UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

VANESSA TREMINIO,

Plaintiff,

v. CASE NO.: 3:22-cv-174-MMH-PDB

Crowley MARITIME CORPORATION,
and JUAN EMILIO BLANCO,

Defendants.
_____/

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

Plaintiff VANESSA TREMINIO ("Treminio"), hereby opposes Defendant Crowley MARITIME CORPORATION's ("Crowley") Motion to Dismiss (Doc. 18).

MEMORANDUM OF LAW

Plaintiff has adequately pleaded her causes of action against Crowley. Accordingly, the Court should deny Crowley's Motion to Dismiss ("Motion").

PLAINTIFF SUFFICIENTLY STATED A CLAIM FOR SEX TRAFFICKING UNDER 18 U.S.C. 1591 IN COUNT II

1. The Amended Complaint sufficiently alleges that Plaintiff engaged in a "commercial sex act" as defined by the statute.

Crowley incorrectly states that the Amended Complaint contains "no allegations" that Plaintiff engaged in a "commercial sex act" and that the phrase "on account of which" suggests there needs to be a causal relationship between the sex act and an exchange of value. Crowley then cites a case finding that a defendant's actions qualified as a "commercial sex act" because the plaintiff received a trip to Mexico and lodging on defendant's property in exchange for his sexual assault.

Plaintiff refers to her business trip to Jacksonville with her boss, a man Crowley knew had already sexually harassed and assaulted Plaintiff and others, as a "twisted forced bargain."Am. Compl., ECF No. 14 ¶¶ 111, 126. While it seems counterintuitive to view the business trip—during which she was raped—as a thing of value, as Crowley noted, for the purposes of establishing a commercial sex act under the TVPA, the trip to Jacksonville was a thing of value. But for the sexual attack, the trip was a valuable career opportunity to Plaintiff, and she had benefitted from business travel and

promotions at Crowley before. Am. Compl., ECF No. 14 ¶¶ 10,11, 209(e)-(f), 111. There was a direct causal relationship between the commercial sex and the exchange of the value of the business trip to Jacksonville. Crowley's Motion states:

> While courts have interpreted the TVPA to extend to 'enticement of victims by means of fraudulent promises of career advancements, for the purposes of engaging them in consensual or non-consensual activity,' there are no allegations that Blanco or Crowley made any promises to Plaintiff with regard to her employment or career in order for the alleged sex act to occur.

Motion, p.6. Crowley's reading is too narrow. Sections 1591 and 1595 use "[b]road, expansive language," and "Congress's use of the word 'whoever' and its repeated use of the word 'any' 'does not lend itself to restrictive interpretation.'" *Noble v. Weinstein*, 335 F.Supp. 3d 504, 516 (S.D.N.Y. 2018). Plaintiff disagrees with Crowley's statement that "there are no allegations that Blanco or Crowley made any promises to Plaintiff with regard to her employment or career in order for the sex act to occur." The Amended Complaint is replete with examples of "promises" by Crowley, Blanco, and other Crowley agents and employees regarding Plaintiff's employment and career. *See* Am. Compl., ECF No. 14 ¶¶ 30, 31, 32, 33, 34, 35, 36, 38, 39. These "promises" were in the form of "threats," or promises to harm her career if she did not comply. A "threat" is a promise of harm, often conditional on some action or inaction of the person being threatened, and a threat to harm someone's career is also a promise to harm someone's career. According to the purposefully broad definition in the TVPA, maintaining one's employment status and ability to earn a living and avoiding irreparable harm to one's career constitute "things of value."

2. Plaintiff sufficiently pleaded beneficiary liability under the TVPA

In its Motion, Crowley wrote:

> Another element of beneficiary liability requires 'participation in a [sex trafficking] venture." *Naples Hotel Co.*, 476 F. Supp 3d at 1255-56 (alteration "[sex trafficking]" added by Crowley). … Plaintiff has failed to allege anything but conclusory allegations of a 'sex trafficking venture.' Instead, the only allegations are that Plaintiff was required, as a condition of her employment, to travel to Jacksonville with Blanco on a business trip.

