UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.
_____/

CASE NO.: 08-cv-80119-MARRA/JOHNSON

JANE DOE NO. 3,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____/

CASE NO.: 08-CV-80232-MARRA/JOHNSON

JANE DOE NO. 4,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____/

CASE NO.: 08-CV-80380-MARRA/JOHNSON

CASE NO.: 08-CV-80381-MARRA/JOHNSON

JANE DOE NO. 5,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____/

CASE NO.: 08-80994-CIV-MARRA/JOHNSON

JANE DOE NO. 6,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____/

CASE NO.: 08-80993-CIV-MARRA/JOHNSON

JANE DOE NO. 7,

Plaintiff,

JEFFREY EPSTEIN

Defendant.

_____/

C.M.A., **CASE NO.: 08-80811-CIV-MARRA/JOHNSON**

Plaintiff,

JEFFREY EPSTEIN

Defendant.

JANE DOE, **CASE NO.: 08-80893-CIV-MARRA/JOHNSON**

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

_____/

DOE II, **CASE NO.: 09-80469-CIV-MARRA-JOHNSON**

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

_____/

JANE DOE NO. 101, **CASE NO.: 09-80591-CIV-MARRA-JOHNSON**

Plaintiff,

JEFFREY EPSTEIN

Defendant.

_____/

JANE DOE NO. 102, **CASE NO.: 09-80656-CIV-MARRA/JOHNSON**

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____/

Defendant, Jeffrey Epstein's Response In Opposition to Plaintiff, Carolyn Margaret Andriano's Motions For Protective Order Regarding Treatment Records From Parent-Child Center, Inc. And Dr. Serge Thys, Records Of Dominique Hyppolite/School District Of Palm Beach County, Good Samaritan Hospital, St, Mary's Hospital , Florida Atlantic University And Gloria C. Hakkarainen, M.D., With Incorporated Memorandum Of Law (DE 207)[1]

And

Motion to Strike C.M.A.'S Conditional Notice Of Intent To Exclusively Rely On Statutory Damages Provided BY 18 U.S.C. §2255 (DE 113), With Incorporated Memorandum Of Law [2]

Defendant, JEFFREY EPSTEIN (hereinafter "EPSTEIN"), by and through his undersigned attorneys, hereby files his Response In Opposition to Plaintiff, Carolyn Margaret Andriano's Motions For Protective Order Regarding Treatment Records From Parent-Child Center, Inc. And Dr. Serge Thys, and Records Of Dominique Hyppolite/School District Of Palm Beach County, Good Samaritan Hospital, St, Mary's Hospital , Florida Atlantic University And Gloria C. Hakkarainen, M.D. (previously DE 114 and 121, now combined in DE 207)(the "Motions for Protective Orders") And Motion to Strike C.M.A.'S Conditional Notice Of Intent To Exclusively Rely On Statutory Damages Provided by 18 U.S.C. §2255 (DE 113) (the "Notice of Conditional Reliance"), With Incorporated Memorandum of Law. An expeditious ruling by this Court is now critical.[3] In support, Epstein states:

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[1] DE 114 and DE 121 were stricken because they were incorrectly filed pursuant to the Court's Order consolidating cases. Plaintiff refilled as one Protective Order (DE 207). Epstein is now re-filing his Response (previously DE 137) with minor changes.

[2] The Response in Opposition to the Motions for Protective Order and the Motion to Strike are inextricably woven together in that each deal with critical discovery issues. Thus, the Response and the Motion to Strike must be handled simultaneously by the Court.

[3] CMA blocked all direct third party discovery by Epstein, stating use of her name on a third party subpoena would violate anonymity. Just when CMA capitulated and allowed Epstein to use her name, she filed protective orders regarding records on June 5, 2009. Instead of being fully briefed so that critical discovery could proceed, the Court struck their Motions for Protective Order (DE 114 and DE 121), Plaintiff filed the motion again, and the "clock" has been reset. The Court denied Epstein's motion to move the trial date; Epstein is staring at discovery cutoffs, and yet Epstein cannot serve third party subpoenas! Epstein is being denied his due process right to defend himself.

