UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE 43

Plaintiff,

v.

JEFFREY EPSTEIN, GHISLAINE MAXWELL, [redacted], LESLEY GROFF and [redacted]

Defendants.

No. 17 Civ. 00616 (JGK)

MEMORANDUM IN OPPOSITION TO LETTER MOTION TO OPPOSE ALTERNATIVE SERVICE ON MAXWELL

Plaintiff, Jane Doe 43, by and through the undersigned counsel, now responds to the letter motion on behalf of non-party Haddon, Morgan and Foreman, P.C. ("Haddon Morgan") requesting that the Court withdraw its order permitting alternative service of defendant Ghislaine Maxwell or, in the alternative, requesting an opportunity to file objections to alternative service. DE 69. The Court properly allowed alternative service on Maxwell through the Haddon Morgan law firm, a law firm that remains in close contact with Maxwell and, indeed, was even representing Maxwell in a related case before this Court within the last week. The motion lacks any merit, and the Court should deny it.

Procedural Background

As the Court is aware from previous pleadings, this case involves allegations by Jane Doe 43 against powerful and wealthy defendants – including Ghislaine Maxwell – who are alleged to have been running an illegal international sex trafficking organization. For example, as alleged in the complaint, "Defendant Maxwell was for decades the highest-ranking employee of the

Defendants' sex trafficking enterprise. She herself recruited young females; oversaw and trained other recruiters on how best to recruit girls for sex; developed and executed schemes designed to recruit young females; and ensured that all participants of the Defendants' sex trafficking scheme acted in certain specific ways in order to advance the purposes of the scheme and conceal it from law enforcement." DE 1 at 4, ¶ 15.

In and around spring/summer of 2017, Jane Doe 43 had succeeded in serving other members of the sex trafficking organization. But defendant Maxwell had eluded service. Accordingly, on August 10, 2017, Jane Doe 43 filed a motion for alternative service pursuant to Federal Rule of Civil Procedure 4(e)(1). DE 57. As recounted in that alternative service motion, defendant Maxwell was a defendant in another case in this Court – [redacted] *v. Ghislaine Maxwell*, No. 1:15-Cv-07433-RWS (S.D.N.Y.). In that other case, she was represented by attorneys at Haddon Morgan. However, as recounted in the motion, these attorneys "have made clear that they are not authorized to accept service and do not know of an address where Maxwell resides or can be served." DE 57 at 1-2.

After receiving the motion – and after no response of any type was filed – on September 28, 2017, this Court granted the application. DE 57 (indicating that Jane Doe 43 "may serve the summons and complaint in this action for defendant Maxwell by serving counsel for Maxwell in 15-cv-7433 (S.D.N.Y.) with the summons and complaint in this action."). Thereafter, as authorized by the Court, Jane Doe 43 served the summon and complaint on Haddon Morgan on October 9, 2017.

Twenty-one days later, a new law firm entered the fray – Sher Tremonte, LLP. Sher Tremonte stated that it represented the law firm of Haddon Morgan and was seeking an opportunity to oppose the Court's order on behalf of Haddon Morgan. DE 69. On the same day,

Haddon Morgan filed a motion to extend the filing deadline for defendant Maxwell to respond to the complaint until 21 days after the Court ruled on the motion, DE 68, which the Court granted the next day. DE 70.

Haddon Morgan Lacks Standing to Oppose Alternative Service

Haddon Morgan's motion seeking to have the Court withdraw its earlier order allowing alternative service should be denied because Haddon Morgan lacks standing to contest alternative service *on defendant Maxwell*. Of course, a constitutional prerequisite for a litigant to invoke the jurisdiction of this Court is that it establish at "an 'irreducible constitutional minimum' . . . [an] injury-in-fact, meaning 'an actual or imminent' and 'concrete and particularized' harm to a 'legally protected interest.'" *Gambles v. Sterling Infosystems, Inc.,* 234 F. Supp. 3d 510, 517 (S.D.N.Y. 2017) (*quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). In light of these requirements, this Court has refused to allow one litigant to raise an improper service claim on behalf of another litigant. *See, e.g., Madu, Edozie & Madu, P.C. v. Socketworks Ltd. Nigeria,* 265 F.R.D. 106, 114–15 (S.D.N.Y.2010) ("Co-defendants do not have standing to assert improper service claims on behalf of other defendants."); *accord S.E.C. v. Lines,* 2009 WL 2431976, at *2 (S.D.N.Y. Aug. 7, 2009).

