FILED UNDER SEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE 43,

Plaintiff,

vs.

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

Defendants.

CASE NO. 17 Civ 616 (JGK)

MEMORANDUM OF LAW IN SUPPORT OF
SUPPLEMENTAL MOTION TO DISMISS

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Defendants Jeffrey Epstein ("Epstein") and Lesley Groff ("Groff") (collectively "Defendants") move, pursuant to Fed. R. Civ. P. 12(b)(2) and (6), to dismiss the First Amended Complaint ("FAC") filed by plaintiff Jane Doe ("Plaintiff"). Exh. A.

The FAC represents Plaintiff's second unsuccessful bite at the apple. On January 26, 2017, Plaintiff filed her original complaint in this matter ("Complaint"). Exh. B. On May 15, 2017, and at the suggestion of the Court, Defendants served a letter on Plaintiff identifying a wide range of deficiencies warranting dismissal of the Complaint ("Deficiency Letter"). Exh. C. On June 5, 2017, Plaintiff filed the FAC – without fixing the deficiencies cited in the Deficiency Letter.

Indeed, just like the Complaint that it replaced, the FAC should be dismissed because the FAC: (a) fails to state a claim under 18 U.S.C. § 1595 ("Section 1595"), which is the sole claim asserted by Plaintiff; (b) relies on a claim which is barred by the statute of limitations; (c) fails to allege personal jurisdiction over Defendants; and (d) improperly lays venue in the Southern District of New York. The FAC should be dismissed with prejudice. Plaintiff's testimony and the documents that she produced in an action captioned [redacted] *v. Maxwell*, No. 15-Civ.-07433 (RWS) ("[redacted] Matter"), confirm that any further re-pleading would be futile.

The FAC also repeats a laundry list of immaterial, impertinent and scandalous allegations about Epstein which were contained in the Complaint and should be stricken from the FAC in the event that it is not dismissed in its entirety.

BACKGROUND

At its heart, the FAC fails because it chronicles a sexual relationship between two consenting adults and then, ten years after the relationship ended, tries to shoehorn that relationship into a statutory scheme prohibiting sex trafficking that simply does not apply.

Plaintiff alleges that she was a [redacted] FAC ¶¶ 3, 34, 64. [redacted] of that brief period, Plaintiff claims to have engaged in a sexual relationship with Epstein, perceiving him to be a man of "wealth and influence" who could take care of her. FAC ¶ 38. According to the FAC, Epstein did take care of her, providing her with a comfortable lifestyle, including an apartment on the Upper East Side of Manhattan, access to a car service and a cell phone. FAC ¶ 52.

Plaintiff left New York and returned to her [redacted] FAC ¶ 55. [redacted] FAC ¶ 61. Plaintiff left the United States again in May 2007, also on her own accord and [redacted] ¶ 64. However, ten years later, after the expiration of any conceivable statute of limitations period, and in a moment of stunning opportunism, Plaintiff now sues for violation of anti-trafficking law, allegedly because Epstein did not help her to [redacted] and advance her career.

The FAC should be dismissed with prejudice because Plaintiff plainly is not a victim of sex trafficking and because the anti-trafficking law clearly is not meant to regulate, let alone prohibit, the consensual adult relationship alleged here. Moreover, the FAC fails to state a claim under Section 1595, advances a claim barred by the statute of limitations, fails to allege personal jurisdiction over Defendants, and improperly lays venue in the Southern District of New York.

The FAC also should be dismissed *with prejudice* because Plaintiff cannot identify a set of facts to support a legally sufficient complaint. Indeed, the deposition testimony and document production that Plaintiff provided in the [redacted] Matter make clear that any effort to redraft her

complaint would be futile.[1] In the [redacted] Matter, [redacted] Dep. 57-58, [redacted]

Plaintiff also acknowledged in the [redacted] Matter that she had considerable experience with adult relationships. She described a romantic relationship that she had before she traveled [redacted]

Plaintiff also explained that in 2006 she had considerable experience with, and opportunities to, travel abroad. Dep. 100; Dep. Ex. 4. [redacted] Dep. 55-56, 101. Not surprisingly, during [redacted]

[1] Pursuant to the Stipulation and Protective Order entered on January 19, 2018 (ECF# 100), the evidence that Plaintiff produced in the [redacted] Matter and referenced in this motion includes her deposition testimony and her document productions that were marked as exhibits at her deposition. Her deposition is referred herein as "Dep. ___" and the deposition exhibits are referred as "Dep. Ex. _ ." As we advised the Court in our letter of November 22, 2017 (ECF# 85), pursuant to Judge Sweet's Order dated November 14, 2017, the defendant in the [redacted] Matter consented to the use of Plaintiff's testimony and the deposition exhibits, but Plaintiff has refused to consent to the use of the other documents that she produced in the [redacted] Matter.

