UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	S1 02 Cr. 649 (TPG)
v.	:	Filed: 9/17/02
MITCHELL E. MOSALLEM; JOHN GHIANNI; HALUK K. ERGULEC; BIRJ DECKMEJIAN; THE COLOR WHEEL, INC.,	:	Violations: 15 U.S.C. § 1 18 U.S.C. § 371 26 U.S.C. § 7206(1)
Defendants.	:	

SUPERSEDING INDICTMENT

COUNT ONE -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The Grand Jury charges:

1. Mitchell E. Mosallem, John Ghianni, and The Color Wheel, Inc. are hereby indicted and made defendants on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period charged in this Count:

2. Defendant Mitchell E. Mosallem (hereinafter "Mosallem") resided in Manhattan, New York. Mosallem was vice president and later executive vice president and director of graphic services for Grey Global Group, Inc. or its predecessors or affiliates, including Grey Advertising, Inc. (hereinafter collectively "Grey"). As director of graphic services, Mosallem supervised approximately 70 employees.

3. Defendant John Ghianni (hereinafter "Ghianni") resided in Fort Lee, New Jersey.

Ghianni was a salesperson representing a company that supplied graphic services, with responsibility for the Grey account.

4. Defendant The Color Wheel, Inc., a company located in Manhattan, New York, was a supplier of graphic services, including retouching and separation services. The Color Wheel, Inc. was wholly owned by Haluk K. Ergulec. In 1999 The Color Wheel, Inc. merged with two other companies wholly owned by Haluk K. Ergulec, Manhattan Color Graphics, Inc., and A2, Inc., with The Color Wheel, Inc. being the surviving corporate entity. Manhattan Color Graphics, Inc., A2, Inc., and the pre- and post-merger The Color Wheel, Inc. are hereinafter collectively referred to as "Color Wheel."

5. Grey, headquartered in Manhattan, New York, provided advertising, marketing, public relations, and media services. Grey was one of the largest advertising agencies in the world, with as many as 12,000 employees and offices in 90 countries. Grey, which had approximately $8.3 billion in billings in 2000, had a client roster that included major consumer brand companies such as Brown & Williamson Tobacco Corp., The Procter & Gamble Co., GlaxoSmithKline p.l.c., Mars Inc., Hasbro, Inc., Eli Lilly & Co., 3M Co., and Joseph E. Seagram & Sons, Inc.

6. Brown & Williamson Tobacco Corp. (hereinafter "B&W") marketed tobacco products. B&W, the third largest cigarette manufacturer and marketer in the United States, was headquartered in Louisville, Kentucky. B&W was a subsidiary of British American Tobacco p.l.c. It had approximately 5,000 employees. B&W's principal brands were Kool, Lucky Strike, Carlton, Kent, Capri, and Pall Mall.

7. Whenever in this Count reference is made to any act, deed, or transaction of any

corporation, such allegation shall be deemed to mean that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

8. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These included a salesperson representing Color Wheel (hereinafter "CC-1"), a Grey executive, a Grey production employee, and salespeople representing certain graphics services companies.

II. DEFINITIONS

9. "Retouching" is the process of editing or otherwise manipulating a photograph or digital image to achieve an aesthetically desired result. The process employs a range of image processing tools which can be used to compose, change, and improve any type of image.

10. "Separation" is the act of decomposing an image or photograph into single-color layers, so that it may be printed with a printing press.

III. TRADE AND COMMERCE

11. From approximately late 1994 until approximately 2001, pursuant to contracts that are the subject of this Count, B&W, through its agency Grey, purchased substantial quantities of retouching and separation services from members of the conspiracy. Materials and equipment were transported across state lines for use in performing some of the aforementioned retouching and separation services.

12. The activities of certain of the defendants and co-conspirators with respect to the

sale of retouching and separation services to B&W, purchased through its agency Grey, including the sale of retouching and separation services pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

13. During the period covered by this Count, certain of the defendants and co-conspirators performed retouching or separation services on advertisements, including advertisements completed pursuant to contracts that are the subject of this Count, which were thereafter shipped across state lines in a continuous and uninterrupted flow of interstate commerce for inclusion in magazines and other media manufactured and produced outside the State of New York. These magazines and other media were also shipped across state lines in a continuous and uninterrupted flow of interstate commerce from their places of manufacture to customers located throughout the United States.

IV. DESCRIPTION OF THE OFFENSE

14. From approximately late 1994 until approximately 2001, the exact dates being unknown to the Grand Jury, the defendants and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

15. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of retouching and separation services to B&W, contracted through its agency Grey.

