UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SARAH EDMONDSON, *et al.*, Plaintiffs, v. KEITH RANIERE; NANCY SALZMAN; CLARE BRONFMAN; SARA BRONFMAN; LAUREN SALZMAN; ALLISON MACK; KATHY RUSSELL; KAREN UNTERREINER; DR. BRANDON PORTER; DR. DANIELLE ROBERTS; NICKI CLYNE; NXIVM CORPORATION; EXECUTIVE SUCCESS PROGRAMS, INC.; ETHICAL SCIENCE FOUNDATION; and FIRST PRINCIPLES, Defendants.	:	CIVIL ACTION NO. 20-CV-485

CORRECTED PLAINTIFFS' COMBINED RESPONSE IN OPPOSITION TO CERTAIN DEFENDANTS' MOTIONS TO DISMISS THE FIRST AMENDED COMPLAINT

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Plaintiffs respectfully submit their combined response in opposition to certain Defendants'[1] motions to dismiss the First Amended Complaint ("FAC").[2]

I. INTRODUCTION AND STATEMENT OF FACTS

Five Defendants move to dismiss the First Amended Complaint ("FAC"), arguing variations on a theme: each had little to do with the others and the harms visited on Plaintiffs. They assert that they cannot understand Plaintiffs' claims against them because of group pleading and the improper merging of their individual grievances. They are wrong. The FAC alleges in detail that Defendants combined and conspired to perpetrate several unlawful acts, for which they are jointly and severally liable under well-settled legal principles.

NXIVM was the brainchild of Defendants Keith Raniere and Nancy Salzman, who are respectively serving a 120-year and nearly 4-year sentence for their NXIVM-related crimes.[3] Raniere was convicted after a six-week jury trial, Nancy Salzman pled guilty to racketeering conspiracy, and Defendants Lauren Salzman, Allison Mack and Kathy Russell pled guilty to racketeering. Defendant Clare Bronfman was also indicted for racketeering and racketeering conspiracy, though she pled guilty to lesser offenses. Some of the Individual Defendants, including Sara Bronfman, Nicole Clyne, Danielle Roberts and Brandon Porter, were not indicted.

[1] Motions to dismiss were served on Plaintiffs by Clare Bronfman, Sara Bronfman, Nicki Clyne, Dr. Danielle Roberts, and Dr. Brandon Porter.

[2] Plaintiffs filed a Second Amended Complaint ("SAC") on February 25, 2022. Doc. No. 159. The SAC reflects the voluntary dismissal of some Plaintiffs and conforms Plaintiff identification to the Court's protective order, but in all other respects is the same as the FAC. Unless otherwise permitted in the protective order, individual Plaintiffs are referred to herein by their full names.

[3] "NXIVM" is the term Plaintiffs use to refer to the enterprise led by Keith Raniere and other Individual Defendants to enrich themselves financially and psychologically by committing various crimes. *See United States v. Raniere*, 384 F. Supp. 3d 282, 294 (E.D.N.Y. April 29, 2019) (describing the enterprise as alleged in the government's indictment of Raniere and several other Individual Defendants). Unless otherwise specified, references to NXIVM include NXIVM Corporation, Executive Success Programs, Inc., Ethical Science Foundation, First Principles, Inc., the Ultima companies, and scores of other organizations and legal entities created by various Defendants to carry out unlawful acts in furtherance of the enterprise. *See* FAC ¶¶ 2 n. 1, 70, 71, 72, 715-721, 750-776, 788-824.

Every Defendant was a high-ranking member of NXIVM and leader of the enterprise. Their stature gave them power and authority, which they together abused repeatedly, to inflict harm upon hundreds, including Plaintiffs. Their purpose was to induce people to pay money for NXIVM and please Raniere, the leader, by various means including criminal and tortious acts, to psychologically manipulate and coerce NXIVM members into submission, and systematically break down their resistance to escalating abuse and control—all to extract money and free labor, including sex, from their victims.

For many years, Defendants falsely promoted Raniere as a genius, great humanitarian whose stellar achievements started when he was a child prodigy, scientist who invented dozens of patented technologies, and celibate ascetic with no material, worldly desires, whose generosity knew no bounds. None of these claims were true. Nor were Defendants' claims that NXIVM's methods—the supposedly (but not actually) patented "Rational Inquiry" system—were scientifically proven and sound.

NXIVM's criminal activity culminated in the creation of DOS, which subjected its recruited "slaves" to, among other things, forced labor, sex trafficking and the burning of Raniere's initials into some DOS victims' pelvic regions. Although some Defendants now seek to distance themselves from DOS, DOS was a manifestation of Defendants' longstanding coercive control tactics that particularly targeted women in the NXIVM community. It was created by NXIVM's leaders to serve the same ends as Defendants' many other groups, including forced labor, and it was comprised of women recruited from the NXIVM community who were familiar with NXIVM's methods, including long indoctrination "intensives" and hours of manipulative EM therapy sessions, where women were stripped of self-esteem, and ideas like

"collateralizing" and "slavery" (which became DOS's tools) were primed.[4] In short, DOS was an arm of NXIVM that cannot be amputated from it for purposes of this litigation.

NXIVM was a racketeering enterprise under the Racketeering in Corrupt Organizations ("RICO") Act and a venture under the Trafficking Victims Protection Reauthorization ("TVPRA") Act. As discussed below, the Individual Defendants conspired to participate and participated in the enterprise/venture, and they are liable under those federal statutes not only for their own actions but also for the tortious conduct of their co-conspirators and co-venturers through joint and several liability because of their agreement to participate in the enterprise/ venture and their conduct in furtherance of it. Several Defendants are also liable for state torts.[5]

II. STATEMENT OF FACTS

A. Indictments, Guilty Pleas, and Criminal Conviction

Many of the Individual Defendants were indicted for—and some were convicted of—the conduct described in the FAC.[6] Defendants Raniere, Clare Bronfman, Russell, Nancy Salzman, and Lauren Salzman were criminally charged with racketeering conspiracy in violation of 18 U.S.C. §1962(c). FAC ¶ 841. A Superseding Indictment included the racketeering conspiracy count against all Individual Defendants and added a racketeering count against Defendants

[4] "Collateralization" was a method by which DOS' leaders gained control of Plaintiffs and others. Members of DOS would convince new recruits that to enter the exclusive sisterhood they had to demonstrate extreme trust in the leadership by providing "collateral," i.e., blackmail material, like compromising confessionals, nude photographs or videos, and letters falsely accusing close family or friends of unethical or illegal conduct. FAC ¶¶ 22-25. Once the first round of collateral was obtained, members of DOS could—and did—obtain ever more collateral from new recruits until they had amassed a stockpile which enabled them to control the recruits. *Id*. Initial collateral obtained from recruits was premised on falsehoods, including that no man had a role in the group (which was headed by Raniere). FAC ¶¶ 22-25. Subsequent collateral was obtained through the same falsehoods and the implicit or explicit threat of revelation of the prior collateral. FAC ¶¶ 22-25.

[5] Plaintiffs do not oppose dismissal of certain claims: in Count III, Section 1595(a) claims based on violations of 18 U.S.C. § 1593A; and Counts IV, VIII and IX, for negligence per se. Plaintiffs maintain the other claims in Count III and the facts alleged in any of these Counts.

[6] Although Plaintiffs have filed a SAC, as instructed by the Court, *see* Dkt. 152, they refer to the FAC in this opposition for the Court's convenience because Defendants relied on the FAC for their motion to dismiss. Attached hereto as Exhibit A is a chart showing the corresponding paragraph numbers between the FAC and SAC.

Raniere, Clare Bronfman, Mack and Lauren Salzman, with sixteen enumerated racketeering acts. FAC ¶¶ 845-46.[7]

Before the Superseding Indictment was unsealed, "[Defendant] Nancy Salzman pled guilty to one count of racketeering conspiracy, admitting to two predicate acts." FAC ¶ 842. During her plea allocution, in which she admitted to agreeing with others to join the charged enterprise, the "government explained [among other things] that if the criminal case were to proceed to trial, the DOJ would prove beyond a reasonable doubt that (i) between 2003 and March 2018, in this District and elsewhere, an enterprise existed, being an ongoing organization created for the common purpose of promoting Keith Raniere and recruiting others into the pyramid organizations he created…." FAC ¶¶ 843-44. Mack admitted to committing two racketeering acts, state law extortion and forced labor. FAC ¶ 849. Lauren Salzman admitted to three racketeering acts, trafficking and document servitude, state law extortion, and forced labor. FAC. ¶ 847. Clare Bronfman was indicted for racketeering based on five predicate acts and racketeering conspiracy, and she pled guilty to conspiracy to conceal and harbor illegal aliens for financial gain (a RICO predicate act) and fraudulent use of identification. FAC ¶¶ 851-52.

Raniere was tried and convicted on seven counts: racketeering conspiracy, racketeering, forced labor conspiracy, wire fraud conspiracy, sex trafficking conspiracy, sex trafficking, and attempted sex trafficking, all involving actions taken in his capacity as the head of NXIVM. The jury found that Raniere had committed all sixteen charged racketeering acts and that NXIVM qualified as a RICO enterprise. FAC ¶¶ 856-57. After the verdict, the court found that Raniere's conduct, including his leadership of the "wide-ranging criminal enterprise," warranted a 120-

[7] Clare Bronfman, Raniere, Mack, and Lauren Salzman filed motions to dismiss the indictment. *U.S. v. Raniere*, 384 F. Supp. 3d 282, 296 (E.D.N.Y. April 29, 2019). Thereafter, all except Raniere pled guilty. Nevertheless, the court attributed all the arguments made by each of the guilty plea defendants to Raniere and then addressed and rejected them in its opinion. *Id*. at 296-97.

year sentence. FAC ¶ 858. As to Clare Bronfman it found that she "played a critical role in the criminal activity, including intimidating and retaliating against[] victims, witnesses and critics in order to silence them and cover up the crimes," and it imposed an 81-month sentence, substantially departing upwards from her guidelines range. FAC ¶ 46.[8]

B. The NXIVM Enterprise

Plaintiffs allege the Individual Defendants—Clare Bronfman and Sara Bronfman included—conspired to operate and participated in NXIVM, whose purpose was to "enrich the Individual Defendants (both monetarily and psychologically) at the expense of Plaintiffs and many other victims." FAC ¶ 866. Raniere's jury found that the enterprise qualified as RICO enterprise when it convicted him of racketeering. FAC ¶ 856. And several defendants conceded the existence of the enterprise when they pled guilty to racketeering. *See e.g.*, FAC ¶¶ 43-44; *see also United States v. Raniere*, 384 F. Supp. 3d 282, 294 (E.D.N.Y. April 29, 2019) (explaining the nature of the RICO enterprise alleged in the Indictment, its purposes, and the means it employed). The enterprise alleged in the FAC traces the enterprise alleged in the Indictment.

C. Defendants' Roles in the Enterprise

The nature of the enterprise changed over time and the Individual Defendants held different roles at different times, but throughout the enterprise was structured to "operate as a unit in order to accomplish the goals of [Defendants'] criminal scheme." FAC ¶ 870.

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[8] That Clare Bronfman was not convicted of the racketeering charge for which she was indicted because she pled to a lesser offense does not insulate her from civil liability for the conduct alleged in the FAC. For many reasons, the government often agrees to allow criminal defendants to plead guilty to more limited charges. *See, e.g.*, *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 664-65 (7th Cir. 2002) (DOJ's decision to limit criminal charges had no evidentiary value in civil case); *In re Vitamins Antitrust Litig.*, 2000 WL 1475705, at *11 n.13 (D.D.C. May 9, 2000) ("the government may undertake plea bargains in order to achieve certain strategic objectives and these goals may be different from those of private litigants"). The same goes for the Individual Defendants that altogether escaped the government's NXIVM-related prosecutions. The Plaintiffs' case is not circumscribed by the indictments. *See In re Polypropylene Carpet Antitrust Litig.*, 178 F.R.D. 603, 619-20 (N.D. Ga. 1997) ("[T]he Court is aware of no authority that requires a civil antitrust plaintiff to plead only the facts of a prior criminal indictment. To the contrary, several cases flatly reject this theory").

Defendants Clare and Sara Bronfman served in leadership positions within NXIVM and invested their wealth to fund its operations and prevent others from uncovering the venture's misconduct. FAC ¶¶ 58-62. Clare Bronfman was a member of the Inner Circle, served on the Executive Committee, and was in charge of NXIVM's finances, operations and legal "department." FAC ¶¶ 58, 703-704. She "owned and directed the activities of several of the "Ultima" group of companies, including exo/eso, which was designed and used to procure, groom and provide sexual servants for Raniere." FAC ¶ 61. She relentlessly persecuted NXIVM's critics and defectors using lawyers and private investigators to ruin their lives, serving them up as examples to the NXIVM community to instill fear of the consequences of failing to remain loyal and silent. FAC ¶¶ 732-749. She "work[ed] hand-in-hand with Raniere to intimidate and silence victims of Raniere's brutal campaign of sexual abuse and exploitation." FAC ¶ 749. (Internal quotation marks omitted).

Sara Bronfman founded and was the head of the Rainbow Cultural Garden, opening branches and recruiting participants overseas. FAC ¶¶ 62, 73, 89, 706, 720. She was a NXIVM board member. FAC ¶ 62. She financed legal campaigns against NXIVM critics and defectors to retaliate against them and to make examples of them to silence others in the community. FAC ¶ 701. She paid for NXIVM's headquarters, offices, and operations' center. FAC ¶ 62. She recruited members to NXIVM and co-founded the Ethical Science Foundation, which among other things sponsored unlawful human experiments. FAC ¶ 701. She used her wealth and social position to promote NXIVM and recruit new members by, among other things, perpetuating the false image of Raniere as a brilliant humanitarian and NXIVM as an ethical organization, recognized and honored by luminaries including the Dalai Lama, which utilized scientific methods to improve people's lives. FAC ¶¶ 62, 702.

Defendant Clyne was a member of the Inner Circle. FAC ¶ 69. She worked with Raniere, Nancy Salzman, Mack and others throughout the years across a number of NXIVM entities. Clyne, Nancy Salzman and Mack worked with Raniere to create TEN C, which was used to attempt to lure young college-age women into sexual relationships with Raniere through offers of work opportunities in Defendant Clare Bronfman's t-shirt company. FAC ¶ 676. Clyne later worked with Raniere and Mack to run two other companies, the Source and the Knife, which spawned more NXIVM curricula and recruited new people to join NXIVM. FAC ¶¶ 750-751. Soon thereafter, she became one of Raniere's "First-Line DOS Masters," along with Mack and Lauren Salzman. FAC ¶¶ 19, 69.

Defendant Roberts was a trusted physician in the NXIVM community. At the behest of Raniere and First-Line DOS masters Mack and Clyne, she used a cauterizing iron to burn Raniere's initials into DOS members' pubic regions, knowing that the women were deceived as to Raniere's involvement in DOS and under the misimpression that the brand was not Raniere's initials. FAC ¶¶ 68, 816-17. Defendant Porter was also a trusted NXIVM physician. He and N. Salzman leveraged NXIVM students' trust and belief that NXIVM was engaged in salutary scientific pursuits to recruit and subject vulnerable individuals (several of whom suffered from debilitating psychiatric disorders) to unscientific, unlawful, and dangerous medical "studies." FAC ¶¶ 16-17, 67, 709-14. The purpose of the studies, which were funded by Clare and Sara Bronfman's Ethical Science Foundation ("ESF"), was to promote NXIVM, including through a propaganda film funded and produced by Defendant Clare Bronfman. FAC ¶ 731.

In sum, Raniere bestowed upon each Defendant the privilege of leading NXIVM and the attendant psychological and financial rewards. They were devoted to Raniere and conspired with him to further the enterprise/venture by illegal means. FAC ¶¶ 4, 12.

D. Silencing Critics and Witnesses

Among their various roles in NXIVM, Clare and Sara Bronfman served as defenders and protectors of Raniere's imperium. To "silence critics and witnesses," FAC ¶ 36, they spent millions of dollars employing armies of lawyers and private investigators to dig up "dirt" on perceived "enemies" (including federal judges), commencing "withering campaigns of abusive, vexatious litigation and [initiated] bogus criminal investigations, by falsely accusing people who left the community . . . ." FAC ¶¶ 36-37, 59, 62, 732-749, 823-824, 831-832, 837, 884, 935-938.[9] Even after DOS was exposed, Clare Bronfman and Raniere continued to intimidate victims into silence, made false statements to law enforcement to instigate a criminal investigation into Plaintiffs Edmondson and Kobelt, wrote and caused lawyers to send threatening letters to DOS defectors, including Plaintiffs Souki Mehdaoui and Jessica Joan Salazar, and manipulated Camila into hiding in Mexico and avoiding the FBI and prosecutors. FAC ¶¶ 39, 92-93, 106, 107, 118, 128, 239, 270, 749, 823, 831, 834. Later yet, on the eve of Raniere's trial, Sara Bronfman attempted to induce a potentially key trial witness, Plaintiff Adrian, to leave the U.S. and remain abroad during the trial. FAC ¶¶ 855, 885, 897.

