

Dismissive: How Trafficking Survivors Are Held to an Unlawfully High Standard in Seeking Civil Liability Against Hotels and a Proposed Solution

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I. INTRODUCTION

A survivor of human trafficking brings a civil action against the hotel chain that benefited from her exploitation under a federal statute and indirect liability. She claims her pimp rented the hotel rooms for weeks at a time using cash and

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a prepaid credit card.¹ She never brought any luggage; dozens of men traipsed through the lobby to her hotel room every day. The staff could see physical signs of her abuse and hear loud altercations when these men visited her room. Maid service was never requested during these visits and, when her pimp checked her out, the room was filled with used condoms, sex paraphernalia, and broken objects. Public policy would suggest she should have a valid cause of action against the hotels who facilitated her exploitation.² Yet, depending on the state in which she brings her lawsuit, her remedy may be dismissed by the mere granting of a pretrial motion.³

The relationship between human trafficking and hotels is logical and extensive.⁴ The Polaris Project, a nationally recognized nonprofit organization focused on combatting human trafficking, reported over 3,500 known trafficking cases occurring at hotels over a ten-year period.⁵ It also concluded approximately seventy-five percent of trafficking survivors come into contact with hotels at some point during their exploitation.⁶ Traffickers prefer hotels because of their privacy and anonymity.⁷ Human trafficking is not class specific; it is pervasive across lower-income area, middle class, and high-income area hotels.⁸

¹ Men, women, and nonbinary individuals are vulnerable to human trafficking. See POLARIS PROJECT, 2019 DATA REPORT (2019), <https://polarisproject.org/wp-content/uploads/2019/09/Polaris-2019-US-National-Human-Trafficking-Hotline-Data-Report.pdf> [https://perma.cc/3S6M-VB8C]. However, women are most predominately victims of human trafficking. *Id.* For ease of reading, I will use female pronouns when speaking of a generalized human trafficking survivor.

² Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN'S L.J. 1, 1–3 (2004).

³ See generally *A.B. v. Marriott Int'l, Inc.*, 455 F. Supp. 3d 171 (E.D. Pa. 2020) (granting in part and denying in part defendant's motion to dismiss based on Pennsylvania agency law); *Doe 4 v. Red Roof Inns, Inc.*, No. 1:19-cv-03845-WMR, 2020 WL 1872336 (N.D. Ga. Apr. 13, 2020) (dismissing claims against franchisor hotel chains); *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959 (S.D. Ohio 2019) (denying defendant's motion to dismiss); *S.J. v. Choice Hotels Int'l, Inc.*, 473 F. Supp. 3d 147 (E.D.N.Y. 2020) (granting in part and denying in part defendant's motion to dismiss based on New York agency law).

⁴ See POLARIS PROJECT, ON-RAMPS, INTERSECTIONS, AND EXIT ROUTES: A ROADMAP FOR SYSTEMS AND INDUSTRIES TO PREVENT AND DISRUPT HUMAN TRAFFICKING 65–77 (July 2018), <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking.pdf> [https://perma.cc/728R-B9VW] [hereinafter ON-RAMPS, INTERSECTIONS, AND EXIT ROUTES].

⁵ *Id.* at 67.

⁶ See Lori Nazry Ross, *See No Evil: A Look at Florida's Legislative Response to Holding Hotels Civilly Liable for "Turning A Blind Eye" to the Sex Trafficking Monster Hiding Behind Closed Doors*, 22 N.Y.U. J. LEGIS. & PUB. POL'Y 375, 385–86 (2020).

⁷ *Id.* at 385.

⁸ See *id.* at 386.

Human trafficking is prevalent across the United States,⁹ and this egregious issue has been addressed by the federal, state, municipal, and local levels of government.¹⁰ However, despite widespread agreement that human trafficking must be combatted, current applications of law provide trafficking survivors inconsistent and variable remedies.¹¹ Current civil remedies for trafficking survivors should be applied uniformly across the country to prevent further exploitation.

This Note discusses the intersection of human trafficking operations and hotels and the remedies available for trafficking survivors. Specifically, Part II analyzes the various levels of culpability different federal courts require under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) for hotels to be liable.¹² Part III then describes district courts' varied application of agency theory and vicarious liability when determining whether hotel chains should be held liable for the exploitation of trafficking survivors.¹³ Finally, Part IV challenges these countless configurations of the many TVPRA interpretations and vicarious liability laws and proposes a solution of a uniform application of the statute and tort law to empower trafficking survivors, per the legislative intent of the Trafficking Victims Protection Act (TVPA) and its reauthorizations.¹⁴ Specifically, Part IV suggests an amendment to the TVPRA holding hotel chains strictly liable if the franchisee hotel benefited from the trafficking survivor's exploitation, should have known that she was being trafficked, and acted with apparent authority.¹⁵ Ultimately, the Trafficking Victims Protection Reauthorization Act of 2008 should be read broadly and indirect liability should be applied uniformly in order to prevent further exploitation of trafficking survivors.

II. ESTABLISHING LIABILITY OF FRANCHISEE HOTELS

Establishing liability of franchisee hotels is essential to the viability of trafficking survivors' claims against hotel chains as beneficiaries from their

⁹ See POLARIS PROJECT, *supra* note 1.

¹⁰ See *Human Trafficking Laws & Regulations*, U.S. DEP'T HOMELAND SEC., <https://www.dhs.gov/human-trafficking-laws-regulations> [<https://perma.cc/V3ZS-KAKS>]; OHIO HUMAN TRAFFICKING TASK FORCE, OVERVIEW OF STATE AND FEDERAL HUMAN TRAFFICKING LAWS, https://humantrafficking.ohio.gov/links/Overview_of_State_and_Federal_HT_Laws10_18.pdf [<https://perma.cc/KZ6W-RNUE>]; Holly Zachariah, *CATCH Court Provides Beacon of Hope for Human Trafficking Victims*, COLUMBUS DISPATCH (June 19, 2019), <https://www.dispatch.com/story/lifestyle/features/the-good-life/2019/06/18/catch-court-provides-beacon-hope/4731919007/> [<https://perma.cc/PN39-5H4M>].

¹¹ See cases cited *supra* note 3.

¹² See *infra* Part II.

¹³ See *infra* Part III.

¹⁴ See *infra* Part IV.

¹⁵ See *infra* Part IV.

exploitation.¹⁶ Absent liability of the franchisee hotels, where the actual trafficking took place, hotel chains will not be held liable for any trafficking that occurred in their franchisee hotels.¹⁷

In 2000, Congress nearly unanimously enacted the Trafficking Victims Protection Act (TVPA)¹⁸ “to combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude” and to “reauthorize certain Federal programs to prevent violence against women.”¹⁹ It created new criminal offenses for forced labor and sex trafficking and increased penalties for existing involuntary servitude crimes.²⁰ Recognizing that the prosecution-centered focus of the TVPA largely overlooked victim services, Congress passed the Trafficking Victims Protection Reauthorization Act of 2003,²¹ which created an avenue for trafficking survivors to seek civil liability against their perpetrators.²² In 2008, Congress again updated the TVPA through the enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008).²³ The TVPRA of 2008 expanded civil liability beyond perpetrators to all who facilitated or benefited from the trafficking survivor’s exploitation.²⁴ On its face, the TVPRA of 2008 permits trafficking survivors to seek civil liability against hotels.²⁵

The markers of trafficking in hotels are consistent: the use of cash or prepaid credit cards, extended stays with little luggage, the presence of sex and drug

¹⁶ A hotel chain cannot be held indirectly liable for the wrongs of its franchisee hotel if the franchisee hotel is not directly liable under the TVPRA. *See, e.g., S.J. v. Choice Hotels Int’l, Inc.*, 473 F. Supp. 3d 147, 154 (E.D.N.Y. 2020) (noting that a hotel chain cannot be held directly liable under the TVPRA for having a general awareness that trafficking occurs on its franchisees’ properties, but instead that a franchisee must be liable under the TVPRA first before a hotel chain can be vicariously liable).

¹⁷ *See id.*

¹⁸ 22 U.S.C. §§ 7101–7114; 146 CONG. REC. 21,346–47 (2000); 146 CONG. REC. 22,852 (2000).

¹⁹ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, §§ 101–113, 114 Stat. 1464, 1466–91 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.).

²⁰ Gallant Fish, *No Rest for the Wicked: Civil Liability Against Hotels in Cases of Sex Trafficking*, 23 BUFF. HUM. RTS. L. REV. 119, 136 (2017); Ross, *supra* note 6, at 387.

²¹ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered sections of 18 U.S.C.).

²² *Id.*; Fish, *supra* note 20, at 137.

²³ 18 U.S.C. § 1595; William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 18 U.S.C.). In addition to the TVPRA of 2003 and the TVPRA of 2008, Congress has further reauthorized the TVPA in 2018. Trafficking Victims Protection Act of 2017, Pub. L. No. 115-393, 132 Stat. 5265 (2018). Another reauthorization to the TVPA of 2000 was introduced into the U.S. House of Representatives in 2021. Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2021, H.R. 5150, 117th Cong. (2021).

²⁴ *See* 18 U.S.C. § 1595.

²⁵ *See id.*; Fish, *supra* note 20, at 137.

paraphernalia in the room, frequent requests for new linens and towels without further request for maid service, and excessive male visitors in the room.²⁶ The financial relationship between trafficking operations and hotels is obvious: hotels financially benefit from the renting of rooms by traffickers.²⁷ Hotels recognize this multifaceted relationship between their businesses and human trafficking and have responded by developing training programs to teach the warning signs.²⁸ Yet, these trainings are apparently insufficient.²⁹ If anything, they illustrate a higher level of culpability, as employees should be better prepared to identify trafficking upon completion of the training.

