

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VIRGINIA GIUFFRE,

Giuffre,

15 Civ. 7433

-against-

SEALED
OPINION

GHISLAINE MAXWELL,

Maxwell.

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A P P E A R A N C E S:

Counsel for Giuffre

BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, FL 33301
By: Sigrid S. McCawley, Esq.
Meredith L. Schultz, Esq.

Counsel for Maxwell

HADDON, MORGAN AND FOREMAN, P.C.
150 East Tenth Avenue
Denver, CO 80203
By: Laura A. Menninger, Esq.
Jeffrey S. Pagliuca, Esq.

Sweet, D.J.

The defendant Ghislaine Maxwell ("Maxwell" or the "Maxwell") has moved pursuant to Rule 56, Fed. R. Civ. P., for summary judgment dismissing the complaint of plaintiff Virginia L. Giuffre ("Giuffre" or the "Giuffre") alleging defamation. Upon the facts and conclusions set forth below, the motion is denied.

I. Prior Proceedings

Since the filing of the complaint on September 21, 2015, setting forth Giuffre's claim of defamation by Maxwell, this action has been vigorously litigated, as demonstrated by the 704 docket entries as of March 8, 2017. At issue is the truth or falsity of a January 2015 statement issued by Maxwell. Discovery has proceeded, a joint pretrial order has been filed, and the action is set for trial on May 15, 2017.

The instant motion was heard and marked fully submitted on February 16, 2017.

II. The Facts

The facts have been set forth in Maxwell's Memorandum of Law in Support of Maxwell's Motion for Summary Judgment, Southern District of New York, Local Rule 56.1; Giuffre's Statement of Contested Facts and Giuffre's Undisputed Facts; and Maxwell's Reply to Giuffre's Statement of Contested Facts and Giuffre's Undisputed Facts pursuant to Local Civil Rule 56.1. They are not in dispute except as noted below.

1. In early 2011, Giuffre, in two British tabloid interviews, made numerous false and defamatory allegations against Maxwell. In the articles, Giuffre made no direct allegations that Maxwell was involved in any improper conduct with Jeffrey Epstein ("Epstein"), who had pleaded guilty in 2007 to procuring a minor for prostitution. Nonetheless, Giuffre suggested that Maxwell worked with Epstein and may have known about the crime for which he was convicted.

Giuffre has denied that the allegations she made against Maxwell were false and defamatory. She noted that she did give an interview to journalist, Sharon Churcher ("Churcher"), in which she described Maxwell's role as someone

who recruited or facilitated the recruitment of young females for Epstein, that she was interviewed by the FBI in 2011, and that she discussed Maxwell's involvement in the sexual abuse.

2. In the articles, Giuffre alleged she had sex with Prince Andrew, "a well-known businessman," a "world-renowned scientist," a "respected liberal politician," and a "foreign head of state."

Giuffre did not contest this statement but noted it is irrelevant.

3. In response to the allegations, Maxwell's British attorney, working with Ross Gow ("Gow"), Maxwell's public relations representative, issued a statement on March 9, 2011, denying "the various allegations about [Maxwell] that have appeared recently in the media. These allegations are all entirely false."

Giuffre has denied that Maxwell's British attorney, Philip Barden ("Barden"), "issued a statement," noting that it appears to have the contact "Gow" and a reference to Devonshire Solicitors.

4. The March 9, 2011 statement read in full:

Statement on Behalf of Ghislaine Maxwell

By Devonshires Solicitors, PRNE Wednesday, March 9, 2011

London, March 10, 2011 - Ghislaine Maxwell denies the various allegations about her that have appeared recently in the media. *These allegations are all entirely false.*

It is unacceptable that letters sent by Maxwell's legal representatives to certain newspapers pointing out the truth and asking for the allegations to be withdrawn have simply been ignored.

In the circumstances, Maxwell is now proceeding to take legal action against those newspapers.

"I understand newspapers need stories to sell copies. It is well known that certain newspapers live by the adage, "why let the truth get in the way of a good story." However, *the allegations made against me are abhorrent and entirely untrue* and I ask that they stop," said Ghislaine Maxwell.

"A number of newspapers have shown a complete lack of accuracy in their reporting of this story and a failure to carry out the most elementary investigation or any real due diligence. I am now taking action to clear my name," she said.

Media contact:

Ross Gow

Acuity Reputation

Tel: +44-203-008-7790

Mob: +44-7778-755-251

Email: ross@acuityreputation.com

Media contact: Ross Gow, Acuity Reputation, Tel: +44-203-008-7790,

Mob: +44-7778-755-251, Email: ross at
acuityreputation.com

Giuffre has noted it is unclear if the original included the italics that are inserted above.

5. In 2008, two alleged victims of Epstein brought an action under the Crime Victims' Rights Act (the "CVRA Action") against the United States Government purporting to challenge Epstein's plea agreement. They alleged the Government violated their CVRA rights by entering into the agreement.

6. Giuffre moved to join the CVRA Action on December 30, 2014, claiming she, too, had her CVRA rights violated by the Government. On January 1, 2015, Giuffre filed a "corrected" joinder motion. See *Jane Doe 1 and Jane Doe 2 v. United States*, No. 9:08-cv-80736-KAM, Docket No. 280 (S.D. Fla. Jan. 2, 2015) ("CVRA Joinder Mot."). Giuffre's joinder motion in this unrelated action included gratuitous and "lurid" accusations.

Giuffre has denied the final sentence fragment.

7. The issue presented in the joinder motion was narrow: whether Giuffre should be permitted to join the CVRA

Action as a party under Federal Rule of Civil Procedure 21, specifically, whether she was a "known victim[]" of Mr. Epstein and the Government owed them CVRA duties." *Jane Doe 1 and Jane Doe 2 v. United States*, No. 9:08-cv-80736-KAM, Docket No. 324 (S.D. Fla. Apr. 7, 2015) ("CVRA Mot. Op.") at 5. Yet, "the bulk of the [motion] consists of copious factual details that [Ms. Giuffre] and [her co-movant] 'would prove . . . if allowed to join.'" *Id.* Giuffre gratuitously included provocative and "lurid details" of her alleged sexual activities as an alleged victim of sexual trafficking.

Giuffre has denied that the issues presented in her joinder motion were narrow and has noted that the issues presented by the joinder motion and related pleadings were multiple and complex, requiring numerous details about Giuffre's sexual abuse and the listing of the perpetrators of her abuse. In a pleading explaining why the motion was filed, see *Jane Doe 1 and Jane Doe 2 v. United States*, No. 9:08-cv-80736-KAM, Docket No. 291 at 18-26 & n.17 (S.D. Fla. Jan. 21, 2015), Giuffre's lawyers specifically listed nine separate reasons why Jane Doe 3's allegations that Alan Dershowitz ("Dershowitz") had sexually abused her were relevant to the case and appropriately included in the relevant filings. Additionally, Giuffre states that Judge

Marra's ruling concluded that certain allegations were not necessary "at this juncture in the proceedings," adding that "Jane Doe 3 is free to reassert these factual details through proper evidentiary proof, should Petitioners demonstrate a good faith basis for believing that such details are pertinent to a matter presented for the Court's consideration." CVRA Mot. Op. at 5-6. Giuffre notes that the CVRA litigation continues and no trial has been held as of the filing of this motion so that the extent to which these factual details will be used at trial has not yet been determined. See Docket Sheet, *Jane Doe 1 and Jane Doe 2 v. United States*, No. 9:08-cv-80736-KAM.

8. At the time they filed the motion, Giuffre and her lawyers knew that the media had been following the Epstein criminal case and the CVRA Action. While they deliberately filed the motion without disclosing Giuffre's name, claiming the need for privacy and secrecy, they made no attempt to file the motion under seal. Quite the contrary, they filed the motion publicly.

Giuffre has noted her denial as set forth to Statement 7 above.

9. As the district court noted in ruling on the joinder motion, Giuffre "name[d] several individuals, and she offers details about the type of sex acts performed and where they took place." CVRA Mot. Op. at 5. The court ruled that "these lurid details are unnecessary," explaining that "[t]he factual details regarding whom and where the Jane Does engaged in sexual activities are immaterial and impertinent . . . , especially considering that these details involve nonparties who are not related to the respondent Government." *Id.* Accordingly, "[t]hese unnecessary details shall be stricken." *Id.* The court then struck all Giuffre's factual allegations relating to her alleged sexual activities and her allegations of misconduct by non-parties. *Id.* at 6. The court said the striking of the "lurid details" was a sanction for Giuffre's improper inclusion of them in the motion. *Id.* at 7.

Giuffre has noted her denial as set forth in Statement 7 above.

10. The district court in the CVRA Action found not only that the "lurid details" were unnecessary but also that the joinder motion itself was "entirely unnecessary." *Id.* at 7. Giuffre and her lawyers knew the motion with all its "lurid

details" was unnecessary because the motion itself recognized that she would be able to participate as a fact witness to achieve the same result she sought as a party. The court denied Giuffre's joinder motion. *Id.* at 10.

Giuffre has noted her denial as set forth in Statement 7 above.

11. One of the non-parties Giuffre "named" repeatedly in the joinder motion was Maxwell. According to the "lurid details" of Giuffre included in the motion, Maxwell personally was involved in a "sexual abuse and sex trafficking scheme" created by Epstein:

- Maxwell "approached" Giuffre in 1999 when Giuffre was "fifteen years old" to recruit her into the scheme.
- Maxwell was "one of the main women" Epstein used to "procure under-aged girls for sexual activities."
- Maxwell was a "primary co-conspirator" with Epstein in his scheme.
- She "persuaded" Giuffre to go to Epstein's mansion "in a fashion very similar to the manner in which Epstein and his other co-conspirators coerced dozens of other children."

- At the mansion, when Giuffre began giving Epstein a massage, he and Ms. Maxwell "turned it into a sexual encounter."
- Epstein "with the assistance of" Maxwell "converted [Giuffre] into . . . a 'sex slave.'" *Id.* Giuffre was a "sex slave" from "about 1999 through 2002."
- Maxwell also was a "co-conspirator in Epstein's sexual abuse."
- Maxwell "appreciated the immunity" she acquired under Epstein's plea agreement, because the immunity protected her from prosecution "for the crimes she committed in Florida."
- Maxwell "participat[ed] in the sexual abuse of [Giuffre] and others."
- Maxwell "took numerous sexually explicit pictures of underage girls involved in sexual activities, including [Giuffre]." *Id.* She shared the photos with Epstein.
- As part of her "role in Epstein's sexual abuse ring," Maxwell "connect[ed]" Epstein with "powerful individuals" so that Epstein could traffic Giuffre to these persons.
- Giuffre was "forced to have sexual relations" with Prince Andrew in "[Maxwell's] apartment" in London. Maxwell "facilitated" Giuffre's sex with Prince Andrew "by acting as a 'madame' for Epstein."
- Maxwell "assist[ed] in internationally trafficking" Giuffre and "numerous other young girls for sexual purposes."
- Giuffre was "forced" to watch Epstein, Maxwell and others "engage in illegal sexual acts with dozens of underage girls."

See CVRA Joinder Mot.

Giuffre has denied the reference to "lurid details" and has noted her denial as set forth in Statements 6 and 7 above and that the testimony from numerous witnesses has corroborated the statements Giuffre made in her joinder motion:

- Johanna Sjoberg ("Sjoberg") May 18, 2016 Dep. Tr. at 8-9, 13, 33-35, 142-143.
- Anthony Figueroa ("Figueroa") June 24, 2016 Dep. Tr. Vol. 1 at 96-97 and 103.
- Rinaldo Rizzo ("Rizzo") June 10, 2016 Dep. Tr. at 52-60.
- Lynn Miller's May 24, 2016 Dep. Tr. at 115.
- Joseph Recarey's June 21, 2016 Dep. Tr. at 29-30.
- David Rodgers' June 3, 2016 Dep. Tr. at 18, 34-36.
- Excerpted Rodgers Dep. Ex. 1 at flight #s 1433-1434, 1444-1446, 1464-1470, 1478-1480, 1490-1491, 1506, 1525-1526, 1528, 1570, and 1589.
- NadiaMarcinkova ("Marcinkova") Dep. Tr. at 10:18-21; 12:11-15; etc.

- Sarah Kellen ("Kellen") Dep. Tr. at 15:13-18; 20:12-16; etc.
- Epstein Dep. Tr. at 116:10-15; 117:18-118:10; etc.
- Juan Alessi ("Alessi") Dep. Tr. At 28, 52-54.
- U.S. Attorney Victim Notification Letter GIUFFRE002216-002218.
- July 2001 New York Presbyterian Hospital Records GIUFFRE003258-003290.
- Judith Lightfoot psychological records GIUFFRE005431-005438.
- Message Pad evidencing Maxwell arranging to have underage girls and young women come to Epstein's home GIUFFRE001386-001571.
- "Black Book" in which Maxwell and other household staff maintained a roster of underage girls including [REDACTED], [REDACTED], and [REDACTED], who were minors at the time the Palm Beach Police's Investigation of Jeffrey Epstein GIUFFRE001573-00669.

- Sex Slave books Epstein ordered from Amazon.com at GIUFFRE006581.
- The folder Maxwell sent to Thailand with Giuffre bearing Maxwell's phone number GIUFFRE003191-003192.
- The Palm Beach Police Report showing that Epstein used women and girls to collect underage girls for his abuse GIUFFRE005614-005700.
- Epstein's Flight Logs showing that Maxwell flew with Giuffre 23 times GIUFFRE007055-007161.

12. In the joinder motion, Giuffre also alleged she was "forced" to have sex with Dershowitz, "model scout" Jean Luc Brunel, and "many other powerful men, including numerous prominent American politicians, powerful business executives, foreign presidents, a well-known Prime Minister, and other world leaders." CVRA Joinder Mot. at 5-6.

Giuffre has noted her denial as set forth in Statements 7 and 11 above.

13. Giuffre said after serving for four years as a "sex slave," she "managed to escape to a foreign country and hide out from Epstein and his co-conspirators for years." *Id.* at 3.

Giuffre has admitted making this statement and has noted since discovered evidence that indicates she was mistaken on the exact timeframe of her abuse and was with Maxwell and Epstein from the years 2000-2002.

14. Giuffre suggested the Government was part of Epstein's "conspiracy" when it "secretly" negotiated a non-prosecution agreement ("NPA") with Epstein precluding federal prosecution of Epstein and his "co-conspirators." *Id.* at 6. The Government's secrecy, Giuffre alleged, was motivated by its fear that Giuffre would raise "powerful objections" to the agreement that would have "shed tremendous public light" on Epstein and other powerful individuals. *Id.* at 6-7.

Giuffre has denied that she suggested that the Government was part of Epstein's conspiracy to commit sex offenses and has noted that the CVRA Action deals with whether the Government failed in their responsibilities to the victims

to inform the victims that the Government was working out an NPA, that the Government did fail to so inform the victims, and that it intentionally did not inform the victims because the expected serious objection from many of the victims might prevent the Government from finalizing the NPA with Epstein.

15. The other "Jane Doe" who joined Giuffre's motion who alleged she was sexually abused on "many occasions" by Epstein was unable to corroborate any of Giuffre's allegations.

Giuffre has denied the statement and noted that the other Jane Doe could corroborate many of Giuffre's allegations based on a similar pattern of abuse by Epstein that she suffered, that she did not know Giuffre, and further has noted [REDACTED], who was deposed in this case, and who was a minor, corroborates the same pattern of abuse.

16. In her multiple and lengthy consensual interviews with Churcher three years earlier, Giuffre told Churcher of virtually none of the details she described in the joinder motion.

Giuffre has denied the statement and noted that absence of any citation or evidence on this point and that the statement here is knowingly false based on the articles and Giuffre's deposition.

17. As Giuffre and her lawyers expected, before Judge Marra in the CVRA Action could strike the "lurid details" of Giuffre's allegations in the joinder motion, members of the media obtained copies of the motion.

Giuffre has denied the statement as set forth in Statement 7 above.

18. At the direction of Barden, on January 2, 2015, Gow sent to numerous representatives of British media organizations an email containing "a quotable statement on behalf of Maxwell" (the "Press Release"). The email was sent to more than six and probably fewer than 30 media representatives. It was not sent to non-media representatives.

Giuffre has denied that "[a]t Mr. Barden's direction, on January [2], 2015, Gow sent to numerous representatives of British media organizations an email containing 'a quotable

statement on behalf of Maxwell'" and has noted that Gow produced an email exchange he had with Maxwell in which Maxwell directs Gow to send the Press Release as follows:

From: G Maxwell <GMax1@ellmax.com>
Date: Fri, 2 Jan 2015 20:14:53 +0000
To: Ross Gow <ross@acuityreputation.com>
Cc: Philip Barden <philip.barden@devonshires.co.uk>
Subject: FW: URGENT - this is the statement

Jane Doe 3 is Virginia Roberts so not a new individual.

The allegations made by Victoria Roberts against Ghislaine Maxwell are untrue.

The original allegations are not new and have been fully responded to and shown to be untrue

Each time the story is re told it changes with new salacious details about public figures and world leaders and now it is alleged by Ms Roberts that Alan Derschwitz is involved in having sexual relations with her, which he denies

Ms Roberts claims are obvious lies and should be treated as such and not publicised as news, as they are defamatory.

Giuffre has further noted that chronologically, this email comes at the end of various other email exchanges between Maxwell and Gow that discuss issuing a press release and that the subject line of this email that Maxwell wrote to Gow states "URGENT - this is the statement," thereby instructing Gow to release this statement to the press. Additionally, Giuffre notes that shortly after Maxwell sent this email to Gow directing him to release the Press Release, Gow distributed it to multiple media outlets, and that no email has been produced in which

Barden directed Gow to issue this press release. At his deposition, Gow authenticated this email and confirmed that Maxwell authorized the statement.

Giuffre has noted that the email and Gow's testimony establish that Maxwell, not Barden, directed and "command[ed]" Gow to publish the defamatory statement and the first sentence of the statement is false and the second sentence - "This email was sent to more than 6 and probably less than 30 media representatives" - omits the fact that not only did Gow admit to emailing the statement to the press, but he also read it to over 30 media representatives over the phone. Giuffre has denied the statement.

19. Among the media representatives who received the Press Release were Martin Robinson of the Daily Mail, P. Peachey of The Independent, Nick Sommerlad of The Mirror, David Brown of The Times, Nick Always and Jo-Anne Pugh of the BBC, and David Mercer of the Press Association. These representatives were selected based on their request after the joinder motion was filed—for a response from Maxwell to Giuffre's allegations in the motion.

Giuffre has denied the second sentence and has noted there is no record evidence that Gow (or anyone else) "selected" journalists "for a response," or that there was any selection process and that Gow testified that anyone who inquired received a reference to the Press Release.

20. The email to the media members read:

To Whom It May Concern,

Please find attached a quotable statement on behalf of Maxwell.

No further communication will be provided by her on this matter.

Thanks for your understanding.

Best Ross
Ross Gow
ACUITY Reputation

Jane Doe 3 is Virginia Roberts—so not a new individual. The allegations made by Victoria Roberts against Ghislaine Maxwell are untrue. The original allegations are not new and have been fully responded to and shown to be untrue.

Each time the story is re told [sic] it changes with new salacious details about public figures and world leaders and now it is alleged by Ms. Roberts [sic] that Alan Dershowitz [sic] is involved in having sexual relations with her, which he denies.

Ms. Roberts claims are obvious lies and should be treated as such and not publicized as news, as they are defamatory.

Ghislaine Maxwell's original response to the lies and defamatory claims remains the same. Maxwell strongly denies allegations of an unsavoury nature, which have appeared in the British press and elsewhere and reserves her right to seek redress at the repetition of such old defamatory claims.

Giuffre has noted that the body text of the email that was sent to news media was cropped and the headings and metadata were omitted and has further noted the image of the email set forth below.

From: <ross@acuityreputation.com>
Date: 2 January 2015 at 20:38
Subject: Ghislaine Maxwell
To: Rossacuity Gow <ross@acuityreputation.com>
bcc: martin.robinson@mailonline.co.uk,
P.Peachey@independent.co.uk,
nick.sommerlad@mirror.co.uk,
david.brown@thetimes.co.uk,
nick.ahway@bbc.co.uk,
jo-anne.pugh@bbc.co.uk

To Whom It May Concern,
Please find attached a quotable statement on behalf of Ms Maxwell.

No further communication will be provided by her on this matter.
Thanks for your understanding.
Best
Ross

Ross Gow
ACUITY Reputation

Jane Doe 3 is Victoria Roberts - so not a new individual. The allegations made by Victoria Roberts against Ghislaine Maxwell are untrue. The original allegations are not new and have been fully responded to and shown to be untrue.

Each time the story is re told it changes with new salacious details about public figures and world leaders and now it is alleged by Ms Roberts that Alan Derschowitz is involved in having sexual relations with her, which he denies.

Ms Roberts claims are obvious lies and should be treated as such and not publicised as news, as they are defamatory.

Ghislaine Maxwell's original response to the lies and defamatory claims remains the same. Maxwell strongly denies allegations of an unsavoury nature, which have appeared in the British press and elsewhere and reserves her right to seek redress at the repetition of such old defamatory claims.

Sent from my BlackBerry® wireless device

21. Barden, who prepared the Press Release, did not intend it as a traditional press release solely to disseminate information to the media, and he intentionally did not pass it through a public relations firm, such as Gow's firm, Acuity Reputation.

Giuffre has denied the statement and has noted that the Barden Declaration should not be considered. She has further noted that there is no evidence to support any assertion of Barden's intent and that Maxwell gave the statement to Gow with instructions to publish it. Giuffre also has denied that the statement did not pass "through a public relations firm, such as Gow's firm, Acuity Reputation" and has noted that record documentary evidence and testimony establish that this statement was disseminated through Gow's firm, Acuity Reputation.

22. The Press Release served two purposes. First, Barden intended that it mitigate the harm to Maxwell's reputation from the press's republication of Giuffre's false allegations. He believed these ends could be accomplished by suggesting to the media that, among other things, they should subject Giuffre's allegations to inquiry and scrutiny. For example, he noted in the statement that Giuffre's allegations changed dramatically over time, suggesting that they are "obvious lies" and therefore should not be "publicized as news."

Giuffre has denied this statement and any statement of Barden's intent and that there was any "republication" by the

press as a matter of law as the press did not "republish" the press statement under New York law and that the allegations in the statement are "false," and cites to the evidence set forth in Statement 11 above.

Giuffre has further disputed that the harm to Maxwell's reputation could be mitigated by the media's inquiry into and scrutiny of Giuffre's allegations, because a deeper inquiry would only reveal additional evidence corroborating Giuffre's allegations, and has noted that the record does not establish who drafted the Press Release, and that it was ultimately Maxwell who "noted" anything because it is her statement and that she directed that it be sent to the media and public.

Giuffre has also disputed that her allegations have changed over time, "dramatically" or otherwise, that the Press Release "suggest[ed]" that her allegations are "obvious lies," because the Press Release affirmatively stated that her allegations are "obvious lies" there is no subtlety, suggestion, or statement of opinion here.

23. Barden intended the January 2015 statement to be "a shot across the bow" of the media, which he believed had been unduly eager to publish Giuffre's allegations without conducting any inquiry of their own. Accordingly, in the statement he repeatedly noted that Giuffre's allegations were "defamatory." In this sense, the statement was intended as a cease and desist letter to the media-recipients, letting the media-recipients understand the seriousness with which Maxwell considered the publication of Giuffre's obviously false allegations and the legal indefensibility of their own conduct.

Giuffre has denied this statement and the statement that Barden repeatedly noted that Giuffre's allegations were "defamatory" as he did not "note" anything in the statement, nor does Maxwell cite to any record evidence that he did.

Giuffre further denies the sentence, "In this sense, the statement was intended as a cease and desist letter to the media-recipients, letting the media-recipients understand the seriousness with which Maxwell considered the publication of Giuffre's obviously false allegations and the legal indefensibility of their own conduct," as there is no record

evidence in support of this claim, and Maxwell has not cited any.

24. Consistent with his purposes as described by Maxwell, Gow's emails prefaced the statement with the following language: "Please find attached a quotable statement on behalf of Maxwell." The statement was intended to be a single, one-time only, comprehensive response, quoted in full, to Giuffre's December 30, 2014, allegations that would give the media Maxwell's response. The purpose of the prefatory statement was to inform the media-recipients of this intent.

Giuffre has disputed the statement and any statement relating to Barden's "purposes," as explained above, and has noted that Gow repeatedly issued this statement via email and over the phone for months on end and that Maxwell instructed them to publish it by telling them it was "quotable,"

and hired a press agent to distribute it to the press with the intent for the press to publish the Press Release.

25. Giuffre has engaged in numerous activities to bring attention to herself, to the prosecution and punishment of

wealthy individuals such as Epstein, and to her claimed interest of bringing light to the rights of victims of sexual abuse.

Giuffre has denied that she engaged in activities to bring attention to herself but has noted that she has taken action to aid in the prosecution of her abusers, and she seeks to bring light to the rights of victims of sexual abuse.

26. Giuffre created an organization, Victims Refuse Silence, Inc., a Florida corporation, directly related to her alleged experience as a victim of sexual abuse.

27. The "goal" of Victims Refuse Silence "was, and continues to be, to help survivors surmount the shame, silence, and intimidation typically experienced by victims of sexual abuse." Toward this end, Giuffre has "dedicated her professional life to helping victims of sex trafficking."

28. Giuffre repeatedly has sought out media organizations to discuss her alleged experience as a victim of sexual abuse.

Giuffre has denied the statement and noted that she was approached by numerous media outlets and refused to speak to most of them, that media organizations sought her out and she did not seek them out.

29. Giuffre has written the manuscript of a book she has been trying to publish detailing her alleged experience as a victim of sexual abuse and of sex trafficking in Epstein's alleged "sex scheme."

Giuffre has stated that this mischaracterizes these activities, that it was against a backdrop of seeking psychological counseling that she drafted the manuscript as an "act of empowerment" and "a way of reframing and taking control over the narrative." Pl.'s Opp'n at 60. Giuffre notes that she ultimately decided not to publish the manuscript. See Giuffre Dep. Tr. 249:16-18; 250:19-251:3.

30. Giuffre was required by Interrogatory No. 6 to identify any false statements attributed to Maxwell that were "published globally, including within the Southern District of New York," as Giuffre alleged in Paragraph 9 of Count One of her complaint. In response, Giuffre identified the Press Release and

nine instances in which various news media published portions of the Press Release in news articles or broadcast stories.

Giuffre has denied this statement. There is no "republishing" as a matter of law and Maxwell possesses the knowledge as to where the defamatory statements were published and Giuffre has noted that she has provided a sampling of Maxwell's defamatory statements published by the news media and that Maxwell caused her statement to be published in an enormous number of media outlets.

Date	Nature	Publishing Entity	Statement/URL
January 2, 2015	Internet	Ross Gow	<p>Jane Doe 3 is Virginia Roberts - so not a new individual. The allegations made by Victoria Roberts against Ghislaine Maxwell are untrue. The original allegations are not new and have been fully responded to and shown to be untrue.</p> <p>Each time the story is re told it changes with new salacious details about public figures and world leaders and now it is alleged by Ms. Roberts that Alan Dershowitz is involved in having sexual relations with her, which he denies.</p> <p>Ms. Roberts's claims are obvious lies and should be treated as such and not publicized as news, as they are defamatory.</p> <p>Ghislaine Maxwell's original response to the lies and defamatory claims remains the same. Maxwell strongly denies allegations of an unsavoury nature, which have appeared in the British press and elsewhere and reserves her right to seek redress at the repetition of such old defamatory claims.</p>
January 2, 2015	Internet	Bolton News	http://www.theboltonnews.co.uk/news/national/11700192-Palace-denies-Andrew-sex-case-claim/
January 3, 2015	Internet	Telegraph	http://www.telegraph.co.uk/news/uknews/theroyalfamily/11323872/Prince-Andrew-denies-having-relations-with-sex-slave-girl.html
January 3, 2015	Internet	Daily Mail	http://www.dailymail.co.uk/news/article-2895366/Prince-Andrew-lobbied-government-easy-Jeffrey-Epstein-Palace-denies-claims-royal-tried-use-influence-help-billionaire-paedophile-2008-police-probe.html
January 3, 2015	Internet	Huffington Post	http://www.huffingtonpost.co.uk/2015/01/03/duke-of-york-sex-abuse-claims_n_6409508.html
January 4, 2015	Internet	Express	http://www.express.co.uk/news/world/550085/Ghislaine-Maxwell-Jeffrey-Epstein-not-madam-paedophile-Florida-court-case-Prince-Andrew
January 4, 2015	Internet	Jewish News Online	http://www.jewishnews.co.uk/dershowitz-nothing-prince-andrews-sex-scandal/
January 5, 2015	Internet/Broadcast	NY Daily News	http://www.nydailynews.com/news/world/alleged-madame-accused-supplying-prince-andrew-article-1.2065505
January 5, 2015	Internet/Broadcast	AOL UK	http://www.aol.co.uk/video/ghislaine-maxwell-declines-to-comment-on-prince-andrew-allegations-518587500/

Two newest articles

[1] <https://www.thesun.co.uk/archives/news/6754/prince-andrews-pal-ghislaine-groped-teen-girls/>

[2] <http://www.mirror.co.uk/news/uk-news/prince-andrews-pal-ghislaine-maxwell-5081971>

31. In none of the nine instances was there any publication of the entire Press Release.

Giuffre has noted extensive evidence of the mass distribution of Maxwell's defamatory statement to over 66 million viewers as stated by her expert witness James Jansen ("Jansen").

32. Maxwell and her agents exercised no control or authority over any media organization, including the media identified in Giuffre's response to Interrogatory No. 6, in connection with the media's publication of portions of the Press Release

Giuffre has disputed this statement and noted it is completely devoid of record evidence and that the record establishes that Maxwell hired Gow because his position allowed him to influence the press to publish her defamatory statement, Dep. Tr. at 13:9-16; 15:18-16:3; 109:12-22; 110:16-21; 111:3-7, and that Maxwell caused her statement to be published by numerous major news organizations with wide readership all over the globe.

33. Eight years after Epstein's guilty plea in Florida, Giuffre brought this action, repeating many of the allegations she made in her CVRA joinder motion.

Giuffre has noted that the defamation cause of action against Maxwell did not accrue until Maxwell defamed her in January of 2015.

34. The complaint alleged that the January 2015 statement "contained the following deliberate falsehoods":

- (a) That Giuffre's sworn allegations "against Ghislaine Maxwell are untrue."
- (b) That the allegations have been "shown to be untrue."
- (c) That Giuffre's "claims are obvious lies."

35. Giuffre lived independently from her parents with her fiancé long before meeting Epstein or Maxwell. After leaving the Growing Together drug rehabilitation facility in 1999, Giuffre moved in with the family of a fellow patient. There she

met, and became engaged to, her friend's brother, James Michael Austrich ("Austrich"). She and Austrich thereafter rented an apartment in the Ft. Lauderdale area with another friend and both worked at various jobs in that area. Later, they stayed briefly with Giuffre's parents in the Palm Beach/Loxahatchee, Florida area before Austrich rented an apartment for the couple on Bent Oak Drive in Royal Palm Beach. Although Giuffre agreed to marry Austrich, she never had any intention of doing so.

Giuffre has denied that she voluntarily lived independently from her parents with her fiancé; she states that she was a troubled minor child who was not realistically engaged prior to meeting Maxwell and Epstein, as she was not of legal age to marry. She confirms she had no intention of marrying Austrich.

36. Giuffre re-enrolled in high school from June 21, 2000 until March 7, 2002. After finishing the 9th grade school year at Forest Hills High School on June 9, 1999, Giuffre re-enrolled at Wellington Adult High School on June 21, 2000, again on August 16, 2000 and on August 14, 2001. On September 20, 2001, Giuffre then enrolled at Royal Palm Beach High School. A few weeks later, on October 12, 2001, she matriculated at

Survivors Charter School. Survivor's Charter School was an alternative school designed to assist students who had been unsuccessful at more traditional schools. Giuffre remained enrolled at Survivor's Charter School until March 7, 2002. She was present 56 days and absent 13 days during her time there. Giuffre never received her high school diploma or GED. The school day at Survivor's Charter School lasted from morning until early afternoon.

Giuffre has denied the statement and has noted that Giuffre's school transcripts indicate "NO COURSES TAKEN" for the 1999-2000 and 2000-2001 school years and that her attempt to work and resume school at Survivor's Charter School as a 10th grader in the 2001-2002 school year was limited to a portion of the school year, spanning fewer than six months from October 2001 to March 7, 2002. She states that she attempted to get away from Epstein's abuse and that the records indicate that Giuffre's attendance was poor, with 69 days present and 32 days absent out of a required 180 day school year. She was not enrolled at the end of the school year. Her presence on flights with Epstein, verified by Epstein's pilot on flight logs, and an abundance of witness testimony corroborate her story that she was flying domestic and internationally with Epstein at least 32

times between December 11, 2000 to July 28, 2001 and June 21, 2002 to August 21, 2002.

37. During the year 2000, Giuffre worked numerous jobs. In 2000, while living with her fiancé, Giuffre held five different jobs: at Aviculture Breeding and Research Center, Southeast Employee Management Company, The Club at Mar-a-Lago, Oasis Outsourcing, and Neiman Marcus. Her taxable earnings that year totaled nearly \$9,000. Giuffre cannot now recall either the Southeast Employee Management Company or the Oasis Outsourcing jobs.

Giuffre has disputed the statement and has noted that while she held various jobs in 2000, Social Security Administration records do not show the exact dates of employment (month and day) because they do not need this information to figure Social Security benefits. She states that neither Southeast Employee Management Company nor Oasis Outsourcing were her employers. She states that she worked at Taco Bell, as well as a pet store, but that neither of these are listed on her Social Security Administration records because they were most likely paid through payroll companies. She subsequently worked at Mar-a-Lago. She also volunteered at Aviculture Breeding and

Research Center, where they eventually put her on the payroll but paid her very little.

38. Giuffre's employment at The Mar-a-Lago spa began in fall 2000. Giuffre's father, Sky Roberts ("Roberts"), was hired as a maintenance worker at The Mar-a-Lago Club in Palm Beach, Florida, beginning on April 11, 2000. Roberts worked there year-round for approximately 3 years. After working there for a period of time, Roberts became acquainted with the head of the spa area and recommended Giuffre for a job there. Mar-a-Lago closes every Mother's Day and reopens on November 1. Most employees at Mar-a-Lago, including all employees of the spa area such as "spa attendants," are "seasonal" and work only when the club is open, *i.e.*, between November 1 and Mother's Day. Giuffre was hired as a "seasonal" spa attendant to work at the Mar-a-Lago Club in the fall of 2000 after she had turned 17.

Giuffre has disputed the statement and noted that the Mar-a-Lago Club produced 177 pages of records in response to Maxwell's subpoena which did not indicate Giuffre's actual dates of employment, nor whether she was a full-time or seasonal employee. The only significant record produced was a single,

vague chart entry indicating that Giuffre was terminated in 2000 and that Mar-a-Lago was a summer job.

39. Giuffre represented herself as a masseuse for Epstein. While working at the Mar-a-Lago spa and reading a library book about massage, Giuffre met Maxwell. Giuffre thereafter told her father that she got a job working for Epstein as a masseuse. Giuffre's father took her to Epstein's house on one occasion around that time, and Epstein came outside and introduced himself to Roberts. Giuffre commenced employment as a traveling masseuse for Epstein. Giuffre was excited about her job as a masseuse, about traveling with him and about meeting famous people. Giuffre represented that she was employed as a masseuse beginning in January 2001. Giuffre never mentioned Maxwell to Austrich. Giuffre's father never met Maxwell.

Giuffre has denied the statement and has noted that in Florida, a person cannot work as a masseuse unless she is "at least 18 years of age or has received a high school diploma or high school equivalency diploma," Fla. Stat. § 480.041. She was a minor child, under the age of 18, when she was working at Mar-a-Lago as a spa attendant and was approached by Maxwell who told her she could make money as a masseuse, a profession in which

Giuffre had no experience. She states that her father drove her to Epstein's house, the address of which was given to her by Maxwell, that she was led into the house and instructed by Maxwell on how to give a massage. She states that Epstein and Maxwell turned the massage into a sexual encounter, and offered her money and a better life to be compliant in the sexual demands of Maxwell and Epstein. She then began travelling with Maxwell and Epstein on private planes and servicing people sexually for money – working not as a legitimate masseuse, but in a position of sexual servitude. Giuffre further noted that Epstein's house manager, Alessi, described Maxwell's methodical routine of how she prepared a list of places ahead of time, then drove to each place for the purpose of recruiting girls to massage Epstein. Alessi stated that on multiple occasions he drove Maxwell to pre-planned places while she recruited girls for massage, and that he witnessed Giuffre at Epstein's house on the very same day that he witnessed Maxwell recruit Giuffre from Mar-a-Lago. Giuffre further noted Sjoberg's testimony that she was similarly recruited.

40. In spring 2001, while living with Austrich, Giuffre lied to and cheated on him with Figueroa, her high school boyfriend. Giuffre and Austrich thereafter broke up, and

Figuerola moved into the Bent Oak apartment with Giuffre. When Austrich returned to the Bent Oak apartment to check on his pets and retrieve his belongings, Figuerola punched Austrich in the face. Figuerola and Giuffre fled the scene before police arrived. Figuerola was then a convicted felon and a drug abuser on probation for possession of a controlled substance.

Giuffre has objected to the statement as irrelevant and unrelated to the allegations made in Giuffre's complaint against Maxwell and the alleged information should be excluded by multiple rules of evidence, and has been contested by Giuffre.

41. Giuffre freely and voluntarily contacted the police to come to her aid in 2001 and 2002 but never reported to them that she was Epstein's "sex slave." In August 2001 at age 17, while living in the same apartment, Giuffre and Figuerola hosted a party with a number of guests. During the party, according to Giuffre, someone entered Giuffre's room and stole \$500 from her shirt pocket. Giuffre contacted the police. She met and spoke with police officers regarding the incident and filed a report. She did not disclose to the officer that she was a "sex slave." A second time, in June 2002, Giuffre contacted

the police to report that her former landlord had left her belongings by the roadside and had lit her mattress on fire. Again, Giuffre met and spoke with the law enforcement officers but did not complain that she was the victim of any sexual trafficking or abuse or that she was then being held as a "sex slave."

Giuffre has objected to the statement as misleading and irrelevant and further noted that she was fearful of Maxwell and Epstein, and, accordingly, she would not have reported her abusers and noted that she knew that Epstein had control over the Palm Beach Police.

42. From August 2001 until September 2002, Epstein and Maxwell were almost entirely absent from Florida on documented travel unaccompanied by Giuffre. Flight logs maintained by Dave Rodgers ("Rodgers"), Epstein's private pilot, evidence the substantial number of trips away from Florida that Epstein and Maxwell took, unaccompanied by Giuffre, between August 2001 and September 2002. Rodgers maintained a log of all flights on which Epstein and Maxwell traveled with him. Epstein additionally traveled with another pilot who did not keep such logs and he also occasionally traveled via commercial flights.

For substantially all of thirteen months of the twenty-two month period from November 2000 to September 2002, Epstein was traveling outside of Florida unaccompanied by Giuffre. During this same period of time, Giuffre was employed at various jobs, enrolled in school, and living with her boyfriend.

Giuffre has disputed this statement and noted the flight logs produced in this matter provide substantive evidence of Giuffre's travel while in the control of Maxwell and Epstein, but are incomplete as Giuffre also was flown by Maxwell on commercial flights. The flight logs and pilot testimony clearly prove that Giuffre was flying domestic and internationally with Epstein at least 32 times between December 11, 2000 to July 28, 2001 and June 21, 2002 to August 21, 2002. Maxwell has acknowledged the flight logs are incomplete and that there were several pilots and co-pilots that flew Epstein and Maxwell (e.g., Rodgers, Lawrence "Larry" Vioski, Bill Hammond, Pete Rathgeb, Gary Roxburgh, and Bill Murphy) in multiple aircrafts and that only Rodgers produced flight records. Giuffre states that Maxwell has also acknowledged that many of the girls recruited by Maxwell routinely traveled on commercial flights for the purposes of providing massages to Epstein or guests at Epstein's New York, New Mexico, or U.S. Virgin Island homes.

Giuffre has further noted that her passport application, travel records, and witness testimony demonstrate flight logs are incomplete, that she also flew commercially while she worked for Maxwell and Epstein. Her passport application, for example, listed travel plans to London, and subsequent flight logs listed Giuffre traveling to London with Maxwell, Epstein, and others. Giuffre has cited the evidence she contends establish her travel with Epstein and Maxwell, including massage training in Thailand.

43. Giuffre and Figueroa shared a '93 white Pontiac in 2001 and 2002. Giuffre freely traveled around the Palm Beach area in that vehicle. In August 2002, Giuffre acquired a Dodge Dakota pickup truck from her father. Figueroa used that vehicle in a series of crimes before and after Giuffre left for Thailand.

Giuffre has denied the statement and has noted that she purchased a car from the \$10,000 payment she received from Epstein after she was forced to have sex with Prince Andrew in London at Maxwell's home.

44. Giuffre held a number of jobs in 2001 and 2002. During 2001 and 2002, Giuffre was gainfully employed at several jobs. She worked as a waitress at Mannino's Restaurant, at TGIFriday's restaurant ("CCI of Royal Palm Inc."), and at Roadhouse Grill. She also was employed at Courtyard Animal Hospital ("Marc Pinkwasser DVM").

Giuffre has denied the statement and noted that in 2001 and 2002 she attempted to go back to school to earn her GED, and tried unsuccessfully to hold down waitressing jobs. She earned \$212.00 as a waitress working "briefly" at Mannino's Restaurant and, in 2002, earned \$403.64 working at the TGIFriday's restaurant ("CCI of Royal Palm Beach") for a "short time period." She earned about \$1,247.90 at Roadhouse Grill until about March 2002, and at the Courtyard Animal Hospital ("Marc Pinkwasser DVM") she received payroll checks for weeks ending April 22, 2002 to June 4, 2002, earning a total of \$1,561.75. Not long after she lost her job at the Courtyard Animal Hospital, she was traveling with Maxwell to the Bahamas, Santa Fe, New Mexico, and New York.

45. Giuffre traveled to Thailand in September 2002 to receive formal training as a masseuse. Figueroa drove her to the

airport. While there, she initially contacted Figueroa frequently, incurring a phone bill of \$4,000. She then met Robert Giuffre while in Thailand and decided to marry him. She thereafter ceased all contact with Figueroa from October 2002 until two days before Figueroa's deposition in this matter in May 2016.

Giuffre admitted traveling to Thailand to receive massage training in September 2002 but noted that she was given an assignment from Maxwell and Epstein that she had to recruit another underage girl from Thailand, and bring that young girl back to Epstein. Giuffre stated that she was expected to return to Epstein and Maxwell upon completion of her massage training and assignment, and that instead she escaped to Australia where she remained in hiding from Maxwell and Epstein for several years.

46. Detective Joseph Recarey ("Recarey") investigated Epstein and failed to uncover any evidence that Maxwell was involved in sexual abuse of minors, sexual trafficking or production or possession of child pornography. Recarey served as the lead detective from the Palm Beach Police Department charged with investigating Epstein. That investigation commenced in

2005. Recarey worked only on the Epstein case for an entire year. He reviewed previous officers' reports and interviews, conducted numerous interviews of witnesses and alleged victims himself, reviewed surveillance footage of the Epstein home, participated in and had knowledge of the search warrant executed on the Epstein home, and testified regarding the case before the Florida state grand jury against Epstein.

Recarey's investigation revealed that not one of the alleged Epstein victims ever mentioned Maxwell's name and she was never considered a suspect by the Government. None of Epstein's alleged victims said they had seen Maxwell at Epstein's house, nor said they had been "recruited by her," nor paid any money by her, nor told what to wear or how to act by her. Indeed, none of Epstein's alleged victims ever reported to the Government they had met or spoken to Maxwell. Maxwell was not seen coming or going from the house during the law enforcement surveillance of Epstein's home. The arrest warrant did not mention Maxwell and her name was never mentioned before the grand jury. No property belonging to Maxwell, including "sex toys" or "child pornography," was seized from Epstein's home during execution of the search warrant. Recarey, when asked to describe "everything that you believe you know about Ghislaine

Maxwell's sexual trafficking conduct," replied, "I don't." He confirmed he has no knowledge about Maxwell sexually trafficking anybody. Recarey also has no knowledge of Giuffre's conduct that is subject of this lawsuit.

Giuffre has denied the statement and noted that Recarey wanted to speak to Maxwell, but she did not return his calls and he concluded that Maxwell's role was to procure girls for Epstein. Giuffre further noted that in the execution of the search warrant, stationary was found in the home bearing Maxwell's name, and notes were written by house staff to Maxwell and message pads uncovered in trash pulls revealing numerous calls left at the house for Maxwell, indicating she was staying in the house during the days when Epstein was engaging in illegal sex acts with minors. Giuffre further noted that a walk through video taken during the execution of the search warrant revealed photos of topless females at the home, including a photograph of Maxwell naked hanging in the home. Alfredo Rodriguez ("Rodriguez"), the house butler from 2004 through 2005, a time period that included daily sexual abuse of underage females, testified that Maxwell kept a list of the local girls who were giving massages at her desk, and that Maxwell kept nude photos of girls on her computer. Giuffre states that Recarey

testified that when the search warrant was executed, the house had been sanitized and the computers removed from the home.

Giuffre states that the co-conspirator who maintained direct contact with the many underage victims was Kellen, whose sole responsibility was to schedule underage girls to visit Epstein for sex and reported directly to Maxwell. Figueroa testified that Maxwell personally requested that he find and bring girls to Epstein for sex once Giuffre had escaped, and that when he brought the girls Maxwell interacted with them, that Maxwell was "the boss" and that she knew everything that was going on.

47. No nude photograph of Giuffre was displayed in Epstein's home. Epstein's housekeeper, Alessi, "never saw any photographs of Virginia Roberts [Giuffre] in Epstein's house." Recarey entered Epstein's home in 2002 to install security cameras to catch a thief and did not observe any "child pornography" within the home, including on Epstein's desk in his office.

Giuffre has denied this statement and noted that Maxwell had pornography on her computer, that there was a

collage of nude photos in Epstein's closet, that the collage was taken into evidence by Recarey, who testified to that fact in his deposition, that Rizzo, a visitor to the home on numerous occasions, was reprimanded by Maxwell for looking at the nude photos, and that the search warrant revealed photographs of nudity displayed, including a photograph of Maxwell herself in the nude. Sjorberg testified that Maxwell bought her a camera for the specific purpose of her taking nude photos of herself and Giuffre has testified that there was a nude photograph of her at the house.

48. Giuffre drafted a "journal" describing individuals to whom she claims she was sexually trafficked as well as her memories and thoughts about her experiences with Epstein. In 2013, she and her husband created a bonfire in her backyard in Florida and burned the journal together with other documents in her possession. Giuffre also kept a "dream journal" regarding her thoughts and memories that she possessed in January 2016. To date, Giuffre cannot locate the "dream journal."

49. Giuffre publicly peddled her story beginning in 2011. Giuffre granted journalist Churcher extensive interviews

that resulted in seven widely distributed articles from March 2011 through January 2015. Churcher regularly communicated with Giuffre and her "attorneys or other agents" from "early 2011" to "the present day." Giuffre received approximately \$160,000 for her stories and pictures that were published by many news organizations.

Giuffre has denied this statement in part and admitted it in part, noting that in 2011, Giuffre was still in hiding from Epstein and Maxwell in Australia and not looking to sell anything or even speak with anyone about what had happened to her. Churcher located Giuffre and impressed the importance of Giuffre standing up to those who had harmed her and speaking with federal authorities. Giuffre did so in 2011, bringing the abuse of Maxwell and Epstein to public light to prevent their continued abuse of others. Giuffre agreed to be interviewed by Churcher and was compensated for sharing her story, which came at the heavy price of being publicly scrutinized.

50. Giuffre drafted a 144-page purportedly autobiographical book manuscript in 2011 which she actively sought to publish. In 2011, contemporaneous with her Churcher interviews, Giuffre drafted a book manuscript which purported to

document Giuffre's experiences as a teenager in Florida, including her interactions with Epstein and Maxwell. Giuffre communicated with literary agents, ghost writers, and potential independent publishers in an effort to get her book published. She generated marketing materials and circulated those along with book chapters to numerous individuals associated with publishing and the media.

Giuffre has denied the statement in part and admitted it in part, stating that she received a Victim Notification Letter from the United States Attorney's office for the Southern District of Florida regarding her sexual victimization by Epstein, that in 2011 she sought psychological counseling from a psychologist for the trauma she endured, and that also that year Churcher sought her out and interviewed her. Giuffre was interviewed by the FBI in 2011. Giuffre has noted that she began to draft a fictionalized account of what happened to her as an act of empowerment and a way of reframing and taking control over the narrative of her past abuse that haunts her and, while she explored trying to publish her story to empower other individuals who were subject to abuse, she ultimately decided not to publish it.

51. The CVRA joinder motion filed by Giuffre generated a media maelstrom and spawned highly publicized litigation between Giuffre's lawyers – Bradley Edwards ("Edwards") and Paul Cassell ("Cassell") – and Dershowitz. After Giuffre publicly accused Dershowitz of sexual misconduct, Dershowitz vigorously defended himself in the media. He called Giuffre a liar and accused her lawyers of unethical conduct. In response, Edwards and Cassell sued Dershowitz, who counterclaimed. This litigation, in turn, caused additional media attention by national and international media organization.

Giuffre has denied the statement as set forth in Statement 7.

52. Giuffre formed non-profit Victims Refuse Silence to attract publicity and speak out on a public controversy. In 2014, Giuffre, with the assistance of the same counsel, formed a non-profit organization, Victims Refuse Silence. According to Giuffre, the purpose of the organization is to promote Giuffre's professed cause against sex slavery. The stated goal of her organization is to help survivors surmount the shame, silence, and intimidation typically experienced by victims of sexual

abuse. Giuffre attempts to promote Victims Refuse Silence at every opportunity. For example, Giuffre participated in an interview in New York with ABC to promote the charity and to get her mission out to the public.

Giuffre has denied that she formed the non-profit Victims Refuse Silence to "speak out on a public controversy," and noted she sought to help survivors of sexual abuse and sexual trafficking and in order to provide assistance to victims, she attempted to talk about the non-profit's mission when she had the opportunity to do so.

III. The Applicable Standard

Summary judgment is appropriate only where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "[T]he substantive law will identify which facts are material." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

A dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."

Id. The relevant inquiry on application for summary judgment is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 251-52. A court is not charged with weighing the evidence and determining its truth, but with determining whether there is a genuine issue for trial. *Westinghouse Elec. Corp. v. N.Y. City Transit Auth.*, 735 F. Supp. 1205, 1212 (S.D.N.Y. 1990) (quoting *Anderson*, 477 U.S. at 249). “[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Anderson*, 477 U.S. at 247-48 (emphasis in original).

While the moving party bears the initial burden of showing that no genuine issue of material fact exists, *Atl. Mut. Ins. Co. v. CSX Lines, L.L.C.*, 432 F.3d 428, 433 (2d Cir. 2005), in cases where the non-moving party bears the burden of persuasion at trial, “the burden on the moving party may be discharged by ‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). “It is ordinarily sufficient for the movant to point

to a lack of evidence . . . on an essential element of the non-movant's claim [T]he nonmoving party must [then] come forward with admissible evidence sufficient to raise a genuine issue of fact for trial" *Jaramillo v. Weyerhaeuser Co.*, 536 F.3d 140, 145 (2d Cir. 2008) (internal citations omitted); see also *Goenaga v. March of Dimes Birth Defects Found.*, 51 F.3d 14, 18 (2d Cir. 1995) ("Once the moving party has made a properly supported showing sufficient to suggest the absence of any genuine issue as to a material fact, the nonmoving party ... must come forward with evidence that would be sufficient to support a jury verdict in his favor").

IV. The Motion for Summary Judgment on Republication Grounds is Denied

Maxwell has moved for summary judgment dismissing Giuffre's complaint on the grounds that Maxwell is not liable for the republication of her Press Release by the media. Because as a matter of law the issuer of a press release is responsible for its publication, the motion is denied.

In New York, liability for a republication "must be based on real authority to influence the final product." *Davis*

v. Costa-Gavras, 580 F. Supp. 1082, 1096 (S.D.N.Y. 1984); see also *Hoffman v. Landers*, 146 A.D.2d 744, 747 (N.Y. App. Div. 2d Dep't 1989) ("One who makes a defamatory statement is not responsible for its recommunication without his authority or request by another over whom he has no control."). Where a defendant "had no actual part in composing or publishing," he cannot be held liable "without disregarding the settled rule of law that no man is bound for the tortious act of another over whom he has not a master's power of control." *Davis*, 580 F. Supp. at 1096 (internal quotation marks and citation omitted). The New York Court of Appeals summarized New York's republication liability standard in *Geraci v. Probst*, 938 N.E.2d 917 (N.Y. 2010), stating that

one who . . . prints and publishes a libel[] is not responsible for its voluntary and unjustifiable repetition, without his authority or request, by others over whom he has no control and who thereby make themselves liable to the person injured, and that such repetition cannot be considered in law a necessary, natural and probable consequence of the original slander or libel.

938 N.E.2d at 921 (internal quotation marks and citation omitted). Thus, "conclusive evidence of lack of actual authority [is] sufficiently dispositive that the [court] 'ha[s] no option but to dismiss the case'" *Davis*, 580 F. Supp. at 1096

(quoting *Rinaldi v. Viking Penguin, Inc.*, 420 N.E.2d 377, 382 (N.Y. 1981)).

However, New York law assigns liability to individuals for the media's publication of press releases. New York appellate courts have held that an individual is liable for the media publishing that individual's defamatory press release. See *Levy v. Smith*, 132 A.D.3d 961, 962-63 (N.Y. App. Div. 2d Dep't 2015) ("Generally, [o]ne who makes a defamatory statement is not responsible for its recommunication without his authority or request by another over whom he has no control Here, however, . . . the appellant intended and authorized the republication of the allegedly defamatory content of the press releases in the news articles."); see also RESTATEMENT (SECOND) OF TORTS § 576 (1977) ("The publication of a libel or slander is a legal cause of any special harm resulting from its repetition by a third person if . . . the repetition was authorized or intended by the original defamer, or . . . the repetition was reasonably to be expected.")

The facts as set forth above establish that Maxwell approved the Press Release. The Press Release was sent to between six and 30 media representatives by Gow as an employee

of Acuity Reputation, the public relations firm hired by Maxwell. The initial sentence of the Press Release - "Please find attached a quotable statement on behalf of Maxwell" - communicates Maxwell's authorization for the media recipients of the Press Release to publish it. See *Nat'l Puerto Rican Day Parade, Inc. v. Casa Pubs., Inc.*, 79 A.D.3d 592, 595 (N.Y. App. Div. 1st Dep't 2010) (affirming the refusal to dismiss defamation counts against a defendant who "submitted an open letter that was published in [a] newspaper, and that [the defendant] paid to have the open letter published," finding that the defendant "authorized [the newspaper] to recommunicate his statements.").

Maxwell has cited *Geraci v. Probst* in support of her position, but *Geraci* is distinguishable from the instant action. In *Geraci*, the defendant sent a letter to the Board of Fire Commissioners, and, more than three years later, a newspaper published the letter. The court held that the defendant was not liable for that belated publication, "made years later without his knowledge or participation." 938 N.E.2d at 919. Here, unlike in *Geraci*, the Press Release was not published "without [her] authority or request," but rather with Maxwell's authority and

by her express request. Gow's testimony establishes Maxwell's authority and control over the Press Release:

Q. When you sent that email were you acting pursuant to Ms. Maxwell's retention of your services?

A. Yes, I was

Q. The subject line does have "FW" which to me indicates it's a forward. Do you know where the rest of this email chain is?

A. My understanding of this is: It was a holiday in the UK, but Mr. Barden was not necessarily accessible at some point in time, so this had been sent to him originally by Ms. Maxwell, and because he was unavailable, she forwarded it to me for immediate action. I therefore respond, "Okay, Ghislaine, I'll go with this."

It is my understanding that this is the agreed statement because the subject of the second one is "Urgent, this is the statement" so I take that as an instruction to send it out, as a positive command: "This is the statement."

Maxwell also cites *Davis v. Costa-Gavras*, involving a libel claim against an author who wrote a book about a military coup in Chile. 580 F. Supp. at 1085. Years after the author published the book, a third-party publishing house republished the book in paperback form and a third-party filmmaker released a movie based on the book. The book author did not actually participate in the republications, though he was aware of the

projects. The court held that the author of the book could not be held liable for the republications, explaining that a "party who is 'innocent of all complicity' in the publication of a libel cannot be held accountable." 580 F. Supp. at 1094 (internal citations omitted). The court further noted that "active participation in implementing the republication resurrects the liability." *Id.* Likewise, in *Karaduman v. Newsday, Inc.*, 416 N.E.2d 557 (1980), also cited by Maxwell, the court held that reporters of a series of articles on narcotics trade "cannot be held personally liable for injuries arising from [the] subsequent republication in book form absent a showing that they approved or participated in some other manner in the activities of the third-party republisher." *Id.* at 559-560. However, the court explicitly noted that this result was required because "the record [wa]s barren of any concrete evidence of the reporters' involvement in the republication of the newspaper series." *Id.* at 540.

Here, there is evidence in the record that Maxwell "actively participated" in influencing the media to publish the Press Release, *Davis*, 580 F. Supp. at 1094, and "approved" of and sought the publication of the press release, *Karaduman*, 416 N.E.2d at 560. Maxwell retained a public relations media

specialist. The Press Release was sent by Maxwell's express request. Gow's testimony about the process leading up to the dissemination of the Press Release indicates that Maxwell did, indeed, "authorize or intend" for the media recipients to publish the statement. Because there are sufficient facts to demonstrate Maxwell's authority and control over the publication of the Press Release, Maxwell's liability for the Press Release's publication survives the motion for summary judgment.

Maxwell has additionally asserted that subjecting her to liability for republication is "particularly unfair" because excerpts of the Press Release, rather than the whole statement, were published. Def.'s Reply at 9. Maxwell cites to *Rand v. New York Times Co.*, 75 A.D.2d 417 (N.Y. App. Div. 1st Dep't 1980), in which a newspaper paraphrased the defendant's opinion, essentially "excis[ing] the opinion from the context in which it was given." *Id.* at 424. No similar alteration, sanitization, hyperbolizing, or paraphrasing of Maxwell's statements has been established here. Nor does the record establish that any statements of Maxwell's were taken out of context; rather, they were directly quoted, accurately and unchanged. The publication of Maxwell's statement that Giuffre's claims are "obvious lies"

does not distort or misrepresent the message Maxwell intended to convey to the public with the Press Release.

Because the purpose of the issuance of the Press Release was publication, Maxwell is liable for its content and the motion for summary judgment on the grounds of non-liability for republication is denied.

V. The Motion for Summary Judgment to Dismiss the Defamation Claim on the Ground of Substantial Truth is Denied

Maxwell has asserted that the Press Release is substantially true and that the defamation claim should therefore be dismissed. See Def.'s Br. at 39. Whether or not Giuffre lied about Maxwell's involvement in the events that Giuffre has alleged took place is the intensely contested factual issue that is the foundation of this action. Accordingly, summary judgment is not appropriate. See *Mitre Sports Intern. Ltd. v. Home Box Office, Inc.*, 22 F. Supp. 3d 240, 255 (S.D.N.Y. 2014) (denying summary judgment because it would require the Court to decide disputed facts to determine whether the statement at issue was substantially true); *Da Silva v. Time Inc.*, 908 F. Supp. 184, 187 (S.D.N.Y. 1995) (denying motion for summary judgment because there was a genuine issue of

material fact as to whether defamatory photo and caption were true).

Under New York law, "truth is an absolute, unqualified defense to a civil defamation action" and "'substantial truth' suffices to defeat a charge of libel." *Jewell v. NYP Holdings, Inc.*, 23 F. Supp. 2d 348, 366 (S.D.N.Y. 1998) (internal quotation marks and citations omitted). A statement is substantially true if the statement would not "have a different effect on the mind of the reader from that which the pleaded truth would have produced." *Id.* (quoting *Fleckenstein v. Friedman*, 193 N.E. 537, 538 (N.Y. 1934)). Thus, "it is not necessary to demonstrate complete accuracy to defeat a charge of libel. It is only necessary that the gist or substance of the challenged statements be true." *Printers II, Inc. v. Professionals Publishing, Inc.*, 784 F.2d 141, 146 (2d Cir. 1986); see also *Korkala v. W.W. Norton & Co.*, 618 F.Supp. 152, 155 (S.D.N.Y. 1985) ("Slight inaccuracies of expression are immaterial provided that the defamatory charge is true in substance.") (internal quotation marks and citation omitted); *Sharon v. Time, Inc.*, 609 F.Supp. 1291, 1294 (S.D.N.Y. 1984) ("Defendant is permitted to prove the substantial truth of this statement by establishing any other proposition that has the

same 'gist' or 'sting' as the original libel, that is, the same effect on the mind of the reader.").

The Honorable Loretta A. Preska has noted that cases addressing whether a statement is substantially true "fall along a broad spectrum." *Jewell*, 23 F. Supp. at 367. There are cases in which a statement is non-actionable because it is completely true. See, e.g., *Carter*, 233 A.D.2d 473, 474 (N.Y. App. Div. 2d Dep't 1996) (claim that defendant committed libel by informing the authorities that plaintiff was endorsing checks made payable to the defendant and depositing them in plaintiff's account held non-actionable where plaintiff had in fact endorsed checks made payable to the defendant). There are cases where "one struggles to identify any area of ambiguity as to truth." *Jewell*, 23 F. Supp. at 368; see, e.g., *Miller v. Journal-News*, 211 A.D.2d 626, 627 (N.Y. App. Div. 2d Dep't 1995) (statement that plaintiff was "suspended" substantially true where plaintiff was placed on "administrative leave"). There are cases where the line between the statement and the admitted truth is more tenuous, but the overall "gist" cannot be said to be substantially different. See, e.g., *Guccione v. Hustler Magazine, Inc.*, 800 F.2d 298, 302-03 (2d Cir. 1986) (holding that statement which implied that plaintiff was then currently an adulterer was substantially true

where plaintiff had ceased being an adulterer but had "unabashedly committed adultery" for thirteen of seventeen years). Finally, there are "those cases in which a defendant simply asks too much in asserting that a statement is substantially true because the difference between the two is plainly substantial." *Jewell*, 23 F. Supp. at 368. For example, the court in *Da Silva*, 908 F. Supp. at 186-87, held that a photograph of plaintiff which identified her as a prostitute was not substantially true where the plaintiff had been a prostitute for some six years but was not at the time of publication.

After reviewing this spectrum of cases, the facts upon which Maxwell bases her argument are insufficient to allow this Court to find substantial truth as a matter of law. A material dispute of fact exists as to the "admitted truth" or the "reality" in this case. Maxwell has cited to various facts to counter Giuffre's claims, such as Giuffre's high school enrollment, short-term jobs, and lack of record on private flight logs during some of the relevant time period, as evidence that Maxwell and Epstein did not abuse Giuffre. The details and significance of the facts offered are highly contested, and therefore cannot establish the "substantial truth" of the Press Release. "[R]easonable jurors could conclude that the statements

. . . are not substantially true." *Boehner v. Heise*, 734 F. Supp. 2d 389, 399 (S.D.N.Y. 2010).

The motion for summary judgment to dismiss the defamation on the ground of substantial truth is denied as not having been established by undisputed material facts.

