

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

UNITED STATES OF AMERICA :  
 :  
 v. : CRIMINAL ACTION  
 :  
 : NO. 12-0367  
 JOAN WOODS CHALKER :

**SURRICK, J.**

**AUGUST 27, 2013**

**MEMORANDUM**

Presently before the Court is Defendant Joan Woods Chalker's Motion for Disclosure of the Records of the Grand Jury Proceedings Concerning the Return of the Indictments. (ECF No. 73.) For the following reasons, Defendant's Motion will be denied.

**I. BACKGROUND**

**A. Procedural History**

On January 22, 2013, a federal grand jury returned a sixty-seven count Superseding Indictment against Dorothy June Brown, Joan Woods Chalker, Michael A. Slade, Jr., Courteney L. Knight, and Anthony Smoot. (Superseding Indictment ("Indictment"), ECF No. 47.)<sup>1</sup> These charges arise out of an alleged scheme perpetrated by Brown to defraud three separate charter schools out of over \$6.7 million.

Defendant is charged with twenty-four counts of wire fraud, in violation of 18 U.S.C. § 1343 and § 2 (Counts 15-37, 51-52), one count of conspiring to obstruct justice, in violation of 18 U.S.C. § 371 (Count 53), five counts of obstruction of justice, in violation of 18 U.S.C. §

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<sup>1</sup> On March 15, 2013, Anthony Smoot entered a guilty plea to conspiracy to obstruct justice, in violation of 18 U.S.C. § 371 (Count 53), and obstruction of justice, in violation of 18 U.S.C. § 1519 and § 2 (Count 58). (Min. Entry, ECF No. 55.) His sentencing is scheduled for December 3, 2013. (Notice of Hearing, ECF No. 103.)

1519 and § 2 (Counts 55-57, 65-66), and two counts of obstruction of justice, in violation of 18 U.S.C. § 1512(c)(2) and § 2 (Counts 61-62).

On March 18, 2013, Defendant filed a Motion for Disclosure of the Records of the Grand Jury Proceedings Concerning the Return of the Indictments. (Def.'s Mot., ECF No. 73.) The Government filed a response on April 22, 2013. (Gov't's Resp., ECF No. 91.) On May 8, 2013, Defendant filed a reply in further support of the Motion. (Def.'s Reply, ECF No. 98.)

## **B. Factual Background**

Counts 15 through 37 of the Indictment charge Defendant and Brown with wire fraud in connection with a scheme to defraud Planet Abacus and the School District of Philadelphia. (Counts 15-37 ¶ 25.) As part of that scheme, Brown and Defendant allegedly caused Planet Abacus to make approximately \$705,561.62 in fraudulent payments to a private educational management company operated by Brown. (*Id.* at ¶ 26.)

Brown established Planet Abacus as a charter school in Philadelphia, Pennsylvania on July 1, 2007. (*Id.* at ¶¶ 19, 22.)<sup>2</sup> At Brown's request, Defendant served as the Chief Executive Officer of Planet Abacus. (Counts 15-37 ¶ 22.) The Planet Abacus Bylaws provided that the Board of Directors "shall have full power to conduct, manage and direct the business and affairs of [Planet Abacus] and all powers of [Planet Abacus] are hereby granted to and vested in the

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<sup>2</sup> In 1997, Pennsylvania enacted the Charter School Law enabling private individuals to establish and maintain charter schools that operate independently from the existing school district structure. (Counts 1-14 ¶ 4.) The schools must be organized as public, not-for-profit corporations. (*Id.* at ¶ 5.) Charter schools are funded with public school funds from the students' districts of residence. (*Id.* at ¶ 6.) Under 24 P.S. Sections 17-1716-A(a) and 17-1749-A(a)(1) of the Charter School Law, the charter school's board of trustees is vested with the authority to decide matters related to the operation of the charter school. (*Id.* at ¶ 7.)

