

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

NEERAJ JINDAL (1)  
JOHN RODGERS (2)

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NO. 4:20-CR-358 ALM/KPJ

**DEFENDANT NEERAJ JINDAL'S MOTION AND INCORPORATED MEMORANDUM  
FOR A BILL OF PARTICULARS**

Pursuant to Federal Rule of Criminal Procedure 7(f) and Local Rule CR-47, Defendant Neeraj Jindal (“Jindal”) files this Motion and Incorporated Memorandum for a Bill of Particulars, respectfully requesting that the Court order the government to provide a bill of particulars in accordance with the following:

## I. INTRODUCTION & BACKGROUND

The government indicted Jindal on December 9, 2020. [Dkt. No. 1]. On April 15, 2021, the government superseded its Indictment with the First Superseding Indictment (hereinafter the “Indictment”) [Dkt. No. 21], which added John Rodgers as a defendant in this case.

The four-count Indictment charges Jindal and John Rodgers with: (1) antitrust conspiracy: price fixing, violation of 15 U.S.C. § 1; (2) conspiracy to commit offense, violation of 18 U.S.C. § 371; (3) obstruction of proceedings before the Federal Trade Commission, violation of 18 U.S.C. § 1505 and § 2 (Jindal only); and (4) obstruction of proceedings before the Federal Trade Commission, violation of 18 U.S.C. § 1505 and § 2 (Rodgers only).

The Indictment alleges that both Defendants and certain unindicted co-conspirators “knowingly entered into and engaged in a conspiracy to suppress competition by agreeing to fix prices and lowering the pay rates to PTs and PTAs.” [Dkt. No. 21 ¶ 11]. It further alleges that Defendants engaged with certain individuals and companies, referred to as Individual 2, Individual 3, Individual 4, Individual 5, Individual 5, Company B, Company C, Company, D, Company E, Company F, and Company G.

Jindal, the owner of a health care staffing company contracted with physical therapists (“PTs”) and physical therapist assistants (“PTAs”) to provide in-home physical therapy services to patients in the Dallas-Fort Worth Metroplex. *Id.* ¶¶ 5, 7. Rodgers was a physical therapist who contracted with Jindal’s company and reported to Jindal. *Id.* ¶ 6. The Indictment alleges that

Jindal and Rodgers contacted the owners of companies B, C, D, E, and F regarding the non-public rates paid to PTs and PTAs. *Id.* ¶ 12(a)-(c).

The Indictment further alleges that “[p]ursuant to the agreement,” Jindal’s company “thereafter paid lower rates to certain PTs and PTAs.” *Id.* at ¶ 12(d). The Indictment does not allege, however, the amount to which Jindal’s company lowered the rates. Nor does the Indictment allege that rates were lowered for PTs or PTAs who contracted with the therapist staffing companies owned by any of Jindal’s competitors, including Individual 2, Individual 3, Individual 4, Individual 5, or Individual 6.

Counsel for Jindal and Rodgers requested all the information sought herein in a June 2, 2021 letter to the government. In response, the government identified certain individuals referred to in the Indictment as Individuals 2-6 and certain companies referred to in the Indictment as Companies B-G, but did not specify which, if any, of the identified individuals or companies were unindicted co-conspirators. The government refused to provide any further information regarding the alleged decreases in pay rates for PTs and PTAs, and refused to identify any unindicted co-conspirators.

## **II. SPECIFIC PARTICULARS**

The government alleges that Jindal and Rodgers entered into and implemented a conspiracy with other unidentified therapist staffing companies to decrease and fix the rates of PTs and PTAs. However, the discovery the government has produced provides no notice of how Jindal or Rodgers actually entered into or implemented any alleged conspiracy. Instead, it discloses a small number of panicky messages that went nowhere and produced no agreement and even more telling, no effect. The government’s failure to disclose information reflecting the alleged implementation of the purported conspiracy to decrease wages will subject Jindal to unfair surprise at trial.

