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ORDER OF THE SUPREME COURT OF TEXAS DENYING PETITION FOR REVIEW (OCTOBER 4, 2019)

SUPREME COURT OF TEXAS

UNIVERSAL TELEPHONE EXCHANGE, INC.

v.

ZTE CORPORATION AND ZTE USA, INC.

October 4, 2019, Order Pronounced

No. 19-0269

Prior History:
From Dallas County; 5th Court of Appeals District.
(05-17-00781-CV, SW3d,
2018 Tex.App. LEXIS 9436, 11-19-18 [*1]).

Notice: Decision Without Published Opinion

Petition for Review Denied.

JUDGMENT OF COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS
(NOVEMBER 19, 2018)

COURT OF APPEALS OF TEXAS
FIFTH DISTRICT, DALLAS

ZTE CORPORATION AND ZTE USA, INC.,

Appellants,

v.

UNIVERSAL TELEPHONE EXCHANGE, INC.,

Appellee.

No. 05-17-00781-CV

On Appeal from the
44th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-10-07052

Before: EVANS, MYERS and BROWN, Justices

In accordance with this Court's opinion of this date, the order of the trial court vacating the arbitrator's award is REVERSED and judgment is RENDERED that the arbitrator's final award entered in ICDR Case No. 50-20-1200-0342 on or about February 16, 2017 be, and hereby is, CONFIRMED.

It is ORDERED that appellants ZTE Corporation and ZTE USA, Inc. recover their costs of this appeal from appellee Universal Telephone Exchange, Inc.

Judgment entered this 19th day of November, 2018.

MEMORANDUM OPINION OF THE COURT OF APPEALS FIFTH DISTRICT OF TEXAS AT DALLAS (NOVEMBER 19, 2018)

COURT OF APPEALS OF TEXAS
FIFTH DISTRICT, DALLAS

ZTE CORPORATION AND ZTE USA, INC.,

Appellant,

v.

UNIVERSAL TELEPHONE EXCHANGE, INC.,

Appellee.

No. 05-17-00781-CV

On Appeal from the
44th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-10-07052

Before: EVANS, MYERS and BROWN, Justices

Opinion by Justice Evans

This is an appeal from the trial court's order vacating an arbitration award in favor of ZTE Corporation and ZTE USA, Inc. (collectively ZTE) on claims brought against them by Universal Telephone Exchange, Inc. (UTE). In five issues, ZTE generally asserts the trial court erred in vacating the award and instead should have granted ZTE's motion to

confirm. We agree that none of the grounds raised by UTE support vacation of the arbitration award. Accordingly, we reverse the trial court's order and render judgment confirming the arbitrator's final award.

BACKGROUND

This dispute arises out of UTE's efforts to obtain a contract to install and integrate a comprehensive and modern telecommunications system throughout the country of Liberia after the country's civil war ended in 2003. The peace agreement ending the war established a transitional government that, among other things, sought to modernize Liberia's telecommunication services. The full record of the arbitration proceeding is not before us and it was not before the trial court. The following facts are largely from the arbitrator's final award and undisputed facts in appellant's brief.[1]

After the civil war ended, UTE began negotiating with Liberia's national telecommunications company, the Liberian Telecommunications Corporation (LTC), with respect to the project.[2] In furtherance of UTE's efforts, UTE executed a non-disclosure agreement (NDA) with ZTE USA to explore obtaining equipment and financing from ZTE USA and/or its Chinese parent

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[1] In its brief, UTE acknowledges that the background facts and history recounted in the arbitration award is basically correct. Moreover, in civil cases, we accept as true the facts stated in appellant's brief unless another party contradicts them. *See* Tex. R. App. P. 38.1(g).

[2] According to ZTE, LTC is the main telecommunications service provider in Liberia.

company, ZTE. The NDA contained an arbitration clause providing all disputes arising from or in connection with the agreement "shall be submitted to the American Arbitration Association in accordance with its rules in force at the time of application for arbitration."

Although UTE and LTC initially reached an agreement in principle to proceed as a joint venture, open competitive bids were eventually solicited for the project. Ultimately, UTE's bid was ranked first among the five qualified bids and LTC passed a resolution confirming UTE's winning bid.[3] After conducting its own investigation, however, Liberia's Contracts and Monopolies Commission (CMC)[4] recommended Liberia's president not approve the LTC/UTE contract because, among other things, UTE did not have the financial resources nor the operational capacity to execute the project. The president rejected the contract and UTE then sought relief from the Liberian legislature and the Liberian courts in an effort to obtain the necessary approval to finalize its winning bid into a contract. However, UTE never consummated a final contract with LTC. UTE sued ZTE, first in Liberia, and later in Dallas County district court, alleging ZTE's improper actions caused UTE to lose the UTE/LTC contract.

The Dallas lawsuit was filed in June 2010. UTE generally alleged ZTE interfered with its business

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[3] ZTE submitted its own competing bid for the project and was ranked fifth out of the five qualified bidders by the LTC.

[4] This commission was also established by the peace agreement and was charged with reviewing all large public financial commitments.

relationships in Liberia and had improperly used UTE's confidential information. The parties executed a Rule 11 agreement in which they agreed to arbitrate their dispute. Specifically, the Rule 11 agreement also provided the case would be submitted to the "American Arbitration Association to be arbitrated in accordance with the terms of the parties' non-disclosure agreement . . . and the rules in force at the time of the application for arbitration."

Upon receipt of the arbitration demand, the AAA referred the matter to its international division (IDCR) under the applicable International Dispute Resolution Procedures (IDR Procedures). After an arbitrator was appointed, the matter proceeded and an arbitration hearing was held. Before the arbitrator issued his final ruling, however, the parties agreed to his removal. UTE then requested the IDCR appoint a three-arbitrator panel to re-hear the case. ZTE objected and the IDCR rejected UTE's request. Raul Gonzalez, former justice of the Texas Supreme Court and UTE's first choice for arbitrator, was appointed. After a two-week hearing, the arbitrator issued his final award denying all of UTE's claims against ZTE. Among other things, the arbitrator concluded UTE's causes of action were barred by limitations, that the project was a high risk business venture, that UTE's behavior was not the "but for cause" of UTE losing the LTC contract, and adverse inferences against ZTE were not warranted because UTE failed to prove ZTE acted with intent to conceal or intentionally destroyed evidence.

ZTE moved to confirm the award in the trial court, and UTE filed a cross-motion to vacate the award, or alternatively, conduct additional discovery based on "new revelations" involving ZTE's execution of a federal

plea agreement nineteen days after the arbitrator issued the final award in this case. The plea agreement involved charges of obstruction of justice, intentional destruction and manipulation of evidence, and lying under oath to federal authorities with respect to investigations of ZTE's sale of telecommunications and security equipment to Iran and North Korea in violation of sanctions imposed against those countries. UTE based its motion to vacate on the following grounds: (1) the AAA impermissibly denied the parties' agreed arbitrator selection method; (2) the arbitrator refused to draw an adverse inference from, or refused to consider, UTE's evidence that ZTE officers, employees, and witnesses were unavailable, concealed, or were uncooperative; (3) ZTE's federal plea agreement established the arbitration award in this case was obtained by corruption, fraud, or undue means, and (4) the arbitrator exceeded his jurisdiction in ruling UTE's claims were barred by limitations. Ultimately, the trial court denied ZTE's motion to confirm and granted UTE's motion without stating a reason, vacating the arbitration award and remanding the case to the AAA. ZTE filed this appeal.

ANALYSIS

A. Standard of Review

We review a trial court's ruling confirming or vacating an arbitration award de novo based on the entire record before us. *See Cambridge Legacy Grp., Inc. v. Jain*, 407 S.W.3d 443, 447 (Tex. App.—Dallas 2013, pet. denied). An arbitration award has the same force as a judgment of a court of last resort and is presumed valid and entitled to great deference. *Id.* Thus, we indulge all reasonable presumptions to up-

hold the arbitration award and no presumptions are indulged against it. *See CVN Group, Inc. v. Delgado*, 95 S.W.3d 234, 238 (Tex. 2002). A party seeking to vacate an arbitration award bears the burden of presenting a record that establishes its grounds for vacating the award. *Statewide Remodeling, Inc. v. Williams*, 244 S.W.3d 564, 568 (Tex. App.—Dallas 2008, no pet.).

