UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

Case No. 5:20-CR-28-MW/MJF

UNITED STATES OF AMERICA

v.

JAMES D. FINCH, et al.

Defendant.
_____/

DEFENDANT FINCH'S MOTION TO DISMISS
THE SECOND SUPERSEDING INDICTMENT

Defendant James D. Finch, by and through undersigned counsel, moves to dismiss the Second Superseding Indictment pursuant to Federal Rule of Criminal Procedure 12.

The Second Superseding Indictment is, once more, a strained attempt to transform unrelated conspiracy allegations into a single, overarching "honest services" conspiracy.[1] The allegations, which are incorporated into all 26 Counts of the Second Superseding Indictment, again, describe a series of distinct schemes that properly at best may be charged only as multiple conspiracies in separate

[1] Exactly as before, the government takes these same multitude of "overt acts" and re-incorporates them into each of the substantive counts. So, based on the way the Second Superseding Indictment is now pled, a jury could find that an event occurred unrelated to Finch and was committed by someone other than Finch, and yet convict him of a substantive count.

indictments. Since the Court ruled on this issue in August the law on duplicity has not changed. Indeed, the doctrine of duplicity still forbids pleading multiple conspiracies within a single count. Because the government has returned another charging document with the same legal defects, the Second Superseding Indictment should be dismissed.[2]

I. Procedural Background

On August 18, 2020, a Federal Grand Jury in Tallahassee returned the original, 64-count Indictment, charging Margo Anderson and Adam Albritton with wire fraud conspiracy to violate honest services and with substantive counts of honest services wire fraud. ECF No. 1.

On December 31, 2020, Anderson's and Albritton's respective counsel challenged much of the language in the Indictment, arguing multiplicity, confusion, and inaccuracy. ECF Nos. 48, 49, and 50. Following a hearing, the Court ordered the government to "clean up" this initial Indictment, requiring amendments to factual allegations and corrections to multiplicitous counts. The Court further dismissed two counts as insufficiently pled. ECF No. 60.

[2] The severe and undeniable unfair prejudice that has occurred before the Grand Jury cannot be overstated. The Grand Jury that heard this matter has been presented with evidence and a charging document making it appear that Finch is involved in multiple conspiracies that he had absolutely nothing to do with. This fatal legal flaw will be presented to the Court shortly in a distinct motion detailing legal and factual improprieties before the Grand Jury.

On March 16, 2021, the Grand Jury returned a 43-count Superseding Indictment adding James Finch and former Lynn Haven City Commissioner Antonius Barnes. ECF No. 64. Unfortunately, the Superseding Indictment incorporated much of the same confusing, legally flawed, inaccurate language from the initial Indictment.

The Superseding Indictment charged Anderson, Albritton, Finch, and Barnes with a single conspiracy count for engaging in honest services fraud, alleging violations of 18 U.S.C. §§ 1343, 1346, and 1349. The "Manner and Means" section of Count 1 covered a period of 66 months and included over 100 paragraphs. It was broken down into 9 subheadings—each containing different facts of the alleged "overall" conspiracy of honest services fraud. Each section involved a different set of facts, people, circumstances, and time frame. Thematically, the charging language attempted to first describe a fraud associated with certain post-hurricane cleanup and involving a fraudulent invoicing scheme between Erosion Control Specialist ("ECS") and Michael White, the City of Lynn Haven's former City Manager. The allegations eventually transformed into an attempt to criminalize repeated complaints by Finch about the high cost of proposed construction projects.

On June 7, 2021, Anderson's and Finch's counsel challenged Count 1 of the Superseding Indictment, arguing that it violated the well-settled doctrine of duplicity. After oral argument over multiple days and careful consideration by the

Court, the Court dismissed Count 1 of the Superseding Indictment on August 19, 2021. ECF No. 185. Following the dismissal of Count 1, and with leave of Court, the government wanted "to take another stab at Count—at the conspiracy allegations" and figure out "how to charge them in light of the Court's ruling," for the third time in this case.

On November 16, 2021, a Federal Grand Jury in Pensacola returned a 26-count Second Superseding Indictment against Anderson and Finch. ECF No. 214. Incredibly, the Second Superseding Indictment contains the same allegations of an overarching honest services fraud count involving the same five "projects,"[3] and then reincorporating each and every allegation into Counts 1–26.

