BOIES SCHILLER FLEXNER

January 3, 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)

EXHIBIT 3

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
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
19.	2015.01.21 - 2015.01.27	E-Mails	1084-1098	Jeffrey Epstein	Ghislaine Maxwell		Common Interest	Communication re: legal advice	Common Interest Privilege
20.	2015.01.21-2015.01.27	E-Mails	1099	Ghislaine Maxwell	Jeffrey Epstein		Common Interest	Communication re: legal advice	Common Interest Privilege
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

Exhibit 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

15-cv-07433-RWS

----------X

DEFENDANT GHISLAINE MAXWELL'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant Ghislaine Maxwell, by and through her undersigned counsel, hereby responds to Plaintiff's Second Request for Production of Documents (the "Requests").

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

1. This response is made to the best of Ms. Maxwell's present knowledge, information and belief. Ms. Maxwell, through her attorneys of record, have not completed the investigation of the facts relating to this case, have not completed discovery in this action, and have not completed preparation for trial. Ms. Maxwell's responses to Plaintiff's requests are based on information currently known to her and are given without waiving Ms. Maxwell's right to use evidence of any subsequently discovered or identified facts, documents or communications. Ms. Maxwell reserves the right to supplement this Response in accordance with Fed. R. Civ. P. 26(e).

2. Ms. Maxwell objects to the Requests to the extent they attempt to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure, the local rules of this Court or any Orders of the Court.

3. Ms. Maxwell objects to the Requests to the extent they seek documents or information protected by the attorney/client privilege, the work-product doctrine, Rule 408 of the Federal Rules of Evidence, any common interest privilege, joint defense agreement or any other applicable privilege.

4. Ms. Maxwell objects to the Requests to the extent they seek documents or information outside of Ms. Maxwell's possession, custody or control.

5. Ms. Maxwell objects to the Requests to the extent they seek information which is not relevant to the subject matter of the litigation and/or is not reasonably calculated to lead to the discovery of admissible evidence.

6. Ms. Maxwell objects to the Requests to the extent they are overly broad, unduly burdensome and/or propounded for the improper purpose of annoying, embarrassing, or harassing Ms. Maxwell.

7. Ms. Maxwell objects to the Requests to the extent they are vague and ambiguous, or imprecise.

8. Ms. Maxwell objects to the Requests to the extent they seek information that is confidential and implicates Ms. Maxwell's privacy interests.

9. Ms. Maxwell incorporates by reference every general objection set forth above into each specific response set forth below. A specific response may repeat a general objection for emphasis or for some other reason. The failure to include any general objection in any specific response does not waive any general objection to that request.

10. The Requests seek information that is confidential and implicates Ms. Maxwell's privacy interests. To the extent such information is relevant and discoverable in this action, Ms. Maxwell will produce such materials subject to an appropriate protective order pursuant to Fed. R. Civ. P. 26(c) limiting their dissemination to the attorneys and their employees.

OBJECTIONS TO DEFINITIONS

11. Ms. Maxwell objects to Definition No. 1 regarding "Agent" to the extent that it purports to extend the meaning beyond those permissible by law.

12. Ms. Maxwell objects to Definition No. 3 regarding "Defendant." The Definition is overly broad and unduly burdensome to the extent it attempts to extend the scope of the Requests to documents in the possession, custody or control of individuals other than Ms. Maxwell or her counsel.

13. Ms. Maxwell objects to Definition No. 5 regarding "Employee." Ms. Maxwell is an individual, sued in an individual capacity, and therefore there is no "past or present officer, director, agent or servant" of hers. Additionally, "attorneys" and "paralegals" are not "employees" of Ms. Maxwell given that she herself is not an attorney and therefore cannot "employ" attorneys.

14. Ms. Maxwell objects to Definition No. 10 regarding "You" or "Your." The Definition is overly broad and unduly burdensome to the extent it attempts to extend the scope of the Requests to documents in the possession, custody or control of individuals other than Ms. Maxwell or her counsel.

OBJECTIONS TO INSTRUCTIONS

15. Ms. Maxwell objects to Instruction No. 1, in particular the definition of the "Relevant Period" to include July 1999 to the present, on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. The Complaint at paragraph 9 purports to describe events pertaining to Plaintiff and Defendant occurring in the years 1999 – 2002. The Complaint also references statements attributed to Ms. Maxwell occurring in January 2015. Defining the "Relevant Period" as "July 1999 to the present" is vastly overbroad, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and as to certain of the Requests, is intended for the improper purpose of annoying or harassing Ms. Maxwell and it implicates her privacy rights. Thus, Ms. Maxwell interprets the Relevant Period to be limited to 1999-2002 and December 30, 2014 - January 31, 2015, except to the extent that any the answers "relate to any activity of defendant with respect to the practice which has been alleged and the duties alleged to be performed by Defendant, 'activities' being defined as sexual abuse or trafficking of any female," in which case her answers reflect the period 2000-today. Ms. Maxwell specifically objects to production of any documents outside that period, except as specifically noted.

16. Ms. Maxwell objects to Instruction No. 3 on the grounds that it is unduly burdensome and is intended for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell cannot possibly recall the specific disposition of documents, particularly electronic documents, dating back over 16 years. However, Ms. Maxwell, prior to this litigation has long had a practice of deleting emails after they have been read.

17. Ms. Maxwell objects to Instruction Nos. 5, 8, 9, 12, 17 to the extent they seek to impose obligations to supply explanations for the presence or absence of such documents, to specifically identify persons or documents, to provide information concerning who prepared documents, the location of any copies of such documents, the identities and contact information for persons who have custody or control of such documents, the reasons for inability to produce portions of documents, and the "natural person in whose possession they were found," beyond the requirements of Rule 34. This Instruction improperly seeks to propound Interrogatories pursuant to Rule 33.

18. Ms. Maxwell objects to Instructions No. 13 on the grounds that it is unduly burdensome and is intended for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell cannot possibly recall the specific circumstances upon which a document dating back 16 years has ceased to exist.

19. Ms. Maxwell objects to Instruction No. 15 to the extent that it calls for documents or information protected by the attorney/client privilege, the work-product doctrine, or any other applicable privilege.

20. Ms. Maxwell objects to Instruction Nos. 18 & 19 to the extent they require information on any privilege log above and beyond the requirements of Local Civil Rule 26.2.

SPECIFIC OBJECTIONS AND RESPONSES TO PLAINTIFF'S SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS

DOCUMENT REQUEST NO. 1

Produce all documents that Your attorneys reviewed and/or relied upon in the March 21, 2016, meet and confer discussion when Mr. Pagliuca stated that (1) Plaintiff made false allegations concerning her sexual assault; (2) she made them in roughly the same time frame that Plaintiff was abused by Jeffrey Epstein; (3) that the allegations were made against a number of individuals in the area; and (4) that the allegations were found to be unfounded by local police.

RESPONSE: Ms. Maxwell has no knowledge of any statements made by Mr. Pagliuca during the March 21, 2016 meet and confer and hence has no documents responsive to this Request. Further, this Request inaccurately characterizes the statements of Ms. Maxwell's counsel during the March 16, 2016 meet and confer.

Ms. Maxwell further objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege.

Ms. Maxwell also objects to this Request to the extent it calls for information relating to Virginia Roberts Giuffre that exists within the public domain, the internet or in public court records and which are equally available to both parties and can be obtained from some other source that is more convenient, less burdensome, and less expensive. Subject to and without waiver of the foregoing, Defendant refers to the public documents and news reports regarding Plaintiff's allegations of sexual abuse and investigation of the same, which have been previously produced, are available in the public domain, or referenced in court papers. Defendant also refers Plaintiff to documents within the possession, custody and control of Plaintiff and her counsel, including without limitation Mr. Bradley Edwards, which were requested in Defendant's First Set of Discovery Requests, but were not produced despite certification of Plaintiff and Plaintiff's counsel that such Responses were truthful and complete.

Without waiver of any such objections, Ms. Maxwell has made available documents related to some of Ms. Giuffre's false allegations of sexual assaults in her Second Supplemental Fed. R. Civ. P. 26(a)(1)(A) disclosures.

DOCUMENT REQUEST NO. 2

Produce all documents concerning how any such police report, or how any such recounting, retelling, summary, or description of any such police report (as referenced in Interrogatory No. 1), came into Your possession. This request includes, but is not limited to, all documents concerning how, when, and by whom such reports (or descriptions of reports) were obtained from a minor child's sealed juvenile records and files.

RESPONSE: Ms. Maxwell objects to this Request in that there is no "Interrogatory No. 1" to which the Request corresponds. She further objects to the Request in that it improperly seeks to propound an Interrogatory in the form of a Request for Production of Documents and is

a contention Interrogatory barred according to Plaintiff's interpretation of the Local Rules. The Request embeds a number of assumptions that are not true and for which Plaintiff supplies no basis for assertion of their veracity.

Ms. Maxwell likewise objects to this Request because it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege.

Finally, Ms. Maxwell also objects to this Request to the extent it calls for information relating to Virginia Roberts Giuffre that exists within the public domain, the internet or in public court records and which are equally available to both parties and can be obtained from some other source that is more convenient, less burdensome, and less expensive. Defendant refers to the public documents and news reports regarding Plaintiff's allegations of sexual abuse and investigation of the same, which have been previously produced, are available in the public domain, or referenced in court papers. Defendant also refers Plaintiff to documents within the possession, custody and control of Plaintiff and her counsel, including without limitation Mr. Bradley Edwards, which were requested in Defendant's First Set of Discovery Requests, but were not produced despite certification of Plaintiff and Plaintiff's counsel that such Responses were truthful and complete.

Without waiver of any such objections, Ms. Maxwell has made available documents related to some of Ms. Giuffre's false allegations of sexual assaults in her Second Supplemental Fed. R. Civ. P. 26(a)(1)(A) disclosures. Ms. Maxwell is withholding documents responsive to this request on the basis of the attorney-client and work product privileges.

DOCUMENT REQUEST NO. 3

Produce all documents concerning how information or knowledge of the local police's findings or opinions concerning Ms. Giuffre's allegations of sexual assault as a minor child came into Your possession, including but not limited to documents concerning any statements made by law enforcement or any state attorney, written or oral, concerning such allegations.

RESPONSE: Ms. Maxwell objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege.

Ms. Maxwell also objects to this Request to the extent it calls for information relating to Virginia Roberts Giuffre that exists within the public domain, the internet or in public court records and which are equally available to both parties and can be obtained from some other source that is more convenient, less burdensome, and less expensive. Subject to and without waiver of the foregoing, Defendant refers to the public documents and news reports regarding Plaintiff's allegations of sexual abuse and investigation of the same, which have been previously produced, are available in the public domain, or referenced in court papers. Defendant also refers Plaintiff to documents within the possession, custody and control of Plaintiff and her counsel, including without limitation Mr. Bradley Edwards, which were requested in Defendant's First Set of Discovery Requests, but were not produced despite certification of Plaintiff and Plaintiff's counsel that such Responses were truthful and complete.

Without waiver of any such objections, Ms. Maxwell has made available documents related to some of Ms. Giuffre's false allegations of sexual assaults in her Second Supplemental Fed. R. Civ. P. 26(a)(1)(A) disclosures. Ms. Maxwell is withholding documents responsive to this request on the basis of the attorney-client and work product privileges.

DOCUMENT REQUEST NO. 4

Produce all documents concerning any investigations, internal or otherwise, by any law enforcement or governmental agency, regarding the illegal disclosure, illegal purchase, and/or theft of sealed juvenile police records concerning Plaintiff.

RESPONSE: Ms. Maxwell objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege. Ms. Maxwell also objects to this Request to the extent it calls information relating to Virginia Roberts Giuffre that exists within the public domain, the internet or in public court records and which are equally available to both parties and can be obtained from some other source that is more convenient, less burdensome, and less expensive. Defendant objects to this request to the extent that it characterizes the gathering of public information as "illegal."

Subject to and without waiver of the foregoing, Defendant has been unable to locate any documents responsive to this Request.

DOCUMENT REQUEST NO. 5

Produce all documents concerning any rape, sexual assault, sexual intercourse, or other sexual encounter involving Plaintiff. This Request includes, but is not limited to, (1) any documents concerning any sexual assault of Plaintiff while a minor; (2) any police reports, or documents concerning any police reports, that were created concerning such claims of sexual assault; and (3) documents concerning any communications received by You (or Your agents or attorneys) by other individuals that reference any sexual assault of Plaintiff while a minor.

RESPONSE: Ms. Maxwell objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege.

Ms. Maxwell also objects to this Request to the extent it calls for information relating to Virginia Roberts Giuffre that exists within the public domain, the internet or in public court records and which are equally available to both parties and can be obtained from some other source that is more convenient, less burdensome, and less expensive. Subject to and without waiver of the foregoing, Defendant refers to the public documents and news reports regarding Plaintiff's false allegations of sexual abuse and investigation of the same, which have been previously produced, are available in the public domain, or referenced in court papers. Defendant also refers Plaintiff to documents within the possession, custody and control of Plaintiff and her counsel, including without limitation Mr. Bradley Edwards, which were requested in Defendant's First Set of Discovery Requests, but were not produced despite certification of Plaintiff and Plaintiff's counsel that such Responses were truthful and complete.

Defendant objects to the characterization of Plaintiff's documented false claims of sexual contact as "rape" or "sexual assault."

Without waiver of any such objections, Ms. Maxwell has made available documents related to some of Ms. Giuffre's false allegations of sexual assault in her Second Supplemental Fed. R. Civ. P. 26(a)(1)(A) disclosures.

DOCUMENT REQUEST NO. 6

Produce any Joint Defense Agreement entered into between You and Jeffrey Epstein from 1999 to the present.

RESPONSE: Ms. Maxwell objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege. Defendant is withholding production of any such agreement on the basis of such privileges.

DOCUMENT REQUEST NO. 7

Produce any documents concerning any Joint Defense Agreement entered into between You and Jeffrey Epstein from 1999 to the present.

RESPONSE: Ms. Maxwell objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege. Defendant is withholding documents on the basis of such privileges.

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.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is cumulative and duplicative. Ms. Maxwell has already produced documents related to her communications with Jeffrey Epstein in response to Plaintiff's First Requests for Production of Documents, all of which document her denial that she did "recruit[] any female under the age of 18 for any purpose."

Ms. Maxwell also objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege. Subject to and without waiver of the foregoing, Defendant has been unable to locate any additional documents responsive to this Request.

DOCUMENT REQUEST NO. 9

Produce any Joint Defense Agreement entered into between You and Alan Dershowitz from 1999 to the present.

RESPONSE: Ms. Maxwell objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege. Subject to and without waiver of the foregoing, Defendant has been unable to locate any documents responsive to this Request.

DOCUMENT REQUEST NO. 10

Produce any documents concerning any Joint Defense Agreement entered into between You and Alan Dershowitz from 1999 to the present.

RESPONSE: Ms. Maxwell objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege. Subject to and without waiver of the foregoing, Defendant has been unable to locate any documents responsive to this Request.

DOCUMENT REQUEST NO. 11

Produce any documents concerning any of Your attorneys' or agents' communications with Alan Dershowitz's attorneys or agents from 1999 to the present

RESPONSE: Ms. Maxwell objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege. Defendant is withholding communications between Mr. Dershowitz's counsel and Defendant's counsel which contain work product and concern joint defense or common interest matters.

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.

RESPONSE: Ms. Maxwell objects to this Request as overly broad, unduly burdensome and interposed for improper purposes. Response to this Request would literally entail defense counsel reviewing for privilege every single document in their possession related to this case.

Ms. Maxwell further objects to this Request on the grounds that it is cumulative and duplicative. Ms. Maxwell further objects to this request as exceeding the scope of this Court's March 17, 2016 Order. Ms. Maxwell also objects to this Request to the extent it calls for information relating to Virginia Roberts Giuffre that exists within the public domain, the internet

or in public court records and which are equally available to both parties and can be obtained from some other source that is more convenient, less burdensome, and less expensive. Ms. Maxwell further objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege. Subject to the foregoing objections, Ms. Maxwell and her counsel are not going to review every document in their possession for any additional documents responsive to this Request.

DOCUMENT REQUEST NO. 13

Produce all contracts, including but not limited to indemnification agreements and employment agreements, between You and Jeffrey Epstein, or any entity associated with Jeffrey Epstein, from 1999 to the present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is cumulative and duplicative and is overly broad. Ms. Maxwell further objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege. Subject to and without waiver of the foregoing, Defendant has been unable to locate any such documents.

DOCUMENT REQUEST NO. 14

Produce all documents concerning any contracts, including but not limited to indemnification agreements and employment agreements, between You and Jeffrey Epstein, or any entity associated with Jeffrey Epstein, from 1999 to the present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is cumulative and duplicative and is overly broad. Ms. Maxwell further objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege. Subject to and without waiver of the foregoing, Defendant has been unable to locate any such documents.

DOCUMENT REQUEST NO. 15

Produce all documents concerning the identity or identities of the individual(s) or entities paying Your legal fees concerning the above-captioned action, and all documents concerning the identity or identities of the individual(s) or entities paying Ross Gow, or any entities associated with Ross Gow, for any work he performed on Your behalf.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it seeks multiple categories of documents within a single request for production. Ms. Maxwell further objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege. Ms. Maxwell is producing her engagement letter with her counsel in this action. Defendant has been unable to locate any additional documents responsive to this Request.

DOCUMENT REQUEST NO. 16

Produce all documents concerning any action or lawsuit brought against You from 1999 to the present, including, but not limited to, actions or lawsuits brought in foreign jurisdictions.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is over-broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell further objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, or any other applicable privilege. Subject to and without waiving the above objections, Ms. Maxwell has been unable to locate any documents responsive to this Request**.**

DOCUMENT REQUEST NO. 17

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.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is cumulative and duplicative. Ms. Maxwell also objects to this Request to the extent it calls for information that exists within the public domain, the internet or in public court records and which are equally available to both parties and can be obtained from some other source that is more convenient, less burdensome, and less expensive. Ms. Maxwell further objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, or any other applicable privilege. Ms. Maxwell is not producing documents that are available in the public domain. Ms. Maxwell has been unable to locate any additional documents responsive to this Request.

DOCUMENT REQUEST NO. 18

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.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is cumulative and duplicative. Ms. Maxwell also objects to this Request to the extent it calls for information that exists within the public domain, the internet or in public court records and which are equally available to both parties and can be obtained from some other source that is more convenient, less burdensome, and less expensive. Ms. Maxwell further objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, or any other applicable privilege. Ms. Maxwell is not producing documents that are available in the public domain. Ms. Maxwell has been unable to locate any additional documents responsive to this Request.

DOCUMENT REQUEST NO. 19 Produce all documents concerning any alleged illegal activity involving Plaintiff from the Relevant Period. This request includes, but is not limited to, any documents concerning the Roadhouse Grill in Florida.

RESPONSE: Ms. Maxwell objects to this Request as vague and confusing. Ms. Maxwell is unaware of all illegal activities in which Plaintiff may have been engaged in during the stated time period, and documents concerning those activities are uniquely within Plaintiff's possession, custody and control.

Ms. Maxwell further objects to this Request to the extent it seeks documents or information protected by the attorney/client privilege, the work-product doctrine, the common interest privilege or any other applicable privilege.

Ms. Maxwell also objects to this Request to the extent it calls for information relating to Virginia Roberts Giuffre that exists within the public domain, the internet or in public court records and which are equally available to both parties and can be obtained from some other source that is more convenient, less burdensome, and less expensive. Subject to and without waiver of the foregoing, Defendant refers to the public documents and news reports regarding Plaintiff's allegations of sexual abuse and investigation of the same, which have been previously produced, are available in the public domain, or referenced in court papers. Defendant also refers Plaintiff to documents within the possession, custody and control of Plaintiff and her counsel, including without limitation Mr. Bradley Edwards, which were requested in Defendant's First Set of Discovery Requests, but were not produced despite certification of Plaintiff and Plaintiff's counsel that such Responses were truthful and complete.

Without waiver of any such objections, Ms. Maxwell has made available documents related to some of Ms. Giuffre's contacts with law enforcement in her Second Supplemental Fed. R. Civ. P. 26(a)(1)(A) disclosures.

DOCUMENT REQUEST NO. 20

Produce all documents concerning any apartment or other dwelling occupied by Plaintiff from 1999 to the present, including but not limited to, all documents concerning the acquisition of, and payment for, such dwellings. This Request includes, but is not limited to, any dwelling paid for -in whole or in part by Defendant or Jeffrey Epstein.

RESPONSE: Ms. Maxwell objects to this Request to the extent it calls for information that exists within the public domain, the internet or in public court records and which are equally available to both parties and can be obtained from some other source that is more convenient, less burdensome, and less expensive. Ms. Maxwell is not producing documents that are available in the public domain. Ms. Maxwell is not re-producing documents already produced by her and produced by Plaintiff in this action, for example, in response to Defendant's First Set of Discovery Requests to Plaintiff which requested *inter alia* documents related to Plaintiff's residences since 1999.

Without waiver of any such objections, Ms. Maxwell has made available documents related to some of Ms. Giuffre's dwellings in her Second Supplemental Fed. R. Civ. P.

26(a)(1)(A) disclosures. Ms. Maxwell has been unable to locate any additional documents responsive to this Request.

DOCUMENT REQUESTS "CONCERNING PUNITIVE DAMAGES"

DOCUMENT REQUEST NO. 21

Produce all copies of the complaints in any lawsuits that You have filed in any court in which You seek damages or any other financial recovery from 2014 to the present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

Ms. Maxwell intends to move for a Protective Order regarding her personal financial information and is refusing to respond and is withholding documents under the category of "Document Requests Concerning Punitive Damages" until the motion is resolved.

Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 22

Produce all Financial Statements prepared for or submitted to any Lender or Investor for the past three years by You personally or on Your behalf or on behalf of any entity in which You hold or held a controlling interest from January 2015 to the Present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

Ms. Maxwell intends to move for a Protective Order regarding her personal financial information and is refusing to respond and is withholding documents under the category of "Document Requests Concerning Punitive Damages" until the motion is resolved.

Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will

Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 23

Produce all W-2s, K-1s, and any other documents reflecting any income (including salary, bonuses, dividends, profit distributions, royalties, advances, annuities, and any other form of income), including all gross and net revenue received by You directly or indirectly from January 2015 to the present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 24

Produce all tax returns filed with any taxing entity (either foreign or domestic) from January 2015 to the present by You or on Your behalf, or on behalf of any entity in which You hold or held a controlling interest at the time of filing.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 25

Produce all bank statements or other financial statements which were prepared by You, on Your behalf or by or on behalf of any entity in which You held an ownership interest of 10% or more at any time from January 2015 to the present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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DOCUMENT REQUEST NO. 26

Produce all deeds and titles to all real property owned by You or held on Your behalf either directly or indirectly at any time from January 2015 to the present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 27

Produce all passbooks (or other documents showing account balances) with respect to all savings accounts, checking accounts, and savings and loan association share accounts owned by

You or on which You hold a right or have held a right to withdraw funds at any time from January 2015 to the present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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DOCUMENT REQUEST NO. 28

Produce all passbooks (or other documents showing account balances) with respect to all savings accounts, checking accounts and savings loan association share accounts, owned by You in whole or in party jointly as co-owner, partner, or joint venture, in any business enterprise, or owned by an entity in which You have or have had a controlling interest at any time from January 2015 to the present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 29

Produce all bank ledger sheets (from the internet or otherwise) concerning all bank accounts in which You have a right to withdraw funds, reflecting the highest balance in said

accounts from January 2015 to the present. .

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 30

Produce all bank ledger sheets (from the internet or otherwise) concerning all bank accounts owned by You solely, or jointly as co-owner, partner, or joint venture, in any business enterprise, or any entity in which You have or have had a controlling interest from January 2015 to the present, reflecting het highest balance in said accounts for each month from January 2015 to the present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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DOCUMENT REQUEST NO. 31

Produce all checkbooks for all accounts on which You were authorized to withdraw funds from January 2015 to the present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 32

Produce the 2015 and 2016 balance sheets and other financial statements with respect to any and all business enterprises of whatever nature (including not-for-profit enterprises), either foreign or domestic, in which You possess any ownership interest of 10% or more, whether a partner, joint venture, stockholder, or otherwise.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 33

Produce all corporate securities (stocks or bonds), foreign or domestic, directly or indirectly held by You, or held on Your behalf or for Your benefit by another individual or entity, including trusts from January 2015 to the Present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this

action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 34

Produce all accounts receivable ledgers or other records which set forth the names and addresses of all persons or business enterprises that are indebted to You and the amounts and terms of such indebtedness from August 2016 to the Present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

Ms. Maxwell intends to move for a Protective Order regarding her personal financial information and is refusing to respond and is withholding documents under the category of "Document Requests Concerning Punitive Damages" until the motion is resolved.

Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 35

Produce all copies of the partnership or corporation Income Tax Returns for any partnership or corporation, either foreign or domestic, in which You do possess or have possessed any ownership interest of 4% or more whether as partner, joint venture, stockholder or otherwise, from 2014 to the present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of

annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

Ms. Maxwell intends to move for a Protective Order regarding her personal financial information and is refusing to respond and is withholding documents under the category of "Document Requests Concerning Punitive Damages" until the motion is resolved.

Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 36

Produce all title certificates, registration certificates, bills of sale, and other evidences of ownership possessed by You or held for Your beneficial interest with respect to any of the following described property owned by You or held directly or indirectly for Your beneficial interest from January 2015 to the present:

a. Motor vehicles of any type, including trucks, other automobiles, and two or three-wheeled vehicles (motorcycles, ATV, etc.).

b. Aircraft of any type, including jets, propeller planes, and helicopters

c. Boats, launches, cruisers, sailboats, or other vessels of any type

d. Real estate and real property

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

Ms. Maxwell intends to move for a Protective Order regarding her personal financial information and is refusing to respond and is withholding documents under the category of "Document Requests Concerning Punitive Damages" until the motion is resolved.

Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 37

From January 2012 to the present, produce all documents concerning any source of funding for the TarraMar Project or any other not-for-profit entities with which You are

associated, including but not limited to, funding received from the Clinton Global Initiative, the Clinton Foundation (a/k/a William J. Clinton Foundation, a/k/a/ the Bill, Hilary & Chelsea Clinton Foundation), and the Clinton Foundation Climate Change Initiative.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 38

Produce all memoranda and/or bills evidencing the amount and terms of all of Your current debts and obligations that exist presently.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 39

Produce all records indicating any and all income (whether taxable or not) received by You from all sources from January 2015 to the present.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad

and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

DOCUMENT REQUEST NO. 40

Produce all copies of any and all brokerage account statements or securities owned by You individually, jointly with any person or entity or as trustee, guardian or custodian, from January 2015 to the present, including in such records date of purchase and amounts paid for such securities, and certificates of any such securities.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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DOCUMENT REQUEST NO. 41

Produce all records pertaining to the acquisition, transfer and sale of all securities by You or on Your behalf from January 2015 to the present, such records to include any and all information relative to gains or losses realized from transactions involving such securities.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms.

Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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DOCUMENT REQUEST NO. 42

Produce all policies of insurance having any cash value that exist or existed from January 2015 to the present, which policies You or any entity controlled by You is the owner or beneficiary.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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UN-NUMBERED REQUEST

Produce all copies of any and all trust agreements that exist or existed from January 2015 to the present in which You are the settlor or beneficiary together with such documents necessary and sufficient to identify the nature and current value of the trust.

RESPONSE: Ms. Maxwell objects to this Request on the grounds that it is overly broad and unduly burdensome and calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Maxwell objects to this Request on the grounds that it is propounded for the improper purpose of annoying or harassing Ms. Maxwell. Ms. Maxwell's personal financial information is not at issue in this matter and information relating thereto is irrelevant.

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Based on the May 16, 2016 conferral, counsel for Plaintiff has agreed to hold this Request in abeyance pending either a finding of liability or resolution of dispositive motions. Plaintiff's counsel will not file a Motion to Compel a Response to this Request, nor will Defendant move for a Protective Order with regard to this Request, without further conferral.

Dated: May 16, 2016

Respectfully submitted,

s/Laura A.Menninger

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Attorneys for Ghislaine Maxwell

CERTIFICATE OF SERVICE

I certify that on May 16, 2016, I served the attached document DEFENDANT GHISLAINE MAXWELL'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS via email to the following counsel of record:

Sigrid S. McCawley
Meridith Schultz
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s/ Laura A. Menninger
Laura A. Menninger

United States District Court
Southern District of New York

Virginia L. Giuffre,

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

v.

Ghislaine Maxwell,

Defendant.
_____/

RESPONSE TO MOTION TO COMPEL ATTORNEY-CLIENT COMMUNICATIONS AND ATTORNEY WORK PRODUCT MATERIALS

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Other Authorities

Plaintiff Virginia Giuffre, by and through her undersigned counsel, hereby files this response to Defendant's Motion to Compel All Attorney-Client Communications and Attorney Work Product Placed at Issue by Plaintiff and Her Attorneys (DE 164). The motion should be denied in its entirety.

INTRODUCTION

Defendant argues Ms. Giuffre and two of her attorneys (Cassell and Edwards) have somehow placed "at issue" her confidential attorney-client communications and therefore have made a "sweeping waiver" of attorney-client privilege in this case. Defendant, however, fails to cite the controlling law on this issue: Federal Rule of Evidence 502. Enacted in 2008, Rule 502 was designed to block exactly the kind of argument Defendant is making. Rule 502 provides that litigants are entitled to the *most* protective law on attorney-client privilege, either state law where the disclosure was made or federal law. The alleged disclosures in this case were made in Florida, and under Florida law did not constitute any waiver of attorney-client privilege. Indeed, Defendant does not reveal to the Court that the Florida judge who handled the case during which the alleged "waivers" occurred (the Dershowitz case) has already considered – and rejected in their entirety – the very arguments that Defendant is advancing here.

In addition, none of the alleged disclosures were made by Ms. Giuffre, who as the holder of the privilege is the only individual with authority to waive it. Moreover, none of the alleged disclosures concerned the substance of confidential attorney-client communications. And finally, Ms. Giuffre will not be seeking to introduce or otherwise take advantage of any confidential attorney-client communications in this case. Accordingly, for these and other reasons, the Court should deny Defendant's motion in its entirety.

FACTUAL BACKGROUND

The CVRA Case

The facts relevant to this issue begin in 2008, when attorney Bradley J. Edwards (soon joined by co-counsel Professor Paul Cassell) filed a *pro bono* action in the Southern District of Florida under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771. Filed on behalf of Jane Doe 1 (and later Jane Doe 2) the CVRA action alleged that federal government had failed to protect the rights of Jane Doe 1 and other similarly situated victims of sex offenses committed by Jeffrey Epstein. *See* Declaration of Sigrid McCawley ("McCawley Decl.") at Exhibit 1, Complaint filed in Jane Doe 1 v. United States, No. 9:08-cv-80736 (S.D. Fla. July 7, 2008). Jane Does 1 and 2 achieved many victories in the case, including a ruling that the CVRA rights of victims could apply before charges were filed, *Does 1 and 2 v. United States*, 817 F.Supp.2d 1337 (S.D. Fla. 2011);[1] that they had standing to challenge the non-prosecution agreement reached between the Government and Epstein, *Jane Does 1 and 2 v. United States*, 950 F.Supp.2d 1262 (S.D. Fla. 2013); and that plea negotiations were not protected from disclosure by any federal rule of evidence, *Does v. United States*, 749 F.3d 999 (11th Cir. 2014). Congress has also followed the developments in the case closely, recently amending the CVRA to insure that in the future crime victims receive notice of any non-prosecution agreement entered into by the Government. *See* Pub. L. 114-22, Title I, § 113(a), (c)(1), May 29, 2015, 129 Stat. 240, 241 (adding 18 U.S.C. § 3771(a)(9) to give crime victims "[t]he right to be informed in a timely manner of any plea bargain or deferred prosecution agreement).

[1] *See generally* Paul G. Cassell, Nathanael J. Mitchell & Bradley J. Edwards, *Crime Victims' Rights During Criminal Investigations? Applying the Crime Victims' Rights Act before Criminal Charges are Filed*, 104 J. CRIM. L. & CRIMINOLOGY 59 (2014).

