



January 4, 2024

**VIA ECF**

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

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

Dear Judge Preska,

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

Respectfully,

/s/ Sigrid S. McCawley  
Sigrid S. McCawley

cc: Counsel of Record (via ECF)

# COMPOSITE EXHIBIT 14

(Filed Under Seal)

## Sandra Perkins

---

**From:** Meredith Schultz  
**Sent:** Thursday, June 16, 2016 4:56 PM  
**To:** Laura Menninger (lmenninger@hmflaw.com)  
**Cc:** Sigrid McCawley; Paul Cassell (cassellp@law.utah.edu); 'brad@pathtojustice.com' (brad@pathtojustice.com)  
**Subject:** Proof of Service - Second Email  
**Attachments:** Proof of Services

Laura,

I am writing to follow up on my June 13, 2016, letter and my June 14, 2016 email (attached), where I requested that you provide me with your proofs of service for the subpoenas you issued in this case. I requested that you provide them to me yesterday, but you have not done so. You made the same request of us and we provided our proofs of service to you earlier this week.

We are in the process of making travel arrangements for the depositions you noticed next week and scheduling around other matters and want to confirm that those witnesses have all been served with subpoenas and are attending the depositions set forth below:

Rebecca Boylan – Wednesday, June 22<sup>nd</sup> 9:00 a.m. – Fort Lauderdale 401 E. Las Olas at Gray Robinson's office – suite 1000.

Michael Austrich – Thursday June 23<sup>rd</sup> 9:00 a.m. - Ocala Florida – Owens & Associates – 108 N. Magnolia Ave

Tony Figueroa – Friday June 24<sup>th</sup> – 9:00 a.m. - 1 Florida Park Drive, U.S. , Suite 214, Palm Coast Florida

Accordingly, kindly provide me – today – your proofs of service for all of the subpoenas you have issued in this case.

Thank you,

Meredith

Meredith L. Schultz  
BOIES, SCHILLER & FLEXNER LLP  
401 East Las Olas Blvd., Suite 1200  
Fort Lauderdale, FL 33301  
Phone: 954-356-0011 ext. 4204  
Fax: 954-356-0022  
<http://www.bsfllp.com>

**Sandra Perkins**

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**From:** Meredith Schultz  
**Sent:** Tuesday, June 14, 2016 3:15 PM  
**To:** Laura Menninger (lmenninger@hmflaw.com)  
**Cc:** Sigrid McCawley; Sandra Perkins; Deborah Knowlton  
**Subject:** Proof of Services  
**Attachments:** PROOF OF SERVICES.PDF

Laura,

I'm following up on my June 14, 2016, letter, wherein, I agreed, as a courtesy, to provide you with proofs of service. They are attached. In the same letter, I requested that you do the same, and provide me with your proofs of service associated with the subpoenas you have issued in this case. Having made the request of me and having received a response, I am sure you will agree to do so. Please send them to me by tomorrow.

Thanks,

Meredith

Meredith L. Schultz  
BOIES, SCHILLER & FLEXNER LLP  
401 East Las Olas Blvd., Suite 1200  
Fort Lauderdale, FL 33301  
Phone: 954-356-0011 ext. 4204  
Fax: 954-356-0022  
<http://www.bsflp.com>



BOIES, SCHILLER & FLEXNER LLP

401 EAST LAS OLAS BOULEVARD • SUITE 1200 • FORT LAUDERDALE, FL 33301-2211 • PH. 954.356.0011 • FAX 954.356.0022

Meredith L. Schultz, Esq.  
Email: [mschultz@bsfllp.com](mailto:mschultz@bsfllp.com)

June 13, 2016

Via CM/ECF

Laura A. Menninger, Esq.  
Haddon, Morgan and Foreman, P.C.  
150 East 10<sup>th</sup> Ave.  
Denver, CO 80203

Re: ***Giuffre v. Maxwell***  
Case no. 15-cv-07433-RWS – Regarding Certificates of Service

Dear Laura,

I have lawfully served the witnesses in this case, and have undertaken great effort to serve Ms. Marcinkova and Ms. Kellen. An affidavit from the process server engaged in that effort documenting such efforts was served upon you and filed with this Court. I'm familiar with Rule 45, and there is no requirement that certificates of service be served upon opposing counsel. Notice is all that is required under the Rules. You, yourself, have not served such certificates of service in this case. I completely reject your arbitrary statement that "[f]ailure to provide them . . . will be understood as an acknowledgement that you have not, in fact, undertaken the good faith efforts." We have said we did. I acknowledge no such thing, and such a statement is nonsense.

In recognition of your request, I am in the process of gathering the certificates of service. I will serve them on you, merely as a courtesy, as I collect them. Please likewise provide all certificates of services for the witnesses you have noticed.

While we are on the topic of absences of responses, you did not respond to my June 8, 2016, letter requesting a meet and confer call. Therefore, I write again to schedule a meet-and-confer call regarding your grossly deficient production and improper objections in response to Plaintiff's Second Request for Production. I am available for a meet and confer call on this matter any time tomorrow and Wednesday, June 15, 2016, from 10:00 AM EST to 4:00 PM EST. Please advise, by tomorrow, what time such a call works for your schedule.

Thanks,



Meredith Schultz

**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 RESPONSE IN OPPOSITION TO DEFENDANT’S MOTION FOR  
DEFENDANT’S RULE 37(b) &(c) SANCTIONS FOR FAILURE TO COMPLY WITH  
COURT ORDER AND FAILURE TO COMPLY WITH RULE 26(a)**

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORTIES .....	ii
INTRODUCTION .....	1
FACTUAL BACKGROUND.....	2
I. MEDICAL PROVIDER IDENTITIES.....	2
II. MEDICAL RECORDS.....	7
A. Dr. Donahue.....	9
B. Dr. Hayek.....	9
C. Dr. Kutikoff, Wellington Imaging Associates (“Wellington Imaging”) , and Growing Together.....	10
D. Ms. Lightfoot .....	10
E. Dr. Olson.....	11
III. MS. GIUFFRE HAS PROVIDED DISCOVERY IN ACCORDANCE WITH HER DISCOVERY OBLIGATIONS.....	12
IV. DEFENDANT CAN SHOW NO PREJUDICE .....	13
V. MS. GIUFFRE HAS BEEN FULLY COMPLIANT IN DISCOVERY .....	15
LEGAL ARGUMENT.....	17
I. DEFENDANT CANNOT SHOW NON-COMPLIANCE, AND HAS PUT FORTH NO COLORABLE LEGAL ARGUMENT FOR SANCTIONS.....	17
II. THERE WAS NO INFORMATION “WITHHELD”, AND THEREFORE, NO PREJUDICE .....	19
III. MS. GIUFFRE HAS FULFILLED HER REQUIREMENTS REGARDING HER RULE 26 DISCLOSURES .....	19
IV. THIS COURT SHOULD NOT STRIKE MS. GIUFFRE’S CLAIMS FOR MEDICAL AND EMOTIONAL DISTRESS DAMAGES.....	22
CONCLUSION.....	23

**TABLE OF AUTHORITIES**

	<u>Page</u>
<b><u>Cases</u></b>	
<i>Candelaria v. Erickson</i> , 2006 WL 1636817 (S.D.N.Y. 2006).....	12
<i>Celle v. Filipino Reporter Enters. Inc.</i> , 209 F.3d 163 (2d Cir.2000).....	20
<i>Design Strategy, Inc. v. Davis</i> , 469 F.3d 284 (2d Cir. 2006).....	14
<i>Gurvey v. Cowan, Liebowitz &amp; Lathman, P.C.</i> , 2014 WL 715612 (S.D.N.Y. 2014).....	18
<i>In re Consol. RNC Cases</i> , 2009 WL 130178 (S.D.N.Y. Jan. 8, 2009) .....	22, 23
<i>In re Dana Corp.</i> , 574 F.3d 129 (2d Cir. 2009).....	6
<i>In re Weiss</i> , 703 F.2d 653 (S.D.N.Y. 1983).....	18
<i>Murray v. Miron</i> , 2015 WL 4041340 (D. Conn., July 1, 2015) .....	21
<i>Naylor v. Rotech Healthcare, Inc.</i> , 679 F. Supp. 2d 505 (D. Vt. 2009).....	20, 21
<i>Nittolo v. Brand</i> , 96 F.R.D. 672 (S.D.N.Y.1983).....	22
<i>Robertson v. Dowbenko</i> , 443 F. App'x 659 (2d Cir. 2011).....	20
<i>Scheel v. Harris</i> , No. CIV.A. 3:11-17-DCR, 2012 WL 3879279 (E.D. Ky. Sept. 6, 2012).....	21
<i>Skywark v. Isaacson</i> , 1999 WL 1489038 (S.D.N.Y. Oct. 14, 1999).....	22

**Rules**

Fed. R. Civ. P. 26.....	<i>passim</i>
Fed. R. Civ. P. 26(a) .....	1, 19
Fed. R. Civ. P. 26(a)(1).....	21
Fed. R. Civ. P. 26(a)(1)(A)(iii) .....	21
Fed. R. Civ. P. 26(a)(5).....	6
Fed. R. Civ. P. 37 .....	18, 24
Fed. R. Civ. P. 37 (b) & (c).....	1
Fed. R. Civ. P. 37(c)(1).....	21

## **INTRODUCTION**

As more and more witnesses come forward testifying about Defendant's involvement in the sexual abuse of young girls, Defendant's discovery arguments have become more removed from the merits of this case and increasingly strident in their tone. The latest example of this genre is the instant motion in which the Defendant boldly proclaims that Ms. Giuffre is "playing a game of catch and release" by deliberately "withholding information" regarding her medical care. Yet the basis for these strong charges turns out to be nothing more than the fact that, when asked to produce a listing of medical care providers that Ms. Giuffre has seen in the last seventeen years – during a period of time when she lived in Australia, then Florida, then Colorado, finally returning to Australia – she was unable to recall all of the providers. Ms. Giuffre and her attorneys have worked diligently to provide this listing to Defendant and, as new information has become available, or as Ms. Giuffre has been able to recall another provider, the information has been disclosed. Indeed, Ms. Giuffre signed every medical records release that Defendant requested. There has been no deliberate "withholding" of information, much less withholding of information that would warrant the extreme sanction of precluding Ms. Giuffre from presenting her claims to a jury.

Moreover, this baseless motion for sanctions comes on the heels of disturbing testimony corroborating what lies at the core of this case – Defendant was involved in facilitating the sexual abuse of young girls with Jeffrey Epstein. One witness, Rinaldo Rizzo, was in tears as he recounted Defendant bringing a 15-year-old girl to his employer's home who, in utmost distress, told him that Defendant stole the young girl's passport and tried to make her have sex with

Epstein, and then threatened her.<sup>1</sup> [REDACTED]

[REDACTED] Another witness, Joanna Sjoberg, testified that Defendant recruited her from her school campus to have sex with Epstein with lies about being her personal assistant.<sup>3</sup>

Two other witnesses, one an underage victim ([REDACTED]) and the other, the police detective who ultimately ended up investigating Epstein (Detective Joseph Recarey, Retired), gave testimony about how Epstein used other women to recruit minors to have sex with him.<sup>4</sup> Most recently, a witness testified that Defendant would call him and ask him to bring over young girls that she would provide to Epstein. *See* McCawley Decl. at Exhibit 9, *ROUGH* Deposition Transcript of Tony Figueroa at 162:8-19. It is against this backdrop that Defendant has filed a motion seeking sanctions. The motion is a transparent effort to deflect attention from the merits of Ms. Giuffre's claim by inventing "willful" discovery violations and should be rejected in its entirety.

## **FACTUAL BACKGROUND**

### **I. MEDICAL PROVIDER IDENTITIES**

As the Court is aware, Defendant has requested that Ms. Giuffre provide the names and medical records of every medical provider she has ever had, for any type of treatment, since 1999. This would be no easy task for anyone, and Ms. Giuffre has had many medical providers

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<sup>1</sup> *See* McCawley Decl. at Exhibit 1, Excerpts from the June 10, 2016 Deposition of Rinaldo Rizzo.

<sup>2</sup> *Id.*

<sup>3</sup> *See* McCawley Decl. at Exhibit 2, Excerpts from the May 18, 2016 Deposition of Joanna Sjoberg.

<sup>4</sup> *See* McCawley Decl. at Exhibits 3 and 4, Excerpts from the June 20, 2016 Deposition of [REDACTED] and Excerpts from the June 21, 2016 Deposition of Joseph Recarey.

in multiple locations. So she and her legal counsel have worked diligently to track them down through a search that has spanned nearly two decades and two continents.

Ms. Giuffre made her initial disclosures on this subject in an answer to an interrogatory that she served on April 29, 2016. Ms. Giuffre listed 15 health care providers that she could recall at the time. Four days later, on May 3, 2016, Defendant deposed Ms. Giuffre. During the deposition, Ms. Giuffre's memory was jogged and she was able to recall two additional providers: Judith Lightfoot and Dr. Christopher Donahue.<sup>5</sup>

Defendant, however, seeks to magnify the innocent recollection of two additional providers at Ms. Giuffre's deposition by misleadingly claiming that "[i]t is only through deposition testimony that Ms. Maxwell became aware of *at least five* - if not more - treating health care physicians." (Mtn. at 1). This claim, too, is inaccurate. Beyond Ms. Lightfoot and Dr. Donahue, Defendant apparently adds to the list of "withheld" doctors by referring to treating physicians who cared for Ms. Giuffre on a one-off basis in the Emergency Room. It is unsurprising that a patient would have trouble remembering an emergency room physician's name. But the real point here is that, in any event, the information was disclosed through documents produced, so there is absolutely no "failure to disclose" as Defendant wrongfully alleges. *See* Centura Health Records (GIUFFRE005498-005569).

Defendant then states that, in her deposition, "Ms. Giuffre claims she was not treated by any other physicians," and then states that other records revealed "three *additional* health care

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<sup>5</sup> Defendant's argument that Ms. Giuffre was trying to "hide" these providers is illogical and wholly contradicted by the fact that Ms. Giuffre disclosed these providers. Defendant never explains how Ms. Giuffre can be "hiding" providers while testifying about them and producing their records.



professionals who treated Plaintiff, including Dr. Scott Robert Geiger, Dr. Joseph Heaney,<sup>6</sup> and Donna Oliver P.A.” (Mtn. at 4, emphasis original). [REDACTED]

[REDACTED]

Defendant is trying to make it seem as if Ms. Giuffre deliberately hid the names of treating physicians in the Emergency Room. As stated above, Ms. Giuffre produced these records so she is clearly not hiding anything. Not learning, not knowing, or not remembering off the top of one’s head the names of Emergency Room staff encountered during a medical emergency is not only unsurprising and understandable, but is also not a discovery violation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Here, Defendant attempts to make something out of nothing. This is particularly true as *Ms. Giuffre made these records available to Defendant*. As evidenced by the details recounted in Defendant’s brief, Ms. Giuffre produced these Emergency Room records to Defendant, and therefore, she is wholly compliant in her discovery obligations.<sup>7</sup>

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<sup>7</sup> Indeed, Ms. Giuffre did not merely sign releases for the release of these records, but Ms. Giuffre’s counsel spent considerable time and effort in attempts to procure these records for Defendant, as detailed in Ms. Giuffre’s counsel’s correspondence. *See* McCawley Decl. at Composite Exhibit 5, May 2016 Emails from Meredith Schultz to Laura Menninger.

Additionally, Defendant's motion lists 15 providers<sup>8</sup> Ms. Giuffre gave to Defendants in her interrogatories (Mtn. at 3), but then states that "Plaintiff failed therein to identify any treatment providers prior to the alleged defamation, despite the Court's order concerning 1999-2015." (Mtn. at 4). This statement, too, is wildly incorrect. Of the list of 15 providers, the overwhelming majority of them are providers "prior to the alleged defamation."<sup>9</sup> For example, Ms. Giuffre produced records from N.Y. Presbyterian Hospital. (GIUFFRE003258-3290). Not only do the dates on the records (e.g., July 9, 2001) demonstrate they are prior to the defamation, but Defendant has independent knowledge that this provider pre-dates Defendant's defamation. Indeed, *Defendant is the one who brought her to that hospital, while she was a minor.* Therefore, Defendant's statement in her brief that "Plaintiff failed therein to identify any treatment providers prior to the alleged defamation, despite the Court's order concerning 1999-2015" (Mtn. at 4) is inaccurate.

Defendant continues with another misleading statement: "As of today's date . . . and 10 days before the end of fact discovery in this case, Ms. Maxwell has learned of at least five additional doctors" (Mtn. at 5), and then, again, names Ms. Lightfoot, Dr. Geiger, Dr. Heaney, Donna Oliver P.A., and Dr. Streeter. Defendant did not learn of these providers 10 days prior to the close of discovery, but much earlier, as the previous page of Defendant's brief recounts.

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<sup>8</sup> (1) Dr. Steven Olson; (2) Dr. Chris Donahue; (3) Dr. John Harris; (4) Dr. Majaliyana; (5) Dr. Wah Wah; (6) Dr. Sellathuri; (7) Royal Oaks Medical Center; (8) Dr. Carol Hayek; (9) NY Presbyterian Hospital; (10) Campbelltown Hospital; (11) SydneyWest Hospital; (12) Westmead Hospital; (13) Dr. Karen Kutikoff; (14) Wellington Imaging Associates; (15) Growing Together.

<sup>9</sup> Providers from that list that treated Ms. Giuffre *prior to Defendant's defamation* include: (1) Dr. John Harris; (2) Dr. Majaliyana; (3) Dr. Majaliyana; (4) Dr. Wah Wah; (5) Dr. Sellathuri; (6) Royal Oaks Medical Center; (7) Dr. Carol Hayek; (8) NY Presbyterian Hospital; (9) Sydney West Hospital; (10) Westmead Hospital; (12) Wellington Imaging Associates; (13) Growing Together.

Defendant's next statement is equally misleading "documents relating to these doctors were not provided until after their identities became known through deposition or other independent investigation by Ms. Maxwell." (Mtn. at 5). Their identities became known to Defendant because Ms. Giuffre disclosed the name of Ms. Lightfoot in her deposition, and because Ms. Giuffre herself produced emergency room records to Defendant – documents bearing the names of the other providers. Accordingly, these five additional names were provided to Defendant by Ms. Giuffre herself, through (1) *her* deposition testimony; and (2) *her* document production.

Defendant is now asking this Court to enter extraordinary sanctions because those names were not provided in response to an interrogatory, ***but, instead, were provided through Ms. Giuffre's testimony and Ms. Giuffre's document production.*** This is an improper request. It is unsurprising that Defendant cannot cite to a single case in which any type of sanctions were awarded under even remotely similar circumstances. Indeed, the purpose of the various aspects of discovery provided by Rule 26(a)(5), Fed. R. Civ. P., is to provide more fulsome information. *C.f. In re Dana Corp.*, 574 F.3d 129, 150 (2d Cir. 2009) ("the various discovery methods are more complementary than fungible"). Here, Ms. Giuffre provided her medical information through interrogatory response, through testimony, and through document production. Ms. Giuffre has met her obligation under both this Court's Order and Rule 26. There has been no failure to disclose: Ms. Giuffre provided the names and testified about her treatment. Accordingly, this motion should be denied in its entirety.

## **II. MEDICAL RECORDS**

Defendant states that Plaintiff has failed to produce any records from (a) Dr. Donahue, (b) Dr. Hayek, (c) Dr. Kutikoff, (d) Wellington Imaging Assocs., (e) Growing Together, (f) post

2011 records from Ms. Lightfoot, and (g) the remaining documents for treatment by Dr. Olson.

(Mtn. at 5). This is also incorrect. There has been no “failure,” as discussed, in turn, below.

Moreover, if records from any providers have not been produced, it is not Ms. Giuffre’s

“failure,” but rather, the failure of the providers, particularly as Ms. Giuffre has executed releases

for her records from all these providers. Ms. Giuffre and her counsel have been diligent in

compiling nearly two decades of medical records from various states and countries. The chart

below provides an overview the efforts undertaken by Ms. Giuffre and the production to

Defendant as a result.