Generally, hoteliers owe “at least a reasonable duty of care for their guests’ safety, comfort, and convenience.”³⁰ Per the Restatement (Second) of Torts, this level of duty requires them to “take reasonable action” to protect their guests against an “unreasonable risk of physical harm” and to help if they know or have reason to know a guest is ill or injured.³¹ Given this common law duty of care, one would think that hotels could be held liable for trafficking survivors’ injuries and the physical harm that resulted from their repeated assaults under tort law. Yet, Congress had to expressly authorize a different avenue for trafficking victims to advocate for themselves and receive recompense under the TVPRA of 2008.³²

The language of the TVPRA of 2008 and its subsequent interpretation determines whether franchisee hotels can be held civilly liable for a trafficking survivor’s exploitation.³³ In relevant part, the TVPRA of 2008 provides that:

An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in

²⁶ Ross, *supra* note 6, at 386.

²⁷ See ON-RAMPS, INTERSECTIONS, AND EXIT ROUTES, *supra* note 4, at 67; Ross, *supra* note 6, at 385–86.

²⁸ ON-RAMPS, INTERSECTIONS, AND EXIT ROUTES, *supra* note 4, at 77.

²⁹ *Id.*

³⁰ Rachel Rothberg, Note, *Risky Business: Holding Hotels Accountable for Sex Trafficking*, 38 YALE L. & POL’Y REV. 265, 272–73 (2019).

³¹ *Id.* (internal quotation marks omitted) (quoting RESTATEMENT (SECOND) OF TORTS § 314A (AM. L. INST. 1965)).

³² See 18 U.S.C. § 1595 (authorizing civil liability against anyone who knowingly benefitted from a trafficking operation and who should have known the operation engaged in trafficking).

³³ See *id.* (authorizing civil liability against anyone who knowingly benefitted from a trafficking operation and who should have known the operation engaged in trafficking); A.B. v. Marriott Int’l, Inc., 455 F. Supp. 3d 171, 194 (E.D. Pa. 2020) (denying the defendants’ motion to dismiss after interpreting the TVPRA as requiring constructive knowledge by hotels); Doe 4 v. Red Roof Inns, Inc., No. 1:19-cv-03845-WMR, 2020 WL 1872336, at *3 (N.D. Ga. Apr. 13, 2020) (granting the defendants’ motion to dismiss after interpreting the TVPRA as requiring actual knowledge by the hotels).

an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.³⁴

District courts have interpreted this provision in different ways.³⁵ Most have applied a negligence standard pursuant to the historical understanding of “should have known” language.³⁶ Other courts have imposed an actual knowledge requirement for TVPRA of 2008 claims.³⁷

A negligence standard or constructive knowledge requirement would imply that a hotel could be held civilly liable under the TVPRA of 2008 if the hotel knowingly benefitted from the trafficking venture and, at a minimum, if the hotel should have known that the venture was engaged in human trafficking.³⁸ An actual knowledge standard suggests that a hotel could only be held civilly liable under the TVPRA of 2008 if it knowingly benefitted from a trafficking venture and actually knew that it was assisting, supporting, or facilitating trafficking.³⁹ The first element of a TVPRA claim is consistent and easy to satisfy: a hotel knowingly benefits from a trafficking venture when it rents out rooms used by traffickers.

The second prong of the TVPRA is where the inconsistencies lie.⁴⁰ The formerly described broad approach would hold a hotel civilly liable under the

³⁴ 18 U.S.C. § 1595(a).

³⁵ See generally *Marriott Int’l, Inc.*, 455 F. Supp. 3d 171 (applying a constructive knowledge standard to TVPRA of 2008 claims); *Red Roof Inns, Inc.*, 2020 WL 1872336 (applying an actual knowledge standard to TVPRA of 2008 claims); *S.J. v. Choice Hotels Int’l, Inc.*, 473 F. Supp. 3d 147 (E.D.N.Y. 2020) (applying a constructive knowledge standard to TVPRA of 2008 claims with the emphasis that, in order to be held civilly liable, the defendant should have known about the specific trafficking of the plaintiff, rather than have a general awareness that trafficking occurs sometimes on the premises); *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959 (S.D. Ohio 2019) (applying a constructive knowledge standard to TVPRA of 2008 claims); *Noble v. Weinstein*, 335 F. Supp. 3d 504 (S.D.N.Y. 2018) (applying an actual knowledge standard to TVPRA claims).

³⁶ See *Marriott Int’l, Inc.*, 455 F. Supp. 3d at 181, 192–94 (quoting *Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d at 964); Fish, *supra* note 20, at 145–46 (quoting William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub L. No. 110-457, § 221, 122 Stat. 5044, 5067).

³⁷ See *Red Roof Inns, Inc.*, 2020 WL 1872336 at *3 (quoting *Noble v. Weinstein*, 335 F. Supp. 3d 504, 534 (S.D.N.Y. 2018)).

³⁸ See, e.g., *Marriott Int’l, Inc.*, 455 F. Supp. 3d at 192–94 (applying a constructive knowledge standard to TVPRA of 2008 claims); *Choice Hotels Int’l, Inc.*, 473 F. Supp. 3d at 152–56 (applying a constructive knowledge standard to TVPRA of 2008 claims); *Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d at 965–69 (applying a constructive knowledge standard to TVPRA of 2008 claims).

³⁹ See, e.g., *Red Roof Inns, Inc.*, 2020 WL 1872336 at *3 (quoting *Noble*, 335 F. Supp. 3d at 524); *Noble*, 335 F. Supp. 3d at 524 (quoting *United States v. Afyare*, 632 F. App’x 272, 286 (6th Cir. 2016)).

⁴⁰ See *infra* notes 41–43 and accompanying text.

TVPRA of 2008 if the hotel should have known the person or venture renting out the room was engaging in human trafficking.⁴¹ The latterly described restrictive approach, currently used in the United States District Court for the Northern District of Georgia, would only hold a hotel civilly liable under the TVPRA of 2008 if the hotel actually knew the person renting out the room was engaging with in human trafficking.⁴²

These two TVPRA interpretations create confusion in an area of law that should be well-defined.⁴³ The varying approaches to the TVPRA and the different applications of indirect liability against hotel chains has produced a muddled landscape where both trafficking survivors and hotels do not know what additional liability the law established and therefore cannot effectively prepare for litigation under the TVPRA.⁴⁴

III. INDIRECT LIABILITY OF HOTEL CHAINS

Trafficking survivors seem to be seeking civil liability of the larger hotel chains under agency theory or vicarious liability theories of law, in addition to suing independent hotels and franchisees.⁴⁵ The district courts across the country hearing these federal TVPRA claims against hotels have largely applied

⁴¹ *Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d at 965–69 (quoting 18 U.S.C. § 1595(a)).

⁴² See *Red Roof Inns, Inc.*, 2020 WL 1872336 at *3 (quoting *Noble*, 335 F. Supp. 3d at 534). The following case description will be used to illustrate how restrictive of a standard this is. For one district court, a motel owner literally high-fiving the trafficker on his way to rape the victim and verbally committing to going into business with the trafficker was insufficient “actual knowledge” to render the motel owner civilly liable under the TVPRA. See *Ricchio v. McLean*, 853 F.3d 553, 555 (1st Cir. 2017). The district court dismissed the plaintiff’s TVPRA claims. *Id.* In one of the few TVPRA cases appealed thus far, the First Circuit reversed the district court’s dismissal of the trafficking survivor’s claims against a motel owner. *Id.* at 558. If these actions by a hotel owner do not amount to actual knowledge in the view of this district court, then the actual knowledge standard will undoubtedly render the TVPRA useless in providing additional avenues for trafficking survivors to hold facilitators of their exploitation accountable.

⁴³ Justice and equity for trafficking survivors requires Congress and courts to create a uniform and defined body of law where survivors can be remunerated for their exploitation and abuse. See *infra* Part IV.B.2.

⁴⁴ See *infra* Part IV.B.2.

⁴⁵ See generally *A.B. v. Marriott Int’l, Inc.*, 455 F. Supp. 3d 171 (E.D. Pa. 2020) (a trafficking survivor seeking liability against a hotel chain under agency theory); *Red Roof Inns, Inc.*, 2020 WL 1872336 (a trafficking survivor seeking liability against multiple hotel chains); *J.C. v. Choice Hotels Int’l, Inc.*, No. 20-cv-00155-WHO, 2020 WL 3035794 (N.D. Cal. June 5, 2020) (a trafficking survivor seeking liability against multiple hotel chains); *Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959 (a trafficking survivor seeking liability against a hotel chain under the vicarious liability theory of law).

state agency or vicarious liability law, leading to a variation of holdings throughout the litigation process.⁴⁶

Franchising is extremely popular in the hotel industry.⁴⁷ Prospective franchisee hotel owners typically sign a franchise agreement with a hotel chain, like Marriott, Hilton, Hyatt, Choice Hotels, and Wyndham.⁴⁸ Franchise agreements are principally licenses where the franchisor shares its brand and other proprietary information to the franchisee in exchange for fees.⁴⁹ Hotel franchise agreements largely include terms requiring the hotel brand to train personnel, to market brand hotels consistently and appropriately, and to maintain brand standards.⁵⁰ These agreements also include franchisee owner responsibilities, usually requiring the franchisee to pay its fees and keep its operations and marketing up to the hotel chain's standards.⁵¹ The franchise agreement is valid for a certain term of years, usually between twenty and twenty-five years in length.⁵²

