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ST-2020-CV-00155

TAMARA CHARLES

CLERK OF THE COURT

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST THOMAS/ST JOHN

5 GHISLAINE MAXWELL

6 Plaintiff,

7 vs.

8 ESTATE OF JEFFREY E EPSTEIN;DARREN
9 K INDYKE in his capacity as Executor of the
10 ESTATE OF JEFFREY EPSTEIN; RICHARD
11 D KAHN in his capacity as Executor of the
12 ESTATE OF JEFFREY EPSTEIN and NES,
13 LLC, a New York Limited Liability Company

Defendants

Case No.: ST-2020-CV-00155

PLAINTIFFS RESPONSE TO
DEFENDANTS MOTION TO DISMISS FOR
FAILURE TO PROSECUTE

14 Plaintiff's response to Co-Executors Motion to dismiss for failure to prosecute or
15 alternatively to compel her to appear Pro-Se

18 **Preliminary Statement**

20 Ghislaine Maxwell appears pro-se and respectively submits this reply in support
21 of the continued stay in proceedings whilst her Appeal against Conviction in Southern District
22 New York is pending, and while she continues to seek counsel, as she requested in
23 plaintiff's response to a status hearing filed May 16th, 2023.

25 Plaintiff will continue to appear, pro se and respond to any court orders in
26 the absence of legal counsel and given the stringent constraints placed upon her by the BOP
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28 PLAINTIFFS RESPONSE TO DEFENDANTS MOTION TO DISMISS FOR FAILURE TO PROSECUTE - 1

1 whilst in FCI Tallahassee. The Plaintiff opposes a defendant's motion to dismiss, and
2 denies she has failed to prosecute her claims.
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5 **Background**
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7 Plaintiff brought this action 3/12/2020 prior to being swept into Epstein's
8 criminal proceedings as she was not party to Epstein's first criminal proceedings and was
9 not identified or referenced in his 2019 indictments.
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12 This action was initiated only after months of seeking contact with the
13 Estate before the plaintiff was indicted and when the Estate could have dealt with her
14 claims but she was ignored. Plaintiff was represented by counsel during the pendency of
15 this case until the court granted plaintiff's attorney's right to withdraw September 7,
16 2022.
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19 The defendants allege that the plaintiff has failed to comply with court
20 orders and willfully so. Neither is true. The Plaintiff submitted her reply per the court's
21 order May 16, 2023 at the FCI Tallahassee Post Office, and with the postal order of
22 proof of service and required by the BOP.
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25 Litigation is deemed filed at the time delivered to prison authority, Houston
26 v LACK 487 U.S. 266; 101 LE D2 D245; 108 SCT2379 (1988).
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1 Plaintiff will continue to comply with all and any Court Orders. The Estate argues
2 as dismissal of the case as a suitable sanction. But the Court should disregard such David and
3 Goliath tactics as the allegations are untrue and baseless.
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6 **ARGUMENT**
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8 The Defendants argue for dismissal of Plaintiff's Case as her contractual and
9 Common Law indemnification claims fail on the merits. The Plaintiff in Plaintiff's
10 Brief in response to the Court order argued that the Plaintiff's common law indemnity claims are
