

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

JANE DOE NO. 5,

Plaintiff,

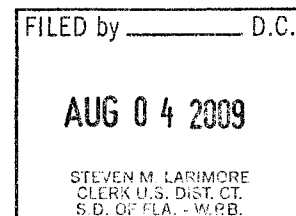
vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

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



JANE DOE NO. 6,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

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

JANE DOE NO. 7,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

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

C.M.A.,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

CASE NO.: 08-CV-80811-MARRA/JOHNSON

JANE DOE,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

CASE NO.: 08-CV-80893-MARRA/JOHNSON

DOE II,

CASE NO.: 09-CV-80469-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

JANE DOE NO. 101,

CASE NO.: 09-CV-80591-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

JANE DOE NO. 102,

CASE NO.: 09-CV-80656-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

**PLAINTIFF, C.M.A.'S, EMERGENCY MOTION FOR PROTECTIVE ORDER
REGARDING THE DEPOSITIONS OF SUSAN POPE AND DR. SERGE THYS AND
INCORPORATED MEMORANDUM OF LAW**

Plaintiff, C.M.A., by and through her undersigned attorneys, hereby files her Emergency Motion for Protective Order Regarding the Depositions of Susan Pope and Dr. Serge Thys and Incorporated Memorandum of Law, and in support thereof states as follows:

1. This is an action to recover money damages against Defendant, JEFFREY EPSTEIN, for acts of sexual abuse and prostitution committed upon the then-minor, C.M.A.

2. On Friday, July 31, 2009, Defendant unilaterally scheduled the deposition of Susan Pope for Thursday, August 6, 2009, at 10:00 a.m., and the deposition of Dr. Serge Thys on August 31, 2009, at 3:15 p.m. (Attached hereto as Exhibits "A" and "B")¹ Ms. Pope is a mental health therapist and Dr. Thys is a psychiatrist.

3. Plaintiff has plead thirty separate counts against EPSTEIN for separate incidences of abuse committed by EPSTEIN against Plaintiff pursuant to 18 U.S.C. §2255. 18 U.S.C. §2255, entitled "Civil remedy for personal injuries", creates a private right of action for minor children who were the victims of certain enumerated sex offenses. 18 U.S.C. §2255 also creates a statutory floor for the amount of damages a victim can recover for a violation of same. Plaintiff has also alleged a single count of Sexual Battery against EPSTEIN.

4. There presently exists between the Plaintiff and EPSTEIN a disagreement as to whether the statutory damage floor established in 18 U.S.C. §2255 is recoverable for each commission of an enumerated sex offenses listed in 18 U.S.C. §2255, or whether the statutory damage floor can only be enforced once, regardless of how many times a defendant perpetrates an enumerated sex offense against a minor victim.

5. This disagreement between the parties is properly the subject of Defendant's *Motion to Dismiss First Amended Complaint For Failure to State a Cause*

¹ Although Defendant's Certificate of Service states that the Notices were sent via email and U.S. Mail on July 30, they were not e-mailed to undersigned until the following day, July 31st.

of Action, and Motion For More Definite Statement; Motion to Strike, and Supporting Memorandum of Law (Attached hereto as Exhibit "C") which is currently pending before this Court.

6. In the event that the Court rules that Plaintiff can recover the statutory damage floor established in 18 U.S.C. §2255 for each proven incident of abuse committed by EPSTEIN upon her, Plaintiff intends to rely exclusively on the statutory damages, rather than those damages which are available at common law. (See Plaintiff, C.M.A.'s Conditional Notice of Intent to Exclusively Rely on Statutory Damages Provided by 18 U.S.C. §2255 attached hereto as Exhibit "D"). If however, the Court rules that the statutory floor applies only one time, regardless of the number of times EPSTEIN committed an enumerated sexual offense against her, Plaintiff will be pursuing all damages available to her at both common law and by statute.

7. Given Plaintiff's intent to rely exclusively on the statutory damages available to her under 18 U.S.C. §2255 as outline above, Plaintiff will not be presenting any evidence of the extent of her physical, emotional, or pecuniary injuries, beyond evidence that she was the 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). Accordingly, any testimony and/or discovery regarding those types of damages would not be relevant to any material issue pending in this case.

8. Presently pending before the Court is Defendant *EPSTEIN's Motion to Compel Plaintiff C.M.A. to Respond to Defendant's First Request to Produce and Answer Defendant's First Set of Interrogatories, and to Overrule Objections, and For an Award of Defendant's Reasonable Expenses* (Attached hereto as Exhibit "E"). EPSTEIN is seeking from Plaintiff the production of certain treatment records of hers from the Susan Pope/Parent-Child Center, Inc., Dr. Serge Thys, a psychiatrist, Dominique Hyppolite/School District of Palm Beach County, Good Samaritan Hospital, St. Mary's Hospital, Florida Atlantic University and Gloria C. Hakkarainen, M.D.

9. Also pending before the Court is Plaintiff, Carolyn Margaret Andriano's Motion for Protective Order Regarding Treatment Records From Parent-Child Center, Inc. (Susan Pope), 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. Hakkareinen, M.D., With Incorporated Memorandum of Law (DE 207) (Attached hereto as Exhibit "F").

10. Rather than allow the Court to rule on the pending motions regarding whether C.M.A, as a victim of repeated sexual offenses at the hands of EPSTEIN, should be subjected to further humiliation, embarrassment, and victimization, EPSTEIN has apparently decided to forge ahead without waiting for the Court's rulings regarding the scope of permissible discovery in this case.

11. Neither the testimony of Susan Pope/Parent-Child Center, Inc. or Dr. Serge Thys will have any relevance whatsoever in the event that Plaintiff pursues only those statutory damages available to her under 18 U.S.C. §2255. To the contrary, the

testimony from these providers regarding the confidential and private treatment would only serve to further humiliate, embarrass, and victimize C.M.A.

12. Furthermore, C.M.A., the information sought by the Defendant is protected by the psychotherapist-patient privilege pursuant to the Supreme Court's decision in Jaffee v. Redmond, 518 U.S. 1, 116 S.Ct. 1923 (1996)("All agree that a psychotherapist privilege covers confidential communications made to licensed psychiatrists and psychologists. We have no hesitation in concluding in this case that the federal privilege should also extend to confidential communications made to licensed social workers in the course of psychotherapy.") Ordinarily, 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. Turner v Imperial Stores, 161 F.R.D. 89 (S.D.Cal. 1995). The evidence sought is also protected under the substantive privacy rights recognized in Florida Statute §§90.503.

