

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 23-CR-146(DG)

-against- : United States Courthouse
Brooklyn, New York

RACHEL CHERWITZ, :
March 30, 2026
Defendant. : 2:45 o'clock p.m.

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TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE DIANE GUJARATI
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript
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1 THE CLERK: This is United States of America versus
2 Rachel Cherwitz.

3 Is the government ready?

4 MS. GUPTA: Yes.

5 THE CLERK: State your appearances, please.

6 MS. GUPTA: Nina Gupta, Kayla Bensing, Sean Fern and
7 Kaitlin Farrell for the United States, and we're joined by
8 Paralegal Specialists Liam McNett and Marlane Bosler, and FBI
9 Special Agent Christine Meyer.

10 THE COURT: Good afternoon, everyone.

11 MS. COHEN: Good afternoon, Your Honor. Celia
12 Cohen, Michael Robotti and Kelly Lin on behalf of Ms. Cherwitz
13 who is also present.

14 THE COURT: And good afternoon to everyone.

15 We are here -- I'm sorry. The Probation Officers in
16 the back, go ahead.

17 PROBATION OFFICER WING: Good afternoon, Your Honor.
18 Meghan Wing from Probation and Patricia Sullivan, Assistant
19 Deputy Chief U.S. Probation Officer.

20 THE COURT: And good afternoon to both of you.

21 We are here today for imposition of sentence. There
22 is an overflow room.

23 Is everyone ready to proceed?

24 Ms. Gupta?

25 MS. GUPTA: Yes, Your Honor.

1 THE COURT: Ms. Cohen?

2 MS. COHEN: Yes, Your Honor.

3 THE COURT: I know, Ms. Cohen and Mr. Robotti, I saw
4 you in the courtroom for Ms. Daedone's sentencing earlier
5 today.

6 I want to just make sure everybody knows that, of
7 course, this is a separate proceeding. The two defendants
8 are, of course, separate individuals and these are separate
9 sentencing proceedings. So while there is certainly overlap
10 including things that the Court will be saying and probably
11 things that the parties will be saying, these are separate
12 proceedings and the issues are not identical. So I don't want
13 people to think that they cannot make an argument simply
14 because that argument was addressed at the sentencing of
15 Defendant Daedone.

16 In May and June of 2025, a five week jury trial was
17 held in this case over which I presided. On June 9th, the
18 jury returned a guilty verdict against Defendant Cherwitz on
19 Count One of the indictment which was the sole count.

20 Count One charged Defendant Cherwitz with forced
21 labor conspiracy, in violation of Title 18, United States
22 Code, Section 1594(b).

23 Does everyone agree that the November 1, 2025
24 guidelines manual is the appropriate manual to use at today's
25 sentencing?

1 Ms. Gupta?

2 MS. GUPTA: Yes, Your Honor.

3 THE COURT: And Ms. Cohen?

4 MS. COHEN: Yes, Your Honor.

5 THE COURT: In light of the fact that the
6 November 2025 guidelines manual is the operative manual, and
7 Section 5H1.11 no longer exists, is defendant seeking to have
8 the court consider the arguments she made in her papers in
9 support of her request for a departure under Section 5H1.11 as
10 part of the court's analysis of the Section 3553(a) factors?

11 MS. COHEN: Yes, Your Honor.

12 THE COURT: And just so the record is clear, the
13 arguments, the request for downward departure was based on
14 what you've referred to as having devoted her life to helping
15 others, right?

16 MS. COHEN: Correct, Your Honor.

17 THE COURT: And the government agrees that it is
18 appropriate for the court to consider the defendant's
19 arguments previously made in the context of departure under
20 3553(a), correct?

21 MS. GUPTA; yes, Your Honor.

22 THE COURT: In preparation for today's sentencing, I
23 have received and reviewed the following items. It is a long
24 list. I will read everything out though.

25 The presentence investigation report, also referred

1 to as PSR, prepared by the Probation Department dated
2 August 21, 2025, which is ECF No. 430. The sentencing
3 recommendation which is also dated August 21, 2025, and which
4 is ECF No. 430-1. The addendum to the PSR dated October 2,
5 2025, which is ECF No. 458. The second addendum to the PSR
6 dated October 17, 2025, which is ECF No. 461. The third
7 addendum to the PSR dated October 30, 2025, which is ECF
8 No. 464. The fourth addendum to the PSR dated November 3,
9 2025, which is ECF No. 467. The fifth addendum to the PSR
10 dated December 29, 2025, which is ECF No. 487. The sixth
11 addendum to the PSR dated March 9, 2026, which is ECF No. 503.
12 The seventh addendum to the PSR dated March 24, 2026, which is
13 ECF No. 510. The eighth addendum to the PSR dated March 26,
14 2026, which is ECF No. 514. And the ninth addendum to the PSR
15 dated March 27, 2026, which is ECF No. 518.

16 Defendant's sentencing memorandum dated November 19,
17 2025, filed under seal at ECF No. 472 and filed publicly at
18 ECF No. 473, and the exhibits thereto which include letters of
19 support and the transcript of the sentencing proceeding in
20 Southern District of New York case number 24-CR-542, United
21 States of America versus Sean Combs, among other documents.

22 The electronic evidence submitted by defendant in
23 connection with the request filed at ECF No. 474. The
24 electronic evidence consists of three videos.

25 The memorandum filed at ECF No. 472 and the exhibits

1 thereto were filed under seal, but the defendant did not file
2 a sealing request in connection with that filing.

3 I will hear you on sealing, but I question why the
4 Combs transcript should be under seal because it's a public
5 document.

6 MS. COHEN: Your Honor, I didn't -- I agree with
7 you, it should not be under seal, and apologies if we had
8 asked for that.

9 THE COURT: Okay. I think you did want some of the
10 other materials under seal in 472. If you want to just tell
11 me why.

12 MS. COHEN: Okay. One second.

13 (Pause.)

14 MS. COHEN: Your Honor, we're fine with them being
15 redacted. We redacted because of references to 3500, but if
16 Your Honor does not, we're fine having that all on the public
17 record if the government doesn't object. That was the basis
18 for it.

19 THE COURT: Okay. I'm okay keeping under seal if
20 the government thinks they should be under seal, except not
21 the Combs transcript. It doesn't make any sense. It's a
22 public document.

23 MS. COHEN: Yes, agreed.

24 MS. GUPTA: And, Your Honor, we agree that 3500
25 material remain under seal to the extent it was quoted.

1 THE COURT: Okay. So -- go ahead.

2 MS. COHEN: I was just going to say, Your Honor, we
3 always are acting in an abundance of caution in this case.

4 THE COURT: So having considered the content of the
5 filing at ECF No. 472, having considered the proffered
6 justification for sealing, and having considered the
7 applicable legal standard governing sealing, I will permit the
8 filing at ECF No. 472 with the exception of the Combs
9 transcript to remain under seal.

10 I find that permitting the filing at ECF No. 472,
11 with the exception of the Combs transcript, to remain under
12 seal is appropriate under the applicable law in light of the
13 nature of the filings. See Lugosch versus Pyramid Company of
14 Onondaga, 435 F.3d 110, at 120, Second Circuit, 2006.

15 Defendant requests that the court impose a sentence
16 of time served.

17 I have also received defendant's March 22, 2026
18 letter addressing restitution, filed under seal at ECF No. 507
19 and filed publicly at ECF No. 508, and I've reviewed that.

20 The government's sentencing memorandum dated
21 December 10, 2025, which is ECF No. 478. And the government's
22 letter also dated December 10, 2025, which is ECF No. 480, and
23 which encloses victim impact statements.

24 The government requests that the court impose a
25 sentence of 168 months of imprisonment.

1 I have received and reviewed the government's
2 submissions regarding restitution filed at ECF Nos. 484, 485,
3 492, 511 and 516. I have received and reviewed the
4 government's submission at ECF No. 506, which relates to
5 restitution and other victim related issues.

6 As the parties are aware from an order issued by the
7 court prior to sentencing, the court has also considered
8 additional submissions the parties made relating to victim
9 participation at sentencing and made a ruling with respect to
10 the same. The order I am referring to is ECF No. 493.

11 There was a March 27, 2026 letter filed jointly by
12 Defendants Daedone and Cherwitz at ECF No. 515 requesting that
13 defendants be given leave to play a five to six minute video.
14 The video was provided to Chambers and it is the same video
15 earlier provided by Defendant Daedone in connection with her
16 sentencing which I have reviewed.

17 By letter filed yesterday, March 29, 2026, at
18 ECF No. 519, the government opposes the request to play the
19 video. And by letter filed jointly yesterday by
20 Defendants Daedone and Cherwitz at ECF No. 520, defendants
21 respond to the government's opposition, acknowledging that it
22 is within the court's discretion to allow or not allow the
23 playing of the video.

24 As an initial matter, I want to understand from
25 Defendant Cherwitz whether she is seeking to play the video

1 that appears to have been the subject of the March 27, 2026
2 letter or any other video? Because you had put in other
3 videos which I have, I've watched, and I don't know whether
4 you are seeking to put in the five to six minute video as well
5 or whether there was some lack of clarity in the way the
6 letter was drafted.

7 MS. COHEN: Yes, Your Honor. I think that was
8 unclear.

9 It was Exhibit 27 which was a very short video but
10 after -- I was here in the courtroom and I understand that
11 Your Honor has reviewed the videos and we do not, it's not
12 necessary for us. I appreciate that, Your Honor, that it is,
13 under Rule 32, within your discretion to permit it, but we're
14 not at this point seeking --

15 THE COURT: Okay. And if there's anything, of
16 course, that you want to raise or bring to my attention that's
17 in those videos, you can address the court later, but I have
18 watched everything, I have read everything.

19 MS. COHEN: Great. Thank you, Your Honor.

20 THE COURT: Can I just have the parties confirm
21 there are no outstanding sealing requests.

22 Ms. Gupta?

23 MS. GUPTA: That's correct, Your Honor.

24 THE COURT: Ms. Cohen?

25 MS. COHEN: That's correct, Your Honor.

1 THE COURT: Is there anything else that I should
2 have already received that I have not mentioned?

3 Ms. Gupta?

4 MS. GUPTA: Your Honor, there were also joint
5 objections from the defendants to the PSR, ECF 450, as well as
6 the government's response to those objections.

7 THE COURT: I think those were made to the Probation
8 Office, is that right?

9 MS. GUPTA: That's correct, Your Honor. They're
10 just on the docket as well and I wanted to point those out.

11 THE COURT: Yes, I have seen those as well and, of
12 course, those were addressed by Probation and then also
13 addressed by the parties, but thank you for raising those.

14 Is there anything else that I have not mentioned
15 that I should have already received?

16 MS. GUPTA: No, Your Honor.

17 MS. COHEN: No, Your Honor.

18 THE COURT: Is there anything that anybody wants to
19 hand up to me now?

20 Ms. Gupta?

21 MS. GUPTA: No, Your Honor.

22 MS. COHEN: No Your Honor.

23 THE COURT: Have the parties received the materials
24 I mentioned: The PSR, the Probation Department's sentencing
25 recommendation, the addendum, the second addendum, third

1 addendum, fourth addendum, fifth addendum, sixth addendum,
2 seventh addendum, eighth addendum, ninth addendum and the
3 parties' submissions?

4 MS. GUPTA: Yes.

5 MS. COHEN: Yes, Your Honor.

6 THE COURT: Has everyone had enough time with each
7 more recently filed addendum to the PSR?

8 MS. GUPTA: Yes, Your Honor.

9 MS. COHEN: Yes, Your Honor.

10 THE COURT: I have read everything reflected on the
11 docket in this case.

12 The parties have extensively and thoroughly set
13 forth their positions on the various sentencing related issues
14 the court will be taking up today and the Probation Department
15 has addressed each of the parties' various objections and has
16 clearly given thoughtful consideration to the sentencing
17 related issues in this case.

18 The sentencing recommendation of the Probation
19 Department, which I am not bound by, is, as the parties are
20 aware, a sentence of imprisonment of 188 months, to be
21 followed by a term of supervised release of three years. The
22 Probation Department has also recommended standard, mandatory
23 and special conditions of supervised release and you have seen
24 all of the conditions.

25 The mandatory conditions are set forth on page 1 of

1 the addendum. There are 13 standard conditions. The standard
2 conditions are set forth on pages 1 to 3 of the addendum.

3 I would just note that the judgment form that will
4 be issued has a slightly different version of the first
5 standard condition than the one that was recommended by
6 Probation and the only difference is the standard condition
7 does not include the words, "within 72 hours of the time you
8 were sentenced or."

9 The special conditions are set forth on pages five
10 to six of the sentencing recommendation. There are four
11 special conditions listed, but can I have the Probation
12 Officer confirm that the Probation Department is no longer
13 recommending the sex offender registration condition?

14 PROBATION OFFICER WING: Correct, Your Honor.

15 THE COURT: And to summarize, the three remaining
16 conditions recommended are a financial records disclosure and
17 financial accounts related condition, a restitution compliance
18 condition, and a victim contact related condition.

19 Have the parties read those three conditions?

20 Ms. Gupta?

21 MS. GUPTA: Yes, Your Honor.

22 THE COURT: Do you waive a public reading of those?

23 MS. GUPTA: Yes, Your Honor.

24 THE COURT: Ms. Cohen, have you read them?

25 MS. COHEN: Same, Your Honor, and we waive.

1 THE COURT: And that goes for your client?

2 MS. COHEN: Yes.

3 THE COURT: One moment, please.

4 (Pause.)

5 THE COURT: I'll let the parties know at this point
6 that I do not intend to impose the victim contact related
7 condition. You can be heard on that later if anyone wants to
8 be heard on that, but my present intention is not to impose
9 that special condition.

10 Defendant Cherwitz stated in her sentencing
11 memorandum to the extent necessary to resolve some of the
12 disputed facts herein, she would request a Fatico hearing.
13 The government has indicated in its papers its view that no
14 Fatico hearing is necessary.

15 The court has determined that on the record here, a
16 Fatico hearing is not necessary with respect to any of the
17 disputed issues.

18 Here, there was a five week trial, the parties have
19 been heard extensively on the disputed issues via the court's
20 consideration of the submissions, and the parties will have
21 the opportunity to be heard further shortly. You are welcome
22 to proffer additional information if you wish to do so.

23 Ms. Gupta, were all applicable victim notification
24 requirements complied with?

25 MS. GUPTA: Yes, Your Honor.

1 THE COURT: Were all victims notified of their right
2 to attend sentencing?

3 MS. GUPTA: Yes.

4 THE COURT: Are any victims present?

5 MS. GUPTA: Yes, Your Honor. Michal Neria is
6 present today. I would note that she has to depart at 4 p.m.,
7 if there's any way that she can speak before that time.

8 THE COURT: Yes, we can make sure that happens.

9 MS. GUPTA: Thank you, Your Honor.

10 THE COURT: Is she the only one who wishes to speak?

11 MS. GUPTA: Yes, Your Honor.

12 THE COURT: Okay. And I want to note that in the
13 court's January 22, 2026 Memorandum and Order at ECF No. 493,
14 the court concluded that the government has sufficiently
15 demonstrated that those individuals who are characterized as
16 victims by the government and who testified at trial are in
17 fact victims within the meaning of the relevant statutes.

