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STATE OF NEW JERSEY, v. GEORGE E. NORCROSS, III, PHILIP A. NORCROSS, WILLIAM M. TAMBUSSI, DANA L. REDD, SIDNEY R. BROWN, and JOHN J. O'DONNELL, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – MERCER COUNTY DOCKET NO. MER-24-001988 INDICTMENT NO. 24-06-00111-S

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT SIDNEY R. BROWN'S SUPPLEMENTAL MOTION TO DISMISS THE INDICTMENT

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INTRODUCTION

In most criminal cases, whether a defendant has committed the offense charged is a matter that must await the outcome of the trial. This case is very different, for two reasons, embodied in both the motion filed jointly by all defendants and in this separate motion filed by Defendant Sidney Brown.[1]

First, even if every single allegation of the 111-page Indictment is taken as true, what is alleged does not describe any crime whatsoever, let alone the offenses of extortion and official misconduct that are at the heart of the Indictment; those are the subjects of the Defendants' Memorandum Of Law In Support Of Defendants' Motion To Dismiss (hereinafter, "Defendants' Joint Brief"), in which Mr. Brown has joined and which he fully supports. In addition, however, for the reasons set forth in this separate submission, and again looking solely within the four corners of the Indictment, the allegation that Mr. Brown participated in a racketeering ("RICO") conspiracy also fails—not as a matter of fact, but of law—because the Indictment fails to state that offense as well. Instead, its allegations, limited as they are to Mr. Brown having participated in a single meeting, do not come close to adequately alleging his participation in an enterprise and certainly do not and cannot—again, strictly as a matter of law—amount to his having done so through a "pattern of racketeering activity," a fundamental element of the offense.

Second, the Indictment does not even satisfy the most basic requirement of such a pleading—that it allege each element of the offenses at issue. Here, as set forth below, the Indictment fails to allege essential elements that are required in order for criminal liability to attach

[1] This motion to dismiss is, as previously discussed with the Court, limited to the face of the Indictment. Should any charges against Mr. Brown survive the motion to dismiss, Mr. Brown reserves the right to raise additional arguments concerning the flawed presentation of the case to the Grand Jury, *see* Tambussi Br. at 7-18, or other challenges that go beyond the face of the Indictment.

at the outset of a prosecution. Again, the Defendants' Joint Brief makes this case with regard to extortion and official misconduct, in particular. As discussed below, when it comes to RICO, the Indictment fails to allege both Mr. Brown's agreement to conduct or participate in the conduct of the affairs of the enterprise and his agreement to commit at least two predicate acts. Both are required but neither are set forth in the Indictment. Likewise, with respect to official misconduct, the Indictment simply does not allege, as it is required to do, that he shared the intent of any official to violate her legal duty. For this reason too, the Indictment, lengthy though it is, does not suffice to justify putting Mr. Brown through the criminal process in which he is stunned to find himself after a lifetime of extraordinary business success, characterized always by integrity, generosity and genuine caring for his community, including Camden, New Jersey.

It is under these circumstances that, fortunately, trial courts like this one have the power to pretermit criminal prosecutions, nipping them in the bud before further harm can be done. The standard pursuant to which Courts do so is understandably high. But where that standard is met, Courts have not only the authority but also the obligation to grant pretrial motions to dismiss legally baseless indictments, in order to spare the Courts and the public of the time and expense of trial, and the defendant the risk, pain and unfairness of having to navigate our criminal justice system. In this case, that standard is readily met, and the Indictment should accordingly be dismissed as against Defendant Sidney Brown.

SUPPLEMENTAL STATEMENT OF FACTS

A. Indictment Allegations

The factual allegations in the Indictment concerning Sidney Brown are minimal. Mr. Brown is the CEO of NFI, a trucking logistics company. Ind. ¶ 13. He was a member of the board at Cooper University Health Care ("Cooper Health"). *Id.* And, he was a partner in the groups that own the Ferry Terminal Building; an office tower that was later called Triad1828 Centre; and a residential building that became 11 Cooper. *Id.* As well, Mr. Brown, along with Defendants George E. Norcross, III ("George Norcross") and John J. O'Donnell, was a member of Camden Partners Tower group ("Camden Partners"). *Id.* ¶ 107. The Indictment states that Camden Partners was represented by Philip A. Norcross ("Philip Norcross") to engage in negotiations with Liberty Property Trust regarding the construction of Triad1828 Centre and 11 Cooper. *Id.*

As described in more detail in the statement of facts contained in Defendants' Joint Brief, Mr. Brown and others are alleged to have sought to construct Triad1828 Centre and 11 Cooper as part of their extraordinary, commendable and entirely lawful initiative to revitalize the Camden Waterfront. *Id.* ¶ 94. In connection with this plan, the Indictment identifies Developer-1, the founder of Dranoff Properties, Inc., ("Dranoff"), who held certain property rights that obstructed those projects. *Id.* More specifically, Dranoff owned the Victor Lofts building, a housing development at the Camden Waterfront, which held a view easement, set to expire in 2022, which restricted the height of structures that could be built to the west of it, including the proposed Triad1828 Centre. *Id.* ¶¶ 19, 34, 94(c). Dranoff also held a right of first refusal for residential

development in the Camden Waterfront area, which would include development of 11 Cooper. *Id.* ¶ 94(d).[2]

From September 2015 to October 2016, Dranoff negotiated with Liberty Property Trust concerning Triad1828 Centre and 11 Cooper. *Id.* ¶¶ 107, 109-11, 116. On October 20, 2016, during a phone call between George Norcross, Phil Norcross, Dranoff, and Dranoff's counsel, the group struck a deal concerning the release of Dranoff's property rights. *Id.* ¶ 136. Liberty Property Trust memorialized this deal in a written agreement the next day, which, among other things, included that:

- Dranoff would terminate the Victor Lofts view easement;
- Dranoff would sell its residential right of first refusal, certain other redevelopment rights, and $18 million worth of ERG tax credits[3] that could be redeemed following development on the 11 Cooper site;
- The Michaels Organization would reimburse Dranoff up to $550,000 for costs incurred;
- Liberty Property Trust would pay Dranoff $1 million for the ERG tax credits and $750,000 to act as a consultant on the anticipated development.

Id. ¶¶ 138, 152. However, later that same day, Dranoff reneged on the deal, jeopardizing the plan. *Id.* ¶ 139. As a result, during a conference call on October 22, 2016, some of the Defendants, including Mr. Brown, discussed whether the City of Camden might use its eminent domain power to condemn Dranoff's easement (*i.e.*, extinguish it following judicial approval and payment to

[2] Dranoff also had an agreement with the Camden Redevelopment Agency to redevelop a building referred to as Radio Lofts. Ind. ¶ 98(d). Mr. Brown is not alleged to have had any involvement in the Radio Lofts matter and is not charged in related Count Four of the Indictment.

[3] ERG tax credits were provided pursuant to the Economic Redevelopment and Growth program administered by the New Jersey Economic Development Authority under the Economic Opportunity Act of 2013 to provide credits of up to forty percent of a capital investment in residential projects in Camden, subject to a net benefit test, *i.e.*, that the net positive benefit to the State was at least equal to the amount of the credit. Ind. ¶¶ 29, 30.

