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December 30, 2020

VIA ECF

The Honorable Debra Freeman
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Farmer v. Indyke, et al.*, 19-cv-10475 (LGS-DCF)
Response to December 28, 2020 Order (Doc. #107)

Dear Judge Freeman:

On behalf of Ghislaine Maxwell, I write in response to this Court's Order dated December 28, 2020, concerning plaintiff's proposed terms for dismissal with prejudice of this action pursuant to Fed. R. Civ. P. 41(a)(2).

Plaintiff proposes to hide from the public, press and Ms. Maxwell — a woman she has publicly and repeatedly accused on Netflix, the New York Times, and multiple other news organizations of the heinous crime of sexual abuse — exactly how much money she stands to make from her untested, uncorroborated, and unfounded allegations. Just as non-disclosure agreements have recently come under scrutiny in the context of “silencing victims,”¹ likewise false accusers of sexual assault who receive money in exchange for their stories, publicly proclaiming they want only “justice” while they and their lawyers secretly rake in substantial sums of money, should not be able to hide their financial gains from public scrutiny. Neither this Court nor Ms. Maxwell had any role in structuring the Epstein payment program or its terms. Rule 41(a)(2) permits this Court to order just and proper conditions of any non-stipulated dismissal. The amount of money plaintiff obtains from the Epstein program is very much a matter of public interest and will go to the very core of plaintiff's credibility during the upcoming criminal trial.

For these and other reasons explained below, this Court should either defer ruling on the issue of the terms of any Rule 41(a)(2) dismissal until full briefing on the matter, or should order plaintiff to disclose the unredacted signed and complete

¹ See, e.g., Tess Wilkinson-Ryan & David A. Hoffman, “Hush Contracts Corrupt Everyone Who Signs Them” *The Atlantic* (Nov. 9, 2019) (<https://www.theatlantic.com/ideas/archive/2019/11/hush-contracts-corrupt-everyone-who-signs-them/601702/>)

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copy of her release, including the amount of money she is making off of her story, as a condition of the dismissal.

By way of background, plaintiff Annie Farmer brought this lawsuit in November 2019, **approximately twenty-four years** after she claims that she was assaulted by Jeffrey Epstein and Ghislaine Maxwell. Earlier this year, defendants served plaintiff with discovery requests calling for the production of any corroborating evidence that the abuse as alleged in the Complaint had occurred in 1995 or 1996. In response, plaintiff produced certain pages from a diary dated in early 1996 which detailed, *only*, that Jeffrey Epstein had held her hand in a movie theater in late 1995 which made her feel uncomfortable. This same diary contained exactly *zero* references to Ghislaine Maxwell; contrary to the assertions in her Complaint, the diary contained no mention that Ghislaine Maxwell had contacted her mother and assured her that she could be trusted alone with Epstein, nor that she had been invited to New Mexico to spend time with Epstein and Maxwell, nor that she had gone to New Mexico, nor that she was ever touched in any way shape or form by Ms. Maxwell as she now claims, nor even that she was sexually touched (apart from the hand-holding) by Jeffrey Epstein.

Plaintiff also was asked for any proof that she had been “threatened” by Ms. Maxwell or Jeffrey Epstein; she produced none. She had no phone records, no notes, no diaries, no emails, in the thousands of pages of her document productions (largely recycled from publicly available materials) that verified *any* contact from Ghislaine Maxwell, *ever*, let alone any threatening communications. Plaintiff is not on a single flight record of Jeffrey Epstein’s private planes that were disclosed by her lawyers. Plaintiff likewise identified no evidence that she — who holds a Ph.D. in Counseling Psychology — had been somehow “prevented” over the course of twenty-four years from reporting her claims to any legal authorities.

The only “police report” plaintiff produced was from her sister, Maria Farmer, from 1996, *after* she claims she learned of plaintiff’s allegations of abuse, and it mentions neither Ghislaine Maxwell nor plaintiff at all. The police report also does not contain *any* reference to any sexual or improper contact. Rather, Maria Farmer’s police report — touted by the Farmers in the press as a corroboration of their claims — reflects her allegation that *Jeffrey Epstein* threatened sometime in the summer of 1996 to burn her artwork for unspecified reasons. It is silent as to Ghislaine Maxwell, to plaintiff (from whom she claims she was then aware had been “sexually assaulted”), and to anything related to sex, or sexual contact, or inappropriate behavior.

