IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA v. JOHN SUPLIZIO ROBERTA SHAFFER	Criminal No. 3:23-19

UNITED STATES' OPPOSITION TO DEFENDANTS' MOTIONS FOR A BILL OF PARTICULARS

The United States, through undersigned counsel, hereby submits this response in opposition to the defendants' motions for a bill of particulars (Doc. Nos. 117, 118).[1]

The motions should be denied. The Superseding Indictment contains a comprehensive recitation of the fraud perpetrated by defendants John Suplizio and Roberta Shaffer on the City of DuBois, including details about how their roles at the City allowed them to misapply over $1.5 million of City money, the contracts with outside companies that they put in place to steal the money, the secret bank accounts they created to funnel the stolen money and the dates those accounts were opened, the dates and amounts of deposits into the secret accounts, the dates and amounts of large cash withdrawals by the defendants from the accounts, and the number of checks written from City accounts to pay Suplizio's personal credit card (the "Chase Visa").

Moreover, the defendants have been aware of the allegations for years, first in the state prosecution and now here. They have been provided with well-organized discovery that will allow

[1] The motions filed by defendant John Sulpizio and defendant Roberta Shaffer are nearly identical. The government will cite to the page numbers of Doc. No. 117 throughout this response.

them to prepare their defense for trial. Indeed, a trial date has not even been set. The defendants are simply not entitled to anything more under the law.

The defendants request that the United States identify what Pennsylvania law is referenced in the Superseding Indictment, but that information is contained in the discovery materials.

The defendants also request that the United States identify which of the purchases on the Chase Visa were paid with City money and were for personal use (*i.e.*, not for the benefit of the City of DuBois). But the defendants misunderstand the law. The federal program theft statute (18 U.S.C. § 666(a)(1)(A)) criminalizes the intentional misapplication of property, even if the use of the property ultimately benefitted the victim of the fraud (here, the City of DuBois). As such, the United States has alleged that **all** payments to the Chase Visa with City money were intentionally misapplied, making them unlawful.

Even if that were not the case, in cases charging violations of § 666(a)(1)(A), courts have consistently held that defendants are not entitled to know each transaction that the government claims violated federal law via a bill of particulars.

In any event, the way that the defendants structured the fraud makes it impossible to do what the defendants ask. That is, it is not clear from the face of many of the purchases who they benefitted. The payments are also comingled. Suplizio charged approximately $866,000 on his Chase Visa and paid approximately $525,000 with City money. The rest was paid with money from other sources. But the payments often do not match up with the purchases, especially because the Chase Visa frequently carried a balance from month to month.

Suplizio and Shaffer did not seek approval from City Council before conducting the transactions or seek reimbursements from the City Council after the transactions. The transactions were done without any oversight or contemporaneous documentation. The United States will

therefore argue that every dollar of the over $525,000 of City money used to pay the Chase Visa was unlawful. The defendants' request is in fact a request for a loss calculation. But the Third Circuit has expressly held—in a § 666(a)(1)(A) case—that **defendants** bear the burden at sentencing to show that the money was used to benefit the victim of the fraud.

Finally, the defendants can easily analyze the discovery for themselves and craft their defense. The Chase Visa account documents are less than 600 pages and contain approximately 1,960 purchases (not hundreds of thousands, as the defendants claim), and the defendants have had those documents for years. Moreover, Shaffer already began such a review; she drafted detailed ledgers categorizing the transactions.

The defendants' motions should therefore be denied.

I. FACTS

A. Summary of the Indictment and Superseding Indictment

On November 14, 2023, a federal grand jury in the Western District of Pennsylvania charged Suplizio and Shaffer with Conspiracy to Commit Federal Program Theft, from February 2014 to February 2022, in violation of 18 U.S.C. § 371 (Count One) and Federal Program Theft, in the years 2018, 2019, 2020, and 2021, in violation of 18 U.S.C. §§ 666(a)(1)(A) and 2 (Counts Two through Five). The Indictment contains 78 paragraphs of detailed allegations about the defendants' fraudulent scheme. (*See* Doc. No. 3.)

On September 24, 2024, the grand jury returned a Superseding Indictment against Suplizio and Shaffer. (Doc. No. 62.) The Superseding Indictment includes the allegations from the original Indictment, plus additional details and charges, and is 115 paragraphs. (*Id.*) According to the Superseding Indictment:

Suplizio was the City Manager and Shaffer was the Secretary of the City of DuBois, which is a "city of the third class" in Pennsylvania that received federal assistance from 2014 to 2021. (*Id.* ¶ 1-2.) DuBois had a five-member City Council and several financial controls, including:

- The City Treasurer was required to keep public funds in banks as directed by the City Council and under the restrictions and safeguards provided by the City Council (a requirement of Pennsylvania law);
- The Controller, Treasurer, and Deputy Treasurer were signatories on all authorized City of DuBois bank accounts;
- All money paid to the City was initially deposited into a "General Fund" and then transferred to the appropriate city account;
- All City expenditures were required to be reviewed and approved by City Council (then sent to the Finance Director to print the checks, to the Controller for final review, and finally to the Treasurer to sign the checks);
- A monthly report with the balance of all City bank accounts was reviewed and approved by the City Council each month; and
- All City bank accounts were audited every year as required by Pennsylvania law.

(*Id.* ¶¶ 11-15.)

