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AHMAD ABOUAMMO

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,  
PLAINTIFF,

v.

AHMAD ABOUAMMO;  
ALI ALZABARAH; AND  
AHMED ALMUTAIRI,  
DEFENDANTS.

CR 19-621 EMC

NOTICE OF MOTION AND MOTION TO DISMISS  
COUNTS FOUR THROUGH TWENTY-TWO FOR  
FAILURE TO STATE AN OFFENSE

HONORABLE EDWARD M. CHEN  
DATE: JAN. 6, 2021  
TIME: 2:30 P.M.

TO: UNITED STATES OF AMERICA, PLAINTIFF; DAVID ANDERSON, UNITED STATES ATTORNEY; AND COLIN  
SAMPSON, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on January 6, 2021, or as soon thereafter as counsel may be  
heard, Defendant Ahmad Abouammo, by and through undersigned counsel, will and hereby  
does, respectfully move the Court to dismiss Counts Four through Twenty-two. This motion  
is made pursuant to Rules 7 and 12 of the Federal Rules of Criminal Procedure on the  
grounds that Counts Four through Twenty-two fail to state an offense for the crimes of wire  
fraud (18 U.S.C. § 1343), honest services wire fraud (18 U.S.C. § 1346), conspiracy to  
commit wire fraud and honest services fraud (18 U.S.C. § 1349), and money laundering (18  
U.S.C. § 1956(a)(2)(B)(i)). This motion is based on the below memorandum of points and

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authorities, the record in this case, and any argument that may occur at the hearing on the motion.

Dated: November 18, 2020

Respectfully submitted,

STEVEN G. KALAR  
Federal Public Defender  
Northern District of California

\_\_\_\_\_/s/\_\_\_\_\_  
ELLEN V. LEONIDA  
Assistant Federal Public Defender

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**1. INTRODUCTION**

Over a year ago, the government charged Ahmad Abouammo and two co-defendants with failing to notify the Attorney General that they were allegedly acting on behalf of a foreign government. Mr. Abouammo was charged with one additional count of falsification of records. The government has since charged the three defendants with an additional 19 counts alleging wire fraud, honest services fraud, conspiracy (to commit honest services and wire fraud), and money laundering (related to the proceeds of the alleged honest services and wire fraud). The alleged victim of the fraud charged in the superseding indictment is Mr. Abouammo’s former employer, Twitter.

None of the new charges state an offense for either wire fraud or honest services fraud. The Superseding Indictment does not allege that Mr. Abouammo acted with the specific intent to deprive Twitter of money or property as required under 18 U.S.C. § 1343. Nor does it allege that Mr. Abouammo made a misrepresentation or omission material to Twitter. The counts charging honest services fraud do not even allege that Twitter was actually deprived of its right to Mr. Abouammo’s honest services. Nor do those counts allege a bribe or kickback as required under 18 U.S.C. § 1346. Since the conduct charged in Counts Five through Nineteen does not constitute an offense under the law, the attendant conspiracy and money laundering counts cannot stand.

**2. ARGUMENT**

Rule 7 mandates that an indictment contain “a plain, concise, and definite written statement of the essential facts constituting the offense charged.” Fed. R. Crim. P. 7(c)(1). That requirement codifies and enforces “basic principles of fundamental fairness” inherent in the Sixth and Fifth Amendments. *Russell v. United States*, 369 U.S. 749, 763-66 (1962). Consequently, an indictment must include a “description of the charges” sufficiently detailed to, among other things, “inform the court of the facts alleged so that it can determine the sufficiency of the charge.” *United States v. Cecil*, 608 F.2d 1294, 1296 (9th Cir. 1979) (per curiam). “The failure of an indictment to detail each element of the charged

1 offense generally constitutes a fatal defect.” *United States v. Keith*, 605 F.2d 462, 464 (9th  
 2 Cir. 1979). An indictment will fail to allege an element of an offense if it “does not allege  
 3 facts which, if proven, would constitute a violation of the statute . . . that the defendant is  
 4 alleged to have violated.” *United States v. Carroll*, 2015 WL 2251206, at \*1 (N.D. Cal. May 13,  
 5 2015) (internal quotation marks omitted).

