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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SARAH RANSOME,

Plaintiff,

v.

17 Civ. 616 (JGK)

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

Defendants.

-----x

New York, N.Y.
August 7, 2018
2:30 p.m.

Before:

HON. JOHN G. KOELTL

District Judge

APPEARANCES

BOIES SCHILLER & FLEXNER LLP
Attorneys for Plaintiff
BY: SIGRID MCCAWLEY

S.J. QUINNEY COLLEGE OF LAW
AT THE UNIVERSITY OF UTAH
Attorneys for Plaintiff
BY: PAUL CASSELL

STEPTOE & JOHNSON LLP
Attorneys for Defendants Jeffery Epstein, Lesley Groff and
Sarah Kellen
BY: MICHAEL MILLER
JUSTIN CHU

DARREN K. INDYKE LLC
Attorney for Defendant Jeffery Epstein
BY: DARREN K. INDYKE

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1 APPEARANCES (Continued)

2 HADDON MORGAN & FOREMAN P.C.

3 Attorneys for Defendant Ghislaine Maxwell

4 BY: LAURA MENNINGER

5 ALSO PRESENT: ALEXANDER LORENZO

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1 (Case called)

2 (In open court)

3 MS. MCCAWLEY: Sigrid McCawley for Sarah Ransome the
4 plaintiff, along with my co-counsel Paul Cassell.

5 MR. MILLER: Good afternoon, your Honor. Michael
6 Miller and Justin Chu from the law firm of Steptoe & Johnson,
7 and Darren Indyke, who is counsel to Mr. Epstein. We represent
8 Jeffery Epstein and Leslie Groff, and yesterday filed a
9 substitution of counsel with respect to Sarah Kellen, whose
10 previously existing counsel is also here today, and if the
11 Court is comfortable with the substitution of counsel, we will
12 argue for all three defendants.

13 THE COURT: I signed it already.

14 MR. MILLER: Fine. Thank you, your Honor.

15 THE COURT: And it should be on the docket, I think.

16 MS. MENNINGER: Good afternoon, your Honor. Laura
17 Menninger, on behalf of Ghislaine Maxwell, from Haddon Morgan &
18 Foreman.

19 MR. LORENZO: Good afternoon, your Honor. Alex
20 Lorenzo from Alston & Bird. As Mr. Miller indicated, we are
21 now predecessor counsel. I saw the order pop on the docket. I
22 wanted to come down in case that there was some issue, but I
23 would request permission to be excused.

24 THE COURT: Yes, you can be excused. Thank you. I
25 did sign the substitution, as you saw.

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1 All right. OK. I know people personally and
2 professionally at Boies Schiller. I knew Mr. Haddon when I was
3 in private practice. I may know people at Steptoe, but I'm not
4 sure. Nothing about any of that affects anything that I do in
5 the case.

6 I also had dealings with Mr. Boise when I was in
7 private practice. Again, nothing about that affects anything
8 that I do in the case. These are motions to dismiss. I'm
9 familiar with the papers, and I'm prepared to listen to
10 argument.

11 MR. MILLER: Your Honor, can I address you from the
12 podium there?

13 THE COURT: Sure.

14 MR. MILLER: Michael Miller from Steptoe & Johnson,
15 and as I indicated we are here on behalf of and Jeffery
16 Epstein, Lesley Groff and Sarah Kellen.

17 Your Honor, we respectfully submit that the amended
18 complaint before you is legally deficient and should be
19 dismissed for several reasons, the first of which is that it
20 was not filed timely. Our belief is that the statute of
21 limitations has lapsed.

22 The amended complaint also fails, your Honor, to
23 properly allege fraud, coercion or force, which are three
24 alternative ways of proving a violation of Section 1591. More
25 broadly, your Honor, it's our view that section 1591 does not

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1 apply to the conduct alleged in this case.

2 And, lastly, at least in terms of points that we will
3 be making, is that we believe that there have been insufficient
4 allegations of personal jurisdiction.

5 In an effort to do this efficiently, your Honor, Ms.
6 Menninger and I have divided up these topics, and if it's all
7 right with the Court, I will be addressing the statute of
8 limitations issue, the allegations of fraud, the scope of
9 Section 1591, and the lack of personal jurisdiction; and Ms.
10 Menninger will be addressing the allegations of coercion and
11 force, the lack of a causal link between those allegations and
12 sexual activity, and the specific allegations with respect to
13 her client.

14 Your Honor, starting with statute of limitations,
15 Section 1591 was enacted in 2000 with a four year statute of
16 limitations. That was the statute of limitations in effect
17 when the events at issue in this case occurred, and those
18 events as alleged were in 2006 and 2007. Clearly, if the four
19 year statute of limitations applies, the lawsuit was not
20 started in a timely fashion.

21 In late 2008, effective early 2009, Section 1591 was
22 amended to permit a ten year statute of limitations. And I
23 think the preliminary, the threshold issue before the Court
24 today, is whether the four year statute of limitations or the
25 ten year statute of limitations should apply to this case.

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1 THE COURT: When the statute was amended to increase
2 the statute of limitations to ten years, the claims were still
3 alive under the four year statute of limitations had the case
4 been brought at that time.

5 MR. MILLER: That is correct, your Honor. And I am
6 aware that there are two cases here -- I believe they are
7 district court cases -- where that analysis has been applied to
8 conclude that the ten year statute of limitations applies. We
9 cited a case out of the District of Minnesota, the Abarca case,
10 that takes a different view, and the thinking in the Abarca
11 case -- which we think is the correct thinking --

12 THE COURT: So far the thinking in this District is
13 against you.

14 MR. MILLER: I appreciate that, but I think that the
15 analysis in Abarca, which basically is that Congress had the
16 ability to articulate that it wished to apply it retroactively,
17 wished to apply it to any action that was not time barred at
18 the time of amendment and didn't do so.

19 THE COURT: But the issue then becomes a definition of
20 retroactivity. The rules against retroactivity are there to
21 prevent -- unless the legislature otherwise provides -- that a
22 cause of action is not revived or that rights are not otherwise
23 cut off. Here there is nothing that was being revived and
24 there was nothing that was being cut off. Congress simply made
25 a determination that the statute of limitations would be

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1 lengthened. So there was no need for Congress to say we're
2 reviving a cause of action that is otherwise barred, which
3 would be the core of a problem of retroactivity. So you have
4 to ask in the first instance if there is a claim of
5 retroactivity, did Congress specifically authorize the
6 retroactive application. In this case there was no retroactive
7 application to be applied; Congress simply lengthened the
8 statute of limitations, and that included all causes of action
9 that were alive at that time. That logic seems to be right.

10 MR. MILLER: Well, if I can, your Honor, I certainly
11 understand, accept and agree with the proposition as you've
12 articulated it as far as it goes, but I think that the case law
13 with respect to retroactive application isn't limited to vested
14 rights like the statute of limitations has already expired and
15 the new statute of limitations would restore an action that has
16 already ceased to be subject to prosecution under the statute
17 of limitations. It's not limited to reviving an affirmative
18 defense that has already run its course.

19 I respectfully submit that there is a significant
20 impact on defendants. At the time that the alleged activity
21 occurred here, there was a four year statute of limitations.
22 By expanding it to ten years, at the time that they engaged in
23 that conduct -- if they were even aware of the statute -- they
24 would have been operating under the assumption that there was a
25 four year statute of limitations.

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1 THE COURT: Yes, it would have been -- it is a
2 difficult argument that a defendant can rely upon the statute
3 of limitations which has not yet expired so that the defendant
4 can say, you know, you can't sue me; you have a few more years
5 to sue me, but after that you can't sue me because of this
6 statute of limitations. Much more powerful argument would be a
7 defendant who says I rely on the fact that if I did something
8 more years ago than the statute of limitations, I am now safe.
9 A defendant who is still subject to being sued cannot say to
10 himself or herself I am now safe.

11 MR. MILLER: That's undeniable, that is true, but in
12 the same breath you could say that by 2011 or thereabouts
13 certain rights that would have existed under the four year
14 statute of limitations would have matured at that point, and
15 from that date forward, from whatever that four date year was
16 forward, there were certain rights that would have existed but
17 for the amendment of the statute of limitations, and that is
18 something of value that is essentially taken away by a
19 retroactive application of the ten year statute of limitations
20 to conduct that predated the date of the amendment.

21 I sense that I'm sledding uphill, and so perhaps I
22 should push my sled in a different direction, but I do believe
23 that the two district court cases here were incorrectly decided
24 on that theory and that the ten year statute of limitations
25 should not apply.

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1 But even if it does apply, your Honor, according to
2 the amended complaint, in January of 2007 -- and I guess just
3 by way of a footnote, the original complaint was filed in this
4 case on January 26th of 2017 -- so in January of 2007,
5 according to the amended complaint in paragraphs 55 to 57, the
6 plaintiff went to South Africa to visit with her family.
7 That's where her father and stepmother and other family members
8 live. Under the Oluch case which we cited from the Southern
9 District, a 2015 case, frankly under the Abarca case from the
10 District of Minnesota that we also cited, the cause of action,
11 if any, that the plaintiff had with respect to the defendants
12 under Section 1591 accrued as of that point in time.

13 Under Oluch the Southern District held that the claim
14 accrued when the plaintiff first left the defendant's home. In
15 the Abarca case -- which I grant is the District of
16 Minnesota -- they put it slightly different, when the plaintiff
17 traveled home to Mexico and had "physical freedom" the cause of
18 action accrued.

19 Under the complaint, the amended complaint as drafted,
20 the plaintiff left New York City, left where Mr. Epstein and
21 the defendants were allegedly located, and went home and had
22 the kind of physical freedom that the Abarca case speaks to.

23 Now, the complaint is in all candor vague about when
24 in January of 2007 that trip occurred, and the lack of detail
25 is odd because, as you may recall from earlier stages of this

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1 case, after the original complaint was filed, we worked out a
2 process with the Court's consent whereby we provided a
3 deficiency letter to the plaintiff, to counsel, outlining the
4 many, many issues that we had with the complaint at that time,
5 and one of those issues was statute of limitations, and one of
6 the points we made is that, to the best of our knowledge, she
7 left, she was already gone and left New York City before
8 January 26 of 2007, more than ten years before the complaint in
9 this action was actually filed.

10 There is additional evidence that was addressed in the
11 papers, and from a procedural perspective let me pause for a
12 moment. I would like to be able to speak to the evidence that
13 was gathered in the Joffre case, which is the subject of a
14 protective order. It's all before you, but I just don't know
15 if you have any reservations about me speaking about it openly
16 in court about it today.

17 THE COURT: I don't. Do any of the parties?

18 I should add that it is not clear to me -- in fact I
19 should put it differently. I think the various items that you
20 rely on from the deposition in the other case are not properly
21 considered by me on this motion, which is a motion to dismiss
22 on several grounds.

