

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. ) No. 08-00026-03-CR-W-FJG  
)  
TROY R. SOLOMON, )  
)  
Defendant. )

**GOVERNMENT'S CONSOLIDATED RESPONSE TO  
DEFENDANT TROY SOLOMON'S MOTION FOR BILL OF  
PARTICULARS [DOC. 58] AND HIS MOTION TO QUASH INDICTMENT [DOC. 65]**

COMES NOW the United States of America, by and through its undersigned counsel, and files this consolidated response to Defendant Troy Solomon's Motion for Bill of Particulars<sup>1</sup> (Doc. 58) and his Motion to Quash the Indictment<sup>2</sup> (Doc. 65). The indictment and the extensive discovery provided to Defendant Solomon are sufficient to: inform him of the charges against which he must defend; minimize surprise at trial; and allow him to plead double jeopardy in a future prosecution for the same offense. Therefore, a Bill of Particulars is not warranted in this case. The Motions should be denied.

**I. BACKGROUND**

On February 6, 2008, a federal grand jury returned a speaking indictment against

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<sup>1</sup> Defendant Solomon adopts by reference Defendant Christopher Elder's Motion For a Bill of Particulars (Doc. 55). The United States incorporates the United States' Response (Doc. 77) into this Consolidated Response.

<sup>2</sup> Defendant Solomon adopts by reference Defendant Martin's Motion to Dismiss For Failure to State an Offense as Counts Two, and Twenty-One through Twenty-Four (Doc. 57). The United States incorporates the United States Response (Doc. 79) into this Consolidated Response.

Defendants Mary Lynn Rostie, Cynthia S. Martin, Troy R. Solomon, Christopher L. Elder, and Delmon L. Johnson. The indictment charges all five named defendants with conspiring to illegally distribute prescription drugs, primarily hydrocodone and alprazolam, in violation of 21 U.S.C. §§ 841(a)(1) and 846. Count Two of the indictment charges Defendant Solomon and other co-defendants with conspiracy to launder the illegally obtained proceeds in violation of 18 U.S.C. §§ 1956(a)(1)(A)(I), 1956(a)(1)(B)(I), and 1956(h). Counts Three through Twelve charge Solomon and other co-defendants with substantive counts of illegal distribution, in violation of 21 U.S.C. § 841(a)(1). The charges stem from the distribution of controlled substances by a pharmacy in Belton, Missouri, to Defendants Solomon and Johnson in Houston, Texas.

The indictment states, in relevant part:

**COUNT ONE**

**(Conspiracy to Distribute Controlled Substances)**

The Grand Jury re-alleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 20 of the Indictment,<sup>3</sup> and further alleges:

From at least in or about August 2004, the exact date being unknown to the Grand Jury, and continuing through October 2005, said dates being approximate, in the Western District of Missouri, and elsewhere, MARY LYNN ROSTIE, a/k/a Lynn Rostie, CYNTHIA S. MARTIN, TROY R. SOLOMON, CHRISTOPHER L. ELDER, and DELMON L. JOHNSON, defendants herein, did knowingly and intentionally combine, conspire, confederate and agree with each other and other persons known and unknown to the Grand Jury, an unindicted co-conspirator, to knowingly and intentionally distribute, dispense, and possess with intent to distribute and dispense Schedule III, IV, and V controlled substances, including but not limited to, hydrocodone, a Schedule III controlled substance, both in its generic name and brand name forms, such as Lortab and Lorcet; alprazolam, a Schedule IV controlled substance, in its generic form and

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<sup>3</sup> Paragraphs 1 through 20 of the Indictment are introductory paragraphs, providing background information.

brand name forms, such as Xanax; and promethazine with codeine, a Schedule V controlled substance, in its generic form and brand name forms, such as Phernergan with codeine; other than for a legitimate medical purpose and not in the usual course of professional practice— thus rendering them unlawful and invalid prescriptions— a violation of Title 21, United States Code, Section 841(a)(1).