I. Background

1. C.M.A. was filed on February 23, 2008. The case was removed to federal court on July 21, 2008. A Motion for Stay was filed on July 25, 2008 (DE 33), which this Court subsequently denied on December 12, 2008 (DE 28). The case was transferred from Judge Zloch to this division on September 3, 2008 (DE 21). C.M.A. filed her First Amended Complaint on February 10, 2009. (C.M.A. DE 39-40). Epstein's Motion to Dismiss same was filed on March 12, 2009. (C.M.A. DE 47). The Motion to Dismiss remains outstanding, and addresses several of the arguments set forth in C.M.A.'s Conditional Notice of Intent to Exclusively Rely of Statutory Damages Provided By 18 U.S.C. §2255 and, therefore, same is incorporated herein by reference.

2. Up until May 20, 2009, Plaintiff refused to allow Defendant to identify her by name in various third-party subpoenas which Defendant intended to serve directed to Plaintiff's health care providers, past and current, which involves basic personal injury discovery. If Defendant could not use CMA's name, how could the provider have provided records from solely a "CMA" designation? Defendant did not want to violate the court's order on anonymity. Thus, Defendant served its April 29, 2009 Motion to Identify (DE 67) and Reply (DE 181) requesting the right to serve third-party subpoenas and/or dismissed Plaintiff's case. Plaintiff offered to allow Defendant access to her medical history only after her attorneys were able to obtain and filter through same. Only then would Plaintiff turnover the "filtered" relevant information. Obviously, such an offer is unrealistic and does not comport with the basic discovery rules or afford Epstein his constitutional due process rights to defend himself.

3. On May 20, 2009, C.M.A. capitulated and filed her Notice of Withdrawal of Previously Raised Objections to Epstein's Motion to Compel and/or Identify C.M.A. in the Style of this

Case and Motion to Identify C.M.A. in Third-Party Subpoenas for Purposes of Discovery, or Alternatively, Motion to Dismiss Sue Sponte (DE 23)(the "Notice of Withdrawal"). Obviously, by filing the Notice of Withdrawal, Plaintiff recognized that her attempts to prevent meaningful discovery were delaying this matter and would ultimately delay her trial.

4. Defendant expeditiously set about to obtain basic background discovery on C.M.A. for use for her deposition and for an eventual medical/psychological exam. But then, on June 5, 2009, C.M.A. filed a Motion for Protective Order Regarding Treatment Records From Parent-Child Center, Inc. and Dr. Serge Thys (DE 114), and of even date she filed her Conditional Notice of Intent to Exclusively Rely on the Statutory Damages provided by 18 U.S.C. §2255. (DE 113). On June 17, 2009, Plaintiff then filed a subsequent Motion for Protective Order Regarding Treatment Records From Palm Beach County School District, Good Samaritan Hospital, St. Mary's Hospital Dr. Gloria C. Hakkarinen, and Florida Atlantic University (DE 121). The Court struck DE 121 on July 17, 2009 because the pleading was incorrectly filed pursuant to the Court's Order consolidated cases. The Plaintiff refilled one (1) Motion for Protective Order (DE 207). While Plaintiff agreed to allow Defendant to identify her in various third-party subpoenas directed to her physicians, she now employed yet another strategy to block discovery of her past medical and psychological history from being discovered by and through the Conditional Notice and the Motions for Protective Order. Without the health care provider information, including psychological/ psychiatric records, it will be impossible to conduct a thorough deposition of C.M.A and have a meaningful compulsory psychological examination by a defense expert. C.M.A. knows full well that such discovery is relevant to the claims she asserts against Epstein.

5. Plaintiff opposed Defendant's motion to strike the current trial date, and this court in denying Defendant's motion instructed Defendant to move forward with discovery. Yet, Plaintiff's own strategy prevents the very discovery this court said Defendant should undertake! Comically, Plaintiff claims in the Notice of Conditional Reliance Notice and in the Motions for Protective Order (which rely solely on the Notice of Conditional Reliance) that ***if*** she is successful in opposing Defendant's Motion to Dismiss, she intends to rely exclusively on the statutory damages provided under 18 U.S.C. 2255 rather than those damages provided for under common law (state tort claims). On the flipside, Plaintiff then claims that ". . .should the court rule. . .that the statutory damage floor can only be applied once, Plaintiff will be pursuing any and all damages available to her, whether they be pursuant to statute or by common law." (DE 113 at ¶5-6 and DE 207at ¶4-7). The undersigned assumes this is part of the "conditional" aspect of the notice. Defendant can find no cases dealing with such a notice in any Federal Court in the United States. Based upon the court's ruling referenced below, such a position is not warranted at Motion to Dismiss stage. What if this motion is not ruled upon until after the discovery cutoff or only the week before the trial? Under that scenario, the Defendant will be prevented from obtaining critical discovery to defend this case. When has a Plaintiff ever been afforded the option to "conditionally" prove damages? Never. Is Epstein forced to take C.M.A.'s deposition without having allowed access to any prior or current medical/psychological treatment? Defendant will request a compulsory medical examination of Plaintiff. If the Plaintiff has it her way, the examiner will perform the examination in a vacuum.

