BSF | BOIES SCHILLER FLEXNER

January 8, 2024

VIA ECF

The Honorable Loretta A. Preska
District Court Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: ***Giuffre v. Maxwell*, Case No. 15-cv-7433-LAP**

Dear Judge Preska,

Pursuant to the Court's December 18, 2023, unsealing order, and following conferral with Defendant, Plaintiff files this set of documents ordered unsealed. The filing of these documents ordered unsealed will be done on a rolling basis until completed. This filing also excludes documents pertaining to Does 105 (*see* December 28, 2023, Email Correspondence with Chambers), 107, and 110 (*see* ECF No. 1319), while the Court's review of those documents is ongoing.

Respectfully,

/s/ Sigrid S. McCawley
Sigrid S. McCawley

cc: Counsel of Record (via ECF)

COMPOSITE
EXHIBIT 1
(FILE UNDER SEAL)

United States District Court
Southern District of New York

Virginia L. Giuffre,

Plaintiff, Case No.: 15-cv-07433-RWS

v.

Ghislaine Maxwell,

Defendant.
_____/

PLAINTIFF'S MOTION TO COMPEL DATA FROM DEFENDANT'S UNDISCLOSED EMAIL ACCOUNT AND FOR AN ADVERSE INFERENCE INSTRUCTION

Plaintiff, Virginia Giuffre, by and through her undersigned counsel, files this Motion to Compel Data from Defendant's Undisclosed Email Account and for An Adverse Inference Instruction regarding the data from that account, and states as follows. Defendant has not disclosed, nor produced data from, the email account she used while abusing Ms. Giuffre from 2000-2002 in violation of this Court's Order [DE 352]. Ms. Giuffre hereby moves to compel Defendant to produce this data, and requests that this Court enter an adverse inference jury instruction for this willful violation of this Court's orders.

I. BACKGROUND

The earliest-dated email Defendant has produced in this litigation is from July 18, 2009. (GM_00069). Ms. Giuffre is aware of two email addresses that appear to be the email addresses Defendant used while Ms. Giuffre was with Defendant and Epstein, namely, from 2000 - 2002. Defendant has denied that she used those accounts to communicate, but she has not disclosed the account she did use to communicate during that time, nor produce documents from it.

Importantly, Defendant has never denied using an email account for communication from 1999-2009, and the facts and circumstances show that it is exceedingly unlikely that Defendant did not use an email account to communicate those years.[1]

For example, according to United States Department of Commerce, "eighty-eight percent of adult Internet users sent or received e-mail" in 2000. *See* Eric C. Newburger, "Home Computers and Internet Use in the United States: August 2000," U.S. DEPARTMENT OF COMMERCE, ECONOMICS AND STATISTICS ADMINISTRATION, U.S. CENSUS BUREAU, September 2001. Additionally, the Pew Research Center published findings that certain demographics have higher internet usage, including many demographics to which Defendant belongs. For example, higher rates of internet usage are found among younger adults (Defendant was 38 in 1999); those with college educations (Defendant has a master's degree); those in households earning more than $75,000 (Defendant was in a household headed by a billionaire during that time, and that household had its own private email server and account); whites or English-speaking Asian-Americans (Defendant is white); and those who live in urban areas (Defendant lived in Palm Beach and Manhattan). *See* Andres Perrin and Maeve Duggan, 'Americans' Internet Access: 2000-2015," PEW RESEARCH CENTER, June 26, 2015.

Additionally, her boyfriend, Jeffrey Epstein, with whom she shared a household from 1999-2002 (and other years), implemented an entire, private email system to communicate with his household and employees, including Defendant. Accordingly, given Defendant's extraordinary economic resources, her high-level social connections, and her elaborate residential email/internet configuration she had during that time, it is extraordinarily unlikely that she would not employ an almost ubiquitous communication tool, nor has she denied it.

[1] On Friday, September 23, 2016, counsel for Ms. Giuffre sent a letter to Defendant inquiring about the undisclosed account. As of the date of this motion, Defendant has made no response.

A. The [redacted] Account

Ms. Giuffre has knowledge of the [redacted] account because it was listed as part of Defendant's contact information (including phone number) on documents gathered by the police from Epstein's home, and turned over to the Palm Beach County State Attorney as part of the investigation and prosecution of Epstein.

See (DE 280-2), Palm Beach County State Attorney's Office, Public Records Request No.: 16-268, Disc 7 at p. 2305 (GIUFFRE007843). Despite the fact that this account was listed as her contact information in the home she shared with Epstein, and despite the fact that ***the username bears her initials***, Defendant claims she does not recognize the account, and has no access to it.

B. The [redacted] Account

The mindspring account is also listed as part of Defendant's contact information gathered by the police. In her filing with this Court, Defendant represented that this was merely a "spam" account "to use when registering for retail sales notifications and the like," and that it contains no relevant documents. (DE 345 at pg. 8). However, it appears that Jeffrey Epstein created the mindspring.org accounts to communicate with his household and with his employees, and did, in fact, communicate with them this way.

As previously recounted, Jeffrey Epstein's house manager, Juan Alessi testified that MindSpring account was in daily use by the Epstein household to send and receive messages, a household to which Defendant belonged:

> Q. So when there would be a message from one of them while they were out of town, they would call you, call you on the telephone?
>
> A. I haven't spoken to Ghislaine in 12 years.

Q. Sorry. I'm talking about when you worked there and you would receive a message that they were coming into town, would that be by way of telephone?

A. Telephone, and also, there was a system at the house, that it was MindSpring, MindSpring I think it's called, that it was like a message system that would come from the office.

Q. What is MindSpring?

A. It was a server. I think it was -- the office would have, like, a message system between him, the houses, the employees, his friends. They would write a message on the computer. There was no email at that time.

Q. Okay. So what computer would you use?

A. My computer in my office.

Q. And so was part of your daily routine to go to your computer and check to see if you had MindSpring messages?

A. No. That was at the end of my stay. That was the very end of my stay. I didn't get involved with that too much. But it was a message system that Jeffrey received every two, three hours, with all the messages that would have to go to the office in New York, and they will print it and send it faxed to the house, and I would hand it to him.

Q. Did it look like the message pads that we've been looking at?

A. No, no, nothing like that.

Q. Was it typed-out messages?

A. Yes, typed-out messages.

Q. Just explain one example of how it would work. Let's say that Ghislaine wanted to send him a message on MindSpring. How would that work?

A. An example?

Q. Sure.

A. It got so ridiculous at the end of my stay, okay? That Mr. Epstein, instead of talking to me that he wants a cup of coffee, he will call the office; the office would type it; they would send it to me, Jeffrey wants a cup of coffee, or Jeffrey wants an orange juice out by the pool.

Q. He would call the office in New York. They would then type it in MindSpring?

A. Send it to me.

Q. How would you know to check for it? How would you know to look for this MindSpring?

A. Because I was in the office. I was there. I was there. And we have a signal when it come on and says, Hey, you've got mail.

Q. Okay.

A. Every day. Every day it was new things put in. That's why I left, too.

Q. Do you know who set up the mind spring system?

A. It was a computer guy. It was a computer guy who worked only for Jeffrey. Mark. Mark Lumber.

Q. Was he local to Palm Beach?

A. No. He was in New York. Everything was set up from New York. And Mark Lumber, I remember he came to Palm Beach to set up the system at the house.

Alessi Dep. Tr. at 223:5-225:17. (June 1, 2016) (McCawley Decl. at Sealed Exhibit 1).

Accordingly, mindspring was a domain name set up for Jeffrey Epstein and his household to communicate with one another, and was, in fact, used in this manner.

The sworn testimony of Janusz Banasiak, another of Epstein's house managers, from the case *L.M. v. Jeffery Epstein and Sarah Kellen*,[2] gives a fuller representation of how Defendant, and others in Epstein's sex-trafficking ring, used their accounts on Epstein's mindspring server:

Q. Okay. Were you aware that Mr. Epstein used a Citrix program to link various computers? Did you know that?

A. Yeah. I use Citrix too in my computer for exchanging e-mails and get through Internet.

***

[2] Case No.: 502008CA028051XXXXMB AB, In the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

Q. That's not something that you were, you were privy to? You weren't, you weren't in the loop of the sharing of information in the house in terms of the computers being connected through any server?

A. I don't really know what, how, how to answer your question because Citrix is for the whole organization to exchange e-mail between employees.

Q. All right. You used the term?

A. So, even my computer is connected to Citrix. I can receive mail and I can e-mail information to employee within organization. But I don't know if you can see to each computer what is going on on another computer.

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Q. You have used the term organization; you can share within the organization. What do you -- just so I can understand what you're calling the organization, what do you mean by that word?

A. People employed by Jeffrey Epstein. There are a few groups of people, his office in New York and I guess --

***

Q. Okay. The other people mentioned as co-conspirators are Sarah Kellen, Adriana Ross, and Nadia Marcinkova. So we'll get to them in a minute but first just so we stay on the track of who was in the organization, is Sarah Kellen, Adriana Ross and Nadia Marcinkova all people that you would also consider within the organization?

A. Yes.

Q. Okay. So, we just added three more names to it. **Who else would you consider, Ghislaine Maxwell?**

A. Yes.

Banasiak Deposition at 56:13-17; 57:2-14; 58:1-7; 60:21-61:7 (February 16, 2010) (Emphasis added) (McCawley Decl. at Sealed Composite Exhibit 2).

As Defendant was a member of Epstein's household, and claims to have been his employee (See McCawley Decl. at Sealed Exhibit 3, Maxwell's April 22, 2016 Dep. Tr. at 10:7-11:3), it is unlikely that her mindspring account was merely a "spam account" from 1999-2002. It is much more likely that this account has - or *had* - Defendant's communications with co-

conspirators Sarah Kellen, Nadia Marcinkova, and Epstein. However, it is Defendant's representation that this account does not presently have responsive documents and was merely used for "spam."

C. Defendant's Non-Disclosed Email Account

If the Court accepts Defendant's claim that she used neither the earthlink.net account nor the mindspring.org "spam" account to communicate, logic dictates that Defendant must have had another email account - one that she actually used - from 2000 - 2002. Despite the Court's orders that Defendant produce responsive documents from ***all*** her email accounts from 1999 to the present, Defendant has neither disclosed nor produced from the email account that she actually used to communicate from 2000-2002. This refusal violates this Court's orders. Ms. Giuffre issued requests to Defendant on October 27, 2015. Nearly a year later, after this Court has specifically ordered Defendant to produce her responsive email from ***all*** her accounts, Defendant has produced none from this account. Not only has Defendant failed to produce emails from the account she actually used from 1999-2002, and she has not even disclosed what account it is.

II. ARGUMENT

A. An Adverse Inference Instruction is Appropriate

An adverse inference instruction is appropriate regarding documents from the email account Defendant actually used from 1999-2002. In light of this clear and persistent pattern of recalcitrance, the Court should instruct the jury that it can draw an adverse inference that the Defendant has concealed relevant evidence. Even if Defendant were, at this late date, to run Ms. Giuffre's proposed search terms over the data from the email account she used from 1999 - 2002 (which she refuses to disclose), such a production would be both untimely and prejudicial. Fact discovery has closed. Numerous depositions have already been taken by Ms. Giuffre without the benefit of these documents. The window for authenticating the documents through depositions

has shut. Expert reports have been exchanged, so Ms. Giuffre's experts did not have the benefit of reviewing these documents. Late production of this information robs Ms. Giuffre of any practical ability to use the discovery, and, importantly, it was incumbent on Defendant to identify this account.

The Second Circuit has stated, "[w]here documents, witnesses, or information of any kind relevant issues in litigation is or was within the exclusive or primary control of a party and is not provided, an adverse inference can be drawn against the withholding party. Such adverse inferences are appropriate as a consequence for failure to make discovery." *Bouzo v. Citibank*, N.A., 1993 WL 525114, at *1 (S.D.N.Y. 1993) (internal citations omitted). The Defendant's continued systemic foot-dragging and obstructionism – even following the Court's June 20 Sealed Order and August 10, 2016 Order [DE 352] – makes an adverse inference instruction with regard to Defendant's documents appropriate. An adverse inference instruction is appropriate when a party refuses to turn over documents in defiance of a Court Order. *See Lyondell-Citgo Refining, LP v. Petroleos de Venezuela, S.A.*, 2005 WL 1026461, at *1 (S.D.N.Y. May 2, 2005) (denying application to set aside Magistrate Judge Peck's order entering an adverse inference instruction against defendant for failure to produce documents that the Judge Peck had ordered Defendant to produce). Accordingly, because a "party's failure to produce evidence within its control creates a presumption that evidence would be unfavorable to that party" an adverse inference should be applied with respect to Defendant's failure to produce data from the email account she used from 1999 -2002 "in order to ensure fair hearing for [the] other party seeking evidence." *Doe v. U.S. Civil Service Commission*, 483 F. Supp. 539, 580 (S.D. N.Y., 1980) (*citing International Union v. NLRB*, 148 U.S. App. D.C. 305, 312-317, 459 F.2d 1329, 1336-41 (D.C.Cir.1972)).

"An adverse inference serves the remedial purpose of restoring the prejudiced party to the same position he would have been in absent the wrongful destruction of [or willful refusal to produce] evidence by the opposing party." *Chevron Corp. v. Donziger*, 296 F.R.D. 168, 222 (S.D.N.Y. 2013) (granting an adverse inference when defendants refused to produce documents pursuant to the District Court's order). Where "an adverse inference ... is sought on the basis that the evidence was not produced in time for use at trial, the party seeking the instruction must show (1) that the party having control over the evidence had an obligation to timely produce it; (2) that the party that failed to timely produce the evidence had 'a culpable state of mind'; and (3) that the missing evidence is 'relevant' to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense." *Id*. (citing *Residential Funding Corp. v. DeGeorge Financial Corp.*, 306 F.3d 99, 108 (2d Cir. 2002)).

Furthermore, as discussed in detail in Ms. Giuffre's Motion for an Adverse Inference Instruction (DE 315) and Supplement Motion for Adverse Inference Instruction (DE 338), an adverse inference is appropriate regarding the documents that Defendant is withholding under the Second Circuit's test set forth in *Residential Funding*. Defendant has admitted to deleting emails as this Court noted in its Order. An adverse inference is equally appropriate if the non-compliance was due to Defendant's destruction of evidence. *See Brown v. Coleman*, 2009 WL 2877602, at *2 (S.D.N.Y. Sept. 8, 2009) ("Where a party violates a court order—either by destroying evidence when directed to preserve it or by failing to produce information because relevant data has been destroyed—Rule 37(b) of the Federal Rules of Civil Procedure provides that the court may impose a range of sanctions, including dismissal or judgment by default, preclusion of evidence, imposition of an adverse inference, or assessment of attorneys' fees and costs. Fed. R. Civ. P. 37(b); *see Residential Funding Corp. v. DeGeorge Financial Corp*., 306

F.3d 99, 106–07 (2d Cir.2002)"). *See also Essenter v. Cumberland Farms, Inc.*, 2011 WL 124505, at *7 (N.D.N.Y. Jan. 14, 2011); and Rule 37(e), Fed. R. Civ. P. ("If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it . . . the court: (2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may: (A) presume that the lost information was unfavorable to the party; (b) instruct the jury that it may or must presume the information was unfavorable to the party; or (C) dismiss the action or enter a default judgment."). Failure to disclose the email account Defendant actually used from 1992-2002 warrants an adverse inference instruction.

III. CONCLUSION

For the reasons set forth above, Ms. Giuffre respectfully requests that this Court compel Defendant to disclose what email account she actually used from 2009-1999, and that the court give the jury an adverse inference jury instruction concerning the documents from the undisclosed email account.

October 14, 2016

Respectfully Submitted,

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By: /s/ Sigrid McCawley

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 14, 2016, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I also certify that the foregoing document is being served to all parties of record via transmission of the Electronic Court Filing System generated by CM/ECF.

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/s/ Meredith Schultz
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

----------X

15-cv-07433-RWS

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DATA FROM DEFENDANT'S (NON-EXISTENT) UNDISCLOSED EMAIL ACCOUNT AND FOR AN ADVERSE INFERENCE INSTRUCTION

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TABLE OF CONTENTS

Defendant Ghislaine Maxwell ("Ms. Maxwell") files this Response to Plaintiff's Motion To Compel Data From Defendant's (Non-Existent) Undisclosed Email Account and For an Adverse Inference Instruction and states as follow:

INTRODUCTION

Plaintiff continues in her course of re-litigating issues, multiplying these proceedings and misstating the record. In what amounts to the fourth Motion on forensic examination of Ms. Maxwell's computers and email accounts, Plaintiff now trumps up a claim that some unidentified and "undisclosed" email account should have been searched and was not. To the contrary, Ms. Maxwell has spent thousands of dollars to forensically image all of her devices, searching every account to which she has access, conducting extremely broad and over-reaching searches for the search terms Plaintiff requested and in complying with this Court's Orders. The result of these exercises proved, as Ms. Maxwell has always maintained, that all non-privileged relevant and responsive documents in her possession, custody and control had already been searched for and produced prior to the excessive and redundant briefing on these issues, resulting in no additional production. Plaintiff's Motion must be denied because no "undisclosed" email account exists and Ms. Maxwell has fully complied with this Court's Orders.

ARGUMENT

I. PLAINTIFF HAS FAILED TO CONFER UNDER RULE 37(A)(1) OR THIS COURT'S ORDER

Despite the clear requirements of Rule 37(a)(1) requiring a certificate of conferral prior to filing any motion to compel, and this Court's standing order regarding conferral on all discovery issues prior to Motions practice, the sum total of Plaintiff's stated conferral attempt is a footnote stating that a letter was sent on September 23, 2016 "inquiring about the undisclosed account" – a letter not included in the exhibits to the Motion. Ms. Maxwell has been clear that she has

searched all accounts that she can access. Had Plaintiff bothered to follow up on this alleged communication, Ms. Maxwell would have reaffirmed that there is no "undisclosed" email account. Instead, Plaintiff filed this frivolous and vexatious motion to waste both the Court and Ms. Maxwell's time and needlessly multiply these proceedings.

Courts in this district routinely deny motions based on failure to confer prior to the motion when such conferral is required by the Rules or Court Order. *Prescient Partners, L.P. v. Fieldcrest Cannon, Inc.,* No. 96 Civ. 7590 (DAB) JCF, 1998 WL 67672, at *3 (S.D.N.Y. 1998) ("Under ordinary circumstances,..., the failure to meet and confer mandates denial of a motion to compel."); *Excess Ins. Co. v. Rochdale Ins. Co.*, No. 05 CIV. 10174, 2007 WL 2900217, at *1 (S.D.N.Y. Oct. 4, 2007) (Sweet, J.) (denying motion and cross motion based on failure to confer, noting "[m]ere correspondence, absent exigent circumstances not present here, does not satisfy the requirement"); *Myers v. Andzel*, No. 06 CIV. 14420 (RWS), 2007 WL 3256865, at *1 (Sweet, J.) (S.D.N.Y. Oct. 15, 2007) (denying motion based on failure to confer).

The Court has been abundantly clear on the necessity for conferral prior to motions practice. In the March 17, 2016 hearing, the Court ordered that prior to motions practice, the parties were to set an agenda on the disputed issue in writing and have a meeting of substance prior to filing a motion. "So I would say exchange writing as to what it's going to be and have a meeting. It doesn't have to be in person, but it certainly has to be a significant meeting; it can't be just one ten-minute telephone call. So that's how I feel about the meet and confer." Tr. p. 3. As shown in the Plaintiff's motion, no such call has occurred.

Based on Plaintiff's failure to confer as required by both the Federal Rules and this Court's standing order, Ms. Maxwell requests that the Motion be denied and attorneys' fees and costs of responding be awarded to Ms. Maxwell.

II. MS. MAXWELL HAS DISCLOSED AND SEARCHED ALL EMAIL ACCOUNTS

a. All Devices Have Been Forensically Searched for Responsive Emails

As requested by Plaintiff and Ordered by the Court, Ms. Maxwell's computer and all of her electronic devices have been forensically imaged, searched for the search terms requested by Plaintiff, and all responsive documents produced. This expensive, costly and time consuming exercise in futility simply confirmed that all responsive documents, including all responsive emails, were produced in March and April 2016.

Most significantly, the devices were searched for all emails—whether saved or deleted – and irrespective of which account they came from; not a single responsive email was located from any Mindspring account and no emails were located from Earthlink or any other secret, hidden, "undisclosed" email account, as Plaintiff speculates must exist.

b. The MindSpring account

The first two accounts discussed in the Motion have already been fully discussed in prior briefings and at length in conferral conferences.[1] *See* DE 320. In addition to the search of Ms. Maxwell's computer and devices, the first account, [redacted] was forensically searched on its server using the search terms proposed by Defendants and as required by the Court. The search uncovered no responsive documents from any time period. *See* DE 320. This included both emails in the account, deleted emails, and any other information relating to the account retained on the MindSpring server. There can simply be no claim for an adverse inference where Plaintiff has already received exactly what she requested – a forensic search of the account for her own defined terms. It resulted in nothing.

[1] Plaintiff conveniently omits the fact that the EarthLink and MindSpring accounts were in an address book purportedly recovered from Mr. Epstein's home by the Palm Beach Police in 2005. Thus, there is no indication or inference that either of these accounts were created or used in the 2000 to 2002 time frame as Plaintiff claims.

c. The EarthLink account

The second account, [redacted] is, as Ms. Maxwell has repeatedly explained to Plaintiff's counsel, an account that she does not recognize, that she does not recall having ever logged onto, and for which she has no password. *See* DE 320. Ms. Maxwell tried every avenue available online through EarthLink to reset the password or otherwise access the account. In fact, when one attempts to recover a password for that account, the system states "The email address you entered is not an EarthLink email address or ID." According to *Plaintiff*, such a message means the account has been permanently deleted by the host company. Plaintiff's counsel, Meredith Shultz, wrote on May 17, 2016, regarding an account of Plaintiff's (that she claims she cannot access but for which relevant and responsive emails were located on her computer):

> "Regarding her live.com address, it appears that the account has been permanently deleted by the host Company. One method of telling if an account still exists for live.com (**and for most web mail systems)** is to perform an account password recovery. When you enter the e-mail address and enter the captca code and hit Next, the website states that it does not recognize the email address. This means that the account has been permanently deleted from live.com's system."

Menninger Decl., Ex. A.

Plaintiff does not, and cannot, explain why she thinks that her own live.com email address has been permanently deleted by the host company, yet based on the exact same set of data, she thinks that an email account that Ms. Maxwell does not recall ever using (and from which no documents exist on her devices) from Earthlink still remains on its system. If there is some way to access the account, Plaintiff hasn't said what it is. Ms. Maxwell simply has no way to access this account and has no information, save Plaintiff's rank speculation.[2]

[2] Plaintiff has an account from which actual documents *have* been produced – proving she did use the account (unlike Ms. Maxwell's EarthLink account) and it contains relevant information. Yet Plaintiff claims she

Because Plaintiff claimed she cannot access her Microsoft account, Ms. Maxwell subpoenaed Microsoft for the documents. Plaintiff moved to quash the subpoena to obtain the information contained in the account and has refused to sign the release provided to her that would allow the production of that information under the terms of a subpoena issued to Microsoft. Menninger Decl,. Ex. B. Tellingly, Plaintiff did not issue a subpoena to EarthLink regarding this account to see if it existed, has content or could be accessed. Instead, she seeks the drastic and improper sanction of an adverse inference knowing that it is far more beneficial to her than actually receiving information from EarthLink which would reveal nothing exists.

d. There is no "Undisclosed" Account

Plaintiff next argues that she is entitled to an adverse inference based on the failure to search a phantom e-mail account that she presumes (without support and based on pure speculation) must have existed, which she has never asked about in discovery, claiming that such an account was improperly "undisclosed" and not searched. Plaintiff bases her absurd argument on statistics suggesting that someone like Ms. Maxwell "likely" had an email account in the 2000 to 2002 timeframe and a specious claim that Ms. Maxwell has never *denied* having an email account from 2000 to 2002. Motion at 2. Notably absent from the Motion is a single interrogatory, request for admission, or deposition question in which Ms. Maxwell was asked to provide all email addresses she has used *or* asked if she ever had an email account in 2000 to 2002. No such question was ever posed to Ms. Maxwell on this issue.[3] How could she possibly deny the existence of an account when she was never asked the question?

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cannot access her Microsoft account because she does not remember the password and does not have sufficient personal information to provide to gain access to the account. DE 207; DE 441. This is not dissimilar to Ms. Maxwell who does not even remember the account let alone the password.

[3] By contrast, Ms. Maxwell requested that Plaintiff identify all email and social media accounts which she had used since 1998. Plaintiff provided false information, and purposefully omitted accounts that have since been discovered, one of which Plaintiff still has failed to forensically search and disclose its responsive documents.

Plaintiff asks this Court to infer the existence of an undisclosed "email" account for Ms. Maxwell in the 2000-2002 timeframe based on witness accounts that Jeffrey Epstein had a "messaging system" on a private server. Of course, there is a big difference between having a private email account (gmail, aol, yahoo, etc.) and communicating through a private messaging system on an employer's sever, as described by Mr. Alessi ("It was a server. I think it was --the office would have, like, a message system between him, the houses, the employees, his friends. They would write a message on the computer. **There was no email at that time.**").[4] To the extent there was a private messaging system used by Mr. Epstein's household employees maintained on a private server by Mr. Epstein, information from that system is not available to Ms. Maxwell. Ms. Maxwell has not been employed by Mr. Epstein for over 10 years and has not had any access to Mr. Epstein's server through Citrix or otherwise since at least the end of her employment with him.

"Whether a party subject to a document request can be compelled to comply depends on two preliminary questions: (1) assuming the requested documents exist, does the party have possession, custody or control over them, and (2) if the party has such possession, custody or control, can the party be compelled to conduct a reasonable search for and, if found, to produce the documents." *Gross v. Lunduski*, 304 F.R.D. 136, 142 (W.D.N.Y. 2014). Ms. Maxwell is not in the possession, custody or control of the server or any information it may contain. "Where

[4] It appears this is what was also being described by Mr. Banasiak in the deposition from another case, a full copy of which has never been produced in this litigation. Indeed, Mr. Banasiak has not been identified as a person with relevant or discoverable information in any of the last three of Plaintiff's Rule 26 Disclosures. In the cited testimony, Mr. Banasiak appears to have discussed accessing a private messaging system maintained on Mr. Epstein's private server using Citrix, a program that allows such access to authorized users. Because Plaintiff has failed to disclose the transcript being quoted, Ms. Maxwell cannot fully decipher the obviously edited testimony quoted in the Motion, does not know what timeframe Mr. Banasiak was referring to regarding the computers or using Citrix, and cannot respond to the claims made regarding the nature of any inference that could be drawn from Mr. Banasiak's selected testimony. The entire argument and reference to the transcript must be ignored and stricken based on Plaintiff's failure to produce in discovery the transcript she relies on.

control is contested, the party seeking production of documents bears the burden of establishing the opposing party's control over those documents." *Alexander Interactive, Inc. v. Adorama, Inc.*, No. 12 CIV. 6608 (PKC) (JCF), 2014 WL 61472, at *3 (S.D.N.Y. Jan. 6, 2014). Plaintiff has made no showing that Ms. Maxwell has any control over the hypothetical documents she suspects may be on Mr. Epstein's private server. As has been made clear by Mr. Epstein's refusal to produce any documents in this matter or provide any testimony, instead invoking his Fifth Amendment privilege, there is no manner in which Ms. Maxwell could require Mr. Epstein to provide any information on Mr. Epstein's private server. Notably, no such "messages" were located on any of Ms. Maxwell's devices or within her email accounts.

Simply put, there are no emails from any accounts, systems or electronic storage devices over which Ms. Maxwell has possession, custody or control that have not been searched and from which responsive non-privileged documents produced.

III. SANCTIONS AGAINST MS. MAXWELL NOT WARRANTED, RATHER COSTS OUGHT TO BE AWARDED TO HER

Plaintiff completely fails to identify which, if any, of the Rules of Civil Procedure she relies on to claim any right to request sanctions, let alone to receive an adverse inference instruction. The argument appears premised on a claim that Ms. Maxwell has not complied with the Court's Order – a completely inaccurate claim:

> On June 20, 2016, this Court ordered:
>
> > Defendant is ordered to collect all ESI by imaging her computers and collecting all email and text messages on any devices ***in Defendant's possession or to which she has access*** that Defendant used between the period of 2002 to present. Defendant is further directed to run mutually- agreed upon search terms related to Plaintiff's requests for production over the aforementioned ESI and produce responsive documents within 21 days of distribution of this opinion.

This was done. Plaintiff then expanded her request, imposed additional search terms, and added conditions concerning the manner in which she wanted devices searched. On August 9,

2016, the Court entered an Order adopting Plaintiff's expanded request and methodology. All accessible email accounts and devices, including deleted files and emails, were searched – again – at significant expense. Again, no additional non-privileged responsive documents were located. There is no non-compliance and no basis for any sanctions, let alone the draconian sanction of an adverse inference.

a. Plaintiff Fails to Identify or Prove the Factors Required for Sanctions Based on Alleged Violation of a Court Order

Absent from Plaintiff's motion is the actual legal standard required for imposition of sanctions, and certainly no argument or citation exist in this case to carry the burden of establishing the factors. In light of the fact that Ms. Maxwell has complied, Plaintiff has failed to demonstrate the minimum hurdle for any sanction. Thus, the factors are not addressed here, nor can they be addressed on Reply. What is clear is that the sanction of an adverse inference is not identified as a sanction that should or could be considered under the rules concerning the failure to comply with a Court Order. *See* Fed. R. Civ. P. 37(b)(2)(A).

b. Controlling Law Prohibits an Adverse Inference Instruction

An adverse inference instruction is considered an "extreme sanction" that "should not be given lightly." *Zubulake v. UBS Warburg LLC,* 220 F.R.D. 212, 220 (S.D.N.Y. 2003). More importantly Plaintiff completely ignores the 2015 changes to Fed. R. Civ. P 37(e)(2), which now permits an adverse inference instruction only when the court finds that a spoliating party purposefully and willfully destroys evidence and that party "acted with the intent to deprive another party of the information's use in the litigation." Fed. R. Civ. P. 37(e)(2). The new Rule 37 "rejects cases such as *Residential Funding Corp. v. DeGeorge Financial Corp*., 306 F.3d 99

(2d Cir. 2002)[5], that authorize the giving of adverse-inference instructions on a finding of negligence or gross negligence." Fed. R. Civ. P. 37(e)(2) Advisory Committee's Note to 2015 Amendment; *see also Thomas v. Butkiewicus*, No. 3:13-CV-747 (JCH), 2016 WL 1718368, at *7 (D. Conn. Apr. 29, 2016) (recognizing abrogation of *Residential Funding*). There is no claim of spoliation – no information has been lost or destroyed since the threat or initiation of litigation when there would have been a duty to preserve. There is no bad faith. Ms. Maxwell has completely complied with all Court Orders and there are no accessible accounts or electronic devices that have not been searched.

i. *The cases cited by Plaintiff are not the controlling standards, and Plaintiff fails to establish the elements required for an adverse inference*

Plaintiff relies heavily on her previously briefed motion requesting an adverse inference relying on factors in a single case, *Residential Funding Corp. v. DeGeorge Financial Corp.*, 306 F.3d 99, 108 (2nd Cir. 2002). This case sets forth the standard for an adverse inference based on the inherent powers of the Court (not under Rule 37(b)) where the party failed to produce relevant documents prior to the commencement of trial. *Id.* ("where, as here, an adverse inference instruction is sought on ***the basis that the evidence was not produced in time for use at trial***, the party seeking the instruction must show (1) that the party having control over the evidence had an obligation to timely produce it; (2) that the party that failed to timely produce the evidence had "a culpable state of mind"; and (3) that the missing evidence is "relevant" to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense"). By contrast, however, courts have repeatedly noted that an adverse inference, and application of the *Residential Funding* test, are not appropriate for a mere delay in production, especially when all documents are produced prior to depositions and trial. *See*

[5] This is the primary case relied on by Plaintiff in support of both of her Motions for an adverse inference.

Psihoyos v. John Wiley & Sons, Inc., No. 11CV01416, 2012 WL 3601087 (S.D.N.Y. June 22, 2012) (refusing to grant adverse inference instruction where Plaintiff did not confer to obtain requested discovery, and noting "Plaintiff does not cite to a single case where an adverse inference instruction was ordered based on the late production of a document").[6] Here, there was no delay in production – there was and is nothing additional to produce. All documents were produced well in advance of trial, prohibiting an adverse inference.

Even if the *Residential Funding* factors were applicable, Plaintiff fails to carry her burden of proving those factors are present in this case. Defendant does not contest that she is obligated to comply with this Court's Orders. She has done so. She has collected all of her electronically stored information, and run all agreed upon search terms – and then re-run the searches when Plaintiff further expanded her demands. The result of the application of these search terms is proof that she has been compliant with her discovery obligations all along. No new non-privileged documents were captured through utilization of the process demanded by Plaintiff. As Ms. Maxwell previously stated in response to the Motion for forensic examination, she had run comprehensive search terms, thoroughly reviewed her records and previously produced all responsive documents in her possession.[7]

The second factor, that "the party that failed to timely produce the evidence had 'a culpable state of mind'" is likewise lacking. There is no claim of Defendant acting with a

[6] *See also Phoenix Four, Inc.,* No. 05 CIV. 4837(HB), 2006 WL 1409413, at *7 (S.D.N.Y. May 23, 2006) (holding that a sanction as severe as an adverse inference was not warranted where defendants came forward with the evidence, even though it was after the close of discovery); *Williams v. Saint–Gobain Corp.,* No. 00 Civ. 502, 2002 WL 1477618, at *2 (W.D.N.Y. June 28, 2002) (holding that no basis for adverse inference instruction existed where defendant failed to produce emails until the eve of trial and there was no evidence of bad faith); *In re A & M Florida Properties II, LLC*, No. 09-15173 (AJG), 2010 WL 1418861, at *6 (Bankr. S.D.N.Y. Apr. 7, 2010) (declining to impose adverse inference instruction where documents were belatedly produced, but there was no bad faith).

[7] Plaintiff's argument that she has been or will be prejudiced is illogical given that there are no documents that have not been produced, and there never have been any responsive documents missing from production.

culpable state of mind, nor is any argued. How can one have a culpable state of mind where there are no additional accounts to search or documents to be produced?

Finally, and perhaps most importantly, Plaintiff fails to provide a shred of evidence that "the missing evidence is 'relevant' to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense." *Residential Funding Corp.*, 306 F.3d at 108. As discussed, completion of the multiple levels of forensic searches resulted in no responsive non-privileged documents. The hypothetical "undisclosed" email account does not exist. There can simply be no claim that there are any "missing" documents, let alone that they are relevant to Plaintiff's claims or defenses. *Giarrizzo v. Holder*, No. 07-CV-0801 MAD/GHL, 2012 WL 716189, at *3 (N.D.N.Y. Mar. 5, 2012) (refusing request for adverse inference where Plaintiff failed to demonstrate relevance prong stating "Plaintiff only identifies the alleged missing documents and speculates, without proof, that the documents support his claim. Indeed, plaintiff has not proven that the aforementioned documents exist"); *Sovulj v. United States*, No. 98 CV 5550FBRML, 2005 WL 2290495, at *5 (E.D.N.Y. Sept. 20, 2005) (plaintiff could not meet the requirements for obtaining an adverse inference because assertion that missing evidence was relevant was pure speculation); *see also Orbit One Commc'ns, Inc. v. Numerex Corp.*, 271 F.R.D. 429, 439 (S.D.N.Y. 2010) (collecting spoliation cases holding that an adverse inference is inappropriate without proof beyond mere speculation allegedly lost information was relevant). "Without proof that defendant's actions, 'created an unfair evidentiary imbalance, an adverse inference charge is not warranted.'" *Giarrizzo*, 2012 WL 716189, at *2 (*citing Richard Green (Fine Paintings) v. McClendon*, 262 F.R.D. 284, 291 (S.D.N.Y. 2009)). Here, Plaintiff cannot demonstrate that there *is any* missing or non-produced information. She hypothecates a non-existent email account and speculates that it must have discoverable relevant evidence. She has

made no attempt to provide any proof or even proffer of relevance beyond mere speculation. Thus, an adverse inference is impermissible.

ii. *Ms. Maxwell has never deleted any relevant emails*

Ms. Maxwell has never "admitted" to deleting any emails that 1) might have any relevance to this case, or 2) after she was under a preservation obligation.[8] Rather, she has a regular practice of deleting spam emails, as do most people. Specifically, she testified:

> A. I have not deleted anything that you have asked me for in discovery. I have given you everything that I have.

[8] By contrast, Plaintiff admits that in 2013 while she was in the process of trying to implead herself into the CVRA case and under a preservation obligation, she and her husband had a bonfire and purposefully burned her journal that she had kept for years containing relevant information. Specifically, she testified;

> Q. The booklet that you gave pages from to Ms. Churcher where is that booklet?
> A. Burned.
> Q. When did you burn it?
> A. In, I think it was 2013. Me and my husband had a bonfire.
> Q. What did you put in the bonfire?
> A. Any kind of memories that I had written down about all the stuff going on.
> Q. Had you written anything about Professor Dershowitz?
> A. He could have been there, yes.
> Q. And you burned that?
> A. I wanted to burn my memories. I wanted to get rid of it. It was very painful stuff.
> Q. Other than what you had written down did you burn anything else? I don't mean the wood, when you talk about burning your memories, what were you burning?
> A. I was burning like memories, thoughts, dreams that I had, just everything that was kind of 1 affiliated with the abuse I endured, and there was a lot of it in there. My husband is pretty spiritual so he said the best thing to do would be burn them.
> Q. Is there anything you decided to keep and not burn?
> A. Just the photographs.
> Q. Anything else that you can think of?
> A. Photographs, that's it.
> . . .
> Q. Did you ever look to see if you had any personal notes in your writing that pertain to Professor Dershowitz?
> A. Like from my old journal, the one that I burned?
> Q. From anywhere. Did you ever make an effort to look?
> A. Dershowitz could have been in my journal, he could have been. We're talking about an 85 page, if not more, you know, things that I had written to get my story out of my head and into pages; and yes, Dershowitz could have been in there, but that's up in the clouds now, bonfire.
> Q. That's what you call your journals, what you burned, right?
> A. Yes.
> Q. And you wrote that journal in order to collect your thoughts?
> A. To get everything out of here and on to paper.

Menninger Decl., Ex. D at 64-65; 194-21.

Q. That is not my question, my question is, did you ever delete emails in January of 2015?
A. In the normal course of my work, there are emails from spam that I delete. That is the type of email I've deleted. Anything that is material to what you want, I have not deleted.
Q. How do you know that?
A. Well, anybody that's to do with Jeffrey or Alan or women or anything of which I know you were interested in, of which I have anything I would not have done because I don't want to subject myself to... [cut off by Plaintiff's counsel]

Menninger Decl., Ex. C at 370.

This Court permitted the forensic examination of all on Ms. Maxwell's electronic devices to ensure that there were no deleted emails or files that might contain relevant information. In that forensic examination, the entire devices and accounts were searched, including all deleted emails and files. Again, as stated, no relevant non-privileged documents resulted from this extensive and exhaustive examination. Plaintiff received the relief that she requested – a forensic examination – to ensure that no information had been lost or destroyed. It has not. Plaintiff cannot now claim that the non-existent hypothetical emails she suspected existed can form the basis for the severe and improper sanction of an adverse inference.

CONCLUSION

Plaintiff has now litigated this issue on four separate occasions, received a complete and exhaustive forensic examination, and the result is exactly what Ms. Maxwell has always contended – there is no relevant non-privileged information that was not originally produced. Having failed to find the smoking gun – because there is none – Plaintiff now weaves a convoluted argument attempting to get an adverse inference instruction because she cannot prove her case based on the actual law and facts. Such an inference is contrary to law, the rules of evidence, and the very notion of a fair trial. It is impermissible and must be denied.

WHEREFORE, Defendant Ghislaine Maxwell request that this Court 1) **DENY** Plaintiff's Motion To Compel Data From Defendant's Undisclosed Email Account and For an

Adverse Inference Instruction, and 2) for attorneys' fees and costs associated with responding to this Motion pursuant to 37(a)(5)(B), and such other and further relief as this Court deems just.

Dated: October 24, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 24, 2016, I electronically served this *Defendant's Response to Plaintiff's Motion to Compel Data from Defendant's (Non-Existent) Undisclosed Email Account and for an Adverse Inference Instruction* via ECF on the following:

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Nicole Simmons

United States District Court
Southern District of New York

Virginia L. Giuffre,

Plaintiff, Case No.: 15-cv-07433-RWS

v.

Ghislaine Maxwell,

Defendant.
_____/

PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO COMPEL DATA FROM DEFENDANT'S UNDISCLOSED EMAIL ACCOUNT AND FOR AN ADVERSE INFERENCE INSTRUCTION

Plaintiff, Virginia Giuffre, by and through her undersigned counsel, hereby files this Reply in Support of her Motion to Compel Data from Defendant's Undisclosed Email Account and for Adverse Inference Instruction.

This Court Ordered Defendant to search for and produce documents from ***all*** her email accounts from 1999-present, but she has produced no email prior to 2009, and still refuses to disclose the email accounts she used prior to that date. Defendant represents to the Court that there is no undisclosed email address, yet in the following sentence, she begins a three-page description of her undisclosed email account on Epstein's server that she says she cannot access. Accordingly, there is an undisclosed account, but Defendant, still, does not produce from it, nor even reveal its name. Defendant's willful and continued refusal to obey this Court's Orders regarding her electronic discovery obligations warrants an adverse inference instruction to the jury, or at a minimum, warrants allowing an independent third party to conduct a forensic review of all of Defendant's electronic data as explained further herein.

I. DEFENDANT'S UNDISCLOSED ACCOUNT

A. The Defendant had a Duty to Search from and Produce All Accounts

In her continued refusal to disclose the email account she used from 1999-2002, Defendant offers a red herring argument, stating: "notably absent from the Motion is a single interrogatory, request for admission, or deposition question in which Ms. Maxwell was asked to provide all email addresses she has ever used." Resp. Br. at 5. Defendant did not need a specific instruction to search within and produce from ***all*** of her accounts - such a request is presumed by the use of the terms "all" or "any," in the interrogatories and the requests for production. It is also presumed by the absence of any limiting language, or restrictions to certain accounts. For example, Ms. Giuffre's first Request sought "[a]ll documents relating to communications with Jeffrey Epstein from 1999 – present."

More important, however, it was ***this Court's own Order*** that required Defendant to search for, and produce from, all accounts from 1999 through the present. *See* Schultz Dec. at Exhibit 1, August 9, 2016, DE 352 at p. 1-2, Order directing Defendant to "capture all of the sent/received emails from Defendant's multiple email accounts, including . . . ***any other email accounts Defendant has used*** in the past or currently uses." (Emphasis added). There can be no excuse for failure to do so and no excuse for continuing to refuse to disclose all of her email accounts.

B. Substantial Data is Missing from the Defendant.

Significant data is missing from the Defendant. Tellingly, Defendant still does not deny that she had a personal email account before 2002 that she used to communicate. And, tellingly, she still does not disclose what it is. Instead, Defendant has produced a miniscule amount of emails in this case and has not produced any e-mail dated prior to July 18, 2009. The Court should direct Defendant to disclose the e-mail account she was using and disclose whether the

account still exists.

Consider what the Defendant could have said in her response – but did not say. Defendant could have said that she used an email account from 1999-2002 and could have provided the identity of the account. She did not say that. Though implausible, she could have said that she did not use any email account whatsoever from 1999-2002. She did not say that either. She could have disclosed the domain name of that account. She did not. She could have explained that she deleted her account; that her account had been destroyed by the provider; or that she can no longer access her account for various other reasons. She did not say any of those things. As a result, Defendant offers no accounting whatsoever for her email communications from 1999-2002.

Defendant spills a lot of ink in subsection (d), describing what she refers to as Jeffrey Epstein's "'messaging system' on a private server" (Resp. Br. at 5). Defendant does not forthrightly state that the Epstein Server Account is distinct from the Mindspring account, which she discusses in a different section, but the language she uses - "there is a big difference between having a private email account (gmail, aol, yahoo, etc.) and communicating through a private messaging system on an employer's sever" - suggests that she is describing a different, undisclosed email account on Epstein's private server.

If the Epstein Server Account is, indeed, a different account from the Mindspring email account, and she did use it to communicate from 1999- July 18, 2009,[1] she should have disclosed this account. Yet, even in her latest response, Defendant does not disclose what the email address is. She fails even to disclose the "local part" or the name of the mailbox that comes before the "@" symbol, as well as the domain name, which follows. Further, she fails to

[1] July 18, 2009 is the earliest-dated email Defendant has produced in this litigation. (GM_00069)

disclose how she, herself, used the email account. All she says is that "it is not available to Ms. Maxwell." (Resp. Br. at 6).[2]

Defendant, apparently, has done nothing to recover her still-undisclosed email account hosted on the private server of her long-time boyfriend and joint defense partner, Jeffrey Epstein. A blanket statement of "unavailability" is incredible – particularly without any description of the steps she has taken to make the emails available. Without taking any efforts to recover her emails on Epstein's private server, she offers a bland conclusory statement that "there is no manner in which Ms. Maxwell could require Mr. Epstein to provide any information on Mr. Epstein's private server." (Resp. Br. at 7). Yet Defendant and Epstein are currently both parties to a joint defense agreement and her own e-mails demonstrate she is communicating regularly with Epstein. Notably, Defendant does not produce any proof of her efforts to try to gain access to the account from Epstein so she can comply with her discovery obligations in this case.

Whether or not it is ultimately unavailable, it should not have taken a motion to compel to prod Defendant into even suggesting that she used another email account from 1999-2002 to communicate. And, importantly, her brief is ***only a suggestion*** of that fact. Nowhere in her brief does Defendant actually state that she had an account on Epstein's private server. Despite pages of protestations that she cannot access the documents on Epstein's private server, she never actually discloses to the Court whether or not she had an account on Epstein's server in the first place. Defendant cannot have it both ways: she cannot seek be absolved of for failure to produce from an inaccessible account while continuing to refuse to admit that such an account even exists.

Additionally, Defendant claims to have performed a forensic exam on her Mindspring

[2] Ironically, Defendant's intimation that there is an undisclosed account is directly beneath a heading that states: "There is no 'Undisclosed' Account."

account. According to testimony, the Mindspring email account is hosted by Epstein's private server. Defendant's brief offers no explanation as to why she could access one email account from Epstein's private server, but not her other account from Epstein's private server. No details are offered. Accordingly, Defendant fails to meet her burden under Rule 26(b)(2)(B), Fed. R. Civ. P., to show that the information is not reasonably accessible because of undue burden or cost.

II. AN ADVERSE INFRERENCE INSTRUCTION IS WARRANTED

In this litigation as the Court will recall, Defendant first refused to produce any documents at all - Ms. Giuffre had to litigate for Defendant to commence discovery (DE 28). Defendant then refused Ms. Giuffre's proposed ESI protocol, and refused to negotiate an alternative. Defendant then proceeded to make her production, which consisted of ***only two documents*** (DE 33 and 35). All the while, Defendant was refusing to sit for her deposition until ultimately directed to do so by the Court (DE 106). Even more egregious, Defendant's counsel did not collect Defendant's electronic documents or run search terms, but allowed Defendant to pick and choose what documents she wanted to produce, which explains the fact that Defendant's initial production consisted of merely two documents. *See* May 12, 2016, Sealed Hearing transcript at 5-9 (Mr. Pagliuca: "After we went through the RFPs, Ms. Maxwell went through two email accounts, the email account at the Terramar and her personal email account Gmax. Those are the only two email accounts that she had access or has access to." . . . Ms. Schultz: "It should be an attorney's judgment whether or not a document is responsive, not at the discretion of the party defendant to look through her computer with absolutely no attorney supervision or any accountability for her search process, especially one that is done completely in secret . . . [t]he fact that defendant has shown so much recalcitrance in even discussing the discovery process is in itself telling that this

hasn't been completed correctly.")