Haddon Morgan's motion utterly fails to allege any injury to it (a law firm) from the Court's alternative service order. The only assertion that even arguably has some remote connection to standing is Haddon Morgan's assertion that the Court's order "places Haddon Morgan in the unusual position of being compelled to accept service beyond the scope of its engagement or the client's authorization." Mot. at 2. But "being placed in an unusual position" is hardly the kind of "concrete and particularized harm" to a "legally-protected interest" that would create standing for Haddon Morgan to litigate alternative service on its client. Thus,

whether the alternative service motion was "not well founded as a matter of law" (Mot. at 3) is of no concern to Haddon Morgan.

Presumably the reason that Haddon Morgan does not even attempt to allege any tangible injury is that passing the summons and complaint along to defendant Maxwell would just require a few strokes on a computer keyboard, forwarding the materials by email to its client. Instead, Haddon Morgan has chosen to retain a New York City-based law firm in an attempt to further delay service in this case. Lacking any direct harm from the Court's order, Haddon Morgan has no standing to contest the order, and its motion should be denied for this reason alone.

Haddon Morgan's Motion for Reconsideration is Untimely.

Haddon Morgan's motion seeks "reconsideration of the Court's order grant [the] motion [for alternative service]." Mot. at 1. However, its motion – filed on October 30, 2017 – is simply untimely.

As a motion for reconsideration, Haddon Morgan's motion should have been filed within 14 days of the Court's original ruling on the motion. The Court ruled on the motion on September 28, 2017, and the docket entry for the motion was entered on September 29, 2017. DE 57. Under SDNY Local Rule 6.3, "a notice of motion for reconsideration or reargument of a court order determining a motion shall be served with fourteen (14) days after entry of the Court's determination of the original motion . . . ." Accordingly, Haddon Morgan's motion should have been filed within 14 days of September 29, 2017 – and it was untimely filed more than a month later.

In theory, Haddon Morgan might be able to argue that it was unaware of the Court's order at or around the time it was entered. However, Haddon Morgan represents only that "had no notice of [the order] until after the Court entered the Order." Mot. at 2. Moreover, Haddon

Morgan undoubtedly had notice of the order when it received the summons and complaint on October 9, 2017. *See* Mot. at 1 (acknowledging hand-delivery of summons and complaint on that day). And yet Haddon Morgan did not file any motion for reconsideration even within the fourteen days after that event. Haddon Morgan offers no reason for its delay, which appears to be simply designed to delay the date by which defendant Maxwell must respond to the complaint. *See* DE 68 (seeking delay of date for Maxwell to respond to the complaint). Accordingly, the Court should deny the motion for reconsideration as untimely.

Haddon Morgan's Objections to the Factual Assertions Underlying the Alternative Service Motion Are Unfounded

In addition to being procedurally deficient, Haddon Morgan's motion simply lacks merit. Haddon Morgan begins by attacking the factual foundations for the motion, by suggesting that there is no evidence suggesting that defendant Maxwell was evading service. Mot. at 2-3. But as Jane Doe 43 pointed out in her initial motion, Maxwell's attorneys at Haddon Morgan had "made clear that they are not authorized to accept service and do not know of an address where Maxwell resides or can be served." DE 55 at 1-2. Haddon Morgan claims that Jane Doe 43 had "no conceivable basis to make such assertions about communications between Haddon Morgan and Maxwell." Mot. at 2. But, in fact, as Haddon Morgan most know (and presumably communicated to the Sher Tremonte law firm), such a basis clearly existed based on previous communications between counsel for Jane Doe 43 and lawyers at Haddon Morgan.

Attorneys for Jane Doe 43 also represented Ms. [redacted] in the earlier and related action in this Court. In the course of that hotly-contested lawsuit, which involved dozens of motions and related communications between counsel, one of Jane Doe 43's attorneys (Bradley J. Edwards, Esq.) was in frequent contact with two of Maxwell's attorneys at Haddon Morgan – Jeff Pagliuca and Laura Menninger. *See* Edwards Aff., Exhibit 1, at 1. Based on his frequent

contacts with Mr. Pagliuca and Ms. Menninger, he understood that they had the ability to immediately contact Maxwell, via email or cellular telephone. *Id.*

In connection with the current lawsuit, Mr. Edwards asked Mr. Pagliuca to accept service on behalf of Ms. Maxwell on numerous occasions, both during telephone calls as well as in emails. *Id.* at 2. He understood from his communications with the Haddon Morgan attorneys that defendant Maxwell did not authorize her law firm to accept service on her behalf. *Id.*

For example, on February 28, 2017, after speaking with Maxwell's counsel on the telephone regarding service on Maxwell, the following email exchange occurred (*id.* at 2):

> **From:** Brad Edwards [redacted]
> **Sent:** Tuesday, February 28, 2017 12:17 PM
> **To:** Jeff Pagliuca
> **Subject:** [redacted] v. Maxwell
> **Importance:** High
>
> Jeff,
>
> I know we spoke about this but figured I would ask anyway.
>
> Will you accept service of the [redacted] complaint on behalf of Ghislaine Maxwell?
>
> If not, will you provide me with an address where she can be served? An office, a home, any location at any time will do. Thanks.
>
> Brad

Later that day, Jeff Pagliuca responded as follows (*id.*):

From: Brad Edwards [redacted]
Sent: Wednesday, March 08, 2017 12:23 PM
To: Jeff Pagliuca [redacted]
Subject: RE: [redacted] v. Maxwell

Jeff,

Did you talk with Laura about accepting service for Maxwell? Or about providing any address where we can have her served? Even if she is not permanently residing at whatever location, we will have a process server stop by wherever she is temporarily and serve her. Thanks.

