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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)
11) No. CR 06-565 SI
Plaintiff,)
12) **NOTICE OF MOTION AND**
v.) **MOTION FOR BILL OF**
13) **PARTICULARS; MEMORANDUM**
PRISCILLA HUNTER, et al.,) **OF POINTS AND AUTHORITIES IN**
14) **SUPPORT OF MOTION**
Defendant.)
15) Date: November 9, 2007
16) Time: 11:00 a.m.
Judge: The Honorable Susan Illston

17 **NOTICE OF MOTION AND MOTION**

18 TO: UNITED STATES ATTORNEY, PLAINTIFF; AND SCOTT N. SCHOOLS, UNITED
19 STATES ATTORNEY, NORTHERN DISTRICT OF CALIFORNIA; AND DAVID DENIER,
ASSISTANT UNITED STATES ATTORNEY;

20 PLEASE TAKE NOTE that on Friday, November 9, 2007 at 11:00 a.m., in the courtroom of
21 the Honorable Susan Illston, or as soon thereafter as the motion may be heard, defendant Michelle
22 Campbell will move this Court to order the government to provide a bill of particulars, pursuant to
23 Federal Rule of Criminal Procedure 7(f). This motion is based on the following memorandum of
24 points and authorities, the constitution of the United States, all relevant statutory authority and case
25 law, and such argument as the Court will entertain at the motion hearing.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Defendant Michelle Campbell is charged in nine counts of a 39 count indictment with the
4 following: **Count 1**, Conspiracy to Steal and Misapply Indian Tribal Funds, in violation of 18 U.S.C.
5 § 371 (citing 18 U.S.C. § 1163); **Count 18**, Conspiracy to Misapply Casino Funds in violation of 18
6 U.S.C. § 371 (citing 18 U.S.C. § 1167(b)); **Count 25**, Willful Misapplication of Casino Funds, in
7 violation of 18 U.S.C. § 1167(b); **Count 26**, Conspiracy to Obstruct Justice, in violation of 18
8 U.S.C. § 371; **Count 27**, Obstruction of Justice and Aiding and Abetting same, in violation of 18
9 U.S.C. § 1519 and 18 U.S.C. § 2; and **Counts 36-39**, Willful Failure to File Tax Return, in violation
10 of 26 U.S.C. § 7203. Ms. Campbell now moves this Court to order the government to provide a bill
11 of particulars in connection with the three conspiracy counts: Count 1 (the “Credit Card Charges
12 Conspiracy”); Count 18 (the “Political Contributions Conspiracy”); and Count 26 (the “Obstruction
13 of Justice Conspiracy”) as well as two of the substantive counts: Count 25 (Misapplication of Casino
14 Fund) and 27 (Obstruction of Justice).

15 The Ninth Circuit Court of Appeals has made clear that an indictment must, at the very least,
16 provide sufficient specific information to allow a defendant to prepare her defense, plead jeopardy in
17 a later prosecution, and ascertain what facts were presented to the grand jury. It must also inform the
18 Court of the facts alleged, so that the Court can determine the sufficiency of the charge. The
19 indictment in this case fulfills none of these functions. A bill of particulars is therefore warranted,
20 and Ms. Campbell respectfully request that this Court order the government to provide such a bill
21 forthwith.

22 **STATEMENT OF FACTS**

23 All the defendants charged in the instant indictment are members of the federally-recognized
24 Coyote Valley Bank of Pomo Indians (“the Tribe”). As a means of earning revenue for the Tribe, the
25 Coyote Valley band operates the Coyote Valley Shodokai Casino (“the Casino”) on the Tribe’s
26 reservation. Between 1995 and 2004, seven of the eight defendants were members of the Tribal

1 Council, the seven-member entity that governs the Tribe.¹ During that same time period, Ms.
2 Campbell was the Treasurer of the tribe.

