

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ANNIE FARMER,

Plaintiff,

v.

DARREN K. INDYKE and RICHARD D. KAHN
in their capacities as the executors of the ESTATE
OF JEFFREY EDWARD EPSTEIN, and
GHISLAINE MAXWELL,

Defendants.

Case No. 1:19-cv-10475-LGS-DCF

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
GHISLAINE MAXWELL'S MOTION TO DISMISS OR TO TRANSFER**

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Plaintiff Annie Farmer, by and through her undersigned attorneys, respectfully submits this Memorandum of Law in Opposition to Defendant Ghislaine Maxwell’s Motion to Dismiss or to Transfer. ECF No. 69.

PRELIMINARY STATEMENT

Maxwell claims that she is being “called to answer . . . for the conduct of Mr. Epstein, who is dead.” Memorandum of Law in Support of Defendant Ghislaine Maxwell’s Motion to Dismiss or to Transfer (“Maxwell Mem.”) at 17, ECF. No. 60. That is false. This action seeks relief from Maxwell for her own criminal conduct against Plaintiff, and her attempts to characterize herself as a present-but-innocent bystander in Epstein’s sex-trafficking conspiracy paint a false picture. For decades, Ghislaine Maxwell recruited countless young women and children for Jeffrey Epstein, forced them to massage both her and Epstein, and those massages later escalated into sexual assaults. Annie Farmer was one of Maxwell’s and Epstein’s minor victims. Epstein and Maxwell offered to help Annie get into college, but instead sexually trafficked and assaulted her.

Annie’s claims are timely both under explicit provisions of New York law, as well as the doctrine of equitable estoppel through the Complaint’s allegations about the methods that Epstein, Maxwell, and their co-conspirators used to silence their victims (including Annie) for decades. Maxwell contends that Annie’s claims are untimely, but ignores the plain language of several New York statutes, while simultaneously drawing comparisons to irrelevant issues in an attempt to mask her flawed arguments. Nevertheless, Maxwell wholly ignores her burden to prove her statute of limitations affirmative defense at this stage of the litigation, and her arguments are meritless. *First*, the Child Victims Act (“CVA”) revived Annie’s claims against Maxwell. *Second*, New York’s borrowing statute is no barrier to Annie’s claims against Maxwell—the CVA precludes the borrowing statute’s application here, and even if it did not, the borrowing statute is inapplicable to Annie’s claims. *Third*, Maxwell has failed to meet her burden of showing that Annie is unable to

invoke equitable estoppel, a highly factual doctrine. *Finally*, Maxwell's argument that venue is improper is meritless given her and this action's connections to this District. The Court should deny Maxwell's motion in its entirety.

STATEMENT OF FACTS

When Annie Farmer was an underage teenager, her sister, Maria, met Jeffrey Epstein and Ghislaine Maxwell at an art show and accepted a job offer to purchase art for Epstein. ECF No. 1 ("Compl.") ¶¶ 42, 43, 45, 46. Maria also worked in Epstein's New York mansion, and noticed that Maxwell regularly brought school-aged girls to the home purportedly to "interview" for Victoria's Secret modeling positions. *Id.* ¶¶ 46-47. Maxwell also told Maria that she needed "to go get girls for Jeffrey." *Id.* ¶ 47.

Eventually, Epstein began taking an interest in Annie and asked Maria questions about Annie. *Id.* ¶ 50. Epstein offered to help get Annie into college, and flew her to New York. *Id.* ¶ 51. During Annie's trip to New York, Epstein spoiled Annie and Maria, giving Annie money to buy a dress and having them driven around in a limousine. *Id.* ¶ 52. Later in the trip, Epstein took Annie and Maria to a movie theater, sat in between the two sisters, and caressed various parts of Annie's body against her will when Maria was not looking. *Id.* ¶¶ 53-54.

After Annie's trip to New York, Epstein began calling Annie's mother to discuss Annie's education, and convinced her to send Annie to an event for high school students at Epstein's ranch in New Mexico. *Id.* ¶ 57. In describing the event, he explained that Maxwell would be on the ranch with the students, too. *Id.* Epstein and Maxwell then arranged and paid for Annie's travel to New Mexico. *Id.* ¶ 58. When Annie arrived in New Mexico, Epstein's driver picked her up from the airport and brought her to Epstein's 10,000-acre, remote ranch. *Id.* Annie quickly realized that she was the only student at the "event," and was completely alone with Epstein and Maxwell. *Id.* On the trip, Epstein and Maxwell attempted to make Annie feel comfortable by

buying her gifts, being friendly and charming, and taking her to the movies. *Id.* ¶¶ 59-60. Epstein and Maxwell attempted to normalize sexual behavior for Annie by fondling each other in front of Annie, pressuring Annie to give Epstein a foot massage, and again caressing and petting Annie in a movie theater. *Id.*

At Epstein's ranch, and after taking Annie to the movies, Maxwell pressured Annie into letting her give Annie a massage. *Id.* ¶ 62. Maxwell directed Annie to take off her clothes and lay on a massage table, touched intimate parts of Annie's body with the door open so that Epstein could watch, and exposed and groped Annie's breasts. *Id.* ¶¶ 62-65. Annie was terrified, but felt trapped at Epstein's massive ranch with no way of leaving or contacting her family. *Id.* ¶ 66. To make matters worse, the next morning, Epstein got into Annie's bed to "cuddle" and pressed his genitals against her. *Id.* ¶ 67.

