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

UNITED STATES OF AMERICA,

Plaintiff,

v.

PRISCILLA HUNTER, MICHELLE
 CAMPBELL, IRIS MARTINEZ, MICHAEL
 HUNTER, DARLENE CRABTREE, ALLAN
 CRABTREE, FRED NAREDO, and
 KATHY REDHORSE-STALLWORTH,

Defendants.

Criminal No. CR-06-0565-SI

UNITED STATES' RESPONSE TO
 DEFENDANT MICHELLE
 CAMPBELL'S MOTION FOR
BILL OF PARTICULARS

DATE: NOVEMBER 9, 2007
 TIME: 11:00 A.M.

I. INTRODUCTION

On October 10, 2007, defendant Michelle Campbell filed a motion seeking an order that the government provide a bill of particulars in connection with the three conspiracy counts: Count One (the "Credit Card Charges Conspiracy"); Count Eighteen (the "Political Contributions Conspiracy"); and Count Twenty-Six (the "Obstruction Of Justice Conspiracy") as well as two of the substantive counts: Count Twenty-Five (Misapplication of Casino Funds) and Twenty-Seven (Obstruction of Justice). Defendant Campbell alleges that the superseding indictment fails to provide sufficient information to allow her to prepare her defense, plead jeopardy in a later prosecution, ascertain what facts were presented to the grand jury or determine the sufficiency of the charge.

1 Specifically, defendant Campbell requests that the Court order the government to:

2 1. File a bill of particulars in connection with Count One detailing all overt acts
3 taken in support of the alleged conspiracy, specifying whether each defendant was an active
4 participant or aider and abettor, describing when the conspiracy was formed, what the object of
5 the conspiracy was, and the details of the Government's theory regarding the aforementioned;

6 2. File a bill of particulars in connection with Count One that lists each and every
7 overt act committed by Michelle Campbell that the government claims are evidence of the
8 alleged conspiracy, including any alleged agreements made by Michelle Campbell in furtherance
9 of the alleged conspiracy;

10 3. File a bill of particulars in connection with Count Eighteen that describes or
11 explains the government's legal theory about how co-signing a tribal check to a politician is
12 legally cognizable as a "theft" or "misapplication" of Indian casino funds, as required for a
13 prosecution under 18 U.S.C. § 1167(b);

14 4. File a bill of particulars in connection with Count Eighteen detailing all overt acts
15 taken in support of the alleged conspiracy, specifying whether each defendant was an active
16 participant or aider and abettor, describing when the conspiracy was formed, what the object of
17 the conspiracy was, and the details of the Government's theory regarding the aforementioned;

18 5. File a bill of particulars in connection with Count Eighteen that lists each and
19 every overt act committed by Michelle Campbell that the government claims are evidence of the
20 alleged conspiracy, including any alleged agreements made by Michelle Campbell in furtherance
21 of the alleged conspiracy;

22 6. File a bill of particulars in connection with Count Twenty-Five that indicates the
23 name of "State Politician D" to whom the check was written, as indicated in Paragraph 30 of the
24 Indictment;

25 7. File a bill of particulars in connection with Count Twenty-Six detailing all overt
26 acts taken in support of the alleged conspiracy to obstruct justice by any defendant or participant,
27 specifying whether each defendant was an active participant or aider and abettor, describing
28 when the conspiracy was formed, what the object of the conspiracy was, and the details of the

1 Government's theory regarding the aforementioned;

2 8. File a bill of particulars in connection with Count Twenty-Six and Twenty-Seven
3 that lists each and every overt act or act committed by Michelle Campbell that the government
4 claims are evidence of the alleged conspiracy to obstruct justice or that the government intends to
5 rely on as an element of their substantive prosecution under 18 U.S.C. §1519, including any
6 alleged agreements made by Michelle Campbell in furtherance of the alleged conspiracy, the
7 records alleged to have been altered, mutilated, or destroyed, and the government's theory of
8 prosecution of the acts allegedly done by Ms. Campbell, rather than a generic listing of the
9 numerous acts prohibited by 18 U.S.C. § 1519.

10 On October 10, 2007, defendant Iris Martinez joined in Michelle Campbell's motion for
11 bill of particulars.

12 On October 11, 2007, defendant Allan Crabtree joined in Michelle Campbell's motion for
13 bill of particulars.

14 On October 11, 2007, defendant Priscilla Hunter joined in Michelle Campbell's motion
15 for bill of particulars.

16 II. ARGUMENT

17 The bill of particulars has three functions:

18 [T]o inform the defendant of the nature of the charge against him with sufficient
19 precision to enable him to prepare for trial, to avoid or minimize that danger of
20 surprise at the time of trial, and to enable him to plead his acquittal or conviction
in bar of another prosecution for the same offense when the indictment itself is too
vague, and indefinite for such purposes.

