suffering and fear. Her life was materially disrupted, altered and ended as a result of the acts of the Defendants, and each of them, all to her damage and the damage to her Estate.

149. Elena Tommarello's two sons Armando and Bruno, the only surviving family members of Elena Tommarello, who are Plaintiffs in this action, have endured emotional distress, mental anguish, suffering and solatium damages as a result of the acts of the Defendants, and each of them, all to their respective damage. (B. Pepenella, T-24-135; A. Pepenella, T-24-140).

viii. Salvatore Ferrigno

150. Salvatore Ferrigno was born in Italy on February 28, 1960. (S. Ferrigno, T-22B-52; Ex. 22). At the time of the December 27, 1985 Rome Airport Attack, Mr. Ferrigno owed permanent allegiance to the United States, intended to become a U.S. citizen. (S. Ferrigno, T-22B-54-56; Ex. 88).

151. Mr. Ferrigno became a United States citizen on September 22, 1993, and has remained a United States citizen from the date of his naturalization through the present. (S. Ferrigno, T-22B-56-58, 60; Ex. 21).

152. At the time of the Rome Airport Attack, Salvatore Ferrigno was travelling from Palermo to his home near Trenton, New Jersey. Because there were no non-stop flights between Palermo and New York, Ferrigno changed planes in Rome. (S. Ferrigno, T-22B-62).

153. On December 27, 1985 Salvatore Ferrigno was at the Rome Fiumicino airport. (S. Ferrigno, T-22B-63).

154. Salvatore Ferrigno suffered gunshot and shrapnel wounds to his chest and finger. (S. Ferrigno, T-22B-65, Ex. 23A).

155. In addition to the severe physical injuries Mr. Ferrigno suffered, he suffered severe emotional trauma and mental anguish as a result of the Rome Airport Attack. (S. Ferrigno, T-22B-77, 82-83).

ix. Francesco Zerilli

156. Francesco Zerilli was born in Italy on March 30, 1961. (F. Zerilli, T-24-41; Ex. 71). At the time of the December 27, 1985 Rome Airport Attack, Mr. Zerilli owed permanent allegiance to the United States and intended to become a U.S. citizen. (F. Zerilli, T-24-42-43, 48).

157. Mr. Zerilli became a United States citizen on August 28, 2006, and has remained a United States citizen from the date of his naturalization through the present. (F. Zerilli, T-24-47; Ex. 70).

158. At the time of the Rome Airport Attack, Francesco Zerilli was travelling to the United States in order to join with his common law wife, Angie, to have a wedding ceremony and then permanently immigrate to the U.S. (F. Zerilli, T-24-48).

159. On December 27, 1985 Francesco Zerilli was at the Rome Fiumicino Airport. (F.Zerilli, T-24-48).

160. Francesco Zerilli suffered gunshot and shrapnel wounds to his right hand. (F. Zerilli, T-24-50; Ex. 72A).

161. In addition to the severe physical injuries Mr. Zerilli suffered, he suffered severe emotional trauma and mental anguish as a result of the Rome Airport Attack. (F. Zerilli, T-24-61-63; A. Zerilli, T-24-66-67).

## V. CONCLUSIONS OF LAW

### A. THE COURT ASSERTS SUBJECT MATTER JURISDICTION UNDER 28 U.S.C. § 1605A

The Defense Authorization Act for Fiscal Year 2008, ("Defense Authorization Act"), Section 1083, Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338-344 (2008) revised the framework under which state-sponsored terrorism cases are brought by substituting 28 U.S.C § 1605A in place of 28 U.S.C. § 1605(a)(7), among other revisions. The original complaint filed in Buonocore on April 21, 2006 asserted the subject matter jurisdiction for the case under 28 U.S.C. § 1605(a)(7). Buonocore, docket #1. On March 28, 2008, the Court granted Plaintiffs' motion to amend the complaint filed in Buonocore, restating the subject matter jurisdiction for the case under 28 U.S.C. § 1605A. Buonocore, [Dkt. #53]. The requirements for the Court to assert its subject matter jurisdiction[6] over the cases—whether under 28 U.S.C. § 1605(a)(7) or 28 U.S.C. § 1605A—did not change with the passage of 28 U.S.C. § 1605A .[7] See 28 U.S.C § 1605A(a)(1), (a)(2).

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[6] The substitution of 28 U.S.C § 1605A for 28 U.S.C. § 1605(a)(7) does not change the Court's test for subject matter jurisdiction, which is clear upon a comparison of the two statutory provisions. Subsection (a)(1) states that "a foreign state shall not be immune from suits in which money damages are sought against the foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee or agent of such foreign state while acting within the scope of his or her office, employment or agency." Aside from the expansion of the class of potential claimants, this language matches the language from 28 U.S.C. § 1605(a)(7), the former section that established the Court's subject matter jurisdiction in Baker.

[7] 28 U.S.C. § 1605(a)(7) (deleted as of January 28, 2008) (stating "not otherwise covered by paragraph (2), in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency, except that the court shall decline to hear a claim under this paragraph--

(A) if the foreign state was not designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) at the time the act occurred, unless later so designated as a result of such act or the act is related to Case Number 1:00CV03110(EGS) in the United States District Court for the District of Columbia; and

(B) even if the foreign state is or was so designated, if--

(i) the act occurred in the foreign state against which the claim has been brought and the claimant has

The requirements for subject matter jurisdiction under 28 U.S.C. § 1605A allow Plaintiffs to seek money damages for personal injury or death if the damages were caused by:

1. the provision of "material support or resources"[8] for hostage taking, torture, and an extrajudicial killing;
2. if the provision of material support was engaged in by an official while acting within the scope of his office;
3. the defendant was a "state-sponsor of terrorism" at the time the act complained of occurred; and
4. the claimant or the victim was a "US national" at the time of the act of terrorism

28 U.S.C. § 1605A(a)(1), (a)(2). As set forth below, the Court may assert subject matter jurisdiction over the Syrian Defendants under this statute.

Proof of the first two elements is inextricably intertwined with the requirements of proof for Plaintiffs' causes of action. Plaintiffs proved at the hearing beyond their burden under 28 U.S.C. § 1608(e) that Syria provided material support and resources, as defined by 18 U.S.C. § 2339A(b), to the ANO and its network of terrorists in Syria and the Middle East for hostage taking, torture, and extrajudicial killings on a scale such that the

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not afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with accepted international rules of arbitration; or

(ii) neither the claimant nor the victim was a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act [8 USCS § 1101(a)(22)]) when the act upon which the claim is based occurred.").