**Manner and Means**

During the course and in the furtherance of the conspiracy, in addition to other acts, the Defendants MARY LYNN ROSTIE, a/k/a Lynn Rostie, CYNTHIA S. MARTIN, TROY R. SOLOMON, CHRISTOPHER L. ELDER, and DELMON L. JOHNSON, with others known and unknown to the Grand Jury:

a. Defendant ELDER wrote unlawful and invalid prescriptions for thousands of dosage units of Schedule III, IV, and V substances (“drugs”). These prescriptions were unlawful and invalid because Defendant ELDER issued them not for a legitimate medical purpose and outside the usual course of professional practice.

b. Defendant SOLOMON obtained the unlawful and invalid prescriptions, as well as authorization for refill orders from Defendant ELDER and would send by facsimile transmission a copy of the prescriptions and refill order re-authorizations to Defendant ROSTIE at the Medicine Shoppe.

c. Defendant ROSTIE ordered and received quantities of controlled substances— including hydrocodone, a Schedule III controlled substance— that Defendant ROSTIE knew exceeded the quantities of controlled substances needed for the use in the course of the legitimate pharmaceutical practice of The Medicine Shoppe.

d. Defendant ROSTIE filled the unlawful and invalid prescriptions written by Defendant ELDER and had the controlled substances delivered via FedEx to Defendants ELDER and SOLOMON at 3003 S. Loop West, Suite 415, Houston, Texas (the location of South Texas Wellness Center) and at 3003 S. Loop West, Suite 450, Houston, Texas (the location of Ascensia Nutritional Pharmacy).

e. Defendant ROSTIE filled prescription orders that bore the signature and DEA number of Dr. B, a medical doctor licensed in Texas, and shipped the controlled substances to Defendant SOLOMON.

f. Defendant JOHNSON had packages sent via United Parcel Service to Defendant MARTIN.

g. Defendant MARTIN paid Defendant ROSTIE thousands of dollars in cash for the controlled substances.

h. Defendants ROSTIE and SOLOMON communicated with each other using telephone lines, fax lines, and cellular telephones, including telephone numbers 816-331-6040, 816-331-6041, 713-665-0309, and 281-469-9913; fax numbers 816-331-7248 and 281-469-9912; and cellular telephone number 832-794-0470, to arrange for the delivery of, and payment for, the controlled substances.

#### **Overt Acts**

In furtherance of the conspiracy, and to accomplish its object, the following persons performed the following overt acts, among others, within the Western District of Missouri and elsewhere:

a. In or before August 2004, Defendant MARTIN introduced Defendant SOLOMON to Defendant ROSTIE for the purpose of obtaining controlled substances from Defendant ROSTIE.

b. Between on or about September 1, 2004, and October 25, 2005, three patients had controlled substance prescriptions filled on multiple dates after they had died. These prescriptions were issued by Defendant ELDER and filled by Defendant ROSTIE.

c. From October 2004 through December 2004, multiple patients of Defendant ELDER had prescriptions filled for 120 tablets of hydrocodone and 90 tablets of alprazolam on the same days. Beginning on December 1, 2004, the same patients began having prescriptions filled for 240 ml of promethazine with codeine syrup in addition to the first two controlled substances on the same days.

d. On or about June 9 and 10, 2005, Defendant ROSTIE filled over one hundred prescriptions for patients whose last names began with the letter "L".

e. On or about June 10 and 11, 2005, Defendant ROSTIE filled over one hundred prescriptions for patients whose last names began with the letter “M”.

f. On or about June 20, 2005, Defendant ROSTIE filled over one hundred prescriptions for patients whose last names began with the letter “W”.

g. From on or about January 4, 2005, through on or about September 22, 2005, the Defendants ROSTIE and SOLOMON, using Dr. B’s DEA registration number and prescription pad, ordered, filled, and shipped 170,280 milliliters of promethazine with codeine syrup, a Schedule V controlled substance.

h. On or about May 10, 2006, Defendant ROSTIE possessed prescriptions issued by Defendant ELDER on prescription pads of Westfield Medical Clinic and dated February 1, 2005 (approximately 71 prescriptions), and February 2, 2005 (approximately 61 prescriptions).

i. On or about May 10, 2006, Defendant ROSTIE possessed handwritten notes concerning the pricing of hydrocodone (10/500mg and 10/650mg), alprazolam, and promethazine with codeine. Some of the notes refer to an unindicted co-conspirator and Defendant ELDER.

All in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D), 841(b)(2), 841(b)(3), and 846.