23 The parties go to great lengths to describe the
24 plaintiff in the most uncomplimentary terms based on the
25 deposition in the other case. Those allegations are plainly

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1 not in the complaint in this action. The deposition was taken
2 after the complaint in this action. There is no reasonable
3 legal basis that I see for incorporating the allegations or the
4 statements in the deposition in the other case in support of
5 the motions in this case.

6 The deposition in the other case was taken after the
7 complaint in this case, was not incorporated into the complaint
8 in this case, was plainly not relied upon by the plaintiff in
9 drafting the complaint in this case, and appears to me to be
10 admitted or offered by the defendants solely for purposes of
11 influencing me against the plaintiff in this case, contrary to
12 the facts that are pleaded in this case, and that includes the
13 comments about the statute of limitations.

14 MR. MILLER: If I might, just briefly, your Honor.

15 THE COURT: Yes, sure.

16 MR. MILLER: Just two quick points. One is
17 chronologically the original complaint was filed in January of
18 2017. It's my understanding, my recollection, that the
19 depositions at issue occurred after that but before the first
20 amended complaint was drafted and filed, so from a timing
21 perspective, if that matters in your analysis --

22 THE COURT: Thank you. It doesn't. It doesn't. Hold
23 on. I appreciate your correcting the chronology, but the
24 deposition was plainly not relied upon by the plaintiff in
25 drafting this complaint, and the plaintiff doesn't rely upon

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1 any of the allegations in that deposition for purposes of the
2 allegations in this complaint.

3 MR. MILLER: Well, I think we carefully articulated in
4 our motion papers that the reason we cited to the Joffre
5 evidence was to establish that if the Court agreed that the
6 first amended complaint as drafted was legally insufficient,
7 that a dismissal should be with prejudice, because based on the
8 Joffre evidence there is no available theory under which the
9 case -- the complaint could be repled properly.

10 THE COURT: That really is not the way in which the
11 deposition was used. It was not used for purposes of saying
12 don't let the plaintiff amend because look at what was said in
13 the deposition. It was used, for example, to say on the
14 statute of limitations that while the complaint alleges
15 activities that continued into February of 2007, you can't
16 believe those allegations because at that time the plaintiff
17 was in fact a willing and knowledgeable person who was doing
18 other things, other things which are not alleged in the
19 complaint. And they were used for purposes of saying you
20 really can't credit the allegations in the complaint of force
21 or fraud, coercion, because look at all of the other things
22 that the plaintiff was doing.

23 MR. MILLER: Your Honor, I must say, I take ownership
24 of the drafting of that motion. It was our intention, if
25 inartfully framed, to really speak to the ability of the

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1 plaintiff to replead a legally sufficient complaint. And I
2 would be happy to sit down with you and go over the motion
3 papers as drafted, but --

4 THE COURT: Well, trust me we will not sit down and go
5 over the motion papers. Trust me also that I carefully read
6 all of the motion papers, and I was more than surprised that
7 lawyers of the distinction of the lawyers in this case on the
8 defense side would do what you did.

9 Now, you may say, oh, Judge, even though our papers
10 were larded with an explicit discussion of each of the
11 plaintiff's relations with other people, right down to the most
12 recent allegations of the plaintiff's alleged other occupation,
13 all of that, we're not relying on that for our motion to
14 dismiss; we're relying on that for our argument that once
15 having dismissed this complaint you shouldn't let the plaintiff
16 replead.

17 You can say that, but I don't think that any
18 reasonable person reading these briefs would come away with
19 that as a conclusion. And also one wonders how that would even
20 make any sense. If I were to grant the motion to dismiss
21 because there are insufficient allegations in the complaint, I
22 should then rely upon the deposition to say that the plaintiff
23 could not replead because I now can read the deposition and
24 rely upon the statements in the deposition, and conclude that
25 any new complaint would not survive a new motion to dismiss,

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1 when the new complaint would plainly not rely upon the specific
2 allegations that the defendants are relying on in the
3 deposition? That would be a difficult argument. Moreover, it
4 is contrary to what you said in the briefs.

5 In the briefs you attempted to come up with other
6 reasons for putting all of this in, reasons like the plaintiff
7 started it; we were able to rely upon the deposition because
8 the plaintiff relied on the deposition. Well, that's not quite
9 right, is it?

10 You made the motions to dismiss, and then the
11 plaintiff responded to the motions to dismiss. And the
12 plaintiff said, you know, the deposition doesn't really say
13 what you're saying it says. But it was in the motions to
14 dismiss, so -- but go ahead.

15 MR. MILLER: Your Honor, I will just say I apologize
16 for any unintended confusion on our part about how we intended
17 to use the evidence from the Joffre matter, and --

18 THE COURT: I should add, the amount of the briefs
19 that are devoted to the allegations from the deposition, I
20 haven't counted up words or pages, but there is an awful lot of
21 these briefs that rely upon what was said at the deposition,
22 and under the law that's just not right. Just as a matter of
23 law it's not correct, which is what brought me to my comment of
24 surprise at the defense counsel doing that.

25 MR. MILLER: Thank you, your Honor. Understood. I

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1 will proceed without any further reference to that body of
2 information.

3 In addition to the fact that the complaint itself, the
4 amended complaint itself, acknowledges that the plaintiff left
5 New York in January of 2007, the complaint also states that at
6 the time that the plaintiff left in January of 2007 and went to
7 South Africa, that when she went to South Africa she was asked
8 to look for somebody to work as a personal assistant to
9 Mr. Epstein, and she decided not to do that, having concluded
10 that the individual, rather than being treated as an assistant,
11 might be treated in another, you know, less reputable way. And
12 I believe it is fair to conclude from that language in the
13 amended complaint that by the time the plaintiff left New York
14 to go to South Africa in January of 2007, she had already come
15 to a place where in her mind she didn't believe she could trust
16 the defendants or the representations that they were making to
17 her about what they were actually seeking to accomplish with --

18 THE COURT: What do I do, for example, with the
19 allegation in the amended complaint in paragraph 61? "In
20 February of 2007, in reliance on promises made by the
21 defendants, plaintiff returned to New York City, in the
22 Southern District of New York, and was promptly ordered by the
23 defendant Maxwell to have sex with defendant Epstein.
24 Defendants Maxwell, Kellen, Groff and Epstein each fraudulently
25 promised plaintiff again that her sexual compliance would be

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1 rewarded with admission to the Fashion Institute of Technology
2 or a comparable college, a promise which they knew to be
3 false."

4 MR. MILLER: I think in short strokes you have an
5 individual who claims that before she left, or at the time she
6 left New York, she no longer believed the representations made
7 by the defendants to her. That is difficult to reconcile with
8 the notion that she left her family in South Africa to come
9 back to New York based on additional promises and
10 representations made by the defendants. So, we have a
11 fundamental conflict within the four corners of the complaint
12 as drafted.

13 THE COURT: It wouldn't be the first time for a fraud
14 case in which an alleged victim of a fraud came to believe that
15 the victim was defrauded, and the perpetrator goes to the
16 victim and convinces the victim to invest yet again. Those
17 cases are in fact not uncommon.

18 So, you say there are conflicting allegations in the
19 complaint. That means that they're not really susceptible to a
20 motion to dismiss. They may be susceptible to a motion for
21 summary judgment. But the only way to grant the motion on
22 statute of limitations grounds is to say that paragraph 61 is
23 simply false, it's a false allegation, you can't take it,
24 Judge.

25 And in order to support that, of course, in your

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1 papers you describe what you say the plaintiff was doing after
2 she returned to New York. But you say, well, we're not relying
3 on that for the motion to dismiss; we're relying on it solely
4 that she can't file an amended complaint.

5 MR. MILLER: That is correct.

6 THE COURT: But then I'm left with the unrebutted
7 paragraph 61.

8 MR. MILLER: The way we read that paragraph is that
9 the allegations were broad, they were conclusory, they don't
10 satisfy Rule 9(b) particularization, and there is no way to
11 read those additional allegations in light of the other
12 allegations in the amended complaint to demonstrate that the
13 plaintiff reasonably relied on whatever new representations
14 were made to her.

15 So, given the unique definition of Section 1591, it is
16 our view that those allegations about the conduct that occurred
17 between February and May of 2007 don't establish a violation of
18 Section 1591.

19 Whatever conduct occurred before January of 2007 --
20 and obviously on the merits, you know, we have a different view
21 of the underlying allegations, but whatever happened before
22 January of 2007, that cause of action accrued at the time the
23 plaintiff left New York and went to South Africa, under the
24 cases that we discussed earlier.

25 So, our view is that the ten year statute of

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1 limitations ran on the activity that occurred before January of
2 2007 and that the new allegations that were raised don't
3 satisfy the elements of Section 1591.

4 Your Honor, Section 1591 requires that the defendants
5 know and, indeed, in some manner of conduct, know that an
6 individual is going to be subject to amongst other things
7 force, coercion or fraud.

8 We respectfully submit that the amended complaint as
9 drafted does not satisfy Rule 9(b) pleading standards. The
10 amended complaint fails to allege with particularity when any
11 representations -- specifically when any representations were
12 made to plaintiff about getting her into FIT -- which seems to
13 have been the principal factual allegation in the amended
14 complaint -- or any other particular school, particularly
15 whether any of those representations were made before or after
16 the alleged sexual relationship began.

17 In addition, the amended complaint fails to allege
18 with particularity what any particular defendant said to her
19 about her prospects of getting into FIT or any other particular
20 school. There is a heavy reliance throughout the amended
21 complaint on group pleading, which is not embraced in this
22 Circuit, when you're talking about oral statements and
23 representations. And the allegations with respect to
24 defendants Groff and Kellen are particularly threadbare and
25 conclusory.

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1 The amended complaint also fails to allege with
2 particularity whether anyone promised that the plaintiff would
3 get into FIT or any other similar school in any particular
4 semester.

5 The amended complaint fails to allege facts
6 demonstrating that at the time whatever statements were made
7 about FIT, that they were false when made. The law is clear in
8 this jurisdiction that the question is were the statements
9 false at the time they were made. And the fact that there has
10 been inaction in connection with the promises isn't sufficient
11 to show that the statements were false when made.

12 The amended complaint contains allegations, your
13 Honor, that strongly suggest to the contrary. The allegations
14 in the complaint are that Mr. Epstein promised to take care of
15 this individual and that he in fact gave her access to an
16 apartment, a car, telephone, and that with respect to the
17 school, that the complaint acknowledges that Epstein reminded
18 the plaintiff about completing her application and reviewing it
19 for her. None of those facts contained in the amended
20 complaint are consistent with the notion that at the time
21 whatever statements were made those statements were false.

22 THE COURT: One of the arguments made in the papers is
23 that it was incredible for the plaintiff to believe that
24 defendant Epstein could impact, derail her application to FIT
25 and derail her modeling career, that is simply incredible, or

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1 the papers say.

2 MR. MILLER: Well, we do make the argument that the
3 plaintiff's reliance on those representations was not
4 reasonable.

5 THE COURT: Not reasonable because it was incredible
6 to believe that a person of the alleged wealth and prestige of
7 defendant Epstein could in fact derail the plaintiff's
8 education and career. That's the argument.

