## **United States District Court Southern District of New York**

Virginia L. Giuffre,	
Plaintiff,	Case No.: 15-cv-07433-RWS
v .	
Ghislaine Maxwell,	
Defendant.	

# $\frac{\text{PLAINTIFF'S MOTION IN LIMINE AND INCORPORATED}}{\text{MEMORANDUM OF LAW}}$

## **TABLE OF CONTENTS**

		<u>Page</u>
PRELIMINA	ARY STATEMENT	1
ARGUMEN	T	2
	TAYLOR SHOULD NOT BE ALLOWED TO OFFER ANY OPINIONS REGARDING MS. GIUFFRE'S CLAIM FOR	
		2
	TAYLOR SHOULD NOT BE ALLOWED TO OFFER ANY OPINIONS REGARDING MS. GIUFFRE'S CLAIM FOR	
		6
•	TAYLOR SHOULD NOT BE ALLOWED TO OFFER ANY OPINIONS REGARDING MS. GIUFFRE'S CLAIM FOR	
		7
•	TAYLOR SHOULD NOT BE ALLOWED TO OFFER ANY OPINIONS REGARDING MS. GIUFFRE'S	
•	TAYLOR SHOULD BE PRECLUDED FROM OFFERING ANY OPINIONS REGARDING THE	
		8
VI.	TAYLOR SHOULD BE PRECLUDED FROM OFFERING ANY OPINIONS REGARDING	9
	TAYLOR SHOULD BE PRECLUDED FROM OFFERING ANY OPINIONS REGARDING	
		10
VIII.	ANY REMAINING OPINIONS OFFERED BY TAYLOR WOULD NO RELEVANT AND HELPFUL.	
CONCLUSI	ON	12
CERTIFICA	ATE OF SERVICE	14

## **TABLE OF AUTHORITIES**

	<u>Page</u>
Cases	
Amorgianos v. Nat'l R.R. Passenger Corp., 303 F.3d 256 (2d Cir. 2002)	1
Andrews v. Metro N. Commuter R.R. Co., 882 F.2d 705 (2d Cir.1989)	11
Bouveng v. NYG Capital LLC, 175 F. Supp. 3d 280 (S.D.N.Y. 2016)	3, 4
Calhoun v. Cooper, 206 A.D.2d 497, 614 N.Y.S.2d 762 (2d Dept.1994)	3
Cantu v. Flanigan, 705 F. Supp. 2d 220 (E.D.N.Y. 2010)	3, 6
Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)	1, 12
Highland Capital Mgmt., L.P. v. Schneider, 379 F. Supp. 2d 461 (S.D.N.Y. 2005)	passim
In re Initial Pub. Offering Sec. Litig., 174 F. Supp. 2d 61 (S.D.N.Y. 2001)	2
In re Rezulin Products Liab. Litig., 309 F. Supp. 2d 531 (S.D.N.Y. 2004)	2
Lippe v. Bairnco Corp., 288 B.R. 678 (S.D.N.Y. 2003) aff'd, 99 Fed.Appx. 274, 2004 WL 1109846 (2d Cir. May 17, 2004)	2
Malletier v. Dooney & Bourke, Inc., 525 F. Supp. 2d 558 (S.D.N.Y. 2007)	2
United States v. Bilzerian, 926 F.2d 1285 (2d Cir.)	2
United States v. Duncan, 42 F.3d 97 (2d Cir.1994)	
United States v. Lumpkin, 192 F.3d 280 (2d Cir.1999)	2

<i>Yammine v. DeVita,</i> 43 A.D.3d 520, 840 N.Y.S.2d 652 (3d Dept. 2007)	
Rules	
Fed. R. Civ. P. 37(c)(l)	1
Fed. R. Evid. 401	1
Fed. R. Evid. 403	1, 8
Fed. R. Evid. 702	1, 2

Pursuant to FRE 401, 403, and 702, as well as Fed. R. Civ. P. 37(c)(l) and other related rules, plaintiff Ms. Giuffre respectfully submits this motion in limine and incorporated memorandum of law to bar opinions offered by Defendant's experts, Gregory B. Taylor (and Kyle D. Jacobson – hereinafter referred to simply as "Taylor") from testifying at trial. Taylor is not properly qualified as an expert on some subjects that he plan to testify about, his testimony is not well-founded on reliable principles, will not be helpful to the jury, and is prejudicial.