Accordingly, the District Court was "troubled by evidence suggesting that Ms. Bronfman repeatedly and consistently leveraged her wealth and social status as a means of intimidating, controlling and punishing individuals whom Raniere perceived as his adversaries . . . ." FAC ¶ 36. "These activities intimidated victims and witnesses, who were so fearful of ending up on the receiving end of a destructive legal onslaught that they were, in fact, silenced." FAC ¶ 38.

[9] These highly publicized *in terrorem* legal wars were financed in large part by Defendants Clare and Sara Bronfman. Also, as part of a pattern of vexatious litigation, witness tampering, and retaliation, Defendants engaged in and directed unlawful activities including perjury, making false statements to law enforcement agencies, destroying or altering evidence, spying on victims and their attorneys, computer hacking, intercepting communications, and even attempting to unlawfully obtain financial account records and other private information about federal judges and other "enemies." FAC ¶ 37. For additional details on these activities see FAC ¶¶ 59-60.

"Numerous Plaintiffs suffered in silence for years, even avoiding cooperation with law enforcement authorities once it became known that the federal government was investigating Defendants. . . . Only now, after the guilty pleas and convictions of a number of the Defendants, do Plaintiffs feel safe enough to come forward and assert their claims." FAC ¶ 39.

E. NXIVM'S Methods and Coercive Effects

"Through the continual and systematic application of the Rational Inquiry methods, Defendants obtained the complete trust of their victims, rendering them psychologically and emotionally dependent upon Defendants. On a near-daily basis, these victims were told that they were failing to advance on the Stripe Path and improve their careers, income and well-being, because they were not working hard enough on their 'issues' and thus needed to take additional courses and receive additional EMs." FAC ¶ 11. "Once Defendants had stripped members of their psychological defenses, they exploited these highly vulnerable people for advantage and gain. This included coercing members into working for the Defendants on 'exchanges' in which they would be severely undercompensated or uncompensated for their labor, but for which they supposedly would earn credits toward the additional expensive courses and EMs that they were assured would improve their lives." FAC ¶ 12. Quitting was failure and would result in immense shame and humiliation. Further, it could expose the victim to malicious litigation, a common tactic of the Defendants, or their being labeled a "suppressive" or "psychopath," resulting in their exile from what had become their entire world. Such ostracization meant losing one's livelihood, which for a community of people who were impoverished and in debt . . . made it impossible in many cases to simply walk away. FAC ¶ 13.[10]

[10] *See also* FAC ¶¶ 8-10.

The FAC provides extensive detail of NXIVM's methods, including how the curriculum, taught in lengthy "intensives," progressively indoctrinated students to accept Raniere's absolute authority, believe in the notion that they had deep emotional and psychological "issues" that were a result of their own inherent weaknesses and failings, and that only through immersing themselves in NXIVM's curriculum and EM psychotherapy sessions could they work to overcome their "issues," improve their lives, enhance their well-being, and get on the path of a fruitful and supposedly more "ethical" career within NXIVM. FAC ¶¶ 600-630. The FAC also extensively details how NXIVM's methods induced students to dedicate themselves to NXIVM, and how this system led to coercive control and forced labor. FAC ¶¶ 631-652. *See also* FAC ¶¶ 677-698 (Defendants' use of psychotherapy methods, including EMs). NXIVM's methods "also systematized and normalized a means by which NXIVM's leadership could continually monitor the behavior, thoughts, and emotional experiences of each member of the community, which in turn enabled the leadership to enforce conformity with NXIVM's rules and norms." FAC ¶ 624.

F. Subjugation Of Women

These norms included Raniere's warped views on gender roles, indoctrinating students in a lengthy series of misogynistic intensives, rendering women vulnerable to Defendants' efforts to feed Raniere's insatiable appetite for young, thin women he could sexually abuse. FAC ¶¶ 654-661, 671. Two NXIVM companies offered curriculum to serve this purpose. Jness "was a program for women . . . designed to normalize the subjugation of women." FAC ¶¶ 654-660. "The subjugation of women in the NXIVM community . . . prepared selected women to be groomed as [Raniere's] sexual partners . . ." FAC ¶ 661. A second women's program was known as SOP Complete: women were "told they would be training to become NXIVM's 'navy

seals,' a pretext used by Raniere and others to subject them to ridicule, humiliation and dehumanizing experiences . . ." FAC ¶ 671.[11]

Raniere was cruel to women who he felt showed insufficient loyalty: when women, like Daniela or Camila, who had become trapped as his sexual partners, expressed a desire to leave him he punished them severely. FAC ¶¶ 662-665. He would be equally cruel to women in his pipeline, including Plaintiff Piesse: "Raniere 'tested' Plaintiff Bonnie Piesse's fealty by instructing her to lick a mud puddle and to run face first into a tree. When Bonnie 'failed' the test . . . Raniere instructed her to restrict her food intake to 800 calories per day." FAC ¶ 666.

"NXIVM [also] used a concept known as 'collateral,' to enforce . . . 'ethical' conduct. Under Raniere's teachings, a person who was honorable and who intended to uphold his [or her] word should be happy to 'collateralize' his [or her] word in a demonstration of good faith." FAC ¶ 781. "However, once someone provided such collateral, he or she would be subject to extortive demands and coerced into doing things he or she would not otherwise do freely." FAC ¶ 782. Another teaching was that punishment was just "the use of rational judgment and critical thinking to uphold ethics. . . In fact, NXIVM taught that forgiving someone with integrity required that person to submit to the appropriate punishment, or 'penance.'" FAC ¶ 785.

These teachings and methods were used to strip women of self-esteem, accept abusive behavior, not to question Raniere's exploitation. FAC ¶ 653-666, 671. Such efforts included TEN C, One Asian, exo/eso and other Ultima companies and, most notoriously, DOS–which was merely the latest in a series of efforts to render women vulnerable and identify the most vulnerable for sexual exploitation. *See e.g.* FAC ¶ 19-33.

[11] For a more complete description, *see* FAC ¶¶ 653-676.

III. ARGUMENT

A. The FAC complies with Rule 8.

Legal Standard

Rule 8 requires a complaint to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). To satisfy the notice pleading requirement of Rule 8, a complaint must contain factual allegations that, taken as a whole, render the plaintiff's entitlement to relief plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 550, 570 (2007). "[W]hen the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged" a claim is facially plausible. *Iqbal*, 556 U.S. at 678. The plausibility standard "simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of [the alleged wrongdoing]." *Twombly*, 550 U.S. at 556. The Court "must liberally construe the claims, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the pleader." *Provepharm, Inc. v. Akorn, Inc.*, 2019 WL 2443185, at *7 (E.D.N.Y. June 11, 2019) (citation omitted). There is no requirement that a plaintiff plead "'specific evidence or extra facts beyond what is needed to make the claim plausible.'" *Id*. (quotation omitted). Further, "[d]etermining whether a [pleading] states a plausible claim for relief [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. With respect to the factual allegations in a complaint, "a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id*. Dismissal as a matter of law is appropriate when "the allegations in a complaint, however true, could not raise a claim of entitlement to relief." *Twombly*, 550 U.S. at 558.

The Bronfman Defendants and Brandon Porter move to dismiss the FAC pursuant to Rule 8, arguing that the FAC is both (1) too long and detailed to be a "short and plain statement" of the claims and (2) too general because it impermissibly lumps parties together. Neither argument passes muster under applicable law when considering the allegations of the FAC.

First, the FAC qualifies as a "short and plain statement" under Rule 8. The purpose of Rule 8 is to "give the adverse party fair notice of the claim asserted so as to enable him to answer and prepare for trial." *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d. Cir. 1988). Compliance with Rule 8 is "not to be judged by the length of the complaint," because complex matters often require greater explication to demonstrate why the claim is plausible. *Karlinsky v. New York Racing Ass'n*, 52 F.R.D. 40, 43 (S.D.N.Y. 1971). Dismissal is a drastic measure "usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." *Salahuddin*, 861 F.2d at 42 (citation omitted).

The FAC is long and detailed because Plaintiffs alleged a years-long RICO enterprise with numerous predicate crimes and actions by several Defendants. But unlike the *pro se* complaints, hopelessly confused allegations, or patently frivolous claims that were dismissed in Defendants' cited cases, the FAC is logically organized by subject matter with descriptive headings. Half of it (FAC ¶¶ 53-577) is devoted to identifying each of the parties and summarizes their involvement with NXIVM. Its fact section (FAC ¶¶ 578-721) describes each Defendant's involvement (FAC ¶¶ 722-824), the cover-up (FAC ¶¶ 825-838), the criminal proceedings (FAC ¶¶ 839-858), and the enumerated counts, which specify the Plaintiffs and Defendants involved in each claim (FAC ¶¶ 859-1020). There is a separate section devoted to the

Bronfman Sisters' history in NXIVM and the key roles they assumed in the enterprise. *See* ¶¶ FAC 699-704.

This factually complex case requires significantly more explanation than the run-of-the-mill fraud cases cited by Defendants. Despite the complexities, the FAC satisfies Rule 8 because it provides sufficient notice and clarity concerning which claims are asserted against which Defendants and by whom. That Clare Bronfman's brief includes a multi-page table summarizing each of the claims asserted demonstrates that Defendants have sufficient awareness of which claims are brought against them by which Plaintiffs. CB Mem. at 5-7.

Second, Defendants' group pleading arguments lacks merit. As noted above, half of the complaint is dedicated to identifying each party and their connections with the enterprise. Under Rule 8, the issue is not whether the FAC sometimes groups defendants together (it asserts a RICO conspiracy, after all), but whether there is enough detail concerning each defendant's role and conduct to provide the "fair notice" required by Rule 8. *Delgado v. Ocwen Loan Servicing, LLC*, 2014 WL 4773991, at *7 (E.D.N.Y. 2014).

Clare and Sara Bronfman, among other things, owned and operated NXIVM entities through which the affairs of enterprise were conducted. *See e.g.* FAC ¶ 705. These allegations put them on notice that they are alleged "insiders" who participated in and benefited from a RICO enterprise, notwithstanding any collective references to "Defendants" elsewhere in the FAC. *See Liberty Mut. Ins. Co. v. Blessinger*, No. 06-CV-391, 2007 WL 951905 , *10 (E.D.N.Y. 2007); *Asdourian v. Konstantin*, 77 F. Supp. 2d 349, 357 (E.D.N.Y. 1999); *Cf. United States Fire Ins. Co. v. United Limousine Service, Inc.*, 303 F. Supp.2d 432, 445 (S.D.N.Y. 2004) ("As to Egan, however, Plaintiff satisfies the particularity requirement because, in the RICO Case Statement, Egan is alleged to be a corporate insider.").

Although their alleged status as "insiders" is sufficient under Rule 8 to put them on notice, the FAC goes further, alleging each participated in the activities the enterprise, including by deceptively promoting Raniere and committing immigration-related crimes. *See infra*., pp. 23-24, 32.

Thus, "[w]hile some paragraphs in the FAC refer to Defendants collectively, there is more than enough detail of each Defendant's individual conduct, particularly in the fact section, to give each 'fair notice of what [each] ... claim is and the grounds upon which it rests.'" *Delgado,* 2014 WL 4773991, at *7. *See also Anwar v. Fairfield Greenwich Ltd,* 728 F. Supp. 2d 372, 406 (S.D.N.Y. 2010) (denying motion to dismiss where complaint alleged "a tight weave of connections between the Fraud Defendants such that group pleading [was]appropriate"). Although the extent of their participation remains to be fleshed out, that is a matter for discovery. *Atkins v. Apollo Real Estate Advisors, L.P.*, 2008 WL 1926684, at *11 (E.D.N.Y. 2008); *AIU Insurance Co. v. Olmecs Medical Supply, Inc.,* No. 04-2934, 2005 WL 3710370, at *8 (E.D.N.Y. Feb. 22, 2005) (stating that "where the role of the particular defendant in the RICO enterprise is unclear, plaintiffs may well be entitled to take discovery on this question").

Defendant Brandon Porter also complains of "group pleading." His arguments are also meritless. Porter is alleged to have overseen and given a veneer of clinical credibility to the unethical medical experiments conducted at ESF. FAC ¶¶ 15-18, 67, 708, 710-714. His direct involvement in experiments is also alleged. FAC ¶¶ 238, 245, 254, 261-262. The FAC specifies which of the two counts are against him, and the factual basis for each. FAC ¶¶ 948-955, 965-971. Porter has ample notice of the claims against him, regardless of any group pleading in which he appears.

Finally, there is no reason to dismiss the FAC due to any group pleading by Plaintiffs as to themselves. The "Parties" section of the FAC identifies each Plaintiff, their specific circumstances, and the injuries they allege. Reading the FAC, as a whole, any group references to "Plaintiffs" must be read as incorporating specifics alleged throughout the FAC. This is not a case where improper "group pleading" has led to a lack of notice. Defendants' Rule 8 arguments should be rejected.

B. Plaintiffs Have Pled Article III Standing

Clare Bronfman claims lack of Article III standing requires dismissal as to 58 Plaintiffs. CB Mem at 11-12. To satisfy Article III standing, each Plaintiff must allege an "injury in fact" that is fairly traceable to the challenged conduct of the defendant and redressable. *Selevan v. N.Y. Thruway Auth.*, 584 F.3d 82, 89 (2d Cir. 2009).

"Any monetary loss suffered by the plaintiff satisfies the injury-in-fact element." *Chevron Corporation v. Donziger*, 833 F.3d 74, 120 (2d Cir. 2016). As Clare Bronfman concedes, every Plaintiff (*e.g.*, Sarah Wall) alleges that she or he "enrolled in and paid for NXIVM curriculum" and that the Plaintiff "enrolled in NXIVM curriculum based upon Defendants' false, material representations that Rational Inquiry provided a scientific, patent-pending technology that would lead to a successful career and self-fulfillment." FAC ¶ 98. Each Plaintiff further alleges that "[c]ontrary to Defendants' representations, Rational Inquiry was neither scientific nor patentable. Defendants also failed to disclose a material fact—that Rational Inquiry was actually a pseudo-scientific hodgepodge of psychotherapeutic methods which, when practiced by unlicensed and unqualified lay-people, subjected its participants to an unreasonable risk of serious psychological injury and emotional distress." Such allegations are more than sufficient to establish injury-in-fact. FAC ¶ 99.

Plaintiffs' allegations also meet the "fairly traceable" requirement. Each Plaintiff plainly asserts that "[a]s a result of Defendants' scheme, criminal acts, and misrepresentations and omissions, [the Plaintiff] was emotionally and financially harmed." FAC ¶¶ 574-576. Several Plaintiffs (like Sarah Wall) state that "as part of Defendants' scheme, [the Plaintiff] performed uncompensated labor, working for many hours without compensation for the benefit of the Defendants." FAC ¶ 577. *See Denney v. Deutsche Bank AG*, 443 F.3d 253, 266 (2d Cir. 2006) ("That these injuries—psychological and economic—are fairly traceable to the alleged conduct of defendants is clear: the Denney class is limited to persons who received and took actions in reliance on the allegedly fraudulent or negligent tax advice provided by defendants, and the asserted injuries-in-fact were a direct result of that reliance."). Plaintiffs also allege causation and injury under RICO. FAC ¶¶ 872, 875.

Despite these allegations, Clare Bronfman urges a myopic focus on whether any given Plaintiff specifically alleges that Clare Bronfman directly caused their injuries. CB Mem. at 10-11. However, the "fairly traceable" requirement of Article III standing "is relatively modest" and "imposes a lower standard than proximate cause." *Rothstein v. UBS AG*, 708 F.3d 82, 92 (2d Cir. 2013). When the FAC is considered as a whole (as it must be), it is apparent that Clare Bronfman is accused not only of committing various harmful actions herself with respect to certain Plaintiffs, but also conducting or participating in the affairs of a RICO enterprise with other Defendants, conspiring to violate RICO, and aiding and abetting various illegal actions by her co-Defendants that injured Plaintiffs, for which she is also responsible. *See* FAC ¶¶ 582-698 (chronicling the NXIVM enterprise, its fraudulent nature, and how the Defendants recruited and exploited Plaintiffs for their monetary and psychological gain). These allegations cannot be ignored when considering Clare Bronfman's liability not only to those Plaintiffs who she directly

harmed but also those who were injured by her co-conspirators.[12] That Clare Bronfman's conduct may have been only an indirect cause of some injuries does not undermine standing. *Chevron*, 833 F.3d 74, 121. ("A defendant's conduct that injures a plaintiff but does so only after intervening conduct by another person, may suffice for Article III standing.").

C. The FAC Plausibly Alleges the RICO Counts.

The Bronfman Defendants and Brandon Porter move to dismiss the FAC pursuant to Rule 8, arguing that the FAC is both (1) too long and detailed to be a "short and plain statement" of the claims and (2) too general because it impermissibly lumps parties together. Neither argument passes muster under applicable law when considering the allegations of the FAC.

