

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION**

**UNITED STATES OF AMERICA**

\*

v.

\*

**CASE NO. 4:20-cr-00056-RSB-CLR**

\*

\*

**PHOENIX FISHERIES, LLC**

\*

**MARK LEON HARRISON**

\*

\*

**DEFENDANTS PHOENIX FISHERIES, LLC  
& MARK LEON HARRISON MOTION TO DISMISS  
COUNT ONE and COUNT THREE**

Pursuant to Federal Rule of Criminal Procedure 12(b)(3)(B), Defendants Phoenix Fisheries, LLC and Mark Leon Harrison (collectively herein referred to as “Harrison Defendants”) respectfully request that the Court dismiss Counts One and Three of the three (3) count indictment.<sup>1</sup> These three (3) charges<sup>2</sup> contained in the two (2) counts fail to include constitutionally sufficient factual detail against the Harrison Defendants and, to the extent that they do contain any detail, fail to charge criminal conduct against the Harrison Defendants. Specifically, rather than offering meaningful notice, Counts One and Three contain only a generic recitation of the Wire Fraud, Mail Fraud and Money Laundering statutes without any specific allegations regarding how the Harrison Defendants conduct creates culpability of the charged offenses, making the Counts charged against these Defendants constitutionally inadequate and

---

<sup>1</sup> Harrison Defendants are not charged in Count Two of the Indictment, which charges a “Conspiracy to Possess with Intent to Distribute and to Distribute a Controlled Substance”, to wit: marijuana. (Doc. 3, p.27) Neither the indictment nor the voluminous Rule 16 disclosures even remotely suggest that Harrison Defendants were involved in any distribution of controlled substance, marijuana or otherwise.

<sup>2</sup> The United States of America (“Government”) charged both Conspiracy to Commit Wire Fraud and Conspiracy to Commit Mail Fraud, two separate offenses, in Count One and the third charged offense of Conspiracy to Commit Money Laundering in Count Three against Harrison Defendants.

deprives each defendant of the right to be apprised of the pending charges. In Count One, allegations that the Harrison Defendants were sending emails “concerning false or misleading invoices and payments for shark fins”, the sale of shark fins or phone with federal agents discussing “selling shark fins” or “shipping shark fins to Hong Kong” without any allegations of how that conduct violates the charges offenses do not constitutionally cut it. (Doc. 3, ¶¶ 48(c) thru 48(f); 48(iii) thru 48(nnn); 48(ppp) thru 48(rrr)). In Count Three, the Government alleges no specific factual allegations of wired transfers associated with the Harrison Defendants. Thus, both charged Counts One and Three are constitutionally deficient and warranting dismissal of the indictment against the Harrison Defendants.<sup>3</sup>

At this stage, neither a bill of particulars nor the volume of the Government’s Rule 16 disclosures can counterbalance these violations. Accordingly, the only available remedy is to dismiss the indictment counts of the indictment as related to the Harrison Defendants and dismiss these defendants from the Government’s prosecution.

## I. STANDARD OF REVIEW

An indictment must contain “a plain, concise, and definite written statement of the essential facts constituting the offense charged.”<sup>4</sup> The pleading requirement is more than a mere formality.

---

<sup>3</sup> Although the Introduction of the indictment speaks of “international wildlife trafficking”, “wildlife trafficking”, “International Wildlife Trafficking” and “shark finning”; cites and quotes The Lacey Act; and then discusses the difference between California and Florida law with regards to the lawful sell of shark fins, *nowhere in the indictment does the Government charge the Harrison Defendants with a Lacey Act violation or charge any other offense, based on federal and/or international law, alleging “wildlife trafficking” or “international wildlife trafficking”, wording the Government uses liberally throughout its indictment, associated with the shark fin business.* (See Doc. 3, ¶¶ 1-2, 4, 6-9, 12, 17, 19-20, and 28-30)

<sup>4</sup> FED. R. CRIM. P. 7(c)(1).

Rather, a sufficiently pleaded indictment is essential to ensure that “the accused [is] informed of the nature and cause of the accusation”<sup>5</sup> and, more importantly, to state an offense.<sup>6</sup>

Adequate pleading is necessary to “ensure an indictment’s compliance with the Sixth Amendment’s requirement to put the defendant on notice of the nature and cause of the accusation and the Fifth Amendment’s guarantees of due process and return of a grand jury indictment only after a finding of probable cause to support all of the necessary elements of the crime.”<sup>7</sup> Satisfying that standard requires meaningful notice, which is determined from the face of the indictment.<sup>8</sup>

Generally, “[t]o pass constitutional scrutiny, an indictment must be sufficiently specific to inform the defendant of the charge against him and to enable him to plead double jeopardy in any future prosecution for the same offense.”<sup>9</sup> In particular, “[a]n indictment is considered legally sufficient if it: (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.”<sup>10</sup>

---

<sup>5</sup> U.S. CONST. amend. VI.