[8] 28 U.S.C. § 1605A(h)(3) defines "material support or resources" as "the meaning given that term in section 2339A of title 18." 18 U.S.C. § 2339A(b) defines "material support or resources" as "any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel."

imposition of vicarious liability is required under 28 U.S.C. § 1605A(c) and the applicable state common law. Proof of aiding and abetting or conspiracy necessarily proves that Syria provided material support or resources to the ANO and its terrorist network.

For the purposes of satisfying the requirements of 28 U.S.C. § 1605A(a)(1), Syria provided safe haven for the ANO beginning in 1983 at least. When a foreign sovereign allows a terrorist organization to operate from its territory, this meets the statutory definition of "safehouse" under 18 U.S.C. § 2339A(b):

> Insofar as the government of the Republic of Sudan affirmatively allowed and/or encouraged al Qaeda and Hezbollah to operate their terrorist enterprises within its borders, and thus provided a base of operations for the planning and execution of terrorist attacks -- as the complaint unambiguously alleges -- Sudan provided a "safehouse" within the meaning of 18 U.S.C. § 2339A, as incorporated in 28 U.S.C. § 1605(a)(7).

Owens v. Republic of Sudan, 412 F. Supp. 2d 99, 108 (D.D.C. 2006). Plaintiffs' further have introduced compelling evidence of Syrian Defendants' cooperation and support of the ANO and its terrorist network is discussed below in the context of Syrian Defendants' joint liability for the death and personal injuries resulting from the Rome and Vienna Airport Attacks.

Plaintiffs have presented uncontroverted and compelling evidence that the Syrian Defendants supported the ANO and its terrorist network's efforts to launch terrorist attacks to kill and injure Americans and Israeli citizens and to disrupt any normalization of relations between Arab states and Israel and against the interests of the government of the United States of America. Thus, the first and second elements to allow the Court to assert subject matter jurisdiction are satisfied.

The third element required asks whether the defendant foreign sovereign was a "state-sponsor of terrorism" at the time the act complained of occurred. 28 U.S.C. § 1605A(a)(2)(A)(i)(I). The term "state-sponsor of terrorism" is defined by the statute at 28 U.S.C. § 1605A(h)(6):

> the term 'state sponsor of terrorism' means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism . . . .

Syria has been designated as a state-sponsor of terrorism continuously since December 29, 1979[9] and Syria's continued designation as a state-sponsor of terrorism was noted on May 18, 2004, 69 Fed. Reg. 28,098, 28,100 (2004), and in 2005, as well as at other times. 31 C.F.R. 596.201 (2005). Moreover, Plaintiff's introduced irrefutable evidence and testimony that Syrian remains on the State Department list of State Sponsors of Terrorism at the time of the evidentiary hearing.

The fourth element required asks whether the victim or claimant was a U.S. national at the time of the act of terrorism. 28 U.S.C. § 1605A(a)(2)(A)(ii). 28 U.S.C. § 1605A(h)(5) defines a U.S. national as defined in 8 U.S.C. § 1101(a)(22), in part, as "a citizen of the United States." In these cases, the U.S. citizenship of Mark Maland, Jeanette Sweis, Juliet Sweis, Michael Sweis, Saeid Sweis, Victor Simpson, Michael Simpson and Jeanne Shinn who were savagely attacked at the Rome Fiumicino airport establishes subject matter jurisdiction for the court over their respective claims, and those of their respective family members, as each respectively was at the time of the Rome

[9] http://www.state.gov/s/ct/c14151.htm.

Airport Attack, United States citizens and remain citizens of the United States. Moreover, the U.S. citizenship of decedents John Buonocore III, Frederick Gage, Don Maland, Charles Shinn, Natasha Simpson, and Elena Tommarello establishes subject matter jurisdiction for the court over their respective claims, and those of their respective estates and family members, as each respectively was at the time of the Rome Airport Attack, United States citizens.

In addition, Plaintiffs Bruno and Armando Pepenella can recover for their solatium claims as the fourth element only requires that the "victim or the claimant" be a U.S. national at the time of the act of terrorism. 28 U.S.C. § 1605A(a)(2)(A)(ii) (Emphasis added). Here, because Bruno and Armando Pepenella's claims for solatium arises from the injuries and death suffered by their mother Elena Tommarello and it has been established that the victim, Elena Tommarello, was a United States citizen at the time of her injuries and death, the Court has jurisdiction to award damages to her U.S. estate and her U.S. permanent resident children for the death of their American mother.

Finally, for Francesco Zerilli and Salvatore Ferrigno, they both meet the second prong of the definition of "national" under 8 U.S.C. § 1101(a)(22)(B) as they both, at the time of the Rome Airport Attack, were each a, "person who, established by their testimony, though not a citizen of the United States, owes permanent allegiance to the United States." 8 U.S.C. § 1101(a)(22)(B).[10]

[10] Federal Courts in Foreign Sovereign Immunity Act cases brought under 28 U.S.C. §1605A have held that, "[c]itizenship…is not the sine qua non of "nationality." A "national of the United States" may also be "a person who, though not a citizen of the United States, owes permanent allegiance to the United States."…We agree- an application for citizenship is the most compelling evidence of permanent allegiance to the United States short of citizenship itself." United States v. Morin, 80 F.3d 124, 126 (4th Cir. 1996) (internal citations omitted). Although it has been held that "[a]n application for citizenship is the most compelling evidence of permanent allegiance to the United States short of citizenship itself. United States v. Morin, 80 F.3d 124(4th Cir. 1996), intent rather than the filing of an actual application for citizenship is key to evidencing permanent allegiance to the United States. See Asemani v. Islamic Republic of Iran, 266

Salvatore Ferrigno was granted lawful U.S. permanent resident status on September 27, 1985 and intended to become a United States citizen as soon as possible under the statutory requirements. (S. Ferrigno, T-22B-55-59; Ex.88). However, because of the injuries Mr. Ferrigno sustained in the Rome Airport Attack, he was unable to apply, and in interviews with Immigration and Naturalization Service agents was advised not to apply, for citizenship until 1992 because of his inability to work and demonstrate the required two years of income in the United States to apply for citizenship, as had been his intention. (S. Ferrigno, T-22B-59-60). Mr. Ferrigno became a naturalized United States citizen in 1992, which was as soon as he could demonstrate two years of income after recovering from his injuries. (S. Ferrigno, T-22B-59). As such, because Mr. Ferrigno at the time of the Rome Airport Attack had the requisite intent to apply for United States citizenship and did so as soon as he could meet the statutory requirements. His "permanent allegiance to the United States" is sufficiently evidenced by the record as required to meet the definition of "national" found in 8 U.S.C. § 1101(a)(22), as interpreted by federal case law.