13. Accordingly, Plaintiff respectfully moves for the entry of a protective order pursuant to Fed. R. Civ. Pro. 26(c) preventing the depositions of Susan Pope and Dr. Serge Thys. More particularly, Plaintiff requests the entry of an order precluding the depositions of Susan Pope and Dr. Serge Thys until such time as the Court rules on the issue regarding whether the statutory damage floor as contained in 18 U.S.C. §2255 applies to each proven commission of an enumerated sexual offense by EPSTEIN against CMA. Should the Court rule that 18 U.S.C. §2255 provides a per incident

damage floor, the testimony would have absolutely no relevance whatsoever. In the event that the Court rules that the damage floor applies only once, the parties can then further brief the Court as to whether C.M.A. has placed her mental condition "in controversy" such that it operates as a waiver of the psychotherapist-patient privilege.

WHEREFORE, Plaintiff, C.M.A., respectfully requests that this Court enter a protective order preventing the depositions of Susan Pope and Dr. Serge until such time as the Court decides whether the statutory damages pursuant to 18 U.S.C. §2255 are available to a victim of an enumerated sexual offense on a per incident basis.

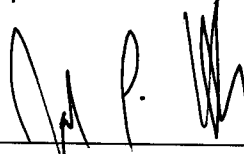
CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Counsel for the movant has conferred via e-mail with counsel for the Defendant regarding his position on Plaintiff's Emergency Motion for Protective Order Regarding the Depositions of Susan Pope and Dr. Serge and Incorporated Memorandum of Law and has advised the undersigned that he objects to the relief requested herein.

/s/ Jack P. Hill

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4rd day of August, 2009, I filed the foregoing with the Clerk of the Court and send copies to all counsel of record via e-mail.



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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 08-CIV-80811-MARRA/JOHNSON

CAROLYN MARGARET ANDRIANO

Plaintiff,

v.

JEFFREY EPSTEIN and SARAH
KELLEN,

Defendants,

_____ /

NOTICE OF TAKING DEPOSITION

PLEASE TAKE NOTICE that the undersigned attorney will take the deposition
duces tecum of:

DEPONENT

Susan Pope
2001 W. Blue Heron Blvd.
Riviera Beach, FL 33401

DATE & TIME

Thursday
August 6, 2009
10:00 a.m.

LOCATION OF DEPOSITION

Burman Critton Luttier & Coleman LLP
515 N. Flagler Drive, Suite 400
West Palm Beach, FL 33401

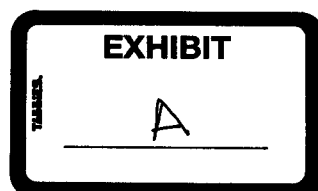
upon oral examination, before U.S. Legal Support, a Notary Public, or any other officer
authorized by law to take depositions in the State of Florida. The oral examination is
being taken for the purpose of discovery, for use at trial, or for such other purposes as are
permitted under the applicable Statutes of Rules of Court.



Robert D. Critton, Jr.
Attorney for Defendant Epstein

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing document is being served
this day on all counsel of record identified on the following Service List via email and U.S.
Mail on this 30th day of July, 2009



C.M.A. v. Epstein, et al.
Page 2

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By: 

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 08-CIV-80811-MARRA/JOHNSON

CAROLYN MARGARET ANDRIANO

Plaintiff,

v.

JEFFREY EPSTEIN and SARAH
KELLEN,

Defendants,

_____ /

NOTICE OF TAKING DEPOSITION

PLEASE TAKE NOTICE that the undersigned attorney will take the deposition
duces tecum of:

DEPONENT

Dr. Serge Thys
2151 45th Street
West Palm Beach, FL 33401

DATE & TIME

Monday
August 31, 2009
3:15 p.m.

LOCATION OF DEPOSITION

Burman Critton Luttier & Coleman LLP
303 Banyan Blvd., Suite 400
West Palm Beach, FL 33401

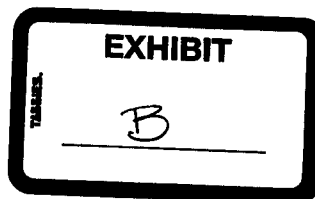
upon oral examination, before U.S. Legal Support, a Notary Public, or any other officer
authorized by law to take depositions in the State of Florida. The oral examination is
being taken for the purpose of discovery, for use at trial, or for such other purposes as are
permitted under the applicable Statutes of Rules of Court.



Robert D. Critton, Jr.
Attorney for Defendant Epstein

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing document is being served
this day on all counsel of record identified on the following Service List via email and U.S.
Mail on this 30th day of July, 2009



C.M.A. v. Epstein, et al.
Page 2

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80811-MARRA/JOHNSON

C.M. A.,

Plaintiff,

v.

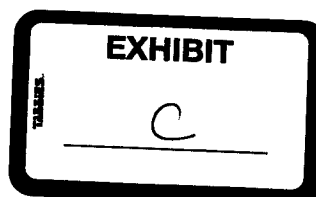
JEFFREY EPSTEIN and SARAH
KELLEN,

Defendants,

**DEFENDANT JEFFREY EPSTEIN'S MOTION TO DISMISS FIRST
AMENDED COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION,
AND MOTION FOR MORE DEFINITE STATEMENT; MOTION TO STRIKE,
AND SUPPORTING MEMORANDUM OF LAW**

Defendant, JEFFREY EPSTEIN, ("EPSTEIN"), by and through his undersigned counsel, moves to dismiss Count I through XXXI of Plaintiff's First Amended Complaint for failure to state a cause of action, and for more definite statement, or to strike, as specified herein. Rule 12(b)(6), (e) and (f), Fed.R.Civ.P. (2008); Local Gen. Rule 7.1 (S.D. Fla. 2008). In support of dismissal, Defendant states:

The First Amended Complaint attempts to allege 32 counts. Counts I through XXX are purportedly brought pursuant to 18 U.S.C. §2255 – *Civil Remedies for Personal Injuries*; Count XXXI is entitled "Sexual Battery," and Count XXXII is entitled "Conspiracy to Commit Tortious Assault only against Defendant, Sarah Kellen." Under the heading "Factual Allegations" of the First Amended Complaint, Plaintiff also references numerous federal and state criminal statutes, but fails to allege whether or not she is attempting to assert claims based on these statutes. (¶15, 1st Am. Comp.).



