Todd&Weld LLP

Howard M. Cooper
E-mail: hcooper@toddweld.com

July 23, 2020

Honorable Loretta A. Preska
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *Giuffre v. Dershowitz,* Case No.: 19-cv-03377-LAP

Dear Judge Preska:

Pursuant to Local Civil Rule 37.2 and Rule 2.A of Your Honor's Individual Practices, Professor Alan Dershowitz ("Professor Dershowitz") respectfully requests a pre-motion conference with respect to Rule 45 subpoenas (the "Subpoenas) that he served on Leslie Wexner and Wexner's attorney, John Zeiger, on June 8, 2020.[1]

The Subpoenas, attached as Ex. A, seek depositions of Wexner and Zeiger, and the production of a small number of documents directly relevant to the central allegation in this case that Plaintiff falsely accused Professor Dershowitz of sexual abuse as part of a scheme to extort Wexner. Professor Dershowitz's counsel has engaged in an extensive meet and confer process and has offered every courtesy and accommodation to Wexner and Zeiger short of withdrawing the Subpoenas. With Wexner refusing to produce any documents or appear for a deposition, and Zeiger refusing to produce documents or provide testimony absent the entry of an onerous protective order which would severely hamper Professor Dershowitz's ability to use the discovery in this litigation, the parties are at an impasse. By this letter, Professor Dershowitz seeks permission from the Court to file a motion to compel.[2]

Your Honor is already acquainted with the factual allegations of this case as they relate to Wexner. Plaintiff alleges in her Amended Complaint that Dershowitz defamed her by claiming that she committed perjury and that she and her attorneys at Boies Schiller Flexner LLP ("BSF") "hatched a scheme to falsely accuse Dershowitz of sex trafficking as part of a criminal attempt to extort a settlement from another party[,]" namely, Wexner. ECF No. 117 at ¶ 14. Your Honor has recognized that by suing Dershowitz for defamation based on this claim, "Giuffre made the truth of these statements (Dershowitz's ultimate defense on the merits), including the actions and motivations of at least one of [BSF's] attorneys, a necessary—indeed essential—part of the Complaint." ECF No. 67 at 33.

In order to defend himself against Plaintiff's claims, Professor Dershowitz seeks to take discovery from Wexner, and his lawyer who dealt with Giuffre's lawyers, Zeiger, concerning Plaintiff's accusations against Wexner and her counsel's communications with Wexner and Zeiger concerning those accusations.

---

[1] Through their counsel, Marion Little, Wexner and Zeiger accepted service of the Subpoenas on June 8, 2020. Ex. B at 2. Counsel apparently seeks to withdraw his acceptance after Professor Dershowitz would not agree to a Protective Order which would have allowed Wexner and Zeiger veto power over any use of the discovery at issue. Ex. C. at 4.

[2] Although Wexner and Zeiger reside in Ohio, they have previously consented pursuant to Fed. R. Civ. P. 45(f) to have Your Honor resolve any disputes arising from the Subpoenas. Ex. D at 4.

Professor Dershowitz originally issued the Subpoenas to Mr. Wexner and Mr. Zeiger on April 28, 2020, and thereafter commenced a meet and confer process with their counsel, Marion Little (who is Zeiger's law partner), while Wexner's and Zeiger's obligation to formally respond to the Subpoenas was held in abeyance by agreement. On June 8, 2020, at Little's request, Professor Dershowitz revised the Subpoenas to make clear that he was not seeking any attorney-client privileged or work product materials. Little accepted service of those Subpoenas. Ex. B at 2. Those Subpoenas seek the following non-privileged documents from Wexner and Zeiger:

1. All Documents sent or delivered concerning Communications between Wexner or Zeiger and any lawyer representing Giuffre.
2. All Documents sent or delivered concerning Communications between Wexner or Zeiger and any lawyer at Boies Schiller Flexner LLP, concerning any Jeffrey Epstein-related matter.
3. All Documents sent or delivered concerning Communications between Wexner or Zeiger and Bradley Edwards, Paul Cassell, or Stanley Pottinger.
4. All Documents received from Giuffre concerning any accusation by Giuffre that she had sexual relations with Wexner.
5. All Documents concerning any offer, agreement or promise Wexner made to help Epstein accusers – including providing information about Epstein's assets to assist them in collecting judgments – in exchange for not sitting for a deposition in Epstein-related litigations.[3]
6. All documents concerning any confidentiality agreement, settlement agreement, or other contractual agreement of any kind between Wexner and Giuffre or any lawyer for Giuffre.
7. All Documents previously produced by Wexner or Zeiger in *Edwards and Cassell v. Dershowitz*, Case No. CACE 15-000072 (17th Judicial District, Broward County, Florida).
8. All Documents previously produced by Wexner or Zeiger in *Giuffre v. Maxwell.*
9. All Documents previously produced by Wexner or Zeiger in response to any subpoena, whether criminal or civil, in any matter related to Jeffrey Epstein.

By letter dated June 19, 2020, Wexner and Zeiger propounded formal objections to the subpoenas. Ex. E. In essence, they claim that Wexner possess no relevant, non-privileged information, and that all materials and testimony sought from Zeiger are confidential, and will not be produced except pursuant to a draconian protective order of their drafting. They contend that Rule 1.6 of the Ohio Professional Conduct Rules prohibits the disclosure of any information which relates to Zeiger's representation of Wexner, or at least requires that it only be disclosed pursuant to a protective order so restrictive it renders the information all but useless to Professor Dershowitz's defense. The protective order they have proposed would entitle them to indiscriminately designate all documents and deposition testimony as confidential, and then preclude Professor Dershowitz from using that material in Court – even as part of a sealed filing – without their permission. Ex. F. at ¶ 4.

Rule 1.6 of the Ohio Professional Conduct Rules, adapted verbatim from the ABA Model Rules, prohibits a lawyer from revealing confidential information relating to a client representation. Ohio Prof. Cond. Rule 1.6(b)(6). Rule 1.6, however, is not a basis to refuse production in response to a lawful subpoena. By its own terms, Rule 1.6 permits the disclosure of information relating to the

[3] This request is based upon an assertion made by Brad Edwards in his book "Relentless Pursuit: My Fight for the Victims of Jeffrey Epstein."

representation of a client in order "to comply with other law or a court order[.]" Ohio Prof. Cond. Rule 1.6(b)(6). "Fed. R. Civ. P. 45 constitutes a 'law' that requires [a subpoenaed attorney] to reveal otherwise confidential, nonprivileged client information, and a subpoena issued under Rule 45 is a court order that compels compliance absent some other valid objection." *F.T.C. v. Trudeau*, 2013 WL 842599, at *4 (N.D. Ill. 2013). *See also S.E.C. v. Sassano*, 274 F.R.D. 495, 497 (S.D.N.Y. 2011).

Even if Rule 1.6 could be interpreted to prohibit a lawyer from producing confidential, but non-privileged information in response to a duly-issued subpoena, Wexner and Zeiger have not explained how the documents sought are properly considered "confidential." The only basis identified in their written objection is that the subpoenas "seek records and information exchanged with the expectation and/or an express or implied agreement of confidentiality" because "[Plaintiff's counsel] Attorney [David] Boies asserts his communications with Attorney Zeiger were confidential." Ex. D at 2. But Boies' recent and convenient assertion – in response to Professor Dershowitz's separate subpoena to BSF (*see* ECF No. 128, p. 2) – that his 2015 correspondence with Zeiger was confidential is at odds with Zeiger's purported understanding that the communications were *not* confidential. In any event, Rule 1.6 is obviously not intended to protect confidentiality asserted by someone other than the lawyer's client. Finally, a claim of confidentiality asserted by Boies, over communications he made in his capacity as counsel for Giuffre, is no basis to withhold those documents from discovery or condition their production on being subject to a protective order, where Giuffre has directly put these matters at issue in this litigation and thereby waived any conceivable confidentiality.[4]

Zeiger and Wexner concede that the discovery sought from Zeiger is relevant to this litigation. Yet, Wexner claims that he possesses no non-privileged information relevant to any claim or defense in this case. To the contrary, the information sought from Wexner goes to the core of Professor Dershowitz's case. It will be key evidence at trial. Wexner has publicly denied having any knowledge of sex trafficking or other illegal activity by Epstein.[5] Through surrogates, he has publicly denied ever meeting Giuffre.[6] Professor Dershowitz is entitled to memorialize these denials on the record in a form that makes them admissible in this litigation.