Because Texas law strongly favors arbitration, judicial review of an award is extraordinarily narrow. *See Hoskins v. Hoskins*, 497 S.W.3d 490, 494 (Tex. 2016) (quoting *E. Tex. Salt Water Disposal Co. v. Werline*, 307 S.W.3d 267, 271 (Tex. 2010)). Under both the Texas Arbitration Act (TAA) and the Federal Arbitration Act (FAA), vacatur is limited to the grounds expressly provided by statute and there are no common-law grounds for vacating an arbitration award. *See Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 584 (2008) (FAA); *Hoskins*, 497 S.W.3d at 494 (TAA). Unless the arbitration award is vacated, modified, or corrected on a ground provided in the arbitration acts, the trial court must grant a party's motion to confirm an award. *See* 9 U.S.C. § 9; Tex. Civ. Prac. & Rem. Code Ann. § 171.087 (West 2011).

B. Arbitrator Selection Rights

In its first issue, ZTE asserts the trial court could not vacate the arbitration award based on UTE's contention that it was denied its arbitrator selection rights under the parties' agreement.[5] UTE argues the

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[5] In its motion to vacate, UTE asserted the selection of a single arbitrator pursuant to IDR Procedures violated subsection 10(a)(3) of the FAA and subsection 171.088(a)(3)(D) of the TAA which generally permit vacatur of an award where arbitrators

AAA "administrative diktat" transferring this case to the ICDR unilaterally changed the arbitrator selection process and prevented UTE from having a three-arbitrator panel pursuant to the AAA Commercial Rules as the parties agreed.[6]

Arbitrators have no independent source of jurisdiction aside from the parties' consent and must be selected pursuant to parties' agreement. *See Americo Life, Inc. v. Myer*, 440 S.W.3d 18, 21 (Tex. 2014). Here, the parties' arbitration agreement was contained in the NDA UTE signed with ZTE, USA. The arbitration agreement merely provided that "disputes shall be submitted to [the] American Arbitration Association in accordance with its rules in force at the time of application for arbitration." Moreover, after UTE sued ZTE Corporation (a Chinese Company) and its United States affiliate in Dallas County district court, the parties entered into a rule 11 agreement to submit the case to the AAA in accordance with the rules in force at the time of the arbitration application. The parties also agreed that ZTE Corporation's special appearance "shall be decided by the arbitrator."

On May 9, 2012 the parties received a letter from the ICDR, a division of the AAA, stating the matter would be administered under the IDR Procedures as amended and in effect as of June 1, 2009. There is no

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engaged in misbehavior or conducted the hearing in a manner that substantially prejudiced a party's rights. *See* 9 U.S.C. § 10 (a)(3); Tex. Civ. Prac. & Rem. Code Ann. § 171.088(a)(3)(D).

[6] UTE argues that because the parties did not agree to the number of arbitrators, it was entitled to a three-member tribunal under the AAA Commercial Rules for large complex dispute involving damages in excess of $1 million.

indication that UTE objected to ICDR administration or application of the IDR Procedures. Additionally, in an August 20, 2012 letter to the parties, the ICDR administrator confirmed the parties had agreed the arbitration would be heard by one arbitrator that the parties would mutually designate. It was not until March 2016, after the parties agreed to remove the first arbitrator from the case, that UTE first asked the ICDR administrator to resume the arbitration with a tribunal of three arbitrators.[7] ZTE objected. The case administrator denied UTE's request concluding the parties originally agreed to have the matter heard by one arbitrator and absent any new mutual agreement, the matter would proceed with a single arbitrator as previously agreed by the parties.

The AAA arbitrator rule for large complex commercial cases provides:

> (a) Large, Complex Commercial Cases shall be heard and determined by either one or three arbitrators, as may be agreed upon by the parties. If the parties are unable to agree upon the number of arbitrators and a claim or counterclaim involves at least $1,000,000,

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[7] UTE specifically argued, "While the recent arbitration was under the ICDR Rules, the decision to use those rules was unilaterally made by the AAA. As ZTE USA, Inc. is a New Jersey company and UTE is a Texas company, the use of the AAA Commercial Rules was expected. While UTE does not preclude use of the ICDR Rules due to the international aspects of the dispute, the use of the AAA Rules' definition where the ICDR Rules are silent is amply warranted in this matter. UTE's proposed constitution and qualifications of the new Tribunal will minimize the potential for any successful challenge to an Award."

> then three arbitrator(s) shall hear and determine the case. If the parties are unable to agree on the number of arbitrators and each claim and counterclaim is less than $1,000,000, then one arbitrator shall hear and determine the case.

American Arbitration Ass'n, Commerical Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Commercial Disputes) L-2(a) (June 1, 2009).

The ICDR, on the other hand, is the international division of the AAA and charged with the exclusive administration of all of the AAA's international matters. According to IDR Procedures, where the parties have provided for the arbitration of an international dispute by the AAA without designating particular rules, the arbitration shall take place in accordance with IDR Procedures in effect at the date of the arbitration commencement, subject to any written modifications adopted by the parties. Int'l Dispute Resolution Procedures International Arbitration Rules Art. 1(1.) (June 1, 2009). Under IDR Procedures, the parties are free to adopt any mutually agreeable procedures for appointing arbitrators, including whether to have a sole arbitrator or a tribunal of three or more. *See id.*, Arts. 5 and 6. The IDR Procedures provide that if the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the administrator determines in its discretion that three arbitrators are appropriate because of the large size, complexity or other circumstances of the case. *Id.* at Art. 5.

UTE's argument that it "expected" the AAA Commercial Rules to apply because the arbitration

agreement was executed between two domestic companies, completely ignores the fact that UTE brought a Chinese company into a dispute that involved a contract that was to be performed in Liberia. Nothing in the arbitration agreement itself expressly indicated that the parties specifically agreed to be bound by the AAA Commercial Rules for the selection process or the number of arbitrators to hear the case. On the contrary, the record reveals the only agreement the parties had with respect to the selection and number of arbitrators was that the matter would be heard by one mutually selected arbitrator as evidenced by the ICDR administrator's August 20 letter. UTE sought to change the parties' agreement when it sought to empanel a three-arbitrator tribunal after the first arbitrator was removed. But ZTE did not agree to UTE's modifications and the ICDR proceeded pursuant to the parties' original agreement. Because the parties initially agreed to a one-arbitrator arbitration, UTE did not establish it was denied its proper arbitrator selection rights, and this ground will not support the trial court's order vacating the arbitration award.

In reaching our conclusion we necessarily reject UTE's reliance on *Americo Life* as inapposite. There, the supreme court held that the party could not be bound by AAA rules requiring impartiality of arbitrators when that altered the express terms of the parties' agreement which allowed each party to select an arbitrator and did not require impartiality as an arbitrator qualification. *Americo Life*, 440 S.W.3d at 24–25. There is nothing in the record before us to suggest that the parties expressly agreed to a three-arbitrator tribunal or that the arbitration would be

conducted pursuant to the AAA procedures for large complex commercial disputes.

C. Fraud and Undue Means

In its second issue, ZTE contends the trial court erred in vacating the award based on UTE's assertion that the award was obtained by fraud or undue means.[8] *See* 9 U.S.C. § 10(a)(1); Tex. Civ. Prac. & Rem. Code Ann. § 171.088(a)(1). UTE claims the trial court properly vacated the award on this ground because ZTE engaged in immoral, illegal, or bad faith conduct during the arbitration through its obstructive and dishonest behavior and as further evidenced by the federal plea agreement and related documents it executed nineteen days after the issuance of the arbitrator's final award. UTE contends ZTE's obstructive and dishonest behavior during the arbitration and ZTE's failure to disclose the criminal activity that was the subject of plea agreement "could have had the impact of preventing the arbitrator's proper evaluation of every aspect of ZTE's defenses and UTE's claims." Specifically, it suggests that had ZTE disclosed its negotiations with the government regarding the plea agreement and the nature of ZTE's misconduct in the federal case involving the sale of goods to Iran and North Korea, it would have influenced the arbitrator's assessment of ZTE's

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[8] Both the FAA and TAA also authorize vacatur for an award procured by corruption. *See* 9 U.S.C. § 10(a)(1); Tex. Civ. Prac. & Rem. Code Ann. § 171.088(a)(1). However, in its appellate brief UTE states there is no allegation of corruption by the arbitrator in this case and UTE instead "asserts and focuses upon 'fraud' and 'undue means.'"

credibility and the need for drawing adverse inferences against ZTE during the arbitration with UTE.