These two statements in Crowley's Motion, and the license it allowed itself in adding the words "[sex trafficking]" to the case cite, underscore Crowley's misunderstanding of the elements necessary to state a claim under a Section 1595(a) beneficiary theory against Crowley. This may be in part due to a lack of clarity in certain sections of the Amended Complaint where at times the terms "venture" and "sex trafficking venture" were used interchangeably.

To be clear, Plaintiff is not alleging that Defendant Crowley knowingly operated an archetypal "sex trafficking venture."

The 11th Circuit clearly set forth the elements of a Section 1595(a) beneficiary claim. The Amended 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).

A. Defendant Crowley Took Part in a Common Undertaking or Enterprise with Defendant Juan Blanco Involving Risk and Potential Profit.

> [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 business trip from El Salvador to Jacksonville, Florida was a "venture" in which both Defendant Crowley and Defendant Blanco participated. 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 important 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, and its total value was approximately $2.3 billion. *See* Am. Compl., ECF No. 14 ¶¶ 15, 16, 17, 18, 19, 27.

Crowley recruited non-American employees, like Plaintiff and Blanco, to maximize profits, because it could pay them lower wages. Even though Crowley paid to fly them to Jacksonville for training on the DFTS contract, Crowley was paying Plaintiff less than $10,000 per year and Blanco less than his American counterparts,

which made the trip potentially profitable for Crowley. The venture was even more profitable after Plaintiff and Blanco returned to El Salvador to train other Crowley employees on the DFTS contract. *See* Am. Compl., ECF No. 14 ¶¶ 71, 72, 93.

B. Crowley Knowingly Benefited by Taking Part in a Common Undertaking or Enterprise with Defendant Juan Blanco Involving Risk and Potential Profit

> '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.

C. Defendant Crowley's Common Undertaking(s) or Enterprise(s) with Defendant Juan Blanco Violated 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 as part of an undertaking or enterprise with Defendant Juan Blanco that involved risk and potential profit, Plaintiff was brutally raped by Defendant Juan Emilio Blanco in a hotel room arranged and paid for by Defendant Crowley. *See* Am. Compl., ECF No. 14 ¶¶ 15, 19, 40. The rape of Plaintiff constituted a "commercial sex act." *See* pp. 2-3, *supra*.

D. Defendant Crowley had sufficient knowledge of the sex trafficking for beneficiary liability under the TVPA

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 trafficking venture, the "negligence standard of constructive knowledge" applies. *Doe v. KIK Interactive, Inc.*, 482 F.Supp. 3d 1242, 1250 (S.D. Fla. 2020). In a prominent TVPA case involving defendants Harvey Weinstein, a convicted sexual predator, and his brother Robert Weinstein, a man alleged to have enabled Harvey's pattern of sexual abuse against numerous women, the court held, with respect to Robert's liability under the TVPA for sex crimes committed by his brother, that:

> The complaint at issue did not allege that Robert Weinstein was 'present for any of the alleged assaults,' 'was told about them before or after they occurred,' or 'anything similar, which might show knowledge or reckless disregard. Judge Sweet therefore held that there were no 'specific factual allegations that plausibly allege Robert knew of, or participated in, Harvey's alleged violation of Section 1591.'

Canosa v. Ziff, 18 Civ. 4115 (PAE), 2019 WL 498865, at *24 (S.D.N.Y. Jan. 28, 2019) (quoting *Noble v. Weinstein*, 335 F. Supp. 3d 504 (S.D.N.Y. 2018)).

In a later case involving convicted sexual predator Harvey Weinstein, with respect to The Weinstein Companies' liability under the TVPA for sex crimes committed by Harvey Weinstein, the court wrote:

> Here, in contrast, as to the TWC Companies, the ***AC alleges specific means and methods used by multiple company employees to facilitate Weinstein's sexual assaults and to cover them up afterwards***. It ***alleges a series of assaults during a five-year period facilitated*** by the TWC Companies. And it alleges that the TWC Companies entered into non-disclosure agreements with many women, with the predictable effect of enabling future assaults by Weinstein. ***These allegations easily exceed those made against Robert Weinstein in Noble. The pattern of facilitation and cover-up by these companies is sufficiently developed here to state a claim of participation against the TWC Companies***.

Canosa, 2019 WL 498865, at *24 (emphasis added).

