

## 1 UNITED STATES DISTRICT COURT

## 2 EASTERN DISTRICT OF NEW YORK (BROOKLYN)

3 SARAH EDMONDSON, et al,

4 Plaintiffs,

5 v.

6 KEITH RANIERE, et al,

7 Defendants.

Case No. 1:20-cv-00485-EK-CLP

Brooklyn, New York

February 1, 2023

2:34 p.m.

## 8 TRANSCRIPT OF HEARING

9 BEFORE THE HONORABLE ERIC R. KOMITEE

10 UNITED STATES DISTRICT COURT JUDGE

## 11 APPEARANCES:

12 For the Plaintiff:

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1 (Call to order at 2:34 p.m.)

2 THE COURT: Please be seated.

3 THE CLERK: Civil cause for oral argument, Edmondson,  
4 et al versus Ranieri, et al. docket number 20 civil 485.

5 Would you all please state your appearances for the  
6 record, starting with the Plaintiff?

7 MR. GOELMAN: Aitan Goelman, Zuckerman Spaeder, good  
8 afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 MR. HOESE: William Hoese, H-O-E-S-E for the  
11 Plaintiffs, good afternoon, Your Honor.

12 THE CLERK: I'll remind you all to speak into the  
13 microphones.

14 MR. HOESE: I'm sorry, I apologize. (Indiscernible.)

15 MS. MANOHAR: Good afternoon, Aarthi Manohar for the  
16 Plaintiffs, Kohn, Swift & Graf.

17 MS. DEAN: Good afternoon, Zahra Dean for the  
18 Plaintiffs also from the Kohn, Swift & Graf.

19 THE COURT: You got to find the microphones where you  
20 can.

21 MR. HILLWIG: Craig Hillwig, Kohn, Swift & Graf also  
22 for Plaintiffs.

23 MR. REINES: Bryan Reines for Plaintiffs.

24 THE COURT: And for the Defendants?

25 MR. SULLIVAN: Ronald Sullivan on behalf of Clare

1 Bronfman.

2 MR. MARTIN: And Craig Martin, Willkie Farr &  
3 Gallagher on behalf of Clare Bronfman as well.

4 MR. WAREHAM: Good afternoon, Your Honor, James  
5 Wareham, Fried Frank, along with my colleague Ann A. and my  
6 partner Robin Henry at the end on behalf of Sara Bronfman.

7 MR. PORTER: Branden Porter representing myself.

8 MS. ROBERTS: Good afternoon, Your Honor, Danielle  
9 Roberts representing myself.

10 MS. CLYNE: And Nicole Clyne representing myself.

11 THE COURT: All right, good afternoon, everyone.  
12 Thank you all for being here.

13 Mr. Goelman, are you leading the case or are you here  
14 all alone and I just didn't make the connection?

15 MR. GOELMAN: This is my first appearance at a  
16 hearing, but we've been working with Mr. Glazer at Kohn Swift.

17 THE CLERK: Microphone, Mr. Goelman.

18 MR. GOELMAN: Sorry. This is my first appearance in  
19 person, but we've been involved since before the complaint was  
20 filed, Your Honor.

21 THE COURT: Okay. And you filed an appearance in the  
22 case?

23 MR. GOELMAN: Yes, Your Honor.

24 THE COURT: All right. So we got a lot of motions to  
25 dismiss by a lot of Defendants dealing with a lot of claims

1 brought by a lot of Plaintiffs.

2 I would like to wrap up here by 5:00, which is two  
3 and a half hours of which we're going to use about 7 minutes.  
4 I assume we'll take a 10-minute break somewhere along the way.

5 By my calculations, that leaves us roughly 10 minutes  
6 or so to discuss each of the 14 counts in the complaint. And  
7 that's then is both sides total per count.

8 So I think, you know, we'll spend more time on RICO,  
9 RICO conspiracy, and the RICO predicates, which obviously have  
10 some overlap between and amongst themselves and maybe less time  
11 on some of the latter counts.

12 But I'm going to ask in the first instance that we  
13 talk about the RICO claims. Even though it's the Defendant's  
14 motions that we're here to argue, I think it actually makes  
15 more sense to start with the Plaintiffs and argue why the  
16 motion to dismiss a given claim should be denied, why in other  
17 words, the allegations are sufficient to make out enough  
18 factual content on each element of each claim. And then, we  
19 can hear from the Defendants essentially in rebuttal.

20 So why don't we kick off with the RICO claim? I  
21 don't know who's -- Mr. Goelman arguing. And I'd like to go  
22 Defendant by Defendant.

23 MR. GOELMAN: Would the Court prefer me to stay at  
24 table or go the lectern?

25 THE COURT: Either is fine with me as long as you're

1 near enough to a microphone that the sound engineer is picking  
2 you up.

3 MR. GOELMAN: Okay.

4 THE COURT: So starting with the claim for RICO as  
5 against Ms. Clare Bronfman?

6 MR. GOELMAN: Your Honor, I'll start -- is this  
7 picking me up? Yeah.

8 THE COURT: That is, you're on.

9 MR. GOELMAN: I want to start by talking by the  
10 question of the existence of an enterprise and what the  
11 enterprise is.

12 And all of the Defendants say that there's no  
13 enterprise here. And I want to just kind of talk about why  
14 this case is right in the wheelhouse of what a RICO case should  
15 be as opposed to a lot of other civil RICO cases that get  
16 filed.

17 As the Court knows, RICO was passed to combat  
18 organized crime. And it had been very difficult for the  
19 government to combat organized crime because those acts were --  
20 took so long, were so disparate, and witnesses had a way of  
21 disappearing or being afraid to testify.

22 So Congress passes RICO. It's initially used to  
23 combat the mob. And then, it starts being used for another  
24 context.

25 When I was at AUSA, I was in a unit called the

1 Violent Gangs Unit. So we used to take street gangs, drug  
2 gangs that charged other drug dealers rents in the projects and  
3 charge them with RICO.

4 And sometimes gang members would get to court and  
5 they would for the first time learn that they were in a gang  
6 that was called by a particular name.

7 Because a lot of times these gangs didn't have names.  
8 It didn't have a hierarchy. They were an affiliation in fact,  
9 but they were looser than you might think.

10 And that was a issue that they raised and an issue  
11 that the 2nd Circuit has repeatedly rejected when affirming  
12 those convictions.

13 This is different, Your Honor. This is NXIVM. You  
14 know, for years, decades, the Mafia argued that there's no such  
15 thing as the Mafia.

16 You can't argue that there's no such thing as NXIVM.  
17 People in the NXIVM community, and it was a community, it was a  
18 distorted, warped community built on lies that did terrible  
19 things to its members, but it was a community. They called  
20 themselves NXIVMs or Espions (phonetic).

21 THE COURT: Yeah, I don't think we have any real  
22 dispute that there were entities here that there were  
23 associations both in fact and in law.

24 We might debate, I suppose, whether you're calling  
25 the enterprise was actually more than one enterprise, but

1 that's why my inclination was to start with the predicate acts  
2 and go Defendant by Defendant, because my sense is that's more  
3 likely to be where the rubber meets the road here in terms of  
4 the motions to dismiss.

5 MR. GOELMAN: Okay, and I'm happy to address why this  
6 is one enterprise and not many enterprise. If the Court wants  
7 to hear that, but if you want to start with predicates, that's  
8 -- whatever the Court prefers.

9 THE COURT: Why don't -- I think we'll be better able  
10 to get to the specifics if we go Defendant by Defendant, and  
11 get your view on whether the complaint adequately alleges the  
12 requisite predicate acts.

13 MR. GOELMAN: Okay.

14 THE COURT: And if you'd start with -- just because  
15 that's the order that my notes here go in Ms. Clare Bronfman.

16 MR. GOELMAN: Okay.

17 THE COURT: You can take it from there.

18 MR. GOELMAN: I will start with Ms. Clare Bronfman.  
19 And I want to begin with a response to what Ms. Clare Bronfman,  
20 Ms. Sara Bronfman, and some of the other Defendants alleged in  
21 their reply briefs.

22 And what they said is you're only going after the  
23 Bronfmans because they're rich. They had nothing to do with  
24 the really bad stuff here. And this is a shameless, I can't  
25 tell you how many times that word appeared, shameless cash grab



1 for a will -- a windfall for greedy plaintiffs and their  
2 lawyers.

3 That's not true, Your Honor. But it is true that the  
4 wealth of the Bronfmans is very relevant here. Without  
5 Bronfman money, there's no NXIVM headquarters or operation  
6 center. There's no houses in Clifton Park, New York. There's  
7 no team of lawyers and private investigators intimidating  
8 critics and apostates. There's no stream of foreign nationals  
9 to abuse. There are no pseudoscientific experiments. There's  
10 no visit by the Dalai Lama. And short, there's no NXIVM or a  
11 greatly reduced NXIVM.

12 And I want to begin in terms of Ms. Clare Bronfman by  
13 talking about what Judge Garaufis found when he sentenced her.  
14 And in their reply briefs, Ms. Clare Bronfman's lawyers say  
15 it's improper to cite the criminal case.

16 That's not right. It's entirely proper to cite the  
17 criminal case. And there are different parts of the criminal  
18 case that will play different roles in this case, should it  
19 proceed to trial.

20 So, for example, Clare Bronfman pleaded guilty to two  
21 counts. She took an oath to tell the truth and stood in a  
22 courthouse in a room in this courthouse and admitted to what  
23 she had done. That clearly is admissible and it probably  
24 has -- it probably is preclusive as well.

25 THE COURT: We can talk about that right there.

1 There may be some collateral estoppel effect to the guilty  
2 pleas. Surely there is some collateral estoppel effect.

3 But a lot of what you cite in the briefs is Judge  
4 Garaufis' characterization of the evidence he saw at trial  
5 perhaps.

6 You know, your motion doesn't always make clear the  
7 extent to which he's basing his observations on trial evidence  
8 versus the PSR versus some other source.

9 And I don't know that you take any position on  
10 whether those kind of observations have any preclusive affect  
11 at all.

12 And if not, then we probably shouldn't be talking  
13 about them at this stage, right, because on a motion to  
14 dismiss, we're testing the legal sufficiency of the complaint.  
15 We're limited to the factual allegations that fall within the  
16 four corners of the complaint except to which -- except to the  
17 extent to which there are matters of which the Court can take  
18 judicial notice.

19 And I can take judicial notice that Judge Garaufis  
20 said something at sentencing because there's a transcript, but  
21 I don't think I -- on the basis can take that for the truth of  
22 the matter asserted unless there's some collateral estoppel or  
23 other legally preclusive effect, but tell me if I have that  
24 wrong?

25 MR. GOELMAN: I think you do have that somewhat

1 wrong, Your Honor.

2 THE COURT: Please.

3 MR. GOELMAN: You know, Judge Garaufis sat through  
4 the trial. He considered all the evidence in the pre-sentence  
5 reports.

6 And then, he made findings by a preponderance of the  
7 evidence, which is greater than what the Court has to find here  
8 to find plausibility about Clare Bronfman's role in NXIVM.

9 And there is -- and we don't need to decide whether  
10 or not those findings are admissible at trial. There's law  
11 about that and we think we have good case.

12 There's even law about sentencing findings being  
13 preclusive, but that is something that is not -- is not joined  
14 right now.

15 You don't have to decide whether or not it's  
16 preclusive or whether or not the evidence is admitted at trial,  
17 but there's nothing that precludes the Court from evaluating  
18 and weighing Judge Garaufis' findings and deciding whether or  
19 not this complaint is plausible.

20 And the complaint itself --

21 THE COURT: Does that depend on -- so not every word  
22 that a judge says in the course of imposing sentence is a  
23 finding of fact, right?

24 The judge may be making findings of fact, but usually  
25 when that's the case, there will be some statement to that

1 effect, but I'm not sure that I saw those in your brief.

2 And you know, are you arguing -- you're not arguing  
3 that every word a judge says at sentencing becomes evidence or  
4 factual allegation even on the basis of which we can test the  
5 sufficiency of the complaint here, right? You're making some  
6 more limited argument, but I'm just not sure I understand what  
7 it is.

8 MR. GOELMAN: I am not arguing that every word that a  
9 judge says at sentencing is admissible. I am arguing that in  
10 order to sentence Clare Bronfman the way he did, Judge Garaufis  
11 made particular findings by a preponderance of the evidence.

12 Those findings were challenged by Clare Bronfman in  
13 her appeal to the 2nd Circuit and the 2nd Circuit affirmed and  
14 said Judge Garaufis was well within his discretion to make  
15 those findings based on record.

16 If Judge Garaufis decided to sentence somebody to  
17 three times the top of a Sentencing Guidelines range, he --

18 THE COURT: Well, let me -- so the conspiracy -- the  
19 two most interesting predicate acts as to Clare Bronfman to me  
20 are the forced labor predicate and the conspiracy to conceal  
21 and harbor illegal aliens predicate or predicates.

22 The latter was the subject of her guilty plea, right?  
23 And I think I agree with you that there's some preclusive  
24 effect from that, but talk about the forced labor predicate.

25 What -- you know, start with your complaint, and

1 then, and tell me exactly what the complaint says about Clare  
2 Bronfman's liability for forced labor. And then to the extent  
3 you're relying not only on things in the complaint, but also  
4 things from the record at sentencing. We can talk about that  
5 in succession.

6 MR. GOELMAN: Okay. Your Honor, before I turn to the  
7 forced labor, I just want to follow up on the immigration fraud  
8 because that is a predicate act and it's a predicate act that  
9 Clare Bronfman pleaded guilty to. And when she pleaded guilty,  
10 she took an oath and said that she had done that for financial  
11 gain.

12 Now that particular Plaintiff -- I mean, that  
13 particular victim, Jane Doe 12, is not a Plaintiff of ours.  
14 But several other Plaintiffs are and several other victims are  
15 Plaintiffs.

16 And just because the Jane Doe 12 is not a Plaintiff  
17 doesn't mean that that cannot count as one of the two predicate  
18 acts.

19 And the complaint alleges at least four different  
20 people who Clare Bronfman committed immigration fraud with  
21 respect to.

22 So right there, there's more than enough predicate  
23 acts for Clare Bronfman before you even get to the forced  
24 labor.

25 THE COURT: Okay, and you're not -- and just make it

1 explicit for me when you say there's more than enough, are you  
2 talking about the factual allegations alleged in writing in the  
3 complaint or are you also trying to leverage some preclusive  
4 effect associated with the guilty plea as well?

5 MR. GOELMAN: Your Honor, the guilty plea and Judge  
6 Garaufis' findings, they're all part of the four corners of the  
7 complaint. We cite them all in the complaint. They're all  
8 being --

9 THE COURT: All right, so just point me there. I've  
10 got the complaint with me. And for the sake of everybody  
11 working off the same paragraph numbers, I'm working off the  
12 First Amended Complaint because I think that's what the briefs  
13 do as well.

14 MR. MARTIN: Your Honor, do you have this as docket -  
15 - document 64?

16 THE COURT: Yes.

17 MR. MARTIN: Okay, thank you.

18 THE COURT: So let me tee this up for you even a  
19 little bit more perhaps. The elements of a claim for forced  
20 labor are that a Defendant knowingly obtained the labor or  
21 services of another by means of a series of bad ways of doing  
22 that, force or physical restraint, but I think the one you  
23 probably are relying on as to Clare Bronfman is the threat of  
24 serious harm. And I'm interested in what the complaint says by  
25 way of alleging that element.

1 MR. GOELMAN: Just one moment. The paragraphs that I  
2 had been planning to direct the Court to are the ones about  
3 Clare Bronfman's guilty plea and it's in fact. So let me --  
4 Court's indulgence.

5 THE COURT: Yeah, I mean, I see, so for example, I  
6 think, one of the Plaintiffs as to who you allege false labor -  
7 - forced labor against Clare Bronfman is Camila. And that is  
8 in the First Amended Complaint, paragraph 87 or thereabouts.  
9 Or anywhere else you want to point me, but my question is --

10 MR. GOELMAN: Your question is how is it --

11 THE COURT: Where is the threat of serious harm  
12 alleged in the complaint?

13 MR. GOELMAN: Clare Bronfman told Camila -- well,  
14 first, she advised Camila not to return to Mexico to renew her  
15 visitor visa.

16 Okay, once that happened, Camila was effectively a  
17 prisoner. And Clare Bronfman and others told Camila that she  
18 would be deported, that she would be in trouble, that she would  
19 be -- when in 2017, Clare Bronfman threatened that Camila Would  
20 be arrested. She told that the FBI was after her.

21 THE COURT: This is before the work happens or after?

22 MR. GOELMAN: Camila's affiliation with NXIVM  
23 continued after 2017. And --

24 THE COURT: Including what you're saying is the  
25 forced labor?

1           MR. GOELMAN: I'm not sure it's -- I'm not sure if  
2 the labor continued after that or not.

3           THE COURT: Well, the labor has to be induced by the  
4 threat. So a threat that happens after the labor has completed  
5 wouldn't work, would it?

6           MR. GOELMAN: No, Your Honor.

7           THE COURT: Okay, so just so I understand, the -- as  
8 to Camila, the threat of serious harm that induces her labor is  
9 what? Is advising her to stop returning to Mexico?

10           That -- I think I need a case citation for the  
11 proposition that giving somebody bad advice about immigration  
12 law, if that's what that is, constitutes a threat of serious  
13 harm.

14           MR. GOELMAN: Camila, along with the other people who  
15 were here illegally, other people who were lured here  
16 illegally, were told that they could be deported because they  
17 were --

18           THE COURT: Right.

19           MR. GOELMAN: -- no longer -- they were no longer  
20 under the four corners of the -- their ability -- their  
21 permission to enter the country.

22           THE COURT: Right. No, and we see the case law that  
23 clearly establishes that threatening to have somebody deported  
24 constitutes a threat of serious harm.

25           But tell me where that is then in the complaint that



1 Ms. Bronfman is herself threatening to cause deportation and,  
2 you know, initiate a deportation raid investigation or  
3 otherwise?

4 MR. GOELMAN: I will direct the Court to paragraph  
5 90.

6 THE COURT: So Clare Bronfman, you allege, refused to  
7 allow Camila to have any direct contact with Ms. Bronfman's  
8 attorneys purportedly because they represent Bronfman and not  
9 her.

10 MR. GOELMAN: Right, told her that she needs to wait  
11 no further instructions.

12 THE COURT: Well, that -- you allege that Clare  
13 Bronfman told her. You said Camila once told. And there's a  
14 lot of passive voice in the complaint including there, right?

15 Camila was told that she might qualify under the  
16 Dream Act, but that she waited to -- she needed to wait for  
17 further instructions. Am I supposed to infer that that's Ms.  
18 Bronfman who is the speaker?

19 MR. GOELMAN: Yes, Your Honor. This is talking about  
20 a conversation that Ms. Bronfman had with her lawyers, who she  
21 retained and she turned around and relayed that or purportedly  
22 relay that to Camila.

23 So I think that despite the use of the passive voice  
24 there, it's pretty apparent who's being talked about.

25 THE COURT: Well, the next one, it says Raniere and

1 Bronfman never intended to assist Camila. And the prior  
2 sentence talks about Bronfman, okay.

3 MR. GOELMAN: Your Honor --

4 THE COURT: Yeah.

5 MR. GOELMAN: -- the --

6 THE COURT: All right, but so fine, let's assume that  
7 that's Clare Bronfman who is the speaker, even though that's  
8 not make explicit.

9 The what is spoken is that Camila might qualify under  
10 the Dream Act, but needed to wait for further instructions  
11 because if she applied, it would risk exposing that she had  
12 been in the country illegally.

