IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DOE I, *et al.*, *Plaintiffs*, v. APPLE INC., *et al.*, *Defendants*.	Civil Action No. 19-3737 (CJN)

REPLY MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANTS' JOINT MOTION TO DISMISS

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INTRODUCTION

The injuries alleged in the complaint are serious, and Defendants strongly condemn the abhorrent labor conditions it describes. Defendants have enacted leading programs aimed at addressing human rights issues in the global supply chain, reflecting their firm commitment to driving strict standards across their various industries. But Plaintiffs' injuries cannot be addressed by this litigation, which stretches the Trafficking Victims Protection Reauthorization Act ("TVPRA") beyond its plain text and further than any court has allowed. If Plaintiffs' allegations were sufficient, it would invite liability for every company that or individual who purchases products containing raw material alleged to be sourced from a nation where harsh economic conditions have been reported. This is not the law.

In their Opposition ("Opp."), Plaintiffs allege that Defendants participate in a "cobalt supply chain venture" with every entity responsible for mining, transporting, refining, processing, and distributing cobalt from the Democratic Republic of Congo ("DRC"). Yet Plaintiffs never explain how Defendants supposedly worked with this vast web of actors as part of a worldwide venture to perpetuate labor conditions in the DRC. Nor could they, given the numerous independent actors between Defendants and the alleged wrongdoers who interacted with Plaintiffs. Instead, Plaintiffs' theory is centered on Defendants' alleged receipt of some amorphous "financial benefit accrued from business relationships" with entities that are, themselves, several steps removed. Opp. 12.

Article III does not allow such attenuated claims. Plaintiffs do not allege that any of the Defendants had any direct role in the injuries they suffered, and they acknowledge that "[a]ny claims made of a traceable cobalt supply chain from the DRC . . . are preposterous." First Amended Complaint ("FAC") ¶¶ 101, 103. A federal court cannot hear Plaintiffs' claims when

there is no traceable connection between Plaintiffs' injuries and any conduct by Defendants. Nor can it require Defendants to change the practices of third-party wrongdoers responsible for working conditions in the DRC.

Nothing in the TVPRA supports such an expansive theory, either. The TVPRA limits liability to cases in which the defendants (1) "knowingly benefit[ted]" (2) "from participation in a venture" (3) that violated the statute's prohibitions on "forced labor" or "trafficking," and (4) "knew or should have known" that the "venture" committed such a violation. 18 U.S.C. §§ 1589(b), 1590, 1595(a). Satisfying these statutory elements requires a *direct connection* between the defendant and the alleged wrongdoing. Allegations that the defendant and the wrongdoing are connected through numerous intermediate steps in a loosely-defined supply chain will not suffice. Without a direct connection, the complaint cannot adequately state that Defendants "participat[ed] in a venture" with the alleged wrongdoers, or that they "knew or should have known" about the particular wrongdoing. Nor does the complaint plausibly allege that (i) the Plaintiffs' labor was obtained "by means of" the actions of any entity in this alleged venture—let alone Defendants, or (ii) Defendants' alleged participation in that "venture" benefited them, as Defendants are not alleged to have received a unique benefit over every other company that purchases DRC cobalt or products containing it. Plaintiffs' common law claims fail for similar reasons: there is no alleged connection between Plaintiffs or the individuals who harmed them, and Defendants.

To be clear, Defendants strongly condemn the use of forced, coerced, and child labor, and have developed policies that reflect their deep commitment to responsible sourcing of minerals. The complaint does not, however, establish Article III standing or satisfy the requirements of the

TVPRA. Because no amendment of the complaint can cure those defects, the complaint should be dismissed with prejudice.

ARGUMENT

I. Plaintiffs Lack Article III Standing

Article III standing " 'is an essential and unchanging' predicate to any exercise" of a federal court's jurisdiction. *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 663 (D.C. Cir. 1996) (en banc) (internal quotation marks omitted). As the parties invoking the federal court's jurisdiction, Plaintiffs "must clearly . . . allege facts demonstrating" their standing. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (internal quotation marks omitted). The Opposition confirms that Plaintiffs have not.

A. Plaintiffs' injuries are not fairly traceable to Defendants

To meet the "irreducible constitutional minimum of standing," Plaintiffs' alleged "injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.' " *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (alterations in original and internal quotation marks omitted). Although in some circumstances Article III standing can be established where the alleged harm is caused by a third party (Opp. 43), it is "substantially more difficult" in such third-party cases "to meet the minimum requirement of [Article] III," *Warth v. Seldin*, 422 U.S. 490, 505 (1975). As Defendants explained in their Motion (at 9-10), Plaintiffs cannot meet that standard because their alleged injuries were at the hands of independent parties at mining sites in the DRC that have no connection to Defendants.

Plaintiffs' sole response is that "Defendants are in a 'venture' with . . . mining companies, a venture that is jointly responsible for the injuries suffered by Plaintiffs." Opp. 42. But Plaintiffs do not cite a single case holding that a plaintiff can meet Article III's traceability requirement

merely by alleging the existence of a "venture" under the TVPRA. Nor could they, as seeking to satisfy statutory elements "will not suffice to substitute for Article III standing." *Fox v. McCormick*, 20 F. Supp. 3d 133, 143 (D.D.C. 2013) (internal quotation marks omitted).

Plaintiffs' argument is also premised on the assertion that there is a worldwide "cobalt supply chain venture" that caused their injuries. *See, e.g.*, Opp. 42-43. But there are no well-pled facts supporting Plaintiffs' theory that every actor in the vaguely defined global supply chain worked together to perpetuate labor conditions in the DRC that caused Plaintiffs' injuries. *Compare id., with infra* pp. 11-13. At most, the complaint indicates that there are myriad discrete commercial arrangements among different actors to mine, refine, distribute, and purchase cobalt. There is no connection alleged between each Defendant's particular commercial arrangements and Plaintiffs' alleged injuries. Thus, Plaintiffs' "protracted chain of causation fails both because of the uncertainty of several individual links and because of the number of speculative links that must hold for the chain to connect the challenged act[ ] to the asserted particularized injury." *Fla. Audubon Soc'y*, 94 F.3d at 670.