3 The heart of the indictment charges Ms. Campbell with participation in three unlawful
4 conspiracies while serving in her capacity as Tribal treasurer. The **first conspiracy**, alleged in
5 **Count One**, charges Ms. Campbell and three other Tribal Council members with using the credit
6 cards provided to the Tribal Council members by the Tribe to pay for personal expenses between
7 2001 and 2003. The **second conspiracy**, alleged in **Count 18**, charges Ms. Campbell and the six
8 other Tribal Council members with authorizing the use Casino revenue for political contributions
9 between 2002 and 2004. The **third conspiracy**, alleged in **Count 26**, charges Ms. Campbell and
10 three other defendants with obstructing justice in connection with an audit of the Tribe and the
11 Casino allegedly conducted by the National Indian Gaming Commission ("NIGC") in July of 2003.²

12 Count 25 and 27 are substantive charges that stem from the second and third conspiracies.
13 Specifically, Count 25 charges Ms. Campbell with co-signing a check to a politician in furtherance of
14 the second conspiracy described above (Count 18). Count 27 charges Ms. Campbell with obstruction
15 of justice in connection with the third conspiracy described above (Count 26).

17 ARGUMENT

18 A. Applicable Law Regarding a Bill of Particulars

19 The Sixth Amendment to the United States Constitution guarantees that a criminal defendant
20 shall "be informed of the nature and cause of the accusation" against him; in turn, the Fifth
21 Amendment ensures that no one "shall . . . be deprived of life, liberty, or property, without due
22 process of law." U.S. Const. amend. VI. Interpreting these provisions, the Supreme Court has
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24 ¹ The last defendant added in October, 2006, Kathy Redhorse-Stallworth, was not a member
25 of the Tribal Council at any time.

26 ² Ms. Campbell is also charged individually in Counts 36-39 with willful failure to file tax
returns for the calendar years 2000 through 2003. A bill of particulars is not requested in connection
with these counts; as such, they are not discussed in detail here.

1 stressed that due process requires notice of the charges and a reasonable opportunity to defend or
2 explain. *Powell v. Alabama*, 287 U.S. 45, 59, 69-73 (1932); *see also In re Oliver*, 333 U.S. 257, 273
3 (1948). This notice is generally given through an indictment, which must permit the defendant to
4 prepare his defense, ensure that he is prosecuted only on the basis of facts presented to the grand
5 jury, enable him to plead jeopardy against a later prosecution, and inform the court of the facts
6 alleged to that it can determine the sufficiency of the charge. *United States v. Cecil*, 608 F.2d 1294,
7 1296 (9th Cir. 1979). If the indictment is lacking, a court should order the government to file a bill of
8 particulars elaborating on the charges. *See* Fed. R. Crim. P. 7(f) (codifying court's discretion to
9 order filing of bill); *United States v. Addonizio*, 451 F.2d 49, 63-64 (3d Cir. 1971); *United States v.*
10 *Smith*, 16 F.R.D. 372, 375 (W.D. Mo. 1954). Doubts should be resolved in favor of granting the bill.
11 *See United States v. Tanner*, 279 F.Supp. 457, 474 (N.D. Ill. 1967).

14 **B. A Bill Of Particulars Is Appropriate If The Defendant Requires Information About A**
15 **Charged Conspiracy**

16 Particularly in a conspiracy case, a bill of particulars is an appropriate means of informing an
17 individual defendant about the charged conspiracy or scheme. Proper information includes specific
18 details not only about each element of the alleged offense, *see Tanner*, 279 F.Supp. at 476, as well as
19 the defendant's alleged involvement, *see United States v. Lopez*, 26 F.R.D. 174, 175-76 (S.D.N.Y.
20 1960), but also about all overt acts in furtherance of the conspiracy or composing the scheme,
21 whether or not set forth in the indictment, upon which the government intends to rely at trial. *See*
22 *United States v. Hubbard*, 474 F.Supp. 64, 81 (D.D.C. 1979). The defendant thus is entitled to
23 information about the substance of each overt act as well as the identities of potential witnesses or
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1 alleged participants, whether or not named in the indictment.³ *See, e.g., Will v. United States*, 389
 2 U.S. 90, 99 (1967); *United States v. Barrentine*, 591 F.2d 1069, 1077 (5th Cir. 1979); *United States*
 3 *v. Rogers*, 617 F. Supp. 1024, 1028-29 (D. Colo. 1985); *United States v. Rosenstein*, 303 F. Supp
 4 210, 213 (S.D.N.Y. 1969); *Smith*, 16 F.R.D. at 374-75; *Will v. United States*, 389 U.S. 90, 99 (1967)
 5 (noting defendant's right to names of potential witnesses where "necessary or useful in the
 6 defendant's preparation for trial"); *United States v. Rogers*, 617 F.Supp. 1024, 1028-29 (D. Colo.
 7 1985) (holding in conspiracy case that "government must reveal the substance, time, place, and date
 8 of each overt act as well as the identities of the participants in those acts"); *United States v.*
 9 *Rosenstein*, 303 F.Supp 210, 213 (S.D.N.Y. 1969); *Smith*, 16 F.R.D. at 374-75.⁴