The application for the Planet Abacus Charter was submitted by Brown in June 2005 to the School District of Philadelphia ("School District"). (Counts 15-37 ¶ 16.) At that time the School District was governed by a five-member School Reform Commission ("SRC"), which approved applications for the creation of charter schools in Philadelphia. (*Id.*)

Board of Directors.” (*Id.* at ¶ 23.)<sup>3</sup> The Bylaws further provided that “no Director shall maintain substantial personal or business interests which conflict or which may be seen as conflicting with those of [Planet Abacus].” (Counts 15-37 ¶ 24.)<sup>4</sup> The Planet Abacus Charter also required that the school maintain certain records on site at the Planet Abacus facility for inspection by the School District. (Counts 15-37 ¶ 30.) These records included Planet Abacus Board meeting minutes. (*Id.*)

In June 2007, Brown established AcademicQuest, LLC (“AcademicQuest”) as an educational management organization. (*Id.* at ¶ 26.) Brown was the sole owner of AcademicQuest. (*Id.*) The Government alleges that after approval of the Planet Abacus Charter, Brown falsely represented that the Planet Abacus Board of Directors had entered into a management contract with AcademicQuest when in fact the Board had never voted on the contract. (*Id.* at ¶ 27.) The management contract entitled AcademicQuest to fifteen percent of the “Qualified Gross Revenues” of Planet Abacus, and an additional two percent of “Qualified Gross Revenues” if a percentage of the students’ test scores increased by a certain amount. (*Id.*) The Government alleges that rather than diverting significant resources or funds from AcademicQuest, Brown directed employees of the other schools that she controlled to provide services to Planet Abacus. (*Id.* at ¶ 36.)

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<sup>3</sup> The Government uses the terms Board of Directors and Board of Trustees interchangeably when referring to Planet Abacus’s governing body. We will use the term Board of Directors.

<sup>4</sup> In addition to these conflict-of-interest provisions, Philadelphia’s Charter School Law was amended in July 2008 to prohibit a charter school administrator from receiving “compensation from another charter school or from a company that provides management or other services to another charter school.” (Counts 15-37 ¶ 12.) Administrator is defined as “the chief executive officer of a charter school and all other employees of a charter school who by virtue of their positions exercise management or operation oversight responsibilities.” (*Id.*)

As part of the scheme to defraud, Brown and others created two fraudulent management contracts dated March 5, 2007. (*Id.* at ¶ 28.) The first management contract (“AQ Contract No. 1”) was executed by Brown, on behalf of AcademicQuest, and Person No. 17, an individual purportedly serving as the President of the Planet Abacus Board as of the date of the contract. (*Id.*) Brown’s personal secretary, Person No. 12, witnessed the execution of the contract. (*Id.*) Brown and Person No. 17 executed a second management contract (“AQ Contract No. 2”) with Anthony Smoot signing as a witness. (*Id.*) Person No. 17 was not a member of the Planet Abacus Board, let alone its President, when he executed the management contracts. (*Id.*)

In addition, Brown caused the creation of falsified Board meeting minutes to make it look as though the Planet Abacus Board had approved a management contract between Planet Abacus and AcademicQuest at a March 5, 2007 Board meeting. (*Id.* at ¶ 31.) The fabricated Board minutes listed Persons Nos. 7, 13, 17, 18, 19, and 20 as present at the March 5, 2007 meeting, and the meeting minutes indicated that they all voted to approve the contract. (*Id.*) In fact, there was no Board managing the affairs of Planet Abacus at the time the AcademicQuest contracts were executed, the Board meeting never took place, and the contract was never voted on. (*Id.* at ¶¶ 29, 31.)

The Government alleges that the conflict-of-interest provisions of Planet Abacus’s Charter and Bylaws prohibited Board members from receiving “management fee” payments while serving on Board. (*Id.* at ¶ 29.) The Charter also forbade Board members from conducting business with their immediate family. (*Id.*)<sup>5</sup> In order to bypass these prohibitions, Brown made it appear as though the Planet Abacus Board had been in existence since at least February 2007,

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<sup>5</sup> The Government does not provide the precise language from the Charter or the Bylaws that set forth these provisions.

and that she was not a Board member. (Counts 15-37 ¶ 29.) The Government alleges that in reality, there was no Board managing the affairs of Planet Abacus in February 2007, nor when the AcademicQuest management contracts were executed. (*Id.*) Rather, Brown managed and directed the affairs of Planet Abacus during that time. (*Id.*) In fact, Brown and Defendant caused the creation of false Board minutes and false Board resolutions to make it appear as though an independent Planet Abacus Board had held meetings and conducted business without Brown's involvement. (*Id.* at ¶ 30.)