Plaintiffs cannot overcome their lack of Article III standing by asserting that the cobalt they mined may have eventually made its way into Defendants' products. Opp. 1. Plaintiffs must present "substantial evidence of a causal relationship between [Defendants' conduct] and the third-party conduct, leaving little doubt as to causation." *Arpaio v. Obama*, 797 F.3d 11, 20 (D.C. Cir. 2015) (internal quotation marks omitted). But the complaint alleges that "[c]obalt from numerous . . . sources is inevitably mixed at various stages in the supply chain," making a "traceable cobalt supply chain" impossible. FAC ¶¶ 101, 103. Plaintiffs' failure to establish traceability mandates dismissal under Article III. *See Kalugin v. Lew*, No. 12-1792 (BAH), 2013 WL 12084544, at *5 (D.D.C. July 16, 2013) (no standing where complaint did not allege facts showing that defendants,

as opposed to a different parties, "actually originated any of the[ ] mortgages" that caused plaintiffs' injuries).

None of the cases Plaintiffs cite holds that purchasing a product at the end of an attenuated, vaguely and variably defined, multi-tiered global supply chain is sufficient to satisfy Article III's traceability requirement. The four cases they cite all involved TVPRA claims against hotel chains for alleged sex trafficking (Opp. 43), where there was a direct connection between the defendant and the third-party wrongdoer. In all of the cases where plaintiffs were allowed to proceed, the plaintiffs alleged they suffered their injuries on the defendant's property and interacted directly with the defendant's employees or agents. In *B.M. v. Wyndham Hotels & Resorts, Inc.*, by contrast, the court dismissed claims that two hotel franchisors were directly liable under the TVPRA because the plaintiff "fail[ed] to connect the dots" between the franchisor defendants and her allegations of sex trafficking *at the individual hotels*—a flaw that would also indicate a lack of Article III standing. No. 20-cv-00656-BLF, 2020 WL 4368214, at *5 (N.D. Cal. July 30, 2020).

The Alien Tort Statute cases Plaintiffs cite (Opp. 43) are inapposite for the same reason: they involve allegations of direct contact between the defendants' employees and the alleged wrongdoers. For example, in *Baloco ex rel. Tapia v. Drummond Co.*, the plaintiffs alleged that the defendants themselves hired paramilitaries to assassinate plaintiffs' family members. 640 F.3d 1338, 1341 (11th Cir. 2011). And in *Doe v. Nestlé S.A.*, the Ninth Circuit found that the plaintiffs alleged facts to support standing against a defendant that was allegedly "involve[d] in farms that rely on child slavery," including by providing tools and equipment and sending its employees to "regularly inspect operations" at the farms "and report back." 929 F.3d 623, 641-42 (9th Cir. 2019), *cert. granted sub nom Nestlé USA, Inc. v. Doe I*, No. 19-416, 2020 WL 3578678 (U.S. July 2, 2020), *and Cargill, Inc. v. Doe I*, No. 19-453, 2020 WL 3578679 (U.S. July 2, 2020). Those

allegations stand in stark contrast to the facts alleged here, where there are at least four independent actors standing between Plaintiffs' alleged injuries and Defendants' alleged conduct. Mot. 9-10.

B. Plaintiffs lack standing to seek injunctive relief

Plaintiffs' Opposition also confirms that they lack standing to seek injunctive relief. Plaintiffs argue that they are not seeking to enjoin Defendants from purchasing DRC cobalt, but rather "to require Defendants to stop the cobalt venture from using forced child labor." Opp. 44. In other words, they seek an injunction requiring Defendants to stop third parties—who are at best multiple levels removed from Defendants—from engaging in wrongful conduct. But there is no Article III standing where "the plaintiff seeks to change the defendant's behavior *only as a means* to alter the conduct of a third party, not before the court, who is the direct source of the plaintiff's injury." *Fulani v. Brady*, 935 F.2d 1324, 1330 (D.C. Cir. 1991) (internal quotation marks omitted).

Plaintiffs cannot even establish that such an injunction would redress their alleged harms. Citing a news article, Plaintiffs assert that an injunction could be effective because, after this suit was filed, Huayou announced that it would not source cobalt from artisanal mines and Defendants caused Huayou and Glencore to join the "Fair Cobalt Alliance." Opp. 3-4, 44 & n.30. That article does not appear in the amended complaint and therefore should not be considered. *See Bender v. Jordan*, 612 F. Supp. 2d 62, 66 (D.D.C. 2009) ("Plaintiffs cannot enlarge the allegations of their Complaint by arguments made in an opposition to a motion to dismiss."). Regardless, contrary to the assertion in Plaintiffs' brief, the article does not say that Defendants caused Huayou and Glencore to join the Fair Cobalt Alliance, let alone establish that they have control over Huayou and Glencore's cobalt sourcing. Accordingly, the injunctive relief Plaintiffs seek would not redress their injuries because eliminating problematic labor practices from DRC cobalt mines depends on altering the conduct of "independent actors not before the courts." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989).

II. The Complaint Fails To State A TVPRA Claim

Plaintiffs' Opposition confirms that their TVPRA claims are centered on Defendants' purchases of cobalt or cobalt-containing products at the end of a complex supply chain. Opp. 1, 14. They contend that purchases of "battery materials" that contain cobalt (FAC ¶ 73) can satisfy the elements of the TVPRA because Congress intended the statute to have a "broad scope," Opp. 1-2. Plaintiffs' claim is contrary to the plain text of the TVPRA and the weight of authority interpreting it.

A. Plaintiffs have not alleged that Defendants "participated in a venture" within the meaning of the TVPRA

Although Plaintiffs deny that they seek to hold Defendants liable merely for purchasing cobalt or cobalt-containing items from a supply chain (*see, e.g.*, Opp. 1), that is exactly the legal rule they propose. They argue that the TVPRA imposes liability for any "financial benefit" from "business relationships" if the beneficiary has knowledge of forced labor—a formulation that does not account for the Section 1595(a)'s "participation in a venture" requirement. Opp. 12; *see also id.* at 3, 11; FAC ¶¶ 99-100. "Participation in a venture" requires a direct factual link between the defendant and the alleged wrongful activities involving the plaintiff—a link that is lacking here.[1] Even a direct transactional business relationship with an entity that commits wrongdoing is

[1] Although Plaintiffs object to dictionary definitions of "participation" and "venture," they offer no alternative definition of the terms. They point only to the "venture" definition from the TVPRA's criminal liability section (Opp. 10-11), but then retreat from that same section's definition of "participation in a venture"—"knowingly assisting, supporting, or facilitating a violation," 18 U.S.C. § 1591(e)(4)—in arguing that "participation in a venture does not require actual participation in the wrongful act." Opp. 9, 14-15. This leaves them without any definition for the term "participation" at all, and their approach would render the term superfluous. *See Agnew v. Gov't of the Dist. of Columbia*, 920 F.3d 49, 57 (D.C. Cir. 2019) (statute should be interpreted to avoid surplusage).

insufficient—much less one where the alleged wrongdoing is committed by entities multiple levels upstream.

