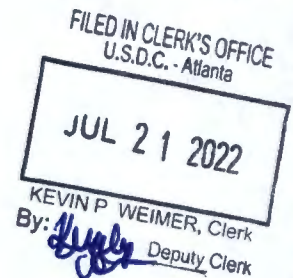


MHC

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**



UNITED STATES OF AMERICA)
)
)
V)
)
DANIEL ERIC JAY)
)
_____)

Criminal Action No: 1 :20-CR-228-MHC-JKL

**DEFENDANT'S MOTION TO DISMISS THE INDICTMENT FOR VAGUENESS AND
LACK OF SPECIFICITY PURSUANT TO RULE 12(b)(3)(B) OF THE FEDERAL RULES
OF CRIMINAL PROCEDURE**

NOW COMES Daniel-Eric: Jay here proceeding as pro se co-counsel, and files, DEFENDANT'S MOTION TO DISMISS THE INDICTMENT FOR VAGUENESS AND LACK OF SPECIFICITY PURSUANT TO RULE 12(b)(3)(B) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE and affirms to the court as follows:

I.

BACKGROUND

1. Defendant JAY was named in 5 Counts of a 20 Count Superseding Indictment filed by the UNITED STATES on or about November 19, 2020.
2. Defendant JAY did NOT waive his right to counsel NOR effective assistance of counsel but was appointed counsel from the Federal Public Defender's Office on June 21, 2021.
3. JAY did NOT waive his right to counsel NOR effective assistance of counsel but was appointed counsel from the Federal Public Defender's Office. Defendant had a PUBLIC DEFENDER for arraignment in Western District of PA initially July 15, 2020 then was given public defender upon

arriving in GA on July 20, 2020 just for the arraignment. JAY was given Public Defender Kamal Ghali on July 30, 2020

4. Defendant JAY entered a plea of NOT GUILTY to the federal First Superseding Indictment count 4 claiming to be a TRUE BILL through attorney Ghali on August 12, 2020.
5. Defendant JAY received a second superseding indictment on Nov 19, 2020 naming Defendant JAY in addition to the bank fraud charge from original indictment, another 4 counts with conspiracy to commit wire fraud, and 3 counts of wire fraud were added.
6. On December 28, 2020, ARRAIGNMENT held as to DANIEL ERIC JAY on the Second Superseding Indictment. PLEA of NOT GUILTY entered as to Count 1, 2-4, 5 with permission from defendant JAY's attorney. No written plea was filed with the court. Response to pro se material added into the record by Defendant JAY.
7. On Feb 12, 2021 Public Defender Kamal Ghali withdraws from case.
8. On Feb 18, 2021 Leigh Burton Finlayson was named stand by counsel.
9. On June 21, 2021, Defendant JAY decides to no longer represent himself and rely upon Leigh Burton Finlayson to take over as counsel. Defendant JAY filed pro se documents 213, 216 and 218-228 between Sept 7 -10, Case was certified for Trial on Sep 8, 2021.

10. Leigh Burton Finlayson filed motions to remove Defendant JAY's pro se motions without his consent.
11. On Oct 13, 2021 change of plea hearing was scheduled for Dec 14, 2021 to sign plea agreement.
12. Defendant JAY, did not accept the plea proposal.
13. Public Defender Finlayson sought leave of absence for scheduled trial date of February 4, 2022.
14. Order setting JURY TRIAL for 19 July 2022 was also signed by the Court on 04 February 2022.

II. DISCUSSION

15. Without effective assistance of counsel, Defendant, here proceeding pro se, seeks his constitutionally guaranteed rights pursuant to the Georgia and the United States of America Constitution(s), and the constitutional guarantees therein and **hereby serves notice that defendant does not waive BUT RESERVES any and all of those constitutionally guaranteed rights.**
16. Generally, Rule 7(c)(1) of the Federal Rules of Criminal Procedure requires an indictment to provide "a plain, concise and definite written statement of the essential facts constituting the offense charged." *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993) ("The Supreme *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993) charged, fairly informs the defendant of the charges against which he must defend, and enables him to enter a plea without fear of double jeopardy.") (citing *Hamling v.*

United States, 418 U.S. 87, 117 (1974)); *see also Collins v. Markley*, 346 F.2d 230, 232 (7th Cir.) (en banc) ("The sufficiency of an indictment is to be measured by certain guide lines. First, the indictment standing alone must contain the elements of the offense intended to be charged, and it must be sufficient to apprise the accused of the nature of the offense. Second, after conviction, the record of the case must be sufficient so that the accused can plead the judgment in bar of any subsequent prosecution for the same offense."), *cert. denied*, 382 U.S. 946 (1965).