When Annie returned home, she did not tell anyone about the sexual assaults out of fear of Epstein and Maxwell's power, wealth, and connections. *Id.* ¶ 70. But, eventually, Annie learned that Epstein and Maxwell had also assaulted her sister Maria, that they called Maria and threatened to burn all of her art, and that Maria attempted to report Epstein and Maxwell to the NYPD but was ignored. *Id.* ¶¶ 71-74. In an effort to stop the abuse, Annie and Maria then attempted to share their stories with Vanity Fair, but Epstein threatened and silenced the magazine. *Id.* ¶ 75. Epstein and Maxwell continued to threaten Maria after they learned about the communications to Vanity Fair. *Id.* ¶ 76. Annie and Maria thereafter lived in fear of Epstein and Maxwell due to their clear power and ability to silence them, the media, and law enforcement. *Id.* ¶ 76.

After Epstein's death, Annie filed this lawsuit against Epstein and Maxwell on November 12, 2019. ECF No. 1. Maxwell's counsel refused to accept service on her behalf for months despite actively litigating on her behalf in another case in this District. *See* ECF Nos. 18, 19, 20.

Eventually, on March 4, 2020, four months after Annie filed the Complaint, Maxwell's counsel entered an appearance. ECF No. 32. Maxwell filed the present motion to dismiss on May 20, 2020, despite the Court's suggestion that the motion would likely not be meritorious. Tr. of Apr. 16, 2020 Pre-Motion Conf. at 3:22–24, ECF No. 54.

ARGUMENT

Maxwell's motion to dismiss or to transfer her should be denied. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). The Court must "accept[] all factual allegations in the complaint as true and draw[] all reasonable inferences in the plaintiff's favor." *Kashef v. BNP Paribas S.A.*, 925 F.3d 53, 58 (2d Cir. 2019).

Drawing all reasonable inferences in Plaintiff's favor, Maxwell has failed to meet her burden of proving that Plaintiff's claims are untimely. Further, Maxwell's arguments that venue is not proper in this District are meritless.

I. Maxwell Has Not Met Her Burden of Proving that Plaintiff's Claims Are Untimely.

Because the statute of limitations is an affirmative defense, Maxwell bears the burden of proving that Plaintiff's claims are untimely. *See Childers v. New York & Presbyterian Hosp.*, 36 F. Supp. 3d 292, 301 (S.D.N.Y. 2014). "[A] complaint does not need to anticipate potential affirmative defenses, such as the statute of limitations, and to affirmatively plead facts in avoidance of such defenses." *Id.* at 315 (internal quotation marks omitted). Accordingly, "dismissal is appropriate only if a complaint clearly shows the claim is out of time." *Harris v. City of New York*, 186 F.3d 243, 250 (2d Cir. 1999). In this case, Plaintiff's factual allegations demonstrate that

(A) her claims are timely under the Child Victims Act, (B) C.P.L.R. 202 does not apply to her claims, and (C) Maxwell is equitably estopped from asserting a statute of limitations defense.

A. The Child Victims Act Revived Plaintiff's Claims Against Maxwell.

The CVA squarely applies to Maxwell's conduct against Plaintiff and therefore revives Plaintiff's claims against Maxwell. The CVA created a one-year window, starting on August 14, 2019, for victims of childhood sexual abuse to bring otherwise time-barred claims for conduct "which would constitute a sexual offense as defined in article one hundred thirty of the penal law." C.P.L.R. 214-g. In enacting the CVA, the New York State Legislature sought to curtail restrictive statutes of limitation and allow survivors of child sexual abuse "to sue or press charges against their abusers, who remain hidden from law enforcement and pose a persistent threat to public safety." N.Y. Comm. Rep., 2019 S.B. 2440, 242nd Legis. Sess. (Jan. 26, 2019). For the following reasons, the CVA both (1) applies to Plaintiff's claims against Maxwell and (2) is constitutional on its face and as applied to Maxwell.