<sup>6</sup> United States v. Sharpe, 438 F.3d 1257, 1263 (11th Cir. 2006) (“For an indictment to be valid, it must contain the elements of the offense intended to be charged, and sufficiently apprise the defendant of what he must be prepared to meet.”) (citation omitted).

<sup>7</sup> United States v. Perraud, 672 F. Supp. 2d 1328, 1345 (S.D. Fla. 2009) (citing United States v. Fern, 155 F.3d 1318, 1325 (11th Cir. 1998)).

<sup>8</sup> Sharpe, 438 F.3d at 1263.

<sup>9</sup> United States v. Cole, 755 F.2d 748, 759 (11th Cir. 1985) (citing Hamling v. United States, 418 U.S. 87, 117 (1974)).

<sup>10</sup> United States v. Jordan, 582 F.3d 1239, 1245 (11th Cir. 2009) (citations omitted).

An insufficiently pleaded indictment is incurable and, therefore, must be dismissed. In other words, post-indictment mechanisms, such as a bill of particulars or Rule 16 disclosures, are constitutionally inadequate counterbalances.<sup>11</sup> In support of that rule, the Supreme Court has offered the following rationale:

To allow the prosecutor . . . to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant would then be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him.<sup>12</sup>

Accordingly, the Government's failure to include constitutionally sufficient detail demands dismissal.

## II. ARGUMENT

### A. **Neither Count One nor Count Three contain any factual allegations tending to suggest that the Harrison Defendants committed any criminal wrongdoing.**

An indictment's sufficiency is evaluated "solely on the basis of the allegations made on its face."<sup>13</sup> "In ruling on a motion to dismiss for failure to state an offense, a district court is limited to reviewing the face of the indictment and, more specifically, the language used to charge the crimes."<sup>14</sup> Generally, the indictment is viewed "as a whole" and given a "common sense

---

<sup>11</sup> United States v. Panzavecchia, 421 F.2d 440, 442 (5th Cir. 1970) ("While a Bill of Particulars can solve evidentiary problems it cannot unlock the Grand Jury's mind and cure a defective indictment."); see also United States v. Sturman, 951 F.2d 1466, 1479 (6th Cir. 1991) ("Furnishing the defendant with a bill of particulars fails to save deficiencies in the indictment.") (citing Russell, v. United States, 369 U.S. 749, 769-70 (1962)); United States v. Hooker, 841 F.2d 1225, 1227 (4th Cir. 1988) (en banc) (same).

<sup>12</sup> Russell, 369 U.S. at 770.

<sup>13</sup> United States v. Welch, 327 F.3d 1081, 1090 (10th Cir. 2003) (quoting United States v. Hall, 20 F.3d 1084, 1087 (10th Cir. 1994)).

<sup>14</sup> Sharpe, 438 F.3d at 1263 (citing United States v. Critzer, 951 F.2d 306, 307 (11th Cir. 1992)).

construction.”<sup>15</sup> But multi-count indictments are treated differently. For those, “each count . . . must be regarded as if it were a separate indictment and must stand on its own content without dependence for its validity on the allegations of any other count not expressly incorporated.”<sup>16</sup> Although cross-incorporations are permitted under Rule 7(c)(1), the referenced allegations must be express.<sup>17</sup>

Here, neither counts – Count One (i.e., the Conspiracy to Commit Mail Fraud and Wire Fraud against the Harrison Defendants and 12 Co-Defendants) or Count Three (i.e., the Money Fraud Conspiracy against the Harrison Defendants and 12 Co-Defendants) – identify any criminal conduct purportedly committed by the Harrison Defendants.

#### **1. Count One: Conspiracy to Commit Mail Fraud and Wire Fraud**

Count One is contained in Paragraphs 26 through 48 (rrr). In Paragraph 26, the Government cross-incorporated Paragraphs 1 through 25. Liberally singling out those allegations even inferentially relevant to the Harrison Defendants in Paragraphs 1 through 48,<sup>18</sup> Count One

---

<sup>15</sup> Jordan, 582 F.3d at 1245 (citing United States v. Gold, 743 F.2d 800, 813 (11th Cir. 1984)).

