UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80893-CIV-MARRA

JANE DOE,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

ORDER

THIS CAUSE is before the Court upon Defendant Jeffrey Epstein ("Defendant")'s Motion to Dismiss, for More Definite Statement & To Strike Directed to Plaintiff Jane Doe's Amended Complaint (DE 87). The Court has reviewed the motion, response (DE 92) and reply (DE 104) and is otherwise fully advised in the premises.

The Amended Complaint

The Amended Complaint alleges five counts, entitled Count I - Sexual Battery upon a Minor; Count II - Cause of Action Pursuant to 18 U.S.C. § 2255; Count III - Intentional Infliction of Emotional Distress; Count IV - Civil Remedy for Criminal Practices; and Count V - Cause of Action Pursuant to Florida Statute 796.09. Defendant seeks dismissal of Counts II and IV of the Amended Complaint or, alternatively, moves for a more definite statement.

Standard of Review

In deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a court must accept all factual allegations in a complaint as true and take them in the light most

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favorable to the plaintiff. See Erickson v. Pardus, 551 U.S. 89, 94 (2007). To satisfy the pleading requirements of Federal Rule of Civil Procedure 8, a complaint must contain a short and plain statement showing an entitlement to relief, and the statement must "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002) (citing Fed. R. Civ. P. 8); see also Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 545 (2007); Dura Pharm., Inc. v. Broudo, 544 U.S. 336, 346 (2005). This is a liberal pleading requirement, one that does not require a plaintiff to plead with particularity every element of a cause of action. Roe v. Aware Woman Ctr. for Choice, Inc., 253 F.3d 678, 683 (11th Cir. 2001). Instead, the complaint need only "contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory." Id. (internal citation and quotation omitted). "A complaint need not specify in detail the precise theory giving rise to recovery. All that is required is that the defendant be on notice as to the claim being asserted against him and the grounds on which it rests." Sams v. United Food and Comm'l Workers Int'l Union, 866 F.2d 1380, 1384 (11th Cir. 1989).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, [ ] a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. at 555 (citations omitted). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." Id. Plaintiff must plead enough facts to state a plausible basis for the claim. Id. See Ashcroft v. Iqbal, 129 S.Ct. 1937, 1950

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(explaining "only a complaint that states a plausible claim for relief survives a motion to dismiss").

Rule 12(e) permits a party to move for a "more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). If a pleading "fails to specify the allegations in a manner that provides sufficient notice" or does not contain enough information to allow a responsive pleading to be framed, the proper motion to be filed is a motion for a more definite statement. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002); Sisk v. Texas Parks and Wildlife Dep't, 644 F.2d 1056, 1059 (5th Cir. 1981).[1] Courts typically grant motions under Rule 12(e) for "shotgun" pleadings, in which it is "virtually impossible to know which allegations of fact are intended to support which claim(s) for relief." Anderson v. District Board of Trustees of Central Florida Community College, 77 F.3d 364, 366 (11th Cir. 1996). Plaintiff has the burden to provide Defendants with a "short and plain statement of the claim." Fed. R. Civ. P. 8(a)(2). As explained by another court, "[t]he claim of the plaintiff in his complaint is sufficiently definite to enable the defendant to know with what it is charged, and it is reasonably able therefrom to respond whether it did the thing charged." Dennis v. Begley Drug Co. of Tennessee, Inc., 53 F.R.D. 608, 609 (E.D. Tenn. 1971). However, a pleading is insufficient if a defendant does not know the basic facts that constitute the claim for relief against it. Such detail should not be left to discovery, for the "purpose of discovery is to find out additional facts about a well-pleaded claim, not to find out whether such a claim exists." Stoner v. Walsh, 772 F. Supp.

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[1] In Bonner v. City of Pritchard, 661 F.2d 1206, 1207 & 1209 (11th Cir. 1981) (*en banc*), the Eleventh Circuit adopted as binding precedent the decisions of the Fifth Circuit rendered prior to October 1, 1981.

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790, 800 (S.D.N.Y. 1991).

Count II - Cause of Action Pursuant to 18 U.S.C. § 2255

Counts II alleges a claim for coercion and enticement to sexual activity in violation of 18 U.S.C. §§ 2422(b), 2423(b), and 2423(e). Those statutes state as follows:

18 U.S.C. § 2422(b):

> Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

18 U.S.C. § 2423(b):

> Travel with intent to engage in illicit sexual conduct.--A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

18 U.S.C. § 2423(e):

> Attempt and conspiracy.--Whoever attempts or conspires to violate subsection (a), (b), (c), or (d) shall be punishable in the same manner as a completed violation of that subsection.

