UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA :

-v- : INFORMATION

GABRIEL SAGAZ, : 97 Cr. 212

Defendant. : Filed: 3/12/98

- - - - - - - - - - - - - - - - - - -X Judge Sand

COUNT ONE

The United States of America, acting through its attorneys, charges:

Conspiracy

The Relevant Parties and Entities

I. Except as otherwise noted, at all times relevant to this Information:

a. Domecq Importers, Inc. ("Domecq Importers") was a corporation incorporated under the laws of the State of New York. Domecq Importers imported and distributed several brands of alcoholic beverages, including Sauza tequila and Presidente brandy. Domecq Importers had its headquarters in Larchmont, New York until in or about January 1991, when it moved them to Old Greenwich, Connecticut.

b. Before in or about March 1994, Domecq Importers was directly owned by two entities controlled by members of the Domecq family and by a member of that family, who served as Domecq Importers' President and Chief Executive Officer until in or about September 1995. In or about March 1994, Domecq Importers and other

related companies were purchased by Allied-Lyons PLC ("Allied-Lyons"), a multi-national corporation based in England. After purchasing these companies, Allied-Lyons changed its name to Allied Domecq PLC ("Allied Domecq"). Following its acquisition by Allied-Lyons, Domecq Importers remained a separate corporation, which was operated as part of Allied Domecq Spirits & Wines ("Spirits & Wines"), the North American branch of Allied Domecq.

c. The defendant GABRIEL SAGAZ was an employee of Domecq Importers. Between in or about October 1987 and January 1990, SAGAZ was the brand manager responsible for marketing Sauza tequila. Beginning in or about January 1990, SAGAZ became the vice president responsible for marketing all of Domecq Importers' brands. After Allied-Lyons' acquisition of Domecq Importers, SAGAZ continued to be responsible for marketing the brands sold by Domecq Importers. He remained in that position until in or about September 1995, when he became president of Domecq Importers.

d. The defendant GABRIEL SAGAZ was one of the executives at Domecq Importers responsible for selecting and contracting with outside vendors to provide Domecq Importers with advertising materials and services, and to design, manufacture and supply items -- such as T-shirts, glasses, umbrellas, banners, and signs -- which were used to promote sales of Domecq Importers' brands (hereinafter the "vendors"). Along with other executives at Domecq Importers, SAGAZ controlled funds that

Domecq Importers had allocated for the marketing and promotion of its various brands, including for the payment of vendors.

e. Domecq Importers had a corporate policy favoring competitive bidding as the method by which Domecq Importers would select the vendors. After Allied-Lyons acquired Domecq Importers, officials of Spirits & Wines directed the defendant GABRIEL SAGAZ and other senior executives at Domecq Importers to adhere to its competitive bidding policy in selecting the vendors.

Statutory Allegations

1. From at least as early as 1989, and continuing up to and including in or about August 1996, in the Southern District of New York and elsewhere, the defendant GABRIEL SAGAZ, and other persons known and unknown, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other to defraud the United States and to violate Title 18, United States Code, Sections 1341 and 1346, and Title 26, United States Code, Section 7201.

2. It was a part and object of the conspiracy that the defendant GABRIEL SAGAZ, and his co-conspirators, would and did defraud the Internal Revenue Service (the "IRS") by impeding, impairing, obstructing, and defeating the lawful Government functions of the IRS in ascertaining, evaluating, assessing, and collecting federal income taxes due from SAGAZ, other individuals, and various entities by (a) impeding and impairing scrutiny by the IRS of the true nature of payments made by Domecq Importers to certain third parties; and (b) impeding and impairing scrutiny by the IRS of the true nature of payments made by certain

third parties to individuals and a variety of entities controlled by SAGAZ or his co-conspirators.

3. It was a further part and object of the conspiracy that the defendant GABRIEL SAGAZ, and his co-conspirators, would and did attempt to evade and defeat a substantial part of the income tax due and owing to the United States by SAGAZ and others, in violation of Title 26, United States Code, Section 7201.