21 *United States v. Geise*, 597 F.2d 1170, 1180 (9th Cir.)(quoting *United States v. Birmley*, 529 F.2d
22 103, 108 (6th Cir. 1976)), *cert. denied*, 444 U.S. 979 (1979). *See also United States v. Ayers*,
23 924 F.2d 1468, 1483-84 (9th Cir. 1991); *United States v. Mitchell*, 744 F.2d 701, 705 (9th Cir.
24 1984); *United States v. Buckner*, 610 F.2d 570, 573 (9th Cir.), *cert. denied*, 445 U.S. 961 (1979).
25 The only pertinent question, therefore, is “. . . whether adequate notice of the charge has been
26 given to the defendant.” 1 Charles Alan Wright, *Federal Practice and Procedure*, § 129, at 662
27 (3d ed. 1999).

28 “A bill of particulars, unlike discovery, is not intended to provide the defendant with the

1 fruits of the government's investigation. Rather, it is intended to give the defendant only that
2 minimum amount of information necessary to permit the defendant to conduct his *own*
3 investigation." *United States v. Smith*, 776 F.2d 1104, 1111 (3d Cir. 1985)(citations
4 omitted)(emphasis in original) A bill of particulars is not intended to be the equivalent of a
5 request for complete discovery of the government's evidence. *Geise*, 597 F.2d at 1181; *Morgan*
6 *v. United States*, 380 F.2d 686, 698 (9th Cir. 1967), *cert. denied*, 390 U.S. 962 (1968). "A
7 defendant is not entitled to know all the *evidence* the government intends to produce, but only the
8 *theory* of the government's case." *Geise*, 597 F.2d at 1181(quoted *Yeargain v. United States*,
9 314 F.2d 881, 882 (9th Cir. 1963)). He is not entitled to know the content of the testimony of
10 each of the government witnesses before trial. *United States v. Ryland*, 806 F.2d 941, 942 (9th
11 Cir. 1986).

12 "To the extent that the indictment or information itself provides details of the alleged
13 offense, a bill of particulars is, of course, unnecessary." *Geise*, 597 F.2d at 1180 (quoting 8
14 Moore's Federal Practice ¶ 7.06[1] at 7-31 n.1 (2d ed. 1978)).

15 Full discovery obviates the need for a bill of particulars. *United States v. Long*, 706 F.2d
16 1044, 1054 (9th Cir. 1983); *United States v. Clay*, 476 F.2d 1211, 1215 (9th Cir. 1973). The
17 government has provided, and will continue to provide, the defendants with all required
18 discovery. Moreover, the discovery has been provided to them in a format to which they all
19 agreed which enables them to effectively search the documents.

20 In view of the discovery, it appears that much of the defendants' demand is intended to
21 limit the government's proof at trial and not for the proper purposes of a bill of particulars.
22 "Bills of particulars are not justified where the only purpose they would serve would be to limit
23 the government's proof or allow the defendant to tailor his testimony to meet the Government's
24 evidence." *United States v. Culoso*, 461 F. Supp. 128, 134 n.9 (S.D.N.Y. 1978), *aff'd*, 607 F.2d
25 999 (2d Cir. 1979).

26 The defendants contend that Counts One, Eighteen, Twenty-Five, Twenty-Six and
27 Twenty-Seven are so vague that they are unable to prepare for trial. To the contrary, the
28 superseding indictment provides sufficient details of the offenses charged "to inform the

defendant of the nature of the charge against him with sufficient precision to enable him to prepare for trial, to avoid or minimize that danger of surprise at the time of trial, and to enable him to plead his acquittal or conviction in bar of another prosecution for the same offense.”

Count One of the superseding indictment alleges:

the defendants PRISCILLA HUNTER, MICHELLE CAMPBELL, IRIS MARTINEZ, and MICHAEL HUNTER . . . did knowingly and intentionally conspire to commit an offense against the United States, specifically, theft and misapplication of funds of a value in excess of \$1,000 from an Indian tribal organization, in violation of Title 18, United States Code, Section 1163, and theft and misapplication of funds of a value in excess of \$1,000 belonging to a gaming establishment on Indian lands, in violation of Title 18, United States Code, Section 1167(b).

