

PREET BHARARA  
United States Attorney for the  
Southern District of New York  
By: CRISTINE IRVIN PHILLIPS  
LI YU  
Assistant United States Attorneys  
86 Chambers Street, 3rd Floor  
New York, New York 10007  
Telephone: (212) 637-2696/2734  
Facsimile: (212) 637-2702  
E-mail: cristine.phillips@usdoj.gov  
li.yu@usdoj.gov

JUDGE KENNAN

14 CV 7339

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

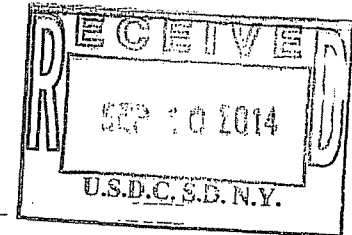
Plaintiff,

v.

HASAN BESNELI and SABA, INC.,

Defendants.  
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14 Civ. \_\_\_\_\_



COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, the United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, hereby alleges upon information and belief as follows:

INTRODUCTION

1. The United States of America brings this action seeking civil penalties against Hasan Besneli ("Besneli") under the Financial Institutions Reform, Recovery and Enforcement Act, 12 U.S.C. § 1833a ("FIRREA") and seeking damages and penalties against SABA, Inc. ("SABA") under FIRREA and the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* As set forth more fully below, the United States alleges in this action that Besneli and SABA, along with TC Basbakani Baskanliginda Darussafaka Cemiyeti ("Darussafaka"), a non-profit organization

located in Istanbul, Turkey, conspired to defraud both Deutsche Bank AG (“Deutsche Bank”), a federally insured financial institution, and the Export-Import Bank of the United States (“Ex-Im Bank”), in obtaining a loan from Deutsche Bank that was guaranteed by the Ex-Im Bank, and in requesting the full disbursement of that loan.

2. Pursuant to the scheme, SABA and Besneli, on behalf of Darussafaka, applied for and obtained a multi-million-dollar loan from Deutsche Bank to fund construction projects in Istanbul and Urla, Turkey (collectively, the “Urla project”), and an Ex-Im Bank guarantee of that loan. Both the loan and the Ex-Im guarantee were extended based upon false and fraudulent representations made by SABA and Besneli regarding two aspects of the Urla project: 1) whether Darussafaka would provide the 15% down payment required for an Ex-Im-guaranteed loan; and 2) the amount of loan funds that Darussafaka would spend on “local costs” for the Urla project.

3. Both components of the Urla project for which SABA and Besneli made fraudulent representations were material to the determination by the Ex-Im Bank to extend its guarantee of the Urla project loan. As the official export credit agency for the United States, the Ex-Im Bank places conditions its loan guarantees, such as not allowing more than 15% of loan funds to be spent on items other than the purchase of U.S. goods, in order to foster its mission of supporting U.S. jobs and businesses. The Ex-Im Bank’s agreement to fund no more than 85% of the net contract price of a project, thereby necessitating that 15% of the project funds be paid or financed as a down payment by the borrower, is required by statute.

4. Once the loan was procured, pursuant to the fraudulent scheme, SABA, acting as exporter, overcharged Darussafaka for the goods that it exported for the Urla project, in order to collect excess loan funds, referred to by Darussafaka as “cash money for Turkey,” which SABA

used to fund Darussafaka's down payment and to fund Darussafaka's local construction costs in excess of the allowable 15%. SABA provided Darussafaka with the cash by funneling it through an entity owned by Besneli, who in turn paid Darussafaka in the form of "donations." Besneli and SABA also knowingly made or caused to be made false and fraudulent statements regarding the progress of the project construction, which were relied upon by Deutsche Bank in disbursing the loan funds.

5. As a result of Defendants' scheme, the Ex-Im Bank sustained millions of dollars in losses when Darussafaka defaulted on the loan after just one interest payment.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and jurisdiction over the claims brought under the False Claims Act pursuant to 31 U.S.C. § 3730(a), as well as pursuant to the Court's general equitable jurisdiction.

