

Jay P. Lefkowitz, P.C.
To Call Writer Directly:

June 17, 2009

VIA FACSIMILE

Ms. A. Marie Villafana, Esq.
United States Attorney's Office
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

Re: Jeffrey Epstein

Dear Marie:

~~We~~I ~~write~~ prepared this answer in response to your letter dated June 15, 2009. At this point, as you are well aware it has been ~~well over two years~~almost three years since the federal government first intervened in what was originally a matter investigated and charged by state prosecutorial authorities. It has been almost a year since Mr. Epstein pleaded guilty in state court and began serving his sentence in county jail, pursuant to the terms and as a direct result of the federal Non-Prosecution Agreement (the "NPA"). When Mr. Epstein was sentenced, the U.S. Attorney promised me and my co-counsel that the United States Attorney's Office's involvement would cease with Mr. Epstein's execution of the NPA and incarceration in state custody. ~~Most importantly, We~~ were also promised that the federal government would not intervene in discretionary state or county decisions regarding the implementation of Mr. Epstein's sentence.

~~We~~We take this opportunity to address in detail each of the alleged instances you describe to support your ~~contention~~position that Mr. Epstein has engaged in a pattern of breaching the NPA. We respectfully submit (and support through documentary evidence) that Mr. Epstein has done nothing to breach the NPA and that the allegations that he has breached the NPA are either factually or legally ~~erroneous~~incorrect. Mr. Epstein's overriding commitment intent is to complete his jail sentence, fulfill his other obligations under the NPA, and reach final settlements of pending section 2255 cases with plaintiffs who are agreeable to such settlements. There have been no past breaches of the NPA. There have been no "willful" breaches of the NPA. There has been no pattern of breaches of the NPA.

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As an initial matter, it is important to consider your recent allegations in context. Mr. Epstein has satisfied, and continues to satisfy, his obligations pursuant to the NPA. Mr. Epstein pleaded guilty to a registerable state offense. He has already registered as a sex offender, and has served over 11 months of his sentence in county jail. While such a plea and punishment were not otherwise sought by the State Attorney, Mr. Epstein agreed to the plea, the sentence, and the obligation to register as a sex offender as a direct result of obligations he agreed to undertake pursuant to the NPA. Furthermore, Mr. Epstein has already paid over \$300,000 in civil settlements and fees for the attorney representative, and has agreed to submit issues regarding further fees to a Special Master pursuant to a proposal agreed to by the attorney representative himself. The claimants whose matters have already been settled were identified by you as victims and, in one case, Mr. Epstein paid a settlement to an individual he had no recollection of ever meeting, nor was given the opportunity to challenge—solely because she appeared on your July 2008 list, ~~and had agreed to a settlement in conformity with ¶ 8 of the NPA.~~

We ~~now are prepared to~~ address each of the allegations contained in your June 15 letter. First, your allegation that Mr. Epstein did not use his “best efforts” to enter his guilty plea and to be sentenced is without merit. June 15, 2009 Letter at 2. The date of entry of the state plea was deferred *with the express consent* of United States Attorney Acosta, who recognized and encouraged the ~~importance-opportunity of~~ allowing Mr. Epstein to pursue an independent assessment of this matter by the Justice Department. The subsequent nine-month “delay” was a direct result of the Justice Department’s determination that it was appropriate to convene an intense and time-consuming review of ~~the charge decision~~ this sui generis set of facts. Thus, the delay was not dictated at all by Mr. Epstein, but instead by the review process agreed to and even if you recall, initiated by Mr. Acosta.

~~When,~~ On June 23, 2008, the Justice Department concluded its final review, Mr. Epstein promptly entered his plea (on June 30, 2008) and immediately began serving his sentence. As the following timeline of events leading up to Mr. Epstein’s entry of plea makes clear, the facts are in contradiction ~~contradict~~ with your assertion that Mr. Epstein willfully breached the NPA by delaying his sentence, and compellingly demonstrate that Mr. Epstein’s participation in high-level Department of Justice reviews ~~of your charge decision~~ cannot factually or legally ground a ~~reasonable~~ claim that he “willfully” breached the NPA:

- The NPA, signed on September 24, 2007, provides that Mr. Epstein “begin serving his sentence not later than January 4, 2008.” See NPA ¶ 11.
- On November 28, 2007, Mr. Epstein’s defense counsel contacted Assistant Attorney General Alice Fisher to request a review of certain provisions of the NPA. We informed the USAO of this request the very next day in a letter to Mr. Acosta. See November 29, 2007 Letter from J. Lefkowitz to U.S. Attorney Acosta, p. 4.

