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VIA ECF

The Honorable Paul G. Gardephe
 District Court Judge
 United States District Court
 Southern District of New York
 40 Foley Square
 New York, NY 10007

Re: *Helm v. Indyke et al.*,
 Case No. 19-cv-10476

Dear Judge Gardephe,

Pursuant to Individual Rule IV(A), Plaintiff Teresa Helm hereby responds to Defendants' request for a pre-motion conference in connection with their anticipated motion to dismiss. Dkt. 12. Plaintiff's claims are timely under New York's statutes of limitation and the doctrine of equitable estoppel, and Defendants' proposed motion "to dismiss" Plaintiff's request for punitive damages is procedurally improper. For the following reasons, the Court should deny Defendants' anticipated motion in its entirety.

I. Plaintiff's Claims Are Timely Under New York Law.

Plaintiff's claims are timely under New York's CPLR § 215(8)(a), which provides: "Whenever it is shown that a criminal action against the same defendant has been commenced with respect to the event or occurrence from which a claim governed by this section arises, *the plaintiff shall have at least one year from the termination of the criminal action . . . to commence the civil action.*" (Emphasis added). Here, Epstein's criminal action in this District terminated on August 29, 2019. Compl. ¶ 35. Because Plaintiff filed the Complaint less than three months later, the action is timely under CPLR § 215(8)(a). Defendants' arguments against CPLR § 215(8)(a)'s application to these facts are meritless.

First, Defendants' argument that CPLR § 215(8)(a) does not apply because Plaintiff was not named as a victim in Epstein's indictment is incorrect. New York courts have held that CPLR § 215(8)(a) is "plain, clear and unambiguous" that it does *not* require that the plaintiff be "the victim or the specific person upon whom the crime had been committed." *Clemens v. Nealon*, 202 A.D.2d 747, 749 (N.Y. App. Div. 1994).

Second, Defendants' narrow construction of § 215(8)(a)'s "event or occurrence" language is improper, especially in light of the breadth of Epstein's indictment. The charges were not limited to crimes committed against specific victims. For example, the overt acts alleged for the sex trafficking conspiracy charge were enticing and recruiting multiple victims, "including minor victims identified herein." Compl., Ex. A (S.D.N.Y Indictment) ¶ 22(a) (emphasis added). As another example, the Indictment's sex trafficking count charged Epstein with the sex trafficking

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of “numerous individuals . . . including but not limited to Minor Victim-1.” *Id.* ¶ 24. Nor did the Indictment describe the sex trafficking conspiracy as exclusively targeting minor victims—it explicitly acknowledged that some victims were not underage at the time of the sexual abuse. *Id.* ¶ 11 (“[Epstein] knew that many of his New York victims were underage.”). The Indictment was targeted at Epstein’s sex-trafficking scheme as a whole, and that scheme is the event or occurrence from which Plaintiff’s civil claims arose. Because Plaintiff’s claims arise out of this common scheme, they fall within CPLR § 215(8)(a).

A recent Second Circuit opinion is instructive. In *Kashef v. BNP Paribas S.A.*, the Court held that BNP Paribas’s (BNPP) guilty plea conceding “knowledge of the atrocities being committed in Sudan and of the consequences of providing Sudan access to U.S. financial markets” allowed victims who were the victims of the atrocities in Sudan to bring a civil action against BNPP pursuant to § 215(8)(a). 925 F.3d 53, 56–57, 62 (2d Cir. 2019). The “event or occurrence” in that case, like the one here, was a broad scheme spanning many years, rather than a single event (such as the rape of one victim on a specified date). The Court therefore analyzed the “event or occurrence” on a general level as “BNPP’s conspiracy with Sudan to violate U.S. sanctions” for humanitarian violations, *id.* at 62–63, and held that the victims of those humanitarian violations could bring claims subject to CPLR § 213(8)(a). Just as BNPP’s general conspiracy to violate sanctions was the relevant event or occurrence in *Kashef*, Epstein’s wide-spread sex trafficking scheme is the event or occurrence at issue in Plaintiff’s case for the purposes of applying CPLR § 215(8)(a).