First, the Amended Complaint sufficiently alleges the element of using a facility or means of interstate commerce. See ¶ 33. More specifics are properly the subject of discovery.

Second, Defendant argues that the Amended Complaint fails to set forth underlying factual allegations as to the requisite elements. Specifically, Defendant claims that Plaintiff fails to allege with whom Defendant conspired and the identity of the other "minor females" referenced in the Amended Complaint. (Mot. at 6-7). However, a review of the Complaint

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reveals that Plaintiff alleges with whom Defendant conspired, stating that he "conspired with others, including his assistants [redacted] and [redacted], to further commit these acts and to avoid police detection." See ¶ 15. Additionally, Plaintiff sufficiently alleges the identity of the other minor females in her Civil RICO Statement, attached to her Complaint, alleging as follows:

> The names of all of the victims are unknown to the plaintiff at this time. However, they include Jane Doe herself as well as the victim in [redacted]. v. Jeffrey Epstein and [redacted]. v. Jeffrey Epstein. A list of more than 30 such minor females has previously been provided by the U.S. Attorney's Office for the Southern District of Florida to Epstein (but not to Jane Doe).

See DE 38-2 at ¶ 4.

Finally, Defendant argues, and Plaintiff concedes, that punitive damages are not available under 18 U.S.C. § 2255. Accordingly, Plaintiff's claim for punitive damages pursuant to 18 U.S.C. § 2255 is hereby **STRICKEN** from the Amended Complaint. The remainder of Defendant's motion to dismiss or for more definite statement of Count II is **DENIED**.

Count IV - Civil Remedy for Criminal Practices

Count IV alleges a claim under the Florida Civil Remedies for Criminal Practices Act, Fla. Stat. 772.104(1) and (2) ("Florida RICO"). These sections state as follows:

> (1) Any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 shall have a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of $200, and reasonable attorney's fees and court costs in the trial and appellate courts.
>
> (2) As an alternative to recovery under subsection (1), any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 due to sex trafficking or human trafficking shall have a cause of action for threefold the amount gained from the sex trafficking or human trafficking and in any such action is entitled to minimum damages in the amount of $200 and reasonable attorney's fees and court costs in

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the trial and appellate courts.

Fla. Stat. 772.104(1) and (2).

Under § 772.103(3), it is "unlawful for any person: ... Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt." Fla. Stat. § 772.103(3). Florida Statutes § 772.102(4), in turn, defines "pattern of criminal activity" as:

> engaging in at least two incidents of criminal activity that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents; provided that the last of such incidents occurred within 5 years after a prior incident of criminal activity. For purposes of this chapter, the term "pattern of criminal activity" shall not include two or more incidents of fraudulent conduct arising out of a single contract or transaction against one or more related persons.

Because of the similarities between Florida and federal RICO acts, Florida looks to federal authority regarding the interpretation and application of its act. Palmas Y Bambu, S.A. v. E.I. Dupont De Nemours & Co., Inc., 881 So.2d 565, 570 n.1 (3rd DCA 2004); see also RLS Business Ventures, Inc. v. Second Chance Wholesale, Inc., 784 So.2d 1194, 1196 n.2 (Fla. 2nd DCA 2001) ("Florida courts have held that cases interpreting the federal RICO statute, title 18, United States Code, are persuasive as to the meaning of Florida's RICO statute, chapter 895, Florida Statutes.").

Defendant argues that this cause of action must be dismissed because (1) Plaintiff lacks standing to bring it; (2) Plaintiff has failed to allege a "distinct" enterprise; (3) tampering with witnesses is not a sufficient predicate act for a Florida RICO claim; (4) that the complaint fails to establish "continuity" of criminal acts; and (5) that the complaint fails to allege "direct injury" from the conspiracy.

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Florida Statutes § 772.102(3) defines "enterprise" as

> any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and the term includes illicit as well as licit enterprises and governmental, as well as other, entities.

There is a "distinctiveness" requirement for RICO enterprises. Florida Evergreen Foliage v. E.I. Dupont De Nemours and Co., 336 F.Supp.2d 1239, 1260-61 (S.D. Fla. 2004). To allege a RICO enterprise, Plaintiff must "name a RICO person distinct from the RICO enterprise." State of Fla., Office of Atty. Gen., Dept. of Legal Affairs v. Tenet, 420 F.Supp.2d 1288 (S.D. Fla. 2005) (citation omitted). Both the United States Supreme Court and the Florida Supreme Court have required proof of a RICO "enterprise" that is separate and distinct from the person charged with the RICO violation. See United States v. Turkette, 452 U.S. 576, 583 (1981); Gross v. State, 765 So.2d 39, 43 (Fla. 2000) (adopting Turkette as a matter of Florida RICO law). "The distinction between the RICO person and the RICO enterprise is necessary because the enterprise itself can be a passive instrument or victim of the racketeering activity." U.S. v. Goldin Indus., Inc., 219 F.3d 1268, 1270-71 (11th Cir.2000) (en banc) (ruling that the "plain language" of RICO requires that the "enterprise" be "separate and distinct" from the "person" who is the defendant), cert. denied, 531 U.S. 1015 (2001).