Community Days was an event that occurred in the City of DuBois in the summer; it included a parade, entertainment, and fireworks. (*Id.* ¶ 16.) The annual cost for Community Days varied but was not more than approximately $170,000 annually. (*Id.* ¶ 24.) Community Days was funded by local businesses, the City of DuBois, and donations from members of the community. (*Id.* ¶ 18.) In other words, it did not need additional large influxes of cash to be funded.

Community Days utilized a specific a bank account used to pay the expenses for the event—Parade Account 7394—on which Sulpizio and Shaffer were signatories. (*Id.* ¶¶ 20-23.)

Even though Community Days already had a bank account to handle expenses, beginning in 2008, Suplizio and Shaffer secretly opened four additional bank accounts—using the City of DuBois tax identification number[2]—allegedly tied to Community Days. (*Id.* ¶¶ 27-36.) These secret accounts were opened without the knowledge of City Council and were not subject to the financial controls of the City. (*Id.*) Suplizio and Shaffer were the only signatories on the secret accounts. (*Id.*)

Suplizio and Shaffer then began funneling money belonging to the City of DuBois into the secret accounts, specifically, $838,800 of administrative waste management fees paid by Company 1 to the City of DuBois; a $75,000 check from Company 2 (an oil and gas company) to the City of DuBois for a "Lease Option" related to future water sales for fracking; and $626,760 of water sales payments from Company 3 (another oil and gas company) to the City of DuBois. (*Id.* ¶¶ 37-59.) In total, Suplizio and Shaffer intentionally misapplied $1,540,560 of money belonging to the City of DuBois by funneling it into the secret accounts. (*Id.*)

This conduct is well documented in the Superseding Indictment, which includes the account numbers of the secret accounts; the dates the secret accounts were opened and by whom; the dates of the contracts and agreements between the City and Companies 1, 2, and 3; and the dates of payments into the secret accounts, among other details. (*Id.* ¶¶ 24-59.)

[2] Suplizio opened the first bank account in May 2008 using the tax identification number for the DuBois Area United Way, but that account was quickly closed in August 2008. The defendants used the City of DuBois tax identification number to open the other three accounts. In addition to being City Manager, Suplizio was the Executive Director of the United Way. Shaffer was the secretary of the United Way from at least May 2008 through 2018. (*Id.* ¶¶ 28-36.)

The Superseding Indictment also sets forth financial transactions conducted by Suplizio and Shaffer using the City money that they misapplied. (*Id.* ¶¶ 71-92.) The Superseding Indictment breaks down the financial transactions by bank account. (*Id.*) For each account, the Superseding Indictment lists, among other things, (1) how many checks were written by Suplizio and Shaffer from the account to pay Suplizio's personal credit card bills; (2) the time frame in which the unauthorized checks were written; (3) the total amount that was paid to Suplizio's personal credit card from the account; and (4) the dates and amounts of large cash withdrawals conducted by and/or Cashier's checks written by Suplizio and Shaffer from each account. (*Id.*)

In sum, Suplizio and Shaffer caused more than approximately $525,000 in money from the secret accounts and Parade Account 7394 to be used to pay Suplizio's Chase Visa bills, and withdrew approximately $430,000 in cash, checks to themselves and others, and cashier's checks. (*Id.*) The purchases on Suplizio's Chase Visa included Suplizio's vacation expenses, utility expenses for Suplizio's residence, department store purchases, jewelry store purchases, political dinners, and other personal expenses. (*Id.* ¶ 61.) Critically, none of the financial transactions that Suplizio and Shaffer conducted with City money were approved by City Council or subject to audit or any other financial controls. (*Id.* ¶¶ 61-70.)

Regarding Count One (Conspiracy to Commit Federal Program Theft), the Superseding Indictment expanded the timeframe of the conspiracy (May 2008 to March 2022) and looped in the money misapplied by the defendants with respect to Company 2 and 3 (the Indictment had only focused on Company 1). (*Id.* ¶ 60.) The Superseding Indictment left Counts Two through Five (Federal Program Theft, in 2018, 2019, 2020, and 2021) essentially unchanged, except for fact that the new allegations in Count One will be used to prove those counts as well. (*Id.* ¶¶ 93-

108.) Indeed, Counts Two through Five expressly incorporate by reference the allegations from Count One. (*Id.*)

The Superseding Indictment also added money laundering charges. Count Six charges Suplizio and Shaffer with conspiracy to engage in monetary transactions over $10,000 with criminally derived property—that is, the debits from the bank accounts discussed above—in violation of 18 U.S.C. § 1956(h). (*Id.* ¶¶ 109-113.) Count Six contains a detailed chart setting forth the transactions, including the date of the transaction, the type of transaction (check, cash withdrawal, *etc.*), the bank account from which the transaction was made, and the amount of the transaction. (*Id.*) Counts Seven through Ten charge the defendants with engaging in monetary transactions over $10,000 with criminally derived property, in violation of 18 U.S.C. §§ 1957(a) and 2. (*Id.* ¶¶ 114-115.) These counts are based on the last four transactions from the chart in Count Six because those transactions fell within the statute of limitations and could be charged as substantive counts. (*Id.*)

B. Critical Discovery Provided to the Defendants

This case began as an investigation by 48th Statewide Investigating Grand Jury led by the Pennsylvania Office of the Attorney General ("PA OAG") and the Pennsylvania State Police ("PSP"). On April 9, 2020, near the beginning of the investigation, PSP conducted an interview of Suplizio at the DuBois Area United Way. The investigation continued after the meeting and search warrants were executed on April 6, 2022, at Suplizio's residence and the offices of Suplizio and Shaffer at the Dubois Area United Way and the City of DuBois.