1. RICO: The FAC plausibly alleges that Clare and Sara Bronfman Violated 18 U.S.C. § 1962(c) (Count I).[13]

Plaintiffs allege that Clare and Sara Bronfman are liable for violating §1962(c), which makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity …." Section 1962(c) is violated when any person engages in "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Cruz v. FXDirectDealer, LLC*, 720 F.3d 115, 120 (2d Cir. 2013) (internal quotation marks omitted).[14]

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[12] *See, e.g., Allstate Insurance Co. v. Yehudian*, 2018 WL 1767873, at *18 (E.D.N.Y Feb. 15, 2018) ("Courts in this district 'routinely find defendants jointly and severally liable in relation to civil RICO claims.'") (citation omitted), adopted in full, 2018 WL 1686106 (E.D.N.Y. May 31, 2018).

[13] Clare Bronfman implies that Plaintiffs must meet a fictional heightened RICO pleading standard. CB Mem. at 8. But two cases she cites contradict that proposition—*Hecht v. Commerce Clearing House, Inc.*, 897 F. 2d 21, 26 n.4 (2d Cir. 1990) (RICO conspiracy pleading "properly measured under the more liberal pleading standards of Rule 8(a).") and *D. Penguin Bros. Ltd. v. City National Bank*, 587 Fed. Appx. 663, 666 (2d Cir. 2014)

[14] The FAC also plausibly alleges that the other Individual Defendants are liable under RICO. Several of those Defendants have not filed motions to dismiss arguing otherwise and Plaintiffs therefore do not refer to them in this opposition.

2. The FAC plausibly alleges that NXIVM is a RICO "enterprise."

A RICO enterprise "includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. §1961(4). Because "any legal entity may qualify as a RICO enterprise," RICO is "most easily satisfied when the enterprise is a formal legal entity." *See First Cap. Asset Mgmt., Inc. v. Satinwood, Inc.*, 385 F.3d 159, 173 (2d Cir. 2004). A RICO enterprise may also be an association-in-fact. *See Boyle v. United States*, 556 U.S. 938, 944 (2009). An association-in-fact exists when there is "a group of persons associated together for a common purpose of engaging in a course of conduct." *Id.* (internal quotation marks omitted). The FAC alleges that NXIVM is an enterprise under RICO's broad definition—a proposition that should be uncontroversial, given that the grand jury returned an indictment alleging that NXIVM's leadership, which consisted of several Individual Defendants, including Clare Brofman, constituted a RICO enterprise, *see* FAC ¶¶ 839-858; *see also United States v. Raniere*, 384 F. Supp. 3d 282, 294 (E.D.N.Y. 2019) (describing the RICO enterprise alleged in the indictment). Indeed several of the defendants admitted in guilty pleas that a RICO enterprise existed. *See e.g.*, FAC ¶ 844; *United State v. Raniere*, 1:18-cr-00204, Dkt. 1125; and a jury concluded that an enterprise existed when it found Raniere guilty of racketeering, *see* FAC ¶ 857 (referencing *United States v. Raniere*, 1:18-cr-00204, Dkt, 969); *see also* FAC ¶ 858 (District Court explaining that Raniere was the leader of a "wide ranging criminal enterprise"); FAC ¶ 843 (the government was prepared to prove beyond a reasonable doubt that an enterprise existed "for the common purpose of promoting Keith Raniere and recruiting others into the pyramid organizations he created…").

First, NXIVM was composed of myriad legal entities. *See* FAC ¶¶ 70-72 (alleging that Defendants organized at least one hundred legal entities to carry out their scheme, including the NXIVM corporation, Executive Success Programs, Inc., and the non-profit Ethical Science Foundation). Such a composition of legal entities satisfies the enterprise requirement because legal entities "are by their nature distinct from the individuals alleged to be conducting the racketeering activity." *Capital 7 Funding v. Wingfield Cap. Corp.*, 2020 WL 2836757, at *10 (E.D.N.Y. May 29, 2020); *see also Bennett v. Berg*, 685 F.2d 1053, 1060 (8th Cir. 1982) (explaining legal entities are "garden-variety" enterprises.).

Second, NXIVM qualifies as an association-in-fact enterprise. The Individual Defendants "associated together for a common purpose of engaging in a course of conduct." *Boyle*, 556 U.S. at 944 (internal quotation marks omitted); *see, e.g.*, FAC ¶¶ 5, 14, 53-69 (alleging Raniere was the creator; Clare and Sara Bronfman were financiers, facilitators, and leaders; and describing other Individual Defendants' roles). They worked together to enrich themselves "monetarily and psychologically," FAC ¶ 866, at the expense of Plaintiffs and others by creating a hierarchical system, FAC ¶¶ 619-620, that allowed them to be "masters" of "slaves," *see, e.g.*, FAC ¶ 816, and by exploiting their "slaves" for financial gain, FAC ¶¶ 867, 223. Indeed, the enterprise here is more than sufficiently alleged because it has several (if not all) the characteristics that are indicative of a RICO enterprise. *See United States v. Pirk*, 267 F. Supp. 3d 406, 420 (W.D.N.Y. 2017) (RICO enterprise "more than sufficiently allege[d]" because association had features like "role differentiation, membership rules, and chain of command" which are "not even necessary"); *see also e.g.*, FAC ¶¶ 59-62, 621 (role differentiation), FAC ¶ 794–95 (membership rules); FAC ¶ 620 (chain of command).

Clare and Sara Bronfman's arguments to the contrary—which fly in the face of the facts established during the criminal proceeding—are unpersuasive. First, Clare Bronfman argues that she "lacks sufficient notice" as to the nature of the enterprise—an argument undermined not only by the FAC but also by the judicial opinion referenced above on the topic, the indictments, and her co-defendants' guilty pleas. Her suggestion that NXIVM is not a RICO enterprise because its misdeeds were so wide-ranging and varied that it cannot be completely described concisely is without authority and meritless. Indeed, a "criminal enterprise is more, not less, dangerous if it is versatile, flexible, and diverse in its objectives and capabilities." *U.S. v. Masters*, 924 F. 2d 1362, 1367 (7th Cir. 1991).

Second, she argues that the FAC's allegations do not allow a plausible inference that all the members of the enterprise operated as a unit to achieve the same purpose(s). CB Mem. at 12-15, 17.[15] Although the Individual Defendants may have executed multiple sub-schemes in furtherance of the enterprise, that does not negate their common purpose to use NXIVM's curricula and false promises to entice Plaintiffs and others to give the Individual Defendants money, labor, and sex. That a criminal organization has arms that perform different functions supports rather than undermines the proposition that it is a RICO enterprise. *See Pirk*, 267 F. Supp.3d at 421 (motorcycle club was enterprise in part *because* it furthered its central purpose—promoting its members—by several different sub-schemes, like selling firearms and untaxed cigarettes and promoting prostitution, as well as preserving and protecting the power, territory, and reputation of the enterprise and its members and placing victims, potential victims, and others in fear of the enterprise, its members, and associates). The FAC alleges that NXIVM was

[15] A plaintiff does not have to plead facts regarding a common purpose when the RICO enterprise is a legal entity separate from the defendant and not an association-in-fact enterprise. *Capital 7 Funding v. Wingfield Capital Corp.*, 2020 WL 2836757, at *9 (E.D.N.Y. May 29, 2020).

a single criminal organization that like the gang in *Pirk*, may have had several goals but one purpose, which is consistent with the government's case; *see Raniere*, 384 F. Supp. 3d at 2964, several of the Individual Defendants' plea agreements, *see* FAC ¶ 843, and the jury's verdict against Raniere.

Third, she argues the FAC fails to explain each Defendant's role in the enterprise or how they all worked as a single unit. CB Mem. at 16. She argues that the only thing that ties the Defendants together is their devotion to Raniere. FAC ¶¶ 16-17. To the contrary, the FAC describes the Individual Defendants operating together and through numerous legal entities to lure people into NXIVM and its affiliated entities to exploit them for monetary and psychological benefits. Clare and Sara Bronfman both sat on the boards of (and, as discussed herein, founded, funded, and operated) various legal entities through which the criminal organization operated, including NXIVM and ESP, *see* FAC ¶¶ 58, 702, with several of the other Individual Defendants. *See* FAC ¶¶ 58–59, 117-18, 127-28, 145, 265, 701, 703-704, 749, 823-824, 831, 837, 833, 884.[16]

For similar reasons, Sara Bronfman's argument that the FAC fails to allege that she operated or managed the enterprise is unpersuasive. She served on NXIVM's board and was a member of the executive board of ESP, head of Rainbow Cultural Garden, Master and Director of Humanities, an ESP Regional vice-president, a professional NXIVM coach, and a head trainer. FAC ¶¶ 62, 702, 720. She funded NXIVM, co-founded Ethical Cultural Foundation and

[16] "As the District Court found, 'the record is clear that [Clare Bronfman] used her incredible wealth and attempted to use her social status and connections not only to support NXIVM's work, but also as a means of intimidating, threatening, and exacting revenge upon individuals who dared to challenge its dogma. This culture of stifling and threatening dissenters, *a culture that Ms. Bronfman clearly participated in and perpetuated*, is the same culture that gave rise to the darkest and most horrific crimes that Raniere and others committed. This was one of the mechanisms by which Raniere exerted and retained power over his victims . . . [and] as a general matter she was his accomplice in the effort to intimidate and silence detractors, using her wealth and privilege as a sword on Raniere's and NXIVM's behalf.'" FAC ¶ 38 (emphasis added).

ESP, founded ESP's VIP program, and opened a London Rainbow Cultural Garden site. FAC ¶¶ 62, 72, 701-702, 705-706, 715, 732, 938, 966. She provided funding for the Dalai Lama to speak at a NXIVM event (which Plaintiffs allege was used to promote a fraudulent narrative about NXIVM) and was involved in promoting and recruiting people for NXIVM. FAC ¶¶ 62, 702. Further, she attempted to convince Adrian to leave the United States while the criminal trial of various defendants was being held. FAC ¶¶ 855, 885, 897. These allegations more than suffice to demonstrate that Sara Bronfman played "*some* part in directing the enterprise's affairs." *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993). "[Section] 1962(c) liability is not limited to upper management." *Id*. at 184. *See also First Capital Asset Management, Inc. v. Satinwood, Inc.*, 385 F.3d 159, 176 (2d Cir. 2004) (explaining that this is a low hurdle for plaintiffs to clear, especially at the pleading stage) (citations omitted) (collecting cases)).

3. The FAC sufficiently alleges that Clare and Sara Bronfman engaged in a pattern of racketeering activity

Section 1962(c) requires that the defendants engaged in a "pattern of racketeering activity," which means committing at least two acts racketeering activity within a ten-year period. 18 U.S.C. § 1961(5). The FAC alleges Clare and Sara Bronfman each engaged in a pattern of racketeering activity. Clare Bronfman committed at least four immigration-related RICO predicate acts by violating 8 U.S.C. § 1324, in addition to mail and wire fraud, in violation of 18 U.S.C. §§1341, 1343. Sara Bronfman witness tampered, in violation of 18 U.S.C. §1512, and committed at least one violation of 8 U.S.C. §1324.

a. Clare Bronfman engaged in a pattern of racketeering activity.

The RICO charges against Clare Bronfman and the other criminal defendants under §1962(c) were based on fourteen predicate acts of racketeering committed by the conspirators. *Raniere*, 384 F. Supp. 3d at 295. Clare Bronfman was alleged to have personally committed five

racketeering acts, two involving identity theft conspiracy, as well as identity theft, money laundering, and visa fraud. FAC. 294-295.[17] The FAC sufficiently alleges that she committed several immigration-related and mail and wire fraud predicate acts.[18]

i. Clare Bronfman committed four immigration-related RICO predicates.

Illegally harboring an alien qualifies as a RICO predicate act when done for financial gain. 18 U.S.C. §1961(1)(F) (providing that acts indictable under Section 274 of the Immigration and Nationality Act, 8 U.S.C. §1324, are RICO predicates when done for financial gain). Clare Bronfman does not contend that the FAC fails to sufficiently allege that she violated the alien harboring statute for financial gain. *See* CB Mem. at 22 ("assuming" the FAC sufficiently alleges an alien harboring violation before arguing that it is only one predicate act and that another is required). In fact, the FAC plausibly alleges that Clare Bronfman violated the alien harboring statute at least *four times*, by "encourag[ing] or induc[ing]" four different individuals to "come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or [would] be in violation of law," 8 U.S.C. §1324(a)(1)(iv); "transport[ing]" such individuals, with knowledge or reckless disregard of that fact that they remained in the United States in violation of law, *id.* § 1324(a)(1)(A)(ii); and/or "conceal[ing]" or "harbor[ing]" them (or attempting to do so) "in any place," with knowledge or in reckless disregard of the fact that they illegally remained in the U.S., *id.* § 1324(a)(1)(A)(iii). Clare Bronfman's immigration-related violations alone thus satisfy RICO's "pattern of racketeering activity" requirement, *see* 18 U.S.C. §§1962(c), 1961(5).

[17] That Clare Bronfman was indicted for committing five predicate acts belies her assertion that the FAC does not sufficiently put her on notice of which predicate acts she committed.

[18] "Two racketeering acts that are not directly related to each other may nevertheless be related indirectly because each is related to the RICO enterprise." *U.S. v. Masters*, 924 F.2d 1362, 1367 (7th Cir. 1991).

First, the FAC plausibly alleges that Clare Bronfman "encourage[d]" Plaintiff Lindsay MacInnis to "come to . . . the United States, knowing or in reckless disregard of the fact that such coming to . . . [would] be in violation of law," 8 U.S.C. § 1324(a)(1)(A)(iv), and attempted to harbor her with knowledge or in reckless disregard of the fact that she remained in the United States illegally, *id.* § 1324(a)(1)(A)(iii), because of circumstances caused by Clare Bronfman, among other Defendants. FAC ¶¶ 222-223. Second, Clare Bronfman violated 8 U.S.C. §1324(a)(1)(A)(ii)–(iv) with respect to Camila by encouraging her to enter the United States, harboring her, and attempting to transport her with the requisite mental state. FAC ¶¶ 84, 90-91, 834. Third, Clare Bronfman violated 8 U.S.C. §1324(a)(1)(A)(iii)–(v) by harboring, encouraging, and conspiring to encourage Adrian, Camila's brother, to reside in the United States with knowledge or reckless disregard of the fact that his residence was illegal. FAC ¶¶ 725-726. Fourth, Clare Bronfman encouraged B to enter and remain in the United States and harbored her with knowledge that her entry and residence violated 8 U.S.C. § 1324. FAC ¶¶ 58, 73, 297, 724 (explaining how ESF, an arm of NXIVM, "sponsor[ed] fraudulently obtained student visas for foreign nationals brought to the United States under false pretenses," to further Rainbow Cultural Gardens, NXIVM's unlicensed child development program, and that B was enticed by ESF to enter the U.S. and once there told she had to work for RCG).

In short, as the district court concluded at Clare's sentencing, it is "clear," that Clare Bronfman "made promises to immigrants that she did not keep, exacted labor that she did not pay for, and took advantage of these individuals' financial straits and immigration statuses in a manner that exacerbated both their financial and emotional vulnerabilities and made them more reliant on her and the NXIVM community, sometimes with very harmful consequences." FAC ¶ 723 (citing Sentencing Memorandum (Dkt. 936), 1:18-cr-00204 (sentencing Clare Bronfman for

violating §1324 with respect to another woman—who was eventually made a DOS "slave"); *see also* FAC ¶ 852 (Clare Bronfman admitting before the district court that "for financial benefit" she "harbor[ed] an individual who [she] knew had remained in the United States in violation of the law [and] substantially facilitated her to live and work in our country in a way that would be undetected" (quoting Clare Bronfman's guilty plea)). The Court need look no further than Clare Bronfman's immigration-related predicates to conclude that the FAC alleges that she engaged in a pattern of racketeering activity.

ii. Clare Bronfman committed multiple mail and wire fraud acts.

The FAC also alleges that Clare Bronfman committed the racketeering acts of mail and wire fraud. *See* 18 U.S.C. §1961(1)(B); Fed. R. Civ. P. 9(b).[19] The elements of mail and wire fraud are: (i) a scheme to defraud; (ii) to obtain money or property; (iii) furthered by the use of interstate mail or wires. *See BWP Media USA Inc. v. Hollywood Fan Sites, Inc.*, 69 F. Supp. 3d 342, 362 (S.D.N.Y. 2014). The FAC alleges that the enterprise was conducted to, *inter alia*, further a fraudulent scheme to obtain money and property from Plaintiffs and others. *See, e.g.*, FAC ¶¶3-4 (alleging that high-ranking individuals within NXIVM manipulated the curriculum to ensure that out of the more than sixteen thousand people who took NXIVM's courses, fewer than one hundred earned income from NXIVM's businesses). Defendants, including Clare Bronfman, repeatedly used mail and wire to effectuate their fraudulent scheme. *See, e.g.*, FAC ¶ 91 (describing frequent telephone calls made Clare Bronfman and Raniere to Adrian in furtherance of the scheme); FAC ¶ 128 (describing several threatening letters Clare Bronfman wrote to Soukiana Mehdaoui in furtherance of the scheme). Importantly, Clare (or Sara) Bronfman did

[19] Further, as discussed *infra*, pp. 27, 32, 35, the Complaint can also be read to plausibly allege that Clare Bronfman aided and abetted predicate acts committed by others, which are imputed to her. The same is true for Sara Bronfman.

not have to mail or send wire communications that were themselves false or misleading and "use of mails [did not even need to be] an essential element of the scheme" so long as they were "incident" to an essential part of the scheme, or a "step in the plot." *United States v. Schmuck*, 489 U.S. 705, 710–11 (1989) (internal citation and quotation marks omitted).[20]

A scheme to defraud includes "everything designed to defraud by representations as to the past or present, or suggestions and promises as to the future." *United States v. Altman*, 48 F.3d 96, 101 (2d Cir. 1995)), (citing *Durland v. United States*, 161 U.S. 306, 313 (1896)), and requires material misrepresentations made with fraudulent intent. *See generally United States v. Pearce*, 224 F.3d 158 (2d Cir. 2000). Plaintiffs need not show that they relied on the defendants' misrepresentations. *See Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 661 (2008). The FAC sufficiently alleges that Clare Bronfman personally used the mails or wire in furtherance of a fraudulent scheme or aided and abetted the commission of mail and wire fraud predicate acts.