9 MR. MILLER: I think the allegations in the amended
10 complaint, your Honor, are that the threat was you'll never go
11 to college anywhere, you'll never get a modeling career going
12 anywhere, and I think that is a pretty broad statement for
13 somebody to reasonably rely upon, regardless of the wealth and
14 power of the individual who is making the statement.

15 THE COURT: So, it is incredible as a matter of law
16 that a person of alleged wealth and prestige sufficient to own
17 an island could in fact blackball someone from education and a
18 career presumably in New York? I am expected to rule as a
19 matter of law that that's incredible as a matter of law, that
20 that is not reasonable reliance, it just couldn't happen, and
21 no reasonable person could believe that it could happen.
22 Right? I mean your argument is asking me to rule as a matter
23 of law that such a conclusion is incredible as a matter of law,
24 and that, therefore, there is no reasonable reliance.

25 MR. MILLER: Yes. The argument is specifically that

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1 relying on the affirmative promises, relying on the alleged
2 very broad allegations of threat, was not reasonable under the
3 circumstances.

4 THE COURT: What comparable case do you think stands
5 for that proposition?

6 MR. MILLER: Well, I think the threat is just so broad
7 as to be as a practical matter -- regardless of the wealth or
8 prestige of the individual -- an impossible threat to carry
9 through on. The notion that an individual could prevent
10 another individual from going to school anywhere, from pursuing
11 a modeling career anywhere, it stretches the boundaries of what
12 is reasonable reliance. That's the point we were making.

13 THE COURT: And my question is what case do you rely
14 on for that proposition with any similar set of circumstances:
15 An alleged -- for purposes of the complaint -- young person
16 versus a person of wealth and prestige, that the kind of
17 promises and alleged threats that were being made were
18 unreasonable as a matter of law?

19 I mean I understand the reasonable reliance cases in
20 terms of investors and in terms of what should and shouldn't be
21 done in terms of reasonably pursuing an investigation of a
22 company. But is there any comparable case that has said that
23 in a situation such as this, such as alleged in the amended
24 complaint, it should be dismissed as a matter of law on a
25 motion to dismiss?

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1 MR. MILLER: Your Honor, most of the cases that we
2 looked at did deal with reasonable reliance in the context of
3 investment scenarios with relatively sophisticated parties on
4 both sides. I can't say that we found a case that is
5 specifically on point, so we're really arguing more from the
6 facts than a specific case.

7 THE COURT: OK.

8 MR. MILLER: Your Honor, the last point that I'd like
9 to address is the issue of lack of personal jurisdiction.

10 I think it's fair to say, based on some of the dialog
11 we've had so far, that it's your view that there are sufficient
12 allegations of conduct in the February to May 2007 time period.
13 But, you know, as we have noted in the papers, virtually all of
14 the conduct that's at issue in this case predated January of
15 2007, predated the plaintiff's departure from New York to go to
16 South Africa.

17 The only allegations in the complaint as to the
18 defendants and their current ties to New York relate to
19 Mr. Epstein and a particular piece of real estate. We
20 respectfully submit that the absence of concrete evidence of
21 violations of Section 1591 in 2007 -- as opposed to before the
22 defendant left -- should lead to the conclusion that there is
23 no personal jurisdiction over the defendants.

24 THE COURT: OK, thank you.

25 MR. MILLER: Thank you.

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1 THE COURT: Ms. Menninger.

2 MS. MENNINGER: Thank you, your Honor. On behalf of
3 defendant Ghislaine Maxwell, I would ask the Court to dismiss
4 the first amended complaint filed on June 5, 2017. In some
5 ways I want to start in the same place that Mr. Miller did, and
6 that is with the statute itself and its passage.

7 Your Honor, in 2007 -- 2006 and 2007 -- when the
8 allegations in the complaint purportedly took place, there was
9 no civil cause of action at all under this chapter other than a
10 violation of 1591. The same amendment which added these ten
11 year statute of limitations also broadened who could be sued
12 and for what.

13 The statute that existed in 2006 and 2007 read, "An
14 individual who is a victim of violation of Section 1589, 1590
15 or 1591 of this chapter, may bring a civil action against the
16 perpetrator in an appropriate district of the U.S. and may
17 recover damages and reasonable attorney fees."

18 The persons who could be sued under that chapter were
19 perpetrators of the crimes specified in 1589, 1590 and 1591,
20 and the person who could sue was an individual who was a victim
21 under those three statutes. Notably absent is any reference to
22 lawsuits, civil causes of action brought pursuant to other
23 sections of that chapter. Those would include 1592, 1593 and
24 1594, as well as 1593(a), which was added in December of 2008
25 and did not previously exist.

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Paragraphs -- you look like you had a question.

THE COURT: The same arguments that I was raising with your colleague would apply to all of these arguments also. At the time that the statute was amended to include the ten year statute of limitations, there was no bar, if you will, to a claim against all of the defendants.

MS. MENNINGER: Your Honor, I respectfully would contend that there is a fundamental difference between a statute of limitations that is extended as to conduct that has already occurred versus creating a new cause of action or a new civil remedy. The support for that, your Honor, is the U.S. Supreme Court in Landgraf v. USI Film Products, which I cited in my papers for a different proposition, but it's found at 511 U.S. 244.

In that case, your Honor, the U.S. Supreme Court was considering a very similar situation with respect to a sexual harassment claim under Title VII. In that case, Title VII, prior to the defendant at issue's conduct, only provided for back pay or equitable remedies, and then in 1991 Congress added a compensatory damage provision.

The U.S. Supreme Court spent a great deal of time in Landgraf, explaining that adding a cause of action for damages -- as was done in this statute -- did not retroactively apply unless there was an express finding by Congress to do so. And they distinguished things like extending statutes of

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1 limitations and, rather, relied on the fact that a new action
2 for damages was being created. And that is what happened in
3 this case with respect to this statute as well, your Honor.

4 THE COURT: OK.

5 MS. MENNINGER: Paragraphs 69 through 77 of the first
6 amended complaint purport to state causes of action under each
7 of those other chapters -- excuse me -- sections of the same
8 chapter, your Honor, and I would ask at the outset that those
9 particular requests be stricken from the first amended
10 complaint.

11 THE COURT: But there would still be the action under
12 1591.

13 MS. MENNINGER: Yes, your Honor. I'm starting from
14 the ones that are really easy, in my opinion, and then moving
15 to 1591, which would be the other one. But it does, your
16 Honor, significantly affect some of the allegations within the
17 first amended complaint. For example, 1592 is the provision
18 that criminalized the taking of the passport, for example.

19 THE COURT: Right. But, in a way, each of the other
20 provisions is subsidiary to 1591. The plaintiff doesn't break
21 out the four separate subsidiary statutes, 1591 and the other
22 three; the plaintiff has only one cause of action for a
23 violation of 1595.

24 MS. MENNINGER: She requests specific damages under
25 some of those statutes, your Honor, for example, forfeiture and

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1 restitution. She relies on a conspiracy theory that is
2 articulated in one of those statutes. She relies on the
3 attempt provision that's included in one of those statutes and,
4 as I mentioned, the passport.

5 THE COURT: But she one claim, one cause of action for
6 a violation of 1595. What the argument that you have been
7 making so far comes down to is I should give the complaint a
8 haircut by striking some of the allegations in the complaint,
9 even though the case goes forward, and even though allegations
10 like holding the passport could be used in support of a
11 violation of 1591.

12 MS. MENNINGER: Your Honor, I was not about to just
13 sit down after that particular argument; I was going to move on
14 to the next one.

15 THE COURT: OK.

16 MS. MENNINGER: So, I guess it would be the first chop
17 in the haircut that I propose that this Court make a complete
18 shaving of the head by the time that we're done. But, in any
19 event, I think those particular statutes clearly do not grant a
20 cause of action to the plaintiff for conduct that occurred
21 prior to Congress authorizing the civil action.

22 With respect to 1591, your Honor, moving there, the
23 statute as it read at the time permitted a cause of action
24 against the perpetrator, not against someone who was alleged to
25 have been a person who benefited from a venture, which is

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1 something else that is seen replete through the first amended
2 complaint. And it requires, your Honor, the statute 1591 as it
3 existed in 2016, that an individual either recruit, entice,
4 harbor, transport, provide, or obtain by any means a person or
5 benefit financially. Those are what I would -- drawing upon
6 criminal law -- call the actus reus of this particular offense
7 that has been granted a civil cause of action.

8 Your Honor asked earlier with respect to the statute
9 of limitations question why does paragraph 61 of the first
10 amended complaint -- which talks about reliance on promises
11 that occurred after January of 2007 -- how can we just read
12 those out of the first amended complaint. Your Honor, I
13 believe that the way 1591 is read, the act is accomplished --
14 the offense accrues when the recruiting, enticing, harboring,
15 etc. occurs.

16 This is not a general fraud statute. Although fraud
17 rears its head in the mens rea element, fundamentally the act
18 that is sought to be covered here occurs at the time of the
19 recruitment, the enticement, the harboring, etc., or at the
20 time of benefiting financially. Those are the two provisions
21 of 1591.

22 So, your Honor, the allegations contained in paragraph
23 61 of the first amended complaint are not allegations of a
24 recruitment, or an enticement, or a harboring; they are
25 allegations that go to the mens rea. Therefore, I would submit

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1 to your Honor that the act has accrued once the recruitment or
2 the enticement happened, not because further acts of purported
3 fraud occurred later.

4 Your Honor, moving on to the sections not already
5 covered by Mr. Miller, I would point your Honor to the
6 requirement that one of those two acts has to occur knowing
7 that fraud, force or coercion will be used to cause that person
8 to engage in a commercial sex act.

9 With respect to knowing that force will be used, there
10 is no allegation of force in the first amended complaint.

11 With respect to fraud, Mr. Miller has already
12 addressed the absence of particular allegations with respect to
13 fraud: The dates, times and circumstances that any particular
14 statement was made. And, your Honor, I will move to the last
15 of those three permitted means of stating a claim, and that is
16 with respect to coercion.

17 In their response, plaintiff has pointed to two
18 particular paragraphs that they claim adequately state a claim
19 for coercion -- although they plead it in the alternative,
20 noting as the statute does, that there are three ways that
21 could accomplish the final goal. And they point to paragraph
22 48, which just says simply that there were threats of serious
23 harm, without stating what any such threats were; and they
24 point to paragraph 49, which is that she was physically
25 returned to the main island on house by a search party at some

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1 point in time. And, again, without any dates, it's difficult
2 for the Court or the parties to understand any particular
3 sequence of events, but it is up to the plaintiff to allege
4 sufficient facts that would state a claim, if they were there.

5 And, your Honor, there are no facts that show -- I
6 think it's important to look at the statute again, which
7 defines what coercion means in this context, and coercion means
8 under 1591 in existence at the time, threats of serious harm
9 to, or physical restraint against any person, is the primary
10 definition.