Plaintiffs have not adequately alleged "participation in a venture." As Defendants showed in their opening brief, multiple courts have held that "participation in a venture" requires that the defendant itself have participated in the alleged wrongdoing that injured the plaintiff. *See* Mot. 19-20 (collecting cases). Plaintiffs have not even attempted to allege such involvement.

Instead, Plaintiffs point to cases interpreting Section 1595(a) as requiring a "tacit agreement" between the defendant and the wrongdoer to engage in the wrongdoing. *See* Opp. 11, 15. But Plaintiffs' claims fail under these cases as well, because Plaintiffs do not allege any such "tacit agreement" between Defendants and any entity that injured them. Plaintiffs' conclusory allegations that Defendants had a "tacit agreement" with Glencore and Huayou that "they would turn a blind eye to continue with and protect the venture," *id.* at 14, are insufficient because they do not involve any allegation of an arrangement or involvement with the *actual alleged wrongdoers*. In all of the cases in which a court found a "tacit agreement" sufficient, the agreement involved the defendant providing direct assistance to the wrongdoers themselves. For example, in *Jean-Charles v. Perlitz* (cited in Opp. 15), the plaintiffs alleged the defendants worked directly with the wrongdoer, provided the means for his wrongdoing, and then actively concealed it. 937 F. Supp. 2d 276, 288 (D. Conn. 2013). Here, the complaint does not allege that Defendants provided anything at all to the labor brokers, mine operators, Presidential guards, or sponsors who engaged in the alleged wrongdoing.

Plaintiffs respond by asserting that Defendants "invent a nonexistent complexity" because Defendants purchased cobalt from Glencore or Huayou, and all of the Plaintiffs were harmed "at mines owned or operated by these mining companies." Opp. 13. But Plaintiffs fail to cite a single

paragraph of the complaint to support that assertion, and for good reason: the complaint does not allege that Glencore or Huayou operate the mining sites where Plaintiffs worked, nor does it plausibly allege that Defendants purchased cobalt directly from those companies. Indeed, in some cases, the complaint explicitly describes the relationship as indirect through an intermediary or alleges only that one company sold Defendants "battery materials" in some unspecified way. *See, e.g.*, FAC ¶¶ 73, 77, 80, 82; *see also* Mot. 17-18. Instead, as Defendants showed in their Motion, Plaintiffs allege that there are numerous independent individuals and entities that stand between Plaintiffs and Defendants. *See* Mot. 5, 9-10 (citing FAC ¶¶ 46, 49-54, which identify sponsors, labor brokers, presidential guards, Taruga Minerals, Kamoto Copper Company, and Umicore N.V., among others); *see also* FAC ¶ 101 (acknowledging that cobalt cannot be traced to particular mines, much less to particular workers).

No case has ever found "participation in a venture" under the TVPRA where the relationship between the Defendants and the wrongdoing is as attenuated as it is here. In *B.M. v. Wyndham Hotels & Resorts, Inc.*, the plaintiff alleged that hotel chains should be liable under the TVPRA because their franchisees "rented rooms to people they knew or should have known were engaged in sex trafficking." 2020 WL 4368214, at *5. The court dismissed the TVPRA claim because the plaintiff failed to show that the hotel chains themselves—as distinguished from the franchisees—participated in a venture with the wrongdoers. As the court explained, the complaint was "devoid of any facts linking" the parent hotel chains, Wyndham and Choice, "to the sex trafficking of this Plaintiff (B.M.)" and thus failed "to make a plausible claim for Wyndham's and Choice's 'participation in [a] venture.' "[2] *Id.* Likewise, here, Plaintiffs' allegations describing an

[2] The court allowed the claim to proceed only under a vicarious liability theory, requiring plaintiffs to prove an agency relationship between the hotel chains and the individual hotels that rented the

attenuated and disconnected supply chain cannot establish that any Defendant was specifically linked to any TVPRA violation. Mot. 9-10; *see also J.B. v. G6 Hosp., LLC*, No. 19-cv-07848-HSG, 2020 WL 4901196, at *10 (N.D. Cal. Aug. 20, 2020) (TVPRA requires a showing of "interaction with a specific venture" engaged in specific violations).

Nothing in *M.L. v. Craigslist Inc.*, also cited by Plaintiffs, suggests a looser standard. No. C19-6153 BHS-TLF, 2020 WL 5494903 (W.D. Wash. Sept. 11, 2020). Plaintiffs argue that *M.L.* was allowed to proceed even though "[t]here was apparently no agreement at all" between the defendant and the alleged wrongdoers—only a "mutually beneficial relationship." Opp. 11. That contradicts the court's description, which states that the parties had a direct "contract[ual]" relationship—namely, an arrangement whereby the defendant website sold space on its classified ads website to sex traffickers. *M.L.*, 2020 WL 5494903, at *1. Nor do Plaintiffs' allegations support liability based on any combination of participation and "constructive knowledge" like that found sufficient in *M.L.*, as Plaintiffs do not and cannot allege that Defendants "openly and knowingly ma[de] a deal with [the alleged wrongdoers] to support [a] venture." *Id.* at *6 (internal quotation marks omitted).

Even if agreements with secondary or tertiary entities could suffice, Plaintiffs have not plausibly alleged any agreement between any Defendant and any such entity to facilitate conduct forbidden by the TVPRA. On the contrary, Plaintiffs acknowledge that Defendants have leading policies that prohibit the very acts alleged and are members of organizations dedicated to ending such practices. Mot. 6 & n.2 (citing FAC ¶¶ 20-21). Plaintiffs' claim that Defendants' efforts are not as effective as they would like (FAC ¶ 112), or that Defendants do not answer every request

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rooms where plaintiffs were exploited. *B.M.*, 2020 WL 4368214, at *6-7. No such agency theory is alleged or possible here.

for information by NGOs, (FAC. ¶¶ 108-09), or their new assertion that Defendants forced Glencore and Huayou to join the Fair Cobalt Alliance (Opp. 12, 17) do not support a plausible inference that these efforts constitute a "tacit agreement" to perpetuate or conceal the very activities they aim to address.

