UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SARAH EDMONDSON, et al., Plaintiffs, v. KEITH RANIERE, et al., Defendants.	1:20-cv-00485-EK-CLP

DEFENDANT CLARE BRONFMAN'S REPLY IN SUPPORT OF HER MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

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Plaintiffs do not, because they cannot, plead sufficient support for their wide-ranging and salacious allegations against Clare Bronfman, and Plaintiffs' Combined Response in Opposition to Certain Defendants' Motions to Dismiss (Opp'n) is yet another illustration of this.[1] Rather, in an effort to intimidate and pressure a woman from a well-known and wealthy family, Plaintiffs seek refuge in joint and several liability theories to try to implicate Clare Bronfman in claims wholly unrelated to her. Plaintiffs argue that, because Clare Bronfman allegedly held leadership positions in NXIVM, Plaintiffs need not plead specific facts as to her actual conduct. *See* FAC ¶ 877; Opp'n at 17–18. Not only is such an argument flagrantly in violation of basic pleading standards, it is also illogical because Plaintiffs plead the same fact—leadership within NXIVM—as to some Plaintiffs. For her part, Clare Bronfman had little-to-nothing to do with most of the accusations. Associating her with such outrageous allegations is a thinly veiled attempt to take her money. Plain and simple. Plaintiffs obviously perceive Clare Bronfman as a deep pocket. However, Plaintiffs' shameless attempt to use this litigation as a vehicle for a windfall should not be tolerated.

Plaintiffs rely on the same tactics they used in the FAC—sweeping generalizations, conclusory assertions, and group pleading[2]—while also engaging in a few new methods in an attempt to disguise their inability to plead specific facts as to Clare Bronfman. Plaintiffs improperly introduce what seem to be new facts, assertions, and legal theories. Yet, it is nearly impossible to definitively ascertain whether such assertions are wholly new, or whether they were hidden within the lengthy and wandering FAC. Plaintiffs also stealthily drop multiple

[1] Plaintiffs' inability to plead sufficient support for their claims was apparent in their First Amended Complaint (Dkt. 64), and in the letter they submitted to the Court (Dkt 116), in response to Defendants' letters previewing arguments for a motion to dismiss (Dkt. 101, 102, 105, 107, 108).

[2] Clare Bronfman reattaches revised Exhibits A, B, C, and D that she previously submitted with her opening brief. These exhibits have been updated to reflect Plaintiffs' names and dismissals.

claims via a footnote, *see* Opp'n at 3 n.5, and drop a Plaintiff in the Second Amended Complaint ("SAC") without any notification to Defendants or, presumably, the Court.[3] In addition, Plaintiffs improperly rely on indictments from a separate criminal case.

Plaintiffs fail to acknowledge, however, that Clare Bronfman and many other Defendants were not found guilty (by plea or trial) on many of the indictments on which Plaintiffs rely. In any event, while a court *may* take judicial notice of the existence of an indictment, it may not do so for the truth of the matters therein. Accordingly, Plaintiffs' reliance on Clare Bronfman's indictment cannot cure Plaintiffs' failure to plead sufficient facts to support their claims. To the contrary, it serves only to underscore the deficiencies apparent on the face of the FAC.

First, Plaintiffs' contention that they need not support their claims against Clare Bronfman with specific factual allegations because they have alleged that she had a leadership position and thus her liability as to all claims can be inferred defies logic. Rule 8 requires that Plaintiffs provide a factual basis to distinguish conduct between Defendants. Given that some other Defendants, and even some Plaintiffs, had leadership positions, Plaintiffs have provided no way to distinguish the conduct of Clare Bronfman.

Second, Plaintiffs mischaracterize Clare Bronfman's Article III standing argument. As explained in our Motion to Dismiss ("Mot."), 56 Plaintiffs plead no facts as to Clare Bronfman and therefore lack standing to bring any claims they may be asserting against her personally. Mot. at 11–12. The only way Clare Bronfman can be deemed liable for their alleged injuries is if they were injured by a RICO enterprise and Clare Bronfman participated in or conspired with that enterprise—something Plaintiffs have failed to sufficiently plead. Plaintiffs do not respond

[3] The SAC (Dkt. 159) surreptitiously drops Jane Doe 59, who appears to have been a non-existent plaintiff who did not make any allegations or appear anywhere in the FAC (Dkt. 64) except on page 182 listing the Plaintiffs bringing Count III(A). Plaintiffs have not notified Defendants of this change in any way and this is further evidence of their inability to keep track of Plaintiffs.

to this point; rather, they simply assert that it is "apparent" from the FAC overall that Clare Bronfman is liable to all Plaintiffs. Opp'n at 17–18.

Third, Plaintiffs have not pleaded a RICO enterprise. They lack even a coherent story as to what the alleged enterprise is—*i.e.*, whether it is a legal entity or an association-in-fact. Nor have they pled that the alleged enterprise acted as a unit with a common purpose, rather than as a hub-and-spokes entity, that cannot constitute an enterprise under RICO.

Fourth, even if Plaintiffs have pleaded an enterprise, they have failed to plausibly allege that Clare Bronfman was a part of it because they have not plausibly alleged that Clare Bronfman committed at least two predicate acts.

Fifth, Plaintiffs' contention that Clare Bronfman's agreement to participate in a RICO conspiracy is established by factual allegations that she held a leadership role within NXIVM, Opp'n at 35, is incoherent. Multiple *Plaintiffs* also held such positions; accordingly, that Clare Bronfman had a leadership role within NXIVM cannot support the inference Plaintiffs seek to draw.

Sixth, Plaintiffs' Chapter 77 claims do not allege that Plaintiffs were injured by Clare Bronfman, and Plaintiffs' argument that Clare Bronfman was part of a "venture" do not save them. In addition, Plaintiffs' claims arising under 18 U.S.C. § 1595(a) fail because Plaintiffs have not alleged that any wrongdoing occurred at a time when it was actionable under the TVPRA.

Seventh, Plaintiffs' remaining state law claims[4] should be dismissed. Count V misstates the cause of action and is barred by the statute of limitations. In addition, Plaintiffs do not allege

[4] Plaintiffs dismiss Counts IV and IX in a footnote. *See* Opp'n at 3 n.5.

Clare Bronfman had any special relationship with Defendants Porter and N. Salzman, as is required for Plaintiffs' gross negligence and recklessness claim in Count X.

Respectfully, these pleading deficiencies should be the end of Plaintiffs' claims against Clare Bronfman. Plaintiffs have already amended their complaint once. Plaintiffs were given a second opportunity to amend after Defendants explained the arguments they would make in the motion to dismiss in a letter to the Court. *See* Nov. 30, 2021 Court Transcript. Plaintiffs refused. *Id.* Accordingly, the FAC represents all the things Plaintiffs are able to say with respect to Clare Bronfman, and they are not nearly enough to survive a motion to dismiss. The FAC should be dismissed with prejudice.