Plaintiff alleges in the Amended Complaint and the RICO statement that the "enterprise" consisted of Defendant Epstein, and his paid employees [redacted] and [redacted]. See Am. Comp. ¶ 43, 44; RICO statement ¶¶ 5, 6, 7. While Plaintiff alleges that the enterprise was separate and distinct from Defendant Epstein and had a definite structure and operational function separate from Epstein, Plaintiff's legal conclusions are not plausible. To withstand a

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motion to dismiss, the allegations must nudge the claim "across the line from conceivable to plausible." Twombly, 550 U.S. at 570 (retiring the "unless it appears beyond doubt" standard of Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). See also Papasan v. Allain, 478 U.S. 265, 286 (1986) (the court accepts as true the plaintiff's factual contentions, not his or her legal conclusions that are couched as factual allegations). A complaint may be dismissed if the facts as pled do not state a claim for relief that is plausible on its face. See Iqbal, 129 S.Ct. at 1950 (explaining "only a complaint that states a plausible claim for relief survives a motion to dismiss").

While it is true that a defendant may be simultaneously a RICO person and a member of the RICO enterprise, the alleged members of the RICO enterprise must be "free to act independently and advance [their] own interests contrary to those of the other" enterprise members. United States v. Goldin Industries, Inc., 219 F.3d 1271-1276-77 (11th Cir. 2000). In this case, Plaintiff alleges that Epstein directed his "underlings" to procure young girls for his own sexual gratification. If the allegations in the Amended Complaint and RICO statement are accepted as true, the alleged "enterprise" would clearly not act independently of Epstein, the RICO Defendant. See Boca Raton Comm. Hosp., Inc. v. Tenet Healthcare Corp., 502 F.Supp.2d 1237, 1253 (S.D. Fla.2007) (the key to "distinctiveness" depends less on whether the enterprise members are separate in the legal sense and more on whether they are free to act independently of each other and to advance their own separate interests); see also Kindred v. Murphy, 2008 WL 476220, *3 (M.D. Fla. 2008) (dismissing RICO claim because the allegations were insufficient to meet requirement that the RICO defendant or person be separate or distinct from the enterprise). In Boca Raton Comm. Hosp., the Court denied summary judgment to the defendant on the issue

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of distinctiveness, concluding that a jury could reasonably conclude that Tenet [the RICO defendant] and its affiliated hospitals [the RICO enterprise] were distinct-that is, free and independent and capable of acting adversely to one another." 502 F.Supp.2d at 1254.

Here, there are no interests of the alleged enterprise separate from those interests of Defendant Epstein the person. The other members of the alleged enterprise have no interests of their own to advance contrary to those of Defendant Epstein. It is completely implausible to conclude otherwise. Plaintiff cannot meet the requirement that Defendant Epstein is separate and distinct from the alleged "enterprise," as the purpose of the enterprise was to advance Epstein's interest in procuring young girls for his sexual gratification. The Court finds that granting Plaintiff leave to amend the Amended Complaint would be futile.[2] Accordingly, Count II - Cause of Action Pursuant to 18 U.S.C. § 2255 is dismissed with prejudice.

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** as follows:

(1) Defendant's Motion to Dismiss, for More Definite Statement & To Strike Directed to Plaintiff Jane Doe's Amended Complaint (DE 87) is **GRANTED IN PART AND DENIED IN PART** as follows:

(a) Plaintiff's claim for punitive damages in Count II (cause of action pursuant to 18 U.S.C. § 2255) is hereby **STRICKEN** from the Amended Complaint.

(b) Count IV (Florida Civil Remedies for Criminal Practices Act) is **DISMISSED WITH PREJUDICE**.

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[2] The Court notes that Plaintiff has previously been granted leave to amend when faced with Defendant's motion to dismiss Plaintiff's original Complaint in this action.

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(c) The remainder of Defendant's motion is **DENIED**.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 3rd day of March, 2010.

KENNETH A. MARRA
United States District Judge

copies to:
All counsel of record

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