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Dismissal is required on the following grounds: (1) A review of the complaint allegations establishes that Plaintiff has failed to state the 30 causes of action under 18 U.S.C.A. 2255. As discussed more fully below herein, this statute does not allow for the Plaintiff to allege 30 separate causes of action; rather, the statute allows for the Plaintiff to attempt to assert one claim. In addition, Plaintiff has failed to allege a violation of the requisite predicate act as identified in 18 U.S.C. §2255 in order to state a cause of action. Thus, Counts I through XXX against EPSTEIN are required to be dismissed. Rule 12(b)(6), Fla.R.Civ.P.

(2) Count XXXI – *Sexual Battery* is also required to be dismissed for failure to state a cause of action as Plaintiff has failed to allege the requisite elements of such claim. The count fails to sufficiently allege whether it is being brought pursuant to common or statutory law. Further, in Count XXXI, Plaintiff reincorporates in their entirety Counts I through XXX; such pleading is improper and requires dismissal under the applicable Federal Rules of Civil Procedure.

Supporting Memorandum of Law
I. Motion To Dismiss Standard

As established by the Supreme Court in Bell Atlantic Corp. V. Twombly, 127 S.Ct. 1955 (2007), a motion to dismiss should be granted if the plaintiff does not plead “enough facts to state a claim to relief that is plausible on its face.” Id., at 1974. Although the complaint need not provide detailed factual allegations, the basis for relief in the complaint must state “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Id., at 1965. Further, “[f]actual allegations must be enough to raise a right to relief above the speculative level ... on the

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assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.*

On a motion to dismiss, the well pleaded allegations of plaintiff's complaint are taken as true and construed in the light most favorable to the plaintiff. M.T.V. v. DeKalb County Sch. Dist., 446 F.3d 1153, 1156 (11th Cir.2006).

Significantly, the Supreme Court in Bell Atlantic Corp. V. Twombly abrogated the often cited observation that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Id.* (abrogating and quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)). The Supreme Court rejected the notion that "a wholly conclusory statement of claim [can] survive a motion to dismiss whenever the pleadings le[ave] open the possibility that a plaintiff might later establish some 'set of [undisclosed] facts' to support recovery." *Id.* As explained by the Supreme Court in Bell Atlantic Corp., *supra* at 1664-65:

While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, *ibid.*; Sanjuan v. American Bd. of Psychiatry and Neurology, Inc., 40 F.3d 247, 251 (C.A.7 1994), a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do, see Papasan v. Allain, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). Factual allegations must be enough to raise a right to relief above the speculative level, see 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-236 (3d ed.2004) (hereinafter Wright & Miller) ("[T]he pleading must contain something more ... than ... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action"), on the assumption that all the allegations in the complaint are true (even if doubtful in fact), see, e.g., Swierkiewicz v. Sorema N. A., 534 U.S. 506, 508, n. 1, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002); Neitzke v. Williams, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) (" Rule 12(b)(6) does not countenance ... dismissals based on a judge's disbelief of a complaint's

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factual allegations”); Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974) (a well-pleaded complaint may proceed even if it appears “that a recovery is very remote and unlikely”).

In discussing Twombly, the Eleventh Circuit in Watts v. Fla. International Univ., 495 F.3d 1289, 1295 (11th Cir. 2007), noted - “The Supreme Court’s most recent formulation of the pleading specificity standard is that ‘stating such a claim requires a complaint with enough factual matter (taken as true) to suggest’ the required element.” In order to sufficiently allege the claim, the complaint is required to identify “facts that are suggestive enough to render [the element] plausible.” Watts, 495 F.3d at 1296 (quoting Twombly, 127 S.Ct. at 1965).

II. Standard for More Definite Statement, Pleading, & Motion to Strike

Pursuant to Rule 12(e), a party may move for more definite statement of a pleading to which a responsive pleading is allowed where the pleading “is so vague or ambiguous that the party cannot reasonably frame a response.” The motion is required to point out the defects and the desired details. Id. As to the general rules and form of pleading, Rules 8 and 10, a claim for relief must contain “a short plain statement of the claim showing that the pleader is entitled to relief;” Rule 8(a)(3); and may contain alternative claims within a count or as many separate claims. Rule 10(d)(2) and (3). 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.”

III. Counts I through XXX, 18 U.S.C. §2255, are required to be dismissed.

A. 18 U.S.C. §2255 creates a single civil remedy or cause of action on behalf of a minor plaintiff against a defendant. The civil remedy afforded is not on a “per violation” basis.

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Contrary to Plaintiff's attempted assertion of 30 separate counts pursuant to 18 U.S.C.A. §2255 - *Civil Remedy for Personal Injuries*, this statute creates a single federal cause of action or "civil remedy" for a minor victim of sexual, abuse, molestation and exploitation. 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. No where 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 Statement – Doe No. 2 v. Epstein, 2009 WL 383332 (S.D. Fla. Feb. 12, 2009); Doe No. 3 v. Epstein, 2009 WL 383330 (S.D. Fla. Feb. 12, 2009); Doe No. 4 v. Epstein, 2009 WL 383286 (S.D. Fla. Feb. 12, 2009); and Doe No. 5 v. Epstein, 2009 WL 383383 (S.D. Fla. Feb. 12, 2009).

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

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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. See also Tilton v. Playboy Entertainment Group, Inc., 554 F.3d 1371 (11th Cir. Jan. 15, 2009)(District Court granted plaintiff “the minimum ‘actual damages’ prescribed by §2255(a),” wherein plaintiff alleged that defendants had violated three of the statutory predicate acts).

In improperly attempting to bring 30 separate counts pursuant to §2255, Plaintiff’s complaint alleges in part that “beginning in approximately late May or early June of 2002, and continuing until approximately August of 2003, the Defendant coerced and enticed the impressionable, vulnerable, and economically deprived then minor Plaintiff to commit various acts of sexual misconduct. These acts occurred, on average, one to three times per week from late may or early June of 2002 until August 2003. At a bare minimum these acts occurred twice a month from June 2002 until August of 2003.” Am. Complaint, ¶13. Plaintiff then claims the identical damages in each of the 30 §2255 counts. See ¶¶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, and 199. As well, in Count XXXI, entitled “Sexual Battery,” Plaintiff claims the identical “actual damages” in that she realleges and incorporates each and every of the 199 allegations in the 30 prior counts.