18 The government requests that the court order
19 restitution to be owed jointly and severally by
20 Defendant Cherwitz and Defendant Daedone to the following
21 testifying victims: Michelle Wright, Michal Neria, Dana Gill,
22 Rebecca Halpern, Anthia Gillick, Max Pixley, and Lyndsi Keves.

23 The government has set forth the specific amounts
24 with respect to each of these seven victims in its filings at
25 ECF Nos. 484, 506, 511, and 516. The total of the amounts is

1 \$887,877.64.

2 I'm going to ask the government to just state each
3 victim's amount and I will give you the order that we're going
4 to go in.

5 Michelle Wright?

6 MS. GUPTA: \$232,375.

7 THE COURT: Michal Neria?

8 MS. GUPTA: \$181,049.14.

9 THE COURT: Dana Gill?

10 MS. GUPTA: \$167,261.

11 THE COURT: Rebecca Halpern?

12 MS. GUPTA: \$55,226.

13 THE COURT: Anthia Gillick?

14 MS. GUPTA: \$178,730.

15 THE COURT: Max Pixley?

16 MS. GUPTA: \$61,740.

17 THE COURT: Lyndsi Keves?

18 MS. GUPTA: \$11,496.50.

19 THE COURT: Can you give me the spelling of Anthia,
20 please?

21 MS. GUPTA: Yes. It's A-N-T-H-I-A.

22 THE COURT: Okay. And, again, did I accurately
23 state the total?

24 MS. GUPTA: Yes, Your Honor.

25 THE COURT: The government submits that the amounts

1 sought are appropriately awarded under the relevant statutory
2 provisions.

3 In light of the record to date, the court will be
4 imposing restitution today. I note that I will not be
5 entering a separate restitution order but will be including
6 the relevant restitution information on the judgment form
7 itself.

8 I just want you to confirm for me, Ms. Gupta, that
9 the government is not seeking an order of forfeiture from the
10 court with respect to Defendant Cherwitz.

11 MS. GUPTA: That's correct, Your Honor.

12 THE COURT: Ms. Cohen, have you read the PSR
13 including the addendum, second addendum, third addendum,
14 fourth addendum, fifth addendum, sixth addendum, seventh
15 addendum, eighth addendum, and ninth addendum, and discussed
16 it with your client?

17 MS. COHEN: I have, Your Honor.

18 THE COURT: I'm going to ask Ms. Cherwitz directly.

19 Have you read the PSR including the addendum, second
20 addendum, third addendum, fourth addendum, fifth addendum,
21 sixth addendum, seventh addendum, eighth addendum and ninth
22 addendum?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Have you discussed the PSR and each
25 addendum with your attorney Ms. Cohen?

1 THE DEFENDANT: Yes, I have.

2 THE COURT: Have you had enough time and opportunity
3 to review these materials and to discuss them with your
4 attorney?

5 THE DEFENDANT: Yes, I have.

6 THE COURT: Have you had the opportunity to go over
7 with your attorney any errors you think there might be in
8 these materials?

9 THE DEFENDANT: Yes, I have.

10 THE COURT: Have you had the opportunity to discuss
11 with your attorney anything at all that you would like to have
12 taken up with the court today?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: Are you satisfied with Ms. Cohen's
15 representation including having her represent you at
16 sentencing?

17 THE DEFENDANT: Yes, I am.

18 THE COURT: Ms. Gupta, have you read the PSR
19 including the addendum, second addendum, third addendum,
20 fourth addendum, fifth addendum, sixth addendum, seventh
21 addendum, eighth addendum, and ninth addendum?

22 MS. GUPTA: Yes, Your Honor.

23 THE COURT: When I refer to the PSR in this
24 proceeding going forward, I'm going to use that term to refer
25 to the PSR, the addendum, second addendum, third addendum,

1 fourth addendum, fifth addendum, sixth addendum, seventh
2 addendum, eighth addendum, and ninth addendum together.

3 I'm going to go over now whether there are any
4 objections to the PSR regarding the accuracy of the factual
5 recitations contained therein. I will ask you separately
6 about the guidelines calculation shortly, but I want to focus
7 on the accuracy of the factual recitations.

8 Defendant Cherwitz submitted objections to the PSR
9 and the Probation Office addressed the objections and I
10 believe the government had responded to those objections as
11 well, correct?

12 MS. GUPTA: Yes, Your Honor.

13 THE COURT: Okay. So does either party have any
14 objections to the accuracy of the factual recitations in the
15 PSR that they wish to raise now?

16 Ms. Gupta?

17 MS. GUPTA: No, Your Honor.

18 THE COURT: Ms. Cohen?

19 MS. COHEN: Your Honor, I think we laid out our
20 objections fully in our papers and I think if the same applies
21 that it's not going to make a difference about the sentencing
22 today, then we rely on our objections and we do not need to
23 discuss any of them.

24 THE COURT: Okay. Yes. To the extent that you made
25 an objection and that it wasn't resolved favorably to you, it

1 will not affect sentencing, will not affect the sentence that
2 I am going to impose.

3 MS. COHEN: Thank you, Your Honor.

4 THE COURT: So I adopt the factual recitations in
5 the PSR including the addendum, second addendum, third
6 addendum, fourth addendum, fifth addendum, sixth addendum,
7 seventh addendum, eighth addendum and ninth addendum.

8 Although the court is no longer required to follow
9 the United States sentencing guidelines because they are not
10 mandatory, I am still required to consider the applicable
11 guidelines in imposing sentence. To do that, it is necessary
12 for me to accurately calculate the guidelines sentencing
13 range.

14 In the PSR, the Probation Department has set forth
15 its guidelines calculation. The Probation Department has
16 calculated a total offense level of 35 and has set forth how
17 it arrived at this number.

18 The Probation Department has determined a criminal
19 history category of I, based on a criminal history score of
20 zero. The Probation Department sets forth that at offense
21 level 35, with a criminal history category of I, the advisory
22 guidelines range of imprisonment is 168 to 210 months.

23 The Probation Department has noted a guidelines fine
24 range of \$40,000 to \$250,000, pursuant to Section 5E1.2(c)(3).
25 The Probation Department has noted that the maximum fine is

1 \$250,000 pursuant to Title 18, United States Code,
2 Section 3571(b).

3 The Probation Department has noted a guidelines
4 range of supervised release of one to three years pursuant to
5 Section 5D1.2(a)(2), but I believe that range is based on the
6 previous version of the guidelines.

7 Does the Probation Office agree that the new
8 applicable range of supervised release is not more than three
9 years?

10 PROBATION OFFICER WING: We agree, Your Honor.

11 THE COURT: Thank you.

12 The Probation Department has noted that because
13 Count One is a Class C felony, defendant is eligible for not
14 less than one nor more than five years of probation, pursuant
15 to Title 18, United States Code, Section 3561(c)(1). The
16 Probation Department has also noted that since the applicable
17 guidelines range is in Zone C -- excuse me -- Zone D of the
18 sentencing table, the defendant is ineligible for probation
19 pursuant to Section 5B1.1, Note 2.

20 The parties have raised certain objections to the
21 guidelines calculation in their sentencing submissions. To
22 the extent that the parties wish to persist in any of those
23 objections and/or to raise any additional objections, I will
24 hear your arguments, but in the first instance, I would like
25 to just get a list from you of the objections you maintain or

1 want to raise for the first time now.

2 Ms. Gupta, will you let me know what objections, if
3 any, you have to the guidelines calculation set forth in the
4 PSR?

5 MS. GUPTA: The government doesn't have any.

6 THE COURT: Ms. Cohen, what objections, if any, do
7 you have to the guidelines calculation set forth in the PSR?
8 And, again, I just want the list now. I will hear you out
9 fully on all of them.

10 MS. COHEN: Yes. And I'm going to go through these
11 despite your rulings, Your Honor, because we obviously make
12 the same.

13 So, first, we object. We believe 2X.1(b)(2), which
14 is the applicable provision here which then guides the Court,
15 of course, to the substantive offense, but it does account for
16 a three level deduction if the conspiracy was not completed.
17 So that was one.

18 We also move -- we also object to the condition of
19 peonage under 2H4.1(b)(3)(A) of one year.

20 We also object to the imposition of the sexual
21 enhancement under 2H4.1(b)(4)(B).

22 THE COURT: And (b)(1)(B) as well, is that correct,
23 that enhancement?

24 MS. COHEN: And (b)(1)(B), correct, which doesn't
25 apply, as Your Honor -- yes, if we get there, then we also

1 believe that that does not apply.

2 We also object to the role enhancement in this case
3 and Probation was asking for a four point increase for role.
4 So we object to that under 3B1.1.

5 And those -- and then, of course, we also ask the
6 Court to consider a one point deduction for the trial penalty.

7 And I just want to make sure.

8 THE COURT: I think you're missing 4C1.1. You're
9 asking for the two level reduction, correct, for the
10 zero-point offender?

11 MS. COHEN: Oh, that's correct, for the zero-point
12 offender, correct.

13 THE COURT: So I will hear the parties out on each
14 enhancement and reduction that's at issue but, first, I want
15 to remind the parties to keep in mind that I presided over the
16 pretrial litigation in this case and over the five week jury
17 trial. I am very familiar with the record and with the
18 parties' views on the many disputed issues.

19 I also remind the parties that with respect to the
20 sentencing guidelines, the concept of relevant conduct is an
21 important one that cannot be ignored. See Sentencing
22 Guidelines Section 1B1.3. I also remind the parties of the
23 rule of lenity.

24 I turn now to the issue of the applicability or
25 nonapplicability of Section 2X1.1(b)(2), and I'll hear from

1 Ms. Cohen as to why she believes that pursuant to
2 Section 2X1.1(b)(2), a three level reduction in offense level
3 is warranted.

4 MS. COHEN: Yes, Your Honor. And I understand your
5 ruling from the prior proceeding but I'll just set forth
6 quickly our arguments.

7 You know, again, this was charged as a conspiracy.
8 I understand the evidence at trial. However, Ms. Cherwitz is
9 in a different position than Ms. Daedone.

10 She came into this later as a participant herself
11 and didn't financially benefit from this and, you know, our
12 position is her mind at the time did not realize or understand
13 or appreciate that people were being forced to labor
14 considering what they were saying and how they were acting at
15 the time.

16 That does not mean that these individuals cannot
17 feel today that they were forced and cannot look back and have
18 these feelings. We're not trying to minimize their feelings,
19 but what I'm focused on is what was in Ms. Cherwitz's mind at
20 the time and how she was acting pursuant to what the
21 individuals were.

22 So for those reasons, and the reasons we layout in
23 our papers, we believe that it does apply.

24 THE COURT: Does the government wish to be heard on
25 this?

1 MS. GUPTA: Your Honor, just briefly. I know this
2 was extensively briefed.

3 That three level reduction applies unless the
4 defendant or a co-conspirator completed all the acts they
5 believed necessary on their part for the successful completion
6 of the substantive offense.

7 We believe that, certainly, the trial evidence
8 shows, by a preponderance of the evidence, that the defendant
9 or a co-conspirator, including here, her co-defendant Daedone,
10 completed all the acts that were necessary. We believe that
11 the evidence supports that the conspiracy was, in fact, fully
12 completed. There was no impediment and it ran its full
13 course.

14 And I would just note that we've cited a number of
15 cases in our submission that the fact of a conspiracy
16 conviction or the fact that a conspiracy was the only, was the
17 only crime charged is not determinative.

18 THE COURT: Okay. And as I think everybody is
19 aware, as I noted at the sentencing of Ms. Daedone which took
20 place earlier today, the court finds that a three level
21 reduction pursuant to Section 2X1.1(b)(2) is not warranted.

22 Here, the court finds by a preponderance of the
23 evidence that Defendant Cherwitz and, among others,
24 co-conspirator Defendant Daedone completed all the acts the
25 conspirators believed necessary on their part for the

1 successful completion of the substantive offense of forced
2 labor.

3 So I make those findings. I had already indicated
4 that in connection with the sentencing of Nicole Daedone, but
5 I note that I find that the three level reduction is not
6 warranted here with respect to Ms. Cherwitz.

7 I turn now to the issue of the applicability or
8 nonapplicability of Section 2H4.1(b)(1)(B).

9 I will hear from the government as to why it
10 believes that pursuant to Section 2H4.1(b)(1)(B), a two level
11 increase in offense level is warranted, and I'd like you to
12 address the statutory language, specifically, "fear," "sexual
13 act," "purpose of degrading or abusing," and "no legitimate
14 purpose." And, of course, I'm now talking about two different
15 statutes because the government has raised arguments with
16 respect to two different statutes, one federal and one state.

17 So I will hear you out now as to why you think this
18 offense level increase is warranted.

19 MS. GUPTA: Yes, Your Honor.

20 We believe it's warranted based primarily on the
21 language that if there was conduct constituting criminal
22 sexual abuse under 18 U.S.C. 2241 or 2242 or any similar
23 offense under state law. And specifically, as part of 2242,
24 we rely on Section 3, engaging in a sexual act with another
25 person without that other person's consent to include doing so

1 through coercion.

2 Here, I think many of our arguments on this,
3 Your Honor, were laid out in the section related to the cross
4 reference although they all apply here as well.

5 As to the language of "sexual act," that is defined
6 as: The penetration, however slight, of the anal or genital
7 opening of another by a hand or finger or by any object with
8 an intent to abuse, humiliate, harass, degrade or arouse or
9 gratify the sexual desire of any person. And that's in
10 Section 2246.

11 I would note that "coercion" is not defined in
12 Section 3, however, it is defined in 18 U.S.C. 1591 which is
13 the sex trafficking statute and there, the language actually
14 tracks the forced labor language as to serious harm. It
15 includes threats of serious harm to or physical restraint
16 against any person. And "serious harm" refers to any harm,
17 whether physical or nonphysical, including psychological,
18 financial or reputational harm, similar to the definition that
19 was applied in our case as to forced labor.

20 So here, Your Honor, we would argue that the trial
21 evidence established a violation of 2242-3 by a preponderance
22 of the evidence, and we rely substantially there on Rebecca
23 Halpern's testimony.

24 She testified that she and others received a text
25 message one morning to attend a meeting at an OM house, The

1 Moreellino. The defendant had announced during that meeting
2 that Ms. Halpern was no longer going to be doing orgasmic
3 meditation or OM demonstrations. So, notably, on that
4 particular day, at that particular meeting, Ms. Halpern was
5 not expecting to engage in an OM demonstration.

6 I think some of the context surrounding this meeting
7 is important. It took place at a time where Ms. Halpern
8 testified that no one within OneTaste was speaking to her. At
9 this point, the defendant had called her a virus and had told
10 others in the community not to speak to her.

11 So she testified that she was not surprised that she
12 was no longer selected to be doing OM demonstrations and was
13 not expecting to do one that day.

14 During the meeting, the defendant called up two
15 other individuals to the front of the room to conduct an OM
16 demonstration and then following that, the defendant directed
17 Ms. Halpern to come to the front of the room to do an OM
18 demonstration. And as I mentioned, she did not believe that
19 she would be participating in one that day based on everything
20 that the defendant had told her.