<sup>16</sup> United States v. Huff, 512 F.2d 66, 69 (5th Cir. 1975) (citations omitted).

<sup>17</sup> Davis v. United States, 357 F.2d 438, 440 n.2 (5th Cir. 1966).

<sup>18</sup> The omitted paragraphs *have no bearing whatsoever* on the Harrison Defendants, in general, or the offenses charged against them, in particular:

- (1) eleven (11) paragraphs identifying co-defendants wholly unrelated to any conduct of the Harrison Defendants (Doc. 3, Indict. ¶¶ 1, 15-18, 21-25, and 27)
- (2) six (6) paragraphs describing wildlife trafficking, sharks, shark finning, and shark fin distribution or sales (Doc. 3, Indict. ¶¶ 2-9; 12, 17, 19-20, and 28-30)
- (3) two (2) paragraphs describing drug trafficking wholly unrelated to any conduct connected to the Harrison Defendants (Doc. 3, Indict. ¶¶ 10-11)
- (4) **sixty-two (62) paragraphs** describing a *separate and distinct conspiracy* alleging drug trafficking of marijuana involving co-defendants wholly unrelated to any conduct of the Harrison Defendants (Doc. 3, Indict. ¶¶ 39-47, 48(g)- 48(s), 48(v) – 48(ll); 44(aaa)and 48(ooo))
- (5) **twenty-one (21) paragraphs** describing wire transfers and discussions with undercover federal agents, none of which involve the Harrison Defendants but *involving* co-defendants

consists of the following allegations against the Harrison Defendants and the only entity or individuals the Harrison Defendants had any relationship with, financial, business or otherwise: Serendipity Business Solutions, LLC, Terry Xing Zhao Wu and Natalie Ye Man Chan Wu:

**THE GRAND JURY CHARGES THAT:**

**Introduction:**

1. At all times material to this Indictment, the defendants herein,

**SERENDIPITY BUSINESS SOLUTIONS, LLC,  
TERRY XING ZHAO WU,  
NATALIE YE MAN CHAN WU,  
PHOENIX FISHERIES, LLC,  
MARK LEON HARRISON,**

and others, were members and associates of a transnational criminal organization (the "Wu TCO"), whose members and associates engaged in wire fraud [not mail fraud], drug trafficking, and money laundering, among other crimes, within the Southern District of Georgia, Northern District of Georgia, Northern District of California, Central District of California, Northern District of Florida, Eastern District of Michigan, District of Arizona, Hong Kong, Mexico, Canada, and elsewhere.

2. The purpose of the Wu TCO was to make money from illegal activities, including wildlife trafficking and drug trafficking. The Wu TCO further sought to hide millions of dollars in illegal proceeds by laundering the money through businesses and bank accounts.

---

wholly unrelated to and any conduct of the Harrison Defendants (Doc. 3, Indict. ¶¶48(mm) - 48(zz), 48(bbb) - 48(hhh))

Under **no conceivable theory** – or, at the very least, one apparent from the Indictment's face – could those referenced allegations substantiate the charges asserted against the Harrison Defendants. See, e.g., Welch, 327F.3d at 1090. Any putative connection asserted by the Government would be extrinsic to the Indictment, and for that reason, they have been excluded.

\* \* \* \* \*

6. The Lacey Act, a federal fish and wildlife trafficking law, makes it unlawful for a person to make or submit a false record, account or identification of wildlife that has been or is intended to be transported in interstate or foreign commerce. 16 U.S.C. § 3372(d).

7. Effective January 1, 2013, it was unlawful to sell, possess, trade or distribute shark fins in or from California. Ca. Fish and Game Code § 2021. However, at all times material to this Indictment, Florida law allowed state licensed dealers to buy and sell saltwater products, including shark fins, so long as the licensed dealer reported the landing as required by Florida law and harvested or landed the entire shark. Fla. Stat. Ann. § 370.07. Although a licensed dealer could buy and sell shark fins, Florida law required that all sharks must be retained in whole condition with heads, tails, and fins attached until landed and specifically prohibited the practice of shark finning. Fla. Stat. Ann. § 379.2426.

8. Thus, licensed dealers in Florida, but not California, could sell, possess, trade or distribute shark fins provided the dealer properly harvested the entire shark and accurately recorded, accounted, and identified all shark fins shipped in interstate or foreign commerce to ensure the harvesting, shipping, and transportation of the protected wildlife complied with federal and state law.

