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

UNITED STATES OF AMERICA	§	
	§	
vs.	§	
	§	NO. 4:20-CR-358 ALM/KPJ
	§	
NEERAJ JINDAL (1)	§	
JOHN RODGERS (2)	§	

DEFENDANT NEERAJ JINDAL'S REPLY IN SUPPORT OF MOTION FOR BILL OF PARTICULARS

I. INTRODUCTION

The government has brought an unprecedented prosecution for alleged wage-fixing conduct that has never before been the subject of a criminal case, and now seeks to avoid identifying the wages that the government alleges were fixed. Rather than simply providing information regarding the purportedly fixed wages, the government contends that it does not need to specify any allegations in the Indictment beyond base elements of the offense, and points to discovery that does not reflect or support the allegations in the Indictment.

II. ARGUMENT & AUTHORITIES

A. The Government Should Identify the Alleged Rate Decreases.

The government bases its opposition to Jindal's request that the Government identify and provide information regarding the allegedly "collusive noncompetitive rates" and the lower rates allegedly paid "[p]ursuant to the agreement," on two arguments: (1) implementation of an agreement or conspiracy is not an element of an offense under Section 1 of the Sherman Act; and (2) the government has provided discovery from which Jindal can glean the requested information. Resp. at p. 6. Neither argument justifies the government's refusal to provide the requested information.

The government contends that it does not need to supplement the Indictment because the Indictment alleges facts supporting the elements of a price-fixing offense.[1] Among those elements is that the defendant and co-conspirators "knowingly formed, joined or participated in a combination or conspiracy." *United States v. Cargo Serv. Stations, Inc.*, 657 F.2d 676, 681 (5th Cir. 1981). The government correctly notes that implementation of a conspiracy is not a standard element of a Section 1 Sherman Act offense, but is incorrect in its assertion that Jindal seeks information that is "inessential to any element of the charged offense." Resp. at p. 5. Indeed, the implementation of a conspiracy, or lack thereof, can be determinative of whether a conspiracy existed. *See United States v. Aiyer*, 470 F. Supp. 3d 383, 414 n.31 (S.D.N.Y. 2020) ("[T]he 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)).

Here, facts relating to the implementation of any agreement to fix wages of PTs and PTAs are key to the government's ability to prove the formation of any conspiracy. Thus, facts demonstrating the implementation of a conspiracy, or the lack of such facts, are essential to whether Jindal or anyone else "knowingly . . . participated in a combination or conspiracy." *Cargo Serv. Stations, Inc.*, 657 F.2d at 681. Because the information Jindal requests is essential to one of the elements of the Indictment's Sherman Act count, the government should identify the requested information in a Bill of Particulars.

The government claims further that it is not required to provide any information regarding the alleged reduction of rates for PTs or PTAs because it has produced discovery and Jindal can glean the requested information from the produced discovery. However, the referenced discovery

[1] For the reasons stated in Jindal's Motion to Dismiss and Reply in Support of Motion to Dismiss, Jindal disagrees that the Indictment alleges a price-fixing offense or alleges a *per se* Sherman Act violation.

does not reflect the allegations in the Indictment and is insufficient in identifying the alleged "collusive noncompetitive rates" or identifying how Jindal "implemented rate decreases in accordance with the agreement reached." [Dkt. No. 21 at ¶12]. Specifically, the Indictment references a $45 pay rate for PTAs, but the discovery produced does not identify any PTAs whose rates Jindal allegedly lowered to $45 "in accordance with the agreement reached." *Id.* Thus, it is unclear from the discovery, and from the Indictment, what the government considers the "collusive noncompetitive rates" and the rates that were "decrease[d] in accordance with the agreement reached." As such, Jindal requests a bill of particulars to avoid surprise at the time of trial.

B. The Government Should Identify the Alleged Unindicted Co-Conspirators.

The government incorrectly claims that Jindal did not articulate why identification of the unindicted co-conspirators is necessary to help in preparation of a defense. Resp. at p. 8. As the Motion states, "the crux of the Indictment is the alleged conspiracy to suppress competition." Motion at p. 9. Other than Defendants Jindal and Rodgers, the Indictment refers to five other unnamed individuals, each of whom allegedly communicated in some way with Jindal or Rodgers regarding pay rates for PTAs and PTs. *See* Indictment at ¶¶ 12(a) (communications with Individual 2), 12(b) (communications with Individuals 3-6). The Indictment likewise refers to the unnamed Companies owned by Individuals 2-6. *Id.* (noting Individuals 2-6's ownership of Companies B-G). The Indictment states that "various commercial entities" participated in the alleged conspiracy. As written, the Indictment requires Jindal to speculate regarding which of Individuals 2-6 or Companies B-G the government considers co-conspirators. It is appropriate for the Court to direct the government to identify the unindicted co-conspirators.

In this case, it is particularly important for Jindal to know which individuals and entities the government considers co-conspirators. As the government noted in its Response, it produced over 14,000 records and the production includes records relating to PT and PTA rates for some of

Companies B-G. Because the Government has alleged that Jindal participated in a conspiracy to fix wages, when evaluating any documents reflecting rates that Companies B-G paid to PTs and PTAs, it is important for Jindal to understand whether the government may argue that such rates are collusive. Because payment of alleged "collusive rates" is central to the charges against Jindal and Rodgers, it is important for Jindal to be able to determine what rates may be considered "collusive" more than one week before trial. Whether a particular company or individual is considered a co-conspirator could influence whether Jindal decides to include certain of that company's or individual's records on the exhibit list, which must be filed on the same day as the witness list. *See* [Dkt. 52]. While the government's refusal to disclose unindicted co-conspirators will adversely affect Jindal's ability to prepare his defense, the government will not face any adverse impact if compelled to identify the unindicted co-conspirators.

Finally, to the extent the government has knowledge and documents reflecting that the unindicted co-conspirators did not pay collusive rates and did not decrease their rates pursuant to any agreement with defendants, that knowledge and those documents fall squarely within the ongoing Brady obligations of the government to produce to defendants.

III. CONCLUSION

Jindal respectfully requests that the Court exercise its discretion and direct the government to file a Bill of Particulars consistent with Jindal's Motion.

Dated: September 10, 2021.

Respectfully submitted,

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By: */s/ Paul E. Coggins*

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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 10th day of September, 2021.

/s/ Paul E. Coggins
Counsel for Defendant