11 not barred and there is not basis to bar Plaintiff's claims as a matter of public policy at the Rule
12 stage according to Virgin Islands Law. Indemnification from criminal acts under the General
13 Corporations Law are provided for under Virgin Islands Law as indemnification may be
14 appropriate if the indemnitee had been convicted of a criminal charge. Specifically the general
15 Corporation Law codified at Title 13 of the Virgin Island Codes provides for such detailed in
16 Plaintiff's Brief in response to the Court Order dated August 1 2022. Further the co-executors
17 public policy defense does not apply to Plaintiff's common law indemnity claims since the
18 defense allows a party to avoid enforcement of a Contract (see Berne supra 46 VI at 150 ;
19 Brouillard vs DLJ Mortg. Cap Inc 63 VI 788,794 VI 2015. As a matter of Common Law the
20 Virgin Islands Courts recognize the right to indemnity between joint tortfeasors see infra Section
21 1 A(2) see also 41 AMJUR2d Indemnity 21 citing Horrabin vs City of Desmoines 198 Iowa 549;
22 199 NW 988 , 38 ALR 544 (1924). Jacobs vs General ACC Fire and Life ASSUR.Corp 14 WIS
23 2d 1,109 NW 2d 462,88 ALR 2d; 1347 (1961). Virgin Islands Policy does not impact Plaintiff's
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1 common law indemnity claims and nor does Virgin Islands public policy bar Plaintiffs indemnity
2 claims that arise under Virgin Islands General Corporation Law.
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5 This law provides that a Corporation may indemnify any person who "was or is" a
6 party to civil or criminal proceeding by reason of the persons relationship with the Corporation
7 "against expenses including attorney fees" . 13 VIC 67 a(a). In the case of a criminal proceeding
8 the person must have had no reasonable cause to believe his conduct was unlawful. These
9 arguments are fully expanded in Plaintiffs brief in response to the Court ORDER.
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12 Under New York Law, Courts routinely order indemnification where a Director is
13 charged with intentional misconduct. If the director or officer satisfied the requirements of NY
14 Biz Corp law a Court may order the Corporation to advance litigation expenses notwithstanding
15 the corporations allegations that the director or officer engaged in wrong doing against the
16 Corporation.
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19 Advance payment of fees is authorized if the Defendant has raised genuine issues
20 of fact or law NYBizCorpLaw 724 (c) .New York law provides for the indemnification of
21 officers and directors for litigation expenses under certain circumstances. NYBizCorpLaw
22 722,723. New York also provides that the statutory indemnification procedures are not exclusive
23 and authorizes a Corporation to agree to indemnify officers and directors.
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26 The Court utilizes 724(c) to direct the advance payment of fees where the
27 indemnification was provided for by a corporate by law, contract or as well when no corporate
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1 indemnification agreement existed as alleged by the Estate who claims that NES LLC operated
2 without corporate indemnification for 16 years prior to their production of documents in
3 2014 from 1998 to 2014, the date the defense introduced the alleged first operating
4 agreement, see the Motion to Dismiss and attached Exhibit C which is NES Operating
5 Agreement.