Dranoff of its objective fair value).[4] *Id.* ¶¶ 128-30, 142-149. That condemnation action, however, was never threatened, and never happened. *See id.* ¶¶ 151, 154. Instead, Liberty Property Trust offered Dranoff an additional $200,000, bringing the total cash value to Dranoff to $1.95 million, an agreement which he accepted on October 24, 2016. *Id.* ¶¶ 151-52, 154. That same day, Conner Strong & Buckelew, NFI, and The Michael's Organization applied for Grow NJ tax credits[5] for the proposed Triad1828 Centre, which the Economic Development Authority awarded on March 24, 2017. *Id*. at ¶¶ 158-59.

Triad1828 Centre and 11 Cooper were eventually constructed in Camden. *Id.* ¶ 160, 169. Triad1828 Centre was owned by Camden Partners Tower Equities, an entity comprised of LLCs associated with George Norcross, Mr. Brown, and Mr. O'Donnell. *Id.* at 160. NFI also leased office space in Triad1828 Centre. *Id.* NFI applied for and received Grow NJ tax credits for its occupancy of Triad1828 Centre for the 2020 calendar year, credits which it subsequently sold. *Id.* ¶ 162. 11 Cooper was owned by CP Residential GSGZ, LLC, which was owned by LLCs that include George Norcross, Mr. O'Donnell, and Mr. Brown as part of their ownership. *Id.* ¶ 169.

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[4] Mr. Brown is not alleged to have been part of the negotiations or discussions leading up to this conference call, and his alleged contribution to the conference call was limited to one question regarding the goal of the litigation and another about the purpose of the call. Ind. ¶¶ 146, 149. Mr. Brown is also not alleged to have ever communicated with Dranoff or with the City of Camden. Indeed, George Norcross is alleged to have told the Liberty Property Trust CEO that "if NFI [Mr. Brown's company] walked away, it wouldn't be a big deal." *Id*. ¶ 121.

[5] The Indictment explains that Grow NJ tax credits were awarded as part of the Grow New Jersey Assistance Program, a tax incentive credit program administered by the New Jersey Economic Development Authority. Ind. ¶ 26. Grow NJ was enacted in 2012 and expanded in 2013 by the Economic Opportunity Act. *Id*. ¶¶ 26, 28. Under Grow NJ, a business would be awarded tax credits if it met certain eligibility requirements, including showing that the tax credits were a material factor in the decision to make a capital investment in the area (here, Camden), and demonstrating that the capital investment and creation of jobs would result in a "net positive benefit" to the State that was at least equal to the credits requested. *Id*. ¶¶ 26-29. Once awarded, the tax credits could be used to offset the amount of tax owed to the State or sold to another company to use as an offset. *Id*. ¶ 27; *see also* n.3, *supra*.

Between 2022 and 2023, the ownership group of 11 Cooper applied for and received ERG tax credits, which it subsequently sold. *Id.* ¶ 211.

B. The Charges In The Indictment

The Indictment charges Mr. Brown with eight counts; given the centrality of the Indictment to this motion, it is described here at length:

- **Count One** charges racketeering conspiracy, in violation of N.J.S.A. 2C:41-2(c) and (d) and N.J.S.A. 2C:5-2, alleging, in conclusory terms, that Mr. Brown and the other Defendants conspired, with the purpose of promoting and facilitating commission of the crime of racketeering, that one or more of them would engage in racketeering and that one or more of them would aid in the planning, solicitation, and commission of the crime of racketeering. Ind. ¶¶ 213(a)-(b). As discussed below, Count One refers to the Defendants generally; to the extent that any actions are alleged as to Mr. Brown, they are described in the preceding paragraphs of the Indictment;

- **Count Three** charges conspiracy, in violation of N.J.S.A. 2C:5-2, to commit various offenses with respect to the Triad1828 Centre and 11 Cooper, including (A) theft by extortion (N.J.S.A. 2C:20-5), by conspiring to obtain by extortion certain property of Dranoff, *i.e.*, a view easement, right of first refusal, residential development rights, and tax credits, Ind. ¶ 220(b)(i); (B) criminal coercion (N.J.S.A. 2C:13-5), by conspiring to take and withhold action as an official and cause an official to take and withhold action, and perform any other act that would not in itself substantially benefit the Defendants, but which was calculated to substantially harm Dranoff with respect to their business, career, financial condition, and reputation, Ind. ¶ 220(b)(ii); (C) financial facilitation of criminal activity (N.J.S.A. 2C:21-25(a) and (c)), by conspiring to transport and possess property valued at more than $500,000—*i.e.*, funds from the sale of Grow NJ and ERG tax credits—that Defendants knew was derived from criminal activity, Ind. ¶ 220(b)(iii), and conspiring to direct, organize, finance, plan, managed, supervise, and control these tax credits, Ind. ¶ 220(b)(iv); (D) misconduct by a corporate official (N.J.S.A. 2C:21-9(c)), by conspiring to use, control, and operate Conner Strong & Buckelew, NFI, The Michael's Organization, CP Residential GSGZ, LLC, and Camden Partners Tower Equities for the furtherance and promotion of the criminal objects of theft by extortion, criminal coercion, financial facilitation of criminal activity, and official misconduct, thereby deriving a benefit for themselves and another in whom they were interested in excess of $75,000, Ind. ¶ 220(b)(v); and (E) official misconduct (N.J.S.A. 2C:30-2), by conspiring to commit the offense of official misconduct by Mayor Redd committing the acts described in Counts One, Five, Six, Nine, and Ten, and the actions described in Count Three of the Indictment, Ind. ¶ 220(b)(vi);

- Two counts of financial facilitation of criminal activity, in violation of N.J.S.A. 2C:21-25(a) and N.J.S.A. 2C:2-6 (**Count Five** with respect to Triad1828 Centre tax credits and **Count Nine** with respect to 11 Cooper tax credits), by possessing property valued

at more than $500,000—namely, funds from the sale of Grow NJ tax credits related to the Triad1828 Centre (Count Five) and funds from the sale of ERG and Grow NJ tax credits related to 11 Cooper (Count Nine)—that Defendants knew were derived from criminal activity, Ind. ¶¶ 224; 232;

- Two counts of financial facilitation of criminal activity, in violation of N.J.S.A. 2C:21-25(c) and N.J.S.A. 2C:2-6 (**Count Six** with respect to Triad1828 Centre and **Count Ten** with respect to 11 Cooper tax credits), by directing, organizing, financing, planning, managing, supervising, and controlling the transactions in property valued at more than $500,000—namely, Grow NJ tax credits related to the Triad1828 Centre (Count Six) and ERG and Grow NJ tax credits related to 11 Cooper (Count Ten)—that they knew were derived from criminal activity, Ind. ¶¶ 226, 234;

- **Count Twelve** charges misconduct by a corporate official, in violation of N.J.S.A. 2C:21-9(c) and N.J.S.A. 2C:2-6, with respect to Triad1828 Centre and 11 Cooper, by using, controlling, and operating Conner Strong & Buckelew, NFI, The Michael's Organization, CP Residential GSGZ, LLC, and Camden Partners Tower Equities for the furtherance of the criminal objects of theft by extortion, criminal coercion, financial facilitation of criminal activity, and official misconduct, Ind. ¶ 238; and

- **Count Thirteen** charges official misconduct, in violation of N.J.S.A. 2C:30-2 and N.J.S.A. 2C:2-6, by Dana Redd, then-Mayor of the City of Camden, committing the acts in Counts One to Three and Five to Twelve of the Indictment, Ind. ¶ 240.

