UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE 43,

Plaintiff,

vs.

JEFFREY EPSTEIN, GHISLAINE MAXWELL, [redacted], [redacted], [redacted], AND [redacted]

Defendants.

CASE NO. 17 Civ 616 (JGK)

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS

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Defendants Jeffrey Epstein ("Epstein") and [redacted] ("[redacted]") (collectively "Defendants") submit this memorandum in support of their motion to dismiss the First Amended Complaint ("FAC") filed by plaintiff Jane Doe ("Plaintiff") pursuant to Fed.R.Civ.P. 12(b)(2) and (6).

The FAC represents the Plaintiff's second unsuccessful bite at the apple. On January 26, 2017, Plaintiff filed her original complaint in this matter ("Complaint"). Exh. __. On May 15, 2017, and at the suggestion of the Court, the Defendants served a letter on Plaintiff identifying a wide range of deficiencies warranting dismissal of the Complaint ("Deficiency Letter"). Exh. ___. On June 5, 2017, Plaintiff filed the FAC, purportedly to correct the deficiencies in the Complaint. Despite ample opportunity to draft a legally sufficient complaint, the FAC still fails to state a claim on which relief can be granted.

Indeed, just like the Complaint that it replaced, the FAC should be dismissed because: (a) the FAC fails to state a claim under 18 U.S.C. § 1595 ("Section 1595"), which is the sole claim asserted by Plaintiff; (b) the claim in the FAC is barred by the statute of limitations; (c) the FAC fails to allege personal jurisdiction over Defendants; and (d) venue is improperly laid in the Southern District of New York. The FAC also repeats a laundry list of irrelevant allegations about Epstein which were contained in the Complaint and should be struck from the FAC.

ARGUMENT

A. Allegations Regarding the Prior Proceedings Should Be Stricken

The allegations set forth in paragraphs 11 through 33 of the FAC relating to state and federal investigations of Epstein, including his prior guilty plea in Florida, referred to herein as the "Prior Proceedings," are scandalous, harassing, and entirely immaterial to the Plaintiff's claims. All of the allegations relating to the Prior Proceedings should be stricken from the FAC.

Under Rule 12(f) of the Federal Rules of Civil Procedure, a "court may strike from a pleading ... any ... immaterial, impertinent, or scandalous matter." *Anderson v. Davis Polk & Wardwell LLP*, 850 F. Supp. 2d 392, 416 (S.D.N.Y. 2012). "An allegation is impertinent or immaterial when it is neither responsive nor relevant to the issues involved in the action." *Id.* "'Scandalous' generally refers to any allegation that unnecessarily reflects on the moral character of an individual or states anything in repulsive language that detracts from the dignity of the court." *Id.*

The allegations in the FAC relating to the Prior Proceedings should be struck from the FAC, pursuant to Rule 12(f). These allegations have no connection to the Plaintiff. As Plaintiff's counsel acknowledged to the Court during the April 6, 2017 court conference ("April 6 Conference"), Plaintiff had nothing to do with the Prior Proceedings. Plaintiff's references to the Prior Proceedings in the FAC serve only one purpose – to attempt to put Epstein in a poor light for conduct wholly unrelated to this dispute. Moreover, these allegations are presented with the sort of breathless language found in tabloid publications, devoid of both substance and cited sources. See FAC at ¶11 ("Defendant Epstein is widely recognized…"), ¶22 ("Defendants Epstein and Maxwell have been known …,") and ¶33 ("A typical way the Defendants …"). In short, these allegations create a substantial risk that a jury might conclude that Epstein engaged in the conduct alleged in the FAC simply because of the alleged Prior Proceedings. For this reason, we respectfully request that all references to the alleged Prior Proceedings be stricken from the FAC.[1]

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[1] While Plaintiff makes public accusations against the defendants that are designed to embarrass and harass, she makes these highly charged and scandalous allegations anonymously. As we noted in the Joint Rule 26(f) Report filed on April 5, 2017, Defendants object to Plaintiff's efforts to proceed in this matter naming the Defendants publicly but without disclosing her own identity. We do not believe that Plaintiff has rebutted the presumption of open court proceedings

B. The FAC Fails to State a Claim

The FAC, like the Complaint it replaces, fails to plead facts sufficient to sustain a claim under Section 1595, which gives rise to civil liability for whoever violates 18 U.S.C. § 1591 ("Section 1591"). The version of Section 1591(a) in effect in 2006-07 (when the events alleged in the FAC purportedly occurred) provided that: "whoever knowingly … recruits, entices, harbors, transports, provides, or obtains by any means a person … knowing that force, fraud, or coercion … will be used to cause the person to engage in a commercial sex act … shall be punished as provided in subsection (b)."

