IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

UNITED STATES OF AMERICA,

v. **Case No.: 5:20cr28-MW/MJF**

MARGO DEAL ANDERSON, et al.,

***Defendants*.**
_____/

ORDER ON MOTIONS TO DISMISS

In this public corruption case, Defendants move to dismiss various Counts of the Superseding Indictment.[1] This Court held a hearing on the motions to dismiss on August 13, 2021 and August 16, 2021.

Generally, Defendants' arguments can be broken down into four categories. *First*, that Count 1 impermissibly charges multiple conspiracies. *Second*, that Counts 6, 7, 8, 9, and 31 allege wire transmissions with insufficient specificity. *Third*, that the vast majority of the honest services fraud counts fail to allege a *quid pro quo*. And *fourth*, that Count 42, alleging that Anderson lied to the FBI, fails to allege that

[1] Specifically, Defendants Finch and Anderson move to dismiss Count 1, ECF Nos. 149 and 155; Defendant Finch moves to dismiss Counts 3, 4, and 5, ECF No. 131; Defendant Anderson moves to dismiss Counts 6, 7, 8, 9, 10, 11, 15, 17, 18, 19, 22, 24, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 40, and 42, ECF No. 138; and Defendant Albritton moves to dismiss Counts 15, 16, 21, 24, 25, 27, 28, 30, 32, 33, and 35, ECF No. 143.

she acted willfully. Having considered all of the parties' papers, and with the benefit of the hearing, this Court addresses each argument in turn.

I

First, Finch and Anderson argue that this Court must dismiss Count 1 as duplicitous. Duplicitous counts impermissibly charge "two or more 'separate and distinct' offenses." *United States v. Schlei*, 122 F.3d 944, 977 (11th Cir. 1997). The problems with a duplicitous count are threefold: "(1) A jury may convict a defendant without unanimously agreeing on the same offense; (2) A defendant may be prejudiced in a subsequent double jeopardy defense; and (3) A court may have difficulty determining the admissibility of evidence." *Id.* Here, Defendants argue that Count 1 is duplicitous because it charges multiple conspiracies in one count.

To determine whether the Superseding Indictment charges one conspiracy, this Court must ask whether there is "an 'interdependence' among the alleged co-conspirators." *United States v. Toler*, 144 F.3d 1423, 1426 (11th Cir. 1998). The question is whether Defendants "act[ed] in *concert* to further a common goal" and whether their "combined efforts" through the different sub-schemes "were . . . required to insure the success of the venture." *United States v. Chandler*, 388 F.3d 796, 811 (11th Cir. 2004) (emphasis in original). To guide this analysis, this Court also looks to "(1) whether a common goal existed; (2) the nature of the underlying scheme; and (3) the overlap of participants." *United States v. Richardson*, 532 F.3d

1279, 1284 (11th Cir. 2008). And this Court must apply the common goal element broadly because " 'common' means 'similar' or 'substantially the same' rather than 'shared' or 'coordinate.' " *United States v. Holt*, 777 F.3d 1234, 1263 (11th Cir. 2015) (quoting *Richardson*, 532 F.3d at 1285).

For ease of reference, at the hearing, this Court divided the allegations in the Superseding Indictment into five "projects": 17th Street, ECS, Debris Disposal, World Claim, and Rebuild. This Court summarizes the Superseding Indictment's allegations as to each "project" below.

- **17th Street**: Finch bribed Anderson (the mayor) and Barnes (a city commissioner) to support his projects with the City of Lynn Haven. In addition, Finch obtained one of those projects, the 17th Street project, through a bid rigging agreement with other companies—including Company A.
- **ECS**: Erosion Control Specialists (ECS) bribed Michael White (the city manager), Anderson, and Albritton (the city attorney) and received hurricane cleanup and trash pickup contracts in return. ECS also submitted false invoices and, when those invoices were paid, paid kickbacks to Albritton.
- **Debris Disposal**: Unbeknownst to the City, Company A employed Albritton. Albritton directed city contractors to use Company A's

property to dispose of debris. After a meeting with Anderson, Finch, White, and the owner of Company A, Anderson directed companies C and D to dispose of debris at one of Finch's properties. Anderson also vetoed White's plan to designate city owned property as a disposal site and secured state government support for a plan to use Finch's site. At the same time, Anderson accepted things of value from Finch.