7. Venue is appropriate in this District pursuant to and 28 U.S.C. §§ 1391(b) and (c) and 31 U.S.C. § 3732(a), because a substantial part of the events or omissions giving rise to the claims occurred in this District, and because Besneli resides outside the United States and so "may be sued in any judicial district" pursuant to 28 U.S.C. § 1391(c)(3).

#### **THE PARTIES**

8. Plaintiff is the United States of America.

9. Defendant SABA, which is an acronym for "Saudi Arabia Business Association," is a Tennessee corporation with a principal place of business in Memphis, Tennessee. SABA was founded in 1987 by former president John Osteen ("Osteen"), and since then has functioned as an exporter of U.S. agricultural equipment and other U.S. goods.

10. Defendant Besneli is a Turkish citizen residing in Istanbul, Turkey. From 2003 until at least 2010, Besneli served as SABA's agent, brokering transactions with foreign entities in which SABA served as U.S. exporter. Besneli also, at various times, served as Executive Vice President of SABA.

#### OTHER ENTITIES AND INDIVIDUALS

11. Darussafaka is a Turkish non-profit organization headquartered in Istanbul, Turkey. A primary mission of Darussafaka is to run a school that educates poor and orphaned children. Darussafaka also owns certain business enterprises, including a retirement home in Urla, Turkey.

12. Bolzano Ltd. ("Bolzano") is a now-defunct shell company formerly incorporated and headquartered in the Isle of Man. Besneli owned and conducted business through Bolzano.

13. Deutsche Bank is a German financial institution with a branch in New York, New York. The New York office of Deutsche Bank extended the loan to Darussafaka for the Urla project.

14. Jennifer Windus ("Windus") is a U.S. citizen residing in Washington, D.C., who performed work for Besneli and SABA, including preparing the Urla project loan application for Deutsche Bank and the application for an Ex-Im loan guarantee on behalf of Darussafaka. At various times, Windus also served as Director of Trade Finance for SABA.

15. Cuneyt Ongun ("Ongun") is a Turkish citizen whose current residence is unknown. In the initial stages of the Urla project, Ongun, who at the time was the nephew of the chairman of Darussafaka's board of directors, served as project manager on behalf of

Darussafaka. In the later stages of the Urla project, Ongun left the employ of Darussafaka and began to work for Besneli.

## FACTS

### **A. The Ex-Im Bank and Its Loan Guarantee Requirements**

16. The Ex-Im Bank is the official export credit agency of the United States. It supports U.S. jobs by financing the export of American goods and services. *See generally* 12 U.S.C. § 635.

17. The Ex-Im Bank offers loan guarantees for loans to foreign entities that wish to use the funds to purchase U.S.-made goods, thereby reducing the risk to private lenders and enabling the loan funds to benefit U.S. companies. *See* 12 U.S.C. § 635(a)(1).

18. In order to fulfill its mission of supporting U.S. jobs, the Ex-Im Bank requires that a substantial majority of the loan funds go directly towards the purchase of U.S. goods, which then are exported to the borrower. Specifically, during the time period of the Urla project, the Ex-Im Bank allowed no more than 15% of available loan funds to be used by a borrower for so-called "local costs," which includes labor costs and the cost of materials not made in the United States.

19. Other than funding for the allowable 15% "local costs," under the terms of a non-reimbursable Ex-Im-guaranteed loan, a foreign borrower should not receive loan proceeds in cash; rather, the borrower receives the goods purchased in the United States with the Ex-Im-guaranteed loan funds and the exporter who purchases those goods receives the loan proceeds.

20. Additionally, the Ex-Im Bank funds no more than 85% of the net contract price of a transaction. As a result, a borrower must either make or finance a 15% down payment towards the total cost of all U.S.-made goods purchased. *See* 12 U.S.C. § 635(a)(2).

21. The Ex-Im Bank relies upon a number of documents in evaluating whether to extend its guarantee to a loan, including the application prepared for the Ex-Im Bank by or on behalf of the foreign borrower, and all relevant contractual agreements, such as those executed by the borrower and exporter.

