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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SERENA FLEITES,

Plaintiff,

v.

MINDGEEK S.A.R.L., *ET AL.*

Defendants.

Case No.: CV 21-04920-CJC(ADSx)

ORDER GRANTING IN PART AND DENYING IN PART VISA’S MOTION TO DISMISS [Dkt. 138], DEMANDING A MORE DEFINITE STATEMENT WITH RESPECT TO PLAINTIFF’S CIVIL CONSPIRACY CLAIM, AND GRANTING THE INTERNATIONAL CENTER FOR LAW & ECONOMICS’ MOTION TO FILE AN AMICUS BRIEF [Dkt. 145]

I. INTRODUCTION

In this case, Plaintiff Serena Fleites brings numerous causes of action against Defendants MindGeek S.A.R.L., MG Freesites Ltd., MindGeek USA Inc., MG Premium Ltd., MG Global Entertainment Inc., 9219-1568 Quebec, Inc., Bernd Bergmair, Feras Antoon, Davis Tassillo, Corey Urman (collectively, the “MindGeek Defendants”), and

1 Visa, Inc., as well as certain doe defendants, referred to as the “Colbeck Capital Does”
2 and the “Bergmair Does.” (Dkt. 124-3 [First Amended Complaint, hereinafter “FAC”].)
3 Against Visa, Plaintiff raises causes of action under the Trafficking Victims Protection
4 Reauthorization Act (“TVPRA”), the Racketeer Influenced and Corrupt Organizations
5 Act (“RICO”), California’s Unfair Competition Law (“UCL”) and False Advertisement
6 Law (“FAL”), and common law civil conspiracy. (*Id.*) Now before the Court is Visa’s
7 motion to dismiss. (Dkt. 138 [Motion], Dkt. 138-1 [Memorandum, hereafter “Mem.”].)
8 For the following reasons, the motion is **GRANTED IN PART AND DENIED IN**
9 **PART.**¹ The Court also **GRANTS** the International Center for Law & Economics’
10 (“ICLE”) motion to file an amicus brief, which the Court finds unpersuasive for the
11 reasons discussed below.

12

13 **II. BACKGROUND**

14

15 **A. Plaintiff’s Allegations**

16

17 In 2014, Plaintiff was thirteen years old. (FAC ¶ 258.) At that time, a sexually
18 explicit video featuring Plaintiff titled “13-Year Old Brunette Shows Off For the
19 Camera” was available on Pornhub.com, a pornography website owned and operated by
20 MindGeek.² (*Id.*) Plaintiff’s then-boyfriend pressured her into making the video and
21 posted it without her knowledge or consent. (*Id.*) MindGeek also took the video and
22 posted it to its other pornography websites. (*Id.* ¶ 259.) The video garnered 400,000
23 views by the time Plaintiff discovered it. (*Id.* ¶ 260.) MindGeek earned revenue from
24 advertisements that appeared alongside the video. (*Id.*)

25

26 ¹ Having read and considered the papers presented by the parties, the Court finds these matters
27 appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the
28 hearing set for August 8, 2022 at 1:30 p.m. is hereby vacated and off calendar.

² As the Court makes clear in a companion order, (Dkt. 167), there is a dispute as to whether the various
MindGeek business entities operated as a single unit or shared an alter ego relationship. But for the
purposes of this order, the Court refers to those business entities simply as “MindGeek.”

1 Impersonating her mother, Plaintiff contacted MindGeek to inform it that the video
2 qualified as child pornography. (*Id.* ¶ 261.) MindGeek seems to have acknowledged as
3 much, but took a few weeks to remove the video. (*Id.*) In this internet age, a week might
4 as well be an eternity because content constantly and instantaneously proliferates and
5 disseminates. The video was downloaded by users and reuploaded several times, and
6 Plaintiff regularly received messages from strangers containing hyperlinks to the video in
7 the years following the original posting. (*Id.* ¶ 262.) One of the reuploads had 2.7
8 million views. (*Id.*) MindGeek earned advertisement revenue from the reuploads and
9 posted the reuploads to its other pornographic websites as well. (*Id.*) When videos were
10 reposted, Plaintiff would tell MindGeek to remove the videos, but MindGeek would ask
11 Plaintiff “to provide photographic proof that she was the child depicted in the video
12 before removing [the videos].” (*Id.* ¶ 263.) Assuming Plaintiff’s allegations are true, the
13 Court is at a loss to understand why such photographic proof was necessary.

14
15 Plaintiff’s life spiraled out of control. She was harassed and bullied in school to
16 such a degree that she started skipping school and finally unenrolled to attend courses
17 online. (*Id.* ¶ 265.) Plaintiff did not tell her mother about the video, and so her
18 relationship with her mother became strained, as her mother did not know why her
19 daughter had suddenly begun to skip classes. (*Id.*) This led to Plaintiff leaving her
20 mother’s home to move in with her sister. (*Id.*) A year later, she moved back in with her
21 mother, whereafter she attempted to hang herself, only to be stopped by her younger
22 sister and her mother’s boyfriend “who removed the power cord from her neck.” (*Id.* ¶
23 266.) She would attempt suicide several times in the ensuing years. (*Id.* ¶ 270.) Plaintiff
24 did not want to face her family after the first suicide attempt, and so she moved in with a
25 friend. (*Id.* ¶ 267.) At her friend’s house, an older man introduced Plaintiff to heroin.
26 (*Id.*) Plaintiff became addicted. (*Id.*) To fund her heroin addiction, Plaintiff—still a
27 minor at this point—created sexually explicit videos at the older man’s behest, who in
28 turn sold the videos on Craigslist. (*Id.*) Some of the videos were uploaded to Pornhub

1 and were still available on the website as recently as June 2020. (*Id.* ¶ 268.) MindGeek
2 uploaded these videos to its other pornographic websites and earned ad revenue from the
3 videos. (*Id.*) While MindGeek profited from the child porn featuring Plaintiff, Plaintiff
4 was intermittently homeless or living in her car, addicted to heroin, depressed and
5 suicidal, and without the support of her family. (*Id.* ¶ 270.)

6 7 **B. MindGeek’s Business Practices and Business Model**

8
9 MindGeek operates several free pornographic websites, including Pornhub, as well
10 as other paid porn sites. (*Id.* ¶ 60.) MindGeek makes money from its free sites in
11 multiple ways: by advertising its paid sites or its products on the free sites, by selling ad
12 space on the free sites for the services or products of third parties, and by harvesting and
13 selling the data of persons who use the free sites. (*Id.*) MindGeek sells ad space through
14 “TrafficJunky,” its advertising platform. (*Id.* ¶ 62.) Ad revenue earned through
15 TrafficJunky accounts for over 50% of MindGeek’s revenue. (*Id.*) To reach their
16 intended audience, advertisers can build campaigns around keywords like
17 “13yearoldteen” and “not18”; indeed, they can even target ads to people searching the
18 term “child rape” in Japanese. (*Id.* ¶¶ 121-123.) Like a billboard on Interstate 5 is more
19 expensive in Los Angeles than the Grapevine, the price to advertise on MindGeek’s sites
20 corresponds with the traffic on those sites: the higher the traffic, the pricier the ad space.
21 (*Id.* ¶ 62.) Thus, MindGeek is incentivized to drive traffic. (*Id.*)

22
23 Disturbingly, child porn drives web traffic. In 2020, the National Center for
24 Missing and Exploited Children (“NCMEC”) produced a report describing the “insatiable
25 demand” for child porn, with 8.4 million such videos posted online in 2018. (*Id.* ¶ 170.)
26 Despite the fact that MindGeek operates porn sites that allow third parties to upload
27 content, which any competent and scrupulous businessperson would understand incurs
28 the substantial risk that child porn will be uploaded to the sites, MindGeek maintained

1 what Plaintiff describes as an “unpoliced platform.” (*Id.* ¶ 183.) MindGeek employed a
2 barebones team of “as few as 6 but never more than about 30 untrained, minimum wage
3 contractors” to monitor the millions of daily uploads. (*Id.* ¶ 186.) This team was clearly
4 understaffed, but also perversely incentivized: they were offered pay bonuses that
5 depended on the number of videos they *approved* for upload. (*Id.* ¶ 187.) Such an
6 incentive structure suggests that content moderation was not the goal.

