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November 16, 2018

BY ECF

Honorable Nicholas G. Garaufis
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

RE: United States of America v. Lauren Salzman, 18 Cr. 204 (NGG)

Dear Judge Garaufis:

We represent Defendant Lauren Salzman in the above-referenced matter. Ms. Salzman respectfully moves this Court for an order dismissing Racketeering Acts Seven and Nine from the Indictment. Submitted contemporaneously herewith is Ms. Salzman's Notice of Motion to Dismiss, Affidavit in Support of Motion to Dismiss, and Memorandum of Law in Support of Motion to Dismiss.

In addition, Ms. Salzman writes to inform the Court that she hereby joins the following Motions: (i) Clare Bronfman, Kathy Russell and Nancy Salzman's Motion to Dismiss Count One of the Indictment, RICO Conspiracy; (ii) Defendant Allison Mack's Motion to Dismiss Count Two of the Indictment, Forced Labor Conspiracy; (iii) Defendant Keith Raniere's Motion to Dismiss Count One; Motion to Dismiss Those Counts and Acts that Fail to Allege Each and Every Element of the Offense and that Charge More than One Offense in a Single Allegation; and Motion for Prompt Disclosure of *Brady* Material and Request for Testimony via Closed Circuit Television.

Respectfully submitted,

/s/ Hector J. Diaz
Hector J. Diaz
Andrea S. Tazioli
602.229.5274

HJD:vl
CC: All Attorney of Record by ECF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

LAUREN SALZMAN,

Defendant.

No. 18-cr-204 (NGG)

NOTICE OF MOTION TO DISMISS

PLEASE TAKE NOTICE that, upon the attached Affidavit of Hector J. Diaz, counsel for Defendant Lauren Salzman, affirmed on November 16, 2018, and upon the accompanying Memorandum of Law, Defendant will move this Court, The Honorable Judge Garaufis, in Courtroom 4D South, on the 3rd day of January, 2019, at 11:00 a.m. or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12(b)(3)(B)(ii), (iii), and (v) of the Federal Rules of Criminal Procedure: (1) dismissing Racketeering Act Seven of the Indictment; (2) dismissing Racketeering Act Nine of the Indictment; and (3) for such other relief as the Court deems just and proper.

Please take further notice that Defendant hereby joins the following Motions: (i) Clare Bronfman, Kathy Russell, and Nancy Salzman's Motion to Dismiss Count One of the Indictment, RICO Conspiracy; (ii) Defendant Allison Mack's Motion to Dismiss Count Two the Indictment, Forced Labor Conspiracy; and (iii) Defendant Keith Raniere's Motion to Dismiss Count One; Motion to Dismiss Those Counts and Acts that Fail to Allege Each and Every Element of the Offense and that Charge More than One Offense in a Single Allegation; and Motion for Prompt Disclosure of *Brady* Materials and Request for Testimony via Closed Circuit Television.

Dated: November 16, 2018
Phoenix, Arizona

Respectfully submitted,

/s/ Hector J. Diaz

Hector J. Diaz
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602-229-5200
Attorneys for Lauren Salzman

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

LAUREN SALZMAN,

Defendant.

No. 18-cr-204 (NGG)

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

HECTOR J. DIAZ, an attorney duly admitted *pro hac vice* in this matter to practice law in the United States District Court for the Eastern District of New York, hereby affirms under penalty of perjury that the following statements are true and correct:

1. I am the attorney of record for Defendant LAUREN SALZMAN in this matter.

2. I was admitted to practice law in the State of Arizona on July 10, 2001. I am a criminal defense attorney associated with the law firm of Quarles & Brady, LLP, located at Two North Central, Phoenix, Arizona 85004.

3. I submit this affidavit in support of Ms. Salzman's Motion to Dismiss Racketeering Acts Seven and Nine from the Indictment pursuant to Rule 12(b)(3)(B)(ii), (iii), and (v) of the Federal Rules of Criminal Procedure.

4. This affidavit and accompanying Memorandum of Law is based upon counsel's investigative efforts to date, including research, review of documents, records, and transcripts, and communications with the Assistant United States Attorneys assigned to this case and numerous other individuals.

5. The legal arguments in support of Ms. Salzman's Motion to Dismiss are fully set forth in the accompanying Memorandum of Law.

Dated: November 16, 2018
Phoenix, Arizona

Respectfully submitted,

Hector J. Diaz
Andrea Tazioli
Quarles & Brady, LLP
Two North Central Avenue
Phoenix, AZ 85004-2391
602-229-5200
Attorneys for Lauren Salzman

By: 
HECTOR J. DIAZ

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

LAUREN SALZMAN,

Defendant.

No. 18-cr-204 (NGG)

ORAL ARGUMENT REQUESTED

Date of service: November 16, 2018

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT LAUREN SALZMAN'S MOTION TO DISMISS THE INDICTMENT OR IN THE ALTERNATIVE FOR A BILL OF PARTICULARS

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PRELIMINARY STATEMENT

Defendant, Lauren Salzman ("Lauren")[1], by and through undersigned counsel, respectfully submits this Memorandum of Law in support of her motion to dismiss Racketeering Acts Seven and Nine of the Indictment, pursuant to Rule 12(b)(3)(B)(ii), (iii), and (v) of the Federal Rules of Criminal Procedure.

Lauren has dedicated the last twenty years of her professional life to promoting the personal development and emotional well-being of others. This quest for human reflection and an appreciation of conscious awareness led her to join her mother, Nancy Salzman, and Defendant Keith Raniere ("Raniere") at Executive Success Programs ("ESP"). ESP provided Lauren with purpose and direction previously missing from her life; and the ESP community of approximately 17,000 members furthered Lauren's efforts to be part of a global initiative focused on the never-ending quest to achieve the highest human potential. While Lauren excelled within the ESP community and helped numerous other individuals who were questioning their life circumstances and personal struggles, she yearned for more personal growth and understanding regarding the place of women in today's society. Whether it was a woman's ability to hold her commitment or endure a difficult situation, Lauren embraced the ideal of empowering women through community and comradery. This empowerment was not only personal to Lauren, but something that was emerging throughout society. Lauren's passion and her commitment to this ideal led her to join an already-existing group of women with the same focus, DOS.