Shortly after the search warrants, Suplizio retained the Comber Miller law firm (the same counsel who represents him in this case) and attorneys for Suplizio began pre-charging

negotiations with law enforcement and Assistant Chief Deputy Attorney General Summer Carroll (who is also a Special Assistant United States Attorney prosecuting this federal case).

On December 20, 2022, the 48th Statewide Investigating Grand Jury issued a presentment.[3] In order to further plea negotiations, the Supervising Judge granted an order to allow defense counsel to read the presentment. Defense counsel reviewed the presentment on January 8, 2023, and plea negotiations continued until Suplizio was charged in Clearfield County, Pennsylvania on March 20, 2023, with a criminal complaint that included the negotiated charges: Theft by Unlawful Taking, Restricted Activities-Conflict of Interest, Fraudulent Returns-PA Tax, and Misapplication of Entrusted Property.

After the initial complaint was filed, PA OAG and PSP allowed the defense, including Suplizio's attorneys who still represent him today, to inspect the discovery in the case. Meetings were held on June 18 and June 28, 2023, at the PA Office of Attorney General as well as PSP DuBois barracks. Counsel was provided access to all physical evidence seized in the case during these meetings.

In addition to the inspection of physical documents, on August 1, 2023, PA OAG also provided Suplizio's defense counsel with a thumb drive containing all relevant evidence to the Pennsylvania charges, including financial records from over forty bank accounts, documents related to transactions with Company 1, 2 and 3 listed in the Superseding Indictment, and the vast majority of the discovery later produced for a second time in the instant case (as described below).

Included in the August 1, 2023 production were all financial records from Suplizio's personal Chase Visa account. Notably, since it was Suplizio's account, he would have had access

[3] In Pennsylvania, a criminal presentment is a formal written accusation issued by a grand jury that a person has committed a crime. The presentment essentially serves as the grand jury's recommendation to the prosecutor, who can then decide whether to pursue charges.

to these documents long before this. In any event, the prosecution provided all records in its possession related to this account in August 2023. This Chase Visa account is referenced throughout the Superseding Indictment (as noted above) and largely forms the basis of the defendants' request for a bill of particulars.

The Chase Visa records provided to Suplizio and his counsel in August 2023 are attached as Government Exhibits 1, 2, and 3 to this Response.[4] Government Exhibit 1 is a PDF titled "*Chase Visa Acct 4272*,"[5] which is 544 pages. *Chase Visa Acct 4272* details all credits and debits from the account from January 2012 to May 2021. Government Exhibit 2 is an excel spreadsheet listing the transactions in this time period, which Chase created to allow for an easier review. And Government Exhibit 3 is a PDF titled "*Chase Visa Acct 4272 Update*," which is 51 pages. *Chase Visa Acct 4272 Update* details all credit card transactions on the Chase Visa from June 2021 (where Government Exhibit 1 left off) to February 2022.

A review of the documents shows that, from January 2012 through February 2022, Suplizio made approximately 1,960 purchases on his Visa totaling over $866,000. (*See* Gov. Exs. 1, 2, and 3.) He paid over $525,000 of that from the secret accounts containing City money. (*Id.*; *see also* Doc. No. 62, ¶ 92.)

As such, as of August 1, 2023—**two years ago**—Suplizio and his counsel had in their possession discovery that contained the details of **all** the Visa purchases and payments that are now relevant to the Superseding Indictment and the instant motions. This discovery is not particularly voluminous. Government Exhibits 1 and 3 total 595 pages. And Government Exhibit 2 helpfully

[4] The exhibits to this Response have been filed under seal. Government Exhibits 2 and 4 were provided to the defendants in native excel format.

[5] The names of the documents contain the full account number, but the United States has only included the last four numbers (4272) in this Response.

lists the transactions from January 2012 to May 2021 in a spreadsheet. Moreover, because the account belonged to Suplizio, he could have accessed the transaction data at any time and presumably has the best insight into the details of each transaction. He has had plenty of time to go over the purchase and payment history.

Defendant Shaffer was not charged in the state prosecution and was not provided with discovery in the summer of 2023 (although she was provided discovery only a few months later in the federal case, in December 2023). However, she too had knowledge of the Visa transactions. Shaffer was Suplizio's secretary for many years—first at the DuBois Area United Way, then at the City of DuBois—from May 3, 2010, until her resignation on September 11, 2023. Shaffer created several documents on her City of DuBois computer that were later recovered by federal subpoena and traced through metadata back to Shaffer.

One of the documents Shaffer created was a spreadsheet tracking the transactions from the secret accounts, including the payments to the Chase Visa. This spreadsheet is attached as Government Exhibit 4 to this Response and was produced to both defendants on October 8, 2024.[6] For the Chase Visa payments, Shaffer listed categories that the expenditures fell under and notes about the payments—the exact information the defendants are now seeking.[7]

For example, as can be seen in the below snip created from the spreadsheet, Shaffer listed a payment to Suplizio's Chase Visa on April 8, 2015, for $5,200. Shaffer categorized the payment as a "City-Donation" and described it as "Receipt Fort Worth Restaurant – Fundraiser Judge Foradora." The Honorable John H. Foradora is a Judge in the Jefferson County Court of Common

[6] Shaffer also drafted other documents—including a ledger that was recovered in hard copy form from her desk during the search warrant execution—that highlight her knowledge of the relevant accounts. These documents were also produced in discovery in the federal case.