II. Multiple and Independent Alleged Conspiracies

The Second Superseding Indictment alleges that Anderson and Finch participated in separate and distinct schemes in violation of the honest services statute designed to defraud the City of Lynn Haven and its citizens. Rather than attempting to parse out each conspiracy contained in the Second Superseding Indictment yet again,[4] we respectfully direct the Court's attention to two separate

[3] In its Order dismissing Count 1 of the Superseding Indictment, the Court divided the allegations into five "projects": 17th Street, ECS, Debris Disposal, World Claim, and Rebuild. ECF No. 185 at 3.

[4] We incorporate by reference the Court's previous discussions and ruling and our original Motion to Dismiss. ECF Nos. 149, 164, and 185.

"projects" that are alleged in the Second Superseding Indictment that are unconnected to Finch.

A. The ECS Conspiracy

The events alleged in paragraphs 59, 61, 67, 68, 76, 77, 81, 83, 84,[5] 85, 86, 87, 88, 92, 93, 94, and 97, involve the fraudulent billing scheme concocted by the owner of ECS (David "Mickey" White), the former Lynn Haven City Manager (Michael White), and others (the "ECS Conspiracy"). ECS was a company that performed debris removal and trash pickup services in the City of Lynn Haven after Hurricane Michael.[6] As part of the scheme, ECS submitted false invoices to and

[5] Paragraph 84 is the only paragraph of the Second Superseding Indictment that contains "ECS" and "Finch." Aside from the fact that this paragraph is wholly unsupported by any document, report, or 302 provided to the defense over the last eight months, the paragraph still fails to allege or prove interdependence.

[6] ECS was incorporated in 2011 by David "Mickey" White and was not licensed in Florida to do contracting, electrical, or plumbing activities, and held no business licenses within the State of Florida. After Hurricane Michael devastated the City of Lynn Haven, David "Mickey" White, Michael White, and others, including the former City Attorney and other unindicted public and law enforcement officials used ECS's services for their personal benefit and at the expense of the City. Unindicted conspirators carefully orchestrated work between vetted and contracted disaster relief companies and ECS. Indeed, there is no allegation or combination of allegations indicating that Finch had knowledge of or acted in concert with the common goals of David "Mickey" White, Michael White, or any unindicated conspirator. *See also United States v. Michael White*, Case No. 5:19-cr-78 (N.D. Fla.), ECF Nos. 65, 66, 70,71,75,76,82,83,105,106; *United States v. Adam Albritton*, Case No. 5:20-CR-28 (N.D. Fla.), ECF Nos. 196, 197; *United States v. Antonius Barnes*, Case No. 5:21-CR-31 (N.D. Fla.), ECF 12, 13.

received payment from the City.[7] Some of the services invoiced to and paid by the City were allegedly performed by ECS for City officials.

It is undisputed that the ECS Conspiracy as alleged does not involve Finch. There are no allegations that Finch or his companies worked with ECS. There are no allegations that Finch knew of or participated in the ECS Conspiracy.[8]

B. WorldClaim Insurance

Likewise, paragraphs 62, 63, and 89 involve the same alleged illegal insurance scheme (the "WorldClaim Conspiracy"). WorldClaim contracted to perform public adjustment work for the City and allegedly offered to perform public adjustment work at no cost to City officials, including Anderson.[9] Again, there are no

---

[7] Per the Second Superseding Indictment, Finch had no knowledge of or role in the contracts or invoices involving ECS. Most, if not all of the work ECS performed for the City was at the knowledge and direction of former City Manager Michael White. The false invoices were prepared and submitted by ECS and David "Mickey" White, many at the direction of Michael White. The Second Superseding Indictment even alleges that the "owner of Company A" instructed David "Mickey" White to "prepare" invoices for work allegedly performed at Anderson's residence. Nothing within the ECS conspiracy allegations contained in paragraphs 59, 61, 67, 68, 76, 77, 81, 83, 85, 86, 87, 88, 92, 93, 94, and 97 involves Finch or is required to ensure the success of the alleged conspiracy allegations against Finch.

[8] Indeed, the allegations claim that this conspiracy was allegedly hatched, on or about October 9, 2018, immediately after Hurricane Michael. As this plan was hatched, James Finch was in a coma in the hospital in Jacksonville, Florida, having suffered a debilitating stroke. Finch was completely unaware of a hurricane hitting Lynn Haven and the magnitude of damage to the city until he was being driven back to his hometown on or about October 30, 2018.