22. In the event of a loan default by a borrower, the lender has the right, under the credit agreement executed by the lender, borrower, and the Ex-Im Bank at the outset of the loan, to make a claim to the Ex-Im Bank for the unpaid loan funds that are the subject of the Ex-Im Bank's guarantee.

**B. Besneli and SABA**

23. In or about 2002, Besneli approached SABA about entering into a business relationship whereby Besneli would act as SABA's agent in brokering transactions with foreign entities involving the export of U.S. goods, and in securing funding for those transactions along with funding guarantees provided by the Ex-Im Bank or another export credit agency.

24. SABA agreed to Besneli's proposal, and in January 2003, entered into an International Trading Services Agreement with Bolzano, the company owned and controlled by Besneli.

25. On June 13, 2003, SABA furnished Besneli with a general power of attorney that allowed Besneli to conduct, on behalf of SABA, "every act, thing or things, in law needed and

necessary to be done in and about conducting business in the country of Turkey,” including signing contracts on SABA’s behalf.

26. SABA also provided Besneli and Windus, who Besneli retained to assist in securing funding and guarantees for the transactions, with SABA business cards and email addresses.

27. Thereafter, in communicating with foreign borrowers, lenders, and the Ex-Im Bank, among others, Besneli and Windus, with SABA’s knowledge, held themselves out as agents of SABA.

28. In the context of the transaction with Darussafaka, Osteen, in a 2005 memorandum, referred to Besneli and those who reported to him as “SABA Istanbul.”

**C. The Fraudulent Procurement of Ex-Im-Guaranteed Loan Funds for the Urla Project**

29. In or about early 2003, Besneli, on behalf of SABA, negotiated an agreement with Darussafaka whereby Besneli would act on Darussafaka’s behalf to procure a loan, and the guarantee of that loan by the Ex-Im Bank, for the construction of a retirement community in Urla, Turkey, as well as a concert hall, movie theater and retail complex in Istanbul, Turkey, collectively referred to as the Urla project. As part of the transaction, SABA would act as exporter for all U.S. goods purchased using Ex-Im-guaranteed loan funds.

30. Windus, acting as agent for SABA and on behalf of Darussafaka, prepared the application for a loan guarantee by the Ex-Im Bank, and submitted that application to the Ex-Im Bank on March 31, 2003.

31. The terms of the proposed loan were as follows: Darussafaka would borrow \$38 million for the Urla project, of which \$28.8 million would be used by SABA to purchase U.S.-

made goods that SABA would export to Darussafaka. Approximately \$5 million would be available for local construction costs in Turkey, and the remaining funds would go towards the Ex-Im Bank exposure fee.

32. Along with the application for the Ex-Im loan guarantee, SABA, on behalf of Darussafaka, submitted to the Ex-Im Bank a Construction and Procurement Agreement (“CPA”) executed by SABA and Darussafaka on March 16, 2003.

33. The CPA, which was signed by Hasan Besneli as “Vice President” of SABA, contained the following relevant provisions:

- a. Section 5.6 stated that Darussafaka would provide a 15% down payment to SABA for the Urla project.
- b. Section 3.1 stated that SABA, in addition to arranging for the financing of the Urla project, would act as contractor for the Urla project and would “lead a group of subcontractors” in completing the construction of the facilities.
- c. Section 9.2 stated that SABA would accept full value of the loan in exchange for completing all necessary procurement and construction needed to complete the Urla project.
- d. Sections 6.2.4 and 6.3.5 stated that SABA would comply with all legal requirements, codes and standards in connection with its work on the Urla project.

34. Based upon the representations made in Darussafaka’s application for Ex-Im guarantee of the loan funds for the Urla project, as well as the CPA, among other things, the Ex-



Im Bank agreed to guarantee the loan, and furnished Darussafaka, via SABA, with a commitment letter on December 12, 2003.