It is well settled that in interpreting a statute, the court’s inquiry begins with the plain and unambiguous language of the statutory text. CBS, Inc. v. Prime Time 24 Venture, 245 F.3d 1217 (11th Cir. 2001); U.S. v. Castroneves, 2009 WL 528251, *3 (S.D. Fla. 2009), citing Reeves v. Astrue, 526 F.3d 732, 734 (11th Cir. 2008); and Smith

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v. Husband, 376 F.Supp.2d at 610 (“When interpreting a statute, [a court’s] inquiry begins with the text.”). “The Court must first look to the plain meaning of the words, and scrutinize the statute’s ‘language, structure, and purpose.’” Id. In addition, in construing a statute, a court is to presume that the legislature said what it means and means what it said, and not add language or give some absurd or strained interpretation. As stated in CBS, Inc., supra at 1228 – “Those who ask courts to give effect to perceived legislative intent by interpreting statutory language contrary to its plain and unambiguous meaning are in effect asking courts to alter that language, and ‘[c]ourts have no authority to alter statutory language.... We cannot add to the terms of [the] provision what Congress left out.’ Merritt, 120 F.3d at 1187.” See also Dodd v. U.S., 125 S.Ct. 2478 (2005); 73 Am.Jur.2d *Statutes* §124.

Title 18 of the U.S.C. is entitled “Crimes and Criminal Procedure.” §2255 is contained in “Part I. Crimes, Chap. 110. Sexual Exploitation and Other Abuse of Children.” 18 U.S.C. §2255 (2003), is entitled ***Civil remedy for personal injuries***, and 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.”

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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 recovery of “actual damages the minor sustains and the cost of the suit, including attorney’s fees.” There is absolutely no language that allows for a plaintiff to multiply the specified or presumptive damages recoverable on a “per violation” basis. The Plaintiff’s position on §2255 puts a strained interpretation with an absurd result. The absurdity of Plaintiff’s position is further evidenced by Count XXXI – “Sexual Battery” where Plaintiff reincorporates each of the 30 counts and seeks the identical “actual damages.”

In Martinez v. White, supra, the defendants sought to dismiss plaintiffs’ 18 U.S.C. §2255 action based on forum non conveniens. The Northern District of California Court, relying on the rules of statutory construction, rejected plaintiffs’ argument that Congress had intended to abrogate the forum non conveniens doctrine in a §2255 action; the District Court noted that the statute does not contain a mandatory venue provision. Had Congress wanted to get rid of the forum non-conveniens doctrine, it would have said so in the statute. Also, in Smith v. Husband, 428 F.Supp. 432; and 376 F.Supp.2d 603, the plaintiff invoked “the accompanying civil remedy for these criminal violations, stating that she has sustained and continues to sustain physical and mental damages, humiliation, and embarrassment as a result of Defendant’s criminal acts.” In other words, she

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brought a single cause of action, based on allegations of multiple violations of the §2255 predicate acts. Furthermore, the court refused to add a venue interpretation that simply was not written into the statutory text. See other §2255 cases cited herein.

For an example of a statute wherein the legislature included the language “for each violation” in assessing a “civil penalty,” see 18 U.S.C. §216, entitled “*Penalties and injunctions*,” of Chapter 11 – “Bribery, Graft, and Conflict of Interests,” also contained in Title 18 – “Crimes and Criminal Procedure.” Subsection (b) of §216 gives the United States Attorney General the power to bring a “civil action... against any person who engages in conduct constituting an offense under” specified sections of the bribery, graft, and conflicts of interest statutes. The statute further provides in relevant part that “upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater.” As noted, 18 U.S.C. §2255 does not include such language.

Accordingly, Plaintiff’s multiple counts brought pursuant to §2255 are required to be dismissed for failure to state multiple causes of action.

B. Also requiring dismissal Plaintiff has failed to sufficiently allege the requisite §2255 predicate acts.

Also requiring dismissal of Plaintiff’s purported §2255 claim(s) is Plaintiff’s failure to sufficiently allege any violation of a requisite predicate act as specifically identified in subsection (a) of the statute quoted above. Relevant to Plaintiff’s complaint, 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

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and who suffers personal injury as a result of such violation" See cases cited above herein. Plaintiff has failed to plead any factual allegations whatsoever pertaining to violations of the specified "predicate acts." In paragraph 15, Plaintiff makes reference by citation only to the following federal statutes – "18 U.S.C. §§2241, 2242, 2243, 2421, and 2423." See endnote following the Certificate of Service herein for the complete statutory text.ⁱ

First, Plaintiff's reliance on 18 U.S.C. §2241 in its entirety as a predicate act is improper; it is a violation of subsection §2241(c) that is a designated predicate act. A reading of the text of the other referenced federal statutes shows that no where in Plaintiff's Amended Complaint are there any allegations setting forth the requisite elements of the cited predicate act. Further, any attempted reliance by Plaintiff on other federal or state statutes not specifically identified in 18 U.S.C. §2255 is improper and fails to state a cause of action. See ¶15 of Am. Complaint wherein Plaintiff references by citation additional Florida State statutes and thereafter incorporates such reference into her §2255 claim(s). See Smith v. Husband, 376 F.Supp.2d, and 428 Supp.2d, supra, requiring allegations/evidence to establish predicate act under 18 U.S.C. §2255 in order to be afforded civil remedy.

Plaintiff appears to be relying solely on an "agreement with the Federal Government" as a basis for imposing liability under 18 U.S.C. §2255. See ¶¶17, 18, and 19 of 1st Am. Complaint. There is nothing in Plaintiff's allegations that would allow for a §2255 claim to go forward without specifying the statutory predicate act and factual allegations pertaining to a violation of the requisite predicate act(s). Accordingly, under

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the standard of pleading as established in Twombly, supra, Plaintiff has failed to sufficiently allege the requisite elements of a §2255 claim, thus requiring dismissal; for failure to state a cause of action.

C. 18 U.S.C. §2255 does not allow for the recovery of punitive damages. Thus, Plaintiff's request for punitive damages under §2255 is required to be dismissed or stricken.

In each of the improperly asserted Counts I through XXX, Plaintiff also seeks punitive damages. A plain reading of 18 U.S.C. §2255, quoted above herein, establishes that the statute does not allow for the recovery of punitive damages. Had Congress wanted to allow for such a recovery, it could have easily written such language into the damages provision of the statute. The legislative body chose not to write a punitive damages component into §2255 as it has done in other statutes affording civil remedies. In relevant part, §2255 reads - Any minor who is a victim of a violation of section ... 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." See discussion of rules of statutory construction in part III.A. herein. See subsection (f)(2) of 18 U.S.C. §2252A, entitled *Certain activities relating to material constituting or containing child pornography*, also contained in Chapter 110, Part I, Crimes, within which specific reference is made to "compensatory and punitive damages" in setting forth the relief which may be afforded to a plaintiff in bringing a civil action under §2252A(f).

