

FILED

May 01, 2020

TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DISTRICT OF ST. THOMAS & ST. JOHN**

GHISLAINE MAXWELL,)
)
 Plaintiff,)
)
 v.)
)
 ESTATE OF JEFFREY E. EPSTEIN, DARREN)
 K. INDYKE, in his capacity as EXECUTOR OF)
 THE ESTATE OF JEFFREY E. EPSTEIN,)
 RICHARD D. KAHN, in his capacity as)
 EXECUTOR OF THE ESTATE OF JEFFREY)
 E. EPSTEIN, and NES, LLC, a New York)
 Limited Liability Company,)
)
 Defendants.)
)
 _____)

CIVIL NO. ST-20-CV-155

MOTION TO DISMISS

& INCORPORATED MEMORANDUM OF LAW

COME NOW, DARREN K. INDYKE and RICHARD D. KAHN, by and through their undersigned counsel, in their capacity as Co-Executors of the Estate of Jeffrey E. Epstein (the “Estate”), and on behalf of the Estate and NES, LLC (“NES”), an entity administered in probate by the Co-Executors as part of the Estate, and hereby move for an order pursuant to V.I. R. Civ. P. 12(b)(6) dismissing the Complaint in this action filed by Plaintiff Ghislaine Maxwell (“Maxwell”).

I. PRELIMINARY STATEMENT

In her Complaint, Maxwell asserts an absolute right to indemnification and advancement of expenses – unqualified in scope, unlimited in duration, and incalculable as to amount – based on a purported promise “to support her financially” that she alleges was made by her former employer at least fourteen (14) years ago. (Compl. ¶¶ 1, 9-11, 14, 15.) Setting aside the dubious *bona fides* of Maxwell’s claims, her action against the Co-Executors is barred

by the mandatory claims processing rules set forth in 15 V.I.C. 606, which prohibit commencement of any action prior to one (1) year after issuance of letters testamentary. And Maxwell's claims against NES, which she bases entirely on her "belief" that its corporate organizational documents entitle her to "mandatory indemnification and advancement" of expenses (Compl. ¶ 47), are defeated by the undisputed fact that those documents provide her no such right.

For these reasons, the Court must dismiss Maxwell's Complaint.¹

II. RELEVANT FACTUAL BACKGROUND

A. The Probate Proceedings

On August 10, 2019, Jeffrey E. Epstein, a domiciliary of the U.S. Virgin Islands, died testate in New York. On August 15, 2019, a Petition for Probate and for Letters Testamentary was filed with the Probate Court of the U.S. Virgin Islands, Probate No. ST-19-PB-0000080. On September 6, 2019, Magistrate Judge Carolyn P. Hermon-Percell issued Letters Testamentary to Darren K. Indyke and Richard D. Kahn. *See Exhibit A.* Since that time, Messrs. Indyke and Kahn have served as Co-Executors of the Estate.

B. Nature of the Action

In her three (3) count Complaint against the Co-Executors and NES, Maxwell seeks common law and contractual "indemnification for and advancement of the attorneys' fees, security costs, costs to find safe accommodation, and all other expenses Maxwell has reasonably incurred and will incur by reason of her prior employment relationship with [Mr. Epstein] and his affiliated businesses in connection with any threatened, pending, or

1. Maxwell names the Estate itself as a defendant. However, that is improper: under Virgin Islands law, an estate does not have a separate identity and may not be sued as a party. *See, e.g.*, 31 Am. Jur. 2d Executors and Administrators § 1141 (2016) ("Since estates are not natural or artificial persons, and they lack legal capacity to sue or be sued, an action against an estate must be brought against an administrator or executor as the representative of the estate.").

completed suit, proceeding, or investigation relating to Epstein, his affiliated business, and his alleged victims.” (Compl. ¶ 1.)

Plaintiff contends that she is entitled to indemnification and advancement of her expenses because Mr. Epstein allegedly promised to “support her financially” and paid certain litigation expenses for her when he was alive. (See Compl. ¶¶ 11-15, 18-19.) Maxwell further alleges that, following Mr. Epstein’s death, Mr. Indyke acting in his capacity as a Co-Executor of the Estate “made assurances” to her that her past legal fees and obligations would be reimbursed by the Estate and paid going forward. (*Id.* ¶¶ 21-22.)

Specifically, Maxwell alleges that she was employed by Mr. Epstein and his affiliated businesses, including NES, from “approximately 1999 through at least 2006.” (Compl. ¶ 9.) During their relationship, Mr. Epstein purportedly “promised Maxwell that he would support her financially.” (Compl. ¶ 11.) Maxwell claims that Mr. Epstein made this promise to her on several occasions, both orally and in writing. (Compl. ¶ 12-14.) She further contends that, when she was leaving Mr. Epstein’s employ in “approximately 2001” to start her own business, he stated in writing that he would “always support [her] financially.” (Compl. ¶¶ 13-15.)²

Maxwell does not allege that any lawsuits for which she seeks indemnification are related to her performance of legitimate, employment-related duties for Mr. Epstein or his affiliated businesses. To the contrary, the claims asserted against Maxwell to date relate to her own misconduct including that she sexually abused young women and, in one case, threatened a potential witness’ life.³

