

and thanking Acosta for agreeing on October 12, 2007, not to “contact any of the identified individuals, potential witnesses, or potential civil claimants and their respective counsel in this matter.”³⁰⁷ Shortly thereafter, Sloman drafted a response to Lefkowitz’s letter, which Acosta revised to clarify the “inaccurate” representations made by Lefkowitz, in particular noting that Acosta did not agree to a “gag order” with regard to victim contact. The draft response, as revised by Acosta, stated:

You should understand, however, that there are some communications that are typical in these matters. As an example, our Office has an obligation to contact the victims to inform them that either [the Special Master], or his designee, will be contact[ing] them. Rest assured that we will continue to treat this matter as we would any similarly situated case.³⁰⁸

In a November 5, 2007 letter, Sloman complained to Lefkowitz that private investigators working for Epstein had been contacting victims and asking whether government agents had discussed financial settlement with them. Sloman noted that the private investigators’ “actions are troublesome because the FBI agents legally are required to advise the victims of the resolution of the matter, which includes informing them that, as part of the resolution, Mr. Epstein has agreed to pay damages in some circumstances.” The same day, Villafañá emailed Sloman expressing her concern that “if we [file charges] now, cross-examination will consist of- ‘and the government told you that if Mr. Epstein is convicted, you are entitled to a large amount of damages, right?’”³⁰⁹

C. October – November 2007: The FBI and the USAO Continue to Investigate, and the FBI Sends a Notice Letter to One Victim Stating That the Case is “Under Investigation”

Although Villafañá and the FBI case agents decided to stop informing victims about the NPA, the FBI continued its investigation of the case, which included locating and interviewing potential victims. In October and November 2007, the FBI interviewed 12 potential new victims, 8 of whom had been identified in a “preliminary” victim list in use at the time Epstein signed the

³⁰⁷ Villafañá later emailed Sloman stating that she planned to meet with the case agents to have a “general discussion about staying out of the civil litigation.”

³⁰⁸ Sloman’s draft also stated that Acosta had informed the defense in a previous conference call that the USAO would not accept a “gag order.” OPR recovered only a draft version of the communication and was unable to find any evidence that the draft letter was finalized or sent to defense counsel.

³⁰⁹ Subsequent records also referred to the prosecutors’ concerns about creating impeachment evidence and that such concerns played a role in their decision not to notify victims of the NPA until after Epstein pled guilty. In August 2008, the AUSA handling the CVRA litigation emailed Villafañá, Acosta, and Sloman expressing his understanding that the “victims were not consulted [concerning the NPA] . . . because [the USAO] did not believe the [CVRA] applied.” Acosta responded: “As I recall, we also believed that contacting the victims would compromise them as potential witnesses. Epstein argued very forcefully that they were doing this for the money and we did not want to discuss liability with them, which was [a] key part of [the] agree[ment].”