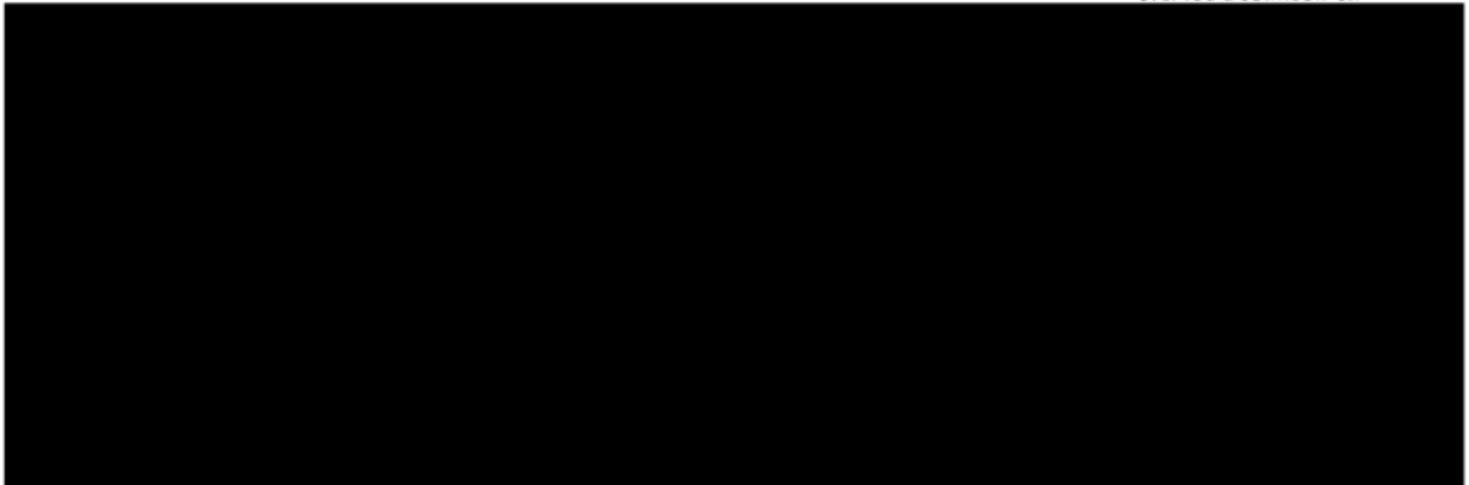


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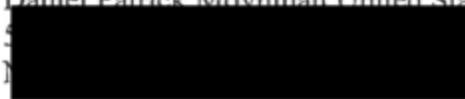
NAME: Michael C. Miller



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July 14, 2017

Hon. John G. Koeltl  
United States District Court, Southern District of New York  
Daniel Patrick Moynihan United States Courthouse



RE: *Jane Doe 43 v. Epstein, et al.*, No. 17 Civ. 616 (JGK)

Dear Judge Koeltl:

I am writing to advise that we inadvertently sent you via facsimile a draft version of a letter we prepared for your consideration, and not the final version. We write to request that the Court please disregard the draft letter. We submit herewith the final version of our letter for the Court's consideration.

Respectfully submitted,



Michael C. Miller

CC: All counsel of record (via e-mail)

**SUBMITTED UNDER SEAL**

July 14, 2017

Hon. John G. Koeltl  
United States District Court, Southern District of New York  
Daniel Patrick Moynihan United States Courthouse

RE: *Jane Doe 43 v. Epstein, et al.*, No. 17 Civ. 616 (JGK)

Dear Judge Koeltl:

We represent defendants Jeffrey Epstein and [REDACTED] (“Defendants”) in the above-referenced lawsuit (“Action”). The Defendants intend to move to dismiss the Action based on, *inter alia*, the failure of Jane Doe 43 (“Plaintiff”) to establish personal jurisdiction over the Defendants (“Motion to Dismiss”). The Plaintiff provided deposition testimony and produced documents in another proceeding (“Plaintiff’s Evidence”) which we believe would be dispositive of the personal jurisdiction issue in the Motion to Dismiss. The Plaintiff’s Evidence is subject to a protective order in the other proceeding. Defendants write this letter, first, to seek the Court’s permission to file a motion requesting relief from the protective order or other similar relief (“Motion for Relief”), and, second, to request a stay of the briefing schedule on the Motion to Dismiss if the Court agrees to consider the Motion for Relief.