9. From at least 2013 and continuing through the return date of this Indictment, the Wu TCO engaged in .... by unlawfully operating a business dealing in shark fins in violation of federal and state law. The Wu TCO purported to use a front shark fin business in Florida, but in reality, unlawfully operated a shark fin business in California to ship shark fins to Hong Kong. The Wu TCO unlawfully wired

money made from a scheme to unlawfully deal in shark fins to third party business bank accounts to hide millions of dollars in illegal proceeds and promote the unlawful activity.

\* \* \* \* \*

**The Defendants**

12. **Defendant Serendipity Business Solutions, LLC** was a California company that engaged in international wildlife trafficking, drug trafficking, and money laundering.

13. **Defendant Terry Xing Zhao Wu** was the operator of **Defendant Serendipity Business Solutions, LLC** and responsible for ordering when to export shark fins and authorizing payments for shark fins. **Defendant Terry Xing Zhao Wu** also handled the sale of shark fins to conspirators in Hong Kong.

14. **Defendant Natalie Ye Man Chan Wu** was the registered agent and manager of **Defendant Serendipity Business Solutions, LLC**. **Defendant Natalie Ye Man Chan Wu** was responsible for conducting financial transactions and signing checks for payment of shark fins.

\* \* \* \* \*

19. **Defendant Phoenix Fisheries, LLC**, was a Florida company that engaged in international wildlife trafficking and money laundering.

20. **Defendant Mark Leon Harrison** was the owner, incorporator, registered agent, and manager of **Defendant Phoenix Fisheries, LLC**. **Defendant Mark Leon Harrison** was responsible for preparing false and misleading commercial invoices and export documents for shark fins for **Defendant Phoenix Fisheries, LLC**. **Defendant Mark Leon Harrison** was an associate of **Defendant Terry Xing Zhao Wu, ....**

\* \* \* \* \*

**COUNT ONE**

**Conspiracy to Commit Wire Fraud and Mail Fraud  
18 U.S.C. § 1349**

26. Paragraphs 1 through 25 of the Indictment are incorporated by reference as if fully set forth herein.

27. Beginning at a time unknown to the Grand Jury, but at least from in or about 2010 and continuing through the return date of this indictment, the precise dates being unknown, in Chatham County, within the Southern District of Georgia, and elsewhere, the defendants herein,

**SERENDIPITY BUSINESS SOLUTIONS, LLC,  
TERRY XING ZHAO WU,  
NATALIE YE MAN CHAN WU,  
PHOENIX FISHERIES, LLC,  
MARK LEON HARRISON,**

aided and abetted by each other and by others known and unknown, with some joining the conspiracy earlier and others joining later, did knowingly and willfully combine, conspire, confederate, and agree together and with each other, and with others known and unknown, to commit certain offenses, to wit:

a. Wire Fraud, that is, to execute and attempt to execute a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, by transmitting and causing to be transmitted by means of wire communications in interstate and foreign commerce, text messages, phone calls, email messages, and financial transactions, for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343; and,

b. Mail Fraud, that is, to execute and attempt to execute a scheme and artifice

to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, by utilizing the United States mail and private and commercial interstate carriers, for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1341.

**OBJECT OF THE CONSPIRACY**

28. It was the object of the conspiracy to make money from illegal activities, including ... and then hide the illegal proceeds through third party business accounts to appear legitimate.

**MANNER AND MEANS OF THE CONSPIRACY**

29. It was part of the conspiracy that members of the conspiracy and others would avoid international, federal, and state wildlife trafficking laws to make money and meet the demand for shark fins in the Asian market.

30. It was further part of the conspiracy that members of the conspiracy and others would create and submit false applications for import/export licenses to United States Fish and Wildlife Services in appear legitimate while conducting business regulated by international, federal, and state wildlife trafficking laws.

31. It was further part of the conspiracy that members of the conspiracy and others would unlawfully smuggle shark fins from Mexico to ultimately be exported to Hong Kong.

32. It was further part of the conspiracy that members of the conspiracy and others created **Defendant Phoenix Fisheries, LLC**, a front seafood company in Florida.

33. It was further part of the conspiracy that **Defendant Phoenix Fisheries, LLC** was created in Florida because possessing, selling, and shipping certain shark fins was lawful in Florida and **Defendant Mark Leon Harrison** had contacts with shark fin dealers.

34. It was further part of the conspiracy that members of the conspiracy and others operated **Defendant Serendipity Business Solutions, LLC**, an unlawful shark fin business operating in California that directed the trade and distribution of shark fins to Hong Kong in violation of California and federal law.

35. It was further part of the conspiracy that members of the conspiracy and others would hide the unlawful shark fin business conducted through **Defendant Serendipity Business Solutions, LLC**, by purporting to use **Defendant Phoenix Fisheries, LLC**, the front seafood business in Florida.

