

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

JANE DOE,

Plaintiff,

v.

DARREN K INDYKE and RICHARD D. KAHN, in
their capacities as executors of THE ESTATE OF
JEFFERY E. EPSTEIN,

Defendants.

Case No. 1:20-cv-02365-LJL-DCF

**CO-EXECUTORS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO
DISMISS PLAINTIFF'S COMPLAINT**

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Defendants Darren K. Indyke and Richard D. Kahn, Co-Executors of the Estate of Jeffrey E. Epstein (the “Co-Executors”), respectfully submit this Memorandum of Law in support of their Motion to Dismiss Plaintiff Jane Doe’s (“Plaintiff”) Complaint (ECF No. 1) pursuant to Federal Rule of Civil Procedure 12(b)(6).

PRELIMINARY STATEMENT

Plaintiff brings a single count against the Co-Executors for Jeffrey Epstein’s (“Epstein”) alleged violations of Sections 1591, 1593A, 1594(a), and 1594(b) of the Trafficking Victims Protection Act, 18 U.S.C. § 1591, *et seq.* (“TVPA”). (Compl. ¶¶ 33, 36.) The Court must dismiss that claim for two separate reasons.

First, Plaintiff’s claim must be dismissed because she fails to plead its essential elements. Plaintiff does not sufficiently allege Epstein’s knowledge or how Doe was coerced under § 1591, a financial benefit under § 1593A, or an agreement or meeting of the minds under § 1594(b). And because she fails to adequately state a claim under § 1591, her claim for attempt under § 1594(a) necessarily fails as well.

Second, as the Court (Hon. Edgardo Ramos) found in another lawsuit against the Co-Executors, because the TVPA provides for a ten-year statute of limitations period for adult victims, any claim based on conduct occurring more than ten years before filing of the complaint must be dismissed with prejudice as untimely. *Lisa Doe v. Indyke*, 465 F. Supp. 3d 452, 462 (S.D.N.Y. 2020). Accordingly, to the extent Plaintiff’s claim is based on alleged conduct occurring before March 17, 2010, the Court must dismiss it as time-barred.

Separately, and also consistent with Judge Ramos’s decision in *Lisa Doe*, the Court must dismiss Plaintiff’s request for punitive damages because “punitive damages under the TVPA are not available after a defendant has died.” *Id.* at 471 (dismissing with prejudice plaintiff’s claim for punitive damages under the TVPA).

STATEMENT OF ALLEGED FACTS

Plaintiff's allegations, which are assumed to be true solely for purposes of this Motion, are insufficient to put the Co-Executors on notice of what she alleges happened to her that constituted TVPA violations. Except for a single paragraph concerning one occurrence in 2012—which allegation has no alleged nexus to any coercion or commercial sex acts—Plaintiff does not articulate (beyond mere conclusions and vague allegations) what specifically happened to her, what Epstein knew and when, or when the abuse ended. Instead, Plaintiff merely asserts labels and conclusions in an apparent attempt to check off the elements of the asserted TVPA violations.

Plaintiff vaguely alleges she was a 22-year-old adult when Epstein began abusing her “nearly 19 years [ago].” (Compl. ¶¶ 2-3.) She further alleges she was “paid in part to be sexually available to Epstein” (*id.* ¶ 27), and that he sexually abused and exerted “continuous psychological and physical control” over her “on a relatively consistent basis for many years” (*id.* ¶ 20). She alleges this abuse occurred in New York, Florida, New Mexico, the U.K., France, and the U.S. Virgin Islands, as well as on private jets. (*Id.* ¶ 26.)

In sum, Plaintiff asserts a single, jumbled cause of action for alleged violations of Sections 1591, 1594(a), 1594(b), and 1594A of the TVPA. She also requests general damages, attorneys' fees, and punitive damages. (*Id.* ¶¶ 29-37.)

LEGAL STANDARDS

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While the Court must normally accept as true all well-pleaded factual allegations in a complaint and draw all inferences in a plaintiff's favor, those principles are “inapplicable to legal conclusions.” *Id.* at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 556 (2007)).

Thus, a pleading that offers only “labels and conclusions” or “a formulaic recitation of the elements of a cause of action” will not do. *Twombly*, 550 U.S. at 555.

ARGUMENT

I. Plaintiff’s TVPA Claim Is Insufficiently Pleaded And Must Be Dismissed

- a. **Plaintiff’s Section 1591 claim fails to sufficiently allege knowledge, means of force, threats of force, fraud or coercion; and, accordingly, her Section 1594(a) claim for attempt to violate Section 1591 also fails.**

Plaintiff fails to allege necessary elements of a TVPA § 1591 claim. To plead a TVPA § 1591 cause of action, Plaintiff is required to allege beyond mere labels and conclusions that Epstein:

knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

18 U.S.C. §1591(a). However, Plaintiff has not asserted any allegations of knowledge, force, threats of force, fraud or coercion except in purely conclusory fashion. (*See, e.g.*, Compl. ¶ 29 (“Defendant, within the special maritime and territorial jurisdiction of the United States, in interstate and foreign commerce, and/or affecting interstate and foreign commerce, knowingly recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, solicited, threatened, forced, or coerced Plaintiff to engage in commercial sex acts.”)). Under *Twombly* and *Iqbal*, this is insufficient to state a claim.

