

Statement of Undisputed Material Facts (“SUMF”), ¶1; Plaintiff’s Response to SUMF (“Plaintiff’s Response”), ¶1.

2. From the outset, Plaza Extra-East has paid rent to United for the space it used at the United Shopping Plaza. Hamed testified:

Q: ...the United Corporation is the – is the company that you’ve been paying rent to for many years, is that correct?

A: Yes, since we started.

See SUMF, ¶3; Plaintiff’s Response, ¶3.

3. As Hamed acknowledged in his deposition testimony, from the beginning in 1986 he and Yusuf agreed that the annual rent for Plaza Extra-East would be calculated on a price per square foot basis. See SUMF, ¶4; Plaintiff’s Response, ¶4.

4. Hamed testified:

Q. So if he [Yusuf] –if he –if he told you how much you owe, would you disagree with him?

...
A. Yes, he [Yusuf] know exactly.

Q. He [Yusuf] knows exactly how much is owed?

A. Yeah, how much we owe him.

See SUMF, ¶5, n.2; Plaintiff’s Response, ¶5.

5. Waleed Hamed agreed to the payment of outstanding back rent in early 2012 to United. See Plaintiff’s Response, ¶¶10 and 11.

6. A demand for rent was made by United. See Plaintiff’s Response, ¶12.

7. Hamed testified:

Q. ...if rent has not been paid on the – the square footage basis that you agreed with Mr. Yusuf for the period between January 1, 1994 and May 4, 2004, would you agree with me that that rent should be paid to United.

...

A. He says that he's not denying the rent, and that Mr. Yusuf is the one who used to, in other words, determine the – the rental rate, and he's the one who would collect the rent.

...

Q. [I]f rent was not paid from January 1, 1994 through May 4, 2004, would you agree that rent should be paid?

A. It should be paid.

...

A. He says, if it hasn't been paid, it should be paid. And he's never – he's never objected to it being paid. Mr. Yusuf is the one who used to decided whether to collect rent or not collect rent.

See SUMF, ¶15; Plaintiff's Response, ¶15.

8. Although Hamed denied SUMF 16 “as worded,” he does not specifically dispute the following: Rent is due from January 1, 2012 to date at least in the amount based on the percentage-of-sales formula that was used to write the joint check for the preceding 8-year period paid on February 7, 2012. See SUMF, ¶16; Plaintiff's Response, ¶16.

9. Again, although Hamed denied SUMF ¶17 “as worded,” he does not specifically dispute the following: The adjusted rent paid by Plaza Extra-Tutu Park for 2012, 2013 and 2014 to present was divided by sales of that store for each of those years to determine a percentage. That percentage was then multiplied by the Plaza Extra –East sales for each year. For 2012, the undisputed rent due is \$702,908.00. ...For 2013, the undisputed rent due is \$654,190.09. ...For the period of January 1, 2014 through August 30, 2014, the undisputed rent due is \$452,366.03. ... The total undisputed rent for Bay 1 for the period January 1, 2012 through August 30, 2014 is \$1,809,464.12 (the “Current Rent”). See SUMF ¶17; Plaintiff's Response, ¶17. The only basis for suggesting that there might be a dispute regarding the Current Rent is Hamed's comment that

“these figures are incorrect as the wrong square footage was used to make this calculation, which should be 67,498 sq. ft., not 69,680 sq. ft. as used by Defendants.” See Plaintiff’s Response, ¶17. This statement is demonstratively incorrect since the percentage of sales formula that is undisputedly used to determine the rent for Plaza Extra-East has nothing to do with the square feet of space occupied by that store. In fact, the square footage of Plaza Extra-East is not even mentioned or considered in the percentage of sales calculation that led to the payment of \$5,408,806.74 on February 7, 2012 or the calculations supporting the claim for the undisputed portion of the rents from January 1, 2012 to date. See SUMF, Exhibits 3A and 3F.

II. Response to Plaintiff’s Counterstatement of Facts

1. Plaintiff’s Counterstatement of Fact (“PCSOF”) #1 is denied. There is no inconsistency in Defendants’ statements or positions. The statement that *there has been only one [full] reconciliation of partnership accounts since the partnership was formed and that occurred at the end of 1993* is consistent with Defendants’ pleadings and other filings. While a partial reconciliation was conducted shortly before the FBI raid in the fall of 2001, this reconciliation related only to Plaza Extra-East. The deposition testimony of Maher Yusuf definitively settles this point. Maher Yusuf testified that receipts were gathered from Plaza Extra-East and tallied. See Deposition of Maher Yusuf, April 3, 2014, p. 64-65 attached as Exhibit 2 to PCSOF. Then, when asked if *all* the receipts had been gathered from *everywhere*, Maher Yusuf explained that this partial reconciliation only reflected certain receipts from Plaza Extra-East, not every store. Specifically, Maher Yusuf testified:

Q. Okay. So let me just see if I’m clear. The two of you collected the receipts from everywhere?

A. No. You’re – I told you, from Plaza Extra-East.

...

A. Plaza Extra-West, it was not done.

Q. It was not done?

A. No. We had just recently opened a year, --

See Transcript of Maher Yusuf Deposition, PCSOF, Exhibit 1, p.65 –66. Conversely, the 1993 reconciliation was comprehensive.

2. Except for the quotations from Defendant's brief, PCSOF #2 is denied. While Defendants may have produced the "Black Book" in discovery as a portion of the massive production received from the Department of Justice, there is absolutely no record evidence to support the statement that the Black Book was found to be in possession of the Defendants...[and that] United had this Black Book in its possession before the 2012 rent reconciliation and payment by Hamed." See LRCi 56.1(a)(1)("Each fact paragraph...should be supported by specific citations to the record."). Certainly, the Declaration of Waleed Hamed does not support these statements. Yusuf testified by declaration that "[M]y son, Yusuf, found the black book in early 2013, among a large number of documents that were returned to us by the FBI." See Declaration of Fathi Yusuf, ¶11, attached as Exhibit 3 to Defendants' brief. This "black book" was only a small portion of the voluminous information returned by the FBI that was equally available to Hamed. Therefore, the fact that Yusuf produced it in the course of discovery in this case is of no moment.

3. PCSOF #3 is denied. Defendants deny that any pages from the "black book" were removed by Yusuf and Hamed has failed to identify any record evidence to support this suggestion. See LRCi 56.1(a)(1). It is undisputed that Hamed and Yusuf had equal access to the documents returned by the Department of Justice, including the Black Book. It is also

undisputed that Waleed Hamed acted as the general manager of the Plaza Extra-East store, where the Black Book had been kept prior to the FBI raid on October 23, 2001.

The pages of the Black Book demonstrate that a reconciliation occurred on “December 31, 1993.” See FY4475. In addition, rent is directly reflected as “24 month rent 1-1-84 to 12-31-85 \$202,000.00” together with additional calculations for rent. See FY4473.

PCSO #4 is denied. Plaintiff argues that Defendants had “unfettered access to the FBI documents” during the pendency of the criminal case and offers affidavits from FBI agents Thomas L. Petri and Christine Zieba (the “FBI Affidavits”) in support of this position. These FBI Affidavits were originally filed in the criminal case pending in the District Court of the Virgin Islands, Division of St. Croix, entitled USA v. Yusuf, et al., Crim. No. 2005-0015 (the Criminal Case”) to rebut the criminal defendants’ joint motion (filed by Counsel for Hamed’s son and authorized agent, Waleed) that access to the records seized by the FBI was limited and that the records had been compromised. However, what Hamed fails to disclose is that the issue had been ruled upon and that Judge Raymond L. Finch rejected the FBI Affidavits in his Order dated July 16, 2009 finding that defendants access to the records had been improperly limited and the records may have been compromised. Specifically, Judge Finch found:

The Government never provided the Defendants with a detailed inventory of the specific items seized. The *Government has only permitted the Defendants limited review of the evidence under supervision* which often involves oversight by Government agents involved in investigating the case.