36. It was further part of the conspiracy that members of the conspiracy and others would create fake invoices and paperwork to make it appear that **Defendant Phoenix Fisheries, LLC** in Florida was invoicing and financing the shark fin business.

37. It was further part of the conspiracy that **Defendant Serendipity Business Solutions, LLC** in California was actually financing and controlling the shark fin business.

38. It was further part of the conspiracy that members of the conspiracy and others would wire illegal profits from the shark fin business to third party business accounts to hide the illegal profits.

\* \* \* \* \*

45. It was further part of the conspiracy that members of the conspiracy and others would charge a commission fee for unlawfully depositing millions of dollars of illegal profits into business accounts to hide the illegal profits.

\* \* \* \* \*

47. It was further part of the conspiracy that members of the conspiracy and others would unlawfully deposit millions of dollars from

illegal activities into third party business accounts located in the United States, Mexico, and Hong Kong, to hide the illegal profits.

**OVERT ACTS**

48. In furtherance of the conspiracy and to affect the object thereof, the Defendants and others committed the below-listed overt acts, among others:

a. On or about June 4, 2013, **Defendant Natalie Ye Man Chan Wu** registered **Defendant Serendipity Business Solutions, LLC** as a limited liability company in California.

b. On or about June 24, 2013, **Defendant Mark Leon Harrison** registered **Defendant Phoenix Fisheries, LLC** as a limited liability company in Florida.

c. Between March 5, 2014 and continuing through at least January 17, 2017, **Defendants Natalie Ye Man Chan Wu, Terry Xing Zhao Wu** and **Mark Leon Harrison**, communicated by emails concerning false or misleading invoices and payments for shark fins through **Defendants Phoenix Fisheries, LLC**.

d. Between March 5, 2014 and continuing through at least January 17, 2017, **Defendants Natalie Ye Man Chan Wu, Terry Xing Zhao Wu** and **Mark Leon Harrison**, communicated by emails that **Defendants Natalie Ye Man Chan Wu, Terry Xing Zhao Wu**, and **Serendipity Business Solutions, LLC** were in fact paying for all the shark fins purportedly purchased and invoiced by **Defendants Mark Leon Harrison** and **Phoenix Fisheries, LLC**.

e. On September 11, 2016, **Defendant Phoenix Fisheries, LLC**, exported 2,948 kilograms of dried shark fins through the port of Savannah to co-conspirators in Hong Kong. The declared value of the shipment was \$159,965.

f. On April 9, 2017, **Defendant Phoenix Fisheries, LLC**, exported 2,722 kilograms of dried shark fins through the port of Savannah to co-conspirators in Hong Kong. The declared value of the shipment was \$63,600.

\* \* \* \* \*

t. On May 15, 2019, **Defendant Terry Xing Zhao Wu** communicated by text messages with a cooperating source to arrange a meeting in California.

u. On May 15, 2019, **Defendant Terry Xing Zhao Wu** met with a cooperating source in Burlingame, California and discussed wildlife trafficking and transporting and investing at least \$2,000,000 in bulk cash for a fee. **Defendant Terry Xing Zhao Wu** further discussed obtaining additional inventory of shark fins from Mexico.

\* \* \* \* \*

iii. On December 17, 2019, **Defendant Mark Leon Harrison**, doing business as **Defendant Phoenix Fisheries, LLC**, communicated with an undercover United States Fish and Wildlife Service (USFWS) agent on the phone concerning selling shark fins and shipping shark fins to Hong Kong.

jjj. Between January 2, 2020 and January 10, 2020, **Defendant Mark Leon Harrison**, doing business as **Defendant Phoenix Fisheries, LLC**, communicated with an undercover USFWS agent through text messages concerning shark fins and agreed to meet in Savannah, Georgia.

kkk. On January 10, 2020, **Defendant Mark Leon Harrison** met with an undercover USFWS agent in Savannah, Georgia and inspected shark fins prior to shipping to conspirators in Hong Kong.

lll. On January 13, 2020, **Defendant Mark Leon Harrison** communicated by email with an undercover USFWS agent concerning shipping shark fins to Hong Kong.

mmm. On January 17, 2020, **Defendant Mark Leon Harrison** communicated by email with

an undercover USFWS agent concerning shipping shark fins to Hong Kong.

nnn. On January 20, 2020, **Defendant Mark Leon Harrison** communicated by email with an undercover USFWS agent concerning shipping shark fins to Hong Kong.