21 She was told to come up and, at first, another
22 OneTaste participant stroked Ms. Halpern's genitals for a few
23 minutes, and then the defendant pushed that participant aside
24 and began stroking Ms. Halpern's genitals without asking her
25 for her permission.

1 Her testimony on this point was: "I don't remember
2 her asking me. If she did, I don't know. I certainly did not
3 want her to at all."

4 She further testified, and I quote: "You're
5 supposed to be looking like you're really into it and I was
6 not into it and I was freaking out and it didn't feel good. I
7 didn't want to be there and I said no."

8 Notably, during this interaction, as the defendant
9 was massaging Ms. Halpern's genitals, she directed another
10 OneTaste participant, Hamza Tayeb, to walk to the end of a
11 hallway, and asked him repeatedly if he could feel
12 Ms. Halpern's orgasm to which he said he could not. And she
13 continued to stroke Ms. Halpern repeatedly but call out to
14 Hamza Tayeb. Finally, she stopped, and then berated and
15 ridiculed Ms. Halpern while she was still half naked on the
16 table stating that she was not doing OM demonstrations
17 anymore, that her orgasm was broken, and that she was a virus
18 infecting everyone with her bad ideas. And Ms. Halpern
19 testified that she began shaking and crying and has only ever
20 felt that way after surgery.

21 So, Your Honor, based on these facts and that
22 testimony, we do think it's clear here that Rachel Cherwitz
23 engaged in a sexual act, there was penetration however slight
24 of the genital opening of another by a finger, and it was done
25 so with the intent to abuse, humiliate, harass or degrade

1 Ms. Halpern, to include doing so through coercion and there we
2 would say the same threats of serious harm applied that
3 applied in our case as to the forced labor conspiracy.

4 So I think that addresses 2242-3.

5 Your Honor, we also --

6 THE COURT: Wait.

7 MS. GUPTA: Yes.

8 THE COURT: Let me just stop you for a moment.

9 MS. GUPTA: Yes.

10 THE COURT: Okay. Go ahead.

11 MS. GUPTA: And then we also made an argument that
12 there is another similar offense under state law. That would
13 be New York Penal Law 130.52 which is forcibly touching.

14 There the language of the statute is: A person is
15 guilty of forcible touching when such person intentionally and
16 for no legitimate purpose forcibly touches the sexual or other
17 intimate parts of another person for the purpose of degrading
18 or abusing such person. And "forcible touching" includes
19 squeezing, grabbing or pinching.

20 So here, we would say Cherwitz certainly touched
21 Halpern as she was massaging her genitals. We don't believe
22 there was any legitimate purpose. I understand that the
23 defense argument has been that this was an OM, this was
24 something that they did all the time.

25 Notably, Your Honor, orgasmic meditation was not on

1 trial, has never been on trial. We certainly have not argued
2 that every instance of orgasmic meditation was a crime, but in
3 this case, this was the labor and coercive activity that
4 Ms. Halpern was engaged in with the defendant, and we don't
5 think there was a legitimate purpose here given that prior to
6 the demonstration beginning, Cherwitz had specifically told
7 Ms. Halpern that she was no longer doing OM demonstrations.

8 So we do think there was a forcible touch there of
9 the intimate parts of another person for the purpose of
10 degrading or abusing such person.

11 And then there is also the language of 2242-3 --
12 apologies -- 2242-1: Causes another person to engage in a
13 sexual act by threatening or placing that other person in
14 fear, other than by threatening or placing that other person
15 in fear that any person will be subjected to death, serious
16 bodily injury or kidnapping.

17 I think there, Your Honor, we would rest on our
18 papers. I think the other arguments would support, would
19 support this enhancement.

20 THE COURT: Okay. I'll turn to Ms. Cohen to hear
21 from you as to why you believe that pursuant to
22 Section 2H4.1(b)(1)(B), a two level increase in offense level
23 is not warranted.

24 MS. COHEN: Thank you, Your Honor.

25 I was going to talk -- I do want to get to the

1 coercion, but let me just pick up on some of the facts the
2 government had just argued that and I think we laid this out
3 in our papers but I want to really, once again, focus on the
4 intent here and the context by which this happened.

5 As Your Honor knows, and Ms. Halpern testified,
6 doing an OM demonstration was prestigious. It was the reason
7 for being in OneTaste. It had, in this instance, nothing to
8 do with labor. It was what the people, particularly the
9 people who had asked to be included in living at
10 The Morellino, which was the most, as we heard a lot of
11 testimony, the most intense of the places, and the OM
12 demonstrations happened day in, day out, right, at least two
13 times per day. So this was something that was done
14 constantly, something that everyone wanted to do and was
15 comfortable.

16 I understand the testimony about how Ms. Halpern was
17 feeling at the time, that she didn't want to do that, but it's
18 difficult to look at a situation where somebody, you know, for
19 364 days of the year, you know, wants to do it and then this
20 one instance, that Ms. Cherwitz would know it. And there was
21 a lot of testimony at trial about what it was, what people
22 were training for, that they were being pushed beyond their
23 boundaries, that there were safe words when it had gone too
24 far.

25 And that -- Ms. Halpern testified that she, she

1 faked it here to get through it and that's unfortunate. I'm
2 not trying to say that someone -- I understand her actions at
3 the time, but faking it indicates to the person that they are
4 okay with it, especially in the context of it happening day in
5 and day out.

6 In addition, there was -- and, you know, there were
7 statements as we indicated in our papers about others who did,
8 and I know this wasn't before the jury, but Your Honor can
9 consider these statements for purposes of sentencing, that,
10 for example, Max Pixley, who Ms. Halpern testified went to
11 Costco where she was shaking and crying, had no recollection
12 of it. And Mr. Tayeb, who was at the demonstration did say
13 that, you know, it was presumed that everyone would want to
14 participate given the context of what they were doing, again,
15 what they did day in and day out, what everybody wanted to do
16 by moving into The Morellino. And certainly, there was no
17 testimony that anyone was forced to move into The Morellino to
18 do a more intense practice.

19 We also note that, in our papers that, you know,
20 again, coming back to the intent, it's not in a vacuum here
21 and I think we, we cited some of this in our papers that
22 Ms. Halpern, for example, only, it was about not even a month
23 prior, when she graduated from CP6, that she credited OM with
24 everything and for leading her back to her boyfriend who she
25 then married and talked about how much she loved it.

1 Now, there can be arguments as to why she said it at
2 the time but what was in, again, Ms. Cherwitz's mind is what
3 matters here.

4 When you think about sexual abuse under these
5 statutes, this is -- these statutes are for people who are,
6 you know, are being molested and being raped. I'm not saying
7 it can't happen in this context, but I think we really need to
8 be looking at what was the person intending at the time and
9 the context is important here in order to determine that.

10 And in terms of the coercion -- and, again, we also
11 cited the Combs case here. I understand that in Combs, the
12 analysis was 2242-1, and we are under 3 here.

13 THE COURT: I think the government is making
14 arguments under 1 and 3.

15 Do I have that right, Ms. Gupta?

16 MS. GUPTA: That's correct. We made arguments under
17 both.

18 MS. COHEN: In terms of 1, we would argue the same
19 thing.

20 Actually, let me start with 3 because I think that's
21 the more, you've already made some rulings on Section 1.

22 In terms of Section 3, number one, they're borrowing
23 the definition of "coercion" from the sex trafficking statute
24 which is not the statute that we're under.

25 Clearly, as the Combs court noted, if Congress had

1 wanted to include psychological coercion under here, it could
2 have, as it did in that context. It would be -- it would not
3 make sense here to make, to apply, under 1, that it would have
4 to cause some kind of fear of bodily harm or, you know, fear
5 that they were going to be hurt or forced, that it would be so
6 different under Section 3 when it still is the same punishment
7 under both.

8 In other words, if this was a statute that, you
9 know, was a lesser, a lesser punishment, you could make that
10 jump that it would be psychological coercion but, here, the
11 increase, the drastic increase in the guidelines here, to say
12 that, oh, okay it does apply under 3, that enough to coerce
13 under the psychological argument, particularly, again, under
14 this context where you have a situation that Your Honor has,
15 you know, we've all agreed is very unique.

16 And, you know, I do -- and I think this applies in a
17 lot of ways to my arguments today, that through this -- and,
18 you know, it's funny. I was thinking the other day, this is
19 such a big point, that it dawned on me why I can't fit a lot
20 of these cases into this situation and a lot of it comes down
21 to when you look at these other forced labor cases or, you
22 know, when something is applied under an enhancement for, a
23 sexual enhancement in the context of forced labor, you think
24 about all these cases.

25 The sole purpose of the person being there was to

1 labor and it is difficult here because this was not the sole
 2 purpose. Right? These people came there, many people came to
 3 OneTaste and didn't labor at all. And so, especially in this
 4 context, it was, again, you know, trying to learn to improve
 5 the OM practice which, again, is hard for people who aren't
 6 involved, but that's what everyone went there to do. So now
 7 to say that that one time where Ms. Halpern didn't want to do
 8 it -- and, again, I completely understand, you can consent one
 9 day and take it away the next and I get that, but that's not
 10 really what happened here or what was communicated to
 11 Ms. Cherwitz, particularly, again, under the circumstances
 12 here where there was the use of safe words, and the manual
 13 itself -- remember there was testimony on this -- that you are
 14 going to be pushed to your boundaries and that's why you
 15 signed up for this.

16 THE COURT: Can I pause you for one moment?

17 MS. COHEN: Sure.

18 THE COURT: And I hate to interrupt you while you're
 19 on this, but if you have more on this particular enhancement,
 20 I can hear you now, but if not -- if you have more on this,
 21 I'm going to take a pause and hear from Ms. Neria because I
 22 know she has to leave.

23 MS. COHEN: Oh.

24 THE COURT: But I don't want to rush you. I want to
 25 fully hear you out. So if there's more you want to say about

1 this --

2 MS. COHEN: I think to go back to just the coercion
3 a little bit.

4 THE COURT: Okay.

5 MS. COHEN: That's fine.

6 THE COURT: So we will pick up, and, again, I
7 apologize for interrupting you on this 2H4.1(b)(1)(B) point,
8 I'll come back to you, Ms. Cohen, but I do think it's
9 important to hear from the victim if the victim wants to speak
10 and I understand she has a time constraint.

11 So I will hear from Ms. Neria if she wishes to
12 speak.

13 MS. COHEN: Thank you, Your Honor.

14 MS. NERIA: Your Honor, thank you for taking the
15 time to hear my statement again.

16 I worked closely with Rachel during my time as
17 OneTaste staff on the sales team and lived with her in the
18 communal home in Manhattan.

19 She took a special interest in me from the very
20 beginning when I took the intro to OM course which she taught.
21 Throughout our time together, she took on a variety of roles
22 with me: Salesperson, mentor, boss, teacher, coach, mother
23 figure, and friend.

24 I always felt like I had to work extra hard to keep
25 her impressed because I could lose her affection at any time.

1 At one moment, she was warm and supportive, complimenting me
2 that she would make a great saleswoman out of me or that I was
3 on the right path at work or in my intimate relationship. And
4 without warning, she would turn scolding telling me I was
5 meek, irresponsible, and playing the victim.

6 She knew how to bait-and-switch so that I became
7 emotionally dependent on her opinions and would follow her
8 orders closely, overriding my own sense of self-preservation
9 and boundaries.

10 She used her power and influence over me to sell me
11 almost all of the courses I took in OneTaste, from the least
12 expensive to the most, \$36,000 for Nicole Daedone intensive
13 and \$50,000 for membership.

14 She knew that I didn't have the money to pay for
15 these courses, but she still pressured me to take out a credit
16 line with the promise that I will figure out how to pay for
17 the debt later.

18 She also instructed me to ask a rich male member who
19 was interested in me sexually to pay for my courses, thus
20 indebting me to him.

21 With hindsight, it is much easier to see that her
22 manipulations stemmed from her priority to make a profit for
23 OneTaste and Nicole by selling courses and extracting free
24 labor from people like me, but while I was there, my ability
25 to understand what was going on was compromised by my complex

1 feelings towards Rachel.

2 I adored and wanted to be like her, but I also
3 feared her because she could get mad easily, humiliate me
4 before others, and threaten expulsion from the group.

5 She said that she had supernatural senses, that she
6 could feel and sense things about people's desires. She used
7 that argument to tell me that she could feel that I wanted to
8 take certain courses even though I couldn't afford them. She
9 would tell me that she knew that I was meant to be in those
10 courses and then she would request a deposit right then and
11 there.

12 This happened repeatedly throughout my time there.
13 I would pay because I believed her that I needed that course
14 for my own self development but also I wanted to please her by
15 affirming her hunch about me and prove myself worthy of her
16 attention.

17 Rachel became more abusive and manipulative as time
18 went on and I became more dependent on the organization for my
19 livelihood, housing, social circle and intimate relationship.

20 Twice she threatened me with expulsion from the
21 group.

22 The first time was during a morning circle where I
23 shared how much I missed my family and how sad I was that we
24 were barely on speaking terms. She then started yelling at me
25 in front of the others telling me that if I don't grow up, she

1 will not have me there anymore. As a result, I tried to stop
2 sharing about my family and was careful with my words.

3 The second time was when I was still upset because
4 of a fight I had with my OneTaste partner the previous night.
5 Rachel noticed that I looked sad and anxious that morning
6 while working back of house for a OneTaste event. She then
7 reprimanded me saying that I wasn't turned on enough to be
8 there which was endangering the prospect of sales for the day.
9 She told me to leave and ordered me to attend a twelve-step
10 meeting and go back to the communal house to wait there alone
11 until the rest of the team came home that night. She forbade
12 me from texting anyone, especially my boyfriend. I remember
13 shaking with anxiety and confusion as a deep sense of
14 isolation and failure took over me until everyone returned
15 that night.

16 I believed that, in some way, Rachel was always
17 under the influence and control of Nicole and did all those
18 things to me and others in order to win Nicole's favor.

19 While she wasn't the mastermind behind the
20 organization like Nicole was, she was Nicole's main
21 executioner. She did everything Nicole wanted her to do,
22 including getting money from clients and employees like me by
23 any means necessary.

24 One time during a higher level course, I did witness
25 Nicole humiliate Rachel publicly in a similar way to which

1 Rachel humiliated me and others. I watched Rachel shrivel
2 into herself as Nicole admonished her with biting words. It
3 was a painful sight.

4 Rachel has sacrificed her whole life for Nicole.
5 It's impossible to know the boundary between her intention to
6 hurt others and her devotion to Nicole. All I know is that
7 Rachel inflicted much harm and abuse on me and countless
8 others as she served her leader.

9 Thank you again for taking this into consideration.

10 THE COURT: Thank you, Ms. Neria, for that powerful
11 statement and for having the strength to give the statement
12 that you gave.

13 Okay. Ms. Cohen, I will go back to you and, again,
14 my apologies for having to take a break from your discussion
15 of 2H4.1(b)(1)(B). I'll hear you out further on that.

16 MS. COHEN: No problem. Thank you, Your Honor.

17 So I was just going to turn to the Combs case and
18 why I think that that is applicable here.

19 In terms of Section 1, I would rely on the same
20 arguments that were made before in terms of -- that really
21 would apply to both.