The verb conspire means “to make an agreement with a group and in secret to do some act (as to commit treason or a crime or carry out a treacherous deed).” Webster’s Third New International Dictionary 485 (1986). Thus, the indictment alleges that the defendants “made an agreement.”

The following facts alleged in the superseding indictment provide circumstantial evidence of the existence of the conspiracy: (1) the Tribal Council, which included the defendants, as a body was responsible for making decisions regarding the Tribe’s financial affair’s (Sup. Indictment ¶¶ 2 & 3); (2) the Council as a whole was reprimanded in the Settlement Agreement and directed to change its ways (Sup. Indictment ¶¶ 9, 10, 11, 12, 13, 14 and 16); (3) defendants Priscilla Hunter, Michael Hunter, Michelle Campbell and Iris Martinez continued to use the credit cards and debit cards issued to them and paid or funded by the Tribe to purchase personal items for their own benefit (Sup. Indictment ¶¶ 17 and 18); (4) defendants Priscilla Hunter, Michelle Campbell and Iris Martinez participated in the cover-up to prevent NIGC from learning of the credit card and debit card misuse. (Sup. Indictment ¶¶ 32 through 39).

Count One of the superseding indictment specifies the means and methods used to carry out the conspiracy. It also details thirteen overt acts committed to further the conspiracy. In addition, as the defendants acknowledge, they have been provided with a significant amount of discovery. The indictment and the discovery are sufficient to enable the defendants to prepare for trial. *See Ayers*, 924 F.2d at 1484. Moreover, there is no requirement in conspiracy cases that the government disclose even all the overt acts in furtherance of the conspiracy. *Geise*, 597

1 F.2d at 1180. The defendants' request for the "when, where, and how" of every act in
 2 furtherance of the conspiracy is equivalent to a request for complete discovery of the
 3 government's evidence, which is not the purpose of the bill of particulars. *Id.* at 1181.

4 Similarly, Counts Eighteen and Twenty-Five are sufficiently detailed to fully apprise the
 5 defendants of the charges against them. Count Eighteen (The Political Contribution Conspiracy)
 6 charges Priscilla Hunter, Michelle Campbell, Iris Martinez, Michael Hunter, Darlene Crabtree,
 7 Allan Crabtree and Fred Naredo, Sr. with conspiracy to misapply casino funds by willful
 8 misapplication of funds in excess of \$1,000 belonging to a gaming establishment on Indian lands,
 9 in violation of 18 U.S.C. § 1167(b). Counts Nineteen through Twenty-Five charge substantive
 10 counts of willful misapplication of casino funds, in violation of 18 U.S.C. § 1167(b).

11 The elements of the offense of willful misapplication of casino funds are: (1) the
 12 defendant abstracted, purloined, willfully misapplied or carried away with the intent to steal;
 13 (2) money, funds or other property of a value in excess of \$1,000; (3) belonging to a gaming
 14 establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or
 15 resolution approved by the National Indian Gaming Commission. 18 U.S.C. § 1167(b).

16 As alleged in the superseding indictment, at all relevant times the Tribe's use of revenue
 17 generated by the Casino was governed by 25 U.S.C. § 2710, 25 C.F.R. § 522.41(b)(2), and by the
 18 Gaming Ordinance approved by the National Indian Gaming Commission. (Sup. Indictment ¶¶ 4
 19 and 5). Under Section 2710 and the NIGC regulations, net revenues from any tribal gaming are
 20 *not to be used for purposes other than*: (1) to fund tribal government operations or programs;
 21 (2) to provide for the general welfare of the tribe and its members; (3) to promote tribal economic
 22 development; (4) to donate to charitable organizations; and (5) to help fund operations of local
 23 government agencies. 18 U.S.C. § 2710(b)(2)(B)(i)-(v); 25 C.F.R. § 522.4(b)(2). Political
 24 contributions are not a permissible use of net gaming revenues under federal law. As the
 25 superseding indictment further alleges, the May 2001 Settlement Agreement between the NIGC
 26 and the Tribe specifically provided that "[n]o charitable gifts or *other gifts* shall be made by the
 27 Casino." That Settlement Agreement also specifies the limited uses of net gaming revenues
 28 specified in the statute and the NIGC regulations. Thus, the defendants knew that they were not

1 authorized to make gifts or contributions to politicians.