Wexner and Zeiger further claim the Subpoenas will expose them to duplicative discovery, because the discovery sought is relevant both to this case and the *Boies v. Dershowitz* matter pending in New York Supreme Court, and there is no formal stipulation to consolidate discovery in the two cases. However, Professor Dershowitz has assured Wexner and Zeiger that once a date for the depositions is definitively established, he would formally notice the depositions in both cases.

Finally, Professor Dershowitz has made clear he will take all reasonable measures to accommodate any COVID-19 related concerns, including by conducting the depositions by videoconference on dates which are agreeable to Wexner and Zeiger and their counsel.

Professor Dershowitz respectfully requests that the Court hold a pre-motion conference with respect to this matter so that he may proceed with his motion to compel.

---

[4] Boies further waived any confidentiality by discussing those communications with Dershowitz.
[5] https://www.wexnerfoundation.org/statement-from-les-wexner/
[6] https://www.nytimes.com/2015/12/13/business/alan-dershowitz-on-the-defense-his-own.html

Respectfully submitted,

/s/ Howard M. Cooper
Howard M. Cooper

cc: All counsel of record, via email
Marion H. Little, Esq., via email

Enclosures: Exhibits A - F

EXHIBIT A

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Virginia L. Giuffre
Plaintiff

v.

Alan Dershowitz
Defendant

Civil Action No. 1:19-cv-03377-LAP

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Leslie Wexner
(Name of person to whom this subpoena is directed)

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
~~Baker Hostetler~~ 200 Civic Center Drive, Suite 1200 Columbus, OH 43215	09/04/2020 10:00 am

The deposition will be recorded by this method: by stenographic and audiovisual means

☑ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: Please see attached Schedule A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 06/08/2020

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Kristine C. Oren
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Alan Dershowitz, who issues or requests this subpoena, are: Howard Cooper, Christian Kiely, and Kristine Oren, Todd & Weld LLP, One Federal Street, 27th Floor, Boston, MA 02110; hcooper@toddweld.com; ckiely@toddweld.com; koren@toddweld.com; 617-720-2626

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:19-cv-03377-LAP

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Print Save As... Add Attachment Reset

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

SCHEDULE A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIRGINIA L. GIUFFRE, Plaintiff, v. ALAN DERSHOWITZ, Defendant.	Civil Action No. 19-cv-03377-LAP
ALAN DERSHOWITZ, Counterclaim Plaintiff, v. VIRGINIA L. GIUFFRE, Counterclaim Defendant.	

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Defendant and Counterclaim Plaintiff Alan Dershowitz ("Dershowitz") requests that Leslie Wexner ("Wexner") produce for inspection and copying all documents and things listed below to James Rollinson at the offices of Baker Hostetler, 200 Civic Center Drive, Suite 1200, Columbus, OH 43215, within thirty (30) days of service of this subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meaning ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District

Court for the Southern and Eastern Districts of New York, including Local Rules of Civil Procedure 26.3 definitions for "communication," "document," "identify," "parties," "person," and "concerning." The Definitions expressly include hard copy documents and electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations. Dershowitz expressly requests forensic images of all electronically stored information (e.g., the document and data, and its metadata). The Definitions also expressly include tangible things.

In addition, the following terms shall have the meanings set forth below whenever used in any Request. The following Definitions apply to the Instructions and Requests below and are incorporated into each Instruction and Request as if fully set forth therein:

1. "Action" means the lawsuit captioned *Virginia L. Giuffre v. Alan Dershowitz*, Civil Action No. 19-cv-03377-LAP.

2. "You," "Your" and "Wexner" means Leslie Wexner and Your agents, representatives, all persons acting on Your behalf, and any and all persons associated with, affiliated with, or controlled by You.

3. "Giuffre" means Virginia L. Giuffre (née Roberts), her agents, representatives, all persons acting on her behalf, and any and all persons associated with, affiliated with, or controlled by her.

4. "Dershowitz" means Defendant and Counterclaim Plaintiff Alan Dershowitz.

5. "Epstein" means Jeffrey E. Epstein, his agents, representatives, all persons acting on his behalf, and any and all persons associated with, affiliated with, or controlled by him.

6. "Complaint" means the Complaint filed by Giuffre in the Action.

7. "Counterclaim" means the Amended Counterclaim filed in the Action.

8. "Answer" means the Answer and Affirmative Defenses filed by Dershowitz in the Action.

9. "CVRA Action" means the lawsuit captioned *Jane Doe 1 and Jane Doe 1 v. United States*, Civil Action No. 08-cv-80736-KAM, filed in the United States District Court for the Southern District of Florida.

10. "Income" includes, without limitation, any revenue, payments, compensation, remuneration, financial benefit or support or any other financial consideration, or provision of any other thing of value.

11. "Person" means any natural person or any legal entity, including, without limitation any business or governmental entity or association.

12. "Document" or "Documents" shall have the broadest meaning possible under Rules 26 and 34 of the Federal Rules of Civil Procedure and shall include without limitation: documents; ESI; Communications in written, electronic, and recorded form; and tangible things.

13. "ESI" means electronically stored information as defined by and used in the Federal Rules of Civil Procedure.

14. "Communication" means any oral or written exchange of words, thoughts or ideas with another person or entity, whether in person, in group, by telephone, by letter, by fax, by electronic mail, by text message, or otherwise.

15. The singular includes the plural and vice versa, except as the context may otherwise require; reference to any gender includes the other gender; the words "and" and "or" shall be constructed as either conjunctive or disjunctive in such manner as will broaden as widely as possible the scope of any request for production; the word "all" means "any and all"; the word "any" means "any and all"; the word "including" means "including but not limited to."

15. The words "concerning," "regarding," "reflecting," and/or "relating to" mean describing, discussing, constituting, containing, considering, embodying, evaluating, mentioning, memorializing, supporting, collaborating, demonstrating, proving, evidencing, showing, refuting, disputing, rebutting, regarding, controverting, contradicting, made in connection with or by reason of, or derived or arising therefrom.

INSTRUCTIONS

1. You must furnish all non-privileged documents within Your possession, custody, or control including any documents in Your constructive possession whereby You have the right to compel production of documents from a third party—as well as those which are reasonably available to You, including documents and information in the possession of Your Attorneys, agents, representatives, consultants, accountants, advisors, or investigators, regardless of the location of such documents.

2. All documents should be produced in single page tiff format, with corresponding document level text files containing the OCR or extracted text. The filename of the text file should correspond to the Bates number of the first page of the document; the filename of the image file should correspond to the Bates number of the document. The Bates number should have a prefix and contain 7 digits and no spaces, for example SAMPLE0000001. The production should be accompanied by: (i) a load file suitable for loading the data into a litigation database that defines document breaks, attachments, metadata, and other information; and (ii) a cross-reference file that facilitates the linking of the produced tiff or native file with a litigation database.

3. For documents maintained electronically, the following fields should be included, at a minimum: Bates Begin, Bates End; Bates Begin Attach; Bates End Attach; Attachment

Document; Pages; Author; Custodian/Source; Date Created; Date Last Modified; Date Received; Date Sent; Time Sent; Document Extension; Email BCC; Email CC; Email From; Email Subject/Title; Email To; Original Filename; File Size; Original Folder Path; MD5 Hash; Parent Document ID; Document Title; Time Zone; Text Link; Native Link.

4. For any electronically stored documents that cannot be interpreted in TIFF format (including, but not limited to, spreadsheets, presentations, databases, logs, video and audio files), you should produce a Bates numbered TIFF placeholder and a native version of that file, with the native version named by its Bates numbers.

5. All drafts of a responsive Document must be produced, as well as all non-identical copies of the Document. Any comment, notation, or other marking shall be sufficient to distinguish Documents that are otherwise similar in appearance and to make them separate Documents for purposes of Your response. Any preliminary form, intermediate form, superseded version, or amendment of any Document is to be considered a separate Document.

6. Each paragraph and subparagraph of these Instructions and the Requests, as well as the definitions herein, shall be construed independently, and no paragraph or subparagraph or definition shall limit the scope of any other.

7. If You object to any Request or any part of a Request, identify the part to which You object, state the objection(s) with specificity, and provide a response to the remaining unobjectionable part.

8. If You object to all or any part of a Request, the objection must state whether any responsive Documents are being withheld on the basis of that objection.

9. If You claim any privilege or similar basis for not producing a requested document, please provide a privilege log consistent with Local Rule 26.2.

10. If You have no Documents in Your possession, custody, or control that are responsive to a particular Request, please so state.