13 I think we can assume that if that's true, that was  
14 not the world's greatest legal advice being provided, but how  
15 does say you need to wait for further instructions constitute a  
16 threat of serious harm?

17 MR. GOELMAN: Your Honor, it is part of the overall  
18 context with which -- under which Camila was here. And how  
19 these women, and I'm using plural, but Camila's one of them,  
20 are lured to the U.S., right, under false pretenses.

21 Once they no longer have their legal immigration  
22 status, they have very little leverage. They're working, doing  
23 menial house work for Clare Bronfman and others.

24 And if they want to leave, if they want to babysit,  
25 if they want to apply for citizenship under the Dream Act, they

1 are told that they can't.

2 And Ms. Bronfman, Your Honor, the complaint needs be  
3 read as a whole. And whether or not there are plausible  
4 allegations to establish any particular element comes from the  
5 complaint as a whole.

6 THE COURT: I agree with that, but it seems at least  
7 incumbent on you if you're saying, look, the way in which the  
8 forced labor was induced here was through the threat of serious  
9 harm, it seems like it's incumbent on you just to say what the  
10 nature of the harm is and how Clare Bronfman induced it.

11 And you know, it's one thing to say that somebody's  
12 living under the stress of, you know, non-legal status in the  
13 country and all the anxiety that that brings with it.

14 It's another thing to say that a particular person  
15 made threats in respect of that status. And it's that last  
16 logical inference that I'm having some trouble with.

17 So what is the harm? And then, we can talk about how  
18 it was induced. The harm is deportation or is it something  
19 else?

20 MR. GOELMAN: That is the threatened harm,  
21 deportation.

22 THE COURT: Okay.

23 MR. GOELMAN: There's also and it depends on the  
24 particular Plaintiff.

25 THE COURT: So how does Clare Bronfman threaten --

1 you allege Clare Bronfman threatened do to go the authorities  
2 and have Camila deported. And my question was like what's the  
3 other allegation that fulfills that role here?

4 MR. GOELMAN: Your Honor, Camila was told that she  
5 had to keep working because if she didn't, she would be found  
6 out, and she would be deported. That's --

7 THE COURT: That's something Clare Bronfman said?

8 MR. GOELMAN: That is something that Clare Bronfman,  
9 to my understanding, relayed to her from the immigration  
10 lawyers.

11 And when I'm talking about the considering the  
12 complaint as a whole, there is -- there are several paragraphs  
13 which talk about Clare Bronfman and her role with respect to  
14 lawyers and the campaign of legal terror against apostates.

15 But she also, Your Honor, and this is alleged in the  
16 complaint, was the one who managed all the legal engagements.  
17 60 lawyers over 30 firms.

18 So when the Court is considering legal advice on  
19 immigration and how that was relayed or not relayed to the  
20 Plaintiffs, I think it's a reasonable inference to conclude  
21 that Ms. Bronfman was part of that.

22 With Court's indulgence, I just want to get this one  
23 paragraph. In paragraph 87, Your Honor, it says over the  
24 course of many years, Defendant Clare Bronfman likewise  
25 exploited Camila's vulnerabilities, including advising Camila

1 to stop returning to Mexico to renew her visitor visa with  
2 false promises of assistance from Bronfman's immigration  
3 lawyers.

4 Bronfman, Raniere, Nancy Salzman, and others knew  
5 that Camila could be even more vulnerable if she lost her  
6 immigration status. And they took advantage of the  
7 circumstances by among other things, paying her very low wages  
8 and often refusing to compensate her at all.

9 THE COURT: No, I get that.

10 MR. GOELMAN: Telling her that she was -- since she  
11 was in the country illegally, she had no right to be paid. So  
12 your question is where does the complaint say explicitly that  
13 Clare Bronfman told her that she was at risk of being deported  
14 if she stopped working for them?

15 THE COURT: I don't think that would be enough even.  
16 I'm not sure that would be true, but if the -- if what you're  
17 saying is the serious harm that Ms. Bronfman threatened was  
18 deportation, I think you have to show me where Ms. Bronfman  
19 threatened deportation.

20 And query whether it would be enough that Ms.  
21 Bronfman said if you stop working, you might be deported. I'm  
22 not even sure how that would work mechanically.

23 I mean, I think I have -- I think we both understand  
24 what the argument is on this. And if you want to transfer from  
25 forced labor to the concealment and harboring of illegal aliens

1 for financial gain, then --

2 MR. GOELMAN: Okay, well --

3 THE COURT: -- let me know where you see the elements  
4 of that.

5 MR. GOELMAN: Okay, well, I will begin with Clare  
6 Bronfman's reply brief, which says that the only predicate act  
7 that (indiscernible) establishing for Clare Bronfman is  
8 harboring an alien. And that's only predicate acts.

9 Clare Bronfman pleaded guilty to harboring an alien.  
10 So I'm pretty sure that's more than come close to establishing,  
11 that is establishing. And the Court can read, her colloquy is  
12 actually in the complaint where she says I did this for  
13 financial gain.

14 THE COURT: What was the financial gain? That -- I  
15 haven't read her allocution.

16 MR. GOELMAN: She got free work at (indiscernible).

17 THE COURT: Okay. And tell me as a matter of law  
18 what is the significance if anything of the fact that we're  
19 talking about a different victim than the ones alleged here and  
20 that the victim is not a Plaintiff in this case?

21 MR. GOELMAN: That is not significant in terms of  
22 establishing whether or not we have met the burden of  
23 establishing that Clare Bronfman committed -- participated in  
24 the RICO enterprise through a pattern of racketeering activity.  
25 You still count that as one of the predicate acts.

1           And the fact, Your Honor, that she pleaded guilty and  
2 admitted under oath that this was for her financial gain, I  
3 understand that she only pleaded guilty to that one victim, and  
4 the victim wasn't a Plaintiff, but there's several other  
5 Plaintiffs who were also harbored illegally by Clare Bronfman.

6           And to believe that she --

7           THE COURT: What does harboring mean in this context?

8           MR. GOELMAN: I'm using it as shorthand for all of  
9 the acts under 1324. She lured people to this country, and  
10 then, kept them basically imprisoned and confined to doing this  
11 work that she had them do, and paid them either nothing or  
12 minimal wages.

13           And threatened them with deportation if they -- or  
14 just blew them off if they asked for better wages or wages at  
15 all.

16           THE COURT: So let's go Plaintiff by Plaintiff then.  
17 The first one I'm looking at is Adrian. What is the  
18 concealment or harboring or you tell me what you think the  
19 apposite verb is as to Adrian?

20           MR. GOELMAN: I think that the allegation is that  
21 Clare Bronfman lured Adrian to the U.S. She was part of the  
22 reason that he was brought here with the promise, which turned  
23 out to be false, that he be able to be financially successful  
24 in starting up a -- I believe it was a T-shirt business with  
25 Ms. Bronfman, because here --

1           THE COURT: But I -- is he still in Mexico City when  
2           that inducement occurs or is he already here?

3           MR. GOELMAN: I believe that the -- and the complaint  
4           alleges that he came to the U.S. at the best of Clare Bronfman  
5           after she made false promises to him.

6           THE COURT: So I'm looking at paragraph 725. In the  
7           third sentence of that paragraph says eventually he complained  
8           that he was unable to support himself and could not stay. To  
9           convince him otherwise, Raniere offered an opportunity to build  
10          a company with Raniere as mentor, Clare Bronfman, and another  
11          person own the equipment for this T-shirt manufacturing  
12          operation. And they offered Adrian a chance to get the company  
13          up and running.

14          What are they doing by that conduct? They're  
15          harboring, they're concealing, they're luring?

16          MR. GOELMAN: For that -- sorry, for that conduct,  
17          they're harboring and concealing. If he's already in the  
18          country, they're not luring him into the United States.

19          THE COURT: But how is giving somebody T-shirt  
20          manufacturing equipment equal to harboring them or concealing  
21          them? I would have thought harboring or concealing means  
22          putting up somebody up in a secret residence or something? And  
23          I guess this is a question of law, not a question of what are  
24          the factual allegations.

25          MR. GOELMAN: Well, in paragraph 726, Your Honor, it



1 says Defendants Raniere and Clare Bronfman and others pressured  
2 Adrian into staying, persuading him that there's no need to  
3 leave the U.S. and re-enter because their lawyers could take  
4 sure of the issue.

5 He relied on these assurances and remained in the  
6 U.S. working for Defendants even after losing his immigration  
7 status.

8 You know, if you pressure someone into staying in the  
9 U.S. illegally, and that forces them to basically be at your  
10 beck and call and under your command, it may not be hiding them  
11 in a cellar, but I don't that concealing has that limited a  
12 meaning.

13 THE COURT: So, in other words, he wants to go home  
14 and they tell him don't do that.

15 MR. GOELMAN: He wants to --

16 THE COURT: And that --

17 MR. GOELMAN: Look, Your Honor, he wants to go back  
18 to Mexico and be in the U.S. legally.

19 THE COURT: Oh, I -- yes, to renew his visa. Okay.  
20 What was, just by way of comparison, since I haven't read the  
21 allocution on this point in front of Judge Garaufis, the  
22 factual basis for the guilty plea?

23 MR. GOELMAN: The one for the -- for Clare Bronfman,  
24 you mean, Your Honor?

25 THE COURT: Yeah, for the victim who's not a

1 Plaintiff here?

2 MR. GOELMAN: For Jane Doe 12?

3 THE COURT: Yes.

4 MR. GOELMAN: It was that she -- I think it was that  
5 she -- I can get you the exact words, but I think it was that  
6 she lured her here and that she did it legally, and she knew  
7 that it was legal, and she did it for her financial benefit. I  
8 think those are the elements.

9 THE COURT: So, in other words, you're saying it was  
10 roughly analogous to what was alleged as to these victims?

11 MR. GOELMAN: I'm sorry, Your Honor, paragraph 852  
12 contains Clare Bronfman's colloquy (indiscernible).

13 THE CLERK: I'm losing you. Please find a  
14 microphone.

15 THE COURT: Paragraph 852 you said?

16 MR. GOELMAN: 852, yes, Your Honor.

17 THE COURT: Okay. Substantially facilitated her to  
18 live and work in our country in a way that would be undetected.  
19 Okay, and which -- sorry, which subsection of 8 USC §1324 are  
20 we talking about here?

21 MR. GOELMAN: One moment, Your Honor. Let me get the  
22 statutory language.

23 THE COURT: I think it's small Roman iii. Whoever  
24 knowing or reckless disregard of the fact that an alien has  
25 come to, entered, or remains in the United States in violation

1 of law. Then conceals, harbors, or shields from detection. Or  
2 shields from detection, okay.

3 And the allocution in paragraph 852 says that by  
4 facilitating her living and working in the United States, that  
5 was facilitating or protecting against detection.

6 But there has to be a RICO injury to switch gears to  
7 another element of the RICO claim. And who's the -- who's  
8 injured by the violation of §1324? Is it clear that the person  
9 so harbored is the victim as opposed to the United States being  
10 the injured party?

11 MR. GOELMAN: Are you talking about under 1324 case  
12 law who the victim is? Are you talking about the allegations  
13 of the complaint who was -- who suffered because of that?

14 THE COURT: This is a legal question. Yeah, so if  
15 one of the elements of the RICO claim is that the Plaintiff  
16 bringing that claim has to show that they were injured, Camila,  
17 Adrian, these other people are Plaintiffs here.

18 What -- to the extent that they are harbored here or  
19 that they're -- that they are shielded from the detection,  
20 here, how are they injured by -- and I understand they're  
21 injured by in other ways, right? They're working for less than  
22 minimum wage, but that may be a Fair Labor Standards Act injury  
23 rather than an immigration law injury.

24 My question is isn't it the case, or tell me if it's  
25 not the case, that the Plaintiffs say what the predicate act

1 has to be was this violation of the immigration law §1324, to  
2 the extent they have to plead an injury, there has to be some  
3 link between the predicate act and the injury.

4 So the injury can't be just failure to pay minimum  
5 wage or otherwise I would have thought. And therefore, it's  
6 incumbent on you to demonstrate as a matter of law that the  
7 person shielded from detection is somehow injured by that  
8 conduct. Is that not the right way of looking at it?

9 MR. GOELMAN: I don't think so, Your Honor. I think  
10 that we have to show that Plaintiffs were injured by the  
11 predicate act of somebody in the enterprise.

12 I don't think we have to show that to satisfy the two  
13 predicate acts prong, the pattern prong, that there was any  
14 injury for that. I think all we have to do is fulfill the  
15 elements of the crime, 1324, which Clare Bronfman pleaded  
16 guilty to.

17 THE COURT: Right, but again, it's in a RICO -- a  
18 civil RICO violation are injury to the Plaintiff's business or  
19 property.

20 MR. GOELMAN: Uh-huh.

21 THE COURT: So how is Adrian injured in this business  
22 or property? And does that -- does the 1324 violation have to  
23 be the instrumentality by which that injury occurs?

24 MR. GOELMAN: I don't believe that for purposes of  
25 RICO that 1324 has to be the instrumentality. But in any case,

1 Adrian, and Camila, and Lindsay MacInniss, they were injured by  
2 the immigration fraud.

3 They were prevented from doing work that paid better.  
4 They were prevented from changing jobs. Camila was not allowed  
5 to babysit. Lindsay MacInniss was not allowed to be a yoga  
6 instructor. They were told this is your new life. This is  
7 your job.

8 And you know, your rewards will come down the line.  
9 You'll get a ownership. You'll get a better salary eventually.  
10 Never intended to do and never have.

11 But without the hammer of them being in the country  
12 illegally, and without the ability to get legal because of the  
13 advice that Clare Bronfman purported relayed from her lawyers,  
14 they're really at Ms. Bronfman's mercy.

15 THE COURT: Okay, all right, can I hear from -- I  
16 want to go claim by claim. And I think it would be helpful for  
17 me while all this is still fresh in memory to hear from Clare  
18 Bronfman's attorney. And then, we'll come back to the  
19 Plaintiffs on the RICO claim.

20 MR. MARTIN: So, Your Honor, Craig Martin. The -- in  
21 terms of -- and I'll stay here because there's smart people on  
22 my right and left that may have something to add.

23 But in terms of the beginning, I just I'm not going  
24 to go through these arguments, but you have a complaint 217  
25 pages long, but you know from the briefs and you have a whole

1 bunch of Plaintiffs and a whole bunch of Defendants. And you  
2 have these group pleading allegations. And we're entitled to  
3 rely upon the complaint and the well -- the factual allegations  
4 of the complaint.

5 So that's what we're dealing with here as opposed to  
6 the narrative offered by Plaintiff's counsel that goes beyond  
7 the words of the complaint. So just to ground set.

8 And then, you know, and obviously, we have Rule 9(b)  
9 issues and then we get to Rule 12(b)(6) issues.

10 I am mindful that it's 3:18 now. And most of your  
11 questions are --

12 THE COURT: Yeah.

13 MR. MARTIN: -- in regard to predicate acts are not  
14 something that I am going to add a lot to because I think that  
15 these issues are quite well briefed.

16 THE COURT: Well, can you just tell me, so that  
17 question I just posed --

18 MR. MARTIN: Yeah.

19 THE COURT: -- of does there need to be a particular  
20 kind of linkage between the predicate act alleged by one of the  
21 Plaintiffs and the injury suffered?

22 In other words, does Adrian for example need to  
23 articulate that he is a victim of the 1324 immigration  
24 violation?

25 MR. MARTIN: And I think the --

1           THE COURT: Or can he be victimized some more  
2 general, more nebulous way by all this?

3           MR. MARTIN: I don't think he can be victimized in a  
4 general, nebulous way.

5           THE COURT: What's the law on that? Is there a case  
6 that speaks to linkage?

7           MR. MARTIN: Whether or not there's a 1324 case, I  
8 have no idea. We have to go look at that, but in terms of --

9           THE COURT: Yeah, I think would be a RICO question.

10          MR. MARTIN: Yeah.

11          THE COURT: Whether yeah.

12          MR. MARTIN: That's where I think the law is. '

13                 In terms of if you go back to our briefs and you look  
14 at the elements of RICO, right? And you see that there is an  
15 enterprise and there's got to be a common purpose for an  
16 enterprise.

17                 And then, there's got -- as is pointed out more  
18 thoroughly in Sara Bronfman's brief, there's got to be  
19 causation.

20                 And then, as is pointed out in all of the briefs,  
21 RICO injury is different than just any injury. It's got to be  
22 injury to business or property.

23                 So the way I would think about that question, Your  
24 Honor, is that RICO requires you to connect the dots from the  
25 common purpose of the enterprise through the predicate acts to

1 causation and to injury for business and property.

2 THE COURT: That could be true.

3 MR. MARTIN: That's --

4 THE COURT: It makes intuitive sense to me, but it  
5 also could not be true. Like I could imagine the causation  
6 rule being on the one hand, that it needs to be the particular,  
7 you know, the conduct that makes up the predicate act is what  
8 causes the injury.

9 Or it could be something broader that the person who  
10 commits the predicate act needs to cause the injury or the RICO  
11 enterprise needs to cause the injury, but there could be a  
12 looser linkage between predicate act and injury perhaps.

13 MR. MARTIN: I don't think so. To -- but we may be  
14 saying the same thing.

15 THE COURT: I mean, my real question is do you think  
16 this question was answered as well as it can be answered in  
17 your briefs or do you think that I would benefit from short,  
18 supplemental briefing on this question perhaps?

19 MR. MARTIN: If you thought it was dispositive, I  
20 would certainly be -- we'd be happy to submit an additional  
21 brief with regard to that.

22 I don't -- I personally do not think the issue is  
23 dispositive.

24 THE COURT: Okay.

25 MR. MARTIN: -- because I don't think you have -- I



1 don't for all the -- for all of the reasons that were embedded  
2 in the question that you just asked, I was looking at my notes  
3 and going to the very same paragraphs because I do not see as  
4 is implied by your questions the predicate acts being  
5 sufficient with regard to Ms. Bronfman.

6 THE COURT: Well, why -- I mean, the -- what I just  
7 heard from Mr. Goelman is that your client entered a plea of  
8 guilty before Judge Garaufis on this exact crime, albeit as to  
9 a different person.

10 And the allegations in the complaint here are  
11 substantially identical, even though they relate to different  
12 people.

13 If it's enough to make the criminal violation for  
14 Judge Garaufis, why isn't it by definition enough to make out -  
15 - to survive a 12(b)(6) motion on the predicate act question?

16 MR. MARTIN: Well, the -- in terms of the predicate  
17 for that question, with regard to her plea, her plea is to a  
18 particular person, who is not a plaintiff in this case and  
19 doesn't qualify as a predicate act in this case.

20 THE COURT: Well, I understand that.

21 MR. MARTIN: In terms --

22 THE COURT: I understand that, but --

23 MR. MARTIN: In terms of --

24 THE COURT: -- what's the conduct to which he  
25 allocutes she says here's what I did that, you know, you go in

1 to plead guilty, the judge says all right, I can't just let you  
2 plead guilty because you want to plead guilty. I need to  
3 establish a factual basis to believe you actually are guilty.  
4 So tell me in your own words what you did that makes you guilty  
5 of this immigration crime?

6 And she says I facilitated this person's ability to  
7 live and work in our country in a way that would be undetected.

8 And Judge Garaufis says, okay, that's -- that  
9 suffices to make it a violation of §1324. That factual  
10 statement of facilitated someone's ability to live in a -- live  
11 and work in our country in a way that's undetected, I'm not  
12 seeing a categorical difference between that and what's alleged  
13 in the complaint. Yes, as to different people, but same  
14 factual substance. No?

