

**United States District Court
Southern District of New York**

██████████,

Plaintiff,

Case No.: 15-cv-07433-RWS

v.

Ghislaine Maxwell,

Defendant

JOINT PRETRIAL STATEMENT

Pursuant to this Court's individual practice rules, the parties hereby submit the following Joint Pretrial Statement as follows:

i. Full Caption of the Action

██████████, Plaintiff v. Ghislaine Maxwell, Defendant, Case No.: 15-cv-07433-RWS.

ii. The Names and Addresses and Telephone and Fax Numbers of Trial Counsel:

Plaintiff's Trial Counsel:

David Boies: Boies Schiller & Flexner
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██████████

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Fax: ██████████
██████████

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Ft. Lauderdale, FL 33301
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[REDACTED]

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Salt Lake City, UT 84112
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Fax: [REDACTED]
[REDACTED]

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Tel: [REDACTED]
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[REDACTED]

J. Stan Pottinger: 49 Twin Lakes Road
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Tel: [REDACTED]
[REDACTED]

Defendant's Trial Counsel:

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[REDACTED]

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Denver, CO 80203
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[REDACTED]

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Fax: [REDACTED]
[REDACTED]

iii. A brief statement by each party as to the basis of subject matter jurisdiction and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such a statement shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.

Plaintiff's Statement:

Subject matter jurisdiction in this case is based on diversity jurisdiction which is determined as of the date of the filing of the complaint. See 28 U.S. Code § 1332(a); see also LeBlanc v. Cleveland, 248 F.3d 95, 100 (2d Cir. 2001). The complaint was filed on September 21, 2015 at which time Plaintiff [REDACTED] was living in Colorado and Defendant Ghislaine Maxwell was living in New York. Plaintiff [REDACTED] is a United States Citizen. Plaintiff is seeking damages in excess of \$75,000.00.

Defendant's Statement:

Ms. Maxwell agrees with the Plaintiff's statement, above.

iv. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.

Plaintiff's Statement:

Plaintiff has filed a single count defamation claim based on New York law. The elements of the defamation claim as set forth in this Court's February 27, 2016 Order are as follows:

“Under New York law, written defamation constituting actionable libel requires Plaintiff to prove: (1) a written defamatory statement of fact concerning the plaintiff; (2) publication to a third party; (3) fault, either negligence or actual malice, depending on the plaintiff’s status; (4) falsity; (5) special damages or per se libel.” February 27, 2016 Order at 6. See also *McNamee v. Clemens*, 762 F. Supp. 2d 584 (E.D. N.Y. 2011); *Dillon v. City of New York*, 261 A.D.2d 34 (1999).

Ms. ██████ alleged that Defendant was involved with a man named Jeffrey Epstein in the recruitment of girls, including minors, for the purpose of sexual abuse. Plaintiff claims she was a minor when she was recruited by Defendant over to Jeffrey Epstein's house. Plaintiff further alleged that Defendant and Epstein commonly lured females to Jeffrey Epstein by telling them they would be paid for giving a massage to Epstein; however, once at Epstein's house Plaintiff claims the Defendant and Epstein would pay the females, including Plaintiff for sex. Plaintiff claims that she was required by Defendant to recruit other females into this sex abuse organization. She claims that she was sex trafficked nationally and internationally as a minor by Defendant and Epstein for sexual purposes. She also claims that Defendant was Epstein’s “madame” and responsible for recruiting girls and young women into sex trafficking for Epstein.

After Plaintiff’s allegations appeared in a motion filed by her lawyers in a separate case in Florida, Defendant issued the following press release which was widely published: The basis for Ms. ██████ defamation claim is a January 2, 2016 press statement issued by Defendant to the international press as follows:

“Jane Doe 3 is ██████ – so not a new individual. The allegations made by ██████ against Ghislaine Maxwell are untrue. The original allegations are not new and have been fully responded to and shown to be untrue.”

“Each time the story is re-told it changes with new salacious details about public figures and world leaders and now it is alleged by Ms. ██████ that Alan Dershowitz is involved and having sexual relations with her, which he denies.”

“Ms. ██████ claims are obvious lies and should be treated as such and not publicized as news, as they are defamatory.”

“Ghislaine Maxwell’s original response to the lies and defamatory claims remains the same. Maxwell strongly denies allegations of an unsavory nature, which have appeared in the British press and elsewhere and reserves her right to seek redress at the repetition of such old defamatory claims.” GM 00068.