\* \* \* \* \*

ppp. On January 24, 2020, **Defendant Mark Leon Harrison** communicated by email with an undercover USFWS agent concerning shipping shark fins to Hong Kong.

qqq. Between January 28, 2020 and January 30, 2020, **Defendant Mark Leon Harrison** communicated by text messages with an undercover USFWS agent concerning shipping shark fins to Hong Kong.

rrr. Between February 3, 2020 and February 10, 2020, **Defendant Mark Leon Harrison** communicated by text messages with an undercover USFWS agent concerning payment for shark fins shipped to Hong Kong.

All in violation of Title 18, United States Code, Sections 1349 and 2.

The detailed allegations from Count One of the Indictment against the Harrison Defendants attempt to assert an unknown unlawful wildlife trafficking violation but fail in that effort. In the few allegations brought against the Harrison Defendants related to their shark fin business conducted with Serendipity Business Solutions, LLC, Natalie Wu and Terry Wu, nothing alleged puts the Harrison Defendants on lawful notice that they are to defend against a conspiracy to commit mail fraud or wire fraud. Engaging in a financial transaction alone, which is detailed in Paragraphs 48(e) and 48(f), without specific allegations of illegality or fraud, does not meet constitutional muster. Accordingly, Count One is insufficient to bring conspiratorial mail fraud and/or wire fraud against these defendants, requiring dismissal of the Harrison Defendants from Count One.

**2. Count Three: Money Laundering Conspiracy**

Applying the same framework, as outlined above, Count Three – which, cross-incorporate Paragraphs 1 through 25 and includes allegations contained in Paragraphs 58 through 60(k), and liberally singling out those allegations inferentially relevant to the Harrison Defendants in Paragraphs 1 through 25, and Paragraphs 58 through 60(k), Count Three alleges against the Harrison Defendants as follows<sup>19</sup>:

\* \* \* \* \*

**COUNT THREE**

*Money Laundering Conspiracy*

18 U.S.C. § 1956(h)

58. Paragraphs 1 through 25 of the Indictment are incorporated by reference as if fully set forth herein.<sup>20</sup>

59. Beginning at a time unknown to the Grand Jury, but at least from in or about 2010 and continuing through the return date of this indictment, the precise dates being unknown, in Chatham County, within the Southern District of Georgia, and elsewhere, the defendants herein,

**SERENDIPITY BUSINESS SOLUTIONS, LLC,  
TERRY XING ZHAO WU,  
NATALIE YE MAN CHAN WU,  
PHOENIX FISHERIES, LLC,  
MARK LEON HARRISON,**

aided and abetted by each other and by others known and unknown, with some joining the

---

<sup>19</sup> The following excerpt similarly excludes the surplusage contained in Paragraphs 1 through 25 – e.g., the allegations describing wildlife trafficking, shark finning, The Lacey Act, and the unrelated co-defendants, allegations of drug trafficking of marijuana, wired transfers to launder money etc. See supra note 18. Paragraphs 1-25 of the Indictment excluding the surplusage as detailed on pages 6-9 of this Motion is adopted and incorporated into this section of the Motion to Dismiss.

conspiracy earlier and others joining later, did knowingly and intentionally combine, conspire, confederate and agree together and with each other, and with others known and unknown, to conduct and attempt to conduct financial transactions affecting interstate commerce, with funds which were proceeds of a specified unlawful activity, that is conspiracy to commit wire fraud and mail fraud, in violation of Title 18, United States Code, Section 1349, .... and which the defendants knew to be the proceeds of some form of unlawful activity and did conspire to do so with the intent to promote the carrying on of the aforesaid specified activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

**OVERT ACTS**

58. In furtherance of the conspiracy, the conspirators committed and caused to be committed in the Southern District of Georgia and elsewhere, financial transactions affecting interstate commerce, using funds which were, and which the defendants knew to be, proceeds of the unlawful conspiracy to commit wire and mail fraud . . . including, but not limited to, the transactions shown below:

\* \* \* \* \*

All in violation of Title 18, United States Code, Sections 1956(h), 1956(a)(1)(A)(i), and 2.

As is glaringly apparent, there are virtually **no allegations** in Count Three of the Indictment alleging a Money Laundering Conspiracy pertaining to the Harrison Defendants. The lack of any substantive allegations against these Defendants in this Count; but nevertheless, being hailed into Court to defend such a specious attempt to charge the Harrison Defendants on this offense, is particularly appalling. In this Count,

there are no transactions that even remotely relate to the Harrison Defendants; no bank accounts in their name or bank account numbers associated with either Defendants financial affairs; nor any financial transactions initiated at their behest. At most, the indictment lists two (2) transactions in Paragraphs 48(e) and 48(f) of Count One but not financial transactions are specified in Paragraphs 1 through 25 or Count Three that relate or are connected to the Harrison Defendants. This Count too, fabulously fails the constitutional test of specificity needed to sustain conviction or to meet the charging requirements of the law. Like Count One, Count Three is due dismissal against the Harrison Defendants.