11 There are not facts other than bald allegations with
12 respect to that definition of coercion. In their response
13 papers they point to a threat that she would no longer be given
14 the same financial benefits that she had been receiving in the
15 past, but that is clearly not what coercion is defined to
16 include in the statute itself under 1591.

17 Finally, your Honor, with respect to what we will call
18 the causal connection, 1591 states that the person must have
19 known that fraud, force or coercion would occur, would be used
20 to cause the commission of the commercial sex act.

21 Again, your Honor, other than using these several
22 months at a time pleading windows, the complaints have not
23 specified the time when any such thing occurred. And I think
24 that was a conscious choice, because they, I believe -- and we
25 will not talk about other things outside of the four corners of

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1 the complaint -- it was a choice they made not to include
2 specific dates. Without those dates, your Honor, there is
3 nothing more than a bald assertion that the knowing, the force,
4 fraud, or coercion would cause a commercial sex act.

5 THE COURT: In your papers -- I say it for the first
6 time, unlike other defendants -- you also rely on the fact that
7 the plaintiff was engaged, you say, in another occupation which
8 is inconsistent with the allegations in the complaint. And I
9 could not understand how that allegation could be made in your
10 papers. It's certainly not in the complaint. And I couldn't
11 understand the reason for putting that in or what the effort
12 was in terms of having me rely on that for a decision.

13 MS. MENNINGER: Your Honor, I heard you very loud and
14 clear when you were speaking with Mr. Miller, and I too had
15 intended to use evidence from the other deposition in support
16 of an argument that any further amendment of this complaint
17 would be futile, but I'm trying to carefully not mention any of
18 those items during my oral argument.

19 THE COURT: OK. If you believe that that's the true
20 reason why that was included in your papers, so be it. Go
21 ahead.

22 MS. MENNINGER: As with the argument regarding
23 fraud -- and I think there are a number of cases --

24 THE COURT: Oh, before we leave that, part of the
25 argument that there was no fraud is there is no -- the

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1 plaintiff hasn't pleaded the reasonable basis for concluding
2 that the defendants didn't believe the alleged promises at the
3 time that they were made and, therefore, there is no pleading
4 of fraud, because a promise isn't fraud unless it is knowingly
5 false when made.

6 At the same time the defendants ask me to strike all
7 the allegations in the complaint about what happened
8 previously, which would appear to go to the issue of intent
9 under 404(b). Promises were made in the past, they weren't
10 kept, the defendants knew that when they were making promises
11 in this case they weren't going to be kept, and the defendants
12 urge me to simply strike paragraphs in the early part of the
13 complaint as irrelevant. Why don't those paragraphs go to
14 intent on the subject of fraud?

15 MS. MENNINGER: Your Honor, the intent for purposes of
16 this statute would require knowledge that force, coercion or
17 fraud would be used to induce a commercial setback. Those
18 earlier allegations do not allege force; they do not allege --
19 except in very bare terms -- coercion; they do not allege,
20 except in very bare terms -- anything with respect to the
21 fraud.

22 So, for the same reasons that in this District fraud
23 requires particularity, those are very broad, unspecified
24 allegations, divorced from dates, times, places, people's
25 statements, and so it appears for perhaps some of the same

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1 reasons that your Honor questioned why some of these other
2 things were in our papers, that that is in fact the same reason
3 that these other allegations were contained in the first
4 amended complaint, more to make it read as a press release than
5 it was to actually try to make a cause of action.

6 THE COURT: There are differences, right, between
7 allegations in a complaint and a legal basis for a motion to
8 dismiss. So, OK.

9 MS. MENNINGER: Your Honor, I would really urge your
10 Honor to look through the complaint with a careful eye towards
11 any places in which an actual time, place, event were
12 specified. We asked for that in our motion to dismiss; we said
13 that there was nothing more than a bald assertion that there
14 was a causal connection; and we were told here is where it says
15 in the amended complaint where it says there is a causal link,
16 but without any reason to show the causal link.

17 There are ways that your Honor could imagine that a
18 complaint could contain allegations. They could say this
19 happened first and then this happened next, but that's not how
20 any of this read.

21 And the same way that your Honor earlier pointed out
22 how am I supposed to just say because he's wealthy he could not
23 have controlled all of higher institutions of learning and all
24 modeling contracts in this world, if there were allegations
25 like he sat on the board of FIT, or he had a special connection

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1 with all of these higher institutions of learning -- like an
2 investor who is defrauded where there have been promises made
3 that an individual has the ability to get a particular
4 return -- there are no facts in here other than the mere
5 mention of wealth and status to suggest under the terms of the
6 amended complaint that this individual, Mr. Epstein, could
7 control all higher institutions of learning or all modeling
8 contracts. But there is even less with respect to my client,
9 your Honor. There are no allegations that she controlled the
10 world of modeling and the world of higher institutions of
11 learning.

12 So, I would ask your Honor to enforce what is the
13 common rule in this District, that allegations of fraud need to
14 be pled with particularity, and no such particularity exists in
15 this amended complaint.

16 THE COURT: OK. Thank you.

17 MS. MCCAWLEY: Is it all right if I'm here, or would
18 you prefer if I am at the podium?

19 THE COURT: It's probably better if you are at the
20 podium.

21 MS. MCCAWLEY: If I could just approach the bench; I
22 have come books.

23 THE COURT: All right. It's not so clear why you're
24 offering up a bench book.

25 MS. MCCAWLEY: Sorry, your Honor. I thought it might

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1 be helpful for you to have in front of you some of the key
2 cases we cited, along with a copy of our amended complaint, and
3 then I have just a couple -- just to make it easy for you to
4 follow -- the bullet points that show where the paragraphs are
5 in the motion to dismiss. They've obviously claimed that we
6 have not properly alleged certain things including fraud and
7 coercion, so I've set this forth.

8 THE COURT: Go ahead.

9 MS. MCCAWLEY: So, your Honor, I submit to you that
10 Congress had in mind this exact situation when it enacted 18
11 U.S.C. 1591, and that was to stop repeat offenders, or repeat
12 traffickers like the defendant in this case, from using fraud
13 and coercion to force females in commercial sex. That's what
14 happened to my client here, and that's what happened to other
15 females, as alleged in our complaint.

16 So what we have alleged in the complaint -- you've
17 heard a lot from the defendant about various deficiencies. We
18 believe the complaint is fulsome. It includes the allegations
19 that are necessary under the statute.

20 The statute makes clear that with respect to the
21 definition of commercial sex, that it is broad and it means any
22 sex act on account of which anything of value is given or
23 received by any person. We believe we have alleged that in our
24 complaint with respect to Ms. Ransome being used and induced
25 into commercial sex with respect to the defendants, and we

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1 believe we have pled that with specificity.

2 I want to talk a little bit about the fact that the
3 defendants have claimed that the tightened pleading standard,
4 we haven't met it. First, I believe we have met it. But
5 setting that aside, in the sea of the over 50 cases that they
6 cite in their briefs, there is not one that addresses a sexual
7 trafficking case where this heightened 9(b) issue is discussed.
8 So, they have RICO cases, they have other securities cases,
9 things of that nature, but nothing in this context.

10 And I submit to you that when Congress enacted this
11 statute, it intended it to be very broad; the language is very
12 broad. It covers not only fraud but also, as we've said,
13 coercion. And while Ms. Menninger was reading to you from the
14 old statute, the statute as it sits today and as it was at the
15 time that our client filed her complaint, defines the term
16 coercion in a much broader manner. It defines it -- and this
17 is in Section 4 of 1591 and (e)(4) -- it says, "The term
18 'serious harm'" -- so serious harm is one of the pieces of
19 coercion -- "The term 'serious harm' means any harm, whether
20 physical or nonphysical, including psychological, financial,
21 reputational harm that is sufficiently serious under all the
22 surrounding circumstances" --

23 THE COURT: Should I look at the statute at the time
24 that the events occurred? You're not suggesting that if the
25 defendants did something when the statute was somewhat

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1 different, and the statute was then amended thereafter, I
2 should look at the amended statute to determine whether what
3 the defendants did at the time that they did it was in
4 violation of the statute?

5 MS. MCCAWLEY: Well, your Honor, first I believe we
6 need we meet both, so let me be clear on that. I believe the
7 complaint as pled meets both standards. I was reading to you
8 the coercion as it stands now with respect to serious harm
9 under the statutory language -- which I believe we've met --
10 and as we talked about with respect to the statute of
11 limitations, that's the Lama v. Malik case and the Oluch case
12 that they referenced.

13 THE COURT: I mean I understand your argument with
14 respect to the statute of limitations with respect to the
15 length of the statute of limitations and the fact that when the
16 statute was amended the claim was still alive.

17 It's a somewhat different argument to say that at the
18 time the statute was amended the statute made unlawful
19 something that was lawful at the time that the defendants did
20 it. That would seem to run counter to the normal retroactivity
21 practice.

22 MS. MCCAWLEY: Right, your Honor, I understand. So, I
23 can just move on from that. I believe we've met the fraud and
24 coercion under both the old version and the new version, and I
25 believe we sufficiently articulate that in our complaint, so I

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1 will move forward with respect to that.

2 I did just want to highlight for you very briefly with
3 respect to the claims of fraud and coercion, that we have pled
4 those. I put them in the binder, but they are a number of
5 paragraphs, 38, 40, 41, 52, 53 and 66; and with respect to
6 coercion, 43, 45, 46, 48, 50 and 57.

7 With respect to the allegation that there was a group
8 pleading or an insufficient pleading with respect to certain of
9 the defendants, we submit to your Honor -- and I put the
10 paragraphs in there -- but we have both allegations particular
11 to the individual defendants, as well as allegations when they
12 pertain to all defendants, we've set that forth in the
13 complaint as well.

14 With respect to reasonable reliance, your Honor
15 touched on this a little bit in the beginning, but we have a
16 number of paragraphs that address that reliance, including 11,
17 12, 16, 22, 36, 38, 40, and the causal link as well in those
18 and in 49.

19 I will just touch briefly on the jurisdictional
20 argument that was made. We obviously believe we've submitted
21 appropriately that your Honor has jurisdiction in this matter,
22 and if there was any question with respect to jurisdiction we
23 did request in our papers to have a jurisdictional deposition.

24 With respect to the timing on the statute of
25 limitations, you pointed out paragraph 61. We believe that in

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1 that paragraph we have set forth very sufficiently that while
2 there was an episode where my client, Ms. Ransome, was sent by
3 the defendants to South Africa for the purposes of recruiting
4 another female and bringing her back to the United States for
5 the purposes of sex, we believe that that allegation is part
6 and parcel of the fraud and coercion that she was susceptible
7 to during that time period, that it carried on, it didn't stop.

8 There is no magical moment in that time period. She
9 was still under that fraud and coercion at that point, and it
10 continued when she got back to the United States, as alleged in
11 the complaint, up until May of 2007, your Honor.