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Accordingly, Plaintiff's claims for punitive damages are required to be dismissed with prejudice or stricken.

D. In the alternative, pursuant to constitutional law principles of statutory interpretation, 18 U.S.C. §2255 is required to be interpreted as creating a single "civil remedy" or cause of action on behalf of a minor plaintiff against a defendant. The "civil remedy" afforded is not on a "per violation" basis.

As set forth above, it is Defendant's position that the text of 18 U.S.C. §2255 does not allow a Plaintiff, such as C.M.A., to pursue the civil remedy and the damages afforded under the statute on a "per violation" basis. See part III.A. above. In the alternative, simply for the sake of argument, if one were to assume that the language of §2255 were vague or ambiguous, under the constitutional based protections of due process, judicial restraint, and the rule of lenity applied in construing a statute, Defendant's position as to the meaning of the statute would prevail over Plaintiff's view. See United States v. Santos, 128 S.Ct. 2020, 2025 (2008). As summarized by the United States Supreme Court in Santos, supra, at 2025:

... The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them. See *United States v. Gradwell*, 243 U.S. 476, 485, 37 S.Ct. 407, 61 L.Ed. 857 (1917); *McBoyle v. United States*, 283 U.S. 25, 27, 51 S.Ct. 340, 75 L.Ed. 816 (1931); *United States v. Bass*, 404 U.S. 336, 347-349, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971). This venerable rule not only vindicates the fundamental principle that no citizen should be held accountable for a violation of a statute whose commands are uncertain, or subjected to punishment that is not clearly prescribed. It also places the weight of inertia upon the party that can best induce Congress to speak more clearly and keeps courts from making criminal law in Congress's stead. ...

In Santos, the Court was faced with the interpretation of the term "proceeds" in the federal money laundering statute, 18 U.S.C. §1956. "The federal money-laundering

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statute prohibits a number of activities involving criminal 'proceeds.'" *Id.*, at 2023. Noting that the term "proceeds" was not defined in the statute, the Supreme Court stated the well settled principle that "when a term is undefined, we give it its ordinary meaning." *Id.*, at 2024. Under the ordinary meaning principle, the government's position was that proceeds meant "receipts," while the defendant's position was that proceeds meant "profits." The Supreme Court recognized that under either of the proffered "ordinary meanings," the provisions of the federal money-laundering statute were still coherent, not redundant, and the statute was not rendered "utterly absurd." Under such a situation, citing to a long line of cases and the established rule of lenity, "the tie must go to the defendant." *Id.*, at 2025. See portion of Court's opinion quoted above. "Because the 'profits' definition of 'proceeds' is always more defendant friendly than the 'receipts' definition, the rule of lenity dictates that it should be adopted." *Id.*

Plaintiff's position would subject Defendant EPSTEIN to a punishment that is not clearly prescribed – an unwritten multiplier of the "actual damages" or the presumptive damages. The rule of lenity requires that Defendant's interpretation of the remedy afforded under §2255 be adopted.

In addition, under the Due Process Clause's basic principle of fair warning -

... a criminal statute must give fair warning of the conduct that it makes a crime As was said in United States v. Harriss, 347 U.S. 612, 617, 74 S.Ct. 808, 812, 98 L.Ed. 989,

'The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.'

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Thus we have struck down a [state] criminal statute under the Due Process Clause where it was not 'sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.' Connally v. General Const. Co., 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322. We have recognized in such cases that 'a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law,' *ibid.*, and that 'No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.' *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 59 S.Ct. 618, 619, 83 L.Ed. 888.

Thus, applying these well-entrenched constitutional principles of statutory interpretation and application, Plaintiff's 30 separate counts brought under 18 U.S.C. §2255 are required to be dismissed.

IV. Count XXXI – "Sexual Battery" is required to be dismissed for failure to state a cause of action. In the alternative, Plaintiff should be required to more definitely state whether she is attempting to allege a claim under Florida common or statutory law, or some federal law, and further allege the required elements and factual allegations.

In Count XXXI, although entitled "Sexual Battery," Plaintiff improperly realleges and incorporates each and every allegation and each and every count (30) which she previously attempted to allege, resulting in a count that is 204 paragraphs long and includes reference to Federal and Florida statutory law, while also including language sounding in common law. The count is such a hodgepodge of legal allegations that Plaintiff fails to state a legally recognizable or viable cause of action.

In ¶15, Plaintiff alleges that "the acts referenced in paragraphs 9 through 14, committed by Defendant against the then minor Plaintiff, C.M.A., were committed in violation of numerous criminal State and Federal statutes ... , including but not limited to, those crimes designated in 18 U.S.C. §§2241, 2242, 2243, 2421, and 2423, criminal

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offenses outlined in Chapter 800 of the Federal Codes, as well as those designated in Florida Statutes §796.03, §796.07, §796.045, §796.04, §39.01; and §827.04.” In ¶203 Plaintiff also alleges that Defendant’s “tortious commission of sexual battery upon C.M.A. were (sic) done willfully and maliciously.”

Supporting Defendant’s position that Plaintiff has failed to state a cause of action in Count XXXI, 18 U.S.C. §§2241(c), not §2241 in its entirety, as discussed above, is one of the predicate acts, along with 2242, 2243, 2421, and 2423, designated in the federal civil remedy statute – 18 U.S.C. §2255. Plaintiff attempted and failed to allege such a claim in the previous counts. Defendant can find no criminal offenses in any “Chapter 800 of the Federal Codes” which give rise to a civil cause of action.

The same is true for Plaintiff’s reference to the Florida Statutes. Not one of the statutes referenced creates a private cause of action or affords a civil remedy on behalf of the alleged victim of the criminal offense.¹ (Except for Florida Statute §39.01, all of the statutes referenced by Plaintiff are contained Title XLVI. *Crimes* of the Florida Statutes). The referenced criminal statutes set forth acts subject to criminal prosecution and the criminal penalties therefor, if proven. See generally, Am. Home Assurance Co. v. Plaza Materials Corp., 908 So.2d 360, 374 (Fla. 2005)(“not every statutory violation carries a civil remedy”); Miami Herald Pub. Co. v. Ferre, 636 F.Supp. 970 (S.D. Fla. 1985)(violation of Florida’s criminal extortion statute does not give rise to civil cause of

¹ Florida Statutes §§796.03 – *Procuring person under age 18 for prostitution*; 796.04 – *Forcing, compelling, or coercing another to become a prostitute*; 796.045 (which did not become effective until Oct. 1, 2004) – *Sex trafficking; penalties*; 796.07 – *Prohibiting prostitution, etc.; evidence; penalties; definitions*; and §39.01, entitled “Definitions,” is contained in Title V – Judicial Branch, Chapter 39 - “Proceedings relating to Children.”