7
8 To exacerbate its failure to police its flagship site Pornhub, MindGeek also spread
9 content around, taking Pornhub videos and uploading them to its various other porn
10 websites. (*Id.* ¶ 194.) Ensuring a hopeless whack-a-mole situation for victims, like
11 Plaintiff, MindGeek also allowed users to download and then reupload videos. (*Id.* ¶
12 210.) Most disturbing of all, Plaintiff alleges that MindGeek itself would reupload illegal
13 videos that it had been forced to disable using made-up accounts that masked the true
14 identity of the uploader. (*Id.* ¶ 208.) Plaintiff alleges “MindGeek has repeatedly stated
15 publicly that it kept every video ever uploaded on its servers even when they were
16 disabled from its sites.” (*Id.* ¶ 125.) That would mean that MindGeek keeps a cache of
17 child porn for future re-uploading. (*Id.* ¶ 209.)

18
19 Part of the fight to drive traffic happens on Google or other search engines.
20 (*Id.* ¶ 167.) Simply put, MindGeek wants its sites to be the top result when people search
21 for porn. (*Id.* ¶ 165.) To that end, the above-described team of monitors—who had
22 insufficient time for their first job, monitoring—took on a second job, formatting. (*Id.* ¶
23 188.) In that role, these contractors edited “the title, tags, and descriptions” of a video or
24 sometimes the video itself. (*Id.*) They also created thumbnails—or still shots of the
25 videos—that are meant to attract users to the videos. (*Id.* ¶ 120.) Plaintiff alleges that
26 MindGeek has maintained that every video on its sites goes through this “formatting”
27 process. (*Id.* ¶ 117.) It seems that MindGeek often used this formatting process to dog-
28 whistle to persons on the hunt for child porn. For example, they could tag a video with

1 “barely legal teen sex” so that the video appears on a Google search (or on a search on
2 the porn site itself) for “teen sex.” (*Id.* ¶ 199.) Through this tagging system, child porn
3 was easy to find on MindGeek’s sites for anyone who cared to look. (*Id.* ¶¶ 199-201.)
4

5 Plaintiff alleges that MindGeek’s sites contain a trove of obvious and easily
6 accessible child porn. Plaintiff alleges that “in just a few clicks, in just a few minutes,
7 users (and investigators and journalists) could find seemingly unlimited pages and videos
8 depicting . . . child sexual assault or exploitation.” (*Id.* ¶ 217.) Titles, descriptions, and
9 tags bluntly described the illicit nature of the videos. (*Id.* ¶¶ 218-19.) And many videos
10 contained clearly underage girls. (*Id.* ¶ 219.) Oftentimes users would leave comments in
11 the videos’ “comment section” on how flagrantly illegal the videos were. (*Id.* ¶¶ 223-24,
12 230.) Plaintiff serves as a prime example: the title of her video quite literally (and
13 accurately) stated that she was 13 years old.
14

15 Sometimes, victims like Plaintiff would do MindGeek’s policing for it. But these
16 victims were often met with delay or stonewalling. (*Id.* ¶¶ 203-204.) The delay would
17 permit MindGeek to continue analyzing a well performing, albeit illegal, video so that
18 MindGeek could refine its algorithms to push similar content. (*Id.* ¶ 203.) When
19 MindGeek removed a video, it would keep the video’s webpage with its title, description,
20 tags, and comments. (*Id.* ¶ 205.) That way, when a user attempted to find a since-
21 removed video on Google, Pornhub would still come up, and when a user clicked the
22 link, they would be taken to a landing page which contained suggestions for similar
23 videos. (*Id.*) As Plaintiff explains “one can run internet searches for known [Child
24 Sexual Abuse Material]/child pornography or other nonconsensual content that was
25 ordered taken down by NCMEC or otherwise and the search will bring you to Pornhub
26 even though that video is not enable [*sic*]. MindGeek’s algorithm will then direct you to
27 similar nondisabled content.” (*Id.* ¶ 207.) Plaintiff alleges a harrowing example in which
28 a video of a toddler and a video of a prepubescent girl being sexually abused were

1 removed, but their “title, tags, views, and url” were kept “live to continue driving traffic
2 to the site.” (*Id.* ¶ 214.)

3
4 MindGeek often went well beyond evasion and delay when interacting with
5 victims. Plaintiff alleges that MindGeek worked to silence and intimidate victims and
6 advocates, efforts which “were directly led by MindGeek vice president Corey Urman,
7 who closely controls and often personally participates in [MindGeek’s] public
8 messaging.” (*Id.* ¶ 311.) Part of this effort involves Urman using false identities to speak
9 on MindGeek’s behalf. (*Id.* ¶ 312.) For example, after an activist by the name of Laila
10 Mickelwait published an op-ed in the Washington Times describing child porn on
11 Pornhub, Urman allegedly wrote an email to the media under the name “Blake White,”
12 wherein he insinuated that Mickelwait was a member of an anti-LGBTQ, anti-women
13 group. (*Id.* ¶ 323.) Plaintiff alleges that over the next year, MindGeek would
14 continuously accuse Mickelwait of lying and using her claims to enrich herself. (*Id.* ¶
15 328.) Under the same pseudonym, Urman allegedly represented to Insider.com in
16 January 2020 that Pornhub immediately removes illegal content when notified, which
17 Plaintiff knows to be false from personal experience. (*Id.* ¶ 325.) Plaintiff also alleges
18 that Urman commissioned an “operative” who wrote online under the pseudonym
19 “EyeDeco” who would harass and intimidate activists and victims and release their
20 personal information. (*Id.* ¶ 330.) “EyeDeco” allegedly received this personal
21 information from Urman. (*Id.* ¶ 332-33.) Urman allegedly directed this operative to
22 attack Plaintiff online, stating in a social media post “Serena seems like she knows and
23 has known for quite some time exactly what she is doing aka #grifting.” (*Id.* ¶ 344.)

24 25 **C. Visa’s Involvement**

26
27 Plaintiff alleges that “Visa recognized MindGeek as an authorized merchant and
28 processed payments to its websites including but not limited to Pornhub[.]” (*Id.* ¶ 36.)

1 Plaintiff alleges that Visa knew MindGeek’s sites contained a substantial amount of child
2 porn and that MindGeek failed to police its sites for such content. (*Id.* ¶¶ 278-283.)

3 Plaintiff alleges that nonetheless, “Visa and its agent banks explicitly agreed with
4 MindGeek to continue to process transactions without restrictions on all MindGeek sites
5 provided MindGeek maintained pretextual window dressing claims that it had
6 technology, processes, and policies in place to prevent such content[.]” (*Id.* ¶ 284.)

7 Elsewhere, Plaintiff alleges that Visa was “aware of MindGeek’s trafficking venture and
8 explicitly agreed with MindGeek to process the financial transactions from which the
9 defendants profited from the venture.” (*Id.* ¶ 276.)

10
11 Plaintiff alleges that Visa obtained knowledge of MindGeek’s child porn problem
12 from various sources. First, Plaintiff alleges that Visa performed reviews of MindGeek’s
13 sites pursuant to its own “due diligence and compliance functions.” (*See, e.g., id.* ¶ 278.)
14 Plaintiff alleges that Visa was further put on notice from its “discussions and negotiations
15 about these issues with MindGeek itself.” (*Id.* ¶ 283.) Further, in November 2019,
16 Visa’s competitor PayPal terminated its relationship with MindGeek, issuing a public
17 statement that “[PayPal] explicitly prohibits the use of [its] services for the sale of
18 materials that depict criminal behavior[.]” (*Id.* ¶ 286.) Visa also landed on a list
19 maintained by anti-trafficking advocates for processing payments for “pornography
20 websites, including those hosting content fetishizing minors[.]” (*Id.* ¶ 288.) Visa
21 responded with a statement that it only permits transactions for the purchase or sale of
22 lawful products or services. (*Id.* ¶ 289.) Anti-sex trafficking advocates also sent various
23 letters and emails to Visa detailing MindGeek’s child trafficking venture. (*Id.* ¶¶ 291-
24 95.) Visa responded: “Maintaining a neutral stance under the law is vital for the free
25 flow of commerce.” (*Id.* ¶ 297.)

26
27 It was not until December 2020 when the New York Times published a report
28 titled “The Children of Pornhub”—wherein the author explained MindGeek’s child porn

1 problem—that Visa took temporary action, at which point Visa suspended business with
2 MindGeek pending ‘investigations’ into the allegations in the New York Times article.
3 (*Id.* ¶ 274.) In response to the suspension, “MindGeek took down over 10 million
4 unverified videos from its [sites], constituting over 80% of its content[.]” (*Id.* ¶ 274.)
5 Ultimately, however, Visa “restored services for MindGeek’s paid premium sites and for
6 advertising on all its sites.” (*Id.*)

8 **III. DISCUSSION**

10 **A. Standing**

12 Visa argues that Plaintiff lacks Article III standing. (Mem.) Plaintiff has the
13 burden of establishing that she has Article III standing with respect to Visa. *See*
14 *WildEarth Guardians v. U.S. Dep’t of Agriculture*, 795 F.3d 1148, 1154 (9th Cir. 2015).
15 To establish standing, Plaintiff must show that she “(1) suffered an injury in fact, (2) that
16 is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be
17 redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547
18 (2016).