#### **PRELIMINARY STATEMENT**

Taylor is a certified public accountant (CPA). And yet, under the guise of providing an accounting-related expert opinion, Taylor opines on such subjects as

His expert opinions should be precluded under this Court's "gatekeeping" function to carefully scrutinize proposed expert testimony for relevancy, reliability, and helpfulness to the jury. See Fed. R. Evid. 702;

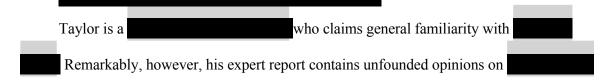
Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 589 (1993). "[W]hen an expert opinion is based on data, a methodology, or studies that are simply inadequate to support the conclusions reached, Daubert and Rule 702 mandate the exclusion of that unreliable opinion testimony." Amorgianos v. Nat'l R.R. Passenger Corp., 303 F.3d 256, 266 (2d Cir. 2002). In addition, the ordinary rules of evidence remain in play with expert witnesses. "Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of

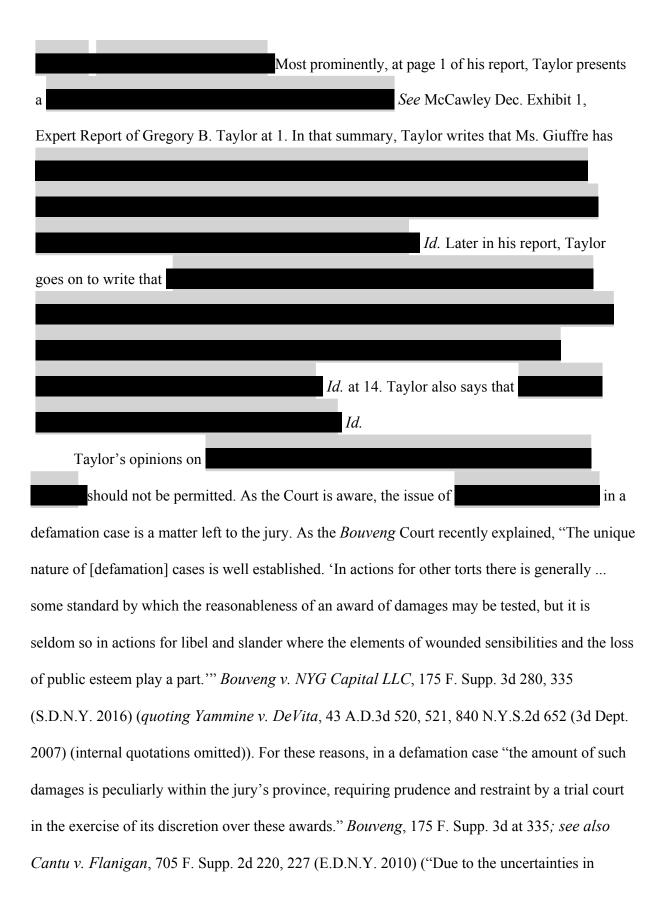
this risk, the judge in weighing possible prejudice against probative force under Rule 403 . . . exercises more control over experts than over lay witnesses." *Malletier v. Dooney & Bourke, Inc.*, 525 F. Supp. 2d 558, 566 (S.D.N.Y. 2007).