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action for damages); Mantooth v. Richards, 557 So.2d 646 (Fla. 4th DCA 1990), *per curiam*, (Dismissal of plaintiff's civil complaint affirmed where parental kidnapping statutes concerned only criminal violations and did not create a civil remedy).

As well, the Count XXXI allegations make absolutely no reference to any viable common law cause of action; Defendant should not be required to guess or speculate as to the nature of Plaintiff's cause of action. Even if Defendant were to speculate as to the supposed cause of action, these causes of action (common law or otherwise) have not been sufficiently alleged. On its face, in accordance with the pleading requirements annunciated in Twombly, supra, Count XXXI is completely lacking as to any common law elements or the underlying factual allegations to support each element, and thus, Count XXXI is required to be dismissed for failure to state a cause of action.

In the alternative, Plaintiff should be required to more definitely state whether her claim is being brought pursuant to federal or Florida statutory law, specifically identify the statute it is being brought under, or whether her claim is being asserted under common law. Once Plaintiff identifies the nature of her claim, she is required to sufficiently allege in accordance with Twombly, the requisite elements of the identified claim, along with sufficient factual allegations supporting the elements.

Conclusion

Pursuant to applicable law, Counts I through XXXI of Plaintiff's First Amended Complaint are required to be dismissed for failure to state a cause of action. 18 U.S.C. does not allow for the Plaintiff C.M.A. to allege separate causes of action against

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Defendant EPSTEIN, but rather allows Plaintiff to attempt to assert a single civil remedy if she can prove a violation of any of the statutory enumerated predicate acts. Further, Plaintiff has failed to sufficiently allege a requisite predicate act under §2255. In addition, §2255 does not allow for recovery of punitive damages. Count XXXI is also subject to dismissal with prejudice for failure to state a cause of action, as Plaintiff has failed to allege a legally viable or recognizable cause of action.

WHEREFORE, Defendant requests that this Court grant his motion to dismiss Counts I through XXXI, or alternative motion for more definite statement, and motion to strike.

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 12th day of March, 2009:

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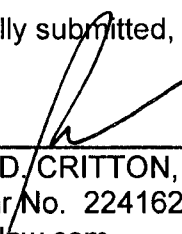
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ENDNOTE:

U.S.C.A. - Title 18. **Crimes and Criminal Procedure**,
Chapter 109A. **Sexual Abuse**

§2241. Aggravated Sexual Abuse.

(c) With children.--Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not

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attained the age of 16 years (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

§ 2242. Sexual abuse

Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly--

(1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or

(2) engages in a sexual act with another person if that other person is--

(A) incapable of appraising the nature of the conduct; or

(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;

or attempts to do so, shall be fined under this title and imprisoned for any term of years or for life.

§ 2243. Sexual abuse of a minor or ward

(a) **Of a minor.**--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who--

(1) has attained the age of 12 years but has not attained the age of 16 years; and

(2) is at least four years younger than the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

(b) **Of a ward.**--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who is--

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(1) in official detention; and
(2) under the custodial, supervisory, or disciplinary authority of the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

(c) Defenses.--(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years.

(2) In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

(d) State of mind proof requirement.--In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew--

- (1) the age of the other person engaging in the sexual act; or
- (2) that the requisite age difference existed between the persons so engaging.

Chapter 117 Transportation for Illegal Sexual Activity and Related Crimes

§ 2421. Transportation generally

Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in 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 or imprisoned not more than 10 years, or both.

§ 2423. Transportation of minors

(a) Transportation with intent to engage in criminal sexual activity.--A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.

(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.

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(c) Engaging in illicit sexual conduct in foreign places.--Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(d) Ancillary offenses.--Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 30 years, or both.

(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.

(f) Definition.--As used in this section, the term "illicit sexual conduct" means (1) a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age.

(g) Defense.--In a prosecution under this section based on illicit sexual conduct as defined in subsection (f)(2), it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80811-CIV-MARRA/JOHNSON

C.M.A.,

Plaintiff,

vs.

JEFFREY EPSTEIN and SARAH
KELLEN,

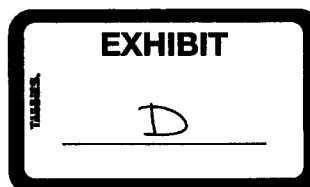
Defendants.

**PLAINTIFF, C.M.A.'S, CONDITIONAL NOTICE OF INTENT TO EXCLUSIVELY RELY
ON STATUTORY DAMAGES PROVIDED BY 18 U.S.C. §2255**

Plaintiff, C.M.A., by and through her undersigned counsel, hereby files her Conditional Notice of Intent to Exclusively Rely on Statutory Damages Provided by 18 U.S.C. §2255, and in support thereof states as follows:

1. This is an action to recover money damages against Defendant, JEFFREY EPSTEIN, for acts of sexual abuse and prostitution committed upon the then-minor, C.M.A.

2. Plaintiff has plead thirty separate counts against EPSTEIN for separate incidences of abuse committed by EPSTEIN against Plaintiff pursuant to 18 U.S.C. §2255. 18 U.S.C. §2255, entitled "Civil remedy for personal injuries", creates a private right of action for minor children who were the victim of certain enumerated sex offenses. 18 U.S.C. §2255 also creates a statutory floor for the amount of damages a



victim can recover for a violation of same. Plaintiff has also alleged a single count of Sexual Battery against EPSTEIN as well.

3. There presently exists between the Plaintiff and EPSTEIN a disagreement as to whether the statutory damage floor established in 18 U.S.C. §2255 is recoverable for each commission of an enumerated sex offense listed in 18 U.S.C. §2255, or whether the statutory damage floor can only be enforced once, regardless of how many times a defendant perpetrates an enumerated sex offense against a minor victim.

4. This disagreement between the parties is properly the subject of Defendant's *Motion to Dismiss First Amended Complaint For Failure to State a Cause of Action, and Motion For More Definite Statement; Motion to Strike, and Supporting Memorandum of Law* (D.E. 47) which is currently pending before this Court.

5. In the event that the Court rules that the Plaintiff is entitled to recover the statutory damages created by 18 U.S.C. §2255 for each violation¹, Plaintiff will be pursuing only those statutory damages, and will not pursue damages available at common law.