Plaintiffs have not adequately alleged a "venture."[3] Not only does the complaint fail to establish "participation in a venture," its factual allegations do not establish that any plausible venture exists or has ever existed. Plaintiffs' Opposition attempts to allege a massive, overarching, worldwide "cobalt supply chain venture" to perpetuate labor conditions in the DRC. *See* Opp. 3, 12. As Plaintiffs recognize, however, the vaguely defined cobalt supply chain involves hundreds if not thousands of disparate entities that are responsible for mining, transporting, refining, processing, and supplying cobalt. *See id.* at 3; *see also* Mot. 5, 9-10; FAC ¶¶ 101. Plaintiffs do not even try to allege that all of these discrete entities are connected with one another in a coordinated business enterprise, much less one aimed at committing acts prohibited by the TVPRA that injured the Plaintiffs.[4] Plaintiffs' conclusory assertion of an overarching venture between and among all participants in the global cobalt supply chain does not suffice. *See H.G. v. Inter-Cont'l Hotels Corp.*, No. 19-cv-13622, 2020 WL 5653304, at *6 (E.D. Mich. Sept. 23, 2020) (TVPRA

[3]As Defendants explained, a "venture" means "[a] business enterprise involving some risk in expectation of gain." Mot. 16-17 (quoting Am. Heritage Dictionary of the English Lang. (4th ed. 2000)). Plaintiffs urge the Court to adopt Section 1591's definition of a venture—"two or more individuals associated in fact," 18 U.S.C. § 1591(e)(6)—but that definition does not apply to other provisions of the TVPRA, *id.* § 1591(e)(1) (defining terms as used "[i]n this section"); *see also In re Princo Corp.*, 486 F.3d 1365, 1368 (Fed. Cir. 2007) (statutory "definitions limited to one section should not be applied to another"). Even if the Section 1591 definition of venture were applicable, it would make no difference because Plaintiffs do not allege that the hundreds of disparate entities in the global cobalt supply chain are "associated in fact" with one another.

[4] Some courts have required that the purpose of the venture be the wrongful activity. *See* Mot. n.9.

requires allegations describing "*the particular venture in which [the defendants] allegedly participated*").

Plaintiffs argue that it should be enough that some Defendants had a "formal agreement" to purchase cobalt from Glencore or Huayou, and that those entities in turn owned and operated the mining sites at which Plaintiffs were injured. Opp. 12 (citing FAC ¶¶ 72-86, 88-89, 99, 100, 107, 110-113). But the paragraphs they cite do not allege that Defendants have formal agreements with Glencore or Huayou at all.[5] Furthermore, even Glencore and Huayou are several steps removed from the mine operators, labor brokers, and Plaintiffs. *See*, *e.g.*, Mot. 9-10; *supra* pp. 8-9. In any event, individual commercial decisions by each Defendant do not support an overarching venture between every actor in the global supply chain.

None of Plaintiffs' cases supports the conclusion that such a vast, disjointed web of commercial interactions is a single "venture" under the statute. Plaintiffs again cite cases involving trafficking at hotels (Opp. 11), but each of those cases involved allegations of a venture between the trafficker and a *specific* hotel where the TVPRA violation took place. *See supra* pp. 8-10. Here, by contrast, Plaintiffs' claims are akin to an assertion that the entire hotel industry is part of a single trafficking venture and subject to potential civil and criminal enforcement. Such a limitless interpretation finds no support in the plain reading of the statutory text or the cases interpreting it. *See A.B. v. Hilton Worldwide Holdings Inc.*, No. 3:19-cv-01992-IM, 2020 WL 5371459, at *9 (D. Or. Sept. 8, 2020) (dismissing TVPRA venture claims where "Plaintiff has not

[5] As noted in Defendants' Motion, the complaint includes a vague allegation about a formal contract between Tesla and Glencore that was reached after the point where many or all of the Plaintiffs were no longer working. Mot. 20 n.10 (discussing FAC ¶ 30).

alleged facts which sufficiently link notice of Plaintiff A.B.'s sex trafficking to any of these Defendants").[6]

B. The complaint does not allege an underlying violation of Section 1589 or Section 1590

Plaintiffs spend most of their Opposition responding to an argument that Defendants never made: that the injuries Plaintiffs suffered were not "serious." To be clear, Defendants condemn the labor conditions alleged in the complaint in the strongest terms and have established policies and procedures that prohibit the use of forced, coerced, or child labor, among other practices. But the specific language of the TVPRA does not extend to labor that is compelled by economic circumstances. *See* Mot. 24. Rather, under the carefully crafted terms and definitions in the statute, TVPRA liability arises only if labor is "knowingly" obtained "*by means of*" an employer's coercive conduct. 18 U.S.C. § 1589(a) (emphasis added); *see id.* § 1590(a). That means that, under the TVPRA, Plaintiffs must allege that they provided labor because an employer caused them to fear serious harm if they did not do so. *See id.* § 1589(a)(2). Labor compelled by other forces, however abhorrent, does not satisfy the specific statutory standard at issue here.

As the Fourth Circuit has explained, to satisfy the TVPRA's requirements, the "*employer's conduct* [must be] sufficiently serious to coerce the victim to provide labor or services against her will." *Muchira v. Al-Rawaf*, 850 F.3d 605, 618 (4th Cir. 2017) (emphasis added) (cited in Opp. 23). Indeed, all the cases Plaintiffs cite in support of their allegations involve the application of

[6] Plaintiffs defend their reading of the term "venture" by citing the TVPRA's legislative history (Opp. 10), but courts need "not resort to legislative history to cloud a statutory text that is clear." *Ratzlaf v. United States*, 510 U.S. 135, 147-48 (1994). Even if such materials were relevant here, the cited history stands for the unremarkable proposition that the TVPRA was intended to encompass "persons who benefit financially or otherwise from trafficking." Opp. 10 (quoting H.R. Rep. No. 106-939, at 101-02 (2000)). That proposition sheds no light on whether every entity in a global supply chain should be treated as a single venture under the TVPRA.

these statutory terms to alleged threats *by an employer*.[7] That is not the case here, where Plaintiffs allege that they were compelled to work by general economic circumstances in the region where they live. *See, e.g.*, FAC ¶¶ 6, 29, 30.

