UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JANE DOE #1,

Plaintiff,

v. CASE NO.: 3:23-cv-383-MMH-JBT

CROWLEY MARITIME CORPORATION,
and JUAN EMILIO BLANCO,

Defendants.
_____/

PLAINTIFF'S RESPONSE IN OPPOSITION TO CROWLEY MARITIME CORPORATION'S MOTION TO DISMISS AND MOTION TO STRIKE

Plaintiff JANE DOE ("Doe") hereby opposes CROWLEY MARITIME CORPORATION'S ("Crowley") Motion to Dismiss and Motion to Strike ("Motion") (Doc. 16 and Doc. 21) and requests it be denied.

LEGAL STANDARD

As this Court has noted in *Treminio v. Crowley Mar. Corp.*, 3:22-CV-174-MMH-PDB, 2023 WL 113565, at *1, Order, Doc. 34, pp.2-3 (M.D. Fla. Jan. 5, 2023):

> In ruling on a motion to dismiss, the Court must accept the factual allegations set forth in the complaint as true. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Swierkiewicz v. Sorema N.A.,* 534 U.S. 506, 508 n.1 (2002); see also *Lotierzo v. Woman's World Med. Ctr., Inc.*, 278 F.3d 1180, 1182 (11th Cir. 2002). In addition, all reasonable inferences should be drawn in favor of the plaintiff. See *Randall v. Scott*, 610 F.3d 701, 705 (11th Cir. 2010). Nonetheless, the plaintiff must still meet some minimal pleading requirements. *Jackson v. Bellsouth Telecomm.*, 372 F.3d 1250, 1262–63 (11th Cir. 2004) (citations omitted). Indeed, while "[s]pecific facts are not necessary," the complaint should "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Further, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). The "plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (internal quotations omitted); see also *Jackson*, 372 F.3d at 1262 (explaining that "conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal") (internal citation and quotations omitted). Indeed, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions," which simply "are not entitled to [an] assumption of truth." *Iqbal*, 556 U.S. at 678, 680. Thus, in ruling on a motion to dismiss, the Court must determine whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Id. at 678 (quoting *Twombly*, 550 U.S. at 570).

BACKGROUND

When Plaintiff joined Crowley in October of 2016 Defendant Blanco, her supervisor, began immediately subjecting her to a pattern of extreme workplace sexual

harassment. Within her first month of starting at Crowley, Blanco shocked Plaintiff by forcing her—within the Crowley office—to watch a pornographic video of transexual males engaging in sex acts. Compl., Doc. 1 ¶¶ 40-42.

Over the next year Blanco's constantly sexually harassing behavior towards Plaintiff and other Inland Department team members continued and only intensified. In July of 2017, while the Plaintiff and other team members were gathered in Crowley's cafeteria in the San Salvador office, "Blanco looked directly into Ms. Doe's eyes and told her he could picture the way her boyfriend "f__ked" her inside [his] truck. Blanco then began gyrating his hips and moving his body to imitate a sex act." Compl., Doc. 1 ¶¶ 84-88.

During the same Summer of 2017, while drinking heavily during a team dinner at a seafood restaurant in San Salvador, Blanco made a sexual threat to Plaintiff in front of other Inland Department team members. "While intrusively staring at Ms. Doe, Blanco said 'one day I'm going to get you drunk,' insinuating his intent to get her intoxicated so he could force sex on her." Compl., Doc. 1 ¶¶ 89-91.

"Ms. Doe was intimidated and frightened by Blanco's statement and the danger of future harassment and sexual assault it signified. One of her fellow team members told Blanco to "shut up," and told Blanco that what he said was inappropriate. Blanco simply laughed off this admonishment and continued to leer intrusively and sexually at Ms. Doe, reinforcing that his sexual threat to her was not an empty one." Ms. Doe was so frightened by Blanco's sexual threat that after the dinner she began searching for new a new job. Compl., Doc. 1 ¶¶ 92-93.

After about one year at Crowley, Ms. Doe decided to file a formal report against Blanco, despite her fears that he would find out and retaliate against her. On November 7, 2017, while Blanco was in Jacksonville, Florida on a business trip to Crowley headquarters—during which Blanco allegedly raped Plaintiff's co-worker Vanessa Treminio—Plaintiff filed an anonymous complaint of sexual harassment against Blanco via Crowley's EthicsPoint system. This EthicsPoint complaint was assigned Case No. 280. Compl., Doc. 1-3.