## **COUNT TWO**

### **(Conspiracy to Commit Promotional/Concealment Money Laundering)**

The Grand Jury re-alleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 20 of the Indictment, and further alleges:

From at least in or about August 2004, the exact date being unknown to the Grand Jury, and continuing through October 2005, said dates being approximate, in the Western District of Missouri, and elsewhere, MARY LYNN ROSTIE, a/k/a Lynn Rostie, CYNTHIA S. MARTIN, TROY R. SOLOMON, and DELMON L. JOHNSON, defendants herein, did knowingly and intentionally combine, conspire, confederate and agree with each other and other persons known and unknown to the Grand Jury, to conduct financial transactions affecting interstate commerce in violation of Title 18, United States Code, Section

1956(a)(1)(A)(i) and (B)(i), which transactions involved the proceeds of specified unlawful activity, that is, conspiracy to illegally distribute and dispense controlled substances in violation of Title 21, United States Code, Section 846, with the intent to promote the carrying on of the specified unlawful activity and knowing that the transactions were designed in whole and in part to conceal and disguise the activity and that while conducting and attempting to conduct such financial transactions, the defendants knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity.

During the course of the conspiracy to distribute hydrocodone, alprazolam, and promethazine with codeine, Defendant ROSTIE, made gross sales of at least \$991,114 from filling the unlawful and invalid prescriptions and distributing these controlled substances.

During the course and in furtherance of the conspiracy, in addition to other acts, the Defendants MARY LYNN ROSTIE, a/k/a Lynn Rostie, CYNTHIA S. MARTIN, TROY R. SOLOMON, and DELMON L. JOHNSON, with others known and unknown to the Grand Jury with the intent to promote the carrying on of the specified activity, and for the purpose to conceal and disguise the nature and source of the proceeds of the specified unlawful activity:

a. From on or about September 2, 2004, through October 31, 2005, approximately 70 packages were shipped via United Parcel Service from Houston, Texas to Defendant MARTIN in Belton, Missouri. The invoices for these packages were sent using the address of 5833 Sunforest Dr., Houston, Texas. This address was the residence of Defendant JOHNSON, and was owned by Defendant SOLOMON. These packages are the only connection known between SOLOMON and MARTIN. In addition, Defendant MARTIN was the only known financial connection between Defendants SOLOMON and ROSTIE.

b. The proceeds of this conspiracy are generated in Texas by Defendants SOLOMON and JOHNSON through the sale of the filled prescriptions that are filled by Defendant ROSTIE. A portion of these proceeds are then provided to Defendant MARTIN as payment, both towards her own benefit, as well as to provide payments for the filled prescriptions as a continuance of the conspiracy. It is therefore believed that the proceeds are provided to Defendant MARTIN in the packages sent via United Parcel Service in order to pay for additional prescriptions.

c. From October 8, 2004 through October 17, 2005, Defendant MARTIN deposited miscellaneous United States currency into her personal checking account with the account number 003477654976 at

Bank of America on 29 separate occasions totaling approximately \$71,666.80.

d. From on or about September 2, 2004, through October 31, 2005, Defendant MARTIN entered the business of Defendant ROSTIE, at ROSTIE ENTERPRISES, LLC, d/b/a The Medicine Shoppe, and provided currency to Defendant ROSTIE for payment on the account of South Texas Wellness Center. This currency represents proceeds of the illegal sale of hydrocodone, alprazolam, and promethazine with codeine.

e. From at least in or about August 2004, and continuing through on or about October 29, 2005, Defendant ROSTIE, deposited into the business checking account of ROSTIE ENTERPRISES LLC, d/b/a The Medicine Shoppe with the account number 3501673 at Allen Bank and Trust Company gross sales of \$991,114, which includes proceeds of the illegal sale of hydrocodone, alprazolam, and promethazine with codeine.

f. Defendant ROSTIE, using the mail services provided by Federal Express, then mailed the filled prescriptions to Defendants SOLOMON and JOHNSON at the business locations of South Texas Wellness Center and Ascensia Nutritional Pharmacy in Houston, Texas.

All in violation of Title 18, United States Code, Section 1956(h).