[7] The spreadsheet stops categorizing the Visa payments/purchases at the end of 2018, suggesting that it was not a complete and contemporaneous accounting of the purchases and payments.

Pleas. He ran for election to the Pennsylvania Supreme Court in 2015 but was defeated in the Democratic primary on May 19, 2015.[8] According to Shaffer's ledger, Suplizio charged $5,200 related to a fundraiser for Judge Foradora with his Chase Visa, and then later paid off that debt with money belonging to the City of DuBois.

222	4/8/2015	Chase VISA	City - Donation	$ (5,200.00)		$ 7,348.03	Receipt Fort Worth Restaurant - Fundraiser Judge Foradora

Another entry on the spreadsheet, pictured below, shows a payment to Suplizio's Visa for $2,994.42 on December 28, 2016, which Shaffer categorized as "Split/Multiple Categories" and listed several charges making up the payment, including $800 spent at the DuBois Country Club. Again, this was paid with City money.

263	12/28/2016	Chase VISA	Split/Multiple Categories	$ (2,994.42)		$ 18,737.46	Receipt - Walmart 225.63; Shannon's Catering 750.00; Walmart 213.79; Jim's Sports Center - 252.00; Jim's Sports Center - 153.00; Dan's Pro Shop - 600.00; DuBois Country Club - 800.00;

Shaffer's spreadsheet also lists times where there was no receipt supporting a payment to Sulpizio's credit card, including this entry for $2,000 for "Dining Out" on November 6, 2017.

284	11/6/2017	Chase VISA	Dining Out	$ (2,000.00)		$ 4,825.07	No Receipt

As such, Shaffer had intimate knowledge of the Chase Visa transactions before the federal indictment was even filed.

On August 16, 2023, Suplizio requested to withdraw his plea agreement and proceed to trial. On October 4, 2023, Suplizio's charges were refiled to add the following: one count of Theft by Unlawful Taking, graded as a Felony 2; three counts of Theft by Deception, graded as a Felony 2; one count of Failure to Make Required Disposition of Funds, graded as a Felony 2; three counts of Dealing in Proceeds, graded as a Felony 1; and Obstruction, graded as a Misdemeanor 2.

The state case was withdrawn after the filing of the federal Indictment. In connection with the Indictment, defendants Suplizio and Shaffer were provided with extensive discovery. In early

[8] *See* https://ballotpedia.org/John_H._Foradora (last accessed July 23, 2025).

December 2023, the government produced bank records, interview reports, documents gathered during the search warrants, documents received from other entities (such as the Companies referenced in the Superseding Indictment), and other records. Many of these records had already been produced to Suplizio in the state case. The records are well-organized in plainly labeled and easy-to-navigate electronic folders. The discovery included Government Exhibits 1, 2, and 3 (the documents discussed above that contain the relevant credits and debits from Suplizio's Chase Visa).

In addition, on December 18, 2023, Suplizio's defense counsel came to the U.S. Attorney's Office to inspect hard copy records from the City of DuBois's auditing firm. Many of these were the same records that they had previously inspected during the state case. The documents were also made available to Shaffer's counsel for inspection.

In connection with the Superseding Indictment, the United States provided additional discovery to the defendants in October 2024, including documents received from the City of DuBois (such as Shaffer's spreadsheet (Gov. Ex. 4)); reports by the FBI and IRS, including witness interview reports; and other documents. Again, the records were well organized and navigable. The government made additional productions in February 2025 and July 2025, which included documents drafted or received after the prior productions. The United States continues to investigate and meet with additional witnesses. It will continue to update discovery as more documents are generated or come into the government's possession.

C. The Instant Motions

On June 27, 2025, the defendants filed motions for a bill of particulars. Their arguments fall into two categories. First, they claim that the Superseding Indictment references Pennsylvania law but fails to identify which law. (Doc. No. 117, at 2, 5-6.) Second, they contend that the

government did not specify whether the deposits to the secret accounts, the disbursements from the secret accounts, or the expenditures on Suplizio's Chase Visa constitute the illegal conduct. (*Id.* at 2-3, 5-8.) As part of this argument, they assert that the government failed to identify which specific transactions from the Chase Visa (1) were paid with City money and (2) were for personal versus public use. (*Id.* at 3.) For the reasons set forth below, the motions should be denied.

II. ARGUMENT

A. Standard for Ordering a Bill of Particulars

Federal Rule of Criminal Procedure 7(c)(1) states that an indictment must provide "a plain, concise and definite written statement of the essential facts constituting the offense charged." Federal Rule of Criminal Procedure 7(f) states that "[t]he court may direct the government to file a bill of particulars."

The purpose of a bill of particulars is "to inform the defendant of the nature of the charges brought against him, to adequately prepare his defense, to avoid surprise during the trial and to protect him against a second prosecution for an inadequately described offense." *United States v. Addonizio*, 451 F.2d 49, 63-64 (3d Cir. 1971). The government should be ordered to file a bill of particulars "[o]nly where an indictment fails to perform these functions, and thereby significantly impairs the defendant's ability to prepare his defense or is likely to lead to prejudicial surprise at trial." *United States v. Urban*, 404 F.3d 754, 771-72 (3d Cir. 2005) (internal citations and quotations omitted); *see also United States v. Jones*, 447 F. App'x 319, 323 (3d Cir. 2011) (where an indictment meets the Rule 7(c)(1) standard, "a bill of particulars [is] unnecessary").