[9] As alleged in the second superseding indictment, Anderson refused WorldClaim's

allegations against Finch.

Indeed, this Court has previously held that the ECS and WorldClaim "projects" are separate conspiracies. ECF No. 185 at 6. Nothing has changed in the allegations that would support a different holding or conclusion.

III. Standard of Review

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.; see also United States v. Kamalu*, No. 06-4956, 298 Fed. App'x 251, 254 (4th Cir. 2008) (unpublished) (quoting *United States v. Duncan*, 850 F.2d 1104, 1108 n.4 (6th Cir. 1988)).

Charging multiple conspiracies in a single count is impermissibly duplicitous. *See, e.g., United States v. Urbanik*, 801 F.2d 692, 695 (4th Cir.1986) ("[I]t is improper to charge a single conspiracy when multiple conspiracies exist . . . ."); *United States v. Allmendinger*, No. 3:10-CR-248, 2011 WL 1157554, at *1 (E.D. Va. Mar. 7, 2011) ("It is unquestioned that an indictment cannot charge two

---

offer of "pro bono" services, stating "I can't do that, I could lose my job." ECF No. 214 at ¶ 89. Anderson paid WorldClaim a negotiated, five percent fee. *Id.*

conspiracies in a single count."); *United States v. Berlin*, 707 F. Supp. 832, 836 (E.D. Va. 1989) ("There is no doubt that an indictment cannot charge two conspiracies in a single count."); *accord United States v. Trainor*, 477 F.3d 24, 31 (1st Cir. 2007) ("A claim that the government improperly has characterized a series of allegedly unlawful transactions as a single enterprise can implicate . . . the doctrine of 'duplicity'—the joining of two or more distinct offenses in a single count of an indictment . . . ."); *United States v. Miller*, 26 F. Supp. 2d 415, 423 (N.D.N.Y. 1998) (explaining the doctrine of duplicity and concluding that "[a]n indictment, therefore, may not charge multiple conspiracies in a single count"); *United States v. Alexander*, 736 F. Supp. 968, 994-95 (D. Minn. 1990) ("Defendants argue that Count I fails to charge a single conspiracy and that, on its face, it demonstrates the charging of at least two, and as many as eight, separate conspiracies. If that is indeed the case, the indictment is duplicitous on its face . . . .").

Although a single conspiracy potentially may consist of an agreement to commit multiple offenses, a single conspiracy count is impermissibly duplicitous when, rather than alleging multiple objects, it alleges multiple conspiracies. As established by the many cases that have condemned the charging of multiple conspiracies within a single count, the government is not permitted to circumvent the doctrine of duplicity by cobbling together unrelated schemes into one count and labeling the charge as a single conspiracy.

To determine whether the Second 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).

An application of the relevant factors to the allegations that are incorporated into every Count within the Second Superseding Indictment demonstrates that the government, once again, has not pleaded (and cannot prove) one overarching conspiracy among the Defendants.

IV. The Multiple Conspiracy Allegations

The factual allegations underlying the Second Superseding Indictment show that it charges multiple distinct schemes to violate different theories of the honest

services statute. Critically missing from the allegations that ostensibly support the existence of "one" conspiracy are allegations that the various schemes shared a common purpose, depended on each other for their own success, were of a like or even similar nature, or had a substantial overlap in membership. Instead, the government has ***again*** alleged distinct and freestanding allegations of schemes that existed independently of one another, and therefore, if anything, constitute separate conspiracies.

A. No Common Purpose

There is no common objective that unites the various "projects" under the umbrella of a single conspiracy. *See Alexander*, 736 F. Supp. at 995 (explaining that when complex, multiple-object conspiracies are alleged in a single count, "[t]he linchpin for such a charge to be properly pleaded is the existence of a single common objective"). Instead, as set forth in the Second Superseding Indictment, and as previously found by this Court, each of the alleged "projects" involved their own discrete objective(s):

- Contracts Conspiracy—An alleged bribery scheme to acquire infrastructure contracts for the benefit of Finch's companies.
- ECS Conspiracy—Multiple schemes involving false invoices to acquire money and/or services at the expense of the City. Part of the alleged scheme involved wasteful spending, false invoices, and the payment of kickbacks.

