

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

[REDACTED],  
Plaintiff,  
vs.  
JEFFREY EPSTEIN, GHISLAINE  
MAXWELL, [REDACTED], LESLEY  
GROFF, AND [REDACTED]  
Defendants.

CASE NO. 17 Civ 616 (JGK)

REPLY MEMORANDUM OF LAW IN SUPPORT OF  
SUPPLEMENTAL MOTION TO DISMISS

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Defendants Jeffrey Epstein (“Epstein”) and Lesley Groff (“Groff”) (collectively “Defendants”) submit this memorandum in further support of their motion to dismiss the First Amended Complaint (“FAC” and “Motion”) filed by Plaintiff [REDACTED] (“Plaintiff”).<sup>1</sup>

**SUMMARY OF THE REPLY**

Plaintiff’s opposition to the Motion (“Opposition”) is 30 pages of whitewash. The irrelevant, conclusory and self-defeating allegations in the FAC which the Plaintiff now highlights in her Opposition were already specifically identified by Defendants in the Motion as among the pleading deficiencies which require dismissal of the FAC. Simply repeating these allegations in response to the Motion cannot resurrect an utterly deficient claim. Moreover, the Opposition also ignores Plaintiff’s sworn testimony and documentary evidence in the [REDACTED] Matter, which she provided in the [REDACTED] Matter after she commenced the instant action. As explained in detail in the Motion, Plaintiff’s admissions in the [REDACTED] Matter repudiate her allegations in the FAC and make it impossible for Plaintiff to plead a legally sufficient complaint. They are irrefutable proof that Plaintiff was too sophisticated to be defrauded, too independent to be coerced, and that any alleged conduct even remotely supportive of Plaintiff’s cause of action occurred more than ten years before the Complaint was filed and outside the statute of limitations. For example:

- At all times relevant to the FAC and the Motion, Plaintiff was a college educated, adult woman (Dep. 57-58);
- Plaintiff dated wealthy, older men before, during and after her alleged relationship with Epstein, including [REDACTED] [REDACTED] (Dep. 359-60, 227-30; Dep. Ex. 13; [REDACTED]);

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<sup>1</sup> Unless otherwise noted, capitalized terms here have the same meaning as defined in the Motion.

- During the brief months that Plaintiff was in New York, and was allegedly a victim of a sex trafficking enterprise, she traveled freely and alone in and out of the United States to visit with her parents, including an [REDACTED];
- During the brief months when Plaintiff alleges that she was manipulated and coerced into a sexual relationship with Epstein, Plaintiff was provided with a highly independent and well-appointed lifestyle. She was free at all times to “escape” this arrangement as she lived alone in a “massive” apartment, had the use of a car service that she could have taken anywhere and had her own cell phone that she could have used at any time to call anyone for assistance (Dep. 76-78; FAC ¶ 52);
- During these same brief months, Plaintiff told friends that she very much enjoyed the lifestyle she was provided in New York ([REDACTED]);
- During the months that Plaintiff alleges that Epstein misled her about his willingness to help her [REDACTED] Plaintiff admits that Epstein actually helped her with her essay and provided other support for her application (Dep. 171-72, 179-80);
- Plaintiff never filed an application to attend [REDACTED] (Dep. 235, 252-53, 390-92). In [REDACTED];
- Even as Plaintiff asserts that the Defendants frustrated her modeling career, she, in fact, did not want to be a model (Dep. 213), could not have worked as a model [REDACTED];
- Over ten years before Plaintiff filed the original complaint in this action, she [REDACTED] (Dep. 227-30, 245-48; Dep. Ex. 13; [REDACTED]);
- On or before January 19, 2007, i.e., over ten years before Plaintiff started this lawsuit, she left New York (See Dep. 278-79, Dep. Ex. 4 (at [REDACTED])) and only returned to New York [REDACTED] (Dep. 227-30, 245-48; Dep. Ex. 13);
- Over ten years before Plaintiff started this lawsuit, she admitted that she no longer trusted Epstein and no longer could believe the things that he told her or promised her (Dep. 416-17), and felt no compulsion to comply with his directions, including the direction to find him a personal assistant (FAC ¶ 56); and

- Plaintiff claims that, through the FAC, she is not seeking any monetary damages and only wants to see the defendants punished with imprisonment (Dep. 35, 325).