7 The co-executors should not raise any objection to indemnification on public
8 policy grounds in addition due to unclean hands. They should be estopped from raising any
9 objection for that reason. The unclean hands doctrine is based on the principle that a
10 party who has committed wrongdoing should not be allowed to come into court and
11 request a remedy for its own personal benefit. *In re Prosser*, 2012, WL 6-7-377. 81 at
12 Star 17, Bankr V.I., December 2012, citing *In RE: New Valley Corp.* 181 S3d, 517-525,
13 3rd Circuit 1999, Sunshine Shopping Center STCTR. Inc. vs. K-Mart Corp. 42 VI, 397,
14 407, 85 S SUP, 2d, 537, 544, DVI, Gen 27, 2000. "It is an ancient and established
15 maximum equity jurisprudence that he who comes into equity must come with clean
16 hands. If a Party seeks relief in equity he must be able to show that on his part there has been
17 honesty and fair dealing." *Bishop vs Bishop* 257 F 2D 495 500 3rd Circuit 1958. *Bishop*
18 v. *Bishop*, (3d Cir. 1958)

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23 In Sunshine Shopping the court held that the defendant could be precluded
24 from raising an equitable defense to forfeiture clause in the least due to his own "unclean
25 hands".

1 The Estate also fails to fully consider and take into consideration Epstein's
2 intent that he and the Estate protect and indemnify employees and co-conspirators of
3 Epstein. This is elucidated in the non-Prosecution agreement, which is detailed in the
4 OPR, The Report of the Office of Professional Responsibility dated November 2020.
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7 The Department of Justice and Epstein's representatives worked for months
8 with prosecutors to fashion the non-prosecution agreement (NPA) that covered his
9 employees and his co-conspirators. The document itself was described as "transactional
10 immunity" by the prosecutors.
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13 The prosecutors describe the NPA as conferring transactional immunity, as
14 the broadest and strongest protection that the Department of Justice offers. Initial
15 language included in the NPA, , "concludes the initiation of any and all criminal charges
16 that might be in the future brought against the full co-conspirators or any employees
17 arising out of ongoing federal investigations are precluded." page 164. Whilst language
18 was modified slightly, so as not to be so detailed, the intent was, and the broad scope
19 of the coverage is what remained, page 166 and 237. The broad sweep of the Non-
20 Prosecution Agreement coupled with the previous indemnification payments demonstrates
21 Epstein's desire to indemnify his employees co-conspirators etc.
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25 The co-executors have not yet identified what specific issues they contend
26 have already been decided by the Southern District of New York (SDNY), but are
27 identical in this case. In fact, the narrow issues tried before the SDNY do not necessarily
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1 overlap with the Plaintiff's claims here, which include indemnification of requests to code
2 in connection with the civil law suit filed by Jennifer Araroz. She did not testify in the
3 SDNY proceedings.

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6 Plaintiffs claims for indemnification relate to Investigations regarding Epstein
7 and security services incurred in 2019 in the wake of intense media scrutiny following
8 Epstein's arrest. To the extent that Plaintiff's claims relate to expenses that Plaintiff
9 incurred exclusively because of Epstein's actions in such claims would be clearly not be
10 subject to any policy bar. Simply put the SDNY Judgment of Conviction does not
11 conclusively establish any issue presented here and is not dispositive of the claims in this
12 action as previously argued in Plaintiff's response to this Court.

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15 It should also be noted that on information and belief, that the two
16 representatives of Epstein's estate are also substantial beneficiaries of the Estate, namely
17 DARREN INDYKE In his capacity as Executor of the Estate of Jeffrey, E. Epstein., and
18 Richard D. Kahn in his capacity as Executor of the Estate of Jeffrey E. Epstein are
19 Employees, officers and or directors of NES. L.L.C, a New York Limited Liability Company
20 On information and belief, Indyke and Kahn, are having their litigation expenses paid by
21 the Estate of Jeffrey E Epstein. Epsteins clearly wanted to indemnify his employees as noted by
22 by Indyke and Kahn's indemnification on information and belief, and on plaintiff's previous
23 suits being indemnified by Epstein whilst he was alive and as noted in previous filings.

1 Plaintiffs claims may not be barred as a matter of public policy at this
2 preliminary stage of the proceedings, and Virgin Islands' public policy is not necessarily
3 barred Plaintiff's contractual indemnity claims because the underlying purpose of contract
4 law is to hold parties to their agreement so that they receive the benefits of their bargains.
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7 Phillip vs Marsh,- Monsanto, 6-6-VI-612, 6-21-VI-2017. Because the Virgin
8 Islands courts have recognized the right to common law indemnity between joint
9 tortfeasors and because, in the certain circumstances, Virgin Island provides that
10 indemnification may be appropriate even if the indemnitee has been convicted of criminal
11 charge. And because there's no basis of our plaintiff's claim as a matter of public policy
12 at the rule 12 stage. And because the Southern District of New York judgment of
13 conviction, to the extent considered does not conclusively decide any issues presented in
14 this action.

15 And because co-executors's public policy defense does not apply to
16 plaintiff common law identity claims, since the defense allowed the party to avoid
17 enforcement of a contract. And because any objection to co executor's indemnification on
18 ground for public policy should be found to have been waved by Epsteins past actions.

19 And finally, because the co-executors may not raise any objection on
20 indemnification on public policy grounds due to unclean hands,

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25 **Conclusion**
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1 Epstein having engaged in the wrongful conduct, as the court stated causing
2 Plaintiff to incur legal and other expenses in the first place; Epstein and by association,
3 his Estate should not be permitted to prevail in this action by relying on a salutary
4 public policy. The plaintiff respectfully ask his court to find a Virgin Islands public
5 policy, does not bar her indemnity claims in this action.

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Respectfully Submitted
S. Maxwell