In the TVPRA context, courts applying state indirect liability law have still looked to the traditional factors of establishing an agency relationship in franchise agreements—ownership and control of the daily operations—as dispositive if the principal, the hotel chain, could be held indirectly liable for the

⁴⁶ In Ohio, courts have looked at the franchisee hotel's retained control or its right to control the mode and manner of its operation in determining if an agency relationship exists. *Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d at 971–72, 974 (ultimately denying the hotel-defendants' motion to dismiss). Under New York state law, a franchisee is generally not the agent of the franchisor. *S.J. v. Choice Hotels Int'l, Inc.*, 473 F. Supp. 3d 147, 154–56 (E.D.N.Y. 2020) (dismissing the trafficking survivor's TVPRA claim after finding an agency relationship did not exist between the franchisee hotel and the hotel chain). New York courts have found agency relationships between franchisees and franchisors only if the amount of control exerted by the franchisor is so complete that the purported independence of the franchisee is rendered a fiction *or* if the franchisor controls the ultimate instrumentality that harmed the plaintiff. *Id.* However, this is an extremely hard burden for plaintiffs to surmount in demonstrating the existence of an agency relationship in the franchise context. *Id.* In Oregon, an even more onerous standard for plaintiffs to show agency in franchise relationships is applied. In order for the franchisor to be liable for the faults of the franchisee, the franchisor must control the day-to-day operations of the franchisee *and* the specific instrumentality that caused the plaintiff's injury. *A.B. v. Hilton Worldwide Holdings Inc.*, 484 F. Supp. 3d 921, 940 (D. Or. 2020) (citing *Viado v. Domino's Pizza, LLC*, 217 P.3d 199 (Or. Ct. App. 2009)).

⁴⁷ *Major Hotel Franchise Conglomerates and the Brands They Own*, FRANCHISE DIRECT, <https://www.franchisedirect.com/information/major-hotel-franchise-conglomerates-and-the-brands-they-own> [<https://perma.cc/2L8N-NB9A>] [hereinafter FRANCHISE DIRECT].

⁴⁸ Carlton Fields, *Hotel Franchise Agreements: What Should Owners Focus On?*, JD SUPRA (Mar. 6, 2020), <https://www.jdsupra.com/legalnews/hotel-franchise-agreements-what-should-35458/> [<https://perma.cc/3UWS-SFZ8>]; FRANCHISE DIRECT, *supra* note 47.

⁴⁹ Carlton Fields, *supra* note 48.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

actions of the agent, the franchisee hotel.⁵³ “If, upon examination of the franchise agreement, it appears that the franchisor has imposed controls in excess of those required merely to protect its trademark, and in fact has deprived the franchisee of any real independence in operating the business, many courts hold that an agency relationship exists.”⁵⁴ Again, courts generally look to the extent of franchisor’s involvement in the franchise’s day-to-day operations when determining if an actual authority agency relationship exists between the franchisor and franchisee.⁵⁵ Yet, applying traditional state law to the non-traditional federal TVPRA statute may be antiquated.⁵⁶

Other district courts hearing these TVPRA claims against hotel chains have relied on common law principles of agency in determining if the hotel chain could be held indirectly liable for the wrongs of its franchisee.⁵⁷ The common law of agency is summarized in the Restatements of Agency.⁵⁸ The Restatement of Agency generally proposes that an agency relationship can exist if the principal delegates actual authority to the agent or if a third party believes the agent acted with apparent authority on behalf of the principal.⁵⁹

Agency theory can be applied in tort cases as the imposition of vicarious liability on the principal and in contract law as requiring the principal fulfill an agent’s promises if the principal consented to the contract.⁶⁰ The TVPRA

⁵³ See *A.B. v. Hilton Worldwide Holdings Inc.*, 484 F. Supp. 3d 921, 939–41 (D. Or. 2020); *S.J. v. Choice Hotels Int’l, Inc.*, 473 F. Supp. 3d 147, 154–56 (E.D.N.Y. 2020); *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959, 971–72 (S.D. Ohio 2019).

⁵⁴ 39 AM. JUR. 2D *Proof of Facts* § 3 (1984).

⁵⁵ *Id.*

⁵⁶ See *infra* notes 127–40, 161 and accompanying text.

⁵⁷ See *J.C. v. Choice Hotels Int’l, Inc.*, No. 20-cv-00155-WHO, 2020 WL 3035794, at *1 (N.D. Cal. June 5, 2020) (noting that, when a federal statute is silent on how to apply indirect liability, federal common law principles of agency should be employed (citing *Meyer v. Holley*, 537 U.S. 280, 287–91 (2003))). Similarly, in a case involving the application of indirect liability to the federal statute on sexual harassment, the Supreme Court of the United States looked to the common law as a starting point in its analysis. *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 754–55 (1998) (quoting *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 740 (1989)).

⁵⁸ See *Burlington Indus., Inc.*, 524 U.S. at 755 (noting that the Restatement of Agency is a good starting point in discussing general agency principles).

⁵⁹ RESTATEMENT (THIRD) OF AGENCY § 3.01 (AM. L. INST. 2006) (“Actual authority . . . is created by a principal’s manifestation to an agent that, as reasonably understood by the agent, expresses the principal’s assent that the agent take action on the principal’s behalf.”); *id.* § 3.03 (“Apparent authority . . . is created by a person’s manifestation that another has authority to act with legal consequences for the person who makes the manifestation, when a third party reasonably believes the actor to be authorized and the belief is traceable to the manifestation.”).

⁶⁰ See *id.* § 7.03(2)(b) (“A principal is subject to vicarious liability to a third party harmed by an agent’s conduct when . . . the agent commits a tort when acting with apparent authority in dealing with a third party on or purportedly on behalf of the principal.”); Edward A. Mearns, Jr., *Vicarious Liability in Agency Contracts*, 48 VA. L. REV. 50, 50 (1962) (noting that a principal will not be held liable for its agent breaking a promise unless the principal consents, meaning the principal gives actual authority for the agent to act).

encompasses aspects of tort law and contract law.⁶¹ The harm caused to trafficking survivors is similar to a tort, as trafficking survivors are repeatedly assaulted and battered.⁶² The TVPRA also embodies contract law in relation to the parties in these cases: the defendants as hotel chains and franchisee hotels have contracts among them, and the plaintiff, as a guest of the hotel, had a contractual relationship with the hotel itself.⁶³

The imposition of vicarious liability in tort cases is supported by fundamental goals of fairness, deterrence, and compensation.⁶⁴ In terms of compensation, vicarious liability provides recompense for plaintiffs harmed by non-wealthy abusers by holding “deep pocket” enterprises intimately involved in the abuse strictly liable.⁶⁵ Imposing liability directly on the abuser in addition to indirectly on the enterprise is also a deterrent for future bad behavior, because it subjects both to legal penalties and additionally subjects the direct actor to consequences imposed by the enterprise held vicariously liable, from being fired to indemnification.⁶⁶ The fairness goal of vicarious liability suggests that an enterprise should manage the risks it introduces into the community by bearing the loss.⁶⁷

Ultimately, with courts across the country applying state law and common law principles,⁶⁸ the landscape of TVPRA claims against hotel chains is in disarray. A uniform standard of indirect liability for TVPRA of 2008 claims that plaintiffs and defendants alike can rely upon in their litigation preparation is more just than the current muddled standing of the law.

IV. A UNIFORM APPLICATION OF THE TVPRA OF 2008 AND OF INDIRECT LIABILITY IN HOTEL CASES IS JUST

A consistent application of the TVPRA of 2008 and indirect liability for those benefiting from trafficking survivors’ exploitation is the most efficient means of using current law to prevent further human trafficking in hotels and to remunerate trafficking survivors. Based on its intent to “enhance measures to combat trafficking in persons,”⁶⁹ the TVPRA of 2008 requires broad civil liability for anyone who knowingly benefits from a trafficking victim’s exploitation.⁷⁰ Additionally, a uniform application of indirect liability should be

⁶¹ See *infra* notes 125–30 and accompanying text.

⁶² See *infra* notes 125–30 and accompanying text.

⁶³ See *infra* notes 125–30 and accompanying text.

⁶⁴ Martha Chamallas, *Vicarious Liability in Torts: The Sex Exception*, 48 VAL. U. L. REV. 133, 150 (2013).

⁶⁵ *Id.*

⁶⁶ *Id.* at 153–57.

⁶⁷ *Id.* at 156.

⁶⁸ See *supra* notes 45–46, 53–56 and accompanying text.

⁶⁹ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, pmbl., 122 Stat. 5044, 5044.

⁷⁰ See *infra* Part IV.A.

implemented in order to best communicate the practices required to avoid third-party liability.⁷¹ Specifically, hotel chains should be held strictly liable for any trafficking on the premises of their franchisee hotels' property if an agency relationship exists between the hotel chain and the franchisee hotel.⁷² These measures will better protect trafficking victims from future harm by incentivizing hotels to earnestly combat human trafficking.

