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—

[14]Ms. 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-

[15]Since 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 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

(footnote cont'd on next page)

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

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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 direction[16]) 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 again 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.'" *Liberman 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. *Liberman*, 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.

[17] *See* 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").

[18] Doc.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

[19]The *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

[21]Ms. 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,

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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:

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United States District Court
Southern District of New York

Virginia L. Giuffre,

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

v.

Ghislaine Maxwell,

Defendant.
_____/

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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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 testamentary 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

[1] *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; 36:2-1.

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. <u>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</u>.[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].[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. <u>It is an undisputed fact that Lyn Miller testified that she believed Defendant became Ms. Giuffre's "new mama"</u>.

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. <u>It is an undisputed Fact that Detective Joseph Recarey testified that he sought to investigate Defendant in relation to his investigation of Jeffrey Epstein</u>.

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. <u>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</u>.

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. <u>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</u>.

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. <u>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</u>.

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. <u>The Flight Logs</u>

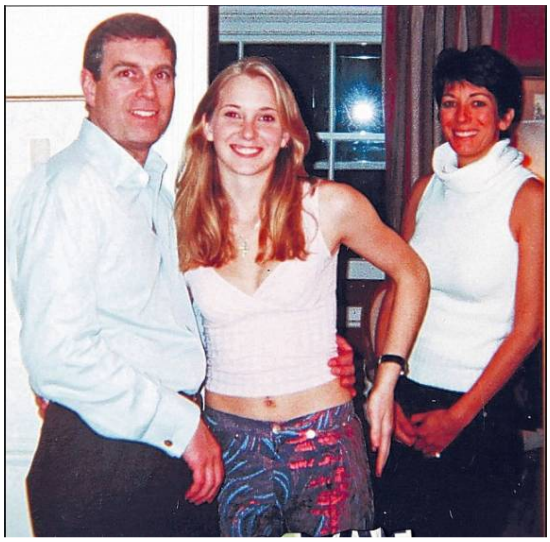
Defendant has never offered a legal explanation for what she was doing with, and why she was traveling with, a minor child on 21 flights while she was a child, including 6 international flights, aboard a convicted pedophile's private jet all over the world. Her motion for

[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.

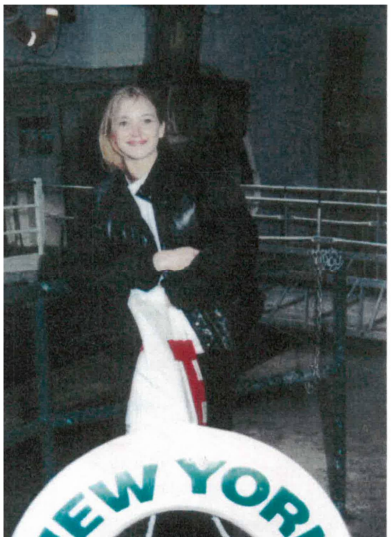
2. The Photographs

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]

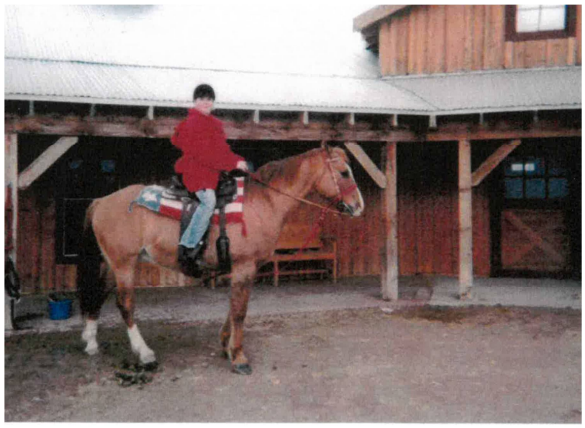


Ms. Giuffre also produced pictures of herself taken when she was in New York with Defendant and Epstein, and from a trip to Europe with Defendant and Epstein:[21]

[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."