On December 30, 2014, Cassell and Edwards filed a Motion Pursuant to Rule 21 for Joinder in the Action on behalf two additional victims: Jane Doe 3 and Jane Doe 4. (Jane Doe 3, Virginia Giuffre, subsequently decided to reveal her name). The joinder motion argued that Jane Does 3 and 4 should be allowed to join the two existing plaintiffs in the action because they had suffered the same violations of their rights under the CVRA. McCawley Decl., Exhibit 2, Jane Does' 3 and 4 Joinder Motion.[2] To establish that they were "victims" of Epstein's sex crimes with standing to join the suit, Jane Does 3 and 4 alleged that they had suffered sexual abuse from Epstein. For example, Jane Doe 3 alleged that she had been forced by Epstein to have sexual relations with various persons, including Alan Dershowitz – who had been one of Epstein's defense attorneys negotiating the non-prosecution deal and arranging to keep it secret from the victims. McCawley Decl., Exhibit 2 at 4. Jane Doe 3 also alleged that Defendant (i.e., Ghislaine Maxwell) had participated in the sexual abuse of Jane Doe 3. *Id.* at 4-5.

After Dershowitz also filed a motion to intervene to contest the allegations (DE 282), Jane Doe 3 filed a response to Dershowitz's intervention motion. McCawley Decl., Exhibit 3, Response to Motion to Intervene.[3] The response explained that the allegations against Dershowitz were relevant to at least eight separate issues in the CVRA case. *Id.* at 18-26. The response also explained some of the evidence supporting the allegations against Dershowitz, including:

- sworn testimony from one of Epstein's household employees (Juan Alessi) that Dershowitz came "pretty often" to Epstein's Florida mansion and got massages while he was there;

[2] The Joinder Motion attached as an exhibit is a "corrected" motion, filed on January 2, 2015. As discussed below, several paragraphs in this motion were later stricken by Judge Marra.

[3] This document is currently restricted/under seal in the CVRA case, although an order sealing it is not found in the Court record so far as can be determined. In light of the sealing of the document, we have marked aspects of this pleading dealing with the document as confidential.

- sworn testimony from another of Epstein's household employees (Alfredo Rodriquez) that Dershowitz was present alone at the home of Epstein, without his family, in the presence of young girls;

- invocations of Fifth Amendment rights to remain silent by three of Epstein's identified co-conspirators (Sarah Kellen, Nadia Marcinkova, and Adrianna Mucinska) when asked questions about whether Dershowitz had been involved with massages by young girls;

- refusals by Jeffrey Epstein to discuss Dershowitz's involvement but instead to invoke his Fifth Amendment right.

Id. at 26-38.

Several months later, on April 7, 2015, the Court (Marra, J.) denied Jane Doe 3 and Jane Doe 4's motion for joinder. McCawley Decl., Exhibit. 4, Order denying Jane Doe 3's motion to join. With regard to the eight separate issues as to which the allegations against Dershowitz were relevant, the Court addressed only the first (establishing "victim" status) and found that the "factual details regarding with whom and where the Jane Does engaged in sexual activities are immaterial and impertinent to this central claim (i.e., that they were known victims of Mr. Epstein and the Government owed them CVRA duties), especially considering that these details involve non-parties who are not related to the respondent Government." *Id.* at 5.[4] Accordingly, the Court struck the factual details from the victims' pleading as unnecessary at that time. The Court specifically recognized, however, that the details could be reasserted by the parties to the action – i.e., Jane Doe 1 and Jane Doe 2 – if they could "demonstrate a good faith basis for believing that such details are pertinent to a matter presented for the Court's consideration." *Id.* at 6. Following the Court's ruling, additional litigation has proceeded in the CVRA case.

The Dershowitz case

[4] In asserting that the non-parties were "not related to the respondent Government," the Court did not address Jane Doe 3's argument that Dershowitz, as one of Epstein's defense counsel, had helped negotiate the non-prosecution agreement and helped to arrange to keep it secret from the victims.

While the CVRA case was moving forward in the Southern District of Florida on behalf of Jane Does 1 and 2, separate litigation developed between the *pro bono* attorneys who had filed the lawsuit (Cassell and Edwards) and Dershowitz. After the filing of the joinder motion in the CVRA case, Dershowitz took the airwaves to attack not only Jane Doe 3, but also Cassell and Edwards. Typical of these attacks was one levelled on CNN, in which Dershowitz alleged:

> If they [Cassell and Edwards] had just done an hours' worth of research and work, they would have seen she is lying through her teeth. . . . They're prepared to lie, cheat, and steal. These are unethical lawyers. . . . They can't be allowed to have a bar card to victimize more innocent people.

Hala Gorani – CNN Live (Jan. 5, 2015).[5]

Cassell and Edwards then filed a state law defamation action against Dershowitz in Broward County, Florida. *See* McCawley Decl., Exhibit. 5, Complaint in *Edwards and Cassell v. Dershowitz*. The complaint alleged that Dershowitz had engaged in a "massive public media assault on the reputation and character" of Cassell and Edwards. *Id.* at 4. Ms. Giuffre was *not* a party to this defamation lawsuit.

The Florida Court Rejects a Waiver of Attorney Clients Privilege Argument

As Cassell and Edwards' Florida defamation action moved forward, Dershowitz sought to make an argument that they had somehow waived their client's (Ms. Giuffre's) attorney-client privilege. On September 8, 2015, Dershowitz filed a motion to compel Cassell and Edwards to produce documents and additional responses to interrogatories. McCawley Decl., Exhibit. 6, Motion to Compel. In his motion, Dershowitz argued that Cassell and Edwards "have waived any privilege or protection that would otherwise attach to responsive documents and information

[5] Available at http://www.cnn.com/videos/world/2015/01/05/wrn-uk-sex-abuse-allegations-alan-dershowitz-intv.cnn.

by bringing this defamation action placing at issue the truthfulness of Jane Doe No. 3's allegations against Dershowitz . . . ." *Id.* at 3-5. In his motion and reply pleading (McCawley Decl., Exhibit 8, Reply in Support of Motion to Compel), Dershowitz argued that Cassell and Edwards' actions throughout the case constituted a waiver of attorney-client privilege.

Cassell and Edwards responded, arguing that Ms. Giuffre was not a party of the defamation action and that she was the only person who could waive her privilege. McCawley Decl., Exhibit 7 at 4-6, Response in Opposition to Motion to Compel. Cassell and Edwards also argued that there had been no waiver because confidential attorney-client communications with Ms. Giuffre were not "at issue" in the defamation case. *Id.* at 6-9. Cassell and Edwards also later filed a sur-reply, further elaborating on the argument that Ms. Giuffre had not waived any attorney-client privilege by publicly discussing her sexual abuse by Epstein and his associates. McCawley Decl., Exhibit 9, Sur-Reply in Support Opposition to Motion to Compel. Cassell and Edwards also explained that communications with Ms. Giuffre were protected not only beginning in March 2014, but even earlier than that date when Ms. Giuffre understood that she was obtaining legal services from Cassell and Edwards. *Id.* at 1.

Following this extensive briefing on waiver issues,[6] on December 8, 2015, the Florida Court (Lynch, J.) ruled, ***denying Dershowitz's argument that attorney-client privilege had been waived.*** McCawley Decl., Exhibit 10, Order Denying Motion to Compel. Specifically, the Court denied the motion to compel, explaining "Pre March 2014 communications are protected by the work product privilege and the witness has not waived the communications that were protected by the attorney-client privilege. Also, there was no waiver by the [Cassell and Edwards] by filing suit." *Id.* at 1.

[6] And following the filing of Cassell and Edwards' summary judgment motion, filed on November 26, 2015.

Ms. Giuffre's Deposition in the Defamation Case

As the defamation action moved forward, Dershowitz subpoenaed Ms. Giuffre to a deposition. McCawley Decl., Exhibit 11, Composite Exhibit of excerpts from transcript of deposition of Ms. Giuffre. During the deposition, held in Fort Lauderdale, Florida, Ms. Giuffre was represented by the undersigned legal counsel, who asserted objections to revealing attorney-client information where the questions called for revealing confidential attorney client communications. *See, e.g., id.* at 22-23; 131-32; 173-74; 183; 208. During the deposition, Ms. Giuffre specifically stated that "I decide not to waive my [attorney-client] privilege at this time." *Id.* at 174. Ms. Giuffre also denied that Cassell and Edwards had ever pressured her into identifying someone as being involved in her sexual abuse. *Id.* at 200-12

The Settlement of the Defamation Case

Ultimately, Cassell, Edwards, and Dershowitz agreed to settle their defamation case. That settlement included both a public statement and confidential monetary payments. As part of the settlement, Cassell and Edwards withdrew their allegations against Dershowitz in the defamation case contained in the then-pending summary judgment motion. McCawley Decl., Exhibit 12, Notice of Withdrawal of Summary Judgment Motion. As explained in the notice of withdrawal of this motion, "the withdrawal of the referenced filings is not intended to be, and should not be construed as being, an acknowledgement by Edwards and Cassell that the allegation made by Ms. Giuffre were mistaken. Edwards and Cassell do acknowledge that the public filing in the Crime Victims' Rights Act case of their client's allegation against Defendant Dershowitz became a major distraction from the merits of the well-founded Crime Victims' Rights Act by causing delay and, as a consequence, turned out to be a tactical mistake." *Id.* All these actions settling the Florida defamation case took place in Florida.

LEGAL STANDARDS FOR WAIVER

A. Federal Rule of Evidence 502 Controls on the Issue of Waiver

Defendant asks this Court to find that Ms. Giuffre has somehow waived her attorney-client privilege regarding various communications in this case. This is no small step. The attorney-client privilege is one of the "oldest recognized privileges for confidential communications." *Swidler & Berlin v. United States,* 524 U.S. 399, 403 (1998)). The privilege's purpose is to "encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and the administration of justice." 524 U.S. at 403 (internal quotation marks omitted).

In setting out the legal standards pertaining to waiver of attorney-client privilege, Defendant fails to cite the controlling – and protective – law on the issue. In a federal case, issues of alleged waiver of attorney-client privilege must be resolved under the new standards in Federal Rule of Evidence 502. In 2008, Congress enacted Federal Rule of Evidence 502, which is entitled "Attorney-Client Privilege and Work Product; Limitations on Waiver." New rule 502 places a number of protections in place to reduce litigation over claims that a party has somehow "waived" attorney client privilege. *See generally* Adv. Comm. Note, Rule 502. Notably, Defendant does not discuss, or even cite, Rule 502 in her motion.

The issue currently before the Court is specifically controlled by Rule 502(c), which covers situations where a disclosure in a state proceeding is alleged, in a federal proceeding, to establish waiver. Rule 502(c) provides the *greater* of protections found in federal or state law:

> (c) Disclosure Made in a State Proceeding. When the disclosure is made in a state proceeding and is not the subject of a state-court order concerning waiver, the disclosure does not operate as a waiver in a federal proceeding if the disclosure:
>
> (1) would not be a waiver under this rule if it had been made in a federal proceeding; or
>
> (2) is not a waiver under the law of the state where the disclosure occurred.

As is readily apparent from the text of the rule, there are two separate ways in which a party can prove that no waiver of attorney-client privilege has occurred: (1) by demonstrating that no waiver exists under federal law; or (2) by demonstrating that no waiver exists under the state law where the disclosure occurred. Between these two possibilities, the drafters of the rule decided to apply the ***most*** protective law that governs waiver. *See* Fed. R. Evid. 502(c), Adv. Comm. Notes ("The [Advisory] Committee [on the Federal Rules of Evidence] determined that the proper solution for the federal court is to apply the law that is ***most*** protective of privilege and work product" (emphasis added)).

B. Florida Law

C.

Florida's protective law on the attorney-client privilege provides that neither an attorney nor a client may be compelled to divulge confidential communications between a lawyer and client which were made during the rendition of legal services. Fla. Stat. Ann. § 90.502(1)(c). Communication denotes more than just giving legal advice; it also includes giving information to the lawyer to enable him to render sound and informed advice. *Hagans v. Gatorland Kubota, LLC/Sentry Ins.*, 45 So.3d 73, 76 (Fla. 1st DCA 2010).

Under Florida law, while the burden of establishing the attorney-client privilege usually rests on the party claiming it, *First Union National Bank v. Turney*, 824 So.2d 172, 185 (Fla. 1st DCA 2002), when communications appear on their face to be privileged, the burden is on the party seeking disclosure to prove facts which would make an exception to the privilege applicable. *Ford Motor Co. v. Hall-Edwards*, 997 So.2d 1148, 1153 (Fla. 3d DCA 2008); *Rousso v. Hannon*, 146 So.3d 66, 70 (Fla. 3d DCA 2014). In this case, Defendant does not appear to dispute that an attorney-client privilege exists with regard to the communications between Ms. Giuffre and her attorneys. Rather, Defendant's argument is that the privilege has somehow been

waived. *See* Motion to Compel at 1-2. Therefore, under Florida law, Defendant must shoulder the burden of overcoming the privilege. (Of course, because Defendant failed to even cite, much less discuss, Florida law, she has not carried that burden.)

Defendant asserts that she can force disclosure of the privileged communications between Ms. Giuffre and her counsel under the "at issue" doctrine. To establish this alleged waiver, Defendant's motion relies on a federal district court case – *Hearn v. Rhay*, 68 F.R.D. 574 (E.D. Wash. 1975), which was cited in *Bank Brussels Lambert v. Credit Lyonnais (Suisse), S.A.*, 210 F.R.D. 506. 509-10 (S.D.N.Y. 2002) (Ellis, M.J.). *See* Motion to Compel at 8. As discussed below, as a matter of controlling federal authority, these cases have been repudiated by the Second Circuit. And to the same effect, Florida law also rejects the expansive *Hearn* approach to waiver. *See Guarantee Ins. Co. v. Heffernan Ins. Brokers, Inc.,* 300 F.R.D. 590, 593-95 (S.D. Fla. 2014) (discussing Florida authorities). Florida law disfavors waiver of the attorney-client privilege and will not readily find an "at issue" waiver. *See Guarantee Ins. Co. v. Heffernan Ins. Brokers, Inc.*, 300 F.R.D. 590, 593 (S.D. Fla. 2014) (*citing Coates v. Akerman, Senterfitt & Eidson, P.A.,* 940 So.2d 504, 508 (Fla. 2nd DCA 2006) (refusing to find waiver based on the at-issue doctrine)). In contrast to *Hearn*, under Florida law, at-issue waiver only occurs "when a party 'raises a claim that will *necessarily* require proof by way of a privileged communication.'" *Coates,* 940 So.2d at 508 (quoting *Jenney v. Airdata Wiman, Inc.,* 846 So.2d 664, 668 (Fla. 2nd DCA 2003)) (emphasis in original). Indeed, in 2014, the Southern District of Florida rejected the *Hearn* "at issue" analysis and instead, adopted the analysis of the Third Circuit as outlined in *Rhone–Poulenc Rorer, Inc. v. Home Indemnity Co.*, 32 F.3d 851 (3d Cir. 1994). *Guarantee Ins*, 300 F.R.D. at 595. The Third Circuit deemed the *Hearn* test to be of "dubious validity" because, although it "dress[es] up [its] analysis with a checklist of factors, [it] appear[s] to rest on a

conclusion that the information sought is relevant and should in fairness be disclosed." *Id.* at 864. The Third Circuit specifically rejected *Hearne* because relevance is not the standard for determining whether or not evidence should be protected from disclosure as privileged. *Rhone*, 32 F.3d at 863. Florida law tracks that of the Third Circuit. *See* 300 F.R.D. at 593-95 (citing Florida case law).

Also, under Florida law, the client – not her attorneys – holds the attorney-client privilege. *See* Fla. Stat. Ann. § 90.502(3); *see also* Fla. Stat. Ann. § 90.502(2) (a client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client). Some Florida courts have even recognized serious due process issues could be created by a procedure through which a client lost their privilege without an opportunity to be heard in the proceedings. *See, e.g., Rogers v. State*, 742 So.2d 827, 829 (Fla. 2d DCA 1999). Under Florida law, so long as a client has a reasonable expectation of privacy in the communication, under § 90.507, the privilege is protected. *McWatters v. State*, 36 So.3d 613, 636 (Fla. 2010). Also under Florida law, only the client – not her attorney – can waive attorney-client privilege. *See Savino v. Luciano*, 92 So.2d 817 (Fla. 1957), *Coates v. Akerman, Senterfitt & Edison, P.A.*, 940 So.2d 504 (Fla. 2d DCA 2006), and *Genovese v. Provident Life and Accident Ins. Co.*, 74 So.3d 1064 (Fla. 2011).

C. Federal Law

Rather than discuss Florida privilege law, Defendant exclusively cites federal case law. *See* Mot. to Compel at ii-iii (table of authorities citing only federal cases). Yet as this Court has previously held in ruling on an earlier privilege motion made by the Defendant, state law generally provides the rule of decision in this diversity case. *See* Giuffre v. Maxwell, DE 135 at

6, 2016 WL 175918 at * 6 (applying New York privilege law) (*citing Allied Irish Banks v. Bank of Am., N.A.*, 240 F.R.D. 96, 102 (S.D.N.Y. 2007) ("Because this Court's subject matter jurisdiction is based upon diversity . . . state law provides the rule of decision concerning the claim of attorney-client privilege.")). Accordingly, an argument can be made that New York *state* law applies in this case[7] – but Defendant does not explain why she jumps to federal law.

As explained above, in the particular context of a waiver argument, Federal Rule of Evidence 502 applies the *more* protective of state law or federal law in determining whether a waiver of privilege has occurred. In this case, the controlling federal law is at least as protective as Florida law. The controlling federal law here comes from the Second Circuit, including *In re Cnty. of Erie*, 546 F.3d 222 (2d Cir. 2008) – a case not even cited, much less discussed, by the Defendant. In view of the importance of the attorney-client privilege, the Second Circuit in that case held that any finding of waiver should be made with "caution." *Id.* at 228.

Rather than cite this controlling Second Circuit precedent, Defendant relies on a 2002 case from this Court applying the *Hearn* "at issue" doctrine. *See* Mot. to Compel at 8 (*citing Bank Brussels Lambert v. Credit Lyonnais (Suisse), S.A.*, 210 F.R.D. 506. 509-10 (S.D.N.Y. 2002) (Ellis, Magistrate Judge) (*quoting Hearn v. Rhay*, 68 F.R.D. 574, 581 (E.D. Wash. 1975)). Defendant goes on to argue that "courts have generally applied the *Hearn* [at issue] doctrine liberally, finding a broad waiver of attorney-client privilege where a party asserts a position 'the truth of which can only be assessed by examination of the privilege communication." Mot. to Compel at 8 (internal quotation omitted).

Defendant fails to recognize that the Second Circuit has explicitly disavowed the *Hearn* doctrine. In *In re Cnty. of Erie*, 546 F.3d 222 (2d Cir. 2008), the Second Circuit explained that "[c]ourts in our Circuit and others have criticized *Hearn* and have applied its tests unevenly." *Id.*

[7] As a protective matter, Ms. Giuffre will also provide citations to New York state authorities in this response.

at 227-28.[8] The Second Circuit also noted that the *Hearn* test "has been subject to academic criticism. *See, e.g.,* Richard L. Marcus, *The Perils of Privilege: Waiver and the Litigator,* 84 MICH. L. REV. 1605, 1628-29 (1986); Note, *Developments in the Law-Privileged Communications,* 98 HARV. L. REV. 1650, 1641-42 (1985) (identifying "the faults in the *Hearn* approach"). In light of these strong criticisms of *Hearn*, the Second Circuit decided that "[w]e agree with its critics that the *Hearn* test cuts too broadly and therefore conclude that the District Court erred in applying it here. . . . Nowhere in the *Hearn* test is found the essential element of *reliance* on privileged advice in the assertion of the claim or defense in order to effect a waiver." 546 F.3d at 229 (emphasis added). The Second Circuit held that, for an "at issue" waiver to occur, "a party must *rely* on privileged advice from his counsel to make his claim or defense." *Id.* (emphasis added).

In light of the Second Circuit's holding, recent cases from this Court have explained that "reliance on privileged advice in the assertion of the claim or defense is an 'essential element' of a claim of waiver." *Aristocrat Leisure Ltd. v. Deutsche Bank Trust Co. Americas,* No. 04 CIV 10014 PKL, 2009 WL 3111766, at *16 (S.D.N.Y. Sept. 28, 2009).[9] For the sake of completeness, it may be relevant to note that New York state privilege law applies the same

[8] The Second Circuit cited numerous cases, including cases from this Court – e.g., *Pereira v. United Jersey Bank,* Nos. 94 Civ 1565 & 94 Civ 1844, 1997 WL 773716, at *3 (S.D.N.Y. Dec.11, 1997) ("*Hearn* is problematic insofar as there are very few instances in which the *Hearn* factors, taken at face value, do not apply and, therefore, a large majority of claims of privilege would be subject to waiver."); *Allen v. West Point-Pepperell, Inc.,* 848 F.Supp. 423, 429 (S.D.N.Y.1994) (noting that district courts within this Circuit have reached conflicting decisions in the application of *Hearn,* and rejecting reliance "upon a line of cases in which courts have unhesitatingly applied a variation of the *Hearn* balancing test"); *Connell v. Bernstein-Macaulay, Inc.,* 407 F.Supp. 420, 422 (S.D.N.Y.1976) ("The actual holding in [*Hearn*] is not in point because the party there asserting the privilege had expressly relied upon the advice of counsel as a defense to the plaintiff's action."); *Rhone-Poulenc Rorer, Inc. v. Home Indem. Co.,* 32 F.3d 851, 864 (3d Cir.1994) (deeming *Hearn* to be of "dubious validity" because, although it "dress[es] up [its] analysis with a checklist of factors, [it] appear[s] to rest on a conclusion that the information sought is relevant and should in fairness be disclosed").

[9] The *Aristocrat Leisure* case accordingly rejected a party's reliance on the same authority that Defendant relies upon here. *See Aristocrat*, 2009 WL 3111766 at *16 n.6 (discussing *Bank Brussels Lambert v. Credit Lyonnais (Suisse), S.A.*, 210 F.R.D. 506 (S.D.N.Y. 2010), and then noting in the next sentence that the *Hearn* test relied upon by *Bank Brussels*' "recently has been criticized by the Second Circuit on this very issue.").

specific and protective standard. *See In re Bank of New York Mellon,* 42 Misc. 3d 171, 177, 977 N.Y.S.2d 560, 565 (Sup. Ct. 2013) ("'at issue' waiver occurs 'when the party has asserted a claim or defense that he intends to prove by use of the privileged materials.' An example of an affirmative act that does constitute 'at issue' waiver of privilege is a party's 'assert[ing] as an affirmative defense [its] reliance upon the advice of counsel.'").[10]

DISCUSSION

I. MS. GIUFFRE DID NOT WAIVE HER ATTORNEY-CLIENT PRIVILEGE WHEN EDWARDS AND CASSELL FILED AND PURSUED THEIR OWN DEFAMATION ACTION AGAINST ALAN DERSHOWITZ.

Defendant's lead argument is that Cassell and Edwards waived Ms. Giuffre's attorney-client privilege when they filed and pursued a defamation action against Alan Dershowitz. *See* Mot. to Compel at 10. This claim is meritless for numerous reasons, including the fact (not disclosed by Defendant) that this very argument has been fully litigated before the Florida court handling that defamation action, which specifically ***rejected*** any finding of waiver.

A. The Florida Court Presiding over the Defamation Action Has Already Rejected the Same Waiver Claim that Defendant is Advancing Here.

The claim that Cassell and Edwards somehow waived Ms. Giuffre's attorney-client by pursuing their own, personal defamation action against Dershowitz has already been the subject of extensive briefing – and, ultimately, a Florida court ruling. Defendant has scoured the docket

[10] New York and federal authorities also hold that when attorneys are not acting on the client's behalf, they cannot waive their client's privilege. N.Y. C.P.L.R. § 4503(a); *Dillenbeck v. Hess*, 73 N.Y.2d 278, 290, 536 N.E.2d 1126, 1134 (N.Y. 1989) ("[T]he sine qua non of any evidentiary privilege is that it is personal to, and can only be waived by, the privilege holder."). *See also In re von Bulow*, 828 F.2d 94, 100-01 (2d Cir. 1987) ("Of course, the privilege belongs solely to the client and may only be waived by him. An attorney may not waive the privilege without his client's consent."); *In re Bank of New York Mellon Corp. Forex Transactions Litig*., 66 F. Supp. 3d 406, 410 (S.D.N.Y. 2014) (same); *Ferreira v. Capitol Specialty Ins. Corp*., 31 Misc. 3d 1209(A), 929 N.Y.S.2d 199 (N.Y. Sup. Ct. 2011) ("CPLR 4503 makes clear that an attorney cannot waive the attorney-client privilege rather waiver is only effective when done by the beneficiary of the privilege or their personal representative.").

in the Dershowitz defamation case to collect every flyspeck of information that she believes support her argument that a "waiver" has taken place. *See* Mot. to Compel at 10-12 and numerous associated exhibits. But, remarkably, she has not revealed to this Court the most relevant information from the docket: that the Florida court considered the same waiver issues and rejecting the same arguments that the Defendant now advances. This Florida court ruling, applying Florida law, is controlling here.

As discussed above in the factual section of this response, in the Florida case, Dershowitz filed a motion to compel advancing legal and factual arguments identical to those the Defendant is advancing here. *See* McCawley Decl., Ex. 6 at 3, Dershowitz motion to compel (arguing that Cassell and Edwards "have waived any privilege or protection that would otherwise attach to responsive documents and information by bringing this defamation action placing at issue the truthfulness of Jane Doe No. 3's allegations against Dershowitz . . . ."). *Id.* at 3. Citing *Hearn v. Rhay*, 68 F.R.D. 574, 581 (E.D. Wash. 1975), Dershowitz claimed that information Ms. Giuffre had confidentially provided to Cassell and Edwards as her attorneys had become "at issue" in the defamation action. McCawley Decl., Ex. 6 at 4-5. Dershowitz argued broadly that a whole host of alleged attorney-client communications were "at issue" in the case, including:

> (1) Jane Doe No. 3's allegations against Dershowitz asserted in the action captioned *Jane Doe #1, et al. v. United States of America*, Case No. 08-cv-80736 (S.D. Fla.) (the "Federal Action"); (2) [Cassell and Edwards'] investigation into Jane Doe No. 3's allegations against Dershowitz; (3) [Cassell and Edwards'] assertion in the Complaint that Dershowitz was an alleged participant in the criminal conduct committed by Jeffrey Epstein ("Epstein"); and (4) Jane Doe No. 3's whereabouts and activities during the time when she claims to have been "sex slave" for Epstein.

Ex. 6 at 3. As the briefing on the issue continued, in an October 26, 2015 response filing, Dershowitz argued that Ms. Giuffre's public statements waived the privilege,[11] along with actions by her attorneys Cassell and Edwards. Ex. 8 at 5-8.[12]

After all these arguments were fully briefed, the Florida court (Lynch, J.) ***rejected*** Dershowitz's arguments that any waiver of the attorney-client privilege had taken place. McCawley Decl., Ex. 10 at 1 ("Defendant/Counterclaim Plaintiff's Motion to Compel Production of documents and complete responses to interrogatories is hereby denied."). In a December 8, 2015, order, Judge Lynch provided a short explanation of his reasoning and entered an order denying Dershowitz's waiver motion. *Id.*

In her pending motion to compel, Defendant recycles the same arguments that Dershowitz made, such as the claim that Cassell and Edwards waived privilege by filing suit (Mot. Compel at 10), that her March 2011 interview with Scarola and Edwards was a waiver (*id.* at 10), and other similar claims (*id.* at 11-13). But Dershowitz already litigated these issues a few months ago in the Dershowitz case – and his claims were rejected by the Florida court. Defendant is now collaterally estopped from relitigating these identical issues here, because Dershowitz had a full and fair opportunity to litigate those issues and Defendant was in a "common interest" agreement with Dershowitz at the time. The doctrine of collateral estoppel protects litigants – and the courts – from relitigating identical issues and promotes efficiency by barring unnecessary litigation. *See Parklane Hosiery Co., Inc. v. Shore,* 439 U.S. 322, 326 (1979). As this Court has explained, for collateral estoppel to apply, there must have been a full

[11] Dershowitz specifically listed the following public statements by Ms. Giuffre as illustrations of how she had waived her privilege: (1) Ms. Giuffre's March 5, 2011, interview with the *Daily Mail*; (2) Ms. Giuffre's April 7, 2011, recorded telephone interview with attorneys Jack Scarola and Brad Edwards; (3) the January 2015 release of Ms. Giuffre's diary by *Radar Online*; (4) Ms. Giuffre's statements to "numerous other third parties," including former boyfriends and the FBI; and (5) Ms. Giuffre's filing of this suit against Defendant. Ex. 6 at 6-8.

[12] Dershowitz specifically argued that (among other illustrations) Cassell's answers to interrogatories and testimony at his deposition in the case had waived privilege. Ex. 6 at 11-12.

and fair opportunity to litigate the decision that now controls and the issue in the prior action must be identical to and decisive of the issue in the instant action. *Zois v. Cooper*, 268 B.R. 890, 893 (S.D.N.Y. 2001), *aff'd sub nom. In re* Zois, 73 F. App'x 509 (2d Cir. 2003). A non-party can be bound by a decision, so long as her interests were "effectively represented." *Zois*, 268 B.R. at 893.[13] As this Court can readily determine from reviewing the pleadings Dershowitz filed in the Florida case, *see* McCawley Decl. at Ex. 6 & 8, Dershowitz fully briefed identical issues to those presented here. And he was effectively representing Maxwell at the time. The elements of collateral estoppel apply.

Moreover, entirely apart from collateral estoppel doctrine, Judge Lynch's decision is highly persuasive. Judge Lynch was the presiding judge over the Dershowitz matter, so he was intimately familiar with (for example) what matters were "at issue" in that particular case. Moreover, Judge Lynch is, of course, a Florida judge skilled in applying Florida legal principles. His ruling on whether a waiver of attorney client privilege existed under Florida law should be given heavy weight here. *See Elliott Associates, L.P. v. Banco de la Nacion,* 194 F.3d 363, 370 (2d Cir. 1999). Finally, Defendant's briefing entirely ignores even the existence of Judge Lynch's ruling. In such circumstances where the Defendant has failed to offer any reason for questioning Judge Lynch's holding, this Court should follow Judge Lynch's lead and hold that no waiver of the attorney-client privilege exists under Florida law. And, because Florida law controlled when the disclosures took place, under Fed. R. Evid. 502(c), no waiver exists in this proceeding.

[13] *Zois* relied on New York law. Florida law is to the same effect, as is federal doctrine. *See O'Brien v. Fed. Trust Bank, F.S.B.,* 727 So. 2d 296, 298 (Fla. Dist. Ct. App. 1999) ("Collateral estoppel prevents relitigation of issues where the identical issues previously have been litigated between the parties or their privies."); *Montana v. United States*, 440 U.S. 147, 153-54 (1979).

B. Actions by Cassell and Edwards Do Not Waive Ms. Giuffre's Attorney-Client Privilege.

Not only has Judge Lynch already ruled on the attorney-client privilege issue, but his ruling was entirely correct. Defendant's argument rests on the proposition that Cassell and Edwards had authority to waive Ms. Giuffre's privilege while they pursued ***their*** Florida defamation action. But in filing their own, personal defamation claims against Dershowitz in a lawsuit where Ms. Giuffre was not a party, Cassell and Edwards were not acting on Ms. Giuffre's behalf. Defendant never attempts to even explain, much less prove, how that defamation action could have benefitted Ms. Giuffre. And Florida law is clear that when attorneys are not acting on the client's behalf, they cannot waive their client's privilege. *See* Charles W. Ehrhardt, 1 Fla. Prac., *Evidence* § 502.6 (2015 ed.); *Schetter v. Schetter*, 239 So.2d 51, 52 (Fla. 4th DCA 1970).