12 So, we believe that the complaint sets forth very
13 sufficient allegations in detail about the harm that she was
14 subjected to and the time period within which that harm
15 occurred.

16 And, your Honor, if you have any other questions, I
17 would be happy to answer them.

18 THE COURT: No, thank you.

19 All right. I will take a ten minute break.

20 Oh, I'm sorry. I should have asked, any response?

21 MR. MILLER: No, your Honor.

22 THE COURT: Ms. Menninger?

23 MS. MENNINGER: Your Honor, may I be very briefly
24 heard?

25 THE COURT: Of course. Of course.

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1 MS. MENNINGER: With respect to the statute of
2 limitations question, your Honor, you heard plaintiff say that
3 they rely on the allegations contained in paragraph 61 of their
4 first amended complaint. And, your Honor, in that particular
5 paragraph they do not set forth any activity that could be
6 described as recruiting, enticing, harboring, transporting or
7 obtaining by any means a person, nor do they set forth anybody
8 who has gained a financial benefit. Those are the two
9 requirements of 1591 as it existed in 2006. And without any
10 allegations that any of those activities happened, you know,
11 after January of 2007 when the plaintiff left the country, they
12 have not set forth I think -- and I would submit to your
13 Honor -- any allegations that would restart the accrual period
14 that set off the ten year statute of limitations at best, the
15 four year statute of limitations of course having expired four
16 years earlier. Thank you.

17 THE COURT: OK. Thank you all. I will take ten
18 minutes.

19 (Recess)

20 THE COURT: I am prepared to decide the motions.

21 The plaintiff, Sarah Ransome, brings this action under
22 the Trafficking Victims Protection Reauthorization Act (the
23 "TVPRA"), 18 U.S.C. Section 1595, against the defendants
24 Jeffery Epstein, Ghislaine Maxwell, Sarah Kellen, Lesley Groff
25 and Natalya Malyshev. The plaintiff alleges that between

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1 October 2006 and May 2007, the defendants knowingly,
2 coercively, and fraudulently recruited and enticed the
3 plaintiff to engage in commercial sex acts with Jeffery Epstein
4 in violation of 18 U.S.C. Section 1591, and that the defendant
5 engaged in conduct that violated 18 U.S.C. Sections 1592, 1593A
6 and 1594.

7 Epstein, Groff, Maxwell and Kellen have filed motions
8 to dismiss the plaintiff's amended complaint pursuant to Rules
9 12(b)(2), 12(b)(3) and 12(b)(6) of the Federal Rules of Civil
10 Procedure, and they move to strike allegations pursuant to Rule
11 12(f) of the Federal Rules of Civil Procedure. They argue that
12 the Court should strike the portion of the amended complaint
13 detailing prior proceedings related to Epstein as impertinent
14 or immaterial to the allegations set forth in the amended
15 complaint and that the amended complaint fails to state a claim
16 for relief under 18 U.S.C. Section 1591 because, first, Section
17 1591 does not apply to the alleged relationship between the
18 plaintiff and Epstein; second, the amended complaint fails to
19 allege fraud or coercion against any of the defendants; third,
20 the amended complaint impermissibly lumps the defendants
21 together in violation of Rule 8 of the Federal Rules of Civil
22 Procedure; and, fourth, the amended complaint fails to
23 demonstrate that the alleged fraudulent or coercive conduct
24 caused the plaintiff to engage in a commercial sex act.
25 Additionally, with respect to the Section 1591 claim, Groff and

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1 Kellen argue that the plaintiff fails to allege that either
2 Groff or Kellen had sufficient knowledge that the plaintiff was
3 engaged in commercial sex caused by fraud or coercion. With
4 respect to the plaintiff's Section 1592 claim, the defendants
5 argue that the claim should be dismissed because it lacks
6 specific factual support. The defendants also argue that the
7 plaintiff does not allege violations of Sections 1593A and
8 1594.

9 The defendants also argue that the plaintiff's claims
10 are barred by the statute of limitations set forth in 18 U.S.C.
11 Section 1595(c), that the Court lacks personal jurisdiction
12 over the defendants, and that venue is improper in this
13 District.

14 In deciding a motion to dismiss pursuant to Rule
15 12(b)(6), the allegations in the complaint are accepted as
16 true, and all reasonable inferences must be drawn in the
17 plaintiff's favor. *McCarthy v. Dun & Bradstreet Corp.*, 482
18 F.3d 184, 191 (2d Cir. 2007). The Court's function on a motion
19 to dismiss is "not to weigh the evidence that might be
20 presented at trial but merely to determine whether the
21 complaint itself is legally sufficient. *Goldman v. Belden*, 754
22 F.2d 1059, 1067 (2d Cir. 1985). The Court should not dismiss
23 the complaint if the plaintiff has stated "enough facts to
24 state a claim to relief that is plausible on its face." *Bell*
25 *Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007). "A claim has

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1 facial plausibility when the plaintiff pleads factual content
2 that allows the court to draw the reasonable inference that the
3 defendant is liable for the misconduct alleged." *Ashcroft v.*
4 *Iqbal*, 556 U.S. 662, 667 (2009). While the Court should
5 construe the factual allegations in the light most favorable to
6 the plaintiff, "the tenet that a court must accept as true all
7 the allegations contained in the complaint is applicable to
8 legal conclusions." *Id.*

9 When presented with a motion to dismiss pursuant to
10 Rule 12(b)(6), the Court may consider documents that are
11 referenced in the complaint, documents that the plaintiff
12 relied on in bringing suit and that are either in the
13 plaintiff's possession or that the plaintiff knew of when
14 bringing suit, or matters of which judicial notice may be
15 taken. See *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153
16 (2d Cir. 2002); *Millennium Health LLC v. Emblemhealth, Inc.*,
17 240 F.Supp. 3d 276, 279-80 (S.D.N.Y. 2017).

18 The following facts are taken from the plaintiff's
19 amended complaint and are accepted as true for the purposes of
20 this motion to dismiss.

21 Jeffery Espstein is a wealthy individual who, along
22 with Sarah Kellen and Lesley Groff, has previously been
23 investigated by Florida state law enforcement and the United
24 States Attorney's office for the Southern District of Florida
25 for various offenses relating to sex trafficking, including 18

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1 U.S.C. Section 1591. Amended Complaint paragraphs 11 to 29.

2 The plaintiff alleges that her association with the
3 defendants began in approximately October 2006, when the
4 plaintiff was approached by Natalya Malyshev, allegedly one of
5 the enterprise's recruiters. Malyshev informed the plaintiff
6 that she would introduce the plaintiff to Epstein, whom
7 Malyshev described as a wealthy philanthropist who regularly
8 used his wealth, influence and connections to help financially
9 poor women like the plaintiff achieve their personal and
10 professional goals and aspirations. Amended complaint
11 paragraphs 35 to 36. Malyshev introduced the plaintiff to
12 Epstein, and Epstein confirmed to the plaintiff that he would
13 use his wealth and influence to have the plaintiff admitted to
14 the Fashion Institute of Technology, ("F.I.T.") in New York
15 City. Between October 2006, and May 2007, each defendant
16 confirmed and reiterated this promise to the plaintiff many
17 times. Amended complaint paragraph 38.

18 Ghislaine Maxwell, who allegedly oversaw the entire
19 sexual enterprise with Epstein, told the plaintiff that in
20 order to reap the benefits of Epstein's and Maxwell's
21 connections, the plaintiff would need to provide Epstein with
22 body massages. Amended complaint paragraph 39. Maxwell
23 allegedly instructed the plaintiff on how to massage Epstein.
24 During the plaintiff's first massage of Epstein, Epstein
25 allegedly converted the massage into a sexual act and made it

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1 known to the plaintiff that further sex would be required in
2 order for the plaintiff to obtain the assistance he promised
3 her. Epstein allegedly told the plaintiff that if she did not
4 perform the sexual act as demanded, Epstein had the ability to
5 make sure that the plaintiff would not obtain either a formal
6 education or any modeling agency contracts. Amended complaint
7 paragraph 43. Maxwell allegedly reiterated to the plaintiff
8 that if the plaintiff did not perform the sexual favors desired
9 by Epstein or abide by the instructions given to her by
10 Epstein, Groff, Kellen, and Maxwell, the defendants had the
11 ability to make sure the plaintiff would not obtain formal
12 education or modeling agency contracts. Amended complaint
13 paragraph 41.

14 Thereafter, the plaintiff was allegedly instructed
15 dozens of times to provide body massages to Epstein, both at
16 his alleged townhouse in New York City and on his alleged
17 private island in the U.S. Virgin Islands, and on each occasion
18 the plaintiff was required to perform a sexual act with
19 Epstein. Amended complaint paragraph 45. Each defendant
20 participated in arranging these meetings between Epstein and
21 the plaintiff, and each defendant allegedly made
22 representations -- mainly promises to advance the plaintiff's
23 education and career -- to ensure that the plaintiff would
24 cooperate in fulfilling Epstein's sexual requests. Amended
25 complaint paragraphs 40 and 45. The plaintiff alleges that

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1 these representations were knowing and deliberately false, were
2 not acted upon by the defendants, and were made by Epstein,
3 Groff, Kellen, and Maxwell solely for the purpose of
4 maintaining the plaintiff's financial dependence on, and sexual
5 compliance with, Epstein's demands. Amended complaint
6 paragraph 53. The plaintiff was also allegedly provided with
7 living quarters in New York, a car service and a cell phone, so
8 long as she serviced Epstein sexually. Amended complaint
9 paragraph 52.

10 Epstein, Maxwell, Kellen, and Groff allegedly
11 intimidated, threatened, humiliated and verbally abused the
12 plaintiff in order to coerce the plaintiff into compliance.
13 Amended complaint paragraph 48 and 50. For example, while
14 being transported to Epstein's island in the U.S. Virgin
15 Islands, Epstein, Maxwell, and Kellen took possession of the
16 plaintiff's passport in order to coerce her to comply with
17 their demands, including their demands that the plaintiff have
18 sex with Epstein and others. Epstein and Maxwell also forced
19 the plaintiff into losing weight in order to be allowed to
20 return to the United States from the trip to South Africa.
21 Amended complaint paragraph 54.

22 The plaintiff complied with the defendants'
23 instructions, including Maxwell's sexual demands. In May 2007,
24 after still not being granted admission into F.I.T., the
25 plaintiff left the United States and did not return. Amended

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1 complaint paragraph 64 to 66.

2 The defendants argue that the portion of the amended
3 complaint related to the prior state and federal investigations
4 of Epstein and others should be stricken from the amended
5 complaint. The defendants argue that these allegations are
6 immaterial because the prior investigations did not involve the
7 plaintiff. The plaintiff argues that the allegations of prior
8 state and federal investigations into Epstein's conduct could
9 be used to show a modus operandi.