Clare Bronfman personally, and acting through agents, made use of the mails and wires to further Defendants' scheme to enrich themselves through their pyramid scheme and to induce certain Plaintiffs to provide labor for little or no compensation.[21] For example, Clare Bronfman "drafted threatening letters that were supplied to NXIVM's lawyers, who transposed the letters verbatim onto law firm letterhead" and sent them to Plaintiffs Edmondson, Salazar, and Mehdaoui, among others. FAC ¶¶ 118, 749. The FAC also alleges that she "made" false statements concerning Sarah Edmondson to the Vancouver Police Department after Edmondson stopped participating in NXIVM programs, alleging that Edmondson hacked computers and stole

[20] Because the mail and wire fraud statutes "use the same relevant language, they are analyzed in the same way." *United States v. Slevin*, 106 F.3d 1086, 1088 (2d Cir. 1996).

[21] "The fraudulent statements of an agent, when made within the scope of its agency, are attributable to the principal." *Aetna Cas. And Sur. Co. v. Aniero Concrete Co., Inc.*, 404 F.3d 566, 580 (2d Cir. 2005); *see also Woods v. Maytag Co.*, 807 F. Supp. 2d 112 (E.D.N.Y. 2011) (this principle is "well-established").

NXIVM property. FAC ¶¶ 106-107, 823, 837. These letters were intended to protect and perpetuate the fraudulent scheme, were false and misleading, FAC ¶ 824, and designed to pressure several Plaintiffs, among others, into silence, so the entities operated by Raniere and Clare Bronfman could weather public and law enforcement scrutiny and continue generating revenue.

In short, the FAC details the fraudulent scheme operated by the Defendants, the use of the mails and wires in furtherance of the scheme, that Clare Bronfman made false and misleading statements personally and through at least one of her agents, and sufficiently describes the content of those statements. This is enough to survive a motion to dismiss.[22]

The FAC also sufficiently alleges intent to defraud. Because it is "unrealistic to expect a plaintiff to plead a defendant's actual state of mind," Federal Rule of Civil Procedure 9(b) "permits plaintiffs to allege fraudulent intent generally." *Powers v. British Vita, P.L.C.*, 57 F.3d 176, 184 (2d Cir. 1995) (internal quotation marks omitted); Fed. R. Civ. P. 9(b) ("[K]knowledge[] and other conditions of a person's mind may be alleged generally). Plaintiffs need only provide "some minimal factual basis for conclusory allegations that give rise to a strong inference of fraudulent intent." *Powers*, 57 F.3d at 184 (internal quotation marks omitted). A complaint may give rise to a sufficient inference of fraudulent intent by "alleg[ing] a motive for committing fraud and a clear opportunity for doing so" or by "identifying circumstances indicating conscious behavior by the defendant." *Id.* The FAC does both.

First, it alleges that Clare Bronfman had motive and a clear opportunity to commit fraud. *See, e.g.*, FAC ¶ 38 (court finding that Clare Bronfman "clear[ly] . . . used her incredibly wealth

[22] Clare Bronfman's reliance on *Flexborrow LLC v. TD Auto Finance LLC*, 255 F. Supp. 3d 406 (E.D.N.Y. 2017), is misplaced. In that case, the complaint "[did] not identify any statements made by [the] defendant that were fraudulent, much less the dates and the times those statements were made or the identities of the recipients." 255 F. Supp. 3d at 422.

and attempted to use her social status and connections not only to support NXIVM's work, but also as a means of intimidating, threatening, and exacting revenge upon individuals who dared to challenge its dogma"). Second, it identifies circumstances indicating conscious behavior by her to commit fraud, particularly "in light of the entire pattern of conscious behavior alleged." *Powers*, 57 F.3d at 187 (holding that conscious behavior evinced fraudulent intent when the defendant violated an agreement soon after entering into it); *see, e.g.*, FAC ¶ 90 (alleging that Clare Bronfman consulted immigration attorneys on Camila's behalf but never intended to assist Camila in obtaining legal status); FAC ¶ 92 (alleging that Camila was persuaded to go into hiding and take up residence in an apartment provided by Clare Bronfman); FAC ¶ 725 (alleging that Adrian was promised a chance to run a t-shirt company using equipment owned by Clare Bronfman but that Clare Bronfman refused to compensate Adrian, knowing that his immigration status made him unable to demand payment).

Clare Bronfman ignores these allegations (and others that similarly evince fraudulent intent). She asserts that because she "continues to stand by Raniere" she "did not and could not have had any fraudulent intent." CB Mem. at 20. Not so. Clare Bronfman's continued support of Raniere negates neither her motive and opportunity to commit fraud nor the facts alleged indicating that she did so. To the contrary, her support of Raniere suggests only that *one of her reasons for committing fraud* was to benefit Raniere. Put simply, a defendant need not commit fraud for reasons she thought were bad to have committed fraud.

b. Sara Bronfman engaged in a pattern of racketeering activity.

The FAC plausibly alleges that Sara Bronfman committed at least two predicate acts: (1) witness tampering, in violation of 18 U.S.C. §1512, and (2) encouraging aliens to come to and reside in the United States illegally, in violation of 8 U.S.C. §1324.

Witness tampering in violation of 18 U.S.C. § 1512 is a RICO racketeering act. 18 U.S.C. §1961(1)(b). Witness tampering includes "corruptly persuad[ing]" another, or attempting to do so, with intent to "influence [or] prevent the testimony of any person in an official proceeding" or "cause or induce" any person to "withhold testimony" from an official proceeding." 18 U.S.C. §1512(b) (1); *id*. at §1512 (b)(2)(A). "[C]orrupt persuasion" means "persuasion motivated by an improper purpose." *United States v. Veliz*, 800 F.3d 63, 70 (2d Cir. 2015). This includes "include[s] causing a witness to withhold relevant facts about the defendant's wrongful acts." *Chevron Corp. v. Donziger*, 974 F. Supp.2d 362, 594–45 (S.D.N.Y. 2014). Corrupt persuasion can arise even where the defendant uses neither threats nor bribes to influence or prevent testimony. *See Riley v. City of New York*, 2015 WL 541346 at *8–9 (E.D.N.Y. 2015) (finding witness tampering occurred when a litigant solicited a false statement to benefit his case and promised the witness that he would help her with her own case); *see United States v. LaFontaine*, 210 F.3d 125, 128–29, 132–33 (2d Cir. 2000) (holding that witness tampering statute satisfied when defendant "remind[ed]" witness of false narrative that would be favorable to the defendant).

Sara Bronfman incorrectly asserts the FAC alleges "no details" as to "when" she discussed compensating Adrian for his refusal to testify. The FAC makes clear that Sara Bronfman violated §1512 by attempting to corruptly persuade Adrian to withhold testimony from an official proceeding. "In the days leading up to the trial," which began on May 7, 2019, Sara Bronfman promised Adrian money if he would leave and remain outside the U.S. during Keith Raniere's criminal trial. *See* FAC ¶¶ 855, 885, 897. These allegations are not conclusory. They contain facts describing *when* Sara Bronfman propositioned Adrian and *how* Sara Bronfman attempted to corruptly persuade him. They also identify the official proceeding from

which Sara Bronfman sought to withhold testimony. Assuming the facts alleged are true, as the Court must, the FAC plausibly alleges that Sara Bronfman violated the witness tampering statute.

Sarah Bronfman's contention that the witness tampering allegations are insufficient because the FAC does not allege *how much* money she offered Adrian is equally meritless. SB Mem. at 12. There is no requirement that a complaint allege the amount of money the defendant offered the potential witness. Indeed, Sara Bronfman would have committed witness tampering even if she offered Adrian only the vague promise of money, or if she merely encouraged him to flee the country to avoid testifying at the Raniere trial with no promise of money at all. *See LaFontaine*, 210 F.3d at 132–33.[23]

Further, as explained above, it is a violation of 8 U.S.C. §1324 to encourage or induce aliens to "come to" or "reside" in the United States, with knowledge or in reckless disregard of the fact that such coming to or residence would violate the law, and 8 U.S.C. §1324 is a RICO predicate. Aiding or abetting such encouragement also violates §1324 and is a RICO predicate act. 8 U.S.C. § 1324(a)(1)(A)(v)(I), (II).[24] Aiding and abetting requires the defendant to have taken "some conscious action that furthered the commission of the crime." *United States v. Pipola*, 83 F.3d 556, 562 (2d Cir. 1996).[25]

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[23] Sarah Bronfman relies on *Homeless Patrol v. Joseph Volpe Family*, 2010 WL 2899099 (S.D.N.Y. 2010) and *Winters v. Jones*, 2018 WL 326518 (D.N.J. 2018). These cases offer her no support. In *Homeless Patrol*, the allegation of witness tampering was "wholly conclusory." 2010 WL 2899099, at *16. In *Winters*, the complaint's only allegation relating to witness tampering was that "Defendants committed witness tampering 'by corruptly persuading [a subset of] plaintiffs with intent to influence their testimony in an official proceeding and without [sic] testimony in an official proceeding.'" 2018 WL 326158 at *10 (quoting complaint).

[24] Aiding and abetting the commission of predicate acts under 18 U.S.C. § 1961(1) can be considered racketeering activity for purposes of proving a RICO violation. S*ee United States v. Litwok*, 678 F.3d 208, 213–215 (2d Cir. 2012); *In re Trilegiant Corp., Inc.*, 11 F. Supp. 3d 132, 141 (D. Conn. 2014).

[25] *Pipola* interpreted the general aiding and abetting statute, 18 U.S.C. § 2(a), which is in relevant respects identical to 8 U.S.C. § 1324(a)(1)(A)(v)(II).

The FAC's allegations and reasonable inferences drawn therefrom permit the conclusion that, at minimum, Sara Bronfman aided and abetted Raniere's and Clare Bronfman's encouragement of aliens to come to and reside in the United States in violation of law, and Raniere's and Clare Bronfman's attempts to harbor and transport such aliens. Sara Bronfman funded, was a leader of, and deeply involved in NXIVM's affairs generally. *See* FAC ¶ 62. Sara Bronfman co-founded and funded ESF, which was used to obtain student visas for foreign nationals under the pretense that they would be given educational scholarships, FAC ¶¶ 72, 74, and she launched and directed the operations of RCG, which is where foreign nationals were made to work in violation of law once they came to the United States. FAC ¶¶ 73, 89, 718, 724.

Specifically, Sara Bronfman operated ESF to "sponsor foreign nationals for educational 'scholarships,' so that they could get visas to come to the United States." FAC ¶ 705. She then "put [those foreign nationals] to work" in RCG, "thereby causing [them] to lose their international student immigration status." FAC ¶¶ 705, 720 (alleging Sara Bronfman directed Loretta Garza to use accounting tricks to hide the existence of foreign nationals working for RCG without the proper visas and to mask RCG's finances). Her practices threatened the foreigners with arrest and deportation, which made them highly dependent on NXIVM. FAC ¶ 707. From these practices NXIVM obtained untaxed cheap labor. FAC ¶ 707. It is therefore reasonable to infer that, as the operator and funder of ESF and RCG, Sara Bronfman shared in the criminal endeavor and took specific actions, like directing Garza or other RCG employees to "maintain multiple sets of books" to hide the foreign national's existence. FAC ¶ 720.

In sum, by witness tampering in violation of 18 U.S.C. §1512 and aiding and abetting violations of 8 U.S.C. §1324, Sara Bronfman committed at least two predicate acts. Those predicate acts were sufficiently related to form the basis of Plaintiffs' §1962 (c) RICO claim, for

they were in service of NXIVM as a criminal enterprise. *See United States v. Coppola*, 671 F.3d 220, 243 (2d Cir. 2012) (explaining that relatedness is established by "connective diverse predicate acts to an enterprise whose business is racketeering activity, such as an organized crime family" (internal quotation marks omitted)).

4. The FAC plausibly alleges that Clare and Sara Bronfman violated 18 U.S.C. § 1962(d) (Count II).

Both Clare and Sara Bronfman move the Court for dismissal of the RICO conspiracy (§1962(d)) claim. CB Mem. at 23-24, SB Mem. at 16. They argue that the FAC does not contain sufficient allegations to allow the Court to infer that they (or any of the other Individual Defendants) agreed to violate RICO.[26]

A person violates RICO's conspiracy proscription if she "agrees to join a racketeering scheme" that involved, or was intended to involve, two or more predicate acts of racketeering and "knowing[ly] engage[s] in the scheme with the intent that its overall goals be effectuated." *See United States v. Zemlyansky*, 908 F.3d 1, 11 (2d Cir. 2018). Clare and Sara Bronfman needed "'knowledge of only the general contours of the conspiracy.'" *U.S. v. White*, 7 F.4th 90, 99 (2d Cir. 2021) (citation omitted). *Accord, New York District Council of Carpenters Pension Fund v. Forde*, 939 F. Supp. 2d 268, 282 (S.D.N.Y. 2013). Nor did they have to know the identities of all the conspirators. *See U.S. v. Martino*, 664 F.2d 860, 876 (2d Cir. 1981) ("a single conspiracy does not become multiple conspiracies merely because a particular member does not know the identities of some other members"); *United States v. Applins*, 637 F.3d 59, 75-76 (2d Cir. 2011)) or all the details of the conspiracy. *New York District Council of Carpenters,*

[26] Clare and Sara Bronfman also incorrectly claim that the Court should dismiss the racketeering conspiracy claim if it were to dismiss the racketeering count (CB Mem. at 23-24). *See Salinas v. U.S.*, 522 U.S. 52, 64-66 (1997) (a defendant "may be liable for [RICO] conspiracy even though he was incapable of committing the substantive offense."). *Accord United States v. Applins*, 637 F.3d 59, 75-76 (2d Cir. 2011); *City of New York v. Bello*, 579 Fed. Appx. 15, 17-18 (2d Cir. 2014).

939 F. Supp. 2d at 282; *Chubb & Son Inc. v. Kelleher*, 2010 WL 5978913, at *4 (E.D.N.Y. Oct. 22, 2010). Their "'agreement to join a conspiracy can be inferred from circumstantial evidence of the defendant's status in the enterprise or knowledge of wrongdoing.'" *Board of Managers of Trump Tower at City Center Condominium by Neditch v. Palazzolo,* 346 F. Supp. 3d 432, 463 (S.D.N.Y. 2018) (citation omitted). *Accord, New York District Council of Carpenters,* 939 F. Supp. 2d at 282. That a defendant would benefit from the scheme may also support such an inference *Board of Managers of Trump Tower,* 346 F. Supp. 3d at 464-65. An inference may also be drawn from a situation that would logically lead an alleged conspirator to suspect that she or he was part of a larger enterprise. *New York District Council of Carpenters,* 939 F. Supp. 2d at 283 (quoting *U.S. v. Zichettello,* 208 F.3d 72, 99 (2d Cir. 2000).

Racketeering conspiracy was addressed in *Salinas v. United States,* 522 U.S. 52 (1997). The opinion begins with an overview of fundamental conspiracy principles that are fully applicable to a RICO conspiracy. A conspirator does not have to "agree to commit or facilitate each and every part of the substantive offense" and the conspirators "may divide up the work, yet each is responsible for the acts of each other…." *Id*. at 63-64 (citation omitted). Conspirators who provide support … are as guilty as the perpetrators." *Id.* at 64 Further, a person may conspire for the commission of a crime by a third person…." *Id*. Third, a "person…may be liable for conspiracy even though he was incapable of committing the substantive offense." *Id*.

The "RICO conspiracy statute…broadened conspiracy coverage by omitting the requirement of an overt act" and a violation does not require proof that "each conspirator agreed that he would be the one to commit two predicate acts." *Id*. A RICO conspirator also does not have to "himself commit or agree to commit the two or more predicate acts requisite to the

underlying offense." *Id*. at 65.[27] The holding in *Salinas* and its progeny render Clare and Sara Bronfman's predicate acts argument irrelevant for purposes of Plaintiffs' racketeering conspiracy claim.[28]

The FAC plausibly alleges that Clare and Sara Bronfman are liable for RICO conspiracy. First, they agreed to join a racketeering enterprise that committed multiple predicate acts, which is expressly alleged in the FAC. *See* FAC ¶ 877.[29] Further, it is reasonable to infer their agreement based on their leadership roles (discussed *supra,* p. 6), and collaboration with other leaders of the enterprise like Raniere (discussed *supra,* pp. 5, 6). Bottom line, the FAC has properly alleged that Clare and Sara Bronfman were part of a conspiracy to violate RICO.