1. The Child Victims Act Applies to Plaintiff's Claims Against Maxwell.

The CVA was designed to revive claims such as Plaintiff's claims that Maxwell sexually assaulted her when she was 16 years old. Maxwell's argument that the CVA does not apply to her has no foundation in law or reality—her conduct against Plaintiff falls squarely within the language of the CVA.

a. Maxwell Committed a Sexual Offense Under the Penal Law.

First, Maxwell's conduct against Plaintiff as alleged in the Complaint amounts to one or more sexual offense for purposes of applying the CVA. The CVA uses Article 130 of New York's Penal Law as a guidepost in defining sexual offenses. C.P.L.R. 214-g; *Giuffre v. Dershowitz*, No. 19 Civ. 3377, 2020 WL 2123214, at *2 (S.D.N.Y. Apr. 8, 2020) ("[T]he CVA's incorporation of the language from the Penal Code is merely a guidepost for determining which claims may be

revived.”). Because Plaintiff alleges that Maxwell’s conduct constituted a sexual offense under Article 130 when Plaintiff was a child and that she suffered injury as a result of that offense, the CVA revives her claims. Compl. ¶¶ 14, 81. In addition to directly alleging that Maxwell’s conduct violated one or more sections of Article 130, the Complaint also includes factual allegations sufficient to give rise to the inference that Maxwell committed such sexual offenses against Plaintiff. *Compare id.* ¶ 64 (“Maxwell touched intimate parts of Annie’s body against her will for the sexual benefit of Maxwell and Epstein.”), *and id.* ¶ 65 (“Maxwell exposed Annie’s breasts and groped her.”), *with* N.Y. Penal Law § 130.52 (defining forcible touching as when a defendant “forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person, or for the purpose of gratifying the actor’s sexual desire”), *and id.* § 130.55 (defining sexual abuse in the third degree as when a defendant “subjects another person to sexual contact without the latter’s consent. . .”). Maxwell’s conduct therefore amounts to one or more sexual offenses, and the CVA applies to revive Plaintiff’s claims against her.

b. The CVA is Not Limited to Acts Occurring in New York.

Second, the text of the CVA does not limit the conduct that it covers to sexual offenses that physically occurred in New York. The plain language of the CVA requires only four things: (1) an allegation of an intentional or negligent act or omission; (2) for “physical, psychological, or other injury or condition;” (3) “suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law;” (4) “committed against a child less than eighteen years of age.” C.P.L.R. 214-g. If the Legislature intended to cover only conduct that physically occurred in New York, it would have included such language.

Despite the CVA’s clear language containing no requirement that the conduct constituting a sexual offense physically occurred in New York, Maxwell argues that she could not have committed a sexual offense against Plaintiff within the meaning of the CVA because Plaintiff

alleges that she sexually assaulted her in New Mexico. Maxwell Mem. at 7-8. She bases this argument on a contention that New York Penal Law only jurisdictionally reaches acts physically committed in New York, and her conduct therefore could not have constituted a sexual offense as defined in the Penal Law. *Id.* But Maxwell’s argument—cited without any relevant, substantive support—is wrong.

Maxwell cites to a host of inapplicable statutes¹ and one case—*People v. McLaughlin*—to argue that “[b]ecause the State only has the power to enact and enforce criminal laws within its territorial borders, there can be no criminal offense unless it has territorial jurisdiction.” 606 N.E.2d 1357, 1359 (N.Y. 1992). Notably missing from her argument, however, is the New York Criminal Procedure Law that sets the territorial jurisdiction of New York Penal Law. “CPL 20.20 has codified the general principle that, for New York to exercise criminal jurisdiction, *some* alleged conduct or consequence of that conduct must have occurred in the state.” *People v. Carvajal*, 845 N.E.2d 1225, 1230–33 (N.Y. 2005) (emphasis added) (finding that New York criminal law extended to a defendant arrested in California who was involved in a trans-continental drug trafficking ring because the “defendant conspired in New York with his New York cohorts to bring cocaine to New York”); *see also McLaughlin*, 606 N.E.2d at 1359 (“The general rule in New York

¹ Maxwell provides a list of statutes in an attempt to show that if the New York Legislature wanted to revive claims for conduct occurring outside of New York, it could have done so more explicitly. Maxwell Mem. at 8-10. Ranging from the suspension of certain licenses for radiologic technologists, N.Y. Pub. Health Law § 3510, to issues concerning a state board for professional misconduct, N.Y. Pub. Health Law § 230, those statutes are irrelevant. The cited statutes merely provide that if a person is convicted of a certain crime, she can be subject to certain license revocations and disciplinary measures. The reference to non-New York law and whether conduct would be a crime if committed in New York is simply to prevent conduct occurring outside of New York and that is not a crime under New York law from leading to license revocations and disciplinary measures. Regardless, this entire argument is irrelevant because New York Penal Law *does* extend to conduct that occurs outside of New York.

is that, for the State to have criminal jurisdiction, either the alleged conduct *or some consequence of it* must of occurred within the State.” (emphasis added) (citing CPL 20.20)).