Ms. Giuffre had to then litigate, extensively, to force Defendant to perform a proper collection and search, and, correctly, in response to the Motion to Compel, this Court directed Maxwell to gather all of her electronic data and run designated search terms. *See* August 9, 2016, Order (DE 352) directing Defendant to gather her electronic data and run search terms. Ms. Giuffre also had to litigate for documents Defendant withheld on a wrongful claim of privilege, many of which were not privileged on their face. Ultimately this Court directed Defendant to produce these documents. (April 15, 2016, Sealed Order granting in part Motion to Compel for Improper Claim of Privilege).

Remarkably, Defendant complains in her brief about the inconvenience caused by the Court ordering her to search her electronic documents (Resp. Br. at 3). But such a routine search is merely Defendant's basic obligation under Rule 26 and Rule 34. Ms. Giuffre should not have been forced to seek a Court Order to get such obviously relevant materials from Defendant. The Federal Rules of Civil Procedure are designed in such a way as to disallow parties to hide relevant information, including the non-disclosure of potential sources of discoverable information, like Defendant's email address on Epstein's private server. As noted by Magistrate Judge Francis, "The overriding theme of recent amendments to the discovery rules has been open and forthright sharing of information by all parties to a case with the aim of expediting case progress, minimizing burden and expense, and removing contentiousness as much as practicable.... If counsel fail in this responsibility—willfully or not—these principles of an open discovery process are undermined, coextensively inhibiting the courts' ability to objectively resolve their clients' disputes and the credibility of its resolution." *U.S. Bank Nat. Ass'n v. PHL Variable Ins. Co.*, 2013 WL 1728933, at *7 (S.D.N.Y.,2013) (Internal citations and quotations

omitted).

Even today, Defendant claims that after running over 200 key search terms, some of which include the names of her admitted close friends and boyfriend, she has not located a single responsive document. The only conclusion that can reasonably be drawn is that she has deleted relevant documents – not simply her "spam" documents, as she would have the Court believe. It is implausible that she would not have any responsive documents after running these search terms. Courts allow a forensic review of the electronic data including e-mail accounts to determine whether a deletion program has been run and to show the number of hits yielded by the search terms, and to provide a sampling to the Court to evaluate whether there indeed are responsive documents within the search term hits. Of course, by refusing to disclose even the name of her account on the Epstein server, let alone attempt to collect it, any such exercise would be futile.[3]

Defendant has set a course of failure to meet her discovery obligations, and with this Response Brief,[4] she continues that tack: she fails to even identify what email addresses she used

[3] Defendant should be required to provide access to her accounts and her electronic data to an independent third party forensic reviewer to perform these searches to determine, among other things, the date range of the accounts, whether deletion programs have been utilized on the accounts, and whether there are search term hits in the e-mail accounts and electronic data. Ms. Giuffre, at the Court's direction, can submit a forensic review protocol for the Court's consideration.

[4] *See, e.g.*: Plaintiff's Response in Opposition to Defendant's Motion to Stay Discovery (DE 20); Defendant's Motion to Stay - Denied (DE 28); Plaintiff's February 26, 2016 Letter Motion to Compel Defendant to Sit for Her Deposition (DE 63) - Granted (DE 106); Plaintiff's Motion to Compel Documents Subject to Improper Claim of Privilege (DE 33), Granted in Part (DE 73); Plaintiff's Motion to Compel Documents Subject to Improper Objections (DE 35), Granted in part (106); Plaintiff's Response in Opposition to Defendant's Motion for a Protective Order Regarding Defendant's Deposition (DE 70) - Defendant's Motion Denied (DE 106); Plaintiff's Motion for Forensic Examination (DE 96) - Granted in part (June 20, 2016 Sealed Order); Plaintiff's Motion to Compel Defendant to Answer Deposition Questions (DE 143), Granted (June 20, 2016 Sealed Order); Plaintiff's Motion for Adverse Inference Instruction (DE 279), Pending; Plaintiff's Motion to Enforce the Court's Order and Direct Defendant to Answer

starting in 1999, in contravention of this Court's Order (DE 352). This behavior, combined with all of the previous refusals to search for and produce documents (which, after litigation, resulted in this Court's Order to Defendant to search for and produce documents), is sufficient grounds for this Court to give an adverse inference instruction under prevailing case law, as detailed in the moving brief. At some point, Defendant should be held accountable for her gamesmanship. Ms. Giuffre respectfully submits that time is now.[5] The Court should deliver to the jury an adverse inference instruction.[6]

III. MS. GIUFFRE MADE EFFORTS TO CONFER THAT WERE DISREGARDED BY DEFENDANT

Rather than explain why she has failed to produce all relevant emails, Defendant spends much of her opposition suggesting to the Court – quite incorrectly – that Ms. Giuffre did not try to confer with Defendant on this discovery issue. But the only failure to confer here is on the part of Defendant. As explained in the moving brief, Ms. Giuffre sent a letter to Defendant conferring on this very issue. Defendant wholly failed to respond to this letter. Sadly, this is not an isolated occurrence. Defendant has simply failed to respond to a number of conferral letters Ms. Giuffre's counsel have sent. Indeed, as the Court is aware from previous filings (DE 290, July 18, 2016, Letter Response in opposition to Motion to Strike), Defendant has made a habit of ignoring

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Deposition Questions (DE 315), and Pending; Plaintiff's Motion to Reopen Defendant's Deposition (DE 466), Pending.

[5] Defendant also has the temerity to seek attorneys' fees and costs from Ms. Giuffre. Of course, for the reasons articulated here, that request is frivolous.

[6] Ms. Giuffre proposes the following instruction: Defendant had a duty to collect and produce relevant data from her email accounts from 1999 to the present. Defendant failed to collect and produce relevant emails from some of those accounts. You may consider that this evidence would have been unfavorable to Defendant on the issue of her defense that her alleged defamatory statements were true.

counsel's repeated, written requests to meet and confer on various issues.[7] The undersigned's September 23, 2016, letter was simply another conferral letter that Defendant chose to ignore.

Defendant's implicitly concedes this pattern of ignoring conferral letters in her response. To support her claim that Ms. Giuffre had somehow failed to confer, Defendant writes that "[h]ad [Ms. Giuffre] bothered to *follow up* on this *alleged* communication, Ms. Maxwell would have reaffirmed that there is no 'undisclosed' email account." Defendant's Resp. Br. at 2 (emphasis added). Defendant has it exactly backwards. It is Defendant's responsibility to be "bothered" to answer Ms. Giuffre's initial conferral letter. Ms. Giuffre should not be expected to "follow up" with subsequent letters on the same subject, waiting for Defendant to deign to respond. Simply put, Ms. Giuffre did attempt to confer on this issue, and Defendant refused. Three weeks went by while Defendant sat on Ms. Giuffre's letter, refusing to engage on this subject.

Rather than explain why she failed to respond to (yet another) of Ms. Giuffre's conferral letters, Defendant slyly suggests that Ms. Giuffre never sent the letter. Defendant describes the letter as an "alleged" communication, and further tells the Court that the "alleged" letter "was not included in the exhibits to the Motion." (Resp. Br. at 1.) Yet there is no doubt that the communication was sent to, and received by, Defendant. First, the email transmittal is attached hereto at Schultz Dec. at Exhibit 2. Second, the letter itself is attached hereto at Schultz Dec. at Exhibit 3. Third, Defendant sent Ms. Giuffre a letter, dated October 17, 2016, that included multiple, ***word-for-word excerpts*** from Ms. Giuffre's September 23, 2016, letter - an "alleged" letter that the Defendant suggests to the Court does not exist. (Defendant's mimicking letter is

[7] The following examples are some conferral letters sent by Ms. Schultz, counsel for Ms. Giuffre, that Defendant's counsel have chosen to ignore, including: a May 20, 2016, letter regarding confidentiality designations (*See* DE 201); a June 8, 2016, letter regarding deficiencies in Defendant's production; a June 13, 2016, letter regarding the same; a June 30, 2016, letter regarding search terms; and a July 14, 2016, letter regarding the same.

attached hereto at Schultz Dec. at Exhibit 4.) Sadly, Defendant's innuendo is not confined to her most recent response, as throughout this litigation, Defendant has repeatedly made deliberately misleading statements to the Court[8] and some explicitly false claims.[9] For present purposes, the key point is that Ms. Giuffre fully fulfilled her conferral obligation.

IV. CONCLUSION

For the foregoing reasons, the Court should direct Defendant to disclose both the local part and the domain name of **all** her email accounts, including those from 1999-2009, and allow a neutral third-party expert to recover responsive data from those accounts (based upon the search terms this Court previously ordered) and allow a forensic review of all of Defendant's electronic data to ensure compliance with this Court's Order. In addition, in view of the pattern of obstructive behavior, the Court should give to the jury an adverse inference instruction.

October 28, 2016

[8] For example, Defendant intimated to the court that she wanted to depose Judith Lightfoot, complaining that there was not sufficient time to arrange the deposition, in attempt to appear to be prejudiced before this Court, when, really, Defendant had ***absolutely no interest*** in taking Judith Lightfoot's deposition and could not be prejudiced. (DE 257). For another example, Defendant represented to the Court that Dr. Olson's records were not produced until after Ms. Giuffre was deposed - that was a distortion as Defendant already had those documents from Dr. Olsen himself, and they were re-issued by Ms. Giuffre after the deposition with Bates labels. *See* Plaintiff's Response in Opposition to Defendant's Motion to Reopen Deposition (DE 259). For another example, Defendant represented to the Court that Ms. Giuffre's rape (where the presence of blood and semen was noted by the police report) was a "simulated sex act" (DE 335). For another example, Defendant put forth to the Court a misleading tally of questions posed to Defendant that included all of the times questions were repeated due to Defendant's refusal to answer, including questions that were asked 15 times without eliciting a response. (DE 368, Plaintiff's Reply in Support of Motion to Enforce the Court's Order and Direct Defendant to Answer Deposition Questions). For another example, Defendant represented to the Court that Ms. Giuffre's privilege log contained un-identified third parties, when it did not. (DE 155).

[9] Defendant clearly and falsely told the Court that Ms. Giuffre has an "opioid addiction" (Reply ISO Motion for Sanctions DE 303), when there is no evidence - documentary or testimonial- that even remotely supports that false and calumnious claim.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 28, 2016, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I also certify that the foregoing document is being served to all parties of record via transmission of the Electronic Court Filing System generated by CM/ECF.

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EXHIBIT 3

(File Under Seal)

GBAQGIUc

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

VIRGINIA L. GIUFFRE, et al.,
Plaintiffs

v. 15 Civ. 7433 (RWS)

GHISLAINE MAXWELL, et al.,
Defendants

----------x

New York, N.Y.
November 10, 2016
12:30 p.m.

Before:

HON. ROBERT W. SWEET

District Judge

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(In open court)

THE COURT: OK. Where we were was to consider the Churcher request with respect to the opinion. Is there any problem with the opinion or the redacted opinion?

MR. CASSELL: Not from the plaintiff, your Honor.

MR. PAGLIUCA: I am leaving that completely up to you, your Honor.

THE COURT: Have you given me an order or how do we do this?

MR. FEDER: Your Honor, Eric Feder for non-party Sharon Churcher. We submitted on September 20, it's document number 440, an agreed notice of filing the redacted opinion, which attached a copy of the redacted opinion. So all we are asking is that the Court sort of issue it as its own docket entry that says opinion or memorandum and opinion, however the Court wants to denominate it, because if we wanted to cite it later, an exhibit would be hard for another court to swallow.

THE COURT: Your motion to publish the redacted opinion is granted, and I will file a docket entry to that effect.

MR. FEDER: Thanks, your Honor.

THE COURT: So that does that.

The testimony of Epstein.

MR. CASSELL: Your Honor, I think the matters we are getting into now are sealed matters, so I would move that the

courtroom be closed at this point.

MR. WEINBERG: We agree, your Honor.

THE COURT: That's fine. You have to police the people who are present.

MR. CASSELL: I believe one attorney who is with Mr. Epstein, and there are several other persons here.

THE COURT: Well, obviously, Epstein is --

MR. CASSELL: Right, Epstein would be permitted, but there are several spectators here.

THE COURT: All right. Yes.

(The remainder of the hearing (pages 4-41) was sealed)

(The following was held in a sealed courtroom)

MR. CASSELL: Your Honor, we would move to compel the testimony of Epstein. I know you've read the pleadings. I could just highlight a couple of small matters for you.

Paul Cassell for plaintiff, Virginia Giuffre. Our motion to compel breaks down into three very narrow pieces, as you know, from the pleadings. Let me highlight a couple of things that we think are foregone conclusions in the language of the case law.

Cell phone records. We've established, and, for example, in our reply brief, we have an exhibit that gives you not just general descriptions of phone records but very particular information about the phone records, even the ten digits that belong to the phone numbers. We've given you line one in Palm Beach County, line three in Palm Beach County. We've given you two phone numbers on Epstein's Gulfstream jet. We've given you two phone numbers on his 727.

The existence of telephone records for those specifically identified numbers is a foregone conclusion. And with regard to authenticating them, obviously the phone company can authenticate those. So we haven't heard any argument that provides any basis for his refusal to produce those phone records. And, remember, it isn't my job to convince you. It's their job to convince you that they have a valid Fifth Amendment privilege to not answering what are obviously very

valid discovery requests.

Similar points could be made -- and I know you've seen the briefing on bank records. Again, we've given you not just the theory that there are bank records. We've given you the bank. We've given you account numbers. Remember, the Palm Beach Police Department executed a search warrant and actually got some of the bank records. So, the idea that he can now assert a Fifth Amendment privilege over bank records that are in the hands of the government strikes us as, to put it mildly, farfetched.

We've also asked for production of photographs. And, there again, in our exhibits filed along with the reply brief, we've actually given you photographs of the photographs we want. The existence of those photographs is a foregone conclusion. The cops went into Epstein's mansion executing a search warrant, saw photographs, and we simply want him to produce those photographs.

Finally, we think we've made a compelling case for those three particular areas of documents, but at a minimum, we're entitled to a privilege log. The defendant wants to litigate, or Mr. Epstein wants to litigate, this motion to compel in the abstract, but that's not the way it's done. The local court rules, the Federal Rules of Civil Procedure, all cited in our brief, say you have to provide a privilege log if you're going to establish the privilege. Again, I'm a little

frustrated because it's not my job to prove we're entitled to the documents. We served valid discovery requests. It's Epstein's attorney's job to show that he has a valid privilege. That's our first point.

As you know, our second point is we have 49 specifically identified questions that we think he has no basis for asserting a Fifth Amendment privilege to. Ten of those questions relate to Professor Dershowitz. And the reason we are obviously entitled, in our view, to answers to those questions is he was deposed in 2010, and this was a case that he initiated. So the defense attorney said, "Do you know Mr. Dershowitz?"

"Yeah, he's a friend of mine. He's my attorney." He has waived privilege over Dershowitz-related questions, at least in the ambit of that answer.

So, obviously, in our view, questions 23 through 31 are no-brainers because he's waived privilege over that, and I'm not sure they have ever really responded to that.

With regard to the other questions, some of these are pretty straightforward: Do you know the defendant in this case, Ms. Maxwell? I mean, you know, they lived together for ten years, and he's asserting a Fifth Amendment privilege over that?

Without going into the substance of any communication you've had, you've communicated with Maxwell in the last year.

Again, that is not the kind of thing that can raise a realistic prospect of incrimination.

Here is another question. This is question 8 in our brief. In June 2008 in open court, you pled guilty to two Florida felonies. Well, that is on the record in Florida court. It's an open event with the government, by the way, who's prosecuting him, and he refused to even answer that question.

As you know, he refused to answer any question other than what's your name? So we have tried to be very selective. We've given you a list of 45 specific questions where we're entitled to the information.

Our third point, as you know, is this issue about Epstein being compelled to testify that he saw Maxwell, his girlfriend, before 2011 in foreign countries standing next to girls under the age of 18. And in response, he said, look, there's a lifetime statute of limitations for sexual abuse crimes, so I face a realistic risk of prosecution. The lifetime statute is an unusual statute, and that statute applies only to some of the most serious crimes in the federal criminal code: Sexual abuse of a child. But the only statute that was cited by Mr. Epstein was the traveler statute, which forbids traveling in foreign commerce to go someplace for nefarious purposes.

That is not covered by the lifetime statute. That's

covered by the standard five-year statute of limitations in federal court. If you look at the elements of that crime, it involves simply traveling for sexual purposes. It's not the kind of crime that would warrant a lifetime statute of limitations. Again, that lifetime statute of limitation is reserved for very narrow offenses.

So we're entitled to force him -- again, we're not trying to force him to testify to everything under the sun. We want him to testify to events before 2010, so that's outside the five-year statute of limitations. And we're not even asking him to testify about events concerning him. We're asking him to say, well, when you were in Thailand, did you see Maxwell in the presence of underage girls. So, we've come up with three narrowly crafted requests, and we believe we're entitled to have Epstein compelled to answer the questions in those three areas.

Thank you, your Honor.

MR. PAGLIUCA: Your Honor, Jeff Pagliuca on behalf of Ms. Maxwell. I have also filed a motion to compel Mr. Epstein's testimony before your Honor.

I take a little bit of a different approach here, Judge, because in my view there has been no showing by Mr. Epstein that there is any reasonable possibility of criminal prosecution. I've not seen one document, I've not seen any letter from a police agency, I've not seen any target

letter from the government, I've not seen any phone calls from anyone to Mr. Epstein. There has been no showing that there's any grand jury convened. There's no summons to Mr. Epstein to appear in any criminal matter. And all we have is this unsubstantiated assertion of "I may be prosecuted somewhere for something."

The law is very clear that it's Mr. Epstein's burden to establish some reasonable possibility of prosecution. That hasn't happened. And unless that happens, I believe Mr. Epstein should be forced to answer all questions put to him.

It's very difficult in my view to litigate this issue in that vacuum, your Honor, because I don't know what statute of limitations we're talking about because I don't know what crime is being proffered as what Mr. Epstein may be in jeopardy of facing.

So I think that that should be the Court's order, in that there's been a failure to demonstrate any reasonable possibility of prosecution. Mr. Epstein should answer all questions.

I do think it's a little difficult to piecemeal this out, your Honor, because when I listen to Mr. Cassell, he says, I want to narrowly ask questions about what did you see Ms. Maxwell do. Well, I think the Court knows and Mr. Cassell knows, certainly, if there were a prosecution that were

reasonable, all of those things would be used under a complicity theory or 404(b) theory. So if there were the establishment of a reasonable likelihood of prosecution, certainly all of those kinds of questions would fall within the Fifth Amendment, but my view is different in that there is no Fifth Amendment privilege that's been demonstrated as applicable here.

There's been discussion about Mr. Epstein somehow being in jeopardy in Florida, I guess. The evidence that I am aware of is that Mr. Epstein pled guilty as part of a joint state/federal investigation, and my view is that as a result of that guilty plea, along with the non-prosecution agreement, there is no reasonable possibility of prosecution. And that plea agreement seemed to encompass dozens, I believe, of alleged victims, and I am unaware of any alleged victims outside of the ambit of that prosecution. Certainly none has been proffered to the Court.

As cited in the papers, my view of the law is fairly clear that that operates as a bar to further prosecution, and, again, I do not see how Mr. Epstein is subject to any reasonable possibility of criminal prosecution. So that is my position on that issue, your Honor. Thank you.

MR. WEINBERG: Martin Weinberg on behalf of Mr. Epstein. Thank you, your Honor.

Let me start where the defendant left off.

Mr. Epstein has a sufficient and reasonable fear of self-incrimination were he to be compelled by court order to answer the questions that were proposed to him. The fear comes in part from proceedings in the Southern District of Florida. He pled guilty to two very narrow state offenses that dealt with two women. That gives him no protection against a federal prosecution, no protection against any other allegation, no protection against the specific allegations that are front and center in the complaint in this case, where Ms. Giuffre says that Mr. Epstein with Ms. Maxwell committed a whole universe of criminal offenses against her in places, including Florida, but also in New Mexico, in New York, in the Virgin Islands in France and England and on planes. So there is no protection from the state plea for any of the allegations made by Ms. Giuffre in this case.

There is a risk that whatever limited protections Mr. Epstein has as a result of his signing and performing under a federal non-prosecution agreement he entered with the U.S. Attorney's Office in the Southern District of Florida, that protection is limited, and it's at risk. It's at risk largely because of the efforts of Mr. Cassell. And I don't mean to be critical. He is representing two other clients in this case. It's a crime victims rights case brought before District Court Marra starting in 2008. Still existing. Mr. Cassell has made it very clear he testified in a deposition in a different case

in Florida that the "ultimate aim of the action in Florida is to invalidate a non-prosecution agreement and allow criminal prosecution."

Our position, as we tried to articulate it for over seven years, and this is testimony from Mr. Cassell in a related case that he was a party to and gave a deposition in, and he goes on and says that "The action CVRA, the crime victims action, is ancillary to a contemplated criminal prosecution of Jeffrey Epstein for women who were resisting him in international sex trafficking.

So that's the goal of the plaintiff's counsel in this case while representing two other young women in a different case down in Florida. They want to nullify the limited protection Mr. Epstein has. It's protection in Florida, but again, Ms. Giuffre's allegations are that the offenses were committed by both the defendant and Mr. Epstein in four or five other locations, some foreign, some domestic.

Mr. Cassell -- even though we strongly believe that Mr. Epstein who went to jail, served time, was on probation and lived up to all his conditions of this non-prosecution agreement, we strongly believe it would be unconstitutional to invalidate it, but the truth is that Judge Marra in the June 19, 2003 opinion, we cited it to your Honor, it's docket entry 189 in that case, and it now has a West citation that I believe is 950 F. Supp.2d, has said that he believes that the

rescission remedy is a potential remedy. He has not dismissed Mr. Cassell's arguments. Instead, he has made it very clear in this opinion that he is strongly considering them, and if the violations, even though they were government violations of the CVRA, are proven, that he is going to consider rescinding Mr. Epstein's protections.

Again, those are limited protections to the Southern District of Florida, but even those are in peril as a result of the resourcefulness and arguments made by Mr. Cassell. So clearly, Mr. Epstein has a reasonable fear that if he is being asked to testify about the allegations made by Ms. Giuffre, whether it's directly or indirectly, by being asked, well, did Ms. Maxwell -- was she ever in the presence of underage women and you, the allegation is Ms. Maxwell helped Mr. Epstein have massages, erotic massages, sexual massages from underage women.

Any questions, whether they're in a document request, whether they're for testimony about Ms. Maxwell, about Ms. Giuffre are squarely within heartland of the Supreme Court's 1951 eight-to-one decision *Hoffman v. U.S.* I learned about that in law school back a long time ago. It is still the compelling precedent. It says any testimony that could be a link in the chain of evidence that has a reasonable risk to you, you are not compelled to testify about. It talks about, yes, we're going to give up having full testimony, whether it's in grand juries or civil trials because we are going to honor

this historic privilege. I think Mr. Cassell in a very creative way has tried to ask the Court to essentially invalidate a privilege of somebody who is at risk.

In part, even in this case, Ms. Schultz's co-counsel, Ms. McCawley said when she was offering investigative records of another agency about an ongoing investigation, that's the word she used on April 21, 2016 at pages 18 and 19, and your Honor granted their right to provide your Honor in camera without disclosure whatever efforts were being made currently by Ms. Giuffre to motivate prosecutions or prosecutors against Ms. Maxwell, but the case against Ms. Maxwell is a case against Mr. Epstein. So he has a legitimate and principal concern that either the protections he has are too limited or they're going to be invalidated down in Florida. So that's the response to Ms. Maxwell's argument that he has no Fifth Amendment because he has no risk. He's at the epicenter of risk.

Directing myself more specifically to Professor Cassell's arguments, the Fifth Amendment is an issue that they've briefed, we've briefed, without agreeing that there is no statute of limits; that it's the life of a child. Ms. Giuffre is still a child. There is an interplay between questions that ask Mr. Epstein, was Ms. Maxwell with an underage woman. You know, were you with underage women and questions like that, whether it's Thailand or France or England, that if they relate to the travel, then certainly what

occurred at the end of the travel is relevant to the travel. Likewise, the travel is relevant to what happened afterwards.

We have a statute now that makes it a crime, whether it's an adult or whether you're having illegal sex with somebody for money, whether it's with somebody underage, if you're having it in Thailand, if you're having it in France, and you're an American, you are now subject to federal criminal prosecution under the statute that we gave your Honor.

There are other statutes. There's man acts statutes. There's travel statutes. There's a whole variety of statutes that Congress has put in to cause a legitimate risk that questions about Ms. Giuffre or Ms. Maxwell, whether the questions are fixed to a foreign location or a domestic location, could be the corroboration of Ms. Giuffre's otherwise uncorroborated allegations.

We have to look no farther than the Bill Cosby case. Nobody prosecuted him based on the allegation of one of the alleged victims; but when he gave a deposition, that was voluntary and made statements, that became the corroboration that led to his prosecution for events that occurred 20 or 25 years ago.

In terms of Professor Dershowitz, yes, Mr. Epstein did testify at a prior deposition about four or five years ago. At the time nobody had made any allegations connecting Professor Dershowitz to any of the allegations against Mr. Epstein except

that he was his lawyer. In the meantime, Ms. Giuffre made allegations first in Florida that Professor Dershowitz was involved in some of these alleged offenses, and so that triggers a Fifth Amendment right. Mr. Epstein is not saying Professor Dershowitz did anything, but to testify about Professor Dershowitz, has he ever been to your home, again, has the potential to corroborate the allegations made by Mr. Cassell's client.

In terms of the waiver argument, the law is very clear that in contrast to an attorney-client privilege, if I was to disclose a privilege in one case, it's disclosed for all cases, but the law is very clear that you can testify in one proceeding and plead the Fifth Amendment in a separate and distinct proceeding. This was an issue that emerged in their reply brief. And if your Honor doesn't mind, I can either send in a supplement --

THE COURT: Sure.

MR. WEINBERG: -- which lists the cases. They're very clear. The Fifth Amendment is proceeding by proceeding.

MR. CASSELL: If we could just have permission to submit parallel responses.

MR. WEINBERG: In terms of the subpoena, the documents subpoenaed, Mr. Cassell focuses on three different categories of requests. One is cell records, and he says because we know that Mr. Epstein had phone records back in 2005 when he was the

subject of the Florida search warrant, that, therefore, it's a foregone conclusion that he has records in 2016. And the specific request is not all telephone records. It's all telephone records associated with you, including cell records from 1999 to the present that show any communications with Ghislaine Maxwell. So he, Mr. Epstein, has to -- to answer this paragraph, it's not just dump cell records in a document response; it's go through cell records to determine from your state of mind whether any particular record matches this subpoena request, which is a record of a communication with Ms. Maxwell. Well, in this case given the allegations made by Ms. Giuffre about Mr. Epstein and Ms. Maxwell, he's got a Fifth Amendment against even admitting that he knows Ms. Maxwell; that he's spoken to Ms. Maxwell. He has a Fifth Amendment against producing a record that he spoke to her during the time period of these allegations.

Second is that there is no foregone conclusion that a record that existed in 2005 is still controlled by Mr. Epstein in 2016. And we cited to the Second Circuit's August 1 opinion that addressed just this issue, and they said, "Whether it is a foregone conclusion that documents remained in Greenfield's control through the issuance of the summons in 2013 is the issue. Only if the retention of a record that could be shown to exist many years before, only if they can show that it's still retained on the date of the subpoena is it a foregone

conclusion," which is an exception to the Fifth Amendment. And the Greenfield case says there needs to be proof that the record is still in the control and possession of Mr. Epstein, otherwise, his producing it is an admission. This is my phone. I still have the record. This month's record shows a call with Ms. Maxwell. It's akin to testimony. They could not ask Mr. Epstein under oath "Did you communicate with Ms. Maxwell during the date and time that Ms. Giuffre says you and her were committing illegal acts?" Just like they can't get it by testimony, they can't get it through a subpoena request that requires as its predicate an admission that this is a call with Ms. Maxwell.

The case cited even by the plaintiffs says, "The touchstone of whether an act of production is testimonial," which would be compelled testimony "is whether the government compels the individual to use the contents of his own mind to explicitly or implicitly communicate a statement of fact." Going through phone records, picking out a month and saying to the plaintiff, this is a record of a call I had with Ms. Maxwell is a communication, a selection by Mr. Epstein that the Fifth Amendment in decisions like *Hubbell v. United States*, discussing *Greenfield*, the Second Circuit recent opinion, cannot be the basis of a subpoena request.

The same thing with bank records. There is no subpoena request for bank records. What there is, is all

documents relating to payments, you, Epstein, made to Ms. Maxwell or any related entity. So, again, he has to go through any financial record and select a record, use his state of mind, select a record that relates to Ms. Maxwell. And by producing it, it's akin to testifying this record is a record between Mr. Epstein and Ms. Maxwell. That's implied testimony. That's an act of production. That's akin to testimony, and that's an admission that this record is the record that is sought by the subpoena. There is no request for bank records. That would be an overbroad request. But they can't ask Mr. Epstein to use his mind to select a document, the production of which is the same as testifying to an event.

Photographs. They have photographs from 2005 seized in a search and seizure in Florida. Again, under *Greenfield*, the issue is not whether they existed in 2005. It's do you currently have photographs of nude women. And the act of producing a photograph of a nude would, one, corroborate allegations against Mr. Epstein that there were these pictures; and, two, require him to admit the existence of this evidence, which they don't know whether he still has or not. And that again goes back right to the heart of the *Greenfield* opinion.

Finally, the allegation about a privilege log. There is no privilege log that was required in a case that I provided your Honor, *SEC v. Foster*, because the issue here is not whether any specific document is privileged or not. It's

whether the category of documents that are asked for in this subpoena are all privileged because they all ask Mr. Epstein to supply a document related to Virginia Giuffre, provide all documents providing relating to Ms. Maxwell, provide payments to Ms. Susue (ph), provide payments through credit cards that show Ms. Maxwell and Ms. Giuffre. In other words, all of the requests that would require him to use his mind, make a selection, and produce a record that when matched against the request would be incriminating testimony.

The cases are clear, including the *Hoffman* case from 1951, that you don't have to incriminate yourself, whether it's through a log or through testimony to raise the Fifth Amendment.

I'll end with a quote from Judge Learned Hand that was cited in a Yale Law Journal article called, "The Conjures Dilemma," which is the Fifth Amendment in civil cases where Judge Learned Hand says, "Obviously, a witness may not be compelled to do more than show that the answer is likely to be dangerous to him, else he will be forced to disclose those very facts which the privilege protects." To do a lie, to set out pictures of Virginia Giuffre 2001, the subpoena at paragraph 19 page 6 of the subpoena wants a log by date and by the content of a document that you're raising a privilege to. That has the same perils as the production of the document. It would be Mr. Epstein going through documents, listing them, naming them

and saying that he still eleven years later or 12 years later has a document that matches the subpoena. The Fifth Amendment protects him. He should not, respectfully, be compelled to testify to produce documents.

MR. CASSELL: Let me just start at the outset by noting a point of agreement. We agree that Epstein with Maxwell traveled to Florida, New York, the Virgin Islands and elsewhere to sexually abuse children, and he remains at risk for criminal prosecution in some of those cases. So we start from the same premises that there are those crimes that are out there.

MR. PAGLIUCA: Your Honor, I object to this colloquy because this is improper. Ms. Maxwell denies any of what Mr. Cassell is saying, and this is just another attempt to inject this inflammatory rhetoric into the record. So I object.

MR. CASSELL: This is our complaint. I don't know that -- I am reiterating what's in our complaint and explaining how it applies to this case is inflammatory. I just want to point out that we agree with that premise. Starting from that premise, the issue that is in three narrow areas are we entitled to produce or force Epstein to produce some information. We hear from Mr. Weinberg that the 1951 *Hoffman* case recognizes a Fifth Amendment privilege, and of course it does. More recently -- and I don't know if this was after he

went to law school -- *Fisher* case of 1976 recognized that even defendants who have committed serious crimes can be forced to produce information so long as the act of producing that information is not incriminating. And I believe Mr. Epstein has agreed that all of the documents do not have a Fifth Amendment privilege to which he's entitled to assert. The only question is whether the mere act of producing those documents is incriminating.

THE COURT: Just a second.

(Pause)

MR. CASSELL: Thank you, your Honor.

So I think we generally agree on the case law. The issue then is whether producing cell phone records -- let's take cell phone records. He says we would have to go through and pick out particular records, and that act of pulling out particular records is in and of itself incriminating.

We would ask our subpoena then to be construed to avoid constitutional objections. Just give us all his cell phone records. There is no picking and choosing at that point. The only reason that some of our requests were initially narrowed was to avoid a burdensomeness objection. If that's the a problem, we would ask leave to have our subpoena construed to request all the records so that isn't the problem, and we've tried to highlight in our brief areas where he is not being required to pick and choose.

He talks about the situation of, well, will these records still remain in his control years later? Of course our subpoena extends through 2016, and obviously this month's cell phone records remain in his control, not to mention records that would extend back at least some period of time.

He cites the *Greenfield* case, which the Second Circuit decided this summer. *Greenfield* though involved a situation where there was a tax scam going on, I don't know, offshore movement of monies and so forth. And the issue there was, well, could the government authenticate the records from these tax shelters and places like that. Here, we're talking about AT&T and cell phone companies that are not fly-by-night operations, so *Greenfield* is an entirely different situation.

With regard to bank records, again, he's talking about picking and choosing. Simply construe our subpoena then or give us leave to amend our subpoena so that it includes all records. He doesn't have to pick and choose.

Photographs. He says that, well, who's to say whether he has them today. It would be incriminating to admit that I have those photographs today. But it has to be that the act of producing the photograph is incriminating. If we were asking him to produce child pornography, he would have a point because pulling out of your pocket a child pornography would in and of itself be incriminating. We are asking him to pull out though pictures of adult women, non-pornographic pictures of children

under the age of 18 and give those to us. The act of producing those photographs -- and remember, we have in the record photographs of the photographs we are asking him to produce. So that can't be incriminating to the government. And, by the way, some of the information was information that was obtained when the state authorities were searching his house, so this isn't a situation where the government is unaware of the information. They have it.

At the very least, we're entitled to a privilege log on all of this. He cites the *Foster* case. The *Foster* case is not a privilege log case. If you look at our reply brief, I think we have seven or eight cases in very recent years where district courts have said, yes, produce a privilege log. We're entitled to a privilege log so we can know what the documents are.

That's our first point. Give us the documents or at the very least, give us a privilege log.

The second set of issues swirls around 49 specifically enumerated questions. I noted, once again, it's Mr. Weinberg's burden to show each and every one of those questions is incriminating. He hasn't done that in his pleadings, and he hasn't done that here this afternoon.

I gave you just a couple of illustrations. I thought Mr. Weinberg would at least try to respond to those illustrations. He did not. The only one he did respond to was

Dershowitz.

Dershowitz has already been let out of the bag. The cat is out of the bag on that one. He says, well, don't worry, Judge, I'm going to give you legal authorities to show that on Monday, my client can stand up and tell the government all about Mr. Dershowitz, and then on Tuesday he can say, oh, no, I don't want to answer those same questions when propounded by Ms. Giuffre.

That's not the way a privilege log works. Once you waive privilege over the material, it's waived. He waived it in 2010. We're entitled to answers of the ten questions dealing with Dershowitz, and we're entitled to, what is it, 39 other answers to questions that are not reasonably incriminating.

The third area is the traveler statute. He said, look, if my client went to Thailand and then sexually abused girls with Maxwell, that's incriminating, so I'm entitled to assert the Fifth. There are a couple problems with that argument. Remember, crimes committed in foreign countries are not the proper subject of a Fifth Amendment privilege because the Fifth Amendment privilege only applies to American crimes. So now we have to get down to what American crime did Epstein commit or would Epstein be incriminating himself in if he said that in 2010 I saw Maxwell with an underage girl in Thailand.

There is only one statute that's been cited by

Epstein, and that's the traveler statute, but the traveler statute does not involve sexual abuse. It involves traveling for illicit sexual conduct. The reason that is significant is, is there a lifetime statute of limitations for the traveler statute, or is it just a standard issue five-year statute of limitations? The standard issue five-year statute of limitations applies to all crimes presumptively, including, like Mr. Pagliuca was talking about conspiracy or something, that's a five-year statute of limitations. The only crimes that are outside the standard issue five-year statute of limitations are sexual abuse of children. The traveler statute does not involve sexual abuse of children, at least at an elemental level. You can commit a violation of the traveler statute if you just travel for certain prostitution purposes, and as a result -- and there was no case law that's been cited by Epstein -- only a five-year statute of limitations applies to the traveler crimes.

So even assuming arguendo that there is some incrimination about the traveler statute, it only exists for five years. I'm only going to ask Epstein questions from 2010 and earlier. Of course, the significant events in this case took place in '99 to 2001, making any possibility of prosecution even more remote.

For those very specific questions, we believe we're entitled to have Epstein compelled to answer.

Thank you, your Honor.

MR. WEINBERG: Could I have one minute to respond, your Honor? I'm sorry, Jeff.

MR. PAGLIUCA: Thank you.

This is a whipsaw here for Ms. Maxwell. This is a perfect illustration of the whipsaw and the problem that we have.

Mr. Cassell stands up and says we agree with Mr. Epstein's counsel that Maxwell sexually assaulted people here, sexually assaulted people there with Mr. Epstein. Well, none of that actually ever happened, your Honor. So they feel free to say whatever they want to say because they know that Mr. Epstein is going to say, well, I'm asserting the Fifth Amendment privilege to whatever it is that you just said. So they can make up whatever they want to make up and implicate Ms. Maxwell, and Ms. Maxwell has no ability to get to the source of the information to use it to exonerate herself in this case. That's the whipsaw that's going on here, your Honor.

There is another am problem that I want to -- well, the other problem here is this is a whipsaw that's created by the plaintiff and her counsel because the plaintiff and her counsel are trying to undo this non-prosecution agreement that then forms the basis of Mr. Epstein's Fifth Amendment privilege assertion. So to the extent that I can try to get to evidence

that would be helpful to Ms. Maxwell, I'm prevented by the actions of the plaintiff and the actions of Mr. Epstein, and that's a problem in my view.

When Mr. Cassell talks about, well, these are these questions that I want to ask, well, all of those questions have follow-up questions from me, your Honor, which is, Ms. Maxwell didn't do this, and you weren't with Ms. Maxwell doing anything, and so we get into this, you know, descending into madness questioning with no good answer.

The other issue that I would like the Court to address is this reference to what was given to the Court in camera by the plaintiff that I've never seen, your Honor. This is some document that was apparently provided to the Court that I objected to, and I asked the Court to produce, that somehow implicates Mr. Epstein's Fifth Amendment privilege. So I would ask again, your Honor, that that document be produced to Ms. Maxwell because we've never seen it. So to the extent the Court is going to rely on that information, I don't believe that it's proper because we've never seen the document that was produced ex-parte in camera, and we've never had an opportunity to respond to it.

If indeed the basis of this Fifth Amendment assertion is the plaintiff's attempt to undo the non-prosecution agreement, there's an easy fix here. The plaintiff can agree not to undo the non-prosecution agreement. The plaintiff can

agree that they will not be seeking rescission of Mr. Epstein's non-prosecution agreement as part of that action, which I might add, your Honor, that Jane Doe No. 3 was Ms. Giuffre who attempted to intervene in that action and still has an interest in the outcome of that action through her lawyers. So that can be agreed to by the plaintiff in this case which would then take us out from under this problem.

But I am caught in the middle of trying to get helpful evidence for my client, which I believe if Mr. Epstein was allowed to testify would support her position fully between Mr. Cassell and his argument and Mr. Epstein and his Fifth Amendment privilege.

THE COURT: Thank you all.

MR. WEINBERG: Can I briefly have a minute, Judge?

THE COURT: No. Thank you.

The next order of business is the reopening of the defendant's testimony.

MS. SCHULTZ: This is Meredith Schultz for Ms. Giuffre.

This Court has already ruled that it's appropriate to reopen a party deposition when that party produces documents after she's been deposed. Cases such as *Wesley v. Muhammad* support that ruling, and pursuant to your ruling, plaintiff is having her deposition taken again next week to answer questions about the documents she produced after her deposition.

Here, defendant failed to produce two important documents until after her deposition and after the close of discovery. These documents are communications with Jeffrey Epstein, her co-conspirator and convicted pedophile, as well as with Ross Gow, her press agent who assisted her in issuing the defamation statement that is at issue in this case. As this Court will recall, defendant and her attorney, Phil Barden, wrongfully refused to produce her agent Ross Gow and forced Ms. Giuffre to spend tens of thousands of dollars to secure his deposition, finally taking place next week.

If Ms. Giuffre is not afforded the opportunity to ask defendant question about these documents, she will be prejudiced and defendant will be rewarded for her failure to make a timely production. Not only are these documents communications with key witnesses, your Honor, they're about a central topic to this case, defaming Ms. Giuffre through the media. These are not emails about the weather or anything like that. They're discussing further public statements about Ms. Giuffre. And importantly, your Honor, these communications took place after the original defamatory statement and one after the commencement of this litigation.

Defendant has argued that because Ms. Giuffre asked her questions about other communications she's had with these two individuals, it's unnecessary to ask about these documents. That argument is just unsupported by the facts, and defendant

cites no case law to support that argument either. None of the questions posed to defendant at her previous deposition were about these two emails. They don't go to her state of mind when she was writing them, when she was communicating, and we don't have an opportunity to ask her what she was doing with those or use them to cross her prior testimony where she tries to walk away from any involvement in issuing the defamatory statement at issue here.

Reopening defendant's deposition is not only necessary for Ms. Giuffre to ask about these documents. Despite being directed by this Court to answer questions that she refused to answer in her first deposition, defendant again refused to answer questions in her second deposition in direct violation of this Court's order. For example, she refused to answer questions asking whether she could remember identifying the girls who were victims of Jeff Epstein during the time she was living and working with him and recruiting girls for her. For another example, she refused to answer questions about Johanna Sjoberg, who defendant recruited for sex with Epstein under the pretense of answering telephones for her. So, Ms. Giuffre has a motion pending concerning defendant's behavior in her second deposition in which she violated the Court's order by refusing to answer those questions.

Now, she's produced two more documents, important pieces of evidence, and accordingly this Court should reopen

the deposition both to ask questions about the lately produced evidence, as well as the ones she refused to answer in violation of the order.

MR PAGLIUCA: Your Honor, let me start with the reference to plaintiff's conduct during her deposition, which is wholly different than the issue before the Court now.

At the direction of her lawyers, Ms. Giuffre refused to answer multiple relevant questions throughout the course of the deposition. The conduct in that deposition after we filed a motion to compel, her lawyers agreed that she needed to sit for a second deposition, and the only issue was whether it was going to be done by video conference or in person. Because of the egregious nature of the conduct, they knew that they had no chance at defeating that motion to compel. Here, your Honor, we are talking about two emails that were inadvertently not included in the production. We thought they had been produced, and when we went back through the documents, it appeared that they hadn't, so we produced them, as is our obligation under Rule 26.

The first email, your Honor, is an email from Mr. Gow to Mr. Barden and Ms. Maxwell that is forwarding an email from The New York Times and simply it says, you know, please advise how you wish to respond. That's it. That's the entirety of this email. There is no response from Ms. Maxwell. So what we're talking about here is an email that Mr. Gow forwarded

saying please advise how you wish to respond. That's it.

This is virtually identical to other emails that are in the same time frame that were produced that Ms. Maxwell was -- they either had the opportunity to ask her these questions or in fact asked her these questions. So it is repetitive, and there is no evidentiary value to this particular email as opposed to the other emails that deal with exactly the same thing. That is, simply somebody saying what would you like me to do, if anything, about this thing that I got from somebody else. The appropriate person to ask about that email is Mr. Gow, and they're going to do that.

I also find it very curious, your Honor, that throughout the papers and argument there is some assertion, I think, that either Ms. Maxwell or her lawyers have done something wrong relative to Mr. Gow and then having to go take his deposition. I don't represent Mr. Gow. I don't control Mr. Gow, who is a citizen of the United Kingdom. I can't make him come here, and I can't make him sit for a deposition. If they want to go take his deposition, that's what they need to do and not complain about it or blame it on Ms. Maxwell, which is what they seem to be doing here.

The other email they're talking about, your Honor, is an April 22 email, which is, again, similar to other emails that were produced from the same time frame, and they asked or had the opportunity to ask questions about the exact same

subject matter in Ms. Maxwell's deposition. So this is really, I think, much ado about nothing here, your Honor, and this motion should be denied.

MS. SCHULTZ: Your Honor, the emails are certainly about a very similar subject matter as emails she was already questioned about, and that is defaming Ms. Giuffre. The timing is different though. These emails occurred after the defamatory statement was released. The fact that she is still using the same press agent has evidentiary value because she didn't fire him. She didn't throw him out.

THE COURT: Ms. Maxwell will be deposed with respect to the emails. The deposition will be limited to two hours.

MS. SCHULTZ: Thank you, your Honor.

THE COURT: Anything else on that subject? OK.

The last motion.

MS. SCHULTZ: Thank you, your Honor.

Defendant has turned a simple and straightforward discovery process into an unnecessary cat-and-mouse game. My next point is very --

THE COURT: Now, I really would appreciate -- look, I understand this case to a degree, at any rate. I understand that there are emotional values at stake, but, you know, we don't need the categorizations. Let's just deal with the issues.

MS. SCHULTZ: Sure. Yes, your Honor.

THE COURT: And we don't need to beat everybody up. Let's just get to the point.

MS. SCHULTZ: This concerns electronically stored information, a very dry subject. Defendant has --

THE COURT: Let me see if I understand it. You're saying that there are email accounts that you believe existed and as to which there has been no data produced. Is that it?

MS. SCHULTZ: That's part of it. Your Honor, let me see if I can cut to the quick. Defendant hasn't denied that she used email to communicate during the critical time period 2000 through 2002. She hasn't denied that. She has merely said, oh, the email addresses you know about are not ones that I used. I think we have a lot of unanswered questions here today, specifically what email accounts did she use those years, what email did she use in 2000, 2001, and another thing, your Honor, is new evidence --

THE COURT: Wait. We're talking about a request for documents, right? And have you not requested all emails during the relevant period?

MS. SCHULTZ: Yes, your Honor, and this Court's order directs the defendant to search from and produce from all email accounts and this is where I'm --

THE COURT: Now, and you're telling me that you have reason to believe that there are accounts as to which she has not done this.

MS. SCHULTZ: Yes, your Honor, for two reasons, and if I can get into that. The first reason is that, like I said, defendant hasn't denied that she used an email account during those years, but she hasn't disclosed what it was. She's merely said, oh, it's not the ones you know about. I don't think it's a very plausible argument for defendant to say I didn't use emails during those years. So we want to know what email she used and whether or not those accounts still exist or if they're archived somewhere. I think under her obligations under the federal rules and under this Court's order, she should be made to disclose what email she used in 2000, in 2001 in 2002. I think that's a very basic elemental part of her discovery.

The secondary problem, your Honor, is defendant has represented to this Court that the Mindspring.com email account that we discovered from the police reports, she said that that is a spam account that she uses to register at retail stores.

THE COURT: I'm sorry, to register?