To find that an attorney waived his client's privilege, a clear record must exist concerning the attorney's attorney to waive privilege. *See Bus. Integration Servs., Inc. v. AT&T Corp.*, No. 06 CIV. 1863 (JGK), 2008 WL 318343, at *2 (S.D.N.Y. Feb. 4, 2008). Here, to the contrary, the record is clear that Ms. Giuffre did ***not*** authorize any waiver of her attorney-client privilege. *See* McCawley Decl., Ex. 13, affidavit of Ms. Giuffre (Ms. Giuffre did not authorize any waiver). Accordingly, under Florida law, Cassell and Edwards' actions did not waive Ms. Giuffre's privilege.[14]

The main examples Defendant offers in support of her waiver argument come from a summary judgment motion that Cassell and Edwards filed. *See* Mot. to Compel at 16. Of

[14] For the sake of completeness, it is worth noting that both federal law and New York state law likewise require that a client waive attorney-client privilege. *See, e.g., Schnell v. Schnall*, 550 F. Supp. 650, 653 (S.D.N.Y.1982) (no waiver of attorney-client privilege where attorney testified at hearing without presence or authorization of client); N.Y. C.P.L.R. 4503 (McKinney) ("Unless the client waives the privilege, an attorney . . . shall not disclose, or be allowed to disclose such communication, nor shall the client be compelled to disclose such communication, in any action, disciplinary trial or hearing, or administrative action, proceeding or hearing conducted by or on behalf of any state, municipal or local governmental agency or by the legislature or any committee or body thereof.").

course, that motion was filed on their behalf – not Ms. Giuffre's. To be sure, that motion contained (among other supporting information) a sworn affidavit from Ms. Giuffre.[15] But the routine step of submitting an affidavit is not a waiver of attorney-client protections, as discussed at greater length in Part II.D., *infra*. And, in any event, Defendant does not include that affidavit among her supporting materials to her motion, much less explain how the recitation of factual information in that affidavit constitutes a waiver by Ms. Giuffre with respect to communications with her attorneys. *See Koon v. State*, 463 So.2d 201, 203-04 (Fla. 1985) (no waiver when the client merely discloses facts which were part of the communication with the client's attorney). Ms. Giuffre has not waived ***her*** privilege.

C. Ms. Giuffre's Confidential Communications With Her Attorneys Were Never "At Issue" in the Florida Dershowitz Litigation.

Defendant's argument that Ms. Giuffre's attorney-client privilege has been waived under the "at issue" doctrine also fails under Florida law because her confidential communications were never at issue in the Dershowitz litigation.

Florida law on when confidential attorney-client communications are at issue comes from the Florida Supreme Court's decision in *Savino v. Luciano*, 92 So.2d 817 (Fla. 1957). There, the Florida Supreme Court announced the test for determining whether confidential communications were "at issue" as whether a claim or defense would "***necessarily require*** that the privileged matter be offered in evidence." *Id.* at 819 (emphasis added); *see also Diaz–Verson v. Walbridge Aldinger Co.*, 54 So.3d 1007, 1011 (Fla. 2d DCA 2010). More recent decisions from Florida

[15] The "evidentiary support" for the summary judgment motion rested on 16 additional exhibits, including such obviously non-privileged materials as a Palm Beach Police Department report; flight logs from Epstein's jet; excerpts from deposition testimony of Epstein, Juan Alessi, Alfredo Rodriquez, and Alan Dershowitz; photographs; and Epstein's telephone directory. *See* Menninger Dec., Ex. E at 28.

have emphasized that *Savino* does not mean that a party waives attorney-client privilege merely by bringing or defending a lawsuit. *Coates v. Akerman, Senterfitt & Edison, P.A.*, 940 So.2d 504 (Fla. 2d DCA 2006). Instead, waiver occurs only when a party "must necessarily use the privilege information to establish its claim or defense." *Id.* at 510-11 (emphasis added). Most recently, in *Genovese v. Provident Life and Accident Ins. Co.*, 74 So. 3d 1064, 1069 (Fla. 2011), *as revised on denial of reh'g* (Nov. 10, 2011), the Florida Supreme Court cited both *Coates* and *Savino* to hold that the "at issue" doctrine allows discovery of privileged material only when the holder of the privilege – the client – raises the advice of counsel as a claim or defense in the action and the communication is essential to the claim or defense. *Id*.

Under these restrictive standards, Ms. Giuffre's communications were never at issue in her attorneys' personal, defamation case against Dershowitz. Consider, for example, a typical allegation Cassell and Edwards' complaint:

> Immediately following the filing of what Defendant, Dershowitz, knew to be an entirely proper and well-founded pleading, Dershowitz initiated a massive public media assault on the reputation and character of Bradley J. Edwards and Paul G. Cassell accusing them of intentionally lying in their filing, of having leveled knowingly false accusations against the Defendant, Dershowitz, without ever conducting any investigation of the credibility of the accusations, and of having acted unethically to the extent that their willful misconduct warranted and required disbarment.

McCawley Decl., Ex. 5 at 4 (¶ 17). As is immediately apparent, this allegation does not ***require*** an examination of Ms. Giuffre's confidential communications with her attorneys. Instead, it requires an assessment of Dershowitz's state of mind with regard to his knowledge of the information that Cassell and Edwards had to support the filing of the allegations. And, as supporting exhibits to the pleadings Cassell and Edwards filed made clear, the adequacy of their investigation could be readily established from many sources that did not have any connection to what Ms. Giuffre may or may not have told them in confidence. *See, e.g.,* McCawley Decl., Ex.

3 at 26-38 (recounting information supporting allegations against Dershowitz, such as sworn testimony from household employees and invocations of the Fifth Amendment by Epstein and his co-conspirators).

To be sure, Dershowitz tried to make an argument that Ms. Giuffre's communications with her attorneys might have some arguable relevance to the case. But Judge Lynch rejected that very argument – and quite properly so. Relevance is insufficient to waive privilege under Florida law. *Guarantee Ins*, 300 F.R.D. at 594 (citing *Coyne v. Schwartz, Gold, Cohen, Zakarin & Kotler, P.A.*, 715 So.2d 1021, 1022 (Fla. 4th DCA 1998)). A client does not waive the attorney-client privilege simply because her credibility could be impeached by communications with her former attorney. *See Jenney v. Airdata Wiman, Inc.,* 846 So.2d 664, 668 (Fla. 2d DCA 2003). Accordingly, under Florida law, Ms. Giuffre's confidential communications with her attorneys were never at issue in the Florida litigation.[16]

D. Defendant Has Not Met the Other Requirements for Showing Waiver of Attorney-Client Privilege.

For the foregoing reasons, Defendant has failed to make the required showing for an "at issue" waiver of attorney-client privilege. But even more fundamentally, Defendant has failed to establish other elements necessary to find a waiver of attorney-client privilege. Defendant repeatedly refers to routine litigation actions, such as the filing of in-court affidavits, as a basis for finding some kind of waiver of privilege. *See* Mot. to Compel at 16. But it is obvious that such actions do not waive attorney-client protection. Litigation requires some limited communication to third parties — including the court and opposing counsel — of information learned in the course of the attorney-client relationship. Therefore, Florida law recognizes an

[16] The same result would obtain under New York state law. *See, e.g., Am. Re-Ins. Co. v. U.S. Fid. & Guar. Co.*, 40 A.D.3d 486, 492, 837 N.Y.S.2d 616, 622 (2007) (the at-issue "doctrine applies where a party, through its affirmative acts, places privileged material at issue and has selectively disclosed the advice").

absolute privilege to protect attorneys' statements made in communications that are preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of, a judicial proceeding. Fla. Stat. Ann. § 90.502(2); *see also McCullough v. Kubiak*, 158 So. 3d 739, 740 (Fla. 4th DCA, 2015). A waiver of the attorney-client privilege occurs only if the client voluntarily discloses in court the substance of a ***communication with her attorney.*** *See, e.g., Delap v. State*, 440 So.2d 1242, 1247 (Fla. 1983) (criminal defendant sought to use in court favorably testimony from his investigator while blocking inquiry into other testimony). No waiver occurs when the client merely discloses facts which were part of the communication with the client's attorney. *See Koon v. State*, 463 So.2d 201, 203-04 (Fla. 1985); *see also Taylor v. State*, 855 So.2d 1, 26 n.29 (Fla. 2003). Thus, the privilege attaches to the communication with counsel, not to the underlying facts. *Brookings v. State*, 495 So.2d 135, 139 (Fla. 1986); *see also Lynch v. State*, 2 So.3d 47, 66 (Fla. 2008).[17] As a result, allegations that Giuffre disclosed to third parties the same facts that she may have related to Cassell and Edwards, without any evidence that she disclosed the substance of her confidential consultation with Edwards and Cassell, cannot overcome her privilege.[18]

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. Defendant has not cited any authority either in Florida (or elsewhere) to

[17] New York state privilege law is to the same effect. *See, e.g., Niesig v. Team I,* 76 N.Y.2d 363, 372, 558 N.E.2d 1030, 1034 (1990) (because "the privilege applies only to confidential communications with counsel (*see,* CPLR 4503), it does not immunize the underlying factual information . . . from disclosure to an adversary").

[18] As an illustration, Defendant notes that in 2011 Ms. Giuffre gave an interview to the *Daily Mail.* Mot. to Compel at 15. But Defendant does not explain how that interview disclosed any attorney-client communications. And because any such disclosures would have been extrajudicial, they would be narrowly construed. *In re von Bulow*, 828 F.2d 94, 103 (2d Cir. 1987).

support his extreme assertion that Ms. Giuffre waived her privilege simply by allowing an affidavit to be filed in a court proceeding.

Defendant also claims Cassell, at his deposition in the Dershowitz case, waived attorney-client privilege by discussing factual information related to his investigation of Ms. Giuffre's allegations (for example, flight log information). Cassell's deposition testimony did not constitute a waiver of Ms. Giuffre's attorney-client privilege. Indeed, Ms. Giuffre's own separate attorney (undersigned counsel, Ms. McCawley, from the law firm of Boies, Schiller & Flexner, LLP) raised a standing objection to Cassell answering any question that would require divulging any attorney/client communications. McCawley Decl., Ex. 14, deposition excerpt of Paul Cassell, Volume I, dated Oct. 16, 2015, at 39:24 – 40:2 ("Virginia Roberts does not waive her attorney/client privilege with her lawyers, and they are not entitled to testify as to information that she intended to be confidential that she communicated to her lawyers.").[19] Defendant also argues that because Cassell said at some (unspecified) point in his deposition that he "knew" some (unidentified) information about Ms. Giuffre, he must have been revealing attorney-client communications. Mot. to Compel at 17 ("Of course, the information [Cassell and Edwards] "knew" about [Ms. Giuffre was a direct result of her attorney-client communications with them . . . ."). But Cassell knew a vast amount of information about Ms. Giuffre from the factual record in the case, such as the flight logs demonstrating flights that she took with Epstein and Defendant on Epstein's jet. Defendant's logic is simply incorrect.

E. Ms. Giuffre Will Not Seek to Use Confidential Attorney-Client Communications in her Action Here.

For all the reasons just explained, Ms. Giuffre has not waived her attorney-client privilege through events that occurred in the Dershowitz case. But one additional point bears

[19] In her "excerpts" from Cassell's deposition, Defendant has not included this portion. *See* Menninger Dec., Ex. L.

emphasis: Defendant attempts to argue that the trial *in this case* will somehow be unfair if she does not receive access to confidential attorney-client communications that Ms. Giuffre had with her lawyers earlier. Mot. to Compel at 20-21. But regardless of what may or may not have been at issue in the Dershowitz case, confidential communications will not be at issue here. For example, Defendant writes that "[i]t would be prejudicial for [Ms. Giuffre] to be able to support her claim in this case that she is not a liar using her attorney's testimony . . . ." *Id.* at 21. To be clear, Ms. Giuffre has no intention of calling, for example, Cassell and Edwards to testify at trial in an attempt to support her claims. Thus, this will not be a case where it will be "misleading to the court or any jury to hear testimony from [Ms. Giuffre's] counsel about all the factual basis, work product and thought process on which they relied in making the allegations in the Joinder Motion," Mot. to Compel at 22, for the simple reason that that Ms. Giuffre's counsel will not be witnesses in the case. Nor will Ms. Giuffre be presenting a "state of mind" defense that might require a more extensive inquiry into attorney-client communications. *See In re Cty. of Erie*, 546 F.3d 222, 229 (2d Cir. 2008) (noting absence of good faith or state of mind issues as a reason for not finding "at issue" waiver of privilege); *Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP*, 62 A.D.3d 581, 582, 880 N.Y.S.2d 617, 618-20 (N.Y. App. Div. 2009) (finding no waiver where plaintiff disavowed any intention to use confidential attorney-client communications; relevance alone insufficient to put privileged materials "at issue" because, "if that were the case, a privilege would have little effect").

To be sure, at trial Ms. Giuffre will present factual testimony supporting her version of events – just as, no doubt, Defendant will try to present testimony supporting her version. But such testimony (from both sides) does not create any waiver of attorney-client privilege. Instead, such testimony is simply the presentation of competing facts, from which the jury can decide

who is telling the truth. None of this creates any need for Defendant to force Ms. Giuffre to reveal confidential communications.

II. MS. GIUFFRE DID NOT WAIVE HER ATTORNEY-CLIENT PRIVILEGE BY DENYING FABRICATED EVICENCE DURING HER DEPOSITION.

Defendant spends significant time arguing that Ms. Giuffre's answers to several deposition questions about the *absence* of any communications from Cassell and Edwards that she provide false information constituted a waiver of attorney client privilege. Mot. to Compel at 11 (arguing that "never" answer to the question "Has Brad [Edwards] ever pressured you or encouraged you in any way or under any circumstances at any time to provide false information about Jeffrey Epstein" constituted a waiver of attorney-client privilege). While the arguments above are sufficient to dispose of this claim, it is worth emphasizing several additional points about this specific testimony.

First, disclosing the *absence* of communication is not the same as exposing any communication. It is a fundamental requirement of a waiver argument that a communication be exposed, *see* Fla. Stat. Ann. § 90.502 (extending privilege to a "communication between lawyer and client"), not the absence of such a communication. *See Montanez v. Publix Super Markets, Inc.,* 135 So. 3d 510, 512-13 (Fla. Dist. Ct. App. 2014) (rejecting argument that client waived her attorney-client privilege by stating that an interrogatory answer was not "her" answer because this did not disclose the substance of her communications with her attorney). *Cf. Mitchell v. Superior Court*, 37 Cal. 3d 591, 602, 691 P.2d 642, 647 (Cal. 1984) ("Relevant case law makes it clear that mere disclosure of the fact that a communication between client and attorney had occurred does *not* amount to disclosure of the specific content of that communication, and as such does not necessarily constitute a waiver of the privilege.").

Second, the questions highlighted by Defendant asked Ms. Giuffre whether she had ever communicated with her attorneys Cassell and Edwards for purposes of committing a crime or fraud. *See* Mot. to Compel at 11 (recounting questions). If such a communication involving perjury had existed, it would not have been covered by the attorney-client privilege in the first instance because it would have involved an on-going crime or fraud. *See* Fla. Stat. Ann. § 90.502(4) ("There is no lawyer-client privilege under this section when . . . [t]he services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud.").[20] Answering those questions by denying the existence of a crime or fraud accordingly did not constitute waiver of confidentiality over any otherwise-protected communication. Indeed, any other conclusion would essentially abolish the attorney-client privilege. A party could simply accuse the opposing side of fabricating evidence and, when that accusation was denied, argue that attorney-client privilege had been waived. This is not the law.

Finally, it is important to note that throughout her deposition, Ms. Giuffre's attorney strenuously objected to any effort by Dershowitz to obtain attorney-client information. *See* McCawley Decl., Exhibit 11, Composite Exhibit of Deposition Excerpts from the Deposition of Virginia Giuffre at 131-32; 173-74; 183; 200-12.[21] Clearly, at her deposition, Ms. Giuffre did not voluntarily waive any attorney-client privilege she held.

[20] Again, for sake of completeness, it is worth noting that federal and New York state law also contain a crime-fraud exception to the attorney client privilege. *HSH Nordbank AG New York Branch v. Swerdlow*, 259 F.R.D. 64, 73 (S.D.N.Y. 2009); *Ulico Cas. Co. v. Wilson, Elser, Moskowitz, Edelman & Dicker*, 1 A.D.3d 223, 224, 767 N.Y.S.2d 228 (2003) (attorney-client privilege "may not be invoked where it involves client communications that may have been in furtherance of a fraudulent scheme, an alleged breach of fiduciary duty or an accusation of some other wrongful conduct").

[21] Once again, these objections are not included in Defendant's excerpts from the deposition.

III. EDWARDS AND CASSELL HAVE NOT WAIVED WORK-PRODUCT PROTECTION AND MAXWELL HAS NOT DEMONSTRATED NEED TO PENETRATE THE PROTECTION.

A. Work Product Protection Has Not Been Waived.

For many of the same reasons that Ms. Giuffre has not waived her attorney-client privilege, the work-product protection has not been waived. Fed. R. Evid. 502's protections against waiver apply not only to the attorney-client privilege but also to the work-product doctrine. On the facts of this case, Rule 502 thus extends all work-product protections that exist "under the law of the state where the disclosure occurred," Fed. R. Evid. 502(c)(2) – i.e., Florida law – as well as the protection that exists under federal law, Fed. R. Evid. 502(c)(1).

Florida law provides that work-product protections extend to "documents and tangible things otherwise discoverable" if a party prepared those items "in anticipation of litigation or for trial." Fla. R. Civ. P. 1.280(b)(3). The rationale supporting the work-product doctrine is that one party is not entitled to prepare his case through the investigative work product of his adversary where the same or similar information is available through ordinary investigative techniques and discovery procedures. *Universal City Development Partners, Ltd. v. Pupillo*, 54 So.3d 612, 614 (Fla. 5th DCA, 2011). The work-product of the litigant, his attorney or agent, cannot be examined, absent rare and exceptional circumstances. *Surf Drugs, Inc. v. Vermette*, 236 So.2d 108, 112 (Fla. 1970).

In Florida (as elsewhere), a party "can make a limited waiver of its . . . work product privilege." *Paradise Divers, Inc. v. Upmal*, 943 So. 2d 812, 814 (Fla. Dist. Ct. App. 2006). A waiver by disclosure only includes "other unrevealed communications only to the extent that they are relevant to the communication already disclosed." *Id.* (*citing Eastern Air Lines, Inc. v. Gellert*, 431 So.2d 329, 332 (Fla. 3d DCA 1983)). Waiver by disclosure does "not mean . . . that

voluntary disclosure of confidential information effectively waives the privilege as to all conversations, or the whole breadth of discussion which may have taken place." *Procacci v. Seitlin*, 497 So. 2d 969, 969-70 (Fla. Dist. Ct. App. 1986) (*citing Goldman, Sachs & Co. v. Blondis,* 412 F.Supp. 286, 288 (N.D.Ill.1976)). Instead, waiver by disclosure is confined to "that specific subject during that particular conversation." *Procacci*, 497 So. 2d at 970 (*quoting Perrignon v. Bergen Brunswig Corp.*, 77 F.R.D. 455, 461 (N.D. Cal.1978)).[22]

As with her attorney-client privilege argument, Defendant has not even cited Florida law on waiver of work-product protection, much less explained how she meets its demanding requirements. Moreover, the illustrations she provides do not prove any general waiver of work-product protection. For example, Defendant relies on the claim that Cassell and Edwards have waived work-product protection by disclosing a transcript of a portion of a 2011 telephone interview with Ms. Giuffre by attorneys Jack Scarola and Brad Edwards. But that recorded interview was never a confidential communication between Mr. Giuffre and the lawyers, but rather (as the transcript of the call itself makes clear) a communication that could be presented ***"to any jury that might ultimately have to hear these facts.***" McCawley Decl., Ex. 15 at 1, transcript of Scarola/Edwards interview on April 7, 2011 (emphasis added). In other words, the recorded call was simply the functional equivalent of an affidavit – and affidavits are routinely disclosed with waiving work product protections, under the law of Florida and elsewhere.

Defendant also argues that Cassell and Edwards waived work-product protection by filing a summary judgment motion in the Dershowitz case which contained supporting exhibits (e.g., flight logs, sworn testimony by third-party witnesses, and other evidence). Mot. to Compel

[22] New York state law is to the same effect. *See Charter One Bank, F.S.B. v. Midtown Rochester, L.L.C.*, 191 Misc. 2d 154, 159, 738 N.Y.S.2d 179, 186 (Sup. Ct. 2002) (" The disclosure of a document protected by the work-product rule does not result in a waiver of the privilege as to other documents.").

at 16. But providing information in support of a summary judgment motion is a routine step that attorneys take every day. While the materials produced are obviously not subject to work product protection, other materials and communications do not somehow become subject to discovery. *Paradise Divers, Inc.*, 943 So. 2d at 814.

B. Defendant Has Not Proven "Need" to Penetrate Work-Product Protection.

Defendant's argument on work product protection also simply assumes that it is the same as the attorney-client privilege and can be waived under an "at issue theory." But the "at issue" legal theory Defendant relies on to argue (incorrectly) that attorney-client privilege has been waived applies only to that privilege. The work product doctrine is quite distinct from attorney-client privilege, and application of the privileges and exceptions to them differ. *See West Bend Mutual Ins. Co*. v. *Higgins,* 9 So.3d 655, 656 (Fla. 5th DCA 2009); *Genovese v. Provident Life & Accident Ins. Co.*, 74 So. 3d 1064, 1068 (Fla. 2011), *as revised on denial of reh'g* (2011). The function of the work product doctrine is to protect counsel's mental impressions. *West Bend Mutual*, 9 So.3d at 656. To pierce the privilege, Defendant must show "that the substantial equivalent of the material cannot be obtained by other means." *Southern Bell Tel. & Tel. Co. v. Deason,* 632 So.2d 1377, 1385 (Fla.1994). Defendant has not even identified any specific work-product she claims to need, much less shown why she cannot get the underlying information from other sources.

Under the law of Florida (and elsewhere[23]), to establish "need," a party must present testimony or evidence demonstrating the material requested is critical to the theory of the

[23] Both federal and New York state law extend work product protections similar to those found in Florida law. *See, e.g., Hickman v. Taylor,* 329 U.S. 495, 511 (1947); N.Y. Civ. Practice Law & Rules § 3101(c) (McKinney). Indeed, New York state law may go even further than Florida's and extends "absolute" work-product protection. *See Charter One Bank, F.S.B. v. Midtown Rochester, L.L.C.*, 191 Misc. 2d 154, 159, 738 N.Y.S.2d 179, 185 (Sup. Ct. 2002) (section 3101(c) "affords absolute immunity from disclosure of attorney's work product.").

requestor's case, or to some significant aspect of the case. *Zirkelbach Const. Inc. v. Rajan*, 93 So.3d 1124, 1130 (Fla. 2d DCA 2012). "[W]ell established in Florida is the principle that the unsworn analysis of a party's attorney and/or a bare assertion of need and undue hardship to obtain the substantial equivalent [is] insufficient to satisfy this showing." *Butler v. Harter*, 152 So.3d 705, 712 (Fla. 1st DCA, 2014); *see Procter & Gamble Co. v. Swilley*, 462 So.2d 1188, 1194 (Fla. 1st DCA 1985); *State v. T.A.*, 528 So.2d 974, 975 (Fla. 2d DCA, 1988) ("[R]epresentations by counsel not made under oath and not subject to cross-examination, absent a stipulation, are not evidence). Further, Florida courts have held that "the showing of need encompasses a showing of diligence by the party seeking discovery of another party's work product." *Butler v. Harter*, 152 So.3d 705, 712 (Fla. 1st DCA, 2014); *see also CSX Transp., Inc. v. Carpenter*, 725 So.2d 434, 435 (Fla. 2d DCA 1999) (quashing order granting motion to compel discovery because the record did not contain affidavits supporting plaintiff's argument that it was unable to obtain the substantially equivalent information by other means without undue hardship); *Falco v. N. Shore Labs. Corp.,* 866 So.2d 1255, 1257 (Fla. 1st DCA 2004) (holding that need and undue hardship "must be demonstrated by affidavit or sworn testimony"); *N. Broward Hosp. Dist. v. Button*, 592 So.2d 367, 368 (Fla. 4th DCA 1992), ("[T]he unsworn assertions of plaintiff's counsel were insufficient to constitute a showing of need and undue hardship."), *called into doubt on other grounds as stated in Columbia Hosp. Corp. of S. Broward v. Fain*, 16 So.3d 236 (Fla. 4th DCA 2009).

Here, Defendant has ample information from which she can present her case. At the core of this case is whether Ms. Giuffre "lied" when she said that the Defendant recruited her to be sexually abused by Jeffrey Epstein. Defendant can, of course, testify to her interactions with Ms. Giuffre, as well as call other witnesses regarding the circumstances of those interactions.

Defendant can also get information from her close friend, Epstein, about the circumstances of the interactions. Defendant and Epstein are not only good friends but they have a "common interest agreement" that facilitates transfer of information between the two of them. Finally, to make her showing that she is unable to obtain "equivalent information" from other sources, Defendant would have to explain in detail what other steps she has taken to secure information from other sources, including not only Epstein but other witnesses present at Epstein's mansion. Having failed to do any of this, Defendant has not made a sufficient showing to obtain work-product information. *Pupillo*, 54 So.3d at 614.

IV. COMMUNICATIONS WITH ATTORNEY JACK SCAROLA ARE COVERED BY A JOINT DEFENSE AGREEMENT AND ARE THUS PROTECTED BY ATTORNEY-CLIENT AND WORK-PRODUCTION PROTECTION.

As a tag-along argument at the end of her motion, Defendant argues that Ms. Giuffre has not established the existence of a common interest or joint defense agreement that embraces Jack Scarola, the attorney for Cassell and Edwards in the Dershowitz litigation. Mot. to Compel at 23-24. Disclosure of that agreement involved notice to the parties to the agreement. Now that appropriate notice has been provided, the agreement can be – and has been – disclosed. *See* McCawley Decl., Ex. 16, common interest agreement. In view of the existence of the valid agreement, it is clear that the referenced communications involving Scarola are protected. *See, e.g.*, *Guiffre v. Maxwell,* No. 15 CIV. 7433 (RWS), 2016 WL 1756918, at *6 (S.D.N.Y. May 2, 2016) (noting common interest agreement protection) (*citing GUS Consulting GMBH v. Chadbourne & Parke LLP*, 20 Misc. 3d 539, 542, 858 N.Y.S.2d 591, 593 (Sup. Ct. 2008)).

CONCLUSION

Defendant's motion to compel should be denied in its entirety.

Dated: June 1, 2016

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of June, 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 this day on the individuals identified below via transmission of Notices of Electronic Filing generated by CM/ECF.

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GIUFFRE

VS.

MAXWELL

Deposition

VIRGINIA GIUFFRE

05/03/2016

Agren Blando Court Reporting & Video, Inc.
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303-296-0017

A I believe this is when I was hoping to join the CVRA case.

Q All right. And do you know when this document was filed?

And actually, just to be clear, about halfway there's actually a second document that was filed. So this is a composite exhibit. Let me be very clear.

So after page 14 -- I'm sorry, 13, there's a second document that is styled Jane Doe #3 and Jane Doe #4's Corrected Motion Pursuant to Rule 21 for Joinder In Action.

Do you see that?

A Did you say page 14?

Q It is on the 14th page of this document.

Do you see that?

A I do.

Q And so this composite Exhibit 2 has both a motion and a corrected motion.

Do you see that?

A Yes.

Q And were both of those pleadings authorized by you to be filed?

A Yes.

Q In other words, you wanted to join the

CVRA action in or about December 30th, 2014, correct?

A I -- I'm not aware of the exact dates. There's no dates on this. But I did try to join the motion, yes.

Q All right. If you can look at the top line of the document.

A Yes.

Q Does it say, Entered on FLSD --

A Oh, it does, too, I'm sorry, yes.

Q That's all right. So does that refresh your memory as to about when you first sought to join the CVRA action?

A Yes.

Q December 30th, 2014, correct?

A Yes.

Q And the corrected motion was filed a few days later, correct?

A Yes, correct.

Q If I could turn to Defendant's Exhibit 3, which was January 21st.

(Exhibit 3 marked.)

MR. EDWARDS: Thank you.

Q (BY MS. MENNINGER) Do you recognize this document?

A Yes, I do.

physical features of Ghislaine Maxwell?

A I can tell you that she had very large natural breasts. I can tell you that her pubic hair was dark brown, nearly black. I don't remember any specific birthmarks or moles that I could point out that would be relevant.

Q Any scar?

A I don't remember any scars.

Q Any tattoos?

A No tattoos.

Q When did you next go to the El Brillo house?

A I believe it would have been the next day.

Q You believe it would have been or was it?

MR. EDWARDS: Form.

A I know that it was consecutive, that I continued to go there after my first -- the first time that the abuse took place there. It was consecutive that I was there, I believe, over the next course of weeks.

Q (BY MS. MENNINGER) What day of the week was the first time you went?

A I don't know.

Q Do you know whether you went the very next day or not?

A I believe I did.

Q All right. How did you get there the very next day?

MR. EDWARDS: Form.

A I believe my dad dropped me off again.

Q (BY MS. MENNINGER) When you say you believe, do you recall him doing that or are you guessing?

A I don't -- well, this is how I figure this. I don't remember Ghislaine picking me up from Mar-a-Lago. I didn't have my own car. So the only way I could have really gotten there would have been my dad picking me up -- I mean, sorry, dropping me off.

Q Do you have a distinct recollection of your father dropping you off there more than one day in a row?

A Yes.

Q You do not recall the car he was driving?

A Like I said, he always drove trucks. That's as good as I can get.

Q And so -- and you worked on weekends as well at Mar-a-Lago or no?

A No.

Q So the second day would have had to be

A I wouldn't say directly.

Q How --

A I'd say I stayed with my parents for -- like, I think I finished school at Crestwood. So I would have been in, I don't know, I guess eighth grade, finished eighth grade. And then -- I don't know. I really don't know. Around eighth grade.

Q You went to Growing Together?

A I think -- I think it was then.

Q And how many years did you live at Growing Together?

A Over a year.

Q Were you ever in foster care?

A What Growing Together was, was like a group home that sent you away to foster parents every night.

Q So you lived in other people's homes during the period of time you were assigned to Growing Together?

A Well, you stayed at Growing Together during the day and then at night you get sent home with parents.

Q Did you go to school while you were at Growing Together?

A Yeah, they offer education there.

Q So the education was at Growing Together?

A Yeah.

Q You did not attend a Palm Beach County --

A I did, but you had to earn your levels up to be able to go outside. So I don't remember what level you have to get up to, to go out to another school. I think there was like seven levels or something. And you had to make it to, like, level 4 to be able to go to outside school.

Q So for some period of time you were assigned to Growing Together and you were going to school at Growing Together. And for some period of time you were going to other schools and coming back to Growing Together?

A Correct.

Q And then when you came back to Growing Together, you were sent to spend the night at a family's home?

A Yes.

Q So you never slept at Growing Together?

A No.

Q Did you live -- other than living at or staying at Growing Together during the day and sleeping at these other homes at night, is there anywhere else that you recall living in the period

a 3. I think it's [redacted]. I really can't make out the telephone number.

Q Okay. Do you see Relationship? Can you read that?

A Friend.

Q Okay. Do you see just below that there's a line that says number 21?

A Do not stop -- sorry, Do not sign application until requested to do so by administrating an oath.

Q Okay.

A Applicant's signature age 13 or older.

Q Oh, it's by the signature line?

A Yeah.

Q And that's your signature?

A Yes.

Q All right. And this is the document that you recall filling out for your first passport?

A I don't recall doing it, but yes, it's in my handwriting and it's got all of my information on it.

Q Okay. And on line -- box 23 it's got your driver's license checked off, right?

A July 23. Yeah, I really can't make out

And when they say massage, that means erotic, okay? That's their term for it. I think there are plenty of other witnesses that can attest to what massage actually means.

And I'm telling you that Ghislaine told me to go to Glenn Dubin and give him a massage, which means sex.

Q Okay. So Glenn -- Ghislaine Maxwell told you to go give a massage to Glenn Dubin?

A Correct.

Q That's your testimony?

A That is my testimony.

Q All right. Ghislaine Maxwell told you to go give a massage to [redacted], correct?

A Correct.

Q Ghislaine Maxwell told you to give a massage to Prince Andrew, correct?

A Correct.

Q Ghislaine Maxwell told you to give a massage to Bill Richardson, correct?

A Correct.

Q When did Ghislaine Maxwell tell you to give a massage to Bill Richardson?

A I don't know dates.

Q Where were you?

A When it happened?

Q When Ghislaine Maxwell used the words, Go give a massage to Bill Richardson, where were you?

MR. EDWARDS: Object to the form. Mischaracterizes her testimony.

A I can't tell you where we were. I know where I was sent to. I don't know where we were when she told me to do that.