16. For the purpose of forming and effectuating the aforesaid combination and

conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) On approximately July 1, 1994, B&W retained Grey as its agent to provide advertising and marketing services on behalf of its various brands. The agreement between B&W and Grey and all succeeding agreements (hereinafter collectively "the agreement") stated that Grey owed the highest fiduciary duties to B&W, and obliged Grey to exert its best efforts and apply its highest professional skill on B&W's behalf;

(b) As part of the agreement, Grey, acting on B&W's behalf, procured various goods and services from third parties. These goods and services included retouching and separation services from graphics supply companies. To ensure that B&W received the best value on purchases made on its behalf by Grey, the agreement between B&W and Grey required that Grey obtain at least three competitive bids before entering into any single contract for goods or services in excess of $25,000, and at least once a year to obtain competitive bids for any other goods or services purchased on B&W's behalf;

(c) Certain of the defendants and co-conspirators designated in advance that defendant Color Wheel would be the low bidder, among the co-conspirators, on contracts to supply retouching services, and that another company would be the low bidder on contracts to supply separation services on behalf of B&W brands;

(d) Certain of the defendants and co-conspirators discussed and agreed on the prices they would bid on contracts to supply retouching and on contracts to supply separation services on behalf of B&W brands;

(e) Certain of the defendants and co-conspirators submitted, or caused to be

submitted, intentionally high, noncompetitive bids on contracts to supply retouching and separation services on behalf of B&W brands, with the understanding that they would be allowed to submit bids for, and under certain circumstances allocated contracts to supply, various services on behalf of other Grey clients. The intentionally high bids relating to work Grey procured for B&W were submitted in order to make it appear to B&W that there had been competition for its contracts when, in fact, there had not; and

(f) Certain of the defendants and co-conspirators paid substantial amounts of cash or goods and services to defendant Mosallem for his assistance in controlling B&W's program for seeking competitive bids for contracts for retouching and for contracts for separation services, and for ensuring that no potential competitors who were not co-conspirators would be invited to bid on such contracts.

V. JURISDICTION AND VENUE

17. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Indictment.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

COUNT TWO -- CONSPIRACY
(18 U.S.C. § 371)

The Grand Jury further charges:

18. Mitchell E. Mosallem, Haluk K. Ergulec, Birj Deckmejian, and The Color Wheel, Inc. are hereby indicted and made defendants on the charge stated below.

19. Paragraphs 2, 4, 5, 7, 9, and 10 of Count One of this Indictment are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

VI. THE RELEVANT PARTIES AND ENTITIES

20. Defendant Haluk K. Ergulec (hereinafter "Ergulec") was a resident of Manhattan. Ergulec was the owner of Color Wheel.

21. Defendant Birj Deckmejian (hereinafter "Deckmejian") was a resident of Manhattan. Deckmejian was a salesperson representing Color Wheel, with responsibility for the Grey account.

22. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These included a salesperson representing Color Wheel (hereinafter "CC-1") and a Grey executive (hereinafter "CC-2").

VII. DEFINITIONS

23. "Prepress services" are the services and materials necessary to provide magazines and other print media with the images that they manufacture and publish. These services include retouching and separation services.

24. "Printing" is the use of a commercial printing press to produce multiple, printed copies of images inserted in print media or otherwise distributed to potential consumers.

25. "Graphic services" encompasses both prepress services and printing.

VIII. DESCRIPTION OF THE OFFENSE

26. From approximately 1991 until approximately July 2000, the exact dates being unknown to the Grand Jury, in the Southern District of New York and elsewhere, defendants Mosallem, Ergulec, Deckmejian, and Color Wheel and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit

an offense against the United States of America, to wit, to violate Title 18, United States Code, Section 1341, in violation of Title 18, United States Code, Section 371.

27. It was a part and an object of the conspiracy that defendants Mosallem, Ergulec, Deckmejian, and Color Wheel, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud clients of Grey, and for obtaining money and property from Grey clients by means of false and fraudulent pretenses, representations, and promises, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Section 1341.

IX. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

28. Grey developed advertising and marketing campaigns on behalf of its clients. Some of the advertising that Grey developed appeared in printed form, such as advertisements consisting of pictures and words in magazines. On behalf of its clients, through its graphics services department, Grey contracted with third parties that were suppliers of graphics services ("graphics suppliers") to provide services and materials related to advertising that appeared in

print, including prepress services and printing. Defendant Mosallem was responsible for establishing procedures for the selection and supervision of graphics suppliers, including the initial review and authorization of their bills for payment.

