

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

[REDACTED],

Plaintiff-Appellee,

v.

GHISLAINE MAXWELL,

Defendant,

v.

SHARON CHURCHER, JEFFREY EPSTEIN,

Respondents,

JULIE BROWN, MIAMI HERALD MEDIA
COMPANY,

Intervenors-Appellants

No. 18-2868

Appellee Maxwell's Response to Order to Show Cause

Appellee Ghislaine Maxwell, through her attorneys Haddon, Morgan and Foreman, P.C., submits this Response to the Court's Order to Show Cause ("OTSC").

I. Objections to the Order to Show Cause.

For the reasons stated in Ms. Maxwell's Motion to Reconsider and Vacate the Court's Order to Show Cause and March 13 Order to Produce Sealed Materials, we respectfully object to the Court's Order to Show Cause ("Motion to Reconsider"). In the event the Court finds on the merits that the district court abused its discretion in sealing or redacting summary judgment materials, the appropriate procedure is to remand the case and direct the court to exercise its sound discretion whether to seal or redact the materials "in light of the relevant facts and circumstances of the particular case," *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 599 (1978).

II. General objections to unsealing of summary judgment materials.

As an initial matter, it is essential that the ██████ v. *Maxwell* parties, i.e., Ms. ██████ and Ms. Maxwell, understand precisely the scope of the OTSC. As we noted in the Motion to Reconsider, the scope is not clear because of the different references to summary judgment "materials." *See* Mot. to Reconsider, at 18 n.4. For purposes of this Response, we assume the Court is referring to the summary judgment motion, response, reply, and all the documents and information

submitted in support of and opposition to the summary judgment motion (collectively “summary judgment materials” or “materials”). And we assume the Court via the OTSC is notifying the [REDACTED] v. *Maxwell* parties (“parties”) that they may object to the Court’s public disclosure of any sealed or redacted summary judgment materials. The OTSC is, however, incomplete because the dozens of individuals who relied on the Protective Order had no notice of the Order and have had no opportunity to respond.

We interpose the following general objections:

1. All sealed and redacted summary judgment materials should remain sealed and redacted with the exception of materials that also are in the public domain.
2. We respectfully object to this Court’s substitution of its discretion for that of the district court in deciding whether to unseal and unredact the summary judgment materials and in deciding the extent to which, if at all, the Protective Order or the order disclosing materials should be narrowly tailored to protect the compelling interests of Ms. Maxwell and non-parties whose information is contained or referenced in the materials. The issues implicated by the decision to unseal and unredact the materials is complex and requires familiarity with, among other things, the district court’s prior oral and written rulings, the parties’ arguments and representations, the statements by non-parties and their counsel, the

interrelationship between and among factual allegations contained in the materials. We incorporate here by reference the Motion for Reconsideration.

3. We object to the disclosure of any materials or statements therein that did not constitute, reflect or result in any judicial action or that the district court did not rely on, including (a) materials that were irrelevant or otherwise were not competent/admissible evidence under the rules of evidence and Federal Rule of Civil Procedure 56, and (b) allegations not evidentially supported as required under Rule 56.

4. We object to the disclosure of any materials submitted to the district court, and any related factual allegation, without any valid Rule 56 purpose. This includes materials Ms. [REDACTED] counsel submitted with the sole intention that they eventually would be revealed to the public to advance her non-Rule 56-related ulterior purposes, including the purpose of gaining publicity and notoriety and creating an environment in which she could continue to profit from her allegations.

5. We object to the disclosure of any materials that were inadmissible under the rules of evidence and were the subject of multiple pending and later-filed motions to exclude their use. Virtually all of the exhibits attached to the Plaintiff's Summary Judgment Response were subject to significant *in limine* motions and were inadmissible for any legitimate evidentiary purpose. These objections are incorporated by reference.

6. We object to the disclosure of any materials that were provided by parties or non-parties pursuant to the Protective Order (Jt. App. 131-36) and the district court's decisions concerning the Protective Order (collectively, "Protective Order"), pursuant to assurances or representations by the parties' counsel that these materials would be subject to the Protective Order, or pursuant to the parties' and non-parties' reliance on the Protective Order to maintain the secrecy and confidentiality of the materials. These non-parties include numerous individuals (many public figures) falsely accused by Ms. [REDACTED], witnesses who discredit her claims, employees of businesses, and family members and friends of Ms. [REDACTED].

7. We object to the disclosure of any materials that were provided by non-parties under the circumstances set forth in Objection No. 6 who have not been given notice of or an opportunity to participate in litigation in this Court on whether sealed and redacted materials should be unsealed and unredacted and disclosed to the public.

8. We object to the unredaction of statements by Ms. [REDACTED] counsel referring to and misrepresenting the content of sealed and/or redacted materials.

9. We object to the unredaction and circulation of Ms. [REDACTED] numerous defamatory claims under the cloak of a "litigation" or "judicial privilege," thereby *de facto* immunizing the statements and insulating them from tort liability.