The FAC fails to establish the elements of a Section 1591(a) violation for at least the following six reasons. First, the FAC fails to adequately plead that the Defendants used "fraud" to cause Plaintiff to engage in a commercial sex act. Second, the FAC fails to allege that the Defendants used "coercion" to cause Plaintiff to engage in a commercial sex act. Third, the FAC fails to establish that any alleged fraud or coercion "caused" the Plaintiff to engage in a commercial sex act. Fourth, the FAC fails to adequately plead that [redacted] "knew" that the Plaintiff would be caused by "fraud" or "coercion" to engage in a commercial sex act. Fifth, the FAC fails to specify what provisions of the commercial sex trafficking statutes it is relying on. Finally, the FAC fails to meet the *Twombly/Iqbal* standard for pleading any claim in federal court.

The FAC is bereft of allegations concerning Plaintiff's background, despite her charged and inflammatory statements about Defendants' supposed conduct involved in the Prior Proceedings. For example, we do not know from the FAC the education level of Plaintiff, nor

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or met the strict standard required for proceeding anonymously. *See, e.g., Doe v. Shakur*, 164 F.R.D. 359 (S.D.N.Y. 1996).

her prior employment, social or travel experiences, nor her purposes for coming to the United States, nor her immigration status while she was in the United States. One can only assume that she has chosen to omit these important facts, which are directly relevant to her contentions of fraud and coercion, because they would make her claim here implausible.

1. The FAC Fails to Plead Fraud

Plaintiff's claim that the Defendants used "fraud" to cause her to engage in a commercial sex act does not satisfy the pleading requirements for claims sounding in fraud.

a) The FAC Fails to Satisfy Rule 9(b)

Plaintiff bases her Section 1595 claim on the Defendants' supposed fraudulent statements and, as a result, the heightened pleading standards set forth in Fed.R.Civ.P 9(b) apply. *Cohen v. SAC Trading Corp.*, 711 F.3d 353, 359 (2d Cir. 2013) (Rule 9(b) "standard also applies to allegations of fraudulent predicate acts supporting a RICO claim"). Similarly here, since the predicate act of Plaintiff's Section 1595 is that she was being fraudulent induced to engaged in commercial sex, the heightened pleading standard of Rule 9(b) applies.

As the Second Circuit explained this standard:

> Rule 9(b) requires that, in alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. To satisfy the pleading requirements of Rule 9(b), a complaint must (1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent. …
>
> [A]lthough Rule 9(b) permits knowledge to be averred generally, we have repeatedly required plaintiffs to plead the factual basis which gives rise to a strong inference of fraudulent intent. Essentially, while Rule 9(b) permits scienter to be demonstrated by inference, this must not be mistaken for license to base claims of fraud on speculation and conclusory allegations. An ample factual basis must be supplied to support the charges.

Wood v. Research Applied Associates, 328 Fed.Appx. 744, 747 (2d Cir. 2009); *O'Brien v. Nat'l Prop. Analysts Partners*, 936 F.2d 674, 676 (2d Cir.1991). Plaintiff's allegations of fraud boil down to this: Epstein allegedly "confirmed to Plaintiff that he would use his wealth and influence to have Plaintiff admitted into the Fashion Institute of Technology" ("[redacted]") and to advanced her career, but had no intention of doing so. FAC ¶¶ 38, 53, 58-64. This is insufficient to satisfy Rule 9(b).

First, the FAC fails to identify with particularity the "fraudulent statements" that Epstein or [redacted] are each alleged to have made to Plaintiff. Indeed, the FAC only alleges that Epstein "confirmed" this representation, that [redacted] "confirmed and reiterated this promise to Plaintiff many times." FAC ¶¶ 38, 53. These allegations fail to provide the particulars of what each Defendant said to Plaintiff on each occasion, when each of the alleged misrepresentations was made, and where each of the Defendants supposedly made these representations.

Second, the FAC fails in multiple instances to identify with particularity that Epstein and [redacted] were the speakers of these alleged fraudulent statements. Indeed, the FAC only alleges that Epstein and [redacted] "confirmed" the statements, not that they made the statements. FAC ¶¶ 38, 53. The FAC does not allege who actually made the alleged statement that was allegedly confirmed by the Defendants. The bald assertion that [redacted] "told" Plaintiff that "Epstein would advance Plaintiff's education" is bereft of any details as when this happened, where they were, or the circumstances as to why and how Plaintiff would even speak with [redacted], a stranger to her, regarding Epstein's alleged promise of education advancement. FAC ¶ 53.

Third, the FAC fails to allege with particularity "where and when" the alleged fraudulent statements were supposedly made. In addition to failing to meet the requirements of Rule 9(b), the allegations fall short of the basic fairness requirement, since Defendants are entitled to know

when and where they supposedly made fraudulent statements to Plaintiff, especially given that Plaintiff has asserted a claim based on events that occurred over ten years ago.