"Undue means" has been defined as immoral, illegal or bad faith conduct." *See Las Palmas Med. Ctr. v. Moore*, 349 S.W.3d 57, 69 (Tex. App.—El Paso 2010, pet. denied); *A.G. Edwards & Sons. Inc. v. McCollough*, 967 F.2d 1401, 1403–04 (9th Cir. 1992). UTE acknowledges that a petitioner seeking to vacate an award procured by fraud or undue means must show the alleged misconduct was material to an issue in the arbitration. *See Odeon Capital Grp. LLC v. Van Alstyne*, 864 F.3d 191, 196–97 (2nd Cir. 2017).

After reviewing the record before us, we cannot conclude UTE met its burden to establish ZTE obtained its award based on conduct that was immoral, illegal, or in bad faith. The conduct that is the subject of the plea agreement, while involving ZTE high officials, was not related to the subject matter of the arbitration. In fact, UTE has failed to show that ZTE had any duty to disclose the plea deal negotiations of the unrelated matter. In any event, UTE acknowledges in its brief that despite evidence introduced at the arbitration that ZTE had actually bribed Liberian officials as part of its underlying claims, the arbitrator still found that there was no evidence that ZTE intentionally withheld or destroyed information. Importantly, the plea agreement and other documents on which UTE now relies likewise do not show that ZTE intentionally withheld or destroyed information pertaining to the transactions involved the arbitration.

As the party seeking to vacate the arbitration award, UTE had the burden to bring forth a complete record establishing its basis for vacation. *See Statewide Remodeling*, 244 S.W.3d at 568. Where, as here, there

is no transcription or record of the arbitration hearing, UTE cannot establish the arbitration award was procured by immoral, illegal, or bad faith conduct. *See id*. Without a record of what was presented to the arbitrator, it is impossible to determine whether the plea agreement and related documents would have been material to the arbitrator's determination. We therefore conclude that UTE failed to meet its burden to show the arbitration award should be vacated on the grounds of fraud or undue means.

In its third issue, ZTE argues that the trial court could not properly vacate the award based UTE's allegations of arbitrator misconduct. We agree. To constitute misconduct requiring vacation of an award, the act complained of must be more than an error of law and must so prejudice the rights of a party such that it denies the party a fundamentally fair hearing. *See Petrobras Am., Inc. v. Astra Oil Trading NV*, No. 01-11-00073-CV, 2012 WL 1068311, at *12 (Tex. App.—Houston [1st Dist.] March 29, 2012, no pet.) (mem. op.).

In the trial court and on appeal, UTE contends the arbitrator refused to consider relevant and material evidence and also refused to draw adverse inferences "from the lack of evidence ZTE asserted was so conveniently unavailable." UTE also asserts it presented evidence that documents and deposition testimony requested in discovery was not produced by, had been destroyed by or deliberately concealed by, ZTE. Again, with no record of the arbitration hearing proceedings before us, we do not know what evidence UTE presented to the arbitrator nor can we review the arbitrator's conduct in connection with this complaint. Because UTE has not brought forth a complete record of the arbitration hearing, it has not

met its burden of proof with respect to this issue. *See Statewide Remodeling*, 244 S.W.3d at 568–69. Accordingly the trial court's order vacating the arbitration award cannot be upheld on this ground.

In its fourth issue, ZTE challenges UTE's assertion that vacatur of the award was proper because the arbitrator exceeded his powers when he determined that all of its claims were barred by limitations.[9] Generally, an arbitrator exceeds his powers when he decides matters not properly before him. *See Ancor Holdings, LLC v. Peterson, Goldman & Villani, Inc.*, 294 S.W.3d 818, 829 (Tex. App.—Dallas 2009, no pet.). UTE's argument under this issue is premised on the contention that the removed arbitrator's June 2014 ruling denying ZTE's motion for summary judgment on limitations was tantamount to a partial final award that was binding on the successor arbitrator because ZTE never sought to vacate the ruling. UTE essentially equates the denial of the summary judgment motion based on limitations to an interim arbitration award that was subject to confirmation or vacation. But UTE provides no authority and we have found none to support its position. Instead, UTE relies primarily on *Yasuda Fire & Marine Insurance Co. of Europe, Ltd. v. Continental Casualty Co.*, 37 F.3d 345 (7th Cir. 1994), which found an interim arbitration order requiring a party to post a letter of credit as interim equitable relief constituted an award under the FAA

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[9] UTE first raised this ground for vacation in its reply in support of its motion to vacate after ZTE alleged that even if the arbitrator had concluded ZTE willfully withheld or destroyed evidence, the outcome of the arbitration would not have changed because the arbitrator determined all of UTE's causes of action were barred by limitations.

that was subject to confirmation or vacation in the district court. *Id.* at 348. Unlike *Yasuda*, a denial of a summary judgment order is not interim equitable relief. Under both federal and Texas law, orders denying motions for summary judgment are generally considered interlocutory orders that are not final until they are merged into a final judgment. *See, e.g. Dewayne Rogers Logging, Inc. v. Propac Indus., Ltd.*, 299 S.W. 3d 374, 388 (Tex. App.—Tyler 2009, pet. denied); *see also Gibbs v. Lomas*, 755 F.3d 529, 536 (7th Cir. 2014) (district court's denial of summary judgment usually unappealable interlocultory [sic] order); *Black v. J.I. Case Co.*, 22 F.3d 568, 570–71 (5th Cir. 1994) (interlocutory order denying summary judgment not appealable where final judgment adverse to movant is rendered after trial on merits). Courts have inherent authority to change or modify any interlocutory order until the judgment becomes final. *See Dewayne Rogers Logging*, 299 S.W.3d at 388; FED. R. CIV. P. 54(b). Because UTE failed to show the arbitrator exceeded his powers by ruling that UTE's claims were barred by limitations, the final award could not have been vacated on this ground.

In its fifth issue, ZTE contends that because UTE failed to present sufficient grounds for vacating the arbitration award, the trial court erred in failing to confirm the award. We agree. As noted above, both FAA and the TAA provide that the trial court must confirm an arbitration award unless grounds are presented for vacating the award. Having concluded that none of the grounds presented by UTE are sufficient for vacating the arbitrator's award, the trial court erred in failing to confirm the award. *See Hamm v. Millennium Income Fund, L.L.C.*, 178 S.W.3d

256, 262 (Tex. App.—Houston [1st Dist.] 2005, pet. denied) (FAA and TAA require trial court to confirm arbitration award unless award is vacated, modified or corrected under statutes). Accordingly, we reverse the trial court's order and render judgment confirming the arbitration award.

CONCLUSION

On the record of this case, we reverse the trial court's order vacating the arbitration award and render judgment confirming the award.

/s/ David Evans
Justice

PLEA AGREEMENT SUBMITTED IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION (MARCH 6, 2017)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

ZTE CORPORATION

No. 3-17CR-0120K

ZTE Corporation (ZTEC), the defendant, by and through its attorneys Clifford Chance, LLP, and Burleson, Pate & Gibson, LLP, and the United States Attorney's Office for the Northern District of Texas and the United States Department of Justice, National Security Division (collectively, the "Department") agree as follows:

1. **Rights of the defendant**: ZTEC understands that it has the rights:

a. to grand jury indictment;

b. to plead not guilty;

c. to have a trial by jury;

d. to have its guilt proven beyond a reasonable doubt; and

e. to confront and cross-examine witnesses and to call witnesses in its defense.

2. Waiver of rights and plea of guilty: ZTEC waives these rights and pleads guilty to the offenses alleged in the Information: Count 1, Conspiracy to Unlawfully Export, in violation of 50 U.S.C. § 1705(c), 31 CFR Part 560, 15 C.F.R. § 764.2(a)-(e); Count 2, Obstruction of Justice, in violation of 18 U.S.C. § 1503 (a); and Count 3, False Statements to Federal Investigators, in violation of 18 U.S.C. § 1001(a). ZTEC understands the nature and elements of the crimes to which it is pleading guilty, and agrees that the Factual Resume it has signed, incorporated herein, is true and will be submitted as evidence.