15 MR. MARTIN: Yeah, I don't think so. When you look  
16 at the three people that there's allegations about, which are  
17 Camila, Adrian, and Daniela, I don't think that that matches up  
18 to what she was pleading to in the criminal case.

19 And in terms of, you know, I would suggest to the  
20 Court that there's a reason that Ms. Bronfman pled to one and  
21 not the others.

22 And Mr. Sullivan, who was her -- at the -- at that  
23 hearing can probably explain that, but I do not think that the  
24 allegations with regard to Camila that you were just walking  
25 through, or Adrian, or Daniela match that particular issue in

1 the same way.

2 And in fact, if you look at it, as best I can tell,  
3 there's a conversation that goes on in those allegations in  
4 which Ms. Bronfman allegedly says that I'm not going to give  
5 you access to my lawyer. That's as best I can tell in terms of  
6 the whole of that paragraph.

7 But as you parse the paragraph, it does not say --

8 THE COURT: Well, then why isn't saying I'll help you  
9 support yourself, I'll give you access to this (indiscernible)  
10 T-shirt company and its equipment. And you can keep a share of  
11 the profits. Why isn't that substantially the same as alleging  
12 that I substantially facilitated her ability to live and work  
13 in our country in a way that would be undetected?

14 MR. MARTIN: I don't know what undetected means in  
15 the portion that we're quoting from the sentencing hearing.

16 THE COURT: From the guilty plea hearing.

17 MR. MARTIN: Yeah, but I do know from the guilty  
18 plea. But I do know with regard to there's a huge difference  
19 between giving somebody the opportunity to participate in a T-  
20 shirt company and harboring or concealing or shielding from  
21 detection.

22 In fact, that seems exactly the opposite to me in the  
23 sense that if you're going to work at a T-shirt company, you're  
24 going to be out there working. That's not concealing or  
25 harboring or shielding from detection.

1           THE COURT: And maybe, I mean, I don't know. This is  
2 a legal question. Maybe if you say to somebody you can work  
3 indoors and print T-shirts and make money, they're less likely  
4 to be detected by the immigration authorities than they're --  
5 than if they're out on the street begging for money. I don't  
6 know.

7           But Judge Garaufis said that that was sufficient to  
8 establish your client's guilt. And it almost feels to me like  
9 you're saying there actually was not a legally sufficient basis  
10 on which to accept the plea.

11           And you may be right or wrong about that, but we  
12 should be looking at the cases on what the word shielding from  
13 detection means and doesn't mean.

14           MR. MARTIN: Well, I -- all get to look at cases and  
15 we're happy to do that if you'd like us to, but when you look  
16 the allegations, in order to square up the allegations to  
17 shielding from detection, there's nothing in the allegations  
18 that is talking about shielding from detection.

19           In terms of there's no -- you know, for example, I  
20 could envision a set of facts that somebody could plead in  
21 which there was shielding from detection, but that's not this.  
22 That's not the facts here.

23           There's no -- for just to take Your Honor's  
24 hypothetical, there no allegation that this person was put in a  
25 basement, they were printing T-shirts, they were not allowed to

1 leave the basement. They had to put the T-shirts on a dumb  
2 waiter to go upstairs for somebody else to sell.

3 THE COURT: Yeah, but there's no way factual  
4 statement about any of that stuff in the plea allocution  
5 either.

6 And we have a determination that that was legally  
7 sufficient to make out a §1324 violation, yes, albeit as to  
8 other people.

9 MR. MARTIN: Right, but that's -- look, the  
10 statements at the plea hearing are just a statement of  
11 alternate fact, Your Honor, as opposed to an application of  
12 fact of law --

13 THE COURT: Right.

14 MR. MARTIN: -- I do respectfully submit.

15 The -- happy to talk more.

16 THE COURT: I think it would be helpful for people to  
17 really bear down on the legal question of whether giving  
18 someone a job and promising them a share -- it's not a job,  
19 it's an equity stake in this T-shirt venture and promising them  
20 a share in the profits, suffices to establish concealment,  
21 harboring, or shielding from detection.

22 Unless you're telling me that you think that issue is  
23 fully briefed already and I just am not seeing it proper, but  
24 that think might be where the rubber meets the road here. And  
25 I'm --

1 MR. MARTIN: If that's where Your Honor thinks the  
2 rubber meets the road, we'd be happy to do that. So in terms  
3 of there, I can guarantee you that we have not exhausted the  
4 analysis of that particular conduct that you just made.

5 THE COURT: Okay, my law clerk's going to keep a  
6 running list of what we may be following up on as we go forward  
7 here.

8 Okay, all right, so back to I don't think I need to  
9 hear from Defense counsel on the forced labor question. I feel  
10 like Mr. Goelman and I crystallized the issues there.

11 Do you want to take up the question of whether the  
12 predicate acts have been adequately alleged as to Sara  
13 Bronfman?

14 MR. GOELMAN: Yes, Your Honor.

15 MR. MARTIN: Your Honor, before we go there, let me -  
16 - Mr. Wareham just so that I have it for you and your law  
17 clerk, Mr. Wareham just handed me their brief at docket entry  
18 169-1.

19 And on page 15, I'll just read it so that you and  
20 your clerk have it, RICO requires that each Plaintiff alleged  
21 injury, quote, in his business or property by the conduct  
22 constituting the violation citing the Geiss case, G-E-I-S-S.

23 THE COURT: Right.

24 MR. MARTIN: 383 F.Supp at 3d and citing one other  
25 case from the Southern District of New York.

1 THE COURT: So that's kind of the secondary. The  
2 first question is do we have a 1324 violation?

3 MR. MARTIN: Right.

4 THE COURT: And the second is does that violation  
5 give rise to an injury on Adrian's part or these other alleged  
6 victims? Or is it instead that the victim of the immigration  
7 fraud is the United States government?

8 And I -- as I said sit here, I don't know the answer  
9 to either of those questions.

10 MR. MARTIN: Right, and I think that that goes to the  
11 causation question in which I basically postulate that you have  
12 go through common purpose all the way to --

13 THE COURT: Yes.

14 MR. MARTIN: -- injury to property.

15 THE COURT: Right, right, so that's the linkage  
16 question that we were talking, yeah, okay.

17 MR. MARTIN: So if you're making a list and you want  
18 us to look at that even more than Geiss case, we'd be happy to.

19 THE COURT: Well, I want to -- I think the Defendants  
20 or sorry the Plaintiffs had disagreed. They're saying it  
21 does -- the injury does not meet the necessarily flow from the  
22 predicate act specifically, but rather from the conduct of the  
23 enterprise more broadly. I hope I'm not mischaracterizing  
24 their argument.

25 But Mr. Goelman, let me turn the floor back to you to

1 respond to any of that and also to turn to the predicate acts  
2 alleged as against Sara Bronfman.

3 MR. GOELMAN: Your Honor, I think I'm going to stay  
4 here for this one since --

5 THE COURT: Yeah.

6 MR. GOELMAN: -- I don't like to keep walking back  
7 and forth. First, I agree with the Court that it's a question  
8 of RICO law as not -- and not 1324 as to whether or not the  
9 injury has to be done to that -- to someone's who a Plaintiff  
10 in order for it to count as a predicate act. And I think that  
11 the law is pretty clear that it doesn't. And we cited to a  
12 case.

13 THE COURT: Not to count as a predicate act, but to  
14 count as injury.

15 THE COURT: Okay, well, as long as a Plaintiff is  
16 injured by some predicate act, I think that we are -- I thought  
17 that we were talking about whether or not the complaint  
18 established a pattern of racketeering by Ms. Clare Bronfman and  
19 that the pattern has to be established by two predicate acts  
20 within 10 years.

21 THE COURT: Right.

22 MR. GOELMAN: So that's what I thought the Court was  
23 questioning whether or not something could count as a predicate  
24 act if it was a different Plaintiff, I mean, a different victim  
25 if it wasn't a Plaintiff, right?



1 THE COURT: Well, let me --

2 MR. GOELMAN: Jane Doe.

3 THE COURT: Oh, I see what you're saying.

4 MR. GOELMAN: Jane Doe 12 is the one that Ms. Clare  
5 Bronfman pled guilty to harboring.

6 THE COURT: And that's the alleged predicate act?

7 MR. GOELMAN: That is one of many predicate acts that  
8 is alleged in the complaint.

9 THE COURT: Okay, so take that as a given that a  
10 predicate act is any predicate act you commit on behalf of the  
11 enterprise irrespective of whether the victim is a Plaintiff or  
12 not a Plaintiff in the civil RICO case. That's one predicate  
13 act.

14 You still need a second one. And I had two questions  
15 in that regard. One is who's the other victim of those or  
16 who -- as to who else has Clare Bronfman concealed, harbored,  
17 or shielded from detection, and how?

18 And when we talked about Adrian and whether he  
19 qualifies or not, I think I still have a legal question about  
20 whether giving somebody a job, knowing that they're in the  
21 country illegally, constitutes a federal crime of shielding  
22 somebody from detection.

23 If it is, I think a lot of businesses across the  
24 country might have criminal problems they're not currently  
25 anticipating.

1           Or is something more than just giving somebody a job  
2           required? And maybe you say that something more is required,  
3           but you've alleged the something more, so you're okay.

4           But then a secondary question was, okay, let's say  
5           there was a predicate act committed as to Adrian, Adrian also  
6           has to show injury. That's one of the elements of his civil  
7           RICO claim.

8           And my question was does his injury have to emanate  
9           from the predicate act specifically? And if that's the case,  
10          how is he injured by being harbored? Or we just heard from  
11          Defense counsel that that sounds more like a benefit than an  
12          injury.

13          MR. GOELMAN: Let me try to take those in turn.  
14          First, in terms of the law, there's a case called Terminate in  
15          the 2nd Circuit 1994, 28 F.3d 1335, that we believe addresses  
16          the question of whether or not you can count as a predicate act  
17          an act that was done to somebody who is not a plaintiff. And  
18          the answer there we believe is yes.

19          With respect to Ms. Bronfman and the difference  
20          between what she pleaded guilty to and what happened not just  
21          to Adrian, but also to Lindsay, and also to Camila, there's  
22          really not any principle difference.

23          And I understand the Court's point that there could  
24          be thousands of employers breaking the immigration laws every  
25          day in this country. And you're right, there could be and

1 there probably are. And you see when, you know, these  
2 factories are raided, what happens to the employers.

3 You know, when you talk about concealment, Your  
4 Honor, it's not just that he wasn't out there begging on the  
5 street or whatever else the Court postulated.

6 I mean, it's a whole scheme to hide his presence  
7 here, right? He doesn't -- he's not given a W-2. There are  
8 allegations in here about the books that were cooked and how  
9 the books were cooked in order to deceive immigration  
10 authorities.

11 And it's not just I'll give you a job. It's also  
12 don't go to the authorities. Don't get legal. Don't go back  
13 to Mexico and apply for a visa. I mean, that is actively  
14 concealing the detection of somebody who's here illegally.

15 THE COURT: Okay. Okay, should we shift gears to  
16 Sarah?

17 MR. GOELMAN: Sure, Your Honor, but I don't want to  
18 leave the Court with the impression that we think that these  
19 four immigration-related offenses are the only available  
20 predicates against Ms. Clare Bronfman.

21 THE COURT: Oh, I accept that. There's also forced  
22 labor. I think you also vaguely allege that Clare Bronfman is  
23 somehow complicit in the predicate acts of mail and wire fraud,  
24 but that, you know, we've heard about group pleading issues.

25 And that's pled in a group pleading sort of way,

1 isn't it? There's no specific allegation or set of allegations  
2 against Clare Bronfman that would cause mail or wire fraud, is  
3 there?

4 MR. GOELMAN: Well, there are. And you know, the  
5 reason it was pled as to all Defendants is that all Defendants  
6 actually were defrauding members of NXIVM.

7 THE COURT: Okay, so that you have the 9(b) issue,  
8 right? You got to plead Clare Bronfman's responsibility for  
9 mail and wire fraud or mail or wire fraud with particularity.  
10 What is pled? Point me to the complaint where we see what  
11 Clare Bronfman is doing that would satisfy that standard?

12 MR. GOELMAN: And that goes back, Your Honor, to the  
13 description of Clare Bronfman. And there's you know, a bunch  
14 of paragraphs in here describing her role in the enterprise.

15 And you know, we talk about all the different  
16 positions she held, right, on the executive board, founder of  
17 ESF, part of the inner circle.

18 THE COURT: Actually, you have a background in  
19 enforcement. I think you and I may have crossed paths at some  
20 point when I was a securities fraud prosecutor and maybe you  
21 were at the CFTC.

22 MR. GOELMAN: Yeah.

23 THE COURT: Were you?

24 MR. GOELMAN: I was, yeah.

25 THE COURT: Okay. Companies commit securities fraud

1 all the time. And they have boards of directors who oversee  
2 everything happening at the company. And it doesn't mean that  
3 every member of the board of directors is criminally liable for  
4 securities fraud, right?

5 You can't -- I don't think you're going to say just  
6 because she held positions of authority, that ergo if there was  
7 a fraud committed some where the organization, she's  
8 automatically responsible, right?

9 So that's why I come back to the question of where  
10 does the complaint speak with particularity to Clare Bronfman's  
11 knowledge in and participation of -- sorry, knowledge of and  
12 participation in mail or wire fraud other than just by  
13 reference to her high ranking position?

14 MR. GOELMAN: Your Honor, I understand your point  
15 about people who are on board of directors. And I think you're  
16 right about criminal liability.

17 I do think that there are directors who are sued by  
18 the SEC or CFDC or sued civilly that have, you know, far less  
19 involvement in the actual crime or actual violation than Ms.  
20 Clare Bronfman did here. And the --

21 THE COURT: But you have to have some involvement and  
22 you have to have knowledge. And I'm just -- I -- I'm perfectly  
23 happy to be correct if I'm wrong here.

24 But where I sit now, I think there's literally  
25 nothing alleged about her specific participation or knowledge.

1 MR. GOELMAN: All right, Your Honor, if you turn  
2 to --

3 (Counsel confer)

4 THE COURT: I was looking for -- thank you.

5 MR. GOELMAN: Your Honor, the reason that I bring up  
6 Clare Bronfman's title is because it is not just a title. It  
7 is also a position that confers authority.

8 And there are allegations in here and I will try to  
9 get you a paragraph number, that talk about how she was  
10 Ranieri's right hand man in developing the curriculum.

11 And the curriculum was based on lies. It was  
12 designed to and did entice people to pay a lot of money for  
13 basically garbage.

14 And if somebody is on the executive board and in  
15 charge of finance and in charge of legal I don't think you can  
16 say that there's no allegation at all that she had, you know,  
17 any idea about the multi-level marketing scheme.

18 THE COURT: But tell me, let's look at some  
19 paragraphs in the complaint, so we can have this conversation  
20 by reference to the specifics.

21 MR. GOELMAN: Okay.

22 THE COURT: Well, if I matriculated into college on  
23 the basis of representations on their website that I'm going to  
24 get a world class education and have all kinds of job  
25 prospects, and then, it turns out that my professors were all

1     terrible and I don't get a job, like I don't -- that's not  
2     enough to allege fraud with particularity.

3             MR. GOELMAN:  No, but --

4             THE COURT:  Now there's got to be some concrete  
5     misrepresentation or omission of some -- you know.  And so  
6     that's why I say like let's get a paragraph number and look at  
7     the same thing.

8             MR. GOELMAN:  Okay, and my colleagues are looking for  
9     it.  And I will point the Court to it, but in terms of your  
10    college analogy, Your Honor, if the -- you're right that  
11    there's not just because you're an employee of the college on  
12    the board of directors necessarily, culpability and liability  
13    for every lie or misrepresentation that's told.

14            But here, we're talking about a much smaller  
15    organization --

16            THE COURT:  What's the lie?

17            MR. GOELMAN:  That this rational inquiry is this  
18    patented wonderful --

19            THE COURT:  There's a patent pending.  And I don't  
20    think you allege there was no patent application pending.  
21    Maybe there wasn't, but in order for the first patent pending  
22    to be a misrepresentation, I would think you'd have to allege  
23    that there's no patent pending.

24            MR. GOELMAN:  I think that -- I'm not sure, but I  
25    believe that there were misrepresentations about whether the

1 technology was patented, whether the patent was pending.

2           There were definitely misrepresentations about how  
3 this could change your life. And there's basically repackaged  
4 cognitive therapy. And it was sold to these people as this  
5 brain child of the smartest man in the world.

6           THE COURT: And you say he's not actually the  
7 smartest person in the world? I'm just kidding.

8           But people make, you know, there are psychotherapists  
9 up and down the West side of Manhattan making grandiose claims  
10 about how psychotherapy can change a person's life. And some  
11 people surely come out of therapy believing that it has not  
12 lived up to those aspirations.

13           And so, again, I say let's look at the particular  
14 passage in the 200-plus page complaint where we say here are  
15 the misrepresentations that we're going to tag Clare Bronfman  
16 with responsibility for.

17           MR. GOELMAN: Okay, if the Court goes to paragraphs  
18 593 and following, it talks about the misrepresentations, talks  
19 about why Rational Inquiry was not eligible for patent  
20 protection.

21           THE COURT: Okay. But there was a -- and then, you  
22 say -- so paragraph 593 actually refers to a bogus patent  
23 application.

24           So I think the natural understanding of that is they  
25 actually did have a patent application pending, but you allege



1       that that patent application was destined to fail.

2               MR. GOELMAN:  As all of them beforehand, yes.

3               THE COURT:  All of NXIVM's applications?

4               MR. GOELMAN:  All of Raniere's patent applications,  
5       yes.

6               THE COURT:  Okay.

7               MR. GOELMAN:  And then, Your Honor, the following  
8       paragraphs talk about some of the other lies that Raniere is  
9       the world's smartest person with an IQ Of 240.

10              THE COURT:  I mean, how would somebody -- is that  
11       actionable as mail or wire fraud that somebody says I'm the  
12       smartest person in the world?  Like there's no basis on which  
13       somebody to credibly make that claim --

14              MR. GOELMAN:  Oh.

15              THE COURT:  -- unless they knew all 7 or 8 billion  
16       people and had them all IQ tested.  Like nobody could be  
17       injured by that claim, it seems to me.

18              MR. GOELMAN:  Your Honor, if I am somewhat lost and  
19       looking for a religion or a philosophy to help me make sense of  
20       my life, and you know, I walk by the Scientology store front,  
21       and then I, you know, walk by the NXIVM or ESP store front and  
22       they say here's this wonderful technology, patent pending, and  
23       it's all come in from this smartest man in the world, Keith  
24       Raniere, who is an ascetic.  He doesn't care at all about  
25       worldly things.

1           And he's celibate. And he has been inventing things  
2 since he was, I don't know, 6. Those are all lies.

3           Now, Your Honor, you may not fall for it. You might  
4 keep walking, but that -- those are statements that are  
5 designed to induce someone to come in and give their credit  
6 card and take a intensive however long course that cost them  
7 thousands of dollars. That's fraud.

8           THE COURT: Okay, what's the best mail or wire fraud  
9 case for the proposition that statements like I'm the smartest  
10 person in the world and my program will change your life are  
11 actionable bases for a mail or wire fraud prosecution?