A. The TVPRA of 2008 Should Be Interpreted Broadly by Courts in Order to Honor Its Legislative Intent

To provide the best avenue for justice and compensation, the Trafficking Victims Protection Reauthorization Act of 2008 should be interpreted broadly, requiring constructive knowledge culpability rather than actual knowledge. The United States District Court for the Northern District of Georgia was improper in deciding actual knowledge is required to be held civilly liable under the TVPRA of 2008.⁷³ By doing so, the court conflated culpability requirements for the federal criminal trafficking statute, codified in 18 U.S.C. § 1591(a), and the civil remedy of the TVPRA.⁷⁴ It is illogical to conclude that the TVPRA of 2008 only authorizes civil litigation against those found criminally liable under 18 U.S.C. § 1591(a) when its language is different from the culpability standard in 18 U.S.C. § 1591(a).⁷⁵ 18 U.S.C. § 1591(a) and the TVPRA of 2008 are similar in requiring that the defendant must have "knowingly" benefitted from the trafficking operation to be liable.⁷⁶ However, the TVPRA of 2008 differs from 18 U.S.C. § 1591(a) in adopting the "should have known" language.⁷⁷ By not adopting the "reckless disregard" language required for criminal trafficking liability, Congress elected to lower the culpability requirement for civil actions under the TVPRA of 2008 to that of a constructive knowledge or negligence standard.⁷⁸

In addition to being consistent with the TVPRA's plain meaning, this statutory interpretation is supported by the Act's legislative intent. Legislative

⁷¹ See *infra* Part IV.B.

⁷² See *infra* Part IV.B.1.

⁷³ See generally *Doe 4 v. Red Roof Inns, Inc.*, No. 1:19-cv-03845-WMR, 2020 WL 1872336 (N.D. Ga. Apr. 13, 2020).

⁷⁴ See *id.* at *3.

⁷⁵ See 18 U.S.C. § 1595(a) (establishing civil liability for "whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act [of human trafficking]"); 18 U.S.C. § 1591(a) (establishing criminal liability for anyone who knowingly benefits from a sex-trafficking venture "knowing, or . . . in reckless disregard of the fact" the conduct amounted to sex trafficking).

⁷⁶ 18 U.S.C. § 1595(a); 18 U.S.C. § 1591(a).

⁷⁷ 18 U.S.C. § 1595(a); 18 U.S.C. § 1591(a).

⁷⁸ See LARRY M. EIG, CONG. RSCH. SERV., 97-589, STATUTORY INTERPRETATION: GENERAL PRINCIPLES AND RECENT TRENDS 16 (2014) (quoting *Atl. Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1933)); Fish, *supra* note 20, at 146 & n.204.

intent can be presumed from the statutory language itself, canons of construction, and review of legislative history.⁷⁹ Firstly, the TVPRA of 2008 is a remedial statute, because it established a remedy previously unavailable for trafficking survivors by authorizing civil litigation against anyone who knowingly benefitted from their exploitation.⁸⁰ Remedial statutes should be interpreted liberally.⁸¹ This means any ambiguities in the TVPRA of 2008 should be interpreted in favor of the party the statute seeks to benefit.⁸² In this case, the TVPRA of 2008 seeks to empower trafficking survivors through a number of measures, including enabling them to sue those who benefitted from their exploitation.⁸³ If the language of the TVPRA of 2008 is ambiguous—which is conceivable since there are different interpretations of the statute across district courts⁸⁴—the presumption of liberal interpretation applies.⁸⁵ Therefore, a constructive-knowledge culpability requirement is even more appropriate, because this standard is broader than an actual-knowledge requirement and favors the trafficking survivors—the persons the TVPRA of 2008 seeks to benefit.

Additionally, the purpose of the TVPRA of 2008 to “enhance measures to combat trafficking in persons” requires an expansive interpretation of the statute.⁸⁶ Arguably, the TVPRA of 2008 was enacted to provide trafficking survivors a means of holding others accountable for their victimization when tort law and state law proves a less reliable option.⁸⁷ Under existing tort law, trafficking survivors could hold hotels accountable for their repeated assaults based on a theory of negligence, because hotels owe a heightened duty of care to their guests.⁸⁸ Historically, courts recognized that hotels have a greater understanding of the potential dangers to guests and that guests entrust hotels with their safety;⁸⁹ this led to courts holding hotels to a higher duty of care to

⁷⁹ See generally EIG, *supra* note 78 (detailing ways to interpret statutes).

⁸⁰ See *Remedial Law*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“A statute that corrects or modifies an existing law; esp., a law providing a new or different remedy when the existing remedy, if any, is inadequate.”).

⁸¹ See *Noble v. Weinstein*, 335 F. Supp. 3d 504, 515 (S.D.N.Y. 2018) (noting that § 1595, a remedial provision, should be interpreted broadly). *But see* EIG, *supra* note 78, at 34–35.

⁸² See EIG, *supra* note 78, at 34.

⁸³ See generally William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 8, 18, & 22 U.S.C.).

⁸⁴ See generally *A.B. v. Marriott Int’l, Inc.*, 455 F. Supp. 3d 171 (E.D. Pa. 2020) (applying a constructive knowledge standard for TVPRA claims); *Doe 4 v. Red Roof Inns, Inc.*, No. 1:19-cv -03845-WMR, 2020 WL 1872336 (N.D. Ga. Apr. 13, 2020) (applying an actual knowledge standard for TVPRA claims).

⁸⁵ See EIG, *supra* note 78, at 34–35.

⁸⁶ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, pmb1., 122 Stat. 5044, 5044.

⁸⁷ See Fish, *supra* note 20, at 145.

⁸⁸ *Id.* at 140.

⁸⁹ *Id.*

“take reasonable precautions against criminal assaults on guests.”⁹⁰ A hotel’s culpability depends on the foreseeability of the harm and the potential costs to prevent the harm under a tort law claim.⁹¹ As long as a hotel takes reasonable precautions to prevent criminal acts against its guests, it is unlikely to be held liable for any criminal acts against its guests under tort law.⁹² For example, if a hotel trains its employees to recognize the warning signs of trafficking, someone who was trafficked in that hotel may not be able to recover under tort law if the training was considered a reasonable precaution.⁹³ Yet, the TVPRA of 2008 does not provide a defense for those who take reasonable precautions to prevent human trafficking.⁹⁴ If anything, precautions like trainings on the signs of human trafficking should implicate hotels more in a TVPRA of 2008 claim, because these trainings would increase the likelihood that the hotel “should have known” trafficking was occurring on the premises.⁹⁵

1. Holding Hotels Who Take Precautions to Prevent Trafficking Civilly Liable Under the TVPRA Is Not a Disincentive for Establishing Precautions

It may be controversial to suggest hotels should be held civilly liable for benefitting from trafficking on their premises if the hotels take precautions to prevent trafficking.⁹⁶ Some may say civil liability could incentivize hotels to refrain from training employees and taking other precautions to prevent trafficking.⁹⁷ However, hotels will be held civilly liable under tort law if they fail to take reasonable precautions to prevent criminal acts.⁹⁸ Therefore, consistent with its purpose to “enhance measures to combat trafficking in persons,”⁹⁹ under this proposed standard, the TVPRA of 2008 requires hotels to follow through on their promises to combat trafficking.¹⁰⁰ Additionally, this proposed standard requires hotels to take further steps to combat human trafficking, like adopt company-wide anti-trafficking policies, support local shelters, establish a response plan, hire fewer subcontractors to prevent labor

⁹⁰ *Id.* (internal quotation marks omitted) (quoting *Banks v. Hyatt Corp.*, 722 F.2d 214, 221 (5th Cir. 1984)).

⁹¹ *Id.* at 141.

⁹² *See Shadday v. Omni Hotels Mgmt. Corp.*, 477 F.3d 511, 512 (7th Cir. 2007).

⁹³ *See id.*

⁹⁴ *See* 18 U.S.C. § 1595.

⁹⁵ *Cf. id.*

⁹⁶ Telephone Interview with John Doe, Partner, Griffith L. Offs. (Oct. 20, 2020); *cf.* *A.B. v. Marriott Int’l, Inc.*, 455 F. Supp. 3d 171, 177, 194 (E.D. Pa. 2020) (holding the trafficking survivor met her burden of proof by producing evidence that Marriott failed to train employees on the signs of trafficking).

⁹⁷ Telephone Interview with John Doe, *supra* note 96.

⁹⁸ *Shadday v. Omni Hotels Mgmt. Corp.*, 477 F.3d 511, 512 (7th Cir. 2007).

⁹⁹ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, pmbl., 122 Stat. 5044, 5044 (2008).

¹⁰⁰ *Id.*; *see also* ON-RAMPS, INTERSECTIONS, AND EXIT ROUTES, *supra* note 4, at 75.

trafficking, and coordinate with travel booking sites to verify customer identities.¹⁰¹ If there is a genuine effort from the government to combat trafficking, as suggested by the TVPRA of 2008, then higher standards must be placed on everyone, from individuals to conglomerates, and systemic changes made to abate human trafficking.

2. Fear of Frivolous Lawsuits Does Not Justify a Narrow Interpretation of the TVPRA of 2008

There may be a concern that a broad interpretation of the TVPRA of 2008 requiring constructive knowledge rather than actual knowledge may further incentivize plaintiff's attorneys to bring frivolous lawsuits against hotels in hopes of large settlements.¹⁰² However, the adversarial process would naturally quash any frivolous litigation. The United States Supreme Court described: "[A] complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact."¹⁰³ Therefore, it follows, any evidentiary insufficiencies will be unearthed in discovery, and the defense will highlight this.¹⁰⁴ Additionally, frivolous

¹⁰¹ *Id.* at 78–79.