6. It appears C.M.A. intends to further stall discovery pending the outcome of the Motion to Dismiss and any future Motion for Summary Judgment. See *infra*. That is, C.M.A. wishes to

rely on the statutory damage floor if she is successful in opposing Defendant's motion to dismiss. She then will assert that her medical history will not be at issue at trial and thus no evidence regarding her physical, emotional and pecuniary injuries will be presented at trial. First, that is not what is currently alleged in the 89-page Amended Complaint. Second, paragraph 6 of Plaintiff's Motion for Protective Order (DE 207) is cleverly worded in that it states "[p]laintiff will not be presenting any evidence of the extent of her physical, emotional or pecuniary injuries, ***beyond*** evidence that she was a victim of sexual contact to which she was legally incapable of consenting by virtue of her age (including, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy, and loss of the capacity to enjoy life)." This court must ask what Plaintiff intends to use ***"beyond"*** evidence of the extent of her physical, emotional or pecuniary injuries. Does ***"beyond"*** mean Plaintiff still intends to produce evidence of her pain and suffering, emotional distress, psychological trauma etc… even if she is successful at Motion to Dismiss? Third, Plaintiff misconstrues the application of the statute as delineated below.

7. This court ruled in its May 28, 2009 Order that "[i]ssues regarding the minimum amount of damages available to Plaintiff under 18 U.S.C. §2255 do not affect whether plaintiff has stated a claim and are not appropriate for Motion to Dismiss. These damages issues will be resolved at summary judgment or trial." See Order (DE 101). Hence, if this Court accepts Plaintiff's position and her bogus Notice of Conditional Reliance, Defendant may not be permitted (unless Plaintiff's motion for protective order are immediately denied) discovery as to C.M.A.'s damages alleged in the Amended Complaint until a Motion for Summary Judgment is

ruled upon, which could be right before and/or at trial. Certainly, such a result would be inherently unfair, but exactly what Plaintiff is strategizing to accomplish.

8. Moreover, it is unreasonable for this court to accept Plaintiff's position set forth in the Notice of Conditional Reliance and in the Motions for Protective Order because this court has already ruled that Plaintiff can only be deposed once. (Case #80119, DE 98 at ¶5 – "Defendant is limited to a single deposition of each Plaintiff, during which defendant may depose the Plaintiff as both a party and a witness.") As such, Plaintiff cannot force the taking of her deposition and any expert depositions while key discovery remains unavailable due to the Plaintiff's Motions for Protective Order. Moreover, if Defendant prematurely takes Plaintiff's deposition based on one (1) theory of recovery (which is exactly what Plaintiff is attempting to accomplish), then under this Court's prior ruling, an additional deposition of Plaintiff may not be allowed despite Plaintiff's success at Motion to Dismiss or Motion for Summary Judgment in connection with her 18 U.S.C. 2255 claims and/or conditional reliance; or even if allowed, there will be no time to conduct necessary relevant discovery.

9. Recognizing Plaintiff's delay tactics and refusal to produce meaningful discovery, Epstein requested that this court strike this case from the current docket, continue the trial, and/or to modify the court's scheduling order. (DE 104). On July 6, 2009, the Court denied that Motion. (DE 187) Plaintiff now uses her delay tactics and the court's order as sword and shield. That is, Epstein is now precluded from taking and/or receiving meaningful basic personal injury discovery in connection with C.M.A.'s claims, which is substantively unfair and directly violates Epstein's due process rights – yet, he is being forced to trial.

II. Argument and Memorandum of Law

a. The Motions For Protective Order Should Be Denied or Stricken

10. In order to understand the absurdity of Plaintiff's motions, the Court needs some background on CMA to conclude that the information sought is relevant and material and may lead to the discovery of admissible evidence.

A. CMA was born on January 2, 1987, and has two children by two different men. CMA had her first child at the age of seventeen and her second at the age of twenty-one.