MS. SCHULTZ: At retail stores. When you go shopping at retail location. She said she uses it for spam. Publicly available information that we've gathered shows that defendant used that account not just for spam. She used it for her Dropbox account, which is an online file sharing account where you can exchange files and photographs. She's used it for her Linked In account, which is a professional networking website

that has inbox and messaging capabilities where messages from your professional contacts are routed to the email you sign up with, so in her case the Mindspring. We also found evidence that she used it for her Tumblr account. That is a social media website that also has inbox and messaging where over 22 percent of the content on this social website is pornographic and over 16 percent of the accounts created therein contain exclusively pornographic material.

So, here we have three examples that are not retail stores. These are user created, user driven and user controlled accounts, and social media accounts and file sharing accounts. It's not a spam account. Defendant's counsel has had plenty of time to ascertain how she used various email addresses and which ones she used, but we don't have that information.

Throughout the process there are still some basic and fundamental questions that have not been answered. What email account did she use in 1999, in 2000, and 2001? Are they still active? Are they archived somewhere? What communications does she have in her social media accounts? What documents and files does she have in Dropbox? The fact that we don't have answers to these questions 12 months into this litigation is troubling. Withholding information of these documents is contrary to our obligations, and it's contrary to this Court's order. If you will note, your Honor, nowhere in the response

brief does it say, oh, I didn't have an email account during these years. It's a vague statement suggesting she has something that's unavailable to her on Epstein's private server.

THE COURT: Thank you.

MR. PAGLIUCA: Your Honor, so first so the record is clear Ms. Maxwell has never been asked the question please identify all of your email accounts for these years. There has never been an interrogatory to that request. There has never been a request in a deposition like that. And so this motion practice is now seemingly turning into some sort of grand jury query here.

We produced, your Honor, all of the responsive emails, and we spent many hours and thousands of dollars looking for these things. It is mind-boggling to me, frankly, that I'm arguing about this because we have searched every device that she has, it's been searched, and there are no responsive emails that we have not produced. I don't know what else to say other than we did it, and we don't have anything to produce to you. That's number one.

THE COURT: Well, what you are in effect saying to me, I think, is that you have answered the inquiry as to what accounts she has because you have searched the computers. So am I wrong?

MR. PAGLIUCA: Well, there's this argument that she

must have had another account, and she has never said whether she does or she doesn't that I don't know how to address, quite frankly, and that relates back to the fact that nobody ever asked her did you have this account or did you have that account.

I can tell you what we did, and I think that answers the question, but what we did was, we collected the devices, we had them forensically searched. This is a long and involved process because, first of all, it was done once and that wasn't good enough. And then it was done again with a giant set of search terms which apparently wasn't good enough. And then it was done a third time with more expansive search terms. The third time resulted in the production of thousands of pages because there were words in there like "passport" and so on Ms. Maxwell's Terra Mar email, for example, every single email says "passport to the ocean" which is one of her catch phrases. I had to read all of those, thousands of these pages because the word passport was in there. So what I'm telling you is all of these things have been searched and everything that is responsive has been produced.

The Mindspring account, first of all, I take exception to what Ms. Schultz just said to the Court about somehow this is used pornographically, whatever she said. This is new information to me, which leads back to another point that is problematic on this motion. They've never conferred about any

of this. If somebody said to me, oh, we found X, Y and Z, go look at it. I would go look at it and be concerned about it, but nobody has ever given me that information, and they tell it to you here without me having any opportunity to look into it and rebut it because I believe that I certainly will be able to because I believe what they're telling you is not true, period.

THE COURT: OK. The motion to compel additional data is denied at this time. The parties will meet and confer. After that meet and confer, you can then advise me of any issues that remain.

MS. SCHULTZ: Your Honor, can I serve an interrogatory asking for the email --

THE COURT: I'm sorry?

MS. SCHULTZ: I'd like to serve an interrogatory asking for what email addresses were used.

MR PAGLIUCA: And I object, your Honor.

MS. SCHULTZ: Discovery is closed. So while we're in front of you, I'm asking for permission to serve that because I don't know how to get --

THE COURT: Well, that where are we? Actually, correct me if I'm wrong, fact discovery is closed?

MR. PAGLIUCA: Yes, for months now.

THE COURT: And if we open it up for an interrogatory here, an interrogatory there -- I think we are stuck with whatever the record is at the moment. So you can meet and

confer on this Mindsprung or spring or whatever and see where you come out. And I would be pleased to hear you again if it is necessary.

MR. PAGLIUCA: Happy to do that, your Honor.

MS. SCHULTZ: Thank you, your Honor.

MR. WEINBERG: Judge, since this matter is under seal, may I send the supplemental letter regarding the Fifth Amendment waiver issue?

THE COURT: Sure, of course.

MR. CASSELL: And I --

THE COURT: Yes, you may respond.

(Adjourned)

United States District Court
Southern District of New York

Virginia L. Giuffre,

Plaintiff,

Case No.: 15-cv-07433-RWS

v.

Ghislaine Maxwell,

Defendant.
_____/

PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO COMPEL ALL WORK PRODUCT AND ATTORNEY-CLIENT COMMUNICATIONS WITH PHILIP BARDEN

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Rules

Other Authorities

Plaintiff, Virginia Giuffre, hereby files this Reply in Support of her Motion to Compel Work Product and Attorney Client Communications with Philip Barden and states as follows.

PRELIMINARY STATEMENT

Defendant does not seriously contest that her attorney, Philip Barden, has explicitly and implicitly disclosed communications with her. Instead, she argues that "absent a client's consent or waiver, the publication of confidential communications by an attorney does not constitute a relinquishment of the privilege by the client." Defendant's Response to "Motion to Compel" Work Product and Attorney-Client Communications with Philip Barden at 8 (hereinafter "Response"). Defendant then maintains that because Barden stated in his Declaration that he was not authorized to waive any privilege, this bars the Court from finding any waiver of attorney-client privilege.

But Defendant cannot have her cake and eat it too. She has placed Barden's declaration into evidence in this case in support of her pending-summary judgment motion. It is thus not Barden who has waived attorney-client privilege in his declaration, but it is Defendant herself, acting through her attorneys in this very case, who waived privilege.

Defendant's publication of Barden's Declaration reveals communications that would otherwise be protected by the attorney-client privilege. For example, consider the following statements found in Barden's Declaration (emphases added):

- In liaison with Mr. Gow *and my client,* on January 2, 2015, I prepared a further statement denying the allegations, and I instructed Mr. Gow to transmit it via email to members of the British media who had made inquiry about plaintiff's allegations about Ms. Maxwell. Schultz Decl., Exh. 2, Barden Declaration, at 2 ¶ 10;

- I did not ask *Ms. Maxwell* to respond point by point to Ms. Giuffre's factual allegations in the CVRA joinder motion. What we needed to do was issue an immediate denial and that necessarily had to be short and to the point. *Id.* at 3 ¶ 13;

- In this sense, the statement was very much intended as a cease and desist letter to the media-recipients, letting the media-recipients understand the seriousness *with which Ms. Maxwell* considered the publication of plaintiff's obviously false allegations and the legal indefensibility of their own conduct. *Id.* at 4 ¶ 17;

- Consistent with those two purposes, Mr. Gow's emails prefaced the statement with the following language: "Please find attached a *quotable statement on behalf of Ms. Maxwell"* (italics supplied). The statement was intended to be a single, one-time-only, comprehensive response—quoted in full, if it was to be used—to plaintiff's December 30, 2014, allegations that would give the media *Ms. Maxwell's* response. *Id.* at 5 ¶ 19;

- I directed that the statement indicate *Ms. Maxwell "strongly denie[d] the allegations* of an unsavoury nature," declare the allegations to be false, give the press-recipients notice that the publications of the allegations "are defamatory," and inform them that *Ms. Maxwell was "reserv[ing] her right to seek redress*." *Id.* at 7 ¶ 30.

Lest there be any doubt as to the source of this information, Barden specifically added that the source was "entirely" his client – the Defendant: "The content of the statement *was entirely based on information I acquired in connection with my role as counsel for Ms. Maxwell.*" *Id.* at 7 ¶ 30.

Defendant then doubled down on the waiver by relying very specifically on these communications in her (currently-pending) summary judgment motion. Here again, some highlight will serve to illustrate the point (internal citations to Barden Declaration omitted and emphasis added):

- Consistent with Mr. Barden's purposes for the statement, Mr. Gow's emails prefaced the statement with the following language: "Please find attached a *quotable statement* **on behalf of Ms. Maxwell**" (emphasis supplied). Summary Judgment Motion at 25;

- After plaintiff filed the CVRA motion, some thirty reporters contacted Ms. Maxwell's press representative, Mr. Gow, for Ms. Maxwell's response. **As Ms. Maxwell's lawyer**, Mr. Barden undertook that task. Relying on his knowledge of the 2011 articles publishing plaintiff's allegations and ***drawing on his experience and training as a lawyer, Mr. Barden crafted a response with the goal of*** discrediting plaintiff and what the statement called plaintiff's new" allegations. Summary Judgment Motion at 27;

- By January 2015 **Ms. Maxwell had retained** British Solicitor Philip Barden to represent and advise her in connection with plaintiff's publication in the British press of

salacious, defamatory allegations of criminal sexual abuse during the period 1999-2002. Summary Judgment Motion at 35;

- Second, Mr. Barden intended the January 2015 statement to be "a shot across the bow" of the media, which he believed had been unduly eager to publish plaintiff's allegations without conducting any inquiry of their own. This was the purpose of repeatedly stating that plaintiff's allegations were "defamatory." The statement was intended as a cease and desist letter to the media-recipients, letting the media-recipients understand the **seriousness with which Ms. Maxwell considered the publication of plaintiff's obviously false allegations** and the legal indefensibility of their own conduct. Summary Judgment Motion at 35-36; and

- At the time Mr. Barden directed the issuance of the statement, he was contemplating litigation against the media-recipients as an additional means to mitigate and prevent harm to Ms. Maxwell. Toward this end, he prepared the statement so **that it made clear Ms. Maxwell "strongly denie[d] the allegations of an unsavoury nature**," declared the republications of the allegations to be false, gave the press-recipients notice that the republications of the allegations "are defamatory," and **informed them that Ms. Maxwell was "reserv[ing] her right to seek redress."** Summary Judgment Motion at 35-36.

Based on Defendant's disclosures, both in the Barden Declaration and in Defendant's Summary Judgment papers, Ms. Giuffre is entitled to have the Court compel production of communications and documents related to these disclosures. Some of those documents are specifically identified in the privilege logs prepared by Defendant, while Defendant has withheld other documents and communications. Defendant provides no good reason why she should not be compelled to produce that information, along with her attorney for a deposition. Accordingly, the motion to compel should be granted.

ARGUMENT

I. DEFENDANT HAS FAILED TO PRODUCE RESPONSIVE DISCOVERY MATERIALS BASED ON ASSERTIONS OF ATTORNEY-CLIENT PRIVILEGE.

In her motion, Ms. Giuffre explained that she sought production of communications between Defendant and her attorney, Philip Barden, which "Defendant listed on her privilege log." Plaintiff's Motion to Compel All Work Product and Attorney Client Communications with Philip Barden at 2 (hereinafter "Mot."). Ms. Giuffre also sought deposition on these

communications and related subjects. *Id.* Ms. Giuffre also attached, as Exhibit 1 to her motion, a list of documents over which Defendant had waived privilege. *Id.* & Ex. 1.

In response, Defendant initially makes the implausible argument that no communications by Barden have been withheld based on any assertion of attorney-client privilege or work product protection. To the contrary, Defendant boldly asserts the position that there is "no unsatisfied request for production" that would warrant granting Ms. Giuffre's motion to compel. Response at 7. This is a remarkable argument, since Defendant has obviously withheld production documents identified based on attorney-client privilege, as Exhibit 1 to the Schultz Declaration to Ms. Giuffre's motion clearly establishes. Presumably the reason Defendant has raised privilege with Barden is that documents exist that are responsive to Ms. Giuffre's request for production.

Numerous discovery requests in this case cover Barden documents. More obviously, Ms. Giuffre asked for all documents concerning statements concerning Ms. Giuffre made on behalf of Defendant by "any . . . individual":

> Produce all documents concerning any statement made by You or on Your behalf to the press or any other group or individual, including draft statements, concerning Ms. Giuffre, by You, Ross Gow, or any other individual, from 2005 to the present, including the dates of any publications, and if published online, the Uniform Resource Identifier (URL) address.[1]

In addition, Ms. Giuffre asked for all documents concerning Ms. Giuffre distributed by Defendant or her "agents":

> Produce all documents concerning which individuals or entities You or Your agents distributed or sent any statements concerning Ms. Giuffre referenced in Request No. 18 made by You or on Your behalf.[2]

[1] Request No. 17 form Plaintiff's Second Request for Production.
[2] Request No. 18 from Plaintiff's Second Request for Production.

There are other requests to which Barden documents are responsive, including:

- **Document Request No. 17**: All documents relating to communications with you and Ross Gow from 2005–Present;

- **Document Request No. 36**: All documents you rely upon to establish that (a) Giuffre's sworn allegations "against Ghislaine Maxwell are untrue."; (b) the allegations have been "shown to be untrue."; and (c) Giuffre's "claims are obvious lies.";

- **Document Request No. 8:** Produce any documents concerning any of Your, or Your attorneys or agent's, communications with Jeffrey Epstein's attorneys or agents from 1999 to the present relating to the issue of sexual abuse of females, or any documents concerning any of Your, Your attorneys or agent's, communications with Jeffrey Epstein's attorneys or agents from 1999 to the present relating to the recruitment of any female under the age of 18 for any purpose, including socializing or performing any type of work or services; and

- **Document Request No. 12:** Produce all documents concerning Virginia Giuffre (a/k/a Virginia Roberts), whether or not they reference her by name. This request includes, but is not limited to, all communications, diaries, journals, calendars, blog posts (whether published or not), notes (handwritten or not), memoranda, mobile phone agreements, wire transfer receipts, or any other document that concerns Plaintiff in any way, whether or not they reference her by name.

Defendant is clearly withholding Barden documents that are responsive to Ms. Giuffre's discovery requests.

II. MS. GIUFFRE HAS NOT FAILED TO CONFER.

During discovery, rather than contend that there were no Barden documents responsive to these requests, Defendant asserted attorney-client privilege. Thus, this is not a case where a party has simply failed to make discovery – something that a simple conferral might resolve. *Cf.* Fed. R. Civ. P. 37(a)(1) (requiring certification of conferral with a party "failing to make disclosure"). Instead, this is a case in which Defendant has made a disclosure – i.e., a privilege log asserting privilege over various documents. While that assertion may have been appropriate earlier in this case, when during summary judgment briefing and argument Defendant reversed course and made Barden's legal strategy, plans, advice, mental impressions, and work product the keystone

of her argument, things changed. Ms. Giuffre is entitled to present those changed circumstances to the Court.

In an effort to deflect attention from the merits of attorney-client issues, Defendant raises the procedural argument that somehow Ms. Giuffre has failed to provide an appropriate certificate of conferral. Resp. at 6. Yet, as Defendant concedes, Ms. Giuffre provided a certificate, explaining that she raised this very issue during the Court's recent oral argument on the summary judgment motion. *See* Resp. at 6 (citing Ms. Giuffre's "Certificate of Conferral" found in Mot. at 12). Of course, Defendant took the position at that time that no further production was required – a position that she continues to maintain in her current briefing. In claiming that Ms. Giuffre has somehow failed to confer, Defendant does not suggest that any conferral would have narrowed the disputed issues before the Court. Ms. Giuffre believes Defendant has waived privilege; Defendant simply disagrees.

Defendant also cites provisions in Fed. R. Civ. P. 37(a)(3) and Local Civil Rule 37.1 concerning identifying the discovery materials in dispute. Defendant claims that the documents at issue in this motion to compel have not been identified with sufficient precision. Defendant, however, fails to address Exhibit 1 to the Schultz Declaration to Ms. Giuffre's motion – which attached three privilege logs from Defendant, all of which specifically identified by Bates number Barden documents which Defendant had chosen to withhold based on attorney-client issues. It is hard to understand how Ms. Giuffre's motion could have been more precise with regard to these communications. And, as discussed below, there appear to be a number of additional communications with Barden that Defendant has deliberately failed to include on her privilege log. Here again, those communications has been specifically identified.

III. DEFENDANT HAS WAIVED WORK PRODUCT PROTECTIONS AND ATTORNEY-CLIENT PRIVILEGE OVER HER COMMUNICATIONS WITH BARDEN.

Now that Defendant has put forth Barden's legal strategy plans, advice, and work product as her primary defense in this action, case law dictates that not only has she waived work product doctrine protection over Barden's work product documents, but she has also waived attorney-client privilege. Accordingly, the Court should compel Defendant to produce communications with Barden and require him to sit for deposition concerning those communications.

A. Defendant Admitted that She Waived Work Product Privilege with Barden.

Defendant's response brief is silent on the fact that Defendant admitted to this Court that her "Barden Declaration" constitutes a waiver of the work product doctrine. As this Court will recall from Defendant's reply in support of her motion for summary judgment, Defendant directly acknowledges work product waiver:

> His intent and purposes are by definition *not* attorney-client communications and do not implicate such communications; they are attorney work product, which he is free to disclose.

Defendant's Reply in Support of Motion for Summary Judgment at 11. Accordingly, Defendant has admitted that she waived her work product privilege with regard to Barden's alleged legal strategy, "intent," and the like. The documents Barden created and considered (including drafts) should be produced, because their protection has been waived, as Defendant admits.

Until Defendant filed her motion for summary judgment along with the Barden affidavit, Barden's work product and legal advice were protected from disclosure. However, in her attorney's efforts to fall on the proverbial sword and attempt to convince the court that it was Defendant's attorney, not Defendant, who issued the defamatory press release, (a press release that she explicitly approved and directed her press agent to publish), Barden set forth his legal

strategy. His various "plans" and his various "intents" are his legal strategy. And, case law clearly recognizes *legal strategy is work product* – therefore, it is waived. *See Kleiman ex rel. Kleiman v. Jay Peak, Inc*., 2012 WL 2498872, at *2 (D. Vt. 2012) ("Opinion work product includes such items as an attorney's legal strategy") (internal citations omitted); *In re Refco Inc. Securities Litigation*, 2012 WL 678139, at *3 (S.D.N.Y. 2012) ("plaintiffs cannot invoke the work product doctrine, as plaintiffs' attorneys shared their legal strategy with a non-party"). *Cf. S.E.C. v. Gupta*, 281 F.R.D. 169, 173 (S.D.N.Y. 2012) ("When an attorney discloses work product . . . [and] there has been a deliberate, affirmative and selective use of work product that waives the privilege. Therefore, [the waiving party] ***waived any work product protection they had over legal strategy*** . . .") (emphasis added).

Barden's Declaration revealed his intentions on how he was to render legal representation of Defendant. In short, he revealed his legal strategy. Legal strategy is work product, as defined both by logic and by the cases above. Accordingly, when a party reveals legal strategy, she has waived privilege under the work product doctrine. And, a lengthy "Declaration," detailing Barden's legal strategy, put forth in a last ditch attempt to defeat the claim against Defendant, most certainly waives any work product protections that may have applied. Accordingly, this Court should direct Defendant to produce all work product related to Barden's representation of her and direct Barden to sit for a deposition in New York.

B. Defendant Also Waived Attorney-Client Privilege.

1. <u>Defendant Waived Attorney-Client Privilege by Placing Communications with Her Attorney at Issue.</u>

Earlier in this case, Defendant claimed attorney-client privilege over her email communications with Barden. And earlier in this case, this Court upheld that assertion of privilege. That attorney-client privilege only applies to attorney-client communications

"primarily or predominately of a legal character." *Guiffre v. Maxwell*, 2016 WL 1756918, at *5 (S.D.N.Y. 2016) (Sweet, J.). Accordingly, it stands to reason that Barden gave legal advice to Defendant regarding matters that are responsive to Plaintiff's requests for production because this Court allowed Defendant to withhold such responsive documents from production.

Now Defendant has waived that attorney-client protection. In her opening motion, Ms. Giuffre gave one illustration of that waiver. In his declaration, Ms. Barden explains specifically what he communicated to Defendant: "I did not ask Ms. Maxwell to respond point by point to Ms. Giuffre's factual allegations in the CVRA joinder motion. What we needed to do was issue an immediate denial and that necessarily had to be short and to the point." Resp. at 8 (citing DE 542-7, Ex. K ¶ 13.

Defendant first argues that, in providing this one illustration, Ms. Giuffre's argument was somehow "disingenuous[]" because she did not take the time to specifically list other illustrations. Resp. at 8. Given Defendant's suggestion that no other illustrations exist, the Court should be aware of the following other, parallel examples of waiver, some of which are recounted above, in an individualized, bullet point listing from both the Barden Declaration and the later Summary Judgment Motion.

Defendant also argues that such examples cannot serve to waive Defendant's privilege. But an attorney has implied authority to assert or waive the privilege on the client's behalf in the course of legal representation. *See* ABA Model Rules of Professional Conduct Rule 1.6(a) (lawyer has authority to reveal confidential information when the disclosure is "impliedly authorized in order to carry out the representation"). If the client fails to object to disclosure of privilege information by the attorney, the client impliedly consents. *See von Bulow v. von Bulow*, 114 F.R.D. 71, 76 (S.D.N.Y. 1987) (privilege waived where client encouraged lawyer to write a

book about legal representation and reveal other confidences on television program), *modified*, 828 F.2d 94 (2d Cir. 1987). Here, the communications are being revealed not accidentally but rather as part of a deliberate legal strategy on behalf of the Defendant in an effort to obtain summary judgment. It is Defendant's attorneys in this very case who have placed the Barden Declaration into evidence and later moved for summary judgment. And, of course, Defendant has not made any effort to withdraw that Declaration, even after the attorney-client waiver issue was raised at oral argument during the summary judgment hearing and later through the filing of this motion.

In these circumstances, the privilege has obviously been waived. *See In re Pioneer Hi-Bred Intl. Inc.*, 238 F.3d 1370, 1376 (Fed. Cir. 2001) (counsel for party may be deposed by opposing party as fact witness without waiving attorney-client privilege, but privilege is waived if counsel discloses privileged matters); *Leybold-Heraeus Technologies, Inc. v. Midwest Instrument Co., Inc.*, 118 F.R.D. 609, 614 (E.D. Wis. 1987) (where attorney took stand, privilege waived for information necessary to cross-examine attorney).

To be sure, parts of Barden's Declaration appear to have been cleverly written in an attempt obscure the fact that he is revealing attorney-client communications. But just as using the words "plan" and "intent" as a coy proxy for the phrase "legal strategy" does not render that "plan" or "intent" something other than legal strategy, swapping the word "intended" for "advised" and does not change the fact that Barden's "intentions" were rendered as legal advice to his client. To the extent that any of Barden's communications with Defendant revealed his legal strategy work product (which the Court can easily determine based on its previous *in camera review*), the disclosures in the Barden Declaration waive the privilege over those

communications as well. Moreover, "legal strategies [also] fall within the attorney-client privilege." *Norton v. Town of Islip,* 2015 WL 5542543, at *1 (E.D.N.Y. 2015).

Perhaps recognizing that his declaration was, in fact, waiving attorney-client, privilege, Barden included in his declaration the statement: "I am not authorized to and do not waive Ms. Maxwell's attorney-client privilege." Schultz Dec. Exhibit 1, Barden Declaration, at 1 ¶ 3. But whatever the effect of this statement at the time Barden signed his declaration, it clearly had no effect when Defendant, through her attorneys in this case, chose to place the Declaration into evidence. At that time, disclosure of confidential communications, and thus waiver, took place. *See, e.g.*, *In re Subpoena Duces Tecum*, 99 F.R.D. 582, 584-86 (D.C. 1983) (disclosing party waived privilege even though it stated in transmittal letter to SEC that it did not waive privilege by submission of information), *aff'd*, 738 F.2d 1367, 1370 (D.C. Cir. 1984).

As Defendant makes no claim that Barden's legal strategies were not communicated to her in his rendering of legal advice to her, she has waived privilege over those communications. Therefore, because Defendant has revealed her attorney's legal strategies, plans, and intentions – strategies he communicated to her in giving her legal advice – she has waived attorney-client privilege. Accordingly, the Court should require Defendant to produce all of her communications with Barden and direct Defendant to have Barden sit for a deposition in New York.

As articulated in the moving brief, it is well settled that waiver may be imposed when the privilege-holder has attempted to use the privilege as both "sword" and "shield." *Granite Partners, L.P. v. Bear Stearns & Co. Inc.*, 184 F.R.D. 49, 54 (S.D.N.Y. 1999) (Sweet, J.); *see also Coleco Indus., Inc. v. Universal City Studios, Inc.*, 110 F.R.D. 688, 691 (S.D.N.Y. 1986) (Sweet, J.). Here, Defendant has made her attorney's advice and legal strategies the keystone of her motion for summary judgment. Her decision ends any privilege that previously protected her

communications with Barden. Indeed, when a party voluntarily waives its work product privilege in an attempt to use her attorney's work product to her advantage, the party must also produce all related documents, including drafts, e-mail communications relating to the work product, documents considered relating to the work product and any other materials created, received, used or considered relating in any way to Ms. Giuffre or this litigation, which is the very subject-matter of the disclosed work-product. *See, e.g.*, *Hickman v. Taylor*, 329 U.S. 495, 511 (1947). The Court should accordingly order disclosure of all related communications here.

2. Defendant Also Waived Attorney Client Privilege by Willfully Failing to Include Communications on Her Privilege Log, therefore Forfeiting Any Potential Privilege.

Defendant also waived her attorney-client privilege for a separate, independent reason: she failed to properly log communications on her privilege log.

A bit of factual background is necessary on this point. In both her earlier (rejected) Motion to Dismiss and her pending Motion for Summary Judgment, Defendant asserted that the qualified pre-litigation privilege shields her defamatory press release from liability. Specifically, Defendant has argued that because she was contemplating an (unspecified and never-filed) lawsuit involving the British Press, she somehow had a "green light" to make whatever defamatory statements she wanted about Ms. Giuffre at the time she issued her press release, i.e., on January 3, 2015.

Of course, if Defendant actually contemplated litigation prior to and on January 3, 2015, *at the time she issued the defamatory press release*, and if Barden was actually as involved in that process as Defendant claims, where are the communications with Barden concerning this contemplated lawsuit that pre-date the issuance of the press release? Put another way, if there was a good-faith anticipated litigation (as the law requires for this defense to apply), and Defendant was working with Barden to issue a statement in relation to that good-faith anticipated

litigation, why are there no communications among Defendant and Barden until ***after*** Defendant issued the statement? They are certainly not in her privilege log.[3]

The Court should be aware that, in all three of Defendant's various iterations of her privilege log, there is no entry for ***any*** communication with Barden prior to January 10, 2015 – a week ***after*** Defendant issued the defamatory press release. *See* Composite Exhibit 2, Defendant's three privilege logs.

United States District Court
For The Southern District of New York

Giuffre v. Maxwell
15-cv-07433-RWS
Ghislaine Maxwell's Privilege Log Amended as of May 16, 2016

*****Per Local Rule 26.2, the following privileges are asserted pursuant to British law, Colorado law and NY law.**

Log ID	DATE	DOC. TYPE	BATES #	FROM	TO	CC	RELATIONSHIP OF PARTIES	SUBJECT MATTER	PRIVILEGE
1.	2011.03.15	E-Mails	1000-1013	Ghislaine Maxwell	Brett Jaffe, Esq.		Attorney / Client	Communication re: legal advice	Attorney-Client
2.	2011.03.15	E-Mails	1014-1019	Brett Jaffe, Esq.	Ghislaine Maxwell		Attorney / Client	Communication re: legal advice	Attorney-Client
3.	2015.01.02	E-Mails	1020-1026	Ross Gow	Ghislaine Maxwell		Attorney Agent / Client	Communication re: legal advice	Attorney-Client
4.	2015.01.02	E-Mail	1024-1026	Ghislaine Maxwell	Ross Gow		Attorney Agent / Client	Communication re: legal advice	Attorney-Client
5.	2015.01.02	E-Mail	1027-1028	Ross Gow	Ghislaine Maxwell	Brian Basham	Attorney Agent / Client	Communication re: legal advice	Attorney-Client
6.	2015.01.06	E-Mail	1029	Ghislaine Maxwell	Jeffrey Epstein		Common Interest	Communication re: legal advice	Common Interest
7.	2015.01.06	E-Mail	1030-1043	Ghislaine Maxwell	Jeffrey Epstein, Alan Dershowitz, Esq.		Attorney / Client	Communication re: legal advice	Common Interest
8.	2015.01.10	E-Mail	1044	Ghislaine Maxwell	Philip Barden, Esq., Ross Gow		Attorney / Client	Communication re: legal advice	Attorney-Client
9.	2015.01.10	E-Mail	1045-1051	Ghislaine Maxwell	Philip Barden, Esq.		Client / Attorney	Communication re: legal advice	Attorney-Client

If Defendant was actually contemplating litigation with Barden in advance of issuing the January 3, 2015 press release (as she repeatedly claims), then there must be email

[3] As the Court is aware, this is not the first time that Ms. Giuffre has found evidence of documents that Defendant willfully withheld in violation of her discovery obligations. There is evidence that Defendant failed to produce documents from email accounts she used during the relevant period, and there are (important, responsive) documents, produced by a third party (Gow), that are in Defendant's possession that she both willfully failed to produce and denied the existence of at her deposition. The pre-January 10, 2015 emails she had with Barden to discuss her purported anticipation litigation are not produced and not logged, but this time, the evidence of their existence comes from Defendant's own argument about the pre-litigation privilege applying to her January 3, 2015 press release. This Court has already ordered one adverse inference jury instruction for Defendant's willful discovery non-compliance, and, at this point, Defendant's continued willful discovery failures warrant a second adverse inference jury instruction, pursuant to the renewed motion filed by Ms. Giuffre on March 3, 2017.

communication that pre-date Defendant's issuance of the statement – yet these communications never appeared on any of Defendant's privilege logs.

Either Defendant wrongfully failed to log those communications in an attempt to withhold them from this litigation (thus waiving any privilege over them), or all the claims she and Barden make about any pre-litigation privilege are untrue. At any rate, it appears that Defendant has withheld email communications with Barden from before January 10, 2015 – withheld even from her privilege log.

It is well settled law that when a party fails to log purportedly privileged communications, that party waives any privilege. *See In re Air Crash at Belle Harbor, New York on November 12, 2001*, 241 F.R.D. 202, 204 (S.D.N.Y. 2007) (Sweet, J.). ("Even if attorney-client and work-product privileges had been established, th***e privileges would have been waived due to Golan's failure to submit a privilege log*** in accordance with the requirements of Local Rule") (emphasis added); *Strougo v. BEA Associates*, 199 F.R.D. 515, 521 (S.D.N.Y. 2001) (Sweet, J.) ("The failure to provide a timely privilege log or to describe the documents in conformity with the Local Rules may result in a waiver of the privilege. *See, e.g.*, Fed. R. Civ. P. 26(b)(5), Advisory Committee Notes ("To withhold materials without such notice is contrary to the rule ... and may be viewed as a waiver of the privilege or protection.")"); *Liz Claiborne, Inc. v. Mademoiselle Knitwear, Inc.*, 1996 WL 668862, at *4 (S.D.N.Y. 1996) (Sweet, J.), citing *Baron Philippe de Rothschild v. Paramount Distillers, Inc.*, No. 87 Civ. 6820, 1995 WL 86476 at *1 (S.D.N.Y. March 1, 1995) (potential privilege waived by failure to produce privilege log describing allegedly privileged documents).

Accordingly, Defendant has waived attorney-client privilege by failing to log her communications with Barden before January 10, 2015.

CONCLUSION

Defendant has used her attorney's legal strategy as her primary defense in this case; accordingly, she has waived all privilege that may otherwise attach to communications with Barden and his work product. Additionally, Defendant has failed to log all of her communications with Barden, which also triggers waiver of any privilege over the email communications she failed to log. The Court should direct Defendant to produce all of Barden's communications and work product (as defined in the moving brief), as such documents are responsive to multiple discovery requests. In addition, the Court should direct Defendant to have Barden sit for deposition in New York to answer questions about these communications.

Dated: March 7, 2017

Respectfully Submitted,

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Meredith Schultz

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of March, 2017, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on the individuals identified below via transmission of Notices of Electronic Filing generated by CM/ECF.

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/s/ Meredith Schultz
Meredith Schultz, Esq.

United States District Court
Southern District of New York

Virginia L. Giuffre,

Plaintiff, Case No.: 15-cv-07433-RWS

v.

Ghislaine Maxwell,

Defendant.

_____/

DECLARATION OF MEREDITH SCHULTZ IN SUPPORT OF PLAINTIFF'S REPLY MOTION TO COMPEL ALL WORK PRODUCT AND ATTORNEY CLIENT COMMUNICATIONS WITH PHILIP BARDEN

I, Meredith Schultz, declare that the below is true and correct to the best of my knowledge as follows:

1. I am a Counsel with the law firm of Boies, Schiller & Flexner LLP and duly licensed to practice in Florida and before this Court pursuant to this Court's Order granting my Application to Appear Pro Hac Vice.

2. I respectfully submit this Declaration in Support of Plaintiff's Reply to Motion to Compel Communication All Work Product and Attorney Client Communications with Philip Barden.

3. Attached hereto as Sealed Exhibit 1 is a true and correct copy of January 6, 2017 Declaration of Philip Barden.

4. Attached hereto as Sealed Composite Exhibit 2 Defendant's February 9, 2016; May 16, 2016; and August 1, 2016 Privilege Log.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Meredith Schultz_____
Meredith Schultz, Esq.

Dated: March 7, 2017.

Respectfully Submitted,

BOIES, SCHILLER & FLEXNER LLP

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I HEREBY CERTIFY that on the 7th day of March, 2017, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I also certify that the foregoing document is being served to all parties of record via transmission of the Electronic Court Filing System generated by CM/ECF.

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/s/ Meredith Schultz
Meredith Schultz

EXHIBIT 1

(FILE UNDER SEAL)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

----------X

15-cv-07433-RWS

Declaration of Philip Barden

I, Philip Barden, declare as follows:

1. I am a Solicitor of the Senior Courts of England & Wales based in London, England.

2. I am submitting this Declaration in support of Ghislaine Maxwell's motion for summary judgment in this action.

3. I am not authorised to and do not waive Ms. Maxwell's attorney-client privilege.

4. I have represented Ms. Maxwell since 2011 regarding the allegations made by Plaintiff Virginia Giuffre and as published in the United Kingdom. I continue to be retained in this regard. I am familiar generally with the subject matter of this action.

5. I first represented Ms. Maxwell in this matter over the weekend of 5th and 6th March 2011, about the time when various UK national newspapers, in hard copy and on line, published numerous and provocative allegations made by the Plaintiff Virginia Giuffre against Ms. Maxwell. The articles by Sharon Churcher were among those published in this time frame.

6. I instructed British press agent Ross Gow to assist me in representing Ms. Maxwell.

7. I caused to be prepared a statement to respond to the articles that appeared in the British Press over the weekend—March 5 and 6, 2011, and thereafter. I directed Mr. Gow to distribute the statements to various media outlets that had published articles.

8. On December 30, 2014, Ms. Giuffre made numerous salacious and improper allegations against Ms. Maxwell in a joinder motion publicly filed in a civil case involving Jeffrey Epstein. Shortly afterward, the British media gained access to the motion and began inquiring about Ms. Maxwell's response.

9. I continued to represent Ms. Maxwell at that time and I coordinated the response to the media. I again instructed Mr. Gow to assist me.

10. In liaison with Mr. Gow and my client, on January 2, 2015, I prepared a further statement denying the allegations, and I instructed Mr. Gow to transmit it via email to members of the British media who had made inquiry about plaintiff's allegations about Ms. Maxwell. Attached as Exhibit A1 is an email containing a true and correct copy of this statement. The statement was issued on my authority. Although it is possible others suggested or contributed content, I prepared the vast majority of the statement and ultimately approved and adopted all of the statement as my work.

11. As is evident from the timing and the typographical errors in the statement, I prepared the statement in haste. I was not in the office on 2nd January 2015 as it was the Friday immediately after New Years day which is a public holiday. Most people took 2nd January off and many business closed that day. I don't now recall where I was that day but I was hard to reach and that indicates I was out with my family. I therefore would have prepared the statement in a hurry. I recall that I wanted to get a statement out as a matter of urgency.

12. I recall that immediately after Ms. Giuffre's motion was filed, media representatives began contacting Mr. Gow and requesting Ms. Maxwell's response to Ms. Giuffre's allegations

of criminal and other misconduct by Ms. Maxwell. I believed an immediate response was imperative, even though this was happening in the midst of the holidays in the United Kingdom. My communications with Mr. Gow and with Ms. Maxwell were sporadic, delayed and hurried because of my and their own holiday schedules. I worked while on vacation and on Friday, January 2, 2015, to ensure that the statement was issued as soon as possible after receiving the media inquiries.

13. I did not ask Ms. Maxwell to respond point by point to Ms. Giuffre's factual allegations in the CVRA joinder motion. What we needed to do was issue an immediate denial and that necessarily had to be short and to the point. It should have been obvious to the media that Ms. Giuffre's new and significantly more salacious allegations had no credibility because they differed so substantially from her previous allegations, when she had the opportunity and incentive to disclose all relevant facts about being a victim of alleged sexual abuse and sex trafficking at the hands of the rich and powerful. I prepared the January 2015 statement based on my knowledge of Ms. Giuffre's past statements and her most recent statements in the joinder motion, and made the point to the media-recipients that she and her new statements, which differed so substantially from her former ones, were not credible—specifically, that the new allegations were patently false—i.e., "obvious lies."

14. By way of example I recall that prior to the December 2014 filing of the joinder motion and the subsequent press reports that Ms. Guiffre clearly stated she had not had sex with Prince Andrew. Yet in her joinder motion she claimed she did have sex with Prince Andrew and that the sex occurred in what can only be described as a very small bathtub, too small for a man of Prince Andrew's size to enjoy a bath in let alone sex. So as of December 2014 it was clear Ms. Guiffre had made polar opposite statements. She was either lying when she said they did not have sex or when she said they did. I made the inescapable inference that she is a liar, as clearly

she is, since both statements cannot as a matter of fact be true. When someone says she did not have sex and then says she did, in other words, there is an obvious lie.

15. I did not intend the January 2015 statement as a traditional press release solely to disseminate information to the media. This is why I intentionally did not request that Mr. Gow or any other public relations specialist prepare or participate in preparing the statement. Instead, Mr. Gow served as my conduit to the media representatives who had requested a response to the joinder motion allegations and who I believed might republish those allegations.

16. My purpose in preparing and causing the statement to be disseminated to those media representatives was twofold. First, I wanted to mitigate the harm to Ms. Maxwell's reputation from the press's republication of plaintiff's false allegations. I believed these ends could be accomplished by suggesting to the media that, among other things, they should subject plaintiff's allegations to inquiry and scrutiny. For example, I noted that plaintiff's allegations changed dramatically over time, suggesting that they are "obvious lies" and therefore should not be "publicised as news."

17. Second, I intended the January 2015 statement to be "a shot across the bow" of the media, which I believed had been unduly eager to publish plaintiff's allegations without conducting any inquiry of their own. This was the purpose of repeatedly stating that plaintiff's allegations were "defamatory." In this sense, the statement was very much intended as a cease and desist letter to the media-recipients, letting the media-recipients understand the seriousness with which Ms. Maxwell considered the publication of plaintiff's obviously false allegations and the legal indefensibility of their own conduct.

18. It is important to understand that any story involving a member of the Royal Family, especially a senior member such as Prince Andrew, gains huge media attention in the UK and a story alleging he had a sex with the Plaintiff caused a feeding frenzy for the press. I wanted the

press to stop and think before publishing, to cease and desist, and that if they continued then they faced higher damages for ignoring my clear warning.

19. Consistent with those two purposes, Mr. Gow's emails prefaced the statement with the following language: "Please find attached a *quotable statement* on behalf of Ms Maxwell" (italics supplied). The statement was intended to be a single, one-time-only, comprehensive response—quoted in full, if it was to be used—to plaintiff's December 30, 2014, allegations that would give the media Ms. Maxwell's response. The purpose of the prefatory statement was to inform the media-recipients of this intent.

20. Selective and partial quotation and use of the statement would disserve my purposes. It was intended to address Plaintiff's behavior and allegations against Ms. Maxwell on a broad scale, that is to say, Plaintiff's history of making false allegations and innuendo to the media against Ms. Maxwell. This is why the statement references Plaintiff's "original allegations" and points out that her story "changes"—i.e. is embellished—over time including the allegations "now" that Professor Dershowitz allegedly had sexual relations with her. This is why I distinguished in the statement between Plaintiff's "original" allegations and her "new," joinder-motion allegations, which differed substantially from the original allegations. And this is why I wrote, "Each time the story is *re told* [sic] it *changes* with *new* salacious details about public figures and world leaders and *now* it is alleged by [Plaintiff] that Alan Derschowitz [sic] is involved in having sexual relations with her, which he denies." (Emphasis supplied.) Having established the dramatic difference between Plaintiff's two sets of allegations, which suggested she was fabricating more and more-salacious allegations as she had more time to manufacture them, I added the third paragraph: "[Ms. Giuffre's] claims are obvious lies and should be treated as such and not publicised as news, as they are defamatory." (Emphasis supplied.) I believed then, and believe now, that it was and remains a fair inference and conclusion that her claims

were and are "obvious lies." As noted, her claims not to have slept with Prince Andrew and to have slept with Prince Andrew are a classic example of an obvious lie. One or other account is on the face of it a lie.

21. As an example of her lack of credibility, the Plaintiff made allegations against Professor Dershowitz, which I understand she has now withdrawn. Professor Dershowitz has credibility because his story, insofar as I am familiar with it, has been consistent; Ms. Giuffre has no credibility because her story has shifted and changed.

22. Further the Plaintiff's account has become more salacious, for example, regarding Prince Andrew. The Plaintiff clearly has been seeking publicity for her story and it is clear to me that she understands retelling the same story doesn't feed the media and generate publicity and so each time she appears to create new allegations to generate media interest.

23. I understand the Plaintiff alleged in her Complaint in this action that the following statements are defamatory. She alleges it was defamatory in the first paragraph of the January 2015 statement to state that "the allegations made by [the Plaintiff] against [Ms.] Maxwell are untrue." For the reasons stated above, it was and is my considered and firm opinion that, in fact, her allegations are untrue. She alleges it was defamatory to state in the same paragraph that the "original allegations" have been "shown to be untrue." For the reasons stated above, it was and is my considered and firm opinion that, in fact, her allegations are untrue. Finally, she alleges that it was defamatory in the third paragraph to state that her claims are "obvious lies." For the reasons stated above, it was and is my considered and firm opinion that, in fact, her claims are obvious lies.

24. Both Mr. Gow and I understood that once the January 2015 statement was sent to the media-representatives, we had no ability to control whether or how they would use the statement and we made no effort to control whether or how they would use the statement.

25. It is my understanding that some of the media-recipients of the January 2015 statement did not publish any part of the statement. I am unaware of any media-recipient publishing the statement in full.

26. The issuance of the statement fully complied with my ethical obligations as a lawyer. Indeed it was duty in representing my client's interests to ensure that a denial was immediately issued. I would have been remiss if I had sat back and not issued a denial, and the press had published that Ms. Maxwell had not responded to enquiries and had not denied the new allegations; the public might have taken the silence as an admission there was some truth in the allegations.

27. The content of the statement was entirely based on information I acquired in connection with my role as counsel for Ms. Maxwell.

28. At the time I directed the issuance of the statement, I was contemplating litigation against the press-recipients as an additional means to mitigate and prevent harm to Ms. Maxwell. Whilst the limitation period for a pure defamation claim has now expired, claims are still being considered for example for publishing a deliberate falsehood, conspiracy to inure and other tortious acts.

29. In any such UK defamation, or other related, action Ms. Giuffre would be a defendant or a witness.

30. I directed that the statement indicate Ms. Maxwell "strongly denie[d] the allegations of an unsavoury nature," declare the allegations to be false, give the press-recipients notice that the publications of the allegations "are defamatory," and inform them that Ms. Maxwell was "reserv[ing] her right to seek redress."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6, 2017.