VI. The Defamation Claim is Not Barred by New York Law

Maxwell has moved to dismiss the complaint on the ground that the Press Release is opinion and protected by the pre-litigation privilege under New York law. Because New York law does not support Maxwell's position, the motion for summary judgment based on the characterization of the Press Release as opinion and as protected by a pre-litigation privilege is denied.

1. The Press Release is Not Opinion.

As previously held, Maxwell's statement that Giuffre's claims of sexual assault are lies is not an expression of opinion:

First, statements that Giuffre's claims 'against [Maxwell] are untrue,' have been 'shown to be untrue,' and are 'obvious lies' have a specific and readily understood factual meaning: that Giuffre is not telling the truth about her history of sexual abuse and [Maxwell]'s role, and that some verifiable investigation has occurred and come to a definitive conclusion proving that fact. Second, these statements (as they themselves allege), are capable of being proven true or false, and therefore constitute actionable fact and not opinion. Third, in their full context, while [Maxwell]'s statements have the effect of generally denying Giuffre's story, they also clearly constitute fact to the reader.

Giuffre v. Maxwell, 165 F. Supp. 3d 147, 152 (S.D.N.Y. 2016).

This Court further concluded that

[Giuffre] cannot be making claims shown to be untrue that are obvious lies without being a liar. Furthermore, to suggest an individual is not telling the truth about her history of having been sexually assaulted as a minor constitutes more than a general denial, it alleges something deeply disturbing about the character of an individual willing to be publicly dishonest about such a reprehensible crime. [Maxwell]'s statements clearly imply that the denials are based on facts separate and contradictory to those that [Giuffre] has alleged.

Id.

Maxwell argues that the "context" of the entire statement "tested against the understanding of the average reader" should be that of a press release as a whole being read only by journalists. Def.'s Br. at 22 (quoting *Aronson v. Wiersma*, 483 N.E.2d 1138, 1139 (1985)). However, the ultimate

audience for a press release is the public. The motion to dismiss opinion clearly addressed this issue:

Sexual assault of a minor is a clear-cut issue; either transgression occurred or it did not. Either Maxwell was involved or she was not. The issue is not a matter of opinion, and there cannot be differing understandings of the same facts that justify diametrically opposed opinion as to whether Maxwell was involved in Giuffre's abuse as Giuffre has claimed. Either Giuffre is telling the truth about her story and Maxwell's involvement, or Maxwell is telling the truth and she was not involved in the trafficking and ultimate abuse of Giuffre.

Giuffre, 165 F. Supp. at 152.

Maxwell has urged that these conclusions at the motion to dismiss stage should be revisited and revised when considering the summary judgment motion since the standard for deciding a Rule 12(b)(6) motion is different from the standard for deciding a Rule 56 motion. In deciding a 12(b)(6) motion, the court must accept as true the factual allegations and draw all inferences in the plaintiff's favor; a plaintiff need only state a claim that is "plausible on its face." *Id.* at 149 (internal quotation marks and citation omitted). In contrast, for a Rule 56 motion, the plaintiff defending the motion may not "rest on [the] allegations" in her complaint. *Anderson*, 477 U.S. at 249.

In deciding its motion to dismiss opinion, the Court relied on *Davis v. Boenheim*, 22 N.E.3d 999 (2014), and held that the three allegedly defamatory statements in the Press Release have a specific and readily understood factual meaning, are capable of being proven true or false, and "clearly constitute fact to the reader." *Giuffre*, 165 F. Supp. at 152. The Court determined that "[t]he dispositive inquiry" for purposes of deciding whether an allegedly defamatory statement is fact or nonactionable opinion is whether "a reasonable reader could have concluded that the statements were conveying facts about the plaintiff." *Id.* at 151 (internal quotation marks and citation omitted). To answer that inquiry, three factors enumerated in *Davis* were applied. See *id.* These three factors are the same as the four factors in *Immuno AG v. Moor-Jankowski*, 567 N.E.2d 1270 (N.Y. 1991); the difference is that the *Davis* court collapsed the *Immuno AG's* third and fourth factors into one. See *Davis*, 22 N.E.3d at 1005. "[T]he critical aspect of the inquiry, as articulated in the third factor set forth above, is to view the statements in context." *Jewell*, 23 F. Supp. 2d at 377. This contextual analysis "proceeds on two levels, the 'broader social setting' of the statements, as well as their 'immediate context.'" *Id.* (citing *Immuno*, 567 N.E.2d at 1280).

Maxwell acknowledges that the Court properly applied *Davis* at the motion to dismiss stage, but argues that the third factor, especially, benefits from the evidence presented in the motion for summary judgment. See Def.'s Br. at 32. In other words, Maxwell argues that "the Court did not have the 'full context'" of the Press Release or the "broader social context and surrounding circumstances of the statement." *Id.* At the motion to dismiss stage, the text of the Press Release had not yet been produced, nor had there been production of emails or deposition testimony regarding the Press Release.

The developed record necessitates the same conclusion as at the motion to dismiss stage. The context and surrounding circumstances remain the same. The publication was intended by Maxwell to reach the average reader, not simply the reporters, Barden's intent, a factual issue in contest, notwithstanding. The issue of truth or falsity is a factual determination, not a matter of opinion. See *Giuffre*, 165 F. Supp. 3d at 152 ("[S]tatements that Giuffre's claims 'against [Maxwell] are untrue,' have been 'shown to be untrue,' and are 'obvious lies' have a specific and readily understood factual meaning.").

2. *The Pre-Litigation Privilege is Inapplicable.*

Maxwell has contended that the pre-litigation privilege as enunciated in *Front, Inc. v. Khalil*, 28 N.E.3d 15, 16 (N.Y. 2015), applies. See Def.'s Br. at 33.

"A privileged communication is one which, but for the occasion on which it is uttered, would be defamatory and actionable." *Park Knoll Assocs. v. Schmidt*, 451 N.E.2d 182, 184 (N.Y. 1983). "[I]t is well-settled that statements made in the course of litigation are entitled to absolute privilege." *Front*, 28 N.E.3d at 18. The privilege that protects statements made in the course of litigation "can extend to preliminary or investigative stages of the process, particularly where compelling public interests are at stake." *Rosenberg v. MetLife, Inc.*, 866 N.E.3d 439, 443 (N.Y. 2007). In *Front*, the New York Court of Appeals ruled that the privilege for "statements made by attorneys prior to the commencement of litigation" is qualified rather than absolute. *Id.* at 16. Specifically, the Court held that an attorney's statements made before litigation has commenced are privileged if (1) the attorney has "a good faith basis to anticipate litigation" and (2) the statements are "pertinent to that anticipated litigation." *Id.* at 20.

The anticipated litigation, according to the Press Release, was "redress at the repetition of such old defamatory claims." See Press Release. According to Barden, Maxwell's lawyer, he participated in the preparation of the Press Release, the purpose of the Press Release was to dissuade the media from publishing Giuffre's allegations, and the implication of the Press Release was that any redress sought by Maxwell would be against the media. Giuffre has disputed Barden's claim that the Press Release was his own statement.

Certain of the cases cited by Maxwell in support of the privilege can be distinguished, according to Giuffre, in that they involve communications to or from parties to the ultimate litigation. See, e.g., *Kirk v. Heppt*, 532 F. Supp. 2d 586, 593 (S.D.N.Y. 2008) (the communication at issue was made by an attorney's client to the attorney's malpractice carrier concerning the client's justiciable controversy against the attorney over which the clients actually sued); *Black v. Green Harbour Homeowners' Ass'n, Inc.*, 19 A.D.3d 962, 963 (N.Y. App. Div. 3d Dep't 2005) (privilege applied to a letter sent by a home owner's association board of directors to the association's members informing them of the status of litigation to which the

association was a party). Giuffre contends that "there was no statement made by anyone before the commencement of litigation because litigation never commenced." See Pl.'s Opp'n at 42.

Here, the communication at issue was sent to members of the media, and no litigation took place between Maxwell and the media recipients of the Press Release.

However, the pre-litigation privilege is not limited to statements between parties and their lawyers. "While the communications at issue in *Front* were among lawyers and potential parties, the New York Court of Appeals did not explicitly require the recipient of the challenged statements to be a lawyer or potential party." *Feist v. Paxfire, Inc.*, No. 11 CIV. 5436 (LGS), 2017 WL 177652, at *5 (S.D.N.Y. Jan. 17, 2017); see *Front*, 28 N.E.3d at 16-17. The Second Circuit "summarily rejected this interpretation when it applied *Front* to an attorney's communications to the press." See *Tacopina v. O'Keefe*, 645 F. App'x 7, 8 (2d Cir. 2016) ("Even crediting [the plaintiff]'s allegation that [the attorney] shared the affidavit with the Daily News before filing it in court, Tacopina has still not sustained his burden of showing that the statements were not pertinent to a good faith anticipated litigation.").

Though a statement made to a non-party may be privileged, the pre-litigation privilege does not apply here because the Press Release cannot be considered a "statement[] made by [an] attorney." *Front*, 28 N.E.3d at 16. Whether Maxwell's attorney, Barden, had a hand in drafting the Press Release, and the extent to which he may have been involved, is a disputed issue of fact. The record evidence establishes that, regardless, the Press Release is properly attributable to Maxwell. Maxwell retained a public relations firm and sent her representative there, Gow, a forwarded email with the statements that were to be used in the Press Release. Maxwell instructed Gow to send it, as he testified in his deposition. While Maxwell herself did not disseminate the email to the media recipients, neither did Barden. The statement was sent out by Gow.

Additionally, the alleged defamatory statements in the Press Release were attributed to Maxwell, and not to her attorney or his agents. The email stated that the Press Release was a "statement on behalf of" Maxwell and notified the media recipients that "[n]o further communication will be provided by her [Maxwell] on this matter." There is no evidence in the email

that the Press Release was anything near an attorney's statement; Barden was not even copied on the email.

The pre-litigation privilege is intended to protect attorneys from defamations claims "so that those discharging a public function may speak freely to zealously represent their clients without fear of reprisal or financial hazard." *Id.* at 18. Where the statement cannot be attributed to an attorney, there is no justification for protecting it by privilege.

In addition, as this Court concluded in denying Maxwell's motion to dismiss, "[t]here is no qualified privilege under New York law when such statements are spoken with malice, knowledge of their falsity, or reckless disregard for their truth." *Giuffre*, 165 F. Supp. 3d at 155 (internal quotation marks and citation omitted). It is Giuffre's contention that Maxwell knew the statements were false because she engaged in and facilitated the sexual abuse of Giuffre. Therefore, according to Giuffre, they were not made in good faith anticipation of litigation, and instead were made for the inappropriate purpose of "bully[ing]," "harassment]," and "intimid[ation]." See *Front*, 28 N.E.3d at 19 (2015). According to Giuffre, there is ample record evidence that Maxwell acted

with malice in issuing the Press Release, thereby making the pre-litigation privilege inapplicable.

Because of the existence of triable issues of material fact rather than opinion and because the pre-litigation privilege is inapplicable, the motion for summary judgment is denied.


VII. Conclusion

For the reasons set forth above, the motion for summary judgment is denied.

The parties are directed to jointly file a proposed redacted version of this Opinion consistent with the Protective Order or notify the Court that none are necessary within one week of the date of receipt of this Opinion.

It is so ordered.

New York, NY
March 27, 2017



ROBERT W. SWEET
U.S.D.J.

EXHIBIT NN

United States District Court
Southern District Of New York

-----X

Virginia L. Giuffre,

Plaintiff,

v.

15-cv-07433-RWS

Ghislaine Maxwell,

Defendant.

-----X

**DEFENDANT GHISLAINE MAXWELL'S
INITIAL F.R.C.P. 26(a)(1)(A) DISCLOSURES**

Pursuant to F.R.C.P. 26(a)(1)(A), Defendant Ghislaine Maxwell makes the following disclosures:

**I. IDENTITIES OF INDIVIDUALS LIKELY TO HAVE DISCOVERABLE
INFORMATION RELEVANT TO DISPUTED FACTS ALLEGED WITH
PARTICULARITY IN THE PLEADINGS**

1. Ghislaine Maxwell
c/o Laura A. Menninger, Esq.
Haddon, Morgan & Foreman, P.C.
150 E. 10th Ave.
Denver, CO 80203
303-831-7364
LMenninger@HMFLaw.com

Ms. Maxwell is the Defendant and may have knowledge concerning matters at issue, including the events of 1999-2002 and the publication of statements in the press in 2011-2015.

2. Virginia Lee Roberts Giuffre
c/o Sigrid S. McCawley, Esq.
Boies, Schiller & Flexner LLP
401 East Las Olas Boulevard, Suite 1200

Miami, Florida 33301
(954) 356-0011
smccawley@bsflp.com

Ms. Giuffre is the Plaintiff and has knowledge concerning the matters at issue in her Complaint, including the events of 1996-2015 and the publication of statements in the press in 2011-2015.

3. Philip Barden
Devonshires Solicitors LLP
30 Finsbury Circus
London, United Kingdom
EC2M 7DT
DX: 33856 Finsbury Square
(020) 7628-7576
Philip.Barden@devonshires.co.uk

Mr. Barden has knowledge concerning press statements by Plaintiff and Defendant in 2011-2015 at issue in this matter.

4. Paul Cassell
College of Law, University of Utah
383 South University Street
Salt Lake City, UT 84112
801-585-5202
paul.cassell@law.utah.edu

Mr. Cassell has knowledge concerning press statements by Plaintiff, Plaintiff's court pleadings, and Plaintiff's sworn testimony.

5. Alan Dershowitz
c/o Richard A. Simpson, Esq.
WILEY REIN, LLP
1776 K Street NW
Washington, D.C. 20006
(202) 719-7000

Mr. Dershowitz has knowledge concerning Plaintiff's false statements to the press, in court pleadings, and in sworn testimony, at issue in this matter.

6. Bradley Edwards
Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.
425 N. Andrews Ave., Suite 2
Ft. Lauderdale, FL 33301
(954) 524-2820
brad@pathtojustice.com

Dated: February 24, 2016.

Respectfully submitted,

s/ Laura A. Menninger

Laura A. Menninger (LM-1374)
HADDON, MORGAN AND FOREMAN, P.C.
150 East 10th Avenue
Denver, CO 80203
Phone: 303.831.7364
Fax: 303.832.2628
lmenninger@hmflaw.com

Attorney for Ghislaine Maxwell

CERTIFICATE OF SERVICE

I certify that on February 24, 2016, I electronically served this *DEFENDANT GHISLAINE MAXWELL'S INITIAL F.R.C.P. 26(A)(1) DISCLOSURES* via e-mail on the following:

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

s/ Laura A. Menninger

Laura A. Menninger

EXHIBIT OO

To: Sharon.Churcher@mailonsunday.co.uk [Sharon.Churcher@mailonsunday.co.uk]
 From: Virginia Giuffre
 Sent: Thur 5/12/2011 2:21:43 AM
 Importance: Normal
 Subject: Re: Good News!!
 Received: Thur 5/12/2011 2:21:43 AM

Thanks again Shazza, I'm bringing down the house with this book!!!
 xoxo Jenna

--- On Wed, 11/5/11, Sharon.Churcher@mailonsunday.co.uk <Sharon.Churcher@mailonsunday.co.uk> wrote:

From: Sharon.Churcher@mailonsunday.co.uk <Sharon.Churcher@mailonsunday.co.uk>
 Subject: Re: Good News!!
 To: "Virginia Giuffre" <[REDACTED]>
 Received: Wednesday, 11 May, 2011, 4:17 PM

Don't forget Alan Dershowitz. JE's buddy and lawyer. good name for your pitch as he repped Claus von Bulow and a movie was made about that case...title was Reversal of Fortune. We all suspect Alan is a pedo and tho no proof of that, you probably met him when he was hanging out w JE.

----->
 From: |
 ----->
 >
 |Virginia Giuffre [REDACTED] |
 ----->
 ----->
 To: |
 ----->
 >
 |Sharon Churcher |
 ----->
 ----->
 Date: |
 ----->
 >
 |10/05/2011 23:00 GDT |
 ----->
 ----->
 Subject: |
 ----->
 >
 |Good News!! |
 ----->

----->
 |Hi Sharon, |
 |
 |Hello gorgeous, I hope this message comes to you on a bright, sunny day!!!
 |I took your advice about what to offer Sandra and she accepted. Were |
 |drawing up a contract through her agent right now and getting busy to meet|

my deadline. Just wondering if you have any information on you from when
you and I were doing interviews about the J.E story. I wanted to put the
names of some of these assholes, oops, I meant to say, pedo's, that J.E
sent me to. With everything going on my brain feels like mush and it would
be a great deal of help!
Having fun sweetie?

Thanks,
Jenna

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Registered No 84121 England.

To: Sharon Churcher [Sharon.Churcher@mailonsunday.co.uk]
 From: Virginia Giuffre
 Sent: Wed 6/8/2011 11:19:55 PM
 Importance: Normal
 Subject: Re: Virginia Roberts
 Received: Wed 6/8/2011 11:19:55 PM

Hi Buddy,

You are absolutely right...nail biting is an understatement of the century!!!
 We didn't have any trouble with spiders or anything like that yesterday, it was more my daughter that gave everyone a spook! She wandered off when I turned my back to look at homemade jam and found her outside in the bush chasing the roo's!! My own miniature Tarzan!!!

My fingers and toes are crossed and I'm thinking positive!!!

Much Love,
 Jenna

--- On Wed, 8/6/11, Sharon Churcher <Sharon.Churcher@mailonsunday.co.uk> wrote:

From: Sharon Churcher <Sharon.Churcher@mailonsunday.co.uk>
 Subject: Re: Virginia Roberts
 To: "[REDACTED]"
 Received: Wednesday, 8 June, 2011, 11:59 AM

Roo's. You lucky things -- but did you have to duck under spider webs? They were strung between trees when I went.

Re Jarred: it is a nailbiting wait but remember he is only one agent. He was keen to see it which is good. If he doesn't go for it, there are others. Different tastes. When did you send it?

Sharon
 XC00

From: Virginia Giuffre [REDACTED]
 Sent: Wednesday, June 08, 2011 07:27 AM
 To: Sharon Churcher
 Subject: Re: Virginia Roberts

Dearest Shazza,
 Once again you have really outdone yourself...MANY, MANY, THANKS!!!

I took the kids to the Australian Walkabout Park today and enjoyed the scenic walks and many kangaroos. Rob and I had good chuckle about our adventures at the Reptile Park with you and Mike ...good times!!! Have you heard from Mike? I hope he is well and if you ever speak, tell him I sent a BIG hello.

I really appreciate everything you have helped with, as a friend you have gone beyond the call of duty!!!

I hope we hear back from Jarred soon!!

xoxoxo Jenna

--- On Wed, 8/6/11, Sharon Churcher <Sharon.Churcher@mailonsunday.co.uk> wrote:

From: Sharon Churcher <Sharon.Churcher@mailonsunday.co.uk>
 Subject: Virginia Roberts
 To: "jarred halperin agent (jarred@objectivecent.com)" <jarred@objectivecent.com>
 Cc: "Virginia Giuffre" <[REDACTED]>
 Received: Wednesday, 8 June, 2011, 2:31 AM

Hi Jarred

Hopefully you have Virginia's book pitch by now.

She has some amazing names which she can share with you in confidence and I think she also has a human interest story that could appeal to the Oprah/female set as well as the Wall Streeters who follow Epstein – a hedge fund king.

Here are a few of our stories about Virginia, plus some examples of the massive US and other international media pickup. Vanity Fair are doing a piece I believe in their August issue. The FBI have reopened the Epstein case due to Virginia's revelations. I also am attaching a link to a NY Magazine profile of Epstein.....written before his world combusted. The FBI believe he was essentially running a private – and mobile -- brothel for some of the world's richest and most influential men.

He got off the first time round after retaining Kenneth Starr (who witchhunted Bill Clinton) and Alan Dershowitz (von Bulow's appeal lawyer, who inspired the movie Reversal of Fortune). The US Justice Dept is investigating corruption allegations against at least one prosecutor involved in the case.

Best regards,

Sharon

<http://www.dailymail.co.uk/news/article-1361039/Prince-Andrew-girl-17-sex-offender-friend-flew-Britain-meet-him.html>

<http://www.dailymail.co.uk/news/article-1363452/Bill-Clinton-15-year-old-masseuse-I-met-twice-claims-Epsteins-girl.html>

http://www.nypost.com/p/news/local/manhattan/pervy_mogul_lent_me_out_BaV1rcQq9ADFIQXewy0J

http://blogs.villagevoice.com/runninscared/2011/06/virginia_robert.php

<http://billionaires.forbes.com/article/03rxqf12IP9nv> (This one, in Forbes Magazine, seems to require subscribing but you get the gist)

<http://www.telegraph.co.uk/news/uknews/theroyalfamily/8362690/Prince-Andrew.html>

<http://www.dailytelegraph.com.au/news/the-prince-a-paedophile-and-the-sex-slave-teen/story-e6fre.rv9-1226013783994>

http://nymag.com/nymetro/news/people/n_7912/

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EXHIBIT PP

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 15-cv-07433-RWS

CONFIDENTIAL VIDEO DEPOSITION OF
VIRGINIA GIUFFRE, VOLUME II

November 14, 2016

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

APPEARANCES:

BOIES, SCHILLER & FLEXNER LLP
By Sigrid S. McCawley, Esq.
401 East Las Olas Boulevard
Suite 1200
Fort Lauderdale, FL 33301
Phone: 954.356.0011
smccawley@bsfllp.com
Appearing on behalf of the Plaintiff

1 APPEARANCES: (Continued)

2 HADDON, MORGAN AND FORMAN, P.C.

By Laura Menninger, Esq.

3 Jeffrey S. Pagliuca, Esq.

150 East 10th Avenue

4 Denver, CO 80203

Phone: 303.831.7364

5 lmenninger@hmflaw.com

jpagliuca@hmflaw.com

6 Appearing on behalf of the

Defendant

7
Also Present:

8 Ann Lundberg, Paralegal

Maryvonne Tompkins, Videographer

1 Pursuant to Notice and the Federal Rules
2 of Civil Procedure, the continued video
3 deposition of VIRGINIA GIUFFRE, called by Defendant,
4 was taken on Monday, November 14, 2016, commencing at
5 8:04 a.m., at 150 East 10th Avenue, Denver, Colorado,
6 before Pamela J. Hansen, Registered Professional
7 Reporter, Certified Realtime Reporter and Notary
8 Public within Colorado.

9
10 * * * * *

I N D E X

11 VIDEO DEPOSITION OF VIRGINIA GIUFFRE, VOLUME II

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1 didn't see them take pictures of the backs of them.

2 I'm not too sure who.

3 Q You don't remember sending to them a
4 photograph that included this wood around another
5 photograph?

6 A No.

7 Q Okay. You have mentioned a journalist by
8 the name of Sharon Churcher.

9 A Yes.

10 Q You are aware that Sharon Churcher
11 published news stories about you?

12 A Yes.

13 MS. MCCAWLEY: Objection.

14 Go ahead.

15 Q (BY MS. MENNINGER) Is anything that you
16 have read in Sharon Churcher's news stories about you
17 untrue?

18 A I think Sharon did print some things that
19 I think she elaborated or maybe misheard. But, I
20 mean, if you have a specific document to show me, I'd
21 love to look at it and read it and tell you what I
22 think.

23 Q Is there anything, as you sit here today,
24 that you know of that Sharon Churcher printed about
25 you that is not true?

1 A Not off the top of my head. If you show
2 me, like, a news clipping article or something, I can
3 definitely read it for you.

4 Q Is there anything that you know of that
5 Sharon Churcher has printed about Ghislaine Maxwell
6 that is not true?

7 A No, not off -- no, not off the top of my
8 head.

9 Q Is there anything that you recall saying
10 to Sharon Churcher that she then printed something
11 different than what you had said to her?

12 A Yeah, I've read stuff. I mean, I just --
13 I can't remember what, but I read something that I
14 think was, Oh, she got that wrong. I can't remember
15 an exact example off the top of my head.

16 Q Did you ever complain to Sharon Churcher
17 about things that she got wrong?

18 A I didn't see a point. I might have, but
19 I -- I didn't see a point really because it's already
20 printed, you know.

21 Q You had a fairly voluminous set of
22 communications with Sharon Churcher by e-mail,
23 correct?

24 MS. MCCAWLEY: Objection.

25 A Voluminous, like a lot of them?

1 Q (BY MS. MENNINGER) Yes.

2 A Yes.

3 Q And during any of those communications, do
4 you know whether she printed things about you after
5 you had any of those communications?

6 MS. MCCAWLEY: Objection.

7 A I don't know. I know a lot of stuff was
8 printed, and I never really stopped to read who
9 printed the article, or wrote the article, I should
10 say. Sorry.

11 Q (BY MS. MENNINGER) Okay. I'll show you
12 Defendant's Exhibit 7.

13 (Exhibit 7 marked.)

14 THE DEPONENT: Thank you.

15 Q (BY MS. MENNINGER) I'll let you read
16 through the statements on the first page there, and
17 if there is anything that is not absolutely true,
18 just put a check by it and we'll come back to it.

19 A It's not very clear how she wrote it. "I
20 flew to the Caribbean with Jeffrey and then Ghislaine
21 Maxwell went to pick up Bill in a huge black
22 helicopter that Jeffrey had bought her."

23 That wasn't an eyewitness statement.
24 Like, I didn't see her do it. Ghislaine was the one
25 who told me about that; that she's the one who flew

1 Bill.

2 Q All right. If you just want to put a
3 check by it, then we'll just come back and talk about
4 each one.

5 A Okay.

6 Q Just to move things along.

7 A Okay. I have made three checkmarks.

8 Q All right.

9 MS. MCCAWLEY: And I just -- before you
10 continue, I just want to identify for the record,
11 since this doesn't have any identifiers on it, are
12 you representing that these are statements from
13 Sharon Churcher?

14 MS. MENNINGER: I'm not representing
15 anything. I'm asking the witness questions about
16 these statements. I asked her is anything on here
17 not true. That's all I asked her.

18 Q (BY MS. MENNINGER) So which ones did you
19 put checkmarks by, Ms. Giuffre?

20 A I'd have been -- I'm sorry. "I'd have
21 been about 17 at the time. I flew to the Caribbean
22 with Jeffrey and then Ghislaine Maxwell went to pick
23 up Bill in a huge black helicopter that Jeffrey had
24 bought her."

25 Q Okay. And what else did you put a check

1 by?

2 A "I used to get frightened flying with her
3 but Bill had the Secret Service with him and I
4 remember him talking about what a good job" --
5 sorry -- "job she did."

6 Q Okay. And what else did you put a check
7 by?

8 A "Donald Trump was also a good friend of
9 Jeffrey's. He didn't partake in any sex with any of
10 us but he flirted with me. He'd laugh and tell
11 Jeffrey, 'you've got the life.'"

12 Q Other than the three you've just
13 mentioned --

14 A Yeah.

15 Q -- everything else on here is absolutely
16 accurate?

17 MS. MCCAWLEY: Objection.

18 A Yes. Well, to the best of my
19 recollection, yes.

20 Q (BY MS. MENNINGER) All right. What is
21 inaccurate about, "I'd have been about 17 at the
22 time. I flew to the Caribbean with Jeffrey and then
23 Ghislaine Maxwell went to pick up Bill in a huge
24 black helicopter that Jeffrey had bought her"?

25 A Because it makes it kind of sound like an

1 eyewitness thing.

2 Q Okay. Did you say that statement to
3 Sharon Churcher?

4 A I said to Sharon that Ghislaine told me
5 that she flew Bill in the heli- -- the black
6 helicopter that Jeffrey bought her, and I just wanted
7 to clarify that I didn't actually see her do that. I
8 heard from Ghislaine that she did that.

9 Q You heard that from Ghislaine, and then
10 you reported to Sharon Churcher that you had heard
11 that from Ghislaine.

12 A Correct.

13 MS. MCCAWLEY: Objection.

14 A I heard a lot of things from Ghislaine
15 that sounded too true -- too outrageous to be true,
16 but you never knew what to believe, so...

17 Q (BY MS. MENNINGER) Okay. And after
18 Sharon Churcher printed what she said you said, did
19 you complain to her that it was inaccurate?

20 A I might have verbally with her, but again,
21 I didn't see a point in making a hissy over it
22 because what was done was done. She had already
23 printed.

24 Q What was inaccurate about, "I used to get
25 frightened flying with her but Bill" said -- "had the

1 Secret Service with him and I remember him talking
2 about what a good job she did"?

3 A I just don't remember saying that to her.
4 I don't remember saying I remember him talking about
5 what a good job she did.

6 Q All right.

7 A I just don't remember that at all.

8 Q Okay. And I guess, just to be clear, my
9 questions wasn't do you remember saying this to
10 Sharon Churcher; my question is, is that statement
11 accurate?

12 MS. MCCAWLEY: Well, objection.

13 Q (BY MS. MENNINGER) Did you used to get
14 frightened flying with her?

15 A Yes.

16 Q Okay. Did Bill have the Secret Service
17 with him?

18 A They were there, but not like on the --
19 not where we were eating.

20 Q Do you remember Bill talking about what a
21 good job she did?

22 A I don't remember that.

23 Q So what is inaccurate about that
24 statement?

25 A I just -- it's inaccurate because I don't

1 remember him talking about what a good job she did.

2 I don't remember that.

3 Q Does it inaccurately suggest that Bill had
4 the Secret Service with him on a helicopter?

5 MS. MCCAWLEY: Objection.

6 A Well, not being an eyewitness to it, I
7 wouldn't be able to tell you. I can't tell you what
8 I don't know.

9 Q (BY MS. MENNINGER) And do you believe you
10 said that statement to Sharon Churcher?

11 A I mean, Sharon and I talked a lot, and if
12 she misheard me or just wrote it in the way that she
13 thought she should, I have no control over that. So
14 I'm not too sure.

15 Q Did she record your interviews?

16 A Some of them. Some of them she didn't. I
17 mean, we, like -- we, like, met for like a week, and
18 we spent a lot of time together, and then even after
19 that we just continued, like, kind of a friendship.

20 Q All right. What's inaccurate about the
21 last statement on that page?

22 A "Donald Trump was also a good friend of
23 Jeffrey's." That part is true.

24 "He didn't partake in any" of -- "any sex
25 with any of us but he flirted with me." It's true

1 that he didn't partake in any sex with us, and but
2 it's not true that he flirted with me. Donald Trump
3 never flirted with me.

4 Then the next sentence is, "He'd laugh and
5 tell Jeffrey, 'you've got the life.'" I never said
6 that to her.

7 Q When you say, "he didn't partake in any
8 sex with any of us," who is "us"?

9 A Girls. Just --

10 Q How do you know who Donald Trump -- Trump
11 had sex with?

12 A Oh, I didn't physically see him have sex
13 with any of the girls, so I can't say who he had sex
14 with in his whole life or not, but I just know it
15 wasn't with me when I was with other girls.

16 Q And who were the other girls that you were
17 with in Donald Trump's presence?

18 A None. There -- I worked for Donald Trump,
19 and I've met him probably a few times.

20 Q When have you met him?

21 A At Mar-a-Lago. My dad and him, I wouldn't
22 say they were friends, but my dad knew him and they
23 would talk all the time -- well, not all the time but
24 when they saw each other.

25 Q Have you ever been in Donald Trump and

1 Jeffrey Epstein's presence with one another?

2 A No.

3 Q What is the basis for your statement that
4 Donald Trump is a good friend of Jeffrey's?

5 A Jeffrey told me that Donald Trump is a
6 good friend of his.

7 Q But you never observed them together?

8 A No, not that I can actually remember. I
9 mean, not off the top of my head, no.

10 Q When did Donald Trump flirt with you?

11 A He didn't. That's what's inaccurate.

12 Q Did you ever see Donald Trump at Jeffrey's
13 home?

14 A Not that I can remember.

15 Q On his island?

16 A No, not that I can remember.

17 Q In New Mexico?

18 A No, not that I can remember.

19 Q In New York?

20 A Not that I can remember.

21 Q All right. If you could turn to the
22 second page and read through those. Let me know if
23 any of those are inaccurate. Just put a check by
24 them and then we'll come back.

25 A Okay.

1 MS. MCCAWLEY: Before you go, Virginia,
2 I'm going to object to the use of the second page of
3 this document. There's no time frame on it. There's
4 no source reference to it, so it's entirely unclear
5 where this has come from.

6 Q (BY MS. MENNINGER) Okay. Are you done?

7 A Yes.

8 Q Okay. What's the first one you've put a
9 check by?

10 A "The hammock photo was all over the
11 houses," in parentheses. And Bill Clinton and -- I'm
12 sorry, "Bill Clinton and Andrew," in parentheses,
13 "had to have seen it."

14 "All over the houses" is not my statement
15 and an exaggeration. They did have that picture in
16 the houses. And I believe, if I remember the
17 conversation correctly, she asked, Could have Bill
18 Clinton and Andrew seen the picture? And I said,
19 Yes, it's possible that they could have seen it.

20 So, I mean, it's just that -- it's not
21 that it's totally inaccurate. I just think it's like
22 journalist writing, had to have seen it. It doesn't
23 mean they saw it. I just think that if it was in
24 front of them, they would have seen it.

25 Q So she told you that -- you told her that

1 the photograph was in the houses -- houses?

2 A Yes. I know he had it in New York on his
3 desk. I know he had it in Palm Beach. I know he had
4 it in the Caribbean. And I don't know if he had it
5 in New Mexico. I can't remember New Mexico. Maybe.

6 Q Where in Palm Beach was the photograph?

7 A The massage room.

8 Q Was that -- you did not say that they --
9 it was all over the houses?

10 A Correct. All over the houses would imply
11 that it's everywhere in the house, so...

12 Q You did not say that Andrew and Clinton
13 had to have seen the photograph?

14 A Correct. I -- it was more of a, if they
15 were in front of it, they would have seen it, kind of
16 a thing. I'm not saying it right. But it wasn't,
17 like, had to have seen it.

18 Q All right. What's the next statement that
19 you put a check by?

20 A I'm sorry, excuse me. My kids shared a
21 beautiful cough with me again.

22 "I spent four years as a millionaire's
23 personal masseuse."

24 Q What is inaccurate about that statement?

25 A We now know, according to the timelines

1 that Mar-a-Lago was able to provide for us, that it
2 was not four years.

3 Q How many years was it?

4 A More like 2-1/2, I think, if I'm right, or
5 two. I'm sorry, I'm really bad at math. But yes,
6 the two period.

7 Q What's the next statement that you have
8 put a check by?

9 A "I was a pedophile's dream." I think she
10 took that out of context and made that her own little
11 headline.

12 Q Did you say that to her?

13 A I said something along the line like, I --
14 the -- the pedos loved me because I would do
15 everything that they wanted for them. But do I think
16 that -- yeah, I -- I know she made that line up
17 herself, the pedos -- pedophile's dream.

18 Q What's the next one you put a check by?

19 A I put a question mark next to the next
20 one. It says, "Three years later she was reunited
21 with her family." I don't know what that pertains
22 to. I don't know what timeline that means.

23 Q Was there a period of three years where
24 you were not with your family?

25 A There's been longer periods than that

1 that -- when I wasn't with my family. That's what I
2 mean, I don't understand where that comes from.

3 "Three years later she was reunited with her family."

4 Q Prior to 2002, was there a period of three
5 years where you were not with your family?

6 A No.

7 Q Okay. Did you say to Sharon Churcher,
8 three years later, she was reunited with her family?

9 A That's what I don't understand. I don't
10 even know what that time periods pertains to.

11 Q Do you recall saying that to Sharon
12 Churcher?

13 A No.

14 Q What's the next one you put a check by?

15 A "After about two years he started to ask
16 me to entertain his friends."

17 Q What's wrong with that statement?

18 A It wasn't two years. I don't know where
19 she got that from.

20 Q Okay. How long was it?

21 A Like, I can't give you an exact time
22 period, but it wasn't right in the beginning. It was
23 after my training, or so to speak training. So, I
24 mean, my best guesstimate would be anywhere between
25 four to six months.

1 Q So you did not say to Sharon Churcher,
2 "After about two years he asked me to entertain his
3 friends"?

4 A Correct.

5 Q What's the next one you put a check by?

6 A That's it. That's all I put a checkmark
7 next to.

8 Q So the rest of these are absolutely
9 accurate?

10 A Nothing a journalist writes is absolutely
11 accurate, but it's -- it sounds accurate, yes.

12 Q Do you recall Jeffrey Epstein saying to
13 you, "I've got a good friend and I need you to fly to
14 the island to entertain him, massage him and make him
15 feel how you make me feel"?

16 MS. MCCAWLEY: Objection.

17 Go ahead.

18 A I do remember him saying that, and I think
19 that's more of a general- -- generalization for all
20 the times that I was sent to the -- where is this --
21 the island to entertain people. And that would be a
22 quote that she made but from my words saying that's
23 what he said to me when I had to go be with these
24 people that he sent me to.

25 Q (BY MS. MENNINGER) Did you say that

1 sentence to her?

2 MS. MCCAWLEY: Objection.

3 A I -- I can't remember. Like I said, I
4 think it's more of a generalization.

5 Q (BY MS. MENNINGER) Did you meet Al Gore?

6 A Yes.

7 Q Did you meet Heidi Klum?

8 A Yes.

9 Q Did you meet Naomi Campbell?

10 A Yes.

11 Q Did you go on a six-week trip with Epstein
12 in 2001?

13 A Yeah. Yes. Sorry.

14 Q When in 2001 did you go on a six-week trip
15 with him?

16 A I don't remember exactly when it was, but
17 it's that -- it's the one where we went to Tangier,
18 Morocco, England. I can't remember where else we
19 went. France.

20 Q Did the FBI tell you that Epstein had
21 hidden cameras watching you the entire time, even
22 when you were in the bathroom?

23 A Yes.

24 Q Did the FBI tell you "Everything he did
25 was illegal because I was under age"?

1 A Yes.

2 Q Who in the FBI told you that?

3 A Whichever agent I was talking to.

4 Q Which agent were you talking to?

5 A I can't remember. I know I was talking to
6 Jason Richards, and there was a girl, I think -- I
7 want -- I want to say her name was Christina Pryor,
8 just off the top of my head. And then I think there
9 was two other agents actually at the consulate
10 building. I don't remember their names. Very hazy.

11 Q When was this conversation with the FBI?

12 A After Sharon printed the articles, the
13 first articles that came out. I don't know how many
14 she printed, but when the first articles came out,
15 after that the FBI contacted me.

16 Q And was the statement that the FBI told
17 you "Everything he did was illegal because I was
18 under age," in response to you telling them that you
19 were age 15 when you met Jeffrey?

20 MS. MCCAWLEY: Objection.

21 A Well, that was the closest proximity I had
22 to go off of.

23 Q (BY MS. MENNINGER) Okay.

24 A So, yes. Although I still was under age,
25 I mean, even if I was 16 and 17.

1 Q Okay. And then if you could do the last
2 page, same way; a check by anything that's not
3 absolutely accurate.

4 MS. MCCAWLEY: Okay. I'm going to object
5 to this as the last page has no identifier of time or
6 source on it.

7 A Okay. I'm ready.

8 Q (BY MS. MENNINGER) All right. Which ones
9 are inaccurate?

10 A The first one is, "Virginia got a
11 part-time job as a changing room assistant." I was a
12 full-time person there. Sorry.

13 Q Okay. So did you say that to Sharon?

14 A Again, I don't remember that exact
15 conversation, but I know it was a full-time job,
16 and -- I mean, full-time as in the, you know, the 9
17 to 5 or whatever hours it was, so it wasn't
18 part-time. I don't remember the exact conversation
19 that we had.

20 Q Okay. What's the next thing you put a
21 check by?

22 A I put a question mark next to, "Another
23 lady led me into Jeffrey's bedroom. The lady walked
24 me straight through into the massage room."

25 I have no idea what circumstance that

1 pertains to. Again, I don't know what that means. I
2 don't even know what other lady she's talking about.
3 So...

4 Q So you don't recall saying that to Sharon
5 Churcher?

6 A Correct. I don't even know what it means.

7 Q Okay. What's the next one you have a
8 check by?

9 A "Afterwards, she was given two \$100 bills
10 and told to return the next day. That was the
11 beginning of the four years she spent with Epstein."

12 Q All right. What's wrong about that
13 statement?

14 A Well, again, I just want to say that the
15 four years was inaccurate based upon memory and not
16 an actual timeline that we were able to get.

17 Q Did you say that to Sharon Churcher, that
18 it was four years?

19 A I don't know if I said that to her or --
20 oh, yeah, did I tell her it was four years? Yes, I
21 did. I'm sorry.

22 Q Okay. What else did you put a check by?

23 A Well, this one is a question mark again.
24 "Radar online has obtained exclusive diary entries of
25 a Teen Sex Slave."

1 It wasn't really a diary. It was, like, I
2 don't know how many pages of something that I wrote,
3 and Sharon used it, so...

4 Q Did you tell Sharon it was your diary
5 entry?

6 A She knew it wasn't a diary entry. No.

7 Q Okay. Were you a teen sex slave?

8 A Yes.

9 Q What's the next one you have a checkmark
10 by?

11 A "I also saw Prince Andrew at a Ranch in
12 New Mexico."

13 Q Did you tell that to Sharon Churcher?

14 A No. And I think it's a mistake. Maybe
15 she meant somewhere else, but because we had been
16 talking about so much, maybe she just put New Mexico.
17 I don't think Sharon intentionally lied on any of
18 these. I just -- I think we talked so much over a
19 period of a week, and then after that we had phone
20 conversations, and so on and so forth, that some of
21 the information just got misheard or mishandled, or
22 whatever.

23 Q And what was printed was inaccurate?

24 A Was that printed? I don't -- I don't
25 remember reading that in the papers, but if it was

1 printed it's inaccurate.

2 Q Do you recall reading any of the ones that
3 you put a checkmark by in the papers?

4 A There's been so much printed, it's hard
5 for me to remember. I mean, yes, it does sound like
6 stuff I read before.

7 Q When you spoke with Sharon Churcher, you
8 agreed to waive your anonymity, right?

9 A I did.

10 Q Why did you agree to do that?

11 A I felt it was time for me to tell my
12 story. I felt it was a good time for me to come
13 forward. I had done so much healing, and I thought
14 that it would be good for other people to hear what's
15 going on, how it's happening, how vulnerable other
16 girls can be and not even know the damage that it
17 causes later in life. And I just thought it would be
18 the right thing to do to come forward.

19 Q You authorized her to publish your name?

20 A I did.

21 Q And your photograph?

22 A Yes.

23 Q In 2011?

24 A I think that was the year, yes.

25 Q You posed for photographs with her,

1 I, VIRGINIA GIUFFRE, do hereby certify that
2 I have read the foregoing transcript and that the
3 same and accompanying amendment sheets, if any,
4 constitute a true and complete record of my
5 testimony.

6 _____
Signature of Deponent

7 () No amendments

8 () Amendments attached

9
10 Acknowledged before me this _____ day
11 of _____, 20____.

12
13 Notary Public: _____

14 My Commission Expires: _____

15 Seal:

16 PJH
17
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1 STATE OF COLORADO)

2) ss. REPORTER'S CERTIFICATE

3 COUNTY OF DENVER)

4 I, Pamela J. Hansen, do hereby certify that
5 I am a Registered Professional Reporter and Notary
6 Public within the State of Colorado; that previous to
7 the commencement of the examination, the deponent was
8 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 23rd day of November, 2016.

20 My commission expires September 3, 2018.

21
22
23 Pamela J. Hansen, CRR, RPR, RMR
24 216 - 16th Street, Suite 600
25 Denver, Colorado 80202

Epstein did invite two young brunettes to a dinner which he gave on his Caribbean island for Mr. Clinton shortly after he left office.

✓ I'd have been about 17 at the time. I flew to the Caribbean with Jeffrey and then Ghislaine Maxwell went to pick up Bill in a huge black helicopter that Jeffrey had bought her.

I remember she was very excited because she got her license around the first year we met.

✓ I used to get frightened flying with her but Bill had the secret service with him and I remember him talking about what a good job she did.

I don't remember seeing Bill again on the trip but I assume Ghislaine flew him back.

Virginia disclosed that Mr. Clinton's vice-president Al Gore and his wife, Tipper, were also guests of Epstein on his island.

Virginia said that yet another American liberal icon, Senator George Mitchell, frequently visited Epstein's New York residence. Mr. Mitchell, aged 77, was very close to Jeffrey, Virginia recalled.

I also met Naomi Campbell at a birthday party of hers on a yacht in the South of France. She is a friend of Ghislaine's but she was a real bitch to me.

✓ Donald Trump was also a good friend of Jeffrey's. He didn't partake in any sex with any of us but he flirted with me. He'd laugh and tell Jeffrey, 'you've got the life.'

EXHIBIT

Giuttre
AGREN BLANDO REPORTING
11-14-16

Ghislaine took nude picture of me lying naked in a hammock, posed with my legs open, a bit provocatively that I gave to Jeffrey for his birthday.

✓ The hammock photo was "all over the houses" and Bill Clinton and Andrew "had to have seen" it.

✓ I spent four years as millionaire's personal masseuse.

I was living on the streets, beaten up and slept with at least two older men in return for food.

While on the streets, I slept with men for money.

✓ I was a paedophile's dream.

2 Three years later she was reunited with her family.

✓ After about two years, he started to ask me to 'entertain' his friends.

She recalls he said "I've got a good friend and I need you to fly to the island to entertain him, massage him and make him feel how you make me feel."

The way it usually worked was I'd been sent to meet a man on the private island Jeffrey owned in the Caribbean, or at his ranch in New Mexico, which was really isolated.

I met famous friends of his such as Al Gore and Heidi Klum and Naomi Campbell.

She was, she says, delighted when Epstein invited her to accompany him on a six-week trip in 2001.

FBI told me that Epstein had hidden cameras watching me the entire time even when I was in the bathroom. I was so embarrassed.

The FBI told me everything he did was illegal because I was under age.

✓ Virginia got a part-time job as a changing room assistant.

I told Ghislaine I wanted to become a masseuse and she said she worked for a very wealthy gentleman who was looking for a traveling masseuse. I'd get training and be paid well.

✓ Another lady led me into Jeffrey's bedroom. The lady walked me straight through into the massage room.

✓ Afterwards, she was given two \$100 bills and told to return the next day. That was the beginning of the four years she spent with Epstein.

✓ Radar Online has obtained exclusive "Diary entries" of "Teen Sex Slave".

I led Prince Andrew into the upstairs bathroom next to the room I was staying in.

I was doing my best trying to put on a good show for him by slowly undressing and started to pour a bath.

He was caressing every part of my naked body and filling my head with endless compliments about my blossoming figure.

He paid careful attention to my toes and was licking them.

✓ I also saw Prince Andrew at the Ranch in New Mexico.

EXHIBIT QQ

To: sharon churcher[sharon.churcher@mailonsunday.co.uk]
From: Virginia Giuffre
Sent: Fri 5/20/2011 2:20:09 AM
Importance: Normal
Subject: How ya doing??
Received: Fri 5/20/2011 2:20:09 AM

Hi Buddy,
I hope you are stopping to smell the daffodils once in a while and having a good day!! I am so excited today because I can go sign with an agent as my contract is finished with "Mail On Sunday"...YEAH!! Sandra and I have been working really hard to get me ready for my trip to the U.S in a few weeks and I was wondering if I could use your advice again. She has got an INT'L agent who is interested in speaking with me and I don't want to say "Yes" to the first bite because I'm not sure what to look for in an agent. What could you recommend that I do? I will send Jarred and Irene (your recommended agent) a copy of the synopsis and sample chapters but how do I choose the right one for "The Story"? Do you know anyone else that might be interested in this as well? If so, i am keen on speaking with anyone who might be. I am soooooo excited about this and will keep you updated with the progressing events. When I am in New York we have to meet up for some city shopping and take the kids to Central Park to see the Zoo, given there will be no masturbating kangaroo's for you to make friends with, but who know's? I am looking forward to showing Robbie around and he's got some family out there as well we have to catch up with. Such busy times, but I'm loving it!! Anyways I hope your taking care and catch me up on your fun times!!

Take care,
Jenna

EXHIBIT RR

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 15-cv-07433-RWS

CONFIDENTIAL VIDEOTAPED DEPOSITION OF
VIRGINIA GIUFFRE

May 3, 2016

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

APPEARANCES:

FAMER, JAFFE, WEISSING, EDWARDS, FISTOS &
LEHRMAN, P.L.

By Brad Edwards, Esq.
425 N. Andrews Avenue
Suite 2
Fort Lauderdale, FL 33301
Phone: 954.524.2820
brad@pathtojustice.com
Appearing on behalf of the
Plaintiff

BOIES, SCHILLER & FLEXNER LLP

By Sigrid S. McCawley, Esq. (For Portion)
401 East Las Olas Boulevard
Suite 1200
Fort Lauderdale, FL 33301-2211
Phone: 954.356.0011
smccawley@bsfllp.com
Appearing on behalf of the
Plaintiff

1 APPEARANCES: (Continued)

2 HADDON, MORGAN AND FORMAN, P.C.

By Laura A. Menninger, Esq.

3 Jeffrey S. Pagliuca, Esq.

150 East 10th Avenue

4 Denver, CO 80203

Phone: 303.831.7364

5 lmenninger@hmflaw.com

jpagliuca@hmflaw.com

6 Appearing on behalf of the

7 Defendant

Also Present:

8 Brenda Rodriguez, Paralegal

9 Nicholas F. Borgia, CLVS Videographer

Pursuant to Notice and the Federal Rules of Civil Procedure, the VIDEOTAPED DEPOSITION OF VIRGINIA GIUFFRE, called by Defendant, was taken on Tuesday, May 3, 2016, commencing at 9:00 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.

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MS. MENNINGER	8
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PRODUCTION REQUEST(S):

(None.)

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1 Some names have been changed in order to protect
2 other people.

3 Q (BY MS. MENNINGER) Protect their privacy?

4 A Protect their privacy, yeah, I would say,
5 just not getting them involved in, if this were to
6 ever go public.

7 Q Well, again, without rereading the whole
8 manuscript --

9 A Reading it, yeah. I'm trying to see if I
10 can -- see something in here.

11 Q Let me narrow my question and maybe that
12 will help.

13 A Yes.

14 Q Is there anything -- well, first of all,
15 did you author that entire manuscript?

16 A Yes, I did.

17 Q Did anyone else author part of that
18 manuscript?

19 A Do you mean did anyone else write this
20 with me?

21 Q Right.

22 A No.

23 Q That's all your writing?

24 A This is my writing.

25 Q Okay. To the best of your recollection,

1 as you sit here right now, is there anything in that
2 manuscript about Ghislaine Maxwell that is untrue?

3 A I don't believe so. Like I said, there is
4 a lot of stuff that I actually have left out of here.

5 Q Um-hum.

6 A So there is a lot more information I could
7 put in there. But as far as Ghislaine Maxwell goes,
8 I would like to say that there is 99.9 percent of it
9 would be to the correct knowledge.

10 Q All right. Is there anything that you --
11 and I understand you're doing this from memory. Is
12 there anything that you recall, as you're sitting
13 here today, about Ghislaine Maxwell that is contained
14 in that manuscript, that is not true?

15 A You know, I haven't read this in a very
16 long time. I don't believe that there's anything in
17 here about Ghislaine Maxwell that is not true.

18 MR. EDWARDS: I'd just ask, Counsel, if
19 you have anything specific to show her about
20 Ghislaine Maxwell --

21 MS. MENNINGER: I'll ask questions.

22 MR. EDWARDS: -- I'll have her look at it.

23 MS. MENNINGER: I'll ask questions.

24 MR. EDWARDS: I know, but I want the
25 record clear that if she hasn't read it in a long

1 I, VIRGINIA GIUFFRE, do hereby certify that
2 I have read the foregoing transcript and that the
3 same and accompanying amendment sheets, if any,
4 constitute a true and complete record of my
5 testimony.

6
7
8
9 _____
Signature of Deponent
10 () No Amendments
() Amendments Attached

11 Acknowledged before me this
12 _____ day of _____, 2016.

13
14 Notary Public: _____

15 Address: _____

16 _____
17 My commission expires _____

18 Seal:
19
20

21 KAM
22
23
24
25

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 11th 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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

15-cv-07433-RWS

**Declaration of Laura A. Menninger in Support of
Defendant's Reply in Support of Motion for Summary Judgment**

I, Laura A. Menninger, declare as follows:

1. I am an attorney at law duly licensed in the State of New York and admitted to practice in the United States District Court for the Southern District of New York. I am a member of the law firm Haddon, Morgan & Foreman, P.C., counsel of record for Defendant Ghislaine Maxwell in this action. I respectfully submit this Declaration in support of Ms. Maxwell's Reply in Support of Motion for Summary Judgment.¹

2. In Defendant's Memorandum of Law in Support of Motion for Summary Judgment (filed Jan. 9, 2017), I included numbered paragraphs corresponding to undisputed facts from the movant's perspective as contemplated by Local Civil Rule 56.1(a), together with the citation to admissible evidence as required by Fed. R. Civ. P. 56(c). *See* Doc. 541, *passim*.

¹At trial, defendant intends to produce either the custodian of record relevant to any disputed document or a certification in compliance with either Fed. R. Evid. P. 803 and/or 902. *See* Fed. R. Civ. P. 56(c). Apart from deposition testimony, the majority of non-deposition documents herein were either produced by plaintiff or obtained with releases signed by plaintiff.

3. On January 9, 2017, I also prepared and served on the Court and counsel, under seal, Defendant's Statement of Material Undisputed Facts Pursuant to Local Civil Rule 56.1 ("Statement"). Those paragraphs mirror the numbered paragraphs contained within the Memorandum of Law, minus the citations to the evidentiary record. The Statement was filed with the Court in hard-copy and placed in the vault (*see* Doc.543).

4. Through a clerical oversight, a redacted version of the Statement was not appended to the filed ECF version of the Notice of Motion for Summary Judgment (Doc. 537). However, as noted in the previous two paragraphs, Ms. Maxwell enumerated all undisputed facts in accordance with Local Civil Rule 56.1(a) in:

- Ms. Maxwell's Memorandum of Law in Support of Motion for Summary Judgment (Doc.541); and
- the Local Rule 56.1 Statement served on the the Court and counsel and filed in hard copy with the Court.

5. Attached as Exhibit NN (filed under seal) is a true and correct copy of Defendant, Ghislaine Maxwell's Initial Disclosure Pursuant to Fed. R. Civ. P. 26, served February 24, 2016.

6. Attached as Exhibit OO (filed under seal) is a true and correct copy of an email correspondence from Plaintiff to Sharon Churcher, dated May 12, 2011, Bates stamped GIUFFRE004096-7; 004028-30.

7. Attached as Exhibit PP (filed under seal) are true and correct copies of excerpts from the November 14, 2016 deposition of Virginia Giuffre, designated Confidential under the Protective Order.

8. Attached as Exhibit QQ (filed under seal) is a true and correct copy of an email correspondence from Plaintiff to Sharon Churcher, dated May 12, 2011, Bates stamped GIUFFRE003959.

9. Attached as Exhibits RR (filed under seal) are true and correct copies of excerpts from the May 3, 2016 deposition of Virginia Giuffre, designated Confidential under the Protective Order.

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

Executed on February 10, 2017.

s/ Laura A. Menninger

Laura A. Menninger

CERTIFICATE OF SERVICE

I certify that on February 10, 2017, I electronically served this *Declaration of Laura A. Menninger in Support of Defendant's Reply to Her Motion for Summary Judgment* 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

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

-----X
VIRGINIA L. GIUFFRE,

Plaintiff,
v.
GHISLAINE MAXWELL,

Defendant.

15-cv-07433-RWS

**Defendant's Reply to Plaintiff's Statement of
Contested Facts and Plaintiff's "Undisputed Facts"
Pursuant to Local Civil Rule 56.1**

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

Pursuant to Rule 56.1 of the Local Civil Rules of this Court, defendant Ghislaine Maxwell submits this Reply to Plaintiff's Statement of Contested Facts and Plaintiff's Undisputed Facts ("Response"), Doc. 586-1.

INTRODUCTION

Plaintiff's Response fails under both the Federal Rules of Evidence and the Local Civil Rules of Procedure.

First, Plaintiff largely failed to provide any "citation to evidence which would be admissible" to challenge Defendant's Statement of Material Undisputed Facts and therefore Ms. Maxwell's undisputed facts should be deemed admitted.

Second, rather than set forth "additional material facts as to which it is contended that there exists *a genuine issue to be tried*" (Local Civil Rule 56.1(b)), Plaintiff instead set forth her own purportedly "undisputed facts." Because Plaintiff did not cross-move for summary judgment, her supposedly "undisputed facts" are not permitted by the Rules and should be stricken.

I. Ms. Maxwell's reply in support of statement of undisputed facts.

1. **Undisputed Fact 1:** In early 2011 plaintiff in two British tabloid interviews made numerous false and defamatory allegations against Ms. Maxwell. In the articles, plaintiff made no direct allegations that Ms. Maxwell was involved in any improper conduct with Jeffrey Epstein, who had pleaded guilty in 2007 to procuring a minor for prostitution. Nonetheless, plaintiff suggested that Ms. Maxwell worked with Epstein and may have known about the crime for which he was convicted. Exs. A and B.

a. **Reply:** Plaintiff cites no admissible evidence to contest these undisputed facts.

McCawley Ex.34 (GIUFFRE368) is an email *from* Sharon Churcher to Plaintiff. It is Ms. Churcher's hearsay and therefore inadmissible. In any event, it does not speak to the

contents of Plaintiff's interviews with Churcher. McCawley Decl. Ex. 31 is an FBI interview, also inadmissible hearsay, which again does not describe Plaintiff's interviews in news articles. In the absence of contrary evidence, Undisputed Fact 1 should be deemed admitted.

2. **Undisputed Fact 2:** In the articles, plaintiff alleged she had sex with Prince Andrew, "a well-known businessman," a "world-renowned scientist," a "respected liberal politician," and a "foreign head of state." Exs. A-B at 5.

a. **Reply:** Plaintiff does not contest these facts and they therefore should be deemed admitted.

3. **Undisputed Fact 3:** In response to the allegations Ms. Maxwell's British attorney, working with Mr. Gow, issued a statement on March 9, 2011, denying "the various allegations about [Ms. Maxwell] that have appeared recently in the media. These allegations are all entirely false." Ex.C.

a. **Reply:** Plaintiff "denies" that Mr. Barden "issued a statement," but offers no admissible evidence to refute this point. Further, she acknowledges that the Statement was issued "By Devonshires Solicitors," Mr. Barden's law firm.

4. **Undisputed Fact 4:** The statement read in full:

Statement on Behalf of Ghislaine Maxwell

By Devonshires Solicitors, PRNE
Wednesday, March 9, 2011

London, March 10, 2011 - Ghislaine Maxwell denies the various allegations about her that have appeared recently in the media. *These allegations are all entirely false.*

It is unacceptable that letters sent by Ms Maxwell's legal representatives to certain newspapers pointing out the truth and asking for the allegations to be withdrawn have simply been ignored.

In the circumstances, *Ms Maxwell is now proceeding to take legal action against those newspapers.*

“I understand newspapers need stories to sell copies. It is well known that certain newspapers live by the adage, “why let the truth get in the way of a good story.” However, *the allegations made against me are abhorrent and entirely untrue* and I ask that they stop,” said Ghislaine Maxwell.

“A number of newspapers have shown a complete lack of accuracy in their reporting of this story and a failure to carry out the most elementary investigation or any real due diligence. I am now taking action to clear my name,” she said.

Media contact:

Ross Gow
Acuity Reputation
Tel: +44-203-008-7790
Mob: +44-7778-755-251
Email: ross@acuityreputation.com

Media contact: Ross Gow, Acuity Reputation, Tel: +44-203-008-7790, Mob: +44-7778-755-251, Email: ross at acuityreputation.com

Ex.C.

a. **Reply:** Plaintiff does dispute the contents of the 2011 statement and therefore it should be deemed admitted.

5. **Undisputed Fact 5:** Plaintiff’s gratuitous and “lurid” accusations in an unrelated action. In 2008 two alleged victims of Epstein brought an action under the Crime Victims’ Rights Act against the United States government purporting to challenge Epstein’s plea agreement. They alleged the government violated their CVRA rights by entering into the agreement. Ex.D, at 2.

a. **Reply:** Plaintiff “stipulates” to the facts contained in paragraph 5 and therefore they should be deemed admitted.

6. **Undisputed Fact 6:** Seven years later, on December 30, 2014, Ms. Giuffre moved to join the CVRA action, claiming she, too, had her CVRA rights violated by the government. On January 1, 2015, Ms. Giuffre filed a “corrected” joinder motion. Ex.D at 1, 9.

a. **Reply:** Plaintiff “agreed” to this paragraph.

7. **Undisputed Fact 7:** The issue presented in her joinder motion was narrow: whether she should be permitted to join the CVRA action as a party under Federal Rule of Civil Procedure 21, specifically, whether she was a “known victim[] of Mr. Epstein and the Government owed them CVRA duties.” Yet, “the bulk of the [motion] consists of copious factual details that [plaintiff] and [her co-movant] ‘would prove . . . if allowed to join.’” Ms. Giuffre gratuitously included provocative and “lurid details” of her alleged sexual activities as an alleged victim of sexual trafficking. Ex.E, at 5.

a. **Reply:** Plaintiff does not dispute that Judge Marra made the findings detailed in Undisputed Fact 7. Further, she admits that the Government refused to stipulate that she “had been sexually abused by Jeffrey Epstein and his co-conspirators (including co-conspirator Alan Dershowitz), which would make her a ‘victim’ of a broad sex trafficking conspiracy.” Although she now submits there were other reasons for inclusion of such lurid details, those reasons were rejected by Judge Marra. As she does not offer any admissible evidence to contradict the findings made by Judge Marra, this “fact,” specifically Judge Marra’s findings, should be deemed admitted. In any event, we request under Fed. R. Evid. 201(c)(2) that the Court take judicial notice of the contents of Judge Marra’s ruling and order.

8. **Undisputed Fact 8:** At the time they filed the motion, Ms. Giuffre and her lawyers knew that the media had been following the Epstein criminal case and the CVRA action. While they deliberately filed the motion without disclosing Ms. Giuffre’s name, claiming the need for privacy and secrecy, they made no attempt to file the motion under seal. Quite the contrary, they filed the motion publicly. Ex.D, at 1 & n.1.

a. **Reply:** Plaintiff offers no admissible evidence to refute these facts and they therefore should be deemed admitted. Specifically, she does not offer any evidence to dispute that she knew the media had been following Epstein and the CVRA action, nor does she dispute that her attorneys made no attempt to file the motion under seal, rather filing it publicly. The facts are thus admitted.

9. Undisputed Fact 9: As the district court noted in ruling on the joinder motion, Ms. Giuffre “name[d] several individuals, and she offers details about the type of sex acts performed and where they took place.” The court ruled that “these lurid details are unnecessary”: “The factual details regarding whom and where the Jane Does engaged in sexual activities are immaterial and impertinent . . . , especially considering that these details involve *non-parties* who are not related to the respondent Government.” Accordingly, “[t]hese unnecessary details shall be stricken.” *Id.* The court then struck all Ms. Giuffre’s factual allegations relating to her alleged sexual activities and her allegations of misconduct by non-parties. The court said the striking of the “lurid details” was a sanction for Ms. Giuffre’s improper inclusion of them in the motion. Ex.E at 5-7.

a. **Reply:** Plaintiff offers no admissible evidence to refute these facts and they therefore should be deemed admitted. See Reply to Undisputed Fact 7, *supra*. In any event, we request under Fed. R. Evid. 201(c)(2) that the Court take judicial notice of the contents of Judge Marra’s ruling and order.