I. THE FAC DOES NOT SATISFY RULE 8 PLEADING REQUIREMENTS.

As explained in our Motion to Dismiss, Mot. at 8–11, the FAC fails to meet the pleading standard set forth by Rule 8. Opp'n at 12–13. The bulk of Plaintiffs' response on this point consists of boilerplate recitations of Rule 8's requirement that a complaint provide "fair notice" to a defendant. That is not in dispute. What *is* in dispute is whether the FAC satisfies that standard.

On that score, the Opposition says precious little. Plaintiffs do not support their assertion that the FAC provides "fair notice" by clarifying how specific facts support specific allegations, but through bulk citations of huge swaths of the FAC. For example, Plaintiffs assert that "[h]alf of it (FAC ¶¶ 53-577) is devoted to identifying each of the parties and summarizes their involvement with NXIVM." Opp'n at 13. But invoking an unspecified range of more than 520 paragraphs of the FAC is proof of its sprawl and lack of direction, not evidence of its specificity. Similarly, Plaintiffs' attempt to excuse these deficiencies by stating that the alleged RICO enterprise spanned over many years and involved "numerous predicate crimes and actions," *id.* at 13, only makes their failure to provide support for their claims all the more glaring.

Likewise, Plaintiffs' observation that "Clare Bronfman's brief includes a multi-page table summarizing each of the claims," Opp'n at 14, confirms that Plaintiffs misapprehend the requirements of Rule 8. It is not enough that the heading of each count names a cause of action and particular plaintiffs and defendants (or, as is often the case with the FAC, groups of plaintiffs and defendants). "Fair notice" requires that a defendant be given some basic understanding of what he or she is alleged to have done to incur such liability to a particular plaintiff. *Atuahene v. City of Hartford*, 10 F. App'x 33, 34 (2d Cir. 2001) (Summary Order). The Opposition fails to explain how the FAC provides Clare Bronfman such notice.

Plaintiffs' argument that their group pleading is excused because Clare Bronfman "owned and operated NXIVM entities" falls flat. *Id.* Plaintiffs do not, as they must, explain how alleged ownership of a NXIVM entity makes Clare Bronfman liable for, *e.g.*, alleged sex trafficking occurring in a separate NXIVM entity. Nor do Plaintiffs explain how conclusory allegations that Clare Bronfman was an "insider" of the alleged enterprise suffice to satisfy Rule 8. To the contrary, Plaintiffs tacitly acknowledge the FAC's shortcomings, conceding with respect to both Clare and Sara Bronfman that "the extent of their participation remains to be fleshed out." *Id.* at 15. Put another way, the FAC does not actually state what Clare Bronfman—as opposed to "Defendants," or even separate from some Plaintiffs —is alleged to have done.

Further, Plaintiffs' argument that they need not allege facts as to each individual Defendant now, and rather, are entitled to discovery is not supported by the case law they cite. Opp'n at 15. The court in *Atkins dismissed* the RICO claim against a defendant because it was not supported with sufficient facts. *Atkins v Apollo Real Estate Advisors, L.P.*, No. CV-05-4365, 2008 WL 1926684, at *11 (E.D.N.Y. Apr. 30, 2008). The dismissal was without prejudice in the event the plaintiffs found additional facts while conducting discovery as to remaining

defendants. *Id.* The court in *Aiu* likewise did not excuse pleading deficiencies because the complaint sufficiently showed that "moving defendants were vital actors who enabled the scheme by" various actions. *Aiu Ins. Co. v. Olmecs Med. Supply, Inc.*, No. CV-042934ERK, 2005 WL 3710370, at *9 (E.D.N.Y. Feb. 22, 2005). The *Aiu* court merely suggested that discovery may help plaintiffs discern the particular role of a defendant. *Id.*

II. FIFTY-SIX PLAINTIFFS LACK STANDING AS TO CLARE BRONFMAN.

As stated in our Motion to Dismiss, Mot. at 11–12, 56 Plaintiffs[5] lack Article III standing to assert claims against Clare Bronfman because they fail to allege an injury fairly traceable to her. *Selevan v. N.Y. Thruway Auth.*, 584 F.3d 82, 89 (2d Cir. 2009). Plaintiffs argue that the boilerplate allegations of these now 56 Plaintiffs that they "enrolled in and paid for NXIVM curriculum based upon Defendants' false, material representations" about Rational Inquiry are sufficient to clear this threshold. Opp'n at 16. They are wrong. Plaintiffs do not allege that Clare Bronfman recruited them into NXIVM ESP curriculum or represented Rational Inquiry as an allegedly "scientific patent-pending technology that would lead to a successful career and self-fulfillment." *Id.*[6] Plaintiffs also fail to allege that she misrepresented or had a duty to disclose to Plaintiffs that it was, as they allege, "actually a pseudo-scientific hodgepodge of alleged psychotherapeutic methods." *Id.*

Plaintiffs attempt to sidestep the standing requirements of Article III by arguing that Clare Bronfman was part of a RICO enterprise that committed illegal actions that injured Plaintiffs. Opp'n at 17–18. However, as discussed in our motion to dismiss, Mot. at 13–18, and below, *infra*

[5] Since the submission of Clare Bronfman's motion to dismiss on January 28, 2022, Plaintiffs have dismissed Jane Does 28, 29, and 56, and Audrey and Amanda. *See* Dkts. 148, 149, 150, 154, 155. Of these, Jane Doe 29 and Amanda did not mention Clare Bronfman in their complaint allegations, bringing the total number of Plaintiffs who lack standing to assert claims against Clare Bronfman from 58 to 56. *See* revised Ex. A.

[6] While Plaintiff M. Vicente asserts that N. Salzman and Clare Bronfman "began recruiting him," the subsequent conduct Plaintiffs allege is unrelated to ESP and instead involves his work as a filmmaker. *See* FAC ¶ 274.

Part III.A–B, Plaintiffs fail to adequately allege either that such an enterprise existed, or that Clare Bronfman was a part of it. Indeed, Plaintiffs concede that they seek to hold Clare Bronfman liable to Plaintiffs for whom she was "only an indirect cause of some injuries." Opp'n at 18. But that is just another way of saying that those alleged injuries were caused by persons *other* than Clare Bronfman. *Id.* at 17–18. And because Plaintiffs fail to properly plead their RICO enterprise claim against Clare Bronfman, the 56 Plaintiffs who do not allege an injury fairly traceable to her lack standing to assert claims against her. In any event, even if Plaintiffs had sufficiently pled RICO claims as to Clare Bronfman, this would save, at best, their Counts I and II.

III. PLAINTIFFS' RICO CLAIM (COUNT I) FAILS.

A. Plaintiffs Fail to Plead a RICO Enterprise.

As our opening brief explained, Mot. at 12–17, Plaintiffs' RICO claim should be dismissed because the FAC does not identify a RICO enterprise or plausibly allege that members of the alleged enterprise operated as a unit with a common purpose. In response, Plaintiffs now (a) allege that "NXIVM" itself is the enterprise, (b) sow confusion on what type of enterprise they are alleging, and (c) improperly rely on a separate criminal case. Opp'n at 19–20. Those efforts fail.

