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May 13, 2020

VIA ECF

Hon. Debra Freeman
United States Magistrate Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: 19-cv-10475 (LGS-DCF), *Annie Farmer v. Darren K. Indyke, et al.*

Dear Judge Freeman:

On behalf of defendant Ghislaine Maxwell, I write under Judge Schofield's Individual Rules and Procedures for Civil Cases III(A)(1) and this Court's Practices II(A) to request a pre-motion conference concerning our anticipated Motion to Stay Discovery under Fed.R.Civ.P. 26(c)(1). Counsel conferred in good faith with both Plaintiff and Defendant Co-Executors of the Estate. Plaintiff does not consent to a stay as indicated on a telephonic conferral conference on April 28. The Co-Executors of the Estate consent to the requested stay.

Three separate and independent grounds justify a protective order staying discovery in this matter.

First, Plaintiff Annie Farmer intends to participate in the Voluntary Claims Resolution Program in the U.S. Virgin Islands (the "Program"), under which the Estate will make compensatory payments to alleged victims of Jeffrey Epstein. Plaintiffs who participate in the Program and accept payment will be required to release all former employees or potential indemnitees of the Estate, including Ms. Maxwell, from any and all claims or causes of action that concern acts of sexual abuse by Mr. Epstein. We understand that, if the Program is approved, it may begin making payments as early as August 2020. Hence, Plaintiff's participation in the Program, if successful, will render this lawsuit moot and will result in its dismissal with prejudice in a few short months. If unsuccessful, Plaintiff will be able to resume this litigation at that time. Other similarly situated plaintiffs, including Plaintiff's own sister represented by the same counsel, have agreed to stay their matters to preserve the parties' and the Court's judicial resources. According to the Complaint, Plaintiff's sister is a central witness to her claims. Plaintiff, however, who claims a

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single encounter with Ms. Maxwell in 1996 in New Mexico, has asserted her plan to undertake a vast, broad course of discovery encompassing not just the 1996 allegation, but all documents spanning the past 24 years, deposing witnesses who have never met her and unearthing documents related to Epstein that do not touch on her claims. This course of discovery will impose undue burden and expense on Ms. Maxwell and may well be wholly unnecessary in just a few months.

Second, the U.S. Attorney's Office in the Southern District of New York has publicly and repeatedly announced its "ongoing" criminal investigation into alleged Epstein "co-conspirators" on the same topic as Plaintiff alleges in this case. *Kashi v. Gratsos*, 790 F.2d 1050, 1057 (2d Cir.1986) (citing *SEC v. Dresser Industries*, 628 F.2d 1368, 1375 (D.C.Cir.) (*en banc*), *cert. denied*, 449 U.S. 993 (1980)) (holding that although "the Constitution ... does not ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings ... a court may decide in its discretion to stay civil proceedings"). Denial of a stay, particularly a stay of Ms. Maxwell's deposition, pending outcome of the criminal investigation could impair her Fifth Amendment privilege against self-incrimination, extend criminal discovery beyond the limits set forth in Federal Rule of Criminal Procedure 16(b), expose the defense's theory to the prosecution in advance of trial, or otherwise prejudice the criminal case. *See In re Par Pharmaceutical, Inc.*, 133 F.R.D. 12, 13 (S.D.N.Y.1990) (citing *Dresser*, 628 F.2d at 1376).

Third, Ms. Maxwell's Motion to Dismiss the claims against her is strong and warrants a stay of discovery pending its resolution. The claims against Ms. Maxwell are barred by the applicable statute of limitations. Under New Mexico law, there is no revival of claims. N.M. Stat. §§ 37-1-8, 37-1-10. Even under New York law (which should not apply), unlike Mr. Epstein, Ms. Maxwell has not been charged with any criminal offense. There is neither an automatic revival of Plaintiff's claims under CPLR § 215(8) or CPLR § 214(g), nor any grounds for equitable estoppel, available to Plaintiff who had every opportunity over twenty-four years to relay her allegations to a Vanity Fair journalist, the police, the FBI, and her own therapist. Finally, because the *entire* allegation against Ms. Maxwell purportedly occurred in New Mexico, and no party to this lawsuit is a resident of New York, venue is improper in New York, requiring dismissal. 28 U.S.C. § 1391(b)(1).

At a minimum, for the above reasons, Ms. Maxwell intends to request that the Court stay her deposition and to bifurcate discovery related to the statute of limitations from the liability discovery.

Ms. Maxwell believes that full briefing on these matters is appropriate and respectfully suggests a briefing schedule that encompasses one week for the filing of the Motion for Stay, one week for any response, and one week for a reply.

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Respectfully Submitted,

A handwritten signature in blue ink, reading "Laura A. Menninger". The signature is fluid and cursive, with the first name "Laura" and last name "Menninger" clearly legible.

Laura A. Menninger

CC: Counsel of Record *via* ECF