See Exhibit A, July 16, 2009 Order, p. 2. Judge Finch further found that the criminal defendants were “without a complete set of document for their unlimited review.” Id. Hence, there was not “unfettered access” and there has been a specific court order so finding, which Hamed failed to properly disclose to this Court. Furthermore, Hamed failed to disclose that his son and

authorized agent, Waleed Hamed, was one of the defendants in the Criminal Case who argued that the defendants were being denied meaningful access to the records and that the records had been compromised. Hence, Hamed's agent has taken contradictory and inconsistent positions regarding access to the FBI records. In the Criminal Case, Waleed Hamed argued that access was limited, to wit:

- a) entire boxes of documents were missing,
- b) portions of documents in boxes were missing,
- c) there was no inventory of what was returned to the criminal defendants and what remained in the FBI's possession;
- d) there was no way to know what had or had not been destroyed because not all of the documents were labeled with bates stamps, and,
- e) the criminal defendants did not have full access to the documents that did remain.

See Exhibit B, Defendants' Reply To The Government's Response to Defendants' Motion for Specific Relief and accompanying statements. Specifically, Waleed argued that "Defendants have been denied access to view and inspect their [the FBI's] documents from November 2004 until November 2008" and explained that "during this time period, defense counsel requested – both telephonically and in writing – access to the FBI Office to inspect Defendants' documents [held by the FBI]. Following each request, Government counsel denied the requested access and instead imposed a rule that if defense counsel wished to review a particular document, they should identify the document to Government counsel and he or she would determine whether to provide that document to the defense for review." See Exhibit B, p. 9.

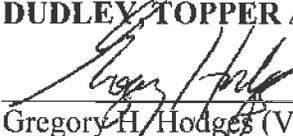
In the various supporting memoranda, Attorney Andreozzi (counsel for Waleed Hamed) chronicled in great detail the difficulty experienced in reviewing documents. Id. Upon discovering that documents were missing during his review in November of 2008, Attorney Andreozzi confirmed that “the defense had not in fact been provided with copies of all documents” during an earlier review in 2004. As the defense did not have physical access to the records, nor been provided complete copies of the records, they had to rely upon the FBI to provide them with access to the documents. At one point in 2009, FBI agents suggested that the defense team “may not be allowed to return” to review the documents. Ultimately, Attorney Andreozzi and the other members of the defense team concluded that “based on the defense team’s review of the seized property, the defense has determined...numerous exhibit boxes or redwells are missing and cannot be accounted for as returned to the defendants...Some boxes or redwells appear to have been consolidated into other boxes, but the consolidations can only be confirmed with respect to the bate stamped documents...Numerous boxes are now missing documents...” See Exhibit B(6), p. 2. Judge Finch agreed that the Government’s document retention and review process was deficient and that substantial curative measures were required as reflected in his July 16, 2009 Order.

Respectfully submitted,

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Dated: September 15, 2014

By:



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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2014, I caused the foregoing **Defendants' Reply To Plaintiff's Response To The Statement Of Undisputed Material Facts And Counterstatement Of Facts** To be served upon the following via e-mail:

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Exhibit A

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA and)
GOVERNMENT OF THE VIRGIN)
ISLANDS,)

Plaintiffs,)

v.)

FATHI YUSUF MOHAMMED YUSUF,)
WALEED MOHAMMED HAMED,)
WAHEED MOHAMMED HAMED,)
MAHER FATHI YUSUF, ISAM)
MOHAMAD YOUSUF, and UNITED)
CORPORATION, dba Plaza Extra)
Supermarkets,)

Defendants.)

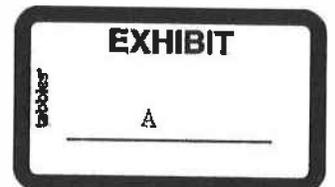
CRIM NO. 2005-0015

ORDER

THIS MATTER comes before the Court on Defendants' Motion for Specific Relief due to the Government's Destruction of the Integrity, Organization and Sourcing of Material Evidence. A hearing was held on such motion on July 9, 2009.

In raids on the six Defendants' various businesses and homes in October of 2001, the Government seized Defendants' business, financial and personal records. Since that date, the Government has retained hundreds of boxes of such records for its use in this case. The Government also obtained additional documents from third-party sources.

The Government organized the voluminous documents and recorded their various sources by boxes numbered and bar coded to correspond with the various locations from which the Government had removed the documents. Rather than identify or log each specific document seized, the Government prepared an index with a general description of the documents contained



in each box.

Since 2001, the Government has returned some of the boxes of seized document. The remaining documents have been retained in the FBI offices in St. Thomas, Virgin Islands.

The Government used a bates numbering system for certain documents within certain boxes. The bates numbering contained prefixes that were indexed to the numbers and bar codes on the boxes. Many of Defendants' documents were not given bates number. However, all of the documents the Government intends to use at trial do have bates numbers.

The Government never provided the Defendants with a detailed inventory of the specific documents seized. The Government has only permitted the Defendants limited review of the evidence under supervision which often involves oversight by Government agents involved in investigating this case.

Several years ago the defense team prepared a general inventory of the groupings of documents and scanned pertinent documents. During their November 2008 document review, the defense team realized that the documents were not in the same order that they had been initially. The Government had reorganized and rearranged the Defendants' documents by removing some documents from the initial original boxes and placing them in different boxes to suit the Government's needs.

The new system of organization is not apparent to the Defendants. The Government has not provided Defendants with any means of tracing the unnumbered documents to the locations from which they were seized within their businesses and homes.

Without a complete set of documents for their unlimited review, the defense team cannot determine the extent of harm, if any, that the Government's rearrangement of the documents has

caused. Accordingly, it is hereby

ORDERED that the Government serve upon the defense team one duplicate set of documents seized from the Defendants, as well as all discoverable documents seized from third parties; that the duplicate set correspond to the present document arrangement; and that Defendants have 60 days from the receipt of such documents to supplement their Motion for Specific Relief due to the Government's Destruction of the Integrity, Organization and Sourcing of Material Evidence.

ENTER:

DATE: July 16, 2009

_____/s/_____
RAYMOND L. FINCH
SENIOR DISTRICT JUDGE

Exhibit B

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

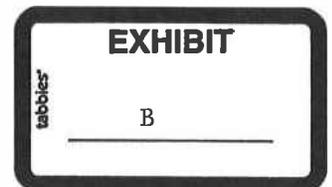
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|----------------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, and |) | |
| GOVERNMENT OF THE VIRGIN ISLANDS |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Criminal No. 2005-015F/B |
| |) | |
| FATHI YUSUF MOHAMAD YUSUF |) | |
| aka Fathi Yusuf, |) | |
| |) | |
| WALEED MOHAMMAD HAMED, |) | |
| aka Wally Hamed, |) | |
| |) | |
| MAHER FATHI YUSUF, |) | |
| aka Mike Yusuf, |) | |
| |) | |
| ISAM MOHAMAD YOUSEF, |) | |
| aka Sam Yousuf, |) | |
| |) | |
| NEJEH FATHI YUSUF, and |) | |
| |) | |
| UNITED CORPORATION |) | |
| d/b/a Plaza Extra |) | |
| |) | |
| Defendants. |) | |

**DEFENDANTS' REPLY TO THE GOVERNMENT'S RESPONSE TO
DEFENDANTS' MOTION FOR SPECIFIC RELIEF**

COME NOW, Defendants, by and through their respective counsel, in reply to the Government's Response to Defendants' Motion for Specific Relief as follows:

Introduction and Procedural History

On February 5, 2009, Defendants filed their Motion for Specific Relief Due to the Government's Destruction of the Integrity, Organization and Sourcing of Material



Evidence (Dkt. No. 1038). The Government responded to Defendants' Motion on February 24, 2009 (Dkt. No. 1067).