The complaint also does not allege facts sufficient to establish, as it must, that Plaintiffs' employers obtained their labor "by means of" harm. Although Plaintiffs point to allegations about the behavior of certain individuals in the DRC toward certain individual Plaintiffs, those allegations amount to only "[t]hreadbare recitals of the elements . . . supported by mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). For example, John Doe 3 alleges that a person associated with "the Congolese government" worked as a labor broker, and that John Doe 3 and other boys "understood" that they needed to work for him in order to make money. FAC ¶ 37 (cited in Opp. 30-31). But the complaint does not explain the basis for that understanding. Plaintiffs who make allegations about sponsors like "Ismail" or "John" likewise cannot clear this bar. *See, e.g.*, *id.* ¶¶ 36, 42, 44 (cited in Opp. 31).[8] The complaint does not allege that any of those individuals were part of a venture with any Defendant, or that any member of the purported venture—let alone Defendants, or even Umicore, Glencore, or Huayou—harmed or threatened

[7] *See* Opp. 23-24 (citing *United States v. Calimlim*, 538 F.3d 706, 711-12 (7th Cir. 2008), *United States v. Dunn*, 652 F.3d 1160, 1170 (9th Cir. 2011), and *Muchira*, 850 F.3d at 618, all of which addressed allegations by housekeepers of wrongdoing by families for whom they worked); *see also* Opp. 28-29 (citing *United States v. Farrell*, 563 F.3d 364, 367-69 (8th Cir. 2009) (housekeepers alleged underlying violations by owner-operators of the hotel where they worked); *United States ex rel. Hawkins v. Mantech Int'l Corp.*, No. 15-2105 (ABJ), 2020 WL 435490, at *18-19 (D.D.C. Jan. 28, 2020) (employees performing engineering services alleged underlying violations by the firm at which they worked); *Nuñag-Tanedo v. E. Baton Rouge Par. Sch. Bd.*, 790 F. Supp. 2d 1134, 1146 (C.D. Cal. 2011) (teachers alleged underlying misconduct by the firm that recruited them for those positions); *Barrientos v. CoreCivic, Inc.*, 951 F.3d 1269, 1274 (11th Cir. 2020) (detainees alleged underlying wrongdoing by the contractor that owned and operated the facility in which they worked)).

[8] Although the Opposition asserts that Ismail threatened to "blackball" certain Plaintiffs (Opp. 31), this allegation does not appear in the complaint.

Plaintiffs in order to compel them to work. It does not even allege that Defendants knew about these individuals' alleged conduct. *See* 18 U.S.C. § 1595(a); *infra* pp. 17-19. That is insufficient to "allow[ ] the court to draw the reasonable inference that *the defendant* is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (emphasis added).

Plaintiffs argue that "whether a reasonable person of the same background would feel compelled to perform the labor at issue" is inherently a fact question that "cannot be resolved on a motion to dismiss." Opp. 21-23 (internal quotation marks omitted) (citing cases involving negligence, negligent supervision, defamation, personal injury, the Fair Credit Reporting Act, and the Fourth and Fifth Amendments). But the TVPRA's specific requirements provide the basis for dismissing claims when a complaint does not plausibly allege facts to support each of them, as multiple courts have recognized. *See, e.g.*, *Roman v. Tyco Simplex Grinnell*, No. 8:16-cv-3449-T-33AEP, 2017 WL 2427251, at *5 (M.D. Fla. June 5, 2017) (dismissing Section 1595 claim where plaintiff failed to allege "who threatened him, how he was threatened, and for what purpose" as required by TVPRA); *Jabagat v. Lombardi*, No. 1:14CV89-HSO-RHW, 2015 WL 11004900, at *3 (S.D. Miss. Jan. 30, 2015) (same, where plaintiff failed to meet statutory requirement to allege facts showing defendants "forced or threatened any harm against Plaintiff"). This Court should do the same.

Plaintiffs point to International Labor Organization documents and domestic and DRC fair labor standards laws' discussion of "consent" to work, but those sources are not relevant to the application of the TVPRA. *See* Opp. 26-27 (citing cases involving the Alien Tort Statute and a state abortion statute, among others). The TVPRA does not use the word "consent," and there is no evidence that Congress silently incorporated these standards into the TVPRA. And it is significant that in another section of the TVRPA, 18 U.S.C. § 1591, Congress created automatic

liability based on whether the plaintiff is a minor, but did not do so in Sections 1589(a) and 1590(a). *See* Mot. 25. Rather, liability under the express terms of these sections turns on whether labor was obtained "by means of" an employer's conduct. 18 U.S.C. §§ 1589(a), 1590(a); *see* Mot. 24.[9]

Because the complaint does not plausibly allege conduct that would satisfy the terms of the TVPRA, including the "by means of" requirement, Plaintiffs' Section 1589 claims should be dismissed. And because they fail to plead a violation of Section 1589, they cannot establish a claim under Section 1590, which prohibits "knowingly recruit[ing] . . . any person for labor or services in violation of this chapter." 18 U.S.C. § 1590. *Contra* Opp. 32-33. Plaintiffs' Section 1590 claim should accordingly be dismissed as well.

C. Plaintiffs fail to allege that Defendants had the requisite knowledge

Plaintiffs admit the complaint lacks factual allegations sufficient to show that Defendants " 'should have known' of the specific harms Plaintiffs suffered." Opp. 5. Plaintiffs nevertheless argue that they satisfy the TVPRA's knowledge requirement because "Defendants were aware of general allegations of the *category* of violation Plaintiffs suffered" and "general, abstract knowledge of potential trafficking" is sufficient. *Id.* at 5-6 (emphasis added and internal quotation marks omitted). But that argument contradicts the plain text of the TVPRA and the weight of authority interpreting the statute.

Section 1595 requires a plaintiff to allege that each defendant had constructive knowledge of a *specific* TVPRA-violating venture that injured each plaintiff. Mot. 26. "The statutory text speaks in singular terms—'participation in *a* venture which that person . . . should have known *has* engaged in *an* act in violation of this chapter.' " *S.J. v. Choice Hotels Int'l, Inc.*, No. 19-cv-

[9] Contrary to Plaintiffs' claim, Defendants have not argued that age is irrelevant under the TVPRA. Opp. 24. Defendants simply note—as Plaintiffs concede (Opp. 24)—that there is no evidence Congress sought to make age dispositive under Sections 1589 or 1590. Mot. 25.