- **WorldClaim**: WorldClaim, a public adjusting firm, approached Individual A, a contract engineer with the City, with a proposal: help us get a contract assisting the City with its hurricane claims and we will give you a percentage of whatever we recover. Individual A, in turn, approached Anderson and White, offering free services from WorldClaim. Anderson and White signed an agreement with WorldClaim using Anderson's post-hurricane emergency powers. WorldClaim, in turn, provided them free or reduced services.
- **Rebuild**: After Hurricane Michael, the City had to rebuild many of its facilities. Finch bribed Anderson for inside information and to exert pressure on city officials to aid Finch in obtaining the rebuild project at a significantly higher cost than the City would pay through its already planned rebuild project.

With the above allegations in mind, this Court turns to the primary issue raised by Defendants' motions—an alleged lack of interdependence. "Chain-shaped conspiracies present classic examples of interdependence." *United States v. Kemp*, 500 F.3d 257, 289 (3rd Cir. 2007). But this is not a chain-shaped conspiracy. Instead, this is more akin to a wheel-shaped "hub and spoke" conspiracy where "a central core of conspirators recruits separate groups of co-conspirators to carry out the various functions of the illegal enterprise." *Chandler*, 388 F.3d at 807 (citing *Kotteakos v. United States*, 328 U.S. 750, 755 (1946)).

Applying that framework, as to 17th Street, Debris Disposal, and Rebuild, the interdependence is clear. For one, there is significant overlap in the players. *See Chandler*, 388 F.3d at 812 (holding that a lack of overlap suggested a lack of interdependence). For example, in the 17th Street scheme, Finch is alleged to have conspired with Company A to rig bids for city contracts. And in the Debris Disposal scheme, among other things, Finch conspired with Company A to divvy up post-Hurricane Michael work from the City. But more importantly, all three schemes are tied together. That is, this wheel has a rim. If Finch is the hub, Anderson is the "rim" tying the three schemes together and vice versa. Plus, all three schemes have the same goal—to disperse City contracts in exchange for bribes—and are similar in nature. This Court thus finds that 17th Street, Debris Disposal, and Rebuild form one conspiracy.

But as to World Claim and ECS, the connection is not so clear. The Government, when asked what ties these "spokes" to the larger wheel, argued that the charged conspiracy might be better thought of as a spider web. This Court agrees; conspiracies are rarely as neat as the wheel analogy implies. Still, all strands in the web must support each other, and to do so they must be somehow connected.

Here, while partially spun by the same spiders, the alleged webs sit in opposite corners of the Lynn Haven garage. Given the opportunity, the Government could identify *no* facts alleged in the Superseding Indictment tying the World Claim or ECS schemes to the remaining allegations. *See Chandler*, 388 F.3d at 812 (noting that the spokes must interact in some way to be interdependent). Nor is there any allegation that Finch had any knowledge of either scheme. Of course, a conspirator need not have knowledge of every aspect of a conspiracy, but there must be some connection. Here there is none. Accordingly, this Court finds that ECS and WorldClaim are separate conspiracies. Count 1 is therefore duplicitous.

But what should this Court do about it? The Government argues for a curative jury instruction. While certainly permissible, a curative instruction is far from the only option. Instead, the remedies for duplicity "vary according to the particular harm or harms to be avoided and the stage of the proceeding at which the threatened harm or harms arise." *United States v. Sturdivant*, 244 F.3d 71, 79 (2d Cir. 2001). Before conviction, for example, a court can either have "the government elect to

proceed based upon only one of the distinct crimes included within a duplicitous count" or give a curative instruction. *Id.* Dismissal, on the other hand, is disfavored and should not be employed "when a less drastic ruling will suffice." *United States v. Goodman*, 285 F.2d 378, 380 (5th Cir. 1960).

