UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SARAH RANSOME,

Plaintiff,

v.

JEFFREY EPSTEIN, GHISLAINE MAXWELL, SARAH KELLEN, LESLEY GROFF, and NATALYA MALYSHEV,

Defendants.

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17-cv-00616-JGK

MEMORANDUM OF LAW IN SUPPORT OF GHISLAINE MAXWELL'S MOTION TO DISMISS

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INTRODUCTION

The amended complaint paints a picture but not a claim for relief. Charitably construed, the amended complaint describes a mutually beneficial, sexual relationship between two consenting adults. It does not plead a claim for unlawful sex trafficking. What's more, no further amendment could cure the deficiencies identified in the various motions to dismiss and reiterated below. As thoroughly explained in Mr. Epstein and Ms. Groff's motion to dismiss, Ms. Ransome's own sworn testimony and the evidence presented in her counsel's previous case against Ms. Maxwell conclusively establish that Ms. Ransome was not trafficked for sex. (Doc. # 104-1, p. 2–4). This case should be dismissed with prejudice.

FACTUAL BACKGROUND

Sarah Ransome has told at least two widely divergent versions of her brief, decade-old relationship with Jeffrey Epstein: the story portrayed in her amended complaint, and the account she provided in her counsel's prior litigation. The former version fails to state a claim, even on its own terms. The latter demonstrates the futility of allowing any further amendment to the complaint currently pending before this Court.

I. THE AMENDED COMPLAINT STORY

Ms. Ransome met Mr. Epstein in October 2006. (Am. Compl. ¶ 34). Ms. Ransome was then an emancipated and adult 22 year old. Mr. Epstein was considerably older, in his fifties. (*Id.* ¶ 11). He was unmarried and quite wealthy, worth more than a billion dollars. (*Id.* ¶¶ 11, 60).

Shortly after they met, Ms. Ransome and Mr. Epstein began a consensual, sexual relationship. (*Id.* ¶ 43). Mr. Epstein lavished gifts and advantages on Ms. Ransome, providing her a cell phone, a luxury car service, and an apartment on the Upper East Side. (*Id.* ¶ 52). Ms.

Ransome and Mr. Epstein engaged in consensual sex "dozens of times" in numerous places, from New York to Mr. Epstein's private island in the U.S. Virgin Islands. (*Id.* ¶ 45).

Ms. Ransome alleges that Mr. Epstein promised "he would use his wealth and influence to have [Ms. Ransome] admitted into The Fashion Institute of Technology (known as "F.I.T.") in New York City or into a similar institute of higher learning offering a curriculum of fashion industry training." (*Id.* ¶¶ 38). Ms. Ransome claims that Ms. Maxwell "confirmed and reiterated this promise." (*Id.*) If Ms. Ransome did not provide Mr. Epstein with continued "sexual favors," Mr. Epstein and Ms. Maxwell told her they "had the ability to make sure that [she] would not obtain formal education or modeling agency contracts. . . ." (*Id.* ¶ 41).

Ms. Ransome traveled to South Africa in January 2007, allegedly at the request of Mr. Epstein on a "recruiting assignment" to find a South African model he could hire as an assistant. (*Id.* ¶ 38). Ms. Ransome alleges that she knew the individual recruited would not "be placed in a legitimate position of employment with Defendant Epstein." (*Id.* ¶ 56). As a result, Ms. Ransome refused to complete the "recruitment." (*Id.* ¶¶ 55–56).

By this point, Ms. Ransome was fully aware of Defendants' alleged scheme. Nevertheless, and of her own volition, she returned to the United States and resumed her relationship with Mr. Epstein. (*Id.* ¶ 61). Ms. Ransome claims that Mr. Epstein and Ms. Maxwell again committed to help her secure her admission to F.I.T. (*Id.*) The amended complaint does not, however, allege that Ms. Ransome ever actually applied for admission at F.I.T. or any other similar institute of higher learning offering a curriculum of fashion industry training. Even so, Ms. Ransome accuses Mr. Epstein and Ms. Maxwell of "fail[ing] and refus[ing] to perform" that promise. (*Id.* ¶ 62). Ms. Ransome left the United States for good in May 2007. (*Id.* ¶ 64).

Some ten years later, despite never applying, Ms. Ransome filed the complaint in this action, alleging that Defendants fraudulently induced and coerced her into a sexual relationship with Mr. Epstein and failed to keep their end of the bargain—secure admission to F.I.T.

II. MS. RANSOME'S PREVIOUS ACCOUNT

Ms. Ransome is not the victim she portrays herself to be. To the contrary, Ms. Ransome's own admissions reveal her sophistication in the ways of fostering romantic relationships with wealthy men. [redacted]

Rather than a Dickensian tale of a vulnerable, naïve, young women, forced into a life of slavery and sexual servitude, this case actually presents the end game of a sophisticated, ambitious woman, accustomed to an expensive lifestyle provided by numerous male benefactors. As elaborated below, the amended complaint fails to state a claim for relief, a failure Ms. Ransome cannot avoid through the convenience of yet another opportunity to re-plead her case.