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 11 **C. A Bill Of Particulars Is Required In Connection with the Obstruction of Justice and**
 12 **Conspiracy to Obstruct Justice Charges (Counts 26-27) Because The Indictment Is**
 13 **Devoid Of Any Factual Particularity**

14 Counts 26 and 27, Paragraphs 31-39 of the Indictment, state the entirety of the government's
 15 allegations that Ms. Campbell conspired to obstruct justice and/or obstructed justice. The indictment
 16 states that the defendants "conspired to participate in the alteration and destruction of Tribal and
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 19 ³ A bill of particulars also appropriately is ordered to inform a defendant whether the
 20 government is charging the defendant as an aider and abetter or a principal. Thus, in *United States v.*
 21 *Agnello*, 367 F. Supp. 444 (E.D.N.Y. 1973), the court ordered the prosecution to provide an
 22 extensive bill of particulars, including identifying which defendants were alleged as "actually having
 committed the offense" and which were alleged as aiders and abettors, the type of aiding and abetting
 involved, the means by which each defendant aided or abetted, the names and addresses of aiders or
 abettors not named in the indictment and the names and addresses of all co-conspirators. *Id.* at 450.

23 ⁴ A defendant is also entitled to know the theory under which the government has named him
 24 in any count. *Yeargain v. United States*, 314 F.2d 881, 882 (9th Cir. 1963). Indeed, provision of
 25 information needed for proper defense preparation is appropriate even if it would disclose details
 26 about government witnesses. *United States v. Addonizio*, 451 F.2d 49, 64 n.16 (3d Cir. 1971);
United States v. Crisona, 271 F. Supp. 150, 156 (S.D.N.Y. 1967). Nor may a request for a bill of
 particulars be denied on the assertion that the defendant knows his own involvement in a case; such a
 ruling would countermand the constitutional presumption that a defendant is innocent of any charge
 until the government proves guilt beyond a reasonable doubt. *See United States v. Manetti*, 323 F.
 Supp. 683, 695-96 (D. Del. 1971); *Tanner*, 279 F. Supp. at 474 n.12.

1 Casino records, with the intent to impede, obstruct and influence that NIGC investigation.”

2 Indictment ¶ 36. The sole description of the overt acts alleged in the indictment is that Ms. Campbell

3 “and others met to alter, mutilate, conceal, cover up, falsify, and make false entries in Tribal and

4 Casino financial and business records.” Indictment ¶ 37b. This sentence is the sole description of

5 the overt acts alleged against Ms. Campbell, and merely parrots the language of the charging statute.

6 See 18 U.S.C. § 1519 (“Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies,

7 or makes a false entry in any record . . . shall be fined under this title. . . .”)

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9 The indictment in this case is similarly flawed to the insufficient indictment at issue in

10 *United States v. Cecil*, 608 F.2d 1294 (9th Cir. 1979). In *Cecil*, the indictment alleged only that:

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12 “Beginning on or before July 1975, and continuing thereafter until on or after
13 October 1975, within the District of Arizona and elsewhere, the named defendants
14 conspired to commit offenses in violation of Title 21, United States Code Section
15 952(a) and 960(a)(1). It was the object of said conspiracy that large quantities of
16 marihuana, a schedule I controlled substance, would be imported into the United
17 States of America from Mexico by one or more of the co-conspirators”

18 *Cecil*, 608 F.2d at 1295. The Ninth Circuit Court of Appeals in *Cecil* held that the indictment

19 failed to give adequate notice of the charges because it did nothing more than parrot the statutory

20 language and “fail[ed] to state any other facts or circumstances pertaining to the conspiracy or any

21 overt acts done in furtherance thereof[.]” *Cecil*, 608 F.2d at 1296-97. Thus, it “fail[ed] to allege

22 sufficient facts to facilitate the proper preparation of a defense and to ensure that the defendants were

23 prosecuted on facts presented to the Grand Jury.” *Cecil*, 608 F.2d at 1296-97.