17. In *Yefsky*, the court held that the indictment was defective in that it did not provide the defendant with adequate notice of the charge (conspiracy to commit mail fraud) against him. 994 F.2d at 993 ("Where guilt depends so crucially upon . . . a specific identification of fact, . . . cases have uniformly held that an indictment must do more than simply repeat the language of the criminal statute.") (citing *Hamling*, 418 U.S. at 118).

18. Alabama existing, in the 11th Circuit, and conforming its court decisions to the 11th Circuit Court of Appeals, the following is relevant: The indictment is unconstitutionally vague because it does not contain "[n]otice of issues to be resolved by the adversary process." **Lankford v. Idaho**, 500 U.S. 110, 126 (1991). *A valid indictment must: (1) show the accused against what to prepare a defense; (2) identify the offense so that he is tried for the same charge that was brought before the grand jury; (3) protect somewhat against double jeopardy; and (4) give the court the means to accept or reject the verdict, pronounce judgment, and pass sentence.* **Thompson v. State**, 542 So. 2d 1286, 1291 (Ala. Crim. App. 1988); *see also State v. Roffler*, 69 So. 3d 225, 231 (Ala.

2010). In Alabama, “[an] indictment must contain the elements of the offense intended to be charged and sufficiently apprise the defendant of what he must be prepared to meet.” Ex parte Rumlin, 564 So. 2d 1386, 1388 (Ala. 1990) (citation omitted); see also Ex parte Hightower, 443 So. 2d 1272, 1273 (Ala. 1983); Hewlett v. State, 520 So. 2d 200, 204 (Ala. Crim. App. 1987).

19. The present indictment lacks the legal and factual specificity necessary for Daniel-Eric: Jay to prepare a reasonable and adequate defense. It does not apprise him of the case he needs to defend against and does not charge the elements of the offense. It fails to set forth particular acts or means by which the defendant allegedly committed the fraud, does not specify the degree of fraud charged, includes no statement of what property was taken by him, from where, or at what time, and does not aver other evidence of fraud. It therefore deprives Defendant JAY of his rights to due process under federal law and to be notified of the charges against him.

20. Under Alabama law, and the 11th Circuit, the indictment is inadequate and must be dismissed. See Ala. Code § 15-8-25; Hightower, 443 So. 2d at 1273 (“An indictment must specify the conduct sought to be condemned so that the defendant may have an opportunity to prepare a defense if one is available.”); Rogers v. State, 539 So. 2d 451, 454 (Ala. Crim. App. 1988) (although

indictment need not contain all proof necessary to convict defendant, it must provide enough information for him to “prepare his defense and be protected against a subsequent prosecution for the same offense” (citation omitted)).

21. If this Court does not dismiss the indictment and order the UNITED STATES to charge the Defendant with a particular ACT (actus reas) in any subsequent indictment, Defendant JAY will be deprived of due process, a fair trial by an impartial jury, a reliable sentencing proceeding, effective assistance of counsel, and the right to confront witnesses against him and to present a defense, as States Constitution precedent law.

