UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-80447-CIV

C.L.,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

DEFENDANT EPSTEIN'S MOTION FOR MORE DEFINITE STATEMENT & TO STRIKE, & TO DISMISS DIRECTED TO COUNT III OF PLAINTIFF C.L.'S COMPLAINT [D.E. 1, dated 3/31/2010]

Defendant, JEFFREY EPSTEIN, ("EPSTEIN"), by and through his undersigned counsel, files this Motion For More Definite Statement & Strike, and Motion to Dismiss Count III Directed To Plaintiff C.L.'s Complaint. Rule 12(b)(6), Rule 12(e) and (f), Fed.R.Civ.P. (2010); Local Gen. Rule 7.1 (S.D. Fla. 2009). In support of his motion, Defendant states:

The Complaint attempts to allege 3 counts, all of which are purportedly brought pursuant to 18 U.S.C. §2255 – *Civil Remedies for Personal Injuries*. Defendant seeks more definite statement of the precise time period during which the alleged conduct by EPSTEIN involving Plaintiff occurred, and seeks more definite statement as to C.L.'s date of birth so he can determine when she was no longer a minor. Plaintiff's complaint fails to state even these rudimentary facts. As discussed more fully below herein, when EPSTEIN's alleged conduct involving C.L. occurred determines what version of 18 U.S.C. §2255 applies to this action.

To be clear, Defendant recognizes that pursuant to the NPA (Non-Prosecution Agreement) he cannot challenge the standing of Plaintiff to bring an action exclusively

under 18 U.S.C. §2255 or raise certain defenses as long as the action is brought exclusively under 18 U.S.C. §2255. In addition, EPSTEIN pursuant to the NPA does not contest this Court's jurisdiction and waives liability as required by paragraph 8 of the NPA as to a predicate act or acts under §2255. However, the NPA does not prevent Defendant from asserting what version of 18 U.S.C. §2255 applies for purposes of establishing a minimum statutory damage recovery and whether one of the three specified predicate acts which was enacted subsequent to the completion of the defendant's alleged offense conduct with allegedly injured the plaintiff can be applied in the face of constitutional ex post facto prohibitions to criminal offenses that were not in effect at the time of the conduct at issue. See footnote 1 herein regarding EPSTEIN's obligation to honor the terms of the NPA.

To the extent that the conduct alleged by Plaintiff occurred prior to July 27, 2006, Count III is subject to dismissal because the predicate act relied upon by Plaintiff for her claims did not come into effect until July 27, 2006. Defendant's attorneys are 100% certain that Plaintiff, in being required to assert basic pleading requirement of time for the alleged acts, will allege that the conduct took place prior to July 27, 2006. Defendant notes that through his undersigned counsel's review of The Town of Palm Beach Police Department file produced in discovery that C.L. was meeting with the police in December of 2005; that C.L.'s date of birth is April of 1988 (thus 18 and not a minor as of the time of the enactment of the predicate offense upon which Count III is based); and that she claimed she was at Defendant's home in 2004. By the Court requiring that Plaintiff plead such allegations, Plaintiff will determine that she has no cause of action in Count III as a matter of law. While this court obviously has not yet ruled on the Motion

for More Definite Statement, Defendant is presenting his argument to Count III knowing that Plaintiff can and should concede the missing elements of "time" and birth month and year in her response.

Supporting Memorandum of Law

Motion For More Definite Statement and To Strike, Rule 12(e) and (f), F.R.C.P.

Plaintiff alleges that "**beginning in or around 1998 through in or around September 2007**, Defendant used his resources and his influence over vulnerable minor girls to engage in a systematic pattern of sexually exploitative behavior." (Complaint, ¶10). C.L. further alleges that she "originally introduced to Defendant when she was fifteen (15) years old." (Id, ¶18). There are no allegations in the Complaint as to Plaintiff's date of birth or as to the time period during which the alleged conduct by EPSTEIN involving C.L. occurred. Such allegations are critical as it determines what version of 18 U.S.C. §2255 applies to this action. As discussed more fully below herein, 18 U.S.C. was amended, effective July 27, 2006.