In relevant part, CPL 20.20(1)(c) provides that a person may be convicted in a New York criminal court under New York Penal Law if the person conspired to commit an offense in New York. *Carvajal*, 845 N.E.2d at 1230 (“Plainly, jurisdiction over an offense exists based on a conspiracy occurring in New York to commit that offense.”); *see also Espinal v. Lee*, No. 13 Civ. 8692, 2014 WL 5643418, at *11 (S.D.N.Y. Nov. 3, 2014) (finding that although the murder at issue occurred out of state, petitioner was subject to New York criminal jurisdiction because his “conversations that took place in New York were sufficient to establish a conspiracy to commit the murder-for-hire”); *People v. Margulies*, 121 A.D.3d 461, 462 (1st Dep’t 2014) (“The evidence established the geographic jurisdiction of New York State and New York County over each of the offenses, based on defendant’s acts and those of his accomplice, notwithstanding that defendant was physically located in Ohio during most of the events in question.”).

Here, the Complaint contains facts sufficient to give rise to the inference that Maxwell began planning and conspiring with Epstein to assault Plaintiff in New York. New York was the epicenter of Epstein and Maxwell’s sex-trafficking operation. Compl. ¶¶ 31, 46, 47. Specifically, Plaintiff alleges that Maxwell and Epstein ran a sex-trafficking network out of Epstein’s home in New York for years, in furtherance of which Maxwell would “go get girls for Jeffrey,” as she told Plaintiff’s sister. Compl. ¶¶ 2, 5, 10-14, 27. Maxwell and Epstein learned about Plaintiff in New York, and Plaintiff traveled there at Epstein’s direction. *Id.* ¶¶ 50-51, 57-58. While in New York, Epstein told Plaintiff’s mother that Maxwell would chaperone her in New Mexico. *Id.* ¶ 57. Once Plaintiff’s mother agreed, “Epstein and Maxwell, who were in New York at the time, arranged and

paid for Annie to fly to New Mexico in the spring of 1996” so that she could be abused by Maxwell and Epstein in the solitude of Epstein’s massive ranch. *Id.* ¶ 58.

Further, N.Y. Penal Law § 20.00 provides that when one “solicits, requests, commands, importunes, or intentionally aids” someone else in violating a provision of the Penal Law, that person is criminally liable for the underlying crime. In addition to containing sufficient facts to give rise to the inference that Maxwell began conspiring to sexually assault Plaintiff while Maxwell was in New York, the Complaint also contains facts sufficient to show that Maxwell aided Epstein when he sexually assaulted Plaintiff in New York. Compl. ¶¶ 10-12, 53–54, 81. Under § 20.00, Maxwell therefore could have been held criminally liable for any forcible touching under Article 130 that Epstein committed against Plaintiff in New York.

Maxwell’s argument that her crimes in New Mexico are outside the jurisdictional reach of New York Penal law is meritless under both CPL 20.20 and N.Y. Penal Law § 20.00. Her conduct in this case therefore constituted one or more sexual offenses under Article 130, and the CVA applies to Plaintiff’s claims.

2. The Child Victims Act is Constitutional.

Maxwell’s challenge to the CVA’s constitutionality is equally meritless. Maxwell contends that the CVA violates her due process rights because claim-revival statutes are an “exceptional remedy” valid only when a “plaintiff could not have brought an action in a timely manner.” Maxwell Mem. at 13 (citing *Doe v. Hartford Roman Catholic Diocese Corp.*, 119 A.3d 462, 512 n.58 (Conn. 2015)). This argument is incorrect, misleading, and relies on outdated law. In the past, “New York courts have looked upon claim-revival provisions skeptically, only upholding them in circumstances where a given plaintiff could not have brought an action in a timely manner.” *Giuffre*, 2020 WL 2123214, at *2. But, unfortunately for Maxwell, “the New

York Courts’ historical skepticism of claim-revival provisions appears to be just that: historical.” *Id.*

As Maxwell herself contends, the New York Court of Appeals recently held that a claim-revival statute will “not run afoul of New York’s due process clause if it merely ‘was a reasonable measure to address an injustice.’” *Id.* (citing *Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 89 N.E.3d 1227, 1243 (N.Y. 2017)); *see also* Maxwell Mem. at 12–13. Maxwell’s argument that claim-revival provisions are constitutional only in “exceptional circumstances” is therefore not the law. Maxwell Mem. at 16. The New York Court of Appeals explicitly rejected the higher “exceptional” circumstances standard for constitutionality used by the district court in the case Maxwell cites as authoritative, *In Re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F. Supp. 3d 466, 476 (S.D.N.Y. 2014), and instead adopted a “reasonableness” standard. *Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 89 N.E.3d at 1243.

