



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

November 16, 2018

Via ECF

The Hon. Magistrate Sarah Netburn
Thurgood Marshall Courthouse
Southern District of New York
40 Foley Square, Room 430
New York, New York 10007

Re: *Sarah Ransome v. Jeffrey Epstein, et al.*, 17-cv-00616 (JGK)

Dear Judge Netburn:

Pursuant to the Court's Order of November 8, 2016 (Doc. # 163) and comments made on the record on November 7, 2016, defendant Ghislaine Maxwell submits the following revised proposed Protective Order for the Court's consideration. The other Defendants join in Ms. Maxwell's request that the Court adopt this proposed Protective Order. Unfortunately, plaintiff disputes the proposed paragraph 3 definition of "confidential information" as reflected in the attached email.

Ms. Maxwell's proposed Protective Order reflects the Court's Order with regard to the preamble, paragraph 8, and paragraphs 12 and 13. Ms. Maxwell's proposed paragraph 3 reads as follows:

3. Information designated "CONFIDENTIAL" shall be information that is confidential and implicates common law and statutory privacy interests, including information reflecting medical or psychological conditions, medical or psychological treatment, prescriptions for controlled substances, non-public personal financial information, sexual activity or sexual contact, education records, email addresses, telephone numbers, home addresses, social security numbers and similarly personally identifying information for parties and third-party witnesses, any information subject to N.Y. Civil Rights Law § 50 or 51, or any other information deemed private by a Court of competent jurisdiction to include the tort of publication of private facts.

Ms. Maxwell believes that the above list adequately captures the type of confidential information likely to be sought (or which already has been sought) from parties and third-party witnesses. The inclusion of the specific statutory and common law rights potentially implicated (N.Y. Civil Rights Law § 50 and 51 and the common law tort of publication of private facts) provides meaningful guidance to the parties and the Court in the event of a dispute concerning what information should or should not be deemed Confidential.

Hon. Sarah Netburn
November 16, 2018
Page 2

Plaintiff's proposal eliminates the specific statutory and common law rights at issue and adds the phrase "details of any" sexual activity or contact, as well as "copyrighted or trademarked materials." Adding the phrase "details of" sexual activity or conduct does not provide meaningful guidance. Does that mean a general discussion of sexual activity or conduct would not be Confidential? How are the parties to know what is a "detail of" sexual activity or conduct versus non-detailed activity or conduct? The phrase muddies the definition more than clarifies. It is frankly hard enough for a lawyer to try to argue such a distinction; when unrepresented third-party witnesses are deposed in this matter and asked about sensitive personal sexual conduct or activity, they should be afforded the privacy of a Confidential designation over their disclosures without risk of towing the line between a detailed or a general description.

Moreover, the statutory and common law rights at issue are easily measured by the cases construing those rights. The N.Y. Civil Rights Law § 50-b, for example, makes confidential the identity of any victim of a sex offense. It is frankly puzzling to me that Plaintiff does not want that information held Confidential. Likewise, the tort of publication of a private fact enjoys a substantial body of case law informing what types of facts are "private," the publication of which gives rise to a civil cause of action. Should the parties dispute whether a fact falls within the ambit of privacy, case law can be used to support or refute any such designation.

Plaintiff argues that the definition "would sweep in a considerable amount of material that should not be made confidential," given that the topic of this case involves "sexual trafficking." In fact, it is because the case involves sexual trafficking that Plaintiff argues she should be permitted to engage in far-ranging inquiries regarding sexual activities, habits and conduct, including (most especially) consensual sexual conduct amongst adults. Plaintiff has yet to articulate why they need to make public any such Confidential information for a *case-related*, versus a media-related, purpose.

Ms. Maxwell also made one small addition to paragraph 8, as indicated by the redline, to allow non-represented third-party witnesses the ability to designate materials Confidential.

For the foregoing reasons, Ms. Maxwell respectfully requests that the Court enter the attached proposed Protective Order.

Respectfully submitted,

HADDON, MORGAN AND FOREMAN, P.C.

/s/ Laura A. Menninger
Laura A. Menninger