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2 NATHANAEL M. COUSINS (CA State Bar No. 177944)
3 DAVID J. WARD (CA State Bar No. 239504)
4 Antitrust Division
5 United States Department of Justice

FILED

DEC - 4 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

PJH

10
11 UNITED STATES OF AMERICA,

No.

12 Plaintiff,

VIOLATIONS: 18 U.S.C. § 1343
- Wire Fraud; 18 U.S.C. § 371 -
Conspiracy; 18 U.S.C. § 1956(a) -
Money Laundering; 18 U.S.C.
§ 982(a)(1) - Forfeiture

13 v.

14 MENDEL BEKER, a.k.a.
15 Mikhail Lvovich, a.k.a. Michael Beker,
16 ARIE PRILIK and
NEWCON INTERNATIONAL LTD.

17 Defendants.

SAN FRANCISCO VENUE

18
19 INDICTMENT

20 The Grand Jury charges:

21 BACKGROUND

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23 At all times relevant to this Indictment:

24 1. Night vision goggles are specially constructed binoculars that allow the user
25 to see objects and surroundings in the dark without additional illumination. The quality of
26 night vision goggles is graded by generations (known as "Gen"), and include Gen I and
27 Gen II night vision goggles. Gen II goggles contain more sophisticated technology than
28 Gen I goggles.

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1 did knowingly and intentionally devise and intended to devise, a scheme and artifice to
2 defraud TACOM as to a material matter, to obtain money and property by means of
3 materially false or misleading pretenses, representations, omissions, and promises, related
4 to TACOM's purchase of night vision goggles under the Battalion Set II contract.

5 9. After failing to disrupt ATN's contract to supply night vision goggles under
6 the Battalion Set II contract, BEKER, PRILIK, and NEWCON devised a scheme to
7 unlawfully enrich themselves by paying ATN to stop supplying night vision goggles under
8 the Battalion Set II contract using false or misleading pretenses, at which point NEWCON
9 would supply the night vision goggles at inflated prices.

10 10. It was part of the scheme and artifice to defraud that BEKER, PRILIK and
11 NEWCON participated in or did the following, among other things:

- 12 a. BEKER contacted an ATN representative and offered to pay ATN to stop
13 supplying night vision goggles under the Battalion Set II contract;
- 14 b. BEKER instructed the ATN representative to create an invoice billing
15 NEWCON \$50,000 and to falsely describe the \$50,000 as a "loan," thereby
16 concealing the true purpose of the \$50,000 -- as an initial payment to
17 induce ATN to stop supplying night vision goggles under the Battalion Set
18 II contract;
- 19 c. BEKER caused \$50,000 to be transferred via wire from a bank account
20 controlled by NEWCON to a bank account controlled by ATN for the
21 purpose of paying ATN to stop supplying night vision goggles under the
22 Battalion Set II contract;
- 23 d. PRILIK told a TACOM contracting official that ATN could no longer
24 supply night vision goggles due to production, export and quality problems.
25 PRILIK's statements included false or misleading pretenses. PRILIK then
26 informed the TACOM official that NEWCON could supply the night vision
27 goggles, but at a substantially higher price.

THE USE OF THE WIRES

11. On or about the dates listed below, in the Northern District of California and elsewhere, for the purpose of executing the aforementioned scheme and artifice to defraud, and attempting to do so, defendants:

MENDEL BEKER,
ARIE PRILIK and
NEWCON

knowingly transmitted and caused to be transmitted, in interstate and foreign commerce, wire communications as set forth below:

<u>Count</u>	<u>Date</u>	<u>Route of Wire</u>	<u>Description</u>
ONE	Sept. 7, 2005	Toronto, Canada to San Mateo, California	\$50,000 wire transfer from Bank of Nova Scotia (Acct#: held by Newcon Optik) to Union Bank of California (Acct#: held by American Technologies Network Corp.)
TWO	Sept. 20, 2005	Toronto, Canada to South San Francisco, California	Telephone call from PRILIK to ATN Representative

All in violation of Title 18, United States Code, Section 1343.

COUNT THREE: 18 U.S.C. § 371 (Conspiracy to Commit Wire Fraud)

12. Paragraphs 1 through 6 and paragraphs 8 through 11 are realleged as if fully set forth here.

13. Beginning in or about August 2005 and continuing until on or about February 7, 2006, both dates being approximate and inclusive, in the Northern District of California and elsewhere, the defendants:

MENDEL BEKER,
ARIE PRILIK and
NEWCON

did knowingly and intentionally conspire and agree to commit wire fraud, in violation of Title 18, United States Code, Section 371.