MEDICAL PROVIDER	HEALTHCARE PROVIDED	ACTION TAKEN	RELATED GIUFFRE PRODUCTION
Dr. Olsen	Primary Care Physician	3/8/16 Letter Request	Giuffre 005342-005346 St. Thomas More Hospital Records (Dr. Olsen) Giuffre 005492-005496 St. Thomas More Hospital Records (Dr. Olsen)
Centura Health	[REDACTED]	5/23/16 Letter Request	Giuffre 005498 Centura Health Release Form (All Medical Records) Giuffre 005501-005569 Responsive Records (Centura Health)
Dr. Carol Hayek	Psychiatrist	3/8/16 Ltr Request 4/28/16 Ltr Request	Giuffre and counsel contacted physician’s office via telephone and email to follow up.
Dr. Chris Donahue	[REDACTED]	4/5/16 Ltr Request	Giuffre 006631-006635 (Dr. Donahue)
Dr. John Harris/Dr. Majliyana	[REDACTED]	4/5/16 Ltr Request	Giuffre 005315 005322 The Entrance Medical Centre (Dr. John Harris and Dr. Darshanee Mahaliyana)
Dr. Wah Wah	[REDACTED]	4/5/16 Ltr Request	Giuffre 005339 005341 Central Coast Family Medicine (Dr. Wah Wah)
Dr. Sellathuri	[REDACTED]	4/5/16 Ltr Request	Giuffre 005089 005091 (“Dr. M. Sella”)
Royal Oaks	Has no treatment records	4/5/16 Ltr	Giuffre 005347 005349 Royal Oaks

MEDICAL PROVIDER	HEALTHCARE PROVIDED	ACTION TAKEN	RELATED GIUFFRE PRODUCTION
Medical Center		Request	Medical Center's Response (No Records)
NY Presbyterian Hospital		Produced	Giuffre 003258 003290 New York Presbyterian Hospital
Campbelltown Hospital/ Sydney West Hospital		Produced	Giuffre 003193 003241 Camselltown Hospital/Camden Hospital (Dr. Elbeaini) Giuffre 003242 003257 Macarthur Health Service (Dr. Elbeaini)
Sydney West Hospital / Westmead Hospital		Produced	Giuffre 003291-003298 Sydney West/Westmead Hospital
Dr. Karen Kutikoff		Release Provided to Defendant's Counsel	04/29/16 Sent via e-mail signed release to Menninger (obtain records directly).
Wellington Imaging Associates		Release Provided to Defendant's Counsel	04/29/16 Sent via e-mail signed release to Menninger (obtain records directly).
Growing Together		Release Provided to Defendant's Counsel	04/29/16 Sent via e-mail signed release to Menninger (obtain records directly).
Ms. Judith Lightfoot	Psychologists	5/4/16 Ltr Request	Giuffre 005431-005438 Medical Release Form with documents (Ms. Lightfoot) Giuffre 006636 Correspondence stating no further records available.
Dr. Scott Robert Geiger		ER Treating Physician	Giuffre 005498-005569 Centura Health Medical Release Form (Requested Entire Medical Record)
Dr. Joseph Heaney		ER Treating Physician	Giuffre 005498-005569 Centura Health Medical Release Form (Requested Entire Medical Record)
Donna Oliver, PA		ER Treating Physician Referral ENT	Giuffre 005498-005569 Centura Health Medical Release Form (Requested Entire Medical Record)
Dr. Michele Streeter		ER Treating Physician	Giuffre 005498-005569 Centura Health Medical Release Form (Requested Entire Medical Record)

Accordingly, as the Court can see with reference to the Bates labels in the above chart, Ms. Giuffre has been compliant in producing her medical records. Indeed, she has signed releases for all records requested by Defendant, and has produced all records released by the providers. In addition to signing all releases for medical providers requested by Defendant, the work associated with compiling the records and following up with providers (as shown by the above chart) clearly demonstrates Ms. Giuffre's good faith and persistence in her deliberate and thorough pursuit of providing Defendant with her medical records. That is reason alone to deny Defendant's unsupported request for sanctions.

A. Dr. Donahue

Plaintiff dutifully signed a release for medical records and provided it to Dr. Donahue on April 5, 2016, and sent a copy to the Defendant so counsel was on notice of the efforts being taken to secure medical records. *See* McCawley Decl. at Composite Exhibit 6, Dr. Donahue letter and Release Form. Ms. Giuffre's counsel has received records from Dr. Donahue since the Defendant filed the instant motion, and immediately provided those records to Defendant. *See* chart above, GIUFFRE00006631-006635.

B. Dr. Hayek

Dr. Hayek treated Ms. Giuffre over seven years ago. Ms. Giuffre signed a release form for Dr. Hayek's records, sent the release form on March 8, 2016, and provided a copy of the form to Defendant. Having not received any records, the undersigned sent a follow-up letter to Dr. Hayek on April 28, 2016, to request the records. Upon information and belief, Dr. Hayek does not keep patient's medical records for longer than seven years, and, therefore, no longer has any records pertaining to Ms. Giuffre. Ms. Giuffre *and her counsel* have made inquiries to Dr.

Hayek's office via telephone and email, but, to date, have not received any response. Again, Ms. Giuffre has no input on Dr. Hayek's document retention policies, and therefore, the lack of production of records from Dr. Hayek cannot be attributed to Ms. Giuffre.

C. Dr. Kutikoff, Wellington Imaging Associates ("Wellington Imaging") , and Growing Together

Plaintiff provided Defendant's counsel executed medical release forms for Dr. Kutikoff, Wellington Imaging, and Growing Together on April 29, 2016. *See* McCawley Decl. at Composite Exhibit 7. Accordingly, Ms. Giuffre has no direct knowledge as to what, if anything, these three providers produced to Defendant's counsel. Ms. Giuffre has done everything in her power to make them available to Defendant, a fact that Defendant cannot dispute. Again, there has been no "failure" by Ms. Giuffre here, as Ms. Giuffre has signed and sent the necessary release forms for the records *to be sent directly to Defendant*.<sup>10</sup>

D. Ms. Lightfoot

Defendant admits that Ms. Giuffre produced Ms. Lightfoot's records in footnote 4 of her brief on page 11, yet on page 16, Defendant wrongfully states Plaintiff has not produced Dr. Lightfoot's records. Despite the self-contradictory briefing, Ms. Lightfoot has produced records. *See* chart above, Giuffre005431-005438, Medical Release Form with documents. As with the other providers, Ms. Giuffre has executed and sent medical records release forms to Ms. Lightfoot, and has thus met her discovery obligations. To follow up on Defendant's wrongful claims that Ms. Giuffre has somehow "withheld" more current records (despite executing a release for *all* records); Ms. Giuffre followed up with Ms. Lightfoot, who provided to Ms.

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<sup>10</sup> Upon information and belief, Ms. Lightfoot is not a medical doctor, but an Australian "Consulting Psychologist."

Giuffre's counsel correspondence stating that she has produced all of Ms. Giuffre's records (*see* chart above, Giuffre006636), thereby indicating that she does not keep more current records.

E. Dr. Olson

Defendant claims that Ms. Giuffre failed to produce "the remaining documents for treatment by Dr. Olson," but this is a wild inaccuracy. (And, Ms. Giuffre would refer the Court to a short excerpt from Dr. Olson's deposition in which Dr. Olson explains in his own words his production. *See* McCawley Decl. at Exhibit 10, Dr. Olson Deposition Excerpt.) First, Ms. Giuffre signed a release for *all* records that Dr. Olson had. *See* McCawley Decl. at Composite Exhibit 6, March 8, 2016, Release for Dr. Olson records. Dr. Olson produced records Bates labeled GIUFFRE005342-005346 and GIUFFRE005492-005496. Dr. Olson then testified in his deposition that he kept a record on his laptop that was not a part of the medical records produced by his hospital. *Id.* During the deposition, he printed that record and gave it to Defendant's counsel. *Id.* Now, Defendant's counsel is claiming that this set of facts constitutes a discovery violation that warrants sanctions. There is no failure to produce here. Ms. Giuffre executed a medical release that provided for all of Ms. Giuffre's medical records with regard to Dr. Olson, and records were produced. It was Dr. Olson who failed to include his "laptop records" among the records that were produced.

Ms. Giuffre knew nothing of the "laptop records" until Dr. Olson's deposition, and Dr. Olson provided them at that time, a fact Defendant admits in a footnote in her Motion to Reopen Ms. Giuffre's Deposition. In that brief, Defendant complains that they were not "produced" until after Ms. Giuffre was deposed. That is a distortion. Defendant already had such documents from Dr. Olson himself. Ms. Giuffre included those documents *that both sides received in the deposition* as part of her next production, so that they would bear a Bates label for tracking



purposes. It was a formality since both sides already had the record. Defendant states: “Despite requests, legible copies have not been provided.” Defendant uses the passive voice here, presumably to avoid making clear the fact that the requests for legible copies would need to be made to Dr. Olson, who controls the records, not to Ms. Giuffre, who long ago authorized the release of all records. The existence of a record that a witness failed to produce prior to a deposition is not a discovery violation from Ms. Giuffre.

### **III. MS. GIUFFRE HAS PROVIDED DISCOVERY IN ACCORDANCE WITH HER DISCOVERY OBLIGATIONS**

The fact is that Ms. Giuffre has executed a release form for each and every medical care provides that Defendant asked for. Defendant cannot contradict this statement. Ms. Giuffre produced medical records she had in her possession (such as New York Presbyterian records), early in discovery. From that point, other medical records were sought and obtained, with Ms. Giuffre facilitating their production from the providers by executing and sending release forms and paying all applicable fees for their release. Moreover, counsel for Ms. Giuffre has kept Defendant fully apprised of such efforts, even giving Defendant copies of all releases that have been issued, and providing updates on Ms. Giuffre’s continued efforts to obtain medical records beyond signing releases. *See* McCawley Decl. at Composite Exhibits 5 and 6.

Executing and sending medical release forms to all of the medical providers satisfies Ms. Giuffre’s discovery obligations with regard to her medical records, and Defendant cannot cite to a case that states otherwise. *See, e.g., Candelaria v. Erickson*, 2006 WL 1636817, at \*1 (S.D.N.Y. 2006) (requiring the execution of updated medical release forms to satisfy discovery obligations). The fact that Defendant has presented this weak tea to the Court - concerning the actions of third-parties Ms. Giuffre does not control - shows just how baseless the motion is.

### **IV. DEFENDANT CAN SHOW NO PREJUDICE**

Defendant claims to be prejudiced because a small fraction of the medical providers were revealed at Ms. Giuffre's deposition, four days after her interrogatory response. This argument is moot. Ms. Giuffre has agreed to reopen her deposition for Defendant's questions regarding those medical providers. Second, Defendant intimates, but does not actually claim, that she wants to depose Ms. Lightfoot, and states that there is not sufficient time: "arranging for and taking the deposition of Ms. Lightfoot . . . is nearly impossible," suggesting to the Court that there is some prejudice to Defendant there. (Mtn. at 11). However, Defendant's behavior (and a close reading of Defendant's brief) suggests that Defendant doesn't actually want to depose Ms. Lightfoot; instead, she just wants to *appear to the Court* as prejudiced by not taking her deposition. First, Defendant *never noticed her deposition* despite knowing her identity for nearly two months - since May 3, 2016. Second, Defendant is careful not to claim in her brief that she *actually wants to depose Ms. Lightfoot*, all the while suggesting that she has suffered some prejudice with respect to not taking Ms. Lightfoot's deposition. Defendant's lack of actual desire to take her deposition stems from the 2011 records Ms. Lightfoot produced - records predating Defendant's defamation by years. [REDACTED]

[REDACTED] This is the reason Defendant is careful not to claim in her brief that she actually wanted to depose Ms. Lightfoot, and this is the reason why Defendant never noticed her for deposition. [REDACTED]

Defendant's claims concerning deposing Dr. Donahue are similarly specious. First, despite knowing about Dr. Donahue since at least April 29, 2016 (a fact she admits in her brief "Dr. Donahue may have been named" (Mtn. at 16)): Defendant has never issued a Notice of Deposition for Dr. Donahue. Defendant cannot claim any prejudice with respect to Dr. Donahue.

Additionally, Defendant acts in bad faith when she claims that medical records from Dr. Donahue were "purposefully hidden by Plaintiff" (Mtn. at 11) when Defendant knows that Ms. Giuffre executed and sent a medical release for Dr. Donahue on April 5, 2016, for all of his records. *See* McCawley Decl. at Composite Exhibit 6, Dr. Donahue Medical Release. As stated above, this argument is moot because the records concerning Dr. Donahue (and other providers at his practice) have been produced to Defendant.

Finally, though Ms. Giuffre does not control how quickly providers respond to her releases (though her counsel has spent considerable time following-up with providers, urging their speedy release, and paying all applicable fees), Ms. Giuffre has agreed to reopen her deposition for questions concerning provider records that were produced subsequent to her deposition. Therefore, Ms. Giuffre has eliminated any prejudice Defendant could claim to suffer with respect to taking Ms. Giuffre's deposition. *See* Giuffre006631-006635.

A factor relevant to the appropriateness of sanctions under Rule 37 for discovery violations is the "prejudice suffered by the opposing party." *Design Strategy, Inc. v. Davis*, 469 F.3d 284, 296 (2d Cir. 2006). Here, Defendant cannot claim any prejudice resulting from her empty claims of "discovery violations." Accordingly, sanctions are inappropriate.

**V. MS. GIUFFRE HAS BEEN FULLY COMPLIANT IN DISCOVERY**

It is the Defendant in this case that has failed to comply with discovery at every turn. Defendant has refused to produce any documents whatsoever without this Court entering an Order directing her to do so. The only reason Plaintiff has documents from Defendant at all is because of this Court's denial of Defendant's stay requests and the Court's rulings on Ms. Giuffre's Motion to Compel for Improper Claim of Privilege (wherein Defendant was ordered to turn over documents that did not even involve communications with counsel) and her Motion to Compel for Improper Objections. Even then, Defendant's counsel refused to even take the routine step of looking at Defendant's email and other electronic documents to find responsive documents, but produced, instead, only what Defendant wanted to produce. Ms. Giuffre had to bring a Motion for Forensic Examination and the Court had to order that Defendant's counsel actually produce documents from Defendant's electronic documents, something that has not yet been done to date. Indeed, Defendant did not make her initial disclosure until February 24, 2016 several months *after* the deadline for these disclosures. Additionally, while Ms. Giuffre started her efforts to take the Defendant's deposition in February, 2016, Defendant did not actually sit for her deposition until after being directed to do so by the Court, on April 22, 2016.

Furthermore, during the deposition, Defendant refused to answer a myriad of questions, and therefore, this Court recently ordered Defendant to sit for her deposition again. *See* June 20, 2016, Order resolving eight discovery motions entered under seal and granting Plaintiff's Motion to Compel Defendant to Answer Deposition Questions (D.E. 143).

Ms. Giuffre has had to litigate, multiple times, for Defendant to make any document production, and Ms. Giuffre has had to litigate, also multiple times, for Defendant to be deposed. *See* Plaintiff's Response in Opposition to Defendant's Motion to Stay Discovery (DE 20); Plaintiff's February 26, 2016, Letter Motion to Compel Defendant to Sit for Her Deposition;

Plaintiff's Motion to Compel Documents Subject to Improper Claim of Privilege (DE 33); Plaintiff's Motion to Compel Documents Subject to Improper Objections (DE 35); Plaintiff's Response in Opposition to Defendant's Motion for a Protective Order Regarding Defendant's Deposition (DE 70); Plaintiff's Motion for Forensic Examination (DE 96); Plaintiff's Motion to Compel Defendant to Answer Deposition Questions (DE 143). Ms. Giuffre has had to expend considerable time and resources simply to have Defendant meet her basic discovery obligations in this case.

Now, having completely stonewalled on discovery, making every produced document and even her own deposition the result of extensive and unnecessary litigation, taking positions that are contrary to the Federal Rules and wholly contrary to prevailing case law, Defendant claims that Ms. Giuffre has been "non-compliant since the outset of discovery." (Mtn. at 11). This statement is completely inaccurate.

Defendant makes a number of unsubstantiated claims regarding law enforcement materials, photographs, and email accounts. Most of these issues have been resolved pursuant to this Court's orders. See June 20, 2016, Order entered under seal denying Defendant's motion to compel law enforcement materials; June 23, 2016, Minute Entry. Ms. Giuffre merely points out that Defendant not only failed to review, search, or produce Defendant's email, from any of her multiple accounts, but also wholly failed to disclose her terramarproject.org email account or her ellmax.com email account.

Regarding photographs, counsel for Ms. Giuffre has gone to considerable expense to recover boxes that Ms. Giuffre thought may contain photographs, including paying approximately \$600.00 for shipping of the boxes to ensure production of any recent information. Accordingly, Defendant articulates no legitimate complaint in this section of her brief.

## LEGAL ARGUMENT

### **I. DEFENDANT CANNOT SHOW NON-COMPLIANCE, AND HAS PUT FORTH NO COLORABLE LEGAL ARGUMENT FOR SANCTIONS**

Sanctions are not appropriate in this case because Defendant cannot show non-compliance. Through the normal course of discovery, Ms. Giuffre produced her medical providers to Defendant, as Defendant admits in her moving brief. Defendant's complaint boils down to the fact that Ms. Giuffre remembered at deposition two providers (Ms. Lightfoot and Dr. Donahue) that she did not recall when compiling her long list of providers in response to Defendant's interrogatory four days prior. That does not constitute non-compliance. That is not sanctionable behavior. And, Defendant cannot cite any case in which a court found differently. Additionally, though Defendant attempts to ascribe blame to Ms. Giuffre for any medical records that have not been sent by providers (or medical records that may not exist), the uncontested fact is that Ms. Giuffre has executed releases for all of the providers Defendant requested. Again, Defendant can point to no case in which sanctions were awarded over medical records where the party signed all applicable releases. Accordingly, Defendant's motion should be denied.<sup>11</sup>

Even Defendant's own cases cited in her brief are inapposite and do not suggest that sanctions are appropriate in this case. For example, in *Davidson v. Dean*, the plaintiff "refused to consent to the release of mental health records" for periods for which he was seeking damages

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<sup>11</sup> What *does* constitute sanctionable behavior is testimonial obduracy that includes "denying memory of the events under inquiry," a tactic Defendant took in response to a multitude of questions at her deposition, as more fully briefed in Ms. Giuffre's Motion to Compel Defendant to Answer Deposition Questions (DE 143), granted by this Court on June 20, 2016. *See In re Weiss*, 703 F.2d 653, 663 (S.D.N.Y. 1983) (holding that "the witness's . . . disclaimers of knowledge or memory, has also been dealt with as contemptuous conduct, warranting sanctions that were coercive, punitive, or both. It has long been the practice of courts viewing such testimony as false and intentionally evasive, and as a sham or subterfuge that purposely avoids giving responsive answers, to ignore the form of the response and treat the witness as having refused to answer.").

and for which the Court ordered him to provide releases. 204 F.R.D. 251, 254 (S.D.N.Y. 2001). By contrast, Ms. Giuffre has executed each and every release for medical records requested by Defendant. In *In re Payne*, Rule 37 sanctions were not even at issue: an attorney was reprimanded for “default[ing] on scheduling orders in fourteen cases, resulting in their dismissal . . . fili[ing] stipulations to withdraw a number of appeals only after his briefing deadlines had passed,” etc. 707 F.3d 195, 198-99 (2d Cir. 2013). Similarly, in *Gurvey v. Cowan, Liebowitz & Lathman, P.C.*, 2014 WL 715612, at \*2 (S.D.N.Y. 2014), sanctions were awarded because, *inter alia*, “my . . . Order explicitly limited discovery to plaintiff’s malpractice and breach-of-fiduciary duty claims . . . However . . . plaintiff has sought discovery of extraordinary breadth that is far beyond the scope of the two claims . . . [and] disregarded my Order . . . by failing to explain in writing how each of her discovery requests to CLL is relevant to the remaining claims.” Accordingly, as stated above, Defendant has not put forth any colorable legal argument for sanctions under Rule 37.

## **II. THERE WAS NO INFORMATION “WITHHELD,” AND THEREFORE, NO PREJUDICE**

Defendant cannot be taken seriously when she claims that “Plaintiff is obviously trying to hide” her treatment related to domestic violence, [REDACTED]

[REDACTED] Given that fact, Defendant’s incendiary claim defies logic. All these things that Defendant claims were deliberately “withheld” or “hidden” are things that Ms. Giuffre provided to Defendant in the normal course of discovery, as described at length above. Defendant cannot claim any prejudice

regarding the manner in which she received this information, and, indeed, does not.<sup>12</sup>

Accordingly, sanctions are wholly inappropriate.

### III. MS. GIUFFRE HAS FULFILLED HER REQUIREMENTS REGARDING HER RULE 26 DISCLOSURES<sup>13 14</sup>

Regarding Ms. Giuffre's computation of damages, Ms. Giuffre has pled defamation *per se* under New York law, where damages are presumed. *Robertson v. Dowbenko*, 443 F. App'x 659, 661 (2d Cir. 2011). Plaintiff provided amounts, damage calculations and supporting evidence required under Rule 26. Plaintiff is retaining experts to support her Rule 26 Disclosures, and expert reports and disclosures are not due at this time. Defendant takes issues with Ms. Giuffre's computation of damages in her Rule 26 disclosures but fails to cite to a single case that requires more from her, let alone more from a Plaintiff claiming defamation *per se*. Indeed, the case law supports that Plaintiff has fully complied with her Rule 26 obligations. *See Naylor v. Rotech Healthcare, Inc.*, 679 F. Supp. 2d 505, 510 (D. Vt. 2009).

In good faith, Ms. Giuffre has produced a multitude of documents and information regarding her damages. Defendant does not cite to a single case that even suggests she is required to do more. What Defendant purports to lack is expert discovery and an expert report on computation of damages. Rule 26(a)(1), governs "initial disclosures," disclosures to be made at

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<sup>12</sup> This is particularly true regarding the timing of Ms. Giuffre's deposition, as Ms. Giuffre has agreed to reopen her deposition concerning any medical information that Defendant did not receive in advance of her deposition.

<sup>13</sup> Defendant references her Motion to Compel Rule 26(a) disclosures (DE 64) that she filed on March 22, 2016, but failed to mention that, after a hearing, this Court denied that motion with leave to refile (DE 106).

<sup>14</sup> Defendant repeatedly attempts to conflate the required disclosures under Federal Rule of Civil Procedure 26(a) and the disclosures ordered by this Court on April 21, 2016, in an apparent effort to 'backdate' those required disclosures.



the beginning of litigation, prior to the completion of expert work. It does not entitle a party to expert discovery at this stage in the case.

Ms. Giuffre has pleaded and will prove defamation *per se*, where damages are presumed. *Robertson v. Dowbenko*, 443 F. App'x at 661 (“As the district court correctly determined, Robertson was presumptively entitled to damages because he alleged defamation per se.”). Under New York law, defamation per se, as alleged in this case, presumes damages, and special damages do not need to be pled and proven. *See Celle v. Filipino Reporter Enters. Inc.*, 209 F.3d 163, 179 (2d Cir.2000) (Second Circuit holding that “[i]f a statement is defamatory per se, injury is assumed. In such a case ‘even where the plaintiff can show no actual damages at all, a plaintiff who has otherwise shown defamation may recover at least nominal damages,’” and confirming an award of punitive damages) (Emphasis added).

