EXHIBIT C

BSF | BOIES SCHILLER FLEXNER

David Boies
[redacted]

May 18, 2020

VIA ECF

The Honorable Debra C. Freeman
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: [redacted] ***v. Darren K. Indyke, Richard D. Kahn, & Ghislaine Maxwell*, 19-10475-LGS-DCF**

Dear Judge Freeman:

Pursuant to Individual Rule I.D, Plaintiff [redacted] hereby responds to Defendant Ghislaine Maxwell's request for a pre-motion conference in connection with her anticipated motion to stay discovery in this matter. The Court should deny Maxwell's motion for a pre-motion conference and deny her anticipated motion in its entirety because, as explained below, each of Maxwell's reasons for staying discovery is meritless and the motion is simply another attempt to unjustifiably delay this litigation.

First, a pending criminal investigation of Maxwell does not justify a stay of discovery. "[A] stay of a civil case to permit conclusion of a related criminal prosecution has been characterized as an extraordinary remedy." *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 98 (2d Cir. 2012) (internal quotation marks omitted). In this Circuit, courts balance the following six factors when considering whether to stay a civil case pending related criminal proceedings:

> 1) the extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the case, including whether the defendants have been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; 4) the private interests of and burden on the defendants; 5) the interests of the courts; and 6) the public interest.

Id. at 99. And according to the very case Maxwell cites in support of staying this action pending a criminal investigation: "The weight of authority in this Circuit indicates that courts will stay a civil proceeding when the criminal investigation has ripened into an indictment, *but will deny a stay of the civil proceeding where no indictment has issued*." *In re Par Pharm., Inc. Sec. Litig.*, 133 F.R.D. 12, 13–14 (S.D.N.Y. 1990) (emphasis added) (internal citations omitted). The Court should deny Maxwell's motion for a stay without prejudice to her ability to renew her application if she is arrested. Until that happens, however, there are no grounds for a stay.

Further, Maxwell has provided no information about the subject matter of the criminal investigation into Epstein's co-conspirators, the status of the investigation, or even disclosed whether she herself is a target of the Southern District's investigation. When Plaintiff's counsel asked Maxwell's counsel for information about the criminal investigation during their meet and confer, Maxwell's counsel refused to provide any details. "A civil defendant urging such a stay [pending a parallel criminal prosecution] bears the burden of establishing its need." *Rex & Roberta Ling Living Tr. v. B Commc'ns Ltd.*, 346 F. Supp. 3d 389, 400 (S.D.N.Y. 2018) (internal quotation marks omitted). Maxwell therefore cannot use the existence of a criminal investigation to dodge her discovery obligations in this matter, particularly while at the same time refusing to provide any details or reasons as to why the investigation is a reason to stay the action under the law of this Circuit.[1]

Second, the potential claims resolution program does not justify a stay of discovery. As this Court knows, the program cannot go forward due to the current criminal activity lien on Jeffrey Epstein's Estate in the U.S. Virgin Islands ("USVI"). *See* Tr. of Feb. 11, 2020 Conf. at 36:15–18 ("[T]he two cases where discovery has been stayed, in light of what's happening in the Virgin Islands, they may end up unstayed."). But even if the lien were lifted and the program could go forward tomorrow, both Epstein's Estate (Maxwell's co-defendant) and this Court have recognized that victims would still not be required to stay discovery in their cases in order to participate in the program. Tr. of Feb 11, 2020 Conf. at 6:10–18 (Estate explaining that staying litigation is not required in order to participate in the program); Tr. of Feb 11, 2020 Conf. at 17:2–3 (Court recognizing that Defendants cannot ask victims to stay their cases in order to participate in the program); Tr. of Nov. 21, 2019 Conf. at 26:10–11 ("The default in this Court is that it does not stay discovery."). Accordingly, this Court has not stayed *any other action* against Jeffrey Epstein's Estate in light of a potential claims administration program unless all the parties agreed to such a stay, and there is no reason to treat this case differently merely because Maxwell is named as a Defendant in addition to the Estate. Further, this Court has recognized that some discovery might, in fact, be necessary to inform the claims resolution program. Tr. of Nov. 21, 2019 Conf. at 27:8–11 ("[I]t may be that you need discovery in the litigation to have in hand certain discovery before you can figure out the right settlement for a particular case.").

