UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE NO. 5

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.
_____/

DEFENDANT EPSTEIN'S UNOPPOSED FIRST MOTION TO AMEND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Defendant, JEFFREY EPSTEIN, (hereinafter "EPSTEIN"), by and through his undersigned attorneys, moves to amend his affirmative defenses as set forth in the attached *Defendant EPSTEIN's First Amended Answer & Affirmative Defenses to Plaintiff's Second Amended Complaint*, attached hereto as **Exhibit A**. Rule 15(a), Fed.R.Civ.P. (2009); Loc. Gen. Rules 7.1, 15.1 (S.D. Fla. 2009):

1. Pursuant to Rule 15(a)(2), Fed.R.Civ.P., a party may amend his pleading "only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Plaintiff's counsel has consented in writing to Defendant's proposed amendments set forth in Exhibit A hereto. Plaintiff's written consent to the amendment is attached hereto as **Exhibit B.**

2. It is well settled that leave to amend is liberally granted where, as here, there is no resulting prejudice. The liberal allowance of pleading amendments is a "recognition that controversies should be decided on the merits whenever practicable." See

generally, 27A Fed.Proc., Lawyers Ed. §62.273. *Generally; freely allowed* (2008). "In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--the leave sought should, as the rules require, be 'freely given.' " Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962).

3. In the instant case, Defendant only amended his affirmative defenses. This is the first amendment sought by Defendant. Defendant's original Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint was recently filed with this Court on April 2, 2009. Recently certain constitutional issues have come to the forefront in other litigation filed against EPSTEIN based on similar allegations regarding the 18 U.S.C. §2255 claim and the punitive damages claim. Accordingly, Defendant seeks to add affirmative defenses directed to those claims. See affirmative defenses in **Exhibit A** hereto.

4. There will be no resulting prejudice to Plaintiff should leave to amend be granted. Defendant has not unduly delayed this matter in seeking the amendments. Defendant by written correspondence sought Plaintiff's permission to amend. As noted, Plaintiff agreed in writing to the amendments. See **Exhibit B** hereto.

5. Accordingly, Defendant is entitled to the amendments sought. Upon this Court entering the order granting Defendant's motion to amend, he will file and serve the Amended Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint. Loc. General Rule 15.1 (S.D. Fla. 2009).

WHEREFORE, Defendant respectfully requests that this Court enter an order granting Defendant's motion to amend.

Rule 7.1 Certification

I hereby certify that Defendant's counsel communicated in writing with Plaintiff's counsel regarding this motion to amend. Plaintiff's counsel agreed in writing to the proposed attached amendment (See **Exhibit A** and **B**).

Robert D. Critton, Jr.
Attorney for Defendant Epstein

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 11th day of June, 2009:

Adam D. Horowitz, Esq.
Stuart S. Mermelstein, Esq.
Adam D. Horowitz, Esq.
Mermelstein & Horowitz, P.A.
18205 Biscayne Boulevard
Suite 2218
Miami, FL 33160
305-931-2200
Fax: 305-931-0877
ssm@sexabuseattorney.com
ahorowitz@sexabuseattorney.com
Counsel for Plaintiff Jane Doe #5

Jack Alan Goldberger, Esq.
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, FL 33401-5012
561-659-8300
Fax: 561-835-8691
jagesq@bellsouth.net
Co-Counsel for Defendant Jeffrey Epstein

Respectfully submitted,

By: _____
ROBERT D. CRITTON, JR., ESQ.
Florida Bar No. 224162

rcrit@bclclaw.com
MICHAEL J. PIKE, ESQ.
Florida Bar #617296
mpike@bclclaw.com
BURMAN, CRITTON, LUTTIER & COLEMAN
515 N. Flagler Drive, Suite 400
West Palm Beach, FL 33401
561/842-2820 Phone
561/515-3148 Fax
Co-Counsel for Defendant Jeffrey Epstein