24 Here, just as in *Cecil*, the indictment merely parrots the language of the statute, and thus fails

25 to provide the basic function of an indictment. None of the defendants charged in Counts 26 and 27

26 can adequately prepare their defenses, because the indictment uses generic descriptions that do not

explain to the defendants what they are alleged to have done, other than to have entered some sort of

1 agreement to do one of numerous listed acts in relation to unnamed documents. For example, on the
2 substantive count alleging that Ms. Campbell obstructed justice (Count 27) it is not clear whether
3 Ms. Campbell is alleged to have altered, mutilated, covered up, falsified, or made false entries in
4 documents. It is also not clear which records Ms. Campbell allegedly acted upon in the alleged
5 generic sea of “Tribal and Casino financial and business records,” Indictment ¶ 37(b), or whether
6 she acted as an aider and abettor. A defendant is entitled to know the theory under which the
7 government has named him in any count. *Yeargain v. United States*, 314 F.2d 881, 882 (9th Cir.
8 1963). Here, the government has listed every possible theory allowed in the statute, without
9 specifying any specific illegal act that Ms. Campbell has allegedly done.
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12 Moreover, neither Ms. Campbell nor any other defendant charged in Counts 26 or 27 have
13 notice of when, where, or how the agreement to conspire was allegedly made, what acts (if any) were
14 taken to further the conspiracy, or their alleged individual roles in the conspiracy. They know
15 nothing about any alleged overt acts taken to support the conspiracy, and in fact do not know if they
16 individually are charged to have done *any* overt acts were taken to support the conspiracy. Under
17 these circumstances, the defendants have no effective notice of the charges against them, and they
18 cannot defend themselves as the Constitution envisions.
19

20 **D. A Bill of Particulars Should Be Granted in Connection with Count Eighteen and**
21 **Twenty Five Because the Indictment, as Written, Does Not State Facts that Indicate a**
22 **Federal Crime Took Place**

23 In Counts 18 and 25, Ms. Campbell is charged with conspiring to steal and stealing from the
24 Shodokai Valley Casino by co-signing a check made out to unknown federal and state politicians that
25 was drawn from Casino funds. Under the caselaw cited above, the indictment on Counts 18 and 25
26 is defective for two reasons. First, the politician to whom Ms. Campbell allegedly co-signed a check

1 to is unnamed. As such, there is no way for Ms. Campbell to adequately prepare a defense in
2 connection with this check. Second, the indictment does not allege facts that adequately state a
3 violation of federal law, even assuming that Ms. Campbell did co-sign the check at issue. Although
4 the indictment does state that writing checks to politicians directly from the Casino account violated
5 a Settlement Agreement with the NIGC, the indictment fails to state how Ms. Campbell's alleged
6 actions violated federal law or constituted "theft" as a matter of federal law.

8 18 U.S.C. § 1167(b) provides for punishment of an individual who "abstracts, purloins,
9 willfully misapplies, or takes and carries away with intent to steal, and money, funds or other
10 property of a value in excess of \$1000 belonging to a gaming establishment." *See* 18 U.S.C. §
11 1167(b). Here, the government has not articulated its theory of prosecution in the indictment as to
12 how co-signing a check to a politician on behalf of the Tribe is "theft" or "willful misapplication" of
13 Indian funds. The indictment cites no federal, state, or local law prohibiting political contributions
14 from being drawn from a Casino account. Nor does the government state facts that, if proven at trial,
15 would support a legal finding that violation of a settlement agreement with the NIGC, or spending
16 money contrary to the mandates of a settlement with NIGC, is somehow "misapplication" or "theft"
17 of funds from the Casino. The indictment does not state or cite authority for the proposition that the
18 NIGC has the authority to dictate the terms under which Casino funds can be directly spent, or that
19 violation of a mandate or directive of the NIGC gives rise to a violation of 18 U.S.C. §1167(b).