11. To the extent that any information that is responsive to the Requests has been destroyed, lost or misplaced, please identify that information by type and author and the date and manner in which the information was destroyed, lost or misplaced.

12. The Requests, Definitions, and Instructions herein are propounded for the purpose of discovery and are not to be taken as a waiver of or prejudice to any objections that may be made at any hearing or trial in this Action to the introduction of any evidence relating to Documents responsive to these Requests or as an admission of the authenticity, relevance, or materiality of Documents responsive to these Requests.

13. The following Requests are both general and specific, and to the degree that a more specific Request seeks documents that also happen to be responsive to a more general Request, the more specific Request does not limited the breadth of the documents which are requested by and responsive to the more general Request.

14. Unless otherwise stated, the relevant time period for these Requests is January 1, 1998 through the date of Your response.

15. Dershowitz specifically requests that You supplement Your responses to these Requests as required under Fed. R. Civ. P. 26(e).

REQUESTS FOR PRODUCTION

1. All Documents sent or delivered concerning Communications between You and any lawyer representing Giuffre.

2. All Documents sent or delivered concerning Communications between You and any lawyer at Boies Schiller Flexner LLP, concerning any Epstein-related matter.

3. All Documents sent or delivered concerning Communications between You and Bradley Edwards, Paul Cassell, or Stanley Pottinger.

4. All Documents received from Giuffre concerning any accusation by Giuffre that she had sexual relations with You.

5. All Documents concerning any offer, agreement or promise You made to help Epstein accusers – including but not limited to providing information about Epstein's assets to assist them in collecting judgments – in exchange for not sitting for a deposition in Epstein-related litigation(s).

6. All Documents concerning any confidentiality agreement, settlement agreement, or other contractual agreement of any kind between You and Giuffre or any lawyer for Giuffre.

7. All Documents previously produced by You in *Edwards and Cassell v. Dershowitz*, Case No. CACE 15-000072 (17th Judicial District, Broward County, Florida).

8. All Documents previously produced by You in *Giuffre v. Maxwell*, 15-cv-07433 (S.D.N.Y.).

9. All Documents previously produced by You in response to any subpoena, whether criminal or civil, in any matter related to Epstein.

ALAN DERSHOWITZ,

By his attorneys,

/s/ Howard M. Cooper
Howard M. Cooper (MA BBO# 543842)
(*pro hac vice*)
Christian G. Kiely (MA BBO# 684308)
(*pro hac vice*)
Kristine C. Oren (MA BBO# 705730)
(*pro hac vice*)
TODD & WELD LLP
One Federal Street, 27th Floor
Boston, MA 02110
(617) 720-2626
hcooper@toddweld.com
ckiely@toddweld.com
koren@toddweld.com

/s/ Imran H. Ansari
Arthur L. Aidala (S.D.N.Y. Bar No. ALA-0059)
Imran H. Ansari (S.D.N.Y. Bar No. IHA-1978)
AIDALA, BERTUNA & KAMINS, P.C.
546 Fifth Avenue, 6th Floor
New York, New York 10036
(212) 486-0011
iansari@aidalalaw.com
aidalaesq@aidalalaw.com

Dated: June 8, 2020

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Virginia L. Giuffre
Plaintiff
v.
Alan Dershowitz
Defendant

Civil Action No. 1:19-cv-03377-LAP

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: John W. Zeiger, Esq.
(Name of person to whom this subpoena is directed)

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
~~Baker Hostetler~~ 200 Civic Center Drive, Suite 1200 Columbus, OH 43215	09/03/2020 10:00 am

The deposition will be recorded by this method: by stenographic and audiovisual means

☑ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: Please see attached Schedule A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 06/08/2020

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Kristine C. Oren
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Alan Dershowitz, who issues or requests this subpoena, are: Howard Cooper, Christian Kiely, and Kristine Oren, Todd & Weld LLP, One Federal Street, 27th Floor, Boston, MA 02110; hcooper@toddweld.com; ckiely@toddweld.com; koren@toddweld.com; 617-720-2626

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:19-cv-03377-LAP

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Print Save As... Add Attachment Reset

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

SCHEDULE A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIRGINIA L. GIUFFRE, Plaintiff, v. ALAN DERSHOWITZ, Defendant.	Civil Action No. 19-cv-03377-LAP
ALAN DERSHOWITZ, Counterclaim Plaintiff, v. VIRGINIA L. GIUFFRE, Counterclaim Defendant.	

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Defendant and Counterclaim Plaintiff Alan Dershowitz ("Dershowitz") requests that John Zeiger, Esq. ("Zeiger") produce for inspection and copying all documents and things listed below to James Rollinson at the offices of Baker Hostetler, 200 Civic Center Drive, Suite 1200, Columbus, OH 43215, within thirty (30) days of service of this subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meaning ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District

Court for the Southern and Eastern Districts of New York, including Local Rules of Civil Procedure 26.3 definitions for "communication," "document," "identify," "parties," "person," and "concerning." The Definitions expressly include hard copy documents and electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations. Dershowitz expressly requests forensic images of all electronically stored information (e.g., the document and data, and its metadata). The Definitions also expressly include tangible things.

In addition, the following terms shall have the meanings set forth below whenever used in any Request. The following Definitions apply to the Instructions and Requests below and are incorporated into each Instruction and Request as if fully set forth therein:

1. "Action" means the lawsuit captioned *Virginia L. Giuffre v. Alan Dershowitz*, Civil Action No. 19-cv-03377-LAP.

2. "You," "Your" and "Zeiger" means John Zeiger and Your agents, representatives, all persons acting on Your behalf, and any and all persons associated with, affiliated with, or controlled by You.

3. "Giuffre" means Virginia L. Giuffre (née Roberts), her agents, representatives, all persons acting on her behalf, and any and all persons associated with, affiliated with, or controlled by her.

4. "Dershowitz" means Defendant and Counterclaim Plaintiff Alan Dershowitz.

5. "Epstein" means Jeffrey E. Epstein, his agents, representatives, all persons acting on his behalf, and any and all persons associated with, affiliated with, or controlled by him.

6. "Wexner" means Leslie H. Wexner, his agents, representatives, all persons acting on his behalf, and any and all persons associated with, affiliated with, or controlled by him.

7. "Complaint" means the Complaint filed by Giuffre in the Action.

8. "Counterclaim" means the Amended Counterclaim filed in the Action.

9. "Answer" means the Answer and Affirmative Defenses filed by Dershowitz in the Action.

10. "CVRA Action" means the lawsuit captioned *Jane Doe 1 and Jane Doe 1 v. United States*, Civil Action No. 08-cv-80736-KAM, filed in the United States District Court for the Southern District of Florida.

11. "Income" includes, without limitation, any revenue, payments, compensation, remuneration, financial benefit or support or any other financial consideration, or provision of any other thing of value.

12. "Person" means any natural person or any legal entity, including, without limitation any business or governmental entity or association.

13. "Document" or "Documents" shall have the broadest meaning possible under Rules 26 and 34 of the Federal Rules of Civil Procedure and shall include without limitation: documents; ESI; Communications in written, electronic, and recorded form; and tangible things.

14. "ESI" means electronically stored information as defined by and used in the Federal Rules of Civil Procedure.

15. "Communication" means any oral or written exchange of words, thoughts or ideas with another person or entity, whether in person, in group, by telephone, by letter, by fax, by electronic mail, by text message, or otherwise.

16. The singular includes the plural and vice versa, except as the context may otherwise require; reference to any gender includes the other gender; the words "and" and "or" shall be constructed as either conjunctive or disjunctive in such manner as will broaden as widely

as possible the scope of any request for production; the word "all" means "any and all"; the word "any" means "any and all"; the word "including" means "including but not limited to."

15. The words "concerning," "regarding," "reflecting," and/or "relating to" mean describing, discussing, constituting, containing, considering, embodying, evaluating, mentioning, memorializing, supporting, collaborating, demonstrating, proving, evidencing, showing, refuting, disputing, rebutting, regarding, controverting, contradicting, made in connection with or by reason of, or derived or arising therefrom.

INSTRUCTIONS

1. You must furnish all non-privileged documents within Your possession, custody, or control including any documents in Your constructive possession whereby You have the right to compel production of documents from a third party—as well as those which are reasonably available to You, including documents and information in the possession of Your Attorneys, agents, representatives, consultants, accountants, advisors, or investigators, regardless of the location of such documents.