Plaintiff also admitted in the [redacted] Matter that, contrary to her allegations in the FAC, [redacted] Dep. 235, 251-53.

Plaintiff's evidence in the [redacted] Matter also makes clear that the relevant conduct alleged with respect to her claimed relationship with Epstein occurred beyond the longest potentially applicable statute of limitations. Indeed, Plaintiff's testimony, emails and photographs all demonstrate that by the time she [redacted] (more than ten years before filing the Complaint), she had given up on her relationship with Epstein, decided that Epstein could not be trusted, and had [redacted] Dep. 227-30, 416-17; Dep. Ex. 13.

In short, Plaintiff's evidence in the [redacted] Matter reflects that Plaintiff was not trafficked for sex; she was an educated adult with a [redacted] In just a few short months, Plaintiff admits that she moved between short, intimate relationships with [redacted] Plaintiff clearly pursues and sheds relationships with wealthy men at her discretion.

For the reasons set forth, herein, the sole claim of sex trafficking asserted in the FAC is not legally sufficient and should be dismissed with prejudice.

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 Plaintiff's claim. All of the allegations relating to the Prior Proceedings should be stricken from the FAC. Under Fed. R. Civ. P. 12(f), 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 stricken from the FAC, pursuant to Rule 12(f). First, these allegations are immaterial to this action because the Prior Proceedings did not involve Plaintiff; the matters giving rise to the Prior Proceedings occurred more than a year before Plaintiff moved to New York in 2006. FAC ¶ 24. Plaintiff's counsel conceded during the April 6, 2017 court conference ("April 6 Conference") that Plaintiff had nothing to do with the Prior Proceedings. Plaintiff's testimony in the [redacted] Matter, in which Plaintiff provided a detailed narrative of her relationship with Epstein, confirms that she had no contact with Epstein before the Fall of 2006 and had nothing to do with the Prior Proceedings. Dep. 90, 98, 112-15. Plaintiff has dragged the Prior Proceedings into the FAC simply to paint Epstein in a poor light and divert attention from the glaring deficiencies of her claim.

Second, the allegations of the Prior Proceedings are scandalous, and described by Plaintiff with the breathless language of tabloid publications, lacking both substance and cited sources. See FAC at ¶ 11 ("Defendant Epstein is widely recognized…") and ¶ 22 ("Defendants Epstein and Maxwell have been known …"). Finally, these allegations create a substantial risk that a jury might infer that Epstein is liable in the instant matter simply because of the alleged Prior Proceedings. Indeed, Plaintiff's decision to rely on these allegations reveals this lawsuit for what it is – an opportunistic gambit by Plaintiff to extort a settlement out of Epstein.

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 provides for civil liability for violations of 18 U.S.C. § 1591 and other enumerated statutes. 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 statute does not apply to the alleged relationship between Plaintiff and Epstein or the alleged conduct. Second, the FAC fails to adequately plead that Defendants used "fraud" to cause Plaintiff to engage in a commercial sex act. Third, the FAC fails to allege that Defendants used "coercion" to cause Plaintiff to engage in a commercial sex act. Fourth, the FAC fails to establish that any alleged fraud or coercion "caused" Plaintiff to engage in a commercial sex act. Fifth, the FAC fails to adequately plead that Groff "knew" that Plaintiff would be caused by "fraud" or "coercion" to engage in a commercial sex act. Finally, the FAC fails to meet the *Twombly/Iqbal* standard for pleading any claim in federal court.

All six of these points should be read in the context of one major deficiency in the FAC – Plaintiff has elected to provide the Court with no information about her personal, educational and professional background. There is nothing in the FAC about Plaintiff's age, maturity, level of education, or prior employment experience. Without these factual allegations, the Court is left with little context to consider when evaluating Plaintiff's allegations of fraud and coercion, and when considering whether the overall narrative described by Plaintiff is even plausible. Given Plaintiff's evidence in the [redacted] Matter – that she was an adult with considerable education, a [redacted] – Plaintiff clearly omitted these key personal details to bolster her baseless claim and mislead the Court.