The CVA’s revival window easily meets such a reasonableness standard. In passing the CVA, the New York Legislature highlighted that “New York is one of the worst states in the nation for survivors of child sexual abuse,” and that “thousands of survivors are unable to sue or press charges against their abusers” because of New York’s “restrictive” statute of limitations. N.Y. Comm. Rep., 2019 S.B. 2440. Having identified the grave injustices faced by victims of child abuse, New York revived previously expired claims. As to reasonableness, the legislature stressed that the age at which most survivors report or come to terms with their abuse “has been estimated to be as high as 52 years old on average,” and also the “persistent threat to public safety” from child abusers. *Id.* Thus, given the time it takes child victims to come to terms with their abuse, the CVA was a reasonable measure to address an injustice and is constitutional.

In fact, one New York state court recently upheld the constitutionality of the CVA, ruling that the CVA properly revived a plaintiff's claims against her former school district for sexual abuse by one of her teachers. *See Torrey v. Portville Cent. Sch.*, 66 Misc. 3d 1225(A) (N.Y. Sup. Ct. 2020). The court held that because the CVA was "a reasonable response to remedy an injustice," it did "not violate [defendant's] right to due process" and was thereby valid under the New York State Constitution. *Id.* New York courts have interpreted due process, enshrined in Article I, § 6 of the New York Constitution, to be coextensive with its federal counterpart. *HVT, Inc. v. Port Auth. of N.Y. & N.J.*, 15 Civ. 5867 (MKB), 2018 WL 3134414, at *2 n.2 (E.D.N.Y. Feb. 15, 2018) (citing *Oneida Indian Nation of N.Y. v. Madison Cty.*, 665 F.3d 408, 427 (2d Cir. 2011)). Consequently, if the CVA does not violate Maxwell's due process rights under the New York Constitution, it does not violate her rights under the United States Constitution. *See HVT*, 2018 WL 3134414, at *2 n.2.

Other states, including Connecticut, have also specifically upheld claim-revival statutes for victims of childhood sexual abuse, including in a case that Maxwell incorrectly cites as supporting her proposition that claim-revival statutes are only constitutional if a "plaintiff could not have brought an action in a timely manner." Maxwell Mem. at 13 (citing *Hartford Roman Catholic Diocese Corp.*, 119 A.3d at 512 n.58). In that case, the Supreme Court of Connecticut held that children who are victims of sexual abuse *cannot* bring claims in a timely manner because child abuse can take years for a victim to come to terms with, and therefore the revival of otherwise time-barred claims was a "rational response by the legislature to the exceptional circumstances and potential for injustice faced by adults who fall victim to sexual abuse as a child." *Hartford Roman Catholic Diocese Corp.*, 119 A.3d at 496. Because the CVA was a "reasonable response"

to the injustice faced by child victims of sexual abuse, such as Plaintiff, the statute is constitutional. *See Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 89 N.E.3d at 1243.

Maxwell makes several additional arguments that have no basis in law. She asserts that Plaintiff's allegations are insufficient to demonstrate that her claims are timely, and therefore that allowing a revival of her claims under the CVA would be unconstitutional. Maxwell Mem. at 17. But this argument is entirely circular: Plaintiff *did* plausibly allege that her claims are timely *by citing the CVA*, which revives claims that would otherwise be untimely. Plaintiff was not required to also plead that the CVA is constitutional; to survive a motion to dismiss, a Plaintiff need only allege "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Maxwell next points to Epstein's death as somehow bearing on the constitutionality of the CVA because Maxwell would be "called to answer for the conduct of Mr. Epstein, who is dead." Maxwell Mem. at 17. To state the obvious, Maxwell and the Estate are separate parties in this matter, and Plaintiff has brought a claim against Maxwell because of Maxwell's *own* conduct against her when she was a minor. Compl. ¶¶ 10-12, 29, 31, 57-58. Maxwell is fully capable of answering for her own conduct, and the timing of this action has no discernable, constitutional bearing on her ability to do so.

Finally, Maxwell points to several facts about a voluntary claims administration program that go beyond the four corners of Plaintiff's Complaint as evidence that this lawsuit "undermines the integrity of the judicial system." Maxwell Mem. at 17-18. Citing those facts in briefing the present motion to dismiss is wholly inappropriate. *See Brass v. Am. Film Techs., Inc.*, 987 F.2d 142, 150 (2d Cir. 1993) ("When determining the sufficiency of plaintiff's claim for Rule 12(b)(6) purposes, consideration is limited to the factual allegations in plaintiff's [pleading].").

Moreover, the voluntary program that Maxwell cites is just that: voluntary. Plaintiff's potential participation in a voluntary claims administration program would not undermine the "integrity of the judicial system." Rather, it is Maxwell's suggestion that the courthouse doors must be closed to Plaintiff due to the existence of a *voluntary* program that would undermine judicial integrity. For the foregoing reasons, Maxwell's argument that the application of the CVA is unconstitutional as applied in this case and on its face is meritless.