Here, Plaintiff also alleges specific means and methods used by multiple Crowley employees to facilitate Defendant Juan Blanco's sexual assaults against Plaintiff and other female Crowley employees, as well as specific means and methods used to cover up sex crimes afterwards. *See* Am. Compl., ECF No. 14 ¶¶ 12, 13, 14, 25, 26, 27, 28, 32, 33, 49, 50, 53.

The Amended Complaint alleges that Juan Blanco engaged in a pattern of workplace sexual harassment and assault over several years, and that these sex crimes were facilitated by Crowley. The Amended Complaint alleges that Crowley knew Blanco was a sexual predator, and that instead of firing him, transferred him to another

department, which had the predictable effect of enabling future sexual assaults of female Crowley employees. The Amended Complaint alleges that Plaintiff notified Crowley immediately after being sexually assaulted by Blanco in an elevator at the Crowley offices, and that she subsequently begged Crowley not to send her on an international business trip with the man she had reported to Crowley was a sexual predator who had already sexually assaulted her. Plaintiff told Crowley that she did not feel safe traveling with Blanco, and feared that he would sexually assault her again.

A person or company "using reasonable care or diligence" would not have continued to employ Blanco after receiving numerous reports of sexual harassment and sexual assault against him from female employees. A person or company "using reasonable care or diligence" would not have forced Plaintiff to travel internationally with Juan Blanco after Plaintiff reported the workplace sexual assault and begged Crowley not to force her to accompany her abuser on an international business trip. *See* Am. Compl., ECF No. 14 ¶¶ 29, 120. For the foregoing reasons, Plaintiff has sufficiently plead beneficiary liability under the TVPA at the Defendant Crowley.

3. Plaintiff sufficiently plead direct/principal liability under the TVPA

The two theories of liability available to trafficking victims under Section 1595(a) are not mutually exclusive. Plaintiff asserts Crowley is liable under the TVPA via a venture/beneficiary theory of liability, as well as under a theory of direct/principal liability. Crowley is liable for Plaintiff's injuries under a theory of direct/principal liability via the doctrine of *respondeat superior*:

> In Florida, an employer is vicariously liable for an employee's tortious conduct where the conduct occurs within the scope of the employment. An employee's [c]onduct is within the scope of employment if it occurs substantially within authorized time and space limits, and it is activated at least in part by a purpose to serve the master.

Hennagan v. Dep't of Highway Safety & Motor Vehicles, 467 So. 2d 748, 751 (Fla. 1st DCA 1985). Multiple Crowley employees who participated in and facilitated the venture that resulted in Plaintiff engaging in a commercial sex act in Jacksonville, Florida were agents and employees of Crowley acting within the actual or apparent scope of their employment or authority, and two or more of these agents intended, at least in part, to in some way benefit Crowley through their participation in the venture, which these agents knew, or were in reckless disregard of the fact, would use means of force, threats of force, fraud, coercion, or any combination of such means to cause Plaintiff to engage in a commercial sex act.

Crowley employees involved in the venture included senior Crowley employees in El Salvador and the United States who were involved in covering up the sexual misconduct and sex crimes committed by Juan Emilio Blanco against at least five different women while Blanco served as a senior manager in Crowley's Procurement Department. Instead of firing Blanco and reporting Blanco to law enforcement for his outrageous and illegal pattern of sexual predation that was known to Crowley, these senior Crowley employees transferred Blanco to the Inland Department and made him Plaintiff's supervisor. This action was taken to benefit Crowley. Crowley agents and employees involved in the venture included Jaqueline Najera, who knew that Juan Emilio Blanco was a sexual predator who had been transferred to the Inland

Department because of sexual misconduct, and who knew that Juan Emilio Blanco had brutally sexually assaulted Plaintiff in the elevator in Crowley's office. When Plaintiff reported being sexually assaulted by Blanco in the Crowley elevator, Najera gaslit Plaintiff, threatened her, silenced her, informed Blanco of the sexual assault allegations, and covered up yet another one of Blanco's sex crimes.

In covering up numerous instances of Blanco's sexual misconduct, threatening Plaintiff into silence, and threatening Plaintiff with serious harm in order to force her to travel internationally with Blanco, Najera acted within the actual or apparent scope of her employment or authority, and she intended, at least in part, to in some way benefit Crowley. Najera knew that Blanco was a "star" performer and that Crowley valued Blanco much more highly than the company valued Plaintiff. Najera knew that it was her job to keep Blanco happy and to make sexual misconduct allegations against Blanco disappear in order to protect the reputation of Crowley and to protect the profits that Crowley earned by continuing to employ Blanco.