Pursuant to Federal Rule of Criminal Procedure 7(f) and the Fifth and Sixth Amendments to the United States Constitution, Jindal respectfully requests that the Court order the government to file a Bill of Particulars for the First Superseding Indictment, specifically providing information related to (1) the alleged “collusive noncompetitive rates”—amounts decreased, whose rates were changed, and the dates of the decreases; and (2) the identification of the unindicted co-conspirators. Such information is necessary for Jindal to understand the charges against him, prepare a proper defense, avoid prejudicial surprise at trial, and to protect him from subsequent prosecution for the same offense.

**A. Alleged Rate Decreases: Amounts; PTs and PTAs with Decreased Rates; Dates of Decreases.**

The core allegation and basis for the prosecution is an alleged conspiracy to fix the rates paid to PTs and PTAs. The Indictment alleges that Jindal implemented rate decreases in accordance with an alleged agreement and paid “collusive noncompetitive rates” to PTs and PTAs. The Indictment is silent with respect to these alleged rate decreases, requiring Jindal to guess as to the amounts and the affected PTs and PTAs. Accordingly, Jindal requests the Court to order that the government provide the following particularized information:

1. What constitutes the “rate decreases” that were implemented “in accordance with the agreement reached?” *See* [Dkt. No. 21 at ¶ 12]. Jindal requests the amount of the rate decreases, including the amounts paid before and after the decreases, the identity of any PT and PTA who received a rate decrease “in accordance with the agreement reached,” and the date[s] of any such decreases.

2. What constitutes the “collusive anticompetitive rates” that were “paid to PTs and PTAs?” *See id.* Jindal requests the amount of the “collusive anticompetitive rates,” the identities of the PTs and PTAs who were paid the collusive anticompetitive rates, the date on which the PTs

and PTAs were first paid collusive anticompetitive rates, and each PT's and PTA's rate before being paid collusive anticompetitive rates.

3. What constitutes the “lower rates” that Jindal’s company paid “to certain PTs and PTAs?” *See id.* at ¶ 12(d). Jindal requests the identities of the PTs and PTAs whose rates were decreased, the amount of such decreases, including the amounts paid before and after the decrease, and the date of the decreases for “certain PTs and PTAs.”

### **B. Identity of Co-Conspirators**

The Indictment contains approximately a half dozen references to unidentified co-conspirators. Therefore, Jindal requests the Court to order that the government provide the following particularized information: A list identifying all co-conspirators, whether individuals or entities, referenced in paragraphs 9 and 11-13 of the Indictment. *See* [Dkt. No. 21 at ¶¶ 9, 11-13].

## **III. LEGAL STANDARD**

“The purpose of a bill of particulars is to inform an accused of the charge with sufficient precision to reduce trial surprise, to enable adequate defense preparation, and critically, by the fleshing out of the charges to illuminate the dimensions of jeopardy.” *United States v. Davis*, 582 F.2d 947, 951 (5th Cir. 1978) (citations omitted). A bill of particulars “is a matter for the trial court’s discretion.” *United States v. Harbin*, 601 F.2d 773, 778 (5th Cir. 1979).

Under Rule 7(f), a “defendant may move for a bill of particulars before or within 14 days after arraignment **or at a later time if the court permits.**” (emphasis added). In the May 28, 2021 Pretrial Order, the Court ordered that “any motions in limine and **any other pretrial motions**” must be filed by August 27, 2021. [Dkt. No. 44]. As such, this Motion is both proper and timely.

## **IV. ARGUMENT REGARDING SPECIFIC PARTICULARS**

Jindal's right "to be informed of the nature and cause of the accusation" against him is guaranteed by the Sixth Amendment. Without sufficient information to identify the particular conduct that forms the basis for the prosecution, Jindal is at an unfair disadvantage in defending this prosecution. "It is axiomatic that a criminal defendant should be given enough information about the offense charged so that he may prepare adequately for trial." *United States v. Rogers*, 617 F. Supp. 1024, 1027 (D. Colo. 1985). Jindal is not attempting to obtain a detailed disclosure of the government's evidence before trial. Rather, Jindal needs sufficient information to reduce surprise at trial and to allow the ability to adequately prepare his defense—the exact purpose of a bill of particulars. *See Davis*, 582 F.2d at 951 (one purpose is to "enable adequate defense preparation").