ARGUMENT

I. THIS COURT SHOULD STRIKE PARAGRAPHS 11–33 OF THE AMENDED COMPLAINT

The first half of Ms. Ransome's amended complaint is replete with harassing, impertinent, and scandalous allegations having nothing to do with this case. (Am. Compl. ¶¶ 11–33). The allegations relate to prior proceedings against Mr. Epstein, not involving Ms. Ransome, and are included solely to distract from the amended complaint's lack of substance. Apart from an allegation that Mr. Epstein and the other Defendants foiled her ability to secure admission to F.I.T., even though she never applied, Ms. Ransome offers little in support of her trafficking claim. Ms. Maxwell joins the other defendants in their request that this Court strike paragraphs 11 through 33 of the amended complaint under Rule 12(f).[1] (Doc. # 104-1, p. 5–6; Doc. # 111, p. 3 n.3). Although the amended complaint fails to state a claim on its own terms, striking the "immaterial, impertinent, [and] scandalous" material brings that failure into stark relief.

II. THE AMENDED COMPLAINT FAILS TO STATE A CLAIM FOR RELIEF

This Court should dismiss Ms. Ransome's amended complaint with prejudice. The Trafficking Victims Protection Act (TVPA) does not apply to the conduct alleged; the amended complaint impermissibly lumps all Defendants together; it does not plead fraud with

[1] This is not the first time Plaintiff's counsel has filed pleadings containing gratuitous and impertinent material concerning Ms. Maxwell. *See* Menninger Decl. Ex B (4/7/2015 Order Denying Motion to Join and Motion to Amend) at 4–6. In case number 9:08-cv-80736-KAM in the Southern District of Florida, the Court struck a Rule 21 motion in its entirety as well as significant portions of the "corrected" Rule 21 motion before denying it on the merits. *Id.* The court also suggested that Plaintiff's counsel might be subject to sanctions under Rule 11. *Id.* at 7.

particularity; it fails to plead reasonable reliance, coercion, or causation; it fails to state a claim under 18 U.S.C. §§ 1592, 1593A, or 1594; it is barred by the statute of limitations; and it improperly lays venue in the Southern District of New York.

A. The Trafficking Victims Protection Act does not apply to the consensual, adult relationship described in the amended complaint

Ms. Ransome asserts a cause of action under the Trafficking Victims Protection Act (TVPA), 18 U.S.C. § 1595. At the time of the alleged events in this case, the TVPA provided:

> whoever knowingly . . . recruits, entices, harbors, transports, provides, or obtains by any means a person . . . knowing that force, fraud, or coercion . . . will be sued to cause the person to engage in a commercial sex act . . . shall be punished as provided in subsection (b).

18 U.S.C. § 1591(a) (2006). Section 1595 creates a civil remedy for violations of section 1591.

"The TVPA is part of a comprehensive regulatory scheme that criminalizes and attempts to prevent slavery, involuntary servitude, and human trafficking for commercial gain." *United States v. Walls*, 784 F.3d 543, 548 (9th Cir. 2015). Congress enacted the TVPA in recognition that "human trafficking, particularly of women and children in the sex industry, 'is a modern form of slavery . . . .'" *Id.* (quoting 22 U.S.C. § 7101(b)(1)).

The amended complaint alleges nothing of this sort. It does not allege that Ms. Ransome was held as a slave, subject to involuntary servitude, or trafficked for the Defendants' commercial gain. Instead, it describes a consensual sexual relationship between Mr. Epstein and Ms. Ransome, who voluntarily entered into the relationship and enjoyed many perks as a result, including financial support, an apartment, transportation, and a cell phone. (Am. Compl. ¶ 52). It was a relationship Ms. Ransome was never forced to continue against her will. Ms. Ransome was free to come and go as she pleased, as evidenced by her trip home to London and South Africa in January 2007, and her voluntary return to the United States in February 2007. (*Id.* ¶¶ 55, 61).

Ms. Ransome claims her motivation to return to the United States was primarily based on an alleged unfulfilled promise–made by Mr. Epstein, and "confirmed and reiterated" by Ms. Maxwell –"that he would use his wealth and influence to have Plaintiff admitted into The Fashion Institute of Technology (known as "F.I.T.") in New York City or into a similar institute of higher learning offering a curriculum of fashion industry training." (*Id.* ¶¶ 38, 61, 62).

Conspicuously absent from the amended complaint, however, are any allegations that Ms. Ransome ever applied to F.I.T. or a similar school, or that she was denied admission based Defendants' conduct. [redacted] Sex trafficking this is not.

In arguing to the contrary, Ms. Ransome relies on *United States v. Marcus*, 487 F. Supp. 2d 289 (E.D.N.Y. 2007), *rev'd*, 628 F.3d 36 (2d. Cir. 2010). She characterizes *Marcus* as affirming application of the TVPA to acts arising out of a relationship that "began as an adult, consenting relationship." (Doc. # 116, p. 9). But that is not so. To the contrary, *Marcus* makes clear that consensual conduct does *not* violate the TVPA. 628 F.3d at 45 n.11.

In *Marcus*, an initially consensual relationship rapidly turned into a non-consensual relationship involving violence, torture, and sexual abuse. *Id.* at 39–40, 45. The court correctly instructed the jury that consensual conduct did not violate the statute. *Id.* at 45 n.11. In turn, the evidence overwhelmingly supported the jury's conclusion that the defendant engaged in rampant, *non*-consensual violence and abuse. For example,

> Marcus tied [the victim's] hands together with rope, made [the victim] lie down on a coffee table, and told [the victim] he was going to put a safety pin through her labia. Because she began to scream and cry, Marcus put a washcloth in [the victim's] mouth and whipped her with a kitchen knife in

> an unsuccessful attempt to force her to stop crying. Marcus proceeded to put the safety pin through [the victim's] labia and attached a padlock to it, closing her vagina.

