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November 22, 2017

SUBMITTED UNDER SEAL

Hon. John G. Koeltl
United States District Court
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

**Re: Jane Doe 43 v. Jeffrey Epstein, et al.
Civil Action No. 17-cv-616**

Dear Judge Koeltl:

We represent Defendants Jeffrey Epstein and Lesley Groff (“Defendants”) in the above-referenced matter (the “*Jane Doe* Matter”). The Defendants filed yesterday a motion to dismiss the First Amended Complaint filed by Plaintiff Jane Doe (“Jane Doe” and “MTD”). For the reasons set forth, below, the Defendants respectfully request that they be provided with an opportunity to submit a supplemental MTD after the Court issues a confidentiality order in this matter.

As we previously advised the Court, Jane Doe voluntarily gave deposition testimony and produced documents relating to the allegations in the *Jane Doe* Matter in a matter captioned [REDACTED] (the “[REDACTED] Matter”) (the “Jane Doe Evidence”). The Jane Doe Evidence, given by Jane Doe shortly after she filed the *Jane Doe* Matter, was designated as Confidential pursuant to the Protective Order in the [REDACTED] Matter (“Protective Order”). Specifically, Jane Doe and the parties to the in the [REDACTED] Matter, the plaintiff, [REDACTED], and the defendant, Ghislaine Maxwell, all designated Jane Doe’s deposition transcript as Confidential, and Jane Doe designated her document production as Confidential. Jane Doe and the plaintiff in the [REDACTED] Matter both subsequently withdrew their confidential designation of Jane Doe’s deposition transcript “in its entirety,” and objected to the confidential designation of that transcript by the defendant in that action.¹

¹ Jane Doe’s more recent conduct is entirely consistent with her decision to withdraw this confidential designation and calls into question whether she should be permitted to continue to proceed in this matter behind a “Jane Doe” caption. Indeed, on November 15, 2017, Jane Doe
(Continued...)

The Jane Doe Evidence, as it turns out, is dispositive of this action. In particular, the Jane Doe Evidence demonstrates that the sole claim asserted in the *Jane Doe* Matter is barred by the longest potentially applicable ten-year statute of limitations, the Court in the *Jane Doe* Matter lacks personal jurisdiction over Defendants, and Jane Doe cannot plead a legally sufficient amended complaint.

On [REDACTED] and pursuant to directions from this Court, the Defendants filed a motion before [REDACTED] seeking a modification of the Protective Order to permit the Defendants to use *all* of the Jane Doe Evidence in support of the MTD (“Motion to Modify”). On [REDACTED] Plaintiff responded to the Motion to Modify by agreeing to permit the use of only some, but not all, of the Jane Doe Evidence. Ghislaine Maxwell, the defendant in the [REDACTED] Matter, advised the Court that she took no position on the Motion to Modify and requested only that Jane Doe’s deposition transcript be treated as confidential pursuant to a protective order to be issued in the *Jane Doe* Matter.

Through Maxwell’s submission, the Defendants learned for the first time that, on May 5, 2017, Jane Doe and [REDACTED] withdrew their confidential designations of Jane Doe’s deposition transcript. Their withdrawal is memorialized in a joint letter filed by their joint counsel in the [REDACTED] Matter – the same lawyers who represent Jane Doe in the *Jane Doe* Matter. See Exhibit B attached. Surprisingly, Jane Doe never advised the Defendants of her and [REDACTED] withdrawal of their confidential designations. On [REDACTED], the [REDACTED] Matter was concluded and dismissed.

On [REDACTED] issued a Sealed Opinion on the Motion to Modify. See Exhibit C attached. Judge Sweet noted that Jane “Doe and the Plaintiff [REDACTED] withdrew th[e] confidential designation of the [Jane] Doe Evidence on May 5, 2017, but the Defendant Ghislaine Maxwell ... objected” to the non-confidential treatment. Opinion at 3. [REDACTED] then made the following rulings.

First, [REDACTED] held that the Jane “Doe Evidence at issue is no longer subject to the [Protective] Order.” Opinion at 6. [REDACTED] explained that “the purpose of the Protective Order was to guide the confidentiality determinations during the discovery process, and not beyond this point.” *Id.* at 7. As a result, the “Protective Order did not extend beyond the completion of discovery or the termination of this action.” *Id.*

Second [REDACTED] held that “absent other arrangements agreed upon regarding the disposal of the protected information, and this Court was informed of no such arrangements, on

published a letter to the editor of the New York Times *in her own name* in which she identified herself as the plaintiff in the *Jane Doe* Matter. See Exhibit A attached.