Fourth, the FAC fails to allege with particularity how the fraudulent promises about Plaintiff's prospects for admission to [redacted], if made at all, were fraudulent. The FAC merely states in conclusory terms that the statements were "knowingly false" and "not acted upon." Cplt. ¶ 53. However, there are no factual allegations to support the assertion that the statements about the Plaintiff and [redacted] were false when made. Plaintiff's allegations that the Defendants did not act on the alleged promise is insufficient to show that the representation was false when made. *Greenberg v. Chrust*, 198 F.Supp.2d 578, 583 (S.D.N.Y. 2002) ("failure to fulfill a promise to perform future acts is not grounds for a fraud action" and "fraudulent intent cannot be inferred merely from the non-performance of a party's representations").

Finally, the FAC fails to provide a factual basis, let alone an "ample factual basis," that would give rise to the "strong inference of fraudulent intent" required to plead a fraud claim in satisfaction of Rule 9(b). *Wood*, 328 Fed.Appx. at 747; *O'Brien*, 936 F.2d at 676. The allegation that Epstein had no intention of following through on his alleged promises to assist Plaintiff in gaining admission to [redacted] or her career advancement is merely conclusory, and does not satisfy the requirements of Rule 9(b). *Greenberg*, 198 F.Supp.2d at 583 ("fraudulent intent cannot be inferred merely from the non-performance of a party's representations"). Plaintiff has alleged no facts to support the contention that Epstein did not perform as he allegedly promised. Instead, the factual allegations state that Epstein promised and Plaintiff received generous support from Epstein, including "living quarters at 301 East 66th Street" on the Upper East Side of Manhattan, "a car service for Plaintiff to use as needed" and a "cell phone." FAC. ¶ 53. The FAC further alleged that Epstein even encouraged Plaintiff to fill out an admission application to

[redacted] in order to gain entrance to the college. FAC ¶ 59. These specific factual allegations do not support and, indeed, are wholly inconsistent with Plaintiff's conclusory assertion that Epstein had no intention of helping Plaintiff to gain admission to [redacted]. Accepting the allegations as true, they tend to demonstrate that Plaintiff was receiving support from Epstein in several respects and provide no hint of any prior intention of Epstein to withhold support in the specific areas of Plaintiff's education or career advancement.

On a related note, the FAC is utterly silent as to the date by which Epstein allegedly promised that the Plaintiff would be admitted to [redacted] or some other comparable school. Not surprisingly, there is nothing in the FAC which demonstrates that a specific promised deadline lapsed.

Based on the foregoing, the FAC fails to establish facts sufficient to infer that Epstein would not follow through on the alleged promises of assistance with admission to [redacted]. As to [redacted], there is simply no factual allegation of fraudulent intent on her part or that [redacted] knew that Plaintiff was engaged in a sexual relationship with Epstein in exchange for the alleged promises.

In short, the FAC fails to meet the pleading standards required under Rule 9(b) with respect to every element required to establish that Epstein and [redacted] made fraudulent statements.

b) The FAC Fails for Lack of Reasonable Reliance

The FAC also fails to plead facts which establish that the Plaintiff reasonably relied on the misrepresentations allegedly made by the Defendants. In order to state a claim sounding in fraud, a plaintiff must plead, among other things, that she reasonably relied on the alleged misrepresentation. *Crigger v. Fahnstock & Co.*, Inc., 443 F.3d 230, 234 (2d Cir. 2006). The FAC does not meet this basic requirement. Instead, the FAC merely states in conclusory terms that "Plaintiff reasonably relied" on the alleged misrepresentations. FAC. ¶ 53. The FAC,

however, does not provide any factual support for this conclusion. Rather, the allegations in the FAC support just the opposite. According to the FAC, at the time the statement was made about Plaintiff's prospects for admission to [redacted], the Plaintiff barely knew Epstein – she had been introduced to Epstein by yet another person whom she barely knew. FAC ¶¶ 36, 38. That such a stranger would offer to "use his wealth and influence to have Plaintiff admitted to" [redacted] or a similar institution in exchange for sexual favors would cause any reasonable person, especially under the circumstances alleged in the FAC, to question, rather than rely on, such a promise.

The FAC contains no allegations concerning any diligence or investigation by Plaintiff into the credibility of any of the statements supposed made to her. Instead, she alleges that she trusted wholesale any and all statements supposed told to her by complete strangers in a foreign land, and contends on that basis that she reasonably relied on their promises of a guaranteed education at a particular institution and a successful career. Plaintiff's allegation of reliance, let alone reasonable reliance, is simply implausible.

Moreover, the FAC fails to allege facts from which the Plaintiff might have reasonably concluded that Epstein had the ability "to have Plaintiff admitted to" [redacted] and that her admittance was a "done deal." FAC ¶¶ 38, 59. For example, the FAC fails to allege that Epstein was associated in any way with [redacted], asserting instead that Epstein merely "had contacts at [redacted]." FAC ¶ 60. Such bare allegations are insufficient. *Ashland Inc. v. Morgan Stanley & Co.*, 652 F.3d 333, 338 (2d Cir. 2011) (dismissing complaint where plaintiff could not have reasonably relied on defendant); *Schlaifer Nance & Co. v. Estate of Warhol*, 119 F.3d 91, 98 (2d Cir. 1997) ("circumstances may be so suspicious as to suggest to a reasonably prudent plaintiff that the defendant's representations may be false, and that the plaintiff cannot reasonably rely on those representations").