B. Plaintiff's counsel without waiving his work product privilege, has information which suggests CMA had drug and psychological problems that pre-dates any contact by CMA with Epstein.

C. CMA is Answers to Interrogatories (#10) indicates that her mother, Dorothy Groenert, her brother, Joseph Andriano, and the father of her first child, Shawn Haught, all ***drove her*** to Epstein's house on various occasions. These people had to have known what CMA was allegedly doing at Epstein's house. So the question remains, who is CMA, what is her history, and why is the information being sought relevant

D. CMA is seeking millions of dollars in personal injury damages. The following represents conduct and events that had to have had a substantial effect on CMA's life and emotional/psychological makeup. These are merely examples and just the tip of the iceberg.

- On March 27, 2000, in Palm Beach County Sheriff's Office Case #00-54914, ***CMA threw*** a cinder block at her mother's boyfriend's car.
- On April 11, 2000, in Palm Beach County Sheriff's Office Case #00-61772, officers responded to the house in reference to ***child abuse*** involving CMA, her brothers, and her mother.

- On June 29, 2000, in Palm Beach County Sheriff's Office Case #00-95746, CMA's mother contacted the police after hearing ***CMA's friends threaten to kill her (CMA).***

- On July 26, 2000, in Palm Beach County Sheriff's Office Case #00-106500, officers responded in reference to Criminal Mischief. CMA was a victim of having her window broken at her house by a Tonya White. White stated she went to CMA's house to confront CMA about ***CMA having sexual relations with her boyfriend.*** CMA would have been thirteen (***13***) years old at this time.

- On August 24, 2000, in Palm Beach County Sheriff's Office Case #00-118442, ***CMA was arrested for aggravated assault*** after chasing her brother around the house with a knife.

- On September 5, 2001, in Palm Beach County Sheriff's Office Case #01-119103, CMA's mother reported her missing. At the time ***CMA was on house detention*** for previous crimes and for being truant from school. A pick-up order was in effect and CMA was subsequently detained.

- On November 24, 2001, in Palm Beach County Sheriff's Office Case #01-150237, officers responded in reference to a Battery. ***CMA*** and her brother ***witnessed*** their mother being beaten by her then boyfriend, Lance Bell.

- On March 26, 2002, in Palm Beach County Sheriff's Office Case #02-48096, officers responded to the house in reference to ***child abuse involving CMA***, her brothers, and her mother.

- On April 6, 2002, in Palm Beach County Sheriff's Office Case #02-571, CMA's mother was arrested for ***possession of crack cocaine*** and CMA and her brothers were removed from their home.

- On October 8, 2002, in Palm Beach County Case #02MH1402, CMA's mother filed a Marchman Act Petition ***naming CMA*** after she told a judge that she was hospitalized for ***overdosing*** on ***Xanax*** and ***Marijuana***, was ***truant*** from school, has ***anger issues***, ***mental disabilities***, and needs treatment for self inflicting wounds. The case was closed on October 31, 2002, because CMA was to be in court the following day for a probation violation.

- On July 27, 2004, in Palm Beach County Case #04MH1530, CMA's mother filed a Marchman Act Petition ***naming CMA*** after she told a judge that she was ***constantly testing positive*** for ***cocaine*** and ***marijuana***.

- On August 16, 2004, in Palm Beach County Case #04MH1676, CMA's mother filed a Marchman Act Petition ***naming CMA*** after she told a judge that treatment at home was not working and a residential facility would be needed.

- On August 22, 2004, in Palm Beach County Case #05MH1934, CMA's mother filed a case ***naming CMA*** for a Petition for Involuntary Assessment for ***Substance Abuse***. CMA's mother stated that CMA was homeless, unclean, and prostituting herself.

- On August 22, 2005, in Palm Beach County Case #05MH1667, CMA's mother filed a case ***naming CMA*** for a Petition for Involuntary Assessment for ***Substance Abuse***. CMA's mother claimed that CMA was homeless, unclean, has been prostitution herself for crack cocaine, is addicted to Xanax, is a cutter and self mutilator, living in a hotel, and has been diagnosed as ***Bipolar*** and ***Schizophrenic.***

11. As stated above, Plaintiff filed the Motions for Protective regarding medical, psychological and school records in an effort to chill discovery. As to the Motion for Protective Order concerning Records from Parent Child-Center, Inc., Dr. Serge Thys, Palm Beach County School District, Good Samaritan Hospital, St. Mary's Hospital, Dr. Gloria C. Hakkarinen, and Florida Atlantic University (DE 207), Plaintiff raises in each the Notice of Conditional reliance as authority for this court to consider in granting same. Accordingly, for the same reasons set out in section II. (a) above, this court should strike or deny the Motions for Protective Order as Plaintiff must still prove "actual damages" under the statute, thereby making her medical and psychological history relevant. Rule 12(f) - *Motion to Strike*, "the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."