May 25, 2017, all protected information, including the Jane Doe Evidence, was to be returned to the original party, parties, non-party, or non-parties who designated it as confidential.” Opinion at 7-8.

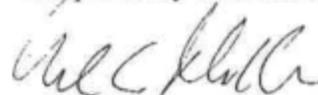
Lastly, ██████████ held that a “party or non-party is deemed a designator of confidentiality if, on the date of this matter’s termination, *i.e.*, May 25, 2017, that party or non-party was deemed the confidentiality designator of the document, information, or piece of material.” Opinion at 8. Since both Jane Doe and ██████████ withdrew their confidentiality designation with respect to Jane Doe’s deposition in its entirety before the termination of the ██████████ Matter, the only confidentiality designator of the deposition transcript, including the documents used during the deposition, is Maxwell.

Counsel for Maxwell has now advised the Defendants that Maxwell agrees that Defendants need not return the deposition transcript, including the documents used during the deposition, and that this evidence may be used in the *Jane Doe* Matter, provided that this evidence is used pursuant to a confidentiality order. See Exhibit D attached.

In order to comply with the seven-day filing deadline directed by the Court, Defendants have filed their MTD yesterday. This version of the MTD does not contain references to the Jane Doe deposition or related exhibits since we do not yet have a confidentiality order in place. Defendants will work diligently to promptly submit a joint draft confidentiality order to the Court in accordance with the arrangement advanced by Maxwell and consistent with the Sealed Opinion.² We respectfully request that the Court permit the Defendants to file a supplemental MTD which references the contents of the Jane Doe deposition and documents used during that deposition within seven (7) days following entry of a confidentiality order in this matter.

We have attempted to contact counsel for Jane Doe in order to obtain his consent to this request, but have not heard back him.