Jose Lopez, a senior manager at Crowley headquarters in Jacksonville, Florida, was an agent and employee of Crowley when, on the morning after Blanco broke into Plaintiff's hotel room and brutally raped her, Lopez continued his long pattern of covering up Blanco's sex crimes against Crowley's vulnerable female employees in order to, at least in part, financially benefit Crowley. Lopez also helped Blanco get to the airport that morning, aided Blanco in fleeing the country and escaping justice for his sex crime against Plaintiff, and failed to notify law enforcement of Plaintiff's allegations.

Juan Blanco was not able to force Plaintiff into a commercial sex act in Jacksonville acting alone. Because of the participation in the venture (that resulted in Plaintiff engaging in a commercial sex act) of numerous Crowley agents and employees acting within the actual or apparent scope of their employment or authority and intending, at least in part, to in some way benefit Crowley, Crowley is liable for Plaintiff's injuries under a TVPA theory of direct/principal liability via the doctrine of *respondeat superior.*

PLAINTIFF STATED A CLAIM OF FORCED LABOR IN COUNT V

1. The Amended Complaint sufficiently alleges that Crowley violated 18 U.S.C. § 1589 by one or more of the Illegal Coercive Means.

In *Barrientos v. CoreCivic, Inc.*, 951 F.3d 1269 (11th Cir. 2020), the 11th Circuit summarized that the TVPA prohibits knowingly "obtain[ing] the labor or services of a person" by any one of, or combination of, the following means:

> (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
>
> (2) by means of serious harm or ***threats of serious harm*** to that person or another person;
>
> (3) by means of the abuse or threatened abuse of law or legal process; or
>
> (4) by means of any ***scheme, plan, or pattern*** intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

18 U.S.C. § 1589(a) (collectively, the "Illegal Coercive Means"). 1589(a) applies to "[w]hoever" knowingly provides or obtains such forced labor or services from a "person." *Barrientos*, 951 F.3d at 1271-72. A victim of a TVPA violation "may bring

a civil action against the perpetrator," and against anyone who "knowingly benefits, financially or by receiving anything of value," from any such violation. *Id.* at 1272.

Crowley is liable if it knowingly obtained or procured Treminio's labor or services through any of the Illegal Coercive Means. Crowley's actions satisfy the elements of §1589, so this Court must give the general terms of the statute their general meaning. *See Barrientos*, 951 F.3d at 1279 (finding a private government contractor's obtaining forced labor through actual or threatened force, restraint, or serious harm fell within the TVPA prohibitions).

In the Amended Complaint, Plaintiff has pleaded sufficient facts to show that Crowley violated the TVPA by more than one of the Illegal Coercive Means—by threats of serious harm and destitution to Treminio and her son and by causing her to believe that if she did not go on the trip to Jacksonville, she would be fired, blacklisted from the industry, and unemployable. *See* Am. Compl., ECF No. 14 ¶¶ 28, 30, 31, 33, 34, 35, 36, 38, 39.

These specific allegations in the Amended Complaint show that Crowley knowingly obtained and provided Plaintiff's forced labor by threats of financial, psychological, and/or reputational harm to Plaintiff and her child's welfare, that were sufficiently serious to compel a reasonable person in the same circumstances to travel to Jacksonville to avoid incurring that harm.

"[S]erious harm" means "any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious . . . to compel a reasonable person of the same background and in the same circumstances

to perform or to continue performing labor or services in order to avoid incurring that harm." 18 U.S.C. § 1589(c)(2). As a single mother threatened with destitution and reputational harm, Treminio had no opportunity to leave without consequences.

Crowley's Motion erroneously states that these types of threats do not rise to the level of "serious harm" required by the statute. Mot. p. 16. Section 1589 was "intended to address the increasingly subtle methods . . . such as where traffickers threaten harm to third persons, restrain their victims without physical violence or injury, or threaten dire consequences by means other than overt violence." *United States v. Garcia*, 02-CR-110S-01, 2003 WL 22956917, at *4 (W.D.N.Y. Dec. 2, 2003).

