

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v- :

INDICTMENT

ADEM ARICI, :

S2 12 Cr. 24 (CS)

OMER IPEK, :

ERDAL KILIC, :

ARMAGAN TANIR, :

ATILLA YAYLA, :

JODY VITALE, :

ANDREW POMA, :

CEVDET ARICI, :

JOSEFINA CARABALLO and :

MARC VERZANI, :

Defendants.

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COUNT ONE

(Tax Conspiracy - All Defendants Except VERZANI)

The Grand Jury charges:

I. RELEVANT INDIVIDUALS AND ENTITIES

A. Relevant Individuals

1. At all times relevant to this Indictment, ADEM ARICI, OMER IPEK, ERDAL KILIC, ARMAGAN TANIR, ATILLA YAYLA, JODY VITALE, ANDREW POMA, CEVDET ARICI and JOSEFINA CARABALLO, the defendants, had an ownership interest and active involvement in one or more of six fine food supermarkets located in New York, New Jersey and Connecticut that did business under the names Zeytinia, Zeytuna or The Amish Market (Collectively referred to as "The

Markets"). ADEM ARICI and OMER IPEK, together, owned a fifty percent or more interest in each of The Markets.

B. The Market Entities

2. Zeytuna, also known as Idaho Farmers Market, Inc., was a fine food supermarket located at 59 Maiden Lane, New York, New York. Idaho Farmer's Market, Inc. was and is organized as a "C corporation," as that term is defined in the Internal Revenue Laws. C corporations were and are ordinarily required to file a U.S. Corporate Income Tax Return, Form 1120, and pay income taxes to the United States Department of the Treasury.

3. Zeytinia Fine Food Store, also known as Oakland Fine Food, Inc., was a fine food supermarket located at 350 Ramapo Valley Road, Oakland, New Jersey. Oakland Fine Food, Inc. was a C corporation.

4. The Amish Market, also known as Potato Farms, LLC, was a fine food supermarket located at 53 Park Place, New York, New York. Potato Farms, LLC, was a limited liability company, that, pursuant to the Internal Revenue Code, was treated as a partnership for tax purposes. Partnerships were and are required to file an annual U.S. Partnership Income Tax Return, Form 1065, but were not required to pay income taxes in their own right. The income or loss from their operation, by law, flowed through to their partners, who were required to declare such income or loss a on U.S. Individual Income Tax Return, Form 1040.

5. Zeytinia Gourmet, also known as Forest Market, LLC, was a fine food supermarket located at 56 Maple Street, Croton-on-Hudson, New York. Forest Market, LLC was a limited liability company.

6. Zeytinia Fine Food Store, also known as Zeytinia, LLC, was a fine food supermarket located at 2801 Pacific Avenue - Units 203-204, Atlantic City, New Jersey. Zeytinia, LLC was a limited liability company.

7. Zeytinia Gourmet Market, also known as Wilton Farms, LLC, was a fine food supermarket located at 14 Danbury Road - Suite 11, Wilton, Connecticut. Wilton Farms, LLC was a limited liability company.

C. The Tax Fraud Scheme

- *The Cash Skim*

8. The Markets' customers paid for their purchases with cash or credit cards. Credit card payments, and on occasion a small portion of the cash receipts, were deposited into bank accounts maintained by each particular market. The remaining cash received by The Markets was skimmed, or diverted, from the books and records of The Markets and used to pay certain cash business expenses, including cash payroll, and the cash that remained was then divided up among The Market owners on a periodic basis.

9. ADEM ARICI, OMER IPEK, ERDAL KILIC, ARMAGAN TANIR, ATILLA YAYLA, JODY VITALE, ANDREW POMA, CEVDET ARICI and JOSEFINA

CARABALLO, the defendants, concealed their cash skimming scheme from federal and state income and sales tax authorities by, among other means, (a) filing and causing to be filed false federal and state corporate and partnership tax returns that understated the gross receipts of The Markets, (b) filing and causing to be filed false state sales tax returns that understated the sales of The Markets, (c) filing and causing to be filed false federal and state personal income tax returns that failed to report as income the cash skimmed from The Markets by their owners, and (d) maintaining a "second set of books" and other records documenting that the owners skimmed cash from each of the market locations for their own personal use. The "second set of books" used to record the true receipts and expenses of The Markets reflect that The Markets failed to report in excess of \$56,000,000 in gross receipts during the years 2004 through 2009.