- In a December 4, 2007 letter, Mr. Acosta stated that he supported the defense's appeal to Washington. *See* December 4, 2007 letter from U.S. Attorney Acosta to K. Starr with a copy to AAG Alice Fisher at p. 5 ("I do not mind this Office's decision being appealed to Washington, and have previously directed our prosecutors to delay filings in this case to provide defense counsel with the option of appealing our decision.").
- On December 11, 2007, pursuant to Mr. Acosta's request, the defense team sent him submissions detailing the defense's concerns related to the NPA. *See* December 11, 2007 Letter from K. Starr to U.S. Attorney Acosta.
- On December 14, 2007, Mr. Acosta met with members of the defense team to discuss the serious issues raised about the NPA.
- In a December 19, 2007 letter, Mr. Acosta again stated that "the issues raised are important and must be fully vetted irrespective of timeliness concerns." *See* December 19, 2007 Letter from U.S. Attorney Acosta to Attorney Lilly Ann Sanchez at pg 3. He also stated that he had spoken with AAG Fisher to ask that she review this matter and to expedite the process. *Id.*
- In the beginning of January, 2008, Mr. Acosta and I discussed the need for further consideration of the issues raised by the defense. He postponed the plea and sentencing until the Child Exploitation and Obscenity Section (CEOS) was finished with its review of the case.
- In a February 29, 2008 email I sent to Mr. Acosta, I confirmed that that "there were significant irregularities with the deferred prosecution agreement" and that he would ask CEOS to evaluate the matter. I also confirmed Mr. Acosta's agreement to postpone the state plea deadline until after the matter was reviewed. On that same day, First Assistant U.S. Attorney Sloman responded in writing as follows: "Please be assured that it has not, and never has been, this Office's intent to interfere or restrict the 'review process' for either Mr. Epstein or CEOS. I leave it to you and CEOS to figure out how best to proceed and will await the results of that process." *See* February 29, 2008 Emails to U.S. Attorney Acosta and from Assistant U.S. Attorney Sloman.
- Given that CEOS determined that it would not review many of the defense's objections and that its review would be limited on the rest of the objections, CEOS's decision, rendered on May 15, 2008, left open the need for a more thorough review of critical issues by others at the Justice Department.
- In a May 28, 2008 email from Mr. Sloman to Mr. Lefkowitz, Mr. Sloman further postponed the deadline to plead until the Deputy Attorney General's Office (DAG)

completed its review. *See* May 28, 2008 Email from Assistant U.S. Attorney Sloman to J. Lefkowitz.

- A final letter of determination was not issued by the Department of Justice until June 23, 2008.
- Just one week after that date, Mr. Epstein promptly entered his plea and immediately began serving his state sentence on June 30, 2008.

While you claim a breach because Mr. Epstein and the defense team did not provide you with the state plea documents until the last business day before the plea, neither Mr. Epstein nor his counsel bear any responsibility for the delay. It was the responsibility of the State Attorney's Office to provide the defense with the plea agreement. Defense counsel did not receive the plea agreement from the State until 10:00 A.M. on June 27, 2008 (the Friday before the plea). *See* June 27, 2008 Email from State Attorney Lanna Belohlavek to J. Goldberger. Once the plea agreement was reviewed by Mr. Epstein's defense team, Mr. Goldberger sent it to you that same afternoon. At 5:55 P.M. on June 27, 2008, following your receipt of the agreement sent to you by Mr. Goldberger, Messrs. Black and Goldberger received a responsive letter from you alleging that the plea agreement violated the NPA. *See* June 27, 2008 Email from Assistant U.S. Attorney Villafana to R. Black and J. Goldberger attaching Notice of Non-Compliance.