4. It was a further part and object of the conspiracy that the defendant GABRIEL SAGAZ, and his co-conspirators, having devised and intending to devise a scheme and artifice to (a) defraud Domecq Importers; (b) obtain money and property from Domecq Importers by means of false and fraudulent pretenses, representations, and promises; and (c) deprive Domecq Importers of its right to the honest services of SAGAZ and certain Domecq executives; and, for the purpose of executing such scheme and artifice and attempting to do so, would and did (i) place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the United States Postal Service; (ii) take and receive from the mails such matters and things; and (iii) knowingly cause such matters and things to be delivered by mail according to the directions thereon, in violation of Title 18, United States Code, Sections 1341 and 1346.

The Means and Methods of the Conspiracy

Among the means and methods of the conspiracy were the following:

The Embezzlement Scheme

5. In or about 1989, the defendant GABRIEL SAGAZ met with the two senior executives of Domecq Importers -- Domecq

Importers' President and Chief Executive Officer, and its Chief Financial Officer. These executives revealed that they had been diverting money out of Domecq Importers to create a fund to provide them with additional income and that they had been assisted in this scheme by one or more of Domecq Importers' vendors. These executives invited SAGAZ to help them divert money to this fund and offered to share the money in the fund with him. SAGAZ agreed to participate in this scheme, which enabled SAGAZ and the two executives (a) to embezzle money from Domecq Importers; and (b) to conceal the embezzled money from the IRS.

6. The embezzlement scheme continued from in or about 1989 until in or about August 1996. During this period, another senior executive, Domecq Importers' Vice President for Sales, was invited to participate in the scheme. This senior executive did, in fact, join the scheme.

7. In total, from in or about 1989 up to and including in or about August 1996, the defendant GABRIEL SAGAZ and the senior executives of Domecq Importers who participated in this scheme (the "Executive Co-conspirators") embezzled at least $13 million from Domecq Importers.

8. The defendant GABRIEL SAGAZ and the Executive Co-conspirators employed several methods to embezzle money from Domecq Importers. Among these methods were the following:

a. Between at least as early as 1991 and in or about August 1996, the defendant GABRIEL SAGAZ and the Executive Co-conspirators arranged for certain of the vendors to receive funds in the form of checks from Domecq Importers. At the direction of SAGAZ and the Executive Co-conspirators, these vendors

then issued checks, or transferred money by wire, to purported third parties that generally matched the amount of funds that they had received from Domecq Importers. To make these transactions appear to relate to the legitimate business of Domecq Importers and the vendors, SAGAZ and the Executive Co-conspirators caused Domecq Importers and the vendors to issue various false and fraudulent documents, including false purchase orders and invoices. These documents were designed to make it appear that the vendors had purchased goods and services from the purported third parties and then resold those goods and services to Domecq Importers. In truth and in fact, however, neither the vendors nor the purported third parties actually provided any goods or services to Domecq Importers in relation to these transactions. Rather, the purported third parties were fictitious entities controlled by the Executive Co-conspirators, and the checks that the vendors made payable to the purported third parties were in fact delivered to one of the Executive Co-conspirators, who deposited all or substantially all of them into offshore bank accounts. The defendant GABRIEL SAGAZ and the Executive Co-conspirators then shared in the proceeds of those checks.

b. The defendant GABRIEL SAGAZ and the Executive Co-conspirators also embezzled money from Domecq Importers by entering into arrangements with one or more independent companies that bottled alcoholic beverages for Domecq Importers. Under these arrangements, certain of the Executive Co-conspirators instructed the bottlers to charge Domecq Importers an additional per case "fee." The Executive Co-conspirators then caused Domecq Importers to pay this additional fee to the bottlers, and instructed the

bottlers to pay a corresponding "commission" to third parties that the Executive Co-conspirators designated. In truth and in fact, the third parties that received the "commission" payments were shell companies that provided no goods or services to either the bottlers or Domecq Importers. The majority of the "commissions" generated in this manner were deposited into offshore bank accounts controlled by the Executive Co-conspirators.

c. The Executive Co-conspirators also embezzled money from Domecq Importers by causing Domecq Importers to send funds to one of the bottlers on the false and fraudulent pretense that these funds would be used to promote Domecq Importers' brands. The Executive Co-conspirators then directed the bottler to issue its own checks to entities that they controlled. In truth and in fact, the bottler did not provide any promotional services to Domecq Importers, and the entities designated by the Executive Co-conspirators provided few, if any, such services. Moreover, the designated entities deposited much of the "promotional" money that they received from the bottler into offshore accounts controlled by the Executive Co-conspirators.

d. The defendant GABRIEL SAGAZ, certain of the Executive Co-conspirators, and other co-conspirators who were current or former sales representatives of Domecq Importers, also embezzled money by submitting and causing Domecq Importers to pay invoices that they knew to be inflated or entirely fictitious. In truth and in fact, the invoices had been submitted by entities that were controlled by the current or former sales representatives who shared the money received from Domecq Importers with SAGAZ and certain of the Executive Co-conspirators.