- Payroll Tax

10. The Markets employed management and staff who were paid through accounts maintained in the name of each particular market. As employers, The Markets' owners were obligated to: (a) withhold and pay over to the Internal Revenue Service ("IRS") certain payroll taxes; (b) file IRS Forms 941, which are quarterly payroll tax forms, reporting to the IRS the income paid to employees and the taxes withheld; and (c) file with the IRS and send to each employee a copy of IRS Forms W-2, reflecting the taxes

withheld and salary paid during the tax year.

11. Rather than paying employees pursuant to the aforementioned reporting scheme, The Markets paid numerous employees, including undocumented foreign citizens, in cash and failed to withhold and pay over to the IRS the required payroll taxes.

12. In furtherance of this payroll tax scheme, ADEM ARICI, OMER IPEK, ERDAL KILIC, ARMAGAN TANIR, ATILLA YAYLA, JODY VITALE, ANDREW POMA, CEVDET ARICI and JOSEFINA CARABALLO, the defendants, caused the preparation and filing with the IRS of certain IRS Forms 941 and W-2, which forms falsely and fraudulently understated the true salaries paid to The Markets' employees and failed to report the salaries of many employees entirely, as was documented in The Markets' "second set of books."

Statutory Allegations

13. From at least in or about 2004 through the date of filing of this Indictment, in the Southern District of New York and elsewhere, ADEM ARICI, OMER IPEK, ERDAL KILIC, ARMAGAN TANIR, ATILLA YAYLA, JODY VITALE, ANDREW POMA, CEVDET ARICI and JOSEFINA CARABALLO, the defendants, together with others known and unknown, willfully and knowingly did combine, conspire, confederate and agree to defraud the United States and an agency thereof, to wit, the Internal Revenue Service, and to commit offenses against the United States, to wit, in violation of Title 26, United States

Code, Sections 7206(1) and 7206(2), and Title 18, United States Code, Sections 1341 and 1343.

Objects of the Conspiracy

14. It was a part and object of the conspiracy that, from in or about 2004 through the date of filing this Indictment, ADEM ARICI, OMER IPEK, ERDAL KILIC, ARMAGAN TANIR, ATILLA YAYLA, JODY VITALE, ANDREW POMA, CEVDET ARICI and JOSEFINA CARABALLO, the defendants, and others known and unknown, would and did defraud the United States of America and an agency thereof, to wit, the IRS, by impeding, impairing, defeating, and obstructing the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment, and collection of income and payroll taxes.

15. It was a further part and object of the conspiracy that, from in or about 2004 through the date of filing this Indictment, ADEM ARICI, OMER IPEK, ERDAL KILIC, ARMAGAN TANIR, ATILLA YAYLA, JODY VITALE, ANDREW POMA, CEVDET ARICI and JOSEFINA CARABALLO, the defendants, and others known and unknown, willfully and knowingly did make and subscribe to false federal tax returns, to wit, corporate, partnership, individual, and payroll tax returns, which returns contained and were verified by the written declaration that they were made under penalties of perjury, and which returns the defendants did not believe to be true and correct as to every material matter, in violation of Title 26, United States Code, Section 7206(1).

16. It was a further part and object of the conspiracy that, from in or about 2004 through the date of filing this Indictment, ADEM ARICI, OMER IPEK, ERDAL KILIC, ARMAGAN TANIR, ATILLA YAYLA, JODY VITALE, ANDREW POMA, CEVDET ARICI and JOSEFINA CARABALLO, the defendants, and others known and unknown, willfully and knowingly did aid and assist in, and procure, counsel, and advise the preparation and presentation under, the internal revenue laws, of tax returns, to wit, corporate, partnership, individual, and payroll tax returns that were fraudulent and false as to materials matters, in violation of Title 26, United States Code, Section 7206(2).