Second, you allege that language contained in the first draft of the plea agreement proposed by the State violated the NPA, because it called for community control in lieu of jail. June 15, 2009 Letter at 2. You now suggest that this "error" evidences Mr. Epstein's alleged efforts to undermine the NPA. I respectfully submit that you are mistaken in both cases. First, the language in the first draft of the plea agreement was prepared exclusively by the State and not seen by the defense until the very day that it was sent to you. Neither Mr. Epstein nor his counsel bear any responsibility for the State's "pseudo-error," and that "pseudo-error" cannot reasonably be attributed to Mr. Epstein or his defense team.

Moreover, as Mr. Goldberger confirmed to you in a telephone conversation on the same day that he received your June 27 letter, the plea agreement, as originally drafted by the State, would have ~~called for~~resulted in the same 12-month and 6-month consecutive jail sentences, followed by one year of community control, as was required by the NPA and ultimately imposed on Mr. Epstein. Although defense counsel asked the State to change the language of the plea agreement to satisfy-alleviate your concerns, the same exact sentence and period of incarceration as required by the NPA would have been imposed on Mr. Epstein had the language of the State's first draft been allowed to apply. *See* June 28, 2008 Email from Assistant U.S. Attorney Villafana to J. Goldberger (confirming a telephone conversation between the parties on June 27 that the state plea agreement was in compliance with the NPA and indicating a request by Assistant U.S. Attorney Villafana to modify the language in the state plea agreement); *see*

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also the initial version and the signed version of the state plea agreements.

The bottom line here is that while Florida counsel for Mr. Epstein fully believed that the initial language in the State's draft would result in a sentence identical to the mandates of the NPA, changes were made in accord with your requests, ~~to make sure that there was complete conformity with the NPA in form as well as substance.~~ The USAO suffered no prejudice nor did the administration of federal criminal justice: lawyers often make linguistic alterations of form; we did so here to satisfy your request and the modification was made in short order, namely, during the Friday and Saturday before Mr. Epstein's state plea; the plea and plea agreement completely complied with the NPA as did Mr. Epstein's sentence; and there was neither a breach, nor harm. Moreover, all communications were through counsel. Mr. Epstein was not a party to these communications and in no way can be considered, factually or legally, to have committed a "willful" breach of the NPA in this regard.

Third, you state that defense "counsel obstructed [your] ability to abide by [your] obligations to notify the victims of the outcome of the federal investigation." June 15, 2009 Letter at 2. That allegation misconstrues the intentions and conduct of the defense team and, importantly cannot seriously allege any "obstruction" or even related conduct by Mr. Epstein himself, as would be required to sanction him for a "willful" breach of the NPA. In October 2007, a full nine months before Mr. Epstein was sentenced, we raised the issue of the victim notification letter. ~~While~~ Mr. Epstein's counsel objected to your method and procedure for notifying the alleged victims and challenged whether you were in fact obligated to notify these individuals pursuant to 18 U.S.C. § 3771, those objections were made in a timely and appropriate manner. On October 10, 2007, I stated in a letter to Mr. Acosta that the defense team did not believe "it was the government's place to be co-counsel to the identified individuals," and reasonably proposed that the alleged victims be contacted by the selected attorney representative. *See* October 10, 2007 Letter from J. Lefkowitz to U.S. Attorney Acosta at pgs 4-5.

Then, on November 28, 2007, you sent defense counsel a proposed victim notification letter indicating that the alleged victims had a federal right to be notified of the resolution of this matter pursuant to the Crime Victims' Rights under § 3771. *See* November 29, 2007 Draft Victim Notification Letter from Assistant U.S. Attorney Villafana. We promptly objected to the draft letter, and our dialogue regarding notification issues continued. You did not finalize the notification letter for several months.

The key point here is that our objections to the letter were made in good faith and were well-founded. After all, on December 6, 2007, Mr. Acosta agreed to many of our objections and adopted several of ~~the our~~ modifications ~~we suggested~~ to resolve problems raised by the draft notification letter. *See* December 6, 2007 Letter from U.S. Attorney Acosta to J. Lefkowitz. ~~This~~ fact ~~that Mr. Acosta eventually adopted certain of the suggested modifications in response to our objections~~ confirms both the good-faith nature of our objections and that

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neither Mr. Epstein nor his counsel violated the NPA by raising those objections in the first place.

