amazon.com.

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1850 Mercer Rd.
Lexington, KY 40511

Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

Billing Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

Shipping Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

rbrd57708/-3-/next/2436223 SORTExtFastTrack

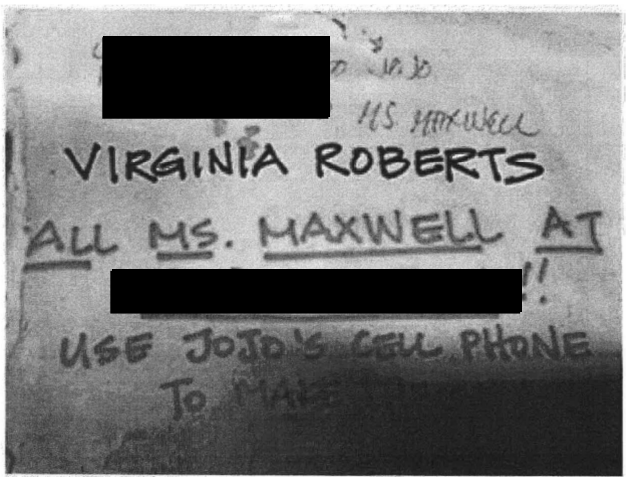
Your order of September 4, 2005 (Order ID 103-1737820-4508648)

Qty.	Item	Item Price	Total
	IN THIS SHIPMENT		
1	SM 101: A Realistic Introduction Wiseman, Jay ---- Paperback (** C-2 **) 0963976389	$16.47	$16.47
1	SlaveCraft: Roadmaps for Erotic Servitude---Principles, Skills and Tools Baldwin, Guy ---- Paperback (** C-2 **) 1881943143	$15.95	$15.95
1	Training With Miss Abernathy: A Workbook for Erotic Slaves and Their Owners Abernathy, Christina ---- Paperback (** C-2 **) 1890159077	$11.95	$11.95

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. <u>Thailand Folder with Defendant's Phone Number</u>

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. <u>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</u>.

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 went shopping and purchased makeup, clothing, and a Burberry bag. The items were purchased with GIUFFRE and returned instructed GIUFFRE to get ready. When GIUFFRE came down after getting ready, she was introduced to

GIUFFRE traveled to CLUB TRAMP GIUFFRE danced at CLUB TRAMP

stayed at CLUB TRAMP for an hour or hour and a half and drank a couple of cocktails before returning to GIUFFRE had not received any direction from After returning to GIUFFRE requested to take a photograph of her GIUFFRE advised that she still had the original photograph in her possession and would provide it to the interviewing agents. GIUFFRE proceeded with

Approximately two months later, GIUFFRE met at

GIUFFRE recalled LNU,

GIUFFRE recalled 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 of 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.3sd 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 reasonable 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. <u>The Barden Declaration presents disputed issues of fact</u>.

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. <u>The Barden Declaration is a deceptive back-door attempt to inject Barden's advice without providing discovery of all attorney communications.</u>

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. Bardent'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 th[e] 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 it 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]

45

- *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. Margrabe*, 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 it's 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 its 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 $ 17,875[49] 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,

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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.

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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.
_____/

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.

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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