In responding to the Motion, Plaintiff simply ignores her many, incontrovertible admissions in the ██████ Matter. These admissions conclusively demonstrate that the Plaintiff's allegations in the FAC are simply false and that the FAC is nothing more than an effort to shake down the Defendants. These admissions also demonstrate that, even if the Court were to give the Plaintiff a third bite at the apple, she cannot draft a legally sufficient complaint.

The FAC should be dismissed with prejudice because Plaintiff fails in the Opposition to refute any of the numerous grounds for dismissal set forth in the Motion. First, the Opposition fails to demonstrate that the anti-trafficking statute should provide relief for Plaintiff. Plaintiff is an educated, sophisticated and well-traveled adult, with strong family ties. She is seeking relief for what amounts to an agreement on her part to engage in sexual relations with Mr. Epstein while he was providing her with robust financial support. This was an arrangement that Plaintiff was free to end at any time that it served her purposes. The statute on which Plaintiff relies requires more than this. But when you cut through all the smoke and mirrors, side step the *ad hominem* attacks and look past Plaintiff's efforts to exploit Mr. Epstein's 10-year old criminal conviction, Plaintiff's specific and relevant factual allegations simply do not establish that Plaintiff is a victim of sex trafficking.

Second, the Opposition fails to demonstrate that the FAC presents a plausible theory under which Plaintiff may advance a claim under Section 1595 or otherwise meet the *Iqbal/Twombly* standard. Third, the Opposition fails to demonstrate that the FAC alleges the requisite fraud, coercion or, indeed, any of the predicate acts to establish a Section 1595 claim. Fourth, the Opposition points to no factual allegations in the FAC that establish that Plaintiff's

claim was timely filed. [REDACTED]

[REDACTED] Under either scenario, Plaintiff filed the original complaint more than ten years after her claim accrued. None of the conclusory allegations in the FAC as to events after January 19, 2007 do anything to resurrect this time-barred claim. Finally, the Opposition fails to demonstrate that the Court possesses personal jurisdiction over Defendants. There is simply no wrongful conduct alleged within the statute of limitations period that could provide a basis for personal jurisdiction.

In summary, the Opposition offers no basis for denying the Motion and Defendants respectfully submit that the FAC should be dismissed with prejudice.

### ARGUMENT

#### **A. Allegations Regarding the Prior Proceedings Should Be Stricken**

Plaintiff's allegations about Epstein's prior criminal record in the Prior Proceedings should be stricken from the FAC. Plaintiff's counsel has already admitted to the Court that the Prior Proceedings have nothing to do with Plaintiff's claim.<sup>2</sup> And he was right about that since the Prior Proceedings predate the conduct at issue in the FAC by over a year, FAC ¶¶ 24, 34, and there is nothing in the FAC linking the Prior Proceedings to Plaintiff.

In her Opposition, however, Plaintiff sidesteps her counsel's accurate statement to the Court and seeks to buttress the FAC with the Prior Proceedings. Plaintiff cites no legal authority to support her reliance on the Prior Proceedings. Instead, Plaintiff argues that the Prior Proceedings prove that Defendants were engaged in a "criminal enterprise" with "knowledge and

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<sup>2</sup> In our Deficiency Letter of May 15, 2017, we reminded Plaintiff's counsel that he made this concession during the April 6, 2017 court conference, and requested that all reference to the Prior Proceedings be removed from the Complaint. Exh. C. We pointed this out to the Court in Defendant's initial Motion to Dismiss filed on November 21, 2017 (ECF # 80) and again in the Motion. Plaintiff counsel has never denied or retracted his statement to the Court.

motive.” Opp. at 7. However, the Prior Proceedings did not involve allegations that Epstein coerced or defrauded a well-educated, sophisticated, adult woman into engaging in sexual conduct with him and thus provide no support for Plaintiff’s claims that Defendants did so in the instant case. Plaintiff’s strongest retort is to assert that the Prior Proceedings provide “contextually necessary facts.” Opp. at 6, 8. But the Prior Proceedings provide no context for Plaintiff’s baseless claim that Mr. Epstein engaged in a sexual relationship with an adult woman over a year after the Prior Proceedings had concluded.