29. Pursuant to agreements with certain of its clients, Grey was paid a fee for its creative work on behalf of the client, and for its supervision of the production of various components of a campaign, including supervision of prepress services and printing. In addition, pursuant to express written agreements with certain of its clients, Grey paid third parties, and was reimbursed by its clients, for "out-of-pocket" costs, including the actual costs of prepress services and printing provided by graphics suppliers. Grey received no markup or other profit on these "out-of-pocket" costs. Grey's clients relied on Grey's representations regarding the accuracy of the bills it presented for reimbursement or the amounts for which it sought reimbursement.

30. The advertising Grey developed and produced for each client often consisted of many separate jobs, with separate, corresponding contracts between Grey and various third party graphics suppliers. In many cases, Grey provided the initiative and exercised its discretion in selecting a graphics supplier and awarding a contract for a particular job or a related group of jobs (a "campaign") after seeking what purported to be competitive bids from multiple graphics suppliers. Usually, by the time a contract was awarded, Grey and its client had established a budget for the job, in part by referring to the prices quoted by the competing graphics suppliers. Employees of Grey's graphics services department were responsible for monitoring jobs to determine whether they would be completed within the established budgets and, if not, for seeking the client's approval to increase the budgets. The actual value of work done in

connection with each job ultimately could be lower than, equal to, or higher than the established budget.

31. The third party graphics suppliers issued invoices to Grey, corresponding to the contracts they had been awarded, when those contracts were completed. Employees of Grey's graphics services department were responsible for reviewing the invoices for accuracy and authorizing them for payment. In situations where the graphics supplier's price for the work exceeded the budget for a particular job, the graphics supplier often knew, at the time it was prepared to seek payment, that it would not be paid in full for the work it had done.

32. Beginning in approximately 1991, defendant Mosallem agreed with defendant Ergulec, defendant Deckmejian, defendant Color Wheel, and certain co-conspirators to defraud certain Grey clients by causing defendant Color Wheel to issue false and fraudulent invoices relating to its contracts to produce advertising services and materials. Typically, the invoices were false and fraudulent in that the quantities -- and thus the prices -- of certain line items listed in the invoices were inflated to allow defendant Color Wheel to recoup three specific types of expenses:

(a) Certain invoices were inflated to allow defendant Color Wheel or defendant Deckmejian to recoup the cost of tickets to theater, sporting, and cultural events it or defendant Deckmejian had provided for the personal benefit of defendant Mosallem, CC-2, other senior employees and executives of Grey, and members of their families;

(b) Certain invoices were inflated to allow defendant Color Wheel to recoup the cost of goods and services it had provided for the personal benefit of defendant Mosallem, CC-2,

other senior employees and executives of Grey, and members of their families. These goods and services included the printing of graphics items such as wedding invitations, holiday cards, brochures, and family and other personal photographs; and

(c) Certain invoices were inflated to allow defendant Color Wheel to recoup charges for work it had performed on earlier jobs, frequently for different Grey clients, for which it had not been fully paid. In these instances, defendant Color Wheel had not received full compensation for the earlier work performed because those jobs had run overbudget, or because the client which had commissioned the advertising was unwilling or unable to pay its bills.

33. Defendant Ergulec instructed CC-1, and defendant Mosallem instructed CC-2, to track the expenses defendant Color Wheel was to recoup, and to identify jobs to which those amounts could be added by fraudulently increasing the quantities and prices of certain line items in those jobs.

34. Between approximately 1991 and July 2000, CC-1 created and maintained lists of expenses and showed them to CC-2, who then identified to which jobs those monies should be added and, in many cases, exactly where and how on the false and fraudulent invoices those charges should appear. On many occasions, CC-2 consulted with other employees in Grey's graphics services department in order to identify the jobs to which monies could be added, normally in situations where the job was expected to run under budget or where the job had not yet been budgeted but defendant Color Wheel could be given an opportunity to increase its bid or

price quotation. CC-1 periodically showed the lists to defendant Mosallem, defendant Ergulec, and defendant Deckmejian, and updated them on the status of the scheme.

35. Between approximately 1991 and July 2000, defendant Mosallem, defendant Ergulec, defendant Deckmejian, and co-conspirators caused defendant Color Wheel to issue to Grey numerous false and fraudulent invoices.

36. Defendant Mosallem and co-conspirators further caused Grey to pay the false and fraudulent invoices and then to seek reimbursement from its clients.

37. Certain of the checks issued by Grey to defendant Color Wheel in payment of the false and fraudulent invoices were sent via the United States mail.