In addition, Mr. Zerilli was a "national" of the United States as defined by 8 U.S.C. § 1101(a)(22) at the time of the Rome Airport Attack. At this time, Mr. Zerilli had the requisite intent to relocate permanently to the United States to live with his common-

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F. Supp.2d 24 (D.D.C. 2003) ("[t]he documents submitted by the plaintiff establish that in 1996 he filed a notice that he intended to apply for United States citizenship, that he filed the application in 1997, that his application was denied at the time as premature, and that in 1998 he filed an oath of allegiance to the United States. He pursued his application for citizenship through an interview with an Immigration and Naturalization officer in July 1999. Under the current interpretation of the term "national," plaintiff has demonstrated his permanent allegiance to the United States sufficient to constitute him a "national" within the meaning of the FSIA.") . See id., 266 F. Supp.2d 24 at 26-27 (D.D.C. 2003). Moreover, this Court has held that when a plaintiff was required to wait a certain period of time to apply for citizenship his intent to file for citizenship with subsequent filing of an application for citizenship was a sufficient showing of intent. See id. ("…plaintiff had not been admitted for permanent residence for the required five years. He was therefore, ineligible to apply for citizenship at that time.")

law wife Angie Zerilli—a United States citizen— and applied for permanent United States residency in April 1986, as soon as he was able to return to the United States to live with his wife. (F. Zerilli T-24-43-48.) As such, Mr. Zerilli—who is currently a United States Citizen— meets the statutory requirements as his "permanent allegiance to the United States" is sufficiently evidenced to meet the definition of a "national" of the United States. 8 U.S.C. §1101(a)(22)

The Court has subject matter jurisdiction over the Syrian Defendants under 28 U.S.C. § 1605A(a). Once the immunity of a foreign state has been lifted and the Court asserts subject matter jurisdiction, 28 U.S.C. § 1606 defines the sources of law that may be applied against a foreign sovereign.

> Once a foreign state's immunity has been lifted under Section 1605 and jurisdiction is found to be proper, Section 1606 provides that "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606. Section 1606 acts as a "pass-through" to substantive causes of action against private individuals that may exist in federal, state or international law.

Heiser v. Islamic Republic of Iran, 466 F. Supp. 2d 229, 265-266 (D.D.C. 2006) quoting Dammarell v. Islamic Republic of Iran, CA No. 01-2224, 2005 U.S. Dist. LEXIS 5343, at *27-32 (D.D.C. Mar. 29, 2005). In this case, a federal cause of action exists under 28 U.S.C. § 1605A(c), along with state law causes of action where they would not lead to an impermissible duplicative recovery.

The Court looks to common law as illustrated by the Restatement (Second) Torts when seeking to define the federal causes of action under 28 U.S.C. § 1605A(c) to fulfill the requirement of 28 U.S.C. § 1606 that non-immune foreign sovereigns shall be liable as would a private individual. See Bettis v. Islamic Republic of Iran, 315 F.3d 325, 333 (D.C. Cir. 2003). The past practice of courts in this Circuit when adjudicating cases

under the state sponsor of terrorism exception to the FSIA serves as a guide for this Court's choice of law analysis. Prior to the passage of the new federal cause of action found at 28 U.S.C. § 1605A(c), courts in this circuit defined causes of action under a federal private right of action known as the Flatow Amendment by utilizing common law as illustrated by the Restatement (Second) Torts. E.g., Sutherland v. Islamic Republic of Iran, 151 F. Supp. 2d 27, 48 (D.D.C. 2001) (applying the Second Restatement of Torts to plaintiff's intentional infliction of emotional distress claim under the federal common law).[11] The Courts therefore look to the Restatement (Second) of Torts to define the federal causes of action under 28 U.S.C. § 1605A(c).

### B. SYRIA IS LIABLE FOR THE MURDER AND PERSONAL INJURIES ARISING FROM THE ROME AND VIENNA AIRPORT ATTACKS UNDER 28 U.S.C. § 1605A(c).

The 2008 amendments to the FSIA expanded the legal mechanisms for determining the civil liability of state-sponsors of terrorism. These amendments created a new private right of action under federal law that operates against any foreign state that is or was a state sponsor of terrorism as described in subsection 28 U.S.C. § 1605A(a)(2)(A)(i) and any official, employee or agent of that foreign state while acting

[11] The practice of borrowing from common law to define causes of action under the Flatow Amendment ended with the D.C. Circuit's decision in Cicippio-Puleo v. Islamic Republic of Iran, 353 F.3d 1024, 1033 (D.C. Cir. 2004), which barred further use of the Flatow Amendment against foreign states or their agencies and instrumentalities. This decision overturned numerous district court decisions that had held the Flatow Amendment provided a cause of action against the foreign state itself. E.g., Cronin v. Islamic Republic of Iran, 238 F. Supp. 2d 222, 231 (D.D.C. 2002). The holding of Cicippio-Puleo does not apply to 28 U.S.C. § 1605A(c), which renews the availability of a federal private right of action for certain victims of state-sponsored terrorism, which was Congress's original intention behind the Flatow Amendment. Id. at 232 ("[T]he legislative history of 28 U.S.C. § 1605(a)(7) and the Flatow Amendment support the conclusion that victims of state-sponsored acts of terrorism have a cause of action against the foreign state itself.")

within the scope of his or her office, employment or agency. 28 U.S.C. § 1605A(c).[12] The wording of this provision[13] matches the wording of the Flatow Amendment[14], except 28 U.S.C. § 1605A(c) explicitly provides a cause of action directly against the foreign state itself.

28 U.S.C. § 1605A(c) allows claims to be brought against the state-sponsor of terrorism if the claimant or the victim was, at the time of the terrorist act, a national of the United States, as were the victims here. Claims may be brought under 28 U.S.C. § 1605A(c) for "personal injury or death caused by" the acts of terrorism as described in 28 U.S.C. § 1605A(a)(1), such as when the "official, employee or agent of that foreign state"

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[12] 28 U.S.C. § 1605A(c) is the effective recodification of the understanding of the Flatow Amendment that existed prior to the Cicippio-Puleo decision. Thus, the language of the new federal private right of action nearly matches the language of the Flatow Amendment.