In short, the FAC fails to establish that Plaintiff reasonably relied on the alleged fraudulent statements about her prospects for admission to [redacted] that she attributes to Epstein and [redacted].[2]

c) The FAC Impermissibly Lumps All Defendants Together

The FAC engages in rampant and impermissible "group pleading." It repeatedly attributes the same conduct and/or statement to all or multiple defendants without identifying which individual defendant engaged in the alleged conduct or made the alleged statement. Since the asserted claim involves allegations of fraud, the Plaintiff's decision to lump all defendants in groups is insufficient to state a claim. *Camofi Master LDC v. Riptide Worldwide, Inc.,* 2011 WL 1197659, at *6 (S.D.N.Y. Mar. 25, 2011) ("group pleading doctrine is an exception to the requirement that the fraudulent acts of each of the defendants be identified separately in the complaint," its application is "limited to group-published documents," and "does not apply to oral statements"); *In re Braskem S.A. Sec. Litig.*, 2017 WL 1216592, at *20 (S.D.N.Y. Mar. 30, 2017) ("the Court has doubt whether the group-pleading doctrine remains good law").

Defendants in their Deficiency Letter advised Plaintiff of this defect. In response, Plaintiff merely inserted the phrase "each of" before the word "defendants" as if that would cure the defect and somehow sufficiently identify the conduct of the different defendants. See FAC ¶¶ 34, 38, 45, 49, 50, 51, 52, 54, 55, 66 and a comparison of these same paragraphs as set forth in the Complaint FAC. Exh. _____.

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[2] Assuming arguendo that Plaintiff's reliance on Epstein's representations was ever reasonable, her reliance certainly was not plausible by January 2007, when Plaintiff expressly acknowledged that she "knew" that she was being used to recruit others for "sexual servitude" (FAC ¶ 61), and that she "did not believe" the Defendants (Cplt. ¶ 51). Her knowledge of Defendant's supposed illegal conduct and distrust of the Defendants renders her claim time-barred, as explained in detail below. *Infra*, pp. ___.

A small sampling of the allegations of the FAC which repeatedly and impermissibly lump all Defendants together amply demonstrates the insurmountable defects in the FAC. First, the FAC alleges that "Defendants recruited Plaintiff into their sexual enterprise," without identifying which defendant was involved in the alleged recruitment and what individual action each defendant allegedly took to recruit Plaintiff. FAC ¶¶ 34. Second, FAC alleges that the "Defendants all participated in arranging for Plaintiff to be transported" without stating what each of the defendants actually did. FAC ¶ 45. Third, the FAC alleges that "Defendants sent Plaintiff … to [redacted] to recruit" without specifying which defendant supposedly "sent" Plaintiff. FAC ¶ 55. Fourth, the FAC alleges that "in addition to their requiring Plaintiff to provide Defendant Epstein with sex acts, each of the Defendants continued to pressure her to lose excessive amounts of body weight and offered her no opportunity to decline or resist their instructions." FAC. ¶ 63. Yet, the FAC does not identify which defendants allegedly "required" Plaintiff to provide sex acts, "pressure[d]" her to lose excessive weight, or offered Plaintiff no opportunity to decline or resist these alleged demands.

By engaging in this pattern of improper group pleading, the FAC fails to state a legally sufficient claim, based on both theories of "fraud" and "coercion," against any one of the Defendants.

d) Section 1591 Does Not Cover Garden Variety Fraud

Congress enacted Section 1591 in order to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims." H.R. Conf. Rep. 106-939 (2000). Among other specific factual findings reached by Congress when it was drafting Section 1591, Congress found as follows:

> Traffickers lure women and girls into their networks through false promises of decent working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models.

Id. Congress also found that additional legislation was needed to combat commercial sex engaged in by women lured to the United States by means of fraud. *Id.* Based on these factual findings, Congress enacted Section 1591 to prohibit sex trafficking by means of fraud. *Id;* 18 U.S.C. 1591(a)(1).

Based on this legislative history, and a clear reading of Section 1591, this statute was not designed to address the relationship which, according to the FAC, the Plaintiff entered into with Epstein. The allegations in the FAC do not establish that the Plaintiff was a victim of sex trafficking under Section 1591 or that she participated in commercial sexual acts as a result of a "fraud" perpetrated by the Defendants.