Mr. Brown has pled not guilty to the charges against him; he is presumed innocent and, as a trial would show, actually is. But for the reasons set forth in the Defendant's Joint Brief, as well as certain portions of the co-defendant's memoranda, *see* Section C, *infra*, each and every one of these Counts fails to state an offense and, in any event, is time-barred and must be dismissed. In addition, for the reasons set forth below, Counts One, Three, and Thirteen also separately fail as to Mr. Brown as a matter of law.

LEGAL ARGUMENT

A. Count One Of The Indictment Is Facially Deficient And Must Be Dismissed As Against Sidney Brown Because It Fails To Allege Facts Constituting The Essential Elements Of The Offense.

Count One charges Mr. Brown with racketeering conspiracy in violation of N.J.S.A. 2C:41-2(c) and (d). N.J.S.A. 2C:41-2(c) provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in or activities of which affect trade or commerce to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

Subsection (d) makes it crime to conspire, as defined by N.J.S.A. 2C:5-2, to violate any provisions of N.J.S.A. 2C:41-2, which includes subsection (c). N.J.S.A. 2C:5-2, in turn, provides:

> A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he: (1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (2) Agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

Under New Jersey law, a racketeering conspiracy has two essential elements: "an agreement to violate RICO and the existence of an enterprise." *State v. Ball*, 141 N.J. 142, 176 (1995). The enterprise is a statutory element "distinct from the incidents constituting the pattern of activity." *Id.* at 162. Because it is distinct, the enterprise must have an "organization" that is formal or informal. *Id.* at 161-62. The Supreme Court of New Jersey has explained that the hallmark of an enterprise is interactions of the sort necessary to accomplish a common goal:

> The hallmark of an enterprise's organization consists rather in those kinds of interactions that become necessary when a group, to accomplish its goal, divides among its members the tasks that are necessary to achieve a common purpose. The division of labor and the separation of functions undertaken by the participants serve as the distinguishing marks of the "enterprise" because when a group does so divide and assemble its labors in order to accomplish its criminal purposes, it must necessarily engage in a high degree of planning, cooperation and coordination, and thus, in effect, constitute itself as an "organization."
>
> [*Id.* at 162.]

Even assuming that an enterprise exists, which Mr. Brown in no way concedes,[6] the inquiry into a RICO conspiracy does not stop there. "In addition, the government must show agreement:

[6] The RICO count fails to allege an enterprise because, among other reasons, the statute is intended to target "substantial organized crime activity," which includes a division of labor and separation

that each participant knowingly associated himself with the larger enterprise." *United States v. Riccobene*, 709 F.2d 214, 224 (3d Cir. 1983), *overruled on other grounds by United States v. Bergrin*, 650 F.3d 257, 266 n.5 (3d Cir. 2011).[7] As to the agreement, the New Jersey Supreme Court has made clear that there are two aspects: "One involves the agreement proper, that is, an agreement to conduct or participate in the conduct of the affairs of the enterprise. The other involves an agreement to the commission of at least two predicate acts. If either agreement is lacking, the defendant has not embraced the objective of the conspiracy—the substantive violation of the RICO Act—that is required for any conspiracy conviction under classic conspiracy law." *Ball*, 141 N.J. at 176; *see also State v. Fair*, 2022 WL 1145129, at *44 (N.J. Super. Ct. App. Div. Apr. 19, 2022) (same).

While an agreement is the crux of any conspiracy charge, *see, e.g.*, *State v. Samuels*, 189 N.J. 236, 245-46 (2007) ("It is the agreement that is pivotal."); *State v. Kamienski*, 254 N.J. Super. 75, 93 (App. Div. 1992) ("The gist of a conspiracy is the actual agreement for the commission of the substantive crime." (internal citations omitted)), an indictment alleging a RICO conspiracy must fulfill very specific requirements unique to that statute: "[A] RICO conspiracy is never simply an agreement to commit specified predicate acts that allegedly form a pattern of racketeering. Nor is it merely an agreement to join in a particular enterprise. Rather, it is an agreement to conduct or to participate in the conduct of a charged enterprise's affairs through a

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of functions to achieve a common criminal purpose, none of which is alleged here. *See Ball*, 141 N.J. at 161.

[7] "The source of New Jersey's RICO Act (Racketeer Influenced and Corrupt Organizations Act), N.J.S.A. 2C:41-1 to -6.2, is the federal RICO Act, 18 U.S.C.A. §§ 1961 to 1968. As a result, federal legislative history and case law is useful in construing New Jersey's RICO law where the provisions do not significantly differ." *State v. Taccetta*, 301 N.J. Super. 227, 245 (App. Div. 1997) (internal citation omitted).

pattern of racketeering." *State v. Cagno*, 211 N.J. 488, 509 (2012) (quoting *United States v. Pizzonia*, 577 F.3d 455, 464 (2d Cir. 2009)); *see also* Model Jury Charges (Criminal), "Conspiracy to Commit Racketeering (N.J.S.A. 2C:41-2(d))" (approved March 22, 2021) ("[T]he State must prove the following elements: (1) That the defendant agreed with another person or persons that they or one or more of them would engage in conduct which constitutes a crime or an attempt or solicitation to commit such crime; OR That the defendant agreed to aid another person or persons in the planning or commission of a crime or of an attempt or solicitation to commit a crime. OR That the defendant agreed to participate in the conduct of a charged enterprise's affairs through a pattern of racketeering. AND (2) That the defendant's purpose was to promote or facilitate the commission of the crime of racketeering." (capitalization in original)).[8] Although a defendant "need not know the identities of all the conspirators, nor . . . all the details of the enterprise," the defendant "must have some minimal knowledge of the extent of [the] enterprise," and must know "that the enterprise extends beyond his individual role." *Ball*, 141 N.J. at 176 (citation omitted); *id.* at 180 ("A defendant's knowledge of the general nature of the enterprise and knowledge that the enterprise extends beyond his or her individual role is sufficient."). But none of these essential allegations—none at all—is charged as to Mr. Brown in Count One of the Indictment.[9]

[8] This Court may, of course, look to model jury charges when deciding a motion to dismiss an indictment. *See, e.g.*, *State v. Brady*, 452 N.J. Super. 143, 159 (App. Div. 2017) (relying on model jury charges to state the elements of the crime alleged when deciding a motion to dismiss the indictment).

[9] Similarly, in the federal context, "conspiracy to violate § 1962(c) requires: (1) that two or more persons agree to further an enterprise whose activities affect or would affect interstate or foreign commerce, and whose execution results or would result in a person conducting or participating directly or indirectly in the enterprise's affairs through a pattern of racketeering activity; (2) that the defendant was a party to or a member of this agreement; and (3) that the defendant joined the agreement knowing of its objectives and with the intention of furthering or facilitating them." *United States v. Williams*, 974 F.3d 320, 369-70 (3d Cir. 2020).