Defendant also seeks to strike and more definitely state ¶¶8, 9, 10, 11, 12, 13, 14, and 15, such that the allegations pertain to C.L. and not other alleged victims or what EPSTEIN's alleged conduct was with respect to other alleged victims. Such allegations are immaterial and impertinent as they are not related to Plaintiff's C.L.'s claim. Plaintiff should allege those facts that specifically pertain to her. Not until ¶16 does Plaintiff assert allegations pertaining to her and the conduct of Defendant directly involving her. What EPSTEIN may or may not have allegedly done with respect to other females does not affect Plaintiff's claim brought pursuant to §2255.

The same lawyers that represent Plaintiff C.L. also represent Plaintiff B.B. in action filed against EPSTEIN in state court – Case No. 502008CA037319XXXXMB AB, 15th Judicial Circuit Court, in for Palm Beach County, State of Florida. It appears that Plaintiff's counsel carelessly used the B.B. complaint as a template for this action even though different causes of action are asserted therein. At one time, the B.B. action attempted to include a Florida RICO claim which has now been voluntarily dismissed; Plaintiff's counsel by including allegations as to other Plaintiffs and other alleged "girls" was attempting to improperly assert a RICO claim in B.B. (Such immaterial and impertinent allegations in the B.B. case are also the subject of a motion to strike). Reference to a scheme, pattern, and plan are immaterial and impertinent to C.L.'s claim. Plaintiff is not allowed to argue other alleged Plaintiff's cases. The C.L. action is brought exclusively under 18 U.S.C. §2255. The allegations in ¶¶8-15 are not related to the elements of Plaintiff's §2255 claim and, thus, are required to be stricken and/or replead to more definitely state the alleged facts specific to C.L.

Motion to Dismiss Count III

Because EPSTEIN's conduct occurred prior to July 27, 2006, and Plaintiff is relying on a statutory predicate act that was not enacted until after Jul. 27, 2006, Count III is required to be dismissed. [1]

Plaintiff is relying on a criminal predicate act, 18 U.S.C. §2252A(g) that was not even in existence at the time of the alleged conduct by EPSTEIN directed to C.L. which would clearly violate the Ex Post Facto Clause of the U.S. Constitution. As noted above, Defendant is certain that when Plaintiff is required to more definitely state her claim and

[1] EPSTEIN will fully honor his obligations as set forth in the Non-Prosecution Agreement with the United States Attorney's Office; principally, as related to the claims made in this case by C.L., the obligations as set forth in paragraph 8 of that Agreement. In particular, EPSTEIN will not contest the allegation that he committed at least one predicate offense as alleged by C.L.

allege facts as to time and conduct/acts specific to her, the date of the acts alleged will be prior to July 27, 2006, and thus, Defendant will argue his position based on the fact that no alleged conduct by EPSTEIN involving C.L. occurred on or after July 27, 2006. Additionally and equally important, as of July 27, 2006, C.L. would be 18 and no longer a minor at the time 18 U.S.C. §2255A(g) was enacted. Plaintiff in her response can and should concede this issue.

There is no language in the statute which suggests (g) is to apply retroactively. 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 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 (2002)[2], 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.

See endnote 1 hereto for statutory text as amended in 2006, effective July 27, 2006. Prior to the 2006 amendments, the version of the statute quoted above was in effect beginning in 1999.[1] The amended version of §2255 significantly changed subsection (a) such that it now reads –

> **(a) In general.--Any person who, while a minor**, was 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, **regardless of whether the injury occurred while such person was a minor**, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney's fee. **Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than $150,000 in value.**

(**Emphasis** added to highlight the changes to the statute effective July 27, 2006).

In Count III of her Complaint, she alleges that Defendant "knowingly engaged in a child exploitation enterprise, as defined in 18 U.S.C. §2252A(g)(2), in violation of 18 U.S.C. §2252A(g)(1)." §2252A is one of the specified criminal predicate acts under 18

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[2] The above quoted version of 18 U.S.C. §2255 was the same beginning in 1999 until amended in 2006, effective July 27, 2006.

U.S.C. §2255. However, subsection (g) of §2252 was not added to §2252 until July, 2006. In attempting to assert a claim pursuant to 18 U.S.C. §2255, Plaintiff is relying on subsection, (g)(1) and (2), of the criminal statute 18 U.S.C. §2252A as the requisite predicate act. Subsection (g) of §2252A was enacted in 2006, effective July 27, 2006. See 2006 Amendments; Pub.L. 109-248, § 701, added subsec. (g). 18 U.S.C.A. § 2252A. If the alleged conduct by EPSTEIN directed to C.L. occurred prior to the effective date of the statute, reliance on subsection (g) violates the well entrenched constitutional principles against retroactivity, and, thus, Count III is required to be dismissed. If the acts occurred only after July 27, 2006 (which Defendant's attorney know cannot be true), C.L. would be 18 and not a minor, so the statute would have no application.

Pre-July, 2006, 18 U.S.C. §2252A contained no subsection (g) as relied on by Plaintiff.[2] See endnote 2 hereto for complete statutory text of 18 U.S.C. §2252A (2004), and as amended effective, July 26, 2006. Subsection (g) which did not exist at the time of Defendant's alleged conduct now criminalizes the following conduct –

> (g) Child exploitation enterprises.—
>
> (1) Whoever engages in a child exploitation enterprise shall be fined under this title and imprisoned for any term of years not less than 20 or for life.
> (2) A person engages in a child exploitation enterprise for the purposes of this section if the person violates section 1591, section 1201 if the victim is a minor, or chapter 109A (involving a minor victim), 110 (except for sections 2257 and 2257A), or 117 (involving a minor victim), as a part of a series of felony violations constituting three or more separate incidents and involving more than one victim, and commits those offenses in concert with three or more other persons.
>
> See endnote 2 hereto.

It is an axiom of law that "retroactivity is not favored in the law." Bowen, 488 U.S., at 208, 109 S.Ct., at 471 (1988). As eloquently stated in Landgraf v. USI Film Products, 114 S.Ct. 1483, 1497, 511 U.S. 244, 265-66 (1994):

... the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.[FN18] For that reason, the "**principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal.**" *Kaiser,* 494 U.S., at 855, 110 S.Ct., at 1586 (SCALIA, J., concurring). In a free, dynamic society, creativity in both commercial and artistic endeavors is **fostered by a rule of law that gives people confidence about the legal consequences of their actions**.

FN18. See *General Motors Corp. v. Romein,* 503 U.S. 181, 191, 112 S.Ct. 1105, 1112, 117 L.Ed.2d 328 (1992) ("Retroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions"); [Further citations omitted].

It is therefore not surprising that the antiretroactivity principle finds expression in several provisions of our Constitution. **The *Ex Post Facto* Clause flatly prohibits retroactive application of penal legislation.**[FN19] Article I, § 10, cl. 1, prohibits States from passing another type of retroactive legislation, laws "impairing the Obligation of Contracts." The Fifth Amendment's Takings Clause prevents the Legislature (and other government actors) from depriving private persons of vested property rights except for a "public use" and upon payment of "just compensation." The prohibitions on "Bills of Attainder" in Art. I, §§ 9-10, **prohibit legislatures from singling out disfavored persons and meting out summary punishment for past conduct.** See, *e.g., United States v. Brown,* 381 U.S. 437, 456-462, 85 S.Ct. 1707, 1719-1722, 14 L.Ed.2d 484 (1965). **The Due Process Clause also protects the interests in fair notice and repose that may be compromised by retroactive legislation**; a justification sufficient to validate a statute's prospective application under the Clause "may not suffice" to warrant its retroactive application. *Usery v. Turner Elkhorn Mining Co.,* 428 U.S. 1, 17, 96 S.Ct. 2882, 2893, 49 L.Ed.2d 752 (1976).