COUNT ONE

22. In COUNT ONE of the Indictment the Prosecution so vaguely attempts to allege criminal activity that the indictment borderlines as being a JOKE! It so vaguely alleges criminal conspiracy that it never alleges one act (actus reas) that Defendant JAY did to warrant the charge. Defendant JAY is mentioned twice in the Count as allegedly making a spoken comment to Defendant Sargent on or about November 6, 2017, communicating to Defendant Mike Sargent that an investor was *“questioning whether he’ll get payback because the deal doesn’t seem real.”* Another communication is alleged by Defendant JAY communicating to Defendant FAYNE, *“I don’t know if [investor L.W.] is bluffing but I don’t think we need attorneys calling Walmart’s legal department.”* These alleged communications are not indicated by the

SUPERCEDING INDICTMENT as being an in person spoken comment, a telephone conversation, an electronic wire text or a hand written note in the mail or FedEx. Furthermore, there is no context of the conversation, and it is NOT a valid criminal accusation. The SUPERCEDING INDICTMENT alleges Defendant JAY has “acknowledged,” with these communications that he is involved in a conspiracy to defraud investors. However, the alleged communications by Defendant JAY does not rise to the level of any such admission and Defendant JAY has not admitted to committing an action but is merely relaying a “hearsay” comment or giving an opinion that could be interpreted in a plethora of ways involving a strategic honest business deal that was getting held up in the “minutia” of “red tape.” This is nothing more than rhetoric and it fails to allege an activity with specificity to which Defendant JAY can mount a defense but, instead, is left guessing as to what is actually being alleged. The Defendant has NO WAY of singling out any particular activity or date associated with the activity that he could claim “double jeopardy” if the action was alleged again in the future. There is no specific identification of fact. It is all left irresponsibly open to imaginative interpretation. It appears that the Plaintiff hopes to score a conviction because Defendant JAY spoke with other Defendants at one time or another. “Guilty by association” is what the prosecution hopes to achieve but it is not at all objective but all subjective innuendo.

23. The affidavit alleges two (2) comments in COUNT ONE that leaves the Defendant unsure if he has to defend each vaguely stated alleged comments as a separate COUNT or can either of the two vaguely stated alleged comments, if found guilty, convict him of

only COUNT ONE. COUNT ONE contains duplicitous allegations that rob the Defendant of a constitutionally protected right.

24. The danger to the Defendant is that the duplicitous indictment may deny a Defendant of his right to a unanimous jury. *"An indictment is duplicitous if it sets forth separate and distinct crimes in one count."* *United States v. Davis*, 306 F.3d 398, 415 (6th Cir.2002) (citing *United States v. Campbell*, 279 F.3d 392, 398 (6th Cir.2002)). Whether an indictment is duplicitous is a question of law that this Court reviews *de novo*. *Id.* "The overall vice of duplicity is that the jury cannot in a general verdict render its finding on each offense, making it difficult to determine whether a conviction rests on only one of the offenses or on both." *United States v. Duncan*, 850 F.2d 1104, 1108 n. 4 (6th Cir.1988). While a duplicative indictment can prejudice a defendant in a variety of ways, the primary concern is that a defendant may be deprived of his right to a unanimous jury verdict. See *United States v. Savoires*, 430 F.3d 376, 380 (6th Cir.2005); *United States v. Shumpert Hood*, 210 F.3d 660, 662-63 (6th Cir.2000). That is, a jury might return a guilty verdict on the single count submitted to them without all twelve jurors agreeing that the defendant committed either (or all) of the offenses charged within that count. Other adverse effects on a defendant "may include improper notice of the charges against him, prejudice in the shaping of evidentiary rulings, in sentencing, in limiting review on appeal, [and] in 444*444 exposure to double jeopardy." *Duncan*, 850 F.2d at 1108 n. 4.

25. COUNT ONE lumps Defendant JAY in with other Defendants who may or may not be actually guilty, making an "Alford Plea" of guilty, by alleging "Defendant's did this" or "Defendants did that" but failed to state what Defendant JAY allegedly did.

26. Furthermore, COUNT ONE of the indictment fails to inform the Defendant if he must be found guilty of two (2) communications that rise to the level of criminal *actus reas* and

mens rea listed in COUNT ONE to be convicted or only one communication listed.

The duplicity of the alleged crimes within this single count presents confusion and risk in denying the Defendant the right to a unanimous verdict.

27. COUNT ONE must be dismissed entirely, against Defendant JAY for there is NO WAY to defend against the allegations NOR make a defense of “double jeopardy,” which is a Constitutionally guaranteed right.