In her anonymous EthicsPoint complaint Case No. 280, Plaintiff wrote,

> "Juan makes really offensive sexual comments at all time of the day about people in the team and people from other teams. He encourages this kind of behavior among the team and has made some instant messaging groups in which he gives nicknames to men and women in the company, which goes from 'fuck face' to making really bad comments such as 'I would love to f... that girl, I bet she is really good at.....' and above [i.e. worse]…he even makes obscene signs at us with his middle finger."

Compl., Doc. 1-3. In her November 7, 2017 EthicsPoint complaint, Doe also accused Blanco of "constantly yelling at personnel," "[threatening] us with contract termination," and engaging in WhatsApp group conversations in which he sent "**sexual comments about people from the team**." Plaintiff told Crowley, "**I have witnessed and suffered this behavior since I started working in this company**." She also told Crowley her fellow team members were "afraid that he [Blanco] will do something to them if he finds out that they have presented a report" to HR. Compl., Doc. 1-3.

Her November 7, 2017 anonymous complaint against Blanco was immediately received by numerous Crowley executives in the United States, including Director of

HR Tiffanny King and VP of Internal Audit, Ethics, and Compliance Arthur LaMoureaux. However, no one attempted to contact the complainant via EthicsPoint until November 16, 2017. Compl., Doc. 1-3.

Not long after she filed her anonymous complaint, in mid-November 2017 Blanco ordered Plaintiff to a one-on-one meeting during which he told Plaintiff that he had selected her to travel with him to Jacksonville, Florida on the next DFTS training trip in January 2018.

> "For Ms. Doe, the news was both exciting and terrifying…the opportunity to work on a high-profile contract for the U.S. Department of Defense, to obtain a travel visa that would allow her to travel back back and forth to the United States on business trips, and to actually visit the United States for training were all enormously valuable career opportunities."

For the Plaintiff, "**The DFTS training trip was the most significant professional opportunity of her life.**" Compl., Doc. 1 ¶¶ 123-126.

> "On the other hand, the prospect of going on an international business trip with a man she considered a sexual predator—a man who had subjected her to humiliating and pervasive sexual harassment, forced her to watch nonconsensual porn, and sexually threatened her—was utterly frightening."

Compl., Doc. 1 ¶ 127. Following the November meeting with Blanco, Crowley paid for and facilitated Plaintiff's obtaining of a business visa to the United States, which eventually became a 10-year work and travel visa to the U.S. This valuable document "would have been impossible for Ms. Doe to obtain without Crowley's facilitation and financing of the visa application process." Compl., Doc. 1 ¶ 166. Not long after her visa application was approved, Blanco approached Plaintiff in the office and "told her he was actively searching hotels in Jacksonville, and that he was '*going to get a real nice*

hotel for you.' This comment frightened Ms. Doe." Compl., Doc. 1 ¶ 167. In mid to late December of 2017, as the date of the trip approached, and after Blanco told Plaintiff he was choosing "a real nice hotel" for her, Plaintiff "requested a private meeting with Crowley Human Resources Manager Jaqueline Najera because she did not *feel* safe traveling to the United States with Blanco." Compl., Doc. 1 ¶ 168.

During her December 2017 meeting with Najera, Plaintiff *told* Najera she did not feel safe traveling to the United States with Blanco. Plaintiff specifically told Najera, "***I am scared that he will try to do something to me in Jacksonville when I'm alone with him.***" Compl., Doc. 1 ¶ 172. While expressing her fears of being sexually assaulted by Blanco, "Najera abruptly cut her off and told Ms. Doe that if she did not feel safe traveling with Blanco on the business trip, or feel safe being around Blanco in the office, she could find a new job. Ms. Doe was speechless. Najera then stared at Ms. Doe for a few moments before saying, '*Can I help you with anything else*?'" Compl., Doc. 1 ¶ 176.

