UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 10-80447 –CV-MARRA/JOHNSON

C. L.

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

PLAINTIFF'S RESPONSE TO DEFENDANT EPSTEIN'S MOTION FOR MORE DEFINITE STATEMENT & TO STRIKE, & TO DISMISS DIRECTED TO COUNT III OF PLAINTIFF C.L.'S COMPLAINT

Plaintiff, C. L., by and through her undersigned counsel, files this Response to Defendant Epstein's Motion For More Definite Statement & To Strike, & To Dismiss Directed To Count III Of Plaintiff C.L.'S Complaint. ("Motion"). First, Defendant argues that Count III of Plaintiff's Complaint should be dismissed because the predicate act relied upon, 18 U.S.C. § 2252 A(g), did not come into effect until July 27, 2006, well after Defendant's offensive conduct occurred. Defendant then seeks a more definite statement, *i.e.*, for Plaintiff to allege her date of birth in order to establish when she reached 18, the age of majority under state and federal law. Finally, Defendant seeks to strike paragraphs 8 through 15 of Plaintiff's Complaint as immaterial and impertinent.

Defendant's motion should be denied for the reasons set forth below:

I. Count III Should Not Be Dismissed, As Retroactive Application Of § 2252 A(G)(1) And (2) Does Not Violate Constitutional *Ex Post Facto* Prohibitions

In moving to dismiss, Defendant focused on the issue of whether Plaintiff may bring the claim set forth in Count III of her Complaint in which she alleged that the Defendant knowingly engaged in a child exploitation enterprise, as defined in 18 U.S.C. § 2252 A(g)(2), in violation of 18 U.S.C. § 2252 A(g)(1). Section 2252 A is one of the specified predicate acts under 18 U.S.C. § 2255, although subsection (g) of that statute was not enacted until 2006, after Defendant's offending conduct occurred. Defendant's argument is premised on the fact that Defendant molested the then minor Plaintiff before subsection (g) of that statute was enacted. Defendant's argument must fail. The *Ex Post Facto* clause does not apply because the remedy afforded under Section 2255 and Section 2252 A is a non-punitive civil remedy.

The matter of whether these and other such amendments may be applied retroactively is extremely relevant to Plaintiff's claims and the remedies sought throughout her Complaint. Plaintiff and Defendant fundamentally disagree as to the retroactive nature of 18 U.S.C. § 2255A as well as the interpretation of whichever version of §2255 the Court adopts. The Court's decisions as to retroactive application of § 2255 ultimately will critically affect the results of claims brought by each and every one of Defendant's many victims who are currently seeking redress under §2255. Thus, its significance cannot be overemphasized.

A. Background Of The 2006 Amendment To The Statute

In July of 2006 substantial changes were made in Section 2255 and to some of its predicate acts as the result of the enactment of the Adam Walsh Child Protection and Safety Act of 2006 ("AWA"). One such measure in the AWA was the Internet Safety

Act, which was codified in §2252 A(g), and outlawed child exploitation enterprises and set a mandatory minimum prison sentence of 20 years for those who act in concert to commit at least three separate violations of federal child pornography, sex trafficking, or sexual abuse laws against multiple child victims. Another very important change brought about by the AWA was Masha's Law[1], which addressed child exploitation over the Internet.

Section 2255 has been lauded as an additional remedy against those who sexually exploit or abuse children. Even though the 2006 Amendment provided for more penalties for child abusers, the pervasive tenor of the legislation was curative and remedial in nature. Throughout the Congressional Record of the enactment of the AWA[2], the act is praised for its extraordinarily remedial quality. For instance, Senator Bill Nelson and others spoke of it as a bill to safeguard children and allow law enforcement to help prevent other families from suffering tragedies similar to those the Walsh's, Lunsford's. Ryce's and Masha had to endure. See Id. at S8021. Additionally, President Bush hailed it as giving law enforcement the tools needed to go after criminals who exploit children.[3]