COUNTS TWO-FOUR

“Wire Fraud”

28. Defendant JAY, at his arraignment was forced to enter a Plea of NOT GUILTY on COUNTS 2-4. However, Defendant JAY does NOT appear by name in Count 2 or Count 4 but only Count 3. Counts 2-4 lump together four defendants without stating what each did but a vague statement that they aided and abetted each other. Nothing within the indictment in this “COUNTS 2-4” section states anything that any defendant did to aid and abet each other. Instead it offers a BOXED IN chart with NO full sentence left only to subjective interpretation by the any reader, more importantly, a defendant trying to wrap his mind around what is being charged!

29. COUNT THREE is equally vague as COUNT ONE. Defendant JAY is NOT mentioned to have committed a single action that would involve wire fraud. Defendant JAY is lumped in with other Defendants as having:

“aided and abetted by each other and by others known and unknown to the Grand Jury, having devised and intending to devise a scheme and artifice to defraud investors in Defendant Fayne’s trucking company, and for obtaining money from those investors by means of materially false and fraudulent pretenses, representations, and promises, and by the omission of material facts, transmitted and caused to be transmitted by means of wire communication in interstate commerce, the following writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice.”

30. COUNT THREE attempts to allege “wire fraud” against investors but fails utterly, once again, to meet the sufficiency prongs of *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993). The SUPERCEDING INDICTMENT includes a chart/graph that is BOXED IN and has no complete sentence and no foundation as to its meaning but is left open to subjective interpretation. Did Defendant Fayne commit wire fraud against investors here by:

\$30,000 wire transfer from United Community Bank account #1408, held in the name of Flame Trucking Inc., to JPMorgan Chase Bank, NA account #0180, held in the name of Daniel E. Jay

This is not a grammatical sentence forming an accusation or allegation BUT a BOXED IN code with no foundational testimony, explanation or sworn statement on which an allegation can be formed. Even if we presume that the BOXED IN code is an allegation, the allegation is upon Defendant Fayne, not Defendant JAY. Defendant Fayne is the one who took action here. Defendant JAY has no way of controlling the wire of the funds as he did not initiate the wire. There is NO action, NO ACTUS REAS! The only implication here that is possible in COUNT THREE is MENS REA, but an indictment must allege an ACT and do it specifically.

31. In COUNTS SEVEN THRU NINETEEN (7-19), Defendant Fayne appears, by BOXED IN reference chart, to have transferred by wire, funds, in various amounts to various financial institutions to named and unnamed persons who are not charged with criminal activity for being the owner of an account that has received a wire, including, *Luxury Lease Company, "S.T., to pay child support owed by Defendant Fayne.," Status Jewelers, Wells Fargo Bank, NA account #0467, held in the name of C.W.. to Regions Bank, account #5081, held in the name of J.S.. to JPMorgan Chase Bank account #1572, held in the name of Sonoran HomeWatch LLC., Sterling National Bank account #5233, held in the name of Lucky Star Licensing. TIME Bank, N.A. account #6105, held in the name of TransArn Trucking Exchange, to purchase eight Kenworth T-680 trucks for C.R. Wilkins Trucking, LLC., JPMorgan Chase Bank, NA account #2162, held in the name of Great Dane LLC, to purchase six refrigerated trailers for C.R. Wilkins Trucking, LLC. AND DeSha County (Arkansas) Sheriff's Office, to pay restitution owed by Defendant Fayne. None of these persons or financial institutions referenced in the BOXED IN CHART have been charged with criminal activity for having received a wire from Defendant Fayne. Yet, through some malicious prosecution, DANIEL ERIC JAY is charged.*

32. Furthermore, the SUPERCEDING INDICTMENT does not, in COUNT THREE, state that UNITED COMMUNITY BANK had been the victim of the fraud and held these funds to which the wire fraud allegation were aimed but that this may be the result of "investor funds" in Fayne's Trucking Company. But that in this COUNT THREE the intent of the action was to:

".....defraud investors in Defendant Fayne's trucking company, and for obtaining money from those investors by means of materially false and fraudulent pretenses, representations, and promises, and by the

omission of material facts, transmitted and caused to be transmitted by means of wire communication in interstate commerce, the following writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice:.....”