B. N.Y. C.P.L.R. 202 Does Not Apply to Plaintiff's Claims.

Maxwell also argues that Plaintiff's claims are time-barred under New York's borrowing statute. But New York's borrowing statute, C.P.L.R. 202 does not apply to or bar Plaintiff's claims. C.P.L.R. 202 provides that when a plaintiff was a non-New York resident when her cause of action accrued and her cause of action accrued "without the state" of New York, New York "borrows" the statute of limitations of the jurisdiction where the claim arose if shorter than New York's. But that statute is inapplicable here for two independent reasons: (1) the CVA explicitly revives Plaintiff's claims and precludes the application of any other statute of limitation, and (2) Plaintiff's claims did not accrue "without the state" of New York.

1. The Child Victims Act Precludes the Application of C.P.L.R. 202.

Under principles of statutory interpretation, the borrowing statute does not apply to this case, which is governed by the CVA. The New York Legislature included language in the CVA that explicitly precludes the borrowing statute's application by providing 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 (emphasis added).

Because the borrowing statute is a provision of law that imposes a period of limitation contrary to the CVA's revival window, it falls squarely within the CVA's "notwithstanding" clause and its application is precluded in this case. *See 2138747 Ontario, Inc. v. Samsung C&T Corp.*,

144 A.D.3d 122, 127 (1st Dep’t 2016) (“The borrowing statute is itself a part of New York’s procedural law and is a statute of limitations in its own right . . .”). The Court need go no further to find that the CVA precludes the application of the borrowing statute. *See* N.Y. Stat. Law § 76 (“Where words of a statute are free from ambiguity and express plainly, clearly and distinctly the legislative intent, resort may not be had to other means of interpretation.”). The legislative history of the CVA also supports such a reading. For example, the New York Senate Report on the CVA explained that the CVA would allow “for time-barred actions in which [childhood sexual abuse] is alleged to be revived, and not be barred by *any* statute of limitation . . . *otherwise existing in law.*” N.Y. Comm. Rep., 2019 N.Y. S.B. 2440 (emphases added).

Maxwell’s contention that the CVA’s “notwithstanding” clause refers only to “any provision of *New York* law that imposes a period of limitation to the contrary” is unsupported. Maxwell Mem. at 11. As Maxwell herself argues in her brief, the Court cannot add language to a statute, *id.* at 9–10, yet that is what Maxwell is asking the Court to do here. But even if Maxwell’s insertion of the phrase “New York” into the CVA’s “notwithstanding” clause was appropriate, the borrowing statute *is* a provision of New York law that imposes a period of limitation contrary to the CVA’s clear language. *See 2138747 Ontario, Inc.*, 144 A.D.3d at 127. The “notwithstanding” language of the CVA therefore expressly encompasses New York’s borrowing statute and precludes its application in this case.

2. Plaintiff’s Claims Did Not Accrue “Without the State” of New York.

Second, the borrowing statute does not apply to this case because it only applies to claims “accruing without the state [of New York].” Plaintiff’s claims did not “accrue without the state.” Maxwell’s contention that the borrowing statute applies because Maxwell’s committed torts against Plaintiff in New Mexico is an oversimplification of the facts of this case. Maxwell Mem. at 5. Construing the facts alleged in the Complaint in the light most favorable to Plaintiff, the

crimes that Maxwell committed against Plaintiff are not limited to an isolated sexual assault in New Mexico. As described in Section I.A.1.b., *supra*, Maxwell and Epstein planned and initiated the trafficking of Plaintiff that resulted in numerous instances of abuse in New York, Compl. ¶¶ 10-12, 29, 31, 57-58, which also served as the epicenter of Epstein and Maxwell’s sex-trafficking conspiracy, *id.* ¶¶ 29, 46, 51, 53, 56-58.; Compl., Ex. A ¶¶ 1-2, 8-13. Plaintiff’s own sister witnessed Maxwell recruiting numerous school-aged girls in New York before Plaintiff was flown to New York. Compl. ¶¶ 46-47.

A cause of action accrues at “the time when, and the place where, the plaintiff first had the right to bring the cause of action.” *Glob. Fin. Corp. v. Triarc Corp.*, 715 N.E.2d 482, 484 (N.Y. 1999). Maxwell began forming an intent and plan to batter, groom, abuse, and inflict emotional distress on Annie in New York long before Plaintiff arrived in New Mexico. Plaintiff’s claims against Maxwell therefore did not accrue “without the state” of New York; New York is where her story began.