The basis for the charges against Jindal are a conspiracy to violate and violation of § 1 of the Sherman Act, which criminalizes every agreement "in restraint of trade or commerce among the several states." 15 U.S.C. § 1. The government should inform Jindal about what conduct constitutes the crime charged. *See Russell v. United States*, 369 U.S. 749, 765-66 (1962) (indictment must state the specifics of the charges). The government cannot simply point to discovery produced to wholly discharge its obligations for a bill of particulars. *See, e.g., United States v. Bortnovsky*, 820 F.2d 572, 574 (2d Cir. 1987).

Here, the Indictment wholly fails to provide any information regarding the alleged agreement in restraint of trade, including the purported agreed upon rates, the amount(s) of any rate decreases, the date of such decreases, and the identities of any PTs or PTAs subjected to those decreases. Moreover, the Indictment fails to identify unindicted co-conspirators who participated in the alleged conspiracy to fix wages.

**A. Alleged Rate Decreases: Amounts; PTs and PTAs with Decreased Rates; Dates of Decreases.**

The Indictment alleges that Jindal and unidentified co-conspirator(s) entered into an agreement to fix wages for PTs and PTAs, and then implemented that agreement by lowering the wages paid to PTs and PTAs. However, the Indictment does not provide any information regarding the alleged implementation of the purported conspiracy. Instead, the Indictment conclusorily states that Jindal “implemented rate decreases in accordance with the agreement reached; and paid PTs and PTAs at collusive noncompetitive rates.” [Dkt. No. 21 at ¶ 12]. The Indictment fails to identify the amount of the rate decreases that were allegedly implemented, including the amounts that were paid before and after the decrease. Nor does the Indictment identify whose rates were decreased and when. Instead, the Indictment alleges that Jindal’s company paid “lower rates to certain PTs and PTAs.” *Id.* at ¶ 12(d). The Indictment fails to identify the “lower rates” or the “certain PTs or PTAs” it references. As written, the Indictment requires Jindal to guess with respect to all aspects of the implementation of the purported agreement. Such details are central to the case and Jindal’s ability to put forth a defense.

In Count I of the Indictment, the only references to any amounts of pay rates for PTs or PTAs are found in Paragraphs 12(a)-(c). Those paragraphs do not, however, provide the requested information. Paragraph 12(a) alleges that Rodgers suggested the possibility of lowering the rate of pay to PTAs to \$45 in a text message conversation with Individual 2, while Individual 2 suggested a \$60 rate for PTs. *Id.* at ¶ 12(a). The Indictment does not notify Jindal if the rates referenced in Paragraph 12(a) constitute the collusive noncompetitive rates that Jindal allegedly paid to PTs and PTAs or the “rate decreases” that Jindal allegedly implemented “in accordance with the agreement reached.”

In Paragraph 12(c), the Indictment references a text exchange between Rodgers and Individual 2 in which Rodgers allegedly told Individual 2, “FYI we made rate changes effective next payroll Monday decreasing PTs and PTA’s,” to which Individual 1 allegedly responded, “Well I can join in where did u go.” *Id.* at ¶ 12(c). The Indictment is silent regarding the actual amount of the referenced rate changes. Instead, it vaguely alleges that “Rodgers and Individual 2 subsequently exchanged text messages regarding Company A’s and Company B’s pay rates for PTs and PTAs,” without identifying the pay rates about which Rodgers and Individual 2 allegedly exchanged messages. *Id.*

The Indictment is also vague and insufficient in its failure to identify PTs and PTAs whose rates were allegedly reduced, only stating that Jindal’s company “lowered the rates of certain PTs and PTAs.” *Id.* at ¶ 12(d). The Indictment leaves Jindal to guess which PTs and PTAs had their rates decreased. Indeed, the Indictment does not even indicate how many PTs and PTAs had their rates reduced in connection with the purported agreement.