Q (BY MS. MENNINGER) Where were you sent to --

A New Mexico.

Q -- by Ghislaine Maxwell?

MR. EDWARDS: Object to the form. Mischaracterizes her testimony again.

A Are you smiling at me because --

Q (BY MS. MENNINGER) No, I'm asking you to answer the question.

A I have answered the question. I was sent to New Mexico.

Q Okay. Where were you sent from?

A I already answered that. I don't know where I was sent from.

Q Okay.

A I was flying everywhere with these people.

Q Where were you sent by Ghislaine Maxwell

to have sex with Jean Luc Brunel?

MR. EDWARDS: Object to the form. Mischaracterized her testimony.

A Many places.

Q (BY MS. MENNINGER) Ghislaine Maxwell sent you to many places to have sex with Jean Luc Brunel?

MR. EDWARDS: Object to the form.

A It happened at many places, yes.

Q (BY MS. MENNINGER) You had sex with Jean Luc Brunel at many places is what you're saying, correct?

A I was sent to Jean Luc Brunel at many places to have sex with him.

Q When did Ghislaine Maxwell send you to a place to have sex with Jean Luc Brunel?

A You are asking --

MR. EDWARDS: Form.

A -- me to answer the impossible.

Q (BY MS. MENNINGER) All right. When did Ghislaine Maxwell send you to have sex with the owner of a large hotel chain?

MR. EDWARDS: Object to the form. Mischaracterization.

A I'm going to keep answering the questions the same way that I keep answering them. I don't

know where it was when she said to go do this.

Q (BY MS. MENNINGER) Okay. Where were you sent to have sex with the owner of a large hotel chain by Ghislaine Maxwell?

MR. EDWARDS: Object to the form.

A I believe that was one time in France.

Q (BY MS. MENNINGER) Which time in France?

A I believe it was around the same time that Naomi Campbell had a birthday party.

Q Where did you have sex with the owner of a large hotel chain in France around the time of Naomi Campbell's birthday party?

A In his own cabana townhouse thing. It was part of a hotel, but I wouldn't call it a hotel.

Jeffrey was staying there. Ghislaine was staying there. Emmy was staying there. I was staying there. This other guy was staying there. I don't know his name.

I was instructed by Ghislaine to go and give him an erotic massage.

Q She used the words erotic massage?

A No, that's my word. The word massage is what they would use. That's their code word.

Q Was she in the room when you gave this erotic massage to the owner of a large hotel chain?

A No, she was not in the room. She was in another cabana.

Q And other than telling you to go give the owner of this large hotel chain a massage, do you remember any other words she used to you to direct you in what you should do?

A Not at the time, no.

Q Where did -- where were you and where was Ms. Maxwell when she directed you to go have sex with Marvin Minsky?

MR. EDWARDS: Object to the form.

A I don't know.

Q (BY MS. MENNINGER) Where did you go to have sex with Marvin Minsky?

A I believe it was the U.S. Virgin Islands, Jeff's -- sorry, Jeffrey Epstein's island in the U.S. Virgin Islands.

Q And when was that?

A I don't know.

Q Do you have any time of year?

A No.

Q Do you know how old you were?

A No.

Q Other than Glenn Dubin, [redacted], Prince Andrew, Jean Luc Brunel, Bill Richardson,

another prince, the large hotel chain owner and Marvin Minsky, is there anyone else that Ghislaine Maxwell directed you to go have sex with?

A I am definitely sure there is. But can I remember everybody's name? No.

Q Okay. Can you remember anything else about them?

A Look, I've given you what I know right now. I'm sorry. This is very hard for me and very frustrating to have to go over this. I don't -- I don't recall all of the people. There was a large amount of people that I was sent to.

Q Do you have any notes of all these people that you were sent to?

A No, I don't.

Q Where are your notes?

A I burned them.

Q When did you burn them?

A In a bonfire when I lived at Titusville because I was sick of going through this shit.

Q Did you have lawyers who were representing you at the time you built a bonfire and burned these notes?

A I've been represented for a long time, but it was not under the instruction of my lawyers to do

this. My husband and I were pretty spiritual people and we believed that these memories were worth burning.

Q So you burned notes of the men with whom you had sex while you were represented by counsel in litigation, correct?

MR. EDWARDS: Object to the form.

A This wasn't anything that was a public document. This was my own private journal, and I didn't want it anymore. So we burned it.

Q (BY MS. MENNINGER) When did you write that journal?

A Just over time. I started writing it probably in, I don't know, I can't speculate, 2012, 2011.

Q So you did not write this journal at the time it happened?

A No.

Q You started writing this journal approximately a decade after you claim you finished being sexually trafficked, correct?

A Yes.

Q And you started writing a journal after you had a lawyer, correct?

A Correct.

Q Including Mr. Edwards, who is sitting right here, correct?

A Correct.

Q What did that journal look like?

A It was green.

Q And what else?

A It was just a spiral notebook.

Q Okay. And what did you put into that green spiral notebook?

A Bad memories. Things that I've gone through, lots of things, you know. I can't tell you. There was a lot of pages. It was over 300 pages in that book.

Q Did you ever show that book to your lawyers?

A No.

Q Did you show that book to anyone?

A My husband.

Q Did you show it to anyone else besides your husband?

A No.

Q Did you tear out pages and give them to Sharon Churcher?

A No, I wrote -- those pages that you're talking about, I wrote for her specifically. She

wanted to know about the Prince Andrew incident.

Q So that's a different piece of paper?

A Yeah, that's just random paper.

Q So you had a green spiral notebook that you began sometime in 2011 or 2012 in which you wrote down your recollections about what had happened to you, and you burned that in a bonfire in 2013.

Did I get that right?

A You got that right.

Q And do you have no other names of people to whom you claim Ghislaine Maxwell directed you to have sex, correct?

A At this time, no.

Q Is there any document that would refresh your recollection that you could look at?

A If you have a document you'd like to show me, I would be glad to look at it and tell you the names I recognize off of that.

Q I'm just asking you if there's a document you know of that has this list of names in it?

A Not in front of me, no.

Q Where is the original of the photograph that has been widely circulated in the press of you with Prince Andrew?

A I probably still have it. It's not in my

possession right now.

Q Where is it?

A Probably in some storage boxes.

Q Where?

A In Sydney.

Q Where in Sydney?

A At some family's house. We got the boxes shipped to Australia, and they were picked up off the porch by my nephews and brought to their house.

Q Which is where?

A In Sydney.

Q Where in Sydney?

A [redacted]

Q And who lives in that house?

A Well, it's owned by my mother-in-law and father-in-law, but my nephews live in the house.

Q What are their names?

A I'm not giving you the names of my nephews.

Q What's the address of the house?

A Why would you want that?

Q I want to know where the photograph is. I'm asking you where the photograph is. And you've just told me it's somewhere in [redacted]?

A Yes.

Q So where in [redacted] is the photograph located?

A If I can't 100 percent say that the photograph is there, it could be at my house that I presently live in. I'm not going to give you the address of my nephews' residence.

Q When is the last time you saw the photograph in person?

A When I packed and left America.

Q Colorado?

A Yes.

Q All right. So you had that photograph here with you in Colorado?

A Yes.

Q What's on the back of the photograph?

A I'm sorry?

Q Is there anything on the back of the photograph?

A There's like the date it was printed, but no writing or anything.

Q Okay. Does it say where it was printed?

A I don't believe so. I think it just -- I don't remember. I just remember there's a date on it.

Q Whose camera was it taken with?

A My little yellow Kodak camera.
Q Who took the picture?
A Jeffrey Epstein.
Q And where did you have it developed?
A I believe when I got back to America.
Q So where?
A I don't know.
Q Palm Beach?
A I don't know.
Q What is the date the photograph was printed?
A I believe it's in March 2001.
Q Okay.
A But that's just off of my photographic memory. I don't -- it could be different, but I think it's March 2001.
Q You have a photographic memory?
A I'm not saying I have a photographic memory. But if I'd look at the back of the photo and I remember what it says, I believe it was March 2001.
Q Did the photograph ever leave your possession for a while?
A I gave it to the FBI.
Q Okay. And when did you get it back?
A When they took copies of it.

Q When was that?

A 2011.

Q When they came to interview you?

A Yes.

Q So from 2011 until you left Colorado it was in your personal possession?

A Yes.

Q What other documents related to this case are in that, storage boxes in Australia?

MR. EDWARDS: Object to the form.

A Documents related to this case -- there -- I don't know. I really can't tell you. I mean, there's seven boxes full of Nerf guns, my kids' toys, photos. I don't know what other documents would be in there.

Q (BY MS. MENNINGER) Did anyone search those documents after you received discovery requests from us in this case?

A I haven't been able to obtain those boxes. I can't get them sent back up to me. It's going to cost me a large amount of money. And right now I'm trying to look after my family, so I'm not able to afford to get them up.

Q You live in Australia, correct?

A I do.

read it.

MS. MENNINGER: We're going off the record.

MR. EDWARDS: Yeah, that's fine. She'll read.

THE VIDEOGRAPHER: That concludes today's proceedings. We're off the record at 5:28.

(Proceedings concluded at 5:28 p.m.)

* * * * * * *

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 IN OPPOSITION TO
MOTION TO EXCEED PRESUMPTIVE TEN DEPOSITION LIMIT

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Defendant Ghislaine Maxwell ("Ms. Maxwell") files this Response in Opposition to Plaintiff's Motion to Exceed Presumptive Ten Deposition Limit, and states as follows:

INTRODUCTION

Despite having taken only three depositions to date, Plaintiff prematurely requests permission to exceed the presumptive ten deposition limit imposed by Fed. R. Civ. P. 30(a)(2)(A)(i) and to conduct 17 separate depositions, almost twice the limit. Without legal support, Plaintiff attempts to conflate the presumptive time limitation for each deposition of seven hours with a right to take a total of 70 hours of depositions. This is an absurd reading of the Federal Rules. The presumptive ten deposition limitation is an independent limitation, and speaks to the number of separate deponents, not deposition time. Indeed, the two independent limitations do not even appear in the same section of the rules.

The heart of Plaintiff's argument is that Ms. Maxwell inconveniently testified and denied Plaintiff's claims, rather than invoking the Fifth Amendment. This dashed Plaintiff's apparent hope to obtain an adverse inference, rather than actually having to prove her case against Ms. Maxwell. Instead, Ms. Maxwell fully testified for the entire 7 hours, responded to all questions posed to her,[1] and testified based on her actual knowledge. Ms. Maxwell's testimony simply bears no relevance to Plaintiff's request to take more than 10 depositions of non-party witnesses.

Conspicuously absent from Plaintiff's motion are (a) any actual information she believes these witnesses may provide which is neither cumulative nor duplicative of other information already disclosed in this case, (b) the fact the information can be obtained from other sources,

[1] Plaintiff flatly mis-represents to the Court that Ms. Maxwell "refused" to answer the questions posed to her, as the actual transcript amply demonstrates. Ms. Maxwell did not avoid any questions and answered all questions to the best of her recollection relating to alleged events 15 years ago. The majority of the bullet point "summary" of the matters about which Ms. Maxwell could not testify were based either on a lack of any personal knowledge or the fact that the events claimed by Plaintiff did not actually happen.

and (c) facts demonstrating that the burden and expense of the discovery is justified by the needs of this case. Indeed, she has not established that the testimony is even relevant to the actual issues in this matter. Plaintiff's inability to establish these factors requires denial of the motion.

I. PLAINTIFF'S REQUEST IS PREMATURE

First, the request to exceed the presumptive ten-deposition limit is premature. "[C]ourts generally will not grant leave to expand the number of depositions until the moving party has exhausted the ten depositions permitted as of right under Rule 30(a)(2)(A) or the number stipulated to by the opposing party." *Gen. Elec. Co. v. Indem. Ins. Co. of N. Am.*, No. 3:06-CV-232 (CFD), 2006 WL 1525970, at *2 (D. Conn. May 25, 2006).

This guideline makes sense because a "moving party must not only justify those depositions it wishes to take, but also the depositions it has already taken." *Id*. (*citing Barrow v. Greenville Indep. Sch. Dist.,* 202 F.R.D. 480, 482 (N.D.Tex. 2001)). This rule is in place because "a party could indirectly circumvent the cap on depositions by exhausting the maximum allotted number to those that she could not justify under the Rule 26(b)(2) standards, and then seek[ ] leave to exceed the limit in order to take depositions that she could substantiate." *Id.* at 483.

Here, Plaintiff seeks a pre-emptive determination that she should be permitted 17 depositions, almost twice the presumptive limit, yet her proposed depositions are not calculated to lead to admissible evidence in this case. By way of example, Plaintiff identifies Nadia Marcinkova, Sarah Kellen (a/k/a Sarah Kensignton or Sarah Vickers), and Jeffrey Epstein as alleged "co-conspirators" with each other. She requests the depositions of each. Plaintiff anticipates each will invoke the Fifth Amendment – in other words, she will not obtain any discoverable information from them.

Plaintiff makes a bizarre argument that somehow this testimony can be used to create an adverse inference against Ms. Maxwell,[2] despite the fact that Ms. Maxwell did not invoke the Fifth Amendment and she testified fully and answered every question posed to her with the only exception the irrelevant and harassing questions Plaintiff posed to her concerning her adult, consensual sexual activities. In other words, depositions of Marcincova, Kellen and Epstein would serve Plaintiff's goal to make a convoluted legal argument, not to actually seek discoverable information. In light of this, the "burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." *Atkinson v. Goord*, No. 01 CIV. 0761 LAKHBP, 2009 WL 890682, at *1 (S.D.N.Y. Apr. 2, 2009); Fed. R. Civ. P. 26(b)(1). If Plaintiff chooses to use her depositions in this manner, she risks utilizing three of her available 10 depositions for an illegitimate purpose. She should not be rewarded with a pre-emptive carte blanche in advance to take additional depositions.

II. THE PROPOSED DEPOSITIONS ARE CUMULATIVE, DUPLICATIVE, AND NOT RELEVANT TO THE CENTRAL ISSUES OF THE DISPUTE

Plaintiff has not met the requisite showing to permit in excess of 10 depositions. In *Sigala v. Spikouris*, 00 CV 0983(ILG), 2002 WL 721078 at *3 (E.D.N.Y. Mar. 7, 2002), the Court set forth the general principles relevant to a party's application to conduct more than ten depositions:

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[2] Invocation of the Fifth Amendment by a third party witness cannot be used to create an adverse inference against a party in a civil action. *See United States v. Dist. Council of New York City & Vicinity of United Bhd. of Carpenters & Joiners of Am.*, No. 90 CIV. 5722 (CSH), 1993 WL 159959, at *5 (S.D.N.Y. May 12, 1993) ("the general rule [is] that an individual's claim of Fifth Amendment protection is personal, and does not give rise to adverse inferences against others."); *Brenner v. World Boxing Council,* 675 F.2d 445, 454 n. 7 (2d Cir.), *cert denied,* 459 U.S. 835 (1982) ("Furthermore, since King was a non-party witness, no adverse inference against appellees could have been drawn from his refusal to testify.").

> The Federal Rules presumptively limit the number of depositions that each side may conduct to ten. *See* Fed.R.Civ.P. 30(a)(2) (A) ("A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if ... a proposed deposition would result in more than ten depositions being taken ...."); *accord Universal City Studios v. Reimerdes,*104 F.Supp.2d 334, 342 (S.D.N.Y.2000); *Landry v. St. James Parish Sch. Bd.,* No. Civ. A 99-1438, 2000 WL 1741886, at *2 (E.D.La. Nov. 22, 2000). The purpose of Rule 30(a)(2)(A) is to "enable courts to maintain a 'tighter rein' on the extent of discovery and to minimize the potential cost of '[w]ide-ranging discovery' . . . ." *Whittingham v. Amherst Coll.,* 163 F.R.D. 170, 171-72 (D.Mass.1995) (citation omitted). Accordingly, "[t]he mere fact that many individuals may have discoverable information does not necessarily entitle a party to depose each such individual." *Dixon v. Certainteed Corp.,* 164 F.R.D. 685, 692 (D.Kan.1996).

"The factors relevant to determining whether a party should be entitled to more than ten depositions are now set forth in Fed.R.Civ.P. 26(b)(2)(C)[3] and include whether (1) the discovery sought is unreasonably cumulative or duplicative or can be obtained from some other source that is more convenient, less burdensome, or less extensive, (2) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action, and (3) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." *Atkinson*, 2009 WL 890682, at *1 (S.D.N.Y. Apr. 2, 2009) (internal quotations omitted).

[3] Rule 26(b)(1) has since been modified to read "(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1)." The scope of discovery permitted by 26(b)(1) is "non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Thus, the factors to be considered have simply been moved to a new number with cross reference.

Weighing these factors, there is no basis for permitting more than the presumptive ten deposition limit. First, as highlighted by the motion, the information purportedly sought is cumulative and duplicative. By way of example, Plaintiff has already deposed Johanna Sjoberg (a former Epstein employee), Juan Alessi (a former Epstein employee), and David Rodgers[4] (former Epstein Pilot). She further seeks to depose Maria Alessi and Jo Fontanella (former Epstein household employees), as well as [redacted] and Emmy Taylor (identified as assistants to Ms. Maxwell or Mr. Epstein). The information Plaintiff claims each of the witnesses may have is identical to that of each other – what they observed while working for Epstein. Plaintiff goes so far as to state that Maria Alessi's deposition is expected to "corroborate" the observations of her husband's.

Plaintiff admits that the purpose in seeking the additional depositions is "obtaining witnesses, like Ms. Sjoberg, who can corroborate that [Plaintiff] is telling the truth." Yet, Ms. Sjoberg did not "corroborate that [Plaintiff] is telling the truth." Instead, she testified that she was hired as an adult by Jeffrey Epstein to provide professional massages, that Ms. Maxwell never asked her for any type of sexual massage, that she never saw Plaintiff giving a massage to Ms. Maxwell nor did she see Ms. Maxwell receive a massage from any underage girl, indeed, in her 5 plus years working for Mr. Epstein, she never saw any person underage at his home. Regardless, Plaintiff is looking in vain for more testimony of exactly the same character, precisely the type of testimony the presumptive limit is intended to prevent.

Similarly, the expected deposition testimony of former Palm Beach Detective Joe Recarey and former Palm Beach Police Chief Michael Reiter are duplicative of each other.

[4] Mr. Rodgers deposition, held last Friday and requiring a separate trip to Florida for Colorado counsel after the scheduled court hearing on Thursday, served simply to authenticate flight logs. There are far more convenient, less burdensome, and less expensive methods by which such information could have been obtained, such as a verifying affidavit, yet Plaintiff chose to unnecessarily burden counsel, the witness and counsel for the witness with a 3 hour deposition to accomplish the same end.

Putting aside the admissibility of this testimony, it appears that both men were involved in the investigation of Mr. Epstein and are expected to testify about their investigation. Plaintiff's allegations were not a part of their investigation, which took place years after Plaintiff left the country. Moreover, their investigation did not involve Ms. Maxwell. Again, such duplicative and irrelevant deposition testimony speaks to the intended purpose of the ten-deposition limit, not a reason to exceed that limit.

The same holds true for Nadia Marcinkova, Sarah Kellen (a/k/a Sarah Kensignton or Sarah Vickers) and Jeffrey Epstein, each of whom Plaintiff anticipates will not respond to questions and invoke their Fifth Amendment right. As discussed above, such invocation has no bearing on the issues in this matter. Moreover, it is obviously cumulative and duplicative.

Plaintiff also identifies Rinaldo Rizzo and Jean Luc Brunel but fails to provide any information from which Ms. Maxwell or the Court could identify the subject matter of their expected testimony. Thus, it is unclear how these individuals have information that differs from or would add to the other proposed deponents. It is the Plaintiff's burden to explain to the Court why these depositions should be permitted if they exceed the presumptive limit, why the information would not be cumulative, and its relevance to the important issues in the action, or the importance of the discovery in resolving those issues. She simply fails to provide any information by which the Court can assess these factors, and thus should not be permitted to exceed the deposition limit based on her proffer.

III. THE TESTIMONY SOUGHT IS IRRELEVANT TO THIS SINGLE COUNT DEFAMATION CASE

This case is a simple defamation case. Plaintiff, through her counsel, filed a pleading making certain claims regarding "Jane Doe No. #3" – the Plaintiff – and her alleged

"circumstances." *See* Complaint. Ms. Maxwell denied the allegations made stating they were "untrue" and "obvious lies." Plaintiff claims these statements are defamatory because she has been called a "liar."

"A public figure claiming defamation under New York law must establish that 'the statements ... complain[ed] of were (1) of and concerning [the plaintiff], (2) likely to be understood as defamatory by the ordinary person, (3) false, and (4) published with actual malice.'" *Biro v. Conde Nast*, 963 F. Supp. 2d 255, 276 (S.D.N.Y. 2013), *aff'd,* 807 F.3d 541 (2d Cir. 2015), and *aff'd,* 622 F. App'x 67 (2d Cir. 2015).

If Ms. Maxwell's statements are essentially true – Plaintiff lied – Plaintiff cannot establish her claim, and it is an absolute defense.[5] Further, if Plaintiff cannot prove actual malice by Ms. Maxwell, her claim fails. *See Contemporary Mission, Inc. v. New York Times Co.*, 842 F.2d 612, 621 (2d Cir. 1988) (limited purpose public figure must establish by clear and convincing evidence that the defendant published the alleged defamatory statement with actual malice, "that is, with knowledge that it was false or with reckless disregard of whether it was false or not") (*quoting New York Times,* 376 U.S. 241, 280 (1964)). That is, Plaintiff must prove that Ms. Maxwell permitted the publication of the statement knowing it to be untrue.

None of the witnesses identified are listed as having discoverable information regarding any of the elements of this claim. None is claimed to have direct knowledge to confirm the truth of Plaintiff's claims about what happened *to her*, that the acts she claims *she* participated in

[5] There is only one public statement that existed on January 2, 2015 to which Ms. Maxwell was responding in the statement by her press agent. The document is the Joinder Motion filed in the Crime Victims' Rights Act case on behalf of Plaintiff by her attorneys, Bradley Edwards and Paul Cassell. Menninger Decl., Ex. A, p. 4. The very first line describing Jane Doe #3 Circumstances is false, as Plaintiff now concedes. It read: "In 1999, Jane Doe #3 was approached by Ghislaine Maxwell," and continuing that "Maxwell persuaded Jane Doe # 3 (who was only fifteen years old) to come to Epstein's mansion . . ." Plaintiff now concedes that she did not meet Ms. Maxwell or Mr. Epstein in 1999, and she was not 15 years old. Menninger Decl., Ex. A at 26-29. No amount of "circumstantial evidence" can overcome the fact that Ms. Maxwell's statement was correct and that statements in the Joinder Motion were untrue.

occurred or that they occurred with the people *she* claims to have been involved. Rather, each witness identified as being able to provide their observations regarding "other" allegedly underage girls, their own personal experience,[6] or beliefs about Plaintiff's credibility. None of this is relevant. This is not a case about Jeffery Epstein or the alleged "modus operandi of the Epstein organization." This is a simple case of if Ms. Maxwell's denial of the allegations made *by Plaintiff* about *Plaintiff's* own interactions with Maxwell was defamatory, and if Ms. Maxwell acted with actual malice in issuing the denial. Plaintiff's attempt to amplify this proceeding into something broader should not be condoned.

Because the evidence sought is nothing more than extraneous inadmissible "circumstantial evidence"[7] irrelevant to proving the essential elements of the claim, "the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." *Atkinson*, 2009 WL 890682, at *1. As such, the request for the additional depositions should be denied.

WHEREFORE, Ms. Maxwell requests that the Motion to permit in excess of the presumptive ten deposition limit be denied; alternatively, if in excess of ten depositions are permitted, Ms. Maxwell requests that Plaintiff be required to pay all costs and attorney's fees

[6] The information sought is also inadmissible. Plaintiff seeks testimony from witness who she claims will testify to experience similar to her stories and this will "corroborate Ms. Giuffre's account description of the motive, way in which Epstein and his co-conspirators created opportunity, intent, plan, knowledge, and to the specifics that make up the criminal signature of Epstein and his co-conspirators." *Motion* at 15-16. Such evidence is prohibited by FRE 404(b), which states "Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Furthermore, no other witness has claimed as Plaintiff does that Ghislaine Maxwell sexually abused them, sexually trafficked them, or that she partook in daily sex with any underage girls. Plaintiff's claim stands in isolation because it is fictional.

[7] This "circumstantial evidence" has no bearing on the truthfulness of the stories published by Plaintiff. It is equally likely to show that Plaintiff became aware of the allegations of others and decided to hop on the band wagon. She then made up similar claims for the purpose of getting paid hundreds of thousands of dollars by the media for publicizing her allegations and identifying well know public figures whose names she has seen documents that she reviewed or other stories she had read.

associated with attending any deposition occurring outside 100 miles of the Courthouse for the Southern District of New York pursuant to S.D.N.Y L.Civ.R. 30.1.

Dated: June 6, 2016.

Respectfully submitted,

/s/ Laura A. Menninger

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CERTIFICATE OF SERVICE

I certify that on June 6, 2016, I electronically served this *Defendant's Response in Opposition to Motion to Exceed Presumptive Ten Deposition Limit* via ECF on the following:

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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 EXCEED PRESUMPTIVE TEN DEPOSITION LIMIT

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Plaintiff Virginia Giuffre, by and through her undersigned counsel, hereby files this reply in support of her Motion to Exceed Presumptive Ten Deposition Limit. The motion should be granted because Ms. Giuffre has shown good cause for needing to exceed the ten deposition limit and in light of recent developments, Ms. Giuffre has streamlined her request, and now seeks only a total of three additional depositions. Notably, while Defendant contests Ms. Giuffre's motion, Defendant has herself unilaterally – **and without seeking any Court approval –** set ***twelve*** witnesses for deposition in this matter. In contrast to Defendant's unilateral action, Ms. Giuffre has properly sought this Court's permission. The Court should grant her motion and allow her to take the three additional depositions.

I. THE PROPOSED DEPOSITIONS ARE IMPORTANT TO THE FUNDAMENTAL CLAIMS AND DEFENSES IN THIS CASE, AND NONE ARE DUPLICATIVE.

Defendant argues that the depositions Ms. Giuffre seeks to take are somehow "duplicative" of each other. Even a quick reading of the Defendant's pleading makes clear this is untrue. Defendant repeatedly gives her own narrow view of what existing witnesses have said. For example, Defendant argues that Ms. Sjoberg "did not corroborate that [Ms. Giuffre] is telling the truth." Defendant's Response at 5. Defendant's characterization is untrue.[1] But, as the mere

[1] Defendant wholly mischaracterized Ms. Sjoberg's testimony as involving "professional massages." Defendant's Resp. at 5. In fact, Ms. Sjoberg testified that, when she was a twenty-one-year-old college student, Defendant (not Jeffrey Epstein) recruited and hired her under the pretext of being a personal assistant to provide sexual massages. As one example of this testimony, Sjoberg testified that Defendant became angry with her for not "finishing your job" when Defendant was the one who ended up having to bring Epstein to orgasm when Ms. Sjoberg did not. *See* McCawley Dec at Exhibit 1, Sjoberg Dep. Tr. at 142:25-143:14(Q. What did you understand Maxwell to mean when you said that you hadn't finished the job, with respect to the camera? A. She implied that I had not brought him to orgasm. Q. So is it fair to say that Maxwell expected you to perform sexual acts when you were massaging Jeffrey? A. I can answer? Yes, I took that conversation to mean that it what was expected of me.) Ms. Sjoberg's testimony also shows that Defendant was a predator of young women and girls, and that her business was to provide girls for Jeffrey Epstein to have sex with. *Id*. at 141:3-5; 150:16-151:2 (Q. Did Maxwell ever ask you to bring other girls over to – for Jeffrey? A. Yes. Q. I want to go back to this: You testified to two things just now with Sigrid that you said were implied to you. A. Okay. Q. The

fact of this dispute confirms, this case is going to be hotly contested and the weight of the evidence on each side is going to be vitally important. The Court is well aware of many other civil cases where the parties have taken far more than ten depositions by mutual agreement. Defendant's refusal to agree to a few more depositions here is simply an effort to keep all the relevant facts from being developed.

Since Ms. Giuffre filed her initial motion seeking seven additional deposition, she has worked diligently to try to streamline the necessary depositions and has discovered new information concerning witnesses and their knowledge of the claims in this case. Accordingly, Ms. Giuffre currently brings before this Court a significantly shorter list[2] of witnesses she needs to depose to prove her claim, with some alterations. To be clear, Ms. Giuffre has narrowed her request and is now only seeking an additional three depositions from the Court as follows:

For descriptions concerning the depositions already taken (Defendant; Ms. Sjoberg; Mr. Alessi; Mr. Rodgers; and Mr. Rizzo), and those yet to be taken (Mr. Epstein; Mr. Gow; [redacted] Ms. Kellen; Ms. Marcinkova; Mr. Recarey; and Mr. Brunel), Ms. Giuffre references and incorporates her descriptions in the moving brief. The only remaining witness is William Jefferson Clinton. His deposition is necessary for the following reason:

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first one was it would take pressure off of Maxwell to have more girls around? A. Right. Q. What exactly did Maxwell say to you that led you to believe that was her implication? A. She said she doesn't have the time or desire to please him as much as he needs, and that's why there were other girls around.).

That Ms. Sjoberg never saw Ms. Giuffre give a massage to Ms. Maxwell is immaterial. Ms. Sjoberg was with Defendant and Epstein when Ms. Giuffre was a minor child, and corroborates Ms. Giuffre's accounts concerning her being trafficked to Prince Andrew. *Id*. at 21-22. Ms. Giuffre refers the Court to Ms. Sjoberg's deposition testimony in its entirety (DE 173-5). It is depositions like this - verifying Ms. Giuffre's account of being recruited by Defendant for sex with Epstein – that Defendant is trying avoid. However, multiple other witnesses have testimony that supports Ms. Giuffre's claims, in different and various ways, and Ms. Giuffre needs that testimony to prove her defamation claim against Defendant.

[2] Ms. Giuffre is no longer seeking the deposition testimony of Emmy Taylor, [redacted], Jo Jo Fontanella, and Michael Reiter.

- In a 2011 interview, Ms. Giuffre mentioned former President Bill Clinton's close personal relationship with Defendant and Jeffrey Epstein. While Ms. Giuffre made no allegations of illegal actions by Bill Clinton, Ms. Maxwell in her deposition raised Ms. Giuffre's comments about President Clinton as one of the "obvious lies" to which she was referring in her public statement that formed the basis of this suit. Apart from the Defendant and Mr. Epstein, former President Clinton is a key person who can provide information about his close relationship with Defendant and Mr. Epstein and disapprove Ms. Maxwell's claims.

Ms. Giuffre is still working diligently with opposing counsel, these witnesses, and their attorneys on scheduling, as well as identifying other witnesses who may have factual information about the case. But, at this time, she seeks this Court's approval for an additional three depositions – depositions that will not consume the full seven hours presumptively allotted.

All three prongs of the three-factor test to evaluate a motion for additional depositions strongly support granting the motion. *Atkinson v. Goord*, No. 01 CIV. 0761 LAKHBP, 2009 WL 890682, at *1 (S.D.N.Y. Apr. 2, 2009). First, as reviewed in detail on a witness-by-witness basis above, the discovery sought is not duplicative. The proposed deponents include the individual who assisted in making the defamatory statement, women Defendant Maxwell hired to recruit girls for Jeffrey Epstein, an individual with intimate knowledge of Defendant and Epstein's sexual trafficking ring, other victims of Jeffrey Epstein (including a then underage victim), Mr. Epstein himself, and other witnesses who can corroborate important pieces of Ms. Giuffre's statements or refute Ms. Maxwell's statements and positions. These witnesses' testimony will corroborate Ms. Giuffre's account of Defendant being a recruiter of females for Epstein and corroborate the type of abuse she and others suffered. Sadly, Ms. Giuffre is far from the only one of Defendant's victims, and there are other witnesses whose testimony is necessary in order to demonstrate the truth of Ms. Giuffre's claims and the falsity of the statements made by Defendant.