In this case, however, a less drastic ruling will not suffice. As Defendants persuasively argued, and the Government largely acknowledged, it is simply not possible to disentangle the allegations in Count 1. Thus, forcing the Government to elect which conspiracy to pursue cannot cure the issues duplicity creates. For the same reason, a curative jury instruction will also not suffice. Left without any less drastic alternatives, this Court must dismiss Count 1 without prejudice. Accordingly, the motions to dismiss Count 1 are **GRANTED**.

II

Next, Anderson argues that "Counts 6, 7, 8, 9, and 31 allege wire transmissions with insufficient specificity to determine if and which alleged schemes were furthered by the wires." ECF No. 138 at 7.[2] Albritton adopts that argument as to count 31. ECF No. 143 at 4.

[2] Specifically, Defendants allege that "Counts 6, 7, and 9 rely on wire transmissions related to deposited checks, but the checks cannot be matched by date or amount to a particular scheme in the Superseding Indictment." ECF No. 138 at 7. Count 8 is based on an "Email with letter from M. White to engineering firm" and Count 31 is based on a "Text message of ALBRITTON and M. White." *Id.*

A legally sufficient indictment "(1) presents the essential elements of the charged offense, (2) notifies the accused of the charges to be defended against, and (3) enables the accused to rely upon a judgment under the indictment as a bar against double jeopardy for any subsequent prosecution for the same offense." *United States v. Woodruff*, 296 F.3d 1041, 1046 (11th Cir. 2002). "The elements of a § 1343 wire fraud violation are: (1) intentional participation in a scheme to defraud; and (2) use of wire communications to further that scheme." *United States v. Poirier*, 321 F.3d 1024, 1028 (11th Cir. 2003).

At the beginning of the wire fraud counts—Counts 2 through 40—under the heading "scheme to defraud," the Government incorporates Count 1's manner and means section describing the alleged conspiracies. ECF No. 64 ¶ 3, at 56. For each count, the Superseding Indictment also describes the charged wire transmission, the date it was sent, and which Defendants are charged. *See, e.g.*, *id.* at 56. The problem, Defendants argue, is that they cannot figure out where the wires supporting the challenged counts fit in the realleged scheme.

Defendants' written argument appeared to be primarily that the Superseding Indictment's vague allegations prevented them from preparing a defense. But at the hearing it became clear that Defendants contend primarily that the Superseding Indictment raises a Fifth Amendment issue because it is not clear what, exactly, the Grand Jury found Defendants did. To support that argument, Anderson directs this

Court to two cases not cited in her papers, *United States v. Jenkins*, 675 F. Supp. 2d 647 (W.D. Va. 2009) and *United States v. Perraud*, 672 F. Supp. 2d 1328 (S.D. Fla. 2009).

Neither case sweeps as broadly as Anderson claims. *Jenkins*, in relevant part, focused on the second and third prongs of the sufficiency test; namely, does the indictment inform the defendant of the charge and does it allow a double jeopardy defense to subsequent prosecution. 675 F. Supp. 2d at 652. In discussing the issue, *Jenkins* recognized, "[a]n indictment drafted in the generic wording of a statute may be . . . sufficient to achieve this end." *Id.* Sometimes, however, when the entire charge depends on a specific fact—in *Jenkins*, what exactly the defendant lied about—the indictment must provide more. *Id. Perraud* stands for largely the same proposition.

This Court does not disagree with the reasoning of either case, but the issue raised in *Jenkins* and *Perraud* is not present here. While not a model pleading, the Superseding Indictment alleges each element of the charged offense. It reincorporates the scheme underlying Count 1 and leaves no doubt as to the specific wires Defendants are charged with sending. *See United States v. Fern*, 155 F.3d 1318, 1325 (11th Cir. 1998) (explaining that "if the facts alleged in the indictment warrant an inference that the jury found probable cause to support all the necessary elements of the charge, the indictment is not fatally deficient on Fifth Amendment grounds.").