Id. at 40. Marcus's victim was forced to remain with him for two years. 487 F. Supp. at 292.

The non-consensual relationship in *Marcus* stands in stark contrast to the relationship described in the amended complaint. Ms. Ransome makes no allegation of physical abuse, violence, or torture. Rather, the amended complaint musters nothing more than conclusory and non-specific allegations of threats of "serious harm," unadorned by any factual explanation of what those "threats" entailed. (Am. Compl. ¶ 8).[2] Where the amended complaint is specific, it describes a mutually beneficial relationship between an older, wealthy man, and a young, worldly, ambitious woman, who is upset that her benefactor did not secure her admission to a fashion school to which she never applied. Where the TVPA clearly applied to the violent and non-consensual relationship at issue in *Marcus*, it plainly does not apply to the consensual

[2] The amended complaint's reliance on conclusory, generalized allegations of "threats," "harm, and "coercion," demonstrate the necessity of striking the scandalous and immaterial allegations dominating the first half of the complaint. *Supra* Part I; *see* Fed. R. Civ. P. 12(f). It is apparent Ms. Ransome hopes to compensate for her complaint's lack of substance by bootstrapping into this case these irrelevant and impertinent allegations.

[redacted]

relationship described by the amended complaint. The *Marcus* decision offers no support to Ms. Ransome's argument.

Indeed, Ms. Ransome's unsupported assertion that she was "trafficked" for sex against her will does a disservice to the thousands of people in the United States who, each year, actually suffer from sex trafficking. Sex trafficking is a form of modern day slavery. *Sex Trafficking*, NATIONAL HUMAN TRAFFICKING HOTLINE, https://humantraffickinghotline.org/type-trafficking/sex-trafficking (last visited March 9, 2018). "Sex traffickers frequently target victims and then use violence, threats, lies, false promises, debt bondage, or other forms of control and manipulation to keep victims involved in the sex industry for their own profit." *Id.* Sex traffickers do not allow their victims to travel freely, as Ms. Ransome did, and sex trafficking victims do not move from relationship to relationship reaping the benefits of a wealthy lifestyle, as Ms. Ransome did. Real sex trafficking is not glamorous; it is not a wealthy lifestyle funded by a rich boyfriend. *See, e.g.*, *Sex Trafficking Story, Escort Services*, NATIONAL HUMAN TRAFFICKING HOTLINE, https://humantraffickinghotline.org/resources/sex-trafficking-story-escort-services-paula (last visited March 9, 2018).

For these reasons, as well as those given in the motions to dismiss filed by Mr. Epstein, Ms. Groff and Kellen, which Ms. Maxwell here adopts, the allegations in the amended complaint fall outside the scope of the TVPA. The case should be dismissed with prejudice.

B. The amended complaint fails to state a claim for relief

Assuming the TVPA applies to the facts alleged by Ms. Ransome, which it doesn't, this case should be dismissed because the amended complaint fails to state a claim on its own terms.

i. The amended complaint impermissibly lumps all Defendants together in violation of Rule 8

As explained by Mr. Epstein, Ms. Groff, and Ms. Kellen in their respective motions to dismiss, the amended complaint is incurably infected with "group pleading." (Doc. # 104-1, p. 15–16; Doc. # 111, p. 8–9). Rule 8 requires a complaint to provide "specification as to the particular activities by any particular defendant." *Am. Sales Co., Inc. v. AstraZeneca AB*, No. 10 Civ. 6062, 2011 WL 1465786, at *5 (S.D.N.Y. Apr. 14, 2011). A court must dismiss a complaint that fails to "indicate clearly the defendants against whom relief is sought and the basis upon which the relief is sought against the particular defendants." *Martin v. City of New York*, No. 07 Civ. 7834, 2008 WL 1826483, at *1 (S.D.N.Y. Apr. 23, 2008).

Here, the amended complaint repeatedly attributes conduct to all Defendants without providing supporting factual allegations sufficient to put Ms. Maxwell on notice as to what conduct is attributed to her. (*See, e.g.*, Am. Compl. ¶¶ 34, 40, 55, 57, 63). Ms. Ransome already failed once to correct this deficiency when given the opportunity. Her repeated violation of Rule 8 requires this Court to dismiss the amended complaint. *See Atuahene v. City of Hartford*, 10 Fed. App'x 33, 34 (2d Cir. 2001) (dismissing plaintiff's complaint which "lump[ed] all the defendants together and provide[d] no factual basis to distinguish their conduct"); *O & G Carriers, Inc. v. Smith*, 799 F. Supp. 1528, 1538 (S.D.N.Y. 1992) (same).

ii. The amended complaint fails under *Iqbal* and *Twombly*

"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.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The plausibility pleading requirement requires a complaint to articulate *facts* supporting the reasonable inference of liability. *Id.*; *Twombly*, 550 U.S. at 556. A complaint that relies on a recitation of the elements of a cause of action or legal conclusions, "unadorned" by factual support, cannot survive a motion to dismiss. *Iqbal*, 556 U.S. at 678.

"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." *Id.* A complaint must do more than establish a "possibility" that the defendant is liable; it must show that liability is "plausible." *Id.* "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.'" *Id.* (quoting *Twombly*, 550 U.S. at 557). The amended complaint falls far short of these standards. Dismissal is therefore required.