22 You know, as was discussed before, the Combs court
23 adopted a narrow reading of the statute that was reinforced by
24 the rule of lenity and the same application is here, should
25 apply to 1 as should apply to 3.

1 As I said before, they both constitute criminal
2 sexual abuse, that carry a base guideline level of 97 to
3 121 months just for this, same, you know, for this statute,
4 the same under 1 or 3.

5 As I said, Congress did not define in this statute
6 what coercion is, that it would include psychological harm,
7 and when Congress uses particular language in one statute,
8 different language in another, we presume, under the case law,
9 that the word choice was intentional.

10 Again, as I said, the principles of lenity and fair
11 notice should also apply here to Section 3. The statute
12 shouldn't reach beyond punishing someone for conduct that
13 isn't clearly contemplated by the statute. And, again, for
14 all the reasons that I said before, given that 1 and 3 are the
15 same punishment, it's illogical that it would be enough just
16 through psychological harm under Section 3 and not have the
17 same fear component as Section 1.

18 There wasn't fear here of any bodily harm. I mean
19 no, no fear of violence. Rather, Ms. Halpern testified
20 repeatedly that she might lose Rachel's approval, that that
21 was one of the issues, and fall from her good graces, that she
22 could be demoted or kicked out or had a long talking to.

23 Again, I'm not trying to downplay what her feelings
24 were and what she testified to in this court but, again, that
25 is not sufficient to also have a fear of serious bodily harm,

1 that the coercion has to have more than just psychological
2 coercion or fear of being kicked out. It's not that imminent
3 concrete harm that is contemplated by the statute.

4 So for all those reasons, we would say that both
5 under Section 1 or Section 3, that there has to be more here
6 than psychological coercion.

7 And, Your Honor, I guess in terms of moving to the
8 state --

9 THE COURT: Yes.

10 MS. COHEN: And I also want to mention that she
11 wasn't trying to be so technical about what OM is or where the
12 finger was placed, I'm not asking the Court to make such a
13 finding. I only put that argument there to step back and say
14 if we're having to put this under a microscope and look at
15 what it is, is this the sexual conduct, the sexual abuse that
16 is contemplated under Section 2242.

17 The same under the state: A person must
18 intentionally and for no legitimate purpose touch the other
19 person. There was a purpose here, whether or not Ms. Halpern,
20 I understand, didn't want to do it at the time, the purpose
21 was to train. Everyone was there to do that.

22 So it wasn't just going in to degrade, abuse or
23 ratify sexual desire. Obviously, the government isn't asking
24 or arguing about the sexual desire but to degrade or abuse is
25 not the sole purpose, but it has to be both for no legitimate

1 purpose and to degrade.

2 And, finally, you know, again, this wasn't -- there
3 was no, there was no money that Ms. Cherwitz was getting from
4 this. There were no sales here. And this happened, again,
5 day in, day out. And so, you know, for all of those
6 reasons -- and, again, as I said, you know, the other people
7 who were there don't recall it being different than the other
8 times.

9 So for all those reasons, you know, not only does it
10 not apply understate law, but the sexual abuse 2242 should not
11 apply here as well.

12 THE COURT: Ms. Gupta, do you want to be heard
13 further?

14 MS. GUPTA: Your Honor, just briefly. I think
15 Ms. Cohen and I certainly agree that the context is important
16 here, and the context here was that this particular incident
17 was not part of the everyday OM practice.

18 Ms. Halpern's testimony established that this was
19 "not typical and not something that had happened before in any
20 meeting," and prior to going up there, Ms. Halpern was told
21 she wasn't participating in OM demonstrations. So, again, she
22 was not expecting to be part of this that day.

23 And when Ms. Cherwitz called her up, the testimony
24 from Ms. Halpern was that Ms. Halpern said she did not want to
25 participate. So certainly she did show her lack of consent at

1 the time.

2 And, notably, the fact that she has consented to
3 OM'ing on other occasions does not automatically mean she
4 consented to this OM with Rachel Cherwitz. There was
5 testimony at trial that, generally speaking, a person is asked
6 whether they want to OM prior to participating in an OM and
7 her testimony was that she was not asked under these
8 circumstances.

9 THE COURT: The court does not find that the two
10 level enhancement pursuant to Section 2H4.1(b)(1)(B) is
11 warranted.

12 The government argues that this enhancement applies
13 because defendant's conduct with respect to Rebecca Halpern
14 constitutes criminal sexual abuse under Title 18, United
15 States Code, Section 2242, and New York Penal Law
16 Section 130.52-1.

17 The court does not find that the government has
18 demonstrated by a preponderance of the evidence that this is
19 so.

20 I turn now to the issue of the applicability or
21 nonapplicability of Section 2H4.1(b)(3)(A). I will hear from
22 the government as to why it believes that pursuant to
23 Section 2H4.1(b)(3)(A), a three level increase in offense
24 level is warranted.

25 Of course, I have already found in the context of

1 Ms. Daedone's sentencing that the three level increase is
2 warranted but I will hear from the government if the
3 government wishes to be heard and then I'll turn to counsel
4 for Ms. Cherwitz.

5 MS. GUPTA: Your Honor, given that the Court has
6 ruled on this and we extensively briefed it, we'll rest on our
7 papers.

8 THE COURT: Okay. I'll hear from Ms. Cohen as to
9 why she believes that pursuant to Section 2H4.1(b)(3)(A), a
10 three level increase in offense level is not warranted.

11 MS. COHEN: Thank you, Your Honor.

12 I think, you know, we've also laid this out in our
13 papers. I understand Your Honor's ruling. I just want to
14 focus on a couple of points.

15 One thing I also think, you know, in addition to,
16 again, the testimony here about the choice that people made
17 but more about the temporal time period here that I think is
18 very difficult. Again, it's -- I already said this and I
19 think this will pepper throughout my statements is that I do
20 distinguish this kind of case from a typical forced labor case
21 because the person is going there from day one to work and
22 then in all of these other cases, they can't leave until it
23 ends and it was over and the person was arrested. You know,
24 here, it's, like, when did the person become psychological
25 coerced such that the labor was forced.

1 You know, it is difficult here and I know that the
2 jury didn't hear all this, you know, some of the evidence here
3 about what people were feeling at the time. And, again, I'm
4 not discrediting how they feel about it now, but at the time,
5 you know, people were requesting to work, they wanted to do
6 it, they were having fun, they loved it, there were tons and
7 tons of text messages and, you know, posts and videos about
8 this and I think that's what makes it difficult to say that
9 they were held for a period of one year or more.

10 So I just wanted to make that distinction here.

11 THE COURT: Okay. Is there anything else?

12 MS. COHEN: With respect to the rest of the
13 arguments, I rely on our papers.

14 THE COURT: Okay.

15 And as I already noted in the context of
16 Ms. Daedone's sentencing, the court find that a three level
17 increase pursuant to Section 2H4.1(b)(3)(A) is warranted. The
18 court finds by a preponderance of the evidence that a victim
19 was held in a condition of peonage or involuntary servitude
20 for more than one year. The guidelines define peonage or
21 involuntary servitude to include forced labor. See
22 Application Note 1 of Section 2H4.1.

23 Although not required for application of the
24 increase, the court finds, as I noted earlier, that multiple
25 victims were held in a condition of peonage or involuntary

1 servitude for more than one year. This was amply established
2 by the trial evidence. Various victims testified as to the
3 conditions and duration of the forced labor.

4 I turn now to the applicability or nonapplicability
5 of Section 2H4.1(b)(4)(B).

6 Of course, there is some overlap on issues we've
7 already spoken about, but I will hear from the government as
8 to why it believes that pursuant to Section 2H4.1(b)(4)(B), an
9 increase in offense level to 32 is warranted.

10 MS. GUPTA: Your Honor, we understand the Court's
11 ruling as to serious bodily injury. I do think that
12 essentially the same arguments apply here.

13 We had argued that the cross-reference applied based
14 on 18 U.S.C. 2242-3, again, based on the OM demonstration of
15 Rebecca Halpern. So we're happy to rest on our papers and our
16 prior arguments on that.

17 THE COURT: Okay. I can hear from defendant now as
18 to why defendant believes that pursuant to
19 Section 2H4.1(b)(4)(B), an increase in offense level to 32 is
20 not warranted.

21 MS. COHEN: Yes, Your Honor.

22 So in order for this to apply, now we're just
23 looking if there's a similar offense under state law and, you
24 know, our argument is that there is no similar offense.

25 Probation had argued under either section 1

1 conduct --

2 THE COURT: I'm sorry. I think the government is
3 relying on 2242 here. Correct?

4 MS. GUPTA: That's correct, Your Honor. In our
5 papers, we had relied on both 3 and 1.

6 THE COURT: Yes, but not a state offense for this
7 particular issue?

8 MS. GUPTA: Correct. I believe that only applies
9 for the serious bodily injury argument.

10 MS. COHEN: Oh, I'm sorry. I'm on the -- okay.
11 Give me a one second.

12 THE COURT: Take your time.

13 (Pause.)

14 MS. COHEN: Okay. Your Honor, we laid that out and
15 the same argument has already been made so we rely on our
16 papers.

17 THE COURT: Okay. The court does not find that the
18 increase to level 32 pursuant to Section 2H4.1(b)(4)(B) is
19 warranted.

20 The government argues that the felony offense of a
21 violation of Title 18, United States Code, Section 2242 was
22 committed during the commission of or in connection with the
23 forced labor conspiracy. The court does not find that the
24 government has demonstrated by a preponderance of the evidence
25 that this is so.

1 I recognize that this is a close question,
2 especially on the unique facts of this case. I also recognize
3 that the Court's resolution of the Section 2H4.1(b)(4)(B)
4 issue significantly affects the guidelines calculation. But,
5 of course, the applicable advisory sentencing guidelines range
6 is only one factor a court must consider in imposing sentence,
7 pursuant to Section 3553(a). I will discuss the
8 Section 3553(a) factors more later.

9 I turn now to the issue of the applicability or
10 nonapplicability of Section 3B1.1(b). I will hear from the
11 government as to why it believes that pursuant to
12 Section 3B1.1(b), a three level increase is warranted.

13 MS. GUPTA: Yes, Your Honor.

14 3B1.1(b) provides that if the defendant was a
15 manager or supervisor, and the criminal activity involved five
16 or more participants or was otherwise extensive, the offense
17 level should be increased by three.

18 Here, Application Note 2 provides that the defendant
19 must have been the manager or supervisor of one or more other
20 participant. A participant is a person who is criminally
21 responsible for the commission of the offense but need not
22 have been convicted.

23 So I think here we would argue that there were
24 several participants that were proven at trial. Certain
25 co-conspirator statements were introduced at trial and

1 admitted by the Court with the understanding that those
2 individuals were co-conspirators, and certainly that includes
3 Nicole Daedone, Rachel Cherwitz herself, Joanna Van Vleck, Yia
4 Vang, Robert Kandell, Rachel Hemsí and Aubrey Fuller. So we
5 think that the five or more participants prong is easily met.

6 As to otherwise extensive, the Court also, for that
7 prong, can consider whether there were a number of knowing
8 participants in the criminal activity as well as the number of
9 unknowing participants.

10 Here, even without the five knowing participants,
11 the scheme was functionally equivalent. It had operations all
12 across the United States and London and dozens of unknowing
13 individuals who placed pressure on victims to purchase courses
14 and the courses with years' long duration with scores of
15 victims.

16 And as to Rachel Cherwitz's role as manager or
17 supervisor in particular, it's clear from the evidence at
18 trial that she was the second in command to Nicole Daedone.
19 She was the head of sales which meant that she held authority
20 over others. Trial testimony established that she, at the
21 very least, supervised Aubrey Fuller who was a co-conspirator
22 and an executive in sales. She was also, at times, higher in
23 the OneTaste hierarchy than Yia Vang and Rachel Hemsí who were
24 found to be co-conspirators as well. She had authority over
25 the sales team including implementing sales goals and

1 recruiting individuals and was otherwise a core part of the
2 forced labor conspiracy.

3 THE COURT: Do you take the position that she is a
4 manager and supervisor? I know you only need to have one, but
5 do you take the position she is both?

6 MS. GUPTA: Yes, Your Honor, we do. And of course,
7 we do differentiate her from her co-defendant Nicole Daedone
8 who was the organizer and leader of OneTaste and of the forced
9 labor conspiracy which is why we've asked for the plus three
10 instead of the plus four which we understand now that
11 Probation agrees with as well.

12 THE COURT: Is there anything else?

13 MS. GUPTA: No, Your Honor. Thank you.

14 THE COURT: Okay. I'll turn to counsel for
15 Defendant Cherwitz to hear why Defendant Cherwitz believes
16 that pursuant to Section 3B1.1(b), a three level increase is
17 not warranted.

18 MS. COHEN: Thank you, Your Honor. I know we spent
19 some time on the four level and that was only because
20 Probation had argued that so we rely on that in our papers.

21 In terms of the two or three, you know, our argument
22 is that, yes, there were other co-conspirators, but she did
23 not supervise any of those co-conspirators.

24 I mean Robert Kandell was a co-founder of the
25 organization. You know, there were messages between

1 Ms. Daedone and other organizers that Rachel is not on about
2 the upper echelons of the company.

3 Rachel, instead, you know, as I said before, came to
4 OneTaste as a participant like many others. She rose in the
5 organization. There was a lot of testimony about how hard she
6 worked, worked harder than anyone else according to Robert
7 Kandell, and, most importantly, at no benefit to herself.

8 So in typical cases where you have a role
9 adjustment, you know, the person is having a larger piece of
10 the proceeds.

11 THE COURT: When you say no benefit, are you
12 referring to financial?

13 MS. COHEN: Correct, Your Honor, no proceeds, you
14 know, very minimal wages here.

15 So in consideration that she didn't supervise the
16 other co-conspirators, didn't financially benefit and
17 ultimately rose in the organization because of her work, we
18 would argue that no enhancement should apply.

19 THE COURT: Ms. Gupta, do you wish to be heard again
20 or not on this issue?

21 MS. GUPTA: No, Your Honor. We'll rest on our
22 papers.

23 THE COURT: Okay. The court finds that a three
24 level increase pursuant to Section 3B1.1(b) is warranted.

25 The court finds by a preponderance of the evidence

1 that defendant was a manager or supervisor but not an
2 organizer or leader and the criminal activity involved five or
3 more participants.

4 Indeed, defendant was both a manager and a
5 supervisor. And although not necessary for the imposition of
6 the three level increase, the court also finds that the
7 criminal activity was otherwise extensive within the meaning
8 of the guidelines and applicable case law.

9 The trial evidence amply demonstrates that there
10 were at least five participants in the criminal activity,
11 including Defendant Cherwitz and her Co-Defendant Nicole
12 Daedone and those others who were identified by the government
13 at trial as co-conspirators.

14 The trial evidence also amply demonstrates that
15 Defendant Cherwitz, inter alia, exercised decisionmaking
16 authority, actively participated in, planned and organized the
17 criminal conduct and exercised a high degree of control and
18 authority over others. And the trial evidence further amply
19 demonstrates that the criminal activity was extensive,
20 including that it was lengthy in duration and wide-ranging in
21 its means, effects and geographic scope.