Second, if Ms. Giuffre is denied these depositions, she will not have had the opportunity to obtain the information by other discovery in this case. The Court will recall from Ms. Giuffre's opening motion that Defendant's surprising lack of memory has, in no small part, caused the need for additional depositions. *See* Motion at 5-8 (listing 59 examples of memory lapses during Ms. Maxwell deposition, including inability to remember events recorded on aircraft flight logs or a photograph). Defendant offers no explanation for her convenient forgetfulness. Moreover, evidence of being recruited by Defendant and being sexually assaulted is not something Ms. Giuffre can obtain through requests for production or through interrogatories. The only way of obtaining such evidence is from witness testimony by those who were victimized, those who assisted Defendant in recruiting and abuse, and those who observed the recruiting or the abuse. For example, Rinaldo Rizzo, an estate manager for a friend of Defendant and Epstein's, testified about an episode where Defendant had threatened a terrified 15 year old girl and confiscated her passport to try to make her have sex with Epstein on his private island: *See* McCawley Decl. at Exhibit 2, Rizzo Deposition [3] Mr. Rizzo testified about another episode where Defendant gave instructions to, and presided over, a group of eleven girls

[3] [redacted]

as young as 14 years old playing a "kissing game" with and for Jeffrey Epstein.[4] Finally, the Defendant appears to be concealing critical evidence of the sexual abuse that other witnesses have testified she possesses. [redacted]. Yet Defendant has failed to produce a single photo in this case. *See* McCawley Decl. at Exhibit 3, Alessi Deposition at 36-41. Document discovery and interrogatories are not helpful in obtaining this type of evidence: depositions are needed.

Third, the burden and expense of this proposed discovery is limited to three additional depositions. Defendant in this case is a multi-millionaire with able counsel. Three depositions will not cause her undue burden, expense, or inconvenience. These depositions are important to resolving issues in this case. Given that very few witnesses reside within 100 miles of the courthouse and therefore cannot be compelled to trial, this request for only three additional depositions is a reasonable request.

While Defendant opposes Ms. Giuffre's request for Court approval of more than ten depositions, she has unilaterally noticed more than ten depositions without bothering to seek approval. As of the date of this filing, Defendant's counsel has issued ***twelve*** subpoenas for

4 [redacted]

deposition testimony – the almost the exact same number Ms. Giuffre is seeking.[5] Defendant cannot credibly oppose Ms. Giuffre's additional depositions while she, herself, is trying to take more than ten without leave of court.[6]

It is plain why Defendant does not want these depositions to go forward. Ms. Sjoberg, Mr. Alessi, and Mr. Rizzo's testimony was harmful to Defendant's case, and the additional depositions will provide further evidence that Defendant acted as Jeffrey Epstein's madam, proving the truth of Ms. Giuffre's statements that Defendant proclaimed publically as "obvious lies."

II. MS. GIUFFRE IS SEEKING HIGHLY RELEVANT TRIAL TESTIMONY.

All of the people Ms. Giuffre seeks to depose have discoverable and important information regarding the elements of Ms. Giuffre's claims. Ms. Giuffre stated that Defendant recruited her and other young females for sex with Jeffrey Epstein. The people she now seeks to depose are all witnesses who can testify to Defendant working essentially as a madam for Jeffrey Epstein, recruiting young females for Epstein, or corroborate other important aspects of her statements. The fact that Defendant recruited girls, some of which were underage, for Epstein makes Ms. Giuffre's claim that she was also recruited by Defendant to ultimately have sex with Epstein and others more credible – and that Defendant's denials of any involvement in such recruiting is a bald-faced lie. Witnesses will testify that Defendant's recruitment and management of the girls for Jeffrey Epstein was a major aspect of Defendant's job, and that Ms.

[5] Defendant's counsel has taken the deposition testimony of (1) Ms. Giuffre; (2) Ms. Giuffre's mother (Lynn Miller); (3) Ms. Giuffre's father (Sky Roberts); and (4) Ms. Giuffre's physician (Dr. Olson). Defendant's counsel has noticed the following witnesses for deposition: (5) Mr. Austrich; (6) Mr. Figueroa; (7) Ms. Degorgieou; (8) a known victim of Jeffrey Epstein; (9) Mr. Weisfield; (10) Ms. Churcher; (11) Ms. Boylan; and (12) the 30(b)(6) witness for Victims Refuse Silence.

[6] Defendant has unilaterally scheduled - without consulting counsel for Ms. Giuffre - at least two of these depositions for days when depositions of Ms. Giuffre's witnesses have been set.

Giuffre's account of her sexual abuse and Defendant's involvement accords perfectly with other witnesses' accounts of what Defendant's job was for Epstein.[7]

That other young females were similarly recruited by the Defendant is evidence that Ms. Giuffre is telling the truth about her experiences – and thus direct evidence that Defendant defamed her when calling her a liar. Clearly, if Ms. Giuffre can establish that Defendant's modus operandi was to recruit young females for Epstein, that helps corroborate Ms. Giuffre's own testimony that Defendant recruited her for the same purposes and in the same manner. Although the Court need not make a final ruling on this evidentiary issue now, Rule 404(b) itself makes such testimony admissible. *See* Fed. R. Evid. 404(b) (other act "evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident."). Indeed, even more specifically than the general provisions of Rule 404(b), Rule 415 makes these other acts admissible, due to the fact that those involved in sexual abuse of minors have a strong propensity for repeating those crimes. *See* Fed. R. Evid. 415(a)(("In a civil case involving a claim for relief based on a party's alleged sexual assault or child molestation, the court may admit evidence that the party committed any other sexual assault or child molestation.").

Entirely apart from corroborating Ms. Giuffre's own individual abuse, however, Defendant fails to recognize that in calling Ms. Giuffre a "liar", she was attacking all aspects of Ms. Giuffre's account – including Ms. Giuffre's statements that Defendant served generally as a recruiter of girls for Epstein and that Epstein sexually abused the underage girls that were

[7] Defendant's specious suggestion that Ms. Giuffre heard about the other girls whom she recruited for sexual purposes and then decided to "hop on the band wagon" (Defendant's Resp. at 8 n.7) tacitly admits that Defendant procured a "band wagon" of girls for Jeffrey Epstein to abuse. Moreover, Defendant cannot refute the documentary evidence that she was on Epstein private jet with Ms. Giuffre over 20 times while Ms. Giuffre was a minor – flights that Defendant is, quite conveniently, now unable to recall. Motion at 5-8.

brought to him. Thus, in this defamation case, the testimony of these witnesses are admissible not only to bolster Ms. Giuffre's testimony about her individual abuse, but because they are simply part of the body of statements whose truth or falsity is at issue in this case.

In addition, one of the witnesses that Ms. Giuffre seeks to depose is registered sex offender Jeffrey Epstein, who stands at the center of the case. Indeed, some of the most critical events took place in the presence of just three people: Ms. Giuffre, defendant Maxwell, and Epstein. If Epstein were to tell the truth, his testimony would fully confirm Ms. Giuffre's account of her sexual abuse. Epstein, however, may well attempt to support Defendant by invoking the Fifth Amendment to avoid answering questions about his sexual abuse of Ms. Giuffre. Apparently privy to her former boyfriend Epstein's anticipated plans in this regard,[8] Defendant makes the claim that it would be a "convoluted argument" to allow Ms. Giuffre to use those invocations against her. Defendant's Resp. at 3. Tellingly, Defendant's response brief cites no authority to refute that proposition that adverse inference can be drawn against co-conspirators. Presumably this is because, as recounted in Ms. Giuffre's opening brief (at pp. 20-22), the Second Circuit's seminal decision of *LiButti v. United States*, 107 F.3d 110, 121 (2d Cir. 1997), squarely upheld the drawing of adverse inferences based on a non-party's invocation of a Fifth Amendment right to remain silent. The Second Circuit instructed that, the circumstances of given case, rather than status of particular nonparty witness, determines whether nonparty witness' invocation of privilege against self-incrimination is admissible in course of civil litigation. *Id*. at122-23. The Second Circuit also held that, in determining whether nonparty witness' invocation of privilege against self-incrimination in course of civil litigation and

[8] In discovery, Defendant Maxwell has produced several emails between Epstein and herself discussing Ms. Giuffre.

drawing of adverse inferences is admissible, court may consider the following nonexclusive factors:

> (1) nature of witness' relationship with and loyalty to party;
> (2) degree of control which party has vested in witness in regard to key facts and subject matter of litigation;
> (3) whether witness is pragmatically noncaptioned party in interest and whether assertion of privilege advances interests of witness and party in outcome of litigation; and
> (4) whether witness was key figure in litigation and played controlling role in respect to its underlying aspects.

Id. at 124-25. Ms. Giuffre will be able to establish that all these factors tip decisively in favor of allowing an adverse inference. Accordingly, her efforts to depose Epstein, Marcinkova, and Kellen seek important information that will be admissible at trial.

III. MS. GIUFFRE'S REQUEST IS TIMELY.

Defendant also argues that this motion is somehow "premature." Defendant's Resp. at 2-3. Clearly, if Ms. Giuffre had waited to file her motion until later, Defendant would have argued until the matter came too late. The motion is proper at this time because, as of the date of this filing, fact discovery closes in 17 days (although Ms. Giuffre has recently filed a motion for a 30-day extension of the deadline). In order to give the Court the opportunity to rule as far in advance as possible – thereby permitting counsel for both side to schedule the remaining depositions – Ms. Giuffre brings the motion now. She also requires a ruling in advance so that she can make final plans about how many depositions she has available and thus which depositions she should prioritize. [9]

[9] Defendant tries to find support for her prematurity argument in *Gen. Elec. Co. v. Indem. Ins. Co. of N. Am.*, No. 3:06-CV-232 (CFD), 2006 WL 1525970, at *2 (D. Conn. May 25, 2006). However, in that case, the Court found a motion for additional depositions to be premature, in part, because "[d]iscovery has not even commenced" . . . and the moving party "ha[d] not listed with specificity those individuals it wishes to depose." Of course, neither of these points applies in this case at hand: the parties are approaching the close of fact discovery, and Ms. Giuffre has provided detailed information about each individual she has deposed already and still seeks to depose.

An additional reason this motion is appropriate now is that, despite Ms. Giuffre's diligent pursuit of depositions, many witnesses have cancelled their dates, failed to appear, or wrongfully evaded service. These maneuvers have frustrated Ms. Giuffre's ability to take their depositions in a logical and sequential fashion, complicating the planning of a deposition schedule. For example, on April 11, 2016, Ms. Giuffre served notice on Defendant's counsel for the deposition of Rinaldo Rizzo, setting it for May 13, 2016. Nearly a month later, just a few days before that properly noticed deposition, Defendant's counsel requested that it be rescheduled, and, therefore, that deposition did not take place until June 10, 2016. Additionally, three other important witnesses evaded Ms. Giuffre's repeated efforts to serve them. It took Ms. Giuffre's motion for alternative service (DE 160) to convince Jeffrey Epstein to allow his attorney to accept service of process. The Court also has before it Ms. Giuffre's motion to serve Sarah Kellen and Nadia Marcinkova by alternative service. These witnesses' evasion of service delayed the taking of their depositions, and, as of the date of this filing, none have been deposed yet.

CONCLUSION

For all these reasons, Ms. Giuffre should be allowed to take three more depositions than the presumptive ten deposition limit – a total of thirteen depositions.

Dated: June 13, 2016.

Respectfully Submitted,

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Sigrid McCawley

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of June, 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 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.

_____/

DECLARATION OF SIGRID S. McCAWLEY IN SUPPORT OF PLAINTIFF'S REPLY TO MOTION TO EXCEED PRESUMPTIVE TEN DEPOSITION LIMIT

I, Sigrid S. McCawley, declare that the below is true and correct to the best of my knowledge as follows:

1. I am a partner 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 September 29, 2015 Order granting my Application to Appear Pro Hac Vice.

2. I respectfully submit this Declaration in Support of Plaintiff's Reply to Motion to Exceed Presumptive Ten Deposition Limit.

3. Attached hereto as Exhibit 1 is a true and correct copy of Johanna Sjoberg's Deposition Transcript excerpts dated May 18, 2016.

4. Attached hereto as Exhibit 2 is a true and correct copy of Rinaldo Rizzo's Rough Deposition Transcript excerpts dated June 10, 2016.

5. Attached hereto as Exhibit 3 is a true and correct copy of Juan Alessi's Deposition Transcript excerpts dated June 1, 2016.

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

/s/ Sigrid S. McCawley
Sigrid S. McCawley, Esq.

Dated: June 13, 2016.

Respectfully Submitted,

BOIES, SCHILLER & FLEXNER LLP

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/s/ Sigrid S. McCawley
Sigrid S. McCawley

EXHIBIT 1

(Filed Under Seal)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CASE NO. 15-CV-07433-RWS

----------x

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

----------x

May 18, 2016
9:04 a.m.

C O N F I D E N T I A L

Deposition of JOHANNA SJOBERG, pursuant to notice, taken by Plaintiff, at the offices of Boies Schiller & Flexner, 401 Las Olas Boulevard, Fort Lauderdale, Florida, before Kelli Ann Willis, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public within and for the State of Florida.

Jeffrey's home when you arrived?

A. Yes. When I first walked in the door, it was just myself, and Ghislaine headed for the staircase and said -- told me to come up to the living room.

Q. And what happened at that point, when you came up to the living room?

A. I came up and saw Virginia, Jeffrey, Prince Andrew, Ghislaine in the room.

Q. And did you meet Prince Andrew at that time?

A. Yes.

Q. And what happened next?

A. At one point, Ghislaine told me to come upstairs, and we went into a closet and pulled out the puppet, the caricature of Prince Andrew, and brought it down. And there was a little tag on the puppet that said "Prince Andrew" on it, and that's when I knew who he was.

Q. And did -- what did the puppet look like?

A. It looked like him. And she brought it down and presented it to him; and that was a great joke, because apparently it was a production from a show on BBC. And they decided to take a picture with it, in which Virginia and Andrew sat on a

couch. They put the puppet on Virginia's lap, and I sat on Andrew's lap, and they put the puppet's hand on Virginia's breast, and Andrew put his hand on my breast, and they took a photo.

Q. Do you remember who took the photo?

A. I don't recall.

Q. Did you ever see the photo after it was taken?

A. I did not.

Q. And Ms. Maxwell was present during the -- was Ms. Maxwell present during that?

A. Yes.

Q. What happened next?

A. The next thing I remember is just being shown to which room I was going to be staying in.

Q. When you exited the room that you were in where the picture was taken, do you recall who remained in that room?

A. I don't.

Q. Do you recall seeing Virginia exit that room?

A. I don't.

Q. During this trip to New York, did you have to perform any work when you were at the New York house?

always covered himself with a towel.

Q. I believe I asked this, but I just want to clarify to make sure that I did: Did Maxwell ever ask you to bring other girls over to -- for Jeffrey?

A. Yes.

Q. Yes?

A. Yes.

Q. And what did you -- did you do anything in response to that?

A. I did bring one girl named [redacted] -- no. [redacted] -- it was some girl named [redacted] that I had worked with at a restaurant. And I recall Ghislaine giving me money to bring her over; however, they never called her to come.

Q. And then I believe you mentioned that one of your physical fitness instructors, you brought a physical fitness instructor; was that correct?

A. Correct.

Q. And what did she do?

A. She gave him a -- like a training session, twice.

Q. Twice.

Did anything sexual in nature happen during the session?

A. At one point he lifted up her shirt and

exposed her bra, and she grabbed it and pulled it down.

Q. Anything else?

A. That was the conversation that he had told her that he had taken this girl's virginity, the girl by the pool.

Q. Okay. Did Maxwell ever say to you that it takes the pressure off of her to have other girls around?

A. She implied that, yes.

Q. In what way?

A. Sexually.

Q. And earlier Laura asked you, I believe, if Maxwell ever asked you to perform any sexual acts, and I believe your testimony was no, but then you also previously stated that during the camera incident that Maxwell had talked to you about not finishing the job.

Did you understand "not finishing the job" meaning bringing Jeffrey to orgasm?

MS. MENNINGER: Objection, leading, form.

BY MS. McCAWLEY:

Q. I'm sorry, Johanna, let me correct that question.

What did you understand Maxwell to mean

when she said you hadn't finished the job, with respect to the camera?

MS. MENNINGER: Objection, leading, form.

THE WITNESS: She implied that I had not brought him to orgasm.

BY MS. McCAWLEY:

Q. So is it fair to say that Maxwell expected you to perform sexual acts when you were massaging Jeffrey?

MS. MENNINGER: Objection, leading, form, foundation.

THE WITNESS: I can answer?

Yes, I took that conversation to mean that is what was expected of me.

BY MS. McCAWLEY:

Q. And then you mentioned, I believe, when you were testifying earlier that Jeffrey told you a story about sex on the plane. What was that about?

MS. MENNINGER: Objection, hearsay.

THE WITNESS: He told me one time Emmy was sleeping on the plane, and they were getting ready to land. And he went and woke her up, and she thought that meant he wanted a blow job, so she started to unzip his pants, and he said, No, no, no, you just have to be awake for

A. No.
Q. Was it in the context of anything?
A. About the camera that she had bought for me.
Q. What did she say in relationship to the camera that she bought for you and taking photographs of you?
A. Just that Jeffrey would like to have some photos of me, and she asked me to take photos of myself.
Q. What did you say?
A. I don't remember saying no, but I never ended up following through. I think I tried once.
Q. This was the pre-selfie era, correct?
A. Exactly.
Q. I want to go back to this: You testified to two things just now with Sigrid that you said were implied to you.
A. Okay.
Q. The first one was it would take pressure off of Maxwell to have more girls around?
A. Right.
Q. What exactly did Maxwell say to you that led you to believe that was her implication?
A. She said she doesn't have the time or

desire to please him as much as he needs, and that's why there were other girls around.

Q. And did she refer specifically to any other girls?

A. No.

Q. Did she talk about underaged girls?

A. No.

Q. Was she talking about massage therapists?

A. Not specifically.

Q. Okay. There were other girls in the house that were not massage therapists, correct?

A. Yes.

Q. [redacted] is another person that was around, correct?

A. Yes.

Q. There were other people he traveled with?

A. Uh-huh.

MS. McCAWLEY: Objection.

BY MS. MENNINGER:

Q. Correct?

A. Correct.

Q. Other girls?

A. Yes.

Q. Adults?

A. Yes.

CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

I, the undersigned authority, certify that JOHANNA SJOBERG personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 18th day of May, 2016.

KELLI ANN WILLIS, RPR, CRR
Notary Public, State of Florida
My Commission No. FF911443
Expires: 2/16/21

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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 CORRECTED[1] REPLY IN SUPPORT OF MOTION TO EXCEED PRESUMPTIVE TEN DEPOSITION LIMIT

Sigrid McCawley
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[1] On June 13, 2016, Ms. Giuffre filed her Reply in Support of her Motion to Exceed the Presumptive Ten Deposition Limit (DE 203). This brief contained excerpt from Rinaldo Rizzo's "rough" deposition transcript, as the final transcript had not yet been completed by the stenographer. On June 14, 2016, the stenographer issued the "final" deposition transcript, and Ms. Giuffre hereby files the final transcript citations and excerpts to replace the "rough" transcript that accompanied her supporting Declaration (DE 204-2). There are no other changes to this document.

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Rules

Plaintiff Virginia Giuffre, by and through her undersigned counsel, hereby files this reply in support of her Motion to Exceed Presumptive Ten Deposition Limit. The motion should be granted because Ms. Giuffre has shown good cause for needing to exceed the ten deposition limit and in light of recent developments, Ms. Giuffre has streamlined her request, and now seeks only a total of three additional depositions. Notably, while Defendant contests Ms. Giuffre's motion, Defendant has herself unilaterally – **and without seeking any Court approval –** set ***twelve*** witnesses for deposition in this matter. In contrast to Defendant's unilateral action, Ms. Giuffre has properly sought this Court's permission. The Court should grant her motion and allow her to take the three additional depositions.

I. THE PROPOSED DEPOSITIONS ARE IMPORTANT TO THE FUNDAMENTAL CLAIMS AND DEFENSES IN THIS CASE, AND NONE ARE DUPLICATIVE.

Defendant argues that the depositions Ms. Giuffre seeks to take are somehow "duplicative" of each other. Even a quick reading of the Defendant's pleading makes clear this is untrue. Defendant repeatedly gives her own narrow view of what existing witnesses have said. For example, Defendant argues that Ms. Sjoberg "did not corroborate that [Ms. Giuffre] is telling the truth." Defendant's Response at 5. Defendant's characterization is untrue.[2] But, as the mere

[2] Defendant wholly mischaracterized Ms. Sjoberg's testimony as involving "professional massages." Defendant's Resp. at 5. In fact, Ms. Sjoberg testified that, when she was a twenty-one-year-old college student, Defendant (not Jeffrey Epstein) recruited and hired her under the pretext of being a personal assistant to provide sexual massages. As one example of this testimony, Sjoberg testified that Defendant became angry with her for not "finishing your job" when Defendant was the one who ended up having to bring Epstein to orgasm when Ms. Sjoberg did not. *See* McCawley Dec at Exhibit 1, Sjoberg Dep. Tr. at 142:25-143:14(Q. What did you understand Maxwell to mean when you said that you hadn't finished the job, with respect to the camera? A. She implied that I had not brought him to orgasm. Q. So is it fair to say that Maxwell expected you to perform sexual acts when you were massaging Jeffrey? A. I can answer? Yes, I took that conversation to mean that it what was expected of me.) Ms. Sjoberg's testimony also shows that Defendant was a predator of young women and girls, and that her business was to provide girls for Jeffrey Epstein to have sex with. *Id*. at 141:3-5; 150:16-151:2 (Q. Did Maxwell ever ask you to bring other girls over to – for Jeffrey? A. Yes. Q. I want to go back to this: You testified to two things just now with Sigrid that you said were implied to you. A. Okay. Q. The

fact of this dispute confirms, this case is going to be hotly contested and the weight of the evidence on each side is going to be vitally important. The Court is well aware of many other civil cases where the parties have taken far more than ten depositions by mutual agreement. Defendant's refusal to agree to a few more depositions here is simply an effort to keep all the relevant facts from being developed.

Since Ms. Giuffre filed her initial motion seeking seven additional deposition, she has worked diligently to try to streamline the necessary depositions and has discovered new information concerning witnesses and their knowledge of the claims in this case. Accordingly, Ms. Giuffre currently brings before this Court a significantly shorter list[3] of witnesses she needs to depose to prove her claim, with some alterations. To be clear, Ms. Giuffre has narrowed her request and is now only seeking an additional three depositions from the Court as follows:

For descriptions concerning the depositions already taken (Defendant; Ms. Sjoberg; Mr. Alessi; Mr. Rodgers; and Mr. Rizzo), and those yet to be taken (Mr. Epstein; Mr. Gow; [redacted] Ms. Kellen; Ms. Marcinkova; Mr. Recarey; and Mr. Brunel), Ms. Giuffre references and incorporates her descriptions in the moving brief. The only remaining witness is William Jefferson Clinton. His deposition is necessary for the following reason:

---

first one was it would take pressure off of Maxwell to have more girls around? A. Right. Q. What exactly did Maxwell say to you that led you to believe that was her implication? A. She said she doesn't have the time or desire to please him as much as he needs, and that's why there were other girls around.).

That Ms. Sjoberg never saw Ms. Giuffre give a massage to Ms. Maxwell is immaterial. Ms. Sjoberg was with Defendant and Epstein when Ms. Giuffre was a minor child, and corroborates Ms. Giuffre's accounts concerning her being trafficked to Prince Andrew. *Id*. at 21-22. Ms. Giuffre refers the Court to Ms. Sjoberg's deposition testimony in its entirety (DE 173-5). It is depositions like this - verifying Ms. Giuffre's account of being recruited by Defendant for sex with Epstein – that Defendant is trying avoid. However, multiple other witnesses have testimony that supports Ms. Giuffre's claims, in different and various ways, and Ms. Giuffre needs that testimony to prove her defamation claim against Defendant.

[3] Ms. Giuffre is no longer seeking the deposition testimony of Emmy Taylor, [redacted] Jo Jo Fontanella, [redacted]

- In a 2011 interview, Ms. Giuffre mentioned former President Bill Clinton's close personal relationship with Defendant and Jeffrey Epstein. While Ms. Giuffre made no allegations of illegal actions by Bill Clinton, Ms. Maxwell in her deposition raised Ms. Giuffre's comments about President Clinton as one of the "obvious lies" to which she was referring in her public statement that formed the basis of this suit. Apart from the Defendant and Mr. Epstein, former President Clinton is a key person who can provide information about his close relationship with Defendant and Mr. Epstein and disapprove Ms. Maxwell's claims.

Ms. Giuffre is still working diligently with opposing counsel, these witnesses, and their attorneys on scheduling, as well as identifying other witnesses who may have factual information about the case. But, at this time, she seeks this Court's approval for an additional three depositions – depositions that will not consume the full seven hours presumptively allotted.

All three prongs of the three-factor test to evaluate a motion for additional depositions strongly support granting the motion. *Atkinson v. Goord*, No. 01 CIV. 0761 LAKHBP, 2009 WL 890682, at *1 (S.D.N.Y. Apr. 2, 2009). First, as reviewed in detail on a witness-by-witness basis above, the discovery sought is not duplicative. The proposed deponents include the individual who assisted in making the defamatory statement, women Defendant Maxwell hired to recruit girls for Jeffrey Epstein, an individual with intimate knowledge of Defendant and Epstein's sexual trafficking ring, other victims of Jeffrey Epstein (including a then underage victim), Mr. Epstein himself, and other witnesses who can corroborate important pieces of Ms. Giuffre's statements or refute Ms. Maxwell's statements and positions. These witnesses' testimony will corroborate Ms. Giuffre's account of Defendant being a recruiter of females for Epstein and corroborate the type of abuse she and others suffered. Sadly, Ms. Giuffre is far from the only one of Defendant's victims, and there are other witnesses whose testimony is necessary in order to demonstrate the truth of Ms. Giuffre's claims and the falsity of the statements made by Defendant.

Second, if Ms. Giuffre is denied these depositions, she will not have had the opportunity to obtain the information by other discovery in this case. The Court will recall from Ms. Giuffre's opening motion that Defendant's surprising lack of memory has, in no small part, caused the need for additional depositions. *See* Motion at 5-8 (listing 59 examples of memory lapses during Ms. Maxwell deposition, including inability to remember events recorded on aircraft flight logs or a photograph). Defendant offers no explanation for her convenient forgetfulness. Moreover, evidence of being recruited by Defendant and being sexually assaulted is not something Ms. Giuffre can obtain through requests for production or through interrogatories. The only way of obtaining such evidence is from witness testimony by those who were victimized, those who assisted Defendant in recruiting and abuse, and those who observed the recruiting or the abuse. For example, Rinaldo Rizzo, an estate manager for a friend of Defendant and Epstein's, testified about an episode where Defendant had threatened a terrified 15 year old girl and confiscated her passport to try to make her have sex with Epstein on his private island: *See* McCawley Decl. at Exhibit 2, Rizzo Deposition [4] Mr. Rizzo testified about another episode where Defendant gave instructions to, and presided over, a group of eleven girls

[4] *See* McCawley Decl. at Exhibit 2, Rizzo *Final Dep. Tr. *52:6-7; *55:23-57:23. "Q. How old was this girl? A. 15 years old." "What did she say? A. She proceeds to tell my wife and I that, and this is not – this is blurting out, not a conversation like I'm having a casual conversation, that quickly I was on an island, I was on the island and there was Ghislaine, there was Sarah, she said they asked me for sex, I said no. . . . And she says no, and she says Ghislaine took my passport. And I said what, and she says Sarah took her passport and phone and gave it to Ghislaine Maxwell, and at that point she said that she was threatened. And I said threatened? She says yes, I was threatened by Ghislaine not to discuss this. . . And she said that before she got there, she was threatened again by Jeffrey and Ghislaine not to talk about what I had mentioned earlier, about – again, the word she used was sex. Q. And during this time that you're saying she is rambling, is her demeanor continues to be what you described it? A. Yes. Q. Was she in fear? A. Yes".

as young as 14 years old playing a "kissing game" with and for Jeffrey Epstein.[5] Finally, the Defendant appears to be concealing critical evidence of the sexual abuse that other witnesses have testified she possesses. For example, Mr. Alessi testified that Defendant kept a large book of naked photos that she took of young girls. Yet Defendant has failed to produce a single photo in this case. *See* McCawley Decl. at Exhibit 3, Alessi Deposition at 36-41. Document discovery and interrogatories are not helpful in obtaining this type of evidence: depositions are needed.

Third, the burden and expense of this proposed discovery is limited to three additional depositions. Defendant in this case is a multi-millionaire with able counsel. Three depositions will not cause her undue burden, expense, or inconvenience. These depositions are important to resolving issues in this case. Given that very few witnesses reside within 100 miles of the courthouse and therefore cannot be compelled to trial, this request for only three additional depositions is a reasonable request.

While Defendant opposes Ms. Giuffre's request for Court approval of more than ten depositions, she has unilaterally noticed more than ten depositions without bothering to seek approval. As of the date of this filing, Defendant's counsel has issued ***twelve*** subpoenas for

[5] *See* McCawley Decl. at Exhibit 2, Rizzo *Final Dep. Tr. "Q. So in the house, tell me if I am wrong, you have Jeffrey Epstein, Ghislaine Maxwell and approximately 11 girls? A. Yes, somewhere between 11 and 12. Q. Can you describe the 11 to 12 girls to your memory? A. In my recollection, various of ages. They could have been from as young as 14, 15 to 18 maybe, 19 . . . very girlish." *32:8-24; "Q. Once inside the house, what happens next? A. I showed Ghislaine and Jeffrey into the living room, and Ghislaine was the one that instructed the girls, pointing that they needed to come to the living room." *34:5-10. "Q. What happens next? A. . . . it was getting very perogative [sic], nothing I would want my children to see. The girls were grinding on each other, lifting up their tops, it was very inappropriate." *37:11-38:6. "Q. What did you see next? A.. . . From what I knew, Jeffrey was with Ghislaine and now I have all these girls acting very inappropriate …." *38:22-39:7. "Q. When the girls are kissing either Jeff or other girls where was Ghislaine Maxwell? A. Sitting right next to Jeffrey." *40:24-41:3. "Q. Is there something you remember vividly? A. . . . I did pull the nanny aside and I was really, my wife and I were dumbfounded, profound of the situation, and she mentioned this was an occurrence that had happened before, and they called it the kissing game." *41:8-17."

deposition testimony – the almost the exact same number Ms. Giuffre is seeking.[6] Defendant cannot credibly oppose Ms. Giuffre's additional depositions while she, herself, is trying to take more than ten without leave of court.[7]

It is plain why Defendant does not want these depositions to go forward. Ms. Sjoberg, Mr. Alessi, and Mr. Rizzo's testimony was harmful to Defendant's case, and the additional depositions will provide further evidence that Defendant acted as Jeffrey Epstein's madam, proving the truth of Ms. Giuffre's statements that Defendant proclaimed publically as "obvious lies."

II. MS. GIUFFRE IS SEEKING HIGHLY RELEVANT TRIAL TESTIMONY.

All of the people Ms. Giuffre seeks to depose have discoverable and important information regarding the elements of Ms. Giuffre's claims. Ms. Giuffre stated that Defendant recruited her and other young females for sex with Jeffrey Epstein. The people she now seeks to depose are all witnesses who can testify to Defendant working essentially as a madam for Jeffrey Epstein, recruiting young females for Epstein, or corroborate other important aspects of her statements. The fact that Defendant recruited girls, some of which were underage, for Epstein makes Ms. Giuffre's claim that she was also recruited by Defendant to ultimately have sex with Epstein and others more credible – and that Defendant's denials of any involvement in such recruiting is a bald-faced lie. Witnesses will testify that Defendant's recruitment and management of the girls for Jeffrey Epstein was a major aspect of Defendant's job, and that Ms.

[6] Defendant's counsel has taken the deposition testimony of (1) Ms. Giuffre; (2) Ms. Giuffre's mother (Lynn Miller); (3) Ms. Giuffre's father (Sky Roberts); and (4) Ms. Giuffre's physician (Dr. Olson). Defendant's counsel has noticed the following witnesses for deposition: (5) Mr. Austrich; (6) Mr. Figueroa; (7) Ms. Degorgieou; (8) a known victim of Jeffrey Epstein; (9) Mr. Weisfield; (10) Ms. Churcher; (11) Ms. Boylan; and (12) the 30(b)(6) witness for Victims Refuse Silence.

