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UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,)	NO. SA CR 06-224-AG
13 Plaintiff,	} CONSOLIDATED OPPOSITION TO DEFENDANTS' MOTION FOR A BILL OF PARTICULARS
14 v.	
15 MICHAEL S. CARONA et al.,	} DATE: DECEMBER 17, 2007 TIME: 1:30 P.M.
16 Defendants.	

17 _____
18 Plaintiff United States of America, by and through its counsel of record, the
19 United States Department of Justice, Public Integrity Section, hereby opposes the
20 motions of defendants Deborah Carona and Debra Hoffman for bills of particulars.

21 This opposition is based on the accompanying memorandum of points and

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1 authorities, the files and records in this case, and such further evidence and
2 argument as the court may permit at any hearing on this matter.

3 Respectfully submitted,

4 WILLIAM WELCH
5 Chief, Public Integrity Section
6 Criminal Division, U.S. Department of
7 Justice

8 Date: 12/05/07

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On October 25, 2007, the Grand Jury returned a ten-count First Superseding
4 Indictment against defendants Michael S. Carona (hereinafter “Carona”), Deborah
5 Carona (hereinafter “D. Carona”), and Debra Hoffman (hereinafter “Hoffman”).
6 Defendants first appeared before a judicial officer in this court in regard to the
7 charges in the First Superseding Indictment on October 31, 2007. On November 5,
8 2007, defendants were arraigned on the First Superseding Indictment.

9 On November 26, 2007, defendant D. Carona filed a motion for a Bill of
10 Particulars seeking each overt act committed in furtherance of the conspiracy that
11 the Government asserts defendant D. Carona had knowledge of, or knowingly
12 participated in and the means and manner by which defendant D. Carona
13 contributed to the acts. Def. Mtn at 2. On November 30, 2007, defendant Hoffman
14 moved to join defendant D. Carona’s Motion for a Bill of Particulars. This Court
15 should deny these motions in their entirety.

16 Count One of the First Superseding Indictment charges all three defendants
17 with Conspiracy to commit honest services mail fraud and bribery. Specifically,
18 Count One alleges a conspiracy in which defendants Carona, D. Carona, and
19 Hoffman, along with co-conspirators George Jaramillo and Donald Haidl, and
20 others schemed to get Carona elected and to corruptly use the office of sheriff to
21 enrich themselves. Count One of the First Superseding Indictment covers nineteen
22 pages, which includes in great detail: eleven introductory paragraphs; two
23 paragraphs, with three sub-paragraphs, defining the objects of the conspiracy; eight
24 paragraphs delineating the manner and means in which the defendants carried out
25 the conspiracy; and sixty-five overt acts specifying the dates, individuals, and acts
26 that the defendants committed to carry out the conspiracy.

27 To date, the government has provided defendants with voluminous discovery
28 and made all discovery, with the exception of witness statements, available to the

1 defense. The Government has provided or made available to defendants, among
2 other discovery: all recorded statements of defendant Carona and defendant D.
3 Carona; all statements made by defendants to law enforcement officials; all Rule 16
4 documentary evidence, including, but not limited to, financial records, subpoenaed
5 documents from the Sheriff’s Department, and publicly available documents (such
6 as Form 700s, bankruptcy petitions, and state financial disclosure documents). The
7 Government is continuing to provide, and make available, discovery to defendants.

8 Despite the detailed allegations in the First Superseding Indictment and the
9 government’s discovery productions, defendants claim that they are unable to
10 prepare for trial. In what is termed a request for a bill of particulars under FRCP 7
11 – but which really is a form of a discovery motion and an attempt to limit the
12 government’s proof at trial – defendants demand that the government provide even
13 more information about the alleged misconduct.