As discussed below, the government characterizes DOS as an extremist group, with its sole focus aimed at controlling and misleading women for the benefit of a "master-slave" relationship.

[1] For purposes of this Motion and in order to not confuse Defendant Lauren Salzman with Defendant Nancy Salzman, this Motion will reference Defendant Lauren Salzman as "Lauren."

The government alleges that Lauren, Raniere, and Defendant Allison Mack ("Mack") threatened women into giving up their personal property and coercing them into performing specific acts, through an alleged scheme by which "collateral" was used to extort women into completing acts they otherwise would not have agreed to perform. The government, however, has ignored that membership in DOS was purely voluntarily; and that Lauren never threatened any of her fellow DOS members into doing anything that they would not have otherwise embraced as part of their membership in DOS. The government's prosecutorial discretion was blinded by lurid tales of "master-slave" relationships, unconventional lifestyles, and allegations of forced labor and sexual misconduct; which resulted in a superseding indictment that is devoid of sufficient factual particularity.

Racketeering Act Seven charges Lauren, Raniere, and Mack with state law extortion, in violation of New York Penal Law §§ 155.30(6), 155.05(2)(e)(v), 155.05(2)(e)(ix) and 20.00. Racketeering Act Nine charges Lauren alone with violations of: (A) the federal forced labor provision, 18 U.S.C. § 1589(a) and 2, and (B) state law extortion, in violation of New York Penal Law §§ 155.30(6), 155.05(2)(e)(v), 155.05(2)(e)(ix), and 20.00.

Racketeering Act Seven (state law extortion) is deficient because it fails to provide any information regarding: the identity of the alleged "lower-level DOS members;" the nature of the alleged threats; the location where the extortionate acts were alleged to have occurred (beyond the assertion that acts occurred in the Eastern District of New York); and the dates and times of the alleged offenses. The charges at issue in Racketeering Act Nine (forced labor and state law extortion) fail to satisfy the Constitutional requirements, because they fail to specify which of Lauren's actions constitute criminal activity. Lastly, to the extent Racketeering Act Seven is found

constitutionally sufficient, Racketeering Act Nine (state law extortion of Jane Doe 6) is multiplicitous.

Racketeering Acts Seven and Nine should be dismissed outright. If they are not, the Court should order the government to provide a bill of particulars to permit the preparation of an adequate defense.[2]

BACKGROUND

On or about 1998, Defendant Keith Raniere ("Raniere") and Defendant Nancy Salzman founded Executive Success Programs ("ESP"), a series of workshops and curriculum designed to "actualize human potential." (*See* Compl., DKT. 1 at ¶ 3).[3] NXIVM Corporation ("NXIVM") was derived from ESP; and NXIVM offered personal and professional development seminars to individuals through its Executive Success Programs. (Compl. at ¶ 3). Thousands of individuals in the United States, Canada, Mexico and abroad, enrolled in these personal and professional development seminars which were taught by Raniere, Nancy Salzman, and other NXIVM professionals. (Compl. at ¶ 5). The NXIVM philosophy is to create "a new ethical understanding" that allows "humanity to rise to its noble possibility." (Compl. at ¶ 4).

On or about 2017, the government began a criminal investigation into ESP and NXIVM. On or about February 14, 2018, the government filed a Complaint against Raniere, based primarily on allegations that Raniere and others operated a secret organization within NXIVM called "DOS"

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[2] Lauren also joins the following Motions: (i) C. Bronfman, K. Russell and N. Salzman's Motion to Dismiss Count One of the Indictment; (ii) Defendant Allison Mack's Motion to Dismiss Count Two of the Indictment, Forced Labor Conspiracy; (iii) Defendant Keith Raniere's Motion to Dismiss Count One; Motion to Dismiss Those Counts and Acts that Fail to Allege Each and Every Element of the Offense and that Charge More than One Offense in a Single Allegation; and Motion for Prompt Disclosure of *Brady* Material and Request for Testimony via Closed Circuit Television.

[3] While this Memorandum cites to the Complaint, Initial Indictment, Superseding Indictment, and other documents filed by the government, this Memorandum does not concede that any of the facts contained in these documents are true and accurate.

or the "Vow." (Compl. at ¶ 11-14). DOS was a "women-only organization," and the goal of DOS was to "eradicate weaknesses in its members." (Compl. at ¶ 17). In the Complaint, the government alleges that DOS operated as a pyramid with existing DOS members recruiting other members, and that Raniere served at the top of the organization. (Compl. at ¶ 13-14). The government alleges that in order for a recruited DOS member to learn about the organization, she needed to provide the existing DOS member with "collateral," which was "meant to ensure that the prospective [DOS member] would keep what she was about to learn a secret." (Compl. at ¶ 15). The "collateral" provided by DOS members included "sexually explicit photographs; videos made to look candid in which the prospective DOS members told damning stories (true or untrue) about themselves, close friends and/or family members; and letters making damaging accusations (true or untrue) against friends and family members." (Compl. at ¶ 16). If the prospective DOS member wanted to join the organization, the prospective DOS member would also have to provide additional collateral in order to further ensure secrecy surrounding the group, which often consisted of sensitive or confidential information. (Compl. at ¶ 18). This collateral was voluntarily given by the prospective DOS member to an existing DOS member. (Compl. at ¶¶ 15-16).

