



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

MKM:TH/MKP
F. #2017R01840

*271 Cadman Plaza East
Brooklyn, New York 11201*

October 19, 2018

By ECF

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

Re: United States v. Keith Raniere, et al.
Criminal Docket No. 18-204 (NGG) (S-1)

Dear Judge Garaufis:

The government respectfully submits this letter to request that the enclosed stipulation and order concerning the production of forensic copies of certain electronic devices be so-ordered by the Court.¹ The proposed stipulation and order has been signed by counsel for defendant Nancy Salzman.

Pursuant to the proposed stipulation and order, the government and counsel for defendant Nancy Salzman also respectfully move for an order pursuant to Federal Rule of Evidence 502(d) ("Rule 502(d)"), permitting the government firewall team (the "Firewall Team") to disclose potentially privileged material to the defendants, without that disclosure resulting in a waiver of any attorney-client privilege or work product protection.

Rule 502(d) provides, in relevant part, that "[a] federal court may order that the [attorney-client] privilege or [work-product] protection is not waived by disclosure connected with the litigation pending before the court – in which event the disclosure is also not a waiver in any other federal or state proceeding." Fed. R. Evid. 502(d). The proposed order provides that the government will produce potentially privileged documents without any party or non-party waiving any attorney-client privilege, work product protections or other privilege. Courts in this District and others have entered similar orders. See, e.g.,

¹ The production of forensic copies of these devices is the subject of a motion pending before this Court, see ECF Docket Entry No. 158.

United States v. Mark Nordlicht, et al., No. 16 CR 640 (BMC), (Dkt. No. 243) (E.D.N.Y. 2017); In re American Express Anti-Steering Rules Antitrust Litig., No. 13 CV 7355 (NGG), 2015 WL 4645240, at *7 (E.D.N.Y. Aug 4, 2015); U.S. Bank Nat'l Ass'n v. PHL Variable Co., 12 CV 6811 (CM), 2012 WL 5395249, at *4 (S.D.N.Y. Nov. 5, 2012); United States v. Usplabs, LLC, et al., 15 CR 496 (SAL) (Dkt. No. 131) (N.D. Tex. Aug. 4, 2016).

The proposed order also provides procedures for the parties to resolve, or, if necessary, present to the Court, disputes regarding individual documents, and provides for ongoing review by the Firewall Team, which will identify to the defense potentially privileged materials that it seeks to make available to the government's trial team.

Based on the foregoing, the government and counsel for defendant Nancy Salzman jointly request that the Court enter the proposed order.

Respectfully submitted,

RICHARD P. DONOGHUE
United States Attorney

By: /s/
Moir Kim Penza
Tanya Hajjar
Shannon C. Jones (Firewall Team)
Assistant U.S. Attorneys
(718) 254-7000

cc: Clerk of Court (NGG) (by ECF)
Counsel of Record (by ECF)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

STIPULATION & ORDER

18-CR-204 (NGG) (S-1)

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

Defendants.

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WHEREAS, the government seeks to produce to all defendants in this litigation (the “Defendants”) forensic copies of certain electronic devices obtained by the government pursuant to a court-authorized search of the residence of the defendant Nancy Salzman (the “Oregon Trail Devices”), some of which may contain personally sensitive information and which may contain information protected by the attorney-client privilege or work-product doctrine (the “Potentially Privileged Materials”), and

WHEREAS, Rule 502 of the Federal Rules of Evidence provides, in pertinent part, that:

The following provisions apply . . . to disclosure of a communication or information covered by the attorney-client privilege or work-product protection. . . . (d) A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation

pending before the court—in which event the disclosure is also not a waiver in any other federal or state proceeding.

IT IS HEREBY STIPULATED AND AGREED by the undersigned attorneys and ORDERED by the Court that:

1. The government will provide the forensic copies of the Oregon Trail Devices to counsel for the Defendants. Disclosure of the forensic copies of the Oregon Trail Devices will be governed by the provisions of the Stipulation and Order signed by the parties and entered by the Court on August 1, 2018.

2. By agreeing to the terms of this Stipulation and Order, the defendant Nancy Salzman does not waive, and expressly reserves, any and all rights to challenge the government's search and seizure of the Oregon Trail Devices. The government agrees not to argue that Nancy Salzman, by agreeing to the terms of this Stipulation and Order, has waived those rights. The government has identified, and will continue to identify, material on the Oregon Trail Devices that is responsive to the search warrants authorizing the seizure of the Oregon Trail Devices and will produce the material, so identified, to counsel for the Defendants.

3. Pursuant to Federal Rule of Evidence 502(d), the Court orders that the production of the Oregon Trail Forensic Copies, including the Potentially Privileged Materials, to the Defendants does not waive Nancy Salzman's rights under the attorney-client privilege, work product doctrine, or any other applicable privilege, nor is the production a waiver of any such privilege or protection in any other federal or state proceeding.

4. By agreeing to the terms of this Stipulation and Order, and by producing the Potentially Privileged Materials pursuant thereto, the government does not concede that any of the Potentially Privileged Materials is subject to any privilege.

5. The Firewall Assistant United States Attorney and their staff (the “Firewall Team”) will identify to counsel for Nancy Salzman, on a rolling basis, Potentially Privileged Materials that the Firewall Team intends to provide to the Assistant United States Attorneys assigned to the trial in this case (the “Trial Team”), and defense counsel for Nancy Salzman may advise the Firewall Team and the other defendants (the “Parties”) of any objections.

6. In addition, defense counsel for Nancy Salzman may advise the Parties of any documents that counsel believes are subject to any privilege (collectively with the other objected-to Potentially Privileged Materials, the “Challenged Documents”).

7. The Parties will meet and confer as to the Challenged Documents, if any, and if they do not reach agreement, may request a ruling from the Court. The Firewall Team will not provide Challenged Documents to the Trial Team until an agreement is reached or an order is entered.

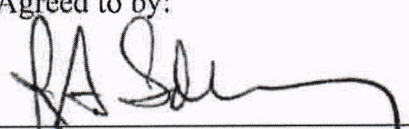
Dated: Brooklyn, New York
October 19, 2018

RICHARD P. DONOGHUE
United States Attorney
Eastern District of New York

By:


Moira Kim Penza
Tanya Hajjar
Shannon C. Jones (Firewall Team)
Assistant U.S. Attorneys

Agreed to by:


David Stern, Esq.
Robert Soloway, Esq.
Attorneys for Nancy Salzman

Submitted to the Court
this 19th day of October, 2018.

SO ORDERED.

THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK