

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-80309-CIV-

JANE DOE No. 103,

Plaintiff,

vs.

JEFFERY EPSTEIN,

Defendant.

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**DEFENDANT EPSTEIN'S MOTION TO AMEND DEFENDANT'S  
MOTION TO DISMISS, & FOR MORE DEFINITE STATEMENT &  
STRIKE DIRECTED TO PLAINTIFF JANE DOE NO. 103'S  
COMPLAINT [dated 4/5/2010]**

Defendant, JEFFREY EPSTEIN, ("EPSTEIN"), by and through his undersigned counsel, moves to amend by his previously filed *Motion To Dismiss, & Motion For More Definite Statement & Strike Directed To Plaintiff JANE DOE 103's Complaint*, (hereinafter "Motion To Dismiss"), dated and filed April 5, 2010. In support of his motion, Defendant states:

1. On April 5, 2010, Defendant previously filed with this Court his Motion To Dismiss. Defendant seeks dismissal of Count VI, which is brought pursuant to 18 U.S.C. §2255, because Plaintiff is relying on a criminal predicate act enumerated in §2255 that did not come into effect until after the alleged time period of the alleged conduct by Defendant involving Plaintiff. 18 U.S.C. §2252A(g), the criminal statute relied upon by Plaintiff in attempting to assert her §2255 claim in Count VI, was not enacted until 2006; the allegedly violative conduct by Defendant occurred, according to Plaintiff's own

allegations, beginning in January 2004 until approximately May 2005. As argued in Defendant's motion to dismiss, Count VI is required to be dismissed because it violates the constitutional principles against retroactivity. See pages 3-11 of Defendant's motion to dismiss.

2. Defendant is not seeking to raise a new argument, but is seeking to clarify the argument made in his motion to dismiss (pp. 3-11). Under the heading – "Motion To Dismiss" – at page 3-4, in the first paragraph, Defendant states in part that - "However, subsection (g) of §2252 was not added to the statute until 2006. Thus, to the extent that Plaintiff is relying on the amended version of §2255, such reliance is improper and Count VI is required to be dismissed as it relies on a statutory predicate act that did not exist at the time of the alleged conduct."

3. Defendant seeks to add the following sentences (paragraph) after the first paragraph, at page 4, to clarify the argument being made.

According to Plaintiff's allegations, the alleged conduct of EPSTEIN directed to Plaintiff occurred beginning in January 2004 until approximately May 2005. In Count VI, 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 not even in existence at the time of the alleged conduct. Subsection (g) 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. As discussed more fully below herein, reliance on subsection (g) violates the well entrenched constitutional principles against retroactivity, and, thus, Count VI is required to be dismissed.

4. Defendant also adds a sentence in the introductory paragraph of the Amended Motion To Dismiss, attached hereto as **Exhibit A**, simply stating that it is an amended motion.

5. Such amendment is in the interest of justice and will allow both the Court and the Plaintiff to understand and address the argument made by Defendant in his motion to dismiss.

6. Defendant further requests that the Amended Motion To Dismiss, **Exhibit A** hereto, be deemed filed as of the date of this motion.

7. Pursuant to Rule 15(a)(2), Fed.R.Civ.P., Defendant sought the consent of the opposing party as to the above amendment/supplement to his motion to dismiss. Plaintiff's counsel **did not oppose** the amendment/supplement.

WHEREFORE, Defendant respectfully requests that this Court enter an Order granting Defendant's motion and deeming as filed as of the date of this motion Defendant's *Amended Motion To Dismiss, & Motion For More Definite Statement & Strike Directed To Plaintiff JANE DOE 103's Complaint*, attached hereto as **Exhibit A**.

/s/ Robert D. Critton  
Robert D. Critton, 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 12<sup>th</sup> day of April, 2010.

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Respectfully submitted,

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