6071 (BMC), 2020 WL 4059569, at *5 (E.D.N.Y. July 20, 2020) (quoting 18 U.S.C. § 1595(a)). Allegations of knowledge about a "general . . . trafficking problem . . . do[ ] not satisfy the *mens rea* requirements of the TVPRA." *Id.* Instead, Plaintiffs must plead facts indicating that Defendants should have known about TVPRA violations at the mining sites where Plaintiffs worked. *See, e.g.*, *Inter-Cont'l Hotels Corp.*, 2020 WL 5653304, at *6 ("That Defendants knew or should have known about trafficking by other (or unspecified) ventures in which they are not alleged to have participated is not enough . . . ."). Plaintiffs' interpretation of the statute, by contrast, "unjustifiably bridges the scienter gap between 'should have known' and 'might have been able to guess.' " *Choice Hotels*, 2020 WL 4059569, at *4.

Rather than directly engaging with Defendants' argument, Plaintiffs attack a strawman, accusing Defendants of importing a "specific knowledge requirement" that "would effectively remove the 'should have known' language from the statute." Opp. 5. But Defendants' position is not that Plaintiffs must allege *actual* knowledge of their specific injuries. Rather—consistent with the plain text—Plaintiffs must plead constructive knowledge of a specific TVPRA violation in which the venture engaged. "The real issue is not, then, actual-versus-constructive knowledge but whether a defendant satisfies the knowledge element as to a *particular* . . . trafficking venture." *Choice Hotels*, 2020 WL 4059569, at *5.

None of the allegations cited in the Opposition satisfies the statutory standard. Rather than alleging that Defendants should have known of specific TVPRA violations at the mining sites where Plaintiffs worked, Plaintiffs rely on generic assertions about Defendants' "internal or external risk assessment reports and corporate social responsibility offices," "widespread public reports" about the DRC cobalt supply chain, and information available by "simply googling 'child labor in cobalt mines.' " Opp. 7-9. But these allegations do not connect Defendants to Plaintiffs,

their employers, or their mining sites, let alone show that Defendants had knowledge of the specific harms Plaintiffs suffered. Treating these generic allegations as sufficient would dramatically expand the scope of the TVPRA to reach every person who benefits from the use or sale of a product for which any raw material ingredient may have been tainted by forced labor.

Plaintiffs counter that "[s]everal courts have found" that "failure to implement policies sufficient to combat a known problem in one's operations can rise to the level of willful blindness or negligence." *Id.* at 7 (internal quotation marks omitted). Those cases are inapposite because each plaintiff in those cases "allege[d] facts specific to her own sex trafficking" that was occurring on the defendant's property, "including a number of signs she alleges should have alerted staff to her situation." *A.C. v. Red Roof Inns, Inc.*, No. 2:19-cv-4965, 2020 WL 3256261, at *5 (S.D. Ohio June 16, 2020); *see also M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959, 967 (S.D. Ohio 2019) (alleging the named plaintiff was trafficked "[a]t each of the [d]efendants' hotel properties"). Here, the complaint contains no facts connecting Defendants to the mining sites where Plaintiffs worked, let alone the alleged traffickers responsible for Plaintiffs' injuries.

Unable to allege facts establishing the required knowledge element under the statute, Plaintiffs assert that the "knowledge or acts of others" in the venture should be imputed to Defendants. Opp. 5. That cannot be squared with the statutory text, which requires a plaintiff to show that *each* defendant "knew or should have known" about the underlying violation in which the venture allegedly engaged. 18 U.S.C. § 1595(a). Plaintiffs' contrary view—that mere participation in a venture is enough so long as another member of the venture knew of TVPRA violations—would render the "knew or should have known" requirement in Section 1595 a nullity. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (courts must "give effect, if possible, to every clause and word of a statute" (internal quotation marks omitted)); *Inter-Cont'l Hotels Corp.*, 2020

WL 5653304, at *7 (rejecting argument that knowledge should be imputed absent "a principal-agent relationship" (internal quotation marks omitted)).[10]

D. Plaintiffs fail to allege any "knowing[ ] benefit" from participation in a TVPRA-violating venture

Plaintiffs' supply chain theory has no support in Section 1595(a), which cabins liability to those who "knowingly benefit[ ], financially or by receiving anything of value, from participation in a [trafficking] venture." 18 U.S.C. § 1595(a). At a minimum, a plaintiff must allege "a causal relationship between affirmative conduct" the defendant took that "further[ed] the [ ]trafficking venture and receipt of a benefit, with actual or . . . constructive knowledge of that causal relationship." *Geiss v. Weinstein Co. Holdings*, 383 F. Supp. 3d 156, 168-69 (S.D.N.Y. 2019). Plaintiffs' Opposition continues to ignore that requirement and the case law enforcing it.[11]

The "hotel cases" (cited in Opp. 18-19) confirm that Plaintiffs must allege a "benefit from a relationship with the trafficker." *M.A.*, 425 F. Supp. 3d at 965; *accord H.H. v. G6 Hosp., LLC*, No. 2:19-CV-755, 2019 WL 6682152, at *2 (S.D. Ohio Dec. 6, 2019); *A.B. v. Marriott Int'l, Inc.*, 455 F. Supp. 3d 171, 191 (E.D. Pa. 2020). Unlike the hotels, which knowingly received payments for specific rooms from traffickers, Defendants are not alleged to have derived any unique benefit

[10] Citing authorities that pre-date the Supreme Court's decisions in *Iqbal* and *Twombly*, Plaintiffs assert that courts should not resolve "questions involving a person's state of mind" at the pleadings stage. Opp. 9. But Plaintiffs cannot avoid *Iqbal*'s requirement that a complaint "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Indeed, courts routinely assess whether allegations of knowledge are sufficient to survive a motion to dismiss, *see Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322–23 (2007), including for claims under the TVPRA, *see Choice Hotels Int'l, Inc.*, 2020 WL 4059569, at *5; *Inter-Cont'l Hotels Corp.*, 2020 WL 5653304, at *6; *Red Roof Inns, Inc.*, 2020 WL 1872336, at *3.