FN19. Article I contains two *Ex Post Facto* Clauses, one directed to Congress (§ 9, cl. 3), the other to the States (§ 10, cl. 1). We have construed the Clauses as applicable only to penal legislation. See *Calder v. Bull,* 3 Dall. 386, 390-391, 1 L.Ed. 648 (1798) (opinion of Chase, J.).

These provisions demonstrate that retroactive statutes raise particular concerns. The Legislature's unmatched powers allow it to sweep away settled expectations suddenly and without individualized consideration. Its responsivity to political pressures poses a risk that it may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals. As Justice Marshall observed in his opinion for **1498 the Court in *Weaver v.*

> *Graham,* 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981), the *Ex Post Facto* Clause not only ensures that individuals have "fair warning" about the effect of criminal statutes, but also "restricts governmental power by restraining arbitrary and potentially vindictive legislation." *Id.,* at 28-29, 101 S.Ct., at 963-964 (citations omitted). [FN20]
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> FN20. See *Richmond v. J. A. Croson Co.,* 488 U.S. 469, 513-514, 109 S.Ct. 706, 732, 102 L.Ed.2d 854 (1989) ("Legislatures are primarily policymaking bodies that promulgate rules to govern future conduct. The constitutional prohibitions against the enactment of *ex post facto* laws and bills of attainder reflect a valid concern about the use of the political process to punish or characterize past conduct of private citizens. It is the judicial system, rather than the legislative process, that is best equipped to identify past wrongdoers and to fashion remedies that will create the conditions that presumably would have existed had no wrong been committed") (STEVENS, J., concurring in part and concurring in judgment); *James v. United States,* 366 U.S. 213, 247, n. 3, 81 S.Ct. 1052, 1052, n. 3, 6 L.Ed.2d 246 (1961) (retroactive punitive measures may reflect "a purpose not to prevent dangerous conduct generally but to impose by legislation a penalty against specific persons or classes of persons").

These well entrenched constitutional protections and presumptions against retroactive application of legislation establish that 18 U.S.C. §2252A in effect at the time of the alleged conduct apply to the instant action, not the amended version which added subsection (g).

Not only is there no clear express intent stating that the statute is to apply retroactively, but even if there were such an intent (which does not exist), applying a later version of the statute would be in clear violation of the Ex Post Facto Clause of the United States Constitution as it would be applied to events occurring before its enactment and would increase the penalty or punishment for the alleged crime. U.S. Const. Art. 1, §9, cl. 3, §10, cl. 1. U.S. v. Seigel, 153 F.3d 1256 (11th Cir. 1998); U.S. v. Edwards, 162 F.3d 87 (3d Cir. 1998); and generally, Calder v. Bull, 3 U.S. 386, 390, 1 L.Ed. 648, 1798 WL 587 (*Calder*) (1798).

> The United States Constitution provides that "[n]o Bill of Attainder or ex post facto Law shall be passed" by Congress. U.S. Const. art. I, § 9, cl. 3. **A law violates the Ex Post Facto Clause if it " 'appli[es] to events occurring before its enactment ... [and] disadvantage[s] the offender affected by it' by altering the definition of criminal conduct or increasing the punishment for the crime."** Lynce v. Mathis, 519 U.S. 433, 117 S.Ct. 891, 137 L.Ed.2d 63 (1997) (quoting Weaver v. Graham, 450 U.S. 24, 29, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981)).
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> U.S. v. Siegel,153 F.3d 1256, 1259 (11th Cir. 1998). (**Empasis** added to above quotations).