6. Should the Court rule however, 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.

¹ The parties also disagree about the amount the statutory damage floor should be for this case. 18 U.S.C. §2255 was amended in 2006 to increase the floor from \$50,000 to \$150,000. The parties essentially disagree about which version of 18 U.S.C. §2255 should apply in this case.

Respectfully submitted,

/s/Jack P. Hill

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 5th, 2009, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached counsel list via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/Jack P. Hill

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CIV-80811-MARRA/JOHNSON

C.M. A.,

Plaintiff,

v.

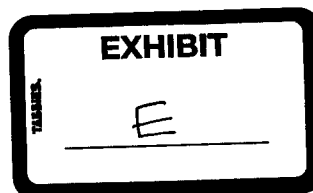
JEFFREY EPSTEIN and SARAH
KELLEN,

Defendants,

**DEFENDANT EPSTEIN'S MOTION TO COMPEL PLAINTIFF C.M.A. TO RESPOND TO
DEFENDANT'S FIRST REQUEST TO PRODUCE AND ANSWER DEFENDANT'S
FIRST SET OF INTERROGATORIES, AND TO OVERRULE OBJECTIONS, AND FOR
AN AWARD OF DEFENDANT'S REASONABLE EXPENSES**

Defendant, JEFFREY EPSTEIN, by and through his undersigned attorneys, moves this Court for an order compelling Plaintiff, C.M.A. to respond to Defendant's First Request To Produce and to answer Defendant's First Set of Interrogatories, and to overrule her objections asserted in Plaintiff's Response To Defendant's First Request To Produce, dated February 13, 2009, and in Plaintiff's Notice of Serving Answers To Interrogatories, dated February 18, 2009. Defendant further seeks an award of his reasonable expenses, including expenses, associated with the making of this motion. Rule 37, Fed.R.Civ.P. (2008); Local Gen. Rules 7.1 and 26.1 H (S.D. Fla. 2008). In support of his motion, Defendant states:

Prior to the filing of this motion, on April 1, 2009, Defendant's counsel communicated by telephone with Plaintiff's counsel in a good faith effort to resolve the discovery issues herein. This motion addresses those discovery items which remain at



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issue. Also, rather than file 2 separate motions to compel, Defendant filed one addressing the production requests and interrogatories because the discovery issues overlap.

**Motion To Compel Responses to Production Requests Nos. 1, 2, 4, 5, and 19,
and Answers to Interrogatories Nos. 2, 18, and 23.**

Production Request No. 1

1. Individual and/or joint income tax returns and supporting documentation including W-2 and 1099 forms for 2002-2007 and, as well as all records or documentation relative to the Plaintiff's earnings for the current year.

Response:

Objection. Irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible information.

Legal Argument Supporting Entitlement to Discovery

Plaintiff's tax returns and supporting documentation are relevant to Plaintiff's damages claims and, thus, discoverable. Plaintiff's complaint alleges in part that "beginning in approximately late May or early June of 2002, and continuing until approximately August of 2003, the Defendant coerced and enticed the impressionable, vulnerable, and economically deprived then minor Plaintiff to commit various acts of sexual misconduct." 1st Am. Complaint, ¶13. (Plaintiff also refused to answer Interrogatory no. 2 which sought her employment history for the past ten years asserting the same general objection).

Such information is both relevant and reasonably calculated to lead to the discovery of admissible evidence. It is well settled that relevant information is discoverable, even if not admissible at trial, so long as the discovery is reasonably calculated to lead to the discovery of admissible evidence. Rule 26(b)(1), Fed.R.Civ.P.;

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Donahay v. Palm Beach Tours & trans., Inc., 242 F.R.D. 685 (S.D. Fla. 2007). Discoverability of such information is governed by Rule 26, Fed.R.Civ.P., pursuant to which the scope of discovery is broad. Donahay, supra, at 686, and cases cited therein. "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the claims or defense of any party involved in the pending action." Id.

Plaintiff's tax returns, along with the requested supporting documentation, for the six year period, and documents relevant to her current earnings, are relevant to Plaintiff's damages claims detailed below herein. Such information would show Plaintiff's employment and earning history, as well as provide evidence as to how Plaintiff has been able to function in her daily life before, during and after the alleged incidents. Was she self-sufficient? Was she able to get out of bed each morning and support herself? What type of job did she hold? One's ability to earn a living and be self-supporting has not only a financial component, but also an emotional/psychological/mental component.

C.M.A.'s First Amended Complaint¹ attempts to allege 32 counts. Counts I through XXX are purportedly brought pursuant to 18 U.S.C. §2255 – *Civil Remedies for Personal Injuries*; Count XXXI is entitled "Sexual Battery," and Count XXXII is entitled "Conspiracy to Commit Tortious Assault only against Defendant, Sarah Kellen."

In her answers to interrogatory nos. 9 and 10, which seek information about C.M.A.'s damages claims, Plaintiff answered that:

¹ Defendant's Motion To Dismiss directed to Plaintiff's First Amended Complaint is pending.

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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).

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.)

In each of her "Wherefore" clauses, Plaintiff seeks "compensatory damages of at least the minimum provided by law." 18 U.S.C. §2255, pursuant to which Plaintiff attempts to bring certain of her claims, allows for recovery of "actual damages." See fn. 2 herein for applicable statutory text.²

As discussed above, the tax returns, and supporting documentation, will provide direct evidence as to Plaintiff's claimed damages. Such information does not only go to

(a) ² 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. [Emphasis added.]

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compensatory or actual damages or loss of income/loss of capacity to earn income type damages, but also her emotional/psychological/mental health type damages. In the telephone communication between counsel for the respective parties, Plaintiff's counsel indicated that Plaintiff was not seeking loss of income/earning capacity type damages; (Defendant is not aware that there has been any formal withdrawal of such damages claimed); notwithstanding, the information sought is still relevant and discoverable based on the additional damages claimed by Plaintiff. The time period will allow Defendant to compare how Plaintiff was doing in her life prior to, during, and after the alleged incident. Again, the type of jobs Plaintiff has been able to hold and her earnings and ability to support herself clearly have not only a financial component, but an emotional/psychological/mental health component as well. Accordingly, Plaintiff's objection is required to be overruled, and Defendant is entitled to the documents requested.