-
2. Maxwell’s written demand to the Estate for indemnification, dated November 22, 2019 and expressly referenced in her Complaint (at paragraph 28), does not mention any written promises by Mr. Epstein to indemnify her. Rather, it refers only to his alleged “oral promises” to do so. (See **Exhibit B** at 2.)
 3. See, e.g., *Annie Farmer v. Indyke and Kahn, et al.*, Case No. 1:19-cv-10475-LGS (S.D.N.Y.; Complaint filed November 11, 2019, alleging *inter alia* that Maxwell “committed sexual assault and battery upon Plaintiff when she was 16 years old,” “exposed [Plaintiff’s] breasts and groped her,” and “threatened [Plaintiff’s sister] in order to keep her quiet.”); *Jennifer Araoz v. Estate of Jeffrey Edward Epstein, et al.*, Index No. 950010/19 (New York State; First Amended Complaint filed October 10, 2019, alleging *inter alia* that Maxwell

III. ARGUMENT

A. Plaintiff's Claim is Premature, in Violation of 15 V.I.C § 606(a).

Whatever the purported merits of Plaintiff's claims, her lawsuit is premature. Maxwell may not file a Complaint against the Co-Executors until twelve (12) months have elapsed after the Probate Court issued Letters Testamentary. *See* 15 V.I.C § 606(a). Here, that twelve (12) month period will not expire until September 6, 2020.

Chapter 23 of Title 15 of the Virgin Islands Code outlines the exclusive procedure for pursuing a claim against executors of an estate. Section 606, entitled "Commencement of Action against Executor or Administrator," sets forth mandatory claims-processing rules; Section 606(a) specifically provides:

"(a) An action may be commenced against an executor or administrator at any time *after the expiration of twelve months from the granting of letters testamentary* or of administration and until the final settlement of the estate and discharge of such executor or administrator from the trust, *and not otherwise.*" (emphasis supplied)

Section 606(a), which authorizes a plaintiff to commence an action against an estate's executor, "mandates that at the time of commencement ... the estate have been open for a minimum of twelve months... ." *Ottley v. Estate of Bell*, 61 V.I. 480, 491-492 (V.I. 2014) (emphasis added) (citing 15 V.I.C. § 606(a)). "[S]ection 606 is an inflexible claims-processing rule that cannot be waived." *Id.* at 492.⁴

The Virgin Islands Legislature's twelve (12) month statutory waiting period is no fluke. Rather, the requirement ensures that a claimant cannot bypass the probate process and relieves

"conspired with Jeffrey Epstein to commit repeated acts of sexual assault and harmful or offensive touching against Plaintiff"); *Jane Doe v. Indyke and Kahn, et al.*, Case No. 1:20-cv-00484-JGK (S.D.N.Y.; Complaint filed January 22, 2020, alleging *inter alia* that Maxwell abused Plaintiff "for years as a young girl" and "regularly facilitated Epstein's abuse of [Plaintiff] and was frequently present when it occurred.").

4. 15 V.I.C. § 606(b) further prohibits commencement of any action against the Co-Executors until after Maxwell has presented them with her claim, and they have determined to disallow it:

"(b) An action against an executor or administrator *shall not be commenced* until the claim of the plaintiff has been duly presented to such executor or administrator and by him disallowed..." (emphasis supplied)

the Co-Executors from simultaneously defending the Estate in civil actions and probate proceedings. *Ottley*, 61 V.I. at 495. This rule further ensures that a claimant cannot seek to gain priority over the Estate's assets by filing suit to the detriment of those claimants who adhere to the probate rules. *Id.* at 495-96.

“The Legislature has outlined in detail the duties of an executor or administrator in administering an estate and the process by which a creditor should seek to satisfy his claim, all under the guidance and review of the Superior Court. See 15 V.I.C. § 394; 15 V.I.C. § 240(c). Therefore, when looking at section 606 in the context of the entire probate scheme, it appears the Legislature intended section 606 'to regulate the process of obtaining review' by providing strict guidance for probate proceedings”

Ottley, 61 V.I. at 493.

The Legislature designed these mandatory rules to ensure the orderly and efficient distribution of decedents' property. *See id.* at 490. Section 606 reflects the Legislature's intent to provide executors with a sufficient period of time in which to marshal an estate's assets, pay taxes, analyze any claims filed against the estate and, depending on whether the executors determine them to be meritorious, allow or reject them. Section 606 then provides a claimant with prompt summary review of her claim if the executors have rejected it. *Id.* at 494.

Here, Maxwell violated the express strictures of Section 606(a): she did not wait twelve months to commence her action, thereby precluding the Co-Executors from proper consideration of her claims. As noted above, the Probate Court issued Letters Testamentary on September 6, 2019. *See Exhibit A.* Pursuant to Section 606(a), Maxwell is not permitted to file suit against the Co-Executors until September 6, 2020 at the earliest, and only then if they have disallowed her claim. Here, her failure to abide by the statutory rules “requires the court to dismiss [the Complaint] for failure to state a claim upon which relief may be granted.”

Ottley, 61 V.I., at 495 (citation omitted). The Court cannot allow Maxwell to jump the line, in violation of the mandatory claims-processing rules enacted by the Legislature.⁵

B. Plaintiff's Claim Against NES is Meritless as a Matter of Law.

Maxwell's claim against NES is defeated by the very documents on which she relies. As noted above, Maxwell asserts her "belief" that her employment relationship with NES entitles her to mandatory indemnification for and advancement of her fees and expenses pursuant to NES' corporate organizational documents:

"Upon information and belief, the corporate organizational documents for NES, LLC *entitle Maxwell to mandatory indemnification and advancement of legal fees, personal security costs, and other expenses incurred by reason of the employment relationship with NES, LLC*, including expenses incurred in connection with the pending suits, proceedings, and investigations concerning Epstein's alleged misconduct."