[13] P.L. 110-181: Private Right of Action.--A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to--

"(1) a national of the United States,

"(2) a member of the armed forces,

"(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or

"(4) the legal representative of a person described in paragraph (1), (2), or (3), for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

[14] P.L. number 104-208: Liability of agents of state sponsors of terrorism to U.S. nationals. Act Sept. 30, 1996, P.L. 104-208, Div A, Title I, § 101(c) [Title V, § 589], 110 Stat. 3009-172, provides:

"(a) An official, employee, or agent of a foreign state designated as a state sponsor of terrorism designated under section 6(j) of the Export Administration Act of 1979 [50 USCS Appx § 2405(j)] while acting within the scope of his or her office, employment, or agency shall be liable to a United States national or the national's legal representative for personal injury or death caused by acts of that official, employee, or agent for which the courts of the United States may maintain jurisdiction under section 1605(a)(7) of title 28, United States Code, for money damages which may include economic damages, solatium, pain, and suffering, and punitive damages if the acts were among those described in section 1605(a)(7).

"(b) Provisions related to statute of limitations and limitations on discovery that would apply to an action brought under 28 U.S.C. § 1605(f) and (g) shall also apply to actions brought under this section. No action shall be maintained under this action if an official, employee, or agent of the United States, while acting within the scope of his or her office, employment, or agency would not be liable for such acts if carried out within the United States.".

engages in the "provision of material resources or support" for "extrajudicial killing" or "hostage taking". For these acts by a foreign state's officials, employees or agents the "foreign state shall be vicariously liable for the acts of its officials, employees or agents . . . ." In this case, Plaintiffs proved that Syria both aided and abetted and conspired with the ANO and its terrorist network, which resulted in the murder and personal injuries arising from the Rome and Vienna Airport Attacks. The Court also finds that the Syrian provision of material support and resources to the ANO was conducted by Syrian government officials, employees and agents within the scope of their official duties.

The common law approach to civil aiding and abetting liability was set forth in the leading case of Halberstam v. Welch, 705 F. 2d 472 (D.C. Cir. 1983).[15] Courts in the D.C. Circuit have adopted the Halberstam analysis in order to analyze whether a foreign sovereign aided and abetted terrorism or conspired with terrorists. Bodoff v. Islamic Republic of Iran, 424 F. Supp. 2d 74, 85 (D.D.C. 2006); Haim v. Islamic Republic of Iran, 425 F. Supp. 2d 56, 69 (D.D.C. 2006); Ungar v. Islamic Republic of Iran, 211 F. Supp. 2d 91, 99 (D.D.C. 2002). This Court similarly adopts the Halberstam test to analyze the Syrian Defendants' vicarious liability resulting from their support of the ANO.

1. SYRIA AIDED AND ABETTED THE MURDER OF JOHN BUONOCORE III, FREDERICK GAGE, DON MALAND, CHARLES SHINN, NATASHA SIMPSON, ELENA TOMMARELLO AND THE PERMANENT PHYSICAL INJURY OF SALVATORE FERRIGNO,

[15] Halberstam is widely regarded as the seminal case for civil aiding and abetting law even though it was based on diversity jurisdiction, because there was no existing state law to apply, and the Court of Appeals therefore synthesized the general American Tort Law on civil aiding and abetting including the standards set out by the RESTATEMENT (SECOND) TORTS § 876 (1979). Halberstam, 705 F. 2d at 477. (analyzing and adopting these standards). "The Supreme Court has described Halberstam v. Welch, 227 U.S. App. D.C. 167, 705 F.2d 472 (D.C. Cir. 1983), as 'a comprehensive opinion on the subject [of aiding and abetting].'" Khulumani v. Barclay Nat'l Bank Ltd., 504 F.3d 254, 287-288 (2d Cir. 2007) quoting Cent. Bank, N.A. v. First Interstate Bank, N.A., 511 U.S. 164, 181 (1994).

MARK MALAND, JEANETTE SWEIS, JULIET SWEIS, MICHAEL SWEIS, SAEID SWEIS, VICTOR SIMPSON, MICHAEL SIMPSON, JEANNE SHINN AND FRANCESCO ZERILLI

The undisputed facts establish Syrian Defendants' vicarious liability for their aiding and abetting of the terrorists who murdered John Buonocore III, Frederick Gage, Don Maland, Charles Shinn, Natasha Simpson and Elena Tommarello, and injured Salvatore Ferrigno, Mark Maland, Jeanette Sweis, Juliet Sweis, Michael Sweis, Saeid Sweis, Victor Simpson, Michael Simpson, Jeanne Shinn and Francesco Zerilli. In Halberstam, the defendant (Hamilton) was held civilly liable under an aiding/abetting theory for the death of Halberstam after he was killed during a burglary by the burglar (Welch), who lived with Hamilton. 705 F. 2d at 475-76. Hamilton disclaimed knowledgeable participation while she lived with the burglar for five years and essentially processed the proceeds of numerous burglaries; she had not participated in Halberstam's murder or in any of Welch's many burglaries. Id. at 486-87. Hamilton claimed that she never asked and was never told the purpose of Welch's nighttime forays, conducted from 5pm until 10pm, over the course of 5 years. Id. at 475. Hamilton further claimed that she never opened the numerous loot boxes stored in the basement of the house that she shared with the burglar.

The D.C. Circuit nonetheless found that "although Hamilton and Welch did not commit burglaries together," their activities were "symbiotic" because Hamilton knew about Welch's illegal activity and assisted him in various ways (e.g., filing tax returns that hid burglary profits, typing transmittal letters for ingots made of gold and silver melted from stolen loot, handling payments and accounts and maintaining all financial transactions in her name). Id. at 486-487. The court's decision in Halberstam was

predicated upon general civil aiding and abetting law, including Section 876 of the Restatement (Second) Torts, to find that civil aiding/abetting liability depends upon:

1. a showing that the party whom the defendant aids must perform a wrongful act that causes an injury;

2. the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides assistance; and

3. the defendant must knowingly and substantially assist the principal violation but need not actually agree to join the wrongful conduct.

Id. at 477-478 (emphasis added). The D.C. Circuit additionally made clear in Halberstam that a defendant does not have to participate in, or even know about, the specific bad act that harms the victim. Id. at 484.