2 Since political contributions are not a permissible use of net gaming revenues and the
3 Settlement Agreement made it clear that such "other gifts" were prohibited, the indictment has
4 sufficiently alleged the elements of the crime of willful misapplication of casino funds in
5 violation of 18 U.S.C. § 1167(b).

6 As with Count One above, Count Eighteen specifies the means and methods used to carry
7 out the conspiracy. It also details nine overt acts committed to further the conspiracy. The
8 indictment and the discovery are sufficient to enable the defendants to prepare for trial. *See*
9 *Ayers*, 924 F.2d at 1484.

10 Finally, Count Twenty-Six of the superseding indictment charges that in or around July
11 2003, the defendants Priscilla Hunter, Michelle Campbell, Iris Martinez and Kathy Redhorse-
12 Stallworth did knowingly and intentionally conspire to commit an offense against the United
13 States, specifically obstruction of justice in violation of 19 U.S.C. § 1519. Count Twenty-Six
14 specifies the method and the means used to carry out the conspiracy and details three overt acts
15 committed to further the conspiracy. Similarly, Count Twenty-Seven provides sufficient details
16 of the offense charged to inform the defendants of the nature of the charges against them. The
17 indictment and the discovery are sufficient to enable the defendants to prepare for trial. *See*
18 *Ayers*, 924 F.2d at 1484.

19 The defendants liken Counts Twenty-Six and Twenty-Seven to the indictment in *United*
20 *States v. Cecil*, 608 F.2d 1294 (9th Cir. 1979). *Cecil* is inapposite. In *Cecil*, the Ninth Circuit
21 reversed the district court which had held that a requested bill of particulars and the
22 Government's "open file" discovery remedied an invalid indictment. Thus, instead of requesting
23 a bill of particulars, if these counts are fatally defective, as suggested by the defendants, they
24 should have moved to dismiss the counts. But does *Cecil* provide authority to support a motion
25 to dismiss Counts Twenty-Six and Twenty-Seven?

26 In *Cecil*, the Ninth Circuit found that:

27 . . . Aside from tracking the language of the pertinent statutes in setting out the
28 elements of the offenses with which the defendants were charged, the indictment
makes only two specific allegations concerning the conspiracies. It states that the
conspiracies occurred in Arizona, Mexico, and elsewhere and offers the names of

1 some of the alleged co-conspirators. The indictment fails to state any other facts
2 or circumstances pertaining to the conspiracy or any overt acts done in furtherance
3 thereof. More importantly, the indictment fails to place the conspiracies within
any time frame. The language "beginning on or before July, 1975, and continuing
thereafter until on or after October, 1975," is open-ended in both directions.

4 *Id.* at 1297.

5 In the present case, Counts Twenty-Six and Twenty-Seven specify that the conspiracy to
6 obstruct justice and the obstruction of justice occurred in or around July 2003. Besides
7 identifying the co-conspirators and the defendants who committed the substantive acts, the
8 indictment alleges the object of the conspiracy and three overt acts committed in furtherance of
9 the conspiracy which acts specifically describe the conduct that constitutes the obstruction of
10 justice. Counts Twenty-Six and Twenty-Seven sufficiently charge the crimes of conspiracy to
11 obstruct justice and obstruction of justice.

12 The United States submits that the indictment in this case fairly apprises the defendants of
13 the charges against them; it cannot be said that the indictment is too vague or indefinite to
14 reasonably allow the defendants to prepare their defenses. The indictment and the Rule 16
15 discovery provided obviate the need for a bill of particulars. Defendant has actually received
16 more than the government was required to disclose under Rule 16. Defendant was provided with
17 copies of all documents that are material to his defense or which the government intends to use in
18 its case-in-chief. Although not required under Rule 16, the government has also provided the
19 defendant with memoranda of interview of witnesses that the government may call at trial.
20 Voluminous discovery has been provided in a format agreed upon by all defense counsel which
21 permits them to effectively search the documents. It is evident that the defendants are attempting
22 to use the bill of particulars to limit the government's proof or to allow them to tailor their
23 testimony to the government's evidence. This they are not entitled to do.

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1 III. CONCLUSION

2 Since the purposes of a bill of particulars are served if the indictment itself provides
3 sufficient details of the charges and if the government provides full discovery, *Geise*, 597 F.2d at
4 1180-81; *Mitchell*, 744 F.2d at 705, the defendants' motion for a bill of particulars should be
5 denied..
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7 Respectfully submitted,

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