To the extent the amended complaint differentiates between the named Defendants, its allegations are implausible. Buried in Ms. Ransome's thirty-one page amended complaint are a mere five general, conclusory allegations against Ms. Maxwell.

- Ms. Maxwell told Ms. Ransome that Mr. Epstein promised to help Ms. Ransome get into F.I.T. or a similar institute, but that promise went unfulfilled. (Am. Compl., ¶¶ 38–41, 50, 53, 59–62).
- Ms. Maxwell told Ms. Ransome to provide Mr. Epstein with body massages in order for Mr. Epstein to help Ms. Ransome get into F.I.T., and Ms. Maxwell instructed Ms. Ransome how to perform the tasks. (*Id*. at 39–47).[3]
- Ms. Maxwell "ordered" Ms. Ransome to have sex with Mr. Epstein. (*Id*. at 47–48, 61).
- Ms. Maxwell "used possession and control of [Ms. Ransome's] passport to induce and coerce [Ms. Ransome] into performing sexual acts with [Mr. Epstein] and others." (*Id*. at 45, 54).
- Ms. Maxwell "intimidated, threatened, humiliated and verbally abused" Ms. Ransome in order to coerce her into sexual compliance. (*Id*. at 43–50).

These allegations are insufficient under *Iqbal* and *Twombly*.

[3] [redacted]

Section 1951 only affords civil liability when the actor "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." 18 U.S.C. § 1591(a) (2006). The factual allegations above, however, fail to create a plausible inference that Ms. Maxwell is liable under the statute; they do not show that Ms. Maxwell recruited, enticed, harbored, or transported Ms. Ransome knowing that force, fraud, or coercion would be used to cause her to engage in a commercial sex act. Ms. Ransome's allegations "do not permit the court to infer more than the mere possibility of misconduct." *See Abu Dhabi Commercial Bank v. Morgan Stanley & Co., Inc.*, 651 F. Supp. 2d 155, 170 (S.D.N.Y. 2009). The amended complaint, therefore, must be dismissed.

iii. The amended complaint fails to plead fraud

a. The amended complaint fails to plead fraud with particularity

Ms. Ransome's complaint alleges fraud. (*See, e.g.*, Am. Compl., ¶¶ 40, 58–64). As a result, she must meet the heightened pleading requirements of Rule 9(b), above and beyond the plausibility standard articulated in *Iqbal* and *Twombly*. Fed. R. Civ. P. 9(b). Rule 9(b) requires allegations of fraud to be pleaded "with particularity." *Id.*

> To satisfy this requirement, a complaint must "specify the time, place, speaker, and content of the alleged misrepresentations," "explain how the misrepresentations were fraudulent and plead those events which give rise to a strong inference that the defendant[] had an intent to defraud, knowledge of the falsity, or a reckless disregard for the truth."

Cohen v. S.A.C. Trading Corp., 711 F.3d 353, 359 (2d Cir. 2013) (quoting *Caputo v. Pfizer, Inc.*, 267 F.3d 181, 191 (2d Cir. 2001)). "An ample factual basis must be supplied to support the [fraud] charges." *O'Brien v. Nat'l Prop. Analysts Partners*, 936 F.2d 674, 676 (2d Cir. 1991); *see also Rosner v. Bank of China*, No. 06-cv-13562, 2008 WL 5416380, at *5 (S.D.N.Y. Dec. 18,

2008), *aff'd*, 349 F. App'x 637 (2d Cir. 2009) (requiring a plaintiff, under Rule 9(b), to plead specific facts which give rise to "strong inference of actual knowledge" of the alleged fraud). Rule 9(b) does not license plaintiffs "to base claims of fraud on speculation and conclusory allegations." *O'Brien*, 936 F.2d at 676.

The sum total of Ms. Ransome's fraud claim is as follows: She claims that "[a]ll Defendants," including Ms. Maxwell, violated 18 U.S.C. § 1591 because they fraudulently promised her that Mr. Epstein, using his "wealth and influence," would help her get into the F.I.T. and advance her career. (Am. Compl. ¶¶ 38, 40, 41, 58, 60, 61). According to Ms. Ransome, the Defendants "knew that [she] was actually being recruited for sexual purposes" and made the false representation "to ensure that [she] would cooperate in fulfilling Epstein's sexual desires." (*Id*.) Ms. Ransome does not allege, however, that Mr. Epstein (or the other Defendants) promised to circumvent the entire application process, that she need not even apply, and that she would then mysteriously be admitted to F.I.T. or a similar institute of higher education.

Ms. Ransome's allegations fail to satisfy Rule 9(b) because she includes no facts to support her fraud claim, much less an "ample factual basis." *See O'Brien*, 936 F.2d at 676. The amended complaint lacks facts showing when or where Ms. Maxwell allegedly made any promises, the content of any promises, nor does it explain how any misrepresentations were fraudulent. Moreover, nothing in the amended complaint supports the "strong inference" that Ms. Maxwell made a promise with the requisite intent to defraud. *See Cohen*, 711 F.3d at 359.