Using increasingly subtle methods, by threatening to fire Tremino, to harm her financially, to cause her child to go hungry, and to harm her character, reputation, and career, Crowley threatened serious harm in violation of subsection 1589(a)(2) and caused Treminio to believe that she and her child would suffer serious harm by means of a scheme or plan in violation of subsection 1589(a)(4). Courts have found that threats of being in debt and being unable to repay those debts constitutes "serious harm" sufficient to survive a motion to dismiss. *See Nunag-Tanedo v. East Baton Rouge Parish School Bd.*, 790 F. Supp. 2d 1134 (C.D. Cal. 2011); *Panwar v. Access Therapies, Inc.*, 2013 WL 5486783 (S.D. Ind. Sept. 30, 2013).

A "scheme, plan or pattern intended to cause a belief of serious harm may refer to intentionally causing the victim to believe that her family will face harms such as banishment, starvation, or bankruptcy in their home country. *Garcia*, 2003 WL 22956917, at *4. The purpose of Crowley's scheme was to make Plaintiff rely on

Crowley for her livelihood, to force her to perform the labor and service of traveling to Jacksonville to avoid banishment, starvation, and bankruptcy. The Amended Complaint contains sufficient facts to state a claim under Section 1589(a) and (b). Section 1590 employs the disjunctive "or" in delineating the ways in which a defendant can violate the statute. Therefore, if a defendant violates section 1589, it also violates section 1590 if it recruited the person to perform forced labor. Since Treminio has plausibly alleged claims for forced labor, she has also plausibly alleged a claim for trafficking related to her recruitment. *See* pp. 5-7, supra.

Moreover, Crowley "knowingly benefitted" from participation in Treminio's forced labor. The business trip was for Crowley's benefit—not Plaintiff's. Crowley benefitted financially and received tangible employment services by force. *See* Am. Compl., ECF No. 14 ¶¶ 15, 16, 38, 93.

PLAINTIFF'S CLAIMS IN COUNTS VI AND VII FOR NEGLIGENCE AND NEGLIGENT SUPERVISION/RETENTION SHOULD NOT BE DISMISSED.

As stated by this Court in *Vestey v. Publix Super Markets, Inc.*, 8:13-CV-2281-T-30TBM, 2013 WL 5929061, at *2 (M.D. Fla. Nov. 1, 2013), "a statute of limitations bar is an affirmative defense. Plaintiff is under no obligation to anticipate and negate this affirmative defense in the complaint." citing *Navarro v. Santos Furniture Custom Design, Inc.*, 372 Fed. Appx. 24, 27 (11th Cir. 2010). "A defendant's motion to dismiss, therefore, can be granted only if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove plausibly that the statute was tolled or that the defendant is equitably estopped from raising the statute of limitations

defense." *Bianco v. Warner*, No. 2:21-cv-03677-FLA (MARx), 2021 WL 4840470, at *3 (C.D. Cal. Oct. 7, 2021).

Crowley is estopped from pursuing any argument that Plaintiff's claims are untimely due to its psychological manipulation and threats against the Plaintiff for years. Crowley threatened to fire the Plaintiff and destroy her career. Meanwhile, Crowley was also intimidating and gaslighting her to prevent the filing of a claim. Despite Defendant's denial of these allegations, at the Motion to Dismiss stage, they must be taken as true, and Crowley should be estopped from asserting a statute of limitations affirmative defense. The facts alleged in the Amended Complaint plausibly state a theory for estoppel to survive the Motion to Dismiss.

Crowley's ongoing negligence occurred from approximately 2017 through 2021. "Under Florida law, the statute of limitations begins to run when the cause of action accrues." *Carnival Corp. v. Rolls-Royce PLC*, 2009 WL 3861482, at *5 (S.D. Fla. Nov. 17, 2009) (citing § 95.031, Fla. Stat.). "Under the continuing tort doctrine, the cause of action accrues when the tortious conduct ceases." *Effs v. Sony Pictures Home Entm't, Inc.*, 197 So. 3d 1243, 1244 (Fla. 3d DCA 2016). "A continuing tort is established by continual tortious acts." *Id.* at 1245.