Philip Barden

COMPOSITE
EXHIBIT 2
(FILE UNDER SEAL)

United States District Court
For The Southern District of New York

Giuffre v. Maxwell
15-cv-07433-RWS

*****Per Local Rule 26.2, the following privileges are asserted pursuant to British law, Colorado law and NY law.**

DATE	DOC. TYPE	FROM	TO	CC	RELATIONSHIP OF PARTIES	SUBJECT MATTER	PRIVILEGE
2011.03.15	E-Mails	Ghislaine Maxwell	Brett Jaffe, Esq.		Attorney / Client	Communication re: legal advice	Attorney-Client
2011.03.15	E-Mails	Brett Jaffe, Esq.	Ghislaine Maxwell		Attorney / Client	Communication re: legal advice	Attorney-Client
2015.01.02	E-Mails	Ross Gow	Ghislaine Maxwell		Attorney Agent / Client	Communication re: legal advice	Attorney-Client
2015.01.02	E-Mail	Ghislaine Maxwell	Ross Gow		Attorney Agent / Client	Communication re: legal advice	Attorney-Client
2015.01.02	E-Mail	Ross Gow	Ghislaine Maxwell	Brian Basham	Attorney Agent / Client	Communication re: legal advice	Attorney-Client
2015.01.06	E-Mail	Ghislaine Maxwell	Jeffrey Epstein		Common Interest	Communication re: legal advice	Common Interest
2015.01.06	E-Mail	Ghislaine Maxwell	Jeffrey Epstein, Alan Dershowitz, Esq.		Attorney / Client	Communication re: legal advice	Common Interest
2015.01.10	E-Mail	Ghislaine Maxwell	Philip Barden, Esq., Ross Gow		Attorney / Client	Communication re: legal advice	Attorney-Client
2015.01.10	E-Mail	Ghislaine Maxwell	Philip Barden, Esq.		Client / Attorney	Communication re: legal advice	Attorney-Client
2015.01.09 2015.01.10	E-Mails	Ross Gow	Philip Barden, Esq.	G. Maxwell	Agent / Attorney / Client	Communication re: legal advice	Attorney-Client
2015.01.11	E-Mail	Ghislaine Maxwell	Jeffrey Epstein		Common Interest	Communication re: legal advice	Common Interest
2015.01.11	E-Mail	Philip Barden, Esq.	Ross Gow	G. Maxwell	Attorney / Agent / Client	Communication re: legal advice	Attorney-Client
2015.01.11	E-Mail	Philip Barden, Esq.	Ghislaine Maxwell	Ross Gow	Attorney / Agent / Client	Communication re: legal advice	Attorney-Client
2015.01.11 – 2015.01.17	E-Mails	Jeffrey Epstein	Ghislaine Maxwell		Common Interest	Communication re: legal advice	Common Interest Privilege

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2015.01.13	E-Mails	Philip Barden, Esq.	Ghislaine Maxwell	Mark Cohen	Attorney / Client	Communication re: legal advice	Attorney-Client
2015.01.21	E-Mail	Ross Gow	Philip Barden, Esq., Ghislaine Maxwell		Agent / Attorney / Client	Communication re: legal advice	Attorney-Client
2015.01.21 - 2015.01.27	E-Mails	Jeffrey Epstein	Ghislaine Maxwell		Common Interest	Communication re: legal advice	Common Interest Privilege
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United States District Court
For The Southern District of New York

Giuffre v. Maxwell
15-cv-07433-RWS
Ghislaine Maxwell's Privilege Log Amended as of May 16, 2016

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2.	2011.03.15	E-Mails	1014-1019	Brett Jaffe, Esq.	Ghislaine Maxwell		Attorney / Client	Communication re: legal advice	Attorney-Client
3.	2015.01.02	E-Mails	1020-1026	Ross Gow	Ghislaine Maxwell		Attorney Agent / Client	Communication re: legal advice	Attorney-Client
4.	2015.01.02	E-Mail	1024-1026	Ghislaine Maxwell	Ross Gow		Attorney Agent / Client	Communication re: legal advice	Attorney-Client
5.	2015.01.02	E-Mail	1027-1028	Ross Gow	Ghislaine Maxwell	Brian Basham	Attorney Agent / Client	Communication re: legal advice	Attorney-Client
6.	2015.01.06	E-Mail	1029	Ghislaine Maxwell	Jeffrey Epstein		Common Interest	Communication re: legal advice	Common Interest
7.	2015.01.06	E-Mail	1030-1043	Ghislaine Maxwell	Jeffrey Epstein, Alan Dershowitz, Esq.		Attorney / Client	Communication re: legal advice	Common Interest
8.	2015.01.10	E-Mail	1044	Ghislaine Maxwell	Philip Barden, Esq., Ross Gow		Attorney / Client	Communication re: legal advice	Attorney-Client
9.	2015.01.10	E-Mail	1045-1051	Ghislaine Maxwell	Philip Barden, Esq.		Client / Attorney	Communication re: legal advice	Attorney-Client
10.	2015.01.09 2015.01.10	E-Mails	1052-1055	Ross Gow	Philip Barden, Esq.	G. Maxwell	Agent / Attorney / Client	Communication re: legal advice	Attorney-Client
11.	2015.01.11	E-Mail	1055-1058	Ghislaine Maxwell	Jeffrey Epstein		Common Interest	Communication re: legal advice	Common Interest
12.	2015.01.11	E-Mail	1055-1058	Philip Barden, Esq.	Ross Gow	G. Maxwell	Attorney / Agent / Client	Communication re: legal advice	Attorney-Client
13.	2015.01.11	E-Mail	1056-1058	Philip Barden, Esq.	Ghislaine Maxwell	Ross Gow	Attorney / Agent / Client	Communication re: legal advice	Attorney-Client

14.	2015.01.11 – 2015.01.17	E-Mails	1059-1083	Jeffrey Epstein	Ghislaine Maxwell		Common Interest	Communication re: legal advice	Common Interest Privilege
15.	2015.01.13	E-Mail	1067-1073	Ghislaine Maxwell	Jeffrey Epstein		Common Interest	Communication re: legal advice	Common Interest Privilege
16.	2015.01.13	E-Mail	1069-1073, 1076-1079	Philip Barden, Esq.	Martin Weinberg, Esq.		Common Interest	Communication re: legal advice	Common Interest Privilege
17.	2015.01.13	E-Mails	1068-1069, 1074-1076	Philip Barden, Esq.	Ghislaine Maxwell	Mark Cohen	Attorney / Client	Communication re: legal advice	Attorney-Client
18.	2015.01.21	E-Mail	1088-1090	Ross Gow	Philip Barden, Esq., Ghislaine Maxwell		Agent / Attorney / Client	Communication re: legal advice	Attorney-Client
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21.	2015.04.22	E-mail	7 pages	Jeffrey Epstein	Ghislaine Maxwell		Common Interest	Forwarding message from Martin Weinberg, labeled "Attorney-Client Privilege" with attachment	Common Interest Privilege
22.	Various	E-mails		Agent of Haddon, Morgan & Foreman; Laura Menninger	Agent of Haddon, Morgan & Foreman; Laura Menninger		Agent of attorney and Attorney	Attorney work product	Attorney Work Product
23.	Various	E-mails		Mary Borja; Laura Menninger	Mary Borja; Laura Menninger		Attorney Work Product	Attorney work product	Attorney Work Product
24.	2015.10.21 – 2015.10.22	E-mail chain with attachment		Darren Indyke; Laura Menninger	Darren Indyke; Laura Menninger		Attorneys for parties to Common Interest Agreement	Common Interest Agreement	Attorney Work Product; Common Interest Privilege

United States District Court
For The Southern District of New York

Giuffre v. Maxwell
15-cv-07433-RWS
Ghislaine Maxwell's Privilege Log Amended as of August 1, 2016

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23.	Various	E-mails		Mary Borja; Laura Menninger	Mary Borja; Laura Menninger		Attorney Work Product	Attorney work product	Attorney Work Product
24.	2015.10.21 - 2015.10.22	E-mail chain with attachment		Darren Indyke; Laura Menninger	Darren Indyke; Laura Menninger		Attorneys for parties to Common Interest Agreement	Common Interest Agreement	Attorney Work Product; Common Interest Privilege
25.	2015.01.06						Attorney/Client	Document prepared by Ghislaine Maxwell at the direction of Philip Barden	Attorney Work Product; Attorney-Client Communication

26.	2015.01.23						Attorney/Client	Document prepared by Ghislaine Maxwell at the direction of Philip Barden	Attorney Work Product; Attorney-Client Communication

United States District Court
Southern District of New York

Virginia L. Giuffre,

Plaintiff, Case No.: 15-cv-07433-RWS

v.

Ghislaine Maxwell,

Defendant.
_____/

REPLY IN SUPPORT OF NON-PARTY'S MOTION FOR PROTECTIVE ORDER AND OPPOSITION TO DEFENDANT'S COMBINED MOTION TO COMPEL NON-PARTY WITNESS TO PRODUCE DOCUMENTS AND RESPOND TO DEPOSITION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Rules

Non-party, Sarah Ransome, by and through her undersigned counsel, hereby files this Reply in Support of Her Motion for Protective Order (DE 640) and Opposition to Defendant's Combined Motion to Compel Non-Party Witness to Produce Documents and Respond to Deposition (DE 655).

BACKGROUND

Non-party Sarah Ransome has already provided significant discovery in this case. She previously flew from Barcelona to New York, sat for a ten-hour deposition, and produced many relevant documents. Indeed, witness Ms. Ransome has provided more significant evidence, including photographic evidence and electronic communications, than Defendant has produced in the two years she has been litigating this matter. Defendant has not produced a **single** document prior to 2009 and not a **single** photograph, despite testimony that she was an avid photographer of the young girls at Epstein's mansions, including taking nude photographs.

Specifically, and by way of example, non-party Ms. Ransome produced the following types of highly relevant information about Defendant's involvement in the sex trafficking and abuse**:**

Ransome_00069

Jeffrey Epstein in 2006 on Little St. James Island

Ransome_000128

Various females on Island in 2006 including Nadia. Marcinkova

Ransome_000131

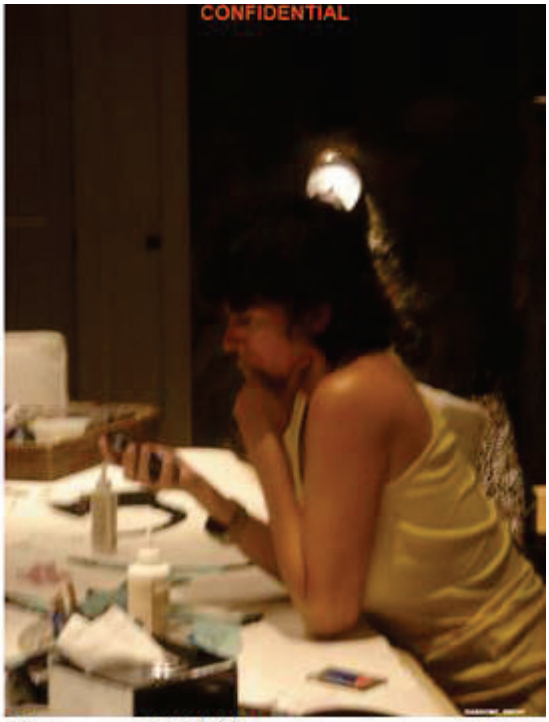
Various females on Island in 2006 including Nadia Marcinkova

Ransome_000135

Various females on Island in 2006 including Nadia Marcinkova

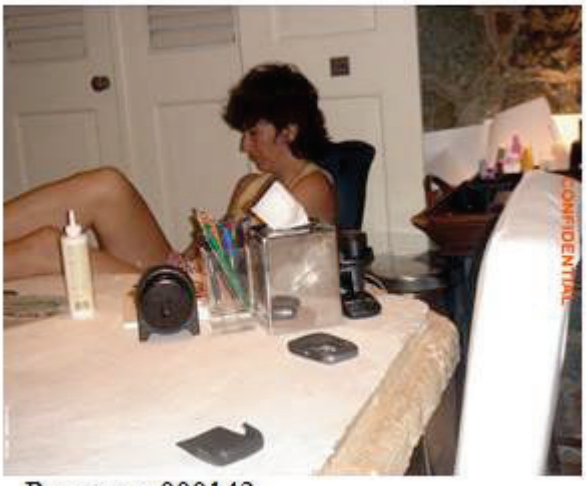
Ransome_000138

Defendant on Little St. James Island in 2006



Ransome_000141

Defendant on Little St. James Island in 2006



Ransome_000142

Defendant on Little St. James Island in 2006

Ransome_000148

Defendant with Jean Luc Brunel in 2006

Ransome_000152

Various females on Little St. James in 2006

Ransome_000154

Jeffrey Epstein and male friend in 2006 on Island

Ransome_000218

Non-Party Sarah Ransome in 2006 on Little St. James Island

From: Sarah Ransome [redacted]
Sent: Thursday, February 08, 2007 2:43 PM
To: [redacted]
Subject: RE: FIT website

Hi Lesely

I will fax my application to you later on today as I am not able to email it. Could you also please tell Jeffery to phone me on the number i gave asap as I am not prepared to go under 56kg in order to study at FIT. I also need a flight booked back to New York so could you please check with Jeffery. The date that I would like to fly back is the 27th Feb.

Thanks very much

Sarah

Ransome_000176

From: [redacted]
Sent: Thursday, December 28, 2006 8:37 PM
To: [redacted]
Subject: flight

Here is your flight details..
You will be going with a girl named Simona and a guy named Valdson. THey will both be staying at 301 E. 66 as well. I have a car picking you all up at 6:45am if you want to meet in the lobby... Please let me know you got this.. thanks!

Traveler(s) Frequent flier details
SARAH RANSOME

Saturday, December 30, 2006
Continental Airlines 1884
Depart: 9:25am
morning Newark, NJ
Newark Liberty Int'l (EWR)
Arrive: 2:43pm
afternoon St Thomas Island, Virgin Islands (U.S.)
St Thomas Island Cyril E King (STT)

Economy | Boeing 737-700 Passenger (73G) | 4hr 18min | 1635 miles

Seat: 20F

Seat is confirmed.

Ransome_000203

Moreover, Ms. Ransome sat for ten hours of deposition and gave critical testimony showing Defendant's direct involvement in Epstein's sex abuse and sex trafficking conspiracy:

Key Testimony	Transcript Citation
Maxwell provided Ms. Ransome with massaging training.	Ransome Dep. Tr. at 331 (Q. What did Ghislaine say to you? A. I can't remember the specific conversation. But the fact that she helped me refine my massage skills to satisfy Jeffrey, I think it's pretty self-explanatory.)
Massage was a key word for sex.	Ransome Dep. Tr. at 330 (Q. Does that have something to do with body massages? A. Can you repeat -- let me read the question again. So I would just like to clarify, body massages meant sex, okay? That's like a key word for sex. So as soon as you stop having sex with Jeffrey and his friends and his girls, you're out, because otherwise there's no reason for you to be associated with Jeffrey, because you're just there to have sex with him, so...)
The girls were on rotation for the purpose of giving Epstein sexual massages each day.	Ransome Dep. Tr. at 152 (Q. Did you see Natalya having any type of sexual relations with Jeffrey during the trip? A. Yes, I did. Q. When did you see that? A. I didn't see it in the bedroom, but we were called on, like, a rotation visit for Jeffrey throughout the day and evening.)
Maxwell was Epstein's main right-hand woman in 2006-2007; Maxwell ran the house like a brothel with girls on rotation for the purpose of giving Epstein sexual massages each day.	Ransome Dep. Tr. at 290-292 (Q. So we have Sarah Kellen having a discussion with Ghislaine about girls. *** There was a constant influx of girls. There were so many girls. There were girls in Miami. There were guests coming. There were -- It's like, I'm sure if you go into a hooker's brothel and see how they run their business, I mean, it's just general conversation about who's going to have sex with who and, you know -- what do you talk about when all do you is have sex every day on rotation? I mean, what is there to talk about? *** Q. Apart from general conversation, do you recall any specifics of any female reporting to Ghislaine? A. Yes, I saw. And with my own eyes, I saw how Ghislaine and Lesley Groff and the other girls reported to them. *** And we were told by Jeffrey Epstein to listen to Ghislaine. So Ghislaine was the main right-hand woman of Jeffrey Epstein. We were told by Jeffrey Epstein to listen to Ghislaine.) *** Ransome Dep. Tr. at 311-312 (Q. And when you say you were on rotation, you mean you were having sex with Jeffrey multiple times per day? A. No. As in when I was finished, another girl was called by Ghislaine. And when they had finished, another girl was called. Q. How do you know that another girl was called by Ghislaine? A. Because I was there, and I saw it and heard it with all my senses. I saw Ghislaine call another girl, and she called me herself, to go give Jeffrey Epstein a sexual massage. Q. What do you mean by call? I guess I'm thinking like telephone. That may be my -- A. No. As in going up to the person and going, Jeffrey wants to see you in his bedroom, which meant it's your turn to be abused. That kind of thing. Q. And this is on the island? A. This is

Key Testimony	Transcript Citation
	on the island. Q. You heard -- as soon as you were done with Jeffrey, you heard Ghislaine go up to another girl and say, it's your turn with Jeffrey? A. So every single day *** So, I mean, our rotation changed every day that specific trip we had in December. So, for example, I would be called. Maybe a couple hours when Jeffrey had a little, you know, break, another girl was called, [redacted]. Then another girl was called. Every single day. We tried to hide on different -- like, so we wouldn't have to get called. We'd generally have to sit in the main area. There was like a big pool, the main seating area. There was a big table. We'd sit there and do kind of art on the table, and we always had to be around. We weren't allowed to go very far on the island. We always had to report to Ghislaine and Jeffrey and tell them if we were going down to the beach to swim because they had an inflatable trampoline. So they -- I mean, we always had to tell Ghislaine and Jeffrey where we were at all times.
Kellen reported to Maxwell.	Ransome Dep. Tr. at 289 (A. everyone was afraid of Ghislaine. All the girls were afraid of her, so everyone -- Sarah Kellen reported to her.)
All the girls providing sexual massages to Epstein reported to Maxwell; Maxwell "called the shots."	Ransome Dep. Tr. at 288-290 (Q. You said that the girls reported to Ghislaine. What did you see or hear that caused you to say that? A. Well, it's pretty obvious. I mean, Ghislaine called the shots. *** So, for example, there was one occasion where Jeffrey didn't like my hair and Ghislaine told me to change it. So there was -- everyone was afraid of Ghislaine. All the girls were afraid of her, so everyone -- Sarah Kellen reported to her. Lesley Groff reported to her. I don't know how to tell you. So when I say reporting, I witnessed with my own two eyes Sarah Kellen reporting to Ghislaine in front of me, but I can't remember specifics. They were talking about girls. I can't remember the specific conversation. But every single person 100 percent, 200 percent reported to Ghislaine. 100 percent.)
Girls were paid to recruit other girls; Maxwell was the main lady.	Ransome Dep. Tr. at 387 (Q. Apart from what Ms. Malyshev told you, do you have any other basis for knowing that Malyshev reported to Kellen, Groff and Maxwell and was paid for her recruitment of young females, including you? A. What she told me. Q. Apart from what she told you, do you have any other basis for that? A. Well, I saw it with my own eyes. I was a witness. Q. What did you witness? A. I witnessed the same thing all the other girls did, the same thing I had to do, was go and report to Sarah Kellen, Lesley Groff and Ghislaine. Ghislaine was the main lady…)
Maxwell recruited girls to the island; Maxwell was the "mamma bear."	Ransome Dep. Tr. at 287-288 (Q. You said, "Watching her interact with the other girls on the island, it became clear to me that she recruited all or many of them to the island." What do you mean that? A. That she recruited a lot of the girls. Q. What did you see? A. I saw how she interacted with all the girls. You know, if you walk into any -- I mean, common sense wise, if you walk into a firm, you kind of know who the boss is. You know, all the girls kind of reported to Ghislaine. Ghislaine was like the mama bear, if you know what I mean. She called the shots; we had to listen to Ghislaine. And Ghislaine was Jeffrey's right-hand

Key Testimony	Transcript Citation
	woman, so, you know, whatever Jeffrey wanted went through Ghislaine and then filtered through.)
Ms. Ransome witnessed Epstein having sex with Marcinkova on his plane in plain view.	Ransome Dep. Tr. at 121-123 (Q. Describe for me what happened on the plane ride? A. Nadia walked in, sat down in front of me, Nataly. We all buckled up, we took off. The rest of the passengers in the -- I think it's towards the front of the plane where all the seats are -- we all -- all the guests were -- fell asleep. I pretended to be asleep. Jeffrey then went -- Jeffrey went to his -- was in his bed on the plane, having open sex with Nadia for everyone to see, on display. ***Q. What types of sexual relationship did Jeffrey and Nadia have on the plane in your presence? A. Well, Nadia was straddling Jeffrey for quite some time. I watched them both ejaculate with each other. They were having quite a good time together.)
Maxwell and Epstein used promises to assist Ms. Ransome in getting into FIT and paying for her in return for being Epstein's sex slave.	Ransome Dep. Tr. at 234-235 (Q. Did you apply for any financial aid for FIT? A. No. Jeffrey was covering FIT. Q. That's what Jeffrey told you? A. Multiple, multiple times. Q. Did Ghislaine Maxwell say anything to you with regards to FIT? A. It was various conversations. It was known among everyone that I was going to FIT, and Jeffrey -- everyone knew he was helping me to get into FIT. It was common knowledge. Q. You described earlier that Ghislaine was helping review your application and your essay. Was there something else that she was doing to help you? A. Well, she said she would, but whether she did, I have no idea. She said she would. Whether she made calls, I doubt, because I didn't end up at FIT. So...)
Maxwell bullied the girls if they didn't comply with Epstein's sexual demands.	Ransome Dep. Tr. at 332 (A. Well, the fact that she used to personally call me herself to give Jeffrey sexual massages. Not body massages; sexual massages. It should be rephrased. I mean, it was pretty obvious. I mean, the whole weight thing. I tried to swim off the island. I tried to escape from an island during the evening to try and escape from her because if I didn't lose weight, they would cut me out of their -- financially off. I would lose the place that I was staying at. I would lose my education. You name it. They bullied me with everything, just like they did with the other girls.)
	Ransome Dep. Tr. at 333-334 (Q. … What was the threat that was made to you by Maxwell? A. The fact that I would lose everything that they promised me. They -- they were really naughty. You know, they took girls from very underprivileged families. They gave them accommodation, they gave them food, gave them money for transportation, you know, private planes, etcetera, etcetera. So if I didn't have sex with Jeffrey, I would be homeless and starving in New York, so -- and my dream of getting a full-time education at one of the top fashion institutes in the world would be diminished. And that's what he held over my head, exactly like he did with [redacted] and the other girls. He was paying for all of their educations. Q. How do you know that? A. Because they were telling me. It was common knowledge amongst all the girls. No other girl would be there

Key Testimony	Transcript Citation
	willingly just to have sex with Jeffrey.)
Victoria Secret outfits were provided to the girls on the Island.	Ransome Dep. Tr. at 350 (Q. They were supplied to you? A. Yes. All of the outfits -- there were clothes that were provided on the island by Jeffrey Epstein, which were all Victoria's Secret clothing: bikinis, nightwear.)
Ms. Ransome testified that she is fearful for her life after coming forward.	Ransome Dep. Tr. at 40 (There were two people following me after I came forward to Maureen Callahan. I went to – I walked downstairs. I walked around -- I have a usual routine that I do. In the morning I went out, I saw the same two people. Later on that afternoon, I saw the same two people again. I was frightened. I'm frightened for my life, absolutely frightened. So there you go.)

Ms. Ransome provided clear testimony as a non-party victim of sex trafficking that her motivating factor for testifying is to hold her traffickers accountable:

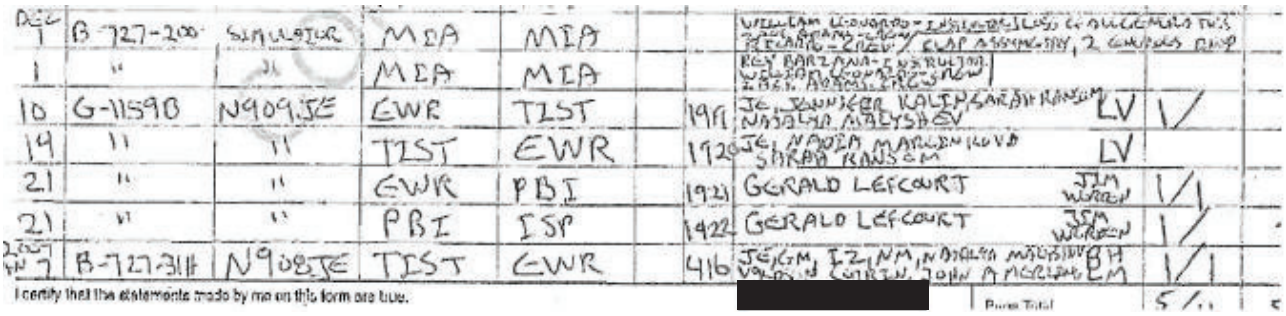
> Q. I'm just asking your understanding.
>
> A. Nothing's been promised to me about money.
>
> Q. Were you seeking money when you authorized this complaint to be filed on your behalf?
>
> A. No. I just wanted a pedophile behind bars, really, and for him to stop abusing young girls. Seeing as I'm going to be a parent myself, I can't really live with myself, knowing that there's a pedophile with my kids on the planet. So as a responsible human being, I thought that I would come forward.

See Pottinger Dec. at Exhibit 1, Ransome Dep. Tr. at 324:10 - 325:21.

Non-party Ms. Ransome further testified during her deposition about her motivation in coming forward and speaking openly: "I wanted to tell my story, and I want to run a campaign in which all the girls that have been abused by Ghislaine and Jeffrey can come forward. And I wanted to run a campaign with the New York Post to get these girls to have the courage to come forward, because I know a lot of them are frightened like myself." *See* Pottinger Dec. at Exhibit 1, Ransome Dep. Tr. at 39:19 to 40:22.

Despite this straightforward and commonsense explanation, Defendant uses her briefing to repeatedly suggest that non-party Ms. Ransome is motivated by "money" and that she "fabricated"

her story. From this dubious premise, Defendant then argues that Ms. Ransome should therefore be punished by having to make burdensome and invasive disclosures of such things as *her boyfriend's cell phone number and information from her current bank account*. Unwilling to confine her attacks to Ms. Ransome, Defendant then levels attacks on the professionalism of Ms. Giuffre's legal counsel, stating in her brief: "One can hardly imagine a better motive to fabricate testimony that the type of lottery win. To make it even better, there is no purchase price for the ticket, because the people who want the testimony are willing to front the cost of the litigation either on a contingency or pro-bono basis." Defendant's Combined Motion at 7. Any suggestion of "fabrication" is directly refuted by the multiple pictures and e-mails non-party Ms. Ransome produced – documentary evidence that Defendant fails to discuss in her brief. Moreover, non-party Ms. Ransome is identified as a passenger on Epstein's own flight logs:



Non-party Ms. Ransome's fulsome production included items such as multiple e-mails with Sarah Kellen, a known key conspirator and recruiter of females, and Leslie Groff, Defendant's other co-conspirator who was also named in the non-prosecution agreement. These e-mails are direct evidence of the trafficking of females for the purpose of sex, and the use of fraud and manipulation to accomplish that purpose. Ms. Ransome also produced numerous photographs of her travels to Epstein's Little Saint James Island, which unequivocally establish Defendant's presence during the years that she swore under oath that she was hardly around. Ms. Ransome's testimony proves that what little Defendant did say during her deposition was far from the truth.

These documents do not lie, and moreover make it abundantly clear that Defendant was far from truthful during her deposition when she denied being a part of Epstein's sexual abuse conspiracy. Rather than engage Ms. Ransome's allegations on the merits, Defendant responds with technicalities. For example, Defendant attempts to suggest that Ms. Giuffre's counsel was not diligent in disclosing Ms. Ransome. Yet if there was any failure of disclosure here, it was entirely Defendant's failure. Clearly, witness Ms. Ransome is someone who has relevant evidence in this case, as her many photographs, e-mails, and other documents undoubtedly establish. And yet Defendant failed to disclose Ms. Ransome's existence not only in her Rule 26 disclosures, but also through (to put it mildly) her inaccurate testimony during her deposition. As a result, Ms. Giuffre's legal counsel did not learn of Ms. Ransome's existence and whereabouts until November. Furthermore, as Ms. Giuffre's counsel informed the Court, it was not until the first week in January that non-party Ms. Ransome was able to meet with counsel in person in Barcelona. Ms. Giuffre's counsel was not going to petition to bring a new witness before this Court without conducting complete due diligence to assure that her testimony was credible. As soon as that in-person meeting was accomplished in early January, Ms. Giuffre filed the appropriate papers with this Court and immediately offered to make Ms. Ransome available to Defendant for a deposition. After first delaying in taking that deposition, Defendant then made this victim of sex trafficking, who had flown to the United States from Barcelona, sit for ten hours at a deposition and be subject to harassing questions.

ARGUMENT

In light of non-party Ms. Ransome's diligent efforts to satisfy Defendant's needs for discovery, the Court should enter a protective order against further discovery (DE 640) and deny Defendant's Combined Motion to Compel[1] (DE 655).

As explained in Non-Party Ransome's Motion for Protective Order, Defendant should not be allowed to use the discovery process as a means of intimidating and harassing a non-party. Counsel is not permitted to intentionally harass or embarrass a non-party witness during a deposition. *See Smartix International LLC v. Garrubbo, Romankow & Capese*, No. 06 CIV 1501 (JGK), 2007 WL 41666035 at *2 (S.D.N.Y Nov. 20, 2007) (court protecting deponent from annoyance, embarrassment and harassment by denying party's attempt to obtain personnel records relating to non-party).

Courts are more vigilant with these protections when the discovery is being sought from a non-party. "[T]he fact of non-party status may be considered by the Court in weighing the burdens imposed in the circumstances." *Katz v. Batavia Marine & Sporting Supplies, Inc.*, 984 F.2d 422, 424 (Fed.Cir.1993); *accord Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 409 (C.D. Cal. 2014); *see also Dart Industries Co., Inc. v. Westwood*

[1] In her Motion to Compel, Defendant failed to comply with Local Rule 37.1 and only inserted selected text from certain objections. Rule 37.1 requires: "upon any motion or application involving discovery or disclosure requests or responses under Fed. R. Civ. P. 37, the moving party shall specify and quote or set forth verbatim ***in the motion papers*** each discovery request and response to which the motion or application is addressed." For all of the discovery items upon which Defendant moves, Defendant has wholly failed to do this. Upon a motion to compel, a court is called upon to evaluate the discovery requests ***as well as the responses and objections***. Local Rule 37.1 is designed to protect against the exact type of self-serving omission of the responding party's objections that Defendant has done in her brief. Accordingly, the Court should deny Defendant's motion in its entirety for failure to comply with Local Rule 37.1. *See Blodgett v. Siemens Industry, Inc.*, 2016 WL 4203490, at *1 (E.D.N.Y. 2016) (denying motion without prejudice for failure to comply with Local Rule 37.1 (which is the same rule in the Eastern District of New York)); *see also* Pottinger Dec. at Exhibit 2, Non-Party Sarah Ransome's Responses and Objections to Defendant's Subpoena Requests.

Chemical Co., 649 F.2d 646 (9th Cir. 1980) ("While discovery is a valuable right and should not be unnecessarily restricted, the 'necessary' restriction may be broader when a non-party is the target of discovery.").

Courts have routinely denied the discovery of non-parties when it is clear that the purpose is to obtain personal information for intimidating or harassing the witness. *See DaCosta v. City of Danbury*, 298 F.R.D. 37 (D. Conn. 2014) (protective order granted with respect to personal information of nonparties, including home addresses, email addresses, phone numbers, dates of birth, children's names, financial account numbers, and social security numbers).

Despite Ms. Ransome's robust production, Defendant comes before this Court to seek additional information solely for the purpose of harassing and intimidating this witness. Defendant's onerous subpoena contained thirty (30) separate categories of requests. Nevertheless, Ms. Ransome produced the documents she had and sat in a deposition for over ten hours with Defendant's counsel. In fact, Ms. Ransome testified that she had produced all of the photographs and documents that she has that relate to Defendant and Epstein.

Ransome 02/17/17 Dep. Tr. at 364:17 to 367:6	
Q. Okay. If I could have you turn to the last three pages, where it says "Documents to be Produced."	A. Mm-hmm.
Q. Have you seen that list before?	A. Yes, I have.
Q. Did you conduct a search of your records to produce documents?	A. Yes, I believe that I produced every single document I can.
Q. After looking at this list, did you go back and look through your photographs in Barcelona?	A. As I said, I looked at everything I had during that time frame and I produced everything I can during that time frame that I was with Jeffrey.
Q. Just tell me what you did in order to make sure you had produced everything that was called for in this list.	A. Okay. So I went through a box of about over 5,000 photos that I had, and I went through every single photo, every single disk, everything that I had. I went through all my emails. I tried to look for the BlackBerry sim card, which I had hoped that I had kept, which had all Ghislaine' s messages on and Jeffrey's and Lesley's, and stupidly I misplaced that, which is really annoying. But I myself, you know, considering my objective is to

	get these people and get justice for the abuse that Ghislaine caused me – and Jeffrey -- I have given as sufficient evidence that I have.
Q. Did you look for all photographs taken by you or containing any image of you at or near any home, business, private vehicle or any other property owned or controlled by Jeffrey Epstein, as indicated in paragraph 7?	A. Yes.
Q. Likewise in paragraph 8, did you look for any photographs that depict any home, business, private vehicle or any other property owned or controlled by Jeffrey Epstein?	A. Yes.
Q. And you did that after reviewing this list of documents?	A. Yeah, I mean, **I received the list and I've complied with everything. I have given absolutely everything that I can to you guys.**
Ransome 02/17/17 Dep. Tr. at 370:16 to 370:18	
Q. Where are these photographs?	A. I have given all the photographs to my lawyers.
Ransome 02/17/17 Dep. Tr. at 371:9 to 371:13	
Q. Were there photographs of other people taken around the same time that you have?	A**. I have given all the photos that I have.**
Ransome 02/17/17 Dep. Tr. at 371:14 to 371:19.	
Q. In other words, if you were messing around with Simona at this time and there's a photo of Simona that you have, did you provide that?	A. I provided every single photograph that I have.

Ransome 02/17/17 Dep. Tr. at 379:9 to 380:13.	
Q. Okay. So you believed that you produced six emails of conversation between yourself and Natalya Malyshev?	***
***	A. Yeah, I collected all -- all -- everything I had, I gave to my lawyers.
Q. Okay. So you believe you gave six emails between yourself and Natalya Malyshev to your attorneys?	A. Yes, I gave all my evidence.

Ransome 02/17/17 Dep. Tr. at 382:14 to 386:16.	
Q. So did you produce the February '04, '07, 4:01 p.m. email from yourself to Nataly Malyshev to your attorneys?	A. I've given all my email correspondence to my lawyers.
Q. Did you give that email to your lawyer?	A. I've given all my emails to my lawyers.
Q. Okay. The next email down says "Sarah Ransome, February 5, 2007, at 10:09 p.m." - Can you read the text of that email on this document?	A. Mm-hmm.
Q. What does the 10:09 p.m. email say?	A. As I've specified before, this is a screenshot[2], okay, of the actual Yahoo email. This is a screenshot. So technically I can't read that anyways, seeing as it's a screen shot.
***	
Q. Did you search your Inbox for documents responsive to the subpoena that I showed you a little while ago?	A. I did. I wanted to be thorough with my research, so I, during that time frame, went through every single email.
Q. You went through each one?	A. I went through all of my emails to make sure I gave all my evidence to my lawyers.
Q. Did you search for keywords or did you just read each email?	A. I read each email.
Q. And did you print out each email?	A. I didn't print out. I saved them to a USB stick.
Q. All of them or just the ones that you thought were needed?	A. Just the ones that were for -- just anything related to Jeffrey, I sent over.

I. NON-PARTY RANSOME HAS PRODUCED DOCUMENTS OF AND DOES NOT HAVE DOCUMENTS FOR A NUMBER OF REQUESTS.

Defendant's Motion to Compel[3] is misleading because it suggests that non-party Ms. Ransome refused to produce documents in response to all thirty categories in the subpoena. That is

[2] Ms. Ransome produced both screen shots and the associated emails. Defendant asked about the screenshots during the deposition, rather than about the supplemental production of the actual emails. Defendant also requested additional pieces of the email chains which non-party Ransome has provided the Defendant the additional pieces of the email chains to the extent they were responsive to the Defendant's subpoena.

[3] Defendant also requested a copy of the CD of photographs that non-party Ms. Ransome already produced in hard copy. A copy of said CD has been made and sent to Defendant.

incorrect. To be clear, Ms. Ransome produced documents, or responded that no documents exist, to Requests 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 20, 23. Request 24 was withdrawn by Defendant and non-party Ransome does not have any documents responsive to Request 26. As to the remaining requests:

- Request 12 – Ms. Ransome testified that she does not have any credit card receipts, cancelled checks, or documents reflecting travel from 2006-2007, other than what she has already produced. *See* Pottinger Dec. at Exhibit 1, Ransome Tr. at 367, 402-403.

- Request 15 - She testified that she does not have any documents reflecting the money paid to her by Jeffrey Epstein (she was paid in cash). *See* Pottinger Dec. at Exhibit 1, Ransome Tr. at 151-152, 415.

- Request 16 - She testified that she was given cash by Epstein during the years 2006-2007 while she was being trafficked by Defendant and Epstein. *See* Pottinger Dec. at Exhibit 1, Ransome Tr. at 415-416.

- Request 17 - She testified that she lived in Epstein's apartment and thereafter lived with a male friend, but she does not have any leases, deeds, or rental agreements for 2006-2007.. *See* Pottinger Dec. at Exhibit 1, Ransome Tr. at 76-78, 228-229.

- Request 19 – Ms. Ransome produced a copy of her FIT essay but testified that she does not believe she has the application but Jeffrey Epstein or the Defendant likely have a copy because they claimed to be assisting her with the application and submission process for FIT). *See* Pottinger Dec. at Exhibit 1, Ransome Tr. at 171-172, 179-180.

- Request 21 – Ms. Ransome testified she did very little modeling because she wasn't successful at it and has no documents relating to her modeling) *See* Pottinger Dec. at Exhibit 1, Ransome Tr. at 82, 85, 112-113, 216, 415.

- Request 25 - She testified she has not had any communication with law enforcement. *See* Pottinger Dec. at Exhibit 1, Ransome Tr. at 183-184, 189.

- Request 27 - She testified that she has never written a book or any similar writings about her time with Defendant. *See* Pottinger Dec. at Exhibit 1, Ransome Tr. at 9, 12-13, 35-38.

- Request 28 - Defendant already has her civil complaint in *Jane Doe 43*, and Ms. Ransome already testified that she is involved in that litigation.

- Request 30 – Ms. Ransome testified that she does not have a current account on Twitter or any other social media platform, and does not have the information for any for the years 2006-2007. *See* Pottinger Dec. at Exhibit 1, Ransome Tr. at 61.

II. DEFENDANT'S SUBPOENA SEEKS DOCUMENTS SOLELY FOR THE PURPOSE OF INTIMIDATING AND HARASSING THIS NON-PARTY WITNESS

Request 10 (Current Passport/Current Visas):

As to Request 10, Ms. Ransome produced her passport during the time that she was being trafficked by Defendant and Epstein. She does not have Visas from that time period, as she testified. Non-party Ms. Ransome should not have to produce her current passport, and Defendant has given no good faith reason for why she should have to.

The remainder of Request 10 is overly broad, seeking "all communications regarding any of Your passports, visas, visa applications or to her permissions to live, work or study in a foreign country for the years 2005 – present." What is responsive and relevant to this case - the passport she held during the years 2006 and 2007 - has been produced. The reminder is simply being sought in order to learn the patterns of Ms. Ransome's travel for purposes of harassing and intimidating her.

Request 18 (Current Driver's License):

Despite non-party Ransome having produced her passport showing her travel during the period she was being trafficked by Defendant and Epstein, Defendant seeks a "copy of her current driver's license." Non-party Ransome is already fearful for her life and has been followed at least once since she disclosed the abuse she endured at the hands of Defendant and Epstein. Obtaining a copy of this non-party's current driver's license is solely for the purpose of harassing and intimidating her and should not be permitted. The evidence that is relevant to the claims from 2006-2007 has already been produced, including the copy of her passport.

Request 29 (Current Bank Statement, Paycheck, Credit Card Statements):

Non-party Ransome testified that she is presently unemployed and is living with her boyfriend. Nevertheless, Defendant insists on moving to compel highly personal financial

information from this non-party as set forth in Request 29: "A copy of your most recent paycheck, paycheck stub, earnings statement and any bank statement, credit card statement and any document reflecting any money owed by you to anyone." This type of current financial information is only being sought for the improper purpose of embarrassing, intimidating, and harassing this non-party. *See DaCosta v. City of Danbury*, 298 F.R.D. 37 (D. Conn. 2014) (protective order granted with respect to personal information of nonparties, including home addresses, email addresses, phone numbers, dates of birth, children's names, financial account numbers, and social security numbers).

Request 22 (All Modeling Contracts Signed or Entered into By You):

Non-party Ransome provided testimony that she did very little modeling while in New York because she was not successful at it, and she also testified that it was mostly freelance modeling. *See* Pottinger Dec. at Exhibit 1, Ransome Tr. at 82, 85, 112-113, 216, 415. Despite receiving this testimony, Defendant is now insisting that she conduct a search for any modeling contract that Ms. Ransome has signed and produce them. This search is solely for the improper purpose of embarrassing, harassing, and intimidating this non-party witness, and should be precluded.

Accordingly, non-party Ransome objects to these Requests which are only being sought for the purpose of harassing and intimidating this non-party witness, and requests that the Court protect her from this clearly, highly personal and harassing discovery.

III. DEFENDANT SHOULD BE PRECLUDED FROM ASKING ANY ADDITIONAL DEPOSITION QUESTIONS THAT ARE SOLELY MEANT TO EMBARRASS, INTIMIDATE AND HARASS THIS NON-PARTY.

Defendant had Ms. Ransome present for a deposition for over ten hours with breaks, ensuring that Defendant got a full seven (7) hours of tape time as provided by the Rules. Despite this, Defendant seeks to compel Ms. Ransome to sit for additional questions. The following are

the categories of deposition testimony that Defendant seeks for which non-party Ms. Ransome contends are sought only for the purpose of harassment and intimidation:

- Current paycheck records and other banking records. Defendant has now added to this that she wants her boyfriend's current income and financial position since non-party Ms. Ransome testified that she is living with her boyfriend. *See* Pottinger Dec at Exhibit 1, Ransome Dep. Tr. at 8-9, 13-14.

- Boyfriend's cell phone number. *See* Pottinger Dec at Exhibit 1, Ransome Dep. Tr. at 27-28.

- Her parent's current address information. *See* Pottinger Dec at Exhibit 1, Ransome Dep. Tr. at 14.

- Communications that non-party Ms. Ransome testified she recalls having with a reporter in the fall of 2016. *See* Pottinger Dec at Exhibit 1, Ransome Dep. Tr. at 37-43, 386-388.

- Privileged communications with Alan Dershowitz when he was meeting with Ms. Ransome about a legal matter. *See* Pottinger Dec at Exhibit 1, Ransome Dep. Tr. at 182-186.

- Her partner's occupation. *See* Pottinger Dec at Exhibit 1, Ransome Dep. Tr. at 13-14.

- What hotel Ms. Ransome was staying at in New York for her deposition. *See* Pottinger Dec at Exhibit 1, Ransome Dep. Tr. at 30-34.

- Whether Alan Dershowitz contacted anyone on Ms. Ransome's behalf. *See* Pottinger Dec at Exhibit 1, Ransome Dep. Tr. at 199.

- Her stepmother's phone, e-mail address and physical address – despite the fact that non-party Ms. Ransome already gave testimony at her lengthy deposition that she does not have her stepmother's contact information. *See* Pottinger Dec. at Exhibit 1, Ransome Dep. Tr. at 239-240.

- When Ms. Ransome provided her photos to her lawyer. *See* Pottinger Dec. at Exhibit 1, Ransome Dep. Tr. at 363.

Ms. Ransome testified that she believed that Alan Dershowitz had been retained to be her lawyer in a legal matter that she was having. Accordingly, counsel objected on privilege grounds when Defendant's counsel attempted to obtain specifics about those meetings. In addition, Defendant attempted to obtain privileged and work product information about Ms. Ransome's

meetings with her counsel in this matter. As the Court can see, the other questions relate to a number of personal family information that a non-party witness should not be required to disclose, particularly when she has a justified fear of Defendant and Jeffrey Epstein. Defendant also requests documents relating to Ms. Ransome's testimony that she recently had conversations with a reporter when she was trying to encourage other victims of Defendant and Epstein to come forward with their stories. After giving fulsome testimony on this topic, Defendant is now demanding that Ms. Ransome conduct a search for documents relating to this reporter. Again, non-party Ms. Ransome has produced a significant amount of discovery and has given her testimony and she should not be forced to undertake an additional burden. Finally, prying into her current personal financial information or her boyfriend's personal financial information should not be condoned. Simply put, all of these categories above for which Defendant seeks additional testimony have nothing to do with this action and are being sought solely to embarrass, harass, and intimidate this non-party, which should not be condoned.

IV. NON-PARTY MS. RANSOME SHOULD NOT BE FORCED TO INCUR THE BURDEN AND EXPENSE OF PRODUCING A PRIVILEGE LOG.

Despite being given less than seven days to respond to Defendant's subpoena and produce documents, Defendant also wrongly demands that this non-party undertake the burden and expense of producing a privilege log. New York law protects non-parties from the significant burden and expense of producing a privilege log. "The burden on the party from which discovery is sought must, of course, be balanced against the need for the information sought." *Wells Fargo Bank, N.A. v. Konover*, 2009 WL 585434, at *5 (D. Conn. Mar. 4, 2009) (denying Rule 45 motion to compel production of documents from non-party). "In performing such a balance, courts have considered the fact that discovery is being sought from a third or non-party, which weighs against permitting discovery." *Tucker v. Am. Int'l Grp., Inc.*, 281

F.R.D. 85, 92 (D. Conn. 2012) (finding request for production on non-party - including creation of privilege log - too burdensome); *see also Medical Components, Inc. v. Classic Medical, Inc.*, 210 F.R.D. 175, 180 n.9 (M.D.N.C. 2002) ("the court should give special weight to the unwanted burden thrust upon non-parties when evaluating the balance of competing needs.")). "Within this [Second] Circuit, courts have held nonparty status to be a 'significant' factor in determining whether discovery is unduly burdensome." *Tucker*, 281 F.R.D. at 92 (citing *Solarex Corp. v. Arco Solar, Inc.*, 121 F.R.D. 163, 179 (E.D.N.Y. 1988) (status as non-party "significant" factor in denying defendant's discovery demand)).

Ms. Ransome is a victim of sex trafficking who bravely came forward to help another victim of abuse. She is not a large corporation with a team of in-house lawyers. In these circumstances, imposing the burden of producing a privilege log on this non-party is inherently unfair. A non-party is not required to undertake the burden of filing a privilege log**.** Defendant is only seeking to try to have this Court force non-party Ms. Ransome to produce a privilege log in this matter to impose additional burden on Ms. Ransome.

In addition, Defendant wrongly argues that she is entitled to any communications and witness interviews between Ms. Giuffre's lawyers and non-party Ms. Ransome. It is well settled that documents relating to witness interviews are protected by the work product privilege. In addition, Defendant wrongly argues that she is entitled to any communications and witness interviews between Ms. Giuffre's lawyers and non-party Ms. Ransome. *See William A. Gross Const., Assoc., Inc. v. Am. Mfrs. Mut. Ins. Co.*, 262 F.R.D. 354, 359 (S.D.N.Y. 2009) (upholding work-product privilege, finding doctrine "'extends to notes, memoranda, ***witness interviews***, and other material'" created in preparation for litigation and trial (emphasis added) (internal citation omitted)). Indeed, "protection of witness interviews has been one of the focuses of the attorney

work-product privilege since its inception in American law." *Gerber v. Down E. Cmty. Hosp.*, 266 F.R.D. 29, 31 (D. Me. 2010) (citing *Hickman v. Taylor*, 329 U.S. 495, 497, 510–11, 67 S. Ct. 385, 91 L.Ed. 451 (1947)). Courts have continuously found an attorney's communications and notes of witness interviews to be privileged work product. *See, e.g.*, *City of Pontiac Gen. Employee's Ret. Sys. v. Lockheed Martin Corp.*, 2012 WL 4202657, at *1 (S.D.N.Y. Sept. 18, 2012) (denying motion to compel, upholding work-product privilege with respect to witness interviews and accompanying notes, emails, and memoranda); *United States v. Jacques Dessange, Inc.*, 2000 WL 310345, at *3 (S.D.N.Y. Mar. 27, 2000) (finding notes of witness interviews to be core work product); *S.E.C. v. NIR Grp., LLC*, 283 F.R.D. 127, 134 (E.D.N.Y. 2012) (work product privilege applied to interviews – along with accompanying notes and memoranda - conducted by attorney); *Buck v. Indian Mountain Sch.*, 2017 WL 421648, at *7 (D. Conn. Jan. 31, 2017) ("the disclosure of witness interviews and documents related thereto, is 'particularly disfavored'" (quoting *Upjohn Co. v. United States*, 449 U.S. 383, 399 (1981))).

V. NON-PARTY MS. RANSOME HAS PRODUCED DOCUMENTS RELEVANT TO *JANE DOE 43.*

Defendant also claims that non-party Ms. Ransome has not produced all documents covered in the subpoena that relate to *Jane Doe 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff and Natalya Malesheve*, Case Number 1:17 – cv-0016-JGK, which involves a claim under the sexual trafficking statute. Regarding the *Jane Doe 43* documents, Ms. Ransome testified that she produced everything that she had that relates to Defendant. *See* Chart *supra*. The case law is clear that a party cannot use the subpoena power in this litigation to gather discovery for a different litigation which is exactly what Defendant is trying to do here. *See Liz Claiborne, Inc., v. Mademoiselle Knitwear, Inc.*, No. 96 CIV 2064 (RWS), 1997 WL 53184 at *5 (Sweet, J.) (S.D.N.Y. Feb. 10, 1997) (this Court limiting deposition questioning of party because

relevance of the questions were tenuous at best and appeared to be directed at improperly gathering information for a different lawsuit); *Night Hawk Limited v. Briarpatch Limited*, No. 03 CIV. 1382 (RWS), 2003 WL 23018833 (S.D.N.Y. Dec. 23, 2003). Irrespective of this case law that says a party should not wrongfully seek a non-party's documents for use in a different matter, non-party Ms. Ransome did produce the documents that she has that relate directly to Defendant and Epstein as she testified.

CONCLUSION

Non-party Ms. Ransome respectfully requests that this Court grant her protection from having to produce any additional discovery or sit for any additional deposition testimony (DE 650). Non-party Ms. Ransome also respectfully requests that the Court deny Defendant's Combined Motion to Compel (DE 655).