19
20 Visa’s argument centers on traceability. Visa argues that Plaintiff’s injuries
21 “depend *entirely* on the independent actions of parties other than Visa.” (Mem. at 7
22 [emphasis in original].) Visa explains “Plaintiff alleges that her injury stems from third
23 parties who took videos and uploaded them to MindGeek sites, from MindGeek’s
24 maintenance of sites on which the videos could be uploaded, and from MindGeek’s lack
25 of monitoring of its sites and failure to remove the videos.” (*Id.* at 6-7.) Visa insists that
26 the involvement of “*numerous* third parties whose independent decisions collectively
27 ha[d] a significant effect on [P]laintiffs’ injuries” in this case forecloses a finding that
28

1 Plaintiff has standing to sue Visa. (*Id.* at 7 [*quoting Maya v. Centex Corp.*, 658 F.3d
2 1060 (9th Cir. 2011)] [emphasis in original].)

3
4 Visa attempts to separate itself from Plaintiff’s injuries by interposing Plaintiff’s
5 traffickers—like Plaintiff’s ex-boyfriend and the unnamed older man—between itself and
6 the harms Plaintiff suffered.³ In the words of 18 U.S.C. section 1591, Plaintiff’s
7 traffickers “entice[d]” or “solicit[ed]” Plaintiff—then a minor—to engage in commercial
8 sex acts, thereby violating section 1591(a)(1). If Plaintiff were suing just those men and
9 Visa, and not MindGeek, and attempting to proceed on a theory that those men
10 “entice[d]” or “solicit[ed]” her to engage in a sex act on camera because they knew Visa
11 would permit MindGeek to monetize the resulting videos, the Court might understand
12 Visa’s position. After all, Plaintiff does not allege that her ex-boyfriend and the unnamed
13 older man were motivated by a desire to earn profit on Pornhub or any of MindGeek’s
14 other websites.⁴ Instead, Plaintiff’s case focuses on the monetization of child porn after it
15 was made and posted to MindGeek’s sites, which, if what Plaintiff alleges is true, Visa
16 knowingly took part in. Plaintiff is suing MindGeek for—again in the words of section
17 1591—“benefit[ing] financially” from the child porn featuring Plaintiff, knowing or in
18 reckless disregard of the fact that Plaintiff was a minor when such videos were produced,
19 in violation of section 1591(a)(2). That is where Visa enters the picture in full view,
20 unobscured by the third parties that it attempts to place between itself and Plaintiff. The
21

22 ³ In its memorandum, Visa also explains that it sits atop Acquirers and Issuers, who in turn directly deal
23 with merchants (like MindGeek) and consumers. (Mem. at 2-3.) Visa, however, submits no declaration
24 to support this assertion. Instead, Visa relies on an explanation of the structure of their network from a
25 Second Circuit case and California Court of Appeal case. Visa is permitted to introduce facts beyond
26 the record on a Rule 12(b)(1) motion. *See Golo, LLC v. Goli Nutrition Inc.*, 2021 WL 3360134, at *3
27 (C.D. Cal. July 30, 2021). But Visa cannot simply borrow the record of another case—or another
28 court’s explanation of the record of a separate case—in lieu of introducing facts into the record of this
case. At any rate, Plaintiff’s allegations with respect to Visa’s ultimate control over whether or not
MindGeek is recognized as a merchant bely Visa’s apparent argument that other entities make such a
determination.

⁴ The unnamed older man did seem to have a profit motive, but he sought to earn such profit through
channels other than MindGeek’s websites, such as Craigslist. (*See* FAC ¶ 267.)

1 emotional trauma that Plaintiff suffered flows directly from MindGeek’s monetization of
2 her videos and the steps that MindGeek took to maximize that monetization. If not for its
3 drive to maximize profit, why would MindGeek allow Plaintiff’s first video to be posted
4 despite its title clearly indicating Plaintiff was well below 18 years old? Why would
5 MindGeek stall before removing the video, which Plaintiff alleges had advertisements
6 running alongside it? Why would MindGeek take the video and upload it to its other
7 porn websites? Why, after being alerted by Plaintiff that the video was child porn, would
8 it allow the video to be reuploaded, whereafter advertisements were again featured
9 alongside the reuploaded videos? And why did Plaintiff have to fight for years to have
10 her videos removed from MindGeek’s sites? Plaintiff claims that MindGeek did these
11 things for money, and Visa knowingly offered up its payment network so that MindGeek
12 could satisfy that goal.

13
14 Visa urges that it has no involvement in the maintenance of MindGeek’s websites.
15 Visa would argue that the decisions made in the list of rhetorical questions above were
16 made by MindGeek without input from Visa and within MindGeek’s sole and direct
17 control. But that again ignores Plaintiff’s allegations of the nature of Visa’s wrongdoing.
18 Plaintiff alleges that Visa pushed the first domino when it continued to recognize
19 MindGeek as a merchant with knowledge of its illicit nature. With that decision—which
20 Visa and Visa alone controlled—in place, the means to profit from child porn was
21 ensured, and MindGeek filled in the gaps to seize the opportunity, promulgating the
22 profit-maximizing policies and practices described above that so damaged Plaintiff’s life.
23 Visa lent to MindGeek a much-needed tool—its payment network—with the alleged
24 knowledge that there was a wealth of monetized child porn on MindGeek’s websites.
25 (*See* Section II.C., *supra*.) If Visa was aware that there was a substantial amount of child
26 porn on MindGeek’s sites, which the Court must accept as true at this stage of the
27 proceedings, then it was aware that it was processing the monetization of child porn,
28 moving money from advertisers to MindGeek for advertisements playing alongside child

1 porn like Plaintiff’s videos. And so, after opening the door, Visa was there at the end of
2 the line, too, performing the final act necessary to establish Plaintiff’s section 1591(a)(2)
3 claim against MindGeek: the movement of money.⁵
4

5 Visa is also alleged to have far more control over MindGeek than Visa’s motion
6 would suggest. Plaintiff alleges that after the New York Times ran its article exposing
7 MindGeek’s child porn problem, Visa suspended MindGeek’s merchant privileges,
8 which led MindGeek to remove 10 million of its videos, or a staggering 80% of its
9 content. (FAC ¶ 274.) Visa never mentions this allegation in its motion, going so far as
10 arguing “Plaintiff’s claims against Visa are all based on an unsupported assumption that
11 Visa could force MindGeek to operate differently.”⁶ (Mem. at 8.) But Visa quite
12 literally did force MindGeek to operate differently, and markedly so, at least for a time.
13 And the astonishingly strong response from MindGeek—who is otherwise alleged to
14 stonewall and even harass victims—is consistent with Plaintiff’s allegations that
15 unnamed former MindGeek employees have explained that MindGeek constantly worries
16 that Visa could cut it off and makes decisions based on what content the “major credit
17 card companies are willing to work with.” (*Id.* ¶ 273.) So yes, Visa might not be directly
18 involved in MindGeek’s day-to-day operations, as Visa does not control precisely how
19 MindGeek goes about satisfying its drive for profit. And MindGeek might be happy to
20 profit from just about any type of content if there exists a market of users demanding
21

22 ⁵ Visa tries to make something of the fact that Pornhub is a free website, and that Plaintiff never alleges
23 that her videos were behind any paywalls. That account is mostly consistent with the FAC, though there
24 is some confusion as to whether Plaintiff’s videos were behind any paywall. But Visa ignores that
25 Plaintiff alleges that advertisements were placed alongside her videos and that Visa, even to this day,
26 processes advertising payments on all MindGeek websites. (FAC ¶ 274.)

27 ⁶ In its reply, Visa argues that Plaintiff speculates that “if Visa had discontinued payment processing for
28 the MindGeek sites, MindGeek in reaction might have done more to police its website more closely,
which might then have led to the identification and removal of videos depicting Plaintiff[.]” (Dkt. 159
at 3.) As the Court echoes throughout this order, Plaintiff is not engaging in far-fetched speculation.
MindGeek allegedly *did* remove 80% of its videos in response to Visa’s temporary suspension of
processing payments for the company. Discovery will tell whether some of Plaintiff’s videos were
removed, but there is a non-fanciful chance that hers were amongst the 80%.

