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8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF ARIZONA

10 United States of America,  
11  
12 Plaintiff,  
13 v.  
14 James R. Parker,  
Jacqueline L. Parker,  
15 Defendants.

**CR-10-757-PHX-ROS**  
**GOVERNMENT’S RESPONSE TO  
DEFENDANTS’ JOINT MOTION FOR A  
BILL OF PARTICULARS**

16 **I. Overview.**

17 Defendants moved for a Bill of Particulars. (CR 46.) The request should be denied. First,  
18 their motion complains about certain discovery, which, in part, has been obviated by the  
19 government’s voluntary production of the two Special Agent Reports (SARs). Second, a  
20 “speaking” Indictment was returned by the Grand Jury, which set forth in great detail the  
21 particular nature of the charges and the evidence against them. Thus, a particularized  
22 Indictment, combined with liberal discovery, obviates any basis for a Bill of Particulars.<sup>1</sup>

23 **II. Factual Background.**

24 The government incorporates by reference the *Factual Background* section in the  
25 Government’s Response To Defendant’s Joint Motion to Compel or Exclude Discovery, that is  
26 being filed contemporaneously with this response.

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28 <sup>1</sup> The government has no objection to the filing of this Motion, without leave of court,  
more than fourteen (14) days after arraignment. Fed. R. Crim. P. 7(f).

1 **III. Legal Argument.**

2 **A. The Grand Jury Returned a Detailed Speaking Indictment.**

3 A bill of particulars is not necessary where, as here, a “speaking Indictment” provides  
4 sufficient details of the charges and the government provides liberal discovery. United States  
5 v. Mitchell, 744 F.2d 701, 705 (9th Cir. 1984); United States v. Long, 706 F.2d 1044 (9th Cir.  
6 1983); United States v. Giese, 597 F.2d 1170, 1180 (9th Cir. 1979) (“To the extent that the  
7 indictment or information itself provides details of the alleged offense, a bill of particulars is,  
8 of course, unnecessary”) (internal quotes omitted); United States v. Santillan, 2007 U.S. Dist.  
9 LEXIS 5660 (D. Ariz. 2007) (“A defendant is not entitled to know all the evidence the  
10 government intends to produce but only the theory of the government’s case.”) (quoting United  
11 States v. Ryland, 806 F.2d 941-42 (9th Cir. 1986); Yeargain v. United States, 314 F.2d 881 (9th  
12 Cir. 1963).

13 In this case the Grand Jury returned a 15 page “particularized” Indictment with twenty  
14 (20) paragraphs of background information and nine (9) separate overt acts. The government  
15 has provided discovery beyond what the law requires. Nothing in either the plain language of  
16 Fed. R. Crim. P. 7(f), or the case law, supports the issuance of a bill of particulars in this case.  
17 Moreover, contrary to defendants’ assertion that the “indictment fails to state with particularity  
18 the information requested” or that the “allegations are vague, ambiguous, and uninformative”  
19 (Motion at 9), the Indictment here clearly and logically specifies the means and methods used  
20 by the defendants to defraud the IRS. In addition, irrespective of defendants’ claim that a bill  
21 of particulars is necessary to enable the defendants to “prepare for and to avoid prejudicial  
22 surprise at trial ... and protect against a second prosecution for the same offense,” (Id.), courts  
23 have specifically recognized that the type of “speaking indictment” employed in this case  
24 provides ample notice to defendants on both fronts. Wong Tai v. United States, 273 U.S. 77  
25 (1927) (concluding that the indictment was not invalid under the Sixth Amendment and that a  
26 bill of particulars was not necessary because the indictment provided “definiteness and certainty  
27 and reasonable particularity as to time and place ... to commit certain specified offenses”); Cf.

1 United States v. Dionisio, 2008 U.S. Dist. LEXIS 84470 (W.D. Wisc. 2008)(denying motion for  
2 bill of particulars in part because “the grand jury returned a speaking indictment that, while not  
3 exactly *Atlas Shrugged*, adequately and clearly sets forth the government's theory of prosecution  
4 so that [the defendant] understands what he is accused of having done in violation of the  
5 anti-kickback statute”); United States v. Black, 2005 U.S. Dist. LEXIS 2184 (W.D.  
6 Wisc.2005)(“Rule 7(c) does not require the government to do more than allege the ‘essential  
7 facts' constituting the offense, which customarily are thought of as the elements. But the grand  
8 jury often returns ‘speaking' indictments and no one would suppose that this runs afoul of Rule  
9 7(c); in fact, defense attorneys usually complain that the grand jury doesn't return enough  
10 speaking indictments.”).

11 Rule 7(c)(1) of the Rules of Criminal Procedure requires only that the indictment contain  
12 a “plain, concise and definite written statement of the essential facts constituting the offense  
13 charged,” and a citation to the statute the defendant is alleged to have violated. An indictment  
14 is sufficient if it contains the elements of the offense charged, fairly informs the defendant of the  
15 charge against which he must defend, and enables him to plead double jeopardy where  
16 appropriate. United States v. Resendiz-Ponce, 549 U.S. 102, 108 (2007); Hamling v. United  
17 States, 418 U.S. 87, 117 (1974). An indictment does not have to describe the government's  
18 evidence, plead evidentiary detail, or identify all the facts supporting the allegations. Wong Tai  
19 273 U.S. at 82; Resendiz-Ponce, 549 U.S. at 108; United States v. Chenaar, 552 F.2d 294, 301  
20 (9th Cir. 1977). The Indictment here clearly meets this criteria.