38. Certain of Grey's invoices to its clients, and corresponding checks issued by Grey clients in payment of the fraudulently inflated charges, were sent via the United States mail or by private or commercial interstate carrier.

39. Certain negatives, press proofs, and other portions of finished advertisements, which were produced by Color Wheel and the prices of which were fraudulently inflated pursuant to the charged conspiracy, were sent by Grey to magazines located throughout the United States by private or commercial interstate carrier.

X. OVERT ACTS

40. In furtherance of the conspiracy and to effect the illegal objects thereof, defendant Mosallem, defendant Ergulec, defendant Deckmejian, defendant Color Wheel, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On approximately September 30, 1999, defendant Color Wheel issued a false and fraudulent invoice to Grey in connection with a Cover Girl smudgeproof mascara magazine advertisement featuring Brandy Norwood, in which invoice the line item for retouching was fraudulently inflated by $5,000;

(b) On approximately June 3, 1999, Grey shipped by Josef Traffic Consulting & Expediting Service, Inc. (hereinafter "Josef Expediting"), a private or commercial interstate carrier, negatives and proofs for a Cover Girl smudgeproof mascara magazine advertisement featuring Brandy Norwood, from defendant Color Wheel to Teen Magazine in Los Angeles, California;

(c) On approximately June 4, 1999, Grey shipped by Josef Expediting, a private or commercial interstate carrier, negatives and proofs for a Cover Girl smudgeproof mascara magazine advertisement featuring Brandy Norwood, from defendant Color Wheel to Young Miss Magazine c/o Brown Printing in Waseca, Minnesota;

(d) On approximately March 30, 1999, defendant Color Wheel issued a false and fraudulent invoice to Grey in connection with a Cover Girl Crackle Lacquer nail polish magazine advertisement, in which invoice the line items for various retouching services were fraudulently inflated by a total of $2,000;

(e) On approximately March 3, 1999, Grey shipped by Josef Expediting, a private or commercial interstate carrier, negatives and press proofs for a Cover Girl Crackle Lacquer nail polish magazine advertisement, from defendant Color Wheel to Jump Magazine c/o Western Laser Graphics in Valencia, California;

(f) On approximately September 30, 1999, defendant Color Wheel issued a false and fraudulent invoice to Grey in connection with a Cover Girl Smoothers magazine advertisement featuring Brandy Norwood, Niki Taylor, Yamila Diaz, Lonneke Engel, and Faith Hill, in which invoice the line items for various retouching services were fraudulently inflated by a total of $5,000;

(g) On approximately January 12, 1999, defendant Color Wheel issued a false and fraudulent invoice to Grey in connection with Pantene bus shelter outdoor advertisements, in which the line item for retouching services was fraudulently inflated by a total of $2,025;

(h) On approximately January 22, 1999, Grey shipped by BEK Expediting, Inc., a private or commercial interstate carrier, Pantene bus shelter outdoor advertisements to various bus shelters in the United States;

(i) On approximately April 12, 2000, defendant Deckmejian paid $500 for tickets to the Big East basketball tournament;

(j) On approximately May 3, 1999, Gotham Sales, Inc. (hereinafter "Gotham Sales"), a ticket brokerage company located in Stamford, Connecticut, issued an invoice to defendant Deckmejian that included a charge of $1,350 for tickets to the Lion King; and

(k) On approximately January 4, 1999, Gotham Sales issued an invoice to defendant Deckmejian that included a charge of $600 for tickets to the Metropolitan Opera.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

COUNT THREE -- CONSPIRACY
(18 U.S.C. § 371)

The Grand Jury further charges:

41. Mitchell E. Mosallem is hereby indicted and made defendant on the charge stated below.

42. Paragraphs 2, 5, 9, and 10 of Count One and Paragraphs 23, 24, 25, and 28 through 31 of Count Two of this Indictment are repeated, realleged, and incorporated in Count Three as if fully set forth in this Count.

43. Co-conspirators, not made defendants herein, participated in the offense charged herein and performed acts and made statements in furtherance thereof. These included an independent salesperson ("CC-3") representing a graphics supply company ("GS-1") located in Manhattan.

XI. DESCRIPTION OF THE OFFENSE

44. From approximately 1990 until approximately 2001, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, defendant Mosallem and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States of America, to wit, to violate Title 18, United States Code, Sections 1341 and 1346, all in violation of Title 18, United States Code, Section 371.