35. Once SABA had obtained the Ex-Im guarantee on behalf of Darussafaka, Deutsche Bank agreed to extend the loan to fund the Urla project. On March 17, 2004, Deutsche Bank, the Ex-Im Bank, and Darussafaka entered into a Credit Agreement, and Darussafaka signed a promissory note for \$38,065,666.00.

**D. SABA and Besneli's Fraudulent Scheme**

36. Notwithstanding the representations that SABA, Besneli and Darussafaka made to Deutsche Bank and the Ex-Im Bank in order to obtain the loan and the Ex-Im guarantee, the reality of the Urla project as negotiated by SABA, Besneli and Darussafaka was very different.

37. In fact, as stated by Ongun, Darussafaka's project manager for the majority of the Urla project, SABA, through Besneli, and Darussafaka conspired at the outset of the transaction to circumvent a number of Ex-Im Bank requirements. The main objective of the scheme was for SABA to collect loan funds from Deutsche Bank that far exceeded the actual value of the goods SABA was purchasing for the Urla project, by applying excessive mark-ups to those goods. SABA then would use those loan funds to 1) fund Darussafaka's required 15% down payment; and 2) funnel cash to Darussafaka for use in funding additional local construction costs, in excess of the 15% that the Ex-Im Bank allowed, by giving the funds to Besneli who then provided them to Darussafaka as "donations."

38. Ongun admitted that SABA, through Besneli, and Darussafaka had agreed to this fraudulent scheme at the outset of the Urla project, and that SABA's agreement to engage in this scheme was the reason that Darussafaka selected SABA for the project.

**(i) Generation of "Cash Money" by SABA Through Mark-Ups**

39. As stated above, SABA received 85% of the available loan funds for the Urla project in order to purchase and export goods to Darussafaka. SABA received those funds from Deutsche Bank in a series of disbursements, paid in response to invoices that SABA generated and submitted to both Deutsche Bank and Ex-Im Bank for disbursement authorization.

40. As evidenced in numerous emails and the testimony of former SABA employees, from the outset of the Urla project, SABA worked closely with Darussafaka to establish a "multiplier" for each shipment of goods that SABA purchased and exported to Darussafaka using Ex-Im-guaranteed loan funds. The multipliers resulted in an overall mark-up of the goods exported by SABA of 55%, with some goods being marked up 300% or more. These margins significantly exceeded the market value of the goods, and ultimately resulted in SABA receiving all \$28.8 million in available loan funds for the purchase of only \$16 million in goods.

41. Besneli took a hands-on role in the setting of the multiplier in conjunction with Darussafaka, and frequently notified SABA via email as to the size of the multiplier that it should apply to each shipment of goods, or even individual goods within a shipment. On other occasions, an officer of SABA would simply email Darussafaka and inquire regarding what multiplier SABA should apply to a shipment. Through this process, Darussafaka, Besneli and SABA colluded to set the prices that SABA was charging for goods.

42. According to the testimony of multiple former SABA employees, the reason that the "multiplier" was changed from one shipment to the next was because SABA agreed to allow Darussafaka to manipulate the value of the goods in order to avoid Turkish Value-Added Taxes ("VAT") whenever possible. This testimony is corroborated by a March 2005 email from

Besneli to the officers of SABA, explaining that Darussafaka had to pay VAT on some goods but not others, and “Darussafaka wants us to make our margin on the[] tax-exempt items,” by applying a higher multiplier to those items, and to reduce the multiplier on items on which Darussafaka had to pay VAT.

43. Furthermore, as evidenced in documents produced by SABA as well as witness testimony, SABA and Besneli routinely provided Darussafaka with spreadsheets showing a breakdown of the amount that SABA paid for goods for the Urla project, the amount that SABA charged Darussafaka for those goods, and the exact amount of the difference that SABA had collected.

44. Email correspondence from Ongun to officers of SABA in June 2005 inquired about the availability of funds generated through the multipliers, which Ongun described as “cash money for Turkey.”