[1/] On July 27, 2006, twenty-five years after the tragic abduction of Adam Walsh, Congress enacted "Masha's Law" as a part of the AWA. Masha's Law, amended § 2255(a) to increase the statutory minimum damages to $150,000 and to expand the scope of potential Plaintiffs from "any minor" to "any person, who while a minor" was a victim of a specified statute, i.e., one of the predicate acts listed in 2255, including the one most relevant here, 2252 A. Masha's Law was named after a 13-year-old Russian orphan, who was adopted by a Pennsylvania man with a history of child exploitation. He sexually assaulted her and posted nude photographs of the child all over Internet pedophile web sites, which are still being downloaded every day. Senator John Kerry, one of the authors of Masha's Law, in his remarks on the day of the adoption of the AWA, highlighted the remedial nature of the legislation, when he said that it was because of Masha that Congress was finally closing unacceptable loopholes in our child exploitation laws. The specific intent of those involved in developing this statutory scheme was for girls similarly violated to be able to bring causes of action as adults because of the continuing nature of such violations. Subsection (g) of 2252 A was also enacted on July 27, 2006 as a part of the AWA.

[2/]152 Cong. Rec. S8012-02 and H5705-01, 2006 WL 2034118 and 2060156, respectively.

[3/]See White House Press Release issued on July 27, 2006 at the signing of the AWA..

B. Defendant's Argument Is Wrong Because It Ignores The Fact That The Ex Post Facto Clause Is Inapplicable To A Non-Punitive Civil Remedy.

Defendant's argument is rooted in his idea that the application of 18 U.S.C. § 2252 A(g)(2006)[5] to Defendant's act would violate the *Ex Post Facto Clause* of the Constitution. The Plaintiff was sexually molested by the Defendant before the 2006 Amendment was enacted. According to Defendant applying subsection (g) "to events occurring before its enactment and would [illegally] increase the penalty or punishment for the alleged crime." Motion at 9.

Defendant's argument must fail – the *Ex Post Facto Clause* only applies to *punitive remedies*. Manocchino v. Kusserow, 961 F.2d 1539, 1541 (11th Cir. 1992) (citing Fleming v. Nestor, 363 U.S. 603, 613(1960)). As the Supreme Court of the State of Florida stated "[a] civil remedy that does not constitute criminal punishment does not violate ex post facto prohibitions." Griffin v. State, 980 So.2d 1035, 1037 (Fla. 2008). "A statute is not punitive, for purposes of determining whether it violates the ex post facto clause, merely because it can be applied in the context of a criminal case." Id. Plaintiff's case against Defendant is civil, not criminal. Defendant's argument that applying subsection (g) would illegally increase the punishment for the alleged *crime* is misplaced. Plaintiff is not and does not have the power to bring a criminal charge against Defendant. In fact, Plaintiff's requested remedy under Section 2255 and by extension Section 2252 A(g) is a *non-punitive civil remedy*.

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[5] Justice Stevens notes in *Landgraf* at 1487 that the presumption against retroactivity finds its expression in the criminal context in the *Ex Post Facto* Clause. Section 2252 A(g) alone does not provide for punitive damages, although they are provided for elsewhere in the 2006 version of the statute. *Landgraf* holds that as such it is 'clearly subject to the presumption against retroactivity, since the very labels given "punitive"...damages, as well as the rationales supporting them, demonstrate that they share key characteristics of criminal sanctions, and therefore would raise a serious question under the *Ex Post Facto* Clause if retroactively imposed.'

Defendant's argument is premised on the general axiom that retroactivity is not favored in the law. (Motion at 7, citing Bowen v. Georgetown University, 488 U.S.204, 208, 109 S. Ct., 468, 471 (D.C.Col.1988)). Quoting extensively from Landgraf v. USI Film Products, 511 U.S. 244, 265-66 (1994), Defendant recited all the concerns underlying the historic presumption against retroactive legislation, one of which is the constitutional prohibition of retroactive application of penal legislation.[4] Defendant's argument is correctly rooted in the premise that the *Ex Post Facto Clause* applies to punitive remedies. Unfortunately, Defendant next attempted to use criminal cases to improperly over-extend the *Ex Post Facto Clause* to the non-punitive civil remedy at hand. This improper extension should not stand.

First, Defendant's argument relied heavily on the cases of U.S. v. Siegel, 153 F. 3d 1256 (11th Cir. 1998) and U.S. v. Edwards, 162 F. 3d. 87 (3d. Cir. 1998). Both held the *Ex Post Facto Clause* barred the application of the Mandatory Victim Restitution Act (MVRA) to defendants whose criminal conduct occurred before the effective date of the statute. Defendant's argument glossed over the key distinction between these cases and the matter at hand. In Defendant's cited cases the disputed remedy was punitive; i.e., it *punished criminal activity*. In the case at hand the remedy at issue is a *non-punitive civil remedy*.