1. Section 1591 Does Not Cover The Alleged Conduct

In enacting Section 1591, Congress explained that "[t]he purposes of this division are 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." Trafficking Victims Protection Act of 2000, Pub. L. 106-386, § 109(9), 114 Stat. 1464, 1466 (emphasis added). It noted that:

> 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. § 102(4), 114 Stat. at 1466. The traffickers "buy children from poor families and sell them into prostitution or into various types of forced or bonded labor." *Id.* They "often transport victims from their home communities to unfamiliar destinations." *Id.* § 102(5), 114 Stat. at 1466. Trafficking is "increasingly perpetrated by organized, sophisticated criminal enterprises" and is "the fastest growing source of profits for organized criminal enterprises worldwide." *Id.* §

102(8), 114 Stat. at 1467. These sort of descriptions do not apply to what is alleged in this action, which is at most (according to the FAC and the evidence provided by Plaintiff) a dispute between an educated adult woman and one in a series of wealthy boyfriends over an unenforceable promise. Simply put, Plaintiff was not a victim of sex trafficking.

First, there are no allegations that "traffickers lured [Plaintiff] into their network by false promises" of a job. Instead, without the involvement of any of the Defendants, Plaintiff traveled to the United States on her own volition. She then voluntarily associated herself with Defendants and engaged in sexual activity with Epstein because, according to her, she was given an Upper East Side lifestyle and she perceived that Epstein could provide her with some advantage in [redacted] These factual allegations do not demonstrate that she was a victim, much less a victim of sex trafficking requiring the protection of Section 1591, a criminal statute.

Plaintiff's evidence in the [redacted] Matter confirms that Section 1591 does not apply to her relationship with Epstein and that Plaintiff cannot draft a legally sufficient complaint. As discussed, above, Plaintiff admitted in the [redacted] Matter that she was well-educated, supported by strong family ties, well-traveled and experienced in adult relationships. Indeed, she acknowledged that, in the space of a few short months, she shifted the object of her attention [redacted] Plaintiff deliberately sought out and voluntarily entered (and exited) relationships with older wealthy men. Plaintiff's evidence in the [redacted] Matter makes clear that she was not trafficked for sex against her will or otherwise duped into the sex trade, and cannot draft a legally sufficient complaint to claim that she was.

Second, to the extent that Plaintiff alleges that Epstein made promises to her that were not fulfilled in a timeframe that Plaintiff expected or wanted (no matter how unreasonable), 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.

In short, Plaintiff's opportunistic relationship with Epstein, as clearly established by her own testimony and her own emails produced in the [redacted] Matter, was not one to which Section 1591 was ever designed to apply.

2. The FAC Fails to Plead Fraud

Plaintiff's claim that 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 Defendants' supposed fraudulent statements and, as a result, the heightened pleading standards set forth in Fed. R. Civ. P 9(b) apply. As the Second Circuit has explained, where a claim is based on predicate acts involving fraud, the plaintiff must state the fraud with particularity pursuant to Rule 9(b). *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").

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 F. App'x. 744, 747 (2d Cir. 2009) (quoting *O'Brien v. Nat'l Prop. Analysts Partners*, 936 F.2d 674, 676 (2d Cir.1991)).

The fraud allegations in the FAC simply do not meet this pleading standard. Indeed, they are premised on the implausible theory that a sophisticated, educated and independent Plaintiff, [redacted] met complete strangers and was duped into an agreement to engage in commercial sex with one of them by [redacted] In her own words, 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 [redacted] and to advance her career, but had no intention of doing so. FAC ¶¶ 38, 53, 58-64. Indeed, the FAC only alleges that Epstein "confirmed" this representation, and that Groff "confirmed and reiterated this promise to Plaintiff many times." FAC ¶¶ 38, 53.

These allegations do not satisfy Rule 9(b) because they fail to adequately specify when and where the allegedly fraudulent statements were made, how (if at all) the alleged statements were fraudulent, and that these statements were made with the requisite intent to defraud. First, the FAC fails to allege with particularity "where and when" the allegedly fraudulent statements were supposedly made. For example, there is no allegation as to when Epstein supposedly made [redacted] or where he made this promise. FAC ¶ 38. The assertion against Groff is equally bare. Instead of providing particulars, the FAC merely states that Groff supposedly "repeated and confirmed" Epstein's promise sometime during the period between "October 2006 and May 2007." *Id.* The bald assertion that Groff "told" Plaintiff that "Epstein would advance Plaintiff's education" is bereft of any details as to when this happened, where they were, or the

circumstances as to why and how Plaintiff would even speak with Groff, a stranger to her, regarding Epstein's alleged [redacted]. FAC ¶ 53. The FAC falls short of the basic fairness requirement, since Defendants are entitled to know when and where they supposedly made fraudulent statements, especially given that Plaintiff's claim is based on events that occurred over ten years ago.