[11] Plaintiffs only response to *Geiss* is that it "was actually addressing the 'participate in a venture' prong of the standard, not the benefit prong." Opp. 19. Although *Geiss* also addressed other TVPRA requirements, it "focus[ed] on plaintiffs' failure to allege any benefits received by defendants from their participation." 383 F. Supp. 3d at 168-69.

from any relationship with a TVPRA perpetrator. Plaintiffs do not allege that Defendants purchased DRC cobalt or products containing it at a better price than any other purchaser because of such relationships. Nor do they even allege that cobalt from the DRC was less expensive than cobalt mined anywhere else, further undermining any suggestion that buying this cobalt benefitted Defendants. Plaintiffs accordingly fail to allege the knowing benefit required to sustain their TVPRA claims.

E. The rule of lenity requires any ambiguity in the statute to be construed in favor of Defendants

Nothing in the plain text of the TVPRA creates liability based on purchases of a product from a multi-level supply chain. But even if any of the statutory terms were ambiguous, the rule of lenity requires this Court to construe them to avoid that result. Plaintiffs do not dispute that the rule of lenity applies to statutes that, like the TVPRA, have both criminal and noncriminal applications. *See* Mot. 28-29. Instead, they argue that the TVPRA is a "remedial statute[ ]" that "should be liberally construed." Opp. 36 (quoting *Peyton v. Rowe*, 391 U.S. 54, 65 (1968)). Even if that label applied here, courts have made clear that the rule of lenity "prevails over" even an "explicit instruction" from Congress "to construe the statute liberally," *United States v. Cano-Flores*, 796 F.3d 83, 94 (D.C. Cir. 2015), so it necessarily prevails over the judge-made canon favoring the liberal construction of remedial statutes. Plaintiffs' reliance (Opp. 36) on *Noble v. Weinstein*, which did not address the rule of lenity, is accordingly misplaced. 335 F. Supp. 3d 504, 515 (S.D.N.Y 2018). And in any event, the court concluded in *Noble* that the meaning of the relevant statutory language was "plain and unambiguous"; it did not purport to construe ambiguous provisions against the defendants. *Id.* at 516 (internal quotation marks omitted).

III. Plaintiffs' TVPRA Claims Are Impermissibly Extraterritorial

Far from being "inapposite," as Plaintiffs assert (Opp. 33), *RJR Nabisco* lays out the two-step framework to determine whether a particular statute overcomes the presumption against extraterritoriality. *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2101 (2016). Because Plaintiffs cannot satisfy either step, their claims should be dismissed.

Step One. Plaintiffs do not dispute that Sections 1589, 1590, and 1595 lack the clear, affirmative indication of extraterritorial application that *RJR Nabisco* requires—a point that alone dooms their claims. Mot. 30-31, 33-35. Plaintiffs' only response is that Section 1596—a provision that governs the prosecution of "offenses"—silently extended Section 1595's private right of action. Opp. 33-34. They are incorrect. By repeatedly using the term "offense," Congress limited Section 1596 to *criminal violations* of the underlying TVPRA provisions. Mot. 31-32. The plain meaning of "offense" "most commonly . . . refer[s] to crimes." *Kellogg Brown & Root Servs., Inc. v. United States ex rel. Carter*, 135 S. Ct. 1970, 1976 (2015); *see also Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (statutory interpretation "begins with the plain language"). That was the primary definition in 2008, when Congress enacted Section 1596, and "that is . . . how the word is used in Title 18." *Kellogg*, 135 S. Ct. at 1976; *see* Mot. 32-33. And were there any ambiguity about how Congress used the term "offense," this Court should "resolve [it] in favor of the narrower definition." *Kellogg*, 135 S. Ct. at 1978; *see supra* p. 20.

In response, Plaintiffs point (Opp. 33-34) to only a handful of cases and a smattering of legislative history. Neither is persuasive, let alone sufficient to overcome the plain text of Section 1596. Indeed, as Plaintiffs acknowledge, most of the cases they cite addressed whether Section 1596 applies retroactively—*not* whether Section 1596 applies to civil suits. *See, e.g.*, *Adhikari v. Kellogg Brown & Root, Inc.*, 845 F.3d 184, 200 (5th Cir. 2017); *Abafita v. Aldukhan*, No. 1:16-cv-06072 (RMB) (SDA), 2019 WL 6735148, at *1 (S.D.N.Y. Apr. 4, 2019), *report and*

recommendation adopted, 2019 WL 4409472 (S.D.N.Y. Sept. 16, 2019); *Plaintiff A v. Schair*, No. 2:11-cv-00145-WCO, 2014 WL 12495639, at *6 (N.D. Ga. Sept. 9, 2014); *Aguilera v. Aegis Commc'ns Grp., LLC*, 72 F. Supp. 3d 975, 979 (W.D. Mo. 2014). And because the text of Section 1596 is clearly limited to crimes, there is no need to resort to legislative history here. *Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 1814 (2019). But if legislative history were relevant, it supports Defendants: as the House Report Plaintiffs cite explains, Section 1596 "provides jurisdiction to U.S. courts for prosecution of certain slavery and trafficking offenses committed abroad." H.R. Rep. No. 110–430, pt. 1, at 55 (2007).[12]

Step Two. Plaintiffs contend that they satisfy the second *RJR Nabisco* step because the "focus" of the TVPRA is where a person benefitted from a TVPRA violation. Opp. 34-35. Plaintiffs are wrong again, as the "focus" of the TVPRA is where the TVPRA violation occurred. *E.g.*, *Plaintiff A*, 2014 WL 12495639, at *5; *David v. Signal Int'l, LLC*, Nos. 08-1220 et al., 2015 WL 75276, at *1 (E.D. La. Jan. 6, 2015); Mot. 36 (collecting additional cases).

Plaintiffs' contrary argument is devoid of any analysis and relies on only one citation (Opp. 35) to *Morrison v. National Australia Bank Ltd.*, in which the Supreme Court held that the "focus" of the Securities and Exchange Act is where the underlying violation takes place—there, where the purchase or sale occurred—as "[i]t is those transactions that the statute seeks to regulate." 561 U.S. 247, 267 (2010) (internal quotation marks omitted). Here, Sections 1589 and 1590 primarily seek to "regulate" "forced labor" and "[t]rafficking with respect to . . . forced labor." Thus, the "focus" is where that violation occurred, not where the benefit accrued. *Id.* at 266.

[12] Plaintiffs also point (Opp. 10, 33) to an amicus brief in an unrelated case about an unrelated statute filed by twenty-one members of Congress. *See* Dkt. No. 38-1. "Post-enactment legislative history . . . is not a legitimate tool of statutory interpretation." *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 (2011). The amicus brief is thus irrelevant to the Court's analysis.