10. Undisputed Fact 10: The district court found not only that the “lurid details” were unnecessary but also that the entire joinder motion was “entirely unnecessary.” Ms. Giuffre and her lawyers knew the motion with all its “lurid details” was unnecessary because the motion

itself recognized that she would be able to participate as a fact witness to achieve the same result she sought as a party. The court denied plaintiff's joinder motion. *Id.* at 7-10.

a. Reply: Plaintiff offers no admissible evidence to refute these facts and they therefore should be deemed admitted. *See* Reply to Undisputed Fact 7, *supra*.

11. Undisputed Fact 11: One of the non-parties Ms. Giuffre "named" repeatedly in the joinder motion was Ms. Maxwell. According to the "lurid details" of Ms. Giuffre included in the motion, Ms. Maxwell personally was involved in a "sexual abuse and sex trafficking scheme" created by Epstein:

- Ms. Maxwell "approached" plaintiff in 1999 when plaintiff was "fifteen years old" to recruit her into the scheme.
- Ms. Maxwell was "one of the main women" Epstein used to "procure under-aged girls for sexual activities."
- Ms. Maxwell was a "primary co-conspirator" with Epstein in his scheme.
- She "persuaded" plaintiff to go to Epstein's mansion "in a fashion very similar to the manner in which Epstein and his other co-conspirators coerced dozens of other children."
- At the mansion, when plaintiff began giving Epstein a massage, he and Ms. Maxwell "turned it into a sexual encounter."
- Epstein "with the assistance of" Ms. Maxwell "converted [plaintiff] into . . . a 'sex slave.'" *Id.* Plaintiff was a "sex slave" from "about 1999 through 2002."
- Ms. Maxwell also was a "co-conspirator in Epstein's sexual abuse."
- Ms. Maxwell "appreciated the immunity" she acquired under Epstein's plea agreement, because the immunity protected her from prosecution "for the crimes she committed in Florida."
- Ms. Maxwell "participat[ed] in the sexual abuse of [plaintiff] and others."
- Ms. Maxwell "took numerous sexually explicit pictures of underage girls involved in sexual activities, including [plaintiff]." *Id.* She shared the photos with Epstein.

- As part of her “role in Epstein’s sexual abuse ring,” Ms. Maxwell “connect[ed]” Epstein with “powerful individuals” so that Epstein could traffick plaintiff to these persons.
- Plaintiff was “forced to have sexual relations” with Prince Andrew in “[Ms. Maxwell’s] apartment” in London. Ms. Maxwell “facilitated” plaintiff’s sex with Prince Andrew “by acting as a ‘madame’ for Epstein.”
- Ms. Maxwell “assist[ed] in internationally trafficking” plaintiff and “numerous other young girls for sexual purposes.”
- Plaintiff was “forced” to watch Epstein, Ms. Maxwell and others “engage in illegal sexual acts with dozens of underage girls.”

Id. at 3-6.

a. Reply: Plaintiff offers no admissible evidence to refute the facts actually stated in the paragraph, i.e., that the “lurid” details (as coined by Judge Marra) were included in her CVRA Joinder Motion. Plaintiff claims to offer “admissible evidence” to “corroborate the statements [she] made in the joinder motion.” Setting aside for the moment that most of the cited documents are inadmissible hearsay, as addressed later, such evidence should be disregarded because none of the offered documents speak to fact that these “lurid” details were actually included in the joinder motion, as a simple reading of Ex.D reveals. Because Plaintiff does not refute that point, the fact that the details were in the Joinder Motion should be deemed admitted. In any event, we request under Fed. R. Evid. 201(c)(2) that the Court take judicial notice of the contents of plaintiff’s CVRA joinder motion.

12. Undisputed Fact 12: In the joinder motion, plaintiff also alleged she was “forced” to have sex with Harvard law professor Alan Dershowitz, “model scout” Jean Luc Brunel, and “many other powerful men, including numerous prominent American politicians, powerful business executives, foreign presidents, a well-known Prime Minister, and other world leaders.”

Id. at 4-6.

a. **Reply:** Again, Plaintiff offers no evidence that these “lurid details” were included in the Joinder Motion, as indeed they were, and thus the fact that they were should be deemed admitted.

13. **Undisputed Fact 13:** Plaintiff said after serving for four years as a “sex slave,” she “managed to escape to a foreign country and hide out from Epstein and his co-conspirators for years.” *Id.* at 3

a. **Reply:** Plaintiff does not dispute that she made this statement in her joinder motion and it is admitted.

14. **Undisputed Fact 14:** Plaintiff suggested the government was part of Epstein’s “conspiracy” when it “secretly” negotiated a non-prosecution agreement with Epstein precluding federal prosecution of Epstein and his “co-conspirators.” The government’s secrecy, plaintiff alleged, was motivated by its fear that plaintiff would raise “powerful objections” to the agreement that would have “shed tremendous public light on Epstein and other powerful individuals. *Id.* at 6-7.

a. **Reply:** Plaintiff does not contest the quoted contents of the joinder motion, but rather offers argument regarding Plaintiff’s purported “belief.” Plaintiff did not submit an affidavit attesting to such “belief” and therefore no admissible evidence was cited or offered. The facts should therefore be deemed admitted.

15. **Undisputed Fact 15:** Notably, the other “Jane Doe” who joined plaintiff’s motion who alleged she was sexually abused “many occasions” by Epstein was unable to corroborate any of plaintiff’s allegations. *Id.* at 7-8.

a. **Reply:** Plaintiff states the facts are “untrue” but offers no admissible evidence to support that statement. She has no affidavit or other statement from “the other ‘Jane

Doe' (who was represented by Plaintiff's counsel, and therefore had the ability to furnish such an affidavit). Indeed, Plaintiff acknowledges that the "other Jane Doe" "does not know Ms. Giuffre." These facts must be deemed admitted. [REDACTED], who is NOT the other Jane Doe, is irrelevant to the undisputed fact asserted. She also offers no corroboration of the 'same pattern of abuse,' and in fact does not "remember" any such facts, as already briefed. *See* Doc. 567 at 12-14.

16. **Undisputed Fact 16:** Also notably, in her multiple and lengthy consensual interviews with Ms. Churcher three years earlier, plaintiff told Ms. Churcher of virtually *none* of the details she described in the joinder motion. Exs. A-B.

a. **Reply:** Plaintiff's protestation aside, the Churcher articles (attached to Ms. Churcher's sworn affidavit filed in this case at Doc. 216 and 216-1 through 216-8) fail to include the vast majority of details included in Plaintiff's CVRA joinder motion, as any side-by-side comparison will reveal. Plaintiff's simple facile response is that she "did reveal details in 2011 consistent with those in the joinder motion." She offers no admissible evidence of these details she "revealed" to Ms. Churcher, instead citing to a heavily redacted interview she purportedly gave to *the FBI*, not Ms. Churcher. The purported FBI report is itself hearsay, not to mention, redacted and prepared years after any supposed interview of Plaintiff. McCawley Decl. Ex.31. Because Plaintiff offers no admissible evidence to contradict the discrepancies between the Churcher articles and the joinder motion, these facts should be deemed admitted.

17. **Undisputed Fact 17: Ms. Maxwell's response to plaintiff's "lurid" accusations: the January 2015 statement.** As plaintiff and her lawyers expected, before District Judge Marra in the CVRA action could strike the "lurid details" of plaintiff's allegations in the joinder

motion, members of the media obtained copies of the motion. Ex.G at 31:2-36:4 & Depo. Exs. 3-4.

a. **Reply:** Plaintiff cites no contrary evidence and therefore the facts should be deemed admitted.

18. **Undisputed Fact 18:** At Mr. Barden's direction, on January 2, 2015, Mr. Gow sent to numerous representatives of British media organizations an email containing "a quotable statement on behalf of Ms Maxwell." Ex.F; Ex.G, at 33:8-23. The email was sent to more than 6 and probably less than 30 media representatives. *See* Ex.G, at 33:8-34:3. It was not sent to non-media representatives. *See id.* at 31:2-35:21.

a. **Reply:** Plaintiff disputes as "blatant falsehood," without admissible evidence, that it was Mr. Barden who directed that the January 2 email be sent to media organizations. She then goes on to quote the very section of Mr. Gow's deposition in which he surmises (but does not know, indicated by his statement it was his "understanding") that it was something that had been sent to Maxwell by Barden. Indeed, Mr. Barden clears up this confusion in his Declaration, in which he unequivocally swore,

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

Ex.K ¶ 10. Mr. Gow’s surmise as to how the statement was “forwarded to him” and by whom does not controvert the sworn testimony of Mr. Barden himself. Again, without admissible evidence to the contrary, the facts must be deemed admitted.

With regard to the number of media representatives to whom he sent the email, Mr. Gow testified it was between 6 and 30. Ex.G at 33-34. His further testimony, offered by Plaintiff, that he spoke to “over 30 journalists” does not contradict that statement. Nowhere does Plaintiff offer testimony that he *read the statement* to over 30 journalists. Instead, Mr. Gow acknowledged it was “very possible” that he had “*ever read[]* the statement to press or media over the phone,” *not* that he read it to “over 30 journalists.” Plaintiff’s selective cutting and pasting undercuts her so called evidence that the facts in Paragraph 18 are “false,” and thus they ought be deemed admissible.

19. **Undisputed Fact 19:** Among the media representatives were Martin Robinson of the Daily Mail; P. Peachey of The Independent; Nick Sommerlad of The Mirror; David Brown of The Times; and Nick Always and Jo-Anne Pugh of the BBC; and David Mercer of the Press Association. These representatives were selected based on their request—after the joinder motion was filed—for a response from Ms. Maxwell to plaintiff’s allegations in the motion. *See, e.g.*, Ex.G, at 30:23-35:21 & Depo.Ex.3.

a. **Reply:** While Plaintiff decries the second sentence as “false,” her cited evidence contradicts her conclusion. Mr. Gow testified that “any time there was an incoming query it was either dealt with on the telephone by referring them back to the two statements...or someone would email them the statement. So no one was left unanswered.” McCawley Decl., Ex.6 at 67. As his testimony makes clear, Mr. Gow sent

the statement to those journalists who made inquiry; he did not sent it to anyone who did not. Based on the admissible evidence, this fact remains undisputed.

20. **Undisputed Fact 20:** The email to the media members read:

To Whom It May Concern,
Please find attached a quotable statement on behalf of Ms Maxwell.
No further communication will be provided by her on this matter.
Thanks for your understanding.
Best
Ross

Ross Gow
ACUITY Reputation

Jane Doe 3 is Virginia Roberts—so not a new individual. The allegations made by Victoria Roberts against Ghislaine Maxwell are untrue. The original allegations are not new and have been fully responded to and shown to be untrue.

Each time the story is re told [sic] it changes with new salacious details about public figures and world leaders and now it is alleged by Ms Roberts [sic] that Alan Derschowitz [sic] is involved in having sexual relations with her, which he denies.

Ms Roberts claims are obvious lies and should be treated as such and not publicised as news, as they are defamatory.

Ghislaine Maxwell's original response to the lies and defamatory claims remains the same. Maxwell strongly denies allegations of an unsavoury nature, which have appeared in the British press and elsewhere and reserves her right to seek redress at the repetition of such old defamatory claims.

Ex.F.

a. **Reply:** Plaintiff does not dispute the contents of the email and therefore it should be deemed admitted.

21. **Undisputed Fact 21:** Mr. Barden, who prepared the January 2015 statement, did not intend it as a traditional press release solely to disseminate information to the media. So he intentionally did not pass it through a public relations firm, such as Mr. Gow's firm, Acuity Reputation. Ex.K ¶¶ 10,15.

a. **Reply:** Plaintiff makes two responses. As to the first sentence, she asserts without evidentiary support that “the Court should not consider” the Barden Declaration. This argument is frivolous for the reasons given on pages 8, 11-12, 18-19 of the Reply Brief in Support of Motion for Summary Judgment. It is a Declaration provided by an attorney with knowledge of the facts, Mr. Barden, disclosed by Defendant in her Rule 26 witnesses, whom Plaintiff chose not to depose. As to the second sentence, Plaintiff offers two pieces of evidence which she argues dispute the facts in question; they do not. That Mr. Gow forwarded the statement, prepared by Mr. Barden, to the media is not disputed. Rather, as Mr. Barden asserted in his declaration, and Plaintiff failed to cite contradictory evidence, he was the one who prepared the vast majority of the statement and instructed Mr. Gow to transmit it via email to members of the British media. Ex.K ¶¶ 10. He likewise avers that he “did not intend the January 2015 statement as a traditional press release solely to disseminate information to the media [and] this is why I intentionally did not request that Mr. Gow or any other public relations specialist prepare or participate in preparing the statement.” *Id.* at ¶ 15. Plaintiff fails to contradict Mr. Barden’s sworn statement.

22. **Undisputed Fact 22:** The January 2015 statement served two purposes. First, Mr. Barden intended that it mitigate the harm to Ms. Maxwell’s reputation from the press’s republication of plaintiff’s false allegations. He believed these ends could be accomplished by suggesting to the media that, among other things, they should subject plaintiff’s allegations to inquiry and scrutiny. For example, he noted in the statement that plaintiff’s allegations changed dramatically over time, suggesting that they are “obvious lies” and therefore should not be “publicised as news.” *Id.* ¶ 11.

a. **Reply:** This paragraph, eliciting Mr. Barden's intent, is uncontroverted by Plaintiff. She fails to cite any contradictory admissible evidence, instead making legal arguments. Her arguments are not admissible evidence (e.g., "it is her statement and she directed that it be sent to the media and public," lacks any citation to record evidence). Plaintiff's list of evidence she contends "corroborates" Plaintiff's claims should be ignored as they do not pertain to Mr. Barden's purposes in drafting the January 2 statement.

23. **Undisputed Fact 23:** Second, Mr. Barden intended the January 2015 statement to be "a shot across the bow" of the media, which he believed had been unduly eager to publish plaintiff's allegations without conducting any inquiry of their own. Accordingly, in the statement he repeatedly noted that plaintiff's allegations were "defamatory." In this sense, the statement was intended as a cease and desist letter to the media-recipients, letting the media-recipients understand the seriousness with which Ms. Maxwell considered the publication of plaintiff's obviously false allegations and the legal indefensibility of their own conduct. *Id.* ¶ 17.

a. **Reply:** Again, Plaintiff "disputes" Mr. Barden's intent without citation to record evidence. Plaintiff claims that Barden did not "note" anything in the statement, but the statement itself contains the phrase: "Ms. Roberts claims are obvious lies and should be treated as such and not publicized as news, *as they are defamatory.*" Plaintiff's unsupported arguments should be ignored and these facts pertaining to Mr. Barden's intent deemed admitted.

24. **Undisputed Fact 24:** Consistent with those two purposes, Mr. Gow's emails prefaced the statement with the following language: "Please find attached a *quotable statement* on behalf of Ms Maxwell" (emphasis supplied). The statement was intended to be a single, one-

time-only, comprehensive response—quoted in full—to plaintiff’s December 30, 2014, allegations that would give the media Ms. Maxwell’s response. *Id.* ¶ 18. The purpose of the prefatory statement was to inform the media-recipients of this intent. *Id.*

a. **Reply:** Plaintiff again “disputes” any statement related to Mr. Barden’s purpose or intent, but offers no evidence contradicting his purpose or intent. She simply points out that Ms. Maxwell retained Mr. Gow in early 2015, and that he works for a public relations firm, which is non-responsive to the fact at issue, i.e., Mr. Barden’s intent with respect to language included in the statement. No one has contested that it was Mr. Gow who actually forwarded the statement to select members of the media who had requested a response. The fact set forth should be deemed admitted.

25. **Undisputed Fact 25: Plaintiff’s activities to bring light to the rights of victims of sexual abuse.** Plaintiff has engaged in numerous activities to bring attention to herself, to the prosecution and punishment of wealthy individuals such as Epstein, and to her claimed interest of bringing light to the rights of victims of sexual abuse.

a. **Reply:** Plaintiff offers no evidence to dispute the facts cited and so they should be deemed admitted.

26. **Undisputed Fact 26:** Plaintiff created an organization, Victims Refuse Silence, Inc., a Florida corporation, directly related to her alleged experience as a victim of sexual abuse. Doc. 1 (Complaint), ¶¶ 24-25.

a. **Reply:** Plaintiff does not dispute this statement.

27. **Undisputed Fact 27:** The “goal” of Victims Refuse Silence “was, and continues to be, to help survivors surmount the shame, silence, and intimidation typically experienced by

victims of sexual abuse.” Toward this end, plaintiff has “dedicated her professional life to helping victims of sex trafficking.” *Id.*

a. **Reply:** Plaintiff “agrees.”

28. **Undisputed Fact 28:** Plaintiff repeatedly has sought out media organizations to discuss her alleged experience as a victim of sexual abuse. This Reply Statement at ¶¶ 51-54 (citing *inter alia* Doc. 216 ¶¶ 2-11 and referenced exhibits, Doc. 261-1 to 216-8; Exs. N, KK, LL, MM).

a. **Reply:** Plaintiff “denies” this contention, points to an email from Sharon Churcher seeking to interview her, and asserts that it was the media that sought her out. The weight of evidence, cited by Defendant at paragraphs 51-54, in addition to Plaintiff’s own documents, belie this assertion. She through her attorneys sought out a videotaped interview with ABC News, she sent her “book manuscript” to publishers and literary agents, and expressed anticipation and frustration that her “exclusive contract” with The Mail prevented her for a period of time from marketing her book. *See, e.g.*, EXHIBIT QQ at GIUFFRE003959.

To: sharon.churcher[sharon.churcher@mailonsunday.co.uk]
 From: Virginia Giuffre
 Sent: Fri 5/20/2011 2:20:09 AM
 Importance: Normal
 Subject: How ya doing??
 Received: Fri 5/20/2011 2:20:09 AM

Hi Buddy,

I hope you are stopping to smell the daffodils once in a while and having a good day!! I am so excited today because I can go sign with an agent as my contract is finished with "Mail On Sunday"...YEAH!! Sandra and I have been working really hard to get me ready for my trip to the U.S in a few weeks and I was wondering if I could use your advice again. She has got an INTL agent who is interested in speaking with me and I don't want to say "Yes" to the first bite because I'm not sure what to look for in an agent. What could you recommend that I do? I will send Jarred and Irene (your recommended agent) a copy of the synopsis and sample chapters but how do I choose the right one for "The Story"? Do you know anyone else that might be interested in this as well? If so, I am keen on speaking with anyone who might be. I am soooooo excited about this and will keep you updated with the progressing events. When I am in New York we have to meet up for some city shopping and take the kids to Central Park to see the Zoo, given there will be no masturbating kangaroo's for you to make friends with, but who knows? I am looking forward to showing Robbie around and he's got some family out there so well we have to catch up with. Such busy times, but I'm loving it!! Anyways I hope your taking care and catch me up on your fun times!!

Take care,
 Jenna

Plaintiff has disputed none of these activities she freely engaged in for years, and thus these facts should be deemed admitted.

29. **Undisputed Fact 29:** On December 30, 2014, plaintiff publicly filed an “entirely unnecessary” joinder motion laden with “unnecessary,” “lurid details” about being “sexually abused” as a “minor victim[]” by wealthy and famous men and being “trafficked” all around the world as a “sex slave.” Ex.J ¶ 24; Ex.K ¶¶ 2-3.

a. **Reply:** Plaintiff argues that her “lurid details” were necessary legally. Judge Marra, however, has already held that they were not and her legal arguments, unsupported by any actual evidence in this case, cannot serve to controvert his findings as quoted.

30. **Undisputed Fact 30:** The plaintiff’s alleged purpose in filing the joinder motion was to “vindicate” her rights under the CVRA, expose the government’s “secretly negotiated” “non-prosecution agreement” with Epstein, “*shed tremendous public light*” on Epstein and “other powerful individuals” that would undermine the agreement, and support the CVRA plaintiffs’ request for documents that would show how Epstein “used his powerful political and social connections to secure a favorable plea deal” and the government’s “motive” to aid Epstein and his “co-conspirators.” Ex.D, at 1, 6-7, 10 (emphasis supplied).

a. **Reply:** Plaintiff fails to offer any evidence to controvert the contents of her CVRA Joinder Motion and thus, the fact should be deemed admitted.

31. **Undisputed Fact 31:** Plaintiff has written the manuscript of a book she has been trying to publish detailing her alleged experience as a victim of sexual abuse and of sex trafficking in Epstein’s alleged “sex scheme.” Ex.KK.

a. **Reply:** Plaintiff directs the Court to her response to paragraph 52 and suggests the factual statement is misleading. She, however, offers no contradictory admissible evidence and thus the fact should be deemed admitted.

32. **Undisputed Fact 32: Republication alleged by plaintiff.** Plaintiff was required by Interrogatory No. 6 to identify any false statements attributed to Ms. Maxwell that were “published globally, including within the Southern District of New York,” as plaintiff alleged in Paragraph 9 of Count I of her complaint. In response, plaintiff identified the January 2015 statement and nine instances in which various news media published portions of the January 2015 statement in news articles or broadcast stories. Ex.H, at 7-8; Ex.I, at 4.

a. **Reply:** Her argument aside, Plaintiff offers no admissible evidence to controvert the interrogatory request and her response, which was limited to “nine instances” in which the press published “portions of the January 2015 statement.” For example, Plaintiff does not point to a single news story that published the entirety of the January 2015 statement. In the absence of contrary evidence, the fact should be deemed admitted.

33. **Undisputed Fact 33:** In none of the nine instances was there any publication of the entire January 2015 statement. Ex.H, at 7-8; Ex.I, at 4.

a. **Reply:** Plaintiff does not and cannot point to any of the nine publications she disclosed, or any other publication, that published the entire January 2015 statement, and this fact thus must be deemed admitted.

34. **Undisputed Fact 34:** Ms. Maxwell and her agents exercised no control or authority over any media organization, including the media identified in plaintiff’s response to

Interrogatory No. 6, in connection with the media's publication of portions of the January 2015 statement. Ex.J ¶ 24; Ex.K ¶¶ 2-3.

a. **Reply:** Plaintiff's proffered evidence, testimony from Mr. Gow, fails to support her argument and fails to controvert the Barden Declaration as cited by the defendant. Nothing in the testimony establishes, as Plaintiff argues, that "Defendant hired Gow because his position allowed him to influence the press to publish her defamatory statement." The testimony is irrelevant to the factual point. The Gow testimony at most relates to why Ms. Maxwell engaged Mr. Gow. It does not bear on the factual point, i.e., that Ms. Maxwell, Mr. Gow or Mr. Barden did not exercise any control or authority over the media in the media's republication of portions of the statement. On this point plaintiff has failed to introduce any contrary evidence. Accordingly, the fact should be deemed admitted.

35. **Undisputed Fact 35: Plaintiff's defamation action against Ms. Maxwell.** Eight years after Epstein's guilty plea, plaintiff brought this action, repeating many of the allegations she made in her CVRA joinder motion. Doc. 1, ¶ 9.

a. **Reply:** Plaintiff "agrees."

36. **Undisputed Fact 36:** The complaint alleged that the January 2015 statement "contained the following deliberate falsehoods":

- (a) That Giuffre's sworn allegations "against Ghislaine Maxwell are untrue."
- (b) That the allegations have been "shown to be untrue."
- (c) That Giuffre's "claims are obvious lies."

Doc. 1 ¶ 30 (boldface and underscoring omitted).

(a) **Reply:** Plaintiff "agreed."

37. Undisputed Fact 37: Plaintiff lived independently from her parents with her fiancé long before meeting Epstein or Ms. Maxwell. After leaving the Growing Together drug rehabilitation facility in 1999, plaintiff moved in with the family of a fellow patient. Ex.L at 7-8, 12-14. There she met, and became engaged to, her friend's brother, James Michael Austrich. *Id.* and at 19. She and Austrich thereafter rented an apartment in the Ft. Lauderdale area with another friend and both worked at various jobs in that area. *Id.* at 11, 13-17. Later, they stayed briefly with plaintiff's parents in the Palm Beach/ Loxahatchee, Florida area before Austrich rented an apartment for the couple on Bent Oak Drive in Royal Palm Beach. *Id.* at 17, 19, 25-27. Although plaintiff agreed to marry Austrich, she never had any intention of doing so. Ex.N at 127-128.

a. **Reply:** Plaintiff offers argument, without an affidavit or any other contradictory evidence, regarding whether Plaintiff "voluntarily live[d] independently" or whether a "reasonable person" could assert she was "engaged." Mr. Austrich and Plaintiff agreed that they were engaged and testified accordingly, as cited. In the absence of admissible evidence to the contrary, the facts as described by her fiancé in his deposition should be deemed admitted.

38. Undisputed Fact 38: Plaintiff re-enrolled in high school from June 21, 2000 until March 7, 2002. After finishing the 9th grade school year at Forest Hills High School on June 9, 1999, plaintiff re-enrolled at Wellington Adult High School on June 21, 2000, again on August 16, 2000 and on August 14, 2001. Ex.O. On September 20, 2001, Plaintiff then enrolled at Royal Palm Beach High School. *Id.* A few weeks later, on October 12, 2001, she matriculated at Survivors Charter School. *Id.* Survivor's Charter School was an alternative school designed to assist students who had been unsuccessful at more traditional schools. Ex.P at 23-24. Plaintiff

remained enrolled at Survivor's Charter School until March 7, 2002. Ex.O. She was present 56 days and absent 13 days during her time there. *Id.* Plaintiff never received her high school diploma or GED. Ex.Q at 475, 483. Plaintiff and Figueroa went "back to school" together at Survivor's Charter School. Ex.P at 23-27. The school day there lasted from morning until early afternoon. *Id.* at 23-27, 144-146.

a. **Reply:** Plaintiff argues, again without evidentiary support, that the "codes" on the school records indicate "semester start and end dates" rather than dates Plaintiff was in school. Her mis-reading of the records is apparent from their face. One column is labelled "Entry date," and the next "Withdrawal Date." Neither say "semester start date" or "semester end" date. Moreover, the "codes" simply prove the point: Plaintiff "entered" school (codes E01 and EA1) on the designated "entry date" and withdrew (either prior to completion, to enter another training program, or who "will continue in the class/program the next term or school year") on the dates designated "withdrawal." The school records display entry and withdrawal dates for Wellington High School Adult Program, from June 21, 2000 – August 15, 2000, from August 16, 2000 – August 13, 2001, and from August 14, 2001- September 20, 2001 and then an entry, that same day, September 20, 2001 at Survivor's Charter School. Plaintiff would have one believe that the records show a school on Plaintiff's official transcript that she never went to, Wellington High School Adult Program, that indicates she withdrew the very day she concededly entered Survivor's Charter School. Her intentional misreading of the record is yet another attempt to obfuscate Plaintiff's lack of memory regarding where and when she went to school, just like she failed to remember 8 jobs she held in 2000 whereas she claimed to have had one. The test is admissible evidence to the contrary, and Plaintiff

offers none. The flight logs (which show trips in early 2001) do not contradict the evidence because they are during the period of time she was enrolled in “Adult High School,” a place where night classes were taught and where one might circumstantially infer, careful attendance records were not kept.

39. Undisputed Fact 39: During the year 2000, plaintiff worked at numerous jobs.

In 2000, while living with her fiancé, plaintiff held five different jobs: at Aviculture Breeding and Research Center, Southeast Employee Management Company, The Club at Mar-a-Lago, Oasis Outsourcing, and Neiman Marcus. Ex.R. Her taxable earnings that year totaled nearly \$9,000. *Id.* Plaintiff cannot now recall either the Southeast Employee Management Company or the Oasis Outsourcing jobs. Ex.Q at 470-471.

a. Reply: Plaintiff does not dispute the facts as presented, merely argues regarding their significance. The Social Security Administration records detail the five jobs at which she worked in 2000; the month and day of the jobs are irrelevant for purposes of this recitation of facts. Likewise, Plaintiff does not dispute the taxable earnings she made that year, or that she does not “remember” the jobs associated with Southeast Employee Management Company or Oasis Outsourcing (whether they were payroll or not), where she made \$3,212 and \$2,037 that year. She also “forgot” about her job at Neiman Marcus, where she made \$1,440 in 2000, until she was confronted with the SSA records. McCawley Dec. Ex.5 at 53, 470.

40. Undisputed Fact 40: Plaintiff’s employment at the Mar-a-Lago spa began in fall 2000. Plaintiff’s father, Sky Roberts, was hired as a maintenance worker at the The Mar-a-Lago Club in Palm Beach, Florida, beginning on April 11, 2000. Ex.S. Mr. Roberts worked there year-round for approximately 3 years. *Id.*; Ex.T at 72-73. After working there for a period

of time, Mr. Roberts became acquainted with the head of the spa area and recommended plaintiff for a job there. *Id.* at 72. Mar-a-Lago closes every Mother's Day and reopens on November 1. Ex.U at Mar-a-Lago0212. Most of employees Mar-a-Lago, including all employees of the spa area such as "spa attendants," are "seasonal" and work only when the club is open, i.e., between November 1 and Mother's Day. Ex.T at 72-73; Ex.U at Mar-a-Lago0212; Ex.V. Plaintiff was hired as a "seasonal" spa attendant to work at the Mar-a-Lago Club in the fall of 2000 after she had turned 17.

a. Reply: Plaintiff's response is misleading. First, she does not dispute that Mr. Roberts, her father began working at Mar-a-Lago in April 2000, nor that he worked there for some time, became acquainted with the head of the spa area and recommended his daughter for a job.

Second, Plaintiff contends that "job postings and job descriptions" "from 2002 and later are irrelevant." There are no such "job postings" cited. Rather, the job posting cited was from October 2000, the same time that Plaintiff was hired. *Compare* Ex.V (posting for "Saturday October 14 and Sunday October 15") with calendar for year 2000, showing Saturday and Sundays in October corresponding to those dates.

Finally, Plaintiff points to her own "recollection" as contrary proof. Her "recollection" about when she worked at Mar-a-Lago has shifted dramatically over time. First, she claimed it was 1998. *See* Jane Doe 102 complaint. Then, it was 1999. *See* Doc. 1, Complaint in this matter. Now, in this response she has changed her answer to 2000. Her vague recollections about what year have been off base, no credit should be given to her newfound recollection of which month she worked there. In any event, she presents no admissible credible evidence to contradict Mar-a-Lago's own records. Ex.U

at Mar-a-Lago⁰²¹² (spa not open from Mother's Day until November 1). Even Plaintiff's father, a longtime employee of Mar-a-lago admitted that the place "closed down" in the summer. Ex.T at 72-73. Plaintiff simply is not credible in her testimony that she recalls it being a "summer job," and the fact that she did not work at the spa until at least November 2000 at the age of 17 should be deemed admitted.

41. Undisputed Fact 41: Plaintiff represented herself as a masseuse for Jeffrey Epstein. While working at the Mar-a-Lago spa and reading a library book about massage, plaintiff met Ms. Maxwell. Plaintiff thereafter told her father that she got a job working for Jeffrey Epstein as a masseuse. Ex.T at 79. Plaintiff's father took her to Epstein's house on one occasion around that time, and Epstein came outside and introduced himself to Mr. Roberts. *Id.* at 82-83. Plaintiff commenced employment as a traveling masseuse for Mr. Epstein. Plaintiff was excited about her job as a masseuse, about traveling with him and about meeting famous people. Ex.L at 56; Ex.P at 126. Plaintiff represented that she was employed as a masseuse beginning in January 2001. Ex.M; Ex.N. Plaintiff never mentioned Ms. Maxwell to her then-fiancé, Austrich. Ex.L at 74. Plaintiff's father never met Ms. Maxwell. Ex.T at 85.

a. **Reply:** Plaintiff does not actually refute any of the facts set forth above, but rather spends her time discussing different facts. Plaintiff's father testified to what she told him, that she "was going to learn massage therapy." Ex.T at 79. She does not contest her father's testimony that Mr. Epstein came out of the house and greeted her father and that her father never met Ms. Maxwell. *See* Reply to Undisputed Fact 41. Whether someone can receive a "massage license" under Florida law without a high school equivalency diploma is of no moment. Plaintiff does not dispute she represented

herself as a masseuse to others, in her own handwriting, beginning in January 2001. Exs. M and N. These facts should be deemed admitted.

42. Undisputed Fact 42: Plaintiff resumed her relationship with convicted felon Anthony Figueroa. In spring 2001, while living with Austrich, plaintiff lied to and cheated on him with her high school boyfriend, Anthony Figueroa. Ex.L at 68, 72. Plaintiff and Austrich thereafter broke up, and Figueroa moved into the Bent Oak apartment with plaintiff. Ex.L at 20; Ex.P at 28. When Austrich returned to the Bent Oak apartment to check on his pets and retrieve his belongings, Figueroa in Plaintiff's presence punched Austrich in the face. Ex.X; Ex.L at 38-45. Figueroa and plaintiff fled the scene before police arrived. Ex.X. Figueroa was then a convicted felon and a drug abuser on probation for possession of a controlled substance. Ex.Y.

a. **Reply:** Plaintiff argues relevance regarding these facts, but contests none of them. They should be deemed admitted. Plaintiff's lies, cheating, and association with a convicted felon and known drug abuser all are relevant in this defamation case concerning her reputation, purported damage to such reputation, and whether she was a known liar, as the January 2015 statement contends.

43. Undisputed Fact 43: Plaintiff freely and voluntarily contacted the police to come to her aid in 2001 and 2002 but never reported to them that she was Epstein's "sex slave." In August 2001 at age 17, while living in the same apartment, plaintiff and Figueroa hosted a party with a number of guests. Ex.Z. During the party, according to plaintiff, someone entered plaintiff's room and stole \$500 from her shirt pocket. *Id.* Plaintiff contacted the police. She met and spoke with police officers regarding the incident and filed a report. She did not disclose to the officer that she was a "sex slave." A second time, in June 2002, plaintiff contacted the police to report that her former landlord had left her belongings by the roadside and

had lit her mattress on fire. Ex.AA. Again, plaintiff met and spoke with the law enforcement officers but did not complain that she was the victim of any sexual trafficking or abuse or that she was then being held as a “sex slave.” *Id.*

a. **Reply:** Plaintiff, again, presents no admissible evidence to contradict these facts, instead arguing their relevance. They should be deemed admitted.

44. **From August 2001 until September 2002, Epstein and Maxwell were almost entirely absent from Florida on documented travel unaccompanied by Plaintiff.** Flight logs maintained by Epstein’s private pilot Dave Rodgers evidence the substantial number of trips away from Florida that Epstein and Maxwell took, unaccompanied by Plaintiff, between August 2001 and September 2002. Ex.BB. Rodgers maintained a log of all flights on which Epstein and Maxwell traveled with him. Ex.CC at 6-15. Epstein additionally traveled with another pilot who did not keep such logs and he also occasionally traveled via commercial flights. *Id.* at 99-100, 103. For substantially all of thirteen months of the twenty-two months (from November 2000 until September 2002) that Plaintiff lived in Palm Beach and knew Epstein, Epstein was traveling outside of Florida unaccompanied by Plaintiff. Ex.BB. During this same period of time, Plaintiff was employed at various jobs, enrolled in school, and living with her boyfriend.

a. **Reply:** Plaintiff goes to great lengths to dispute facts other than those presented as Undisputed Fact 44. Her voluminous, repetitive recitation of the flights that Plaintiff *was* on do nothing to demonstrate the 13 months of flights from July 2001 until August 2002 that Epstein and Maxwell *were on without Plaintiff*, as reflected in the logs. Her assertions regarding the other flights that she took, commercial or on another plane, do nothing to establish all of the many flights she *was not on* during 13 of the 22 month period during which Epstein and Maxwell were away from Palm Beach. Plaintiff does

not dispute that Epstein and Maxwell were on the flights without her. The facts as presented by Defendant should be deemed admitted.

45. Undisputed Fact 45: Plaintiff and Figueroa shared a vehicle during 2001 and 2002. Plaintiff and Figueroa shared a '93 white Pontiac in 2001 and 2002. Ex.P at 67; Ex.EE. Plaintiff freely traveled around the Palm Beach area in that vehicle. *Id.* In August 2002, Plaintiff acquired a Dodge Dakota pickup truck from her father. Ex.P at 67-68. Figueroa used that vehicle in a series of crimes before and after Plaintiff left for Thailand. *Id.*; Ex.FF.

a. **Reply:** Again, the Response has nothing to do with the facts stated. As Plaintiff concedes, she and Mr. Figueroa had one car that they both used. In fact, they traveled to and from school together. Ex.P at 67-68. She also does not dispute that she traveled freely around the Palm Beach area in that vehicle, or that “her car” was used in a series of thefts while she was in Thailand. All should be deemed admitted.

46. Undisputed Fact 46: Plaintiff held a number of jobs in 2001 and 2002. During 2001 and 2002, plaintiff was gainfully employed at several jobs. She worked as a waitress at Mannino's Restaurant, at TGIFriday's restaurant (aka CCI of Royal Palm Inc.), and at Roadhouse Grill. Ex.R. She also was employed at Courtyard Animal Hospital (aka Marc Pinkwasser DVM). *Id.*; Ex.W.

a. **Reply:** Plaintiff admits all of the facts set forth above, aside from the use of the word “gainfully.” They should be deemed admitted.

47. Undisputed Fact 47: In September 2002, Plaintiff traveled to Thailand to receive massage training and while there, met her future husband and eloped with him. Plaintiff traveled to Thailand in September 2002 to receive formal training as a masseuse. Figueroa drove her to the airport. While there, she initially contacted Figueroa frequently,

incurring a phone bill of \$4,000. Ex.P at 35. She met Robert Giuffre while in Thailand and decided to marry him. She thereafter ceased all contact with Figueroa from October 2002 until two days before Mr. Figueroa's deposition in this matter in May 2016. *Id.* at 29, 37.

a. **Reply:** Again, Plaintiff does not refute the facts set forth, she simply offers her own interpretation of those facts. In the absence of any contrary evidence, they should be deemed admitted.

48. **Undisputed Fact 48: Detective Recarey's investigation of Epstein failed to uncover any evidence that Ms. Maxwell was involved in sexual abuse of minors, sexual trafficking or production or possession of child pornography.** Joseph Recarey served as the lead detective from the Palm Beach Police Department charged with investigating Jeffrey Epstein. Ex.GG at 10. That investigation commenced in 2005. *Id.* Recarey worked only on the Epstein case for an entire year. *Id.* at 274. He reviewed previous officers' reports and interviews, conducted numerous interviews of witnesses and alleged victims himself, reviewed surveillance footage of the Epstein home, participated in and had knowledge of the search warrant executed on the Epstein home, and testified regarding the case before the Florida state grand jury against Epstein. *Id.* at 212-215. Detective Recarey's investigation revealed that not one of the alleged Epstein victims ever mentioned Ms. Maxwell's name and she was never considered a suspect by the government. *Id.* at 10-11, 180-82, 187-96, 241-42, 278. None of Epstein's alleged victims said they had seen Ms. Maxwell at Epstein's house, nor said they had been "recruited by her," nor paid any money by her, nor told what to wear or how to act by her. *Id.* Indeed, none of Epstein's alleged victims ever reported to the government they had met or spoken to Ms. Maxwell. Maxwell was not seen coming or going from the house during the law enforcement surveillance of Epstein's home. *Id.* at 214-215. The arrest warrant did not mention Ms. Maxwell

and her name was never mentioned before the grand jury. *Id.* at 203, 211. No property belonging to Maxwell, including “sex toys” or “child pornography,” was seized from Epstein’s home during execution of the search warrant. *Id.* at 257. Detective Recarey, when asked to describe “everything that you believe you know about Ghislaine Maxwell’s sexual trafficking conduct,” replied, “I don’t.” *Id.* at 278. He confirmed he has no knowledge about Ms. Maxwell sexually trafficking anybody. *Id.* at 278-79. Detective Recarey also has no knowledge of Plaintiff’s conduct that is subject of this lawsuit. *Id.* at 259-260.

a. **Reply:** Plaintiff offers several misleading “contrary” facts, none of which actually address the facts presented herein, namely whether Ms. Maxwell was ever mentioned by any of Epstein’s alleged victims, whether she was the target of their investigation, and whether any of her property was seized from Epstein’s home. Plaintiff cites to numerous inadmissible pieces of evidence on facts other than those. Mr. Rodriguez, a convicted felon for obstructing justice related to the Epstein case, is dead and his deposition testimony is the subject of a motion in limine because Ms. Maxwell has never had the opportunity to cross examine him. Doc. 567 at 14. Ms. Rabuyo likewise is not a witness who has been deposed in this case, and therefore her “testimony” is not admissible against Ms. Maxwell. The message pads are not authenticated by anyone, as will be the subject of a forthcoming motion *in limine*. And there is not one shred of evidence that any child pornography, as opposed to a topless photo of a very adult Ms. Maxwell, were ever found in Epstein’s home. The facts should be deemed admitted, as those proffered by Defendant are based on admissible evidence.

49. Undisputed Fact 49: No nude photograph of Plaintiff was displayed in Epstein’s home. Epstein’s housekeeper, Juan Alessi, “never saw any photographs of Virginia

Roberts in Mr. Epstein's house." Ex.HH at ¶ 17. Detective Recarey entered Epstein's home in 2002 to install security cameras to catch a thief and did not observe any "child pornography" within the home, including on Epstein's desk in his office. Ex.GG at 289-90.

a. **Reply:** Plaintiff offered no evidence that a nude photograph of *her* was displayed in Epstein's home. All of the testimony she submits has nothing to do with a nude photograph of herself. The fact should be deemed admitted.

50. Undisputed Fact 50: Plaintiff intentionally destroyed her "journal" and "dream journal" regarding her "memories" of this case in 2013 while represented by counsel. Plaintiff drafted a "journal" describing individuals to whom she claims she was sexually trafficked as well as her memories and thoughts about her experiences with Epstein. Ex.II at 64-65, 194; Ex.N at 205-08. In 2013, she and her husband created a bonfire in her backyard in Florida and burned the journal together with other documents in her possession. *Id.* Plaintiff also kept a "dream journal" regarding her thoughts and memories that she possessed in January 2016. Ex.II at 194-96. To date, Plaintiff cannot locate the "dream journal." *Id.*

a. **Reply:** Plaintiff offers no contrary admissible regarding her destruction of her journal and it should be deemed admitted.

51. Undisputed Fact 51: Plaintiff publicly peddled her story beginning in 2011. Plaintiff granted journalist Sharon Churcher extensive interviews that resulted in seven (7) widely distributed articles from March 2011 through January 2015. Doc. 216 ¶¶ 2-11 and referenced exhibits; Doc. 261-1 to 216-8, incorporated by reference. Churcher regularly communicated with plaintiff and her "attorneys or other agents" from "early 2011" to "the present day." Plaintiff received approximately \$160,000 for her stories and pictures that were published by many news organizations. Ex.N at 247-248.

a. **Reply:** Plaintiff offers no evidence to contradict the facts asserted and they should therefore be deemed admitted. Plaintiff's unsupported spin of those facts should be stricken.

52. Undisputed Fact 52: Plaintiff drafted a 144-page purportedly autobiographical book manuscript in 2011 which she actively sought to publish. In 2011, contemporaneous with her Churcher interviews, plaintiff drafted a book manuscript which purported to document plaintiff's experiences as a teenager in Florida, including her interactions with Epstein and Maxwell. Ex.KK. Plaintiff communicated with literary agents, ghost writers and potential independent publishers in an effort to get her book published. She generated marketing materials and circulated those along with book chapters to numerous individuals associated with publishing and the media.

a. **Reply:** Plaintiff cites inadmissible evidence, and attorney argument, in contradiction of these facts. They should be ignored. The "Victim Notification Letter" is inadmissible hearsay. The psychologist records likewise are inadmissible hearsay. The FBI interview is inadmissible hearsay. Plaintiff's counsel then flatly misrepresents to the Court her own client's characterization of the book manuscript, calling it a "fictionalized account." Plaintiff, contradicting her counsel, testified that the book manuscript is "99% true."

Q Is there anything -- well, first of all, did you author that entire manuscript?

A Yes, I did.

Q Did anyone else author part of that manuscript?

A Do you mean did anyone else write this with me?

Q Right.

A No.

Q That's all your writing?

A This is my writing.

Q Okay. To the best of your recollection as you sit here right now, is there anything in that manuscript about Ghislaine Maxwell that is untrue?

A I don't believe so. Like I said, there is a lot of stuff that I actually have left out of here.

Q Um-hum.

A. So there is a lot more information I could put in there. But as far as Ghislaine Maxwell goes, I would like to say that there is 99.9 percent of it would be to the correct knowledge.

Q All right. Is there anything that you -- and I understand you're doing this from memory. Is there anything that you recall, as you're sitting here today, about Ghislaine Maxwell that is contained in that manuscript, that is not true?

A You know, I haven't read this in a very long time. I don't believe that there's anything in here about Ghislaine Maxwell that is not true.

EXHIBIT RR at 42-43 (emphasis added).

Plaintiff clearly now would like to spin the book manuscript as “fictionalized” because she is well aware that the “facts” presented by her in that manuscript are contradicted by many other documentary and testimonial records. Yet she offers no admissible evidence that Plaintiff intended the manuscript to be fictional. Citations to social scientists who have not testified in this case and whose work has not even be cited by any expert in this case is wholly improper and should be stricken.

53. Undisputed Fact 53: Plaintiff’s publicly filed “lurid” CVRA pleadings initiated a media frenzy and generated highly publicized litigation between her lawyers and Alan Dershowitz. On December 30, 2014, plaintiff, through counsel, publicly filed a joinder motion that contained her “lurid allegations” about Ms. Maxwell and many others, including Alan Dershowitz, Prince Andrew, Jean-Luc Brunel. The joinder motion was followed by a “corrected” motion (Ex.D) and two further declarations in January and February 2015, which repeated many of plaintiff’s claims. These CVRA pleadings generated a media maelstrom and spawned highly publicized litigation between plaintiff’s lawyers, Edwards and Cassell, and Alan

Dershowitz. After plaintiff publicly alleged Mr. Dershowitz of sexual misconduct, Mr. Dershowitz vigorously defended himself in the media. He called plaintiff a liar and accused her lawyers of unethical conduct. In response, attorneys Edwards and Cassell sued Dershowitz who counterclaimed. This litigation, in turn, caused additional media attention by national and international media organizations. Doc. 363 at 363-1 through 363-14.

a. **Reply:** Plaintiff offers no contrary facts and so they should be deemed admitted.

54. Undisputed Fact 54: Plaintiff formed non-profit Victims Refuse Silence to attract publicity and speak out on a public controversy. In 2014, plaintiff, with the assistance of the same counsel, formed a non-profit organization, Victims Refuse Silence. According to plaintiff, the purpose of the organization is to promote plaintiff's professed cause against sex slavery. The stated goal of her organization is to help survivors surmount the shame, silence, and intimidation typically experienced by victims of sexual abuse. Ex.LL. Plaintiff attempts to promote Victims Refuse Silence at every opportunity. Ex.MM at 17-18. For example, plaintiff participated in an interview in New York with ABC to promote the charity and to get her mission out to the public. *Id.* at 28.

a. **Reply:** Plaintiff offers no contrary evidence and the facts should be deemed admitted.

II. The Court should strike plaintiff's statement of "undisputed facts."

The summary-judgment procedure is well established. When the summary-judgment non-movant bears the burden of proof at trial, as in the case at bar, the movant may show a *prima facie* entitlement to summary judgment in one of two ways: (1) the movant may point to evidence that negates the non-movant's claims, or (2) the movant may identify those portions of its opponent's evidence that demonstrate the absence of a genuine issue of material fact.

Salahuddin v. Goord, 467 F.3d 263, 272-73 (2d Cir. 2006). If the movant makes this showing in either manner, the burden shifts to the nonmovant to identify record evidence creating a genuine issue of material fact. *Id.* at 273.

Local Civil Rule 56.1(a) carries out this summary-judgment procedure by requiring the summary-judgment movant to set forth “material facts as to which she contends there is no genuine issue to be tried.” Subsection (b) of the rule requires the party opposing summary judgment to set forth a “statement of additional material facts as to which it is contended that *there exists a genuine issue to be tried*” (emphasis supplied).

Ms. Maxwell has moved for summary judgment; plaintiff has not. As movant, Ms. Maxwell is required under Local Civil Rule 56.1 to enumerate the facts she is asserting as undisputed; as the party opposing summary judgment, plaintiff is permitted—if she can—to introduce admissible evidence creating a genuine issue of material fact. *See* Fed. R. Civ. P. 56(c)(1).

Plaintiff is confused. Plaintiff believes she—the party *opposing* summary judgment—must enumerate facts she is asserting as undisputed, and so she has submitted her own Rule 56.1 statement of “undisputed facts.” That gets the summary-judgment procedure exactly backwards. *Plaintiff’s* “undisputed facts” are irrelevant. Plaintiff cannot avoid summary judgment by proposing “undisputed facts”; she may only do so by creating a genuine issue of material fact *as to Ms. Maxwell’s statement of undisputed facts*. Accordingly, this Court should strike plaintiff’s statement of “undisputed facts.”

Although Ms. Maxwell as the summary-judgment movant has no duty to respond to plaintiff’s alleged “undisputed facts,” we hasten to add that Ms. Maxwell in fact opposes and disputes most of plaintiff’s alleged “undisputed facts.” For example, Defendant’s Undisputed

Fact 40 includes the statement, “Ms. Giuffre was hired as a ‘seasonal’ spa attendant to work at the Mar-a-Lago Club in the fall of 2000 after she had turned 17.” Yet, Plaintiff sets forth as her own “Undisputed Fact 58” that “Virginia [got] job at Mar-a-Lago in 2000, either months before or just after [her] 17th birthday.” Plaintiff has done nothing more than set forth her “dispute” with Defendant’s Undisputed Fact 40 as her own “undisputed fact.” It makes no sense. *See also* Plaintiff’s “Undisputed Fact” 63. The other alleged undisputed facts are simply Plaintiff’s assertion of her deposition testimony, and hearsay of her statements to other witnesses, couched as “Undisputed Facts.” Ms. Maxwell strenuously disputes almost all of the alleged “undisputed facts” claiming that she engaged in any sexual acts, misconduct or communications with plaintiff or others; indeed, over the course of two days and thirteen hours of deposition Ms. Maxwell disputed all such allegations.

Because none of Plaintiff’s “undisputed facts” have anything to do with the issues raised by Defendant’s Motion for Summary Judgment, Ms. Maxwell moves to strike plaintiff’s statement of “undisputed facts.”

Conclusion

For the foregoing reasons, Ms. Maxwell requests that the Court deem her Undisputed Facts admitted, and that the Court strike plaintiff’s statement of “undisputed facts.”

Dated: February 10, 2017

Respectfully submitted,

/s/ Laura A. Menninger

Laura A. Menninger (LM-1374)

Jeffrey S. Pagliuca (*pro hac vice*)

HADDON, MORGAN AND FOREMAN, P.C.

150 East 10th 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 February 10, 2017, I electronically served this *Defendant's Reply to Plaintiff's Statement of Contested Facts and Plaintiff's "Undisputed Facts" Pursuant to Local Civil Rule 56.1* 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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

VIRGINIA L. GIUFFRE,

Plaintiff,

v.

15-cv-07433-RWS

GHISLAINE MAXWELL,

Defendant.

-----X

**Declaration of Laura A. Menninger in Support of
Defendant's Motion For Summary Judgment**

I, Laura A. Menninger, declare as follows:

1. I am an attorney at law duly licensed in the State of New York and admitted to practice in the United States District Court for the Southern District of New York. I am a member of the law firm Haddon, Morgan & Foreman, P.C., counsel of record for Defendant Ghislaine Maxwell in this action. I respectfully submit this Declaration in support of Ms. Maxwell's Motion for Summary Judgment.¹

2. Attached as Exhibit A is a true and correct copy of an article by Sharon Churcher entitled "Prince Andrew and the 17-year-old girl his sex offender flew to Britain to meet him," DAILY MAIL, dated March 2, 2011.

¹ At trial, defendant intends to produce either the custodian of record relevant to any disputed document or a certification in compliance with either Fed. R. Evid. P. 803 and/or 902. See Fed. R. Civ. P. 56(c). Apart from deposition testimony, the majority of non-deposition documents herein were either produced by plaintiff or obtained with releases signed by plaintiff.

3. Attached as Exhibit B is a true and correct copy of an article by Sharon Churcher entitled “Teenage girl recruited by paedophile Jeffrey Epstein reveals how she twice met Bill Clinton,” DAILY MAIL, dated March 5, 2011.

4. Attached as Exhibit C is a true and correct copy of a statement on behalf of Ms. Maxwell dated March 9, 2011.

5. Attached as Exhibit D (filed under seal) is a true and correct copy of the corrected Motion for Joinder, *Doe v. United States*, No. 08-80736-Civ-Marra/Johnson (S.D. Fla. Jan. 2, 2015).

6. Attached as Exhibit E is a true and correct copy of an Order Denying Motion to Join Under Rule 21, *Doe v. United States*, No. 08-80736-Civ-Marra/Johnson (S.D. Fla. Apr. 7, 2016).

7. Attached as Exhibit F is a true and correct copy of a statement on behalf of Ms. Maxwell dated January 2, 2015.

8. Attached as Exhibit G (filed under seal) are true and correct copies of excerpts from the November 18, 2016 deposition of Ross Gow, designated Confidential under the Protective Order.

9. Attached as Exhibit H (filed under seal) is a true and correct copy of Plaintiff’s Response to Second Request for Production and to Interrogatories and Requests for Admissions, dated July 1, 2016.

10. Attached as Exhibit I (filed under seal) is a true and correct copy of Plaintiff’s Supplemental Responses to to Interrogatory Nos. 6, 12 and 13, dated August 17, 2016, designated Confidential under the Protective Order.

11. Attached as Exhibit J (filed under seal) is a true and correct copy of the Declaration of Ghislaine Maxwell, dated January 6, 2017.

12. Attached as Exhibit K (filed under seal) is a true and correct copy of the Declaration of Philip Barden, dated January 6, 2017.

13. Attached as Exhibit L (filed under seal) are true and correct copies of excerpts from the June 23, 2016 deposition of James Austrich, designated Confidential under the Protective Order.

14. Attached as Exhibit M (filed under seal) is a true and correct copy of Plaintiff's passport application, dated January 12, 2001, designated Confidential under the Protective Order.

15. Attached as Exhibit N (filed under seal) are true and correct copies of excerpts from the May 3, 2016 deposition of Virginia Giuffre, designated Confidential under the Protective Order.

16. Attached as Exhibit O (filed under seal) are true and correct copies of Plaintiff's school records Bates stamped GM_00888 and GIUFFFREE004981-88 and designated Confidential under the Protective Order.

17. Attached as Exhibit P (filed under seal) are true and correct copies of excerpts from the June 24, 2016 deposition of Tony Figueroa, designated Confidential under the Protective Order.

18. Attached as Exhibit Q (filed under seal) are true and correct copies of excerpts from the November 14, 2016 deposition of Virginia Giuffre, designated Confidential under the Protective Order.

19. Attached as Exhibit R (filed under seal) is a true and correct copy of Plaintiff's Social Security records dated October 25, 2016, Bates stamped GIUFFRE009175, designated Confidential under the Protective Order.

20. Attached as Exhibit S (filed under seal) is a true and correct copy of Mar-A-Lago records, Bates stamped MAR-A-LAGO-0001 and MAR-A-LAGO-0161-0177.

21. Attached as Exhibit T (filed under seal) is a true and correct copies of excerpts from the May 20, 2016 deposition of Sky Roberts, designated Confidential under the Protective Order.

22. Attached as Exhibit U (filed under seal)) is a true and correct copy of the Mar-A-Lago employee handbook, dated October 28, 1995, Bates stamped MAR-A-LAGO-0178-0243.

23. Attached as Exhibit V (filed under seal) is a true and correct copy of the Mar-A-Lago advertisement, Bates stamped MAR-A-LAGO-0086.

24. Attached as Exhibit W (filed under seal) is a true and correct copy of Plaintiff's Courtyard Animal Hospital employment application, Bates stamped GIUFFRE009201-11, designated Confidential under the Protective Order.

25. Attached as Exhibit X(filed under seal) is a true and correct copy of the Royal Palm Beach Police Department Offense Report date, June 10, 2001, Bates stamped GM_00780-82.

26. Attached as Exhibit Y (filed under seal) is a true and correct copy of the Royal Palm Beach Police Department Probable Cause Affidavit date, November 19, 1999, Bates stamped GM_01223-28.

27. Attached as Exhibit Z (filed under seal) is a true and correct copy of the Royal Palm Beach Police Department Offense Report date, August 3, 2001, Bates stamped GM_00777-79.

28. Attached as Exhibit AA (filed under seal) is a true and correct copy of the Palm Beach County Sheriff's Offense Report date, June 02, 2002, Bates stamped GM_00748-79.

29. Attached as Exhibit BB (filed under seal) are true and correct copies of David Rodgers flight logs from November 1995 to May 2013, Bates stamped DR__0001-DR0107.

30. Attached as Exhibit CC (filed under seal) is a true and correct copy of excerpts from the June 3, 2016 deposition of David Rodgers, designated Confidential under the Protective Order.

31. Exhibit DD left intentionally blank.

32. Attached as Exhibit EE (filed under seal) is a true and correct copy of the Royal Palm Beach Police Citation Tracking Report date, June 19, 2002, Bates stamped GM_00776.

33. Attached as Exhibit FF (filed under seal) is a true and correct copy of the Palm Beach County Sheriff's Offense Report, Bates stamped GM_01202-28.

34. Attached as Exhibit GG (filed under seal) is a true and correct copies of excerpts from the June 21, 2016 deposition of Joseph Recarey, designated Confidential under the Protective Order.

35. Attached as Exhibit HH (filed under seal) is a true and correct copy of the Affidavit of Juan P. Alessi, dated January 13, 2016, Bates stamped GM_01197-1201.

36. Attached as Exhibit II (filed under seal) is a true and correct copy of excerpts from the Deposition of Virginia Giuffre taken in *Cassell v. Dershowitz*, on January 16, 2016, and designated as Confidential under the Protective Order.

37. Attached as Exhibit JJ (filed under seal) is a true and correct copy of Errata Sheet from the January 16, 2016 deposition of Virginia Giuffre taken in *Cassell v. Dershowitz*, dated February 11, 2016 and designated by Plaintiff as Confidential under the Protective Order.

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

39. Attached as Exhibit LL is a true and correct copy of the Victims Refuse Silence, Inc. Articles of Incorporation dated December 23, 2014, GIUFFRE001064-65.

40. Attached as Exhibit MM (filed under seal) is a true and correct copy of excerpts from the September 8, 2016 deposition of Brittany Henderson, designated Confidential under the Protective Order.

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

Executed on January 6, 2017.

s/ Laura A. Menninger
Laura A. Menninger

CERTIFICATE OF SERVICE

I certify that on January 6, 2017, I electronically served this *Declaration of Laura A. Menninger in Support of Defendant's Motion for Summary Judgment* 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**

Virginia L. Giuffre,

Plaintiff,

Case No.: 15-cv-07433-RWS

v.

Ghislaine Maxwell,

Defendant.

_____ /

**DECLARATION OF SIGRID MCCAWLEY IN SUPPORT OF
PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT AND UNDISPUTED FACTS**

I, Sigrid 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 Support of Plaintiff's Response to Defendant's Motion for Summary Judgment and Undisputed Facts.
3. Attached hereto as Sealed Exhibit 1 are true and correct copies of Excerpts from June 1, 2016 Depositions of Juan Alessi.
4. Attached here to as Sealed Exhibit 2 is a true and correct copy of Excerpts from June 23, 2016, Deposition of James Austrich.
5. Attached hereto as Sealed Exhibit 3 is a true and correct copy of Excerpts from September 9, 2016, Deposition of Jeffrey Epstein.
6. Attached hereto as Sealed Exhibit 4 is a true and correct copy of Excerpts from June 24, 2016, Deposition of Tony Figueroa (Volumes I and II).

7. Attached hereto as Sealed Composite Exhibit 5 are true and correct copies of Excerpts from May 3, 2016 and November 14, 2016, Deposition of Virginia Giuffre.

8. Attached hereto as Sealed Exhibit 6 is a true and correct copy of Excerpts from November 18, 2016, Deposition of Ross Gow.

9. Attached hereto as Sealed Exhibit 7 is a true and correct copy of Excerpts from June 20, 2016, Deposition of [REDACTED].

10. Attached hereto as Sealed Exhibit 8 is a true and correct copy of Excerpts from January 25, 2017, Deposition of Sarah Kellen.

11. Attached hereto as Sealed Exhibit 9 is a true and correct copy of Excerpts from November 29, 2016, Deposition of Peter Kent.

12. Attached hereto as Sealed Exhibit 10 is a true and correct copy of Excerpts from January 17, 2017, Deposition of Nadia Marcinko.

13. Attached hereto as Sealed Composite Exhibit 11 are true and correct copies of Excerpts from April 22, 2016 and July 22, 2016, Depositions of Ghislaine Maxwell.

14. Attached hereto as Sealed Exhibit 12 is a true and correct copy of Excerpts from May 24, 2016, Deposition of Lynne Trudy Miller

15. Attached hereto as Sealed Exhibit 13 is a true and correct copy of Excerpts from June 21, 2016, Deposition Joseph Recarey.

16. Attached hereto as Sealed Exhibit 14 is a true and correct copy of Excerpts from June 10, 2016, Deposition of Rinaldo Rizzo.

17. Attached hereto as Sealed Exhibit 15 is a true and correct copy of Excerpts from June 3, 2016, Deposition of David Rodgers.

18. Attached hereto as Sealed Exhibit 16 is a true and correct copy of Excerpts from May 18, 2016, Deposition of Johanna Sjoborg.

19. Attached hereto as Sealed Exhibit 17 is a true and correct copy of Excerpts from May 20, 2016, Deposition of Sky Roberts.

20. Attached hereto as Sealed Composite Exhibit 18 are true and correct copies of Excerpts from September 8, 2009, Depositions of Juan Alessi (GIUFFRE000102-000103; GIUFFRE000105; GIUFFRE000241-000242).

21. Attached hereto as Sealed Exhibit 19 is a true and correct copy of Excerpts from February 16, 2010, Deposition of Janusz Banasiak (GIUFFRE004431-004432; GIUFFRE004437-004438; GIUFFRE004477).

22. Attached hereto as Sealed Exhibit 20 is a true and correct copy of Excerpts from October 20, 2009, Deposition of Louella Rabuyo (GIUFFRE004386).

23. Attached hereto as Sealed Composite Exhibit 21 is a true and correct copy of Excerpts from July 29, 2009 and August 7, 2009, Deposition of Alfredo Rodriguez (GIUFFRE000936-000937; GIUFFRE000942; GIUFFRE000953-000954; GIUFFRE000974; GIUFFRE000978; GIUFFRE000996; GIUFFRE000999-001000; GIUFFRE001003).

24. Attached hereto as Sealed Exhibit 22 is a true and correct copy of August 1, 2016, Defendant's Privilege Log.

25. Attached hereto as Sealed Exhibit 23 is a true and correct copy of September 15, 2016, Expert Report of Professor Terry Coonan.

26. Attached hereto as Sealed Exhibit 24 is a true and correct copy of September 15, 2016, Expert Report of Doctor Bernard Jansen.

27. Attached hereto as Sealed Exhibit 25 is a true and correct copy of November 28, 2016, Expert Report of Peter Kent

28. Attached hereto as Sealed Exhibit 26 is a true and correct copy of January 2, 2015, Email Correspondence (GM_00068).

29. Attached hereto as Sealed Exhibit 27 is a true and correct copy of Excerpts of Palm Beach School County Records (GM_00888-00898).

