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April 3, 2020

VIA ECF

The Honorable Lorna G. Schofield
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Annie Farmer v. Darren K. Indyke et al., 19-10475-LGS-DCF

Dear Judge Schofield,

Pursuant to Individual Rules III.A.1 and III.C.2, Plaintiff Annie Farmer hereby responds to Defendant Ghislaine Maxwell's request for a pre-motion conference in connection with her anticipated motion to dismiss. Dkt. 46.

The Court has already held a hearing on an anticipated motion to dismiss Plaintiff's complaint. Maxwell's co-Defendants, the executors of Jeffrey Epstein's estate, filed a pre-motion letter on January 24, 2020, raising many of the same arguments that Maxwell does here. Dkt. 17. At a hearing on March 5, 2020, the Court discouraged the Estate from filing its motion because it would have raised numerous factual issues inappropriate for resolution at the pleading stage. See Dkt. 39 at 6:5-6 ("So, what I'm going to do is I am going to ask you to hold off on the motion to dismiss."). The Estate complied, and filed its Answer on March 27, 2020. Dkt. 45.

Despite the fact that Maxwell's counsel has had Plaintiff's Complaint since December 6, 2019, see Dkts. 20, 20-2, and had already appeared and filed a motion *before* the March 5 pre-motion conference took place, see Dkts. 32, 33, they inexplicably chose not to attend that hearing, and instead now force Plaintiff and the Court to repeat the process for what are essentially the same legal arguments. As explained below, the Court should deny Maxwell's motion in its entirety.¹

I. Plaintiff's Complaint Satisfies Rule 8

Maxwell first contends that the Complaint does not satisfy Rule 8 of the Federal Rules of Civil Procedure. But the Complaint specifically describes the sexual assault and false imprisonment that Maxwell committed against Plaintiff when she was a child. Compl. ¶¶ 62–69 (alleging that Maxwell forced Plaintiff, a child, to let her massage Plaintiff's naked body and groped her breasts, and Plaintiff had no way of escaping). Such allegations easily meet Rule 8's threshold, which requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(1). They also render Plaintiff's claims against Maxwell plausible. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face'").

The mere fact that some allegations attribute conduct to both Epstein and Maxwell does not render the Complaint insufficient under Rule 8. Any allegations that refer to both Epstein and

¹ If the Court allows Maxwell to file a motion to dismiss, Plaintiff requests 30 days from the date of the motion to file an opposition, with Maxwell's reply brief due 10 days thereafter.



Maxwell do so because Epstein and Maxwell worked together to facilitate the sex trafficking and assault of Plaintiff and other girls. *See, e.g.*, Compl. ¶ 11 (Maxwell was in charge of recruiting girls); *id.* ¶¶ 46–47 (Maxwell brought young girls to Epstein’s home); *id.* ¶ 57 (Epstein convinced Plaintiff’s mother to send Plaintiff to Epstein’s ranch by promising that Maxwell would chaperone); *id.* ¶ 59 (Maxwell asked Plaintiff to massage Epstein). Maxwell’s assertion that these allegations somehow do “not provide fair notice of the claims or the factual grounds on which the claims rest,” Dkt. 46 at 2, is without merit.²

II. Venue Is Proper

Maxwell next asserts that the Southern District of New York is an improper venue. But venue is proper in any “judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.” 28 U.S.C. § 1391(b)(2). As alleged in the Complaint, venue is proper because Epstein and Maxwell operated a sex-trafficking ring out of Epstein’s New York City home, Epstein and Maxwell flew Plaintiff to New York City to groom and abuse her, and Epstein and Maxwell arranged to fly Plaintiff to Epstein’s ranch from New York City. Compl. ¶¶ 11, 29, 46, 51, 53, 58.

Because a substantial part of the events giving rise to Plaintiff’s claims occurred in the Southern District of New York, Maxwell’s current residence is irrelevant. But even if it were relevant, Plaintiff properly alleged that “Ghislaine Maxwell is a New York citizen and is domiciled in the Southern District of New York,” Compl. ¶ 21, based on the limited information available concerning Maxwell’s whereabouts.³

Maxwell implies that she is no longer a resident of New York, but does not disclose where she resides or otherwise indicate where venue would be proper. Dkt. 46 at 2. Maxwell cannot escape this lawsuit by hiding her current location. If Maxwell seeks to challenge venue on the grounds that she does not currently live in New York, the Court should require her to provide the factual basis for that argument by testifying at an evidentiary hearing.