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OVERT ACTS

14. As part of the conspiracy, and to carry out its objectives, BEKER and PRILIK, as agents of NEWCON and while they were actively engaged in the management, direction, control or transaction of NEWCON's business affairs, committed or caused to be committed the following overt acts, among others, in the Northern District of California and elsewhere:

- a. On or about August 26, 2005, PRILIK spoke by telephone to an ATN representative, proposing that ATN and NEWCON coordinate the price at which they would offer to sell night vision goggles under the TACOM contract. PRILIK described this as "an illegal antitrust."
- b. On or about September 1, 2005, BEKER spoke by telephone to an ATN representative and proposed to compensate ATN in return for ATN's agreement to stop supplying night vision goggles under the Battalion Set II contract.
- c. On or about September 7, 2005, BEKER ordered the wire transfer of \$50,000 from a bank account controlled by NEWCON at the Bank of Nova Scotia to a bank account controlled by ATN at the Union Bank of California, the first installment in NEWCON's payments to ATN in return for ATN's agreement to stop supplying night vision goggles under the Battalion Set II contract.
- d. On or about September 20, 2005, PRILIK spoke by telephone to an ATN representative and, among other things, pressed him to sign an agreement containing the false or misleading pretenses under which ATN would stop supplying night vision goggles under the Battalion Set II contract.

All in violation of Title 18, United States Code, Section 371.

COUNT FOUR: (18 U.S.C. 1956(a) - Money Laundering)

15. Paragraphs 1 through 6 and 8 through 11, are realleged as if fully set forth here.

1 16. On or about September 7, 2005, within the Northern District of California
2 and elsewhere, the defendants:

3 MENDEL BEKER and
4 NEWCON

5 did transport, transmit or transfer, or cause to be transported, transmitted or transferred, or
6 did attempt to transport, transmit or transfer, a monetary instrument or funds from a place
7 outside the United States to a place in the United States, with the intent to promote the
8 carrying on of specified unlawful activity, namely Wire Fraud as alleged in Counts One
9 and Two herein, by transferring \$50,000 from a bank account controlled by NEWCON at
10 the Bank of Nova Scotia in Toronto, Canada, to a bank account controlled by ATN at the
11 Union Bank of California in the Northern District of California, in violation of Title 18,
12 United States Code, Section 1956(a)(2)(A).

13 FORFEITURE ALLEGATION: (18 U.S.C. § 982(a)(1))

14 17. Paragraphs 1 through 6, 8 through 11, and paragraph 16 are hereby re-
15 alleged as if fully set forth here, for the purpose of alleging forfeiture pursuant to the
16 provisions of Title 18, United States Code, Section 982(a)(1).

17 18. Upon conviction of the offense alleged in Count Four of this Indictment, the
18 defendants:

19 MENDEL BEKER and
20 NEWCON

21 shall forfeit to the United States pursuant to Title 18, United States Code, Section
22 982(a)(1), all right, title and interest in property, real or personal, involved in said
23 violation, or any property traceable to such property, including but not limited to:

- 24 a. all property used in any manner to commit or facilitate the
25 commission of said offenses, including but not limited to \$50,000
26 transferred from a NEWCON bank account at the Bank of Nova
27 Scotia to an ATN bank account at the Union Bank of California.

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b. a sum of money equal to the total amount of money involved in the commission of said offenses.

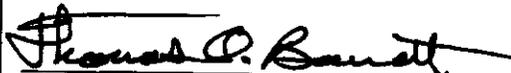
19. If, as a result of any act or omission of the defendants, any of said property

- a. cannot be located upon the exercise of due diligence,
- b. has been transferred or sold to or deposited with a third person,
- c. has been placed beyond the jurisdiction of the Court,
- d. has been substantially diminished in value, or
- e. has been commingled with other property that cannot be divided without difficulty,

any and all interest the defendants have in any other property, up to the value of the property described in paragraph 18 above, shall be forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).

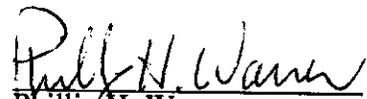
DATED:

A TRUE BILL

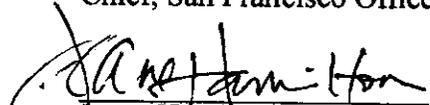

Thomas O. Barnett
Assistant Attorney General

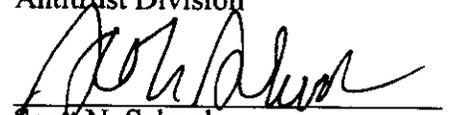
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