(Compl. ¶ 47; emphasis supplied.)

Unfortunately for Maxwell, the truth is otherwise. As set forth in the Operating Agreement of NES, LLC dated January 1, 2014 (the "NES Operating Agreement", a copy of which is attached hereto as **Exhibit C**), NES has no obligation to indemnify Maxwell for or advance her fees and expenses.⁶ Rather, the NES Operating Agreement allows NES to decline

5. To the extent that Maxwell relies on common-law indemnification, her claims are premature for another, independent reason: under Virgin Islands law, a party may not assert a common-law claim for indemnification in a separate action before a judgment has been rendered against her. *See Willie v. Amerada Hess Corp.*, 66 V.I. 23, 108, 2017 V.I. LEXIS 37, *132 (V.I. Super. Feb. 28, 2017).

6. Because Maxwell expressly incorporates by reference NES's corporate organizational documents in her Complaint, the Court may properly consider those documents in deciding this motion to dismiss. *See Hess Oil Virgin Islands Corp. v. Fluor Daniel*, Case No. SX-05-165, 2020 WL 1819622 (V.I. Super. Ct. Apr. 8, 2020)(applying the "incorporation-by-reference" doctrine in declining to convert a pre-answer motion under V.I. R. Civ. P. 12(b)(6) to a motion for summary judgment, despite the defendants' submission of documents referenced in the complaint but not attached to it). As the Court in *Hess* observed:

"Ordinarily, when ruling on a pre-answer motion to dismiss, the Court must accept the plaintiff's allegations as true ... 'and draw all fair inferences from such allegations.'" *Stanley*, 2020 VI Super 47 at ¶ 12 (citation omitted)). But the incorporation-by-reference doctrine permits a court to review the actual document referenced in the complaint "to ensure that the plaintiff has not misrepresented its contents and that any inference the plaintiff seeks to have drawn is a reasonable one." *Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752, 797 (Del. Ch. 2016), *overruled in part on other grounds by Tiger v. Boast Apparel, Inc.*, 214 A.3d 933, 939 (Del. 2019). The doctrine further "limits the ability of the plaintiff to take language out of context, because the defendants can point the court to the entire document... [and] enables courts to

Maxwell's claims for indemnification and advancement of fees and expenses, in its sole discretion:

"...[T]he Company ... *may indemnify*, defend and hold harmless any employee or agent, who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, from and against any expense, loss, damage or liability incurred or connected with, or any claim, suit, demand, loss, judgment, liability, cost or expense ... arising from or related to, the Company ... or such employee or agent on behalf of the Company ... provided that such amounts were not the result of fraud, gross negligence, or reckless or intentional misconduct on the part of ... such employee or agent against whom a claim is asserted. The Company *may advance* to ... any such employee or agent ... the costs of defending any claim, suit or action against such person if such person undertakes to repay the funds advanced, with interest, if the person is not entitled to indemnification under this Section."

(Exhibit C at Section VI.B.1, at pp. 5-6; emphasis supplied.)

The NES Operating Agreement thus provides NES with discretion to indemnify its employees arising from performance of their job duties, *provided* that the employees did not engage in "fraud, gross negligence, or reckless or intentional misconduct."⁷ The Court should reject Maxwell's claim that, notwithstanding the explicit language in the Operating Agreement, NES is required to indemnify her for her own alleged misconduct. "Ordinarily, when the terms of a contract are unambiguous, the Superior Court treats the issue of the meaning of those terms as a question of law... ." *United Corp. v. Tutu Park, Ltd.*, 55 V.I. 702, 707, (V.I. 2011); *see also Bluewater Construction, Inc. v. CBI Acquisitions, LLC*, 70 V.I. 586, 608 (V.I. Super. May 20, 2010) (interpretation of forum selection clause was a matter of law under Florida law). Here, the Operating Agreement cannot be construed to entitle Maxwell to

dispose of meritless complaints at the pleading stage." *Id.* "Without the ability to consider the document at issue in its entirety, complaints that quoted only selected and misleading portions of such documents could not be dismissed under Rule 12(b)(6) even though they would be doomed to failure." *Id.* (quoting *In re: Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 169 (Del. 2006))."

2020 WL 1819622 *8-9. *See also Fenster v. Dechabert*, 65 V.I. 20, 22, 2016 V.I. LEXIS 214, *1, 2016 WL 8943821 (V.I. Super. Aug. 8, 2016) ("The court may consider items of unquestioned authenticity that are referred to in the challenged pleading and are integral to the pleader's claim for relief").

7. *See Exhibit C* at Section VI.B.1, at pp. 5-6.

mandatory indemnification, as pleaded. Accordingly, it renders Maxwell's claim for contractual indemnification meritless as a matter of law.

Nor does Maxwell fit the criterion under the NES Operating Agreement for mandatory indemnification of its employees or agents under the limited circumstance where that employee or agent has been successful in her defense of an action or proceeding. See **Exhibit C** at Section VI.B.2, at p. 6. Here, Maxwell has not succeeded in defense of any action or proceeding against her. Because NES is not required to indemnify Maxwell for or advance any of her expenses, the Court should dismiss her claim against it.⁸

WHEREFORE, Defendants respectfully request that the Court dismiss the Complaint filed by the Plaintiff in this action.

