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Honorable Karen M. Williams
United States District Judge
Mitchell H. Cohen Federal Courthouse
One John F. Gerry Plaza, Fourth & Cooper Streets
Camden, New Jersey 08101

Re: United States v. Eric Rivera, et al., Crim. No. 24-267 (KMW)

Dear Judge Williams:

The Government respectfully submits this letter to address the Court's question of whether the severance motions filed by defendants Adrienne Ponzo and James Wessels have been mooted by Ponzo's guilty plea. While Ponzo's motion has been mooted, Wessels' motion has not been mooted and still needs to be decided. Below, the Government explains why it does not believe Wessels' severance motion has been mooted. Further, while the Government does not believe that severance is required here, the Government does not object to the severance of certain counts. In the event the Court determines that severance is appropriate, the Government provides clarity below on precisely which counts should be severed and proposes a framework for further proceedings.

A. Ponzo's Guilty Plea Does Not Moot Wessels' Severance Motion.

Ponzo's guilty plea means that she will not proceed to trial on the Indictment and therefore her severance motion is moot. *See In re Trader*, 322 F. App'x 203, 204 (3d Cir. 2009) ("[W]ithout a trial, Trader's motions for pre-trial discovery and for severance became moot."). Wessels, however, also filed a severance motion, arguing that the charges relating to the conspiracy joined by Ponzo and Rivera were unrelated to his conspiracy, and that he would be prejudiced by evidence of the conspiracy involving Ponzo. ECF No. 53-2.

Ponzo's guilty plea does not result in any charges being dropped from the indictment, because Ponzo was not the sole defendant in any of the counts charged. With that said, some of the counts in the Indictment are now pending solely against Rivera do not address conduct by Wessels. Because each Count that Wessels asserts was misjoined and should be severed remains in the Indictment so long as Rivera remains a defendant, the Government acknowledges that Wessels' severance motion has not been mooted by Ponzo's guilty plea. Further, while the Government does not believe that severance is *required* under Federal Rules of Criminal Procedure 8(b) and 14, in light of Ponzo's guilty plea, the Government does not object to severance of certain counts as set forth in the following section.

B. The Court Should Schedule a Joint Trial of Defendants Rivera and Wessels on Counts 1-4, 8-9, and 13-17.

If the Court orders severance, it should sever Counts 5-7 and 10-12 and schedule, as the first trial, a joint trial of Rivera and Wessels on Counts 1-4, 8-9, and 13-17. The Court should decline to sever Counts 9 and 13-17, which Wessels also appears to seek to sever.

The argument that Wessels briefed and advanced at the motions hearing was that the Indictment charges two separate conspiracies: (1) a bank fraud conspiracy, involving Rivera, Wessels, and others, to defraud Lender-1 by submitting fraudulent Paycheck Protection Program (PPP) loans; and (2) a wire fraud conspiracy, involving Rivera, Ponzo, and others, to defraud the U.S. Small Business Administration (SBA) by submitting fraudulent Economic Injury Disaster Loans (EIDLs). Wessels argued that joinder of these two conspiracies was improper under Rule 8(b) because Wessels was not alleged to have participated in the wire fraud conspiracy, and the wire fraud conspiracy was not part of the same "act or transaction" as the bank fraud conspiracy. He also argued that he would be prejudiced if the jury heard evidence of a separate conspiracy that he did not join.

If the Court credits Wessels' argument, it should sever the counts involving the wire fraud conspiracy from the joint trial of Rivera and Wessels. That means that the Court should sever Counts 5-7 because those counts involve the wire fraud conspiracy that Wessels did not join. The Court also should sever Counts 10-12, because those counts charge money laundering transactions involving the proceeds of the wire fraud conspiracy that Wessels did not join.

But the Court should decline Wessels' request to sever Counts 9 and 13-17. Count 9 charges Rivera with conspiring to commit money laundering with the proceeds of both the bank fraud conspiracy that Wessels joined ***and*** the wire fraud conspiracy that Wessels did not join. As such, Count 9 depends on—and is intertwined with—some of the same proofs as Wessels' criminal conduct in the bank fraud conspiracy. There is no reason to sever it.

Moreover, there would be no prejudice to Wessels by including Count 9 at trial, because the Government would not offer any proofs involving the wire fraud conspiracy that Wessels did not join. Instead, when proving Count 9, the Government would only present evidence that Rivera laundered the proceeds of the bank fraud conspiracy that Wessels himself joined. Similarly, the paragraphs of Count 9 corresponding to the wire fraud conspiracy could be redacted before the jury receives it, leaving only the paragraphs about laundering the proceeds of the bank fraud conspiracy.