In the first place, Plaintiffs cannot make up their minds as to what the purported RICO enterprise is. In the FAC, Plaintiffs alleged that the enterprise was "under the NXIVM umbrella," FAC p. 1, but later referred to the purported enterprise as "the Enterprise or NXIVM." FAC ¶ 65. In their Opposition, Plaintiffs allege that NXIXM itself is the enterprise. Opp'n at 19. Yet Plaintiffs admit to being members and leaders of NXIVM. *See, e.g.,* FAC ¶ 100. Under this logic, Plaintiffs implicate themselves as participants of the alleged enterprise. To state the obvious, it makes no sense for Plaintiffs to seek to impose treble-damages for RICO liability on Clare Bronfman based on the very same conduct that they admittedly engaged in.

Plaintiffs also cannot decide whether their alleged "enterprise" is a legal entity or an association-in-fact. Opp'n at 19–20; *see also ISystems, Inc. v. Fu, No. 3:08-CV-1175-N*, 2010 WL 11534523, at *1 (N.D. Tex. June 28, 2010) ("A RICO enterprise can be *either* a legal entity *or* an association-in-fact.") (emphasis added). In the FAC, Plaintiffs assert that the enterprise is an association-in-fact enterprise. FAC ¶ 865. In their Opposition, however, Plaintiffs contend variously that the alleged enterprise (1) is a legal entity, Opp'n at 21 & n.15, (2) is "composed of myriad legal entities," Opp'n at 20, and (3) "qualifies as an association-in-fact enterprise." *Id.* It is not too much to ask that Plaintiffs decide on their legal theory and stick with it.

Plaintiffs also muddy the waters by referencing materials related to *United States v. Raniere*, 18-cr-204, 384 F. Supp. 3d 282 (E.D.N.Y. Apr. 29, 2016). *See, e.g.*, Opp'n 19, 22, 23. Plaintiffs contend, for example, that NXIVM's status as a RICO enterprise is legally "uncontroversial" because of a prior indictment involving a handful of Defendants. Opp'n at 19. That argument is both improper and illogical. First, despite Plaintiffs' persistent attempts to cite certain criminal indictments as if they establish some fact, an indictment is hearsay that cannot be considered for the truth of the matters asserted therein. *See, e.g., Bejaoui v. City of New York*, No. 13-CV-5667 NGG RML, 2015 WL 1529633, at *5 (E.D.N.Y. Mar. 31, 2015). Thus, the fact that a criminal defendant was indicted on a certain charge is not evidence that the defendant is guilty of the actions alleged in that indictment or that any underlying facts alleged in the indictment are true. The prior indictment is certainly not germane to the question of whether Plaintiffs *sufficiently pleaded* the existence of a RICO enterprise in this separate civil action.

Only Defendants Raniere, N. Salzman, L. Salzman, and Mack were convicted of or pled to racketeering offenses (and Raniere's conviction is under appeal). It is incoherent for Plaintiffs to argue that, because four Defendants were convicted of being involved in a RICO enterprise in

a criminal case, which may or may not be the same enterprise alleged in this case, it is "uncontroversial" that Plaintiffs have *properly pled* a RICO enterprise in a *separate civil* action involving a different group of defendants, a different group of plaintiffs, and different claims. *See generally* FAC.

Apart from the ever-changing nature of *what* Plaintiffs are alleging the enterprise *is*, Plaintiffs have also failed to satisfy the required elements for an association-in-fact enterprise: (1) a common purpose shared by all members of the enterprise; (2) relationships among the enterprise members; and (3) longevity sufficient to permit the enterprise members to pursue the enterprise's purpose. *BWP Media USA Inc. v. Hollywood Fan Sites, LLC*, 69 F. Supp. 3d 342, 359–60 (S.D.N.Y. 2014); *Stein v. World-Wide Plumbing Supply, Inc.*, 71 F. Supp. 3d 320, 325 (E.D.N.Y. 2014). "[A]n association in fact 'requires both interpersonal relationships and a common interest,' not mere parallel conduct." *Abbott Labs. v. Adelphia Supply USA*, No. 15-CV-5826 (CBA) (LB), 2017 WL 57802, at *5 (E.D.N.Y. Jan. 4, 2017).

As explained in our opening brief, Plaintiffs have not plausibly pled that Defendants shared the same common purpose and acted as a unit. Mot. at 14–15. Plaintiffs cite a non-binding criminal case for the proposition that it does not matter that Defendants did not act in a cohesive manner. Opp'n at 21–22. However, the *Pirk* court considered an indictment for RICO conspiracy, not a substantive RICO violation, *U.S. v. Pirk*, 267 F. Supp. 3d 406, 416 (W.D.N.Y. 2017), and nothing in *Pirk* suggests that the alleged enterprise was anything other than a cohesive unit that engaged in a multitude of acts in order to achieve a common purpose, *see id.* at 416, 421 (stating that the indictment described the defendants' alleged roles within the enterprise, and the hierarchy, membership rules, and chain of command of the enterprise, and alleged that they engaged "in a variety of illegal activity including but not limited to drug

trafficking, firearm sales . . . robbery, and prostitution"). Here, by contrast, Plaintiffs allege that some Defendants engaged in some activity, such as allegedly sponsoring scientific studies, *see, e.g.*, FAC ¶ 254, whereas other Defendants engaged in other completely unrelated activities, such as allegedly requiring women to take nude photos, *see, e.g.*, *id.* ¶ 168. There is no logical connection between these activities, and Plaintiffs do not plead facts to suggest otherwise.

Plaintiffs' attempt to show that they have pleaded an enterprise also fails because the individual paragraphs of the FAC that Plaintiffs rely upon simply do not support the propositions for which they are cited. For example, Plaintiffs cite FAC paragraphs 794–95 to show that they have pleaded role differentiation among the enterprise members, but those paragraphs describe rules of *DOS* membership. The FAC does not allege that all Defendants were involved in DOS (nor could it). Plaintiffs also cite FAC paragraphs 620 and 621 as examples of how they allegedly pleaded a chain of command and role differentiation. But those these paragraphs name only Defendants Raniere and N. Salzman, and they explain the hierarchy within Executive Success Programs, rather than the alleged enterprise. As with DOS, the FAC does not allege that all Defendants who were allegedly part of the enterprise were also highly ranked members of the Striped Path, but does allege that several Plaintiffs were. In any event, none of the paragraphs Plaintiffs cite cure any of the pleading deficiencies regarding an alleged *enterprise*.