Fourth, Mr. Epstein did not, as alleged in your letter of June 15 at pg 2, refuse “to fulfill promptly Mr. Epstein’s obligation to secure the services of an attorney representative for the victims.” It was the United States’ obligation to select a suitable attorney representative, subject to the good-faith approval of Mr. Epstein’s counsel. *See* NPA ¶ 7. ~~Mr. Epstein’s counsel raised a good-faith objection to one of the proposed attorney representatives, and your office promptly withdrew his name.~~ Indeed, due to ~~the~~ a concern we had raised, your office specifically modified the procedure ~~to select~~ that was to select an attorney representative and delegated that task to Judge Davis. *See* Addendum to NPA ¶ 7A. Again, the fact that your office accommodated our concerns validates their legitimacy and undermines any claim that the NPA was breached by raising those concerns with you. To the contrary, Mr. Epstein executed the Addendum to resolve outstanding and, in relation to a Non-Prosecution or Deferred Prosecution Agreement, highly unorthodox issues at the intersection of civil and criminal law. A letter to Judge Davis (authored by then FAUSA Sloman) dated October 25, 2007 followed.

Once Mr. Podhurst’s firm was selected by Judge Davis, Mr. Epstein did not object to the selection ~~—as he could have under the Addendum to the NPA (¶ 7A)—~~ but instead made every effort to retain Mr. Podhurst as soon as possible. Moreover, as you, yourself, have acknowledged to the court, the open issues involving the unique, challenging and unprecedented implementation of the § 2255 portions of the NPA were not finally resolved until early September of 2008. *See* December 22, 2008 Villafana Supplemental Declaration at pg 3, ¶ 9. Only five days later, on September 8, 2008, I sent a letter to Robert Josefsberg advising him that Mr. Epstein would pay his fees pursuant to the NPA for his role as an attorney representative. *See* September 8, 2008 Letter from J. Lefkowitz to R. Josefsberg. Furthermore, in an effort to comply with the obligations under the NPA, Mr. Epstein already has paid Mr. Podhurst over \$160,000 in legal fees, despite significant concerns over the scope of the work for which he is billing Mr. Epstein, and has agreed with ~~the attorney representative’s~~ Mr. Josepefburg’s proposal that a Special Master be empowered to resolve any issues that ~~Mr. Josefsberg~~ he and Mr. Epstein’s civil counsel cannot resolve. *See* June 15, 2009 Letter from Robert Critton to Kathy Ezell. There is nothing about the exchanges between counsel and the USAO regarding the ~~unusual issues~~ attorney representative -that ~~have~~ s arisen in this case that even begins to approach a “willful” breach by Mr. Epstein.

Fifth, ~~you go on to suggest in a further attempt to demonstrate~~ that Mr. Epstein willfully breached the NPA, ~~you allege that~~ by the actions of Mr. Tein and Mr. Goldberger who failed to approved ~~of~~ the victim notification letter that contained incorrect information ~~containing information that Mr. Epstein and I contended is incorrect.~~ *See* June 15 letter at 2. ~~That~~ the incorrect information ~~contained~~ in the letter was a proposed unilateral modification to the NPA which was never approved by Mr. Epstein nor any member of the defense team. ~~It~~ In fact, the defense team

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~~was never afforded a reasonable opportunity to review and provide comments on the notification letter, as requested. See July 10, 2008 Letter from J. Goldberger to Assistant U.S. Attorney Villfana. As you indicated in your July 10, 2008 reply to Mr. Goldberger, you commenced sending out the victim notification letters on a rolling basis without even addressing the defense's request for an opportunity review the letter, much less the defense's approval of the letter. See July 10, 2008 Letter from Assistant U.S. Attorney Villafana to J. Goldberger.~~