It is also important to note that "[o]ne of the fundamental requirements of Rule 702 is that the proposed [expert] testimony 'assist the trier of fact to understand the evidence or to determine a fact in issue." In re Rezulin Products Liab. Litig., 309 F. Supp. 2d 531, 540 (S.D.N.Y. 2004) (quoting Fed. R. Evid. 702); accord Lippe v. Bairnco Corp., 288 B.R. 678, 685 (S.D.N.Y. 2003), aff'd, 99 Fed.Appx. 274, 275, 2004 WL 1109846, at \*1 (2d Cir. May 17, 2004); see also In re Initial Pub. Offering Sec. Litig., 174 F. Supp. 2d 61, 68 (S.D.N.Y. 2001) ("As Rule 702's plain language shows, the opinion of an expert witness is *only* admissible if it (1) assists the trier of fact in (2) understanding the evidence or determining a disputed fact.") (emphasis in original). In deciding whether expert testimony will be helpful to the fact-finder, the Court must determine whether the testimony "usurp[s] either the role of the trial judge in instructing the jury as to the applicable law or the role of the jury in applying that law to the facts before it." *United States v.* Lumpkin, 192 F.3d 280, 289 (2d Cir.1999) (quoting United States v. Duncan, 42 F.3d 97, 101 (2d Cir.1994)) (internal quotation marks omitted); accord United States v. Bilzerian, 926 F.2d 1285, 1294 (2d Cir.), cert. denied, 502 U.S. 813 (1991); see also Highland Capital Mgmt., L.P. v. Schneider, 379 F. Supp. 2d 461, 468 (S.D.N.Y. 2005).

#### **ARGUMENT**

# I. TAYLOR SHOULD NOT BE ALLOWED TO OFFER ANY OPINIONS REGARDING MS. GIUFFRE'S



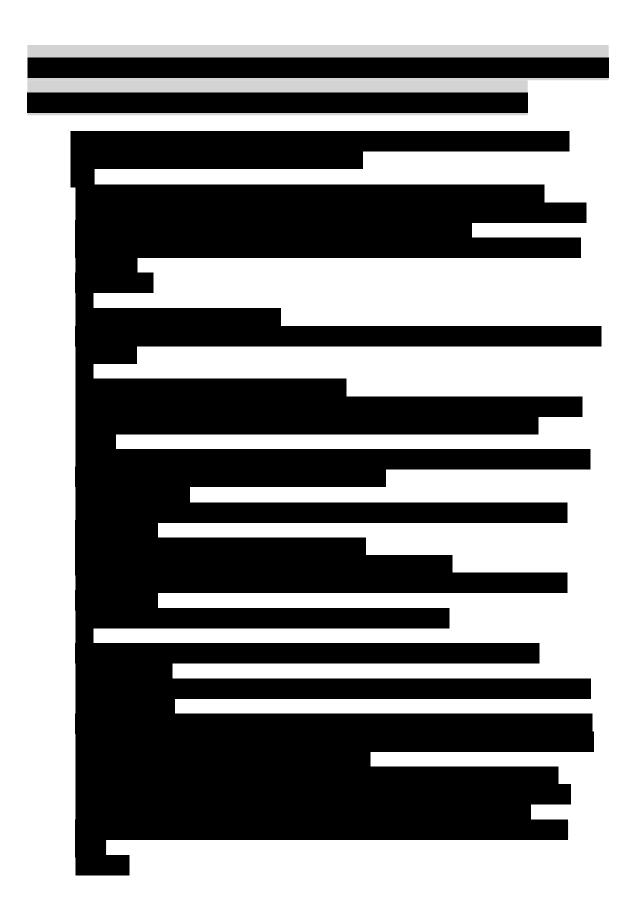


calculating [non-economic] damage awards [in defamation cases], New York courts have consistently held that deference to the jury's findings is required in considering whether to reduce a jury's award." (*citing Calhoun v. Cooper*, 206 A.D.2d 497, 497, 614 N.Y.S.2d 762 (2 Dept.1994)). "Jurors are uniquely positioned to assess the evidence presented at trial and assign a monetary value to the plaintiff's non-economic damages." *Bouveng*, 175 F. Supp. 3d at 335.

