

FILED

MAY 23 2008

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

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11 Attorneys for the United States

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA,)
16 Plaintiff,)
17 v.)
18 MENDEL BEKER, a.k.a.)
19 Mikhail Lvovich, a.k.a. Michael Beker,)
20 ARIE PRILIK and)
21 NEWCON INTERNATIONAL LTD.)
22 Defendants.)

No. CR 07-0765 PJH
UNITED STATES' MOTION TO
REDACT PORTIONS OF THE
INDICTMENT, SIGN A CORRECTED
ARREST WARRANT AND
UNSEAL U.S. v. MENDEL BEKER, et al

23 The United States respectfully requests that the Court take the following actions:

- 24 1) Order the redaction of all bank account numbers in the Indictment that is made available to the
25 public in the Court Clerk's Office. The United States further requests, however, that the original,
26 unredacted, version of the Indictment remain available to law enforcement, Antitrust Division
27 attorneys and other Division personnel and Court personnel when necessary to perform their
28 official duties.
- 2) Sign a corrected arrest warrant for defendant Arie Prilik. The original warrant, signed by
Magistrate Judge Elizabeth LaPorte on December 4, 2007, incorrectly stated that the Indictment
voted out against Prilik on December 4, 2007, charged Prilik with money laundering in violation

1 of 18 U.S.C. § 1956(a).

2 3) Unseal the criminal case United States of America v. Mendel Beker, a.k.a. Mikhail Lvovich,
3 a.k.a., Michael Beker, Arie Prilik and Newcon International Ltd. (CR 07-0765 PJH).

4 The undersigned represent that unsealing these documents in this manner and making the
5 requested modifications will compromise no law enforcement interest. Attached are a proposed
6 Order, a copy of the Indictment with the requested redactions and the corrected arrest warrant for
7 defendant Arie Prilik.

8 Respectfully Submitted,

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10 Dated: 5/14/08

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12 JEANE HAMILTON
13 Trial Attorney
14 Antitrust Division
15 U.S. Department of Justice
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL BEKER, a.k.a.
Mikhail Lvovich, a.k.a. Mendel Beker,
ARIE PRILIK and
NEWCON INTERNATIONAL LTD.

Defendants.

No. CR 07-0765 PJH

[PROPOSED] ORDER TO REDACT
PORTIONS OF THE INDICTMENT AND
UNSEAL U.S. v. MENDEL BEKER, et al

Based upon the motion of the government and for good cause shown, IT IS HEREBY
ORDERED:

- 1) That all bank account numbers be redacted from the Indictment that is made available to the public in the Court Clerk’s Office, as shown in the attached Indictment; and
- 2) The criminal case United States of America v. Mendel Beker, a.k.a. Mikhail Lvovich, a.k.a., Michael Beker, Arie Prilik and Newcon International Ltd. (CR 07-0765 PJH) be unsealed.

DATED: _____

Honorable Phyllis J. Hamilton
United States District Court Judge

1 JEANE HAMILTON (CA State Bar No. 157834)
NATHANAEL M. COUSINS (CA State Bar No. 177944)
2 DAVID J. WARD (CA State Bar No. 239504)
Antitrust Division
3 United States Department of Justice

FILED

DEC - 4 2007

4
5 **SEALED**
6 **BY COURT ORDER**

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

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

PJH

10
11 UNITED STATES OF AMERICA,

CR 07 No.

-0765

12 Plaintiff,

13 v.

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

17 Defendants.

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

SAN FRANCISCO VENUE

18
19 INDICTMENT

20 The Grand Jury charges:

21 BACKGROUND

22
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.

1 2. Defendant NEWCON INTERNATIONAL LTD. ("NEWCON"), also
2 known as Newcon Optik, was a privately held company based in Toronto, Canada.
3 NEWCON sells night vision goggles. Whenever in this Indictment reference is made to
4 any act, deed, or transaction of NEWCON, the allegation means that NEWCON engaged
5 in the act, deed, or transaction by or through its officers, directors, employees, agents, or
6 other representatives while they were actively engaged in the management, direction,
7 control, or transaction of NEWCON'S business or affairs.

8 3. Defendant MENDEL BEKER, a resident of Toronto, Canada, was president
9 and chief executive of NEWCON.

10 4. Defendant ARIE PRILIK, a resident of Toronto, Canada, was a vice president
11 at NEWCON and reported to BEKER.