- Post-Hurricane Debris Disposal Conspiracy—Multiple schemes involving logistics (pricing, justification, and directives) for the disposal of vegetative debris to acquire money and/or services at the expense of the City. This alleged bribery scheme also includes allegations of seeking and obtaining DDMS approval from the State of Florida.

- WorldClaim Conspiracy—An alleged insurance scheme involving public adjustment work for the City and offers to perform public adjustment work at no cost to certain City officials.

- Rebuild Conspiracy—An alleged political conspiracy involving disagreements and different opinions regarding the rebuilding of public buildings and the high costs associated with proposed plans.

The government may attempt to argue, yet again, that each "project" was directed toward "defraud[ing] and depriv[ing] the City of Lynn Haven and its citizens of their right to the honest services" of Anderson. But the totality of the allegations fails to establish a commonality of purpose. The government must do more than allege a general conspiratorial purpose between the defendants.

B. Absence of Interdependence

Even if the allegations sufficiently allege a common purpose, which they do not, the allegations are duplicitous (alleging multiple conspiracies) because the Second Superseding Indictment fails to allege sufficient interdependence among the alleged co-conspirators. *See United States v. Woodard*, 459 F.3d 1078 (11th Cir. 2006) (a single conspiracy requires "an interdependence among the alleged co-

conspirators") (citing *United States v. Chandler*, 388 F.3d 796, 811 (11th Cir. 2004)); *United States v. Harrison*, 942 F.2d 751, 756 (10th Cir. 1991) (internal quotation marks omitted) (explaining that interdependence is the "principal concern" in distinguishing between single and multiple conspiracies); *United States v. Smith*, 86 F.3d 1154 (4th Cir. June 4, 1996) (unpublished) (internal quotation marks omitted); *United States v. Hadeed*, No. 1:08-CV-461, 2009 WL 1657539, at *10 (E.D. Va. June 12, 2009) ("One conspiracy requires 'interdependence among the alleged co-conspirators' . . . .").

That is, even if the alleged purpose of defrauding the City and its citizens is a sufficient conspiratorial objective, a single conspiracy has not been charged because Defendants were not doing so collectively. *See First Fin. Sav. Bank, Inc. v. Am. Bankers of Fla., Inc.*, No. 88-33-CIV-5-H, 1990 WL 302790, at *3 (E.D.N.C. Apr. 17, 1990) ("the existence of a common goal, standing alone, will not suffice to show a single conspiracy," but must be "combined with evidence of interdependence between and among the alleged co-conspirators"); *United States v. Carnagie*, 533 F.3d 1231, 1239 (10th Cir. 2008) ("This common goal, however, is not by itself enough to establish interdependence: 'What is required is a *shared*, single criminal objective, not just similar or parallel objectives between similarly situated people.' ") (quoting *United States v. Evans*, 970 F.2d 663, 671 (10th Cir. 1992)). "Interdependence is established when the activities of the alleged co-conspirators in

one aspect of the charged scheme are necessary or advantageous to the success of the activities of co-conspirators in another aspect of the charged scheme, or the success of the venture as a whole." *United States v. Stewart*, 256 F.3d 231, 250 (4th Cir. 2001).

As alleged in the Second Superseding Indictment, the various "projects" operated independently, and the success of one "project" did not affect another or even increase the probability that another "project" would succeed. For instance, the alleged acquisition of the 17th Street and ½-cent sales tax contracts have no bearing on the alleged schemes involving ECS or the WorldClaim events, and vice versa. Based on the Second Superseding Indictment's own allegations, the alleged schemes were not subparts of some greater, overarching conspiracy. The alleged "projects" rise and fall entirely on their own terms, and the government cannot prove (and the Second Superseding Indictment does not even allege) otherwise.

C. Distinct Nature, Time, and Membership

The conspiracies are uniquely distinct in nature, time, and membership, as detailed above. Indeed, the Second Superseding Indictment contains no allegations that Anderson and Finch collectively participated in or were even aware of the alleged efforts of (1) convicted felons Michael White and David "Mickey" White, (2) one another, or (3) the unindicted "conspirators" or "others" to defraud the City and its citizens. The overarching honest services conspiracy allegations are legally

and factually defective on its face and should be dismissed.