1. The Indictment fails to allege that Sidney Brown was aware of the extent of the purported enterprise.

It is well-established that an indictment must allege "all the essential facts of the crime." *State v. Dorn*, 233 N.J. 81, 93-94 (2018); *see R.* 3:7-3 ("The indictment or accusation shall be a written statement of the essential facts constituting the crime charged."). That is, "[a] valid indictment may not simply allege the 'essential elements of the offense;' it must also allege specific facts that satisfy those elements." *State v. Jeannotte-Rodriguez*, 469 N.J. Super. 69, 103 (App. Div. 2021) (quoting *United States v. Menendez*, 137 F. Supp. 3d 688, 706 (D.N.J. 2015)); *see also State v. Wein*, 80 N.J. 491, 497 (1979) ("The indictment must charge the defendant with the commission of a crime in reasonably understandable language setting forth all of the critical facts and each of the essential elements which constitute the offense alleged."). Thus, as a general rule, "[t]he charging instrument must include a satisfactory response to the questions of 'who . . ., what, where, and how.'" *Jeannotte-Rodriguez*, 469 N.J. Super. at 103 (quoting 5 Wayne R. LaFave et al., Criminal Procedure, § 19.3(c) (4th ed. 2020)).

Moreover, and critically with respect to the current motions, when the factual allegations contained in an indictment do not "support the charges," the indictment is "'palpably defective' and subject to dismissal." *State v. Brady*, 452 N.J. Super. 143, 158 (App. Div. 2017) (quoting *State v. Morrison*, 188 N.J. 2, 12 (2006)); *see also State v. Hogan*, 144 N.J. 216, 229 (1996) (An indictment that is "manifestly deficient or palpably defective" should be dismissed). It is on this basis that New Jersey courts routinely dismiss indictments, and appellate courts affirm such dismissals, where the conduct alleged does not fall within the criminal statutes charged. *See, e.g., Morrison*, 188 N.J. at 20 (dismissal of indictment where the statute charged did not proscribe the acts alleged taken); *State v. L.D.*, 444 N.J. Super. 45, 61 (App. Div. 2016) (dismissal was appropriate where the indictment was "clearly lacking" in facts to support the offense charged);

State v. Thompson, 402 N.J. Super. 177, 190, 204 (App. Div. 2008) (affirming dismissal of official misconduct charge where the conduct alleged could not legally "provide [a] basis to impose criminal sanctions"). Indeed, it is reversible error not to do so. *See, e.g.*, *State v. Perry*, 439 N.J. Super. 514, 532 (App. Div. 2015) (affirming dismissal of indictments, and reversing trial court's refusal to dismiss others, where the facts, as alleged, did not amount to a crime and exceeded the scope of conduct that the statute was intended to prohibit); *see also State v. Riley*, 412 N.J. Super. 162, 169 (Law. Div. 2009) ("[W]here the statute is interpreted in such a way that the facts presented to the grand jury simply do not fall within the statute invoked, then the indictment must be dismissed.").

Here, the Indictment does not properly charge the first aspect of the agreement to violate RICO—*i.e.*, that Mr. Brown agreed "to conduct or participate in the conduct of the affairs of the enterprise"—because it does not even allege that Mr. Brown had "some minimal knowledge of the extent of [the] enterprise." *See Ball*, 141 N.J. at 176. Instead, Count One lumps Mr. Brown together with his alleged co-defendants and claims that they were all part of a single "enterprise" that dates back to 2012.[10] Ind. ¶ 213. The Indictment alleges that the extent (or purpose) of the supposed enterprise includes a broad range of objectives:[11]

- Preserving, protecting, promoting, and enhancing the power, reputation, and profits of the enterprise and its members and associates;
- Preserving, protecting, promoting, and enhancing the reputation and political power of George Norcross who was the leader of the enterprise, through the use of various means, including controlling endorsements and access to the local political party apparatus, directing appointments to government positions, intimidating political

[10] Mr. Brown's position should in no way be interpreted as a concession that the Indictment sufficiently alleges that the other Defendants were members of any enterprise. For the reasons set forth in Defendants' Joint Brief, no offense is stated against any of them.

[11] The listed purposes of the alleged enterprise are restated here to demonstrate both the breadth of the enterprise defined by the State and how little of it—if any—is even tangentially related to the truly minimal allegations against Mr. Brown.

opponents, using its influence and control over government agencies to cause opponents to lose government contracts;

- Enriching and rewarding members, allies, and associates of the enterprise, including with political endorsements, appointments to public positions, influencing government contracts, and placement in lucrative private sector jobs;

- Influencing the New Jersey Legislature, which sits in Trenton, New Jersey, to pass the Economic Opportunity Act in 2013 in a manner that greatly increased tax credit awards for projects in Camden and was tailor made to advance the interests of the enterprise;

- Obtaining Grow NJ and ERG tax credits over a 10-year period, beginning with the acquisition of the tax credits through applications to the EDA by the enterprise members and associates and their associated firms, and by other means, and which, according to the enterprise's plan, would be received during that 10-year period through annual certifications to the EDA;

- Using the tax credits to pay for a building or buildings in Camden, which would be occupied by certain of the enterprise members' firms, and firms associated with enterprise members, and to cover the costs of Camden property occupied by firms associated with enterprise members, so that costs expended in planning, constructing, or occupying such property would be offset by the application or sale of the tax credits;

- Concealing, misrepresenting, and hiding the illegal operation of the enterprise and acts done in furtherance of the enterprise from the public and law enforcement, for the purpose of advancing the objectives of the enterprise, including by misleading the public, law enforcement, the news media, and others into believing that the acquisition and sale of the tax credits stemmed from purely lawful activity, and thus avoiding attempts by the State to recapture the value of awarded tax credits;

- Promoting compliance with the enterprise's demands by retaliating against those in the way of and opposed to the enterprise; and

- Using the enterprise's reputation for controlling governmental entities to intimidate and threaten those who held property interests that the enterprise wanted to acquire, including in order to apply for, and receive, Grow NJ and ERG tax credit awards.

Id. ¶ 215.

However, as the specific facts underlying Count One—as set forth in the 211 preceding paragraphs and incorporated by reference in that Count—show, Mr. Brown is not alleged to have had *any* involvement whatsoever in or any knowledge at all of numerous of the purported aspects of the enterprise, including:

- Any political matters, such as political endorsements, access to local political parties, appointments to government or public positions, intimidation of political opponents, or control over government entities or agencies;
- Any placement in private sector jobs;
- The passage of the Economic Opportunity Act;
- Concealment or misrepresentation of purportedly illegal activities from the public and law enforcement or avoiding attempts by the State to recapture the tax credits;
- Retaliating against opponents of the "enterprise"; or
- Using the purported enterprise's reputation in order to control governmental entities to intimidate and threaten others.