Under Halberstam, the Syrian Defendants are liable for aiding and abetting the Rome and Vienna Airport Attacks and all of the associated intentional torts that were reasonably foreseeable as a result of their provision of material support or resources to the ANO, which caused all of Plaintiffs' injuries. Id. The Rome and Vienna Airport Attacks and murder and injury of Plaintiffs were a reasonably foreseeable result of Syria's decision to aid and abet the ANO, which sought to attack and murder American citizens and Israeli civilians in its quest to destabilize the Middle East Peace Process, all in contravention of the interests of the United States of America.

The Syrian Defendants are liable for the deaths and injuries caused by the ANO and its terrorist organization under an aiding and abetting theory of liability. The first two elements of the Halberstam test are clearly met: (a) the ANO, "the party whom the defendant aids", committed the Rome and Vienna Airport Attacks, or performed a wrongful act that caused an injury and (b) Syria was "generally aware of" its "role as part

of an overall illegal or tortious activity at the time that" it provided assistance to the ANO.

Syria could not possibly claim that it was unaware of the aims or notorious practices of the ANO, which included torture, murder and terrorism of Americans, Israelis and citizens of any other nation that stood on friendly terms with Israel across the Middle East on a horrific scale. "Additionally, the length of time two parties work closely together may also strengthen the likelihood that they are engaged in a common pursuit. Mutually supportive activity by parties in contact with one another over a long period suggests a common plan." Id. at 481 (court's emphasis retained). The ANO terrorism began after Sabri al-Banna a/k/a Abu Nidal broke away from Arafat's Fatah movement and formed his own more radical organization which he called the Fatah-Revolutionary Council (a.k.a. the Abu Nidal Organization).

The third element of the Halberstam test is whether the Syrian government knowingly and substantially assisted the Rome and Vienna Airport Attacks. While the Syrian Defendants may not have had prior knowledge of the particular Rome and Vienna Airport Attacks, Syria provided its support to the ANO knowing and intending that such activities were likely. Additionally, the general forms of Syrian support were utilized for those specific Rome and Vienna Airport Attacks. Syrian Defendants provided critical material support or resources to the ANO and its network by providing, the following, but not limited to:

- safe haven for the ANO inside Syria from at least 1983 through at least the November 23, 1985 hijacking[16] and December 27, 1985 coordinated Rome and

[16] See Baker v. Socialist People's Libyan Arab Jamahiriya, 2011 U.S. Dist. LEXIS 33586 (D.D.C. Mar. 30, 2011).

Vienna Airport Attacks; including permitting the ANO to maintain offices and safe houses in Syria and training camps in Syrian controlled territory, including the Baaka Valley in Lebanon,

- key travel documents to ANO operatives;
- the freedom for ANO operatives to travel on military highways between training camps in Syrian controlled Lebanon and Damascus without passport control but under the watchful eye of Syrian military and intelligence, it being noted that Syria had at the time tens of thousands of troops in its control of Lebanon; and
- unhindered transit through the international airport of both Damascus and Beirut.

Further, Syria directly participated the attacks by playing a role in the selection of the timing, methodologies, and operations that were involved in the Rome and Vienna Airport Attacks, which is corroborated by the surviving ANO terrorists from the Rome and Vienna Airport Attacks.

These activities occurred with the authorization, agreement and support of Syria's government. The key to the analysis of Syria's support for the ANO is to understand the context of its utilization by the Syrian government. The support and conspiracy with the ANO that could not have been made without authorization and knowledge of President Assad and General Muhammad al-Khuli and the active participation of the Syrian Air Force Intelligence agency. C.f. Eisenfeld v. Islamic Republic of Iran, 172 F. Supp. 2d 1, 6 (D.D.C. 2000) (finding high officials of the defendant "whose approval would be necessary to carry out the economic commitment of Iran to Hamas and the training of terrorists in Iran" liable based upon expert witness testimony).

Whether the quantity of assistance provided meets the requirements of the Halberstam test depends on the Court's analysis of five factors: "[t]he Restatement suggests five factors in making this determination: 'the nature of the act encouraged, the amount of assistance given by the defendant, his presence or absence at the time of the tort, his relation to the other [tortfeasor] and his state of mind.'" Halberstam v. Welch, 705 F.2d 472, 478 (D.C. Cir. 1983). A court need not find that all five factors are present to make a finding of substantial assistance. The Halberstam court noted the defendant was not present during the principal violation, as described below, but nonetheless found the defendant civilly liable.

The Halberstam court first looked at the nature of the act assisted when it analyzed the five-factor test to determine the substantiality of the assistance provided by the defendant to the burglar, which was "a long-running burglary enterprise, heavily dependent on aid in transforming large quantities of stolen goods into 'legitimate' wealth." Id. at 488. This factor is defined as: "the nature of the act involved dictates what aid might matter, i.e. be substantial." Id. at 484. As an example, in Rael v. Cadena, 93 N.M. 684, 604 P.2d 822 (1979) (liability for verbal encouragement at the scene of a battery) the nature of the act, a beating, informed the decision as to the substantiality of the aid, the aider and abettor yelling "kill him, kill him." 705 F.2d at 481, 484. In this case, ANO operations required the unhindered transit of their terrorists, which came directly through the Damascus and Beirut airports and over the Syrian-Lebanon border. Providing safe haven and facilitating free passage was crucial to the nature of the act involved: the construction of a terrorist network in the Middle East to launch terrorist

attacks to kill and injure innocent civilians and to destabilize the Middle East peace process, all in contravention of the policy of the United States of America.

The Halberstam court next looked at the amount of assistance the burglar's co-conspirator rendered to the general criminal enterprise. "[A]lthough the amount of assistance Hamilton gave Welch may not have been overwhelming as to any given burglary in the five-year life of this criminal operation, it added up over time to an essential part of the pattern." Id. Halberstam discussed Cobb v. Indian Springs, Inc., 258 Ark. 9, 522 S.W.2d 383 (1975), where mere verbal encouragement sufficed where a security guard encouraged a younger new car owner to engage in a high speed test drive, during which a pedestrian was struck. 705 F.2d at 482. The Court should find the amount of assistance that Syria funneled to the ANO far exceeds the threshold required by Halberstam.

The Halberstam court then analyzed and discounted the third factor, presence at the scene of the principal violation.

> Third, Hamilton was admittedly not present at the time of the murder or even at the time of any burglary. But as we noted above, the success of the tortious enterprise clearly required expeditious and unsuspicious disposal of the goods, and Hamilton's role in that side of the business was substantial.

Id. The same analysis results in this case. The presence of Syrian agents is not a prerequisite for aiding and abetting liability.