By way of additional background information, shortly after Plaintiff initiated the Action, she was deposed in another matter pending in this District, [REDACTED] v. *Maxwell*, No. 15 Civ. 7433 (RWS) (the “[REDACTED] action”). During that deposition, Plaintiff gave sworn testimony and produced documents, i.e., the Plaintiff’s Evidence. Mr. Epstein, through his counsel, as a non-party witness in the [REDACTED] action, was provided with a copy of the Plaintiff’s Evidence. These materials were marked “Confidential” pursuant to the Protective Order in that case.<sup>1</sup> Under the terms of the Protective Order, “Confidential” documents “shall not be disclosed or used for any purpose except the preparation and trial of this case.” Exhibit A at ¶ 4. Further, any documents marked “Confidential” must be returned or destroyed at the conclusion of the case. *Id.* at ¶ 12.

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<sup>1</sup> A copy of the Protective Order is attached hereto as Exhibit A. Out of respect for the provisions of the Protective Order, we are submitting this letter to the Court under seal.

The [REDACTED] action was voluntarily dismissed on May 25, 2017. No. 15 Civ. 7433, docket no. 919. To avoid risk of spoliation in the Action, Mr. Epstein has not yet returned or destroyed the Plaintiff's Evidence pending guidance from this Court.

We respectfully submit that the Plaintiff's Evidence provides grounds for this Court to dispose of the Action entirely, *inter alia*, under Rule 12(b)(2) for lack of personal jurisdiction. Because the Defendants have no present connection to New York upon which to confer personal jurisdiction, personal jurisdiction over the Defendants would have to be based on tortious conduct allegedly committed in New York. CPLR 302(a)(2). We respectfully submit that the Plaintiff's Evidence is dispositive on the question of whether tortious conduct occurred during the limitations period upon which Plaintiff can base personal jurisdiction, either under a four or ten year limitations period.<sup>2</sup>

We now seek guidance so that the Court may consider these documents in support of Defendants' Motion to Dismiss. *See Pearson Educ., Inc. v. Kumar*, 721 F. Supp. 2d 166, 182 (S.D.N.Y. 2010) (a court may consider documents outside of the complaint on a motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2), as the motion "is inherently a matter requiring the resolution of factual issues outside of the pleadings.") (citation omitted). We respectfully submit that the Court's consideration of these documents would conserve judicial resources and promote the interests of judicial economy, as they allow the Court to dispose of the case at the motion to dismiss stage.

With the Court's leave, the Defendants will move this Court for relief from the Protective Order in the [REDACTED] action, or for such other relief that permits the Court to consider the above-mentioned documents in connection with the Motion to Dismiss. We also respectfully request that Defendants be permitted to use Plaintiff's Evidence in support of the Motion for Relief to demonstrate to the Court how Plaintiff's Evidence provides grounds for the Court to dismiss the case in its entirety. We have attempted to meet and confer with Plaintiff's counsel in good faith on this issue; they have not agreed to the relief we seek.

Finally, if the Court permits the Defendants to file a Motion for Relief, we ask that the Court stay the current briefing schedule for the Motion to Dismiss pending resolution of the Motion for Relief. Defendants do not seek to delay the present case and are prepared to file their Motion to Dismiss within seven days of the resolution of this issue.

\* \* \* \*

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<sup>2</sup> Defendants believe that the correct statute of limitations period is four years.

Hon. John G. Koeltl  
July 14, 2017  
Page 3 of 3

We are available for a conference at the Court's convenience to discuss this issue further, or to submit the documents for *in camera* review.

Respectfully submitted,



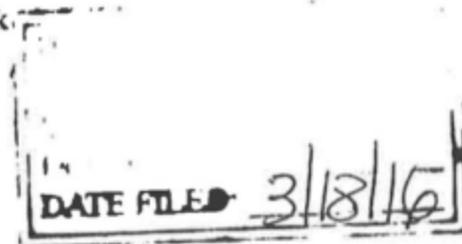
Michael C. Miller

CC: All counsel of record (via e-mail)

# **EXHIBIT A**

United States District Court  
Southern District Of New York

-----X  
[REDACTED]  
Plaintiff,  
  
v.  
  
Ghislain Maxwell,  
  
Defendant.  
-----X



15-cv-07433-RWS

**PROTECTIVE ORDER**

Upon a showing of good cause in support of the entry of a protective order to protect the discovery and dissemination of confidential information or information which will improperly annoy, embarrass, or oppress any party, witness, or person providing discovery in this case, **IT IS ORDERED:**

1. This Protective Order shall apply to all documents, materials, and information, including without limitation, documents produced, answers to interrogatories, responses to requests for admission, deposition testimony, and other information disclosed pursuant to the disclosure or discovery duties created by the Federal Rules of Civil Procedure.
2. As used in this Protective Order, "document" is defined as provided in FED.R.CIV.P. 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

