UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

KEITH RANIERE, CLARE BRONFMAN, ALLISON MACK, KATHY RUSSELL, LAUREN SALZMAN, and NANCY SALZMAN,

Defendants.

No. 18-cr-204 (NGG)

ORAL ARGUMENT REQUESTED

Date of service: January 30, 2019

REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT LAUREN SALZMAN'S MOTION FOR SEVERANCE OF DEFENDANTS

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PRELIMINARY STATEMENT

Defendant Lauren Salzman ("Lauren"),[1] by and through undersigned counsel, respectfully submits this Reply in support of her Motion for Severance of Defendants (the "Motion for Severance") and in reply to the Government's Response in Opposition to the Motion for Severance (the "Response"). In its Response, the Government essentially argues that Lauren's request for severance should be denied simply because she and her co-defendants have been charged with a racketeering conspiracy. The mere existence of an alleged RICO conspiracy, however, "does not absolve the government from an independent obligation to consider the unfairness that may result from joinder." *See United States v. Rittweger*, 524 F.3d 171, 180 (2d Cir. 2008). And even where a defendant is charged with participating in a RICO conspiracy, courts have broad discretion to order severance if the defendant will be prejudiced by a joint trial under the particular circumstances of the case. *See, e.g.,* Fed. R. Crim. P. 14(a); *United States v. Gallo,* 668 F.Supp. 736, 748 (E.D.N.Y. 1987).

Lauren will be prejudiced by a joint trial with defendants Keith Raniere ("Raniere") and Allison Mack ("Mack"). If Lauren is tried alongside Raniere and Mack, there is a serious risk that the jury will wrongly associate Lauren with sex trafficking. Lauren did not participate in, was not aware of, and is not named in the sex trafficking predicate act or charged with any stand-alone sex trafficking offenses. Yet the words "sex," "sex cult," and "sex trafficking" have continued to permeate the media's coverage of this case and have tainted the public's perception of both this case overall and Lauren individually. In fact, just one day after Lauren filed her Motion for Severance, the New York Post published an article entitled "NXIVM Co-Founder's Daughter

[1] For purposes of this Reply and in order to remain consistent with prior pleadings filed to date, this Reply will refer to Defendant Lauren Salzman as "Lauren."

Wants Separate **Sex Cult** Trial."[2] Based on this headline alone, the presumption is that Lauren herself was involved in an alleged sex cult and is tied to the government's allegations of sex trafficking. The Government's pleadings filed to date, including its Response, further reinforce its intent to make sex the theme of its case against all defendants, even those who are not charged with a single sex-related crime. Notably, the Government claims that it will offer evidence at trial that *all* the defendants were in "intimate relationships with Raniere" and "undertook efforts to facilitate Raniere's access to other women." (Response at 16.) This alleged evidence is not relevant to any charges against Lauren and would only have the effect of tainting the juror's minds.

Sex crimes, including sex trafficking, are particularly disturbing and sensitive offenses. Noticeably absent from the Government's Response is any meaningful rebuttal to the argument that sex trafficking is exactly the type of inflammatory offense that may cause significant prejudice. In light of the egregious nature of the sex trafficking evidence that the Government claims it will present at trial against Raniere and Mack, a joint trial would put Lauren at serious risk of "guilt by association." As such, Lauren respectfully requests that the Court grant her Motion for Severance from co-defendants Raniere and Mack.

ARGUMENT

As an initial matter, the Government emphasizes the preference for joint trials when defendants were indicted together (Response at 5); however, that preference is overcome when a party will be prejudiced by the joint trial. *See Zafiro v. United States*, 506 U.S. 534, 537–38 (1993). That is the exact point of a Rule 14(a) motion for severance. The Government also argues that severance is inappropriate because a joint trial will be more efficient and will prevent witnesses

[2] *See* Emily Saul, *NXIVM Co-Founder's Daughter Wants Separate 'Sex Cult' Trial*, The New York Post, Jan. 10, 2019, 1:26 PM, https://nypost.com/2019/01/10/nxivm-co-founders-daughter-wants-separate-sex-cult-trial/ (emphasis added).