First, there are no allegations that "traffickers lured [Plaintiff] into their network by false promises" of a job. Instead, Plaintiff alleges that, without the involvement of any of the Defendants, she traveled to the United States on her own volition and for reasons that appear to have nothing whatsoever to do with the Defendants. She then voluntarily associated herself with the Defendants and, according to Plaintiff's allegations, engaged in sexual activity with Epstein because she perceived that Epstein could provide her with some advantage in gaining entrance to an institution of higher learning and because she was given living quarters on the Upper East Side of Manhattan, the use of a car service and a cell phone. These factual allegations do not demonstrate that she was a victim of fraud, much less a victim of sex trafficking requiring the protection of Section 1591.

Second, to the extent that Epstein allegedly made promises to the Plaintiff that were not fulfilled in a timeframe that Plaintiff expected or wanted, these sorts of issues are a matter for

resolution between these two adults who allegedly entered into an adult relationship. When enacting Section 1591, Congress did not evidence any intention to legislate the private relationship between two consenting adults.

2. The FAC Fails to Plead Coercion

The FAC fails to allege that the Defendants used "coercion" to cause the Plaintiff to engage in a commercial sex act. The statute defines coercion to include the following categories of conduct:

(A) threats of serious harm to or physical restraint against any person;
(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
(C) the abuse or threatened abuse of law or the legal process.

The FAC simply fails to meet any of these three theories for establishing coercion.

First, the allegations of coercion are unspecific and wholly conclusory, as exemplified by the allegations in paragraph 48 that "Defendants Epstein and Maxwell intimidated, threatened, humiliated and verbally abused Plaintiff in order to coerce her into sexual compliance. These Defendants threatened Plaintiff with serious harm, as well as serious psychological, financial, and reputational harm, with the purpose and effect of compelling Plaintiff to perform and continue performing the demanded commercial sexual activity demanded by Defendants." FAC ¶ 48. The FAC does not allege a single specific factual instance where Epstein or [redacted] made a "threat[] of serious harm to or physical restraint against" the Plaintiff. Indeed, the FAC speaks of only one occasion where Plaintiff allegedly suffered unspecified "verbal abuse and threats" and, as a result, "attempted to escape from Defendant Epstein's private island." FAC ¶ 49. This single allegation taken as true does not establish that Plaintiff was subject to a threat of serious harm. And the fact that the Plaintiff was allegedly "returned" to the house on the island does not demonstrate that she was subject to "physical restraint." And there is nothing alleged in

the FAC that demonstrates that this isolated incident had anything at all to do with whatever sexual activity Plaintiff claims she engaged in.

Second, the FAC fails to establish that there was a "scheme, plan, or pattern" to cause Plaintiff to believe that she would be seriously harmed or restrained. Indeed, the FAC is devoid of specific factual allegations concerning threats of physical harm, as discussed above. And, with respect to physical restraint, the FAC alleges that Plaintiff traveled freely within the United States and abroad, and was provided with living quarters of her own on the Upper East Side of Manhattan as well as a car service and cellphone. FAC. ¶¶ 45, 52, 64. Plaintiff alleges that, when Plaintiff was in [redacted], where she held citizenship and where her parents resided, Epstein and Maxwell told her that "she would not be permitted to return to the United States to receive her promised education unless she lost weight." Plaintiff does not explain how any of the defendants would have any ability to deny her entry to the United States. Plaintiff has not provided any factual allegations that any of the defendants held her travel documents in order to prevent her movement or had any power to affect her ability to travel to the United States. To the contrary, the FAC alleges that she traveled to and from the United States as she wished. Indeed, she admits that "she refused to perform the recruitment assignment" allegedly "demanded" by Epstein to find young females to serve in "sexual servitude" while she was in [redacted]. FAC. ¶ 55. Yet, she was able to come back to the United States. Moreover, there is no showing of any threatened "serious harm" had she chosen to remain in [redacted]. There is simply no "threat of serious harm" alleged. In any event, this isolated allegation does not establish the existence of a "scheme, plan or pattern" at all, much less a "scheme, plan or pattern" which would cause Plaintiff to believe she would be in serious harm or physical restraint if she did not engage in commercial sexual activity. FAC. ¶ 55.

Third, a withdrawal of support to gain admission to [redacted] or refusal to provide living quarters on the Upper East Side of Manhattan or a car service does not constitute "threats of serious harm." A withdrawal of such support would simply mean that Plaintiff would no longer have the desired life style or assistance for potential educational advancement as to which she had neither a legal right nor moral entitlement.

Similarly, the supposed threat by Maxwell and Epstein that "they had the ability to make sure that Plaintiff would not obtain formal education or modeling agency contracts if she failed to provide sexual favors" is no threat at all. FAC ¶ 41. Plaintiff is not alleged to be a gullible person with diminished capacity, or uneducated or inexperienced socially. Rather, Plaintiff has carefully chosen not to disclose her educational level and prior employment, social and travel backround. It is implausible for Plaintiff or any other reasonable person to perceive this as a realistic threat or to believe that defendants had such omnipotent ability. The pleading standard is not lowered simply because Epstein is alleged to be "rich and powerful."