12          MR. GOELMAN: For securities fraud, Your Honor? I  
13 mean, you know, there's a line between puffery and, you know,  
14 actionable, misleading, or false statements. But I think if  
15 you --

16          THE COURT: Well, and also between statements of  
17 opinion. I mean, you know, this program will change your life,  
18 that's not really falsifiable other than by reference to the  
19 subjective experience of the person who feels their life was or  
20 was not changed, right? The initial presentation has to be  
21 something that is susceptible to being proven true or false.

22          MR. GOELMAN: Right.

23          THE COURT: And --

24          MR. GOELMAN: Sorry, go ahead.

25          THE COURT: You know, you may be well be able to

1 prove at trial that Mr. Ranieri was not the smartest person in  
2 the world. That seems eminently --

3 MR. GOELMAN: Plausible.

4 THE COURT: -- falsifiable maybe. But claims about  
5 the psychic effects in terms of self-esteem and well-being,  
6 like that's why I asked. Like have you seen a mail or wire  
7 fraud case where that was the kind of subject matter of the  
8 misrepresentations?

9 MR. GOELMAN: Your Honor, I can get back to you about  
10 the best mail or wire fraud cases we have. You were a  
11 securities prosecutor. I think that the securities unit or the  
12 SEC, if they had someone, and it's not just this is going to  
13 change your life and we're awesome.

14 It's also based on Keith Ranieri. I mean, he's the  
15 brand. And he's the, you know, kind of god head figure and all  
16 the qualities that he says he had weren't true. I mean, they  
17 are falsified.

18 He wasn't an ascetic. He wasn't celibate. He was  
19 sleeping with 15 year olds. And if that fact had been told to  
20 the person walking down the street in, you know, whatever city,  
21 I think that that would be pretty material.

22 THE COURT: Okay.

23 MR. MARTIN: Your Honor, oh.

24 MR. GOELMAN: Sorry.

25 THE COURT: I don't think I needed any rebuttal in

1 this. And if you want to tell me what you want to say before  
2 you say it, we can decide if we're going to shift gears here.

3 MR. MARTIN: Tell me what you want to say?

4 THE COURT: Just like are you responding to the  
5 question of what constitutes mail or wire fraud or?

6 MR. MARTIN: No, no. I'm responding to the  
7 paragraphs that he's pointing me to in the complaint with  
8 regard to Ms. Bronfman are not paragraphs that are alleging  
9 something that Ms. Bronfman did.

10 THE COURT: Right, there's no statement that she knew  
11 whether a patent application was pending --

12 MR. MARTIN: Right.

13 THE COURT: -- or not pending or whether previous  
14 patent applications had been unsuccessful. I understand that.

15 MR. GOELMAN: Except that --

16 MR. MARTIN: But it says leadership positions, the  
17 Plaintiffs were in leadership positions.

18 THE COURT: Yeah, I mean, this is why I started  
19 with -- this is why I wanted to start with the forced labor and  
20 alien harboring statutes because I think that's where the RICO  
21 -- the predicate acts element of the RICO claim is going to  
22 rise or fall, but we descended a bit into predicate acts beyond  
23 those two.

24 Let's shift gears to Sara Bronfman. And then, I want  
25 to get into some of the other Defendants who are here as well.

1           MR. GOELMAN: Okay. And Your Honor, with respect to  
2 Sara Bronfman, one of the predicate acts is witness tampering,  
3 which is a 18 United States Code 1512. It's one of the RICO  
4 predicates.

5           THE COURT: Right.

6           MR. GOELMAN: And --

7           THE COURT: Told somebody shortly before trial, this  
8 is asking somebody to make themselves scarce in the lead up to  
9 trial.

10          MR. GOELMAN: Correct.

11          THE COURT: Okay.

12          MR. GOELMAN: But it's not just Sara Bronfman did  
13 that. The complaint also contains allegations that Clare  
14 Bronfman did that.

15          THE COURT: Can you just remind me what paragraph  
16 we're talking about there?

17          MR. GOELMAN: Sure. While they're getting the cites  
18 for the Court, this was with respect to Camila, who even after  
19 2017 when Raniere was arrested -- well, actually 2017 Ms. Clare  
20 Bronfman and Raniere were down in Mexico.

21                 And Camila, who was a potential witness to child sex  
22 abuse and child pornography against Raniere, was hidden away by  
23 others, primarily Clare Bronfman being -- by being told that  
24 the FBI was after her. And she was hidden in an apartment.  
25 And I will get the Court the citations for that.

1           THE COURT: Let's switch gears to -- so I'll make a  
2 note that you want us to look more closely at the witness  
3 tampering predicate act as to Clare.

4           MR. GOELMAN: Okay, Sara, so what Ms. Sara Bronfman  
5 says in her motion to dismiss is that the First Amended  
6 Complaint's low in intent to plead substantial assistance as to  
7 Sara Bronfman as it's vague allegation that Clare and Sara  
8 Bronfman provided the funds for the rent of premises and the  
9 purchases of the -- purchase of the equipment used in the  
10 unauthorized human research through ESF substantially assisting  
11 Porter.

12           I don't know how anyone can call that vague. It says  
13 how they assisted, what entity they used to funnel money, the  
14 specific use of the money.

15           THE COURT: Sorry, so which predicate act are we  
16 talking about here?

17           MR. GOELMAN: I'm not sure that the -- is the ESF?  
18 Okay. Your Honor, that actually doesn't have to do with the  
19 RICO claim.

20           Adrian, the witness tampering with Adrian, Sara  
21 Bronfman attempts to get him to go abroad so that he can't  
22 testify in the criminal case.

23           I think that in the pleadings, Ms. Sara Bronfman  
24 actually concedes that witness tampering is a plausible  
25 predicate. And you know, intimidation of witnesses is a

1 primary tool in the Mafia tool kit --

2 THE COURT: Okay.

3 MR. GOELMAN: -- which is why it's a predicate act as  
4 an RICO.

5 THE COURT: So where is the -- can you just point me  
6 to the paragraph in the complaint you're talking about?

7 MR. GOELMAN: About Adrian?

8 THE COURT: About, yes.

9 MR. GOELMAN: 855, Your Honor.

10 THE COURT: Okay. Okay. In the days leading up to  
11 trial, Sara Bronfman and her husband attempted to obstruct by  
12 employing false pretenses and promises of money to entice  
13 Adrian to leave the United States and remain outside of it  
14 through the criminal trial.

15 I understand the import of that reference to money.  
16 And I think I probably agree with you that the specific  
17 monetary amount needs to be stated, but what are the false  
18 pretenses that you're referring to?

19 MR. GOELMAN: That he should go to Europe so that he  
20 can pursue this promising career opportunity.

21 THE COURT: Is that alleged in there or are you just  
22 saying false pretenses with no additional detail?

23 MR. GOELMAN: I think it actually is alleged and it  
24 might be during the -- in the part about Adrian.

25 (Counsel confer)

1           THE COURT: You don't need to point me to a  
2 paragraph, but so the false presence is that there's a  
3 promising career opportunity awaiting him in Europe, assuming  
4 he departs now and stays out of the United States for the  
5 duration of the trial. We'll look for that.

6           But that's one predicate act of witness tampering.  
7 What's the second highest confidence predicate act that you  
8 allege as to Sara Bronfman?

9           MR. GOELMAN: Aiding and abetting, immigration fraud.  
10 Founding an organization called ESF, which was supposedly to  
11 sponsor foreign nationals for educational scholarships so they  
12 could get visas to come to the United States.

13           And then, putting these people to work in the Rainbow  
14 Cultural Garden, which Sara Bronfman founded and I believe ran.  
15 And then, that caused them to lose their immigration status.  
16 And I think if you go to the complaint at paragraph 705.

17           THE COURT: So everybody who gives somebody who's in  
18 the United States on a student visa a job, thus undermining  
19 their student visa immigration status, you're saying is  
20 committing this crime?

21           MR. GOELMAN: I'm saying if you sponsor students to  
22 come to the United States under the false pretense that they're  
23 going to get a scholarship and they're going to be a student.

24           And what you really do is you put them to work and  
25 pay them very little and are aided by the fact that they're



1 then illegally in the country, that that qualifies for 1324.  
2 It is --

3 THE COURT: Oh, I see.

4 MR. GOELMAN: -- a violation of 1324 to encourage or  
5 induce aliens to come to or reside in the United States with  
6 knowledge or in reckless disregard of the fact that such coming  
7 to residence would violate the law.

8 You have people come into the country under false  
9 pretenses, that's against the law.

10 THE COURT: Okay, but all this says, if I look at 705  
11 and 706, is that Sara, together with others, established these  
12 two nonprofits, but you don't say that she made any of the  
13 false representations about student immigration status or even  
14 that she knew about I don't think.

15 You're just saying the fact that an entity that she  
16 started employed these people -- yeah, you get my question.

17 MR. GOELMAN: Yeah, so she starts an entity, ESF,  
18 says we're going to sponsor students to come in here on student  
19 visas, right?

20 They get there and then a different entity, which she  
21 also founded and controls, put them --

22 THE COURT: Where does it say that she said that  
23 we're going to sponsor people on student visas?

24 MR. GOELMAN: It said that -- says paragraph 6, that  
25 Defendants used ESF to sponsor foreign nationals for

1 educational scholarships, so they could get visas to come to  
2 the United States.

3 THE COURT: But does she know -- is -- yeah. Oh, so  
4 Defendants you're saying is defined to include every Defendant?

5 MR. GOELMAN: No, I'm saying it is defined to include  
6 the Defendants, who are referred to in the previous paragraph  
7 who established the nonprofits.

8 THE COURT: Is that right? It's Defendants with a  
9 capital "D", which I would have thought was a defined term  
10 somewhere, although maybe not. But Defendants with a capital  
11 "D" is used throughout to mean everybody.

12 MR. GOELMAN: Your Honor, I understand that, you  
13 know, a title by itself may not mean that a person actually did  
14 a particular action, but if you are the founder and operator of  
15 a fraudulent foundation, I think that it's not too great a leap  
16 to say that, you know, you knew or at least were willfully  
17 blind in not knowing what the foundation was doing.

18 THE COURT: That's like *respondeat superior* liability  
19 though, no? Just extrapolating --

20 MR. GOELMAN: No, for *respondeat superior*, I think  
21 the more is, you know, the whole company is liable because, you  
22 know, the janitor somewhere bribed a foreign official. And  
23 under, you know, *respondeat superior* is strict liability for  
24 the company. I'm not talking about that.

25 I'm talking about Ms. Sara Bronfman who this -- this

1 was her organization. And these are not, you know,  
2 multinational companies.

3 THE COURT: I mean, how big are they? How many --  
4 well, okay. All right, let's move on. Sticking with the RICO  
5 claim from Sara Bronfman to next on my list is Ms. Clyne. And  
6 the two predicate acts I think we're looking at there are the  
7 1591 claim, which is transporting or recruiting or enticing or  
8 harboring a person under age 18, knowing that the person's  
9 under the age 18 or that force, fraud, or coercion will be used  
10 to this person and knowing or in reckless disregard of the fact  
11 that this person will be engaged in a commercial sex act.

12 So as to Ms. Clyne in that first element of  
13 transporting or recruiting or enticing or harboring, which of  
14 those do you allege?

15 MR. WAREHAM: Your Honor, just for a second, I just  
16 want to make sure that I'm not trying to steal the sun from  
17 this client, who I just met, but do you want us to address the  
18 comments about Sara Bronfman?

19 THE COURT: So, yeah, let's -- I'm sorry, let's a  
20 take minute on that. So going back to the predicate acts  
21 alleged as to Sara Bronfman, the first one was witness  
22 tampering, right?

23 MR. WAREHAM: Correct. So preparatory comment or  
24 two. Sara Bronfman left the United States in 2011. Sara  
25 Bronfman was never -- never mind a subject to a target in a

1 criminal act that kind of underlies this thing. She was never  
2 a witness. She was interviewed --

3 THE COURT: Did she speak to -- does the complaint  
4 allege that she spoke to Adrian about leaving the country for  
5 the duration of the criminal trial?

6 MR. WAREHAM: Well, in a nutshell, the homeless  
7 patrol case sets out the exact types of arguments, conclusory  
8 arguments raised in complaint and says that falls short of the  
9 pleading standard so --

10 THE COURT: Can I just -- maybe I'll ask Mr. Goelman  
11 this question when I should have before. What's the paragraph  
12 if you can put your finger on it that says what Sara Bronfman  
13 did as to this witness tampering predicate?

14 MR. WAREHAM: Of the big problems, Your Honor, is and  
15 I've know Mr. Goelman a long time. In reading all these  
16 materials, he got itself confused between what's in the First  
17 Amended Complaint and what's in the brief. And there's new  
18 stuff about France and this and that.

19 THE COURT: Okay.

20 MR. WAREHAM: It's in the brief. It's not in the  
21 First Amended Complaint. So --

22 THE COURT: Well, that's why I asked the question.

23 MR. WAREHAM: Yeah, one of our problems throughout  
24 not only --

25 THE COURT: All right, so you're saying --

1 MR. WAREHAM: Yeah.

2 THE COURT: -- that as to witness tampering the --

3 MR. WAREHAM: That's it.

4 THE COURT: -- the allegations that they're invoking  
5 are just not in the complaint?

6 MR. WAREHAM: They're not in the complaint. Any time  
7 you need content. And I think frankly need some dollar amount.

8 THE COURT: Well, that -- forget about the specifics.  
9 I'm asking whether there's even a general reference in the  
10 complaint to Sara Bronfman's participation in this conversation  
11 about --

12 MR. GOELMAN: Paragraph 855, Your Honor. Sara  
13 Bronfman and her husband.

14 THE COURT: Thank you. Okay. Oh, yeah, we just  
15 looked at that.

16 MR. WAREHAM: Yeah, which would under --

17 THE COURT: All right, so what --

18 MR. WAREHAM: -- homeless patrol go bye bye.

19 THE COURT: Under what?

20 MR. WAREHAM: A homeless patrol case addresses these  
21 very same type of allegations and dismisses the allegation as a  
22 predicate act.

23 THE COURT: Really?

24 MR. WAREHAM: Yes. And --

25 THE COURT: Saying for somebody -- I'll set you up in

1 a promising career opportunity in Europe if you leave the  
2 country right now, knowing that that person is a likely witness  
3 in a criminal trial that's set to begin imminently, that's --

4 MR. WAREHAM: Well, that's a hypothetical not in the  
5 complaint. I'm just addressing 855, right? So, you know, any  
6 details --

7 THE COURT: That's what 855 says. And it says  
8 homeless patrol doesn't sound like a criminal case to me.

9 MR. WAREHAM: No, it's a RICO case, Your Honor.

10 THE COURT: A RICO case where witness tampering is  
11 the --

12 MR. WAREHAM: Alleged predicate act, where conclusory  
13 allegations very similar to what's in 855 are dismissed as a  
14 predicate act.

15 THE COURT: Okay. Put aside that for a moment. And  
16 talk to me about the second predicate act that we spoke to Mr.  
17 Goelman about, aiding and abetting immigration fraud through  
18 the establishment of the two entities listed in whatever  
19 paragraph that was.

20 MR. WAREHAM: Yeah, that's kind of a subset of group  
21 pleading and pleading by title, not by action. We of course  
22 scoured this complaint. There's not a solitary allegation that  
23 Sara took any action with respect to any alien.

24 None are identified in the amended complaint. They  
25 point to impermissible group pleading arguments, which the

1 Court identified to talk about Defendants. You got to talk  
2 about individual. You know, one of the things that Court said  
3 --

4 THE COURT: I understand.

5 MR. WAREHAM: You know, when you in November of '21  
6 said to the counsel for the Plaintiffs, you may wish to re-  
7 amend because now we're at the third bite of the apple.

8 THE COURT: When was that? That's on my list of  
9 questions for later. When was it that I extended that  
10 invitation to amend?

11 MR. WAREHAM: November 21st, 2021. And you said --  
12 30 of 2021. And what you said very clearly was that the  
13 Plaintiffs have to allege these acts specifically with respect  
14 to every individual Defendant individually.

15 And you know, you were coming off the 2nd Circuit's  
16 rejection of group pleading. And of course, the group pleading  
17 doesn't just go to the Defendant's group pleading. Unusually  
18 in this case, Plaintiff's group pleading is replete throughout  
19 the First Amended Complaint.

20 THE COURT: Right.

21 MR. WAREHAM: We can't tell who was harmed when or  
22 where by Sara Bronfman for any single count. So if I had been  
23 asked and you said Your Honor --

24 THE COURT: I understand your group pleading  
25 argument.

1 MR. WAREHAM: Yeah.

2 THE COURT: I would have delver into it deeper --

3 MR. WAREHAM: Sure.

4 THE COURT: -- at level of specificity if we can.

5 Okay, so I think I have at least clarity in my mind  
6 if not in the courtroom in general on how to think about the  
7 predicate acts alleged as to Sara Bronfman.

8 As to Nikki Clyne, the §1591 sex trafficking claim,  
9 element 1, if I have this right, is that the person accused  
10 knowingly transported or recruited or enticed or harbored. I  
11 take it the verb you say that's applicable here is recruited?

12 MS. MANOHAR: Your Honor?

13 THE COURT: Or enticed.

14 MS. MANOHAR: Your Honor, this is argument. I'm  
15 prepared to speak to §1591 as a predicate act and waiver  
16 (indiscernible) to the facts.

17 THE COURT: Please.

18 MS. MANOHAR: I believe the operative words here  
19 would be recruits, entices, or maintains. Several of the terms  
20 in a TD hearing are undefined and they're meant to be construed  
21 according to their plain meaning.

22 THE COURT: Yeah, I think I understand how you say  
23 the allegations establish recruitment and enticing. I'm not  
24 sure I know what maintains means, but we can put that aside for  
25 now.



1           Why is this a commercial sex act for which somebody  
2 is being recruited?

3           MS. MANOHAR: The term urge commercial sex act means  
4 any sex act (indiscernible) in which anything of value is given  
5 to or received by any person.

6           The commercial sex act was a thing of value to Keith  
7 Raniere. And in fact, ultimately that the commercial sex act  
8 was not completed for some of these Plaintiffs is material.

9           THE COURT: Is the thing of value -- hold on.

10          MS. MANOHAR: The thing of value is the sex act in  
11 and of itself.

12          THE COURT: But then every sex act is a commercial  
13 sex act?

14          MS. MANOHAR: No, in the context of this complaint,  
15 in context of this case. The NXIVM operation was a sex  
16 trafficking pipeline. It was designed and maintained in order  
17 to funnel individuals (indiscernible) for further sexual  
18 pleasure. That is how it's a commercial sex act.

19          THE COURT: Even if no money ever changes hands, it's  
20 the fact that the pipeline you're saying that makes this  
21 commercial, that it's organized like a business?

22          MS. MANOHAR: Commercial sex act is defined as  
23 anything of value. And the anything of value is not limited to  
24 financial value. It's limited to any benefit.

25          THE COURT: It sounds to me like there might some

1 circularity in your definition of what makes a sex act  
2 commercial if you're saying that the thing of value that's  
3 exchanged for the sex is the sex.

4 But the 2nd Circuit I think spoke to this -- a  
5 related question in the Raniere appeal, right? And they say,  
6 if I have this right, that the commercial requirement was  
7 satisfied if the person recruiting enticing, et cetera, does it  
8 in return for a quote unquote privileged position within an  
9 organization. Do you allege that in the complaint?

10 MS. MANOHAR: Yes, we do.

11 THE COURT: And I don't just mean that Ms. Clyne held  
12 a privileged position, but that she received it as compensation  
13 for the enticing and facilitating that we're talking about.