Once becoming a member, the government alleges that DOS members engaged in forced labor at the direction of other DOS members. (Compl. at ¶ 20). While forced labor connotes serious manual labor or completing unwanted tasks, the forced labor allegations of the Complaint come nowhere close to even having a personal assistant. (Compl. at ¶ 24). Specifically, the government asserts that DOS members engaged in "acts of care" for other DOS members, including, "bringing them coffee, buying them groceries, making them lunch, cleaning their houses, and retrieving lost items for them, among other tasks." (Compl. at ¶ 20). The government further alleges that some DOS members were given regular assignments to complete by other DOS

members that included reviewing ESP materials and doing work for NXIVM. (Compl. at ¶ 25). DOS members engaged in these "acts of care" and other assignments voluntarily in order to improve themselves, consistent with the goals and teachings of DOS. (Compl. at ¶¶ 15, 17, 20).

The Complaint alleges that DOS members agreed to perform specific acts that they otherwise would not have performed, out of a perceived belief that their collateral would be released to the public. (Compl. at ¶¶ 18-19). The government's Complaint does not directly allege that the *purpose* of the collateral was to obtain control over DOS members or that Lauren coerced DOS members into providing collateral. Notably, the government does not allege in its Complaint that DOS members were directly attempting to coerce prospective DOS members in order to obtain their collateral; rather, the government simply alleges that DOS members sought to obtain collateral in order to maintain the secrecy of the organization. (Compl. at ¶¶ 15-19). Indeed, the only reference in the Complaint regarding the release of collateral is that DOS members were able to leave the organization without having their collateral released, so long as they did not speak about DOS. (Compl. at ¶ 51).

On or about April 20, 2018, the government obtained its Initial Indictment against Raniere and Mack charging them with sex trafficking, sex trafficking conspiracy and forced labor conspiracy-- offenses which were derived from Raniere and Mack's involvement in DOS. (Initial Indictment, DKT. 14).

On or about July 23, 2018, the government obtained a Superseding Indictment ("Indictment"), adding four more defendants, Clare Bronfman, Nancy Salzman, Kathy Russell and Lauren Salzman, and alleging a RICO Conspiracy, among other claims. (Indictment, DKT. 50). In the Indictment, the government alleges that Raniere and Lauren committed forced labor and document servitude in connection with a woman (Jane Doe 4), who was confined to a room as

punishment and denied her immigration documents (Racketeering Act Six). (Indictment, at ¶¶ 26-27). The government's remaining allegations against Lauren pertain to her alleged involvement in DOS, and that she "knowingly and intentionally" obtained property/collateral from individuals through coercion/extortion and fraudulent means. (Indictment at ¶¶ 11, 28, 32-33, 35, 36). Specifically, the allegations against Lauren are that she "knowingly and intentionally [stole] property by extortion" when she instilled in "lower-ranking DOS members" a fear that if such property was not delivered, Lauren and her DOS co-conspirators, would expose sensitive information about these "lower-ranking DOS members" (Racketeering Act Seven). (Indictment at ¶ 28). Presumably, this sensitive information threatened to be exposed was prior collateral provided to her and her co-conspirators by lower-ranking DOS members. (Indictment at ¶ 28). The government also alleges that Lauren committed the crimes of forced labor and state law extortion (Racketeering Act Nine) as to a specific victim, Jane Doe 6. (Indictment at ¶¶ 32-33). Based on a review of the government's pleadings provided to date, it is not clear which acts gave rise to the allegation of forced labor as to Jane Doe 6. (Indictment at ¶ 32). The government further alleges that Lauren engaged in a forced labor conspiracy in order to obtain the labor and services of "lower-ranking DOS members" (Count Two: Forced Labor Conspiracy). (Indictment at ¶ 35). Lastly, the government alleges that Lauren falsely induced these lower ranking DOS members to provide their collateral when she failed to provide these members with all of the material facts surrounding DOS (Count Three: Wire Fraud Conspiracy). (Indictment at ¶ 36; Government's Letter dated Jul. 24, 2018, DKT. 52 at 4).

DOS members were keenly aware that DOS was not a traditional personal growth group, but rather, was a more intensive and radical approach at addressing issues inherent in self-victimization and weakness borne out of traditional female roles in society. (Compl. at ¶ 17). As

with its Complaint, the government's DOS allegations detailed in the Indictment against Lauren rely on conjecture and assumptions. (Compl., DKT. 1; Initial Indictment, DKT. 14; Indictment, DKT. 50; Government Letter dated Jul. 24, 2018, DKT. 52). The government, through its pretrial submissions, has not accused Lauren of ever threatening any DOS members with the release of their collateral in order to have them to perform labor and services. Moreover, the government has not proffered any information in any of its pretrial pleadings, including the Indictment, connecting Lauren to the any alleged sex trafficking offenses. (Compl., DKT. 1; Initial Indictment, DKT. 14; Indictment, DKT. 50; Government Letter dated Jul. 24, 2018, DKT. 52).

The allegations against Lauren, discussed above, stem from her lengthy professional involvement with ESP. In 1998, Lauren obtained a Bachelor of Arts degree from SUNY-Oswego, and she subsequently began a two-year internship at ESP, where she assisted her mother, Nancy Salzman, in codifying the basic ESP curriculum and learned to teach the curriculum to individuals and groups. Upon completion of her internship, Lauren became an independent contractor for ESP in a teaching capacity and was appointed to serve as the Director of Education, a position she held within ESP for almost twenty years. In this capacity, Lauren established proficiency standards and created tools to measure staff performance and the effectiveness of the ESP education model. She was also responsible for training and evaluating the educational staff for the organization, which spanned six countries. Moreover, Lauren taught high-level executive and VIP trainings to, among others, members of multiple foreign presidential families, the New York State Department of Health executive staff, and to employees of multi-million dollar corporations in the United States and Mexico.