2. All documents should be produced in single page tiff format, with corresponding document level text files containing the OCR or extracted text. The filename of the text file should correspond to the Bates number of the first page of the document; the filename of the image file should correspond to the Bates number of the document. The Bates number should have a prefix and contain 7 digits and no spaces, for example SAMPLE0000001. The production should be accompanied by: (i) a load file suitable for loading the data into a litigation database that defines document breaks, attachments, metadata, and other information; and (ii) a cross-reference file that facilitates the linking of the produced tiff or native file with a litigation database.

3. For documents maintained electronically, the following fields should be included, at a minimum: Bates Begin, Bates End; Bates Begin Attach; Bates End Attach; Attachment Document; Pages; Author; Custodian/Source; Date Created; Date Last Modified; Date Received; Date Sent; Time Sent; Document Extension; Email BCC; Email CC; Email From; Email Subject/Title; Email To; Original Filename; File Size; Original Folder Path; MD5 Hash; Parent Document ID; Document Title; Time Zone; Text Link; Native Link.

4. For any electronically stored documents that cannot be interpreted in TIFF format (including, but not limited to, spreadsheets, presentations, databases, logs, video and audio files), you should produce a Bates numbered TIFF placeholder and a native version of that file, with the native version named by its Bates numbers.

5. All drafts of a responsive Document must be produced, as well as all non-identical copies of the Document. Any comment, notation, or other marking shall be sufficient to distinguish Documents that are otherwise similar in appearance and to make them separate Documents for purposes of Your response. Any preliminary form, intermediate form, superseded version, or amendment of any Document is to be considered a separate Document.

6. Each paragraph and subparagraph of these Instructions and the Requests, as well as the definitions herein, shall be construed independently, and no paragraph or subparagraph or definition shall limit the scope of any other.

7. If You object to any Request or any part of a Request, identify the part to which You object, state the objection(s) with specificity, and provide a response to the remaining unobjectionable part.

8. If You object to all or any part of a Request, the objection must state whether any responsive Documents are being withheld on the basis of that objection.

9. If You claim any privilege or similar basis for not producing a requested document, please provide a privilege log consistent with Local Rule 26.2.

10. If You have no Documents in Your possession, custody, or control that are responsive to a particular Request, please so state.

11. To the extent that any information that is responsive to the Requests has been destroyed, lost or misplaced, please identify that information by type and author and the date and manner in which the information was destroyed, lost or misplaced.

12. The Requests, Definitions, and Instructions herein are propounded for the purpose of discovery and are not to be taken as a waiver of or prejudice to any objections that may be made at any hearing or trial in this Action to the introduction of any evidence relating to Documents responsive to these Requests or as an admission of the authenticity, relevance, or materiality of Documents responsive to these Requests.

13. The following Requests are both general and specific, and to the degree that a more specific Request seeks documents that also happen to be responsive to a more general Request, the more specific Request does not limited the breadth of the documents which are requested by and responsive to the more general Request.

14. Unless otherwise stated, the relevant time period for these Requests is January 1, 1998 through the date of Your response.

15. Dershowitz specifically requests that You supplement Your responses to these Requests as required under Fed. R. Civ. P. 26(e).

REQUESTS FOR PRODUCTION

1. All Documents sent or delivered concerning Communications between You and any lawyer representing Giuffre.

2. All Documents sent or delivered concerning Communications between You and any lawyer at Boies Schiller Flexner LLP, concerning any Epstein-related matter.

3. All Documents sent or delivered concerning Communications between You and Bradley Edwards, Paul Cassell, or Stanley Pottinger.

4. All Documents received from Giuffre concerning any accusation by Giuffre that she had sexual relations with Wexner.

5. All Documents concerning any offer, agreement or promise Wexner made to help Epstein accusers – including but not limited to providing information about Epstein's assets to assist them in collecting judgments – in exchange for not sitting for a deposition in Epstein-related litigation(s).

6. All Documents concerning any confidentiality agreement, settlement agreement, or other contractual agreement of any kind between Wexner and Giuffre or any lawyer for Giuffre.

7. All Documents previously produced by You or Wexner in *Edwards and Cassell v. Dershowitz*, Case No. CACE 15-000072 (17th Judicial District, Broward County, Florida).

8. All Documents previously produced by You or Wexner in *Giuffre v. Maxwell*, 15-cv-07433 (S.D.N.Y.).

9. All Documents previously produced by You or Wexner in response to any subpoena, whether criminal or civil, in any matter related to Epstein.

ALAN DERSHOWITZ,

By his attorneys,

/s/ Howard M. Cooper
Howard M. Cooper (MA BBO# 543842)
(*pro hac vice*)
Christian G. Kiely (MA BBO# 684308)
(*pro hac vice*)
Kristine C. Oren (MA BBO# 705730)
(*pro hac vice*)
TODD & WELD LLP
One Federal Street, 27th Floor
Boston, MA 02110
(617) 720-2626
hcooper@toddweld.com
ckiely@toddweld.com
koren@toddweld.com

/s/ Imran H. Ansari
Arthur L. Aidala (S.D.N.Y. Bar No. ALA-0059)
Imran H. Ansari (S.D.N.Y. Bar No. IHA-1978)
AIDALA, BERTUNA & KAMINS, P.C.
546 Fifth Avenue, 6th Floor
New York, New York 10036
(212) 486-0011
iansari@aidalalaw.com
aidalaesq@aidalalaw.com

Dated: June 8, 2020

EXHIBIT B

Kiely, Christian

From: Marion H. Little <little@litohio.com>
Sent: Tuesday, June 9, 2020 9:41 AM
To: Cooper, Howard
Cc: Oren, Kristy; Basaria, Saraa; Kiely, Christian
Subject: RE: Activity in Case 1:19-cv-03377-LAP Giuffre v. Dershowitz - Subpoenas to Wexner and Zeiger

The subject line in the email references an "Activity in Case," which is suggestive of some of court filing. We understand, as required by Rule 45, Mr. Dershowitz will provide notice of his service of the subpoenas to counsel for the other parties. However, as is customary with the local court practice, the notice and return of service need not be filed with the clerk of courts and we request confirmation that they will not be. Thanks, mhl

-----Original Message-----
From: Cooper, Howard [mailto:hcooper@toddweld.com]
Sent: Monday, June 08, 2020 8:58 PM
To: Marion H. Little
Cc: Oren, Kristy; Basaria, Saraa; Kiely, Christian
Subject: Re: Activity in Case 1:19-cv-03377-LAP Giuffre v. Dershowitz - Subpoenas to Wexner and Zeiger

Not sure what you mean but the attachments have not been filed in court.

Best,

Howard

Howard M. Cooper

Todd & Weld LLP
One Federal Street
Boston, MA 02110
T: 617-720-2626
F: 617-227-5777
www.toddweld.com

On Jun 8, 2020, at 6:15 PM, Marion H. Little <little@litohio.com> wrote:

Howard, I'll follow up with by Wednesday, but I assume these have not been filed. I do not believe filing is necessary under the local rules. Nor we expect that they would be. Thanks, mhl

From: Cooper, Howard [mailto:hcooper@toddweld.com]
Sent: Monday, June 08, 2020 3:19 PM
To: Marion H. Little
Cc: Oren, Kristy; Basaria, Saraa; Kiely, Christian
Subject: FW: Activity in Case 1:19-cv-03377-LAP Giuffre v. Dershowitz - Subpoenas to Wexner and Zeiger

Hi Marion –

As we have discussed, attached please find subpoenas for Mr. Wexner and Mr. Zeiger. I very much appreciate your agreeing to accept service for them. As we have also agreed, the dates are placeholders for purposes of any testimony and so that you may file whatever motion you determine to file. I am hoping you will produce the non-privileged, non-work product documents we seek in the short term. When we agree on actual dates, we will send notices making clear the depositions will be taken for purposes of both the federal and state court actions. I also wish to memorialize what I believe I have made clear – that we will extend every courtesy to your clients as to the date(s), location and time of their depositions. We will observe appropriate social distancing.

I have reviewed your proposed Protective Order. We cannot agree to its terms. It will unfairly hamstring us if we are not able to file materials designated as confidential with the court as we deem necessary. As I have said, anything which is truly private like personal health care information (if it were even to come up) we can treat as confidential to be filed under the cover of a motion to impound. But based upon what we understand your clients' testimony is likely to be, some of which is already public via statements made to the media, it really cannot be considered confidential. If you like, I would be glad to draft and send a confidentiality agreement which protects truly personal and proprietary, non-public information.

Please call me when you are ready to discuss a schedule.

Thanks.