Respectfully,

Dated: May 1, 2020

/s/ Christopher Allen Kroblin

CHRISTOPHER ALLEN KROBLIN, ESQ.

ANDREW W. HEYMANN, ESQ.

WILLIAM L. BLUM, ESQ.

SHARI N. D'ANDRADE, ESQ.

MARJORIE WHALEN, ESQ.

V.I. Bar Nos. 966, 266, 136, 1221 & R2019

KELLERHALS FERGUSON KROBLIN PLLC

Royal Palms Professional Building

9053 Estate Thomas, Suite 101

St. Thomas, V.I. 00802

Telephone: (340) 779-2564

Facsimile: (888) 316-9269

Email: ckroblin@kellfer.com

aheymann@solblum.com

wblum@solblum.com

sdandrade@kellfer.com

mwhalen@kellfer.com

8. Maxwell styles Count Three of the Complaint as one for contractual indemnification against NES "and Other Entities" (Compl. p. 7), but she names as defendants in this action no entities other than NES and the Co-Executors. And as to the other Epstein-affiliated entities Maxwell describes – the C.O.U.Q. Foundation, New York Strategy Group, JEGE LLC, JEGE Inc. and LSJ, LLC (Compl. ¶ 52) – she alleges only her "belief" that their corporate organizational documents "likely provide a right to indemnity." (*Id.* ¶ 53; emphasis supplied.) That is too thin a reed to satisfy the requirement that Plaintiff allege facts supporting all of the elements of her claim.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May 2020, I caused a true and exact copy of the foregoing **Motion to Dismiss & Incorporated Memorandum of Law** to be served via electronic mail upon:

Kyle R. Waldner, Esq.
Quintairos, Prieto, Wood & Boyer, P.A.
9300 S. Dadeland Blvd., 4th Floor
Miami, FL 33156
kwaldner@qpwbllaw.com

/s/ Christopher Allen Kroblin

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

IN THE MATTER OF THE ESTATE OF)
))
))
JEFFREY E. EPSTEIN,)
))
Deceased)
_____)

PROBATE NO. ST-19-PB-80

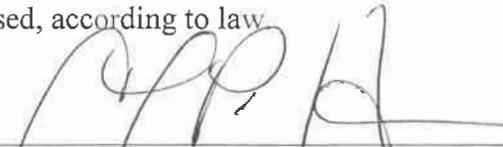
LETTERS TESTAMENTARY

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, that the Last Will and Testament of **JEFFREY E. EPSTEIN** dated the 8th day of August 2019, which is hereto annexed, has been duly proven in this Court, and that **DARREN K. INDYKE** and **RICHARD D. KAHN**, who have been nominated as Co-Executors therein have been duly appointed Co-Executors of the estate of **JEFFREY E. EPSTEIN**.

This, therefore, authorizes **DARREN K. INDYKE** and **RICHARD D. KAHN** to administer the Estate of **JEFFREY E. EPSTEIN**, deceased, according to law.

DATED: September 6th, 2019



CAROLYN P. HERMON-PERCELL
Magistrate Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

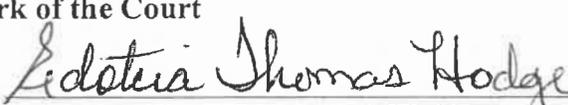
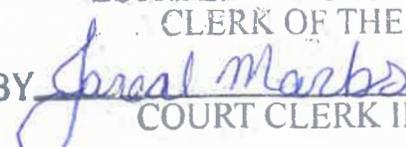
By: 
EDOTCIA THOMAS-HODGE
Court Clerk Supervisor 9/16/2019

Exhibit A

A CERTIFIED TRUE COPY
DATE: September 6, 2019
ESTRELLA H. GEORGE
CLERK OF THE COURT
BY: 
COURT CLERK II

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

IN THE MATTER OF THE ESTATE OF)
)
)
JEFFREY E. EPSTEIN,)
)
Deceased)
_____)

PROBATE NO. ST-19-PB-80

ORDER FOR PROBATE

Upon consideration of the Petition filed herein, and it appearing to the satisfaction of the Court that **JEFFREY E. EPSTEIN** died, testate, in Manhattan, New York, on August 10, 2019, and the adult heirs-at-law and next of kin of the deceased have been served with process or have consented to said Petition, and the Last Will and Testament of **JEFFREY E. EPSTEIN** dated the 8th day of August 2019 having been duly proved in this Court, and there being no valid objection to the probate of the said Will, it is

ORDERED that the Will is admitted to probate and recorded as the Last will and Testament of **JEFFREY E. EPSTEIN** valid to pass real and personal property, and that Letters Testamentary be issued to **DARREN K. INDYKE** and **RICHARD D. KAHN**, the Co-Executors named therein, who may qualify hereunder without bond, conditioned on the faithful performance of trust.

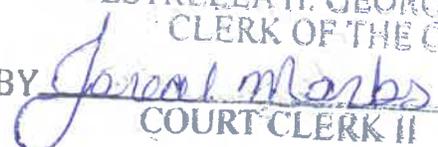
IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the Seal of the Court to be affixed this 6th day of September 2019.