17. It was a further part and object of the conspiracy that, from in or about 2004 through the date of filing this Indictment, ADEM ARICI, OMER IPEK, ERDAL KILIC, ARMAGAN TANIR, ATILLA YAYLA, JODY VITALE, ANDREW POMA, CEVDET ARICI and JOSEFINA CARABALLO, the defendants, and others known and unknown, willfully, and knowingly having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, to wit, a scheme to defraud the IRS and the State of New York of tax revenues, for the purpose of executing such scheme and artifice and attempting so to do, would and did (i) cause matters and things to be deposited in the mail and with private and commercial interstate carriers in order to be sent and delivered by same, and

cause matters and things to be delivered by mail and private and commercial interstate carriers according to the directions thereon, to wit, tax returns and related information, in violation of Title 18, United States Code, Section 1341; and (ii) transmit and cause to be transmitted by means of wire and radio communications in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, to wit, tax returns, faxes, and e-mails, in violation of Title 18, United States Code, Section 1343.

Means and Methods of the Conspiracy

18. Among the means and methods by which ADEM ARICI, OMER IPEK, ERDAL KILIC, ARMAGAN TANIR, ATILLA YAYLA, JODY VITALE, ANDREW POMA, CEVDET ARICI and JOSEFINA CARABALLO, the defendants, and others known and unknown, would and did carry out the objectives of the conspiracy were: (a) skimming a substantial portion of the gross receipts of each of The Markets' daily cash receipts and diverting the skimmed receipts to their own personal use; (b) hiring numerous employees whom they paid in cash and "off the books;" (c) concealing their scheme by maintaining a hidden "second set of books" which documented the true receipts and expenses of The Markets; (d) concealing the scheme by repeatedly filing false and misleading federal corporate, partnership, payroll and income tax returns and state sales tax returns with the State of New York; (e) selling and otherwise transferring to nominee owners the assets of The Markets to conceal their ownership of

those assets from the IRS; and (f) conducting their affairs in a way to conceal from the IRS the true income of The Markets and their owners.

Overt Acts

19. In furtherance of the conspiracy and to effect the illegal objects thereof, ADEM ARICI, OMER IPEK, ERDAL KILIC, ARMAGAN TANIR, ATILLA YAYLA, JODY VITALE, ANDREW POMA, CEVDET ARICI and JOSEFINA CARABALLO, the defendants, and their co-conspirators not named herein, committed and caused to be committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about October 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Individual Income Tax Return, Form 1040, for ADEM ARICI, the defendant, for the tax year 2005.

b. In or about October 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Individual Income Tax Return, Form 1040, for ADEM ARICI, the defendant, for the tax year 2006.

c. In or about April and May of 2009, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false

U.S. Individual Income Tax Return, Form 1040, for ADEM ARICI, the defendant, for the tax year 2007.

d. In or about April and December of 2009, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Individual Income Tax Return, Form 1040, for ADEM ARICI, the defendant, for the tax year 2008.

e. In or about April 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Individual Income Tax Return, Form 1040, for OMER IPEK, the defendant, for the tax year 2006.

f. In or about April 2008, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Individual Income Tax Return, Form 1040, for OMER IPEK, the defendant, for the tax year 2007.

g. In or about May of 2009, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Individual Income Tax Return, Form 1040, for OMER IPEK, the defendant, for the tax year 2008.

h. In or about October 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and

otherwise, and caused to be filed with the IRS, a false U.S. Individual Income Tax Return, Form 1040, for ANDREW POMA, the defendant, for the tax year 2006.

i. In or about April 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Individual Income Tax Return, Form 1040, for ERDAL KILIC, the defendant, for the tax year 2006.

j. In or about April 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Individual Income Tax Return, Form 1040, for CEVDET ARICI, the defendant, for the tax year 2006.

k. In or about October 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Individual Income Tax Return, Form 1040, for ATILLA YAYLA, the defendant, for the tax year 2006.

l. In or about April 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Individual Income Tax Return, Form 1040, for ARMAGAN TANIR, the defendant, for the tax year 2006.

m. In or about April 2007, a member of the conspiracy

caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Individual Income Tax Return, Form 1040, for JOSEFINA CARABALLO, the defendant, for the tax year 2006.