Ms. Ransome points to her conclusory allegations that Ms. Maxwell made promises that were "knowingly false" and "not acted upon." (Am. Compl. ¶ 53). She does not aver that Ms. Maxwell's promise was "knowingly false" when made. And "fraudulent intent cannot be inferred merely from the non-performance of a party's representations." *Greenberg v. Chrust*,

198 F. Supp. 2d 578, 583 (S.D.N.Y. 2002) ("[T]he failure to fulfill a promise to perform future acts is not grounds for a fraud action." (quoting *Cohen*, 25 F.3d at 1172)). These conclusory allegations, therefore, are insufficient to state a fraud claim under Rule 9.

Ms. Ransome's fraud claim fails for yet another reason: She never applied to F.I.T. Ms. Maxwell cannot be liable for fraudulently stating that Mr. Epstein would secure her admission to F.I.T. when Ms. Ransome never even applied.

For these reasons, as well as those given by Mr. Epstein, Ms. Groff, and Ms. Kellen, (Doc. # 104-1, p. 9–16; Doc. # 111, p. 7-13), this Court should dismiss the amended complaint.

b. The amended complaint fails to plead reasonable reliance

A fraud claim must plead facts establishing reasonable reliance on the allegedly fraudulent promise. *Crigger v. Fahnstock & Co., Inc.*, 443 F.3d 230, 234 (2d Cir. 2006). Here, however, Ms. Ransome merely states, in conclusory terms, that she "reasonably relied" on the alleged fraudulent misrepresentations. (Am. Compl. ¶ 53). She does not include any facts to support this assertion. Thus, Ms. Ransome has not shown reliance on the alleged promise.

Nor has she shown that any such reliance was reasonable. Ms. Ransome had only just met Mr. Epstein when he allegedly told her that he would use his wealth and connections to get her admitted into F.I.T. or a similar institution. (*Id.* ¶ 36, 38). It is preposterous that a reasonable person would rely on such a promise from a person she barely knew. No reasonable person would rely on the promise of a virtual stranger claiming he would secure her admission to college so long as she gave him sexual favors. *See Schlaifer Nance & Co. v. Estate of Andy Warhol*, 119 F.3d 91, 98 (2d Cir. 1997) (refusing to find reasonable reliance when "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"); *see also Abbey v. Skokos*, No. 11-1037-cv, 2013 WL 336010, at *1 (2d Cir. Jan 30, 2013) (stating that a plaintiff's reliance is unreasonable if "through minimal diligence" she should have discovered the truth). Further, Ms. Ransome does not allege that she knew Mr. Epstein had gotten others into F.I.T., that he was on the faculty or staff there, or had particular connections to the school, or any reason to believe Ms. Maxwell would have any additional bases for making any such promises. The lack of detail regarding the promise; the subject of the agreement (sexual favors); and the promise of admission into an institution of higher education would cause any reasonable person to question, not rely, on such a statement. Ms. Ransome has failed to carry her burden of pleading reasonable reliance.

iv. The amended complaint fails to plead coercion

As set forth in the motions to dismiss filed by Mr. Epstein, Ms. Groff, and Ms. Kellen, the amended complaint fails to include factual allegations to support the contention that Defendants used "coercion" to traffic Ms. Ransome. Section 1591 defines coercion, as:

> (A) threats of serious harm or physical restraint against any person; [or]
> (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.

18 U.S.C. § 1591(e)(2). Serious harm can be "physical or nonphysical, including psychological, financial, or reputational harm," but it must be "sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm." 18 U.S.C. § 1591(e)(4). As explained below, the amended complaint does not contain any factual allegations of coercive conduct. The most it includes is language cribbed from the statute and conclusory allegations which are not presumed as true and provide no support for Ms. Ransome's contentions. (*See, e.g.*, Am. Compl. ¶ 48); *see Iqbal*, 556 U.S. at 681.

First, the complaint does not show that Defendants made "threats of serious harm to or physical restraint" against Ms. Ransome. For example, Ms. Ransome claims "Maxwell and Epstein threatened [her] that . . . they [] had the ability to make sure that [she] would not obtain formal education or modeling agency contracts" if she did not comply with their requests. (Am. Compl. ¶ 41); *see also* (*Id*. ¶¶ 50, 52). The suggestion that a well-traveled, educated, adult woman could believe that Mr. Epstein, much less his alleged cohort Ms. Maxwell, had the ability to prevent every institution of higher education from accepting her, and every modeling agency in the world from hiring her, is ridiculous. *See* 18 U.S.C. § 1591(e)(4). This statement, as a matter of law, is not a threat.

To continue the parade of conclusory allegations, Ms. Ransome argues that "Defendants Epstein and Maxwell intimidated, threatened, humiliated and verbally abused Plaintiff in order to coerce her into sexual compliance." (Am. Compl. ¶ 48). Instead of putting forth facts to support her claim, the amended complaint merely parrots the statutory definition of serious harm. (*Id.* ("Defendants Epstein and Maxwell "threatened [her] with serious psychological, financial, and reputational harm, compelling Plaintiff to perform and continue performing the commercial sexual activity demanded by Defendants.")); *see also* 18 U.S.C. § 1591(e)(4). Every alleged threat in the amended complaint suffers from these deficiencies. (*See, e.g.,* Am. Compl. ¶¶ 50).

The next allegation is focused on Mr. Epstein's wealth and the fact that he bankrolled a luxurious lifestyle for Ms. Ransome in New York. The amended complaint contends that these facts in combination—or in and of themselves, the amended complaint is unclear—were part of a scheme or plan that caused Ms. Ransome to believe that she must perform sexual acts with Mr. Epstein or suffer unspecified "serious harm." (*Id.* ¶¶ 50–52). But neither wealth nor the revocation of a lifestyle constitutes serious harm. The amended complaint does not include a

single fact converting Mr. Epstein's wealth and his generosity towards Ms. Ransome into a threat of serious harm. *See* 18 U.S.C. § 1591(e)(4).