"From the manner in which Najera trivialized Ms. Doe's fears about Juan Blanco and delivered the ultimatum about finding another job, it was clear to Ms. Doe that she did not have any choice other than to go on the business trip if she wanted to keep her job." Compl., Doc. 1 ¶ 178. By that point, Plaintiff had already seen Blanco, Lopez, and Najera retaliate against another Inland Department employee who complained of sexual misconduct by firing her, and she knew they had the power to fire her for complaining as well. Compl., Doc. 1 ¶¶ 53-72, 179.

Blanco's boss Jose Lopez told Ms. Doe to "*do whatever Juan says*," while in Jacksonville. Compl., Doc. 1 ¶¶ 203. "Crowley had ensured that Ms. Doe was totally dependent on Blanco and controlled by him during her time in Jacksonville." Compl., Doc. 1 ¶¶ 202-206.

On or about the afternoon of Friday January 12, 2018 Blanco pressured Plaintiff and Ricardo to attend dinner at the home of Blanco's wife in Jacksonville. That evening Plaintiff's worst fears for the trip were realized when Blanco sexually attacked and assaulted her.

Blanco's attack was only stopped by the sudden appearance of Blanco's wife. Plaintiff believes that if Blanco's wife had not appeared when she did, Plaintiff "would have continued to be sexually assaulted and likely raped by Blanco." Compl., Doc. 1 ¶ 223. Later, Plaintiff alleges Blanco repeatedly attempted to gain access to her bedroom while she spent a sleepless, terrified night trapped inside the home with Blanco. Compl., Doc. 1 ¶¶ 224-230.

Over the next week in Jacksonville Blanco continued to sexually harass Plaintiff and attempted to intimidate her into silence by staring at her threateningly during trainings. Plaintiff was continually on the verge of panic attacks. Compl., Doc. 1 ¶¶ 231. When Doe was scheduled to fly back to El Salvador with Blanco, Plaintiff "intentionally missed her flight to avoid traveling back to El Salvador with Blanco." Compl., Doc. 1 ¶¶ 232-233.

When she returned to El Salvador Plaintiff filed a 2nd, non-anonymous EthicsPoint complaint against Blanco, which became Case No. 297. Compl., Doc. 1-

9. In her 2nd EthicsPoint complaint, filed on January 23, 2018, Plaintiff called Blanco "*a sex offender*" and wrote "*I seriously can't work with a sex offender and even worst having him as my supervisor.*" Compl., Doc. 1-9. Crowley finally fired Blanco the next day, on January 24, 2018. Compl., Doc. 1 ¶ 38.

MEMORANDUM OF LAW

I. Count II should NOT be dismissed under Rule 12(b)(6) because Plaintiff has sufficiently stated a claim for sex trafficking under the TVPA

In her Complaint, Plaintiff alleges one claim against Crowley for sex trafficking under the TVPA, under two theories of liability. Section 1595 allows victims to pursue civil claims against perpetrators of trafficking (direct liability) or those who knowingly benefit financially from trafficking (beneficiary liability). In Count II, Plaintiff adequately states a claim against Crowley pursuant to both theories, and Crowley's Motion to Dismiss should therefore be denied.

A. Commercial sex act

In its Motion to Dismiss, Crowley argues Plaintiff's sex trafficking claims should be dismissed because Plaintiff has not plausibly alleged that a "commercial sex act" occurred.

As this Court has noted in *Treminio v. Crowley Mar. Corp.*, 3:22-CV-174-MMH-PDB, 2023 WL 113565, at *1, Order, Doc. 34, pp.2-3 (M.D. Fla. Jan. 5, 2023):

> The TVPA defines a "commercial sex act" as "any sex act, on account of which anything of value is given to or received by any person." 18 U.S.C. § 1591(e)(3) (emphasis added). Courts have viewed the meaning of "anything of value" broadly. *See United States v. Raniere*, 55 F.4th 354, 362 (2d Cir. 2022) ("Bearing in mind these textual clues, we conclude that, as it is used in Section 1591, the phrase 'anything of value' need not have a monetary or financial component."); *United States v. Rivera*, No.