CAROLYN P. HERMON-PERCELL
Magistrate Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

By: 
EDOTCIA THOMAS-HODGE
Court Clerk Supervisor 9 / 6 / 2019

A CERTIFIED TRUE COPY
DATE September 6, 2019
ESTRELLA H. GEORGE
CLERK OF THE COURT
BY 
COURT CLERK II



H A D D O N
M O R G A N
F O R E M A N

Haddon, Morgan and Foreman, P.C.
Jeffrey S. Pagliuca

150 East 10th Avenue
Denver, Colorado 80203
PH 303.831.7364 FX 303.832.2628
www.hmflaw.com
jpagliuca@hmflaw.com

November 22, 2019

VIA EMAIL

Darren K. Indyke
Richard D. Kahn
c/o William L. Blum, Esq.
Kellerhals Ferguson Kroblin PLLC
9053 Estate Thomas, Suite 101
St. Thomas, V.I. 00802
wblum@solblum.com

RE: Demand for Indemnification

Dear Mr. Indyke and Mr. Kahn:

Our firm and Cohen & Gresser LLP represent Ghislaine Maxwell in connection with legal proceedings related to events that occurred while she was employed by Jeffrey Epstein and his affiliated businesses. On behalf of Ms. Maxwell, we write to respectfully request that the Estate of Jeffrey Epstein indemnify and advance expenses to Ms. Maxwell for attorneys' fees, security costs, and all other expenses reasonably incurred by reason of her prior employment relationship with Mr. Epstein and his affiliated businesses in connection with any threatened, pending, or completed suit, proceeding, or investigation relating to Mr. Epstein, his affiliated businesses, and his alleged victims.

From approximately 1999 through 2009, Ms. Maxwell was employed by Mr. Epstein individually, and by several of his affiliated businesses, including, but not limited to, NES LLC, New York Strategy Group, JEJE LLC, JEJE Inc., and LSJ LLC. Pursuant to the relevant corporate organizational documents, Ms. Maxwell is entitled to mandatory indemnification and advancement of expenses incurred by reason of her employment relationship with Mr. Epstein and his affiliated businesses, including attorneys' fees (both from our firm and Cohen & Gresser), as well as relocation and security costs, all of which are ongoing, extensive, and directly related to the pending suits, proceedings, and investigations concerning Mr. Epstein's alleged misconduct.

Accordingly, we request that you provide copies of any documents in your possession setting forth applicable indemnification and/or advancement rights and policies, including, among other things, Ms. Maxwell's employment records, and any corporate documents, such as articles of incorporation, operating agreements, and bylaws for all entities that employed Ms.

Exhibit B

Maxwell. In addition, we request that you provide copies of any other documents, including any applicable insurance policies, that provide for indemnification and/or advancement for former employees of Mr. Epstein and his affiliated businesses.

In addition, please note that Ms. Maxwell is entitled to indemnification and advancement given that Mr. Epstein, on more than one occasion, promised that he would indemnify Ms. Maxwell and advance any expenses incurred by reason of her prior employment relationship with him and his affiliated businesses. Mr. Epstein's oral promise is evidenced by the fact that, among other things: (1) Mr. Epstein indemnified Ms. Maxwell and advanced legal fees and settlement costs when they were incurred in connection with the lawsuit filed by Sarah Ransome (*Jane Doe 43 v. Epstein et al*, 17-cv-00616-JGK); and (2) Mr. Epstein indemnified and advanced legal fees and expenses for a number of other employees in other various lawsuits, including Sarah Kellen, Leslie Groff, and Nadia Marcinkova. Mr. Epstein's oral promises to Ms. Maxwell are enforceable as a matter of law. See, e.g., *Barclays Bank of New York v. Goldman*, 517 F. Supp. 403, 414 (S.D.N.Y. 1981); *Hyatt Legal Servs. v. Ruppitz*, 620 So. 2d 1134, 1136 (Fla. Dist. Ct. App. 1993).

Ms. Maxwell is further entitled to indemnification under common law. Common law indemnity is an equitable concept that works to shift liability when failure to do so would result in "the unjust enrichment of one party at the expense of another." *Mas v. Two Bridges Assocs.*, 75 N.Y.2d 680, 689-91 (1990). All of the jurisdictions in which Ms. Maxwell carried out her relevant employment duties—New York, Florida, New Mexico, and the U.S. Virgin Islands—recognize a common law right to indemnification, which allows for the shifting of liability to avoid the unfairness of holding one party liable solely on account of the wrongdoing of another. See *Parris v. Shared Equities, Co.*, 281 A.D.2d 174, 175, 721 N.Y.S.2d 634, 635 (1st Dep't 2001) (recognizing common law indemnification under New York law); *K-Mart Corp. v. Chairs, Inc.*, 506 So.2d 7 (Fla. 5th DCA), *review denied*, 513 So.2d 1060 (Fla. 1987) ("The right to indemnity may arise out of a contract or it may be based on liability imposed by law."); *Safeway, Inc. v. Rooter 2000 Plumbing & Drain SSS*, 368 P.3d 389, 398-99 (N.M. 2016) (recognizing common law indemnification under New Mexico law); *Willie v. Amerada Hess Corp.*, No. SX-06-CV-202, 2017 WL 772808, at *30 (V.I. Super. Feb. 28, 2017) ("This Court believes that the soundest rule for the Virgin Islands is to continue recognizing claims for common law indemnification.").

Here, Ms. Maxwell had no involvement in or knowledge of Mr. Epstein's alleged misconduct, but nonetheless has been forced to pay significant legal fees, personal security costs, and other expenses merely because the alleged events occurred while she was employed by Mr. Epstein and his affiliated businesses. Accordingly, Mr. Epstein's estate must indemnify Ms. Maxwell for those expenses.