1 such content. But the FAC supports an inference that Visa draws the informal boundaries
2 of what types of content are fair game for profit, or fair game for its payment network,
3 the mechanism through which MindGeek earns profit. When MindGeek crosses the line,
4 or at least when MindGeek is very publicly admonished for crossing the line, Visa cracks
5 the whip and MindGeek responds vigorously.⁷ Yet, here is Visa, standing at and
6 controlling the valve, insisting that it cannot be blamed for the water spill because
7 someone else is wielding the hose.⁸

8
9 This is not a case in which the “independent decisions” of “numerous third parties”
10 separate Visa from Plaintiff, to borrow Visa’s words. (*See* Mem. at 7.) It is simple: Visa
11 made the decision to continue to recognize MindGeek as a merchant, despite its alleged
12 knowledge that MindGeek monetized child porn, MindGeek made the decision to
13 continue monetizing child porn, and there are enough facts pled to suggest that the latter
14 decision depended on the former, at least judging from the fallout from the New York
15 Times piece. The cases to which Visa cites are inapposite. In those cases, various
16 plaintiffs sought to pin intractable and complicated social, economic, or political
17 problems on one or a few actors despite the existence of multiple, independent actors
18 who could also be blamed for the plaintiffs’ harms. For example, Visa cites *Boschma v.*
19 *Bureau of Alcohol, Tobacco, Firearms & Explosives*, 2018 WL 2251629 (C.D. Cal. May
20

21 ⁷ The Court questions whether *Novak v. U.S.*, cited in Visa’s reply, is an apposite case, given that it
22 announces a rule of standing in cases wherein a plaintiff alleges an injury caused by the government’s
23 regulation (or lack thereof) of a third party. 795 F.3d 1012 (9th Cir. 2015). Even if the case is on point,
24 for the reasons mentioned above, Plaintiff has plausibly alleged that Visa’s conduct of recognizing
MindGeek as a merchant was “at least a substantial factor motivating [MindGeek’s] actions.” *Id.* at
1019 (internal citations and quotations removed).

25 ⁸ Visa tries to argue that even after it suspended MindGeek, and even after MindGeek removed 80% of
26 its content, Plaintiff alleges that her content remained on Pornhub. Visa gets the timeline wrong.
27 Plaintiff alleges that some of her videos were still on Pornhub as late as June 2020. (*Id.* ¶ 268.) The
28 New York Times article and Visa’s response did not come until December 2020. (*Id.* ¶ 298.) But even
if Plaintiff’s videos were still on Pornhub after Visa suspended MindGeek, that would not upset
Plaintiff’s theory of standing, because a temporary suspension is just that: temporary. Visa is alleged to
have resumed processing advertisement transactions for all MindGeek’s sites after the suspension. (*Id.* ¶
274.)

1 16, 2018), wherein the court held that the Department of Justice and the Bureau of
2 Alcohol, Tobacco, Firearms, and Explosives could not be sued on the theory that their
3 inaction causes gun violence, citing a “casual chain” that “includes numerous third
4 parties, most significantly, the individuals who commit acts of gun violence.” *Id.* at *3.
5 In *Snake River Farmers’ Ass’n, Inc. v. Dep’t of Lab.*, 9 F.3d 792 (9th Cir. 1993), certain
6 farmers sued the Department of Labor on a theory that farm wages they had set in a
7 certain area for a certain kind of farm work might depress the wages paid in another area
8 for the same type of work, but the court found that theory too speculative to support
9 Article III standing. And in *Kaing v. Pulte Homes, Inc.*, 2010 WL 625365 (N.D. Cal.
10 Feb. 18, 2010), *aff’d sub nom. Kaing v. Pultegroup, Inc.*, 464 F. App’x 630 (9th Cir.
11 2011), the plaintiff attempted to hold a certain lender responsible for the decrease in her
12 home’s value on the theory that the lender’s practices caused foreclosures in her
13 neighborhood, but the court explained that the plaintiff’s standing “theory...depends
14 upon a chain of causation that is dependent upon many factors, such as unemployment,
15 health problems, a general weakening economy, or other financial conditions, the
16 decisions of various homeowners to foreclose rather than refinance, as well as other
17 economic factors that can have unpredictable effects on the housing market.”

18
19 The sexual exploitation of minors is an intractable, complicated social problem
20 involving countless independent bad actors. But Plaintiff does not seek to pin society’s
21 problem with the sexual exploitation of minors on Visa, she seeks to hold Visa
22 accountable for a much narrower problem: MindGeek’s monetization of the sexual
23 exploitation of children. Properly framed, the problem at issue becomes less nebulous
24 and involves far fewer actors. That is especially true when one keeps in mind what
25 MindGeek is being sued for in this case: knowingly monetizing (or financially benefitting
26 from) child porn. Again, Visa is not being sued on a theory that Visa encourages the
27 production of child porn by allowing MindGeek to monetize it. Such a theory would not
28 fit the facts of this case, because, as mentioned above, Plaintiff’s traffickers are not

1 alleged to have had in mind profiting from Plaintiff’s videos through MindGeek’s
2 monetization and profit-sharing system. Visa is being sued instead for knowingly
3 providing the means through which MindGeek monetizes child porn once such content is
4 already produced and posted. And unlike the cases to which Visa cites wherein the
5 courts would have had to speculate with respect to how the actions of the defendants
6 would affect numerous other independent actors lending to a societal problem, the Court
7 need not speculate as to how Visa’s actions affect the way that MindGeek approaches
8 child porn. It bears repeating that after the New York Times published an article
9 specifically addressing child porn on Pornhub, Visa suspended MindGeek’s merchant
10 privileges, and MindGeek responded by removing 80% of its content. Plaintiff never
11 explicitly describes the nature of the content that MindGeek removed. But given the
12 subject matter of the New York Times article and given that Visa was clear that its
13 decision to suspend MindGeek was in response to the article, it is reasonable to infer that
14 much of the removed content was child porn or suspected child porn. When the Court
15 couples MindGeek’s expansive content removal with allegations that former MindGeek
16 employees have reported a general anxiety at the company that Visa might pull the plug,
17 it does not strike the Court as fatally speculative to say that Visa—with knowledge of
18 what was being monetized and authority to withhold the means of monetization—bears
19 direct responsibility (along with MindGeek) for MindGeek’s monetization of child porn,
20 and in turn the monetization of Plaintiff’s videos.

21
22 In an argument reminiscent of the “too big to fail” refrain from the financial
23 industry in the 2008 financial crisis, Visa argues that “[i]f accepted, Plaintiff’s theory
24 would upend the financial and payment industries.” (Mem. at 9.) The Court does not see
25 this decision as the drastic tectonic shift that Visa fears. But the Court will make the gist
26 of its holding clear, to assuage any such fear: Visa is being kept in this case because it is
27 alleged to have continued to recognize as a merchant an immense, well known, and
28 highly visible business that it knew used its websites to host and monetize child porn.

1 Moreover, Visa allegedly had considerable sway over that business’s decision-making, a
2 conclusion amply supported by the allegation that MindGeek removed 80% of its content
3 when Visa suspended its business with MindGeek. Visa is not being asked to police “the
4 billions of individual transactions it processes each year.” (Mem. at 9.) It is simply
5 being asked to refrain from offering the tool with which a known alleged criminal entity
6 performs its crimes. That is not a tall order and does not spell out an existential threat to
7 the financial industry.

8
9 **B. Failure to State a Claim**

10
11 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal
12 sufficiency of a plaintiff’s claims. The issue on a motion to dismiss for failure to state a
13 claim is not whether the plaintiff will ultimately prevail, but whether the plaintiff is
14 entitled to offer evidence to support the claims asserted. *Gilligan v. Jamco Dev. Corp.*,
15 108 F.3d 246, 249 (9th Cir. 1997). Rule 12(b)(6) is read in conjunction with Rule 8(a),
16 which requires only “a short and plain statement of the claim showing that the pleader is
17 entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see Whitaker v. Tesla Motors, Inc.*, 985 F.3d
18 1173, 1176 (9th Cir. 2021). When evaluating a Rule 12(b)(6) motion, the district court
19 must accept all material allegations in the complaint as true and construe them in the light
20 most favorable to the non-moving party. *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d
21 1005, 1014 (9th Cir. 2012). To survive a motion to dismiss, a complaint must contain
22 sufficient factual material to “state a claim to relief that is plausible on its face.” *Bell Atl.*
23 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint must contain well-pleaded
24 factual allegations, not legal conclusions, that “plausibly give rise to an entitlement to
25 relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). In keeping with this liberal pleading
26 standard, the district court should grant the plaintiff leave to amend if the complaint can
27 possibly be cured by additional factual allegations. *Doe v. United States*, 58 F.3d 494,
28 497 (9th Cir. 1995).

