



Haddon, Morgan and Foreman, P.C
Laura A. Menninger

150 East 10th Avenue
Denver, Colorado 80203
PH 303.831.7364 FX 303.832.2628
www.hmflaw.com
lmenninger@hmflaw.com

May 19, 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:

I write to reply in further support of Ms. Ghislaine Maxwell's request for a pre-motion conference to discuss a Motion to Stay Discovery in this matter.

Plaintiff's *ad hominem* attacks notwithstanding, this Court has the power pursuant to Rule 26(c) to stay discovery "for good cause shown," regardless of whether the opposing party consents to the stay or whether a claims program requires that she do so. *Spencer Trask Software & Info. Servs., LLC v. RPost Int'l Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002). Good cause in this case exists for three independent reasons, balanced against the expansive discovery Plaintiff seeks against Ms. Maxwell (and the other Defendants).

First, Plaintiff's intended imminent participation in the U.S.V.I. Voluntary Claims Program likely will, contrary to her counsel's claim, render this lawsuit moot. Plaintiff's counsel asserts "it is not clear that Maxwell would be released for her torts against Plaintiff" (Resp. at 2); in fact, Mr. Boies approved the release covering all Epstein employees (including Ms. Maxwell) for legal actions such as Plaintiff's which falsely accuse Ms. Maxwell of sexual assault. See Co-Executors' Corrections to Attorney General's Status Report on Voluntary Compensation Program and Renewed Request for Ruling at 2 & Ex. B, *Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-80 (Apr. 14, 2020, V.I. Super. Ct) (attached as Exhibit A). Plaintiff concededly intends to participate in the Program; she recently asked the U.S.V.I. Probate Court for a status conference to help launch the Program. According to reports, the Program is expected to make its payments at the early part of August, so any stay likely would be brief.

Hon. Debra Freeman

May 19, 2020

Page 2

That the Program does not itself require participants to stay their litigation does not deprive this Court of jurisdiction to do so for good cause. Each dollar that the Estate spends on discovery in this and other cases by Plaintiff's counsel is one less dollar available through the fund for any of Mr. Epstein's other accusers. It would seem an inherent conflict of interest for one accuser represented by the same counsel (Maria Farmer) to voluntarily stay her case "to conserve resources" of the Court and parties only to have another accuser (her sister, Plaintiff) with the same counsel drive up litigation costs with expansive discovery requests and dozens of depositions.

Second, the ongoing criminal investigation, despite Plaintiff's feigned ignorance of its existence¹ and despite Ms. Maxwell not having been arrested or charged, further justifies a stay. This Circuit's six factors all support a stay, regardless of whether in *most* cases a mere investigation is insufficient to warrant one.

It is the height of irony that Plaintiff's counsel demands Ms. Maxwell provide the "subject matter" and "status" of any criminal investigation. It is Plaintiff's counsel themselves who have attempted to foment such a prosecution against Ms. Maxwell, including through extrajudicial commentary well beyond the bounds of Rule of Professional Conduct 3.6. *See, e.g.*, Kevin G. Hall, "Ghislaine Maxwell says she was Epstein's employee not his madam," Miami Herald (Mar. 18, 2020) (quoting Sigrid McCawley, "It is absolutely appalling that Ghislaine Maxwell, who committed crimes with Epstein against these victims, is seeking to drain funds from the very estate that should be paying the Epstein victims' claims...We view her actions as unconscionable but this is an individual who lost sight of right from wrong a very long time ago."). And it is Plaintiff's counsel who claim (to the press at least) to be behind the prosecution. *E.g.*, Andrew Denney and Bruce Golding, "Jeffrey Epstein's no-bail ruling may encourage more accusers to come forward," NY Post (July 18, 2019 ("McCawley wouldn't identify her new clients but said she encouraged them to report their alleged abuse to the FBI. McCawley declined to say if any had been interviewed by the feds, but Manhattan federal prosecutor Alex Rossmiller on Monday told Berman that the case against Epstein was 'getting stronger every day.'").