## 6 **2.1 The Superseding Indictment Fails to State an Offense of Wire Fraud Under** 7 **18 U.S.C. § 1343**

8 To establish a charge of wire fraud, the government must prove: “(1) the existence  
 9 of a scheme to defraud; (2) the use of wire, radio, or television to further the scheme; and  
 10 (3) a specific intent to defraud.” *United States v. Jinian*, 725 F.3d 954, 960 (9th Cir. 2013).  
 11 The Superseding Indictment fails to state a wire fraud offense for two reasons. First, it does  
 12 not allege that Mr. Abouammo acted with the specific intent to defraud Twitter by  
 13 depriving it of its money or property. Second, it does not allege that Mr. Abouammo made a  
 14 material misrepresentation or omission in furtherance of the purported scheme to defraud.

### 15 **2.1.1 The Superseding Indictment Does Not Allege that Mr. Abouammo** 16 **Acted with a Specific Intent to Defraud Twitter of Money or** 17 **Property**

18 An essential element of the crime of wire fraud is the specific intent to deprive the  
 19 victim of its money or property by means of deception. *United States v. Miller*, 953 F.3d  
 20 1095, 1102 (9th Cir. 2020); *see also United States v. Ciccone*, 219 F.3d 1078, 1082 (9th Cir.  
 21 2000) (holding that to prove wire fraud, “the government must prove beyond a reasonable  
 22 doubt the element of specific intent”); *United States v. Holmes*, 2020 WL 666563, at \*20  
 23 (N.D. Cal. Feb. 11, 2020) (granting in part motion to dismiss wire fraud charges for failure  
 24 to allege that defendants intended to deprive victims of money or property). Here, the  
 25 Superseding Indictment fails to allege either.

26 Regarding a specific intent to deprive Twitter of money, the Superseding Indictment  
 27 merely alleges that Mr. Abouammo participated in a scheme that “deprived Twitter of . . . its  
 28 money and property by enabling individuals and entities outside of Twitter . . . access to  
 nonpublic account information.” Superseding Indictment, Dkt. No. 53, ¶ 28. There is not a

1 single other allegation in the Superseding Indictment concerning Twitter’s money. This is  
2 not surprising, given that the Superseding Indictment alleges that Mr. Abouammo accessed  
3 the nonpublic account information of only two Twitter users. *Id.* at ¶ 27(b). The  
4 Superseding Indictment does not allege an economic value associated with accessing those  
5 two users’ data, nor does it allege that Mr. Abouammo engaged in such access for the  
6 purpose of depriving Twitter of money. Indeed, the Superseding Indictment does not allege  
7 that Mr. Abouammo ever intended to (or did in fact) deprive Twitter of any money.

8 Nor does the Superseding Indictment allege that Mr. Abouammo harbored a specific  
9 intent to deprive Twitter of property for purposes of 18 U.S.C. § 1343. The Supreme Court  
10 has long held that, “for purposes of the [wire] fraud statute, the thing obtained must be  
11 property in the hands of the victim.” *Cleveland v. United States*, 531 U.S. 12, 15 (2000); *see*  
12 *Carpenter v. United States*, 484 U.S. 19, 26-27 (1987) (noting that the statute is “limited in  
13 scope to the protection of property rights”).<sup>1</sup> Because the Supreme Court has not defined  
14 the “property” protected by the wire fraud statutes, the question of whether information is  
15 property for purposes of wire fraud, “must be determined by reference to applicable state  
16 laws.” *Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 214 F. Supp. 3d 808,  
17 822 (N.D. Cal. 2016) (citing *United States v. Shotts*, 145 F.3d 1289, 1294 (11th Cir. 1998)),  
18 *aff’d*, 890 F.3d 828 (9th Cir.), *amended*, 897 F.3d 1224 (9th Cir.), and *aff’d*, 735 F. App’x 241  
19 (9th Cir. 2018); *see also Borre v. United States*, 940 F.2d 215, 220 (7th Cir. 1991) (“It is  
20 logical, therefore, for this court to look to state law in determining whether a cable  
21 television franchise constitutes ‘property’ for purposes of the mail fraud statute.”);  
22 *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1001 (1984) (recognizing the “basic axiom that  
23 property interests . . . are not created by the Constitution [but] stem from an independent  
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25 <sup>1</sup> Although § 1346 provides an exception to this rule in the case of honest services fraud,  
26 the scope of § 1343—*i.e.*, “direct” wire fraud—remains limited to deprivations of property  
27 interests for allegations of wire fraud not premised on an honest services theory. *Miller*,  
28 953 F.3d at 1103. In addition, while the Court in *Cleveland* analyzed the mail fraud statute,  
courts apply the same analysis to mail and wire fraud allegations. *See Carpenter*, 484 U.S. at  
25 n.6.