Production Request No. 2

2. All bills/expenses from any medical doctor, chiropractor, psychologists, psychiatrists, mental health counselors (including any members of the healing arts and related fields, i.e. drugs, prescriptions, etc.) you claim you incurred as a result of the injuries which are or may be the subject matter of this lawsuit

Response:

None in our possession. These will be provided upon receipt. Discovery is ongoing.

Legal Argument Supporting Entitlement to Discovery

Plaintiff makes no objection to the documents requested, but has failed to produce any documents responsive to this request. Clearly, the documents are relevant and discoverable as they go to proof of Plaintiff's claimed injuries. In the April 1, 2009,

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telephone communication Plaintiff's counsel indicated that Plaintiff was still not in possession of such documents. The First Request for Production was served on Plaintiff on January 16, 2009. In her answer to interrogatory no. 11, (Notice of Serving Answers, dated February 18, 2009, identifies a psychiatrist and a counselor/therapist from whom she claims she is receiving "treatment or examination for the injuries for which [she] seeks damages." See **Exhibit A** hereto for copy C.M.A.'s answer to interrogatory no. 11. Regarding the date of treatment from the psychiatrist – she asserts "I would defer to the Doctor's records." She claims the treatment from the counselor/therapist has been "since high school" and "ongoing." Defendant is entitled to the documents sought and Plaintiff is in control of and has the ability to obtain the requested medical bills and expenses she claims were incurred as result of her injuries claimed in this action. Plaintiff should be required to immediately produce the requested documents to Defendant.

Production Request No. 4

4. All reports, evaluations, recommendations and/or analysis submitted by any expert which relate to or cover the incident which is the subject matter of this lawsuit and/or any injuries, damages or losses you allege were caused by the incident.

Response:

Any reports generated by any retained experts not yet disclosed are protected by the work product privilege. Notwithstanding same, none.

Legal Argument Supporting Entitlement to Discovery

Plaintiff, through counsel, in the April 1, 2009, telephone communication, indicated that she does not have any responsive documents and stands by her objection. Rule 26 provides in relevant part –

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2) Disclosure of Expert Testimony.

(A) In General. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report--prepared and signed by the witness--**if the witness is one retained or specially employed to provide expert testimony in the case** or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the data or other information considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) Time to Disclose Expert Testimony. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B), within 30 days after the other party's disclosure.

* * * * *

(e) Supplementing Disclosures and Responses.

(1) In General. A party who has made a disclosure under Rule 26(a)--or who has responded to an interrogatory, request for production, or request for admission--must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective

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information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) **Expert Witness.** For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due.

Accordingly, Defendant requests that should Plaintiff be in possession of any such reports, evaluations, recommendations and/or analysis prepared by an expert expected to testify at trial or deposition, or to be used by an expert expected to testify at trial or deposition, that such documents be produced as required by Rule 26, Fed.R.Civ.P. quoted above.

Production Request No. 5

5. All medical reports and/or records from doctors, physicians, (including psychologists, psychiatrists, mental health counselors), hospitals, drug or alcohol facilities or any other person or entity who has rendered treatment to or examined you for any reason after the incident(s) which is the subject matter of this lawsuit.

Response:

None in our possession. Discovery is ongoing.

Legal Argument Supporting Entitlement to Discovery

Once again, Plaintiff should be required to immediately produce the requested documents. In support of ordering immediate production, Defendant realleges and incorporates his "Legal Argument Supporting Entitlement To Discovery" to request no. 5 above herein.

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Interrogatory No. 2

2. List the names, business addresses, telephone and cell phone numbers, dates of employment, immediate supervisor (name and address) and rates of pay regarding all employers, including self-employment, for whom you have worked in the past 10 years; this includes listing all sources of income you have received. Answer this question by year, i.e. 1998 – 2009.

Answer:

Objection. Irrelevant, immaterial and not reasonably calculated to lead to discovery of admissible evidence.

Legal Argument Supporting Entitlement to Discovery

Such information is clearly relevant to the damages and injuries claimed by Plaintiff in this action. Plaintiff's complaint alleges in part that "beginning in approximately late May or early June of 2002, and continuing until approximately August of 2003, the Defendant coerced and enticed the impressionable, vulnerable, and economically deprived then minor Plaintiff to commit various acts of sexual misconduct." 1st Am. Complaint, ¶13. (See discussion of Production Request no. 1 above herein).

Such information is both relevant and reasonably calculated to lead to the discovery of admissible evidence. It is well settled that relevant information is discoverable, even if not admissible at trial, so long as the discovery is reasonably calculated to lead to the discovery of admissible evidence. Rule 26(b)(1), Fed.R.Civ.P.; Donahay v. Palm Beach Tours & trans., Inc., 242 F.R.D. 685 (S.D. Fla. 2007). Discoverability of such information is governed by Rule 26, Fed.R.Civ.P., pursuant to which the scope of discovery is broad. Donahay, supra, at 686, and cases cited therein. "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the claims or defense of any party involved in the pending action." Id.

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Plaintiff's employment and earnings history prior to and after the alleged incidents are relevant to her claimed damages and injuries. Such information would not only evidence Plaintiff's employment and earning history, but also provide evidence as to how Plaintiff has been able to function in her daily life before, during and after the alleged incidents. Was she self-sufficient? Was she able to get out of bed each morning and support herself? What type of job did she hold? One's ability to earn a living and be self-supporting has not only a financial component, but also an emotional/psychological/mental component.

C.M.A.'s First Amended Complaint attempts to allege 32 counts. Counts I through XXX are purportedly brought pursuant to 18 U.S.C. §2255 – *Civil Remedies for Personal Injuries*; Count XXXI is entitled "Sexual Battery," and Count XXXII is entitled "Conspiracy to Commit Tortious Assault only against Defendant, Sarah Kellen."

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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.)

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As discussed above, C.M.A.'s employment and earnings history will provide direct evidence as to Plaintiff's claimed damages. Such information does not only go to compensatory or actual damages or loss of income/loss of capacity to earn income type damages, but also her emotional/psychological/mental health type damages. In the telephone communication between counsel for the respective parties, Plaintiff's counsel indicated that Plaintiff was not seeking loss of income/earning capacity type damages; (Defendant is not aware that there has been any formal withdrawal of such damages claimed); notwithstanding, the information sought is still relevant and discoverable based on the additional damages claimed by Plaintiff. The time period will allow Defendant to compare how Plaintiff was doing in her life prior to, during, and after the alleged incident. Again, the type of jobs Plaintiff has been able to hold and her earnings and ability to support herself clearly have not only a financial component, but an emotional/psychological/mental health component as well. Accordingly, Plaintiff's