n. In or about April 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Corporate Income tax return, Form 1120, for Idaho Farmers Market, Inc. for the tax year 2007.

o. In or about April 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Payroll Tax Return, Form 941, for Idaho Farmers Market, Inc. for the first quarter of the tax year 2007.

p. In or about April 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Partnership Tax Return, Form 1065, for Potato Farms, LLC for the tax year 2006.

q. In or about April 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Payroll Tax Return, Form 941, for Potato Farms, LLC for the first quarter of tax year 2007.

r. In or about May 2009, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Partnership Tax Return, Form 1065, for Forest Market, LLC, for the tax year 2008.

s. In or about April 2007, a member of the conspiracy caused to be prepared and caused to be transmitted by mail and otherwise, and caused to be filed with the IRS, a false U.S. Payroll Tax Return, Form 941, for Forest Market, LLC for the first quarter of the tax year 2007.

t. On or about October 6, 2009, ERDAL KILIC and ADEM ARICI, the defendants, met with two IRS undercover agents ("UCA 1 and UCA 2 ") posing as prospective buyers of The Markets at the Maiden Lane, New York market. At the meeting, KILIC and ARICI advised UCA 1 and UCA 2, among other things, that the owners of The Markets skim a substantial amount of cash from The Markets' operations, do not report all of the income received from the Markets, and pay their employees off the books.

u. On or about November 18, 2009, ADEM ARICI, ARMAGAN TANIR, ERDAL KILIC and ATILLA YAYLA, the defendants, met with UCA 1 and UCA 2 at the Oakland, New Jersey market and advised UCA 1 and UCA 2, among other things, that the owners skim a substantial portion of The Markets' receipts and file false tax returns.

v. On or about November 19, 2009, CEVDET ARICI, the

defendant, met with UCA 1 and UCA 2 at the Croton on Hudson, New York market and advised UCA 1 and UCA 2, among other things, that the owners skim substantial portion of the Market's receipts, and divide the cash among the owners.

(Title 18, United States Code, Section 371.)

COUNT TWO
(Corrupt Endeavor To Obstruct and Impede the
Due Administration of the Internal Revenue
Laws - All Defendants Except VERZANI)

The Grand Jury further charges:

20. The allegations set forth in paragraphs 1 through 12 and 19, are repeated and realleged as if fully set forth herein.

21. From in or about 2004 through the date of filing

this Indictment, in the Southern District of New York and elsewhere, ADEM ARICI, OMER IPEK, ERDAL KILIC, ARMAGAN TANIR, ATILIA YAVIA, JODY VITALE, ANDREW POMA, CEVDET ARICI and JOSEFINA

CARABALLO, the defendants, did corruptly obstruct and impede, and

endeavor to obstruct and impede, as set forth above, the due

administration of the Internal Revenue Laws.

(Title 26, United States Code, Section 7212(a).)

COUNTS THREE THROUGH TWENTY-FOUR
(Subscribing To False And Fraudulent
U.S. Individual Income Tax Returns)

The Grand Jury further charges:

22. The allegations in paragraphs 1 through 12 and 19 of this Indictment are repeated and realleged as though fully set forth herein.

Statutory Allegation

23. On or about the dates set forth below, in the Southern District of New York and elsewhere, the below-named defendants willfully and knowingly did make and subscribe to the U.S. Individual Income Tax Returns, Forms 1040 described below, for the tax years set forth below, which returns contained and were verified by the written declaration that they were made under penalties of perjury, and which returns the below-named defendants did not believe to be true and correct as to every material matter, in the ways, among others, as set forth below:

COUNT	Defendant	Tax Year	Return	Filing Date	False Items(s)
3	ADEM ARICI	2005	FORM 1040	10/15/07	Failed to report all income from The Markets.
4	ADEM ARICI	2006	FORM 1040	10/22/07	Failed to report all income from The Markets.