Additionally, Ms. Giuffre has claimed punitive damages for the defamation per se. “[C]ourts have generally recognized that ... punitive damages are typically not amenable to the type of disclosures contemplated by Rule 26(a)(1)(A)(iii), and have held that the failure to disclosure a number or calculation for such damages was substantially justified.” *See Murray v. Miron*, 2015 WL 4041340 (D. Conn., July 1, 2015). *See also Scheel v. Harris*, No. CIV.A. 3:11-17-DCR, 2012 WL 3879279, at \*7 (E.D. Ky. Sept. 6, 2012) (finding that a failure to provide a precise number or calculation for their punitive damages claim is substantially justified pursuant to Fed. R. Civ. P. 37(c)(1)).

Accordingly, Ms. Giuffre’s disclosures comply with Rule 26 for the computation of damages. *See Naylor v. Rotech Healthcare, Inc.*, 679 F. Supp. 2d at 510 (“The Court is skeptical of the need for so much additional discovery, since the only open issue on the defamation claim seems to be damages. Miles’s email itself provides evidence of the statement and publication to

a third party. Damages will depend on [plaintiff] Naylor's testimony and perhaps evidence from a few other sources, such as Naylor's family and friends, or Streeter [one of defendant's clients].") Ms. Giuffre has provided the calculations evidencing how she arrived at her damage figures and has provided a myriad of documents upon which she also will rely in proving damages. This includes supporting documents showing average medical expenses computed by her average life expectancy. "[N]on-economic damages based on pain and suffering ... are generally not amenable to the type of disclosures contemplated by Rule 26(a)(1)(A)(iii)." *Scheel v. Harris*, No. CIV.A. 3:11-17-DCR, 2012 WL 3879279, at \*7 (E.D. Ky. Sept. 6, 2012) (holding that plaintiff's failure to disclose a number or calculation for such damages was substantially justified).

#### **IV. THIS COURT SHOULD NOT STRIKE MS. GIUFFRE'S CLAIMS FOR MEDICAL AND EMOTIONAL DISTRESS DAMAGES**

Defendant cites four cases in support of her request for this Court to strike her claims for medical and emotional distress damages, and each one of them militates against any such relief being awarded in this case. In the first, *Nittolo v. Brand*, sanctions were awarded in a personal injury action because, *inter alia*, the plaintiff went to his physician and took away his medical records before defendant had a chance to use the court-ordered release to access them, and the Court found the plaintiff lied under oath about taking away the records. 96 F.R.D. 672, 673 (S.D.N.Y.1983). By contrast, Ms. Giuffre has signed every medical release form requested by Defendant and provided all medical records that they yielded.

Defendant's second case is equally inapposite. In *Skywark v. Isaacson*, Court found that the plaintiff "began his pattern of lying about at least three matters of extreme significance to his claim for damages;" lied to his experts and lied under oath; and "never provided defendants with the promised [medical release] authorizations." 1999 WL 1489038 at \*3, \*5, \*11 (S.D.N.Y. Oct.

14, 1999). The facts could not be more dissimilar to the case at hand, where Ms. Giuffre has provided truthful testimony regarding her medical history and has executed all medical releases.

Defendant's third case continues in the same pattern. In *In re Consol. RNC Cases*, "all Plaintiffs either expressly refused to provide mental health treatment records or simply failed to provide such records during the course of discovery." 2009 WL 130178, at \*2 (S.D.N.Y. Jan. 8, 2009). Defendant's fourth case is similarly inapposite by Defendant's own description, turning on failure to provide medical releases. (Mtn. at 19).

Importantly, Defendant represents to the Court that she seeks the "sanction of striking the claim or precluding evidence only on the damages that relate to the withheld documents and information." (Mtn. at 19). This is confusing for two reasons. First, Ms. Giuffre has provided information about the providers that she has knowledge of and has provided releases for their medical records, so the sanction she seeks could not apply to any of the providers in Defendant's brief. Second, there are no "withheld documents." Ms. Giuffre has not withheld any medical records, and, indeed, has authorized the release of all records sought by Defendant. Accordingly, there are no "withheld records" upon which sanctions could be applied. And, again, there has been no violation of this Court's Order.

### **CONCLUSION**

Since filing the instant motion for sanctions, two other witnesses - witnesses subpoenaed by Defendant herself in order to mount her defense - have given testimony to support Ms. Giuffre. Most recently, Defendant's witness, Tony Figueroa, testified he witnessed Defendant

escort young girls he brought over to Epstein's home to Epstein for sex acts, and testified that Defendant called him on the phone, asking him to bring girls over to Epstein's house.<sup>15</sup>

Q And how long would you and one of these other girls sit there and have this small talk with Ms. Maxwell?

A No more than 10 or 15 minutes.

Q What were you waiting for?

A Pretty much her to take them up stairs then I would leave. I would wait for them to be like we're ready. And I would be all right. See you later and I would leave.

Q You were waiting for who to take who up stairs?

A I had seen Ms. Maxwell take a girl up there well not up there visibly but I watched her leave had room with one.

Q Up stairs?

12 A Well, I didn't see the stairs. Like in the kitchen there's not like you have to go all around and all that shit.

See McCawley Decl. at Exhibit 9, *ROUGH* Figueroa Tr. at 156:22-157:14.

Q Let me fix this. Gill when Gillian Maxwell would call you during the time that you were living with Virginia she would ask you what specifically?

A Just if I had found any ear girls just to bring the Jeffrey.

Q Okay.

A Pretty much everytime a conversation with any of them it was either asking Virginia where she was ask the asking her to get girls or asking me get girls.

See McCawley Decl. at Exhibit 9, *ROUGH* Figueroa Tr. at 162:8-19.

Accordingly, at this stage in discovery, it is not just the flight logs showing Defendant flying with Epstein and Ms. Giuffre over twenty times when she was a minor; it is not just the message pads from law enforcement's trash pulls that show Defendant arranging to have an underage girl come over to Epstein's house for "training;" it is not just the police report; it is not just the photographs of Defendant and other men with Ms. Giuffre when she was a minor.

Now, there is actual, live testimonial evidence that Defendant was a procurer of young girls for sex with Jeffrey Epstein, with whom she shared a home and a life, thus validating Ms. Giuffre's claims. Therefore, this baseless motion for sanctions is more a reflection of the

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<sup>15</sup> See McCawley Decl. at Exhibit 9, Excerpts from the June 24, 2016 *ROUGH* Deposition Transcript for the Deposition of Tony Figueroa.

abundant testimonial evidence condemning Defendant than any type of imagined discovery violation on behalf of Ms. Giuffre.

Ms. Giuffre respectfully requests that it be denied in its entirety.

Dated: June 28, 2016.

Respectfully Submitted,

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Sigrid McCawley

Sigrid McCawley (Pro Hac Vice)  
Meredith Schultz (Pro Hac Vice)  
Boies Schiller & Flexner LLP  
401 E. Las Olas Blvd., Suite 1200  
Ft. Lauderdale, FL 33301  
(954) 356-0011

David Boies  
Boies Schiller & Flexner LLP  
333 Main Street  
Armonk, NY 10504

Bradley J. Edwards (Pro Hac Vice)  
FARMER, JAFFE, WEISSING,  
EDWARDS, FISTOS & LEHRMAN, P.L.  
425 North Andrews Avenue, Suite 2  
Fort Lauderdale, Florida 33301  
(954) 524-2820

Paul G. Cassell (Pro Hac Vice)  
S.J. Quinney College of Law  
University of Utah  
383 University St.  
Salt Lake City, UT 84112  
(801) 585-5202<sup>16</sup>

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<sup>16</sup> This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah for this private representation.



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on the 28th day of June, 2016, I served the attached document  
via Email to the following counsel of record.

Laura A. Menninger, Esq.  
Jeffrey Pagliuca, Esq.  
HADDON, MORGAN & FOREMAN, P.C.  
150 East 10<sup>th</sup> Avenue  
Denver, Colorado 80203  
Tel: (303) 831-7364  
Fax: (303) 832-2628  
Email: [lmenninger@hmflaw.com](mailto:lmenninger@hmflaw.com)  
[jpagliuca@hmflaw.com](mailto:jpagliuca@hmflaw.com)

/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 PLAINTIFF'S RESPONSE IN  
OPPOSITION TO DEFENDANT'S MOTION FOR DEFENDANT'S RULE 37(b) &(c)  
SANCTIONS FOR FAILURE TO COMPLY WITH COURT ORDER AND FAILURE TO  
COMPLY WITH RULE 26(a)**

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 Order granting my Application to Appear Pro Hac Vice.
2. I respectfully submit this Declaration in response to Defendant's Motion for Defendant's Rule 37(b) &(c) Sanctions for Failure to Comply with Court Order and Failure to Comply with Rule 26(a).
3. Attached hereto as Sealed Exhibit 1 is a true and correct copy of Excerpts from the May 18, 2016 Deposition of Rinaldo Rizzo.
4. Attached hereto as Sealed Exhibit 2 is a true and correct copy of Excerpts from the



June 10, 2016 Deposition of Johanna Sjoberg.

5. Attached hereto as Sealed Exhibit 3 is a true and correct copy of Excerpts from the

June 20, 2016 Deposition of [REDACTED]

6. Attached hereto as Sealed Exhibit 4 is a true and correct copy of Excerpts from the

June 21, 2016 Deposition of Joseph Recarey.

7. Attached hereto as Sealed Composite Exhibit 5 is a true and correct copy of E-mail

Correspondences to Laura Menninger.

8. Attached hereto as Sealed Composite Exhibit 6 is a true and correct copy of

Medical Release Letter to Providers.

9. Attached hereto as Sealed Composite Exhibit 7 is a true and correct copy of April

29, 2016 Signed Medical Releases to Opposing Counsel.

10. Attached hereto as Sealed Exhibit 8 is a true and correct copy of Judith Lightfoot's

Redacted Medical Release (Giuffre005431-005438).

11. Attached hereto as Sealed Exhibit 9, is a true and correct copy of Excerpts from

the June 24, 2016 Deposition of Tony Figueroa.

12. Attached hereto as Sealed Exhibit 10 is a true and correct copy of Excerpt from the

May 26, 2016 Confidential Deposition of Dr. Steven Olson.

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

/s/ Sigrid McCawley

Sigrid McCawley

Dated: June 28, 2016

Respectfully Submitted,

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Sigrid McCawley  
Sigrid McCawley (Pro Hac Vice)  
Meredith Schultz (Pro Hac Vice)  
Boies, Schiller & Flexner LLP  
401 E. Las Olas Blvd., Suite 1200  
Ft. Lauderdale, FL 33301  
Tel: (954) 356-0011  
Email: smccawley@bsfllp.com

David Boies  
Boies, Schiller & Flexner LLP  
333 Main Street  
Armonk, NY 10504

Paul G. Cassell (Pro Hac Vice)  
Ronald N. Boyce Presidential Professor of  
Criminal Law  
S.J. Quinney College of Law at the  
University of Utah  
383 S. University St.  
Salt Lake City, UT 84112-0730  
(801) 585-5202 (phone)  
(801) 585-2750 (fax)  
Email: cassellp@law.utah.edu

Bradley Edwards (Pro Hac Vice)  
Farmer, Jaffe, Weissing, Edwards,  
Fistos & Lehrman, P.L.  
425 North Andrews Avenue, Suite 2  
Fort Lauderdale, Florida 33301  
Tel: (954) 524-2820  
Fax: (954) 524-2822  
Email: brad@pathtojustice.com

**CERTIFICATE OF SERVICE**

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

Laura A. Menninger, Esq.  
Jeffrey Paliuca, Esq.  
HADDON, MORGAN & FOREMAN, P.C.  
150 East 10<sup>th</sup> Avenue  
Denver, Colorado 80203  
Tel: (303) 831-7364  
Fax: (303) 832-2628  
[Email: lmenninger@hmflaw.com](mailto:lmenninger@hmflaw.com)

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

# EXHIBIT 2

## (File 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.

1 Jeffrey's home when you arrived?

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

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

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

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

12 A. Yes.

13 Q. And what happened next?

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

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

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

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

5 Q. Do you remember who took the photo?

6 A. I don't recall.

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

9 A. I did not.

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

12 A. Yes.

13 Q. What happened next?

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

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

19 A. I don't.

20 Q. Do you recall seeing Virginia exit that  
21 room?

22 A. I don't.

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

1 always covered himself with a towel.

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

5 A. Yes.

6 Q. Yes?

7 A. Yes.

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

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

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

18 A. Correct.

19 Q. And what did she do?

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

22 Q. Twice.

23 Did anything sexual in nature happen  
24 during the session?

25 A. At one point he lifted up her shirt and



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

3 Q. Anything else?

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

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

10 A. She implied that, yes.

11 Q. In what way?

12 A. Sexually.

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

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

21 MS. MENNINGER: Objection, leading, form.

22 BY MS. McCAWLEY:

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

25 What did you understand Maxwell to mean

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

3 MS. MENNINGER: Objection, leading, form.

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

6 BY MS. McCAWLEY:

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

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

12 THE WITNESS: I can answer?

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

15 BY MS. McCAWLEY:

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

19 MS. MENNINGER: Objection, hearsay.

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

1 A. No.

2 Q. Was it in the context of anything?

3 A. About the camera that she had bought for  
4 me.

5 Q. What did she say in relationship to the  
6 camera that she bought for you and taking  
7 photographs of you?

8 A. Just that Jeffrey would like to have some  
9 photos of me, and she asked me to take photos of  
10 myself.

11 Q. What did you say?

12 A. I don't remember saying no, but I never  
13 ended up following through. I think I tried once.

14 Q. This was the pre-selfie era, correct?

15 A. Exactly.

16 Q. I want to go back to this: You testified  
17 to two things just now with Sigrid that you said  
18 were implied to you.

19 A. Okay.

20 Q. The first one was it would take pressure  
21 off of Maxwell to have more girls around?

22 A. Right.

23 Q. What exactly did Maxwell say to you that  
24 led you to believe that was her implication?

25 A. She said she doesn't have the time or

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

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

5           A.     No.

6           Q.     Did she talk about underaged girls?

7           A.     No.

8           Q.     Was she talking about massage therapists?

9           A.     Not specifically.

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

12          A.     Yes.

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

15          A.     Yes.

16          Q.     There were other people he traveled with?

17          A.     Uh-huh.

18                 MS. McCAWLEY: Objection.

19     BY MS. MENNINGER:

20          Q.     Correct?

21          A.     Correct.

22          Q.     Other girls?

23          A.     Yes.

24          Q.     Adults?

25          A.     Yes.

1 CERTIFICATE OF OATH  
2 STATE OF FLORIDA )  
3 COUNTY OF MIAMI-DADE )  
4  
5 I, the undersigned authority, certify  
6 that JOHANNA SJOBERG personally appeared before me  
7 and was duly sworn.  
8 WITNESS my hand and official seal this  
9 18th day of May, 2016.  
10  
11  
12 KELLI ANN WILLIS, RPR, CRR  
13 Notary Public, State of Florida  
14 My Commission No. FF911443  
15 Expires: 2/16/21  
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# EXHIBIT 3

## (File 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

June 20, 2016

9:12 a.m.

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

Deposition of [REDACTED], pursuant  
to notice, taken by Plaintiff, at the  
offices of Podhurst Orseck, 25 West  
Flagler Street, Suite 800, Miami, Florida,  
before Kelli Ann Willis, a Registered  
Professional Reporter, Certified Realtime  
Reporter and Notary Public within and  
for the State of Florida.

1

2 know the extent of their relationship. But she  
3 would schedule his appointments and handle clerical  
4 things for him as far as I can see.

5 Q. All right.

6 And when you first went to his house,  
7 where did -- where were you taken within the house?

8 MR. PAGLIUCA: Object to form and  
9 foundation.

10 THE WITNESS: Kitchen, up to the room, up  
11 to his master suite.

12 BY MR. EDWARDS:

13 Q. And which stairwell did you go up to his  
14 suite?

15 A. I do not remember.

16 Q. Was it the stairs off by the kitchen?

17 A. I do not recall.

18 Q. And when you went into his bedroom, were  
19 you under the belief that it was going to be you  
20 providing some sort of a massage?

21 A. It certainly didn't involve any sexual  
22 activity. That's what I was under the assumption.  
23 I don't recall exactly how I was propositioned to  
24 get there. I just was there, and all of a sudden  
25 something horrible happened to me.



1

2 Q. Did you, at 16 years old or 17 years old,  
3 have any massage training or experience?

4 A. No.

5 Q. Did [REDACTED] have any massage  
6 experience?

7 A. I do not -- I can't speak to her  
8 experience. I do not know. She was not really a  
9 friend of mine. Barely an acquaintance. We maybe  
10 spoke three times in our entire going to school  
11 together and everything.

12 Q. Did you ever learn what her incentive was  
13 to bring you to Jeffrey Epstein's house?

14 A. Later I found out that they would get  
15 kickbacks for bringing people over.

16 Q. Do you remember seeing Jeffrey Epstein  
17 give her money that day?

18 A. I don't recall, no.

19 Q. If you said that in your statement, that  
20 you remember [REDACTED] getting money for bringing you  
21 here that day, would that be a true statement?

22 A. Yes, absolutely. Everything in there is  
23 the truth. I do not remember from years ago at this  
24 point.

25 MR. PAGLIUCA: Object to form and

1

2 into?

3 A. I worked very, very hard to not recall  
4 anything specific about my sexual encounters with  
5 this person as one of his victims. I cannot answer  
6 your question. Things -- it wasn't supposed to be  
7 sexual, but it was. That's as specific as I can  
8 get.

9 Q. Fair to say that when Jeffrey Epstein or  
10 his assistants used the term "massage," someone is  
11 going to come give a massage, that that's always a  
12 sexual encounter?

13 MR. PAGLIUCA: Object to form and  
14 foundation.

15 THE WITNESS: "Always" is a strong word to  
16 use. I'm not making that assumption, but  
17 oftentimes that's exactly what it meant.

18 BY MR. EDWARDS:

19 Q. When Jeffrey Epstein was paying high  
20 school girls for these alleged massages, he was  
21 paying to turn it into a sexual encounter, fair?

22 MR. PAGLIUCA: Object to form and  
23 foundation.

24 THE WITNESS: I would say yes, that is the  
25 motivation. I'm not a mind-reader. I don't

1

2

know what he was thinking. It's fair to

3

assume.

4

BY MR. EDWARDS:

5

Q. All right.

6

Did you know how [REDACTED] met

7

Jeffrey Epstein?

8

A. No.

9

Q. Do you know someone named Hayley Robson?

10

A. No.

11

Q. Did you know Tony Figueroa?

12

A. No. It sounds like a familiar name, but I

13

do not know him.

14

Q. Did you know Ashley Davis?

15

A. I may have gone to high school with an

16

Ashley Davis, but that seems like a very common

17

name.

18

Q. Were you asked by Jeffrey Epstein to bring

19

other girls to him?

20

A. Yes.

21

Q. And for what purpose?

22

MR. PAGLIUCA: Object to form and

23

foundation.

24

BY MR. EDWARDS:

25

Q. What is his stated purpose?

1

2           A.    I was never present when he interacted  
3 with those women. I don't know exactly what  
4 happened.

5           Q.    Did you bring other girls to him?

6           A.    Yes. I brought friends over.

7           Q.    And were they also of similar age to you?

8           A.    Yes. They were my peers.

9           Q.    High school girls?

10          A.    Correct.

11          Q.    Did any of them have massage experience?

12          A.    I do not know.

13               MR. PAGLIUCA: Object to form.

14 BY MR. EDWARDS:

15          Q.    Were you going out to look for a massage  
16 therapist, a professional massage therapist to bring  
17 to him?

18          A.    No.

19          Q.    What he wanted at his house was young high  
20 school girls under the pretense of some massage?

21               MR. PAGLIUCA: Object to form and  
22 foundation.

23 BY MR. EDWARDS

24          Q.    Is that fair?

25               MR. PAGLIUCA: Object to form and

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2 foundation.

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16 BY MR. EDWARDS:

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[REDACTED]

THE WITNESS: Yes, that's fair. I mean, I have to think. Sometimes I would go over and I would just swim and I would get paid, or I would take a nap and I'd get paid, or I would just hang out and I'd get paid. So that should be in my statement as well.

It wasn't my assumption that they were coming over to do anything. I did not know, once the door was closed or once they went to another area of the home. I often just went over and did my own thing while they were doing whatever they were doing. It was none of my business.

Q. When you would say you would just hang out at the pool, who would you be with?

A. I don't remember anyone. None of those girls were any friends. We were all there just through that mutual connection.

Q. I just have a list of girls, and I want you to tell me whether you know who they are or you don't.

Do you know Felicia Esposito?

1

2 BY MR. EDWARDS:

3 Q. When you got to his house, you were  
4 requested to give a massage?

5 MR. PAGLIUCA: Object to foundation and  
6 form.

7 THE WITNESS: I don't exactly remember. I  
8 don't remember if I was asked in the kitchen.  
9 I don't remember if -- I don't remember.

10 BY MR. EDWARDS:

11 Q. Massage was part of the game, though?

12 MR. PAGLIUCA: Object to form and  
13 foundation.

14 THE WITNESS: I don't remember. I'm  
15 sorry.

16 BY MR. EDWARDS:

17 Q. But even during this deposition today, we  
18 have described at times you giving him a massage?

19 A. Yes. You're asking about my first  
20 encounter, though.

21 Q. Sorry, I'm just trying to sum up the whole  
22 thing.

23 A. Okay.

24 Q. Was massage part of the lure to get you  
25 specifically to his house?

1

2 A. Yes.

3 MR. PAGLIUCA: Object to form and

4 foundation.

5 BY MR. EDWARDS:

6 Q. And at the time, you are 15, 16 or 17

7 years old?

8 MR. PAGLIUCA: Object to form and

9 foundation.

10 THE WITNESS: Yes.

11 BY MR. EDWARDS:

12 Q. No massage experience?

13 A. No.

14 Q. You were told to bring other girls to his

15 house?

16 MR. PAGLIUCA: Object to form and

17 foundation.

18 THE WITNESS: After a while, yes.

19 BY MR. EDWARDS:

20 Q. These massages were turned sexual by

21 Jeffrey, as opposed to by anyone else?

22 A. Jeffrey took my clothes off without my

23 consent the first time I met him.