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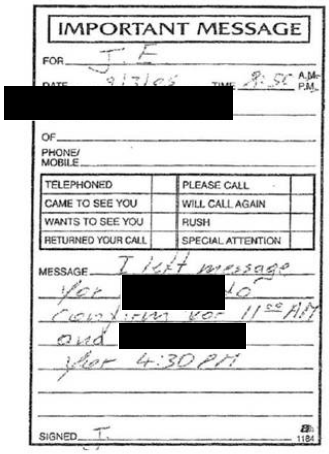
[26] *See* McCawley Dec. at Exhibit 38, Lightfoot Records, GIUFFRE005437.
[27] *See* McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 45:13-25; 97:9-98:8.
[28] *See* McCawley Dec. at Exhibit 13, Recarey Dep. Tr. at 25:12-21; 40:5-15; 41:16-23; 42:14-43:10; 45:13-25; *see also* search warrant video showing 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 J.E

[redacted]

OF

PHONE/ MOBILE

TELEPHONED		PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE I left message for [redacted] to confirm for 11:00 AM and [redacted] for 4:30 PM

SIGNED I.

GIUFFRE001412 (SAO01092)


IMPORTANT MESSAGE

FOR JE

DATE [redacted] TIME 2:15 A.M. P.M.

M [redacted]

OF

PHONE 963 8470 (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 WANTS TO KNOW IF SHE SHOULD BRING HER FRIEND [redacted] WITH TONIGHT

SAO01456

SIGNED

GIUFFRE001427 (SAO01456)


IMPORTANT MESSAGE

FOR Jeff. ey

DATE 2/28/05 TIME 12:32 A.M. P.M.

M [redacted]

OF

PHONE/ MOBILE

TELEPHONED		PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE She is 15 on driving if 2:30 is ok she needs to stay in school

GIUFFRE001388 (SAO01067)


IMPORTANT MESSAGE
FOR MR EPSTEIN
DATE 7/19/04 TIME 7:50 A.M. P.M.
M [redacted]
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 8/20/05 TIME 8:50 A.M. P.M.
M [redacted]
OF
PHONE/ MOBILE
TELEPHONED X | 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? I believe [redacted] wants to work.
SIGNED J

GIUFFRE001448 (SAO01476)


IMPORTANT MESSAGE
FOR Jeffrey
DATE [redacted] TIME 5:11 A.M. P.M.
M [redacted]
OF
PHONE/ MOBILE [redacted]
TELEPHONED X | PLEASE CALL
CAME TO SEE YOU | WILL CALL AGAIN
WANTS TO SEE YOU | RUSH
RETURNED YOUR CALL | SPECIAL ATTENTION
MESSAGE has girl for tonight
SIGNED

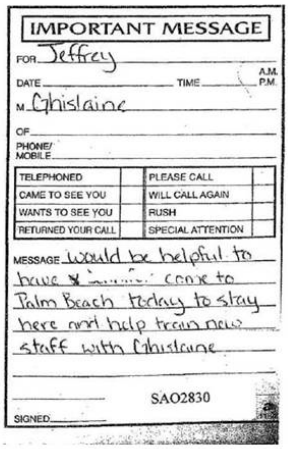
GIUFFRE001452 (SAO02828)


IMPORTANT MESSAGE
FOR JE
DATE TIME 5:14 A.M. P.M.
M Jean 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 just did a good one - 18 years - (She spoke to me & said "I love Jeffrey")
SIGNED

GIUFFRE001456 (SAO2832)


IMPORTANT MESSAGE
FOR Jeffrey
DATE 4/1/05 TIME 8:08 A.M. P.M.
M Jean-Luc
OF
PHONE/ MOBILE [redacted]
TELEPHONED X | 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
SIGNED

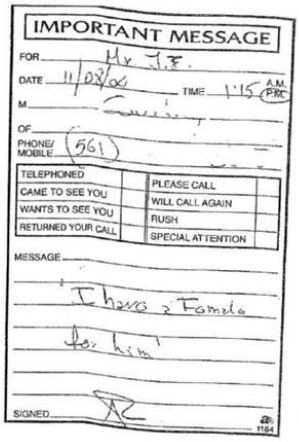
GIUFFRE001563 (SAO3008)


IMPORTANT MESSAGE
FOR Jeffrey
DATE TIME A.M. P.M.
M Ghislaine
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 Ghislaine
SAO2830
SIGNED

GIUFFRE001454 (SAO02830)


IMPORTANT MESSAGE
FOR J E
DATE 1/22/05 TIME 5:10 A.M. P.M.
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 a female for him'
SAO01455
SIGNED R

GIUFFRE001426 (SAO01455)


IMPORTANT MESSAGE
FOR Mr J.E.
DATE 11/03/04 TIME 1:15 A.M. P.M.
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 a Female for him'
SIGNED R

GIUFFRE001423 (SAO01452)

The following are descriptions of a sampling of messages pads[30] 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 _____ 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 ___ 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

massages 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 form 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] – 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.