5	ADEM ARICI	2007	FORM 1040	5/4/09	Failed to report all income from The Markets.
6	ADEM ARICI	2008	FORM 1040	12/9/09	Failed to report all income from The Markets.
7	OMER IPEK	2006	FORM 1040	4/14/07	Failed to report all income from The Markets.
8	OMER IPEK	2007	FORM 1040	4/15/08	Failed to report all income from The Markets.
9	OMER IPEK	2008	FORM 1040	5/19/09	Failed to report all income from The Markets.
10	ANDREW POMA	2006	FORM 1040	10/29/07	Failed to report all income from The Markets.
11	ANDREW POMA	2009	FORM 1040	6/21/10	Failed to report all income from The Markets.
12	ERDAL KILIC	2006	FORM 1040	4/15/07	Failed to report all income from The Markets.
13	ERDAL KILIC	2007	FORM 1040	4/15/08	Failed to report all income from The Markets.
14	ERDAL KILIC	2008	FORM 1040	5/19/09	Failed to report all income from The Markets.

15	CEVDET ARICI	2006	FORM 1040	4/12/07	Failed to report all income from The Markets.
16	CEVDET ARICI	2007	FORM 1040	4/18/08	Failed to report all income from The Markets.
17	ARMAGAN TANIR	2006	FORM 1040	4/19/07	Failed to report all income from The Markets.
18	ARMAGAN TANIR	2007	FORM 1040	4/17/08	Failed to report all income from The Markets.
19	ARMAGAN TANIR	2008	FORM 1040	4/21/09	Failed to report all income from The Markets.
20	ARMAGAN TANIR	2009	FORM 1040	4/19/10	Failed to report all income from The Markets.
21	JOSEFINA CARABALLO	2006	FORM 1040	4/20/07	Failed to report all income from The Markets.
22	JOSEFINA CARABALLO	2007	FORM 1040	4/20/08	Failed to report all income from The Markets.
23	JOSEFINA CARABALLO	2008	FORM 1040	4/20/09	Failed to report all income from The Markets.
24	JOSEFINA CARABALLO	2009	FORM 1040	4/20/10	Failed to report all income from The Markets.

(Title 26, United States Code, Section 7206(1).)

COUNTS TWENTY-FIVE THROUGH THIRTY-THREE
 (Aiding and Assisting in the Preparation of False and
 Fraudulent Income Tax Returns)

The Grand Jury further charges:

24. The allegations in paragraphs 1 through 12 and 19 of this Indictment are repeated and realleged as though fully set forth herein.

Statutory Allegation

25. On or about the dates set forth below, in the Southern District of New York and elsewhere, the below-named defendants willfully and knowingly did aid and assist in, and procure, counsel, and advise the preparation and presentation under, the internal revenue laws, the below-described corporate, partnership, and payroll tax returns, which returns were fraudulent and false as to material matters, as set forth below:

COUNT	DEFENDANTS	YEAR	Return	FILING DATE	FALSE ITEM(S)
25	ADEM ARICI OMER IPEK ANDREW POMA	2007	FORM 1120 - IDAHO FARMERS MARKET	12/21/07	Gross receipts; cost of goods sold; payroll; dividends.
26	ADEM ARICI OMER IPEK ANDREW POMA	2008 - Q1	FORM 941 - IDAHO FARMERS MARKET	4/29/08	Cash payroll.

27	ADEM ARICI OMER IPEK ANDREW POMA	2008 - Q4	FORM 941 - IDAHO FARMERS MARKET	1/29/09	Cash Payroll.
28	ADEM ARICI OMER IPEK ARMAGAN TANIR	2006	FORM 1065 - POTATO FARMS	4/9/07	Gross receipts; cost of goods sold; payroll.
29	ADEM ARICI OMER IPEK ARMAGAN TANIR JODY VITALE	2007 -Q1	FORM 941 - POTATO FARMS	4/2/07	Cash payroll.
30	ADEM ARICI OMER IPEK ARMAGAN TANIR JODY VITALE	2007 -Q3	FORM 941 - POTATO FARMS	10/8/07	Cash payroll.
31	ADEM ARICI OMER IPEK CEVDET ARICI ERDAL KILIC	2008	FORM 1065 - FOREST MARKET	5/28/09	Gross receipts; cost of goods sold; payroll.
32	ADEM ARICI OMER IPEK CEVDET ARICI ERDAL KILIC	2007 -Q3	FORM 941- FOREST MARKET	4/23/08	Cash payroll.
33	ADEM ARICI OMER IPEK CEVDET ARICI ERDAL KILIC	2008 -Q1	FORM 941- FOREST MARKET	4/28/08	Cash payroll.