10 A "court may strike from a pleading an insufficient
11 defense or any redundant, immaterial, impertinent, or
12 scandalous matter." Federal Rule of Civil Procedure 12(f).
13 "Motions to strike are not to be freely granted, and no
14 deletions will be made unless it is clear that the allegations
15 are without [basis]." Laub v. Genway Corp., 60 F.R.D. 462,
16 465-66 (S.D.N.Y. 1973) (citations and quotations omitted).
17 Moreover, the movants should show that they will be prejudiced
18 if the attacked allegations are left in the pleadings. Allstate
19 Ins. Co. v. Home Ins. Co., No. 97 Civ. 4332, 1997 WL 639254, at
20 *1 (S.D.N.Y. Oct 15, 1997). As another court in this district
21 noted:

22 "there has arisen since the adoption of Rule 12(f)
23 general judicial agreement, as reflected in the extensive case
24 law on the subject, that motions to strike under Rule 12(f)
25 should be denied unless the challenged allegations have no

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1 possible relation or logical connection to the subject matter
2 of the controversy and may cause some form of significant
3 prejudice to one or more of the parties to the action."

4 VNB Realty, Inc. v. Bank of America Corp., No. 11 CV.
5 6805, 2013 WL 5179197, at *3 (S.D.N.Y. Sept. 16, 2013)
6 (internal quotation marks, brackets and citations omitted); see
7 also I.B. Trading, Inc. v. Tripoint Global Equities, LLC, 280
8 F. Supp. 3d 524, 546 (S.D.N.Y. 2017).

9 There is no issue in this case with respect to an
10 unknown identity that may have to be proved by a pattern of
11 similar alleged crimes. Cf. Federal Rule of Evidence 404(b);
12 United States v. Carlton, 534 F.3d 97, 101-02 (2d Cir. 2008)
13 (holding that the defendant's three prior convictions for bank
14 robbery were admissible to prove identity for the bank robbery
15 at issue through a common modus operandi). However, the
16 portion of the amended complaint that the defendants move to
17 strike is not relevant to an issue of identity. The plaintiff
18 has no doubt as to who allegedly committed sex acts with her.
19 However, the portion of the amended complaint that the
20 defendants move to strike is not so irrelevant to the case that
21 they should be stricken. Groff, Maxwell and Kellen deny that
22 the alleged promises of financial assistance to the plaintiff
23 were knowingly false when made. The portion of the amended
24 complaint subject to the motion to strike provides specific
25 facts in support of the plaintiff's allegations that she was

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1 recruited an enticed into performing sex acts with Epstein as
2 part of a larger enterprise to provide Epstein with young
3 females for sex, in which each defendant allegedly played a
4 specific role.

5 The defendants contend that the plaintiff was a
6 younger woman who willingly accepted the blandishments of a
7 wealthy older man. The knowledge and intent of the defendants
8 will plainly be an issue. The paragraphs of the amended
9 complaint that the defendants seek to strike may be evidence of
10 the defendants' knowledge and intent in their dealings with the
11 plaintiff. See Federal Rule of Evidence 404(b). Accordingly,
12 the motion to strike is denied.

13 The defendants move to dismiss the amended complaint
14 on the basis that 18 U.S.C. Section 1591 does not cover the
15 alleged conduct. The defendants argue that the plaintiff and
16 Epstein were engaged in a consensual relationship and that the
17 amended complaint does not allege that the plaintiff was the
18 victim of sex trafficking within the meaning of Section 1591.

19 As support for their argument, the defendants rely on
20 the plaintiff's deposition in a proceeding before a different
21 judge. According to the defendants, in this deposition the
22 plaintiff describes her relationship with Epstein as
23 consensual. The defendants argue that this testimony from the
24 plaintiff contradicts the amended complaint. But it is well
25 established that it is improper for the Court to consider

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1 matters outside of the pleadings on a motion to dismiss.
2 Millennium Health, 240 F. Supp. 3d at 280. The defendants
3 argue that the Court can consider the plaintiff's testimony
4 because it was relied on by the plaintiff in response to the
5 defendants motions. But the plaintiff referenced her prior
6 deposition only in response to the defendants' improper use of
7 the deposition. The defendants also argue that the plaintiff
8 relied on her prior deposition to draft the amended complaint,
9 but that is plainly not true. The plaintiff's deposition is
10 not referred to, relied on, or incorporated by reference in the
11 amended complaint, and indeed the defendants argue that the
12 specific testimony in the deposition is actually inconsistent
13 with the allegations in the amended complaint. Therefore, the
14 Court will not consider either parties' improper use of
15 materials outside of the amended complaint.

16 The defendants also argue that the amended complaint
17 itself should be read as describing a consensual relationship
18 between two adults, but the amended complaint describes with
19 sufficient detail the manner in which the plaintiff was
20 deceived, threatened, and coerced into following the
21 defendants' instructions to comply with Epstein's sexual
22 requests. Accepting the defendants' description of the
23 relationship between the plaintiff and Epstein would require
24 the Court to accept the defendants' view of the facts rather
25 than the allegations in the amended complaint. That would be

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1 improper on a motion to dismiss.

2 The defendants further argue that Section 1591 was
3 intended only to reach victim's trafficked for sex and held
4 against their will, and that the amended complaint does not
5 allege that the plaintiff falls within that definition. The
6 defendants again rely on materials outside the amended
7 complaint to support this proposition. The Court will not
8 consider evidence extrinsic to the amended complaint at this
9 stage of the litigation.

10 Moreover, Section 1591 is not as limited as the
11 defendants suggest. Rather, Section 1591(a) imposes liability
12 on:

13 "whoever knowingly in or affecting interstate or
14 foreign commerce, or within the special maritime and
15 territorial jurisdiction of the United States, recruits,
16 entices, harbors, transports, provides, obtains ... or solicits
17 by any means a person, or benefits financially or by receiving
18 anything of value from participation in a venture ... knowing,
19 or ... in reckless disregard of the fact, that means of force,
20 threats of force, fraud, coercion ... or any combination of
21 such means will be used to cause the person to engage in a
22 commercial sex act."

23 18 U.S.C. Section 1591. The statute imposes liability
24 for the use of force but does not require that force be used in
25 order for conduct to fall within the statute's reach.

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1 Here, the amended complaint alleges that the plaintiff
2 performed sex acts on Epstein in return for numerous financial
3 inducements and fraudulent misrepresentations made and
4 reiterated by each of the defendants to the plaintiff. The
5 plaintiff was allegedly recruited and enticed by the defendants
6 who knew that she would be fraudulently induced to engage in
7 commercial sex acts with Epstein. A commercial sex act is
8 defined in Section 1591(e)(3) as "any sex act, on account of
9 which anything of value is given to or received by any person
10 ." The plaintiff was given financial incentives to engage in
11 sex acts with Epstein. She was allegedly fraudulently induced
12 to do so by false promises of help in her education and career,
13 and threatened with retaliation if she did not continue. The
14 promises were allegedly knowingly false when made. She was
15 recruited and solicited to do so. While the defendants seek to
16 limit the statute to sex slavery, the statute is not so
17 limited.

18 Accordingly, the defendants' argument that the amended
19 complaint's allegations do not fall within Section 1591 is
20 without merit.

21 The defendants move to dismiss the amended complaint
22 on the ground that it fails to satisfy the pleading
23 requirements under *Iqbal*, *Twombly*, and Rule 8 of the Federal
24 Rules of Civil Procedure. The defendants argue that the
25 amended complaint does not state a plausible claim with

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1 sufficient specific allegations that the plaintiff was a victim
2 of sex trafficking in violation of Section 1591 or any other
3 related statute entitling the plaintiff to civil relief
4 pursuant to Section 1595.

5 While the plaintiff has partly relied on group
6 pleading in her allegations against the defendant, the amended
7 complaint contains several specific factual allegations
8 sufficient to survive a motion to dismiss against each of the
9 defendants. For example, the amended complaint alleges that in
10 March or April of 2007, Maxwell, Kellen, and Groff reiterated
11 to the plaintiff Epstein's alleged promise that in exchange for
12 the plaintiff's continued sexual cooperation with Epstein,
13 Epstein would use his wealth and influence to have the
14 plaintiff admitted into F.I.T. Amended complaint paragraph 38.
15 The amended complaint alleges that Maxwell and Epstein
16 threatened the plaintiff that if she did not comply with
17 Epstein's sexual requests, they had the ability to make sure
18 she did not obtain a formal education or modeling agency
19 contracts. Amended complaint paragraph 41. The amended
20 complaint also alleges that Epstein's wealth and connections
21 were similarly used by Kellen and Groff both to induce the
22 plaintiff to provide sex to Epstein and as a means of
23 threatening punishment to the plaintiff if she refused to
24 comply with their instructions. Amended complaint paragraph
25 50.

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1 Accordingly, the defendants' motion to dismiss on the
2 basis that the plaintiff does not state a plausible claim based
3 on specific factual allegations is without merit.

4 The defendants argue that the amended complaint fails
5 to state a claim under Section 1591 because it fails to allege
6 either fraud under Rule 9(b) or coercion as defined by Section
7 1591. Section 1591 defines coercion as:

8 "(A) Threats of serious harm to or physical restraint
9 against any person;

10 "(B) Any scheme, plan, or pattern intended to cause a
11 person to believe that failure to perform an act would result
12 in serious harm to or physical restraint against any person; or

13 "(C) The abuse or threatened abuse of law or the
14 legal process." 18 U.S.C. Section 1591(e)(2).

15 Section 1591 defines serious harm as:

16 "any harm, whether physical or nonphysical, including
17 psychological, financial, or reputational harm, that is
18 sufficiently serious under all of the surrounding
19 circumstances, to compel a reasonable person of the same
20 background and in the same circumstances to perform or to
21 continue to performing commercial sexual activity in order to
22 avoid incurring that harm." 18 U.S.C. Section 1591(e)(5).

23 Based on the definitions of coercion provided by
24 Sections 1591(e)(2) and 1591(e)(5), the plaintiff has stated a
25 claim for coercion,. As explained above, the plaintiff alleges

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1 that the threats made to her by Epstein, Maxwell, Groff, and
2 Kellen coerced the plaintiff into performing and continuing to
3 perform the sexual acts requested by Epstein.

4 Maxwell, Groff, and Epstein argue that the threats
5 allegedly made by Maxwell and Epstein would not cause a
6 reasonable person to believe that they were in danger of
7 suffering serious harm, and therefore the plaintiff's
8 allegations fail to state a claim for coercion. But whether a
9 reasonable person would perceive the alleged statements as a
10 threat of serious harm is necessarily a factual inquiry which
11 cannot be decided on a motion to dismiss.

12 Moreover, it is certainly not implausible that a young
13 person could believe that a person of apparent enormous wealth
14 would have the power to open educational and career doors for
15 her, or to slam those doors if she did not acquiesce in
16 requests for sexual activity.

17 Kellen argues that nowhere in the amended complaint is
18 Kellen alleged to have participated in or to have been aware of
19 Maxwell's and Epstein's threats, but the amended complaint
20 alleges that Kellen played a role in inducing the plaintiff
21 into performing commercial sex acts for Epstein and that Kellen
22 used Epstein's wealth, influence, power and connections as a
23 means of threatening punishment in the event that the plaintiff
24 refused to comply with the instructions to provide sex to
25 Epstein. That conduct meets the definition of coercion and

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1 under Section 1591(e)(2).