~~The proposed modification mistakenly included in the victim notification letter was never a part of the NPA and~~ was only suggested by your office in a letter from Mr. Acosta on December 19, 2007. We never agreed to that the language. In fact, I personally raised several objections to the suggested modification in my letter to Mr. Acosta, dated December 21, 2007. See December 21, 2007 Letter from J. Lefkowitz to U.S. Attorney Acosta. I, personally first became aware of the error of the error on Wednesday, August 13, 2008 and discussed the matter with you immediately. See August 15, 2008 Letter from Assistant U.S. Attorney Villafana to J. Lefkowitz (confirming that the "December modification" is not a part of the NPA). Again, that oversight was not a willful breach or an expression an intention of intent to violate the terms of the Agreement, but instead represented the efforts of counsel, acting in good faith, in an attempt attempting to negotiate oinsure that the letter contained only previously agreed upon language appropriate language with your office on the content of your communication with individuals who would in the near future be potential civil claimants. See August 13 and 15, 2008 Letters from Assistant U.S. Attorney Villafana to J. Lefkowitz.

Sixth, you raise the issue of a delayed withdrawal of a motion to quash. See June 15, 2009 letter at 2-3. First, there is no motion to quash that still remains pending. The fact that the motion was not withdrawn for some time was merely due to an administrative oversight that has now previously been remedied, but at no time did it prejudice the Government in any way. Nor did it result from some effort by myself or co-counsel to gain some tactical advantage. Second, no effort was made by any counsel to seek a judicial decision on the pending motion. The motion had no adverse effect on the Government, and the delay in its withdrawal is legally and factually unrelated to the type of material and willful breach that alone could warrant sanctions remedies—not least of all because Mr. Epstein has suffered irreversible prejudice by complying with the core provisions of the NPA. Again, he has been imprisoned, he has plead guilty, he is registered, he has paid sums to claimants all to comply with the NPA duties.

Seventh, you state that additional issues arose in November regarding the issuance of work release to Mr. Epstein. June 15, 1009 Letter at 3. We have previously diseussed-reviewed this very matter with you and other individuals in your office in November 2008. At that time, Mr. Roy Black met with you, Karen Atkinson, Bob Senior, and Jeffrey Sloman in Miami to review the work release issue. Among other significant documents, we presented you with your

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own email in which you acknowledged the sheriff had discretion in the matter. *See* July 3, 2008 Email from Assistant U.S. Attorney Villafana to Michael Gauger (“If Mr. Epstein is truly eligible for the [work release] program, we have no objection to him being treated like any other similarly situated prisoner . . .”). Furthermore, Mr. Acosta previously assured me and other counsel that the USAO would not interfere in the ordinary implementation of discretionary administrative decisions by state or county officials. We are under no obligation (in the NPA or anywhere else) to notify you of such discretionary and ordinary state-made decisions, and the fact that your office confirmed that Mr. Epstein was entitled to the same discretionary administrative decisions as other similarly situated inmates fundamentally undermines any claim that Mr. Epstein breached the NPA in connection with the state and county officials’ decision. In any event, after thoroughly reviewing and evaluating Mr. Epstein’s application, the Palm Beach County Sheriff’s Office properly exercised its discretion, in full compliance with its stated requirements, policies and procedures, to grant Mr. Epstein work release. In addition, after the Sheriff’s Office received a multi-page letter from you to Captain Sleeth, which recited the very allegations of errors on Mr. Epstein’s work release application to which you refer in your latest letter, after each allegation was fully reviewed, the Sheriff’s office found its initial decision appropriate, and found to be of little significance.