The Indictment also nowhere alleges that Mr. Brown had any involvement in the events that form several critical aspects of the alleged enterprise's activities—the L3 Complex transaction or the Radio Lofts matter. *See, e.g.*, Ind. ¶¶ 26-92 (discussing the Economic Opportunity Act and the L3 Complex transaction without any mention of Mr. Brown or NFI); *id.* ¶ 147 (alleging that during the conference call on October 22, 2016, George Norcross "raised the issue of having the CRA take away Developer-1's Radio Lofts redevelopment option, an issue unrelated to his group's negotiations with Developer-1"); *id.* ¶¶ 181-92 (discussing the Radio Lofts matter).[12] Nor of

[12] Accordingly, but significantly, Mr. Brown is not charged in any of the Counts arising from those alleged matters:

- Count Two: Conspiracy to Commit Theft by Extortion, Criminal Coercion, Financial Facilitation of Criminal Activity, Misconduct by Corporate Official, and Official Misconduct - First Degree (L3 Complex);
- Count Four: Conspiracy to Commit Theft by Extortion and Criminal Coercion - Second Degree (Radio Lofts);
- Count Seven: Financial Facilitation of Criminal Activity - First Degree (L3 Complex Credits, Possession);
- Count Eight: Financial Facilitation of Criminal Activity - First Degree (L3 Complex Credits, Directing Transactions); and

course, can an allegation that Mr. Brown was simply associated with other Defendants around the time of some of the allegations in the Indictment substitute for an allegation that he actually agreed to participate in the alleged conspiracy. *See* Model Jury Charges (Criminal), "Conspiracy to Commit Racketeering (N.J.S.A. 2C:41-2(d))" (approved March 22, 2021) ("Mere association, acquaintance, or family relationship with an alleged conspirator is not enough to establish a defendant's guilt of conspiracy."); *State v. Augello*, 2021 WL 1541594, at *7 (N.J. Super. Ct. App. Div. Apr. 20, 2021) ("[D]efendant's mere association with or membership in the Pagans in itself in no way proves the defendant was involved in racketeering activity or that the Pagans constituted a criminal enterprise.").

In the seminal case of *State v. Ball*,[13] the defendants were at the core of an illegal dumping scheme—they organized and protected the scheme, were aware of the common purpose of the enterprise to make money from illegal dumping, agreed to participate in the enterprise through illegal acts that were at the core of the enterprise's business, generally understood that the enterprise extended beyond their individual role, and agreed to commit illegal acts that were

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- Count Eleven: Misconduct by a Corporate Official - Second Degree (Cooper Health).

This omission is more than telling: it is dispositive as to Mr. Brown. The State may not allege, on the one hand, that these disparate schemes define the scope of the enterprise and also candidly admit that Mr. Brown had no involvement in them.

[13] Although *Ball* addressed the sufficiency of the evidence presented during trial, which requires application of a different standard, courts deciding a motion to dismiss an indictment routinely look to such cases to determine what the law is and to inform what is required to sustain an indictment. *See, e.g.*, *State v. Campione*, 462 N.J. Super. 466, 493 (App. Div. 2020) (relying on post-trial decisions to determine whether the required elements of a conspiracy were charged on a motion to dismiss the indictment); *State v. Vasquez-Merino*, 2023 WL 3243154, at *6 (N.J. Super. Ct. App. Div. May 4, 2023) (relying on post-trial cases when addressing a motion to dismiss the indictment). As noted earlier, the law, as well as the interests of justice, demand the dismissal of a defective indictment before the damaging loss of time, cost, and reputational harm of an unjustified prosecution. While a post-verdict or Appellate Division-directed dismissal is vindication, the collateral consequences of an improper prosecution are severe and irreversible.

ongoing over a period of time thereby posing a threat of continuation. 141 N.J. at 185. The court found that the defendants "[a]ll were aware of the illegal objective of the enterprise, and they discussed their plans frequently." *Id*. at 183. And it found that the RICO enterprise there included the "kinds of interactions that become necessary when a group, to accomplish its goal, divides among its members the tasks that are necessary to achieve a common purpose." *Id*. at 161-62. Unlike the interactions and involvement of the participants in *Ball*, here, in the 80 pages preceding Count One, the Indictment merely alleges a single interaction between Mr. Brown and the other defendants: an October 22, 2016 conference call attended by, among others, Mr. Brown, George Norcross, Philip Norcross, William Tambussi (an attorney for George Norcross), and Mr. O'Donnell. Ind. ¶ 142. That is, on its face, the Indictment in this case is devoid of any allegation—of the sort that was present in *Ball*—that Mr. Brown knew that the enterprise extended beyond the one phone call that he is alleged to have participated in.

Moreover, this conference call solely concerned the Triad1828 Centre and 11 Cooper building, *see id.* ¶¶ 142-49, and took place years after the passage of the Economic Opportunity Act and the alleged completion of the L3 Complex transaction, *see id.* ¶¶ 28, 82. According to the Indictment, the only matter discussed during that conference call was potential litigation regarding Dranoff's property interests and how it would affect business negotiations with Dranoff. *Id*. ¶¶ 142-49. As for Mr. Brown, his alleged contribution was limited to one question regarding the goal of the litigation and another about the purpose of the call. *Id*. ¶¶ 146, 149. And co-defendant Tambussi's alleged response—again, according to the Indictment itself—described nothing illicit: "So, the thought process here is that . . . if in fact the court agrees with us, and we think that we have a very strong argument in that regard, the [Victor's] view easement's value comes down to virtually nothing . . . because . . . of the facts that we know with regard to . . . how the development

will enhance the value of [Dranoff]'s property. So, it puts [Dranoff] in a drastically different position in terms of negotiating." *Id.* ¶¶ 145, 149. Based on Mr. Tambussi's recommendation, including his representation that "we have a very strong argument," Mr. Brown—who is not an attorney, and who is not alleged to have been part of any other communications concerning this matter—thought that the group should move forward with Mr. Tambussi's plan. *Id.* ¶ 149. Nothing conveyed during this conference call, as alleged, suggested anything illicit. And the Indictment's description of this conference call includes no allegations, let alone facts to support, that Mr. Brown was aware that an "enterprise" even existed, much less one that dated back to 2012—four years before this alleged conference call—or one that extended beyond the single issue discussed during that call.

Put simply, the Indictment fails to allege that, by participating in a single conference call concerning a discrete matter, Mr. Brown agreed to participate in the affairs of the described enterprise, as the law requires. *See Ball*, 141 N.J. at 176. Thus, Count One must be dismissed as against Mr. Brown. *See, e.g.*, *State v. Fortin*, 178 N.J. 540, 633-34 (2004) (Under Article I, Paragraph 8 of the New Jersey State Constitution "every element [of the offense charged] must be alleged in the indictment. In the absence of such proof, the indictment is subject to dismissal."); *cf. United States v. Gonzalez*, 921 F.2d 1530, 1542-43 (11th Cir. 1991) (holding that the defendant did not agree to the "wide agreement" alleged by the government; instead, "[t]he government's evidence show[ed] only a more limited agreement on [the defendant's] part," and thus failed to show the defendant's "*agreement* to the *overall* conspiracy" (emphasis in original)).

2. The Indictment fails to allege that Sidney Brown agreed to commit at least two predicate acts as part of a "pattern of racketeering activity."

The Indictment also fails to allege the second essential element of a RICO conspiracy—"an agreement to the commission of at least two predicate acts." *See Ball*, 141 N.J. at 176. To be

sure, Count One alleges a violation of numerous *statutes* as part of the "pattern of racketeering activity," namely:

- "Interference with Commerce by Threats or Violence," in violation of 18 U.S.C. § 1951, by obstructing, delaying, and affecting commerce and the movement of any article and commodity in commerce, by extortion as it is defined in that section, to wit, by obtaining property from another, with consent, induced by wrongful use of actual and threatened fear and under color of official right, and attempting and conspiring so to do;
- Theft by Extortion, in violation of N.J.S.A. 2C:20-5;
- Financial Facilitation of Criminal Activity, in violation of N.J.S.A. 2C:21-25;
- Misconduct by Corporate Official, in violation of N.J.S.A. 2C:21-9; and
- Conspiracy to commit these crimes, in violation of N.J.S.A. 2C:5-2.