45. It was a part and an object of the conspiracy that defendant Mosallem and others known and unknown, having devised and intending to devise a scheme and artifice to defraud Grey and Grey's clients, and for obtaining money and property from Grey and Grey's clients by means of false and fraudulent pretenses, representations, and promises, and to deprive Grey and

Grey's clients of their intangible right to the honest services of Grey's employees, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Section 1341 and 1346.

XII. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

46. During all or some of the period from approximately 1990 until approximately 2001, CC-3 paid defendant Mosallem cash kickbacks. The kickbacks were unknown to Grey and Grey's clients, who expected that Grey's employees would act in accordance with Grey's fiduciary obligation when awarding contracts to vendors. The amount of the kickbacks paid by CC-3 was approximately 6¼% of the total volume of contracts awarded by Grey to GS-1. CC-3 typically paid the cash kickbacks to defendant Mosallem on a monthly basis, usually over lunch or dinner at restaurants in Manhattan. In exchange for the cash kickbacks, defendant Mosallem ensured that GS-1 was placed on Grey's limited list of approved vendors, which defendant Mosallem had created, and further ensured that GS-1 would receive a portion of the total value of contracts for prepress services and printing awarded by Grey. By paying the kickbacks, CC-3

was able to maintain GS-1's prices at noncompetitive levels because he did not have to set GS-1's prices in response to open and honest competition from other vendors. As a result, Grey and its clients paid higher prices for prepress services and printing than they would have if Mosallem had aggressively and honestly solicited competitive prices from other vendors.

47. Between approximately 1990 and 2001, defendant Mosallem and CC-3 caused GS-1 to issue to Grey numerous invoices.

48. Defendant Mosallem and co-conspirators further caused Grey to pay the invoices and then to seek reimbursement from its clients.

49. Some of the checks issued by Grey to GS-1 in payment of the invoices were sent via the United States mail.

50. Some of Grey's invoices to its clients, and corresponding checks issued by Grey clients in payment of the invoices, were sent via the United States mail or by private or commercial interstate carrier.

51. Some printed materials, negatives, press proofs, and other portions of finished advertisements that were produced by GS-1 were sent by Grey to magazines located throughout the United States by private or commercial interstate carrier.

XIII. OVERT ACTS

52. In furtherance of the conspiracy and to effect the illegal objects thereof, defendant Mosallem and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On numerous occasions GS-1 sent invoices to Grey through the mails;

(b) On numerous occasions Grey paid invoices issued by GS-1 by checks sent

through the mails;

(c) On numerous occasions defendant Mosallem received substantial amounts of cash from CC-3 at restaurants in Manhattan;

(d) On approximately November 30, 1999, GS-1 submitted an estimate to Grey for printing work on a Hasbro Toy Group advertisement for Nascar 2000 Winner's Circle; and

(e) On approximately December 3, 1999, Grey shipped by Josef Traffic Consulting & Expediting Service, Inc., a private or commercial interstate carrier, negatives and proofs for a Hasbro Toy Group advertisement for Nascar 2000 Winner's Circle, from GS-1 to Hasbro Toy Group in Cincinnati, Ohio.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

COUNT FOUR -- CONSPIRACY
(18 U.S.C. § 371)

The Grand Jury further charges:

53. Mitchell E. Mosallem is hereby indicted and made defendant on the charge stated below.

54. Paragraphs 2, 5, 9, and 10 of Count One and Paragraphs 23, 24, 25, and 28 through 31 of Count Two of this Indictment are repeated, realleged, and incorporated in Count Four as if fully set forth in this Count.

55. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These included a co-conspirator ("CC-4") who was a co-owner of a printing company located in Manhattan and also worked as a salesperson representing two Manhattan companies that provided prepress services. The printing company and two prepress service

companies are hereinafter collectively referred to as “GS-2."

XIV. DESCRIPTION OF THE OFFENSE

56. From approximately 1990 until approximately 2001, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, defendant Mosallem and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States of America, to wit, to violate Title 18, United States Code, Sections 1341 and 1346, all in violation of Title 18, United States Code, Section 371.

57. It was a part and an object of the conspiracy that defendant Mosallem and others known and unknown, having devised and intending to devise a scheme and artifice to defraud Grey and Grey’s clients, and for obtaining money and property from Grey and Grey’s clients by means of false and fraudulent pretenses, representations, and promises, and to deprive Grey and Grey’s clients of their intangible right to the honest services of Grey’s employees, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Section 1341 and 1346.