24 Q. The massages were scheduled by people

25 working for Jeffrey?

1

2 A. I don't recall.

3 MR. PAGLIUCA: Object to form and  
4 foundation.

5 BY MR. EDWARDS:

6 Q. Jeffrey Epstein, during these massages,  
7 would use sex toys or have sex toys used?

8 MR. PAGLIUCA: Object to form and  
9 foundation.

10 THE WITNESS: Well, at that point, it's no  
11 longer a massage. Something else is going on.  
12 But, yes, he would take out adult toys and  
13 different things.

14 BY MR. EDWARDS:

15 Q. While you were a teenager, Jeffrey Epstein  
16 asked you to live with him?

17 A. Yes. He wanted me to be emancipated.

18 Q. Jeffrey Epstein encouraged girl-on-girl  
19 sex?

20 MR. PAGLIUCA: Object to form and  
21 foundation.

22 THE WITNESS: Yes.

23 BY MR. EDWARDS:

24 Q. And after you cooperated with the police,  
25 you were intimidated by people working for Jeffrey



1

2 Epstein?

3

4

MR. PAGLIUCA: Object to form and  
foundation.

5

THE WITNESS: Yes.

6

7

MR. EDWARDS: All right. I don't have  
anything further for you. I apologize that we  
even had to go through this, all right?

8

9

THE WITNESS: Okay.

10

E X A M I N A T I O N

11

BY MR. PAGLIUCA:

12

13

14

15

Q. [REDACTED] by name is Jeff Pagluica. I  
live in Denver, Colorado. And, like you, I don't  
want to be here today either, okay? I would rather  
be in Denver.

16

17

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25

I just want to -- as I understand it, and  
I'm not trying to get into any of your treatment  
over the last, let's say, 10 years, because I don't  
know how long it's been, but as I understand what  
you and your lawyer have said here today, you have  
been involved in some number of years of therapy, in  
which the purpose -- part of the purpose of the  
therapy has been to forget all of these events that  
Mr. Edwards was asking you questions about; is that  
correct?

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[REDACTED]

CERTIFICATE OF OATH

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

I, the undersigned authority, certify that  
[REDACTED] personally appeared before me and  
was duly sworn.

WITNESS my hand and official seal this  
23rd day of June, 2016.

Kelli Ann Willis, RPR, CRR  
Notary Public, State of Florida  
Commission FF928291, Expires 2-16-20

+ + + + +

CERTIFICATE

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

I, Kelli Ann Willis, Registered  
Professional Reporter and Certified Realtime  
Reporter do hereby certify that I was  
authorized to and did stenographically report the  
foregoing deposition of [REDACTED] that a  
review of the transcript was not requested; and  
that the transcript is a true record of my  
stenographic notes.

I FURTHER CERTIFY that I am not a  
relative, employee, attorney, or counsel of any  
of the parties, nor am I a relative or employee of  
any of the parties' attorney or counsel connected  
with the action, nor am I financially interested  
in the action.

Dated this 23rd day of June, 2016.

KELLI ANN WILLIS, RPR, CRR

# EXHIBIT 4

## (File 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

June 21, 2016

9:17 a.m.

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

Deposition of JOSEPH RECAREY, 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.

1 JOSEPH RECAREY - CONFIDENTIAL

2 Ghislane Maxwell?

3 A. I wanted to speak with everyone related to  
4 this home, including Ms. Maxwell. My contact was  
5 through Gus, Attorney Gus Fronstin, at the time, who  
6 initially had told me that he would make everyone  
7 available for an interview. And subsequent  
8 conversations later, no one was available for  
9 interview and everybody had an attorney, and I was  
10 not going to be able to speak with them.

11 Q. Okay. During your investigation, what did  
12 you learn in terms of Ghislane Maxwell's  
13 involvement, if any?

14 MR. PAGLIUCA: Object to form and  
15 foundation.

16 THE WITNESS: Ms. Maxwell, during her  
17 research, was found to be Epstein's long-time  
18 friend. During the interviews, Ms. Maxwell was  
19 involved in seeking girls to perform massages  
20 and work at Epstein's home.

21 MR. PAGLIUCA: Object to form and  
22 foundation.

23 BY MR. EDWARDS:

24 Q. Did you interview -- how many girls did  
25 you interview that were sought to give or that

1 JOSEPH RECAREY - CONFIDENTIAL

2 actually gave massages at Epstein's home?

3 MR. PAGLIUCA: Object to form and

4 foundation.

5 BY MR. EDWARDS:

6 Q. Approximately.

7 MR. PAGLIUCA: Same objection.

8 THE WITNESS: I would say approximately

9 30; 30, 33.

10 BY MR. EDWARDS:

11 Q. And of the 30, 33 or so girls, how many

12 had massage experience?

13 MR. PAGLIUCA: Object to form and

14 foundation.

15 THE WITNESS: I believe two of them may

16 have been -- two of them.

17 BY MR. EDWARDS:

18 Q. Okay. And as we go through this report,  
19 you may remember the names?

20 A. Correct. Let me correct myself. I  
21 believe only one had.

22 Q. And was that -- was that one of similar  
23 age to the other girls?

24 MR. PAGLIUCA: Object to form and

25 foundation.

1 JOSEPH RECAREY - CONFIDENTIAL

2 THE WITNESS: No.

3 BY MR. EDWARDS:

4 Q. Okay. The one with massage experience was  
5 older?

6 MR. PAGLIUCA: Object to form and  
7 foundation.

8 THE WITNESS: Correct.

9 BY MR. EDWARDS:

10 Q. The remainder of the 30 girls that went to  
11 this house for the purposes of massage or recruited  
12 for massage, is it my understanding that they had no  
13 massage experience?

14 MR. PAGLIUCA: Object to form and  
15 foundation.

16 THE WITNESS: That's correct.

17 BY MR. EDWARDS:

18 Q. And were the majority of those girls that  
19 you interviewed over or under the age of 18?

20 MR. PAGLIUCA: Object to form and  
21 foundation.

22 THE WITNESS: The majority were under.

23 BY MR. EDWARDS:

24 Q. And how was it that Mr. Epstein gained  
25 access to that number of underaged girls?

1 JOSEPH RECAREY - CONFIDENTIAL

2 MR. PAGLIUCA: Object to form and  
3 foundation.

4 THE WITNESS: Each of the victims that  
5 went to the home were asked to bring their  
6 friends to the home. Some complied and some  
7 didn't.

8 BY MR. EDWARDS:

9 Q. Okay. So the victim would come to the  
10 home and could give a massage and get paid for it;  
11 is that right?

12 MR. PAGLIUCA: Object to form and  
13 foundation.

14 THE WITNESS: Correct.

15 BY MR. EDWARDS:

16 Q. And at the end of that massage, if that  
17 victim brought other friends, she would get paid for  
18 the recruitment of those friends?

19 MR. PAGLIUCA: Object to form and  
20 foundation.

21 THE WITNESS: Correct.

22 BY MR. EDWARDS:

23 Q. Additionally, did your investigation  
24 reveal that the assistants of Jeffrey Epstein would  
25 call and set up for these girls to come over to the



1 JOSEPH RECAREY - CONFIDENTIAL

2 house for the massages?

3 MR. PAGLIUCA: Object to form and  
4 foundation.

5 THE WITNESS: Correct.

6 BY MR. EDWARDS:

7 Q. And, as well, certain people that were  
8 friends or girlfriends or assistants of Jeffrey  
9 Epstein would recruit girls under the pretense of  
10 giving a massage?

11 MR. PAGLIUCA: Object to form and  
12 foundation.

13 THE WITNESS: Correct.

14 BY MR. EDWARDS:

15 Q. Is that what your investigation revealed  
16 in terms of the system of getting these girls over  
17 to the house?

18 MR. PAGLIUCA: Object to form and  
19 foundation.

20 THE WITNESS: Yes.

21 BY MR. EDWARDS:

22 Q. Okay. Talking about the massages, when --  
23 when these -- the various girls that you interviewed  
24 described the massages, was there a pattern of what  
25 occurred during these massages?

1 JOSEPH RECAREY - CONFIDENTIAL

2 MR. PAGLIUCA: Object to form and  
3 foundation.

4 THE WITNESS: Yes, there was.

5 BY MR. EDWARDS:

6 Q. Okay. Describe for us what the pattern  
7 was that was told to you by the 30 or so girls that  
8 you interviewed?

9 MR. PAGLIUCA: Object to form and  
10 foundation.

11 THE WITNESS: Initially, when the -- when  
12 the victims would come into the home and were  
13 brought upstairs to provide the massage,  
14 Epstein would lay on his massage table, where  
15 they would start to rub his back and the back  
16 of his legs.

17 Epstein would either attempt to fondle the  
18 girls or touch the girls inappropriately, and  
19 at which point he would masturbate. And when  
20 he was done, he would get up and go wash off  
21 while the girls would get dressed and go back  
22 downstairs and get paid.

23 BY MR. EDWARDS:

24 Q. Okay. So did you determine that "massage"  
25 was actually a code word for something else?

1 JOSEPH RECAREY - CONFIDENTIAL

2 MR. PAGLIUCA: Object to form and  
3 foundation.

4 THE WITNESS: When they went to perform a  
5 massage, it was for sexual gratification.

6 BY MR. EDWARDS:

7 Q. And when the assistants would call and ask  
8 these girls to work, did you learn what the term  
9 "work" meant with respect to these girls coming to  
10 the house?

11 MR. PAGLIUCA: Object to form and  
12 foundation.

13 THE WITNESS: "Work" meant to come and  
14 provide Epstein a massage.

15 BY MR. EDWARDS:

16 Q. And massage -- how often would these  
17 massages, based upon your investigation, turn into  
18 something sexual?

19 MR. PAGLIUCA: Object to form and  
20 foundation.

21 THE WITNESS: During the investigation, it  
22 was determined that he would have multiple  
23 massages during the day. He would have some in  
24 the morning and some in the afternoon,  
25 sometimes into the evening. So he would

1 JOSEPH RECAREY - CONFIDENTIAL

2 BY MR. EDWARDS:

3 Q. All right.

4 And so when you went to speak with the  
5 victims, what did these victims say about their  
6 experience with Jeffrey Epstein?

7 MR. PAGLIUCA: Object to form and  
8 foundation.

9 THE WITNESS: Once they were recruited,  
10 they were brought to the home. They were to  
11 provide a massage.

12 Some of the victims did not want to be  
13 touched; some of the victims did not want to  
14 partake in that. So it was -- I believe for --  
15 for a couple of them it was only a one-shot  
16 deal, but others continued to come.

17 BY MR. EDWARDS:

18 Q. Okay. And as you interviewed some of  
19 those victims, did you learn that some of those  
20 victims also brought additional girls?

21 MR. PAGLIUCA: Object to form and  
22 foundation.

23 THE WITNESS: That's correct.

24 BY MR. EDWARDS:

25 Q. So as you were investigating this case, as

1 JOSEPH RECAREY - CONFIDENTIAL

2 part of your investigation, you're learning  
3 information from these victims and then going to  
4 talk to the next person down the line, if you will?

5 MR. PAGLIUCA: Object to form and  
6 foundation.

7 THE WITNESS: Correct.

8 BY MR. EDWARDS:

9 Q. And what is the purpose of that?

10 A. To identify further victims and acquire  
11 additional information.

12 Q. And in doing that, were you able to  
13 corroborate the accuracy of what the first victim  
14 told you?

15 MR. PAGLIUCA: Object to form and  
16 foundation.

17 THE WITNESS: Correct.

18 BY MR. EDWARDS:

19 Q. Okay. And did you learn of Sarah Kellen's  
20 involvement with respect to the various girls?

21 MR. PAGLIUCA: Object to form and  
22 foundation.

23 THE WITNESS: Yes.

24 BY MR. EDWARDS:

25 Q. What was her role?

1 JOSEPH RECAREY - CONFIDENTIAL

2 MR. PAGLIUCA: Object to form and  
3 foundation.

4 THE WITNESS: That is correct.

5 BY MR. EDWARDS:

6 Q. And did you turn all of your files over to  
7 either the State Attorney's Office or the FBI?

8 A. That is correct.

9 Q. And through the State Attorney's Office,  
10 was the information contained within the probable  
11 cause affidavit and the incident reports a publicly  
12 available document?

13 MR. PAGLIUCA: Object to form and  
14 foundation.

15 THE WITNESS: Yes.

16 BY MR. EDWARDS:

17 Q. And around the time of your  
18 investigation -- around the time you ended your  
19 investigation and thereafter, were various newspaper  
20 articles written about the substance of some of your  
21 investigation?

22 A. Yes.

23 Q. Did it become well known to the public  
24 that Jeffrey Epstein had recruited high school girls  
25 to his house for the purpose of some sexually

1 JOSEPH RECAREY - CONFIDENTIAL

2 involved massage?

3 MR. PAGLIUCA: Object to form and  
4 foundation.

5 THE WITNESS: That is correct.

6 BY MR. EDWARDS:

7 Q. And, in fact, haven't you read many of  
8 these newspaper articles?

9 A. That is correct.

10 Q. That was not a hidden secret from the  
11 public beginning in 2006, right?

12 A. No.

13 Q. And from your overall investigation, kind  
14 of just a big picture, what was the criminal  
15 activity, as specific as you can, that you learned  
16 that Jeffrey Epstein and others were involved in?

17 MR. PAGLIUCA: Object to form and  
18 foundation.

19 THE WITNESS: It was sexual battery and  
20 lewd and lascivious conduct for under the age  
21 of 16.

22 BY MR. EDWARDS:

23 Q. And what was the specific system of  
24 engaging in this type of activity?

25 MR. PAGLIUCA: Object to form and

1 JOSEPH RECAREY - CONFIDENTIAL

2 foundation.

3 THE WITNESS: As to --

4 BY MR. EDWARDS:

5 Q. From the recruitment to the: How did you  
6 get them, what did you do, how did you keep it  
7 going?

8 A. Once the --

9 MR. PAGLIUCA: Object to form and  
10 foundation. Sorry.

11 THE WITNESS: No, no.

12 As it became known to us that the victim  
13 was recruited, brought to the home, provided  
14 the massage, was paid, whether there was  
15 inappropriate touching, whether there was  
16 sexual activity, whether there was actually  
17 intercourse, all of that was documented and was  
18 asked whether they brought anyone to the home,  
19 whether they had any formal training in massage  
20 therapy, and once -- once additional victims  
21 were identified, we continued the same -- the  
22 same method of investigation.

23 BY MR. EDWARDS:

24 Q. Okay. And one of the earliest victims, in  
25 terms of the chronology of this pyramid of girls,



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2 for lack a better word -- you understand what I mean  
3 by that, right?

4 MR. PAGLIUCA: Object to form and  
5 foundation.

6 THE WITNESS: Yes.

7 BY MR. EDWARDS:

8 Q. That there's -- there's -- one of the  
9 earliest victims that you interviewed was Haley  
10 Robson; is that right?

11 MR. PAGLIUCA: Object to form and  
12 foundation.

13 THE WITNESS: It was actually SG, I think  
14 was the first one that was interviewed, and  
15 then HR was the one I interviewed.

16 BY MR. EDWARDS:

17 Q. Okay. My question was bad.

18 I know that the first person interviewed  
19 that kind of kicked off the investigation was SG,  
20 but -- and just to create a picture of what we have  
21 here, this is, and tell me if I characterized it  
22 wrong, a scheme that Jeffrey Epstein engaged in by  
23 using assistants to recruit girls, right?

24 A. Correct.

25 Q. Under the --

1 JOSEPH RECAREY - CONFIDENTIAL

2 MR. PAGLIUCA: Object to form and  
3 foundation.

4 BY MR. EDWARDS:

5 Q. Under the pretense of giving a massage?

6 MR. PAGLIUCA: Object to form and  
7 foundation.

8 THE WITNESS: Correct. Either a message  
9 and/or become a model for Victoria's Secrets  
10 and/or connections.

11 BY MR. EDWARDS:

12 Q. And when he was able to get these girls to  
13 his home, he would then offer them money to also  
14 become recruiters for him?

15 MR. PAGLIUCA: Object to form and  
16 foundation.

17 THE WITNESS: Correct.

18 BY MR. EDWARDS:

19 Q. And that created this -- if you've mapped  
20 it out, kind of a spider web or a pyramid of girls  
21 bringing girls to Jeffrey Epstein's house?

22 MR. PAGLIUCA: Object to form and  
23 foundation.

24 BY MR. EDWARDS:

25 Q. Right?

1 JOSEPH RECAREY - CONFIDENTIAL

2 A. Correct.

3 Q. All right.

4 So when I say one of the first, I mean on  
5 the top of the pyramid one of the earliest people  
6 that you interviewed that brought girls to Jeffrey  
7 Epstein's house was HR?

8 A. Correct.

9 MR. PAGLIUCA: Object to form and  
10 foundation.

11 BY MR. EDWARDS:

12 Q. And I think that you testified that Molly  
13 and Tony drove HR to Jeffrey Epstein's house the  
14 first time, right?

15 MR. PAGLIUCA: Object to form and  
16 foundation.

17 THE WITNESS: Correct.

18 BY MR. EDWARDS:

19 Q. Did you ever trace all the way up to the  
20 highest level to determine who was it that started  
21 this particular chain of Palm Beach girls coming  
22 over to Jeffrey Epstein's home?

23 MR. PAGLIUCA: Object to form and  
24 foundation.

25 THE WITNESS: I did not. Basically, when

AFFIDAVIT

STATE OF FLORIDA                   )  
COUNTY OF                         )

I, \_\_\_\_\_, being first  
duly sworn, do hereby acknowledge that I did  
read a true and certified copy of my deposition  
which was taken in the case of GIUFFRE V.  
MAXWELL, taken on the 24th day of September,  
2016, and the corrections I desire to make are  
as indicated on the attached Errata Sheet.

CERTIFICATE

STATE OF FLORIDA                   )  
COUNTY OF                         )

Before me personally appeared

\_\_\_\_\_,  
to me well known / known to me to be the  
person described in and who executed the  
foregoing instrument and acknowledged to and  
before me that he executed the said instrument  
in the capacity and for the purpose therein  
expressed.

Witness my hand and official seal, this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

My Commission Expires:

# EXHIBIT 10

## (File Under Seal)

***GIUFFRE***

***VS.***

***MAXWELL***

**Deposition**

***STEVEN W OLSON***

*05/26/2016*

---

***Agren Blando Court Reporting & Video, Inc.***

*216 16th Street, Suite 600*

*Denver Colorado, 80202*

*303-296-0017*

**Agren Blando Court Reporting & Video, Inc.**

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 15-cv-07433-RWS

---

CONFIDENTIAL DEPOSITION OF DR. STEVEN W. OLSON  
May 26, 2016

---

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

---

APPEARANCES:

S.J. QUINNEY COLLEGE OF LAW, UNIVERSITY OF UTAH

By Paul G. Cassell, Esq.

383 S. University Street

Salt Lake City, UT 84112

Phone: 801.585.5202

Cassellp@law.utah.edu

Appearing on behalf of the

Plaintiff

HADDON, MORGAN AND FORMAN, P.C.

By Laura A. Menninger, Esq.

150 East 10th Avenue

Denver, CO 80203

Phone: 303.831.7364

lmenninger@hmflaw.com

Appearing on behalf of the

Defendant

Pursuant to Subpoena, Notice and the  
Federal Rules of Civil Procedure, the DEPOSITION OF  
DR. STEVEN W. OLSON, called by Defendant, was taken  
on Thursday, May 26, 2016, commencing at 8:54 a.m.,  
at 150 East 10th Avenue, Denver, Colorado, before  
Kelly A. Mackereth, Certified Shorthand Reporter,  
Registered Professional Reporter, Certified Realtime  
Reporter and Notary Public within Colorado.

\* \* \* \* \*  
I N D E X

EXAMINATION	PAGE
MS. MENNINGER	4
MR. CASSELL	109
MS. MENNINGER	127
MR. CASSELL	136
PRODUCTION REQUEST(S) :	
	44



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## INDEX OF EXHIBITS

DESCRIPTION	INITIAL REFERENCE
Exhibit 1 Authorization for the Release and Disclosure of Protected Health Information and Medical Records	7
Exhibit 2 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action	7
Exhibit 3 Subpoena to Testify at a Deposition in a Civil Action	8
Exhibit 4 Document titled Centura Health Physician Group Patient Information	40
Exhibit 5 Visit note for Dr. Olson	43
Exhibit 6 Document titled Patient Health Summary, The Entrance Medical Centre	100
Exhibit 7 Document titled Patient Health Summary from Central Coast Family Medicine	105

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1 Q All right. Do you know how you came to be  
2 the doctor for Virginia Giuffre?

3 A No. I -- she would have filled out a new  
4 patient packet and showed up for a new patient  
5 appointment for a particular reason. I reviewed it.

6

7

8 Q Do you know where that new patient packet  
9 is now?

10 A It's going to be scanned in the computer.  
11 If you don't have it, I brought my computer. I can  
12 probably scan it and print it out or just print it  
13 out.

14 Q Is that among the documents that you have  
15 next to you?

16 A The new patient packet isn't here, but I  
17 have it -- I should have it on my computer. I could  
18 probably log in and print it, to be honest. It  
19 wouldn't be that hard. I assumed that the hospital  
20 is taking care of all the documentation that was  
21 requested. So I didn't actually bring it.

22 Q I understand.

23 A I actually have it, happen to have it with  
24 me.

25 Q All right. Why don't we -- we can

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1       probably do that when we take a break in just a few  
2       minutes, and I can tell you how to get on the  
3       Internet and we'll see if that works.

4               A       Um-hum.

5               Q       Do you know how many times that you saw  
6       Virginia Giuffre?

7               A       Once.

8               Q       Do you know whether she was referred to  
9       you by another doctor?

10              A       No.

11              Q       Do you mean no, you don't know or --

12              A       I have no idea. I have no idea. I don't  
13       know why she would have been referred. Most the time  
14       people are referring out.