Plaintiff’s sole specific allegation is that, sometime in 2012, Epstein “grabbed [her] by the hand” and performed a sex act on her. (*Id.* ¶ 28.) This allegation does not by itself remedy Plaintiff’s otherwise deficient allegations. Plaintiff does not even attempt to articulate how the single alleged occurrence in 2012 is related to the asserted TVPA violations—it is just a transparent attempt to allege an occurrence within the statute of limitations.

Accordingly, the Court must dismiss Plaintiff’s claim for violations of TVPA § 1591. Plaintiff’s claim under TVPA § 1594(a)—that Epstein attempted to violate § 1591—necessarily fails as a result and the Court must dismiss it as well. *See, e.g., Stein v. World-Wide Plumbing Supply Inc.*, 71 F. Supp. 3d 320, 330 (E.D.N.Y. 2014) (dismissing claim for attempted violation of the TVPA against certain defendants because plaintiff failed to adequately plead an underlying violation of the TVPA against those defendants).

b. Plaintiff’s conspiracy claim under Section 1591(b) fails to sufficiently allege the necessary element of an agreement.

Plaintiff’s allegations that Epstein was involved in a conspiracy to violate the TVPA (Compl. ¶ 32) are insufficient to state a claim because (i) she fails to sufficiently allege the necessary element of an agreement, and (ii) her conspiracy allegations consist of nothing more than “labels and conclusions.” *See Twombly*, 550 U.S. at 555.

The entirety of Plaintiff’s conspiracy allegations is found in two conclusory paragraphs:

13. At all times relevant herein, Jeffrey Epstein [“Epstein”] was an extremely wealthy financier, who used his wealth, power, resources, and connections to commit illegal sexual crimes in violation of the TVPRA [*sic*], and to employ and conspire with other corporate entities, private foundations and trusts, to assist him in committing those sexual crimes or torts or to facilitate or enable those acts to occur.

32. Defendant¹ conspired with each member of the enterprise, and with other persons known and unknown, to violate 18 U.S.C. § 1591. In so doing, Defendant violated U.S.C. § 1594(a).²

Fatal to her claim, Plaintiff does not plead an agreement or meeting of the minds between or among Epstein and anyone else. *See Chen Gang v. Zhao Zhizhen*, 799 F. App'x 16, 19 (2d Cir. 2020) (“To maintain a civil conspiracy action, the plaintiff must provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end.”) (affirming District Court’s dismissal of conspiracy claims for failing to meet *Twombly* standards); *Webb v. Goord*, 340 F.3d 105, 111 (2d Cir. 2003) (“The plaintiffs have not alleged, except in the most conclusory fashion, that any such meeting of the minds occurred among any or all of the defendants. Their conspiracy allegation must therefore fail.”).

While Plaintiff’s allegation implies the existence of an “enterprise,” she does not describe or define the so-called “enterprise,” nor otherwise identify (beyond broad categories) any alleged co-conspirators, how they were involved in the conspiracy, how or when they had a meeting of the minds, how the conspiracy worked, or how the conspiracy was connected to or harmed Plaintiff. Vaguely alleging a conspiracy, without any allegation of an agreement or meeting of the minds, is insufficient to articulate the conspiracy on which the alleged Section 1594(b) violations are based. Accordingly, the Court must dismiss Plaintiff’s claim for violations of TVPA § 1594(b).

c. Plaintiff’s TVPA Section 1593A Claim Contains No Supporting Allegations And Must Be Dismissed

Plaintiff’s claim for violations of TVPA § 1593A must be dismissed because she fails to assert any supporting facts. Section 1593A provides for liability for those who “knowingly

¹ Because Plaintiff names as defendants Messrs. Indyke and Kahn solely in their capacities as Co-Executors of the Estate of Jeffrey E. Epstein, and not in their personal capacities, and because all allegations of sexual abuse allege it was committed by Epstein, the Co-Executors presume that “Defendant” refers to Epstein.