The Prosecution, apparently does not believe that the Defendant has a right to be informed of the specific charges against him much less the nature and the cause of the accusations in the manner prescribed by law. The Defendant cannot defend against nor claim double jeopardy on these non-mentioned and perhaps infinite number of allegations vaguely inferred by pluralities not quantified specifically herein.

33. In order for the allegation in COUNT THREE to be valid it must name Defendant JAY as having taken some action or made a material statement to an investor that is allegedly a falsehood, then cause that investor to forward a certain dollar amount to either Defendant Fayne or himself and allege no effort to return such sum. However, COUNT THREE alleges investor fraud but gives no investor name, no comment to an investor and no evidence of an investor sending funds to either Defendant JAY or Defendant Fayne. Instead we are left to subjectively interpret a chart/graph that is BOXED IN that Defendant Fayne wired Defendant JAY “\$30,000 wire transfer from UNITED COMMUNITY BANK....” The chart or BOX does not match the allegation. In addition, the US Style and Usage Manual states that information inside brackets or boxes are NOT to be considered as part of a document but instead for reference only.

34. There is no specific identification of fact for which the Defendant can prepare a defense in the present case in COUNTS ONE & THREE or make the defense of “double jeopardy” in a future case as required by *Yefsky (supra)*.

35. COUNTS TWO, THREE and FOUR must be dismissed entirely, against Defendant JAY (as well as the other defendants) for there is NO WAY to defend against the

allegations, depose any witness before trial, NOR make a defense of “double jeopardy,” which is a Constitutionally guaranteed right.

COUNT FIVE

36. In COUNT FIVE of the indictment the allegation is only SEEMINGLY slightly more detailed than the previous allegations. It attempts to allege that the Defendant JAY, aided and abetted Defendant Fayne in a scheme to defraud UNITED COMMUNITY BANK, but never specifically alleges what Defendant JAY actually did. It lays out three (3) multiple inferences of perhaps some criminal activity but fails to state it plainly:

.....aided and abetted by each other and by others known and unknown to the Grand Jury, participated in a scheme and artifice to defraud United Community Bank, a financial institution as defined in Title 18, United States Code, Section 20, and to obtain moneys and finds owned by and under the custody and control of United Community Bank, by means of materially false and fraudulent pretenses, representations, and promises, and by the omission of material facts (“the bank fraud scheme”).

The indictment here does not state what Defendant JAY did to commit this violation but instead makes the allegation that Defendant JAY had personal communications with persons known and unknown and that we are invited to presume that these communications are criminal without the indictment stating that they are criminal. Once again three separate communications are included in only one COUNT for Defendant JAY. This is confusing and appears to be multiplicitous.

37. COUNT FIVE of the SUPERCEDING INDICTMENT states in one part:

On or about March 29, 2020, Defendant Jay suggested to Defendant Fayne that Defendant Fayne obtain a PPP loan under false pretenses and use the loan proceeds for an illegal purpose, namely, to make payments related to the wire fraud conspiracy described in Count 1 of this Indictment.

However, this statement in the indictment does not say how Defendant JAY suggested to Defendant Fayne to commit a crime. It does not say that Defendant JAY asked Defendant Fayne to watch a documentary on someone who had been successful or unsuccessful in getting a PPE Loan, or if Defendant JAY told him that a PPE might be an honest or dishonest option and Defendant Fayne would have to realize he would have to commit fraud to get the loan.

38. No further statement in COUNT FIVE alleges how Defendant accomplished the suggestion to Defendant Fayne but accuses Defendant JAY of communicating by unstated means:

"{I}f we can somehow justify 100+ drivers on 1099 for Flame we have something[j]" Defendant Jay then helped Defendant Fayne create fraudulent documents to support a PPP loan application.

The statement alleged to be communicated by Defendant JAY, does not rise to a criminal level and should not have to be defended as many if not all companies submitting applications seek to "somehow" "justify" the information submitted. Would it have been criminal to have communicated, *"we can easily justify 100 + drivers on 1099s for Flame, therefore we have something."*

39. The indictment then makes another vague statement by stating *"Defendant JAY then helped Fayne create fraudulent documents to support a PPP loan application."* The statement is never made as to what fraudulent documents are alleged and if, so, did Defendant JAY know they were fraudulent or know that they would be used by Defendant Fayne to commit fraud. As many people who are ignorant ask others to help them by creating samples or templates. We are expected to infer things subjectively from the statements in this indictment.