1 **1. TVPRA**

2

3 While Plaintiff’s FAC was not abundantly clear on what theories of TVPRA

4 liability she is raising against MindGeek and Visa, her opposition to Defendants’ various

5 motions to dismiss clarifies her theories. (Dkt. 151 [Opposition, hereafter “Opp.”].)

6 Plaintiff claims that MindGeek is a beneficiary of a trafficking venture under 18 U.S.C.

7 section 1591(a)(2), (Opp. at 28-39), and a direct sex trafficker under section 1591(a)(1),

8 (Opp. at 39-40), and that Visa is a beneficiary of a trafficking venture under section

9 1591(a)(2), (Opp. at 41-44), and that Visa conspired to violate section 1591 pursuant to

10 section 1594(c), (Opp. at 44-45). Plaintiff has failed to state a beneficiary liability claim

11 against Visa pursuant to section 1591(a)(2), but she has stated a conspiracy claim against

12 Visa pursuant to section 1594(c) on a theory that Visa conspired with MindGeek to

13 violate section 1591(a)(2). The Court begins with an analysis of Plaintiff’s section 1591

14 claims against MindGeek, as such claims can be imputed to Visa as an alleged co-

15 conspirator.⁹

16

17 **a) MindGeek’s TVPRA Violation**

18

19 18 U.S.C. section 1595 provides a private right of action to victims of violations of

20 18 U.S.C. ch. 77, which contains section 1591. 18 U.S.C. § 1595(a). Section 1591

21 criminalizes two categories of actors involved in a sex trafficking venture: direct

22 traffickers and those who benefit financially from the venture. Section 1591(a)(1), the

23 direct trafficker portion of the statute, punishes whoever knowingly “recruits, entices,

24 harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any

25 means a person” knowing that “the person has not attained the age of 18 years and will be

26

27 ⁹ The Court recognizes that the MindGeek Defendants’ motions are not before it, (*see* Dkt. 167), and the

28 Court does not intend for its analysis in this order to serve as a ruling on the MindGeek Defendants’

motions to dismiss. Still, this order should be a highly relevant signal to the MindGeek Defendants as to

how the Court views many of their attacks and challenges to Plaintiff’s complaint.

1 caused to engage in a commercial sex act.” *Id.* § 1591(a)(1). Plaintiff argues that
2 MindGeek bears direct trafficker liability because the company “advertised” her in the
3 sense that term is used in section 1591(a)(1). Plaintiff’s argument is based on a few
4 sentences of dicta from *Doe v. Twitter, Inc.*, 555 F.Supp.3d 889 (N.D. Cal. 2021). In that
5 case, two individuals sued Twitter when sexually explicit videos of those individuals as
6 minors were posted on Twitter.com after they had sent the videos to a third-party. *Id.* at
7 893-894. The boys did not allege that Twitter advertised them, but the court, in *dicta*,
8 explained that their case might have supported an advertisement claim, stating that videos
9 posted to Twitter could conceivably advertise a person. *Id.* at 915. The Court does not
10 disagree: a video can certainly advertise a person. However, the term “advertise” must be
11 read with the remainder of section 1591(a). It is a crime to advertise a person knowing
12 that the person is not 18 years old and will be caused to engage in a commercial sex act.
13 18 U.S.C. § 1591(a). The Court understands the statute to criminalize the advertisement
14 of minors when that advertisement aims to lead to a sex act. Twitter’s and MindGeek’s
15 websites could certainly be used to effectuate advertisement of a minor that leads to
16 further sex acts. For example, if a trafficker posts a video of a minor engaged in a sex act
17 to an online platform like Pornhub and makes known—through the title, tags, or
18 comments on the video, for example—that the minor is available for future sex acts to
19 those interested, depending on how the owner of the online platform interacts with the
20 advertisement and video, the platform owner might bear direct trafficker liability for such
21 advertisement under section 1591(a)(1). But Plaintiff does not allege that her videos
22 were posted in the form of an advertisement to users that she might be available for future
23 sex acts. In this case, the direct traffickers include Plaintiff’s ex-boyfriend and the
24 unnamed older man. In the words of section 1591(a)(1), these men both solicited or
25 enticed Plaintiff to commit a sex act knowing she was underage.

26
27 Plaintiff has, however, comfortably stated a claim under section 1591(a)(2) against
28 MindGeek. As the Court thoroughly explained in *Doe v. MindGeek USA Incorporated*,

1 558 F.Supp.3d 828 (C.D. Cal. 2021), for a civil plaintiff proceeding under section 1595 to
2 state a beneficiary liability claim pursuant to section 1591(a)(2), the plaintiff must allege
3 that (1) the defendant knowingly participated in a sex trafficking venture, (2) knowingly
4 received a benefit from its participation, and (3) knew or should have known that the
5 plaintiff was a victim of sex trafficking.¹⁰ *Id.* at 837.

6
7 As in *Doe*, Plaintiff has adequately pled that MindGeek knowingly participated in
8 a sex trafficking venture with Plaintiff’s primary traffickers. *See id.* at 838. The title of
9 the first video featuring Plaintiff was “13-Year Old Brunette Shows Off For The
10 Camera.” (FAC ¶ 258.) If that was not enough of a red flag, Plaintiff alleges that her age
11 was obvious from the video itself. (*Id.*) And yet, after review, MindGeek allowed the
12 video to be posted to Pornhub. (*Id.*) MindGeek went further than passively allowing the
13 video to be posted, it also “categorized, tagged, [and] optimized the video for user
14 preferences,” placed the video in playlists, posted the video to its other porn websites,
15 and placed advertisements alongside the video. (*Id.* ¶¶ 259-60.) Plaintiff contacted
16 MindGeek and explicitly informed them that the video was child porn, whereafter the
17 video remained on Pornhub for two weeks and continued to gain views. (*Id.* ¶ 261.) But
18 the problem did not end there, because many users downloaded and then reuploaded the
19 video to Pornhub (it is even possible that MindGeek itself reuploaded the video after it
20 was removed),¹¹ and the process would start over: MindGeek allowed the video to be
21 posted, monetized the video, spread it to its other sites, and delayed in removing the

22
23 ¹⁰ The Court notes that the sex acts in this case were commercial in nature. In *Doe v. MindGeek USA*
24 *Incorporated*, 558 F.Supp.3d 828 (C.D. Cal. 2021), this Court recognized the theory that the commercial
25 nature of the sex act could be latent. *Id.* at 840. Plaintiff does not allege that her ex-boyfriend
26 monetized Plaintiff’s first video or made the video with any hope of earning profit from it. But
27 MindGeek did monetize the first video by placing advertisements alongside it, thereby commercializing
28 Plaintiff’s sex act with her ex-boyfriend. Latent commercialization is not at issue with the second set of
videos: those videos were expressly made for sale.

¹¹ As this Court explained in *Doe*, at the pleading stage, the Court can reasonably infer that MindGeek
interacted with Plaintiff’s videos in a manner consistent with Plaintiff’s allegations as to how MindGeek
interacted with child porn generally. 558 F.Supp.3d at 842, n.6. Plaintiff alleges that MindGeek has a
practice of reuploading videos that it has been forced to remove. (FAC ¶ 208.)

1 video after Plaintiff’s complaints. (*Id.* ¶ 262-63.) As for the latter series of sexually
2 explicit videos that Plaintiff made as a minor to fund her depression-induced heroin
3 addiction, MindGeek interacted with those videos in much the same way. (*Id.* ¶ 268.)
4 Some of these videos were still on Pornhub as late as June 2020. (*Id.*) By allowing the
5 videos to be posted, formatting the videos, propagating the videos, and monetizing the
6 videos over the course of several years, MindGeek developed a continuous business
7 relationship with Plaintiff’s primary traffickers. *See Doe*, 558 F.Supp.3d at 837.