(Title 26, United States Code, Section 7206(2).)

COUNT THIRTY-FOUR
(Conspiracy - Defendants ADEM ARICI and VERZANI)

The Grand Jury further charges:

Background

26. At all times relevant to this Indictment, ADEM ARICI, the defendant, was a citizen of the United States of America.

27. At all times relevant to this Indictment, MARC E. VERZANI, the defendant, was a citizen of the United States of America.

28. Since approximately 1962, the United States has maintained an economic embargo against Cuba through the enactment of various laws and regulations restricting United States trade and economic transactions with Cuba.

29. At all times relevant to this Indictment, the United States Department of the Treasury, through the Office of Foreign Assets Control ("OFAC"), was a department responsible for enforcing the Cuban embargo and exercised its responsibilities through the enforcement of Cuban Assets Control Regulations ("CACR"), which were promulgated by the Treasury Department under the Trading With The Enemy Act, Title 50, United States Code, Appendix, Sections 1-6, 7-39 and 41-44. Subject to narrow exceptions, the regulations prohibited all commercial transactions with Cuba or Cuban nationals unless licensed in advance by OFAC.

Statutory Allegation

30. From in or about April 2011 through in or about

September 2011, in the Southern District of New York and elsewhere, ADEM ARICI and MARC E. VERZANI, the defendants, together with others known and unknown, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit an offense against the United States, to wit, to violate regulations promulgated under the Trading with the Enemy Act, Title 50, United States Code Appendix, Sections 5(b) and 16, specifically, Title 31, Code of Federal Regulations, Sections 515.201(b), 515.201(c), and 515.420, by engaging in prohibited transactions in which a Cuban national had an interest and engaging in transactions for the purpose of and having the effect of avoiding the prohibitions set forth in Title 31, Code of Federal Regulations, Sections 515.201(b), 515.201(c), and 515.420.

Overt Acts

31. In furtherance of the conspiracy and to effect the illegal object thereof, ADEM ARICI and MARC E. VERZANI, the defendants, together with others known and unknown, committed the following overt acts, in the Southern District of New York and elsewhere:

a. In or about the summer of 2011, ARICI contacted VERZANI in Bronx County, New York, regarding travel to Cuba.

b. On or about August 23, 2011, VERZANI caused to be wire transferred through Western Union approximately \$676 from New York, New York to a travel agent in Cancun, Mexico.

c. On or about September 5, 2011, VERZANI sent an

email to a person in Bronx County, New York ("Individual One") advising him in coded language about the costs of airfare to Cuba for VERZANI and Individual One.

d. On or about September 6, 2011, VERZANI sent an email to Individual One in Bronx County, New York that included a travel itinerary confirming that VERZANI and Individual One would travel to Cancun, Mexico on September 8, 2011.

e. On or about September 7, 2011, VERZANI sent an email to Individual One in Bronx County, New York, attaching a boarding pass for a September 8, 2011 flight to Cancun, Mexico for Individual One.

f. On or about September 8, 2011, VERZANI and Individual One traveled to Havana, Cuba, via Cancun, Mexico.

g. Between September 8, 2011 and September 12, 2011, while in Cuba, VERZANI advised ARICI regarding ARICI's business interests in Cuba.

h. Between September 8, 2011 and September 12, 2011, VERZANI received goods and services in Cuba.

i. Between September 8, 2011 and September 12, 2011, ARICI received goods and services in Cuba.

j. Between September 8, 2001 and September 12, 2011, VERZANI and ARICI visited a property under construction in Cuba, which ARICI stated that he was building and planned to run as a hotel.

k. On or about September 13, 2011, VERZANI submitted

a Declaration to the U.S. Department of Homeland Security falsely stating that Mexico was the only country that VERZANI visited on his trip prior to returning to the United States.

(Title 18, United States Code, Section 371.)