The statute, as amended in 2006, contains no language stating that the application of subsection (g) is to be retroactive. Thus, there is no manifest intent that the statute is to apply retroactively, and, accordingly, the statute in effect during the time of the alleged conduct is to apply. Landgraf v. USI Film Products, supra, at 1493, ("A statement that a statute will become effective on a certain date does not even arguably suggest that it has any application to conduct that occurred at an earlier date."). Here the statute, by adding subsection (g), clearly alters the definition of the criminal conduct.

The cases of U.S. v. Siegel, supra (11th Cir. 1998), and U.S. v. Edwards, supra (3d Cir. 1998), support Defendant's position that application of the current version of 18 U.S.C. §2252A would be in clear violation of the Ex Post Facto Clause. In Siegel, the Eleventh Circuit found that the Ex Post Facto Clause barred application of the Mandatory Victim Restitution Act of 1996 (MVRA) to the defendant whose criminal conduct occurred before the effective date of the statute, 18 U.S.C. §3664(f)(1)(A), even though the guilty plea and sentencing proceeding occurred after the effective date of the statute. On July 19, 1996, the defendant Siegel pleaded guilty to various charges under 18 U.S.C. §371 and §1956(a)(1)(A), (conspiracy to commit mail and wire fraud, bank fraud, and laundering of money instruments; and money laundering). He was sentenced on March

7, 1997. As part of his sentence, Siegel was ordered to pay $1,207,000.00 in restitution under the MVRA which became effective on April 24, 1996. Pub.L. No. 104-132, 110 Stat. 1214, 1229-1236. The 1996 amendments to MVRA required that the district court must order restitution in the full amount of the victim's loss without consideration of the defendant's ability to pay. Prior to the enactment of the MVRA and under the former 18 U.S.C. §3664(a) of the Victim and Witness Protection Act of 1982 (VWPA), Pub.l. No. 97-291, 96 Stat. 1248, the court was required to consider, among other factors, the defendant's ability to pay in determining the amount of restitution.

When the MVRA was enacted in 1996, Congress stated that the amendments to the VWPA "shall, to the extent constitutionally permissible, be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment of this Act [Apr. 24, 1996]." Siegel, supra at 1258. The alleged crimes occurred between February, 1988 to May, 1990. The Court agreed with the defendant's position that 1996 MVRA "should not be applied in reviewing the validity of the court's restitution order because to do so would violate the Ex Post Facto Clause of the United States Constitution. See U.S. Const. art I, §9, cl. 3."

In resolving the issue in favor of the defendant, the Court first considered whether a restitution order is a punishment. Id, at 1259. In determining that restitution was a punishment, the Court noted that §3663A(a)(1) of Title 18 expressly describes restitution as a "penalty." In addition, the Court also noted that "[a]lthough not in the context of an ex post facto determination, … restitution is a 'criminal penalty meant to have strong deterrent and rehabilitative effect.' United States v. Twitty, 107 F.3d 1482, 1493 n. 12 (11th Cir.1997)." Second, the Court considered "whether the imposition of restitution

under the MVRA is an increased penalty as prohibited by the Ex Post Facto Clause." Id, at 1259. In determining that the application of the 1996 MVRA would indeed run afoul of the Constitution's Ex Post Facto Clause, the Court agreed with the majority of the Circuits that restitution under the 1996 MVRA was an increased penalty.[3] "The effect of the MVRA can be detrimental to a defendant. Previously, after considering the defendant's financial condition, the court had the discretion to order restitution in an amount less than the loss sustained by the victim. Under the MVRA, however, the court must order restitution to each victim in the full amount." Id, at 1260. See also U.S. v. Edwards, 162 F.2d 87 (3rd Circuit 1998).

Based on these principles barring retroactive application, Defendant is entitled to a determination that the statute in effect at the time of the alleged criminal conduct applies and, thus, Count III is subject to dismissal. The statute now criminalizes conduct not previously so criminalized.