Against the backdrop of this dearth of evidence, Ms. Maxwell moved in May 2020 to dismiss the claims. Plaintiff, on the other hand, pressed to take Ms. Maxwell’s deposition. What was a clear possibility in the spring of 2020 became crystal-clear on July 2: plaintiff was working during the pendency of this lawsuit

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with the Southern District of New York's U.S. Attorney's Office to try to circumvent Ms. Maxwell's Fifth Amendment rights in advance of the June 29, 2020 indictment. Plaintiff was then an undisclosed prosecution witness. Indeed, her counsel, Mr. Boies, went so far as to tell this Court that Ms. Maxwell was the one who should be explaining the status of the ongoing criminal investigation when he knew all along from the USAO exactly what the status was and his client's participation in it.

Following the July 2 unsealing of the indictment, plaintiff publicly self-identified as one of the accusers mentioned in that indictment. She no doubt will be a government witness at the criminal trial scheduled for July 2020. No court or jury has considered plaintiff's claims or weighed the evidence concerning her allegations. Plaintiff has never been deposed nor participated in any in-court testimony. She has never been cross-examined. Certainly, the Epstein claims program does not have any mechanism to challenge plaintiff's false assertions against Ms. Maxwell, nor is there even a procedure by which the claims administrator can consider contrary evidence. The fact that plaintiff seeks, money from the Estate and from Ms. Maxwell, in the *millions* of dollars, *at the same time* she is a government witness in an upcoming criminal trial on the same topic is reason enough to suspect that her newly asserted memories of abuse — without corroboration — are not based on the truth or a desire for "justice" so much as her desire for cash. To be clear, Ms. Maxwell adamantly denies plaintiff's allegations.

Now, plaintiff who voluntarily instituted this civil lawsuit wants to dismiss it with each party to bear their own fees and costs. She wants Ms. Maxwell — and the public and press — to be kept in the dark as to the amount of money she is being paid in exchange for her fabrications as to Ms. Maxwell. She says she participated in the Epstein claims program. Ms. Maxwell, unlike the Estate, has not been given a copy of anything that plaintiff submitted to the claims program. She does not know whether plaintiff made up new allegations against her, whether she changed her story again, nor what "evidence" she alleges support her claims. Likewise, she does not know how much money the claims program offered to pay her. Certainly, the amount of money that plaintiff has been offered by the Estate in exchange for her un-tested story will be an issue in the upcoming criminal trial when plaintiff takes the stand, for the first time, and faces cross-examination. It is unusual, to say the least, that the government is standing by while its star trial witness is receiving money based on her untested stories in advance of her criminal testimony. The motive for fabrication could not be clearer.

This Court held a hearing on December 16, 2020, on plaintiff's request to dismiss this action pursuant to Rule 41(a)(2). Ms. Maxwell requested that she be provided a copy of the unredacted and signed release, including the amount of compensation that plaintiff is set to receive based on her false story against Ms. Maxwell. She also requested that she not be prejudiced in her current lawsuit against the Estate for indemnification for legal fees. This Court indicated during that call that

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it would not order plaintiff to provide an unredacted copy, rather that it would likely order dismissal under Rule 41(a)(2) with a redacted copy, together with an assurance of the document's authenticity.

Thereafter, the parties began their discussions to determine whether they could resolve their differences and stipulate to a dismissal. Plaintiff demanded that the negotiations take place over the course of a few days, never explaining the need for the speed and certainly without regard to any of the other significant limitations on undersigned counsel's ability to confer with her counsel. Plaintiff's December 21 letter provides an incomplete narrative of counsels' subsequent correspondence. On the same day as the Court conference, as plaintiff is well-aware based on her work with the US Attorney's Office, the government filed its 40-page response to Ms. Maxwell's renewed application for bail in 20-cr-330 (AJN). Ms. Maxwell had 48 hours to work with her counsel to prepare a 10-page reply. That reply was filed late on December 18. She was not able then to confer with undersigned counsel to discuss the December 16 court conference in this case nor plaintiff's proposed stipulation language. Ms. Maxwell is not provided calls to counsel over the weekends. On Monday, December 21, plaintiff's counsel began giving false deadlines – threatening to call the Court if they did not receive an answer by 5:00 p.m. that same day to their proposal. Defense counsel truthfully responded that she did not then know when she would be able to confer with her client. Plaintiff's counsel also inappropriately demanded to know when undersigned would be able to speak with Ms. Maxwell on the topic of this case's settlement. These demands are inappropriate because, as the Court is aware, Ms. Maxwell has numerous ongoing legal matters and it is frankly none of plaintiff's counsel's prerogative to demand that counsel speak to her client on a particular day on a particular matter. In addition to the renewed bail application, Ms. Maxwell also is actively in the process of reviewing — and discussing — over two million pages of criminal discovery in preparation for the upcoming January 11, 2021, motions deadline in her criminal case. Much of that discovery was only produced at the end of November. The pressure on her counsel and her to review and discuss — under very onerous conditions at the MDC — all of this discovery and the motions is significant.