¹⁰² In an interview with an attorney currently representing a small franchisee hotel who wishes to remain anonymous, this argument came to light. Telephone Interview with John Doe, *supra* note 96. The attorney asserted that the constructive knowledge standard would require hotels to investigate even seemingly innocuous behavior, like clients booking the hotel room on third-party travel websites and not using the main hotel entrance to access their room, in order to avoid civil liability under the TVPRA of 2008. *Id.* In his opinion, this unreasonable standard would drive customers away as their privacy would be compromised. *Id.* The attorney claims the lawsuit against his client is completely frivolous, absent of any evidence in its initial complaint demonstrating his client specifically benefitted from the trafficking survivor's exploitation. *Id.* Instead, he argues the plaintiff's attorney brought a frivolous civil action against multiple hotels in hopes of a large settlement. *Id.* The attorney did not believe the trafficking survivor had approached her attorney to bring this civil action; instead, he thinks the attorney encouraged her to bring a civil lawsuit against these hotels. *Id.*

¹⁰³ *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

¹⁰⁴ Furthermore, the motion to dismiss standard is a high burden to plaintiffs, thus curbing frivolous litigation. See Suja A. Thomas, *Why the Motion to Dismiss Is Now Unconstitutional*, 92 MINN. L. REV. 1851, 1852 (2008). This standard is so high, it has been deemed unconstitutional by scholars and experts in the field of litigation. *Id.* at 1889–90.

In *Twombly* and *Tellabs*, while the Court continued to state that the court should accept the alleged facts as true, the Court superimposed additional requirements for plaintiffs to meet to survive a motion to dismiss, requirements which in essence eliminated the standard to take the alleged facts as true and explicitly eliminated the 'no set of facts' language.

In *Twombly*, the Court decided that for a typical claim with no special pleading requirements, a court should engage in a determination of whether the plaintiff has alleged 'enough facts to state a claim to relief that is plausible on its face.' In *Tellabs*, the Court stated that for a claim created by Congress for which Congress has imposed

lawsuits are much rarer than the public believes.¹⁰⁵ If frivolous lawsuits are few and far between¹⁰⁶ and defendants can expose these factual deficiencies through the litigation process, then there is no plausible reason to apply a different standard for TVPRA of 2008 claims.¹⁰⁷

3. *The Legal Community Can Take Further Measures to Prevent Further Exploitation of Trafficking Survivors by Their Counsel*

While plaintiff's attorneys are known for approaching potential clients to encourage them to bring lawsuits against individuals and entities with deep pockets,¹⁰⁸ the unethical behavior of a fraction of attorneys should not substantively affect courts' application of the TVPRA of 2008.¹⁰⁹ Trafficking

additional pleading requirements, such special pleading could require courts to examine both inferences from the facts that favor the plaintiff and inferences from the facts that favor the defendant. In both cases, the Court emphasized the cost that companies face with unwarranted discovery and the settlement of unmeritorious cases.

Id. at 1852 (footnotes omitted).

¹⁰⁵ See Michael Darling, Note, *The Frivolous Litigation Narrative: Web of Deception or Cautionary Tale?*, 36 REV. LITIG. 711, 733–34 (2018).

¹⁰⁶ See *id.* at 733.

¹⁰⁷ An additional concern may be that hotels are not currently covered under their liability insurance for TVPRA of 2008 claims. Telephone Interview with John Doe, *supra* note 96. However, this does not seem to be the case at present. Louise Esola, *The Hospitality Industry's Lurking Liability*, BUS. INS. (Aug. 7, 2017), <https://www.businessinsurance.com/article/20170807/NEWS06/912314912/Sex-trafficking-hospitality-industry-lurking-liability#https://perma.cc/A748-KRS4> (stating that most liability insurance policies in the hospitality industry do not mention human trafficking, indicating it is covered under the general policy). This may change as civil litigation against hotels under the TVPRA of 2008 continues to increase. Policies could expressly exclude coverage for trafficking civil litigation. *Id.* While this may be concerning for hotels and their viability, it further incentivizes hotels to be better corporate citizens and protect their guests. *Id.* The goal of the TVPRA of 2008 is not just to provide an additional avenue for justice for trafficking survivors by establishing civil liability against anyone who knowingly benefits from the survivor's exploitation; the TVPRA of 2008 aims to combat human trafficking. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, pmb., 122 Stat. 5044, 5044. Combatting human trafficking requires proactivity, including incentivizing hotels to play their part in stopping trafficking on their properties. See Jonathan Todres, *The Private Sector's Pivotal Role in Combating Human Trafficking*, 3 CAL. L. REV. CIR. 80, 98 (2012).

¹⁰⁸ See Maureen Minehan, *On the Prowl: Could Plaintiffs' Attorneys Be Targeting Your Employees?* (June 1, 2010), Westlaw 27 No. 11 Emp. Alert 1; ACE PRIV. RISK SERVS., TARGETING THE RICH: LIABILITY LAWSUITS AND THE THREAT TO FAMILIES WITH EMERGING AND ESTABLISHED WEALTH 1 (Mar. 2012), <https://pcs.marsh.com/content/dam/marsh/Documents/PDF/US-en/ACE%20Targeting%20the%20Rich%20Liability%20Lawsuits%20032012.pdf> [https://perma.cc/ZE5J-3LNZ].

¹⁰⁹ Plaintiff's attorneys target their advertising to specific audiences and create websites to draw awareness to potential noncompliance with the law of organizations they seek to bring lawsuits against. See Minehan, *supra* note 108. They also data mine public records in

survivors should not be further exploited by overzealous plaintiff's attorneys seeking a big payoff.¹¹⁰ However, limiting the TVPRA of 2008 is not the solution.

Again, trafficking survivors should not be denied recompense for their exploitation due to the bad acts of others, including their potential counsel. An alternative solution to the potential problem of unethical client solicitation practices lies in current professional responsibility standards.¹¹¹ Nearly all states have enacted professional responsibility standards for the solicitation of clients.¹¹² For example, Ohio prohibits attorneys from soliciting clients when a significant motivation for doing so is the attorney's financial gain.¹¹³ However, it provides an exception to this rule if the person contacted is a lawyer.¹¹⁴ Additionally, an attorney cannot contact a potential client if the person has indicated they do not want to be solicited by the attorney or the solicitation involves harassment, coercion, or duress, regardless of the attorney's motivation.¹¹⁵ This rule is a good preliminary step to prevent unethical solicitation of trafficking survivors as clients in civil lawsuits against hotels, because violating professional conduct standards can lead to discipline and disbarment.¹¹⁶

However, due to the plaintiffs in TVPRA of 2008 claims being more vulnerable and already the subject of unfathomable mistreatment and injustice by their traffickers and those that benefitted from their exploitation, additional measures to prevent further mistreatment may be needed. While the federal government does not currently weigh in on attorney professional conduct outside of truth-in-advertising issues,¹¹⁷ there may be an opportunity to address

finding and soliciting clients. *See id.* (discussing the implication of these practices on employers in the Fair Labor Standards Act context). This Note does not condone these solicitation practices; instead, it argues that preventative measures can be taken to avert inappropriate solicitation of clients in the TVPRA context and an overarching change to the application of the TVPRA of 2008 aimed at stopping frivolous lawsuits will unjustly inhibit trafficking survivors' ability to hold hotels civilly liable for their exploitation.

¹¹⁰ Professor Kimberly Jordan of the Ohio State University Moritz College of Law indicated this end. Telephone Interview with Kimberly Jordan, Clinical Professor of L.; Dir., Just. for Child, Project, Ohio State Univ. Moritz Coll. of L. (Oct. 20, 2020). She has been approached on multiple occasions by plaintiff's attorneys to solicit the contact information of her trafficking survivor clients for potential civil litigation against hotels. *Id.* She is concerned that this is a prevalent practice and that this coercive behavior perpetuates trafficking survivors' exploitation. *Id.* She advocates for a restructuring of the TVPRA of 2008 to earmark additional funds or portions of damages for human trafficking victim services. *Id.*

¹¹¹ *See, e.g.*, OHIO RULES OF PRO. CONDUCT r. 7.3 (2018).

¹¹² *See* Minehan, *supra* note 108; *see, e.g.*, OHIO RULES OF PRO. CONDUCT r. 7.3 (2018).

¹¹³ OHIO RULES OF PRO. CONDUCT r. 7.3(a) (2018).

¹¹⁴ *Id.*

¹¹⁵ OHIO RULES OF PRO. CONDUCT r. 7.3(b) (2018).

¹¹⁶ MODEL RULES OF PRO. CONDUCT r. 8.4 cmt. 1 (AM. BAR ASS'N 2020); *see also* MODEL RULES FOR DISCIPLINARY ENF'T r. 10 (AM. BAR ASS'N 2020).

¹¹⁷ *See* Minehan, *supra* note 108.

improper solicitation of clients in a subsequent Trafficking Victims Protection Reauthorization Act. At an extreme, an amendment to the TVPRA could prevent further exploitation of trafficking survivors from their unethical solicitation for TVPRA lawsuits by creating an avenue for trafficking survivors to hold attorneys civilly liable for exploiting them by soliciting them and subjecting them to taxing litigation.¹¹⁸ A less extreme measure could be for a TVPRA amendment to subject attorneys to discipline and federal court disbarment if they improperly solicit trafficking survivors as clients.¹¹⁹ Amending the TVPRA to address potential improper solicitation of trafficking survivors as clients is ideal, because Congress can implement higher ethical standards for attorneys in these cases. For example, Congress could determine attorneys behave unethically by further exploiting trafficking survivors if they data mine public records or approach a trafficking survivor's criminal attorney, typically

¹¹⁸ Amending the TVPA to address concerns beyond civil and criminal liability is not foreign. Congress updated the TVPA in 2003, 2006, 2008, and 2018. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006) (codified as amended in scattered sections of 18 and 22 U.S.C.); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.); Trafficking Victims Protection Act of 2017, Pub. L. No. 115-393, 132 Stat. 5265 (2018) (codified as amended in scattered sections of 5, 8, 18, 22, 34, and 42 U.S.C.). An additional reauthorization of the TVPA was introduced in the U.S. House of Representatives in 2021 and offered many more preventative measures to avoid the exploitation of populations vulnerable to trafficking. *See generally* Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2021, H.R. 5150, 117th Cong. (2021). If enacted into law as it is currently written, the TVPRA of 2021 would expand the civil remedy for trafficking survivors to permit survivors to sue those who retaliate against them due to their participation in any “complaint, investigation, proceeding, or hearing under or related to this chapter” or due to their opposition of any “behavior that is a violation of this chapter.” *Id.* § 110. Further, the bill exempts federal income taxation on civil damages awarded to trafficking survivors. *Id.* § 108. Presumably in an attempt to encourage hotels to take action, the bill requires commercial lodging in the United States for employees of federal agencies be booked, when possible, with hotels or motels who “enforce a zero-tolerance policy regarding severe forms of trafficking in persons,” amongst other preventative measures. *Id.* § 122. Congress has proven its willingness to expand the original TVPA of 2000 to prevent and compensate for the exploitation of trafficking survivors; therefore, recommending additional updates to the TVPRA of 2008 to potentially include a civil remedy for inappropriate plaintiff attorney practices is a reasonable suggestion.