12. Next, Plaintiff states in her Motions for Protective Order that "[o]rdinarily a plaintiff does not place her mental condition in controversy merely by requesting damages for mental anguish or 'garden variety' emotional distress. ***In order to place a party's mental condition in***

controversy the party must allege a specific mental or psychiatric disorder or intend to offer expert testimony to support their claim of emotional distress." (DE 207) Plaintiff cites Turner v. Imperial Stores, 161 F.R.D. 89 (S.D. Cal. 1995); however, that case dealt primarily with compelling the mental examination of a patient, not the production of records. Nonetheless, the case supports Defendant's position for the production of information by subpoena. For instance, Plaintiff once again seems to forget her answers to interrogatories and the allegations in her First Amended Complaint, which is the *OPERATIVE* pleading. For instance, in her answers to interrogatory nos. 9 and 10, which seek information about C.M.A.'s damage claims, Plaintiff answered that:

> I have **bi-polar disorder** and **manic depression**. I lost my self-esteem. I began cutting myself on my arms and legs and developed drug problems. Permanent injuries are psychological. (Interrog. No. 9).
>
> I am claiming compensation for mental anguish, mental pain, **psychic trauma**, and loss of enjoyment of life. These damages will be evaluated by a jury who will provide their own methods of computation in an amount of at least the statutory minimum established by 18 U.S.C.A. §2255. (Interrog. No. 10).

13. In her 1st Amended Complaint, relevant to her damages claims, Plaintiff alleges:

> … C.M.A., has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy and other damages … . The then minor Plaintiff incurred medical and psychological expenses … and will in the future suffer additional medical and psychological expenses. The Plaintiff C.M.A. has suffered loss of income, a loss of the capacity to earn income in the future, and a loss of capacity to enjoy life. These injuries are permanent in nature and the Plaintiff, C.M.A., will continue to suffer these losses in the future.
>
> (1st Am. Complaint, Counts I – XXX (18 U.S.C. §2255), ¶¶25, 31, 37, 43, 49, 55, 61, 67, 73, 79, 85, 91, 97, 103, 109, 115, 121, 127, 133, 139, 145, 151, 157, 163, 169, 175, 181, 187, 193; Count XXXI (Sexual Battery), ¶199.)

See Fajardo v. Pierce County, 2009 WL 1765756 (W.D. Wash. 2009)(allegations of specific disorders amount to more than garden variety disorders and thus Plaintiff waived physician-patient privilege as it involved a complex medical issue); Alexander v. City of Bellingham, 2008 WL 2077970 (W.D. Wash. 2008); Grit v. Target Corp., 2008 WL 1777744 (M.D. Fla. 2008); Trenary v. Bush Entertainment Corp., 2006 WL 3333621 (M.D. Fla. 2006)(responses to interrogatories placed plaintiff's mental condition at issue); Tracey P. v. Sarasota County, 2006 WL 1678908 (M.D. Fla. 2006)(responses to interrogatories delineating depression and bi-polar disorder are more than simple allegations of emotional distress thus placing plaintiff's mental condition at issue).

14. Clearly, Plaintiff has alleged specific psychological disorders (bi-polar and manic depression), and seeks to recover medical expenses associated with those complex medical issues. Accordingly, the Motions for Protective Order should be denied and/or stricken. See also United States v. Bear Stops, 997 F.2d 451 (8th Cir. 1993)(dealing with "admissibility of other acts of sexual abuse by individuals other than the defendant to explain why a victim of abuse exhibited behavioral manifestations of a sexually abused child. Fed.R.Evid. 403, 412 and 412(b)(1).