Plaintiff appears to have included the Prior Proceedings in the FAC because of their potential to distract a fact finder from the otherwise obvious shortcomings in Plaintiff’s allegations. Not surprisingly, the allegations concerning the Prior Proceedings are advanced with the same sweeping broad generalizations as Plaintiff utilizes with the rest of the allegations in the FAC. For example, Plaintiff asserts without any specific factual basis that there was a “continued cover-up” involving attempts to “intimidate witnesses” and the “destruction of documents and evidence.” Opp. at 8. However, Plaintiff does not allege which Defendants engaged in this conduct, specifically when they did it, which witnesses were allegedly intimidated and how, and what documents and other evidence were allegedly destroyed.

In short, the Prior Proceedings have nothing to do with the claim in the FAC. That the Plaintiff nonetheless chose to include them in the FAC is very troubling. They offer a finder of fact nothing but a salacious, tabloid headline edge. Defendants respectfully submit that the Prior Proceedings should be stricken from the FAC.

**B. The FAC Fails to State a Claim**

The Opposition, like the FAC it tries to salvage, relies on sweeping, conclusory allegations that merely parrot statutory language. These arguments offer no basis for denying the Motion. The Opposition also fails to address the Plaintiff’s dispositive admissions in the [REDACTED]

Matter which demonstrate that she cannot plead a legally sufficient complaint. Plaintiff's Opposition is silent in the face of her stunning admissions about herself and about her relationship with Epstein and others. See pp. 2-3, *infra*. These un rebutted facts demonstrate that she is no victim of sex trafficking. Plaintiff clearly started and ended relationships with older, wealthy men as a matter of choice, and not as a victim of sex trafficking. These sorts of relationships are not what Congress meant to regulate, let alone criminalize.

1. Section 1591 Does Not Cover The Alleged Conduct

The FAC fails to plead facts demonstrating that the Defendants engaged in conduct prohibited by 18 U.S.C. § 1591 ("Section 1591"), the violation of which is a necessary predicate for Plaintiff's claim. And the Opposition does nothing to change that reality. All that Plaintiff pleads is sex in exchange for benefits. Section 1591 requires more. It requires sex in exchange for benefits, plus that this arrangement must be the product of coercion or fraud.

Plaintiff cites one case for the proposition that a romantic relationship between the alleged victim and perpetrator is sufficient to invoke the application of Section 1591. Opp. at 9-10, citing *United States v. Marcus*, 487 F.Supp.2d 289, 304 (S.D.N.Y. 2007), *rev'd in part and aff'd in part*, 628 F.3d 36 (2d Cir. 2010). The *Marcus* case simply fails to support the application of Section 1591 in the instant case.

The District Court in *Marcus* decided that Section 1591 was violated in that case because the victim was tortured into promoting a sexual bondage and sadomasochist website for commercial purposes. Specifically, the victim "remained with defendant against her will for nearly two years, during which period she created and maintained the defendants' website and engaged in BDSM conduct with the defendant and others that was photographed and placed on the website." 487 F.Supp.2d at 292, 304. The District Court held that the "commercial sex acts at issue here were not the product of an intimate relationship but, rather, were obtained through

force, fraud or coercion.” 487 F.Supp.2d. at 304.<sup>3</sup> On appeal, and notably, the Second Circuit explained that the “consensual BDSM activities alone could not constitute the basis for a conviction under the sex trafficking charges.” 628 F.3d at 45.

*Marcus* is clearly inapplicable to the Plaintiff’s claim. For example, unlike the *Marcus* case, the FAC does not allege any acts of torture or violence. And Plaintiff’s allegations of fraud and coercion are wholly conclusory. The Opposition does nothing more than repeat these conclusory allegations (e.g., the Defendants “threatened retaliation against her if she did not perform” and “Defendant Epstein gave Plaintiff no option, opportunity, or choice not to participate in the prescribed sexual acts.” Opp. Mem. at 13. Moreover, and in sharp contrast to the victim in the *Marcus* case, the Plaintiff lived an independent lifestyle in New York, with her own apartment, phone and access to car service. She traveled abroad extensively, and without company or restriction [REDACTED] Plaintiff has simply failed to allege facts which support the application of sex trafficking statutes to the conduct of the Defendants.