12 5. On or about February 14, 2005, the U.S. Army's Tank-Automotive and
13 Armaments Command ("TACOM"), the military unit tasked with equipping and training
14 the Iraqi Army, awarded a contract valued at approximately \$250 million to International
15 Trade Establishment ("ITE"), a civilian military supplier based in Amman, Jordan.
16 Known as the Battalion Set II contract, the contract required ITE to supply the Iraqi Armed
17 Forces with weapons, communications equipment and Gen II night vision goggles.

18 6. On or about March 12, 2005, ITE awarded the night vision goggles portion of
19 the Battalion Set II contract to American Technologies Network, Inc. ("ATN"), a South
20 San Francisco-based corporation.

21 COUNTS ONE AND TWO: (18 U.S.C. § 1343 - Wire Fraud)

22 7. Paragraphs 1 through 6 are realleged as if fully set forth here.

23 THE SCHEME TO DEFRAUD

24 8. Beginning in or about August 2005 and continuing until on or about February
25 7, 2006, both dates being approximate and inclusive, in the Northern District of California
26 and elsewhere, the defendants:

27 MENDEL BEKER,
28 ARIE PRILIK and
 NEWCON

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.

//

1 OVERT ACTS

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

- 7 a. On or about August 26, 2005, PRILIK spoke by telephone to an ATN
8 representative, proposing that ATN and NEWCON coordinate the price at
9 which they would offer to sell night vision goggles under the TACOM
10 contract. PRILIK described this as "an illegal antitrust."
11 b. On or about September 1, 2005, BEKER spoke by telephone to an ATN
12 representative and proposed to compensate ATN in return for ATN's
13 agreement to stop supplying night vision goggles under the Battalion Set II
14 contract.
15 c. On or about September 7, 2005, BEKER ordered the wire transfer of
16 \$50,000 from a bank account controlled by NEWCON at the Bank of Nova
17 Scotia to a bank account controlled by ATN at the Union Bank of
18 California, the first installment in NEWCON's payments to ATN in return
19 for ATN's agreement to stop supplying night vision goggles under the
20 Battalion Set II contract.
21 d. On or about September 20, 2005, PRILIK spoke by telephone to an ATN
22 representative and, among other things, pressed him to sign an agreement
23 containing the false or misleading pretenses under which ATN would stop
24 supplying night vision goggles under the Battalion Set II contract.

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

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

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

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

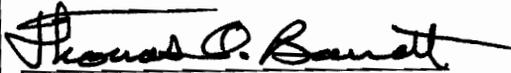
19. If, as a result of any act or omission of the defendants, any of said property

- 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,

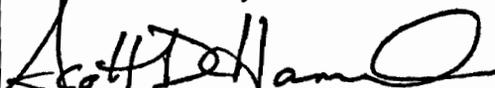
any and all interest the defendants have in any other property, up to the value of the property described in paragraph 18 above, shall be forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).

DATED:

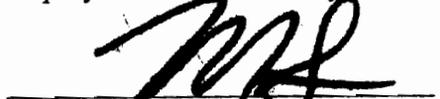
A TRUE BILL

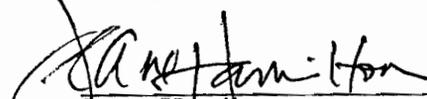

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Antitrust Division

Scott N. Schools
United States Attorney
Northern District of California

AO 442 (Rev. 08/07) Warrant for Arrest

UNITED STATES DISTRICT COURT

Northern

District of

California

UNITED STATES OF AMERICA

WARRANT FOR ARREST

V.

MENDEL BEKER, a.k.a. Mikhail Lvovich,
a.k.a. Michael Beker, ARIE PRILIK AND
NEWCON INTERNATIONAL LTD.

Case Number: CR 07-0765 PJH

To: The United States Marshal
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest Arie Prilik
Name

and bring him or her forthwith to the nearest magistrate judge to answer a(n)

- Indictment
- Information
- Complaint
- Order of court
- Pretrial Release Violation Petition
- Probation Violation Petition
- Supervised Release Violation
- Violation Notice

charging him or her with (brief description of offense)

Wire Fraud; Conspiracy to Commit Wire Fraud

in violation of Title 18 United States Code, Section(s) 1343; 371

in violation of the conditions of his or her pretrial release imposed by the court.

in violation of the conditions of his or her supervision imposed by the court.

Phyllis J. Hamilton

Name of Issuing Officer

Signature of Issuing Officer

U.S. District Court Judge

Title of Issuing Officer

Date and Location

RETURN

This warrant was received and executed with the arrest of the above-named individual at

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		