Howard

EXHIBIT C

ZEIGER, TIGGES & LITTLE LLP

ATTORNEYS AT LAW

3500 HUNTINGTON CENTER

41 SOUTH HIGH STREET

COLUMBUS, OHIO 43215

TELEPHONE: (614) 365-9900

FACSIMILE: (614) 365-7900

WRITER'S DIRECT NUMBER:
(614) 365-4113

July 10, 2020

Via Email

Howard M. Cooper, Esq.
Todd & Weld LLP
One Federal Street
Boston, MA 02110
hcooper@toddweld.com

Re: David Boies v. Alan Dershowitz
Supreme Court of New York, County of New York
Case No. 160874/2019 (the "State Action");

Virginia L. Giuffre v. Alan Dershowitz
U.S. District Court, Southern District of New York
Case No. 19-cv-3377 (Preska, J.) (the "Federal Action") (collectively, the Federal Action and the State Action are referred to as the "Lawsuits")

Dear Howard:

We are writing in response to your email of June 29, 2020. The delay in our response was caused by the two in-court preliminary injunction hearings the undersigned has tried within the last seven days, with a third scheduled this upcoming Monday.

At the outset, we note that your email appears to be an effort to rewrite both the context and content of our discussions. We assume that your client is driving this new position, but we are obviously obligated to respond directly through you.

To be clear, our position on this matter has been consistent throughout. Although you incorrectly state the amount of documents, we have previously confirmed for you that in response to a subpoena we would have certain non-privileged, but otherwise confidential, information responsive to your client's subpoena. We have never suggested or indicated that such records would be released without the benefit of a protective order. To the contrary, the Ohio Code of Professional Responsibility, as outlined in our prior correspondence, requires that we affirmatively seek to secure a protective order before the production of such information. We have cited for you this mandatory rule. We have cited for you the case law. In response to both, you have offered nothing.

In our initial discussion, you represented that the parties to the case were developing a proposed protective order, which a review of the docket reveals never occurred. Later, you communicated your client's position that a protective order would only be acceptable to him in the most limited of circumstances, namely the protection of tax information and health information. We disagreed and tendered a protective order for your review and consideration. There is nothing extraordinary about the protective order. It is, quite frankly, fairly customary and standard for this type of litigation and this form has been filed in countless federal proceedings.

We believe District Judge Preska will agree. Having reviewed the July 1, 2020 Order issued in the Federal Action, it appears that the Court does not share your client's view as to the scope or import of protective orders. For example, the Court commented: "The Maxwell Protective Order . . . is unremarkable in form and function," and then discussed its basic elements. The protective order we tendered for your review contains these same elements and serves the same basic purpose.

Your email suggests that your client is changing his position and is more flexible than previously represented as to the scope of the protective order. If this is true (as it should be), we invite you to return a redline copy of the protective order we tendered to you. We are not, however, prepared to speculate and guess as to your client's position on any given day.

We have been equally clear as to the scope of permissible discovery. We have agreed to make Attorney Zeiger available for deposition given that he arguably has discoverable information. While we believe the information is unfavorable to your client's claims, we are prepared to make Attorney Zeiger available for your examination so that you can confirm this as well. In contrast, we have repeatedly advised that Mr. Wexner does not have any non-privileged personal information relevant to the purported conspiracy theory narrative outlined in your client's amended counterclaim in the Federal Action. And what other information he may possess, is simply collateral, extrinsic evidence of no admissibility or, quite frankly, import to the claims of these cases. On this point as well, District Judge Preska's July 1 Order further supports our view that the discovery sought by your client is impermissibly broad, as the Court offered several comments questioning the scope of the discovery pursued by your client.

We have consistently communicated the foregoing positions so that we could identify and narrow those issues that District Judge Preska would be required to consider and resolve. This is, of course, an obligation that all counsel share as part of any extrajudicial dialogue addressing discovery disputes. We had also shared with you our intention to move the Court for a protective order on whatever issues remain unresolved.

Now as for the event presumably prompting your client's most recent position, you inquired whether we would make the requested documents available to both you and your client

before the Court's resolution of our motion for a protective order—even though your client had not agreed to a protective order. We responded that we would consider your proposal but we were concerned given the lack of an enforcement mechanism for ensuring compliance with a confidentiality commitment. You responded by noting that you would not share the information with your opponents unless they agreed to maintain the confidentiality of the information, but did not address the lack of an enforcement mechanism. The latter is particularly important as we already have advised you of your client's breach of his confidentiality agreement with Attorney Zeiger—an agreement (and breach) that we have not waived.

We then advised, on June 23, that we would not release the information without the benefit of an enforcement mechanism for seeking a contempt of court citation. The necessity for such protection was made clear by press reports detailing the content of sealed materials purportedly made available to you.

> NEW: Alan Dershowitz's attorney confirms that his client has access to Virginia Giuffre's sealed depositions. Those depositions reveal that she was directed by Jeffrey Epstein to have sex with former Israeli PM Ehud Barak & Victoria's Secret's Les Wexner.
>
> [Julie K. Brown June 23, 2020 Twitter Post.]

District Judge Preska's July 1 Order, at footnote 6, further highlights the necessity for an enforcement mechanism given the public and toxic-fashion in which your client has sought to litigate his disputes with Ms. Giuffre. Those comments need not be repeated here.

Equally troubling is that we have re-reviewed you client's pleading in the Federal Action in light of the foregoing. Paragraph 23 of the Amended Complaint specifically discloses the contents of a "sealed deposition." Is this the same deposition that District Judge Preska ordered released to you with the stipulation that the contents remain sealed? If it is the same deposition, there is compelling reason for the Court to issue a protective order and take such other action as she deems appropriate.

Turning to your threats to proceed with the filing of a Motion to Compel, we do not believe your client has a basis for seeking any relief. However, we assume (and insist) any such motion will be filed consistent with the local rules and in a manner that is consistent with all pending orders and directions by the District Court.

As for your statement that you are no longer willing to wait until the fall for depositions, we offer two points. First, the timing of the depositions is not a choice for you to make. We have already advised that there will be no deposition of Mr. Wexner until the District Judge has

resolved the disputes and, in any event, no depositions will occur unless they are done in a manner that does not unnecessarily create health risks given the ages of the deponents. We cite for your benefit the national headlines reporting on the surge of COVID-19 cases and State's re-closings. In our county, for example, Ohio's Governor is issuing an order obligating the wearing of facial coverings. Second, Mr. Zeiger and Mr. Wexner will not compromise their rights in response to your client's threat to make things inconvenient for them.

Moreover, we had accepted service of the subpoenas based upon your representations as to the dates and times of the depositions—your transmittal correspondence confirms the same. Given your client's breach of this agreement, the deponents are relieved from the subpoenas. Your client can re-serve the subpoenas at his pleasure and then we will respond appropriately. Given that your client's entrenched position seems to be diametrically inconsistent with the District Judge's view on this matter, we will be pleased to present these issues to the Court for full consideration and all available relief.

There is another point your client should appreciate. Rule 45 expressly provides for a non-party's recovery of its attorneys' fees where undue burden or expense has been imposed. The following conduct certainly supports recovery of fees: Mr. Dershowitz's game playing of (a) seeking the discovery of confidential information but not agreeing to a protective order; (b) making representations with respect to the service of a subpoena and then reneging on the agreement; and (c) interposing baseless threats in an effort to force a capitulation from a non-party. Each supports an award of all fees and costs.

Very truly yours,

Marion M. Little, Jr.

MHL:tlt:1053-001:864313

EXHIBIT D

Kiely, Christian

From: Cooper, Howard
Sent: Wednesday, July 15, 2020 12:18 PM
To: Marion H. Little; Kiely, Christian
Cc: Oren, Kristy
Subject: RE: From Marion Little re: David Boies v. Dershowitz; Giuffre v. Dershowitz [IWOV-DMS.FID44745]

Marion –

We disagree. No need for further discussion or debate, especially by email. Let's let the Court decide.

One thing to be clear about, however, we of course remain willing to accommodate any COVID 19 concerns by taking Mr. Wexner and Mr. Zeiger's depositions remotely and at a date and time reasonable suitable to them. We also remain agreeable to a protective order which does not give your clients veto power over whether the discovery can be used by Professor Dershowitz. If you are at all interested in talking further, please let us know. Otherwise, we will proceed with our motion to compel.