At the same time that plaintiff demanded immediate same-day answers to a stipulated dismissal, **when she waited twenty-four years to bring a lawsuit**, Ms. Maxwell also received similar correspondence from the plaintiff in *Indyke v. Epstein, et al.*, 20-cv-484 (JGK-DCF). On December 21, plaintiff in that case sought a dismissal pursuant to Rule 41(a)(2) for substantially the same reasons as plaintiff in this case — a desire to get her money faster — and was opposed by undersigned counsel for the same reasons as in this case — an inability to immediately speak to the incarcerated Ms. Maxwell concerning the terms of such dismissal. Last Wednesday, December 22, Judge Koeltl held a status conference concerning the *Doe* dismissal request. Coincidentally the conference was held at the exact time that undersigned counsel could have been speaking with her client but was not able to do

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so given the hearing. Judge Koeltl urged the parties to try to resolve the language of a stipulated dismissal and said, in the absence of any such stipulation, he would take motions from the parties on a Rule 41(a)(2) motion by January 15, 2021. Ms. Maxwell was not given legal calls from December 24 through December 28 due to the holidays. She likewise is not being afforded communications with counsel from December 30 through January 2.

Plaintiff offered to counsel, and to this Court, no reason whatsoever that she cannot wait an extra week or so for Ms. Maxwell to be able to discuss the stipulated dismissal with her client. While plaintiff's counsel may want to know exactly when Ms. Maxwell is speaking to her lawyer *on this case*, that information is frankly subject to attorney-client privilege and impedes Ms. Maxwell's right to counsel in her criminal case because it necessarily communicates when she is consulting with her counsel on this matter versus her criminal matter. Non-incarcerated defendants are not subject to disclosure of that information and plaintiff has offered no legal support for her demands to counsel or this Court to know that information here.

Plaintiff also fails to articulate any ground for her baseless assertion that defense counsel's inability to get back to her with a date and time certain when she will be able to speak to her client on this topic is somehow "retaliation" for plaintiff's bail application submission. Counsel pointed to the bail application to illustrate that, as plaintiff's counsel is well-aware, Ms. Maxwell is in custody and not at liberty to discuss her case with her counsel at all hours of the day and night and also that she had more pressing matters to contend with following the December 16 court conference in this case.

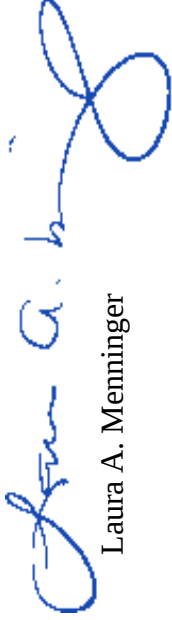
Ms. Maxwell respectfully requests that this Court, as Judge Koeltl has done, defer any ruling on a Rule 41(a)(2) motion until after January 15, 2021, with full briefing on the issue. Ms. Maxwell's criminal motions are due on January 11, 2021. The government has produced more than 2 million pages of discovery, with approximately 1.5 million of those pages produced after November 23, 2020. The additional two weeks from today will permit Ms. Maxwell to focus on the very pressing discovery and motions issues in her criminal case, and also permit her counsel to adequately confer with her on this civil dismissal in a reasonable amount of time. In the absence of full briefing and a small delay (given the 24 years that plaintiff deferred bringing this lawsuit), Ms. Maxwell respectfully requests that the Court:

1. Strike from plaintiff's proposed order any reference to each party to bear its own costs and attorneys' fees, given Ms. Maxwell's expenditure of substantial sums of money to defend against plaintiff's baseless and uncorroborated claims; and

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2. Require that plaintiff disclose the substantial sum of money that she expects to receive from the Epstein program in exchange for her uncorroborated and un-substantiated story that encompasses Ms. Maxwell.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Laura A. Menninger". The signature is stylized with a large, looping "L" and a long, sweeping "M".

Laura A. Menninger

CC: Counsel of Record *via* ECF