15              Q       Right.

16              A       They don't refer back to a general  
17       practitioner.

18              Q       No one ever refers anyone to you?

19              A       It generally goes the other direction.  
20       Well, other patients might refer people to me, and  
21       that happens, but --

22              Q       Okay. Do you know if you treat  
23       Ms. Giuffre's children in your practice?

24              A       Not that I'm aware of.

25              Q       Do you know a woman by the name of Lynn

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1 Miller?

2 A I know several Millers.

3 Q Who works at Saint Thomas More Hospital?

4 A I think so, yeah. That sounds familiar,  
5 yeah.

6 Q Do you know her professionally?

7 A Not really.

8 Q Okay.

9 A I mean, her name sounds familiar.

10 Q Do you know of any connection between Lynn  
11 Miller and Virginia Giuffre?

12 A None. I have met Virginia once. I only  
13 saw her once, a year ago. That's the extent of my --

14 Q Have you ever read any media reports about  
15 Ms. Giuffre?

16 A No. No, I haven't. I don't know anything  
17 about it.

18 Q Okay. Do you know how long --

19 A She -- I believe she mentioned that it was  
20 some kind of -- mentioned something about being a  
21 famous sexual abuse something.

22 Q You haven't read any of the reports?

23 A I have no idea.

24 Q Okay. I'm just trying to establish your  
25 sources information.

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1           A       Yeah.

2           Q       So if you had information about  
3       Ms. Giuffre, other than your visit --

4           A       Yeah.

5           Q       -- do you know another source?

6           A       No.

7           Q       From family members?

8           A       No.

9           Q       From community members, anything?

10          A       Nothing.

11          Q       Do you know how long your visit with her  
12       lasted?

13          A       It -- sometimes I document time spent, but  
14       not always. I mean, it's not important. They're  
15       half-hour visits typically. It would have been a  
16       half hour or less, I would expect.

17          Q       All right. Before looking at your  
18       records, is there anything about Ms. Giuffre that you  
19       recall just from the top of your head?

20                   I understand you see many, many patients  
21       and this was a year ago. So you tell me.

22          A       Nothing. I saw her once. And when I went  
23       back and read the note, I went, Oh, yeah, I remember  
24       someone mentioning about being in a sexual abuse  
25       trial or something, some kind of sexual abuse thing.



1 Q That's the only unusual part that stuck  
2 out?

3 A Yeah, and I don't really remember anything  
4 about her at all, actually, I don't.

5 Q Do you know what she looks like?

6 A No, I don't remember. It was one time a  
7 year ago. I don't remember.

8 Q I understand. Okay. If it's okay with  
9 you, I would like to take a break and see if we can  
10 pull up the other records because I don't want to go  
11 through my questions and then go back and look at  
12 those records. I'd rather do it one time.

13 A Okay.

14 Q Is that all right?

15 A Yeah, I'm fine with that.

16 MS. MENNINGER: All right. Let's go off  
17 the record.

18 (Recess taken from 9:41 a.m. to  
19 10:07 a.m.)

20 (Exhibit 4 marked.)

21 Q (BY MS. MENNINGER) So we're back on the  
22 record. All right.

23 I'm going to give you a document marked as  
24 Exhibit 4. And I'm going to make a small record  
25 about what just took place off the record, which is

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1       that you, as I understand it, and tell me if I'm  
2       wrong, have access to medical records from your  
3       office on your laptop, correct?

4             A       Yes.

5             Q       Okay. And you were able to get on your  
6       laptop and print out records related to Ms. Giuffre  
7       that you had on that laptop, correct?

8             A       Yes.

9             Q       And we printed that out and made copies  
10      for everyone here, and that's what you see in front  
11      of you as Exhibit 4, correct?

12            A       Yes.

13            Q       We made those printouts on a portable  
14      printer. So they're not the best quality, correct?

15            A       Correct.

16            Q       And some portions are not printing out as  
17      well?

18            A       Yes.

19            Q       And you, I think, would be okay with  
20      sending us a more complete set later?

21            A       Yes.

22            Q       All right. I'm going to take just a  
23      minute to review it.

24                    Can you tell us what the records that you  
25      just printed out in Exhibit 4 represent?

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1           A       Generally it's demographics information  
2           and then a list of medications, a list of surgeries,  
3           a list of family medical history, and then a list of  
4           physical complaints that there's some -- it's called  
5           review of systems, things someone has been feeling  
6           and self-reported in the last two weeks.

7           Q       Okay. So is this typically -- is this  
8           patient information document typically in the  
9           patient's handwriting?

10          A       Yes.

11          Q       And I presume you don't know Ms. Giuffre's  
12          handwriting?

13          A       No.

14          Q       But it's a practice to ask the patient to  
15          fill these forms out?

16          A       Yes, and then have it there before their  
17          appointment.

18          Q       All right. So if I see the date reflected  
19          on the top of the first page as May 21st, 2015 --

20          A       Um-hum.

21          Q       -- do you believe that to be the date that  
22          you actually saw Ms. Giuffre?

23          A       Probably, yes.

24          Q       Okay.

25          A       Sometimes people will bring it in early,



1 but yeah.

2 Q Okay. Why don't we go ahead and mark  
3 Exhibit 5, which will be helpful as we're going  
4 through this.

5 (Exhibit 5 marked.)

6 Q (BY MS. MENNINGER) And I'm going to ask  
7 you to keep 4 and 5 kind of close by, and we'll talk  
8 about them.

9 Do you recognize Exhibit 5?

10 A Yes. That's the visit note.

11 Q And the visit note of Ms. Giuffre's visit  
12 with you?

13 A Yes.

14 Q In your office?

15 A Yes.

16 Q And after looking at Exhibit 5, can you  
17 tell what date it is that you actually saw  
18 Ms. Giuffre?

19 A 5/21/2015.

20 Q Okay. Is that also the same date as the  
21 patient intake form --

22 A Yes.

23 Q -- in Exhibit 4?

24 A Yes.

25 Q All right. Do you recall whether you

1 STATE OF COLORADO)

2 ) ss. REPORTER'S CERTIFICATE  
3 COUNTY OF DENVER )

4 I, Kelly A. Mackereth, do hereby certify  
5 that I am a Registered Professional Reporter and  
6 Notary Public within the State of Colorado; that  
7 previous to the commencement of the examination, the  
8 deponent was duly sworn to testify to the truth.

9 I further certify that this deposition was  
10 taken in shorthand by me at the time and place herein  
11 set forth, that it was thereafter reduced to  
12 typewritten form, and that the foregoing constitutes  
13 a true and correct transcript.

14 I further certify that I am not related to,  
15 employed by, nor of counsel for any of the parties or  
16 attorneys herein, nor otherwise interested in the  
17 result of the within action.

18 In witness whereof, I have affixed my  
19 signature this 31st day of May, 2016.

20 My commission expires April 21, 2019.

21  
22  
23 Kelly A. Mackereth, CRR, RPR, CSR  
24 216 - 16th Street, Suite 600  
25 Denver, Colorado 80202

**Agren Blando Court Reporting & Video, Inc.**

1 AGREN BLANDO COURT REPORTING & VIDEO, INC.  
2 216 - 16th Street, Suite 600  
3 Denver, Colorado 80202  
4 4450 Arapahoe Avenue, Suite 100  
5 Boulder, Colorado 80303

6 DR. STEVEN W. OLSON  
7 May 26, 2016  
8 Giuffre v. Maxwell  
9 Case No. 15-cv-07433-RWS

10 The original deposition was filed with  
11 Laura Menninger, Esq., on approximately the  
12 31st day of May, 2016.

13 \_XXX\_ Signature waived.

14 \_\_\_\_\_ Unsigned; signed signature page and  
15 amendment sheets, if any, to be filed at  
16 trial.

17 \_\_\_\_\_ Reading and signing not requested pursuant  
18 to C.R.C.P. Rule 30(e).

19 \_\_\_\_\_ Unsigned; amendment sheets and/or signature  
20 pages should be forwarded to Agren Blando to  
21 be filed in the envelope attached to the  
22 sealed original.

23 Thank you.

24 AGREN BLANDO COURT REPORTING & VIDEO, INC.

25 cc: All Counsel

# EXHIBIT 2

## (File Under Seal)

**Meredith Schultz**

---

**From:** Bernadette Martin <bernadette@mbe-accounting.com.au>  
**Sent:** Monday, June 27, 2016 10:33 PM  
**To:** Meredith Schultz  
**Subject:** Virginia Giuffre

Dear Sir/Madam

Ms Judith A Lightfoot has requested I forward this to you:

This will serve to advise all records of a psychological nature have been presented.

Judith A Lightfoot  
Consulting Psychologist  
28 June 2016

Kind Regards

**Bernadette Martin**

Ph: 02 43533630  
Fax: 02 43533629  
[Bernadette@mbe-accounting.com.au](mailto:Bernadette@mbe-accounting.com.au)



Suite 1g  
154-156 Pacific Highway  
TUGGERAH 2259  
PO Box 3435, TUGGERAH 2259

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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<sup>1</sup> RESPONSE IN OPPOSITION TO DEFENDANT'S  
MOTION FOR DEFENDANT'S RULE 37(b) &(c) SANCTIONS FOR FAILURE TO  
COMPLY WITH COURT ORDER AND FAILURE TO COMPLY WITH RULE 26(a)**

---

<sup>1</sup> Due to inadvertence, one of the medical providers Ms. Giuffre disclosed to Defendant, and from whom she diligently sought medical records as far back as March of this year, Dr. Mona Devanesan, was left off of Ms. Giuffre's medical provider chart. It has been added in this version of the brief for increased accuracy. There are no other changes.

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORTIES .....	ii
INTRODUCTION .....	1
FACTUAL BACKGROUND.....	2
I. MEDICAL PROVIDER IDENTITIES.....	2
II. MEDICAL RECORDS.....	7
A. Dr. Donahue.....	9
B. Dr. Hayek.....	9
C. Dr. Kutikoff, Wellington Imaging Associates (“Wellington Imaging”) , and Growing Together.....	10
D. Ms. Lightfoot .....	10
E. Dr. Olson.....	11
III. MS. GIUFFRE HAS PROVIDED DISCOVERY IN ACCORDANCE WITH HER DISCOVERY OBLIGATIONS.....	12
IV. DEFENDANT CAN SHOW NO PREJUDICE .....	13
V. MS. GIUFFRE HAS BEEN FULLY COMPLIANT IN DISCOVERY .....	15
LEGAL ARGUMENT.....	17
I. DEFENDANT CANNOT SHOW NON-COMPLIANCE, AND HAS PUT FORTH NO COLORABLE LEGAL ARGUMENT FOR SANCTIONS.....	17
II. THERE WAS NO INFORMATION “WITHHELD”, AND THEREFORE, NO PREJUDICE .....	19
III. MS. GIUFFRE HAS FULFILLED HER REQUIREMENTS REGARDING HER RULE 26 DISCLOSURES .....	19
IV. THIS COURT SHOULD NOT STRIKE MS. GIUFFRE’S CLAIMS FOR MEDICAL AND EMOTIONAL DISTRESS DAMAGES.....	22
CONCLUSION.....	23

**TABLE OF AUTHORITIES**

	<u>Page</u>
<b><u>Cases</u></b>	
<i>Candelaria v. Erickson</i> , 2006 WL 1636817 (S.D.N.Y. 2006).....	12
<i>Celle v. Filipino Reporter Enters. Inc.</i> , 209 F.3d 163 (2d Cir.2000).....	20
<i>Design Strategy, Inc. v. Davis</i> , 469 F.3d 284 (2d Cir. 2006).....	14
<i>Gurvey v. Cowan, Liebowitz &amp; Lathman, P.C.</i> , 2014 WL 715612 (S.D.N.Y. 2014).....	18
<i>In re Consol. RNC Cases</i> , 2009 WL 130178 (S.D.N.Y. Jan. 8, 2009) .....	22, 23
<i>In re Dana Corp.</i> , 574 F.3d 129 (2d Cir. 2009).....	6
<i>In re Weiss</i> , 703 F.2d 653 (S.D.N.Y. 1983).....	18
<i>Murray v. Miron</i> , 2015 WL 4041340 (D. Conn., July 1, 2015) .....	21
<i>Naylor v. Rotech Healthcare, Inc.</i> , 679 F. Supp. 2d 505 (D. Vt. 2009).....	20, 21
<i>Nittolo v. Brand</i> , 96 F.R.D. 672 (S.D.N.Y.1983).....	22
<i>Robertson v. Dowbenko</i> , 443 F. App'x 659 (2d Cir. 2011).....	20
<i>Scheel v. Harris</i> , No. CIV.A. 3:11-17-DCR, 2012 WL 3879279 (E.D. Ky. Sept. 6, 2012).....	21
<i>Skywark v. Isaacson</i> , 1999 WL 1489038 (S.D.N.Y. Oct. 14, 1999).....	22



**Rules**

Fed. R. Civ. P. 26.....*passim*

Fed. R. Civ. P. 26(a) ..... 1, 19

Fed. R. Civ. P. 26(a)(1)..... 21

Fed. R. Civ. P. 26(a)(1)(A)(iii) ..... 21

Fed. R. Civ. P. 26(a)(5)..... 6

Fed. R. Civ. P. 37 ..... 18, 24

Fed. R. Civ. P. 37 (b) & (c)..... 1

Fed. R. Civ. P. 37(c)(1)..... 21

## **INTRODUCTION**

As more and more witnesses come forward testifying about Defendant's involvement in the sexual abuse of young girls, Defendant's discovery arguments have become more removed from the merits of this case and increasingly strident in their tone. The latest example of this genre is the instant motion in which the Defendant boldly proclaims that Ms. Giuffre is "playing a game of catch and release" by deliberately "withholding information" regarding her medical care. Yet the basis for these strong charges turns out to be nothing more than the fact that, when asked to produce a listing of medical care providers that Ms. Giuffre has seen in the last seventeen years – during a period of time when she lived in Australia, then Florida, then Colorado, finally returning to Australia – she was unable to recall all of the providers. Ms. Giuffre and her attorneys have worked diligently to provide this listing to Defendant and, as new information has become available, or as Ms. Giuffre has been able to recall another provider, the information has been disclosed. Indeed, Ms. Giuffre signed every medical records release that Defendant requested. There has been no deliberate "withholding" of information, much less withholding of information that would warrant the extreme sanction of precluding Ms. Giuffre from presenting her claims to a jury.

Moreover, this baseless motion for sanctions comes on the heels of disturbing testimony corroborating what lies at the core of this case – Defendant was involved in facilitating the sexual abuse of young girls with Jeffrey Epstein. One witness, Rinaldo Rizzo, was in tears as he recounted Defendant bringing a 15-year-old girl to his employer's home who, in utmost distress, told him that Defendant stole the young girl's passport and tried to make her have sex with

Epstein, and then threatened her.<sup>2</sup> Mr. Rizzo also testified that he watched Maxwell direct a room full of underage girls to kiss, dance, and touch one another in a sexual way for Defendant and Epstein to watch.<sup>3</sup> Another witness, Joanna Sjoberg, testified that Defendant recruited her from her school campus to have sex with Epstein with lies about being her personal assistant.<sup>4</sup> Two other witnesses, one an underage victim (██████████) and the other, the police detective who ultimately ended up investigating Epstein (Detective Joseph Recarey, Retired), gave testimony about how Epstein used other women to recruit minors to have sex with him.<sup>5</sup> Most recently, a witness testified that Defendant would call him and ask him to bring over young girls that she would provide to Epstein. *See* McCawley Decl. at Exhibit 9, *ROUGH* Deposition Transcript of Tony Figueroa at 162:8-19. It is against this backdrop that Defendant has filed a motion seeking sanctions. The motion is a transparent effort to deflect attention from the merits of Ms. Giuffre's claim by inventing "willful" discovery violations and should be rejected in its entirety.

## **FACTUAL BACKGROUND**

### **I. MEDICAL PROVIDER IDENTITIES**

As the Court is aware, Defendant has requested that Ms. Giuffre provide the names and medical records of every medical provider she has ever had, for any type of treatment, since 1999. This would be no easy task for anyone, and Ms. Giuffre has had many medical providers

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<sup>2</sup> *See* McCawley Decl. at Exhibit 1, Excerpts from the June 10, 2016 Deposition of Rinaldo Rizzo.

<sup>3</sup> *Id.*

<sup>4</sup> *See* McCawley Decl. at Exhibit 2, Excerpts from the May 18, 2016 Deposition of Joanna Sjoberg.

<sup>5</sup> *See* McCawley Decl. at Exhibits 3 and 4, Excerpts from the June 20, 2016 Deposition of ██████████ and Excerpts from the June 21, 2016 Deposition of Joseph Recarey.

in multiple locations. So she and her legal counsel have worked diligently to track them down through a search that has spanned nearly two decades and two continents.

Ms. Giuffre made her initial disclosures on this subject in an answer to an interrogatory that she served on April 29, 2016. Ms. Giuffre listed 15 health care providers that she could recall at the time. Four days later, on May 3, 2016, Defendant deposed Ms. Giuffre. During the deposition, Ms. Giuffre's memory was jogged and she was able to recall two additional providers: Judith Lightfoot and Dr. Christopher Donahue.<sup>6</sup>

Defendant, however, seeks to magnify the innocent recollection of two additional providers at Ms. Giuffre's deposition by misleadingly claiming that "[i]t is only through deposition testimony that Ms. Maxwell became aware of *at least five* - if not more - treating health care physicians." (Mtn. at 1). This claim, too, is inaccurate. Beyond Ms. Lightfoot and Dr. Donahue, Defendant apparently adds to the list of "withheld" doctors by referring to treating physicians who cared for Ms. Giuffre on a one-off basis in the Emergency Room. It is unsurprising that a patient would have trouble remembering an emergency room physician's name. But the real point here is that, in any event, the information was disclosed through documents produced, so there is absolutely no "failure to disclose" as Defendant wrongfully alleges. *See* Centura Health Records (GIUFFRE005498-005569).

Defendant then states that, in her deposition, "Ms. Giuffre claims she was not treated by any other physicians," and then states that other records revealed "three *additional* health care

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<sup>6</sup> Defendant's argument that Ms. Giuffre was trying to "hide" these providers is illogical and wholly contradicted by the fact that Ms. Giuffre disclosed these providers. Defendant never explains how Ms. Giuffre can be "hiding" providers while testifying about them and producing their records.

professionals who treated Plaintiff, including Dr. Scott Robert Geiger, Dr. Joseph Heaney,<sup>7</sup> and Donna Oliver P.A.” (Mtn. at 4, emphasis original). [REDACTED]

[REDACTED]

[REDACTED]

Defendant is trying to make it seem as if Ms. Giuffre deliberately hid the names of treating physicians in the Emergency Room. As stated above, Ms. Giuffre produced these records so she is clearly not hiding anything. Not learning, not knowing, or not remembering off the top of one’s head the names of Emergency Room staff encountered during a medical emergency is not only unsurprising and understandable, but is also not a discovery violation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Here, Defendant attempts to make something out of nothing. This is particularly true as *Ms. Giuffre made these records available to Defendant*. As evidenced by the details recounted in Defendant’s brief, Ms. Giuffre produced these Emergency Room records to Defendant, and therefore, she is wholly compliant in her discovery obligations.<sup>8</sup>

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<sup>8</sup> Indeed, Ms. Giuffre did not merely sign releases for the release of these records, but Ms. Giuffre’s counsel spent considerable time and effort in attempts to procure these records for Defendant, as detailed in Ms. Giuffre’s counsel’s correspondence. *See* McCawley Decl. at Composite Exhibit 5, May 2016 Emails from Meredith Schultz to Laura Menninger.

Additionally, Defendant's motion lists 15 providers<sup>9</sup> Ms. Giuffre gave to Defendants in her interrogatories (Mtn. at 3), but then states that "Plaintiff failed therein to identify any treatment providers prior to the alleged defamation, despite the Court's order concerning 1999-2015." (Mtn. at 4). This statement, too, is wildly incorrect. Of the list of 15 providers, the overwhelming majority of them are providers "prior to the alleged defamation."<sup>10</sup> For example, Ms. Giuffre produced records from N.Y. Presbyterian Hospital. (GIUFFRE003258-3290). Not only do the dates on the records (e.g., July 9, 2001) demonstrate they are prior to the defamation, but Defendant has independent knowledge that this provider pre-dates Defendant's defamation. Indeed, *Defendant is the one who brought her to that hospital, while she was a minor.* Therefore, Defendant's statement in her brief that "Plaintiff failed therein to identify any treatment providers prior to the alleged defamation, despite the Court's order concerning 1999-2015" (Mtn. at 4) is inaccurate.

Defendant continues with another misleading statement: "As of today's date . . . and 10 days before the end of fact discovery in this case, Ms. Maxwell has learned of at least five additional doctors" (Mtn. at 5), and then, again, names Ms. Lightfoot, Dr. Geiger, Dr. Heaney, Donna Oliver P.A., and Dr. Streeter. Defendant did not learn of these providers 10 days prior to the close of discovery, but much earlier, as the previous page of Defendant's brief recounts.

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<sup>9</sup> (1) Dr. Steven Olson; (2) Dr. Chris Donahue; (3) Dr. John Harris; (4) Dr. Majaliyana; (5) Dr. Wah Wah; (6) Dr. Sellathuri; (7) Royal Oaks Medical Center; (8) Dr. Carol Hayek; (9) NY Presbyterian Hospital; (10) Campbelltown Hospital; (11) SydneyWest Hospital; (12) Westmead Hospital; (13) Dr. Karen Kutikoff; (14) Wellington Imaging Associates; (15) Growing Together.

