Proposed Footnote to letter to [redacted]

FN – That Jane Doe 101 did not meet the threshold requirements for the imposition of the waiver of liability portion of par 8 of the NPA is demonstrated by the filings of Jane Doe II in 09-80469-CIV-Marra, a federal lawsuit filed in March, 2009 seeking "exclusively 2255" damages while Jane Doe II already had a pending separate state court suit filed in July of 2008 seeking damages against Epstein for sexual assault and conspiracy. Jane Doe II in her federal complaint alleged Epstein could "not contest liability for claims brought exclusively pursuant to 18 U.S.C.§2255". In her response to Epstein's Motion to Dismiss in which Epstein challenged the "exclusivity" claim, she argued to Judge Marra at page 7, that "Epstein appeared to be violating the agreement . . . [NPA]". However, her attorney then withdrew that claim at the June 12, 2009 hearing (and in her subsequent Amended Response) agreeing that the state filing negated the "exclusivity" of the federal 2255 lawsuit. On the current record, nothing prevents Jane Doe 101 from filing a parallel state court claim thus she has not, by affirmative waiver filed before the challenged Motion to Dismiss, committed herself to a litigation strategy that would potentially qualify her for the waiver of liability obligation.