from having to testify more than once. (Response at 18-19.) While Lauren appreciates the interests of judicial economy and the convenience of witnesses, under the particular circumstances of this case, those interests are outweighed by the substantial prejudice to Lauren if she is jointly tried with Raniere and Mack.[3]

I. The Mere Fact that the Indictment Alleges a RICO Conspiracy Count Does Not Preclude Severance.

The crux of the Government's argument is that Lauren must be tried with Raniere and Mack because they are all charged with a RICO conspiracy. (*See, e.g.*, Response at 7-9.) However, allegations of a RICO conspiracy are not an automatic bar to severance. In fact, courts in this jurisdiction have exercised their broad discretion to grant severance, where appropriate, in cases involving a RICO conspiracy. *See, e.g.*, *Gallo*, 668 F. Supp. at 750; *United States v. Dowtin*, 2012 WL 7679552, at *5 (E.D.N.Y. Nov. 20, 2012).

In its Response, the Government attempts to distinguish *United States v. Dowtin* by cherry-picking the **one** defendant "who was not charged with racketeering or racketeering conspiracy." (Response at 13.) What the Government fails to acknowledge, however, is that the court also granted severance for a defendant who was charged with "participating in a racketeering conspiracy" and another defendant who was charged with "racketeering, racketeering conspiracy, conspiracy." *Dowtin*, 2012 WL 7679552, at *5. Contrary to what the Government suggests in its

[3] In arguing that separate trials will be harmful to potential witnesses, the Government's reliance on *United States v. O'Connor* is misplaced. 650 F.3d 839, 859 (2d Cir. 2011). In *O'Connor*, the court noted that where two defendants were charged with sex trafficking a victim (one defendant was charged with selling the victim to the other defendant to use in child pornography), it was appropriate to avoid unnecessarily subjecting the victim providing "virtually all of the disturbing testimony" more than once. *Id.* That is not even remotely the case here. If severance is granted in this case, no alleged sex trafficking victim would be forced to confront the alleged perpetrator in two separate trials.

Response, Lauren is not disqualified from severance merely because she has been charged in a RICO conspiracy.

It is within the sound discretion of this Court "to determine whether sufficient prejudice exists to warrant severance." *Gallo*, 668 F.Supp. at 736, 748. In making that determination, the question before the Court is whether "the jury can keep the evidence relevant to each defendant separate and render a fair and impartial verdict as to each defendant." *United States v. Locascio*, 357 F. Supp. 2d 536, 543 (E.D.N.Y. 2004); *see also Zafiro*, 506 U.S. at 539 (finding that severance is warranted when there is a serious risk that a joint trial would "prevent the jury from making a reliable judgment about guilt or innocence"). In discussing the various factors raised in Lauren's Motion for Severance, the Government fails to recognize that courts must consider whether joinder creates a risk of prejudice under a totality of the circumstances. *Locascio*, 357 F. Supp. 2d at 543; *Gallo*, 668 F.Supp. at 749; *see also Zafiro*, 506 U.S. at 539. Instead, the Government effectively treats each factor as dispositive. (*See, e.g.*, Response at 11 (arguing that risk of spillover evidence does not "provide a basis to order severance"); Response at 14, n.4 (stating that differing levels of culpability "standing alone" do not require severance); Response at 19 (citing the standard for establishing that antagonistic defenses, alone, mandates severance).) The Government misconstrues the law and Lauren's position. Lauren has not argued that any one factor, alone, requires severance. Rather, Lauren's position is that, when considering all the factors together, there is a serious risk that a joint trial will prevent the jury from making a reliable judgment about her guilt or innocence.

II. There is a Significant Risk of Prejudice to Lauren from Sex Trafficking Evidence That Will Be Admitted Against Only Raniere and Mack.