8
9 The second prong—knowing receipt of a financial benefit from participation in a
10 sex trafficking venture—is easily met. MindGeek monetized Plaintiff’s videos by
11 placing advertisements alongside those videos. (FAC ¶¶ 260, 262, 268.) And the third
12 prong—MindGeek’s actual or constructive knowledge that Plaintiff was the victim of sex
13 trafficking—is also easily met. Plaintiff quite literally told MindGeek herself that she
14 was a minor in her videos, thereby expressly alerting them that she was the victim of sex
15 trafficking, and yet the videos remained on MindGeek’s sites—in their reuploaded
16 form—for several years, each earning MindGeek ad revenue.¹² (*Id.* ¶¶ 261-263.)

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27
28 ¹² Plaintiff’s section 1595 claim against MindGeek is excepted from the immunity conferred by section 230 of the Communications Decency Act pursuant to the Allow States and Victims to Fight Online Sex Trafficking Act. *See Doe v. MindGeek*, 558 F. Supp. 3d at 836.

1 Visa had any knowledge—constructive or otherwise—of Plaintiff, her videos, or her age
2 in the videos.¹³

3
4 However, under section 1594(c), Plaintiff has adequately pled that Visa conspired
5 with MindGeek to violate section 1591(a)(2). The Court opens with some axioms
6 relating to the law of criminal conspiracy. One conspirator is liable for the acts of its co-
7 conspirator when such acts are in furtherance of the conspiracy, *see Pinkerton v. United*
8 *States*, 328 U.S. 640, 647 (1946), even if the conspirator “is unaware of the existence of
9 the acts or the actors[.]” *United States v. Testa*, 548 F.2d 847, 855 (9th Cir. 1977), so long
10 as the acts are the “necessary or natural consequence” of the conspiracy, *United States v.*
11 *Fonseca-Caro*, 114 F.3d 906, 908 (9th Cir. 1997). *See also United States v. Mothersill*,
12 87 F.3d 1214, 1218 (11th Cir. 1996) (“Each party to a continuing conspiracy may be
13 vicariously liable for substantive criminal offenses committed by a co-conspirator during
14 the course and in the furtherance of the conspiracy, notwithstanding the party’s non-
15 participation in the offenses or lack of knowledge thereof. Liability will not lie, however,
16 if the substantive crime did not fall within the scope of the unlawful project, or was

17
18 ¹³ While the Court agrees with Visa that its alleged conduct does not amount to a section 1591(a)(2)
19 violation, the Court feels it necessary to explain the difference between this case and *Perfect 10, Inc. v.*
20 *Visa Int’l Serv. Ass’n*, 494 F.3d 788 (9th Cir. 2007), which Visa relies upon to argue that it did not
21 violate section 1591(a)(2), (Mem. at 15-16), because the Court feels that Visa’s analysis of *Perfect 10*
22 reflects its misunderstanding of the proper framing of this case. In *Perfect 10*, Visa was sued for
23 contributory and vicarious copyright infringement for processing credit card charges incurred by
24 customers purchasing infringing images from numerous offending websites. *Perfect 10*, 494 F.3d at
25 794. There, the court explained “While Perfect 10 has alleged that Defendants make it easier for
26 websites to profit from this infringing activity, the issue here is reproduction, alteration, display and
27 distribution, which can occur without payment.” *Id.* at 797. Here, in contrast, what is at issue is
28 *payment* (or monetization). The court in *Perfect 10* explained that Visa made “it easier for infringement
to be profitable, which tends to increase financial incentives to infringe, which in turn tends to increase
infringement,” and that the “additional step in the causal chain” prevented liability. *Id.* at 798. But there
is no additional step here because profiting is MindGeek’s crime and Visa allegedly directly participated
in that crime. Visa’s motion reads as though it believes it is being sued for incentivizing the production
and posting of child porn by money-driven direct traffickers by processing payments on MindGeek’s
sites. If that were the case, this case would come far closer to *Perfect 10*. But Visa is being sued for
knowingly providing the tool through which MindGeek monetized child porn, which is itself a crime (or
a “direct infringement,” to analogize to *Perfect 10*).

1 merely a part of the ramifications of the plan which could not be reasonably foreseen as a
2 necessary or natural consequence of the unlawful agreement.”) (internal quotations and
3 citations removed) (cleaned up). If a conspiracy is adequately pled, Visa can bear
4 liability for MindGeek’s section 1591(a)(2) violation if such crime was committed in
5 furtherance of and a natural consequence of the conspiracy, regardless of whether Visa
6 knew of or interacted with Plaintiff or her primary traffickers.

7
8 To borrow Visa’s own statement of the law, to allege a conspiracy to violate
9 section 1591(a)(2), Plaintiff must allege facts supporting a conclusion that MindGeek and
10 Visa had a ““unity of purpose or a common design and understanding, or a meeting of the
11 minds in an unlawful arrangement.”” (Mem. at 24 [*quoting Transgo, Inc. v. Ajac*
12 *Transmission Parts Corp.*, 768 F.2d 1001, 1020 (9th Cir. 1985)].) Such meeting of the
13 minds or agreement need not be explicit but can be inferred if Visa “entered into a joint
14 enterprise with consciousness of its general nature and extent.” *Paguirigan v. Prompt*
15 *Nursing Emp. Agency LLC*, 286 F. Supp. 3d 430, 440 (E.D.N.Y. 2017). Visa allegedly
16 did just that. Plaintiff adequately alleges that Visa knew that MindGeek’s websites were
17 teeming with monetized child porn from its own due diligence and discussions and
18 negotiations with MindGeek, PayPal’s decision to cease doing business with MindGeek,
19 communications from advocates with which Visa interacted, and from the New York
20 Times article. (*See* Section II.C., *supra*.) Despite this alleged knowledge, Plaintiff
21 asserts that Visa “explicitly agreed with MindGeek to process the financial transactions
22 from which the defendants profited from the [sex trafficking] venture.” Through
23 Plaintiff’s entire ordeal and to this day, Visa processes advertisement payments on
24 MindGeek’s sites. (FAC ¶ 275.) If Visa knew MindGeek’s sites contained a wealth of
25 child porn and that MindGeek regularly placed ads alongside its videos, facts that are
26 either expressly alleged or clearly implied in the FAC, then it knew that MindGeek was
27 regularly committing violations of section 1591(a)(2) by participating in hundreds or
28 thousands of sex trafficking ventures and financially benefiting from such participation.

1 With such knowledge, Visa continued to grant MindGeek the means to financially benefit
2 from its participation in sex trafficking ventures: the Visa payment network. It does not
3 matter that Visa did not know who the eventual victims or primary traffickers would be
4 or whether Visa interacted with or knew of Plaintiff, her videos, or her traffickers.
5 MindGeek’s violation of section 1591(a)(2), and Plaintiff’s resulting harm, were natural
6 consequences of Visa’s alleged knowing decision to provide the means through which
7 MindGeek could monetize child porn videos, like those featuring Plaintiff.

8
9 Visa argues “[t]he allegation that Visa recognized MindGeek as an authorized
10 merchant and processed payment to its websites does not suggest that Visa agreed to
11 participate in sex trafficking of any kind.” (Mem. at 24 [internal quotations removed]
12 [cleaned up].) The predicate criminal agreement or meeting of the minds here, however,
13 is not to participate in sex trafficking, it is an agreement to knowingly benefit financially
14 from sex trafficking. At this stage, Visa’s agreement to financially benefit from child
15 porn can be inferred from its decision to continue to recognize MindGeek as a merchant
16 despite allegedly knowing that MindGeek monetized a substantial amount of child porn
17 on its websites.

18
19 Visa cites *Craigslist Inc. v. 3Taps Inc.*, 942 F. Supp. 2d 962, 982 (N.D. Cal. 2013)
20 for the proposition that a commercial relationship alone does not establish a conspiracy.¹⁴
21 In *Craigslist*, Craigslist accused 3Taps of stealing its data and selling it to Padmapper,
22 another company. In dismissing Craigslist’s civil conspiracy claim against Padmapper,
23 the court held: “[t]hat Padmapper had an incentive to use the inappropriately obtained
24

25 ¹⁴ Visa also cites *Benson v. JPMorgan Chase Bank, N.A.*, 2010 WL 1526394, at *6 (N.D. Cal. Apr. 15,
26 2010). That case is not persuasive. It involves one or two sentences of analysis with respect to the
27 conspiracy claim therein. And the court had good reason to avoid any in-depth analysis: the plaintiff
28 conceded that the claim was inadequately pled and asked for leave to amend. Also, for what it is worth,
both *Benson* and *Craigslist* come from the common law civil conspiracy context. They do not involve
claims under section 1594. The Court queries whether they are even applicable to the present analysis.
At any rate, they are distinguishable or unpersuasive.