[7] Defendant has unilaterally scheduled - without consulting counsel for Ms. Giuffre - at least two of these depositions for days when depositions of Ms. Giuffre's witnesses have been set.

Giuffre's account of her sexual abuse and Defendant's involvement accords perfectly with other witnesses' accounts of what Defendant's job was for Epstein.[8]

That other young females were similarly recruited by the Defendant is evidence that Ms. Giuffre is telling the truth about her experiences – and thus direct evidence that Defendant defamed her when calling her a liar. Clearly, if Ms. Giuffre can establish that Defendant's modus operandi was to recruit young females for Epstein, that helps corroborate Ms. Giuffre's own testimony that Defendant recruited her for the same purposes and in the same manner. Although the Court need not make a final ruling on this evidentiary issue now, Rule 404(b) itself makes such testimony admissible. *See* Fed. R. Evid. 404(b) (other act "evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident."). Indeed, even more specifically than the general provisions of Rule 404(b), Rule 415 makes these other acts admissible, due to the fact that those involved in sexual abuse of minors have a strong propensity for repeating those crimes. *See* Fed. R. Evid. 415(a)(("In a civil case involving a claim for relief based on a party's alleged sexual assault or child molestation, the court may admit evidence that the party committed any other sexual assault or child molestation.").

Entirely apart from corroborating Ms. Giuffre's own individual abuse, however, Defendant fails to recognize that in calling Ms. Giuffre a "liar", she was attacking all aspects of Ms. Giuffre's account – including Ms. Giuffre's statements that Defendant served generally as a recruiter of girls for Epstein and that Epstein sexually abused the underage girls that were

[8] Defendant's specious suggestion that Ms. Giuffre heard about the other girls whom she recruited for sexual purposes and then decided to "hop on the band wagon" (Defendant's Resp. at 8 n.7) tacitly admits that Defendant procured a "band wagon" of girls for Jeffrey Epstein to abuse. Moreover, Defendant cannot refute the documentary evidence that she was on Epstein private jet with Ms. Giuffre over 20 times while Ms. Giuffre was a minor – flights that Defendant is, quite conveniently, now unable to recall. Motion at 5-8.

brought to him. Thus, in this defamation case, the testimony of these witnesses are admissible not only to bolster Ms. Giuffre's testimony about her individual abuse, but because they are simply part of the body of statements whose truth or falsity is at issue in this case.

In addition, one of the witnesses that Ms. Giuffre seeks to depose is registered sex offender Jeffrey Epstein, who stands at the center of the case. Indeed, some of the most critical events took place in the presence of just three people: Ms. Giuffre, defendant Maxwell, and Epstein. If Epstein were to tell the truth, his testimony would fully confirm Ms. Giuffre's account of her sexual abuse. Epstein, however, may well attempt to support Defendant by invoking the Fifth Amendment to avoid answering questions about his sexual abuse of Ms. Giuffre. Apparently privy to her former boyfriend Epstein's anticipated plans in this regard,[9] Defendant makes the claim that it would be a "convoluted argument" to allow Ms. Giuffre to use those invocations against her. Defendant's Resp. at 3. Tellingly, Defendant's response brief cites no authority to refute that proposition that adverse inference can be drawn against co-conspirators. Presumably this is because, as recounted in Ms. Giuffre's opening brief (at pp. 20-22), the Second Circuit's seminal decision of *LiButti v. United States*, 107 F.3d 110, 121 (2d Cir. 1997), squarely upheld the drawing of adverse inferences based on a non-party's invocation of a Fifth Amendment right to remain silent. The Second Circuit instructed that, the circumstances of given case, rather than status of particular nonparty witness, determines whether nonparty witness' invocation of privilege against self-incrimination is admissible in course of civil litigation. *Id*. at122-23. The Second Circuit also held that, in determining whether nonparty witness' invocation of privilege against self-incrimination in course of civil litigation and

[9] In discovery, Defendant Maxwell has produced several emails between Epstein and herself discussing Ms. Giuffre.

drawing of adverse inferences is admissible, court may consider the following nonexclusive factors:

> (1) nature of witness' relationship with and loyalty to party;
> (2) degree of control which party has vested in witness in regard to key facts and subject matter of litigation;
> (3) whether witness is pragmatically noncaptioned party in interest and whether assertion of privilege advances interests of witness and party in outcome of litigation; and
> (4) whether witness was key figure in litigation and played controlling role in respect to its underlying aspects.

Id. at 124-25. Ms. Giuffre will be able to establish that all these factors tip decisively in favor of allowing an adverse inference. Accordingly, her efforts to depose Epstein, Marcinkova, and Kellen seek important information that will be admissible at trial.

III. MS. GIUFFRE'S REQUEST IS TIMELY.

Defendant also argues that this motion is somehow "premature." Defendant's Resp. at 2-3. Clearly, if Ms. Giuffre had waited to file her motion until later, Defendant would have argued until the matter came too late. The motion is proper at this time because, as of the date of this filing, fact discovery closes in 17 days (although Ms. Giuffre has recently filed a motion for a 30-day extension of the deadline). In order to give the Court the opportunity to rule as far in advance as possible – thereby permitting counsel for both side to schedule the remaining depositions – Ms. Giuffre brings the motion now. She also requires a ruling in advance so that she can make final plans about how many depositions she has available and thus which depositions she should prioritize. [10]

[10] Defendant tries to find support for her prematurity argument in *Gen. Elec. Co. v. Indem. Ins. Co. of N. Am.*, No. 3:06-CV-232 (CFD), 2006 WL 1525970, at *2 (D. Conn. May 25, 2006). However, in that case, the Court found a motion for additional depositions to be premature, in part, because "[d]iscovery has not even commenced" . . . and the moving party "ha[d] not listed with specificity those individuals it wishes to depose." Of course, neither of these points applies in this case at hand: the parties are approaching the close of fact discovery, and Ms. Giuffre has provided detailed information about each individual she has deposed already and still seeks to depose.

An additional reason this motion is appropriate now is that, despite Ms. Giuffre's diligent pursuit of depositions, many witnesses have cancelled their dates, failed to appear, or wrongfully evaded service. These maneuvers have frustrated Ms. Giuffre's ability to take their depositions in a logical and sequential fashion, complicating the planning of a deposition schedule. For example, on April 11, 2016, Ms. Giuffre served notice on Defendant's counsel for the deposition of Rinaldo Rizzo, setting it for May 13, 2016. Nearly a month later, just a few days before that properly noticed deposition, Defendant's counsel requested that it be rescheduled, and, therefore, that deposition did not take place until June 10, 2016. Additionally, three other important witnesses evaded Ms. Giuffre's repeated efforts to serve them. It took Ms. Giuffre's motion for alternative service (DE 160) to convince Jeffrey Epstein to allow his attorney to accept service of process. The Court also has before it Ms. Giuffre's motion to serve Sarah Kellen and Nadia Marcinkova by alternative service. These witnesses' evasion of service delayed the taking of their depositions, and, as of the date of this filing, none have been deposed yet.

CONCLUSION

For all these reasons, Ms. Giuffre should be allowed to take three more depositions than the presumptive ten deposition limit – a total of thirteen depositions.

Dated: June 14, 2016.

Respectfully Submitted,

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Sigrid McCawley

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of June, 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 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.

_____/

CORRECTED[1] DECLARATION OF SIGRID S. McCAWLEY IN SUPPORT OF PLAINTIFF'S REPLY TO MOTION TO EXCEED PRESUMPTIVE TEN DEPOSITION LIMIT

I, Sigrid S. McCawley, declare that the below is true and correct to the best of my knowledge as follows:

1. I am a partner 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 September 29, 2015 Order granting my Application to Appear Pro Hac Vice.

2. I respectfully submit this Declaration in Support of Plaintiff's Reply to Motion to Exceed Presumptive Ten Deposition Limit.

3. Attached hereto as Exhibit 1 is a true and correct copy of Johanna Sjoberg's Deposition Transcript excerpts dated May 18, 2016.

4. Attached hereto as Exhibit 2 is a true and correct copy of Rinaldo Rizzo's **Final** Deposition Transcript excerpts dated June 10, 2016.

[1] On June 13, 2016, Ms. Giuffre filed her Reply in Support of her Motion to Exceed the Presumptive Ten Deposition Limit (DE 203). This brief contained excerpts from Rinaldo Rizzo's "rough" deposition transcript, as the final transcript had not yet been completed by the stenographer. On June 14, 2016, the stenographer issued the "final" deposition transcript, and Ms. Giuffre hereby files the final transcript citations and excerpts to replace the "rough" transcript that accompanied her supporting Declaration (DE 204-2). There are no other changes to this document.

5. Attached hereto as Exhibit 3 is a true and correct copy of Juan Alessi's Deposition Transcript excerpts dated June 1, 2016.

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

/s/ Sigrid S. McCawley
Sigrid S. McCawley, Esq.

Dated: June 14, 2016.

Respectfully Submitted,

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Sigrid McCawley
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I HEREBY CERTIFY that on the 14th day of June, 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 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

EXHIBIT 1

(Filed Under Seal)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CASE NO. 15-CV-07433-RWS

----------x

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

----------x

May 18, 2016
9:04 a.m.

C O N F I D E N T I A L

Deposition of JOHANNA SJOBERG, pursuant to notice, taken by Plaintiff, at the offices of Boies Schiller & Flexner, 401 Las Olas Boulevard, Fort Lauderdale, Florida, before Kelli Ann Willis, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public within and for the State of Florida.

Jeffrey's home when you arrived?

A. Yes. When I first walked in the door, it was just myself, and Ghislaine headed for the staircase and said -- told me to come up to the living room.

Q. And what happened at that point, when you came up to the living room?

A. I came up and saw Virginia, Jeffrey, Prince Andrew, Ghislaine in the room.

Q. And did you meet Prince Andrew at that time?

A. Yes.

Q. And what happened next?

A. At one point, Ghislaine told me to come upstairs, and we went into a closet and pulled out the puppet, the caricature of Prince Andrew, and brought it down. And there was a little tag on the puppet that said "Prince Andrew" on it, and that's when I knew who he was.

Q. And did -- what did the puppet look like?

A. It looked like him. And she brought it down and presented it to him; and that was a great joke, because apparently it was a production from a show on BBC. And they decided to take a picture with it, in which Virginia and Andrew sat on a

couch. They put the puppet on Virginia's lap, and I sat on Andrew's lap, and they put the puppet's hand on Virginia's breast, and Andrew put his hand on my breast, and they took a photo.

Q. Do you remember who took the photo?

A. I don't recall.

Q. Did you ever see the photo after it was taken?

A. I did not.

Q. And Ms. Maxwell was present during the -- was Ms. Maxwell present during that?

A. Yes.

Q. What happened next?

A. The next thing I remember is just being shown to which room I was going to be staying in.

Q. When you exited the room that you were in where the picture was taken, do you recall who remained in that room?

A. I don't.

Q. Do you recall seeing Virginia exit that room?

A. I don't.

Q. During this trip to New York, did you have to perform any work when you were at the New York house?

always covered himself with a towel.

Q. I believe I asked this, but I just want to clarify to make sure that I did: Did Maxwell ever ask you to bring other girls over to -- for Jeffrey?

A. Yes.

Q. Yes?

A. Yes.

Q. And what did you -- did you do anything in response to that?

A. I did bring one girl named Francesca -- no. Florence -- it was some girl named Florencia that I had worked with at a restaurant. And I recall Ghislaine giving me money to bring her over; however, they never called her to come.

Q. And then I believe you mentioned that one of your physical fitness instructors, you brought a physical fitness instructor; was that correct?

A. Correct.

Q. And what did she do?

A. She gave him a -- like a training session, twice.

Q. Twice.

Did anything sexual in nature happen during the session?

A. At one point he lifted up her shirt and

exposed her bra, and she grabbed it and pulled it down.

Q. Anything else?

A. That was the conversation that he had told her that he had taken this girl's virginity, the girl by the pool.

Q. Okay. Did Maxwell ever say to you that it takes the pressure off of her to have other girls around?

A. She implied that, yes.

Q. In what way?

A. Sexually.

Q. And earlier Laura asked you, I believe, if Maxwell ever asked you to perform any sexual acts, and I believe your testimony was no, but then you also previously stated that during the camera incident that Maxwell had talked to you about not finishing the job.

Did you understand "not finishing the job" meaning bringing Jeffrey to orgasm?

MS. MENNINGER: Objection, leading, form.

BY MS. McCAWLEY:

Q. I'm sorry, Johanna, let me correct that question.

What did you understand Maxwell to mean

when she said you hadn't finished the job, with respect to the camera?

MS. MENNINGER: Objection, leading, form.

THE WITNESS: She implied that I had not brought him to orgasm.

BY MS. McCAWLEY:

Q. So is it fair to say that Maxwell expected you to perform sexual acts when you were massaging Jeffrey?

MS. MENNINGER: Objection, leading, form, foundation.

THE WITNESS: I can answer?

Yes, I took that conversation to mean that is what was expected of me.

BY MS. McCAWLEY:

Q. And then you mentioned, I believe, when you were testifying earlier that Jeffrey told you a story about sex on the plane. What was that about?

MS. MENNINGER: Objection, hearsay.

THE WITNESS: He told me one time Emmy was sleeping on the plane, and they were getting ready to land. And he went and woke her up, and she thought that meant he wanted a blow job, so she started to unzip his pants, and he said, No, no, no, you just have to be awake for

A. No.
Q. Was it in the context of anything?
A. About the camera that she had bought for me.
Q. What did she say in relationship to the camera that she bought for you and taking photographs of you?
A. Just that Jeffrey would like to have some photos of me, and she asked me to take photos of myself.
Q. What did you say?
A. I don't remember saying no, but I never ended up following through. I think I tried once.
Q. This was the pre-selfie era, correct?
A. Exactly.
Q. I want to go back to this: You testified to two things just now with Sigrid that you said were implied to you.
A. Okay.
Q. The first one was it would take pressure off of Maxwell to have more girls around?
A. Right.
Q. What exactly did Maxwell say to you that led you to believe that was her implication?
A. She said she doesn't have the time or

desire to please him as much as he needs, and that's why there were other girls around.

Q. And did she refer specifically to any other girls?

A. No.

Q. Did she talk about underaged girls?

A. No.

Q. Was she talking about massage therapists?

A. Not specifically.

Q. Okay. There were other girls in the house that were not massage therapists, correct?

A. Yes.

Q. Nadia is another person that was around, correct?

A. Yes.

Q. There were other people he traveled with?

A. Uh-huh.

MS. McCAWLEY: Objection.

BY MS. MENNINGER:

Q. Correct?

A. Correct.

Q. Other girls?

A. Yes.

Q. Adults?

A. Yes.

CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

I, the undersigned authority, certify that JOHANNA SJOBERG personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 18th day of May, 2016.

KELLI ANN WILLIS, RPR, CRR
Notary Public, State of Florida
My Commission No. FF911443
Expires: 2/16/21

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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 AMENDED[1] CORRECTED[2] REPLY IN SUPPORT OF MOTION TO EXCEED PRESUMPTIVE TEN DEPOSITION LIMIT

Sigrid McCawley
BOIES, SCHILLER & FLEXNER LLP
401 E. Las Olas Blvd., Suite 1200

[1] Pursuant to conferral with opposing counsel, Plaintiff has revised the first paragraph of this brief, as well as the second-to-last paragraph of Section I of this brief out of a concern Defendant raised with the use of the term "set" when referring to depositions. In an abundance of caution, to avoid unnecessary disputes and waste of this Court's time, the undersigned agreed to revise the brief to remove the language in question. The remainder of this brief is unchanged.

[2] On June 13, 2016, Ms. Giuffre filed her Reply in Support of her Motion to Exceed the Presumptive Ten Deposition Limit (DE 203). This brief contained excerpt from Rinaldo Rizzo's "rough" deposition transcript, as the final transcript had not yet been completed by the stenographer. On June 14, 2016, the stenographer issued the "final" deposition transcript, and Ms. Giuffre hereby files the final transcript citations and excerpts to replace the "rough" transcript that accompanied her supporting Declaration (DE 204-2). There are no other changes to this document.

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Cases

Rules

Plaintiff Virginia Giuffre, by and through her undersigned counsel, hereby files this reply in support of her Motion to Exceed Presumptive Ten Deposition Limit. The motion should be granted because Ms. Giuffre has shown good cause for needing to exceed the ten deposition limit and in light of recent developments, Ms. Giuffre has streamlined her request, and now seeks only a total of three additional depositions. The Court should grant her motion and allow her to take the three additional depositions.

I. THE PROPOSED DEPOSITIONS ARE IMPORTANT TO THE FUNDAMENTAL CLAIMS AND DEFENSES IN THIS CASE, AND NONE ARE DUPLICATIVE.

Defendant argues that the depositions Ms. Giuffre seeks to take are somehow "duplicative" of each other. Even a quick reading of the Defendant's pleading makes clear this is untrue. Defendant repeatedly gives her own narrow view of what existing witnesses have said. For example, Defendant argues that Ms. Sjoberg "did not corroborate that [Ms. Giuffre] is telling the truth." Defendant's Response at 5. Defendant's characterization is untrue.[3] But, as the mere

[3] Defendant wholly mischaracterized Ms. Sjoberg's testimony as involving "professional massages." Defendant's Resp. at 5. In fact, Ms. Sjoberg testified that, when she was a twenty-one-year-old college student, Defendant (not Jeffrey Epstein) recruited and hired her under the pretext of being a personal assistant to provide sexual massages. As one example of this testimony, Sjoberg testified that Defendant became angry with her for not "finishing your job" when Defendant was the one who ended up having to bring Epstein to orgasm when Ms. Sjoberg did not. *See* McCawley Dec at Exhibit 1, Sjoberg Dep. Tr. at 142:25-143:14(Q. What did you understand Maxwell to mean when you said that you hadn't finished the job, with respect to the camera? A. She implied that I had not brought him to orgasm. Q. So is it fair to say that Maxwell expected you to perform sexual acts when you were massaging Jeffrey? A. I can answer? Yes, I took that conversation to mean that it what was expected of me.) Ms. Sjoberg's testimony also shows that Defendant was a predator of young women and girls, and that her business was to provide girls for Jeffrey Epstein to have sex with. *Id*. at 141:3-5; 150:16-151:2 (Q. Did Maxwell ever ask you to bring other girls over to – for Jeffrey? A. Yes. Q. I want to go back to this: You testified to two things just now with Sigrid that you said were implied to you. A. Okay. Q. The first one was it would take pressure off of Maxwell to have more girls around? A. Right. Q. What exactly did Maxwell say to you that led you to believe that was her implication? A. She said she doesn't have the time or desire to please him as much as he needs, and that's why there were other girls around.).
That Ms. Sjoberg never saw Ms. Giuffre give a massage to Ms. Maxwell is immaterial. Ms. Sjoberg was with Defendant and Epstein when Ms. Giuffre was a minor child, and corroborates

fact of this dispute confirms, this case is going to be hotly contested and the weight of the evidence on each side is going to be vitally important. The Court is well aware of many other civil cases where the parties have taken far more than ten depositions by mutual agreement. Defendant's refusal to agree to a few more depositions here is simply an effort to keep all the relevant facts from being developed.

Since Ms. Giuffre filed her initial motion seeking seven additional deposition, she has worked diligently to try to streamline the necessary depositions and has discovered new information concerning witnesses and their knowledge of the claims in this case. Accordingly, Ms. Giuffre currently brings before this Court a significantly shorter list[4] of witnesses she needs to depose to prove her claim, with some alterations. To be clear, Ms. Giuffre has narrowed her request and is now only seeking an additional three depositions from the Court as follows:

For descriptions concerning the depositions already taken (Defendant; Ms. Sjoberg; Mr. Alessi; Mr. Rodgers; and Mr. Rizzo), and those yet to be taken (Mr. Epstein; Mr. Gow; [redacted] Ms. Kellen; Ms. Marcinkova; Mr. Recarey; and Mr. Brunel), Ms. Giuffre references and incorporates her descriptions in the moving brief. The only remaining witness is William Jefferson Clinton. His deposition is necessary for the following reason:

- In a 2011 interview, Ms. Giuffre mentioned former President Bill Clinton's close personal relationship with Defendant and Jeffrey Epstein. While Ms. Giuffre made no allegations of illegal actions by Bill Clinton, Ms. Maxwell in her deposition raised Ms. Giuffre's comments about President Clinton as one of the "obvious lies" to which she was referring in her public statement that formed the basis of this suit. Apart from the

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Ms. Giuffre's accounts concerning her being trafficked to Prince Andrew. *Id*. at 21-22. Ms. Giuffre refers the Court to Ms. Sjoberg's deposition testimony in its entirety (DE 173-5). It is depositions like this - verifying Ms. Giuffre's account of being recruited by Defendant for sex with Epstein – that Defendant is trying avoid. However, multiple other witnesses have testimony that supports Ms. Giuffre's claims, in different and various ways, and Ms. Giuffre needs that testimony to prove her defamation claim against Defendant.

[4] Ms. Giuffre is no longer seeking the deposition testimony of Emmy Taylor, [redacted] Jo Jo Fontanella, and Michael Reiter.

> Defendant and Mr. Epstein, former President Clinton is a key person who can provide information about his close relationship with Defendant and Mr. Epstein and disapprove Ms. Maxwell's claims.

Ms. Giuffre is still working diligently with opposing counsel, these witnesses, and their attorneys on scheduling, as well as identifying other witnesses who may have factual information about the case. But, at this time, she seeks this Court's approval for an additional three depositions – depositions that will not consume the full seven hours presumptively allotted.

All three prongs of the three-factor test to evaluate a motion for additional depositions strongly support granting the motion. *Atkinson v. Goord*, No. 01 CIV. 0761 LAKHBP, 2009 WL 890682, at *1 (S.D.N.Y. Apr. 2, 2009). First, as reviewed in detail on a witness-by-witness basis above, the discovery sought is not duplicative. The proposed deponents include the individual who assisted in making the defamatory statement, women Defendant Maxwell hired to recruit girls for Jeffrey Epstein, an individual with intimate knowledge of Defendant and Epstein's sexual trafficking ring, other victims of Jeffrey Epstein (including a then underage victim), Mr. Epstein himself, and other witnesses who can corroborate important pieces of Ms. Giuffre's statements or refute Ms. Maxwell's statements and positions. These witnesses' testimony will corroborate Ms. Giuffre's account of Defendant being a recruiter of females for Epstein and corroborate the type of abuse she and others suffered. Sadly, Ms. Giuffre is far from the only one of Defendant's victims, and there are other witnesses whose testimony is necessary in order to demonstrate the truth of Ms. Giuffre's claims and the falsity of the statements made by Defendant.

Second, if Ms. Giuffre is denied these depositions, she will not have had the opportunity to obtain the information by other discovery in this case. The Court will recall from Ms. Giuffre's opening motion that Defendant's surprising lack of memory has, in no small part,

caused the need for additional depositions. *See* Motion at 5-8 (listing 59 examples of memory lapses during Ms. Maxwell deposition, including inability to remember events recorded on aircraft flight logs or a photograph). Defendant offers no explanation for her convenient forgetfulness. Moreover, evidence of being recruited by Defendant and being sexually assaulted is not something Ms. Giuffre can obtain through requests for production or through interrogatories. The only way of obtaining such evidence is from witness testimony by those who were victimized, those who assisted Defendant in recruiting and abuse, and those who observed the recruiting or the abuse. For example, Rinaldo Rizzo, an estate manager for a friend of Defendant and Epstein's, testified about an episode where Defendant had threatened a terrified 15 year old girl and confiscated her passport to try to make her have sex with Epstein on his private island: *See* McCawley Decl. at Exhibit 2, Rizzo Deposition [5] Mr. Rizzo testified about another episode where Defendant gave instructions to, and presided over, a group of eleven girls as young as 14 years old playing a "kissing game" with and for Jeffrey Epstein.[6] Finally, the

[5] *See* McCawley Decl. at Exhibit 2, Rizzo *Final Dep. Tr. *52:6-7; *55:23-57:23. "Q. How old was this girl? A. 15 years old." "What did she say? A. She proceeds to tell my wife and I that, and this is not – this is blurting out, not a conversation like I'm having a casual conversation, that quickly I was on an island, I was on the island and there was Ghislaine, there was Sarah, she said they asked me for sex, I said no. . . . And she says no, and she says Ghislaine took my passport. And I said what, and she says Sarah took her passport and phone and gave it to Ghislaine Maxwell, and at that point she said that she was threatened. And I said threatened? She says yes, I was threatened by Ghislaine not to discuss this. . . And she said that before she got there, she was threatened again by Jeffrey and Ghislaine not to talk about what I had mentioned earlier, about – again, the word she used was sex. Q. And during this time that you're saying she is rambling, is her demeanor continues to be what you described it? A. Yes. Q. Was she in fear? A. Yes".

[6] *See* McCawley Decl. at Exhibit 2, Rizzo *Final Dep. Tr. "Q. So in the house, tell me if I am wrong, you have Jeffrey Epstein, Ghislaine Maxwell and approximately 11 girls? A. Yes, somewhere between 11 and 12. Q. Can you describe the 11 to 12 girls to your memory? A. In my recollection, various of ages. They could have been from as young as 14, 15 to 18 maybe, 19 . . . very girlish." *32:8-24; "Q. Once inside the house, what happens next? A. I showed Ghislaine and Jeffrey into the living room, and Ghislaine was the one that instructed the girls, pointing that they needed to come to the living room." *34:5-10. "Q. What happens next? A. . . . it was getting

Defendant appears to be concealing critical evidence of the sexual abuse that other witnesses have testified she possesses. [redacted] Yet Defendant has failed to produce a single photo in this case. *See* McCawley Decl. at Exhibit 3, Alessi Deposition at 36-41. Document discovery and interrogatories are not helpful in obtaining this type of evidence: depositions are needed.

Third, the burden and expense of this proposed discovery is limited to three additional depositions. Defendant in this case is a multi-millionaire with able counsel. Three depositions will not cause her undue burden, expense, or inconvenience. These depositions are important to resolving issues in this case. Given that very few witnesses reside within 100 miles of the courthouse and therefore cannot be compelled to trial, this request for only three additional depositions is a reasonable request.

It is plain why Defendant does not want these depositions to go forward. Ms. Sjoberg, Mr. Alessi, and Mr. Rizzo's testimony was harmful to Defendant's case, and the additional depositions will provide further evidence that Defendant acted as Jeffrey Epstein's madam, proving the truth of Ms. Giuffre's statements that Defendant proclaimed publically as "obvious lies."

II. MS. GIUFFRE IS SEEKING HIGHLY RELEVANT TRIAL TESTIMONY.

All of the people Ms. Giuffre seeks to depose have discoverable and important information regarding the elements of Ms. Giuffre's claims. Ms. Giuffre stated that Defendant

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very perogative [sic], nothing I would want my children to see. The girls were grinding on each other, lifting up their tops, it was very inappropriate." *37:11-38:6. "Q. What did you see next? A.. . . From what I knew, Jeffrey was with Ghislaine and now I have all these girls acting very inappropriate …." *38:22-39:7. "Q. When the girls are kissing either Jeff or other girls where was Ghislaine Maxwell? A. Sitting right next to Jeffrey." *40:24-41:3. "Q. Is there something you remember vividly? A. . . . I did pull the nanny aside and I was really, my wife and I were dumbfounded, profound of the situation, and she mentioned this was an occurrence that had happened before, and they called it the kissing game." *41:8-17."

recruited her and other young females for sex with Jeffrey Epstein. The people she now seeks to depose are all witnesses who can testify to Defendant working essentially as a madam for Jeffrey Epstein, recruiting young females for Epstein, or corroborate other important aspects of her statements. The fact that Defendant recruited girls, some of which were underage, for Epstein makes Ms. Giuffre's claim that she was also recruited by Defendant to ultimately have sex with Epstein and others more credible – and that Defendant's denials of any involvement in such recruiting is a bald-faced lie. Witnesses will testify that Defendant's recruitment and management of the girls for Jeffrey Epstein was a major aspect of Defendant's job, and that Ms. Giuffre's account of her sexual abuse and Defendant's involvement accords perfectly with other witnesses' accounts of what Defendant's job was for Epstein.[7]

That other young females were similarly recruited by the Defendant is evidence that Ms. Giuffre is telling the truth about her experiences – and thus direct evidence that Defendant defamed her when calling her a liar. Clearly, if Ms. Giuffre can establish that Defendant's modus operandi was to recruit young females for Epstein, that helps corroborate Ms. Giuffre's own testimony that Defendant recruited her for the same purposes and in the same manner. Although the Court need not make a final ruling on this evidentiary issue now, Rule 404(b) itself makes such testimony admissible. *See* Fed. R. Evid. 404(b) (other act "evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident."). Indeed, even more specifically than the general provisions of Rule 404(b), Rule 415 makes these other acts admissible, due to

[7] Defendant's specious suggestion that Ms. Giuffre heard about the other girls whom she recruited for sexual purposes and then decided to "hop on the band wagon" (Defendant's Resp. at 8 n.7) tacitly admits that Defendant procured a "band wagon" of girls for Jeffrey Epstein to abuse. Moreover, Defendant cannot refute the documentary evidence that she was on Epstein private jet with Ms. Giuffre over 20 times while Ms. Giuffre was a minor – flights that Defendant is, quite conveniently, now unable to recall. Motion at 5-8.

the fact that those involved in sexual abuse of minors have a strong propensity for repeating those crimes. *See* Fed. R. Evid. 415(a)(("In a civil case involving a claim for relief based on a party's alleged sexual assault or child molestation, the court may admit evidence that the party committed any other sexual assault or child molestation.").

Entirely apart from corroborating Ms. Giuffre's own individual abuse, however, Defendant fails to recognize that in calling Ms. Giuffre a "liar", she was attacking all aspects of Ms. Giuffre's account – including Ms. Giuffre's statements that Defendant served generally as a recruiter of girls for Epstein and that Epstein sexually abused the underage girls that were brought to him. Thus, in this defamation case, the testimony of these witnesses are admissible not only to bolster Ms. Giuffre's testimony about her individual abuse, but because they are simply part of the body of statements whose truth or falsity is at issue in this case.

In addition, one of the witnesses that Ms. Giuffre seeks to depose is registered sex offender Jeffrey Epstein, who stands at the center of the case. Indeed, some of the most critical events took place in the presence of just three people: Ms. Giuffre, defendant Maxwell, and Epstein. If Epstein were to tell the truth, his testimony would fully confirm Ms. Giuffre's account of her sexual abuse. Epstein, however, may well attempt to support Defendant by invoking the Fifth Amendment to avoid answering questions about his sexual abuse of Ms. Giuffre. Apparently privy to her former boyfriend Epstein's anticipated plans in this regard,[8] Defendant makes the claim that it would be a "convoluted argument" to allow Ms. Giuffre to use those invocations against her. Defendant's Resp. at 3. Tellingly, Defendant's response brief cites no authority to refute that proposition that adverse inference can be drawn against co-conspirators. Presumably this is because, as recounted in Ms. Giuffre's opening brief (at pp. 20-

[8] In discovery, Defendant Maxwell has produced several emails between Epstein and herself discussing Ms. Giuffre.

22), the Second Circuit's seminal decision of *LiButti v. United States*, 107 F.3d 110, 121 (2d Cir. 1997), squarely upheld the drawing of adverse inferences based on a non-party's invocation of a Fifth Amendment right to remain silent. The Second Circuit instructed that, the circumstances of given case, rather than status of particular nonparty witness, determines whether nonparty witness' invocation of privilege against self-incrimination is admissible in course of civil litigation. *Id*. at122-23. The Second Circuit also held that, in determining whether nonparty witness' invocation of privilege against self-incrimination in course of civil litigation and drawing of adverse inferences is admissible, court may consider the following nonexclusive factors:

> (1) nature of witness' relationship with and loyalty to party;
> (2) degree of control which party has vested in witness in regard to key facts and subject matter of litigation;
> (3) whether witness is pragmatically noncaptioned party in interest and whether assertion of privilege advances interests of witness and party in outcome of litigation; and
> (4) whether witness was key figure in litigation and played controlling role in respect to its underlying aspects.

Id. at 124-25. Ms. Giuffre will be able to establish that all these factors tip decisively in favor of allowing an adverse inference. Accordingly, her efforts to depose Epstein, Marcinkova, and Kellen seek important information that will be admissible at trial.

