UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

	X	
VIRGINIA L. GIUFFRE,		
Plaintiff,		
V.		15-cv-07433-RWS
GHISLAINE MAXWELL,		13-CV-07 - 33-KWS
Defendant.		
	V	

Memorandum of Law in Support of Defendant's <u>Motion for Summary Judgment</u>

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

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	A.	The January 2015 statement constitutes nonactionable opinion
	В.	In this Rule 56 proceeding, this Court's Rule 12(b)(6) opinion does not control the question of law whether the January 2015 statement constitutes nonactionable opinion
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D.	Plaintiff must also prove actual malice to overcome the defenses of reply and prelitigation privilege
E.	The January 2015 statement was substantially true, and plaintiff cannot produce clear and convincing evidence of its falsity
1.	The January 2015 statement accurately denied that Ms. Maxwell met Plaintiff when Plaintiff was 15 years old in 1999 56
2.	The January 2015 statement accurately denied that Ms. Maxwell "regularly participate[d] in Epstein's sexual exploitation of minors" and that "the Government knows" such fact
3.	The January 2015 statement accurately denied that "with [Ms. Maxwell's] assistance, [Epstein] converted [Plaintiff] into what is commonly referred to as a 'sex slave."
4.	The January 2015 statement accurately reported that Plaintiff alleged "sexual relations" with Professor Dershowitz which he denied
5.	The January 2015 statement accurately denied that Ms. Maxwell created and distributed child pornography and that the Government knows of and possesses such child pornography
6.	January 2015 statement accurately denied Maxwell acted as "madame" for Epstein to traffic Plaintiff to the rich and famous
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New York Times Co. v. Sullivan, 376 U.S. 254 (1964)
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Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 776-77 (1986)
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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 Defendant Ghislaine Maxwell

CERTIFICATE OF SERVICE

I certify that on January 6, 2017, I electronically served this *Memorandum 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

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

Bradley J. Edwards Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L. 425 North Andrews Ave., Ste. 2 Ft. Lauderdale, FL 33301 brad@pathtojustice.com J. Stanley Pottinger 49 Twin Lakes Rd. South Salem, NY 10590 StanPottinger@aol.com

/s/ Nicole Simmons

Nicole Simmons