My best regards to you,

Howard

From: Terri Thompson <thompson@litohio.com> **On Behalf Of** Marion H. Little
Sent: Wednesday, July 15, 2020 12:11 PM
To: Kiely, Christian <ckiely@toddweld.com>; Cooper, Howard <hcooper@toddweld.com>; Marion H. Little <little@litohio.com>
Cc: Oren, Kristy <koren@toddweld.com>
Subject: RE: From Marion Little re: David Boies v. Dershowitz; Giuffre v. Dershowitz [IWOV-DMS.FID44745]

Please see the attached letter. There is no valid service of a subpoena.

MHL

From: Kiely, Christian [mailto:ckiely@toddweld.com]
Sent: Monday, July 13, 2020 4:00 PM
To: Cooper, Howard; Marion H. Little
Cc: Oren, Kristy
Subject: RE: From Marion Little re: David Boies v. Dershowitz; Giuffre v. Dershowitz [IWOV-DMS.FID44745] - Wexner, Zeiger and Documents

Marion,

As Howard has indicated, we are now at the point where we are going to need to file a motion to compel. In your email of June 22, 2020, you indicated it was your preference to litigate the subpoenas in S.D.N.Y. rather than S.D. Ohio. Can

you please confirm that Mr. Zeiger and Mr. Wexner will consent to jurisdiction in S.D.N.Y for purposes of this motion practice? We are willing to agree on a reasonable briefing schedule to accommodate any summer vacation plans, etc.

Please let me know. Thank you.

Regards,
Christian

Christian G. Kiely

Todd & Weld LLP
One Federal Street, Boston, MA 02110
Tel: 617.624.4729 Fax: 617.624.4829
www.toddweld.com

From: Cooper, Howard <hcooper@toddweld.com>
Sent: Monday, June 29, 2020 5:01 PM
To: Marion H. Little <little@litohio.com>
Subject: RE: From Marion Little re: David Boies v. Dershowitz; Giuffre v. Dershowitz [IWOV-DMS.FID44745] - Wexner, Zeiger and Documents

Hi Marion –

I wanted to take a few days before responding to your surprising email. I am not sure where you arrived at the misunderstanding that Alan's "counsel" has disclosed anything improperly, and that is plainly not true. Nor are we in possession of anything the court did not already order we be provided or which we have appropriately obtained, and there has been no accusation or finding otherwise that I am aware of. That you would rely upon something that you apparently read in a newspaper rather than calling me before sending your email is certainly disappointing especially after our multiple conversations, which I had thought were quite courteous.

You have described for me in detail a half dozen non-privileged, non-work product documents which you have told me are not subject to any confidentiality or other order whatsoever. The documents include a 2015 letter from BSF which sought to initiate an investigation into Mr. Wexner and his alleged contact with Virginia Giuffre, and Attorney Zeiger's following exchanges with BSF lawyers. You told me that these documents would be produced without objection subject only to a reasonable protective order. You contacted me and asked me to change language in the subpoena to accommodate your concerns to be clear that we were not asking for privileged documents, which we did. You then sent me a proposed protective order which would allow your client to prevent us from using the documents and other discovery in court at all without your approval, and which would render the discovery we seek and which you concede exists unusable as a practical matter. I have repeatedly offered to enter into a Protective order that is standard, including one which would allow for things properly designated confidential because of privacy issues to be filed under seal. Given what I thought was a respectful disagreement over the scope of the protective order, I have offered to keep the documents you told me would be produced as attorneys and clients eyes only until your motion is resolved. In short, I believe and hope that I have extended you every courtesy I can think of, only apparently to now have you accuse my

office of some form of wrongdoing without even picking up the phone to discuss it while you also threaten that you need the power of contempt before you will let us see anything.

I am not looking to get into an argument with you, Marion. This is very simple. Mr. Wexner and Mr. Zeiger have information which is relevant and discoverable in the lawsuit in which they have been subpoenaed. We wish to get the documents and to depose Attorney Zeiger and Mr. Wexner. We had said we would settle upon a schedule cooperatively before you sent your most recent email, and in this regard I had been prepared to extend you every courtesy as well. However, I am no longer willing to wait until the Fall as a courtesy given the numerous unexpected roadblocks you have created which are not consistent with our discussions. Such a delay is not reasonable or to anyone. As a courtesy, I am letting you know we will be filing a motion to compel shortly.

I remain available to talk if you like and would always prefer to work out any issues by agreement where possible.

Thank you,

Howard

From: Marion H. Little <little@litohio.com>
Sent: Tuesday, June 23, 2020 3:31 PM
To: Cooper, Howard <hcooper@toddweld.com>
Cc: Terri Thompson <thompson@litohio.com>; Kiely, Christian <ckiely@toddweld.com>; Oren, Kristy <koren@toddweld.com>; Basaria, Saraa <sbasaria@toddweld.com>; Imran H. Ansari, Esq. <iansari@aidalalaw.com>
Subject: RE: From Marion Little re: David Boies v. Dershowitz; Giuffre v. Dershowitz [IWOV-DMS.FID44745]

Howard, we will not be releasing the information absent the protective order that contains an enforcement mechanism for seeking contempt of court. The necessity for this is evidenced by Julie Brown's tweet today reporting that your client's counsel has access to sealed depositions and is disclosing the contents of the same. Do not know whether that is true, but that is what she is reporting. mhl

---

From: Cooper, Howard [mailto:hcooper@toddweld.com]
Sent: Monday, June 22, 2020 5:49 PM
To: Marion H. Little
Cc: Terri Thompson; Kiely, Christian; Oren, Kristy; Basaria, Saraa; Imran H. Ansari, Esq.
Subject: RE: From Marion Little re: David Boies v. Dershowitz; Giuffre v. Dershowitz [IWOV-DMS.FID44745]

We would not turn the documents over to them (which I assume they already have) unless they agreed.

From: Marion H. Little <little@litohio.com>
Sent: Monday, June 22, 2020 1:26 PM
To: Cooper, Howard <hcooper@toddweld.com>
Cc: Terri Thompson <thompson@litohio.com>; Kiely, Christian <ckiely@toddweld.com>; Oren, Kristy <koren@toddweld.com>; Basaria, Saraa <sbasaria@toddweld.com>; Imran H. Ansari, Esq. <iansari@aidalalaw.com>
Subject: RE: From Marion Little re: David Boies v. Dershowitz; Giuffre v. Dershowitz [IWOV-DMS.FID44745]

Howard,

Let me think about it. I'm a bit concerned since I would not have an enforcement mechanism. Would the other parties sign off?

-----Original Message-----

From: Cooper, Howard [mailto:hcooper@toddweld.com]
Sent: Monday, June 22, 2020 12:59 PM
To: Marion H. Little
Cc: Terri Thompson; Kiely, Christian; Oren, Kristy; Basaria, Saraa; Imran H. Ansari, Esq.
Subject: Re: From Marion Little re: David Boies v. Dershowitz; Giuffre v. Dershowitz [IWOV-DMS.FID44745]

Marion-

Let's talk when you are done with your PI. Would you consider sending the documents now if we agreed that until the motion is resolved we will keep them attorneys and clients eyes only with all rights reserved?

Thanks.

Howard

Howard M. Cooper

Todd & Weld LLP
One Federal Street
Boston, MA 02110
T: 617-720-2626
F: 617-227-5777
www.toddweld.com

On Jun 22, 2020, at 12:51 PM, Marion H. Little <little@litohio.com> wrote:

Howard,

We do have a couple of documents to produce one the confidentiality objection is resolved. They are not privileged, but they are confidential for the reasons outlined in the objection letter. If your client's position has changed re the protective order we circulated, please let me know and we could seek to have it entered by the Court. I could then forward those materials to you. Otherwise, our motion to the Court will request the issuance of a protective order.

I have a PI hearing this week. I am guessing we are a couple weeks out on the motion. Our preference is to file the motion in SDNY (as opposed to S.D. Ohio), which should simplify things. I assume your client does not object to that approach.

If it is helpful, we could jump on a call late today. Thanks, mhl

From: Cooper, Howard [mailto:hcooper@toddweld.com]
Sent: Monday, June 22, 2020 12:25 PM
To: Terri Thompson
Cc: Marion H. Little; Kiely, Christian; Oren, Kristy; Basaria, Saraa; Imran H. Ansari, Esq.
Subject: RE: From Marion Little re: David Boies v. Dershowitz; Giuffre v. Dershowitz [IWOV-DMS.FID44745]

Marion –

I had understood you would be sending along the small set of documents you described to me, as to which there is no

objection in producing. Do you intend to send them? Also, please let me know your timeframe for filing your motion(s).