In January 2017 -- two years after DOS was formed, Lauren joined DOS, a group of women who were dedicated to the principle of "eradicating weaknesses in its members" and the

empowerment of women. (Compl. at ¶ 17). While DOS had been in existence since 2015, on information, Lauren joined this group on or about January 2017, and she was a member of this group for approximately four and one half months. (Compl. at ¶ 11).

The Indictment, filed on July 23, 2018, charges the defendants with, *inter alia*, violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). The Indictment alleges ten predicate acts that the defendants engaged in as part of the RICO conspiracy.

Relevant to the Court's consideration of this Motion is Racketeering Act Seven, which applies to Lauren, Raniere and Mack, states:

> In or about and between September 2015 and June 2017, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants KEITH RANIERE, ALLISON MACK and LAUREN SALZMAN, together with others, did knowingly and intentionally steal property by extortion, in that RANIERE, MACK, LAUREN SALZMAN and others obtained property, to wit: personal property and other things of value, by compelling and inducing one or more persons, to wit: lower-ranking DOS members, to deliver such property by instilling in them a fear that, if the property were not so delivered, RANIERE, MACK, LAUREN SALZMAN and others would (l) expose a secret and publicize an asserted fact, whether true or false, tending to subject one or more persons to hatred, contempt and ridicule; and (2) perform an act which would not in itself materially benefit RANIERE, MACK, LAUREN SALZMAN and others, but which was calculated to harm one or more persons materially with respect to their health, safety, business, calling, career, financial condition, reputation and personal relationships, in violation of New York Penal Law Sections 155.30(6), 155.05(2)(e)(v), 155.05(2)(e)(ix) and 20.00. (Indictment at ¶ 28).

Also relevant to this Motion is Racketeering Act Nine, which is unique to Lauren, and states:

> A. Forced Labor Jane Doe 6
>
> In or about and between February 2017 and June 2017, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant LAUREN SALZMAN, together with others, did knowingly and intentionally obtain the labor and services of a person, to wit: Jane Doe 6, an individual whose identity is known to the Grand Jury, by means of (a) force, physical restraint and threats of physical restraint to her and one or more other persons, (b) serious harm and threats of serious harm to her and one or more

> persons, (c) one or more schemes, plans and patterns intended to cause her to believe that, if she did not perform such labor and services, she and one or more other persons would suffer serious harm, and a combination of such means, in violation of Title 18, United States Code, Sections 1589(a) and 2. (Indictment at ¶ 32).
>
> B. State Law Extortion of Jane Doe 6
>
> In or about and between February 2017 and June 2017, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant LAUREN SALZMAN, together with others, did knowingly and intentionally steal property by extortion, in that LAUREN SALZMAN and others obtained property, to wit: bank account authorization and sexually explicit photographs and videos, by compelling and inducing Jane Doe 6 to deliver such property by instilling in her a fear that, if the property were not so delivered, LAUREN SALZMAN and others would (1) expose a secret and publicize an asserted fact, whether true or false, tending to subject one or more persons to hatred, contempt and ridicule; and (2) perform an act which would not itself materially benefit LAUREN SALZMAN, but which was calculated to harm one or more persons materially with respect to their health, safety, business, calling career, financial condition, reputation and personal relationships, in violation of New York Penal Law Sections 155.30(6), 155.05(2)(e)(v), 155.05(2)(e)(ix) and 20.00. (Indictment at ¶ 33).

For the reasons discussed below, Racketeering Acts Seven and Nine, as alleged, lack the specificity required by law and must be dismissed. Racketeering Act None-B (state law extortion) is also mutliplicitous, and therefore must be dismissed.

ARGUMENT

According to Federal Rule of Criminal Procedure ("FRCRP") 12, "a party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits." Lauren moves this Court to dismiss Racketeering Acts Seven and Nine pursuant to FRCRP 12(b)(3)(B)(ii), (iii), and (v). It is understood that "dismissal of an indictment is an 'extraordinary remedy' reserved for extremely limited circumstances implicating fundamental rights." *United States v. De La Pava*, 268 F.3d 157, 165 (2d Cir. 2001). However, Racketeering Acts Seven and Nine, as alleged, violate Lauren's constitutional rights to be informed of the nature

of the accusations asserted against her and to be provided with enough information to prevent being subject to double jeopardy. *See United States v. Walsh*, 194 F.3d 37, 44 (2d Cir. 1999).

I. The Indictment Fails to Adequately Plead Racketeering Acts Seven and Nine.

Racketeering Acts Seven and Nine lack the specificity required by the U.S. Constitution and Rule 7(c)(1) of the Federal Rules of Criminal Procedure. Rule 7(c)(1) provides that the Indictment "must be a plain, concise, and definite written statement of the essential facts constituting the offense charged." The Indictment Clause of the Fifth Amendment further requires that the Indictment: (1) "contain[] the elements of the offense charged and fairly inform[] a defendant of the charge against which he must defend," and (2) "enable[] [the defendant] to plead an acquittal or conviction in bar of future prosecutions for the same offense." *Hambling v. United States*, 418 U.S. 87, 117 (1974).

In the Second Circuit, "an indictment need to do little more than to track the language of the statute charged and state the time and place (in approximate terms) of the alleged crime." *Walsh*, 194 F.3d at 44 (2d Cir. 1999). Additionally, an indictment must "contain some amount of factual particularity to ensure that the prosecution will not fill in elements of its case with facts other than those considered by the grand jury." *Id.* at 45. There are, however, some charges that require greater specificity. *Russell v. United States*, 369 U.S. 749, 764 (1962); *see also United States v. Urso*, 369 F. Supp. 2d 254, 266 (E.D.N.Y. 2005) (explaining that "the quantum and type of factual specificity required in an indictment varies according to the charges alleged against the defendant").