30. Attached hereto as Sealed Exhibit 28 is a true and correct copy of Excerpts of Message Pads (GIUFFRE001388; GIUFFRE001409; GIUFFRE001412-4213; GIUFFRE001417-18, GIUFFRE001421; GIUFFRE001423; GIUFFRE001426-1428; GIUFFRE001432-1433; GIUFFRE001435; GIUFFRE001446; GIUFFRE001448-1449; GIUFFRE001452-1454; GIUFFRE001456; GIUFFRE001462; GIUFFRE001474; GIUFFRE001563).

31. Attached here to as Sealed Exhibit 29 is a true and correct copy of Epstein's Black Book (GIUFFRE001573-GIUFFRE001669).

32. Attached hereto as Sealed Exhibit 30 is a true and correct copy of September 3, 2008, U.S. Attorney Victim Notification Letter (GIUFFRE002216-002218).

33. Attached hereto as Sealed Exhibit 31 is a true and correct copy of July 5, 2013, Federal Bureau of Investigation Interview (GIUFFRE001235-001246).

34. Attached hereto as Sealed Exhibit 32 is a true and correct copy of Handwritten Note from Defendant. (GIUFFRE003191-003192).

35. Attached hereto as Sealed Exhibit 33 is a true and correct copy of July 2001 New York Presbyterian Hospital Records (GIUFFRE003258-003290).

36. Attached hereto as Sealed Exhibit 34 is a true and correct copy of a February 17, 2011, Email Correspondence to Sharon Churcher (GIUFFRE003678).

37. Attached hereto as Sealed Exhibit 35 is a true and correct copy of February 13, 2011, Email Correspondence to Sharon Churcher (GIUFFRE003690).

38. Attached hereto as Sealed Exhibit 36 is a true and correct copy of February 25, 2011, Email Correspondence to Sharon Churcher (GIUFFRE003731.).

39. Attached hereto as Exhibit 37 is a true and correct copy of a Passport Application

(GIUFFRE004721).

40. Attached hereto as Sealed Exhibit 38 is a true and correct copy of Judith Lightfoot Psychological Records (GIUFFRE005431-005438).

41. Attached hereto as Sealed Exhibit 39 is a true and correct copy of July 25, 2006, Palm Beach Police Department Incident Report (GIUFFRE005614-005700).

42. Attached hereto as Sealed Exhibit 40 is a true and correct copy of an Amazon Receipt (GIUFFRE006581).

43. Attached hereto as Sealed Exhibit 41 is a true and correct copy of David Rodger's June 3, 2016, Deposition Exhibit 1, Flight Log, (GIUFFRE007055-007161).

44. Attached hereto as Sealed Exhibit 42 are true and correct copies of Photographs (GIUFFRE007162-7182).

45. Attached hereto as Sealed Exhibit 43 is a true and correct copy of Travel Documents to Thailand (GIUFFRE007411-GIUFFRE007432).

46. Attached hereto as Sealed Exhibit 44 is a true and correct copy of Walkthrough Video CD (GIUFFRE007584).

47. Attached hereto as Sealed Exhibit 45 is a true and correct copy of West Palm Beach Contact List (GIUFFRE007834-GIUFFRE007847).

48. Attached hereto as Sealed Exhibit 46 is a true and correct copy of October 23, 2016, Social Security Administration records (GIUFFRE009176-GIUFFRE009179).

49. Attached hereto as Sealed Exhibit 47 is a true and correct copy of November 7, 2016, Employment Records from Courtyard Animal Hospital (GIUFFRE009203).

50. Attached hereto as Sealed Exhibit 48 is a true and correct copy of January 2, 2015, Email Correspondence (RG (UK) _000009).

51. Attached hereto as Sealed Exhibit 49 are true and correct copies of Termination

Documents (MAR-A-LAGO 0173 & MAR-A-LAGO 0176).

52. Attached hereto as Sealed Exhibit 50 is a true and correct copy of January 2, 2015, Joinder Motion (GIUFFRE000319-000333).

53. Attached hereto as Sealed Exhibit 51 is a true and correct copy of Virginia Roberts Driver License (GIUFFRE009209).

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

/s/ Sigrid McCawley
Sigrid McCawley, Esq.

Dated: January 31, 2017.

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) 585-5202¹

¹ This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah for this private representation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of January, 2017, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I also certify that the foregoing document is being served to all parties of record via transmission of the Electronic Court Filing System generated by CM/ECF.

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

/s/ Sigrid McCawley
Sigrid McCawley

United States District Court
Southern District of New York

Virginia L. Giuffre,

Plaintiff,

Case No.: 15-cv-07433-RWS

v.

Ghislaine Maxwell,

Defendant.

**SOUTHERN DISTRICT OF NEW YORK LOCAL RULE 56.1 PLAINTIFF'S
STATEMENT OF CONTESTED FACTS AND PLAINTIFF'S UNDISPUTED FACTS**

DEFENDANT'S PURPORTED FACTS

1. **Ms. Maxwell's response to publications of Ms. Giuffre's false allegations: the March 2011 statement.** In early 2011 Ms. Giuffre in two British tabloid interviews made numerous false and defamatory allegations against Ms. Maxwell. In the articles, Ms. Giuffre made no direct allegations that Ms. Maxwell was involved in any improper conduct with Jeffrey Epstein, who had pleaded guilty in 2007 to procuring a minor for prostitution. Nonetheless, Ms. Giuffre suggested that Ms. Maxwell worked with Epstein and may have known about the crime for which he was convicted.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre denies that the allegations she made against Ms. Maxwell are false. Furthermore, Ms. Giuffre did give an interview to journalist, Sharon Churcher, in which Ms. Giuffre accurately and truthfully described Defendant Maxwell's role as someone who recruited or facilitated the recruitment of young females for Jeffrey Epstein. *See* McCawley Dec. at Exhibit 34, GIUFFRE003678. Ms. Giuffre was also interviewed by the FBI in 2011 and she discussed Defendant's involvement in the sexual abuse. *See* McCawley Dec. at Exhibit 31, FBI Redacted 302, FIUFFRE001235-1246. Those statements were not "false and defamatory," but instead truthful and accurate.

DEFENDANT'S PURPORTED FACTS

2. In the articles, Ms. Giuffre alleged she had sex with Prince Andrew, "a well-known businessman," a "world-renowned scientist," a "respected liberal politician," and a "foreign head of state."

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre does not contest this fact, but believes that it is irrelevant.

DEFENDANT'S PURPORTED FACTS

3. In response to the allegations Ms. Maxwell's British attorney, working with Mr. Gow, issued a statement on March 9, 2011, denying "the various allegations about [Ms. Maxwell] that have appeared recently in the media. These allegations are all entirely false."

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre denies that Mr. Barden, "issued a statement." Instead it appears to have the contact as Ross Gow and a reference to Devonshire Solicitors.

DEFENDANT'S PURPORTED FACTS

4. The statement read in full:

Statement on Behalf of Ghislaine Maxwell

By Devonshires Solicitors, PRNE Wednesday, March 9, 2011

London, March 10, 2011 - Ghislaine Maxwell denies the various allegations about her that have appeared recently in the media. *These allegations are all entirely false.*

It is unacceptable that letters sent by Ms. Maxwell's legal representatives to certain newspapers pointing out the truth and asking for the allegations to be withdrawn have simply been ignored.

In the circumstances, *Ms. Maxwell is now proceeding to take legal action against those newspapers.*

"I understand newspapers need stories to sell copies. It is well known that certain newspapers live by the adage, "why let the truth get in the way of a good story." However, *the allegations made against me are abhorrent and entirely untrue* and I ask that they stop," said Ghislaine Maxwell.

"A number of newspapers have shown a complete lack of accuracy in their reporting of this story and a failure to carry out the most elementary investigation or any real due diligence. I am now taking action to clear my name," she said.

Media contact:

Ross Gow

Acuity Reputation

Tel: +44-203-008-7790

Mob: +44-7778-755-251

Email: ross@acuityreputation.com

Media contact: Ross Gow, Acuity Reputation, Tel: +44-203-008-7790,

Mob: +44-7778-755-251, Email: ross at acuityreputation.com

GIUFFRE001067-68

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

The document speaks for itself although it is unclear if the original included the italics that are inserted by the Defendant above.

DEFENDANT'S PURPORTED FACTS

5. **Ms. Giuffre's gratuitous and "lurid" accusations in an unrelated action.** In 2008 two alleged victims of Epstein brought an action under the Crime Victims' Rights Act against the United States government purporting to challenge Epstein's plea agreement. They alleged the government violated their CVRA rights by entering into the agreement.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

While we would stipulate to the statement in this paragraph starting with the words "In 2008", we do not stipulate to the opening sentence fragment Maxwell places in bold.

DEFENDANT'S PURPORTED FACTS

6. Seven years later, on December 30, 2014, Ms. Giuffre moved to join the CVRA action, claiming she, too, had her CVRA rights violated by the government. On January 1, 2015, Ms. Giuffre filed a "corrected" joinder motion.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Agreed.

DEFENDANT'S PURPORTED FACTS

7. The issue presented in her joinder motion was narrow: whether she should be permitted to join the CVRA action as a party under Federal Rule of Civil Procedure 21, specifically, whether she was a "known victim[]" of Mr. Epstein and the Government owed them CVRA duties." Yet, "the bulk of the [motion] consists of copious factual details that [Ms. Giuffre] and [her co-movant] 'would prove . . . if allowed to join.'" Ms.

Giuffre gratuitously included provocative and “lurid details” of her alleged sexual activities as an alleged victim of sexual trafficking.

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

Ms. Giuffre denies that the issues presented in here joinder motion were narrow. The issues presented by the joinder motion and related pleadings were multiple and complex, requiring numerous details about Ms. Giuffre’s sexual abuse and the perpetrators of her abuse. In a pleading explaining why the motion was filed, Ms. Giuffre’s lawyers specifically listed nine separate reasons why Jane Doe 3’s allegations that Dershowitz had sexually abused her were relevant to the case and appropriately included in the relevant filings:

1. To establish that Jane Doe 3 had been sexually abused by Jeffrey Epstein and his co-conspirators (including co-conspirator Alan Dershowitz), which would make her a “victim” of a broad sex trafficking conspiracy covered by the federal Crime Victims’ Rights Act, 18 U.S.C. § 3771, and therefore entitled to participate in the case;

2. To support then-pending discovery requests that asked specifically for information related to contacts by Dershowitz with the Government on behalf of Jeffrey Epstein;

3. To support the victims’ allegation that the Government had a motive for failing to afford victims with their rights in the criminal process – specifically, pressure from Dershowitz and other members of Epstein’s legal defense team to keep the parameters of the non-prosecution agreement (NPA) secret to prevent Jane Doe 3 and other victims from objecting to and blocking judicial approval of the agreement;

4. To establish the breadth of the NPA’s provision extending immunity to “any potential co-conspirators of Epstein” and the scope of the remedy that the victims (including not only Jane Doe 3 but also other similarly-situated minor victims who had been sexually abused by Dershowitz) might be able to obtain for violations of their rights;

5. To provide part of the factual context for the scope of the “interface” between the victims, the Government, and Epstein’s defense team – an interface that was relevant under Judge Marra’s previous ruling that the Government was entitled to raise “a fact-sensitive equitable defense which must be considered in the factual context of the entire interface between Epstein, the relevant prosecutorial authorities and the federal offense victims . . .”;

6. To prove the applicability of the “crime/fraud/misconduct” exception to the attorney-client privilege that was being raised by the Government in opposition to the victims’ motion for production of numerous documents;

7. To bolster the victims’ argument that their right “to be treated with fairness,” 18 U.S.C. § 3771(a)(8), had been violated through the Government’s secret negotiations with one of their abusers;

8. To provide notice and lay out the parameters of potential witness testimony for any subsequent proceedings or trial – i.e., the scope of the testimony that Jane Doe 3 was expected to provide in support of Jane Doe 1 and Jane Doe 2, the already-recognized Ms. Giuffre in the action; and

9. To support Jane Doe 3’s argument for equitable estoppel to toll the six-year statute of limitations being raised by the Government in opposition to her motion to join – i.e., that the statute was tolled while she was in hiding in Australia due to the danger posed by Epstein and his powerful friends, including prominent lawyer Alan Dershowitz.

Jane Does #1 and #2 v. United States, No. 9:08-cv-80736, DE 291 at 18-26 & n.17 (S.D. Fla. 2015). Ms. Giuffre’s lawyers had attempted to obtain a stipulation from the Government on point #1 above (“victim” status), but the Government had declined. Judge Marra’s ruling concluded that certain allegations were not necessary “at this juncture in the proceedings.” DE 324 at 5. Judge Marra specifically added, however, that “Jane Doe 3 is free to reassert these factual details through proper evidentiary proof, should Petitioners demonstrate a good faith basis for believing that such details are pertinent to a matter presented for the Court’s consideration.” DE 324 at 6. The CVRA litigation continues and no trial has been held as of the filing of this brief. As such, the extent to which these factual details will be used at trial has not yet been determined. *See* Docket Sheet, *Jane Does #1 and #2 v. U.S.*, No. 9:08-cv-80736.

DEFENDANT’S PURPORTED FACTS

8. At the time they filed the motion, Ms. Giuffre and her lawyers knew that the media had been following the Epstein criminal case and the CVRA action. While they deliberately filed the motion without disclosing Ms. Giuffre’s name, claiming the need for privacy and secrecy, they made no attempt to file the motion under seal. Quite the contrary, they filed the motion publicly.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

See Ms. Giuffre's Response to Point #7, above.

DEFENDANT'S PURPORTED FACTS

9. As the district court noted in ruling on the joinder motion, Ms. Giuffre "name[d] several individuals, and she offers details about the type of sex acts performed and where they took place." The court ruled that "these lurid details are unnecessary": "The factual details regarding whom and where the Jane Does engaged in sexual activities are immaterial and impertinent . . . , especially considering that these details involve non-parties who are not related to the respondent Government." Accordingly, "[t]hese unnecessary details shall be stricken." *Id.* The court then struck all Ms. Giuffre's factual allegations relating to her alleged sexual activities and her allegations of misconduct by non-parties. The court said the striking of the "lurid details" was a sanction for Ms. Giuffre's improper inclusion of them in the motion.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

See Ms. Giuffre's Response to Point #7, above.

DEFENDANT'S PURPORTED FACTS

10. The district court found not only that the "lurid details" were unnecessary but also that the entire joinder motion was "entirely unnecessary." Ms. Giuffre and her lawyers knew the motion with all its "lurid details" was unnecessary because the motion itself recognized that she would be able to participate as a fact witness to achieve the same result she sought as a party. The court denied Ms. Giuffre's joinder motion.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

See Ms. Giuffre's Response to Point #7, above.

DEFENDANT'S PURPORTED FACTS

11. One of the non-parties Ms. Giuffre "named" repeatedly in the joinder motion was Ms. Maxwell. According to the "lurid details" of Ms. Giuffre included in the motion, Ms. Maxwell personally was involved in a "sexual abuse and sex trafficking scheme" created by Epstein:
 - Ms. Maxwell "approached" Ms. Giuffre in 1999 when Ms. Giuffre was "fifteen years old" to recruit her into the scheme.
 - Ms. Maxwell was "one of the main women" Epstein used to "procure under-aged girls for sexual activities."
 - Ms. Maxwell was a "primary co-conspirator" with Epstein in his scheme.

- She “persuaded” Ms. Giuffre to go to Epstein’s mansion “in a fashion very similar to the manner in which Epstein and his other co-conspirators coerced dozens of other children.”
- At the mansion, when Ms. Giuffre began giving Epstein a massage, he and Ms. Maxwell “turned it into a sexual encounter.”
- Epstein “with the assistance of” Ms. Maxwell “converted [Ms. Giuffre] into . . . a ‘sex slave.’” *Id.* Ms. Giuffre was a “sex slave” from “about 1999 through 2002.”
- Ms. Maxwell also was a “co-conspirator in Epstein’s sexual abuse.”
- Ms. Maxwell “appreciated the immunity” she acquired under Epstein’s plea agreement, because the immunity protected her from prosecution “for the crimes she committed in Florida.”
- Ms. Maxwell “participat[ed] in the sexual abuse of [Ms. Giuffre] and others.”
- Ms. Maxwell “took numerous sexually explicit pictures of underage girls involved in sexual activities, including [Ms. Giuffre].” *Id.* She shared the photos with Epstein.
- As part of her “role in Epstein’s sexual abuse ring,” Ms. Maxwell “connect[ed]” Epstein with “powerful individuals” so that Epstein could traffic Ms. Giuffre to these persons.
- Ms. Giuffre was “forced to have sexual relations” with Prince Andrew in
- “[Ms. Maxwell’s] apartment” in London. Ms. Maxwell “facilitated” Ms. Giuffre’s sex with Prince Andrew “by acting as a ‘madame’ for Epstein.”
- Ms. Maxwell “assist[ed] in internationally trafficking” Ms. Giuffre and “numerous other young girls for sexual purposes.”
- Ms. Giuffre was “forced” to watch Epstein, Ms. Maxwell and others “engage in illegal sexual acts with dozens of underage girls.”

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

See Ms. Giuffre’s Response to Point #7, above. Ms. Giuffre contests the reference to “lurid details”. Moreover, the testimony from numerous witnesses corroborates the statements Ms. Giuffre made in her joinder motion. *See* below.

- *See* McCawley Dec. at Exhibit 16, Sjoberg’s May 18, 2016 Dep. Tr. at 8-9, 13, 33-35, 142-143
- *See* McCawley Dec. at Exhibit 4, Figueroa June 24, 2016 Dep. Tr. Vol. 1 at 96-97 and 103
- *See* McCawley Dec. at Exhibit 14, Rinaldo Rizzo’s June 10, 2016 Dep. Tr. at 52-60
- *See* McCawley Dec. at Exhibit 12, Lynn Miller’s May 24, 2016 Dep. Tr. at 115
- *See* McCawley Dec. at Exhibit 13, Joseph Recarey’s June 21, 2016 Dep. Tr. at 29-30

- See McCawley Dec. at Exhibit 15, David Rodgers' June 3, 2016 Dep. Tr. at 18, 34-36
- Exhibit 2 Excerpted Rodgers Dep. Ex. 1 at flight #s 1433-1434, 1444-1446, 1464-1470, 1478-1480, 1490-1491, 1506, 1525-1526, 1528, 1570 and 1589
- See McCawley Dec. at Exhibit 10, Marcinkova Dep. Tr. at 10:18-21; 12:11-15; etc.
- See McCawley Dec. at Exhibit 8, Kellen Dep. Tr. at 15:13-18; 20:12-16; etc. Epstein Dep. Tr. at 116:10-15; 117:18-118:10; etc.
- See McCawley Dec. at Exhibit 1, Alessi Dep. Tr. at 28, 52-54
- See McCawley Dec. at Exhibit 30, U.S. Attorney Victim Notification Letter GIUFFRE002216-002218
- See McCawley Dec. at Exhibit 33, July 2001 New York Presbyterian Hospital Records GIUFFRE003258-003290
- J See McCawley Dec. at Exhibit 38, Judith Lightfoot psychological records GIUFFRE005431-005438
- See McCawley Dec. at Exhibit 28, Message Pad evidencing Defendant arranging to have underage girls and young women come to Epstein's home GIUFFRE001386-001571
- See McCawley Dec. at Exhibit 29, Black Book in which Defendant and other household staff maintained a roster of underage girls including [REDACTED]
[REDACTED], who were minors at the time the Palm Beach Police's Investigation of Jeffrey Epstein GIUFFRE001573-00669
- See McCawley Dec. at Exhibit 40, Sex Slave books Epstein ordered from Amazon.com at GIUFFRE006581
- See McCawley Dec. at Exhibit 32, the folder Defendant sent to Thailand with Ms. Giuffre bearing Defendant's phone number GIUFFRE003191-003192

- See McCawley Dec. at Exhibit 39, the Palm Beach Police Report showing that Epstein used women and girls to collect underage girls for his abuse GIUFFRE005614-005700
- See McCawley Dec. at Exhibit 41, Epstein's Flight Logs showing that Defendant flew with Ms. Giuffre 23 times GIUFFRE007055-007161

DEFENDANT'S PURPORTED FACTS

12. In the joinder motion, Ms. Giuffre also alleged she was "forced" to have sex with Harvard law professor Alan Dershowitz, "model scout" Jean Luc Brunel, and "many other powerful men, including numerous prominent American politicians, powerful business executives, foreign presidents, a well-known Prime Minister, and other world leaders."

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

See Response to Point #7 and 11, above.

DEFENDANT'S PURPORTED FACTS

13. Ms. Giuffre said after serving for four years as a "sex slave," she "managed to escape to a foreign country and hide out from Epstein and his co-conspirators for years."

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Agreed that Ms. Giuffre made this statement and has since discovered evidence that indicates she was mistaken on the exact timeframe of her abuse and was with Defendant and Jeffrey Epstein from the years 2000 – 2002.

DEFENDANT'S PURPORTED FACTS

14. Ms. Giuffre suggested the government was part of Epstein's "conspiracy" when it "secretly" negotiated a non-prosecution agreement with Epstein precluding federal prosecution of Epstein and his "co-conspirators." The government's secrecy, Ms. Giuffre alleged, was motivated by its fear that Ms. Giuffre would raise "powerful objections" to the agreement that would have "shed tremendous public light on Epstein and other powerful individuals."

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre did not suggest that the Government was part of Epstein's conspiracy to commit sex offenses. The CVRA case deals with whether the Government failed in their responsibilities to the victims to inform the victims that the Government was working out a NPA,

and it is Ms. Giuffre's belief that the Government did fail to so inform the victims, and intentionally did not inform the victims because the expected serious objection from many of the victims might prevent the Government from finalizing a NPA with Epstein. *See* McCawley Dec. at Exhibit 50, Joinder Motion (GIUFFRE00319-00333).

DEFENDANT'S PURPORTED FACTS

15. Notably, the other "Jane Doe" who joined Ms. Giuffre's motion who alleged she was sexually abused "many occasions" by Epstein was unable to corroborate any of Ms. Giuffre's allegations.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

This is untrue. The other Jane Doe could corroborate many of Ms. Giuffre's allegations based on a similar pattern of abuse that she suffered by Epstein. She did not know Ms. Giuffre though. [REDACTED], who was deposed in this case, and who was a minor, corroborates the same pattern of abuse. *See* McCawley Dec. at Exhibit 7, [REDACTED] Dep. Tr. at 54:25-57:5.

DEFENDANT'S PURPORTED FACTS

16. Also notably, in her multiple and lengthy consensual interviews with Ms. Churcher three years earlier, Ms. Giuffre told Ms. Churcher of virtually none of the details she described in the joinder motion.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

This is untrue. Furthermore, Defendant does not offer any citation or evidence on this point. Defendant's statement here is knowingly false. Having read the articles and taken Ms. Giuffre's deposition, Defendant knows that Ms. Giuffre did reveal details in 2011 consistent with those in the joinder motion. *See* McCawley Dec. at Exhibit 31, GIUFFRE003678, FBI Redacted 302, GIUFFRE001235-1246.

DEFENDANT'S PURPORTED FACTS

17. **Ms. Maxwell's response to Ms. Giuffre's "lurid" accusations: the January 2015 statement.** As Ms. Giuffre and her lawyers expected, before District Judge Marra in the

CVRA action could strike the “lurid details” of Ms. Giuffre’s allegations in the joinder motion, members of the media obtained copies of the motion.

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

See Ms. Giuffre’s Response to Point #7, above.

DEFENDANT’S PURPORTED FACTS

18. At Mr. Barden’s direction, on January 3, 2015, Mr. Gow sent to numerous representatives of British media organizations an email containing “a quotable statement on behalf of Ms. Maxwell.” The email was sent to more than 6 and probably less than 30 media representatives. It was not sent to non-media representatives.

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

Defendant falsely claims that “[a]t Mr. Barden’s direction, on January 3, 2015, Mr. Gow sent to numerous representatives of British media organizations an email containing ‘a quotable statement on behalf of Ms. Maxwell.’” This is a blatant falsehood about the document that is at the heart of this litigation. Record evidence shows that Gow sent that email at Defendant’s direction, not at Mr. Barden’s direction. Indeed, on the evening before his deposition, Mr. Gow produced an email exchange he had with Defendant in which Defendant directs Mr. Gow to send the press statement. It is as follows:

From: G Maxwell <GMax1@ellmax.com>
Date: Fri, 2 Jan 2015 20:14:53 +0000
To: Ross Gow <ross@acuityreputation.com>
Cc: Philip Barden <philip.barden@devonshires.co.uk>
Subject: FW: URGENT - this is the statement

Jane Doe 3 is Virginia Roberts so not a new individual.

The allegations made by Victoria Roberts against Ghislaine Maxwell are untrue.

The original allegations are not new and have been fully responded to and shown to be untrue

Each time the story is re told it changes with new salacious details about public figures and world leaders and now it is alleged by Ms Roberts that Alan Derschwitz is involved in having sexual relations with her, which he denies

Ms Roberts claims are obvious lies and should be treated as such and not publicised as news, as they are defamatory.

Chronologically, this email comes at the end of various other email exchanges between Defendant and Gow that discuss issuing a press release. The subject line of this email that Defendant wrote to Gow states “URGENT – this is the statement,” thereby instructing Gow to release this statement to the press. Shortly after Defendant sent this email to Gow directing him to release the statement, Gow distributed the statement to multiple media outlets. Neither Defendant nor Gow have produced any email in which Barden directed Gow to issue this press release (nor can they).

Despite sending it herself, and despite it being responsive to six court-ordered search terms, Defendant failed to produce this email. Her press agent, Gow, produced this the evening before his deposition on November 17, 2016. At the deposition, Mr. Gow authenticated this email and confirmed that Defendant authorized the statement:

Q. When you sent that email were you acting pursuant to Ms. Maxwell's retention of your services?

A. Yes, I was.

(Exhibit 9 was marked for identification.)

Q. This also appears to be an email chain with you and Ms. Maxwell; is that correct?

A. It does appear to be so.

Q. Did you send the top email of the chain that says "Okay, G, going with this"?

A. I did.

Q. And did you receive from Ms. Maxwell, the bottom email of that chain?

A. I believe so. Well, I believe -- yes, yeah, it was forwarded from Ms. Maxwell, yes.

MR. DYER: Sorry, I don't quite understand that answer.

THE WITNESS: I misspoke that. I did receive it from Ms. Maxwell.

MR. DYER: Okay.

Q. The subject line does have “FW” which to me indicates it's a forward. Do you know where the rest of this email chain is?

A. My understanding of this is: It was a holiday in the UK, but Mr. Barden was not necessarily accessible at some point in time, so this had been sent to him originally by Ms. Maxwell, and because he was unavailable, she forwarded it to me for immediate action. I therefore respond, “Okay, Ghislaine, I'll go with this.”

It is my understanding that this is the agreed statement because the subject of the second one is “Urgent, this is the statement” so I take that as an instruction to send it out, as a positive command: “This is the statement.”

See McCawley Decl. at Exhibit 6, November 18, 2016, Ross Gow Dep. Tr. at 14:15-17; 44:6-45:13.

Together, the email and Gow's testimony unequivocally establish that Defendant – not Barden – directed and “command[ed]” Gow to publish the defamatory statement. Accordingly, the first sentence of Defendant's Paragraph 18 is false.

The second sentence – “This email was sent to more than 6 and probably less than 30 media representatives” – omits the fact that not only did Gow admit to emailing the statement to the press, but he also read it to over 30 media representatives over the phone:

Q. Do you recall ever reading the statement to the press or the media over the phone?

A. It's very possible that I would have done so, yes.

See McCawley Decl. at Exhibit 6, Gow Dep. Tr. at 66:2-25.

Q. Do you -- do you remember discussing that with The Guardian?

A. No, I don't. I'm not saying I didn't but I can't recall. You have to bear in mind, if you'd be so kind, that I've been speaking to **over 30 journalists** and media outlets about this, and I can't recall every single -- the detail of every single conversation.

See McCawley Decl. at Exhibit 6, Gow Dep. Tr. at 64:8-14 (emphasis added). Thus, the second sentence of Defendant's Paragraph 18 is also false.

DEFENDANT'S PURPORTED FACTS

19. Among the media representatives were Martin Robinson of the Daily Mail; P. Peachey of The Independent; Nick Sommerlad of The Mirror; David Brown of The Times; and Nick Always and Jo-Anne Pugh of the BBC; and David Mercer of the Press Association. These representatives were selected based on their request—after the joinder motion was filed—for a response from Ms. Maxwell to Ms. Giuffre's allegations in the motion.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre agrees to the first sentence. The second sentence is a false. Accordingly, there is no record evidence that Gow (or anyone else) “selected” journalists “for a response,” or that there was any selection process whatsoever. To the contrary, Gow testified that anyone who inquired received a reference to the January 2015 defamatory response:

Q. To the extent you can recall or could estimate, how many other emails do you believe you sent bearing that statement that's in Exhibit 2?

A. I really can't remember but certainly more than six and probably less than 30, somewhere in between. Any time there was an incoming query it was either dealt with on the telephone by referring them back to the two statements of March 2011 and January 2015 or someone would email them the statement. So *no one was left unanswered*, broadly, is the -- is where we were. But I can't remember every single person we reached out to.

See McCawley Dec at Exhibit 6 Gow Dep. Tr. at 67:15-68:1 (emphasis added).

DEFENDANT'S PURPORTED FACTS

20. The email to the media members read:

To Whom It May Concern,

Please find attached a quotable statement on behalf of Ms. Maxwell.

No further communication will be provided by her on this matter.

Thanks for your understanding.

Best Ross

Ross Gow

ACUITY Reputation

Jane Doe 3 is Virginia Roberts—so not a new individual. The allegations made by Victoria Roberts against Ghislaine Maxwell are untrue. The original allegations are not new and have been fully responded to and shown to be untrue.

Each time the story is re told [sic] it changes with new salacious details about public figures and world leaders and now it is alleged by Ms. Roberts [sic] that Alan Dershowitz [sic] is involved in having sexual relations with her, which he denies.

Ms. Roberts claims are obvious lies and should be treated as such and not publicized as news, as they are defamatory.

Ghislaine Maxwell's original response to the lies and defamatory claims remains the same. Maxwell strongly denies allegations of an unsavoury nature, which have appeared in the British press and elsewhere and reserves her right to seek redress at the repetition of such old defamatory claims.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

While Defendant cropped the body text of the email that was sent to news media representatives, she completely omitted the headings and metadata. Ms. Giuffre has put an image of the email below in Ms. Giuffre's Paragraph. *See* GM_00068.

From: <ross@acuityreputation.com>
Date: 2 January 2015 at 20:38
Subject: Ghislaine Maxwell
To: Rossacuity Gow <ross@acuityreputation.com>
bcc: martin.robinson@mailonline.co.uk,
P.Peachey@independent.co.uk,
nick.sommerlad@mirror.co.uk,
david.brown@thetimes.co.uk,
nick.alway@bbc.co.uk,
jo-anne.pugh@bbc.co.uk

To Whom It May Concern,
Please find attached a quotable statement on behalf of Ms Maxwell.

No further communication will be provided by her on this matter.
Thanks for your understanding.
Best
Ross

Ross Gow
ACUITY Reputation

Jane Doe 3 is Virginia Roberts - so not a new individual. The allegations made by Victoria Roberts against Ghislaine Maxwell are untrue. The original allegations are not new and have been fully responded to and shown to be untrue.

Each time the story is re told it changes with new salacious details about public figures and world leaders and now it is alleged by Ms Roberts that Alan Derschowitz is involved in having sexual relations with her, which he denies.

Ms Roberts claims are obvious lies and should be treated as such and not publicised as news, as they are defamatory.

Ghislaine Maxwell's original response to the lies and defamatory claims remains the same. Maxwell strongly denies allegations of an unsavoury nature, which have appeared in the British press and elsewhere and reserves her right to seek redress at the repetition of such old defamatory claims.

Sent from my BlackBerry® wireless device

DEFENDANT'S PURPORTED FACTS

21. Mr. Barden, who prepared the January 2015 statement, did not intend it as a traditional press release solely to disseminate information to the media. So he intentionally did not pass it through a public relations firm, such as Mr. Gow's firm, Acuity Reputation.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Defendant states: "Mr. Barden, who prepared the statement, did not intend it as a traditional press release solely to dissemination information to the media." Ms. Giuffre contests this statement, and all statements regarding Mr. Barden's beliefs and purposes, and the like.

Further, as stated in detail in Ms. Giuffre's Opposition Defendant's Motion for Summary Judgment, this Court should not even consider the Barden Declaration. Additionally, there is absolutely no record evidence of Barden's intent and the Court should not consider it.

The next sentence states, "So he intentionally did not pass it [the press release] through a public relations firm, such as Mr. Gow's firm, Acuity Reputation." Again, there is zero record evidence to support any assertion of Barden's intent. To the extent that this sentence claims that Barden did not give the statement to Gow, Ms. Giuffre does not dispute it; as described above, Defendant gave the statement to Gow with instructions to publish it. *See* McCawley Dec. at Exhibit 48, RG(UK)_000009, imaged in full at paragraph 81, *supra*. To the extent that this sentence claims that the statement did not pass "through a public relations firm, such as Mr. Gow's firm, Acuity Reputation," Ms. Giuffre disputes that statement. Record documentary evidence and testimony establish that this statement was disseminated through a public relations firm, namely, Ross Gow's firm, Acuity Reputation. *See* McCawley Dec. at Exhibit 6, Gow Dep. Tr. at 109:4-6 ("Q. Approximately how long have you been providing such services? A. Acuity was set up in 2010.").

DEFENDANT'S PURPORTED FACTS

22. The January 2015 statement served two purposes. First, Mr. Barden intended that it mitigate the harm to Ms. Maxwell's reputation from the press's republication of Ms. Giuffre's false allegations. He believed these ends could be accomplished by suggesting to the media that, among other things, they should subject Ms. Giuffre's allegations to inquiry and scrutiny. For example, he noted in the statement that Ms. Giuffre's allegations changed dramatically over time, suggesting that they are "obvious lies" and therefore should not be "publicized as news."

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre objects to this paragraph in its entirety. She disputes that the January 2015 statement "served two purposes," as this statement is wholly unsupported by the record, which Defendant again neglects to cite. Ms. Giuffre also contests the second sentence in which Defendant claims that "Mr. Barden intended that it mitigate the harm to Ms. Maxwell's reputation from the press's republication of Ms. Giuffre's false allegations." First, Ms. Giuffre disputes any statement of Barden's intent as explained above. Second, Ms. Giuffre disputes that there was any "republication" by the press as a matter of law, as explained in her memorandum of law opposing summary judgment, as the press did not "republish" the press statement under New York law. Third, Ms. Giuffre disputes that her allegations are "false," and cites to the following non-exhaustive sampling of evidence to corroborate her allegations against Defendant:

- See McCawley Dec. at Exhibit 16, Sjoberg's May 18, 2016 Dep. Tr. at 8-9, 13, 33-35, 142-143
- See McCawley Dec. at Exhibit 4, Figueroa June 24, 2016 Dep. Tr. Vol. 1 at 96-97 and 103
- See McCawley Dec. at Exhibit 14, Rinaldo Rizzo's June 10, 2016 Dep. Tr. at 52-60
- See McCawley Dec. at Exhibit 12, Lynn Miller's May 24, 2016 Dep. Tr. at 115
- See McCawley Dec. at Exhibit 13, Joseph Recarey's June 21, 2016 Dep. Tr. at 29-30
- See McCawley Dec. at Exhibit 15, David Rodgers' June 3, 2016 Dep. Tr. at 18, 34-36

- Exhibit 2 Excerpted Rodgers Dep. Ex. 1 at flight #s 1433-1434, 1444-1446, 1464-1470, 1478-1480, 1490-1491, 1506, 1525-1526, 1528, 1570 and 1589
- *See* McCawley Dec. at Exhibit 10, Marcinkova Dep. Tr. at 10:18-21; 12:11-15; etc.
- *See* McCawley Dec. at Exhibit 8, Kellen Dep. Tr. at 15:13-18; 20:12-16; etc. Epstein Dep. Tr. at 116:10-15; 117:18-118:10; etc.
- *See* McCawley Dec. at Exhibit 1, Alessi Dep. Tr. at 28, 52-54
- *See* McCawley Dec. at Exhibit 42, Photographs including GIUFFRE007162-007182.
- *See* McCawley Dec. at Exhibit 30, U.S. Attorney Victim Notification Letter GIUFFRE002216-002218
- *See* McCawley Dec. at Exhibit 33, July 2001 New York Presbyterian Hospital Records GIUFFRE003258-003290
- *See* McCawley Dec. at Exhibit 38, Judith Lightfoot psychological records GIUFFRE005431-005438
- *See* McCawley Dec. at Exhibit 28, Message Pad evidencing Defendant arranging to have underage girls and young women come to Epstein's home GIUFFRE001386-001571
- *See* McCawley Dec. at Exhibit 29, Black Book in which Defendant and other household staff maintained a roster of underage girls including [REDACTED]
[REDACTED], who were minors at the time the Palm Beach Police's Investigation of Jeffrey Epstein GIUFFRE001573-00669
- *See* McCawley Dec. at Exhibit 40, Sex Slave books Epstein ordered from Amazon.com at GIUFFRE006581
- *See* McCawley Dec. at Exhibit 32, the folder Defendant sent to Thailand with Ms. Giuffre bearing Defendant's phone number GIUFFRE003191-003192

- See McCawley Dec. at Exhibit 39, the Palm Beach Police Report showing that Epstein used women and girls to collect underage girls for his abuse GIUFFRE005614-005700
- See McCawley Dec. at Exhibit 41, Epstein's Flight Logs showing that Defendant flew with Ms. Giuffre 23 times GIUFFRE007055-007161

Next, Defendant states, "He [Barden] believed these ends could be accomplished by suggesting to the media that, among other things, they should subject Ms. Giuffre's allegations to inquiry and scrutiny." Ms. Giuffre disputes any statement as to Barden's "belief" (*supra*). Ms. Giuffre disputes that the harm to Defendant's reputation could be mitigated by the media's inquiry into and scrutiny of Ms. Giuffre's allegations, because a deeper inquiry would only reveal additional evidence corroborating Ms. Giuffre's allegations, such as the evidence put forth in Ms. Giuffre's opposition memorandum of law and detailed in the bulleted citations, *supra*.

Defendant then states, "For example, he [Barden] noted in the statement that Ms. Giuffre's allegations changed dramatically over time, suggesting that they are 'obvious lies' and therefore should not be 'publicized as news.'" First, Ms. Giuffre disputes that Barden noted anything in the statement, as that is unsubstantiated by the record evidence. Not to do Defendant's work for her, but the closest evidence Defendant has for such a statement is testimony from the Gow deposition wherein Gow speculates that Barden "had a hand in" drafting the press statement, an opinion which may or may not be based on first-hand knowledge. See McCawley Dec. at Exhibit 6, Gow Dep. Tr. at 45:14-17 (Q. Okay. A. And I say, "Thanks, Philip" because I'm aware of the fact that he had a hand, a considerable hand in the drafting.") This is wholly insufficient to show who drafted the passages quoted by Defendant above. Regardless of those passages' original author, it is ultimately Defendant who "noted" anything because it is her statement and she directed that it be sent to the media and public.

Second, Ms. Giuffre disputes that her allegations have changed over time, “dramatically” or otherwise. Third, Ms. Giuffre disputes that the press release “suggest[ed]” that her allegations are “obvious lies,” because Defendant’s press release affirmatively, unambiguously stated that her allegations are “obvious lies” – there is no subtlety, suggestion, or statement of opinion here. *See Giuffre v. Maxwell*, 165 F. Supp.3d 147, 152 (S.D.N.Y. 2016) (“... these statements (as they themselves allege), are capable of being proven true or false, and therefore constitute actionable fact and not opinion.”)

DEFENDANT’S PURPORTED FACTS

23. Second, Mr. Barden intended the January 2015 statement to be “a shot across the bow” of the media, which he believed had been unduly eager to publish Ms. Giuffre’s allegations without conducting any inquiry of their own. Accordingly, in the statement he repeatedly noted that Ms. Giuffre’s allegations were “defamatory.” In this sense, the statement was intended as a cease and desist letter to the media-recipients, letting the media-recipients understand the seriousness with which Ms. Maxwell considered the publication of Ms. Giuffre’s obviously false allegations and the legal indefensibility of their own conduct.

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

This paragraph is another purported statement of Defendant’s counsel’s “intent.” Defendant states: “Second, Mr. Barden intended the January 2015 statement to be a ‘shot across the bow’ of the media, which he believed had been unduly eager to publish Ms. Giuffre’s’ allegations without conducting any inquiry of their own.” Not only does Defendant once again refer to Mr. Barden’s intent, but she also mischaracterizes the statement as a “shot across the bow” of the media. The press release did not threaten or give warning to the media in any way whatsoever. *See McCawley Dec. at Exhibit 26, GM_00068, full image copied in Ms. Giuffre’s Paragraph 18, supra.*

Next, Ms. Giuffre disputes the sentence, “Accordingly, in the statement he repeatedly noted that Ms. Giuffre’s allegations were ‘defamatory.’” Barden did not “note” anything in the statement, nor does Defendant cite to any record evidence that he does. Furthermore, Ms. Giuffre

denies that any of her allegations are defamatory in the slightest, as they are all true and substantiated by record evidence (*supra*).

Ms. Giuffre also disputes the sentence, “In this sense, the statement was intended as a cease and desist letter to the media-recipients, letting the media-recipients understand the seriousness with which Ms. Maxwell considered the publication of Ms. Giuffre’s obviously false allegations and the legal indefensibility of their own conduct.” First, Ms. Giuffre objects to any statement of Barden’s intent, as articulated above. Second, Defendant’s conventional press release was in no way any type of “cease and desist letter.” There is no record evidence in support of this claim, and Defendant unsurprisingly cites to none. Third, Ms. Giuffre disputes that any media-recipients would be given to understand “the seriousness with which Ms. Maxwell considered the publication of Ms. Giuffre’s obviously false allegations and the legal indefensibility of their own conduct” by Defendant’s self-serving press release, as that is unsupported by the record. Finally, Ms. Giuffre rejects that her allegations are “obviously false,” a claim which is completely unsupported by record evidence.

DEFENDANT’S PURPORTED FACTS

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

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

Ms. Giuffre disputes that any part of Defendant's press release is "consistent with those two [of Barden's] purposes." Indeed, Ms. Giuffre disputes this and any statement relating to Barden's "purposes," as explained above.

Next, Ms. Giuffre disputes that, "The statement was intended to be a single, one-time-only, comprehensive response – quoted in full – to Ms. Giuffre's December 30, 2014, allegations that would give the media Ms. Maxwell's response." First, Ms. Giuffre disputes this and any statement relating to Barden's "intent" as explained above. Second, Ms. Giuffre disputes that anyone intended the press release to be a one-time-only, comprehensive response. The record evidence says otherwise: Gow repeatedly issued this statement via email and over the phone for months on end.

Next, Defendant states, "The purpose of the prefatory statement was to inform the media-recipients of this intent." First, Ms. Giuffre disputes this and any statement relating to Barden's purpose as explained above. Second, Ms. Giuffre disputes that the press release was to inform the media of **anything**. Defendant issued a press release, instructed them to publish it (by telling them it was "quotable"), *see* McCawley Dec. at Exhibit 48, RG(UK)_000009 (*supra*), and hired a press agent to feed it to the press:

Q. Did Ms. Maxwell retain the services of you or your firm?

A. Yes, she did.

Q. Is it your belief that that agreement was in effect on January 2nd, 2015?

A. Yes.

Q. Do you recall the terms of that agreement?

A. Well, it was a re-establishment of an existing agreement so if we go back to the original agreement, it was to provide public relations services to Ms. Maxwell in the matter of Giuffre and her activities.

See McCawley Dec. at Exhibit 6 Gow Dep. Tr. at 12:19-21; 13:9-16. The record evidence shows that Defendant's intent was for the press to publish her press release: any other interpretation is not only contrary to logic, but unsupported by the record.

DEFENDANT'S PURPORTED FACTS

25. **Ms. Giuffre's activities to bring light to the rights of victims of sexual abuse.** Ms. Giuffre has engaged in numerous activities to bring attention to herself, to the prosecution and punishment of wealthy individuals such as Epstein, and to her claimed interest of bringing light to the rights of victims of sexual abuse.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Agreed to the portion of Defendant's assertion in bold font. Ms. Giuffre has not engaged in activities to bring attention to herself, rather she has taken action to aid in the prosecution of her abusers, and she seeks to bring light to the rights of victims of sexual abuse.

DEFENDANT'S PURPORTED FACTS

26. Ms. Giuffre created an organization, Victims Refuse Silence, Inc., a Florida corporation, directly related to her alleged experience as a victim of sexual abuse.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre created Victims Refuse Silence, Inc., in order to help other sexually trafficked victims find the resources they need to recover and heal. *See*

www.victimsrefusesilence.org.

DEFENDANT'S PURPORTED FACTS

27. The "goal" of Victims Refuse Silence "was, and continues to be, to help survivors surmount the shame, silence, and intimidation typically experienced by victims of sexual abuse." Toward this end, Ms. Giuffre has "dedicated her professional life to helping victims of sex trafficking."

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Agreed.

DEFENDANT’S PURPORTED FACTS

28. Ms. Giuffre repeatedly has sought out media organizations to discuss her alleged experience as a victim of sexual abuse.

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

Denied. Ms. Giuffre was approached by numerous media outlets and refused to speak to most of them. Media organizations sought her out; she did not seek them out. *See* McCawley Dec. at Exhibit 35, GIUFFRE003690, email from Sharon Churcher seeking to interview Ms. Giuffre.

DEFENDANT’S PURPORTED FACTS

29. On December 30, 2014, Ms. Giuffre publicly filed an “entirely unnecessary” joinder motion laden with “unnecessary,” “lurid details” about being “sexually abused” as a “minor victim[]” by wealthy and famous men and being “trafficked” all around the world as a “sex slave.”

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

See Ms. Giuffre’s Paragraph 7, *supra*, listing multiple reasons why details were, in fact, necessary.

DEFENDANT’S PURPORTED FACTS

30. The Ms. Giuffre’s alleged purpose in filing the joinder motion was to “vindicate” her rights under the CVRA, expose the government’s “secretly negotiated” “non-prosecution agreement” with Epstein, “shed tremendous public light” on Epstein and “other powerful individuals” that would undermine the agreement, and support the CVRA Ms. Giuffre’s request for documents that would show how Epstein “used his powerful political and social connections to secure a favorable plea deal” and the government’s “motive” to aid Epstein and his “co-conspirators.”

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

See Ms. Giuffre’s Paragraph 7, *supra*, listing multiple purposes of Ms. Giuffre’s lawyers’ filing of the motion.

DEFENDANT’S PURPORTED FACTS

31. Ms. Giuffre has written the manuscript of a book she has been trying to publish detailing her alleged experience as a victim of sexual abuse and of sex trafficking in Epstein’s alleged “sex scheme.”

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

See Ms. Giuffre’s Paragraph 52, *infra*, explaining that the context of this statement is misleading.

DEFENDANT’S PURPORTED FACTS

32. **Republication alleged by Ms. Giuffre.** Ms. Giuffre was required by Interrogatory No. 6 to identify any false statements attributed to Ms. Maxwell that were ““published globally, including within the Southern District of New York,”” as Ms. Giuffre alleged in Paragraph 9 of Count I of her complaint. In response, Ms. Giuffre identified the January 2015 statement and nine instances in which various news media published portions of the January 2015 statement in news articles or broadcast stories.

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

Ms. Giuffre objects to this paragraph in its entirety, starting with the bolded heading (“Republication alleged by Ms. Giuffre”). There is no “republishing” as a matter of law in this case, as explained in Ms. Giuffre’s memorandum of law. Accordingly, Ms. Giuffre is not and has not alleged republication. As noted in her objection that, it is Defendant who possesses the knowledge as to where the defamatory statements were published; unsurprisingly, Defendant failed to comply with Ms. Giuffre’s discovery requests on the same.

As Defendant already knows, Ms. Giuffre provided a sampling of Defendant’s defamatory statements published by the news media, as “identification of an exhaustive responsive list would be unduly burdensome.” This, of course, is because Defendant caused her statement to be published in an enormous number of media outlets. Ms. Giuffre’s full response to Interrogatory No. 6 is below. As the Court can see, these nine instances were a good-faith effort to provide some samples (as it would be virtually impossible to provide all of them), below. Ms.

Giuffre has also put forth an exhaustive expert report and expert testimony from Jim Jansen regarding the dissemination of Defendant's defamatory press release.

Ms. Giuffre objects because the information interrogatory above is in the possession of Defendant who has failed to comply with her production obligations in this matter, and has failed to comply with her production obligations with this very subject matter. See Document Request No. 17 from Ms. Giuffre's Second Request for Production of Documents to Defendant Ghislaine Maxwell. Maxwell has not produced all "URL or Internet addresses for any internet version of such publication" that she directed her agent, Ross Gow, to send.

Ms. Giuffre further objects because the information requested above is in the possession of Defendant's agent, who caused the false statements to be issued to various media outlets. Ms. Giuffre has not had the opportunity to depose Maxwell's agent Ross Gow; therefore, this answer remains incomplete.

Consequently, Ms. Giuffre reserves the right to modify and/or supplement her responses, as information is largely in the possession of the Defendant and her agent. Ms. Giuffre objects to this interrogatory in that it violates Rule 33 as its subparts, in combination with the other interrogatories, exceed the allowable twenty-five interrogatories. Ms. Giuffre objects to this request because it is in the public domain. Ms. Giuffre also objects in that it seeks information protected by the attorney-client/work product privilege, and any other applicable privilege stated in the General Objections.

Notwithstanding such objections, Ms. Giuffre has already produced documents supplements such responsive documents with the following list of publications. While the identification of an exhaustive responsive list would be unduly burdensome, in an effort to make a good faith effort towards compliance, Ms. Giuffre provides the following examples, which are incomplete based on the aforementioned reasons:

Date	Nature	Publishing Entity	Statement/URL
January 2, 2015	Internet	Ross Gow	<p>Jane Doe 3 is Virginia Roberts - so not a new individual. The allegations made by Victoria Roberts against Ghislaine Maxwell are untrue. The original allegations are not new and have been fully responded to and shown to be untrue.</p> <p>Each time the story is re told it changes with new salacious details about public figures and world leaders and now it is alleged by Ms. Roberts that Alan Dershowitz is involved in having sexual relations with her, which he denies.</p> <p>Ms. Roberts's claims are obvious lies and should be treated as such and not publicized as news, as they are defamatory.</p> <p>Ghislaine Maxwell's original response to the lies and defamatory claims remains the same. Maxwell strongly denies allegations of an unsavoury nature, which have appeared in the British press and elsewhere and reserves her right to seek redress at the repetition of such old defamatory claims.</p>
January 2, 2015	Internet	Bolton News	http://www.theboltonnews.co.uk/news/national/11700192_Palace-denies-Andrew-sex-case-claim/
January 3, 2015	Internet	Telegraph	http://www.telegraph.co.uk/news/uknews/theroyalfamily/11323872/Prince-Andrew-denies-having-relations-with-sex-slave-girl.html
January 3, 2015	Internet	Daily Mail	http://www.dailymail.co.uk/news/article-2895366/Prince-Andrew-lobbied-government-easy-Jeffrey-Epstein-Palace-denies-claims-royal-tried-use-influence-help-billionaire-paedophile-2008-police-probe.html
January 3, 2015	Internet	Huffington Post	http://www.huffingtonpost.co.uk/2015/01/03/duke-of-york-sex-abuse-claims_n_6409508.html

January 4, 2015	Internet	Express	http://www.express.co.uk/news/world/550085/Ghislaine-Maxwell-Jeffrey-Epstein-not-madam-paedophile-Florida-court-case-Prince-Andrew
January 4, 2015	Internet	Jewish News Online	http://www.jewishnews.co.uk/dershowitz-nothing-prince-andrews-sex-scandal/
January 5, 2015	Internet/Broadcast	NY Daily News	http://www.nydailynews.com/news/world/alleged-madame-accused-supplying-prince-andrew-article-1.2065505
January 5, 2015	Internet/Broadcast	AOL UK	http://www.aol.co.uk/video/ghislaine-maxwell-declines-to-comment-on-prince-andrew-allegations-518587500/

Two newest articles

^[1] <https://www.thesun.co.uk/archives/news/6754/prince-andrews-pal-ghislaine-groped-teen-girls/>

^[2] <http://www.mirror.co.uk/news/uk-news/prince-andrews-pal-ghislaine-maxwell-5081971>

DEFENDANT'S PURPORTED FACTS

33. In none of the nine instances was there any publication of the entire January 2015 statement.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

While there may be certain publications who did not print every word of Defendant's lengthy press release, most publications quoted the most salient, to-the-point parts of Defendant's statement that call Ms. Giuffre a liar. In each of the nine articles listed above, the defamatory statement, as articulated by the Complaint and *as identified by the Court as actionable*, is published. *See Giuffre v. Maxwell*, 165 F. Supp.3d 147, 152 (S.D.N.Y. 2016) ("statements that Giuffre's claims 'against [Defendant] are untrue,' have been 'shown to be untrue,' and are 'obvious lies' have a specific and readily understood factual meaning: that Giuffre is not telling the truth about her history of sexual abuse and Defendant's role, and that some verifiable investigation has occurred and come to a definitive conclusion proving that fact. Second, these statements (as they themselves allege), are capable of being proven true or false, and therefore constitute actionable fact and not opinion"). Ms. Giuffre also put forth extensive evidence of the mass distribution of Defendant's defamatory statement to over 66 million viewers through her expert witness Jim Jansen. *See McCawley Dec. at Exhibit 24, Expert Report of Jim Jansen.*

DEFENDANT'S PURPORTED FACTS

34. Ms. Maxwell and her agents exercised no control or authority over any media organization, including the media identified in Ms. Giuffre's response to Interrogatory No. 6, in connection with the media's publication of portions of the January 2015 statement.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre disputes this statement in its entirety, as it is completely devoid of record evidence. In fact, the record establishes the contrary. First, Defendant hired Gow because his

position allowed him to influence the press to publish her defamatory statement. A sampling of Gow's testimony establishes just that:

Q. Did Ms. Maxwell retain the services of you or your firm?

A. Yes, she did.

Q. Is it your belief that that agreement was in effect on January 2nd, 2015?

A. Yes.

Q. Do you recall the terms of that agreement?

A. Well, it was a re-establishment of an existing agreement so if we go back to the original agreement, it was to provide public relations services to Ms. Maxwell in the matter of Giuffre and her activities.

Q. You can answer -- to the extent that anything you testify to is not protected by a privilege.

A. Ms. Roberts first came to my attention on or around March 2011 when I was called into a meeting with Philip Barden and Ms. Maxwell at Devonshires law office, that she had made -- Ms. Giuffre had made extremely unpleasant allegations about Ms. Maxwell's private life. We were -- Acuity Reputation, my firm was called in to protect Ms. Maxwell's reputation, and to set the record straight. That was -- and that work commenced on or around March of 2011.

Q. Does this document fairly depict pages from your -- from Acuity Reputation's website?

A. It does.

Q. Do you see where it says "We manage reputation and forge opinion through public relations, strategic communications and high level networking"?

A. I do.

Q. Is that a true statement?

A. Say it again. Sorry.

Q. Is that a true statement?

A. It is, yes. I wrote that statement.

Q. Okay. Do you see where your website claims that your company has "excellent relationships with the media"?

A. I do.

Q. Is that a true statement?

A. That is true, yeah.

Q. Is it correct that you advertise your “excellent relationships with the media” because your services often include giving communications to the media on behalf of your clients?

A. Yes.

See McCawley Dec. at Exhibit 6 Gow Dep. Tr. at 13:9-16; 15:18-16:3; 109:12-22; 110:16-21; 111:3-7. In addition to testimonial evidence, the proof is also in the result. By using Gow to issue her press release, Defendant caused her statement to be published by numerous major news organizations with wide readership all over the globe. Accordingly, the record evidence shows that Ms. Maxwell, through her agent, had immense control and authority over the media, convincing major news outlets to publish her words based on nothing more than a single email from Gow.

DEFENDANT’S PURPORTED FACTS

35. Ms. Giuffre’s defamation action against Ms. Maxwell. Eight years after Epstein’s guilty plea, Ms. Giuffre brought this action, repeating many of the allegations she made in her CVRA joinder motion.

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

Agreed, but noting that the defamation cause of action against Defendant did not accrue until Defendant defamed her in January of 2015, the same year Ms. Giuffre filed suit against Defendant for defamation.

DEFENDANT’S PURPORTED FACTS

36. The complaint alleged that the January 2015 statement “contained the following deliberate falsehoods”:
- (a) That Giuffre’s sworn allegations “against Ghislaine Maxwell are untrue.”
 - (b) That the allegations have been “shown to be untrue.”
 - (c) That Giuffre’s “claims are obvious lies.”

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Agreed. However, in discovery, Defendant was finally forced to produce the complete press release she issued. *See* McCawley Dec. at Exhibit 26, GIUFFRE00068.

DEFENDANT'S PURPORTED FACTS

37. Ms. Giuffre lived independently from her parents with her fiancé long before meeting Epstein or Ms. Maxwell. After leaving the Growing Together drug rehabilitation facility in 1999, Ms. Giuffre moved in with the family of a fellow patient. There she met, and became engaged to, her friend's brother, James Michael Austrich. She and Austrich thereafter rented an apartment in the Ft. Lauderdale area with another friend and both worked at various jobs in that area. Later, they stayed briefly with Ms. Giuffre's parents in the Palm Beach/Loxahatchee, Florida area before Austrich rented an apartment for the couple on Bent Oak Drive in Royal Palm Beach. Although Ms. Giuffre agreed to marry Austrich, she never had any intention of doing so.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre did not voluntarily live independently from her parents with her fiancé, rather Ms. Giuffre was a troubled minor child who was not truly engaged prior to meeting Defendant and Epstein. Where Ms. Giuffre lived, and who she lived with, are not relevant to the issues being decided in this action. Again, this is merely a transparent distraction from the case that is actually at issue, and is being used for the sole purpose of inserting conjecture in an effort to distract the Court and ultimately the jury.

Although Austrich testified that he proposed to Ms. Giuffre on Valentine's Day, *see* Austrich at p. 19, Ms. Giuffre was a troubled teen who could not realistically be considered a fiancé in the true sense of the word, nor was she of legal age to marry. In fact, as accurately described by Defendant, Ms. Giuffre never had any intention of marrying Austrich. Giuffre Dep. Tr. at 127:22-128:21. Given that Ms. Giuffre was a child with limited legal capacity at this point, and that she did not have any intention of marrying Austrich, a reasonable person could not assert that Ms. Giuffre was engaged.

DEFENDANT'S PURPORTED FACTS

38. Ms. Giuffre re-enrolled in high school from June 21, 2000 until March 7, 2002. After finishing the 9th grade school year at Forest Hills High School on June 9, 1999, Ms. Giuffre re-enrolled at Wellington Adult High School on June 21, 2000, again on August 16, 2000 and on August 14, 2001. On September 20, 2001, Ms. Giuffre then enrolled at Royal Palm Beach High School. A few weeks later, on October 12, 2001, she matriculated at Survivors Charter School. Id. Survivor's Charter School was an alternative school designed to assist students who had been unsuccessful at more traditional schools. Ms. Giuffre remained enrolled at Survivor's Charter School until March 7, 2002. She was present 56 days and absent 13 days during her time there. Id. Ms. Giuffre never received her high school diploma or GED. Ms. Giuffre and Figueroa went "back to school" together at Survivor's Charter School. The school day there lasted from morning until early afternoon.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre denies this statement. Either Defendant is blatantly misleading this Court or Defendant simply does not understand how to interpret Ms. Giuffre's school records. The record produced by Defendant (GM0888) is specifically titled "A07. Assignment History," which reflects semester start and end dates per each 180 day school year, not dates that Ms. Giuffre physically enrolled or withdrew from school. *See* McCawley Dec. at Exhibit 27, GM0888.

PANEL: _____ A07. ASSIGNMENT HISTORY YEAR: 16
 T234 Monday May 23, 2016 9:04 am
 STDT: 12870606 ROBERTS, VIRGINIA L SCHL: 3390 GR: 10 ST: I

ENTRY		WITHDRAWAL												E			
C	CD	DATE	OD	CD	DATE	R	PF	SY	CL	DS	SCHL	DESC	GR	PRS	ABS	UNX	Y
-	R02	101201	---	W26	030702	N	---	02	01	---	3390	SURVIVORS	10	56	31	---	Y
-	R02	092001	---	W02	101101	N	---	02	01	---	2331	ROYAL PALM HIG	10	13	1	---	---
-	EA1	081401	---	W32	092001	Z	---	02	A1	---	2192	WLLNGTN HS ADL	30	---	---	---	---
-	EA1	081600	---	W47	081301	Z	---	01	A1	---	2192	WLLNGTN HS ADL	30	---	---	---	Y
-	EA1	062100	---	W47	081500	Z	---	00	A1	---	2192	WLLNGTN HS ADL	30	---	---	---	Y
-	E01	081699	---	W03	081699	N	---	00	01	---	2331	ROYAL PALM HIG	10	---	---	---	---
-	E01	081998	---	W02	060999	P	---	99	01	---	0581	FOREST HILL HI	09	155	25	---	Y
-	E01	082097	---	W01	061098	R	---	98	01	---	2331	ROYAL PALM HIG	09	147	33	---	Y
-	E01	082097	---	W22	082097	N	---	98	01	---	2191	WELLINGTON HIG	09	---	---	---	---
-	R03	040797	---	W02	061197	P	---	97	01	---	1691	CRESTWOOD MID	08	40	5	---	Y
-	E01	082294	---	DNE	082294	N	---	95	01	---	1703	ROYAL PINES SC	06	---	---	---	---
-	E01	082393	---	W02	061094	P	---	94	01	---	1901	LOXAHATCHEE EL	05	167	13	---	Y
-	E01	082592	---	W01	061193	P	---	93	01	---	1901	LOXAHATCHEE EL	04	176	4	---	Y

While “Grade 30” indicates adult education, Ms. Giuffre’s attendance records indicate that she was ***not*** present in school between 6/21/00-09/20/01 (*see* withdrawal codes W32 and W47).

WITHDRAWAL CODES: ADULT STUDENTS

- **W26** - Any student who withdraws from school to enter the adult education program prior to completion of graduation requirements.
- **W32** - Any adult student who left the class/program to enter another training program.
- **W47** - Any adult student who is procedurally withdrawn at the end of the term or school year who will continue in the class/program the next term or school year.

<http://www.fldoe.org/core/fileparse.php/8861/urlt/0094063-appendb.pdf>

More importantly, Ms. Giuffre’s school transcripts clearly indicate “NO COURSES TAKEN” for the 1999-2000 and 2000-2001 school years. (*See* McCawley Dec. at Exhibit 27, GM_00893.) Ms. Giuffre’s attempt to work and resume school at Survivor’s Charter School as a 10th grader in the 2001-2002 school year was limited to a portion of the school year (10/20/01-03/07/02), and further substantiates Ms. Giuffre’s testimony that she attempted to get away from Epstein’s abuse, along with the following testimony by Figueroa:

- Q: Was there a period of time between 2001 and when she left in 2002 here she was not working for Jeffrey?
- A: Yes.
- Q: What period of time was that?
- A: It was pretty much, like, when she was actually working as a server. Like, basically because we were trying to not have her go back there. Like, she did not want to go back there. And we were trying to just work without needing his money, you know.”

