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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,
vs.
Michael Lacey, *et al.*,
Defendants.

Case No. 2:18-cr-00422-PHX-DJH

**DEFENDANTS' MOTION IN
LIMINE TO PRECLUDE
IRRELEVANT AND PREJUDICIAL
TESTIMONY¹**

(Oral Argument Requested)

¹ Undersigned counsel certifies that they have conferred with the government in an effort to resolve the disputed evidentiary issues that are the subject of these motions.

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1 Defendants move to preclude irrelevant and unfairly prejudicial witness testimony
2 about the experiences of persons engaging in prostitution (including as a victim of sex
3 trafficking) and crimes committed by or against such persons.

4 **Proposed Order:** Evidence about a person engaging in prostitution or being
5 trafficked is precluded, unless (1) the evidence relates to one or more of the fifty charged
6 ads and (2) one or more defendants *knew* that the person who was the subject of a charged
7 ad was engaged in prostitution or was being trafficked at the time the charged ad was
8 posted or while it was published on the website.

9 **Background.** Although the Court previously considered a related MIL (Docs. 911,
10 1156), this motion is brought due to new facts: namely, the mistrial resulting from the
11 government repeatedly eliciting irrelevant and prejudicial trial testimony. Before the first
12 trial, the Court ruled admissible evidence that “people were trafficked using
13 Backpage.com,” including testimony about “how ads were created, drafted, edited, and
14 paid for” as long the government did not “linger on the details of the abuse sex trafficking
15 victims suffered.” Doc. 1156 at 4, 5. This instruction proved insufficient to prevent the
16 government from repeatedly eliciting irrelevant, inflammatory testimony regarding crimes
17 (including sex trafficking) the defendants did not know about and are not charged with. A
18 mistrial resulted when, beginning “in the opening, and with every witness thereafter . . .
19 the government [] abused th[e] leeway” given to elicit testimony to show defendants were
20 on notice that some people posted adult ads on Backpage.com that were associated with
21 illegal activities. Moreover, despite the Court’s order to the contrary, the testimony was
22 “not tethered to any communication with the defendants.” Doc. 1347 at 4-5.

23 The government intends at retrial to press the same case, listing most of the same
24 witnesses, and recently saying its case will essentially be a repeat, including the “witnesses
25 who are trafficking victims who are going to be testifying to their postings” and “talking
26 about how they were involved in a business enterprise.” Doc. 1576, 3/20/23 Tr. at 20.
27 The government still lists 15 witnesses who allegedly engaged (or had family members who
28 allegedly engaged) in prostitution or were trafficked, as well as multiple law enforcement

1 witnesses who investigated cases related to the charged ads, but also unrelated ads.²

2 **Argument.** Defendants are “not indicted for facilitating the amorphous notion of
3 ‘prostitution’” but “for facilitating (via publishing ads) on fifty distinct occasions where
4 prostitutes, prostitution-related business, or other groups were involved in the business of
5 prostitution.” Doc. 946 at 13. “[T]his case is not about Backpage . . . [t]his case is about
6 these individual defendants and whether they had specific knowledge of these ads as
7 facilitating illegal activity.” Doc. 1099 at 38. Moreover, “one cannot intend to
8 promote/facilitate a business enterprise one does not know exists.” Doc. 946 at 15-16.
9 Accordingly, the government must prove, among other things, that defendants knew of
10 and intended to facilitate the individual “prostitutes [or] prostitution-related businesses”
11 related to the fifty charged ads. A witness’s testimony about a person engaging in
12 prostitution or being trafficked could not make the defendants’ intent related to a charged
13 ad “more or less probable,” Fed. R. Evid. 401, unless that person’s experience is (1) related
14 to a charged ad and (2) defendants *knew* that person was engaged in prostitution or was
15 being trafficked at the time that ad was posted or while it was published on the website.
16 Otherwise, the testimony has no bearing on any fact “of consequence in determining the
17 action,” *id.*

18 For example, Jessika Svendgard testified at trial to running away from home,
19 watching a friend performing acts of prostitution, performing acts of prostitution herself,
20 her relationship with her pimps, and her role in one pimp’s eventual prosecution. *See* Doc.
21 1334, Trial Tr. Day 6 (A.M.) at 69-89; Doc. 1335, Trial Tr. Day 6 (P.M.) at 11. None of
22 this testimony related to any of the fifty charged ads, to whether any defendant had
23 contemporaneous knowledge of the facts to which she testified, or to any defendant’s
24 knowledge or intent with respect to any of the charged ads. Moreover, the government

25
26 ²The 15 witnesses are Anya Beck, Sara Beck, Astrid Cervantes, Naomi Figueroa,
27 Shaniqua Fraizer, Breahannah Leary Hodges, Megan Lundstrom, Destinee Ortiz, and
28 Jordan Thurman (each of whom purportedly has some connection to a charged ad) and
Andrea Benson, Priscilla Harrison, Kubiiki Pride, Arshana Sanders, Jessika Svendgard,
and Nacole Svendgard (each of whom has no connection to a charged ad).

1 elicited through Ms. Svendgard precisely what the Court had prohibited: “testimony from
2 people engaged in prostitution regarding the details of their lifestyles *except as it relates to*
3 *their use of Backpage.com.*” Doc. 1156 at 6 (emphasis added).

4 Put simply, this kind of testimony has no relevance to the elements of the Travel
5 Act charges (or the related conspiracy charge) and serves only to provoke the jury’s
6 sympathy, inflaming it against defendants for having been associated with the online
7 classified ad web platform on which a pimp placed ads. *See* Doc. 1156 at 5 (holding that
8 “[t]estimony from people involved in prostitution is only relevant as it relates to their use
9 of Backpage.com and notice to defendants that prostitutes were using their website.
10 Testimony concerning the lifestyle and impact that prostitution had on witnesses’ lives is
11 irrelevant to the crimes charged”).

12 Lacking relevance, such testimony is “unfairly prejudicial” because it tends “to
13 suggest or encourage a decision on an improper basis, commonly . . . an emotional one.”
14 *U.S. v. Ellis*, 147 F.3d 1131, 1135 (9th Cir. 1998). Therefore, to avoid unfair prejudice, the
15 government should be precluded from presenting testimony from or about persons who
16 were engaged in prostitution if those acts of prostitution had no connection to the fifty
17 charged ads. Even with respect to evidence that might relate to one of the charged ads,
18 the Court should not permit the testimony unless the government establishes one or more
19 defendants’ contemporaneous knowledge that the subject of a charged ad was engaged in
20 prostitution or was being trafficked. In addition, the Court has already held that such
21 testimony must exclude all “day in the life” testimony and is limited to the use of
22 Backpage.com (how ads were created, drafted, edited, and paid for), the association of a
23 charged ad to an act or acts of prostitution, and any defendant’s knowledge or intent with
24 respect to any such ad(s). *See* Doc. 1156 at 5.

25 The inadequate constraints on the government during the first trial, and the
26 resulting prejudice to defendants, ultimately required a mistrial. Doc. 1347 at 4-5. The
27 order proposed in this Motion will ensure relevant evidence is admitted, while mitigating
28 the risk of the repeat of the same prejudice.

1 DATED this 8th day of June, 2023.

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