Because the complaint does not allege that Plaintiffs were trafficked to the United States, that any violations of Section 1589 occurred in this country, or that any injuries occurred in the United States, Plaintiffs cannot satisfy *RJR Nabisco*'s second step, either. *See* 136 S. Ct. at 2101.

IV. Plaintiffs' Common Law Claims Should Be Dismissed

Plaintiffs fail to address the fundamental flaw in their common law claims: the lack of any relationship between Defendants and Plaintiffs. *See supra* pp. 8-9, 11-12 (describing layers of complexity in the supply chain). Instead, they argue, incorrectly, that such a relationship is unnecessary. Opp. 39.

First, although unjust enrichment claims sometimes fail where the parties have an explicit contractual agreement (Opp. 39 n.28), the lack of *any* relationship also defeats such a claim. *See* Mot. 38-39. The unjust enrichment cases Plaintiffs discuss (Opp. 37-38) all involve direct relationships. In *Bregman v. Perles*, defendant lawyers directly hired an investigator and failed to pay him, so he sued them for breach of contract. 747 F.3d 873, 874 (D.C. Cir. 2014). And in *Kramer Associates, Inc. v. Ikam, Ltd.*, a foreign corporation sued a consulting firm for breach of contract after the firm failed to provide the agreed-upon services to the corporation despite receiving payment. 888 A.2d 247, 249 (D.C. 2005).[13]

Here, there is no such relationship. The vaguely defined global supply chain is so complex that Plaintiffs *admit* they cannot even connect Defendants to any of the mining sites in question—let alone to the many other intermediaries standing between Defendants' alleged conduct and

[13] *See also News World Commc'ns, Inc. v. Thompsen*, 878 A.2d 1218 (D.C. 2005) (magazine and proposal submitter); *Mazor v. Farrell*, 186 A.3d 829 (D.C. 2018) (father and son); *Kiwanuka v. Bakilana*, 844 F. Supp. 2d 107 (D.D.C. 2012) (employee and employers); *FDIC v. Bank of Am., N.A.*, 308 F. Supp. 3d 197 (D.D.C. 2018) (FDIC and regulated bank); *In re Lorazepam & Clorazepate Antitrust Litig.*, 295 F. Supp. 2d 30 (D.D.C. 2003) (drug purchasers and manufacturers).

Plaintiffs' injuries. *See* FAC ¶ 101. And Plaintiffs acknowledge that their injuries were caused by the independent actions of parties neither related to nor controlled by Defendants in any way. *See id.* ¶¶ 53-54; *see also* Mot. 9-10. Their unjust enrichment claim therefore fails.

Second, this lack of relationship likewise defeats Plaintiffs' negligent supervision claim, which requires that a defendant have a duty to supervise the person committing the wrong. *See* Mot. 39-40. Plaintiffs argue that they have "shown Defendants were in a 'venture' with the mining companies that established the close relationship Defendants say is lacking for this claim." Opp. 40-41. They also try to create a new duty by arguing that Defendants' policies against child labor in their supply chains somehow transform them into supervisors of all the workers in those chains. *See id.* at 39-40. There is no support for these new theories of liability. As with unjust enrichment, every case Plaintiffs cite involved a direct supervisory relationship between the defendant and the wrongdoer. *Id.* at 40 (citing *Wilson v. Good Humor Corp.*, 757 F.2d 1293 (D.C. Cir. 1985) (franchisee and franchisor), and *Doe I v. Exxon Mobil Corp.*, 573 F. Supp. 2d 16 (D.D.C. 2008) (military forces and employer who paid them and controlled their day-to-day activities)). No such relationship exists here. *See* Mot. 39-40.

Third, Plaintiffs' intentional infliction of emotional distress claim fails for similar reasons. Contrary to Plaintiffs' suggestion (Opp. 41), no case law supports the imposition of this liability based on alleged participation in a venture. Once again, Plaintiffs' cases involve direct relationships, not alleged ventures. Opp. 41-42 (citing *Purcell v. Thomas*, 928 A.2d 699 (D.C. 2007) (employee and employer), and *Kiwanuka*, 844 F. Supp. 2d 107 (same)). Moreover, the demanding standard for an intentional infliction of emotional distress claim requires Plaintiffs to show that Defendants' conduct—as opposed to conduct by others—was "especially calculated to cause, and does cause, mental distress of a very serious kind." *Ochoa v. Superior Court*, 703 P.2d

1, 4 n.5 (Cal. 1985) (internal quotation marks omitted) (cited in Mot. 40-41). The only case Plaintiffs cite to support their claim that they have satisfied this requirement is one involving abusive treatment by a plaintiff's *direct employer*, not procurement or corporate social responsibility initiatives by entities many steps removed. Opp. 42 (citing *Kiwanuka*, 844 F. Supp. 2d at 119-20).

Under the laws of any jurisdiction identified by the parties, Plaintiffs' common law claims should be dismissed.[14]

V. Plaintiffs' Request For Leave to Amend Should Be Denied

Although Rule 15 contemplates that leave be "freely give[n]," it is "not automatic[]" and should be denied where the amendment would be "futil[e]." *N. Am. Cath. Educ. Programming Found., Inc. v. Womble, Carlyle, Sandridge & Rice, PLLC*, 887 F. Supp. 2d 78, 83-85 (D.D.C. 2012) (internal quotation marks omitted). As explained above, Plaintiffs' complaint suffers from numerous legal deficiencies that cannot be cured by an amendment. Moreover, Plaintiffs have not identified any additional facts they would add to cure the issues identified by Defendants, nor is there reason to believe Plaintiffs will be able to do so. Any amendment would therefore be futile, *see Nono v. George Washington Univ.*, 245 F. Supp. 3d 141, 149 (D.D.C. 2017), and their complaint should accordingly be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' complaint with prejudice.

[14] Plaintiffs argue that Defendants agree that only the laws of the District of Columbia, California, Texas, or Washington apply to Plaintiffs' common law claims. Opp. 37 n.27. Congolese law may also apply, in which case these claims must also be dismissed given Plaintiffs' concession that Congolese law does not provide them a remedy. Mot. 41; FAC ¶ 22.

December 18, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on December 18, 2020, I electronically filed the foregoing with the United States District Court for the District of Columbia by using the CM/ECF system.

December 18, 2020

Respectfully submitted,

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