COUNT THIRTY-FIVE

(Trading With the Enemy - Defendant ADEM ARICI)

The Grand Jury further charges:

32. Paragraphs 26 through 29 and 31 are repeated and realleged as if fully set forth herein.

33. From in or about April 2011 through in or about September 2011, in the Southern District of New York and elsewhere, ADEM ARICI, the defendant, willfully and knowingly violated regulations promulgated under the Trading with the Enemy Act, Title 50, United States Code Appendix, Sections 5(b) and 16, specifically, Title 31, Code of Federal Regulations, Sections 515.201(b), 515.201(c), and 515.420, to wit, without having obtained a license to travel to Cuba, ARICI engaged in prohibited transactions in which a Cuban national had an interest and engaged in transactions for the purpose of and having the effect of avoiding the prohibitions set forth in Title 31, Code of Federal Regulations, Sections 515.201(b), 515.201(c), and 515.420.

(Title 50, United States Code Appendix, Sections 5(b) and 16;
Title 18, United States Code, Section 2.)

COUNT THIRTY-SIX
(Witness Tampering - Defendant ADEM ARICI)

The Grand Jury further charges:

34. On or about November 18, 2011, in the Southern District of New York and elsewhere, ADEM ARICI, the defendant, knowingly used intimidation, threatened, and corruptly persuaded another person, and attempted to do so, and engaged in misleading conduct toward another person, with intent to hinder, delay, and prevent the communication to a law enforcement officer of the United States of information relating to the commission and possible commission of a Federal offense, to wit, ARICI counseled Individual One to falsely tell law enforcement agents, among other things, that Individual One did not travel to Cuba, that he did not know ARICI and that had not met with ARICI in Cuba.

(Title 18, United States Code, Section 1512(b)(3).)

COUNT THIRTY-SEVEN

(Trading With the Enemy - Defendant VERZANI)

The Grand Jury further charges:

35. Paragraphs 26 through 29 and 31 are repeated and realleged as if fully set forth herein.

36. From in or about April 2011 through in or about September 2011, in the Southern District of New York and elsewhere, MARC E. VERZANI, the defendant, willfully and knowingly violated regulations promulgated under the Trading with the Enemy Act, Title 50, United States Code Appendix, Sections 5(b) and 16, specifically, Title 31, Code of Federal Regulations, Sections 515.201(b), 515.201(c), and 515.420, to wit, without having obtained a license to travel to Cuba, VERZANI engaged in prohibited transactions in which a Cuban national had an interest and engaged in transactions for the purpose of and having the effect of avoiding the prohibitions set forth in Title 31, Code of Federal Regulations, Sections 515.201(b), 515.201(c), and 515.420.

(Title 50, United States Code Appendix, Sections 5(b) and 16; Title 18, United States Code, Section 2.)

COUNT THIRTY-EIGHT

(Obstruction of the Administration of Justice - Defendant
VERZANI)

The Grand Jury further charges:

37. On or about October 11, 2011, in the Southern District of New York, MARC E. VERZANI, the defendant, corruptly influenced, obstructed, and impeded, and endeavored to influence, obstruct, and impede, the due administration of justice, to wit, VERZANI, gave false and misleading sworn testimony at a hearing in White Plains, New York before the Honorable Lisa Margaret Smith, United States Magistrate Judge, Southern District of New York, in a civil action entitled *In the Matter of Three Search Warrants Executed at Three Locations on April 29, 2010*, 11 Misc. 0271 (CS) (LMS), including false testimony that the only foreign countries he had been in with ADEM ARICI were Argentina and Brazil, whereas in truth and fact, as recently as September 2011, he had been with ARICI in Cuba.

(Title 18, United States Code, Section 1503.)

COUNT THIRTY-NINE

(Witness Tampering - Defendant VERZANI)

The Grand Jury further charges:

38. From on or about October 12, 2011 through on or about October 18, 2011, in the Southern District of New York and elsewhere, MARC E. VERZANI, the defendant, knowingly used intimidation, threatened, and corruptly persuaded another person, and attempted to do so, and engaged in misleading conduct toward another person, with intent to hinder, delay, and prevent the communication to a law enforcement officer of the United States of information relating to the commission and possible commission of a Federal offense, to wit, VERZANI counseled Individual One to falsely tell law enforcement agents that Individual One did not recall the specifics of his September 2011 travel to Cuba with VERZANI and to invoke his Fifth Amendment privilege against self incrimination and not to answer questions if he were specifically asked about travel to Cuba.