The level of detail in an indictment "can be a basis for denying the motion for a bill of particulars." *United States v. Henderson*, No. 3:22-CR-14-TAV-JEM, 2025 WL 1427504, at *8 (E.D. Tenn. May 16, 2025). Moreover, where a defendant has "access through discovery to the

documents and witness statements relied upon by the government in constructing its case, including trial evidence reflecting" dates and amounts of payments, the case for a bill of particulars is "weakened" because "[f]ull discovery . . . obviates the need for a bill of particulars." *Urban*, 404 F.3d at 771-72 (internal citations and quotations omitted).

Importantly, "[a] bill of particulars, unlike discovery, is not intended to provide the defendant with the fruits of the government's investigation. Rather, it is intended to give the defendant only that minimum amount of information necessary to permit the defendant to conduct his own investigation." *United States v. Gagliardi*, 285 F. App'x 11, 20 (3d Cir. 2008) (internal quotations omitted). It is "firmly established" that a defendant is not entitled to "a wholesale discovery of the Government's evidence" and that the government is not required to "weave the information at its command into the warp of a fully integrated trial theory for the benefit of the defendant." *Addonizio*, 451 F.2d at 64-65; *see also United States v. Gabriel*, 715 F.2d 1447, 1449 (10th Cir. 1983) ("A bill of particulars may not be used to compel the government to disclose evidentiary details or to explain the legal theories upon which it intends to rely at trial").

Nor is the government required to list all the overt acts that might be proven at trial. *United States v. Armocida*, 515 F.2d 49, 54 (3d Cir. 1975) ("Appellant's request for the 'when, where and how' of any overt acts not alleged in the indictment was tantamount to a request for wholesale discovery of the Government's evidence, which is not the purpose of a bill of particulars under Fed.R.Crim.P. 7(f).") (internal quotations omitted).

Applying these standards, the defendants' motions should be denied. As explained above, the Superseding Indictment is extremely detailed and more than adequately informs the defendants of the nature of the charges against them and provides them with all the information they need to conduct their own investigation and prepare for trial. The defendants have also been provided

with extensive, well-organized discovery that they have had access to for years. Nothing more is required of the United States.

B. The Court Should Not Order a Bill of Particulars Regarding the Pennsylvania Law Referenced in the Superseding Indictment.

Defendants seek a bill of particulars identifying the Pennsylvania law referenced in the Superseding Indictment. (Doc. No. 117, at 2, 5-6.) They claim that a "detailed statement of the claims and charges requires the government to identify the provisions of law a defendant is alleged to have violated." (*Id.* at 4.)

As detailed above, the Superseding Indictment references Pennsylvania law with respect to the financial controls that govern a Pennsylvania city like DuBois (a "city of the third class"), including that (1) that the City Treasurer was required to keep public funds in banks as directed by the City Council and under the restrictions and safeguards provided by the City Council and (2) all City bank accounts were required to be audited every year. (Doc. No. 62, ¶¶ 11-15.)

Documents produced to the defendants in discovery—in particular, an IRS investigative report produced on October 8, 2024—expressly point the defendants to Part 5 of 11 Pa.C.S.A., which is titled "Third Class Cities." See the below snip from that report (emphasis added):

> The City of DuBois is a "city of the third class," which is a city in the Commonwealth of Pennsylvania with a population of less than 250,000. Cities of the third class are specifically addressed in Part 5 of 11 Pa. Code. The designation of a city of the third class allowed the City of DuBois to adopt a "council-manager plan" form of government, under which elected DuBois City Council members appoint a city manager to run the day-to-day business operations of the City. A city treasurer and a controller are also elected positions. The City of DuBois has operated under this council-manager plan since 2010.

Part 5 of 11 Pa.C.S.A. sets forth the requirements referenced in the Superseding Indictment. *See, e.g.*, 11 Pa. Stat. and Cons. Stat. Ann. § 11406 ("The city treasurer shall keep public funds in banks or financial depositories as directed by council and under the restrictions and safeguards as provided by council."); 11 Pa. Stat. and Cons. Stat. Ann. § 11704.12 ("The independent auditor

shall conduct an annual audit of all accounts of city officers, departments and offices which collect, receive and disburse public money or are authorized with the management, control or custody of public money on which the independent auditor is required to report under this subchapter. The annual audit, as directed by council, shall also include any accounts subject to examination by the city controller under Subchapter A (relating to city controller).").

The defendants request for a bill of particulars on this point is therefore moot, as it was already provided. *See Henderson*, 2025 WL 1427504, at *8 ("defendant is not entitled to a bill of particulars with respect to information which is available through other sources") (internal quotations omitted).

Importantly, the government is not conceding that it must prove that the defendants violated these provisions of Pennsylvania law to obtain a conviction, as this is not an element of any of the offenses charged. Rather, it is evidence that, when presented in connection with witness testimony, will highlight that the defendants did not obtain the proper authorizations or employ any financial controls for the transactions that were a part of their fraudulent scheme. This provides the Court with another basis to deny the defendants' request for a bill of particulars. *See id.*, at *8 (denying motion for bill of particulars because "the information sought by Defendant is not an element of the offense").

In sum, this request for a bill of particulars should be denied.