15. Here, the information sought by subpoena may show that Plaintiff suffered from bi-polar disorder and manic depression (specifically pled by her) as a result of other life events or sexual activity prior to, during or after the acts alleged in the Amended Complaint. Did other life events and/or other sexual activity with others, which may be similar to alleged Epstein conduct, cause "emotional distress, psychological trauma, loss of dignity, humiliation or embarrassment", and if so or not, why? See Interrogatory Numbers 9 and 10, **Exhibit "A"**. Accordingly, the

probative value of obtaining full and complete copies of the basic personal injury discovery sought by subpoena goes to the heart of Plaintiff's damages or lack thereof, including medical, psychiatric, psychological, employment and school records, i.e. standard personal injury discovery.

b. The Notice of Conditional Reliance Allegedly Under 18 U.S.C. §2255 Lacks Substantial Merit And Conflicts With the Allegations In The First Amended Complaint

16. Plaintiff's Motions for Protective Order rely solely upon her twisted interpretation of 18 U.S.C. §2255 as set forth in her Notice of Conditional Reliance. In an effort to artificially inflate her alleged damages beyond that of which the statute permits, Plaintiff claims that 18 U.S.C. §2255 creates a statutory damage floor for recovery of damages for each commission of an enumerated sex offense listed under said statute and, therefore, prevents her from having to prove "actual damages," or any damages if Plaintiff's theory is accepted.

Defendant claims in his Motion to Dismiss that the civil remedy afforded creates only a single civil remedy or cause of action (one recovery) on behalf of a minor plaintiff against a defendant.

In other words, there is nothing in the statute which would allow a plaintiff to duplicate or multiply her "actual damages" sustained and proven on a per violation or per count basis. A §2255 plaintiff is entitled to a single recovery of her "actual damages;" if she sustains and proves an amount less than the statutory minimum, she recovers at least that amount. Of course, she can prove her actual damages were greater.

At this juncture, Plaintiff wishes to have it both ways. That is, if she is successful at Motion to Dismiss and her interpretation of 18 U.S.C. §2255 is accepted, then Plaintiff claims

she will only seek statutory damages available thereunder. (DE 113) If, however, Plaintiff is not successful at Motion to Dismiss, she will then seek "any and all damages available to her, whether they be pursuant to statute or common law." In short, Plaintiff wishes to prevent basic discovery until such time as she decides what damages she will seek based upon her success on certain outstanding substantive motions, and that determination can only be made after Motion to Dismiss and/or Motion for Summary Judgment. Thus, discovery will be conveniently stayed for Plaintiff until that time, thereby prejudicing the Defendant and deny him his due process rights. Moreover, if this Court chooses not to rule on the Motion to Dismiss solely as to Plaintiff's loose interpretation of 18 U.S.C. §2255, Plaintiff will then file a Motion for Summary Judgment and will refuse to produce any meaningful discovery until such time as the court rules on that motion. This court must not delay critical discovery based upon Plaintiff's misplaced interpretation of the subject statute, and her hope that she will be successful at Motion to Dismiss or Motion for Summary Judgment. The court has told Defendant to "move forward" - yet the Plaintiff continues to throw up roadblocks.

17. While Epstein's Motion to Dismiss the First Amended Complaint (DE 47) fully sets forth why Plaintiff's argument concerning the statutory damages floor should not apply, a brief summary is required herein to explain why Plaintiff's Notice of Conditional Reliance is meritless. Contrary to Plaintiff's attempted assertion of 30 separate counts pursuant to 18 U.S.C.A. §2255 - *Civil Remedy for Personal Injuries*, 18 U.S.C. §2255 creates a single federal cause of action or "civil remedy" (recovery) for a minor victim of sexual abuse, molestation and exploitation. (Even if this Court were to agree with Plaintiff that a Plaintiff could allege multiple §2255 causes of action or counts, the Plaintiff is still entitled to only a single recovery of her

actual damages in an amount no less than § minimum). Under the plain meaning of the statutory text, §2255 does not create separate causes of action on behalf of a minor against a defendant on a "per violation" basis. Nowhere in the statutory text is there any reference to the civil remedy afforded by this statute as being on a "per violation" basis. 18 U.S.C. 2255(a) creates a civil remedy for "a minor who is a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation … ." See Smith v. Husband, 428 F.Supp.2d 432 (E.D. Va. 2006); Smith v. Husband, 376 F.Supp.2d 603 (E.D. Va. 2006); Doe v. Liberatore, 478 F.Supp.2d 742, 754 (M.D. Pa. 2007); and the recent cases in front of this court on Defendant's Motions to Dismiss and For More Definite.