Fourth, the FAC does not allege that the Defendants engaged in any "abuse or threatened abuse of the law or legal process" required by the statute.

3. <u>The FAC Fails to Plead a Causal Link</u>

The FAC fails to plead that the Defendants' alleged fraudulent and coercive conduct "caused" the Plaintiff to engage in a commercial sex act, as required under Section 1591. *United States v. Marcus*, 487 F.Supp.2d 289, 306-07 (E.D.N.Y. 2007), rev'd on other grounds, 538 F.3d 97 (2d Cir. 2008) (a violation of Section 1591 requires that a "commercial sex act … be a product of force, fraud or coercion.")*)* The FAC fails to establish any linkage between the alleged promises of admission to [redacted] and criticism about the Defendants' weight and appearance, and any sexual act performed by the Plaintiff.

Indeed, the clear implication of the FAC is exactly the opposite. The FAC can be fairly read to evidence that the Plaintiff, then an adult woman, was engaged in a consensual sexual relationship with Epstein, an unmarried adult man, on her own accord, which she was free to terminate at will. Her allegations of receiving financial support amount to nothing more than the claims of an adult girlfriend who received financial support from someone with whom she was in a romantic relationship. When she became dissatisfied with that relationship and decided to terminate it, as would properly be expected of any similar relationship, the financial support she received based on that relationship terminated as well. Whatever unfulfilled promises about an education at [redacted] and unwelcome criticism Plaintiff claims to have experienced, the FAC makes clear that her sexual acts were not specifically the product of those two events.

Finally, the sex acts alleged in the FAC are not "commercial sex" acts, much less sex acts in violation of Section 1591. If they were, a significant percentage of the population likely would have engaged in commercial sex and violated the statute.

In short, Plaintiff fails to establish the required causal link between the alleged fraud and coercion and her sexual conduct. She also fails to establish that she engaged in "commercial sex."

4. <u>The FAC Fails To Allege Knowledge Against [redacted]</u>

The FAC fails to allege facts which establish that [redacted] engaged in any conduct "knowing that force, fraud, or coercion … will be used to cause [the Plaintiff] to engage in a commercial sex act," as required in Section 1591. Here, there are no specific factual allegations showing that [redacted] knew that the Plaintiff was engaged in a sexual relationship with Epstein, much less that [redacted] knew that Plaintiff was engaged in commercial sex caused by fraud or coercion. At best, the allegations show that [redacted] performed legitimate secretarial functions such as making travel arrangements. FAC ¶ 51.

Plaintiff's conclusion in the FAC that [redacted] had knowledge is without factual support, and merely parrots the statutory language. FAC ¶40 ("knew", "knowingly"). But there is simply no fact to show [redacted] knew of the alleged private relationship between Plaintiff and Epstein or that Epstein did not intend to fulfill his alleged promises. The conclusory allegations against [redacted] are insufficient to show that she had the "knowledge" required for liability under Section 1591.

5. The FAC Fails to Allege Other Predicate Acts

Plaintiff's principal response to the Deficiency Letter (which Plaintiff appears to have largely ignored during her preparation of the FAC) was to add to the FAC other supposed statutory violations which Plaintiff now asserts support her Section 1595 claim. None of these new allegations tip the scale; the FAC is still insufficiently drafted as a matter of law.

a) The FAC Fails to State a Violation of Section 1592

Plaintiff added a claim under 18 U.S.C. §1592 in which she alleges that the defendants "concealed, removed, confiscated, and possessed Plaintiff's passport and associated immigration documents." FAC ¶ 69. Plaintiff alleges that this occurred in the course of violating Section 1591, and that it occurred "to prevent, restrict, attempt to restrict without lawful authority, Plaintiff's liberty to move or travel, in order to maintain the sexual services of Plaintiff, while Plaintiff was a victim of a severe form of sex trafficking." *Id.*

This claim is utterly without merit. First, as described, above, the FAC simply fails to establish a violation of Section 1591. Second, the FAC is utterly devoid of facts supporting the notion that Plaintiff's travel to Epstein's island was anything other than a vacation that she willingly and voluntarily participated in. It should come as no surprise that Plaintiff's passport may have been needed to facilitate her movement in and out of the island, but there is certainly no evidence that the Defendants ever possessed Plaintiff's passport when she lived in New York

on the Upper East Side and that she was somehow restricted in her ability to travel in and out of New York and the United States at her will. The FAC acknowledges that she traveled to and from [redacted] on her own schedule without interference or control by the Defendants. Notably, and as to [redacted], the FAC does not even mention that [redacted] played any role in these specific allegations.