V. The Appropriate Remedy: Dismissal

In general, the Court has discretion to fashion appropriate relief "according to the particular harm or harms to be avoided" in a particular case. *United States v. Sturdivant*, 244 F.3d 71, 79 (2d Cir. 2001). "Where an indictment or information contains a duplicitous count, the proper remedy is to dismiss the count or to require the United States to elect which offense it desires to pursue." *United States v. Pleasant*, 125 F. Supp. 2d 173, 176 (E.D. Va. 2000); *see also United States v. Aguilar*, 756 F.2d 1418, 1423 (9th Cir. 1985); *United States v. Roy*, No. 11-CR-109, 2012 WL 47768, at *5 (D. Vt. Jan. 9, 2012); *United States v. Bachman*, 164 F. Supp. 898, 900 (D.D.C. 1958) ("[I]f there are two or more separate and distinct offenses charged in one count, the indictment becomes subject to a motion to dismiss.").

Again, Finch does not believe that it is appropriate to ask the Court itself to reformulate the indictment into multiple offenses because such separate offenses have not been presented to or charged by a grand jury. Any effort by the government or even asking the Court to unilaterally rewrite the indictment by dividing it into multiple conspiracy counts or by electing one conspiracy and striking allegations of the others would unconstitutionally invade the province of the grand jury.[10] *See*

[10] The same Fifth Amendment arguments and concerns apply to Counts 2–26 of the Second Superseding Indictment because the 122 paragraphs of general allegations containing the multiple conspiracies are incorporated and realleged into each count.

Stirone v. United States, 361 U.S. 212, 218-19 (1960) ("The right to have the grand jury make the charge on its own judgment is a substantial right which cannot be taken away with or without court amendment."); *accord United States v. Lentz*, 524 F.3d 501, 511 (4th Cir. 2008) ("[T]he 'court cannot permit a defendant to be tried on charges that are not made in the indictment against him.' ") (quoting *Stirone*, 361 U.S. at 217); *United States v. Randall*, 171 F.3d 195, 203 (4th Cir. 1999) ("[O]nly the grand jury may broaden or alter the charges in the indictment.").

The fact that the Second Superseding Indictment contains multiple conspiracy allegations that ultimately cannot be joined under Federal Rule of Criminal Procedure 8, however, provides further reason to dismiss the whole indictment rather than to order an alternative form of relief. *See, e.g.*, *United States v. Marlinga*, No. CRIM 04–80372, 2005 WL 513494, at *7 (E.D. Mich. Feb. 28, 2005) (finding single count charging multiple conspiracies to be "duplicitous," and concluding that "[b]ecause of the Court's finding that misjoinder has occurred [under Rule 8] . . . a single superceding [sic] indictment charging two conspiracies is not appropriate. Separate indictments is the only solution.").

United States v. Marlinga, No. CRIM 04–80372, 2005 WL 513494 (E.D. Mich. Feb. 28, 2005), though not binding authority, provides a useful comparison and wise guidance. In *Marlinga*, two defendants were charged in a single conspiracy count with conspiracy to deprive citizens of a right to honest services where the

defendants allegedly offered to make and accept campaign contributions to a prosecutor running for Congress, in exchange for certain prosecutorial acts in two pending court cases. *Id.* at *2. The court determined that although one conspiracy was charged, count one actually comprised two separate conspiracies pertaining to each of the two pending court cases. *Id.* at *4. Thus, the court determined that count one was duplicitous. *Id.* With respect to remedies, the court first recognized that a jury instruction would be an unsatisfactory remedy where the defect in the indictment is recognized in advance of trial and the indictment is "duplicitous on its face." *Id.* at *6.

The duplicity cannot be chalked up in this case as a harmless pleading defect or remedied by a curative jury instruction at trial. Indeed, leaving the multiple conspiracies alleged in the Second Superseding Indictment, even as separate counts, would run afoul of the standards for proper joinder under Rule 8.[11] Under the

[11] Because the Second Superseding Indictment alleges multiple conspiracies, "the general rule" that "defendants charged in the same criminal conspiracy should be tried together," *United States v. Reavis*, 48 F.3d 763, 767 (4th Cir. 1995), does not apply. Instead, under Rule 8(b), the alleged offenses must be "unified by some substantial identity of facts or participants" or "arise out of a common plan or scheme." *United States v. Porter*, 821 F.2d 968, 972 (4th Cir. 1987). Thus, while multiple conspiracies may be alleged against multiple defendants in the same indictment, "the fact [that] two conspiracies 'are of a similar character or involve one or more common participants' is not enough. Even if there are some common participants, generally similar objectives, and common confidential informants, multiple conspiracies must have a common goal or purpose to be joined under Rule 8(b)." *United States v. Greenfield*, No. 01-CR-401, 2001 WL 1230538 at *3-4 (S.D.N.Y. Oct. 16, 2001) (quoting *United States v. Lech*, 161 F.R.D. 255, 256

circumstances, dismissal of the whole indictment is the only remedy that will ensure compliance with the mandatory pleading requirements of Rule 8. And, even if misjoinder were not an insurmountable problem for the government, the indictment should be dismissed because the risk of trial prejudice is too severe.[12]