22 I turn now to the applicability or nonapplicability
23 of Section 3E1.1.

24 I will hear from the defendant as to why she
25 believes that pursuant to Section 3E1.1, a one level reduction

1 is warranted.

2 MS. COHEN: Thank you, Your Honor.

3 I'm sorry. Give me one moment.

4 THE COURT: Sure.

5 (Pause.)

6 MS. COHEN: Thank you, Your Honor.

7 Yes, Your Honor. As we argued, I mean, you know, I
8 understand Judge Rakoff referred to this as the third point,
9 but I think that, you know, his rationale here about just not
10 penalizing someone for going to trial is the reason we asked
11 for this.

12 I think, you know, this case, in particular, as
13 we've all said is a tough one. It is not, it is not a case
14 where the facts are black and white. I think we can all agree
15 to that. You know, it largely depended on testimony.
16 Psychological coercion is not did you rob them, did you do,
17 did you do insider trading. It's just, it's a little more
18 nuanced.

19 I think in this case, in particular, where, you
20 know, we did have fabricated evidence, we had these journals
21 that I know both defendants from the get-go believed were not
22 real which was proven. You know, those reasons -- for all
23 those reasons, I think, you know, Ms. Cherwitz didn't have a
24 choice. She wanted -- she had to go to trial because of all
25 those reasons, a very different kind of case.

1 So, you know, we asked that an additional point be
2 reduced under Judge Rakoff's decision. I know you're not
3 bound by that, but the fact that often, there is considered --
4 you know, it is a penalty when people go to trial because they
5 do not get anything, they're penalized against it.

6 While I get that, you know, pleading guilty saves
7 the government time and resources and those people are
8 accepting responsibility and should get some kind of benefit,
9 you know, we're asking for one point additional here to reduce
10 it given the unique circumstances of this case.

11 THE COURT: Are you arguing that she has accepted
12 responsibility in any way or are you really just arguing that
13 she should get one level off because she went to trial?

14 MS. COHEN: Yes. I'm arguing because she went to
15 trial, she should get an additional point off because, again,
16 she chose to exercise her Sixth Amendment right and shouldn't
17 be penalized for that, again, particularly in light of the
18 unique circumstances of this case.

19 THE COURT: Okay, but you're not affirmatively
20 arguing that she has accepted responsibility, correct?

21 MS. COHEN: Correct, Your Honor.

22 THE COURT: Okay. I'll hear from the government as
23 to why it believes that pursuant to Section 3E1.1, a one level
24 reduction is not warranted.

25 MS. GUPTA: Yes, Your Honor.

1 Under 3E1.1, the only way there is a reduction of
2 one level is if there is acceptance of responsibility.

3 Under 3E1.1(b), that only applies if the defendant
4 qualifies for a decrease under subsection A which requires
5 acceptance of responsibility.

6 So, here, if the defendant is not accepting
7 responsibility, and I think that's clear not only from what's
8 been said today but also from the defense submission which
9 begins: "As the defense maintained throughout the trial, we
10 do not believe that Rachel committed a crime. Rachel had no
11 intent to force anyone to work for OneTaste, and the victims'
12 contemporaneous statements during the time they were working
13 for OneTaste expressed their choice to be there." So I don't
14 think there's any basis to apply it.

15 Then I would also note, in response to Ms. Cohen's
16 comments, that the Second Circuit has squarely held that 3E1.1
17 provides a benefit for acceptance of responsibility, not a
18 penalty for trial.

19 THE COURT: Here, the court finds that a one level
20 reduction pursuant to Section 3E1.1 is not warranted.

21 The court does not find that defendant has
22 demonstrated entitlement to any reduction for acceptance of
23 responsibility. Defendant has demonstrated no acceptance of
24 responsibility. And that is not a comment on her exercising
25 her right to trial. She is not incurring any penalty for

1 exercising that right. To the contrary, she is just not
2 getting a benefit for accepting responsibility because she has
3 not done so.

4 Although a given defendant may be awarded an
5 acceptance of responsibility reduction under the guidelines
6 post trial, that is not appropriate here on the facts and
7 circumstances of this particular case and this particular
8 defendant. And, of course, as the government noted, I think
9 everybody acknowledges, the Judge Rakoff decision is not
10 binding on me. It is neither binding nor persuasive.

11 I turn now to the issue of the applicability or
12 nonapplicability of Section 4C1.1(a).

13 I will hear from defendant as to why she believes
14 that pursuant to Section 4C1.1, a two level reduction is
15 warranted. And, of course, I have already made the
16 determination that she qualifies for the enhancement for role
17 so she is, based on that finding, ineligible for the two level
18 reduction under 4C1.1, but I will hear you out because I know
19 you disagree with the role enhancement as well. I also would
20 like you to address the issue of substantial financial
21 hardship.

22 So I'll hear you out, Ms. Cohen.

23 MS. COHEN: Thank you, Your Honor.

24 Yes. So there are a lot of rationales as to why
25 someone can't get the zero-point offender. As Your Honor is

1 aware, you know, it has to be no criminal history, didn't
2 receive an adjustment for terrorism, didn't use violence or
3 credible threats of violence in connection with the offense,
4 didn't result in death or serious bodily injury, is not a sex
5 offense, the crime.

6 She didn't personally cause substantial financial
7 hardship. That is one. Look, we did not believe that she
8 caused personal financial hardship because the individuals
9 ultimately had a choice to sign up just like any kind of sales
10 position. I mean, you know, individuals signed up immediately
11 for these courses and could not have been brainwashed or, you
12 know, been under any kind of influence at that time. And, you
13 know, a lot of the individuals quit their jobs on their own to
14 come and work for OneTaste and start to take these classes.

15 So, you know, I think for her personally causing
16 substantial financial hardship, I do not see that that is
17 here. They all, again, had a choice to sign up and, you know,
18 the fact that it would go just to Rachel as to everybody
19 causing financial hardship because she's in sales, of course,
20 she is selling something but they ultimately had a choice
21 whether to sign up.

22 The other factors aren't present except I agree that
23 Your Honor has found the role adjustment which would make her
24 ineligible. Obviously, we would still argue that, you know,
25 given her life and her lack of criminal history and all the

1 other elements, it should apply, but I understand that under
2 that ruling, it would not.

3 THE COURT: I'll hear from the government as to why
4 it believes that pursuant to Section 4C1.1, a two level
5 reduction is not warranted. And, of course, I've already
6 found the role enhancement applies, but if there's anything
7 you would like to comment on this particular section of the
8 guidelines, I'll hear you out now.

9 MS. GUPTA: No, Your Honor. We'll rely on our
10 submission given the Court's ruling on the role enhancement.

11 THE COURT: Here the court finds that a two level
12 reduction pursuant to Section 4C1.1 is not warranted.

13 The court does not find that defendant has
14 demonstrated entitlement to such reduction. Indeed, in light
15 of the court's finding that an offense level increase for role
16 applies, defendant is ineligible for a decrease under
17 Section 4C1.1. And although the court need not and does not
18 determine whether Defendant Cherwitz is ineligible for a
19 decrease under Section 4C1.1 for the additional reason that
20 she personally caused substantial financial hardship, the
21 court notes that the government makes persuasive arguments in
22 this regard in its papers.

23 Are there any objections to the guidelines
24 calculation in the PSR that have not been addressed yet?

25 Ms. Gupta?

1 MS. GUPTA: No, Your Honor.

2 THE COURT: Ms. Cohen?

3 MS. COHEN: No, Your Honor.

4 THE COURT: For the enhancements I have found apply,
5 the preponderance standard was easily met. The preponderance
6 of the evidence standard is the appropriate standard here.
7 But I note for record completeness that even under a higher
8 reasonable certainty standard, which is the standard
9 Defendant Cherwitz urges at least with respect to certain
10 contested issues, the court's findings would be the same.

11 I also note that whether or not I apply any
12 particular disputed enhancement or reduction under the
13 guidelines does not affect the ultimate sentence I will be
14 imposing. And I note that where I did not agree with a
15 party's position with respect to particular enhancements or
16 reductions under the guidelines, I will nevertheless consider
17 the arguments advanced by the parties in my consideration of
18 the Section 3553(a) factors, which I will discuss further
19 later. As has been said probably too many times, this is a
20 unique case and the court needs to consider all of the
21 Section 3553(a) factors, of course.

22 Based on my independent evaluation of the sentencing
23 guidelines, I find a total offense level of 28 calculated as
24 follows.

25 A base offense level of 22, pursuant to

1 Section 2H4.1(a)(1). See also Sections 2X5.1 and 2X1.1.

2 A three level increase, pursuant to
3 Section 2H4.1(b)(3)(A), because a victim was held in a
4 condition of peonage or involuntary servitude for more than
5 one year.

6 A three level increase, pursuant to
7 Section 3B1.1(b), because defendant was a manager or
8 supervisor but not an organizer or leader and the criminal
9 activity involved five or more participants and was otherwise
10 extensive. Again, I note that my determination that the
11 criminal activity was otherwise extensive is not necessary to
12 my determination that the three level increase applies here.

13 I find a criminal history category of I.

14 At offense level 28, with criminal history category
15 of I, the advisory guidelines range of imprisonment is 78 to
16 97 months.

17 The guidelines term of supervised release is not
18 more than three years, pursuant to Section 5D1.2(a)(2).

19 The fine range is \$25,000 to \$250,000, pursuant to
20 Section 5E1.2(c)(3).

21 Are there any objections to the guidelines
22 calculation as I've just stated it other than what's already
23 been raised?

24 Ms. Gupta?

25 MS. GUPTA: No, Your Honor.

1 THE COURT: Ms. Cohen?

2 MS. COHEN: No, Your Honor. Thank you.

3 THE COURT: So with respect to the PSR, I have asked
4 about objections to the factual recitations and I have asked
5 about objections to the guidelines calculation and I've
6 addressed those issues.

7 I'll ask now, in an abundance of caution, are there
8 any objections to any part at all of the PSR including the
9 addendum, second addendum, third addendum, fourth addendum,
10 fifth addendum, sixth addendum, seventh addendum, eighth
11 addendum and ninth addendum that either party wants to raise
12 that have not been raised yet?

13 Ms. Gupta?

14 MS. GUPTA: No, Your Honor.

15 THE COURT: Ms. Cohen?

16 MS. COHEN: No, Your Honor.

17 THE COURT: I adopt the PSR with the addendum,
18 second addendum, third addendum, fourth addendum, fifth
19 addendum, sixth addendum, seventh addendum, eighth addendum
20 and ninth addendum consistent with what I have already stated
21 on the record with respect to my findings and guidelines
22 calculation.

23 Is anyone seeking a reduction from the applicable
24 advisory guidelines range under any guidelines provision? I
25 am distinguishing between the guidelines provisions and the

1 Section 3553(a) statutory factors.

2 Ms. Gupta?

3 MS. GUPTA: No, Your Honor.

4 THE COURT: Ms. Cohen?

5 MS. COHEN: No, Your Honor.

6 THE COURT: I'll now give the government, defense
7 counsel and the defendant the opportunity to be heard as to
8 sentencing.

9 Let me just confirm with the government that there
10 are no additional victims that intend to speak.

11 Correct?

12 MS. GUPTA: That's correct, Your Honor.

13 THE COURT: I'll give the government the opportunity
14 first to speak, then defense counsel and then Ms. Cherwitz
15 who, of course, is not required to speak but she is absolutely
16 welcome to and she has that right.

17 So let me turn to Ms. Gupta.

18 Do you wish to be heard with respect to sentencing?

19 MS. GUPTA: Yes, Your Honor.

20 At the outset, I would just note that given the
21 sentence that was imposed today on Nicole Daedone and the
22 calculated guideline sentence today, we are revising our
23 sentencing recommendation.

24 It was originally 168 months in our submission, but
25 we will now ask for a guideline sentence, so a sentence

1 between 78 and 97 months' imprisonment, although I would just
2 note that we do stand on our prior guidelines calculation.

3 THE COURT: Okay. And you're not asking for a
4 particular point in that range?

5 MS. GUPTA: No, Your Honor.

6 THE COURT: Do you wish to be heard further on
7 sentencing?

8 MS. GUPTA: Yes, Your Honor. Thank you.

9 THE COURT: Go ahead.

10 MS. GUPTA: Your Honor, I would like to address
11 three 3553(a) factors.

12 The defendant's crime here lasted over a decade. It
13 involved numerous victims and it caused untold harm and the
14 defendant benefited substantially.

15 She was Nicole Daedone's second in command and was
16 respected and revered within OneTaste. She was paid a salary
17 greater than the victims in this case and enjoyed substantial
18 power and prestige, and each of the 3553(a) factors calls for
19 a sentence within the applicable guidelines range.

20 I'll just start with the nature and circumstances of
21 the offense.

22 I think there should be no question that this crime
23 was egregious. The defendant and her co-defendant used a
24 combination of abusive tactics to coerce victims into
25 providing unpaid or substantially underpaid labor for over a

1 decade. Nearly every trial witness, including both victims
2 and non-victims described these tactics.

3 They included indoctrinating their victims to
4 believe that OneTaste was everything to them and that they
5 would have nothing if they left. The defendant and her
6 co-defendant groomed victims into accepting repeated sexual
7 touch. And, again, while orgasmic meditation in and of itself
8 was never on trial, the trial evidence did show that it often
9 constituted the labor or coercive activity for the victims in
10 this case.

11 The defendants isolated victims from their friends,
12 family and anyone outside of OneTaste calling people outside
13 of OneTaste "muggles." They manipulated victims into working
14 long hours for little or no pay. And co-conspirator and
15 co-founder Robert Kandell testified that this was their plan
16 from the start.

17 They collected information about victims' prior
18 trauma and used that information against them. They monitored
19 victims and shared bedrooms and communal homes including
20 instructing victims to report back to both defendants on their
21 relationships. They publicly shamed victims including the OM
22 demonstration that we have discussed at length today involving
23 Becky Halpern. They disrupted victims' intimate relationships
24 for the good of OneTaste.

25 They sexually abused their victims which showed up

1 in many ways but just as a few examples, they directed victims
2 to serve as handlers for OneTaste's main investor, Reese
3 Jones, including sexually servicing him each day and
4 performing other menial labor for him. They coerced victims
5 into allowing OneTaste's clients, prospective customers and
6 other OneTaste participants to stroke the victims' genitals
7 and compelling victims to stroke OneTaste's clients,
8 prospective customers and other OneTaste participants' penises
9 and have sex with them.

10 The defendants physically exhausted their victims.
11 They demanded work from them all day, all night, including
12 demanding responses on text messages late into the night. And
13 victims testified that they could not sleep until they hit
14 their sales goals.

15 I do want to note here that there's been repeated
16 arguments from the defense that this case has only been about
17 psychological harm and that's simply not the case.

18 Sexual abuse is physical harm. Working people until
19 they are physically exhausted or sick is also physical harm.
20 And the defendants also financially harmed their victims. In
21 some cases, Rachel Cherwitz herself directed victims to incur
22 debt to pay for expensive courses including opening lines of
23 credit and she knew that they couldn't afford them. And the
24 defendants also underpaid their victims or did not pay them at
25 all for their labor leading to lasting financial harm.