> 6:12-CR-121-ORL-37, 2012 WL 6589526, at *5 (M.D. Fla. Dec. 18, 2012) (finding that ordination as a prophet was a thing of value), aff'd, 551 F. App'x 531 (11th Cir. 2014); *David v. Weinstein Co. LLC*, 431 F. Supp. 3d 290, 303–04 (S.D.N.Y. 2019) (finding that a career opportunity is a thing of value).

In her Complaint, Plaintiff alleges that Blanco selected her for the trip because of his plan to sexually assault her, as he had allegedly previously done with at least one other female Crowley employee (Vanessa Treminio) during a similar international business trip to Jacksonville approximately 2 months earlier.

Plaintiff alleges that prior to her January 2018 trip to Jacksonville, she requested a meeting with Crowley HR Manager Jacqueline Najera during which she told Najera that she did not feel safe traveling with Blanco, and in fact never felt safe around him. Plaintiff alleges that Najera then told her that if she did not go on the trip with Blanco she would be fired. Compl., Doc. 1 ¶ 172-176.

In her Complaint, Plaintiff alleges that because of Najera's threat to fire her if she did not accompany Blanco on the January 2018 trip to Jacksonville, she went on the business trip despite reasonably fearing that she would be assaulted by Blanco during the trip.

In exchange for going on the trip to Jacksonville, Plaintiff alleges she received 1) a Crowley-sponsored 10-year U.S. travel visa that allowed her to travel back and forth to the United States, and which made her more attractive to employers in El Salvador who also had offices or headquarters in the United States; 2) round-trip travel to the United States, hotel accommodations, and meals; 3) valuable training on a large U.S. Department of Defense logistics contract (DFTS); 4) valuable professional

connections with senior employees at her company's headquarters in Jacksonville; 5) tangible job benefits, including continued employment with Crowley, which included her salary and other employment benefits, and the possibility of valuable career advancement within Crowley, which in fact materialized in the years following Plaintiff's sexual assault in Jacksonville when Plaintiff was promoted to manager, and then later to analyst.

Plaintiff alleges that during the trip she was forced into a "sex act" when Blanco sexually attacked and assaulted her at his wife's home. Plaintiff alleges that there was a direct causal relationship between the "things of value" she received in exchange for going on the trip, despite reasonably fearing that she would be assaulted by Blanco during the trip, and the "sex act." And Plaintiff alleges that the "sex act" was "on account of" the things of value she received, i.e. *but for* the things of value she was offered and received, the sex act would not have occurred.

As this Court has noted in *Treminio v. Crowley Mar. Corp.*, 3:22-CV-174-MMH-PDB, 2023 WL 113565, at *1, Order, Doc. 34, pp.2-3 (M.D. Fla. Jan. 5, 2023):

> Blanco's alleged plan to use a business opportunity to lure Treminio into a vulnerable position where he could sexually assault her raises a reasonable inference that the things of value were received on account of the sex act. See Eckhart v. Fox News Network, LLC, No. 20-CV-5593 (RA), 2021 WL 4124616, at *3, *9 (S.D.N.Y. Sept. 9, 2021), on reconsideration in part, No. 20-CV-5593 (RA), 2022 WL 4579121 (S.D.N.Y. Sept. 29, 2022); David, 431 F. Supp. 3d at 303–04, 305 n.5; Roe v. Howard, No. 1:16-CV-562, 2018 WL 284977, at *2 (E.D. Va. Jan. 3, 2018), aff'd, 917 F.3d 229 (4th Cir. 2019).

In the present case, Blanco is alleged to have used an almost identical *modus operandi* against Plaintiff that he is alleged to have used against Treminio, *i.e.*, using a

valuable business opportunity to lure Plaintiff into a vulnerable position in a foreign country where he could sexually assault her. Blanco's behavior towards Plaintiff also raises a reasonable inference that the things of value Plaintiff received on account of the sex act committed by Blanco in Jacksonville, and that the things of value were causally related to a sex act with Blanco.

B. Plaintiff has established that Crowley has beneficiary liability under the TVPA

The 11th Circuit has clearly set forth the elements of a Section 1595(a) beneficiary claim, and Plaintiff Complaint meets this standard against Crowley:

> In order to state a beneficiary claim under Section 1595(a), a plaintiff must plausibly allege that the defendant (1) knowingly benefited, (2) from taking part in a common undertaking or enterprise involving risk and potential profit, (3) that undertaking or enterprise violated the TVPRA as to the plaintiff, and (4) the defendant had constructive or actual knowledge that the undertaking or enterprise violated the TVPRA as to the plaintiff.