2 The defendants also argue that the plaintiff has
3 failed to satisfy the heightened pleading standards provided by
4 Rule 9(b) for fraud claims because the amended complaint fails
5 to specify when and where any fraudulent statements were made
6 or explain why these statements were made with scienter. Rule
7 9(b) provides that "in alleging fraud or mistake, a party must
8 state with particularity the circumstances constituting fraud
9 or mistake. Malice, intent, knowledge, and other conditions
10 ever a person's mind may be alleged generally." Federal Rules
11 of Civil Procedure 9(b). To satisfy Rule 9(b), a complaint
12 must "(1) specify the statements that the plaintiff contends
13 were fraudulent, (2) identify the speaker, (3) state where and
14 when the statements were made, and (4) explain why the
15 statements were fraudulent." *Mills v. Polar Molecular Corp.*,
16 12 F.3d 1170, 1175 (2d Cir. 1993). Although Rule 9(b) allows a
17 plaintiff to allege fraudulent intent generally, a plaintiff
18 must allege facts that give rise to a strong inference of
19 fraudulent intent. *Shields v. Citytrust Bancorp, Inc.*, 25 F.3d
20 1124, 1128 (2d Cir. 1994). This strong inference can be
21 established either "(a) by alleging facts to show that
22 defendants had both motive and opportunity to commit fraud, or
23 (b) by alleging facts that constitute strong circumstantial
24 evidence of conscious misbehavior or recklessness." *Id.* See
25 also *U.S. Bank National Association v. BFPRU 1, LLC*, 230

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1 F.Supp. 3rd 253, 262 (S.D.N.Y. 2017).

2 The amended complaint satisfies Rule 9(b). The
3 plaintiff alleges that Malyshev told the plaintiff in October
4 of 2006 that Epstein would use his wealth and influence to have
5 the plaintiff admitted into F.I.T. and that when Malyshev
6 introduced the plaintiff to Epstein, Epstein reiterated this
7 promise to her. Amended complaint paragraphs 34 to 36. The
8 plaintiff also alleges that between October 2006 and May 2007,
9 Maxwell, Kellen, and Groff each confirmed and reiterated to the
10 plaintiff many times that Epstein would use his wealth and
11 connections to advance the plaintiff's career. Amended
12 complaint paragraph 38. These allegations sufficiently specify
13 the statements that the plaintiff contends are fraudulent, as
14 well as the identity of the speakers. See *Lehman Brothers*
15 *Commercial Corp. v. Minmetals International Non-Ferrous Metals*
16 *Trading Co.*, No. 94 Civ. 8301 (JFK), 1995 WL 608323A2, at *2
17 (S.D.N.Y. Oct. 16, 1995) (noting that where allegedly
18 fraudulent statements occurred over a period of time, a
19 plaintiff is not required to provide the date and time of every
20 statement).

21 While the plaintiff does not describe the specific
22 locations where each of the alleged misstatements took place,
23 the plaintiff does allege that a substantial portion of her
24 interaction with Epstein occurred at his townhouse in New York
25 and on his private island in the U.S. Virgin Islands and that

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1 each defendant participated in arranging the plaintiff's
2 transportation to these locations. Amended complaint paragraph
3 45. Moreover, the plaintiff provides the exact address where
4 the plaintiff was provided living quarters and that she was
5 provided a cell phone so that the defendant could communicate
6 with and maintain control over the plaintiff. Amended
7 complaint paragraph 52. These allegations satisfy the
8 requirement under Rule 9(b) that the plaintiff provide the
9 location at which the fraudulent statements were made.

10 As to scienter, the defendants argue that the fact
11 that they did not ultimately act upon the alleged promises to
12 have the plaintiff admitted into F.I.T. fails to show that they
13 made the alleged misrepresentations with the intent to defraud.
14 But while "the failure to fulfill a promise to perform future
15 acts is not ground for a fraud action," it can provide a basis
16 for fraud if "there existed an intent not to perform at the
17 time the promise was made." Cohen v. Koenig, 25 F.3d 1168,
18 1172 (2d Cir. 1994). Here, the plaintiff alleges that the
19 defendants reiterated and confirmed Epstein's promise solely
20 for the purpose of maintaining the plaintiff's relationship
21 with Epstein. Amended complaint paragraph 53. The plaintiff
22 also alleges that these statements were reiterated by the
23 defendants with the intention of convincing her to rely on the
24 defendants' representations in furtherance of a sex trafficking
25 enterprise. Amended complaint paragraph 53. That is

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1 sufficient to allege that when the defendants made the
2 statements at issue, the defendants did not intend to perform
3 their promises to further the plaintiff's education and career.
4 Indeed, the allegations that the defendants seek to strike may
5 provide further evidence of the defendants' knowledge and
6 intent. Accordingly, the defendants' argument that the
7 plaintiff has failed to plead fraud is without merit.

8 Kellen and Groff also argue that the plaintiff's
9 allegations against them do not establish that either had
10 knowledge that force, fraud, or coercion would be used to cause
11 the plaintiff to engage in a commercial sex act with Epstein.
12 This argument is without merit. As explained above, the
13 amended complaint provides several specific allegations that,
14 if accepted as true, would establish that both Kellen and Groff
15 knew that Epstein's wealth, influence, power and connections
16 were being used fraudulently to induce the plaintiff into
17 complying with Epstein's demands and as a means of coercing the
18 plaintiff.

19 Accordingly, the defendants' argument that the amended
20 complaint fails to state a claim because it does not allege
21 coercion or fraud fails.

22 The defendants argue that the amended complaint fails
23 to plead a causal link under Section 1591 because the amended
24 complaint should be read as describing a consensual sexual
25 relationship between the plaintiff and Epstein. See 18 U.S.C.

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1 Section 1591(a) (requiring that "force, threats of force,
2 fraud, coercion ... or any combination of such means ... be
3 used to cause the person to engage in a commercial sex act").
4 This argument is without merit. Again, this argument asks the
5 Court to accept the defendants' version of the facts rather
6 than accept the well pleaded allegations in the plaintiff's
7 amended complaint as true, which is impermissible on a motion
8 to dismiss. Accordingly, the defendants' argument that the
9 amended complaint fails to plead a causal link is without
10 merit.

11 Epstein, Maxwell, and Kellen move to dismiss the
12 plaintiff's claim that they violated Section 1592. Epstein
13 Maxwell, and Kellen argue that plaintiff's Section 1592 claim
14 lacks factual support and argue that there is no factual
15 allegation that the plaintiff's passport was confiscated and
16 held in order to force the plaintiff into commercial sex.

17 Section 1592 imposes liability on "whoever knowingly
18 ... confiscates, or possesses any ... passport ... of another
19 person in the course of a violation of section ... 1591." 18
20 U.S.C. Section 1592(a). As an initial matter, the plaintiff's
21 allegation of a violation of Section 1591 alones provides a
22 sufficient basis to proceed on a claim under Section 1595. See
23 18 U.S.C. Section 1595(a) (providing a civil remedy to anyone
24 "who is a victim of a violation of" Chapter 77 of Title 18 of
25 the United States Code). Moreover, the plaintiff has pleaded

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1 sufficiently a violation of Section 1592. The amended
2 complaint alleges that the plaintiff's passport was confiscated
3 and controlled by Groff, Maxwell, and Kellen while the
4 plaintiff was on Epstein's private island in order to coerce
5 the plaintiff into providing sex to Epstein. Of course, the
6 defendants tell a completely different story by relying on upon
7 statements in the plaintiff's deposition, but the Court cannot
8 rely upon those statements for purposes of this motion to
9 dismiss. Accordingly, the amended complaint states a cause of
10 action under Section 1592.

11 The defendants also argue that the plaintiff fails to
12 state violations of Sections 1593A and 1594. As noted above,
13 the plaintiff's allegations of violations of Sections 1591 and
14 1592 are each sufficient on their own to sustain a Section 1595
15 claim. It is therefore unnecessary to reach the defendants'
16 arguments with respect to Sections 1593A and 1594.

17 The defendants argue that the plaintiff's claim is
18 barred by the statute of limitations in Section 1595(c)(1).

19 At the time when the plaintiff alleges the violation
20 in this case occurred -- in 2006 and 2007 -- Section 1595
21 contained a four-year statute of limitations. See Trafficking
22 Victims Protection Reauthorization Act of 2003, Public Law No.
23 108-193, Section 4(a)(4), 117 Statutes 2875, 2878; 28 U.S.C.
24 Section 1658(a); see also Cruz v. Maypa, 773 F.3d 138, 143-44
25 (4th Cir. 2014). In December 2008, Section 1595 was amended to

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1 provide a ten year statute of limitations. See William
2 Wilberforce Trafficking Victims Protection Reauthorization Act
3 of 2008, Public Law No. 110-457, Section 221, 122 Statutes
4 5044, 5067.

5 The defendants argue that the ten year statute of
6 limitations should not be read to apply to this case under the
7 anti-retroactivity doctrine and that the four-year statute of
8 limitations applies to the plaintiff's claims in this case.
9 See Weingarten v. United States, 865 F.3d 48, 54-55 (2d Cir.
10 2017) (citing Landgraf v. USI Film Products, 511 U.S. 244,
11 (1994)). Therefore, the defendants conclude that the
12 plaintiff's claims are plainly time-barred.

13 The defendants rely on Abarca v. Little, 54 F. Supp.
14 3d 1064 (District of Minnesota 2014), in which the district
15 court held that the four-year statute of limitations applied to
16 Section 1595 claims, where the conduct was alleged to have
17 occurred prior to the 2008 amendment. Id. at 1068-69.
18 However, courts within this Circuit have held consistently that
19 the ten-year statute of limitations applies to TVPRA claims
20 that were not time-barred under the four-year statute of
21 limitations when Congress extended the Section 1595 statute of
22 limitations in December 2008, even if those claims accrued
23 before 2008. See Lama v. Malik, 192 F. Supp. 3d 313, 321-323
24 (E.D.N.Y. 2016); Oluoch, v. Orina, 101 F. Supp. 3d 325, 329-31
25 (S.D.N.Y. 2015); accord Cruz, 773 F.3d at 143-44. In that

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1 situation, applying this ten year statute to claims that were
2 alive in December of 2008 has no retroactive effect because it
3 does not impair any rights or revive any stale or expired
4 claims. The defendants have not explained why this Court
5 should reject the conclusions reached by all of the other
6 courts of this Circuit that have addressed this question, which
7 have held uniformly that the ten-year statute of limitations
8 applies to claims that were viable when the ten-year statute of
9 limitations period was enacted. See *Lama*, 192 F. Supp. 3d at
10 321-22 (collecting cases). Accordingly, the ten-year statute
11 of limitations applies to the plaintiff's claims in this
12 action.