1 Now, the victims can describe the lasting impact
2 that the defendant's actions had on them better than I can so
3 I'd like to take a moment now to quote now from some of their
4 testimony at trial as well as some of the victim impact
5 statements that were submitted.

6 I do want to note that many of the victims are not
7 here today in person because of everything that they already
8 had to endure, including reliving some of their worst moments
9 during this trial and even after trial, including reading
10 about themselves and their testimony online.

11 Becky testified that while she was at OneTaste: "I
12 really, really lost touch with reality and I really was so, so
13 immersed in this world that my sense of up and down and right
14 and wrong was completely skewed.

15 And when asked about the psychological harm she
16 experienced, she testified: "It's pretty extreme, I would
17 say. It's really hard to be in this room right now, for
18 example. It's something that I still deal with on a daily
19 basis."

20 Christina testified: "My sense of my own instinct
21 and intuition and feelings of what is right and wrong and
22 values slowly became formatted into the style of like a box or
23 algorithm. That was the appropriate one. That was the
24 OneTaste one."

25 And regarding the prospect of leaving OneTaste, she

1 said: "There was not going to be anywhere to go to where
2 anyone would understand anything about me. All of my previous
3 relationships were gone."

4 Dana wrote in a statement to this court: "The
5 myriad ways in which the defendants manipulated me and my
6 interpersonal relationships at OneTaste led me to deeply
7 distrust both myself and the people around me. To this day, I
8 find it difficult to trust people which makes it incredibly
9 difficult to engage in any relationship in a meaningful way,
10 especially in romantic relationships."

11 Lianna testified: "When I left OneTaste, I was in a
12 really hard place. It was the most difficult thing I've ever
13 done. I had become so immeshed with the organization and we
14 didn't have any days off. We were just, like, my whole life
15 had become about OneTaste that I was really worn out at the
16 end. And I was -- it was really hard to function when I
17 left."

18 Max testified: "I think my whole world view got,
19 like, slowly broken down and reshaped until the way that I
20 understood myself and my identity and what reality was was
21 really based on the groupthink at OneTaste. I didn't have a
22 sense of self anymore. I just -- it is hard for me even now
23 to understand what happened to me while I was there, but it
24 felt like I lost myself and I lost my perception of reality
25 and I sacrificed a lot of things in my life for my involvement

1 in OneTaste."

2 Michal testified, and I know Your Honor has heard
3 from her today but she stated: "I gave everything that I had
4 to make it work, to make my life as a disciple of orgasm. I
5 wanted it to work with all my heart. I gave my money, my
6 time, my body for this thing, and everything went so fast. It
7 was like I was in a time machine and everything was so high
8 intensity, and there was so much pressure exerted on me and my
9 intimate relationships and financially, that by the time I got
10 out, I felt like I didn't recognize myself anymore."

11 Anthia testified: "Psychologically, there was -- I
12 felt a lot of damage from my time at OneTaste."

13 Michelle wrote in an impact statement: "The effects
14 of my time at OneTaste, under the guidance and care of Nicole
15 Daedone and Rachel Cherwitz, still reverberate heavily in my
16 life today. The way I feel ten years behind in my financial
17 life, the way I can't surrender myself in sex or in
18 partnerships because of all the pain and trauma those things
19 led me to, the way I don't want to be seen or heard publicly
20 or by my friends, the hypersensitively around too much or too
21 little sleep, too much or too little rest, too much or too
22 little work, the list of traumatic effects goes on."

23 These are just some of the victims' words.

24 In addition, Your Honor has before it victim impact
25 statements as well as statements that the government received

1 from several additional individuals, some of whom are here in
2 the courtroom today.

3 We understand Your Honor's ruling about who
4 qualifies statutorily as a victim in this case, but we submit
5 that the Court should take into consideration the defendant's
6 actions had ramifications far beyond just the witnesses who
7 testified at this trial.

8 Now I'll move to the history and characteristics of
9 the defendant which we believe overall support a guideline
10 sentence.

11 Notably, as I think was reinforced today, the
12 defendant still has not accepted responsibility, expressed any
13 remorse or apologized to her victims.

14 I do want to acknowledge that there are some
15 mitigating circumstances here that the Court can and should
16 consider regarding the defendant's background including her
17 prior substance abuse and health issues that were raised in
18 her submissions, as well as her treatment and educational
19 efforts in that area which the government find commendable.

20 And, obviously, the defense has submitted letters
21 from many supporters describing the defendant as someone who
22 helped them during a time of need and as someone who is
23 generous and compassionate and we don't dispute that. Some
24 people experienced her that way and, in fact, I think many of
25 the victims in this case at least initially experienced her

1 that way.

2 It is particularly surprising and concerning that
3 the defendant, someone who does have this background in
4 rehabilitative studies in addiction treatment, would treat the
5 victims in this case in the way that she did, for example, by
6 directing victims to have sex every day for 30 days even when
7 they were visibly upset and sick, directing them to have their
8 genitals stroked or to stroke others for financial profit,
9 financially coercing victims including when they clearly
10 stated they were unable to pay for courses, and sending
11 victims to Alcoholics Anonymous and Narcotics Anonymous when
12 they were not addicted to either alcohol or narcotics.

13 So, overall, the defendant's history and
14 characteristics all support a guideline sentence.

15 I'll next address the need to avoid unwarranted
16 sentencing disparities.

17 I know the defense made a lot of arguments on this
18 case and cited a number of cases in their submissions. We
19 would submit that given the revised guideline sentence today
20 that the government is seeking, there really isn't a large
21 concern about disparity here, but I would just note as a
22 general matter that every case is unique.

23 I think it's been mentioned many times that this
24 case in particular is unique. This case involved sexual abuse
25 and numerous victims that spanned geographically, as well as a

1 variety of coercive tactics, so we don't believe that there
2 are any disparity concerns here with the sentence that the
3 government is seeking.

4 And, finally, I'll address deterrence and protection
5 of the public.

6 We do believe a significant sentence within the
7 guidelines range is needed in this case for deterrence. The
8 Court should deter others by imposing a sentence that makes
9 clear that the conduct here will not be treated as a lesser
10 crime simply because it was packaged as a startup specializing
11 in sexual awareness. The Court's sentence today will be seen
12 by the victims themselves as well as other individuals who
13 were impacted by their time at OneTaste, including those who
14 have not come forward, and a serious sentence will send a
15 message to victims in the criminal justice system that that
16 system took what they have endured seriously and will
17 encourage others to come forward in future cases.

18 Now, as to specific deterrence, the defendant's lack
19 of remorse here, the lack of acceptance of responsibility,
20 coupled with the supporters she has, does call for a
21 substantial sentence that will protect the public.

22 I think it's notable that some of the victims wrote
23 about this in the victim impact statements that they submitted
24 to the court.

25 For example, Dana wrote that she is "concerned that

1 the defendants will continue their manipulative and coercive
2 practices as long as they are able."

3 And Becky Halpern wrote: "I am certain that given
4 the chance, they would return to the crimes of which they are
5 convicted. They will give it a new name, new face, new
6 branding, but the mechanism will be the same."

7 So for both general and specific deterrence, and to
8 protect the public, the Court should impose a guideline
9 sentence.

10 And I'll just briefly conclude that the victims have
11 described so powerfully, mostly at trial and, today, you heard
12 from Ms. Neria as well, the impact of the defendant's crimes
13 even when it meant reliving the worst moments of their lives.
14 And it's clear that they will be carrying that damage with
15 them for the rest of their lives.

16 So for all of the reasons in our submission and as
17 described today, we respectfully request a guidelines sentence
18 of 78 to 97 months' imprisonment.

19 THE COURT: Do you want to speak to restitution?

20 MS. GUPTA: Yes, Your Honor, just briefly.

21 I know this has been extensively briefed, but we
22 believe we've presented a reasonable approximation and a sound
23 methodology as to each of the testifying victims.

24 THE COURT: Okay. And, of course, the Court has
25 already found in connection with the sentencing of Ms. Daedone

1 that you have met your burden with respect to the amounts of
2 the restitution that you were seeking.

3 Obviously, this is the sentencing of Ms. Cherwitz,
4 so whether it's imposed on her or not is a different issue,
5 but I just wanted to make sure that the record is clear that I
6 have already found that the government has met its burden on
7 demonstrating that the amounts that the government has asked
8 for are appropriate and, in fact, should be imposed under the
9 statute.

10 MS. GUPTA: Yes, Your Honor, we agree.

11 THE COURT: And I think in the context of
12 Ms. Daedone's sentencing, it was discussed that your
13 methodology both with respect to wages and medical expenses
14 is, in some ways, I think, conservative.

15 MS. GUPTA: Correct, Your Honor. It was based
16 entirely on trial testimony, sworn affidavits and supporting
17 documentation and, in some instances, we did exclude certain
18 time periods in response to arguments raised by the defense.

19 THE COURT: And you excluded certain expenses that
20 you did not find are recoverable under the Trafficking Victims
21 Protection Act and you've backed out an amount that was
22 already reimbursed by the State.

23 MS. GUPTA: That's correct, Your Honor.

24 THE COURT: I'll hear from you, Ms. Cohen. Do you
25 wish to be heard with respect to sentencing?

1 MS. COHEN: Yes, Your Honor. Thank you.

2 I'd like to start with the nature and circumstances
3 of the offense.

4 Some of this, I'll try to be short, it is somewhat
5 repetitive of some of the themes, but I'll first note, and I
6 think Ms. Bonjean said this as well, we're not disputing that
7 conspiracy to commit forced labor is not a serious crime nor
8 are we belittling or saying anything about the victims in this
9 case. We may argue factually about what happened at the time
10 but, again, I'm not commenting on anyone's, anyone's feelings
11 or how that made them feel and what they're saying today.

12 One thing, I think, is interesting and as I was
13 listening to some of the victims' statements and I think it
14 was Max Pixley, I believe, who said, you know, the groupthink
15 at OneTaste.

16 You know, some of this, as we saw during the trial,
17 is in some sense a lot of groupthink, people there, people
18 excited, reading off of each other and what was going on. And
19 the reason that I'm saying that, again, is not to say I know
20 that the testimony, and the Court heard testimony but, you
21 know, as I think Your Honor can see from the trial, I put my
22 whole heart and soul into this case.

23 I read every single thing that every witness in this
24 case and others wrote, I watched their videos, and I saw their
25 text messages and their posts and all of that. And I know

1 that the jury didn't hear it and I know there was evidence,
2 and I'm not disputing what the jury found, but I think we do
3 need to step back and think of some of that in the context of
4 this sentence and, again, in how it was in the intent of
5 Ms. Cherwitz and what she understood people wanted to do.

6 For example, some people came in on day one and
7 bought these classes and wanted to because they were excited
8 about it just like she did when she came there. So, you know,
9 that is, people wanted to be in this environment. I mean,
10 there are videos. Sometimes I would be watching saying, oh,
11 my gosh, this is a lot, they were having a lot of fun and they
12 were very happy at times. And, again, I'm not commenting on
13 how they feel today, but it was a lot of that at the time.

14 I think, you know, the government had said that it
15 was the intent from the beginning was to manipulate. You
16 know, remember Ms. Cherwitz wasn't there in the beginning.
17 Mr. Kandell was the co-founder. As we know, he received
18 immunity in this case but, you know, he was there first.

19 I think one other common theme among all of the
20 testifying or most of the testifying witnesses, victims in
21 this case was the statement that this was complicated. And I
22 think it was complicated. Even Ms. Neria today noted the
23 complicated feelings of her friendship with Rachel and also
24 with the feelings that she had that were negative, but these
25 feelings were very wrapped up and I think, again, that is also

1 what makes this case very unique.

2 I was looking, and I know I talked about this both
3 in the sentencing submission, but I had recently been reading
4 that Sabhnani case again, a Long Island case, and what struck
5 me there, and that's why I keep saying this, is that these
6 poor women were brought from another country, had their
7 passports taken. I mean they were sexually, they were
8 physically abused. It was horrible. There was no other
9 reason for them to be there and, you know, that is a different
10 circumstance here.

11 There were people like Michelle Wright who described
12 Ms. Cherwitz as a mentor and a friend. And I will tell you,
13 and I've met Rachel obviously many, many years later, but I
14 was very honored to represent her because she was so
15 appreciative, so warm and caring in a time that I was with
16 her. I think that that comes through in a lot of these
17 letters and in some of the people who testified in this court.

18 As we know, Robert Kandell also described Rachel
19 wonderfully, and I put that quote in our papers about how, you
20 know, she was passionate and an inspiring leader.

21 I mean she worked so hard and, you know, she
22 obviously, you can see she expected people to work that hard.
23 Not everybody should and be expected to work that hard and
24 that is not right but, you know, she was passionate. She
25 was -- again, when you get into, like, the OM demonstrations

1 and being a leader, you know, what she believed is that these
2 people wanted this training and wanted to be trained and
3 wanted to succeed in the organization because that's what she
4 wanted for herself.

5 And, you know, as Mr. Kandell described, in the
6 worst of times, she got annoyed because people weren't doing
7 what they were doing or they were lazy and argumentative, and
8 maybe in the context of everything going on, we can understand
9 how these people now feel but at the time, you know, she
10 thought she was doing her job and she was pushing people to
11 what she believed they wanted to be pushed for in connection
12 with the OM and, you know, what OneTaste was supposed to give
13 them. So I think that needs to be considered here when you
14 consider everything in terms of the nature and the
15 circumstances of this offense.

16 And then, you know, and the other point, as I argued
17 in our papers, is that, you know, I think also when you look
18 at what a person, should they have known, and you can argue
19 she should have known people were upset maybe in some
20 circumstances but, again, in contrast to everything that these
21 people were saying at the time, it's hard to look at that and
22 think that they didn't want to be there and that she was
23 forcing them.

24 You know, in looking at these other cases that
25 involve psychological harm, these other cases are civil cases

1 and, you know, in those cases, the court did not find that it
2 was proven by a preponderance serious harm because the victims
3 could leave at any time and being ostracized was not found to
4 be serious harm. I'm not saying that again trying to
5 relitigate the case but just to take it, you know, look at
6 this from that perspective and I think that is very important
7 here.

8 In terms of the nature -- the history and
9 characteristics of Ms. Cherwitz, you know, Ms. Cherwitz is
10 married. Her husband, Matt Pelletier, is here in the
11 courtroom, of course, supporting her today. He remains
12 supportive of her as does his family who also wrote letters on
13 her behalf.

14 Rachel as, you know, as Your Honor is aware, and
15 this is -- and I thank the government for acknowledging the
16 good that she has done. Rachel did her whole, you know, as I
17 think you can see from all of these letters, was trying to
18 help people and there were letters from people at OneTaste who
19 talk about how she helped them.

20 For example, Marissa Ward who has a job now as, I
21 think she's a counselor. She has nothing to do with OneTaste
22 but she, you know, she worked, she said, alongside her almost
23 every day for three years and she saw her in various settings.
24 And while we heard about negative things, a lot of negative
25 things about Rachel, she and others described very positive

1 things about how she helped them.