Eighth, it is both unreasonable and unjustifiable to hold Mr. Epstein responsible ~~blame to Mr. Epstein~~—never mind declare him in breach—with regard to Judge McSorley’s *nunc pro tunc* order. June 15 Letter at 3. Frankly, I am confused as to how you could do so. Neither Mr. Epstein nor defense counsel had anything to do with and certainly no—prior knowledge ~~of, or anything to do with, of~~ this order. Defense counsel only learned of it after you ~~told us about it~~ brought it to our attention. ~~The fact are as follows, the~~—The Department of Corrections requires an order placing someone on community control before the Department of Corrections will supervise that person. Judge Pucillo, the retired judge that took Mr. Epstein’s plea, inadvertently neglected to enter the order placing Mr. Epstein on Community Control 1. When Judge McSorley learned of this, she properly entered the order *nunc pro tunc* to the date of the plea. *See* Order of Community Control. If you will note on the 3-page court event form, *see* attached, circled at the top of page 2 is “C.C.1” (community control 1). Mr. Epstein was properly placed on community control 1 on the day of his plea to begin only after he completes his jail sentence, and the *nunc pro tunc* order simply ratifies the oral pronouncement made by the court at the time of the plea. Given that the NPA expressly provides that Mr. Epstein is to serve a sentence of 12 months in “community control consecutive to his two terms in county jail,” NPA at ¶ 2(b), your assertion that the inclusion of community control “directly contradicted the terms of the” NPA is totally -incorrect.

Finally, the motion to dismiss that was the topic of discussion on June 12 has been withdrawn. As indicated in the letter I sent you yesterday, we have adopted an internal screening process aimed ~~at~~ eliminating future concerns about anything that reasonably could be construed as a breach of the NPA. Mr. Epstein has directed all counsel to make certain ~~sure~~ that

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no filing ~~is made that reasonably~~ could be construed as a breach of the NPA. Furthermore, the new process, as we stated in my June 15 letter to you, attached hereto, will ~~allow you to have provide you , if you so choose ,~~ the opportunity to review any such filing *before* it is submitted to the court so that you may determine whether or not it constitutes a breach.

That having been said, I wish to reiterate our firm belief that the NPA allowed Mr. Epstein the right to contest litigation whenever an express waiver of all other state, federal or common law claims or the right to bring contested litigation in the future was not sufficiently or correctly pleaded. As you know, Martin Weinberg and I spent several weeks negotiating the language of the NPA with you and Mr. Acosta. ~~Every word in that agreement was subject to negotiation and deliberation.~~ Both Mr. Weinberg and I firmly believe that the motion to dismiss that was recently filed (and then promptly withdrawn) did not constitute a violation of the NPA.

First, Paragraph 8 of the NPA limits those who may benefit from any waivers by Mr. Epstein to an “identified individual” who “elects to proceed exclusively under 18 USC 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law”. More is required of a plaintiff than to simply allege, as did Jane Doe 101, that she “exclusively seeks civil remedies pursuant to 18 USC 2255.” Amended Complaint ¶ 24. Such an averment satisfies only the exclusivity portion of the twin conditions set forth in the NPA at ¶ 8. The word “and” followed by the requirement of an affirmative waiver of any other claims, federal, state, or common law mandates an additional affirmative act by the plaintiff. No such waiver was filed or even pled. Jane Doe 101 did no more than restate that her complaint in civil action no 9:09-cv-80591-KAM was only for 2255 damages. She never affirmatively waived all future claims in state or federal court, as required by the NPA. Because of this threshold issue, Jane Doe 101 did not, through the attorney representative, satisfy the NPA ¶ 8 requirements. While Mr. Epstein’s counsel still believe for these reasons that the motion did not conflict with Mr. Epstein’s obligations under the NPA, the Motion was in relevant part withdrawn at Mr. Epstein’s insistence—further demonstrating that Mr. Epstein has prioritized his desire to avoid contentious additional litigation with the USAO over this matter.

~~Moreover, the waiver of liability delineated in ¶ 8 of the NPA apply only to identified individuals who entered agreements to settle, as opposed to identified individuals who elected to litigate once settlement efforts failed.~~

~~Second, the NPA was entered with the expectation that Epstein would not challenge liability for “a violation of an enumerated section of Title 18,” i.e. he would agree to a single offense that would provide the claimant with the threshold right to pursue a single claim for damages in federal court if a reasonable settlement could not be consummated. See December 4, 2007 Letter from U.S. Attorney Acosta letter to K. Starr at pg 2. But Jane Doe 101 pleaded multiple counts charging multiple underlying violations by Mr. Epstein of the criminal statutory~~

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~~predicates for 2255 relief. At best, these provisions of the NPA are unclear and ambiguous—as U.S. Attorney Acosta himself properly recognized. *Id.* (conceding that the key sentences in ¶ 8 of the NPA were “far from simple”).~~