Dated: March 7, 2017

Respectfully Submitted,

By: /s/ J. Stanley Pottinger

J. Stanley Pottinger (Pro Hac Vice)
Counsel for Sarah Ransome

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th of March, 2017, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on the individuals identified below via transmission of Notices of Electronic Filing generated by CM/ECF.

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EXHIBIT 2

(File Under Seal)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Virginia L. Giuffre,

Plaintiff,

v.

Ghislaine Maxwell,

Defendant.
_____/

Case No.: 15-cv-07433-RWS

NON-PARTY SARAH RANSOME's RESPONSES AND OBJECTIONS TO DEFENDANT'S SUBPOENA REQUESTS

Sarah Ransome, a non-party to this action, hereby responds to the Subpoena *Duces Tecum* noticed by Defendant Maxwell, and submits these responses and objections ("Responses") to the document requests contained therein.

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

Defendant, Maxwell has served non-party Sarah Ransome with a subpoena *duces tecum* seeking an array of documents that are both irrelevant to this matter and entirely privileged. Defendant's subpoena is solely meant to harass and place an undue burden on Ms. Ransome.

To be discoverable, information sought must be relevant to the underlying action. Fed. R. Civ. P. 26(b)(1). Where discovery is sought from third parties, the Court must weigh the probative value of the information against the burden of production on said non-party. *In re Biovail Corp. Sec. Litig.*, 247 F.R.D. 72, 74 (S.D.N.Y. 2007) (citing *Concord Boat Corp. v. Brunswick Corp.,* 169 F.R.D. 44, 48-49 (S.D.N.Y.1996)); Fed.R.Civ.P. 45(c)(2)(B). In order to determine whether a subpoena imposes an undue burden, the Court should consider: 1) relevance, 2) the need of the party for the documents, 3) the breadth of the document request, 4) the time period covered by it, 5) the particularity with which the documents are described, and 6) the burden imposed. *Id.*

Specifically, the subpoena served on Ms. Ransome seeks documents that are wholly irrelevant to the underlying action including protected financial information and documents or communications between Sarah Ransome and her attorneys, which are protected by the attorney-client privilege and the work product doctrine. Notably, the face of the subpoena demonstrates that Defendant is not even seeking documents relevant to the matter before this Court, and is instead attempting to obtain backdoor discovery for other actions.

Ms. Ransome's responses are subject to the following qualifications, explanations, and objections, which apply to each and every request, and are incorporated in full by this reference into each and every response below as if fully set forth therein:

1. Ransome objects to Defendant's vastly overbroad non-party subpoena as it places an undue burden on her to have to search for the broad scope of materials requested, most of which seeks information that is irrelevant to the Defamation Action and clearly intended solely to harass, embarrass, intimidate, and oppress this non-party by seeking highly personal and sensitive information.

2. Ransome objects to Defendant's clear abuse of the subpoena power of this Court as she issued subpoena requests that are intended to obtain discovery for the development of another action relating to this non-party, and are clearly unrelated to this case.

3. Ransome responds to the requests as she reasonably interprets and understands the requests. Should Defendant subsequently assert an interpretation of any individual request that differs from her understanding, she reserves the right to supplement the responses.

4. To the extent a request seeks documents protected from discovery by the attorney-client privilege, or any other privilege or protection, no such documents shall be produced even if

no specific objection is asserted in response to each individual request. Inadvertent identification or production of privileged documents or information is not a waiver of any applicable privilege.

5. Ransome objects to the Definitions and Instructions and to each Request to the extent they seek to alter or expand upon the obligations imposed by the Federal Rules of Civil Procedure.

6. Ransome objects to the Definitions and Instructions and to each Request to the extent that it calls for the production of documents that are not in her custody, possession, or control.

7. A statement in response to a specific request that Ransome will produce documents is not a statement that any such documents exist but, rather, means only that such documents that do exist and are responsive to a specific Request will be produced.

8. To the extent that Ransome produces documents in response to specific requests to which she has objected, Ransome reserves the right to maintain such objections with respect to any additional information, and such objections are not waived by the production of responsive documents.

9. Ransome objects to the requests to the extent they seek private and confidential financial information or other confidential information of any kind.

10. Ransome objects to the requests to the extent they seek personal and confidential financial information related to third-parties.

11. Ransome objects to the requests to the extent that they seek documents already in Defendant's possession or to the extent they are publicly available.

12. Ransome objects to the requests as overbroad where a time limit has not been specified. To the extent the Court directs discovery from this non-party, it should be limited to the date of the filing of this action to the present.

13. Ransome objects to the Requests as they seek to place an undue burden on Ransome, who is a non-party to the pending litigation.

RESPONSES AND OBJECTIONS

1. All Documents containing Communications with Virginia Roberts Giuffre, or any of her attorneys, agents, investigators, from the period 1999-present.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks fundamentally privileged communications between a non-party and her counsel. Specifically, Ransome objects to this request on the grounds of privilege, the work product doctrine, the common interest privilege, or any other privilege or protection.

Ransome further objects to this Request in that it is vague and ambiguous with respect to its reference to "all documents" containing communications. Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request to the extent it seeks confidential financial information from a non-party. Ransome objects to this Request in that it places an undue burden on this non-party including, for example, requiring the non-party to search for "documents," which has been very broadly defined, for a period of time lasting more than seventeen years.

Without waiving such objections, Ransome is not in possession of any non-privileged documents responsive to this request.

2. All fee agreements for Your engagements with any attorneys for the purpose of pursuing any civil or criminal claims regarding Jeffrey Epstein, Ghislaine Maxwell, Natalya Malyshov, Sarah Kellen, and Nadia Marcincova.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks fundamentally privileged communications between a non-party and her counsel. Specifically, Ransome objects to this request on the grounds of privilege, the work product doctrine, the common interest privilege, or any other privilege or protection. Ransome further objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request to the extent it seeks confidential financial information from a non-party.

Without waiving such objections, a copy of non-party Sarah Ransome's retainer agreement is attached hereto as RANSOME_000016, which should be treated as Confidential pursuant to the parties' Protective Order. Ms. Ransome reserves the right to supplement this response should additional responsive documentation become available.

3. All Documents that reference, relate to, or mention, whether by name or otherwise, the following individuals: Virginia Roberts, Ghislaine Maxwell, Jeffrey Epstein, Natalya Malyshov, Sarah Kellen, and Nadia Marcincova.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks fundamentally privileged communications between a non-party and her counsel. Specifically, Ransome objects to this request on the grounds of privilege, the work product doctrine, the common interest privilege, or any other privilege or protection. Ransome further objects to this Request in that it is vague and ambiguous with respect to its reference to "all documents."

Ransome further objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request to the extent it seeks confidential financial information from a non-party. Ransome objects to this Request in that it places an undue burden on this non-party including, for example, requiring the non-party to search for all "documents," which has been broadly defined.

Without waiving such objections, all responsive documents in non-party Sarah Ransome's possession are attached hereto as RANSOME_000001-000016, which should be treated as Confidential pursuant to the parties' Protective Order.

4. All Communications You have had in whatever form with any other female who you ever witnessed at or in a property, home, business, plane or automobile other vehicle owned or controlled by Jeffrey Epstein.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks an unlimited number of communications between a non-party and an unlimited number of unidentified individuals. Defendant has made no effort to specifically identify a single individual, and instead casts an incredibly unreasonable net to include "any other female." Ransome objects to this Request in that it places an undue burden on this non-party including, for example, requiring the non-party to search for "documents," which has been broadly defined, for an unspecified period of time. This request is entirely unreasonable, and the very definition of overly broad. Ransome further objects to this Request in that it is vague and ambiguous, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action.

5. All Communications You have had with Natalya Malyshov, Virginia Roberts, Ghislaine Maxwell, Jeffrey Epstein, Sarah Kellen, or Nadia Marcincova.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks an unlimited number of unspecified communications. Specifically, Ransome objects to this request on the grounds of privilege, the work product doctrine, the common interest privilege, or any other privilege or protection. Ransome further objects to this request in that it is vague and ambiguous with respect to its reference to "all communications." Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it places an undue burden on this non-party including, for example, requiring the non-party to search for "communications," which has been broadly defined for an unlimited period of time.

Without waiving such objections, all responsive documents in non-party Sarah Ransome's possession are attached hereto as RANSOME_000001-000016, which should be treated as Confidential pursuant to the parties' Protective Order.

6. Any photographs containing any image of Virginia Roberts, Ghislaine Maxwell, Jeffrey Epstein, Natalya Malyshov, Sarah Kellen, or Nadia Marcincova.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks an unlimited number of unspecified photographs. Ransome further objects to this request in that it is vague and ambiguous with respect to its reference to all photographs. Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it places an undue burden on this non-party including, for example, requiring the non-party to search for photographs for an unlimited period of time.

Without waiving such objections, all responsive photographs in non-party Sarah Ransome's possession are attached hereto as RANSOME_000024-000028, 000069, 000121-000123, 000126-000135, 000138-000143, 000145-000155, which should be treated as Confidential pursuant to the parties' Protective Order.

7. Any photographs taken by You, or containing any image of You, at, in or near any home, business, private vehicle (including airplane), or any other property owned or controlled by Jeffrey Epstein.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks an unlimited number of unspecified photographs. Ransome further objects to this request in that it is vague and ambiguous with respect to its reference to "any photographs." Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it places an undue burden on this non-party including, for example, requiring the non-party to search for photographs for an unlimited period of time.

Without waiving such objections, all responsive photographs in non-party Sarah Ransome's possession are attached hereto as RANSOME_000022, 42-47, 52, 56-59, 71, 127-131, 152, 153, which should be treated as Confidential pursuant to the parties' Protective Order.

8. Any photographs that depict any home, business, private vehicle (including airplane), or any other property owned or controlled by Jeffrey Epstein.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks an unlimited number of unspecified photographs. Ransome further objects to this request in that it is vague and ambiguous with respect to its reference to "any photographs." Ransome objects to this Request as overbroad, harassing,

and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it places an undue burden on this non-party including, for example, requiring the non-party to search for photographs for an unlimited period of time.

Without waiving such objections, all responsive photographs in non-party Sarah Ransome's possession are attached hereto as RANSOME_00017-000156, which should be treated as Confidential pursuant to the parties' Protective Order.

9. All of Your passports, travel visas, or permissions to live, work or study in a foreign country, related to the years 2005-present.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Without waiving such objections, a copy of non-party Sarah Ransome's current passport is attached hereto as RANSOME_000157-000168, which should be treated as Confidential pursuant to the parties' Protective Order.

10. All Communications regarding any of Your passports, visas, visa applications, or other permission to live, work or study in a foreign country, for the years 2005-present.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

11. All Documents referencing any commercial plane tickets, boarding passes, or any other mode of travel during the time period 2006-2007.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying

action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Without waiving such objections, all responsive documents in non-party Sarah Ransome's possession are attached hereto as RANSOME_000001-000004, 000008, 000011, 000012, which should be treated as Confidential pursuant to the parties' Protective Order.

12. Any credit card receipt, canceled check, or any other Document reflecting travel by You during the time period 2006-2007.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine*

Maxwell, Sarah Kellen, Lesley Groff, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome further objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Ransome objects to Defendant's attempt to abuse subpoena power to seek private and confidential financial information or other confidential information of any kind from this non-party. Ransome further objects on the basis that the confidential and private financial records sought by Defendant relating to this non-party have no relevance to proving the allegations in the complaint, and are not discoverable. *DeLeonardis v. Hara*, 25 N.Y.S.3d 185, 185 (N.Y. App. Div. 2016).

13. All phone records for any cellphone owned, used or possessed by You during the years 2006-2007.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead

to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Without waiving such objections, Ransome is not in possession of documents responsive to this request.

14. All Documents reflecting or relating to any Communications between Jeffrey Epstein or Ghislaine Maxwell and either of Your parents, step-parents or other family members.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Without waiting such objections, Ransome is not in possession of any documents responsive to this request.

15. All Documents reflecting any money, payment, valuable consideration or other remuneration received by You from Jeffrey Epstein or any person known by You to be affiliated with Jeffrey Epstein.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Ransome objects to Defendant's attempt to abuse subpoena power to seek private and confidential financial information or other confidential information of any kind from this non-party. Ransome further objects on the basis that the confidential and private financial records sought by Defendant relating to this non-party have no relevance to proving the allegations in the complaint, and are not discoverable. *DeLeonardis v. Hara*, 25 N.Y.S.3d 185, 185 (N.Y. App. Div. 2016).

16. All bank statements, credit card statements, money transfer records, or other statements from any financial institution in Your name, in whole or in part, for the years 2006-2007.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Ransome objects to Defendant's attempt to abuse subpoena power to seek private and confidential financial information or other confidential information of any kind from this non-party. Ransome further objects on the basis that the confidential and private financial records sought by Defendant relating to this non-party have no relevance to proving the allegations in the complaint, and are not discoverable. *DeLeonardis v. Hara*, 25 N.Y.S.3d 185, 185 (N.Y. App. Div. 2016).

17. Any Documents concerning Your residency during the years 2006-2007, including leases, rental agreements, rent payments, deeds, or trusts.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

18. A copy of Your current driver's license.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK

(S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Without waiving such objections, Sarah Ransome's driver's license will be produced at her deposition in this matter.

19. Any Document reflecting any of Your post-secondary training or educational degree or course of study, to include transcripts, payments for tuition, courses taken, dates of attendance and grades received.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose

20. Any application for college, university, or any other post-secondary institution, or technical college, fashion college, modeling training or any similar institution, submitted by You or on Your behalf during the years 2005 – present.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

21. All Documents reflecting any moneys received by You in exchange for any "modeling" by You.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead

allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Ransome objects to Defendant's attempt to abuse subpoena power to seek private and confidential financial information or other confidential information of any kind from this non-party. Ransome further objects on the basis that the confidential and private financial records sought by Defendant relating to this non-party have no relevance to proving the allegations in the complaint, and are not discoverable. *DeLeonardis v. Hara*, 25 N.Y.S.3d 185, 185 (N.Y. App. Div. 2016).

22. All modeling contracts signed or entered into by You.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead

to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Ransome objects to Defendant's attempt to abuse subpoena power to seek private and confidential financial information or other confidential information of any kind from this non-party. Ransome further objects on the basis that the confidential and private financial records sought by Defendant relating to this non-party have no relevance to proving the allegations in the complaint, and are not discoverable. *DeLeonardis v. Hara*, 25 N.Y.S.3d 185, 185 (N.Y. App. Div. 2016).

23. Any calendar, receipt, Communication or Document reflecting your whereabouts during the calendar years 2006-2007.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in

that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Without waiving such objections, all responsive electronic communications in non-party Sarah Ransome's possession are attached hereto as RANSOME_000001-000015, which should be treated as Confidential pursuant to the parties' Protective Order.

24. Any Documents reflecting Your medical, mental health or emergency care or other treatment for any eating disorder, malnourishment, kidney malfunction, emotional problems, psychological or psychiatric disorders, sexually transmitted diseases, and therapy records, and any prescriptions for any of the above categories.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

25. Any Documents containing any Communications You have had with any law enforcement agency.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

26. Any Documents that reflect any criminal charges, tickets, summonses, arrests, investigations concerning You or witnessed by You.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine*

Maxwell, Sarah Kellen, Lesley Groff, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

27. Any Documents containing any statement regarding Your experience or contact with Virginia Roberts, Ghislaine Maxwell, Jeffrey Epstein, Natalya Malyshov, Sarah Kellen, and Nadia Marcincova, including without limitation any Communication with anyone, any diary, journal, email, letter, witness statement, and summary.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Without waiving such objections, all responsive electronic communications in non-party Sarah Ransome's possession are attached hereto as RANSOME_000001-000015, which should be treated as Confidential pursuant to the parties' Protective Order.

28. Any civil complaint or civil demand filed by You or on Your behalf by which You have ever sought damages or compensation of any form or nature.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.).

Defendant is currently in possession of the aforementioned pleading. Therefore, Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

29. A copy of Your most recent paycheck, paycheck stub, earnings statement and any bank statement, credit card statement and any Document reflecting any money owed by You to anyone.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Ransome objects to Defendant's attempt to abuse subpoena power to seek private and confidential financial information or other confidential information of any kind from this non-party. Ransome further objects on the basis that the confidential and private financial records sought by Defendant relating to this non-party have no relevance to proving the allegations in the complaint, and are not discoverable. *DeLeonardis v. Hara*, 25 N.Y.S.3d 185, 185 (N.Y. App. Div. 2016).

30. A copy of your Facebook, Instagram, Twitter, and any other social media application or program for the years 2006-2007 and from 2015 – present.

RESPONSE:

In addition to the Preliminary Statement and General Objections, Ransome objects to this request in that she is a non-party and this requests seeks information that is clearly not relevant to

the underlying action. Ransome objects to Defendant being permitted to utilize the underlying action to obtain backdoor discovery into a separate action entirely unrelated to whether or not Maxwell defamed Virginia Roberts Giuffre. Ransome further objects to this request in that the face of the request demonstrates that the Defendant is abusing the subpoena power by serving a subpoena on a non-party that seeks discovery unrelated to the underlying matter, but instead allegedly relevant to another Federal Action styled *JANE DOE 43 v. Jeffrey Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff*, and Natalya Malyshev Case Number 1:17-cv-00616-JGK (S.D.N.Y.). Ransome objects to this Request as overbroad, harassing, and not calculated to lead to discoverable evidence relevant to the Defamation Action. Ransome objects to this Request in that it represents a complete invasion of privacy. A non-party should not be subjected to undue harassment serving no admissible purpose.

Dated: February 13, 2017

Respectfully Submitted,

By: /s/ *J. Stanley Pottinger*

J. Stanley Pottinger
49 Twin Lakes Road
South Salem, New York 10590-1012
914-763-8333

CERTIFICATE OF SERVICE

I certify that on February 13, 2017, I electronically served this Objection to Subpoena via Email on the following.

Laura A. Menninger
Jeffrey S. Pagliuca
Haddon, Morgan and Foreman, P.C.
150 East 10th Avenue
Denver, CO 80203
lmenninger@hmflaw.com

By: /s/ *J. Stanley Pottinger*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

15-cv-07433-RWS

----------X

Defendant's Reply in Support of Motion to Compel Non-Party Witness to Produce Documents and Respond to Deposition Questions

Laura A. Menninger
Jeffrey S. Pagliuca
Ty Gee
HADDON, MORGAN AND FOREMAN, P.C.
150 East 10th Avenue
Denver, CO 80203
303.831.7364

TABLE OF CONTENTS

Defendant Ghislaine Maxwell ("Ms. Maxwell") files this Reply in Support of her Motion to Compel Non-Party Witness to Produce Documents and Respond to Deposition Questions (Doc. 655) and further states as follows:

INTRODUCTION

Ms. Ransome's Opposition to Defendant's Combined Motion to Compel ("Opposition") (Doc. 700), fell woefully short of actually addressing the categories of documents and deposition questions sought by the Motion. While Ms. Ransome touts her "robust" production, in fact she produced 18 pages of documents (three after the Motion to Compel was filed), an incomplete copy of one of her old passports, and 150 photographs which were given to her by Jean Luc Brunel. In short, the Opposition seems to suggest because she produced these pages, she should not have to answer other of the subpoena requests nor answer deposition questions which are designed to lead to admissible evidence and which, concededly, do not call for privileged answers. The Opposition, long on screenshots of photos and documents, but short on law or argument aimed at the Motion to Compel, fails to articulate any actual basis for refusal to produce or to answer, and Ms. Ransome should be ordered to comply.

ARGUMENT

I. MS. RANSOME UNJUSTIFIABLY FAILED TO PRODUCE A PRIVILEGE LOG, RESULTING IN A WAIVER OF HER PRIVILEGE

Ms. Ransome concedes she produced no privilege log, despite her assertion of privilege as to Requests 1, 2, 3 and 5. Menninger Decl. Ex. E at Responses 1-3, 5. In the face of the plain language in Rule 45(e)(2)(A), as well as the legion of cited cases requiring a privilege log (Motion at 4-5), Ms. Ransome submits two unpersuasive and inapposite arguments: (1) a log would be "burdensome", and (2) witness interviews are subject to work product protection.

Regarding "burdensomeness," Ms. Ransome is represented by at least five attorneys from three different firms.[1] She first spoke to those attorneys sometime in October or November 2016, so the entire volume of their communications cannot be significant, and she submits no proof to the Court that it is. She has offered no explanation as to why her five (or six) attorneys are unable to prepare a privilege log as to their communications with her, or any other documents withheld as privileged.

The cases cited by Plaintiff do not support her position. For example, *Wells Fargo Bank, N.A.* has nothing to do with privilege logs and, in fact, holds to the contrary: "The permissible scope of discovery from a non-party is generally the same as that applicable to discovery sought from parties." *Wells Fargo Bank, N.A. v. Konover*, No. 3:05CV1924 CFD/WIG, 2009 WL 585434, at *4 (D. Conn. Mar. 4, 2009). The non-party witness in *Med. Components, Inc. v. Classic Med., Inc.*, 210 F.R.D. 175, 180 (M.D.N.C. 2002), actually offered to provide a privilege log. And the non-party witness in *Tucker v. Am. Int'l Grp, Inc.,* 281 F.R.D. 85 (D. Conn. 2012), fully complied with two previous discovery requests but objected to inspection of its electronic servers to locate emails whose existence was speculative.

Ms. Ransome's second argument, the unremarkable position that witness interviews are covered by work product protection, does nothing to address the issue in question, i.e., whether she should have provided a privilege log identifying any such privileged documents. Rule 45(e)(2)(A) requires as to any withheld document "subject to protection as trial-preparation material," a non-party witness must "(i) expressly make the claim; and (ii) describe the nature of

[1] It is "at least" five attorneys because, when asked, Ms. Ransome testified that she is represented by Mr. Guirguis (who appeared at her deposition but has not entered an appearance in this case), Mr. Boies, Ms. McCawley, Mr. Pottinger and Mr. Edwards, but she denied being represented by Mr. Cassell, despite the fact that she has a signed fee agreement with him. Pottinger Decl. (Doc. 701) Ex. 1 at 19-20; Menninger Decl. Ex. C. She testified also that she is not represented by Meredith Schultz, though Ms. Schultz entered her appearance on Ms. Ransome's behalf. *Compare* Pottinger Decl. Ex. 1 at 23 with Docket, 17-cv-00616.

the withheld documents…in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim." Ms. Ransome and her five attorneys admittedly did not expressly make any such claim nor did they describe the nature of the withheld documents.

The witness's unjustified failure to provide a privilege log as to Responses 1-3 and 5 effected a waiver of any privilege. *See* Mot. at 4-5; *OneBeacon Ins. Co. v. Forman Int'l Ltd.,* 04 CIV. 2271(RWS), 2006 WL 3771010, at *7–8 (S.D.N.Y. Dec. 15, 2006); *In re Application for Subpoena to Kroll,* 224 F.R.D. 326, 328 (E.D.N.Y. 2004); *Labatt Ltd. v. Molson Breweries,* Nos. 93 CV 75004, 94 CV 71540(RPP), 1995 WL 23603 (S.D.N.Y. Jan. 20, 1995); *In re Grand Jury Subpoena,* 274 F.3d 563, 575-76 (1st Cir. 2001).

II. MS. RANSOME REFUSED TO PRODUCE RELEVANT, RESPONSIVE DOCUMENTS WITHOUT BASIS

A. Requests 1, 4, 5, 14: Communications with Witnesses Related to this Case

Requests 1, 4, 5 and 14 requested communications between Ms. Ransome and a number of different witnesses in this case. In response, Ms. Ransome produced 18 pages emails. She testified that she conducted the search for responsive emails herself, of her Yahoo account inbox. Pottinger Dep. Ex. 1 at 378-83, 386. Ms. Ransome did not search any other accounts for responsive communications, no forensic search was conducted of the account, nor did her attorneys conduct a search of her computer (including the attorneys representing her in her *Jane Doe* complaint).

According to Ms. Ransome at her deposition, she possesses other responsive communications. For example, she testified that she wrote to the NY Post reporter, Maureen Callahan, in an attempt to sell her story to the media, in or about October 2016. Pottinger Ex. 1 at 38 ("I emailed her after I read an article that she had written about Jeffrey Epstein."); *id.* at 50

("There were, I think, a few emails exchanged, but nothing ever came about it. Q: And, again, those emails from your Yahoo account? A: Yes."). She testified that those emails are still on her computer in her Yahoo account. *Id.* at 39 (Q: Where is the email that you wrote her? A: It's on a—it's on my computer. Q: Okay. In your Yahoo account? A: Yes."). They were not produced. *Compare* Menninger Decl. Ex. I, Request No. 3 (seeking documents that reference "Ghislaine Maxwell, Jeffrey Epstein" and others).

She also possesses emails with witness Pumla Grizell, to whom she allegedly had complained about Jeffrey Epstein, but only produced selected emails within the same email chain.

Because a thorough search of email communications was not performed within the Yahoo account or any other account used by Ms. Ransome, there is no guarantee that all responsive documents have been produced. After counsel for Ms. Maxwell raised during conferral the incomplete production of communications, Ms. Ransome's lawyers were able to locate additional responsive documents which have been produced in 3 different batches. The Court should order a thorough and complete search of Ms. Ransome's emails and accounts to ensure that there are no other missing communications and that the identified communications with Ms. Callahan and Ms. Grizell are produced.

B. Request 2: Fee Agreements

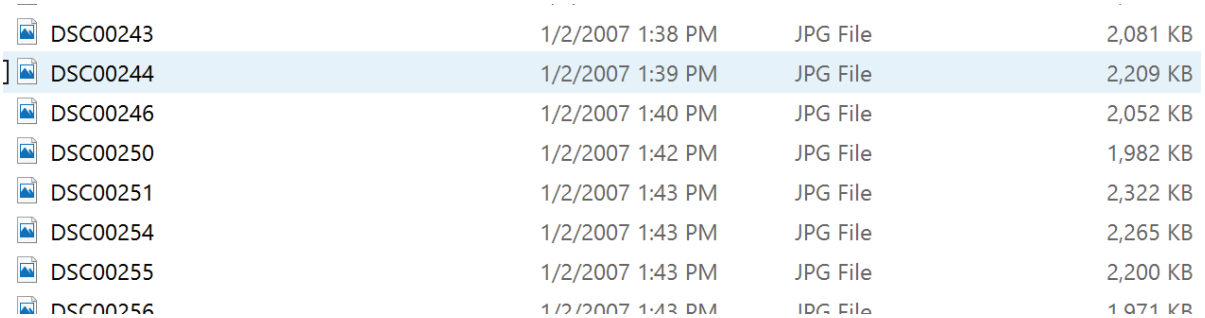
In response to Request 2, Ms. Ransome produced her fee agreement with Messrs. Edwards, Pottinger and Cassell, purporting to reflect their pro bono representation of her as a witness in this matter. She has not produced, nor indicated any basis for withholding, her fee agreement associated with her civil complaint in *Jane Doe 43 v. Epstein et al.,* including any for Mr. Cassell, Mr. Edwards, Mr. Boies, Ms. McCawley or Ms. Schultz, all of whom have entered appearances in that matter. *See Docket Report*, *Jane Doe 43 v. Epstein et al.,* 17-cv-00616-JGK.

She also did not produce any writing reflecting her engagement of Mr. Guirguis as her counsel. Ms. Ransome's interconnected legal representations, her financial motive for testifying, and her financial arrangements with those counsel all are relevant and discoverable.

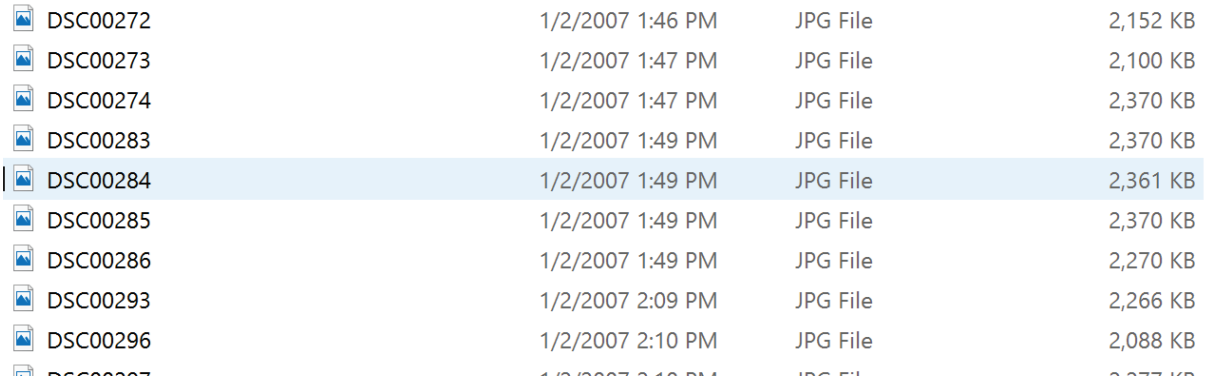
C. Request 6-7: Photographs

Ms. Ransome produced *some* photographs which she claims documents her time on the island. Some photos, in fact, capture her image on what appears to Little St. James Island. Indeed, she inserted photographs in her Response and suggested that such photographs of Ms. Maxwell had been taken by her. *See* Opp'n at 1-4 (Doc. 700). Any such implication would be false. As Ms. Ransome testified and as subsequent investigation has revealed, the photographs of Ms. Maxwell were actually taken by Jean Luc Brunel, placed on a disk, and *given to Ms. Ransome*. Pottinger Decl. Ex. 1 at 335-336 ("Jean Luc took these specific photos…I had a disk that Jean Luc had given me as a present and memento of that holiday."). Some of the photos were taken when Ms. Ransome was not even on the island.

In any event, the photographs produced are incomplete. The "gift" disk of photographs, jumps sequential numbers thereby having omitted a number of photos, purportedly taken on the island.



DSC00243	1/2/2007 1:38 PM	JPG File	2,081 KB
DSC00244	1/2/2007 1:39 PM	JPG File	2,209 KB
DSC00246	1/2/2007 1:40 PM	JPG File	2,052 KB
DSC00250	1/2/2007 1:42 PM	JPG File	1,982 KB
DSC00251	1/2/2007 1:43 PM	JPG File	2,322 KB
DSC00254	1/2/2007 1:43 PM	JPG File	2,265 KB
DSC00255	1/2/2007 1:43 PM	JPG File	2,200 KB
DSC00256	1/2/2007 1:43 PM	JPG File	1,971 KB



DSC00272	1/2/2007 1:46 PM	JPG File	2,152 KB
DSC00273	1/2/2007 1:47 PM	JPG File	2,100 KB
DSC00274	1/2/2007 1:47 PM	JPG File	2,370 KB
DSC00283	1/2/2007 1:49 PM	JPG File	2,370 KB
DSC00284	1/2/2007 1:49 PM	JPG File	2,361 KB
DSC00285	1/2/2007 1:49 PM	JPG File	2,370 KB
DSC00286	1/2/2007 1:49 PM	JPG File	2,270 KB
DSC00293	1/2/2007 2:09 PM	JPG File	2,266 KB
DSC00296	1/2/2007 2:10 PM	JPG File	2,088 KB

See, e.g., Menninger Decl. Ex. J (screenshots of contents of disk produced).

Furthermore, Plaintiff was asked to produce the photos in "native format." As to print photographs, she provided some copies of the fronts of photos and some backs of photos, but she produced the fronts and backs separately so there is no way to discern which front goes with which back.

Ms. Ransome should be ordered to produce *all* responsive photographs in their native format, or permit inspection of the same.

D. Request 9-12: Passports, Visas and Other Travel Documents

In Response 9, Ms. Ransome promised that her "current passport is attached." Pottinger Decl. Ex. 1 at 10. It was not. Ms. Ransome instead produced one of her expired passports, specifically her British passports. She did not produce her South African passport from 2006-07, nor did she produce either her current or her prior South African passports. In fact, Ms. Ransome had her current passport both in NY and she presented it at the time she signed her declaration in Barcelona.

Ms. Ransome also produced no documents either reflecting her visas to travel, work or study in the US (Request 10) or any communication regarding such visas (Request 11).

These documents are calculated to lead to admissible discovery, not, as the witness baldly proclaims, intended to "harass" her. Ms. Ransome's story is premised on the notion that she

wanted to "further her education" in the U.S., which is why she traveled here in late 2006. She also has alleged that she was "promised" that Mr. Epstein would help her gain admission to FIT, and that Ms. Maxwell also made such extraordinary promises. Whether Ms. Ransome had permission to attend school in the U.S., or to work here, bears directly on whether she reasonably could have relied on any such alleged promise. Moreover, the dates of Ms. Ransome's travel to and from the U.S., to and from South Africa, and to and from other countries relates directly to whether or not she was in fact present in the U.S. when she claims that she was. The requested documents should be produced.

E. Request 15-16: Financial Records to Support Her Claims

In her *Jane Doe 43* complaint, Ms. Ransome averred that "Defendants Epstein and Maxwell continued to provide [her] with things of value in exchange for [her] continued compliance with Epstein's sexual demands; however, they failed and refused to perform their promises to help [her] be admitted to F.I.T. or another school, or to provide financial support for college admission or on-going education." *See Jane Doe 43 v. Epstein et al.,* 17-cv-00616, Complaint (Doc. 1) at 16-17. The subpoena thus called for Ms. Ransome to produce documents reflecting any payments received by her from Mr. Epstein (or his associates) and her financial records from the years 2006-07 when she claims she was receiving remuneration from Mr. Epstein.

In response, Ms. Ransome contends that these records are a "complete invasion of her privacy" and have "no relevance." Apart from "relevance" not being the applicable standard, it is hard to imagine documents reflecting her financial payments from Mr. Epstein being any more relevant. During her deposition, Ms. Ransome testified that she had a bank account in NY in 2006-07 and her counsel instructed her not to answer the question "with which bank?" Pottinger Decl. Ex. 1 at 414-15. She testified that in that account she placed her earnings from her

"modeling contracts." *Id.* She also testified that during the operative time frame she was making money working for an agency in New York who arranged to have her paid $1,500 to "entertain" or "spend time" with "gentlemen" with whom she sometimes engaged in sexual relations on her "own accord." *Id.*at 86-88. Finally, she claims she had "savings" from her previous modeling jobs.

All of Ms. Ransome's financial circumstances at the time, including whether she received money from Mr. Epstein, when and how much, all bear signifcant relevance to her claims that she was given financial incentives by Epstein and Maxwell in exchange for sexual compliance. The subpoena is narrowly tailored to (a) money directly from Epstein or his associates, or (b) from the time frame 2006-07. Any privacy concerns can be alleviated based on the protective order entered in this case.

F. Request 18: Driver's License

Response to Request No. 18 promised that "Sarah Ransome's driver's license will be produced at her (February 17) deposition in this matter." Pottinger Dec. Ex. 1 at 17. It was not. Ms. Ransome now contends that she is "fearful for her life" based on her sharing her story with a news reporter from the New York Post.[2] A driver's license contains important identifying information from which background checks and other investigation can occur. It is primarily a public document. But for the fact that Ms. Ransome lives in Spain, and has dual citizenships with the UK and South Africa, such document could be obtained by a simple visit to the Department of Motor Vehicles. Any newfound privacy concerns can be alleviated by a "confidential" designation on the production.

[2] Ms. Ransome testified that she was "followed at least once," but that was after she contacted the New York Post reporter and blames that reporter for sharing her secret. The supposed "following" occurred prior to Ms. Ransome's name being identified publicly or to counsel for Ms. Maxwell, and Ms. Ransome admits she did not report the alleged following to any law enforcement authorities.

G. Request 19-20: Education Records

Ms. Ransome was requested to produce her other post-secondary education degrees, transcripts, and attendance and grade records, as well as her applications to fashion college, modeling or other technical colleges. Ms. Ransome testified at her deposition, and noted in her *Jane Doe 43* complaint that she filled out an application for acceptance at the Fashion Institute of Technology ("FIT") and that, she says, Mr. Epstein and Ms. Maxwell promised to help her gain admission, but they did not which forms the basis of her claim that her sexual favors to Mr. Epstein amounted to "trafficking."

She failed to produce her FIT application, without justification. She also failed to produce any other records concerning her other post-secondary training or applications. These documents relate to the allegations in her Jane Doe complaint (paragraphs 37, 53-55) and also her financial motivation to testify in this case.

H. Request 21-22: Modeling Contracts

Similarly, Ms. Ransome refused to produce her modeling contracts or earnings, which directly relate to Paragraph 38 of her *Jane Doe* complaint. She did not indicate she searched for any such documents, indeed she refused to answer questions about her modeling earnings, as discussed *infra*.

I. Request 30: Social Media

Finally, Ms. Ransome was asked to produce her social media postings. She denied having any such accounts. Pottinger Dec. Ex. 1 at 61 ("I don't have any social media platforms."). This testimony was false. Menninger Decl. Ex. K. Ms. Ransome has, at least, a Twitter account as well as an Instagram account. While some posts are public, others are only shared with her friends. Ms. Ransome should be required to produce any of her postings on any social media platform.

III. MS. RANSOME UNJUSTIFIABLY REFUSED TO ANSWER RELEVANT DEPOSTION QUESTIONS, AND SHE MUST BE COMPELLED TO RE-APPEAR AND RESPOND

During her deposition, Ms. Ransome's counsel (and Plaintiff's counsel) instructed her not to answer a number of non-privileged questions. The record of the deposition is replete with such frivolous objections. For example, at page 7, her attorney instructed her not to give her "current address," whether she "has any source of income," "her family's location, things of that nature," and her partner's "cellphone number." None of these questions call for privileged information. Pottinger Dec. Ex. 1 at 7, 10-12, 15. When asked who was paying for her hotel in New York, Mr. Guirguis instructed Ms. Ransome not to answer, and then Ms. McCawley (appearing on behalf of Plaintiff and NOT on behalf of Ms. Ransome), instructed her to answer. *Id.* at 31-33. Her attorneys (and Plaintiff's counsel) took breaks while questions were pending to consult with Ms. Ransome before she answered. In sum, there were a significant number of deposition questions posed to Ms. Ransome that she was improperly instructed not to answer and for which she should be compelled to return to a deposition and answer.

Category 1 - Personal current financial information.

In opposition, Ms. Ransome asserts, without factual or legal support, that her financial information is being sought "for the purpose of harassment and intimidation." Because Ms. Ransome failed to address the relevance argument asserted by the Motion, this issue should be deemed admitted. *Compare* Motion at 10-11; Opp'n at 19.

Category 2 - the cell phone number of her partner.

In opposition, Ms. Ransome asserts, without factual or legal support, that her partner's cellphone number is being sought "for the purpose of harassment and intimidation." Because Ms. Ransome failed to address the relevance assertion asserted by the motion, this issue should be deemed admitted. *Compare* Motion at 11; Opp'n at 19.

Category 3 – Allegedly privileged communications with Alan Dershowitz

In opposition, Ms. Ransome has now backtracked from her deposition testimony and claims she "believed" that Alan Dershowitz was her attorney, even though she then testified that a third person, Mr. Epstein, was in the room during her conversations with Mr. Dershowitz. Because there was an improper assertion of privilege by her attorneys to the questions posed, Ms. Ransome should be ordered to respond to those deposition questions. *See* Motion at 11-12; Opp'n at 19-20.

The Witness's Abandoned Objections

Ms. Ransome did not oppose the specific requests that she answer the following deposition questions, all of which she was instructed not to answer without any claim of privilege or protection. *See* Mot. at 12. Ms. Ransome should also be required to answer these questions:

1. Her partner's occupation (motivation for fabrication)
2. Her parents' addresses (she claims that they spoke with Ms. Maxwell and Mr. Epstein and have knowledge of her "coming forward")
3. Where she was staying while in NY (paid for by Plaintiff's Counsel, motive for fabrication and bias)
4. Whether Alan Dershowitz contacted anyone on her behalf (communications with others by counsel not privileged)
5. Her stepmother's phone number and email address and physical address (she claims that they spoke with Ms. Maxwell and Mr. Epstein)
6. When she provided her photos to her lawyer (*date* of communication and production to attorney not privileged)

CONCLUSION

For the reasons articulated in the Motion to Compel and further supported in this Reply, Defendant requests the entry of an Order:

1. Compelling production of all documents responsive to the subpoena, including communications with counsel because privilege has been waived. These include specifically, but are not limited to:

a. Her current passport, her South African passports, and all missing pages excluded from the passport produced
b. Her emails with Maureen Callahan, including ones wherein she sent photograph of her and her boyfriend referenced in her deposition
c. Her fee agreements
d. Her FIT application
e. The disc of photos provided to her by Jean Luc Brunel – containing the metadata
f. All photographs either previously produced or withheld, with metadata or, if in hard copy, including the front and back of the photo
g. All emails from [redacted] by, between, or referencing any Defendant in Jane Doe 43, or communicating with any person Ms. Ransome knew through Jeffrey Epstein, or that related to her claims in this case and the *Jane Doe 43* complaint.
h. Her financial records from Epstein or from 2006-07
i. Her modeling contracts, and
j. Her social media

2. Requiring Ms. Ransome to re-appear for deposition and respond to all questions as to which she was instructed not to answer in her first deposition, excluding the name of her current prescribing doctor;

Dated: March 14, 2017

Respectfully submitted,

/s/ Laura A. Menninger

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CERTIFICATE OF SERVICE

I certify that on March 14, 2017, I electronically served this *Defendant's Reply in Support of Motion to Compel Non-Party Witness to Produce Documents and Respond to Deposition Questions* via ECF on the following:

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EXHIBIT 1

(FILE UNDER SEAL)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

VIRGINIA L. GIUFFRE,

Plaintiff,

v. 15 Cv. 7433 (RWS)

GHISLAINE MAXWELL,

Defendant.

----------x

February 16, 2017
12:45 p.m.

Before:

HON. ROBERT W. SWEET

District Judge

APPEARANCES

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(Case called)

THE COURT: I think we have got to try to bring a little order out of this chaos. Chaos being, by my approximation, five feet of paper, maybe I am wrong, it might be four, but it's between four and five, and myriad motions and so on.

There are some preliminaries I would like to ask you about.

How do you all feel about our trial setting of March 13. Is that real?

MS. McCAWLEY: We are set for March 13 right now, and we actually had on the agenda, Jeff and I spoke about wanting to talk to you about this today. We had originally anticipated a two-week trial. We have set aside our experts, other individuals that need to be here for that time period, so we are planning to go to trial during that time period if it works with the Court's schedule.

There is a concern that we may run long. So one thought we had, I had, was whether or not it would be amenable to the Court to possibly pick our jury on the Friday before, which would be the 10th, so that by the time Monday rolls around we can start the actual trial. Mr. Pagliura has a family wedding the third weekend, so if we roll into that third week that may become problematic for him. So we want to try to find a way to keep the trial date and get through it, and

hopefully we can work with the Court on that.

I will let them speak on that as well, but that's our position, is we would like to go forward on the 13th and proceed forward.

MR. PAGLIUCA: We actually conferred with Mr. Edwards about this last week, and I advised Mr. Edwards that we were going to be filing a motion to continue the trial that's presently scheduled.

The Court can see from the pretrial order that we filed, there is some roughly, by my count, 80 witnesses that have been identified as trial witnesses. When you actually try to tally up the recorded testimony that's been designated, I don't think you could play that testimony within a two-week time frame. So, in my view, this case as currently postured would roughly take about a month to try as currently postured. When we originally scheduled the case, we all agreed it would be a two-week time frame. My daughter's wedding is not the issue in this case. So I don't want that to be an issue.

THE COURT: When is it?

MR. PAGLIUCA: It is before the trial, shortly before the trial, your Honor. So it is not the third week. There was some discussion about opening up the trial, moving it earlier, which is why I said I really need to be at my daughter's wedding, which is March 4, but that's not the issue. The issue is the two weeks that have been set aside are not sufficient to

try this case, number one.

There is another real problem and a prejudicial problem to the defense, should it go as the plaintiffs have currently postured it, which is we have witnesses in England, South Africa, Colorado, and these people all have to come here on a date certain. And the pretrial order, the plaintiff's statement suggests that they may need 10 to 15 trial days, but I can't schedule international witnesses and Colorado witnesses and expert witnesses on a rolling basis because they have to get here and be available to testify.

So there are a plethora of problems with this case proceeding on March 13. And that's sort of the tip of the iceberg, your Honor, because then there are all these other discovery and evidentiary issues that, frankly, I don't believe will be resolved in sufficient time to have an orderly trial here. If we go through all of the deposition designations and then end up with designations, I don't see how anyone can cut together that much designation testimony in a short time before trial in the case. So I predict, if we were to go to trial, we would end up with massive delays, massive juror problems, and delay of time and waste of court resources.

So I think for all of those reasons, your Honor, I am anticipating filing a motion to continue, but that's as I see the lay of the land here. If we had planned for this to be a month long case, I think we would have approached this

differently, but we didn't.

THE COURT: What do you think is a reasonable trial date under your view of the matter?

MR. PAGLIUCA: I would say sometime this summer would be fine, your Honor. June would be fine. We are talking about 90 days from the original trial date. Believe me, we all want to resolve this case, and my client wants to resolve this case. I am not looking for any tactical delay here. I am just looking for a reasonable solution to what I see as a global problem.

THE COURT: OK. Let me ask you this. Would anybody have any problem if we were to start this on April 10?

MS. McCAWLEY: Your Honor, I don't believe at this very moment that that would be a problem. My only issue is I cleared all of my experts. They had to set aside their schedule to be here for that date. So I would hate to commit to something and have one of my critical experts say they have already scheduled something in that time period. The earlier the better for us. We want to get this case tried, but I would have to double-check before I committed our group to that because I just don't know at this point.

THE COURT: I think based on the joint pretrial order, and the outstanding problems that we have, which we will get to, I think we are probably talking about a four-week trial.

How about the defense, April 10.

MS. MENNINGER: Your Honor, I have a trial scheduled in federal court in Colorado beginning on April 24.

THE COURT: When?

MS. MENNINGER: April 24, your Honor. And I have another state court trial scheduled on May 8. So I would ask to set it past those two dates.

THE COURT: That sounds like May 15.

MS. MENNINGER: That's fine, your Honor. We haven't checked with our experts either.

THE COURT: I understand the problem of witness availability and so on, I have got that, but that's something we can work out, hopefully. How about May 15 then?

MS. McCAWLEY: Yes, your Honor. Again, we have two of the partners trying the case with us as well.

THE COURT: Let's do this then. Let's plan on May 15, and I would direct counsel not to take any other commitments, trial counsel, so that we can go forward with that.

So that's first order of business.

MS. McCAWLEY: Your Honor, could I ask one question, just so I am clear when we are scheduling witnesses. Do you typically run your trials five days through or take off Thursdays? In other words, do we get five full days straight or do you usually have a break where we won't be on trial on Thursday, for example?

THE COURT: I don't understand the question.

MS. McCAWLEY: If we start trial on a Monday, do you typically run the full week or do you take a break on Thursdays for these hearings?

THE COURT: No. We would probably run a full week. Friday has sort of a sacrosanct atmosphere, but that's not written down anywhere. It will depend. See how we go and whatever.

MS. McCAWLEY: Thank you, your Honor.

MR. PAGLIUCA: Your Honor, might I ask one other question on the scheduling matter?

THE COURT: Yes.

MR. PAGLIUCA: One of the things that would be very helpful in scheduling would be if we had a system where the plaintiff had a start date and an end date so that I could then contact witnesses and say, here's your day.

THE COURT: There's a lot of things that have to be ironed out. Let's start with a couple.

The Flores motion, I think we should probably have a hearing on the admissibility of the challenged document -- I am calling it that -- because if the document doesn't get in, there is no sense worrying about Flores. So that's one thing.