3. Sentence: The minimum and maximum penalties the Court can impose include:

Count One

a. A maximum fine, pursuant to 18 U.S.C. § 3571, of the greatest of $1,000,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense.

b. A mandatory special assessment of $400;

Count Two

a. A maximum fine, pursuant to 18 U.S.C. § 3571, of the greatest of $500,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense.

b. A mandatory special assessment of $400;

Count Three

a. A maximum fine, pursuant to 18 U.S.C. § 3571, of the greatest of $500,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense.

b. A mandatory special assessment of $400;

[. . .]

. . . to the extent the Government determines in its sole discretion that disclosure would be in furtherance of the Government's discharge of its duties and responsibilities or is otherwise required by law, and in such circumstances gives notice to ZTEC.

h. ZTEC agrees that the four employees identified as having signed the document described in paragraphs 40-41 of the Factual Resume have resigned or will resign or will be terminated, along with any and all payment obligations owed to them. ZTEC further agrees that it will accomplish this within six months of signing this Plea Agreement and that it shall provide the Department corroborating documentation of these actions.

i. ZTEC agrees that if it or any of its direct or indirect affiliates or subsidiaries issue a press release in connection with this Plea Agreement, ZTEC shall first consult the Department and the Department of Commerce to determine whether (a) the text of the release is true and accurate with respect to matters between the Department and the defendant; and (b) the Department and Department of Commerce have

no objection to the release. Statements made by ZTEC at any press conference or other public speaking event shall be consistent with the approved press release.

j. ZTEC agrees that these undertakings shall be binding upon any acquirer or successor in interest to ZTEC or substantially all of ZTEC's assets and liabilities or business.

k. ZTEC waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without . . . .

[. . .]

. . . government will be free from any obligations of this Agreement and free to prosecute ZTEC for all offenses of which it has knowledge. In such event, ZTEC waives any objections based upon delay in prosecution. If any plea is vacated or withdrawn for any reason other than a finding that it was involuntary, ZTEC also waives objection to the use against it of any information or statements it has provided to the Department, and any resulting leads.

10. Voluntary plea: These pleas of guilty are freely and voluntarily made and are not the result of force or threats, or of promises apart from those set forth in this Plea Agreement. There have been no guarantees or promises from anyone as to what sentences the Court will impose. Upon entry of ZTEC's plea, the Department of Justice will not oppose ZTEC's removal from the Entity List and the Department of Justice will use its best efforts to move for an expeditious entry of this Plea Agreement.

11. Waiver of right to appeal or otherwise challenge sentence: ZTEC waives its rights, conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742, to appeal from its convictions and sentences. ZTEC further waives its right to contest its convictions and sentences in any collateral proceeding, including proceedings under 28 U.S.C. § 2255. ZTEC, however, reserves the rights (a) to bring a direct appeal of (i) a sentence exceeding the statutory maximum punishment, or (ii) an arithmetic error at sentencing; (b) to challenge the voluntariness of its pleas of guilty or this waiver; and (c) to bring a claim of ineffective assistance of counsel.

12. Representation of counsel: ZTEC has thoroughly reviewed all legal and factual aspects of this case with its lawyer and is fully satisfied with that lawyer's legal representation. ZTEC has received from its lawyer explanations satisfactory to it concerning each paragraph of this Plea Agreement, each of its rights affected by this Agreement, and the alternatives available to it other than entering into this agreement. Because ZTEC concedes that it is guilty, and after conferring with its lawyer, ZTEC has concluded that it is in its best interest to enter into this Plea Agreement and all its terms, rather than to proceed to trial in this case.

13. Forfeiture

a. ZTEC agrees to the Forfeiture Allegation in the Criminal Information to which it is pleading guilty.

b. Specifically, ZTEC agrees to pay the United States a forfeiture money judgment in the amount of $143,496,266. ZTEC agrees that the Factual Resume supporting its guilty plea is sufficient evidence to support this forfeiture. ZTEC agrees that the Court

may enter a preliminary Consent Order of Forfeiture for this property at the time of ZTEC's guilty plea or at any time before sentencing. ZTEC agrees that this Order will become final as to ZTEC when it is issued and will be part of the sentence pursuant to Rule 32.2(b)(4)(A), F.R.C.P.

c. ZTEC agrees that, if ZTEC does not pay the United States a forfeiture money judgment in the amount of $143,496,266 within ninety (90) days after the date of sentencing, this Plea Agreement permits the Government to seek to forfeit any of ZTEC's assets, or any assets of its U.S. subsidiary, ZTE USA, Inc., real or personal, that are subject to forfeiture under any federal statute, whether or not this Agreement specifically identifies the asset. Regarding any asset or property, ZTEC agrees to . . . .

[. . .]

14. Entirety of agreement: This document is a complete statement of the parties' agreement and may not be modified unless the modification is in writing and signed by all parties.

AGREED TO AND SIGNED this 6th day of March 2017.

John R. Parker
United States Attorney

/s/ Zhao Xianming
Chairman and President of
ZTE Corporation

/s/ Wendy L. Wysong
Attorney for Defendant

/s/ J. Mark Penley
Assistant U.S. Attorney

/s/ Gary C. Tromblay
Deputy Criminal Chief

/s/ Lisa J. Dunn
Criminal Chief

/s/ Elizabeth L. D. Cannon
Trial Attorney
National Security Division

FINAL AWARD OF THE INTERNATIONAL CENTER FOR DISPUTE RESOLUTION (FEBRUARY 16, 2017)

INTERNATIONAL CENTRE FOR
DISPUTE RESOLUTION
INTERNATIONAL ARBITRATION TRIBUNAL

In the Matter of Arbitration Between

UNIVERSAL TELEPHONE EXCHANGE, INC.,

Claimant,

v.

ZTE CORPORATION AND ZTE USA, INC.,

Respondents.

ICDR Case No. 502012000342

Final Award

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above named parties dated March 1, 2012, and having been duly sworn, and duly heard the proofs and allegations of the parties, do hereby AWARD as follows:

I. Introduction:

> Universal Telephone Exchange, Inc., (hereinafter "Claimant") is a Texas corporation with its principal place of business in Dallas, County, Texas. Narasimha Bhogavalli is Claimant's President and equal partner. There are two other equal partners: James Yarclay from Liberia, and Sam Kyereh from Ghana.
>
> ZTE Corporation is a People's Republic of China company that manufactures and sells telecommunications equipment and information technologies. Its affiliate, ZTE USA, Inc., is based in New Jersey (both of them, collectively, "Respondents.")

Claimant and Respondents are parties to a June 2, 2004 Non-Disclosure Agreement ("NDA"). The contract was intended by the parties to define their relationship and respective duties and obligations relating to Claimant's prospective purchase of equipment from Respondents. This was in anticipation of and in conjunction with a possible joint venture contract with the Liberian Telecommunications Corporation ("LTC") to modernize the telecommunications system in the country of Liberia.

II. Arbitration Provision/Rule 11 Agreement

The NDA contains an arbitration provision that states:

> "*This Agreement shall be governed in all respects by the laws of the State of New Jersey, excluding its conflicts of law provisions. All disputes arising from the execu-*

> *tion of or in connection with the agreement shall be settled through friendly negotiation between both parties. In case no settlement can be reached, the disputes shall be submitted to American Arbitration Association in accordance with its rules in force at the time of application for arbitration. The venue of arbitration shall be in New Jersey. The arbitration award shall be final and binding upon both parties*."

Disputes arose from and relate to the NDA. After winning a competitive bid that did not result in a contract due to alleged interference by Respondents, Claimant made various efforts in Liberia to have the contract executed. When these efforts failed, Claimant filed suit in the 191st Judicial Court of Dallas County, Texas. Respondents filed a Special Appearance, asserted affirmative defenses, including the applicable statutes of limitations under Texas law, and a Motion to Compel Arbitration. On April 30, 2012, Claimant filed its demand for arbitration with the American Arbitration Association ("AAA"). Thereafter, the parties entered into a "Rule 11 Agreement:"

> "*This letter confirms our and the parties' agreement in the above-referenced matter to submit this case to the American Arbitration Association to be arbitrated in accordance with the terms of the parties' non-disclosure agreement (except with respect to its choice of law and venue provisions) and the rules in force at the time of the application for arbitration. The parties agree that the venue for the arbitration shall be in Dallas County, Texas and the arbitration shall be final and*

> *binding upon the parties in accordance with Texas law. The governing law over the dispute shall be Texas law.*
>
> *In addition, the parties agree that defendant ZTE Corporation's special appearance shall be decided by the arbitrator, who will decide whether the State of Texas has personal jurisdiction over ZTE Corporation . . . the parties agree that the date of filing the arbitration demand for statute of limitations purposes shall relate back to the date of filing plaintiff's original petition which was filed on June 11, 2010*."