In *Russell*, the Supreme Court explained, "[w]here guilt depends so crucially upon such a specific identification of fact, our cases have uniformly held that an indictment must do more than simply repeat the language of the criminal statute." *Russell*, 369 U.S. at 764; *see also United States*

v. Stringer, 730 F.3d 120, 126 (2d Cir. 2013) (acknowledging the reasoning in *Russell* that "for certain criminal statutes specification of how a particular element of a criminal charge will be met (as opposed to categorical recitation of the element) is of such importance to the fairness of the proceeding that it must be spelled out in the indictment, but there is no such universal requirement."). Moreover, "[i]t is an elementary principle of criminal pleading, that where the definition of an offense, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the species, it must descend to particulars." *United States v. Rosenblatt*, 554 F.2d 36, 41 (2d Cir. 1977).

Crimes prohibiting threats are subject to the heightened pleading standard announced in *Russell*. *See Sira v. Morton*, 380 F.3d 57, 73 (2d Cir. 2004) ("[W]e have not upheld indictments that merely tracked statutory language prohibiting threats when more specific pleading was necessary to permit the accused to prepare his defense and defend against double jeopardy."). Additionally, the charges at issue—extortion and forced labor—concern statutes generically defined, which require the indictment to "descend to particulars." *United States v. Peterson*, 544 F. Supp. 2d 1363, 1375 (M.D. Ga. 2008) (finding that 18 U.S.C. §1589 is generic and must be pled with particularity); *see Wood v. Gen. Motors Corp.*, 2015 WL 1396437, at *6 (E.D.N.Y. Mar. 25, 2015) (explaining that the predicate act of extortion must be pled with sufficient specificity to plausibly suggest that defendants "knowingly and willfully created or instilled fear . . . or that such fear induced the wrongful transfer of property," and merely alleging a general scheme is not sufficient).

A. Racketeering Act Seven, State Law Extortion, And Racketeering Act Nine-B, State Law Extortion of Jane Doe 6, Do Not Sufficiently Allege Conduct in Violation of N.Y. Penal Law §§ 155.30(6), 155.05(2)(e)(v), 155.05(2)(e)(ix) and 20.00.

Racketeering Acts Seven and Nine-B, both state law extortion offenses, are subjected to the heightened pleading standard discussed in *Russell*. Counts charging extortion-related offenses should describe the alleged threats in some detail. *People v Keohane*, 115 N.Y.S.2d 492, 496 (N.Y. Gen. Sess. 1951) (explaining that the counts charging extortion described "the substance of the alleged threats . . . in some detail *as required*") (emphasis added); *see also People v. Graves*, 820 N.Y.S.2d 476, 478 (N.Y. Crim. Ct. 2006) (denying a defendant's motion to dismiss a coercion charge where the complaint specifically alleged the exact threat employed by defendant to compel the complainant to pay a sum of money). Notably, "it has long been the rule in this Circuit that a deficiency in an indictment's factual allegations of the elements of an offense 'is not cured by' the fact that the relevant count 'cited the statute that [the defendant] is alleged to have violated.'" *United States v. Gonzalez*, 686 F.3d 122, 128 (2d Cir. 2012) (citing *United States v. Berlin*, 472 F.2d 1002, 1008 (2d Cir. 1973)) (alterations in original).

In *United States v. Urso*,[4] the court dismissed two loansharking counts for lack of specificity. 369 F. Supp. 2d, 24, 266 (E.D.N.Y. 2005). These loansharking counts failed to allege the name of the victim, the individuals alleged to have worked with the defendant, the location where the extortionate acts were alleged to have occurred (beyond the assertion that some portion of the acts occurred in the relevant district), the dates and times of the alleged offenses, and the nature of the threats allegedly employed. *Id.* at 265. The court reasoned that the government failed

[4] While *Urso* involved acts of loansharking, the state law extortion offenses alleged in this Indictment can be easily analogized to a federal loansharking offense, as both acts hinge on a threat in order to obtain property. *See, e.g.*, 18 U.S.C. § 892, 18 U.S.C. § 894; NY Penal Law §§ 155.30(6), 155.05(2)(e)(v), 155.05(2)(e)(ix) and 20.00.

to allege sufficient factual information to "adequately tie the government to the evidence presented to the Grand Jury" or to "permit [the defendant] to anticipate the acts and conversations that the government will assert at trial." *Id.* at 266; *see also United States v. Kramer*, 499 F. Supp. 2d 300, 305–06 (E.D.N.Y. 2007) (dismissing an indictment for failure to state an offense when the indictment failed to allege any conduct that could support an allegation that the defendant knowingly participated in an extortionate act); *Berlin*, 472 F.2d at 1008–09 (reversing a conviction because the indictment failed to plead an essential element of the charge).

Moreover, an essential element of the crime of extortion is that the defendant "instilled fear" in the victim in some way to compel them to part with their property. *People v. Dioguardi*, 8 N.Y.2d 260, 268 (1960) ("The essence of the crime is obtaining property by a wrongful use of fear, induced by a threat to do an unlawful injury").[5] Simply put, there must be some nexus between the threat and the taking of property. *See id.*

1. Racketeering Act Seven Is Not Pled with the Requisite Particularity.

Racketeering Act Seven alleges that Lauren, Raniere and Mack "together with others, did knowingly and intentionally steal property by extortion…and obtained property…by instilling fear" in [lower-ranking DOS members] that if the property was not delivered, Lauren, Raniere and Mack would: (1) expose a secret and publicize an asserted fact, whether true or false, tending to subject one or more persons to hatred, contempt and ridicule; and (2) perform an act which would not in itself materially benefit Lauren, Raniere and Mack, but which was calculated to harm one or more persons materially. Indictment at ¶ 28. Racketeering Act Seven fails to meet the heightened pleading standard set forth in *Russell* and does no more than track the language of the

[5] Prior to 1965 the New York extortion statute was codified in N.Y. Penal Law § 850. Although, *Dioguardi* cites to the pre-amended version of New York extortion law, the amendment did not alter the essence of the crime.

statute. *See, e.g., United States v. Tomasetta*, 429 F.2d 978, 980-81 (1st Cir. 1970) (dismissing the indictment charging the defendant with violating loan sharking provisions of Consumer Credit Protection Act for failure to specify means by which alleged threats were communicated, location of alleged offense, and name of victim).