1 source such as state law”) (internal quotation marks omitted). Accordingly, this Court must  
2 look to California law to decide whether Twitter users’ non-public account information  
3 constitutes Twitter’s property for purposes of Section 1343.

4 Courts in this district have held that information can only constitute “property”  
5 under California law if it qualifies as a trade secret under the California Uniform Trade  
6 Secrets Act (“CUTSA”) or another provision of positive law. *Planned Parenthood*, 214 F.  
7 Supp. 3d at 822-23 (rejecting wire fraud allegations as predicate offenses for civil RICO  
8 claims where plaintiffs failed to allege that information defendants acquired was a trade  
9 secret under CUTSA); *SunPower Corp. v. SolarCity Corp.*, 2012 WL 6160472, at \*5 (N.D. Cal.  
10 Dec. 11, 2012) (dismissing plaintiff’s claims of wrongful misappropriation of confidential  
11 information where plaintiff failed to allege that CUTSA or another provision of positive law  
12 created a property right in that information).

13 Conversely, “if confidential information [does] not qualify as [a] trade secret under  
14 CUTSA, then there [is] no common law claim protecting against its misappropriation.”  
15 *Planned Parenthood*, 214 F. Supp. 3d at 823; *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th  
16 210, 239 (2010) (“Information that does not fit this definition, and is not otherwise made  
17 property by some provision of positive law, belongs to no one, and cannot be converted or  
18 stolen.”), *disapproved of on other grounds by Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310  
19 (2011). Because California law does not recognize a property interest in non-trade secret,  
20 non-public information, it is not property under the wire fraud statute. *See Planned*  
21 *Parenthood*, 214 F. Supp. 3d at 823. The Superseding Indictment does not allege that the  
22 nonpublic information that was allegedly accessed constitutes trade secret information  
23 under CUTSA or any other provision of positive law. The wire fraud charges against Mr.  
24 Abouammo therefore suffer from the same fatal defect as those in *Planned Parenthood*.  
25 Because the Superseding Indictment fails to allege that Mr. Abouammo had the specific  
26 intent to deprive Twitter of its money or its property, it fails to state an offense of wire  
27 fraud against Mr. Abouammo.

1                                   **2.1.2 The Superseding Indictment Does Not Allege that Mr. Abouammo**  
 2                                   **Made a Material Misrepresentation or Omission**

3                   The Superseding Indictment also fails to state a wire fraud offense against Mr.  
 4                   Abouammo because it does not allege that he made a material misrepresentation,  
 5                   concealment, or omission, as required to state an offense under 18 U.S.C. § 1343.