1 information, or that 3Taps would not itself have committed the acts without a market for
2 the resulting information, *does not plausibly suggest* that Padmapper ever intended to
3 assist 3Taps in the alleged wrongful conduct required to obtain the information in the first
4 place.” 942 F. Supp. 2d at 982 (emphasis added). In other words, it seems that the court
5 in *Craigslist* was uncomfortable with what it saw as a logical leap from one alleged co-
6 conspirator’s conduct and the inferred intent of that co-conspirator to aid the other co-
7 conspirator in a wrongful act. The court thought the bridge between Padmapper’s
8 conduct—buying stolen data—and an inference that Padmapper intended to assist 3Taps
9 in stealing that data in the first place was too far.

10
11 But the bridge is short and clear in this case when one keeps in mind what
12 MindGeek’s alleged criminal act is and how Visa’s conduct is intertwined with
13 MindGeek’s criminal act. MindGeek is being sued for knowingly monetizing child porn.
14 Visa’s act of continuing to recognize MindGeek as a merchant is directly linked to
15 MindGeek’s criminal act, as Visa’s act served to keep open the means through which
16 MindGeek completed its criminal act knowing that that criminal act was being
17 committed. At this early stage of the proceedings, before Plaintiff has had any discovery
18 from which to derive Visa’s state of mind, the Court can comfortably infer that Visa
19 intended to help MindGeek monetize child porn from the very fact that Visa continued to
20 provide MindGeek the means to do so and knew MindGeek was indeed doing so. Put yet
21 another way, Visa is not alleged to have simply created an incentive to commit a crime, it
22 is alleged to have knowingly provided the tool used to complete a crime.

23 24 **2. Statutory Standing Under TVPRA**

25
26 Visa argues that Plaintiff lacks statutory standing under the TVPRA. As Visa
27 explains, courts are instructed to “presume that a statutory cause of action is limited to
28 plaintiffs whose injuries are proximately caused by violations of the statute.” *Lexmark*

1 *Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 132 (2014). The “proximate-
2 cause requirement generally bars suits for alleged harm that is too remote from the
3 defendant’s unlawful conduct.” *Id.* at 133 (internal quotations and citations removed).
4 Visa argues that its conduct was not the proximate cause of Plaintiff’s injuries. The
5 above analysis—of both Article III standing and Visa’s alleged TVPRA violation—
6 should make clear that Visa’s argument is unpersuasive to the Court at this stage of the
7 case. Plaintiff adequately pleads that Visa conspired with MindGeek to violate section
8 1591(a)(2), that MindGeek did complete such violation of section 1591(a)(2), that such
9 violation can be imputed to Visa on a conspiracy basis, and that her alleged injuries flow
10 from the monetization of her videos and the acts taken to effectuate and maximize that
11 monetization. When MindGeek decides to monetize child porn, and Visa decides to
12 continue to allow its payment network to be used for that goal despite knowledge of
13 MindGeek’s monetization of child porn, it is entirely foreseeable that victims of child
14 porn like Plaintiff will suffer the harms that Plaintiff alleges.

15
16 *Fields v. Twitter, Inc.*, 881 F.3d 739 (9th Cir. 2018) is distinguishable. There,
17 Twitter was sued for providing material support to ISIS after ISIS members killed
18 plaintiffs’ husbands in Jordan on the theory that Twitter allowed its platform to be used
19 by ISIS to communicate, fundraise, recruit, and train members. The court held:
20 “Appellants have not pleaded that Twitter’s provision of communication equipment to
21 ISIS, in the form of Twitter accounts and direct messaging services, had any direct
22 relationship with the injuries that Plaintiffs–Appellants suffered.” 881 F.3d at 749-50.
23 The court also cited the district court with approval, who stated “There are no facts
24 indicating that Abu Zaid’s attack was in any way impacted, helped by, or the result of
25 ISIS’s presence on the social network.” *Id.* at 750.

26
27 First, the Court will not decide whether the “direct relationship” test adopted in
28 *Fields*—a decision tied directly to the language of a different statute than the TVPRA

1 with different wording—applies to the TVPRA, as neither party briefed that issue with
2 any sort of depth or even recognized that the court in *Fields* made a deliberate choice
3 based on a statutory analysis. *See Fields*, 881 F.3d at 748. For the reasons explained
4 above, if foreseeability is the standard, it is met here. Even if a direct relationship were
5 required, and even if such standard would excuse Visa if its payment network was not
6 used to monetize Plaintiff’s videos specifically, the Court would not dismiss Plaintiff’s
7 claims against Visa. At this stage of the proceedings, she has adequately alleged the
8 possibility that Visa’s payment network was used in relation to her videos: she alleges
9 that advertisements were placed alongside her videos and that Visa continues to process
10 advertisement payments for MindGeek’s porn sites. The Court can infer a strong
11 possibility that Visa’s network was involved in at least some advertisement transactions
12 relating directly to Plaintiff’s videos. To require Plaintiff to have concrete proof that
13 Visa’s payment network was actually used in connection with her videos would be an
14 impossible standard to meet prior to discovery.

15
16 To sum, the Court **GRANTS** Visa’s motion with respect to Plaintiff’s section
17 1591(a)(2) claim against Visa and **DENIES** Visa’s motion with respect to Plaintiff’s
18 section 1594(c) claim against Visa, which in turn may serve as a predicate for imputing
19 MindGeek’s section 1591(a)(2) liability to Visa.

20 21 **3. RICO**

22
23 Visa argues that Plaintiff has failed to state a RICO claim against it. But the Court
24 will not perform a RICO analysis on this motion. As the Court held in a companion
25 order, jurisdictional discovery is appropriate with respect to the MindGeek Defendants.
26 (*See* Dkt. 167.) The MindGeek Entity Defendants, in their motion to dismiss—which the
27 Court denied without prejudice in light of the parties proceeding to jurisdictional
28 discovery—raised two related threshold arguments that the Court believes may dispose of

1 Plaintiff's RICO claims. They argue that Plaintiff's injuries are not cognizable under
2 RICO, and that the statute of limitations has run even if the injuries are cognizable. Of
3 Course, this is an order on Visa's motion, and Visa failed to raise these arguments. But
4 the Court cannot ignore them when to do so would necessitate what very well may end up
5 being a needless analysis of whether Plaintiff adequately pleads the other specifics of a
6 RICO claim. After jurisdictional discovery, the Court suspects Plaintiff will file a
7 Second Amended Complaint, which the Court grants her leave to do. In that Second
8 Amended Complaint, if she has a good faith, reasonable basis for doing so, she must
9 include additional facts relating to MindGeek's arguments regarding her injuries and the
10 statute of limitations. The Court believes that Plaintiff's injuries—her loss of
11 employment opportunities and damage to her image—may be cognizable under current
12 Ninth Circuit case law, which seems to recognize a broad category of what might be
13 deemed a property interest.¹⁵ See, e.g., *Diaz v. Gates*, 420 F.3d 897 (9th Cir. 2005).
14 Still, the FAC is critically vague in tying Plaintiff's injuries to MindGeek's and Visa's
15 conduct. It was no mystery in *Diaz* as to why the plaintiff could not seek employment: he
16 was imprisoned. *Id.* The Court can guess reasons why Plaintiff's employment prospects
17 were affected by MindGeek's conduct, but she has not made that connection clear in the
18 FAC and it is not the Court's job to guess. Plaintiff will also have to plead specific facts
19 as to why her depression, addiction, suicidal ideations, and other complicating conditions
20 stopped her from filing a complaint sooner. Or she will have to allege facts that support a
21 conclusion that she suffered a new, independent RICO injury during the limitations
22 period, rather than just a continuation or compounding of the injuries she suffered outside
23 the limitations period. See *Sasser v. Amen*, 2001 WL 764953, at *7 (N.D. Cal. July 2,
24 2001), *aff'd*, 57 F. App'x 307 (9th Cir. 2003).

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26
27
28 ¹⁵ While these injuries seem to be cognizable under Ninth Circuit case law, and therefore worthy of passing the pleading stage, the Court strongly questions whether Plaintiff could prove damages relating to these injuries with the requisite level of certainty on summary judgment or at trial.