5. Plaintiffs Have Standing to Bring RICO Claims

Clare Bronfman also challenges Plaintiffs' RICO standing, which requires that a person be "injured in his business or property by reason of a violation of section 1962 of this chapter…." 18 U.S.C. §1964(c). CB Mem. at 22-23. She concedes that the FAC alleges the Plaintiffs were financially injured by being fraudulently induced into paying for worthless NXIVM courses, but then suggests that if some Plaintiffs made money from NXIVM they did not suffer a RICO injury. Even if this set-off theory were viable, it is a factual issue that cannot be determined on a motion to dismiss.

Sara Bronfman claims that the FAC's allegation that Plaintiffs were monetarily harmed as the result of "Defendants' scheme, criminal acts, and misrepresentations and omissions"

[27] Further, liability for racketeering conspiracy does not require the "establishment of an enterprise" *United States v. Applins,* 637 F.3d 59, 75 (2d Cir. 2011) (footnote omitted). It follows that there is also no requirement that the defendant operate or mange an enterprise's affairs. *City of New York v. Hatu*, 2019 WL 2325902, at *14 (S.D.N.Y. May 31, 2019) (citing *United States v. Zichettello,* 208 F.3d at 99).

[28] As noted above, the allegations of the FAC also allow a reasonable inference that Clare and Sara Bronfman aided and abetted various predicate acts, which is equivalent to Clare or Sara Bronfman committing such acts for purposes of RICO.

[29] Among the predicate acts committed by Clare and Sara Bronfman's co-conspirators are violations of the TVPRA, 18 U.S.C. §1592, discussed *infra*, pp. 37-38, 60-61.

insufficiently pleads that their injury was caused by any RICO violation committed by her. SB Mem.at 15.[30] The argument does not support dismissal. First, the FAC does allege that her and her co-conspirators' predicate acts, including mail and wire fraud, immigration-related, and forced labor and trafficking conduct resulted in financial harm to the Plaintiffs. Second, Sara Bronfman is alleged to have conspired to violate RICO and, as a conspirator, she is jointly and severally liable for any injury caused by a co-conspirator. *See Salinas*, 522 U.S. at 63-64 ("each [member of the conspiracy] is responsible for the acts of each other…."); *City of New York v. Pollack*, 2006 WL 522462, *17 (S.D.N.Y. 2006) (the "nature of civil RICO offenses requires imposition of joint and several liability because all defendants participate in the enterprise responsible for the RICO violations" (citation omitted) (alterations adopted)).

D. Plaintiffs Do Not Have to Plead Compliance with the Statute of Limitations

Sara Bronfman contends that the FAC must be dismissed because each Plaintiff did not allege that he or she was injured within the applicable limitations periods. RICO. SB Mem. at 8-10. Not so. A plaintiff "is not required to plead that his or her claims are timely because nonadherence to statutes of limitations is an affirmative defense." *Jones v. City of New York*, 2021 WL 5562694, at *5 (S.D.N.Y. Nov. 29, 2021). *Harris v. City of New York*, 186 F.3d 243, 251 (2d Cir. 1999); Fed. R. Civ. P. 8(c)(1). Because the statute of limitations is an affirmative defense, unless it appears from the face of a complaint that a claim is untimely the issue should not be resolved on a motion to dismiss. *See, e.g., Connecticut General Life Insurance Company*

[30] Plaintiffs do not take issue with Sara Bronfman's contention that that they cannot collect strictly personal injury damages under RICO. What they do seek to recover is the money spent for NXIVM procured by fraud, for financial loss from uncompensated labor and trafficking. See *Adhikari v. Daoud & Partners*, 697 F. Supp. 2d 674, 690-91 (S.D. Tex. 2009) (reduction in promised wages, being compelled to pay out-of-pocket fees to defendants, and being prevented from obtaining alternative employment sufficient allegations of financial loss under RICO), and pecuniary loss due to false imprisonment, *see Diaz v. Gates*, 420 F.3d 897, 898-903 (9th Cir. 2005) (en banc) (holding that false imprisonment is compensable under RICO when it causes the victim to lose employment opportunities).

v. BioHealth Laboratories, Inc., 988 F.3d 127, 132 (2d Cir. 2021); *Whiteside v. Hover-Davis, Inc.*, 995 F.3d 315, 319 (2d Cir. 2021) (affirming the principle).[31]

Sara Bronfman offers no argument that Plaintiffs have pled themselves out of court. Indeed, her argument suggests—at most—that the FAC's allegations leave uncertainty as to when Plaintiffs' claims accrued and whether they are within the statute of limitations. SB Mem. at 8-9. Because the FAC does not clearly and definitively foreclose Plaintiffs' claims against Sara Bronfman—and she offers no argument that it does—the Court cannot dismiss Plaintiffs' claims against her as untimely.[32]

E. Plaintiffs' Chapter 77 Claims (Count III) Are Well-Pled

All claims in Count III are brought under 18 U.S.C. § 1595(a), which creates a private right of action for victims of peonage, slavery, and human trafficking. Section 1595(a) permits "victims" to bring civil actions against those who violate any prohibition in Title 18, Chapter 77 of the U.S. Code, *see* 18 U.S.C. §§ 1581-1597, including those who "knowingly benefit[], financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of [Chapter 77]." The FAC alleges that all Individual Defendants are liable under § 1595(a) because they directly violated or

[31] The "discovery accrual rule" applicable in RICO cases, *Rotella v. West, 528 U.S. 549 (2000)* and determining the date of accrual on a motion to dismiss is appropriate only where the facts required to determine when a reasonable plaintiff or ordinary intelligence would have been aware of the fraud can be obtained from the complaint. *E.g., Staehr v. Hartford Financial Services Group, Inc.*, 547 F.3d 406, 412 (2d Cir. 2008).

[32] Sara Bronfman cites three cases to support her argument: *HV Assocs. v. PNC Bank, N.A.*, 2020 WL 5819559 (S.D.N.Y. 2020), *Myers Industr., Inc. v. Schoeller Arca Sys., Inc.*, 171 F. Supp. 3d 107 (S.D.N.Y. 2016), and *Dallas v. Vosburgh*, 2019 WL 4573743 (W.D.N.Y. 2019). Far from supporting her argument, the cases reinforce the principle discussed by Plaintiffs (but ignored by Sara Bronfman) that a court may dismiss a claim on limitations grounds only if untimeliness is readily discernable from the face of the complaint. *See HV Associates*, 2020 WL 5819559 at *4; *Myers*, 171 F. Supp. 3d at 115; *Dallas*, , 2019 WL 4573743 at *3.

participated in a venture that violated 18 U.S.C. §§ 1581 (peonage), 1589 (forced labor), 1590 (human trafficking), 1591 (sex trafficking) and 1592 (document servitude).[33]

1. NXIVM was a venture under § 1595(a).

"The term 'venture' means any group of two or more individuals associated in fact, whether or not a legal entity." *Jane Doe No. 1 et al v. Daniel S. Fitzgerald*, No. CV2010713MWFRAOX, 2022 WL 425016, at *8 (C.D. Cal. Jan. 6, 2022) (citing 18 U.S.C. § 1591(e)(6)). Plaintiffs allege that Defendants, individuals associated in fact, conspired to operate and participated in a criminal enterprise and venture that engaged in, among other things, acts of fraud, forced labor, peonage and sex trafficking under the NXIVM umbrella. (Statement of Facts p. x)). Civil liability does not require that the venture be solely created and operated for purposes of trafficking, and an individual can be liable even if she did not directly participate in the venture's trafficking. *See M.A. v. Wyndham Hotels & Resorts, Inc*., 425 F. Supp. 3d 959, 970 (S.D. Ohio 2019). However, as Plaintiffs allege, NXIVM was "set up by [D]efendants [and] was designed . . . for the purpose of facilitating [racketeering and trafficking] crimes and also ensuring that [D]efendants would personally reap ample benefits therefrom." *Bistline v. Parker*, 918 F.3d 849, 874-75 (10th Cir. 2019).

a. Each Defendant Participated in the Venture.

Participation in a venture is meant to be construed according to its plain meaning, and "[t]he ordinary meaning of participate or participation is to take part in or share with others in common or in an association." *Doe #1 v. Red Roof Inns, Inc.*, 21 F.4th 714, 724-25 (11th Cir.

[33] The FAC also alleges violations of 18 U.S.C. § 1593A, benefitting financially from peonage, forced labor and sex trafficking, but it is not necessary for Plaintiffs to allege or prove violations of this criminal statute in order to establish civil liability under 1595(a). Plaintiffs thus do not oppose dismissal of claims based on violations of section 1593A.

2021). "Participation' under § 1595 does not require actual knowledge of participation in the [specific offense] itself." *Wyndham*, 425 F. Supp. 3d at 970.

Each Individual Defendant participated in the venture. Defendant Nicole Clyne, along with Defendants Raniere, Nancy Salzman and Allison Mack, created TEN C, "which was aimed at procuring young women from college sororities for Raniere," by offering them jobs in the t-shirt company owned by Clare Bronfman. FAC ¶ 676; *supra*, pp. 10, 11.[34] Subsequently, Clyne and Mack "created and ran DOS with Raniere." FAC ¶ 676. Clyne was a First Line DOS Master and a member of the Inner Circle. FAC ¶ 69. She continues to support Defendant Raniere, visiting and communicating with him regularly, and to advocate and/or recruit for what remains of DOS. FAC ¶ 69. Defendant Roberts was a licensed physician who used a cauterizing iron to brand members of DOS.[35] She continues to support Raniere and promote DOS. FAC ¶ 69. Defendant Porter "was paid by and acted as an agent of ESF, under the direction of Raniere, Clare Bronfman, and Nancy Salzman." FAC ¶ 67. He conducted illegal and fraudulent "studies" using NXIVM members, including the "Human Fright Experiment," and the Tourette's and OCD "studies." FAC ¶ 67. And, as explained above, Defendants N. Salzman, L. Salzman, Mack and Russell, who each pleaded guilty to racketeering conspiracy, were active participants in the NXIVM venture.

Defendants C. Bronfman and S. Bronfman served in leadership positions within the NXIVM venture and invested their wealth to fund its operations and obstruct the ability of others

[34] The company was used several times for trafficking purposes; it was also used by Raniere and C. Bronfman to obtain unpaid labor and services from Plaintiff Adrian, and later used to lure Plaintiff Salazar to move to Albany to work with Raniere. FAC ¶ 676.

[35] Subsequent to the filing of the FAC, the New York State OPMC revoked Roberts' license to practice medicine, largely for her conduct in branding Raniere's initials into womens' pubic regions. The SAC was filed only to make technical changes to conform to the Court's protective order concerning disclosure of Plaintiffs' identities, and did not include any substantive amendments to the fact allegations other than to remove several Plaintiffs whose had terminated their claims.

to uncover the venture's misconduct. *See* FAC p. 2; FAC ¶¶ 62, 73, 89, 706, 720; *supra,* p. 6. Moreover, they attempted to protect the venture to prevent obstruct law enforcement from terminating it by, among other things, silencing witnesses. When women began to defect from DOS, some of them pleaded with members of NXIVM's executive board to help them get their collateral returned or destroyed. Plaintiff Kristin was one such victim, and she wrote to Lauren Salzman and Clare Bronfman, beseeching them to return or destroy her collateral, which she described in detail for them. *See* FAC ¶ 490. Bronfman refused. Instead, intent on retaliating against the whistleblower, Edmondson, she made false statements to law enforcement in an attempt to have criminal charges brought against Edmondson and her administrative assistant, Plaintiff Jennifer Kobelt. FAC ¶¶ 831, 833-834; *supra*, p. 8. Clare Bronfman viciously attacked defectors and critics through the legal system to retaliate against them and through those examples intimidate and silence others. She tried to pressure and silence NXIVM defectors, "including defectors who were witnesses to wrongdoing by the Defendants and others." FAC ¶ 830; *supra,* p. 6. She and Raniere drafted threatening letters, which she had lawyers send to, among others, DOS Plaintiffs Souki Mehdaoui, Jessica Joan Salazar and several other DOS defectors, to "intimidate and silence [those] victims of Raniere's brutal campaign of sexual abuse and exploitation." FAC ¶ 749. The letters stated that if these victims spoke to anyone about their ordeals, they would be subjected to civil and criminal actions. *See* FAC ¶ 749.

Clare Bronfman also helped Raniere attempt to continue to control Plaintiff Camila, when Camila decided to leave NXIVM and return to Mexico, driven by her brother, Adrian. Bronfman tried to pressure Adrian and then Camila directly, with assistance from an attorney and former Acting Director of ICE. FAC ¶ 91. Even later, after Raniere was charged for the pornographic pictures he took of Camila when she was fifteen, Bronfman and Raniere paid for a

lawyer who helped manipulate Camila into hiding and refusing to cooperate with the FBI investigation or testify at trial. FAC ¶ 92.

In sum, Clare Bronfman was engaged in efforts for two years – from the initial wave of DOS defections in mid-2017 through Raniere's trial in mid-2019 – to obstruct, attempt to obstruct or interfere in the enforcement of some of the most damning charges: forced labor, sex trafficking, racketeering conspiracy and racketeering (including, among many other things, child exploitation predicates).

Consistent with her equally long participation in Defendants' tactics to silence witnesses, S. Bronfman decided to come to Raniere's rescue shortly before his trial began. Knowing that Adrian was a potentially key witness, S. Bronfman attempted to persuade him to leave the U.S. and become unavailable as a trial witness by offering him a substantial sum of money to go to France, under the pretense of having a video production project for him that would require him to remain in France during the period that the trail would be taking place. *See* FAC ¶ 855. Like her sister, S. Bronfman attempted to obstruct the enforcement of serious charges.

Clare and Sara Bronfman were longstanding members of Defendants' conspiracy and venture. The criminal investigation and indictments were not solely directed at Raniere; they were directed at individuals at the heart of the NXIVM venture, and thus had implications for the venture and its members, Defendants in this action. DOS was not separate, any more than was any other organization or entity within the NXIVM umbrella. All were created to serve the same agreed purpose by the same means. One of Clare's and Sara's roles in the venture was to protect the realm by enforcing the code of omerta. When Clare began her efforts to punish and silence DOS "slaves," she was simply performing her longstanding duties to protect Raniere and the venture. Because slavery, collateral and coerced labor were already familiar aspects of the

venture, she shrugged off the pleas from some of those slaves for help getting their collateral returned. *See e.g.* FAC ¶ 749. Instead, she lashed out at the whistleblower, Plaintiff Edmondson, and then began to threaten others who were leaving with legal action if they did not remain silent. *See e.g.* FAC ¶ 36. After she entered her guilty plea (and on supervised release awaiting sentencing), Raniere's trial date was fast approaching. He was facing child pornography charges with respect to Camila (who Raniere, Clare and others had frightened into hiding so she would be unavailable to testify), and trafficking and document servitude charges with respect to her sister, Daniela. Their brother, Adrian, was potentially a key witness who could provide corroborating testimony about both of his sisters' experiences. Sara Bronfman attempted to lure him to leave the country for the duration of the trial. *See e.g.* FAC ¶ 855.

These were not random or spontaneous acts by the Defendants; they were continuing to do what they had always done – silence witnesses. They are liable to Plaintiffs as participants in the venture. And they are liable to Plaintiffs as co-conspirators in the longstanding conspiracy that had as one of its aims to engage in trafficking offenses.[36]

b. Defendants Knowingly Benefitted from Their Participation

Section 1595(a) imposes liability upon persons who "knowingly benefit[ted] financially or by receiving anything of value" from their participation in the venture. The definition of "anything of value" is broad:

> Courts have consistently held that "anything of value" encompasses more than simply monetary exchanges. *See, e.g., United States v. Cook*, 782 F.3d 983, 988-89 (8th Cir. 2015) (holding that "[t]he phrase 'anything of value' is extremely broad" and encompasses "sexual acts, photographs, and videos"); *Noble v. Weinstein*, 335 F. Supp.

[36] Even if DOS were viewed as a distinct conspiracy, which it was not, Defendants C. and S. Bronfman joined it when they engaged in this conduct and "'it is black letter conspiracy law that one who joins a conspiracy in progress ratifies all that has come before.'" *Cleft of the Rock Found. v. Wilson*, 992. F. Supp. 574, 584 (E.D.N.Y. 1998) (*quoting Dixon v. Mack*, 507 F. Supp. 345, 350-51 (S.D.N.Y. 1980)). "[F]or purposes of conviction for conspiracy (as opposed to conviction for substantive offenses), a coconspirator is liable for acts committed in furtherance of the conspiracy prior to his entry into the conspiracy." *U.S. v. Blackmon*, 839 F. 2d 900, 911 (2d Cir. 1980).