6                                   **2.1.2.1 The Superseding Indictment Does Not Allege that**  
 7                                   **Mr. Abouammo Made a Material Misrepresentation or**  
 8                                   **Concealment**

9                   It is axiomatic that “materiality of falsehood is an element” of the federal wire fraud  
 10                   statute. *Neder v. United States*, 527 U.S. 1, 25 (1999); accord 9th Cir. Model Crim. Jury Instr.  
 11                   8.124. A misrepresentation or omission is material when it “has a natural tendency to  
 12                   influence, or was capable of influencing, the decision of the decisionmaking body to which  
 13                   it was addressed.” *United States v. Peterson*, 538 F.3d 1064, 1072 (9th Cir. 2008) (quoting  
 14                   *Kungys v. United States*, 485 U.S. 759, 770 (1988)). Further, “each misstatement must be  
 15                   ‘material’ to form the basis of the wire fraud charges.” *Holmes*, 2020 WL 666563, at \*13 n.8  
 16                   (citing *United States v. Woods*, 335 F.3d 993, 1000 (9th Cir. 2003)).

17                   The Superseding Indictment alleges only one affirmative  
 18                   misrepresentation/concealment on Mr. Abouammo’s part: that Mr. Abouammo “used  
 19                   private means of communication, including personal telephones, email addresses, and  
 20                   Twitter DMs, to communicate with representatives and officials of the government of KSA  
 21                   and Saudi Royal Family . . . to avoid detection of the scheme by Twitter.”<sup>2</sup> Superseding  
 22                   Indictment, Dkt. No. 53, ¶ 27(a). That allegation simply lists three extremely common  
 23                   forms of communication, including the internet messaging platform least likely to prevent  
 24                   detection by Twitter—the Twitter app itself. The Indictment does not allege that *any*

25                   <sup>2</sup> The government identified paragraphs 26 and 27 of the Superseding Indictment as  
 26                   containing its charged misrepresentations, concealments, and omissions in response to Mr.  
 27                   Abouammo’s motion for a bill of particulars. Govt. Opp. to Mot. for Bill of Particulars, Dkt.  
 28                   No. 68, p. 2 (stating that indictment sets forth “acts of concealment and material  
 representations, promises, and omissions” at ¶¶ 26(a)-(u) and 27(a)-(f) of the Superseding  
 Indictment).

1 specific information was related using these platforms, much less a material  
2 misrepresentation.

3 **2.1.2.2 The Superseding Indictment Does Not Allege a**  
4 **Material Omission.**

5 Nor has the government alleged an omission on Mr. Abouammo's part that could  
6 support a criminal charge. In the Ninth Circuit, an omission may "form the basis of a  
7 scheme to defraud only when there exists an independent duty (either fiduciary or derived  
8 from an explicit and independent statutory requirement) and such a duty has been  
9 breached." *United States v. Dowling*, 739 F.2d 1445, 1450 (9th Cir. 1984), *rev'd on other*  
10 *grounds*, 473 U.S. 207 (1985). Accordingly, an indictment must allege facts giving rise to a  
11 duty to disclose the information allegedly omitted to withstand a motion to dismiss under  
12 Rule 12. *United States v. Lonich*, 2016 WL 324039, at \*8 (N.D. Cal. Jan. 27, 2016) (dismissing  
13 portions of an indictment charging wire fraud on omission theory for failure to allege facts  
14 giving rise to a duty to disclose). The Superseding Indictment fails to do so.

15 The Superseding Indictment does not sufficiently allege that Mr. Abouammo had a  
16 duty to disclose any of the information he allegedly withheld from Twitter. First, the  
17 government does not allege that Mr. Abouammo had a duty to disclose his accessing of  
18 Twitter users' nonpublic account information. The government appears to concede this  
19 point by leaving Mr. Abouammo's non-disclosure of such access off its list of "material false  
20 representations, promises, and omissions" in the Superseding Indictment. *See* Superseding  
21 Indictment, Dkt. No. 53, ¶ 27. The government even admits that Mr. Abouammo "had  
22 access to proprietary and confidential Twitter information, including information about  
23 Twitter users," by virtue of his role at Twitter. *See Id.* at ¶ 17.