40. The next multiple claim made in COUNT FIVE of the SUPERSEDING INDICTMENT is that:

Defendant Jay admitted to E.B. that he had falsified bank statements to help Defendant Fayne get the loan. Defendant Jay also admitted to E.B. that he had made up a list of fake names of people who were allegedly employed by Flame Trucking Inc., and that Defendant Fayne had submitted that list to United Community Bank in connection with the loan.

This statement above is a hearsay statement from an unknown person indicated by the initials E.B. who cannot be identified by Defendant JAY for pretrial deposition. Furthermore, the alleged hearsay statement by Defendant JAY does not admit that he, Defendant JAY, knowingly participated in any criminal fraud but perhaps that Defendant Fayne used a sample or template made up by Defendant JAY for reference by Defendant Fayne but Defendant Fayne took it upon himself to use the list fraudulently.

41. The indictment, to be valid, should have only one action per count listed for Defendant JAY and in this example the COUNT should state that *[Defendant Jay knowingly and purposely participated in bank fraud by making up a list of fake names of people who were allegedly employed by Flame Trucking, Inc. so that Defendant Fayne could submit that same list of fake names to UNITED COMMUNITY BANK in connection with the loan.]* However, NO such statement is made in this COUNT FIVE of the indictment. It is all left to innuendo and interpretation by the reader.

42. The affidavit alleges two (2) comments in COUNT ONE that leaves the Defendant unsure if he has to defend each vaguely stated alleged comments as a separate COUNT or can either of the two vaguely stated alleged comments, if found guilty, convict him of

only COUNT ONE. COUNT ONE contains duplicitous allegations that rob the Defendant of a constitutionally protected right.

43. The affidavit alleges two (2) comments in COUNT FIVE and one other "suggestion" unknown to how the suggestion was made, that leaves the Defendant unsure if he has to defend each vaguely stated alleged comments as a separate COUNT or can either of the two vaguely stated alleged comments, if found guilty, convict him of only COUNT FIVE. Defendant JAY is also left to guess how he is alleged to have made the "suggestion "to apply for a PPP loan "under false pretenses." COUNT FIVE contains duplicitous allegations that rob the Defendant of a constitutionally protected right.

44. Once again the danger to the Defendant is that the duplicitous indictment may deny a Defendant of his right to a unanimous jury. *"An indictment is duplicitous if it sets forth separate and distinct crimes in one count."* United States v. Davis, 306 F.3d 398, 415 (6th Cir.2002) (citing United States v. Campbell, 279 F.3d 392, 398 (6th Cir.2002)). *Whether an indictment is duplicitous is a question of law that this Court reviews de novo. Id. "The overall vice of duplicity is that the jury cannot in a general verdict render its finding on each offense, making it difficult to determine whether a conviction rests on only one of the offenses or on both."* United States v. Duncan, 850 F.2d 1104, 1108 n. 4 (6th Cir.1988). *While a duplicative indictment can prejudice a defendant in a variety of ways, the primary concern is that a defendant may be deprived of his right to a unanimous jury verdict. See* United States v. Savoires, 430 F.3d 376, 380 (6th Cir.2005); United States v. Shumpert Hood, 210 F.3d 660, 662-63 (6th Cir.2000). *That is, a jury might return a guilty verdict on the single count submitted to them without all twelve jurors agreeing that the defendant committed either (or all) of the offenses charged within that count. Other*

*adverse effects on a defendant "may include improper notice of the charges against him, prejudice in the shaping of evidentiary rulings, in sentencing, in limiting review on appeal, [and] in 444*444 exposure to double jeopardy." Duncan, 850 F.2d at 1108 n. 4.*

45. COUNT FIVE must be dismissed entirely, against Defendant JAY for there is NO WAY to defend against the allegations NOR make a defense of "double jeopardy," which is a constitutionally guaranteed right.