Plaintiff’s Complaint also seeks damages for the slanderous statement Ms. Maxwell made on January 4, 2015.

“Sexual abuse is a clear-cut issue; either transgressions occurred or it did not. Either Maxwell was involved or she was not....**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 recruitment or trafficking and ultimate abuse of Plaintiff .”**
February 27, 2016 Order.

Plaintiff claims she was being truthful when she described being recruited for sexual purpose and Defendant’s involvement in the sex trafficking organization that recruited Plaintiff and others. Consequently, Plaintiff has sued Defendant for defamation, claiming that Defendant defamed her when she publicly denied involvement and declared that Plaintiff was lying about being used for sex and about Defendant’s involvement.

Defendant’s Statement:

Ms. Maxwell’s defense to plaintiff’s single defamation claim is a general denial and numerous affirmative defenses.

Plaintiff must prove: (1) a written defamatory statement of fact concerning the plaintiff; (2) publication to a third party; (3) actual malice; (4) falsity; (5) and per se libel.

Plaintiff cannot prove these elements. The basic reason she cannot prove these elements is because she has told her story of sexual abuse numerous times, and she has been unable to settle on any one version. Notably, she has been unable to keep straight the most salacious allegations. Prince Andrew is an example. Disclosing her story publicly for the first time in March 2011 in an “exclusive” relationship with reporter Sharon Churcher, plaintiff had every incentive and opportunity to tell her entire story honestly and completely. She told Churcher she

did not have sex with Prince Andrew. Less than four years later, after engaging a lawyer, plaintiff alleged she was “forced” to have sex with Prince Andrew. And not only that, she was “forced” to have sex with him in three different locations around the world. This is one of many examples of plaintiff’s habit of manufacturing allegations as the need arises. By the time of Ms. Maxwell’s January 2015 denial of plaintiff’s allegations, plaintiff had become a person quite literally incapable of being believed as to any of her lurid and salacious allegations concerning her alleged sex abuse.

In March 2011, plaintiff made numerous allegations in news articles about her alleged experience in a sex-abuse and -trafficking scheme allegedly created by Epstein in which Ms. Maxwell played a significant role. Shortly afterward, Ms. Maxwell issued a strenuous denial of the 2011 allegations and emphatically asserted they were “false”; plaintiff responded with silence. In December 2015 plaintiff publicly filed in an unrelated lawsuit (by alleged Epstein victims against the United States government), i.e., “the CVRA action,” a motion that contained numerous lurid and salacious allegations against Ms. Maxwell. The federal judge in that lawsuit ruled that the lurid and salacious allegations were unnecessary and, as a sanction, struck the allegations. As plaintiff expected and intended, the media obtained copies of the motion. At issue is a January 2, 2015, statement prepared by Ms. Maxwell’s British solicitor Philip Barden. Mr. Barden sent the statement to Ms. Maxwell for approval and, following approval, caused Mr. Gow to send (via email) the statement to six to thirty members of the media who had requested from Mr. Gow on behalf of Ms. Maxwell a response to plaintiff’s lurid and salacious allegations. The email containing the statement read:

To Whom It May Concern,

Please find attached a quotable statement on behalf of Ms. Maxwell. No further communication will be provided by her on this matter.

Thanks for your understanding.

Best

Ross

Ross Gow

ACUITY Reputation

Jane Doe 3 is ██████████—so not a new individual. The allegations made by ██████████ against Ghislaine Maxwell are untrue. The original allegations are not new and have been fully responded to and shown to be untrue.

Each time the story is re told [sic] it changes with new salacious details about public figures and world leaders and now it is alleged by Ms ██████████ [sic] that Alan Derschowitz [sic] is involved in having sexual relations with her, which he denies. Ms ██████████ claims are obvious lies and should be treated as such and not publicised as news, as they are defamatory.

Ghislaine Maxwell's original response to the lies and defamatory claims remains the same. Maxwell strongly denies allegations of an unsavoury nature, which have appeared in the British press and elsewhere and reserves her right to seek redress at the repetition of such old defamatory claims.