Racketeering Act Seven does not provide the specific identity of the alleged victims. Instead, the Indictment cryptically states that the alleged victims are "lower-ranking DOS members" without any clarification as to the specific identity of these women. The Indictment alleges generally that this offense occurred sometime within a twenty-six month period ("[i]n or about or between September 2015 and June 2017") in the Eastern District of New York, however, Racketeering Act Seven does not provide the location within the Eastern District of New York where these extortionate acts against the lower-ranking DOS members were alleged to have occurred; nor does Racketeering Act Seven provide the dates and times of the alleged offenses. The Indictment also does not identify the nature of the threats allegedly employed. *See Tomasetta*, 429 F.2d at 980-81. For instance, the Indictment does not mention the lower-ranking DOS members' *secret* that Lauren, Raniere or Mack would expose. Moreover, the Indictment does not mention the *act* that Lauren, Raniere or Mack presumably would have performed and which was calculated to cause harm to the lower-ranking DOS members. Without this information, Racketeering Act Seven does not provide even a paltry level of information to allow anticipation of the acts or conversations that the government will assert at trial and fails to provide enough information to ensure that the government will not "fill in elements of its case with facts other than those considered by the grand jury." *Walsh*, 194 F.3d at 45.

In the context of extortion or threat-related offenses, a heightened pleading standard is required. *See, e.g., Sira v. Morton*, 380 F.3d 57, 73 (2d Cir. 2004); *Urso*, 369 F.Supp.2d at 266.

"[F]or an indictment to fulfill the functions of notifying the defendant of the charges against him and of assuring that he is tried on the matters considered by the grand jury, the indictment must state some fact specific enough to describe a particular criminal act, rather than a type of crime." *United States v. Pirro*, 212 F.3d 86, 93 (2d. 2000). Racketeering Act Seven is charged only in generic terms without any facts specific to describe the particular criminal act -- there is no specificity as to the victims, location of the crime, and most importantly, the nature of the threats. Accordingly, Racketeering Act Seven must be dismissed.

2. Racketeering Act Nine-B Must Also Be Dismissed for Failure to Be Pled with the Requisite Particularity.

Similar to Racketeering Act Seven, Racketeering Act Nine-B also mirrors the language set forth in the state law extortion statute with very little more. Again, relying on cases from this Circuit, it is apparent that this count is not pled with the required particularity. *See, e.g., Sira v. Morton*, 380 F.3d 57, 73 (2d Cir. 2004); *Pirro*, 212 F.3d at 93; *Kramer*, 499 F. Supp. 2d at 305–06. While the Indictment vaguely describes that the alleged acts committed against Jane Doe 6 occurred in the Eastern District of New York within a four month period ("[i]n about or between February and June 2017), the Indictment is unclear as to the specific month, date or time of the alleged offense. Racketeering Act Nine-B also fails to provide the location where the extortionate acts were alleged to have occurred. For example, the Indictment makes no mention whether this Racketeering Act occurred in either Brooklyn, Long Island, Staten Island, or some other location within the Eastern District of New York. This is especially important given that the government's Complaint alleges that several of the DOS related activities also occurred throughout the state of New York. (*See, e.g.,* Compl. at ¶¶ 12, 43). The cases in this Circuit require a more targeted approach when discussing particularities of the Indictment. *See, e.g., Walsh*, 194 F.3d at 45; *Sira*, 380 F.3d at 73; *Rosenblatt*, 554 F.2d at 41; *Russell*, 369 U.S. at 764.

Racketeering Act Nine-B alleges that Lauren "did knowingly and intentionally steal property by extortion…to wit: bank account authorizations and sexually explicit photographs and videos, by compelling and inducing Jane Doe 6 to deliver such property by instilling in her a fear that if the property were not delivered, Lauren…would (1) expose a secret and publicize an asserted fact, whether true or false, tending to subject one or more persons to hatred, contempt and ridicule; and (2) perform an act which would not in itself materially benefit Lauren, but which was calculated to harm one or more persons materially…" (Indictment at ¶ 33). While the government provides the name of the victim (Jane Doe 6) and the property obtained, critically missing from this Count is the nature of the threat which presumably instilled more than a subjective fear in Jane Doe 6. *See, e.g., Adia v. Grandeur Mgmt. Inc.,* 2018 WL 4300528, at *3 (S.D.N.Y. Sept. 10, 2018). The absence of this information is especially important, given that many of the DOS members voluntarily provided their collateral on at least two separate occasions: the first occasion was in order to learn about the organization; and the second occasion was in order to join the organization. (*See, e.g.,* Compl. at ¶¶ 15-18). The fact that these women, including Jane Doe 6, provided collateral voluntarily undercuts any notion that there was a threat component inherent in the sharing of collateral. Moreover, the government's failure to properly state the nature of the threat within Racketeering Act Nine-B supports that this was nothing more than a subjective fear by Jane Doe 6. *See, e.g., id.*; *Dioguardi*, 8 N.Y.2d at 268 ("The essence of the crime is obtaining property by a wrongful use of fear, induced by a threat to do an unlawful injury"); *Sira*, 380 F.3d at 73 (holding that crimes prohibiting threats are subject to the heightened pleading standard.) Thus, the rationale articulated by the courts in this Circuit should apply with equal force to the present charge.

B. Racketeering Act Nine-A, Forced Labor of Jane Doe 6, Fails to Specify Which Acts Were Committed in Violation of 18 U.S.C. § 1589(a) and 2.