See McCawley Dec. at Exhibit 4, Figueroa Dep. Tr. at 92-93

- Q: So the thing that Virginia was tired of ... What was it that Virginia was trying to get away from and stop with respect to working at Jeffrey Epstein's house?
- A: To stop being used and abused.

See McCawley Dec. at Exhibit 4, Figueroa Dep. Tr. at 248

Even still, if the records are correct, which Ms. Giuffre does not concede, the records indicate that Ms. Giuffre's attendance was poor, with 69 days present and 32 days absent out of a required 180 day school year and that she was **not enrolled at the end of the school year** (emphasis added).

DISTRICT: 50 SCHOOL: 3390 NO COURSES TAKEN
YEAR: 1999-2000 GRADE LEVEL: NA

	GPA	QTY	PTS		GPA	QTY	PTS
DISTRICT-TERM:	1.4286		5.00	CUM:	1.5429		27.00
STATE-TERM:	1.4286		5.00	CUM:	1.5429		27.00

1999-2000 ANNUAL DAYS-PRESENT: 0 ABSENT: 0
SUMMER TERMS DAYS-PRESENT: 0 ABSENT: 0
PROMOTION STATUS NOT APPLICABLE

DISTRICT: 50 SCHOOL: 3390 NO COURSES TAKEN
YEAR: 2000-2001 GRADE LEVEL: NA

	GPA	QTY	PTS		GPA	QTY	PTS
DISTRICT-TERM:	1.4286		5.00	CUM:	1.5429		27.00
STATE-TERM:	1.4286		5.00	CUM:	1.5429		27.00

2000-2001 ANNUAL DAYS-PRESENT: 0 ABSENT: 0
SUMMER TERMS DAYS-PRESENT: 0 ABSENT: 0
PROMOTION STATUS NOT APPLICABLE

DISTRICT: 50 SCHOOL: 3390 SURVIVORS CHARTER SCHOOL
YEAR: 2001-2002 GRADE LEVEL: 10

T	COURSE#	COURSE TITLE	AREA	FLAG	R	A	O	CREDIT
						C	N	ATT./EARN
1	0500530	PERS,CAR,SCH DEV 4	EL		C	Z	N	0.50 0.50
1	1001440	BUS ENG I	EN	J	B	Z	N	0.50 0.50
1	1205370	CONSUMER MATH	MA	C	C	Z	N	0.50 0.50
1	8300310	WORKPLACE ESSENTIAL	VO		B	Z	N	0.50 0.50
1	8301610	WORK EXP 1	VO		F	Z	N	0.50 0.00
1	8301650	WORK EXP-OJT	VO		F	Z	N	1.00 0.00
								CREDIT, TERM: 3.50 2.00

	GPA	QTY	PTS		GPA	QTY	PTS
DISTRICT-TERM:	1.4286		5.00	CUM:	1.5429		27.00
STATE-TERM:	1.4286		5.00	CUM:	1.5429		27.00

2001-2002 ANNUAL DAYS-PRESENT: 69 ABSENT: 32
SUMMER TERMS DAYS-PRESENT: 0 ABSENT: 0
NOT ENROLLED IN DISTRICT K-12 AT END OF SCHOOL YEAR

See McCawley Dec. at Exhibit 27, GM_00893.

Ms. Giuffre's obvious gap in her school attendance, her presence verified by Epstein's pilot on flight logs, and an abundance of witness testimony all corroborate her story that she was that Ms. Giuffre was flying domestic and internationally with Epstein at least 32 times between 12/11/00-07/28/01 and 06/21/02-08/21/02 (Defendant traveling with Ms. Giuffre on 23 of the flights). *See* McCawley Dec. at Exhibits 15 and 41, Pilot, David Rodgers' Dep. Tr. 96:12-166; Rodger's Dep. Ex. 1 (Ms. Giuffre flight dates: 12/11/00; 12/14/00 (GIUFFRE007095); 01/26/01; 01/27/01; 01/30/01 (GIUFFRE007096); 03/05/01: 03/06/01; 03/08/01 x's 2; 03/09/01; 03/11/01 x's 2 (GIUFFRE007097); 03/27/01; 03/29/01; 03/31/01 (GIUFFRE007098); 04/09/01 x's 2; 04/11/01; 04/16/01; 05/03/01; 05/05/01 (GIUFFRE007099); 05/14/01(GIUFFRE007100); 06/03/01 06/05/01; 07/04/01; 07/08/01; 07/11/01 (GIUFFRE007101); 07/16/01; 07/28/01; (GIUFFRE007102); 06/21/02 (GIUFFRE007111); 08/18/02; 08/21/02 (GIUFFRE007112); *See* McCawley Dec. at Exhibit 1, Alessi Dep. Tr. at 104: 9-14 (Q: Do you know how long Virginia had been coming over to the house before she started traveling on an airplane with Ghislaine and Jeffrey? THE WITNESS: Not too long. I don't think it was too long after that); *See* McCawley Dec. at Exhibit 37, GIUFFRE004721 (passport application).

DEFENDANT'S PURPORTED FACTS

39. During the year 2000, Ms. Giuffre worked at numerous jobs. In 2000, while living with her fiancé, Ms. Giuffre held five different jobs: at Aviculture Breeding and Research Center, Southeast Employee Management Company, The Club at Mar-a-Lago, Oasis Outsourcing, and Neiman Marcus. Her taxable earnings that year totaled nearly \$9,000. Ms. Giuffre cannot now recall either the Southeast Employee Management Company or the Oasis Outsourcing jobs.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre disputes this statement. During 2000, Ms. Giuffre shared an apartment with her then boyfriend, James Michael Austrich and his friend, Mario. *See* McCawley Dec. at Exhibit 2, Austrich Dep. Tr. at p. 92. Although Austrich testified that he proposed to Ms. Giuffre on Valentine's Day, *see* Austrich at p. 19, Ms. Giuffre was a troubled teen who could not realistically be considered a fiancé in the true sense of the word nor was she of legal age to marry. While Ms. Giuffre held various jobs in 2000, "[SSA] records do not show the exact date of employment (month and day) because [they] do not need this information to figure Social Security benefits." *See* McCawley Dec. at Exhibit 46, GIUFFRE009176).

The reason that Ms. Giuffre cannot recall two companies listed on her SSA records (Southeast Employee Management Company or Oasis Outsourcing) is simply because they were not her employers. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 470-472. Had Defendant bothered to run a simple google search, she could have ruled them out as being payroll and benefit administration companies. *See* <http://www.oasisadvantage.com/west-palm-beach-peo>; <http://www.progressiveemployer.com/>; <http://www.businesswire.com/news/home/20060501006151/en/Progressive-Employer-Services-Purchases-Southeast-Employee-Management>.

Ms. Giuffre has testified that she believes she worked at Taco Bell, at an aviary, then Mar-a-Lago (*See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at p. 53, 470). Austrich also testified that Ms. Giuffre worked with him at Taco Bell, as well as a pet store for "over a month" before working at Mar-a-Lago (*See* McCawley Dec. at Exhibit 5, Austrich Dep. Tr. at p. 16, 30, 98). Neither Taco Bell nor the pet store are listed on Ms. Giuffre's SSA records because they were most likely paid through payroll companies. *See* McCawley Dec. at Exhibit 46, GIUFFRE009178. Ms. Giuffre also testified that she volunteered at an aviary where they

eventually put her on their payroll, but paid her very little. Giuffre Dep. Tr. at p. 52; Aviculture Breeding and Research Center taxable earnings for 2000 is \$99.48, *See* McCawley Dec. at Exhibit 46, GIUFFRE009178.

DEFENDANT'S PURPORTED FACTS

40. Ms. Giuffre's employment at the Mar-a-Lago spa began in fall 2000. Ms. Giuffre's father, Sky Roberts, was hired as a maintenance worker at the The Mar-a-Lago Club in Palm Beach, Florida, beginning on April 11, 2000. Mr. Roberts worked there year-round for approximately 3 years. After working there for a period of time, Mr. Roberts became acquainted with the head of the spa area and recommended Ms. Giuffre for a job there. Mar-a-Lago closes every Mother's Day and reopens on November 1. Most of employees Mar-a-Lago, including all employees of the spa area such as "spa attendants," are "seasonal" and work only when the club is open, i.e., between November 1 and Mother's Day. Ms. Giuffre was hired as a "seasonal" spa attendant to work at the Mar-a-Lago Club in the fall of 2000 after she had turned 17.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre disputes this statement. Defendant cannot simply infer Ms. Giuffre's employment history and claim it to be undisputed. The Mar-a-Lago Club produced 177 pages of records in response to Defendant's subpoena. However, not one page indicated Ms. Giuffre's actual dates of employment, nor whether she was a full-time or seasonal employee. In fact, the only significant record produced was a single, vague chart entry indicating that Ms. Giuffre was terminated in 2000. MAR-A-LAGO 0173, 0176.

TERMINATIONS

LAST NAME	FIRST NAME	
Rinker	Ross	Box #7
Rivera	Pablo	Box #3
Rivera	Eduardo	Box #2
Rivero	Alicia	Box #7
Robbins	Jody	Box #4
Roberts	Virginia	Box #4

Box #1	1998 terms
Box #2	1998 & 1999 terms
Box #3	1999 terms
Box #4	2000 terms
Box #5	2000 terms
Box #6	2001 terms

MAR-A-LAGO 0173

MAR-A-LAGO 0176

Job postings and job descriptions produced by Mar-a-Lago from 2002 and later are irrelevant to Ms. Giuffre's employment because they are from after she worked there. Ms. Giuffre testified that Mar-a-Lago was a summer job. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. 56, 550. In fact, her father, Sky Roberts, testified that he referred his daughter for employment, and she did not get the job through a posting (*See* McCawley Dec. at Exhibit 17, Sky Roberts Dep. Tr. at 72); he drove his daughter to and from work consistent with his full time schedule (*See* McCawley Dec. at Exhibit 17, Sky Roberts Dep. Tr. at 74); he believes the spa – like the kitchen/dining room - was open to local guests in the summer (*See* McCawley Dec. at Exhibit 17, Sky Roberts Dep. Tr. 138-139); and that his daughter was not attending school when she worked at Mar-a-Lago (*See* McCawley Dec. at Exhibit 17, Sky Roberts Dep. Tr. 134). In addition, Juan Alessi testified that it was “Summer” when Defendant approached Ms. Giuffre at Mar-a-Lago because he specifically remembered “that day I was sweating like hell in the -- in the car, waiting for Ms. Maxwell to come out of the massage.” *See* McCawley Dec. at Exhibit 1, Alessi Dep. Tr. at 94:24-95:2.

DEFENDANT'S PURPORTED FACTS

41. **Ms. Giuffre represented herself as a masseuse for Jeffrey Epstein.** While working at the Mar-a-Lago spa and reading a library book about massage, Ms. Giuffre met Ms. Maxwell. Ms. Giuffre thereafter told her father that she got a job working for Jeffrey Epstein as a masseuse. Ms. Giuffre's father took her to Epstein's house on one occasion around that time, and Epstein came outside and introduced himself to Mr. Roberts. Ms. Giuffre commenced employment as a traveling masseuse for Mr. Epstein. Ms. Giuffre was excited about her job as a masseuse, about traveling with him and about meeting famous people. Ms. Giuffre represented that she was employed as a masseuse beginning in January 2001. Ms. Giuffre never mentioned Ms. Maxwell to her then-fiancé, Austrich. Ms. Giuffre's father never met Ms. Maxwell.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre denies Defendant's false and factually unsupported narrative. In Florida, a person cannot work as a masseuse unless she is “at least 18 years of age or has received a high

school diploma or high school equivalency diploma.” Fla. Stat. § 480.041. Ms. Giuffre was a minor child, under the age of 18, when she was working at Mar-a-Lago as a spa attendant. Giuffre Dep. Tr. at 61:9-61:24. She was approached by Defendant, who told her she could make money as a masseuse, a profession in which Ms. Giuffre had no experience. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 111:12-111:21; 116:19-117:12. (Sky Roberts, Ms. Giuffre father, verified Ms. Giuffre’s account that Defendant recruited his daughter to “learn massage therapy.” *See* McCawley Dec. at Exhibit 17, Sky Roberts Dep. Tr. at 80:7-19; 84:18 - 85:1).

Ms. Giuffre’s father drove her to Jeffrey Epstein’s house, the address of which was given to her by Defendant. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 117:20-118:1. Ms. Giuffre was lead into the house, and was instructed by Defendant on how to give a massage, during which Epstein and Defendant turned the massage into a sexual encounter, and offered Ms. Giuffre money and a better life to be compliant in the sexual demands of Defendant and Epstein. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 198:20-199:3; 199:15-199:18. The minor Ms. Giuffre then began travelling with Defendant and Epstein on private planes and servicing people sexually for money—working not as a legitimate masseuse, but in a position of sexual servitude. *See* McCawley Dec. at Exhibits 5, 1, Giuffre Dep. Tr. at 193:22-194:16; 201:24; 204:24;205:5; Alessi Dep. Tr. at 104:9-104:14.

Epstein’s house manager, Juan Alessi, described Defendant’s methodical routine of how she prepared a list of places ahead of time, then drove to each place for the purpose of recruiting girls to massage Epstein. *See* McCawley Dec. at Exhibit 18, Alessi Dep. Tr. at 34; GIUFFRE000105 at 57-58; GIUFFRE000241-242 at p. 212-213. Alessi also stated that on multiple occasions he drove Defendant to pre-planned places while she recruited girls for

massage. *Id.* He furthered testified that he witnessed Ms. Giuffre at Epstein's house on the very same day that he witnessed Defendant recruit Ms. Giuffre from Mar-a-Lago. *See* McCawley Dec. at Exhibit 18, Alessi Dep. Tr. at 96-98; GIUFFRE000102-103 at p. 48-49.

Johanna Sjoberg, through her sworn testimony, demonstrated that Defendant recruited her in a similar fashion by driving to the college campus where she attended school and approached her to work at Epstein's home answering phones. *See* McCawley Dec. at Exhibit 16, Sjoberg Dep. Tr. at 8-9. Sjoberg testified that she answered phones for one day before Defendant propositioned her to rub feet for \$100.00 an hour. *See* McCawley Dec. at Exhibit 16, Sjoberg Dep. Tr. at 13. The following day, Sjoberg was paired with Defendant's assistant, Emmy Taylor, who provided her with massage training on Epstein. Sjoberg at 13-15. Ms. Giuffre's then-boyfriend, Austrich, testified that he could not recall the name of the person who recruited Ms. Giuffre. However, he did say that she was recruited by someone to work for Epstein as a massage therapist, but that Ms. Giuffre did not have any experience. *See* McCawley Dec. at Exhibit 2, Austrich Dep. Tr. at 34-35, 100-101, 127-128. Neither Ms. Giuffre nor Sjoberg were licensed or trained in massage, but were invited soon after being recruited to travel with Epstein on his private plane to massage him. *See* McCawley Dec. at Exhibit 16, Giuffre Dep. Tr. at 16-17; Sjoberg Dep. Tr. at 13-15; Austrich Dep. Tr. at 109-110; Alessi Dep. Tr. at 104.

DEFENDANT'S PURPORTED FACTS

42. **Ms. Giuffre resumed her relationship with convicted felon Anthony Figueroa.** In spring 2001, while living with Austrich, Ms. Giuffre lied to and cheated on him with her high school boyfriend, Anthony Figueroa. Ms. Giuffre and Austrich thereafter broke up, and Figueroa moved into the Bent Oak apartment with Ms. Giuffre. When Austrich returned to the Bent Oak apartment to check on his pets and retrieve his belongings, Figueroa in Ms. Giuffre's presence punched Austrich in the face. Figueroa and Ms. Giuffre fled the scene before police arrived. Figueroa was then a convicted felon and a drug abuser on probation for possession of a controlled substance.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

This entire statement is wholly irrelevant to the case being tried, and is improperly being inserted to tarnish the record. Ms. Giuffre's dating history as a young teen bears no relation to the allegations made within Ms. Giuffre's complaint against Defendant. As previously stated, Defendant is attempting to muddy the record with nonsensical teen drama in an effort to detract from her salacious sexual abuse of a minor child. Such statements bear no relation to the issues presented through her motion for summary judgment, and should be given weight reflecting the same. As specifically set forth in Ms. Giuffre's objections to designated testimony, the alleged information would be excluded by multiple rules of evidence, and contested by Ms. Giuffre. *See* McCawley Dec. at Exhibit 5, Virginia Dep. Tr., *passim*. Moreover, it was the Defendant who solicited Anthony Figueroa to recruit high school aged girls for Epstein. *See* McCawley Dec. at Exhibit 4 Figueroa Tr. at 200 and 228-229.

DEFENDANT'S PURPORTED FACTS

43. **Ms. Giuffre freely and voluntarily contacted the police to come to her aid in 2001 and 2002 but never reported to them that she was Epstein's "sex slave."** In August 2001 at age 17, while living in the same apartment, Ms. Giuffre and Figueroa hosted a party with a number of guests. During the party, according to Ms. Giuffre, someone entered Ms. Giuffre's room and stole \$500 from her shirt pocket. Ms. Giuffre contacted the police. She met and spoke with police officers regarding the incident and filed a report. She did not disclose to the officer that she was a "sex slave." A second time, in June 2002, Ms. Giuffre contacted the police to report that her former landlord had left her belongings by the roadside and had lit her mattress on fire. Again, Ms. Giuffre met and spoke with the law enforcement officers but did not complain that she was the victim of any sexual trafficking or abuse or that she was then being held as a "sex slave."

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

This statement is misleading in several respects and irrelevant. The fact that Ms. Giuffre did contact police on two occasions for two specific purposes and did not take that opportunity to also inform the police of everything else that was going on in her life at the time is immaterial. Defendant implies that anytime someone calls the police for one thing they should tell the police

about every other crime regardless of the relevance to the crime to which the police responded and regardless to the threat to herself should she report on these powerful people. Moreover, as Professor Coonan explained:

Popular understandings of the term “sex slave” might still connote images of violent pimps, white slavery, or of victims chained to a bed in a brothel in the minds of some people. To call Ms. Giuffre a victim of sex trafficking would however very accurately convey the reality that she along with a great many other victims of contemporary forms of slavery are often exploited by the “invisible chains” of fraud and psychological coercion.

See McCawley Dec. at Exhibit 23, Coonan Expert Report at 20. Ms. Giuffre specifically testified that she was fearful of Defendant and Epstein, and, accordingly, she would not have reported her abusers. She also knew that Epstein had control over the Palm Beach Police. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 240:3-241:2.

DEFENDANT’S PURPORTED FACTS

44. **From August 2001 until September 2002, Epstein and Maxwell were almost entirely absent from Florida on documented travel unaccompanied by Ms. Giuffre.** Flight logs maintained by Epstein’s private pilot Dave Rodgers evidence the substantial number of trips away from Florida that Epstein and Maxwell took, unaccompanied by Ms. Giuffre, between August 2001 and September 2002. Rodgers maintained a log of all flights on which Epstein and Maxwell traveled with him. Epstein additionally traveled with another pilot who did not keep such logs and he also occasionally traveled via commercial flights. For substantially all of thirteen months of the twenty-two months (from November 2000 until September 2002) that Ms. Giuffre lived in Palm Beach and knew Epstein, Epstein was traveling outside of Florida unaccompanied by Ms. Giuffre. During this same period of time, Ms. Giuffre was employed at various jobs, enrolled in school, and living with her boyfriend.

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

The flight logs produced in this matter provide substantive evidence of Ms. Giuffre’s travel while in the control of Defendant and Epstein, but are clearly incomplete. Moreover, Ms. Giuffre also was flown by Defendant on commercial flights. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 155:5-11. Ms. Giuffre disputes Defendant’s statement to the contrary, as reliance upon incomplete records to prove that Ms. Giuffre was not in fact in the presence of

Defendant and Epstein is insufficient. Ms. Giuffre incorporates additional details contained in Response #38 and #46 herein.

Ms. Giuffre's obvious gap in her school records, her presence verified by Epstein's pilot on flight logs, and witness testimony, corroborate her story that she was traveling with Defendant and Epstein. In fact, flight logs and pilot testimony clearly prove that Ms. Giuffre was flying domestic and internationally with Epstein at least 32 times between 12/11/00-07/28/01 and 06/21/02-08/21/02 (Defendant traveling with Ms. Giuffre on 23 of the flights).

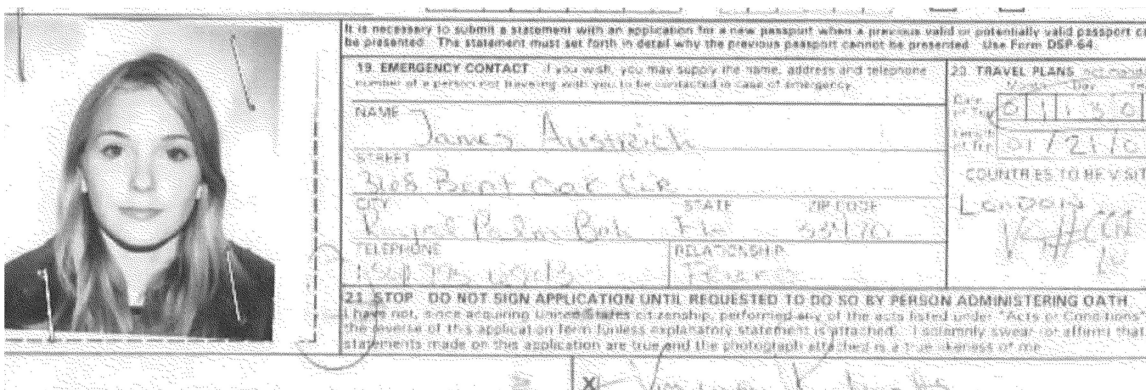
As Defendant acknowledges in her own statement #44, flight records are incomplete. There were several pilots and co-pilots that flew Epstein and Maxwell (Lawrence "Larry" Visoski, David (Dave) Rodgers, Bill Hammond, Pete Rathgeb, Gary Roxburgh, and Bill Murphy) in multiple aircrafts (JEJE, Inc. Aircraft # N908JE – Type B-727-31, and Hyperion Air, Inc. Aircraft # N909JE – Type G-1159B). Yet, only one pilot, David Rodger's produced flight records. See McCawley Dec. at Exhibit 41, David Rodger's Flight Log, GIUFFRE007055- GIUFFRE007161. In addition, many of the girls recruited by Defendant routinely traveled on commercial flights for the purposes of providing massages to Epstein or guests at Epstein's New York, New Mexico, or U.S. Virgin Island homes. See McCawley Dec. at Exhibit 16, Sjoberg Dep. Tr. at 27.

As thoroughly depicted below, Ms. Giuffre's passport application, travel records and witness testimony clearly demonstrate flight logs are incomplete because only one pilot kept a log, and Ms. Giuffre also flew commercially while she worked for Defendant and Epstein. For example, on December 11, 2000, while underage, Ms. Giuffre appears on Rodger's flight log (flight #1433) traveling with Epstein, Maxwell and Emmy Taylor from PBI (Palm Beach, FL) to TEB (Teterboro, NJ) then on December 14, 2001 (#1434) continues traveling with Epstein and

Maxwell to TIST (U.S. Virgin Islands); however, there is no flight records of Ms. Giuffre's return to Palm Beach. *See* McCawley Dec. at Exhibit 15, *see* McCawley Dec. at Exhibit 41, Rodger's Dep. Ex. 1 at GIUFFRE007095; see also Rodger's Dep. Tr. 96-98 ("Q: And do you know how Jeffrey Epstein, Ghislaine Maxwell, Adam Perry Lang, and Virginia get off of St. Thomas or leave the island? A: No. I do not. Probably a charter, I'm guessing.").

11	"	"	PBI	TEB	1433	JE, GM, CT, VIRGINIA
14	"	"	TEB	TIST	1434	JE, GM, AP, VIRGINIA
14	"	"	TIST	PBI	1435	REPOSITION FOR OPS 2 + TLAS
2001 JAN 13	"	"	PBI	PBI	1436	TLAS CERTIFICATION

On January 12, 2001, at Defendant's directive, Ms. Giuffre applied for a Passport to travel with them internationally. *See* McCawley Dec. at Exhibit 37, GIUFFRE004721, passport application listing travel plans to London; flight logs subsequently lists Ms. Giuffre traveling to London with Defendant, Epstein and others).



It is necessary to submit a statement with an application for a new passport when a previous valid or potentially valid passport cannot be presented. The statement must set forth in detail why the previous passport cannot be presented. Use Form DSP-64.

19. EMERGENCY CONTACT. If you wish, you may supply the name, address and telephone number of a person traveling with you to be contacted in case of emergency.

NAME: James Austria
STREET: 308 Brent Oak Cir
CITY: Palm Beach, FL
STATE: FL
ZIP CODE: 33480
TELEPHONE: 561-833-1000
RELATIONSHIP: Father

20. TRAVEL PLANS. Not mandatory. Date of trip: 01/13/01
Length of trip: 01/21/01
COUNTRIES TO BE VISITED: LONDON, UK

21. STOP. DO NOT SIGN APPLICATION UNTIL REQUESTED TO DO SO BY PERSON ADMINISTERING OATH. I have not, since acquiring United States citizenship, performed any of the acts listed under "Acts or Conditions" the reverse of this application form. Unless explanatory statement is attached. I solemnly swear (or affirm) that statements made on this application are true and the photograph attached is a true likeness of me.

On January 26, 2001, while underage, Ms. Giuffre appears on Rodger's flight log (flight #1444) traveling with Epstein, Maxwell and Emmy Taylor from TEB (Teterboro, NJ) to PBI (Palm Beach, FL); however, there is no flight record indicating how Ms. Giuffre got to New York. On January 27, 2001 (#1445) continues traveling with Epstein, Maxwell and Emmy Taylor from PBI (Palm Beach) to TIST (U.S. Virgin Islands) returning from TIST (U.S. Virgin

Islands) four days later on January 30, 2001. See McCawley Dec. at Exhibit 15, Rodger's Dep.

Ex. 1 at GIUFFRE007096; Rodger's Dep. Tr. at 100-102.

26	"	"	TEB	PBE	1444	JG, GM, ET, VIRGINIA ROBERTS
18	C172	N1446V	PBE LNA	PBE LNA		C172 VOUT PETE SORENSON
18	"	"	LNA	LCQ		B727 CLOSING N505LS
19	"	"	LCQ	MCO		JONATHAN MAND - INSTRUMENT COMPETENCY CHECK - SATISFACTORY
19	"	"	MCO	LNA		
22	G1159B	N908JC	PBE	TIST	1445	JG, GM, ET, VIRGINIA ROBERTS
30	"	"	TIST	PBE	1446	JG, GM, ET, VIRGINIA ROBERTS

On March 5, 2001 Ms. Giuffre, Maxwell, Epstein, Emmy Taylor traveled together internationally (flight #1464) leaving PBI (West Palm Beach) to CYJT (Stephenville, Canada); then on March 6, 2001 (#1465) they continued on to LFPB (Paris, France) with a layover for three days. On March 8, 2001, other passengers, including one unidentified female, joined them on flights # 1466-1467 (from LFPB (Paris, France) - LGGR (Granada, Spain) eventually landing in EGGW (London, England) on March 11, 2001, where she was then introduced to and lent out to Prince Andrew. See McCawley Dec. at Exhibit 15, Rodger's Dep. Ex. 1 at GIUFFRE007097; Rodger's Dep. Tr. at 104-114.

2001	From	To	Flown No.	Maneuvers, Endorsements
21	B-727-200	DFW	DFW	RUNWAY STABILIZER, MANUAL GEAR EXTENSION, RTO BRAKING, BRAKES RELEASE, STALLS, SINGLE ENGINE APPROACHES, RTO, STABILIZER CHECK RIDE
22	"	MGM	MGM	
23	"	"	"	
23	C-421B	DFW	ADS	JONATHAN MAND - HIGH DENSITY APPROACHES, STOPS, etc.
23	"	ADS	PNS	JONATHAN MAND - SID, DEPARTURE MANEUVERS, PERFORMANCE CHARTS
23	"	PNS	PBE	JONATHAN MAND - LOW COMMUNICATIONS PROCEDURES, WEICHTS & DALLANCE
3	"	PBE	LCQ	KRISTY ROGERS - CLIMBS, DESCENTS, STRAIGHT & LEVEL FLIGHT
3	"	LCQ	LAL	KRISTY ROGERS - TURNS, STABILIZER
3	"	LAL	PBE	KRISTY ROGERS - DESCENTS, etc.
5	G-1159B	PBE	CYJT	1464 JG, GM, ET, VIRGINIA ROBERTS
6	"	CYJT	LFPB	1465 JG, GM, ET, VR
6	"	LFPB	LGGR	1466 JG, GM, ET, VR, ALBERTO & LINDA PENA LEGAR, REAR, LGGR, etc.
6	"	LGGR	GMTT	1467 JG, GM, ET, VR, ALBERTO & LINDA PENA LEGAR, etc.
9	"	GMTT	EGGW	1468 JG, GM, ET, VR
11	"	EGGW	BGR	1469 JG, GM, ET, VR
11	"	BGR	TEB	1470 JG, GM, ET, VR

See also photo of Ms. Giuffre, Maxwell and Prince Andrew in London.

GIUFFRE007167; *see also* Figueroa Dep. Tr. at 251.



Ms. Giuffre, Epstein, Maxwell, and Taylor remained in London for three days until departing on March 11, 2001 (#1469), stopping in BGR (Bangor, Maine) before departing (#1470) back to TEB (Teterboro, NJ); however, there is no flight record of Ms. Giuffre's return to Palm Beach. *See* Rodger's Dep. Ex. 1 at GIUFFRE007097; Rodger's Dep. Tr. at 104-114.

27	G-1159A	N909JE	PBI	TEB	1478	JE, GM, EP, NR, 2 FGMAGS, BANN RGR
29	"	"	TEB	SAF	1479	JE, GM, AP, UR, BK, MARVEN MENSKY
31	"	"	SAF	PBI	1480	JE, GM, AP, UR, NADIA BJORLIN, HENRY JARCEK
APR 1	"	"	PBI	LCG	1481	JE, GM, AP

On March 27, 2001, while underage, Ms. Giuffre, Maxwell, Epstein, Emmy Taylor, two unidentified females and others traveled together (#1478) from PBI (Palm Beach) to TEB (Teterboro, NJ); then three days later, on March 29, 2001, continued on (#1479) to SAF (Santa Fe, NM), returning to PBI (Palm Beach, FL) with Nadia Bjorlin (#1480) on March 31, 2001. *See* McCawley Dec. at Exhibit 15, Rodger's Dep. Ex. 1 at GIUFFRE007098; Rodger's Dep. Tr. at 119-125.

A few glaring examples of how Ms. Giuffre's travel records are incomplete is that Ms. Giuffre traveled from ADS (Addison, Texas) on May 3, 2001 (#1501) to SAT (San Antonio, Texas); then departs SAT (San Antonio, Texas) on May 5, 2001 (#1502) to PBF (Pine Bluff, AR) but there is no record produced that explains how Ms. Giuffre arrived in Addison, Texas or how she returned to Palm Beach from Pine Bluff, AR. Although Epstein's plane appears to have originated from Palm Beach on April 23, 2001, Ms. Giuffre's name doesn't appear on the log. *See* Rodger's Dep. Ex. 1 at GIUFFRE007099; Rodger's Dep. Tr. at 130-132 ("Q: Do you know how Virginia Roberts got to Addison, Texas? A: No. ... Q: Went to Addison and picked up Virginia Roberts? A: It looks like it.").

Another prime example of how incomplete Ms. Giuffre's travel records are is on May 14, 2001. While Ms. Giuffre appears on flight #1506 with Epstein, Maxwell, Emmy Taylor and others (including one unidentified female) from TIST (U.S. Virgin Islands) to TEB (Teterboro, NJ), there is no record produced explaining how Ms. Giuffre arrived to the U.S. Virgin Islands or where she stayed when she landed in New York. *See* McCawley Dec. at Exhibit 15, Rodger's Dep. Ex. 1 at GIUFFRE007100; Rodger's Dep. Tr. at 132-133 ("Q: What were the other possible avenues back in those days for Jeffrey Epstein, Ghislaine Maxwell to travel to the Virgin Islands? A: They could have done a charter, possibly.") (*Id.* at 134-135 "Q: All right. So at some point in time, between May 7th and May 14th – A: Uh-huh. Q: -- somebody flies the Gulfstream to the Virgin Islands. A: Correct. Q: And who would that be? A: Larry Visoski and I don't know who the other person would have been."); *Id.* at 136 ("Q. Do you know where Virginia Roberts went during that time after she landed in Teterboro on the 14th? A. I do not."))

14	1590	N904JG	TIST	TEB	1506	JG, GM, ET, BK, VR 1 female
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On June 3, 2001, Ms. Giuffre travels from PBI (Palm Beach) to TIST (U.S. Virgin Islands) on flight #1510 for three days; then, on June 5, 2001, continues on flight #1511 to TEB (Teterboro, NJ); however, there is no record of Ms. Giuffre returning to Palm Beach. *See* Rodger's Dep. Ex. 1 at GIUFFRE007101; Rodger's Dep. Tr. at 136-137.

6-1	G-1159B	N909JC	TEB	PBI	1501	JG, GM, ET, AP, BANU KUCUK ROYLU	1/1
3	"	"	PBI	TIST	1510	JG, VIRGINIA ROBERTS, BANU KUCUK ROYLU	1/1
5	"	"	TIST	TEB	1511	JG, VR, BK	1/1
8	"	"	TEB	CYUL	1512	JG, GM, NAOMI CAMPBELL, REBECCA WIDJIS, ANNA LAVALLER, ANNA MOLEB, DAVID GONZALEZ	1/1
12	"	"	CYUL	TEB	1513	REPOSESTON (AP, BLIND A/DOLIT)	1/1
12	"	"	TEB	PBI	1514	JG	1/1
13	"	"	PBI	TEB	1515	JG, CAROL	1/1
15	"	"	TEB	PBI	1516	JG, GM, SHERRAN, CAROLYN, 1 FEMALE	1/1
18	"	"	PBI	TEB	1517	JG, GM, 1 FEMALE	1/1
22	"	"	TEB	LFPD	1518	JG, GM, CRISTALL WASHIG, EXOTERNA GRINGA	1/1
23	"	"	LFPD	LFMN	1519	JG, GM, 1 FEMALE	1/1
25	"	"	LFMN	LIML	1520	JG, GM, 1 FEMALE	1/1
26	"	"	LFML	LFPB	1521	JG, GM	1/1
28	"	"	LFPB	LPAZ	1522	JG, GM, ET, ED TUTTLE	1/1
28	"	"	LPAZ	TIST	1523	JG, GM, ET, ED TUTTLE	1/1
JUL 4	"	"	TIST	PBI	1524	JG, AP, VR, 1 FEMALE	1/1
8	"	"	PBI	TEB	1525	JG, GM, ET, AP, VR, SHERRAN CAMPBELL, GARY REYNOLDS, GARY ROSENBERG	1/1
11	"	"	TEB	CPS	1526	JG, GM, ET, VR	1/1

Then, on July 4, 2001, Ms. Giuffre reappears on flight #1524 with Epstein and an unidentified female leaving TIST (U.S. Virgin Islands) to return to PBI (Palm Beach); however, there is no flight record that reflects how Ms. Giuffre got to the U.S. Virgin Islands. *See* McCawley Dec. at Exhibit 15, Rodger's Dep. Ex. 1 at GIUFFRE007101; Rodger's Dep. Tr. at 138-139 ("Q. And do you know how Virginia Roberts got to the Virgin Islands? A: No. Q. Is there any -- is it possible that the Cessna took her or the Boeing took her? Or any other aircraft that is owned by Jeffrey? A: No, I would -- if I had to guess, I would guess the airlines.")

Again, on July 8, 2001, Ms. Giuffre appears on flight #1525 with Epstein, Maxwell, Emmy Taylor and others including an unidentified female departing PBI (Palm Beach) to TEB

(Teterboro, NJ). Four days later, on July 11, 2001, Ms. Giuffre, Epstein and Maxwell continue on (#1526) to CPS (Cahokia-St. Louis, Illinois) which was a stop due to a mechanical delay on the way to Santa Fe, NM; however, there is no flight record that reflects how Ms. Giuffre returned home to Palm Beach. *See* McCawley Dec. at Exhibit 15, Rodger's Dep. Ex. 1 at GIUFFRE007101; Rodger's Dep. Tr. 139-141 ("Q: And then three days later, you leave out of Teterboro to CPS? A: Yes. Q: Where is that? A: That is St. Louis, actually it is Cahokia, Illinois, across the river from St. Louis. Q: Who are your passengers? A: Jeffrey Epstein, Ghislaine Maxwell, Emmy Tayler, Virginia Roberts. We were actually en route to Santa Fe. We had a mechanical problem. We had to go into there for maintenance.")

On July 16, 2001, Ms. Giuffre appears on flight #1528 with Epstein, Maxwell and Emmy Taylor from SAF (Santa Fe, NM) to TEB (Teterboro, NJ); however, Ms. Giuffre's flight to Santa Fe, NM is missing from the records. In addition, on July 28, 2001, Ms. Giuffre reappears on the flight log (#1531) returning with Epstein from TIST (U.S. Virgin Islands) to PBI (Palm Beach); however, there is no record of Ms. Giuffre's flight to the U.S. Virgin Islands. *See* McCawley Dec. at Exhibit 15, Rodger's Dep. Ex. 1 at GIUFFRE007102; Rodger's Dep. Tr. 142.

2001			From	To		
JUL 11	G-1159B	N989JE	CPS	SAF	1527	REPOSITION-PILOT STAFFIC LEAK GARY ROBERTS GARY ROBERTS
16	"	"	SAF	TEB	1528	JE, ET, GM, VR ROBERTS
23	"	"	PBE	TIST	1529	JE, STEWART LEWIS
28	"	"	TIST	PBE	1531	JE, VIRGINIA ROBERTS

On June 21, 2002, Ms. Giuffre appears on flight #1570 with Epstein, Maxwell, Sarah Kellen, Cindy Lopez and Jean Luc Brunel from PBI (Palm Beach, FL) to MYEF (George Town, Bahamas); however, there is no record of Ms. Giuffre returning to Palm Beach. *See* McCawley Dec. at Exhibit 15, Rodger's Dep. Ex. 1 at GIUFFRE007111; Rodger's Dep. Tr. 161-162 ("Q:

Virginia Roberts was taken to the Bahamas. Do you know where she went from there? A. I do not.”)

2002			From	To	From No.	maneuvers, endorsements
JUN						
8	B-727-31H	N908JC	EIDW	JFK	111	JE, GM, SK
8	"	"	JFK	PBI	112	JE, SK
12	G-1159B	N909JC	PBI	PBI	1567	GMU FLIGHTS-SEAN RELEY, GRIE LARSEN
14	B-727-31H	N908JC	PBI	BOS	113	REPOSITION
14	"	"	BOS	TEST	114	JE, SK, CINDY LOPEZ, LAURA HINES
16	"	"	TEST	JFK	115	JE, GM, SK, CINDY LOPEZ, LAURA HINES
19	G-1159B	N909JC	PBI	TEB	1568	REPOSITION
19	"	"	TEB	PBI	1569	JE, GM, SK, CINDY LOPEZ
21	"	"	PBI	MYEF	1570	JE, GM, SK, CL JUAN LUC BRUNO, VIRGENIA ROBERTS
21	"	"	MYEF	PBI	1571	REPOSITION
23	"	"	PBI	MYEF	1572	REPOSITION
23	"	"	MYEF	TEB	1573	JE, GM, SK, CL JULIANA BORGES, PETER J. ROBERTS
23	"	"	TEB	PBI	1574	REPOSITION
AUG						
4	G-1159B	N909JC	PBI	MVY	1583	JE, 1 FEMALE
4	"	"	MVY	BED	1584	JE, 1 FEMALE
4	"	"	BED	TEB	1585	JE, 1 FEMALE
5	"	"	TEB	SAF	1586	JE, SK, 2 FEMALE
6	C-172XP	N739SP	ACG	ACG		172 CHECK OUT
6	206L3	N474AW	ZORRO	ACG		
15	B-727-31H	N908JC	JAX	JAX	126	C-CHECK FLIGHT TEST
16	"	"	JAX	PBI	127	RETURN FROM C-CHECK
17	G-1159-B	N909JC	SAF	TEB	1589	JE, GM, SK, CINDY LOPEZ, VIRGENIA ROBERTS, EDUARDO ALFREDO MARGARETA, MELX SEMENOV
18	"	"	TEB	PBI	1590	JE, VIRGENIA ROBERTS, 1 FEMALE

On August 17, 2002, Ms. Giuffre appears on flight #1589 with Epstein, Maxwell, Sarah Kellen, Cindy Lopez and others from SAF (Santa Fe, NM) to TEB (Teterboro, NJ); Ms. Giuffre returns to PBI (Palm Beach, FL) on August 18, 2002 with Epstein and one unidentified female (#1590). See McCawley Dec. at Exhibit 15, Rodger's Dep. Ex. 1 at GIUFFRE007112; Rodger's Dep. Tr. 165 ("Q: Do you know how Virginia Roberts got to Santa Fe? A: No.")

From September 29, 2002 through October 19, 2002, Defendant and Epstein sent Ms. Giuffre on a commercial flight to Thailand for massage training and provided her with all accommodations. *See* McCawley Dec. at Exhibit 43, Giuffre007411-Giuffre007432.

DEFENDANT'S PURPORTED FACTS

45. **Ms. Giuffre and Figueroa shared a vehicle during 2001 and 2002.** Ms. Giuffre and Figueroa shared a '93 white Pontiac in 2001 and 2002. Ms. Giuffre freely traveled around the Palm Beach area in that vehicle. In August 2002, Ms. Giuffre acquired a Dodge Dakota pickup truck from her father. Figueroa used that vehicle in a series of crimes before and after Ms. Giuffre left for Thailand.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre and Tony Figueroa did not share a vehicle during 2001 and 2002. Instead, Figueroa borrowed Ms. Giuffre's car while she was traveling with Defendant and Epstein. Figueroa testified that he "got to take the car, because she was going somewhere else in the world and did not need it, so..." Figueroa Dep. Tr. At 89-90.

In fact, Ms. Giuffre was frequently traveling with Defendant and Epstein. *See* McCawley Dec. at Exhibit 1, Alessi Dep. Tr. at 9-14 (stating that Virginia started traveling on an airplane with Ghislaine and Jeffrey "not too long" after she started going over to the house). Figueroa further testified that Virginia "would normally go about two weeks out of every month" with Epstein. Figueroa Dep. Tr. at 90. He further stated, "Pretty much every time I took her there, it was always to his mansion. I picked her up one time -- maybe it was a couple of times --from the jet stream place. But pretty much every single time it was at the hou- -- at the mansion." *Id.* Moreover, Ms. Giuffre testified she purchased a car from the \$10,000 payment she received from Epstein after she was forced to have sex with Prince Andres in London at Defendant's home when Ms. Giuffre was a minor. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 120:1-20.

DEFENDANT’S PURPORTED FACTS

46. **Ms. Giuffre held a number of jobs in 2001 and 2002.** During 2001 and 2002, Ms. Giuffre was gainfully employed at several jobs. She worked as a waitress at Mannino’s Restaurant, at TGIFriday’s restaurant (aka CCI of Royal Palm Inc.), and at Roadhouse Grill. She also was employed at Courtyard Animal Hospital (aka Marc Pinkwasser DVM).

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

This statement is laughable. Ms. Giuffre was hardly gainfully employed during a time period in which she was trying to escape from the grip Epstein and Maxwell had on Ms. Giuffre. While Social Security provides that she earned nominal amounts of earning statements for 2001 and 2002, the records do not indicate the month or quarter of the year’s work. *See* McCawley Dec. at Exhibit 46, GIUFFRE009176. For a brief period, Ms. Giuffre attempted to go back to school to earn her GED, and tried unsuccessfully to hold down waitressing jobs. *See* McCawley Dec. at Exhibit 27, GIUFFRE009179.

For example, in 2001, Ms. Giuffre earned \$212.00 as a waitress working “briefly” at Mannino’s Restaurant. (*See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 472). In 2002, Ms. Giuffre earned \$403.64 at CCI of Royal Palm Beach working there (TGI Fridays) for a “short time period.” (*See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 473). Then, Ms. Giuffre worked at Roadhouse grill until about March 2002 earning \$1,247.90 (*See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 474).

EMPLOYER NUMBER: 65-0241353
 MANNINOS INC
 MANNINOS RESTAURANT
 12793 B W FOREST HILL BLVD
 WEST PALM BEACH FL 33414-4749

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
2001					\$212.00

EMPLOYER NUMBER: 06-1587035
 CCI OF ROYAL PALM INC
 % ROBERT FURR TTEE
 2255 GLADES RD STE 337-W
 BOCA RATON FL 33431-7379

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
2002					\$403.64

EMPLOYER NUMBER: 65-0367604
 ROADHOUSE GRILL INC
 ROBERT C FURR TTEE IN BANKRUPTCY
 2255 GLADES RD STE 337W
 BOCA RATON FL 33431-7379

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
2002					\$1,247.90

EMPLOYER NUMBER: 65-0915938
 MARC PINKWASSER DVM PA
 13860 WELLINGTON TRCE STE 31
 WELLINGTON FL 33414-8541

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
2002					\$1,561.75

GIUFFRE009179.¶

According to Dr. Pinkwasser's records, Ms. Giuffre's also received payroll checks for weeks ending 04/22/02-06/04/02 earning a total of \$1,561.75. (*See* McCawley Dec. at Exhibit 47, GIUFFRE009203).

4/22/02 Courtyard Animal Hospital
 5/6/02 Courtyard Animal Hospital
 5/6/02 Courtyard Animal Hospital
 5/20/02 Courtyard Animal Hospital
 6/4/02 Courtyard Animal Hospital

Not long after Ms. Giuffre losing her job at Courtyard Animal Hospital, GIUFFRE00009211, flight records show that Ms. Giuffre was soon back under Epstein's control traveling with Maxwell to the Bahamas, Santa Fe, New Mexico then New York, *see* McCawley Dec. at Exhibit 47, GIUFFRE007111-GIUFFRE007112.

DEFENDANT'S PURPORTED FACTS

47. **In September 2002, Ms. Giuffre traveled to Thailand to receive massage training and while there, met her future husband and eloped with him.** Ms. Giuffre traveled

to Thailand in September 2002 to receive formal training as a masseuse. Figueroa drove her to the airport. While there, she initially contacted Figueroa frequently, incurring a phone bill of \$4,000. She met Robert Giuffre while in Thailand and decided to marry him. She thereafter ceased all contact with Figueroa from October 2002 until two days before Mr. Figueroa's deposition in this matter in May 2016.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre did travel to Thailand to receive massage training in September 2002. However, Defendant has inaccurately told only part of the story. Defendant has conveniently left out certain key facts, which includes the fact that Ms. Giuffre was given an assignment from Defendant and Epstein that she had to recruit another underage girl from Thailand, and bring that young girl back to Epstein. *See* McCawley Dec. at Exhibit 43, GIUFFRE 003191. The document Ms. Giuffre was give directs her to "call Ms. Maxwell." *See* McCawley Dec. at Exhibit 32, GIUFFRE003191. It is not disputed by Defendant or Epstein, that Ms. Giuffre was expected to return to Epstein and Maxwell upon completion of her massage training and assignment. It is undisputed by Ms. Giuffre that she did not return to Defendant and Epstein, but instead escaped clear across the world to Australia where she remained in hiding from Defendant and Epstein for several years.

DEFENDANT'S PURPORTED FACTS

48. **Detective Recarey's investigation of Epstein failed to uncover any evidence that Ms. Maxwell was involved in sexual abuse of minors, sexual trafficking or production or possession of child pornography.** Joseph Recarey served as the lead detective from the Palm Beach Police Department charged with investigating Jeffrey Epstein. That investigation commenced in 2005. Recarey worked only on the Epstein case for an entire year. He reviewed previous officers' reports and interviews, conducted numerous interviews of witnesses and alleged victims himself, reviewed surveillance footage of the Epstein home, participated in and had knowledge of the search warrant executed on the Epstein home, and testified regarding the case before the Florida state grand jury against Epstein. Detective Recarey's investigation revealed that not one of the alleged Epstein victims ever mentioned Ms. Maxwell's name and she was never considered a suspect by the government. None of Epstein's alleged victims said they had seen Ms. Maxwell at Epstein's house, nor said they had been "recruited by her," nor paid any money by her, nor told what to wear or how to act by her. Indeed, none of Epstein's alleged victims ever reported to the government they had met or spoken to Ms. Maxwell. Maxwell was not

seen coming or going from the house during the law enforcement surveillance of Epstein's home. The arrest warrant did not mention Ms. Maxwell and her name was never mentioned before the grand jury. No property belonging to Maxwell, including "sex toys" or "child pornography," was seized from Epstein's home during execution of the search warrant. Detective Recarey, when asked to describe "everything that you believe you know about Ghislaine Maxwell's sexual trafficking conduct," replied, "I don't." He confirmed he has no knowledge about Ms. Maxwell sexually trafficking anybody. Detective Recarey also has no knowledge of Ms. Giuffre's conduct that is subject of this lawsuit.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

This statement is false. Detective Recarey knew that Maxwell was involved in the illegal sexual activities at Epstein's house. He wanted to speak to her, but Maxwell did not return his calls. *See* McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 28:23-29:10. Detective Recarey concluded that Defendant's role was to procure girls for Epstein. *See* McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 29:16-29:20. In the execution of the search warrant, stationary was found in the home bearing Maxwell's name, and notes were written by house staff to Maxwell. *See* McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 45:13-25; *Id.* at 83:3-83:15; see also Message Pads, GIUFFRE 001412, 001418, 001435, 001446, 001449, 001453, 001454. A key piece of evidence in the investigation were message pads uncovered in trash pulls, and from inside the residence during the search warrant. Those message pads revealed numerous calls left at the house for Maxwell, indicating she was staying in the house during the days when Epstein was engaging in illegal sex acts with minors.

Additionally, a walk through video taken during the execution of the search warrant revealed photos of topless females at the home, and there was even a photograph of Maxwell naked hanging in the home. The house staff who were deposed in the civil cases each testified to Maxwell being the boss in charge of everyone in the house. *See* McCawley Dec. at Exhibits 1,

19, 21, Banasiak Dep. Tr. at 8:21-9:16; 14:20-15:6; Alessi Dep. Tr. at 23:11-23:20; Rodriguez Dep. Tr. at 169:1-169:4.

Rodriguez, the house butler from 2004 through 2005, a time period that revealed daily sexual abuse of underage females, testified that Maxwell kept a list of the local girls who were giving massages at her desk, and that Maxwell kept nude photos of girls on her computer. *See* McCawley Dec. at Exhibit 21, Rodriguez Dep. Tr. at 238:4-238:22; 302:19-303:10; 306:1-306:24. Recarey testified that when the search warrant was executed, the house had been sanitized and the computers removed from the home. *See* McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 72:25-73:15. Banaziak testified that the computers were removed by Adriana Ross, another employee who answered to Maxwell. *See* McCawley Dec. at Exhibit 19, Banaziak Dep. Tr. at 54:7-22.

The record is replete with testimony demonstrating that Maxwell recruited Virginia, and recruited other females, who in turn recruited other females, all who were sexually abuse by Epstein; meaning, it is undisputed that Maxwell started the top of the pyramid of local Palm Beach girls who were all eventually identified as victims. *See, e.g.,* McCawley Dec. at Exhibit 1, Alessi Dep. Tr. at 34:19-35:3; 98:5-98:12; 104:15-104:23. The co-conspirator who maintained direct contact with the many underage victims was Sarah Kellen, whose sole responsibility was to schedule underage girls to visit Epstein for sex. Sarah reported directly to Maxwell. *See* McCawley Dec. at Exhibit 21, Rodriguez Dep. Tr. at 26:10-26:20. On the day when the search warrant was executed, the house maid, Ruboyo was scheduled to report to the house that day at 8 am; however, she received a call from Maxwell telling her not to go. *See* McCawley Dec. at Exhibit 20, Rabuyo Dep. Tr. at 81:20-82:25. Maxwell orchestrated and ran the entire sex

trafficking scheme from a high level, and insulated herself from most of the underage girls who were being paid for sex.

Tony Figueroa, Ms. Giuffre's ex-boyfriend, did testify that Maxwell personally requested that he find and bring girls to Epstein for sex once Ms. Giuffre had escaped, and that when he brought the girls Maxwell interacted with them. *See* McCawley Dec. at Exhibit 4, Figueroa Dep. Tr. at 200:6-18; 228:23-229:21. Rodriguez testified unequivocally that Maxwell was "the boss" and that she knew everything that was going on. *See* McCawley Dec. at Exhibit 21, Rodriguez Dep. Tr. 169:1-169:4.

DEFENDANT'S PURPORTED FACTS

49. **No nude photograph of Ms. Giuffre was displayed in Epstein's home.** Epstein's housekeeper, Juan Alessi, "never saw any photographs of Virginia Roberts in Mr. Epstein's house." Detective Recarey entered Epstein's home in 2002 to install security cameras to catch a thief and did not observe any "child pornography" within the home, including on Epstein's desk in his office.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

This is false. Nude photographs were displayed throughout Epstein's home. Furthermore, Alfredo Rodriguez testified to Maxwell having pornography on her computer. Rodriguez Dep. Tr. 150:10-17; 306:1-306:24. He also testified to there being a collage of nude photos in Epstein's closet. *Id.* 253:14-254:18. That collage was eventually taken into evidence by Detective Recarey, who testified to that fact in his deposition. *See* McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 73:19-73:24. And those photos are still in the possession of the FBI or US Attorney's Office. *See* McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 74:2-74:7.

Numerous other people have testified about nude photographs being on display in the home including Ronaldo Rizzo, who visited the home on numerous occasions and who was reprimanded by Maxwell herself for looking at the nude photos. *See* McCawley Dec. at Exhibit 14, Rizzo Dep. Tr. at 25:19-26:20. Additionally, the search warrant video, taken at a time when

the house had already been sanitized, revealed photographs of nudity displayed, including a photograph of Maxwell herself in the nude. *See* McCawley Dec. at Exhibit 44, Search Warrant Video attached to the Deposition of Recarey.

Johanna Sjoberg testified that the Defendant bought her a camera for the specific purpose of her taking nude photos of herself. *See* McCawley Dec. at Exhibit 16 Sjoberg Tr. at 150. Finally, Virginia Giuffre testified that there was a nude photograph of her at the house. *See* McCawley Dec. at Exhibit 5 Virginia Giuffre Tr. at 232 and 333.

DEFENDANT'S PURPORTED FACTS

50. **Ms. Giuffre intentionally destroyed her “journal” and “dream journal” regarding her “memories” of this case in 2013 while represented by counsel.** Ms. Giuffre drafted a “journal” describing individuals to whom she claims she was sexually trafficked as well as her memories and thoughts about her experiences with Epstein. In 2013, she and her husband created a bonfire in her backyard in Florida and burned the journal together with other documents in her possession. *Id.* Ms. Giuffre also kept a “dream journal” regarding her thoughts and memories that she possessed in January 2016. To date, Ms. Giuffre cannot locate the “dream journal.”

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

The dream journal contained memories of Ms. Giuffre's dreams. While Ms. Giuffre has looked for this journal, which is wholly irrelevant to this case, she has been unable to locate it. Ms. Giuffre also wrote in a personal journal some of her experiences with Maxwell and Epstein, which were harmful and painful. In an effort to relieve herself of those past painful experiences, Ms. Giuffre followed the advice of a therapist, and burned the journal as a form of cathartic release at a time when she was under no obligation to maintain the personal memorialization of personal and painful experiences. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 205:13-206:10.

DEFENDANT'S PURPORTED FACTS

51. **Ms. Giuffre publicly peddled her story beginning in 2011.** Ms. Giuffre granted journalist Sharon Churcher extensive interviews that resulted in seven (7) widely distributed articles from March 2011 through January 2015. Churcher regularly communicated with Ms. Giuffre and her “attorneys or other agents” from “early 2011” to “the present day.” Ms. Giuffre received approximately \$160,000 for her stories and pictures that were published by many news organizations.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Defendant's statement misrepresents history. In 2011, Ms. Giuffre was still in hiding from Epstein and Maxwell in Australia. Ms. Giuffre was not looking to sell anything or even speak with anyone about what had happened to her in her previous life from which she dramatically escaped. Journalist, Sharon Churcher, located Ms. Giuffre and impressed the importance of Ms. Giuffre standing up to those who had harmed her and speak with Federal authorities, which Ms. Giuffre did in 2011. *See* McCawley Dec. at Exhibit 31, Redacted 302 GIUFFRE001235-01246.

In addition, Churcher impressed the importance of bringing the abuse of Defendant and Epstein to public light to prevent their continued abuse of others. *See* McCawley Dec. at Exhibit 35, Giuffre003690. After much deliberation, Ms. Giuffre agreed to be interviewed by Churcher, and was compensated for sharing her story, which came at a heavy price of being publicly scrutinized.

DEFENDANT'S PURPORTED FACTS

52. **Ms. Giuffre drafted a 144-page purportedly autobiographical book manuscript in 2011 which she actively sought to publish.** In 2011, contemporaneous with her Churcher interviews, Ms. Giuffre drafted a book manuscript which purported to document Ms. Giuffre's experiences as a teenager in Florida, including her interactions with Epstein and Maxwell. Ms. Giuffre communicated with literary agents, ghost writers and potential independent publishers in an effort to get her book published. She generated marketing materials and circulated those along with book chapters to numerous individuals associated with publishing and the media.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Defendant's characterization of these activities are out of context and thus misleading. In 2008, Ms. Giuffre received a Victim Notification Letter from the United States Attorney's office for the Southern District of Florida, *see* McCawley Dec. at Exhibit 30, GIUFFRE0010202, regarding her sexual victimization by Epstein. Thereafter, in 2011, she sought psychological counseling from a psychologist for the trauma she endured. Also that year, journalist Sharon Churcher sought her out, and traveled half way around the globe to interview her on painful subjects. Ms. Giuffre was interviewed by the FBI in 2011. *See* McCawley Dec. at Exhibit 31, FBI Redacted 302 GIUFFRE01235-1246. She was also getting psychological help. *See* McCawley Dec. at Exhibit 38, Lightfoot Records, GIUFFRE005431-005438. In that situation, Ms. Giuffre began to draft a fictionalized account of what happened to her. It was against this backdrop of her trauma being unearthed, her steps to seek psychological counseling for it, that she drafted this manuscript. Doing so was an act of empowerment and a way of reframing and taking control over the narrative of her past abuse that haunts her.

"Writing 'I' has been an emancipatory project for women." Perreault, Jeanne, "AUTOGRAPHY/ TRANSFORMATION/ ASYMMETRY," *Women, Autobiography, Theory A Reader* edited by Sidonie Smith & Julia Watson. Indeed, scholars have written that the act of engaging in autobiography or even accounts loosely based on autobiography, is a process of taking control of one's own narrative and one's own self: "Thus a specific recitation of identity involves the inclusion of certain identity contents and the exclusion of others; the incorporation of certain narrative itineraries and internationalities, the silencing of others; the adoption of certain autobiographical voices, the muting of others." Smith, Sidonie, PERFORMATIVITY,

AUTOBIOGRAPHICAL PRACTICE, RESISTANCE, *Women, Autobiography, Theory A Reader* edited by Sidonie Smith & Julia Watson.

Indeed, even a cursory look at the manuscript penned by Ms. Giuffre informs the reader that she is trying to put forth a more palatable and more empowering narrative to over-write that powerlessness she felt when being abused by Defendant and Epstein. While Ms. Giuffre explored trying to publish her story to empower other individuals who were subject to abuse, she ultimately decided not to publish it. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. 249:16-18; 250:19-251:3.

DEFENDANT’S PURPORTED FACTS

53. **Ms. Giuffre’s publicly filed “lurid” CVRA pleadings initiated a media frenzy and generated highly publicized litigation between her lawyers and Alan Dershowitz.** On December 30, 2014, Ms. Giuffre, through counsel, publicly filed a joinder motion that contained her “lurid allegations” about Ms. Maxwell and many others, including Alan Dershowitz, Prince Andrew, Jean-Luc Brunel. The joinder motion was followed by a “corrected” motion and two further declarations in January and February 2015, which repeated many of Ms. Giuffre’s claims. These CVRA pleadings generated a media maelstrom and spawned highly publicized litigation between Ms. Giuffre’s lawyers, Edwards and Cassell, and Alan Dershowitz. After Ms. Giuffre publicly alleged Mr. Dershowitz of sexual misconduct, Mr. Dershowitz vigorously defended himself in the media. He called Ms. Giuffre a liar and accused her lawyers of unethical conduct. In response, attorneys Edwards and Cassell sued Dershowitz who counterclaimed. This litigation, in turn, caused additional media attention by national and international media organizations.

MS. GIUFFRE’S STATEMENT CONTROVERTING DEFENDANT’S FACTS

See Ms. Giuffre’s Paragraph 7, *supra*, explaining why the allegations were necessary and appropriate for multiple reasons. Ms. Giuffre disputes Defendant’s false characterization of these events, and, indeed, the media attention was caused by Defendant’s issuing her defamatory press release.

DEFENDANT'S PURPORTED FACTS

54. **Ms. Giuffre formed non-profit Victims Refuse Silence to attract publicity and speak out on a public controversy.** In 2014, Ms. Giuffre, with the assistance of the same counsel, formed a non-profit organization, Victims Refuse Silence. According to Ms. Giuffre, the purpose of the organization is to promote Ms. Giuffre's professed cause against sex slavery. The stated goal of her organization is to help survivors surmount the shame, silence, and intimidation typically experienced by victims of sexual abuse. Ms. Giuffre attempts to promote Victims Refuse Silence at every opportunity. For example, Ms. Giuffre participated in an interview in New York with ABC to promote the charity and to get her mission out to the public.

MS. GIUFFRE'S STATEMENT CONTROVERTING DEFENDANT'S FACTS

Ms. Giuffre did not form the non-profit Victims Refuse Silence to "speak out on a public controversy," but instead to simply help survivors of sexual abuse and sexual trafficking. In order to provide assistance to victims, Ms. Giuffre attempted to talk about the non-profit's mission when she had the opportunity to do so. *See* www.victimsrefusesilence.org.

MS. GIUFFRE'S STATEMENT OF UNDISPUTED FACTS

55. Virginia Roberts was born August 9, 1983. *See* McCawley Dec. at Exhibit 51, Driver's License GIUFFRE009209.

56. Virginia Roberts turned 18 on August 9, 2001.

57. In 2000, Virginia's father Sky Roberts worked at the Mar-a-Lago. *See* McCawley Dec. at Exhibit 17, Sky Roberts Dep. Tr. at 72, 74.

58. Sky Roberts got Virginia a job at Mar-a-Lago in 2000, either months before or just after Virginia's 17th birthday. *See* McCawley Dec. at Exhibit 17, Sky Roberts Dep. Tr. at 72, 74; Giuffre Dep. Tr. at 25:19-25:21; 28:10-28:12.

59. The only year in which Virginia was employed at Mar-a-Lago was 2000. *See* McCawley Dec. at Exhibit 49, MAR-A-LAGO 0173, 0176.

60. Virginia worked at Mar-a-Lago as a spa bathroom attendant. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 61:9-61:24; Austrich Dep. Tr. at 100:3-12.

61. Virginia was not a masseuse at Mar-a-Lago as she had no massage experience. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 111:12-111:21; 116:19-117:12; Austrich Dep. Tr. at 34-35, 100-101, 127-128; Figueroa Dep. Tr. at 82:10-15; 168:24-169:1; Sky Roberts Dep. Tr. at 80:7-19; 84:18 -85:1.