For purposes of the trial, this four-paragraph statement is notable in these ways: It (accurately) informed the six to thirty journalists that it was written by someone other than Ms. Maxwell. It said it would be the only statement made by or on behalf of Ms. Maxwell. While denying plaintiff's allegations, the statement made no effort to identify and deny any particular allegation by plaintiff against Ms. Maxwell. Throughout, the statement refers only generically to the falsity of the "allegations" and "claims"—plural, i.e., more than one of plaintiff's allegations are "untrue" and more than one of plaintiff's "claims" are "obvious lies." The statement distinguishes between two sets of allegations by plaintiff against Ms. Maxwell—the "original" allegations, i.e., from March 2011, and the "new" allegations made in the CVRA motion. As though written by a lawyer (because it was), the statement builds a logical case for disbelieving the new allegations: (a) the original allegations, i.e., more than one, have been "shown to be untrue"; (b) the new allegations are untrue because plaintiff's previous, "original" allegations

were shown to be untrue (e.g., plaintiff’s implicit admission through silence in response to Ms. Maxwell’s forceful denial of the 2011 allegations), because her new allegations have changed so dramatically that they often contradict her earlier allegations, and because her new allegations have the ring of untruthfulness, e.g., “new salacious details about public figures and world leaders” and “now” alleged sex with Harvard law professor Alan Dershowitz; and therefore (c) plaintiff’s “claims” are “obvious lies.” Having established plaintiff’s lack of credibility and the “obvious” falsity of plaintiff’s allegations, the statement, which as noted was sent to the media, included a threat to sue the media if they republished plaintiff’s obviously false allegations.

Plaintiff sued on this statement.¹ She alleges she was defamed because of three sentences: in the first paragraph, the sentence that her allegations against Ms. Maxwell are “untrue”; in the same paragraph, the sentence that her “original allegations . . . have been fully responded to and shown to be untrue”; and in the third paragraph, the sentence that plaintiff’s “claims are obvious lies.”

The central question at trial is whether plaintiff can prove by clear and convincing evidence that (a) the three sentences, placed in the context of the January 2015 statement, assert a false fact,² and (b) Ms. Maxwell caused a false and defamatory fact to be published to the journalists knowing it was false or with reckless disregard to whether it was false.

To prove the three sentences are false, plaintiff is required to prove by clear and convincing evidence every one of the “new” allegations against Ms. Maxwell are true, every one

¹ Plaintiff also alleged that on January 4, 2015, Ms. Maxwell slandered her when Ms. Maxwell responded to a reporter’s question shouted to her on a Manhattan street, “I am referring to the statement that we made.” Doc.1 ¶ 37. In the summary-judgment proceedings, plaintiff did not dispute—and thereby confessed—that this statement is not actionable. Accordingly, we assume this statement is not in issue at trial.

² *Blair v. Inside Ed. Prods.*, 7 F. Supp. 3d 348, 358 & n.6 (S.D.N.Y. 2014) (citing *DiBella v. Hopkins*, 403 F.3d 102, 111 (2d Cir. 2005)).

of “original allegations” are true, and every one of plaintiff’s “claims” are true. If plaintiff experiences a failure of proof of at least two of the “new” allegations, two of the “original” allegations, and two of the “claims,” she has failed to carry her burden of proving falsity.

Plaintiff quotes an excerpt from page 10 of this Court’s Fed. R. Civ. P. 12(b)(6) Order in support of its statement of its claim. There are three problems. One, plaintiff misquotes the Order. Two, plaintiff’s use of the excerpt is highly misleading. The passage is from the Court’s 12(b)(6) determination as a matter of law.³ Since the Court was writing about a question of law, it is highly misleading to (a) omit the Court’s reference to the fact that it was writing about a question of law, and (b) suggest that the passage was relevant to plaintiff’s case in chief. Three, to the extent plaintiff is suggesting that the Court’s 12(b)(6) ruling is dispositive of the affirmative defense of opinion, she is wrong. We discussed the inapplicability of the Court’s ruling on opinion in Argument II of our Memorandum of Law in Support of Ms. Maxwell’s Motion for Summary Judgment and our Reply Brief in Support of the Motion for Summary Judgment. On the Rule 56 record and, we anticipate, on the trial record, we submit that in the context of the January 2015 statement the three sentences constitute constitutionally protected, nonactionable opinion.