Ms. Maxwell's Affidavit, attached as Exhibit 1, affirms the facts forming the basis for this Demand. Ms. Maxwell has attached the relevant invoices as Exhibits A, B, and C to her affidavit. These invoices represent some of Ms. Maxwell's considerable expenses. The bills reflect legal fees and costs paid by Ms. Maxwell to Haddon, Morgan, and Foreman, P.C., in the

Darren K. Indyke
Richard D. Kahn
November 22, 2019
Page 3

amount of \$101,527.67 (Affidavit Exhibit A); legal fees and costs paid to Cohen & Gresser, LLP, in the amount of \$318,093.04 (Affidavit Exhibit B) and security/relocation costs paid to The Next Step (Veterans Transition) Ltd in the amount of £154,345.46 (Affidavit Exhibit C).

In light of the serious and time-sensitive nature these issues, we appreciate your prompt response to this demand.

Best Regards,



Jeffrey S. Pagliuca

Cc: Christopher Allen Kroblin (ckroblin@kellfer.com)
Shari N. D'Andrade (sdandrade@kellfer.com)
Marjorie Whalen (mwhalen@kellfer.com)

Mark S. Cohen (mcohen@cohengresser.com)
Christian R. Everdell (ceverdell@cohengresser.com)

AFFIDAVIT OF GHISLANE MAXWELL

I, Ghislane Maxwell, of legal age and sound mind and body deposes and states:

1. I have personal knowledge of the statements I make in this Affidavit and am authorized to make them.

2. I have reviewed the letter by my lawyer, Jeffrey Pagliuca, requesting that the Estate of Jeffrey Epstein defend and indemnify me. This affidavit is attached as Exhibit 1 to that letter and I affirm and verify that the factual statements contained in the letter are true.

3. From approximately 1999 through 2009, I was employed by Mr. Epstein individually, and by several of his affiliated businesses, including, but not limited to, NES LLC, New York Strategy Group, JEJE LLC, JEJE Inc., and LSJ LLC.

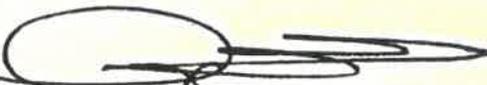
4. Mr. Epstein, on more than one occasion, promised that he would indemnify, defend, and advance any expenses incurred by reason of my prior employment relationship with him and his affiliated businesses.

5. I have incurred substantial expenses defending myself against false accusations and investigations arising out of my employment relationship with Mr. Epstein and his companies. The invoices attached to this affidavit as Exhibits A, B, and C are true and accurate (redacted) copies of bills that I have paid and am responsible for paying. These expenses are ongoing.

6. My legal expenses were and are reasonable and necessary and directly related to my prior employment with Mr. Epstein and his companies.

7. As a result of the enormous publicity surrounding the criminal and civil lawsuits against Mr. Epstein and the false portrayal of me as an accomplice to Mr. Epstein I continue to receive death threats on a regular basis. Because of the death threats and the media frenzy I have needed to hire security guards and relocate to an undisclosed location for an unknown amount of time.

I certify that, under the penalty of perjury that the above written statements herein are true and accurate to the best of my knowledge.


Signature: Ghislane Maxwell

15 Half Moon Street, London W1J 7DZ, United Kingdom

Sworn to and subscribed this 22nd day of November, 2019. Witness my hand.

Solicitor:

NM Neely
NM NEILPERN

Solicitor of the Supreme Court, ~~UK~~
England & Wales

EXHIBIT 1

**OPERATING AGREEMENT
OF
NES, LLC**
A New York Limited Liability Company

THIS OPERATING AGREEMENT (this “Agreement”) of NES, LLC, a New York limited liability company (the “Company”), organized under the Limited Liability Company Law of the State of New York (this “LLC Law”) is adopted as of January 1, 2014 by the Company’s sole member, Jeffrey E. Epstein (hereinafter referred to as “Sole Member”), with an address at 6100 Red Hook Quarter, B3, St. Thomas, U.S. Virgin Islands 00802, who has determined that the Company’s activities and the rights and responsibilities of its members shall be governed by the following terms and conditions:

SECTION I
ORGANIZATION & FORMATION

A. Formation. The Company has been organized as a New York limited liability company under and pursuant to the LLC Law by the filing of Articles of Organization (“Articles”) with the Secretary of State of the State of New York on August 13, 1998, as required by the LLC Law.

B. Name. The name of the Company shall be “NES, LLC”. The Company upon proper notice and filing with the Secretary of State of the State of New York may conduct its operations under one or more assumed names.

C. Purposes. The purpose of the Company is to engage in any lawful activity, operate any lawful enterprise or to have any other lawful purpose permitted by the LLC Law and the other applicable laws of the State of New York. The Company shall have all the powers necessary or convenient to affect any purpose for which it is formed, including all powers granted by the LLC Law.

D. Duration. The Company shall continue in existence perpetually, beginning on the date of filing of the Articles, unless terminated by law or dissolved and terminated.

E. Service Address and Place of Business. The Secretary of State of the State of New York is designated as the agent of the Company upon whom process against the Company may be served. The post office address within or without the State of New York to which process so served may be sent is 9 East 71st Street, New York, New York 10021. The Company’s principal place of business shall be located in the City, State and County of New York, or such other place or places as the Sole Member may hereafter determine.