<sup>10</sup> Providers from that list that treated Ms. Giuffre *prior to Defendant's defamation* include: (1) Dr. John Harris; (2) Dr. Majaliyana; (3) Dr. Majaliyana; (4) Dr. Wah Wah; (5) Dr. Sellathuri; (6) Royal Oaks Medical Center; (7) Dr. Carol Hayek; (8) NY Presbyterian Hospital; (9) Sydney West Hospital; (10) Westmead Hospital; (12) Wellington Imaging Associates; (13) Growing Together.

Defendant's next statement is equally misleading "documents relating to these doctors were not provided until after their identities became known through deposition or other independent investigation by Ms. Maxwell." (Mtn. at 5). Their identities became known to Defendant because Ms. Giuffre disclosed the name of Ms. Lightfoot in her deposition, and because Ms. Giuffre herself produced emergency room records to Defendant – documents bearing the names of the other providers. Accordingly, these five additional names were provided to Defendant by Ms. Giuffre herself, through (1) *her* deposition testimony; and (2) *her* document production.

Defendant is now asking this Court to enter extraordinary sanctions because those names were not provided in response to an interrogatory, ***but, instead, were provided through Ms. Giuffre's testimony and Ms. Giuffre's document production.*** This is an improper request. It is unsurprising that Defendant cannot cite to a single case in which any type of sanctions were awarded under even remotely similar circumstances. Indeed, the purpose of the various aspects of discovery provided by Rule 26(a)(5), Fed. R. Civ. P., is to provide more fulsome information. *C.f. In re Dana Corp.*, 574 F.3d 129, 150 (2d Cir. 2009) ("the various discovery methods are more complementary than fungible"). Here, Ms. Giuffre provided her medical information through interrogatory response, through testimony, and through document production. Ms. Giuffre has met her obligation under both this Court's Order and Rule 26. There has been no failure to disclose: Ms. Giuffre provided the names and testified about her treatment. Accordingly, this motion should be denied in its entirety.

## II. MEDICAL RECORDS

Defendant states that Plaintiff has failed to produce any records from (a) Dr. Donahue, (b) Dr. Hayek, (c) Dr. Kutikoff, (d) Wellington Imaging Assocs., (e) Growing Together, (f) post

2011 records from Ms. Lightfoot, and (g) the remaining documents for treatment by Dr. Olson. (Mtn. at 5). This is also incorrect. There has been no “failure,” as discussed, in turn, below. Moreover, if records from any providers have not been produced, it is not Ms. Giuffre’s “failure,” but rather, the failure of the providers, particularly as Ms. Giuffre has executed releases for her records from all these providers. Ms. Giuffre and her counsel have been diligent in compiling nearly two decades of medical records from various states and countries. The chart below provides an overview the efforts undertaken by Ms. Giuffre and the production to Defendant as a result.

MEDICAL PROVIDER	HEALTHCARE PROVIDED	ACTION TAKEN	RELATED GIUFFRE PRODUCTION
Dr. Olsen	Primary Care Physician	3/8/16 Letter Request	Giuffre 005342-005346 St. Thomas More Hospital Records (Dr. Olsen) Giuffre 005492-005496 St. Thomas More Hospital Records (Dr. Olsen)
Centura Health	[REDACTED]	5/23/16 Letter Request	Giuffre 005498 Centura Health Release Form (All Medical Records) Giuffre 005501-005569 Responsive Records (Centura Health)
Dr. Carol Hayek	Psychiatrist	3/8/16 Ltr Request 4/28/16 Ltr Request	Giuffre and counsel contacted physician’s office via telephone and email to follow up.
Dr. Chris Donahue	[REDACTED]	4/5/16 Ltr Request	Giuffre 006631-006635 (Dr. Donahue)
Dr. John Harris/Dr. Majliiyana	[REDACTED]	4/5/16 Ltr Request	Giuffre 005315 005322 The Entrance Medical Centre (Dr. John Harris and Dr. Darshanee Mahaliyana)
Dr. Wah Wah	[REDACTED]	4/5/16 Ltr Request	Giuffre 005339 005341 Central Coast Family Medicine (Dr. Wah Wah)
Dr. Sellathuri	[REDACTED]	4/5/16 Ltr Request	Giuffre 005089 005091 (“Dr. M. Sella”)
Royal Oaks	Has no treatment records	4/5/16 Ltr	Giuffre 005347 005349 Royal Oaks



MEDICAL PROVIDER	HEALTHCARE PROVIDED	ACTION TAKEN	RELATED GIUFFRE PRODUCTION
Medical Center		Request	Medical Center's Response (No Records)
NY Presbyterian Hospital	[REDACTED]	Produced	Giuffre 003258 003290 New York Presbyterian Hospital
Campbelltown Hospital/ Sydney West Hospital	[REDACTED]	Produced	Giuffre 003193 003241 Camselltown Hospital/Camden Hospital (Dr. Elbeaini) Giuffre 003242 003257 Macarthur Health Service (Dr. Elbeaini)
Sydney West Hospital / Westmead Hospital	[REDACTED]	Produced	Giuffre 003291-003298 Sydney West/Westmead Hospital
Dr. Karen Kutikoff		Release Provided to Defendant's Counsel	04/29/16 Sent via e-mail signed release to Menninger (obtain records directly).
Wellington Imaging Associates		Release Provided to Defendant's Counsel	04/29/16 Sent via e-mail signed release to Menninger (obtain records directly).
Growing Together		Release Provided to Defendant's Counsel	04/29/16 Sent via e-mail signed release to Menninger (obtain records directly).
Ms. Judith Lightfoot	Psychologists	5/4/16 Ltr Request	Giuffre 005431-005438 Medical Release Form with documents (Ms. Lightfoot) Giuffre 006636 Correspondence stating no further records available.
Dr. Mona Devanesan	[REDACTED]	3/28/16 Ltr Request	Evidence of efforts to obtain records and of Dr. Devanesan's retirement were produced as GIUFFRE005335-5338.
Dr. Scott Robert Geiger	[REDACTED]	ER Treating Physician	Giuffre 005498-005569 Centura Health Medical Release Form (Requested Entire Medical Record)
Dr. Joseph Heaney	[REDACTED]	ER Treating Physician	Giuffre 005498-005569 Centura Health Medical Release Form (Requested Entire Medical Record)
Donna Oliver, PA	[REDACTED]	ER Treating Physician Referral ENT	Giuffre 005498-005569 Centura Health Medical Release Form (Requested Entire Medical Record)

MEDICAL PROVIDER	HEALTHCARE PROVIDED	ACTION TAKEN	RELATED GIUFFRE PRODUCTION
Dr. Michele Streeter	[REDACTED] [REDACTED]	ER Treating Physician	Giuffre 005498-005569 Centura Health Medical Release Form (Requested Entire Medical Record)

Accordingly, as the Court can see with reference to the Bates labels in the above chart, Ms. Giuffre has been compliant in producing her medical records. Indeed, she has signed releases for all records requested by Defendant, and has produced all records released by the providers. In addition to signing all releases for medical providers requested by Defendant, the work associated with compiling the records and following up with providers (as shown by the above chart) clearly demonstrates Ms. Giuffre's good faith and persistence in her deliberate and thorough pursuit of providing Defendant with her medical records. That is reason alone to deny Defendant's unsupported request for sanctions.

A. Dr. Donahue

Plaintiff dutifully signed a release for medical records and provided it to Dr. Donahue on April 5, 2016, and sent a copy to the Defendant so counsel was on notice of the efforts being taken to secure medical records. *See* McCawley Decl. at Composite Exhibit 6, Dr. Donahue letter and Release Form. Ms. Giuffre's counsel has received records from Dr. Donahue since the Defendant filed the instant motion, and immediately provided those records to Defendant. *See* chart above, GIUFFRE00006631-006635.

B. Dr. Hayek

Dr. Hayek treated Ms. Giuffre over seven years ago. Ms. Giuffre signed a release form for Dr. Hayek's records, sent the release form on March 8, 2016, and provided a copy of the form to Defendant. Having not received any records, the undersigned sent a follow-up letter to

Dr. Hayek on April 28, 2016, to request the records. Upon information and belief, Dr. Hayek does not keep patient's medical records for longer than seven years, and, therefore, no longer has any records pertaining to Ms. Giuffre. Ms. Giuffre *and her counsel* have made inquiries to Dr. Hayek's office via telephone and email, but, to date, have not received any response. Again, Ms. Giuffre has no input on Dr. Hayek's document retention policies, and therefore, the lack of production of records from Dr. Hayek cannot be attributed to Ms. Giuffre.

C. Dr. Kutikoff, Wellington Imaging Associates ("Wellington Imaging"), and Growing Together

Plaintiff provided Defendant's counsel executed medical release forms for Dr. Kutikoff, Wellington Imaging, and Growing Together on April 29, 2016. *See* McCawley Decl. at Composite Exhibit 7. Accordingly, Ms. Giuffre has no direct knowledge as to what, if anything, these three providers produced to Defendant's counsel. Ms. Giuffre has done everything in her power to make them available to Defendant, a fact that Defendant cannot dispute. Again, there has been no "failure" by Ms. Giuffre here, as Ms. Giuffre has signed and sent the necessary release forms for the records *to be sent directly to Defendant*.<sup>11</sup>

D. Ms. Lightfoot

Defendant admits that Ms. Giuffre produced Ms. Lightfoot's records in footnote 4 of her brief on page 11, yet on page 16, Defendant wrongfully states Plaintiff has not produced Dr. Lightfoot's records. Despite the self-contradictory briefing, Ms. Lightfoot has produced records. *See* chart above, Giuffre005431-005438, Medical Release Form with documents. As with the other providers, Ms. Giuffre has executed and sent medical records release forms to Ms. Lightfoot, and has thus met her discovery obligations. To follow up on Defendant's wrongful

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<sup>11</sup> Upon information and belief, Ms. Lightfoot is not a medical doctor, but an Australian "Consulting Psychologist."

claims that Ms. Giuffre has somehow “withheld” more current records (despite executing a release for *all* records); Ms. Giuffre followed up with Ms. Lightfoot, who provided to Ms. Giuffre’s counsel correspondence stating that she has produced all of Ms. Giuffre’s records (*see* chart above, Giuffre006636), thereby indicating that she does not keep more current records.

E. Dr. Olson

Defendant claims that Ms. Giuffre failed to produce “the remaining documents for treatment by Dr. Olson,” but this is a wild inaccuracy. (And, Ms. Giuffre would refer the Court to a short excerpt from Dr. Olson’s deposition in which Dr. Olson explains in his own words his production. *See* McCawley Decl. at Exhibit 10, Dr. Olson Deposition Excerpt.) First, Ms. Giuffre signed a release for *all* records that Dr. Olson had. *See* McCawley Decl. at Composite Exhibit 6, March 8, 2016, Release for Dr. Olson records. Dr. Olson produced records Bates labeled GIUFFRE005342-005346 and GIUFFRE005492-005496. Dr. Olson then testified in his deposition that he kept a record on his laptop that was not a part of the medical records produced by his hospital. *Id.* During the deposition, he printed that record and gave it to Defendant’s counsel. *Id.* Now, Defendant’s counsel is claiming that this set of facts constitutes a discovery violation that warrants sanctions. There is no failure to produce here. Ms. Giuffre executed a medical release that provided for all of Ms. Giuffre’s medical records with regard to Dr. Olson, and records were produced. It was Dr. Olson who failed to include his “laptop records” among the records that were produced.

Ms. Giuffre knew nothing of the “laptop records” until Dr. Olson’s deposition, and Dr. Olson provided them at that time, a fact Defendant admits in a footnote in her Motion to Reopen Ms. Giuffre’s Deposition. In that brief, Defendant complains that they were not “produced” until after Ms. Giuffre was deposed. That is a distortion. Defendant already had such documents from

Dr. Olson himself. Ms. Giuffre included those documents *that both sides received in the deposition* as part of her next production, so that they would bear a Bates label for tracking purposes. It was a formality since both sides already had the record. Defendant states: “Despite requests, legible copies have not been provided.” Defendant uses the passive voice here, presumably to avoid making clear the fact that the requests for legible copies would need to be made to Dr. Olson, who controls the records, not to Ms. Giuffre, who long ago authorized the release of all records. The existence of a record that a witness failed to produce prior to a deposition is not a discovery violation from Ms. Giuffre.

### **III. MS. GIUFFRE HAS PROVIDED DISCOVERY IN ACCORDANCE WITH HER DISCOVERY OBLIGATIONS**

The fact is that Ms. Giuffre has executed a release form for each and every medical care provides that Defendant asked for. Defendant cannot contradict this statement. Ms. Giuffre produced medical records she had in her possession (such as New York Presbyterian records), early in discovery. From that point, other medical records were sought and obtained, with Ms. Giuffre facilitating their production from the providers by executing and sending release forms and paying all applicable fees for their release. Moreover, counsel for Ms. Giuffre has kept Defendant fully apprised of such efforts, even giving Defendant copies of all releases that have been issued, and providing updates on Ms. Giuffre’s continued efforts to obtain medical records beyond signing releases. *See McCawley Decl. at Composite Exhibits 5 and 6.*

Executing and sending medical release forms to all of the medical providers satisfies Ms. Giuffre’s discovery obligations with regard to her medical records, and Defendant cannot cite to a case that states otherwise. *See, e.g., Candelaria v. Erickson*, 2006 WL 1636817, at \*1 (S.D.N.Y. 2006) (requiring the execution of updated medical release forms to satisfy discovery

obligations). The fact that Defendant has presented this weak tea to the Court - concerning the actions of third-parties Ms. Giuffre does not control - shows just how baseless the motion is.

#### IV. DEFENDANT CAN SHOW NO PREJUDICE

Defendant claims to be prejudiced because a small fraction of the medical providers were revealed at Ms. Giuffre's deposition, four days after her interrogatory response. This argument is moot. Ms. Giuffre has agreed to reopen her deposition for Defendant's questions regarding those medical providers. Second, Defendant intimates, but does not actually claim, that she wants to depose Ms. Lightfoot, and states that there is not sufficient time: "arranging for and taking the deposition of Ms. Lightfoot . . . is nearly impossible," suggesting to the Court that there is some prejudice to Defendant there. (Mtn. at 11). However, Defendant's behavior (and a close reading of Defendant's brief) suggests that Defendant doesn't actually want to depose Ms. Lightfoot; instead, she just wants to *appear to the Court* as prejudiced by not taking her deposition. First, Defendant *never noticed her deposition* despite knowing her identity for nearly two months - since May 3, 2016. Second, Defendant is careful not to claim in her brief that she *actually wants to depose Ms. Lightfoot*, all the while suggesting that she has suffered some prejudice with respect to not taking Ms. Lightfoot's deposition. Defendant's lack of actual desire to take her deposition stems from the 2011 records Ms. Lightfoot produced - records predating Defendant's defamation by years. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This is the reason Defendant is careful not to claim in her brief that she

actually wanted to depose [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Defendant's claims concerning deposing Dr. Donahue are similarly specious. First, despite knowing about Dr. Donahue since at least April 29, 2016 (a fact she admits in her brief "Dr. Donahue may have been named" (Mtn. at 16)): Defendant has never issued a Notice of Deposition for Dr. Donahue. Defendant cannot claim any prejudice with respect to Dr. Donahue.

Additionally, Defendant acts in bad faith when she claims that medical records from Dr. Donahue were "purposefully hidden by Plaintiff" (Mtn. at 11) when Defendant knows that Ms. Giuffre executed and sent a medical release for Dr. Donahue on April 5, 2016, for all of his records. *See* McCawley Decl. at Composite Exhibit 6, Dr. Donahue Medical Release. As stated above, this argument is moot because the records concerning Dr. Donahue (and other providers at his practice) have been produced to Defendant.

Finally, though Ms. Giuffre does not control how quickly providers respond to her releases (though her counsel has spent considerable time following-up with providers, urging their speedy release, and paying all applicable fees), Ms. Giuffre has agreed to reopen her deposition for questions concerning provider records that were produced subsequent to her deposition. Therefore, Ms. Giuffre has eliminated any prejudice Defendant could claim to suffer with respect to taking Ms. Giuffre's deposition. *See* Giuffre006631-006635.

A factor relevant to the appropriateness of sanctions under Rule 37 for discovery violations is the "prejudice suffered by the opposing party." *Design Strategy, Inc. v. Davis*, 469

F.3d 284, 296 (2d Cir. 2006). Here, Defendant cannot claim any prejudice resulting from her empty claims of “discovery violations.” Accordingly, sanctions are inappropriate.

**V. MS. GIUFFRE HAS BEEN FULLY COMPLIANT IN DISCOVERY**

It is the Defendant in this case that has failed to comply with discovery at every turn. Defendant has refused to produce any documents whatsoever without this Court entering an Order directing her to do so. The only reason Plaintiff has documents from Defendant at all is because of this Court’s denial of Defendant’s stay requests and the Court’s rulings on Ms. Giuffre’s Motion to Compel for Improper Claim of Privilege (wherein Defendant was ordered to turn over documents that did not even involve communications with counsel) and her Motion to Compel for Improper Objections. Even then, Defendant’s counsel refused to even take the routine step of looking at Defendant’s email and other electronic documents to find responsive documents, but produced, instead, only what Defendant wanted to produce. Ms. Giuffre had to bring a Motion for Forensic Examination and the Court had to order that Defendant’s counsel actually produce documents from Defendant’s electronic documents, something that has not yet been done to date. Indeed, Defendant did not make her initial disclosure until February 24, 2016 several months *after* the deadline for these disclosures. Additionally, while Ms. Giuffre started her efforts to take the Defendant’s deposition in February, 2016, Defendant did not actually sit for her deposition until after being directed to do so by the Court, on April 22, 2016.

Furthermore, during the deposition, Defendant refused to answer a myriad of questions, and therefore, this Court recently ordered Defendant to sit for her deposition again. *See* June 20, 2016, Order resolving eight discovery motions entered under seal and granting Plaintiff’s Motion to Compel Defendant to Answer Deposition Questions (D.E. 143).



Ms. Giuffre has had to litigate, multiple times, for Defendant to make any document production, and Ms. Giuffre has had to litigate, also multiple times, for Defendant to be deposed. *See* Plaintiff's Response in Opposition to Defendant's Motion to Stay Discovery (DE 20); Plaintiff's February 26, 2016, Letter Motion to Compel Defendant to Sit for Her Deposition; Plaintiff's Motion to Compel Documents Subject to Improper Claim of Privilege (DE 33); Plaintiff's Motion to Compel Documents Subject to Improper Objections (DE 35); Plaintiff's Response in Opposition to Defendant's Motion for a Protective Order Regarding Defendant's Deposition (DE 70); Plaintiff's Motion for Forensic Examination (DE 96); Plaintiff's Motion to Compel Defendant to Answer Deposition Questions (DE 143). Ms. Giuffre has had to expend considerable time and resources simply to have Defendant meet her basic discovery obligations in this case.

Now, having completely stonewalled on discovery, making every produced document and even her own deposition the result of extensive and unnecessary litigation, taking positions that are contrary to the Federal Rules and wholly contrary to prevailing case law, Defendant claims that Ms. Giuffre has been "non-compliant since the outset of discovery." (Mtn. at 11). This statement is completely inaccurate.

Defendant makes a number of unsubstantiated claims regarding law enforcement materials, photographs, and email accounts. Most of these issues have been resolved pursuant to this Court's orders. *See* June 20, 2016, Order entered under seal denying Defendant's motion to compel law enforcement materials; June 23, 2016, Minute Entry. Ms. Giuffre merely points out that Defendant not only failed to review, search, or produce Defendant's email, from any of her multiple accounts, but also wholly failed to disclose her terramarproject.org email account or her ellmax.com email account.

Regarding photographs, counsel for Ms. Giuffre has gone to considerable expense to recover boxes that Ms. Giuffre thought may contain photographs, including paying approximately \$600.00 for shipping of the boxes to ensure production of any recent information. Accordingly, Defendant articulates no legitimate complaint in this section of her brief.

### **LEGAL ARGUMENT**

#### **I. DEFENDANT CANNOT SHOW NON-COMPLIANCE, AND HAS PUT FORTH NO COLORABLE LEGAL ARGUMENT FOR SANCTIONS**

Sanctions are not appropriate in this case because Defendant cannot show non-compliance. Through the normal course of discovery, Ms. Giuffre produced her medical providers to Defendant, as Defendant admits in her moving brief. Defendant's complaint boils down to the fact that Ms. Giuffre remembered at deposition two providers (Ms. Lightfoot and Dr. Donahue) that she did not recall when compiling her long list of providers in response to Defendant's interrogatory four days prior. That does not constitute non-compliance. That is not sanctionable behavior. And, Defendant cannot cite any case in which a court found differently. Additionally, though Defendant attempts to ascribe blame to Ms. Giuffre for any medical records that have not been sent by providers (or medical records that may not exist), the uncontested fact is that Ms. Giuffre has executed releases for all of the providers Defendant requested. Again, Defendant can point to no case in which sanctions were awarded over medical records where the party signed all applicable releases. Accordingly, Defendant's motion should be denied.<sup>12</sup>

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<sup>12</sup> What *does* constitute sanctionable behavior is testimonial obduracy that includes "denying memory of the events under inquiry," a tactic Defendant took in response to a multitude of questions at her deposition, as more fully briefed in Ms. Giuffre's Motion to Compel Defendant to Answer Deposition Questions (DE 143), granted by this Court on June 20, 2016. *See In re Weiss*, 703 F.2d 653, 663 (S.D.N.Y. 1983) (holding that "the witness's . . . disclaimers of knowledge or memory, has also been dealt with as contemptuous conduct, warranting sanctions that were coercive, punitive, or both. It has long been the practice of courts viewing such testimony as false and intentionally evasive, and as a sham or subterfuge that purposely avoids

Even Defendant's own cases cited in her brief are inapposite and do not suggest that sanctions are appropriate in this case. For example, in *Davidson v. Dean*, the plaintiff "refused to consent to the release of mental health records" for periods for which he was seeking damages and for which the Court ordered him to provide releases. 204 F.R.D. 251, 254 (S.D.N.Y. 2001). By contrast, Ms. Giuffre has executed each and every release for medical records requested by Defendant. In *In re Payne*, Rule 37 sanctions were not even at issue: an attorney was reprimanded for "default[ing] on scheduling orders in fourteen cases, resulting in their dismissal . . . fili[ing] stipulations to withdraw a number of appeals only after his briefing deadlines had passed," etc. 707 F.3d 195, 198-99 (2d Cir. 2013). Similarly, in *Gurvey v. Cowan, Liebowitz & Lathman, P.C.*, 2014 WL 715612, at \*2 (S.D.N.Y. 2014), sanctions were awarded because, *inter alia*, "my . . . Order explicitly limited discovery to plaintiff's malpractice and breach-of-fiduciary duty claims . . . However . . . plaintiff has sought discovery of extraordinary breadth that is far beyond the scope of the two claims . . . [and] disregarded my Order . . . by failing to explain in writing how each of her discovery requests to CLL is relevant to the remaining claims." Accordingly, as stated above, Defendant has not put forth any colorable legal argument for sanctions under Rule 37.