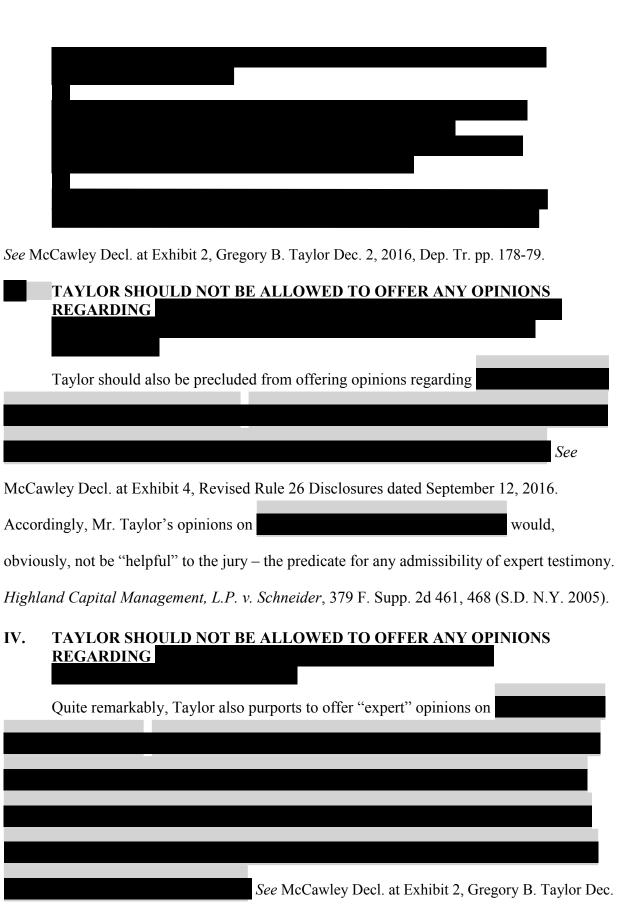
Taylor is in no position to assist the jury in determining His expertise (if any) lies in *economic* areas; by definition, fall outside the area in which he is qualified to offer expert opinions. During his deposition,

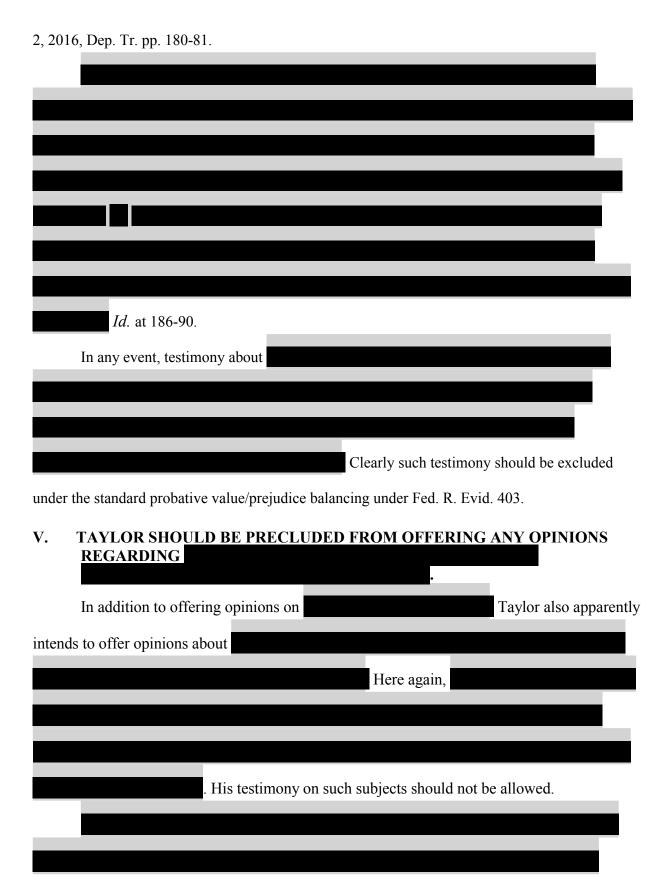
See McCawley Decl. at Exhibit 2, Gregory B. Taylor Dec. 2, 2016, Dep. Tr. pp. 22-23.