The Halberstam court also discounted the fourth factor, relation to the tortfeasors, because of its desire to avoid finding a spousal relationship as a reason for liability. Id. In this case, however, the relation to the tortfeasor significantly contributed to the terrorist war that the ANO launched on American and Israeli citizens and anyone who

supported the peace process. Syria provided one of the few safe places for the ANO to train and organize and Syria itself occupied a key geographical position and only its willingness to participate in the conspiracy with the ANO to attack these targets allowed the ANO to succeed as it did and to carry out violent, murderous, terrorist attacks such as the Rome and Vienna Airport Attacks.

The Halberstam court examined the fifth factor, the defendant's state of mind and found that the co-conspirator's long term and knowing participation in the enterprise "reflected her intent and desire to make the venture succeed; it was no passing fancy or impetuous act." Id. In this case, for over three decades the Syrian government has aided, abetted and conspired with terrorist organizations. The Syrian government is uniquely experienced in the cost-benefit calculus of working with terrorist organizations, as well as the inevitable consequences for the targeted pool of victims, such as U.S. citizens. Syria's aid to the ANO was not an impetuous act performed without an appreciation of the foreseeable consequences but rather was part and parcel of a long term, coordinated high government policy carried out over many years to destabilize the peace process and attack US interests.

The Halberstam court also found the length and circumstances of the co-conspirator's assistance to add to the inference that she knew that her husband was involved in a criminal enterprise. "She performed these services in an unusual way under unusual circumstances for a long period of time and thereby helped launder the loot and divert attention from Welch." Id. at 487. In this case, Syria can never claim that it misunderstood the aims and practices of the ANO. Syria knew that the ANO would kill and injure American citizens to achieve its goals – often during the course of the

purposefully-most-spectacular acts of terrorism possible. Knowing this, and because of this, the Syrian government continued to give substantial assistance. The stealthy circumstances of Syrian assistance to the ANO are similar to the circumstances of Hamilton's aid to Welch, which prompted the Halberstam court to note that Hamilton provided the "services in an unusual way under unusual circumstances for a long period of time" thereby creating a further justification for a finding of aiding and abetting liability.

Finally, a key question for the Halberstam court was whether the murder was a natural and foreseeable consequence of the activity that the wife assisted the husband in.

> Similarly, under an aiding-abetting theory, it was a natural and foreseeable consequence of the activity Hamilton helped Welch to undertake. It was not necessary that Hamilton knew specifically that Welch was committing burglaries. Rather, when she assisted him, it was enough that she knew he was involved in some type of personal property crime at night--whether as a fence, burglar, or armed robber made no difference--because violence and killing is a foreseeable risk in any of these enterprises.

Id. at 488 (D.C. Cir. 1983) (emphasis added). Even if Syria did not know that these specific acts of terrorism, the Rome and Vienna Airport Attacks, would occur, it was natural and foreseeable outcomes of Syria's support, sponsorship and aid to the ANO.

### 2. SYRIA CONSPIRED WITH THE ANO TO KILL AND INJURE U.S. CITIZENS BY ACTS OF INTERNATIONAL TERRORISM

Halberstam v. Welch also discussed the tort of civil conspiracy, as set forth by the Restatement, which has also been relied upon by numerous decisions in this Circuit finding that foreign states conspired with terrorist groups such as Hezbollah. E.g., Valore v. Islamic Republic of Iran, 478 F. Supp. 2d 101, 109 (D.D.C. 2007) citing Estate of Heiser v. Islamic Republic of Iran, 466 F. Supp. 2d 229, 266 (D.D.C. 2006). Civil conspiracy includes four elements. "A list of the separate elements of civil conspiracy

includes: (1) an agreement between two or more persons; (2) to participate in an unlawful act, or a lawful act in an unlawful manner; (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement; (4) which overt act was done pursuant to and in furtherance of the common scheme." Halberstam v. Welch, 705 F.2d 472, 477 (D.C. Cir. 1983) citing Ryan v. Eli Lilly & Co., 514 F. Supp. 1004, 1012 (D.S.C. 1981). Under this analysis, the government of Syria is also vicariously liable for the murders and personal injuries resulting from the Airport Attacks, as a result of its conspiracy with the ANO to attack American citizens and to destabilize the peace process through terrorist attacks as acts of international terrorism.

The first and key element to a conspiracy case is whether the Syrian government agreed to join the ANO in wrongful conduct. "The prime distinction between civil conspiracies and aiding-abetting is that a conspiracy involves an agreement to participate in a wrongful activity. Aiding-abetting focuses on whether a defendant knowingly gave 'substantial assistance' to someone who performed wrongful conduct, not on whether the defendant agreed to join the wrongful conduct." Halberstam, at 478. Whether the Syrian government agreed to the specific hijacking is irrelevant:

> As to the extent of liability, once the conspiracy has been formed, all its members are liable for injuries caused by acts pursuant to or in furtherance of the conspiracy. A conspirator need not participate actively in or benefit from the wrongful action . . . . [a]s noted above, a conspirator can be liable even if he neither planned nor knew about the particular overt act that caused injury, so long as the purpose of the act was to advance the overall object of the conspiracy.

Id. at 481, 487 (emphasis added). Civil conspiracy only requires proof of an agreement to participate in wrongful conduct. Id. at 477. The Syrian government and the ANO conspired to kill and injure U.S. citizens through barbaric acts of terrorism. The Rome

and Vienna Airport Attacks were organized and committed as overt acts pursuant to the conspiracy and in furtherance of the goals of the conspiracy. Civil conspiracy does not require an agreement to engage in the particular wrongful act that produced the injuries. See id.

The question then logically becomes what evidence is sufficient to establish the existence of an unlawful conspiracy:

> in most cases the court will have to infer a conspiracy from indirect evidence, it must initially look to see if the alleged joint tortfeasors are pursuing the same goal -- although performing different functions -- and are in contact with one another. The circumstances of each case dictate what other specific evidence may be useful in inferring agreement.

Id. at 481 (emphasis added). Here, Syria and the ANO overtly and intentionally joined together. Syria and ANO pursued the same goal: the prevention of the peaceful recognition by moderate Arab states and Yassir Arafat's Fatah and Palestine Liberation Organization of the Israeli government, as supported by the United States, Egypt and others. While the well-known capabilities of the U.S. military certainly provided a good reason for Syria to exert best efforts to obscure any ties between it and the ANO, Plaintiffs produced evidence that Syria consciously took steps to obscure its ties to terrorism, by hiring, engaging, supporting, sponsoring, aiding, abetting and joining with non-Syrian terrorists, hired guns, to wit, the ANO, which has been designated and remains designated by the US government as a Foreign Terrorist Organization.