The Government's 4-page Response fails to admit or deny the detailed numbered factual allegations set forth in Defendant's Motion. Instead, it offers a vague statement that "numerous" allegations are "spurious" and "false". Because the allegations describe actions and statements made by two Government case agents (FBI Agents Thomas Petri and Christine Zieba) and one Government attorney of record (Department of Justice Attorney Lori Hendrickson) in this matter, the Government possesses direct knowledge sufficient to admit or deny each allegation in the motion. It chose not to. The clear inference is that the government does not dispute the factual allegations, and the only issue in controversy is whether the requested relief is warranted.

On the issue of relief, the Government argues in its 4-page response that (1) the Defendant failed to identify harm caused by the Government's actions, and (2) that the Defendant failed to attach an affidavit or other evidence to substantiate the harm. Defendants address each of these arguments in turn.

I. The Government's Actions Harmed the Defendants.

The Government opens its argument on the harm caused with what appears to be a categorical denial of *all* of the Defendants' allegations. It then immediately rephrases the denial to imply that only the Defendants' claim of *harm* is false. The response is vague, and the Government avoids the specific facts relevant to whether its Agents in fact shuffled, reorganized, and destroyed the sourcing of the Defendants' documents. Instead of proffering facts to either refute or affirm the specific allegations set forth in the Defendants' Motion, the Government trivializes the allegations. In this manner, the

Government avoids the pertinent issues and fails to address the precise harms identified in the Defendants' Motion. As a consequence, the Government's Response leaves undisputed the fact that the FBI Agents knowingly and willfully rearranged and shuffled the Defendants' documents in their custody so as to severely compromise the Defendants' ability either to utilize or rely on those documents in their defense.

The Government asserts at page 2 of its Response that the Defendants cannot identify all specific documents that may have been destroyed or compromised. From this, the Government draws the inference that the Defendants' claim for relief is without merit. The assertion is correct; the inference is false.

The fallacy of the Government's inference is best understood through the Government's own actions: When the Government seized the original documents from the Defendants' homes and businesses, it chose to Bates stamp only *some* of the seized documents and not others. The Government then returned some of the non-Bates stamped documents to the Defendants that it deemed to be inconsequential to the case, but retained thousands of other non-Bates stamped documents at its FBI Office. Defendants requested the return of the remaining documents held by the FBI, but the Government refused. The seized documents, therefore, fall into three categories: (1) Bates stamped documents retained by the Government; (2) Non-Bates stamped documents retained by the Government; and (3) Documents returned to the Defendants.

Government Agents and Government Counsel then organized each Bates stamped document they intend to use at trial in plastic binders. Each document is cross referenced to its Bates inventory number and bar-coded search warrant evidence boxes so as to preserve the source and authenticity of each and every document. *The Government did*

not employ these controls with the non-Bates numbered documents it returned to the Defendants or with the non-Bates numbered documents it retains at the FBI Office.

Now, in the epitome of self-serving statements, and as if to somehow *reassure* the Defendants and this Court, the Government states: “As is customary, the government will provide the seized location and inventory number *for any evidence the government seeks to use at trial.*” (Dkt.. No. 1067, at 2 n1). The Government’s statement unequivocally proves that the Government understands its obligation to preserve the integrity of evidence and that it understands the protocol that must be followed to ensure that the integrity of evidence is preserved. The Government’s “assurance” also demonstrates that the Government followed its protocol with respect to the evidence it intends to use at trial to prove its case, but that it *violated* the protocol with respect to the rest of the documentary evidence, including the non-Bates stamped documents held at the FBI Office.

It is these documents that the FBI Agents shuffled and reorganized, destroying any chance of establishing the “customary” inventory numbering preserved by the Government *with its evidence.* The statement thus confirms that the Government understands the need to follow established protocol to ensure the integrity of seized property. The Government’s selective application of such protocol and its willful reorganization and shuffling of the documents is direct evidence of its bad faith and willful disregard of the defendants’ due process rights.

The Government’s next argument on the issue of harm is deeply troubling as it confirms one of the grave consequences expressed in Defendants’ Motion. The Government states: “The [Defendants’] claim is inherently unreliable because it presumes

that the defendant's index was true and accurate at the time it was made." (Dkt. 1067 at 2-3). The Government, without ever having seen Defendants' index, dismisses it as "inherently unreliable" for purposes of this Motion and would no doubt do the same at trial. *Thus, it is undisputed that the government shuffled and reorganized the defendants' documents knowing that there is no "reliable" indexing in place that would provide the "customary" assurance of the organizational integrity required by the Court for evidence proffered by a party for admission at trial.*

In view of this, the Defendants cannot identify and quantify each and every harm caused; nor can the Defendants identify every specific document that may have been, or even in fact has been destroyed or misplaced by the Government.¹ Had the Government followed its internal protocol, and properly Bates stamped, inventoried and organized every document it seized, the defense may have been able to accomplish such identification. To the Defendants' direct and irreversible detriment, the Government made the deliberate choice not to do so. This very inability to identify the specific resulting harm illustrates the gravity of the prejudice caused by the Government's actions.

To demonstrate, the Government criticizes the Defendants' inability to "provide a description of any records" that are missing, and touts "repeated" offers to locate "any document" that the defense cannot find (Dkt. No. 1067 at 2 n1). The fallacy underlying such bogus "offers" is that: (1) the Government maintained no index of the specific non-bate stamped documents, and (2) it challenges any index created by the defense team as

¹ This inability to identify the true extent of the harm was among the issues raised by the Defendants in their motion.

“inherently unreliable.” Obviously, without a detailed inventory of Bates stamped documents, the Defendants cannot identify specific documents that may be missing.

The Government continues its sleight of hand in its footnote 2. In an apparent effort to explain away the Agents’ concession that they rearranged the Defendants’ documents, the government concocts a scenario under which it suggests that that the Agents actually rearranged the numbered and bar-coded boxes purportedly to facilitate the defense team’s review: “In an attempt to facilitate the defendants’ review of evidence, the agents reorganized boxes to place them in numerical order.” (Dkt. No. 1067 at 3 n2). This is not the “reorganization” at issue in the Motion.

The defense team demanded numerical review of the boxes *after* it discovered that Agent Zieba had shuffled and rearranged documents among the boxes. When confronted by the defense team, Agent Zieba confessed that she reorganized and shuffled the documents. It was after Agent Zieba’s admission that the Government agreed to the defense’s numerical review of the boxes. Attorney Hendrickson required, as a condition to such numerical review, that the Government review each box before the defense team was granted access. Let it be clear: Agent Zieba rearranged *documents*, not *boxes*. She did so *not* to assist the defense in its review. Rather, she did so for her own reasons—reasons Government counsel has refused to allow the Agent to reveal to the Defense. The Government’s assertion at footnote 2 is false, and the defense calls upon the Government to correct the statement or be prepared to address it at a hearing through the appropriate government witnesses.

As its final argument on harm, the Government—in the face of its earlier assertion that any document index prepared by the defense is “inherently unreliable”—complains

that it cannot determine the extent of the harm its actions caused the defense *without having access to the defense's document index*. The Government has the burden of maintaining the integrity of all evidence. It is the Government that should have Bates-stamped *all* the documents and recorded its own *complete* inventory of *all* the documents. The Government has no basis to now request or require a Defendant's general inventory to determine the organizational integrity of the documents it holds. The Government failed to properly catalogue and maintain the documentary evidence of this case, and the Government is now faced with the fact that it cannot ensure the integrity of the documents in its custody. In the words of Attorney Hendrickson, "What's done is done."