Because this issue has been raised before trial, a mere jury instruction would not be appropriate. As one District Judge explained after concluding that a charged conspiracy count was duplicitous:

> [T]his court chooses to heed the time-honored adage that "an ounce of prevention is worth a pound of cure." This is particularly true, where, as here, the preservation of defendants' Fifth and Sixth Amendment rights hangs in the balance. In light of the potential infringement of these rights if this court chose to roll the dice and preserve the confusion of [the duplicitous count] until a jury instruction at the end of trial, the Ninth Circuit's observation concerning the timing of duplicity objections is particularly instructive: "A duplicity objection can easily be made before trial because a duplicity claim is directed at the face of the indictment and not at the evidence presented at trial."

United States v. Hardy, 762 F. Supp. 1403, 1410 (D. Hawaii 1991); *Marlinga*, 2005 (S.D.N.Y. 1995) (Sotomayor, J.)) (other internal citations omitted).

[12] Even if dismissal were not otherwise required, it is the only remedy that will protect Finch from substantial trial prejudice (including the potential violation of his constitutional rights). In this case, trial prejudice will inevitably result if the jury is asked to consider any of the counts as charged. First, there is a substantial risk of "prejudicial spillover" of evidence from one conspiracy into another. For example, evidence of the WorldClaim and ECS Conspiracies will be admitted against Finch even though the Second Superseding Indictment contains no allegations that Finch was aware of, involved in, or participated in those distinct and unrelated conspiracies.

WL 513494, at *6 ("Acknowledging that Count One of the Indictment is duplicitous prior to trial, but failing to cure the duplicity until the jury instruction stage, would leave Defendant open to the very prejudices the Court can prevent. Hoping that a jury instruction will remedy a problem that can clearly be solved now, makes no sense.").

VI. Conclusion

As previously indicated, the Court previously ordered the government to "clean up" the initial Indictment. The Court required amendments to factual allegations and corrections to multiplicitous counts. The Court dismissed two counts as insufficiently pled. *See* ECF No. 60. The Court further has dismissed Count 2, which attempted to charge an offense clearly on its face outside the statute of limitations. ECF No. 121. Three months ago, the Court dismissed the same legally flawed allegations and conspiracy count that the government returned on November 16, 2021. ECF No. 185. The Court could not have been clearer in its ruling.

The government bears the responsibility of authoring the charging document. That responsibility carries with it a burden commensurate with the awesome power to investigate and prosecute on behalf of the United States. In this case, the sovereign no longer is entitled to the "benefit of the doubt" regarding drafting errors, mistakes, and decisions to disregard the Court's prior rulings.

For the reasons stated above, the Second Superseding Indictment should be

dismissed as duplicitous.

LOCAL RULE 7.1(F) CERTIFICATION

Pursuant to Local Rule 7.1(F), the undersigned certifies that this motion contains 4691 words pursuant to the word count provided by Microsoft Word.

LOCAL RULE 7.1(K) REQUEST FOR HEARING

Pursuant to Local Rule 7.1(K), Defendant James D. Finch respectfully requests that the Court set this matter for hearing because oral argument would assist the Court in resolving the issues raised in this Motion to Dismiss. The undersigned estimates that the defense would need approximately 30 minutes for argument.

Respectfully submitted,

/s/ Guy A. Lewis
Guy A. Lewis
Florida Bar No. 623740
Jeffrey M. Forman
Florida Bar No. 105135
The Law Offices of Guy A. Lewis PLLC
12575 SW 67th Avenue
Pinecrest, Florida 33156
954-688-6340
glewis@lewistein.com
jforman@lewistein.com

Counsel for Defendant,
James D. Finch

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 2, 2021, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that a true and correct copy of the foregoing has been served electronically via the CM/ECF System on all counsel of record.

/s/ Guy A. Lewis
GUY A. LEWIS