62. Maxwell approached Virginia at Mar-a-Lago, and recruited her to come to Jeffrey Epstein's house. *See* McCawley Dec. at Exhibits 1, 5, and 17, Giuffre Dep. Tr. at 111:12-111:21; 116:19-117:12; Alessi Dep. Tr. at 94:24-95:2; Sky Roberts Dep. Tr. at 80:7-19; 84:18 -85:1.

63. At the time Maxwell recruited Virginia to Jeffrey Epstein's house, Virginia was either 16 or 17 years old, depending on whether this occurred just before or just after Virginia's birthday. *See* McCawley Dec. at Exhibit 49, MAR-A-LAGO 0173, 0176.

64. Virginia followed Maxwell's instructions and reported to Jeffrey Epstein's house on the night of the day when Maxwell approached Virginia at Mar-a-Lago. *See* McCawley Dec. at Exhibits 5 and 18, Giuffre Dep. Tr. at 117:20-118:1; Alessi Dep. Tr. at 96-98; GIUFFRE000102-103 at p. 48-49.

65. Maxwell told Virginia at Mar-a-Lago that Virginia could get paid for giving a massage to Jeffrey Epstein. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 111:12-111:21; 116:19-117:12.

66. When Virginia arrived at Epstein's house, she was taken upstairs to Epstein's bedroom, and instructed by Maxwell and Epstein how to give Epstein a massage. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 198:20-199:3; 199:15-199:18; Epstein Dep. Tr. at 74:3-14.

67. Epstein and Maxwell turned the massage into a sexual encounter. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 198:20-199:3; 199:15-199:18.

68. Virginia was not a professional masseuse, and was not old enough to be a masseuse in Florida even though Maxwell testified she only hired professional masseuses. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 61:9-61:24, 111:12-111:21, 116:19-117:12; Fla. Stat. § 480.041; Maxwell Dep. Tr. at 23:21-24:9; 31:6-18; 41:7-13; 220:13-221:2; 225:23-226:20; 248:5-16; 310:6-17; 383:2-18.

69. Maxwell and Epstein promised Virginia money and a better life in exchange for complying with their sexual demands. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 198:20-199:3; 199:15-199:18.

70. Maxwell had sex with Virginia and other females. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 138:17-139:16; Maxwell 07-22-2016 Dep. Tr. at 86:25-87:9; 91:15-91:21.

71. Virginia was trafficked nationally and internationally for sexual purposes. *See* McCawley Dec. at Exhibits 5, 1, 41? GIUFFRE007055-007161 (Flight Logs); Giuffre Dep. Tr. at 193:22-194:16; 201:24; 204:24:205:5; Alessi Dep. Tr. at 104:9-104:14; Andrew Photo GIUFFRE007167; Spain Photo GIUFFRE007166.

72. Maxwell recruited other non-professionals under the guise of being a masseuse, but in reality only recruited girls for sexual purposes. *See* McCawley Dec. at Exhibits 5, 16, 4, 1, 18 Giuffre Dep. Tr. at 198:20-199:3; Sjoberg Dep. Tr. at 13-15; Figueroa Dep. Tr. at 88:12-22; Alessi Dep. Tr. at 34; GIUFFRE000105 at 57-58; GIUFFRE000241-242 at p. 212-213.

73. Maxwell was the boss of others whose job it was to recruit minor females for Epstein for sex, such as Sarah Kellen. *See* McCawley Dec. at Exhibit 21, Rodriguez Dep. Tr. at 26:10-26:20.

74. Maxwell was a recruiter of underage girls and other young females for Epstein for sex, and was the boss in charge of those females. *See* McCawley Dec. at Exhibits 16, 4, 21, and 1, Sjoberg Dep. Tr. 8-9, 13-15, 27; Figueroa Dep. Figueroa Dep. Tr. at 200:6-18; 228:23-229:21; Rodriguez Dep. Tr. 169:1-169:4; Alessi Dep. Tr. at 23:11-23:20; 34:19-35:3; 98:5-98:12; 104:15-104:23.

Dated: January 31, 2017

Respectfully Submitted,

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Sigrid McCawley
Sigrid McCawley (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) 585-5202¹

¹ This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah for this private representation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 31, 2017, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on the individuals identified below via transmission of Notices of Electronic Filing generated by CM/ECF.

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

_____ /

**PLAINTIFFS' RESPONSE TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Sigrid McCawley
BOIES, SCHILLER & FLEXNER LLP
401 E. Las Olas Blvd., Suite 1200
Ft. Lauderdale, FL 33301
(954) 356-0011

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<i>Merriam-Webster</i> (11 th ed. 2006).....	60, 64
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I. PRELIMINARY STATEMENT

There can be no question that disputed issues of material facts preclude granting summary judgment when, in a one-count defamation case, Defendant presents the Court with a 68-page memorandum of law, a 16-page statement of purported facts, and approximately 700 pages of exhibits. The sheer scope of Defendant's response, if anything, conclusively demonstrates that volumes of disputed facts surround the core question of whether Defendant abused Ms. Giuffre. Indeed, Defendant acknowledges a dispute between the parties as to whether she abused Ms. Giuffre. *See, e.g.*, Motion for Summary Judgment at 1; Motion to Dismiss at 1. This Court already said that this disputed factual question is central to this case:

Either Plaintiff is telling the truth about her story and Defendant's involvement, or defendant is telling the truth and she was not involved in the trafficking and ultimate abuse of Plaintiff. The answer depends on facts. Defendant's statements are therefore actionable as defamation. Whether they ultimately prove to meet the standards of defamation (including but not limited to falsity) *is a matter for the fact-finder.*

Order Denying Defendant's Motion to Dismiss at 10. While this fact remains in dispute, summary judgment is foreclosed.

But even turning to Defendant's claims, the avalanche of aspersions she casts upon Ms. Giuffre and her counsel should not distract the Court from the fact that the instant motion cannot come within sight of meeting the standard for an award of summary judgment. The most glaring and emblematic example of the Defendant's far-fetched claims appears in her attempt to move away from her defamatory statement by arguing that it was her attorney and not her, who issued the defamatory statement for the press to publish, though she is forced to admit the statement was made on her behalf. This is an untenable position to take at trial, and an impossible argument to advance at the summary judgment stage, as both the testimonial and documentary evidence positively refute that argument. Defendant incorrectly asks this Court to make a factual

finding that her defamatory press release was actually a legal opinion, issued not by her, but by her lawyer, to the media, despite documentary evidence showing otherwise.

Defendant also argues that she has proven the truth of her statement calling Ms. Giuffre a liar with respect to the statements Ms. Giuffre made about Defendant. To the contrary, voluminous evidence, both documentary and testimonial from numerous witnesses, corroborate Ms. Giuffre's account of Defendant's involvement in the sexual abuse and trafficking of Ms. Giuffre. Just to briefly highlight a few, Johanna Sjoberg, testified that Defendant recruited her under the guise of a legitimate assistant position, but asked her to perform sexual massages for Epstein, and punished her when she didn't cause Epstein to orgasm.¹ Tony Figueroa testified that Defendant contacted him to recruit high school-aged girls for Epstein, and also testified that Maxwell and Epstein participated in multiple threesomes with Virginia Giuffre. Even more shockingly, the butler for Defendant's close friend witnessed, first-hand, a fifteen-year-old Swedish girl crying and shaking because Defendant was attempting to force her to have sex with Epstein and she refused. This is a fraction of the testimony that will be elicited at trial about Defendant's involvement in the sexual abuse and trafficking of Ms. Giuffre.

Defendant's primary argument in support of her contention that she did not abuse and traffic Ms. Giuffre as a minor child is that employment records show that Ms. Giuffre was either sixteen or seventeen when Defendant recruited her from her job at Mar-a-Lago for sex with Epstein, not fifteen-years-old as Plaintiff originally thought. Call this the "yes-I'm-a-sex-trafficker-but-only-of-sixteen-year-old-girls" defense. Defendant does not explain why sexual abuse of a fifteen year old differs in any material way from sexual abuse of a sixteen or seventeen year old. All instances involve a minor child, who cannot consent, and who is

¹See McCawley Dec. at Exhibit 16, Sjoberg Dep. Tr. at 8:5-10; 13:1-3; 12:17-14:3; 15:1-5; 32:9-16; 34:5-35:1; 36:2-1.

protected by federal and state laws. The fact remains that Defendant recruited Ms. Giuffre while she was a minor child for sexual purposes and then proceeded to take her all over the world on convicted pedophile Jeffrey Epstein's private jet, the "Lolita Express,"² as well as to his various residences, and even to her own London house. Flight logs even reveal twenty-three flights that Defendant shared with Ms. Giuffre – although Defendant claims she is unable to remember even a single one of those flights. Inconsequential details that Ms. Giuffre may have originally remembered incorrectly do not render her substantive claims of abuse by Defendant false, much less deliberate "lies." At most, these minor inaccuracies, in the context of a child suffering from a troubled childhood and sexual abuse, create nothing more than a fact question on whether Defendant's statement that Ms. Giuffre lied when she accused Defendant of abuse is "substantially true," thereby precluding summary judgment. *See Mitre Sports Int'l Ltd. v. Home Box Office, Inc.*, 22 F. Supp. 3d 240, 255 (S.D.N.Y. 2014) ("Because determining whether COI is substantially true would require this court to decide disputed facts ... summary judgment is not appropriate").

Defendant has tried to spin these inconsequential mistakes of memory into talismanic significance and evidence of some form of bad-faith litigation, but this claim fails under the weight of the evidence. As the Court knows, the clear weight of the evidence establishes Defendant's heavy and extensive involvement in both Jeffrey Epstein's sex trafficking ring and in recruiting Ms. Giuffre, living with her and Jeffrey Epstein in the same homes while Ms. Giuffre was a minor, and traveling with Ms. Giuffre and Jeffrey Epstein – including 23 documented flights. Even the house staff testified that Defendant and Ms. Giuffre were regularly

² See, e.g.: "All aboard the 'Lolita Express': Flight logs reveal the many trips Bill Clinton and Alan Dershowitz took on pedophile Jeffrey Epstein's private jet with anonymous women" at The Daily Mail, <http://www.dailymail.co.uk/news/article-2922773/Newly-released-flight-logs-reveal-time-trips-Bill-Clinton-Harvard-law-professor-Alan-Dershowitz-took-pedophile-Jeffrey-Epstein-s-Lolita-Express-private-jet-anonymous-women.html>.

together. *See* McCawley Dec. at Exhibit 1, Alessi Dep. Tr. at 103:4-9 (“Q. After that day, do you recall that she started coming to the house more frequently. A. Yes, she did. Q. In fact, did she start coming to the house approximately three times a week? A. Yes, probably.”). It is also undisputed that witnesses deposed in this case have testified about Defendant’s role as a procurer of underage girls and young women for Jeffrey Epstein. At the very least, a trier of fact should determine whether the evidence establishes whether or not Ms. Giuffre’s claims of Defendant being involved in her trafficking and abuse are true. Defendant’s summary judgment motion should be denied in its entirety.

II. UNDISPUTED FACTS

The record evidence in this case shows that Defendant shared a household with convicted pedophile Jeffrey Epstein for many years. While there, she actively took part in recruiting underage girls and young women for sex with Epstein, as well as scheduling the girls to come over, and maintaining a list of the girls and their phone numbers. Ms. Giuffre was indisputably a minor when Defendant recruited her to have sex with convicted pedophile Jeffrey Epstein. Thereafter, Ms. Giuffre flew on Epstein’s private jets – the – Lolita Express” – with Defendant at least 23 times.

A. It is an Undisputed Fact That Multiple Witnesses Deposed in This Case Have Testified That Defendant Operated as Convicted Pedophile Jeffrey Epstein’s Procurer of Underage Girls.

1. It is an undisputed fact that Joanna Sjoberg testified Defendant lured her from her school to have sex with Epstein under the guise of hiring her for a job answering phones.

Ms. Sjoberg’s account of her experiences with Defendant are chillingly similar. As with Ms. Giuffre, Defendant, a perfect stranger, approached Ms. Sjoberg while trolling Ms. Sjoberg’s school grounds. She lured Ms. Sjoberg into her and Epstein’s home under the guise of a legitimate job of answering phones, a pretext that lasted only a day. A young college student,

nearly 2,000 miles from home, Defendant soon instructed Ms. Sjoberg to massage Epstein, and made it clear that Sjoberg's purpose was to bring Epstein to orgasm during these massages so that Defendant did not have to do it.

Q. And when did you first meet Ms. Maxwell?

A. 2001. March probably. End of February/beginning of March.

Q. And how did you meet her?

A. She approached me while I was on campus at Palm Beach Atlantic College.

Q. And how long did you work in that position answering phones and doing --

A. Just that one day.

Q. And what happened that second time you came to the house?

A. At that point, I met Emmy Taylor, and she took me up to Jeffrey's bathroom and he was present. And her and I both massaged Jeffrey. She was showing me how to massage. And then she -- he took -- he got off the table, she got on the table. She took off her clothes, got on the table, and then he was showing me moves that he liked. And then I took my clothes off. They asked me to get on the table so I could feel it. Then they both massaged me.

Q. Who did Emmy work for?

2 A. Ghislaine.

3 Q. Did Maxwell ever refer to Emmy by any particular term?

5 A. She called her her slave.

Q. Did Jeffrey ever tell you why he received so many massages from so many different girls?

A. He explained to me that, in his opinion, he needed to have three orgasms a day. It was biological, like eating.

Q. Was there anything you were supposed to do in order to get the camera?

THE WITNESS: I did not know that there were expectations of me to get the camera until after. She [Defendant] had purchased the camera for me, and I was over there giving Jeffrey a massage. I did not know that she was in possession of the camera until later. She told me -- called me after I had left and said, I have the camera for you, but you cannot receive it yet because **you came here and didn't finish your job and I had to finish it for you.**

Q. And did you -- what did you understand her to mean?

A. She was implying that I did not get Jeffrey off, and so she had to do it.

Q. And when you say "get Jeffrey off," do you mean bring him to orgasm?

A. Yes.

Q. Based on what you knew, did Maxwell know that the type of massages Jeffrey was getting typically involved sexual acts?

THE WITNESS: Yes.

Q. What was Maxwell's main job with respect to Jeffrey?

THE WITNESS: Well, beyond companionship, her job, as it related to me, was to find other girls that would perform massages for him and herself.³

Ms. Sjoberg also testified about sexual acts that occurred with her, Prince Andrew, and Ms. Giuffre, when she and Defendant were staying at Epstein's Manhattan mansion:

Q. Tell me how it came to be that there was a picture taken.

THE WITNESS: I just remember someone suggesting a photo, and they told us to go get on the couch. And so Andrew and Virginia sat on the couch, and they put the puppet, the puppet on her lap. And so then I sat on Andrew's lap, and I believe on my own volition, and they took the puppet's hands and put it on Virginia's breast, and so Andrew put his on mine.⁴

Ms. Sjoberg's testimony corroborates Ms. Giuffre's account of how Defendant recruited her (and others) under a ruse of a legitimate job in order to bring them into the household to have sex with Epstein. Ms. Sjoberg's testimony also corroborates Ms. Giuffre's account of being lent out to Prince Andrew by Defendant, as even the interaction Ms. Sjoberg witnessed included a sexual act: Prince Andrew using a puppet to touch Ms. Giuffre's breast while using a hand to touch Ms. Sjoberg's breast.

2. **It is an undisputed fact that Tony Figueroa testified that Defendant would call him to bring over underage girls and that Defendant and Epstein would have threesomes with Ms. Giuffre.**⁵

Tony Figueroa testified that Plaintiff told him about threesomes Ms. Giuffre had with Defendant and Epstein which included the use of strap-ons:

Q. Okay. And tell me everything that you remember about what Ms. Roberts said about being intimate with Ms. Maxwell and Mr. Epstein at the same time.

A. I remember her talking about, like, strap-ons and stuff like that. But, I mean, like I said, all the details are not really that clear. But I remember her talking about, like, how they would always be using and stuff like that.

Q. She and Ms. Maxwell and Mr. Epstein would use strap-ons?

A. Uh-huh (affirmative).

³ See McCawley Dec. at Exhibit 16, Sjoberg Dep. Tr. at 8:5-10; 13:1-3; 12:17-14:3; 15:1-5; 32:9-16; 34:5-35:1; 36:2-15.

⁴ See McCawley Dec. at Exhibit 16, Sjoberg Dep. Tr. at 82:23-83:9.

⁵ Defendant attempts to discredit Figueroa's damaging testimony by repeatedly mentioning that he has been convicted for a drug-related offense. Unsurprisingly, in this attack, Defendant does not mention that she has a DUI conviction. See McCawley Dec. at Exhibit 11, Maxwell Dep. Tr. at 390:13-15. (April 22, 2016).

Q. Other than sex with the Prince, is there anyone else that Jeffrey wanted Ms. Roberts to have sex with that she relayed to you?

A. Mainly, like I said, just Ms. Maxwell and all the other girls.

Q. Ms. Maxwell wanted -- Jeffrey wanted Virginia to have sex with Ms. Maxwell?

A. And him, yeah.

Q. And did she tell you whether she had ever done that?

A. Yeah. She said that she did.

Q. And what did she describe having happened?

A. I believe I already told you that. With the strap-ons and dildos and everything.⁶

[REDACTED]

[REDACTED]⁷

Figueroa also testified that Defendant called him to ask if he had found any other girls for Epstein, thereby acting as procurer of girls for Epstein:

Q. [W]hen Ghislaine 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 other girls just to bring to Jeffrey.

Q. Okay.

A. Pretty much every time there was a conversation with any of them, it was either asking Virginia where she was at, or asking her to get girls, or asking me to get girls.

Q. Okay. Well, tell me. When did Ms. Maxwell ask you to bring a girl?

A. Never in person. It was, like, literally, like, on the phone maybe, like, once or twice.

Q. All right. Did Ms. Maxwell call you frequently?

A. No.

Q. All right. How many times do you think Ms. Maxwell called you, at all?

A. I'd just say that probably a just a few, a couple of times. Maybe once or twice.

Q. One or two --

A. The majority of the time it was pretty much his assistant.

Q. How do you know Ms. Maxwell's voice?

A. Because she sounds British.

Q. So someone with a British accent called you once or twice and asked for --

A. Well, she told me who she was.

Q. Okay. And what did she say when she called you and asked you to bring girls?

A. She just said, "Hi. This is Ghislaine. Jeffrey was wondering if you had anybody that could come over."⁸

⁶ See McCawley Dec. at Exhibit 4, Figueroa June 24, 2016 Dep. Tr. Vol. 1 at 96-97 and 103.

⁷ See McCawley Dec. at Exhibit 11, Maxwell Dep. Tr. at 55:19-58:23 (July 22, 2016).

⁸ See McCawley Dec. at Exhibit 4, Figueroa Dep. Tr. at 200:6-18; 228:23-229:21.

3. **It is an undisputed fact that Rinaldo Rizzo testified that Defendant took the passport of a 15-year-old Swedish girl and threatened her when she refused to have sex with Epstein.**

Rinaldo Rizzo was the house manager for one of Defendant's close friends, Eva Dubin. Mr. Rizzo testified - through tears - how, while working at Dubin's house, he observed Defendant bring a 15 year old Swedish girl to Dubin's house. In distress, the 15 year old girl tearfully explained to him that Defendant tried to force her to have sex with Epstein through threats and stealing her passport:

Q. How old was this girl?

A. 15 years old.

Q. Describe for me what the girl looked like, including her demeanor and anything else you remember about her when she walks into the kitchen.

A. Very attractive, beautiful young girl. Makeup, very put together, casual dress. But she seemed to be upset, maybe distraught, and she was shaking, and as she sat down, she sat down and sat in the stool exactly the way the girls that I mentioned to you sat at Jeffrey's house, with no expression and with their head down. But we could tell that she was very nervous.

Q. What do you mean by distraught and shaking, what do you mean by that?

A. Shaking, I mean literally quivering.

Q. What did she say?

A. She proceeds to tell my wife and I that, and this is not -- this is blurting out, not a conversation like I'm having a casual conversation. That quickly, I was on an island, I was on the island and there was Ghislaine, there was Sarah, she said they asked me for sex, I said no. And she is just rambling, and I'm like what, and she said -- I asked her, I said what? And she says yes, I was on the island, I don't know how I got from the island to here. Last afternoon or in the afternoon I was on the island and now I'm here. And I said do you have a -- this is not making any sense to me, and I said this is nuts, do you have a passport, do you have a phone? And she says no, and she says Ghislaine took my passport. And I said what, and she says Sarah took her passport and her phone and gave it to Ghislaine Maxwell, and at that point she said that she was threatened. And I said threatened, she says yes, I was threatened by Ghislaine not to discuss this. And I'm just shocked. So the conversation, and she is just rambling on and on, again, like I said, how she got here, she doesn't know how she got here. Again, I asked her, did you contact your parents and she says no. At that point, she says I'm not supposed to talk about this. I said, but I said: How did you get here. I don't understand. We were totally lost for words. And she said that before she got there, she was threatened again by Jeffrey and Ghislaine not to talk about what I had mentioned earlier, about -- again, the word she used was sex.

Q. And during this time that you're saying she is rambling, is her demeanor continues to be what you described it?

A. Yes.

Q. Was she in fear?

A. Yes.

Q. You could tell?

A. Yes.

A. She was shaking uncontrollably.⁹

4. It is an undisputed fact that Lyn Miller testified that she believed Defendant became Ms. Giuffre's "new mama".

Lyn Miller is Ms. Giuffre's mother. She testified that when Ms. Giuffre started living with Defendant, Defendant became Ms. Giuffre's "new momma."¹⁰ Incredulously, Defendant testified that she barely remembered Ms. Giuffre.¹¹

5. It is an undisputed Fact that Detective Joseph Recarey testified that he sought to investigate Defendant in relation to his investigation of Jeffrey Epstein.

Detective Recarey led the Palm Beach Police's investigation of Epstein. He testified that Defendant procured girls for Epstein, and that he sought to question her in relation to his investigation, but could not contact her due to the interference of Epstein's lawyer:

Q. A cross-reference of Jeffrey Epstein's residence revealed which affiliated names?

A. It revealed Nadia Marcinkova, Ghislane Maxwell, Mark Epstein. Also, the cross-reference, any previous reports from the residence as well.

Q. During your investigation, did you learn of any involvement that Nadia Marcinkova had with any of the activities you were investigating?

Q. The other name that is on here as a cross-reference is Ghislane Maxwell. Did you speak with Ghislane Maxwell?

A. I did not.

Q. Did you ever attempt to speak with Ghislane Maxwell?

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

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

⁹ See McCawley Dec. at Exhibit 14, Rinaldo Rizzo's June 10, 2016 Dep. Tr. at 52:6-7; 52:25-53:17; 55:23-58:5

¹⁰ See McCawley Dec. at Exhibit 12, Lynn Miller's May 24, 2016 Dep. Tr. at 115.

¹¹ See McCawley Dec. at Exhibit 11, Maxwell Dep. Tr. at 77:25-78:15 (April 22, 2016).

THE WITNESS: Ms. Maxwell, during her research, was found to be Epstein's long-time friend. During the interviews, Ms. Maxwell was involved in seeking girls to perform massages and work at Epstein's home.¹²

6. **It is an undisputed fact that Pilot David Rodgers testified that he flew Defendant and Ms. Giuffre at least 23 times on Epstein's jet, the "Lolita Express" and that "GM" on the flight logs Stands for Ghislaine Maxwell.**

Notably, at Defendant's deposition, Defendant refused to admit that she flew with Ms. Giuffre, and denied that she appeared on Epstein's pilot's flight logs.¹³ However, David Rodgers, Epstein pilot, testified that the passenger listed on his flight logs bearing the initials – GM – was, in fact, Ghislaine Maxwell, and that he was the pilot on at least 23 flights in which Defendant flew with Plaintiff.¹⁴ The dates of those flights show that Ms. Giuffre was an underage child on many of them when she flew with Defendant.¹⁵

7. **It is an undisputed fact that Sarah Kellen, Nadia Marcinkova, and Jeffrey Epstein invoked the Fifth Amendment when asked about Defendant trafficking girls for Jeffery Epstein.**

Both Sarah Kellen and Nadia Marcinkova lived with Jeffrey Epstein for many years. They both invoked the Fifth Amendment when asked about Defendant's participation in recruiting underage girls for sex with Epstein. Marcinkova testified as follows:

Q. Did Ghislaine Maxwell work as a recruiter of young girls for Jeffrey Epstein when you met her?

A. Same answer. [Invocation of Fifth Amendment]

Q. Have you observed Ghislaine Maxwell and Jeffrey Epstein convert what started as a massage with these young girls into something sexual?

A. Same answer.¹⁶

¹² See McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 27:10-17; 28:21-29:20.

¹³ See McCawley Dec. at Exhibit 11, Maxwell's April 22, 2016 Dep. Tr. at 78-79, 144.

¹⁴ See McCawley Decl. at Exhibit 41, Rodgers Dep. Ex. 1, GIUFFRE 007055-007161 (flight records evidencing Defendant (GM) flying with Ms. Giuffre).

¹⁵ See McCawley Dec. at Exhibit 15, David Rodgers' June 3, 2016 Dep. Tr. at 18, 34-36; *see also* Exhibit 41, Rodgers Dep. Ex. 1 at flight #s 1433-1434, 1444-1446, 1464-1470, 1478-1480, 1490-1491, 1506, 1525-1526, 1528, 1570 and 1589.

¹⁶ See McCawley Dec. at Exhibit 10, Marcinkova Dep. Tr. at 10:18-21; 12:11-15.

Kellen testified as follows:

Q. Did Ghislaine Maxwell work as a recruiter for young girls for Jeffrey Epstein when you met her?

A. On advice of my counsel I must invoke my Fifth and Sixth Amendment privilege . . .

Q. Isn't it true that Ghislaine Maxwell would recruit underage girls for sex and sex acts with Jeffrey Epstein?

A. On advice of my counsel I must invoke my Fifth and Sixth Amendment privilege . . .¹⁷

Similarly, Jeffrey Epstein invoked the Fifth Amendment when asked about Defendant's involvement in procuring underage girls for sex with him.

Q. Maxwell was one of the main women whom you used to procure underage girls for sexual activities, true?

THE WITNESS: Fifth.

Q. Maxwell was a primary co-conspirator in your sexual abuse scheme, true?

THE WITNESS: Fifth.

Q. Maxwell was a primary co-conspirator in your sex trafficking scheme, true?

THE WITNESS: Fifth.

Q. Maxwell herself regularly participated in your sexual exploitation of minors, true?

THE WITNESS: Fifth.¹⁸

8. It is an undisputed fact that Juan Alessi testified that Defendant was one of the people who procured some of the over 100 girls he witnessed visit Epstein, and that he had to clean Defendant's sex toys.

Juan Alessi was Epstein's house manager. He testified as follows:

Q. And over the course of that 10-year period of time while Ms. Maxwell was at the house, do you have an approximation as to the number of different females – females that you were told were massage therapists that came to house?

A. I cannot give you a number, but I would say probably over 100 in my stay there.

Q. I don't think I asked the right – the question that I was looking to ask, so let me go back. Did you go out looking for the girls –

A. No.

Q. – to bring –

A. Never

Q. – as the massage therapists?

A. Never.

Q. Who did?

¹⁷ See McCawley Dec. at Exhibit 8, Kellen Dep. Tr. at 15:13-18; 20:12-16.

¹⁸ See McCawley Dec. at Exhibit 3, Epstein Dep. Tr. at 116:10-15; 117:18-118:10.

A. Ms. Maxwell, Mr. Epstein and their friends, because their friend relay to other friends they knew a massage therapist and they would send to the house. So it was referrals.

Q. Did you have occasion to clean up after the massages?

A. Yes.

Q. Okay. And that is after both a massage for Jeffrey Epstein, as well as clean up after a massage that Ghislaine Maxwell may have received?

A. Yes.

Q. And on occasion, after -- in cleaning up after a massage of Jeffrey Epstein or Ghislaine Maxwell, did you have occasion to find vibrators or sex toys that would be left out?

A. yes, I did.¹⁹

9. It is an undisputed fact that Defendant was unable to garner a single witness throughout discovery who can testify that she did not act as the procurer of underage girls and young women for Jeffrey Epstein.

Defendant has not been able to procure a single witness - not one – to testify that Defendant did not procure girls for sex with Epstein or participate in the sex. Even one of her own witnesses, Tony Figueroa, testified that she both procured girls and participated in the sex. Another one of Defendant's witnesses, Ms. Giuffre's mother, named Defendant as Ms. Giuffre's "new mamma." Indeed, those who knew her well, who spent considerable time with her in Epstein's shared household, like Juan Alessi, Alfredo Rodriguez and Joanna Sjoberg, have testified that she was Epstein's procuress. Others who lived with her – Jeffrey Epstein, Nadia Marcinkova, and Sarah Kellen – invoked the Fifth Amendment so as not to answer questions on the same. No one has testified to the contrary.

B. Documentary Evidence also Shows that Defendant Trafficked Ms. Giuffre and Procured her for Sex with Convicted Pedophile Jeffrey Epstein while She Was Underage.

1. The Flight Logs

Defendant has never offered a legal explanation for what she was doing with, and why she was traveling with, a minor child on 21 flights while she was a child, including 6 international flights, aboard a convicted pedophile's private jet all over the world. Her motion for

¹⁹ See McCawley Dec. at Exhibit 1, Alessi Dep. Tr. at 28:6-15; 30:51-25; 52:9-22.

summary judgment – as well as all previous briefing papers – are absolutely silent on those damning documents.

2. The Photographs

Throughout a mountain of briefing and, and even in her own deposition testimony, Defendant never offered an explanation regarding Ms. Giuffre's photographs of her, Defendant, and Epstein. She never offered a legal explanation for why Prince Andrew was photographed with his hand around Ms. Giuffre's bare waist while she was a minor child, while posing with Defendant, inside Defendant's house in London. This particular photograph corroborates Ms. Giuffre's claims, and there is no other reasonable explanation why an American child should be in the company of adults not her kin, in the London house owned by the girlfriend of a now-convicted sex offender.²⁰



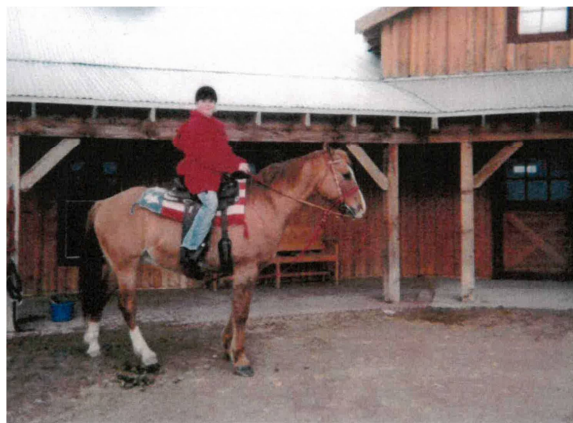
Ms. Giuffre also produced pictures of herself taken when she was in New York with Defendant and Epstein, and from a trip to Europe with Defendant and Epstein.²¹

²⁰ See McCawley Dec at Exhibit 42, GIUFFRE007167, Prince Andrew and Defendant Photo.

²¹ See McCawley Dec at Exhibit 42, GIUFFRE007182 - 007166.



And, Ms. Giuffre has produced a number of pictures of herself taken at the Zorro Ranch, Epstein's New Mexico Ranch, two of which are below.²²



Finally, among other nude photos, which included full nudes of Defendant, Ms. Giuffre produced images of females that the Palm Beach Police confiscated during the execution of the

²² See McCawley Dec at Exhibit 42, GIUFFRE007175; 007173.

warrant, including one photograph revealing the bare bottom of a girl who appears to be pre-pubescent (Ms. Giuffre will only submit its redacted form).²³



3. The Victim Identification Letter

In 2008, the United States Attorney's office for the Southern District of Florida identified Ms. Giuffre as a protected "victim" of Jeffrey Epstein's sex abuse. The U.S. Attorney mailed Ms. Giuffre a notice of her rights as a crime victim under the CVRA.²⁴

Re: Jeffrey Epstein/ NOTIFICATION OF
IDENTIFIED VICTIM

Dear :

By virtue of this letter, the United States Attorney's Office for the Southern District of Florida provides you with the following notice because you are an identified victim of a federal offense.

4. New York Presbyterian Hospital Records

Ms. Giuffre has provided extensive medical records in this case, including medical records from the time when Defendant was sexually abusing and trafficking her. Ms. Giuffre produced records supporting her claim of being sexually abused in New York resulting in both

²³ See McCawley Dec at Exhibit 44, GIUFFRE007584.

²⁴ See McCawley Dec. at Exhibit 30, GIUFFRE 002216-002218, Victim Notification Letter.

Defendant and Epstein taking Plaintiff to New York Presbyterian Hospital in New York while she was a minor.²⁵ The dates on the hospital records show she was seventeen years old.

5. Judith Lightfoot Psychological Records

As the Court is aware, Defendant propounded wildly overbroad requests for production concerning the past eighteen years of Ms. Giuffre's medical history. Defendant repeatedly and vehemently argued to the Court that it was essential to procure every page of these records in a fanfare of unnecessary motion practice. *See, e.g.*, Defendant's Motion to Compel (DE 75); Defendant's Motion for Sanctions at 10 ("Ms. Maxwell has been severely prejudiced by Plaintiff's failure to provide the required identifying information and documents from her health care providers."). Ms. Giuffre and her counsel took on the considerable burden and significant expense of retrieving and producing over 250 pages of medical records from over 20 providers, spanning two continents and nearly two decades.

Now that those records have been collected, Defendant's 68 page motion makes no reference to a single medical record produced by Ms. Giuffre, nor a single provider, nor a single treatment, nor or a single medication prescribed. After Defendant's repeated motion practice stressing the essentiality of these records, this may surprise the Court. But not Ms. Giuffre. Defendant's requests unearthed documents that are highly unfavorable to Defendant that corroborate Ms. Giuffre's claims against her.

Years before this cause of action arose, Ms. Giuffre sought counseling from a psychologist for the trauma she continued to experience after being abused by Defendant and Epstein. A 2011 psychological treatment record, written by her treating psychologist, unambiguously describes Defendant as Ms. Giuffre's abuser:

²⁵ *See* McCawley Dec at Exhibit 33, GIUFFRE003259-003290.

. . . [Ms. Giuffre] was approached by Ghislaine Maxwell who said she could help her get a job as a massage therapist . . . seemed respectable . . . was shown how to massage, etc., Geoff [sic] Epstein. Told to undress and perform sexual acts on person. Miss Maxwell promised her \$200 a job.²⁶

Therefore, years before Defendant defamed her, Ms. Giuffre confided in her treating psychologist that Maxwell recruited her for sex with Epstein.

6. Message Pads

Detective Recarey, the lead investigator of the criminal investigation into Epstein and his associates' sex crimes, recovered carbon copies of hand-written messages taken by various staff, including Defendant, at Epstein's Palm Beach residence.²⁷ These were collected both from trash pulls from the residence and during the execution of the search warrant where the pads were found laying out in the open in the residence.²⁸ The search warrant was executed in 2005 and the message pads collected include messages recorded in 2004 and 2005. Numerous witnesses have described that these copies of collected messages accurately reflect those taken by various staff at the Palm Beach Epstein mansion between 2004 and 2005.²⁹

The messages raise a question of fact as to Maxwell's involvement in the sexual abuse of minors and are relevant to refute Maxwell's denial of any involvement with Epstein during relevant time periods, and, accordingly her denial of knowledge of certain events.

While there were hundreds of these messages recovered during the investigation, this small sample demonstrates the undeniable reality that there exists a genuine issue of material fact with respect to Defendant's involvement in and knowledge of the activities described by Giuffre which Maxwell has said we "untrue" and "obvious lies."

²⁶ See McCawley Dec. at Exhibit 38, Lightfoot Records, GIUFFRE005437.

²⁷ See McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 45:13-25; 97:9-98:8.

²⁸ See McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 25:12-21; 40:5-15; 41:16-23; 42:14-43:10; 45:13-25; *see also* search warrant video showing the pads openly displayed on the desk.

²⁹ See McCawley Dec. at Exhibit 21, 1, 16, 11, Rodriguez Dep. Tr. at 73:19-74:12; Alessi Dep. Tr. at 141:18-21; Sjoberg Dep. Tr. at 64:1-6; Maxwell Dep. Tr. at 147:23-148:3; 148:19-149:14.

This sampling reveals that Maxwell, “GM,” took messages at the residence, including from underage girls who were calling to schedule a time to come over to see Epstein. This demonstrates that Maxwell was at Epstein’s Palm Beach mansion in 2004 and 2005, incidentally a time period she has denied being around the house in her deposition. *See supra* GIUFFRE001412; 001435; 001449. The messages also reveal that multiple “girls” were leaving messages that were being taken and memorialized and left out in the open for anyone to see. Certain messages also make clear that a number of these “girls” were in school. In addition to taking messages herself (and the staff working under her direction taking these relevant messages), staff employees were taking and leaving messages for Defendant. This is evidence that Maxwell was in the house at relevant times, including times that she has now testified under oath that she was not there. Other messages demonstrate Epstein and Maxwell’s friends, including Jean Luc Brunel, leaving messages relating to underage females. The following is a small sampling of such messages:

IMPORTANT MESSAGE			
FOR <u>J.E.</u>			
DATE <u>8/17/05</u>		TIME <u>8:50</u> A.M. P.M.	
M. <u>[REDACTED]</u>			
OF <u>[REDACTED]</u>			
PHONE/ MOBILE <u>[REDACTED]</u>			
TELEPHONED	PLEASE CALL		
CAME TO SEE YOU	WILL CALL AGAIN		
WANTS TO SEE YOU	RUSH		
RETURNED YOUR CALL	SPECIAL ATTENTION		
MESSAGE <u>I left message</u>			
<u>for [REDACTED] to</u>			
<u>call him at 11:00 AM</u>			
<u>and [REDACTED]</u>			
<u>for 4:30 PM</u>			
SIGNED <u>T.</u>			

GIUFFRE001412 (SAO01092)

IMPORTANT MESSAGE			
FOR <u>SE</u>			
DATE <u>8/16/05</u>		TIME <u>2:26</u> A.M. P.M.	
M. <u>[REDACTED]</u>			
OF <u>[REDACTED]</u>			
PHONE <u>963 8470</u> AREA CODE NUMBER EXTENSION			
TELEPHONED	PLEASE CALL		
CAME TO SEE YOU	WILL CALL AGAIN		
WANTS TO SEE YOU	RUSH		
RETURNED YOUR CALL	SPECIAL ATTENTION		
MESSAGE <u>WANTS TO KNOW</u>			
<u>IF SHE SHOULD RING</u>			
<u>HER FRIEND [REDACTED]</u>			
<u>WILL TONIGHT</u>			
SAO01456			
SIGNED <u>M. [REDACTED]</u>			

GIUFFRE001427 (SAO01456)

IMPORTANT MESSAGE			
FOR <u>Teff. [REDACTED]</u>			
DATE <u>2/28/05</u>		TIME <u>12:32</u> A.M. P.M.	
M. <u>[REDACTED]</u>			
OF <u>[REDACTED]</u>			
PHONE/ MOBILE <u>[REDACTED]</u>			
TELEPHONED	PLEASE CALL		
CAME TO SEE YOU	WILL CALL AGAIN		
WANTS TO SEE YOU	RUSH		
RETURNED YOUR CALL	SPECIAL ATTENTION		
MESSAGE <u>SHE IS WORKING</u>			
<u>IF 2:30 is ok</u>			
<u>she can come to</u>			
<u>stay in school</u>			

GIUFFRE001388 (SAO01067)

IMPORTANT MESSAGE	
FOR	MR EPSTEIN
DATE	7/9/04 TIME 7:50 AM
M	
OF	
PHONE/ MOBILE	
TELEPHONED	PLEASE CALL
CAME TO SEE YOU	WILL CALL AGAIN
WANTS TO SEE YOU	RUSH
RETURNED YOUR CALL	SPECIAL ATTENTION
MESSAGE: " [REDACTED] IS AVAILABLE ON TUESDAY NO ONE FOR TOMORROW	
SAO01461	
SIGNED	R

GIUFFRE001432 (SAO01461)

IMPORTANT MESSAGE	
FOR	J.E.
DATE	8/26/05 TIME 8:50 AM
M	
OF	
PHONE/ MOBILE	
TELEPHONED	PLEASE CALL
CAME TO SEE YOU	WILL CALL AGAIN
WANTS TO SEE YOU	RUSH
RETURNED YOUR CALL	SPECIAL ATTENTION
MESSAGE: [REDACTED] - confirmed at 4 PM Who is scheduled for morning? The live [REDACTED] wants to work	
SAO01476	
SIGNED	J

GIUFFRE001448 (SAO01476)

IMPORTANT MESSAGE	
FOR	Jeffrey
DATE	TIME 5:11 AM
M	
OF	
PHONE/ MOBILE	
TELEPHONED	PLEASE CALL
CAME TO SEE YOU	WILL CALL AGAIN
WANTS TO SEE YOU	RUSH
RETURNED YOUR CALL	SPECIAL ATTENTION
MESSAGE: has girl for tonight	
SAO02828	
SIGNED	

GIUFFRE001452 (SAO02828)

IMPORTANT MESSAGE	
FOR	JE
DATE	5/14 AM
M	Jeannine
OF	
PHONE/ MOBILE	
TELEPHONED	PLEASE CALL
CAME TO SEE YOU	WILL CALL AGAIN
WANTS TO SEE YOU	RUSH
RETURNED YOUR CALL	SPECIAL ATTENTION
MESSAGE: He just did a good one - 1/2 years - (he spoke to me & said "I love Jeffrey")	
SAO2832	
SIGNED	

GIUFFRE001456 (SAO2832)

IMPORTANT MESSAGE	
FOR	Jeffrey
DATE	6/1/05 TIME 8:08 AM
M	John - Luc
OF	
PHONE/ MOBILE	
TELEPHONED	PLEASE CALL
CAME TO SEE YOU	WILL CALL AGAIN
WANTS TO SEE YOU	RUSH
RETURNED YOUR CALL	SPECIAL ATTENTION
MESSAGE: He has a teacher for you to teach you how to speak Russian. She is 2x8 years old not blonde lessons are free and you can have 1st today if you call	
SAO3008	
SIGNED	

GIUFFRE001563 (SAO3008)

IMPORTANT MESSAGE	
FOR	Jeffrey
DATE	TIME A.M. P.M.
M	Christiane
OF	
PHONE/ MOBILE	
TELEPHONED	PLEASE CALL
CAME TO SEE YOU	WILL CALL AGAIN
WANTS TO SEE YOU	RUSH
RETURNED YOUR CALL	SPECIAL ATTENTION
MESSAGE: would be helpful to have [REDACTED] come to Palm Beach today to stay here and help train new staff with Christiane	
SAO2830	
SIGNED	

GIUFFRE001454 (SAO02830)

IMPORTANT MESSAGE	
FOR	J.E.
DATE	1/29/05 TIME 6:10 AM
M	
OF	
PHONE/ MOBILE	(561) [REDACTED]
TELEPHONED	PLEASE CALL
CAME TO SEE YOU	WILL CALL AGAIN
WANTS TO SEE YOU	RUSH
RETURNED YOUR CALL	SPECIAL ATTENTION
MESSAGE: I have 2 female for him	
SAO01455	
SIGNED	RE

GIUFFRE001426 (SAO01455)

IMPORTANT MESSAGE	
FOR	Mr J.E.
DATE	11/28/06 TIME 1:15 AM
M	
OF	
PHONE/ MOBILE	(561)
TELEPHONED	PLEASE CALL
CAME TO SEE YOU	WILL CALL AGAIN
WANTS TO SEE YOU	RUSH
RETURNED YOUR CALL	SPECIAL ATTENTION
MESSAGE: I have 2 female for him	
SAO01452	
SIGNED	RE

GIUFFRE001423 (SAO01452)

The following are descriptions of a sampling of messages pads³⁰ that create a genuine dispute of material fact:

- One message pad reflects [REDACTED], who is identified in the Palm Beach Police Report as a minor, contacting Jeffrey Epstein for “work” explaining that she does not have any money. The term “work” was often used by members of Jeffrey Epstein’s sexual trafficking ring to refer to sexual massages. (See GIUFFRE05660 (“She stated she was called by Sara for her to return to work for Epstein. [REDACTED] stated ‘work’ is the term used by Sarah to provide the massage in underwear.”). **Giuffre 001462: July 5th no year to JE from [REDACTED] ”I need work. I mean I don’t have money. Do you have some work for me?”**
- Other message pads reflect [REDACTED] who was a minor, calling and leaving a message at the Palm Beach mansion that she has recruited another girl for Jeffrey Epstein. The second message demonstrates that Jeffrey Epstein required different girls to be scheduled every day of the week. The third shows an offer to have two minor girls come to the home at the same time to provide sexual massages. These type of messages indicate the lack of secrecy of the fact that multiple young females were visiting every day and at least raises a question of fact whether Maxwell was knowledgeable and involved as Giuffre has said, or whether Giuffre was lying and Maxwell was not at all involved or aware of this activity, as Defendant would attempt to have the world believe.
Giuffre 001428 – undated Jeffrey From [REDACTED] – “Has girl for tonight” ;Giuffre 001432 (pictured above)– 7/9/04 – Mr. Epstein From [REDACTED] – “[REDACTED] is available on Tuesday no one for tomorrow”; GIUFFRE 001433 /1/17/04 – Mr. Epstein from [REDACTED] – “Me and [REDACTED] can come tomorrow any time or [REDACTED] alone” ; Giuffre – 001452 – undated Jeffrey from [REDACTED] “Has girl for tonight.”
- Other message pads demonstrate that there was a pattern and practice of using young females to recruit additional young females to provide sexual massages on a daily basis.
Giuffre 001413 (pictured above)– JE from “N” – “[REDACTED] hasn’t confirmed [REDACTED] for 11:00 yet, so she is keeping [REDACTED] on hold in case [REDACTED] doesn’t call back; Giuffre 001448 -8/20/05 JE from [REDACTED] - [REDACTED] confirmed [REDACTED] at 4 pm. Who is scheduled for morning? I believe [REDACTED] wants to work.”

This message pad reflects that a friend of Jeffrey Epstein is sending him a sixteen year old Russian girl for purposes of sex. **Giuffre 001563 (pictured above)- 6/1/05 For Jeffrey From Jean Luc “He has a teacher for you to teach you how to speak Russian. She is 2X8 years old not blonde. Lessons are free and you can have your 1st today if you call.”**

- This message pad directly refutes Maxwell’s sworn testimony that she was not present during the year 2005 at Jeffrey Epstein’s Palm Beach mansion because this shows [REDACTED] leaving a message for Jeffrey at the Palm Beach home that she was going to work out

³⁰ See McCawley Dec. at Exhibit 28.

with the Defendant on September 10, 2005. The police were only able to retrieve a fraction of these message pads during their trash pull but even in the few they recovered, it shows Maxwell was regularly at the Palm Beach home during the time period she claimed she was not. To the contrary, she was both sending and receiving messages and messages, like this one, reflect her presence at the mansion. **Giuffre 001412 – 9/10/05 (during the year Maxwell says she was never around) JE from [REDACTED] – “I went to Sarah and made her water bottle and I went to work out with GM.”**

- These message pads further corroborate that Defendant lied in her testimony and she was in fact in regular contact with Jeffrey Epstein during the years 2004 and 2005. For example, the message from “Larry” demonstrates that Defendant is at the Palm Beach mansion so frequently that people, including Epstein’s main pilot Larry Visoski, are leaving messages for Maxwell at the Palm Beach house. **Giuffre 001435 7/25/04 – Mr. Epstein from Ms. Maxwell – “tell him to call me”; Giuffre – 001449 – 8/22/05 – JE from GM; Giuffre – 001453 – 4/25/04 for Ms. Maxwell From Larry “returning your call”;**
- This message pad shows that Defendant was clearly actively involved in Jeffrey Epstein’s life and the activities at his Palm Beach mansion. **Giuffre – 001454 – undated Jeffrey From Ghislaine – “Would be helpful to have _____ come to Palm Beach today to stay here and help train new staff with Ghislaine.”**
- This message pad clearly reflects an underage female (noted by the police redaction of the name) leaving a message asking if she can come to the house at a later time because she needs to “stay in school.” **Giuffre 001417 (pictured above)– Jeffrey 2/28/05 Redacted name “She is wondering if 2:30 is o.k. She needs to stay in school.”**
- This message pad reflects a message from [REDACTED] who was under the age of eighteen at the time she was going over to Jeffrey Epstein’s home to provide sexual massages according to the Palm Beach Investigative Report. **Giuffre 001421 3/4/05 to Jeffrey from [REDACTED] “It is o.k. for [REDACTED] to stop by and drop something?”**
- These message pads reflect the pattern of underage girls (noted by the police redaction of the name on the message pad) calling the Palm Beach mansion to leave a message about sending a “female” over to provide a sexual massage. **Giuffre 001423 11/08/04 To Mr. JE – redacted from – “I have a female for him” Giuffre 001426 (pictured above) – 1/09/05 JE To JE from Redacted – “I have a female for him.”**
- This message pad reflects the pattern and practice of having young girls bring other young girls to the house to perform sexual massages. Indeed the “[REDACTED]” reflected in this message pad corresponds in name to the [REDACTED] that Tony Figueroa testified he initially brought to Jeffrey Epstein during the time period that the Defendant was requesting that Tony find some young females to bring to Jeffrey Epstein’s home. *See* Figueroa at 184-185. The Palm Beach Police Report reflects that “[REDACTED]” and “[REDACTED]” also brought seventeen year old [REDACTED] to the home to perform sexual massages. *See* GIUFFRE 05641. [REDACTED] thereafter recruited a number of other young girls to perform sexual

messages as reflected in the Palm Beach Police Report. **Giuffre 001427 (pictured above) – 1/2/03 – JE from [REDACTED] “Wants to know if she should bring her friend [REDACTED] with tonight.”**

- This message pad reflects multiple sexual massages being scheduled for the same day which corroborates Virginia GIUFFRE, [REDACTED] and Johanna Sjorberg’s testimony that Jeffrey Epstein required that he have multiple orgasms in a day which occurred during these sexual massages. **Giuffre 001449 (pictured above) – 9/03/05 JE from [REDACTED] – “I left message for [REDACTED] to confirm for 11:00 a.m. and [REDACTED] for 4:30 p.m.”**
- This message pad shows a friend of Jeffrey Epstein’s discussing with him how he had sex with an 18 year old who had also been with Jeffrey Epstein. **Giuffre – 001456 (pictured above)– undated JE from Jean Luc – “He just did a good one – 18 years – she spoke to me and said “I love Jeffrey.”**

Law enforcement was able to confirm identities of underage victims through the use of the names and telephone numbers in these message pads:

Q. The next line down is what I wanted to focus on, April 5th, 2005. This trash pull, what evidence is yielded from this particular trash pull?

THE WITNESS: The trash pull indicated that there were several messages with written items on it. There was a message from HR indicating that there would be an 11:00 appointment. There were other individuals that had called during that day.

Q. And when you would -- when you would see females’ names and telephone numbers, would you take those telephone numbers and match it to -- to a person?

THE WITNESS: We would do our best to identify who that person was.

Q. And is that one way in which you discovered the identities of some of the other what soon came to be known as victims?

THE WITNESS: Correct.

Q. Did you find names of other witnesses and people that you knew to have been associated with the house in those message pads?

THE WITNESS: Yes.

Q. And so what was the evidentiary value to you of the message pads collected from Jeffrey Epstein’s home in the search warrant?

THE WITNESS: It was very important to corroborate what the victims had already told me as to calling in and for work.³¹

7. The Black Book

Palm Beach Police confiscated an extensive lists of contacts with their phone numbers from Defendant and Epstein’s residence.³² Ghislaine Maxwell maintained a contact list in an

³¹ See McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 42:14-43:17; 78:25:-79:15.

approximately 100-page-long hard copy, which was openly available to other house employees. It consisted primarily of telephone numbers, addresses, or email addresses for various personal friends, associates, employees, or personal or business connections of Epstein or Defendant. Prior to being terminated by Defendant, the Palm Beach house butler Alfredo Rodriguez printed a copy of this document and ultimately provided it to the FBI. This document reflects the numerous phone numbers of Defendant, Epstein as well as staff phone numbers. Additionally, and importantly, there are several sections entitled “Massage” alongside a geographical designation with names of females and corresponding telephone numbers. These numbers included those of underage females (with no training in massage therapy) – including [REDACTED] [REDACTED] – identified during the criminal investigation of Epstein. This document is an authentic reflection of the people who were associated with Epstein, Defendant, and the management of their properties, and the knowledge each had of the contents of the document.

8. Sex Slave Amazon.com Book Receipt

Detective Recarey authenticated an Amazon.com receipt that the Palm Beach Police collected from Jeffrey Epstein’s trash. The books he ordered are titled:

- (1) SM 101: A Realistic Introduction, Wiseman, Jay;
- (2) SlaveCraft: Roadmaps for Erotic Servitude – Principles, Skills and Tools by Guy Baldwin; and
- (3) Training with Miss Abernathy: A Workbook for Erotic Slaves and Their Owners, by Christina Abernathy, as shown below:

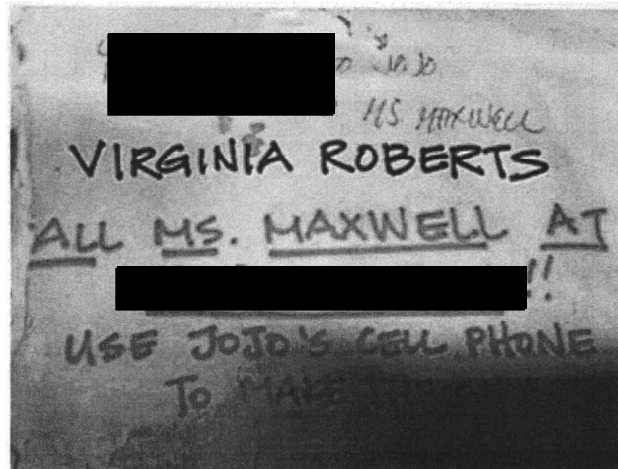
³² See McCawley Dec. at Exhibit 45, Phone List, Public Records Request No.: 16-268 at 2282 – 2288.



This disturbing 2005 purchase corroborate Ms. Giuffre's account of being sexually exploited by Defendant and Epstein – not to mention the dozens of underage girls in the Palm Beach Police Report. Additionally, Defendant testified that she was not with Jeffrey Epstein in 2005 and 2006 when he was ordering books on how to use sex slaves; however, record evidence contradicts that testimony.

9. Thailand Folder with Defendant's Phone Number

Defendant also was integral in arranging to have Virginia go to Thailand. While Epstein had paid for a massage therapy session in Thailand, there was a catch. Defendant told Virginia she had to meet young girls in Thailand and bring her back to the U.S. for Epstein and Defendant. Indeed, on the travel records and tickets Defendant gave to Virginia, Defendant wrote on the back the name of the girl Virginia was supposed to meet, and she was also instructed to check in frequently with Defendant as it was further signified by the words "Call Ms. Maxwell (917) [REDACTED]!" on Virginia's travel documents. In this case, Virginia also produced the hard copy records from her hotel stay in Thailand paid for by Epstein. *See* McCawley Dec. at Exhibit 32, 43, GIUFFRE 003191-003192; GIUFFRE 007411-007432.



10. It is undisputed fact that the FBI report and the Churcher emails reference Ms. Giuffre's accounts of sexual activity with Prince Andrew that she made in 2011, contrary to Defendant's argument that Ms. Giuffre never made such claims until 2014.

Based on the FBI's Interview of Ms. Giuffre in 2011, they wrote a report reflecting Ms.

Giuffre's claims concerning her sexual encounters with Prince Andrew.³³

GIUFFRE and [REDACTED] went shopping and purchased makeup, clothing, and a Burberry bag. The items were purchased with [REDACTED] GIUFFRE and [REDACTED] returned [REDACTED] at [REDACTED]. [REDACTED] instructed GIUFFRE to get ready. When GIUFFRE came down after getting ready, she was introduced to [REDACTED].

[REDACTED]

[REDACTED] GIUFFRE traveled to CLUB TRAMP [REDACTED] GIUFFRE danced [REDACTED] at CLUB TRAMP [REDACTED]

[REDACTED]

[REDACTED] stayed at CLUB TRAMP for an hour or hour and a half and drank a couple of cocktails before returning to [REDACTED] GIUFFRE had not received any direction from [REDACTED]

[REDACTED] After returning to [REDACTED] GIUFFRE requested [REDACTED] to take a photograph of her [REDACTED] GIUFFRE advised that she still had the original photograph in her possession and would provide it to the interviewing agents. GIUFFRE proceeded with [REDACTED]

[REDACTED]

Approximately two months later, GIUFFRE met [REDACTED] at [REDACTED]

[REDACTED]

[REDACTED] GIUFFRE recalled [REDACTED]

[REDACTED] LNU, [REDACTED]

[REDACTED]

[REDACTED] GIUFFRE recalled [REDACTED] joking about trading GIUFFRE in because she was getting too old.

³³ See McCawley Dec. at Exhibit 31, GIUFFRE001235-1246, FBI Redacted 302.

Additionally, 2011 correspondence with Sharon Churcher shows that Ms. Giuffre disclosed her sexual encounters with Prince Andrew, but Churcher had to check with the publisher's lawyers "on how much can be published,"

-----Original Message-----
From: Sharon.Churcher@mailonsunday.co.uk
Sent: Friday, 18 February 2011 7:25 AM
To: Virginia Giuffre

Hi there
Have been up all night writing. Won't have an opinion from our lawyer on how much can be published until London wakes up. The lawyers wanted internal FBI documents but I think the Justice Dept letter is all you have from the feds??? Anyway can I give you a call early afternoon? Maybe have a late lunch?
S

See McCawley Dec. at Exhibit 34, GIUFFRE003678. Accordingly, there is documentary evidence that refutes Defendant's meritless argument that Ms. Giuffre did not allege she had sex with Prince Andrew until 2014. To the contrary, two sources, including the FBI, show Ms. Giuffre made these claims in 2011.

C. Defendant Has Produced No Documents Whatsoever That Tend to Show That She Did Not Procure Underage Girls For Jeffrey Epstein.

Defendant has produced no documents that even tend to show that she did not procure underage girls for sex with Epstein, and no documents that tend to show that she did not participate in the abuse. Indeed, Defendant refused to produce *any* documents dated prior to 2009, which includes the 2000-2002 period during which she abused Ms. Giuffre.

Against this backdrop of an avalanche of evidence showing the Defendant sexually trafficked Ms. Giuffre, summary judgment on any of the issues advanced by Defendant is inappropriate. While we discuss the particulars of the individual claims below, the larger picture is important too. Ms. Giuffre will prove at trial that Epstein and Defendant sexually trafficked her. And yet, when Ms. Giuffre had the courage to come forward and expose what Defendant had done to world – in a Court pleading trying to hold Epstein accountable – Defendant

responded by calling her a liar in a press release intended for worldwide publication. Such heinous conduct is not a mere “opinion,” but rather is defamation executed deliberately and with actual malice. The jury should hear all of the evidence and then render its verdict on Ms. Giuffre’s complaint.

III. LEGAL STANDARD

Rule 56 of the Federal Rules of Civil Procedure provides that a motion for summary judgment may be granted only when “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” The Second Circuit has repeatedly held that “all ambiguities and inferences to be drawn from the underlying facts should be resolved in favor of the party opposing the motion, and all doubts as to the existence of a genuine issue for trial should be resolved against the moving party.” *Swan Brewery Co. Ltd. v. U.S. Trust Co. of New York*, 832 F. Supp. 714, 717 (S.D.N.Y. 1993) (Sweet, J.), citing *Brady v. Town of Colchester*, 863 F.2d 205, 210 (2d Cir. 1988) (internal quotations omitted). In other words, in deciding a motion for summary judgment, the court must construe the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in the non-moving party’s favor. *In re “Agent Orange” Prod. Liab. Litig.*, 517 F.3d 76, 87 (2d Cir. 2008). *Stern v. Cosby*, 645 F. Supp. 2d 258, 269 (S.D.N.Y.2009). Summary judgment should be denied “if the evidence is such that a reasonable jury could return a verdict” in favor of the non-moving party. *See Net Jets Aviation, Inc. v. LHC Commc’ns, LLC*, 537 F.3d 168, 178–79 (2d Cir. 2008).

IV. LEGAL ARGUMENT

A. Defendant is Liable for the Publication of the Defamatory Statement and Damages for Its Publication

Defendant’s lead argument is that, when she issued a press release attacking Ms. Giuffre to members of the media, she somehow is not responsible when the media quickly published her

attacks. If accepted, this remarkable claim would eviscerate defamation law, as it would permit a defamer to send defamatory statements to the media and then stand back and watch – immune from liability – when (as in this case) the defamatory statements are published around the world. This absurd position is not the law, particularly given that the Defendant released a statement to media asking them to “[p]lease find attached a *quotable statement* on behalf of Ms. Maxwell.”

To make her claim seem plausible, Defendant cites older cases, some dating back as far as 1906. This presents a distorted picture of the case law on these issues. As a leading authority on defamation explains with regard to liability for republication by another of statement by a defendant: “Two standards have evolved. The older one is that the person making the defamatory statement is liable for republication only if it occurs with his or her express or implied authorization or consent. The more modern formulation adds responsibility for all republication that can reasonably be anticipated or that is the ‘natural and probable consequence’ of the publication.” SACK ON DEFAMATION § 2.7.2 at 2-113 to 2-114 (4th ed. 2016). In this case, however, the nuances of the applicable legal standards make little difference because Defendant so clearly authorized – indeed, desired and did everything possible to obtain – publication of her defamatory statements attacking Ms. Giuffre.

1. Under New York Law, Defendant is liable for the media’s publication of her press release.

Given the obvious purposes of defamation law, New York law unsurprisingly assigns liability to individuals for the media’s publication of press releases. Indeed, New York appellate courts have repeatedly held that an individual is liable for the media publishing that individual’s defamatory press release. *See Levy v. Smith*, 18 N.Y.S.3d 438, 439, 132 A.D.3d 961, 962–63 (N.Y.A.D. 2 Dept. 2015) (“Generally, [o]ne who makes a defamatory statement is not responsible for its recommunication without his authority or request by another over whom he

has no control . . . Here, however . . . the appellant intended and authorized the republication of the allegedly defamatory content of the press releases in the news articles”); *National Puerto Rican Day Parade, Inc. v. Casa Publications, Inc.*, 914 N.Y.S.2d 120, 123, 79 A.D.3d 592, 595 (N.Y.A.D. 1 Dept. 2010) (affirming the refusal to dismiss defamation counts against a defendant who “submitted an open letter that was published in [a] newspaper, and that [the defendant] paid to have the open letter published,” and finding that the defendant “authorized [the newspaper] to recommunicate his statements.”) *See also* RESTATEMENT (SECOND) OF TORTS § 576 (1977) (“The publication of a libel or slander is a legal cause of any special harm resulting from its repetition by a third person if . . . the repetition was authorized or intended by the original defamer, or . . . the repetition was reasonably to be expected.”)³⁴

Defendant deliberately sent her defamatory statement to major news media publishers for worldwide circulation because Defendant wanted the public at large to believe that Ms. Giuffre was lying about her abuse. Defendant even hired a public relations media specialist to ensure the media would publish her statement. Her efforts succeeded: her public relations agent instructed dozens of media outlets to publish her “quotable” defamatory statement and they did.