14 A fair reading of the detailed First Superseding Indictment and an analysis of
15 the relevant case law make clear that defendants are not entitled to a bill of
16 particulars. Defendants have an obvious understanding of the charges against them,
17 and are well able to prepare for trial. There is no need for the government to
18 supplement the extensively detailed allegations with the additional information
19 demanded by defendants. For these reasons, defendants’ motions for bills of
20 particulars should be denied.¹

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23 ¹ Defendant Hoffman simply filed a motion to join defendant D.
24 Carona’s Motion for a Bill of Particulars, but does not set out specifically what
25 “Particulars” defendant Hoffman is seeking. Based on the facts and circumstances
26 in this case, specifically the detailed First Superseding Indictment and the nearly
27 open discovery, in addition to the case law, this Court should deny defendant
28 Hoffman’s motion for a Bill of Particulars. The Government’s opposition,
however, will focus on defendant D. Carona’s motion as it enumerates what
information is sought.

1 **II. ARGUMENT**

2 **A. A Bill of Particulars is Not Warranted Where the Indictment**
3 **Provides Adequate Notice of the Charges**

4 Rule 7(f) of the Federal Rules of Criminal Procedure provides for a bill of
5 particulars as follows:

6 The court may direct the filing of a bill of particulars. A motion for a
7 bill of particulars may be made before arraignment or within ten days
8 after arraignment or at such later times as the court may permit. A bill
of particulars may be amended at any time subject to such conditions
as justice requires.²

9 Granting or denying a motion for a bill of particulars is within the sound discretion
10 of the trial court and will not be disturbed absent an abuse of discretion. See United
11 States v. Ayers, 924 F.2d 1468, 1483 (9th Cir. 1991).

12 Courts have consistently held that the only legitimate purpose served by a bill
13 of particulars is to give a defendant sufficient information about the nature of
14 charges pending against her so that she may: (1) prepare for trial; (2) avoid
15 prejudicial surprise at trial; and (3) plead her acquittal or conviction as a bar to
16 another prosecution for the same offense when the indictment is too vague and
17 indefinite for such purposes. Ayers, 924 F.2d at 1483; United States v. Buckner,
18 610 F.2d 570, 573 (9th Cir. 1979); United States v. Giese, 597 F.2d 1170, 1180 (9th
19 Cir. 1979). “To the extent that the indictment [] itself provides details of the alleged
20 offense, a bill of particulars is, of course, unnecessary.” Giese, 597 F.2d at 1180;
21 see also United States v. Federbush, 625 F.2d 246, 252 (9th Cir. 1980). The instant
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23 ² Rule 7(f) permits the filing of a request for a bill of particulars any
24 time before arraignment or up to ten days after arraignment, and by leave of court
25 after that. Defendant D. Carona was arraigned on the charges in the First
26 Superseding Indictment on November 5, 2007, but did not file her motion for a bill
27 of particulars until November 26, 2007. Defendant does not attempt to offer an
28 excuse for the late filing of this motion. As the motion is not timely, and defendant
has shown no good cause for the delay, the Court can also deny defendant’s motion
as untimely.

1 First Superseding Indictment provides extensive, specific information about the
2 alleged corruption and fraud with which defendants have been charged, therefore,
3 no bill of particulars is needed.

4 In a fraud case that followed the Ninth Circuit's opinion in Giese, the court
5 stated that a bill of particulars may be allowed "only where the charges of the
6 indictment are so general that they do not advise the defendant of the specific acts
7 of which he is accused." United States v. Lasky, 967 F. Supp. 749, 756 (E.D.N.Y.
8 1997). Accordingly, the court found that the indictment was a clear, detailed
9 charging instrument that was specific in its terms, informed the defendant of the
10 specific acts of which he was accused, and contained the information that the
11 defendant needed to prepare his defense. Id. As a result, the court rejected the
12 request for a bill of particulars. Id.

13 In addition, "in determining if a bill of particulars should be ordered in a
14 specific case, a court should consider whether the defendant has been advised
15 adequately of the charges through the indictment and all other disclosures made by
16 the government." United States v. Long, 706 F.2d 1044, 1054 (9th Cir. 1983); see
17 also Buckner, 610 F.2d at 574; Giese, 597 F.2d at 1180. "These purposes are
18 served if the indictment itself provides sufficient details of the charges and if the
19 Government provides full discovery to the defense." United States v. Mitchell, 744
20 F. 2d 701, 705 (9th Cir. 1984).