¹¹⁹ Historically, federal court disbarment concurrently or subsequently follows state discipline. *See Note, Disbarment in the Federal Courts*, 85 YALE L.J. 975, 975 (1976). However, the TVPRA creates a new legal avenue for trafficking survivors to be recompensed for their exploitation, because existing laws are insufficient. *See* H.R. 5150. Following this logic, existing norms of federal courts reacting to state courts' attorney discipline should be revisited. Perhaps a more just solution to unethical solicitation of trafficking survivors for TVPRA civil lawsuits is for federal courts to proactively discipline attorneys, rather than wait for a decision by the state court.

acceptable behavior under state professional responsibility standards.¹²⁰ Therefore, an abundance of solutions is available to prevent the further exploitation of trafficking survivors from plaintiff's attorneys.

The adversarial process and motion to dismiss standard obviate any fear for frivolous TVPRA litigation.¹²¹ Additionally, current ethical standards for attorneys are likely sufficient to curb overzealous plaintiff's attorneys seeking a big payoff by suing hotels with TVPRA claims.¹²² However, an amendment to the TVPRA could enforce stricter ethical standards on plaintiff's attorneys to avoid the further exploitation of trafficking survivors.¹²³ A misperception of a prevalence of frivolous litigation and the potential unethical behavior of a fraction of plaintiff's attorneys should not inhibit a broad interpretation of the TVPRA of 2008 and an application constructive knowledge culpability standard.

B. Indirect Liability Should Be Applied Uniformly Across TVPRA of 2008 Claims

A broad interpretation of the TVPRA of 2008 is not enough; a uniform application of indirect liability is needed to combat human trafficking by incentivizing hotel chains to adjust their hotel management practices to avoid liability. A consistent application of indirect liability would not only serve the goal of the TVPRA of 2008 to hold individuals accountable for benefiting from a trafficking survivor's exploitation,¹²⁴ but it would aid in proactively combatting human trafficking, rather than solely reactively remunerating survivors.¹²⁵

The application of state vicarious liability law or agency theory to federal TVPRA of 2008 claims is unjust, because cases with seemingly identical factual situations could be dismissed in one state or move past the pretrial motion stage in another.¹²⁶ The TVPRA of 2008 is not tort law in the traditional sense, nor does it pertain to contract law explicitly.¹²⁷ The TVPRA pertains implicitly to tort-like actions from the standpoint of the harm—trafficking survivors being

¹²⁰ *E.g.*, OHIO RULES OF PRO. CONDUCT r. 7.3 (2018).

¹²¹ *See supra* Part IV.A.2.

¹²² *See supra* notes 114–19.

¹²³ *See supra* notes 120–22.

¹²⁴ *See* 18 U.S.C.A. § 1595 (West).

¹²⁵ *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, pmbl., 122 Stat. 5044, 5044 (stating the purpose of the Act as “to enhance measures to combat trafficking in persons”); Todres, *supra* note 107.

¹²⁶ *See, e.g.*, *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959, 971, 974 (S.D. Ohio 2019); *S.J. v. Choice Hotels Int’l, Inc.*, 473 F. Supp. 3d 147, 154, 159 (E.D.N.Y. 2020).

¹²⁷ *See generally* Fish, *supra* note 20 (discussing the TVPRA of 2008 and claims against hotels under tort law as two separate legal avenues).

repeatedly assaulted, battered, and exploited.¹²⁸ If tort law was too restrictive in human trafficking civil cases and Congress had to authorize a broader class of individuals for civil liability under the TVPRA of 2008,¹²⁹ then it stands to reason that a broader application of indirect liability is warranted in TVPRA of 2008 cases as well. The TVPRA of 2008 also has ties to contract law; offenders violate a social contract, and hotels promise to keep their guests safe.¹³⁰ Therefore, a better approach to indirect liability in TVPRA of 2008 cases is a hybrid of vicarious liability and agency theory.

There is significant overlap between vicarious liability law and agency theory.¹³¹ Fundamentally, both principles pertain to relationships between parties.¹³² Vicarious liability focuses on the ties between the parties in addition to policy justifications for holding someone indirectly liable for a tort.¹³³

¹²⁸ See *Tort*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("A civil wrong, other than breach of contract, for which a remedy may be obtained . . ."). The harm the TVPRA of 2008 seeks to address is also similar to unjust enrichment. *Unjust Enrichment*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense.").

¹²⁹ See Fish, *supra* note 20, at 145.

¹³⁰ "Philosophers as far back as Socrates" have iterated the importance of social contracts in our ability to be civilized. *Social Contract Theory*, ETHICS UNWRAPPED, <https://ethicsunwrapped.utexas.edu/glossary/social-contract-theory> [<https://perma.cc/645K-C3CF>]. Social contracts, necessary for people to live together in society, are a set of moral or political rules, like laws, constitutions, and ethical norms. See *id.* Offenders violate the social contract from a moral standpoint by infringing upon trafficking victims' freedoms and by breaking the law. Hotels implicitly promise to keep their guests safe based on the social contract established through common law of hotel's heightened duty of care to guest safety. See Rothberg, *supra* note 30, at 272–73.

¹³¹ See *infra* notes 132–39 and accompanying text.

¹³² See *Agency*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("A *relationship* that arises when one person (a principal) manifests assent to another (an agent) that the agent will act on the principal's behalf, subject to the principal's control, and the agent manifests assent or otherwise consents to do so." (emphasis added)); *Vicarious*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("Performed or suffered by *one person* as substitute for *another*; indirect; surrogate." (emphasis added)).

¹³³ Professor Martha Chamallas has discussed the underlying policy justifications for holding employers vicariously liable for the torts of their employees in her scholarship; she also highlighted the absence of a clear rule of law for vicarious liability in sexual abuse and sexual exploitation cases. Chamallas, *supra* note 64, at 134–36 ("[W]hen it comes to sexual abuse and exploitation cases, tort law gives no crisp answer to the question of whether a business is vicariously liable for the sexual torts committed by its employees. Instead, the cases are conflicting and confusing, with a decided tendency to rule against vicarious liability in the sexual misconduct context. This reluctance to impose vicarious liability persists even though there is often a pressing need for compensation in this context Absent vicarious liability, sexual abuse victims are forced to seek compensation from the perpetrators themselves, a notoriously unreliable source of funds given the fact that many offenders end up in jail and few individuals are able to satisfy large tort judgments in the absence of insurance." (footnotes omitted)); see also *id.* at 150, 155–56.

Agency theory focuses on relinquishment of authority or consent to act on the other party's behalf.¹³⁴

Both rules of law have flaws in the TVPRA of 2008 context. Vicarious liability law is advantageous because of a social policy underlying the TVPRA of 2008 in providing recompense for people who have been exploited.¹³⁵ Yet, traditional vicarious liability law would require a case-by-case application of state law in district courts deciding cases pertaining to a federal statute,¹³⁶ and the TVPRA does not authorize lawsuits for a tort in actuality.¹³⁷ Agency theory is also applicable, because of the presence of contracts between hotel chains and franchisee hotels and between franchisee hotels and guests (in the form of renting a hotel room).¹³⁸ However, agency theory has a significant loophole in the TVPRA of 2008 context: if the hotel chain does not consent to the franchisee acting on its behalf, the hotel chain will never be liable for promises of the franchisee hotel.¹³⁹ Agency law also has the limitation of courts applying different standards based on state law.¹⁴⁰ A hybrid approach to indirect liability in TVPRA of 2008 cases would denounce the misapplications of vicarious liability and agency theory in this context and aggregate the most pertinent aspects of both rules.

¹³⁴ See RESTATEMENT (SECOND) OF AGENCY § 26 (AM. L. INST. 1958) (establishing the general rule creating authority under agency as requiring the principal's authorization for an agent to do something on the principal's behalf); Mearns, *supra* note 60, at 50 (distinguishing agency law from vicariously liability as requiring consent for an employer to be liable in contracts).

¹³⁵ See Chamallas, *supra* note 64, at 150.

¹³⁶ See generally *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959 (S.D. Ohio 2019) (applying Ohio vicarious liability law); *S.J. v. Choice Hotels Int'l, Inc.*, 473 F. Supp. 3d 147 (E.D.N.Y. 2020) (applying New York vicarious liability law); *S.Y. v. Naples Hotel Co.*, 476 F. Supp. 3d 1251 (M.D. Fla. 2020) (applying Florida vicarious liability law).