24 Instead, the government seeks to base Mr. Abouammo's alleged duty and failure to  
25 disclose in Twitter's "Gift Policy," which allegedly required employees to report gifts  
26 exceeding \$100 in value to Twitter management. *See Id.* at ¶ 16. As an initial matter, the  
27 Superseding Indictment does not allege that Mr. Abouammo signed or otherwise  
28 acknowledged Twitter's "Gift Policy." *See Id.* at ¶¶ 14-16. It is doubtful that an employer's

1 gift policy not signed or otherwise acknowledged by an employee gives rise to a duty to  
2 disclose sufficient to support a criminal charge on a fraud-by-omission theory.

3 More significantly, however, the omissions alleged in the Superseding Indictment  
4 are immaterial to the purported scheme to defraud. The Superseding Indictment alleges  
5 that Mr. Abouammo “concealed from Twitter his receipt of a watch” and “concealed from  
6 Twitter his receipt of \$100,000 . . .” *Id.* at ¶ 27(b)-(c). Significantly, the government *does*  
7 *not* allege that Twitter’s “Gift Policy” would have required Mr. Abouammo to report the  
8 circumstances surrounding his acceptance of such a gift (e.g., that he allegedly received it in  
9 exchange for providing nonpublic information to someone outside of Twitter). As alleged in  
10 the Superseding Indictment, the “Gift Policy” would have required Mr. Abouammo only to  
11 bring the gift itself to the attention of management and to return the gift to the sender. *Id.* at  
12 ¶ 16. Any failure by Mr. Abouammo to report a gift, therefore, would not have been  
13 material to the alleged scheme to access nonpublic account information because he would  
14 not have been under any obligation to disclose such access to Twitter management under  
15 the terms of the “Gift Policy.”

16 The Superseding Indictment thus fails to allege a material misrepresentation,  
17 concealment, or omission in furtherance of the alleged scheme to defraud. Accordingly, the  
18 Superseding Indictment fails to state an offense of wire fraud.

## 19 **2.2 The Superseding Indictment Fails to State an Offense of Honest Services** 20 **Wire Fraud Under 18 U.S.C. §§ 1343 and 1346.**

21 To prevail on a charge of honest services fraud, the government must prove the  
22 elements of wire fraud and, in addition, that (1) the scheme or plan to defraud was one to  
23 deprive Twitter of its right to honest services; (2) the scheme or plan consisted of a bribe  
24 or kickback in exchange for the defendant’s services; *and* (3) the defendant owed and  
25 violated a fiduciary duty. *United States v. Milovanovic*, 678 F.3d 713, 726 (9th Cir. 2012).  
26 The government’s honest services fraud theory fails in two ways. First, the Superseding  
27 Indictment does not allege that Mr. Abouammo deprived Twitter of its honest services  
28 because Mr. Abouammo’s alleged misconduct falls entirely outside the scope of his role at

1 Twitter. Second, the Superseding Indictment does not adequately allege that Mr.  
2 Abouammo received a bribe in exchange for accessing nonpublic user information because  
3 the Superseding Indictment fails to allege a *quid pro quo*.

#### 4 **2.2.1 The Superseding Indictment Fails to Allege that Mr. Abouammo** 5 **Deprived Twitter of Its Right of Honest Services**

6 The Ninth Circuit has warned that, “[w]ithout some kind of limiting principle, honest  
7 services wire fraud could potentially make relatively innocuous conduct subject to criminal  
8 sanctions.” *United States v. Kincaid-Chauncey*, 556 F.3d 923, 940 (9th Cir. 2009). Especially  
9 in the private sector context, honest services fraud “poses special risks.” *United States v.*  
10 *Sun-Diamond Growers of California*, 138 F.3d 961, 973 (D.C. Cir. 1998). In light of those  
11 risks, courts have recognized that not every breach of an employment contract or  
12 workplace policy rises to the level of a federal crime. *See, e.g., United States v. Keuylian*, 23  
13 F.Supp.3d 1126, 1128 (C.D. Cal. 2014) (“Without some affirmative act of deception, a failure  
14 to perform one’s contractual duties does not amount to fraud.”); *United States v. Nosal*,  
15 2009 WL 981336, at \*8 (N.D. Cal. Apr. 13, 2009) (“[C]ourts have been hesitant to impose  
16 federal liability upon every private dispute involving an employee transgression that incurs  
17 no public deprivation of rights.”); *Sun-Diamond Growers*, 138 F.3d at 973 (“Every material  
18 act of dishonesty by an employee deprives the employer of that worker’s honest services,  
19 yet not every such act is converted into a federal crime by the mere use of the mails or  
20 interstate phone system.”) (internal quotation marks omitted). Moreover, misconduct  
21 falling outside the scope of an employee’s job duties does not undermine the purpose of the  
22 employment relationship and thus cannot constitute honest services fraud. *United States v.*  
23 *Czubinski*, 106 F.3d 1069 (1st Cir. 1997).