b) The FAC Fails to State a Violation of Section 1593A

Plaintiff also added a claim predicated on Section 1593A. FAC ¶70. This statute, however, did not exist when Plaintiff knew the Defendants. In fact, Section 1593A was enacted in December 2008, after the events alleged in the FAC had occurred and it has no application to the allegations set forth in the FAC. *Velez v. Sanchez*, 693 F.3d 308, 325 (2d Cir. 2012) ("there is a well-established presumption against the retroactive application of legislation, including amendments creating a private cause of action"). In any event, the FAC fails to allege facts constituting a violation section 1593A, which criminalizes those who knowingly participate in or benefits from a venture in contravention of Section 1592 and 1595(a). Because the FAC fails to state a violation of Section 1592 and 1595(a), as demonstrated above, there cannot be a violation of Section 1593A.

c) The FAC Fails to State a Violation of Sections 1594(a)-(c)

Plaintiff also asserts that Defendants violated Section 1594(a)-(c). As the statute existed during the events in question, section 1594(a) criminalized any "attempt" to violate Section 1591, and Sections 1595(b) and (c) specified the relevant punishments for violations of various related statutes. For the same reasons explained above, Plaintiff fails to state a violation of Section 1594(a). *Stein v. World-Wide Plumbing Supply Inc.*, 71 F.Supp.3d 320, 330 (E.D.N.Y. 2014) ("a claim of attempt requires plaintiff to allege that defendants had the intent to commit

the underlying crime"). As discussed above, pp. ___, there is no factually allegations to support the contention that Defendants intended to violate Section 1591.

C. The FAC Fails to Meet the *Twombly/Igbal* Standard

The FAC not only fails to meet the heightened pleading standards applicable to fraud based claims, it also fails to meet the more relaxed pleading standards set forth by the United States Supreme Court in *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955 (2007) and *Ashcroft v. Igbal*, 129 S.Ct. 1937 (2009). These two decisions set forth the basic requirements for pleading a claim. As explained and applied by the Second Circuit:

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.

Wood, 328 Fed.Appx. at 747 (quoting *Igbal*, 129 S.Ct. at 1949). Here, at best, the FAC merely parrots the statutory elements of a Section 1595 claim regarding fraud and coercion without specifically alleging the factual basis for those elements. As described in more detail, above, the Complaint fails to meet the *Twombly/Igbal* pleading standard. The FAC, taken as a whole, does not plead a plausible claim that Plaintiff was a victim of sex trafficking in violation of criminal statutes entitling her to civil relief pursuant to Section 1595. Instead, the FAC as a whole presents the Plaintiff as a consenting adult engaged in a voluntary relationship with Epstein which provided the Plaintiff with a remarkably comfortable life style and the prospects of help with her [redacted] application. This is hardly the sort of relationship that this sex trafficking statute was designed to address.

Moreover, the FAC does not allege that Plaintiff was a minor, that she was uneducated or that she was inexperienced in the world. As mentioned above, the FAC is bereft of allegations concerning Plaintiff's background. We do not know from the FAC whether Plaintiff was college educated, nor her prior employment, social or travel experiences, nor her purposes for coming to the United States, nor her immigration status while she was in the United States. The absence of such allegations shows that Plaintiff was an educated adult who was experienced in the world and who freely chose to engage in the alleged sex acts set forth in the FAC. Plaintiff's allegations of fraud and coercion are simply not plausible, and, as a result, the FAC fails under the *Twombly/Igbal* pleading standard.

D. The Claim Is Barred by the Statute of Limitations

Plaintiff's claim is time-barred under either (a) the four-year statute of limitations applicable to claims that arose before the 2008 statutory amendment that extended the limitations period to ten years or (b) even the current ten-year statute of limitations period.

Plaintiff's claim is barred by the four-year statute of limitations. According to the FAC, the conduct giving rise to the claim allegedly occurred between October 2006 and April 2007, and Plaintiff "left the United States" in May 2007 and "did not return." FAC ¶¶ 34, 64. This action was not commenced until January 27, 2017, more than four years after any of the events alleged in the FAC occurred. Plaintiff's claim is therefore time-barred. *Abarca v. Little*, 54 F.Supp.3d 1064, 1068 (Minn. 2014). As the Court stated in *Abarca,* a claim under Section 1595 had a four-year of statute of limitations when originally enacted. The statute was amended in December 2008 and the limitations period was extended to ten years. *Id.* However, "Congress did not expressly state or otherwise indicate that the [statute's] limitations period applies retroactively." *Id.* The plaintiff in *Abarca*, like Plaintiff here, filed the Section 1595 claim after the statute was amended to provide for a ten-year statute of limitations. Applying the well-

established presumption against retroactive legislation, the Court in *Abarca* determined that the ten-year statute of limitation did not apply because the alleged wrongful conduct occurred before the statute of limitations was amended. *Id*. at 1069. The Court therefore applied the four-year statute of limitations and dismissed the Section 1595 claim because it was filed more than four years after the alleged wrongful acts. *Id.*

Here, all events alleged in the FAC ended in 2007, before the 2008 amendment extending the limitations period from four to ten years was enacted. As a result, the four-year statute of limitations applies. Plaintiff's claim, filed in January 2017 and more than four years after the events described in the FAC, is time-barred.