"At best, the [FAC] asserts a rimless 'hub and spokes' relationship between [some Defendants and Raniere] that courts have consistently found insufficient to state a RICO claim." *Moss v. BMO Harris Bank, N.A.*, 258 F. Supp. 3d 289, 303 (E.D.N.Y. 2017).[7] Plaintiffs rely on the fact that Clare Bronfman and some other Defendants at certain points in time sat on the

[7] Plaintiffs tip their hand that the only alleged connection among Defendants is through Raniere when they allege that Defendants "were devoted to Raniere and conspired with him [not with him *and the other Defendants*] to further the enterprise." Opp'n at 7.

boards of certain so-called NXIVM entities as though those allegations would support an inference that the enterprise acted as a unit. Opp'n at 22. But the FAC does not and cannot allege that *all* Defendants sat on a board. More fundamentally, the FAC does not allege that they sat on the *same* board at the same time. *See generally* FAC. Further, some of the Plaintiffs also sat on boards of the very NXIVM entities they now seek to deem a RICO enterprise. *See, e.g.*, FAC ¶ 277. The "inclusion of non-defendants in the alleged [enterprise] is emblematic of a 'hub and spokes' enterprise structure that other courts have consistently and correctly rejected." *Moss*, 258 F. Supp. 3d at 302. "Without factual allegations that [Plaintiffs] cooperated to form a continuing unit working toward a common purpose, their mere independent, uncoordinated participation . . . does not create a RICO enterprise." *Id.* at 301 (quoting *Abbott Labs.*, 2017 WL 57802, at *4). Thus, because Plaintiffs have not "plead[ed] any facts as to the . . . mechanics of the alleged ongoing working relationship among [Defendants], [Plaintiffs have] not successfully alleged 'that the various associates of the alleged enterprise functioned as a continuing unit'" *Wolhendler v. Goldberg*, No. 19-cv-457, 2020 WL 5658790, at *6 (E.D.N.Y. Sept. 23, 2020) (citations omitted).

B. Plaintiffs Fail to Plausibly Allege that Clare Bronfman Engaged in a Pattern of Racketeering Activity.

Plaintiffs do not plausibly allege that Clare Bronfman committed at least two predicate acts[8] and therefore fail to allege that she engaged in a pattern of racketeering activity.[9] First,

[8] Plaintiffs repeatedly cite to language from a sentencing memorandum as proof that Clare Bronfman harbored aliens. However, the one person Clare Bronfman pled to having harbored is not a plaintiff in this litigation. Therefore, for at least this reason, the sentencing memorandum is not germane.

[9] In response to our argument that Plaintiffs failed to plead two predicate acts as to Clare Bronfman, Mot. at 18-22, Plaintiffs argue only that Clare Bronfman illegally harbored aliens and committed mail and wire fraud, Opp'n 23–29. Plaintiffs do not assert any other of their laundry list of claims (*e.g.*, witness tampering, witness retaliation, and extortion) as to Clare Bronfman. These claims, to the extent they were asserted against Clare Bronfman in the FAC, should be dismissed as abandoned.

while Plaintiffs argue that Clare Bronfman committed four immigration-related RICO predicates, Opp'n at 23, they have not even pleaded one. Plaintiffs allege that Clare Bronfman encouraged "B" to enter the United States, *id.* at 25, but that allegation is beside the point because "B" is not a plaintiff in this case. *See Sterling Nat'l Mortg. Co. v. Infinite Title Sols., LLC*, No. 10-22147-CIV, 2011 WL 13220625, at *2 (S.D. Fla. Mar. 3, 2011), *report and recommendation adopted*, 2011 WL 1222168 (S.D. Fla. Mar. 31, 2011). Plaintiffs also contend that Clare Bronfman illegally harbored Plaintiff Camila. *Id.* (citing FAC ¶¶ 84, 90–91, 834). But the cited paragraphs of the FAC do not support any such claim, and especially do not support a claim, as they must, that Clare Bronfman acted for financial gain. Instead, they allege only that Clare Bronfman consulted an attorney on Camila's behalf but did not allow Camila to talk with the attorney directly, and that Clare Bronfman called Camila's brother Adrian as he was driving Camila to Texas, demanding that he return Camila back to New York. As to Plaintiff Adrian, the FAC does not allege that Clare Bronfman had anything to do with him coming to the United States. *See* FAC ¶ 725–26. While it does allege that Clare Bronfman worked out a way for Adrian to be paid through a Mexican entity, it does not allege that she did so to conceal or harbor Adrian, or that she did so for financial gain. *Id.* In fact, the FAC alleges that Clare Bronfman was the person who arranged to pay Adrian, not that she benefitted financially from him. *Id.* Similarly, Plaintiffs' claims as to Plaintiff MacInnis fail because Plaintiffs' allegations show that Clare Bronfman did not attempt to conceal MacInnis, but rather sought to help her reside and work lawfully within the United States. FAC ¶ 222–23.

Second, Plaintiffs' mail and wire fraud claims fail because (a) they do not meet the 9(b) pleading standard, (b) they do not support Plaintiffs' assertion that Clare Bronfman acted with an

intent to defraud, and (c) litigation activities do not constitute RICO predicate acts. *See* Mot. at 19–21.

Mail and wire fraud claims must comply with the pleading standards of Rule 9(b). *Knoll v. Schectman*, 275 F. App'x 50, 51 (2d Cir. 2008) (affirming dismissal of mail and wire fraud claims for failure to meet Rule 9(b) pleading standard because "[a]lthough the amended complaint sets forth the dates, locations, senders and recipient of the allegedly fraudulent communications, its assertions as to their contents and the reason each communication was fraudulent are conclusory."). Therefore, Plaintiffs must (1) specify the allegedly fraudulent statements; (2) explain why the statements are allegedly fraudulent; (3) "state when and where the statements were made;" and (4) "identify those responsible for the statements." *Lundy v. Cath. Health Sys. of Long Island Inc.*, 711 F.3d 106, 119 (2d Cir. 2013). Plaintiffs' claims satisfy none of these requirements. Plaintiffs allege that Clare Bronfman drafted threatening letters but do not identify any fraudulent statements in those letters, nor explain why they were fraudulent, or when they were drafted. Opp'n at 27. Plaintiffs allege that Clare Bronfman made "false statements concerning Sarah Edmondson to the Vancouver Police Department," but do not explain what the false statements were, when the statements were made, why the statements were fraudulent, or even how these statements involved the mail or wire systems. Opp'n at 27–28.

Plaintiffs' response to our demonstration that Plaintiffs do not plead that Clare Bronfman allegedly committed acts of mail or wire fraud with the intent to further a scheme, Mot. at 20–21, is puzzling. Plaintiffs argue that the Court can infer intent from their allegations in FAC ¶¶ 90, 92, and 725. Opp'n at 28–29. But these paragraphs have no apparent connection to mail or wire fraud. They allege that Clare Bronfman consulted attorneys for Plaintiff Camila but did not allow Camila to speak with them directly, FAC ¶ 90, that she provided funds to Camila, *id.* ¶ 92, and that she

offered Adrian an opportunity to run a t-shirt company but did not compensate him, *id.* ¶ 725. The use of mail or wire is not mentioned in any of these paragraphs, nor are these facts even included in the FAC's section on mail and wire fraud in FAC. *See id.* ¶¶ 872–75.