III. Specific objections to unsealing of summary judgment materials.

DOCKET #	EXHIBIT #	OBJECTION	ASSOCIATED PENDING OBJECTIONS/ PLEADINGS in [REDACTED] v. Maxwell
537		Proposed redactions to Def. Statement of Undisputed Facts: Numbered paragraphs 11-17, 35, 37-52	
541		Proposed redactions: Numbered paragraphs 11-17, 35, 37-52; Section 6(A) (pp. 40 <i>et seq.</i>); Section 6(E) (pp. 56-68)	
542		Document titles redacted consistent with Appellee's objections herein	
542-4	D	Not a judicial document, not relied upon by Court; portions stricken by Judge Marra	Florida Order
	I	Not a judicial document, not relied upon by Court	
	L	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality; repeats previously unpublicized defamatory hearsay from Plaintiff	ECF 566 at 6-7, 826 at 6-7;
	M	Not a judicial document, not relied upon by Court;	
	N	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (some represented, no notice of proceedings); contains defamatory statements about previously undisclosed 3rd parties accused of sex trafficking; repeats material stricken by Judge Marra	
	O	Not a judicial document, not relied upon by Court;	
	P	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (unrepresented); inadmissible evidence contained within transcript; repeats defamatory hearsay from Plaintiff	ECF 566 at 32-39; 633 at 4; 826 at 32-39
	Q	Not a judicial document, not relied upon by Court;	
	R	Not a judicial document, not relied upon by Court;	
	S	Not a judicial document, not relied upon by Court; numerous non-parties' employment records; counsel not given notice of these proceedings	
	T	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (unrepresented); inadmissible evidence contained within transcript	ECF 566 at 57; 633 at 12; 826 at 57

	U	Not a judicial document, not relied upon by Court; contains proprietary employee handbook; counsel not given notice of these proceedings	
	V	Not a judicial document, not relied upon by Court;	
	W	Not a judicial document, not relied upon by Court; contains proprietary employee information; counsel not given notice of proceedings	
	X	Not a judicial document, not relied upon by Court;	
	Y	Not a judicial document, not relied upon by Court;	
	Z	Not a judicial document, not relied upon by Court	
	AA	Not a judicial document, not relied upon by Court	
	BB	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (counsel)	
	CC	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (counsel)	
	EE	Not a judicial document, not relied upon by Court	
	FF	Not a judicial document, not relied upon by Court	
	GG	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality; Inadmissible, Motions in <i>Limine</i>	ECF 677, 693, 566 at 49; 633 at 11; 826 at 49
	HH	Not a judicial document, not relied upon by Court	
	II	Not a judicial document, not relied upon by Court; Deposition taken in another matter (Maxwell did not participate or cross-examine); 3rd Party Confidentiality (some represented by counsel, no notice of proceedings); contains defamatory accusations re previously undisclosed 3rd parties; repeats material stricken by Marra	
	JJ	Not a judicial document, not relied upon by Court; Deposition taken in another matter (Maxwell did not participate or cross-examine); 3rd Party Confidentiality (some represented by counsel, no notice); contains defamatory accusations re previously undisclosed 3rd parties; repeats material stricken by Judge Marra	

	KK	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality; contains defamatory statements about previously undisclosed 3rd parties accusing of sex trafficking; repeats material stricken by Judge Marra	
542-9	MM	Not a judicial document, not relied upon by Court	
586		Proposed redactions: pp. 1-27 up to III (not addressing any summary judgment issues); p. 44 (“for example” through end of paragraph); p. 48-49 (to end of section); p. 53-54 (last paragraph continued to next page); p. 56 (“In sum” thru 57 1 st paragraph); p.57-67 (Sections 8(A)-(F))	
586-1		Proposed redactions: Statement of Undisputed Facts paragraphs 11-17 and 35-52; all of “Plaintiff’s Undisputed Facts,” paragraphs 55-74 (p. 62-65) (nothing in rules permits non-movant to submit undisputed facts)	
586-2		Document titles redacted consistent with Appellee’s objections herein	
586-3	1	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (unrepresented, no notice)	ECF 566 at 2, 633 at 2, and 826 at 2
	2	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality; repeats previously unpublicized defamatory hearsay from Plaintiff; inadmissible hearsay	ECF 566 at 6-7, 826 at 6-7;
	3	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (represented, no notice). The transcript was inadmissible and not relied on by the Court.	ECF 567 at 5
	4	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (unrepresented, no notice); inadmissible evidence; defamatory hearsay from Plaintiff	ECF 566 at 32-39; 633 at 4; 826 at 32-39
	5	Not a judicial document, not relied upon by Court;	
	7	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (represented). The transcript is inadmissible	ECF 567 at 12; 566 at 44, 833 at 44;
	8	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (represented). The transcript is inadmissible	ECF 673, 674-1
	9	Not a judicial document, not relied upon by Court	
	10	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (represented, no notice of these proceedings). The transcript is inadmissible	ECF 673, 674-1