14 MS. MANOHAR: Yes, we do. I direct the Court to  
15 paragraph 69 that the First Amended Complaint. We allege that  
16 Clyne worked directly with Raniere to create a run DOS.

17 Within the DOS structure, Clyne was the first line  
18 master and Jane Doe 8 was a slave. She was a member of the  
19 inner circle.

20 Those were all --

21 THE COURT: Yeah, but that doesn't rule out -- I  
22 looked at this -- the only ones who are suggesting. I don't  
23 think that if it makes the enticing recruiter, et cetera, part  
24 of the commercial transaction of sorts is that you get a  
25 privileged position within the organization, does it matter the

1 order in which things happen? Maybe not.

2 MS. MANOHAR: I'm not sure I understand the question.  
3 Well --

4 THE COURT: You have to recruit the person or entice  
5 them, while knowing or recklessly disregarding the fact that  
6 the person you are recruiting or enticing will be engaged in a  
7 commercial sex act.

8 I mean, it's obvious why you would know that is if  
9 you're recruiting someone to participate in sort of garden  
10 variety prostitution, right? The exchange of sex for money.  
11 That's not exactly what we're dealing with here.

12 And so, my question is at the moment, according to  
13 your allegations, which is all we're testing now, at the  
14 moment, you allege Ms. Clyne to have recruited and/or enticed  
15 the people below her in this organization. Does she know that  
16 they would be engaged in a commercial sex act? And if so, how?

17 And you're saying she knows that it's all commercial  
18 because she was given this privileged position with the  
19 expectation that she would, well, you tell me before I try to  
20 hypothesize your view?

21 MS. MANOHAR: So as a general matter, DOS was  
22 structured as a pyramid. People at the top of the pyramid,  
23 first line masters, were given these positions of power and  
24 they were able to maintain their positions of power by  
25 recruiting, enticing, maintaining, et cetera individuals below

1       them on the pyramid.

2               The specific benefits that they attained were slaves.  
3       We define that specifically in the complaint. Those slaves  
4       provided them with labor services, menial tasks, around the  
5       clock care, acts of service. Those were the non-monetary  
6       benefits of --

7               THE COURT: Okay, so you're not really -- I haven't  
8       dug out or had my clerks dig out this passage that the 2nd  
9       Circuit wrote in upholding Mr. Ranieri's criminal conviction.  
10      You're not relying on that reasoning.

11              If I understand you correctly, and definitely correct  
12      me if I'm wrong, the commerce here is that in exchange for  
13      recruiting, enticing women to engage in these acts with  
14      Ranieri, you say that Ms. Clyne was compensated with free,  
15      quote unquote, slave labor. Is that makes this commercial?

16              MS. MANOHAR: Correct, Your Honor.

17              THE COURT: Okay. So that's one predicate act.

18              The second predicate I have you alleging as against  
19      Ms. Clyne is the forced labor count, which is 18 U.S. Code  
20      §1589, obtaining or providing labor or services of another by  
21      means of a threat of serious harm.

22              And I take it the threat of serious harm you allege  
23      is the release or publication of what the complaint calls  
24      collateral is that the threat we're talking about?

25              MS. MANOHAR: That's correct, Your Honor. But also,

1 the psychological and physical abuse that accompanied being a  
2 slave to a first line master that included sleep deprivation,  
3 starvation, around the clock back in call service, this was a  
4 very --

5 THE COURT: Does that work with the statute because I  
6 thought the threat of serious harm as to be the thing by means  
7 of which the victim is induced to provide this labor?

8 If it's just a consequence of the labor, that's not  
9 the serious harm we're talking about.

10 MS. MANOHAR: No, collateral would meet that  
11 definition. The sort of -- the general environment in which  
12 the collateral was given was this abusive environment. And  
13 that's why I'm discussing the -- a motion for physical abuse as  
14 well. Even if it was -- it was occurring contemporaneous with  
15 the given of collateral as well after the fact.

16 THE COURT: Okay. Can you just point me to the  
17 places in the complaint where these allegations appear? So as  
18 to --

19 MS. MANOHAR: Yes, Your Honor.

20 THE COURT: -- paragraph 168, where you talk about  
21 the, quote unquote, master slave relationship?

22 MS. MANOHAR: Yes, this paragraph.

23 THE COURT: And her elevated position within the  
24 organization is at paragraphs 25 and 69?

25 MS. MANOHAR: Yes, correct, Your Honor.

1           THE COURT: Okay. And where do you allege I  
2 understand there's a general allegation at paragraph 22 about  
3 the release of collateral, but I don't know that that speaks to  
4 Defendant Clyne's participation directly. So where's the  
5 allegation that Ms. Clyne herself threatened to release  
6 collateral?

7           MS. MANOHAR: Paragraph 168, Defendant Clyne told  
8 Jane Doe 8 that she needed collateral in the form of nude  
9 photographs to tell her about it.

10           Clyne also required Jane Doe 8 to provide here with  
11 the email addresses of her colleagues at work as collateral and  
12 then revealed that Jane Doe 8 had entered into a master slave  
13 relationship.

14           THE COURT: And then revealed, okay. All right, and  
15 Ms. Clyne, do you want it be heard on what just transpired?

16           MS. CLYNE: Yes, I would love to.

17           THE COURT: Please.

18           MS. CLYNE: Thank you, Your Honor. Well, I know this  
19 isn't the time to rebut, you know, all the allegations, but  
20 first of all, if what they're saying is true, generally  
21 speaking, I should be a Plaintiff in this case because I'm no  
22 different than other people who are, you know, being  
23 represented by the attorneys over here in terms of any type of  
24 authority or rank within the companies.

25           In terms of Jane Doe 8, that description of how it

1 happened is completely false.

2 THE COURT: So.

3 MS. CLYNE: It was a voluntary, you know, agreement.  
4 Jane Doe 8 was never threatened. And I think some facts should  
5 be understood, which is the fact that she lived in a different  
6 country the entire time.

7 And I received no uncompensated labor. If there was  
8 uncompensated labor performed, it was at the center at which  
9 she was a coach, which was led by Sarah Edmondson, a fellow  
10 Plaintiff. So it just doesn't beg to reason.

11 I understand I'm not a lawyer. I have no legal  
12 precedent, but there's just no logic here --

13 THE COURT: Yeah.

14 MS. CLYNE: -- to what they're alleging.

15 THE COURT: So you -- it seems like you do understand  
16 at least a little bit about what differentiates a motion to  
17 dismiss, which is what we're dealing with now, from a motion  
18 say for summary judgment --

19 MS. CLYNE: Sure.

20 THE COURT: -- which we might deal with later or  
21 ultimately a trial.

22 At the motion to dismiss stage, we accept the truth  
23 or we treat as true everything that the complaint alleges.  
24 We're not having a dispute about whether these facts are  
25 correct or not correct. We're just testing whether they're

1     legally adequate, assuming they're truth, to make out a claim  
2     for RICO or whatever.

3             MS. CLYNE:   So they're alleging -- this is a question  
4     because I don't totally understand, that I thought Jane Doe 8  
5     was going to have some sort of sex.  Is that the allegation?  
6     Because --

7             THE COURT:   Yeah, if --

8             MS. CLYNE:   -- my understanding is she's -- she was  
9     and is married.  And --

10            THE COURT:   Well, let me just look at the --

11            MS. CLYNE:   -- it makes no sense to me.

12            THE COURT:   The elements of we're talking about a  
13     statute here, the citation for which is 18 U.S. Code §1591.

14            MS. CLYNE:   Uh-huh.

15            THE COURT:   It's being referred to in the complaint  
16     as the sex trafficking claim.

17            And as I understand it, the elements of that claim,  
18     meaning the things somebody has to prove in order to prevail on  
19     that claim are, one, that the Defendant on that claim knowingly  
20     transported or recruited or enticed a person knowing or  
21     recklessly disregarding the fact that that person was going to  
22     be subject to force, fraud, or coercion.

23            MS. CLYNE:   But so what are the specifics in the  
24     complaint?  I don't --

25            THE COURT:   And knowing that the person was going to



1 be engaged following that coercion in a commercial sex act.

2 And so, we just talked about certain paragraphs in  
3 the complaint that allege that it was the job of people in this  
4 D-O-S or I guess DOS organization to recruit people into it.

5 And in paragraph 168, they say and we have to treat  
6 this as true for today's purposes, that you recruited Jane Doe  
7 8 to participate in DOS, that you told her that to --

8 MS. CLYNE: Like well what -- how does that prove or  
9 create the foundation for sex trafficking? That's what -- I  
10 don't understand that. I know they say it. They say under  
11 uncompensated labor, but I think you understand that the words  
12 master and slave are not literal in this case.

13 It was a figure of speech that was used in a program  
14 where there was no monetary exchange whatsoever. And to be  
15 quite honest, being in a position where you're mentoring  
16 someone, it's -- there's a lot of labor on my part to help  
17 people.

18 I was available to Jane Doe 8, 24/7 to help her with  
19 her problems and she called me at all hours.

20 THE COURT: So you're suggesting that --

21 MS. CLYNE: So I --

22 THE COURT: If I understand the legal argument that  
23 you're making --

24 MS. CLYNE: Okay, thank you.

25 THE COURT: -- you're suggesting that there's

1 actually no allegation in the complaint that you --

2 MS. CLYNE: That links sex trafficking or forced  
3 labor to inviting someone into DOS, that they voluntary --

4 THE COURT: Knowing with reckless disregard --

5 MS. CLYNE: Right.

6 THE COURT: -- of the fact that this person would be  
7 engaged in a commercial sex act.

8 So I guess putting that question back then to  
9 Plaintiff's counsel, where -- what paragraph in the complaint  
10 makes that linkage that the recruitment enticement maintenance  
11 whatever was with knowledge or reckless disregard that the  
12 person being recruited would be engaged in a commercial sex  
13 act?

14 MS. MANOHAR: Your Honor, I'll get you the paragraphs  
15 in a second, but I'd like to say the complaint is replete with  
16 discussions of the manipulation and the extreme nature of DOS.

17 We also allege that Ms. Clyne was the person who  
18 designed it with Mr. Raniere. And we also allege that it was a  
19 pipeline to funnel women directly to Mr. Raniere, so I'll get  
20 you --

21 THE COURT: And the reason you need to say not only  
22 that that's what it was, but that at the time of she did the  
23 recruiting or enticing or whatever, that Ms. Clyne knew or  
24 recklessly disregarded the fact that this person would be  
25 engaged -- not might be engaged, would be engaged a commercial

1 sex act.

2 MS. MANOHAR: Your Honor, we allege that DOS was  
3 created as a sex trafficking mechanism. That's what it was.

4 THE COURT: Which paragraph are we talking about  
5 here?

6 MS. MANOHAR: 69's a paragraph that relates  
7 specifically to Ms. Clyne. I'll get you the paragraphs related  
8 --

9 THE COURT: You said 6 and 9?

10 MS. MANOHAR: Paragraph 69.

11 THE COURT: 69.

12 MS. MANOHAR: And I'll get you the paragraph related  
13 to DOS in a second.

14 THE COURT: Worked with Ranieri to create environment  
15 DOS.

16 MS. MANOHAR: And then --

17 THE COURT: Was a first line master and member of the  
18 inner circle. Continues to support Ranieri and advocate for  
19 him.

20 But it doesn't say -- it doesn't make that last step  
21 in the linkage at least not in this paragraph that created and  
22 ran DOS knowing or recklessly disregarding that the  
23 participants would be engaged.

24 MS. MANOHAR: We have those paragraphs beginning at  
25 paragraph 788. That's the --

1 THE COURT: 7 --

2 MS. MANOHAR: -- long description of DOS. And we  
3 allege in this paragraph that DOS was created with this -- for  
4 the express purpose of providing women to Raniere.

5 THE COURT: So just because this paragraph is -- I  
6 mean, because this complaint is so long, can you just point me  
7 to the particular paragraph you're talking about?

8 MS. MANOHAR: Yes, paragraph 793, 794, 795, 797.

9 THE COURT: So look at 793. You have a bunch of  
10 people named there. And it says all these people were first  
11 line DOS masters, with their own pods, some of whom, and that's  
12 the phrase that we get hung up on here, some of whom had been  
13 coerced into recruiting their own slaves as well.

14 And so, it's the purpose generally was to provide a  
15 good labor pool for Raniere and the first line masters, as well  
16 to expand Raniere's supply of partners.

17 But isn't it incumbent on you to allege at least  
18 somewhere this element of Ms. Clyne's knowledge or reckless  
19 disregard that when she was recruiting people, Ms. Clyne knew  
20 or recklessly disregarded that they were being recruited to  
21 engage in commercial sex acts?

22 MS. MANOHAR: Yes, Your Honor read in connection with  
23 paragraph 69, we believe we plausibly allege the connection  
24 between Ms. Clyne, DOS, and the state of mind requirement of  
25 §1591.

1           THE COURT: Could you be -- let's say I dismiss this  
2 claim, but with leave to amend, so dismiss without prejudice.  
3 Could you say more about how Ms. Clyne knew at the time she was  
4 recruiting, enticing, et cetera the purpose for which she was  
5 recruiting people, namely to engage in commercial sex acts?

6           MS. MANOHAR: Yes, we could.

7           THE COURT: So that's why -- yeah.

8           MS. MANOHAR: I understand that.

9           MS. CLYNE: I just want to add, too, that Camila was  
10 a first line who's a Plaintiff, again, raising the issue of the  
11 arbitrary nature --

12          THE COURT: Well, but that --

13          MS. CLYNE: -- between Plaintiff and Defendant.

14          THE COURT: I hear what you're saying. We see  
15 unfortunately a lot of more classically commercial sex  
16 trafficking cases in this district and elsewhere. And it  
17 happens all the time that people are both perpetrators of these  
18 offenses and victims unfortunately.

19               And I understand the logical point you're making, but  
20 I'm not sure if it's a matter of law --

21          MS. CLYNE: Well, just to the point that they're  
22 raising, that because I was part of DOS that that implies that  
23 I had any knowledge of this fabricated sex trafficking  
24 enterprise.

25          THE COURT: Yeah. Should §9 be applied to this

1 claim? I'm getting a head shake of no from behind you.

2 MR. HOESE: Excuse me, Your Honor. 9 --

3 THE CLERK: I'm sorry, the microphone.

4 MR. HOESE: I believe that 9 only applies to  
5 allegations regarding fraud.

6 THE COURT: Yes, and but the -- so the elements of  
7 disclaim are the person is recruited, enticed, et cetera by  
8 means of force, fraud, or coercion.

9 And I take it what you're telling me is that if  
10 you're hanging your hat on the coercion option, then you don't  
11 have a 9(b) issue because fraud's not implicated?

12 MR. HOESE: Your Honor, William Hoese.

13 THE CLERK: I'm not picking you up on the microphone.

14 MR. HOESE: Okay. Your Honor, William Hoese for the  
15 Plaintiffs. I believe that we also allege that fraud was used.

16 THE COURT: Well, but then you have to articulate  
17 that in particularity under Rule 9(b), wouldn't you?

18 MR. HOESE: Well, perhaps, but I think we do within  
19 this complaint. And I also believe that all the allegations  
20 regarding --

21 THE COURT: You do with particularity as to this  
22 client? You didn't say a single word about what she said or a  
23 conversation that she had or. I mean, I --

24 MR. HOESE: I don't -- well, I come from Pennsylvania  
25 where fact pleading is the requirement for state complaints,

1 but I believe this complaint has given her reasonable notice of  
2 the claim. She's here defending herself, doing a very nice  
3 job, but I think the complaint adequately alleges when you read  
4 as Mr. Goelman said, all of the allegations in toto.

5 THE COURT: So what I'm getting hung up on is it may  
6 have been enough. You know, assuming this not a 9(b) issue  
7 that needs to be pleaded with particularity, it may have been  
8 enough if you would have just said we allege that when Ms.  
9 Clyne recruited Jane Doe 8 and others into this organization,  
10 she did so knowing or in reckless disregard of the fact that  
11 they were or would be engaged in commercial sex acts.

12 If you just -- I looked hard at the language of the  
13 statute itself. But as to Ms. Clyne, you don't even do that.  
14 And I asked you or you just reminded maybe a year ago, maybe  
15 more if you wanted to amend the complaint to increase the level  
16 of specificity or particularity as to any of these things. And  
17 the answer I got was no.

18 And that begs a question, which we know as I look  
19 through now then, is why is this matter of a law that any  
20 dismissals should be without prejudice to amend instead of with  
21 prejudice given the procedural history here?

22 MR. HOESE: And Your Honor, I apologize for --

23 THE COURT: And if you want to defend Mr. Goelman on  
24 that, that's fine with me.

25 MR. HOESE: No, it's fine. I'm always prepared to

1 address that question. I also want to say just that Mr. Glazer  
2 apologizes for not being able to be here today. I can't really  
3 say anything more about it, but I just wanted to let the Court  
4 know he wanted to be here so.

5 THE COURT: Okay, I hope he's all right.

6 MR. HOESE: Thank you.

7 THE COURT: Mr. Goelman?

8 MR. GOELMAN: Aitan Goelman for the Plaintiffs. Your  
9 Honor, I was not here at the hearing and I don't remember  
10 playing a part in the exchange of letters, but I have read the  
11 transcript of the hearing that you're talking about and seen  
12 the letters.

13 And I understand that the argument is basically we  
14 told you guys that these were defects in the complaint, you had  
15 your chance, and now it's too late.

16 And I would just refer this Court to 2nd a Circuit  
17 opinion. It's Loreley Financing. It's from 2015. And 797  
18 F.3d at 190. It's the exact same fact pattern. It was Judge  
19 Sullivan in the district court before he was elevated to the  
20 2nd Circuit.

21 And he did the exact same thing. He had a pre-motion  
22 hearing, which is fine. He had them exchange letters, which is  
23 fine.

24 And then, he basically offered the Plaintiffs a  
25 Hobson's choice: agree to cure deficiencies not yet fully



1 briefed and decided or forfeit the opportunity to re-plead.

2 And what the 2nd Circuit said is without the benefit  
3 of a ruling, many a plaintiff will not see the necessity of  
4 amendment or be in opposition or be able to weigh the  
5 practicality and possible means of assuring specific  
6 deficiencies.

7 So what the 2nd Circuit said is that, I mean, right  
8 now, we're in Rule 15 world, right, not Rule 16. So district  
9 courts are instructed to grant leave to amend freely when  
10 justice requires.

11 THE COURT: Right, but there's still an assessment to  
12 be made there as to the prejudice to the opposing party. Like  
13 this case has gone on a long time. And otherwise, I'll read  
14 the Loreley Financing case.

15 And I'm not saying there's a point of rule in this  
16 courtroom or anywhere else that if you're offered an  
17 opportunity to amend and you decline, that you forfeited  
18 forever.

19 I'm saying that's one factor potentially that's  
20 relevant in the mix. Obviously, we should assess the extent to  
21 which you were really on notice of the deficiencies at issue.  
22 How many time has passed since? How, you know, how -- what  
23 affect on other dates in the case calendar and so forth?

24 I mean, we have a I think a pretty pronounced shotgun  
25 pleading problem with this complaint. And the Defendants have

1 been saying it for a long time, the more I read the complaint,  
2 the more I come to the same conclusion, which is it's just, you  
3 know, how many pages in total?

4 MR. GOELMAN: Over 200.

5 THE COURT: Over 200 pages. And when I say tell me  
6 what are the facts that give rise to a predicate acts, I'm told  
7 you know, look at a couple of paragraphs that are hundreds of  
8 pages away from each other, and by the way, you have to  
9 interpret, you know, you have to assess that predicate act by  
10 reference to the complaint as a whole and draw all kinds of  
11 inferences that are not even explicitly articulated.