On September 12, 2012, an arbitrator was appointed by AAA. He presided over the arbitration hearing, made rulings on motions, and heard the evidence. However, at the close of the evidence, before an award on the merits was issued, for reasons not relevant to this Award, the arbitrator was requested by both parties to stand down. The parties participated in a second selection process and, on May 2, 2016, the undersigned was appointed as sole arbitrator.

The arbitration hearing was conducted in Dallas, Texas during the weeks of October 17 and October 24, 2016. Additional briefs and exhibits were filed, and the hearing was declared closed on December 21, 2016. Counsels appearing for Claimant were Lawrence Friedman, John Sokatch and Carlos Morales of Friedman & Feiger, L.L.P., and Richard Faulkner, James Blume and Mercy McBrayer of Blume, Faulkner & Skeen, PLLC. Respondents were represented by Jim Davis and John Fraser of Ferguson, Braswell & Fraser. P.C.

On the first day of the hearing. Claimant filed a motion for the Tribunal to warn Respondents of potential drawing of adverse inferences against Respondents if they did not produce any and all documents responsive to Claimant's discovery requests and subpoenas. The Tribunal took this motion under advisement.

III. Backdrop

The LTC was established in 1973 and granted monopoly rights. Liberia experienced two civil wars that lasted from 1999 to August 18, 2003. The war ended as a result of a Comprehensive Peace Agreement ("Accra Peace Accord,") entered into by the various warring factions. LTC equipment was severely damaged or destroyed during the civil wars; corruption, looting, and the loss of customers, left LTC in a fragile financial condition. It struggled to pay its employees and to maintain its dilapidated equipment. Without foreign investments, LTC was incapable of rebuilding the country's telecommunications system.

The Accra Peace Accord suspended provisions of the Liberian Constitution, called for new elections, and established a National Transitional Government of Liberia "(NTGL"). The NTGL commenced on October 14, 2003 and was mandated to expire on January, 2006, when the newly elected government would be inaugurated. Immediately upon installation of the NTGL, all cabinet Ministers, Deputy and Assistant Ministers of the current government, all members of the Supreme Court, and heads of public corporations, and State-owned enterprises, were deemed to have resigned.

The NTGL consisted of an Executive branch, headed by the Transitional Chairman of the NTGL,

C. Gyude Bryant ((“President Bryant”); a National Transitional Legislative Assembly (“NTLA”), and a Transitional Judiciary. The NTGL re-established some departments, created new ones, appointed new heads of agencies/departments, and Supreme Court Justices.

With the assistance of consultants from the World Bank, the NTGL established a new policy for LTC, with three goals in mind:

1. Open competition in the selection of credible investors in the rehabilitation, revitalization, and modernization of LTC,
2. Maximum level of transparency in the negotiations leading to an agreement and
3. The highest degree of protection for all investments made in Liberia.

Article 17 of the Accra Peace Accord established the **Contracts and Monopolies Commission (or “CMC”).** It was tasked with the responsibility of reviewing and ensuring that all public financial and budgetary commitments over $20,000.00 USD entered into by the NTGL, were transparent, non-monopolistic and in accordance with the laws of Liberia, and internationally accepted norms of commercial practice. This was the environment under which a variety of disputes arose.

IV. Factual Background

After James Yarclay became aware that LTC planned to rebuild its telecommunication system, he moved back to Liberia, and opened an office in Monrovia. In early 2004, LTC sought and obtained a bid from a New Jersey company, Engineering & Professional Services (“EPS”), to install and integrate a

comprehensive and modern telecommunications system in Liberia. On March, 2004, after spending a substantial amount of time, money, and resources, EPS submitted a confidential written proposal to LTC.

The proposal had a typical proprietary statement that generally provided that the furnished data could not be disclosed to other parties for any purpose other than to evaluate the proposal. The EPS proposal included a three phase implementation plan; phase I: Monrovia; phase II: Greater Monrovia, and phase III: nationwide. It also required a down payment of approximately $170 million, due in 60 days after signing the contract. On April 12, 2004, LTC signed a contract with EPS for these services and equipment, even though it knew at the time that it did not have the money to pay for it. After LTC did not go forward with the EPS contract, it started its search for a joint partner that would finance and manage the project.

In April, 2004, James Yarclay met in Dallas with President Bryant and other Liberian officials. Claimant expressed interest in becoming a joint venture partner with LTC. Contemporaneously, Claimant began to assemble a list of potential vendors for equipment for the Liberian project. After investigating various vendors, Claimants settled on Respondent. What followed were many months of exploratory discussions, and numerous in-person meetings between representatives of Claimant and Respondents. The fact finding discussions included an assessment of the state of affairs in Liberia, types of equipment, costs, payment terms, and Respondents possibly financing all or part of the project. Prior to Claimant contacting Respondents, Respondents were not aware of this potential business opportunity in Liberia. Early in the negotia-

tions, Respondents proposed and drafted the June 2, 2004 NDA.

The NDA provided that either party may disclose confidential information to the other party in the course of exploring a potential business relationship. The party receiving the confidential information of the other, was obligated to hold the information in confidence, to exercise diligence in preserving the secrecy of such information, and to not duplicate, alter, reveal, or reuse design information or prototypes fabricated according to the confidential information. it further provided that disclosure by or to an affiliate of a party shall be deemed to be a disclosure by or to that party, as applicable. The parties agreed to comply with all United States treaties, laws, and regulations.

The NDA also had **Exclusions from Nondisclosure and Nonuse Obligation**:

> "*Information received from the Disclosing Party shall not be deemed to be confidential information if the party seeking to avoid its obligation under such paragraph can document that: (i) it was in the public domain at or subsequent to the time it was communicated to Receiving Party by disclosure through no fault of Receiving Party; (ii) it was rightfully in Receiving Party's possession free of any obligation of confidence at or subsequent to the time it was communicated to Receiving Party by Disclosing Party . . .* "

On June, 2004, LTC gave a copy of the EPS proposal to Claimant; this same month, Claimant incorporated the EPS proposal into a build, operate and transfer ("BOT") proposal with Claimant financing,

and submitted it to LTC. In July, 2004, Claimant gave a copy of its June, 2004 proposal to Respondents and in August, 2004, Claimant and Respondents entered into a Memorandum of Understanding ("MOU") about a prospective vendor agreement for the Liberian project.

On September 25, 2004, LTC agreed in principle with Claimant to enter into a shared management contract. This agreement was formalized in an October, 2004 MOU. The parties agreed that LTC and Claimant would form and own a joint venture company for the modernization of the Liberian telecommunications system. Claimant would own 70% of the company and LTC 30%. Claimant agreed to provide immediate funds, enumerated equipment within a specified time; the duration of the Agreement was fifteen (15) years with automatic five (5) years renewals, and implementation would be in three (3) stages, similar to the EPS proposal.

On November 24, 2004, LTC wrote a letter to Respondents advising them of the joint venture agreement between LTC and Claimant and stating that Claimant had chosen Respondents as a preferred vendor. This same month, Amara M. Kromah and Alfred Bargor, Sr., LTC's Managing Director and Deputy Director, in a secret "Consulting Agreement," agreed to lobby on behalf of Respondents to be the vendor of equipment for the project and Respondents would pay them 5% of all equipment sales made by Respondents in connection with the LTC revitalization project.

Mr. Kromah entered into a second "Consulting Agreement" with Respondents with the same terms as before. For a fee of a 5% commission for all Respond-

ents' equipment sales to LTC, he agreed to lobby on behalf of Respondents to become the vendor of the equipment. He received two cash payments from Respondents, in a paper bag, $30,000.00 USD, and then $15,000.00 USD.