Further, accepting Defendants' argument that anytime an indictment contains a factual ambiguity it violates the Fifth Amendment, this Court does not see how a bill of particulars could ever be permissible. While a bill of particulars cannot save an otherwise invalid indictment by apprising a defendant of what offenses they are charged with committing, a bill of particulars may address many of the concerns discussed in *Jenkins*. Specifically, a bill of particulars is used to "inform the defendant of the charge against him with sufficient precision to allow him to prepare his defense, to minimize surprise at trial, and to enable him to plead double jeopardy in the event of a later prosecution for the same offense." *United States v. Warren*, 772 F.2d 827, 837 (11th Cir. 1985).

In light of the above, this Court finds that the Superseding Indictment is not constitutionally deficient as to Counts 6, 7, 8, 9, and 31. And while a close call, this Court finds that, because ties do not go to the Government, a bill of particulars is warranted. Accordingly, Defendants' motions to dismiss Counts 6, 7, 8, 9, and 31 are **DENIED**, and the Government is ordered to file a bill of particulars as to these counts.

III

Turning to the third issue, Finch, Anderson, and Albritton argue that the Superseding Indictment does not sufficiently allege a *quid pro quo* agreement supporting their honest services fraud charges for Counts 3, 4, and 5 as to Finch,

Counts 6, 7, 8, 9, 10, 11, 15, 17, 18, 19, 22, 24, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, and 40 as to Anderson, and Counts 15, 16, 21, 24, 25, 27, 28, 30, 32, 33, and 35 as to Albritton. Relevant here, the Superseding Indictment alleges the following.

As to Barnes and Finch, Barnes was a city commissioner from 1996 to April 2019. *Id.* ¶ 5. On February 28, 2017, Barnes moved during a city commission meeting to approve adding $668,000 to a promissory note to Finch's company. *Id.* ¶ 68. On December 12, 2017, Barnes voted to approve a resolution "authorizing the issuance by Lynn Haven of a $6,090,000 municipal revenue bond and a loan agreement . . . to provide funding . . . to pay for" work conducted by Finch's company. *Id.* ¶ 74. And on November 6, 2018, Barnes voted for a resolution "stating that Lynn Haven had agreed to contract for and complete the work described in the Joint Participation Agreement with [Finch's] company." *Id.* ¶ 82.

Additionally, on September 8, 2015 Finch loaned Barnes $8,000, $12,000 on September 28, 2015, $5,000 on October 28, 2015, $10,000 on January 26, 2016, $2,500 on November 14, 2016, $2,500 on March 15, 2017, and $5,000 on December 4, 2017. *Id.* ¶ 85a–g. In total, Finch loaned Barnes $45,000 while Barnes was a city commissioner. But Barnes never reported these loans on applications for business loans from other entities. *Id.* ¶¶ 124–25. The implication, of course, is that these were not really loans.

As for Anderson, the Superseding Indictment alleges that Anderson "requested that . . . ECS provide debris removal and repairs to her personal residence and the private residence of her mother and a neighbor." ECF No. 64 ¶ 31. "These services were valued at approximately $48,000." *Id.* Anderson then "signed Lynn Haven checks issued to ECS" under the false pretense that ECS had done work for the City when in reality the checks were in payment for the work ECS provided to Anderson. *Id.* ¶ 32. In total, Anderson allegedly signed off on approximately $5 million in payments to ECS without questioning the legitimacy of those payments. *Id.* ¶ 40. Plus, Anderson specifically authorized a fraudulent $224,722.75 check to ECS. *Id.* ¶ 41. Anderson also said nothing when informed that Albritton had drafted a backdated task order, attributed to her, assigning trash pickup to ECS. *Id.* ¶ 45, 47.