12 And I might be more inclined to grant leave to amend  
13 if I thought that it would go a substantial part of the way  
14 towards solving the shotgun pleading problem. It's just going  
15 to make the complaint longer and more confusing. That might be  
16 relevant to the analysis also not in a way that I think is  
17 helpful to you.

18 Do you understand my question? If -- it might  
19 militate against a finding of prejudice to the Defendants if  
20 you are saying at the same time you ask for leave to amend that  
21 you're going to simplify and streamline the complaint and make  
22 it a lot easier for everybody to understand what they're  
23 accused of, you know, you've got all kinds of claims here that  
24 you say every Plaintiff brings this claim against every  
25 Defendant, and then, you also have a thing about, you know,

1 multiple Plaintiffs or multiple Defendants on that claim.

2 How would you feel about the idea of and I'm not  
3 saying I'm going to grant this. I'm just asking like is it  
4 possible that the amended complaint would come in substantially  
5 lighter and more focused than the complaint we have now?  
6 Because the answer to that question I think might inform the  
7 prejudice analysis you're anticipating me making.

8 MR. GOELMAN: Your Honor, are you talking about  
9 prejudice to the Defendants?

10 THE COURT: Yes.

11 MR. GOELMAN: Because under that paradigm, every  
12 complaint filed is prejudicial to Defendants because they have  
13 to defend against it.

14 THE COURT: No, no, no.

15 MR. GOELMAN: Right?

16 THE COURT: I'm saying the Defendants have been  
17 laboring for a year under the obligation to divine that they're  
18 accuse of in a complaint that really doesn't make that clear.

19 And leave to amend it seems theoretically possible  
20 could make that problem either better or worse. And if there  
21 was some concrete reason to believe that leave to amend would  
22 help focus this case substantially and tell the Plaintiffs  
23 exactly what they're accused of doing when, that might be  
24 relevant to the analysis. Does that make sense and sort  
25 distinguish this case from every other case in the world?

1           MR. GOELMAN: I understand what the Court means. I'm  
2 still not clear about the definition of prejudice that the  
3 Court is using.

4           But I will say this. We'll do what the Court wants.  
5 If you tell us, if you dismiss it with leave to amend and, you  
6 know, indicate what you think the deficiencies in the complaint  
7 are, then we will attempt to write a complaint that cures those  
8 deficiencies.

9           The pre-motion letters by the Defendants contained  
10 allegations that the complaint was deficient in about 50  
11 different ways.

12           Now maybe the Court agrees with 10 of those. Maybe  
13 the Court agrees with 5 of those. I don't think the Court  
14 agrees with all 50 of those.

15           So it's pretty impossible at that point as Plaintiffs  
16 to go back and fix things when you're just being told to hold  
17 the whole thing sucks.

18           And Your Honor, I would -- yeah, I do think it makes  
19 sense to read the Loreley case because Judge Sullivan -- I  
20 mean, it's literally word for word what he said. He didn't say  
21 I have a hard and fast rule that you get one shot and one shot  
22 only. And --

23           THE COURT: Well, every case has to be judged on its  
24 own merits. And you know, the standard is the standard, right?  
25 And maybe it applies exactly the same way in that case based on

1 all of the, you know, every other procedural posture maybe  
2 applies differently, but I understand your point.

3 MR. GOELMAN: Can I just add one thing Your Honor?  
4 Because there is a -- if the Court find -- look, I think that  
5 the main reasons to dismiss with prejudice according to 2nd  
6 Circuit are futility and bad faith.

7 And if you find bad faith, then you find bad faith.  
8 I don't think there's any evidence of that here.

9 If you find futility, you know, I don't think that  
10 the challenge of writing more focused complaint means futility.

11 The one claim that would be futile is if the Court  
12 agrees that because one or more Plaintiffs were also in NXIVM,  
13 that inherently means they can't be a Plaintiff in an RICO  
14 lawsuit. And that is something that the Defendants have  
15 argued. I don't think it's the law.

16 THE COURT: No, no.

17 MR. GOELMAN: If it is the law, we can't -- that's a  
18 futile. We can't change that.

19 THE COURT: No, it's futile -- so my individual rules  
20 say that when someone wants leave to amend the complaint, they  
21 need to submit a blackline that shows here are the changes he  
22 proposed to make to the complaint. And I just ask the question  
23 of Ms. Dean -- no, sorry, Ms. --

24 MS. MANOHAR: Manohar.

25 THE COURT: Okay, people are moving out of order from

1 my little chart here. Thank you. I'm sorry.

2 The question I posed was could you just allege more  
3 specifically or even more generally that Ms. Clyne knew when  
4 she was recruiting, enticing, et cetera people to come to this  
5 inner circle that they were -- that they would be engaged as a  
6 result of that recruitment in commercial sex acts.

7 And the answer was yes. Like we can judge futility  
8 by the Plaintiffs submitting a proposed amended complaint and  
9 taking a look at it and saying, okay, is this going to make a  
10 difference or is this not going to make a difference?

11 And I think it may make sense to do that before I go  
12 through the Herculean effort of weighing an earlier -- on a  
13 motion to dismiss a complaint that spans more than 200 pages  
14 and involves more than 70 Plaintiffs alleging, you know, 14  
15 causes of action against however many Defendants we have here  
16 in some cases where the only way I'm going to be able to  
17 dismiss the count unless they give me Defendant is to read the  
18 entire 211 pages to conclude that the count doesn't allege  
19 anything as against that Defendant on that claim.

20 Why not -- why not ask you to move for a leave to  
21 amend now and to attach a draft complaint to that motion, that  
22 yeah, also attaches a blackline and allows me to tell the  
23 extent to which amendment would be futile or not futile?

24 Would streamline the shotgun pleading problems I'm  
25 talking about here or aggravate them and so forth. Just as a

1 matter of order of operations.

2 MR. GOELMAN: No, I understand. And certainly, this  
3 hearing and your comments about shotgun approach and your  
4 comments about, you know, the different specificity you desire  
5 is giving us an idea of what kind of blackline the Court would  
6 be looking for.

7 If there's any further direction about what the Court  
8 finds deficient in the complaint, I know you think it's too  
9 long. I know you think it's shotgun.

10 THE COURT: And it just doesn't -- there are elements  
11 and this -- for just -- got up a minute ago, and Ms. Clyne is a  
12 perfect example that, you know within one of the elements of  
13 the sex trafficking claim is that the person doing the  
14 recruiting, enticing, et cetera knows or recklessly disregards  
15 knowledge that the person they're recruiting will be engaged in  
16 a commercial sex act. Like the complaint doesn't say that. I  
17 asked is that something you could say and the answer was yes.

18 You don't need me. Like you can go through as well  
19 as I can and, you know, look for the elements of each cause of  
20 action and say, okay, have we alleged all the elements?

21 So what, you know, what do you propose if anything  
22 with respect to amendment on the bases we've talked about here  
23 today?

24 And if you want to take that question away, might not  
25 be a fair question to put someone on the spot and ask you to

1 answer now, but I would be interested to just in terms of  
2 supplemental briefing questions to hear from the Plaintiffs  
3 about what proposed amendments they would make.

4 MR. GOELMAN: So the pleading would be, if the Court  
5 decides to dismiss with leave to amend, this is what we planned  
6 to do differently?

7 THE COURT: I'm trying to think of the path forward  
8 here. I see that there's law in other circuits and there may  
9 be in the 2nd Circuit as well.

10 So let me read you an 11th Circuit case that got some  
11 notoriety. You might have even seen this yourself. It's an  
12 11th Circuit case talking about an appellate -- well, 11th  
13 Circuit speaking on appeal.

14 The amended complaint is an incomprehensible shotgun  
15 pleading. It employs a multitude of claims and incorporates by  
16 reference all of its factual allegations into each claim,  
17 making it nearly impossible for Defendants and the Court to  
18 determine with certainty which factual allegations give rise to  
19 which claims for relief.

20 At 28 pages long, so a 10th of what we're dealing  
21 with here approximately and having incorporated all 123  
22 paragraphs of allegations into 16 counts, it is neither short  
23 nor plain. So it's a real 8 issue.

24 Absent a dismissal in Defendants in framing their  
25 answer would likely have responded in kind. They say some



1 harsh stuff that I won't repeat here because I'm not sure it's  
2 that fair under the circumstances.

3 But here's the reason why I raised this. They  
4 conclude by saying this is why we have condemned shotgun  
5 pleadings time and time again. And this is why we have  
6 repeatedly held that a district court retains authority to  
7 dismiss a shotgun pleading on that basis alone.

8 So what does that imply for the order of operations?  
9 Maybe that the right thing is for me not to get deep into the  
10 weeds of every element of every count that every Plaintiff is  
11 bringing against every Defendant.

12 But instead, to you know, dismiss without prejudice,  
13 yeah, so like this, you know, Count 20 or sorry Count 15 begins  
14 with paragraph 994. Plaintiff's re-allege and incorporate by  
15 reference each of the foregoing paragraphs in this complaint.

16 All right, so Count 15, which may not be part of this  
17 case anymore, I don't think it is, but you get the idea  
18 re-alleges and incorporates 993 paragraphs into that particular  
19 count.

20 Like I think we have at least the same number of  
21 problems that the 28-page complaint raised in the 11th Circuit.  
22 And I don't think it's an efficient use of judicial resources  
23 if I don't say so myself for me to write as I say the full  
24 merits order on a motion to dismiss, only then to start from  
25 scratch.

1           And so, it may well be that the path forward is tell  
2 me how you amend this complaint in response to that which  
3 you've heard here today, that which you've read in the  
4 Defendant's briefs.

5           And you know, if it seems like the Defendants will be  
6 helped in their understanding of what they're being accused of,  
7 rather than prejudiced, you know, maybe we'll all agree that  
8 leave to amend should be freely granted under those  
9 circumstances, but we would have to be solving problems like  
10 the shotgun pleading problem that I just described.

11           MR. GOELMAN: Well, Your Honor, in terms of we all  
12 agree, I mean I don't think the Defendants would ever agree. I  
13 certainly wouldn't if I were defense counsel, but we can do  
14 that.

15           Do you mean then we wouldn't -- we would not submit  
16 the actual blackline of the complaint. We just would describe  
17 in our motion for leave what we intend to do.

18           THE COURT: That wouldn't comply with my individual  
19 rules, but it might be that this complaint is so long and the  
20 changes you're contemplating are so substantial, that a  
21 blackline would not be readable.

22           And so, you'd be asking for relief from that part of  
23 my individual orders. It is pretty common. I'm the only judge  
24 in the city who's saying, you know, do an actual blackline to  
25 show what the changes would be.

1           The more detail, the better, because if we're judging  
2 things like futility, prejudice, et cetera, you know, the devil  
3 on those questions is in the details, right?

4           So I would leave it to your good discretion, I think,  
5 to decide if okay, we got to, you know, draft a complaint and  
6 then run a blackline.

7           Or is it better to have a narrative statement of here  
8 is precisely that which we would seek to do in an amended  
9 complaint, but that specific you know, count by count,  
10 Defendant by Defendant.

11           MR. GOELMAN: Uh-huh.

12           THE COURT: Rather than general.

13           MR. GOELMAN: Okay, thank you.

14           THE COURT: Okay. All right, so that I think brings  
15 us to the end of the predicate act on the 1591 claim against  
16 Ms. Clyne.

17           The first leading (indiscernible) against Ms. Clyne,  
18 Ms. Manohar?

19           MR. HOESE: Your Honor, excuse me, Your Honor.

20           THE CLERK: Counsel --

21           MR. HOESE: We have division of labor.

22           THE COURT: Okay.

23           MR. HOESE: And I'm -- if it's all right with the  
24 Court I'm prepared to address forced labor.

25           THE COURT: Please.

1 MR. HOESE: Thank you, Your Honor.

2 THE COURT: Mr. -- are you Mr. Dean?

3 MR. HOESE: No.

4 THE COURT: I'm sorry.

5 MR. HOESE: William Hoese, Your Honor.

6 MR. GOELMAN: This is Ms. Dean next to me, Your  
7 Honor.

8 THE COURT: Thank you. I've solve the mystery of who  
9 Ms. Dean is. I'm sorry. I have a map in front of me that says  
10 which lawyer is sitting there and somebody moved around after  
11 that map was created. I don't know who that person was.

12 MR. HOESE: Well, I don't want to point the fingers  
13 at anybody, but it was me, Your Honor.

14 THE COURT: I'm just kidding.

15 MR. HOESE: As a predicate act, and there are really  
16 two things here, Your Honor, in terms of forced labor, but as a  
17 predicate act, let's take a look at the statute.

18 THE COURT: Yeah, knowingly obtained or provided the  
19 labor of services -- labor or services of another by means of  
20 and I take the means you're going to invoke is the threat of  
21 serious harm?

22 MR. HOESE: That's correct, Your Honor. And in this  
23 case, with respect to the forced labor, the threat of serious  
24 harm is what you mentioned earlier, which is the threat of  
25 release of collateral.

1           And the complaint alleges that before people are  
2           induced -- people were induced to become members of DOS, they  
3           were asked to give collateral, which was financial credit card  
4           authorizations.

5           THE COURT:   Right.

6           MR. HOESE:   You know, naked photographs, videos,  
7           letters.

8           THE COURT:   So what -- I understand there's a threat  
9           to release the collateral.

10          MR. HOESE:   Yes.

11          THE COURT:   And short of that is a threat of serious  
12          harm.   The 2nd Circuit said so.   In Raniere, I think that's the  
13          law of the case.   I don't think we're anybody's disputing that.

14                 I think the question for me is the Defendants  
15          threatened to release the collateral if what?   And where is  
16          that in the complaint?

17          MR. HOESE:   Uh --

18          THE COURT:   Because I'm not sure they said if you  
19          don't keep working for us for free, or below minimum wage,  
20          whatever, then we're going to release the collateral or maybe  
21          they did.   But my question is the threat to release the  
22          collateral is predicated on what condition?

23          MR. HOESE:   My understanding was that --

24          THE COURT:   I don't want to hear your understanding,  
25          I'm sorry.   I want the paragraph in the complaint.

1           MR. HOESE: No, that's fair Your Honor. In the  
2 complaint, and we're going to give you the exact numbers  
3 momentarily, it says that the collateral is given in order to  
4 as a sign of loyalty to DOS and that the threat was that if you  
5 were disloyal or disavowed your vow, that you would have  
6 committed some kind of breach under NXIVM rules.

7           THE COURT: If you disavowed your vow?

8           MR. HOESE: Yes, well, it was also called a vow, Your  
9 Honor.

10          THE COURT: But what's the vow? The vow is to  
11 provide free labor?

12          MR. HOESE: The vow was -- the vow was to submit to a  
13 position as a slave to another woman in this organization and  
14 essentially to be at their beck and call to do what they said  
15 whenever they said it and not to disobey. And if you  
16 disobeyed, then the threat was, or excuse me, the stick was  
17 that we would release this collateral.

18          Because if you think about it, Your Honor, why else  
19 would you have someone write a letter saying I was abused, you  
20 know, true or false, I was abused by someone in my family and  
21 give that to somebody?

22          It's not the world I live in. But the threat was  
23 that again, if you were disloyal that this could be released.  
24 And that's the serious harm.

25          THE COURT: If you were disloyal. So you're saying

1 that the collateral becomes both a source of the coercion for  
2 the commercial sex act at the heart of Count 3(a) and it is  
3 also the threat of serious harm that is used to procure the  
4 labor or services that are the heart of Count 3(b)?

5 MR. HOESE: I agree with that, Your Honor.

6 THE COURT: Okay.

7 MR. HOESE: There's a lot of overlap in the TVPRN  
8 sections.

9 THE COURT: Okay, but so the collateral is serving  
10 two purposes at least there?

11 MR. HOESE: Yes.

12 THE COURT: And the (indiscernible) says in paragraph  
13 159 that these -- those were required to sign a contract or  
14 the --

15 MR. HOESE: Yes, Your Honor.

16 THE COURT: That's some of them at least --

17 MS. MANOHAR: That's under Salzman.

18 THE COURT: Oh, just one particular one?

19 MS. MANOHAR: Yeah.

20 THE COURT: Okay, that's what I was trying to  
21 understand, like I think you probably do at the Rule 12 stage  
22 have enough specifics here. There certainly are more specifics  
23 than in some of the other counts.

24 But where does it say that this collateral was used  
25 specifically to extract labor and specifically to coerce people

1 into commercial sex acts?

2 MS. MANOHAR: But --

3 THE COURT: Because you've got two paragraphs in here  
4 where people actually say I'm leaving. Paragraph arguing 62 in  
5 respect to Jane Doe 7 and paragraph 170 in respect to Jane Doe  
6 8.

7 And do you allege as to both that the collateral is  
8 in fact released for that violation of the vow?

9 MR. HOESE: We don't, Your Honor.

10 THE COURT: As to neither?

11 MR. HOESE: As to neither.

12 THE COURT: Okay.

13 MR. HOESE: However, I'd hasten to add that there was  
14 the threat of the release of the collateral, not the actual  
15 release of the collateral after the fact.

16 THE COURT: Okay, so then where is the threat  
17 described in those specific terms as a threat designed to  
18 coerce free labor or commercial sex acts? I think it is in  
19 here. I think I'm just not seeing it right now.

20 MR. HOESE: Ms. Manohar is assisting me. Thank you.  
21 Page 152 of the FAC, paragraph 782.

22 THE COURT: You said 152 first?

23 MR. HOESE: Page 152, yes, Your Honor.

24 THE COURT: Page 152?

25 MR. HOESE: Yeah, maybe I shouldn't have said that,



1 but --

2 THE COURT: Yeah, do a paragraph number if you would.

3 MR. HOESE: No, I was going to do that.

4 THE COURT: Oh, I see.

5 MR. HOESE: Paragraph 781. And I could read it to  
6 the Court because I think this applies to more than just Ms.  
7 Clyne.

8 NXVIM used a concept known as collateral to enforce  
9 with the creators of DOS some sort of ethical conduct. Under  
10 Ranieri's teachings, a person who is honorable and they were  
11 trying it uphold his word should be happy to collateralize his  
12 word in a demonstration of good faith. And this --

13 THE COURT: There's a step in the logic that I think  
14 you need to make, which is you're collateralizing your word and  
15 part of your word was I'll work for free. I'll engage in  
16 commercial sex act. Like where is the -- and again I think you  
17 do make this connection, but I just I'm not seeing it right  
18 now.

19 MR. HOESE: I --

20 THE COURT: Where is the allegation that that is part  
21 of what we mean when we say quote unquote his word?

22 MR. HOESE: Well, let me draw the Court's attention  
23 to paragraph 787. Most importantly, collateral was the key to  
24 get admission into DOS.

25 Recruits were required to provide deeds to property

1 and confidential information about themselves, family members,  
2 or employers who were encouraged to lie if the information  
3 provided was not scandalous enough to merit Ranieri's approval.  
4 That's more towards the serious harm. But --

5 THE COURT: Is there anywhere in here where  
6 it's -- where somebody's threatened, hey, if you stop working  
7 for free, providing this quote unquote slave labor, we will  
8 release or collateral such that we know that the collateral is  
9 serving that purpose in the forced labor context?

10 MR. HOESE: That -- is there a specific allegation in  
11 the complaint that one or more of the Defendants said exactly  
12 those words that if you --

13 THE COURT: Not exactly those words but --

14 MR. HOESE: But if you breach your vow --

15 THE COURT: Made that point in substance.

16 MR. HOESE: -- we'll release the collateral.

17 THE COURT: That if you'll either provide labor or  
18 engage in the commercial sex acts that the collateral will be  
19 released.