45. As stated in SABA’s financial records, by the end of the Urla project, SABA had received the full \$28.8 million in Ex-Im-guaranteed loan funds from Deutsche Bank, from which it had purchased just \$16 million in goods. According to the same financial records, throughout the Urla project, SABA made frequent payments to Besneli, ultimately totaling \$11.2 million; Besneli then funneled the majority of the money back to Darussafaka through payments characterized as “donations.”

**(ii) Funding of Local Costs through Mark-Ups**

46. As discussed previously, the Ex-Im Bank required, during the time period of the Urla project, that a borrower expend only 15% of loan funds on local costs such as labor or locally purchased materials. Accordingly, in the application for an Ex-Im loan guarantee

submitted by Windus, and in the loan documents subsequently executed, Darussafaka represented that it would spend no more than 15% of available loan funds, or approximately \$5 million, on local costs for the Urla project. SABA also represented, in the CPA executed by Besneli, that it would adhere to all legal requirements in its role as contractor, which, per the terms of the CPA, included ultimate financial responsibility for local construction.

47. Despite these representations, Ongun stated in his 2011 interview that initial construction estimates for the Urla project ranged from \$12-14 million, significantly exceeding the \$5 million allowable under Ex-Im Bank rules. Ongun also stated that one of the primary purposes of the mark-up scheme entered into by SABA and Darussafaka was to use the “cash money” generated by the multipliers to pay the excess construction costs.

48. Consistent with this scheme, over the course of the Urla project, Besneli, through Bolzano, wired 19 cash payments to Darussafaka, totaling almost \$7.5 million. Darussafaka issued Bolzano a receipt for each of these payments; the receipt described each payment as a “donation” from Bolzano to Darussafaka.

49. A comparison of the timing of the payments made by SABA to Bolzano from the net proceeds from SABA’s marked up goods, and the “donation” payments made by Bolzano to Darussafaka, shows that the Bolzano “donations” often immediately followed payments from SABA to Bolzano, and typically were the same or similar amounts.

50. Participation in this scheme by both Besneli and SABA is further corroborated by a draft “Bolzano Local Construction Joint Ventures” agreement, written by Besneli and produced to the Government by SABA. This agreement states, “[i]n order to keep the official local content within 15%, it is necessary to unofficially shift margin from the supply of USA goods and

services to the local subcontractor.” The agreement goes on to cite to a “confidential informal” arrangement between Bolzano and the Turkish sub-contractors, whereby Bolzano “makes the subcontractor whole for any subcontractor cost in excess of the 15% price the subcontractor receives from SABA using the commission payments Bolzano receives from SABA.”

51. As still further evidence of SABA and Besneli’s participation in the scheme, in a December 2004 email that included all of SABA’s senior officers, SABA’s Urla project manager expressed concern to Unver Orer (“Orer”), an employee of Besneli in Turkey who was overseeing construction on the Urla project, that disbursement of loan funds for construction costs was significantly outpacing construction progress, and that the pace of funding was “too aggressive” to allow for completion of the project within budget. Orer responded, “[y]ou are absolutely correct. The balance is being financed by Hasan Besneli.”

52. The scheme perpetrated by SABA, Besneli, and Darussafaka to fund additional construction costs with Ex-Im-guaranteed loan funds directly violated Ex-Im rules. In representing that SABA and Darussafaka would adhere to Ex-Im’s 15% local cost requirement, SABA and Besneli thus knowingly made false and fraudulent statements that were material to the Ex-Im Bank’s decision to extend its loan guarantee, and which also affected Deutsche Bank in its role as lender.

**(iii) Funding of Darussafaka’s Required 15% Down Payment through Mark-Ups**

53. The CPA, executed by Besneli on behalf of SABA, stated that Darussafaka would make a 15% down payment, or just over \$5 million, to SABA for the Urla project. In addition, SABA completed and submitted an Exporter’s Certificate to the Ex-Im Bank, which certified that it had received, or would finance, the 15% down payment.