22 Accordingly, Ms. Campbell is at a loss to defend this charge, as the legal basis for connecting
23 her alleged action co-signing the check to the crime codified in 18 U.S.C. § 1176(b) is unstated and
24 unexplained in the indictment. Theoretically, some legal theory connecting the alleged co-signing of
25 the check to the law codified in 18 U.S.C. §1167(b) must have been presented to the grand jury for
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1 an indictment to be returned. Under the language of the current indictment, however, neither Ms.
2 Campbell nor the Court can ensure that she is being prosecuted based on the legal theory presented to
3 the grand jury. The lack of legal theory in the indictment makes it impossible to ascertain what
4 theory was presented to the grand jury, and thus impossible to determine what was in the minds of
5 the grand jury when they determined that probable cause existed. The indictment accordingly
6 “deprive[s] the defendant of a basic protection that the grand jury was designed to secure, because a
7 defendant could then be convicted on the basis of facts not found by, and perhaps not even presented
8 to, the grand jury that indicted him.” *Cecil*, 608 F.2d at 1297. A bill of particulars is accordingly
9 warranted.
10

11 **E. A Bill of Particulars Should be Granted Directing the Government to Provide Further**
12 **Information About Count One**

13 Ms. Campbell hereby joins in the Motion for a Bill of Particulars in connection with Count
14 One filed by co-defendant Michael Hunter on October 4, 2007. For the reasons stated therein, as
15 well as the caselaw cited above, a bill of particulars should be granted in connection with the
16 conspiracy charged in Count One.
17

18 **CONCLUSION**

19 Just as in *Cecil*, the indictment in this case suffers from a “glaring lack of factual
20 particularity” which must be remedied. *Cecil*, 608 F.2d at 1297. Ms. Campbell therefore
21 respectfully request this Court to order the government to:
22

- 23 1. File a bill of particulars in connection with Count One detailing all overt acts taken in
24 support of the alleged conspiracy, specifying whether each defendant was an active
25 participant or aider and abettor, describing when the conspiracy was formed, what the
26 object of the conspiracy was, and the details of the Government’s theory regarding the

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- aforementioned;
2. File a bill of particulars in connection with Count One that lists each and every overt act committed by Michelle Campbell that the government claims are evidence of the alleged conspiracy, including any alleged agreements made by Michelle Campbell in furtherance of the alleged conspiracy;
 3. File a bill of particulars in connection with Count Eighteen that describes or explains the government’s legal theory about how co-signing a tribal check to a politician is legally cognizable as a “theft” or “misapplication” of Indian casino funds, as required for a prosecution under 18 U.S.C. § 1167(b);
 4. File a bill of particulars in connection with Count Eighteen detailing all overt acts taken in support of the alleged conspiracy, specifying whether each defendant was an active participant or aider and abettor, describing when the conspiracy was formed, what the object of the conspiracy was, and the details of the Government’s theory regarding the aforementioned;
 5. File a bill of particulars in connection with Count Eighteen that lists each and every overt act committed by Michelle Campbell that the government claims are evidence of the alleged conspiracy, including any alleged agreements made by Michelle Campbell in furtherance of the alleged conspiracy;
 6. File a bill of particulars in connection with Count Twenty-Five that indicates the name of “State Politician D” to whom the check was written, as indicated in Paragraph 30 of the Indictment;
 7. File a bill of particulars in connection with Count Twenty-Six detailing all overt acts

1 taken in support of the alleged conspiracy to obstruct justice by any defendant or
2 participant, specifying whether each defendant was an active participant or aider and
3 abettor, describing when the conspiracy was formed, what the object of the conspiracy
4 was, and the details of the Government's theory regarding the aforementioned;

- 5
- 6 8. File a bill of particulars in connection with Count Twenty-Six and Twenty-Seven that
7 lists each and every overt act or act committed by Michelle Campbell that the
8 government claims are evidence of the alleged conspiracy to obstruct justice or that
9 the government intends to rely on as an element of their substantive prosecution under
10 18 U.S.C. §1519, including any alleged agreements made by Michelle Campbell in
11 furtherance of the alleged conspiracy, the records alleged to have been altered,
12 mutilated, or destroyed, and the government's theory of prosecution of the acts
13 allegedly done by Ms. Campbell, rather than a generic listing of the numerous acts
14 prohibited by 18 U.S.C. § 1519.
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17 Dated: October 10, 2007

18 Respectfully submitted,

19 BARRY J. PORTMAN
20 Federal Public Defender

21 /S/

22 ELIZABETH M. FALK
23 Assistant Federal Public Defender
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