The Planet Abacus Charter also provided that prior to entering into a management contract, the Planet Abacus Board was required to submit the proposed contract to the School District for review and comment. (*Id.* at ¶ 37.) In July 2009, during an audit of Planet Abacus' first year of operation, Brown was informed that the AcademicQuest contract could violate the Planet Abacus Charter because the Board had failed to submit it to the school Board. (*Id.* at ¶ 38.)<sup>6</sup> In order to conceal this potential violation, Brown, Defendant, and others created falsified contracts, falsified Board meeting minutes and resolutions, and other falsified documents to make it appear as though the AcademicQuest management contract was actually a consulting contract, and thus would need no School District approval. (Counts 15-37 ¶ 38.)

One of these falsified documents was a consulting contract between Planet Abacus and AcademicQuest dated March 5, 2007. (*Id.* at ¶ 39.) Person No. 17 signed the contract as the Planet Abacus President, Brown signed on behalf of AcademicQuest, and Chalker forged the signature of a witness to the contract, Person No. 23. (*Id.*) Person No. 19 forged the signature of her aunt, Person No. 22, as a witness to Brown's execution of the contract. (*Id.*) Neither Person No. 22 nor 23 had given permission for their names to be signed by others, and in fact Person

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<sup>6</sup> The audit was performed pursuant to the requirements of the Charter School Law and the Planet Abacus Charter. (Counts 15-37 ¶ 38.)

No. 22 was deceased as of the date of the contract. (*Id.*) Brown, Knight, and others also fabricated at least two additional versions of backdated “consulting contracts” between Planet Abacus and AcademicQuest. (*Id.* at ¶ 40.) In August 2009, Brown falsified Board meeting minutes to make it appear as though the Planet Abacus Board had held a special meeting on March 16, 2007 for the purpose of approving a “consulting contract” with AcademicQuest. (*Id.* at ¶ 43.) In reality, the consulting contracts were never approved by the Planet Abacus Board. (*Id.*)

On August 28, 2009, Smoot provided the March 16, 2007 falsified Board meeting minutes to the auditor. (*Id.* at ¶ 45.) The auditor requested that Planet Abacus obtain a legal opinion as to whether the AcademicQuest Contract constituted a management contract. (*Id.*) Rather than provide this information to the auditor, Smoot, Brown, and Defendant hired a different auditing firm to complete the Planet Abacus audit. (*Id.*) In February 2010, Brown, Defendant, and Smoot provided fabricated Board meeting minutes, resolutions, and other falsified records, including AcademicQuest invoices to the second auditor. (*Id.* at ¶ 46.)

The Government alleges that from December 2007 to April 2011, Brown, Defendant, and others used the fabricated consulting and management contracts to cause Planet Abacus to make approximately \$705,561.62 in fraudulent payments to AcademicQuest and Brown. (*Id.* at ¶ 26.)

## **II. DISCUSSION**

### **A. Defendant’s Contentions**

Defendant requests the disclosure, or in the alternative an *in camera* inspection, of the following three items: (1) grand jury proceeding transcripts concerning the legal instructions provided to the jury that returned the Indictment and the Superseding Indictment; (2) any transcripts of Government counsel’s statements to the grand jury; and (3) any transcripts setting

forth evidence of material deceptions causing economic harm or intended to cause economic harm. (Def.'s Mot. 1, 13.)

Defendant claims that the Indictment is defective as a matter of law because Counts 15 through 37 are based on a conflict-of-interest theory of fraud, and that such a theory cannot support an indictment for wire fraud. (*Id.* at 1.) In essence, Defendant argues that because the wire fraud charges are based on an invalid legal theory, there is a possibility that the Government presented evidence regarding non-disclosure of a conflict of interest as the scheme to defraud, and inappropriately instructed the grand jury that such an undisclosed conflict of interest could constitute a scheme or artifice to defraud under the federal wire fraud statute. Moreover, Defendant contends that the Indictment fails to allege an element of wire fraud, that is, a material deception intended to cause economic harm. (Def.'s Mem. 9.) Defendant claims that because the Indictment omits this element of wire fraud, the grand jury was likely not presented with evidence of a material deception. (*Id.*)