54. Notwithstanding these representations, at no time did Darussafaka ever provide SABA with a 15% down payment for the Urla project. Instead, as admitted by Ongun, SABA agreed to generate the funds equivalent to the 15% down payment through multipliers.

55. In accordance with Ex-Im requirements, SABA was only eligible to receive 85% of the value of all goods that it purchased and exported to Darussafaka as part of the Urla project, and it was expected to access the other 15% through down payment funds. More than one former SABA employee interviewed by the Government testified that because SABA never received the down payment funds, it was forced to make up the initial shortfall, and did so by ordering high-value goods and applying especially high multipliers at the outset of the Urla project, often at the direction of Besneli. These actions by SABA and Besneli are also evidenced in multiple emails and documents produced by SABA.

56. SABA and Besneli attempted to cover up their fraudulent misrepresentations to the Ex-Im Bank regarding Darussafaka's down payment for the Urla project by creating the appearance that the down payment was financed by Bolzano. Accordingly, Besneli provided SABA with a "promissory note" from Bolzano dated October 21, 2004, in the amount of \$5,970,000.

57. Later, SABA and Bolzano executed an "offset agreement," dated December 31, 2006, by which the amount of the promissory note and the "accrued but unpaid commission" purportedly owed by SABA to Bolzano were mutually cancelled out. This agreement contains several inconsistencies, however, including the fact that the amount of the offset is \$5,074,853.77, which is different than the amount of the promissory note, and the fact that the promissory note had already come due on October 1, 2006.

58. Furthermore, an officer of SABA testified in an interview that SABA never expected to be paid in accordance with the promissory note; rather, it was always SABA's intention to ultimately "offset" the amount of the down payment against the funds that SABA generated by the multipliers.

59. Despite its contractual obligations, SABA also never inquired whether Besneli actually intended to, or ultimately did, collect any down payment funds from Darussafaka.

60. In fact, in letters to Darussafaka dated September 30, 2006 and December 31, 2006, Besneli "forgave" Darussafaka's purported indebtedness to Bolzano for the down payment, stating "[t]his cancellation of receivable is a donation to your esteemed foundation." Besneli wrote these letters on SABA letterhead and signed them as Executive Vice President of SABA, despite having purportedly financed the down payment through Bolzano, not SABA. In addition, the amount of debt forgiveness "donated" by Besneli in the two letters totaled \$5,052,707.07 – yet a third amount that matched neither the promissory note nor the offset agreement.

61. These documents, combined with witness testimony regarding SABA's intention to use multipliers to generate the down payment funds, demonstrate a fraudulent intent by SABA and Besneli to violate the 15% down payment requirement, despite promising to adhere to that requirement in the CPA, and their attempt to cover up their fraudulent scheme through further falsifications. SABA's and Darussafaka's purported adherence to that down payment requirement was material to the Ex-Im Bank's decision to guarantee the Urla project loan, as it reflected on the financial soundness of Darussafaka as borrower and its commitment to fund the Urla project.

**E. Fraudulent Representations Made by SABA to Obtain Loan Disbursements from Deutsche Bank**

62. In the CPA, SABA agreed to act as contractor for the Urla project, which entailed hiring and overseeing subcontractors to complete the construction, and monitoring the progress of that construction. In this capacity, SABA also was obligated to certify the progress of the construction to Deutsche Bank, which relied on those certifications in disbursing the allowable 15% of loan funds to Darussafaka for construction costs.

63. Yet the evidence demonstrates that SABA quickly relinquished its obligation to monitor and oversee construction, but nonetheless falsely certified the progress of that construction in order to induce Deutsche Bank to disburse loan funds for Darussafaka's construction costs.

64. Just prior to the beginning of the Urla project, SABA hired a project manager in Memphis to oversee the progress of the Turkish subcontractors, maintain a project schedule, and review payment invoices for local construction work. Initially, this project manager expressed concern that the CPA, which obligated SABA to assume ultimate financial responsibility for the completion of the Urla project, lacked basic details such as drawings and a projected construction budget. When the project manager asked SABA officers about this lack of detail in the CPA, he was told not to worry about the construction details because everything had been taken care of.