Finally, Ms. Ransome variously and inconsistently claims that some or all of the "Defendants" withheld her passport and restricted her travel, without specifying when her passport was taken from her. (Am. Compl. ¶¶ 45, 49, 51, 54). The amended complaint does not, however, allege that Ms. Ransome attempted to travel internationally but was stopped only because the "Defendants" withheld her passport. In fact, the amended complaint shows exactly the opposite. Ms. Ransome was allowed to, and did, travel of her own accord, even when acting in defiance of Defendants' alleged threats of serious harm. (*Id*. ¶ 56).

v. The amended complaint fails to plead a causal link

As explained in Mr. Epstein and Ms. Groff's motion to dismiss, the amended complaint fails to demonstrate that the alleged fraudulent and coercive conduct "caused" Ms. Ransome to engage in a commercial sex act. (Doc. # 104-1, p. 19). *See 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) (To violate Section 1591, a "commercial sex act . . . [must] be a product of force, fraud or coercion."). Ms. Ransome consented to enter into a relationship with Mr. Epstein and acted of her own free will during the relationship. Then, when she terminated the relationship, she felt deprived and dissatisfied with the termination of the benefits that came along with dating a billionaire financier. A partner's generosity is not a "commercial sex act" that 18 U.S.C. § 1591 intends to punish.

vi. Sections 1592, 1593A, and 1594(a)–(c) do not provide relief

Neither does the amended complaint state a claim for relief under sections 1952, 1953A, or 1954. On this score, Ms. Maxwell adopts and incorporates the arguments made by Mr. Epstein, Ms. Groff, and Ms. Kellen. (Doc. # 104-1, p. 20–22; Doc. # 111, p. 15–16 & n.9–n.10).

First, Ms. Ransome cannot state a claim under section 1592 because she has no claim under section 1591. A violation of the former must be predicated on a violation of the latter. 18 U.S.C. § 1592 (requiring proof that the defendant "knowingly destroy[ed], conceal[ed], remove[d], confiscat[ated] or possesse[d] any actual or purported passport" "in the course of violating section . . . 1591" or "with the intent to violate section . . . 1591"). Here, because Ms. Ransome cannot plausibly allege that Ms. Maxwell violated section 1591, (*supra* Parts II.A–II.B.v), she cannot seek relief under section 1592 either.

Second, section 1593A requires proof that a defendant "benefit[ted], financially or by receiving anything of value," from participating in the improper venture. 18 U.S.C. § 1593A. The amended complaint fails to identify even a single financial benefit or thing of value received by Ms. Maxwell. In fact, the only person who benefitted and received a financial benefit from the relationship is Ms. Ransome. [4]

Ms. Ransome does not seriously contend otherwise. In fact, in response to the motions to dismiss, all she has to say is this:

> For Section 1593A, Ms. Ransome pled facts alleging that all Defendants benefited financially from participating in the sex trafficking venture. . . . Thus, the statute provides that "[w]hoever knowingly benefits, financially or by receiving anything of value, from participation" in an illegal venture of the type at issue here has violated the applicable criminal chapter. The Amended Complaint alleges that the Defendants obtained financial and other benefits from their illegal enterprise "up to the present in some form or another." . . . As an illustration, until the Defendants divest themselves of the gains from their illegal enterprise, they remain in violation of the law. Such allegations are all that is required to survive a motion to dismiss.

[4] In any event, section 1593A was enacted in December 2008, after the events in this case. It cannot provide a basis for relief. (Doc. # 104-1, p. 21–22; Doc. # 111, p. 16 n.10).

(Doc. # 115, p. 17–18). Nowhere in this defense of the amended complaint does Ms. Ransome even attempt to identify the "gains" Ms. Maxwell allegedly received. As with the amended complaint, "these are merely legal conclusions" without any factual allegations to support them. *See Twombly*, 550 U.S. at 565.

Finally, section 1594(a)–(c) provides no relief to Ms. Ransome. At the time of the events alleged in the amended complaint, section 1594(a) prohibited "attempts" to violate section 1591. The amended complaint does not, however, allege that Ms. Maxwell *attempted* anything unlawful; it alleges she *succeeded* in acting unlawfully. This is not an attempt case. But even if it were, the amended complaint would come up short, because it fails to state a claim for relief under section 1951. *Supra* Parts II.A–II.B.v.

For their part, sections 1595(b) and (c) have nothing to do with this civil case. Those sections, as they existed in 2006 and 2007, applied to sentencing and forfeiture proceedings in criminal cases for unlawful sexual trafficking. They did not and do not provide any form of relief in this civil action. Ms. Ransome ignores this in her response to the motions to dismiss. (Doc. # 115, p. 18). Ignoring this fact is reason enough to dismiss any claims asserted under these provisions.

III. AS TO GHISLAINE MAXWELL, ANY FURTHER AMENDMENT OF THE COMPLAINT WOULD BE FUTILE

A comparison of plaintiff's amended complaint with her deposition testimony demonstrates that Ms. Ransome has no factual basis from which to amend and correct her pleading deficiencies.