**B. As framed, Counts One and Three against the Harrison Defendants lack constitutionally sufficient detail and, therefore, are due to be dismissed.**

In overview, the Governments allegations against the Harrison Defendants, which allege (1) email communications with Defendants Natalie Ye Man Chan Wu and Terry Xing Zhao Wu regarding shark fin purchases (Paragraphs 48(c) & 48(d)); (2) two (2) transactions involving the exportation of shark fins by Phoenix Fisheries, LLC (Paragraphs 48(e) & 48(f)); and (3) allegations of in-person, text and email communications between the Harrison Defendants and undercover USFWS agents regarding the exportation of shark fins (Paragraphs 48(iii) through 48(nnn),48(ppp) through 48(rrr)), together are insufficient to inform the Harrison Defendants of being charged with the offenses of Wire Fraud, Mail Fraud and/or Money Laundering.

As the Eleventh Circuit has explained, “if the indictment tracks the language of the statute, it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged.”<sup>21</sup> Here, however, neither the prefatory paragraphs nor those paragraphs coupled with the specific allegations of specific conduct of the Harrison Defendants advises these Defendants of the basis on which the charges in Count One and Three are substantiated. In short, the indictment makes allegations of some unknown statutory illegality involving their shark fin business dealings associated with Defendants Natalie Ye Man Chan Wu and Terry Xing Zhao Wu but fails to allege how these dealings result in those charges asserted in Counts One and Three of the Indictment brought against them.

At bottom, “[i]t is the statement of facts in the indictment, rather than the statutory citation, that is controlling, and the omission of an essential element from the pleading cannot be cured by citing the statute.”<sup>22</sup> Taken together, the Indictment is fatally deficient, and as a consequence, Counts One and Three as to the Harrison Defendants include no “indication of what the Government contend[s] [is] unlawful about [the Harrison Defendants’] conduct.”<sup>23</sup> Instead, as alleged, these counts require the Harrison Defendants to speculate as to the conduct targeted by the Government in the Indictment.<sup>24</sup> Without the requisite level of detail, Counts One and Three against the Harrison Defendants are deficient and, therefore, must be dismissed.

**C. Count One duplicitously charges two separate offenses in one count requiring dismissal.**

---

<sup>21</sup> Sharpe, 438 F.3d at 1263 (quoting United States v. Bobo, 344 F.3d 1076, 1083 (11th Cir. 2003)) (emphasis added).

<sup>22</sup> 1 FEDERAL PRACTICE & PROCEDURE: CRIMINAL § 125 (4th ed. 2008) (emphasis added).

<sup>23</sup> Bobo, 344 F.3d at 1084.

<sup>24</sup> Again, there are no charges of Lacey Act violations or any other “shark fin” related criminal offenses brought in the Indictment.

The Government charged all Defendants with **both** Conspiracy to Commit Wire Fraud **and** Conspiracy to Commit Mail Fraud, two separate offenses, **in one count**, Count One of the Indictment. “A count in an indictment is duplicitous if it charges two or more separate and distinct offenses.”<sup>25</sup> Although rooted in the Fifth and Sixth Amendments,<sup>26</sup> “the prohibition of duplicitous counts is embodied in [Federal Rule of Criminal Procedure 8(a)], which provides for ‘a separate count for each offense.’”<sup>27</sup>

Duplicitously charging a defendant is prejudicial. First, “there is no way for a jury to convict on one offense and acquit on another offense contained in the same count.”<sup>28</sup> Second, “because the jurors have two crimes to consider in a single count, they may convict without reaching a unanimous agreement on either.”<sup>29</sup> Third, the entanglement of multiple charges in a single count skews evidentiary rulings at trial because evidence admissible for one charge may be inadmissible for the other.<sup>30</sup> Fourth, a duplicitous indictment fails to notify a defendant of the charges against which he is expected to defend.<sup>31</sup>

The Government has duplicitously charged the Harrison Defendants in Count One. Count One, therefore, is due to be dismissed on this additional ground. At a minimum, it should be

---

<sup>25</sup> United States v. Seher, 562 F.3d 1344, 1360 (11th Cir. 2009) (quoting United States v. Schlei, 122 F.3d 944, 977 (11th Cir. 1997)).