65. Later, as the construction project got underway, SABA's project manager was unable to obtain basic information from Turkey regarding the construction progress. Despite having knowledge of this information deficit, no one at SABA intervened to ensure that SABA was able to monitor the construction. Instead, the project manager was relieved of his



construction oversight duties within a few months of the start of construction, and instead he was tasked with aiding in the procurement of U.S. goods for export to Darussafaka. Thereafter, no one at SABA was responsible for overseeing the construction in Turkey.

66. Instead of abiding by its obligation to oversee and monitor the progress of local construction, SABA almost immediately ceded this responsibility to Orer, who worked for Besneli in Turkey. Orer, with SABA and Besneli's knowledge, signed the progress reports provided to Deutsche Bank on SABA's behalf; according to multiple former SABA employees, no one at SABA had any knowledge as to whether the certifications in these progress reports were accurate.

67. In fact, the bills being submitted by the subcontractors were materially inconsistent with the project photos from the same time period – a fact that SABA should have known, had it taken basic steps to adhere to its oversight obligations. Nonetheless, Deutsche Bank disbursed the funds to pay all requested bills based upon SABA's false and fraudulent certifications, as executed by Orer with SABA and Besneli's knowledge.

68. In a 2005 memo from Osteen to Besneli, Osteen complained that SABA lacked control over the construction of the Urla project and stated that construction "is basically being managed by [Darussafaka]." Yet the situation did not change throughout the course of the Urla project.

69. Ultimately, at the end of the project, a significant portion of the Urla retirement home remained only partially constructed. Despite being contractually obligated under the CPA to ensure the completion of the Urla project construction, a provision of the CPA that was material to the Ex-Im Bank in guaranteeing the Urla project loan, as it ensured the successful

completion of the project, SABA did nothing to remedy this serious deficiency. Furthermore, neither SABA nor Besneli ever reported this deficiency to Deutsche Bank or the Ex-Im Bank.

**F. Results of the Scheme**

70. In March of 2007, a new board of directors at Darussafaka conducted an internal audit of the Urla project and expressed serious concerns regarding the amount of mark-up on the goods bought by SABA.

71. On April 20, 2007, Darussafaka defaulted on its loan after making just one interest payment.

72. On September 13, 2007, Deutsche Bank submitted a claim to the Ex-Im Bank for payment on the loan guarantee. Ex-Im ultimately paid the full amount of the loan, plus accrued interest, totaling more than \$39 million.

73. In November of 2007, the Turkish authorities began to investigate Ongun (who by this time was working for Besneli), as well as the former chairman of the Darussafaka board of directors, for their role in the Urla project.

74. Despite having knowledge of both the Darussafaka audit and the Turkish investigation, neither SABA nor Besneli took steps to notify the Ex-Im Bank.

75. The actions of Besneli and SABA in connection with the Urla project constituted intentional fraud, both in the procurement of the loan funds and Ex-Im Bank guarantee based upon fraudulent representations, and in the concealment that fraud from Deutsche Bank and the Ex-Im Bank on an ongoing basis.

**FIRST CLAIM (as against SABA and Besneli)**  
**VIOLATION OF FIRREA (31 U.S.C. § 1833a, 18 U.S.C. § 1341 and 18 U.S.C. § 1343)**

76. The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

77. Besneli and SABA unlawfully, knowingly and willfully executed a scheme and artifice to defraud, specifically for the purpose of procuring loan funds for the Urla project and causing the disbursement of those loan funds, and executed that scheme using interstate mail carriers and interstate wire, in violation of 18 U.S.C. §§ 1341 and 1343.

78. Specifically, SABA and Besneli used interstate mail carriers and interstate wire to, among other things: communicate with Darussafaka and each other in planning and executing the scheme; communicate with and transmit documents to Deutsche Bank and the Ex-Im Bank, including applications for the Urla project loan and loan guarantee, respectively; and elicit payment disbursements from Deutsche Bank and disbursement authority from the Ex-Im Bank.