2 I remember watching the video during trial of, the
3 beast video. And I paid specific attention, I've watched it
4 several times, to Ms. Cherwitz and how she went around to
5 people and gave them water, made sure there were safe words.
6 I think you can look at that and think she was -- the people
7 came there for this and she thought that she was giving them
8 what they wanted and she took care of them in those instances
9 and I think some of the people described that.

10 Then starting in 2017 or 2018 -- yes, sorry, 2018, I
11 think that's really important for the Court to consider. What
12 did she do during that time? And what she went and did -- as
13 you know, she has a history. She was an addict. She overcame
14 that. She went to AA. This is, sorry, prior to OneTaste,
15 that was extremely meaningful for her.

16 And I think the, you know, the arguments that people
17 were told to go to AA was a negative. I think in terms of,
18 for Ms. Cherwitz who got so much out of those meetings, not
19 just to become sober but found it very much a spiritual
20 awakening and lived her life pursuant to that, thought that
21 she was giving these people something that would be spiritual
22 for them as well. I understand people didn't take it like
23 that, but it was sending somebody out to another organization
24 where they could help and grow spiritually is not something
25 that you would think of in the forced context. Right?

1 Because they're going out and setting goals, speaking to these
2 other people about their issues and learn from these. So that
3 was the point of that. If you inventory that, all of that
4 comes from AA.

5 So then going back to what I was saying, starting in
6 2018, Rachel went back to school. She became an addiction
7 counselor.

8 She, I think, in particular, I thought, as I noted
9 in the sentencing submission, Kerri Russi met Rachel while
10 they were both working in the drug and alcohol recovery
11 community and I thought it was particularly impressive that
12 what she wrote in her letter about how Rachel had dedicated
13 her life to supporting others in community which a lot of
14 people echoed, but most importantly, that her own, that the
15 patients who then came to Ms. Russi shared stories with her
16 about the positive impact that Rachel had on their early
17 recovery and that's significant because that, the people
18 coming from her, they didn't have to say those things and they
19 did. And she described, described her as someone who listens
20 deeply, offers hope and reminds them of their own ability to
21 find solutions in difficult moments. Her presence helped
22 people feel seen, heard and empowered.

23 I think those words are echoed even beyond that,
24 what Rachel did even after she was arrested and awaiting
25 trial. We talked about her work at the free food restaurant

1 in Harlem where they would pass out meals to families or
2 friends or people who couldn't, you know, who couldn't be
3 there or the people who came in and said they would have a
4 decent dinner and would be, you know, feel important that
5 night.

6 And, you know, as her long time friend who's also in
7 the courtroom today, Ms. Dugandzic.

8 THE COURT: Yes, I recognize her from the video.

9 MS. COHEN: Yes, she has known Rachel almost her
10 whole life, since they were 12, and talked about, you know,
11 what she does for homeless and talks to people, gives people
12 dignity.

13 Whether Your Honor sees that, you know, I don't, it
14 contrasts with what the government said today and how people
15 felt at OneTaste, I think, you know, when you sentence someone
16 and you're guessing what they're going to be like, at least
17 here, we have years of, of her doing these acts and of trying
18 to make the world a better place.

19 And I wanted -- before I move on, I just wanted to
20 comment that at the MDC, which as we've already noted is not
21 an easy place to be, that Rachel has, you know, or, sorry,
22 Ms. Cherwitz has really, unlike any client or people who
23 complain, she has just, you know, not done that and actually
24 made the best of it and is very beloved by the other inmates
25 there, the correctional guards, there have been no incidents,

1 and, you know, I think that is also important to note.

2 Then I wanted to turn to the need to avoid
3 unwarranted sentencing disparities.

4 I mean, obviously, we were looking at some very
5 different guidelines so some of those cases, you know, don't
6 necessarily apply here, but I think the fact that, you know --
7 I was making the point, in fact, that originally, that the ask
8 in the guideline was comparable to many cases involving
9 minors, et cetera. Obviously, that's not the case here and
10 may be inapplicable now but I think it's warranted looking at
11 these cases once again, putting the layer over it, that this
12 was a case that, unlike these, every one of the forced labor
13 cases, you know, it was just labor and that was it, and much,
14 much worse facts that were just based on the fact that there
15 was no way for these people to leave.

16 And then finally, I'll just comment on deterrence.

17 So, you know, I think, in a way, I've already
18 mentioned this in terms of specific deterrence and the good
19 that Rachel has done since 2018 and continues to do even at
20 the MDC.

21 I think most, also very important is that there have
22 been -- we're asking for time served here because she's been
23 at the MDC for ten months. She was arrested with, you know,
24 helicopters and guns blazing. If there's something that would
25 deter you from conduct, that certainly is a start. A

1 five-week trial. She was publicly disgraced, obviously,
2 humiliated, shamed in front of the press. She's not going --
3 it's going to be difficult for her to get another job as a
4 counselor. She faces financial ruin.

5 All of these things should be considered in the fact
6 that there is a lot here to deter. It's not -- again, it's
7 not like she's not suffering, that she's been out this whole
8 time and she hasn't had anything. And, you know, and being --
9 obviously, she's a convicted felon. She'll have that the rest
10 of her life, the stigma surrounding that. So all of these,
11 plus she has served ten months at the MDC.

12 So, certainly, that is sufficient deterrence in this
13 case and makes it, for all the reasons, a sentence of time
14 served would be sufficient, but not greater than necessary, to
15 satisfy the interests of justice here in fashioning the
16 appropriate sentence.

17 And in terms of general deterrence, you know, I
18 think these same circumstances apply that I just argued in
19 terms of general deterrence. And, you know, I think this
20 crime, like, I understand it in terms of dissuading people
21 from taking advantage, but I think Rachel is in a different
22 situation here where someone who came in later and, as I said,
23 worked her way up at the company and, most importantly, did
24 not try to profit from this.

25 I mean the government mentioned that she made more

1 than the victims. She worked there for ten years so, of
2 course, she's going to make more than them. And I remember
3 their charts, there were certain times where she was making
4 the same.

5 And, you know, I think that in terms of the general
6 deterrence, this isn't the kind of crime where, you know, you
7 have -- where it's very black and white. It's not easy to
8 replicate, this type of crime. So it's not like in insider
9 trading, where you want to stop someone from doing that. I
10 think there has been so much surrounding this case, it has
11 been very public and she has suffered and she has been in jail
12 for the past ten months.

13 I think that, you know, addresses the need for, the
14 seriousness of the offense and the punishment.

15 Again, as I said, we're not trying to say that it's
16 not serious but she is in a different position here than
17 Ms. Daedone. You know, it is a serious offense but these, for
18 all the reasons I said, does demonstrate that it is serious
19 given all of the punishment that has already occurred.

20 And, you know, I think I'll just say in terms of,
21 before I comment on restitution, you know, again, I ask the
22 Court, I understand, you know, that the individuals here and
23 what they feel now, but to consider that Rachel did believe
24 in -- sorry -- does believe in, you know, in what she was
25 doing and she, she believed when these individuals said that

1 they wanted to do this, that they, in fact, did want to do
2 this. And, you know, so that, I think, should be taken into
3 consideration.

4 And then, finally, in terms of restitution, you
5 know, we argued, we did a lot of work on restitution and I
6 think it's important and I didn't mean to make the work done
7 because I'm trying to nitpick about dollars, but I think this
8 deserved of a lot of, you know, and I apologize for the late
9 filing but I was working on this for a long time. It was a
10 lot of material to compile and I think that I understand
11 Your Honor's imposition of it. I mean I think the government
12 agreed with some of, you know, our arguments and did cut down
13 on it. And I do think, once again, the same theme I've been
14 talking about in terms of the overlay of what they were doing
15 for OM is why, you know, that's also just very, very
16 difficult.

17 And I think --

18 THE COURT: Do you want to speak to any other
19 aspects of the sentence?

20 Let me ask you about special conditions
21 specifically.

22 MS. COHEN: Yes.

23 THE COURT: There were originally four recommended
24 and the Probation Department is no longer, of course,
25 recommending the sex offender registration condition. I am

1 not inclined to impose the last one, relating to victim
2 contact, which leaves two conditions, which was the second one
3 that was recommended by Probation and the third one.

4 MS. COHEN: Yes.

5 THE COURT: The second one relating to the financial
6 records and accounts and the third one that had been
7 recommended relating to restitution.

8 MS. COHEN: Yes.

9 THE COURT: So do you have any objections to those?
10 Do you want to be heard on those?

11 MS. COHEN: No, Your Honor.

12 THE COURT: Okay. And do you want them read out to
13 you?

14 MS. COHEN: No, Your Honor. We waive that. I've
15 been over that with Ms. Cherwitz.

16 THE COURT: Yes. Okay.

17 I note that, of course, Ms. Cherwitz is paying close
18 attention as she did throughout the trial and she's following
19 along what's happening.

20 You have the right to make a statement or present
21 any information to mitigate the sentence. You are certainly
22 not required to but you have that right and you are welcome to
23 do that.

24 Do you wish to do so now?

25 THE DEFENDANT: I do not.

1 THE COURT: Okay. Thank you.

2 Is there any reason why sentence should not be
3 imposed at this time?

4 Ms. Gupta?

5 MS. GUPTA: No, Your Honor.

6 THE COURT: Ms. Cohen?

7 MS. COHEN: No, Your Honor.

8 THE COURT: We will proceed then.

9 I will start by explaining the factors I have
10 considered in arriving at Ms. Cherwitz' sentence.

11 I have considered each of the factors set forth in
12 Title 18, United States Code, Section 3553(a). Those factors
13 are as follows.

14 First factor: The nature and circumstances of the
15 offense and the history and characteristics of the defendant.

16 Second factor: The need for the sentence imposed,
17 A, to reflect the seriousness of the offense, to promote
18 respect for the law and to provide just punishment for the
19 offense, B, to afford adequate deterrence to criminal conduct,
20 C, to protect the public from further crimes of the defendant
21 and, D, to provide the defendant with needed educational or
22 vocational training, medical care or other correctional
23 treatment in the most effective manner.

24 Third factor: The kinds of sentences available.

25 Fourth factor: The guidelines range.

1 Fifth factor: Any pertinent policy statement.

2 Sixth factor: The need to avoid unwarranted
3 sentence disparities among defendants with similar records who
4 have been found guilty of similar conduct.

5 And seventh factor: The need to provide restitution
6 to any victims of the offense.

7 Under Title 18, United States Code, Section 3553(a),
8 I am required to impose a sentence sufficient but not greater
9 than necessary to comply with the purposes set forth in
10 Title 18, United States Code, Section 3553(a)(2), which I just
11 described.

12 I have considered each of the factors I am required
13 to consider in arriving at the sentence I am going to impose
14 today and I have considered those factors in light of the
15 particular facts of this case.

16 Quite a bit of what I'm going to say will be
17 familiar from the sentencing of Ms. Daedone because although
18 the two defendants certainly are two separate individuals,
19 there is a lot of overlap in terms of the conduct here and, of
20 course, they were found to be guilty of the same conspiracy.

21 The offense that Ms. Cherwitz committed, forced
22 labor conspiracy, is a very serious offense.

23 For a significant period of time, Ms. Cherwitz
24 played an important role in the conspiracy -- in a conspiracy
25 that involved coercing others, through a variety of means, to

1 perform labor and services, including sexual services.

2 Make no mistake about it, even though Ms. Cherwitz
3 was not the founder or leader of OneTaste, her role in the
4 conspiracy was vital. She was a manager and a supervisor.
5 The evidence reflects how closely she partnered with
6 Ms. Daedone during the conspiracy.

7 I was struck today by Ms. Neria's words at this
8 proceeding where she referred to Ms. Cherwitz as Ms. Daedone's
9 main executioner. Now, what she meant by that was that she
10 was executing tasks. She didn't mean she was murdering
11 someone, obviously. But she said that she did what Nicole
12 Daedone wanted her to do, including getting money from clients
13 and employees by any means necessary. And I'm paraphrasing,
14 but it was, I was struck by that because Ms. Cherwitz did
15 partner very closely with Ms. Daedone during the conspiracy.

16 Ms. Cherwitz and her co-conspirators benefited from
17 the conspiracy and the acts taken in furtherance of the
18 conspiracy. And, of course, there are many ways to benefit
19 from something. There are benefits that are non-financial
20 benefits that are nonetheless important benefits.

21 Ms. Cherwitz makes much of the fact that the
22 indictment did not charge her with the substantive crime of
23 forced labor. But what she appears to fail to appreciate is
24 that the trial evidence amply demonstrated that there wasn't
25 just an agreement here to commit forced labor, there were

1 concrete actions taken to that end. Many, many, serious
2 actions. Deliberate actions. Harmful actions. The trial
3 evidence demonstrated by at least a preponderance of the
4 evidence that forced labor occurred.

5 Ms. Cherwitz and her co-conspirators, including
6 Nicole Daedone, caused significant harm to numerous victims.
7 The harm they caused included financial harm, physical harm
8 and psychological harm. Some of the harm caused has proven to
9 be long lasting, if not irreparable, and there's a lot of
10 information in the record before the court about the harm.

11 And although I did not find that Ms. Cherwitz's
12 conduct with respect to Ms. Halpern that we have talked about
13 at some length warranted an offense level increase for
14 sentencing guidelines calculation purposes, it bears noting
15 that the conduct was egregious.

16 Here, there is nothing mitigating about the criminal
17 conduct itself.

18 I presided over the five week jury trial in this
19 matter. The testimony and other evidence presented at trial
20 painted a clear picture of coercion, carried out in
21 deliberate, orchestrated, methodical, calculated and egregious
22 ways, including in insidious ways.

23 And, again, as I noted at the sentencing of
24 Ms. Daedone earlier, the government was correct when it said
25 in summation at trial that "this was a deliberate and

1 calculated conspiracy to exploit vulnerable people for money
2 and power," and that "the defendants built a business on the
3 backs of a select group of women who they targeted, abused,
4 and exploited."

5 The trial evidence painted a particularly vivid
6 picture of how Ms. Cherwitz conducted herself toward victims.
7 More specifically, how poorly she treated them. And how
8 constant and unrelenting the poor treatment was even when it
9 was clear that victims were being affected by her conduct.

10 In her sentencing memorandum, I believe at page 47,
11 Counsel states: "While there was testimony during the trial
12 from witnesses about how Rachel treated them on text message
13 or otherwise, which Rachel regrets, her actions came from a
14 place of caring."

15 That assertion is particularly difficult for the
16 court to credit, having spent days listening to the credible
17 testimony of people Ms. Cherwitz mistreated.

18 The trial evidence puts the lie to any suggestion
19 that what this case is really about is a small number of women
20 who simply came to regret actions in which they had
21 voluntarily engaged years earlier.

22 The trial evidence also puts the lie to any
23 suggestion that all that Ms. Cherwitz and her co-conspirators
24 were trying to do was to empower women.

25 What Ms. Cherwitz did to the victims was not at all

1 empowering. To the contrary.

2 The trial evidence also puts the lie to any
3 suggestion that Ms. Cherwitz and Ms. Daedone were charged and
4 convicted because of how society views women.