Moreover, the specific acts Plaintiffs allege Clare Bronfman engaged in as part of their mail and wire fraud claim constitute litigation activities, which are not predicate acts under RICO. Mot. at 22; Opp'n at 27–28. "[L]itigation activities [are] improper predicates for civil RICO claims." *Rajaratnam v. Motley Rice, LLC*, 449 F. Supp. 3d 45, 70 (E.D.N.Y. 2020). Likewise, "false representations and filed false documents in" court "do not constitute RICO predicates." *Smulley v. Federal Housing Finance Agency,* 754 Fed. Appx. 18, *23 (2d Cir. 2018) (Summary Order). Indeed "disseminating false statements into the [court] with the intent to coerce plaintiff into settling, runs headlong into 'the overwhelming weight of authority [that] bars a civil RICO claim based on the use of the mail or wire to conduct allegedly fraudulent litigation activities as predicate racketeering acts.'" *Rajaratnam,* 449 F. Supp. 3d at 69.

C. Plaintiffs Lack Standing Under RICO.

Plaintiffs do not refute our argument that they have failed to plead an injury cognizable under RICO. Mot. at 22–23. Instead, Plaintiffs first mischaracterize our summary of the FAC's bald assertions as a concession that they were harmed (Clare Bronfman does not concede this), and then state that facts cannot be determined on a motion to dismiss. Opp'n at 35. But our point has nothing to do with facts. The FAC fails to even *allege* what RICO requires: injury to Plaintiffs' "injury or property." 18 U.S.C. § 1964(c). That failure requires dismissal.

IV. PLAINTIFFS' RICO CONSPIRACY CLAIM (COUNT II) FAILS.

Plaintiffs' Opposition entirely ignores our showing that the FAC does not plausibly allege that Clare Bronfman *agreed* to violate RICO. *See* Mot. at 24. Plaintiffs instead cite *Salinas v. United States*, 522 U.S. 52 (1997) to argue that a defendant can be liable for conspiracy even if

she did not commit a predicate act. *See* Opp'n at 34–35. But that misses the point. *Salinas* requires that alleged co-conspirators "*agree* to pursue the *same criminal objective*." *Id.*; 522 U.S. at 63 (emphasis added). Here, by contrast, Plaintiffs have not plausibly alleged that Clare Bronfman entered into any such agreement. Moreover, a RICO conspiracy allegation requires more than bare plausibility: the plaintiff "should state *with specificity* what the agreement was, who entered into the agreement, when the agreement commenced, and what actions were taken in furtherance of it." *FD Property Holdings, Inc. v. U.S. Traffic Corp.*, 205 F. Supp. 2d 362, 373 (E.D.N.Y. 2002) (emphasis added). The required specificity is absent from the FAC.

Faced with their pleading deficiency, Plaintiffs ask this Court to *infer* the specifics of the required agreement. Opp'n at 34–35. Even if that were permissible—and it is not, given the requirement that a complaint "*state*" the specifics of the agreement, *FD Property Holdings, Inc.*, 205 F. Supp. 2d at 373 (emphasis added)—the FAC lacks any factual allegations from which the Court could draw such an inference. Plaintiffs emphasize their allegations that Clare Bronfman at various times sat on the board for NXIVM entities, and that she allegedly collaborated with Raniere. Opp'n at 35. But the FAC also alleges that certain of the Plaintiffs did *exactly the same thing*. *See, e.g.*, FAC ¶¶ 275–80. It is illogical for Plaintiffs to ask the Court to infer that Clare Bronfman agreed to further a racketeering enterprise based on the same facts some Plaintiffs use to argue that they are victims of an enterprise.

In sum, Plaintiffs have failed to allege a RICO conspiracy claim as to Clare Bronfman because they failed to allege that Clare Bronfman agreed to further a racketeering enterprise.

V. PLAINTIFFS' CHAPTER 77 CLAIMS (COUNT III) FAIL.

As a threshold matter, and as yet another example of Plaintiffs' attempt to stealthily hide their sloppy pleading in the FAC, Plaintiffs state in a footnote that they "do not oppose dismissal"

of their "Count III, Section 1595(a) claims based on violations of 18 U.S.C. § 1593A." Opp'n at 3 n.5. Therefore, all of Plaintiffs' 1593A claims should be dismissed.

Plaintiffs' Opposition all but abandons any effort to establish that Clare Bronfman actually committed any Chapter 77 offenses, but rather pursues derivative liability based on alleged "participation" in a "venture" that engaged in Chapter 77 offenses. But even a "participation" theory cannot proceed based on mere membership in or association with a venture that is alleged to have violated Chapter 77. To the contrary, liability requires Plaintiffs to allege "specific conduct" that furthered the venture, undertaken "with the knowledge, or in reckless disregard of the fact, that it was furthering the alleged … venture." *Noble v. Weinstein*, 335 F. Supp. 3d 504, 524 (S.D.N.Y. 2018). The FAC does not clear that threshold, and Plaintiffs' Chapter 77 claims should accordingly be dismissed.[10]

A. Plaintiffs' Sex Trafficking Claim (Count III(A)) Fails.

Plaintiffs' effort to ground Clare Bronfman's liability on alleged sex trafficking offenses fails because the FAC does not plausibly allege that Clare Bronfman participated in—or even knew of—the alleged sex trafficking activities.

Indeed, Plaintiffs' Opposition makes even more explicit that they cannot tie Clare Bronfman to DOS prior to the "defections in mid-2017." Opp'n at 41. Plaintiffs have made no allegations that Clare Bronfman knew of or was part of DOS and therefore have not and cannot

[10] Plaintiffs offer no sound response to our showing, *see* Mot. at 25 n.14, that Plaintiffs' Chapter 77 claims are not adequately pled because they do not specify the dates of the alleged misconduct, even though the TVPRA's civil remedy provision was not enacted until 2003 and Congress did not impose liability on beneficiaries until 2008. Plaintiffs do not contest that these enactments have no "retroactive application." *Velez v. Sanchez*, 693 F.3d 308, 325 (2d Cir. 2012). Plaintiffs instead respond that they are "not required to plead that [their] claims are timely because nonadherence to statutes of limitations is an affirmative defense." Opp'n at 36. But that analogy to a limitations defense is inapt. Here, the timing of alleged misconduct goes not to the availability of an affirmative *defense*, but rather to whether that misconduct is even subject to the TVPRA civil remedy in the first instance. Plaintiffs' lack of specificity is therefore fatal to their claims.

allege that she participated in or knowingly benefitted from alleged sex trafficking related to DOS in any way.