~~In short, our good-faith efforts to raise litigation issues will be more carefully scrutinized in the future as to limit the possibility of being in public filings cannot and should not be construed by your as providing the USAO office with the legal or factual basis ~~to claim that you are right, we are wrong, and to somehow claimsomewhat~~ Mr. Epstein is in “willful” breach, ~~particularly when, upon notice, he directed counsel to abandon litigation positions in order to avoid conflict with your Office.~~ Issues regarding the scope of the ¶ 8 waivers are unorthodox and even unprecedented. They result in part from the NPA being executed before you identified the individuals listed, *see* NPA ¶ 7, and, importantly, given the evolution of the civil litigation, before any joint statement as required by the terms of the NPA was provided to Mr. Josefburg, disclosure to counsel of the nature of or numerosity of the claims the listed individuals were alleged. Nevertheless, as we stated on June 15, we intend to provide you with future filings in advance so that we can discuss their interaction with the NPA before rather than after any filing. However, barring your acceptance of that procedure, in a good faith attempt to avoid future conflict, we would hope to clarify some of the more ambiguous parts of the agreement with you as soon as possible.~~

~~While Mr. Epstein’s counsel still believe for theseis and other legal reasons set forth below that the motion did not conflict with Mr. Epstein’s obligations under the NPA, the Motion was in relevant part withdrawn at Mr. Epstein’s insistence—further demonstrating that Mr. Epstein has prioritized his desire to avoid contentious additional litigation with the USAO over this matter.~~

At this point, Mr. Epstein has completed over 11 months of his sentence. He has already registered as a sex offender and forever has had his reputation injured because of it. Mr. Epstein would have never pleaded guilty to a registerable offense or agreed to serve a sentence that included any jail time (the pre-NPA state offense carried with it mandatory PTI) were the NPA not in place. Thus, he has not only complied with the terms of the NPA, but provided valuable “consideration” to the government in exchange for the promises your Office made to him. Three of the alleged victims have already been compensated pursuant to the terms of the NPA, and there are on-going negotiations regarding the other identified individuals. Indeed, Mr. Epstein has previously offered to pay the statutory minimum under § 2255 to every woman on Mr. Josefsberg’s list.

The facts demonstrate that Mr. Epstein he has clearly not committed any breach of the NPA, much less a willful breach. ~~and. And, as I have demonstrated in this letter, in several~~

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~~instances, the issues you complain about are not the fault of the defense at all and cannot reasonably be construed as a breach under any reasonable construction of the NPA.~~

As we have reiterated and as has been proven by Mr. Epstein's own actions, Mr. Epstein has no intention of breaching the NPA and has never had any such intention. Although you claim that Mr. Epstein received the benefits of the NPA and the Government only its burdens, I believe the reality is to the contrary. Mr. Epstein has suffered significant and irreversible prejudice: he has been imprisoned in a county jail for almost a year, he has pleaded guilty to a state felony that required sex registration and has, in fact, registered as a sex offender, he accepted civil burdens in his ongoing litigation that may result in millions of dollars of future payments; he has settled cases that could be won, in deference to the NPA; and he is paying and will pay hundreds of thousands of dollars in legal fees for his adversaries to pursue him in court. The Government may have endured some delays and administrative costs in in its decision to verifying facts—such as that the Sheriff authorized work release program , according to state procedure and that the state issued certain orders—but neither the Government nor any civil plaintiff has suffered any harm, any prejudice, or any disadvantage as a result of the events alleged “breaches” you have identified. We signed a contract -- the NPA -- with you in good faith, and in exchange Mr. Epstein gave consideration that cannot be returned (12 months of his freedom and his reputation). He is legally entitled to its benefits. He committed no “willful breach.” As such, we believe it would constitute both a contractual and constitutional error to seek further remedy or to in any way withdraw from the NPA.

We will continue to make our best efforts to communicate with you about any potential problems and hope, in the interest of fairness, you will do the same.

Sincerely,

Jay P. Lefkowitz, P.C.

Enclosures

cc: Jeffrey Sloman, Esq.
Karen Atkinson, Esq.

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