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Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,	)	No.
)	
Plaintiff,	)	<u>COUNT ONE:</u>
	)	Conspiracy
vs.	)	Vio. of 18 U.S.C. § 371
)	
KEVIN MAHLER,	)	<u>COUNT TWO:</u>
	)	Kickbacks
Defendant.	)	Vio. of 41 U.S.C. § 8702
)	
	)	<u>COUNT THREE:</u>
	)	Kickbacks
	)	Vio. of 41 U.S.C. § 8702
)	
	)	<u>COUNT FOUR:</u>
	)	Kickbacks
	)	Vio. of 41 U.S.C. § 8702
)	
	)	<u>COUNT FIVE:</u>
	)	Kickbacks
	)	Vio. of 41 U.S.C. § 8702
)	
	)	<u>COUNT SIX:</u>
	)	False Tax Return
	)	Vio. of 26 U.S.C. § 7206(1)

INFORMATION

The United States charges that:

BACKGROUND

1. Fort Wainwright is a United States Army facility located in Fairbanks, Alaska. Between 2016 and 2021, the United States Army awarded contracts to various prime contractors for construction services and maintenance at Fort Wainwright.

2. Beginning no later than March 2016 and continuing through at least March 2021 (“the relevant period”), defendant KEVIN MAHLER was an employee of COMPANIES B and C, both of which were prime contractors providing construction services at Fort Wainwright.

3. During the relevant period, Benjamin McCulloch owned COMPANY A, a subcontractor providing flooring construction services to COMPANY B and COMPANY C at Fort Wainwright.

COUNT ONE

(Conspiracy to Accept Kickbacks in violation of 18 U.S.C. § 371)

The Conspiracy and its Objects

4. Beginning at least as early as March 2016, and continuing through and around March 2021, in the District of Alaska and elsewhere, MAHLER, Benjamin McCulloch, and others known and unknown, did unlawfully, willfully, and knowingly combine, conspire, and agree together and with each other to commit an offense against the United States, namely, to accept kickbacks in violation of 41 U.S.C. § 8702, specifically, by MAHLER knowingly and willfully accepting kickbacks—that is, money, fees, commissions, credits, gifts, gratuities, things of value, and compensation—directly and indirectly from Benjamin McCulloch, for the purpose of

improperly obtaining and rewarding favorable treatment in connection with subcontracts relating to prime contracts for construction services at Fort Wainwright.

Manner and Means of the Conspiracy

5. The manner and means of the conspiracy were as follows:

a. Beginning in or around March 2016, Benjamin McCulloch submitted flooring construction proposals for projects at Fort Wainwright to MAHLER and engaged in communications and attended meetings with MAHLER. In the course of these interactions, MAHLER requested that Benjamin McCulloch inflate the prices COMPANY A charged COMPANY B and COMPANY C for flooring construction services at Fort Wainwright. Benjamin McCulloch agreed in the course of these interactions to pay approximately half of the inflated amount to MAHLER as kickbacks.

b. MAHLER solicited specific kickbacks related to particular subcontracts by inflating the price contained in Benjamin McCulloch's proposals and requesting that Benjamin McCulloch re-submit proposals with inflated prices to COMPANIES B and C. Benjamin McCulloch then re-submitted the inflated proposals.

c. MAHLER then caused COMPANIES B and C to award flooring subcontracts to Benjamin McCulloch and COMPANY A at the inflated price. Benjamin McCulloch then provided kickbacks in the form of cash and goods to MAHLER, equal to approximately half of the inflated amount.

Overt Acts

6. In furtherance of the conspiracy and to effect its objects, the following overt acts, among others, were committed in the District of Alaska and elsewhere:

a. Beginning on or around March 13, 2017, in a continuing course of conduct, MAHLER accepted at least \$47,563.22 in kickbacks from Benjamin McCulloch for the purpose of improperly obtaining and rewarding favorable treatment in connection with a subcontract relating to a prime contract for construction services at Building 1053 located on Fort Wainwright. Among the kickbacks MAHLER accepted from Benjamin McCulloch was a 2017 Ford Explorer worth at least \$45,164.00.

b. Beginning on or around September 20, 2018, and continuing through at least December 2, 2019, MAHLER accepted at least \$32,021.87 in kickbacks from Benjamin McCulloch for the purpose of improperly obtaining and rewarding favorable treatment in connection with a subcontract relating to a prime contract for construction services at Building 3416, located on Fort Wainwright. The kickbacks MAHLER accepted from Benjamin McCulloch included, among other things, Apple watches, TVs, a camera, a camera lens, binoculars, workout equipment, and cash payments.

c. Beginning on or around January 29, 2020, and continuing through at least April 30, 2020, MAHLER accepted at least \$1,816.98 in kickbacks from Benjamin McCulloch for the purpose of improperly obtaining and rewarding favorable treatment in connection with a subcontract relating to a prime contract for construction services at a Popeyes-Taco Bell restaurant, located on Fort Wainwright.

d. Beginning in or around July 2020, in a continuing course of conduct, MAHLER accepted at least \$20,000 in kickbacks from Benjamin McCulloch for the purpose of improperly obtaining and rewarding favorable treatment in connection with a subcontract relating to a prime contract for construction services at Hangar 1, located on

Fort Wainwright. Among the kickbacks MAHLER accepted from Benjamin McCulloch were cash payments and a side-by-side all-terrain vehicle worth approximately \$16,499. All in violation of Title 18, United States Code, Section 371 and Title 41, United States Code, Section 8702.