III. MS. GIUFFRE'S REQUEST IS TIMELY.

Defendant also argues that this motion is somehow "premature." Defendant's Resp. at 2-3. Clearly, if Ms. Giuffre had waited to file her motion until later, Defendant would have argued until the matter came too late. The motion is proper at this time because, as of the date of this filing, fact discovery closes in 17 days (although Ms. Giuffre has recently filed a motion for a 30-day extension of the deadline). In order to give the Court the opportunity to rule as far in advance as possible – thereby permitting counsel for both side to schedule the remaining depositions – Ms. Giuffre brings the motion now. She also requires a ruling in advance so that

she can make final plans about how many depositions she has available and thus which depositions she should prioritize. [9]

An additional reason this motion is appropriate now is that, despite Ms. Giuffre's diligent pursuit of depositions, many witnesses have cancelled their dates, failed to appear, or wrongfully evaded service. These maneuvers have frustrated Ms. Giuffre's ability to take their depositions in a logical and sequential fashion, complicating the planning of a deposition schedule. For example, on April 11, 2016, Ms. Giuffre served notice on Defendant's counsel for the deposition of Rinaldo Rizzo, setting it for May 13, 2016. Nearly a month later, just a few days before that properly noticed deposition, Defendant's counsel requested that it be rescheduled, and, therefore, that deposition did not take place until June 10, 2016. Additionally, three other important witnesses evaded Ms. Giuffre's repeated efforts to serve them. It took Ms. Giuffre's motion for alternative service (DE 160) to convince Jeffrey Epstein to allow his attorney to accept service of process. The Court also has before it Ms. Giuffre's motion to serve Sarah Kellen and Nadia Marcinkova by alternative service. These witnesses' evasion of service delayed the taking of their depositions, and, as of the date of this filing, none have been deposed yet.

CONCLUSION

For all these reasons, Ms. Giuffre should be allowed to take three more depositions than the presumptive ten deposition limit – a total of thirteen depositions.

Dated: June 14, 2016.

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[9] Defendant tries to find support for her prematurity argument in *Gen. Elec. Co. v. Indem. Ins. Co. of N. Am.*, No. 3:06-CV-232 (CFD), 2006 WL 1525970, at *2 (D. Conn. May 25, 2006). However, in that case, the Court found a motion for additional depositions to be premature, in part, because "[d]iscovery has not even commenced" . . . and the moving party "ha[d] not listed with specificity those individuals it wishes to depose." Of course, neither of these points applies in this case at hand: the parties are approaching the close of fact discovery, and Ms. Giuffre has provided detailed information about each individual she has deposed already and still seeks to depose.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of June, 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 this day on the individuals identified below via transmission of Notices of Electronic Filing generated by CM/ECF.

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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 COMBINED MEMORANDUM OF LAW IN OPPOSITION TO EXTENDING DEADLINE TO COMPLETE DEPOSITIONS AND MOTION FOR SANCTIONS FOR VIOLATION OF RULE 45

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TABLE OF AUTHORITIES

Defendant Ghislaine Maxwell ("Ms. Maxwell") files this Combined Response ("Response") in Opposition to Plaintiff's Motion to Extend Deadline to Complete Depositions ("Motion") and Motion for Sanctions For Violation of Rule 45, and states as follows:

INTRODUCTION

Apparently, Plaintiff seeks to take six (6) depositions beyond the scheduling order deadline of July 1, yet has failed to demonstrate good cause or diligence as to any.[1] The witnesses include (1) President Bill Clinton, a witness that Plaintiff initiated informal attempts to depose on June 9, and (2) Ross Gow, who Plaintiff began steps to depose under the Hague Convention in London last Friday, June 17. Plaintiff also seeks to untimely depose (3) Jean Luc Brunel, a witness she had noticed for a mid-June deposition, who apparently did not appear on that date with agreement and consent of Plaintiff's counsel.

The remaining three witnesses Plaintiff seeks to untimely depose are ones who repeatedly have expressed their intention to take the Fifth Amendment as to all questions posed. Counsel for (4) Jeffrey Epstein, offered to accept service on or about April 11 but Plaintiff ignored that offer for more than six weeks. Plaintiff only began on June 12 any attempt to schedule that deposition in the Virgin Islands. Last week, Mr. Epstein's counsel filed a Motion to Quash his deposition subpoena. The final untimely depositions sought by Plaintiff are for witnesses (5) Sarah Kellen and (6) Nadia Marcincova, about whom Plaintiff has made no public claims and thus, have no testimony relevant to this defamation action concerning whether Plaintiff's public

[1] In her Amended Corrected Reply In Support of Motion to Exceed Ten Depositions, Plaintiff represents that she only seeks to take three depositions beyond the limit of ten and that she no longer seeks depositions of witnesses Emmy Taylor, Dana Burns, JoJo Fontanilla, and Michael Reiter. (Doc. #224 at 2 n.4) She does not state her intentions with respect to other witnesses, like Maria Alessi, that she noticed but never deposed. However, comparing that Reply with her other motions, counsel has deduced the remaining witnesses from whom Plaintiff apparently seeks to secure deposition testimony in July. Plaintiff has already taken 6 depositions and another scheduled tomorrow. Thus by the close of discovery she will have taken 7 of her allotted 10 depositions.

allegations about Ghislaine Maxwell are – or rather are not – true. The attempted service of subpoenas on Epstein, Kellen and Marcincova all violated Rule 45(a)(4) and should be sanctioned by this Court.

As to all of these witnesses, Plaintiff has fallen far short of the "good cause" required by Rule 16(b)(4) to modify the Scheduling Order. In fact, for the most part, her failures to actively pursue depositions with these witnesses qualifies as in-excusable neglect: She frittered away seven of the eight months of the discovery period and now has placed Ms. Maxwell, this Court, and the witnesses in the untenable position of trying to accommodate her last-minute scramble. In the absence of any acceptable excuses, and for the limited evidentiary value that most of the requested witnesses can provide, this Court should deny the request for the extra time to take these six depositions.

The only witnesses for whom depositions should be permitted following the discovery cut-off are: (1) Ms. Sharon Churcher, Plaintiff's friend, advocate and former journalist with the *Daily Mail*, who filed a Motion to Quash her subpoena on the day before her scheduled deposition,[2] and (2) Plaintiff, who refused to answer questions at her deposition concerning highly relevant, non-privileged information.[3]

Alternatively, if the Court is to grant additional time for Plaintiff to take depositions, Ms. Maxwell will be unduly prejudiced without sufficient additional time to (a) secure any witnesses to rebut testimony gleaned from these witnesses, (b) conduct discovery of Plaintiff's retained experts, (c) submit a summary judgment motion which includes facts learned from these late depositions, and (d) prepare for trial. Thus, if the Court grants Plaintiff's motion, the remaining deadlines in the Scheduling Order ought to be extended accordingly.

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[2] Ms. Churcher's motion to quash will be heard this Thursday by the Court.

[3] Ms. Maxwell is filing simultaneously with this Response a Motion to Re-Open Plaintiff's Deposition.

BACKGROUND

To divert attention away from her own lack of diligence, Plaintiff characteristically devotes much of her Motion blaming Ms. Maxwell and her counsel for her own problems with depositions. Not only is Plaintiff's account factually inaccurate, none of it matters to whether she could timely complete the six depositions at issue.

For example, the scheduling of Ms. Maxwell's deposition (which depended, among other things, on an historic snowstorm, a disputed protective order, Plaintiff's failure to timely produce documents, and counsel's conflicting calendars, all of which have been amply documented with this Court)[4] does not inform any analysis regarding Plaintiff's lack of diligence in pursuing depositions of these six witnesses. *See* Rule 26d)(3) ("Unless the parties stipulate or the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice: (A) methods of discovery may be used in any sequence, and (B) discovery by one party does not require any other party to delay its discovery."). Likewise, receipt of Ms. Maxwell's Rule 26 disclosures in February also had nothing to do with these witnesses. *Id.* Notably, each of the witnesses who Plaintiff now seeks to depose were known to her from the outset; all but President Clinton were included in her initial Rule 26 disclosures served on November 11, 2015 and two of the six were specifically mentioned in Plaintiff's Complaint.

Finally, the fact that witness Rinaldo Rizzo had a deposition re-scheduled from April until June does not have any bearing on the issue presented by this motion. Mr. Rizzo was deposed on June 14 and he has nothing to do with the remaining depositions. Mr. Rizzo, in fact, was practically gleeful to be a witness: he was the one who initiated contact with Brad Edwards after reading about the lawsuit, asked to be a witness in this case, hopes to make money from this

[4] Doc. #62 & Tr. of Hearing of Mar. 24 at 4.

case, already has sued Glenn Dubin, Epstein's friend, had counsel who was totally cooperative in the rescheduling and reported fanciful and never-before heard claims about Ms. Maxwell, the Dubins and others that he has never reported to any law enforcement even though he claims that he witnessed potential kidnappings and sexual assaults on children.[5] Plaintiff's claim that Mr. Rizzo is an "example of delay that has harmed [her] ability to obtain all depositions in a timely manner" (Mot. at 3) is specious.

Contrary to Plaintiff's assertion, discovery began in this case on October 23, 2015, following the parties' Rule 26(f) conferral. *See* Fed.R.Civ.P. 26(d)(1). At the Rule 16(b) scheduling conference on October 28, 2015, this Court directed the parties to complete all fact discovery by July 1, 2016. (Doc. #13) On November 30, 2015, contemporaneous with the filing of her Rule 12(b) Motion to Dismiss, Ms. Maxwell also requested of this Court a stay of discovery pursuant to Rule 26(c). (Doc. #17) That motion was denied on January 20, 2016, with an additional two-week period granted to respond to Plaintiff's First Request for Production of Documents.[6] The discovery was thus never stayed.

Plaintiff erroneously asserts that that discovery "did not commence in this matter until" February 8. What she means is that she neglected to seek any non-witness depositions until then; nothing in the Rules of Civil Procedure, this Court's Orders, or the law prevented Plaintiff from doing so at any point after October 23, 2015.[7] Plaintiff has had over eight months to subpoena

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[5] *See,* Menninger Declaration, Ex. A (Rizzo deposition transcript excerpts). Of course, Plaintiff's counsel has engaged in their own last-minute "unavailability" for a deposition scheduled by Ms. Maxwell, as to Plaintiff's former fiancé, a witness who is hostile, required numerous service attempts at great cost and inconvenience, and who then (because of Plaintiff's last minute unavailability) had to be re-served by a process server who swam through a swamp to get to his home, at additional cost and inconvenience.

[6] By agreement of the parties, the time to respond was extended an additional six days because defense counsel was in a jury trial at the time the Court's Order was handed down.

[7] *See, e.g.,* Pltf's Opp'n to Mot. to Stay (Doc. #20) at 17 n.8 ("As of the date of this filing, zero (0) disposition [sic] notices have been propounded on the Defendant.").

witnesses, schedule depositions and conduct them. Instead, she waited until the last minute and now complains of lack of time. Any lack of time is a product of her own bad faith and negligent litigation tactics and should not be sanctioned by this Court.

The failure to timely secure the depositions of the remaining six witnesses is through no fault of Ms. Maxwell or her counsel. As to these witnesses, Ms. Maxwell and her counsel have played no role in hindering Plaintiff's ability to depose the witnesses; in fact, as to four of the six Plaintiff attempted to serve subpoenas on the witnesses before ever providing notice to the defense, in clear violation of Rule 45(a)(4).

LEGAL AUTHORITY

Rule 16(b) permits modification of a scheduling order only upon a showing of "good cause." To satisfy the good cause standard "the party must show that, ***despite its having exercised diligence***, the applicable deadline could not have been reasonably met." *Sokol Holdings, Inc. v. BMD Munai, Inc.,* 05 Civ. 3749 (KMW)(DF), 2009 WL 2524611 at *7 (S.D.N.Y. Aug. 14, 2009) (emphasis added) (*citing Rent-A-Center Inc. v. 47 Mamaroneck Ave. Corp.,* 215 F.R.D. 100, 104 (S.D.N.Y. 2003) (McMahon, J.)); *accord Parker v. Columbia Pictures Indus.,* 204 F.3d 326, 340 (2d Cir. 2000) (" '[G]ood cause' depends on the diligence of the moving party."); *Perfect Pearl Co., Inc. v. Majestic Pearl & Stone, Inc.,* 889 F. Supp. 2d 453, 457 (S.D.N.Y. 2012) (Engelmeyer, J.) ("To show good cause, a movant must demonstrate that it has been diligent, meaning that, despite its having exercised diligence, the applicable deadline could not have been reasonably met.").

Good cause depends on the *diligence* of the moving party in seeking to meet the scheduling order. *Grochowski v. Phoenix Const.,* 318 F.3d 80, 86 (2d Cir.2003). The Oxford Dictionary defines "diligence" as "careful and persistent work or effort." *See* "diligence" at http://www.oxforddictionaries.com/us/definition/american_english/diligence (last accessed on

June 18, 2016). "Good cause" and diligence were not shown when a party raised the prospect of a deposition nine days prior to the discovery deadline. *Carlson v. Geneva City School Dist.*, 277 F.R.D. 90 (W.D.N.Y. 2011); *compare Reese v. Virginia Intern. Terminals, Inc.,* 286 F.R.D. 282 (E.D. Va. 2012) (depositions noticed very early in discovery period and movant engaged in continuing meet-and-confer dialogue with defendants throughout five month discovery period); *Iantosca v. Benistar Admin. Svcs., Inc.*, 765 F.Supp.2d 79 (D. Mass. 2011) (correspondence indicated that the plaintiffs had tried on numerous occasions to schedule the depositions and to extend the discovery schedule but that the defendants had either refused or failed to respond, good cause found).

ARGUMENT

I. PLAINTIFF'S LACK OF DILIGENCE

Plaintiff has demonstrated an extreme lack of diligence in securing the remaining six depositions that she seeks.

A. President Bill Clinton

Plaintiff's Motion failed to mention any desire to take the deposition of former President Clinton. No Notice of Deposition has been served and no scheduling of his deposition has commenced. Indeed, President Clinton first appeared on Plaintiff's Third Revised Rule 26 Disclosures two weeks ago on June 1. Then, last week, in her Reply In Support of Motion to Exceed Ten Depositions filed on June 13 ("Reply"), Plaintiff averred that President Clinton's deposition is "necessary" because Ms. Maxwell "in her deposition [on April 25] raised Ms. Giuffre's comments about President Clinton as one of the 'obvious lies' to which she was referring in her public statement that formed the basis of this suit." Reply at 3. This is utter nonsense and nothing more than a transparent ploy by Plaintiff to increase media exposure for her sensational stories through deposition side-show. This witness has nothing relevant to add

to this case and Plaintiff has made no effort, much less one in good faith to timely secure his testimony.

Plaintiff admits she has "made not allegations of illegal actions by Bill Clinton." *Id.* But Plaintiff has asserted that she spent time with President Clinton on the island of Little St. James, US Virgin Islands and that she flew there with the President in a helicopter piloted by Ms. Maxwell. In one article, authored by Sharon Churcher, Plaintiff related:

> "On one occasion, she adds, Epstein did invite two young brunettes to dinner which he gave on his Caribbean island for Mr. Clinton shortly after he left office. But as far as she knows, the ex-President did not take the bait. 'I'd have been about 17 at the time,' she says. 'I flew to the Caribbean with Jeffrey and then Ghislaine Maxwell went to pick up Bill in a huge black helicopter that Jeffrey bought her. She'd always wanted to fly and Jeffrey paid for her to take lessons, and I remember she was very excited because she got her license around the first year we met. I used to get frightened flying with her but Bill had the Secret Service with him and I remember him talking about what a good job she did. I only met Bill twice but Jeffrey told me they were good friends.'
>
> 'We all dined together that night. Jeffrey was at the head of the table. Bill was at his left. I sat across from him. Emmy Taylor, Ghislaine's blonde British assistant, sat at my right. Ghislaine was at Bill's left and at the left of Ghislaine there were two olive-skinned brunettes who'd flown in with us from New York. I'd never met them before. I'd say they were no older than 17, very innocent-looking. They weren't there for me. They weren't there for Jeffrey or Ghislaine because I was there to have sex with Jeffrey on the trip. Maybe Jeffrey thought they would entertain Bill, but I saw no evidence that he was interested in them. He and Jeffrey and Ghislaine seemed to have a very good relationship. Bill was very funny. He made me laugh a few times. And he and Jeffrey and Ghislaine told blokey jokes and the brunettes listened politely and giggled. After dinner I gave Jeffrey an erotic massage. I don't remember seeing Bill again on the trip but I assume Ghislaine flew him back."

See Sharon Churcher, "Teenage girl recruited by peadophile Jeffrey Epstein reveals how she twice met Bill Clinton," DAILY MAIL (Mar. 5, 2011) (attached to Declaration of Sharon Churcher, Ex. 3 (Doc. #216-3). Similarly, in Plaintiff's unpublished and un-dated book manuscript, *The Billionaire Playboys' Club*, she writes:

> "The next big dinner party on the island had another significant guest appearance being the one and only, Bill Clinton. He is the only president in the world to be

> dismissed from his role as a world leader because he was caught with his trousers around his ankles and had the stain to prove it. Publicly humiliating his wife and himself he retired from his title but not from his lifestyle. This wasn't a big party as such, only a few of us eating at the diner table. There was Jeffrey at the head of it all, as always. On the left side was Emmy, Ghislaine and I sitting across the table from us was Bill with two lovely girls who were visiting from New York. Bill's wife, Hillary's absence from the night made it easy for his apparent provocative cheeky side to come out. Teasing the girls on either side of him with playful pokes and brassy comments, there was no modesty between any of them. We all finished our meals and scattered in our own different directions."

Menninger Decl. Ex. B at 110.

Each and every part of Plaintiff's claims regarding President Clinton has conclusively been proven false. Former FBI Director Louis Freeh submitted a report wherein he concluded that President Clinton "did not, in fact travel to, nor was he present on, Little St. James Island between January 1, 2001 and January 1, 2003." Menninger Decl., Ex. C. Further, if any Secret Service agents had accompanied Clinton to that location, "they would have been required to make and file shift logs, travel vouchers, and related documentation relating to the visit," and there was a "total absence" of any such documentation. *Id.* Remarkably, Plaintiff now even denies telling Churcher that she ever witnessed Ms. Maxwell flying President Clinton or his Secret Service anywhere, or joking with Clinton about "what a good job she did." Menninger Decl., Ex. D. Plaintiff's counsel remarkably instructed Plaintiff not to answer any additional questions about the other things Sharon Churcher inaccurately reported. *Id.* Lending even more incredulity to Plaintiff's story, Ms. Maxwell only received her pilot's license in mid-1999 casting insurmountable doubt that a recently retired president and his staff would be permitted to fly with her at the helm.

With the record thus, Plaintiff's claims about Clinton's presence on the Island and the fully concocted story about the dinner party that occurred thereon totally debunked by the former head of the FBI and with Plaintiff now disclaiming she ever witnessed the Secret Service or

President Clinton being flown in a helicopter by Ghislaine Maxwell, the relevance of any testimony he might add (*i.e.,* confirm that he was, as Louis Freeh determined, never on the Island) is non-existent. The only purpose for seeking this deposition is for the calculated media strategy that Plaintiff and her publicity-seeking attorneys have devised.

Plaintiff failed to disclose President Clinton as a witness until June 1, failed to notice his deposition, failed to diligently pursue a subpoena on him and he has no relevant testimony to offer. Accordingly, Plaintiff's leave to modify the scheduling order to permit his deposition should be denied.

B. Ross Gow

As the Court likely recalls, Ross Gow actually issued the statement pertinent to this defamation suit. Plaintiff has known about Ross Gow and his role in this lawsuit since the outset: She referenced him repeatedly by name in the Complaint filed on September 21, 2015. *See, e.g.,* Complaint paragraph 29 ("As part of Maxwell's campaign, she directed her agent, Ross Gow, to attack Giuffre's honesty and truthfulness and to accuse Giuffre of lying."). Plaintiff also has been well aware throughout that Mr. Gow resides in London. *See, e.g.,* Plaintiff's Motion to Compel Improper Privileges, at 8 (Doc. #33).

After filing that Complaint in September and litigating the Motion to Compel based on privileges related to Mr. Gow in March, Plaintiff took exactly zero steps to depose Mr. Gow until she filed this Motion. Now, nine months after filing her Complaint, Plaintiff contends there is "not sufficient time" for her to "go through the Hague Convention for service on Mr. Gow" so as to "complete this process before the June 30, 2016 deadline." Mot. at 4. Indeed, Plaintiff only initiated that process three days ago, on Friday, June 17, two weeks shy of the discovery cut-off.

Plaintiff, once again, tries to blame Ms. Maxwell for her own lack of diligence by misrepresenting to this Court that "Ms. Giuffre asked that Defendant produce her agent, Mr.

Gow, for a deposition but Defendant has refused…despite acknowledging that Defendant plans to call Mr. Gow for testimony at trial." *Id.* In truth, Plaintiff sent a letter on May 23 which read in its entirety, "This letter is to seek your agreement to produce Ross Gow for deposition, as the agent for your client, Ms. Maxwell. We can work with Mr. Gow's schedule to minimize inconvenience. Please advise by Wednesday, May 25, 2016, whether you will produce Mr. Gow or whether we will need to seek relief from the Court with respect to his deposition." Menninger Decl. Ex. E. That was the first communication regarding any deposition of Mr. Gow. Two days later, defense counsel requested any "legal authority that would allow Ms. Maxwell to 'produce' Ross Gow for a deposition" or "any rule or case that would either enable or require her to do so." *Id.* Plaintiff never responded. She also has not explained when or how Ms. Maxwell "acknowledged" her "plans to call Mr. Gow for testimony at trial," nor why that is relevant to whether Plaintiff has demonstrated good cause for her own failure to take steps to depose a foreign witness deposition until June 17, for a witness she was aware before even filing the Complaint.

During the hearing on March 24, this Court stated that it would consider expect to see "good faith showing" of efforts to comply with the schedule and "an inability because of Hague Convention problems," before it would consider changing the Scheduling Order. Ms. Maxwell submits that waiting until June 17, two weeks before the end of discovery, to even begin the Hague Convention process falls far short of any such good faith showing and the request for leave to take Mr. Gow's testimony beyond July 1 should be denied.

C. Jean Luc Brunel

With regard to Jean Luc Brunel, Plaintiff simply asserts that he was "subpoenaed," and "set for mid-June deposition[]," but "through counsel" has "requested we change the dates of [his] deposition." Mot. at 4. That is her entire argument. She omits key facts that would,

instead, demonstrate her lack of diligence in securing Mr. Brunel's testimony and also show that she has waived any right to seek an out-of-time deposition.

Plaintiff first issued a Notice of a Rule 45 subpoena for documents from Mr. Brunel on February 16, at an address "c/o" attorney, Joe Titone. No documents were ever produced pursuant to that subpoena. Menninger Decl., Ex. F. Then, on May 23, 2016, Plaintiff issued a new "Notice of Subpoena Duces Tecum," attached to which was actually a subpoena for deposition testimony to occur on June 8, at 9:00 a.m. in New York. *Id.* Again, the subpoena was addressed "c/o" attorney Robert Hantman. Then, on June 2, Plaintiff's counsel sent an email that they had received "an email yesterday from Mr. Brunel's attorney saying he needs to reschedule. I believe he is trying to get us new dates today or tomorrow." *Id.* The "scheduled date" of June 8 came and went without any indication of any new dates provided by Mr. Brunel's counsel. The following week, Plaintiff's counsel stated in a phone conversation that Mr. Brunel's counsel said his client had gone to France and it was unclear when he would be returning to the United States.

Following the filing of the instant motion, counsel for Ms. Maxwell requested copies of the certificates of service for all of Plaintiff's Rule 45 subpoenas in this case. Plaintiff's counsel provided certificates on June 14. Notably absent was any certificate of service for Mr. Brunel. Thus, either Mr. Brunel was never served, or he was served and Plaintiff unilaterally extended his compliance date to an unscheduled time in the future. Either way, the time to complain about a witness's non-compliance is at or near the time it occurs. Failure to timely complain regarding non-compliance with a subpoena constitutes a waiver. In any event, whether served or not, Mr. Brunel apparently promised to provide new dates before his deposition date came and went, did not do so, has left the country and not indicated a present intention to return. Given Plaintiff's

role in failing to compel him to attend a deposition, no "good cause" has been demonstrated to take the deposition of Mr. Brunel after July 1.

D. Jeffrey Epstein

As with the other witnesses, Plaintiff has failed to demonstrate "good cause" for seeking to depose Jeffrey Epstein out of time. Plaintiff claims that she was unable to secure service on Mr. Epstein until May 27, 2016, because his counsel "refused to accept service" until she filed her motion for alternative service. The documents reflect the opposite: Mr. Epstein's attorney agreed to accept service on April 11, 2016, and it was only on May 27, 2016, that *Plaintiff* agreed. *See* Poe Declaration in Support of Motion to Quash Epstein Deposition, Ex. 3 (Doc. # 223-3). Plaintiff fails to explain her strategic decision, or negligence, in failing to respond for over six weeks to Mr. Weinberg's email offering to accept service. Indeed, in another failure of candor, Plaintiff's counsel also neglected to tell this Court about the email offer from Mr. Weinberg either in the instant motion or in her motion to serve Mr. Epstein by alternate means. Mot. at 2; Doc. # 160.[8]

Plaintiff apparently now claims that she never received that email from Martin Weinberg. All of the preceding communications, however, indicate that Mr. Weinberg promptly responded to Ms. McCawley's inquiries. *See, e.g.,* Poe Declaration, Ex. 2 (email of April 6 from Weinberg to McCawley (offering to let her know regarding acceptance of service on April 7)); email of McCawley in response ("That works fine – thank you.")). Thus, if Ms. McCawley received no follow up response from Mr. Weinberg, as she now claims, when he had been corresponding

[8] In another glaring omission from Plaintiff's submissions to the Court on the topic of the service of Mr. Epstein, Plaintiff's own counsel have strenuously litigated in other cases that Mr. Epstein is a resident of Florida, over his objection that he is a resident of the U.S. Virgin Islands. *See, e.g.,* Menninger Decl., Ex. G (Motion to Quash Subpoena on Jeffrey Epstein, Broward County, Florida, 15-000072). Yet, all of Plaintiff's purported attempts at service on Mr. Epstein were in New York.

with her previously theretofore, she had a duty to follow up on that inquiry. A failure to do so is plain vanilla neglect.

Even after agreeing to the terms proposed by Epstein's counsel on May 27, that is, location of the deposition in the U.S. Virgin Islands and subject to right to oppose the subpoena, Plaintiff then waited an *additional three weeks* until June 12, to even attempt to schedule Epstein's deposition. Epstein Memorandum in Support of Mot. to Quash at 2 (Doc. # 222). Agreeing to take a deposition in the Virgin Islands on May 27, then waiting until June 12, to try to schedule a date for that deposition, when numerous other depositions had already been scheduled in New York, Florida, and California for the balance of June, is either neglect or strategic posturing by Plaintiff. Either way, it does not amount to "good cause" for such a deposition to take place beyond July 1.

Finally, Plaintiff suggests, without factual foundation, that Ms. Maxwell played some role in Mr. Epstein's counsel's refusal to accept service. *See* Mot. at 2 ("forced to personally serve the Defendant's former boyfriend, employer, and co-conspirator"). As the timeline and documents now reveal, however, Plaintiff failed to provide notice to Ms. Maxwell that she was attempting to serve a Rule 45 subpoena on Mr. Epstein for more than 7 weeks! *Id.* Plaintiff states that she began her service attempts on March 7, 2016. The very first Notice of Subpoena and Deposition served on Ms. Maxwell, however, is dated April 27. Menninger Decl. Ex. H. Thus, between March 7 and April 27, Ms. McCawley engaged in repeated attempts to serve Mr. Epstein a Rule 45 subpoena (including a request for documents) without providing the proper notice to the parties pursuant to Rule 45(a)(4) ("If the subpoena commands the production of documents… , then *before it is served* on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.") (emphasis added). As detailed below, this was

not an isolated incident and merits sanction. In any event, it is difficult to imagine how it is Ms. Maxwell's fault that Plaintiff could not serve Mr. Epstein when she was never put on notice of any attempt to do so.

Given that Plaintiff knew as of April 11 the conditions pursuant to which Mr. Epstein would accept service through counsel, yet waited until May 27 to agree to those terms, and then waited another nearly three weeks to attempt to schedule Mr. Epstein's deposition on a date available for his counsel and Ms. Maxwell's counsel, Plaintiff has fallen far short of demonstrating "good cause" for taking Mr. Epstein's deposition beyond the end of the fact discovery cut-off.

E. Nadia Marcincova and Sarah Kellen

Finally, Plaintiff seeks the depositions of two other witnesses – Sarah Kellen and Nadia Marcincova -- who, she complains, "despite being represented by counsel, have refused to accept service."[9] Mot. at 3. Plaintiff claims that her process servers tried for three weeks (from April 25 until May 18) to personally serve Ms. Kellen and Ms. Marcincova with subpoenas *duces tecum*. She did not explain, however, why she waited until April to try to serve these two witnesses, about whom her attorneys have known since 2008. She also has not explained to this Court any legally relevant or admissible evidence that either possess, nor how she intends to introduce that evidence in a trial of this defamation claim between Plaintiff and Ms. Maxwell.

Apart from these witnesses stated intent to take the Fifth Amendment which renders their testimony inadmissible, as discussed more fully below, neither witness has any relevant testimony to offer because Plaintiff never made a public statement about either one of them.

[9] Actually, in Plaintiff's Motion for Leave to Serve Three Deposition Subpoenas by Means Other than Personal Service, Plaintiff details that Ms. Marcincova's counsel stated he no longer represents her. (Doc. #161 at 5) ("counsel for Ms. Giuffre reached out to Ms. Marcinkova's former counsel but he indicated that he could not accept service as he no longer represents her"). It is unclear then, why Plaintiff persists in representing to this Court that Ms. Marcincova instructed her counsel not to accept service, or why Plaintiff seeks to serve Ms. Marcincova through her *former* counsel.

Plaintiff did not include either woman in her Sharon Churcher-paid interviews, nor were they mentioned in Plaintiff's Joinder Motion of December 30, 2014. Thus, neither Plaintiff's allegations about Ms. Maxwell, nor Ms. Maxwell's denial of the same based on her personal knowledge, are implicated by anything that Ms. Kellen or Ms. Marcincova may have done with anyone else. Their testimony cannot corroborate Plaintiff's account, nor can it shed light on whether Ms. Maxwell's denial of that account is accurate, because Plaintiff's account did not mention either of them.

Finally as to these witnesses, Plaintiff once again documented her own failure to comply with Rule 45 in regard to attempts to serve these two witnesses. Six of the service attempts occurred on April 25 and April 26. Yet Plaintiff only provided Notice to Ms. Maxwell of her intent to serve the subpoenas on April 27. Menninger Decl. Ex. I.

II. FIFTH AMENDMENT BY EPSTEIN, KELLEN OR MARCINCOVA NOT ADMISSIBLE IN THIS CASE AGAINST MS. MAXWELL

The depositions of Epstein, Kellen and Marcincova do not constitute "good cause" to modify the scheduling order in this case for the additional reason that they all have represented to Plaintiff their intention to assert the Fifth Amendment protection as to *all* questions and such assertion will not be admissible evidence in this trial. Indeed, counsel for Mr. Epstein recently filed a Motion to Quash his subpoena based on the same legal principle that his deposition is unduly burdensome in light of the fact that it will not lead to admissible evidence. (Doc. # 221, 222, 223) The Court should consider this additional factor to decline a finding of "good cause" for extending the discovery deadline.

Plaintiff wrongfully contends that any assertion of the Fifth Amendment during the depositions of Epstein, Kellen and Marincova will be admissible in the trial of this defamation matter (where none of those individuals are parties) based on an "adverse inference" that can be

drawn against Ms. Maxwell. *See LiButti v. United States*, 107 F.3d 110, 121 (2d Cir. 1997). In fact, none of the *LiButti* factors support her argument. While noting that Ms. Maxwell anticipates more extensive briefing on this issue in support of Mr. Epstein's Motion to Quash, a few facts bear mentioning here:

- Ms. Maxwell was the employee of Mr. Epstein --in the 1990s -- not the other way around. Mr. Epstein has never worked for or been in control of Ms. Maxwell.