Secondly, we have got to figure out how you all want to handle the confidential material, any materials that have been designated as confidential, when we get to the trial. And we have got to have some kind of a protocol as to how that's

going to be done.

So I would say counsel should get together and decide when you want to have a hearing on the admissibility issue, the Rodriguez materials, and then, also, how you would propose that we handle the question of confidentiality. Because I hope we are not going to be opening and closing the courtroom. It should be open all the time, as far as I am concerned.

Let me put it this way. I would certainly urge that we remove the confidential designation for any material that's going to be submitted to the jury.

MR. PAGLIUCA: Your Honor, I think that's what our protective order contemplates.

THE COURT: Well, work out how we are going to deal with it. The mechanics are not easy.

Having said all of that, I think what I should do right now, I think we might hear briefly on the motion to intervene and then hear the motion for summary judgment. My sense of that at the moment is that some of the issues that are involved in that motion for summary judgment have to be decided before you really come to grips with the seven experts that have been de-expertized, if that's a word.

So that's the way I would suggest we proceed. So you meet and confer and decide when you want to have a hearing on the Rodriguez documents, and if you can agree on how we are going to handle the confidential materials, bring it back to me

if you can't agree. And at the moment, I will hear the motion to intervene.

Anybody for it?

MR. WOLMAN: Good afternoon, your Honor. Jay Wolman, Randazza Legal Group, on behalf of putative intervenor Michael Cernovich, d/b/a Cernovich Media.

Consistent with how your Honor is approaching trial, saying that it should be open all the time, summary judgment is a proceeding --

THE COURT: I didn't make a decision on that. I said that would be my preference. We have a confidentiality agreement and that's controlling.

MR. WOLMAN: I understand, your Honor.

The orders already here did not require the Court to analyze any material submitted to be sealed. The parties were given the opportunity to freely submit in support of judicial documents. There is no question summary judgment papers are judicial documents. They can determine the outcome of the case. The Second Circuit is quite clear on this. It's settled.

So then the only question becomes whether or not the plaintiffs, or whomever would want the materials sealed, because the motion for summary judgment itself was filed by the defendants who didn't say why it should be sealed.

THE COURT: Let's talk about the motion to intervene.

MR. WOLMAN: Yes, your Honor. It's to intervene for the purposes of unsealing. My client is a member of the media. The Fourth Estate has a First Amendment right to review judicial documents, a common law right of access to the court proceedings as to what is going on, because the Court may find for the defendants. The court may say, no, it has to go to trial. But that is an adjudication and the standard for sealing any of these documents has not been met because nobody has asked the Court for a finding on any of the materials.

THE COURT: Thank you.

MS. SCHULTZ: This is Meredith Schultz for the plaintiff.

This Court has already ruled that the protective order should not be disturbed by a proposed intervenor seeking to unseal and publish self-selected, piecemeal portions of the record. The latest attempt at intervention by a party line defendant failed on the applicable law, as it is little more than an attempt to taint the jury pool and malign the plaintiff in the eyes of the public immediately prior to trial.

This Court's analysis can begin and end with the Second Circuit's presumption against modifying protective orders on which the parties have reasonably relied. The Second Circuit test on this is clear. It's articulated in *In re Teligent*, 640 F.3d 53, and *In re Sep. 11 Litig.*, 262 F.R.D. 274. Courts can only set aside protective orders if they are

improvidently granted or if there is some extraordinary circumstance or compelling need. The proposed intervenors fail to make any showing whatsoever for either prong of this test.

The Second Circuit has been hesitant to permit --

THE COURT: Forgive me, but we are talking about the motion to intervene. You're talking about the substance of unsealing. But do they get in to make that motion?

MS. SCHULTZ: No, your Honor, and this is why.

The First Amendment does not give the proposed intervenor standing to intervene in this case. Nonparties cannot claim a First Amendment infringement on their freedom of speech. The right to speak in public does not carry with it an unrestrained right to gather information. Moreover, the proposed intervenor's brief is completely silent on how the public access to pretrial proceedings would play a significant positive role in the functioning of the judicial process. And under the test set forth by the Second Circuit in *Newsday LLC*, 730 F.Supp.2d, at page 417, he makes no showing of that whatsoever. So already there is no standing to intervene based on the Second Circuit test.

Finally, this Court has already ruled that it's appropriate for these materials to be sealed, and nothing in either the purported intervenor or Professor Dershowitz's joining of that brief put forth any evidence that the law should be disturbed.

THE COURT: Anything further?

MS. SCHULTZ: Before you are going to reach the merits going to the sealing order, the protective order, there is no standing to intervene in this case.

THE COURT: Thank you. Anything else?

MS. SCHULTZ: Yes, if you don't mind, your Honor.

It fails for other reasons under the law. In the entire motion and reply brief, it is wholly bereft of case law in which a motion to intervene and publish confidential information has been granted in a case with circumstances like this at all.

Here, there are clear and compelling reasons for the sealed documents to remain sealed. They involve the sexual abuse and sexual trafficking of minors. Both parties in this case and the Court in its March 17, 2016 hearing articulated clear and compelling reasons why these records should be sealed.

Contrary to the *Bernstein* case cited by the purported intervenor, where records were unsealed after settlement, not weeks prior to trial, these documents were not sealed because of some pedestrian reason like an alleged kickback scheme. There can hardly be a more compelling reason to seal documents than those that depict the sexual abuse and sexual trafficking of plaintiff, other minors and other young women.

Here, there is no showing why some unspecified

interest in revealing documents concerning sexual assault should disturb the protective order. Moreover, there is prima facie evidence here that there is an illegitimate purpose.

There are two purported intervenors -- one intervenor and one purported intervenor moving the Court to unseal these documents right now. Under *Nixon v. Warner,* Supreme Court case, 435 U.S. 598, and *Amodeo*, 71 F.3d at 1044, the purported intervenor's history of being, as New York Magazine termed, a rape apologist and attacking victims of sexual abuse point to a highly illegitimate purpose to get these unsealed documents that relate to sexual assault. Also, Dershowitz's now official joining of this motion shows that both directly and by proxy are acting to ratify Dershowitz's private spite.

Courts in this district and others routinely seal summary judgment materials, such as in *Louis Vuitton v. My Other Bag*, wherein the court held that privacy interests of business figures were sufficient to keep summary judgment documents sealed. Here, the privacy interests are those of underage victims of sexual assault. If this Court can extend protection to summary judgment materials related to business figures, it can certainly protect documents surrounding sexual assault of minors.

Again, I don't think the Court needs to reach the merits because I don't think there is standing to intervene.

Thank you, your Honor.

THE COURT: Anything further?

MR. WOLMAN: I am surprised by the question of standing. Nothing in any of the opposition suggests that my client is not a member of the Fourth Estate. Nothing in the opposition suggests that this is not a newsworthy case. There have been plenty of articles about Mr. Epstein, about this entire proceeding. This has been in the media. So my client is just another journalist looking to find out here what's going on.

Honestly, I am litigating a little bit with one arm tied behind my back because I am being told that the summary judgment motions and papers have information about all these other minors. I wouldn't know that, your Honor. The motion for summary judgment is redacted, pages 1 to 68. Every single exhibit, the opposition, the reply, this is all redacted. This is not part of the public record. The public cannot examine it.

Regardless of my client's relationship with Professor Dershowitz does not negate his standing as a member of the media looking to report on a newsworthy case. If there are particular materials in the summary judgment motion or opposition that are proper to be sealed, we recognize that, but we don't know what they are in order to make that analysis. They are putting the cart before the horse saying it should be sealed or remain sealed when they haven't made a showing of

what it is that should be sealed. So we can't address that issue.

With respect to the Second Circuit precedent, this is not about tainting the jury pool or self-selecting. This isn't even about discovery materials. Mr. Dershowitz's motion was about discovery materials. This isn't. This is about a judicial document, the motion for summary judgment.

Now, the case they relied upon, the documents weren't at issue until after settlement. Well, this is actually more important because this is about what the Court will or will not decide on the ultimate outcome potentially of this case, because defendants could walk out of here winning summary judgment based upon these very papers that the public has no idea what is in them. That distinguishes *Martindale*. It fits as seen in *Agent Orange*. Just because, unfortunately, it does involve allegedly the sexual assault of minors, that does not in and of itself mean there should be a blanket sealing order in all cases.

In fact, *Globe Newspaper* was the Supreme Court case that specifically held that a Massachusetts statute that automatically sealed material relating to sexual assault of minors does not pass muster. We have to look at an individualized, particularized basis as to why these particular materials should be sealed. Maybe they should be, some of them. We are not looking to embarrass or expose the plaintiff.

We are looking to publicize about a defendant who is now sued in multiple cases relating to a pedophilia ring. This is the news. This is what the public is interested in. This is about there is justice in the courts and there is justice in the court of public opinion.

THE COURT: Thank you all. I will reserve decision.

Now I would like to hear on the motion for summary judgment.

MR. PAGLIUCA: Your Honor, this Mr. Gee who will be arguing this motion. I think it might be prudent at this point, given that I think we are likely going to be talking about information that is subject to the protective order --

THE COURT: I think you won't.

MR. PAGLIUCA: OK.

MR. GEE: Good afternoon, your Honor. My name is Ty Gee. The Court granted my PHV motion last week.

We have 80-some-odd witnesses and the Court has talked about four to five feet of material. I think the summary judgment motion, your Honor, might cut to the chase, and the Court has suggested that perhaps it could, at least with regard to the pending 702 motions.

I am here to suggest to the Court that the disposition of this motion for summary judgment, at least with regard to issue number one, certainly can narrow the issues considerably. There would not necessarily need to be 80 witnesses. And with

regard to the other three issues raised on the motion for summary judgment, they would resolve the case entirely.

I would like to talk in order of the issues that I think require the least amount of facts in order for the defendant to prevail on summary judgment. The first had to do with republication.

Your Honor, this Court decided the *Davis* case in 1984, which, frankly, has been consistent with all of the republication law in the state of New York. It requires that for there to be liability for republication, it must be based on real authority to influence the final product. So that's what we, the defense, have been focusing on with regard to this issue. Was there real authority to influence the final product? Authority has a specific meaning. In *Davis*, the Court said that authority means the authority to decide upon or implement the republication. And the Court further said that acquiescence or peripheral involvement in any republication is legally insufficient.

Of course, I have read the response and the plaintiff chafes at this idea that an original publisher should not be liable for republication. Your Honor, I guess I have a couple of responses to that. One is that this disagreement with that rule is directed to the wrong forum. The New York Court of Appeals and the New York law, of course, is what applies here. The New York Court of Appeals already has spoken on this topic.

And in *Geraci*, the court said that *Davis* is right, that you need control and authority over the republication in order for a defendant to incur liability.

I would also say, Judge, that the plaintiff's disagreement with this rule fails to acknowledge the unique history and the robust protection of free speech that the New York Constitution has afforded speakers in the state of New York. This is discussed in the *Immuno AG* case cited in our papers. At the end of the day, Judge, the plaintiff chose to sue in New York, chose to have New York State law apply. The plaintiff doesn't have to like it. They just have to live with it. And the law is very clear as stated in *Davis*.

Now, with regard to the undisputed facts on this question, Judge, there is no question that Mr. Barton, Ms. Maxwell's lawyer, as her agent, caused the January 2015 statement to issue. The e-mail that accompanies that January 2015 statement says, in effect, here is a quotable statement.

Here is what it does not say, Judge. It does not say, you are hereby commanded to reprint and republish what we say here. It doesn't say, if you do not print this quotable statement, we will sue you. It does not say that if you republish the joinder motion allegations, you must also republish the statement. Ultimately, what the e-mail does is that it leaves totally in the discretion of the media whether to publish this quotable statement or not to publish the

quotable statement.

There was some discussion in the papers about whether this was a, quote unquote, press release. The plaintiff wants to call it a press release. That's not what the statement calls itself. As we point out in our papers, it would be quite an unusual press release to make these arguments about how the plaintiff has told falsehoods and then threatened to sue the very people to whom this quotable statement is submitted.

The dispositive fact for *Davis* purposes and for *Geraci* purposes, Judge, is that we have uncontested testimony from the defendant, Ms. Maxwell, from Mr. Barton and Mr. Gow that they did not control the republication of this quotable statement, and they had no decision-making authority over any of the media. You did not see a contest on that question.

In *Davis*, this Court held that if there is no evidence that the defendant controlled republication or made the decision to republish, the trial court has "no option" but to dismiss the case. And here, your Honor, to grant summary judgment.

There was some confusion, I believe, in the plaintiff's papers with regard to the question of republication and the separate question of republication of excerpts from the quotable statement. These are two different points, your Honor, and we submit that the plaintiff loses on both of these issues.

It loses on the first issue because it has not produced any admissible evidence that Ms. Maxwell or her agent had any control or authority over the media or making a decision about the republication of the quotable statement.

On the second issue, with regard to excerpts, we pointed out that, as bad as it is to hold a defendant liable for the republication of a statement, it must ever so be wrong to make that defendant liable for someone else's decision to republish portions of a statement she has issued.

Now, the New York state law on this is set out in the *Rand v. New York Times* case. The undisputed facts with regard to this second point with regard to republication, Judge, is that Mr. Barton drafted the bulk of this statement. If you look at the Barton declaration, paragraphs 13 to 20, this makes it absolutely clear. I understand from the plaintiff that there is some dispute about whether Mr. Barton drafted the bulk of the statement. That's not true at all. If the Court looks at the papers cited by the response, there is no contradiction of Mr. Barton's testimony. Mr. Barton said that, I drafted the vast majority of it. He said that it's possible that someone else may have contributed, but, ultimately, I'm the one who drafted it, and I adopted all of these statements in the January 2015 statement.

It is undisputed, Judge, that Mr. Barton's purposes in drafting the statement on behalf of Ms. Maxwell was two-fold:

To mitigate the damage caused by the plaintiff's salacious statements to the media, in the form of that joinder motion in the CVRA case, and the second purpose was to prevent further damage to Ms. Maxwell by issuing this quotable statement.

Now, the quotable statement is unique, as I pointed out earlier, because it threatens to sue the very people to whom it is sent. And Mr. Barton says that that was intentional. This quotable statement was intended to be a cease and desist. If you republish this plaintiff's allegations in that CVRA joinder motion, you do so at your own legal peril. That was the message that Mr. Barton was delivering in that January 2015 statement.

Mr. Barton also testifies -- and this is actually shown in the statement itself, January 2015 statement -- that he was building, in effect, a syllogism. The syllogism went something like this, Judge:

Premise number one is that this woman has made false statements in the past, referring to the original allegations from as far back as 2011 and the Sharon Churcher articles.

Premise number two was she is doing it again. These allegations, these new allegations in the CVRA joinder motion are different from, and more salacious than, and contradictory of the March 2011 statements that were made to the press, for example, the two Churcher articles attached as Exhibit A and B to our motion.

The conclusion from these two premises, Judge, is found in the third paragraph of the January 2015 statement, that this plaintiff is uttering, quote, obvious lies, the claims are obvious lies.

THE COURT: Meaning all that you have referred to?

MR. GEE: I'm sorry?

THE COURT: Meaning all that you have referred to, the 2011 and the intervenor's claims?

MR. GEE: That's a very good question.

THE COURT: Yes, it is.

MR. GEE: The recipients of this quotable statement, of course, are the 6 to 30 journalists to whom Mr. Gow sent e-mails to. There is no indication whatsoever in the January 2015 statement about which allegations are being referred to and the allegation -- there's two references to allegations in the first paragraph of the January 2015 statement.

THE COURT: Original.

MR. GEE: Right. If we go back to the original allegations --

THE COURT: Those are 2011.

MR. GEE: That's right, Judge.

So let's go back to the original allegations. I'm not sure exactly what are the original allegations. I have no doubt that the recipients of this January 2015 statement had no idea what qualifies as, quote, the original allegations.

THE COURT: I don't care about that. What I am trying to figure out is what claims are we talking about.

MR. GEE: Your Honor, I think that is the problem with the plaintiff's case. Is that we have no idea what we are talking about. Because if we listen to what Mr. Barton is intending, he is not trying to focus --

THE COURT: His intent, it seems to me -- I don't mean to be rude, but I don't know that his intent matters. There is no question but that Ms. Maxwell authorized the issuance of the statement. So it seems to me it's her statement.

MR. GEE: Your Honor, in fact, why don't we just set aside Mr. Barton's declaration for purposes of discussion of this second point about republication.

The *Rand* point is that you cannot take a statement, an excerpt from a statement; you, the republisher, cannot choose which part of a statement to extract from and then republish it and then have the plaintiff choose to sue the person whose statement was extracted. That's the *Rand v. New York Times* point, Judge. And we don't need Mr. Barton's support there because it is uncontested that what happened in this case is that every single one of the republications were excerpts from that quotable statement.

The only point I was trying to make, and I don't need Mr. Barton to make this for me, is that that quotable statement sets up a legal argument that says, she lied here, she lied

here, these are obvious lies.

Now, the *Rand* point is this. You can't take one of the premises, or, for example, a conclusion, and then republish that and then make Ms. Maxwell liable for that republication. She didn't choose to say only premise one. She didn't choose just to say premise two. She chose to say all of it. She is building a point. She is making a point to the media that you, media, need to be responsible, you need to be questioning, and you need to make comparisons between her earlier statements and her new statements, and you figure it out, because if you figure it out wrong, you could be on the wrong end of a lawsuit filed by my client.

What the media did in this case, and, frankly, what the plaintiffs did in their own complaint, paragraph 30, your Honor, was to take portions, in fact, it was words in the complaint, the complaint that your Honor ruled on in that 12(b)(6) motion. They didn't even take the sentences; they literally extracted phrases and stuck it into paragraph 30 of their complaint. But the problem here is, if you do anything like what the plaintiffs did, or what the media did in this case, you can't hold Ms. Maxwell liable for that republication. You change the meaning. How do you change the meaning? You changed the meaning because you excluded premise one or premise two or the conclusion or the entire argument that Mr. Barton was trying to make on behalf of Ms. Maxwell.

So that's the second republication point, your Honor.

Let me move quickly to the pre-litigation privilege. This was argument three in our summary judgment papers, Judge.

We know under New York law that if you're in litigation, a lawyer makes a statement that's absolutely privileged. The question in the *Front v. Khalil* case is what happens if a lawyer makes a statement before litigation has begun? And in that case, litigation did not begin until six months after the allegedly defamatory statements by the lawyer.

So what the New York Court of Appeals says in 2015 is that, because of the possibility of abuse by lawyers -- I can't imagine that -- what we are going to do instead is we are not going to give you an absolute privilege, we will give you a qualified privilege. But it defines a qualified privilege rather carefully, Judge. It says that the qualified privilege that you have is that any statement that a lawyer makes in good faith anticipated litigation, that's pertinent to good faith anticipated litigation, is privileged.

Now, you can look at this as being absolutely privileged or qualifiedly privileged. It's absolutely privileged, in my view, so long as the lawyer can establish that there was a good faith anticipated litigation. Once you have established that point, then it is an absolute privilege. Or you can talk about it in a qualified sense, which is that the lawyer has a privilege to make defamatory statements, but

the privilege is qualified by whether or not the statement is pertinent to good faith anticipated litigation.

Regardless of which way we want to look at this privilege, as articulated in the *Khalil* case, Judge, it applies here. The elements that *Khalil* says we must establish in order to prevail on summary judgment on this privilege, Judge, is it has to be a statement by an attorney or an agent under his direction. We have undisputed testimony, paragraphs 7 to 20 of Mr. Barton's declaration, saying that: I'm the one who engaged Mr. Gow. I am the one who directed Mr. Gow. I am the one who drafted the vast majority of the statement. As to the possibility that other parts were drafted by someone else, I adopted them as my own before I directed Mr. Gow to send out the statement. We have satisfied that.

The second element is that it had to be pertinent to good faith anticipated litigation. Well, the test on pertinence, I don't believe that the plaintiff is contesting this but I will just mention it quickly, which is that in the *Flomenhaft* case, the appellate court said that the test on pertinence is "extremely liberal." And for a statement to be actionable it must be "outrageously out of context."

Well, there is good reason why the plaintiff would not dispute this, Judge. The January 2015 statement was certainly not outrageously out of context. It was fully within context. Be careful if you choose to republish the plaintiff's salacious

allegations because we may end up suing you for defamation. As a matter of fact, in the last paragraph of the January 2015 statement, the word defamatory is used twice, Judge.

The last element is, was there anticipated good faith litigation? Well, that's not a difficult hurdle for us, Judge. Mr. Barton says in his declaration that, as a matter of fact, he did anticipate litigation. He did not have in his eye a particular reporter or medium to bring a lawsuit against. In fact, that was the whole point of the January 2015 statement, was to dissuade the media from republishing plaintiff's false statements. And that's why he made the argument that he did: Do not trust this person, this person tells falsehoods. He could easily see, and he did see, that if the media chose to republish the plaintiff's false allegations, it would be "defamatory," as he says in the fourth paragraph of the January 2015 statement, and he would be entitled to sue. So that certainly is good faith anticipated litigation.

Judge, once we have satisfied those elements, this privilege kicks in and that statement, the January 2015 statement, all of it, becomes non-actionable under the New York Constitution.

It seems to me that the main point of the plaintiff's in opposition to the pre-litigation privilege is this idea that malice applies. Well, Judge, that was addressed in the Khalil case. There is no malice question in the application of the

pre-litigation privilege. It specifically talks about how malice does not apply. In other words, the privilege removing malice that applies to, let us call it, a qualified privilege, a general qualified privilege in the State of New York, does not apply to the pre-litigation privilege. It says so in *Khalil*. And all that we must show to prevail on summary judgment is good faith anticipated litigation that is related to the statement made by an attorney. It could not be a simpler rule. And, Judge, we have satisfied all the standards. We don't even need to rely on Mr. Barton frankly. We have to rely on Mr. Barton to the extent that he is the lawyer who prepared the statement, but that's not a contested fact, your Honor.

I see the plaintiff, as they sometimes want to do, is simply making an argument that, no, he did not prepare the statement, but they have no opposition to Mr. Barton's declaration. They say that Mr. Gow prepared the statement, or Ms. Maxwell prepared the statement. Where is the evidence for that, Judge? There is absolutely no evidence. Mr. Barton's declaration is undisputed on the question of who prepared the statement, who engaged Mr. Gow, who directed Mr. Gow to cause this statement to issue to the media.

Let me move on to the issue of opinion, Judge. This is argument two in our motion for summary judgment.

The New York Constitution, under *Immuno AG* and the

Steinhilber case, requires the application of those four so-called *Omen* factors. I call them the *Steinhilber* factors because *Steinhilber* adopted the four factors in the D.C. Circuit *Omen* case. And these factors, your Honor, all come our way. The plaintiff loses on the question of opinion as well.

On the question of indefiniteness and the ambiguity, the Court brought out the point earlier about, well, what is meant by the word allegations used twice in the first paragraph. First, allegations without an adjective, and then the second time, original allegations. What is meant by that?

Well, here is the indefiniteness and the ambiguity, Judge, that comes right into play. The plaintiff is facing an insurmountable problem, both at trial against the 80 witnesses and in the summary judgment motion, because they are trying to establish that every allegation ever made by the plaintiff is true, and provably true. So here they are chasing windmills trying to prove that every allegation the plaintiff has ever made is true. It can't be done, and I am going to talk a little bit more about that in a moment as far as why it cannot be done. For now I just wanted to talk about the indefiniteness and the ambiguity.

The third statement in the January 2015 statement, the third sentence that is the subject of the complaint, paragraph 30, is Mr. Barton's statement in paragraph 3 that plaintiff's claims are "obvious lies." Well, we don't know what, quote

unquote, claims Mr. Barton is referring to. He just says claims. That is another area of indefiniteness and ambiguity, Judge. The Court doesn't know, the plaintiff doesn't know, and none of the reporters would know what is meant by the words allegations, original allegations, and claims.

As Mr. Barton tells it, he is not trying to go blow by blow to try to rebut plaintiff's allegations. He is going after something bigger. He is going after the plaintiff's credibility. And that comes out in the January 2015 statement itself. It talks in generalities about how her claims have proven to be untrue. Well, how are they proven to be untrue? Well, you don't need Mr. Barton for this. Take a look at the March 2011 statement issued by Ms. Maxwell, and that also was drafted by Mr. Barton, but it doesn't really matter. The point is that in the March 2011 statement, and this answers your question with regard to that statement, Judge, the March 2011 statement, in the very first paragraph of the March 2011 statement, Ms. Maxwell says that the allegations by the plaintiff are "all entirely false." That is to be distinguished from the January 2015 statement when she does not say "all entirely false." She says simply that the allegations are false.

Now, the distinction between the March 2011 statement and the January 2015 statement bear on this question of indefiniteness and ambiguity. It's certainly not indefinite

and it's certainly not ambiguous when Ms. Maxwell says in March of 2011 that these allegations are "all entirely false." It is ambiguous and it is indefinite when she fails to say "all entirely false."

The second issue is whether these three sentences identified in paragraph 30 of the complaint are capable of being characterized as true or false.

Now, this is a kind of binary question that the *Steinhilber* factor two has us look at. But recognizing at the same time that there are some statements that appear factual, but are not when looked at in context -- and now we are jumping to factor number three in *Steinhilber*, the contextual issue.

On the question of whether it could be proved true or false, well, the plaintiff has taken to chasing this windmill of trying to prove whether the allegations are true or false. What I suggest to the Court is that you can't prove whether the, quote unquote, allegations are true or false because they are not identified. You can't prove whether the, quote, claims are obvious lies because they are not identified. If you broke down every single allegation made by the plaintiff into constituent sentences, discrete constituent sentences, you might have over a thousand statements. These plaintiffs have chosen to go on this adventure of trying to prove each one of these allegations is true, and, conversely, that there was no good faith basis for Ms. Maxwell to say that any of them were

not true, to say that any of them were false.

Judge, I don't know that this is an adventure that is going to get us very far. The Court is setting a one-month trial for us to figure out whether these hundreds of allegations made by the plaintiff are true or false, but what I was trying to do, Judge, was cut to the chase. Are there at least two allegations, plural? Because the Second Circuit in the *Law Firm of Foster Case* says that substantial accuracy is the standard here for defendants, not literal accuracy. But what I am trying to focus on is that, if that's the standard, Judge, and we show you literal accuracy, then surely we win on the *Law Firm of Foster Case*.

Judge, may I approach the Court? I have a hand-out I would like to share with the Court.

So that I don't need to discuss this on the record, Judge, I ask two things. Number one, that the Court let me know when it has finished reading this, and, number two, I would like for this document to be included in today's record.

THE COURT: Yes.

MR. GEE: Thank you, Judge.

What I have done here is to do a very simple comparison between the March 2011 allegations, i.e., the original allegations by the plaintiff, and her new, her CVRA joinder motion allegations. The first allegations were given to Sharon Churcher, reporter, for $160,000, where Ms. Churcher

says in the article that she interviewed the plaintiff "at length." In the article it says -- I think it was on page 3 of the article; Exhibit A to our motion for summary judgment -- for a week or better she interviewed the plaintiff.

This was plaintiff's coming-out story, first time that she had publicly disclosed who she was and what has happened to her, supposedly, to Ms. Churcher. Ms. Churcher then writes a very lengthy article, Exhibit A to our memorandum, and the second column, Judge, discusses the plaintiff's allegations on the very same subjects. The first encounter with Mr. Epstein and then the second encounter with Prince Andrew.

As the Court can see from this very simple comparison, anyone with half a brain in January of 2015 could take a look at column 1 and look at column 2 and decide that the original allegations are either true or they are false; the new allegations are either true or false.

Now, here is a situation where we are not talking about opinion; we are talking about remembered fact or, alternatively, manufactured fact. Now, either the plaintiff had these encounters as she described in 2011, or she had the encounters as described in her CVRA joinder motion in December 2014.

As the Court says in its 12(b)(6) order, one of these must be true. This is a binary question, Judge. You can't have both of these being true.

Now, when we are talking about that second *Steinhilber* element, whether something can be characterized as true or false, of course, we are applying the second factor to the January 2015 statement and, specifically, to those three sentences: The allegations are false, the original allegations were shown to be untrue, and the third sentence is, the claims are obvious lies.

Now, when the Court issued its 12(b)(6) order, it did not have the benefit, of course, of Exhibits A and B, the Sharon Churcher articles to our memorandum of law; it did not even have the benefit of the full January 2015 statement; it didn't have the benefit of the original allegations proven to be a true statement from March of 2011, because all that it had before it was what the plaintiff chose to select, excerpt, and put into paragraph 30 of the complaint.

In that context, it was fairly easy for the Court to say, well, accepting these allegations as true, and drawing all inferences in favor of the plaintiff, I, the Court, can see how this idea of an opinion defense doesn't fly, because it says here that the allegations are false. I could see how the Court would say, well, either the allegations are true or they are false. When we place into context the statement, however, we now see all kinds of problems with the plaintiff's case.

The one problem this Court already identified was this question of, What does it mean allegations, plural? What does

it mean original allegations, plural? And what does it mean claims, plural? We don't know, Judge, what that means. And I will predict that if you have Mr. Barton, Mr. Gow, and Ms. Maxwell testify in this case, they will say, we don't know what it means. They will say, we don't know what it means because it is totally vague. That's not the point they are trying to make. They are not trying to make the point in 2015 that everything this plaintiff has ever said is a falsehood. They are making the point that, media, use your head, figure out which of these allegations are true and false before you go around republishing her allegations. That's the point.

When we get to the third factor, the third *Steinhilber* factor, we know that the New York Constitution requires that we consider the full context. And in the *Boeheim* case, the court said that the full context factor is often the key consideration. I think it is here too, Judge. It makes sense, this factor. It is a First Amendment sin to take things out of context and then sue people for it. Everything must be read in context. If you take something out of context, as the plaintiffs do in paragraph 30, you have no idea the environment in which those excerpted statements are being used. But we know now, Judge. We know now because of the Rule 56 record.

We know that in context that January 2015 statement in its entirety actually makes a lot of sense. It actually is something that you can see a lawyer drafting, on one hand, to

try to fend off the allegations he believes are false on behalf of his client, and on the other hand, to tell the media, you republish her false allegations at your peril. That is the context of that statement. As I say, Judge, you don't need Mr. Barton to take a look at the statement and see what he was building there. He is building a syllogism. He is trying to persuade the media don't republish the plaintiff's statements.

As a side note, Judge, on the question of republication, you will note that Mr. Barton gets it right. Mr. Barton doesn't say, if you republish plaintiff's allegations, we are going to sue the plaintiff. He doesn't say that. He says, in the fourth paragraph of the January 2015 statement, if you republish the plaintiff's false allegations, we are going to sue you, the plaintiff. The January 2015 statement is not issued to the plaintiff, although she would certainly be a critical witness if Mr. Barton were to sue the media.

Let's get to the last factor, Judge. The last factor is a broader setting, and the broader setting as applicable to our motion for summary judgment has to do with the question of to whom this January 2015 statement was issued. It was issued to 6 to 30 media. It doesn't really matter what the number is. It could be one, it could be eight, it could be 100 newspaper reporters. The point is that it was issued to this audience, and the audience of reporters, not to the general public. It

didn't make any sense to issue to the general public because he is talking about threatening to sue the media.

So he sends it to the reporters, the reporters who had contacted Mr. Gow and asked for a response from Ms. Maxwell. You want a response? I will give you a response. Here is the response. The response is this woman is telling falsehoods. Her original allegation had proven to be false. She is doing it again. This time they are more salacious, yes. The claims are obvious lies. If you're not careful about republishing, we will sue you. That's the message.

So, Judge, the New York Constitution would require that the jury be instructed, if it gets that far, that this has to be looked at, not as a member of the general public, the January 2015 statement must be viewed from the viewpoint of these journalists who are the recipients, the exclusive recipients of the 2015 statement.

The last argument that we made I can be fairly short with, Judge. This is the argument that discusses the plaintiff's heavy burden. Plaintiff has to prove two things by clear and convincing evidence. One is it has to prove falsity of the three sentences that are the subject of this lawsuit: The allegations are false, the original allegations have proven to be false, and the claims are obvious lies.

By the way, on the "obvious lies" question, Judge, just to step back for a second, on the question of opinion, I

don't see how anyone could look at that sentence, "these are obvious lies," and not see an opinion here. Because what is an obvious lie? That is purely subject to opinion. It certainly can't be proven true or false what is obvious. I would suggest to the Court that the hand-out that I gave titled "Two examples of Plaintiff Giuffre's original and new allegations" is an example of where there are obvious lies.

Now, moving back to this question of what the plaintiff's heavy burden is, they have to prove by clear and convincing evidence -- and we set out what the standard is in the Southern District of New York in our papers what clear and convincing is -- they have to prove falsity and they have to prove actual malice, actual malice being that Ms. Maxwell, when that January 2015 statement was issued, knew that those three sentences were false or had been published anyway through Mr. Gow with reckless disregard to whether they were false or not.

For the Court's benefit, what we tried to do to make this point more salient is, rather than have the Court wade through the hundreds of pages of materials the plaintiff submitted, we look at it from the converse angle, and that is, are there at least two allegations? I use two because I am trying to follow the *Foster* case, and I am trying to show literal truth or literal falsity, and allegations plural means two or more. So if I can find two occasions when this plaintiff has told falsehoods, or has said something that would

lead Ms. Maxwell or Mr. Barton on her behalf to believe in good faith that she has told a falsehood, this case ends, Judge, the plaintiff loses.

In our papers, we actually identified for the Court some of those facts. I won't go into them now because we are on the record and the court hasn't been sealed, but I submit to the Court, Judge, that there is no dispute that at least two, and we know of many more of course, but at least two of plaintiff's original allegations are false. We know that at least two of her new allegations are false. And any way you cut it, this plaintiff has lied, and she has lied in statements to the public. The only way that Ms. Maxwell would know about the statements are the ones that she made to the public. In her own deposition, she has admitted that parts of the Sharon Churcher article, Exhibit A to our memorandum, at least 11 statements that she made are not true.

That's it. The case is over, Judge. We have shown more than one allegation made by this plaintiff is false. Or we don't even have to prove that it's false. We can simply show that we had a good faith basis for believing that it was false, and under *New York Times v. Sullivan*, that's good enough. The case is over, Judge.

I anticipate that what is going to happen as soon as I leave this podium, Judge, is that the plaintiff is going to trot out about a hundred pages of facts and spend most of the

time talking about facts. That's simply an homage to the idea that if the law is opposed to you, go with the facts. I suggest that the Court do what I am going to be doing, which is I am going to be trying to figure out, every time they mention a fact, whether it is something that is of consequence to our motion for summary judgment. I have laid out what the law is. I don't expect them to be talking much about the law. It will be about the facts and about how there must be conflicts. But there is no disputing Mr. Barton's declaration to the extent that it is required for a motion for summary judgment.

So, your Honor, we would ask that the Court enter a motion for summary judgment and we can have our May free.

MS. McCAWLEY: May I be heard, your Honor?

THE COURT: Sure.

MS. McCAWLEY: I would like to start by handing your Honor some materials, if I could approach the bench.

THE COURT: Sure.

MS. McCAWLEY: I did three this time. I remembered.

I want to be very clear to start. We are going to focus on the law, but as you know, at the summary judgment stage, if there are factually disputed issues, it would be improper to be granting summary judgment. So let's talk about both.

To start, there is a plethora of evidence that shows that the defendant sexually abused and sexually trafficked my

client when she was a minor. A plethora. We don't have to prove hundreds of allegations. All we have to prove is that my client was abused and trafficked by Maxwell. The statement comes out two days after the CVRA filing where my client says she was abused and trafficked by Maxwell, and that statement is released and calls her allegations, plural, untrue, obvious lies, etc.

So let's just look at what we have. I am not going to repeat it because it's in your binder, but in there you will see -- and, also, because it's confidential right now -- you will see a number of witnesses who corroborate the story that they were similarly abused by both Maxwell and Epstein. You will see eyewitnesses at the time back in 2000 who defendant asked to assist in this process with. You will see the flight log showing over 23 flights when my client was a minor flying with Maxwell and Epstein. You are going to see a number of witnesses taking the Fifth when asked about Maxwell. You're going to see the house staff talking about how these things occurred, that there was evidence of sexual trafficking and abuse.

More importantly, your Honor, you're going to see the hard copy documents. As my partner, David Boies, often says, the documents don't lie, and in this case they prove the case. It needs to go to the jury. You will see that there are pictures from early 2000. Nothing produced by Maxwell, mind

you; she has produced nothing. From the early 2000s, the first documents we get, after pulling tooth and nail, is 2011. So there is nothing from her for the early years 2000.

But we have pictures, hard copy pictures. We have hospital records from when my client was a minor here in New York with them. We have time and travel records saying call Maxwell. We have message pads. We have the FBI 302, which was taken in 2011, mentions Prince Andrew in it, in the unredacted part, so you can see it there. The victim notification letter, the black book, which we have talked about, and you said with respect to Alfredo Rodriguez, which has a Florida massage section that has a 14-year-old girl's name in it.

So this information is all relevant to the factual issue of whether defendant's defamatory statement that my client lied about sexual abuse that's at issue here.

Your Honor, they have been careful about trying to carve around your February 27th order, and I am mindful of the fact that that was an order that was issued at the motion to dismiss stage, but to be clear, that order has well-reasoned language because it talks about sexual abuse being a clear-cut issue. You either were abused or you were not. You said either Maxwell is telling the truth and she was involved or the plaintiff is telling the truth. It's a factual issue that can be determined by the finder of fact, as you said.

So, your Honor, let's look at this republication issue

because I think that is an issue that they focused on tremendously, and I want to be very clear on that.

First of all, Maxwell issued this press release, not her lawyer Barton. They can file as many self-serving declarations as they want, but the documents don't lie. If you look in your binder, your Honor, you will see the smoking gun e-mail. And I will tell you, we didn't get that e-mail from Maxwell. You will remember that we had to fight tooth and nail to get the deposition of Ross Gow, her press agent. We spent close to $100,000 getting all the way over to London, fighting in those courts, to get the deposition of her agent. They wouldn't produce him. And now they are submitting this affidavit on behalf of Barton.

Your Honor, that document is critical, because what it shows very clearly is it was Maxwell who sent the press release to her press agent, Ross Gow, for publication. That press release goes out from Ross Gow, not from a lawyer. His Web site says he is a reputation manager. He is a press agent who issued a press release. This is not a cease and desist letter. This was a press release. In fact, a press release that said, "Please find the attached quotable statement by Ms. Maxwell." It's a press release telling the press, please quote these defamatory statements.

They have admitted at least 30 different international press folks to defame my client in the international press.

And now they want to say, Oh, no, no, hands off, we are not liable for any of that; we are not liable for our statement being disseminated in the international press; there is republication case law and we didn't control or authorize that. There is no better evidence, your Honor, of control and authorization than sending a press release to the international press saying, please publish this, please publish these defamatory statements so that the international public thinks that this little girl is a liar. So that is what is happening here.

So when we look at the republication law, you will see very clearly, there are cases that we can follow -- and it is New York case law; we have cited nothing but New York case law -- that says it's different when you issue a press release. Look at *Levy v. Smith*, and that's in your binder, your Honor. That case says, yes, there is republication case law that says you have to control or authorize. But issuing a press release so that it goes out to the media, is that control or authorization? It's saying, here is a statement, I want to publish this and disseminate it internationally.

We also have the *National Puerto Rican Day* case, which is the same thing. It was an opinion piece that was paid for and disseminated to the press. And there the court held, yes, there is control and authorization over that dissemination.

Here, your Honor, we have the same thing. We have

Maxwell hiring a paid press agent to issue a statement to the international press with defamatory statements in it, your Honor.

They focus on the *Geraci* case. And that is case law in New York. We looked at that case. We take no issue with that case. That case is vastly different than the situation here. In that case, the republication happened three years later. The initial publication was a statement to a fire commissioner, it was a letter, but then three years later a newspaper published.

This here is vastly different. We have a press release that's given directly to the international media for publication saying, Please, here, attached find a quotable statement for your distribution, your Honor. This is the perfect situation. If the law were otherwise, it would turn defamation on its head. It would mean that you could issue a press release to the international press and then sit back and say, I am not liable because those other publications put the quotes in, I didn't. That's not the law, your Honor. She controlled and authorized this entire process.

So, your Honor, we believe that the cases that they focus on there are distinguishable because they are situations where -- for all of their cases -- where the publication was in a different type of publication, happened years after the fact. Those are the types of republication issues where the court

says, well, that person is not really liable. Three years later a different movie came out with a statement that the original publisher had no involvement with. That's where the republication law lands. But if you look at *Levy* and if you look at the *National Puerto Rican Day* cases, you will see that the courts do hold you liable when you issue a press release, which is what happened here.

So I submit to you that on republication and the publication issue, she is certainly liable for publication of the initial statement to the 30 international press, and then thereafter she is liable for those being quoted.

Now, she says, well, there is another issue, because if it's excerpted or quoted or edited in any way, under *New York v. Rand*, I am not liable. *New York v. Rand* is a case that involves an interview of a singer, and it's a long interview that takes place, and then the publication that comes out takes statements from that interview and changes the words. So it uses different words than what happened during the interview.

That's not our situation here, your Honor. The defamation that we have gone after, that you see from our expert, Jim Jansen, has gone after, are the quoted statements. That's what we are looking at. The press release has those statements; those being quoted by the international media that she sent it to, she is liable for that. It's not a *Rand* situation. This is exact quotes from her statement that she

said, Please find a quotable statement. She didn't say, you have to quote the whole thing. She said, Please find a quotable statement. And what are they going to quote? The defamatory pieces, the obvious lies, the things that make my client look like a liar when she is not.

So that issue, in my view, is something that is clear that there was publication, and that if anything is deemed republication, it was clearly authorized by the defendant.

So let's look at the second issue that they raise, and that is they raise the issue of the pre-litigation privilege.

Now, your Honor well knows, I know you're familiar with the pre-litigation privilege because you have had cases that have talked about it. But with respect to the pre-litigation privilege, that was crafted to handle situations like when, for example, a lawyer sends a cease and desist letter in advance of litigation. If you look at the *Khalil* case, which they talk about, that case was a situation where an employee had stolen intellectual property and the lawyer sent a letter saying, this person has stolen this intellectual property, we want them to cease and desist and give our property back. Then that person sued for defamation.

We are in a remarkably different situation here. We are not in a pre-litigation context here, no matter how many times they want to say it. No matter how much they want Barton to throw himself on the sword and say, oh, this is all about

litigation, it's not, your Honor, because the documents don't lie. So if you look at the documents, you will see it's not about pre-litigation.

The *Block v. First Blood* case, which is your case, your Honor, in that case you denied summary judgment saying, to prevail on a qualified privilege defense, the defendant must show that his claim of privilege does not raise a triable issue of fact that would defeat it. Here, we clearly have triable issues of fact. We believe that there is no pre-litigation privilege that's applicable, but at a minimum, we have triable issues of fact.

So with respect to pre-litigation, let's look at what the facts are. The facts are that this statement, which they say we haven't contested or disputed, that's not correct. We submitted the statements themselves, those e-mails that show that Maxwell is sending the statement; not her lawyer, Maxwell. The documents don't lie. So Maxwell sends a statement to her press agent, which gets issued to the international press. They say, no, the purpose was -- let's rephrase that, the purpose was that we really were thinking about suing the international press. Maxwell in her deposition said she never sued the international press. So this never occurred. There was no lawsuit that came out of this.

If you look at what the statements are, if you accepted that, you would be able to say, someone can defame

someone freely, a nonparty, included in a statement, issue it to the international press and then stand back and say, oh, well, my lawyer really intended to sue those other entities, those publications, so therefore I get protected by the pre-litigation privilege. That's not the law, your Honor. It doesn't apply here. This was Maxwell issuing a statement for her own benefit, to try to clear up her reputation, because she had been implicated in a very serious sexual trafficking and sexual abuse situation. That is what that statement was about. It was not about litigation. It was about taking down my client and her reputation and trying to build back defendant's reputation.

And while we are on that, your Honor, they admitted that by submitting Barton's declaration, they waived the work product privilege. We contend that they also waived an attorney-client privilege. They have submitted a privilege log to you that you have reviewed that had documents on it, communications between the two of them. We should be able to see all of that. Certainly, if they waived the work product privilege, where are the drafts of this document, where are the e-mails back and forth on how this was created? That's all factual issues. We are entitled to see that.

So, your Honor, I submit to you that there is no pre-litigation privilege here. This was not done for the purposes of litigation, regardless of what they are doing as a

post hoc self-serving declaration, and that they don't meet the case law for that either. If anything, there is clearly a questionable issue of fact as to that.

So, your Honor, I would like to turn now to the issue of whether or not -- they have now argued again, as they did at the motion to dismiss stage, that these statements are not fact, they are opinion.

So, your Honor, if you look at that, that argument turns logic on its head. Mr. Gee said today, these folks would have to prove a hundred allegations are all true in order to win this case. That's not the case, your Honor. We only have to prove, because her statement says the allegations that my client has made are false, we only have to prove that my client was sexually abused and trafficked, which we can do. We prove that, we win this defamation case. She defamed my client by calling her a liar about sexual abuse and trafficking claims.

Your Honor, when we look at whether that's fact or opinion, you were very clear in your motion to dismiss order, talking about the nature of calling someone a liar, and that being able to be proven true or false when it relates to sexual abuse. You said either Maxwell was involved or she was not. This issue is not a matter of opinion, and there cannot be a differing understanding of the same fact that justify diametrically opposed opinions as to whether defendant was involved in the plaintiff's abuse as plaintiff has claimed.

Either plaintiff is telling the truth about her story and defendant's involvement or defendant is telling the truth and she was not involved in the trafficking and ultimate abuse of the plaintiff. The answer depends on facts.

Your Honor, that is the case. So let's look at this four-factor test that they talk about, because that four-factor test, which you did analyze in your motion to dismiss papers as well, but that four-factor test bodes clearly in favor of finding that this is fact and not opinion.

If you look at the first factor, the statement has to be definite and unambiguous, clearly, the statement is definite here. She is calling my client a liar. She is saying her claims of sexual abuse and trafficking are obvious lies. So in that context, there is definiteness, it is not ambiguous. She is either telling the truth or she is not. That's it.

With respect to the second factor, it says the statement must be verifiable and be capable of being proven true or false. That's clearly the issue here. It is capable of being proven true or false as to whether or not my client was sexually abused and trafficked by Ms. Maxwell. Again, you have a plethora of facts in the binder that show, we believe, that that is the case. But, nevertheless, it's not an opinion. It is a factual issue as to whether that occurred.

The third is looking at the entire context of the statement and to compel a finding of whether it's a statement

of fact or opinion. Again, the context of this statement -- and that bleeds into the fourth factor -- is a press release. This was a press release by Maxwell. It wasn't an opinion piece. It wasn't a letter to the editor. It was a press release, your Honor, where Maxwell's goal was to put false facts into the public to try to repair her reputation.

So, your Honor, we contend that under that four-factor test, it is absolutely clear that this would be fact and not opinion.

The last issue that they raise -- they skipped a few things, but the last issue that they did raise was the issue of malice, and they say that we would be unable to prove in this case malice.

First, they haven't met their burden for showing that we have to prove malice. But if we do have to prove malice, we absolutely can, because what this statement is about is sexual abuse, and the person who made the statement is Maxwell. So if Maxwell abused my client, and then knowingly made a statement that my client was lying about that abuse, that those claims were obvious lies, that establishes malice. It's knowledge on the part of the person making the statement. She made it intentionally to try to deflect from her own self, and she would be responsible for that action, and we would have established malice.

So with respect to that issue, we absolutely can

establish malice without question. The only question is whether we have to establish that.