Brad Edwards
Board Certified Trial Attorney
425 North Andrews Avenue, Suite 2
Fort Lauderdale, Florida 33301
Toll Free: [redacted] Local [redacted]
Cell: [redacted] Facsimile: [redacted]
[redacted] www.pathtojustice.com

Mr. Pagliuca, however, did not get back to Mr. Edwards with an answer. So Mr. Edwards then followed up with another email to Mr. Pagliuca (*id.* at 3):

From: Jeff Pagliuca [redacted]
Sent: Tuesday, February 28, 2017 5:28 PM
To: Brad Edwards [redacted]
Subject: RE: [redacted] v. Maxwell

I think Laura told you that she is not permanently settled. I do not believe she has a permanent residence. I am not sure it makes sense for us to accept service because I don't expect we will be defending the case. Currently working on motions in limine and off to daughter's wedding tomorrow. I will try to get back to you on Monday or Tuesday with an answer.

Jeffrey S. Pagliuca
Haddon, Morgan and Foreman, P.C.
150 East 10th Avenue
Denver, Colorado 80203
Main [redacted]

In follow up conversations, Mr. Pagliuca indicated that he was unable to provide the information that Mr. Edwards was requesting, nor could Haddon Morgan accept service on Maxwell's behalf. *Id.* at 3.

Further efforts continued – unsuccessfully – to arrange service through the Haddon Morgan firm. For example, on May 9, 2017, co-counsel for Jane Doe 43 (Ms. Sigrid McCawley at Boies Schiller) sent an email to Mr. Pagliuca as follows (*id.* at 3-4):

From: Sigrid McCawley [redacted]
Sent: Tuesday, May 09, 2017 4:33 PM
To: Jeff Pagliuca [redacted]
Cc: Brad Edwards [redacted] Paul Cassell [redacted]
Subject: Service of Complaint

Hello Jeff- rather than have process servers continue to pursue Maxwell to try to get service on her in the [redacted] action, will your firm agree to accept service on her behalf of that complaint?

Thanks,
Sigrid

Sigrid McCawley
Partner

BOIES SCHILLER FLEXNER LLP
401 E. Las Olas Blvd. Suite 1200
Fort Lauderdale, FL, 33301
[redacted]

This email chain and with related telephone conversations) provides more than ample basis for the conclusion that defendant Maxwell was (and is) evading service.

Since the Court's ruling, counsel for Jane Doe 43 have attempted to avoid burdening the Court with any additional litigation about service of process issues. On November 7, 2017, Mr. Edwards sent the following email:

From: Brad Edwards [redacted]
Sent: Tuesday, November 7, 2017 6:51 AM
To: [redacted]
Cc: [redacted] Paul Cassell [redacted]
Subject: Maxwell

Hi Jeff/Laura,

Presumably you have a way of contacting Ms. Maxwell and will do so this week in light of the hearing tomorrow. In the event your motion is granted next week, can you please tel us:
A contact phone number for Ms. Maxwell;
A location where she is presently and where she can be served;
An address where she currently resides.

In the event you still don't know the answers to the last two questions, could you please ask her during your call with her this week? Thank you.

Brad

As of this writing, no response was received to this email. However, on November 8, 2017, Ms. Menninger appeared before Judge Sweet – in this Court – to argue a confidentiality issue on behalf of defendant Maxwell including arguments as to the type of protective order that should be put in place in the Jane Doe 43 case to protect the interests of defendant Maxwell. Edwards Aff. at 4.

The Alternative Service Motion was Well-Founded as a Matter of Law.

Finally, Haddon Morgan argues that the alternative service motion was not well-founded as a matter of law. Mot. at 3. The issue, as Haddon Morgan concedes, simply boils down to "impracticablility" of standard methods of service. *Id.* Haddon Morgan attempts to argue that the showing made in the earlier motion was somehow inadequate. But its claims ring hollow when the Court considers the fact that Haddon Morgan attorneys themselves had said, in for example the email exchange recited above, that defendant Maxwell "is not permanently settled" and that they "do not believe she has a permanent residence." Edwards Aff. at 2 (*quoting* February 28, 2017 email from Mr. Pagliuca).