COUNT 2

(Accepted Kickbacks in violation of 41 U.S.C. § 8702—Building 1053)

7. The allegations set forth in Count 1 are incorporated herein by reference.
8. Beginning in or around March 13, 2017, in a continuing course of conduct, in the District of Alaska and elsewhere, MAHLER knowingly and willfully accepted at least \$47,563.22 in kickbacks—that is, money, fees, commissions, credits, gifts, gratuities, things of value, and compensation—directly and indirectly from Benjamin McCulloch, as a sub-contractor employee, for the purpose of improperly obtaining and rewarding favorable treatment in connection with a subcontract relating to a prime contract for construction services at Building 1053 in Fort Wainwright. Among the kickbacks MAHLER accepted from Benjamin McCulloch was a 2017 Ford Explorer worth at least \$45,164.00.

All in violation of Title 41, United States Code, Section 8702.

COUNT 3

(Accepting Kickbacks in violation of 41 U.S.C. § 8702—Building 3416)

9. The allegations set forth in Count 1 are incorporated herein by reference.
10. Beginning on or around September 20, 2018, and continuing through at least December 2, 2019, in the District of Alaska and elsewhere, MAHLER knowingly and willfully accepted at least \$32,021.87 in kickbacks from Benjamin McCulloch, as a subcontractor employee, for the purpose of improperly obtaining and rewarding favorable treatment in

connection with a subcontract relating to a prime contract for construction services at Building 3416, located on Fort Wainwright. The kickbacks MAHLER accepted from Benjamin McCulloch included, among other things, Apple watches, TVs, a camera, a camera lens, binoculars, workout equipment, and cash payments.

All in violation of Title 41, United States Code, Section 8702.

COUNT 4

(Accepting Kickbacks in violation of 41 U.S.C. § 8702—Popeyes-Taco Bell)

11. The allegations set forth in Count 1 are incorporated herein by reference.

12. Beginning on or around January 29, 2020, and continuing through at least April 30, 2020, in the District of Alaska and elsewhere, MAHLER knowingly and willfully accepted at least \$1,816.98 in kickbacks from Benjamin McCulloch, as a subcontractor employee, for the purpose of improperly obtaining and rewarding favorable treatment in connection with a subcontract relating to a prime contract for construction services at a Popeyes-Taco Bell restaurant, located on Fort Wainwright.

All in violation of Title 41, United States Code, Section 8702.

COUNT 5

(Accepting Kickbacks in violation of 41 U.S.C. § 8702—Hangar 1)

13. The allegations set forth in Count 1 are incorporated herein by reference.

14. Beginning in or around July 2020, in a continuing course of conduct, in the District of Alaska and elsewhere, MAHLER knowingly and willfully accepted at least \$20,000 in kickbacks from Benjamin McCulloch, as a subcontractor employee, for the purpose of improperly obtaining and rewarding favorable treatment in connection with a subcontract relating to a prime contract for construction services at Hangar 1, located on Fort Wainwright. Among the kickbacks

MAHLER accepted from Benjamin McCulloch were cash payments and a side-by-side all-terrain vehicle worth approximately \$16,499.

All in violation of Title 41, United States Code, Section 8702.

COUNT SIX

(Making and Subscribing a False Tax Return)

15. The allegations set forth in Count 1 are incorporated herein by reference.

16. The kickbacks MAHLER accepted from Benjamin McCulloch were taxable income. MAHLER did not report this income on his Form 1040 individual tax returns for the years 2017 – 2020. For each of these years, MAHLER willfully made and subscribed a tax return under penalty of perjury that he did not believe to be true and correct as to every material matter.

17. For example, on or about April 18, 2018, in the District of Alaska, MAHLER willfully made and subscribed a Form 1040 tax return for the tax year 2017, which was verified by a written declaration that it was made under the penalties of perjury, and which MAHLER did not believe to be true and correct as to every material fact. Specifically, MAHLER did not include the \$47,563 he accepted as kickbacks from Benjamin McCulloch in 2017. The defendant's failure to accurately report his income resulted in an underpayment of taxes of \$12,348.00 for tax year 2017.

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All in violation of Title 26, United States Code, Section 7206(1) and Title 18, United States Code, Section 2.

U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION, By



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DATE: 1/29/2024