In any event, the Government's agents and attorneys have full knowledge of what was done with the documents. Thus, while they cannot reconstruct the organization of thousands of un-Bates stamped documents, they can respond to Defendants' allegations by explaining to this Court precisely what they did with the documents. They choose not to. Instead (as might any wrongdoer) the Government seeks to ascertain the extent of the harm their victim figured out before admitting what its agents and attorneys have done. The result is a blanket denial that the government agents must now defend at an evidentiary hearing.

In view of the above, the Government's arguments on the issue of harm actually reinforce the Defendants' position that the Government's shuffling and rearrangement of the Defendants' property unfairly and unconstitutionally prejudices Defendants' ability to, *inter alia*, (1) establish or contest the authenticity of documents; (2) establish or contest the source of documents; (3) cross-examine the Government's witnesses with respect to documents; (4) establish or contest whether a particular individual had access

to or knowledge of documents; (5) establish whether all of the seized documents are properly accounted for; and (6) contest whether particular documents were obtained by improper means and/or whether materials are privileged. These and other issues were expressly identified and addressed in Defendants' Motion, yet the Government ignores them in its response. The Defendants can only assume that the Government understood the end result of its willful malfeasance, and fully intends to reap the benefits at trial.

II. Defendants Bring this Motion in Good Faith.

Instead of addressing the specific detailed allegations set forth in the Defendant's Motion, the Government merely ignores them and argues that reciting facts in the motion rather than through an affidavit shows bad faith in bringing the Motion. The Government fails to cite any case law or other authority to support this argument. The Government could have raised this argument *and* addressed the specific allegations. It chose not to. Defendants respectfully submit that it is the *Government's* actions that illustrate bad faith.

The Government can verify the truth of the Defendant's allegations through its own agents and attorneys in this case, for it is they who actively participated in or were privy to the subject acts and communications. The absurdity of the Government's position is illustrated in its argument that a significant number of allegations pertain to actions taken *by law enforcement*, and that it is difficult to respond to the Defendants' Motion "*given the unsourced allegations.*" Given the Government's refusal to confirm the allegations through the individuals charged with the statements or acts (namely case Agents Zieba and Petri, and case Attorney Hendrickson), and its refusal to provide statements from any of those individuals, the Defendants attach hereto as **Exhibits A-F**

statements of contact from members of the defense team supporting the allegations set forth in the Defendants' Motion.

Thus, the Government's claim that it is unable to respond to Defendants' Motion with particularity is without merit. It is telling, moreover, that the Government has not submitted its own affidavits from Assistant Attorney General Hendrickson or Agents Zeiba, Petri, and Petri—or for that matter averred any facts whatsoever—disputing the allegations made in Defendants' Motion.

III. The Defendants Have Been Denied Access to View and Inspect Their Documents from November 2004 Until November 2008.

The Government denies that it has forbidden the Defendants access to FBI Offices to inspect their documents from November 2004 through November 2008. It attacks this single allegation, raised at paragraph 13 of Defendants' 79-paragraph Motion, as if it were the only allegation upon which the claim for relief is based. Presumably, the Government asserts this singular denial on a presumption by the Government that there is no documentary evidence memorializing the Government's refusal to allow Defendants access during this period. Defendants challenge the Government's denial as false.

During this time period, defense counsel requested—both telephonically and in writing—access to the FBI Office to inspect the Defendants' documents. Following each request, Government counsel denied the requested access and instead imposed a rule that if defense counsel wished to review a particular document, they should identify the document to Government Counsel and he or she would determine whether to provide that document to the defense for review.² Government Counsel must concede these acts.

² The absurdity of this "rule," is transparent. First, the Governments "rule" would require the Defendants to know and be able to identify every document in the Government's possession. Second, the rule would

Defense counsel stands ready to offer proof of such actions at an evidentiary hearing on this matter. (See Dkt. No. 1067 at 4).

Conclusion

WHEREFORE, in light of the foregoing, Defendants respectfully request that this Court

- (1) Grant Defendants' Motion for Specific Relief Due to The Government's Destruction of the Integrity, Organization and Sourcing of Material Evidence;
- (2) Dismiss the case in its entirety, with prejudice; and
- (3) Grant such other relief as requested in the Motion or as the Court in its discretion deems appropriate.

DATED: March 17, 2009

Respectfully submitted,

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require the Defendants to identify each document that the defense deems pertinent to this case before gaining access to it. Thus, the "rule" is not only impossible but violates the Defendants due process rights.

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_____/s/_____
John K. Dema, Esq.
1236 Strand Street, Suite 103
Christiansted, St. Croix, USVI 00820

_____/s/_____
Thomas Alkon, Esq.
2115 Queen St.
Christiansted, St. Croix, USVI 00820

_____/s/_____
Randall P. Andreozzi, Esq.
9145 Main St.
Clarence, NY 14031

_____/s/_____
Derek M. Hodge, Esq.
P.O. Box 303678
St. Thomas, USVI 00804

Exhibit B-1

MEMORANDUM
UNITED STATES V. YUSUF, ET AL.

TO: ALL DEFENSE COUNSEL

FROM: RANDALL ANDREOZZI, RONALD WISE, JOSÉ MARRERO, HOWARD EPSTEIN, THERESA MAINS, TRACY MARIEN

SUBJECT: NARRATIVE OF EVENTS AT ST. THOMAS FBI OFFICES ON MONDAY, NOVEMBER 10, 2008

DATE: NOVEMBER 10, 2008

CC:

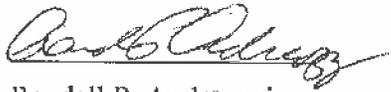
The following persons travelled to the FBI Offices in St. Thomas to review client documents: Randall Andreozzi, Ronald Wise, José Marrero, Howard Epstein, Theresa Mains, and Tracy Marien.

When the group arrived at the FBI offices, we were greeted by a staff person who told us Special Agent Christine Zeiba was waiting for us at the lower office. Randy Andreozzi asked the woman if the documents were moved down to that office. The woman assured us that Special Agent Zeiba had everything we needed. We walked to the office and were greeted there by Special Agent Zeiba. She asked to speak with Mr. Andreozzi privately.

In a private conversation, Special Agent Zeiba advised Mr. Andreozzi that she was under the impression that a group of only two or three people would be at the office, and that the group would identify specific documents they wished to see and that she would bring the documents to them. She advised that she was by herself and could not accommodate such a large group. Special Agent Zeiba stated that she was informed by FBI Agent Petri that the defense had been provided with copies of all documents in the case, and that this visit was to view only specific documents. She asked why we had not given her a list of the documents we wanted to see so that she could pull them for us ahead of time. Mr. Andreozzi informed her that this was not the understanding, and that the defense had not in fact been provided with copies of all documents. Mr. Andreozzi reminded her that, in their discussions on the previous Saturday, he advised her of the size of the group attending and had forwarded his email correspondence with Mr. Daly confirming their review for the week. Special Agent Zeiba expressed concern that she had not been properly informed of the scope of the week's document review. After conferring with co-counsel Gordon Rhea, Mr. Andreozzi advised that the group would return on Wednesday, after Agent Zeiba had the opportunity to confer with DOJ Counsel on the matter. [Mr. Andreozzi attests to this paragraph].

Upon their return to the group, Special Agent Zeiba told Randy Andreozzi that DOJ attorney Hendrickson and Special Agent Petri would be present when we returned to review documents on Wednesday. Whereupon the defense team departed from the FBI offices.