Although evidence of an explicit agreement is unnecessary for a finding of civil conspiracy, in Halberstam v. Welch, the court inferred an agreement between Hamilton, the live-in companion and co-conspirator of the burglar and the de-facto accountant of his criminal enterprise, and Welch, the burglar, despite the lack of a confession by Hamilton

or any other direct evidence of an agreement between them to conspire to steal goods and launder the proceeds. Id. at 486-87.

> [C]ourts have to infer an agreement from indirect evidence in most civil conspiracy cases. The circumstances of the wrongdoing generally dictate what evidence is relevant or available in deciding whether an agreement exists. Factors like the relationship between the parties' acts, the time and place of their execution, and the duration of the joint activity influence the determination. In this case, Hamilton and Welch did not commit burglaries together but their activities were symbiotic.

Id. (emphasis added). In this case, the convicted terrorist, Khalid Ibrahim, being the sole surviving terrorist of the Rome Airport Attack and Mustafa Badra, the surviving terrorist of the Vienna Airport Attack, has each admitted under oath his involvement with the ANO, that each was trained in an ANO training camp in the Syrian-controlled Baaka Valley, that Ibrahim was dispatched to Rome and instructed to commit the shooting attack at the Rome Fiumicino airport and that Badra was dispatched to Vienna to commit the booth attack at the Vienna airport. These were coordinated attacks that occurred by plan, scheme and design, at 9:00am local time on the same day – December 27, 1985. The Court, having also received the testimony of former US government officials Colonel Patrick Lang (ret.) of the Defense Intelligence Agency, Ambassador Robert Oakley and Dr. David Long formerly of the State Department, and others, including Professor Marius Deeb and Dr. Yoram Schweitzer, concludes that the undisputed facts establish the existence of an actual agreement between Syria and the ANO to commit acts of international terrorism, including that they actually committed the Rome and Vienna Airport Attacks. Further, the Court infers an agreement to engage in a campaign of terrorism designed to destabilize the peace process, which was overtly implemented

through the terrorist attacks against innocent civilians from certain countries supporting the peace process, including Egypt, the United States and Israel.

As Hamilton in Halberstam acted as a logistical support hub for Welch—as his accountant and money launderer—Syria acted as a logistical support hub for the ANO by providing safe haven for training, logistics, weapons and the enabling of travel for the operations of numerous important ANO operatives and facilitating safe passage through absolutely critical transit points for the movement of terrorists. The duration of joint activity, from at least 1983 to 1987, further establishes the existence of a long term, active and violent conspiracy to engage in acts of international terrorism, and the actual commitment by Syria and the ANO of the Rome and Vienna Airport Attacks, and the killing and maiming of the Plaintiffs as part of the agreement between the Syrian Defendants and ANO to engage in violent, brutal, notorious terrorist attacks to kill and injure American citizens and others in a blatant attempt to violently destabilize the peace process through visible attacks on Egypt, the US, Israel and their western allies.

Considering the same evidence as in Buonocore, this Court found in Baker, that Syria, through its officials acting in their official capacity, provided funding, training, safe haven, access, and a variety of other material support to the ANO. Baker v. Socialist People's Libyan Arab Jamahiriya, 2011 U.S. Dist. LEXIS 33586 (D.D.C. Mar. 30, 2011). As such, the court found that the elements of a civil conspiracy between Syria and the ANO are therefore satisfied. Id. at 68. Further, the court found that both before and after the November-December 1985 time period during which the Rome and Vienna Airport Attacks occurred, Syria provided logistical support to the ANO including, but not limited to, permitting the ANO to maintain offices and safe houses in Syria, maintaining training

camps in Syria-controlled territory including the Baaka Valley in Lebanon, and providing identification and travel documents to ANO operatives. Id. at 24. Syria participated in the planning, including the timing and the methodologies, and the operations involved in the Rome and Vienna Airport Attacks. Id. at 25. The Syrian government, both directly and acting through Syrian Air Force Intelligence, provided support to the ANO organization, and specifically sponsored the Rome and Vienna Airport Attacks. Id. at 25. The Rome and Vienna Airport Attacks could not have taken place without Syria's direct support for the ANO. Id. at 26. The ANO was materially and substantially supported in its terrorist activities by the Syrian defendants beginning in 1981-1983, and continuing through and including the December 1985 Rome and Vienna Airport Attacks. Id. at 26. During the period encompassing the Rome and Vienna Airport Attacks of December, 1985, Syria remained one of the primary state sponsors of terrorism. Id. at 27. During the relevant period surrounding the Rome and Vienna Airport Attacks, President Hafiz al-Assad ruled Syria under an authoritarian government, whereby all organs of the state were directly under his control. Id. at 28. The Syrian Defendant's are liable to the Plaintiffs, and each of them, for the acts of international terrorism committed against the Plaintiff's.

### C. PLAINTIFFS ARE ENTITLED TO DAMAGES UNDER 28 U.S.C. § 1605A(c)

Plaintiffs have proven Defendants' liability under 28 U.S.C. § 1605A(c), which makes the following damages available under the federal cause action: economic damages, solatium, pain and suffering and punitive damages, as suffered by the Plaintiff victims and their families.

#### 1. ECONOMIC DAMAGES

As to economic damages to the Estates of Don Maland, John Buonocore III, Fred Gage, and Natasha Simpson resulting from the tortuous conduct of Defendants, evidence of the victims' lost earning capacity was presented by Dr. James Markham, an economist who was accepted by the Court as an expert in the field of forensic economics.

The testimony of Dr. James Markham reviewed the methodology of calculation of economic loss, which the Court should find to be competent, admissible, probative, reliable and a proper basis for the damage awards proposed herein for the Court's consideration in keeping with the proof introduced at trial.