20 MR. HOESE: We're working our way through. And  
21 regrettably, Your Honor, I haven't been able to find it yet,  
22 but there are multiple paragraphs regarding DOS, the type of  
23 information that was required.

24 And I also would like to mention that, and these are  
25 paragraphs with respect to Ms. Clare Bronfman, that certain

1 Plaintiffs and others wrote to her and others explicitly  
2 describing the collateral and beseeching her and others for its  
3 return.

4 THE COURT: I'm -- believe me, I'm not questioning  
5 that this is extraordinarily sensitive and painful for anybody  
6 who finds themselves in that position.

7 MR. HOESE: I'm sorry --

8 THE COURT: I just want to understand the extent to  
9 which the linkage is made explicit or whether it remains  
10 implicit that --

11 THE COURT: I think it's --

12 THE COURT: -- that the reason people provided the  
13 labor they provided and the commercial sex acts alleged is that  
14 that was caused in whole or in part by the collateral.

15 MR. HOESE: I'll say this. I think Ms. Manohar wants  
16 to address one of your points, but I think its inferential in  
17 terms of why would I write to one of the inner circle and  
18 beseech them to return this material if I wasn't operating  
19 under the belief that it was going to be released? I mean,  
20 if --

21 THE COURT: I'm not questioning that they had a  
22 legitimate concern that the collateral would be released, but  
23 we're talking about -- let me give you the actual words here by  
24 means of.

25 The person who's the subject of the first labor count

1 has to be providing their labor or services or has to be --  
2 those that labor or those services have to be obtained by means  
3 of the use of the threat of serious harm, right?

4 And so, I think the first by means there's a causal  
5 linkage that you have to make. And I think you do make it.  
6 I'm just trying to understand if it's sort of an inference from  
7 the totality of 950 paragraphs or if it says here somewhere  
8 explicitly, you know, Victim X only did this work that was  
9 referred to as slave labor because she had provided collateral  
10 and was concerned about its release or Victim Y, who engaged in  
11 what we're calling commercial sex acts in this case did so only  
12 because or in part because she was concerned about the release  
13 of the collateral.

14 MS. MANOHAR: Your Honor, if I might interject, we do  
15 have language in the complaint.

16 THE COURT: I thought I read it. Yeah.

17 MS. MANOHAR: It describes as much. I'd direct the  
18 Court to paragraph 802, which states recruits have expressed  
19 interest in joining DOS were again required to submit  
20 collateral to become members.

21 Once they became members, the quote slaves were  
22 routinely required to provide more collateral with the  
23 understanding that if they ever attempted to leave --

24 THE COURT: Thank you. Yes.

25 MS. MANOHAR: -- or failed to comply with the

1 expectations of them as slaves including the demands for more  
2 collateral, the collateral already provided would be released.  
3 The expectation of the slaves would that they would be  
4 performing labor.

5 THE COURT: Yes, and doing everything their masters  
6 told them, correct.

7 MS. MANOHAR: Correct.

8 THE COURT: I think that's -- I think that's what was  
9 I looking for. Okay.

10 All right, Ms. Clyne, do you want to be heard on the  
11 forced labor predicate act?

12 MS. CLYNE: Yes, Your Honor.

13 THE COURT: Just briefly.

14 MS. CLYNE: Just quickly, 171 says as a result of  
15 capital D Defendants criminal acts and misrepresentations and  
16 omissions. Jane Doe 8 was emotionally and financially harmed  
17 and then same thing, 172, performed uncompensated labor working  
18 for many hours without compensation for the benefit of the  
19 Defendants.

20 Again, I'm not clear if that's supposed to be for me  
21 or if the implication is that because she's in DOS, now she's  
22 performing labor for Sarah Edmondson at the Vancouver Center.

23 THE COURT: Sorry, tell me the two paragraph numbers  
24 you --

25 MS. CLYNE: 171 and 172.

1 THE COURT: Okay.

2 MS. CLYNE: Because I was never involved in, you  
3 know, her life in Vancouver. So I'm not clear as to if that's  
4 a general allegation or if I'm included.

5 THE COURT: Okay.

6 MS. CLYNE: Or if it's specific to me.

7 THE COURT: Yeah, well, the Defendants are going to  
8 put in a letter that tells me whether or not they wish to amend  
9 the complaint to add additional specifics. And that'll would  
10 be something they'll tell us they do or do not want to clarify.

11 All right. We are over the time that I had hoped to  
12 conclude by. I want to make sure every Defendant here has an  
13 opportunity to be heard.

14 Is it Dr. Roberts, do you want to be heard next?

15 MS. ROBERTS: Sure.

16 THE COURT: Please. And you can address any of the  
17 claims against you that you wish. I'm interested especially in  
18 the battery claims and specifically the allegation in paragraph  
19 68 that this branding was performed, quote, without informed  
20 consent.

21 I don't know how way to read that to mean that there  
22 was consent, but it wasn't informed, or that there was no  
23 consent informed or otherwise. But you'll tell me anything you  
24 want to tell about the --

25 MS. ROBERTS: Sure.

1           THE COURT:  -- complaint and why it should be  
2 dismissed as to you.

3           MS. ROBERTS:  Sure.  I will address that.  I guess  
4 the first point I wanted to make was just that I don't see any  
5 connection between me and the RICO case at all.  I'll address  
6 the battery separately from that, because that's the only place  
7 they specifically mention my name.

8           But in terms of being a participant in any type of  
9 RICO conspiracy, I mean, I clearly wasn't prosecuted, I wasn't  
10 indicted, I wasn't tied to any type of RICO conspiracy at all  
11 in this entire process by the FBI agents.

12           So most of the other predicate acts would have to be  
13 based on that and there doesn't seem to be any plausible  
14 connection there.

15           If we refer directly to the battery charges, in my  
16 experience, the entire experience of the branding was  
17 consensual.

18           The women that were brought into DOS chose to join  
19 DOS, knowing that there would be an initiation process and that  
20 they would receive a brand.

21           They had consented to that ahead of time.  They had  
22 also consented to the fact that we would be given information  
23 on as-needed basis.  And that would that essentially we weren't  
24 entitled to any particular information.

25           Based on that, myself and the other --

1           THE COURT: Well, what does informed consent for  
2 something like that mean to you? How should I read those words  
3 in the complaint?

4           MS. ROBERTS: Well, I think every single member that  
5 was brought was informed in terms of before they ever joined  
6 before they ever gave there first piece -- well, before they  
7 ever decided to join DOS and gave collateral to join DOS,  
8 including myself by the way, we were informed that we were  
9 going to receive a brand. So there was informed consent in  
10 that process.

11          THE COURT: Can I just ask the Plaintiffs whoever is  
12 taking the lead on this count, you know, how should I read  
13 that?

14          MS. MANOHAR: So in terms of informed consent, so  
15 with respect to the battery, the individuals who were branded  
16 did not know ahead of time that they were going to be branded  
17 before they were first invited to DOS.

18                They had no idea that the brand would be comprised of  
19 Raniere's initials. And at that point, they were already  
20 collateralized. So they didn't feel that they had the  
21 opportunity.

22                In terms of informed consent, they didn't know that  
23 they would have anesthesia.

24          THE COURT: Okay.

25          MS. MANOHAR: None of them were disclosed the fact



1 that this would be part of the process. When they were first  
2 invited to DOS, they were only told that they -- in order to  
3 learn more about DOS, that they provide collateral. Any  
4 information that was provided to any of the women in DOS was  
5 subsequent to them turning over the first form of collateral.

6 THE COURT: Okay. And is it self-evident under New  
7 York law or clearly established I guess under New York law that  
8 informed, you know, subjecting somebody to a procedure like  
9 that this without informed consent constitutes battery as a  
10 matter of common law?

11 MS. MANOHAR: So the cases that we've cited talk  
12 about the intentional wrongful physical contact without consent  
13 or that the consent is -- it's, sorry, or that the intended  
14 contact was itself offensive or without consent if they didn't  
15 have consent as to what the brand was or that it was part of  
16 Ranieri's initials.

17 That cannot be informed consent. Informed consent by  
18 definition means it would have to have the information, which  
19 they did not.

20 MS. ROBERT: Can I address that, Your Honor?

21 THE COURT: Let me just ask one follow up question of  
22 Plaintiff's counsel. Is it -- do you -- does the complaint  
23 allege that the nature of this brand was misrepresenting or  
24 just that it was not -- it doesn't allege that it was -- it  
25 represented the five elements?

1 MS. MANOHAR: Yes, we do allege that it was  
2 misrepresented and it's also a question of the scope of the  
3 alleged consent.

4 So they might have consented to receiving a brand,  
5 but if they did not know what the brand was, that cannot be  
6 informed consent.

7 THE COURT: Okay, does the -- remind me, does the  
8 complaint allege that it was Dr. Roberts herself who made the  
9 misrepresentations about what this brand actually consisted of?

10 MS. MANOHAR: I believe so, but I can check the  
11 paragraph.

12 THE COURT: I'm just trying to understand what is  
13 alleged more generally and what's alleged as to Dr. Roberts  
14 herself.

15 Yeah, it just says in paragraph 102 that Ms.  
16 Edmondson was told, again passive voice, that this brand was a  
17 symbol of the five elements, but in fact, it was Mr. Ranieri's  
18 initials.

19 Does it matter for the battery claim what Mr. -- that  
20 Dr. Roberts is telling people that she shows that people are  
21 being told by others?

22 MS. MANOHAR: I think it does matter, but I think it  
23 also matters that they were collateralized at that point and  
24 therefore could not give informed consent.

25 THE COURT: Do you allege specifically that Dr.

1 Roberts knew about the collateralization process?

2 MS. MANOHAR: Dr. Roberts was herself in DOS and  
3 verified, went through the same process, and was aware that  
4 collateral was required before individuals could be provided  
5 with any more information about DOS.

6 THE COURT: Okay. Is that alleged? We've heard it  
7 from both sides now, but I'm just not sure I remember reading  
8 in the complaint that Dr. Roberts was herself an inductee.

9 MS. MANOHAR: At paragraph 68, we have Roberts  
10 continues to support Raniere and publicly promote DOS.

11 THE COURT: But does that -- that's not exactly what  
12 I was asking, right? And that speaks to current time, not  
13 pre-branding.

14 Right, she must know that the victims are not really  
15 consenting or not validly consenting. And it could be that she  
16 knows that because she knows that they're essentially the  
17 subject of the extortion scheme essentially through the  
18 collateral, but I just -- I can't remember again where in the  
19 complaint you see that.

20 MS. MANOHAR: I can't point to paragraph at this  
21 point.

22 THE COURT: Okay. Well, think about whether that is  
23 something that needed to point me to later or perhaps make the  
24 subject of an amendment if we were to go that route.

25 Okay, Dr. Roberts, back to you. I'm sorry.

1 MS. ROBERTS: Sure. I mean, I think it would be also  
2 important to clarify that, yes, I was brought in in the same  
3 way that these women were. So the women that are alleging that  
4 I deceived them or withheld information --

5 THE COURT: So just to remind you, we're stuck with  
6 the four corners of the complaint here.

7 MS. ROBERTS: Yes.

8 THE COURT: And all we're testing is what it says in  
9 here. You want to probably address your arguments to that as  
10 well.

11 MS. ROBERTS: Uh-huh. I guess what I need to know is  
12 they're alleging that I knew some sort of information that  
13 these other women didn't know and that I somehow didn't inform  
14 them of that information.

15 THE COURT: No, the allegation, as I understand it,  
16 is well, maybe alleged as to you specifically in the complaint  
17 right now it may not be, but assume that we were dealing with  
18 an allegation that you knew when one or more of these that  
19 would have been submitted to this process that they lacked the  
20 freedom to say no.

21 And instead, that they were submitting because they  
22 had given up this compromising material and feared that if they  
23 didn't comply, it would be released.

24 And that you know as a doctor and just as a citizen  
25 that whatever consent they're giving under those circumstances

1 is not really consent.

2 MS. ROBERTS: Well, my experience in terms of that  
3 was the exact opposite. I was brought in. I was introduced  
4 and invited into an organization the same way that that were.

5 So I clearly knew I had a choice to say no. I  
6 clearly knew that my collateral wasn't going to -- I wasn't  
7 going to be forced.

8 THE COURT: Again, we're outside the four corners of  
9 the complaint. I understand what you're saying.

10 MS. ROBERTS: To the relevance, I mean.

11 THE COURT: Yeah, the question is what does the  
12 complaint say about who knew what when and who had what free  
13 choices to make when? And you know, we'll test it by that  
14 standard.

15 All right, Dr. Porter, let me give you 10 minutes  
16 here as well.

17 MR. PORTER: Okay, so I guess the way I would start  
18 is with the first complaints that directly mention me.

19 THE COURT: Tell me if you're in which count you're  
20 talking about or which cause of action?

21 MR. PORTER: Right, so there's -- it's number 8 like  
22 the negligence and the human research.

23 THE COURT: Yes.

24 MR. PORTER: And then, also 10 with gross negligence  
25 and recklessness. Now this is probably something more about

1 the future in that like there's no dates given in these.

2 So in my response, these actions most likely are  
3 outside of the -- I forget the word right now, statute of  
4 limitations.

5 And I don't know, but I was included in all of these  
6 RICO charges, including sex trafficking.

7 THE COURT: Can I just -- I apologize when I keep  
8 interrupting the Defendant --

9 MR. PORTER: Right.

10 THE COURT: -- so I invite to speak first to hear  
11 from Plaintiffs.

12 MR. PORTER: No, that's okay.

13 THE COURT: But I think I can sharpen up --

14 MR. PORTER: Yeah.

15 THE COURT: -- one of my questions by speaking to  
16 them for a minute and then giving you a chance to respond.

17 Negligence per se, one of the elements as Plaintiff's  
18 counsel knows is that the --

19 MS. MANOHAR: Your Honor, sorry, if I can interject.  
20 I don't think that we've we dismissed that claim. The only  
21 claims were Defendant Porter specifically mentioned is a gross  
22 negligence and recklessness claim.

23 THE COURT: Okay, so not -- sorry not Count 8?

24 MS. MANOHAR: Correct.

25 THE COURT: Gross negligence is count -- claim 10.

1 Also a three-year statute of limitations. Okay, so essentially  
2 a medical malpractice claim, right?

3 And the allegations as to Defendant Porter are that  
4 he conducted experiments on people within the NXIVM community  
5 without voluntary, informed consent or professional oversight.

6 Can you get into more specifics about why informed  
7 consent was lacking?

8 MS. MANOHAR: So I think the focus for the negligence  
9 and recklessness claims is that he breached his duty of care to  
10 them as a medical doctor holding himself out as providing a  
11 cure for OCD and Turret Syndrome.

12 THE COURT: Which -- so I'm looking at paragraph 67.  
13 Is there something else I should be looking at? Because that  
14 doesn't say. Just says he conducted these experiments without  
15 voluntary informed concept or professional oversight, which is  
16 fairly conclusory.

17 MS. MANOHAR: So with respect to Porter specific  
18 conduct, I can point to paragraph 711.

19 THE COURT: Okay, yeah, yeah.

20 MS. MANOHAR: Subparagraph E through D, as well as  
21 the specific date of allegations.

22 THE COURT: So tell me how though -- this is  
23 basically saying -- well, tell me how these paragraphs equate  
24 to a lack of informed consent?

25 Is it your position that there just could be no

1 informed consent because this was just essentially junk science  
2 or was there something, you know, more specific lacking in the  
3 consent people may or may not have given to participate?

4 MS. MANOHAR: So the participants were not aware that  
5 they would be treated using untested, unauthorized, and  
6 inherently risky psychotherapy and unscientific so-called  
7 studies for the treatments of OCD and Turret Syndrome.

8 So in terms of legally informed consent, I think that  
9 they were not aware of what the treatment of consist of. But  
10 moreover, going back to the fact that this --

11 THE COURT: But why so I understand that different,  
12 you know, the medical board has established that a doctor  
13 should not be doing this in New York state, but we're dealing  
14 with a common law negligence claim here.

15 Does -- so usually when the negligence emerges from  
16 the omission to speak, it's because somebody has a duty to say  
17 the thing that they're not saying maybe.

18 MS. MANOHAR: Sorry, to clarify the negligence is not  
19 in the omission to speak, but the negligence is in his breach  
20 of duty to approach their care in the way that a reasonably  
21 prudent and careful medical professional would have provided  
22 under similar circumstances.

23 THE COURT: Okay, so it's not to say I thought for a  
24 minute you were saying he should have obtained informed consent  
25 by telling people explicitly, by the way, one of our none of



1 what we're about to do here has been the subject of the  
2 peer-reviewed research published in medical journals.

3 It's not that. It's he just should not have been  
4 doing, what is it?

5 MS. MANOHAR: He should not have been doing that, but  
6 in addition to the fact that he shouldn't have been treating  
7 them using these risky psychotherapy methods. He should have  
8 being informed consent, which he did not do.

9 THE COURT: Okay. And the elements of a negligence  
10 claim are duty, breach, causation, and damages. And as to Jane  
11 Doe 19, we learned that the experiment still haunts her today.

12 I think there are a -- is Jane Doe 19 the only  
13 Plaintiff pursuing this claim?

14 MS. MANOHAR: There are a few other participants.  
15 Using their names, Plaintiffs are Margot, Isabella, and  
16 Caryssa. I believe their Jane Doe numbers are 19, 20, and 21.

17 THE COURT: Okay, and is there harm or damages  
18 alleged as to them?

19 MS. MANOHAR: As for Jane Doe 20, I point you to  
20 paragraph 246 and 247.

21 THE COURT: 246. Hold on, one second. Okay, so 245,  
22 she gets treatment from Defendant Porter.

23 MS. MANOHAR: Correct.

24 THE COURT: And 246, we learn that she's in serious  
25 psychiatric crisis. Is it implicit there, obvious that the

1 psychiatric crisis is a function of then Dr. Porter's  
2 treatment?

3 MS. MANOHAR: Yes.

4 MR. PORTER: That wasn't -- I mean, unless it says  
5 that Nancy Salzman was doing this.

6 THE COURT: Well, paragraph 245 says that if Ranieri  
7 approved, the treatment would be administered by Nancy Salzman  
8 and Porter. That's in the first sentence of 245.

9 MR. PORTER: Okay.

10 MS. MANOHAR: And the second sentence reads Ranieri  
11 subsequently approved this treatment after which Jane Doe 20  
12 was subject the night before along EMS and (indiscernible)  
13 questioning by Porter.

14 THE COURT: Uh-huh.

15 MS. MANOHAR: Who had also instructed her to seek  
16 pain medications prescribed by a previous doctor.

17 THE COURT: Okay. You don't think, assuming we might  
18 be amending the complaint, anyway you don't think it would  
19 behoove you to say anything more about causation?

20 Like paragraph 246 begins with the word eventually.  
21 It could begin with a phrase like as a result of these  
22 experiments.

23 Again, you can tell me that you think it is all the  
24 negligence cause of action requires, but I just put the  
25 question to you.