Second, the FAC fails to show how the alleged promises about Plaintiff's prospects for [redacted] if made at all, were fraudulent. The FAC merely states in conclusory terms that the statements were "knowingly false" and "not acted upon." FAC ¶ 53. However, there are no factual allegations to support the assertion that the statements were false when made. Plaintiff's allegations that Defendants did not act on the alleged promises about FIT are insufficient to show that the representations were 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").

Finally, the FAC fails to provide any 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 F. App'x 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 [redacted] 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").

Indeed, Plaintiff has alleged no facts to support the contention that Epstein did not perform as he allegedly promised. To the contrary, the factual allegations state that Epstein promised -- and provided -- generous support to Plaintiff, 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 ¶ 52. The FAC further alleged that Epstein encouraged Plaintiff to fill [redacted] FAC ¶ 59. These specific factual allegations are wholly inconsistent with Plaintiff's conclusory assertion that Epstein had no intention of helping Plaintiff [redacted] Accepting the "factual" allegations as true, they tend to demonstrate that Epstein provided the promised benefits to her, and was working with Plaintiff [redacted] There is no factual assertion that demonstrates any prior intention of Epstein to withhold support in the specific areas of Plaintiff's education or career advancement.

The FAC provides no particulars as to any timeframe in which Plaintiff was to be [redacted] Nor does it provide any particulars as to whether and when Plaintiff submitted her application necessary for admission. Thus, even if Plaintiff was not [redacted] it does not demonstrate that Epstein did not help. It simply means that [redacted] In sum, the FAC fails to allege facts sufficient to infer that Epstein would not follow through on the alleged promises of assistance regarding Plaintiff's admission to FIT. As to Groff, there is no factual allegation of fraudulent intent at all or that Groff knew that Plaintiff was engaged in a sexual relationship with Epstein in exchange for the alleged promises. In sum, the FAC fails to meet the pleading standards required under Rule 9(b) with respect to every element required to establish that Epstein and Groff committed a fraud, and should therefore be dismissed.

Moreover, Defendants submit that the FAC should be dismissed with prejudice. There is nothing in the FAC or the available record which supports the view that Plaintiff can file a legally sufficient complaint. Indeed, while Defendants' Deficiency Letter mapped out the myriad of defects in the Complaint, the FAC fixes none of them. Plaintiff's evidence in the

[redacted] Matter confirms that she cannot do better. For example, Plaintiff alleges in the FAC that Epstein did not help her with [redacted]; she then admits in her deposition and document production that Epstein actually did try to help, including [redacted] Dep. 171-72, 179-80, 235; Dep. Ex. 10. [redacted] Dep. 235, 252-53, 390-92; Dep. Ex. 10. Indeed, during Plaintiff's deposition, she could not offer any proof that she [redacted] and instead admitted she never received any response whatsoever [redacted] Dep. 235, 252-53, 390-92. In short, Plaintiff's evidence in the [redacted] Matter demonstrates that Epstein tried to help Plaintiff gain [redacted] and that she failed to follow through. For these simple reasons, the FAC should be dismissed with prejudice.

b) The FAC Fails for Lack of Reasonable Reliance

In order to state a claim sounding in fraud, among other things, a plaintiff must also plead facts to establish that she reasonably relied on the alleged misrepresentations. *Crigger v. Fahnstock & Co., Inc.*, 443 F.3d 230, 234 (2d Cir. 2006). The FAC does not meet this basic requirement. It merely states in conclusory terms that "Plaintiff reasonably relied" on the alleged misrepresentations (FAC ¶ 53) without providing any factual support for this conclusion. To the contrary, the allegations in the FAC support just the opposite conclusion. According to the FAC, at the time the statement was made about Plaintiff's [redacted] Plaintiff barely knew Epstein – she had only just met Epstein through 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] 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 vagueness of the promise, including that there was no timeframe as to when the [redacted] was to occur, should also have caused an educated and worldly person such as Plaintiff to cast further doubt on the alleged promise, instead of relying on it wholesale as alleged here.

Moreover, the FAC fails to allege facts from which Plaintiff might have reasonably concluded that Epstein had the ability "to have Plaintiff [redacted] was a "done deal." FAC ¶¶ 38, 59. For example, the FAC fails to allege that Epstein was associated [redacted], rather asserting that he merely [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 Andy 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 sum, the FAC contains no allegations concerning any diligence or investigation by Plaintiff into the credibility of any of the statements supposedly made to her. Instead, she alleges that she trusted wholesale any and all statements told to her by complete strangers in a foreign country, and contends on that basis 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.