This deficiency in Defendant's argument is highlighted by Court's opinion in Edwards, which recognized the remedy at issue in that case (i.e., restitution) was a criminal penalty. Restitution is an integral and necessary part of sentencing, supervised

[4] U.S. Const. Art 1, § 9, cl.3.

release, and probation.[6] Edwards at 91. In reaching this decision the Edwards Court relied upon the legislative history of the MVRA which indicated mandatory restitution should be considered a condition of a defendant's supervised release and probation. Thus, the Court concluded that the MVRA's legislative history evinced a congressional intent to . . . make mandatory restitution under the MVRA a penalty separate from civil remedies available to victims of crime . . . *i.e.*, to ensure that restitution under the MVRA is a form of criminal penalty rather than civil redress. See Edwards at 91. Defendant's argument ignores the fact that while criminal restitution may resemble a civil remedy it simply is not a civil remedy. This is in stark contrast to Plaintiff's reliance on § 2252A(g) in her *civil case* which provides a *civil remedy* imposed under the *civil statute* 18 U.S.C. § 2255.

C. Section 2255's Remedy Is A Non-Punitive Civil Remedy

The remedy provided under Section 2255 and by extension Section 2252A(g) is a non-punitive civil remedy.

First, in Individual Known to Defendant as 08MIS70 96.jpg v. Falso, 2009 WL 4807537 (N.D. NY. Dec. 9, 2009), the Court analyzed the remedy provided under Section 2255 and held it was clear the remedy was a civil remedy and was not criminally punitive. Id. As the Court stated, "the fact that the payment of damages might have some deterrent effect is insufficient to categorize the statute as criminal. The statute serves civil goals." Id. [8]

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[6] 18 U. S. C. §§ 3556, 3563 (a)(b)(A), 3563 (b)(2), 3565, 3663A, 3664.

[8] Other decisions relating to AWA agree that the legislation is civil and remedial in nature and not violative of rules or statutes prohibiting retroactivity. See State v. Bodyke, 2008-Ohio-6387 (Ohio App. 6th Dist. 2008) ("[T]he more burdensome registration requirements and the collection and dissemination of additional information about the offender are part of a remedial, regulatory scheme designed to protect the public rather [than] to punish the offender). Moreover, in State v. Honey, 2008-Ohio-4943 (Ohio App. 9th

Second, Plaintiff's argument Section 2255's remedy is a non-punitive civil remedy is supported by the Eleventh Circuit's opinion in Manocchino v. Kusserow, 961 F.2d 1542 (11th Cir. 1992). In Manocchino, the Eleventh Circuit analyzed an ex-post facto challenge to a different statute. The Court stated that "since the legislative intent of [that] [statute] [was] to protect the public, the sanction [was] remedial, not punitive." 961 F.2d at 1542. The Court held the remedy was not punitive despite clear indications the statute also served punitive goal of providing a deterrent against criminal action. Id. As the Manocchino Court stated, the "legislative history, taken as a whole, demonstrate[d] that the primary goal of the legislation [was] to protect" the public. Id.

Like the statute analyzed in Manocchino, the legislative history of Section 2255 points to the fact that the remedy provided under Section 2255 and subsequently Section 2252 is not punitive. First, the House report from Section 2255's original passage states that "[t]he bill also authorizes the pursuit of a civil remedy for personal injuries resulting from certain sex crimes against children." H.R. Rep. No. 105-557, at 11 (1998), *reprinted in* 1998 U.S.C.C.A.N. 678, 679. Second, the "Background and Need for the Legislation" section demonstrates that the purpose of the legislation, including the remedy, was to protect children. The House reported that "the 'Child Protection and Sexual Predator Punishment Act of 1998,' [was] a response to requests of … parents and law enforcement

