

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

JASON BOYCE,

Plaintiffs,

-against-

BRUCE WEBER; JASON KANNER; SOUL
ARTIST MANAGEMENT; LITTLE BEAR
INC,

Defendants.

Index No.: 160630/2017

**PLAINTIFF’S MEMORANDUM OF
LAW IN SUPPORT OF PLAINTIFF’S
MOTION FOR LEAVE TO AMEND THE
COMPLAINT**

[Oral Argument Requested]

PRELIMINARY STATEMENT

Pursuant to section 3025(b) of the New York Civil Practice Law and Rules (“CPLR”), Plaintiff Jason Boyce respectfully submits this Motion for Leave to File an Amended Complaint.

PROCEDURAL HISTORY

On December 1, 2017, Plaintiff Jason Boyce (“Boyce”) filed the above-entitled action against Defendants Bruce Weber (Weber), Jason Kanner, Soul Artist Management, and Little Bear, Inc. (collectively, “Defendants”). Defendants Weber and Little Bear, Inc. filed their answer on December 21, 2017. Defendants Jason Kanner and Soul Artist Management filed their answer on May 8, 2018. Boyce filed a Request for Judicial Intervention (“RJI”) on July 11, 2018. A preliminary conference was scheduled for November 14, 2018.

On August 14, 2018, intervening case law arose out of the District Court for the Southern District of New York which directly relates to the “casting couch” practices at the core of Boyce’s claims. In *Noble v. Weinstein*, Case No. 17 Civ. 9260, 2018 WL 3863452 (S.D.N.Y.

August 14, 2018), the District Court entered an order denying a producer's motion to dismiss federal sex trafficking claims brought against him by an aspiring actress.

On or around September 5, 2018, through counsel, Boyce advised Weber that he would be raising an additional claim against Weber, violation of 18 U.S.C. section 1591, the Trafficking Victims Protection Act. The parties agreed to participate in confidential mediation, scheduled for November 19, 2018. On November 7, 2018, the parties sought leave from the Court to adjourn the RJI in order to preserve judicial resources, given the parties' attempt to resolve the dispute without court intervention. On November 9, 2018, the Court ordered that the preliminary conference be adjourned to February 20, 2018.

On November 12, 2018, Defendants Weber and Little Bear, Inc. unilaterally canceled the mediation. Boyce requested an advanced preliminary conference on November 21, 2018, and now files the instant motion for leave to amend the complaint. The Proposed Amended Complaint does not offer substantially new material facts, but rather seeks add a new theory of liability against one Weber based on the intervening case law.

ARGUMENT

I. A Party's Request for Leave to File an Amended Complaint Shall Be Freely Given

A party may amend his pleading at any time by leave of court, which "shall be freely given..." CPLR 3025(b). In the absence of prejudice or surprise resulting from a delay in seeking leave to amend, the court should grant leave to a party seeking to amend his pleadings unless the proposed amendment is "palpably insufficient or patently devoid of merit." *See MBIA Insurance Corporation v. Greystone & Co., Inc.*, 74 A.D.3d 499 (2010).

///

///

A. There Is No Long Delay in Plaintiff's Request and Therefore No Resulting Prejudice or Surprise to Defendants

“[L]eave to amend a complaint to add an additional theory of liability is generally granted when the defendants were placed on notice of such theory by the allegations in the initial complaint...” *Jacobson v. McNeil Consumer & Specialty Pharms.*, 68 A.D.3d 652, 653 (2009). Here, the purpose of Boyce’s request to amend is to add a new theory of liability supported by intervening case law, based substantially on the same facts. *See id.* at 654 (leave to amend complaint to add claim granted where the new claim is premised on the same set of facts as the initial complaint). Therefore, there is no surprise or undue prejudice resulting to Defendants.