Doe #1 v. Red Roof Inns, Inc., 21 F.4th 714, 727 (11th Cir. 2021).

i. Plaintiff has sufficiently alleged participation in a venture

> [T]he participation element of a 'beneficiary' claim under § 1595(a) does not require that the defendant in question have participated in the sex trafficking act itself. See, e.g., S.Y., 476 F.Supp. 3d at 1256. Instead, as the court explains, 'participation in a venture' requires only that a defendant take part in a common undertaking or enterprise involving risk and potential profit.

Red Roof, 21 F.4th at 730 (Jordan, J., concurring). For purposes of establishing a claim under a section 1595(a) beneficiary theory, Defendant Juan Blanco and Defendant Crowley constituted a group of two or more individuals who took part in a common undertaking or enterprise involving risk and potential profit. The January 2018 DFTS business trip from San Salvador, El Salvador to Jacksonville, Florida can be seen as a

"venture," or part of a larger venture in which both Defendant Crowley and Defendant Blanco participated. To further the venture, Crowley recruited and transported Plaintiff and Blanco (a star employee) to Jacksonville from El Salvador to assist with the implementation of the Defense Freight Transportation Services ("DFTS") contract, a new and very lucrative multi-billion-dollar business deal Crowley signed with the U.S. Department of Defense (DoD) in July of 2017.

The DFTS contract was one of the largest logistics contracts ever awarded to a single company by the U.S. government, with a total value in the billions of dollars. Crowley recruited non-American employees, like Plaintiff and Blanco, to maximize profits, because it could pay them much lower wages than it was required to pay Americans. Even though Crowley paid to fly Plaintiff to Jacksonville for training on the DFTS contract, Crowley was paying Plaintiff less than $10,000 per year and Blanco significantly less than his American counterparts for doing comparable work. As part of the DFTS venture, Plaintiff was to receive training in Jacksonville on the implementation of the DFTS contract, and then return to El Salvador where she would teach other Crowley employees what she had learned in Jacksonville to further enable the implementation of the DFTS contract.

ii. Plaintiff has adequately alleged that Crowley knowingly benefited from participation in a venture

> 'Knowledge' is '[a]n awareness or understanding of a fact or circumstance; a state of mind in which a person has no substantial doubt about the existence of a fact.' . . . And Section 1595(a) explains that a defendant may benefit 'financially or by receiving anything of value.' Accordingly, a plaintiff . . . must allege that the defendant knew it was receiving some value from participating in the alleged venture.

Red Roof, 21 F.4th at 723-24.

As a profit-maximizing, for-profit corporation, Crowley knowingly benefited from employing Blanco, and knowingly and intentionally benefited from sending Blanco to Jacksonville with Plaintiff in furtherance of implementing the new multi-billion dollar DFTS contract.

iii. Plaintiff has adequately alleged a violation of the TVPA as to Plaintiff

The third element for beneficiary liability is that the venture in which the defendant participated and from which it knowingly benefited must have violated the TVPA as to the Plaintiff. In violation of 18 U.S.C. § 1591, Defendant Crowley did knowingly benefit, financially or by receiving anything of value, from participation in a venture of two or more individuals associated in fact, in or affecting interstate or foreign commerce, in which Plaintiff was recruited, enticed, harbored, transported, or obtained by any means, when Crowley knew, or was in reckless disregard of the fact, that means of force, threats of force, fraud, coercion, or any combination of such means would be used to cause the Plaintiff to engage in a commercial sex act.

After Crowley recruited and transported Plaintiff to Jacksonville in January 2018 as part of an undertaking or enterprise with Defendant Juan Blanco that involved risk and potential profit, Plaintiff was sexually attacked and assaulted by Defendant Blanco during the DFTS training trip. See Compl., Doc. 1 ¶¶ 213-227. The sexual attack and assault of Plaintiff was premeditated and constituted a "commercial sex act." See pp. 9-12, supra.

iv. Plaintiff has adequately alleged Crowley had actual or constructive knowledge that she would be trafficked.