21 Defendant D. Carona cites United States v. Chen, 2006 WL 3898177 (N.D.
22 Cal. 2006), as support for her claim for a bill of particulars. Chen, however, is
23 easily distinguishable from the present case. In Chen, the Government charged
24 defendant, in one paragraph, with a drug conspiracy covering approximately five
25 years and involving approximately nineteen other co-conspirators. Id. at *1. The
26 charge provided no specific dates, specific acts, or specific transactions. The court
27 found the general indictment did not provide defendants with notice of the charges
28 they faced. Id. at *3. In the present case, the First Superseding Indictment, and

1 specifically Count One of the First Superseding Indictment, provides sufficient
2 notice to defendants of what allegations they face, and sets forth in great detail the
3 alleged crimes and acts for which they are charged.

4 The Court must ensure that the indictment fairly informs defendants of the
5 charges against them. See Long, 706 F.2d at 1054. The indictment must do so in a
6 manner that provides “sufficient precision to enable [defendant] to prepare for trial,
7 to avoid or minimize the danger of surprise at the time of trial, and to enable him to
8 plead his acquittal or conviction in bar of another prosecution for the same offense.”
9 Giese, 597 F.2d at 1180 (internal quotation marks and citations deleted). A fair
10 understanding of the Government’s case is paramount. See United States v.
11 Ryland, 806 F.2d 941, 942 (9th Cir. 1986). The First Superseding Indictment in
12 this case adequately informs the defendants of the precise theory the Government is
13 pursuing. Count One, identifies with specificity a discrete number of transactions
14 and the manner and means employed to accomplish the objects of the conspiracy.
15 The First Superseding Indictment enumerates the claims and charges against
16 defendants in a direct and orderly fashion. As a result, this Court should deny
17 defendants’ motions for bills of particular.

18 **B. Defendants Should Not be Permitted to Use a Bill of Particulars in**
19 **Lieu of Discovery or to Limit the Government’s Proof**

20 Much of defendant’s motion is geared to attempting to limit the government’s
21 proof at trial. This is improper. The filing of a bill of particulars poses the danger
22 of limiting the government’s presentation of its case by restricting its proof to the
23 evidentiary matters furnished in the bill. See United States v. Murray, 297 F.2d
24 812, 819 (2d Cir. 1962). For this reason, a bill of particulars is “not intended to
25 give a preview of the case or unduly restrict the government” at trial. United States
26 v. Young & Rubicam, Inc., 741 F. Supp. 334, 349 (D.Conn. 1990) (collecting
27 cases). To the contrary, the government “may not be compelled to provide a bill of
28 particulars disclosing the manner in which it will attempt to prove the charges, the

1 precise manner in which the defendant committed the crimes charged, or a preview
2 of the government’s evidence or legal theories.” United States v. Ojeikere, 299 F.
3 Supp. 2d 254, 261 (S.D.N.Y. 2004).

4 A bill of particulars is also not to be used as a substitute for discovery,
5 including Rule 16 and the Jencks Act. Buckner, 610 F.2d at 574; Giese, 597 F.2d at
6 1180; Cooper v. United States, 282 F.2d 527, 532 (9th Cir. 1960) (“Rule 7(f) . . .
7 should not be invoked to bring about a result prohibited in effect by Rule 16.”); see
8 also United States v. Sepulveda, 15 F.3d 1161, 1192-93 (1st Cir. 1993) (holding
9 that district court’s denial of motion for bill of particulars was appropriate where
10 government provided all relevant material minus Jencks Act material to defendant
11 to prepare for trial).

12 In Giese, the defendant sought a bill of particulars on how each of the overt
13 acts contributed to the scheme, how certain alleged co-schemer’s statements were
14 made in furtherance of the scheme, and requested a list of acts performed by each
15 schemer. The Ninth Circuit noted that “[T]here is no requirement in conspiracy
16 cases that the government disclose even all the overt acts in furtherance of the
17 conspiracy.” Giese, 597 F.2d at 1180. The Court further explained:

18 Appellant’s request for the when, where, and how of every act in
19 furtherance of the conspiracy, was equivalent to a request for
20 complete discovery of the government’s evidence, which is not a
purpose of the bill of particulars.