## **B. Legal Standard**

“[T]he standard practice since approximately the 17th century has been to conduct grand jury proceedings in secret.” *Giles v. California*, 554 U.S. 353, 371 (2008); *see also Douglas Oil Co. of Cal. v. Petrol Stops Nw.*, 441 U.S. 211, 218 (1979) (“[T]he proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings.”); *United States v. R. Enters., Inc.*, 498 U.S. 292, 299 (1991) (noting that “grand jury proceedings are subject to strict secrecy requirements”). Federal Rule of Criminal Procedure 6(e) recognizes this tradition of secrecy, and seeks to preserve it, “creating a general rule of confidentiality for all matters occurring before the grand jury.” *United States v. Smith*, 123 F.3d 140, 148 (3d Cir. 1997)

(internal quotation marks omitted). “Rule 6(e) applies to anything which may reveal what occurred before the grand jury.” *Id.* (internal quotation marks omitted)

Rule 6(e) does contain several exceptions to grand jury secrecy. One such exception outlined in Rule 6(e)(3)(E)(ii) authorizes the court to disclose a grand jury matter “at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury.” Fed. R. Crim. P. 6(e)(3)(E)(ii). Because grand jury proceedings are entitled to a strong presumption of regularity, a defendant seeking disclosure of grand jury information under Rule 6(e)(3)(E)(ii) “bears the heavy burden of establishing that particularized and factually based grounds exist to support the proposition that irregularities in the grand jury proceedings may create a basis for dismissal of the indictment.” *United States v. Bunty*, 617 F. Supp. 2d 359, 372 (E.D. Pa. 2008) (internal quotation marks and citation omitted); *see also United States v. McDowell*, 888 F.2d 285, 289 (3d Cir. 1989) (emphasizing that to obtain grand jury materials, a party must show “a particularized need for that information which outweighs the public interest in secrecy”) (citing *United States v. Procter & Gamble Co.*, 356 U.S. 677, 683 (1957)). The defendant’s request must be “structured to cover only material so needed.” *In re Grand Jury Matter (Cantania)*, 682 F.2d 61, 64 (3d Cir. 1982) (quoting *Douglas*, 441 U.S. at 222)).

Once the defendant has demonstrated a particularized need for disclosure the court “must weigh the competing interests and order so much disclosure as needed for the ends of justice.” *McDowell*, 888 F.2d at 289 (quoting *Cantania*, 682 F.2d at 62). The judge is afforded considerable discretion when balancing these competing interests. *Id.*; *Bunty*, 617 F. Supp. 2d at 372 (“The decision to permit disclosure [of grand jury transcripts] is within the discretion of the

trial court judge who must assess whether the need for disclosure overbalances the requirements of secrecy.” (quoting *United States v. Mahoney*, 495 F. Supp. 1270, 1272 (E.D. Pa. 1980)).

### **C. Analysis**

#### *1. Conflict-of-Interest Theory of Fraud*

Defendant’s Motion primarily rests on the notion that the Government improperly alleged a conflict-of-interest theory of wire fraud in Counts 15 through 37, which is “*per se* defective.” (Def.’s Mem. 9.) Specifically, Defendant argues that the scheme to defraud alleged by the Government is premised on Brown and Defendant’s attempts to conceal violations of the conflict-of-interest provisions provided in the Planet Abacus Bylaws. (*Id.* at 9.) She contends that because the Government’s Indictment is premised on an improper legal theory, it is likely that the grand juries were improperly instructed on the allegations of wire fraud. (*Id.* at 2.)

Defendant relies solely on the Supreme Court’s decision in *United States v. Skilling*, 130 S. Ct. 2896 (2010), which addressed the limitations of honest services wire fraud under 18 U.S.C. § 1346. Under 18 U.S.C. § 1346, the term “scheme or artifice to defraud” includes “a scheme or artifice to deprive another of the intangible right of honest services.” 18 U.S.C. § 1346. The Court in *Skilling* limited honest services fraud to only those schemes that deprive another of honest services through “bribes and kickbacks.” 130 S. Ct. at 2931. The Court specifically rejected the Government’s argument that honest services fraud should include “undisclosed self-dealing by a public official . . . [such as] the taking of official action by the [official] that further his own undisclosed financial interests while purporting to act in the interests of those to whom he owes a fiduciary duty.” *Id.* at 2932.