### **COUNTS THREE THROUGH SIX**

#### **(Distribution of Controlled Substances)**

The Grand Jury re-alleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 20 of the Indictment, and further alleges:

On or about the dates set forth below, in the Western District of Missouri, and elsewhere, MARY LYNN ROSTIE, a/k/a Lynn Rostie, TROY SOLOMON and CHRISTOPHER ELDER, defendants herein, aiding and abetting each other and others, both known and unknown to the Grand Jury, did knowingly and intentionally distribute and dispense Schedule III and IV controlled substances, as set forth below, other than for a legitimate medical purpose and not in the usual course of professional practice:

<b>Count</b>	<b>Date Prescription Written</b>	<b>Patient</b>	<b>Date Prescription Filled</b>	<b>Controlled Substance Description</b>
3	10/19/2004	Amanda Allen	10/19/2004	Lorcet 10/650, a brand name prescription drug containing hydrocodone, a Schedule III controlled substance, 120 dosage units; Xanax 2mg, a brand name prescription drug containing alprazolam, a schedule IV controlled substance, 90 dosage units
4	10/19/2004	Lindsay Louis	10/19/2004	Lorcet 10/650, a brand name prescription drug containing hydrocodone, a Schedule III controlled substance, 120 dosage units; Xanax 2mg, a brand name prescription drug containing alprazolam, a schedule IV controlled substance, 90 dosage units
5	10/26/2004	Mark Ivey	10/27/2004	Lortab 10/500, a brand name prescription drug containing hydrocodone, a Schedule III controlled substance, 120 dosage units; Xanax 2mg, a brand name prescription drug containing alprazolam, a schedule IV controlled substance, 90 dosage units
6	10/26/2004	Cheryl Zarsky	10/27/2004	Lortab10/500, a brand name prescription drug containing hydrocodone, a Schedule III controlled substance, 120 dosage units; Xanax 2mg, a brand name prescription drug containing alprazolam, a schedule IV controlled substance, 90 dosage units

All in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D), and 841(b)(2), and Title 18, United States Code, Section 2.



**COUNT SEVEN THROUGH TEN**

**(Distribution of Controlled Substances)**

The Grand Jury re-alleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 20 of the Indictment, and further alleges:

On or about the dates set forth below, in the Western District of Missouri, and elsewhere, MARY LYNN ROSTIE, a/k/a Lynn Rostie, CHRISTOPHER L. ELDER, TROY R. SOLOMON, and DELMON L. JOHNSON, defendants herein, aiding and abetting each other and others, both known and unknown to the Grand Jury, to knowingly and intentionally distribute and dispense Schedule III, Schedule IV, and Schedule V controlled substances, as set forth below, other than for a legitimate medical purpose and not in the usual course of professional practice:

<b>Count</b>	<b>Date</b>	<b>Patient</b>	<b>Controlled Substances Description</b>
7	09/14/04	H.H.	Rx# 194227 for hydrocodone 10/650mg, a Schedule III controlled substance, 120 dosage units; Rx # 194228 for alprazolam 2mg, a Schedule IV controlled substance, 90 dosage units
8	09/14/04	M.P.	Rx# 194254 for hydrocodone 10/650mg, a Schedule III controlled substance, 120 dosage units; Rx # 194256 for alprazolam 2mg, a Schedule IV controlled substance, 90 dosage units
9	04/29/05	H.H.	Rx# 214514 for hydrocodone 10/650mg, a Schedule III controlled substance, 120 dosage units; Rx# 214515 for alprazolam 2mg, a Schedule IV controlled substance, 90 dosage units; Rx# 214516 for promethazine with codeine, a Schedule V controlled substance, 240 ml
10	04/29/05	M.P.	Rx# 214565 for hydrocodone 10/650mg, a Schedule III controlled substance, 120 dosage units; Rx# 214566 for alprazolam 2mg, a Schedule IV controlled substance, 90 dosage units; Rx# 214567 for promethazine with codeine, a Schedule V controlled substance, 240 ml

All in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D), 841(b)(2), and 841(b)(3), and Title 18, United States Code, Section 2.