Plaintiffs also contend that exo/eso "was designed and used to procure, groom and provide sexual servants for Raniere." *See* Opp'n at 6, 56. But that theory cannot save Plaintiffs' sex trafficking claims, because none of the exo/eso Plaintiffs—Piesse, Stiles, and MacInnis—allege any sexual relations with Raniere or anyone else within NXIVM.[11] Therefore, participation in exo/eso cannot form the basis for any sex trafficking claims.[12]

B. Plaintiffs' Forced Labor Claim (Count III(B)) Fails.

Plaintiffs also fail to adequately allege any involvement by Clare Bronfman in any Plaintiff's alleged forced labor or services. As a threshold matter, while Plaintiffs bring Count III(B) "against all Defendants on behalf of all Plaintiffs," FAC p. 182, not all Plaintiffs allege that they performed forced labor. Eleven Plaintiffs[13] make no such allegations whatsoever. Plaintiffs' Opposition does not dispute this. For this reason, these 11 Plaintiffs' forced labor claims against Clare Bronfman should be dismissed with prejudice. In addition, as discussed in Part II *supra*, 56 Plaintiffs do not mention Clare Bronfman anywhere in the FAC and thus have not sufficiently alleged an injury traceable to her in order to have standing to assert claims against her. Thus, altogether at least 58 of the FAC's remaining 70 Plaintiffs cannot assert forced labor claims against Clare Bronfman as a matter of law.[14] *See* Mot. at 28.

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[11] Plaintiffs Piesse, Stiles, and MacInnis may be among the laundry list of plaintiffs bringing sex trafficking claims, *see* Opp'n at 56–57, but that does not mean that they alleged any facts that would support bringing such a claim.

[12] In addition, many of the Plaintiffs included in Count III(A) do not allege any sex-related facts at all as to any Defendant. For example, Plaintiffs Kobelt, Leviton, Constantino, Diaz Cano, Chapman, Cooley, Fiander, Holmes, Hammond, McLean, Menhaji, Neal, Pratt, Rood, Shaw, Vanderheyden, J. Vicente, Vieta, Gross, and Fair-Layman do not allege facts that support a claim of sex trafficking.

[13] These 11 Plaintiffs include: Edmondson, Natalie, Green, Menhaji, Pratt, Vieta, Wysocki, Gendron, Golfman, Haynes, and Black

[14] There is some overlap between the Plaintiffs who do not state an injury caused by Clare Bronfman and those who do not allege performing uncompensated labor. Plaintiffs Green, Menhaji, Pratt, Vieta, Wysocki, Gendron, Golfman,

The remaining 12 Plaintiffs also fail to adequately plead that Clare Bronfman knowingly provided, obtained, or benefitted from their labor or services by means of force, serious harm, abuse of legal process, or threats thereof. The group of Plaintiffs in this claim who were allegedly in DOS —Camila, Salazar, Mehdaoui, and Kristin,[15] *see* Opp'n at 47—fails to allege that Clare Bronfman had any knowledge of or involvement in DOS. Instead, Plaintiffs' Opposition argues that all of their DOS-related allegations against Clare Bronfman relate to alleged refusal to return collateral or retaliation against defectors *after* DOS became public and began disbanding, rather than participation in DOS itself. *See* Opp'n at 41–42. Because the DOS Plaintiffs fail to allege that Clare Bronfman was part of DOS or involved in any of its alleged forced labor activities, their forced labor claims against Clare Bronfman must be dismissed.

Plaintiffs who bring forced labor claims based on participation in NXIVM-sponsored psychological studies—Kobelt, Leviton, Constantino, and Long-Cottrell—also fail to allege that Clare Bronfman violated § 1589's forced labor proscription. Voluntary participation in a psychological study does not qualify either as "labor" or as being "forced." For purposes of § 1589, the Second Circuit has defined "labor" as "the expenditure of physical or mental effort especially when fatiguing, difficult, or compulsory" and "service" as "the performance of work commanded or paid for by another." *Saraswat v. Business Integra, Inc.*, No. 15-cv-4680, 2019 WL 1865193,

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Haynes, Black, and Jane Doe 59 fall into both categories. Thus, 56 Plaintiffs lack standing and an additional two (Edmondson and Natalie) do not allege uncompensated labor, bringing the total to 58 Plaintiffs who cannot state a claim for forced labor against Clare Bronfman under Count III(B).

[15] Plaintiffs also include Edmondson, Nicole, Jaspeado, Pena, Charlotte, Rachel, Oxenberg, Valerie, and Jane Does 8 and 9 in this group. *See* Opp'n at 47. However, of these Plaintiffs, Nicole, Oxenberg, Jaspeado, Pena, Charlotte, Rachel, Valerie, and Jane Does 8 and 9 do not mention Clare Bronfman and thus do not have standing to assert claims against her, *see* Part II *supra*, and Edmondson does not allege performing forced labor in the FAC at all. Plaintiff Audrey was voluntarily dismissed from the case on February 22, 2022. Dkt. 154.

In addition, we note that, in Plaintiffs' December 17, 2021 letter (Dkt. 133), Plaintiffs requested continued anonymity for Jane Does 8, 9, 10, 11, 15, and 50. Dkt. 133 at 7–8 n.4. However, in the SAC, Plaintiffs use the first names of Jane Does 10 (Charlotte), 11 (Rachel), 15 (Valerie), and 50 (Kristin). We refer to these Plaintiffs by their first names, consistent with Plaintiffs' practice in the SAC.

at *7 (E.D.N.Y. Apr. 25, 2019) (quoting *U.S. v. Marcus*, 628 F.3d 36, 44 n.10 (2d Cir. 2010)). The FAC does not allege that Plaintiffs Kobelt, Leviton, Constantino, and Long-Cottrell were forced to participate in the studies through force, physical restraint, serious harm, abuse of legal process, or threats thereof. Voluntary participation in a psychological study with the hope of reducing symptoms of Tourette Syndrome or OCD does not qualify as forced labor for purposes of § 1589. The case Plaintiffs cite in support of their argument that "participating in illegitimate, bogus psychotherapy" qualifies as forced labor, Opp'n at 48, is inapposite. The patients in that case, who suffered from severe mental illnesses like schizophrenia, were forced to perform activities such as nude farm labor and engage in coerced sexual acts as part of their "therapy." *See U.S. v. Kaufman*, 546 F.3d 1242, 1247–50 (10th Cir. 2008). This is a far cry from Plaintiffs' allegations here.

Furthermore, "section 1589 contains an express *scienter* requirement." *Akhtar v. Vitamin Herbal Homeopathic Ctr. Inc.*, No. 19-cv-1422, 2021 WL 7186030, at *7 (E.D.N.Y. Apr. 30, 2021). There must be evidence that "the [defendant] *intended* to cause the victim to believe that she would suffer serious harm—from the vantage point of the victim—if she did not continue to work." *Id.* Given that Plaintiffs allege that Clare Bronfman's only involvement in these studies was that she "provided the funds for the rent of the premises and the purchase of equipment" through ESF, FAC ¶ 962, Plaintiffs fail to allege that Clare Bronfman had the requisite state of mind to be liable under §1589—or that she actively participated in any wrongdoing of the sort that might support liability on Plaintiffs' "participation" theory. *See Noble*, 335 F. Supp. 3d at 524.