Ind. ¶ 216. For the reasons more fully articulated in Defendants' Joint Brief, the Indictment fails to allege violations of these statutes, as a matter of law. *See* Defs.' Br. at 15-27, 31-35; *Karo Mktg. Corp., Inc. v. Playdrome America*, 331 N.J. Super. 430, 444 (App. Div. 2000) (holding that claims brought under the New Jersey RICO statute "fail in the absence of predicate criminal activity").

But the provisions of RICO under which Mr. Brown is charged—N.J.S.A. 2C:41-2(c) and (d)—do not look to how many *statutes* are violated: they require that the specific defendant charged "conspire[ed] to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity, *i.e.*, two *acts* of racketeering activity within at least ten years of each other." *See Ball*, 141 N.J. at 179-80 (emphasis added). The New Jersey RICO statute prohibits multiple "incidents" rather than "acts," *see* N.J.S.A. 2C:41-1(d), but the result is the same: to be properly charged a defendant has to have done at least two things. Indeed, that the statute requires two predicate *acts* or *incidents* is clear from the mandate that those acts comprise a "pattern," also a fundamental element of the offense. *See Ball*, 141 N.J. at 164 (discussing *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985)). In that regard, "two isolated acts

of racketeering activity do not constitute a pattern," nor do "one 'racketeering activity' and the threat of continuing activity." *Sedima*, 473 U.S. at 496 n.14. Instead, a pattern of racketeering, as defined by statute (and consistent with the common-sense meaning of the word "pattern"), requires both (1) at least two *incidents* of racketeering conduct and (2) that the conduct must have "the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents." N.J.S.A. 2C:41-1(d) (emphasis added). Thus, the Supreme Court in *Ball* interpreted the statute as "expressly enjoin[ing] use of the RICO statute to cover isolated criminal incidents." 141 N.J. at 167-68. Rather, there must be "some degree of continuity, or threat of continuity," which is "inherent in the 'relatedness' element of the 'pattern of racketeering activity.'" *Id*. at 168. But, of course, this continuity element could never be satisfied by a single "act" or "incident."

The caselaw makes this clear. For example, a single bank robbery, although it may involve multiple racketeering activities, generally does not amount to a "pattern of racketeering":

> [A] single (interstate) bank robbery consists of several different parts (say, using a gun, threatening a teller, stealing a getaway car, perhaps abducting the teller as well, and eventually lying about participation). Some of those separate parts may themselves constitute separate criminal acts or "crimes" (in the technical sense that each, separately, violates a specific statute). Yet, those several separate criminal parts, taken together, do not generally make out a "pattern." To hold otherwise would mean that many individual bank robberies, frauds, drug sales, embezzlements, and other crimes as well would automatically fall within the scope of the RICO statute, a result contrary to RICO's basic purpose. One might express the fact that a single criminal episode, or event, is not a "pattern" by stating that its parts, taken together, do not "amount to or pose a threat of continued criminal activity." Or, one might risk circularity and simply state that those parts do not bear to each other the relevant ("pattern of racketeering") relationship. But, however courts express the point, they have consistently held that a single episode does not constitute a "pattern," even if that single episode involves behavior that amounts to several crimes (for example, several unlawful mailings).

Apparel Art Int'l v. Jacobson, 967 F.2d 720, 722-23 (1st Cir. 1992) (internal citations omitted). And this is entirely consistent with New Jersey law. *See Ball*, 141 N.J. at 168 ("[S]ome degree of

continuity, or threat of continuity, is required and is inherent in the "relatedness" element of the "pattern of racketeering activity."); *id.* at 169 ("[S]hort-term criminal activity, to be covered, must encompass incidents of criminal conduct that are not disconnected or isolated. Incidents of racketeering that occur sequentially, to overcome any inference that they are totally disconnected or isolated, must exhibit some temporal connection or continuity over time."); *Yucaipa Am. All. Fund I, L.P. v. Ehrlich*, 204 F. Supp. 3d 765, 782 (D. Del. 2016), *aff'd*, 716 F. App'x. 73 (3d Cir. 2017) ("The Third Circuit has often held that a single scheme involving a single injury to a single victim within a short period of time falls outside of RICO due to lack of continuity, even where all aspects are entirely related." (collecting cases)).

Of course, the Indictment here does not allege even a trace of a pattern with respect to Mr. Brown. He appears in a single interaction in the Indictment: the conference call that occurred on October 22, 2016. Ind. ¶¶ 142-49. On the basis of this call, the Indictment theorizes a single agreement to bring a court action against Dranoff. Ind. ¶ 127 (stating that George Norcross, Philip Norcross, Mr. Tambussi, Mr. Brown, and Mr. O'Donnell "then all agreed to cause the CRA to bring court action against [Dranoff] with the purpose of creating additional pressure on [Dranoff] to sell his rights"). And after this conference call, Dranoff entered into an agreement to release his sought after property rights in exchange for nearly $2 million. Ind. ¶¶ 151-52, 154. That ended the matter; nothing happened thereafter, as would be required to establish the "pattern" that RICO demands.

Even if this single agreement to commit a single act provided a sufficient factual basis to support an allegation that Mr. Brown agreed to commit a predicate RICO offense—and as set forth

in the Defendants' Joint Brief, it does not[14]—a single agreement is insufficient to allege Mr. Brown's participation in a RICO conspiracy. *See Ball*, 141 N.J. at 176; *see also United States v. Private Sanitation Indus. Ass'n*, 793 F. Supp. 1114, 1147 (E.D.N.Y. 1992) ("Clearly, the RICO conspiracy claims cannot be maintained against [defendants] on the basis of only one allegation that they agreed to commit one predicate act; the forty-fifth and the forty-sixth claims for relief must therefore be dismissed as against these two defendants."). Specifically, these allegations fail to satisfy the New Jersey Supreme Court's clear mandate that RICO requires satisfaction of each of two requirements: "One involves the agreement proper, that is, an agreement to conduct or participate in the conduct of the affairs of the enterprise. The other involves an agreement to the commission of at least two predicate acts. *If either agreement is lacking, the defendant has not embraced the objective of the conspiracy—the substantive violation of the RICO Act—that is required for any conspiracy conviction under classic conspiracy law.*" *Ball*, 141 N.J. at 176 (emphasis added); *see also Fair*, 2022 WL 1145129, at *44 (same). As far as Mr. Brown's participation in any supposed conspiracy, the Indictment contains no allegations to support a threat of continuity. *See Ball*, 141 N.J. at 168 (requiring "some degree of continuity, or threat of continuity").

Mr. Brown is not alleged to have done (or agreed to do) anything else pertinent to this case, other than having his company, NFI, legitimately apply for and receive Grow NJ tax credits for

[14] The conference call and the resulting agreement to proceed with the condemnation action against Dranoff did not involve any threat. *See* discussion in Defs.' Br. at 23-27. The Indictment alleges that Defendants planned to persuade the Camden Redevelopment Agency to bring court action through a legitimate process, and this potential court action was never conveyed to Dranoff or filed. *See id.* at 24-25. Similarly, Defendants did not engage in anything "wrongful" in violation of the Hobbs Act because they planned to resolve this issue in court. *See id.* at 23-24. Indeed, the alleged source of pressure was an effort to persuade a government entity to file a lawsuit, which is not only lawful, but protected as part of the constitutional right to petition for the redress of grievances. *See id*. at 24-26; *see also* U.S. Const. amend. I; N.J. Const. art. I, § 18.