XV. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

58. During all or some of the period from approximately 1990 until approximately 2001, CC-4 paid defendant Mosallem kickbacks in the form of goods or services such as clothing, limousine service, and meals at restaurants. CC-4 made arrangements with various suppliers of those goods and services so that defendant Mosallem could charge personal goods and services to GS-2's account and have the subsequent invoices paid by GS-2. The kickbacks were unknown to Grey and Grey's clients, who expected that Grey's employees would act in accordance with Grey's fiduciary obligation when awarding contracts to vendors. In exchange for the kickbacks, defendant Mosallem ensured that GS-2 was placed on Grey's limited list of approved vendors, which defendant Mosallem had created, and further ensured that GS-2 would receive a portion of the total value of contracts for prepress services and printing awarded by Grey. By paying the kickbacks, CC-4 was able to maintain GS-2's prices at noncompetitive levels because he did not have to set GS-2's prices in response to open and honest competition from other vendors. As a result, Grey and its clients paid higher prices for prepress services and printing than they would have if Mosallem had aggressively and honestly solicited competitive prices from other vendors.

59. Between approximately 1990 and 2001, defendant Mosallem and CC-4 caused GS-2 to issue to Grey numerous invoices.

60. Defendant Mosallem and co-conspirators further caused Grey to pay the invoices and then to seek reimbursement from its clients.

61. Some of the checks issued by Grey to GS-2 in payment of the invoices were sent via the United States mail.

62. Some of Grey's invoices to its clients, and corresponding checks issued by Grey clients in payment of the invoices, were sent via the United States mail or by private or commercial interstate carrier.

63. Some printed materials, negatives, press proofs, and other portions of finished advertisements that were produced by GS-2 were sent by Grey to magazines located throughout the United States by private or commercial interstate carrier.

XVI. OVERT ACTS

64. In furtherance of the conspiracy and to effect the illegal objects thereof, defendant Mosallem and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On numerous occasions GS-2 sent invoices to Grey through the mails;

(b) On numerous occasions Grey paid invoices issued by GS-2 by checks sent through the mails;

(c) On approximately August 31, 1999, a men's clothing store located in Manhattan issued an invoice to GS-2 for $6,267.67 for three suits and one jacket ordered by defendant Mosallem;

(d) On approximately January 5, 1998, a men's clothing store located in Manhattan issued an invoice to GS-2 for $1,463 purportedly for 38 golf shirts, that in actuality represented clothing ordered by defendant Mosallem;

(e) On approximately September 24, 1999, a men's clothing store located in

Manhattan issued an invoice to GS-2 for $1,959.32 for five shirts, one pair of pants, one pair of shoes, and three ties ordered by defendant Mosallem; and

(f) On approximately March 15, 2000, CRC Management, Inc., a limousine company located in Queens, issued an invoice to GS-2 for $630.49, which invoice included trips provided to a member of defendant Mosallem's family.

COUNT FIVE -- CONSPIRACY
(18 U.S.C. § 371)

The Grand Jury further charges:

65. Mitchell E. Mosallem is hereby indicted and made defendant on the charge stated below.

66. Paragraphs 2, 5, 9, and 10 of Count One and Paragraphs 23, 24, 25, and 28 through 31 of Count Two of this Indictment are repeated, realleged, and incorporated in Count Five as if fully set forth in this Count.

67. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These included the owner and certain executives of affiliated graphics supply companies (collectively "GS-3") located in Manhattan, and salespeople representing those companies.

XVII. DESCRIPTION OF THE OFFENSE

68. From approximately 1990 until approximately 2001, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, defendant Mosallem and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States

of America, to wit, to violate Title 18, United States Code, Sections 1341 and 1346, all in violation of Title 18, United States Code, Section 371.

69. It was a part and an object of the conspiracy that defendant Mosallem and others known and unknown, having devised and intending to devise a scheme and artifice to defraud Grey and Grey's clients, and for obtaining money and property from Grey and Grey's clients by means of false and fraudulent pretenses, representations, and promises, and to deprive Grey and Grey's clients of their intangible right to the honest services of Grey's employees, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Section 1341 and 1346.

XVIII. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

70. During all or some of the period from approximately 1990 until approximately 2001, the owner, certain executives, and salespeople representing GS-3 paid defendant Mosallem kickbacks in the form of cash, goods, or services. The kickbacks were unknown to Grey and Grey's clients, who expected that Grey's employees would act in accordance with Grey's fiduciary obligation when awarding contracts to vendors. In exchange for the kickbacks, defendant Mosallem ensured that GS-3 was placed on Grey's limited list of approved vendors, which defendant Mosallem had created, and further ensured that GS-3 would receive a portion of the total value of contracts for prepress services and printing awarded by Grey. By paying the kickbacks, GS-3 was able to maintain its prices at noncompetitive levels because it did not have to set prices in response to open and honest competition from other vendors. As a result, Grey and its clients paid higher prices for prepress services and printing than they would have if Mosallem had aggressively and honestly solicited competitive prices from other vendors.