Plaintiff's evidence in the [redacted] Matter confirms that she cannot plead reasonable reliance. Most fundamentally, as discussed, above, Plaintiff acknowledged that, in 2006, she was not young, inexperienced, or helpless. Plaintiff was a college educated adult, with strong

family ties, and the ability to travel at will around the globe, including trips to visit her mother in [redacted]. Plaintiff also confirmed that Defendants were complete strangers to her when she met them in the United States (Dep. 90-91, 112-15) and that her relationship with Epstein lasted no more than about three months. Plaintiff clearly cannot plead reasonable reliance.

c) The FAC Impermissibly Lumps All Defendants Together

The FAC also engages in rampant "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. Such group-pleading does not satisfy the basic requirement of Rule 8 that a complaint must 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); *Atuahene v. City of Hartford,* 10 F. App'x 33, 34 (2d Cir. 2001) (dismissing complaint because plaintiff "lump[ed] all the defendants together and provided[ed] no factual basis to distinguish their conduct").

Defendants in their Deficiency Letter advised Plaintiff of this defect. In response, Plaintiff simply inserted the phrase "each of" before the word "defendants" as if that would cure the defect and somehow better identify the conduct of the different defendants. See FAC ¶¶ 38, 52, 53, 61, 63 and a comparison of these same paragraphs as set forth in the Complaint. Exh. D.

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. FAC ¶¶ 34. Second, the FAC alleges that "Defendants sent Plaintiff … t[redacted] to recruit" without specifying which defendant supposedly "sent"

Plaintiff. FAC ¶ 55. Third, the FAC alleges that "Defendants Maxwell, [redacted] and Groff each also confirmed and reiterated this promise to Plaintiff many times," but without specifying which of these defendants actually did so or where and when each of the defendants made the alleged statements. FAC ¶ 38. Fourth, the FAC alleges that the "Defendants[] telling Plaintiff that Epstein would use his connections to have her admitted to FIT," but again without specifying which defendant did the "telling" or where and when that occurred. FAC ¶ 40. Fifth, 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 against any one of the Defendants.

3. <u>The FAC Fails to Plead Coercion</u>

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

18 U.S.C. § 1591(e)(2). The FAC simply fails to provide factual allegations to support any of these three definitions of coercion.

First, the allegations of coercion in the FAC are not specific and are wholly conclusory. *See, e.g.*, FAC ¶ 48. The FAC does not allege a single specific factual instance where Epstein or

Groff made a "threat[] of serious harm to or physical restraint against" 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. The fact that 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 to do with whatever sexual activity Plaintiff claims she engaged in with Epstein.

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 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, 55, 64.

Plaintiff has not provided any factual allegations that any of the defendants held her immigration documents in order to prevent her movement, prevented her from traveling, or had any power to affect her ability to travel to or from the United States. To the contrary, the FAC alleges that she traveled to and from the United States as she wished. She admits that she freely "refused to perform the recruitment assignment" allegedly "demanded" by Epstein to find young females to serve in "sexual servitude" while she was in South Africa. FAC ¶ 56. Yet, she was able to come back to the United States.

Third, a withdrawal of [redacted] or refusal to provide living quarters on the Upper East Side 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 lifestyle or assistance for potential educational or career advancement, as to which she had neither a legal right nor moral claim to obtain from Epstein.

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, uneducated, or inexperienced socially. Rather, as indicated below, her testimony and other evidence in the [redacted] Matter shows the opposite. 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 offers no factual support that Defendants engaged in any "abuse or threatened abuse of the law or legal process" required by the statute.

Plaintiff's evidence in the [redacted] Matter demonstrates that Plaintiff cannot successfully redraft her complaint to allege coercion. As discussed, above, Plaintiff was free to come and go at will. She traveled extensively when she was in the United States, including taking at least a [redacted] Dep. 98-99, 103-04, 278-79; Dep. Ex. 4. On each trip, Plaintiff was free to stay with her family or return to New York. But Plaintiff wanted to go back to New York for her own reasons and not due to coercion. Indeed, Plaintiff wanted to return to New York because she liked the lifestyle and wanted to [redacted] Dep. 228-30, 245-48; Dep. Ex. 13. In short, the FAC should be dismissed with prejudice because Plaintiff cannot successfully plead that she was a victim of coercion.

4. The FAC Fails to Plead a Causal Link

The FAC fails to plead that Defendants' alleged fraudulent and coercive conduct "caused" 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.").