Mr. Bargor also entered into a second confidential "Consulting Agreement" with Respondents, under the same terms as before. He was paid $30,000 USD cash, in a paper bag by Respondents.

On November 8, 2004, the no bid BOT agreement between Claimant and LTC came to a halt. As a result of the August 18, 2003 Accra Peace Accord, President Bryant instructed LTC to advertise and invite open competitive bids for upgrading LTC. In November 29, 2004, Claimant gave Respondents a digital copy of its confidential Liberian project. The file included bid documents, technical specifications, financial projections, site survey information and the like. On January, 2005, Claimant submitted its bid proposal to LTC. Unbeknownst to Claimant at the time, Respondents submitted its own BOT bid to LTC.

The bid application fee was $5,000.00 USD. The Bid Submission Document informed prospective bidders that the bids would be evaluated on eleven categories, such as Financial Capacity, Technical Capacity, Industry Experience, and the like. This document announced the maximum number of points that could be achieved in each evaluation category. The maximum points that each applicant bidder could accumulate was 100 points.

Five bidders qualified for an evaluation:

1. L Infotel-Italia

2. ZTE Corporation
3. International Gateway Africa
4. Universal Telephone Exchange (UTE)
5. Huawei Technologies Company

The Bid & Evaluations Committee vetted the proposals and conducted interviews with each bidder to clarify specific issues that were of concern or importance to members of the committee. Mr. Kromah and Mr. Bargor were two (2) of thirteen (13) members of this Committee. On February 14.2005, the committee announced the results:

1. UTE-89 points (Claimant)
2. Huawei-79 points
3. Infotel-66 points
4. ZTE-57 points (Respondent)
5. International Gateway Africa-43 points

The Bid and Evaluation Committee submitted the names of the three highest bidders to LTC, and LTC passed a resolution confirming the winning bid. Claimant began drafting the contractual terms of the Joint Venture agreement. However, despite not winning the bid, Respondents continued their efforts to be the supplier of the equipment.

On March, 2005, the **Contracts and Monopolies Commission** conducted its own investigation and concluded that Claimant's winning bid was significantly identical to the EPS proposal. CMC contacted EPS and EPS informed CMC that it had not authorized the use of its intellectual property. After its due diligence inquiry, the CMC determined that Claimant did not

have the financial resources nor the operational capacity to carry out the joint venture project. Also, CMC learned that James Yarclay was a convicted felon, a fugitive from justice, and had declared bankruptcy. The CMC recommended that President Bryant not approve an LTC/Claimant joint venture contract, and the contract was never executed.

On June 10, 2005, Claimant filed a complaint with the Committee on Post and Telecommunications, complaining about the actions taken by President Bryant and the CMC. This committee found in favor of Claimant, and reported their findings to the NTLA. With a 2/3rds majority vote, NTLA passed a Resolution which stated that the bid process was conducted fairly. and recommended that a contract with Claimant be executed. It forwarded the resolution to President Bryant, and he made it known that he was not going to approve it and returned the Resolution back to NTLA. The NTLA again passed a "Binding" Resolution with a 2/3rds vote, requesting that President Bryant, "respect and enforce the result and recommendations" of LTC's Bid and Evaluation Committee. President Bryant refused. Claimant argues that under Liberian Law, the NTLA's second resolution automatically overrode the President's "veto" and became law as a "Bill."

After President Bryant's rejection of the LTC/ Claimant contract, Respondents began moving equipment and services to the LTC building under the guise of a "donation" agreement. Claimant obtained a Stay Order against Respondents, but this order was appealed.

Thereafter, Claimant pursued legal remedies trying to finalize the agreement with LTC. On November 18. 2005, Claimant filed a Petition for a Writ of

Mandamus with the Liberian Supreme Court, requesting that the Court order LTC to sign the contract with Claimant. On January 12, 2006, a then sitting solo Transitional Supreme Court Justice, ruled in favor of Claimant. On January 30, 2006, Claimant brought a civil suit against LTC and Respondents, alleging unfair business competition, collusion with Liberian officials and bribery.

In February, 2006, the newly elected President of Liberia took office and appointed a new Supreme Court and new managers of LTC. LTC appealed the ruling of the Transitional Justice and on August 18, 2006, the full Supreme Court, in a unanimous opinion, reversed. It held that the Writ of Mandamus was not an appropriate remedy. The Court wrote that this writ is appropriate only to require an official to comply with a legal duty, not to redress private contract rights. In essence, the Court held that Claimant had an adequate remedy at law, and noted that Claimant had a civil suit pending in a Liberian trial court involving the same subject matter. As of April 2014, the case was pending.

With the LTC/Claimant joint venture contract stalled because of conflict between the LTC, NTLA and President Bryant, Respondents continued to pursue sale of equipment to LTC. On June 5. 2005, Mr. Kromah entered into the second Consulting Agreement with Respondents, agreeing to do his best to make sure that Respondents would be the equipment vendor in a proposed BOT contract between LTC and AFRIPA/A-Link. Mr. Kromah revived a dormant 1999 BOT contract between LTC and AFRIPA/A-Link, and used this amended contract as the instrument by which LTC purchased equipment from Respondents. Res-

pondents moved equipment and personnel to the LTC Building. In July 1, 2005, Respondents rewarded Mr. Kromah and a traveling companion with an all-expenses paid trip to China which included an unlimited shopping spree, and $1,000.00 USD cash. During this visit, Mr. Kromah, signed a MOU for LTC to purchase equipment directly from Respondents.

Ranney B. Jackson, Sr., the Chairman of the Post and Telecommunications Committee, and currently Deputy Minister for External Affairs of Liberia, testified that he was involved in drafting Article 17 of the Accra Peace Accord, and that under Liberian Law, neither President Bryant nor the Contracts and Monopolies Commission, had power to annul the decision of the NTLA; that LTC did not have legal authority to enter into a contract with anyone but Claimant.

Charles Brumskine, a Liberian law expert, testified that the NTLA "Binding" Resolution purporting to instruct President Bryant to approve the LTC/Claimant contract, was a "legal nullity," a mere expression of their preference, and that President Bryant acted within his authority in declining to approve the contract.

Dusty Wolokolie, a member of the Contracts and Monopolies Commission, testified that James Yarclay offer him and other members of the CMC, financial remuneration if they affirmed the decision of the Bid and Evaluations Committee and the NTLA.

V. Claimant contends that:

1. Respondents learned of the LTC bid process entirely from Claimant and had it not been

for Claimant, Respondents would not have known of this business opportunity in Liberia.

2. It is not possible for Respondents to have prepared a comprehensive bid from the date it picked up the bid package on December 10, 2005 to the date it was due in January 17. 2006.

3. Respondents must have used Claimant's propriety information that it copied in New Jersey, when on November 29, 2004, at Respondents request, Mr. Bhogavalli turned over his laptop computer to Respondents so that they could copy his Liberian project file.

4. After Claimant was declared to have the winning bid, Respondents continued to meet with LTC and other government agencies to interfere with and "steal" Claimant's contract with LTC.

5. The confidential consulting agreements and cash payments by Respondents to Mr. Kromah and Mr. Bargor, and the all-expense paid trips to China, are evidence of bribes and Respondents' wrongful interference with its business opportunity.

6. The bribery and corruption that Respondents engaged in is against the laws of the United States, the States of Texas and New Jersey, the People's Republic of China, Liberia, and the laws and treaties of the international community.

7. Respondents' wrongful conduct was the direct result of Claimant not getting the BOT contract, causing damage to Claimant.

8. Respondents failed to comply with reasonable discovery requests and intentionally withheld information from Claimant and the Arbitration Tribunal. Thus, the Tribunal should draw adverse inferences against Respondents.

VI. Claimant's Causes of Action

Claimant contends that Respondents' bad acts entitle Claimant to an award for consequential damages, statutory damages, disgorgement, penalties, punitive damages, attorneys' fees and costs, for the following reasons:

A. **Breach of Contract:** Claimant asserts that Respondents breached their obligations under the NDA by appropriating for their own benefit and using Claimant's confidential and proprietary information obtained under the NDA to compete with Claimant and do business with LTC and third parties.

B. **Misappropriation of trade secrets:** Respondents wrongfully used and misappropriated Claimant's trade secrets.

C. **Fraud:** Respondents misrepresented that the information provided under the NDA would be and remain confidential, and not be used against Claimant.