<sup>26</sup> See, e.g., United States v. Kearney, 451 F. Supp. 33, 35 (S.D.N.Y. 1978) (“The prohibition against duplicity has constitutional underpinnings in the Sixth Amendment’s guarantee that an accused be adequately informed of the nature and cause of the accusation and in the Fifth Amendment’s interdiction against double jeopardy. . . . The possibility that a less-than-unanimous verdict will be returned by the jury is an additional danger sought to be obviated by the Rule.”).

<sup>27</sup> United States v. Buchmeier, 255 F.3d 415, 421 (7th Cir. 2001).

<sup>28</sup> 1A FEDERAL PRACTICE & PROCEDURE – CRIMINAL § 142 (4th ed. 2008).

<sup>29</sup> 1A FEDERAL PRACTICE & PROCEDURE – CRIMINAL § 142 (4th ed. 2008).

<sup>30</sup> See, e.g., United States v. Moloney, 287 F.3d 236, 239 (2d Cir. 2002).

<sup>31</sup> See, e.g., United States v. Duncan, 850 F.2d 1104, 1108 (6th Cir. 1988).

narrowed to single offense counts consistent with the Federal Rules and the Fifth and Sixth Amendments or compel the Government to elect which offense(s) it intends to pursue at trial.

**D. Count Three fails to charge an underlying predicate offense against the Harrison Defendants making it legally deficient and requiring dismissal**

The only underlying predicate offenses charged in the Indictment are found in Count One, charging both Conspiracy to Commit Wire Fraud and Conspiracy to Commit Mail Fraud; notwithstanding the general references to The Lacey Act and alleged “wildlife trafficking”.

“Money laundering is an offense to be punished separately from an underlying criminal offense.

The main issue in a money laundering charge, therefore, is determining when the predicate crime becomes a "completed offense" after which money laundering can occur.”<sup>32</sup>The Eleventh

Circuit has long held that “[g]enerally, transactions are not considered "money laundering"

unless, among other things, they involve proceeds of separate criminal activity that has already happened. Therefore, no money laundering can occur prior to the completion of the

predicate offense(s) that generated the proceeds to be laundered.”<sup>33</sup> Because Count Three is

based on Wire Fraud and Mail Fraud, criminal conduct which the Harrison Defendants were not involved in and have not been sufficiently charged in the Indictment, there are no predicate

offenses charged for much less “completed” which the Harrison Defendants can be convicted of

Money Laundering Conspiracy as the Government attempts to allege in Count Three.

Accordingly, Count Three is also due to be dismissed.

---

<sup>32</sup> United States v. Christo, 129 F.3d 57, 579-580 (11th Cir.1997) (citing United States v. Edgmon, 952 F.2d 1206, 1213 (10th Cir.1991); United States v. Kennedy, 64 F.3d 1465, 1477-78 (10th Cir.1995))

<sup>33</sup> United States v. Noor Aldien Alabed, 2019 U.S. Dist. LEXIS 224829 (N.D. Ga. Dec. 4, 2019)

**III. CONCLUSION**

For the reasons set out herein, separately and collectively, the Harrison Defendants respectfully requests that the Court dismiss Counts One and Count Three of the Indictment.

Respectfully submitted,

**/s/ DAVID P. YORK**  
DAVID P. YORK (YORKD2887)  
Admitted, *Pro Hac Vice*  
[coumanis@c-ylaw.com](mailto:coumanis@c-ylaw.com)  
Attorney for Defendant, Mark Leon Harrison

**/s/ CHRIST N. COUMANIS**  
CHRIST N. COUMANIS (COUMC1593)  
Admitted, *Pro Hac Vice*  
[coumanis@c-ylaw.com](mailto:coumanis@c-ylaw.com)  
Attorney for Defendant, Mark Leon Harrison

OF COUNSEL:

COUMANIS & YORK, P.C.  
Post Office Box 2627  
Daphne, Alabama  
Phone: 251.990.3083 – Daphne  
Phone: 251.431.7272 - Mobile  
Fax: 251.928.8665

Mobile:  
Post Office Box 1646  
Mobile, Alabama 36633

**CERTIFICATE OF SERVICE**

I do hereby certify that I have on July 20, 2021 electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system and request the Court to serve the same electronically on the U.S. Attorneys and all counsel and parties of record in this matter.

**/s/ DAVID P. YORK**  
DAVID P. YORK (YORKD2887)  
Admitted, *Pro Hac Vice*