The means by which Lauren allegedly obtained forced labor from Jane Doe 6 are not alleged in the Indictment, let alone stated with sufficient specificity. The Second Circuit has succinctly stated that "[a]n indictment that does not set out all of the essential elements of the offense charged is defective." *Gonzalez*, 686 F.3d at 127. It is also well established that a charge under 18 U.S.C. § 1589 requires the alleged victim's acquiesce to be objectively reasonable under the circumstances. *Paguirigan v. Prompt Nursing Emp't Agency LLC*, 286 F. Supp. 3d 430, 438 (E.D.N.Y. 2017).

In *United States v. Peterson*, the court explained that the terms of §1589(a) are generic. 544 F. Supp. 2d 1363, 1375 (M.D. Ga. 2008). Therefore, to properly charge a defendant with a violation of § 1589(a), the indictment must state the offense with particularity. *Id.* (referencing *Russell v. United States*, 369 U.S. 749, 764 (1962)). In *Peterson*, the indictment merely alleged that the defendant obtained forced labor "by abuse or threatened abuse of the law or legal process" in violation of §1589(a)(3). *Id.* The court found that the statute's "core of criminality" was the means used to obtain the labor. *Id.* Thus, failure to specify *what acts* the defendant committed that violated the statute, rendered the indictment "factually insufficient." *Id.*

As established in *Peterson*, because merely obtaining someone's labor or services is not prohibited by law, the *threatening and/or harmful means* by which the defendant obtained the labor or services of an individual is the "core of criminality" of §1589. There needs to be more than simply tracking the language of the statute, otherwise, it would be impossible to determine whether the requirement of serious harm can be met in order to establish a violation of this statute. When crimes that are defined in generic terms—especially those prohibiting threats—are charged

by merely tracking the statutory language, the defendant is not provided with sufficient information to defend against double jeopardy or to be apprised of the nature of the accusations.

Here, analogous to the indictment in *Peterson*, the government simply regurgitates the language of the statute and fails to state the offense with particularity. Like *Peterson*, the government alleges that Lauren obtained the labor and services of Jane Doe 6 by means of "(a) "force, physical restraint, and threats of physical restraint…;" (b) "serious harm and threats of serious harm"…;" and (c) "one or more schemes, plans and patterns intended to cause her to believe that, if she did not perform such labor and services, she and one or more other persons would suffer serious harm." (Indictment at ¶ 32). In using this generic language, the government fails to allege the "core of criminality," or the threatening or harmful means allegedly used by Lauren in order to obtain the forced labor or services from Jane Doe 6.

For instance, the Indictment does not state what purported "force, physical restraint, and threats of physical restraint" or "serious harm and threats of serious harm" were made by Lauren in order to obtain the labor and services of Jane Doe 6. Nor does the government detail the "schemes, plans and patterns" devised by Lauren, which would have caused Jane Doe 6 to engage in any alleged labor and services. Additionally, Racketeering Act Nine-A does not provide enough detail to support that Jane Doe 6 acquiesced to the alleged forced labor because of something more than a subjective feeling that she may suffer negative consequences. *Adia*, 2018 WL 4300528, at *3 (holding that the plaintiff failed to state a claim under 18 U.S.C. 1589(a) where the plaintiff's sole rationale for the forced labor charge was the plaintiff's subjective fear of negative consequences—no actual threat was alleged). Lastly, the Indictment does not even state the nature

of Jane Doe 6's alleged "forced labor and services"[6] that Jane Doe 6 purportedly provided to Lauren— an essential element of the offense charged. 18 U.S.C. § 1589(a); *see also, Headley v. Church of Scientology Int'l.,* 687 F.3d 1173, 1179 (9th Cir. 2012) (reasoning that the text of 18 U.S.C. § 1589(a) "is a problem for the [plaintiffs] because the record contains little evidence that the defendants obtained the [plaintiffs'] labor "by means of" serious harm, threats, or other improper methods.").

Second Circuit case law is clear that crimes prohibiting threats are subjected to a heightened pleadings standard. *Sira*, 380 F.3d at 73. Because the Indictment does not provide the specific facts upon which guilt hinges, the indictment fails under *Russell* and must be dismissed.

II. Racketeering Act Nine-B, State Law Extortion of Jane Doe 6, is Multiplicitous.

If the Court finds that Racketeering Act Seven is constitutionally sufficient, Racketeering Act Nine-B should be dismissed for multiplicity. *See, e.g.,* FRCRP 12(b)(3)(B)(ii); *United States v. Reed*, 639 F.2d 896, 904 (2d Cir. 1981); *People v. Vangorden*, 147 A.D.3d 1436, 1439, (N.Y. App. Div. 2017) (noting "the remedy for multiplicitous counts is dismissal of all but one of the affected counts."). "An indictment is multiplicitous when it charges a single offense as an offense

[6] To the extent that the alleged "forced labor and services" constitute the "acts of care" described in the Complaint (e.g., buying groceries, making lunch, carrying luggage, cleaning houses, and retrieving lost items), such acts do not constitute forced labor, as these acts were not obtained by the methods contemplated by 18 U.S.C. § 1589(a). *Compare Muchira v. Al-Rawaf*, 850 F.3d 605, 620 (4th Cir. 2017) (finding that complying with "cultural 'house rules' coupled with long work hours and verbal reprimands" among other things, which caused Muchira to experience serious psychological harm, was insufficient "to prove a 'forced labor' violation" under 18 U.S.C. § 1589), *and United States v. Toviave*, 761 F.3d 623, 624 (6th Cir. 2014) (holding that children's household chores such as cooking, cleaning, and doing laundry do not amount to forced labor under 18 U.S.C. § 1589; and thus, the Sixth Circuit reversed the lower court's federal forced labor conviction), *with United States v. Sabhnani*, 599 F.3d 215, 224-32 (2d Cir. 2010) (affirming forced labor convictions where victims did not speak English, did not know how to drive, and did not know how to use a phone were brought into the United States illegally, forced to do grueling work, forced to sleep on the floor and had limited food and clothing).

multiple times, in separate counts, when, in law and fact, only one crime has been committed." *United States v. Chacko*, 169 F.3d 140, 145 (2d Cir. 1999). The danger in multiplicitous indictments is two-fold: (1) they could result in the defendant being sentenced to multiple punishments for the same offense, and (2) charging multiple counts for the same offense may prejudice a jury "by suggesting that the defendant has committed not one but several crimes." *United States v. Reed*, 639 F.2d 896, 904 (2d Cir. 1981).