(Title 18, United States Code, Section 1512(b)(3).)

FORFEITURE ALLEGATIONS AS TO COUNT ONE

39. As the result of committing the conspiracy offense alleged in Count One of this Indictment, in violation of Title 18, United States Code, Section 371, ADEM ARICI, OMER IPEK, ERDAL KILIC, ARMAGAN TANIR, ATILLA YAYLA, JODY VITALE, ANDREW POMA, CEVDET ARICI and JOSEFINA CARABALLO, the defendants, shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses.

Substitute Asset Provision

40. If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendant(s) up to the value of the above forfeitable property.

(Title 18, United States Code, Sections 981 and 982, and
Title 28, United States Code, Section 2461.)

FORFEITURE ALLEGATIONS AS TO COUNTS THIRTY-FOUR, THIRTY-FIVE AND THIRTY-SEVEN

41. As a result of committing one or more of the conspiracy and Trading With the Enemy offenses, in violation of Title 50, United States Code Appendix, Sections 5(b) and 16, and Title 18, United States Code Section 371, as alleged in Counts Thirty-four, Thirty-five and Thirty-seven of this Indictment, defendants ADEM ARICI and MARC E. VERZANI shall forfeit to the United States, pursuant to Title 50, United States Code Appendix, Section 16(c), any property, funds, securities, papers, and other articles or documents, or any vessel, together with tackle, apparel, furniture, and equipment, concerned in such violations, including, but not limited to, the following:

- a. property and businesses owned in whole or part by ARICI in Cuba;
- b. money spent on travel to and from Cuba; and
- c. the value of goods and services consumed by the defendants in Cuba in or about September 2011.

Substitute Asset Provision

42. If any of above-described forfeitable property, as a result of any act or omission of the defendant(s):

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;

(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendant(s) up to the value of the above forfeitable property.

(Title 21, United States Code, Section 853(p); and Title 50, United States Code Appendix, Section 16 (c).)

FORFEITURE ALLEGATIONS AS TO COUNTS THIRTY-SIX, THIRTY-EIGHT, AND THIRTY-NINE

43. As the result of committing the obstruction of administration of justice offense, in violation of Title 18, United States Code, Section 1503, as alleged in Count Thirty-eight of this Indictment, and one or more of the witness tampering offenses, in violation of Title 18, United States Code, Section 1512, as alleged in Counts Thirty-six and Thirty-nine of this Indictment, defendants ADEM ARICI and MARC E. VERZANI shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(c), and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of these offenses, including but not limited to a sum of United States currency representing the amount of proceeds obtained as a result of the offenses.

Substitute Asset Provision

44. If any of the above-described forfeitable property, as a result of any act or omission of defendant(s):

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with a third person;

(3) has been placed beyond the jurisdiction of Court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficult;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981(a)(1)(c); Title 21, United States Code, Section 853(p), and Title 28, United States Code, Section 2461.)



PREET BHARARA
United States Attorney

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

**ADEM ARICI,
OMER IPEK,
ERDAL KILIC,
ARMAGAN TANIR,
ATILLA YAYLA,
JODY VITALE,
ANDREW POMA,
CEVDET ARICI,
JOSEFINA CARABALLO and
MARC VERZANI,**

Defendants.

INDICTMENT

S2 12 Cr. 0024 (cs)

**(In Violation of Title 18, United States Code, Section 371)
(In Violation of Title 26, United States Code, Section 7212(a))
(In Violation of Title 26, United States Code, Section 7206(1))
(In Violation of Title 26, United States Code, Section 7206(2))
(In Violation of Title 50, United States Code, Sections 5(b) and 16)
(In Violation of Title 18, United States Code, Section 2)
(In Violation of Title 18, United States Code, Section 1512(b)(3))
(In Violation of Title 18, United States Code, Section 1503)**

PREET BHARARA

United States Attorney.