- Ms. Maxwell and Mr. Epstein have had no financial, professional or employment relationship in more than a decade, many years before 2015 when the purportedly defamatory statement was published. Ms. Maxwell testified that she has not spoken to Mr. Epstein in 2 years.

- Maxwell has not vested any control in Mr. Epstein "in regard to key facts and subject matter of litigation." As the Court is well aware from review of emails submitted *in camera* (and later produced to Plaintiff):

    - Mr. Epstein and his counsel gave advice to Maxwell regarding whether she should issue a statement *after* January 2, 2015. In one, Mr. Epstein even suggested what such a statement might say. Maxwell never issued any additional statement.

    - Maxwell had her own counsel who operated independently of Mr. Epstein and his counsel.

- Epstein is not "pragmatically a non-captioned party in interest" in this litigation nor has he "played controlling role in respect to its underlying aspects." Epstein is not, despie Plaintiff's suggestion, paying Ms. Maxwell's legal fees. Plaintiff sought by way of discovery any "contracts," "indemnification agreements," "employment agreements" between Ms. Maxwell and Epstein or any entity associated with Epstein, from 1999 to the present. Ms. Maxwell responded under oath that there are no such documents. Epstein played no role in the issuance of the January 2 statement, nor has he issued any public statement regarding Plaintiff. Indeed, Plaintiff and Epstein fully resolved any claims against one another by way of a confidential settlement in 2009, another action in which Ms. Maxwell had no role.

- Assertion of the privilege by Epstein does not advance any interest of Ms. Maxwell's. Quite to the contrary, Epstein would be a key witness in her support, exonerating her from Plaintiff's allegations regarding sex abuse, sexual trafficking and acting as his "madam" to the stars. As proof, one need look no further than emails already reviewed by this Court. In an email sent by Epstein to Ms. Maxwell on January 25, 2015, while the media maelstrom generated by Plaintiff's false claims continued to foment, he wrote: "You have done nothing wrong and I would urge you to start acting like it. Go outside, head high, not as an escaping convict. Go to parties. Deal with it." Menninger Decl. Ex. J

- Likewise, Epstein drafted a statement for Ms. Maxwell to issue (though she never did). In that statement, Epstein wrote (presumably what his testimony would reflect, should he not take the Fifth):

  "Since JE was charged in 2007 for solicitation of a prostitute I have been the target of outright lies, innuendo, slander, defamation and salacious gossip and harassment; headlines made up of quotes I have never given, statements I have never made, trips with people to places I have never been, holidays with people I have never met, false allegations of impropriety and offensive behavior that I abhor and have never ever been party to, witness to events that I have never seen, living off trust funds that I have never ever had, party to stories that have changed materially both in time place and event, depending on what paper you read, and the list goes on.

  I have never been a party in any criminal action pertaining to JE.

  For the record:

  At the time of Jeffrey's plea, I was in a very long-term committed relationship with another man and no longer working with Jeffrey. Whilst I remained on friendly terms with him up until his plea, I have had limited contact since. Every story in the press innuendo and comment has been taken from civil depositions against JE, which were settled many years ago. None of the depositions were ever subject to cross examination, not one. Any standard of truth and were used for those who claimed they were victims to receive financial payment to be shared between them and their lawyers. One firm created and sold fake cases against Mr. Epstein – the firm subsequently imploded and the (sic) Rothstein, the owner of the firm was sent to jail for 50 years for his crime. The lawyer who is currently representing Virginia (Brad Edwards) was his partner. Need I say more.

  These so called 'new revelations' stem from an alleged diary from VR that reads like the memoirs she is purporting to be selling. Also perhaps pertinent – in a previous complaint against others, her claims were rejected by the police 'due to ..VR..lack of credibility."

  The new interest in this old settled case results from lawyers representing some of JE victims filed a suit against the US government, not JE. They contend that the US govt violated their rights. The documents and deal that JE negotiated with the government was given to the lawyers 6 years ago and is a public document.

  I am not a part of, nor did you have anything to do with, JE plea bargain. I have never even seen the proceedings nor any of the depositions. I reserve my right to file complaint and sue for defamation and slander."; *Id.*

These correspondences demonstrate that Ms. Maxwell has no control over Mr. Epstein in regards to the alleged defamation statement, he had no role in issuance of the statement, he has no benefit in the outcome of this litigation and he played no controlling role in its respect.

Similarly, there is not any evidence at all to support an adverse inference to be drawn from either Sarah Kellen nor Nadia Marcincova's assertion of the Fifth. Ms. Maxwell hardly knows either woman, never worked with them, they have had nothing to do with this litigation and do not stand to benefit from it, especially as Plaintiff has never made any allegations about her involvement with either of the two of them, they are simply irrelevant to this defamation action.

III. PLAINTIFF'S BAD FAITH DISCOVERY TACTICS SHOULD NOT BE REWARDED WITH EXTRA TIME

1. Plaintiff's Rule 26 Revolving Door

Plaintiff's army of lawyers (who collectively have been litigating matters related to Jeffrey Epstein since 2008) served their Rule 26 initial disclosures on November 11, 2015. Those disclosures listed 94 individual witnesses with knowledge regarding the facts of this case, yet provided addresses (only of their counsel) as to just two, Jeffrey Epstein and Alan Dershowitz. Plaintiff then also listed categories of witnesses such as "all other then-minor girls, whose identities Plaintiff will attempt to determine" and "all pilots, chauffeurs, chefs, and other employees of" Ms. Maxwell or Jeffrey Epstein. Plaintiff claimed as to her Rule 26 disclosures that "only a fraction of those individuals will actually be witnesses in this case, and as discovery progresses, the list will be further narrowed." (Doc. #20 at 17) The opposite has happened.

Between November 11 and March 11, Plaintiff trimmed her Rule 26 list of persons with knowledge from 94 to 69, inexplicably removing 34 names, but adding 12 more. She removed,

for example, witnesses Andrea Mitrovich and Dara Preece, but added Senators George Mitchell, Bill Richardson and Les Wexner.

Then between March 11 and June 1, a few weeks before the discovery cut-off, Plaintiff added 20 more witnesses, including President Clinton, Palm Beach officers Recarey and Reiter, and purported "victims of sexual abuse" including a client of Mr. Edwards, who he has clearly known about for years.[10] As to several of these newly added witnesses, in particular [redacted] Recarey and Reiter, Plaintiff promptly scheduled their depositions in June, despite having just disclosed their names on June 1. And last Friday, on the business day just before the depositions of [redacted] and Recarey, Plaintiff disclosed 623 new documents, including for the first time the "unredacted" police reports from Palm Beach, that Plaintiff clearly has had in her possession, or her counsel's possession, for years. Menninger Decl. Ex. K.

This is precisely the type of hide-and-seek that Rule 26 is designed to prevent. While Ms. Maxwell anticipates filing in the near future a separate motion concerning Plaintiff's latest Rule 26 violations and seeking sanctions for the same, this Court can and should consider this behavior in determining whether Plaintiff has "good cause" to extend the discovery cut-off so that she can continue her gamesmanship.

2. Plaintiff's Recurrent Rule 45 Violations

As this Court has previously held:

> Rule 45(b)(1) requires a party issuing a subpoena for the production of documents to a nonparty to "provide prior notice to all parties to the litigation," which has been interpreted to "require that notice be given prior to the *issuance* of the subpoena, not prior to its return date." *Murphy v. Board of Educ.,* 196 F.R.D. 220, 222 (W.D.N.Y.2000). At least one court in this circuit has held that notice provided on the same day that the subpoenas have been served constitutes inadequate notice under Rule 45. *See, e.g., Fox Industries, Inc. v. Gurovich,* No. 03–CV–5166, 2006 WL 2882580, *11 (E.D.N.Y. Oct. 6, 2006). … The

[10] Rather than list his client's address in the custody of the U.S. Marshal's Office, Mr. Edwards said her address is "c/o" himself.

> requirement that prior notice "must be given has important underpinnings of fairness and efficiency." *Cootes Drive LLC v. Internet Law Library, Inc.,* No. 01–CV–9877, 2002 WL 424647, *2 (S.D.N.Y. Mar. 19, 2002). Plaintiff fails to provide an adequate explanation or argument for how a same-day notification satisfies Rule 45's requirements. *See, e.g., id.* ("[C]ounsel for the [offending party] offered no explanation or excuse for their failure to comply with the rule's strictures. They did not attempt to defend the timeliness of their notice. The [offending party's] admitted violation ... cannot be countenanced.").

Usov v. Lazar, 13-cv-818 (RWS), 2014 WL 4354691, at *15 (S.D.N.Y. Sept. 2, 2014) (granting motion to quash the subpoenas where notice given on the same day and served beyond 100 mile limitation of Rule 45). In that case, Plaintiff had provided *same day notice* of the issuance of a subpoena. Here, we have repeated attempts to serve a subpoena over the course of days before any notice was given to Ms. Maxwell. As described previously, Plaintiff has amply documented her own violations of the Rule by detailing her attempts to serve subpoenas *duces tecum* before ever providing notice to Ms. Maxwell with regards to witnesses Epstein, Kellen and Marcincova.

Likewise, with respect to witness, Alexandra Hall, Plaintiff served the subpoena prior to providing notice. *See* Menninger Decl. Ex. L. Served subpoenas before providing Notice under Rule 45. Accordingly, Plaintiff moves to quash the subpoenas on Epstein, Kellen and Marcincova as violations of Rule 45's notice provision. Ms. Maxwell further requests sanctions pursuant to Rule 37 for these documented violations.

With respect to Ms. Hall, who was deposed already earlier today, Ms. Maxwell believes that she did not offer any admissible testimony at her deposition. If Plaintiff's seek to introduce her testimony, the defense reserves the right to exclude such testimony both on evidentiary grounds as well as in violation of Rule 45's notice provision.[11]

IV. MS. MAXWELL'S GOOD FAITH EFFORTS TO CONDUCT DISCOVERY

[11] Counsel for Ms. Maxwell only learned of the Rule 45 violation this past weekend after reviewing certificates of service provided by Plaintiff's counsel last week, without sufficient time to file a motion to quash the subpoena on Ms. Hall.

As already documented in previous pleadings, Ms. Maxwell's counsel has engaged in significant and repeated efforts to conduct discovery in this case in a professional, civil manner, especially as it relates to the depositions of non-parties. On February 25, 2016, counsel for Ms. Maxwell requested that the lawyers confer by telephone to arrange a schedule for the non-party depositions to occur in various states and countries.[12] Plaintiff ignored that request, and requests of the same ilk made on at least 6 different occasions in March and April. It was only on two and ½ months later, on May 5, 2016, when Plaintiff's counsel finally responded with "as is becoming clear, both sides are going to be needing to be coordinating a number of depositions."[13] She then proposed a calendar which scheduled 13 additional depositions for Plaintiff and only 2 days (actually ½ days) for defendant to depose her remaining witnesses. [14] Defendant provided a calendar which allowed for both sides to take remaining depositions, but Plaintiff ignored it and continued to schedule depositions on dates for witnesses without consulting defense counsel for their availability first. Menninger Decl., Ex. M.

Because of the breakdown in communications, defense counsel was left with little choice but to (a) show up at each of Plaintiff's noticed depositions, in Florida and New York, and (b) issue subpoenas for witness depositions on other dates in June. For example, Plaintiff issued a

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[12] McCawley Decl. in Support of Request to Exceed Ten Deposition Limit, Exhibit 1 (Doc. # 173-1) at 28 (Letter of Menninger to McCawley (Feb. 25, 2015) ("I would suggest that rather than repeated emails on the topic of scheduling the various depositions in this case, or the unilateral issuance of deposition notices and subpoenas, you and I have a phone conference wherein we discuss which depositions are going to be taken, where, and a plan for doing them in an orderly fashion that minimizes travel and inconvenience for counsel and the witnesses. As you are well aware from your own practice of law, attorneys have other clients, other court dates and other commitments to work around. The FRCP and Local Rules contemplate courtesy and cooperation among counsel in the scheduling and timing of discovery processes. This rule makes even more sense in a case such as this spanning various parts of the country where counsel must engage in lengthy travel and the attendant scheduling of flights, hotels and rental cars.")).

[13] *Id.* at 19.

[14] *Id.* at 1-3.

Notice of Deposition for Juan Alessi on May 31, 2016, without any conferral with counsel, in Florida, fully aware that defense counsel would be traveling from Colorado. Defense counsel, in fact, did have to travel on Memorial Day to Florida for the 9:00 a.m. May 31 deposition. Mr. Alessi, however, did not appear on that date, believing that his deposition was for June 1, the same day that his wife had been subpoenaed to appear and because he and his wife live an hour away from Ft. Lauderdale. Thus, despite defense counsel's herculean efforts, no deposition occurred on May 31. On June 1, Mr. Alessi appeared, but there was insufficient time to take his wife's deposition, who presumably made the one hour drive for naught. Also, defense counsel then had to travel to New York for the June 2 hearing and back to Florida for a deposition of another witness, Mr. Rogers, that had been scheduled without input from defense counsel.

Counsel for Plaintiff makes much of her efforts to serve witnesses Epstein, Marcincova and Kellen. She fails to advise the Court that Ms. Maxwell has been "forced" to expend great time, money and resources to serve Plaintiff's *own mother, father, former fiancé and former boyfriend*. As described before, the defense even re-scheduled the deposition of Plaintiff's former fiancé due to the last minute unavailability of Plaintiff's counsel, although all counsel were already in Florida and had expended hundreds of dollars to serve him. Plaintiff made no effort to help serve those closest to her, including her own family members. Unlike Plaintiff, however, Ms. Maxwell and her counsel are fully aware that such are the difficulties of litigation. We do not ascribe to Plaintiff the blame.

Having flown to Florida a total of four separate times to attend depositions of five of Plaintiff's noticed witnesses, defense counsel has borne the brunt of Plaintiff's mismanagement of counsel and witness time. Defense counsel scheduled their own Florida depositions of three witnesses to occur during two of the four trips. Defense counsel offered to, and did, schedule the

two Colorado non-party witnesses the same week in May, so as minimize Plaintiff's counsel's travel obligations. Plaintiff, however, rescheduled the deposition of Mr. Rizzo in New York for a week after this Court had a hearing, rather than accommodating any attempt to have the New York deposition occur when all counsel were already present in NY.

To the extent the Court wishes to consider the good faith efforts of defense counsel in conducting depositions when deciding whether to grant Plaintiff additional time, defense has more than met their burden.

V. GOOD CAUSE EXISTS TO TAKE RE-DEPOSE PLAINTIFF AND TO DEPOSE SHARON CHURCHER EXISTS

In contrast to the lack of good cause to extend discovery for Plaintiff's six witnesses, Ms. Maxwell seeks leave of the Court to take depositions beyond June 30. First, Ms. Maxwell properly served a deposition subpoena (and provided appropriate notice to Plaintiff's counsel) on Plaintiff's friend, confidante and former-Daily Mail journalist, Sharon Churcher for a deposition to occur in New York on June 16. Menninger Decl. Ex. N. On June 15, the day before her scheduled deposition, Ms. Churcher's counsel filed a Motion to Quash. That motion is to be heard by this Court on June 23. Should the Court deny the Motion to Quash, Ms. Churcher's deposition would need to be re-scheduled. Dates in early July would be sufficient for counsel.

Similarly, Ms. Maxwell is filing simultaneously with this Motion a request to re-open the deposition of Plaintiff on the grounds, *inter alia*, that she failed to provide numerous documents (ordered to be produced by this Court) until after her deposition (and still has failed to provide others)[15], she materially changed substantive and significant portions of her testimony after the

[15] For example, Ms. Giuffre testified that she had approximately 8 boxes, which included documents pertinent to this case, which she shipped from her home in Colorado to Australia in October 2015 to an undisclosed location (at her deposition, she would not testify where in Australia the boxes were located), and that the boxes had not been searched for responsive documents. Menninger Decl. Ex. D. In repeated conferrals following her deposition, on May 19, her counsel finally agreed to secure the boxes. As of today's date, the boxes still have not arrived,

fact through her *errata* sheet on May 31, and she refused to answer material questions at her deposition on the advice of counsel, including for example, which of Ms. Churcher's many quotes attributed to her were incorrect. *See,e g.,* Menninger Decl. Ex. D, referenced *supra*. As with Ms. Churcher's deposition, the re-opened deposition of Plaintiff could occur in early July, assuming she provides the Court-ordered documents timely.

VI. ALTERNATIVELY, ALL OTHER DEADLINES NEED TO BE EXTENDED

Finally, Plaintiff glibly asserts that she seeks only 30 extra days to conduct her depositions, but does not want any other dates moved. Of course, that inures to her benefit and to Ms. Maxwell's detriment. July already was scheduled for expert disclosures (Plaintiff has yet to disclose her retained expert, and thus the defense has been unable to secure a rebuttal expert). Likewise, should any new information be learned in these late depositions that requires rebuttal, Ms. Maxwell will be unable to secure such evidence on a timely basis.

Further, summary judgment motions are due in this case on August 3. If depositions continue throughout August, Ms. Maxwell's ability to include any late-learned information in her anticipated motion will be jeopardized. Finally, the trial is scheduled for October, continuing fact discovery until August seriously impinges on Ms. Maxwell's ability to prepare for that trial, including preparing witnesses, exhibits and testimony.

WHEREFORE, Ms. Maxwell requests that the Motion to Extend the Deadline to Complete Depositions be denied; alternatively, if the deadline is extended for any of the listed six witnesses, Ms. Maxwell requests that the dates for expert discovery, dispositive motions and the trial date by extended as well. Further, Ms. Maxwell requests sanctions for Plaintiff's failures to comply with the notice provisions of Rule 45(a)(4).

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apparently having been put on the slow boat to the US. One can only imagine where on the high seas the boxes may be located now. Of course, there were many alternative methods to search the boxes. The unknown custodians in Australia for example could have simply looked in them to see whether they contained any responsive documents.

Dated: June 20, 2016.

Respectfully submitted,

/s/ Laura A. Menninger

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CERTIFICATE OF SERVICE

I certify that on June 20, 2016, I electronically served this *DEFENDANT'S COMBINED MEMORANDUM OF LAW IN OPPOSITION TO EXTENDING DEADLINE TO COMPLETE DEPOSITIONS AND MOTION FOR SANCTIONS FOR VIOLATION OF RULE 45* via ECF on the following:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIRGINIA L. GIUFFRE, Plaintiff, v. GHISLAINE MAXWELL, Defendant.	**15-cv-07433-RWS**

Declaration Of Laura A. Menninger In Support Of Defendant's Response in Opposition to Extending Deadline to Complete Depositions and Motion for Sanctions for Violations of Rule 45

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 ("Maxwell") in this action. I respectfully submit this declaration in support of Defendant's Response in Opposition to Extending Deadline to Complete Depositions and Motion for Sanctions for Violations of Rule 45.

2. Attached as Exhibit A (filed under seal) is a true and correct copy of excerpts from the Deposition of Rinaldo Rizzo on June 10, 2016, and designated by Plaintiff as Confidential under the Protective Order.

3. Attached as Exhibit B (filed under seal) is a true and correct copy of The Billionaire Playboys Club book manuscript drafted by Plaintiff, designated by Plaintiff as Confidential under the Protective Order

4. Attached as Exhibit C is a report by former FBI director, Louis Freeh.

5. Attached as Exhibit D (filed under seal) is a true and correct copy of excerpts of Plaintiff's deposition on May 3, 2016, and designated by Plaintiff as Confidential under the Protective Order.

6. Attached as Exhibit E are true and correct copies of May 23, 2016 correspondence from Meredith Shulz and May 25, 2016 correspondence from myself.

7. Attached as Exhibit F are true and correct copies of Notices of Subpoena with attachments for Jean Luc Brunel, served on February 16, 2016 and May 23, 2016, as well as correspondence regarding Mr. Brunel's deposition from counsel, Bradley Edwards.

8. Attached as Exhibit G is a Motion to Quash filed by counsel for Jeffrey Epstein in Broward County, Florida in *Edwards and Cassell v. Dershowitz*, Case No. 15-0000072 on September 10, 2015.

9. Attached as Exhibit H is a true and correct copy of the Notice of Deposition and Subpoena for Jeffrey Epstein, served on counsel on April 27, 2016.

10. Attached as Exhbit I are true and correct copies of the Notices of Deposition and Subpoena for Sarah Kellen and Nadia Marcincova, served on counsel on April 27, 2016.

11. Attached as Exhibit J (filed under seal) are true and correct copies of correspondence produced in this case between Ms. Maxwell and Jeffrey Epstein from January 2015, and designated as Confidential by Defendant under the Protective Order.

12. Attached as Exhibit K (filed under seal) are Notices of Deposition and Subpoena for [redacted], Joe Recarey and Michael Reiter and a letter of production from Sigrid McCawley of June 17, 2016, designated as Confidential by Plaintiff under the Protective Order.

13. Attached as Exhibit L (filed under seal) is the certificate of service for [redacted]

[redacted]

14. Attached as Exhibit M is a true and correct copy of my correspondence to Plaintiff's counsel of May 25, 2016.

15. Attached as Exhibit N is a Notice of Subpoena and Deposition for Sharon Churcher on June 16, and the certificate of service dated June 4.

By: */s/ Laura A. Menninger*
Laura A. Menninger

CERTIFICATE OF SERVICE

I certify that on June 20, 2016, I electronically served this *Declaration Of Laura A. Menninger In Support Of Defendant's Response in Opposition to Extending Deadline to Complete Depositions and Motion for Sanctions for Violations of Rule 45* via ECF on the following:

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EXHIBIT A

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

VIRGINIA L. GIUFFRE,

Plaintiff,

-against-

Case No.:
15-cv-07433-RWS

GHISLAINE MAXWELL,

Defendant.

- x

CONFIDENTIAL

Videotaped deposition of RINALDO RIZZO, taken pursuant to subpoena, was held at the law offices of Boies Schiller & Flexner, 333 Main Street, Armonk, New York, commencing June 10, 2016, 10:06 a.m., on the above date, before Leslie Fagin, a Court Reporter and Notary Public in the State of New York.

- - -

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228 East 48th Street
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BY: ROBERT LEWIS, ESQ.

Also Present:

RODOLFO DURAN, Videographer

THE VIDEOGRAPHER: This is DVD No. 1 in the video-recorded deposition of Rinaldo Rizzo, in the matter of Virginia Giuffre versus Ghislaine Maxwell, in the United States District Court, Southern District of New York. This deposition is being held at 333 Main Street in Armonk, New York, June 10, 2016, at approximately 10:06 a.m.

My name is Rodolfo Duran. I am the legal video specialist. The court reporter is Leslie Fagin, and we're both in association with Magna Legal Services.

Will counsel please introduce themselves.

MR. EDWARDS: Brad Edwards. I represent the plaintiff, Virginia Giuffre.

MR. PAGLIUCA: Jeff Pagliuca, appearing on behalf of Ms. Maxwell.

MR. LEWIS: Robert Lewis, with the firm of Freeman Lewis, LLP, representing the deponent, Rinaldo Rizzo.

R. Rizzo - Confidential

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

R I N A L D O R I Z Z O,
called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. EDWARDS:

Q. Mr. Rizzo, can you tell us your full name for the record?
A. Rinaldo A. Rizzo.
Q. And what is your date of birth?
A. [redacted]
Q. What is your address?
A. [redacted].
Q. What is your educational background?
A. I have a management degree with a minor in business law from Texas A&M University, and I have a degree in applied science in hospitality and culinary arts from the Culinary Institute of America.

R. Rizzo - Confidential

Q. Are you married?
A. Yes.
Q. Who are you married to?
A. Debra Rizzo.
Q. How long have you been married?
A. We've been together 27 years, so 22.
Q. And do you have children?
A. Yes.
Q. How many?
A. One.
Q. Since graduating, what has been your profession?
A. It is called private service or domestic service.
Q. What does that mean?
A. My role is to work within a family as a desired position that's offered to me, and most of it's been in management or support of household staff.
Q. Was there a time when you worked in the household of Glenn Dubin and Eva Anderson Dubin?
A. Yes.

R. Rizzo - Confidential
fired abruptly at this point, right?
A. Correct.
Q. You went and retained counsel to sue the Dubins, their entity and [redacted], all of them, right?
A. Correct.
Q. I take it you were deposed in connection with that litigation, correct?
A. Correct.
Q. Now, during that litigation, that litigation meaning the reference in Exhibit 3, 13-cv-8864, did you ever tell anyone about the interactions with Mr. Epstein that you described here today?
A. No, I did not.
Q. That was not a part of your lawsuit, correct?
A. Could you restate the question? I don't understand what --
Q. You didn't raise that as an issue as to why you were suing the Dubins in 2013, right?
A. No, I did not.
THE VIDEOGRAPHER: The time is

R. Rizzo - Confidential
12:41. We are going off the record.
(Recess.)
THE VIDEOGRAPHER: The time is 12:47 p.m. We are back on the record. This begins DVD No. 3.
BY MR. PAGLIUCA:
Q. I just have a few more questions. I'm going to finish off with your employment.
So after this lawsuit was concluded, referenced in Exhibit 3, have you worked since then?
A. No, I have not.
Q. Has your wife worked since then?
A. On and off, yes.
Q. How is it that you are currently supporting yourself?
A. I'm on disability.
Q. That's as a result of your back injury?
A. Yes, and my hip injury.
Q. I didn't realize you had a hip injury, I'm sorry. Is that Social Security disability?
A. Yes, it is.

R. Rizzo - Confidential
Q. The lawsuit with the Dubins referenced in Exhibit 3 was settled, I take it?
A. Correct.
Q. That was pursuant to a confidential settlement agreement?
A. Correct.
Q. And I am assuming that you received a sum of money to settle that litigation, is that correct?
A. Correct.
Q. And I'm not going to ask you the details about that, but in case I need to do something, let me put it this way. If I choose to subpoena that settlement agreement from the Dubins, are you going to have any objection to that, or is it all right if we do that as far as you are concerned?
A. I would have to discuss it with my lawyer.
MR. PAGLIUCA: I can talk to you about that, if we decide to do it.
Q. I just want to turn now, and this is the last series of questions I have, what

R. Rizzo - Confidential
you did in advance of coming here today.
Have you talked to Mr. Edwards before?
A. Yes.
Q. And when have you talked to Mr. Edwards?
A. I don't recall the exact date and time.
Q. Did Mr. Edwards call you or did you call Mr. Edwards first?
A. I called him.
Q. When did you call Mr. Edwards?
A. I don't recall the exact date and time.
Q. Years ago, days ago, months ago?
A. It's been at least over a year.
Q. Why did you call Mr. Edwards?
A. At the time I was having a very hard time with my attorney. My wife and I had discussed the issue. As my wife put it, we needed an attorney with balls and she had been keeping track of the Jeffrey Epstein issue, and basically in our conversation --
MR. LEWIS: Let me stop you there.

R. Rizzo - Confidential

There is a privilege of spousal privilege, so please don't disclose conversations you had with your wife.

THE WITNESS: Sorry.

MR. LEWIS: You can answer the question why you called, but you don't need to disclose anything about conversations with your wife.

A. I was looking for an attorney that basically could handle this kind of situation, and I felt like, from what I had read, that Mr. Edwards was probably someone I needed to attain, if I could.

Q. And so the, you referenced dissatisfaction with an attorney. I'm assuming that was the attorney that filed this 13-cv-8664 action, is that correct?

A. Correct.

Q. So you weren't happy with that lawyer and you were looking for a more aggressive lawyer?

A. Correct, or someone that could work with my lawyer.

Q. The point being you were looking to

R. Rizzo - Confidential

recover some form of compensation, I take it, from the Dubins or Mr. Epstein?

A. I was hoping -- how does Mr. Epstein --

Q. I don't know. I'm asking the question.

A. That's incorrect.

Q. You were seeking to get compensation from the Dubins, though?

A. Correct.

Q. And that was the point of you calling Mr. Edwards is that, however you learned it, you learned about the Epstein litigation and you knew Mr. Edwards was involved in the Epstein litigation?

A. Correct.

Q. The point of you contacting Mr. Edwards was to see if he could represent you in some litigation involving the Dubins in which you would collect money, is that right?

A. Correct.

Q. And so when you called Mr. Edwards, what do you recall telling him?

MR. LEWIS: At this point, I object

R. Rizzo - Confidential

on attorney/client privilege grounds. The conversation is privileged for the purpose of seeking legal advice.

MR. PAGLIUCA: I don't understand. Mr. Edwards is the lawyer for the witness.

MR. LEWIS: I am the lawyer for the witness.

MR. PAGLIUCA: I know, I'm not asking about you.

MR. LEWIS: He called Mr. Edwards for the purpose to determine whether Mr. Edwards could represent him in some capacity in that other lawsuit, so the conversations is privileged.

MR. PAGLIUCA: I'm going to disagree, and you know we may need to revisit that issue respectfully.

MR. LEWIS: Fair enough.

MR. PAGLIUCA: Let me put some parameters on this that don't ask for communications.

MR. LEWIS: Ask a question and I will object or not.

R. Rizzo - Confidential

Q. I think you said you called Mr. Edwards about a year ago?

A. More or less, correct.

Q. I didn't print out the docket sheet, but do you recall when you settled the 13-cv-8664 case?

A. To the best of my recollection, I think it was in December.

Q. Of?

A. I don't recall. I mean, it's last year.

Q. Without telling me what you told Mr. Edwards, what was the purpose of your calling -- I think you already told me this, so I won't reask it. Never mind.

Did you just speak with Mr. Edwards over the phone?

A. Correct, yes.

Q. And I take it Mr. Edwards did not become your lawyer in connection with any litigation against the Dubins, correct?

MR. LEWIS: You may answer that.

A. Correct.

Q. And Mr. Edwards in some fashion

indicated to you that he wasn't going to be your lawyer in connection with litigation, correct?

MR. LEWIS: Objection. Do not answer that on privilege grounds.

Q. Mr. Edwards never became your lawyer, is that right?

A. Correct.

Q. After that conversation, did you have any -- after you understood that Mr. Edwards was not your lawyer, did you have further conversations with Mr. Edwards?

A. No, I did not.

Q. You may object to this, but I need to ask this question. In the first conversation that you had with Mr. Edwards, did you tell Mr. Edwards the things that you've told us here today?

MR. LEWIS: Objection. Do not answer.

MR. PAGLIUCA: Privilege?

MR. LEWIS: Yes.

MR. PAGLIUCA: So just so the record is clear, it seems to me this

would be a subject matter waiver of everything that he has talked about. I don't know why it makes a difference if he is talking about it now and he told Mr. Edwards, I think he can talk about what he said to Mr. Edwards. It seems to me there is a waiver here.

MR. LEWIS: You are presuming what he said to Mr. Edwards. And secondly, just because, even if that were the case, I'm not saying it is, just because you testify to incidents which you tell your attorney about doesn't mean the disclosures to your attorney are not privileged.

MR. PAGLIUCA: Fair enough. We can argue about this later if we need to.

BY MR. PAGLIUCA:

Q. Other than Mr. Edwards and your wife and your current attorney, have you talked to anyone else about the things that you've talked about here today?

A. No, I have not.

Q. I think you answered this question,

but I want to make sure.

After that first conversation with Mr. Edwards, did you speak with Mr. Edwards again in advance of this deposition today?

MR. LEWIS: You may answer that.

A. No, I have not.

Q. Do you know, did Mr. Edwards provide a list of questions to your lawyer, who is here today, for you to provide those answers to your lawyer to give to Mr. Edwards?

MR. LEWIS: I advise the witness to only answer that question to the extent he knows it outside of any conversations that he might have had with me, which are privileged.

A. No.

Q. So let me explain that question, and here is my issue with that, and I don't know if this happened or didn't happen, but if there are questions that are given proposed to you by Mr. Edwards and you give them to the client with the expectation he is going to give that information to you to give

to Mr. Edwards, it's not privileged.

MR. LEWIS: I can represent that didn't happen.

MR. PAGLIUCA: That solves the problem.

Q. I'm just closing the loop on this and then we are done.

Have you spoken to anyone who is affiliated with Mr. Edwards, either another lawyer in his office, paralegal, an investigator, about the things that you've talked about here today?

A. No, I have not.

MR. PAGLIUCA: That's all I have.

MR. EDWARDS: I don't have any questions. I appreciate you taking the time. Sorry about your injury.

THE VIDEOGRAPHER: The time is 12:58 p.m. and we are going off the record.

(Recess.)

THE VIDEOGRAPHER: Back on the record.

MR. PAGLIUCA: The parties have