Indeed, the FAC should be fairly read to evidence that Plaintiff, then an adult woman, sought and engaged in a consensual sexual relationship with Epstein, an unmarried adult man, on her own accord. 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 be expected of any similar relationship, the financial support she received based on that relationship terminated as well. Whatever unfulfilled promises about an education [redacted] and unwelcome criticism of her appearance that Plaintiff claims to have experienced, the FAC makes clear that her sexual acts were not 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, a criminal statute. If they were, a significant percentage of the population likely would have unwittingly engaged in commercial sex and committed a crime in violation of the statute. As demonstrated in Point B.1. above, the kind of relationship between Plaintiff and Epstein alleged here does not violate the anti-trafficking statute. No crime was committed here.

5. The FAC Fails To Allege Knowledge Against Groff

The FAC fails to allege facts which establish that Groff 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 Groff knew that Plaintiff was engaged in a sexual relationship with Epstein, much less that Groff knew that Plaintiff was engaged in commercial sex caused by fraud or coercion. At best, the allegations show that Groff performed legitimate secretarial functions such as making travel arrangements. FAC ¶ 51.

Plaintiff's conclusion in the FAC that Groff had knowledge is without factual support, and merely parrots the statutory language. FAC ¶ 40 ("knew", "knowingly"). There are simply no facts to show Groff 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 Groff are insufficient to show that she had the "knowledge" as required under Section 1591.

Plaintiff's evidence in the [redacted] Matter shows that Groff's interaction with Plaintiff was limited to secretarial tasks, such as booking flights, confirming receipt of emails from Plaintiff, and relaying messages from Epstein, including that, as of February 9, 2007, Epstein had not yet received Plaintiff's FIT application essay. Dep. Ex. 10. Given this evidence, the claim against Groff should be dismissed with prejudice.

6. <u>The FAC Fails to Allege Any Predicate Acts</u>

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 criminal 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) <u>The FAC Fails to State a Violation of Section 1592</u>

Plaintiff added a claimed violation of 18 U.S.C. § 1592 and alleges that 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 factual support and 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 Defendants ever held either of Plaintiff's passports – let alone both of them -- against her will. The FAC acknowledges that she traveled to and from [redacted] on her own schedule without interference or control by Defendants. As discussed in detail, above, Plaintiff traveled freely to her home countries multiple times, and chose to return to the United States, and admitted that "I did a lot of traveling during my time in the U.S." Dep. 100; Dep. Ex. 4. Third, there is no factual allegation supporting the requisite statutory element that her passport was withheld in order to force her into commercial sex. Notably, and as to Groff, the FAC does not even mention that Groff played any role involving her passports.

Her testimony in the [redacted] Matter that she traveled multiple times to her homes in the [redacted]a, as well as her travels within the United States, confirm that there is no basis for a Section 1592 violation, and that Plaintiff will not be able to successfully plead such a violation. Dep. 98-99, 103-04, 278-79; Dep. Ex. 4.

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

Plaintiff also added a claimed criminal violation of 18 U.S.C. 1593A as a basis for a Section 1595 claim. FAC ¶ 70. This statute, however, was enacted in December 2008, after the events alleged in the FAC had occurred. It therefore has no application here. *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 benefit from a venture in contravention of Section 1592 and 1595. Because the FAC fails to state a violation of Sections 1592 and 1595, as demonstrated above, there cannot be a violation of Section 1593A.

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

In a failed attempt to provide another basis for a Section 1595 claim, Plaintiff also asserts that Defendants committed a crime in violation of 18 U.S.C. 1594(a)-(c). As of the time during the events in question, section 1594(a) criminalized any "attempt" to violate Section 1591, and Sections 1594(b) and (c) specified the relevant punishments for violations of various related statutes. For the reasons that the FAC fails to state a violation of Section 1591, and indeed any violation of the anti-trafficking statutes, Plaintiff has failed to state a violation of Section 1594(a). Plaintiff does not allege an unsuccessful violation of the anti-trafficking statutes. She alleges instead that Defendants succeeded in making her a victim of the crime of sex trafficking. As demonstrated above, however, Plaintiff has failed to allege facts sufficient to state such a claim. Moreover, the FAC has failed to allege the requisite elements necessary to establish an attempted crime. *U.S. v. Farhane*, 634 F.3d 127, 145 (2d Cir. 2011) ("attempt requires proof that a defendant (a) had the intent to commit the object crime and (b) engaged in conduct amounting to a substantial step towards its commission"); *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"). Here, there are no factual allegations in the FAC to support the contention that Defendants intended to violate the anti-trafficking statutes and, as demonstrated above, Defendants did not take steps, let alone substantial steps, to violate the anti-trafficking statutes.

* * *

The FAC therefore fails to plead a predicate violation under these statutes. Moreover, as discussed in Point B.1. above, the anti-trafficking statutes were not enacted to address the consensual adult relationship alleged here between Plaintiff and Epstein.