Even if the ten year statute of limitations applies, Plaintiff's claim is still time-barred. Plaintiff admits in the FAC and the original Complaint that, when she traveled to [redacted] in January 2007, she no knew defendants were engaged in illegal conduct and looking to victimize women and that longer trusted the Defendants. In fact, Plaintiff alleges that she "knew" she was being asked to recruit "female models" from [redacted] who would not be placed in legitimate positions, but would instead "be forced into sexual servitude." FAC ¶ 56. Moreover, Plaintiff has expressly acknowledged in the original Complaint that, as of January 2007, "she did not believe that the requested model would be placed in a legitimate position of employment with Defendant Epstein but would, instead, be forced into sexual servitude." Cplt. ¶ 51. Clearly, by January 2007, Plaintiff could no longer claim to be reasonably relying on Defendants' representations about, for example, gaining admission to [redacted]. Because Plaintiff's claim admittedly turns on whether she was defrauded and coerced, the statute of limitations period on her Section 1595 claim commenced to run no later than January 2007 and expired before this action was filed on January 27, 2017.

Moreover, since Plaintiff left the United States in January 2007 and went to [redacted], where she held citizenship and where her parents reside, any arguable coercion terminated at that time. FAC ¶ 55. There is nothing to support the contention that the Defendants engaged in coercion to procure sexual acts from the Plaintiff. Plaintiff was under no compulsion whatsoever to return to the United States or to continue her alleged association with Defendants. In fact, she admits that she freely "refused to perform the recruitment assignment" alleged "demanded" of her to find females to serve in "sexual servitude." FAC. ¶ 56. By her own admission, whatever "coercion" defendants might have had on Plaintiff ceased at that time. In any event, she could have simply chosen to stay in [redacted]. Her alleged further association with Defendants when she returned to New York in February 2007 was purely the voluntary action of an adult, as were all of her other actions. Significantly, Plaintiff alleges no threat to her since February 2007 when she returned from [redacted]. She merely alleges, again without providing specific facts, that Defendants "continue to repeatedly make false representations . . . that she would be admitted to [redacted]." FAC ¶ 64. Since no act of coercion occurred within ten years before the lawsuit was filed on January 27, 2017, Plaintiff's claim is time-barred.

The assertions that Defendants defrauded her or coerced Plaintiff into commercial sex when she returned to the United States in February 2007 are wholly insufficient as a matter of law. Although the FAC repeats some of the same conclusory and vague allegations relating to the earlier period outside of even the 10-year statute of limitations, it again provides none of the specific factual allegations necessary to establish what Epstein or [redacted] actually did during that limitations period to violate the statute.

E. <u>The Court Does Not Have Jurisdiction Over Defendants</u>

Other than an alleged ownership of real estate in New York by Epstein, the FAC alleges no present connection of the Defendants to New York. As a result, personal jurisdiction over the

Defendants would have to be based on tortious conduct allegedly committed in New York. CPLR 302(a)(2). As explained below, however, there are insufficient allegations of tortious conduct during the limitations period upon which Plaintiff can base personal jurisdiction, even if the ten year limitations period were to apply, which Defendants maintain it does not.

Because this action was filed on January 27, 2017, all of the conduct alleged to have occurred before February 2007 falls outside of even the ten year limitations period. The FAC, however, does not allege conduct after Plaintiff left for [redacted] in January 2007 that can be fairly said to be subject to a Section 1595 claim, as discussed in detail above. Moreover, there are no allegations regarding the whereabouts of the Defendants during that time period. The allegations concerning this period merely track the statutory language but without providing the necessary factual support. The FAC, therefore, fails to establish that the Court has personal jurisdiction over Epstein and [redacted].

F. Venue Is Improperly Laid in the Southern District of New York

For the same reasons that the Court lacks personal jurisdiction over the Defendants, the Southern District of New York is not the proper venue for this action. The applicable venue statute, 28 U.S.C. § 1391(b)(2), requires that "a substantial part of the event or omission giving rise to the claim occurred" within the Southern District of New York. This fundamental element is not met here. The conduct alleged occurred outside of the statute of limitations period and cannot form the basis of either a claim or venue.

CONCLUSION

For all of the reasons set forth, above, this case lacks merit and should be dismissed no matter where it is filed. Having said that, and as you know, Epstein resides in the U.S. Virgin Islands, where the court has personal jurisdiction over him. Moreover, the other Defendants are all located in states other than New York and no significant part of the events within the statute

of limitations period occurred in New York. Thus, were the Plaintiff able to articulate a sustainable claim against the Defendants, pursuant to 28 U.S.C. § 1391(b)(3), the only proper venue in which to litigate this matter would be in the U.S. Virgin Islands.

Dated: July _____, 2017

Respectfully submitted,

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