² While this paragraph alleges a conspiracy, which, according to Plaintiff, amounted to a violation of “§ 1594(a),” it is § 1594**(b)** that proscribes conspiracies to violate the TVPA, not § 1594**(a)**.

benefit[], financially or by receiving anything of value, from participation in a venture which has engaged in any act in violation of [the TVPA].” 18 U.S.C. § 1593A. Plaintiff references Section 1593A only twice in her Complaint; both times, the section is merely included in a litany of TVPA sections allegedly violated by Epstein, as follows:

33. By virtue of Defendant’s violations of 18 U.S.C. §§ 1591, **1593A**, and 1594, Defendant Darren K. Indyke and Richard D. Khan [*sic*] as Joint Personal Representatives of the Estate of Jeffrey E. Epstein is subject to civil causes of action under 18 U.S.C. § 1595 by Plaintiff, who is a victim of the violations.

36. As direct and proximate result of Defendant’s commission of the aforementioned criminal offenses enumerated in 18 U.S.C. § 1591, **1593A**, and 1594, and the associated civil remedies provide in § 1595, Plaintiff has in the past suffered and will continue to suffer injury and pain; emotional distress; psychological and psychiatric trauma; mental anguish; humiliation; confusion; embarrassment; loss of self-esteem; loss of dignity; loss of enjoyment of life; invasion of privacy; and other damages associated with actions. Plaintiff will incur further legal, medical and psychological expenses. These injuries are permanent in nature and Plaintiff will continue to suffer from them in the future. In addition to these losses, Plaintiff has incurred attorneys’ fees and will be required do so in the future.

(Emphasis added.) Plaintiff does not allege that Epstein benefitted financially or received anything of value from his participation in a venture that violated the TVPA.³ Accordingly, Plaintiff fails to adequately plead a claim under TVPA § 1593A, and the Court must dismiss that claim.

II. Plaintiff’s TVPA Claim Is Largely, If Not Entirely, Time-Barred To The Extent It Is Based On Conduct Occurring Before March 17, 2010

Plaintiff’s TVPA claim is at least partially time-barred. The TVPA expressly provides that a victim of a TVPA violation may not bring a civil action under the Act later than “10 years after

³ This claim also fails because Plaintiff did not adequately plead an underlying violation of § 1591, as explained, *supra*, in Section I(a). *See St. Louis v. Perlitz*, No. 3:13-CV-1132 (RNC), 2016 WL 1408076, at *3 (D. Conn. Apr. 8, 2016) (finding a violation against one who “knowingly benefits, 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 [the TVPA]” “requires an underlying violation of § 1591 (or another section of the statute), and plaintiffs have failed to allege such a violation”).

the cause of action arose,” where the victim was an adult at the time of the violation. 18 U.S.C. § 1595(c)(1).

Here, Plaintiff alleges she was an adult when the alleged abuse began. (Compl. ¶ 3.) Therefore, and consistent with *Lisa Doe*, Plaintiff’s claim in her March 17, 2020 Complaint is untimely to the extent it is based on alleged conduct that occurred before March 17, 2010. *See* 18 U.S.C. § 1595(c)(1); *Lisa Doe v. Indyke*, 465 F. Supp. 3d 452, 462 (S.D.N.Y. 2020) (Ramos, J.) (“While the Court disagrees that the conspiracy claims are time-barred, Doe has not presented arguments as to why the non-conspiracy claims, such as attempt, referenced in Counts VI to IX are not time-barred and the Court dismisses those with prejudice.”) (dismissing with prejudice TVPA Section 1591, 1594(a), and 1593A claims as untimely).

Lisa Doe is directly on point. In that case, another alleged victim of Epstein sued the Co-Executors for, among other things, TVPA violations. 465 F. Supp. 3d 452. The Co-Executors moved to dismiss Lisa Doe’s TVPA claims as untimely to the extent they were based on conduct occurring outside the limitations period, *i.e.*, more than ten years before Lisa Doe filed her complaint. *Id.* at 462. Judge Ramos granted the Co-Executors’ motion in part, dismissing all TVPA claims except the conspiracy claim,⁴ to the extent they were based on alleged conduct occurring more than ten years before Lisa Doe filed her complaint. *Id.*

Under *Lisa Doe*, the Court must dismiss Plaintiff’s non-conspiracy TVPA claim as untimely to the extent it is based on conduct that occurred more than ten years before Plaintiff filed her Complaint. Because Plaintiff’s only specific allegation of abuse (Compl. ¶ 28) does not

⁴ Judge Ramos found that Lisa Doe’s TVPA conspiracy claims were not time-barred “provided ‘at least one overt act in furtherance of the conspiratorial agreement’ occurred within the limitations period.” 465 F. Supp. 3d at 462 (quoting *United States v. Ben Zvi*, 242 F.3d 89, 97 (2d. Cir. 2001)). Judge Ramos found that, as Lisa Doe pleaded an overt act within the limitations period, her TVPA conspiracy should not be dismissed on the pleadings. *Id.* In this action, the Co-Executors do not seek to dismiss Plaintiff’s TVPA conspiracy claim as time-barred. (They do move to dismiss such claim as inadequately pleaded, as explained above in Section I(b).)

demonstrate a commercial sex act—or any other nexus to the TVPA—Plaintiff has not pleaded *any* alleged conduct violating the TVPA within the limitations period. Accordingly, Plaintiff’s claim should be dismissed as untimely in its entirety. However, even if this Court finds that the allegation in Paragraph 28 sufficiently pleads a violation of the TVPA, the Court must still dismiss the claim to the extent it is based on conduct that occurred before March 17, 2010.