The cases Defendants cite are inapposite because the criminal charges in those cases were much narrower than Epstein’s, and related to events that occurred on specified dates. *See Christodoulou v. Terdeman*, 262 A.D.2d 595, 596 (N.Y. App. Div. 1999) (prosecution commenced only in connection with events on February 26, 1993 and December 28, 1993); *Gallina v. Thatcher*, No. 2017-52980, 2018 N.Y. Misc. LEXIS 8435, at *3 (Sup. Ct. Oct. 23, 2018) (indictment “charged [the defendant] for incidents occurring on three (3) specific dates”). Epstein’s S.D.N.Y Indictment was much broader, covering sexual abuse that occurred “over the course of many years” “from *at least in or about* 2002, up to and including *at least in or about* 2005.” S.D.N.Y. Indictment ¶¶ 1–2, 8, 20, 24 (emphases added). Plaintiff’s claims are therefore timely under CPLR § 215(8)(a) because the scheme the S.D.N.Y Indictment targeted is the event or occurrence from which Plaintiff’s civil claims arise.

Finally, principles of statutory interpretation require the Court to construe CPLR § 215(8)(a) liberally. New York courts “liberally construe remedial statutes in favor of the intended beneficiaries and consider the mischief sought to be remedied and favor the construction which will suppress the evil and advance the remedy.” *Crucible Materials Corp. v. N.Y. Power Auth.*, 50 A.D.3d 1353, 1356 (N.Y. App. Div. 2008) (internal quotation marks omitted). Narrowly construing § 215(8)(a) to foreclose Plaintiff’s claims as untimely would violate that principle.

II. Plaintiff Has Sufficiently Pled Facts Supporting Equitable Estoppel and Tolling.

Even if Plaintiff’s claims were otherwise time-barred under New York’s statutes of limitation (they are not), they would still be timely under the doctrine of equitable estoppel. Defendants assert that Plaintiff “fails to meet her burden to allege extraordinary circumstances sufficient to justify tolling or equitable estoppel.” Dkt. 12 at 3. But the Complaint alleges in detail



the methods of intimidation and control that Jeffrey Epstein and his co-conspirators used to deter their victims from seeking justice. Equitable estoppel applies “where it would be unjust to allow a defendant to assert a statute of limitations defense,” *Zumpano v. Quinn*, 849 N.E.2d 926, 929 (N.Y. 2006), due to “deception, concealment, threats, or other misconduct,” *Zoe G. v. Frederick F.G.*, 208 A.D.2d 675, 675 (N.Y. App. Div. 1994). The Complaint alleges that Epstein and his co-conspirators manipulated their victims using “financial power, promises, and threats to ensure that the victim returned as directed and remained compliant with their demands;” made clear to Plaintiff “that he was incredibly wealthy, powerful, and regularly in contact with world leaders;” and attempted to contact Plaintiff after her sexual assault. Compl. ¶¶ 26, 52, 53. The allegations concerning Epstein’s purposeful silencing of his victims (and Plaintiff specifically) easily provide the requisite “extraordinary circumstances” for equitable tolling.

Because equitable estoppel and equitable tolling are fact-specific doctrines, Defendants’ attempt to resolve the issue at motion to dismiss is inappropriate, and any motion challenging whether or not those doctrines apply should be reserved until after the parties have conducted discovery. *See, e.g., Carelock v. United States*, 2015 WL 5000816, at *8 (S.D.N.Y. Aug. 20, 2015).

III. The Court Should Address Punitive Damages After Discovery

Federal Rule 12(b)(6) allows a defendant to file a motion to dismiss for “failure to state a claim upon which relief can be granted.” Defendants’ request for the Court to dismiss Plaintiff’s claim for punitive damages does not relate to either of Plaintiff’s claims (battery and intentional infliction of emotion distress) and does not relate to the sufficiency of the allegations in the Complaint. The issue of what type of damages to which Plaintiff is entitled should therefore be dealt with at a later stage of this litigation. *See, e.g., Okyere v. Palisades Collection, LLC*, 961 F. Supp. 2d 522, 536 (S.D.N.Y. 2013) (denying “motion to ‘dismiss’ plaintiff’s request for punitive damages as procedurally premature”).

Respectfully submitted,

/s/ Joshua I. Schiller

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cc: Counsel of Record (via ECF)