CONCLUSION

46. Defendant has not seen any statement within COUNT ONE, COUNT TWO, COUNT THREE, COUNT FOUR or COUNT FIVE of the indictment in this case that gives him enough information to know what he is being specifically charged with doing and he cannot form a defense based on the current indictment and believes that he has been severely prejudiced by the vagueness and lack of specificity thereof.

47. THEREFORE, upon careful consideration, Defendant, is exercising his right to proceed pro se, pursuant to *Faretta v. California 422 U.S. 806 (1975)*, without waiving his right to have effective assistance of counsel pursuant to the 6th Amendment to the Constitution for the United States of America and *Johnson v. Zerbst 304 U.S. 458*.

48. Defendant respectfully reserves the right to alter, amend, modify and/or supplement, any of the foregoing pleadings as well as modifications to the existing record before this court.

WHEREFORE PREMISES CONSIDERED, Defendant here is proceeding constructively pro se, with ineffective assistance of counsel, requests relief of this court as follows:

- a. That this court grant in all things this Defendant's motion/requests for:

An acceptance and filing of this MOTION within the docket by the Clerk of Court Allowing Defendant to proceed Pro Se while searching for effective assistance of counsel;

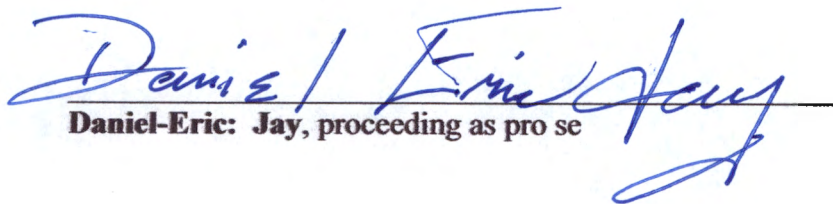
- a. That this Court dismiss **COUNT ONE** of the Indictment for being vague and failing to meet the requirement of Rule 7(c) of the Federal Rules of Criminal Procedure specifically by failing to pass the sufficiency test set forth in *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993) or for being duplicitous or both;
- b. That this Court dismiss **COUNTS TWO, THREE, AND FOUR** of the Indictment for being vague and failing to meet the requirement of Rule 7(c) of the Federal Rules of Criminal Procedure specifically by failing to pass the sufficiency test set forth in *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993) or for being duplicitous or both;
- c. That this Court dismiss **COUNT FIVE** of the Indictment for being vague and failing to meet the requirement of Rule 7(c) of the Federal Rules of Criminal Procedure specifically by failing to pass the sufficiency test set forth in *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993) or for being multiplicitous or both.

- d. Defendant further request from this court lenience, as he is not trained in law or criminal defense.
- e. And any other added relief at law and/or in equity to which Defendant is entitled.
- f. Defendant demands justice.

I, Daniel- Eric:Jay do hereby declare and affirm that the foregoing document was authored by me and is true, accurate, complete and not misleading under the penalty of perjury to the best of my knowledge and belief.

FURTHER AFFIANT/ DECLARANT SAYETH NOT

Respectfully submitted:


Daniel-Eric: Jay, proceeding as pro se

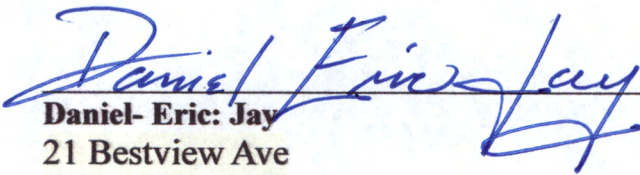
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this **DEFENDANT'S MOTION TO DISMISS
THE INDICTMENT FOR VAGUENESS AND LACK OF SPECIFICITY PURSUANT TO
RULE 12(b)(3)(B) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE**

in this case has, on the 14 day of July 2022, been served via US Postal

Service to counsel of record for the Prosecutor in this case:

MICHAEL J. BROWN
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Kevin B. Weimer
CLERK OF COURT
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Atlanta, GA 30303-3307

CLEARED DATE

JUL 21 2022

U.S. Marshals Service
Atlanta, GA 30303