Plus, Anderson allegedly "used her position as Mayor of Lynn Haven to take official action favorable to Company A, [Finch], and [Finch's] business interests . . . in exchange for financial benefits from [Finch]." *Id.* ¶ 25. For example, the Government alleges that Anderson received a variety of things from Finch, including "a free Motorhome," plus "travel in a private airplane to Biloxi, Mississippi, and the Florida Keys, and lodging, meals, and entertainment." *Id.* ¶ 84. It also alleges that Anderson took many official actions, or pressured others to take official actions, that benefited Finch. In addition, Anderson allegedly agreed to use her emergency powers to sign a contract with WorldClaim and that, in exchange, Anderson "would

not be charged any fees by WorldClaim to adjust any private insurance claims for" her. ECF No. 64 ¶ 87.

As to Albritton, the Superseding Indictment alleges that ECS provided free services to Albritton and that Albritton later orchestrated the drafting and approval of a fraudulently backdated trash pickup contract for ECS. It also alleges that Albritton received tens of thousands of dollars in kickbacks from ECS.

Specifically, Count 15 addresses a check to ECS in payment for fraudulent invoices that Anderson approved. *Id.* ¶ 41. Count 24 addresses a check to ECS for work done for White, Anderson, and Albritton and falsely reported as work for the City. *Id.* ¶ 42. Count 27 concerns a check to ECS based on false invoices. *Id.* ¶ 50. The Superseding Indictment alleges that Albritton received a $10,000 kickback from ECS from the proceeds of the check described in Count 27. *Id.* Count 28 is largely the same as Count 27, except that Albritton is alleged to have received a $20,000 kickback. *Id.* ¶ 51. Count 30 alleges another $20,000 kickback under similar circumstances. *Id.* ¶ 52. Count 32 is directed at text messages between Albritton and ECS's director regarding the City's contract with ECS. *Id.* at 60. Finally, Count 33 and 35 charge that Albritton received $20,000 and $10,000, respectively, in kickbacks from ECS for fraudulent invoices. *Id.* ¶¶ 53–54.

In seeking to dismiss Counts 3, 4, and 5, Finch argues that the Superseding Indictment is insufficient because "there are no allegations that Barnes demanded

money and bribes," nor are there "allegations of a meeting between Barnes and Finch" or allegations that either "directed any representatives to meet on their behalf." ECF No. 131 at 16–17. And, relying on *United States v. Silver*, 948 F.3d 538, 556 (2d Cir. 2020), all three Defendants argue that "[a]lthough an honest services bribery charge does not require an agreement to perform a *specific* official act, the government is required to identify and allege an agreement by [a public official] to act on a focused or concrete 'question or matter.' " *See, e.g.*, ECF No. 131 at 18.

Though ably argued, Defendants' arguments fail because they largely attack the sufficiency of the evidence, not the Superseding Indictment's allegations. To be sure, the Government may not be able to prove a *quid pro quo* existed between any of the Defendants on such thin evidence. There is, however, "no summary judgment procedure in criminal cases" and a motion to dismiss does not "provide for a pre-trial determination of sufficiency of the evidence." *United States v. Salman*, 378 F.3d 1266, 1268 (11th Cir. 2004).

Indeed, although the Superseding Indictment does not allege specific meetings or explicit agreements, *Silver* makes clear that "the quid pro quo *may be express or implied*." 948 F.3d at 551 (emphasis added). This is because "bribery is rarely conducted in explicit terms; instead, the language of bribery is one of implication

and innuendo" and thus "in some circumstances, a wink and a nod, an exchange of monies, and a subsequent vote on a bill likely will be sufficient." *Id.* at 558 n.10.[3]

With that in mind, the Superseding Indictment sufficiently alleges a *quid pro quo* as to all three Defendants. First, that Finch gave Barnes bribes disguised as loans in exchange for Barnes's support in the city council. Second, that Anderson agreed to provide official acts for Finch, supporting his involvement in the 17th Street, Debris Disposal, and Rebuild projects in exchange for items of value including travel and a motorhome. Third, that Anderson agreed to provide official acts supporting ECS, including authorizing payments and additional contracts, in exchange for services worth approximately $48,000. Fourth, that Anderson agreed to sign a contract, using her emergency powers as mayor, with WorldClaim in exchange for free services. And fifth, that Albritton agreed to help ECS obtain a trash pickup contract with the city in exchange for free services and kickbacks.