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

The FAC not only fails to meet the stringent pleading standards applicable to fraud based claims, it also fails to meet the basic pleading standards set forth in *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). Under these two decisions, as explained and applied by the Second Circuit:

> [A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. … Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility ....

Wood, 328 F. App'x. at 746-747 (quoting *Iqbal*, 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. 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 presents Plaintiff as a consenting adult engaged in a voluntary relationship which provided her with a remarkably comfortable lifestyle and the prospects of help with her [redacted]. This is hardly the sort of relationship that the sex trafficking statute was designed to address.

Plaintiff's allegations of sex trafficking are simply not plausible and cannot be remedied by a new complaint. As explained in detail throughout this Memorandum, the evidence in the [redacted] Matter only confirms this fact. The record of Plaintiff's implausible narrative is clear, and Plaintiff cannot walk her FAC back from it.

As a final nail in the coffin, Plaintiff specifically testified in the [redacted] Matter that she is not seeking monetary damages in the instant action, where the only possible relief under Section 1595 is monetary damages (Dep. 35, 325):

> Q. Do you expect to receive money as a result of that lawsuit [against Epstein]?
> A. Oh, no. No.
> Q. You're not asking to receive any money as a result of that lawsuit?
> A. No. No.
>
> * * *
>
> Q. Were you seeking money when you authorized this complaint [against Epstein] to be filed on your behalf?
> A. No. I just wanted a pedophile behind bars, really, and for him to stop abusing young girls.

Plaintiff's testimony that she is not seeking monetary relief in and of itself is sufficient ground to dismiss her claim with prejudice. *Townes v. City of New York*, 176 F.3d 138, 149 (2d Cir. 1999) (action dismissed for failure to state a claim where plaintiff did not seek the only relief to which he was entitled).

The FAC should therefore be dismissed with prejudice for failing to meet the plausibility standard under *Twombly* and *Iqbal* and because Plaintiff is not seeking the only relief that could be granted under Section 1595.

D. <u>The Claim Is Barred by the Statute of Limitations</u>

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 Plaintif[redacted] and "did not return." FAC ¶¶ 34, 64. This

action was not commenced until January 26, 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 (D. 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 presumption against retroactive application of 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.*[2]

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 that when she returned home to [redacted] she believed that Defendants were engaged in illegal conduct, were victimizing women and could no longer be

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[2] B*ut see Oluch v. Orina*, 101 F.Supp.3d 325, 330 (S.D.N.Y. 2015) (applying a ten-year statute of limitations).

trusted. For example, in the FAC Plaintiff alleges that she "knew" she was being asked to recruit "female models" [redacted] who would not be placed in legitimate positions, but would instead "be forced into sexual servitude." FAC ¶ 56; *see also*, Cplt. ¶ 51. Clearly, by January 2007, Plaintiff could no longer claim to be relying on Defendants' representations about, for example, [redacted] because, according to her own allegations, she did not believe what she was being told by Defendants. She was also free and safe with [redacted] FAC ¶ 55. As plainly demonstrated by Plaintiff's deliberate refusal to comply with Defendants' alleged recruitment request, FAC ¶ 56, and her subsequent unimpeded return to New York in February 2007, Plaintiff was then under no compulsion to follow orders and no longer did so. Thus, based on Plaintiff's own allegations in the FAC, any arguable fraud or coercion terminated in January 2007, and the statute of limitation began to run no later than that time. *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"). Because Plaintiff's claim admittedly turns on whether she was defrauded or coerced, the statute of limitations period expired before this action was filed on January 26, 2017, more than ten years after she left New York in January 2007.

Plaintiff's evidence in the [redacted] Matter reinforces the fact that she cannot file a claim which satisfies even the ten-year statute of limitations. Plaintiff admitted, for example, that before she left New York in January 2007 she had decided that Epstein could not be trusted, had let her down and was not taking her seriously: "He let me down with my [redacted] and that he wasn't talking me seriously." Dep. 416-17. And, before leaving New York in January 2007, Plaintiff had already met her [redacted] with whom she would

live and did live when she returned in February 2007. Dep. 227-30, 245-48; Dep Ex. 13. Moreover, as detailed below, on at least two occasions, she was "physically free" from Defendants when she visited her parents at their homes in the [redacted] Dep. 98-99, 103-04, 278-79.