Thanks and regards,

Howard

From: Terri Thompson <thompson@litohio.com>
Sent: Friday, June 19, 2020 5:09 PM
To: Cooper, Howard <hcooper@toddweld.com>
Cc: Marion H. Little <little@litohio.com>
Subject: From Marion Little re: David Boies v. Dershowitz; Giuffre v. Dershowitz [IWOV-DMS.FID44745]

Terri Thompson
Zeiger, Tigges & Little LLP
41 S. High Street, Suite 3500
Columbus, OH 43215
(614) 324-5065
Email: thompson@litohio.com<mailto:thompson@litohio.com>

_____
This e-mail, and any attachments thereto, is intended only for the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me by return e-mail and permanently delete the original and any copy of this e-mail message and any printout thereof.

To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax penalties.

This e-mail, and any attachments thereto, is intended only for the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient, you are hereby notified that any

---

This e-mail, and any attachments thereto, is intended only for the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me by return e-mail and permanently delete the original and any copy of this e-mail message and any printout thereof.
To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax penalties.

EXHIBIT E

ZEIGER, TIGGES & LITTLE LLP

ATTORNEYS AT LAW

3500 HUNTINGTON CENTER

41 SOUTH HIGH STREET

COLUMBUS, OHIO 43215

TELEPHONE: (614) 365-9900
FACSIMILE: (614) 365-7900

WRITER'S DIRECT NUMBER:
(614) 365-4113

June 19, 2020

Via Email

Howard M. Cooper, Esq.
Todd & Weld LLP
One Federal Street
Boston, MA 02110
hcooper@toddweld.com

Re: David Boies v. Alan Dershowitz
Supreme Court of New York, County of New York
Case No. 160874/2019 (the "State Action");

Virginia L. Giuffre v. Alan Dershowitz
U.S. District Court, Southern District of New York
Case No. 19-cv-3377 (Preska, J.) (the "Federal Action") (collectively, the Federal Action and the State Action are referred to as the "Lawsuits")

Objections to Record Subpoenas Propounded upon Attorney John W. Zeiger and Leslie H. Wexner

Dear Howard:

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, we object to the subpoenas issued on June 8, 2020, to Attorney John W. Zeiger and Leslie H. Wexner (the "Subpoenas") seeking records on the following grounds:

1. The Subpoenas seek confidential records and information relating to Attorney Zeiger's representation of Mr. Wexner.[1] Under Rule 1.6(a) of the Ohio Rules of Professional Conduct "[a] lawyer *shall not* reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law…." (Emphasis added.) "Confidential information" under this Rule "is *broader* than simply that information covered by the attorney-client privilege and covers *all 'information* relating to the representation.'" Lamson & Sessions Co. v. Mundinger, 2009 U.S. Dist. LEXIS 37197, at *13 (N.D. Ohio May 1, 2009) (emphasis added). The "presumptive prohibition on the

[1] The Subpoenas do not appear to request the production of any privileged materials. However, all rights and objections are reserved as to all privileged materials.

disclosure of confidential information" under Rule 1.6(a) extends to information the attorney receives from sources outside of the attorney-client relationship such as communications with opposing counsel. See City of Pittsburgh v. Silver, 50 A.3d 296, 301 (Pa. Commw. 2012) (settlement negotiations are protected by Rule 1.6). It includes "all information relating to the representation, *whatever its source*." Ohio Prof. Cond. Rule 1.6, cmt. 3 (emphasis added).

2. The Subpoenas seek records and information exchanged with the expectation and/or an express or implied agreement of confidentiality. We have reviewed some of the correspondence publicly filed and submitted to District Judge Preska in the Federal Action. Attorney Boies asserts his communications with Attorney Zeiger were confidential. [Federal Action, Doc. 128, pg. 2.]

3. Under those limited circumstances where deviation from the "presumptive prohibition" precluding disclosure is permitted under Professional Conduct Rule 1.6, the attorney and the court are duty-bound to protect confidential information from entering the public domain: "If the disclosure will be made in connection with a judicial proceeding, *the disclosure should be made in a manner that limits access to the information* to the tribunal or other persons having a need to know it and *appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable*." Ohio Prof. Cond. Rule 1.6, cmt. 16 (emphasis added). Accord: Spratley v. State Farm Mut. Auto. Ins. Co., 78 P.3d 603, ¶ 22 (Utah 2003) (discussing Utah's version of Rule 1.6 and noting: "[t]he trial court has numerous tools it *must* employ to prevent unwarranted disclosure of the confidential information, including the use of sealing and protective orders, limited admissibility of evidence, orders restricting the use of testimony in successive proceedings, and, where appropriate, in camera proceedings.") (quotation omitted).

   We have previously provided a proposed Protective Order that would allow non-parties responding to discovery to invoke its protection for offered testimony and documents produced. Mr. Dershowitz has rejected this proposed Protective Order, and we understand that he otherwise intends to oppose any confidential treatment of the documents produced in response to the subpoena duces tecum or any testimony solicited in oral depositions except to the extent such information relates to health or financial information. As such, separate and apart from the instant objections, we intend to move the court for the entry of a standard and customary protective order consistent with those routinely entered in cases pending in the Southern District of New York in comparable type proceedings.

4. The Subpoenas unnecessarily and unreasonably expose the deponents to duplicative discovery. As referenced above, Mr. Dershowitz is a party in two

related cases: the State and Federal Actions. We have preliminarily reviewed the Lawsuits and note they overlap in substantial respects, thus exposing non-parties to duplicative discovery in multi-forums. A review of the respective dockets in the Lawsuits reveals no order or stipulation consolidating discovery. We understand that the subpoenas, from the perspective of Mr. Dershowitz, are intended to be for both Lawsuits. However, absent a stipulation from the litigants in the Lawsuits that the requested discovery will, in fact, be consolidated at least as to the deponents, we object that this discovery unreasonably imposes a burden on non-parties.

We further note that, provided that our confidentiality concerns are appropriately addressed either voluntarily by the parties to the Lawsuits or otherwise resolved by the Court, we will make Attorney Zeiger available for oral testimony. Having reviewed the respective pleadings from the Lawsuits, it appears that Attorney Zeiger may possibly have discoverable information that is relevant to either a claim or defense in the Lawsuits and such deposition is proportional to the needs of the Lawsuits.

In contrast, we believe Mr. Wexner has no non-privileged information relevant to a claim or defense on Mr. Dershowitz's allegations of an extortion scheme. As for the remaining allegations in the Lawsuit, we believe Mr. Wexner's deposition would impose an unreasonable burden on him as his testimony would not be relevant and/or proportional to the needs of the Lawsuits and, in fact, is at best merely inadmissible extrinsic, collateral evidence. Having reviewed the transcript of the Rule 26 conference before District Judge Preska, it appears Her Honor shares our view. We thus intend to seek an order precluding his testimony. We previously offered as a compromise to have Mr. Wexner answer written deposition questions, as permitted under Civil Rule 31, but understand this proposal is unacceptable to Mr. Dershowitz, and he will oppose our motion to preclude Mr. Wexner's deposition.

As a final note, Mr. Wexner will be 83 years old and Attorney Zeiger will be 73 years old at the rescheduled deposition dates, they are thus in a heightened-risk category, and their continued health remains paramount. Each of the deponents has followed quarantine practices for the last several months given the current pandemic. Attorney Zeiger and Mr. Wexner, if ordered by the Court, will only be made available for deposition consistent with the then-federal, state, and local health restrictions and best heath practices.

We believe we have conferred in good faith with your offices in an effort to resolve these disputes without court action, and thus intend to certify for purposes of Rule 26 and any applicable local rule that all extrajudicial efforts to resolve these issues have been exhausted. If you disagree and believe additional discussions would be beneficial, please advise and we will schedule a call.

Thank you for your attention to this matter.

Very truly yours,

Marion H. Little, Jr.

MHL:tlt:1053-001:860834

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIRGINIA L. GIUFFRE,	:	
	:	**Case No. 1:19-cv-03377**
Plaintiff,	:	
	:	**Judge Preska**
v.	:	
	:	
ALAN DERSHOWITZ,	:	
	:	
Defendant.	:	

PROTECTIVE ORDER

Upon a showing of good cause in support of the entry of a protective order to protect the discovery and dissemination of confidential information or information which may improperly annoy, embarrass, or oppress any party, witness, or person providing discovery in this case, **IT IS ORDERED:**

1. This Protective Order shall govern the production, disclosure, dissemination, exchange and use of all documents, information, or other things, responses to interrogatories, responses to requests for admission, responses to subpoenas, deposition testimony and exhibits, and all copies, extracts, summaries, compilations, designations, and portions thereof produced, given, or exchanged by and among all parties and non-parties in the course of the above-captioned proceeding (the "Proceeding") ("Discovery Materials").