Plaintiff stated a claim of TVPA beneficiary liability, alleging Crowley:

> have either actual or constructive knowledge that the venture—in which it voluntarily participated and from which it knowingly benefited—violated the TVPRA as to the plaintiff. Section 1595(a) requires that the defendant 'knew or should have known [that the venture] has engaged in an act in violation of this chapter.' . . . **Constructive knowledge…is that knowledge which 'one using reasonable care or diligence should have**.'

Red Roof, 21 F.4th at 725. Because § 1595(a) requires that a defendant "knew or should have known" that it was benefitting from or participating in a venture that would violate the TVPA, the "negligence standard of constructive knowledge" applies. *Doe v. KIK Interactive, Inc.,* 482 F.Supp. 3d 1242, 1250 (S.D. Fla. 2020).

Plaintiff's flight departed San Salvador, El Salvador with her supervisor Defendant Blanco and another Crowley employee named Ricardo on Sunday January 7, 2018. Compl., Doc. 1 ¶ 201. Plaintiff was sexually attacked and assaulted by Blanco in Jacksonville, Florida on or about January 12, 2018.

Prior to Plaintiff's trip, Crowley was in possession of overwhelming evidence that Blanco was consistently engaged in outrageous workplace and work-related sexual misconduct, including a credible allegation that Blanco had raped Plaintiff's Inland Department co-worker Vanessa Treminio in Jacksonville during a DFTS training trip approximately 2 months earlier. One using reasonable care or diligence would not have allowed Blanco to recruit and transport Plaintiff on the January 2018 international business trip out of concern that Blanco posed a danger to Plaintiff, and Crowley's negligence directly contributed to Plaintiff being trafficked and sexually

attacked and assaulted by Blanco in Jacksonville, Florida in January of 2018.

On November 7, 2017 Plaintiff first warned Crowley about Blanco by filing an anonymous complaint of sexual harassment against Blanco via Crowley's EthicsPoint system. Compl., Doc. 1-3. *See* pp. 4-5, supra. In mid to late December of 2017 Plaintiff herself warned Crowley that she was afraid to travel to Jacksonville with Blanco because she was afraid that he would sexually assault her during the trip. During the December 2017 meeting with Crowley HR Manager Jacqueline Najera, Plaintiff told Najera she did not feel safe traveling to the United States with Blanco. Plaintiff specifically told Najera, "***I am scared that he will try to do something to me in Jacksonville when I'm alone with him.***" Compl., Doc. 1 ¶ 172. Plaintiff's fears and concerns for her safety were completely ignored by Crowley, and Plaintiff was silenced and threatened with termination if she did not accompany Blanco on the trip. Compl., Doc. 1 ¶ 176.

On December 20, 2017, more than 2 weeks before Plaintiff departed on the trip to Jacksonville with Blanco, Crowley Regional HR Manager Senobia Matute emailed a highly troubling investigation report to Crowley's global Director of HR Tiffanny King regarding Defendant Blanco. Compl., Doc. 1-8. After 12 interviews with Blanco's team members, Matute concluded, "*There is an evident problem with Supervisor Juan Blanco. The comments that female personnel shared, are out of order and don't comply with our Crowley's values and culture*." These "comments" included Blanco allegedly telling a female employee to "*Prepare your throat for tonight*," telling another with a ponytail he was sure her boyfriend liked it because, "*it's easier to grab you*," and telling

another "*boyfriends like to put their girls on their knees*." Compl., Doc. 1-8. Matute recommended to King that, "*Immediate actions need to be taken with Juan Emilio Blanco. He does not comply with the values that Crowley promote.* Compl., Doc. 1-8. However, Crowley continued to allow Blanco to take his female subordinates on international business trips.

Most egregiously, Crowley has admitted that Vice President of Internal Audit, Ethics, and Compliance Arthur LaMoureaux was told by Plaintiff's co-worker Vanessa Treminio that Blanco had sexually assaulted her during a previous DFTS training trip to Jacksonville in November of 2017. Compl., Doc. 1-7. Treminio's report of sexual assault to Crowley's highest ranking "Ethics" official occurred prior to Plaintiff's trip to Jacksonville in January of 2018. Compl., Doc. 1 ¶ 159. Instead of initiating an investigation, notifying law enforcement, and/or taking immediate action to prevent Blanco from raping or sexually assaulting additional female Crowley employees—including Plaintiff—LaMoureaux did nothing, and claims he merely kept Treminio's report "confidential." Compl., Doc. 1-7.