Generally, "if proof of each offense requires proof of an additional fact then the offenses are separate" and not multiplicitous. *United States v. Carrozza*, 728 F. Supp. 266, 274 (S.D.N.Y. 1990) (citing *Blockberger v. United States*, 284 U.S. 299 (1932)); *United States v. Nguyen*, 2014 WL 1512030, at *13 (W.D.N.Y. Apr. 7, 2014), (holding that under the *Blockberger* test the charges were not multiplicitous "because either crime could be proven without necessarily establishing the other crime").

Multiplicity is typically raised when a defendant is charged with violations of different statutory provisions that involve the same factual offense or when a defendant is charged with multiple violations of the same statutory scheme. *See United States v. Harris*, 805 F. Supp. 166, 172–73 (S.D.N.Y. 1992). The instant case presents a unique multiplicity scenario, but nevertheless invokes the dangers present in multiplicitous indictments.

Here, Racketeering Act Seven alleges the same offense as Racketeering Act Nine-B. Both counts charge that Lauren and others violated the state law extortion statutes by means of threatening to expose a secret and performing an act calculated to harm one or more persons. Racketeering Act Nine-B names a victim, Jane Doe 6, and identifies the personal property, bank account authorizations and sexually explicit photographs and videos. However, Racketeering Act Seven provides no specific information as to the identity of the alleged victims or their property.

Instead, Racketeering Act Seven generally names "lower-ranking DOS members" as the subjects of extortion and generally alleges that Lauren and others obtained "personal property and other things of value." Because Jane Doe 6 was a "lower-ranking DOS member," both Jane Doe 6 and her alleged property could presumably be included within Racketeering Act Seven.

This is not a situation where the defendant is properly charged with multiple counts of the same crime because they concern different victims. *See People v. Cunningham*, 12 A.D.3d 1131, 1132 (N.Y. App. Div. 2004). Instead, Racketeering Act Seven presumably includes the victim and property specifically identified in Racketeering Act Nine-B.[7] Notably, Racketeering Act Nine-B even encompasses the same dates as alleged in Racketeering Act Seven. Thus, Racketeering Act Nine-B embodies the same alleged extortionate acts charged in Racketeering Act Seven. *See United States v. Husain*, 2000 WL 1901408, *5 (5th Cir. Dec. 5, 2000) (explaining that charging a defendant with possession and transfer of a firearm is likely multiplicitous because you cannot prove transfer without first proving possession).

Although Racketeering Act Seven may require proof of an additional fact that is not required to prove Racketeering Act Nine-B, because it seemingly concerns more victims, the converse is not true. Assuming that Jane Doe 6 and the bank account authorizations and sexually explicit photographs and videos are included in Racketeering Act Seven, the proof required to prove Racketeering Act Nine-B would be based on identical facts *and* law as the proof required to

[7] The government could have avoided this issue by simply identifying the "lower-ranking DOS members" and "personal property and other things of value" in Racketeering Act Seven. The fact that the government did not do this suggests that Racketeering Act 9-B is multiplicitous.

prove Racketeering Act Seven.[8] In other words, you cannot prove Racketeering Act Nine-B without first proving Racketeering Act Seven. Thus, applying the *Blockberger* test, the indictment is multiplicitous, and Racketeering Act Nine-B should be dismissed.

III. Alternatively, Defendant is Entitled to a Bill of Particulars.

Lauren is entitled to a bill of particulars in the event that Racketeering Acts Seven and Nine survives her motion to dismiss. In accordance with Local Criminal Rule 16.1, on or about August 14, 2018, all defendants jointly requested a Bill of Particulars from the government and subsequently informed the Court of this request. *See* Letter to Judge Garaufis dated Sept. 11, 2018, DKT. 127. The defendants have yet to receive a Bill of Particulars as to the substantive counts.

A bill of particulars is required "where the charges of the indictment are so general that they do not advise the defendant of the specific acts of which he is accused." *United States v. Walsh*, 194 F.3d 37, 47 (2d Cir. 1999). Racketeering Acts Seven and Nine meets this standard. Lauren is entitled to know which of her actions allegedly violated the charged crimes. *United States v. Rigas*, 490 F.3d 208, 237 (2d Cir. 2007) ("[T]he bill's purpose is to 'advise the defendant of the specific acts of which he is accused.'") (quoting *Walsh*, 194 F.3d at 47). Further, discovery is not an adequate substitute for a bill of particulars because the government has "provid[ed] mountains of documents to defense counsel" with little guidance as to which ones are relevant. *United States v. Bortnovsky*, 820 F.2d 572, 575 (2d Cir. 1987).

[8] Should the Court grant a Bill of Particulars as to Racketeering Act Seven, and it is subsequently determined that Jane Doe 6 is not included as a "lower-ranking DOS member" in Racketeering Act Seven, then the multiplicitous argument detailed in subsection II of this Motion would be moot.

CONCLUSION

For the foregoing reasons, Lauren respectfully requests this Court to grant her motion to dismiss Racketeering Acts Seven and Nine of the Indictment. In the alternative, Lauren requests that this Court order the government to provide the requested bill of particulars.

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