Despite this deliberate campaign to widely publicize her defamatory statement, Defendant now disclaims any responsibility for the media publishing her press release. If we understand Defendant’s position correctly, because she somehow lacked “control” over what major newspapers and other media finally put in their stories, she escapes liability for defamation. This nonsensical position would let a defamer send a false and defamatory letter to major media, and then, when they published the accusation, escape any liability. Such an

³⁴*Cf.*, *Eliah v. Ucatan Corp.*, 433 F. Supp. 309, 312–13 (W.D.N.Y. 1977) (“The alleged multistate publication of plaintiff’s photograph without her consent thus gives rise to a single cause of action. . . . However, evidence of the multistate publication of the magazine and the number of copies sold would be competent and pertinent to a showing of damages, if any, suffered by plaintiff.”)

argument is not only an affront to logic, but it is contrary to prevailing New York case law, cited above. Perhaps even more important, in the context of the pending summary judgment motion, it would require Defendant to convince the jury that she did not “authorize or intend” for the major media to publish her press release. Obviously the disputed facts on this point are legion, and summary judgment is accordingly inappropriate.

Even the cases Defendant cites contradict her argument. She first cites *Geraci v. Probst*, in which a defendant sent a letter to the Board of Fire Commissioners, and, years later, a newspaper published the letter. The court held that the defendant was not liable for that belated publication, “made years later without his knowledge or participation.” *Id.*, at 340. By contrast, Defendant not only authorized the defamatory statement, but paid money to her publicist to convince media outlets to publish it promptly – actions taken with both her knowledge and consent. Defendant’s statement was thus not published “without [her] authority or request,” as in *Geraci*, but by her express authority and by her express request. Defendant’s publicist’s testimony and the documents produced by Defendant’s publicist unambiguously establish that the media published her press release with Defendant’s authority and by her request:

Q. When you sent that email were you acting pursuant to Ms. Maxwell’s retention of your services?

A. Yes, I was

Q. The subject line does have “FW” which to me indicates it’s a forward. Do you know where the rest of this email chain is?

A. My understanding of this is: It was a holiday in the UK, but Mr. Barden was not necessarily accessible at some point in time, so this had been sent to him originally by Ms. Maxwell, and because he was unavailable, she forwarded it to me for immediate action. I therefore respond, “Okay, Ghislaine, I’ll go with this.”

It is my understanding that this is the agreed statement because the subject of the second one is “Urgent, this is the statement” so ***I take that as an instruction to send it out, as a positive command***: “This is the statement.”³⁵

³⁵ See McCawley Dec. at Exhibit 6, Ross Gow Dep. Tr. at 14:15-17; 44:6-45:13 (emphasis added).

Similarly, another case cited by Defendant, *Davis v. Costa-Gavras*, involved a libel claim against a book author who wrote an account of the 1972 military coup in Chile. Years later, the plaintiff attempted to ascribe defamation liability to a third-party publishing house's decision to republish the book in paperback form and a third-party filmmaker who released a movie based on the book. The Court held that a "party who is 'innocent of all complicity' in the publication of a libel cannot be held accountable . . . [but that] a deliberate decision to republish or active participation in implementing the republication resurrects the liability." 580 F. Supp. 1082, 1094 (S.D.N.Y. 1984). Here, Defendant made a deliberate decision to publish her press release, and actively participated in that process. At the very least, the jury must make a determination of whether Defendant was "innocent of all complicity" for a libelous statement contained in her press release.

Finally, Defendant cites *Karaduman v. Newsday, Inc.*, 416 N.E.2d 557 (1980), which held that reporters of a series of articles on narcotics trade "cannot be held personally liable for injuries arising from its subsequent republication in book form absent a showing that they approved or participated in some other manner in the activities of the third-party republisher." *Id.*, 416 N.E.2d at 559-560. Again, the jury could reasonably find that Defendant both approved of, and even participated in, the media's publication of her press release. Indeed, it is hard to understand how any jury could find anything else. Defendant was obviously "active" in influencing the media to publish her defamatory press release, she both "approved" of and pushed for the publication of the press release. Accordingly, she is liable for its publication.³⁶

³⁶ On page 14 of her motion, Defendant makes wholly contradictory statements. In back-to-back sentences, she tells the Court that (1) she has no control over whether the media published the statement she sent to the media (with instructions to publish it by an influential publicist); (2) her public relations representative gave instructions to the media on how to publish it (in full); and (3) her public relations representative "made no effort to control" how the media would publish it. Indeed, the best evidence of Defendant's control over the press is the fact dozens of media outlets obeyed her directive to publish her defamatory statement.

Therefore, disclaiming responsibility for the media's publication of a statement (for which she hired a publicist for the purpose of influencing the media to publish that statement) is contrary to both prevailing case law, and the cases cited by Defendant.

2. Defendant is liable for the media's publication of the defamatory statement.

After arguing, contrary to New York law, that she is not liable for the media's publication of her own press release, Defendant next argues that she is not liable for the media's publications of the *defamatory statement* contained within her press release if the media chose to make even the tiniest of editorial changes. If we understand Defendant's argument correctly, any omission of any language from a press release is somehow a "selective, partial" publication for which she escapes liability. Mot. at 14. Once again, this claim is absurd on its face. It would mean that a defamer could send to the media a long attack on a victim with one irrelevant sentence and, when the media quite predictably cut that sentence, escape liability for the attack. Moreover, even on its face, the claim presents a jury question of what changes would be, in context, viewed as "selective" or "partial" publications – something that only a jury could determine after hearing all of the evidence.

In support of this meritless argument, Defendant cites *Rand v. New York Times Co.*, for the proposition that a defendant cannot be liable for a publisher's "editing and excerpting of her statement." 430 N.Y.S.2d 271, 274, 75 A.D.2d 417, 422 (N.Y.A.D. 1980). This argument fails for several reasons. First, there is no "republication" by the media as a matter of law. Defendant issued a defamatory statement to the press, and its publication (as Defendant intended) is not a "republication" under the law, as discussed above. Second, there was no "editing" or paraphrasing or taking the quote out of context of the core defamatory statement in the press release: that Ms. Giuffre is a liar. The "obvious lies" passage is the heart of the message

Defendant sent to the press: that Ms. Giuffre was lying about her past sexual abuse. Even in isolation, Defendant's quote stating that Ms. Giuffre's claims are "obvious lies" does not distort or misrepresent the message Defendant intended to convey to the public that Ms. Giuffre was lying about her claims. As this Court explained in denying Defendant's Motion to Dismiss, this case "involves statements that explicitly claim the sexual assault allegations are false." *Giuffre v. Maxwell*, 165 F. Supp. 3d 147, 152 (S.D.N.Y. 2016).

Furthermore, the facts at issue here make the *Rand* holding inapposite. In *Rand*, a newspaper paraphrased and "sanitized" defendant's words. No such changing, sanitizing, or paraphrasing occurred in the instant case: the media **quoted** Defendant's statement accurately. Further, the phrase at issue in *Rand* was that certain people "screwed" another person. The speaker/newspaper used the term "screwed" in reference to a record label's dealings with a performing artist, and not did not mean "screwed" in the literal sense, but as "rhetorical hyperbole, and as such, is not to be taken literally." *Id.* By contrast, there is no hyperbole in Defendant's defamatory statement, and it was never distorted or paraphrased by any publication known to Ms. Giuffre. A jury could reasonably conclude that Defendant's statement that Ms. Giuffre's claims of child sexual abuse are "obvious lies" is not a rhetorical device, nor hyperbole, but a literal and particular affirmation that Ms. Giuffre lied.

Accordingly, there is no support in the factual record that the media reporting that Defendant stated that Ms. Giuffre's claims of childhood sexual abuse are "obvious lies" is a distortion of Defendant's message or hyperbole. Even a cursory review of the press release would lead to that conclusion. Moreover, to the extent that there is any dispute that Defendant's statement had a different meaning outside of the context of the remainder of the press release,

such a determination of meaning and interpretation is a question of fact for the jury to decide, and is inappropriate for a determination upon summary judgment.

B. Material Issues of Fact Preclude Summary Judgment.

1. The Barden Declaration presents disputed issues of fact.

The primary basis of Defendant's motion for summary judgment is her attorney's self-serving, *post hoc* affidavit wherein he sets forth his alleged "intent" with regard Defendant's defamatory statement.³⁷ Ms. Giuffre disputes Defendant's attorney's alleged and unproven "intent" (not to mention Defendant's "intent"), not only because Defendant refuses to turn over her attorney's communications, but also because questions of intent are questions of fact to be determined by a trier of fact. Furthermore, ample record evidence contradicts the claimed "intent."

a. The Barden Declaration is a deceptive back-door attempt to inject Barden's advice without providing discovery of all attorney communications.

In her brief, Defendant discloses her attorney's alleged legal strategy and alleged legal advice; however, she deliberately states that her attorney "intended," instead of her attorney "advised," when discussing her attorney's legal strategy and advice, using that phrase *at least 37 times*,³⁸ and using phrases such as Barden's "beliefs,"³⁹ "purposes,"⁴⁰ "goals,"⁴¹ and

³⁷ The Barden declaration is problematic for other reasons as well. In addition to Defendant's over-length, 68-page motion and among Defendant's 654 pages of exhibits lies an eight-page attorney affidavit that proffers legal conclusions and arguments. This exhibit is yet another improper attempt to circumvent this Court's rules on page limits. See *Pacenza v. IBM Corp.*, 363 F. App'x 128, 130 (2d Cir. 2010) (affirming lower court decision to strike "documents submitted . . . in support of his summary judgment motion [that] included legal conclusions and arguments" because those "extraneous arguments constituted an attempt . . . to circumvent page-limit requirements submitted to the court."); cf. *HB v. Monroe Woodbury Cent. School Dist.*, 2012 WL 4477552, at *6 (S.D.N.Y. Sept. 27, 2012) ("The device of incorporating an affirmation into a brief by reference, as Plaintiffs have done here, in order to evade the twenty-five page limit, rather obviously defeats the purpose of the rule"). The court should disregard the Barden Declaration for that reason alone.

³⁸ MSJ at 7 (three times), 8 (three), 15 (four), 16, 25 (five), 26, 33, 35 (two), 36 (three); Statement of Facts at 6 (two), 7 (five); Decl. of Philip Barden at 4 (four), 5 (three).

³⁹ MSJ at 25, 35; Statement of Facts at 7 (two); Decl. of Philip Barden at 3, 4 (three), 5 (two).

⁴⁰ MSJ at 8, 25, 35; Statement of Facts at 7 (three); Decl. of Philip Barden at 4 (two), 5 (three).

“contemplations” 25 other times. All the while Defendant has claimed a privilege as to her communications with Barden. Defendant attempts to convince the Court that she only granted Gow permission to publish the defamatory statement as part of “Mr. Barden’s deliberated and carefully crafted” (MSJ at 16) legal strategy and advice. Yet, she still refused to turn over her communications with Barden under the auspices of attorney-client privilege.⁴² Such gamesmanship should not be permitted.

If the Court were to consider the Barden Declaration (which it shouldn’t), it would be ruling on a less than complete record because, based on this Declaration, it is necessary that Defendant disclose all communications with him and possibly others. Ms. Giuffre doesn’t have those communications, the court doesn’t have those communications; therefore, Defendant is asking for summary judgment on an incomplete record.

The Court should also not consider the Barden Declaration because it will be inadmissible as unduly prejudicial. It is a self-serving declaration by a non-deposed witness made without turning over the documents that are relevant to the declaration. *See, e.g., Rubens v. Mason*, 387 F.3d 183, 185 (2d Cir. 2004) (“We find that the District Court predicated its grant of summary judgment as to liability on an affidavit from the arbitrator who presided over the underlying arbitration, the probative value of which was substantially outweighed by the danger of unfair prejudice. The affidavit, therefore should not have been admitted. We therefore vacate the grant of summary judgment to the defendants on liability and remand to the District Court.”).

- b. Defendant’s summary judgment argument requires factual findings regarding Barden’s intent, thereby precluding summary judgment.

Even were the Court to consider this Declaration and representations therein – which it should not – the declaration itself demonstrates that the Court would have to make factual

⁴¹ MSJ at 27.

⁴² *See* McCawley Dec. at Exhibit 22, Defendant’s Privilege Log.

finding as to what Mr. Barden's intent really was. Finding about intent are inappropriate at the summary judgment stage, as this Court and the Second Circuit have recognized. This Court has explained, "*if it is necessary to resolve inferences regarding intent, summary judgment is not appropriate.*" *Id.* (Sweet, J.) (emphasis added), citing *Patrick v. Le Fevre*, 745 F.2d 153, 159 (2d Cir. 1984); *Friedman v. Meyers*, 482 F.2d 435, 439 (2d Cir. 1973) (other citations omitted).

c. There are factual disputes regarding Barden's Declaration.

Finally, there are material disputes over the statements in the Barden Declaration because they are directly refuted by record evidence. For example, the instant motion and the Barden Declaration describe the press release merely as a document expressing "his [Mr. Barden's] *opinion – in the form of a legal argument* – as a lawyer would be," as opposed to a press release for dissemination by the media to the public. Record evidence refutes this claim, as (1) the press release was sent to journalists, not media publishers or in-house counsel; (2) the press release instructed the journalists to publish the defamatory statement ("Please find attached a *quotable statement* on behalf of Ms. Maxwell"); (3) it was issued by a publicist on Defendant's behalf and not by an attorney, without any reference to attorneys or laws – indeed, Gow testified that Barden was unavailable to approve the statement; and (4) Gow testified that he issued the statement only after he understood Defendant to have "signed off" it, an understanding he formed based on Defendant's "positive command" to him: "This is the agreed statement."

Q. When you sent that email were you acting pursuant to Ms. Maxwell's retention of your services?

A. Yes, I was.

Q. When you say "agreed statement" can you tell me more about what you mean? **Who agreed to the statement?**

A. I need to give you some context, if I may, about that statement. So, this is on New Year's Day. I was in France so the email time here of 21:46, in French time was 22:46, and I was getting up early the next morning to drive my family back from the south of France to England, which is a 14-hour journey, door to door. So on the morning of the 2nd of January,

bearing in mind that Ms. Maxwell, I think was in New York then, she was five hours behind, so there was quite a lot of, sort of time difference between the various countries here, I sent her an email, I believe, saying - parsing this-- forwarding this email to her saying "How do you wish to proceed?" And then I was on the telephone-- I had two telephones in the car, I received in excess of 30 phone calls from various media outlets on the 2nd of January, all asking for information about how Ms. Maxwell was looking to respond to the latest court filings, which were filed on the 30th of December as I understand.

And by close-- towards close of play on the 2nd, **I received an email forwarded by Ms. Maxwell, containing a draft statement** which my understanding was the majority of which had been drafted by Mr. Barden **with a header along the lines of "This is the agreed statement."** At close of play on the 2nd. So--I was--I had gone under the Channel Tunnel and I was sitting on the other side and that email, which **my understanding was that it had been signed off by the client, effectively**, was then sent out to a number of media, including Mr. Ball and various other UK newspapers.

Q. Mr. Gow, when you say "end of play" and "close of play," are you referring to sending the email that is Exhibit 2?

A. Yes, I am

Q. The subject line does have "FW" which to me indicates it's a forward. Do you know where the rest of this email chain is?

A. My understanding of this is: It was a holiday in the UK, but Mr. Barden was not necessarily accessible at some point in time, so **this had been sent to him originally by Ms. Maxwell, and because he was unavailable, she forwarded it to me for immediate action. I therefore respond, "Okay, Ghislaine, I'll go with this."**

It is my understanding that this is the agreed statement because the subject of the second one is "Urgent, this is the statement" so I take that as an instruction to send it out, as a positive command: "This is the statement."⁴³

Accordingly, record evidence shows that the press release was intended as press release, and not as a "legal argument." Record evidence also establishes that Defendant circulated the press release to Barden and Gow, and then gave a "positive command" to Gow to publish it. Additionally, there is no indicia that the press release is a legal opinion. To the contrary, it was issued by, and specifically attributed to, a woman who has personal knowledge of whether Ms. Giuffre's claims of sexual abuse are true, and she states that Ms. Giuffre is a liar.⁴⁴ At the very least, all of these factual issues must be considered by a jury.

⁴³ See McCawley Dec. at Exhibit 6, Ross Gow Dep. Tr. at 14:15-17; 31:19-33:7; 44:6-45:13 (emphasis added).

⁴⁴ Unsurprisingly, Defendant cites no case law to support her argument that her attorney's alleged influence in preparing the statement Defendant issued to the media somehow shields her from liability.

Another example is that Defendant states that “Gow served only as Mr. Barden’s conduit to the media” (MTD at 25), and “Mr. Barden was directing the January 2-15 statement to a discrete number of media representatives.” Barden wasn’t directing anything – he wasn’t even in the loop when Defendant decided to publish the statement - and the documents prove it. Indeed, the press release itself states that it is “on behalf of Ms. Maxwell,” not Barden, and it was Defendant who gave the “positive command” to Gow to publish it. These are just a couple of examples, among many, of the purported facts asserted in Defendant’s motion and Barden’s Declaration that are directly refuted by facts in the record.

Finally, neither the media nor the general public could have known that the statement should be attributed to Barden. His name was nowhere in it, nor is there any reference to counsel. Defendant’s argument that the “context” is the media knowing Barden’s intent or involvement is unsupported by the record. The significant factual disputes about Barden, alone, prevent summary judgment.

C. Defendant’s Defamatory Statement Was Not Opinion as a Matter of Law.

As this Court previously held, correctly, Defendant stating that Ms. Giuffre’s claims of sexual assault are lies is not an expression of opinion:

“First, statements that Giuffre’s claims ‘against [Defendant] are untrue,’ have been ‘shown to be untrue,’ and are ‘obvious lies’ have a specific and readily understood factual meaning: that Giuffre is not telling the truth about her history of sexual abuse and Defendant’s role, and that some verifiable investigation has occurred and come to a definitive conclusion proving that fact. Second, these statements (as they themselves allege), are capable of being proven true or false, and therefore constitute actionable fact and not opinion. Third, in their full context, while Defendant’s statements have the effect of generally denying Plaintiff’s story, they also clearly constitute fact to the reader.”

Giuffre v. Maxwell, 165 F. Supp. 3d 147, 152 (S.D.N.Y. 2016). This Court further explained:

“Plaintiff cannot be making claims shown to be untrue that are obvious lies without being a liar. Furthermore, to suggest an individual is not telling the truth

about her history of having been sexually assaulted as a minor constitutes more than a general denial, it alleges something deeply disturbing about the character of an individual willing to be publicly dishonest about such a reprehensible crime. Defendant's statements clearly imply that the denials are based on facts separate and contradictory to those that Plaintiff has alleged." *Id.*

Defendant argues that somehow the "context" of the entire statement "tested against the understanding of the average reader" should be the press release as a whole being read only by journalists. This is an unreasonable construct because the ultimate audience for a press release is the public. Indeed, the purpose of a press release is to reach readers. Unsurprisingly, Defendant cites no case that holds that journalists might somehow believe statements of fact are opinion while others do not.

This Court has previously covered this ground when it clearly stated:

Sexual assault of a minor is a clear-cut issue; either transgression occurred or it did not. Either Maxwell was involved or she was not. The issue is not a matter of opinion, and there cannot be differing understandings of the same facts that justify diametrically opposed opinion as to whether Defendant was involved in Plaintiff's abuse as Plaintiff has claimed. Either Plaintiff is telling the truth about her story and Defendant's involvement, or Defendant is telling the truth and she was not involved in the trafficking and ultimate abuse of Plaintiff.

Giuffre v. Maxwell, 165 F. Supp. at 152 (S.D.N.Y. 2016). The same conclusion applies now. At the motion to dismiss stage, Defendant had not yet produced the statement she issued to the press. That statement is now in evidence, so there is no ambiguity as to what defendant released to the press.

The absurdity of Defendant characterizing his statements calling Ms. Giuffre a liar as mere "opinion" is revealed by the fact that Defendant was the one who was sexually trafficking and otherwise abusing Ms. Giuffre. No reasonable person in any context would construe that as Defendant's mere "opinion" on the subject, since Defendant knew she was abusing Ms. Giuffre. Indeed, this argument is contradicted by Defendant's own deposition testimony:

Q. Do you believe Jeffrey Epstein sexually abused minors?

A. I can only testify to what I know. **I know that Virginia is a liar and I know what she testified is a lie.** So I can only testify to what I know to be a falsehood and half those falsehoods are enormous and so **I can only categorically deny everything she has said** and that is the only thing I can talk about because I have no knowledge of anything else.

See McCawley Dec. at Exhibit 11, Maxwell Dep. Tr. (April 17, 2016) at 174:6-19.

Defendant slyly contends in her motion that “Mr. Barden’s “arguments” in the press release constitute ‘pure opinion,’” attempting to disclaim any involvement in making the defamatory statement. However, it is not Mr. Barden’s statement, nor his opinion, that is at issue here. At issue here is Defendant’s statement – a statement attributable to her, that she approved, whose publication she “command[ed],” and for which she hired a public relations representative to disseminate to at least 30 journalists for publication. While Mr. Barden could possibly have had his own opinion as to whether or not his client abused Ms. Giuffre, Defendant cannot express an opinion on a binary, yes/no subject where she knows the truth. As this Court previously articulated, “statements that Giuffre’s claims ‘against [defendant] are untrue,’ have been ‘shown to be untrue,’ and are ‘obvious lies’ have a specific and readily understood factual meaning.” *Giuffre v. Maxwell*, 165 F. Supp. 3d at 152. Again, at the very least, the jury must pass on such issues.

D. The Pre-Litigation Privilege Does Not Apply to Defendant’s Press Release

1. Defendant fails to make a showing that the pre-litigation privilege applies.

Defendant’s next argument seeks refuge in the pre-litigation privilege. If we understand the argument correctly, Defendant seems to be saying that because she was contemplating an (unspecified and never-filed) lawsuit involving the British Press, she somehow had a “green light” to make whatever defamatory statements she wanted about Ms. Giuffre. To prove such a

remarkably claim, Defendant relies on caselaw involving such mundane topics as “cease and desist” letters sent to opposing parties and the like. Obviously such arguments have no application to the press release that Defendant sent out, worldwide, attacking Ms. Giuffre’s veracity.

The problems with the Defendant’s argument are legion. For starters, there is no record evidence – not even Defendant’s own testimony – suggesting that she was contemplating litigation against Ms. Giuffre, or that her press release was related to contemplated litigation against Ms. Giuffre. Tellingly, the only “evidence” Defendant cites of any alleged contemplated litigation is the self-serving, *post hoc*, partial waiver of attorney-client privilege found in the Barden Declaration. As discussed above, that Declaration fails to establish that there was good faith anticipated litigation between her and Ms. Giuffre, particularly when evidence in the record contradicts such assertions. At the very least, it is a matter of fact for the jury to decide.

In another case in which a defendant attempted to claim pre-litigation privilege applied to statements made to the press, this Court denied summary judgment, and held, “[t]o prevail on a qualified privilege defense [defendant] must show that his claim of privilege does not raise triable issues of fact that would defeat it.” *Block v. First Blood Associates*, 691 F. Supp. 685, 699-700 (Sweet, J.) (S.D.N.Y. 1988) (denying summary judgment on the pre-litigation qualified privilege affirmative defense because there was “a genuine issue as to malice and appropriate purpose”). Defendant’s claim here likewise fails.

First, Defendant’s testimony makes no mention of any contemplated lawsuit – much less, any contemplated lawsuit against Ms. Giuffre. Second, Defendant has offered no witnesses who will testify that she intended to bring any law suit. Third, she did not, in fact, bring any such lawsuit. The only “evidence” is a *post hoc* Declaration written by her attorney. Finally, it must be

remembered, as explained at length above, the Defendant had sexually trafficking Defendant and was attempting to continue to conceal her criminal acts. Whether her statements had an “appropriate purpose,” *Block* 691 F. Supp. at 699-700 (Sweet, J.) – or were, rather, efforts by a criminal organization to silence its victims – is obviously contested. Accordingly, obvious issues of fact exist as to whether or not Defendant contemplated litigation.

Distorting reality, Defendant further argues: “Statements pertinent to a good faith anticipated litigation made by attorneys (or their agents under their direction) before the commencement of litigation are privileged.” (MSJ at 33). The record evidence shows that Defendant’s attorney did not make the defamatory statement. Further, Defendant’s attorney’s agents did not make the defamatory statement. Defendant did. And, there was no statement made by anyone “before the commencement of litigation” because *litigation never commenced*. Accordingly, the cases Defendant cites where attorneys are making statements (or where clients are making statements to their attorneys regarding judicial proceedings including malpractice) are wholly inapposite as detailed below.⁴⁵

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- *Front v. Khalil*, 24 N.Y.3d 713, 720 (2015) - statement made by attorney.
- *Flomenhaft v. Finkelstein*, 127 A.D.3d 634, 637 n.2, 8 N.Y.S.3d 161 (N.Y. App. Div. 2015) - did not even address pre-litigation privilege, and said that *Front, Inc.* was not relevant to the case.
- *Kirk v. Heppt*, 532 F. Supp. 2d 586, 593 (S.D.N.Y. 2008) - the communication at issue was made by an attorney’s client to the attorney’s malpractice carrier concerning the client’s justiciable controversy against the attorney over which the clients actually sued.
- *Petrus v. Smith*, 91 A.D.2d 1190 (N.Y.A.D., 1983) - the court held: “[r]emarks of attorney to Surrogate are cloaked with absolute immunity as statements made in course of judicial proceedings – Attorney’s gratuitous opinion outside courthouse calling plaintiff liar . . . is not similarly immune.” (This case undermines the false argument Defendant tries to make).
- *Klien* - contrary to dicta quoted by Defendant from the *Klein* case, there were no communications made “between litigating parties or their attorneys,” just a press release Defendant instructed her press agent to disseminate to the media.
- *Frechtman v. Gutterman*, 115 A.D.3d 102, 103, 979 N.Y.S.2d 58, 61 (2014) - the communication at issue was a letter sent by a client to his attorney terminating the representation for malpractice.
- *Sexter & Warmflash, P.C. v. Margrave*, 38 A.D.3d 163 (N.Y.A.D. 1 Dept. 2007) - privilege applied to letter client sent discharging law firm as the client’s attorneys as statements relating to a judicial proceeding and law firm sued for defamation.

Similarly, in *Black v. Green Harbour Homeowners' Ass'n, Inc.*, 19 A.D.3d 962, 963, 798 N.Y.S.2d 753, 754 (2005), cited by Defendant, the Court held a privilege applied to a letter sent by a home owner's association board of directors to the association's members informing them of the status of litigation to which the association was a party, and to the association's letter to the state attorney general sent to discharge its duties to the association. In this case, litigation was actually pending, the communication was sent by a party to that litigation as part of its duties, and the communication itself concerned the litigation. Defendant's press release fits none of those descriptions.

Unsurprisingly, Defendant cites to no case in which a Court has held that this or any qualified privilege extends to internationally disseminated press releases defaming a non-party to the purported "anticipated" litigation. Regardless of whether or not Barden had a hand in drafting the statement (another disputed issue of fact for the jury), Defendant issued the statement, instructed that it be published, and the statement she issued was attributed to her, and not to her attorney (or his agents). Accordingly, all the case law Defendant cites about an *attorney* making a statement (or a client making a statement to their attorney or malpractice carrier) is inapposite.

2. Defendant is foreclosed from using the pre-litigation privilege because she acted with malice.

In any event, because Defendant acted with malice, she cannot avail herself of the pre-litigation privilege. As this Court has explained denying Defendant's motion to dismiss, "There is no qualified privilege under New York law when such statements are spoken with malice, knowledge of their falsity, or reckless disregard for their truth." *Giuffre v. Maxwell*, 165 F. Supp. 3d at 155 (citing *Block*, 691 F. Supp. at 699 (Sweet, J.) (S.D.N.Y. 1988)). There is ample record evidence that Defendant acted with malice in issuing the press release, thereby making the litigation privilege inapplicable. *See Block*, 691 F. Supp. at 700 (Sweet, J.) ("Here, sufficient

evidence has been adduced to support the inference that [defendant] acted with malice, and may not, therefore, claim a qualified privilege under New York law . . . a genuine issue as to malice and appropriate purpose has properly been raised and is sufficient to preclude summary judgment.”). For example, Ms. Sjoberg testified that Defendant recruited her for sex with Epstein, thus corroborating Ms. Giuffre’s own account of Defendant’s involvement in abusing her with Epstein. For another example, Jeffrey Epstein’s pilot testified that Defendant flew with Ms. Giuffre on at least 23 flights, thus corroborating Ms. Giuffre’s claims against Defendant. *See* McCawley Dec. at Exhibit 15, Rodgers Dep. Tr., at 34:3-10. For another example, Tony Figueroa testified that Defendant asked him for assistance in recruiting girls for Epstein – more testimony that corroborates Ms. Giuffre’s claims against Defendant.

Defendant’s statements that Ms. Giuffre was lying and her claims of sexual abuse were “obvious lies” were not pertinent to a good faith anticipated litigation but, instead, they were made for an inappropriate purpose – i.e., to bully, harass, intimidate, and ultimately silence Ms. Giuffre. As the record evidence shows, Defendant knew the statements were false because Defendant engaged in and facilitated the sexual abuse of this minor child, therefore, they were made for the inappropriate purpose of “bullying,” “harassment,” and “intimidation.” *See Front v. Khalil*, 24 N.Y.3d 713, 720 (2015). Simply put, Defendant sexually trafficked Ms. Giuffre – and then tried to silence Ms. Giuffre to keep her crimes secret – circumstances that prevent her from using privileges designed to shield legitimate legal disputes from court interference.

New York case law fully confirms that pre-litigation qualified privilege does not apply to this case. Historically, statements made in the course of litigation were entitled to privilege from defamations claims “so that those discharging a public function may speak freely to zealously represent their clients without fear of reprisal or financial hazard.” *Id.* at 718. A 2015 New York

Court of Appeals case somewhat extended this privilege by holding that statements made by attorneys prior to the commencement of the litigation are protected by a qualified privilege if those statements are pertinent to a good faith anticipated litigation. *Id.* at 718. (“Although it is well settled that statements made in the course of litigation are entitled to absolute privilege, the Court has not directly addressed whether statements made by an attorney on behalf of his or her client in connection with prospective litigation are privileged” . . . “to advance the goals of encouraging communication prior to the commencement of litigation” . . . “we hold that statements made prior to the commencement of an anticipated litigation are privileged, and that the privilege is lost where a defendant proves that the statements were not pertinent to a good faith anticipated litigation.”).

The Court of Appeals’ reason for allowing this qualified privilege could not be more clear: “When litigation is anticipated, attorneys and parties should be free to communicate in order to reduce or avoid the need to actually commence litigation. Attorneys often send cease and desist letters to avoid litigation. Applying privilege to such preliminary communication encourages potential defendants to negotiate with potential plaintiffs in order to prevent costly and time consuming judicial intervention.” *Id.* at 719-20. Under this rationale, the *Khalil* court found that an attorney’s letters to the potential defendant were privileged because they were sent “in an attempt to avoid litigation by requesting, among other things, that Khalil return the alleged stolen proprietary information and cease and desist his use of that information.” *Id.* at 720.

Here, quite unlike *Khalil*, the Defendant’s statements were (1) made by a non-attorney (Defendant through Gow); (2) concerning a non-party to any alleged anticipated litigation; (3) knowingly false statements; and (4) contained in a press release directed at, and disseminated to,

the public at large. Defendant's statements cannot be considered "pertinent to a good faith anticipated litigation," such that the qualified privilege should apply.

Finally, though it strains credulity to even entertain the prospect, if Defendant could make even colorable showings on these basic issues, it would remain an issue of fact for the jury to determine whether or not Defendant's press release, calling Ms. Giuffre's sex abuse claims "obvious lies," was any type of "cease-and-desist" statement or a statement that acted to "reduce or avoid" or resolve any "anticipated" litigation. Summary judgment is obviously inappropriate here as well.

3. Defendant cannot invoke the pre-litigation privilege because she has no "meritorious claim" for "good faith" litigation.

Finally, Defendant cannot prevail in asserting this qualified privilege because, in order to invoke this privilege, she must have "meritorious claims" for "good faith anticipated litigation." *Khalil* specifically states that for the qualified privilege to apply, the statements must be made "pertinent to a good faith anticipated litigation," and it does not protect attorneys . . . asserting wholly *unmeritorious claims*, unsupported in law and fact, in violation of counsel's ethical obligations." *Khalil*, 24 N.Y.3d at 718, 720 (emphasis added). Defendant has neither "meritorious claims" nor "good faith anticipated litigation." Defendant cannot have a "meritorious claim" for "good faith anticipated litigation" against the press (or Ms. Giuffre) because Ms. Giuffre's reports of her sexual abuse are true, Defendant knows that they are true, and Defendant made a knowingly false statement when she called Ms. Giuffre a liar. Under these circumstances, Defendant has no "meritorious" claim to make in "good faith" relating to either Ms. Giuffre's statements or their coverage in the press, thereby making her defamatory statements wholly outside the protection of this qualified privilege. At the very least, the issue of

whether Defendant has meritorious claims against the press on the grounds that she did not abuse Ms. Giuffre is a question of fact for the jury to decide.

V. DEFENDANT HAS NOT - AND CANNOT - SHOW THAT HER DEFAMATORY STATEMENT IS SUBSTANTIALLY TRUE

Defendant next claims that her press release calling Ms. Giuffre a liar about her past sex abuse was somehow “substantially true.” Here again, this is a highly disputed claim. On its face, to determine what is “substantially” true or not requires extensive fact finding, such as whether Defendant recruited Ms. Giuffre as a minor child for sex with Defendant’s live-in boyfriend and convicted pedophile, Jeffrey Epstein. Accordingly, summary judgment is not appropriate. *See Mitre Sports Intern. Ltd. v. Home Box Office, Inc.*, 22 F. Supp. 3d 240, 255 (S.D.N.Y.2014) (denying summary judgment because it would require the Court to decide disputed facts to determine whether the statement at issue was substantially true); *Da Silva v. Time Inc.*, 908 F. Supp. 184, 187 (S.D.N.Y. 1995) (denying motion for summary judgment because there was a genuine issue of material act as to whether defamatory photo and caption were not true, stating “[i]n the instant case Da Silva’s contention that she was a reformed prostitute at the time of photography and publication provides a rational basis upon which a fact-finder could conclude that the photograph was not substantially true”).

Additionally, Defendant has remarkably not submitted any evidence that she did not recruit Ms. Giuffre for sex with Epstein. Nor has Defendant offered any evidence that her role in Epstein’s household was not to recruit girls and young women for Jeffrey Epstein. Accordingly, summary judgment is inappropriate. *See Stern v. Cosby*, 645 F. Supp. 2d 258, 277 (S.D.N.Y. 2009) (because defendant had “not submitted any evidence to show that Statement 11 is substantially true, her motion for summary judgment as to Statement 11 is denied”).

Further, much of the purported evidence upon which Defendant relies to allege the truth of her defamatory statement is merely hearsay, including inadmissible hearsay statements made by Alan Dershowitz, who Defendant did not depose in this case (and whom Ms. Giuffre has not had an opportunity to cross examine). Hearsay cannot establish the truth of a defamatory statement as a matter of law at summary judgment. *Lopez v. Univision Communications, Inc.*, 45 F. Supp.2d 348, 359 (S.D.N.Y.1999) (denying summary judgment and holding “defendants’ evidence as to what they were told by representatives of NYU and Kean College, to the extent offered for the truth of the matters asserted, is inadmissible hearsay and an insufficient basis upon which to grant summary judgment of dismissal on the ground that the statements were substantially true.”).

Finally, many of the facts upon which Defendant bases her argument that her defamatory statement was true are wholly tangential to the claims against her by Ms. Giuffre and the defamatory statement. For example, Defendant supports her contention that she did not recruit Ms. Giuffre for sex with Epstein based on the fact that Ms. Giuffre lived independently of her parents before meeting Epstein and Ms. Maxwell. (Of course, a child outside the supervision of her parents makes it much more likely she would be recruited by Defendant into sex trafficking, but that is for the jury to decide.) That fact does not go to whether or not Defendant’s statement calling Ms. Giuffre a liar is true, because Ms. Giuffre never made any claims relating to where she lived prior to meeting Defendant. Moreover, it is immaterial with whom she was living: the fundamental and overarching fact remains that Defendant recruited Ms. Giuffre for sex with Epstein when she was a minor child.

Defendant next proffers Ms. Giuffre’s limited high school enrollment and short-term jobs that she held as evidence that she and Epstein did not abuse her. The logic of this position is

unclear. The fact that Ms. Giuffre worked at Taco Bell for a few days hardly establishes she was not abused by Defendant and Epstein. Indeed, if anything it shows the vulnerability of Ms. Giuffre to enticements that a billionaire and his wealthy and powerful girlfriend could offer. In any event, what to make of such fact is something for the jury to consider. They are irrelevant for the same reason as above: Ms. Giuffre never made any claims about her studies or her prior employment. Indeed, neither Ms. Giuffre's statement about being recruited by Defendant as a child, nor Defendant's refutation even mentions Ms. Giuffre's lack of schooling or lack of a stable home as a child. Purported facts that have nothing to do with Ms. Giuffre's claims of sexual abuse against Defendant, and nothing to do with Defendant calling Ms. Giuffre a liar for such claims, do not establish the "*substantial* truth" of Defendant's statement. Tellingly, Defendant cites to no analogous case in any jurisdiction that even suggests otherwise.

VI. PLAINTIFF DOES NOT NEED TO ESTABLISH MALICE FOR HER DEFAMATION CLAIM, BUT IN THE EVENT THE COURT RULES OTHERWISE, THERE IS MORE THAN SUFFICIENT RECORD EVIDENCE FOR A REASONABLE JURY TO DETERMINE DEFENDANT ACTED WITH ACTUAL MALICE

Defendant's next (and, again, quite remarkable) argument is that Ms. Giuffre somehow will be unable to establish actual malice in this case. One would think that a sex trafficker calling one of her victims a liar would be a quintessential example of actual malice. Defendant's spurious case citations and misplaced argument do not detract from this core fact.

Though Defendant does not mention the legal standard for actual malice until she is 48 pages into her 68-page brief,⁴⁶ the legal definition of actual malice, as defined by the United

⁴⁶ Though perhaps a scrivener's error, Defendant errantly cites to two Supreme Court cases – *Gerts v. Robert Welch, Inc.*, 418 U.S. 323 (1974) and *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986) – that arose out of the laws of Illinois and Pennsylvania, respectively, to support a proposition concerning New York law. Defendant also cites to *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 109 S. Ct. 2678, 105 L. Ed. 2d 562 (1989), wherein the ruling was not at summary judgment, and the plaintiff in the defamation case was a judicial candidate in a public election.

States Supreme Court, and reiterated by the Second Circuit, should be the light by which all of Defendant's purported "facts" and argument should be viewed. "Actual malice" means that the statement was published with "knowledge that the statement was 'false or with reckless disregard of whether it was false or not.'" *Baiul v. Disson*, 607 F. App'x 18, 20 (2d Cir. 2015), quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 280, 84 S. Ct. 710, 11 L.Ed.2d 686 (1964).

Defendant argues that Ms. Giuffre is a limited purpose public figure. While Ms. Giuffre disputes that claim, the issue is entirely irrelevant here because Ms. Giuffre will prove at trial, with overwhelming evidence, that Defendant made her statement calling Ms. Giuffre a liar with malice, fully knowing – as a sex trafficker – that it was false. Put another way, Defendant knew that Ms. Giuffre was telling the truth when she described how Defendant recruited her for sex as an underage girl and then sexually trafficked her with her boyfriend Jeffrey Epstein.

The Second Circuit instructs that, "[o]n a motion for summary judgment, a court cannot try issues of fact; it can only determine whether there are issues to be tried. If, as to the issue on which summary judgment is sought, there is any evidence in the record from any source from which a reasonable inference could be drawn in favor of the nonmoving party, summary judgment is improper." *Chambers v. TRM Copy Ctrs. Corp.*, 43 F.3d 29, 37 (2d Cir. 1994) (internal citations and quotations omitted). "As the moving party, Defendants have the burden of demonstrating an absence of clear and convincing evidence substantiating Plaintiffs' claims." *De Sole v. Knoedler Gallery, LLC*, 139 F. Supp. 3d 618, 640 (S.D.N.Y. 2015) (citing *Chambers*).

Defendant fails to meet her burden of demonstrating an absence of clear and convincing evidence substantiating Ms. Giuffre's claims that Defendant acted with actual malice. Ms. Giuffre will easily be able to meet any trial burden of clear and convincing evidence of actual

malice. Tellingly, Defendant does not even attempt to address the documentary evidence, nor the testimonial evidence showing she was a recruiter of girls for Epstein.

As shown above, far beyond showing that a reasonable inference could be drawn in her favor, which is all that is required at this point to defeat Defendant's motion, Ms. Giuffre will easily be able to meet her trial burden of clear and convincing evidence of actual malice.

Of course, a plaintiff need only show "actual malice" on the part of a defendant if that plaintiff is a public figure or a limited public figure, which Ms. Giuffre is not, as explained *infra*.

VII. THE COURT NEED NOT REACH THE ISSUE, AT THIS TIME, OF WHETHER MS. GIUFFRE IS A LIMITED PURPOSE PUBLIC FIGURE

For the reasons just explained, Ms. Giuffre will easily be able to prove actual malice at the trial in this case. Defendant argues that Ms. Giuffre "is a public figure who must prove actual malice." MSJ at 49. Given the overwhelming proof of the second part of that statement, the Court need not spend its time considering the first.

If the Court wishes to nonetheless consider the issue at this time, it is not appropriate for disposition at the summary judgment stage of this case. The defendant bears the burden of demonstrating that the plaintiff is a limited purpose public figure. *See Lerman v. Flynt Distrib. Co.*, 745 F.2d 123, 136–37 (2d Cir. 1984). Defendant correctly articulates the legal test for a finding that a plaintiff is a limited purpose public figure, but glosses over the fact that all prongs of the test must be met in order for a court to make that finding. *See, e.g., Contemporary Mission, Inc. v. N.Y. Times Co.*, 842 F.2d 612, 617 (2d Cir. 1988) ("[T]his court set forth a **four part test** for determining whether someone is a limited purpose public figure" (emphasis added)); *Herbert v. Lando*, 596 F. Supp. 1178, 1186 (S.D.N.Y. 1984) ("The Second Circuit recently summarized the **criteria**" (emphasis added)), *aff'd in part, rev'd in part*, 781 F.2d 298 (2d Cir. 1986); *cf. Nehls v. Hillsdale Coll.*, 178 F. Supp. 2d 771, 778 (E.D. Mich. 2001) (finding plaintiff

was not a limited public figure for failing one element of the *Lerman* test and thus denying defendant's motion for summary judgment) ("The defendant has proven all of the elements but the third ..."), *aff'd*, 65 F. App'x 984 (6th Cir. 2003). Of course, proof that Ms. Giuffre (or anyone else) is a limited purpose public figure requires proof of a set of facts from which Ms. Giuffre believes Defendant has not shown in satisfaction of the four-part test.

Significantly –this Court should pause here to note that the details of Jane Doe 3's sexual exploitation and abuse, as anonymously set forth in her CVRA joinder motion, ***caused the Defendant to identify, with certainty, Jane Doe 3 as Ms. Giuffre***. Yet, at her deposition, Defendant claimed to "barely remember her at all."⁴⁷ Defendant's ability to immediately and positively identify the anonymous individual making claims of sexual abuse, if anything, shows that Defendant was intimately aware of Ms. Giuffre's sexual exploitation.

And, to be sure, Ms. Giuffre never asked to be sexually abused or trafficked by Defendant or convicted pedophile Jeffrey Epstein when she was a child – legally, she did not even have the capacity to consent. Defendant cannot recruit a minor child for sexual exploitation and then, afterwards, argue that her victim injected herself into the public controversy when coming forward about the abuse she suffered.

Moreover, Defendant has not made a sufficient showing that Ms. Giuffre has "regular" and "continuing" access to the news media. The policy rationale behind this prong is that public figures generally enjoy significant access to the media. One reporter wrote some articles on Ms. Giuffre in 2011. Thereafter, it was not until 2015, that Ms. Giuffre spoke to someone in the news media about these issues, and that interview was granted ***after*** Defendant's defamatory remarks. Such limited contacts precludes a finding that Ms. Giuffre is a limited public figure. *See*

⁴⁷ *See* McCawley Dec. at Exhibit 11, Maxwell Dep. Tr. at 44:23-45:4 (July 22, 2016) ("Q. You do remember Virginia, about that time back in the 2000s, giving Mr. Epstein massages? A. I barely remember her at all.").

Hutchinson v. Proxmire, 443 U.S. 111, 99 S. Ct. 2675, 61 L.Ed.2d 411 (1979) (finding plaintiff maintained no regular and continuing access to the media and thus was not a public figure).

It is also unclear how Defendant plans to show that Ms. Giuffre “successfully invited public attention to her views.” To be sure, Ms. Giuffre decided to start “Victims Refuse Silence,” a not-for-profit organization whose mission is “to change the landscape of the war on sexual abuse and human trafficking. Our goal is to undertake an instrumental role in helping survivors break the silence associated with sexual abuse. To fulfill this mission, we aim to enhance the lives of women who have been victimized.”⁴⁸ The website lists the National Trafficking Hotline, and provides a state-by-state resources for local organizations where victims can seek help. Unsurprisingly, Defendant cites no cases that hold that maintaining a website makes one a public figure. *See Mitre Sports Int’l Ltd. v. Home Box Office, Inc.*, 22 F. Supp. 3d 240, 252 (S.D.N.Y. 2014) (finding plaintiff was not a limited public figure and denying defendant’s motion for summary judgment) (“corporate policy denouncing child labor on its website ... do[es] not show that Mitre ... aimed to influence the public’s views on the controversy”). More important, Defendant does not explain how Ms. Giuffre was using the website to influence public views on whether she had been abused by Defendant – the subject at issue in this lawsuit.

Interestingly, Defendant has spent \$ 17,875⁴⁹ on an expert witness to tell the Court and the jury that hardly anyone searches on the internet using search terms such as “victims refuse silence sex slave.” One of Defendant’s six briefs raising *Daubert* issues specifically argues that Dr. Anderson’s estimates on the cost of remediating Ms. Giuffre’s online reputation are improper because Dr. Anderson included nearly unused search phrases when evaluating internet content. Kent’s rebuttal report states: “. . . there seems no reason to believe that such a person would use

⁴⁸<http://www.victimsrefusesilence.org/our-mission>.

⁴⁹ See McCawley Dec. at Exhibit 9, Kent Dep. Tr. at 25:16-26:6.

this term . . . Indeed, these are terms unlikely to be used by anyone unfamiliar with this litigation. . . . Why, for instance, would it be necessary to push down offending Web pages in the results that the search engines provide for the term victim's refuse silence sex slave, when this term is likely never used . . ." *See* McCawley Dec. at Exhibit 25, Kent Report at 10, 33.

Defendant cannot argue to the Court that Ms. Giuffre has "successfully" invited public attention to her views through her VRS website while simultaneously filing a *Daubert* motion that argues that search terms such as "victims refuse silence sex slave" are "likely never used," thus making the website unsuccessful in inviting public attention. In any event, Defendant has failed to set forth with precision the allegedly undisputed fact – and supporting evidence – she uses to support her argument.

Moreover, "[i]t is preferable to reduce the public figure question to a more meaningful context by looking to the nature and extent of *an individual's participation in the particular controversy giving rise to the defamation.*" *Greenberg v. CBS Inc.*, 69 A.D.2d 693, 704, 419 N.Y.S.2d 988, 995 (1979) (emphasis added), citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 352, 94 S. Ct. 2997, 41 L.Ed.2d 789. The context here is highly significant. Ms. Giuffre never chose to participate in Defendant and Epstein's underage sex ring, a "controversy" that gave rise to Defendant's defamation. In arguing that Ms. Giuffre thrust herself into the public spotlight, Defendant conveniently leaves out the fact that it is by her doing that Ms. Giuffre is in this controversy in the first place. No minor child willingly becomes a participant in sexual abuse, and it is perverse for the abuser to argue that her victim deliberately became a subject of public attention when speaking out about that abuse for the purpose of advancing justice and helping other victims.

For all these reasons, the Court should simply decline to decide the public figure issue at this juncture. But if it chooses to reach the issue, it should reject Defendant's unsupported argument.

VIII. THE JANUARY 2015 STATEMENT WAS NOT "SUBSTANTIALLY TRUE," AND MS. GIUFFRE HAS PRODUCED CLEAR AND CONVINCING EVIDENCE OF ITS FALSITY

As a final argument, Defendant argues that her January 2015 statement was "substantially true." Given that the statement argues that Ms. Giuffre lied when she said she was sexually trafficked by Defendant, the reader of Defendant's motion might reasonably expect to see some evidence presented showing that Defendant was not a sex trafficker. Instead, the reader is treated to technical quibbles. For example, the lead argument to show the "substantial" truth of Defendant's statement is the argument that Ms. Giuffre was not fifteen years old, but all of sixteen or seventeen years old when she was trafficked. As the Court knows (and can take judicial notice of), Florida law makes age eighteen the age of consent. Accordingly, it is no moment that Ms. Giuffre may have been mistaken about the exact year the sex trafficking started. Call this the "yes-I'm-a-sex-trafficker-but-only-of-sixteen-year-old-girls" defense. To even describe the defense is to show how meritless it is.

More broadly, at issue are the statements Ms. Giuffre made regarding Defendant's involvement in, and knowledge of, the sexual abuse and sex trafficking of Ms. Giuffre (and other minor girls) through a recruitment scheme executed by Defendant and Jeffrey Epstein. In response to those various statements, Defendant publicly claimed that, "the allegations made by (Ms. Giuffre) *against* Ghislaine Maxwell are untrue." Defendant continued that Ms. Giuffre's "claims are obvious lies and should be treated as such...." Defendant, through her statement

intended to convey that Ms. Giuffre was lying about everything she had said against Defendant – “the allegations.”

In sum and essence, those statements made by Ms. Giuffre about which Defendant released a public statement to exclaim were “untrue” and “obvious lies” were:

- (1) That Defendant approached Ms. Giuffre while Ms. Giuffre was an underage minor working at the Mar-a-Lago Country Club, and recruited the then-minor Ms. Giuffre to go to the house of Jeffrey Epstein under the pretense of providing a massage to Jeffrey Epstein for money;
- (2) That Ms. Giuffre followed Defendant’s instructions, and was driven to Jeffrey Epstein’s house, where she was greeted by Defendant and later introduced to Jeffrey Epstein;
- (3) That Ms. Giuffre was lead upstairs to be introduced to Jeffrey Epstein in his bedroom, and that while there Defendant demonstrated how Ms. Giuffre should provide a massage to Jeffrey Epstein;
- (4) That Defendant and Epstein converted the massage into a sexual experience, requesting that Ms. Giuffre remove her clothing, after which time a sexual encounter was had;
- (5) That Defendant and Epstein expressed approval for Ms. Giuffre, and offered her money in exchange for this erotic massage turned full sexual encounter;
- (6) That Defendant and Epstein offered Ms. Giuffre the promise of money and a better life in exchange for Ms. Giuffre acting sexually compliant and subservient to their demands;
- (7) That Ms. Giuffre, after that first encounter, was repeatedly requested to service Epstein and/or Defendant sexually and/or others;
- (8) That Ms. Giuffre was taken on Epstein’s private planes on numerous occasions and trafficked nationally and internationally for the purpose of servicing Epstein and others, including Defendant, sexually;
- (9) That Defendant was Epstein’s primary manager of the recruitment and training of females who Epstein paid for sexual purposes;
- (10) That Defendant participated in sexual encounters with females, including Ms. Giuffre; and
- (11) That Ms. Giuffre and other recruited females were encouraged by Defendant and Epstein to bring other young females to Epstein for the purpose of servicing him sexually.

Defendant, by way of her January 2015 statement, declared that Ms. Giuffre lied about each and every one of these allegations regarding Defendant. In fact, Defendant clarified further this position in her deposition when she said repeatedly that everything Ms. Giuffre said about Defendant was totally false.⁵⁰ The clarification in her deposition is identical in intention to the reasonable interpretation of her statement that Defendant made publicly, which has formed the basis of this defamation action—that Ms. Giuffre was lying about everything she said about Defendant, and that Defendant was not at all involved in the activity she was accused of engaging in.

While her public statement could not have been more clear, as her deposition testimony further underscored, Defendant intended the world to believe that nothing Ms. Giuffre said about Defendant was true, and that Defendant was not at all involved with any of the things she was accused of. Defendant has decided in this motion to minutely dissect the nuance of Ms. Giuffre’s various statements to cause the Court to reach a far-fetched conclusion that Defendant’s insidiously false statement was somehow “substantially true.” Ironically, this repositioning amounts to nothing more than an admission by Defendant of the defamatory nature of her statement.

A. When Ms. Giuffre Initially Described Her Encounters With Defendant and Epstein, She Mistakenly Believed the First Encounter Occurred During the Year 1999.

Discovery has resulted in the production of records, including Ms. Giuffre’s employment records from Mar-a-Lago, which she did not possess at the time she was recounting her interactions with Defendant. Those records establish that the initial encounter wherein Defendant recruited Ms. Giuffre occurred during the year 2000 and not during 1999. Ms. Giuffre was

⁵⁰ See McCawley Dec. at Exhibit 11, Maxwell 4-22-2016 Dep. Tr. at 135:3-4; 178:15-178:24; 179:20-180:7; 228:7-229:10.

sixteen years old before August 9, 2000, and turned seventeen on that date. It is unclear from the limited records available whether Defendant approached and recruited Ms. Giuffre before or just after Ms. Giuffre's 17th birthday. However, what has now been established through numerous witnesses is that Defendant approached and recruited a minor child for the purposes of enticing that minor over to the house of Jeffrey Epstein, a currently-registered sex offender.⁵¹ The exact lure of Ms. Giuffre by Defendant - enticement of being paid money to give a billionaire a massage at his mansion - was used by Epstein and his many associates and employees to recruit dozens and dozens of other underage girls. There is no doubt that the crux of Ms. Giuffre's statement on this point is that Defendant recruited her when she was only a minor child unable to consent to sex, not precisely how far under the age of consent she was. Defendant's public claim that Ms. Giuffre's account of this approach, and recruiting element, was "untrue" and "obvious lies" is not "substantially true," but is itself an obvious lie – as Ms. Giuffre will prove to the jury at trial.

B. Defendant's January 2015 Statement Claiming as "Untrue" and an "Obvious Lie" the Allegation That She Regularly Participated in Epstein's Sexual Exploitation of Minors and That the Government Knows Such Fact is Not Substantially True But Instead Completely False.

Defendant next argues that she "accurately denied that [she] 'regularly participate[d] in Epstein's sexual exploitation on minors' and that 'the Government knows such fact.'" MSJ at 58. It is not clear whether Defendant is nitpicking this statement by contesting whether she "regularly" participated in Epstein's sexual exploitation or whether she did participate, but the Government was unaware of the extent of her involvement. Call this the "yes-I'm-a-sex-trafficker-but-only-on-Tuesdays-and-Thursdays" defense – here again, to simply recount the claim is to see its absurdity.

⁵¹ See McCawley Dec. at Exhibit 1, 5, Alessi Dep. Tr. at 94:24-95:2; Giuffre Dep. Tr. at 111:12-111:21; 116:19-117:12.

Contrary to Defendant's misleading, cherry-picked fragments of information she has chosen to use to support her point, there is an abundance of evidence clearly linking Defendant to Epstein's sexual exploitation of minors. As the Court is aware, numerous message pads were recovered from Epstein's home indicating Defendant's involvement in and knowledge of Epstein's illegal exploitation.⁵² Additionally, numerous employees and others have testified about Defendant's high-ranking position in the hierarchal structure of the sexual exploitation scheme.⁵³ In fact, multiple individuals, in addition to the Ms. Giuffre, have testified about Maxwell's involvement in the exploitation of minors, including Ms. Giuffre.⁵⁴

Defendant also argues that one government investigator, Palm Beach, Florida, Detective Recarey, may not have been aware of her involvement in the sex trafficking. Defendant fails to cite another passage in Detective Recarey's deposition, where he noted that he was aware of Defendant's involvement with Epstein and the sexual exploitation of children.⁵⁵ But even assuming Recarey was unaware (which Ms. Giuffre strongly disputes), Defendant would have, at most, a "yes-I'm-a-sex-trafficker-but-I-successfully-hid-it-from-one-of-the-cops" defense – again, not a likely claim.

More broadly, Ms. Giuffre's statement about what the "Government" knew about sex trafficking was made in pleadings filed in a *federal* Court case attacking the decision of the U.S. Attorney's Office for the Southern District of Florida to offer Jeffrey Epstein immunity from prosecution for *federal* sex trafficking crimes. Accordingly, to present an even arguable claim for summary judgment, Defendant would have to show that the U.S. Attorney's Office (and its

⁵² See, e.g., McCawley Dec at Exhibit 28 (message pad excerpts), GIUFFRE 001412, 001418, 001435, 001446, 001449, 001453, 001454.

⁵³ See McCawley Dec. at Exhibit 21, 1, Rodriguez Dep. Tr. at 169:1-169:4; Alessi Dep. Tr. at 23:11-23:20; 34:19-35:3; 98:5-98:12; 104:15-104:23.

⁵⁴ See McCawley Dec. at Exhibit 16, 4, Sjoberg Dep. Tr. at 13; Figueroa Dep. Tr. at 96-97; 103; 200:6-18; 228:23-229:21.

⁵⁵ See McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 29:16-29:20; 45:13-25; 83:3-83:15.

investigators from the FBI) did not know about Defendant's sex trafficking. This proof would need to include, for example, evidence that the FBI did not learn about Defendant's sex trafficking when (among other things) Ms. Giuffre told FBI agents about it when she met with them in Australia in 2011. Here again, Defendant has no evidence to even begin making such a showing.

C. Defendant's January 2015 Statement Claiming as "Untrue" or an "Obvious Lie" That Maxwell and Epstein Converted Ms. Giuffre Into a Sexual Slave is Not Substantially True.

Defendant next argues that she accurately disputed Ms. Giuffre's statement that Defendant held her as a "sex slave." Relying on dictionary definitions of "slave" that define the term to refer to a "confined" person who is the "legal property" of another (MSJ at 59, citing *Merriam-Webster*, etc.), Defendant claims Ms. Giuffre was not confined or the property of Defendant. Call this the "yes-I'm-a-sex-trafficker-but-I-didn't-use-chains" defense. And, once again, to even describe the defense is to refute it.

Defendant does not explain why the jury would be required to use the held-in-chains definition of "slave" in evaluating her statement. *Merriam-Webster* (11th ed. 2006) also defines "slave" as "one that is completely subservient to a dominating influence" – a definition that fits Ms. Giuffre's circumstances to a tee. As Ms. Giuffre has explained in detail, she was recruited as a minor child by Defendant, who then dominated her and used for sexual purposes. That testimony alone creates a genuine issue of fact on this point.

From the context of all of Ms. Giuffre's statements about Defendant, Ms. Giuffre has never said or implied that she was physically placed in a cage. Instead, she has described the vast disparity of power and the influence of Defendant and Epstein, the fear of disobedience, the typical locations of the abuse being in a private plane, in huge mansion manned with Epstein employed servants, a private island, or some inescapable place abroad in the presence of

Defendant, in addition to the continued – and fraudulent – promise of a better future, as those things that kept her retained in a situation of sexual servitude. While not physical chained, Ms. Giuffre was groomed as minor and trained, and these factors became her invisible chains.

Indeed, as Ms. Giuffre’s expert on sex trafficking, Professor Coonan, has explained:

Popular understandings of the term “sex slave” might still connote images of violent pimps, white slavery, or of victims chained to a bed in a brothel in the minds of some people. To call Ms. Giuffre a victim of sex trafficking would however very accurately convey the reality that she along with a great many other victims of contemporary forms of slavery are often exploited by the “invisible chains” of fraud and psychological coercion.

See McCawley Dec. at Exhibit 23, Coonan Expert Report at 20.

If the Court takes as true, which it must for the purpose of this motion, that Ms. Giuffre was trafficked and used exclusively for sexual purposes by Defendant and Epstein, then the Court must also reach the conclusion at this stage that Maxwell’s assertion – that Ms. Giuffre’s description of being a sex slave is “untrue” or “obvious lies” – is not substantially true. There undoubtedly remains a genuine issue of material fact on this point, and in fact, Defendant’s position taken in this motion is tantamount to an admission of the truth of Plaintiff’s statement about Defendant on this point.

D. Any Statement of Misdirection Regarding Professor Alan Dershowitz is Nothing More Than an Irrelevant Distraction to The Facts of This Case and Matters Not on the Defense of Whether Defendant’s Statement Was Substantially True.

Defendant next contends that she accurately recounted that Alan Dershowitz had denied having sex with Ms. Giuffre. MSJ at 60. Call this the “yes-I’m-a-sex-trafficker-but-she-was-not-trafficked-to-the-professor” defense. While it is accurate that Ms. Giuffre made allegations against Professor Dershowitz, those allegations are not at issue in this case. Defendant, in her defamatory statement, claimed that “the allegations made by [Ms. Giuffre] against Ghislaine Maxwell are untrue.” *See McCawley Dec. at Exhibit 26, GM_00068.* In her deposition,

Defendant maintained the position that she “cannot speculate on what anybody else did or didn’t do.” *See* McCawley Dec. at Exhibit 11, Maxwell 4-22-2016 Dep. Tr. at 180:3-180:4. In fact, regarding Ms. Giuffre’s claims about others, Defendant unequivocally stated, “I can only testify to what she said about me, which was 1000 percent false.” *See* McCawley Dec. at Exhibit 11, Maxwell 4-22-2016 Dep. Tr. at 228:10-228:12.

Defendant Maxwell makes additional misstatements about Dershowitz’s production in a defamation action filed against him in her desperate attempt to have Dershowitz to jump aboard and help bail out her sinking canoe. While Ms. Giuffre can – and, if necessary, will – refute Dershowitz’s claim he was not a beneficiary of Epstein and Defendant’s sex trafficking, that is not relevant at this stage. Whatever may or may not have happened with Dershowitz (and Ms. Giuffre’s sworn statements that he sexually abused her is alone enough to create disputed facts on the issue of whether Defendant’s statements about him were “substantially true”) has no bearing whatsoever on the truth or falsity of the statements Ms. Giuffre made about Defendant.

This case is not about whether Ms. Giuffre has ever made untruthful allegations against anyone, which she contends she has not, but about whether her allegations about Defendant were true, or whether those specific allegations were “untrue,” “obvious lies” as Defendant publicly proclaimed. These issues are disputed and must go to the jury.

E. Contrary to Defendant’s Position, There is a Genuine Issue of Material Fact as to Whether She Created or Distributed Child Pornography, or Whether the Government Was Aware of Same.

Defendant next argues that she did not create child pornography and that the Government knew this. Call this the “until-you-find-the-photos-I’m-innocent” defense. Of course, as noted earlier, Defendant’s claim requires that she show that “the Government” – in context, the FBI and the U.S. Attorney’s Office for the Southern District of Florida – “knew” that she had no

child pornography. Yet Defendant has offered no such evidence – much less evidence so powerful as to warrant summary judgment on this point.