In the unlikely event plaintiff can prove each and every new and original allegation and every claim is true, plaintiff must prove by clear and convincing evidence Ms. Maxwell’s actual malice. It is axiomatic that plaintiff’s clear and convincing proof of the truth of all her allegations and claims—in the unlikely event she can do this—is substantially different from proving with

³ *Enigma Software Grp. USA, LLC v. Bleeping Computer LLC*, 194 F. Supp. 3d 263, 2016 WL 3773394, at *11 (S.D.N.Y. July 8, 2016).

clear and convincing evidence Ms. Maxwell's "subjective mental state"⁴ that she knew every one of plaintiff's allegations and claims were false or recklessly disregarded whether they were false. Put another way, if the evidence shows that when the January 2015 statement issued Ms. Maxwell in good █████ believed two of plaintiff's new allegations were false, two of the original allegations were false, and/or two of plaintiff's claims were "obvious lies," the defamation claim fails.

Affirmative defenses:

Statute of limitations. To the extent plaintiff alleges defamation relating to Ms. Maxwell's March 2011 statement, the claim is time-barred under N.Y. C.P.L.R. § 215(3).

Single publication rule. To the extent plaintiff alleges defamation relating to Ms. Maxwell's March 2011 statement, the claim is barred under this rule, since all publications of the statement merged into the single publication in March 2011.

Constitutionally protected opinion. The United States Constitution and the New York Constitution renders opinion nonactionable.

United Kingdom's Defamation Act of 2013. Mr. Barden prepared the January 2015 statement in compliance with the Defamation Act. To the extent the Act applies in this action, it precludes liability. See Defamation Act §§ 1-4, 8.

Self-defense privilege. A person's communications responding to written and verbal attacks are immunized by a qualified privilege. This law is set forth in Doc.15 at 8-10. Ms. Maxwell's is immunized by this privilege in connection with the allegedly defamatory statements.

⁴ *Dalbec v. Gentleman's Companion, Inc.*, 828 F.2d 921, 927 (2d Cir. 1987).

Qualified privileges. Ms. Maxwell's January 2015 statement is immunized by the following qualified privileges: litigation; pre-litigation; common interest; fair comment; self-defense; absence of malice; consent; opinion and rhetorical hyperbole; innocent construction.

Actual malice. Plaintiff cannot prove actual malice.

Substantial truth. Ms. Maxwell is not liable because the January 2015 statement was substantially true.

Lack of reputational damage. The January 2015 statement did not cause or contribute to harm to plaintiff's reputation.

Failure to mitigate. Plaintiff failed to mitigate her claimed damages.

No causation. Plaintiff's damages, if any, were caused by intervening causes, her own preexisting medical and mental conditions, and/or causes without the knowledge or participation of Ms. Maxwell and for which Ms. Maxwell is not responsible.

Assumption of risk. When plaintiff gratuitously made false, lurid, salacious and outrageous allegations against Ms. Maxwell, she assumed the risk Ms. Maxwell would respond proportionally.

v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.

Plaintiff Statement: Plaintiff has requested a jury trial and anticipates the trial will take 4 weeks.

Defendant's Statement: Defendant has requested a jury trial. Defendant has requested ½ of the allotted trial time during which to introduce her witnesses and evidence. Accordingly, Defendant anticipates that her case will begin on May 31, 2017, and her fact and expert witnesses (including those traveling from out-of-state and internationally for purposes of the trial) will be testifying beginning at that time.

vi. A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not consented).

Joint Statement: N/A

vii. Any stipulations or agreed statement of fact or law which have been agreed to by all parties.

Joint Statement: There are not stipulations or agreements.

viii. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witness will testify in person or by deposition:

Plaintiff's Statement:

1. Daniel Wilson (live)
2. [REDACTED] (video)
3. [REDACTED] (live)
4. Rinaldo Rizzo (live)
5. Tony Figueroa (video)
6. [REDACTED]
7. [REDACTED] (live)
8. [REDACTED] (video)
9. [REDACTED] (video)
10. [REDACTED] (video)
11. [REDACTED] (voice recording)
12. Jean Luc Brunel (live)
13. Jeffrey Epstein (video)
14. [REDACTED] (live)
15. Alfredo Rodriquez (video)
16. Dave Rogers (video)

17. [REDACTED] (live)
18. Michael Austrich (video)
19. Sky Roberts (video)
20. Juan Alessi (video)
21. Lynn Miller (video)
22. Ross Gow (video)
23. Brittany Henderson (live or depo)
24. Any party to this action
25. Any and all witnesses listed by Defendant
26. Any Records custodians necessary to authenticate business records under FRE 803(b)
27. Any witnesses necessary for impeachment or rebuttal
28. Dr. Kliman (expert)
29. Dr. Coonan (expert)
30. Jim Jansen (expert)
31. Chris Andersen (expert)
32. Bill Chandler (rebuttal expert)
33. Dianne Flores (expert)

Plaintiff reserves the right to supplement this list as necessary. Ms. [REDACTED] may offer additional testimony to impeach or rebut evidence offered.