## **II. THERE WAS NO INFORMATION "WITHHELD," AND THEREFORE, NO PREJUDICE**

Defendant cannot be taken seriously when she claims that "Plaintiff is obviously trying to hide" her treatment related to domestic violence, [REDACTED]

[REDACTED] Given that fact, Defendant's incendiary claim defies logic. All these things that Defendant claims were

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giving responsive answers, to ignore the form of the response and treat the witness as having refused to answer." [REDACTED]

deliberately “withheld” or “hidden” are things that Ms. Giuffre provided to Defendant in the normal course of discovery, as described at length above. Defendant cannot claim any prejudice regarding the manner in which she received this information, and, indeed, does not.<sup>13</sup>

Accordingly, sanctions are wholly inappropriate.

### **III. MS. GIUFFRE HAS FULFILLED HER REQUIREMENTS REGARDING HER RULE 26 DISCLOSURES<sup>1415</sup>**

Regarding Ms. Giuffre’s computation of damages, Ms. Giuffre has pled defamation *per se* under New York law, where damages are presumed. *Robertson v. Dowbenko*, 443 F. App’x 659, 661 (2d Cir. 2011). Plaintiff provided amounts, damage calculations and supporting evidence required under Rule 26. Plaintiff is retaining experts to support her Rule 26 Disclosures, and expert reports and disclosures are not due at this time. Defendant takes issues with Ms. Giuffre’s computation of damages in her Rule 26 disclosures but fails to cite to a single case that requires more from her, let alone more from a Plaintiff claiming defamation *per se*. Indeed, the case law supports that Plaintiff has fully complied with her Rule 26 obligations. *See Naylor v. Rotech Healthcare, Inc.*, 679 F. Supp. 2d 505, 510 (D. Vt. 2009).

In good faith, Ms. Giuffre has produced a multitude of documents and information regarding her damages. Defendant does not cite to a single case that even suggests she is required to do more. What Defendant purports to lack is expert discovery and an expert report on

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<sup>13</sup> This is particularly true regarding the timing of Ms. Giuffre’s deposition, as Ms. Giuffre has agreed to reopen her deposition concerning any medical information that Defendant did not receive in advance of her deposition.

<sup>14</sup> Defendant references her Motion to Compel Rule 26(a) disclosures (DE 64) that she filed on March 22, 2016, but failed to mention that, after a hearing, this Court denied that motion with leave to refile (DE 106).

<sup>15</sup> Defendant repeatedly attempts to conflate the required disclosures under Federal Rule of Civil Procedure 26(a) and the disclosures ordered by this Court on April 21, 2016, in an apparent effort to ‘backdate’ those required disclosures.

computation of damages. Rule 26(a)(1), governs “initial disclosures,” disclosures to be made at the beginning of litigation, prior to the completion of expert work. It does not entitle a party to expert discovery at this stage in the case.

Ms. Giuffre has pleaded and will prove defamation *per se*, where damages are presumed. *Robertson v. Dowbenko*, 443 F. App'x at 661 (“As the district court correctly determined, Robertson was presumptively entitled to damages because he alleged defamation per se.”). Under New York law, defamation per se, as alleged in this case, presumes damages, and special damages do not need to be pled and proven. *See Celle v. Filipino Reporter Enters. Inc.*, 209 F.3d 163, 179 (2d Cir.2000) (Second Circuit holding that “[i]f a statement is defamatory per se, injury is assumed. In such a case ‘even where the plaintiff can show no actual damages at all, a plaintiff who has otherwise shown defamation may recover at least nominal damages,’” and confirming an award of punitive damages) (Emphasis added).

Additionally, Ms. Giuffre has claimed punitive damages for the defamation per se. “[C]ourts have generally recognized that ... punitive damages are typically not amenable to the type of disclosures contemplated by Rule 26(a)(1)(A)(iii), and have held that the failure to disclose a number or calculation for such damages was substantially justified.” *See Murray v. Miron*, 2015 WL 4041340 (D. Conn., July 1, 2015). *See also Scheel v. Harris*, No. CIV.A. 3:11-17-DCR, 2012 WL 3879279, at \*7 (E.D. Ky. Sept. 6, 2012) (finding that a failure to provide a precise number or calculation for their punitive damages claim is substantially justified pursuant to Fed. R. Civ. P. 37(c)(1)).

Accordingly, Ms. Giuffre’s disclosures comply with Rule 26 for the computation of damages. *See Naylor v. Rotech Healthcare, Inc.*, 679 F. Supp. 2d at 510 (“The Court is skeptical of the need for so much additional discovery, since the only open issue on the defamation claim

seems to be damages. Miles's email itself provides evidence of the statement and publication to a third party. Damages will depend on [plaintiff] Naylor's testimony and perhaps evidence from a few other sources, such as Naylor's family and friends, or Streeter [one of defendant's clients].") Ms. Giuffre has provided the calculations evidencing how she arrived at her damage figures and has provided a myriad of documents upon which she also will rely in proving damages. This includes supporting documents showing average medical expenses computed by her average life expectancy. "[N]on-economic damages based on pain and suffering ... are generally not amenable to the type of disclosures contemplated by Rule 26(a)(1)(A)(iii)." *Scheel v. Harris*, No. CIV.A. 3:11-17-DCR, 2012 WL 3879279, at \*7 (E.D. Ky. Sept. 6, 2012) (holding that plaintiff's failure to disclose a number or calculation for such damages was substantially justified).

#### **IV. THIS COURT SHOULD NOT STRIKE MS. GIUFFRE'S CLAIMS FOR MEDICAL AND EMOTIONAL DISTRESS DAMAGES**

Defendant cites four cases in support of her request for this Court to strike her claims for medical and emotional distress damages, and each one of them militates against any such relief being awarded in this case. In the first, *Nittolo v. Brand*, sanctions were awarded in a personal injury action because, *inter alia*, the plaintiff went to his physician and took away his medical records before defendant had a chance to use the court-ordered release to access them, and the Court found the plaintiff lied under oath about taking away the records. 96 F.R.D. 672, 673 (S.D.N.Y.1983). By contrast, Ms. Giuffre has signed every medical release form requested by Defendant and provided all medical records that they yielded.

Defendant's second case is equally inapposite. In *Skywark v. Isaacson*, Court found that the plaintiff "began his pattern of lying about at least three matters of extreme significance to his claim for damages;" lied to his experts and lied under oath; and "never provided defendants with

the promised [medical release] authorizations.” 1999 WL 1489038 at \*3, \*5, \*11 (S.D.N.Y. Oct. 14, 1999). The facts could not be more dissimilar to the case at hand, where Ms. Giuffre has provided truthful testimony regarding her medical history and has executed all medical releases.

Defendant’s third case continues in the same pattern. In *In re Consol. RNC Cases*, “all Plaintiffs either expressly refused to provide mental health treatment records or simply failed to provide such records during the course of discovery.” 2009 WL 130178, at \*2 (S.D.N.Y. Jan. 8, 2009). Defendant’s fourth case is similarly inapposite by Defendant’s own description, turning on failure to provide medical releases. (Mtn. at 19).

Importantly, Defendant represents to the Court that she seeks the “sanction of striking the claim or precluding evidence only on the damages that relate to the withheld documents and information.” (Mtn. at 19). This is confusing for two reasons. First, Ms. Giuffre has provided information about the providers that she has knowledge of and has provided releases for their medical records, so the sanction she seeks could not apply to any of the providers in Defendant’s brief. Second, there are no “withheld documents.” Ms. Giuffre has not withheld any medical records, and, indeed, has authorized the release of all records sought by Defendant. Accordingly, there are no “withheld records” upon which sanctions could be applied. And, again, there has been no violation of this Court’s Order.

### **CONCLUSION**

Since filing the instant motion for sanctions, two other witnesses - witnesses subpoenaed by Defendant herself in order to mount her defense - have given testimony to support Ms. Giuffre. Most recently, Defendant’s witness, Tony Figueroa, testified he witnessed Defendant

escort young girls he brought over to Epstein's home to Epstein for sex acts, and testified that Defendant called him on the phone, asking him to bring girls over to Epstein's house.<sup>16</sup>

Q And how long would you and one of these other girls sit there and have this small talk with Ms. Maxwell?

A No more than 10 or 15 minutes.

Q What were you waiting for?

A Pretty much her to take them up stairs then I would leave. I would wait for them to be like we're ready. And I would be all right. See you later and I would leave.

Q You were waiting for who to take who up stairs?

A I had seen Ms. Maxwell take a girl up there well not up there visibly but I watched her leave had room with one.

Q Up stairs?

12 A Well, I didn't see the stairs. Like in the kitchen there's not like you have to go all around and all that shit.

See McCawley Decl. at Exhibit 9, *ROUGH* Figueroa Tr. at 156:22-157:14.

Q Let me fix this. Gill when Gillian Maxwell would call you during the time that you were living with Virginia she would ask you what specifically?

A Just if I had found any ear girls just to bring the Jeffrey.

Q Okay.

A Pretty much everytime a conversation with any of them it was either asking Virginia where she was ask the asking her to get girls or asking me get girls.

See McCawley Decl. at Exhibit 9, *ROUGH* Figueroa Tr. at 162:8-19.

Accordingly, at this stage in discovery, it is not just the flight logs showing Defendant flying with Epstein and Ms. Giuffre over twenty times when she was a minor; it is not just the message pads from law enforcement's trash pulls that show Defendant arranging to have an underage girl come over to Epstein's house for "training;" it is not just the police report; it is not just the photographs of Defendant and other men with Ms. Giuffre when she was a minor.

Now, there is actual, live testimonial evidence that Defendant was a procurer of young girls for sex with Jeffrey Epstein, with whom she shared a home and a life, thus validating Ms. Giuffre's claims. Therefore, this baseless motion for sanctions is more a reflection of the

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<sup>16</sup> See McCawley Decl. at Exhibit 9, Excerpts from the June 24, 2016 *ROUGH* Deposition Transcript for the Deposition of Tony Figueroa.



abundant testimonial evidence condemning Defendant than any type of imagined discovery violation on behalf of Ms. Giuffre.

Ms. Giuffre respectfully requests that it be denied in its entirety.

Dated: June 28, 2016.

Respectfully Submitted,

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Sigrid McCawley

Sigrid McCawley (Pro Hac Vice)  
Meredith Schultz (Pro Hac Vice)  
Boies Schiller & Flexner LLP  
401 E. Las Olas Blvd., Suite 1200  
Ft. Lauderdale, FL 33301  
(954) 356-0011

David Boies  
Boies Schiller & Flexner LLP  
333 Main Street  
Armonk, NY 10504

Bradley J. Edwards (Pro Hac Vice)  
FARMER, JAFFE, WEISSING,  
EDWARDS, FISTOS & LEHRMAN, P.L.  
425 North Andrews Avenue, Suite 2  
Fort Lauderdale, Florida 33301  
(954) 524-2820

Paul G. Cassell (Pro Hac Vice)  
S.J. Quinney College of Law  
University of Utah  
383 University St.  
Salt Lake City, UT 84112  
(801) 585-5202<sup>17</sup>

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<sup>17</sup> This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah for this private representation.



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on the 28th day of June, 2016, I served the attached document  
via Email to the following counsel of record.

Laura A. Menninger, Esq.  
Jeffrey Pagliuca, Esq.  
HADDON, MORGAN & FOREMAN, P.C.  
150 East 10<sup>th</sup> Avenue  
Denver, Colorado 80203  
Tel: (303) 831-7364  
Fax: (303) 832-2628  
Email: [lmenninger@hmflaw.com](mailto:lmenninger@hmflaw.com)  
[jpagliuca@hmflaw.com](mailto:jpagliuca@hmflaw.com)

/s/ Sigrid S. McCawley \_\_\_\_\_  
Sigrid S. McCawley

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
VIRGINIA L. GIUFFRE,  
Plaintiff,  
v.  
GHISLAINE MAXWELL,  
Defendant.  
-----X

15-cv-07433-RWS

**REPLY IN SUPPORT OF MOTION TO REOPEN DEPOSITION OF PLAINTIFF**  
**VIRGINIA GIUFFRE**

Laura A. Menninger  
Jeffrey S. Pagliuca  
HADDON, MORGAN, AND FOREMAN, P.C.  
East 10<sup>th</sup> Avenue  
Denver, CO 80203  
303.831.7364

## TABLE OF CONTENTS

INTRODUCTION .....	1
ARGUMENT .....	2
I. PLAINTIFF’S PRODUCTION OF KEY DOCUMENTS AFTER HER DEPOSITION NECESSITATES ADDITIONAL EXAMINATION .....	2
A. Plaintiff failed to identify her health care providers and produce their records prior to her deposition, despite this Court’s order .....	2
B. Plaintiff failed to produce emails from her iCloud and Hotmail accounts.....	4
C. Plaintiff failed to address issue of her employment records .....	5
D. Newly obtained education records and other witness testimony contradict Plaintiff’s deposition.....	5
E. Plaintiff identified new witnesses in her Rule 26 disclosures after her deposition.....	6
II. PLAINTIFF’S COUNSEL INSTRUCTED PLAINTIFF NOT TO ANSWER RELEVANT, NON-PRIVILEGED QUESTIONS IN HER FIRST DEPOSITION.....	7
III. PLAINTIFF CONCEDES THAT HER ERRATA SHEET IS PROPERLY THE SUBJECT FOR RE-OPENED DEPOSITION.....	9
IV. RESTRICTIONS TO TWO HOURS AND VIA VIDEOTAPE UNJUSTIFIED.....	9
CERTIFICATE OF SERVICE .....	12

Defendant Ghislaine Maxwell submits this Reply to Plaintiff's Opposition ("Response") to Motion to Reopen Deposition of Plaintiff ("Motion"), and as grounds therefore states as follows:

### INTRODUCTION<sup>1</sup>

Plaintiff concedes the reopening of her deposition based on (a) the late production of records concerning Plaintiff's medical and mental health treatment, (b) her unjustifiable refusal to answer questions related to statements the media "got wrong," (c) material edits to her deposition testimony through her errata sheet. Plaintiff did not address her newly disclosed employment records and thus it should be deemed admitted. Apparently, she still contests questions regarding other items not disclosed until after her deposition, including (a) iCloud and Hotmail emails, (b) school records from Forest Hills High School, Wellington High School and Survivors Charter school, and (c) witnesses newly identified in her Third and Fourth Revised Rule 26 disclosures. There is no legally principled reason to exclude these topics during Plaintiff's reopened deposition and Ms. Maxwell should be permitted to examine Plaintiff based on this information produced *after* her deposition although requested *before*.

The other limitations proposed by Plaintiff are not appropriate. Due to the quantity of documents and the number of topics, two hours will be insufficient to appropriately inquire. Moreover, Plaintiff's deposition should be in person; she chose to move to Australia from Colorado during the pendency of this case and has been in the US for weeks attending witness depositions and other litigation matters by her own choosing. Deposition by videoconference will be extremely cumbersome to accomplish given the hundreds of pages of documents to be

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<sup>1</sup> Defendant conferred with counsel for Plaintiff regarding this Motion prior to its filing. By email of May 8, 2016, Mr. Pagliuca requested conferral regarding Plaintiff's refusal to answer questions at her deposition. That conferral was held on May 9 and May 10. Mr. Edwards offered, for example, to consider whether a verified representation by Plaintiff all of the statements that the media "got wrong" would suffice instead of a re-opened deposition.

covered and which were necessitated by Plaintiff's late disclosures and refusal to answer questions at her first deposition.

### **ARGUMENT**

#### **I. PLAINTIFF'S PRODUCTION OF KEY DOCUMENTS AFTER HER DEPOSITION NECESSITATES ADDITIONAL EXAMINATION**

##### **A. Plaintiff failed to identify her health care providers and produce their records prior to her deposition, despite this Court's order**

Plaintiff concedes that numerous medical records were not produced until after her May 3<sup>rd</sup> deposition, to wit:

■ Plaintiff Doe [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

■ Plaintiff Doe [REDACTED]  
[REDACTED]

■ Plaintiff Doe [REDACTED]  
[REDACTED]  
[REDACTED]

● Plaintiff Jane Doe [REDACTED]  
[REDACTED]  
[REDACTED]

■ Plaintiff Doe [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]  
[REDACTED]

■ Plaintiff Doe [REDACTED]  
[REDACTED]  
[REDACTED]

■ Plaintiff Doe [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Furthermore, there remain numerous doctors from the relevant time frame for whom no records have been provided. In addition to all of the treatment providers from 1999-2002, no records have been provided by Plaintiff for:

A horizontal bar chart titled "U.S. should take action to address climate change" showing the percentage of respondents who believe the U.S. should take action to address climate change. The chart is broken down by age group (18-29, 30-49, 50-69, 70+) and gender (Male, Female). The legend indicates that dark gray bars represent "Yes, Definitely" and light gray bars represent "No, Definitely Not." The x-axis represents the percentage of respondents, ranging from 0% to 100%.

Age Group	Gender	Yes, Definitely	No, Definitely Not
18-29	Male	85%	15%
	Female	80%	20%
30-49	Male	80%	20%
	Female	75%	25%
50-69	Male	75%	25%
	Female	70%	30%
70+	Male	65%	35%
	Female	60%	40%

Menninger Decl., Ex. O.

Plaintiff, while not opposing the reopening of the deposition for documents produced after that date, writes to refute supposed “baseless suggestions of impropriety.” Yet, her Response contains additional impropriety. Plaintiff repeatedly asserts that she *has* produced and disclosed documents but her chart and her arguments neglect to mention that those documents were only sought and produced *after* the deposition, indeed up to and including the very same day she filed her Response on June 28. Her claim that she could not “remember” Dr. Donohue or Judith Lightfoot until her deposition is hard to believe given she had consulted with them in the days and weeks just before her Interrogatory Responses. *Id.*; Ex. D at 334-35. Further, all of the 2015-2016 medical records from Colorado were only produced because *the defense*, not

<sup>2</sup> Defendant's Interrogatories sought the identities and locations of Plaintiff's health care providers, the dates of treatment, the nature of the treatment, medical expenses to date, and releases for each. Inexplicably, despite this Court's Order to answer the interrogatory, Plaintiff still has not provided the dates of treatment, the nature of treatment or any information concerning expenses for *any* of her providers.



Plaintiff, sent a subpoena to Dr. Olson and his hospital for records and then learned that Plaintiff had been seen by other doctors there and secured a release which the *defense* sent to Plaintiff. As detailed more fulsomely in the Reply in Support of Sanctions filed contemporaneously, the late disclosures were not due to Ms. Giuffre and her attorneys going to “great lengths” to track down records; they have only responded to requests for doctor’s records when the *defense* has brought to their attention missing doctors and records. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Given Plaintiff’s agreement to submit to questioning based on the late-disclosed records, it is hardly worth the Court or counsel’s time to again correct the record as to each of Plaintiff’s misstatements. In lieu, Ms. Maxwell hereby incorporates by reference her Reply in Support of Motion for Sanctions which addresses many of Plaintiff’s misstatements concerning production of her health care providers’ identities and their records.

**B. Plaintiff failed to produce emails from her iCloud and Hotmail accounts**

Plaintiff objects to further questioning regarding emails from her iCloud and Hotmail accounts and submits that Ms. Maxwell’s claims regarding these missing emails “are simply false” because she “produced every relevant document from her iCloud account.” Resp. at 8. Plaintiff ignores the most important fact: she produced them after the deposition and only after Ms. Maxwell issued a subpoena to the email providers. The emails were produced on June 10, more than one month after Plaintiff’s deposition. *See* Menninger Decl., Ex. K.

Similarly, following Ms. Maxwell’s subpoena to Hotmail, that company has now confirmed that Plaintiff has an active account with them and that the account has been used by

Plaintiff since the beginning of this case. Plaintiff concededly did not search that account for responsive documents but has represented to this Court that she will sign the release provided by Microsoft, obtain the records and search the account. Thus, any responsive emails from that account likewise will not have been available at the time of Plaintiff's deposition.

Plaintiff does not argue the responsive emails are not relevant, nor can she. Thus, Ms. Maxwell should be entitled to reopen Plaintiff's deposition to inquire regarding those emails as well as any that are produced from the Hotmail account.

**C. Plaintiff failed to address issue of her employment records**

In her Response, Plaintiff did not address Ms. Maxwell's request to reopen Plaintiff's deposition regarding late-disclosed employment records. Accordingly, the issue should be deemed admitted and inquiry into Plaintiff's employment based on the new records permitted.