C. The Court Should Not Order a Bill of Particulars Regarding the Chase Visa Transactions.

As noted above, the defendants claim that the Superseding Indictment fails to identify whether the deposits to the secret accounts, the disbursements from the secret accounts, or the expenditures on Suplizio's Chase Visa constitute the criminal activity. (Doc. No. 117 at 2-3, 5-8.) That is simply not true. As explained above, numerous details regarding all three of these

categories of transactions are plainly alleged in the Superseding Indictment as part of the fraudulent scheme.[9]

Federal program theft occurs when the defendant "embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property." 18 U.S.C. § 666(a)(1)(A). As stated explicitly in the statute, there are multiple ways in which the government can prove this crime. *See United States v. Shulick*, 18 F.4th 91, 112 (3d Cir. 2021) ("The jury charge . . . identified several ways by which Shulick could be found guilty of misappropriating the money, [including] "embezzle," "obtain by fraud," and "convert").

In the context of a motion for a bill of particulars, courts have expressly held that the government is **not** required to identify which theory of § 666(a)(1)(A) it intends to present to the jury. *See United States v. Ollison*, No. CRIM.A. 3:06-CR-272L, 2007 WL 580619, at *2–3 (N.D. Tex. Feb. 23, 2007), *aff'd*, 555 F.3d 152 (5th Cir. 2009) ("Where a statute specified alternative ways in which an offense can be committed, the indictment may allege the several ways in the conjunctive, and a conviction thereon will stand if proof of one or more of the means of

[9] The defendants also contend that Counts Two through Five "include no factual details as to what funds were converted, nor how." (Doc. No. 117, at 2.) But Counts Two through Five expressly incorporate by reference the allegations from the 92 paragraphs in Count One. The Federal Rules of Criminal Procedure allow a count to "incorporate by reference an allegation made in another count." Fed. R. Crim. P. 7(c)(1). Following that rule, the Third Circuit has held that a substantive count in an indictment may incorporate by reference allegations from a conspiracy count, and that the court must consider both the language of the specific count and the language of any incorporated allegations when it determines the sufficiency of a charge. *United States v. Kemp*, 500 F.3d 257, 280 (3d Cir. 2007) (holding that allegations in wire fraud counts, when read together with the allegations in the conspiracy count, which were incorporated by reference, were sufficient to put defendants on notice of the governments' bribery theory of honest services fraud). *See also United States v. Beard*, No. 120CR00351SCJLTW, 2022 WL 18657429, at *6 (N.D. Ga. June 3, 2022), *report and recommendation adopted*, No. 1:20-CR-00351-SCJ, 2023 WL 372914 (N.D. Ga. Jan. 24, 2023) (denying a motion for a bill of particulars in a § 666(a)(1)(A) prosecution because "Paragraphs 13(e) through (h) correspond to the exact timeframe of Counts 4 and 5 and clearly explain what Defendant allegedly took, when he allegedly did it, and how.").

commission is sufficient. Defendant's motion cites no authority in support of her argument that she is entitled to know under which theory the Government will proceed.") (internal quotations omitted).

The defendants' motions essentially ask for the government's theory of the federal program theft, which is improper. The Court should deny the motions on this basis alone.

At any rate, several of the theories of liability under § 666(a)(1)(A) are apparent from the face of the Superseding Indictment, and, when analyzed, provide additional reasons for the Court to deny the motions. For example, as previously stated, the Superseding Indictment alleges that **all** the deposits to the secret accounts, the disbursements from the accounts, and the expenditures on Suplizio's credit card (up to the amount paid with City money—approximately $525.000) were fraudulent. That is because all those transactions fall under the portion of § 666(a)(1)(A) that prohibits the intentional misapplication of property.

The Third Circuit Model jury instruction states that, "[t]o intentionally misapply money or property means to intentionally use money or property of [the City] **knowing that such use is unauthorized or unjustifiable or wrongful**. **Misapplication includes the wrongful use of the money or property for an unauthorized purpose, even if such use benefitted the [City]**." *Id.* (emphasis added).

In *Shulick*, the defendant argued that the district court erred in using that jury instruction and instructing the jury that an intentional misapplication within the meaning of § 666(a)(1)(A) can be found even if the misuse of funds still benefited the victim. 18 F.4th at 107. The Third Circuit carefully analyzed the language of the statute and legislative history and held that the phrase "to the use of any person other than the rightful owner" only modifies the word "convert" and that "[t]he disjunctive 'or' suggests that an intentional misapplication of funds is a separate

way of satisfying the statute." *Id.* The court explained that "[i]f Congress wished to subject intentional misapplication to this same condition, it could have included parallel language after intentional misapplication—for example, drafting the statute to read: 'intentionally misapplies for the use of any person other than the rightful owner, property.' Congress, however, did not do that." *Id.* at 108.

The court also noted that several other Circuits have held that "intentional misapplication" can mean misapplication of money for otherwise legitimate purposes. *Id.* at 108-109 (*citing United States v. Urlacher*, 979 F.2d 935, 938 (2d Cir. 1992) ("The first four prohibitions cover any possible taking of money for one's own use or benefit," so "in order to avoid redundancy, ['intentionally misapplies'] must mean intentional misapplication for otherwise legitimate purposes."); *United States v. Cornier-Ortiz*, 361 F.3d 29, 37 (1st Cir. 2004) (citing *Urlacher* to conclude that using funds for legitimate purposes, but in violation of conflict of interest rules, is still an intentional misapplication); *United States v. Frazier*, 53 F.3d 1105, 1114 (10th Cir. 1995) (concluding there was a misapplication even though "[t]he funds were [still] used to purchase computers and computer equipment for the educational organization," the victim)).