Defendant's Statement:

Subject to: evidentiary rulings to be made by the Court; the disposition of motions pending before the Court; the pending deposition of [REDACTED], a witness recently disclosed by the Plaintiff, and any witnesses identified as a result of the disclosure and deposition of Ms. [REDACTED];

and the evidence presented by the Plaintiff in her case in chief, Ms. Maxwell may offer testimony from the following witnesses at trial:

1. Ghislaine Maxwell (live)
c/o Laura A. Menninger, Esq.
Haddon, Morgan & Foreman, P.C.
150 E. 10th Ave. Denver, CO 80203

2. Kathy [REDACTED] (live)

[REDACTED]

3. Miles [REDACTED] (live)

[REDACTED]

4. Philip Barden (live)
Devonshires Solicitors LLP
30 Finsbury Circus
London, United Kingdom EC2M 7DT
DX: 33856 Finsbury Square

5. Richard Barnett (live)

[REDACTED]
[REDACTED]

6. Custodian of Records (live)
The Mar-a-Lago Club, Inc.
725 Fifth Avenue
New York, NY 10022

7. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8. [REDACTED]
[REDACTED]
[REDACTED]

9. Dershowitz (live)
c/o Richard A. Simpson, Esq.
WILEY REIN, LLP
1776 K Street NW
Washington, D.C. 20006

10. Anthony DiVirgilio (live)
Investigative Resources, Inc.

[REDACTED]

[REDACTED]

12. [REDACTED] (live)

[REDACTED]

13. [REDACTED] (live)

[REDACTED]

14. Amanda Ellison (live)

[REDACTED]

[REDACTED]

16. Phillip W. Esplin, Ed.D. (live)

[REDACTED]

17. Anthony Figueroa (video)

18. Louis Freeh (live)

[REDACTED]

19. Ross Gow (video)

Acuity Representation

[REDACTED]
[REDACTED]

20. Brett Jaffe (live)

Alston & Bird, LLP, NY
90 Park Avenue
New York, NY 10016

21. Robert Hanson (live)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23. Brittany Henderson (video)

24. Peter Kent (live)

[REDACTED]
[REDACTED]
[REDACTED]

25. Guy Louthan (live)

26. Lynn Miller (video)

27. Frederick M. Miller, M.D. (live)

[REDACTED]
[REDACTED]

28. Dr. Steven Olson (video)

29. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

30. Joseph Recarey (video)

31. Sky Roberts (video)

32. David Rodgers (video)

33. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

34. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

35. Katie Vaughan-Edwards (live)
Orchard End
Fittleton

36. Vicky Ward(live)

37. Any Records Custodian necessary to authenticate business records, records of regularly conducted activity, or public records, or the absence of the same, under F.R.E. 803(b)

38. Any Witness necessary for impeachment or rebuttal

39. Any person identified by Plaintiff

Ms. Maxwell reserves the right supplement this list as necessary. Ms. Maxwell may offer additional testimony to impeach or rebut evidence offered by the Plaintiff in her case in chief.

ix. A designation by each part of deposition testimony to be offered in its case in chief with any cross designations and objections by any other party.

Joint Statement: The parties have submitted their designations and will be providing the Court, in advance of the February 23, 2017 hearing on designations, hard copies of the transcripts with the designations for each side highlighted along with highlighted counter-designations for ease of review.

x. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

Respectfully Submitted,

BOIES, SCHILLER & FLEXNER LLP

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([REDACTED]

Counsel for Plaintiff, [REDACTED]

By: /s/ Jeffrey S. Pagliuca
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Jeffrey Pagliuca, Esq.
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Tel: [REDACTED]
Counsel for Defendant, Ghislaine Maxwell

⁵ This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah for this private representation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of April, 2017, I served the attached document via CM/ECF and e-mail to the following counsel of record.

Laura A. Menninger, Esq.
Jeffrey Pagliuca, Esq.
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