First, Ms. Ransome claims the promise to get her into F.I.T. went unfulfilled. (Am. Compl. ¶¶ 38-41, 50, 53, 59-62). Yet, [redacted]

[redacted]

Second, Ms. Ransome alleged that Ms. Maxwell instructed her how to perform massages on Mr. Epstein in exchange for help with her FIT admission. But she admitted [redacted]

Third, Ms. Ransome alleges she was "ordered" by Ms. Maxwell to have sex with Mr. Epstein. Yet, when asked for [redacted]

[5] At her counsel's suggestion and behest, Ms. Ransome was deposed in February 2017, following the filing of her original Complaint in this case. (Doc. 116-1, Ex. 2).

Fourth, Ms. Ransome claims that Ms. Maxwell, together with the other defendants, "used possession and control of [her] passport" to induce and coerce her into sexual acts. (Am. Compl. ¶ 45, 54) Yet she admits that [redacted]

Finally, Ms. Ransome contends that [redacted]

(Doc. #116-1, Ex. 2, *passim* and pp. 179-80).

No point would be served by allowing Ms. Ransome yet another opportunity to re-plead her case. Her amended complaint is deficient as described above, and when she had the opportunity during her deposition to support her allegations with facts, she had nothing of consequence to say. Ms. Maxwell is not and cannot be liable for sex trafficking.

IV. THE AMENDED COMPLAINT IS UNTIMELY

Whatever the merit of the amended complaint (and there is none), this Court should dismiss it for yet another reason: It is time-barred.

The motions to dismiss filed by Mr. Epstein, Ms. Goff, and Ms. Kellen explain why. Ms. Maxwell here adopts and incorporates by reference the arguments made in those motions. (Doc. # 104-1, p. 24–29; Doc. # 111, p. 16–18). In brief, at the time of the events alleged in the amended complaint (late 2006 and early 2007), the applicable statute of limitations was four years. *See* 28 U.S.C. § 1658(a) (2006); *Abarca v. Little*, 54 F. Supp. 3d 1064, 1068 (D. Minn. 2014). The complaint was filed on January 26, 2017, after the expiration of that four-year period.

In response to the motions to dismiss, Ms. Ransome invokes the Trafficking Victims Protection Reauthorization Act (TVPRA)–enacted in 2008, and effective June 20, 2009–which provides a ten-year statute of limitations. Pub. L. No. 110-457, § 221(2)(B), 122 Stat. 5044, 5067 (codified at 18 U.S.C. § 1595(c)). Ms. Ransome argues that because her claim had not expired on June 20, 2009, "that is sufficient to permit an extension of the statute of limitations." (Doc. # 115, p. 22). Ms. Ransome's argument fails, however, because it confuses power with intent. Congress has the power to extend a statute of limitations for unexpired claims, but it did not manifest an intent to do so here.

Statutory interpretation is always a question of intent. *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001). In turn, a bedrock principle of statutory interpretation is that Congress does not intend its statutes to have retroactive effect absent a clear, express statement to the contrary. *INS v. St. Cyr*, 533 U.S. 289, 316 (2001); *accord Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37 (2006) ("[A] statute shall not be given retroactive effect unless such construction is required by explicit language or by necessary implication." (quotation omitted)); *United States v. Sec. Indus. Bank*, 459 U.S. 70, 79–80 (1982) ("The presumption is very strong that a statute was not meant to apply retrospectively, and it ought never to receive such a construction if it is susceptible of any other." (quotation omitted)). "The principle that statutes operate only prospectively . . . is familiar to every law student." *Sec. Indus. Bank*, 459 U.S. at 79.

Here, all agree that the TVPRA contains no clear statement of intent to apply the amended statute of limitations to claims that had already accrued at the time of its enactment. Nor is there a dispute that Ms. Ransome's claim had accrued by the time of the 2008 amendment. Thus, absent compelling evidence of an intent to the contrary, the 2008 amendment does not apply to this case. *See St. Cyr*, 533 U.S. at 316. Ms. Ransome has no such evidence.

In fact, the available evidence points to precisely the opposite conclusion: Congress intended the amended statute of limitations to apply only to claims accruing after its effective date. "[I]n determining a statute's temporal reach, generally, [the] normal rules of construction apply," including "other construction rules" that may "remove the possibility of retroactivity." *Lindh v. Murphy*, 521 U.S. 320, 326 (1997). In this case, if Congress had intended such a result, it knew full well how to extend a limitations period for claims that have already accrued but not yet expired. *See Stronger v. California*, 539 U.S. 607, 616–17 (2003) (passing a law expressly "extending unexpired limitations periods" is a "tailored approach to extending limitations periods . . . taken in modern statutes"). All Congress had to do was utilize language similar to that which it has employed many times before. *See, e.g.*, 18 U.S.C. § 3293 (notes on effective date of 1990 amendment) ("The amendments made by subsection (a) shall apply to any offense committed before the date of the enactment of this section, if the statute of limitations applicable to that offense had not run as of such date."); *id.* (notes on effect of 1989 amendment) ("(3) EFFECT OF AMENDMENTS ON OFFENSES FOR WHICH THE CURRENT PERIOD OF LIMITATIONS HAD NOT RUN.—The amendments made by this subsection shall apply to an offense committed before the effective date of this section, if the statute of limitations applicable to that offense under this chapter had not run as of such date."). But Congress deliberately chose not to do so when it reauthorized the TVPA in 2008, thereby confirming its intent not to extend the limitations period of accrued but not-yet-expired claims such as Ms. Ransome's. At the very least, because Congress decided not to include such standard language in the TVPRA, Ms. Ransome cannot overcome the presumption against retroactivity.