I have reviewed the foregoing narrative and confirm to the best of my recollection that it is a true and accurate summary of the events described.



Randall P. Andreozzi

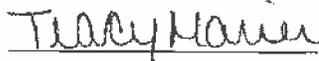
Jose Marrero



Ronald Wise

Theresa Mains

Howard Epstein



Tracy Marien

I have reviewed the foregoing narrative and confirm to the best of my recollection that it is a true and accurate summary of the events described.

Randall P. Andreozzi

Jose Marrero

Ronald Wise

Theresa Mains

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Howard Epstein

Tracy Marien

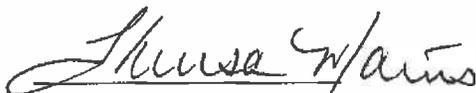
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Randall P. Andreozzi



Jose Marrero

Ronald Wise



Theresa Mains

Howard Epstein

Tracy Marien

Exhibit B-2

MEMORANDUM
UNITED STATES V. YUSUF, ET AL.

TO: ALL DEFENSE COUNSEL

FROM: RANDALL ANDREOZZI, RONALD WISE, JOSÉ MARRERO, HOWARD EPSTEIN, THERESA MAINS, TRACY MARIEN, EUGENE BENTON

SUBJECT: NARRATIVE OF EVENTS AT ST. THOMAS FBI OFFICES ON WEDNESDAY, NOVEMBER 12, 2008

DATE: NOVEMBER 12, 2008

CC:

The following persons travelled to the FBI Offices in St. Thomas to review client documents: Randall Andreozzi, Ronald Wise, José Marrero, Howard Epstein, Eugene Benton, Theresa Mains, and Tracy Marien.

Present for the Government: Lori Hendrickson (DOJ); Thomas Petri (FBI), Javier Bell (IRS), Christine Zeiba (FBI), and various FBI staff.

Upon the team's arrival at FBI offices, we encountered current case agent Christine Zeiba, DOJ counsel Laurie Hendrickson, FBI Special Agent Thomas Petri, and IRS Special Agent Javier Bell. Ms. Hendrickson advised that these agents would be present to monitor our document review. She explained that we would be allowed to view one box at a time; that only one person would be allowed to touch the documents at a time; and that the government agents – not the defense team -- would select and produce each box that we would be allowed to review. Randy Andreozzi stated that this protocol was entirely inconsistent with the protocol of the defense's earlier review sessions. He requested that Ms. Hendrickson explain why this protocol was in place. Ms. Hendrickson explained that such protocol was necessary to ensure that the documents were not rearranged in the boxes and to maintain the integrity of the chain of custody of the documents.

IRS Agent Javier Bell was not introduced to the group upon our arrival. Mr. Marrero recognized Mr. Bell and greeted him. Upon inquiry, we learned that Mr. Bell was relocated by the IRS to Denver, Colorado.

Ms. Hendrickson advised that our review would be monitored by herself, Messrs. Petri and Bell, and Ms. Zeiba. Mr. Andreozzi asked why a Denver-based IRS Agent and a Florida-based FBI Agent were required to monitor document review at a St. Thomas FBI Office. Ms. Hendrickson advised that we were not entitled to know the reasons for their presence at the St. Thomas FBI offices. Mr. Andreozzi advised Ms. Hendrickson that such protocol was not acceptable to the defense team.

After negotiations between Ms. Hendrickson and Mr. Andreozzi, it was agreed that the defense would limit the number of people in the review at given times, and that Ms. Hendrickson and Messrs. Petri and Bell would not be allowed to observe or otherwise monitor the review. Ms. Zeiba would monitor the review, along with other members of her office as needed. Ms. Zeiba would bring out boxes in groups of five, and the team would review one box at a time.

Upon review of the first box produced (Box 131), the team found that it contained documents that had not been in Box 131 at the time of the defense team's earlier document review. (The defense team had prepared a general summary index of documents contained in each box on their prior visits to the FBI offices in 2004, and brought the Index with them to this visit.) The defense team was able to discern the discrepancy by (1) referencing its document index created during the previous visit, and (2) noting that the bates stamp on these documents began with 295 rather than 131 (the government's organization of the documents uses a prefix of the bates number that matches the box number in which it stored each document). The prefixes of the bates stamped documents no longer matched the box number. We then verified that the subject documents matched the bates numbers of the defense's index of some of the documents in Box 295, thus confirming that the subject documents were in fact originally catalogued from a different box.

Randy Andreozzi asked Christine Zeiba why this document was located in box 131.

It was then that Christine Zeiba informed us that she reorganized the documents and boxes. Randy Andreozzi explained to Special Agent Zeiba that the defense's indexing of the documents was based on the boxes in which they were originally maintained by the FBI. Mr. Andreozzi further explained that the FBI represented to the defense team during the initial document reviews that the box numbers corresponded with the various locations and rooms within each location from which the documents were seized. Because the FBI elected to bates number only some of the documents seized, the only way for the defense to track the documents was by box number. Randy Andreozzi asked why she rearranged the documents and whether she employed a certain methodology in rearranging the documents. Special Agent Zeiba stated she could not discuss her method of organization with us. Special Agent Zeiba stated she just changed the boxes and rearranged the documents to fit with her organizational method.

Randy Andreozzi repeated the question: "So if we were to look through, say, Box 200, and refer to our index, the contents of the box would not match?" Christine Zeiba confirmed that this was correct; the documents would no longer match to the defense's index. She explained, "I had no idea the defense relied on the order of these documents to particular boxes. I rearranged them how I was doing them and what made sense to me. I was thinking you would give me a list of the documents you were missing or wanted to look at and I could pull them because I know where they are. I did not know you would be looking through all the boxes."

Randy Andreozzi stated that this development puts the defense at square one. The integrity, organization, and custody chain of the boxes, the bates stamped documents, and the non-bates stamped documents have all been compromised. He asked Ms. Zeiba how, in light of this, could the defense (1) determine what documents were removed from the various files; (2) determine what documents the defense does not have, (3) determine what documents have been removed or are missing from the boxes; (4) determine what documents have been rearranged among the boxes; and (5) determine what rooms, stores, homes, or individuals specific documents were seized from. Ms. Zeiba did not answer the question. Special Agent Zeiba repeated she had no idea the defense or the FBI relied on the box numbers as the identifying factor in indexing and arranging the documents, or as a reference as to the locations from which the FBI procured the documents. Special Agent Zeiba repeated she truly thought that we were to provide her with a list of documents to pull. Ms. Zeiba then stated she needed to speak with attorney Hendrickson and Special Agent Petri. At this point, Hendrickson, Petri and Bell returned to the FBI office. When attorney Hendrickson and Petri entered, Randy Andreozzi informed them of the issue.

Special Agent Petri claimed that after the defense team looked through documents from the boxes during its initial document review, the FBI Agents found many misplaced documents and had to replace them in their correct boxes. Thus, claimed Petri, it was probably the defense team that misplaced the document in Box 131. Randy Andreozzi challenged this assertion by asking how the FBI Agents would know whether the documents were misplaced if they were not relying on a specific organizational method based on box numbers in the first place. Petri repeated his allegation and then said, "This is why we have to have an agent watch you to insure the integrity of the order of the documents."

Randy Andreozzi then repeated his question: If there is integrity to the order of the documents in their respective boxes, and Christine Zeiba just informed us that she rearranged the documents and boxes, why will the FBI not provide us with the methodology (if any) for her reorganization? Petri then confronted Special Agent Zeiba, "You reorganized the boxes?" Ms. Zeiba now claimed she just rearranged the boxes. Mr. Petri replied he did not want to discuss the issue anymore.