5 Ms. Cherwitz exploited certain women in a calculated
6 way and benefitted from that calculated exploitation. She
7 benefited in various ways, including in obtaining power.

8 The sentence here must reflect the seriousness of
9 the offense of conviction. The sentence must also provide
10 just punishment. That is important here given the gravity of
11 the offense of conviction.

12 There is also a strong need for deterrence here.
13 Both general deterrence and specific deterrence. People must
14 in general be deterred from engaging in conduct that preys on
15 and exploits vulnerable people and causes immense, lasting
16 harm.

17 And Ms. Cherwitz must be deterred. The need for
18 specific deterrence is very strong, particularly given the
19 nature and duration of Ms. Cherwitz's criminal conduct and the
20 fact that she does not appear to be remorseful.

21 Ms. Cherwitz's conduct was not a momentary lapse of judgment.
22 It took place for many years and was calculated. And what she
23 was doing was not about enlightenment or operating in a
24 different dimension. It wasn't a game or a show. It was
25 criminal.

1 Ms. Cherwitz, similar to Ms. Daedone, makes much of
2 the fact that her victims were educated women, as if that
3 somehow excuses her criminal conduct. It is notable that
4 Ms. Cherwitz too was an educated woman at the time of her
5 crime. She knew better.

6 The sentence imposed must promote respect for the
7 law, which Ms. Cherwitz has demonstrated through her conduct
8 she lacks. And the sentence must serve to protect the public.
9 That is important here.

10 There are many reasons to impose a significant
11 sentence of imprisonment. There are also mitigating factors
12 in the record before me. I have considered all of the
13 arguments that have been raised in mitigation and have
14 considered all of the mitigation-related information in the
15 record before me.

16 I have, for example, considered that Ms. Cherwitz
17 has no prior criminal history. I have considered
18 Ms. Cherwitz's background and family circumstances. I have
19 considered her past substance abuse. I have considered
20 Ms. Cherwitz's mental health. She has some serious mental
21 health issues and has serious diagnoses, which I won't
22 publicly state but which are reflected in sealed materials in
23 the record.

24 I have considered the numerous letters of support
25 for Ms. Cherwitz that have been submitted. I have read each

1 and every one of them multiple times and I have read them
2 carefully. The letters speak to various positive qualities of
3 Ms. Cherwitz and speak to various charitable activities in
4 which she has engaged. Numerous people have provided
5 testimonials about the positive impact Ms. Cherwitz has had on
6 them. Again, though, those testimonials stand in contrast to
7 the treatment of the victims.

8 I have considered the issue of disparity, both
9 disparity within this case and disparity with respect to other
10 cases in the forced labor context.

11 Because of the unique circumstances of this case,
12 there isn't a particularly close comparator in terms of other
13 cases. But I have considered the other cases and other
14 defendants referenced by the parties. And, of course, I have
15 taken into consideration Ms. Daedone, who was sentenced
16 earlier today.

17 Again, I note though that Ms. Daedone and
18 Ms. Cherwitz partnered very closely with each other in this
19 conspiracy and Ms. Cherwitz played a very, literally and
20 figuratively, hands-on role here, including, as has been
21 discussed quite a bit, with respect to Ms. Halpern.

22 This is a unique case. Again, I note that my
23 resolution of the various guidelines disputes between the
24 parties does not affect the sentence I intend to impose. I
25 would impose the same sentence whether or not I applied any

1 particular disputed guidelines enhancement or reduction.

2 The government has revised its sentencing request
3 from 168 months, which I will note, upon consideration of all
4 of the 3553(a) factors in the context of this unique case,
5 would have been a sentence that was greater than necessary to
6 serve the purposes of sentencing that must be served. The
7 government now asks for a sentence within the applicable
8 advisory guidelines range that the court has found of 78 to
9 97 months.

10 Upon consideration of all of the 3553(a) factors in
11 the context of this unique case, I have determined that a
12 sentence of time served which is what is requested by
13 Ms. Cherwitz would not be at all sufficient.

14 I will now state the sentence I intend to impose.

15 Ms. Cherwitz, please rise.

16 Ms. Cherwitz, it is the judgment of the court that
17 you are sentenced to a term of imprisonment of 78 months, to
18 be followed by a term of supervised release of two years.

19 I am imposing the term of supervised release having
20 conducted an individualized assessment. I have considered the
21 factors set forth in Title 18, United States Code,
22 Section 3583(c). I note that the term of supervised release
23 is lower than that requested by the government and recommended
24 by the Probation Department.

25 You may be seated.

1 I will describe the conditions of supervised release
2 that you will be subject to momentarily but, first, I will
3 address some additional aspects of your sentence.

4 In light of the record, the court determines that
5 you are unable to pay a fine and, therefore, no fine is
6 imposed.

7 Restitution is mandatory in this case pursuant to
8 Title 18, United States Code, Section 1593.

9 Defendant Cherwitz shall pay restitution in the
10 amount of \$887,877.64.

11 Specifically, she shall pay restitution to the
12 following victims in the following amounts.

13 Michelle Wright: \$232,375.00.

14 Michal Neria: \$181,049.14.

15 Dana Gill: \$167,261.00.

16 Rebecca Halpern: \$55,226.00.

17 Anthia Gillick: \$178,730.00.

18 Max Pixley: \$61,740.00.

19 And Lyndsi Keves: \$11,496.50.

20 And, again, the total is \$887,877.64. So that's
21 \$887,877.64.

22 Have I stated those numbers correctly, Ms. Gupta?

23 MS. GUPTA: Yes, Your Honor.

24 THE COURT: The restitution obligation is joint and
25 several with the restitution ordered as to Defendant Nicole

1 Daedone in the instant case bearing docket number 23-CR-00146.
2 As you know, Ms. Daedone was sentenced earlier today.

3 The restitution amount shall be due immediately and
4 shall be payable at a rate of \$25 per quarter while defendant
5 is in custody and at a rate of 10 percent of gross monthly
6 income while defendant is on supervised release.

7 Restitution payments shall be directed to the Clerk
8 of Court, 225 Cadman Plaza East, Brooklyn, New York, 11201.
9 The interest requirement is waived based on the record, which
10 indicates that defendant does not have the ability to pay
11 interest.

12 The government is directed to provide all necessary
13 address information to the Clerk of Court to facilitate the
14 distribution of the restitution.

15 The restitution amount ordered is the total of the
16 amounts that the government requested for each of the victims
17 as to whom restitution is being ordered.

18 In determining the restitution amount for each
19 victim -- and I went through this, of course, at the
20 sentencing of Ms. Daedone but this is a separate proceeding
21 and I am going to reiterate.

22 In determining the restitution amount for each
23 victim, I followed the framework set forth in Title 18, United
24 States Code, Section 1593, which incorporates by reference
25 Title 18, United States Code, Section 2259(c)(2) and the Fair

1 Labor Standards Act. I assume the parties' familiarity with
2 the relevant framework.

3 The court previously concluded on the record before
4 the court, and having presided over the five week jury trial
5 in this case, that the government had sufficiently
6 demonstrated that those individuals who are characterized as
7 victims by the government and who testified at trial are, in
8 fact, victims within the meaning of the relevant statutes.

9 On the unique facts of this case, the court
10 concludes that the government has demonstrated by a
11 preponderance of the evidence that the victims' losses were
12 sustained as a proximate result of the offense and the amounts
13 requested by the government represent a reasonable
14 approximation of losses supported by a sound methodology.

15 With respect to the amount of restitution requested
16 for each victim, I note that the government relies on trial
17 testimony, sworn affidavits and/or information provided by the
18 victims in support of their sworn affidavits.

19 As the parties are aware, the record contains a
20 significant amount of restitution related information.

21 The record contains information as to costs that
22 fall within the categories set out in Title 18, United States
23 Code, Section 2259, including, inter alia, medical services
24 relating to physical, psychiatric and/or psychological care,
25 lost income and attorney's fees.

1 The record also contains information relevant to the
2 issue of the value of the victims' labor as guaranteed under
3 the FLSA.

4 Here, I considered all of the materials in the
5 record with respect to each victim as to whom the government
6 is requesting restitution, including the parties' submissions.
7 And, of course, I heard the victims testify at trial and as I
8 noted at the proceeding involving Ms. Daedone's sentencing, I
9 credit what they had to say on the matters relevant to the
10 issue of restitution.

11 Again, I conclude that the government has
12 demonstrated by a preponderance of the evidence that the
13 victims' losses were sustained as a proximate result of the
14 offense and the amounts requested by the government represent
15 a reasonable approximation of losses supported by a sound
16 methodology.

17 The government set forth its methodology in its
18 submissions and it is sound, particularly given the unique
19 facts and circumstances of this case. And as I think was
20 noted earlier, in certain respects, the government's
21 methodology and resulting approximations of losses are
22 conservative. And the degree of precision and parsing urged
23 by defendant is not required, including with respect to
24 therapy costs.

25 Ms. Cherwitz, you are ordered to pay to the United

1 States a mandatory special assessment of \$100, which shall be
2 due immediately.

3 The thirteen standard conditions of supervised
4 release adopted by the court shall apply.

5 As I noted earlier, the standard conditions are on
6 pages 1 to 3 of the addendum, which is ECF No. 458.

7 As I noted earlier, there is one slight change,
8 which will be the first condition which will be reflected on
9 the judgment form does not contain the following language that
10 the Probation Department had included. The language is
11 "within 72 hours of the time you were sentenced or."

12 Does anyone want me to read the thirteen standard
13 conditions? If so, I'll read them.

14 Ms. Gupta?

15 MS. GUPTA: No, Your Honor.

16 MS. COHEN: No, Your Honor.

17 THE COURT: In addition, Ms. Cherwitz, you will be
18 subject to the following mandatory conditions.

19 You must not commit another federal, state or local
20 crime. You must not unlawfully possess a controlled
21 substance. You must refrain from any unlawful use of a
22 controlled substance. You must submit to a drug test within
23 15 days of release on supervised release and at least two
24 periodic drug tests thereafter for use of a controlled
25 substance. You must cooperate in the collection of DNA as

1 directed by the Probation Department. You must make
2 restitution in accordance with the applicable statutes and
3 with the restitution ordered.

4 Given the nature and circumstances of your offense,
5 given the need to protect the public from further crimes by
6 you and the need for deterrence, and given the restitution
7 ordered, you will also be subject to and must comply with two
8 special conditions and those are two of the conditions that
9 had been recommended by the Probation Department. They are on
10 pages 5 to 6 of the sentencing recommendation, ECF No. 430-1.

11 I have already explained that the two conditions I
12 am imposing are the second recommended condition which is
13 about the financial records and financial accounts, and the
14 third recommended condition which is related to restitution.
15 So I'm only imposing those two.

16 I will ask, again, whether anybody wants those two
17 special conditions read.

18 Ms. Gupta?

19 MS. GUPTA: No, Your Honor.

20 MS. COHEN: No, Your Honor. Thank you.

21 THE COURT: And, Ms. Cohen, your client has reviewed
22 the conditions, correct?

23 MS. COHEN: She has, Your Honor.

24 THE COURT: Okay. Does either party object to
25 either of these two special conditions?

1 MS. GUPTA: No, Your Honor.

2 MS. COHEN: No, Your Honor.

3 THE COURT: I do find that each of these conditions
4 complies with the requirements of Section 3583(d). Each of
5 these conditions is reasonably related to the relevant
6 Section 3553(a) factors set forth in Section 3583(d), involves
7 no greater deprivation of liberty than is reasonably necessary
8 for the purposes set forth in the relevant 3553(a)(2)
9 provisions set forth in Section 3583(d), and is consistent
10 with pertinent policy statements issued by the Sentencing
11 Commission and I note, in this regard, Section 5D1.3.

12 Ms. Cherwitz, you should know that violating the
13 terms of your supervised release could lead to your supervised
14 release being revoked. Under that circumstance, you could be
15 ordered back to prison.

16 I direct the Probation Department provide defendant
17 with a written statement that sets forth all the conditions to
18 which the term of supervised release is subject and that is
19 sufficiently clear and specific to serve as a guide for the
20 defendant's conduct and for such supervision as is required.

21 Give me one moment, please.

22 (Pause.)

23 THE COURT: Does either counsel know of any legal
24 reason why the sentence that I have indicated I intend to
25 impose should not be imposed as stated?

1 Ms. Gupta?

2 MS. GUPTA: No, Your Honor.

3 MS. COHEN: No Your Honor.

4 THE COURT: I order the sentence I have described to
5 be imposed as stated.

6 I find that this sentence is sufficient but not
7 greater than necessary to comply with the sentencing purposes
8 set forth in Title 18, United States Code, Section 3553(a)(2),
9 including the need to reflect the seriousness of the offense,
10 to promote respect for the law, to provide just punishment for
11 the offense, to afford adequate deterrence to criminal conduct
12 and to protect the public from further crimes of the
13 defendant.

14 There are no open counts to be addressed.

15 Is that correct?

16 MS. GUPTA: Yes, that's correct.

17 THE COURT: You agree with that?

18 MS. COHEN: We agree, Your Honor.

19 THE COURT: I'll now let Ms. Cherwitz know of her
20 appeal rights.

21 Ms. Cherwitz, you can appeal your conviction. You
22 also have the right to appeal the sentence imposed.

23 Any notice of appeal must be filed within 14 days of
24 the entry of judgment or within 14 days of the filing of a
25 notice of appeal by the government.

1 If you request, the Clerk of Court will prepare and
2 file a notice of appeal on your behalf. If you cannot afford
3 to pay the cost of an appeal, you have the right to apply for
4 leave to appeal *in forma pauperis*, which means you can apply
5 to have the court waive the filing fee. If you cannot afford
6 to pay for appellate counsel, you may also apply for
7 court-appointed counsel.

8 The PSR will be made part of the record in this
9 matter and placed under seal. If an appeal is taken, counsel
10 on appeal may have access to the sealed report without further
11 application to this court. In addition, I direct that a
12 transcript of today's sentencing be made part of the court
13 record for purposes of an appeal.

14 Defendant, of course, remains remanded.

15 Are there any other matters to resolve in this case?

16 MS. GUPTA: No, Your Honor.

17 MS. COHEN: No, Your Honor.

18 THE COURT: I want to thank the Probation Office for
19 its work on this case. I know this case probably required
20 more people hours for the Probation Department than most cases
21 and I appreciate the care that the Probation Officers put into
22 this case.

23 I also thank the parties for their advocacy in
24 connection with sentencing and beyond that as well.

25 I think I said this at the time of the trial to

1 Mr. Robotti and Ms. Cohen that it was clear that you came into
2 the case at a relatively late stage and that you worked very
3 hard very quickly to get up to speed and it was very clear to
4 the court that you care very much about your client. So I
5 wanted to just mention that I noted that your efforts did not
6 go unnoticed.

7 MS. COHEN: Thank you, Your Honor.

8 THE COURT: Is there anything else we need to take
9 up?

10 MS. GUPTA: No, Your Honor, not from the government.

11 MS. COHEN: No, Your Honor, not from the defense.

12 THE COURT: I wish Ms. Cherwitz the best of luck and
13 we are adjourned.

14 (Matter concluded.)

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