Moreover, there has been no long delay. The District Court’s order was issued on August 14, 2018, and brought to the attention of defense counsel less than one month later, eliminating any potential for surprise. There is no prejudice where the trial date has not been set and the parties have not yet conducted party depositions, which were postponed pending the mediation, or completed discovery. *See Jacobson*, 68 A.D.3d at 654; *Suarez v. City of New York*, 169 A.D.2d 540 (1991) (even a ten-year delay in seeking an amendment is not a per se bar to the granting of such relief, where the opposing party cannot show prejudice resulting from the delay); *compare Cseh v. New York City Transit Authority*, 240 A.D.2d 270 (1997) (the defendants’ proposed amendment adding a statute of limitations defense to their answer improper after ten-year delay where the parties conducted extensive discovery related to the claim proposed to be dismissed and a statement of trial readiness was filed).

Moreover, any prejudice – of which there is none – would be the result of Weber’s own making. Boyce could have filed his motion for leave to amend the complaint months ago, had

Weber and Little Bear, Inc. not misled the parties and this Court into believing that court intervention should be delayed pending good-faith settlement negotiations.

B. The Proposed Amendment, Based on Intervening Case Law Addressing “Casting Couch” Practices, Is Meritorious

A private right of action is available for sex trafficking violations of 18 U.S.C. section 1591. 18 U.S.C. § 1595. To state a claim under section 1591, a plaintiff must show that the defendant “knowingly and in interstate or foreign commerce: (1) recruited, enticed, harbored, transported, provided, obtained, or maintained by any means a person; (2) knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud...or any combination of such means will be used; (3) to cause the person to engage in a commercial sex act.” *Noble*, 2018 WL 3863452, at *5 (internal quotations omitted). The defendant in *Noble* argued that applying a sex-trafficking claim to casting-couch practices would “unfairly expand the federal sex trafficking statute to all sexual activity occurring between adults in which one party holds a superior position of power and influence.” *Id.* The District Court disagreed, noting that “[w]hile the instant case is not an archetypal sex trafficking action, the allegations plausibly establish” a violation of section 1591. *Id.*

In *Noble*, the plaintiff alleged that Harvey Weinstein, an influential film producer, invited her to his hotel room by promising a one-on-one meeting, as well as the prospect of a film role and modeling meeting. *Id.* at *2-3. The plaintiff alleged that in the hotel room, Weinstein groped her and masturbated in front of her. *Id.* at *3. The District Court found that the plaintiff, an aspiring actress, properly alleged that the defendant had “enticed” and “recruited” her via his (empty) promises, which were “more than enough to arouse ‘hope and desire’” in the aspiring actress. *Id.* at *7 (quoting Merriam-Webster Online Dictionary).

The District Court noted that section 1591 “requires Plaintiff to plausibly allege knowledge, or a *modus operandi*, associated with above-described ‘enticement,’ that Defendant enticed Plaintiff will knowledge that means of force or fraud would be used to cause a commercial sex act to take place.” *Id.* at *8. The District Court found that the plaintiff had plausibly alleged that Weinstein knew, “from the start of their professional relationship,” that he would use fraudulent means to entice her to engage in a sex act, by promising a film role and assuring her during the act that “everything will be taken care of for you if you relax.” *Id.* That Weinstein’s promises, “all professional in nature, became more frequent and elaborate once he and Noble were alone in the hotel room,” coupled with the fact that he never performed on the promises, plausibly evidence “conscious behavior and fraudulent intent.” *Id.* The plaintiff also alleged that Weinstein engaged in force.