24 In *Czubinski*, the defendant, an employee of the IRS, accessed “confidential  
25 information” of multiple individuals by “performing computer searches that were outside  
26 of the scope of his duties” and in violation of IRS rules. 106 F.3d at 1071. Despite the  
27 defendant’s clear violation of his employer’s policy regarding access of confidential  
28 consumer information, the court reversed his conviction because “there [was] no

1 suggestion that he failed to carry out his official tasks adequately, or intended to do so.” *Id.*  
2 at 1077. Noting that there was “no evidence that Congress intended to create what  
3 amounts to a draconian personnel regulation,” the *Czubinski* court cautioned against “the  
4 threat of transforming governmental workplace violations into felonies.” *Id.*

5 This case presents an analogous situation in that Mr. Abouammo’s alleged conduct  
6 in violation of Twitter’s policies had no impact whatsoever on the job he was hired to do.  
7 As alleged, Mr. Abouammo was a “Media Partnerships Manager responsible for the Middle  
8 East and North Africa (MENA) region at Twitter.” Superseding Indictment, Dkt. No. 53, at ¶  
9 12. In that role, he provided assistance for “notable accounts, including accounts of public  
10 interest or belonging to brands, journalists, and celebrities in the MENA region, with  
11 content and Twitter strategy, and with sharing best practices.” *Id.* The alleged unauthorized  
12 access of private user information in no way undermines the purpose of providing  
13 assistance to notable account holders. Indeed, the Superseding Indictment does not allege  
14 that Mr. Abouammo ever failed to perform his job duties adequately or that the charged  
15 conduct in any way impacted his role as Media Partnerships Manager. Consequently, the  
16 Superseding Indictment fails to state an offense for honest services fraud.

17 **2.2.2 The Superseding Indictment Fails to Allege that the Scheme**  
18 **Consisted of a Bribe or Kickback in Exchange for Mr.**  
19 **Abouammo’s Alleged Acts**

20 Honest services fraud offenses are limited to schemes involving bribes and  
21 kickbacks. *Skilling v. United States*, 561 U.S. 358, 409 (2010). To establish the offense of  
22 honest services fraud, the government must allege “specific factual allegations supporting  
23 claims of bribery or kickbacks.” *Comm. to Protect our Agric. Water v. Occidental Oil and Gas*  
24 *Corp.*, 235 F. Supp. 3d 1132, 1178–79 (E.D. Cal. 2017). Not every exchange of money  
25 constitutes a bribe or a kickback, however. The government must allege a *quid pro quo*,  
26 meaning promises “made in return for an explicit promise or undertaking by the official to  
27 perform or not to perform an official act.” *United States v. Inzunza*, 638 F.3d 1006, 1013  
28 (9th Cir. 2011); *cf. United States v. Garrido*, 713 F. 3d 985, 997 (9th Cir. 2013) (“Section

1 1346 honest services convictions on a bribery theory . . . require at least an implied *quid*  
2 *pro quo*”; reversing certain honest services fraud convictions). The Superseding Indictment  
3 is silent as to any kickback and fails to allege that Mr. Abouammo received a bribe in  
4 exchange for any specific undertaking.