III. Plaintiff’s Claims Are Timely

Maxwell’s statute of limitations arguments are equally meritless. As noted above, the Court has already considered the same statute of limitations arguments that Maxwell raises now. Specifically, the Court recognized that the doctrines of equitable estoppel and equitable tolling are “very fact specific,” and accordingly asked the Estate to refrain from filing a motion to dismiss

² Maxwell also asks the Court to strike certain allegations from the Complaint under Rule 12(f), but does not specify why those allegations are “redundant, immaterial, impertinent, or scandalous,” *see* Fed. R. Civ. P. 12(f), or cite a single authority supporting her position. The allegations that Maxwell asks the Court to strike quote public documents that explain the scheme that caused Plaintiff’s injuries. If Maxwell wants to challenge the factual accuracy of those allegations, she may do so at trial.

³ Plaintiff’s counsel never “informed this Court” that Maxwell was not domiciled in New York. Dkt. 46 at 2. Rather, in a previous filing Plaintiff’s counsel merely noted that Maxwell sold her New York home in 2016 to demonstrate why Maxwell could not be located for the purpose of serving her with process. Dkt. 19 at 3.



prior to discovery. Dkt. 39 at 3:4-8 (“[T]he doctrines of equitable estoppel and equitable tolling could, nevertheless, save the claims and make them timely and that is very fact specific . . .”). There is no reason to treat Maxwell’s arguments any differently than those of the Estate.

Plaintiff’s allegations concerning Maxwell’s conduct easily provide the requisite extraordinary circumstances for equitable tolling. Maxwell intimidated girls “who attempted to escape or report Epstein’s sex trafficking operation”; manipulated victims using “financial power, promises, and threats to ensure that the victim returned as directed and remained compliant with their demands”; and repeatedly threatened Plaintiff’s sister to try to prevent she and Plaintiff from reporting the crimes against them. Compl. ¶¶ 12, 16, 17, 31, 70, 72, 76.

Plaintiff’s claims are also timely under the Child Victims Act (“CVA”), C.P.L.R. § 214-g, which provides that civil claims for injuries suffered as a result of conduct that would constitute a sexual offense as defined in Article 130 of the Penal Law committed against a child “is hereby revived, and action thereon may be commenced . . . not later than one year and six months after the effective date of this section.” The Complaint alleges that Epstein and Maxwell’s actions constitute sexual offenses under Article 130, and that those actions were committed against Plaintiff when she was 16 years old. Compl. ¶¶ 14, 80, 81.

Maxwell’s argument that the CVA is “unconstitutional” is wrong.⁴ The CVA was enacted to “finally allow justice for past and future survivors of child sexual abuse, help the public identify hidden child predators through civil litigation discovery, and shift the significant and lasting costs of child sexual abuse to the responsible parties.” N.Y. Comm. Rep., 2019 N.Y. S.B. No. 2440, 242nd Legis. Sess. (Jan. 26, 2019). It therefore satisfies due process because “it was enacted as a reasonable response in order to remedy an injustice.” *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 89 N.E.3d 1227, 1243 (N.Y. 2017).⁵

Finally, New York’s borrowing statute, C.P.L.R. § 202, does not apply to this action, as the CVA provides for a revival window of civil claims “[n]otwithstanding any provision of law which imposes a period of limitation to the contrary.” C.P.L.R. § 214-g.

Respectfully submitted,

/s/ Sigrid S. McCawley

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⁴ Contrary to Maxwell’s suggestion, the CVA’s text does not limit its application to sexual offenses that occurred in New York. Regardless, the Complaint alleges that Maxwell committed sexual offenses in both New York and New Mexico by sexually assaulting Plaintiff and facilitating Epstein’s sexual assault of Plaintiff. Compl. ¶¶ 10-13, 29, 54, 57-65, 68, 70.

⁵ The Estate and Maxwell both point out that the Farmer sisters had reported their conduct. Dkt. 17 at 3; Dkt. 46 at 3–4. But Defendants ignore the fact that after Epstein and Maxwell learned of this, they threatened Vanity Fair and the Farmer sisters to keep them silent. Compl. ¶¶ 75–76.



Joshua I. Schiller, Esq.

cc: Counsel of Record (via ECF)