**COUNTS ELEVEN AND TWELVE**

**(Distribution of Controlled Substances)**

The Grand Jury re-alleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 20 of the Indictment, and further alleges:

On or about the dates set forth below, in the Western District of Missouri, and elsewhere, MARY LYNN ROSTIE, a/k/a Lynn Rostie, and TROY R. SOLOMON, defendants herein, aiding and abetting each other and others, both known and unknown to the Grand Jury, to knowingly and intentionally distribute and dispense a Schedule V controlled substance, as set forth below, other than for a legitimate medical purpose and not in the usual course of professional practice:

Count	Date	Patient	Controlled Substance Description
11	01/04/05	Jean Greenwald	Promethazine with Codeine, a Schedule V controlled substance, 473 ml
12	01/04/05	Alexander Zhang	Promethazine with Codeine, a Schedule V controlled substance, 473 ml

All in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(3), and Title 18, United States Code, Section 2.

Indictment, at 5-14.

**II. LEGAL ARGUMENT**

Defendant Solomon moves for a bill of particulars, contending that the indictment fails to provide him “with the information necessary to prepare his defense in a number of crucial respects.” (Def. Solomon’s Mtn. For Bill of Particulars, at 10.) That motion seeks a mass of evidentiary detail. (See Def. Solomon’s Mtn. For Bill of Particulars, at 2-9.) In his motion to quash the indictment, Defendant Solomon does not allege that the indictment fails to state the

elements of the offenses charged against him; rather he asserts that the indictment “fails to sufficiently describe any alleged criminal conduct” by him. (Def. Solomon’s Mtn. to Quash, at 2.) Defendant Solomon’s motion to quash claims that every allegation in every count in which he is a named defendant is “conclusory.” (See Def. Solomon Mtn. to Quash, at 3-9.) These arguments are without merit. In his motion for a bill of particulars, Defendant Solomon requests information which has already been furnished to him, or which would constitute pretrial discovery to which he is not entitled. In addition, the indictment is sufficient.

**A. Defendant Solomon’s Motion to Quash Indictment Should Be Denied – The Indictment is Sufficiently Specific.**

Generally, Rule 7(c)(1) of the Federal Rules of Criminal Procedure requires an indictment to provide “a plain, concise and definite written statement of the essential facts constituting the offense charged.” *United States v. Sewell*, 513 F.3d 820, 821 (8th Cir. 2008) (quoting *United States v. Hernandez*, 299 F.3d 984, 992 (8th Cir. 2002); *United States v. Fleming*, 8 F.3d 1264, 1265 (8th Cir. 1993)). The indictment “shall state the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.” Fed.R.Crim.P. 7(c)(1). The Supreme Court has instructed that “an indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.” *Hamling v. United States*, 418 U.S. 87, 117 (1974).

“An indictment should not be read in a hyper technical fashion and should be deemed sufficient unless no reasonable construction can be said to charge the offense.” *United States v. O’Hagan*, 139 F.3d 641, 651 (8th Cir.1998) (internal quotation marks and citation omitted).

The indictment is legally sufficient on its face, in that it puts Defendant Solomon on notice of the parameters of the drug conspiracy, the money laundering conspiracy, and the illegal distribution charges, and as such, operates as a bar to double jeopardy for subsequent prosecutions. It is undisputed that the indictment contains the elements of the offenses charged against Defendant Solomon. Defendant Solomon's principal argument is that the indictment fails to describe "any alleged criminal conduct" by him. (*See* Def. Solomon's Mtn. to Quash Indictment, at 9.) He makes a similar argument in his motion for a bill particulars, asserting that the indictment fails to provide him "with the information necessary to prepare his defense in a number of crucial respects." (Def. Solomon's Mtn. For Bill of Particulars, at 10.) Thus, he acknowledges that the indictment contains the essential elements of the charged offenses.

Each count is sufficiently specific for him to prepare a defense. Since it is conceded that each count alleges all the essential elements of the crime charged, then it follows that each count tracks the language of the statute which he is alleged to have violated.

Furthermore, each count contains a citation to the statute which he is alleged to have violated. Count One charges a violation of 21 U.S.C. § 846. Count Two charges a violation of 18 U.S.C. § 1956(h). Counts Three through Twelve charge a violation of 21 U.S.C. § 841(a)(1).

Further, each count states an approximate time when the crime occurs. In Count One, he is informed of the dates of the drug conspiracy – between August 2004 and October 2005. Count Two states the same time (in approximate terms) as Count One. Counts Three through Twelve specify a date for each offense.

