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 **REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT**

Pursuant to section 3025(b) and 2214(b) of the New York Civil Practice Law and Rules ("CPLR"), Plaintiff Jason Boyce respectfully submits this reply brief in further support of his Motion for Leave to File an Amended Complaint.

INTRODUCTION

Defendant's Opposition lacks any compelling argument to deny Plaintiff's Motion for Leave to Amend the Complaint. Instead, Defendant argues, without merit; (1) that somehow a discovery dispute is grounds for denying Plaintiff's Motion; (2) that somehow Plaintiff's claim is without merit, despite the fact that the allegations directly mirror those in *Noble v. Weinstein*, 335 F.Supp.3d 504 (2018); (3) that somehow Defendant is prejudiced, despite the fact that the proposed Amended Complaint does not contain any new facts; and (4) that somehow nude photographs of the Plaintiff sent by Plaintiff's agents to Weber are evidence that Weber did not entice Plaintiff into a manipulative sexual relationship where forced and fraudulent sex acts were exchanged for promises of commercial gain.

None of the above arguments have any semblance of merit, and it is apparent that Defendant only included those photographs as a means of trying to embarrass and shame the Plaintiff.

Distracted by his collection of exploitative penis pictures, accumulated through years of manipulating aspiring models into objects of sexual gratification, Weber fails to show why Plaintiff's Motion should not be granted. He concedes that he has not been prejudiced by the addition of new facts, but rather seeks to argue the merits of the amendment. However, his admission to the Court that agents knew to send him penis pictures in order to secure work for models establishes that he engaged in casting-couch practices as prohibited by the sex trafficking statute.

Plaintiff hereby submits this reply to renew his request to the Court to allow him to amend the complaint.

ARGUMENT

A. Unclean Hands: Weber's Principal Argument Is that Plaintiff Has Not Complied with Discovery, Yet his Opposition Brief Included Responsive Documents Never Produced to Plaintiff

Weber argues that Plaintiff's motion for leave to amend should be denied because Plaintiff has not responded to discovery requests. Weber's argument is without citation to any legal authority with regard to the standard for leave to amend pleadings. As a factual matter, it is also based on galling misrepresentations to the Court, as well as hypocrisy of the highest degree.

Weber repeatedly claims that Plaintiff has not provided discovery responses since the parties' meet and confer correspondence on June 1, 2018. (Defs.' Opposition Brief in response to Mot. for Leave to Amend, 5-6.) However, Plaintiff provided over 2000 pages of documents on

June 8, 2018 and July 9, 2018. Weber even introduced some of these documents at depositions later in July of 2018.

Moreover, Weber attached numerous documents to his Opposition Brief which were requested by Plaintiff in discovery and withheld without notice or cause. Only *after* filing his Opposition Brief did Weber produce the documents to Plaintiff, claiming that they had been "inadvertently withheld." (Exhibit A.) Nevertheless, Defendant fails to cite any authority to support his argument that a discovery dispute is grounds to deny a motion for leave. The reason for this, of course, is that a discovery dispute is *not* grounds for denying a motion for leave.

B. Plaintiff's Proposed Amendment Is Meritorious, as Weber's Casting Couch Practices Mirror Weinstein's

Defendant spends a great deal of his Opposition Brief arguing that the instant allegations do not fall under the basic, mostly widely understood scenario envisioned by the sex trafficking statute. Plaintiff, however, never contended that it does. Instead, like the *Noble* case, the instant allegations admittedly do not fall within the "archetypal sex trafficking action." In *Noble*, which is far and away the most relevant, on point, and precedential case, the Court went out of its way to note that such allegations do not need to fall within the "archetypal" fact pattern to be a violation of §1591:

> Plaintiff's Amended Complaint adequately states a claim under Section 1591 against Harvey Weinstein. While the instant case is not an archetypal sex trafficking action, the allegations plausibly establish that Harvey's 2014 conduct in Cannes, France violated Section 1591.

Noble, 335 F.Supp.3d at 515. The allegations of what took place in France in *Noble,* directly mirror the allegations of what took place during the meeting between Plaintiff and Weber. Both here and in *Noble,* the plaintiffs allege that a powerful industry insider invited them to meetings,

which the plaintiffs attended for the purpose of achieving work and success in their respective industries. *Id*. Both plaintiffs allege that both defendants, Weinstein and Weber, "from the start of their professional relationship," knew that they would promise the plaintiffs professional success in exchange for letting them engage in sex acts. *Id.* at 518. (Weinstein: "everything will be taken care of for you if you relax"; Weber: "how far do you want to make it? How ambitious are you?") *Id.* at 512. Both plaintiffs allege that both defendants, Weinstein and Weber, arranged for the meetings to be one-on-one, and that the defendants then forcefully and/or fraudulently engaged in sexual touching. *Id.* at 512, 518.