As further explained by the Landgraf court, supra at 280, and at 1505,[4]

> When a case implicates a federal statute enacted after the events in suit, the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, *i.e.*, whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate

[3] The Eleventh Circuit, in holding that "the MVRA cannot be applied to a person whose criminal conduct occurred prior to April 24, 1996," was "persuaded by the majority of districts on this issue." "Restitution is a criminal penalty carrying with it characteristics of criminal punishment." Siegel, supra at 1260. The Eleventh Circuit is in agreement with the Second, Third, Eighth, Ninth, and D.C. Circuits. See U.S. v. Futrell, 209 F.3d 1286, 1289-90 (11th Cir. 2000).

[4] In Landgraf, the United States Supreme Court affirmed the judgment of the Court of Appeals and refused to apply new provisions of the Civil Rights Act of 1991 to conduct occurring before the effective date of the Act. The Court determined that statutory text in question, §102, was subject to the presumption against statutory retroactivity.

> retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result.

Even though C.L. has invoked the provisions of the criminal NPA between EPSTEIN and USAO (see paragraphs 27 and 28 of Complaint), it does not mean that Plaintiff can avoid application of the well established constitutional protections discussed herein (as well as other constitutional protections and principles, including but not limited to the rule of lenity and due process) and which EPSTEIN is entitled to assert so long as the assertions do not conflict with his obligations to neither contest jurisdiction nor liability as set forth in paragraph 8 of the NPA.

Thus, Count III should be dismissed to the extent it relies on conduct that occurred prior to July 27, 2006, and relies on a criminal predicate act that did not come into existence until July 27, 2006, in violation of the constitutional prohibitions of retroactivity.

Conclusion

Pursuant to the above, Count III is required to be dismissed. In addition, Plaintiff should be required to more definitely state the specific dates of the alleged conduct by EPSTEIN specifically involving her, and her date of birth. Any conduct occurring after her 18th birthday should be stricken, and ¶¶8 – 15 of the Complaint should also be stricken and be replead to the extent that allegations specifically involve C.L.

WHEREFORE, Defendant requests that this Court dismiss Count III against him, and further grant his Motion for More Definite Statement and to Strike.

/s/ Robert D. Critton, Jr.
Robert D. Critton, Jr., Esq.
Attorney for Defendant

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 3rd day of May, 2010.

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[1] **18 USCA §2255 (1999-July 26, 2006):**

PART I--CRIMES
CHAPTER 110--SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN
§ 2255. Civil remedy for personal injuries

(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.

CREDIT(S)
(Added Pub.L. 99-500, Title I, § 101(b) [Title VII, § 703(a)], Oct. 18, 1986, 100 Stat. 1783-75, and amended Pub.L. 99-591, Title I, § 101(b) [Title VII, § 703(a)], Oct. 30, 1986, 100 Stat. 3341-75; Pub.L. 105-314, Title VI, § 605, Oct. 30, 1998, 112 Stat. 2984.)

18 U.S.C. §2255, as amended 2006, Effective July 27, 2006:
PART I--CRIMES
CHAPTER 110--SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

§ 2255. Civil remedy for personal injuries

(a) In general.--Any person who, while a minor, was 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, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney's fee. Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than $150,000 in value.

(b) Statute of limitations.--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.

CREDIT(S)
(Added Pub.L. 99-500, Title I, § 101(b) [Title VII, § 703(a)], Oct. 18, 1986, 100 Stat. 1783-75, and amended Pub.L. 99-591, Title I, § 101(b) [Title VII, § 703(a)], Oct. 30, 1986, 100 Stat. 3341-75; Pub.L. 105-314, Title VI, § 605, Oct. 30, 1998, 112 Stat. 2984; Pub.L. 109-248, Title VII, § 707(b), (c), July 27, 2006, 120 Stat. 650.)