Tragically, by taking appropriate action in response to an incredibly serious allegation of rape that Crowley admits under oath was reported to him by Treminio, LaMoureaux could have prevented Plaintiff from being sexually abused by Blanco in January 2018. Crowley's concern was not protecting the women it knew Blanco was victimizing, but rather protecting its company's own public image and profits.

Given the numerous warnings Crowley received about Blanco prior to his sexual attack and assault of Plaintiff in Jacksonville in January of 2018, Crowley

"knew or should have known" that by allowing Blanco to take yet another subordinate employee on an international business trip that the Company was benefitting from, or participating in, a venture that would violate the TVPA as to Plaintiff.

C. Plaintiff has established perpetrator liability under the TVPA

To establish perpetrator liability, Plaintiff must allege sufficient facts to show that Crowley sent Plaintiff on a business trip with actual knowledge, or in reckless disregard of the fact, that Blanco would use force to cause Plaintiff to engage in a commercial sex act. 18 U.S.C. § 1591(a).

The facts of this case demonstrate that when Plaintiff's flight departed San Salvador on Sunday January 7, 2018, Crowley had actual knowledge, via Vice President of Ethics Arthur LaMoureaux, that Vanessa Treminio had accused Blanco of raping her approximately two months earlier in a hotel room in Jacksonville, Florida on a DFTS training trip. *See* pp. 18, supra.

Given this knowledge, and the knowledge Crowley possessed that multiple female Crowley employees had accused Blanco of workplace or work-related extreme sexual harassment and assault, Crowley either knew, or was in reckless disregard of the fact, that Blanco would use force to cause Plaintiff to engage in a commercial sex act on her January 2018 trip to Jacksonville.

Crowley is also liable to Plaintiff under a perpetrator theory of sex trafficking via common law agency theories of liability, including *respondeat superior*.

D. Plaintiff's Complaint is not a Shot Gun Pleading under Rule 8

Shotgun pleadings violate Rule 8 by "fail[ing] to one degree or another ... to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1323. Upon review of the Complaint, it cannot be said that it fails to give the defendants adequate notice. On the contrary, and in the interest of judicial efficiency, the Complaint refers to the related case of *Treminio v. Crowley*, pending in this Court, Case No. 3:22-CV-174-MMH-PDB because both cases involve the same two Defendants and substantially similar background facts.

As pleaded, the Complaint adequately gives the Defendants notice of the sex trafficking claims against them and the detailed grounds upon which each claim rests. The Complaint in this case serves to streamline the pleadings—this is the opposite of a shotgun pleading.

In and of itself, the incorporation of unnecessary facts and allegations into all counts is not *per se* dispositive of whether a complaint is a shotgun pleading. *Denson v. Rambosk*, 2:21-CV-497-JES-NPM, 2022 WL 4367158, at *3 (M.D. Fla. Sept. 21, 2022) (citing *Weiland*, 792 F.3d at 1316). Here, Plaintiff incorporates paragraphs from Treminio's alleged sex trafficking because they are relevant and probative of a pattern of misconduct and the Defendants' knowledge and awareness of it. The incorporated paragraphs simply identify the substance of the Defendants' misconduct.

Shotgun pleadings waste scarce judicial resources, "inexorably broaden[ ] the scope of discovery," "wreak havoc on appellate court dockets," and "undermine[ ] the public's respect for the courts." *Davis v. Coca-Cola Bottling Co.*

Consol., 516 F.3d 955, 981–83 (11th Cir. 2008). None of these "unacceptable consequences" is present here. "[N]otice is the touchstone of the Eleventh Circuit's shotgun pleading framework." *Cont'l 332 Fund, LLC v. Albertelli*, 317 F. Supp. 3d 1124, 1138 (M.D. Fla. 2018).