3. Information designated "CONFIDENTIAL" shall be information that is confidential and implicates common law and statutory privacy interests of (a) plaintiff [REDACTED] and (b) defendant Ghislaine Maxwell.
4. CONFIDENTIAL information shall not be disclosed or used for any purpose except the preparation and trial of this case.
5. CONFIDENTIAL documents, materials, and/or information (collectively "CONFIDENTIAL INFORMATION") shall not, without the consent of the party producing it or further Order of the Court, be disclosed *except that* such information may be disclosed to:
  - a. attorneys actively working on this case;
  - b. persons regularly employed or associated with the attorneys actively working on this case whose assistance is required by said attorneys in the preparation for trial, at trial, or at other proceedings in this case;
  - c. the parties;
  - d. expert witnesses and consultants retained in connection with this proceeding, to the extent such disclosure is necessary for preparation, trial or other proceedings in this case;
  - e. the Court and its employees ("Court Personnel") in this case;
  - f. stenographic reporters who are engaged in proceedings necessarily incident to the conduct of this action;
  - g. deponents, witnesses, or potential witnesses; and

- h. other persons by written agreement of the parties.
6. Prior to disclosing any CONFIDENTIAL INFORMATION to any person listed above (other than counsel, persons employed by counsel, Court Personnel and stenographic reporters), counsel shall provide such person with a copy of this Protective Order and obtain from such person a written acknowledgment stating that he or she has read this Protective Order and agrees to be bound by its provisions. All such acknowledgments shall be retained by counsel and shall be subject to *in camera* review by the Court if good cause for review is demonstrated by opposing counsel.
  7. Documents are designated as CONFIDENTIAL by placing or affixing on them (in a manner that will not interfere with their legibility) the following or other appropriate notice: "CONFIDENTIAL." Discovery material designated CONFIDENTIAL shall be identified by Bates number. To the extent practical, the respective legend shall be placed near the Bates number.
  8. Designation of a document as CONFIDENTIAL INFORMATION shall constitute a representation that such document has been reviewed by an attorney for the designating party, that there is a valid and good faith basis for such designation, made at the time of disclosure or production to the receiving party, and that disclosure of such information to persons other than those permitted access to such material would cause a privacy harm to the designating party.

9. Whenever a deposition involves the disclosure of CONFIDENTIAL INFORMATION, the deposition or portions thereof shall be designated as CONFIDENTIAL and shall be subject to the provisions of this Protective Order. Such designation shall be made on the record during the deposition whenever possible, but a party may designate portions of depositions as CONFIDENTIAL after transcription, provided written notice of the designation is promptly given to all counsel of record within thirty (30) days after notice by the court reporter of the completion of the transcript, and until the expiration of such thirty (30) days after notice by the court reporter of the completion of the transcript, no party or counsel for any such party may share the contents of the deposition outside the limitations of this Protective Order.
10. Whenever a party seeks to file any document or material containing CONFIDENTIAL INFORMATION with the Court in this matter, it shall be accompanied by a Motion to Seal pursuant to Section 6.2 of the Electronic Case Filing Rules & Instructions for the Southern District of New York.
11. A party may object to the designation of particular CONFIDENTIAL INFORMATION by giving written notice to the party designating the disputed information. The written notice shall identify the information to which the objection is made. If the parties cannot resolve the objection within ten (10) business days after the time the notice is received, it shall be the obligation of the party designating the information as CONFIDENTIAL to file an

appropriate motion requesting that the Court determine whether the disputed information should be subject to the terms of this Protective Order. If such a motion is timely filed, the disputed information shall be treated as CONFIDENTIAL under the terms of this Protective Order until the Court rules on the motion. If the designating party fails to file such a motion within the prescribed time, the disputed information shall lose its designation as CONFIDENTIAL and shall not thereafter be treated as CONFIDENTIAL in accordance with this Protective Order. In connection with a motion filed under this provision, the party designating the information as CONFIDENTIAL shall bear the burden of establishing that good cause exists for the disputed information to be treated as CONFIDENTIAL.

12. At the conclusion of this case, unless other arrangements are agreed upon, each document and all copies thereof which have been designated as CONFIDENTIAL shall be returned to the party that designated it CONFIDENTIAL, or the parties may elect to destroy CONFIDENTIAL documents. Where the parties agree to destroy CONFIDENTIAL documents, the destroying party shall provide all parties with an affidavit confirming the destruction.
13. This Protective Order shall have no force and effect on the use of any CONFIDENTIAL INFORMATION at trial in this matter.

14. This Protective Order may be modified by the Court at any time for good cause shown following notice to all parties and an opportunity for them to be heard.

BY THE COURT

  
UNITED STATES DISTRICT JUDGE

3-17-16