The indictment alleges factual allegations about his role in the drug conspiracy and the substantive offenses. For instance, in Count One he is described as a co-conspirator who

obtained the unlawful and invalid prescriptions from Defendant Elder, and would fax the drug orders to Defendant Rostie at The Medicine Shoppe. Count Two of the indictment states that the proceeds of the conspiracy were generate in Texas by him and Defendant Johnson through the sale of the filled prescriptions that were filled by Defendant Rostie. Counts Three through Twelve gives a description of the controlled substance and a patient's name or initials for each offense.

Clearly, the Indictment is sufficient in its purpose to give general notice to Defendant Solomon of the charges filed against him so as to allow him to prepare his defense. Although he cites 41 portions of the indictment that he claims lack specificity, he never explains why, in regard to any one of those 41 portions, greater specificity is required. *See United States v. Crowley*, 236 F.3d 104, 106 (2d Cir. 2000) (holding that a criminal defendant must apprise the Court of those particular portions of the indictment that are lacking in the requisite specificity, and explain why, in the circumstances, greater specificity is required). Indeed, he asserts in general terms that the allegations in the indictment are “conclusory.” (*See Defendant Solomon's Mtn. to Quash Indictment*, at 9.) Thus, his challenge to the specificity of the indictment should be rejected.

**B. Defendant Solomon's Motion for Bill of Particulars Should Be Denied – Defendant Solomon Seeks Discovery To Which He Is Not Entitled.**

A defendant is not entitled to a bill of particulars as a matter of right. *Wong Tai v. United States*, 273 U.S. 77, 82 (1927). The grant or denial of a bill of particulars is reserved to the discretion of the Court. *United States v. Buffington*, 578 F.2d 213, 214 (8th Cir. 1978).

Although he claims that he is not seeking evidentiary detail, his eight pages seeking detailed information belie that assertion. A bill of particulars is unwarranted in this case.

Defendant Solomon's motion for a bill of particular seeks a mass of evidentiary detail, to which he is not entitled. *Hemphill v. United States*, 392 F.2d 45, 49 (8th Cir.) (“[a]cquisition of evidentiary detail is not the function of the bill of particulars”), *cert. denied*, 393 U.S. 877 (1968).

With regard to the conspiracy count, he seeks numerous items of information such as: (1) the identity of the “other person known” and “unindicted co-conspirator” with whom he is alleged to have conspired to distribute controlled substances; (2) the connection between him and his pharmacy or The Medicine Shoppe; (3) the specific dates, times, locations, and persons present or involved during the specific instances that he is alleged to have conspired to distribute controlled substances; (4) specification of the Schedule III, IV, and V controlled substances he allegedly distributed together with the identity of each person to whom such controlled substances were distributed and the date, time, and location of the distribution; and (5) the dates and times when he allegedly received shipments of controlled substances from co-defendant Rostie, together with the alleged contents of each such shipment and the place where the shipment was received.

His request for the identities of the other persons known and the unindicted co-conspirator “is nothing more than an ill-disguised attempt at general pre-trial discovery, and, as such, must be rejected.” *United States v. Williams*, 181 F. Supp.2d 267, 294-95 (S.D.N.Y. 2001) (internal quotation marks, brackets, and citations omitted); *see United States v. DiCesare*, 765 F.2d 890, 897 (9th Cir. 1985) (concluding that the names of unidentified co-conspirators do not

warrant a bill of particulars). Likewise, Defendant Solomon's request for the full name of the two patients listed in Counts Seven through Ten is unnecessary. (*See* Defendant Solomon's Mtn. to Quash Indictment, at 8.) The patients are listed in the indictment to protect their privacy. Although the patients are identified by initials, it is not essential that an indictment identify them by their full names. *See United States v. Wabo*, 290 F. Supp.2d 486, 490 (D.N.J. 2003) (ruling that identification of victims in an indictment is not essential). Moreover, the discovery contains the full name of the victims. As another district court has held: "[W]hen discovery provided by the government fills in the outline of the indictment, the necessity for a bill of particulars declines." *United States v. Caruso*, 948 F. Supp. 382, 393 (D.N.J. 1996). Thus, such requests should be denied.