Defendant’s reliance on *Skilling* is misplaced. The Supreme Court’s holding in *Skilling* is strictly limited to honest services fraud under 18 U.S.C. § 1346. See *United States v. Wright*,

665 F.3d 560, 573 (3d Cir. 2012) (“Unlike honest services fraud, *Skilling* did not disturb the law of traditional fraud.”); *see also United States v. Del Toro*, 489 F. App’x 537, 539-40 (3d Cir. 2012) (holding that *Skilling* was inapposite where the defendant was not charged with honest services wire fraud); *United States v. Conti*, No. 08-05, 2010 WL 4613798, at \*5 (W.D. Pa. Nov. 5, 2010) (“*Skilling* does not apply to the charges of traditional fraud pursuant to the mail and wire fraud statutes.”); *Stinn v. United States*, 856 F. Supp. 2d 531, 537-38 (E.D.N.Y. 2012) (“The *Skilling* Court said nothing about the sufficiency of the government’s evidence to establish traditional money or property fraud. The Court merely held that, if the government charges, and the jury is instructed on, an honest services theory of fraud under § 1346, the government must prove that a defendant received bribes or kickbacks as a part of the deceptive scheme.”); *United States v. Fenzl*, 731 F. Supp. 2d 796, 800 (N.D. Ill. 2010) (concluding that *Skilling* does not insert “additional elements or limitations to the traditional mail or wire fraud statutes”); *United States v. Washington*, No. 11-4647, 2011 WL 10068686, at \*1 (N.D. Ill. Oct. 3, 2011) (“*Skilling* limited the behavior proscribed by § 1346, not § 1343, the traditional wire fraud statute.”).

The Government does not allege that Brown or Defendant deprived the charter schools of their “honest services,” or that they failed to disclose a conflict of interest. Rather, they are charged with fabricating management and consulting contracts in order to misappropriate substantial amounts of money for Brown’s private educational management organizations. As part of the scheme to defraud, Brown and Defendant attempted to circumvent the school’s prohibitions on self-dealing by fabricating Board meeting minutes and resolutions to make it appear as though an independent Board of Directors approved the fraudulent management contracts. Their attempts to bypass the school’s conflict-of-interest provisions are certainly relevant to the Government’s alleged scheme to defraud as they provide context for why Brown

and her co-Defendants conducted the scheme in the manner that they did. *See United States v. Pitt*, 482 F. App'x 787, 802 n.2 (4th Cir. 2012) (Traxler J. concurring in part, dissenting in part) (“*Skilling* does not . . . render evidence of an undisclosed conflict irrelevant or inadmissible in a § 1341 pecuniary fraud case.”); *United States v. Hatfield*, 724 F. Supp. 2d 321, 329 (E.D.N.Y. 2010) (concluding that despite *Skilling*'s limitation on honest services fraud, evidence of the defendant's conflict of interest was relevant to the allegations of mail and wire fraud). We are satisfied that the Indictment does not run afoul of the limitations set forth in *Skilling*.

Since the Government's Indictment is not based on an improper theory of wire fraud, and is facially valid, Defendant has failed to demonstrate a particularized need for the requested disclosures. *See United States v. Dimasi*, No. 09-10166, 2011 WL 468213, at \*3 (D. Mass. Feb. 4, 2011) (denying motion to disclose legal instructions provided to grand jury because the indictment alleged a valid legal theory and thus “any lack of instructions or mistakes in instruction to the grand jury would not be sufficiently prejudicial to justify relief”); *United States v. Welch*, 201 F.R.D. 521, 525 (D. Utah 2001) (denying the defendant's request to disclose grand jury instructions where indictment was valid on its face and particularized need not shown); *United States v. Trie*, 23 F. Supp. 2d 55, 62 (D.D.C. 1998) (“[T]he mere suspicion that the grand jury may not have been properly instructed with respect to [a] legal definition . . . is insufficient to establish that [defendant] is entitled either to dismissal of the indictment or to disclosure of grand jury materials.” (citing *United States v. Buchanan*, 787 F.2d 477, 487 (10th Cir. 1986))).<sup>7</sup>