III. Plaintiff Is Not Entitled To Punitive Damages As A Matter Of Law

Plaintiff’s request for punitive damages must be dismissed as a matter of law. As a threshold matter, “where punitive damages have been unavailable as a matter of law, courts have not hesitated to dismiss prayers for such damages at the threshold.” *Mary Doe v. Indyke*, 457 F. Supp. 3d 278, 283-84 (S.D.N.Y. 2020) (Engelmayer, J.) (dismissing punitive damages demand at pleadings stage) (citing *Murtha v. N.Y. State Gaming Comm’n*, No. 17 Civ. 10040 (NSR), 2019 WL 4450687, at *19 (S.D.N.Y. Sept. 17, 2019) (dismissing plaintiff’s demand for punitive damages because statute “does not provide for punitive damages”); *Rosen v. N.Y.C. Dep’t of Educ.*, No. 18 Civ. 6670 (AT), 2019 WL 4039958, at *9 (S.D.N.Y. Aug. 27, 2019) (granting motion to dismiss demand for punitive damages where statute did not permit a plaintiff to recover punitive damages); *Talarico v. Port Auth. of N.Y. & N.J.*, 367 F. Supp. 3d 161, 172 (S.D.N.Y. 2019) (dismissing demand for punitive damages against Port Authority where “the Third Circuit and the overwhelming majority of district courts within this Circuit have held that punitive damages are not available against” that defendant (internal quotation marks and citation omitted)); *Canete v. Metro. Transp. Auth.*, No. 17 Civ. 3961 (PAE), 2018 WL 4538897, at *9 (S.D.N.Y. Sept. 20, 2018) (dismissing demand for punitive damages where such relief was “precluded as a matter of law”); *SJB ex rel. Berkhout v. N.Y.C. Dep’t of Educ.*, No. 03 Civ. 6653 (NRB), 2004 WL 1586500, at *8 (S.D.N.Y. July 14, 2004) (dismissing punitive damages claim because such damages are unavailable in § 1983 actions against municipalities)).

As Judge Ramos held in *Lisa Doe*, “punitive damages under the TVPA are not available after a defendant has died.” 465 F. Supp. 3d at 471 (dismissing with prejudice plaintiff’s claim for punitive damages under the TVPA against the Co-Executors). “As a general matter with regards to claims brought under federal law, ‘[u]nless a statute directly addresses the issue, courts are generally guided by principles of federal common law, which prescribe that claims characterized as “penal” abate upon a party’s death, while claims characterized as “remedial” survive.’” *Id.* (citing *U.S. ex rel. Colucci v. Beth Israel Med. Ctr.*, 603 F. Supp. 2d 677, 680 (S.D.N.Y. 2009)); *see also Official Comm. of Unsecured Creditors of Exeter Holdings, Ltd. v. Haltman*, 13-cv-5475 (JS) (AKT), 2017 WL 9485707, at *3 (E.D.N.Y. Aug. 3, 2017). “Even where a statute is characterized as remedial, however, courts have found punitive damages unavailable.” *Lisa Doe*, 465 F. Supp. 3d at 471 (citing *Estwick v. U.S. Air Shuttle*, 950 F. Supp. 493, 498 (E.D.N.Y. 1996) (“The punitive damages are plainly penal....”); *EEOC v. Deloitte & Touche, LLP*, No. 97 Civ. 6484 (LMM), 2000 WL 1024700, at *7 (S.D.N.Y. July 25, 2000)). In fact, even where a federal cause of action survives death, punitive damages remain unavailable. *See, e.g., Medrano v. MCDR, Inc.*, 366 F. Supp. 2d 625, 635 (W.D. Tenn. 2005) (dismissing deceased plaintiff’s claim for punitive damages under 42 U.S.C. § 1981).

Accordingly, under this Court’s directly applicable precedent analyzing similar same claims and issues against the same defendants, punitive damages are unavailable to Plaintiff and her demand for those damages must be dismissed. *See Lisa Doe*, 465 F. Supp. 3d at 471.

IV. Conclusion

For the foregoing reasons, the Co-Executors respectfully request that the Court grant their Motion to Dismiss Plaintiff’s Complaint, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 6, 2021

Respectfully submitted,

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