Having previously specifically told counsel for Jane Doe 43 that they did "not believe [defendant Maxwell] has a permanent resident," Haddon Morgan now argues that counsel should have attempted to serve defendant Maxwell at an alleged "residence" in London. Haddon Morgan first claims that Maxwell is "described through the press as a 'British Socialite.'" Mot. at 2. Prominent British media, however, report that Maxwell has been "[b]ased in Manhattan since the early 1990s." *See Why Are the Rich and Powerful so in Thrall to Ghislaine Maxwell?*, DailyMail.com, http://www.dailymail.co.uk/news/article-2904115/Ghislaine-Maxwell-s-link-sex-scandal-court-papers-involving-Prince-Andrew-Jeffery-Epstein-don-t-stop-having-amazing-social-connections.html (Jan. 9, 2015 article, visited Nov. 13, 2017).[1] To be sure, no one disputes that that defendant Maxwell was born decades ago in Britain, thus rendering her a "British Socialite." But that hardly provides any useful basis for attempting to serve her now.

Haddon Morgan also claims defendant Maxwell's "home" in London "was the subject of motion practice in the [redacted] Action." But the motion that Haddon Morgan cites – DE 404, *see*

[1] Curiously, Haddon Morgan cites this same newspaper article in its pleading, Mot. at 2, without noting that the article involves a description of a speech by Ms. Maxwell in New York, as well as the fact that article state that Maxwell has been "based in Manhattan" for more than two decades.

Mot at 2 n.1 (citing "ECF No. 404") – in fact involved whether defendant Maxwell attempting to conceal assets through a $15 million sale of her townhome in *Manhattan*. *See* DE 404 at 2-3 (argument by Haddon Morgan attorneys disputing whether the sale of the Manhattan townhome demonstrated consciousness of criminal guilt). Perhaps the Haddon Morgan attorneys meant to reference some other pleading, as it is true that in the other lawsuit, Ms. [redacted] had alleged that she was sexually trafficked by Epstein and Maxwell into a London flat associated with Maxwell. But these events took place in around 2001, more than 15 years ago. How service could have been practicably effected there today in light of the fact defendant Maxwell is now "based" in New York and "not permanently settled" is unclear.

Perhaps (although this is not articulated in the motion) Haddon Morgan believes that Jane Doe 43 could have somehow effected service somewhere in London if Ms. Maxwell had some time decided to return there, through the Hague Convention. But as this Court has previously recognized, numerous courts have authorized alternative service even where the Hague Convention applies. *See, e.g., Jian Zhang v. Baidu.com Inc.*, 293 F.R.D. 508, 512 (S.D.N.Y. 2013) (*citing Richmond Techs., Inc. v. Aumtech Bus. Solutions,* No. 11–CV–02460–LHK, 2011 WL 2607158, at *12 (N.D. Cal. July 1, 2011) (citing cases). Moreover, proceeding under the Hague Convention would invariably trigger long delays, a fact which has led this Court (among many others) to authorize alternative service to move a case along towards conclusion. *See, e.g., Stream SICAV v. Wang*, 989 F. Supp. 2d 264, 280 (S.D.N.Y. 2013).

Finally, Haddon Morgan appears to treat the issue before the Court as one of proceduralism for proceduralism's sake. Indeed, the Court could read through all of the Haddon Morgan's motion without finding any substantive reason for reversing its previous order allowing alternative service. Of course, the primary purpose of service is to "provide[ ] notice

reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action . . . ." *In GLG Life Tech Corp. Sec. Litig.*, 287 F.R.D. 262, 267 (S.D.N.Y. 2012) (*citing Volkswagenwerk Aktiengesellschaft v. Schluck,* 486 U.S. 694, 705 (1988) (internal citations omitted)). Haddon Morgon is continuing to litigate on behalf of defendant Maxwell in this very Court and, thus, presumably has an effective way of communication with Maxwell. This Court (Koeltl, J.), has previously allowed service to be made through an attorney that was representing a client, explaining that the attorney "must know how to contact [the client] to notify her of service." *United States v. Machat*, No. 08 CIV.7936(JGK), 2009 WL 3029303, at *4 (S.D.N.Y. Sept. 21, 2009). The same is true here, and nothing in Haddon Morgan's motion suggests otherwise.

Conclusion

The motion for the Court to reconsider its order should be denied.

Dated: November 13, 2017

Respectfully submitted,

FARMER, JAFFE, WEISSING,
EDWARDS, FISTOS&LEHRMAN, P.L.

/s/ Bradley J. Edwards

Bradley J. Edwards
425 North Andrews Avenue, Suite 2 Fort
Lauderdale, Florida 33301
[redacted]
Attorney for Plaintiff Jane Doe 43

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th of November, 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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