Respectfully submitted,

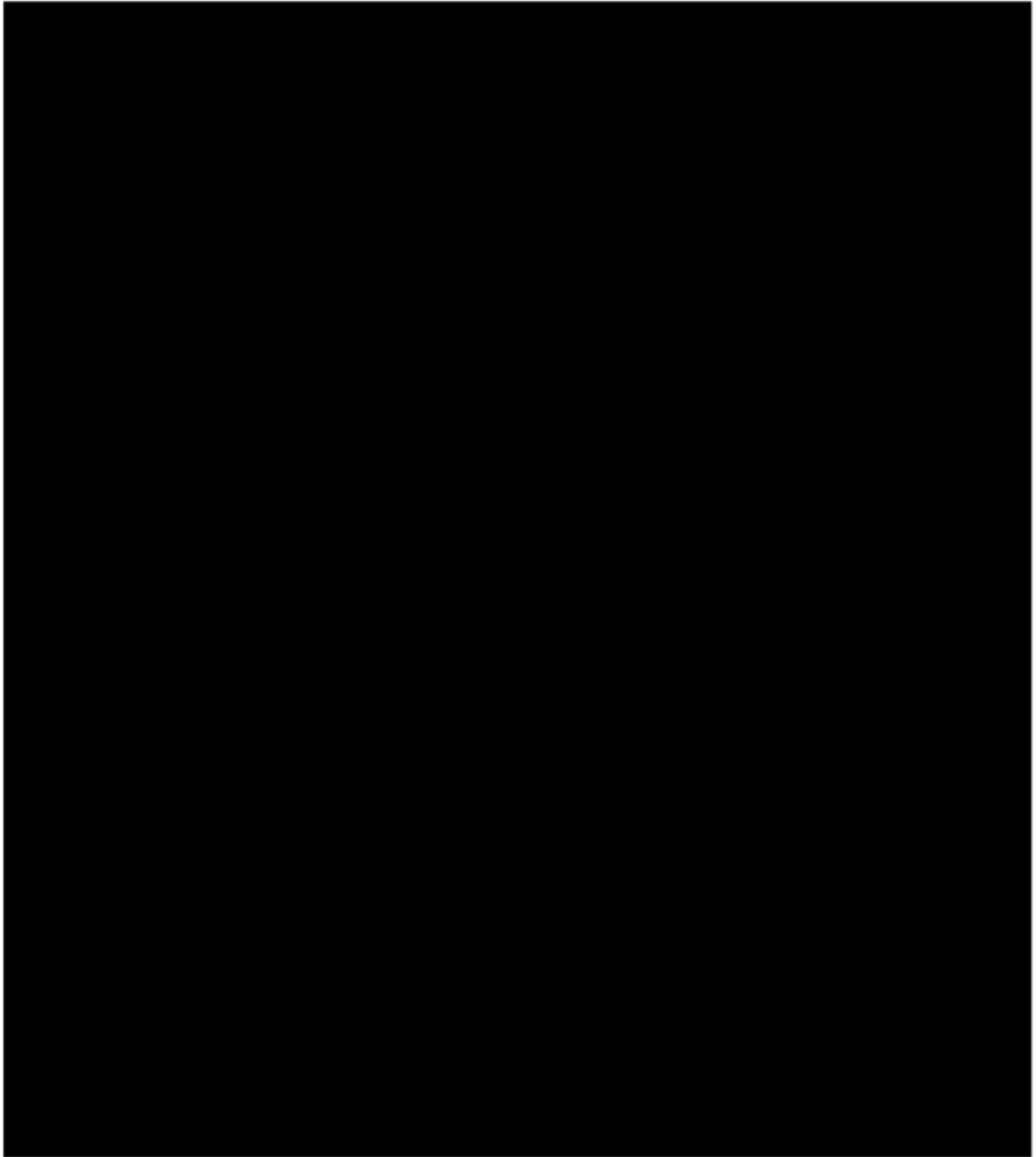


Michael C. Miller
Counsel for Defendants Jeffrey
Epstein and Lesley Groff

² We will also attempt to reach agreement with Jane Doe regarding the balance of the Jane Doe Evidence that was designated confidential but was not used at Jane Doe’s deposition.

EXHIBIT A

The New York Times | <https://nyti.ms/2jvHgf5>



https://www.nytimes.com/2017/11/15/opinion/david-boies.html?mabReward=ART_CTM1&reci... 11/16/2017



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EXHIBIT B

May 5, 2017

VIA E-MAIL

Laura Menninger, Esq.
HADDON, MORGAN AND FOREMAN, P.C.
150 East 10th Avenue
Denver, Colorado 80203
lmenninger@hmflaw.com

Re: [REDACTED]

Dear Ms. Menninger,

Pursuant to paragraph 11 of the Protective Order (DE 62), this letter hereby informs you of Ms. [REDACTED] withdrawal of her confidentiality designation of [REDACTED] deposition transcript in its entirety, as well as Ms. [REDACTED] objection to Defendant's confidentiality designation of [REDACTED] deposition transcript in its entirety. [REDACTED] joins Ms. [REDACTED] in objecting to any confidentiality designations over her deposition transcript.

Sincerely,

/s/ Meredith Schultz

Meredith Schultz, Esq.

MS/akc

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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██████████ ██████████,

Plaintiff,

15 Civ. 7433

-against-

SEALED
OPINION

GHISLAINE MAXWELL,

Defendant.

-----X

A P P E A R A N C E S:

Counsel for ██████████ ██████████

BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Boulevard, Suite 1200
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Counsel for Ghislaine Maxwell

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STEPTOE & JOHNSON LLP
1114 Avenue of the Americas
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By: Michael C. Miller, Esq.
Justin Y.K. Chu, Esq.
Michael A. Keough, Esq.

Sweet, D.J.

Third-Party Proposed Intervenors Jeffrey Epstein and Lesley Groff (the "Intervenors") have moved under Fed. R. Civ. P. Rule 24(b) to intervene in this action and to modify the protective order entered in this action on March 17, 2016 (the "Protective Order" or the "Order"). See Fed. R. Civ. P. 24(b); Order, ECF No. 62. Intervenors are two of the defendants in an action captioned *Jane Doe 43 v. Epstein*, No. 17 Civ. 616 (JGK), currently pending before the Honorable John G. Koeltl (the "*Jane Doe* action"). Intervenors seek through the instant motion to modify the Protective Order to permit Intervenors to use all evidence produced by Non-Party Jane Doe 43 ("Jane Doe" or "Doe") in this action concerning her alleged interactions with the Intervenors (the "*Jane Doe Evidence*" or the "*Evidence*"), including deposition testimony and documents, to assist them in preparing a Motion to Dismiss in the *Jane Doe* action.