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Dist. 2008) the Court explained, "A statute is 'substantive' if it impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligation, or liabilities as to a past transaction, or creates a new right. Conversely, remedial laws are those affecting only the remedy provided, and include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right." *Id.* at 7. The court explains that "to withstand the Ex Post Facto Clause, a statute must be civil and non-punitive with regard to both the legislature's intent in enacting it and its actual effect upon enactment. *Id* at 6. The court rejects the claim that AWA violates the Constitutional prohibition against ex post facto laws because it is obviously intended to be civil and non-punitive in nature (*id*). Because public safety is the driving force behind AWA, the fact that the requirements of the act have a significant impact upon the lives of sex offenders, does not offend Ohio's prohibition on retroactive laws. *Id.* at 5. *But see, Basel v. McFarland & Sons, Inc.*, 815So. 2d 687,692 (Fla. 5th DCA 2002) (even if legislature expressly provides for it, courts will refuse retroactive application if statute impairs vested rights, creates new obligations or imposes new penalties).

to address public safety issues involving the most vulnerable members of our society, our children." Id. at 12. Accordingly, the legislative history of Section 2255 demonstrates it was intended to protect the public and provide a civil remedy for victims of sexual abuse. Thus, just like the statute in Manocchino, the remedy provided under Section 2255 and by extension Section 2252 while protective is not punitive.

D. Conclusion

As a whole, Defendant's argument is deficient because it ignores the fact that the *Ex Post Facto Clause* is only applicable to punitive remedies. Manocchino v. Kusserow, 961 F.2d 1539, 1541 (11th Cir. 1992) (citing Fleming v. Nestor, 363 U.S. 603, 613(1960)). Defendant's reliance on Siegel and Edwards is misplaced. Those cases dealt with punitive criminal restitution. Section 2255 does not mandate payment of restitution, rather, it provides for a non-punitive civil remedy. 18 U.S.C. § 2255 (2006); Individual Known to Defendant As 08MIST096.JPG and 08mist067.jpg v. Falso, No. 5:08-cd-917, slip op. at 2 (N.D. N.Y. Dec. 9, 2009) ("it is clear that the statutory intent was to provide a civil remedy."). Just because civil recovery under Section 2255 is predicated on a criminal statute, does not mean that its remedy is punitive. Cf. Patel v. Thompson, 319 F.3d 1317, 1319 (11th Cir. 2003). The Defendant's over extension should not stand. The *Ex Post Facto Clause* does not apply to the case at hand.

II. Defendant's Motion For A More Definite Statement Should Fail Because It Is Inappropriate And Moot.

Plaintiff acknowledges that the date she reached majority has relevance to her § 2255 claims. Accordingly, Plaintiff does not object to providing her birth date to Defendant through appropriate discovery. Plaintiff has alleged that Defendant caused her severe harm while she was a minor by actions constituting the violation of several

criminal predicate acts listed in § 2255. Whether or not certain of those specific acts may be found to have been committed after she reached the age of majority will be a factual issue that can be determined through discovery like other factual matters. Under no circumstances can Defendant contend that he did not violate one or more criminal predicate acts harming Plaintiff while she was a minor. Plaintiff has brought her claims anonymously as C.L. specifically to protect her privacy as a child victim. For the same reason she should not be required to publish her birth date in a pleading that is available to the public, as birth dates are but another link in the chain to identification. In any case, since Plaintiff agrees to provide that information privately to the Defendant, his request that it be specifically pled is moot.

Plaintiff's Complaint without her date of birth satisfies Federal pleading requirements. First, Federal Rule of Civil Procedure 8(a)2 only requires, "a short and plain statement of the claim showing the pleader is entitled to relief." Plaintiff stated she was a minor when Defendant sexually molested her – which is sufficient under FRCP 8(a)(2). Second, Plaintiff's Complaint provides ample information to provide the Defendant fair notice as to the nature of her claims. The purpose of Federal Rule of Civil Procedure 8(a)2 is to provide the Defendant with fair notice of what claim is being alleged and the grounds upon which it rests. See Davis v. Coca-Cola Bottling Co. Consol., 516 F.3d 955, 974 (11th Cir. 2008). From reading the Complaint the Defendant can certainly decipher that the grounds for Plaintiff's claims rest upon Defendant's sexual molestation of her when she was a minor. Moreover, the Complaint's factual allegations raise a right to relief that is certainly more than speculative – in fact, the Defendant already pled guilty to molesting Plaintiff. See Bell Atlantic Corp. v. Twombly, 550 US

544, 555 (2007) ("[f]actual allegations must be enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)."). Finally, Federal Rule of Civil Procedure 12(e) requires Plaintiff to provide Defendant a more definite statement only when the Complaint "is so vague and ambiguous that a [Defendant] cannot reasonably prepare a response." Defendant has enough information to prepare a response to Plaintiff's Complaint. To quote Defendant's motion, "Defendant's attorneys are 100% certain that Plaintiff … will allege that the conduct took place prior to July 27, 2006." "…C.L's date of birth is April of 1988…and she claimed she was at Defendant's home in 2004." (Motion at 2).