Now, I just want to touch one more moment on this idea they have just raised in the summary judgment papers that they only have to show that two issues are false, and if they show that, they win. That's not the case, your Honor. The statement is about any of the allegations. So she is saying my client's allegations are untrue. So if we prove that those allegations of sexual abuse and trafficking are true, that my client was sexually abused and trafficked, we win. That's defamatory. So they have just flipped logic on its head with respect to this, oh, we can prove two things and then we win. That's not the case here.

But regardless, bottom line, your Honor, this is a case that must go to the jury. There are clearly questions of disputed fact. They don't qualify for the issue of republication. They don't qualify for the pre-litigation privilege. Malice is a factual issue that goes to the jury, your Honor. So summary judgment should be denied, and we are entitled to take this case to a jury.

Thank you, your Honor.

MR. GEE: Thank you, your Honor.

Well, I didn't give the plaintiff enough credit. I thought they were going to try to prove this case, but instead, they are going to try to prove a different case.

I didn't think that it was possible to prove, for example, all of the allegations the plaintiff made to Ms. Churcher in Exhibit A and B were all true. I didn't think that they were going to be able to prove that all of the allegations made by the plaintiff in the CVRA joinder motion are true. And put a different way, I didn't think that they were going to be able to prove by clear and convincing evidence that Ms. Maxwell, through Mr. Barton, could not have in good faith believed that at least two of these allegations, the original and the new, were false. I didn't think they could do that.

I think what Ms. McCawley has just done is implicitly confirm that they can't do that, that's why they are not going to do it. Instead, they have changed the case, Judge. And I want to spend a little bit of time on this because I think it's really important for the parties and for the Court, and ultimately, if this case makes it that far, to the jury.

I heard Ms. McCawley say multiple times that what this case is about is sexual abuse. My client was sexually abused and trafficked, that's what we have to prove. That's coming right out of Ms. McCawley's mouth.

Judge, they brought a defamation case; they didn't bring a sexual abuse case. The question is not whether Ms. Maxwell sexually abused anyone. The question is whether Ms. Maxwell defamed someone, specifically, the plaintiff. And,

judge, they don't cite any case law for this idea that if you're alleged to have defamed someone about the underlying transaction, that we get to prove whether the underlying transaction is true, and if it is true, then we win. That's not the case they brought.

The allegation in the complaint, the requirement of defamation law in the State of New York is that, if you, the plaintiff, allege that you have been defamed, your obligation, or burden as the defamation plaintiff, is to prove that the allegations made against you are false.

Furthermore, if you, the plaintiff, are a public figure, as the plaintiff in this case must certainly be -- a person who writes books, a person who gives out interviews is a public figure. A person who establishes a nonprofit organization for this very purpose of making public this idea of assisting victims of sexual abuse, I can't imagine a more limited public figure set of facts. But setting that aside, the defamation law in New York says, if you bring a defamation claim, you have to prove the defamation. And if you're a public figure, as the plaintiff is, then you would also have to prove actual malice. You have to prove falsity by clear and convincing evidence, falsity of the allegedly defamatory statement, and you have to prove actual malice.

Now, I don't know what case Ms. McCawley is trying. She is the one who brought this lawsuit. She has to prove

defamation. If she proves that the plaintiff was sexually abused, in fact, if I were to concede right now that the plaintiff had been sexually abused, does that mean that she wins the defamation case, Judge? I think not. She has said that three sentences in the January 2015 statement are false, are defamatory. One is, the allegations are false. Sentence number two is, the original allegations have been proven to be untrue. And the third sentence is, the claims are obvious lies.

Well, one thing that I took away from Ms. McCawley's conversation with the Court is that she didn't answer your question, Judge. The question was, What does it mean when the January 2015 statement says allegations twice in the first paragraph? What does it mean in the third paragraph when Ms. Maxwell, through Mr. Barton, says the claims, plural, are obvious lies? Ms. McCawley doesn't answer the question because, as I predicted the first time I was up here, there is no answer to that question. She doesn't want to answer the question because she can't answer the question. The Court can't answer the question, and I guarantee you I cannot answer the question. No one knows what that means. As I said before, there is no witness who will testify in this courtroom about what that means, what specific statement is being referenced. It doesn't exist.

So what does the plaintiff do? What the plaintiff

does is, since we can't figure out what it means, what we will try to do is just prove that she was sexually abused. In the words of Ms. McCawley, I am going to prove that my client was sexually abused and trafficked. Well, that doesn't satisfy your burden of proving defamation. The fact that the plaintiff was sexually abused and trafficked? No.

To use Ms. McCawley's words, there is a plethora of allegations. Take a look at Exhibits A and B. Take a look at the CVRA joinder motion. Talk about plethora. Judge, this plaintiff has said at least 100 different things in all these news articles, the original allegations, and then another couple of dozen in the CVRA joinder motion. Well, which of these allegations is the plaintiff going to prove, if true, in order to show that my client's statement from January 2015 is false?

I think what we hear from Ms. McCawley is we are not going to do that. Well, Judge, if we are not going to do that, can we please have summary judgment because they can't prove their case. You can't prove your case by showing that Ms. Giuffre was sexually abused and trafficked.

On the republication issue, Judge, Ms. McCawley says there is no better evidence about the authorization and control of republication other than the words in Mr. Gow's e-mail, "please find this quotable statement," on behalf of Ms. Maxwell.

Well, that's not true, Judge. That sentence from Mr. Gow tells us two things. One is that this is a statement written on behalf of Ms. Maxwell. This is not Ms. Maxwell's statement per se. It is written on behalf, by her agent.

Now, the reporters may very well have thought that Mr. Gow prepared the statement, but it doesn't really matter because we have Mr. Barton's declaration saying that, I prepared the statement.

But with regard to the issue of republication, Judge, it says, here is a quotable statement. It doesn't say, as Ms. McCawley recharacterizes it, please publish the statement. Actually, you won't see those words in that January 2015 statement. It doesn't say, please publish this statement. It says, here is a statement.

And Ms. McCawley wants to put all of her eggs into the question whether this is a press release or whether it's not a press release. Judge, that seems like an irrelevant road to go down to try to characterize something as a press release or as not a press release.

How about we look at it this way? It is a statement that was issued to 6 to 30 media. We should look at it that way because that's what the undisputed facts are. It wasn't issued to anyone else.

What is also true is that the press were free to do with that statement as they wished because we, Ms. Maxwell and

her agent, did not control what the media did with that.

I hear Ms. McCawley try to characterize the authorization and control law relevant to republication. I guess I could ask the Court to disregard what Ms. McCawley and I say altogether because we have laid out the law. If the Court looks at, for example, footnote 3 on page 3 of our reply brief, we cited to five, six cases from the federal district courts in New York.

In *Egiazaryan*, the 2012 case, it says the original publisher is not liable for republication where he had nothing to do with the decision to republish and he had no control over it. Well, those are facts, Judge.

In *Egiazaryan* II, same holding. That's a 2011 opinion.

In *Davis v. Costa-Gavras*, which is this Court's 1984 decision, what does the court say? Under New York law, liability for a subsequent republication must be based on real authority to influence the final product, not upon evidence of acquiescence or peripheral involvement in the republication process.

Judge, we are within *Davis*. We didn't have any influence over the final product. At best, we had acquiescence or peripheral involvement, but *Davis* says that's not enough.

In the earlier *Davis* case, from 580 F.Supp., at 1094, it says the original publisher is not liable for injuries

caused by the republication "absent a showing that they approved or participated in some other manner in the activities of the third-party republisher." Well, we win on that case, Judge. We certainly didn't participate or approve of any republication or any third-party republisher's decision to republish.

Then we have the *Croy* case from 1999, "The original author of a document may not be held personally liable for injuries arising from its subsequent republication absent a showing that the original author approved or participated in some other manner in the activities of the third-party republisher."

Then, finally, we have the *Cerasani* case, also from this court, 1998, "A liable plaintiff must allege that the party had authority or control over or somehow ratified or approved the republication."

Well, we win on that case, Judge.

So I appreciate Ms. McCawley's attempt to recharacterize and redefine what authority and control are, but it's totally unnecessary because the federal courts and the state courts have made it clear what kind of control or authority is required.

With regard to the pre-litigation privilege, Judge -- I'm sorry. Let me step back on the republication issue. There was a mention of the *Levy* case and the *National*

Puerto Rican case, two New York intermediate appellate court decisions. Once again, the plaintiff fails to acknowledge that those, like this Court's opinion back in October, are 12(b)(6) cases. They are not summary judgment cases, not relevant to this proceeding, Judge. Those are cases where, actually, the courts made inferences of control and authority based on the pleaded facts. Of course, the Court isn't able to do that in a Rule 56 proceeding.

On the pre-litigation privilege, Judge, the statement made by Ms. McCawley is that Ms. Maxwell sends the statement. She is the one who drafts the statement. She is the one who prepares the statement. She points to a, quote unquote, smoking gun. What is the smoking gun Ms. McCawley is referring to? This e-mail that they spent upwards of $100,000 to get.

Well, Judge, the smoking gun turns out to be nothing but a peashooter. This smoking gun is an e-mail from Ms. Maxwell to Mr. Gow saying this is the statement. That's it. It is the actual transmission. It was the actual approval by Ms. Maxwell of the statement that Mr. Gow ultimately sends to these 6 to 30 newspaper reporters.

Well, since Ms. McCawley wants to call this a conflict of facts and wants a jury, then it's her burden to show that there is a conflict between the smoking gun and Mr. Barton's declaration. Well, where is the conflict, Judge?

Ms. Maxwell, in sending out that smoking gun, didn't

say, Mr. Gow, I just drafted this statement without the help of any lawyers, would you please issue the statement? That's not what Ms. Maxwell said. She said, this is the statement, this is the agreed statement. That's perfectly in consonance with Mr. Barton's declaration. What does Mr. Barton say? Mr. Barton says, I drafted the vast majority of the statement, and to the extent that anyone else contributed to drafting the statement, I adopted it and I approved it as my own, and I am the one who directed Mr. Gow to issue the statement. Those are not inconsistent. That's not a basis for a jury trial, Judge.

Finally, we get to this issue of the plaintiff having to prove falsity by clear and convincing evidence, actual malice by clear and convincing evidence. There was very little discussion of this by Ms. McCawley, but she points out that we are not going to try to prove actual malice as to any discrete set of statements made by our client. We are not going to try to prove the truth of her allegations that makes Ms. Maxwell's January 2015 statement false. We are not going to do that. What we are going to do instead, Judge, according to Ms. McCawley, is we are going to prove that our client was sexually abused and trafficked.

This returns us to the beginning, Judge. It is crucially important to the parties that they know what they are litigating, and I see two ships passing in the night on the central question in this case. On the one hand, the plaintiff

says we are proving a sexual abuse case; we are going to prove that our client was sexually abused and trafficked. We on the defense are trying to prove -- well, we have no obligation to prove anything, but here is what we are defending against. We are defending against a defamation claim. The defamation claim, as alleged in the complaint, paragraph 30, says there are three sentences in your January 2015 statement that are false. So, naturally, we have focused on those three sentences in the 2015 statement to see whether they are true or false.

If we, Judge, the parties, the lawyers cannot agree on that central question, it may not take four weeks to try this case, it might take eight weeks to try this case. They are proving something that we have no obligation to defend against. We are defending a defamation claim because that's the claim that they brought.

So, Judge, we think it's just imperative that the Court step in on this central question of what is at issue in this lawsuit, this defamation lawsuit.

THE COURT: Thank you all. I will reserve decision.

I think we will leave the other motions for consideration after I resolve the summary judgment.

MS. McCAWLEY: Thank you, your Honor.

(Adjourned)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

15-cv-07433-RWS

----------X

Defendant's Surreply in Opposition to "Motion to Compel" Work Product and Attorney-Client Communications with Philip Barden

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Defendant Ghislaine Maxwell, through counsel, submits this Surreply in opposition to plaintiff's "Motion to Compel All Work Product and Attorney Client [sic] Communications with Philip Barden" (Doc.637).

INTRODUCTION

Procedurally, plaintiff's Motion to Compel is a mess. The motion violates every rule applicable to motions to compel: her counsel did not confer; the motion fails to identify any discovery request it is seeking to "compel" a response to; and it failed to list verbatim any such allegedly unanswered discovery request, as required by local rule. Additionally, discovery closed nearly eight months ago, and trial is 60 days away.

Substantively, the Motion to Compel is facially frivolous. It argues Mr. Barden's declaration effected a waiver of the attorney-client privilege between him and Ms. Maxwell. Plaintiff identified two sentences in the declaration in which Mr. Barden purportedly "*reveal[ed]* attorney client [sic] legal advice given to Defendant." Mot. 3 (emphasis supplied). The sentences are found in Paragraph 13 of the declaration, where Mr. Barden discusses his intent and purpose in preparing the January 2015 statement. We quote in full the two sentences so that the Court can see for itself the remarkably frivolous nature of the argument: "I did not ask Ms. Maxwell to respond point by point to Ms. Giuffre's factual allegations in the CVRA joinder motion. What we needed to do was issue an immediate denial and that necessarily had to be short and to the point." Doc.542-7, Ex.K ¶ 13.

After we filed our response pointing out the procedural and substantive flaws in the motion, plaintiff filed an excess-length reply (five pages longer than her motion) that, in violation of the rules, asserted a range of new factual statements and legal arguments. The reply identified four additional Barden sentences that purportedly effected a waiver of the attorney-client privilege. These are more frivolous than the two sentences identified in the motion. Her

counsel on March 9, 2017, followed up on this by presenting argument on the Motion to Compel that relied almost entirely on the rules-violating reply.

Because of the unfairness from plaintiff's chaotic approach to motion practice, we requested on March 9 leave to file a surreply, and the Court granted the request in open court.

ARGUMENT

I. THE MOTION TO COMPEL SHOULD BE DENIED BECAUSE OF PLAINTIFF'S FAILURE TO COMPLY WITH THE RULES.

As discussed in our response (Doc.653) the failure to comply with the rules is an independent ground for denial of a motion to compel. Plaintiff tries in her reply to fix the rules violations, but there are some procedural defaults that cannot be fixed retroactively. One is the requirement of conferral. Compliance with the rule mandating conferral is a precondition for relief under Federal Rule of Civil Procedure 37.

In her reply plaintiff conspicuously fails to show how she conferred in good faith to resolve the alleged discovery issues before filing the motion. *See* Plf's Reply 3. She merely repeats what she said in her Rule 37(a)(1) certification—that she "raised" the "issue" of attorney-client waiver at the "recent oral argument." As we discussed in the response, "raising an issue" in court is not a "conferral in good faith." The failure to show conferral in good faith necessarily means her counsel's Rule 37(a)(1) certification was signed in violation of Rule 11(b).

We do not mean to stand on some "technical" objection to the motion. For one, Rule 37(a)(1) is not a technical rule; it is a "mandatory prerequisite to the court's consideration of a motion to compel," not simply "an empty formality." *Madison v. PALA Interstate, LLC*, Civ. No. 13-765-BAJ-RLB, 2014 WL 7004039, at *2 (M.D. La. Dec. 10, 2014); *accord, e.g.*, *Berndt v. Snyder*, Civ. No. 13-cv-368-SM, 2014 WL 6977848, at *3 (D.N.H. Dec. 9, 2014). For another, a principal purpose of the requirement is to avoid the filing of "unnecessary motions," *Sprint*

Communic'ns Co. v. Comcast Cable Communic'ns, LLC, Nos. 11-2684-, 11-2685- & 11-2686-JWL, 2015WL11122119, at 1 (D. Kan. Apr. 21, 2015).

The Motion to Compel is an example of an unnecessary motion and part of the "chaos" this Court described as characterizing this case. It resulted, yet again, from a disregard of the rules and practices of this Court intended to effectuate Rule 1 and minimize the parties' use of judicial resources. The need to enforce the rules—to prevent the plaintiff from treating them as merely advisory and to bring some order to the chaos of this case—is a good and sufficient ground to deny the Motion to Compel.

II. PLAINTIFF'S ARGUMENT THAT MS. MAXWELL HAS WAIVED HER ATTORNEY-CLIENT PRIVILEGE IS STILL FRIVOLOUS.

As we demonstrated in our response, it was frivolous to argue that Ms. Maxwell waived her attorney-client privilege because her lawyer submitted a declaration saying: (a) he was not authorized to and was not waiving her attorney-client privilege; and (b) in preparing the January 2015 statement he did "not" ask Ms. Maxwell to respond point by point to plaintiff's allegations in the CVRA joinder motion." In short, a lawyer cannot waive the attorney-client privilege—which belongs to the client—by saying he did not communicate with his client. To argue otherwise is fatuous.

To try to improve on her argument, plaintiff argues on pages 2-3 of her reply there are four additional statements[1] in the Barden declaration that effected a waiver of the privilege because Ms. Maxwell "plac[ed] communications with her attorney at issue" (capitalization altered):

[1]In the Motion to Compel, she said she was providing one example. In her reply, she says these four additional statements also are "example[s]." Plf's Reply 1. We suggest the Court should read these statements by the plaintiff the way we do: "This is the best we can do to identify instances of alleged waiver."

1. "In liaison with Mr. Gow and my client, on January 2, 2015, I prepared a further statement denying the allegations, and I instructed Mr. Gow to transmit it via email to members of the British media who had made inquiry about plaintiff's allegations about Ms. Maxwell." Doc.638-2 ¶ 10.

2. "Second, I intended the January 2015 statement to be 'a shot across the bow' of the media, which I believed had been unduly eager to publish plaintiff's allegations without conducting any inquiry of their own. This was the purpose of repeatedly stating that plaintiff's allegations were 'defamatory.' In this sense, the statement was very much intended as a cease and desist letter to the media-recipients, letting the media-recipients understand the seriousness with which Ms. Maxwell considered the publication of plaintiff's obviously false allegations and the legal indefensibility of their own conduct."[2] *Id.* ¶ 17.

3. "Consistent with those two purposes, Mr. Gow's emails prefaced the statement with the following language: 'Please find attached a quotable statement on behalf of Ms Maxwell' (italics supplied). The statement was intended to be a single, one-time-only, comprehensive response—quoted in full, if it was to be used—to plaintiff's December 30, 2014, allegations that would give the media Ms. Maxwell's response. The purpose of the prefatory statement was to inform the media-recipients of this intent."[3] *Id.* ¶ 19.

4. "I directed that the statement indicate Ms. Maxwell 'strongly denie[d] the allegations of an unsavoury nature,' declare the allegations to be false, give the press-recipients notice that the publications of the allegations 'are defamatory,' and inform them that Ms. Maxwell was 'reserv[ing] her right to seek redress.'" *Id.* ¶ 30.

That is a terrible argument. For starters, this is not Ms. Maxwell's declaration, and Mr. Barden explicitly said he had no authority to waive her privilege. Doc.638-2 ¶ 3. Additionally, none of these four statements discloses any communication between Mr. Barden and Ms. Maxwell. To contend otherwise is the height of frivolousness and warrants sanctions under Rule 11(c)(3).

[2]In her reply plaintiff only quotes the last sentence of this paragraph. We think that is rather misleading; so we quote the entire paragraph.

[3]Plaintiff omits the last sentence. We think that is misleading; so we quote the entire paragraph.

To illustrate how frivolous the argument is, we turn to plaintiff's response to our May 2016 motion to compel (Doc.164) plaintiff to produce certain categories of her attorney-client communications. Our motion was premised on *plaintiff's own testimony* in which she repeatedly disclosed her communications with her attorney. *See* Doc.164 at 10-11. In opposition to that motion, plaintiff cited cases and advanced arguments that directly rebut her Motion to Compel. *See* Doc.184 at 9-14, 18-19, 21-22. Notably, plaintiff argued:

- "[B]oth federal and New York state law . . . require that a client waive attorney-client privilege." *Id.* at 18 n.14.
- "To find that an attorney waived his client's privilege, a clear record must exist concerning the attorney's attorney [sic] to waive privilege. *See Bus. Integration Servs. v. AT&T Corp.*, No. 06 CIV. 1863 (JGK), 2008 WL 318343, at *2 (S.D.N.Y. Feb. 4, 2008). Here . . . the record is clear that [plaintiff] did not authorize any waiver of her attorney-client privilege." *Id.* at 18. Compare Paragraph 3 of Mr. Barden's declaration: "I am not authorized to and do not waive Ms. Maxwell's attorney-client privilege." Doc.638-2 ¶ 3.
- Even though plaintiff submitted a declaration implicitly disclosing attorney-client communications, it did not result in waiver of the privilege because "*the routine step of submitting an affidavit is not a waiver of attorney-client protections*." Doc.184 at 19 (emphasis supplied).
- "A waiver of the attorney-client privilege occurs only if the client voluntarily discloses in court the substance of a communication with her attorney. No waiver occurs when the client merely discloses facts which were part of the communication with the client's attorney. . . . [T]he privilege attaches to the communication with counsel, not to the underlying facts. . . . To hold otherwise would eviscerate the attorney-client privilege. Such a ruling would mean that every time an attorney filed a declaration by his client that contained the factual basis for the client's claim, the opposing party would have the right to examine all privileged communications." *Id.* at 21-22 (citations omitted).
- It is an "*extreme assertion*" to say that a client "waived her privilege simply by allowing an affidavit to be filed in a court proceeding." *Id.* (emphasis supplied).
- "[D]isclosing the *absence* of communication is not the same as exposing any communication. It is a fundamental requirement that a communication be exposed,

> not the absence of such a communication." *Id.* at 25 (italics in original; underscoring supplied). Compare plaintiff's argument at page 9 of the reply that Mr. Barden waived the attorney-client privilege when he stated in his declaration, "*I did not ask* Ms. Maxwell to respond point by point . . ." (emphasis supplied).

We cannot say this any better. So we incorporate herein by reference the cases and arguments at pages 9-14, 18-19 and 21-22 of Doc.184. Plaintiff's cases and argument are a resounding self-refutation of her own Motion to Compel. If no attorney-client communication was disclosed, then axiomatically the privileged communication was not used as a sword and the communication is not placed in issue. *See, e.g.*, *AIU Ins. Co. v. TIG Ins. Co.*, 2008 WL 5062030, at *4 (S.D.N.Y. Nov. 25, 2008) (holding that "[t]he at-issue doctrine is construed narrowly" and requires proof of three elements, including that the privilege holder "put *the protected information* at issue by making it relevant to the case") (emphasis supplied).

Plaintiff also argues in passing that Ms. Maxwell waived the attorney-client privilege by "fail[ing] to properly log communications on her privilege log." Plf's Reply 12. This does not appear to be a serious argument. There was not even a whisper of this claim in the Motion to Compel. Regardless, the argument presupposes that oral communications between an attorney and his client must be included in a privilege log. That is not the law. That is why plaintiff herself has not logged all her oral communications with her attorneys. Additionally, plaintiff forgets we have *produced* email communications predating January 10, 2015, involving Mr. Barden, Mr. Gow and Ms. Maxwell. Indeed, plaintiff attached a number of such communications to her Motion to Compel. *See* Doc.638-4.

III. PLAINTIFF IS NOT ENTITLED TO MR. BARDEN'S WORK PRODUCT.

As noted in Argument I, above, the Motion to Compel failed to identify a single unsatisfied discovery request. Accordingly, in our response we argued that plaintiff could not "compel" production of Mr. Barden's work product when she failed to identify an unsatisfied

discovery request seeking such work product. Resp. 7. In reply, plaintiff makes the *non-sequitur* argument that she requested in discovery documents subject to the *attorney-client privilege*. *See* Plf's Reply 3-5. This fails to cure the Motion to Compel's procedural default of failing to identify any unsatisfied discovery request seeking Mr. Barden's work product. If there is no such unsatisfied discovery request, *a fortiori* plaintiff is not entitled to any relief under Rule 37.

CONCLUSION

The Court should deny the motion to compel, and award sanctions.

Dated: March 17, 2017

Respectfully submitted,

/s/ Ty Gee

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CERTIFICATE OF SERVICE

I certify that on March 17, 2017, I electronically served this *Defendant's Surreply in Opposition to "Motion to Compel" Work Product and Attorney-Client Communications with Philip Barden* via ECF on the following:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

----------X

15-cv-07433-RWS

Motion to Appoint Special Master to Preside Over Third Deposition of Defendant

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Defendant Ghislaine Maxwell ("Ms. Maxwell"), pursuant to Federal Rule of Civil Procedure 53, files this Motion to Appoint a Special Master to Preside over the Third Deposition of Defendant Ghislaine Maxwell, and states as follows:

STATEMENT OF CONFERRAL

The undersigned has conferred with counsel for Plaintiff, who stated that they do not agree to the appointment of a special master to oversee Ms. Maxwell's third deposition.

INTRODUCTION

Plaintiff has deposed Defendant for more than thirteen hours of testimony on the record. During the previous depositions, a variety of issues arose, including repetitive and duplicative questioning on a variety of subjects outside of the Court's previous orders, resulting in the need for objections to the questioning and instructions not to answer. The Court has permitted Ms. Maxwell to be deposed for a third time, on limited subject areas, limited to non-duplicative examination, for a maximum of two hours. To avoid the possibility of any request for yet another deposition of Ms. Maxwell, we submit it is in the best interest of all parties to appoint a special master to preside over the deposition to provide immediate rulings on any objections that may arise regarding questions that are outside of the scope of the deposition as set forth in this Court's March 23, 2017 and November 10, 2016 Orders, or any other issues that might arise during the deposition.

I. THE SCOPE OF THE DEPOSITION

On November 2, 2016, the Court granted Plaintiff's Motion to permit a third deposition of Ms. Maxwell concerning the following subjects:

(a) Johanna Sjoberg ,

(b) Maria and Annie Farmer,

(c) women brought by Tony Figueroa ,

> (d) other women who gave massages to Jeffrey Epstein, and any evidence, circumstances, or records relating to the massages.

Order of Nov. 2, 2016 at 7.

During the hearing on November 10, 2016, this Court granted Plaintiff's Motion to permit this third deposition to include questioning concerning two emails produced August 16, 2016 (Doc. # 466); *see* Tr. of Nov. 10, 2016 hearing at 34.

On November 15, 2016, Defendant moved for reconsideration or clarification of portions of the November 2, 2016 Order. With respect to the third deposition of Ms. Maxwell, the Court granted the motion for clarification, which requested that the Court clarify that the deposition would be limited to non-duplicative questioning "limited to the four areas of inquiry referred to in the Order at page 7." Sealed Order of March 23, 2017 at 4.[1]

Pursuant to Fed. R. Civ. P. 53, the Court may appoint a special master to "address pretrial and post-trial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district." In light of the trial in this matter scheduled to begin May 15, 2017, it is in all parties' best interest to complete this final two hours of deposition quickly and efficiently. Given that in the prior depositions of Ms. Maxwell, counsel for Plaintiff has repeatedly covered the same questions, we believe that there is a high likelihood that this repetitive duplicative questioning will occur again, necessitating objections by counsel to enforce this Court March 23, 2017 Order, as is permitted by Fed. R. Civ. P. 30(c)(2). Should this occur, an immediate ruling on the issue by a special master would prevent the need for any further briefings on these matters, whether by Motion for Protective Order or otherwise.

[1] Because the Order pertaining to reopening the deposition concerning the two emails occurred after the November 2, 2016 Order, it was not addressed in the Motion for Reconsideration, and therefore not identified as one of the limited topics of the third deposition. It is clear from the hearing transcript, however, that the Court and counsel recognized that these topics would be covered in the same additional two-hour deposition.

There is also a legitimate concern regarding Plaintiff's counsel's treatment of Ms. Maxwell during her deposition, as evidenced by tactics in the prior depositions such as refusing to permit Ms. Maxwell to take requested breaks, scolding Ms. Maxwell that she could not speak with her counsel at break, and other deposition tactics clearly improper under Fed. R. Civ. P. 30(d)(3)(a). By way of example, in her second deposition, the following occurred:

> THE WITNESS: Can we take a break?
> MR. BOIES: Only if you commit not to talk to your counsel during the break.
> THE WITNESS: That's ludicrous.
> MR. BOIES: You want a break to talk to your counsel, right?
> THE WITNESS: I want to use the bathroom.
> MR. BOIES: You want to talk to your counsel, right?
> THE WITNESS: I talk to my counsel all the time.
> MR. BOIES: I don't want you talking to your counsel while I'm in the middle of this examination.
> MR. PAGLIUCA: I'm going to talk to her, so are we going to sit here and go for the rest of the day until we're done?
> MR. BOIES: No, but I'm going to go through the rest of this line of questioning, unless you take her and walk out and then, I'm going to protest that to the judge.
> MR. PAGLIUCA: He is refusing a bathroom break to you right now.

See Menninger Decl. Ex. A, at 102-103. Obviously, the risk of such improper oppressive conduct by counsel would be greatly reduced with the presence of a third-party neutral arbiter in the room.

Thus, for efficiency purposes and to protect Ms. Maxwell from harassment and oppression, we request that the Court appoint a Special Master to preside over Ms. Maxwell's third deposition and be given the following powers:

1) Provide immediate and binding rulings on any and all objections concerning whether the questioning exceeds the limitations imposed by the Court, including duplicative questioning;

2) Provide immediate and binding rulings on any claims of oppression or harassment of the witnesses;

3) Provide immediate and binding rulings on any objections that would otherwise necessitate a Motion for Protective Order, other than instructions not to answer based on privilege, which shall be preserved in the deposition record.

4) Provide immediate and binding rulings on any other matter occurring during the deposition that will effectuate the completion of Ms. Maxwell's final 2-hour deposition.

Consistent with Fed. R. Civ. P. 53(f) the Special Master's ruling on these questions will be reviewed under an abuse of discretion standard. We propose that each side share in the cost of the special master equally, pursuant to Fed. R. Civ. P. 53(g)(2)&(3). Within 2 days after the Court's approval of this request Ms. Maxwell will propose a list of three qualified special masters and request that the Court select one of these individuals to act as the Special Master for this deposition.

CONCLUSION

WHEREFORE, Defendant requests the appointment of a Special Master under Fed. R. Civ. P. 53 to oversee and rule of any objections raised (other than form and foundation objections) in Ms. Maxwell's final two hours of deposition.

Dated: April 11, 2017

Respectfully submitted,

/s/ Laura A. Menninger

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CERTIFICATE OF SERVICE

I certify that on April 11, 2017, I electronically served this *Motion to Appoint Special Master to Preside Over Third Deposition of Defendant* via ECF on the following:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

----------X

15-cv-07433-RWS

Declaration of Laura A. Menninger in Support of Defendant's
Motion to Appoint Special Master to Preside Over Third Deposition of Defendant

I, Laura A. Menninger, declare as follows:

1. I am an attorney at law duly licensed in the State of New York and admitted to practice in the United States District Court for the Southern District of New York. I am a member of the law firm Haddon, Morgan & Foreman, P.C., counsel of record for Defendant Ghislaine Maxwell in this action. I respectfully submit this Declaration in support of Ms. Maxwell's Motion to Appoint Special Master to Preside Over Third Deposition of Defendant.

2. Attached as Exhibit A are true and correct copies of excerpts from the deposition of Ghislaine Maxwell on July 22, 2016, designated Confidential under the Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 11, 2017.

s/ Laura A. Menninger
Laura A. Menninger

CERTIFICATE OF SERVICE

I certify that on April 11, 2017, I electronically served this *Declaration of Laura A. Menninger in Support of Defendant's Motion to Appoint Special Master to Preside Over Third Deposition of Defendant* via ECF on the following:

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Nicole Simmons

United States District Court
Southern District of New York

Virginia L. Giuffre,

Plaintiff, Case No.: 15-cv-07433-RWS

v.

Ghislaine Maxwell,

Defendant.
_____/

PLAINTIFF MS. GIUFFRE'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO APPOINT A SPECIAL MASTER TO PRESIDE OVER THE THIRD DEPOSITION OF DEFENDANT

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Plaintiff, Ms. Virginia Giuffre, respectfully submits this memorandum of law in response and opposition to Defendant's Motion to Appoint a Special Master to Preside Over the Third Deposition of Defendant.

BACKGROUND

Defendant's recounting of the certain background facts obscures the fact that the Court has entered two separate orders, each of which require a deposition of not more than two hours of Defendant. Accordingly, the upcoming deposition will not exceed a total of four hours. The two separate issues relate to (1) Defendant's failure to answer certain questions at her deposition and (2) her late production of important emails. These two issues developed as follows.

Defendant's Failure to Answer Certain Questions

During her first deposition, Defendant improperly refused to answer certain questions. Accordingly, the Court ordered a second deposition, directing the Defendant to answer questions on several enumerated topics:

> Defendant is ordered to answer questions relating to Defendant's own sexual activity (a) with or involving Jeffrey Epstein ("Epstein"), (b) with or involving Plaintiff, (c) with or involving underage females known to Epstein or who Defendant believed or intended might become known to Epstein, or (d) involving or including massage with individuals Defendant knew to be, or believed might become, known to Epstein . Defendant is also directed to answer questions relating to her knowledge of sexual activities of others (a) with or involving Epstein, (b) with or involving Plaintiff, (c) with or involving underage females known to Epstein or who Defendant believed were known or might become known to Epstein, or (d) involving or including massage with individuals Defendant knew to be or believed might become known to Epstein. The scope of Defendant's answers are not bound by time period, though Defendant need not answer questions that relate to none of these subjects or that is clearly not relevant, such as sexual activity of third- parties who bear no knowledge or relation to the key events, individuals, or locations of this case.

Sealed Order June 20, 2016 at 9-10.

Pursuant to this June 20, 2016, Order, Ms. Giuffre took Defendant's deposition a second time. And – once again – the Defendant refused to answer questions on this subject. And, once again, Ms. Giuffre was forced to move to compel answers. And, once again, the Court ordered Defendant to answer questions about the subjects she had refused to address, enumerating four specific topics:

> The Plaintiff has moved to compel answers to questions which were the subject of the June 20, 2016 Order. In particular, Defendant refused to answer questions about (a) Johanna Sjoberg , (b) Maria and Annie Farmer , (c) women brought by Tony Figueroa, and (d) other women who gave massages to Jeffrey Epstein ("Epstein") , and any evidence, circumstances, or records relating to the massages. The Defendant has opposed the motion on the grounds that the questions were repetitive and her previous deposition testimony answered the questions posed. Directions not to answer except on the grounds of privilege or court order are not appropriate with respect to the particular deposition at issue. The motion to compel is granted and Defendant is directed to answer the deposition questions.

Sealed Omnibus Order, Nov. 2, 2016, at 7. The Court also indicated that the "deposition will be limited to two hours of questions and answers excluding counsel colloquy." *Id.* at 7-8.

Shortly after this order was entered, on November 16, 2016, Defendant moved for reconsideration of the order. On March 23, 2017, this Court refused to reconsider the Order, but reiterated that the third deposition would proceed "limited to the four areas of inquiry referred to in the Order at page 7." Sealed Order of March 23, 2017 at 4.

Defendant's Deposition about Documents Produced Late.

A separate issue arose about Defendant's belated production of important documents. After the close of discovery on July 31, 2016, Defendant produced two critical emails: one between her and her press agent, Ross Gow, and another between her and Jeffrey Epstein. Ms. Giuffre then filed a motion to reopen Defendant on these important documents. DE 466. As explained in length in the motion, these two documents involved central issues in the case,

including Defendant's coordination of the press attack on Ms. Giuffre and Defendant's coordination of the attack with her co-conspirator, Epstein.

The Court heard oral argument on Ms. Giuffre's motion on November 10, 2016. After argument, the Court agreed with Ms. Giuffre and ruled as follows: "Ms. Maxwell will be deposed with respect to the emails. The deposition will be limited to two hours." Sealed Transcript, Nov. 10, 2016, at 34.

DISCUSSION

Defendant now moves for appointment of a special master, offering two arguments. First, Defendant claims that she is concerned about "repetitive duplicative questioning" of certain subjects. Mot. at 2. Of course, given the time limits involved, Ms. Giuffre's counsel would have no reason to engage in such repetitive questioning. But, in any event, there is no need for a special master to be involved in deciding whether questioning is somehow repetitive. Defense counsel can simply note an objection to that effect, and the deposition will move forward. *See* Fed. R. Civ. P. 30(c)(2). A special master is not needed – and would, of course, have great difficulty in getting up to speed on what subjects might or might not be regarded as repetitive.

Second, Defendant claims that she has been subject to "oppressive conduct" during her second deposition, citing an approximately one-minute long passage in the deposition with Ms. Giuffre's counsel, David Boies, indicated his view that caselaw did not permit a witness to substantively confer with legal counsel during the middle of a deposition. Defense counsel took the opposite view.

On this point, Mr. Boies was correct. It is hornbook law that

> once a deposition begins, however, an attorney and a client do not have an absolute right to confer. Rather, a private conference between a deponent and the

> deponent's attorney during the taking of a deposition is improper unless the conference is for the purpose of determining whether a privilege should be asserted. This rule applies to both conferences initiated by the attorney and conferences initiated by the witness, including conferences regarding documents shown to the witness during the deposition. If the witness does not understand a question or needs some language further defined or some documents further explained, the witness can ask the deposing attorney for clarification or additional information or may simply testify to a lack of knowledge or understanding.

10A FEDERAL PROCEDURE, LAWYER EDITION § 26:452 (current through Mar. 2017). Indeed, it is well-known that requesting a break is a stratagem improperly used by clever lawyers and witnesses:

> Furthermore, private conferences between the deponent and the deponent's attorney are prohibited during deposition recesses; *otherwise, a clever lawyer or witness who finds that a deposition is going in an undesirable or unanticipated direction could simply insist on a short recess to discuss the unanticipated yet desired answers, thereby circumventing the prohibition on private conferences*.

Id. (emphasis added); *see Morales v. Zondo, Inc.,* 204 F.R.D. 50, 53 (S.D.N.Y. 2001) ("in general, a deponent and the deponent's attorney have no right to confer during a deposition, except for the purpose of determining whether a privilege shall be asserted"). There was nothing wrong with Mr. Boies explaining this law during the course of deposition, much less an "oppressive" practice that would require appointment of a special master.

Defendant asks that the special master be given power to, among other things, "[p]rovide immediate and binding rulings on any other matter occurring during the deposition that will effectual the completion of Ms. Maxwell's final 2-hour deposition." Mot. at 4. For the special master to fairly make "binding" rulings, however, the master would have to immerse himself or herself in the details of more than 800 docket entries that now form the law of this case. That would be difficult for any special master to do effectively. It is far simpler – and fairer – for the normal deposition rules to simply apply. During the deposition, Defendant's counsel is free to instruct her not to answer any question on grounds of privilege; but as to other objections, they

are merely noted on the record and the deposition moves forward. *See* Fed. R. Civ. P. 30(c)(2). However, Defendant is wrongfully trying to assign costs relating to the appointment of an unnecessary special master to Plaintiff. That is prejudicial. It is Defendant who has behaved improperly in repeated depositions, and Plaintiff should not be required to pay for a special master.

A final point needs to be mentioned. As recounted in the background section above, the Court has entered two separate orders for reopening Defendant's deposition on two separate subjects. Each of those orders directs an additional two-hour deposition on each of those subjects. Accordingly, Ms. Giuffre is entitled to depose Defendant for two hour on each subject, up to a total of four hours. The Defendant should not get a benefit from having *twice* improperly withheld information, by collapsing the two hours needed to address each of these topics into an average of one hour for each of these topics.

The Court's orders on this point of the four hours appear to be clear. But because Defendant has alluded to a different interpretation of the Orders, Ms. Giuffre respectfully requests that the Court reiterate that the upcoming deposition of Defendant on these topics will not exceed four hours (exclusive of counsel colloquy).

Of course, Ms. Giuffre's counsel will endeavor to take Defendant's deposition as quickly as possible. But as the Court is aware from previous pleadings, Defendant has had some remarkable memory lapses during earlier depositions, feigned incomprehension of common words such as "puppet," as well as repeatedly requesting that questions be re-asked or clarified, over and over and over again, when the those questions were clear, concise, and unambiguous, as a way to avoid answering the questions put to her. It is for these reasons that Ms. Giuffre is

concerned about time limits at the upcoming deposition and asks the Court to reiterate its ruling on the four hours total time permitted.

In light of the foregoing, this Court requiring an appointment of a special master would impose an undue and unwarranted expense upon Ms. Giuffre. Such a burden and expense is wholly inappropriate in light of the fact that the sole reason this third deposition is going forward is Defendant's repeated wrongful discovery failure. This Court ordered a third deposition for Defendant's failure to answer questions at her first and second deposition. And, this Court ordered a third deposition for Defendant wrongful failure to produce relevant documents until just days after her second deposition. Notably, Defendant withheld these documents until that second deposition was completed, thus depriving Ms. Giuffre the opportunity to ask questions on those emails.

Finally, Ms. Giuffre has been asking for April dates for this deposition since March. After repeated requests, counsel for Defendant was only willing to make Defendant available for deposition the first week of May, on the eve of trial. This motion for a Special Master is nothing more than an attempt to create yet another roadblock in taking Defendant's deposition – a deposition that would not be set but for Defendant's refusal to answer questions and comply with discovery obligations – and create additional and unnecessary expense for Ms. Giuffre.

CONCLUSION

For all of the foregoing reasons, Ms. Giuffre respectfully requests that the Court deny Defendant's motion for appointment of a special master. Ms. Giuffre also respectfully requests that the Court reiterate that deposition of the each of the two topics will not exceed two hours, meaning that the total deposition of Defendant will not exceed four hours.

Dated: April 18, 2017

Respectfully Submitted,

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[1] This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah for this private representation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of April, 2017, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on the individuals identified below via transmission of Notices of Electronic Filing generated by CM/ECF.

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/s/ Sigrid S. McCawley
Sigrid S. McCawley

United States District Court
Southern District of New York

Virginia L. Giuffre,

Plaintiff, Case No.: 15-cv-07433-RWS

v.

Ghislaine Maxwell,

Defendant.
_____/

JOINT RESPONSE IN OPPOSITION TO PROPOSED INTERVENORS' MOTION FOR LEAVE TO INTERVENE AND TO MODIFY THE PROTECTIVE ORDER

Non-Party Jane Doe 43 in the captioned matter *Jane Doe 43 v. Epstein, et al*, No. 17 Civ. 616 (JGK) and Plaintiff Virginia Giuffre oppose the Proposed Intervenors' Motion for Leave to Intervene and to Modify the Protective Order for the reasons set forth below. The Proposed Intervenors are two non-parties, Jeffrey Epstein and Leslie Groff ("Epstein Defendants").

PRELIMINARY STATEMENT

This Court has twice held that non-parties, such as Jeffrey Epstein and Leslie Groff, cannot challenge this Court's Protective Order. Therefore, the Court should summarily deny this motion.

PROCEDURAL HISTORY

On March 18, 2016, this Court entered a Protective Order (DE 62) for the privacy of the parties and deponents. Non-Party Jane Doe 43 was a fact witness and deponent in the *Giuffre v. Maxwell* case. She provided both deposition testimony and documents in this case which were designated as "confidential" under the terms of the Protective Order. On January 26, 2017, Non-

Party Jane Doe 43 filed her own action against Jeffrey Epstein and others for violations of 18 U.S.C. § 1595 for engaging in commercial sex trafficking. Despite the fact that it is well settled that a Court should not consider documents beyond the four corners of the complaint in evaluating a Motion to Dismiss, the Epstein Defendants seek to utilize documents produced by Jane Doe 43 in this matter for purposes of supporting their Motion to Dismiss in the matter before Judge Koeltl. The Epstein Defendants argue that the materials can be used to establish that Jane Doe 43's claims should be barred because they are outside the ten (10) year statute of limitation period and also that they somehow establish that Epstein is not within the New York Court's jurisdiction.

Accordingly, the Epstein Defendants came before this Court seeking to intervene to gain access to documents that were marked confidential under the Protective Order. In an effort to avoid any unnecessary motion practice before this Court, Non-Party Jane Doe 43 and Virginia Giuffre agreed to the release of her deposition transcript and any of the documents that could remotely be related to the challenges to jurisdiction and statute of limitations (56 documents) which the Epstein Defendants desire to present at the Motion to Dismiss stage. The Epstein Defendants were not satisfied with the disclosure agreement, and are therefore before this Court seeking additional documents.

At the outset, it is critical to note that the Court, in its November 2, 2016 order, has already held in this case that a non-party cannot seek to overturn the protective order as follows:

> "The Protective Order states that parties can object to the confidentiality designations: "A party may object to the designation of particular CONFIDENTIAL INFORMATION by giving written notice to the party designating the disputed information… it shall be the obligation of the party designating the information as CONFIDENTIAL to file an appropriate motion requesting that the Court determine whether the disputed information should be subject to the terms of this Protective Order." This Court's Protective Order does not allow for non-parties to challenge these designations.

> The Movant agreed to be bound by the provisions of the Protective Order in exchange for receiving the Requested Documents. Accordingly, he has agreed to the confidentiality restrictions placed on the documents, no matter what the documents contained so that he could be privy to all of the discovery in this case. He is thereby bound by its confidentiality provisions, as well as the provisions ***that only allows parties to bring challenges to the Protective Order.***"

November 2, 2016 Sealed Opinion (emphasis added).

Similarly here, the Epstein Defendants only have possession of these documents because Epstein was a witness in this matter bound by the Protective Order. As such, he cannot move to release those documents because he is not a party to this action. Defendant Maxwell has not joined Epstein's Motion. Accordingly, it is the law of the case that his motion must be denied.

ARGUMENT

It is well settled that a Court should not consider documents outside the four corners of the Complaint at the Motion to Dismiss stage. *See, e.g., In re Giant Interactive Grp., Inc. Sec. Litig.*, 643 F. Supp. 2d 562, 573 (S.D.N.Y. 2009) (Sweet, J.) (Court not considering evidence outside of complaint in deciding motion to dismiss, denying motion) ("'[T]he evidence advanced by Defendants is not within the four corners of the Complaint, and cannot be considered here.'" (citing *Fonte v. Bd. of Managers of Cont'l Towers Condo.*, 848 F.2d 24, 25 (2d Cir. 1988))); *Bill Diodato Photography LLC v. Avon Prod., Inc.*, No. 12 CIV. 847 RWS, 2012 WL 3240428, at *4 (S.D.N.Y. Aug. 7, 2012), on reconsideration, No. 12 CIV. 847 RWS, 2012 WL 4335164 (S.D.N.Y. Sept. 21, 2012) (Sweet, J.) ("A Rule 12(b)(6) motion to dismiss challenges only the face of the pleading. Thus, in deciding such a motion to dismiss, 'the Court must limit its analysis to the four corners of the complaint.'" (internal citations omitted)). Yet the Epstein Defendants seek to intervene in this case for the exact purpose of obtaining relief from documents marked as "confidential" to admittedly utilize in support of their Motion to Dismiss.

Furthermore, Jane Doe 43 has good reason to believe that the Epstein Defendants also have the nefarious purpose of utilizing the confidential documents to humiliate and embarrass her in a public filing. This tactic should not be tolerated, and for that, their motion to modify should be denied.

I. Jane Doe 43 and Virginia Giuffre Have Already Agreed to Disclose Any Remotely Relevant Testimony and Documents

As an initial matter, Jane Doe 43 and Virginia Giuffre have already agreed to release Jane Doe 43's deposition transcript and 56[1] documents that she produced from the confines of the Protective Order. Epstein Defendants spend a substantial amount of time in their Motion to Intervene trying to convince this Court that Jane Doe 43's testimony, which they label the "Agreed Evidence," establishes that she was not trafficked during the statute of limitations period. That could not be further from the truth. Jane Doe 43's testimony clearly establishes that her abuse continued within the ten (10) year statute of limitations period:

- She provided testimony demonstrating that Epstein's abuse of Jane Doe 43 continued during the ten (10) year window before she filed her lawsuit against him. Jane Doe 43 Dep. Tr. 216; 250-251; Jane Doe 43000002-15.
- She testified that she and the other girls were frightened of Epstein and Ghislaine Maxwell. Jane Doe 43 Dep. Tr. 44; 283.
- She testified that she was held against her will on Epstein's island. Jane Doe 43 Dep. Tr. 209.
- She testified that Epstein and Maxwell, knowing Jane Doe 43 was financially destitute, and was suffering from depression, lured her into their commercial sex trafficking ring with the false promises of taking care of her and paying for her education if she complied with their demands. Jane Doe 43 Dep. Tr. 112; 233; 250-251.