Based upon the conclusions set forth below, the motion to intervene is granted, and all documents, materials, and information subject to the Protective Order must be returned to the party who designated its confidentiality as of the date this action was dismissed.

I. Prior Proceedings

This action was commenced on September 21, 2015 by [REDACTED] [REDACTED] (" [REDACTED]" or the "Plaintiff"). On March 17, 2016, the Court entered into a Protective Order to maintain the privacy of the parties and deponents during the pendency of discovery. Pursuant to the Order, the parties and non-parties, including Doe, designated certain documents, materials, deposition testimony, and other information confidential. Doe was a fact witness and deponent in this action, and provided both deposition testimony and documents, which were designated confidential by the Plaintiff and Doe under the terms of the Protective Order. Doe and the Plaintiff withdrew this confidential designation of the Doe Evidence on May 5, 2017, but the Defendant Ghislaine Maxwell ("Maxwell" or the "Defendant") objected. See Maxwell Letter, Exs. A & B. This action was settled and dismissed with prejudice pursuant to a joint stipulation for dismissal entered into on May 25, 2017.

On January 26, 2017, Doe filed the *Jane Doe* action against Jeffrey Epstein and others (the "Epstein Defendants") alleging commercial sex trafficking in violation of 18 U.S.C. § 1595. Intervenor's plan to move to dismiss the *Jane Doe* action, and sought to use the *Jane Doe* Evidence, which had been marked

confidential pursuant to the Protective Order, in support of that Motion to Dismiss. Jane Doe sought to bar the use of certain material, and Judge Koeltl instructed the Intervenor to "make their application for relief from the Protective Order to the Judge in the case in which the Protective Order was entered," and to attempt to agree with Doe and [REDACTED] on the scope of the proposed modification. See Intervenor's Br. Ex. B. Jane Doe and [REDACTED] agreed to the release of Doe's deposition transcript and fifty-six (56) documents, but sought to bar the use of a collection of photographs and a series of 2016 email communications between Doe and a reporter, the status of which is now the subject of the instant motion. This motion was heard and marked fully submitted on November 8, 2017.

II. The Protective Order

The Protective Order provided confidentiality for documents, materials and/or information so designated by the parties, together with procedures relating to the designations and any challenges to the designations among other provisions. See Order, ECF No. 62. The Order also provides that it would have no effect on the use of confidential information at trial. The Order stated, in relevant part:

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.

[. . .]

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.

III. The Motion to Intervene is Granted

Pursuant to Fed. R. Civ. P. Rule 24(b), the Court may permit a non-party to intervene where the non-party has "a claim or defense that shares with the main action a common question of law or fact," and the court "consider[s] whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b); see also [REDACTED] v. Maxwell, November 2, 2016 Sealed Opinion on Motion to Intervene for Alan M. Dershowitz; [REDACTED] v. Maxwell, No. 15

Civ. 7433 (RWS), 2017 WL 1787934 (S.D.N.Y. May 3, 2017)
(granting permissive intervention for Michael Cernovich).

The Jane Doe Evidence at issue relates directly to the facts alleged by Doe in both the *Jane Doe* action and this action relative to Doe's purported relationship with the Intervenor sufficient to satisfy the Rule 24(b) requirement. Accordingly, the motion to intervene is granted.

IV. All Materials Subject to the Protective Order Must be Returned to the Designating Party or Destroyed

The Intervenor argues the Protective Order should be modified to permit their use of all Jane Doe Evidence in support of their Motion to Dismiss in the *Jane Doe* action. Doe and ██████ contest this modification arguing the documents in dispute have no bearing on the Epstein Defendants' arguments in their Motion to Dismiss, and alleging that the Intervenor merely seek to use the Jane Doe Evidence in a public filing in order to publicly humiliate and intimidate Doe. While the parties dispute the reasons for and against modification of the Order and the scope of such a modification, the Doe Evidence at issue is no longer subject to the Order.