The Government vigorously contends that all evidence against Raniere and Mack will also be admissible against Lauren because she too is charged with a RICO conspiracy. (*See, e.g.*,

Response at 10-11.) What the Government completely ignores, however, is that Raniere and Mack have also been charged with three additional counts of separate sex trafficking crimes: Sex Trafficking Conspiracy (Count 4), Sex Trafficking - Jane Doe 5 (Count 5), and Attempted Sex Trafficking - Jane Doe 8 (Count 6). (*See* Indictment ¶¶ 37-39.) These three counts are in addition to Racketeering Act 8, which includes Sex Trafficking of Jane Doe 5, alleged as part of the RICO conspiracy (Count 1). (Indictment ¶ 29.) At trial, the government will present evidence of these stand-alone sex trafficking offenses—offenses that do not involve or implicate Lauren—which will inevitably taint the jury and prejudice Lauren.

As the court explained in *Dowtin*, even if Raniere's and Mack's single sex trafficking racketeering act may be admissible as RICO enterprise evidence in Lauren's separate trial, "it would not generate the level of prejudice that would result from a joint trial" that also encompasses evidence of the stand-alone sex trafficking offenses. 2012 WL 7679552, at *5. Indeed, the Government will be highly motivated to present voluminous evidence of sex trafficking at a trial against Raniere and Mack, as they are the defendants who are alleged to have engaged in this conduct. (Indictment ¶¶ 29, 37-39.) The same would not be true in a separate trial for Lauren, in which Raniere and Mack are not parties. Instead, the Government would presumably focus its presentation of evidence as to those acts and charges against Lauren, none of which remotely infer sex trafficking. Given the disturbing nature of sex trafficking offenses, the risk of prejudice to Lauren from a joint trial with Raniere and Mack is "especially acute" because she is not alleged to have personally committed the type of "heinous offenses with which some of [her] brethren are charged." *Id.* (citing *Gallo*, 668 F.Supp at 750).

The Government relies on *United States v. Diaz* and *United States v. Spinelli* for the proposition that a conspiracy defendant is not prejudiced by evidence of a co-conspirator's "violent

or disturbing" acts in which the defendant was not personally involved. (Response at 11-12.) However, in both of those cases, the defendant who claimed to suffer prejudice from evidence of violent acts had also *personally* engaged in similar violent acts (*i.e.*, a murder and a shooting). *United States v. Diaz*, 176 F.3d 52, 103 (2d Cir. 1999); *United States v. Spinelli*, 352 F.3d 48, 55 (2d Cir. 2003). That is not the case here. The Government claims that evidence of sex trafficking will not prejudice Lauren because she is charged with trafficking for labor and services and document servitude. (Response at 16, n.5.) But the government ignores that neither of these charges are sex-related crimes or even have an alleged sexual component. It cannot be legitimately disputed that sex trafficking is a particularly inflammatory offense. *Cf., e.g.*, *United States v. Blake*, 868 F.3d 960, 969 (11th Cir. 2017) (noting that "[s]ex trafficking by coercion is an abhorrent crime," but declining to sever sex trafficking by coercion charge from child sex trafficking charge, because both charges were equally inflammatory). Notably, sex trafficking involving the use of coercion (with which Raniere and Mack are charged) carries with it a fifteen-year minimum prison sentence—roughly *3 to 5 times* the base level sentence for trafficking for labor and services or document servitude. *See, e.g.*, 18 U.S.C. § 1591(b)(1); Federal Sentencing Guidelines Manual § 2H4.1. Accordingly, Lauren should not be burdened with the stigma of the sex trafficking evidence the Government will present against Raniere and Mack. *See Gallo*, 668 F. Supp. at 750.