Here, Plaintiff alleges she was a repeat victim of Crowley's continual negligence from 2017 to 2021. Such allegations are sufficient to invoke the continuing tort doctrine. *See Nat'l Sourcing, Inc. v. Bracciale*, 2018 WL 6172430, at *2 (M.D. Fla. Nov. 26, 2018) (finding allegation that a defendant's actions "continued to this day" inferred

continuous tortious conduct, thereby making it plausible for the plaintiffs to assert the continuing tort doctrine as a basis to toll the statute of limitations).

It is not apparent from the face of the Complaint that the claim is time-barred because the Court cannot determine that Plaintiff's negligence and negligent supervision/retention claims are not subject to statutory or equitable tolling. *See C.S. v. Wyndham Hotels & Resorts, Inc.*, 538 F. Supp. 3d 1284, 1304 (M.D. Fla. 2021) (denying a motion to dismiss based on the statute of limitations affirmative defense). Since it is not apparent from the face of the Complaint that the negligence claims are time-barred, dismissal based upon the statute of limitations is not appropriate. As the court stated in an order denying Marilyn Manson's motion to dismiss:

> A reasonable jury could find that the effects of Defendants' unconscionable acts, including the threat to Plaintiff's safety, family, and career, persisted years after her last contact with the Defendants. As a result of the sexual and psychological abuse, Plaintiff also suffers from complex Post-Traumatic Stress Disorder. Given her struggles, a jury could find that Plaintiff filed suit within a reasonable time after the coercive effects of Defendants' unconscionable acts ended, allowing time to start healing from the physical and emotional trauma and prepare for a civil case.

Bianco v. Warner, 2021 WL 4840470, at *7 (C.D. Cal. Oct. 7, 2021).

PLAINTIFF'S CLAIM FOR NEGLIGENCE COUNT VI IS NOT DUPLICATIVE OF PLAINTIFF'S CLAIM FOR NEGLIGENT RETENTION/ SUPERVISION COUNT VII

"Under Florida law, a claim for negligent hiring, retention, or supervision requires that an employee's wrongful conduct be committed outside the scope of employment." *Buckler v. Israel*, 680 F.App'x 831, 834 (11th Cir. 2017). Plaintiff's claim for negligent hiring, retention, training and supervision in Count VII is premised on Crowley's direct liability, as opposed to a claim under the theory of *respondeat superior*

pursuant to which Crowley's liability is derivative of the negligence of its employees acting within the scope of employment in Count VI.

Crowley has not admitted that it will be vicariously liable under the theory of *respondeat superior* for the acts of its agents or employees. Therefore, Plaintiff's claims for negligent hiring and retention are neither duplicative, nor prejudicial. Furthermore, Plaintiff has asserted a valid claim for punitive damages against Crowley, and the claim for negligent retention and supervision exposes Crowley to the possibility of additional liability in the form of punitive damages. At this stage, the Court should allow Plaintiff to pursue liability via both theories.

PLAINTIFF ADEQUATELY STATED A CLAIM FOR NEGLIGENT MISREPRESENTATION IN COUNT VIII

Plaintiff's allegations are sufficient to allow her to conduct discovery to prove the allegations. This case is similar to *Doe v. Grand Villa of New Port Richey*, 540 F.Supp. 3d 1168 (M.D. Fla. 2021) where an employee alleged she was sexually battered by her supervisor, and her employer was aware of at least one prior incident, yet allowed him to remain in a supervisory role and failed to protect that Plaintiff. *Id.* at 1170-71.

Here, as in *Doe v. Grand Villa*, Treminio's negligent misrepresentation claim should not be dismissed. *Id.* at 1174 (denying a motion to dismiss an amended complaint alleging that the employer negligently misrepresented that it "maintained a safe workplace," and the employee's specific conduct in reliance thereon (accepting and continuing employment)). As in this case, *Doe*'s allegations:

> demonstrate the falsity of the identified representation, including an allegation that there was at least one prior act of sexual misconduct by Plaintiff's

> supervisor 'which took place and was reported to Grand Villa prior to [Plaintiff's] tenure at the company'; an allegation that an effective and independent human resources department is absent from Grand Villa; and an allegation that Grand Villa has 'deficient operational practices' regarding training and supervising its personnel, including as determined by state regulators.