1 MS. MANOHAR: If given the opportunity to amend, we  
2 could (indiscernible) mine is more specific.

3 THE COURT: Okay. All right, Dr. Porter, do you want  
4 to -- do you want to go last word?

5 MR. PORTER: I guess my last word has to do with the  
6 RICO charges against me. The -- where it was --

7 THE COURT: The negligence is not a predicate act  
8 for --

9 MR. PORTER: No, no, no, I'm talking about the group  
10 pleading that I was included in.

11 THE COURT: That's what I'm -- I think we're saying  
12 the same thing --

13 MR. PORTER: Okay. Right.

14 THE COURT: -- in different ways.

15 MR. PORTER: Right. Yeah, so there's no predicate  
16 acts against me that are where my name is associated with doing  
17 anything directly with anyone.

18 THE COURT: Can I just ask again sort of turning back  
19 to Defense counsel I'm sorry, or Plaintiff's counsel, I'm  
20 sorry, what are the predicate acts you claim as against  
21 Defendant Porter?

22 MS. DEAN: We're not claiming any predicate acts  
23 against Mr. Porter.

24 THE COURT: So you -- but didn't you dismiss the RICO  
25 claim against him or are you asking to do that now?

1 MR. HOESE: Your Honor, excuse me. We allege that  
2 Mr. Porter was part of the RICO enterprise and conspired to  
3 violate RICO in which case he'd be liable for the predicate  
4 injuries from any of the predicate acts and from the operation  
5 enterprise that other Defendants, co-conspirators conducted.

6 THE COURT: Okay, but then, if you're alleging that  
7 so you're saying -- remind me where Count 1 is?

8 MR. GOELMAN: Paragraph 59, Your Honor.

9 THE COURT: Yeah. So at least in the First Amended  
10 Complaint Count 1 is alleged as against all individual  
11 Defendants on behalf of all Plaintiffs. Does that change in  
12 the second amended complaint?

13 MR. HOESE: No, Your Honor.

14 THE COURT: Okay. So are you asking them to dismiss  
15 the -- Count 1 as to Defendant Porter?

16 MR. HOESE: I apologize, Your Honor. Count 1 is on  
17 which page again?

18 THE COURT: Page 175 of the First Amended Complaint.

19 MR. HOESE: Thank you. Since you asked the question  
20 directly, I would say if there were an amended complaint, it's  
21 very possible that this count would not be alleged against Dr.  
22 Porter.

23 THE COURT: But you are ready to proceed right now,  
24 right?

25 MR. HOESE: If there are no predicate acts alleged

1 against Dr. Porter, my understanding of RICO is that he could  
2 not have violated 18 USC Section 1962(c) or 1964(c).

3 THE COURT: Okay, so on that basis, you have no  
4 objection to me now dismissing Count 1 as against Mr. Porter,  
5 correct or incorrect?

6 MR. HOESE: I will concede the dismissal of Count 1  
7 as against Dr. Porter.

8 THE COURT: Okay. And okay, but not the RICO  
9 conspiracy claim in Count 2?

10 MR. HOESE: No, not at this time, Your Honor.

11 THE COURT: Okay. All right. I think we will --

12 MR. HOESE: Your Honor --

13 THE COURT: Leave the substantive. I'm sorry.

14 MS. ROBERTS: I'm sorry, excuse me.

15 THE COURT: Yeah.

16 MS. ROBERTS: I think it wasn't clear about my  
17 question either, which my first -- the first comment I made to  
18 you was what are the predicate acts that they're --

19 THE COURT: Thank you, yes. Defense or Plaintiff's  
20 counsel, does that -- what are we doing with respect to Count 1  
21 as against Defendant Roberts?

22 MS. DEAN: Your Honor, we're looking at predicate act  
23 to her under §3951 of the TPRA sex trafficking.

24 THE COURT: To -- as to the alleged two predicate  
25 acts or no?

1 MR. HOESE: Yes, Your Honor (indiscernible) two  
2 predicate acts.

3 THE CLERK: I can't hear you, counsel.

4 THE COURT: You're off the microphone.

5 MR. HOESE: Yes, Your Honor, in order as we just  
6 discussed to violate 1962(c) would be you'd have to have  
7 committed two predicate acts.

8 THE COURT: So do you oppose I guess my question is  
9 the motion to dismiss Count 1 as against Defendant Roberts?

10 MR. HOESE: Well, I would have to confer with my --

11 THE COURT: Yeah, take a moment.

12 MR. HOESE: -- co-counsel, but --

13 THE COURT: Take a moment and then, I think we're  
14 done with the substantive legal arguments here today, but I  
15 just want to make sure we all understand the path forward in  
16 terms of who's going to submit what when.

17 And so, happy to hear from maybe Defense counsel on  
18 that subject first since Plaintiff's counsel is gathering their  
19 thoughts on Count 1.

20 MR. MARTIN: So Craig Martin. I'll go first with  
21 regard to Clare Bronfman. The -- this goes to your order of  
22 operation --

23 THE COURT: If you have to name who your client is,  
24 you don't have the excuse that people have moved from chair to  
25 chair. So you need to a better excuse than that.

1 MR. MARTIN: I will come up with one. I think this  
2 question goes to your order of operations question, Your Honor.

3 THE COURT: Yeah.

4 MR. MARTIN: And I will give you our perspective on  
5 it.

6 THE COURT: Please.

7 MR. MARTIN: The briefs first of all, I think as Your  
8 Honor knows, there is a second amended complaint at docket  
9 entry 159.

10 THE COURT: I do. I think of that as more  
11 housekeeping and clean up than a substantive amendment, but  
12 yes.

13 MR. MARTIN: Right, just so that we got it clear in  
14 the record, but there is one. In terms of the preparing the  
15 briefing in this case and preparing for argument in this case  
16 is extraordinarily complicated, given the pleading that exists.

17 In terms of you'll notice that both Bronfman  
18 Defendants and maybe everybody else started with Rule 8.

19 THE COURT: No, I remember. Believe me.

20 MR. MARTIN: Yes, and the reason --

21 THE COURT: And yeah.

22 MR. MARTIN: And the reason I -- look, this complaint  
23 is a mess under any reasonable definition in any court in the  
24 country.

25 Our job quite honestly just to put this in context

1 our job and respectfully Your Honor's job is not to sit here  
2 for three and a half hours and try to parse out what claims  
3 Plaintiffs made against which Defendants.

4 THE COURT: Right.

5 MR. MARTIN: It should be dismissed under Rule 8.

6 THE COURT: So even if, let just to be clear in case  
7 I wasn't before, even if the Plaintiffs come back and say, yes,  
8 judge, before you render a decision on any of these motions, we  
9 would like leave to amend the complaint, I would give you of  
10 course the opportunity to oppose such leave in writing.

11 And if it's appropriate that leave be denied  
12 notwithstanding the 2nd Circuit's Loreley case and other  
13 binding law, then you know, we'll proceed to decide the motions  
14 as they have been rendered against the second amended  
15 complaint.

16 But the order of operations question for me now  
17 simply is should we take up that dispute about leave to amend  
18 before I go through the process of what you're describing as  
19 the painful process of sorting through every one of these  
20 motions as against every one of these counts against every  
21 Defendant, et cetera. What's your view on that question?

22 MR. MARTIN: To be clear, my view is that you should  
23 dismiss the complaint under Rule 8. It is an impermissible  
24 pleading. It --

25 UNIDENTIFIED SPEAKER: Your Honor, it's an exquisite



1 --

2 THE COURT: But -- can I just understand --

3 MR. WAREHAM: -- manifestation of failure to  
4 understand the essence of Rule 8.

5 THE COURT: Hold on a second. Counsel, understand.

6 MR. WAREHAM: I understand he has his ruling.  
7 There's case law on this. That's what this is.

8 THE COURT: Hold on a second. I should dismiss the  
9 complaint under Rule 8 without prejudice?

10 MR. MARTIN: You should dismiss the complaint under  
11 Rule 8. If you want to entertain a motion for them to file an  
12 amended complaint thereafter, let them file their motion, give  
13 us the entire complaint.

14 It's hard for me to envision another 70 Plaintiff,  
15 14, 15 count complaint against about 20 Defendants given what  
16 I've given what we've seen here. And in terms of --

17 THE COURT: You're saying I should give them I should  
18 dismiss the complaint under Rule 8 and not say whether the  
19 dismissal's with or without prejudice?

20 MR. MARTIN: Right. And --

21 THE COURT: And instead instruct the Plaintiffs to  
22 seek leave not to amend at that point because there's no  
23 complaint pending, but just submit another complaint?

24 MR. MARTIN: Yes, and then if you grant them leave  
25 under Rule 15, with the full complaint, and they can give us a

1 redline, too.

2 THE COURT: And why is that -- what is the -- for  
3 (indiscernible) the same debate over amendment. What does the  
4 interim dismissal under Rule 8 get you? I don't understand --

5 MR. MARTIN: Well.

6 THE COURT: -- the pragmatic difference. Either way,  
7 if we're fighting (indiscernible) they should be allowed submit  
8 a new complaint.

9 MR. MARTIN: Well, I -- look, Your Honor, I've listen  
10 to the Court. What I think is the right result is to dismiss  
11 the complaint with prejudice, period.

12 Three-year old complaint, they've pled, they've  
13 amended, we've briefed.

14 THE COURT: Is that the rule in the 2nd Circuit by  
15 the way that -- I mean, I think if you say this rule flows from  
16 Rule 8.

17 So it's the rule everywhere but has the 2nd Circuit  
18 said things like we've repeatedly held that a district court  
19 retains authority to dismiss a shotgun pleading on that basis  
20 alone, i.e. on the basis that it's shotgun pleading?

21 MR. MARTIN: Mr. Wareham is all geared up to tell you  
22 about that.

23 MR. WAREHAM: Well, certainly.

24 THE COURT: What's the best 2nd Circuit case?

25 MR. WAREHAM: 2nd Circuit case, I get the

1 pronunciation wrong, that deals with the biggest problem here,  
2 which is group pleading. Okay, is Atatune (phonetic) cited in  
3 our briefs.

4 THE COURT: Yeah.

5 MR. WAREHAM: And group pleading's not allowed in --

6 THE COURT: What's the best 2nd Circuit case on  
7 shotgun pleading?

8 MR. WAREHAM: I'm not sure I understand the  
9 difference between shotgun pleading and --

10 THE COURT: Shotgun pleading to me is you're not  
11 saying which factual allegations suffice to allege which causes  
12 of action, right?

13 You're just throwing a whole bunch of spaghetti at  
14 the wall, over hundreds of paragraphs, and then saying we  
15 restate and incorporate by reference everything that you said  
16 so far in every count that follows leaving it to me to go dig  
17 through two other pages to figure out, okay, what the RICO  
18 allegations against Defendant X or Defendant Y.

19 If you can find the 2nd Circuit case, the 11th  
20 Circuit case I just read, I'd be interested to hear the name.

21 I am inclined to dismiss the complaint under Rule 8  
22 at this point. I don't think it's going to make much of a  
23 practical difference in terms of how you go forward.

24 We're either going to -- it seems to be unfair to  
25 dismiss the complaint on a procedural basis basically that it

1 doesn't comply with Rule 8 and not give another chance to the  
2 Defendants to fix that problem.

3 But I want to be explicit if I haven't been already  
4 that one basis for dismissing the complaint of course is the  
5 Rule 8 shotgun pleading issue.

6 And you know if the new complaint doesn't really  
7 solve that issue, then that might be a basis for denying leave  
8 to amend that's futile because we're going to dismiss the new  
9 complaint under Rule 8 the same way we would have the second  
10 amended complaint.

11 I think what we're learning is it really is  
12 incumbent -- it has to be incumbent on the Defendants -- I'm  
13 sorry the Plaintiffs at this point to tell me exactly what the  
14 amended complaint would say, which means to actually submit a  
15 draft of the proposed amended complaint.

16 MR. WAREHAM: And Your Honor, with respect to Sara  
17 Bronfman, who departed the United States 12 years ago, the  
18 complaint is so bad to us, that I would encourage the  
19 Plaintiffs to when they get their rule book out and study Rule  
20 8, is to go three more down and take a look at Rule 11, because  
21 I don't see any possible way --

22 THE COURT: Okay.

23 MR. WAREHAM: -- given that the length of time and  
24 their knowledge of the multiple pleadings and the arguments and  
25 the unbelievable work that this Court has done. I mean, I'm

1 just amazed at how much you've studied and gone through and  
2 parsed and thought this through.

3 THE COURT: Thank you.

4 MR. WAREHAM: And here we are nowhere. And it isn't  
5 because of you. So I would let them look to Rule 11, take a  
6 sneak peek at that before we come back and waste the time and  
7 money that they're wasting here.

8 THE COURT: Okay, Mr. Goelman, do you want to be  
9 heard on what I just suggested about actually needing to see a  
10 draft of the amended complaint?

11 MR. GOELMAN: We'll prepare one.

12 THE COURT: Okay. What's a reasonable time frame for  
13 that?

14 MR: 60 days.

15 THE COURT: Granted. I don't think you need to write  
16 anything then until you see the amended complaint. The -- you  
17 know, bite sized issue of laws that we're talking about having  
18 supplemental pleading on was based on the assumption that we  
19 were going to decide the motion as to the existing complaint.

20 You'll bear that in mind if it turns out that any of  
21 that is relevant to whether leave to amend would be futile here  
22 or not.

23 Anyone else -- outside from the 60 days right now,  
24 well, let me set a second deadline.

25 So 60 days from now we'll get proposed amended

1 complaint and argument from, you know, a short brief. So let's  
2 say 15 pages or less from the Plaintiffs on why we leave to  
3 amend should be granted.

4 And then, 30 days from then in response also 15 pages  
5 or less. And speak up now if the 15 pages or speak up later if  
6 15 pages is not enough, but I'm going to try to keep this short  
7 given we already know a lot about what's going on here today.

8 So 30 days after their 60-day deadline, a response  
9 from the Defendants on whether leave to amend should be denied  
10 and why. Also, 15 single-spaced pages.

11 10 days after that, a reply brief 10 pages or less on  
12 leave. And if I grant leave, I'm not -- I don't think you all  
13 need to go back to square one in terms of moving to dismiss.  
14 You may just want to submit a short supplement to what you've  
15 said already explaining why, you know, the changes don't change  
16 the outcome.

17 But I will set that motion, you know, deadline for a  
18 motion or an answer when I decide the question about leave to  
19 amend.

20 MR. GOELMAN: I know the last thing the Court wants  
21 is more pages from us, but if we submit a 15-page motion for  
22 leave and then, each of the 5 Defendants submits a 15-page  
23 opposition, then I think we would need more than 10 pages to  
24 respond to their 75.

25 THE COURT: I was -- yeah, should be thinking more in

1 terms multiplication here. I think we can do 75 pages from the  
2 Defendants in opposing leave to amend. Can you all divide and  
3 conquer maybe in 10 pages each? Of course.

4 All right, let's -- let me say 15 pages for the  
5 opposition to leave to amend unless you decide the -- you're  
6 not opposing for some reason.

7 And then, fully 20 pages in response in reply from  
8 the Plaintiffs. I doubt everybody's going to need all that. I  
9 think you're going to see a lot of the same arguments from  
10 multiple Defendants and you don't have to reply them multiple  
11 times.

12 Thank you all. It's taken me a great deal of time to  
13 get my head around this complaint and all the various  
14 complicated legal issues we discussed here today.

15 I do just want to say to the Defendant especially  
16 since we have some non-lawyer Defendants here and non  
17 represented Defendants, don't read too much into my questioning  
18 here about what may happen on the merits at the end of the day.  
19 I'm putting the Plaintiffs through their paces as you can  
20 pretty firmly on the notion of whether they've met every  
21 element on every claim they've alleged as against every  
22 Defendant.

23 The fact that I'm, you know, lobbing question after  
24 question their way, that doesn't mean anything about which way  
25 this case is likely to come out.

1           In the end, it just means I'm -- it's my obligation  
2   to test at this stage the legal sufficiency of the allegations  
3   in the complaint.

4           I want to do that assertively so that we get the  
5   right answer, but it's hard to get claims dismissed at the  
6   motion to dismiss stage before any evidence is adduced in  
7   discovery. And so, I'll just -- I'll live you all with that  
8   caveat.

9           Anything else from the Plaintiff's side before we  
10  adjourn?

11          MR. GOELMAN: No, Your Honor. Thank you.

12          MS. ROBERTS: (Indiscernible.)

13          THE CLERK: I can't hear you.

14          THE COURT: Oh, yes, I was going to come back, thank  
15  you for yes repeatedly reminding on this. Where do we stand  
16  with respect to Count 1 as against Ms. Roberts?

17          MR. GOELMAN: You can also dismiss that, Your Honor.

18          THE COURT: Okay. All right, so we've made some  
19  concrete head way here today at least in respect of two claims.

20          MS. ROBERTS: Your Honor, the only other question in  
21  terms of specifying would be I would need - in terms of  
22  informed consent, I would need to know why I'm responsible for  
23  needing informed consent and what that would include. Like  
24  what was I was responsible in informing them of in this  
25  situation?



1 THE COURT: Well, you'll see new or amended  
2 allegations they come back with --

3 MS. ROBERTS: Right.

4 THE COURT: If any and if you don't think adequate to  
5 inform you of what you're accused of, you'll tell me why.

6 MR. PORTER: And so, does this mean that the other  
7 RICO things like the sex trafficking and forced labor and  
8 things like that were included in the group pleading, like  
9 those are out also for me or is it different?

10 THE COURT: I'm not 100 percent sure I understand  
11 your question, so I'll just answer it with what I think will  
12 get you to where you're heading. So if you look at, you know,  
13 the complaint --

14 MR. PORTER: Right.

15 THE COURT: -- sets out a bunch of factual  
16 allegations and then at the end, it set forth what we call  
17 cause of action.

18 MR. PORTER: Right.

19 THE COURT: -- right and they're numbered. And the  
20 first cause of action in Count 1 is a civil RICO violation.  
21 And the complaint said that that Count 1 civil RICO violation  
22 was being alleged as against all the individual Defendants.

23 MR. PORTER: Right.

24 THE COURT: That's no longer true now that we've had  
25 a motion from the Plaintiffs granted by me to dismiss you and

1 Dr. Roberts from Count 1.

2 MR. PORTER: Okay.

3 THE COURT: Maybe you're asking me, okay, now when we  
4 go back to the factual allegations before we get to the cause  
5 of action at the end should I read the word Defendants to  
6 include me, when it's talking about --

7 MR. PORTER: Right. The reason I ask is because when  
8 I apply for a medical license in a state, it's a requirement  
9 that I share this court case with them.

10 And when they read it, they see that I'm charged with  
11 sex trafficking, forced labor, human trafficking.

12 THE COURT: Yeah.

13 MR. PORTER: It's absolutely impossible for me to --

14 THE COURT: So we've heard a lot about group pleading  
15 and why it's a problem because it's all -- which defendant,  
16 what they did specifically.

17 And when we look at the proposed amended complaint,  
18 maybe you'll see that instead of just saying the defendants did  
19 X, it's more specific as to which defendants did which of X, Y,  
20 and Z. If not, you know, take a look at the rules of civil  
21 procedure. There are legal devices pursuant to which  
22 defendant can move to strike material in the complaint. That's  
23 a pretty hard standard to satisfy, but you'll, you know, you'll  
24 make whatever arguments you feel are appropriate.

25 Any other defendant with any questions or comments at

1     this point?

2                 MR. MARTIN:   Goodnight, Your Honor.

3                 THE COURT:   Thank you all.   This has been elucidating  
4     for me.   And I appreciate the high quality of the argument all  
5     around.

6                 MR. GOELMAN:   Thank you, Your Honor.

7                 (Proceedings concluded at 5:53 p.m.)

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**CERTIFICATE**

I, Chris Hwang, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

21

February 2, 2023

Chris Hwang

Date

Court Reporter