18. There is no reported case supporting Plaintiff's tortured and nonsensical interpretation of §2255. In all of these cases (cited above), each of the Plaintiffs brought a single count or cause of action attempting to allege numerous violations of the "predicate acts" specifically identified in §2255. "18 U.S.C. §2255 gives victims of sexual conduct who are minors a private right of action." Martinez v. White, 492 F.Supp.2d 1186, 1188 (N.D. Cal. 2007), (emphasis added). 18 U.S.C.A. §2255 "merely provides a cause of action for damages in 'any appropriate United States District Court.'" Id, at 1189.

19. Moreover, Sexual Exploitation and Other Abuse of Children." 18 U.S.C. §2255 (2003), the statute in effect at the time of the alleged incident, is entitled ***Civil remedy for personal injuries***, and specifically provides:

> ***(a)*** Any minor who is a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation may sue in any appropriate United

> States District Court and shall recover the actual damages such minor sustains and the cost of the suit, including a reasonable attorney's fee. ***Any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than $50,000 in value.***
>
> (b) Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability.

Reading the entire statute in context, no where is there any language indicating that a minor plaintiff has a private right of action against a defendant "per violation." Under the statutory rules of construction, had the legislature intended to give a plaintiff multiple causes of action against a defendant on a per violation basis, the statute would have included such language. Had Congress wanted to create such a remedy as Plaintiff attempts to bring, it could have easily included language of "per violation" after the presumptive damages amount in subsection (a). By its own terms, the statute provides for the single recovery of "actual damages the minor sustains and the cost of the suit, including attorney's fees." Moreover, even if Plaintiff's strained interpretation of the statute were accepted by this court, it does not relieve Plaintiff from having to prove "actual damages" as set forth in subsection (a) above. Importantly, the statute reads that "[a]ny minor as described in the preceding sentence shall be deemed to have sustained damages of no less than $50,000 in value." Id. That is, if Plaintiff shows that she sustained only $10,000 in actual, personal injury damages, she would still receive no less than $50,000. As well, Plaintiff can be awarded $75,000, $125,000 or whatever amount of actual damages that are awarded by the fact finder, i.e. §2255 has no cap. Thus, under both scenarios, Plaintiff is not relieved from proving actual damages.

20. Defendant does not have the luxury of waiting for a ruling on the 2255 issues. Instead, he must complete discovery as per this court's order. C.M.A. and her attorneys wish to control how discovery will take place and who will be deposed, control what questions will be asked and to whom, and Plaintiff wishes to decide what damages she may seek pending the outcome of a substantive motion despite what her Amended Complaint already alleges. Epstein's due process rights in connection with the defense of this matter are being violated by the Plaintiff who wishes to force Epstein to trial with various legal issues up in the air and incomplete discovery.

21. In sum, C.M.A.'s motions for protective orders reflect her tactics to delay and prevent meaningful discovery in hopes that C.M.A. will be able to prevent Epstein from putting on critical evidence in defense of his case. Epstein cannot defend this matter when the element of unfair and prejudicial "surprise" is ever so present. Schearbrook Land and Livestock Company v. U.S. et. al, 124 F.R.D. 221 (M.D. Fla. 1988). Plaintiff's trial by ambush tactics should not be tolerated.

22. Accordingly, the Notice of Conditional reliance should be stricken from the record pursuant to Rule 12(f) - *Motion to Strike*, "the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Moreover, to the extent necessary, this portion of this Motion shall also serve as any Opposition Response to the Notice of Conditional Reliance.

Rule 7.1 Certification

I hereby certify that counsel for the respective parties communicated by telephone in a good faith effort to resolve the discovery issues prior to the filing of this motion to compel. Counsel was unable to resolve the issues outlined herein.

WHEREFORE, Epstein, through his counsel, requests that this court enter an Order:

a. striking the Notice of Conditional Reliance;

b. striking and/or denying the Motions for Protective Order;

c. allowing the Defendant to obtain all documents which are the subject of the subpoenas associated with the Motions for Protective Order; and

d. for such other and further relief as this court deems just and proper.

By: _____
ROBERT D. CRITTON, JR., ESQ.
Florida Bar No. 224162
MICHAEL J. PIKE, ESQ.
Florida Bar #617296

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 21st day of July, 2009

Respectfully submitted,

By: _____
ROBERT D. CRITTON, JR., ESQ.
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