Id. *Compare with* Am. Compl., ECF No. 14 ¶¶ 203, 206, 207, 208, 209(a)-(f), 211, 212, 216, 217, 218, 219, 222. *See also Tannenbaum v. Jefferies, LLC*, 2019 WL 5535126, at *2 (M.D. Fla. Oct. 25, 2019) ("Discovery will likely yield the information [the defendant] contends the complaint is lacking.").

PLAINTIFF STATED A CLAIM IN COUNT IX FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1. The Amended Complaint sufficiently alleges outrageous conduct.

As Crowley asserts in its Motion, p. 29, the "touchstone" of viable claims of intentional infliction of emotional distress occurring in the workplace is that they allege circumstances of outrageousness that involve "repeated verbal abuse coupled with repeated offensive physical contact." *Johnson v. Thigpen,* 788 So. 2d 410, 412 (Fla. 1st DCA 2001). The Amended Complaint provides detailed facts chronicling years of Plaintiff's repeated verbal abuse and threats to her livelihood and her son's welfare, coupled with graphic details of repeated sexual assault—objectively offensive, if not the most offensive, physical contact. For example, "Vanessa, it's really not a big deal. You should thank Juan for noticing a woman like you. It's not like you were a virgin girl. You already have a kid, you know?" . . . comparing Plaintiff to a "used car," because she already had a child, and it wasn't as if she were a "new car." Am. Compl. ECF No. 14, ¶ 49.

For Crowley to claim that "Plaintiff makes no such allegations here," Mot. P. 29, is to ask the Court to ignore pages and pages of allegations of verbal, psychological, and sexual abuse. That would be a grave injustice. *See also Drury v. Volusia County*, No. 6:10-cv-1176, 2011 WL 1625042 (M.D. Fla. Apr. 28, 2011) (declining to dismiss an IIED claim where plaintiff alleged that the defendant "was aware of the illegal sexual abuse of [minor] [p]laintiff and, rather than reporting those crimes to the authori[ties], gave advice to [co-defendant] to assist the [d]efendants in hiding their crimes and to obstruct the on-going police investigation").

Based on the foregoing, Plaintiff has properly stated a claim of intentional infliction of emotional distress in Count IX for which relief should be granted.

PLAINTIFF HAS SUFFICIENTLY STATED A CLAIM IN COUNT X FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS.

The Amended Complaint alleges that Plaintiff suffered "physical impact" and "physical injury" from being sexually assaulted and raped by Defendant Juan Emilio Blanco, another employee of Defendant Crowley. Plaintiff is claiming emotional distress damages for the emotional distress stemming from the sexual assault and rape, as well as the aftermath of coverups, gaslighting, threats, and psychological manipulation—not merely from the sexual assault itself. *Kaufman v. Pfizer Pharm., Inc.,* 1:02-CV-22692, 2010 WL 9438673, at *8 (S.D. Fla. Nov. 23, 2010).

Plaintiff's trauma was foreseeable. Based on what Crowley actually and constructively knew about Juan Blanco, Crowley was able to reasonably foresee that its acts and omissions would have caused Plaintiff's emotional distress. Crowley

forced Plaintiff into a "zone of danger" and at risk of physical harm, causing fear when Crowley forced her to go on an international business trip with Blanco. Plaintiff's allegations satisfy the impact rule. Crowley's actions caused damages to the Plaintiff.

Following the continuing tort doctrine theory addressed in relation to Counts VI and VII, *supra*, Plaintiff can recover damages for emotional distress caused by the negligence of Crowley stemming from the physical injuries Plaintiff sustained as a result of the sexual assaults Crowley negligently allowed to occur. Therefore, Plaintiff has sufficiently stated a claim for negligent infliction of emotional distress to survive Crowley's Motion.

MOTION FOR LEAVE TO AMEND

Plaintiff set out to plead several causes in the alternative, that Crowley either actively participated in or knowingly benefitted from a venture that involved forced labor and trafficking, and Plaintiff has alleged facts to support these allegations. In an abundance of caution, should this Honorable Court grant Crowley's Motion, or any part thereof, Plaintiff respectfully requests leave to amend.

Respectfully submitted,

/s/ Adria G. Notari
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CERTIFICATE OF SERVICE

I certify that on May 4, 2022, I electronically filed the foregoing with the Clerk of 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.

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