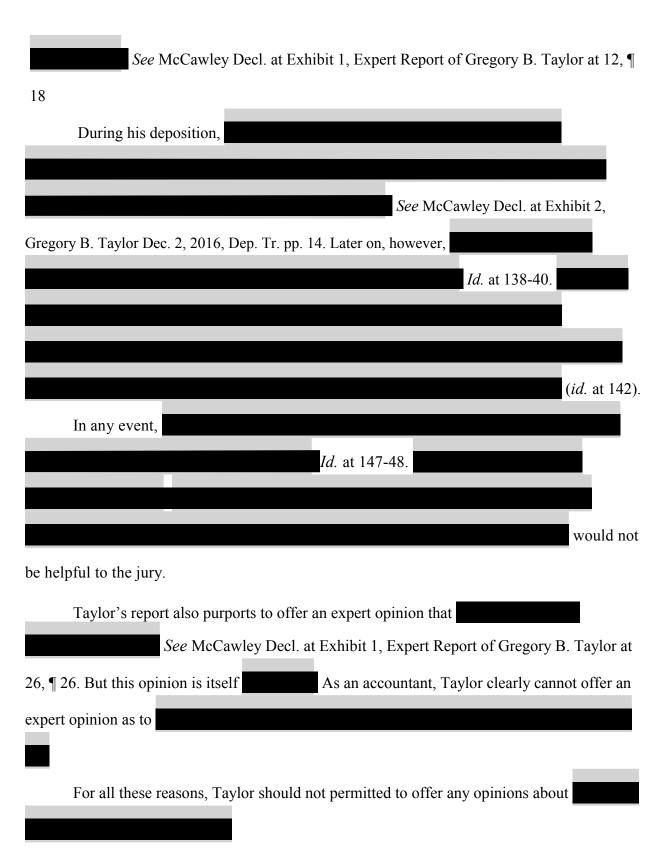
Further deposition questions confirmed that



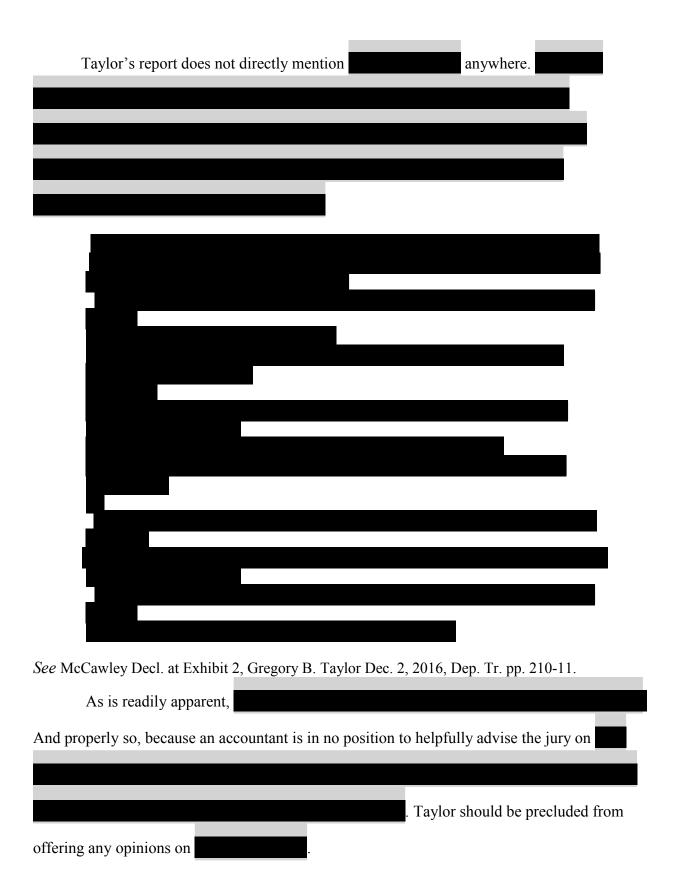
See McCawley Decl. at Exhibit 2, Gregory B. Taylor Dec. 2, 2016, Dep. Tr. pp. 132-34. , the jury will be instructed that they should consider In calculating such things as Ms. Giuffre's "standing in the community, the nature of the statement made about [her], the extent to which the statement was circulated, the tendency of the statement to injure a person such as [her], and all of the other facts and circumstances in the case." See Cantu, 705 F. Supp. 2d at 227–28 (listing these factors). In evaluating these factors, the jury will not be assisted by Taylor's testimony and he should be precluded from offering any opinions regarding TAYLOR SHOULD NOT BE ALLOWED TO OFFER ANY OPINIONS II. REGARDING Taylor should also not be allowed to offer any expert testimony concerning Of course, as an accountant, Taylor has no expertise in . That is an area outside of his expertise. Only a properly-trained offer opinions in that area. Taylor was questioned about