> 3d 504, 521 (S.D.N.Y. 2018) ("Congress's use of expansive language in defining commercial sex act—using such terms as 'any sex act,' 'anything of value,' 'given to or received by any person'—requires a liberal reading."); *United States v. Rivera*, No. 6:12-CR-121, 2012 WL 6589526, at *5 (M.D. Fla. Dec. 18, 2012) (holding that the term "anything of value" "encompasses more than just monetary gain," including "ordination as a prophet"), *aff'd*, 551 F. App'x 531 (11th Cir. 2014).

United States v. Raniere, 384 F. Supp. 3d 282, 318 (E.D.N.Y. 2019) (Garaufis, J.). "[V]alue is a subjective, rather than objective, concept where 'the focus of the ... term is to be placed on the value which the defendant subjectively attaches' to what is sought to be received." *United States v. Petrovic*, 701 F.3d 849, 858 (8th Cir.2012).

Each Defendant knew that he or she was benefitting from the venture. The fact that some benefitted financially from the venture is enough to satisfy this requirement for them. Defendants Clyne, S. Bronfman, C. Bronfman, Lauren Salzman, Mack and Raniere "benefitted financially through the receipt of . . . free labor, including personal assistants, housekeepers, drivers, personal shoppers and others." FAC p. 2. Defendants Clyne, Mack and Lauren Salzman received free labor and services as First Line DOS masters. *See* FAC ¶ 26. Defendant Porter was paid by the NXIVM trafficking venture for his work conducting unlawful human experiments. FAC ¶ 67.

All Defendants also received non-monetary things of value from the trafficking venture, including:

> …[E]nhanced status, titles, and power to wield over the rank-and-file members, including among other things positions as officers, directors and/or senior managers of NXIVM-affiliated entities and groups, as well as enhanced feelings of self-esteem and worth, because they were deemed "successes" within the Enterprise . . . [T]he satisfaction of believing that they were at the forefront of a new era in the history of human civilization, and they were poised to benefit by gaining exceptional status within this remade society they were setting out to create.

FAC ¶ 49. Defendants' knew they derived these benefits from their participation in the venture, including attaining high positions of power and authority within NXIVM, close relationships with and approval from Raniere, and the resulting elevated stature and high-esteem they were held in within the NXIVM community. FAC ¶ 49. The value they obtained from their participation in the venture were undeniable.

c. Each Defendant Knew or Should have Known the Venture Committed TVPRA Offenses

Section 1595(a) imposes civil liability on participants in the venture who "knew or should have known" that it was engaged in Chapter 77 offenses. 18 U.S.C. 1595(a). This *scienter* standard is less than recklessness, requiring only constructive knowledge the venture is committing trafficking offenses:

> The phrase "knew or should have known," echoes common language used in describing an objective standard of negligence… In short, it is possible for a defendant to be civilly liable without having violated any of the criminal portions of the TVPA, because the statute permits recovery under a civil standard even in the absence of proof of intentional conduct.

Ricchio v. Bijal, Inc., 424 F. Supp. 3d 182, 193-194 (D. Mass. 2019). *See also Doe #1 v. MG Freesites, LTD*, No. 7:21-CV-00220-LSC, 2022 WL 407147, at *11 (N.D. Ala. Feb. 9, 2022) ("[T]he civil statute allows a plaintiff to plead that the defendant merely had constructive knowledge.").[37]

The FAC (and reasonable inferences drawn from it) adequately alleges that each Defendant had the requisite scienter. Their participation in the venture was substantial; they

[37] In *SJ v. Choice Hotels Int'l, Inc.*, 473 F. Supp.3d 147 (E.D.N.Y. 2020), Judge Cogan applied this standard and dismissed beneficiary liability claims against two corporate hotel franchisors, because there were no allegations that the defendants were aware of any indicia of trafficking on their franchisees' independently owned and operated properties. The corporations' general awareness "of a general sex trafficking problem in low-budget lodgings" at best supported a speculative inference that defendants "might have been able to guess" there was trafficking occurring on those properties. *Id.* at 154. Unlike remote corporate franchisors, Defendants here were immersed in the environment where trafficking was occurring, they participated directly in the venture, and did not need to guess about anything.

were in extremely close proximity to both their co-venturers and the victims; they were intimately familiar with every aspect of the NXIVM venture's operations, and they were themselves – individually and in combinations with various other co-venturers – engaged in the commission of the venture's myriad trafficking offenses.[38]

2. Members of the Venture Committed TVPRA Offenses

a. Forced Labor, Forced Labor Conspiracy and Attempted Forced Labor

All members of the NXIVM venture were jointly engaged in efforts to subject NXIVM members to forced labor, and it often succeeded. Under § 1589, which is a basis for § 1595(a) liability, individuals are proscribed from "knowingly provid[ing] or obtain[ing] the labor or services of a person" by various means, including "force, threats of force, physical restraint, or threats of physical restraint to that person or another person," "serious harm or threats of serious harm to that person or another person; abuse or threatened abuse of law or legal process," and using a "scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint. 18 U.S.C. § 1589(a). Any person who conspires or attempts to provide or obtain a person's labor or services by any of the above enumerated means is equally liable. 18 U.S.C. § 1594(a) & (b). *See Paguirigan v. Prompt Nursing Emp. Agency LLC*, 286 F. Supp. 3d 430, 439–40 (E.D.N.Y.

[38] Clare Bronfman's assertion that the NXIVM venture was not a trafficking venture but a company which sought to "inspire joy," CB Mem. at 1, is an inappropriate attempt to inject a fact issue into the motion to dismiss stage of this proceeding. And, in any case, so long as Clare Bronfman knew or should have known she was participating in a venture that violated Chapter 77 (as alleged in the FAC), it is of no moment that she also thought the venture was "inspir[ing] joy." *See Wyndham Hotels*, 425 F. Supp. 3d at 970 (explaining that liability can attach even when an "individual participates in a venture that is not specifically a . . . trafficking venture and [the individual's] participation is not direct participation in the . . . trafficking.").

2017). Members of NXIVM procured labor from Plaintiffs using, among other things, threats of serious harm.

i. Members of NXIVM procured labor or services from Plaintiffs.

"The term 'labor or services,' which is not defined by [§ 1589], is viewed in accord with its ordinary meaning." *United States v. Callahan*, 801 F.3d 606, 620 (6th Cir. 2015). *Labor* means the "expenditure of physical or mental effort esp. when fatiguing, difficult, or compulsory' and *service* means "the performance of work commanded or paid for by another." *Id.* (quoting Webster's Third New International Dictionary (1993)). Traditional domestic tasks, cleaning, running errands, and yardwork qualify. *Id*. Manual and physical tasks also qualify. *See, e.g., Bistline*, 918 F.3d at 872. Sex acts can also qualify as labor and services under §1589. *See Ricchio v. McLean*, 853 F.3d 553, 557 (1st Cir. 2017). ("*McLean*").NXIVM companies, organizations, programs and events were staffed by Nxians, and NXIVM leaders' homes and offices, their personal and work lives, were supported by Nxians' work, as well. To work up the Stripe Path, Plaintiffs were required to perform traditional forms of labor or services for the NXIVM venture for little or no compensation with the goals of coaching or proctoring. *See* FAC ¶¶ 639-646. Among other things, students were taught that only "actions that produce tangible results c[ould] be classified as work," that because their participation in NXIVM provided them with "extraordinary value, the free labor they provided to NXIVM was not considered slavery[,]" and that the value students placed on their work was inflated, justifying withholding compensation. *See e.g.*, FAC ¶¶ 645-646. "[A]nyone who did not produce value was a 'Parasite,' [thus] coercing members into providing their labor for fear of being characterized as a Parasite and being excommunicated." FAC ¶ 647. For instance, Plaintiff Edmondson was never

paid for her years of work as a coach, and was required to continue providing free labor and services after becoming a proctor. *See* FAC ¶¶ 100-101.

Other Plaintiffs performed chores and domestic work for NXIVM and its leaders, including personally assisting various Defendants with menial or other tasks. For example, Plaintiff Daniela provided housekeeping and other domestic services for Defendant Raniere and others, as well as IT and library services. FAC ¶ 79. Plaintiff Camila provided housekeeping for Defendant Nancy Salzman. FAC ¶ 87. She also worked as a babysitter for Raniere and others and at the RCG. FAC ¶ 89. Adrian worked countless hours at the t-shirt company owned by Ms. C. Bronfman.[39] FAC ¶ 725.

Plaintiffs Piesse, Stiles and MacInnis worked countless hours, around the clock, setting up an "Ultima" company, exo/eso, directly under the supervision of Clare Bronfman (who owned the company) and Raniere. FAC ¶ 215, 222, 231, 752. Plaintiffs Soukiana Mehdaoui, Veronica Jaspeado, Isabella Constantino, Ashley McLean, Maja Miljkovic, and Mark Vicente worked to set up another Ultima company, the Knife, run by Defendant Clyne among others, while Plaintiff Nicole worked for yet another Ultima company, the Source, headed by Defendants Mack and Clyne. FAC ¶¶ 134, 777, 780.

All the DOS Plaintiffs, too, – Camila, Sarah Edmondson, Jessica Joan Salazar, Soukiana Mehdaoui, Nicole, Veronica Jaspeado, Paloma Pena, Jane Doe 8, Jane Doe 9, Charlotte, Rachel, India Oxenberg, Valerie and Kristin – were required to provide traditional labor and services to their "masters," including housekeeping, shopping, meal preparation and other chores. *See, e.g.*, FAC ¶ 30.

[39] Plaintiff Jessica Joan Salazar was later persuaded to move to Albany to work directly with Raniere in this same t-shirt company, but after she became ensnared in DOS that opportunity (if it ever was real) evaporated. FAC ¶ 114.

Other Plaintiffs performed non-traditional forms of labor or services for NXIVM other than "work in an economic sense." *Kaufman*, 546 F.3d 1242, 1263; *see also Hackwell v. United States*, 491 F.3d 1229, 1233–34 (10th Cir. 2007) (discussing services as "the performance of any duties or work for another."). Several DOS members were "assigned" to have sex with Raniere, which is labor or services under section 1589. *See Ricchio*, 853 F.3d 553, 557. Additionally, the Plaintiffs who were subjects of the fraudulent human "studies" designed by Raniere, conducted by Defendants Nancy Salzman and Brandon Porter, and sponsored and funded by S. and C. Bronfman's ESF, also provided labor or services, which can include participating in illegitimate, bogus psychotherapy for mental illness that is in reality done for other purposes (including a perpetrator's lurid entertainment). *Kaufman.* at 1247-1250. Plaintiffs Isabella, Caryssa, Margot, Camila and Kobelt were subjects in NXIVM's medical "studies," and Camila and Kobelt were subjects in the fright study. NXIVM needed subjects for these projects, not because they were legitimate scientific undertakings, but because they enabled Defendants to perpetuate the falsity that NXIVM's methods could advance the understanding of human emotions and even cure debilitating psychiatric disorders. Indeed, two Plaintiffs who were subjects in the Tourette's project were filmed for a propaganda video, funded and executive produced by C. Bronfman, which lied about the abuse they suffered. FAC ¶ 731.

Many other Plaintiffs provided labor or services of some kind, either directly to NXIVM's leadership, including each Defendant, or through service in one of the many organizations and entities run by those Defendants, and everyone who progressed beyond the initial, introductory intensive was subjected to Defendants' manipulative, high-pressure tactics to pull them deep enough into the community that they would be expected or even needed to work in some capacity. *Supra*, pp. 2, 9, 10.

ii. The labor procured by members of the venture was by means of threats of serious harm.

The venture was designed and operated to provide or obtain the labor or services of NXIVM members by means of "serious harm or threats of serious harm . . . abuse or threatened abuse of law or legal process . . . [and/or] any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person…would suffer serious harm." *See, e.g.,* FAC ¶ 891. "Serious harm" is defined as "any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person *of the same background and in the same circumstances* to perform or to continue performing labor or services in order to avoid incurring that harm." *Id.* § 1589(c)(2) (Emphasis added). When assessing "serious harm," "the vulnerabilities and characteristics of the specific victim become extremely important because one individual could be impervious to some types of coercion that cause another to acquiesce in providing forced labor…." and so the relevant inquiry is whether the defendant "intentionally cause[d] the oppressed person reasonably to believe, given her special vulnerabilities, that she ha[d] no alternative but to remain in involuntary service for a time." *Ross v. Jenkins*, 325 F. Supp. 3d 1141, 1164 (D. Kan. 2018); *see also Paguirigan*, 286 F. Supp. 3d at 438 ("[I]n considering whether the employer intends the victim to believe she cannot leave, we must 'consider the particular vulnerabilities of a person in the victim's position,' though the victim's acquiescence must be objectively reasonable under the circumstances.").

The FAC details how NXIVM was designed to identify, create, and exploit Plaintiffs' vulnerabilities to achieve increasing levels of coercive control over them, and it describes how harmful those methods were. *See* FAC ¶ 12. NXIVM's methods inflicted serious harm intended

to compel Plaintiffs to work under circumstances they would not have agreed to in the absence of that serious harm, and it kept Plaintiffs in a perpetual state of fear that they would suffer additional serious harm if they did not at all times continue to acquiesce to the venture's demands and refrain from questioning or challenging anyone holding a higher-rank. FAC ¶ 651. Plaintiffs believed they had to persevere to progress and endured a systematically abusive environment. *See, e.g.*, FAC ¶ 652. They believed they could not leave without suffering more harm, including potentially being sued and incurring legal costs, which Defendants were notorious for pursuing. *See, e.g.*, FAC ¶ 225. Thus, among other things, Plaintiffs often worked under the threat or fear of financial harm, which "constitutes serious harm within the meaning of the [TVPRA]… Allegations of such a severe financial burden are more than enough to rise to the level of harm necessary to state a [TVPRA] claim." *Paguirigan*, 286 F. Supp. 3d 430, 438.

The fact that some Plaintiffs could have conceivably refused the venture's demands or even left NXIVM does not preclude finding that their labor was forced. "The [TVPRA] does not require that plaintiffs be kept under "literal lock and key." *Franco v. Diaz*, 51 F. Supp.3d 235, 247 (E.D.N.Y. 2014); *see also Guobadia v. Irowa*, 103 F. Supp.3d 325, 335 (E.D.N.Y. 2015) ("that the Plaintiff may have been able to come and go as she pleased from the home does not mean the Defendants' [sic] were not engaging her in unlawful forced labor."). Defendants so manipulated Plaintiffs that they believed they had no choice but to stay and continue providing labor and services to Defendants. "[T]he TVPRA was enacted to encompass more subtle forms of psychological abuse and nonviolent coercion than those previously required to hold perpetrators accountable." *Bistline,* 918 F.3d 849, 871; s*ee also Guobadia,* 103 F. Supp. 3d at 335 ("[E]vidence must be considered under the totality of the [Plaintiff's] circumstances.").

Three groups of Plaintiffs were subjected to additional serious harm. The labor of the Exo/eso Plaintiffs was obtained through unique abuse. *See, e.g.*, FAC ¶¶ 752, 762, 763, 769, 765, 773, 775-778 (alleging facts describing how Exo/eso was used to groom women for Raniere, how the women were subject to sleep deprivation and other physical abuse, and scolded for requesting compensation for their labor, which caused several to endure serious physical injuries). So too for Plaintiffs associated with DOS. *See e.g.*, FAC ¶¶ 9-10, 22, 27, 29, 31, 32-34, 823 (alleging facts describing how "collateral" was used to trap the DOS Plaintiffs, so that they could be subjected to severe abuse, with the aim of providing them as sexual conquests for Raniere). It is well-settled that the coerced performance of sexual acts qualifies as forced labor. *See, e.g., Gilbert v. United States Olympic Committee*, 423 F. Supp. 3d 1112, 1126-29; *Kaufman*, 546 F.3d 1242, 1262-63 (compelling Plaintiffs to engage in sex acts was forced labor, despite Defendant's contention that Plaintiffs' actions were "voluntary"). The DOS Plaintiffs were "slaves," some of whom were forced into sexual relationships with Raniere, and all of whom were made to pose for sexually suggestive photographs or videos and forced into sexually compromising situations on demand. *See, e.g.*, FAC ¶ 30. This constituted "labor or services," and it was forced upon them. And so too for Plaintiffs subject to human experimentation. *See* FAC ¶¶ 67, 238 (alleging in painstaking details the experience of Camila, Ms. Kobelt, Ms. Constantino, Ms. Long and Ms. Leviton, who were subject to dangerous experiments and studies that lacked legitimacy). The severity of this psychological abuse and the Plaintiffs' vulnerable state make it "irrelevant" to a finding of serious harm whether they actually "had the opportunity to escape." *Ramos v. Hoyle*, No. 08-21809-CIV, 2008 WL 5381821, at *5 (S.D. Fla. Dec. 19, 2008).

iii. Serious Harm by Threat or Abuse of Legal Process

Section § 1589(a)(3), another basis for liability under § 1595(a), prohibits obtaining the labor or services of a person "by means of the abuse or threatened abuse of law or legal process." Many Plaintiffs believed they risked legal retribution from Defendants should they speak out or leave. *See* FAC ¶ 733. They knew that Defendants pursued legal wars against others who had done the same. The message these abuses sent to those inside NXIVM was clear: 'cross us, and this will happen to you.'" FAC ¶ 733.