SECTION II
CAPITAL STRUCTURE: MEMBERSHIP UNITS AND
CONTRIBUTIONS/TRANSFER OF MEMBERSHIP UNITS

A. Capital Contribution by the Sole Member; Initial Issuance. The Sole Member's ownership rights in the Company shall be reflected as a 100% membership interest as recorded in the Company's records. The Sole Member may make additional capital contributions from time to time and at any time and in any amounts that he may desire.

B. Transfer of Membership Interest. Subject to the provisions of this Section, a Member may transfer and assign all or a portion of his interest as a member in the Company ("Membership Interest") to any one or more persons or entities, at any time and from time to time. The transfer and assignment of all or a portion of a Membership Interest does not, in and of itself, entitle the assignee to participate in the management and affairs of the Company or to become a member. Such assignee is only entitled to receive, to the extent assigned, the distributions the assigning Member would otherwise be entitled to, and such assignee shall only become an assignee of all or a portion of a Membership Interest and not a substitute Member. An assignee of all or a portion of a Membership Interest shall be admitted as a substitute Member and shall be entitled to all the rights and powers of the assignor only if all the Members consent. If admitted, the substitute Member, has to the extent assigned, all of the rights and powers, and is subject to all of the restrictions and liabilities, of a Member of the Company. Notwithstanding the foregoing, without the consent of any other Member, the Sole Member may, by a duly executed agreement with the assignee, assign any or all of the Membership Interest then held by the Sole Member, together with the Sole Member's management and voting rights in the Company with respect to the portion of the Membership Interest so assigned, and, upon the consummation of such assignment, the assignee thereof shall be automatically admitted as a substitute member, with all of the rights and powers held by, and subject to all of the restrictions and liabilities imposed upon, the Sole Member immediately prior to such assignment, to the full extent of the portion of the Membership Interest so assigned.

C. No Interest; No Return of Capital. Capital contributions to the Company shall not earn interest, except as otherwise expressly provided for in this Agreement. Except as otherwise provided in this Agreement, a Member shall not be entitled to withdraw, or to receive a return of, a capital contribution or any portion thereof; provided, however, that, subject to the provisions of Section IV hereof, the Sole Member shall from time to time and at any time, in the Sole Member's discretion, be entitled to withdraw, and receive a return of, all or any part of the Sole Member's capital contribution.

SECTION III
CAPITAL ACCOUNT

A. Capital Account. A capital account ("Capital Account") shall be maintained for the Sole Member, and each additional Member, if any, in accordance with the provision of this Article.

1. Increases in Capital Account. The Capital Account of each Member shall be increased by:

- (a) The fair market value of the Member's initial capital contribution and any additional capital contributions by the Member to the Company. If any property, other than cash, is contributed to or distributed by the Company, the adjustments to Capital Accounts required by Treasury Regulation Section 1.704-1(b)(2)(iv)(d), (e), (f) and (g) and Section 1.704-1(b)(4)(I) shall be made.
- (b) The Member's share of the increase in the tax basis of Company property, if any, arising out of the recapture of any tax credit.
- (c) Allocations to the Member of Profit.
- (d) Company income or gain (including income and gain exempt from income taxation) as provided under this Agreement, or otherwise by Regulation Section 1.704-1(b)(2)(iv).
- (e) The amount of Company liabilities that are assumed by the Member.

2. Decreases in Capital Account. The Capital Account of each Member shall be decreased by:

- (a) The amount of money distributed to the Member by the Company pursuant to any provision of this Agreement.
- (b) The fair market value of property distributed to the Member by the Company (net of liabilities secured by such distributed property that Member is considered to assume or take subject to under Code Section 752).
- (c) Allocations to the Member of Losses.
- (d) Allocations to the Member of deductions, expenses, Nonrecourse Deductions and net losses allocated to him pursuant to this Agreement, and the Member's share of Company expenditures which are neither deductible nor properly chargeable to Capital Accounts under Code Section 705(a)(2)(B) or are treated as such expenditures under Treasury Regulation Section 1.704-1(b)(2)(iv)(i). "Nonrecourse Deductions" shall have the meaning set forth in Treasury Regulation Section 1.704-2.
- (e) The amount of any liabilities of the Member that are assumed by the Company.

SECTION IV
ALLOCATIONS AND DISTRIBUTIONS

A. Allocations. For purposes of maintaining each Member's Capital Account, all of the Company's net profits, net losses, expenses and other items of income, gain, loss, and credit shall be allocated to the Member in proportion to the percentage Membership Interest of such Member. All items of Company taxable income, gain, loss, deduction, and credit recognized or allowable for Federal income tax purposes shall be similarly allocated and credited or charged to each Member in proportion to the percentage Membership Interest held by such Member.

B. Distributions. Net cash flow shall be distributed at such times and in such amounts as may be determined from time to time and at any time by the Sole Member of the Company in the following priority:

1. First, to the Members in repayment of any advance of funds to the Company as a lender, to the extent of and in proportion to such advances, including interest thereon, if any;
2. Additional distributions, if any will be made to the Members in proportion to the percentage Membership Interests held by them, respectively, in such amounts and at such times as may be determined by the Sole Member of the Company.