**D. Newly obtained education records and other witness testimony contradict Plaintiff's deposition**

Plaintiff testified at her deposition that she began working at Mar-a-Lago during a break from her GED classes, that she believed it was a summer job, and that while she cannot pinpoint the exact date, it was to the best of her recollection in or about June 2000 when she was still 16 years old. Menninger Decl., Ex. D at 57. This Court ordered Plaintiff to produce her education records and, mere days before her deposition, Plaintiff signed releases for some of the institutions she attended in Florida. Defendant obtained records pursuant to those releases after the deposition (despite having sought them by discovery request in February). The transcripts from Royal Palm Beach and Forest Hills High School directly contradict Plaintiff's story. In fact, they are highly relevant because they show that Plaintiff was in school during the summer of 2000, finishing on August 15, 2000, when she was 17 years old. Appropriate areas of inquiry at a reopened deposition of Plaintiff would be matching her story up to the records and

demonstrating that she did not start working at Mar-a-Lago until she was 17 years old --- despite her well-publicized claims that she was a “sex slave” for Jeffrey Epstein from the age of 15 years old beginning in 1998.

Furthermore, testimony from other witnesses in this case, including Plaintiff’s former boyfriend Tony Figueroa, materially contradict Plaintiff’s claims. Mr. Figueroa testified on June 24 that he and Plaintiff were enrolled in an all-day high school and that they attended school together every day and that Plaintiff was not working for Epstein. Menninger Decl., Ex. P. Based on these newly discovered records, Mr. Figueroa confirmed that time period as October 2001 – March 2002, directly contradicting Plaintiff’s deposition testimony that she was a “sex slave” for 4 years from 1998-2002 and that she was with Epstein constantly during that four year period.

Based on the newly discovered education records and other witness testimony concerning those records, Ms. Maxwell should be entitled to question Plaintiff at her continued deposition about those records. Ms. Maxwell lacked those records at the time of Plaintiff’s deposition because Plaintiff refused to produce her education records, Ms. Maxwell had to file a Motion to Compel and obtain a Court Order before Plaintiff would sign a release for the records. Therefore, there is no basis for Plaintiff to object to a continued deposition regarding the newly obtained records and witness testimony.

**E. Plaintiff identified new witnesses in her Rule 26 disclosures after her deposition**

Plaintiff does not address the fact that she added 28 new witnesses to her Rule 26 disclosures after her deposition.<sup>3</sup> The new witnesses added by Ms. Maxwell to her Rule 26 list

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<sup>3</sup> The only mention Plaintiff makes is asking the Court to deny Ms. Maxwell’s motion to strike the new witnesses. Ms. Maxwell stated that her motion to strike would be by *separate* motion (Mot. at 10), thus there is no motion to strike.

are almost entirely ones that were taken off Plaintiff's list. Presumably, they have information relevant to this case and Ms. Maxwell is entitled to question Plaintiff on these disclosures to determine what, if any, relevant information these newly disclosed witnesses might have.

## **II. PLAINTIFF'S COUNSEL INSTRUCTED PLAINTIFF NOT TO ANSWER RELEVANT, NON-PRIVILEGED QUESTIONS IN HER FIRST DEPOSITION**

Plaintiff's counsel glosses over their instruction to Plaintiff not to answer questions at her deposition regarding non-privileged issues.

During her deposition, the following exchange occurred:

**Q: You did not read the articles published by Sharon Churcher about your stories to Sharon Churcher?**

A: I have read some articles about what Sharon Churcher wrote. And a lot of the stuff that she writes she takes things from my own mouth and changes them into her own words as journalists do. And I never came back to her and told her to correct anything. What was done was done. There was nothing else I can do.

**Q: So even if she printed something that were untrue you didn't ask her to correct it, correct?**

A: There was things that she printed that really pissed me off, but there was nothing I could do about it. It's already out there.

**Q: She printed things that were untrue, correct?**

A: I wouldn't say that they were untrue. I would just say that she printed them as journalists take your words and turn them into something else.

**Q: She got it wrong?**

A: In some ways, yes.

**Q: Did she print things in her articles that you did not say to her?**

MR. EDWARDS: I object and ask that the witness be given the opportunity to see the document so that she can review it and answer that question accurately. Otherwise she's unable to answer the question. I'm not going to allow her to answer.

**Q: Did Sharon Churcher print things that you did not say?**

MR. EDWARDS: I'm going to instruct my client not to answer unless you give her what it is that you're talking about that was printed. And she will tell you the answer, the accurate answer to your question. Just without the document to refresh her recollection and see it, she's not going to answer the question.

**Q: Did Sharon Churcher print things that you did not say?**

MR. EDWARDS: Same objection. Same instruction not to answer.

**Q: Did Sharon Churcher print things that you felt were inaccurate?**

MR. EDWARDS: Same objection. Same instruction. If she sees the document, she's going to answer every one of these questions.

**Q: Did any other reporter print statements that you believe are inaccurate?**

MR. EDWARDS: Same objection. Same instruction.

**Q: Did any reporter print statements about Ghislaine Maxwell that were inaccurate?**

MR. EDWARDS: Same objection. Same instruction.

Menninger Decl., Ex. D at 220-23.

At no time did Plaintiff say she “could not remember” what Churcher “got wrong.” Mr. Edwards refused to allow her to answer the question unless her recollection was “refreshed,” even though she never said she lacked a recollection. This is a patently improper instruction not to answer, as well as improper suggestion to his client that she needed to have a “refreshed” memory by looking at articles from Ms. Churcher. The instruction not to answer was improper and Plaintiff should be required to answer all questions regarding inaccuracies in the media reports of this case. Indeed, it is hard to conceive of an area more directly relevant to this single-count defamation case in which Ms. Maxwell has said that Plaintiff’s statements to the press were lies, and now even Plaintiff is saying that the press “got it wrong”.

Plaintiff’s counsel similarly would not allow Plaintiff to answer questions regarding her communications with law enforcement, specifically regarding Ms. Maxwell. Ms. Maxwell respectfully disagrees that this area should be off limits. Efforts by a Plaintiff to have another party charged with a crime, including any statement made during the course of those efforts, are clearly relevant, reflect bias and motive, and may be used for impeachment. There is no privilege which attaches to a civil litigant’s prior statements to law enforcement and to the extent

any such statements exist, Ms. Maxwell should be permitted to inquire regarding the statements and the circumstances of surrounding their issuance, during Plaintiff's reopened deposition.

Ms. Maxwell disagrees with Plaintiff's contention regarding the identity of her expert but agrees not to inquire into that topic during the reopened deposition in light of the upcoming expert disclosure deadlines.

In light of the clearly improper instructions not to answer non-privileged relevant questions, Plaintiff's deposition must be reopened.

### **III. PLAINTIFF CONCEDES THAT HER ERRATA SHEET IS PROPERLY THE SUBJECT FOR RE-OPENED DEPOSITION**

Because Plaintiff concedes, as she must, that changes to her deposition testimony as reflected on her errata sheet are proper areas of inquiry, Ms. Maxwell perceives no need for additional argument regarding the materiality of Plaintiff's changes although they were not based on "misspellings and the like" as Plaintiff avers.

### **IV. RESTRICTIONS TO TWO HOURS AND VIA VIDEOTAPE UNJUSTIFIED**

Ms. Maxwell has identified a significant number of areas of inquiry for reopened deposition and two hours is insufficient to accomplish that goal. Ms. Maxwell seeks leave to reopen Plaintiff's deposition regarding belatedly disclosed records from:

■ [REDACTED]

- Email records from iCloud and Hotmail regarding interactions with the FBI
- School records regarding the time period of 1999-2002
- 18 newly listed witnesses
- Any published news stories that Plaintiff concedes were inaccurate
- Plaintiff's interactions with law enforcement regarding Ms. Maxwell.

All of these are properly the subject of additional inquiry at a deposition and to address them will require more than two hours. While Ms. Maxwell does not believe that seven hours will be necessary, she did not use all of the first seven hours based on Plaintiff's refusal to answer relevant non-privileged questions and believes that she will be able to finish her examination on these topics within a reasonable period of time, most likely between 4-5 hours.

Further, such deposition should be done live and in person, not via videotape from Australia. Video conference depositions are exceedingly difficult and cumbersome when handling the number of records at issue here – medical records, school records, employment records and emails, as well as press statements, errata sheets and the like. Counsel will not have the ability to hand over documents to the witness as needed.

Plaintiff argues that her childcare needs require her to be in Australia. Notably, Plaintiff has spent several weeks in the U.S. attending in person the depositions of her former fiancé and boyfriend in Florida (and calling them in advance of their testimony) and, upon information and belief, attending to other litigation and personal matters. Plaintiff lived in Colorado at the time she filed this litigation and made a decision to return to Australia after doing so. She and her counsel failed to disclose relevant doctors and medical records, emails, employment and school records in advance of her deposition, and she was instructed not to answer relevant, non-privileged questions. She chose to change her deposition testimony after the fact.

WHEREFORE, Ms. Maxwell respectfully requests a reopened deposition of Plaintiff to include the topics of:

1. Any documents disclosed after May 3 regarding:
  - a. Plaintiff's medical and mental care
  - b. Plaintiff's employment
  - c. Plaintiff's education
  - d. Plaintiff's emails from her iCloud and Hotmail accounts

2. Any question she was instructed not to answer regarding:
  - a. Inaccurate statements attributed to her in the press;
  - b. Her communications with law enforcement about Ms. Maxwell;
3. Any changes to her deposition testimony as reflected on her errata sheet.

Ms. Maxwell asks the Court to deny Plaintiff's request that the reopened deposition be limited to two hours or occur via remote means. Finally, Ms. Maxwell requests costs incurred in bringing this Motion based on counsel's improper instructions not to answer relevant and non-privileged questions.

Dated: July 8, 2016

Respectfully submitted,

/s/ Laura A. Menninger

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Laura A. Menninger (LM-1374)  
Jeffrey S. Pagliuca (*pro hac vice*)  
HADDON, MORGAN AND FOREMAN, P.C.  
150 East 10<sup>th</sup> Avenue  
Denver, CO 80203  
Phone: 303.831.7364  
Fax: 303.832.2628  
lmenninger@hmflaw.com

*Attorneys for Ghislaine Maxwell*



**CERTIFICATE OF SERVICE**

I certify that on July 8, 2016, I electronically served this *REPLY IN SUPPORT OF DEFENDANT'S MOTION TO REOPEN DEPOSITION OF PLAINTIFF VIRGINIA GIUFFRE* via ECF on the following:

Sigrid S. McCawley  
Meredith Schultz  
BOIES, SCHILLER & FLEXNER, LLP  
401 East Las Olas Boulevard, Ste. 1200  
Ft. Lauderdale, FL 33301  
smccawley@bsflp.com  
mschultz@bsflp.com

Bradley J. Edwards  
FARMER, JAFFE, WEISSING, EDWARDS,  
FISTOS & LEHRMAN, P.L.  
425 North Andrews Ave., Ste. 2  
Ft. Lauderdale, FL 33301  
brad@pathtojustice.com

Paul G. Cassell  
383 S. University Street  
Salt Lake City, UT 84112  
cassellp@law.utah.edu

J. Stanley Pottinger  
49 Twin Lakes Rd.  
South Salem, NY 10590  
StanPottinger@aol.com

/s/ Nicole Simmons  
Nicole Simmons

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
VIRGINIA L. GIUFFRE,  
                    Plaintiff,  
v.  
GHISLAINE MAXWELL,  
                    Defendant.  
-----X

**15-cv-07433-RWS**

**Declaration Of Laura A. Menninger In Support Of  
Reply to Plaintiff's Opposition to Defendant's Motion To Reopen  
Plaintiff's Deposition**

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 Reply to Plaintiff's Opposition to Defendant's Motion To Reopen Plaintiff's Deposition.

2. Attached as Exhibit O (filed under seal) are true and correct copies of select pages of Plaintiff's medical records bates labeled GIUFFRE 5089, 5316-18, 6631, designated as Confidential under the Protective Order.

3. Attached as Exhibit P (filed under seal) are true and correct copies of excerpts from the deposition of Anthony Figuera, designated as Confidential under the Protective Order.

Dated: July 8, 2016

By: /s/ Laura A. Menninger

Laura A. Menninger

**CERTIFICATE OF SERVICE**

I certify that on July 8, 2016, I electronically served this *Declaration Of Laura A.*

*Menninger In Support Of Reply to Plaintiff's Opposition to Defendant's Motion To Reopen*

*Plaintiff's Deposition* via ECF on the following:

Sigrid S. McCawley  
Meredith Schultz  
BOIES, SCHILLER & FLEXNER, LLP  
401 East Las Olas Boulevard, Ste. 1200  
Ft. Lauderdale, FL 33301  
smccawley@bsfllp.com  
mschultz@bsfllp.com

Bradley J. Edwards  
FARMER, JAFFE, WEISSING, EDWARDS,  
FISTOS & LEHRMAN, P.L.  
425 North Andrews Ave., Ste. 2  
Ft. Lauderdale, FL 33301  
brad@pathtojustice.com

Paul G. Cassell  
383 S. University Street  
Salt Lake City, UT 84112  
cassellp@law.utah.edu

J. Stanley Pottinger  
49 Twin Lakes Rd.  
South Salem, NY 10590  
StanPottinger@aol.com

/s/ Nicole Simmons

Nicole Simmons

# **EXHIBIT P**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CASE: 15-cv-07433-RWS

VIRGINIA GIUFFRE,  
Plaintiff,

v.

GHISLAINE MAXWELL,  
Defendant.

\_\_\_\_\_/

VIDEOTAPED DEPOSITION OF TONY FIGUEROA

Volume 1 of 2

Pages 1 - 157

Taken at the Instance of the Defendant

DATE: Friday, June 24, 2016

TIME: Commenced: 8:59 a.m.  
Concluded: 1:22 p.m.

PLACE: Southern Reporting Company  
B. Paul Katz Professional Center  
(SunTrust Building)  
One Florida Park Drive South  
Suite 214  
Palm Coast, Florida 32137

REPORTED BY: LEANNE W. FITZGERALD, FPR  
Florida Professional Reporter  
Court Reporter and Notary Public

1 APPEARANCE OF COUNSEL

2  
3  
4 ON BEHALF OF THE PLAINTIFF:

5 BRADLEY J. EDWARDS, Esquire  
6 Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.  
7 425 North Andrews Avenue  
8 Ft. Lauderdale, Florida 33301  
9 954-524-2820  
10 Brad@pathtojustice.com

11  
12  
13 ON BEHALF OF THE DEFENDANT:

14 LAURA A. MENNINGER, Esquire  
15 Haddon, Morgan and Foreman, P.C.  
16 150 East 10th Avenue  
17 Denver, Colorado 80203  
18 303-831-7364  
19 Lmenninger@hmflaw.com; Nsimmons@hmflaw.com

20  
21  
22 Also appearing: Jenny Martin, Videographer from Abel  
23 Virginia Giuffre, Plaintiff  
24  
25

1 BY MS. MENNINGER:

2 Q And where did you go after Royal Palm  
3 Beach?

4 A I believe it was South Area. I'm pretty  
5 sure it was South Area.

6 Q Did you go to another school after that?

7 A Yeah. I went to Gold Coast after that.

8 Q Is that also in Royal Palm Beach?

9 A No. That's -- South Area was in Lake  
10 Worth. Gold Coast is in West Palm. They were both  
11 alternative schools.

12 Q Did you ever go to a Survivors Charter  
13 School?

14 A Yes. I went there, too.

15 Q When did you go there?

16 A I'm not exactly sure of the date. But it  
17 was somewhere after either -- I'm pretty sure it  
18 was -- maybe -- I can't remember if it was Gold  
19 Coast first or Survivor. But one of the -- I'm  
20 trying to remember. I honestly don't remember which  
21 one came first.

22 Q That's all right.

23 Can you describe for me Survivors Charter  
24 School? What is it like, or was it like?

25 A I mean, like I said, it was an alternative

1 school. It was just pretty much a bunch of bad  
2 kids, you know, who have gotten kicked out. And it  
3 was pretty much like a last chance kind of school,  
4 you know what I mean?

5 Q Does it look like a school?

6 A Kind of. I mean, it had, like, a  
7 cafeteria, and then it had a whole bunch of, like,  
8 portables and stuff around there. And it was  
9 under -- it was, like, right near the Lake Worth. I  
10 remember there was, like, a bridge that went over  
11 the interstate right by it. But, I mean, it was  
12 just a little, you know, little crappy school.

13 Q Was it during the day or at night?

14 A It was during the day.

15 Q So regular school hours?

16 A Yeah. Well, it was actually a little bit  
17 shorter hours. I can't remember exactly. But I  
18 know it was not like the full days. Because, I  
19 mean, at the alternative schools, it's obviously not  
20 up to regular high school standards. I mean, they  
21 just do pretty much stuff to get people to get out  
22 of school, you know, so...

23 Q Get the credits that you need?

24 A Yeah. So that way they can finish high  
25 school and not drop out and whatnot, so...



1 Q You actually go there in the morning,  
2 though, and take classes?

3 A Yeah.

4 Q And get checked in at attendance?

5 A Yeah.

6 Q And then you may leave a little earlier  
7 than a regular school day?

8 A Uh-huh (affirmative).

9 Q All right. It's not a online program?

10 A No, it was not online.

11 Q When you were at Survivors Charter School,  
12 did you ever see Ms. Roberts there?

13 A Was it Survivors? I don't remember if it  
14 was Survivors. Or was it -- because I'm pretty sure  
15 we were both -- was it -- I know we both went to one  
16 of the schools. I'm pretty sure it was Survivors,  
17 maybe.

18 Q Did you see her there?

19 A Now, when we went to the school, like, we  
20 were together afterwards. But I don't remember  
21 exactly which one it was. I know it was one of  
22 those alternative schools that we went to, though.

23 Q Okay. Did you -- was Wellington an  
24 alternative school?

25 A No. Wellington is a -- is a real high

1 school, like a regular high school.

2 Q Do you know if Wellington has an adult  
3 program?

4 A They might. I mean, I really don't know.  
5 I'm not sure.

6 Q Did you ever take night classes there?

7 A No.

8 Q So you believe when you reunited with  
9 Ms. Roberts in or around 2001, she had also gone to  
10 one of those alternative schools?

11 A When I reunited with her, no. We ended  
12 up, like, trying to go finish school.

13 Q Tell me about that.

14 A I mean, we just ended up going to one of  
15 those alternative schools and didn't even finish  
16 that.

17 Q So you two had both left school, but went  
18 back together --

19 A Yeah.

20 Q -- to one of the alternative schools?

21 A Yeah.

22 Q And that may have been Survivors Charter  
23 School?

24 A Yeah. I'm pretty sure it probably was.  
25 I'm pretty sure.

1 Q You both wanted to get your GEDs?

2 A Yeah.

3 Q Get better jobs?

4 A Uh-huh (affirmative).

5 Q Things like -- that was the plan?

6 A Yeah.

7 Q But it did not work out?

8 A Yeah.

9 Q Do you know how long the two of you went  
10 to Survivors Charter School?

11 A I honestly don't remember.

12 Q Okay. You do have a recollection of going  
13 with her, though?

14 A Yeah.

15 Q Seeing her there?

16 A Uh-huh (affirmative).

17 Q I'm trying to get a little bit of a time  
18 frame on the time that you reunited with  
19 Ms. Roberts. I know you said you lived -- you  
20 remember being in an apartment with her in September  
21 of 2000 -- 9/11/2001; right?

22 A Yeah.

23 Q Do you think you had been together with  
24 her for a while at that point?

25 A It was probably, I'd say, like a month or

1 BY MS. MENNINGER:

2 Q Mr. Figueroa, you mentioned that you and  
3 Ms. Roberts attempted to go to back to school while  
4 you were together --

5 A Yes.

6 Q -- to get your GED?

7 A Yeah. Yes.

8 Q And you believe that you went to the  
9 Survivors Charter School?

10 A Yes.

11 MS. MENNINGER: Okay. I'm going to mark  
12 Defendant's Exhibit 6.

13 (Defendant's Exhibit 6 was marked for  
14 identification.)

15 BY MS. MENNINGER:

16 Q This is a school record for Ms. Roberts  
17 that lists the names of various schools. And --

18 A So it was Survivors, obviously. That's  
19 the only one on that list that isn't -- or that's  
20 there that's on mine, as well.

21 Q Okay.

22 A Other than the other ones, but...

23 Q All right. So you recognize Survivors  
24 Charter School on Ms. Roberts' school records?

25 A Yeah. That's what I'm saying. Since that

1 is the one on here, that's -- that's completely  
2 clear. I could not remember if it was that one or  
3 Gold Coast.

4 Q Okay. There is an entry date for  
5 Ms. Roberts at Survivors Charter School of  
6 10/12/2001, and a withdrawal on 3/7 of '02. Do you  
7 see that?

8 A I mean, it's this; right? I mean, that's  
9 the top.

10 Q The entry date of 10/12/01, withdrawal  
11 3/7/02 at Survivors?

12 A Okay. I did not know what those  
13 numbers -- I did not realize that that was a date.

14 Q I understand. And I know you did not make  
15 this record.

16 So I'm just wanting to know if that's  
17 consistent with your recollection, that you guys  
18 went to school in the fall of 2001 until the --

19 A Yeah, that sounds about right.

20 Q -- March of 2002. It sounds right?

21 A Yeah.

22 Q And you both went to school together?

23 A Uh-huh (affirmative).

24 Q In the mornings?

25 A Yeah.

1 Q And got out of school at some earlier time  
2 than a regular school day?

3 A Yeah.

4 Q Do you recall Ms. Roberts going to Royal  
5 Palm Beach High? Again, this is in the 2001 time  
6 frame.

7 A I -- I don't recall. I really don't.

8 Q Do you recall her, during the time you  
9 were with her, taking any night classes at  
10 Wellington High School?

11 A I don't recall.

12 Q Is it possible?

13 A It's a possibility.

14 MR. EDWARDS: Object to the form.

15 BY MS. MENNINGER:

16 Q Do you know whether Wellington has a night  
17 school program?

18 A Like I said before, I don't know. They  
19 could.

20 Q You went there in ninth grade?

21 A Yeah. It was during the day, though. I  
22 have no clue about night school.

23 Q Got it.

24 But you do have a memory about Survivors  
25 Charter School?