Triad1828 Centre, and agreeing that the 11 Cooper ownership group would apply for ERG tax credits for 11 Cooper, which it received. Ind. ¶¶ 162, 165, 171-72. But those allegations fail to state an agreement to commit any crime, let alone an agreement to commit a predicate act in furtherance of the "enterprise." Nowhere does the Indictment allege—nor could it—that Mr. Brown sought or received tax credits for which he was not eligible, or that he committed fraud in connection with the awards, and he has not been charged, here or elsewhere, with defrauding the New Jersey Economic Development Authority.[15] But without any crime alleged, facts concerning Mr. Brown's involvement in the application for and receipt of tax credits cannot form the basis of any supposed racketeering activity. *See State v. Ball*, 268 N.J. Super. 72, 100 (App. Div. 1993), *aff'd*, 141 N.J. 142 (1995) ("[P]redicate acts are those acts defined by statute to be illegal or 'Racketeering Activity' as set forth in N.J.S.A. 2C:41-1a(1) and (2)"); *Amboy Bank v. Harbor View Estates LLC*, 2022 WL 619544, at *5 (N.J. Super. Ct. App. Div. Mar. 3, 2022) ("Racketeering activity is defined as a predicate act of enumerated crimes recognized under New Jersey law or equivalent crimes under the laws of any other jurisdiction, or conduct constituting racketeering activity under the federal RICO Act." (quoting N.J.S.A. 2C:41-1(a))). And because nothing illicit is alleged with respect to the tax credits, all that is left is the single agreement to bring a court action against Dranoff, which as explained above is insufficient to maintain a RICO charge. *See Ball*, 141 N.J. at 179-80 (recognizing that N.J.S.A. 2C:41-2(c) and (d), when read together, speak to "conspiring to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity, *i.e.*, two acts of racketeering activity within at

[15] This conduct underlies the claimed predicate acts of financial facilitation of criminal activity and misconduct by a corporate official. However, as Defendants explained in their Joint Brief, these are derivative offenses; there must be some "criminal activity" from which the property being possessed or transacted has been "derived," N.S.J.A. 2C:21-25, or a "criminal object" furthered or promoted through the corporation, N.J.S.A. 2C:21-9(c). *See* Defs.' Br. at 35-37, 41-43.

least ten years of each other" (citation omitted)); *id.* at 167-68 (recognizing that the RICO statute was not designed to punish separate, isolated offenses); *Cagno*, 211 N.J. at 509 ("[A] RICO conspiracy . . . is an agreement to conduct or to participate in the conduct of a charged enterprise's affairs *through* a pattern of racketeering." (citation omitted) (emphasis in original)).

For these reasons, the Indictment's dearth of allegations concerning Mr. Brown's awareness of the extent of the purported enterprise or agreement to commit at least two predicate acts in furtherance of any such enterprise compels dismissal of Count One against him. *See Ball*, 141 N.J. at 176.

B. Counts Three And Thirteen Of The Indictment Fail To Sufficiently Charge Sidney Brown With Official Misconduct.

As discussed, "[i]t is well-established that an indictment cannot stand if it fails to charge an offense." *State v. Bennett*, 194 N.J. Super. 231, 234 (App. Div. 1984). Here, the Indictment purports to charge Mr. Brown, in Count Three, with first-degree conspiracy to commit theft by extortion, criminal coercion, financial facilitation of criminal activity, misconduct by corporate official, and official misconduct, in violation of N.J.S.A. 2C:20-5, N.J.S.A. 2C:13-5, N.J.S.A. 2C:21-25, N.J.S.A. 2C:21-9, N.J.S.A. 2C:30-2, and N.J.S.A. 2C:5-2. Mr. Brown also stands accused, in Count Thirteen, of second-degree official misconduct, contrary to N.J.S.A. 2C:30-2 and N.J.S.A. 2C:2-6, for acts allegedly taken by then-mayor of Camden, Dana Redd, as described in Counts One to Three and Five to Twelve of the Indictment.[16]

[16] Again, and notably, Mr. Brown is not charged in Counts Two, Four, Seven, Eight, or Eleven, which are based on allegations relating to the L3 Complex and Radio Lofts. Indeed, as set forth in Section A, *supra*, the only allegation in the Indictment involving Mr. Brown relates to an October 22, 2016 conference call concerning Triad 1828 Centre and 11 Cooper. Thus, to the extent Mr. Brown's liability for official misconduct is based on acts that Mayor Redd allegedly took in connection with the L3 Complex and Radio Lofts, he faces a very serious risk of being convicted for a crime in which he had absolutely no involvement. *See, e.g.*, *State v. Lee*, 2013 WL 1285434, at *4 (N.J. Super. Ct. App. Div. Apr. 1, 2013) ("The rule against duplicity protects defendant from

Official misconduct, as defined by N.J.S.A. 2C:30-2, provides:

> A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit:
>
> a. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner; or
>
> b. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

There is no question that Mr. Brown is not, and never has been, a public servant as defined under the statute—at no time did Mr. Brown hold any public office, work for the Government, or perform any governmental function (or exercise any control over anyone who did)—and the State does not purport to charge him as such. *See* N.J.S.A. 2C:27-1g (defining "public servant" as "any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function, but the term does not include witnesses"). Rather, although it is not explicit in the Indictment, the State appears to charge Mr. Brown with official misconduct under either a conspiracy or an accomplice theory of liability, *i.e.*, based on the conduct of someone else who did hold a public position. In that regard, while a private person may be charged as an accomplice to official misconduct or as part of a conspiracy, "the State must show that [the private person] 'acted with the purpose of promoting or facilitating the substantive offense for which he is charged,'" *State v. Tolotti*, 2019 WL 692300, at *9 (N.J. Super. Ct. App. Div. Feb. 20, 2019) (quoting *State v. Hinds*, 143 N.J. 540, 551 (1996)), and that the private person shared with the public servant the intent to abuse the public servant's office, *Hinds*, 143 N.J. at 551. Mr. Brown's alleged culpability is thus wholly dependent

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prejudice." (quoting *State v. N.J. Trade Waste Ass'n*, 96 N.J. 8, 21 (1984)). For this reason too, the Court should dismiss Count Thirteen.

upon at least one properly alleged count of official misconduct by a public official—in this case Mayor Redd the only public official charged.[17]

However, as set forth in detail in Defendants' Joint Brief, the Indictment fails to allege that Mayor Redd used her office to violate any legal duty that she had as then-mayor of Camden, and, does not adequately allege her subjective motives. *See* Defs.' Br. at 27-35. New Jersey's official misconduct statute, N.J.S.A. 2C:30-2, requires official action or inaction in violation of a concrete legal demand. *Id*. at 28-31. The State does not even attempt, however, to identify any legal authority that Mayor Redd purportedly exceeded, or any clear legal duty that she failed to carry out. *See id*. at 31. Rather, the Indictment merely describes routine political activity that comes nowhere close to violating the law. *See id.* at 32-34. Absent sufficient allegations of crimes committed by Mayor Redd, then, there is absolutely no way the Indictment could reasonably allege that Mr. Brown shared in Mayor Redd's alleged intent to abuse her office.