9. Through the creation of fraudulent, inflated and fictitious invoices, and the use of offshore bank accounts, the defendant GABRIEL SAGAZ and his co-conspirators impeded and impaired the IRS's scrutiny of (a) the U.S. Individual Income Tax Returns, Forms 1040, filed by SAGAZ and the Executive Co-conspirators, (b) the true nature of payments made by Domecq Importers to certain third parties; and (c) the true nature of payments made by certain third parties to individuals and a variety of entities controlled by SAGAZ or his co-conspirators. Moreover, SAGAZ did not report his receipt of any portion of the money embezzled from Domecq Importers on his U.S. Individual Income Tax Returns, and the Executive Co-conspirators did not report their receipt of most, if not all, of the money embezzled from Domecq Importers on their U.S. Individual Income Tax Returns. As a result, those tax returns substantially underreported the taxable income and the correct amount of tax due and owing from these individuals.

The Kickback Schemes

10. In addition to embezzling money from Domecq Importers, beginning at least as early as 1989, the defendant GABRIEL SAGAZ and other employees of Domecq Importers, including certain of the Executive Co-conspirators (collectively referred to as the "Domecq Co-conspirators"), solicited and received kickbacks from several vendors who provided promotional and advertising goods and services to Domecq Importers (the "Vendor Co-conspirators"). While certain executives of Domecq Importers knew that the defendant GABRIEL SAGAZ and the Domecq Co-conspirators were receiving kickbacks from the Vendor Co-conspirators, and indeed had

either solicited kickbacks themselves or shared in the kickbacks generated by SAGAZ, SAGAZ solicited and received such kickbacks without the knowledge and consent of the majority owners of Domecq Importers. Moreover, after Allied-Lyons acquired Domecq Importers in approximately March 1994, the kickback scheme continued without Allied Domecq's knowledge and consent.

11. Thus, from at least as early as 1989 through in or about August 1996, the defendant GABRIEL SAGAZ and the Domecq Co-conspirators received, directly and indirectly, kickbacks in cash and checks from the Vendor Co-conspirators of more than $2.1 million, of which SAGAZ received in excess of $700,000.

12. In order to generate a substantial portion of the funds used to pay the kickbacks, the defendant GABRIEL SAGAZ and the Domecq Co-conspirators arranged for the Vendor Co-conspirators to obtain contracts, either directly or indirectly, that had not been awarded in accordance with Domecq Importers' competitive bidding policy. The Vendor Co-conspirators then submitted numerous false and fraudulent invoices to Domecq Importers (the "fraudulent invoices"). The fraudulent invoices either (a) reflected transactions that were entirely fictitious; (b) sought payment for substantially more goods than the Vendor Co-conspirators had actually produced for Domecq Importers; or (c) sought payment for goods that were priced higher than the Vendor Co-conspirators otherwise would have charged.

13. The defendant GABRIEL SAGAZ and the Domecq Co-conspirators then approved the fraudulent invoices for payment and Domecq Importers paid them.

14. After the invoices were paid, the Vendor Co-conspirators used the funds generated through the fraudulent invoices to make payments to the defendant GABRIEL SAGAZ and the Domecq Co-conspirators. These payments were made in several ways:

a. On numerous occasions, the defendant GABRIEL SAGAZ and the Domecq Co-conspirators arranged to receive kickbacks directly from the Vendor Co-conspirators.

b. On other occasions, SAGAZ and the Domecq Co-conspirators directed the Vendor Co-conspirators to pay the kickbacks to various entities, which were simply aliases for SAGAZ and his co-conspirators. For example, between approximately January 1991 and August 1995, SAGAZ received kickback payments from the Vendor Co-conspirators in the form of checks made payable to entities named "Acropolis Design," "Artemis Design," "Miramar Productions," and "Nakashima Investments." SAGAZ then negotiated these checks, generally by depositing them into either domestic bank accounts that he had established in the names of these entities, or offshore bank accounts that he maintained in his own name.

c. In addition, SAGAZ and the Domecq Co-conspirators arranged for the Vendor Co-conspirators to pay kickbacks on their behalf to their family members and friends, and to legitimate businesses that provided SAGAZ and the Domecq Co-conspirators with goods and services.