The Superseding Indictment also identifies sufficiently specific questions or matters; namely, "ECS Fraudulent Invoices," "ECS Trash Pick-Ups," "Disposal of Vegetative Debris or Chips," "Disaster Debris Management Site," "17th Street

[3] At the hearing, Defendants argued at length that the Government is conflating sufficiency of the evidence at trial with sufficiency of the allegations for a motion to dismiss. This Court gets it. Pleading is not proving and vice versa. But that cuts both ways. Just because you can prove it does not mean you have plead it; but just because you cannot prove it does not mean you have failed to plead it.

Projects," "WorldClaim Insurance," and "City of Lynn Haven Design & Rebuild." ECF No. 64 at 13, 19, 24, 28, 29, 38, 41.

Leaning on *McDonnell*, *Silver* gave some examples of what qualifies as a sufficiently specific question or matter—like "whether state universities will research a particular drug, or whether the state will provide funding to research a particular disease." 948 F.3d at 558. Though it is a close call, comparing the examples from *Silver* to the matters the Government alleges leads this Court to find that the Superseding Indictment passes muster. This is not the type of situation envisioned in *Silver* where the matter is so broadly drawn that "criminal liability could attach to any later action the official takes so long as the official is exercising some ability granted to him or her by law." *Id.* at 557.

On the other hand, Albritton's attacks on Counts 16 and 21 have merit.[4] As for Count 16, Albritton argues that the Government does not allege any *quid pro quo*, only that Albritton directed business to Company A and that he had an undisclosed interest in Company A. But even "an egregious conflict of interest" is insufficient to support a conviction for honest services fraud. *United States v. Aunspaugh*, 792 F.3d 1302, 1304 (11th Cir. 2015) (citing *United States v. Skilling*, 561 U.S. 358 (2010)).

[4] Albritton's challenge to Count 25, however, is easily dismissed. Albritton argues that Count 25 should be dismissed because the Superseding Indictment does not allege a bribe or kickback. But as the Government points out, Count 25 charges property fraud only, not honest services fraud. *See* ECF No. 64 at 59. Albritton conceded at the hearing that Count 25 is sufficient for this reason.

The Government argues that Count 16 alleges more than a conflict of interest, and that the *quid pro quo* was Company A's payment for legal services in exchange for Albritton directing business to Company A. But under the Government's theory, any favorable action Albritton took on any matter involving Company A would give rise to an honest services fraud charge. That is simply not the law. *See Silver*, 948 F.3d at 557.

Finally, Albritton argues that "[C]ount 21 is due to be dismissed as there are no factual allegations included in the Superseding Indictment to show Albritton caused ECS to provide debris removal services or repairs to a residence located at 2114 Country Club Drive." ECF No. 143 at 6. The Superseding Indictment does not contain any narrative allegations about the address, but merely describes the charged wire as "Text messages between [Albritton] and D. White to go to 2114 CC Dr., tarp and patch broken windows." ECF No. 64 at 59. The Government responds that the address is Albritton's parent's house. ECF No. 159 at 37. But this information is found nowhere in the Superseding Indictment. Accordingly, both Count 16 and 21 must be dismissed.

For the above reasons, Defendants' motions to dismiss Counts 6, 7, 8, 9, 10, 11, 15, 17, 18, 19, 22, 24, 25, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, and 40 are **DENIED**. Albritton's motion to dismiss is **GRANTED** as to Counts 16 and 21. Counts 16 and 21 are dismissed without prejudice.

Further, although this Court denies the vast majority of Defendants' motions as it pertains to the *quid pro quo* issue, the Superseding Indictment is far from perfect. Accordingly, this Court finds that a bill of particulars is appropriate as to these counts as well. The Government is ordered to file a bill of particulars addressing the counts listed above.