But even to the extent the Indictment could be read to suggest that Mayor Redd purposely committed an unauthorized act in violation of her official functions—an interpretation that is contrary to the Indictment's text and that Mr. Brown in no way concedes—the Indictment fatally fails to allege that Mr. Brown shared any such intent, or any facts to support such an inference, and thus, the official misconduct charges against Mr. Brown, set forth in Counts Three and Thirteen, must be dismissed, even if the Court should somehow deny Mayor Redd's own separate motion to dismiss. Specifically, the Indictment does not allege any facts to show that Mr. Brown had any involvement in, or even knew about the facts alleged with regard to Mayor Redd's

[17] Accordingly, if the Court dismisses the official misconduct charges against Mayor Redd, then the Court must also dismiss the official misconduct charges against Mr. Brown, as they are completely derivative of Mayor Redd's criminal liability. *See Hinds*, 143 N.J. at 551 ("[Defendant] should not be liable for official misconduct in the absence of proof that he shared with [the public official] the intent to abuse [the public official's] office").

purported plan to abuse her office or any allegedly improper acts. In fact, the Indictment does not allege any connection between Mr. Brown and Mayor Redd at all. Thus, for example, the Indictment does not allege: (1) that Mr. Brown ever contacted, communicated, or met with Mayor Redd; (2) that Mr. Brown was aware of any alleged agreement between Mayor Redd and any of his co-defendants that involved the improper use of Mayor Redd's office; (3) or that Mr. Brown knew of the acts that Mayor Redd is alleged to have taken, including (i) telling CFP CEO-1 to deal with Philip Norcross regarding the L3 Complex negotiations,[18] Ind. ¶¶ 49-50; (ii) informing CFP CEO-1 that his job was in jeopardy during the L3 transaction, Ind. ¶ 77; (iii) telling CFP CEO-1 that CC-1 would replace Cooper Health CEO-1 as co-chair on a non-profit board, Ind. ¶ 78; and (iv) failing to return telephone calls from Dranoff, Ind. ¶¶ 124-25.

Without any facts to show that Mr. Brown knew of any alleged agreement with Mayor Redd or of Mayor Redd's official functions and duties, the Indictment cannot sufficiently allege that Mr. Brown conspired or aided Mayor Redd's purportedly unauthorized acts with the understanding that doing so violated her obligation as then-mayor of Camden. *See Tolotti*, 2019 WL 692300, at *9 (affirming dismissal of second-degree conspiracy to commit official misconduct and second-degree official misconduct charges against a private citizen where there was no allegation or evidence presented to the grand jury that the private citizen was aware of the regulations governing the public officials' employment); *State v. Ruiz-Vidal*, 2021 WL 222737, at *5 (N.J. Super. Ct. App. Div. Jan. 22, 2021) (finding that "there was a reasonable probability that the defendant [a non-public official] would have been successful in moving to dismiss [a] second-

[18] As the State's decision to omit Mr. Brown from Counts Two, Seven, and Eight makes clear, Mr. Brown was not involved in the allegations relating to the L3 Complex at all. It follows that he can have no conspiratorial or accomplice liability for any of acts alleged in those counts including official misconduct.

degree official misconduct charge[]" where there was no indication that defendant worked to further the alleged scheme or was aware of an intermediary's agreement with the public servant to violate his office). Accordingly, the official misconduct charges, premised solely as it relates to Mr. Brown on conspiracy and accomplice theories of liability, are inadequate alleged as a matter of law, and must be dismissed for failing to charge an offense.

C. All Counts Of The Indictment Against Sidney Brown Must Be Dismissed.

As set forth above, Mr. Brown joins fully in the arguments set forth in Defendants' Joint Brief and the Brief In Support Of John J. O'Donnell's Motion To Dismiss The Indictment; he also joins Points I.C. and III of the Brief In Support Of Philip A. Norcross's Motion To Dismiss The Indictment; and Point III of the Brief In Support Of Defendant William M. Tambussi, Esq.'s Motion To Dismiss The Indictment. While certainly not fully reanalyzed or re-stated here, those arguments are equally applicable to Mr. Brown, warranting dismissal of all Counts against him.

As thoroughly set forth in the Defendants' Joint Brief, the Indictment fails to state the offenses of theft by extortion, criminal coercion, and official misconduct, requiring dismissal of the related Counts in the Indictment. More specifically, the only threats alleged in the Indictment concerned business consequences, or "coercive economic bargaining," for which "theft penalties would be quite inappropriate." *See, e.g.*, II *Final Report of the New Jersey Criminal Law Revision Comm'n, Commentary* 227-28 (1971); *State v. Roth*, 289 N.J. Super. 152, 160-62 (App. Div. 1996). In addition, the alleged efforts to persuade the City of Camden to use its eminent domain power to condemn Dranoff's easement through a legitimate action is protected as part of the constitutional right to petition for redress of grievances. *See* U.S. Const. amend. I; N.J. Const., art. I, § 18. For these reasons, as more fully explicated in Defendants' Joint Brief, the remaining Counts must also be dismissed because they are derivative of the unlawful threat and official misconduct charges.

In any event, all Counts of the Indictment are time-barred. As explained in Defendants' Joint Brief, and more fully elaborated in Mr. O'Donnell's brief, the alleged conspiracy and all derivative offenses are subject to a five-year statute of limitations, *i.e.*, to be timely, the Indictment must—but does not—allege that the charges against Mr. Brown continued and extended beyond June 2019. *See* N.J.S.A. 2C:1-6(b)(1). The only alleged "threat" to Dranoff occurred and ended in 2016, when Dranoff agreed to sell his property rights in connection with the Triad1828 Centre and 11 Cooper developments on October 24, 2016. *See* Ind. ¶ 152. The State's attempt to recast this alleged threat as part of a "continuing offense" via the RICO conspiracy charge is flawed because any purported crimes which were the object of that conspiracy were allegedly completed by 2016. And, as discussed above, Mr. Brown is not alleged to have done anything further following the conference call in 2016. *See, e.g.*, *State v. Reid*, 456 N.J. Super. 44, 64 (App. Div. 2018) ("[W]hen the crime or crimes" which are the object of the conspiracy "are committed," the "duration of a conspiracy generally terminates"). Further, the Indictment's allegations that the conspiracy extended beyond 2016 to include applying for and receiving tax credits fails as a matter of law. *See* O'Donnell Br. (discussing *United States v. Silver*, 948 F.3d 538 (2d Cir. 2020); *United States v. Grimm*, 738 F.3d 498 (2d Cir. 2013); *United States v. Salmonese*, 352 F.3d 608 (2d Cir. 2003); *United States v. Colon-Munoz*, 192 F.3d 210 (1st Cir. 1999); *United States v. Doherty*, 867 F.2d 47 (1st Cir. 1989)). Finally, for the reasons set forth in the Defendants' Joint Brief, the seven-year statute of limitations for official misconduct, N.J.S.A. 2C:1-6(b)(3), still requires dismissal of the charges against Mr. Brown because all alleged acts by Mayor Redd occurred more than seven years ago, *i.e.*, before June 2017.

CONCLUSION

For all of these reasons, and those to be added in any Reply Briefs to be filed and at the oral argument of this matter, Defendant Sidney Brown respectfully requests that the Court dismiss Counts One, Three, Five, Six, Nine, Ten, Twelve, and Thirteen of the Indictment against him.

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Respectfully submitted,

s/ Lawrence S. Lustberg

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