71. Between approximately 1990 and 2001, defendant Mosallem and co-conspirators caused GS-3 to issue to Grey numerous invoices.

72. Defendant Mosallem and co-conspirators further caused Grey to pay the invoices and then to seek reimbursement from its clients.

73. Some of the checks issued by Grey to GS-3 in payment of the invoices were sent

via the United States mail.

74. Some of Grey's invoices to its clients, and corresponding checks issued by Grey clients in payment of the invoices, were sent via the United States mail or by private or commercial interstate carrier.

75. Some printed materials, negatives, press proofs, and other portions of finished advertisements, which were produced by GS-3, were sent by Grey to magazines located throughout the United States by private or commercial interstate carrier.

XIX. OVERT ACTS

76. In furtherance of the conspiracy and to effect the illegal objects thereof, defendant Mosallem and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On numerous occasions GS-3 sent invoices to Grey through the mails;

(b) On numerous occasions Grey paid invoices issued by GS-3 by checks sent through the mails;

(c) On approximately June 7, 1999, Travel Exchange, a travel agency located in Stamford, Connecticut, issued an invoice to GS-3 for $2,556.42 for airline tickets for the benefit of defendant Mosallem or a member of his family; and

(d) On approximately March 16, 2001, Travel Exchange, a travel agency located in Stamford, Connecticut, issued an invoice to GS-3 for $389.75 for airline tickets for the benefit of defendant Mosallem or a member of his family.

COUNT SIX -- CONSPIRACY
(18 U.S.C. § 371)

The Grand Jury further charges:

77. Mitchell E. Mosallem is hereby indicted and made defendant on the charge stated below.

78. Paragraph 2 of Count One of this Indictment is repeated, realleged, and incorporated in Count Six as if fully set forth in this Count.

79. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These included owners, executives, and salespeople representing the graphics supply companies identified as "GS-1," "GS-2," and "GS-3" in Counts Three, Four, and Five of this Indictment.

XX. DESCRIPTION OF THE OFFENSE

80. From approximately 1990 until approximately 2001, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, defendant Mosallem and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to defraud the United States of America and an agency thereof, to wit, the Internal Revenue Service ("IRS") of the United States Department of the Treasury, in violation of Title 18, United States Code, Section 371.

81. It was a part and object of the conspiracy that defendant Mosallem and co-conspirators would and did defraud the United States of America and the IRS by impeding, impairing, obstructing, and defeating the lawful government functions of the IRS in the ascertainment, computation, assessment, and collection of income taxes due and owing from defendant Mosallem.

XXI. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

82. During all or some of the period from approximately 1990 until approximately 2001, co-conspirators representing GS-1, GS-2, and GS-3 paid defendant Mosallem kickbacks in cash and goods and services. Defendant Mosallem failed to account for the value of these kickbacks on the income tax returns filed by him and his spouse.

XXI. OVERT ACTS

83. In furtherance of the conspiracy and to effect the illegal objects thereof, defendant Mosallem and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On approximately March 13, 1997, defendant Mosallem filed a false and fraudulent U.S. Income Tax Return, Form 1040, for 1996, wherein he failed to report accurately his true personal income;

(b) On approximately April 14, 1998, defendant Mosallem filed a false and fraudulent U.S. Income Tax Return, Form 1040, for 1997, wherein he failed to report accurately his true personal income;

(c) On approximately April 12, 1999, defendant Mosallem filed a false and fraudulent U.S. Income Tax Return, Form 1040, for 1998, wherein he failed to report accurately his true personal income; and

(d) On approximately March 25, 2000, defendant Mosallem filed a false and fraudulent U.S. Income Tax Return, Form 1040, for 1999, wherein he failed to report accurately his true personal income;

(e) On approximately March 27, 2001, defendant Mosallem filed a false and fraudulent U.S. Income Tax Return, Form 1040, for 2000, wherein he failed to report accurately his true personal income;

(f) On approximately June 7, 1999, Travel Exchange, a travel agency located in Stamford, Connecticut, issued an invoice to GS-3 for $2,556.42 for airline tickets for the benefit of defendant Mosallem or a member of his family;

