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August 10, 2020

Honorable Loretta A. Preska
United States District Court
Southern District of New York

[REDACTED]
New York, NY 10007

Re: August 3, 2020 Order (Doc. 1096)
[REDACTED] v. *Ghislaine Maxwell*, No. 15 Civ. 7433 (LAP)

Dear Judge Preska:

I write in response to the Court's Order of August 3, 2020 (Doc. 1069), the Order and Protocol for Unsealing Decided Motions (Doc. 1044) ("Protocol"), and to raise with the Court the legal effect of new information that came to the attention of counsel for Ms. Maxwell on Friday, August 7, 2020.

New information: On Friday, August 7, 2020, counsel for Ms. Maxwell learned of critical new information that impacts both this action and *U.S. v. Maxwell*, 20 Cr. 330 (AJN) (the "Criminal Action"). The information implicates Ms. Maxwell's right to due process and fairness in this civil action and affects the Second Circuit's review of the Court's unsealing order of July 23, 2020. Additionally, the information implicates her rights as a criminal defendant guaranteed under the Fourth, Fifth and Sixth Amendments.

Counsel makes the representations about implications of the new information as an officer of this Court. At this time, counsel is not at liberty to disclose the information because it is subject to a protective order in the Criminal Action, which forbids its use "for any civil proceeding or any purpose other than the defense" of the criminal action absent "further order of the Court." Protective Order, 20 Cr. 330 (AJN) at ¶¶ 1(a), 18 (Exhibit A). As required by that Protective Order and Judge Nathan's Individual Practices in Criminal Cases, counsel initiated a conferral with the U.S. Attorney's Office over the weekend concerning a modification of the Protective Order to share the information with this Court and the Second Circuit. Barring agreement, Ms. Maxwell intends to seek modification of the Protective Order in the Criminal Action from Judge Nathan forthwith to permit sharing the information with this Court, *ex parte* and *in camera* if necessary, and with the Second Circuit (likewise under seal if necessary).

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Ms. Maxwell requests a temporary stay of the unsealing process for approximately three weeks until the conclusion of (a) the conferral with the U.S. Attorney's Office to a modification of the Protective Order in the Criminal Action and, if necessary, an application and ruling by Judge Nathan on the issue, to permit the use of the information in this Court and before the Second Circuit (under seal in both courts, if necessary), (b) an application to this Court containing the new information in support of a request to stay the unsealing process until the conclusion of the Criminal Action, and (c) a ruling by this Court on the motion for stay.

Streamlining of Unsealing Process: As directed by the Court, counsel for Ms. Maxwell conferred with plaintiff's counsel concerning various proposals to streamline the unsealing process. Subject to Ms. Maxwell's request to temporarily pause the process as described above, defense counsel has agreed to several potential modifications of the Protocol which we hope will ease the burden on the parties and the Court going forward, should the unsealing move ahead. Of note, and as Plaintiff will explain to the Court, the parties have agreed to notify all of the Non-Parties at once so that we can understand which Non-Parties object to the unsealing before deciding how to proceed with future redactions. Although this will give the Court and the Original Parties more information about the scope of objectors, there are limitations to the extent to which it will expedite the process. As counsel has made clear in the past, it will take significant effort by the Original Parties and their staff to put together the excerpts for any Non-Party who requests them because each Non-Party will be entitled to see his or her own information (but not that of other Non-Parties). After receiving a request from a Non-Party, we anticipate it will take up to a week per Non-Party to agree to the excerpts to send to them for review. But on balance we agree that having a sense of the number of participating Non-Parties will aid the Court in conducting future proceedings, we have agreed to Plaintiff's suggestion on that front. The parties can submit a proposed modification of the Protocol and Notice to the Court to reflect this agreement.

We also have agreed, as the Court suggested, to shorten the time period for the Original Parties to object and to respond from 14 to 7 days. This would impact paragraphs 2(d), 2(e) and 2(f) of the Protocol. The parties can also submit a proposed modification of the Protocol to the Court. The parties also agreed to leave the time for Non-Parties to object at 14 days given some practical considerations applicable to them.

Although the parties were able to reach some agreement, we cannot agree to all of Plaintiff's proposals and write separately to explain the basis for our disagreements.

First, we carefully considered the Court's suggestion to reduce the number of pages of briefing to ten pages per side. *Id.* Our initial Objection (DE 1057) was 14 pages long; Plaintiff's Response was 19 pages. The Court concluded that our Objection was, in many respects, not specific enough. We would ask leave to at least have 15 pages to object to the five motions proposed below, with any response limited to the same. We will endeavor to keep it shorter than that, but also allow for more space to provide specifics to the Court.

Second, we have obtained new contact information for Doe 1 from a separate civil suit. We believe that Doe 1 retains a right to notification and participation. We suggest

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providing the Notice to Doe 1 at the new address for any future pleadings that implicate his or her deposition, which is currently subject to the Second Circuit's stay.

Third, to prevent against some of the errors that occurred during the last round of unsealings, we request that the Protocol be amended to require the Responding Original Party who proposes unsealing to supply with their Response a proposed unredacted set of the pleadings at issue, for the Court's consideration and for the Objecting Original Party or Non-Party to have the right of reply. Preparing those redactions after the fact allows much ambiguity into the Court's ruling and we believe the Court's ruling should specify which redactions it is accepting or rejecting at the time of ruling.

Finally, we request that the Court allow for the any objecting Non-Party or Original Party be given 7 days following any unseal order to apply for relief in the Second Circuit from the order prior to the documents being released.

Proposed Next Set of Docket Entries for Review:

Given the Second Circuit's stay concerning Ms. Maxwell and Doe 1's deposition transcripts and materials that quote from them, we propose that the Court deviate from the Doe 1 and 2 chronology (given that Doe 1's deposition is sprinkled throughout those motions) and instead take the following five decided motions and their related pleadings. This list represents the first five chronological decided motions that (a) have sealed or redacted materials and (b) do not have attached or quote from documents subject to the stay. They are:

- 75 – Defendant's Motion to Compel Responses to Defendant's First Set of Discovery Responses to Plaintiff
- 139 – Plaintiff's Brief in Support of the Privilege Claimed for In Camera Submission
- 155 – Defendant's Motion to Compel Non-Privileged Documents
- 215 – Sharon Churcher Motion to Quash Subpoena
- 231 – Defendant's Motion to Reopen Deposition of Plaintiff [REDACTED]

Counsel for Ms. Maxwell is available for a telephone conference to discuss any of the foregoing, should the Court desire.

Respectfully submitted,


Laura A. Menninger

CC: Counsel of Record via ECF