C. Maxwell Has Not Met Her Burden of Proving that Plaintiff Cannot Invoke Equitable Estoppel.

Even if the Court were to hold that the CVA does not apply to Plaintiff’s claims, or that C.P.L.R. 202 does, it should hold that they are still timely under the doctrine of equitable estoppel.² Maxwell contends that “equitable doctrines require ‘extraordinary’ factors that make it ‘unjust’ to allow a defendant to assert a statute of limitations defense.” Maxwell Mem. at 18. But this case is extraordinary, and “courts have long had the power, both at law and equity, to bar the assertion of the affirmative defense of the Statute of Limitations where it is the defendant’s affirmative

² To the extent the doctrine of equitable tolling is unavailable to Plaintiff, Plaintiff has sufficiently plead conduct to equitably estop the defendants from asserting a statute of limitations defense in this matter.

wrongdoing—a carefully concealed crime here—which produced the long delay between the accrual of the cause of action and the institution of the legal proceeding.” *Gen. Stencils, Inc. v. Chiappa*, 219 N.E.2d 169, 171 (N.Y. 1966). A defendant is therefore equitably estopped from asserting a statute of limitations defense if the defendant “wrongfully induced the plaintiff to refrain from timely commencing an action by deception, concealment, threats or other misconduct.” *Funk v. Belneftekhim*, No. 14-CV-0376 (BMC), 2019 WL 3035124, at *2 (E.D.N.Y. July 11, 2019) (internal citation omitted).

Assuming the truth of the allegations in Plaintiff’s Complaint and drawing all inferences in her favor, Plaintiff has sufficiently pleaded misconduct that equitably estops Maxwell from asserting a statute of limitations defense. Maxwell oversaw Epstein’s massive sex-trafficking network and procured a plethora of underage girls for his abuse. Compl. ¶¶ 10-12. Plaintiff was one of those underage girls, and after she escaped Maxwell and Epstein, the two made sure that she could not speak out. Maxwell and Epstein’s display of great power, wealth, and connections was purposefully designed to instill fear in their victims and caused Plaintiff to initially not tell anyone what had happened at Epstein’s New York home and New Mexico ranch. *Id.* ¶ 70. Eventually, Plaintiff told her sister what happened, and the two tried to share their stories with law enforcement and a magazine; however, Epstein threatened and intimidated the magazine into not reporting Plaintiff’s allegations. *Id.* ¶ 75. Maxwell and Epstein then embarked on a campaign of threats against Plaintiff’s sister, which instilled even more fear in Plaintiff. *Id.* ¶ 76. Plaintiff’s fear was further exacerbated by the unwillingness of state and federal authorities, as well as the media, to take any action against Epstein. *Id.*

Plaintiff’s allegations are therefore more than sufficient to allow her claims to proceed under an equitable estoppel theory at this early stage of the litigation. And even if they were not,

Plaintiff was not required to “affirmatively plead facts in avoidance of” Maxwell’s statute of limitations defense. *Childers*, 36 F. Supp. 3d at 315 (internal quotation marks and citation omitted). Further, “[w]hether equitable estoppel applies in a given case is ultimately a question of fact.” *Kosakow v. New Rochelle Radiology Assocs., P.C.*, 274 F.3d 706, 725 (2d Cir. 2001). Courts applying New York law have therefore reserved the highly factual issue of equitable estoppel for after discovery. *See, e.g., Gotlin v. Lederman*, No. 05-CV-1899 (ILG), 2006 WL 1154817, at *13 (E.D.N.Y. Apr. 28, 2006) (“A vast majority of the cases on equitable estoppel permit plaintiffs to defeat a motion to dismiss on the pleadings, deferring the question until some discovery can be had.”).

In fact, this Court has already recognized that the doctrines of equitable estoppel and equitable tolling are “very fact specific” and accordingly asked both Epstein’s Estate and Maxwell to refrain from filing a motion to dismiss prior to discovery. Tr. of Mar. 5, 2020 Pre-Motion Conf. at 3:4-8, ECF No. 39; Tr. of Apr. 16, 2020 Pre-Motion Conf. at 5:4-7, ECF No. 54 (“And with respect to the statute of limitations, as I said in the last conference, it strikes me that that question raises a host of factual issues, and it would be better resolved after some discovery.”). Maxwell has therefore failed to meet her burden of proving that Plaintiff cannot invoke equitable estoppel in this litigation.