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<sup>7</sup> Defendant also suggests that the disclosure of legal instructions provided to a grand jury is not subject to the same presumption of secrecy and may be disclosed “absent the customary demonstration of particularized need.” (*See* Def.'s Mot. 11.) Defendant is simply wrong. Legal instructions provided to the grand jury are entitled to the “presumption of regularity” and can only be disclosed upon a showing of particularized need. *See United States v. Mariani*, 7 F. Supp. 2d 556, 568 (M.D. Pa. 1998) (denying request for production of grand jury instructions as defendant failed to demonstrate a particularized need which would warrant disclosure); *United*

## 2. *Material Deception*

Defendant further argues that the Indictment fails to allege a material misrepresentation as part of a scheme to deprive the victims of money or property. (Def.’s Mem. 9.) Based on this alleged deficiency, Defendant contends that there is a likelihood that the grand juries were not instructed on a key element of wire fraud, and accordingly, did not consider or agree upon this element of the offense. (*Id.*)

In order to prove wire fraud under 18 U.S.C. § 1343, the Government must establish: “(1) the defendant’s knowing and willful participation in a scheme or artifice to defraud, (2) with the specific intent to defraud, and (3) the use of . . . interstate wire communications in furtherance of the scheme.” *United States v. Andrews*, 681 F.3d 509, 518 (3d Cir. 2012). The fraud must expose the victim of the scheme to an actual or potential loss of money or property. *Wright*, 665 F.3d at 573 (“Traditional mail fraud under § 1341 involves defrauding a private party of money or property. . .”).<sup>8</sup>

The Supreme Court in *Neder v. United States*, 527 U.S. 1, 25 (1999), established that materiality of a falsehood is an element of wire fraud. A misrepresentation “is material if it has ‘a natural tendency to influence, or [is] capable of influencing, the decision of the decisionmaking body to which it was addressed.’” *Id.* (quoting *United States v. Gaudin*, 515

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*States v. Keystone Auto. Plating Corp.*, No. 83-306, 1984 WL 2946, at \*7 (D.N.J. Jan. 9, 1984) (“Prosecutor’s instructions are part of the grand jury proceeding and are entitled to a presumption of regularity.” (citing *United States v. Hubbard*, 474 F. Supp. 64, 86 (D.D.C. 1979))); *United States v. Johnson*, No. 92-39, 1994 WL 805243, at \*7 (W.D.N.Y. May 26, 1995) (“As with a request for a review of grand jury minutes, the secrecy of the grand jury will not be compromised by an order to disclose grand jury instructions without a showing of ‘particularized need.’”)

<sup>8</sup> The federal wire fraud statute, 18 U.S.C. § 1343, is practically identical to the federal mail fraud statute, 18 U.S.C. § 1341, and cases interpreting one statute apply equally to the other. *United States v. Yusuf*, 536 F.3d 178, 188 n.14 (3d Cir. 2008) (citing *United States v. Morelli*, 169 F.3d 798, 806 n.9 (3d Cir. 1999)).

U.S. 506, 509 (1995)). The decisionmaker need not actually be influenced by the statement. *United States v. Fumo*, No. 06-319, 2009 WL 1688482, at \*6 (E.D. Pa. June 17, 2009). Rather, the relevant inquiry is “whether the falsehood was of a type that one would normally predict would influence the given decisionmaking body.” *Id.* (quoting *United States v. McBane*, 433 F.3d 344, 351 (3d Cir. 2005)). Even though materiality has been recognized as an element of the federal wire fraud statute, “failure of an indictment to allege materiality as an explicit element is not fatal to the indictment.” *United States v. Wecht*, No. 06-0026, 2007 WL 3125096, at \*11-12 (W.D. Pa. Oct. 24, 2007) (citing *United States v. White*, No. 04-370, 2004 WL 2612017, at \*12 (E.D. Pa. Oct. 29, 2004)); *United States v. Stewart*, 151 F. Supp. 2d 572, 584 (E.D. Pa. 2001) (“[T]he superseding indictment identifies misrepresentations that can only be characterized as material even though the word ‘material’ is not used.”). The court must examine whether the indictment alleges facts that would warrant the inference of materiality. *See Wecht*, 2007 WL 3125096, at \*5 (“In a mail fraud indictment that does not specifically allege materiality, allegations of specific facts may be sufficient to warrant the inference of materiality.” )