Ultimately, in *Shulick*, the Third Circuit held that, "even though the money still inured to the [victim's] benefit," the jury instruction permitting the defendant's conviction was appropriate.

Schulick is directly on point here. Suplizio and Shaffer intentionally misapplied every dollar of the over $1.5 million in deposits to the secret accounts—when it was deposited, then again when it was withdrawn from the accounts in large cash withdrawals[10] or as payments to Suplizio's Chase Visa.

[10] Notably, the defendants do not seek a bill of particulars regarding the approximate $430,000 in cash, checks to themselves and others, and cashier's checks that the defendants withdrew.

As such, the answer to the defendants' question is that the United States will argue that every payment to the credit card with City money was unlawful because it was intentionally misapplied. In *United States v. Cammarata*, No. CR 21-00427-01, 2022 WL 7127565, at *4 (E.D. Pa. Oct. 12, 2022), the court, relying on Third Circuit precedent, denied the defendant's motion for a bill of particulars under similar circumstances, and explained that:

> **Although Defendant Cammarata is correct that the government has not identified each and every allegedly fraudulent submission underlying the conspiracy claim in the Superseding Indictment, this information is not necessary in the present case because the government is alleging that *every* claim . . . was fraudulent**. Therefore, this is not a case where, without a particularized accounting of each and every allegedly fraudulent transaction, a defendant would be forced to tediously weed through numerous transaction records in an attempt to identify which specific claims the government is alleging are fraudulent.

Id. (italics in original; other emphasis added).

Notably, the *Cammarata* court distinguished the *Bortnovsky* decision relied on heavily by the defendants:

> In *Bortnovsky*, the government produced evidence of twelve burglaries, although only four of the twelve were actually 'alleged to be fabricated.' *Bortnovsky*, 820 F.2d at 574. This resulted in the defense being "forced to explain events surrounding eight actual burglaries and to confront numerous documents unrelated to the charges pending." *Id.* at 574–75. The facts of *Bortnovsky*, are thus, distinguishable from the present case because, here, there is no mystery as to which claims are alleged to be fraudulent; the Superseding Indictment specifically alleges that all claims . . . were fraudulent.

Id. at *5 (citing *United States v. Bortnovsky*, 820 F.2d 572 (2d Cir. 1987)).[11]

The *Cammarata* court also denied the motion for a bill of particulars because "the dates on which the allegedly fraudulent claims occurred, to whom they were submitted, for what amounts,

[11] Another case relied on by the defendants, *United States v. Nachamie*, 91 F. Supp. 2d 565, 571 (S.D.N.Y. 2000), can be distinguished for the same reasons. In that case, only some of the claims were alleged to be fraudulent. *Id.* Here, the government is alleging that all the payments to Suplizio's Chase Visa were unlawful.

or any other of the particularized information Defendant Cammarata requests be provided in a bill of particulars, is available and ascertainable to the Defendant in the discovery." *Id.* at *6. The court opined that "the manner and means set forth in the Superseding Indictment clearly explains that the government is alleging all the claims . . . were fraudulent. . . . **It would, therefore, be redundant, unnecessary, and unduly burdensome to require the government to go back through discovery and list each and every claim . . . when this information is available and ascertainable to the Defendant in discovery, and when the Superseding Indictment sufficiently lays out the manner and means of the fraud allegations**." *Id.* (emphasis added).

As in *Cammarata*, the motions here should be denied because the government is alleging that all the City money Suplizio and Shaffer used to pay Suplizio's Chase Visa was part of the fraud, and thus a further accounting by the United States would be redundant, unnecessary, and unduly burdensome.

To be sure, the government also intends to argue other theories of the crime under § 666(a)(1)(A)—for example, that the defendants without authority knowingly converted City money to the use of any person other than the City. Under this theory, the government may choose present evidence at trial that many of the transactions on Suplizio's Chase Visa were for his personal benefit or the benefit of others, and not for the benefit of the City of DuBois. A few of those examples from Shaffer's ledger are discussed above, such as when City money was used to pay for fundraisers for Judges and trips to the county club.

But even under this theory of the crime, the government is not obligated to tell the defense exactly what transactions it will highlight at trial. *See United States v. Moyer*, 674 F.3d 192, 203 (3d Cir. 2012) ("Although the government did not identify every omission or inclusion that rendered false the documents identified in the indictment, and thus did not, at the pre-trial stage,

weave the information at its command into the warp of a fully integrated trial theory for the benefit of the defendant[ ], the government was not required to do so.") (internal quotations omitted).

In fact, in cases charging violations of § 666(a)(1)(A), courts have consistently held that defendants are **not** "entitled to know each and every transaction that the government claims violated federal law, [rather than] simply just a few examples of such." *United States v. Beard*, No. 120CR00351SCJLTW, 2022 WL 18657429, at *6 (N.D. Ga. June 3, 2022), *report and recommendation adopted*, No. 1:20-CR-00351-SCJ, 2023 WL 372914 (N.D. Ga. Jan. 24, 2023) ("Whether every instance is discussed in this Indictment or not, if in the future Defendant is charged by the Government with misappropriating funds from the City of Atlanta between July 30, 2015 and July 29, 2017, he will be able to plead double jeopardy. He is not 'entitled to know each and every transaction that the government claims violated federal law' via a bill of particulars."). *See also United States v. Walsh*, 156 F. Supp. 3d 374, 394-95 (E.D.N.Y. 2016) (defendant indicted for theft of funds and wire fraud was not entitled to a bill of particulars specifying the wire transmissions alleged and the dates of those transmissions, the specific time sheets alleged to contain entries for hours not worked, and the specific dates on which defendant allegedly did not work because the indictment adequately described the nature of the charges and the defendant had the records needed to prepare for trial).