## 2. The FAC Fails To Plead Fraud

The Opposition similarly fails to demonstrate that the FAC sufficiently pleads fraud. First, the Opposition does nothing to address the implausibility of Plaintiff’s theory that a sophisticated, experienced and educated adult was duped by complete strangers into engaging in commercial sex with the [REDACTED] Second, the Opposition fails to address the lack of specificity in the FAC as to when Defendants [REDACTED]

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<sup>3</sup> Contrary to Plaintiff’s contention, the District Court did not deem “nonsensical” the argument that the sex trafficking statute was not meant to regulate domestic relationship. Opp. at 9. The District Court used that term to describe the contention that Section 1591 is ambiguous.



3. The FAC Fails To Plead Coercion

Plaintiff contends that Defendants “coerced her with promises of an education, living quarters, and other benefits” to engage in sexual conduct with Epstein. Opp. at 13-14. As a matter of law, this does not constitute coercion. Coercion requires the delivery of threats of “serious harm.” There are no such threats alleged in the FAC. Indeed, the FAC suggests that a sophisticated, college educated adult with strong family ties and experience with adult relationship was “coerced” into sexual relations by threats that she would no longer receive benefits to which she had no entitlement, i.e., her Upper East Side apartment, phone, car service, [REDACTED]. Such threats, if they are threats at all, are not threats of “serious harm.” Plaintiff, by her own admissions, was free to move elsewhere, [REDACTED] start a new relationship with a new boyfriend, and buckle down and [REDACTED]. Plaintiff apparently had to choose between being self-sufficient, like most young adults in this world, and relying on others for a very comfortable lifestyle. That her access to this lifestyle was not guaranteed to continue does not constitute a threat of “serious harm.”

Plaintiff’s remaining contentions of coercion lack factual support. For example, the Opposition cites as proof of coercion the Plaintiff’s allegation that she was “physically restrained” on Epstein’s Caribbean island. Opp. at 5. This allegation is not supported by the facts in the FAC. It also ignores the fact that, for most of the brief time that Plaintiff interacted with Defendants, she lived by herself in an apartment in Manhattan with unfettered access to a car and a cell phone. It also ignores the fact that Plaintiff had strong family relations, and the capacity and willingness to visit her family members in two different countries. Plaintiff’s claim that she was physical restrained while on an isolated visit to the island is not supported by the FAC and does not establish that she was coerced into a sexual relationship with Mr. Epstein.



there is no causal link showing that Plaintiff was manipulated into having sex with Mr. Epstein through fraud, coercion, or otherwise.

5. The FAC Fails To Allege Knowledge Against Groff

In response to Defendants' contention that the FAC fails to allege knowledge against Groff, Plaintiff merely repeats the allegations verbatim in the FAC. Opp. at 14-15. Plaintiff does not address at all the conclusory nature of those allegations and the lack of factual support. Neither the FAC nor the Opposition provides a factual basis showing that Groff knew that Plaintiff was engaged in a sexual relationship with Epstein, let alone that Plaintiff was defrauded or coerced into that relationship. There is no allegation that Groff ever traveled with Plaintiff, spoke with Plaintiff other than in the course of fulfilling the functions of a secretary, socialized with either Plaintiff or Epstein, or learned from anyone about Plaintiff's alleged sexual relationship. As the emails between Plaintiff and Groff show, Groff merely relayed messages between Plaintiff and Epstein about [REDACTED] and discussed travel arrangements with Plaintiff. Dep. Ex.10.

6. The FAC Fails To Allege Any Predicate Acts

Consistent with the fact that the assertion of violations of Sections 1592, 1953A and 1594(a)-(c) was only added after Defendants served its Deficiency Letter on Plaintiff detailing the many (still unremedied) deficiencies in the original Complaint, Plaintiff provides a cursory discussion on these sections in her Opposition and ignores the legal authority cited in the Motion. Opp. at 16-18.