II. Venue is Proper in this District.

Venue is proper in this judicial district, which served as the hub of Maxwell and Epstein’s crimes against Plaintiff and the countless others that they abused and trafficked. Venue is proper in “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.” 18 U.S.C. § 1391(b)(2). On a motion to dismiss for improper venue pursuant to Rule 12(b)(3), if the Court does not hold an evidentiary hearing, the plaintiff need only make a prima facie showing of proper venue. *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 355 (2d Cir. 2005)

(citing *CutCo Indus. v. Naughton*, 806 F.2d 361, 364–65 (2d Cir. 1986)). “In analyzing whether the plaintiff has made the requisite prima facie showing that venue is proper, [the Court must] view all the facts in a light most favorable to plaintiff.” *Phillips v. Audio Active Ltd.*, 494 F.3d 378, 384 (2d Cir. 2007). Here, viewing the facts alleged in the Complaint in the light most favorable to Plaintiff, Plaintiff has made a prima facie showing that venue is proper in the Southern District of New York because a substantial part of the events underlying Plaintiff’s claims occurred there.

Maxwell’s contention that this District is an improper venue because Plaintiff’s allegations “concern conduct occurring exclusively in New Mexico” is incorrect and ignores key facts alleged in the Complaint. Maxwell Mem. at 20. “Determining whether events are sufficiently substantial to support venue is not achieved by simply adding up the number of contacts. Rather, the putatively substantial acts must bear a close nexus to the claims in issue.” *Cartier v. Micha, Inc.*, No. Civ. 4699 (DC), 2007 WL 1187188, at *3 (S.D.N.Y. Apr. 20, 2007) (internal quotation marks and citations omitted). Further, venue may be proper in multiple districts “as long as ‘a substantial part’ of the underlying events took place in those districts.” *Gulf Ins. Co.*, 417 F.3d at 356. Accordingly, this Court has found a close nexus and thereby proper venue when the idea and plan for the actions that gave rise to the complaint originated in New York, even if the plan was executed elsewhere. *See Persh v. Petersen*, No. 15 CIV. 1414 LGS, 2015 WL 5326173, at *4–5 (S.D.N.Y. Sept. 14, 2015) (Schofield, J.) (holding that venue was proper in a breach contract action because the “terms of [the contract] were negotiated and discussed in substantial part in New York,” and the details were finalized there).

As alleged in the Complaint, Maxwell and Epstein operated a sex-trafficking ring out of Epstein’s New York City home, where Maxwell recruited young girls for Epstein. Compl. ¶¶ 11, 12, 31, 47-48, 57-58. Maxwell and Epstein learned about Plaintiff through her sister in New York

City. *Id.* ¶¶ 50, 58. Epstein then, through the ruse of wanting to help her get into college, flew Plaintiff to New York City, where during her stay he first engaged in non-consensual physical contact with her. *Id.* ¶¶ 51-54. Following Plaintiff’s visit, Maxwell and Epstein conspired in New York City to lure Plaintiff to Epstein’s ranch in New Mexico so that they could abuse her further. *See id.* ¶¶ 56-58. Epstein called Plaintiff’s mother from New York City and told her that Maxwell would chaperone her in New Mexico. *Id.* ¶ 57. Once Plaintiff’s mother assented, “Epstein and Maxwell, who were in New York at the time, arranged and paid for Annie to fly to New Mexico in the spring of 1996” where she was isolated at Epstein’s massive ranch and abused by both adults. *Id.* ¶ 58. This District thus has a “close nexus” to Plaintiff’s claims because the idea and plan to assault Plaintiff were developed here. *See Persh*, 2015 WL 5326173 at *4. Venue is thus proper under § 1391(b)(2) because a “substantial part of the underlying events” took place in New York City. *Gulf Ins. Co.*, 417 F.3d at 355; *see also* Tr. of Apr. 16, 2020 Pre-Motion Conf. at 4:24–5:3, ECF No. 54 (“[I]t seems to me that the matters alleged are alleged to be in the Southern District of New York . . . as well as in New Mexico.”).

Plaintiff also alleges that Maxwell is a New York citizen domiciled in the Southern District of New York, Compl. ¶ 21, and therefore venue is additionally proper under 28 U.S.C. § 1391(b)(1) because all Defendants are residents of New York. In Maxwell’s brief, she states that she does not, in fact, reside in New York, but does not submit any documentary evidence to support that contention, nor does she state where she resides or when she stopped residing in New York. Maxwell Mem. at 20. Such a conclusory statement in an unsworn legal brief is not enough to rebut Plaintiff’s prima facie showing that Maxwell is a resident of New York and that venue is proper in this District. *See Gulf Ins. Co.*, 417 F.3d at 355; *Sanderson v. Horse Cave Theatre* 76, 881 F. Supp. 2d 493, 506 (S.D.N.Y. 2012) (“On a motion to dismiss for improper venue . . . [t]he court

must take all allegations in the complaint as true, unless contradicted by defendants' affidavits.") (internal quotation marks and citation omitted). Venue is therefore proper in this District under both § 1391(b)(1) and § 1391(b)(2).

CONCLUSION

For the foregoing reasons, the Court should deny Defendant Ghislaine Maxwell's Motion to Dismiss or to Transfer.

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Respectfully Submitted,

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