As an initial matter, we note that Defendant merely asserts, without offering any factual support, that the Superseding Indictment fails to allege an element of the wire fraud offense. Such a bald assertion, without any factual basis, is insufficient to meet her heavy burden of establishing a particularized need for disclosure. *United States v. Shane*, 584 F. Supp. 364, 367 (E.D. Pa. 1984) (“[C]ourts generally reject unsupported beliefs and conjectures as grounds for disclosure of grand jury materials to defendants.” (citing *United States v. Lovecchio*, 561 F. Supp. 221, 232 (M.D. Pa. 1983))); *United States v. Holzwanger*, No. 10-00714, 2011 WL 1741920, at \*10 (D.N.J. May 4, 2011) (denying motion for disclosure of grand jury instructions where the defendants merely speculated that the jury was improperly instructed on the law);

*United States v. Naegele*, 474 F. Supp. 2d 9, 10 (D.D.C 2007) (“It is also settled that conclusory or speculative allegations of misconduct do not meet the particularized need standard; a factual basis is required.”).

In any event, it is clear from the face of the Superseding Indictment that the Government sufficiently pled material misrepresentations that deprived the victims of money. First, the Superseding Indictment charges both Brown and Defendant with the fabrication of board meeting minutes, board resolutions, and consulting contracts. (*See* Counts 15-37 ¶¶ 30, 32, 38.) These fabricated documents were available to the School District for inspection and prevented the School District from discovering that Planet Abacus and AcademicQuest had not entered into a Board-approved contract. Moreover, the fraudulent management contract is the basis for the fraudulent payments, and thus it is reasonable to infer that its very existence was material to Planet Abacus’ decision to pay AcademicQuest. Accordingly, the Indictment sufficiently alleges facts that would warrant an inference of materiality.

Defendant also makes the unsubstantiated claim that the Government failed to allege that the victims had a money or property interest in the proceeds of the fraud. It is well settled that the Government need not prove that the victim of the fraud actually suffered any monetary loss, merely that they were exposed to a loss of money or property. *Wright*, 665 F.3d at 573; *Riley*, 621 F.3d 312, 327 (3d Cir. 2010) (“[T]he Government need not prove actual loss to the locality to satisfy the elements of the mail fraud statute.”); *see also* Mod. Crim. Jury Inst. 6.18.1341-4 (“[I]t is not necessary that the government prove that . . . the intended victim actually suffered any loss.”). The Superseding Indictment alleges that AcademicQuest and Brown received fraudulent payments from Planet Abacus totaling \$705,561.62. Planet Abacus was thus exposed to a substantial monetary loss as a result of the fraudulent scheme alleged in the Superseding

Indictment. Again, as the Superseding Indictment contains sufficient factual allegations to plead an offense under the federal wire fraud statute, Defendant has failed to establish a particularized need for the production of the grand jury transcripts.<sup>9</sup>

### III. CONCLUSION

For the foregoing reason, Defendant's Motion will be denied.

An appropriate Order follows.

**BY THE COURT:**



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**R. BARCLAY SURRICK, J.**

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<sup>9</sup> In the alternative, Defendant requests that the Court perform an *in camera* review of the grand jury transcripts. Since we have concluded that Defendant has failed to establish a particularized need for disclosure, an *in camera* review of the grand jury transcripts is unnecessary. *See Shane*, 584 F. Supp. at 367 (denying the defendant's request for disclosure or *in camera* review of grand jury materials when motion was based on "mere unsupported pleadings"); *Welch*, 201 F.R.D. at 525 (holding that an *in camera* review of grand jury instructions would serve no purpose as the court had previously ruled that the defendants had failed to show a particularized need for disclosure of the grand jury materials).