(g) On approximately September 24, 1999, a men's clothing store located in Manhattan issued an invoice to GS-2 for $1,959.32 for five shirts, one pair of pants, one pair of shoes, and three ties ordered by defendant Mosallem; and

(h) On numerous occasions defendant Mosallem received substantial amounts of cash from a co-conspirator at various locations in Manhattan.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

COUNT SEVEN -- FRAUD AND FALSE STATEMENTS
(26 U.S.C. § 7206(1))

The Grand Jury further charges:

84. On or about March 13, 1997, in the Southern District of New York and elsewhere, Mitchell E. Mosallem, a resident of Manhattan, New York, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the calendar year 1996, which was verified by defendant Mosallem's written declaration that it was made under penalties of perjury and was filed with the Internal Revenue Service, and which income tax return he did not believe to be true and correct as to every material matter, in that the income tax return reported taxable income of $172,979 and tax of $46,767, whereas, as defendant Mosallem then and there well knew and believed, his income and tax for calendar year 1996 were substantially in excess of the amounts reported, because said income tax return failed to report as income his receipt of cash and goods and services for his personal benefit from vendors to his employer.

IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7206(1)

COUNT EIGHT -- FRAUD AND FALSE STATEMENTS
(26 U.S.C. § 7206(1))

The Grand Jury further charges:

85. On or about April 14, 1998, in the Southern District of New York and elsewhere, Mitchell E. Mosallem, a resident of Manhattan, New York, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the calendar year 1997, which was verified by defendant Mosallem's written declaration that it was made under penalties of perjury and was filed with the Internal Revenue Service, and which income tax return he did not believe to be true and correct as to every material matter, in that the income tax return reported taxable income

of $176,352 and tax of $47,140, whereas, as defendant Mosallem then and there well knew and believed, his income and tax for calendar year 1997 were substantially in excess of the amounts reported, because said income tax return failed to report as income his receipt of cash and goods and services for his personal benefit from vendors to his employer.

IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7206(1)

COUNT NINE -- FRAUD AND FALSE STATEMENTS
(26 U.S.C. § 7206(1))

The Grand Jury further charges:

86. On or about April 12, 1999, in the Southern District of New York and elsewhere, Mitchell E. Mosallem, a resident of Manhattan, New York, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the calendar year 1998, which was verified by defendant Mosallem's written declaration that it was made under penalties of perjury and was filed with the Internal Revenue Service, and which income tax return he did not believe to be true and correct as to every material matter, in that the income tax return reported taxable income of $325,919 and tax of $90,452, whereas, as defendant Mosallem then and there well knew and believed, his income and tax for calendar year 1998 were substantially in excess of the amounts reported, because said income tax return failed to report as income his receipt of cash and goods and services for his personal benefit from vendors to his employer.

IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7206(1)

COUNT TEN -- FRAUD AND FALSE STATEMENTS
(26 U.S.C. § 7206(1))

The Grand Jury further charges:

87. On or about March 25, 2000, in the Southern District of New York and elsewhere, Mitchell E. Mosallem, a resident of Manhattan, New York, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the calendar year 1999, which was verified by defendant Mosallem's written declaration that it was made under penalties of perjury and was filed with the Internal Revenue Service, and which income tax return he did not believe to be true and correct as to every material matter, in that the income tax return reported taxable income of $46,356 and tax of $17,559, whereas, as defendant Mosallem then and there well knew and believed, his income and tax for calendar year 1999 were substantially in excess of the amounts reported, because said income tax return failed to report as income his receipt of cash and goods and services for his personal benefit from vendors to his employer.

IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7206(1)

COUNT ELEVEN -- FRAUD AND FALSE STATEMENTS
(26 U.S.C. § 7206(1))

The Grand Jury further charges:

88. On or about March 27, 2001, in the Southern District of New York and elsewhere, Mitchell E. Mosallem, a resident of Manhattan, New York, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the calendar year 2000, which was verified by defendant Mosallem's written declaration that it was made under penalties of perjury and was filed with the Internal Revenue Service, and which income tax return he did not believe to be true and correct as to every material matter, in that the income tax return reported taxable income of $158,163 and tax of $36,526, whereas, as defendant Mosallem then and there well knew and believed, his income and tax for calendar year 2000 were substantially in excess of the amounts

reported, because said income tax return failed to report as income his receipt of cash and goods and services for his personal benefit from vendors to his employer.

IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7206(1)

Dated: 9/17/02

A True Bill

/s/
Foreperson

/s/
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/s/
JAMES M. GRIFFIN
Deputy Assistant Attorney General

/s/
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