Maxwell also contends that if the program moves forward and Plaintiff chooses to participate, Maxwell will be released from liability for sexually assaulting Plaintiff when she was a child. But, again, the contours of the program have not been finalized. Even if the program moves forward and even if Plaintiff chooses to participate, it is not clear that Maxwell would be released for her torts against Plaintiff. In fact, the scope of the release that participants in the program would be required to sign is the very issue, and the sole issue, that the USVI Attorney General and Epstein's Estate are still negotiating. *See* Co-Executors' Corrections to Attorney

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[1] The pending criminal investigation did not inhibit Maxwell from filing her own lawsuit against the Estate for indemnification, even though her criminal conduct would be directly at issue in that case, and the case would require discovery concerning such conduct. *Maxwell v. Estate of Jeffrey E. Epstein, et al.*, ST-20-CV-155 (V.I. Super. Ct.); *Willie v. Amerada Hess Corp.*, 66 V.I. 23, 92 (Super. Ct. 2017) (common law indemnification is only available "where an *innocent party* is held vicariously liable for the actions of the *true tortfeasor*" (emphases in original) (internal quotation marks and citations omitted)).

General's Status Report on Voluntary Compensation Program, *Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-80 (Apr. 14, 2020, V.I. Super. Ct.); Notice of Joinder of Motion for Status Conference Regarding Victim Compensation Fund, *Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-80 (Apr. 29, 2020, V.I. Super. Ct.). The claims resolution program is therefore not a valid basis to stay this action without Plaintiff's consent.[2]

Third, Maxwell contends that her motion to dismiss is "strong and warrants a stay of discovery pending its resolution." Plaintiff has already addressed the merits of Maxwell's motion to dismiss in her response to Maxwell's letter requesting a pre-motion conference on that motion. ECF No. 48. Judge Schofield's words at the pre-motion conference—in which she suggested that Maxwell's counsel *not* file a motion to dismiss—speak for themselves, and demonstrate that Maxwell's motion to dismiss is anything but "strong": "I've reviewed the letter from defendant Maxwell's counsel, and this particular motion doesn't strike me as any more meritorious" than the one previously contemplated by the Estate, which eventually filed an Answer in lieu of a motion to dismiss after a similar pre-motion conference before Judge Schofield. Tr. of Apr. 16, 2020 Conf. at 3:22–24. Further, this Court has explicitly stated that the default in this Court is that dispositive motions do not stay discovery, which is also consistent with Judge Schofield's individual rules. Tr. of Nov. 21, 2019 Conf. at 26:10–12; Judge Schofield's Individual Rule III.C.2. ("Absent extraordinary circumstances, the Court does not stay discovery or any other case management deadlines during the pendency of a motion to dismiss."). Maxwell's anticipated motion to dismiss should not stay discovery in this matter, just as the Estate's motions to dismiss have not stayed discovery in any other matter against it in this District.

The Court should deny Maxwell's motion for a pre-motion conference, and deny her anticipated motion to stay discovery in this matter in its entirety. Nor is full briefing necessary to address the above issues—the anticipated motion to stay borders on frivolous in light of this Court's clear statements about staying cases against Epstein's Estate and Judge Schofield's advice to Maxwell to refrain from filing a motion to dismiss. Maxwell has already failed to comply with her discovery obligations in this matter, in effect granting herself a *de facto* stay, and providing for a full, three-week briefing schedule on her anticipated motion to stay will only give her another incentive to continue to delay. Fact discovery in this matter ends in less than two months, and we respectfully submit that her delay tactics should end now.

Respectfully submitted,

/s/ David Boies
David Boies, Esq.

cc: Counsel of Record (via ECF)

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[2] Maxwell also argues that the fact that Plaintiff's sister (and a few other victims) have voluntarily stayed their cases in light of a potential claims resolution program warrants a ruling that Plaintiff *must* stay her case as well. This makes no sense. Plaintiff and her sister filed separate actions and are separate litigants. Plaintiff's sister's decisions do not bind Plaintiff, nor do any other victims' decisions.