C. Distribution upon Liquidation of the Company.

1. At the termination of the Company and after the Company has satisfied or provided for the satisfaction of all the Company's debts and other obligations, the Company's assets will be distributed in cash to the Members first, in discharge of their respective capital interests; and then, in proportion to the percentage Membership Interests held by them, respectively.
2. If the Company lacks sufficient assets to make the distributions described in the foregoing paragraph, the Company will make distributions in proportion to the respective Membership Interests of the Members.

SECTION V
MANAGEMENT OF BUSINESS

A. In General. The Company shall be member-managed. The Members of the Company shall manage the business and affairs of the Company and shall have full and complete authority, power and discretion to do all things necessary or convenient to manage, control and carry out the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. All decisions and actions of the Company in connection therewith shall be determined by the affirmative vote or the written consent of Members holding a majority percentage of the Membership Interests of the Company.

B. Limitation of Manager's Authority. Notwithstanding anything to the contrary provided in the foregoing, the written consent of the Sole Member shall be required to:

1. Sell, transfer, assign, convey, or otherwise dispose of any part of the Company's assets;
2. Cause the Company to incur any debt in excess of \$5,000, whether or not in the ordinary course of business;
3. Cause the Company to incur any debt less than \$5,000 other than in the ordinary course of business;
4. Cause the Company to encumber any assets in connection with any debt referred to in clause 2 or 3 above;
5. Issue or sell, or approve the transfer, assignment, conveyance or other disposition of all or any portion of any Membership Interest in the Company;
6. Adopt, amend or repeal the Operating Agreement of the Company;
7. Approve a plan of merger of the Company with any other entity;
8. Incur any single expense or combination of related expenses in excess of \$5,000;
9. Cause the Company to make any distributions to its Members.

C. Voting of Membership Interests. A Membership Interest is entitled to be voted only if it is owned by a Member, and the relative weight of the vote of each such Membership Interest shall be proportionate to such Member's percentage Membership Interest. Neither an assignee nor a transferee may vote a Membership Interest unless such assignee or transferee is admitted as a Member.

SECTION VI **EXCULPATION OF LIABILITY: INDEMNIFICATION**

A. Exculpation of Liability. Unless otherwise provided by law or expressly assumed pursuant to a written instrument signed by such person, neither the Sole Member nor any other subsequent Member of the Company shall be personally liable for the acts, debts or liabilities of the Company.

B. Indemnification.

1. Except as otherwise provided in this Section, the Company, its receiver or its trustee shall indemnify, defend and hold harmless the Sole Member, each other subsequent Member and their respective heirs, personal representatives, and successors, and may indemnify, defend and hold harmless any employee or agent, who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, from and against any expense, loss, damage or liability incurred or connected with, or any claim, suit, demand, loss, judgment, liability, cost or expense, including, without limitation, reasonable attorney's fees, arising from or related to, the Company or any act or omission of the Sole Member, such subsequent Member or such employee or agent on behalf of the Company, and amounts paid in settlement of any of the above, provided that such amounts were not the result of fraud, gross negligence, or reckless or intentional misconduct on the part of the Sole Member, such subsequent Member or such employee or agent against whom a claim is asserted. The Company may advance to the Sole

Member, such subsequent Member or any such employee or agent and their respective heirs, personal representatives, and successors the costs of defending any claim, suit or action against such person if such person undertakes to repay the funds advanced, with interest, if the person is not entitled to indemnification under this Section.

2. To the extent that the Sole Member, such subsequent Member, or any such employee or agent of the Company has been successful on the merits or otherwise in defense of an action, suit or proceeding or in defense of any claim, issue or other matter in the action, suit or proceeding, such person shall be indemnified against actual and reasonable expenses, including, without limitation, attorneys' fees, incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided herein.

3. Any indemnification permitted under this Section, unless ordered by a court, shall be made by the Company only as authorized in the specific case upon a determination that the indemnification is proper under the circumstances because the person to be indemnified has met the applicable standard of conduct and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. This determination and evaluation shall be made by the vote of the majority of the percentage Membership Interests. Notwithstanding the foregoing to the contrary, no indemnification shall be provided to any Member, employee or agent of the Company for or in connection with the receipt of a financial benefit to which such person is not entitled, voting for or assenting to a distribution to the Members in violation of this Agreement or the LLC Law, or a knowing violation of other law.

SECTION VII **LIQUIDATION**

The Company shall be dissolved, and shall terminate and wind up its affairs, upon the determination of the Sole Member to do so.

SECTION VIII **MISCELLANEOUS PROVISIONS**

A. Section Headings. The Section headings and numbers contained in this Agreement have been inserted only as a matter of convenience and for reference, and in no way shall be construed to define, limit or describe the scope or intent of any provision of this Agreement.

B. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

C. Amendment. This Agreement may be amended or revoked at any time, in writing, with the consent of the Sole Member. No change or modification to this Agreement shall be valid unless in writing and signed by the Sole Member.

D. Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and shall inure to the benefit of the parties, and their respective distributees, heirs, successors and assigns.

E. Governing Law. The rights and obligations of the Sole Member, and any claims and disputes relating thereto, shall be subject to and governed by, and construed and enforced in accordance with the laws of the State of New York, including without limitation, the LLC Law, as well as all New York Laws applicable to contracts executed and to be fully performed within the State of New York, without application of New York's laws relating to conflicts of law.

IN WITNESS WHEREOF, the Sole Member makes and executes this Operating Agreement on the day and year first written above.

SOLE MEMBER:

Jeffrey E. Epstein