The key inquiry is whether the "failure to more precisely parcel out and identify the facts relevant to each claim materially increase[s] the burden of understanding the factual allegations underlying each count." *Weiland*, 792 F.3d at 1324. With respect to this Complaint, there is no increased burden.

Under Fed. R. Evid. 415, in a civil case involving a claim for relief based on a party's alleged sexual assault, the court may admit evidence that the party committed **any other sexual assault** (emphasis added). This is evidence of "other crimes, wrongs, or acts" under Fed. R. Evid. 404(b)(2), admissible for "proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident."

The evidence of sex trafficking allegations in Treminio's case based on Juan Blanco's sexual assault and rape is relevant and admissible in the instant case under Fed. R. Evid. 415. Furthermore, evidence of prior crimes, wrongs, and acts by both Defendants in Treminio's case is admissible for proving their knowledge, as well as motive, opportunity, intent, preparation, plan, identity, absence of mistake, or lack of accident under Fed. R. Evid. 404(b)(2).

E. Crowley's Motion to Strike Various Allegations in the Complaint under Rule 12(f) Should be Denied.

Striking a pleading is a drastic remedy and "generally disfavored." *Flickinger v. Love's Travel Stops & Country Stores, Inc.*, No. 8:20-CV-2212-T-33CPT, 2021 WL 118976, at *7 (M.D. Fla. Jan. 13, 2021). A plaintiff has a right "to make [a] copy of a written instrument that is an exhibit to a pleading ... a part of the pleading for all purposes." *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 756 (11th Cir.2010). A motion to strike "will usually be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties." *Thompson v. Kindred Nursing Ctrs. E., LLC*, 211 F.Supp. 2d 1345, 1348 (M.D. Fla. 2002). When deciding a motion to strike, a court must accept the truthfulness of well-pleaded facts and "cannot consider matters beyond the pleadings." *Carlson Corp./Southeast v. School Board Of Seminole County, Fla.*, 778 F.Supp. 518 (M.D.Fla.1991).

A motion to strike is not intended to "procure the dismissal of all or part of a complaint." *Liberty Media Holdings, LLC v. Wintice Group, Inc.*, 6:10-cv-44-Orl-19GJK, 2010 WL 2367227, at *1 (M.D. Fla. June 14, 2010). A motion to strike should be granted only if "the matter sought to be omitted has no possible relationship to the controversy, may confuse the issues, or otherwise prejudice a party." *Reyher v. Trans World Airlines, Inc.*, 881 F.Supp. 574, 576 (M.D. Fla. 1995) (citing cases). Because this standard is rarely met, "[m]otions to strike are generally disfavored by the Court and are often considered time wasters." *Somerset Pharm., Inc. v. Kimball*, 168 F.R.D. 69, 71 (M.D. Fla. 1996).

This Complaint is neither confusing nor conclusory. Accepting the truthfulness of the Plaintiff's well-pleaded facts, it cannot be said that the allegations have no possible relation to the controversy and may cause undue prejudice. Crowley devotes many pages to claim that Plaintiff has not adequately alleged Crowley's requisite knowledge under the TVPA. For this reason alone, the allegations that Crowley seeks to strike from the Complaint should not be stricken. They are crucial to Plaintiff's claims, highly relevant to Crowley's knowledge and participation in the sex trafficking, and probative of the issues in controversy.

Crowley also drastically seeks to strike Treminio's Amended Complaint as an exhibit to the Complaint. Crowley has failed to make a showing that attaching Treminio's Amended Complaint as an exhibit meets the high 12(f) standard. These two cases are intricately related and allege incidents involving the same two defendants. There is significant factual overlap with the dates of the sexual assault allegations within 2 months of each other. The Court should find that the exhibits are relevant, probative, and directly related to the controversy and have no unduly prejudicial effect. *See generally*, *Williams v. Delray Auto Mall, Inc.*, 289 F.R.D. 697, 699–700 (S.D. Fla. 2013) ("[a] motion to strike will usually be denied unless the material has no possible relation to the controversy and may cause prejudice to one of the parties.").

WHEREFORE, based on the foregoing, the Plaintiff respectfully requests Crowley's Motion to Dismiss and Motion to Strike be denied.

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2023, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that this document is being served this day on all counsel on the Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

Respectfully submitted,

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