The specific language of the Protective Order, as well as the underlying reasons for its issuance, establish that certain actions were to be taken "[a]t the conclusion of this case" regarding the ultimate disposition of the protected information. See Order, ¶ 12. Paragraph 12 of the Order states:

At the conclusion of the 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.

Id. Moreover, paragraph 13 and the Order's introductory language establish that the purpose of the Order was to guide confidentiality determinations during the discovery process, and not beyond this point. See Order, ¶ 13 ("This Protective Order shall have no force and effect on the use of any CONFIDENTIAL INFORMATION at trial in this matter."). The Protective Order did not extend beyond the completion of discovery or beyond the termination of this action.

Accordingly, absent "other arrangements . . . agreed upon" regarding the disposal of the protected information, and this Court was informed of no such arrangements, on May 25, 2017, all protected information, including the Jane Doe Evidence, was to be returned to the original party, parties,

non-party, or non-parties who designated it as confidential.¹ See *id.*; cf. *In re Agent Orange Prod. Liab. Litig.*, 821 F.2d 139, 145 (2d Cir. 1987) (holding that the court did not abuse its discretion, even where it modified a term of the settlement agreement, by lifting the protective order).

A party or non-party is deemed the designator of confidentiality if, on the date of the matter's termination, i.e., May 25, 2017, that party or non-party was deemed the confidentiality designator of the document, information, or piece of material. Moreover, where a document, information, or piece of material, was deemed confidential by multiple parties, such as a deposition transcript, the protected information must be returned to all designators.

V. Conclusion

Based on the facts and conclusions set forth above, the Intervenors' motion to intervene is granted, and the motion to modify the Protective Order is denied. Pursuant to paragraph

¹ At the termination of the case, the parties also obtained permission, by way of paragraph 12 of the Order, to destroy any or all confidential documents. However, without any affidavits provided to the Court stating this effect, and in light of the present dispute, the Court infers that such action was not taken.

12 of the Order, all documents, materials, and information subject to the Protective Order have been, or will be returned to the party who designated its confidentiality.

It is so ordered.

New York, NY



EXHIBIT D



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November 21, 2017

VIA EMAIL

Justin Y.K. Chu
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Re: [REDACTED] v. *Maxwell*: Deposition Transcript of [REDACTED]
with Attached Exhibits

Dear Mr. Chu,

As a result of [REDACTED] order of [REDACTED] we understand that Ms. Maxwell is the only individual that maintains the confidentiality designation of Ms. [REDACTED] deposition and the related exhibits. ("the Confidential Information"). You have requested that your clients be permitted to use portions of the confidential information in support of his Motion to Dismiss the Complaint in *Jane Doe 43 v. Epstein et al*, Case No. 17-cv-00616-JGK ("*Jane Doe 43 v. Epstein*").

We have no objection to the use of the confidential information under the following conditions:

1. Use of the confidential information by your clients is limited to the Motion to Dismiss and any related reply in in *Jane Doe 43 v. Epstein*.
2. Dissemination of the confidential information is restricted to the parties in *Jane Doe 43 v. Epstein*, the parties' lawyers who have entered their appearance in the action, and the Court.
3. Any use of the confidential information in connection with the Motion to Dismiss in *Jane Doe 43 v. Epstein* will be under seal and not accessible to the public. You agree to redact any confidential information from any motions or pleadings and submit any portions of the confidential information used as an exhibit as sealed documents.

Justin Y.K. Chu
November 21, 2017
Page 2

4. Prior to your use of the confidential information you will request and obtain a Protective Order from the Court in *Jane Doe 43 v. Epstein* that limits and restricts the use of the confidential information to the terms in paragraphs 1-3 above.
5. We have no objection to any of the other parties using the confidential information in connection with the motion to dismiss the complaint in *Jane Doe 43 v. Epstein* if they so request, so long as the evidence is used pursuant to the terms stated above.
6. If the *Jane Doe* Matter proceeds beyond the motion to dismiss stage, we are open to permitting the use of the evidence for the remainder of the case, subject to an agreed upon Protective Order.

If you have any questions or concerns regarding this matter, please feel free to contact me.

Very Truly Yours,

HADDON, MORGAN AND FOREMAN, P.C.

/s/ Jeffrey S. Pagliuca
Jeffrey S. Pagliuca