The Court, having received the evidence and testimony of the Plaintiff victims, and having considered the testimony of Dr. James Markham, hereby finds as follows:

(i) that the Estate of Don Maland is entitled to receive compensatory damages for the total amount of economic loss damages sustained as a result of the murder of Don Maland, and accordingly does hereby award damages to said Estate against the Syrian Defendants, jointly and severally, in the amount of $_____; and an award of prejudgment interest from December 27, 1985 to date of Judgment; and interest thereon at the legal rate from date of Judgment until paid in full; and

(ii) that the Estate of John Buonocore III is entitled to an award of compensatory damages for the total amount of economic loss damages sustained by John Buonocore III, and accordingly does hereby award damages to the Estate John Buonocore III against the Defendants, jointly and severally, in the amount of $_____; and an award of prejudgment interest from December 27, 1985 to date of Judgment; and interest thereon at the legal rate from date of Judgment until paid in full; and

(iii) that the Estate of Frederick Gage is entitled to an award of compensatory damages for the total amount of economic loss damages sustained by Frederick Gage, and accordingly does hereby award damages to the Estate of Frederick Gage against the Defendants, jointly and severally, in the amount of $_____ and an award of prejudgment interest from December 27, 1985 to date of Judgment; and interest thereon at the legal rate from date of Judgment until paid in full.

(iv) that the Estate of Natasha Simpson is entitled to an award of compensatory damages for the total amount of economic loss damages sustained by Natasha Simpson, and accordingly does hereby award damages to the Estate of Natasha Simpson against the Defendants, jointly and severally, in the amount of $_____ and an award of prejudgment interest from December 27, 1985 to date of Judgment; and interest thereon at the legal rate from date of Judgment until paid in full.

2. PAIN AND SUFFERING;

In determining the appropriate amount of compensatory damages in an action under the terrorism exception to the Foreign Sovereign Immunities Act (FSIA), the Court may look to prior decisions awarding damages for pain and suffering, and to those awarding damages for solatium. See Acosta v. Islamic Republic of Iran, 574 F. Supp. 2d 15 (D.D.C. 2008).

In this Court's decision in a recent case brought against Syria under 28 U.S.C. § 1605A, Baker, 580 F. Supp. 2d 53, 74 (D.D.C. 2008), this Court held that compensatory damages for pain and suffering was $50,000,000.00 to each plaintiff given the horrific nature in which each individual was murdered by Syrian sponsored terrorists. The fear of watching and experiencing a terrorist attack inside the Rome Fiumicino Airport, was

equally horrific in this instance. Family members became separated, individuals were forced to lie on the floor in agony as they waited for help to arrive, not knowing when or if the attack would ever end.

The Court heard extensive testimony on the pain and suffering resulting from the acts above described. The Court received direct testimony from surviving American victims of the Rome Airport Attack, Specifically, the surviving American national victims who testified in person, through declaration/affidavit or by other means at trial were Mark Maland, Victor Simpson, Michael Simpson, Jeanette Sweis, Juliet Sweis, Sayel Sweis, Salvatore Ferrigno and Francesco Zerilli. These victims, described not only their own horrific ordeal, their pain, their suffering, their anguish and the permanent physical injuries which they suffered solatium damages as a result of the Rome Airport Attack but also serve as living witnesses to the ordeal suffered by those who died as a result of the attack and those who suffered solatium damages as a result of the Rome Airport Attack.

i. Don Maland

Don Maland was present, fully conscious and suffered as the events described *supra* unfolded in the Rome Airport Attack. Don suffered a gunshot wound to his skull, but remained conscious and coherent after the attack ended. (M. Maland, T-22A-54). While lying in a pool of blood, his older brother Mark used a handkerchief to try to staunch the profuse bleeding from Don's head. (M. Maland, T-22A-54, Ex. 6). Mark and Don continued to talk and pray together on the floor of the airport concourse until Don was taken by ambulance to San Giovanni Hospital. (M. Maland, T-22A-54-57). Don continued to speak coherently even at the hospital, but eventually died on the

operating table as a result of the injuries suffered in the Rome Airport Attack. (Ex. 15; T. Maland, T-22B-48).

From this testimony and documentary evidence, and other evidence presented to the Court, the Court finds that Don Maland suffered intensely in the Rome Airport Attack. Further, the Court finds that Don Maland's death was caused by the wounds and related injuries that he sustained in the attack. As such, this Court hereby makes the following compensatory damage award for the pain and suffering and wrongful death of Don Maland in the amount of $ _____.

ii. Mark Maland

Mark Maland was present, fully conscious and suffered as the events described *supra* unfolded in the Rome Airport Attack. When the terrorist attack began, Mark and his younger brother, Don, instinctively fell to the floor next to the TWA counter. (M. Maland, T-22A-52). While noise and commotion was going on, Mark and Don were lying head to foot. (M. Maland, T-22A-53). Mark was hit by a bullet in the right leg during the attack, and once the gunfire stopped he looked over to see a pool of blood in front of Don's head. M. Maland, T-22A-54). Although Don was still speaking coherently, Mark touched Don's head and felt a crease, the depth of a finger, where a bullet had hit him. (M. Maland, T-22A-54). Mark took out his handkerchief and held it against Don's head in an attempt to staunch the bleeding while the brothers prayed together. (M. Maland, T-22A-54; Ex. 6). Not long after, Don was taken away by ambulance, and Mark never saw his brother alive again as Don Maland died at the hospital as a result of the Rome Airport Attack. (M. Maland, T-22A-57).

In addition to multiple gunshot and shrapnel wounds, Mark had an exposed fracture on his right leg. (M. Maland, T-22A-62; Ex. 3A). Although he was previously a long distance runner, as a result of the injury, he was never able to run again. (M. Maland, T-22A-69). The injury has also limited the distance that he is able to walk as well as causing the leg to stiffen up anytime he drives a car or must keep the leg in one position for more than 20 minutes. (M. Maland, T-22A-74-75).

As a result of the terrorist attack and the his witnessing Don's murder, Mark also developed pain in his back of his head and neck and was diagnosed with anxiety and acute depression. (M. Maland, T-22A-68; Ex. 3B). Mark became paranoid and locked all the doors in his house, believing that at anytime the terrorists could come "to finish the job" they had started in Rome. (M. Maland, T-22A-69). For a year or two afterwards, Mark attended grief counseling, but still today, there is a fear of crowds, a sadness that does not go away and constant thought about where Don would be today if the attacks had never happened. (M. Maland, T-22A-72; T. Maland T-22B-47-48).

From this testimony and documentary evidence, and other evidence presented to the Court, the Court finds that Mark Maland suffered intensely and minute-by-minute throughout the Rome Airport Attack and during his hospitalization and its long aftermath. Mark Maland witnessed the murder of his younger brother, Don and suffered the loss of his brother, entitling him to solatium damages. Furthermore, Mark Maland suffered permanent physical disability in his right leg due to the attack. As such, this Court hereby makes the following compensatory damage award for the pain and suffering of Mark Maland in the amount of $_____.

iii. Natasha Simpson