No Violation of Section 1592 – Plaintiff relies on the conclusory allegations in the FAC that some of the Defendants “took possession” of her passport”. Opp. at 16-17. However, the FAC does not provide any facts explaining this allegation. For example, the FAC does not state when her passport was taken, under what circumstances her passport was taken, how long

her passport was taken, or which of the Defendants supposedly took her passport. In fact, Groff is not even mentioned at all. Plaintiff also fails to state which of her two passports issued by the United Kingdom and South Africa was supposedly involved. Moreover, as explained in the Motion, there cannot be a Section 1592 violation without properly alleging a violation of Section 1591. In any event, the FAC shows that Plaintiff freely traveled between New York, the United Kingdom and South Africa multiple times during her brief time in the United States; Plaintiff's evidence in the [REDACTED] Matter confirms all of this. There is simply no way to link the possession of one of her passports to the alleged sexual relationship with Epstein.

No Violation of Section 1593A – Plaintiff does not provide any legal authority to support her argument that Section 1593A, enacted two years after her alleged relationship with Epstein had ended, should apply here. She ignores and completely fails to address the well-established presumption against the retroactive application of legislation. Opp. at 17-18.

No Violation of Section 1594(a)-(c) – Plaintiff ignores and fails to address the fact that Section 1594(a) prohibits attempts to violate Section 1591. Here, Plaintiff has not pled an attempt to violate Section 1591, but instead contends that Defendants successfully violated Section 1591 and made her a victim. As demonstrated above, the FAC also fails to plead the requisite element that Defendants intended to violate Section 1591.

Plaintiff's attempt to repackage her claim as one founded in a conspiracy is also unavailing. There is an utter lack of factual support that Defendants entered into an agreement to violate the anti-trafficking statute. *Stein v. World-Wide Plumbing*, 71 F.Supp.3d 320, 330 (S.D.N.Y. 2014) (dismissing conspiracy claim, explaining that defendants having “possibly participated in violation of the forced labor prohibition ... does not imply that there was some act of agreement between any of them.”

**C. The FAC Fails To Meet The *Twombly/Iqbal* Standard**

For all of the reasons set forth, above, the FAC does not plead a plausible claim that Plaintiff was a victim of sex trafficking, and Plaintiff's evidence in the ██████ Matter confirms that Plaintiff cannot remedy this deficiency by drafting a new complaint. Indeed, as one of the cases cited by Plaintiff amply demonstrates, the Court can properly consider the Plaintiff's deposition and exhibits in the ██████ Matter in evaluating whether the Plaintiff has met the *Twombly/Iqbal* pleading standard. In *Heskiaoff v. Sling Media, Inc.*, 2017 WL 56323078 (2d. Cir. Nov. 22, 2017), the Second Circuit held that "for motion to dismiss purposes, 'we have deemed a complaint to include ... any statements or documents incorporated in it by reference ... and documents that the plaintiff either possessed or knew about and upon which they relied in bringing the suit.'" *Id.* at \*2. The Plaintiff's evidence in the ██████ Matter provides powerful proof that Plaintiff has not, and cannot, draft a plausible claim of sex trafficking.<sup>4</sup>

At its heart, the Plaintiff's FAC is alleging a breach of contract – that Plaintiff did not receive the benefit she bargained for in entering into a relationship with Mr. Epstein. This does not constitute a violation of the sex-trafficking statute. In *Tardibuono-Quigley v. HSBC*, 2017 WL 1216925 (S.D.N.Y. Mar. 30, 2017), the Court dismissed a RICO claim where the claim was, at bottom, a breach of contract claim. *Id.* at \*11. As the Court explained:

Simply dressing up a breach of contract claim by further alleging that the promisor had no intention, at the time of the contract's making, to perform its obligations thereunder, is insufficient to state an independent claim for tort.

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<sup>4</sup> Given the evidence consists of Plaintiff's sworn statements and contemporaneous statements, no discovery is necessary to determine this motion.

In addition, Plaintiff's claim is barred as a matter of law because Plaintiff is seeking no monetary relief in this case. This is a fact that Plaintiff acknowledged in her deposition testimony while she was represented by three lawyers and testifying "to the best of her knowledge." Opp. at 21.