¹³⁷ See *supra* notes 30–32, 87, 127 and accompanying text.

¹³⁸ See *supra* notes 4–7, 47–52 and accompanying text.

¹³⁹ Mearns, *supra* note 60, at 50. There is an argument that hotel chains consent to franchisee hotels acting on their behalf through the presence of a franchise agreement. However, hotel chains can strongly assert that they have oversight and control over the franchisee hotel's operations; they are not consenting for franchisee hotels to speak or act in the name of the hotel chain. This is a plausible claim, but this undervalues the specific purpose of the TVPRA of 2008. It broadly authorizes civil actions against those who benefit from a trafficking survivor's exploitation. 18 U.S.C. § 1595. It does not consider the nuance or "blame-game" of agency theory. It is unlikely Congress, in its intent to "enhance measures to combat trafficking in persons," wished to excuse from liability someone who did not consent to have one's agent act on one's account but who had extensive ties to the agent's operation in general. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, pmb., 122 Stat. 5044, 5044 (2008). The solution posed in this Note seeks to address this loophole.

¹⁴⁰ See, e.g., *A.B. v. Hilton Worldwide Holdings Inc.*, 484 F. Supp. 3d 921, 940 (D. Or. 2020) (applying Oregon law on agency and franchisor liability to a federal TVPRA claim).

1. *A New Approach to Indirect Liability in TVPRA of 2008 Cases Is Needed to Promote Justice for Survivors*

The most equitable means of imposing uniform indirect liability in TVPRA of 2008 claims is to amend the TVPRA in a subsequent reauthorization, providing the appropriate relationship needed for hotel chains to be held liable in these cases. This new categorization of indirect liability for TVPRA of 2008 cases could take many forms, but the simplest measure would be to combine vicarious liability law with agency theory.¹⁴¹ This implies, if there is a principal and agent relationship between the hotel chain and its franchisee hotel, the hotel chain would be held strictly liable for the failures of its franchisee hotels in detecting human trafficking on the premises.¹⁴²

The idea recognizes the applicability of agency law in the hotel chains' relationships with franchisee hotels; hotel chains can still raise a defense to a TVPRA of 2008 case by claiming a lack of an apparent agency relationship with its franchisee hotels. However, this proposal also addresses the consent loophole in current common-law agency theory as unacceptable in cases regarding such egregious behavior as human trafficking.¹⁴³ Thus, it implements strict liability once an agency relationship is found.¹⁴⁴ This proposal is very similar to a principal's liability when an agent commits a tort,¹⁴⁵ but expressly authorizes a

¹⁴¹ See, e.g., *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 754–55 (1998).

¹⁴² This hybrid indirect liability proposal is appropriate in light of a Supreme Court of the United States decision with similarities. See *id.* at 754–55. In this case, the Court called for the application of a “uniform and predictable standard” of agency law in Title VII sexual harassment cases, because the definition of “employer” under Title VII included the term “agent.” *Id.* at 754. The Court recognized the importance of applying indirect liability pursuant to “statutory interpretation” and “congressional direction.” See *id.* at 754–55. Ultimately, the Court gave credence to the Restatement of Agency and its sections pertaining to a principal's liability when the agent commits a tort. *Id.* at 755. The *Burlington* Court verifies that a uniform application of indirect liability is appropriate in cases involving federal statutes broadening existing law. *Id.* at 754–55. While Congress did not expressly address potential agency relationships in the TVPRA of 2008, agency does exist between many potential defendants in TVPRA of 2008 cases, and the harm the TVPRA of 2008 seeks to provide relief is similar to a tort injury. Therefore, an amendment to the TVPRA of 2008 recognizing potential agency relationships in defendants and applying a uniform vicarious liability standard when agency does exist is a plausible and just proposal.

¹⁴³ There have been suggestions that the consent requirement for indirect liability in agency contracts is outdated in general. See Mearns, *supra* note 60, at 52 (“A principal should be bound by the promise of his *general agent* (whether or not authorized) when such promise is made within the (contract) *scope of the agent's power*.”). In this case, the franchisee hotel, as a possible agent to the hotel chain, made a promise to guests to keep them safe, and this promise is clearly within the scope of the hotel's power. See *id.* Thus, under this proposition, the hotel chain should be held liable for a violation of this promise.

¹⁴⁴ See *id.*; cf. *Burlington Indus., Inc.*, 524 U.S. at 762–63.

¹⁴⁵ See RESTATEMENT (THIRD) OF AGENCY § 7.03(2)(b) (AM. L. INST. 2006) (“A principal is subject to vicarious liability to a third party harmed by an agent's conduct when . . . the agent commits a tort when acting with apparent authority in dealing with a third

vicarious liability standard in TVPRA of 2008 cases, rather than just tort cases. This recognizes the inherent similarities between the TVPRA of 2008 and a tort law negligence claim against a hotel for a trafficking survivor's assault and battery during her exploitation.¹⁴⁶

This proposed amendment holding third-party principals strictly liable for an agent's violations of the TVPRA of 2008 makes sense logically. Following Restatement (Third) of Agency § 7.03(2)(b),¹⁴⁷ hotel chains will be held strictly liable for violations of the TVPRA by their franchisees if the franchisee hotel has apparent authority in dealing with the trafficking victim. Applying an apparent authority requirement, rather than an actual authority requirement, again promotes uniformity across the country and better reflects the relationship between hotel chains and their franchisees. Actual authority analysis would hinge on case-by-case factual determinations,¹⁴⁸ whereas an apparent authority analysis rests on whether a third-party reasonably relies on a representation by the principal that the agent has authority.¹⁴⁹ While a plaintiff could bring a third-party claim on actual authority agency and apparent authority agency,¹⁵⁰ requiring a minimal apparent authority relationship between hotel chains and their franchisees in TVPRA of 2008 claims again aids in clarifying what must be proven and establishes uniformity.

While establishing apparent authority historically requires a detrimental reliance on this representation or manifestation by the plaintiff,¹⁵¹ this element must be relaxed in TVPRA cases to require solely that any third-party, not just the plaintiff, would reasonably believe that the agent has authority.¹⁵² Logically,

party on or purportedly on behalf of the principal.”); *see also* RESTATEMENT (SECOND) OF AGENCY § 219(1) (AM. L. INST. 1957) (“A master is subject to liability for the torts of his servants committed while acting in the scope of their employment.”).

¹⁴⁶ *Cf.* Fish, *supra* note 20, at 120–21.

¹⁴⁷ *See* RESTATEMENT (THIRD) OF AGENCY § 7.03(2)(b) (AM. L. INST. 2006).

¹⁴⁸ *See, e.g.,* A.B. v. Hilton Worldwide Holdings Inc., 484 F. Supp. 3d 921, 939–41 (D. Or. 2020) (analyzing the existence of actual authority by examining the specific delegation of power to the franchisee through express authorization in the franchise agreement).

¹⁴⁹ RESTATEMENT (THIRD) OF AGENCY § 3.03 (AM. L. INST. 2006) (“Apparent authority . . . is created by a person’s manifestation that another has authority to act with legal consequences for the person who makes the manifestation, when a third party reasonably believes the actor to be authorized and the belief is traceable to the manifestation.”).

¹⁵⁰ *Id.* § 2.03 cmt. c (“Apparent authority often coincides with actual authority.”).

¹⁵¹ *E.g.,* 3 TEXAS JURISPRUDENCE 3D AGENCY § 78.

¹⁵² Historically, apparent authority required that the representation by the principal changed the position of the plaintiff. *Id.* Meaning, the plaintiff would have reacted differently if it knew the principal had delegated authority to the agent. *Id.* In the hotel trafficking context, this would mean that the franchisee hotel only had apparent authority if the trafficking survivor would have chosen to stay at a different hotel if she knew that the hotel was a franchise and not operated by the actual brand. However, this is an unrealistic standard, because trafficking survivors have little to no choice in the hotel in which they are trafficked. Therefore, this relaxed standard is necessary in the application of indirect liability to hotels in TVPRA cases. *See* RESTATEMENT (THIRD) OF AGENCY § 2.03 cmt. c (AM. L. INST. 2006)

the average person who stays at a franchisee hotel branded with the hotel chain conflates the actions of the franchisee hotel as actions of the hotel chain.

Modifying agency theory rooted in the sometimes-outdated common law to better conform to new laws is not uncommon.¹⁵³ In fact, the Supreme Court of the United States did just that in a class of cases similarly related to sexual abuse, specifically in the application of employer liability in Title VII sexual harassment cases.¹⁵⁴ As traditional law does not soundly support the legal actions authorized by the TVPRA,¹⁵⁵ adjusting the traditional elements needed to establish the existence of an agency relationship is appropriate in this case. Just like the Supreme Court crafted a unique role of agency law in Title VII sexual harassment cases,¹⁵⁶ a uniform and unique application of hotel chain indirect liability in TVPRA cases is fitting.

Under this proposal, the burdens to prove indirect liability for hotel chains would be easily met in most cases. Some may argue this is improper. However, harsh disincentives for dithering must be implemented in order to effectuate the purpose of the TVPRA to combat human trafficking.¹⁵⁷ Regardless, Congress could authorize an affirmative defense for third parties in TVPRA claims if it so desires.¹⁵⁸ This uniform indirect liability amendment is simply a logical and just starting point for establishing the bases of law in civil human trafficking cases.

(“[Apparent authority] applies to any set of circumstances under which it is reasonable for a third party to believe that an agent has authority, so long as the belief is traceable to manifestations of the principal.”).

¹⁵³ See, e.g., *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 754–66 (1998).