Also, importantly, the way Suplizio and Shaffer structured the fraud with respect to Suplizio's Chase Visa provides further reason to deny the motions. As explained above, there were approximately 1,960 purchases on Suplizio's credit card for the relevant time period, totaling approximately $866,000. (*See* Gov. Exs. 1, 2, and 3.) Suplizio and Shaffer paid over $525,000 of that from the accounts containing City money. (*Id.*; *see also* Doc. No. 62, ¶ 92.) But—as defendants recognize in the motions—those payments were comingled with payments Suplizio

made to the credit card with other sources. (*See* Doc. No. 117; Gov. Exs. 1 and 3.) And, regarding the purchases, it is impossible to tell on the face of most of them which allegedly "benefitted" the City of DuBois instead of Suplizio or others (for example, purchases at restaurants, Walmart, catering services, and florists). (Gov. Exs. 1 and 3.) Importantly, none of these purchases were approved by City Council, so even if they did "benefit" the City of DuBois—which is a big "if"—they were all unauthorized and unlawful. The credit card also often carried a balance from the previous month, making matching the payment to the purchase extremely difficult. (*Id.*)

This comingling of purchases and payments makes it nearly impossible to identify what purchases were personal and what purchases were paid with City money. Shaffer's ledgers will assist the government in proving this at trial, but they do not cover every transaction. If defendants had submitted a formal reimbursement request for the expenses, or kept a contemporaneous accounting of them, or had sought City Council's approval for the expenditures, or if the expenditures had been part of the yearly audit of City accounts, or if they had been subject to **any** type of financial controls, then perhaps the United States could identify every expenditure that was paid with City money and was personal versus public. But Suplizio and Shaffer did not do any of that.

Defense counsel claims that, without a bill of particulars, they will have to "guess[]" what transactions were paid with City money and were for personal use. (Doc. No. 117 at 3.) But they have the best sources for the answers to those questions—their clients. It is the citizens of DuBois—not the defendants—who have been left to guess how more than $1.5 million of their money was spent.

In another case involving federal program theft and money laundering, the Ninth Circuit Court of Appeals held that, when calculating loss under the United States Sentencing Guidelines,

the district court did not err when it held that "it was unnecessary to separately analyze each and every one of the transactions in which Ayala used GUTD's funds to pay her own expenses. . . . [because] **Ayala extensively comingled her personal expenses with GUTD finances, wielded complete control over GUTD finances, spent money directly from the GUTD account, and transferred money between her account and the GUTD account at will**." *United States v. Ayala*, 821 F. App'x 761, 765 (9th Cir. 2020) (emphasis added). This is exactly the case here.

The *Ayala* case highlights an important point. The defendants' motion is really an argument over the loss calculation, not over the elements of the crimes. In *Shulick*, the Third Circuit held that it was the **defendant's** burden—not the government's—to show what money was spent for the benefit of the victim in a § 666(a)(1)(A) prosecution because "the Government made out a prima facie case of the loss amount." *Shulick*, 18 F.4th at 114. So too here. Suplizio and Shaffer will carry this burden at sentencing because the United States will have shown that all the money was initially misapplied.

Finally, the defendants have had the discovery they need to analyze the transactions for years, and it is not an overly onerous task. The defendants claim that there are "tens or hundreds of thousands of transactions" and "thousands of pages" that they must review. (Doc, No. 117, at 3, 6.) But, as set forth above, there are only approximately 1,960 purchases detailed on 595 pages. (*See* Gov. Exs. 1 and 3.) Two years is plenty of time to analyze each transaction, and a trial date has not even been set.

Even if the Court considered the entirety of the discovery, the productions are well organized, and the defendants have had plenty of time to review the documents (and will have

additional time before trial).[12] *See Henderson*, 2025 WL 1427504, at *10 ("The Indictment here is very detailed and the Government submits that it has produced well-organized and comprehensive discovery to Defendant."); *Beard*, 2023 WL 372914, at *2 ("The fact that the discovery may be voluminous and that there may be a voluminous list of financial transactions is also not determinative as the Government indicated that it organized the extensive discovery material in a manner to facilitate its examination. The Government also indicated . . . that Defendant has had more than a year to review the discovery material. As of the date of this Order, it has been almost 300 days since the Government made this statement in its brief—combined with an upcoming August 21, 2023 trial date, there is approximately another 200 days for review of the material. The Court accordingly finds adequate time to review these materials."). *See also United States v. Curran*, No. 23-2643, 2025 WL 1577564, at *2 (3d Cir. June 4, 2025) ("Between the detailed indictment and access to "voluminous discovery materials," he could have adequately prepared for trial and avoided all surprises.").

In sum, the defendants' request for a further accounting of the Chase Visa transactions should be denied.

[12] In contrast, in *Bortnovsky*, relied on by the defendants, defense counsel "had only four days" to review the discovery. 820 F.2d at 575.

III. CONCLUSION

For the foregoing reasons, the Court should deny the defendants' motions for a bill of particulars.

Respectfully submitted,

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