	11	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality; Right to Privacy	
	12	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (represented, no notice)	ECF 566
	13	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (represented, no notice). The testimony is inadmissible and not relied on by Court	ECF 677, 678
	14	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (represented, no notice). The testimony is inadmissible.	ECF 566, 693, 694, 694-1
	15	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (represented by Counsel, no notice). The testimony is inadmissible and not relied on by Court	ECF 566
	16	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (represented by counsel, no notice); Right to privacy; Transcript contains inadmissible evidence	ECF 566 at 64-65; 826 at 64-65
	17	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (unrepresented, no notice); inadmissible evidence contained within transcript	ECF 566 at 57; 633 at 12; 826 at 57
	18	Not a judicial document; Deposition taken in another case, Maxwell did not participate or cross exam. The testimony is inadmissible and was not relied on by Court	ECF 566
	19	Not a judicial document; Deposition taken in unrelated case, Maxwell did not participate or cross exam); The testimony is inadmissible and was not relied on by Court	ECF 567
	20	Not a judicial document; Deposition taken in unrelated case, Maxwell did not participate or cross exam) The testimony is inadmissible and was not relied on by Court	ECF 567
	21	Not a judicial document; Deposition taken in unrelated case, Maxwell did not participate or cross exam; The testimony is inadmissible and was not relied on by Court	ECF 567, 646
	22	Not a Judicial Document; Attorney Client Privilege. The document was not relied on by the Court	
	23	Not a judicial document; the document is an inadmissible opinion, FRE 702, not relied on by the Court	ECF 524, 525-1
	24	Not a judicial document; This document is inadmissible, FRE 702, and was not relied on by the Court	ECF 528, 786, 787, 788
	25	Not a judicial document, not relied upon by Court;	
	27	Not a judicial document, not relied upon by Court; FERPA protected	

	28	Not a judicial document; The compilation document is inadmissible and was not relied on by the Court	ECF 677
	29	Not a judicial document; This document is inadmissible and was not relied on by the Court	ECF 679, 680
	30	Not a judicial document; This document is inadmissible and was not relied on by the Court	ECF 681
	31	Not a judicial document; This document is inadmissible and was not relied on by the Court	ECF 667, 783
	32	Not a judicial document; This document is inadmissible hearsay without foundation and was not relied on by Court	ECF 677, 693
	33	Not a judicial document, not relied upon by Court;	
	34	Not a judicial document, not relied upon by Court;	
	35	Not a judicial document, not relied upon by Court;	
	36	Not a judicial document, not relied upon by Court;	
	37	Not a judicial document, not relied upon by Court;	
	38	Not a judicial document, not relied upon by Court; repeats defamatory hearsay of Plaintiff	
	39	Not a judicial document, not relied upon by Court;	
	40	Not a judicial document, not relied upon by Court; The document is inadmissible and was not relied on by the Court	ECF 677
	41	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (represented, no notice of these proceedings). The document was not relied on by the Court	
	42	Not a judicial document, not relied upon by Court;	
	43	Not a judicial document, not relied upon by Court	
	44	Not a judicial document, not relied upon by Court; Inadmissible	
	45	Not a judicial document; The document is inadmissible and was not relied on by the Court	ECF 677

	46	Not a judicial document, not relied upon by Court;	
	47	Not a judicial document, not relied upon by Court; contains proprietary employee information; counsel not given notice of proceedings	
	49	Not a judicial document, not relied upon by Court; numerous non-parties' employment records; counsel not given notice of these proceedings	
	50	Not a judicial document, not relied upon by Court; stricken by Judge Marra;	Florida Order
	51	Not a judicial document, not relied upon by Court;	
620		Proposed redactions: p. 26, last paragraph thru end of p. 27; p. 28 last paragraph thru conclusion on top of p. 29	
620-1		Proposed redactions: numbered paragraphs 11-17, 35-52	
621		Document titles redacted consistent with Appellee's objections herein	
621-1	NN	Not a judicial document, not relied upon by Court	
621-2	OO	Not a judicial document, not relied upon by Court;	
621-3	PP	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (some represented by counsel, no notice); contains defamatory statements re previously undisclosed 3rd parties accused of sex trafficking; repeats material stricken by Judge Marra	
621-4	QQ	Not a judicial document, not relied upon by Court;	
621-5	RR	Not a judicial document, not relied upon by Court; 3rd Party Confidentiality (some represented by counsel, no notice); contains defamatory statements about previously undisclosed 3rd parties accusing of sex trafficking; repeats material stricken by Judge Marra	
872		Proposed Redactions: Statement of Undisputed Facts 11-17 and 35-52	

Respectfully submitted,

s/ Ty Gee

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Certificate of Service

I certify that on March 19, 2019, I served via CM/ECF a copy of this *Appellee Maxwell's Response to Order to Show Cause* on the following persons:

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