13 The defendants argue that even if the ten-year period
14 applies, the plaintiff's claims would still be time barred
15 because they accrued no later than January 2007. But the
16 amended complaint alleges that the plaintiff returned to New
17 York in February 2007, each of the defendants promised the
18 plaintiff again that her sexual compliance would be rewarded
19 with admission into F.I.T. and that each defendant required the
20 plaintiff to provide Epstein with sex acts thereafter. Amended
21 complaint paragraphs 61-63. The defendants argue further that
22 after January 2007 it was unreasonable for the plaintiff to
23 rely on any alleged promises made by the defendants, but this
24 is a factual question that cannot be decided on a motion to
25 dismiss. A statute of limitations defense that involves a

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1 fact-specific analysis is inappropriate to resolve on a motion
2 to dismiss unless it is clearly meritorious from the face of
3 the complaint. See *Bigsby v. Barclays Capital Real Estate,*
4 *Inc.*, 298 F. Supp. 3d 708, 725-26 (S.D.N.Y. 2018). That is
5 plainly not the case here. Accordingly the defendants' motions
6 to dismiss based on the argument that the plaintiff's claim is
7 time-barred are not yet ripe for litigation.

8 Accordingly, the defendants' statute of limitations
9 defense is not a basis to dismiss the plaintiff's claims.

10 Finally, the defendants move to dismiss the amended
11 complaint for lack of personal jurisdiction. Groff, Kellen,
12 and Maxwell argue that the amended complaint fails to allege
13 any present connection between the defendants and New York.
14 However, there is plainly specific personal jurisdiction over
15 all of the defendants on the basis that the alleged violations
16 of Section 1595 occurred in New York. See N.Y. C.P.L.R.
17 Section 302(a)(2) (providing personal jurisdiction over any
18 person who "commits a tortious act within the state").

19 The defendants contend that the alleged tortious
20 conduct in this case ended prior to the period covered by the
21 statute of limitations and that therefore the amended complaint
22 fails to show that the suit-related conduct occurred in New
23 York. This argument depends upon accepting the defendants'
24 arguments on the statute of limitations that the Court has
25 already rejected. In any event, to survive a motion to dismiss

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1 where no evidentiary hearing is held, the plaintiff need only
2 make a prima facie case that the defendants are subject to the
3 Court's personal jurisdiction. See *In re Magnetic Audiotape*
4 *Antitrust Litigation*, 334 F.3d 204, 206 (2d Cir. 2003) (per
5 curium) ("Prior to discovery, a plaintiff may defeat a motion
6 to dismiss based on legally sufficient allegations of
7 jurisdiction;") *PDX Labs, Inc. v. Friedlander*, 103 F.3d 1105,
8 1108 (2d Cir. 1997); *Rubinbaum LLP v. Related corporate*
9 *Partners V, L.P.*, 154 F. Supp. 2d 481, 486 (S.D.N.Y. 2001).
10 The Court must construe the pleadings and supporting affidavits
11 in the light most favorable to the plaintiff. See *PDK Labs*,
12 103 F.3d at 1108. The plaintiff eventually will have to
13 establish jurisdiction by a preponderance of the evidence,
14 either at trial or at a pretrial evidentiary hearing. See
15 *CutCo Industries, Inc. v. Naughton*, 806 F.2d 361, 365 (2d Cir.
16 1986); *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 889, 904
17 (2d Cir. 1981). But at this stage, prior to discovery, the
18 Court must "credit a plaintiff's averments of jurisdictional
19 facts as true." *In re Magnetic Audiotape*, 334 F.3d at 206; see
20 also *Landau v. New Horizon*, No. 02 Civ. 6802, 2003 WL 22097989,
21 at *3, (S.D.N.Y., Sept. 8, 2003). The plaintiff has done all
22 she needs to do to plead personal jurisdiction at this stage of
23 the litigation. See *United States v. Machet*, No. 08 Civ. 7936,
24 2009 WL 3029303, at *8 (S.D.N.Y. Sept. 21, 2009) ("Where, as
25 here, the facts of the case itself are so intertwined with the

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1 jurisdictional issue, the Court is well within its discretion
2 to deny the motion to dismiss for lack of personal
3 jurisdiction.").

4 Similarly, the defendants' assertion that venue is
5 improper in this District is without merit. Again, the
6 defendants argue that the alleged conduct occurred outside of
7 the statute of limitations period and therefore cannot
8 establish that a substantial part of the events giving rise to
9 the claim occurred within this District. The defendants'
10 argument is yet another variant of their statute of limitations
11 argument, which has already been rejected as grounds to dismiss
12 the amended complaint. The amended complaint alleges that a
13 substantial amount of the actionable conduct occurred here in
14 the Southern District of New York.

15 Accordingly, the defendants' arguments to dismiss for
16 lack of personal jurisdiction and improper are without merit.

17 The Court has considered all of the arguments raised
18 by the parties. To the extent not specifically addressed, the
19 arguments are either moot or without merit. As explained
20 above, the defendants' motions to dismiss are denied. The
21 clerk is directed to close all pending motions. So ordered.

22 All right. That brings us then to the scheduling
23 order. How much time for discovery?

24 It would seem to me that discovery in the case is
25 fairly straightforward. There are about six potential

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1 witnesses. The parties allege that each of the other parties
2 is not telling the truth. Whether those issues can be resolved
3 on summary judgment, I don't know. I don't decide anything
4 until it's briefed on the facts and the law; and there is no
5 such motion before me, except the parties attempted to rely on
6 lots of material outside the complaint. But there are about
7 six witnesses, except perhaps some additional witnesses with
8 respect to the allegations in the complaint that were the
9 subject of the motion to strike. But I would think that you
10 all ought to be able to complete discovery by the end of the
11 year, end of December. OK?

12 MR. MILLER: Your Honor, respectfully, could we
13 request a close of discovery at the end of February of 2019?

14 THE COURT: On what basis?

15 MR. MILLER: Just as I'm starting to discuss the issue
16 of timing with my colleagues here, there is some concern that
17 between document production and scheduling depositions, the end
18 of the year may not be realistic, and we're just trying to set
19 a date that gives us some flexibility there.

20 THE COURT: OK. Yes, plaintiff?

21 MS. MCCAWLEY: On behalf of the plaintiff, we would
22 like to proceed as swiftly as possible, so we would appreciate
23 the December date.

24 THE COURT: I think February is a little long. On the
25 other hand, I think asking the parties to complete discovery at

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1 the end of the holiday season, December the 28th, may not be
2 quite fair to both sides, so I think the end of January is not
3 unreasonable -- that's six months -- but that should be a firm
4 deadline. There is no reason why you can't get the discovery
5 done by then. So, the last Friday in January is actually
6 January 25. So, complete discovery by January 25, 2019.

7 There aren't going to be anymore parties, causes of
8 action, amendments to the complaint; is that right?

9 MS. MCCAWLEY: Not from the plaintiff, no.

10 THE COURT: OK.

11 MR. MILLER: Your Honor, obviously we have not filed
12 an answer yet.

13 THE COURT: Right.

14 MR. MILLER: And we haven't fully evaluated whether
15 there are any counterclaims or the like, so I just want to note
16 that for the record.

17 THE COURT: OK. I think the rules say, what, how much
18 time after a decision on the motion to dismiss to file an
19 answer? 14 days?

20 MR. MILLER: The wiser heads at this table are telling
21 me 20 days.

22 MS. MENNINGER: I think it's 21 just off the top of my
23 head, but I apologize, your Honor, I may be confusing another
24 rule.

25 THE COURT: It doesn't really make a difference,

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1 because I can set it.

2 For what it's worth, my recollection was correct, it's
3 14 days. "Unless the court sets a different time, serving a
4 motion under this rule alters these periods as follows: If the
5 court denies the motion or postpones its disposition until
6 trial, the responsive pleading must be served within 14 days
7 after notice of the court's action."

8 MR. MILLER: Your Honor, can we request --

9 THE COURT: You can have some more time. So end of
10 August, August 31. So, time for defendants to answer is August
11 31, 2018.

12 No additional parties or causes of action after
13 September 14, 2018.

14 No additional defenses after September 28, 2018.

15 Except for good cause shown, all discovery is to be
16 completed by January 25, 2019.

17 Dispositive motions, if any, February 15, 2019.

18 Joint pretrial order, March 1, 2019.

19 And the date for the pretrial order gets put over
20 automatically for three weeks if there is a dispositive motion,
21 and the ready trial date gets put over also for four weeks.

22 So, if there is a dispositive motion, the parties
23 should be ready for trial 48 hours notice on and after March
24 15.

25 This is a jury trial, yes? Jury trial.

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1 Estimated trial time? Eight days?

2 MS. MCCAWLEY: That would be fine, your Honor.

3 THE COURT: Do the parties want to talk to the
4 magistrate judge about the possibility of settlement?

5 MS. MCCAWLEY: We have no objection to that, your
6 Honor.

7 MR. MILLER: We haven't discussed that with the
8 clients yet. As a general proposition, we are always open to
9 that, but I would like to discuss it with the clients if I
10 could.

11 THE COURT: Well, it seems to me if there is
12 willingness on one side to talk, I should at least send it to
13 the magistrate judge, even if one side says that there will
14 never be a settlement in this case. So long as there is some
15 flexibility on one side, that at least is a step forward.
16 Which leads then to the next question: Would the parties agree
17 to try this case before the magistrate judge? I don't know if
18 another magistrate judge has been appointed. It was originally
19 Magistrate Judge Francis, who has now left the bench, but the
20 docket sheet will reflect a new magistrate judge when I assign
21 it to the magistrate judge for purposes of settlement, so you
22 can follow that.

23 I imagine that without even knowing who the magistrate
24 judge is, you're not going to tell me that you're prepared to
25 agree to try the case before the magistrate judge, but maybe

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1 I'm wrong.

2 MS. MCCAWLEY: I would appreciate knowing the
3 magistrate before we make that decision and talk to our client.

4 THE COURT: OK. So, I'm going to refer it to the
5 magistrate judge for purposes of settlement. Follow the docket
6 sheet, and you will see who the magistrate judge is.

7 And you can let me know by September 14 -- just write
8 me a letter -- whether the parties consent to trial before the
9 magistrate judge. And you can just write me a joint letter.
10 You don't have to tell me who wants to go to the magistrate
11 judge and who doesn't; all I need to know is whether all agree
12 to go to the magistrate judge.

13 Which leads me then to one other request. I really
14 urge all of you to be cooperative and civil with each other.

15 Whatever the relations are between your clients should
16 not infect the way you deal with each other, or the papers that
17 you file before me, because that's really not helpful.

18 So, OK, I'll enter the civil scheduling order. I will
19 do an order disposing of the motions, and the full rationale
20 for the motions is in the transcript.

21 All right. Anything further?

22 MS. MCCAWLEY: Thank you, your Honor.

23 MR. MILLER: No. Thank you, your Honor.

24 THE COURT: Good afternoon, all.

25 (Adjourned)