This point is disputed from the simple fact that Ms. Giuffre herself testified that Defendant took many photograph of her naked. *See* McCawley Dec. at Exhibit 5, Giuffre Dep. Tr. at 232:3-9; 233:7-9. This is consistent with the Palm Beach butler’s, Alfredo Rodriguez’s, testimony that he personally saw photos of naked children on Defendant’s computer. *See* McCawley Dec. at Exhibit 21, Rodriguez Dep. Tr. at 150:10-17; 306:1-306:24. Another housekeeper, Juan Alessi also saw photos of young nude females on Defendant’s computer, although he wasn’t sure whether to consider it pornography. *See* McCawley Dec. at Exhibit 1, Alessi Dep. Tr. at 175:5-175:24. Finally, Detective Recarey found a collage of nude photos of young females in Epstein’s closet, and turned the photos over to the FBI and U.S. Attorney’s office.⁵⁶ While the U.S. Attorney’s office will not share the photos obtained from Recarey’s investigation, it is thus undisputed that the government possesses photos of nude, young females confiscated from Epstein’s Palm Beach mansion. Indeed, the police video disclosed through a FOIA request shows naked images of women throughout the house, including a full nude of the Defendant.⁵⁷ At a minimum, there is a clear genuine issue of material fact in this regard.

F. Defendant Did Act as a “Madame” For Epstein to Traffic Ms. Giuffre to The Rich and Famous.

Defendant next argues that she did not act as a “Madame” for Epstein. MSJ at 63. The gist of the argument seems to be that Defendant believes trafficking one girl to Epstein does not a Madame make. Call this the “yes-I-was-Virginia’s-Madame-but-no-one-else’s” defense. This argument fails linguistically on the very dictionary definitions that Defendant cites elsewhere –

⁵⁶ *See* McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 73:19-73:24; 74:2-74:7.

⁵⁷ *See* McCawley Dec. at Exhibit 44, FOIA CD GIUFFRE 007584.

but not here. *See Merriam-Webster* (11th ed. 2006) (defining “madam” as “the female head of a house of prostitution”).

Once again, Defendant conceals the relevant facts on this issue. First, multiple witnesses have testified to Defendant’s recruiting, maintaining, harboring, and trafficking girls for Epstein.⁵⁸ In fact, Defendant herself was unable to deny procuring Ms. Giuffre for Epstein.⁵⁹ While Defendant has attempted to fumble her way through explaining some plausible reason for bringing a sixteen or seventeen year old to Epstein, her explanations are, to put it blandly, unpersuasive. As with other issues, the jury will have to decide who to believe.

One of the individuals Ms. Giuffre was trafficked to was Prince Andrew – trafficking that took place in Defendant’s own townhouse in London. There exist flight logs evidencing Ms. Giuffre flying to London alongside Defendant and Epstein on Epstein’s private plane, and a photo of Ms. Giuffre, Defendant, and the Prince, without Defendant ever offering a legal reasonable explanation for that photo being taken, or for traveling with a year old girl overseas.

Defendant begins to meander somewhat aimlessly on this point, shifting Plaintiff’s burden to substantiate Plaintiff’s claim that Defendant was Epstein’s Madame, which is a point at issue, into whether or not Plaintiff has conclusively proven the identities and accurate job titles of the other men to whom Plaintiff was lent for sex by Epstein. No matter how hard Defendant tries to reframe this case, drag other people in, or split hairs, she is unable to contest the facts – facts showing she was more than a Madame but a full-fledged sex trafficker. Ms. Giuffre told the truth when she said that Defendant recruited her as a minor, under the pretense of giving a

⁵⁸ *See* McCawley Dec. at Exhibit 16, 1, 18, 2, Sjoberg Dep. Tr. at 13; Alessi Dep. Tr. at 34; GIUFFRE000105 at 57-58; GIUFFRE000241-242 at p. 212-213; Austrich Dep. Tr. at 34-35, 100-101, 127-128; Alessi Dep. Tr. at 34:19-35:3; 98:5-98:12; 104:15-104:23.

⁵⁹ *See* McCawley Dec. at Exhibit 11, Maxwell Dep. Tr. at 214:14-215:3.

massage, and converted her into a traveling sex slave, consistent with Defendant and Epstein's pattern and practice.

As the Court astutely acknowledged early on, "at the center of this case is the veracity of a contextual world of facts more broad than the allegedly defamatory statements . . . either transgression occurred or it did not. Either Maxwell was involved or she was not." If Defendant was involved, then her January 2015 statement was defamatory. Ms. Giuffre will prove to the jury, through overwhelming evidence, her prior allegations about Defendant's involvement. The Court should give Ms. Giuffre that opportunity, and deny Defendant's motion for summary judgment.

IX. CONCLUSION

For the foregoing reasons, this Court should deny Defendant's motion for summary judgment in all respects.

Dated: January 31, 2017

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) 585-5202⁶⁰

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on January 31, 2017, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on the individuals identified below via transmission of Notices of Electronic Filing generated by CM/ECF.

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

/s/ Sigrid S. McCawley
Sigrid S. McCawley

⁶⁰ 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.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

15-cv-07433-RWS

**Reply Brief in Support of Defendant's
Motion for Summary Judgment**

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

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PRELIMINARY STATEMENT

Before the Court reaches the question whether plaintiff can prove falsity and actual malice, it should decide three questions of law, one that narrows considerably the legal issues and two that dispose of the case entirely.

1. It is undisputed Ms. Maxwell, through her agents, sent to various media-representatives—and to no one else—the January 2015 statement. It is undisputed she had no control over any of the media that decided to republish excerpts from the statement. On these facts, under black letter New York law, she is not responsible for these republications. Plaintiff’s contrary argument relies on a “foreseeability” doctrine the New York Court of Appeals has specifically rejected. Summary judgment should enter in favor of Ms. Maxwell as to any republication.

2. Under the New York Constitution, whether a statement is constitutionally nonactionable opinion depends upon, among other things, an examination of the full context of the communication and consideration of the setting surrounding it. The January 2015 statement, making no reference to specific allegations, explains *why* the author believes plaintiff’s allegations are “obvious lies”: “Each time the story is re told [sic] it changes with new salacious details” It is an expression of a venerable opinion: when a person falsely cries wolf previously, others are free to opine she is telling falsehoods now. This is nonactionable opinion.

3. Under New York law, a statement made pertinent to good faith anticipated litigation is nonactionable. The statement was sent exclusively to the media representatives, and contained a clear message: the media should not republish plaintiff’s “obvious lies,” else Ms. Maxwell would sue them. Such a statement is nonactionable.

If the Court reaches the question of falsity and actual malice, the Rule 56 record establishes plaintiff cannot prove falsity and actual malice by clear and convincing evidence.

ARGUMENT

I. Ms. Maxwell is not liable for republications of the January 2015 statement.

Under black letter New York law, liability for republication of an allegedly defamatory statement “must be based on real authority to influence the final product.” *Davis v. Costa-Gavras*, 580 F. Supp. 1082, 1096 (S.D.N.Y. 1984). “[W]here a defendant ‘had no actual part in composing or publishing,’ he cannot be held liable.” *Id.* (citing *Folwell v. Miller*, 145 F. 495, 497 (2d Cir. 1906)); accord *Geraci v. Probst*, 938 N.E.2d 917, 921 (N.Y. 2010). “[C]onclusive evidence of lack of actual authority [is] sufficiently dispositive that the [trial court] ‘ha[s] no option but to dismiss the case’” *Id.* (emphasis supplied; quoting *Rinaldi v. Viking Penguin, Inc.*, 420 N.E.2d 377, 382 (N.Y. 1981)).

It is undisputed Ms. Maxwell and her agents had no ability to control and did not control whether or how the media-recipients would use the statement. DOC. 542-7, Ex.J ¶¶ 2-3; *id.*, Ex.K ¶ 24. Unsurprisingly, plaintiff has offered no evidence of such control. *A fortiori* this Court “ha[s] no option but to dismiss the case,” *id.* (internal quotations omitted), to the extent it is founded upon the media’s republication of the statement.

A. Plaintiff’s argument against summary judgment is substantially groundless.

A legal argument is frivolous if it is presented contrary to a “long line of authorities” and the “fundamental principles”¹ of the underlying substantive law. Plaintiff Giuffre’s argument opposing summary judgment as to republication is frivolous.

The New York Court of Appeals in *Geraci* followed a long line of New York cases holding that a defamation defendant is not liable for republication of his allegedly defamatory statement unless he had “actual authority” to control the decision to republish: “Our

¹*Porky Prods. v. Nippon Exp. U.S.A.*, 1 F.Supp.2d 227, 234 (S.D.N.Y. 1997), *aff’d*, 152 F.3d 920 (2d Cir. 1998).

republication liability standard has been consistent for more than one hundred years.” See *Geraci*, 938 N.E.2d at 921 (footnote omitted). Indeed, the *Geraci* court observed, the New York Court of Appeals in *Schoepflin v. Coffey*,² a case decided in 1900, held:

“*It is too well settled to be now questioned that one who . . . prints and publishes a libel[] is not responsible for its voluntary and unjustifiable repetition, without his authority or request, by others over whom he has no control and who thereby make themselves liable to the person injured, and that such repetition cannot be considered in law a necessary, natural and probable consequence of the original slander or libel.*”

938 N.E.2d at 921 (emphasis supplied; quoting *Schoepflin*, 56 N.E. at 504).

The cases in which this Court and its sister courts in this Circuit assiduously have followed this line of New York cases are legion.³ The Second Circuit was in the vanguard.⁴

²56 N.E. 502 (N.Y. 1900).

³See *Egiazaryan v. Zalmayev*, 880 F. Supp. 2d 494, 501 (S.D.N.Y. 2012) (“[t]he original publisher is not liable for republication where he had ‘nothing to do with the decision to [republish] and [he] had no control over it.’”) (quoting *Rinaldi v. Viking Penguin, Inc.*, 425 N.Y.S.2d 101, 104 (1st Dep’t 1980), *aff’d*, 420 N.E.2d 377 (N.Y. 1981)); *Egiazaryan v. Zalmayev*, No. 11 CIV. 2670 PKC, 2011 WL 6097136, at *5 (S.D.N.Y. Dec. 7, 2011) (same); *Davis v. Costa-Gavras*, 595 F. Supp. 982, 988 (S.D.N.Y. 1984) (“Under New York law, liability for a subsequent republication must be based on real authority to influence the final product, not upon evidence of acquiescence or peripheral involvement in the republication process.”); *Davis*, 580 F. Supp. at 1094 (original publisher not liable for injuries caused by the republication “‘absent a showing that they approved or participated in some other manner in the activities of the third party republisher’”) (quoting *Karaduman v. Newsday, Inc.*, 416 N.E.2d 557, 560 (N.Y. 1980)); *Croy v. A.O. Fox Mem’l Hosp.*, 68 F. Supp. 2d 136, 144 (N.D.N.Y. 1999) (“The original author of a document may not be held personally liable for injuries arising from its subsequent republication absent a showing that the original author approved or participated in some other manner in the activities of the third-party republisher.”) (citations omitted); *Cerasani v. Sony Corp.*, 991 F. Supp. 343, 351 (S.D.N.Y. 1998) (“a libel plaintiff must allege that the party had authority or control over, or somehow ratified or approved, the republication”).

⁴See *Folwell v. Miller*, 145 F. 495, 497 (2d Cir. 1906) (affirming directed verdict in favor of managing editor: “when it appears affirmatively that he was not on duty [upon receipt of libelous matter and its republication], and could not have had any actual part in composing or publishing, we think he cannot be held liable without disregarding the settled rule of law by which no man is bound for the tortious act of another over whom *he has not a master’s power of control*”) (emphasis supplied), *quoted with approval in Davis I*, 580 F. Supp. at 1096; *Cerasani*, 991 F. Supp. at 351.

In the face of this uninterrupted line of New York state (and federal) cases dating back to the nineteenth century powerfully establishing a bright line rule regarding republication liability, plaintiff Giuffre manages what amounts to a—frivolous—murmur of opposition. She claims there are “[t]wo standards” in New York law: one “older,” and one “more modern.” Resp. 28. The “older” standard, plaintiff says, is represented by the legion of cases we have cited. The “more modern formulation”—where can it be found? Why, in one place: a treatise on defamation. *Id.* (citing *Sack on Defamation* § 2.7.2, at 2-113 to -114 (4th ed. 2016)). It surely is frivolous to argue that a treatise creates a republication-liability standard that is separate from, “more modern” than, and supersedes the New York Court of Appeals’ 2010 decision in *Geraci* and this Court’s 2012 decision in *Egiazaryan*.

Trying to build on this start, plaintiff argues, “New York appellate courts have *repeatedly held* than an individual is liable for the media publishing that individual’s defamatory press release.” Resp. 28 (emphasis supplied). Even if we accept plaintiff’s mischaracterization of the January 2015 statement as a “press release,”⁵ her argument still would be meritless. To begin with, when plaintiff says the New York appellate courts have “repeatedly” supported her claimed rule of law, she means . . . twice. And an examination of those two cases reveals she is quite wrong and, worse, has advanced a seriously misleading argument. Neither case involved, as here, a motion for summary judgment. In both cases, the New York appellate division affirmed the denial of a motion to dismiss under the state’s equivalent of Federal Rule of Civil Procedure 12(b)(6). *See Levy v. Smith*, 18 N.Y.S.3d 438, 439 (2d Dep’t 2015); *National Puerto Rican Day Parade, Inc. v. Casa Pubs.* (“NPR”), 914 N.Y.S.2d 120, 122-23 (1st Dep’t 2010).

⁵As discussed in This Reply, at 16-19, the January 2015 statement would be a strange “press release,” as it threatened to sue the very press to which it was “releasing” information.

This argument, too, is frivolous. Despite plaintiff's baseless claim there is an "old" formulation and a "more modern" formulation of republication-liability law in New York, both cases she cites *applied the same "old" standard used by the New York Court of Appeals in Geraci, by this Court in the two Egiazaryan cases*, and by us in our Memorandum of Law in support of Ms. Maxwell's motion for summary judgment. *See Levy*, 18 N.Y.S.3d at 439 (citing *Geraci* and *Schoepflin*); *NPR*, 914 N.Y.S.2d at 594-95 (citing *Hoffman v. Landers*, 537 N.Y.S.2d 228, 231 (2d Dep't 1989) (citing *Schoepflin*)).

Both the courts in *Levy* and *NPR* applied the *Geraci* standard and the 12(b)(6) standards, e.g., assuming the pleaded facts were true. They concluded it was possible to infer from the complaints' allegations that the defendant caused the republications. Accordingly, they denied the motions to dismiss. *See Levy*, 18 N.Y.S.2d at 439; *NPR*, 914 N.Y.S.2d at 123. It was improper for plaintiff to cite these cases without disclosing they are 12(b)(6) cases in which the courts applied the *Geraci* republication rule and inferred facts from the pleaded allegations.

B. New York state and federal courts have rejected liability for republication based on "foreseeability."

Plaintiff cites section 576 of the Restatement (Second) of Torts for the proposition that if republication was foreseeable, then the defendant is the cause of any special damages from the republication. This argument is frivolous. As an initial matter, plaintiff has pleaded no special damages. *See Doc.1*; *Doc.23* at 23; *Doc.37* at 17.

Regardless, the New York Court of Appeals in *Geraci* *rejected* the Restatement's foreseeability doctrine. *See* 938 N.E.2d at 921-22 (noting that section 576's foreseeability standard "is not nearly as broad as plaintiff . . . suggest[s]" and "[t]hat we did not endorse such a broad [Restatement] standard of foreseeability in *Karaduman* is evident from our decision the following year in *Rinaldi*") (emphasis supplied).

While trying to distinguish this Court’s decision in *Davis*, plaintiff fails to disclose that *Davis* itself—decided 26 years before *Geraci*—also *rejected* plaintiff’s foreseeability argument. The *Davis* plaintiffs, like plaintiff Giuffre here, also asserted republication liability, despite defendant’s lack of participation, on the ground “he could reasonably have foreseen that republication would occur.” 580 F.Supp. at 1096. This Court, relying on *Karaduman*, was unpersuaded: The New York Court of Appeals “has not applied the foreseeability standard suggested by plaintiffs in prior libel cases in which such a standard would have been relevant, if not controlling.” *Id.* This Court noted: The jurisdictions that have adopted a foreseeability standard “have refused to hold responsible a defendant with no control or influence over the entity that actually republished the statement.” *Id.* Plaintiff’s failure to disclose this Court’s holdings in *Davis* is a notable lapse in candor.

C. Plaintiff’s purported application of the *Geraci* rule is misleading and wrong.

Plaintiff eventually purports to apply the “old” standard, that is to say, the controlling law in the state of New York. She argues Ms. Maxwell “authorized” the January 2015 statement, “paid money to her publicist to convince media outlets to publish it,” “request[ed]” its publication, “made a deliberate decision to publish her press release,” “actively participated” in “the decision to publish her press release,” was “active” in “influencing the media to publish” the statement, and “approved of” and “pushed for” the publication of the statement. Resp. 30-31. These argument-manufactured facts have no record support.

In applying the controlling law, plaintiff wittingly makes a mess of it. She disingenuously suggests any help Ms. Maxwell gave to help her lawyer prepare the January 2015 statement and her signing-off on it are the equivalent of requesting, authorizing and controlling its *republication*. That isn’t the law. The “authority” required for republication liability is the “actual authority . . . to decide upon or implement” the republication. 580 F.Supp. at 1095

(emphasis supplied; citing *Rinaldi*, 420 N.E.2d at 382). Judge Sofaer studied *Rinaldi*'s holding, and noted republication liability must be based on a "decision" by the defendant to republish and must focus on "real authority to influence the final product, *not upon evidence of acquiescence or peripheral involvement in the republication process.*" *Id.* at 1096 (emphasis supplied).

Accordingly, Judge Sofaer held, when there is "conclusive evidence of lack of actual authority" this is "dispositive" of republication liability and the trial court "'ha[s] no option but to dismiss the case against the [defendant].'" *Id.* (emphasis supplied; quoting *Rinaldi*, 420 N.E.2d at 382).

There is no evidence Ms. Maxwell "paid money to her publicist to convince" the media to publish her statement; this is why plaintiff cites no evidence to support that assertion. *See* Resp. 30. Mr. Gow's email containing the statement says nothing to "convince" the media to publish the statement. *See* Doc.542-6, Ex.F. There is no evidence Ms. Maxwell was "active" in "influencing the media to publish" it; nor is there any evidence she "pushed for" or "requested" its publication; this is why plaintiff cites no evidence to support these assertions. *See id.* 31.

Indeed, plaintiff has zero evidence Ms. Maxwell or her agents ever did anything to urge or request any media to publish the statement. Mr. Gow presented the January 2015 statement via email to six to thirty media representatives; it was not sent to anyone else; in the email he told the journalists he was presenting a "quotable statement" "on behalf of" Ms. Maxwell and "[n]o further communication will be provided." Doc.542-6, Ex.F. It is undisputed Ms. Maxwell and her agents had no control over the media that republished portions of the statement. Doc.542-7, 542-7, Ex.J ¶¶ 2-3; *id.*, Ex.K ¶ 24.

Plaintiff argues "a jury" should decide whether Ms. Maxwell "authorized or intended" the statement to be republished, or "approved of, and even participated, in" its republication. Resp. 30-31. All plaintiffs want to get to "a jury." The summary-judgment question is whether they deserve to. Plaintiff has offered no evidence to put before a jury on the dispositive *Geraci*

question: whether Ms. Maxwell affirmatively authorized or requested a person or entity “over whom [s]he has . . . control,” 938 N.E.2d at 921. The only new argument plaintiff makes in her entreaty to see “a jury” is that she should be permitted to prove Ms. Maxwell’s “complicity.” As with her other factually bereft arguments, the complicity argument awaits plaintiff’s introduction of facts to support it. Having failed to do so, plaintiff cannot avoid summary judgment.

Plaintiff labors in vain to turn the Barden Declaration into “disputed issues of fact.” For there to be a disputed factual issue, plaintiff would need to introduce evidence disputing his sworn statements. She has not done so. In any event, the Barden Declaration is all but irrelevant to the central, dispositive republication question: whether Ms. Maxwell is liable for the media’s republication of her statement, where they did so without her authority or request and where she and her agents had “no control”⁶ over the media. On this question we cited to the Barden Declaration for one evidentiary fact: Messrs. Barden and Gow had no control over the media.⁷ See Doc.542-7, Ex.K ¶ 24, *cited in* Memo. of Law 14.⁸ Plaintiff has offered no admissible evidence disputing this fact.

“[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). It is one thing to argue in conclusory fashion, as plaintiff does, that “a jury” should decide a factual question. It is quite another to identify evidence in the Rule 56 record that raises a genuine question of material fact, which plaintiff does not do. Summary judgment is warranted.

⁶*Geraci*, 938 N.E.2d at 921.

⁷As discussed in Argument I.D., below, we cited more plenarily to the Barden Declaration in connection with a different point—the particular unfairness of subjecting Ms. Maxwell to liability when the media selectively quoted portions of the January 15 statement.

⁸In the Memorandum, we erroneously cited to ¶ 24 of Exhibit J; we intended to cite to ¶ 24 of Exhibit K (Doc.542-1, Ex.K), which is Mr. Barden’s declaration.

D. Subjecting Ms. Maxwell to liability for the media's republication of excerpts they unilaterally selected is particularly unfair.

It is undisputed that no one ever republished *in toto* the January 2015 statement and that various media unilaterally selected portions of the statement to republish. We said on page 14 of our Memorandum that the media's "selective, partial republication of the statement is *more problematic yet*" (emphasis altered). That is to say, as improper as it is to hold a publisher of a statement liable for republications over which she had no control, worse is it to make her liable for selective, partial republications of her statement. We relied on the holding in *Rand v. New York Times Co.*, 430 N.Y.S.2d 271, 275 (1st Dep't 1980), that a publisher cannot be charged with a republisher's "editing and excerpting of her statement." Memo. of Law 14.

Plaintiff argues that our position is "absurd on its face" because "[i]t would mean . . . a defamer could send to the media a long attack on a victim with one irrelevant sentence and, when the media quite predictably cut that sentence, escape liability." Resp. 32. This argument has two erroneous assumptions. One is that the "defamer" can "escape liability." Not true. An original publisher remains liable for her defamation. We are concerned here with *republication*. The second wrong assumption is that the original publisher must always remain liable for any republication. *Geraci* rejects that view: Under New York law "each person who repeats the defamatory statement is responsible for the resulting damages." 938 N.E.2d at 921.

The effort by plaintiff to distinguish *Rand* is meritless. She argues the media's republication of the January 2015 statement actually was not a republication at all, just an original publication. Resp. 32. *That* argument is "absurd on its face," *id.*, since there is no dispute Ms. Maxwell did not control the media's decision to republish (excerpts from) the statement. Plaintiff next argues the media did not "edit[]" or "tak[e] . . . quote[s] out of context." *Id.* Plaintiff could not be more wrong. As she concedes, all republications of the statement by the

media were selective, partial republications of the statement. Any such selective, partial republication by definition took those excerpts “out of context.” This is so because Mr. Gow informed the media in his email that he was providing “a quotable statement,” Doc.542-6, Ex.F, not a statement “from which you, the media, are free to excerpt as you please.”

More importantly, as Mr. Barden explained, selectively excerpting the statement substantially altered his message. *See id.*, Ex.K ¶ 20. For example, when he said in the third paragraph that plaintiff’s claims are “obvious lies,” it followed two paragraphs in which he explained *why* it was obvious the new claims are lies. *See id.*, Ex.K ¶¶ 19-22. Excerpting and republishing only the “obvious lies” phrase—as plaintiff did in her complaint—certainly gives the reader a different understanding than if the media had republished the entire statement. As *Rand* held: A defendant cannot be liable for the republication of derogatory but constitutionally protected opinion “when the foundation upon which that opinion is based is omitted. The defamatory remark should be read against the background of its issuance.” 430 N.Y.S.2d at 275 (internal quotations omitted).

Plaintiff argues: “A jury could reasonably conclude that [Ms. Maxwell’s] statement that Ms. Giuffre’s *claims of child sexual abuse* are ‘obvious lies’ is not a rhetorical device, nor hyperbole, but a literal and particular affirmation that [plaintiff] lied.” Resp. 33 (emphasis supplied). We italicize plaintiff’s rhetorical sleight of hand. As plaintiff knows, nowhere did the January 2015 statement specify which of plaintiff’s countless allegations are “obvious lies.” Indeed, this is the problem with plaintiff’s case: since the statement specified no particular allegations as obvious lies, plaintiff believes she is entitled to “prove” the truth of every allegation she ever has made about her alleged experience as a “sex slave.” What Mr. Barden’s declaration makes clear is he deliberately made no reference to any specific allegation by plaintiff. He had a bigger target: plaintiff’s credibility. He used the statement to show plaintiff’s

behavior is that of a liar, i.e., one who increasingly embellishes her story, and her allegations become more and more outlandish, so that by January 2015 she was claiming to have had sex with a well respected Harvard law professor, Alan Dershowitz. *See* Doc.542-7, Ex.K ¶¶ 19-22.

Contrary to plaintiff’s argument, “even apparent statements of fact may assume the character of statements of opinion, and thus be privileged, when made in public debate . . . or other circumstances in which an audience may anticipate the use of epithets, fiery rhetoric or hyperbole.” *Steinhilber v. Alphonse*, 501 N.E.2d 550, 556 (N.Y. 1986) (internal quotations and brackets omitted). That was the case here. Plaintiff falsely—and, as Judge Marra held, “unnecessar[ily]”⁹—alleged in lurid detail that Ms. Maxwell had sexually abused her. The six to thirty journalists would have anticipated a “fiery” denial of the allegations. Regardless, the statement overall was constitutionally protected opinion grounded on facts disclosed to the journalists: plaintiff’s increasingly outlandish and inconsistent stories, her newly embellished allegations, and her increasingly lurid and salacious enhancements of her earlier allegations.

E. Mr. Barden’s declaration is perfectly proper.

Plaintiff makes a plethora of complaints about Mr. Barden’s declarations. None has any merit. She objects to Mr. Barden’s declaration of his intent and purposes for preparing the January 2015 statement because, she says, this implicates the attorney-client privilege. That is untrue. His intent and purposes are by definition *not* attorney-client communications and do not implicate such communications; they are attorney work product,¹⁰ which he is free to disclose.¹¹

⁹Doc.542-5, Ex.E, at 5.

¹⁰*Travelers Indem. Co. v. Northrop Grumman Corp.*, No. 12 CIV. 3040 KBF, 2013 WL 3055437, at *3 (S.D.N.Y. Apr. 22, 2013) (identifying work product as including defense counsel’s “mental impressions, thought processes and strategies connected with [the] defense”).

¹¹*See In re China Med. Techs., Inc.*, 539 B.R. 643, 658 (S.D.N.Y. 2015)

She objects he is “non-deposed.” But Mr. Barden was the third-listed potential witness in our Rule 26(a)(1)(A) disclosure, served on plaintiff a year ago; the disclosure said he “has knowledge concerning press statements by . . . Defendant in 2011-2015 at issue in this matter.”¹² Plaintiff was free to depose him; that she chose not to was her own tactical decision. Finally, plaintiff argues “there are factual disputes” regarding the declaration. But plaintiff identified no such factual disputes relating to the declaration. A party opposing summary judgment cannot create a dispute by arguing, which is all plaintiff does. *See* Resp. 35-38.

F. Plaintiff effectively has confessed Arguments I.B. and I.C. of the Memorandum.

Argument I.B. of the Memorandum contends the First Amendment bars liability for republication by media organizations of the January 2015 statement. *See* Memo. of Law 16-17. Argument I.C. contends that under *Geraci* plaintiff is barred from introducing into evidence any of the media organizations’ republication of the January 2015 statement. *See id.* at 17-18. Plaintiff offers no resistance to these arguments. We respectfully request that the Court consider these arguments confessed. *See, e.g., Cowan v. City of Mount Vernon*, 95 F. Supp. 3d 624, 645-46 (S.D.N.Y. 2015) (citing cases).

II. The January 2015 statement is constitutionally protected opinion.

In deciding whether a statement is opinion the New York Constitution requires application of “the widely used four-part *Ollman*^[13] formula,” *Immuno AG v. Moor-Jankowski*, 567 N.E.2d 1270, 1274 (N.Y. 1991). *See id.* at 1274, 1277-78, 1280-82 (noting *Steinhilber*’s adoption of formula). We addressed each of the four *Ollman* factors. The plaintiff avoids this analysis, choosing merely to block-quote large portions of this Court’s Rule 12(b)(6) order. That

¹²Menninger Decl. EXHIBIT NN, at 2.

¹³*Ollman v. Evans*, 750 F.2d 970 (D.C. Cir. 1984).

is a mistake. *Immuno AG* is the seminal case prescribing the analysis to be used in a *summary-judgment proceeding* for assessing whether under the New York Constitution a statement is absolutely protected as opinion.

Instead of addressing the four factors, plaintiff simply relies on this Court's 12(b)(6) order. The Court's order does not control. In deciding the Rule 12(b)(6) motion, the Court assumed the complaint's allegations were true and drew all reasonable inferences in plaintiff's favor. In this proceeding, plaintiff is not entitled either to the assumption or the inferences. The opinion-versus-fact question will be controlled by the Rule 56 record.

Relying on the Court's order, plaintiff argues that the question whether the three allegedly defamatory sentences are opinion or fact is controlled by *Davis v. Boenheim*, 22 N.E.3d 999 (N.Y. 2014), and *Green v. Cosby*, 138 F. Supp. 3d 114 (D. Mass. 2015). *See* Resp. 38. *Davis* was an appeal from a 12(b)(6) dismissal. This procedural posture was critical to its decision:

[D]efendants argue that because a reader could interpret the statement as pure opinion, the statement is as a consequence, nonactionable and was properly dismissed [pursuant to a pre-answer motion]. However, on a motion to dismiss we consider whether any reading of the complaint supports the defamation claim. Thus, although it may well be that the challenged statements are subject to defendants' interpretation, the motion to dismiss must be denied if the communication at issue, taking the words in their ordinary meaning and in context, is also susceptible to a defamatory connotation. We find this complaint to meet this minimum pleading requirement.

Davis, 22 N.E.3d at 1006-07 (internal quotations, brackets, ellipsis and citations omitted).

Green was a decision on the defendant's motion to dismiss. The case was decided under *California* and *Florida* defamation law. *See* 138 F. Supp. 3d at 124, 130, 136-37. The court made it clear the 12(b)(6) procedural posture was critical to its decision: "At this stage of the litigation, the court's concern is whether any fact contained in or implied by an allegedly defamatory statement is susceptible to being proved true or false; if so capable, Defendant cannot avoid application of defamation law by claiming the statement expresses only opinion." *Id.* at 130.

In the case at bar, application of the four *Steinhilber* factors on the Rule 56 record compels a different conclusion. The complaint alleges three sentences in the January 2015 statement are defamatory: in the first paragraph of the statement, plaintiff Giuffre's allegations are "untrue"; in the same paragraph, the "original allegations" have been "shown to be untrue"; and in the third paragraph, plaintiff's "claims are obvious lies."¹⁴ Doc.1 ¶ 30.

Factor 1: Indefiniteness and ambiguity. On the face of the complaint in a 12(b)(6) proceeding, the words "untrue" and "obvious lies" might be susceptible of "a specific and readily understood factual meaning," Doc.37 at 9. This is especially true if it is taken out of context, e.g., extracted from the statement. But this approach is forbidden. *See, e.g., Law Firm of Daniel P. Foster, P.C. v. Turner Broad. Sys.*, 844 F.2d 955, 959 (2d Cir. 1988).

The first sentence—"[t]he allegations made by [plaintiff] against [Ms. Maxwell] are untrue"—is indefinite and ambiguous because it is wholly unclear which "allegations" are being referenced. The second sentence—"[t]he original allegations . . . have been fully responded to and shown to be untrue"—also is indefinite and ambiguous for the same reason. Additionally, it is unclear what are the "original" allegations. It is unclear what is meant by "shown to be untrue." What one person may believe is a fact shown to be untrue, another person may believe is a fact not (sufficiently) shown to be untrue. The existence of God, climate change and existence of widespread voter fraud in the election are examples of this. The third sentence—

¹⁴Ms. Maxwell testified in her deposition that she "know[s]" plaintiff is a "liar." This testimony, plaintiff argues, "contradict[s]" our contention that the three allegedly defamatory sentences in the July 2015 statement are opinion. Resp. 39-40. Plaintiff's argument is a *non-sequitur*. Ms. Maxwell's 2016 deposition testimony in which she disclosed all the reasons she believes plaintiff has uttered a plethora of false allegations is irrelevant to whether the three sentences in the July 2015 statement, prepared by Mr. Barden to respond to the joint-motion allegations, are opinions.

“[plaintiff’s] claims are obvious lies”—also is indefinite and ambiguous. An “obvious lie” to one person is not an “obvious lie” to another.

Factor 2: Capable of being characterized as true or false. On the 12(b)(6) record, the Court held the three statements “are capable of being proven true or false.” Doc.37 at 9. As a general question of law, one person’s statement that another person’s allegations are “untrue” or are “obvious lies” is not necessarily capable of being proved true or false—regardless of the subject matter of the opined “untruths” or “lies.” *See Rizzuto v. Nexxus Prod. Co.*, 641 F. Supp. 473, 481 (S.D.N.Y. 1986), *aff’d*, 810 F.2d 1161 (2d Cir. 1986); *Telephone Sys. Int’l v. Cecil*, No. 02 CV 9315(GBD), 2003 WL 22232908, at *2 (S.D.N.Y. Sept. 29, 2003); Memo. of Law 35 (citing cases). As *Steinhilber* observed, “even apparent statements of fact may assume the character of statements of opinion, and thus be privileged.” 501 N.E.2d at 556.

At least two of plaintiff’s CVRA allegations cannot be proven true or false (only two such allegations are needed in order to render the January 15 statement an opinion). We have identified two such allegations in the joinder motion: that Ms. Maxwell “appreciated the immunity granted” to Epstein, and that she “act[ed] as a ‘madame’ for Epstein.” Memo. of Law 22. Plaintiff does not dispute this. The result is that the January 15 statement’s assertion that plaintiff’s “allegations” and “claims” in the joint motion are “untrue” or “obvious lies” is by definition an opinion. It cannot be proven true or false whether Ms. Maxwell “appreciated” Epstein’s immunity or whether she “acted as a madame.” Indeed, it seems quite obvious that the joinder-motion allegations about “appreciation” and “madame” *are themselves opinion*.

In the statement, Mr. Barden on behalf of Ms. Maxwell also says plaintiff’s “original allegations . . . have been fully responded to and shown to be untrue.” Doc.542-6, Ex.F. This cannot be proven true or false. The “full response” to the original allegations is a reference to the “Statement on Behalf of Ghislaine Maxwell” issued March 9, 2011, in response to plaintiff’s

allegations contained in media stories, including the Churcher articles. *See* Doc.542-3, Ex.C. Whether the 2011 statement “fully” responded to the original allegations and whether it “showed” the original allegations to be untrue are pure (argumentative) opinion. “[O]bvious lies” on its face is an opinion. The “obviousness” of a lie simply cannot be proven true or false.

Factor 3: The full context of the statement. Three contextual facts are revealed by the Rule 56 record. **One**, the email transmitting the statement to the media-representatives—along with the third-person references to Ms. Maxwell—told them Ms. Maxwell did not prepare the statement: “Please find attached a quotable statement *on behalf of* Ms. Maxwell.” Doc.542-6, Ex.F (emphasis supplied). It is undisputed that in fact Mr. Barden prepared the bulk of it and ultimately approved and adopted as his work all of it. Doc.542-7, Ex.K ¶ 10.

Two, Mr. Barden’s statement issued on behalf of his client would not be a traditional press release solely to disseminate information to the media; this is why he did not request Mr. Gow or any other public relations specialist to prepare or participate in preparing the statement. *Id.*, Ex.K ¶ 15. The statement was a broad-brush communique to the media about plaintiff and her new allegations; it was not to be a “point by point” rebuttal of each new allegation. *Id.*, Ex.K ¶ 13. The logic and approach to preparing the statement were simple: compare plaintiff’s prior allegations and conduct in telling her story with her current allegations and conduct. *See generally id.*, Ex.K ¶ 13. When he wrote the statement, he knew of plaintiff’s 2011 allegation that she had *not* had sex with Prince Andrew and he knew of her CVRA allegation that she *did* have sex with him. *Id.*, Ex.K ¶ 14. Also within his knowledge was the story she had told Churcher before March 2011—a story that was far *less* provocative and salacious than the one she included in the joinder motion. *See id.*, Ex.K ¶ 5; *compare* Docs.542-1 & 542-2, Exs.A & B (Churcher articles published March 2011) *with* Doc.542-4, Ex.D (plaintiff’s joinder motion containing dramatically different and more lurid and salacious allegations).

Mr. Barden's approach provides critical context to explaining how the statement builds a logical argument that the new allegations are false. It first notes plaintiff's "original allegations"; then it points out how the story changed and was embellished over time, "now" with allegations that plaintiff had sex with a prominent and highly respected Harvard law professor ("Each time the story is re told [sic] it changes with new salacious details about public figures and world leaders . . ."). The argument builds up to the opinion in the third paragraph: "[Plaintiff's] claims are obvious lies and should be treated as such" Doc.542-6, Ex.F. *See generally id.*, Ex.K ¶¶ 13-22. This third paragraph—and the threat in the fourth paragraph to sue the media for republication of plaintiff's falsehoods—confirms what is plain from the statement itself: it was not a traditional press release.

Three, the statement was intended to respond (via denial) to the media-recipients' requests for a reply to the new CVRA joinder-motion allegations. *Id.* ¶¶ 8, 10, 16. But more than that, it was intended to be "a shot across the bow" of the media. *Id.* ¶ 17. The logical argument was created to (a) persuade the media-recipients that they needed to "subject plaintiff's allegations to inquiry and scrutiny"; (b) explain to the media-recipients how it was "obvious" that plaintiff "had no credibility" because of her shifting story and increasingly lurid and salacious allegations as time went on, many of which (e.g., the allegations of sex with Prince Andrew and Professor Dershowitz) on their face appear far-fetched,¹⁵ and (c) warn the media-

¹⁵Since the CVRA joinder motion, there has emerged a substantial amount of evidence—some from plaintiff's own pen—that plaintiff's allegations about having been "forced" to have sex with prominent individuals are falsehoods. A telling example is a series of emails between plaintiff and reporter Churcher when plaintiff was working on negotiating a book deal about her alleged experiences and Churcher was trying to help her. On May 10, 2011, plaintiff tells Churcher she cannot remember whom she had told Churcher she had had sex with. Churcher responds, "Don't forget Alan Dershowitz," which Churcher says is a "good name for [plaintiff's] pitch" to her literary agent. It is clear neither Churcher nor plaintiff believed plaintiff

recipients that they republished plaintiff's obvious falsehoods against Ms. Maxwell at their legal peril. *See id.* ¶¶ 13, 16, 17, 20.

As the New York Court of Appeals observed, the context of a statement often is the “key consideration” in fact vs. opinion cases. *Davis*, 22 N.E.3d at 1006. So it is here. As *Davis* suggested, the three challenged statements are “subject to [Ms. Maxwell's] interpretation,” *id.* at 1007; accord *Sweeney v. Prisoners' Legal Servs. of N.Y.*, 538 N.Y.S.2d 370, 371-72 (3d Dep't 1989). The context of the January 2015 statement makes clear that the characterization of plaintiff's allegations and claims as “untrue” or “obvious lies” are ultimate opinions—conclusions—drawn from disclosed facts.

Factor 4: The broader setting surrounding the statement, including conventions that might signal to readers that the statement likely is opinion and not fact. It is undisputed that the January 2015 statement was sent exclusively to more than six and fewer than thirty media representatives, each of whom expressly had requested from Mr. Gow that he provide them with Ms. Maxwell's reply to the new joint-motion allegations. Doc.542-7, Ex.K ¶¶ 8, 10. As was obvious from the statement, it was not a traditional press release, as such a release does not explain—lawyer-like—why new allegations when measured against previous allegations lack credibility. Nor does a traditional release threaten to sue the media to whom the release is sent. The media representatives upon receiving the January 2015 statement would have understood it was presenting an (opinionated) argument that plaintiff was not credible because of her

had had sex with Professor Dershowitz, since (a) Churcher suggests that he would be a “good name” to “pitch” *because* of his prominence (“he [represented] Claus von Bulow and a movie was made about that case...title was Reversal of Fortune”), and (b) Churcher states, “We all *suspect* [Professor Dershowitz] is a pedo[phile] and tho *no proof of that*, you probably met him when he was hanging put w [Epstein].” Menninger Decl., EXHIBIT.OO, at Giuffre004096-97 (emphasis supplied).

inconsistent and shifting sex abuse story and her increasingly lurid allegations against more and more prominent individuals. And they would have understood that these characteristics of a storyteller undermine her credibility and *ergo* the credibility of her new allegations.

In its 12(b)(6) order the Court said the three sentences have the effect of denying plaintiff's story but "they also clearly constitute fact to the reader." The ruling is affected in two ways by the Rule 56 record. Based on the foregoing discussion of the evidence, the three sentences clearly constitute (argumentative) opinions of Mr. Barden on behalf of Ms. Maxwell.

Though the Court did not discuss who is "the reader," this is important in *Steinhilber* Factor 4." Under settled defamation-opinion law, an allegedly defamatory statement is to be viewed "from the perspective of the audience to whom it is addressed." *Dibella v. Hopkins*, No. 01 CIV. 11779 (DC), 2002 WL 31427362, at *2 (S.D.N.Y. Oct. 30, 2002). Here, "the reader" is six to thirty journalists. They could not have read the July 2015 statement—or the three allegedly defamatory sentences—the same way it was read by these journalists' audience, i.e., the general public. This is because, as plaintiff implicitly concedes, these journalists only republished excerpts—and not the entirety of the statement, which would have given context to the three sentences. It is axiomatic that an out-of-context republication of the three sentences—without the rest of the statement—would deprive the reader of the logic and reasoning behind the opinionated conclusion that plaintiff was making "untrue" allegations and telling "obvious lies."

III. The pre-litigation privilege bars this action.

A. The privilege applies to the January 2015 statement.

Statements pertinent to a good faith anticipated litigation made by attorneys (or their agents under their direction¹⁶) before the commencement of litigation are privileged and “no cause of action for defamation can be based on those statements,” *Front, Inc. v. Khalil*, 28 N.E.3d 15, 16 (N.Y. 2015). The facts that must be established, therefore, are (a) a statement, (b) that is pertinent to a good faith anticipated litigation, and (c) by attorneys or their agents under their direction. We did this. *See* Memo. of Law 6-8, 33-38; Doc.542-7, Ex.K ¶¶ 8-30. For example, Mr. Barden (a) drafted the vast majority of the January 2015 statement and approved and adopted all of it, (b) directed Mr. Gow to send it to the media representatives who had requested Ms. Maxwell’s reply to plaintiff’s joint-motion allegations, (c) in the statement threatened legal action against these media representatives, and (d) at the time of the statement “was contemplating litigation against the press-recipients.” *Id.*, Ex.K ¶¶ 10, 16-17, 28, 30.

Plaintiff argues without citation to authority: Ms. Maxwell herself did not testify she intended to sue; she hasn’t offered any witnesses to testify she intended to bring a lawsuit; she didn’t in fact sue; and—this one is a *non-sequitur*—the statement was an “attempt[] to continue to conceal her criminal acts.” Resp. 41-42. These arguments fail. The privilege exists without regard to whether *Ms. Maxwell* testifies she “intended” to sue, whether she has “witnesses” to say she intended to sue, or whether she “in fact” sued. It refers to “anticipated” litigation, not “guaranteed” litigation. Indeed, the point of the pre-litigation privilege is to promote communications that *avoid* litigation. *See Khalil*, 28 N.E.3d at 19 (“When litigation is

¹⁶*See Chambers v. Wells Fargo Bank, N.A.*, No. CV 15-6976 (JBS/JS), 2016 WL 3533998, at *8 (D.N.J. June 28, 2016); *see generally Hawkins v. Harris*, 661 A.2d 284, 289-91 (N.J. 1995).

anticipated, attorneys and parties should be free to communicate in order to reduce or avoid the need to actually commence litigation.”). It applies when there is a good faith basis to *anticipate* litigation. Mr. Barden, Ms. Maxwell’s lawyer who *drafted and caused the statement to be sent out*, actually was anticipating litigation. Doc.542-7, Ex.K ¶ 28. The argument that the statement was an attempt to “conceal” Ms. Maxwell’s “criminal acts” is fatuous. It would be hard to *post facto* “conceal” alleged criminal acts that plaintiff luridly and salaciously described in an earlier public filing, i.e., in the CVRA case, in which the United States government was the defendant.

Citing no record evidence, plaintiff argues, “The record evidence shows [Mr. Barden] did not make the [January 2015] statement.” Resp. 42. That argument is easily disposed of by Mr. Barden’s uncontested testimony. *See* Doc.542-7, Ex.K ¶¶ 10-13, 15-17, 20, 26-28, 30.

B. Malice is irrelevant to the pre-litigation privilege.

Citing the New York Court of Appeals’ decision in *Khalil*, we pointed out that malice is not relevant to the pre-litigation privilege. Memo. of Law 34-35. To prevail on the pre-litigation privilege the defendant need only establish one element: the allegedly defamatory statement at issue was “pertinent to a good faith anticipated litigation.” *Id.* (quoting *Khalil*, 28 N.E.3d at 16). Plaintiff disputes this and, without discussing *Khalil* or citing authorities, simply argues the pre-litigation privilege is “foreclosed . . . because [Ms. Maxwell] acted with malice.” Resp. 43. As suggested by her inability to find any law to support her, plaintiff is wrong.

Under general New York defamation law, “[t]he shield provided by a qualified privilege may be dissolved” if plaintiff in rebuttal can show that the defendant “spoke with ‘malice.’” *Lieberman v. Gelstein*, 605 N.E.2d 344, 349 (N.Y. 1992); *accord Khalil*, 28 N.E.3d at 19. “Malice” means two things: spite or ill will, and knowledge of falsity or reckless disregard of falsity. *Lieberman*, 605 N.E.2d at 349. Plaintiff relies on this general qualified-privilege law.

The problem for plaintiff is that in *Khalil* the New York Court of Appeals held this general rule does not apply to the pre-litigation privilege. Khalil worked for a company named Front. After eight years, he resigned and began working for “EOC,” one of Front’s competitors. Front’s lawyer Kimmel sent a demand letter to Khalil alleging he had committed criminal, tortious and ethical misconduct. Kimmel sent another demand letter to EOC and others stating Khalil had conspired with EOC to breach his fiduciary duty to Front. Six months later, Front sued Khalil. Khalil brought a third-party claim against Kimmel for libel *per se*. The trial court dismissed the lawsuit, ruling that the letters were “absolutely privileged” under the litigation privilege “and that it therefore did not need to reach the question of malice.” 28 N.E.3d at 17 (internal quotations omitted). The Appellate Division affirmed, holding that the litigation privilege absolutely protected the letter “because they were issued in the context of prospective litigation.” *Id.* at 18 (internal quotations omitted).

The Court of Appeals affirmed, but altered the law on the litigation privilege. It observed, “Although it is well-settled that statements made *in the course of litigation* are entitled to absolute privilege, this Court has not directly addressed whether statements made by an attorney on behalf of his or her client in connection with *prospective litigation* are privileged.” *Id.* (emphasis supplied). Some Appellate Division departments had held the absolute privilege applies to statements made in connection with prospective litigation, but other departments had held such statements were entitled only to a qualified privilege. *Id.*

The answer to whether pre-litigation statements should be absolute or qualified, the Court of Appeals held, is driven by the rationale for protecting pre-litigation statements:

When litigation is anticipated, attorneys and parties should be free to communicate in order to reduce or avoid the need to actually commence litigation. Attorneys often send cease and desist letters to avoid litigation. . . . Communication during this pre-litigation phase should be encouraged and not chilled by the possibility of being the basis for a defamation suit.

Id. at 19. However, the court recognized that “extending privileged status to communication made prior to anticipated litigation has the potential to be abused”; extending an absolute privilege to this context, the court said, “would be problematic and unnecessary.” *Id.*

The court held it would recognize only a qualified privilege for pre-litigation communications. *Id.* Crucially to the case at bar, the court held that the traditional privilege-rebuttal malice was *inapplicable* to the pre-litigation privilege:

Rather than applying the general malice standard to this pre-litigation stage, the privilege should only be applied to statements pertinent to a good faith anticipated litigation. This requirement ensures that privilege does not protect attorneys who are seeking to bully, harass, or intimidate their client’s adversaries by threatening baseless litigation or by asserting wholly unmeritorious claims, unsupported in law and fact, in violation of counsel’s ethical obligations. Therefore, we hold that statements made prior to the commencement of an anticipated litigation are privileged, and that the privilege is lost where a defendant proves that the statements were not pertinent to a good faith anticipated litigation.

Id. (emphasis supplied).

Accordingly, the only question is whether the January 2015 statement Mr. Barden caused to be issued to the six to thirty journalists was “pertinent to a good faith anticipated litigation.” The undisputed evidence establishes that the answer is yes. Mr. Barden anticipated litigation.¹⁷ He “fully complied with [his] ethical obligation as a lawyer.”¹⁸ He was hardly “bully[ing], harass[ing], or intimidat[ing]” the six to thirty journalists, since he caused a press agent, Mr.

¹⁷See Doc.542-7, Ex.K ¶ 28 (“At the time I directed the issuance of the statement, I was contemplating litigation against the press-recipients”); *id.* ¶ 17 (statement was intended as “a shot across the bow”; “the statement was very much intended as a cease and desist letter to the media-recipients, letting [them] understand the seriousness with which Ms. Maxwell considered the publication of plaintiff’s obviously false allegations and the legal indefensibility of their own conduct”); Doc.542-6, Ex.F (“Maxwell . . . reserves her right to seek redress”).

¹⁸Doc.542-7, Ex.K ¶ 26.

Gow, to issue the statement,¹⁹ and he believed he had an affirmative duty in representing Ms. Maxwell to prepare the statement and cause it to be delivered to the journalists.²⁰

Plaintiff argues that when Mr. Barden issued the January 2015 statement on Ms. Maxwell's behalf, he had only “wholly unmeritorious claims, *unsupported in law and fact*, in violation of counsel's ethical obligations” and did not have “good faith anticipated litigation.” Resp. 46 (quoting *Khalil*, 28 N.E.3d at 19; italics omitted). Plaintiff's rationale? Because she was telling the truth and so the media would only be reporting the truth. *Id.* That is a nonsensical, frivolous argument.

Whether Mr. Barden, who represents Ms. Maxwell, had a meritorious or good faith basis for anticipating defamation litigation has nothing to do with whether the media believed plaintiff was telling the truth, and surely not whether *the plaintiff* believed or said she was telling the truth. Based on his knowledge of plaintiff's history, Mr. Barden in good faith believed that plaintiff had been making false allegations for years and that the falsity of the allegations “should have been obvious to the media.” Doc.542-7, Ex.K ¶ 13; *see id.* ¶¶ 14, 16-17, 20-23, 26-28, 30. Accordingly, at the time he caused the statement to issue, Mr. Barden had a good-faith basis to anticipate litigation against any of the media that republished plaintiff's false allegations.

It hardly matters for purposes of the pre-litigation privilege whether the media republished or did not republish plaintiff's allegations or whether Mr. Barden ultimately did or did not sue any of the media for any republication. As the *Khalil* court recognized, “[a]ttorneys often send cease and desist letters to avoid litigation,” 28 N.E.3d at 19, and such letters have a

¹⁹The *Khalil* court admonished attorneys to “exercise caution when corresponding with unrepresented potential parties who may be particularly susceptible to harassment and unequipped to respond properly even to appropriate communications from an attorney.” *Khalil*, 28 N.E.3d at 19 n.2.

²⁰*See* Doc.542-7, Ex.K ¶ 26.

valid purpose protected by the pre-litigation privilege. Mr. Barden testified that the January 2015 statement in fact served as a cease and desist letter. *See* Doc.542-7, Ex.K ¶ 17.

IV. Ms. Maxwell's January 4, 2015, statement is nonactionable.

Plaintiff did not respond to our argument that Ms. Maxwell's January 4, 2015, statement to a reporter is nonactionable. *See* Memo. of Law 38-39. We respectfully submit plaintiff has confessed this point. *See Cowan*, 95 F. Supp. 3d at 645-46.

V. Summary judgment is warranted because plaintiff cannot establish falsity or actual malice by clear and convincing evidence.

Plaintiff is a public figure. *See* Memo. of Law 16-17, 49-54. Therefore, she must prove falsity and actual malice. Under New York law, a public-figure defamation plaintiff must go beyond the federal constitutional minimum and prove falsity by clear and convincing evidence. *Blair v. Inside Ed. Prods.*, 7 F. Supp. 3d 348, 358 & n.6 (S.D.N.Y. 2014) (citing *DiBella v. Hopkins*, 403 F.3d 102, 111 (2d Cir.2005)). She must also prove actual malice by clear and convincing evidence. *Karedes v. Ackerley Grp., Inc.*, 423 F.3d 107, 114 (2d Cir. 2005) (quoting *Phila. Newspapers v. Hepps*, 475 U.S. 767, 773 (1986)).

Clear and convincing evidence is evidence that “produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *Blair*, 7 F. Supp. 3d. at 358 (internal quotations and brackets omitted).

Plaintiff must prove by clear and convincing evidence (a) the material falsity of three sentences in the context of the January 2015 statement, and (b) Ms. Maxwell's actual malice, i.e., knowledge of the falsity of the three sentences or reckless disregard of whether they were false. The three sentences are: in the first paragraph of the statement, plaintiff's allegations are

“untrue”; in the same paragraph, the “original allegations” have been “shown to be untrue”; and in the third paragraph, plaintiff’s “claims are obvious lies.”²¹ Doc.1 ¶ 30.

Plaintiff cannot prove the falsity of the three sentences, let alone actual malice. If the Rule 56 record establishes that *two* of plaintiff’s CVRA joinder-motion allegations are false and *two* of her “original” allegations are false, this defamation action collapses on itself. This is because the statement does not specify how many of plaintiff’s allegations are false; it certainly does not say “all” plaintiff’s allegations are false. It uses the plural of “allegation.” The plural of allegation literally means “more than one.” *See* Memo. of Law 21.

Sentence No. 1. Since the sentence does not specify any particular allegation and since plaintiff made a plethora of allegations against Ms. Maxwell, plaintiff would be required to prove the truth of every one of the plethora of allegations *and* that Ms. Maxwell knew each one of the allegations was true. Conversely, if there are at least two allegations that plaintiff cannot prove to be true or if there was good reason for Ms. Maxwell to believe at least two of the allegations to be false, then summary judgment should enter against plaintiff.

There are at least two allegations by plaintiff against Ms. Maxwell that are untrue. In the CVRA joinder motion, plaintiff alleged that in plaintiff’s first encounter with Mr. Epstein, Ms. Maxwell took her to Mr. Epstein’s bedroom for a massage that Mr. Epstein and Ms. Maxwell “turned . . . into a sexual encounter,” Doc.542-4, Ex.D, at 3. This allegation contradicted her allegation in the Sharon Churcher article that a woman *other than* Ms. Maxwell

²¹Ms. Maxwell said in her deposition she “know[s]” plaintiff is a “liar.” This testimony, plaintiff argues, “contradict[s]” our contention that the three sentences in the January 2015 statement are opinion. Resp. 39-40. Plaintiff’s argument is a *non-sequitur*. Ms. Maxwell’s 2016 deposition testimony in which she disclosed all the reasons she believes plaintiff has uttered a plethora of false allegations is wholly irrelevant to whether the three sentences in the January 2015 statement, prepared by Mr. Barden to respond to the joint-motion allegations, are opinions.

took her to Mr. Epstein’s bedroom; during the massage *that* woman gave instructions to plaintiff, and the massage “quickly developed into a sexual encounter.” Doc.542-1, Ex.A, at 4.

A second allegation pertaining to plaintiff’s entire story about Ms. Maxwell’s introduction of plaintiff to Prince Andrew is untrue. In the joinder motion, plaintiff alleged Ms. Maxwell served an “important . . . role” in “Epstein’s sexual abuse ring,” namely, connecting Mr. Epstein to “powerful individuals” who would sexually abuse plaintiff. *Id.*, Ex.D, at 5. Plaintiff alleged that in this role Ms. Maxwell introduced plaintiff to Prince Andrew, and she was “forced to have sexual relations with this Prince in three separate geographical locations,” including Ms. Maxwell’s London apartment. *Id.*, Ex.D, at 5. These allegations directly contradicted her earlier allegations in the 2011 Churcher article that (a) there never was “any sexual contact between [plaintiff] and [Prince] Andrew,” and (b) Prince Andrew did not know “Epstein paid her to have sex with [Epstein’s] friends.” *Id.*, Ex.A, at 6.

Mr. Barden on behalf of Ms. Maxwell said in the first sentence that plaintiff’s “allegations”—plural—against Ms. Maxwell are “untrue.” We have just established through plaintiff’s own contradictory words that it would be fair to characterize at least two of her allegations to be untrue. Having spent significant time with Ms. Churcher in 2011 and having substantial incentive to disclose all important details of her “sex abuse” story, *see* Menninger Decl. EXHIBIT OO, plaintiff in 2011 presented a story that exculpated Ms. Maxwell and Prince Andrew of the very misconduct that in 2015—after securing a lawyer and seeing her story as a profit vehicle—she inculpated them for. In the face of her contradictory allegations, plaintiff cannot possibly prove by clear and convincing evidence that all her joinder-motion allegations are true, or that when Ms. Maxwell said they were untrue, she knew each one of the allegations was true or that she recklessly disregarded whether each one was true.

Under New York law, a defendant's allegedly defamatory statement is held "to a standard of substantial, not literal, accuracy." *Law Firm of Daniel P. Foster*, 844 F.2d at 959. Here, Ms. Maxwell's first sentence *literally* is true: more than one of plaintiff's allegations are "untrue." Accordingly, there is no defamation.

Sentence No. 2. The second sentence at issue in this action states, "The original allegations are not new and have been fully responded to and shown to be untrue." Plaintiff alleges the sentence is defamatory to the extent it asserts the original allegations were "shown to be untrue." Doc.1 ¶ 30. Plaintiff cannot prove this statement's falsity.

It is a matter of pure opinion whether any given allegation was "shown" to be untrue. Some people require more proof than others to conclude that a fact has been "shown to be untrue." We discussed above various examples of this, e.g., climate change. Here, Ms. Maxwell via Mr. Barden in March 2011 issued a statement denying plaintiff's Churcher-story allegations as "all entirely false." Doc.542-3, Ex.C. Plaintiff did not respond to this statement, let alone claim it was defamatory. Her non-response reasonably could be seen as a concession that Ms. Maxwell's denial was righteous. *See* Doc.542-7, Ex.K (Mr. Barden: "I would have been remiss if I had sat back and not issued a denial, and the press had published that Ms. Maxwell had not responded to enquiries and had not denied the new allegations; the public might have taken the silence as an admission there was some truth in the in allegations.").

Regardless, we easily can show two of plaintiff's original allegations are untrue. Many of plaintiff's original allegations are contained in the two Churcher articles, Docs.542-1 & 542-2, Exs.A & B. The articles contained numerous allegations by plaintiff relating to her alleged sexual abuse. In her deposition, plaintiff was shown Deposition Exhibit 7, a collection of some of her allegations in the articles. Plaintiff placed checkmarks by those allegations she admitted—over the course of 20 pages of testimony—were not true. *See* Menninger Decl. EXHIBIT PP, at

435:7-455:6 & Depo. Ex.7. These include her claims that: (1) she was 17 when she flew to the Caribbean with Mr. Epstein and Ms. Maxwell “went to pick up Bill in a huge black helicopter,” referring to former President Bill Clinton; (2) her conversation with Mr. Clinton about Ms. Maxwell’s pilot skills; and (3) Donald Trump was a “good friend” of Mr. Epstein’s and “flirted with me”.

Plaintiff’s admissions on the falsity of her original allegations are fatal to her defamation claim as to the second sentence. The eleven admittedly false “original allegations” axiomatically would warrant the second sentence. Plaintiff has no possible way to prove the second sentence is false. Indeed, like Ms. Maxwell’s first sentence, the second sentence literally is true: more than one of plaintiff’s original allegations are untrue. A statement that literally is true cannot be defamatory as a matter of law. *See Law Firm of Daniel P. Foster*, 844 F.2d at 959.

Sentence No. 3. Defamation as to the third sentence is foreclosed. To begin with, as discussed above, whether plaintiff has uttered “obvious lies” is a matter of opinion: in the face of plaintiff’s gratuitous and lurid allegations of Ms. Maxwell’s years-long participation at the center of a child sex-trafficking ring, for the journalists-recipients of the July 2015 statement the phrase was an anticipated “epithet[, fiery rhetoric or hyperbole,” *Steinhilber*, 501 N.E.2d at 556 (internal quotations omitted); *see Tel. Sys. Int’l*, 2003 WL 22232908, at *2 (observing Court’s previous holding in *Rizzuto* that defendants’ use of phrases “conned,” “rip off” and “lying” in advertisements were not actionable as libel and were “rhetorical hyperbole, a vigorous epithet used by those who considered themselves unfairly treated and sought to bring what they alleged were the true facts to the readers”) (internal quotations omitted).

Even if *arguendo* the third sentence—plaintiff’s “claims are obvious lies”—cannot be considered opinion, the Rule 56 record forecloses a defamation claim. The sentence does not specify which of plaintiff’s “claims,” i.e., allegations, are obvious lies. It could refer to the

“original” claims; the “new,” CVRA claims; the claims against Ms. Maxwell; the claims against anyone, including Professor Dershowitz, who was mentioned in the preceding sentence; or any two or more of all the claims plaintiff ever had made about her alleged experiences as the alleged victim of a child sex-trafficking ring.

Regardless of what is being referred to, there is no defamation. As demonstrated in the discussion above of the first and second sentences, the Rule 56 record establishes that at least two of plaintiff’s “original” allegations are untrue, at least two of her CVRA allegations are untrue, at least two of her allegations against Ms. Maxwell are untrue, at least two of her allegations against anyone (e.g., Ms. Maxwell, Prince Andrew or Professor Dershowitz) are untrue, and at least two of her allegations about her alleged sex-trafficking experiences are untrue. Moreover, the untruthfulness—the falsity—of the allegations certainly is “obvious.” After all, plaintiff herself admitted under oath that a multitude of her original allegations are untrue, and she implicitly admitted some of her CVRA allegations are untrue because they were contradicted by her original allegations.

CONCLUSION

The Court should grant summary judgment in favor of Ms. Maxwell.

February 10, 2017.

Respectfully submitted,

s/ Laura A. Menninger

Laura A. Menninger (LM-1374)

Jeffrey S. Pagliuca (*pro hac vice*)

Ty Gee (*pro hac vice pending*)

HADDON, MORGAN AND FOREMAN, P.C.

150 East 10th Avenue

Denver, CO 80203

Phone: 303.831.7364

Fax: 303.832.2628

lmenninger@hmflaw.com

Attorneys for Defendant Ghislaine Maxwell

CERTIFICATE OF SERVICE

I certify that on February 10, 2017, I electronically served this *Reply Brief in Support of Defendant's Motion for Summary Judgment* 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

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of August, two thousand nineteen.

Julie Brown, Miami Herald Media Company,

Intervenors - Appellants.

v.

Ghislaine Maxwell,

Defendant - Appellee,

v.

Virginia L. Giuffre,

Plaintiff - Appellee.

ORDER

Docket No: 18-2868

Appellee, Ghislaine Maxwell, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

A circular official seal of the United States Court of Appeals for the Second Circuit is positioned over the signature. The seal features the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom, with stars on either side of the central text. The signature "Catherine O'Hagan Wolfe" is written in cursive across the seal.