Because the FAC fails to meet the *Twombly/Iqbal* pleading standard, it should be dismissed with prejudice.

**D. The Claim Is Barred By The Statute Of Limitations**

Plaintiff contends that her claim was filed within the ten year statute of limitations period because Defendants "have not produced anything showing that [the Plaintiff] was not in the United States through January 31, 2007." Opp. at 26. This argument simply ignores Plaintiff's own admissions in the [REDACTED] Matter which shows that she was gone from New York, working [REDACTED] Mr. Epstein – all more than ten years before she started this lawsuit. For example, [REDACTED]

[REDACTED]

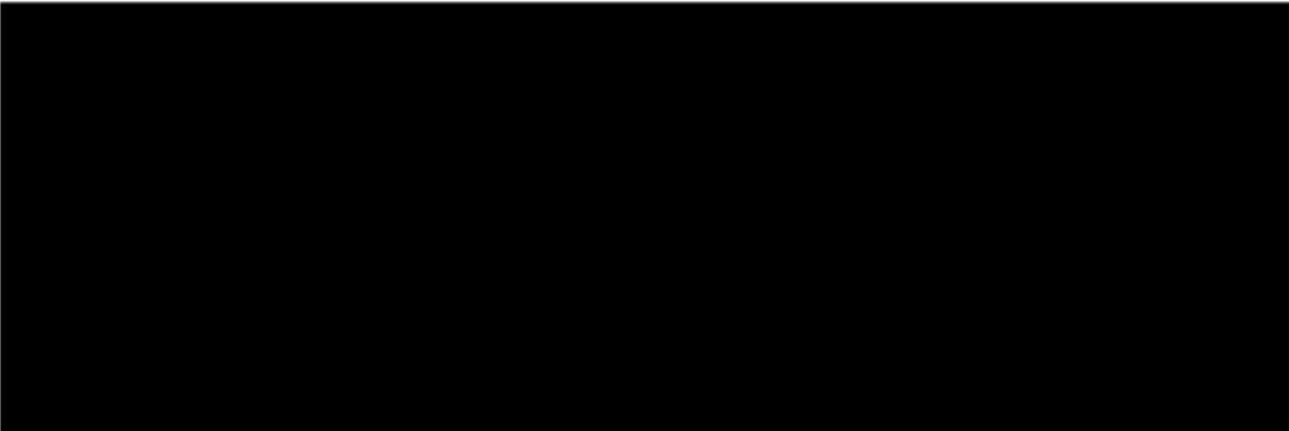
[REDACTED]

[REDACTED] Although the version of this email she produced does not show the date, her

[REDACTED]

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<sup>5</sup> Defendants may use all of the evidence produced by Plaintiff in the [REDACTED] Matter if she uses evidence outside of her deposition transcript and exhibits ("Transcript"). Confidentiality Stipulation and Order (ECF # 100), ¶ 2. Here, Plaintiff's Opposition cites to evidence outside of the Transcript, including [REDACTED], 000003. Opp. at p. 24.



All of this occurred outside of the ten year statute of limitations period. Indeed, when Plaintiff returned to New York on February 25, 2007 (Dep. Ex. 4; [REDACTED]), she moved [REDACTED] Dep. 229-30, 244-45, 248; Mov. Mem. at 26-27. As noted in the opening brief, the FAC contains no factual allegation supporting the notion that Plaintiff continued her association with Defendants after she returned to New York in February. Her claim is therefore time barred.

**E. The Court Does Not Have Jurisdiction Over Defendants**

As demonstrated in the opening brief and above, there is no conduct within the statute of limitation period upon which jurisdiction can be based. The Court therefore lacks personal jurisdiction over Defendants. Mov. Mem. at 29-30; *see also: Jonas v. Estate of Leven*, 116 F.supp.3d 314 (S.N.N.Y. 2015) (“in deciding a motion to dismiss a complaint for want of personal jurisdiction, the district court may consider materials outside of the complaint”). For the same reasons, venue is improperly laid in this district.

Dated: New York, New York  
April 23, 2018

Respectfully submitted,



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