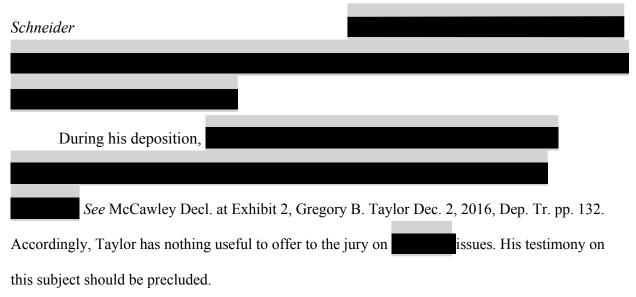
# VI. TAYLOR SHOULD BE PRECLUDED FROM OFFERING ANY OPINIONS REGARDING.



# VII. TAYLOR SHOULD BE PRECLUDED FROM OFFERING ANY OPINIONS REGARDING

In his report, Taylor
See, e.g., McCawley Decl. at Exhibit 1,
Expert Report of Gregory B. Taylor at 12-13, ¶ 20.
Id. at 12 $\P$
20. But whether have anything to do with the damages in this case is not for an
accountant to determine, but rather for the jury. It is clear that "expert testimony is inadmissible
when it addresses 'lay matters which a jury is capable of understanding and deciding without the
expert's help." Highland Capital Mgmt., L.P. v. Schneider, 379 F. Supp. 2d 461, 468 (S.D.N.Y.
2005) (quoting Andrews v. Metro N. Commuter R.R. Co., 882 F.2d 705, 708 (2d Cir.1989) (citing
eases)).
Throughout his report,
See
McCawley Decl. at Exhibit 1, Expert Report of Gregory B. Taylor at 14, ¶ 24.
Taylor's discussion of the property of the pro
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While an expert "may opine on an issue of fact within the jury's province," an expert "may not give testimony stating ultimate legal conclusions based on those facts." *Highland Capital Mgmt.*, *L.P. v.* 



## VIII. ANY REMAINING OPINIONS OFFERED BY TAYLOR WOULD NOT BE RELEVANT AND HELPFUL.

The previous seven sections of this *Daubert* motion have explained why seven different kinds of testimony that Taylor plans to offer should be excluded. If all of this testimony is excluded, nothing of substance remains in Taylor's opinion that would be relevant and helpful to the jury. Accordingly, he should be precluded from testifying at all.

#### **CONCLUSION**

For all of the foregoing reasons, Ms. Giuffre respectfully requests that the Court preclude Court preclude defendant's propose expert, Gregory B. Taylor (and Kyle D. Jacobson) from offering expert opinions in this case.

Dated: January 6, 2017 Respectfully Submitted,

BOIES, SCHILLER & FLEXNER LLP

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#### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on the 6<sup>th</sup> of January, 2017, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on the individuals identified below via transmission of Notices of Electronic Filing generated by CM/ECF.

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