5 There is not a single allegation in the Superseding Indictment of an outgoing wire  
6 transmission from Mr. Abouammo to Foreign Official-1 (or anyone else) in which Mr.  
7 Abouammo is alleged to have shared nonpublic account information. Absent a specific  
8 factual allegation that Mr. Abouammo disclosed nonpublic account information to someone  
9 outside of Twitter, the Superseding Indictment does not allege that Mr. Abouammo  
10 provided any *quid* in exchange for the purported *quo*.

11 Nor does the Superseding Indictment sufficiently allege that that the money given to  
12 Mr. Abouammo was *in exchange for* his disclosure of specific nonpublic account  
13 information. In order to establish a *quid pro quo*, the Government must allege that a  
14 promise to perform was linked to a promise of payment. *Inzunza*, 638 F.3d at 1025. In  
15 *Inzunza*, for example, the court considered whether contributions made to two city council  
16 members constituted bribery for purposes of honest services fraud. *Id.* at 1009-10. The  
17 honest services fraud allegations that withstood scrutiny “described payments made to [a  
18 city council member] to which he knew he was not entitled, accompanied by an express  
19 promise to perform official acts.” *Id.* at 1019. However, *Inzunza* affirmed the district court’s  
20 granting of a motion for acquittal regarding a different council member because “[t]here  
21 was neither an explicit promise nor a connection of such a promise to a contribution.” *Id.* at  
22 1025.

23 Here, the Superseding Indictment alleges no specific promise to disclose nonpublic  
24 account information, let alone a link tying such a promise to a promise of payment.<sup>3</sup>  
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26 <sup>3</sup> The Superseding Indictment uses the word “bribe” just twice, and only as part of a  
27 recitation of the language of the statute as limited by the Supreme Court in *Skilling*.  
28 Superseding Indictment, Dkt. No. 53, ¶¶ 36, 38.

1 Moreover, the Superseding Indictment alleges that the majority of the money purportedly  
2 paid to Mr. Abouammo was received after he resigned from Twitter. *See* Superseding  
3 Indictment, Dkt. No. 53, ¶ 26(k). At most, the government has alleged that Mr. Abouammo  
4 received gratuities. But gratuities—even “secret” gratuities—do not constitute a bribe for  
5 the purposes of honest services fraud. *United States v. Hawkins*, 777 F.3d 880, 882 (7th Cir.  
6 2015) (vacating a wire fraud conviction because the “secret receipt of a gratuity . . . is  
7 neither a bribe nor a kickback.”). Consequently, Counts Five through Nineteen of the  
8 Superseding Indictment fail to state an offense of wire fraud or honest services wire fraud,  
9 and the Court should dismiss them.

### 10 **2.3 The Court Should Dismiss the Conspiracy and Money Laundering Counts.**

11 Count Four of the Superseding Indictment charges Mr. Abouammo with conspiracy  
12 to commit wire fraud and honest services fraud under 18 U.S.C. Section 1349. *See*  
13 Superseding Indictment, Dkt. No. 53, ¶¶ 35-36. In Counts Twenty through Twenty-two, the  
14 Superseding Indictment charges Mr. Abouammo with three counts of money laundering  
15 under 18 U.S.C. § 1956(a)(2)(B)(i). *Id.* at ¶¶ 39-44. All of these offenses are predicated on  
16 the validity of the wire fraud/honest services fraud charged in Counts Five through  
17 Nineteen. Because the Superseding Indictment fails to state an offense for any of the  
18 charged wire fraud and honest services fraud counts, the Court must dismiss the  
19 conspiracy and money laundering counts as well.

20 Where an indictment fails to allege the underlying fraud in a conspiracy, the  
21 conspiracy count fails as well. *United States v. Cogswell*, 637 F. Supp. 295, 300 (N.D. Cal.  
22 1985) (“The conspiracy to defraud fails because it does not allege the particulars of a  
23 fraudulent scheme”; dismissing fraud and conspiracy to defraud charges for failure to state  
24 an offense). Count Four specifically charges a conspiracy to commit wire fraud and honest  
25 services fraud. Thus, the government’s failure to state offenses that constitute either wire  
26 fraud or honest services fraud is fatal to the charged conspiracy count.