III. Combined With Other Factors, the Complexity of the Indictment Creates a Risk of Prejudice to Lauren.

The Government contends that there is "no reason to believe" that this case would be confusing to a jury of laypersons, apparently because it does not involve economics or statistics. (Response at 13, n.3.) Yet, the unique nature of the facts in this case and the charges in the indictment are undoubtedly complex. For instance, the types of predicate acts contained in the RICO Conspiracy run the gamut—from identity theft and money laundering to sex trafficking,

forced labor, and state law extortion—and are alleged to have occurred within a fifteen year period. This is not a typical racketeering case involving a traditional criminal enterprise, such as the mafia, a drug cartel, or a gang. The Government has twisted the nature of NXIVM and DOS and the co-defendants' alleged involvement in these entities in an effort to shoehorn them into the definition of an illegal enterprise. Even the underlying racketeering acts are a completely novel method of charging the alleged crimes—there is no precedent for the Government's allegations of "forced labor" based on personal errands such as picking up coffee or grabbing groceries, (Compl. ¶ 20), or "extortion" resulting from an adult voluntarily sending private information in order to gain access to an exclusive group. (Compl. ¶ 15.)

Moreover, the Indictment involves numerous "conspiracies within conspiracies," involving a wide range of facts applicable to only certain defendants and pertaining to each defendant's purported involvement in NXIVM and/or DOS, which could be quite confusing to a jury. *See, e.g.*, *Gallo*, 668 F.Supp. at 751. The complexity of the Indictment, coupled with the other factors discussed in the Motion for Severance and this Reply, certainly weighs in favor of severance. *See, e.g.*, *Locascio,* 357 F. Supp. 2d at 543; (DKT. 268 at 6-15).

IV. Combined With Other Factors, the Potential Conflict Between Lauren's Defense Theories and Raniere's and Mack's Defense Theories Creates a Risk of Prejudice to Lauren.

In its Response, the Government contends that Lauren's trial may only be severed if her defense theory is so irreconcilable with Raniere's and Mack's that, "in order to accept the defense of one defendant, the jury must of necessity convict a second defendant." (Response at 19.) As Lauren explained in her Motion for Severance, however, that is the standard for demonstrating that this factor, *alone*, mandates severance. *See Gallo,* 668 F. Supp. at 751. But the mere possibility of antagonistic defenses nevertheless weighs in favor of severance, and must be considered together with all other relevant factors. *Id.* (finding that even if the potential for "some prejudicial

antagonism" does not in and of itself *require* severance, it still "weighs in favor of splitting the indictment for trial").

Here, Lauren anticipates that her defense theories will conflict with those offered by Raniere and Mack. At trial, the Government will surely present evidence that women in DOS allegedly performed sex acts at the direction of Raniere and/or Mack. Raniere and Mack will be compelled to defend themselves against such assertions, and such a defense will presumably include the cross-examination of the Government's relevant witnesses. While Raniere, Mack, and Lauren are all connected to DOS, to date, the government has not provided discovery which supports that Lauren was aware of any sex or sex trafficking within DOS. As such, Lauren may strategically decide not to cross-examine any of the sex trafficking witnesses. A jury, however, may deduce that Lauren's strategic decision not to cross-examine these witnesses is evidence of her guilt, especially in light her Lauren's involvement in DOS. This mere presence of a potential conflict in defense theories weighs in favor of severance.

Moreover, to the extent the Government will seek to prove that Lauren somehow assisted Raniere in his "punishment" of a young woman for "develop[ing] romantic feelings for a man who was not Raniere," (*see* Response at 16 n.5), the government will be hard pressed to do so. Lauren vehemently denies that she had any knowledge of Raniere's purported punishment of this young woman, and she intends to vigorously defend herself against such assertions. In light of the Government's intent to implicate Lauren for Raniere's and Mack's alleged conduct, there is certainly a risk of antagonistic defenses. Considered together with all the other factors, there is a substantial risk of prejudice to Lauren.

CONCLUSION

It is within this Court's sound discretion to determine whether sufficient prejudice exists to warrant the severance of defendants. Under the unique circumstances of this case, and in considering all of the *Gallo* factors, there is a significant risk of prejudice to Lauren if she is tried jointly with Raniere and Mack. For all of these reasons and the reasons set forth in Lauren's Motion for Severance, Lauren respectfully requests that the Court grant her request for severance.

Dated: January 30, 2019
Phoenix, Arizona

Respectfully submitted,

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