D. **Conversion and civil theft:** Respondents wrongfully exercised dominion and control

of Claimant's confidential and proprietary information.

E. **Tortious interference with contracts and prospective business relations:** Respondents interfered with Claimant's reasonable expectation of economic benefit, "but for" said interference, Claimant would have obtained the benefits of the very lucrative BOT contract with LTC.

F. **Violations of the Texas Theft Liability Act:** Respondents unlawfully appropriated, secured and/or stole Claimant's property in violations of Texas Penal Code sections 31.03, 31.04 and 31.05.

G. **Trespass to chattels:** Respondents intentionally interfered with Claimant's use or possession of Claimant's chattels.

H. **Civil conspiracy:** Respondents were members of a combination of two or more persons, the object of which was to accomplish an unlawful person.

I. **Common Law Misappropriation of time, labor, skill and money:** Respondents appropriated for their own benefit Claimant's confidential and proprietary work.

J. **Racketeer Influenced & Corrupt Organization Act ("RICO") cause of action**: Respondents through various officers and employees, traveled across U.S. States and international boundaries, and also used the private commercial carriers, telephone, fax and "Internet" wires and other instrumentalities of inter-

state and international commerce within the last ten (10) years, in the conduct of their bribery and corruption scheme. Respondents knew of and agreed to the overall objectives of the predicate RICO offenses. Overt acts were performed by or participated in by Respondents to further the racketeering activity. 18 U.S.C. §§ 1961-1968, commonly known as "RICO", and its New Jersey counterpart. N.J.S.A. § 2C:41-1, *et seq.*, commonly and hereafter known as the "Little RICO" Act. Claimant asserts that it is entitled to statutory damages, treble damages, disgorgement, interest, attorneys' fees, and costs as a result of Respondents' actions.

K. **Federal Corrupt Practices Act and Travel Act:** Respondents' activities violated and give rise to statutory liability under the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1, the Travel Act, 18 U.S.C. § 1952.

L. **United Nations Convention on Contracts for the International Sale of Goods:** Violations of the Convention on the International Sale of Goods Agreement are contained in multiple documents including the NDA.

VII. Respondents' Defenses

1. All of Claimants' causes of action are barred by statutes of limitations.

2. The RICO claims are outside the scope of this arbitration and should be dismissed with prejudice; in the alternative, Claimant cannot

prove the elements of a civil RICO under either Federal or New Jersey law.

3. To the extent Claimant is asserting a private cause of action under the Foreign Corrupt Practices Act, the claim is legally deficient.

4. Claimant did not prove it provided any "Confidential Information" to Respondents.

5. Any information given to Respondents by Claimant was in the public domain at or after the time it was given to Respondents, and the NDA expressly excludes information that was in the public domain.

6. Claimant failed to prove Respondents' relied on or used any confidential information in connection with any proposal Claimant submitted to the LTC.

7. Even if Respondents had obtained and had used Claimant's alleged "Confidential Information," such use caused no harm to Claimant.

8. Respondents could not have used any alleged "Confidential Information" or trade secrets of Claimant in connection with Respondents' proposals to provide their own telecommunications equipment to Afripa/A-link in June 2005 or to LTC.

9. Claimant did not design, manufacture, or sell telecommunications equipment, therefore did not have any "Confidential Information" regarding design, functionality, or pricing of telecommunications equipment.

10. Even if Respondents used information that they obtained from Claimant in connection with Respondents' bid for the LTC's BOT contract, Respondents did not interfere with Claimant's contract expectation, as LTC rejected Respondents' bid and awarded the winning bid to Claimant.

11. Respondents did not interfere with Claimant's prospective contractual relationship with the LTC "by shipping and installing" Respondents' equipment in the LTC's premises.

12. Even if Claimant had been a seller of telecommunications equipment, Respondents had the right to compete with UTE.

13. The NDA did not bar competition between Claimant and Respondents.

14. Respondents owed no common law duty to Claimant not to compete for sales of equipment in Liberia.

15. Claimant has no credible evidence that Respondents bribed any official of the Liberian government, but only that Respondents sought to influence them to cause the LTC to purchase equipment from Respondents.

16. Respondents did not attempt to deprive Claimant of the prospective BOT contract.

17. Respondents did not cause Claimant any damages because Respondents did not cause Claimant to lose the BOT contract with the LTC.

18. The government of Liberia deprived Claimant of its prospective contract with the LTC.

19. Respondents' actions were not the "but for cause" of Claimant losing out on its prospective contractual opportunity.

20. Even if Respondents caused Claimant damages, the damages are not reasonably certain under Texas Law because Claimant had only been in business for three (3) years.

21. Claimant's limited experience was as a competitive local exchange carrier and not as a telecommunications system integrator, installer, and operator.

22. Claimant lacked the financial wherewithal to perform the contemplated joint venture agreement.

23. Claimant is not entitled to damages in the form of disgorgement of Respondents' profits in connection with Respondents' sales of telecommunications equipment in Liberia.

24. Neither the NDA nor the circumstances of their prospective buyer-seller relationship created a fiduciary relationship.

25. Adverse inferences against Respondents are not warranted because there is no evidence that Respondents acted with the subjective purpose of concealing or destroying discoverable evidence.

VIII. Findings of Fact

1. This was a high risk business venture.

2. Claimant did not have experience as a telecommunications system integrator, installer and operator.

3. Claimant and Respondents did not enter into a vendor agreement.

4. Notwithstanding the nefarious relationship between Mr. Kromah, Mr. Bargor and Respondents, Claimant won the bid.

5. Claimant did not present evidence that Respondents intentionally destroyed evidence.

6. It is conceivable that during the approximately ten (10) year gap between the time the events took place and Claimant's request for production, documents were lost or destroyed in the ordinary course of business.

7. James Yarclay offered Dusty Wolokolie money if he looked favorably on Claimants' proposal.

8. To the extent any of the foregoing Findings of Fact also constitute Conclusions of Law, they are adopted as such.

IX. Conclusions of Law

1. All of Claimant's causes of action are time barred by applicable statutes of limitations.

2. Even though Claimant's legal claims are barred by limitations, in the interest of justice, I will address them.

3. There is no vendor contract between Claimant and Respondents.

4. The Memorandum of Understanding entered into by Claimant and Respondents is not a

binding contract; it lacks all of the elements of an enforceable agreement: an offer to sell specific equipment, acceptance, consideration, and the intention to be legally bound.

5. The Non-Disclosure Agreement did not create a fiduciary duty between Claimant and Respondents.

6. The conduct of the parties did not create a fiduciary duty between Claimant and Respondents.

7. The Non-Disclosure Agreement did not bar competition between Claimant and Respondents; Respondents were free to submit their own bid.

8. Claimant and Respondents were engaged in arm's length transactions.

9. Even if Respondents misappropriated and used Claimant's confidential information and bribed LTC's employees, Claimant did not suffer compensable damages because Claimant was awarded the winning bid.

10. Respondents' behavior is not the "but for cause" of Claimant losing out the contract with the LTC.

11. As a state owned business, LTC is under the supervision of the Executive Branch of Government.

12. Claimant lost the contract because the Contracts and Monopolies Commission concluded that Claimant was not qualified and President Bryant did not approve the contract.

13. Respondents did not tortuously interfere with Claimant's prospective business relationship.

14. Claimant failed to prove the existence of a RICO enterprise or a pattern of racketeering activity.

15. Claimant failed to prove all of its causes of action by a preponderance of the evidence.

16. Adverse inferences against Respondents are not warranted because Claimant failed to prove that Respondents acted with subjective intent to conceal or destroy discoverable evidence.

17. To the extent any of the foregoing Conclusions of Law also constitute Findings of Fact, they are adopted as such.

AWARD

For the reasons stated above, I award as follows:

1. All claims presented in this arbitration by Claimant, Universal Telephone Exchange, Inc. against Respondents, ZTE Corporation and ZTE USA, Inc. are hereby denied.

2. Attorney's fees are denied to Claimant and Respondents.

3. The Administrative fees and expenses of the International Centre for Dispute Resolution (ICDR) totaling $30,550.00 USD and the compensation and expenses of the Arbitrator totaling $167,793.99 USD are to be borne as incurred.