Accordingly, Defendant's motion for a more definite statement must fail. It is illogical, unnecessary and has no basis in the law. The Plaintiff is not required to give the Defendant more information than is legally necessary just because the Defendant desires that information for an Affirmative Defense.

III. Defendant's Motion To Strike Paragraphs 8 Through 15 Because They Don't Pertain Strictly To The Plaintiff Should Be Denied.

It is no wonder that Defendant would like to eliminate paragraphs 8 through 15 of Plaintiff's Complaint; however, his request should be summarily denied. These paragraphs are material and pertinent. They describe the child exploitation enterprise by which Defendant, in concert with at least three assistants, lured countless young women to his lair on exclusive Palm Beach, where he assaulted them and enticed them to perform lewd and lascivious acts for his sexual gratification.

Taken paragraph by paragraph, these portions of Plaintiff's Complaint allege a systematic pattern of sexual exploitation of vulnerable minor girls by an older man with vast resources and influence. (¶ 10). As part of this plan, Defendant employed agents to

call and transport to his residence economically disadvantaged and underage girls, who were unlikely to complain to authorities or would have credibility issues if they did. (¶ 11). At least three assistants helped orchestrate Defendant's child exploitation enterprise by arranging appointments for massages, escorting the minor victims to the massage room, cajoling them to remove their clothes, delivering cash after each massage and/or procurement and assisting in taking nude photographs of these minor victims. (¶ 12). The assistants helped secure a secluded place for these activities, making it more difficult for the child victims to flee or for the unlawful exploitation to be detected. (¶ 13). Assistants would handle introductions and information gathering upon the girls' arrival before leading them upstairs. (¶ 14). An assistant or procurer would "lead the way" instructing each new girl as to where and how Defendant liked to be touched during massage. She would then leave the minor girl alone with Defendant, who would expose himself, grope, fondle, digitally penetrate, apply a vibrator or coerce the girl into having intercourse with him or to perform sexual acts with one of his female assistants, all the while masturbating himself. (¶ 15). Defendant traveled to and from his multiple international residences, using the telephone to contact these minor girls and conspiring with his assistants to facilitate his child exploitation enterprise and avoid police detection. (¶ 16).

These were not isolated acts but a systematic, well developed plan. Defendant had a veritable Ponzi scheme by which he secured his young prey, paid them to lure other minor victims and then groomed the faithful among them to become more and more involved with him sexually. In that way, these paragraphs do pertain to C.L. One must understand the system to perceive how Plaintiff was drawn in, groomed, and then abused

and molested in a slowly escalating fashion. This was indeed a child exploitation enterprise as described in §2252A.

Nonetheless, Defendant only concludes that paragraphs 8 – 15 should be stricken without citing any case and with minimal accompanying argument. Thus, this Court should see Defendant's request for what it really is – a smoke screen in an attempt to obscure the terrible facts which surrounded Plaintiff's molestation.

CONCLUSION

Defendant failed to effectively argue that Count III of Plaintiff's claim should be dismissed. Application of Section 2255 and by extension Section 2252 to Defendant's acts does not violate the *Ex Post Facto Clause*. Plaintiff's case is civil, not criminal. Those statutes provide for a non-punitive civil remedy, not criminal punishment. Defendant's request for a more definite statement must also fail because the Plaintiff sufficiently described her age to state a cause of action. Finally, Defendant failed to provide any legal basis as to why paragraphs 8 – 15 should be stricken from the Complaint. As stated, those paragraphs are pertinent to the story of when Jeffrey Epstein molested the then minor Plaintiff.

WHEREFORE, Plaintiff prays that the Court deny all parts Defendant's Motion.

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 26th day of May, 2010, on all counsel identified on the following Service List.

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