79. Because Darussafaka defaulted on the Urla project loan after just one interest payment, Besneli and SABA's fraudulent scheme has affected Deutsche Bank, a federally insured financial institution.

80. As a result of Besneli and SABA's knowing and willful conduct, the Government incurred millions of dollars in losses resulting from Ex-Im's payment of its loan guarantee for the Urla project loan, on which Darussafaka defaulted.

81. Accordingly, Besneli and SABA are liable for civil penalties in the maximum amount authorized by FIRREA.

**SECOND CLAIM (as against SABA)**

**VIOLATION OF THE FALSE CLAIMS ACT (31 U.S.C. § 3729(a)(1) (2006))**

82. The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

83. In connection with the fraudulent scheme set forth herein, SABA knowingly caused to be presented fraudulent claims to the Ex-Im Bank in connection with the Ex-Im loan guarantee extended for the Urla project.

84. The Government incurred millions of dollars in losses resulting from Ex-Im's payment of that loan guarantee, following Darussafaka's default on the loan.

85. By virtue of the false claims caused to be made by SABA, the Government suffered damages and therefore is entitled to treble damages under the False Claims Act, to be determined at trial, and a civil penalty as required by law.

**THIRD CLAIM (as against SABA)**

**VIOLATION OF THE FALSE CLAIMS ACT (31 U.S.C. § 3729(a)(1)(B) (2010))**

86. The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

87. In connection with the fraudulent scheme set forth herein, SABA knowingly made, and caused to be made, false statements that were material to claims submitted to Deutsche Bank and the Ex-Im Bank in connection with the loan and loan guarantee for the Urla project.

88. The Government incurred millions of dollars in losses resulting from Ex-Im's payment of its loan guarantee for the Urla project loan, on which Darussafaka defaulted.

89. By virtue of the false statements made and caused to be made by SABA, the Government suffered damages and therefore is entitled to treble damages under the False Claims Act, to be determined at trial, and a civil penalty as required by law.

**FOURTH CLAIM (as against SABA)**

**VIOLATION OF THE FALSE CLAIMS ACT (31 U.S.C. § 3729(a)(3) (2006))**

90. The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

91. In connection with the fraudulent scheme set forth herein, SABA conspired with Darussafaka to defraud the Government by inducing the Ex-Im Bank to guarantee the loan for the Urla project.

92. Specifically, SABA agreed with Darussafaka to intentionally misrepresent aspects of the Urla project that were material to the Ex-Im Bank's decision to guarantee the loan, and acted in furtherance of that conspiracy in submitting documents to the Ex-Im Bank containing statements that SABA knew to be false, concerning whether Darussafaka would provide a 15% down payment to SABA and the amount of loan funds that would be spent on local construction costs.

93. The Government incurred millions of dollars in losses resulting from Ex-Im's payment of that loan guarantee, following Darussafaka's default on the loan.

94. By virtue of the conspiracy perpetrated by SABA, the Government suffered damages and therefore is entitled to treble damages under the False Claims Act, to be determined at trial, and a civil penalty as required by law.


WHEREFORE, the United States demands judgment in its favor and against Besneli and SABA as follows:

- (a) As to SABA and Besneli, a judgment imposing civil penalties under FIRREA, up to the maximum amount allowed by law;
- (b) As to SABA, a judgment awarding treble the Government's damages in an amount to be determined at trial, such civil penalties under the False Claims Act as are required by law, and costs pursuant to 31 U.S.C. § 3729(a); and
- (c) Such further relief as is proper.

Dated: New York, New York  
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PREET BHARARA  
United States Attorney  
Southern District of New York  
Attorney for the United States of America

By:

  
CRISTINE IRVIN PHILLIPS  
LI YU  
Assistant United States Attorneys  
86 Chambers Street, 3<sup>rd</sup> Fl.  
New York, New York 10007  
Tel. (212) 637-2696/2734  
Fax (212) 637-2702  
cristine.phillips@usdoj.gov  
li.yu@usdoj.gov