In sum, Plaintiffs must show that they provided labor or services that were forced or coerced, and that Clare Bronfman specifically intended to cause Plaintiffs to believe that they would suffer serious harm if they did not continue to work. Plaintiffs have failed to plausibly allege these elements of their forced labor claims.

C. Plaintiffs' Human Trafficking Claim (Count III(C)) Fails.

As our Motion to Dismiss explained, Mot. at 33–34, a human trafficking claim turns on the existence of some *other* predicate TVPRA (Chapter 77) offense. Plaintiffs' Opposition does not dispute that premise, but contends that their human trafficking claims may proceed because they have validly alleged other TVPRA offenses. *See* Opp'n at 60. Since Plaintiffs' other TVPRA theories do not validly state a claim against Clare Bronfman, however, their human trafficking claim should be dismissed.

D. Plaintiffs' Peonage Claim (Count III(D)) Fails.

Plaintiffs also fail to establish that Clare Bronfman held or returned any person to a condition of peonage in violation of 18 U.S.C. § 1581(a). As a threshold matter, the TVPRA did not contain a private right of action to bring peonage claims until December 23, 2008. Because the TVPRA amendments are not retroactive, Plaintiffs can bring no peonage claims for conduct preceding December 23, 2008. *See Fei Guan v. Bing Ran*, No. 1:17-cv-332, 2017 WL 2881363, at *4–5 (E.D. Va. July 6, 2017).

Secondly, Plaintiffs' Opposition clarifies that the FAC's sprawling allegations assert direct peonage claims against Clare Bronfman related only to Plaintiffs MacInnis and Adrian. Opp'n at 57–58. However, the FAC does not allege sufficient facts to show that Clare Bronfman placed either plaintiff in a condition of peonage. As to MacInnis, the FAC alleges that Clare Bronfman helped her obtain a visa and then, when asked by MacInnis, provided her with the funds required by her visa to keep her legal immigration status. FAC ¶¶ 222–25. While Clare Bronfman allegedly told MacInnis that these payments were a loan she would have to repay, the FAC also states that MacInnis was able to leave NXIVM and move back to Canada without ever repaying the alleged loan. *See id*. The FAC also does not plausibly allege that Clare Bronfman held Adrian in a condition of peonage. Rather, the FAC alleges that Adrian voluntarily took the

opportunity to get the t-shirt company up and running with the hope that he would receive a share of the revenues when it became profitable. *See* FAC ¶ 725. Plaintiffs speculate that Adrian "would continue working for [Defendants] so long as he believed he was indebted to the Defendants," but there is no evidence he was working off any debt to Clare Bronfman. In fact, Clare Bronfman arranged for Adrian to be paid for his work. *See* FAC ¶¶ 725–26.

As to the remaining Plaintiffs in the case, Plaintiffs have no specific allegations against Clare Bronfman. Instead, they rely on general arguments that "[t]he entire organization operated by capitalizing on the debt of its members." Opp'n at 58. They claim this was "common knowledge to NXIVM leaders," which includes many Plaintiffs. *Id.* While Plaintiffs allege Clare Bronfman "was responsible for [NXIVM] 'legal' and its finances," Opp'n at 59, there are no allegations that she established or promoted the "exchange" system Plaintiffs describe. Plaintiffs' peonage claims against Clare Bronfman thus lack support in the form of *factual* allegations, and should be dismissed on that basis. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

E. Plaintiff Daniela's Document Servitude Claim (Count III(E)) Fails.

Plaintiffs do not dispute that they have not pleaded any facts regarding any conduct by Clare Bronfman in relation to Daniela, the only Plaintiff for this count. Instead, they argue in opposition that, because Clare Bronfman held leadership position in NXIVM at some undefined time, she therefore knew or should have known about Daniela's immigration status and document servitude. *See* Opp'n at 61. This is not enough. Tellingly, Plaintiffs have also pleaded that several other parties, including Plaintiffs, held similar leadership positions, yet Plaintiffs do not ask the Court to draw the same inference as to them. Plaintiffs thus have not pleaded a factual basis for their claim that Clare Bronfman is liable for Daniela for a document servitude.[16]

[16] Further, Plaintiffs provide no specificity as to when this alleged document servitude occurred. This is relevant because "the right to bring a civil action for document servitude under the TVPRA did not exist until December 23,

VI. PLAINTIFFS' STATE LAW CLAIMS FAIL.

Plaintiffs do not oppose dismissal of Counts IV (negligence per se) and IX (aiding and abetting) against all Defendants. Plaintiffs bury this in a footnote and make no other mention anywhere else in their 70-page brief that they effectively drop two claims against Clare Bronfman. Counts IV and IX should be dismissed with prejudice.

Plaintiffs' remaining state claims asserted against Clare Bronfman, malicious abuse of legal process (Count V) and Gross Negligence and Recklessness (Count X) fail as well.

A. Plaintiffs' Malicious Abuse of Legal Process Claim (Count V) Fails.

As a threshold matter, Plaintiffs conflate "malicious abuse of process" with "malicious prosecution."[17] These are two distinct causes of action with separate pleading requirements: "[M]alicious prosecution concerns the issuance of process without justification, while abuse of process concerns the use of lawfully issued process to accomplish some unjustified purpose." *Manhattan Enter. Grp. LLC v. Higgins*, 816 F. App'x 512, 514 (2d Cir. 2020) (citation omitted); *see also Sulkowska v. City of New York*, 129 F. Supp. 2d 274, 296 (S.D.N.Y. 2001) ("[w]hile malicious prosecution concerns the improper issuance of process, malicious abuse of process involves the improper use of process after it is regularly issued"). Plaintiffs bring a claim for abuse of process, FAC at 199–201, but their Opposition proceeds as though the claim is for malicious prosecution, *see* Opp'n at 61.[18] Plaintiffs point to alleged misconduct in *initiating* legal proceedings, but this is irrelevant for the abuse of process claim they actually brought.

2008." *Akhtar*, 2021 WL 7186030, at *10. Therefore, if the alleged seizure occurred before that date, no claim for document servitude is actionable. Because Plaintiffs have failed to state when the alleged seizure of Daniela's passport occurred, they have failed to allege the elements of their document servitude claim.

[17] Some courts use the term malicious use of process, which is the same tort as malicious prosecution. *See Jones v. Maples/Trump*, No. 98 CIV. 7132 (SHS), 2002 WL 287752, at *7 (S.D.N.Y. Feb. 26, 2002), *aff'd sub nom. Jones v. Trump*, 71 F. App'x 873 (2d Cir. 2003) (malicious use of process and malicious prosecution are one in the same).