¹⁵⁴ See *id.*; *Faragher v. City of Boca Raton*, 524 U.S. 775, 797–810 (1998). The Court determined that the Restatement of Agency was a good starting point but ultimately insufficient to equitably apply indirect liability to the complex and novel Title VII sexual harassment cause of action. *Burlington Indus., Inc.*, 524 U.S. at 755 (noting that “[t]he Restatement (Second) of Agency . . . is a useful beginning point, . . . [although] common-law principles may not be wholly transferable to Title VII”). The TVPRA case is similar. In this context, common-law principles of agency may not be wholly transferable to the TVPRA. Therefore, adjusting the traditional requirements for apparent agency in TVPRA cases is appropriate.

¹⁵⁵ See *supra* notes 87, 126–40 and accompanying text.

¹⁵⁶ See cases cited *supra* notes 153–54.

¹⁵⁷ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, pmbl., 122 Stat. 5044, 5044 (“[The purpose of this Act is] to enhance measures to combat trafficking in persons . . .”).

¹⁵⁸ Creating affirmative defenses to new laws broadening the scope of liability is not unrealistic. The Supreme Court of the United States established an affirmative defense to sexual harassment Title VII cases if the employer acted reasonably to prevent and correct harassment and the employee-plaintiff failed to act reasonably by not utilizing the employer’s grievance procedures. *Faragher*, 524 U.S. at 807. Therefore, creating an affirmative defense for hotels in TVPRA claims is an option if absolutely necessary; however, affirmative defenses should be only established by Congressional authorization in lieu of narrowing the scope of the TVPRA. By applying broad indirect liability, subject to a limited affirmative defense, the core intent of the TVPRA to combat trafficking is not undermined.

A specific amendment to the TVPRA of 2008 addressing indirect liability is necessary, because vicarious liability law is not inherently applicable and common-law agency theory creates an undesirable loophole that subverts the intent of Congress in enacting the TVPRA.¹⁵⁹ Ultimately, this proposed amendment authorizes vicarious liability for persons in an agency relationship with the party directly liable under the TVPRA of 2008 and relaxes the elements to establish apparent authority agency by requiring that any third party, not just the plaintiff, would have reasonably believed the franchisee hotel was acting on behalf of the hotel chain and that she based this belief on the hotel chain's representations.

2. *Reliable Law Benefits Both Trafficking Survivors and Hotels*

A consistent application of indirect liability in TVPRA of 2008 cases would provide clarity to trafficking survivors about the viability of their claims against hotel chains. This would serve both an economic and social good. Trafficking survivors, who have already been egregiously exploited, could avoid suffering further from a fruitless lawsuit. A well-defined path to recompense—even if that path limits the viability of suing hotel chains to some extent—is more just than the erratic and unpredictable current standing of law in TVPRA of 2008 cases. A clear standard would also serve an economic good for hotel chains. With a firm understanding of the law, hotel chains can prevent litigation by adjusting their practices.¹⁶⁰ By clearly understanding whether their engagements with franchisee hotels could amount to indirect liability under the TVPRA of 2008, hotels would be more invested in preventing trafficking in their hotels; this increases the probability of financial losses at the hotel chain level if further actions are not taken to combat trafficking on the premises.¹⁶¹

Additionally, hotel chains do business with franchisees in many states; varying a hotel chain's indirect liability for federal TVPRA claims based on the

¹⁵⁹ See *supra* notes 126–40 and accompanying text. Vicarious liability is inapplicable, because the TVPRA of 2008 is not clearly tort law. See generally Fish, *supra* note 20. Vicarious liability is also not the most equitable solution, because district courts would apply state vicarious liability law to federal TVPRA of 2008 claims. See cases cited *supra* note 136. Agency law creates a loophole as long as the hotel chain does not expressly or impliedly consent to the franchisee acting on its behalf. See Mearns, *supra* note 60, at 50. Further, amendments to the TVPA are not foreign. See sources cited *supra* note 118.

¹⁶⁰ See *7 Easy Ways Your Business Can Avoid a Lawsuit*, BROWN & FORTUNATO (July 9, 2018), <https://www.bf-law.com/blog/7-easy-ways-your-business-can-avoid-a-lawsuit/> [<https://perma.cc/Z6TW-5T4K>] (suggesting companies implement policies and procedures and be ethical, honest, and moral to avoid lawsuits).

¹⁶¹ Cf. Sowon Kim, *Human Trafficking and the Hotel Industry: How to Prevent It*, EHL INSIGHTS, <https://hospitalityinsights.ehl.edu/human-trafficking-hospitality-industry> [<https://perma.cc/K66U-ZTHU>] (“Human trafficking in hotels is associated with legal risks including complicity, operational risks such as business disruption, reputational risks linked to financial implications, and most importantly to ethical and moral risk, as human trafficking is a crime against humanity.”).

franchisee's state law is burdensome and convoluted.¹⁶² Hotels would have to continually alter their litigation strategy and retention of attorneys based on the franchisee's state law. Therefore, a uniform application of indirect liability in TVPRA cases is advantageous for hotels.

A uniform application of indirect liability in TVPRA of 2008 cases would also incentivize hotel chains to revamp their corporate social responsibility goals. Corporate social responsibility initiatives benefit a company's sustainability and reputation.¹⁶³ They also help businesses avoid government sanctions and maintain their license to operate in certain communities.¹⁶⁴ To ensure a hotel can continue to operate, it must appease the public and the government.¹⁶⁵ Public awareness that trafficking is rampant in the hotel chains' properties would lead to an outcry and lost profits.¹⁶⁶ A reputation for facilitating human rights violations, like human trafficking, would likely affect a hotel chain's value, competitive advantage, bottom line, and, ultimately, its sustainability.¹⁶⁷

Yet, a hotel chain can tout corporate social responsibility initiatives without any substance behind them to appease consumers,¹⁶⁸ so the added pressure of potential civil liability under the TVPRA of 2008 is needed to financially incentivize hotel chains to fulfill seemingly empty promises to combat human trafficking. Corporate social responsibility is not only an ethical response to societal needs but also a wise business strategy to remain competitive.¹⁶⁹ However, corporate social responsibility has its limits in combatting such a pervasive and egregious issue like human trafficking.¹⁷⁰ A sincere commitment from the public, nonprofit, and private sectors is needed to effectively face this

¹⁶² See *The Ultimate Guide to the World's Top Hotel Brand's and Their Properties*, SOC. TABLES, <https://www.socialtables.com/blog/hospitality/guide-worlds-top-brands/> [https://perma.cc/MD4N-4UGS].

¹⁶³ Erika R. George & Scarlet R. Smith, *In Good Company: How Corporate Social Responsibility Can Protect Rights and Aid Efforts to End Child Sex Trafficking and Modern Slavery*, 46 N.Y.U. J. INT'L L. & POL. 55, 105 (2013).

¹⁶⁴ *Id.*

¹⁶⁵ See *id.* at 105–06.

¹⁶⁶ See *id.* at 106.

¹⁶⁷ See *id.* at 106–07.

¹⁶⁸ See *id.*

¹⁶⁹ George & Smith, *supra* note 163, at 109.

¹⁷⁰ Minimally, corporations should implement anti-human trafficking initiatives at three levels of management. Kim, *supra* note 161. Senior management should pinpoint the hotels in their portfolio close to known smuggling and trafficking routes. *Id.* Heat maps are commonly used to evaluate a property's level of risk. See *id.* This process should be implemented to detect potential trafficking hotspots. Corporate level management should develop anti-trafficking policies, procedures (including in their supply chain), and trainings. *Id.* Corporate level management must then follow through and monitor the effectiveness of these policies. See *id.* Operational level management must create barriers for the perpetration of trafficking by working with current and future employees on the warning signs of trafficking. See *id.*

issue.¹⁷¹ A uniform application of indirect liability in TVPRA of 2008 claims is necessary for buy-in from the private sector, including hotel chains.

V. CONCLUSION

In order to best preserve the purpose of the TVPRA of 2008, courts should interpret the statute liberally and apply a uniform liability standard.¹⁷² This solution is highly recursive and fills in some of the gaps in hotel operations perpetuating human trafficking. Hotel chains are incentivized to create proactive initiatives to detect human trafficking and to protect their reputation. Franchisee hotels then must actually implement these initiatives in order to avoid civil liability under a constructive knowledge standard. Human trafficking cannot be combatted with empty promises. If a franchisee hotel's actions or non-actions do not detect human trafficking on the premises, a hotel chain with a significant relationship to the franchisee hotel, as an entity with more resources, should be held liable for its failure to ensure compliance with its anti-human trafficking goals. Human trafficking is furthered in this country by systematic practices in the hotel industry; by putting the weight of the law behind actual change, the TVPRA of 2008 can fulfill its intended purpose.

¹⁷¹ See George & Smith, *supra* note 163, at 56–59.

¹⁷² The focus of this Note is on sex trafficking in hotels. However, this solution is applicable in labor trafficking situations. Labor trafficking is prevalent in the hospitality industry. See ON-RAMPS, INTERSECTIONS, AND EXIT ROUTES, *supra* note 4, at 72. Potential victims of labor trafficking in hotels are most frequently housekeepers. *Id.* A constructive knowledge culpability requirement for TVPRA of 2008 claims is an appropriate remedy for labor trafficking survivors, because hotels could be held liable if they should have known their subcontractors trafficked their workers. Businesses have a societal obligation to engage with only reputable vendors. See *id.* at 79. A consistent vicarious liability standard in TVPRA of 2008 cases would incentivize hotels to hire housekeeping staff directly when possible and to not contract with businesses that exploit their workers.