According to Plaintiff's testimony and her [redacted], Plaintiff first arrived in the [redacted] She left to visit her mother in th[redacted] [redacted] She left again before January 19, 2007, more than ten years before she filed this action on January 26, 2017. Specifically, Plaintiff's passport shows that she first arrived in the United States on [redacted]. Dep. Ex. 4. She testified that she was on a [redacted] Dep. 83, 98, 258-59. In order to avoid overstaying her visa, she left the United States, and went to visit her mother in the [redacted] and returned on October 19, 2006. Dep. 98-99, 103-04, 278-79; Dep. Ex. 4 (at [redacted]). She testified that she never overstayed her visa and always left before the 90 day period expired. Dep. 103-04, 279. She further testified that the 90 day period would automatically start anew each time she arrived in the United States, *i.e.*, she could stay for 90 days each time arrived in this country. Dep. 278-80. Accordingly, Plaintiff must have left the United States before January 19, 2007, 90 days from October 19, 2006, in order to satisfy the 90 day restriction. Plaintiff's passport shows that she did not return to the United States until February 25, 2007. Dep. Ex. 4 (at [redacted]).

This evidence demonstrates that Plaintiff's claim accrued as early as October 19, 2006, when she first left New York, and no later than January 19, 2007, when she left New York again for an extended period of time. This action was filed on January 26, 2017, more than ten year

after her trips out of New York to her families in the United Kingdom and South Africa. As a result, Plaintiff's claim is time-barred by the longest possible statute of limitations.

Plaintiff's deposition testimony and document production in the [redacted] Matter, alone or combined with her admissions in the FAC, make it abundantly clear that she simply cannot draft a claim to establish any fraud or coercion within the ten-year statute of limitations.

Since Plaintiff's claim accrued no later than January 2007, and as early as late 2006, the allegations concerning the period subsequent to her returns to the United States are irrelevant. To the extent that those events could be considered, 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. She merely alleges, again without providing specific facts, that Defendants wanted her to continue the prior relationship and "continue[d] to repeatedly make false representations . . . that she would be admitted to FIT." FAC ¶¶ 61, 64. But Plaintiff concedes, however, that before hearing these "false representations" she had already concluded that Epstein could not be trusted at all -- and particularly regarding her potential [redacted] Based on these facts, Plaintiff cannot establish that she reasonably relied on anything she was told by Defendants after she returned to New York in February 2007.

Similarly clear is that Plaintiff was not subject to fraud or coercion when she returned to New York in February 2007. By her own admissions in the [redacted] Matter, when Plaintiff returned to New York from her home in South Africa in February 2007, it was not to continue her relationship with Epstein. Instead, she moved in with her new boyfriend, a banker living on the Upper East Side of Manhattan, because she wanted to "get away from Jeffrey [Epstein]." Dep. 253-54. She testified that while she was still in [redacted] she arranged to move out of the apartment Epstein provided to her and [redacted] Dep. 245-48; Dep. Ex.

13. According to Plaintiff, she made this decision because "when you live in someone's apartment, it's a form of control. So when you don't comply with their instructions all the time, hundred percent, it's like leverage for them to control you. I don't like being controlled by people, especially by someone like Jeffrey Epstein and Ghislaine Maxwell." Dep. 253-54. All of this evidence, in addition to Plaintiff's own admissions in the FAC, confirms that Plaintiff was free from coercion and control when she returned to New York, and that Plaintiff's claim is time-barred, a defect that no amendment can cure.

E. The Court Does Not Have Jurisdiction Over Defendants

Other than an alleged ownership of real estate in New York by Epstein, the FAC alleges no present connection of Defendants to New York. As a result, personal jurisdiction over 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 26, 2017, all of the conduct alleged to have occurred before February 2007 falls outside of the ten year limitations period. As a result, the conduct that allegedly occurred after her trip outside of the United States in October 2006 or January 2007 cannot form the basis of a claim or personal jurisdiction against Defendants. There is simply no showing of wrongful conduct within the limitations period to demonstrate "suit-related conduct" necessary for personal jurisdiction. *See Walden v. Fiore*, 134 S.Ct. 1115, 1121-22 (2014). Moreover, the FAC does not allege conduct after Plaintiff left for the [redacted] in January 2007 that is sufficient to state a claim under Section 1595, and Plaintiff's testimony in the [redacted] Matter confirms that such a claim cannot ever be sufficiently plead. Dep. 255, 411, 418. The allegations in the FAC 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 Groff.

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

For the same reasons that the Court lacks personal jurisdiction over 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, this action should be dismissed with prejudice.

Dated: January 26, 2018

Respectfully submitted,

By: _____

Michael C. Miller
Justin Y.K. Chu
Michael A. Keough
STEPTOE & JOHNSON LLP
1114 Avenue of the Americas
New York, New York 10036
[redacted]

Attorneys for Defendants
Jeffrey Epstein & Lesley Groff