After Hendrickson, Petri and Bell left the office, Special Agent Zeiba advised the defense team that she did not realize the documents were organized by box number. Special Agent Zeiba stated that she did not understand the issue when we first explained it to her but now she understands. Special Agent Zeiba stated that this explains why Randy Andreozzi told her that the defense could go through all of the boxes relatively expeditiously, and, with respect to some of the boxes, we would need only glance through them. Ms. Zeiba stated that she reorganized the documents among the boxes because she did not like how they were originally organized. Ms. Zeiba continued to make comments regarding the boxes and what she had initially perceived would be the order of events when the defense team arrived for the document review. Ms. Zeiba repeatedly attempted to persuade Randy Andreozzi to adopt a procedure by which the defense would tell her what documents we needed and she could retrieve the specific documents. Randy Andreozzi stated it was not that "we need specific documents," But that we needed to review all of the documents as they are maintained in the boxes and under the FBI's document controls. Mr. Andreozzi explained again that, when the defense conducted its initial document review, it attempted to create in the time allowed as detailed a general inventory summarizing documents or groups of documents that were in each box based on box number as possible. Some documents were bates numbered, but most were not. Mr. Andreozzi pointed out that even the documents that were bates stamped were identified based on the box number. Tracy Marien observed further that the FBI placed bar codes on the specific boxes that matched the box numbers and bates prefixes.

At this point Ms. Zeiba asked the team to break for lunch.

After the lunch break, Special Agent Zeiba had the defense team wait in the waiting room. When the team entered the FBI office, Agents Bell and Petri came into the office. Randy Andreozzi asked Special Agent Zeiba why Bell and Petri were present. Randy Andreozzi reiterated his agreement with attorney Hendrickson that they would not be present during our review. However, Agents Bell and Petri were now in the storage room where the United documents were stored. Special Agent Zeiba told us that she had asked Bell and Petri re-shelve the boxes we were finished reviewing and bring our new boxes. Randy Andreozzi asked Ms. Zeiba whether Petri and Bell were reviewing or further rearranging or removing documents. Ms. Zeiba stated they were not. Special Agent Petri then emerged from the storage room carrying documents and asked Special Agent Zeiba to instruct him as to the boxes she wanted him to the documents in. Zeiba got up from the table and went into the storage room with Petri and Bell. Zeiba stated to them, "I just finished telling them you were not looking at documents." It was clear to the team that Petri and Bell were taking further unknown actions with respect to the clients' documents.

Upon review of the contents of box 468, José Marrero noted that the documents were not bates stamped. Consequently, we would not know what to look for or ask for with respect to any documents that might be moved or missing. Randy Andreozzi explained again that the defense's general indexing summarizes the documents in each box, assuming that the defense team would be able to come back and go back to each box as needed, with the understanding that the integrity of each bar coded box would be maintained. Many documents were not bates stamped so the identifying location and integrity of the evidence was assumed to be with the box numbers the FBI utilized. Christine Zeiba responded, "I don't have them organized the way you have them organized."

Randy Andreozzi then asked, "When you did your new system, did you bates stamp the documents?"

Christine Zeiba responded, "I am not sure what you mean. If you feel you are missing something and cannot articulate the document, we would have to recopy everything." Christine Zeiba repeatedly stated she assumed the defense was given copies of 100% of the documents and she did not understand why the FBI had not given us all of the documents.

Randy Andreozzi gave Ms. Zeiba a list of six boxes we wanted to review. Special Agent Zeiba retrieved three of the requested items. One was a banker's box and two were redwells. One redwell was labeled "161-formerly" and contained only about 8-10 documents. The other redwell was labeled "428" and contained a few manilla folders of documents. Randy Andreozzi informed Ms. Zeiba that 161 and 428, based on our index, used to be full boxes of documents. He asked why the redwell was labeled "161-formerly." Ms. Zeiba would only restate that the documents are no longer in their original order.

Randy Andreozzi asked for the other 3 boxes he requested. Ms. Zeiba stated that she was not going to provide them to us today. Special Agent Zeiba stated, "For today I will just keep pulling boxes randomly because I don't have them organized the way you have them organized." Randy Andreozzi expressed his concern that it appears that Special Agents Zeiba, Bell and Petri were preparing boxes of documents and providing them to the team at their discretion. Mr. Andreozzi explained that such actions are entirely unacceptable. Mr. Andreozzi asked why Special Agent Zeiba could not retrieve specific numbered boxes when requested or why the Special Agent Zeiba could not produce the boxes in numerical order, as they were arranged at the FBI office during the defense's earlier visits. Ms. Zeiba simply stated that she could not do this, and then told Mr. Andreozzi that Ms. Hendrickson specifically instructed her to just pull random boxes for the defense. Mr. Andreozzi asked Ms. Zeiba for permission to view the boxes to determine how they were arranged in the storage room. Ms. Zeiba refused. Special Agent Zeiba then stated that at this time she wanted to defer any further questions or discussions to Laurie Hendrickson and Thomas Petri. Ms. Zeiba called for Ms. Hendrickson and met with her in the waiting room for an extended discussion.

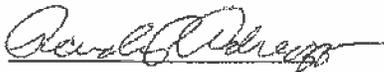
Laurie Hendrickson then arrived and asked Randy Andreozzi to meet with her in the waiting area. The two went outside to discuss the matter privately.

Randy Andreozzi explained the situation and his concerns to Ms. Hendrickson. Ms. Hendrickson acknowledged what occurred but could say only, "What's done is done." Mr. Andreozzi stated that he would discuss the matter with his co-counsel so that they may evaluate the gravity and effect of the events and any possible remedies. He stated that it was now more important than ever for the team to review *all* boxes of client documents held at the FBI office in numerical order so that the team could properly evaluate the extent of the harm. Ms. Hendrickson agreed to this procedure. She stated that she would work that evening toward that end, and hoped that she would have at least the

first fifty boxes ready for review the following morning. Mr. Andreozzi again expressed concern, and asked why they needed the evening to "prepare" the boxes. He stated that, based on his familiarity with the boxes, if it was a matter of organizing the boxes in numerical order, he could assist the team and they could have the boxes organized in less than an hour. Ms. Hendrickson would not answer the question. She asked that we leave for now and return in the morning. [Randy Andreozzi attests to this paragraph]

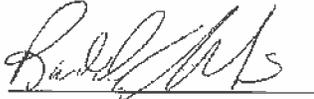
Randy Andreozzi returned to the conference room and the team departed from the FBI office for the rest of the day.

I have reviewed the foregoing narrative and confirm to the best of my recollection that it is a true and accurate summary of the events described.



Randall P. Andreozzi

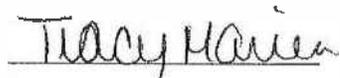
Jose Marrero



Ronald Wise

Theresa Mains

Howard Epstein



Tracy Marien



Eugene Benton

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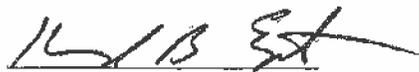
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Randall P. Andreozzi

Jose Marrero

Ronald Wise

Theresa Mains



Howard Epstein

Tracy Marien

Eugene Benton

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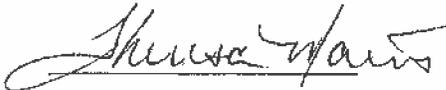
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Randall P. Andreozzi



Jose Marrero

Ronald Wise



Theresa Mains

Howard Epstein

Tracy Marien

Eugene Benton

Exhibit B-3

MEMORANDUM
UNITED STATES V. YUSUF, ET AL.