2. A party, person, or entity receiving Discovery Materials from another party, person, or entity shall use such Discovery Materials solely for purposes of preparing for and conducting litigation of the Proceeding. Discovery Materials designated as Confidential shall not be disclosed by a non-designating party except as expressly permitted by the terms of the Protective Order.

3. Any party to this litigation and any third party shall have the right to designate as "Confidential" and subject to the Protective Order any information, document, or thing, or portion of any document or thing that contains: (a) information that relates to efforts to comply with statutory or judicial regulations (regardless of whether such information is protected by the attorney-client privilege); (b) information concerning private facts or information which, if publicly disclosed, would serve to embarrass a party or third party; (c) disclosure of information prohibited by non-disclosure agreement(s) with third parties that is not (i) generally available to the public or in the public domain or (ii) independently known to the receiving party; or (d) information a party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure. Any party to this litigation or any third party covered by this Protective Order, who produces or discloses any Confidential material,

including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: "CONFIDENTIAL" or "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" (hereinafter "Confidential") at the time of its production.

4. This Order does not authorize filing protected materials under seal. No Discovery Material designated as Confidential may be filed with the Court under seal without prior permission as to each such filing, upon motion and for good cause shown, including the necessity and legal basis for filing under seal.

5. Confidential material and the contents of Confidential material may be disclosed only to the following individuals under the following conditions:

a. The parties;

b. The parties' legal counsel (partners, employees, legal assistants, paralegals, secretarial and clerical employees);

c. Any deponent or witness may be shown or examined on any information, document or thing designated Confidential if it appears that the witness authored or received a copy of it, was involved in or may have relevant knowledge with respect to the subject matter described therein or is employed by the party who produced the information, document or thing, or if the producing party consents to such disclosure;

d. Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials; and

e. Such other persons as may be designated by order of the Court.

6. Confidential material shall be used only by individuals permitted access to it under Paragraph 5. Confidential material, copies thereof, and the information contained therein, shall not be disclosed in any manner to any other individual, until and unless (a) counsel for the party asserting confidentiality waives the claim of confidentiality, or (b) the Court orders such disclosure.

7. With respect to any depositions that involve a disclosure of Confidential material of a party or third party to this action, such party or third party shall have until thirty (30) days after receipt of the deposition transcript within which to inform all other parties that portions of the transcript are to be designated Confidential, which period may be extended by agreement of the parties. No such deposition transcript shall be disclosed to any individual other than the individuals described in Paragraph 5 (a), (b), (c), (d), and (e) above and the deponent during

these thirty (30) days, and no individual attending such a deposition shall disclose the contents of the deposition to any individual other than those described in Paragraph 6 (a), (b), (c), (d), and (e)) above during said thirty (30) days. Upon being informed that certain portions of a deposition are to be designated as Confidential, all parties shall immediately cause each copy of the transcript in its custody or control to be appropriately marked and limit disclosure of that transcript in accordance with this Order. The portions of a transcript designated as Confidential shall not be filed under seal absent the further order of this Court.

8. If counsel for a party receiving documents or information designated as Confidential hereunder objects to such designation of any or all of such items, the following procedure shall apply:

a. Counsel for the objecting party shall serve on the designating party or third party a written objection to such designation, which shall describe with particularity the documents or information in question and shall state the grounds for objection. Counsel for the designating party or third party shall respond in writing to such objection within 14 days, and shall state with particularity the grounds for asserting that the document or information is Confidential. If no timely written response is made to the objection, the challenged designation will be deemed to be void. If the designating party or third party makes a timely response to such objection asserting the propriety of the designation, counsel shall then confer in good faith in an effort to resolve the dispute.

b. If a dispute as to a Confidential designation of a document or item of information cannot be resolved by agreement, the proponent of the designation being challenged shall present the dispute to the Court initially by telephone or letter, in accordance with the Court's published Individual Procedures, before filing a formal motion for an order regarding the challenged designation. The document or information that is the subject of the filing shall be treated as originally designated pending resolution of the dispute. The provisions of this paragraph are not intended to shift the burden of establishing confidentiality, which shall at all times remain the burden of the designating party.

9. If the need arises during trial or at any hearing before the Court for any party to disclose Confidential or information, it may do so only after giving notice to the producing party and as directed by the Court.

10. To the extent consistent with applicable law, the inadvertent or unintentional disclosure of Confidential material that should have been designated as such, regardless of whether the information, document or thing was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the specific information, document or thing disclosed or as to any other material or information concerning the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing counsel for all parties to whom the material was disclosed that the material should have been designated Confidential within a reasonable time after

disclosure. Such notice shall constitute a designation of the information, document or thing as Confidential under this Protective Order.

11. When the inadvertent or mistaken disclosure of any information, document or thing protected by privilege or work-product immunity is discovered by the producing party and brought to the attention of the receiving party, the receiving party's treatment of such material shall be in accordance with Federal Rule of Civil Procedure 26(b)(5)(B). Such inadvertent or mistaken disclosure of such information, document or thing shall not by itself constitute a waiver by the producing party of any claims of privilege or work-product immunity. However, nothing herein restricts the right of the receiving party to challenge the producing party's claim of privilege if appropriate within a reasonable time after receiving notice of the inadvertent or mistaken disclosure. If a party decides to add a designation to any document previously produced without designation, or to withdraw the designation on any document previously produced, the designating party shall produce to each receiving party substitute copies of such documents bearing the appropriate designation, if any. Each receiving party shall use reasonable efforts to substitute the later produced documents for the previously produced documents, and destroy or return to the designating party the previously produced documents and all copies thereof.

12. This Protective Order shall not deprive any party of its right to object to discovery by any other party or on any otherwise permitted ground. This Protective Order is being entered without prejudice to the right of any party to move the Court for modification or for relief from any of its terms.

13. This Protective Order shall survive the termination of this action and shall remain in full force and effect unless modified by an Order of this Court or by the written stipulation of the parties filed with the Court.

14. No receiving party shall produce Confidential material to third parties unless a request is made in accordance with applicable discovery rules and/or pursuant to a subpoena, court order, or other compulsory process, or any request for production is received from any governmental agency or other self-regulatory organization, purporting to have authority to require the production thereof. In the event that a receiving party receives such a request, subpoena, order or other compulsory process commanding the production of Confidential material, the receiving party shall, to the extent permissible by law and the rules, requirements or requests of any relevant governmental or self-regulatory organization, promptly (a) make a timely objection to the production of the Confidential material on the grounds that production is precluded by this Protective Order; (b) notify the designating party of the existence and general substance of each such request, subpoena, order, or other compulsory process, including the dates set for the production, no later than three (3) business days after the receipt of such request, subpoena, order or other compulsory process; (c) furnish the designating party with a copy of the document(s) that the receiving party received that memorialized the request, subpoena, order, or other compulsory process, no later than three (3) business days after the receipt of such request, subpoena, order or other compulsory process; and (d) not interfere with the designating party's response or objection to any such request, subpoena, order, or other compulsory process. The receiving party shall be entitled to comply with the request, subpoena, order or other compulsory

process except to the extent that (i) the designating party is successful in timely obtaining an order modifying or quashing the request, subpoena, order, or other compulsory process, or (ii) the receiving party is on notice that an application for such relief is pending; provided that the receiving party shall in all events be entitled to comply with the request, subpoena, order or other compulsory process to the extent required by law and the rules, requirements or requests of any relevant governmental or self-regulatory organization.

15. Upon final conclusion of this litigation, each party or other individual subject to the terms hereof shall be under an obligation to assemble and to return to the originating source all originals and unmarked copies of documents and things containing Confidential material and to destroy, should such source so request, all copies of Confidential material as well as excerpts, summaries and digests revealing Confidential material that do not constitute attorney work product. Counsel may retain complete copies of all work product, transcripts, and pleadings including any exhibits attached thereto for archival purposes, subject to the provisions of this Protective Order. To the extent a party requests the return of Confidential material from the Court after the final conclusion of the litigation, including the exhaustion of all appeals therefrom and all related proceedings, the party shall file a motion seeking such relief.

16. The Court retains jurisdiction even after final disposition of this proceeding to enforce this Protective Order and to make such amendments, modifications, deletions and additions to this Protective Order as the Court may from time to time deem appropriate.

IT IS SO ORDERED.

Dated: _____

_____
United States District Judge