A sex act is "commercial" where on account of it, "anything of value is given to or received by any person." *Id.* at 514, 521 (quoting 18 U.S.C. § 1591(e)(3)). A meeting with Weber, just like a meeting with Weinstein, at the time carried value "in and of itself." *Id.* at 521. Moreover, a person's "reasonable expectation" that he or she would have a continued professional relationship with the Weinstein (film) or Weber (modeling), as well as the mere prospect of a gig, are sufficient to satisfy the commercial aspect. *Id.*

At its core, *Noble* affirms that casting couch practices constitute sex trafficking under the federal statute. *See id.* at 521 n.8 *(*discussing the application of casting couch practices to the sex trafficking statute). Weber, whose "breathing exercises" are now synonymous with his infamous assaultive conduct, is the quintessential casting couch predator.

C. There Is no Prejudice to Weber Because There Is No Surprise of New Facts

Weber concedes that he has not been surprised by any additional facts in Plaintiff's proposed amended complaint. (Defs.' Opposition Brief in response to Mot. for Leave to Amend, 9.) His argument that he would nonetheless be prejudiced by the amendment is confounding; he cites to *Dawley v. McCumber*, 45 A.D.3d 1399 (2007) for the proposition that a motion to amend

should be denied "where the facts giving rise to the new portions of the amended pleading 'were or should have been known to' the movant when he served his initial pleading." However, in *Dawley*, the movant *introduced new facts*, unlike here. *Id.* at 1399. Moreover, the court in *Dawley* expressly found that the nonmoving party would be prejudiced by a new set of facts because the movant was suffering from dementia and therefore could not be deposed on the new set of facts (and had previously refused to be deposed). *Id.* Here, Plaintiff is not suffering from dementia and can be deposed. Moreover, Plaintiff has not refused to be deposed – indeed, the parties had scheduled his deposition, as well as Weber's, and postponed them for a mediation that Weber then unilaterally canceled.

Weber's reliance on *Dawley* is confounding. The facts are beyond distinguishable; they are inapposite. Weber's concession that he is not surprised by any new facts should persuade the Court to grant Plaintiff's motion for leave to amend, as Weber was admittedly "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).

D. Weber's Collection of Photographs of Boyce Are Evidence that the Sex Trafficking Claims Are Meritorious and that Weber Lacks Any Defense

Plaintiff finds it rather peculiar that Defendant would include the grossly inappropriate photographs of Plaintiff posing in the nude as attachments to the Opposition Brief. First, those photographs were not sent by Plaintiff to Weber, but instead were sent by Plaintiff's agents to Weber, in an attempt to convince Weber to meet Plaintiff. Second, in the event those photographs were attached as a means of demonstrating a consensual relationship between Plaintiff and Defendant, it is misguided because consent is not a defense to the sex trafficking statute.

In order to convince Weber to consider meeting Boyce, two different agents sent Weber photographs of Boyce in the nude, penis prominently featured. As evidenced by the screenshots (inappropriately) filed by Defendant as an attachment to his Opposition Brief, Weber did not protest receiving these photographs, admonish the senders, or even seem surprised to receive them. These photographs, which Boyce did not know had been sent to Weber, are evidence of Weber's predatory desires, and an intent to engage in casting-couch sex acts with Boyce upon meeting him. Notably, the only photographs that *Boyce* actually sent to Weber directly were *not* nudes. Further, none of the photographs used in Weber's famous campaigns for Abercrombie & Fitch, Ralph Lauren, or *Vogue* feature any penises. One wonders then why multiple agents thought it a good idea to send Weber pictures that prominently included Plaintiff's penis, which Weber did not protest.

Additionally, even if in an alternate reality, where these photos were evidence of Plaintiff's consent, consent is not a defense under the sex trafficking statute. In fact, the Court in *Noble* explicitly rejected Defendant's argument regarding consent, stating:

> Harvey Weinstein cautions the Court against application of Section 1591 to conduct involving "consensual sexual activity," and other ordinary sexual encounters. He poses to the Court a hypothetical: "Query whether an individual who treats a person to a free dinner and a movie, promises future outings and/or gifts, and then attempts and/or engages in what he or she construes as consensual sexual activity, could be prosecuted under Section 1591 as a 'sex trafficker.'" Notably absent from this hypothetical are the necessary elements of force, fraud, and commerce, all of which have been established here.

Noble, 335 F.Supp.3d at 523. In the instant matter, Plaintiff's allegations satisfy the necessary elements of "force, fraud, and commerce" (*see* Amended Complaint paragraphs 117-135) and Defendant does not contend otherwise. Therefore, the photographs do nothing to undermine the merit of Plaintiff's claims, and actually strengthen the allegation that Weber is a sexual predator

who used his power to entice and then fraudulently force sex acts on models. Assuming Defendant understands the nature of the sex trafficking claim, one can only fathom that the reason those pictures were included in his Opposition Brief was a blatant attempt to embarrass Plaintiff. It is Weber who should be embarrassed.

CONCLUSION

Plaintiff respectfully requests that the Court grant him leave to amend his complaint to add an additional theory of liability, as this Court, is of course, given wide discretion to do.

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