[2] **Part I. Crimes**
Chapter 110. Sexual Exploitation and Other Abuse of Children

§ 2252A. Certain activities relating to material constituting or containing child pornography

(a) Any person who—

(1) knowingly mails, or transports or ships in interstate or foreign commerce by any means, including by computer, any child pornography;
(2) knowingly receives or distributes—
(A) any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or
(B) any material that contains child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer;
(3) knowingly—
(A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or
(B) advertises, promotes, presents, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains—
(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or
(ii) a visual depiction of an actual minor engaging in sexually explicit conduct;
(4) either—
(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly sells or possesses with the intent to sell any child pornography; or

(B) knowingly sells or possesses with the intent to sell any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer;
(5) either—
(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or
(B) knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or
(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—
(A) that has been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer;
(B) that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or
(C) which distribution, offer, sending, or provision is accomplished using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer,

for purposes of inducing or persuading a minor to participate in any activity that is illegal. [FN1]

shall be punished as provided in subsection (b).

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), (4), or (6) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but, if such person has a prior conviction under this chapter, chapter 71, chapter 109A, chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of

child pornography, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) that—

(1)(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and
(B) each such person was an adult at the time the material was produced; or
(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense under subsection (c)(2) shall be available in any prosecution that involves child pornography as described in section 2256(8)(C). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.

(d) Affirmative defense.—It shall be an affirmative defense to a charge of violating subsection (a)(5) that the defendant—

(1) possessed less than three images of child pornography; and
(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof—
(A) took reasonable steps to destroy each such image; or
(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

(e) Admissibility of evidence.—On motion of the government, in any prosecution under this chapter or section 1466A, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.

(f) Civil remedies.—

(1) In general.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) or section 1466A may commence a civil action for the relief set forth in paragraph (2).
(2) Relief.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—
(A) temporary, preliminary, or permanent injunctive relief;
(B) compensatory and punitive damages; and
(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.

As amended eff. July 27, 2006 – Adding Subsection (g).

§ 2252A. Certain activities relating to material constituting or containing child pornography

(a) Any person who—

(1) knowingly mails, or transports or ships in interstate or foreign commerce by any means, including by computer, any child pornography;
(2) knowingly receives or distributes—
(A) any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or
(B) any material that contains child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer;
(3) knowingly—
(A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or
(B) advertises, promotes, presents, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains—
(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or

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(ii) a visual depiction of an actual minor engaging in sexually explicit conduct;
(4) either—
(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly sells or possesses with the intent to sell any child pornography; or
(B) knowingly sells or possesses with the intent to sell any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer;
(5) either—
(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or
(B) knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or
(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—
(A) that has been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer;
(B) that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or
(C) which distribution, offer, sending, or provision is accomplished using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer,

for purposes of inducing or persuading a minor to participate in any activity that is illegal. [FN1]

shall be punished as provided in subsection (b).

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), (4), or (6) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but, if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a

minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) that—

(1)(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and
(B) each such person was an adult at the time the material was produced; or
(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense under subsection (c)(2) shall be available in any prosecution that involves child pornography as described in section 2256(8)(C). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.

(d) Affirmative defense.—It shall be an affirmative defense to a charge of violating subsection (a)(5) that the defendant—

(1) possessed less than three images of child pornography; and
(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof—
(A) took reasonable steps to destroy each such image; or
(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

(e) Admissibility of evidence.—On motion of the government, in any prosecution under this chapter or section 1466A, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.

(f) Civil remedies.—

(1) In general.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) or section 1466A may commence a civil action for the relief set forth in paragraph (2).
(2) Relief.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—
(A) temporary, preliminary, or permanent injunctive relief;
(B) compensatory and punitive damages; and
(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.

(g) Child exploitation enterprises.—

(1) Whoever engages in a child exploitation enterprise shall be fined under this title and imprisoned for any term of years not less than 20 or for life.
(2) A person engages in a child exploitation enterprise for the purposes of this section if the person violates section 1591, section 1201 if the victim is a minor, or chapter 109A (involving a minor victim), 110 (except for sections 2257 and 2257A), or 117 (involving a minor victim), as a part of a series of felony violations constituting three or more separate incidents and involving more than one victim, and commits those offenses in concert with three or more other persons.

(Emphasis added to show new subsection (g)).