21 Id. at 1181.

22 Furthermore, in United States v. Ryland, 806 F.2d 941 (9th Cir. 1986), the
23 Ninth Circuit held:

24 Ryland’s argument regarding the denial of a bill of particulars
25 misconstrues the purpose of a bill of particulars. A defendant is
26 not entitled to know all the evidence the government intends to
produce but only the theory of the government’s case. (Citations
omitted).

27 Id. at 942; see also United States v. Rosenthal, 793 F.2d 1214, 1227 (11th Cir.
28 1986) (bill of particulars may not be used to compel the government to provide

1 facts regarding the existence and formation of a conspiracy nor to provide all overt
2 acts which may be proven at trial); United States v. Smith, 341 F.Supp. 687, 690
3 (N.D. Ga 1972) (holding defendant’s requests for a bill of particular improper when
4 the request goes “to the Government’s proof rather than to a clarification of the
5 indictment”).

6 Defendant D. Carona requests that this Court order a bill of particulars
7 identifying the overt acts “that the government will assert at trial that Deborah
8 Carona knew of, or knowingly participated in, as well as the means and manner by
9 which she contributed to these overt acts.” Def. Mtn at 4. Defendant D. Carona
10 cites no caselaw or authority, as she cannot, that provides support for her position.
11 A bill of particulars may not be used to obtain the information sought by defendant,
12 and therefore, this Court should deny defendants’ motions.³

13 **C. Defendants Have Been Provided Sufficient Discovery to Obviate**
14 **Any Request for Further Particularity**

15 In addition to the detailed allegations in the First Superseding Indictment, the
16 Government has supplied defendants with comprehensive discovery. The
17 Government has provided or made available to defendants Rule 16 discovery.
18 When the Government provides access to the particulars of the crimes charged to
19 defendants through Rule 16 discovery, federal courts have routinely denied requests
20 for bills of particulars. United States v. Mitchell, 744 F.2d at 705; Long, 706 F.2d

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22 ³ Defendant D. Carona’s motion states that this motion “is the first of a
23 series of motions intended on extricating Deborah Carona from an indictment that
24 the government has pursued without probable cause and in a retaliatory fashion.”
25 Def. Mtn at 3. Defendant also theorizes that “the government’s intentions in
26 joining her in this indictment are abundantly clear – get to the Sheriff by getting to
27 his family.” Id. at 4. Although an interesting theory, it is as baseless as the current
28 motion. A grand jury returned the First Superseding Indictment against Defendant
D. Carona based on probable cause that she committed the charged offense.
Furthermore, a Bill of Particulars is not the appropriate vehicle to “extricate” a
defendant from an indictment.

1 at 1054.

2 In Long, for example, the defendant claimed following his conviction that the
3 district court erred by denying his motion for a bill of particulars. The Ninth Circuit
4 affirmed the district court's decision saying, "In determining if a bill of particulars
5 should be ordered in a specific case, a court should consider whether the defendant
6 has been advised adequately of the charges through the indictment and all other
7 disclosures made by the government." Long, 706 F.2d at 1054. The court held
8 because the defendant received the full discovery to which he was entitled under the
9 applicable rules, there was no abuse of discretion in denying his motion. Id.; see
10 also Giese, 597 F.2d at 1180 (Government's supplying full discovery to a defendant
11 obviates the need for a bill of particulars).

12 In this case, the Government has provided defendants with Rule 16
13 discovery, as well as additional information not required under Rule 16. The
14 defendants should not be entitled to use a motion for a bill of particulars as a device
15 for compelling further discovery of either the details of the government's evidence
16 or the manner in which the crimes were committed. Ryland, 806 F.2d at 943;
17 United States v. Giese, 597 F.2d at 1181; Ellis v. United States, 321 F.2d 931, 932
18 (9th Cir. 1963). As the Government has and will continue to produce full discovery
19 to defendants, there is no need for a bill of particulars and this Court should deny
20 defendants' motions.

21 **III. CONCLUSION**

22 The Indictment in this case fully and fairly apprises defendants of the charges
23 against them. These defendants and their attorneys are fully able to prepare for trial
24 based on the information contained in the charging document as well as the
25 discovery they have received and will continue to receive. For the reasons set forth
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1 above, the government respectfully requests that the Court deny defendants'
2 motions for bills of particulars.

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