Others were foreign nationals who feared deportation, which also satisfies the serious harm element of 18 U.S.C. § 1589(a)(3). *See United States v. Garcia*, No. 02-CR-110S-01, 2003 WL 22956917, at *4 (W.D.N.Y. Dec. 2, 2003) (threat of deportation fell within scope of "abuse of legal process" under 18 U.S.C. § 1589(a)(3)); *see also Nunag-Tanedo*, 790 F. Supp. 2d 1134, 1145; *Lagayan v. Odeh*, 199 F. Supp. 3d 21, 29 (D.D.C. 2016). "Even a single threat of deportation can be sufficient to support such a claim when the totality of the circumstances would allow a jury to find that the plaintiff did not understand that there was "any other option." *Yassin v. AR Enterprises, LLC*, No. CV 16-12280-DJC, 2017 WL 6625027, at *3 (D. Mass. Dec. 28, 2017) (citing *Elat v. Ngoubene*, 993 F. Supp. 2d 497, 530 (D. Md. 2014).

For example, Adrian, Camila and Daniela, who had been manipulated and abused, were often threatened that they could be turned over to immigration authorities or otherwise sent back to their home country if they did not acquiesce to the demands of Defendants and others. *See, e.g.*, FAC ¶¶ 59, 87-88, 92. They had come in to NXIVM as children, and they were isolated and forced to work within NXIVM in whatever capacity they were permitted, because they had no other means of support. FAC ¶ 59. Worse still, they lost their immigration statuses by relying on the advice of Clare Bronfman (who was the head of "legal" and had immigration

counsel on retainer) that they did not have to return to Mexico to renew their visas, leaving them with no ability to find paying jobs outside of NXIVM and under constant fear of being arrested and deported. FAC ¶ 59.

Adrian was put to work by Raniere and Clare Bronfman in her t-shirt company and misled to believe he could earn a substantial share of the net revenues once some investors were paid off, when in fact there were no investors. FAC ¶ 725. Defendants knew and intended that Adrian would feel compelled to work or otherwise risk deportation or arrest. FAC ¶ 725. Likewise, Camila's lack of immigration status was used as an excuse to refuse to pay her for work. FAC ¶ 87. When she complained, she was threatened with eviction and deportation and dire consequences. FAC ¶ 727. Daniela was also undocumented, despite her requests that Ms. Bronfman's lawyers help her fix the situation. FAC ¶ 728. Eventually, she was confined to a room, her passport and identity papers confiscated, and told that if she left for any reason she could be arrested and deported without basic identity papers. FAC ¶ 81. The cumulative effect of their fear of deportation and various abuses inflicted on them rendered them extremely vulnerable, believing themselves compelled to continue working because they were at risk of additional harm should they stop working and leave. FAC ¶ 729.[40]

As discussed above, Plaintiff Lindsay MacInnis was among the foreign nationals lured by Raniere and Clare Bronfman under false pretenses to obtain business consulting visas and then put to work in exo/eso under conditions that violated the terms of their visas. *Supra,* p. 25; *see also* FAC ¶¶ 35, 73-74, 706-707, 720-21. Defendants also pressured members of the NXIVM

[40] Defendant C. Bronfman misrepresents the court's analysis in *Aguirre v. Best Care Agency, Inc*. 961 F. Supp. 2d 427, 432 (E.D.N.Y. 2013), which did not "decline [] to conclude that nearly identical allegations qualified as abuse or threatened abuse of legal process." Def. Brief at p. 32. Rather, the court denied Plaintiff's motion for summary judgment, holding that there were disputed issues of material fact, including the question of whether Defendants' conduct constituted an abuse of the legal process under section 1589. *Aguirre,* 961 F. Supp. 2d 427, 445.

community to engage in marriage fraud. FAC ¶ 730. When Plaintiff Maja Miljkovic found herself consumed by NXIVM-generated fears of failing and being separated from the NXIVM community, Defendants compelled her to seduce a member of the NXIVM community and marry him so she could obtain a green card, supposedly to "save her." FAC ¶ 730.

NXIVM's practice of isolating workers, compromising their immigration status, subjecting them to the potential threat of deportation, financial ruin, fear tactics and other forms of psychological manipulation and pressure, constitute serious harms under section 1589. *See, e.g.*, *Lagasan v. Al-Ghasel*, 92 F. Supp. 3d 445, 454 (E.D. Va. 2015); *Nunag-Tanedo*, 790 F. Supp. 2d 1134, 1145.

b. Some Plaintiffs were also victims of sex trafficking by members of the NXIVM venture

Defendants are also liable under § 1595(a), for violations of § 1591, which proscribes, among other things, knowingly recruiting, enticing, or coercing persons to engage in "commercial sex act[s]" affecting foreign or interstate commerce (or benefitting from participation in a venture that undertakes such activity). 18 U.S.C. § 1591(a).[41] The term "commercial sex act" means "any sex act, on account of which anything of value is given to or received by any person." §1591(e)(3). "Anything of value" is construed broadly, including both monetary and non-monetary benefits. *Raniere*, 384 F. Supp. 3d at 318; *United States v. Rivera*, No. 6:12-CR-121-ORL-37, 2012 WL 6589526, at *5 (M.D. Fla. Dec. 18, 2012), aff'd, 551 F. App'x 531 (11th Cir. 2014); *see also United States v. Cook*, 782 F.3d 983, 989 (8th Cir. 2015) (holding that defendant's receipt of sexual photographs "could constitute things of value under [Section 1591]."). "[V]alue is a subjective, rather than objective, concept where 'the focus of the

[41] The foreign/interstate federal jurisdictional hook is satisfied because NXIVM's conduct frequently spread across national and international boundaries. *See, e.g.*, FAC ¶¶ 90-92, 833.

... term is to be placed on the value which the defendant subjectively attaches' to what is sought to be received." *Petrovic*, 701 F.3d 849, 858.

The crime of sex trafficking does not have to result in the performance of a sex act; it is complete when the recruitment, enticement, harboring, providing or obtaining occurs. *McLean*, 853 F.3d 553, 558 ("the objective of …the intended trafficking need not be satisfied for liability to attach."). If the perpetrator engages in the specified conduct with respect to the victim, with the expectation that those consequences will unfold, it satisfies the reckless disregard standard. *See United States v. Todd*, 627 F.3d 329, 334 (9th Cir. 2010) ("The knowledge required of the defendant [for § 1591 liability] is such that if things go as he has planned, force, fraud or coercion will be employed to cause his victim to engage in a commercial sex transaction."). Attempting or conspiring to engage in sex trafficking is also a crime. 18 U.S.C. §1594(a-b). 18 U.S.C. §1591(d) also makes it a crime for anyone to "obstruct[], attempt[] to obstruct, or in any way interfere[] with the enforcement" of the statute.

All DOS Plaintiffs were victims of sex trafficking, attempted sex trafficking and sex trafficking conspiracy. Defendants Clyne and Mack conspired with Raniere to create and run DOS. Clyne, Mack and L. Salzman as first-line masters knowingly recruited, enticed, provided and/or obtained by fraudulent and coercive means DOS "slaves," including the DOS Plaintiffs, knowing the DOS plaintiffs would be subjected to unlawful coercion for the purpose of providing Raniere with women for his sexual gratification. FAC ¶ 19-20. They repeatedly compelled DOS slaves to give "collateral," including nude and pornographic images and videos, which they threatened to release if the DOS slaves did not acquiesce to their demands, and they shared that collateral with Raniere. *Id*. at ¶ 22. They broke them down physically and

psychologically, compelling them to comply with their every demand. *See supra,* p. 11; *see also* FAC ¶¶ 168-170 (Alleging Clyne recruited and obtained collateral from Jane Doe 8).

Defendant Roberts worked with Raniere and the first-line masters to further bind the "slaves" to DOS and Raniere. Wielding a cauterizing iron and using no anesthesia, she burned Raniere's initials into DOS members' pubic regions, knowing that the women had been lied to about the brand being a symbol of the earth's elements. Inflicting victims with permanent, proprietary markings is what sex traffickers do to their victims. *See, e.g., U.S. v. Campbell*, 770 F. 3d 556, 559 (7th Cir. 2014) (sex trafficker "branded" and abused victims). These brutal events were filmed, saved as collateral and, of course, shared with Raniere. *See* FAC ¶¶ 68, 819. This branding not only furthered the objective of the conspiracy, but directly injured women physically and emotionally. DOS Plaintiffs Edmondson, Camila, Nicole, India Oxenberg and Paloma Pena were scarred for life with Raniere's brand. *See* FAC ¶ 34.

But while DOS is the most notorious sex trafficking effort within NXIVM, it was not the only one. It was, instead, the culmination of years of preceding efforts by various Defendants. Much earlier, with the creation of TEN C, Clyne, Mack, Raniere and Nancy Salzman plotted and attempted to recruit young college-age women for the purpose of providing them for Raniere to sexually abuse. *See* FAC ¶ 676. Even earlier, Nancy Salzman harbored and benefitted from keeping fifteen-year-old Camila as a housekeeper, recklessly disregarding that Camila was being groomed to have sex with Raniere. *See* FAC ¶¶ 86-87.

The Ultima companies were also attempts to engage in or conspire to engage in sex trafficking. Exo/eso was one such operation, and it was run by Clare Bronfman and Raniere, using the same coercive methods of verbal abuse, sleep deprivation, calorie deprivation, physical exertion and financial duress to subjugate Plaintiffs Piesse, Stiles and MacInnis, who assert

claims for sex trafficking as well. *See* FAC ¶¶ 751-753. So, too, was the Source, a company headed by Mack and Clyne for which Plaintiff Nicole worked. FAC ¶ 751.

All of these efforts were conducted against the backdrop of some of NXIVM's most nefarious, misogynistic indoctrination: the Jness and SOP Complete programs, where women were systematically stripped of their self-esteem and rendered extremely vulnerable to severely abusive situations, and to believe it was their obligation to endure those situations and work through them to become stronger, better women. FAC ¶¶ 654, 671. All female members of the NXIVM community were compelled to subject themselves to these intensives. They were the foundation of the venture's sex trafficking pipelines, priming women by creating and exploiting vulnerabilities that would break down their resistance to further trafficking efforts. *See* FAC ¶¶ 654-666, 671.

c. Members of the Venture Committed Acts of Peonage

Section 1581 (a) prohibits holding or returning "any person to a condition of peonage . . ." *Id*. "Peonage is a status or condition of compulsory service or involuntary servitude based upon a real or alleged indebtedness." *Pierce v. United States*, 146 F.2d 84, 86 (5th Cir. 1944). "To prove peonage, plaintiff must show that [the defendant] intentionally held him against his will and coerced him to work in order to satisfy his debt by (1) physical restraint or force, (2) legal coercion, or (3) threats of legal coercion or physical force. *Mohammed v. Sidecar Techs. Inc*., No. 16 C 2538, 2016 WL 6647946, at *4 (N.D. Ill. Nov. 10, 2016) (citing *United States v. Farrell*, 563 F.3d 364 (8th Cir. 2009)).

Clare Bronfman argues that "the FAC identifies no specific Plaintiff who allegedly had a debt nor specific Defendants to whom such debt was allegedly owed such that the Plaintiff was forced to work to pay off." CB Mem. at p. 34. First of all, this is false. The Complaint

specifically alleges that Ms. Bronfman compelled Plaintiff MacInnis to work to pay off an indebtedness that Bronfman concocted in order to bind MacInnis to exo/eso. *See* FAC ¶ 223. It also alleges that Adrian was put to work in her t-shirt company and told that if he continued to work hard until the (phony) investors were paid off, he could start earning money. *Supra,* pp. 29, 47, 53. This was an alleged indebtedness and Adrian was in conditions of peonage.

But courts hold that defendants cannot escape liability for peonage even where a plaintiff is indebted specifically to another defendant. "Courts have recognized a peonage claim against defendants based on a debt owed to a different defendant." *Jacqueline De Britto Bucco, et al. v. Western Iowa Tech Community College*, No. C21-4001-LTS, 2022 WL 605801, at *10 n.5 (N.D. Iowa Mar. 1, 2022). NXIVM's tactics were designed to induce vulnerable individuals into conditions of servitude in order to work off indebtednesses that were manufactured precisely to put the victims in those conditions, including many Plaintiffs. "NXIVM … pressured members to purchase classes they could not afford, and many members incurred substantial personal debt to continue purchasing courses in hopes of climbing within the ranks of NXIVM. Members also became indebted to NXIVM, other NXIVM-related entities, and to persons including Individual Defendants, and were induced to take additional courses and intensives that they were told they could pay for through an otherwise uncompensated labor "exchange," which was claimed to be an "ethical" transaction in the NXIVM world." FAC ¶ 642. The entire organization operated by capitalizing on the debt of its members and by forcing them into service in a futile attempts to pay of this debt. This was common knowledge to NXIVM leaders and, as such, these Defendants, who were core participants in and who derived considerable benefits from the NXIVM venture, knew or should have known about the organization's peonage offenses.

C. Bronfman ran NXIVM, she was responsible for its "legal" and its finances, and she was well aware of the debt-trap tactic, used it well, and knew it would be deployed regularly because the system was designed to drive students into debt and to apply manipulative and coercive tactics to cause them to believe that if they feared being in debt, it was an "issue" they needed to overcome. *Supra,* pp. 1, 10. She knew what was done to students, and if there were particular instances where she didn't have all the facts, she should have known, because she ran things, she was in continual contact with Raniere and his Inner Circle, she had access to all the NXIVM books and records, she decided who to threaten with legal action, her lawyers handled the immigration matters (where she allowed someone to obtain advice or assistance), this aspect of the NXIVM venture could have been custom-crafted for her appetite for power and control over people. And through obtaining and maintaining her high-rank and authority, and the satisfaction of achieving such levels of control over members of the community, C. Bronfman was a prime beneficiary of it all. She is liable to the specific Plaintiffs who she placed into conditions of peonage, and she is liable to all of the venture's peonage victims and its attempted peonage victims as a beneficiary under section 1595(a).

S. Bronfman likewise held a high rank in the organization, and knew the curriculum well enough to be a "trainer." *See* FAC ¶ 700. She founded and oversaw RCG, and was a trustee of ESF, the non-profit she and C. Bronfman created. *See* FAC ¶¶ 89, 705. Those two entities worked together to enslave foreign nationals, who were enticed to come to the U.S. under student visas with the promise of scholarship money, only to be informed on arrival that in truth if they wanted the scholarship funds, they had to work those sums off with RCG. *See* FAC ¶¶ 88, 89, 92. In other words, the scholarships were actually loans, manufactured indebtedness calculated to hold these foreign nationals, whose immigration status was lost the moment they started

working for RCG, in conditions of servitude. S. Bronfman knew peonage was systematic within the NXIVM venture, both directly through the entities she oversaw and how they operated, and through her deep understanding of the NXIVM system and the centrality of indebtedness as a means of maintaining a bound workforce. What she didn't specifically know, she clearly should have known, because it was all around her. She benefitted from her participation in the NXIVM enterprise, she was deeply involved in promoting NXIVM through false promises and pretenses to recruit new members, and she is liable to every Plaintiff who was subjected to peonage or attempted peonage under section 1595(a).

d. Members of the venture engaged in human trafficking.

In order to state a trafficking in persons claim under 18 U.S.C. § 1590, a "plaintiff must show that a defendant knowingly recruited, harbored or transported plaintiff for labor or services or obstructed or attempted to obstruct enforcement of the statute." *Martinez v. Calimlim*, 651 F. Supp. 2d 852, 864 (E.D. Wis. 2009). The FAC alleges that this was a primary purpose of Defendants' venture. *Supra*, p. 2. Since the FAC adequately alleges forced labor and peonage, Plaintiffs have adequately pled their human trafficking claim under Sections 1581 and 1590. *See, e.g., Ross*, 325 F. Supp. 3d at 1164-65; *see also Magtoles v. United Staffing Registry, Inc.*, No. 21CV1850KAMPK, 2021 WL 6197063, at *10 (E.D.N.Y. Dec. 30, 2021) ("[I]f a defendant violates section 1589, he also violates section 1590 if he recruited the person to perform forced labor."); *see also McLean*, 853 F.3d 553, 558 (Section 1590(a) "prohibiting the 'knowing[ ] ... harbor[ing] ... [of] any person for labor or services,' … is most obviously read as requiring only intent to produce the result described).").

F. Plaintiff Daniela's Claim Against C. Bronfman for Unlawful Conduct With Respect To Documents is Sufficiently Pled

Section 18 U.S.C. § 1592(a)(2) proscribes knowingly destroying, confiscating, or possessing certain immigration documents with the intent to violate 18 U.S.C. §§ 1581, 1583, 1584, 1589, 1590, or 1591. Defendant C. Bronfman argues that because she is not mentioned in the paragraphs in the complaint with respect to Daniela's immigration documents that she is not liable for other Defendants' confiscation of them. CB Mem. at 35. But Ms. Bronfman knew or should have about this because she had high-level positions and longstanding relationships with Raniere (who was convicted for this offense), and Lauren Salzman (who admitted it). *Supra,* pp. 6, 35; FAC ¶¶ 44, 58. She was deeply involved in the venture's forced labor and peonage and was directly involved in compromising Daniela's immigration status to keep her bound to the venture. *See* FAC ¶ 59. She is, therefore, equally liable for the Section 1592 offenses.[42]

G. Plaintiffs' State Law Claims for Gross Negligence and Recklessness, Aiding and Abetting, and Malicious Abuse of Process Should Not Be Dismissed.