TO: ALL DEFENSE COUNSEL
FROM: RANDALL ANDREOZZI, RONALD WISE, JOSÉ MARRERO, HOWARD EPSTEIN, THERESA MAINS, TRACY MARIEN
SUBJECT: NARRATIVE OF EVENTS AT ST. THOMAS FBI OFFICES ON THURSDAY, NOVEMBER 13, 2008
DATE: NOVEMBER 13, 2008
CC:

FBI OFFICES DOCUMENT REVIEW NOVEMBER 13, 2008

The following persons travelled to the FBI Offices in St. Thomas to review client documents: Randall Andreozzi, José Marrero, Howard Epstein, and Theresa Mains. Ron Wise joined the group during the afternoon session.

Present for the Government: Lori Hendrickson (DOJ); Thomas Petri (FBI), Javier Bell (IRS), Christine Zeiba (FBI).

MORNING

Upon the group's arrival, Lori Hendrickson asked to speak privately with Randy Andreozzi.

In a private discussion, Ms. Hendrickson advised Mr. Andreozzi that she reviewed the documents until 8 p.m. the previous night. Ms. Hendrickson's explanation is that the FBI Special Agents did in fact reorganize and remove documents since the defense team's last visit. Ms. Hendrickson explained that, as best she can determine, the following occurred:

1. The Special Agents removed some documents and put them in trial folders. They used the originals, and no copies were replaced in the original boxes.
2. The Special Agents returned some documents to the defendants at various points in time. Ms. Hendrickson claims that some items and documents returned were pulled from boxes and returned to the defendants (rather than entire boxes being returned intact), but she cannot identify the specific items or documents returned. Mr. Andreozzi advised that he recalls a document return in 2006 that was box by box, and not a return of specifically identified documents or items.
3. As for the boxes that the FBI has retained, the Special Agents reorganized the documents contained in those boxes in various ways. For example, the Special Agents may have grouped all bank statements together so that they no longer maintained the statements in the original boxes based on their source. Defense counsel is now unable to determine where the various documents were procured or who may have had access to them.

Ms. Hendrickson stated that this was the best she could do on the matter, and repeated that, "What's done is done." Ms. Hendrickson further asserted that she failed to understand why there was an issue since we had access to the documents earlier. Mr. Andreozzi explained that, for the same reasons the government was compelled to maintain the integrity of the system while we reviewed the documents today, the defense needs to verify whether that same integrity has been maintained during

the years in which the evidence was in the government's hands. Mr. Andreozzi asked whether Ms. Hendrickson could now ever make any representations as to the integrity of the chain of custody of the documents based on what has occurred. Ms. Hendrickson refused to answer the question. [Randy Andreozzi attests to this private discussion].

The defense team identified a number of documents that they wanted to scan. Ms. Zeiba noted that we should tag all documents for scanning and after lunch she would provide them to us. The team tagged 3 documents that were in a binder that was in one of the boxes.

At this point Ms. Zeiba requested that the defense team leave the offices for the lunch break.

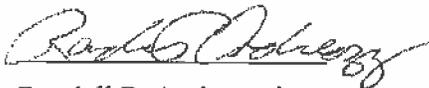
AFTERNOON

Ron Wise joined the group for this portion of the review. After returning from lunch, Ms. Zeiba produced for the defense team the contents of the aforementioned binder (previously box 35). Two tagged documents (including a cover sheet of "Search Warrant Return" which reflected location and description of seized items) were now missing from the binder. When asked where the documents to be scanned were, Special Agent Zeiba stated that those documents were the property of the FBI and we could not scan those documents. We again noted the box contained Gross Receipts tax returns. However, the box no longer contained Scotia Bank information, although we did find checks written on the Scotia Bank account.

As the review of documents proceeded, the defense team noted numerous instances in which documents that were originally noted (per their index) as being in certain boxes were no longer contained in the boxes. Additionally, as the boxes were now being brought out in numerical order, there were a number of boxes missing that were identified in the earlier index, as available before.

At one point, Ronald Wise handed a document to Theresa Mains and asked her to scan it for our files. An unidentified FBI Special Agent who had been monitoring our activities from one end of the table immediately stood, feigned as if stretching, and casually walked to the side of the table where Ms. Mains was working. There he stopped, leaned casually against a file cabinet, and begin to observe the computer screen that would reflect the document Ms. Mains was attempting to scan. Mr. Wise immediately advised this agent to move back to his original position at the end of the table. This FBI Special Agent did not move, and asked why he should have to move. Mr. Wise explained that it was unacceptable for him to observe Ms. Mains' computer screen which would enable him to determine documents deemed pertinent by the defense team. After a brief pause, this FBI Special Agent returned to the end of the table, shaking his head to demonstrate he did not understand or disagreed with Mr. Wise's request.

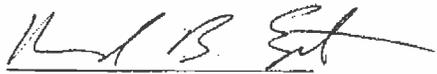
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Randall P. Andreozzi

Jose Marrero

Theresa Mains

A handwritten signature in black ink, appearing to read "H. B. Epstein", written over a horizontal line.

Howard Epstein

A handwritten signature in black ink, appearing to read "Ronald Wise", written over a horizontal line.

Ronald Wise

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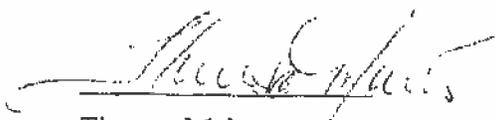
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I have reviewed the foregoing narrative and confirm to the best of my recollection that it is a true and accurate summary of the events described.

Randall P. Andreozzi



Jose Marrero

A handwritten signature in cursive script, appearing to read "Theresa Mains", written over a horizontal line.

Theresa Mains

Howard Epstein

Ronald Wise

Exhibit B-4

MEMORANDUM OF ACTIVITIES

Date: January 26, 2009

Time: 9:00 AM to 5:00 PM (Approximately)

Location: FBI Offices, St. Thomas USVI

Present: Randall Andreozzi, Attorney
José I. Marrero, Consultant
Ronald E. Wise, Consultant
Howard Epstein, CPA
Thomas Petri, Special Agent, FBI
Christine Zeiba, Special Agent, FBI
Javier Bell, Special Agent, IRS

SUBJECT: NARRATIVE OF EVENTS AT ST. THOMAS FBI OFFICES ON MONDAY,
JANUARY 26, 2009

FBI OFFICES DOCUMENT REVIEW JANUARY 26, 2009

On this date, Randall Andreozzi, José Marrero, Howard Epstein, and Ronald Wise arrived at the FBI Offices in St. Thomas to continue the review of client documents that began in November, 2008.

Present for the Government were Special Agent Thomas Petri (FBI), Special Agent Javier Bell (IRS), and Special Agent Christine Zeiba (FBI).

The session began at approximately 9:15 a.m. with the defense team continuing its review of the boxes of client documents to determine the extent of the harm caused by the Agents' reorganization of documents. Specifically, the team began its review with Box 255 and continued in numerical progression.

To facilitate the team's evaluation of the harm, Randy Andreozzi requested that the FBI provide the search warrant returns identifying the specific documents seized and their respective sources. Special Agent Petri stated he would not provide the defense team with copies of the search warrant returns and inventory, as he claimed this information had already been provided. The search warrant returns in the possession of the defense contain only general and often vague references to the documents seized. In many instances, the description of the documents seized is listed as "Documents" or "Boxes of Documents." Consequently, a significant number of the search warrant returns produced by the FBI – particularly those relating to un-bates-stamped documents – are of no use in identifying the specific documents seized.

Agent Petri further stressed that all of the documents obtained by the U. S. Government during the raid and subsequent investigation were "his" and not the defendants'. According to Agent Petri, he could and did organize them as he deemed appropriate. In response to questions from Randy Andreozzi, SA Petri stated he had in fact already reviewed the contents contained in the boxes of seized evidence and moved documents to different boxes as appropriate.

The team continued its review of the documents and terminated its review at approximately 5:00 p.m.