15. Moreover, on numerous occasions, the defendant GABRIEL SAGAZ and the Domecq Co-conspirators permitted the Vendor Co-conspirators to keep a portion of the funds obtained from Domecq Importers by means of the fraudulent invoices.

16. One of the Vendor Co-conspirators provided Internal Revenue Service Forms 1099 to the defendant GABRIEL SAGAZ corresponding to a portion of the kickbacks that that Vendor Co-Conspirator had paid to SAGAZ. These Forms 1099 reflected payments totaling approximately $422,990 for the years 1990, 1992, 1993, 1994, and 1995. SAGAZ included the amounts listed on these Forms 1099 on his U.S. Individual Income Tax Returns for the corresponding years, and he paid income taxes on the reported amounts. However, SAGAZ did not report on his U.S. Individual Income Tax Returns kickback payments for which he had not received Forms 1099. Thus, he did not report -- or pay taxes on -- at least $290,000 in kickback payments that he received from Vendor Co-conspirators.

17. The mails were used in several ways to further the above-described schemes. For example, the mails were used in connection with the embezzlement scheme in that fraudulent purchase orders issued by Domecq Importers to the vendors and fraudulent invoices issued by the vendors to Domecq Importers were sent through the mails. Similarly, many of the vendors who participated in the kickback scheme regularly mailed fraudulent invoices to Domecq Importers to request payment for goods and services. Moreover, Domecq Importers regularly mailed checks to the vendors in payment of the fraudulent invoices, and at least one of the vendors mailed checks to one of the defendant GABRIEL SAGAZ's co-conspirators.

Overt Acts

18. In furtherance of the conspiracy and to effect its objects, the defendant GABRIEL SAGAZ and his co-conspirators

committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about January 3, 1992, the defendant GABRIEL SAGAZ received a check from a Vendor Co-conspirator made payable to "Artemis Design" in the amount of $9,797.50, which was for the benefit of the defendant GABRIEL SAGAZ.

b. On or about April 15, 1993, the defendant GABRIEL SAGAZ filed a U.S. Individual Income Tax Return, Form 1040, for the calendar year 1992, which failed to report all of his 1992 income from the schemes described in this Information, and thereby substantially underreported the defendant’s correct tax due and owing.

c. On or about October 30, 1993, in the Southern District of New York, a Vendor Co-conspirator issued a check to "Nakashima Investments" in the amount of $15,000.00, which was for the benefit of the defendant GABRIEL SAGAZ.

d. On or about June 19, 1994, the defendant GABRIEL SAGAZ filed a U.S. Individual Income Tax Return, Form 1040, for the calendar year 1993, which failed to report all of his 1993 income from the schemes described in this Information, and thereby substantially underreported the defendant’s correct tax due and owing.

e. On or about October 12, 1994, in the Southern District of New York, a Vendor Co-conspirator issued a check payable to the "Winston Group" in the amount of $173,355.10.

f. On or about April 15, 1995, the defendant GABRIEL SAGAZ filed a U.S. Individual Income Tax Return, Form 1040, for the calendar year 1994, which failed to report all of his 1994

income from the schemes described in this Information, and thereby substantially underreported the defendant's correct tax due and owing.

g. On or about June 21, 1995, in the Southern District of New York, a Vendor Co-conspirator issued a check to "Miramar Productions" in the amount of $18,590.00, which was for the benefit of the defendant GABRIEL SAGAZ.

h. On or about April 15, 1996, the defendant GABRIEL SAGAZ filed a U.S. Individual Income Tax Return, Form 1040, for the calendar year 1995, which failed to report all of his 1995 income from the schemes described in this Information, and thereby substantially underreported the defendant's correct tax due and owing.

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

_____"/s/"_____
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