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January 30, 2020

VIA ECF AND FACSIMILE

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

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

Dear Judge Preska:

Plaintiff Virginia Giuffre writes to update the court on the progress of the parties' discussions regarding the unsealing protocol to be administered by the Court. The parties are in agreement as to the majority of the protocol's provisions, including the form Nonparty Notice, but have come to an impasse on a few key issues. The disagreements are reflected in Plaintiff's proposed protocol (Ex. A) and the attached redline comparing Plaintiff's proposed protocol with Defendant's proposed protocol (Ex. B).

I. List of Decided Motions

First, the opening paragraph of Defendant's proposed protocol states that this Court "approved" Defendant's list of decided motions (Dkt. 1007-1) as the list of motions to guide the unsealing process. That is not true. According to the transcript of the status conference before the Court on January 16, 2020, the Court directed the parties to use the *format* of Defendant's list of decided motions, but it did not "approve" the contents of Defendant's list. In fact, the Court's words were: "the reason I like this listing is because it lists the motion, the date it was filed, the related conference documents, the docket number of the order resolving the motion, and the date of the resolution and whether it is sealed or redacted. So, I would like to work off of this form if we could." Dkt. 1021 at 10:22–11:6.

Plaintiff objects to using Defendant's list of decided motions because it excludes two motions that Judge Sweet decided from the bench. Those motions are: (1) Plaintiff's Motion to Compel Ghislaine Maxwell to Produce Data from Undisclosed Email Account and For an Adverse Inference Instruction, Dkt. 468, and (2) Defendant's Motion in Limine to Exclude In Toto Certain Deposition Designated by Plaintiff for Use at Trial, Dkt. 567. As Plaintiff explained in her November 12, 2019 letter to the Court, Dkt. 1006, Judge Sweet held a hearing on the Motion to Compel, Dkt. 468, on November 10, 2016, and made a ruling with respect to that motion at page 40 of the transcript of that hearing. And Judge Sweet indicated that the Motion in Limine, Dkt. 567, was partially resolved in an April 5, 2017 minute entry and at the April 5, 2017, hearing on that motion. Dkt. 903.

Defendant continues to refuse to include those two motions on her list of decided motions clearly because these filings contain an abundance of critical information relating to the issues in this case that Defendant does not want made public. Plaintiff has prepared a list that includes *all* of the decided motions, including those two motions. Plaintiffs is prepared to file that list with the Court, but Defendant is currently reviewing it to determine whether she objects to it being filed on the public docket. Once Defendant reviews the list, Plaintiff will file it with the Court.

In addition to including the columns that the Court found useful at the status conference, in order to lessen the Court's review burden, Plaintiff went through the documents to determine if any of the sealed exhibits had been unsealed by the Second Circuit. Accordingly, the list of decided motions that Plaintiff intends to file also includes a column indicating whether any portion of the respective document has already been released by the Second Circuit in *Brown v. Maxwell*, 18-2868.[1] Plaintiff proposes that the Court use her list to guide the unsealing process.

II. Judicial Documents

As the redline comparing Plaintiff's proposed protocol and Defendant's proposed protocol reflects, the opening paragraph of Defendant's protocol says that "the Court will conduct an individualized review of each Sealed Item in the List of Decided Motions to determine (1) whether it is a judicial document [and] (2) if it is not a judicial document, whether it should remained sealed/redacted . . ." But Defendant is asking the Court to repeat work that it has already done—the Court already determined that decided motions are judicial documents and that a presumption of public access applies to each one. The Court's December 16, 2019, Order specifically said: "The Court concludes that only motions actually decided by Judge Sweet—along with documents relevant to Judge Sweet's decisions on those motions—are properly considered judicial documents to which a presumption of public access attaches." Dkt. 1016. Plaintiff therefore contends that the first step of the *Brown* procedure is complete as to the decided motions, and that the Court need only determine whether countervailing interests exist and whether those countervailing interests outweigh the presumption of public access that applies to the decided motions. Asking the parties to brief and the Court to decide this issue once again will unduly delay the unsealing process.

III. List of Nonparties

The parties have also largely agreed to the list of nonparties to be notified when his or her name appears in a document that could be unsealed. Specifically, the parties agreed to exclude four categories of nonparties from the list: (1) reporters, authors and/or other literary professionals; (2) police and/or other investigators of Epstein; (3) attorneys; and (4) medical professionals.[2]

Plaintiff contends that Epstein's house staff and other employees should not be entitled to notice because their names and associations with Epstein are public and well-known. For example, many of those employees' names appear in Plaintiff's Rule 26 Disclosures, which were filed publicly on the docket in unredacted form. Dkts. 69-2, 69-3. In addition, many of Epstein's employees have given depositions (in this matter and other related matters) that are publicly

[1] This column does not address whether deposition testimony included in or attached to the motion has been released. As discussed at the January 16, 2020, status conference, that project will take more time to complete.
[2] Plaintiff intends to submit a list of these nonparties that the parties have agreed to exclude from the list to the Court under seal.

available on the docket or on the internet. *See, e.g.*, *Brown v. Maxwell*, 18-2868 (2d Cir.), Dkt. 283, Exs. 1, 15, 18, 19, 20, 21. Further, none of the employees that Plaintiff seeks to exclude from the nonparty list were victims of Epstein's sexual abuse and have not been accused of participating in that abuse.

Pursuant to the instructions the Court provided on November 13, 2019, "any nonparties discussed in materials that have already been unsealed in this litigation" and "nonparties discussed in otherwise unsealed materials that are included in sealed filings" do not need to be included on the list of nonparties to be noticed during the unsealing process. Dkt. 1009. Plaintiff sees no reason that the Court should be burdened with separately notifying nonparties (1) whose names have already been widely publicized and reported on, (2) who are not victims of Epstein's sexual abuse, and (3) who have not been accused of participating in that abuse. Yet Defendant continues to maintain that individuals falling into that category should be notified each time their name appears in a document that could potentially be unsealed and allowed to raise an objection. Defendant's position is simply an attempt to delay and complicate the unsealing process to ensure that no further misconduct becomes available to the public. Plaintiff is attempting to create efficiencies and streamline this process. Plaintiff therefore requests that the Court use Plaintiff's list of nonparties to guide this process, attached as Exhibit C to this letter.

IV. Other Edits to Promote Efficiency

Plaintiff has made a number of other edits to the protocol intended to minimize the burden on the Court. First, Plaintiff has included a definition of "best efforts" in Paragraph 2(b), which describes the method by which the parties must serve nonparties in order to avoid future disputes about whether a party has made a sufficient attempt to serve a nonparty. Second, in an effort to speed up the process, Plaintiff has edited the protocol to allow for a reply in support of an objection only if the Court would find such a reply helpful. In that case, the Court would order the objector to file such a reply. *See* Ex. B ¶ 2(d)-(f). Finally, Plaintiff sees no reason to provide all noticed nonparties with the ability to request an evidentiary hearing. *See* Ex. B ¶ 2(h). The weighing of any countervailing interests against the presumption of public access is a legal issue for the Court, and written submissions would be sufficient. If the Court reviews a nonparty objection and determines that a factual dispute exists that prevents the Court from making a ruling, it can order the parties and relevant nonparties to appear for an evidentiary hearing to resolve the issue.

Sincerely,

/s/ Sigrid S. McCawley

Sigrid S. McCawley, Esq.

cc: Counsel of Record (via ECF)