[1] Jane Doe 43 inadvertently failed to include Document 000425-426 and hereby incorporates that email, which is from 2007, into the documents she has agreed to release.

- Jane Doe 43 testified that she interacted with Maxwell after Epstein flew her back from South Africa which was within the ten (10) year statute of limitations period and that she "frequently" was summoned to Epstein and Maxwell's office in New York. Jane Doe 43 Dep. Tr. 171, 172, 176, 177, 294- 295, 374; 396.

- She testified that Epstein purchased a cell phone for her so he could keep track of her at all times and if she did not come when called he would come find her. Jane Doe 43 Dep. Tr. 177; 257.

- She was forced by Epstein to have sex with other girls and with a colleague of Epstein's in his New York mansion. Jane Doe 43 Dep. Tr. 187-192.

- During the ten (10) year statute of limitations period, Epstein used threats to ensure Jane Doe 43 complied with his physical demands including forcing her to stop eating so she could meet his demands. Jane Doe 43 Dep. Tr. 221, 224, 230, 417.

- During the ten (10) year statute of limitation period, she testified she was actively working on her FIT application based on the false promises that Epstein and Maxwell would assist in her enrollment and pay for her schooling. Jane Doe 43 Dep. Tr. 233; 376; 408.

- In February 2007, Epstein asked Jane Doe 43 to find him a personal assistant in South Africa to bring back to him who was "very young looking, pretty." Jane Doe 43 Dep. Tr. 218-220; 418.

- She testified that she was with Epstein until April 2007, which is well within the ten (10) year statute of limitations period. Jane Doe 43 Dep. Tr. 412.

- When asked if she tried to break away from Epstein in February 2007, she responded saying: "No. I didn't decide to make a break with Jeffrey Epstein." Jane Doe 43 Dep. Tr. 43 at 416.

Jane Doe 43 was questioned in this deposition by Defendant Maxwell's lawyers for purposes of the *Maxwell* case. However, she was not asked many key questions that are highly relevant to the case pending before Judge Koeltl. For example, she was not asked whether during the period of January 2007 to April 2007 she believed that she was able to leave Epstein without being subject to harm. She was not asked about the specifics of the multiple times she was abused during the period of January 2007 to April 2007 by Epstein. And she was not asked

about how Epstein continued to manipulate her in order to keep her compliant in his sexual trafficking ring. And, again, pursuant to this Court's Orders, the movants do not have the right under the Protective Order to bring this motion.

II. The Disputed Documents Should Remain Protected

Despite the fact that Jane Doe 43 and Virginia Giuffre agreed to release her deposition and 56 different documents, including communications from the time period she was abused by the Epstein Defendants, the Epstein Defendants are still insisting on coming before this Court to fight over the so-called "Disputed Documents" that the Epstein Defendants improperly and impermissibly seek to remove from this Court's Protective Order. These documents have nothing to do with any of the Epstein Defendants' alleged arguments in their Motion to Dismiss arguments that relate to jurisdiction and statute of limitations challenges. To the contrary, the Epstein Defendants are merely trying to publicly smear Jane Doe 43 by attaching salacious emails to a public filing, despite the fact that the documents have no relationship to the Motion to Dismiss.

The "Disputed Documents" can be categorized in two groups. The first group is a collection of photographs of various people including Jane Doe 43, Epstein, Maxwell, and other females (Jane Doe 43 000204-235). The photographs are not dated and have no bearing on the statute of limitations or jurisdiction arguments that the Epstein Defendants want to make. The second group includes a series of **2016** communications that Jane Doe 43 had with a reporter (Jane Doe 43 000428-557). These communications are not relevant to either the issue of statute of limitations or the issue of whether the court has jurisdiction over the *Epstein* matter in New York. They do, however, include highly *irrelevant* items that could only serve the Epstein Defendants by smearing and embarrassing Jane Doe 43, such as pictures of Jane Doe 43 after a

suicide attempt. Those could only be used to publicly humiliate and intimidate her. Again, none of that evidence should be considered at the Motion to Dismiss stage. Of course, the Court need not reach such details for consideration on the instant motion as it has already held that non-parties cannot challenge the Protective Order.

III. The Court Should Not Modify the Protective Order as to These Documents

The Court took care to have the parties enter into the Protective Order in this case given the sensitive nature of the sexual abuse allegations at issue. Jane Doe 43 courageously gave her testimony in this action, and voluntarily produced documents even though she was not subject to a subpoena in Spain. The documents that she produced contain sensitive information, and the Epstein Defendants have failed to set forth a sufficient basis justifying a modification to the Protective Order. As the Court is aware, even if the Epstein Defendants did set forth a sufficient basis, this Court still could not grant the relief sought because, as it previously held, non-parties cannot move the Court to modify the Protective Order. The Court need not reach **any** of the arguments put forth by these non-parties. This Court's November 2, 2016 Order makes clear that a non-party, like Epstein here, who obtains Confidential materials only through his participation in this case, is bound by the terms of the Protective Order which only allows modification by a "party." Order at 24-25.

There is a "strong presumption against the modification of a protective order," in the Second Circuit, and "orders should not be modified absent a showing of improvidence in the grant of the order or some extraordinary circumstance or compelling need." *In re Teligent, Inc.*, 640 F.3d 53, 59 (2d Cir. 2011); *see also In re September 11 Litigation*, 262 F.R.D. 274 (S.D.N.Y. 2009). The Second Circuit has been hesitant to permit modifications that might "unfairly disturb the legitimate expectations of the parties or deponents." *Dorsett v. County of*

Nassau, 289 F.R.D. 54, 64 (E.D.N.Y. 2012). Indeed, "[i]t is presumptively unfair for courts to modify protective orders which assure confidentiality and upon which the parties have reasonably relied." *Id.* (internal citations and quotations omitted); *see also Medical Diagnostic Imaging, PLLC v. Carecore Nat., LLC*, 2009 WL 2135294, at *4 (S.D.N.Y. 2009) (denying motion to modify protective order because parties and third parties have reasonably relied upon the terms of the protective order).

As discussed in detail in this Court's previous Order, "[t]he Protective Order provided confidentiality for information the parties determine would 'improperly annoy, embarrass or oppress any party, witness or person providing discovery in this case.'" May 2, 2017 Order Denying Modification of Protective Order (DE 892) at 4 (quoting Protective Order). Further, "[t]his Court has, three times, found the issues presented in the action warrant a Protective Order, and has specifically expressed concern for its ongoing efficacy." *Id.* at 5.

Moreover, the Protective Order (DE 62) does not allow non-parties, like Epstein, to challenge the confidentiality designations or the efficacy of the Order. The Protective Order only states that *parties* can object to the confidentiality designations: "A party may object to the designation of particular CONFIDENTIAL INFORMATION by giving written notice to the party designating the disputed information . . . it shall be the obligation the party designating the information as CONFIDENTIAL to file an appropriate motion requesting that the Court determine whether the disputed information should be subject to the terms of this Protective Order." (DE 62 at ¶ 11, p. 4). This Court's Protective Order does not allow for non-parties to challenge these designations and therefore this Motion to Intervene, filed by Epstein and Groff, both non-parties to this case, should be rejected.

Notably, the cases that the Epstein Defendants relies upon are inapposite. None of the cases that the Epstein Defendants cite involve the modification of a protective order for purposes of a defendant moving to dismiss a different case. More specifically, none of the cases that they cite relate to a protective order in a sexual abuse case. In *Int'l Equity Investments, Inc. v. Opportunity Equity Partners Ltd.*, No. 05 CIV. 2745 JGK RLE, 2010 WL 779314, at *4 (S.D.N.Y. Mar. 2, 2010), the court granted the motion to intervene, but denied the motion to modify the confidentiality order, just as this Court has done two times before. In *Charter Oak Fire Ins. Co. v. Electrolux Home Prods., Inc.*, 287 F.R.D. 130, 134 (E.D.N.Y. 2012), the plaintiff, not a third-party, moved to modify the order for a separate third-party in another case. In *Gambale v. Deutsche Bank AG*, 377 F.3d 133 (2d Cir. 2004), the court *sua sponte* publicly disclosed settlement terms. *In re Ethylene Propylene Diene Monomer (EPDM) Antitrust Litig.*, 255 F.R.D. 308, 313 (D. Conn. 2009) involves a Canadian class action lawsuit that is virtually identical to its American counterpart. And in *In re Visa Check/MasterMoney Antitrust Litig.*, 190 F.R.D. 309 (E.D.N.Y. 2000), the United States Department of Justice sought to intervene in an antitrust case.

Finally, "a litigant's purpose in seeking modification of an existing protective order is also relevant for determining whether to grant a modification. Requests to modify protective orders so that the public may access discovery materials is arguably subject to a more stringent presumption against modification because there is no public right of access to discovery materials." *Dorsett*, 289 F.R.D. at 65 (E.D.N.Y. 2012). There can be no legitimate purpose for the movants seeking pictures of Jane Doe 43 after her attempted suicide and these are documents they can seek through the normal courses of discovery before Judge Koeltl. As with other non-party attempted intervenors, the Epstein Defendants are seeking to humiliate and embarrass Jane

Doe 43 by attaching confidential materials to a public filing, and for that their motion must be denied. And, again, the Court need not reach merits of this motion because the Court previously, and unambiguously, held that non-parties cannot disturb this Court's Protective Order.

CONCLUSION

For all the foregoing reasons, the Court should deny the Proposed Intervenors' Motion for Leave to Intervene and to Modify the Protective Order.

Dated: October 19, 2017

Respectfully Submitted,

BOIES SCHILLER FLEXNER LLP

By: /s/ Sigrid McCawley

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of October, 2017, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I also certify that the foregoing document is being served to all parties of record via transmission of the Electronic Court Filing System generated by CM/ECF.

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[2] This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah for this private representation.

EXHIBIT A

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DIANE L. HOUK

FILED UNDER SEAL

June 21, 2017

By ECF

Honorable Robert W. Sweet
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Giuffre v. Maxwell, No. 15 Civ. 7433 (RWS)

Dear Judge Sweet:

This firm represents Intervenor Professor Alan M. Dershowitz, and we write in anticipation of the parties' forthcoming motion practice concerning the confidentiality of the Sarah Ransome deposition.[1] Intervenor requests that, if the Court allows Plaintiff Virginia Giuffre to remove the confidentiality designation concerning the Ransome deposition—an action that would require modification of the Protective Order in this case —it also simultaneously remove the confidentiality designation from several related emails and attachments that the parties previously designated confidential (RANSOME_000273-557) ("the Emails"). The Emails will demonstrate that Ms. Ransome's inflammatory, salacious, and defamatory testimony concerning the Intervenor and others is false and that the deponent is not credible. Absent this relief, Ms. Ransome's unrebutted testimony will gravely prejudice Intervenor by publishing deliberate lies calculated to harm his reputation. Counsel for Ms. Giuffre has not indicated whether she consents to removing the confidentiality designation from the Emails; and counsel has indicated that Ms. Giuffre "is not sure" whether she will seek to remove the confidentiality designation from the Ransome deposition, notwithstanding her prior letter requesting that relief

[1] Intervenor Dershowitz respectfully submits that issues concerning the confidentiality of particular materials under the protective order are not mooted by the settlement of the underlying action. *See Gambale v. Deutsche Bank AG*, 377 F.3d 133, 140-41 (2d Cir. 2004).

privately. Nevertheless, we write in an abundance of caution and to avoid the risk of a de-contextualized and one-sided disclosure.

In a letter from her counsel Boise Shiller Flexner LLP to Laura Menninger on May 5, 2017, Ms. Giuffre purported to give notice of her "withdrawal of her confidentiality designation of Ms. Ransome's deposition transcript in its entirety." We understand Ms. Maxwell will move to oppose this de-designation.

If the Court allows Ms. Giuffre to remove the confidentiality designation from the Ransome deposition, the Emails should be disclosed at the same time to allow the public to understand the full context of Ms. Ransome's testimony, and to assess the credibility (or lack thereof) of Ms. Ransome. Ms. Giuffre should not be permitted to use this Court's power to make a false and heinous public accusation against Intervenor (like the publicly filed false affidavits in prior litigation concerning Intervenor) and then shield from disclosure all proof that the accusation is perjurious (as she has done previously in this case by designating her book manuscript and emails to the press, which show her claims against Intervenor to be false, as confidential).

Intervenor seeks the de-designation of the Emails to challenge Ms. Ransome's false and defamatory accusations that, among other things, she had sexual intercourse with Intervenor when she was twenty-three. Ms. Ransome's allegations concerning Intervenor are categorically false. Prof. Dershowitz has never met or had contact with Ms. Ransome, was not her lawyer, and certainly never had a sexual encounter with her. Prior to this action, Intervenor had never heard of Ms. Ransome. Her testimony was fabricated from whole cloth. Ms. Ransome's testimony also contains a slew of other incendiary claims concerning the sexual proclivities of Donald Trump, Bill Clinton, and other prominent individuals.

The Emails are a necessary antidote to Ms. Ransome's deposition misstatements because they demonstrate she manifestly lacks credibility. For example, she writes:

- "My emails have been hacked. I have reached out to the Russians for help and they are coming to my aid. Thank goodness for Anonymous!!!! I will make sure that they all go behind bars. I have already sent everything I need to so, the CIA, hacking my emails etc were too late. I also have numerous devices, with systems that are unhackable and I have film footage all over Europe itching to be released." Ex. 1 (RANSOME_000521);

- Her friend was "approached, by Special Agents Forces Men sent directly by Hilary [sic] Clinton herself, in order to protect her presidential campaign." Ex. 2 (RANSOME_000295)*;*

- "I will make sure that neither that evil bitch Hillary or that Paedophile Trump gets elected. I will also make sure that everyone on the God damn planet see's [sic] that footage and photo's [sic] and will release them to Wiki leaks by Sunday. I will take down Epstein and his bunch of fuck wit cronies myself!!!!!!!!!! I have also gone to a Russian news paper." Ex. 3 (RANSOME_000368);

- "Clinton[ ] and Trump must pay for what they did to us as must the rest of the men that were involved in their seedy inner circle." Ex. 4 (RANSOME_000284);

- "[M]y friend had sexual intercourse with Clinton, Prince Andrew and Richard Branson, sex tapes were in fact filmed on each separate occasion … I eventually managed to persuade her to send me some of the video footage which she kept, implicating all three all men … I have backed up the footage on several USB sticks and have securely sent them to various different locations throughout Europe." Ex. 5 (RANSOME_000295);

- "[A]nother friend … was one of the many girls that had sexual relations with Donald Trump … She confided in me about her casual 'friendship' with Donald. Mr. Trump definitely seemed to have a thing for her and she told me how he kept going on about how he liked her 'pert nipples'. Donald Trump liked flicking and sucking her nipples until they were raw. One evening when we were showering together she showed me her nipples. They looked incredibly painful as they were red and swollen and I remember wincing when I looked at them. I also know she had sexual relations with Trump at Jeffery's NY mansion on regular occasions as I once met Jen for coffee, just before she was going to meet Trump and Epstein together at his mansion." Ex. 6 (RANSOME_000296);

Importantly, the Emails, which fatally undermine Ms. Ransome's credibility, were not available to Ms. Maxwell's counsel when she examined Ms. Ransome in the deposition in this case. For this reason, the deposition transcript standing alone leaves an incomplete and, thus, false impression of Ms. Ransome and her outrageous claims.

This Court should not allow its power to enter and modify a protective order to be manipulated so as to authorize selective disclosure of de-contextualized materials. If the Ransome deposition is made public, the Emails must also be as well.

Respectfully submitted,

Andrew G. Celli, Jr.

c: Counsel for Plaintiff and Defendant (by Email)

Exhibit 1

From: Sarah Ransome
To: [redacted]
Subject: Re: Our talk -
Date: Sunday, October 23, 2016 3:52:09 AM

Dear Maureen,

I have spoken to my family at some length this morning and I would like to retract everything I have said to you and walk away from this.

I shouldn't have contacted you and I'm sorry I wasted your time. It's not worth coming forward and I will never be heard anyhow and only bad things will happen as a consequence of me going public and I know this to be true. This will just create pain for my family and I and they have already helped me pick up the pieces once before and I can't ask them to do that again.

I'm disappointed that you have made little contact or didn't do anything to help me this week as it been a little terrifying for Peter and myself but I understand your stance and we managed to get through it. Prehaps if I was in your position I would have done the same?

I guess one person can't make a difference.

I wish you the best of luck on catching Epstein and company.

Regards

Sarah

From: Sarah Ransome <[redacted]
To: Sarah Ransome <[redacted]
Subject: Re: Our talk -
Sent: Sat, Oct 22, 2016 4:52:41 PM

Maureen,

My emails been hacked. I have reached out to the Russians for help and they are coming to my aid. Thank goodness for Anonymous!!!!

I will make sure that they all go behind bars. I have already sent everything I need to so, the CIA, hacking my emails etc were too late.

I also have numerous devices, with systems that are unhackable and I have film footage all over Europe itching to be released.

Thanks again for your help. You really took one for the team. Nice! I hope you go to sleep at night wondering just quite where you will end up after this life is finished. Don't believe me? I can prove that too. You don't know who I am and I am not going to go away until I have achieved my goals on getting the bad guys where they belong.

Exhibit 2

whilst he spanked his penis on her bottom.

She also had to have sexual intercourse with Clinton in Epstein's New York Mansion just off 5th Avenue on numerous occasions. It's the NY Mansion we spoke about yesterday. I too was forced by Epstein to visit regularly and if I didn't turn up he would personally come and find me where ever I was hiding. It still bewilders me how Epstein always seemed to know where I was if I didn't turn up at his NY residence.

When my friend had sexual intercourse with Clinton, Prince Andrew and Richard Branson, sex tapes were in fact filmed on each separate occasion by Jeffery. Thank God she managed to get a hold of some footage of the filmed sex tapes, which clearly identify the faces of Clinton, Prince Andrew and Branson having sexual intercourse with her. Frustratingly enough Epstein was not seen in any of the footage but he was clever like that!

After two hours of trying to convince my friend to come forward with me, I eventually managed to persuade her to send me some of the video footage which she kept, implicating all three all men mentioned above. I personally can confirm that I have, with my own two eyes, seen the evidence of these sexual acts, which clearly identifies Bill Clinton, Prince Andrew, Richard Branson having sexual intercourse with my friend. I will be more then willing to swear under oath and testify in court over these sex tapes. It will break your heart into a million tiny pieces Maureen when you watch this footage, and I know that what I watched yesterday, will haunt me for the rest of my life!

Unfortunately, I cannot send you the footage without her consent due to massive consequences to her safety but I can confirm that I do have footage in my possession. I have backed up the footage on several USB sticks and have securely sent them to various different locations throughout Europe with only one other person close to me, knowing where their locations are, just in case anything happens to me before the footage is released.

When my friend eventually had the courage to speak out and went to the police in 2008 to report what had happened, nothing was done and she was utterly humiliated by the police department where she went to report what had happened with Epstein, Clinton, Branson and Prince Andrew. She was made to feel like a dirty whore and a liar and wasn't taken seriously. When she then tried to sue Epstein for damages, she was severely bullied and threatened by his lawyer Alan Dershowitz whom she also had sexual relations with and who was also heavily involved in Epstein's paedophile Ring.

A couple months later, she was then approached, by Special Agents Forces Men sent directly by Hilary Clinton herself, in order to protect her presidential campaign in 2008. They heavily intimidated her, ruffled her up (luckily she took photos as evidence) and was then forced to sign a confidentiality agreement which ensures that she can never come forward publicly implicating her husband.

She was then given a substantial payout, directly from the Clinton Foundation to keep her quiet. She is 1000% certain that the FBI did a cover up and she has the individual names of Hilary's Special Agent Officers involved in intimidating her. She was then forced against her will to sign a legally binding confidentially agreement on Hilary's behalf for her eternal silence. If she breaks this agreement, she is dead.

She told me how it was a complete conspiracy as Alan Dershowitz, whom was one of the lawyers that represented Jeffery when he went to trail, made huge endorsements to the Clinton Foundation to help fund her 2008 presidential campaign.

I personally met Alan numerous times as Jeffery had sent him to my legal aid, to deal with a case I was going to open against [redacted] whom I met through the website SugarDaddie.com (he went under the name [redacted] on the site). [redacted] also tried to rape me with his friend when we were at anchor on his boat in Miami.

Exhibit 3

I'm stronger then that and mark my words I will take them and you down with me if you do not publish my story!!!!!!!!!!!!
* I have already corresponded with the Moscow police and aid them in stopping Hillary or Trump getting through.
*I will film my own interview on this subject and post it on every single one of my social media apps and ask everybody to share it!!! (I have lived all over the world some I have quite a big little black book of my own!

I have also emailed Wiki Leaks and Anonymous, because my voice will be heard if it's the last thing I do!!!

I will not stand by and let anyone else be hurt and I want those bastards to see my face when I was in my coma. That was a result of the trauma they put me through. No one else will suffer, do you understand me!!!!!!! I thought you were on our side!

You have really annoyed the wrong person and I am done being nice to anyone anymore.

So there you have your God damn headline, I'm taking the world to Ransom and taking down all the evil people with or without your help!

Sarah

From: Sarah Ransome <[redacted]>;
To: Maureen Callahan <[redacted]>;
Subject: Re: Our talk -
Sent: Fri, Oct 21, 2016 11:23:08 AM

Maureen,

Seeming as MY and my fiancé's life is in danger and nothing has been done!!!! Even though I have every bit of evidence to implicate all parties mentioned.

Mark my words, I will make sure that neither that evil bitch Hillary or that Paedophile Trump gets elected. I will also make sure that everyone on the God damn planet see's that footage and photo's and will release them to Wiki leaks by Sunday. I will take down Epstein and his bunch of fuck wit cronies myself!!!!!!!!!!

I have also gone to a Russian news paper.

Seeming as the US Goverment won't help me surprise surprise, I will help myself..... just like I alsways have!!!!!

You've just lost your exclusive and I AM SUPER FUCKED OFF NOW!!!!

I feel so strongly about taking down these evil cunts, that even if you offered me enough money to buy the biggest Super Yacht in the world, which would give me the ability to hire and then fire all the people that where dicks to me, when I worked in the industry, I will still not diaviate from my goal.

Exhibit 4

Thu, Oct 13, 2016 5:43:06 PM

Hi Sarah,

No need to apologize at all. I'm with you -- the more girls who can come forward the better. We're in a new climate now -- it's the victimizers who should be scared, not the victims.

Send me the best number to call you at, and we'll talk next week. Thanks to you for reaching out.

Sincerely,
M

On Thu, Oct 13, 2016 at 1:27 PM, Sarah Ransome <[redacted]> wrote:

> That's great. We need to get the other girls to come forward Maureen as they are all be afraid. I however am not intimated and need your help. These men distroyed my life.
>
> I apologize for my heated first email to you however when I came across your acticle in the NYC Post, how that happened I don't know and everything came flooding back. I would never dream of contacting anyone about this but something made me reach out to you.
>
> What they did was wrong and I have spent the last 10 years trying to forget what happened on that Island. There are more girls Maureen. More then you can ever imagine. They're scared and so am I but Jeffery, Clinton, and Trump must
> pay for what they did to us as must the rest of the men that were involved in their seedy inner circle. We have to get the rest of the girls to come forward somehow?
>
> I look forward to you your
> call and thank you for taking the time to listen to me.
>
> Kind Regards
>
> Sarah

Exhibit 5

whilst he spanked his penis on her bottom.

She also had to have sexual intercourse with Clinton in Epstein's New York Mansion just off 5th Avenue on numerous occasions. It's the NY Mansion we spoke about yesterday. I too was forced by Epstein to visit regularly and if I didn't turn up he would personally come and find me where ever I was hiding. It still bewilders me how Epstein always seemed to know where I was if I didn't turn up at his NY residence.

When my friend had sexual intercourse with Clinton, Prince Andrew and Richard Branson, sex tapes were in fact filmed on each separate occasion by Jeffery. Thank God she managed to get a hold of some footage of the filmed sex tapes, which clearly identify the faces of Clinton, Prince Andrew and Branson having sexual intercourse with her. Frustratingly enough Epstein was not seen in any of the footage but he was clever like that!

After two hours of trying to convince my friend to come forward with me, I eventually managed to persuade her to send me some of the video footage which she kept, implicating all three all men mentioned above. I personally can confirm that I have, with my own two eyes, seen the evidence of these sexual acts, which clearly identifies Bill Clinton, Prince Andrew, Richard Branson having sexual intercourse with my friend. I will be more then willing to swear under oath and testify in court over these sex tapes. It will break your heart into a million tiny pieces Maureen when you watch this footage, and I know that what I watched yesterday, will haunt me for the rest of my life!

Unfortunately, I cannot send you the footage without her consent due to massive consequences to her safety but I can confirm that I do have footage in my possession. I have backed up the footage on several USB sticks and have securely sent them to various different locations throughout Europe with only one other person close to me, knowing where their locations are, just in case anything happens to me before the footage is released.

When my friend eventually had the courage to speak out and went to the police in 2008 to report what had happened, nothing was done and she was utterly humiliated by the police department where she went to report what had happened with Epstein, Clinton, Branson and Prince Andrew. She was made to feel like a dirty whore and a liar and wasn't taken seriously. When she then tried to sue Epstein for damages, she was severely bullied and threatened by his lawyer Alan Dershowitz whom she also had sexual relations with and who was also heavily involved in Epstein's paedophile Ring.

A couple months later, she was then approached, by Special Agents Forces Men sent directly by Hilary Clinton herself, in order to protect her presidential campaign in 2008. They heavily intimidated her, ruffled her up (luckily she took photos as evidence) and was then forced to sign a confidentiality agreement which ensures that she can never come forward publicly implicating her husband.

She was then given a substantial payout, directly from the Clinton Foundation to keep her quiet. She is 1000% certain that the FBI did a cover up and she has the individual names of Hilary's Special Agent Officers involved in intimidating her. She was then forced against her will to sign a legally binding confidentially agreement on Hilary's behalf for her eternal silence. If she breaks this agreement, she is dead.

She told me how it was a complete conspiracy as Alan Dershowitz, whom was one of the lawyers that represented Jeffery when he went to trail, made huge endorsements to the Clinton Foundation to help fund her 2008 presidential campaign.

I personally met Alan numerous times as Jeffery had sent him to my legal aid, to deal with a case I was going to open against [redacted] whom I met through the website SugarDaddie.com (he went under the name [redacted] the site). [redacted] also tried to rape me with his friend when we were at anchor on his boat in Miami.

Exhibit 6

several girls at any one time. She confided in me about her casual “friendship" with Donald. Mr Trump definitely seemed to have a thing for her and she told me how he kept going on about how he liked her "pert nipples”.

Donald Trump liked flicking and sucking her nipples until they were raw. One evening when we were showering together she showed me her nipples. They looked incredibly painful as they were red and swollen and I remember wincing when I looked at them. I also know she had sexual relations with Trump at Jeffery’s NY mansion on regular occasions as I once met Jen for coffee, just before she was going to meet Trump and Epstein together at his mansion.

I will shortly start forwarding you, all the emails which I have managed to save. They include the following:

[redacted] I moved from Edinburgh to New York in September 2006, where shortly after I was introduced to Jeffery Epstein by Natalie.

[redacted]. A couple months later, after he constantly stalked me around Edinburgh, I moved to New York to get as far away from him as possible and to start a new life.

I will send you that photo, amongst others as soon as I am able to fly back to the UK next week as I definitely, 100% have it all in my little storage box. I also have other photo’s of the Epstein girls and I, whilst on the Island including a couple of pictures of me with Sergey Brin and his then finance Anne Wojcicki. I met the pair when they visited the Island for the day as Sergey wanted try out his new kite surfing equipment as he had only just started kite surfing and was very eager to try out his new equipment with us girls.

In my secret box, I also have old sim cards which still contain old text messages and telephone numbers which I will have to send you next week once I have them. Hopefully Jens number will be there and I can trace her somehow, surely?

* Email exchanges with Sarah Kellen which includes flight tickets booked for me to St Thomas.

*Email exchanges with Lesley Groff ,which proves that I was asked to source girls from modelling agencies when I went home to see my family in Cape Town. How Jeffery used education as a way for me to trade my soul to the Devil and become a sex slave to pay for my studies at FIT in New York.

I was desperate to get qualified and get a proper career. The email also show's evidence that I had to become almost anorexic for Jeffery to even entertain the idea of him paying for my tuition. As you will see, Lesley Groff asked me to send her a picture for Jeffery.

I would like to point out that I had to regularly send nude photo's to Lesley so that Jeffery could check how my body looked and if I was putting on any weight.

* An email which was exchanged between [redacted] using his code name [redacted] via Sugar Daddie.com. I have other correspondence which I had with him in my storage box in England.

* Email exchanges between the girl Natalie Malyshev whom received funds from Jeffery for introducing me to him.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

----------X

15-cv-07433-RWS

Ms. Maxwell's Motion for an Order to Show Cause re Protective Order

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Defendant Ghislaine Maxwell, through her counsel, moves for an Order to Show Cause requiring plaintiff Virginia Giuffre and her lawyers to state why this Court should not impose sanctions for their failure to comply with this Court's Protective Order (Doc.62) and Opinion issued on November 14, 2017.

INTRODUCTION

This Court entered a Protective Order that governs the parties' use and disposition of documents designated as "Confidential" ("Confidential Materials"). The Protective Order prohibits the use of the materials in any other case, and requires the parties to return or destroy the materials at the conclusion of this case.

This case concluded in May 2017. Despite our requests, Ms. Giuffre's lawyers have refused to return or destroy the Confidential Materials. Instead, they have indicated they wish to use the Confidential Materials in another case they are pursuing.

The Protective Order on which all the parties relied to disclose and produce Confidential Materials is unambiguous about the use and return or destruction of Confidential Materials. This Court should issue an Order to Show Cause.

FACTUAL BACKGROUND

Ms. Giuffre sought to convert her defamation action into a lawsuit for child "sexual abuse" and "sexual trafficking" of children. Toward that end, she made numerous allegations of sexual conduct involving herself, Jeffrey Epstein, Ms. Maxwell, and dozens of others, including numerous prominent men. In preparation to litigate Ms. Giuffre's factual allegations, the parties sought and obtained from each other and non-parties a wide range of highly sensitive, personal and confidential information about themselves and non-parties.

This Protective Order. To facilitate disclosures and discovery the Court entered a Protective Order allowing parties to disclose and produce "confidential"-designated materials

("Confidential Materials"). The parties' depositions were taken under the Order's auspice: The parties and numerous non-parties in depositions and document productions disclosed highly sensitive, personal and confidential information with the understanding that such information would be designated "Confidential." The Order prohibits Confidential Materials from being "disclosed or used for any purpose except the preparation and trial of this case." Doc.62 ¶ 4. Under the Order the parties are (a) prohibited from disclosing such materials to non-parties except on certain conditions, and (b) required at the conclusion of the case to return or destroy "each document and all copies thereof" of these Confidential Materials. *Id.* ¶ 12. The parties produced thousands of pages of Confidential Materials under the Protective Order.

The parties submitted various Confidential Materials under seal as exhibits to court filings. The Protective Order provided that any such materials submitted to the Court "shall be accompanied by a Motion to Seal pursuant to Section 6.2 of the Electronic Case Filing Rules & Instructions for the Southern District of New York."

In May 2017 the parties entered into a settlement agreement resolving all matters relating to the lawsuit. On May 25, 2017, "[t]his action was settled and dismissed with prejudice pursuant to a joint stipulation for dismissal." Sealed Op., at 3 (Nov. 14, 2017); *see* Doc.917 (Order approving joint stipulation for dismissal with prejudice).

On November 14, 2017, this Court ordered: "[A]ll documents, materials, and information subject to the Protective Order *must be returned to the party who designated its confidentiality as of the date this action was dismissed*." *Id.* 2 (emphasis supplied). Ms. Giuffre and her counsel have not complied with this order. This Motion seeks enforcement of the Protective Order and this Court's November 14, 2017, reiterating the command contained in the Protective Order to return Confidential Materials.

The attempts by non-parties to gain access to Confidential Materials. Four sets of non-parties have sought access to various Confidential Materials submitted to the Court in various filings.

In August 2016 Alan Dershowitz requested unsealing of portions of a brief filed in connection with a motion to quash, discrete emails filed with the motion, and the manuscript of Ms. Giuffre's memoir filed with another motion. Doc.364, at 1-2. The Court denied the motion to unseal. Sealed Op., at 15-25 (Nov. 2, 2016). The Court noted Mr. Dershowitz sought to use the materials "in a media campaign to make public a selected portion of the discovery in this action to defend himself not in this court but in the court of public opinion." *Id.* 21 (internal quotations and citation omitted). If his motion were granted, the Court observed, "the Protective Order will be selectively deployed and in the interest of reciprocity destroyed." *Id.* at 21-22. The Court concluded:

> "It is presumptively unfair for courts to modify protective orders which assure confidentiality and upon which the parties have reasonably relied. . . . [T]he Second Circuit determined that 'absent a showing of improvidence in . . . [a] protective order or some extraordinary circumstance or compelling need . . . a witness should be entitled to rely upon the enforceability of a protective order against any third parties.'" In this case, the parties and multiple other deponents have relied on this Court's Protective Order in giving testimony and producing documents . . . .

Id. at 23 (quoting *Dorsett v. City of Nassau*, 289 F.R.D. 54, 64 (E.D.N.Y. 2012) (quoting *Martindell v. Int'l Tel. & Tel. Corp.*, 594 F.2d 291, 296 (2d Cir. 1979))). Mr. Dershowitz filed an appeal (Doc.504), which is pending.

In January 2017 a purported journalist Michael Cernovich requested unsealing of Ms. Maxwell's summary judgment brief, her attorney's declaration in support of the summary judgment motion, and any "pleadings, memoranda, declarations, exhibits, orders, and other documents filed or to be filed" in connection with the summary judgment motion. Doc.551, at 2.

Mr. Dershowitz joined the motion. Doc.610. The Court denied the motion. Doc.892. Among other things, the Court found that "the parties and multiple deponents have reasonably relied on the Protective Order in giving testimony and producing documents including evidence of assault, medical records, and emails." *Id.* at 6. Mr. Cernovich (Doc.920) and Mr. Dershowitz (Doc.915) filed an appeal, which is pending.

In January 2017, while the case at bar was pending, the *Giuffre* lawyers brought a second lawsuit, *Doe 43 v. Epstein*, No. 17-cv-616 (S.D.N.Y.). In the case *sub judice* the *Giuffre* lawyers had identified their new client, Doe 43, as a witness for Ms. Giuffre in the case at bar, and we deposed and obtained documents relating to Doe 43. In the second lawsuit, Doe 43 (an adult) alleged she, like Ms. Giuffre, had been the victim of sexual abuse and sexual trafficking by Mr. Epstein to prominent men. *Doe 43* named multiple defendants, including Mr. Epstein and Ms. Maxwell.

In October 2017 two of the *Doe 43* defendants, Mr. Epstein and Lesley Groff, requested unsealing of numerous Confidential Materials relating to Doe 43's alleged relationship with Mr. Epstein. Doc.924, at 4. Ms. Giuffre and Doe 43 opposed the motion, arguing in part, "Jane Doe 43 courageously gave her testimony . . . and voluntarily produced documents . . . The documents that she produced contain sensitive information." Doc.928, at 7. Ms. Giuffre and Doe 43 objected, arguing that the movants were seeking "to humiliate and embarrass Jane Doe 43" by using the Confidential Materials in public filings in the *Doe 43* case. *Id.* 9-10. This Court denied the motion to unseal. It held that the Protective Order did not extend beyond the May 25, 2017, termination of this action. Sealed Op., at 7 (Nov. 14, 2017). "Accordingly," the Court said:

> absent "other arrangements . . . agreed upon" regarding the disposal of the protected information, and this Court was informed of no such arrangements, on May 25, 2017, all protected information, including the [materials that are the

> subject of Mr. Epstein and Ms. Groff's motion], was to be returned to the original party, parties, non-party, or non-parties who designated it as confidential.

Id. at 7-8 (footnote omitted; quoting Protective Order ¶ 12).[1] The Court ordered: "[A]ll documents, materials, and information subject to the Protective Order *must be returned* to the party who designated its confidentiality as of the date this action was dismissed." *Id.* at 2 (emphasis supplied).

Notwithstanding the Court's November 14, 2017, Opinion and our specific requests, the lawyers for Ms. Giuffre and Doe 43 have refused to comply with Paragraph 12 of the Protective Order. In the face of the Court's conclusion that this case "terminat[ed]" on May 25, 2017, the lawyers have taken the position that this case has *not* terminated because of the pendency of appeals of this Court's orders denying motions to unseal documents *filed with the Court* and in the Court's possession. As these lawyers know the vast bulk of the Confidential Materials was never filed with the Court. They have offered no reason why they have refused to return or destroy Confidential Materials "and all copies thereof" in their possession, custody and control that have *not* been filed with the Court.

In April 2018 a Miami Herald journalist and the Herald (collectively "the Miami Herald") moved to unseal all sealed and redacted documents filed with the Court. Doc.936, at 1. Messrs. Dershowitz and Cernovich joined the motion. Docs.941 & 947; *see* Doc.953, at 10. The lawyers for Ms. Giuffre and Doe 43 took this position on behalf of Ms. Giuffre: "Plaintiff Virginia Giuffre *does not oppose* [the Miami Herald's motion to unseal] to the extent it seeks to unseal <u>all</u> docket entries . . ., including the unsealing of all trial designated deposition

[1]In the footnote the Court acknowledged that the parties could comply with Paragraph 12 by destroying the Confidential Materials, but observed that "without any affidavits provided to the Court stating [that destruction has occurred], and in light of the present dispute, the Court infers that such action was not taken." *Id.* at 8 n.1.

transcripts." Doc.945, at 3 (italics added; underscoring in original). The Court denied the motion. Doc.953. It noted the case at bar contained "allegations concerning the intimate, sexual, and private conduct of the parties and of third persons, some prominent, some private," *id.* at 2; Ms. Giuffre had alleged she had been subjected to "public ridicule, contempt and disgrace," *id.* at 3; she also alleged she had been "sexually abused at numerous locations around the world with prominent and politically powerful men," *id.* at 3-4. As it did in denying the Dershowitz and Cernovich motions, the Court found that release of the Confidential Materials "could expose the parties to annoyance, embarrassment, and oppression given the highly sensitive nature of the underlying allegations." *Id.* at 24. Moreover,

> [t]he parties mutually assented to entering into the Protective Order. The parties relied upon its provisions, as did dozens of witnesses and other non-parties. Documents designated confidential included a range of allegations of sexual acts involving Plaintiff and non-parties to this litigation, some famous, some not; the identities of non-parties who either allegedly engaged in sexual acts with Plaintiff or who allegedly facilitated such acts; Plaintiff's sexual history and prior allegations of sexual assault; and Plaintiff's medical history. The Protective Order has maintained the confidentiality of these sensitive materials.

Id. The Court found irrelevant that Mr. Dershowitz and Ms. Giuffre in joining or not opposing the Miami Herald's motion were choosing not to protect their privacy interests:

> The privacy interests of Maxwell, Giuffre, Dershowitz, as well as dozens of third persons, all of whom relied upon the promise of secrecy outlined in the Protective Order and enforced by the Court, have been implicated. It makes no difference that Giuffre and Dershowitz have chosen to waive their privacy interests to the underlying confidential information by supporting this motion, as Maxwell has not agreed to such a waiver.
>
> More importantly, the dozens of non-parties who provided highly confidential information relating to their own stories provided that information in reliance on the Protective Order and the understanding that it would continue to protect everything it claimed it would. . . .

Id. at 34-35.[2] The Miami Herald filed an appeal (Doc.955), which is pending.

ARGUMENT

The Court should enter an Order to Show Cause requiring Ms. Giuffre and her lawyers to state why the Court should not impose sanctions on them for violation of this Court's orders.

The Protective Order requires the return or destruction of all Confidential Materials:

> At the conclusion of this case, unless other arrangements are agreed upon, each document and all copies thereof which have been designated as Confidential shall be returned to the party that designated it Confidential, or the parties may elect to destroy Confidential documents. Where the parties agree to destroy Confidential documents, the destroying party shall provide all parties with an affidavit confirming the destruction.

Doc.62 ¶ 12 (capitalization altered). Ms. Giuffre and her lawyers have not returned any Confidential Materials to us. Nor have they provided us with an affidavit confirming the destruction of the materials.

On July 6, 2017, we proposed a procedure for compliance with Paragraph 12 of the Protective Order. Under that procedure the parties would destroy all Confidential Materials in their possession, custody and control and would cause any non-party to whom they provided Confidential Materials to destroy the materials. We proposed compliance by July 31, 2017. *See* EXHIBIT A. Ms. Giuffre's counsel rejected this proposal. Mr. Cassell said Paragraph 12's provisions were not in effect because the case had not concluded:

---

[2]Just as Mr. Dershowitz correctly points out in his papers that the Confidential Materials establish the falsity of Ms. Giuffre's allegations against him, the materials contain compelling evidence establishing that the allegations against Ms. Maxwell are false and that Ms. Giuffre sold her false narrative to the press. Nonetheless we recognize that it is impossible to put back into the proverbial bag Ms. Giuffre's salacious and defamatory statements. Even if all the Confidential Materials were disclosed contrary to the privacy rights of dozens of individuals, they "will be selectively deployed" "not in this court but in the court of public opinion," Sealed Op. (Nov. 3, 2016), at 22, by the media and others for their own purposes, none of which will be the search for the truth. Accordingly we continue to believe the right of privacy of Ms. Maxwell and other innocent individuals should carry the day.

> [T]wo appeals involving this case (and to which Ms. Giuffre has been named as a party) are currently pending in the Second Circuit. These two appeals [by Messrs. Dershowitz and Cernovich] involve some of the confidential documents that you are, apparently, proposing may need to be destroyed now.
>
> Until those appeals have been resolved, it would be premature to begin implementing paragraph 12's provision.

EXHIBIT B.

On September 6, 2018, we renewed our request that Ms. Giuffre and her counsel comply with Paragraph 12 "in light of Judge Sweet's Opinions of November 14, 2017 [denying Mr. Epstein and Ms. Groff's motion to unseal] and August 27, 2018 [denying the Miami Herald's motion to unseal]. EXHIBIT C. Ms. Giuffre's counsel again rejected our request. Mr. Cassell repeated that this case had not concluded. In addition to the two pending appeals involving Messrs. Dershowitz and Cernovich, he said, the Miami Herald's appeal of the denial of its motion to unseal also was pending. "Until the three pending appeals have been resolved," he concluded, "it continues to be the case that it would be premature to begin implementing paragraph 12's provisions." EXHIBIT D. Mr. Cassell did not address this Court's conclusion in its November 14, 2017, opinion that this case terminated on May 25, 2017, and as of that date the parties were required to comply with Paragraph 12.

On November 21, 2018, we conferred once more with Ms. Giuffre's counsel. They said their position remained unchanged.

Ms. Giuffre's and her counsel's position violates the Protective Order. Their position that this case has not concluded flies in the face of this Court's conclusion and direction to the parties more than a year ago to comply with Paragraph 12. In its sealed Opinion issued November 14, 2017, the Court ruled that this lawsuit concluded for purposes of Paragraph 12 on May 25, 2017,

and that the parties were required to return or destroy the Confidential Materials pursuant to Paragraph 12:

- "Based upon the conclusions set forth below, . . . *all documents, materials, and information subject to the Protective Order must be returned* to the party who designated its confidentiality as of [May 25, 2017,] the date this action was dismissed." Sealed Op. (Nov. 14, 2017), at 2 (emphasis supplied).

- "[P]aragraph 13 and the [Protective] Order's introductory language establish that the purpose of the Order was to guide confidentiality determinations during the discovery process, and not beyond this point. The Protective Order did not extend beyond the completion of discovery or beyond the termination of this action." *Id.* at 7.

- "Accordingly, absent 'other arrangements . . . agreed upon' regarding the disposal of the protected information, this Court was informed of no such arrangements, *on May 25, 2017, all protected information, including the Jane Doe Evidence, was to be returned* to the original party, parties, non-party, or non-parties who designated it as confidential." *Id.* at 7-8 (footnote omitted; emphasis supplied).

These conclusions and the Court's direction to the parties to comply with Paragraph 12 underscore the willful violation of Paragraph 12 of the Protective Order and the directive in Court's November 14, 2017, opinion to comply with Paragraph 12.

Ms. Giuffre's counsel's argument that the case has not been terminated because of the pendency of the appeals by the non-parties is meritless. When the Court issued its directive on November 14, 2017, to comply with Paragraph 12, it was well aware of the two pending appeals. There is no dispute this action has been terminated: the case was dismissed with prejudice by the parties' stipulation approved by the Court on May 25, 2017. *Id.* at 3; Doc.917. The Court's interpretation of its own Protective Order is conclusive. It explicitly held that the Protective Order "did not extend beyond the completion of discovery or beyond the termination of this action," and it declared on November 14, 2017, that this case is well beyond both. Sealed Op., at 3 (Nov. 14, 2017).

The three pending appeals are irrelevant to the parties' compliance with Paragraph 12. None of the non-parties who brought the appeals requested Confidential Materials in the parties' possession, custody and control. To the contrary, each requested the unsealing of discrete court filings or, in the case of the Miami Herald, the unsealing of all sealed court filings. None of these requests concern the parties, who are not in the possession, custody or control of the court filings. Indeed none of the non-parties requested any order requiring the parties to maintain or produce Confidential Materials to them. Axiomatically whatever the result of the appeals, nothing but unwarranted intransigence explains Ms. Giuffre and her counsel's refusal to comply with the Protective Order or the Court's November 14, 2017, directive.

The Court's inherent power to vindicate its orders is broad. "When the district court invokes its inherent power to sanction misconduct by an attorney that involves that attorney's violation of a court order or other misconduct that is not undertaken for the client's benefit, the district court need not find bad faith before imposing a sanction under its inherent power." *United States v. Seltzer*, 227 F.3d 36, 42 (2d Cir. 2000). We have such a situation here. Ms. Giuffre's attorneys' refusal to comply with Paragraph 12 and this Court's November 14, 2017, directive was not undertaken for Ms. Giuffre's benefit. Ms. Giuffre has settled her lawsuit. Meanwhile Ms. Giuffre's lawyers are prosecuting *Doe 43* and seeking to take advantage of the Confidential Materials in that lawsuit.[3]

[3]To the extent Ms. Giuffre is complicit in her attorneys' violation of the Court's orders and directives, both she and her counsel are subject to sanction. *See, e.g.*, *Seltzer*, 227 F.3d at 40-41; *N.Y. State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1352 (2d Cir. 1989).

CONCLUSION

The Court should issue an Order to Show Cause requiring Ms. Giuffre and her counsel to state why this Court should not impose sanctions upon Ms. Giuffre or her counsel or both for violation of this Court's Protective Order and November 14, 2017, directive.

Dated: December 4, 2018

Respectfully submitted,

s/ Laura A. Menninger, Ty Gee
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CERTIFICATE OF SERVICE

I certify that on December 4, 2018, I electronically served this *Motion for an Order to Show Cause re Protective Order* via ECF on the following:

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