Ms. Ransome pins her hopes on one case from the Eastern District of New York, *Lama v. Malik*, which she mischaracterizes as "*Second Circuit* precedent . . . directly on point." (Doc.

#115, p. 22 (emphasis added)). That decision applied the 2008 amendment to a claim accruing before the amendment was enacted. 192 F. Supp. 3d 313, 321 (E.D.N.Y 2016). This Court should decline to follow the decision in *Lama*, however, because it misapplied the Supreme Court's decision in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

Under *Landgraf*, "the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach." *Id.* at 280. The *Lama* court concluded Congress had not expressly prescribed the temporal reach of the 2008 amendment because it did not contain an express provision precluding retroactive application. 192 F. Supp. 3d at 321–22. But that reasoning flips the analysis on its head. The proper starting point is a presumption *against* retroactivity, rebuttable only if there is an express statement providing for retroactive application. The improper starting point, the one employed by the court in *Lama*, is a presumption *in favor of* retroactivity, rebuttable only if there is an express statement precluding retroactive application. And as explained above, Ms. Ransome cannot overcome the presumption against retroactivity in this case because Congress chose not to employ readily available, time-tested statutory language authorizing an extension of the statute of limitations for claims that had already accrued but not yet expired. Properly employed, therefore, the interpretive framework of *Landgraf* dictates a conclusion that "Congress has expressly prescribed the [TVPRA's] proper reach"—it applies only to claims accruing after it became effective. 51 U.S. at 280. Accordingly, the ten-year statute of limitations in the TVPRA does not apply to Ms. Ransome's case.

But even if the ten-year statute of limitations were to apply, Ms. Ransome's complaint is time-barred. Because Ms. Ransome filed her complaint on January 26, 2017, she cannot state a claim for relief based on conduct occurring more than ten years before that date, i.e., January 26, 2007. That reality renders irrelevant the factual allegations in the first sixty paragraphs of the

amended complaint, which allege conduct before and including January 2007. In turn, nothing in the six paragraphs that follow (which allege conduct after January 2007) supports a claim under any section of the TVPA. In particular, Ms. Ransome, voluntarily and of her own free will, left the United States in January 2007 and returned in February 2007. (Am. Compl. ¶ 61). Because Ms. Ransome had the "physical freedom" to travel outside the "control" of Mr. Epstein, she cannot state a claim based on anything after her voluntary departure in January 2007. *See, e.g.*, *Oluch v. Orina*, 101 F. Supp. 3d 325, 330 (S.D.N.Y. 2015) (Section 1595 claim accrued when plaintiff first left defendant's home); *Abarca*, 54 F. Supp. 3d at 1070 (Section 1595 claim accrued when plaintiff traveled home to Mexico and had "physical freedom").

To be sure, as explained in the motions to dismiss filed by Mr. Epstein, Ms. Groff, and Ms. Kellen, any claim Ms. Ransome might have had accrued no later than January 2007, and therefore expired before she filed the first complaint on January 26, 2017. (Doc. # 104-1, p. 24–29; Doc. # 111, p. 16–18). The amended complaint alleges that in January 2017, Ms. Ransome went on a "recruiting" trip to South Africa to find an administrative assistant for Mr. Epstein. Ms. Ransome says she refused to complete this assignment, knowing that any recruit would not be given a bona fide job. Instead, the recruit would be forced to provide Mr. Epstein with sexual favors, like Ms. Ransome claims she was forced to do. These allegations demonstrate that, at least by the time of the January 2007 trip to South Africa, Ms. Ransome was no longer relying on any promises from Mr. Epstein or Ms. Maxwell of career or educational advancement. According to Ms. Ransome herself, she knew full well of Defendants alleged scheme to traffick her for sex. Because her complaint was filed more than ten years later, it is untimely.

[redacted]

[redacted]

Any way you view it, therefore, Ms. Ransome filed her complaint after the statute of limitations expired. This Court should dismiss the amended complaint with prejudice.

V. THIS COURT IS NOT THE PROPER FORUM

As explained in the previously filed motions to dismiss, which Ms. Maxwell incorporates by reference, the amended complaint fails to establish the necessary "suit-related conduct" in New York. *See Walden v. Fiore*, 134 S. Ct. 1115, 1121–22 (2014). The acts allegedly giving rise to liability occurred outside the applicable statute of limitations, whether it be four years or ten years. (Doc. # 104-1, p. 24–30; Doc. # 111, p. 18). As a result, Ms. Ransome's allegations against Ms. Maxwell do not "arise out of or relate to" to Ms. Maxwell's contacts with New York, as is required to support jurisdiction. *See Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 141 (2d Cir. 2014). Additionally, because the amended complaint does not allege that Ms. Maxwell is domiciled in New York, this Court cannot exercise general jurisdiction over her in this case. Accordingly, this Court lacks personal jurisdiction over Ms. Maxwell and venue is improper.

CONCLUSION

For these reasons, Ms. Maxwell respectfully requests that this Court dismiss this case with prejudice.

Dated: March 13, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 13, 2018, I served the accompanying *Memorandum of Law in Support of Ghislaine Maxwell's Motion to Dismiss* on the following counsel of record:

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