The District Court found that even if Weinstein’s promises of professional advantage were “indefinite and vague,” his statements to the plaintiff *caused* her to go to his hotel room, and to “partially comply” in the performance of a sex act. *Id.* at *9. Therefore, his fraudulent promises caused the sex act to take place. *Id.* Notably, the sex act is “commercial” where on account of it, “anything of value is given to or received by any person.” *Id.* at *10 (quoting 18 U.S.C. § 1591(e)(3)). The District Court held that the meeting with Weinstein carried value “in and of itself.” *Id.* at 11. Moreover, the plaintiff’s “reasonable expectation” that she would receive things of value in the future – including the prospect of a film role, a meeting, and a continued professional relationship with the Weinstein Company – were sufficient to satisfy the commercial aspect. *Id.*

Here, similarly, Weber enticed Boyce to his studio with the promise of a photoshoot. (Proposed Amended Compl. ¶ 24.) The opportunity for a photoshoot with Weber, who is

famous for jumpstarting careers of male models and casting his own models in campaigns, was sufficient to entice Boyce to his studio. (*Id.* at ¶¶ 21, 23, 25.) Boyce alleges that at the photoshoot, Weber immediately got him alone and put him through a series of unconventional practices, including asking him to take off his pants and underwear without notice, and kissing him on the mouth with Boyce’s consent. (*Id.* at ¶¶ 27-28, 37, 47.) Weber continually enticed Boyce to “relax,” telling him that he was still “so tense.” (*Id.* at ¶ 39.) Boyce alleges that Weber put his hand on Boyce’s hand without permission, pulled Boyce’s hand down to Boyce’s genitals, “grabbed” Boyce’s arm, and moved it back and forth “so that Boyce was forced to rub his own genitals.” (*Id.* at ¶¶ 43-44.) Weber then put his fingers in Boyce’s mouth, and told him “if you just had confidence, you’d go really far How far do you want to make it? How ambitious are you?” (*Id.* at ¶ 45.)

Weber’s forceful actions support Boyce’s claim that Weber used force to cause him to engage in a commercial sex act. That Weber’s promises of professional success – making reference to Boyce’s going “really far” and “making it” – increased as he groped Boyce and stuck his fingers in Boyce’s mouth evidence Weber’s “conscious behavior and fraudulent intent.” The fact that Weber never followed up with Boyce except to FaceTime privately, and that he did not even show up to Boyce’s subsequent casting call, also evidence his intent to defraud Boyce, in addition to engage in the use of force. (*Id.* at ¶¶ 50, 52, 55.)

Weber enticed Boyce to engage in a “commercial sex act,” because something “of value [was] given to or received by any person.” 18 U.S.C. § 1591(e)(3). The initial meeting and subsequent photoshoot with the legendary Bruce Weber carried value “in and of itself.” Moreover, Boyce’s “reasonable expectation” that he would “go far” if he allowed Weber to grope him is sufficient to satisfy the commercial aspect. The blame is not on the aspiring model

for submitting to Weber's assault, but rather on Weber for using a model's aspirations to assault him. Like others before him, Weber has displayed a *modus operandi* of casting-couch practices, which the District Court in *Noble* held constitutes a viable claim of sex trafficking pursuant to section 1591. *Noble*, 2018 WL 3863452, at *11 n.8 ("The concept of the 'casting couch,' in which aspiring actors and actresses are promised valuable professional opportunities in exchange for sexual favors, has been in the American lexicon for nearly a century").

ATTACHED PROPOSED AMENDED COMPLAINT

As required, Boyce is attaching a copy of the Proposed Amended Complaint (attached hereto as Exhibit 1). The new claim and prayer for relief, as against Defendant Weber only, is redlined for clarity.

MEET AND CONFER

Through counsel, Boyce met and conferred with counsel for Defendants regarding this motion. Defendants did not provide consent to the amendment.

CONCLUSION

Plaintiff respectfully requests that the Court grant him leave to amend his complaint to add an additional theory of liability.

Dated: New York, New York
December 21, 2018

THE BLOOM FIRM

By: /s/ Arick Fudali
Lisa Bloom
Arick Fudali
Anna Levine-Gronningsater
Sarah Bloom
85 Delancey Street, #20
New York, New York 10002
(818) 884-8079
arick@thebloomfirm.com
Attorneys for Jason Boyce