In the same vein, Counts 13-17 charge Rivera with laundering the proceeds of the bank fraud conspiracy that Wessels joined. Evidence of the wire fraud conspiracy that Wessels did not join would not be needed to prove Counts 13-17, and the Government would not present any such proofs at trial.

Although Wessels is not charged in Counts 9 and 13-17, the proceeds that form the basis of Counts 9 and 13-17 are derived from his Specified Unlawful Activity because they were acquired through the bank fraud conspiracy that Wessels joined. Joining these Counts is appropriate because Rivera and Wessels "are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses." Fed. R. Crim. P. 8(b). If the EIDL fraud and the laundering of EIDL fraud proceeds are severed, all of the remaining counts involve the bank fraud conspiracy in which both defendants participated. Joinder of these counts is appropriate. The joinder rule does not require every defendant to be charged in every count. *See id.* ("The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.").

It is common and permissible for money laundering and the underlying offense that generate the proceeds to be charged in the same indictment; indeed the merger doctrine exists because money laundering and the Specified Unlawful Activity are regularly charged together. It is similarly common for individuals to be charged with committing the underlying offense but not the subsequent laundering. In *United States v. Walker*, 392 F. App'x 919, 925-26 (3d Cir. 2010), the Third Circuit affirmed the denial of severance motions brought by one defendant who was charged with drug trafficking conspiracy but not money laundering, and by another defendant who was charged with money laundering but not drug trafficking conspiracy. "[T]he money laundering conspiracy and the drug-trafficking conspiracy were interrelated" because the laundered property was the proceeds of the drug trafficking conspiracy." *Id.* The Third Circuit found that the jury was able to compartmentalize the evidence, especially given that "the Government structured the testimony to set apart the money laundering case." *Id.* Similarly, in *United States v. Lyttle*, 460 F. App'x 3, 8 (2d Cir. 2012), an indictment charged three defendants with wire and mail fraud, but only two of the defendants with money laundering. The Second Circuit upheld the district court's denial of severance of the money laundering count, stating that the court's repeated instructions to the jury that the defendant was not charged with money laundering was sufficient to remove any prejudice. *Id.*; *see also United States v. Hosseini*, 679 F.3d 544, 552-53 (2d Cir. 2012) (affirming denial of motion for misjoinder under Rule 8(b) where defendant was charged with money laundering but not drug conspiracy); *United States v. Marzano*, 160 F.3d 399, 401 (7th Cir. 1998) (no misjoinder or severance where drug offenses related to laundering); *United States v. Acosta*, 2012 WL 3887534, at *3 (S.D. Fla. Sept. 7, 2012) ("[T]he conduct charged in the money laundering counts regards proceeds allegedly acquired during the drug-trafficking activity charged in Counts 1 through 8. Thus, all of the counts in the Superseding Indictment are 'connected' for purposes of Rule 8(a) and (b)."). There are no grounds for severing the money laundering counts that flow from

Wessels' PPP fraud from the counts charging his fraud. Indeed, even were severance ordered, evidence about the subsequent laundering of the fraudulently obtained funds would be admissible at trial because that evidence is intrinsic to the charge of bank fraud conspiracy or, at a minimum, admissible as non-propensity evidence of Rivera's motive and knowledge.

Rivera and Wessels should jointly be tried on counts relating to their bank fraud conspiracy (Counts 1-4); on Wessels' conspiracy to launder the proceeds of the PPP conspiracy charged in Count 1, which Rivera has not moved to sever (Count 8); and on the counts related to Rivera's laundering of the proceeds of the PPP conspiracy that both Rivera and Wessels are charged with in Count 1 (Counts 9 and 13-17). The remaining counts would be severed and would be the subject of a second trial involving only Rivera.

Consistent with the above analysis, if the Court determines that severance is appropriate, the Government respectfully requests that the Court set a trial date in September 2025 for the joint trial on Counts 1-4; 8-9; and 13-17. The Government expects that the joint trial would last approximately two or three weeks. The second trial, against Rivera only on Counts 5-7 and 10-12, could be set for a date after the completion of the joint trial. Thank you for your consideration.

Respectfully submitted,

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cc: All counsel of record (via ECF)