Defendant Solomon requests the alleged connection between him and Ascensia Nutritional Pharmacy or The Medicine Shoppe. The indictment states that he obtained unlawful and invalid prescriptions and that he would send by facsimile transmission a copy of the prescriptions and refill order re-authorizations to Defendant Rostie at The Medicine Shoppe. (*See* Indictment, at 6.) The indictment further states that co-defendant Rostie filled the unlawful and invalid prescriptions and had the controlled substances delivered via Federal Express to him at Ascensia Nutritional Pharmacy. (*See* Indictment, at 6-7.) In the extensive discovery provided to him, Defendant Solomon is informed that he was a co-owner of the Ascensia Nutritional Pharmacy.

In many instances, Defendant Solomon seeks information to which he is not entitled. For example, with regard to Count One, Defendant Solomon seeks specific information regarding "dates, times, locations, and persons present or involved during the specific instances that [he] is

alleged to have conspired to distribute controlled substances.” (Defendant Solomon’s Mtn. for Bill of Particulars, at 3). This request for detailed information is essentially duplicated by his request for the government to identify “by nature, date, and time, each specific instance of unlawful activity that [he] allegedly engaged in that amounts to conspiracy to commit money laundering as well as all persons associated with each such instance as alleged in Count Two of the Indictment.” (Def. Solomon’s Mtn. for Bill of Particulars, at 5.) “The ‘whens wheres and with whoms of acts and participation in the charged conspiracy’ is not properly the function of a bill of particulars.” *United States v. Stanford*, 2008 WL 558052, \*2 (D.S.D. Feb. 29, 2008) (quoting *United States v. Jiminez*, 824 F. Supp. 351, 365 (S.D.N.Y. 1993)). *See also United States v. Long*, 449 F.2d 288 (8th Cir. 1997) (holding that defendants are not entitled to the exact times and locations of acts in furtherance of the conspiracy).

Defendant Solomon also seeks greater specificity regarding overt acts in furtherance of the conspiracy counts. “A bill of particulars may not be used to compel the government to provide the essential facts regarding the existence and formation of a conspiracy. Nor is the government required to provide the defendant with all overt acts that might be proven at trial.” *United States v. Rosenthal*, 793 F.2d 1214, 1227 (11th Cir. 1986). *See also Wong Tai*, 273 U.S. at 82 (concluding that defendants are not entitled to specification of every overt act). Indeed, “detailed evidence of a conspiracy is generally unavailable to defendants through a bill of particulars, and overt acts in furtherance of the conspiracy need not be disclosed.” *United States v. Allen*, 289 F. Supp. 2d 230, 237 (N.D.N.Y. 2003) (citations omitted).

Furthermore, the extensive discovery in this case obviates the need for a bill of particulars. *See United States v. Canino*, 949 F.2d 928, 949 (7th Cir. 1991) (“The nature and



operations of the ‘open file’ policy is an adequate ‘satisfactory form’ of information retrieval, making the bill of particulars unnecessary”), *cert. denied*, 504 U.S. 910 (1992); *United States v. Valentine*, 984 F.2d 906, 908 (8th Cir.) (“The district court denied the Bill of Particulars as moot because the Government indicated it had opened its file to [the defendant]”), *cert. denied*, 510 U.S. 828 (1993). In the present case, the Government has provided Defendant Solomon with extensive discovery in electronic form, including a master compact disk (“CD”) containing word searchable PDF images of the documents. In fact, more than 17,000 total pages of discovery were copied on the CD.

In light of the speaking indictment and comprehensive discovery, Defendant Solomon’s motion for bill of particulars should be denied. Likewise, his motion to quash the indictment for lack of specificity should be denied.

## II. CONCLUSION

For the reasons previously stated, the United States respectfully requests that Defendant Solomon's Motion for Bill of Particulars and his Motion to Quash the Indictment be denied.

Respectfully submitted,

John F. Wood  
United States Attorney

By */s/ Rudolph R. Rhodes, IV*

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on July 21, 2008, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

Anthony L. Bannwart  
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Houston, Texas 77074

*/s/ Rudolph R. Rhodes, IV*

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Rudolph R. Rhodes IV  
Assistant United States Attorney