[18] Plaintiffs do not even acknowledge this discrepancy, which cannot be explained away as innocent mislabeling. Plaintiffs were on notice of their apparent mislabeling when Clare Bronfman filed her letter previewing her arguments

Even if Plaintiffs did intend to bring a claim for malicious prosecution, they have failed to plausibly plead that claim. Plaintiffs point to FAC ¶¶ 106, 107, and 265 as the basis for their purported malicious prosecution claim. Opp'n at 62. However, in relevant part, these paragraphs consist of bald and conclusory allegations that Clare Bronfman filed a "false criminal complaint," FAC ¶ 265, made "false statements" to the police, *id.* ¶ 106, and that "Defendants" had a co-conspirator "in Mexico hire an attorney to lodge false criminal charges," *id.* ¶ 107. Ignoring the fact that it was an attorney, hired by an unnamed co-conspirator, working with an undefined group of Defendants, who allegedly lodged the charges, the FAC does not allege what the complaints consisted of, and why they were false. Similarly, the allegations in paragraphs 106 and 265 do not meet the test set out by Plaintiffs that a malicious prosecution claim plead sufficient facts to support (a) a lack of probable cause and (b) actual malice. Opp'n at 61.

Count V should be dismissed for the additional reason that, whether it is an abuse of process or a malicious prosecution claim, it is untimely. *See* Mot. at 38–39. The Opposition does not appear to dispute our argument that the limitations period would have expired, but Plaintiffs contend, *see* Opp'n at 68, that the limitations period was tolled under N.Y. C.L.P.R. 215(8)(a), which provides that "[w]henever it is shown that a criminal action against the same defendant has been commenced with respect to the event or occurrence from which a claim governed by this section arises, the plaintiff shall have at least one year from the termination of the criminal action as defined in section 1.20 of the criminal procedure law in which to commence the civil action." But § 215(8) "does not apply to negligence actions." *Rosado v. Estime*, 76 N.Y.S.3d 391, 398 n.1. (Sup. Ct. 2018). Furthermore, the only plaintiff that can avail herself of tolling

for a motion to dismiss. *See* Dkt. 102 at 6. It is clear that Plaintiffs are either confused as to what claims they are attempting to bring, or that Plaintiffs are attempting to recast their claim as malicious prosecution after Defendants demonstrated that Plaintiffs failed to adequately plead abuse of legal process.

under § 215(8)(a) is the criminal complainant. *Robinson v. Franklin Gen. Hosp.*, 611 N.Y.S.2d 778, 779 (Sup. Ct. 1994). Because Plaintiffs do not allege that any of the Plaintiffs who seek to invoke § 215(8)(a) were complainants in the criminal case, tolling is unavailable here. This argument applies equally to malicious prosecution and abuse of legal process claims. Thus, regardless, Plaintiffs cannot bring claims for conduct that occurred prior to January 2019.

B. Plaintiffs' Gross Negligence and Recklessness Claim (Count X) Fails.

Plaintiffs concede that their gross negligence and recklessness claims require a special relationship between Clare Bronfman and Defendants Porter and N. Salzman. *See* Opp'n at 64–65. But the FAC seeks to ground such a relationship only on sponsorship of Plaintiffs Leviton, Constantino, and Long-Cottrell's treatment. This is not enough. *See Mayer v. Cornell Univ.*, No. 96-cv-7600, 1997 WL 32916, at *3 (2d Cir. Jan. 8, 1997) ("sponsor" is not liable for an injury if the sponsor has no particular expertise in the injurious activity); *Woo Hee Cho v. Oquendo*, 2018 WL 9945701, at *10–11 (E.D.N.Y. Aug. 25, 2018) (no special relationship absent the ability to control the direct tortfeasor's conduct).

The authority upon which Plaintiffs principally rely, *see* Opp'n at 64–65, is inapposite. *Fletcher v. Dakota* was a race discrimination case discussing whether the business judgment rule could insulate a condo board from being liable for housing discrimination. 99 A.D. 3d 43, 49–51 (N.Y. 1st Dep't 2012). It rested its conclusion on specific New York statutes relating to housing law, which are irrelevant to the gross negligence allegations asserted against Clare Bronfman and whether mere payment of medical bills creates a "special relationship" such that she owed a duty of care to Plaintiffs Leviton, Constantino, and Long-Cottrell. *Id.* at 45.

Plaintiffs stress Clare Bronfman's alleged involvement in the documentary, *My Tourette's*, a film based on the process Plaintiffs engaged in with Defendants N. Salzman and Porter, in an attempt to buttress their narrative that Clare Bronfman, a non-medical person,

somehow was in a position to supervise Defendants N. Salzman and Porter. But these facts are irrelevant to whether a special relationship existed between Clare Bronfman and Defendants N. Salzman and Porter such that a duty would have extended to Clare Bronfman, because mere sponsorship, especially of a documentary film created after the completion of the alleged study, does not suggest Clare Bronfman had any control over the study itself. Mot. at 41–43.

VII. DISMISSAL WITH PREJUDICE IS WARRANTED.

The Court should reject Plaintiffs' passing suggestion that any dismissal should be with leave to amend. Opp'n at 69–70. As our Motion to Dismiss explained, Mot. at 43, Plaintiffs were put on notice of the FAC's deficiencies through letters submitted to the Court. *See* Dkt. 101, 102, 105, 107, 109, 119. The Court warned that the purpose of the letters was to prevent the process of briefing, oral argument, and decision on a motion to dismiss, "only to have the Plaintiff come back" and request leave to amend. Nov. 30, 2021 Court Transcript. The Court stated that these letters gave "enough of a preview" that "Plaintiffs should have a decent sense of whether" they would like to amend, and gave Plaintiffs such an opportunity. Nov. 30, 2021 Court Transcript. Plaintiffs chose not to. *Id.* Nor do Plaintiffs offer any hint as to *how* they might amend their complaint to address the deficiencies identified in our Motion to Dismiss. That failure is a tacit admission that "[t]he problem … is substantive" and that any further amendment would be futile. *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000).

For the foregoing reasons, and those stated in our Motion to Dismiss, Plaintiffs' First Amended Complaint[19] should be dismissed, with prejudice, as to Clare Bronfman.

[19] Plaintiffs' Second Amended Complaint should also be dismissed with prejudice.

Dated: April 11 , 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 5 of the Federal Rules of Civil Procedure, Rule 5.2 of the Local Rules of the Eastern District of New York, and Rule III.C.2 of Judge Komitee's Individual Practices and Rules, the undersigned, an attorney of record in this case, hereby certifies that on April , 2022, a true and correct copy of **Defendant Clare Bronfman's Reply In Support Of Her Motion To Dismiss Plaintiffs' First Amended Complaint** was served electronically to pro se parties that have appeared in this litigation, and counsel of record for represented parties that have appeared in this litigation.

Dated: April 11, 2022

/s/ Craig C. Martin

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