1 **4. UCL and FAL**

2

3 Plaintiff alleges that Visa violated the UCL and FAL. Visa argues that Plaintiff
4 has failed to state a claim under either law. (Mem. at 26-27.) Visa focuses on the fact
5 that in the section of the FAC wherein UCL and FAL violations are pled, Plaintiff’s
6 allegations focus primarily on conduct attributable to MindGeek, not Visa. However,
7 while the Court would have liked Plaintiff to clearly spell out the factual theories
8 underlying her UCL and FAL claims against Visa in the section of the FAC that deals
9 specifically with those laws, the Court must view the complaint as a whole to assess
10 whether Plaintiff has pled facts sufficient to support her claims against Visa under the
11 UCL and FAL. The UCL prohibits unlawful, unfair, or fraudulent business acts or
12 practices. Cal. Bus. & Prof. Code § 17200. “Under the UCL’s unlawful prong,
13 violations of other laws are borrowed and made independently actionable under the
14 UCL.” *Herron v. Best Buy Co. Inc.*, 924 F. Supp. 2d 1161, 1177 (E.D. Cal. 2013)
15 (internal quotations omitted). For the reasons explained above, Plaintiff has adequately
16 pled that Visa violated 18 U.S.C. section 1594(c) by continuing to process financial
17 transactions for MindGeek whilst knowing MindGeek’s sites contained a substantial
18 amount of monetized child porn. This could qualify as an “unlawful” business practice.
19 And, contrary to Visa’s assertion, Plaintiff has adequately alleged that Visa has control
20 over deciding whether to recognize MindGeek as a merchant, making *Emery v. Visa*
21 *Internat. Serv. Ass’n*, 95 Cal.App.4th 952 (2002) distinguishable. Plaintiff has, however,
22 failed to plead an FAL claim against Visa. Plaintiff does not attempt to spell out her
23 theory of FAL liability with respect to Visa in her opposition, and, unlike the UCL claim,
24 the Court cannot neatly glean a theory of liability for Plaintiff’s FAL claim from the
25 FAC. The Court **GRANTS** Visa’s motion with respect to Plaintiff’s FAL claim and
26 **DENIES** the motion with respect to the UCL claim.

27

28

1 **5. Common Law Conspiracy**

2
3 The Court **ORDERS** Plaintiff to plead a more definite statement of her civil
4 conspiracy claim. Federal Rule of Civil Procedure 12(e) permits a party to move for a
5 more definite statement when a complaint is “so vague or ambiguous that the party
6 cannot reasonably prepare a response.” Fed. R. Civ. Pro. 12(e). And the Court is
7 empowered to demand a more definite statement *sua sponte*. See *Paylor v. Hartford Fire*
8 *Ins. Co.*, 748 F.3d 1117, 1127 (11th Cir. 2014) (“[N]othing should stop District Courts
9 from demanding, on their own initiative, that the parties replead the case.”). Although
10 Visa does not lodge a Rule 12(e) motion, the Court finds it necessary to demand of
11 Plaintiff a more definite statement with respect to her common law civil conspiracy cause
12 of action against Visa.

13
14 Under California law, civil “[c]onspiracy is not a cause of action, but a legal
15 doctrine that imposes liability on persons who, although not actually committing a tort
16 themselves, share with the immediate tortfeasors a common plan or design in its
17 perpetration.” *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 510–11,
18 (1994). Thus, a claim for civil conspiracy rests on the “commission of an actual tort.”
19 *Id.* at 511. And so, to assess whether civil conspiracy is adequately pled, the Court would
20 have to assess whether Plaintiff has adequately pled the commission of the underlying
21 tort or torts. See *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503,
22 511 (1994).

23
24 Plaintiff does raise several tort causes of action. (See FAC.) But Plaintiff brings
25 these causes of action against the MindGeek Defendants, not Visa. (See *id.*) When
26 Plaintiff pleads her civil conspiracy claim, she includes Visa, but she does not make clear
27 what torts Visa allegedly conspired to commit. Instead, she lists a series of alleged “overt
28 acts,” the same list of alleged acts that she used to support her section 1591 claims

1 against the MindGeek Defendants. The Court cannot simply guess what tort or torts that
2 list is supposed to represent. And so, the Court cannot perform an analysis of whether
3 civil conspiracy is adequately pled, because it does not know which tort or torts it should
4 evaluate to assess whether Plaintiff has adequately pled the commission thereof. If
5 Plaintiff mistakenly pled civil conspiracy as a standalone tort, it should be removed from
6 her complaint. If she is attempting to use the civil conspiracy claim as a means to impute
7 tort liability to Visa for some or all of the various torts that she pleads, she must amend
8 her complaint to make clear which tort causes of action Visa allegedly conspired to
9 commit.

11 **IV. ICLE’S AMICUS BRIEF**

12
13 Also before the Court is the ICLE’s motion for leave to participate as amicus
14 curiae. (Dkt. 145.) The Court **GRANTS** that motion. However, the Court does not find
15 ICLE’s brief persuasive. The brief focuses on whether Visa should be treated as a
16 participant as that term is used in the RICO and TVPRA statutes. (See *id.* at 4 [“The
17 fundamental question with respect to Visa’s Motion to Dismiss, then, is whether Visa
18 should properly be considered a ‘participant’ in the activities alleged under these
19 statutes.”].) But as discussed, the Court does reach the RICO claim in this order, and the
20 Court agrees that Visa did not participate in a sex trafficking venture as that term is used
21 in the TVPRA. In other words, ICLE focuses on a moot point. ICLE also operates under
22 the assumption that the Court’s only concern is to make sure to assign liability to parties
23 in a superior position to avoid future harms—deterrence, in other words. But courts also
24 punish parties for past harms, even if there is no prospect that such punishment will deter
25 an ongoing problem. The Court is also not so sure that deterrence will not be had if
26 Visa—as a result of this order or further developments in this case—ceases to recognize
27 MindGeek as a merchant. The last time Visa did that, MindGeek allegedly cleaned up its
28

1 websites to the tune of 80% of its content. That looks a lot like effective deterrence. This
2 alleged fact is something both Visa and ICLE ignore in their briefing.

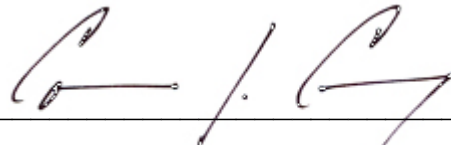
3
4 The Court also takes issue with ICLE’s suggestion that keeping Visa in this case
5 would send a signal that any company who allows MindGeek to “do business”—like
6 FedEx, who delivers packages to the company—is fair game for a lawsuit. (Dkt. 145 at
7 16.) Visa is alleged to have knowingly allowed MindGeek to use its payment network to
8 do crime, not simply to “do business.” FedEx can keep delivering packages to MindGeek
9 if it has no reason to believe those packages are instrumental to a crime. Nor would this
10 order support a suit against Google for allowing Pornhub to appear in its search results.
11 (*See id.*) Visa allegedly knowingly provided the very tool through which MindGeek
12 committed its alleged crime of financially benefitting from child porn. Even if Google
13 knows that its search engine is being used to drive traffic to a website allegedly teeming
14 with child porn, and thereby indirectly helps that website financially benefit from its
15 illicit content, it would not have provided a tool through which the crime is completed,
16 unlike Visa.

17
18 The Court further takes issue with ICLE’s suggestion that it would be unfair to
19 expect Visa to cut MindGeek off when the majority of MindGeek’s content is legal porn.
20 (*Id.* at 17.) MindGeek is alleged to have done far more than unwittingly host some illicit
21 content amidst its numerous legal videos. It is alleged to have solicited child porn and
22 those searching for it, stored, distributed, and re-uploaded child porn knowing that it was
23 child porn, and analyzed the performance of child porn to refine its algorithms, all with
24 an intent to monetize illegal content. If that is true, MindGeek is a criminal enterprise
25 also engaged in legitimate business. Suffice to say, law abiding businesses should avoid
26 doing business with criminal enterprises, even when those criminal enterprises have been
27 smart enough to diversify their activities.

1 **V. CONCLUSION**

2
3 For the foregoing reasons, Visa’s motion is **GRANTED IN PART AND**
4 **DENIED IN PART WITH LEAVE TO AMEND.** However, leave to amend is limited.
5 The Court will not permit Plaintiff to amend her section 1591(a)(2) claim against Visa.
6 Such amendment would be futile because Plaintiff simply has no basis for claiming Visa
7 directly participated in the sex trafficking ventures that harmed her.¹⁶ Plaintiff shall
8 withhold any amendment until the parties have completed jurisdictional discovery, which
9 the Court has ordered in a companion order. (*See* Dkt. 167.)

10
11 DATED: July 29, 2022



12
13 CORMAC J. CARNEY

14 UNITED STATES DISTRICT JUDGE

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28 ¹⁶ That does not mean that Visa cannot be held liable for MindGeek’s section 1591(a)(2) violation on a conspiracy basis.