IV

Finally, Anderson argues that Count 42, alleging that she lied to the FBI, is insufficient because it "fails to allege any facts that directly or circumstantially support a finding that Anderson made false statements with knowledge that her conduct was unlawful." ECF No. 138 at 19–20.

A conviction under 18 U.S.C. § 1001 requires proof beyond a reasonable doubt as to the following elements: "(1) that a statement was made; (2) that it was false; (3) that it was material; (4) that it was made with specific intent; and (5) that it was within the jurisdiction of an agency of the United States." *United States v. House*, 684 F.3d 1173, 1203 (11th Cir. 2012). The issue here is willfulness. *See* ECF No. 138 at 19. "[T]o establish a willful violation of a statute, generally 'the Government must prove that the defendant acted with knowledge that his conduct was unlawful.' " *United States v. Clay*, 832 F.3d 1259, 1308 (11th Cir. 2016) (quoting *Bryan v. United States*, 524 U.S. 184, 191–92 (1998)).

Acknowledging the element of willfulness, the Eleventh Circuit has found an indictment to be sufficient when it "only charged that [the defendant] 'knowingly made a false, fictitious and fraudulent statement . . . in violation of Title 18 U.S.C. § 1001.' " *United States v. Stefan*, 784 F.2d 1093, 1101 (11th Cir. 1986). As the court explained, although the indictment did not allege that the defendant acted willfully, it "specifically refer[ed] to 18 U.S.C. § 1001" and thus the defendant could not "claim that he did not receive adequate notice of the charges against him." *Id.* at 1102. It is hard to see how this Court can say, "the Government alleged willfulness but not well enough" when the Eleventh Circuit has excused failures to allege willfulness at all.

Plus, it is not clear what more Anderson would have the Government allege. Of course, the "general rule" is that "wrongdoing must be conscious to be criminal." *Elonis v. United States*, 575 U.S. 723, 734 (2015). But as the Eleventh Circuit has acknowledged, mens rea requirements such as willfulness will almost always be established through circumstantial evidence. *Clay*, 832 F.3d at 1309. Here, the Superseding Indictment alleges that Anderson told the FBI that she had first been introduced to ECS's director in December 2018 or January 2019, knowing full well that she had been introduced to him in October 2018. *See* ECF No. 64 at 63. These facts are more than sufficient to allege that Anderson acted willfully. Anderson's motion to dismiss Count 42 is therefore **DENIED**.

* * *

In ruling on Defendants' motions, this Court addresses only the issues before it. Clearly, this Order raises other issues, some of which the parties recognized at the hearing. For example, this Court is dismissing Count 1. Count 1's allegations are incorporated throughout the Superseding Indictment. This *could* make other counts subject to dismissal. *See United States v. Adkinson*, 135 F.3d 1363, 1378 (11th Cir. 1998). This Court, however, declines to address this issue or any other until raised by the parties.

For the foregoing reasons,

IT IS ORDERED:

1. The motions to dismiss Count 1, ECF Nos. 149 and 155, are **GRANTED**. Count 1 is dismissed without prejudice.
2. Defendant Finch's motion to dismiss Counts 3, 4, and 5, ECF No. 131, is **DENIED**.
3. Defendant Anderson's motion to dismiss Counts 6, 7, 8, 9, 10, 11, 15, 17, 18, 19, 22, 24, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 40, and 42, ECF No. 138, is **DENIED**.
4. Defendant Albritton's motion to dismiss Counts 15, 16, 21, 24, 25, 27, 28, 30, 32, 33, and 35, ECF No. 143, is **GRANTED in part** and **DENIED in part**. Counts 16 and 21 are dismissed without prejudice.

5. The Government is ordered to file a bill or particulars addressing the ambiguities discussed in this Order **on or before September 9, 2021**.

SO ORDERED on August 19, 2021.

s/Mark E. Walker
Chief United States District Judge