21 **B. Full Discovery has Been Provided to the Defendants.**

22 Defendants claim that the government is not following an “open file policy,” and allege  
23 discovery violations, including the failure to turn over Grand Jury testimony pursuant to the  
24 Jencks Act, and the case agent’s Special Agent Reports (“SARs”). (Motion at 4.) As discussed  
25 thoroughly in the Government’s Response To Defendants’ Joint Motion To Compel Or Exclude  
26 Discovery, filed contemporaneously, while the government is not legally obligated to turn over  
27 the SARs under the “work product” and “deliberative process” privileges codified in Fed. R.  
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1 Crim. P 16(a)(2), the government has voluntarily disclosed the SARs to the defense. It should  
2 also be pointed out that the government has disclosed 15,746 pages of discovery, including all  
3 of the exhibits used to produce the special agent's reports, as well as all interview reports, far  
4 in advance of when they are required to be produced pursuant to Jencks.

5 **C. Defendants' "Specific Demands" are Frivolous.**

6 Defendants further argue that the bill of particulars is needed to "[d]istill" the  
7 government's "[p]roof and ... [t]heory of [c]riminal [l]iability." (Motion at 10.) The disingenuous  
8 method they used in their Motion was to frame a "who/what/when/where/why" question to  
9 virtually every line of the Indictment. This facade manufactured twelve (12) pages of "specific  
10 demands" to the end of their pleading. (Motion at 13-25.) No indictment could satisfy such  
11 antics, and the law does not require it. This Indictment, and the government's discovery clearly  
12 explain how defendants stipulated in May of 2003 to owing \$1.7 million in taxes, interest, and  
13 penalties before United States Tax Court, and how they thereafter hid their assets and income  
14 through nominee and straw owners instead of paying any of their agreed upon tax liability.

15 Perhaps the clearest examples of defendants' overreach are questions that isolate a single  
16 fact and ask how that fact alone is "illegal." Examples of this method were questions asking how  
17 starting up a cattle operation, purchasing a Rolls Royce, or using LLCs and other corporate  
18 entities, is illegal. Similarly, they took words with common understandings and asked for the  
19 proof of those general definitions. Examples of this were requesting definitions for "nominee  
20 entity," "luxury home," and "straw buyer." The Indictment does not need to explain ever little  
21 nuance the defendants' may perceive in the words used by the government in a lengthy speaking  
22 indictment. That is a matter for closing argument; not a bill of particulars.

23 As a factual matter, it is clear that the speaking Indictment contains much of the requested  
24 information as it clearly lays out how their use of the various nominee entities, the luxury homes,  
25 and the purchase of a Rolls Royce and other luxury items, were used to conceal their assets and  
26 income while owing a significant amount of money to the IRS. The evidence to support the  
27 speaking Indictment is also contained in the full discovery the government has provided.

1           The request for a bill of particulars seems designed to obscure the straight-forward nature  
2 of the charged crimes. For example, Question 17, which states: *Describe how purchasing a*  
3 *Rolls Royce is illegal or indicative of illegal activity*, is plainly frivolous. Obviously, purchasing  
4 a “Rolls Royce” is not, without more, illegal. Nor is it illegal to take out a second mortgage on  
5 a \$1.5 million home, or create an LLC that purports to control and operate an individual’s assets.  
6 However, without going into every detail of the charged crimes, it is readily apparent that those  
7 facts, when added to the backdrop of their history with the IRS, are actions probative of  
8 defendant Parker’s attempt to hide assets and not pay the IRS. When considering that defendants  
9 are also charged with lying to the IRS by submitting several materially false Offers in  
10 Compromise, in which they significantly under reported their assets and income, and mistated  
11 how they planned to pay the IRS, it is obvious how purchasing a \$300,000 car, or starting a  
12 million dollar cattle operation, is probative of defendant’s intent to lie to the IRS.

13           Question 21 is another example. It reads: *Please describe how Mackinnon Belize Land*  
14 *and Development Limited’s sales of 597 acres of land in Belize is illegal or indicative of illegal*  
15 *activity*. Again, the sale of land, by itself, is not illegal. However, when you consider that  
16 defendant James Parker did not report to the IRS any income earned from the sale of the land,  
17 and is now charged with failing to pay taxes, it is obvious why that sale of land in Belize is  
18 material to the crimes charged. Moreover, defendants’ request that the government “specify  
19 the buyer(s) of this land and “the date(s) of the transaction(s)” can be answered simply by  
20 reading lines 26-28 of the Indictment.

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1 **IV. Conclusion.**

2 There is no basis for a bill of particulars. Defendants' Motion should be denied.

3 Respectfully submitted this 4<sup>th</sup> day of February, 2011.

4 DENNIS K. BURKE  
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6 District of Arizona

7 s/ Walter Perkel

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10 Certificate of Service: I hereby certify that on this day , I electronically transmitted the attached document to the Clerk's  
11 Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF  
12 registrants: Joy Bertrand, John McBee, and Michael Minns.  
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