The alleged “collusive noncompetitive rates” are at the core of the charges against Jindal. Without specifics about whose rates were illegally decreased, when, and in what amount, Jindal must speculate as to whether and how he implemented a conspiracy in violation of the Sherman Act. *See Russell*, 369 U.S.at 765-66; *see also United States v. Aiyer*, 470 F. Supp. 3d 383, 414 n.31 (S.D.N.Y. 2020) (recognizing that “the Supreme Court . . . has stated that the evidence of the failure of a conspiracy to achieve its ends can be used to demonstrate the lack of a conspiracy or the lack of intent on the part of an alleged conspirator”) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 592 (1986)). Therefore, Jindal requests that the Court order the government to particularize the allegedly “collusive noncompetitive rates;” the amounts of any



illegal decreases in rates, including the amounts before and after the decrease; the PTs and PTAs who were subject to allegedly illegal rates; and when those rates were put into place.

### **B. Identities of Unindicted Co-Conspirators**

Paragraph 9 of the Indictment alleges, “Various commercial entities and an individual, not made defendants in this Count, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.” *Id.* ¶ 9. In fact, the Indictment references the co-conspirators numerous times as entities and individuals that: performed acts and made statements in furtherance of the charged offense (¶ 9); knowingly entered into a conspiracy to suppress competition (¶ 11); provided and received non-public rates paid to PTs and PTAs (¶ 12); engaged in the business activities that are the subject of the conspiracy charged that affected interstate trade and commerce (¶ 13).

While a conspiracy conviction does not *require* the identification of co-conspirators, the evidence must support the existence of the co-conspirator and that the defendant conspired with the co-conspirator. *See U.S. v. Moree*, 897 F.2d 1329, 1332 (5th Cir. 1990). A bill of particulars is the proper procedure for identifying the names of co-conspirators involved in crimes charged. *See United States v. Barrentine*, 591 F.2d 1069, 1077 (5th Cir. 1979). Moreover, “[i]t is not uncommon for the trial judge to require the government to disclose their names when information is necessary in a defendant’s preparation for trial.” *Id.* This is especially true where the government plans to call such unindicted co-conspirators as witnesses because “to do otherwise is to guarantee prejudicial surprise to the defendant if the government is allowed to produce undisclosed, unknown members of the enterprise and its activities to testify against the defendant.” *United States v. Thevis*, 474 F. Supp. 117, 125 (N.D. Ga. 1979), *aff’d*, 665 F.2d 616 (5th Cir. 1982).

Here, the crux of the Indictment is the alleged conspiracy to suppress competition. Without the identities of the co-conspirators, it is unclear how the government can allege that competition was suppressed—what competition and with whom? The government has alleged that Jindal paid collusive rates, but has not identified the unindicted co-conspirators with whom he allegedly colluded. It is entirely unclear from the Indictment who, if any, of Individuals 2-6 and Companies B-G are co-conspirators. It is similarly unclear if any individuals or entities not yet identified by the government are unindicted co-conspirators.

The information is important where, as here, the government intends to hold Jindal liable for his own and the acts of alleged co-conspirators. *See Rogers*, 617 F. Supp. at 1029 (government must provide enough information “to apprise defendants of the nature of their own alleged overt acts as well as those of co-violators”). The identity of each of the co-conspirators is necessary for trial preparation and to avoid prejudicial surprise. *Id.* Therefore, the government should be ordered to identify each unindicted co-conspirator, whether an individual or an entity, to avoid surprise and allow Jindal to adequately prepare his defenses.

## V. CONCLUSION

WHEREFORE, Jindal respectfully requests this Court to order the government to file a Bill of Particulars providing the above-requested information that is essential to protect Jindal’s ability to understand the charges, to prepare proper defenses, to prevent prejudicial surprise at trial, and to protect Jindal from subsequent prosecution for the same offenses.

Dated: August 20, 2021.

Respectfully submitted,

**LOCKE LORD LLP**

By: */s/ Paul E. Coggins*

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**Counsel for Defendant Neeraj Jindal**

**CERTIFICATE OF CONFERENCE**

On August 20, 2021, I conferred with counsel for the United States on the merits of this motion. Counsel has stated that they are opposed to the relief sought in this motion.

*/s/ Brendan P. Gaffney*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon all counsel of record via the Court's electronic filing service on this 20th day of August, 2021.

*/s/ Paul E. Coggins*

Counsel for Defendant