I have reviewed the foregoing narrative and confirm to the best of my recollection that it is a true and accurate summary of the events described.



Randall Andreozzi, Attorney



José I. Marrero, Consultant



Ronald E. Wise, Consultant



Howard Epstein, CPA

Exhibit B-5

MEMORANDUM OF ACTIVITIES

Date: January 27, 2009

Time: 9:00 AM to 5:10 PM (Approximately)

Location: FBI Offices, St. Thomas USVI

Present: Randall Andreozzi, Attorney

José I. Marrero, Consultant

Ronald E. Wise, Consultant

Howard Epstein, CPA

Thomas Petri, Special Agent, FBI

Christine Zeiba, Special Agent, FBI

Javier Bell, Special Agent, IRS

**SUBJECT: NARRATIVE OF EVENTS AT ST. THOMAS FBI OFFICES ON TUESDAY,
JANUARY 27, 2009**

FBI OFFICES DOCUMENT REVIEW JANUARY 27, 2009

On this date, Randall Andreozzi, José Marrero, Howard Epstein, and Ronald Wise arrived at the FBI Offices in St. Thomas to review client documents maintained by the Government:

Present for the Government were Special Agent Thomas Petri (FBI), Special Agent Javier Bell (IRS), and Special Agent Christine Zeiba (FBI).

The session began at approximately 9:15 a.m. with the defense team picking up where it left off on January 26, 2009 in its review of the boxes of client documents to determine the extent of the harm caused by the Agents' reorganization of documents. During the initial portion of the session, SA Javier Bell was not present. During the morning meetings, SA Petri spoke with Randy Andreozzi, stating that "discovery" was OK, but he would not allow the defense team to review evidence for the purpose of developing another motion. He added that Mr. Andreozzi should simply take the case to trial. Mr. Andreozzi stated the purpose of the defense team's presence was to *both* review documents and to assess any potential harm resulting from the rearrangement of documents by the Government. SA Petri responded that if that was true, Ms. Hendrickson had lied to him (Petri), apparently suggesting that he was under a mistaken impression as to the purpose of the defense team's visit. SA Petri then asked us to leave the area while he attempted to telephone DOJ Attorney Laurie Hendrickson.

A few minutes later, SA Petri allowed us to return to the area, saying "Come in and I will explain what is left of your charade." He suggested Mr. Andreozzi should bring a photocopier to the premises to copy

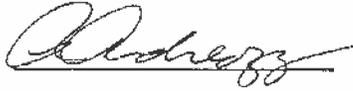
documents, as the defense team may not be allowed to return again. Mr. Andreozzi repeated that the purpose of the defense team's presence was to both review documents and to assess any potential harm resulting from the rearrangement of documents by the Government. SA Petri said that the only movement of documents was the movement of the boxes from one location to another, and the chain of custody had been preserved. He then added, "I probably have taken documents from one box, and at my discretion moved them to another box." Shortly thereafter, he denied having said that he had moved documents from one box to another, explaining that he had previously said, "*If* I had moved documents...." He then added, "Even if I said there was stuff that was moved from one box to another, I don't care. If I move evidence from one box to another, it does not matter as long as you have seen all the evidence. I do not have to tell you how I catalogue my evidence."

Mr. Andreozzi asked that Agent Petri also produce any documents the Government procured in the matter through subpoenas. Special Agent Petri explained that the only subpoenaed documents he would allow the defense to review would be those that we specifically request. He advised Mr. Andreozzi to request specific documents as opposed to *all* subpoenaed records, and that he would determine which documents were relevant. Mr. Andreozzi explained to the Agent that this protocol was not logically feasible. SA Petri disagreed, and the defense team continued review of the seized documents.

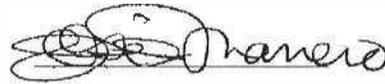
The defense team left the premises around 11:45 AM and returned around 1:15 PM to continue its review. During the afternoon session, SA Petri and Mr. Andreozzi continued to discuss documents needed for review by the defense team. Mr. Andreozzi explained to SA Petri that the FBI's identification of specific documents and the organization of the documents based on the source from which they were procured during the search is an important issue. SA Petri stated, "It doesn't matter how we store our evidence." He added: "A document is a document, is a document." Mr. Andreozzi continued to inquire as to whether the FBI employed a certain methodology in rearranging the seized documents within the storage boxes. SA Petri declined to provide answers to his questions, stating he considered those questions only for their "pure entertainment value."

Near the end of the afternoon session, Agent Petri stated that he would require a list of additional items the defense would like to review the next day. The defense team left the premises at approximately 5:00 PM to prepare a list for Agent Petri. Mr. Andreozzi and Mr. Marrero returned to the FBI facility at approximately 5:05 PM to provide the list and confer with SA Petri regarding documents to be reviewed on the following day. The list included foreign bank account information, seized computer analyses, tax return preparer files (already being supplied), and all documents procured by the Agents from third parties through the current date, either through subpoenas or otherwise. SA Petri reviewed the list, stated, "I know where you are going with this," and demanded that Messrs. Andreozzi and Marrero leave the office. [This paragraph is attested to by Mr. Andreozzi and Mr. Marrero, only.]

I have reviewed the foregoing narrative and confirm to the best of my recollection that it is a true and accurate summary of the events described.



Randall Andreozzi, Attorney



José I. Marrero, Consultant



Ronald E. Wise, Consultant



Howard Epstein, CPA

Exhibit B-6

MEMORANDUM OF ACTIVITIES

Date: January 28, 2009

Time: 9:00 AM to 5:00 PM (Approximately)

Location: FBI Offices, St. Thomas, USVI

Present: Randall Andreozzi, Attorney
José I. Marrero, Consultant
Ronald E. Wise, Consultant
Howard Epstein, CPA
Thomas Petri, Special Agent, FBI
Christine Zeiba, Special Agent, FBI
Javier Bell, Special Agent, IRS

SUBJECT: NARRATIVE OF EVENTS AT ST. THOMAS FBI OFFICES ON WEDNESDAY,
JANUARY 28, 2009

FBI OFFICES DOCUMENT REVIEW JANUARY 28, 2009

On this date, Randall Andreozzi, José Marrero, Howard Epstein, and Ronald Wise arrived at the FBI Offices in St. Thomas to continue their document review.

Present for the Government were Special Agent Javier Bell (IRS) and Special Agent Christine Zeiba (FBI). Agent Petri was not present.

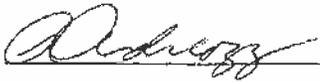
The defense team continued to review documents in the possession of the Government during the morning session before breaking for lunch around noon.

During the afternoon of January 28, 2009, the defense team concluded its review of the seized documents (with the exception of boxes 134 through 254). Special Agent Javier Bell then began production of certain items identified by the defense team the previous day. He produced a box containing expandable folders bearing notations "CAB-#1," "CAB-#2," etc. These folders contained various documents, some identified with document numbers, and others unmarked. One of the folders contained documents identified by numbers beginning with the prefix "S4." Although the majority of these documents were in French, most of them appeared to consist of or relate to bank records from St. Martin. One un-numbered document consisting of multiple pages appeared to set forth banking regulations.

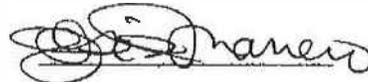
Special Agent Zeiba then produced from her office an expandable file folder containing what appeared to be requests for bank records by the U. S. Government and various responding documents from the French

This memorandum was prepared on January 29, 2009 from notes made during the meeting with SA Zeiba and other members of the prosecution team.

I have reviewed the foregoing narrative and confirm to the best of my recollection that it is a true and accurate summary of the events described.



Randall Andreozzi, Attorney



José I. Marrero, Consultant



Ronald E. Wise, Consultant



Howard Epstein, CPA