1. Plaintiffs state a claim for malicious prosecution.

The elements of malicious prosecution are: (1) the initiation or continuation of a criminal proceeding against plaintiff; (2) termination of the proceeding in plaintiff's favor; (3) lack of probable cause for commencing the proceeding; and (4) actual malice as a motivation for defendant's actions. *See Jackson v. Nassau Cty*., No. 18-CV-3007(JS)(AKT), 2021 WL 3207168, at *10 (E.D.N.Y. July 28, 2021).

[42] *See Wyndham*, 425 F. Supp. 3d 959, 970 (beneficiary liability does not require knowledge of specific offense); *see also United States of America Ex Rel., Elgasim Mohamed Fadlalla, et al. v. Dyncorp International, LLC, et al..*, No. 8:15-CV-01806-PX, 2022 WL 703918, at *6 (D. Md. Mar. 9, 2022) (defendant's knowledge that venture's objective was to coerce workers into continuing to provide labor, high level of authority and power in venture, and close working relationship with perpetrators sufficient to infer scienter, even where communications with perpetrators did not specifically mention confiscating passports).

Clare Bronfman financed and personally directed vexatious litigation, threatened litigation and initiated false criminal complaints as a means of intimidating, threatening, and exacting revenge upon individuals who dared to challenge NXIVM's dogma, FAC 11, ¶ ¶36-38, 1732, 734, 144, 145.

To initiate a criminal proceeding, one must "play[ ] an active role in the prosecution, such as giving advice and encouragement or importuning the authorities to act." *Manganiello v. City of New York*, 612 F.3d 149, 163 (2d Cir. 2010). Defendant Clare Bronfman, along with others in the United States and Mexico, by false pretenses caused law enforcement agencies to open criminal investigations on victims and witnesses including Plaintiffs Sarah Edmondson, Jessica Joan Salazar, Soukiana Mehdaoui, Jennifer Kobelt and Toni Natalie.

After Sarah Edmondson and Jennifer Kobelt defected and spoke out publicly about Defendants' wrongdoing, Clare Bronfman made false statements to the Vancouver Police Department that Ms. Edmondson and Ms. Kobelt had allegedly committed crimes against NXIVM. The police department ultimately concluded there was no evidence to support C. Bronfman's allegations, and they closed the investigation. FAC 34 ¶ 106-107, Pg. 61, ¶ 265. As documented in threatening letters from attorneys, including a state prosecutor in Mexico, C. Bronfman and Raniere (along with others) caused criminal investigations to be opened against (among others) Plaintiffs Salazar, Mehdaoui and Natalie.

"Malice does not require actual spite or hatred, but only "that the defendant must have commenced the criminal proceeding due to a wrong or improper motive, something other than a desire to see the ends of justice served." *Dufort v. City of New York*, 874 F.3d 338, 353 (2d Cir. 2017) (quoting *Nardelli v. Stamberg*, 44 N.Y.2d 500, 502-03, 406 N.Y.S.2d 443, 377 N.E.2d 975 (1978)). "Malice may be inferred from the absence of probable cause." *Jorgensen*, 2021 WL

4144984, at *6. The allegations underlying these criminal complaints were utterly baseless and intended only to intimidate and silence them (and others by example) so that they would not report to or cooperate with authorities concerning Defendants' unlawful conduct. FAC 36, ¶¶ 117, 118, 37-38,127, 128, 749.

Moreover, for two decades, Defendants Raniere, Nancy Salzman and C. Bronfman, with substantial financial assistance from S. Bronfman, waged a relentless campaign of meritless legal actions against Plaintiff Natalie. Every single one of those actions was terminated in Ms. Natalie's favor.

Defendants Clare and Sara Bronfman cite New York law for a claim for abuse of process and argue that abuse of legal process claim fails because it is time-barred and not adequately pled, CB Mem at 38-39, and that Plaintiffs fail to allege that she employed any legal process or plead special damages, SB Mem at 33-35. However, plaintiffs allege malicious prosecution and not abuse of process. FAC 934, 936-937.

2. Plaintiffs' State a Claim for Gross Negligence and Recklessness

A plaintiff states a claim for gross negligence if the complaint alleges facts plausibly suggesting that the defendant's conduct "evinces a reckless disregard for the rights of others or smacks of intentional wrongdoing." *M+J Savitt, Inc. v. Savitt*, No. 08 Civ. 8535(DLC), 2009 WL 691278, at *12 (S.D.N.Y. Mar. 17, 2009) (quoting *AT & T v. City of New York*, 83 F.3d 549, 556 (2d Cir. 1996)). Recklessness in the context of a gross negligence claim means "an extreme departure from the standards of ordinary care," such that "the danger was either known to the defendant or so obvious that the defendant must have been aware of it." *AMW Materials Testing, Inc. v. Town of Babylon*, 584 F.3d 436, 454 (2d Cir. 2009) (internal quotation mark omitted).

Under New York law a defendant assumes a duty of care when his or her conduct places the plaintiff "in a more vulnerable position than he would have been in had [the defendant] not taken any action at all". *Tavarez v. Lelakis*, 143 F.3d 744, 746-47 (2d Cir. 1998). An assumed duty arises "only where (1) the failure to exercise due care increases the risk of harm to the plaintiff or (2) the harm is suffered because of the plaintiff's reliance on the undertaking". *Id.*at 747 (quoting Restatement (Second) Torts S 323 at 137 cmt. C (1965)). The assumption-of-duty inquiry is necessarily fact specific and typically hinges on a plaintiff's reasonable reliance, to his or her own detriment, as an indicator of whether the defendant has "launched a force or instrument of harm" *H. R Moch Co. v. Rensselaer Water Co*., 247 N.Y. 160, 168 (1928).

As a Medical Doctor and a Registered Nurse, Porter and Salzman had a duty to uphold the accepted standard of care in their treatment of Plaintiffs Margot, Isabella and Caryssa. They breached their duty by failing to provide a standard of care that reasonably prudent and careful medical professionals would provide under similar circumstances. Their use of untested, unauthorized and inherently risky psychotherapy in unscientific so-called "studies" for the treatment of OCD and Tourette's Syndrome, without even bothering to obtain the legally required informed consent, was such an extreme breach of their duty of care that no reasonable person, let alone a doctor and nurse, would have thought at all appropriate, which directly caused Margot, Isabella and Caryssa to suffer injury.

A duty of care can be assumed if there is a special relationship between the defendant and the tortfeasor. New York courts recognize a special relationship where the defendant "ha[s] the necessary authority or ability to exercise the requisite control over the [tortfeasor's] conduct so as to give rise to a duty to protect the injured claimants." *Stephen v. State*, 19 N.Y.S.3d 585,586 (App. Div. 2015). Even a member of a board of directors may be individually liable to third

parties for a corporate tort if she directed, controlled, approved or ratified the decision that led to the plaintiff's injury. *Fletcher v. Dakota, Inc.*, 99 A.D. 3d 43, 49-50 (1st Dep't 2012).

Clare and Sara Bronfman assumed a duty of care because they had a special relationship with Porter and Nancy. They established and funded ESF as a non-profit for the purpose of conducting medical studies. FAC ¶ 14, 16, 22 705. Porter worked for their non-profit, ESF, which sponsored and funded his and Nancy's work in these unlawful experiments. Clare paid Caryssa's expenses, treatment costs including intensives in the Tourette's study. FAC ¶ 261. Clare also produced and financed the production of "My Tourettes", a misleading film intended to falsely promote NXIVM's supposed achievements in medical science, which included footage of Isabella and Caryssa's participation in the study. FAC 255, 261. Clare and Sara Bronfman had the authority and ability to exercise control over the studies, and their failure to exercise that control placed plaintiffs Margot, Isabella and Caryssa increased the risk of harm to Plaintiffs, who suffered harm in reliance on the undertaking. *Tavarez*, 143 F.3d at 746-47. Plaintiffs were placed "in a more vulnerable position than [they] would have been in had [Defendants] not taken any action at all." *Id*. at 747.

Defendants argue that they were merely sponsors of the so-called studies and bear no responsibility for them. But the cases they cite are inapposite. *McGrath v. United Hosp*., 167 A.D.2d 518 (N.Y. App. Div. 1990), *Vogel v. West Mountain Corp*., 97 A.D.2d 46 (N.Y. App. Div. 1983) and *Mayer v. Cornell Univ.*, 1997 WL 32916 (2d Cir. Jan. 8, 1997), cited by Clare, held there was no special relationship between corporate sponsors and the events they sponsored. But Clare and Sara Bronfman were not merely corporate sponsors of fundraising, ski or snorkeling events, they were high-ranking leaders in NXIVM with considerable power and authority, and direct proximity to Porter, Nancy and the studies. Sara cites to *David v. Weinstein*

Co., 2019 WL 1864073 (S.D.N.Y. Apr. 24, 2019) and *Woo Hee Cho v. Oquendo*, 2018 WL 9945701 (E.D.N.Y. Aug. 25, 2018). SB Mem at 28. But in those cases, the torts in question were sexual assaults, and the courts held that the tortfeasors' employers could not be considered to have assumed a special duty of care with respect to the victims, because sexual assaults were not within the scope of the tortfeasors' employment and served no purpose for the businesses. The treatment of OCD and Tourettes using ESP methods occurred in the course of Porter's employment and Nancy's work, the studies were one of the purposes for which Defendant's Clare and Sara Bronfman established and funded ESF, and they served the larger purposes of NXIVM's agenda of continually and falsely promoting its methods as scientifically sound and capable of curing human ailments.

Nor is their lack of medical expertise relevant. SB Mem at 29. They were aware that the ESP curriculum and EMs used to supposedly treat Plaintiffs' psychiatric disorders were methods that were exclusive to ESP and thus untested and never used to treat any disease or disorder. FAC ¶ 966. And they knew that these methods, which they and others fraudulently promoted as scientific means of self-improvement, were created and used to psychologically manipulate and coerce people into forced labor. *See* FAC ¶ 50.

The danger to Plaintiffs was known to Defendant Clare Bronfman. She was advised by a person with experience in medical and human research that there were scientific protocols they were required to follow in their "studies," but she disregarded that advice. FAC ¶ 709. If Sara Bronfman did not specifically know of the danger, it was because she deliberately disregarded it. Their failure to exercise control in these circumstances was clearly reckless because "the danger was either known to [them] or so obvious that [they] must have been aware of it." *AMW Materials,* 584 F.3d at 454. They were grossly negligent in failing to protect Plaintiffs, and they

are both jointly and severally liable with Porter and Salzman for the injuries Plaintiffs suffered as a result of their participation in the experiments.

3. BATTERY against Defendant Danielle Roberts on behalf of Plaintiffs Sarah Edmondson, Nicole, Paloma Pena and India Oxenberg (Count VI)

Plaintiffs Sarah Edmondson, Nicole, Paloma Pena and India Oxenberg adequately plead battery against Defendant Roberts for branding them. FAC ¶¶34, 941, 942.

Battery is the "intentional wrongful physical contact with another person without consent," *United National Insurance Co. v. Waterfront New York Realty Corp.*, 994 F.2d 105, 108 (2d Cir. 1993), and the required intent is "merely that the defendant intentionally made bodily contact and that the intended contact was itself offensive or without consent." *Rivera v. Puerto Rican Home Attendants Servs., Inc.*, 930 F. Supp. 124, 133 (S.D.N.Y. 1996) (*citing Zgraggen v. Wilsey*, 200 A.D.2d 818, 819 (1994); 6 N.Y.JUR.2D, Assault § 4 at 198 n. 25.)).

Roberts argues that the branding was consensual and therefore not offensive in nature. This disputed issue of fact is a defense, and she must not only adduce evidence of consent but the branding did not exceed the scope of any alleged consent. *Van Vooren v. Cook*, 75 N.Y.S.2d 362, 366 (App. Div. 1947); *Goff v. Clarke*, No. 98-2101, 2002 WL 126276, at *2 (N.Y. Sup. Ct. Jan. 22, 2002), *aff'd as modified*, 302 A.D.2d 725, 755 N.Y.S.2d 493 (2003) (defendant exceeded the scope of consent even if plaintiff was a "willing participant in the tussle[.]").

H. Defendants' Limitations Arguments Are Not Ripe for Decision

In addition to the fact that the FAC does not on its face clearly offer a basis for dismissal on limitations grounds at this juncture, the FAC's allegations offer a basis for equitable tolling, which is fact specific and requires discovery, and N.Y. C.P.L.R. 215(8)(a) also tolls certain limitations periods in this case.

1. New York Law Tolls Abuse of Legal Process and Battery

N.Y. C.P.L.R. 215(8)(a) would toll Counts V and VI—making a ruling at the motion to dismiss inappropriate. Section 215(8)(a) provides a one-year limitations period from the termination of a criminal action, notwithstanding that the time in which to commence such action has already expired, when that criminal action was against the same defendant with respect to the same event or occurrence as the civil claims that § 215(3) governs. Section 215(3) explicitly includes battery and courts have expanded § 215(3) to govern intentional torts, including malicious abuse of process. *See DeMartino v. New York*, No. 12-CV-3319 SJF AKT, 2013 WL 3226789, at *14 (E.D.N.Y. June 24, 2013), aff'd, 586 F. App'x 68 (2d Cir. 2014). "Same defendant" is "broad enough to include persons or entities so related to the criminal defendant as to be vicariously liable for his intentional torts." *LaRocca v. Collen IP, Intell. Prop. L., P.C.*, No. 08 CIV. 6274 SCR, 2009 WL 10435869, at *1-2 (S.D.N.Y. May 6, 2009) (internal citations omitted).

Here too, the malicious abuse of legal process and battery claims are not isolated events. They arise out of the same occurrence as the subject of the criminal action. Branding DOS "slaves" was part of the sex trafficking charged in the criminal case, and thus no claims against any Defendants related to that may be decided at this juncture. *See Doe v. Indyke*, 465 F. Supp. 3d 452, 461 (S.D.N.Y. 2020) (limitations period for battery claims tolled because part of events at issue in criminal sex trafficking case). Likewise, the FAC's allegations of Clare and Sara Bronfman's use of malicious litigation was part of the criminal case, cited by the District Court as one of the bases for Clare Bronfman's substantial sentence enhancement. FAC ¶ 38].

2. Coconspirator Acts Toll Statutes of Limitations

Conspiracy claims in the FAC are not clearly time-barred because multiple overt acts in furtherance of the conspiracy occurred within the limitations period. *See U.S. v. Ben Zvi*, 242

F.3d 89, 97-98 (2d Cir. 2001) (conspiracy claims are timely if "at least one overt act in furtherance of the conspiratorial agreement" occurs within that limitations period),

The FAC alleges numerous overt acts by coconspirators in Counts II, III, VII, and/or IX. The FAC is thus not clearly untimely on its face. Making these factual determinations at a motion to dismiss, for allegations involving multiple coconspirators acting over multiple decades, is premature.

3. Equitable Estoppel

Equitable estoppel may be raised where a defendant "wrongfully induced the plaintiff to refrain from timely commencing an action by . . . threats or other misconduct . . ." *Roeder v. J.P. Morgan Chase & Co.*, No. 20-CV-2400 (LJL), 2021 WL 797807 (S.D.N.Y. Feb. 26, 2021), aff'd, No. 21-552, 2022 WL 211702 (2d Cir. Jan. 25, 2022). The FAC alleges that Defendants' systematic coercion, manipulation and threats intimidated Plaintiffs and that such threats were successful in delaying their legal action—making dismissal on timeliness grounds at this early stage of litigation unfair and improper. FAC ¶ 39.

I. Any Dismissal Should Be With Leave to Amend

Although Plaintiffs have previously amended the complaint, those amendments were "as of right" under Rule 15(a)(1), or to voluntarily dismiss parties under Rule 41. If the Court is inclined to dismiss all or part of the FAC, it should do so without prejudice and grant Plaintiffs leave to amend to cure any issues pursuant to Rule 15(a)(2). As the Second Circuit recently explained:

> At the outset of the litigation, a plaintiff may freely amend her pleadings pursuant to Rule 15(a)(1) as of right without court permission. After that period ends—either upon expiration of a specified period in a scheduling order or upon expiration of the default period set forth in Rule 15(a)(1)(A)—the plaintiff must move the court for leave to amend, but the court should grant such leave "freely ... when justice requires."

Sacerdote v. New York Univ., 9 F.4th 95, 115 (2d Cir. 2021). "This is a 'liberal' and 'permissive' standard, and the only 'grounds on which denial of leave to amend has long been held proper' are upon a showing of 'undue delay, bad faith, dilatory motive, [or] futility.'" *Id.* Leave to amend is "almost always" granted when pleadings are dismissed under Rule 9 grounds for lack of particularity. *Luce v. Edelstein*, 802 F.2d 49, 56 (2d Cir. 1986). Plaintiffs therefore respectfully request that any dismissal be without prejudice and accompanied by express leave to amend.

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/s/ Neil L. Glazer

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