The reasons for a stay pending resolution of a criminal investigation are obvious. Ms. Maxwell should be afforded the presumption of innocence, and the other constitutional protections, inherent in a criminal case. While Plaintiff makes veiled threats about Ms. Maxwell's eventual "arrest", she does nothing to dispute the fact that she intends to depose Ms. Maxwell in short order and will thus force her into the Hobbesian choice of whether to testify or reserve a decision on testifying until

¹ *See, e.g.*, Daniel Bates, "Prince Andrew ignores three formal requests to be interviewed under oath about his friendship with paedophile Jeffrey Epstein," *Daily Mail* (May 3, 2020) ("Mr. Boies said he was confident prosecutors would persist. 'I've got quite a bit of confidence that they will not let this drop,' he added.") (<https://www.dailymail.co.uk/news/article-8281419/Prince-Andrew-ignores-three-formal-requests-interviewed.html>)

Hon. Debra Freeman
 May 19, 2020
 Page 3

appropriately determined in any criminal prosecution, or until the U.S. Attorney's Office clears Ms. Maxwell from any involvement in alleged sexual abuse.

Finally, contrary to Plaintiff's assertion, the strength of Ms. Maxwell's Motion to Dismiss should be judged by its content, not by a pre-motion conference request letter nor by motions to dismiss filed by other defendants in other actions. As is clear from her now-filed Motion to Dismiss (ECF No. 70), the claims against Ms. Maxwell are barred by the applicable statute of limitations and venue is improper in New York.

Good cause for a stay may be shown where a party (1) has filed a dispositive motion, (2) the stay is for a short period of time, and (3) the opposing party will not be prejudiced by the stay. Additional factors include the breadth of discovery sought and the burden of responding to it. *Spencer Trask Software, supra*, 206 F.R.D. at 368. Here, it would be hard to over-state the breadth of discovery requests posed by Plaintiff. Thus far, Plaintiff has interposed – and Ms. Maxwell has objected but responded to – **63 Requests for Production and 33 Interrogatories**. Plaintiff contends the “relevant period” for discovery dates from 1996 until today and has sought for those 24 years, *inter alia*, all “calendars”, all “address books,” all purchase history for any Amazon.com account ever used, all funding for Ms. Maxwell's charity organization, and all documents “produced by You or Epstein in discovery in *Giuffre v. Maxwell*.” Discovery requests propounded by the same Plaintiff's counsel similar to those propounded here gave rise to nearly 1,000 docket entries, almost exclusively involving discovery disputes, in *Giuffre v. Maxwell*. *See generally*, Docket, *Giuffre v. Maxwell*, Case No. 15-cv-07433 (S.D.N.Y.).

Plaintiff contends there is no reason to treat Ms. Maxwell differently than the Estate. To the contrary, Ms. Maxwell is facing one lawsuit – not 16. Unlike the Estate, she is not a multi-millionaire and must self-fund her defense against the extensive discovery sought by Plaintiff.² Ms. Maxwell's defenses are significantly different than Mr. Epstein's; indeed, she absolutely denies that she participated in this or any other sexual abuse or trafficking or assault, and no court, judge or jury has ever determined that she has.

There are a number of intermediate options available under Rule 26, including a bifurcation of discovery on the statute of limitations first, limitations to just paper discovery for the period of stay (which is *de facto* the case during the Covid crisis in any event) or a stay on Ms. Maxwell's deposition until the other matters have been resolved. A full briefing on these matters is appropriate.

² The fact that Ms. Maxwell is simultaneously pursuing indemnification from the Estate for legal fees incurred as a result of her employment with Mr. Epstein twenty or more years ago has no bearing on the request for a stay. As Mr. Epstein himself wrote before his death, Ms. Maxwell has done nothing wrong, and she has every right to be indemnified for litigation against her that resulted from her employment by Mr. Epstein.

Hon. Debra Freeman
May 19, 2020
Page 4

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Laura A. Menninger". The signature is fluid and cursive, with a large loop at the end.

Laura A. Menninger
CC: Counsel of Record via ECF