4. This AWARD is in full settlement of all claims and counterclaims submitted in this arbitration. All

claims for relief not expressly granted herein, including all claims set forth by the Parties in their pleadings, in their pre- and post-hearing briefs, or orally at the hearing, are hereby DENIED.

/s/ Hon. Raul A. Gonzalez
Arbitrator

February 16, 2017

PLAINTIFF'S AMENDED MOTION TO VACATE ARBITRATION AWARD AND DEFENDANTS' MOTION TO CONFIRM ARBITRATION AWARD —TRANSCRIPT OF PROCEEDINGS, RELEVANT EXCERPTS (JUNE 8, 2017)

IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS, 44TH JUDICIAL DISTRICT

UNIVERSAL TELEPHONE EXCHANGE, INC.,

Plaintiff,

v.

ZTE CORPORATION and ZTE USA, INC.,

Defendants.

Court of Appeals Cause No. 05-17-00781-CV

Trial Court Cause No. DC-10-07052-B

Before: Hon. Bonnie Lee GOLDSTEIN, Presiding Judge

[June 8, 2017 Transcript, p.11]

MR. DAVIS [COUNSEL FOR DEFENDANTS]: Good morning, Your Honor. You have indicated what piqued your interest, and I will primarily address those issues and suggest from our perspective whether and to what extent they are relative.

And, of course, I hope be able to answer any questions you might have.

[. . .]

But, in any event, however good the evidence was, however persuasive it might have been, it was Justice Gonzalez's job as arbitrator to hear it, consider it, rule on it, and decide whether, per the request of UTE, that adverse inferences should be imposed based upon the notion—sort of like spoliation of evidence—that there should have been documentation of X. It's not here, and there is evidence that you destroyed it or withheld it with an intent to deprive this tribunal of relevant evidence.

And that was argued very effectively, very thoroughly by UTE's counsel. Justice Gonzalez took it under consideration, and he specifically rejected that. He said, I'm not imposing any adverse inferences.

He said, the documents and testimony and witnesses you are talking about involve things that occurred 12 or 13 years ago. It is equally likely that anything that you think should exist but doesn't—which, by the way, there is nothing specific really—but if there is something, if you think there was documentation or evidence that should have existed but wasn't produced, it could have been lost; it could have been destroyed in the ordinary course of document maintenance. There was no evidence that there was some destruction of evidence or some withholding of evidence here.

And Justice Gonzalez said, therefore, I don't—I'm not going to impose adverse inferences, and I don't think you have proven anything to me about withholding evidence or destroying evidence.

[. . .]

MR. FAULKNER [COUNSEL FOR PLAINTIFF]: May I rise? Richard Faulkner on behalf of UTE.

[. . .]

. . . I have been a lawyer for nearly 40 years, and I started in the tradition of a southern gentleman.

One thing that is important is that ZTE has a documented history of misleading its own lawyers as well as courts, tribunals, and the Congress. So nothing that we say in any way, shape, or form relating to this case in any way reflects adversely on our opposing counsel. They have always behaved in the best traditions of the federal, international, and Texas bars.

We do not say that Justice Gonzalez is incompetent. Quite the contrary, what we say is, he was bamboozled. He was misled just the same way that ZTE has established a pattern of misleading the United States Congress, the United States District Court for the Southern District of New York, and our cited Vringo versus ZTE case—which has led to sanctions and new litigation filed as recently as approximately a month ago contesting, amongst other things, whether or not the lawyers were misled and/or misled the Court, perhaps inadvertently, in another matter involving ZTE on similar issues.

[. . .]

MR. FAULKNER: . . . Some of what we were denied was the ability to call Ashley Yablon. We knew he was in some way, shape, or form a whistle-blower. We did not know at the time that the federal government had offered him Witness Protection Program status.

THE COURT: So you are not going to find him.

MR. FAULKNER: No, he is out. He declined it. He is now giving interviews in the news media. He is available. He settled his dispute with ZTE.

One of the other witnesses who was unavailable was—we jokingly refer to him as General Ding Ming Feng. It became a running joke among us that Ding Ming Feng was absent.

But Ding Ming Feng was the Vice President of Global Sales. Why is this important? Because in the federal plea bargain and in the factual resume associated with the plea bargain, the Vice President of Global Sales is required to be terminated and not paid.

The CEO is required to be terminated and not paid.

The Vice President of Logistics was required to be terminated and not paid. And there was a fourth one, and I forget his title.

But, basically, the same people who were in charge of ZTE at the time of our arbitration have all been fired and are not to be associated with ZTE.

During the course of our arbitration, we tried to get Ding Ming Feng's testimony. He appeared once

earlier in the case via Skype deposition through . . .

[. . .]

MR. FAULKNER: But some of the documents that we were unable to obtain, based upon ZTE's supposed inability to locate the documents, were things such as the bid package. How in the world could they do a multi-billion-dollar project, which our opposing counsel values at $4 billion, without having the bids? Without having the contracts they executed with the Liberian Telecommunications Commission?

We were missing all of the contracts relating to Africa, the stand-in fake company that was used by ZTE to steal the business, very similar to the types of stand-in cut-out companies that ZTE admits to using in the criminal plea bargain. This is standard operating procedure for them.

THE COURT: But you knew back in 2004 and 2005 of all of this bad conduct.

MR. FAULKNER: We knew of some of it, Your Honor. And as you have already pointed out, we did not have a criminal conviction in the United States admitting to or establishing that type of bad behavior.

There was a criminal conviction in Algeria, and all of the ZTE employees fled the country before they could be arrested. . . .

We did not know that at the same time we were engaged in this arbitration, ZTE, for reasons of profit, was willing to risk misleading and lying

to the United States Department . . . Bureau of Investigation.

And, quite . . . our argument is simple. . . . if they will take the risk for a few hundred million dollars of jail time, of being barred in this country—they claim that we had a $4 billion dispute here—it is logical to take and assume that the Chinese conducted economic warfare against UTE, a little Texas start-up who never knew it was in a war, and they used the same techniques.

[. . .]

MR. FAULKNER: Oh, because, Your Honor, we have in Liberia the admitted established bribery of government officials to steal the contract. No question about it. . . .

The techniques used by ZTE included corruption, destruction of documents. Those are things that were done to UTE. They parallel and have now been admitted by ZTE as being done against the United States of America. At the same time

[. . .]

MR. FAULKNER: Except that we could not get a number of key documents, some of which I have been referring to.

And without those documents, without being able to bring Mr. Yablon in as a witness who could verify that what we were saying was correct: that they had in fact destroyed records, that they had in fact concealed witnesses, that they had in fact arranged for witnesses to provide false testimony, that they had in fact misled their own lawyers.

> . . . He had information that the FBI secretly mirrored his hard drive, that we believe will include some of the documents relevant to this case that ZTE hid.
>
> If the basis of vacating an arbitration award on fraud, corruption, and undue means has any meaning in law, it is this case. How would any private company, without the resources of the FBI and the Department of Justice, ever realistically be able to establish the kind of organized corporate criminal activity and misleading of courts and tribunals without relying on subsequent, almost contemporaneous criminal pleas and admissions.
>
> And what we are saying is that all of ZTE's now-admitted criminal activity parallels, mirrors, and virtually duplicates what was done to UTE. We had no independent ability to do anymore than we did. We were misled. The arbitrator was misled, just like they misled Congress and the courts here and abroad. Consequently, it is fraud. It is undue means.
>
> [. . .]
>
> MR. FAULKNER: As a professor, I love this stuff because we finally get a good explanation of what the law means based on these facts in a situation where it's not going to open the floodgates of litigation or challenges.
>
> Consequently, the fraud, the corruption, and the undue means, corruption—they admit they bribed. The ministers came to the United States and testified they were bribed. No question about that. Tens of millions of dollars that were supposed

to additionally be paid in bribes, I don't know whether they ever were.

But there is your corruption. Fraud, they misled this tribunal. They misled UTE. They have engaged in a pattern of spoliation of evidence, destruction of information, concealing of witnesses.

And, quite frankly, Mr. Yablon probably wasn't concealed by them. I think we will probably discover that he was one who was hidden by the Federal Bureau of Investigation to protect one of their key people. Be that as it was, he was unavailable to us, even though we attempted to find him and get his testimony.

Ding Ming Feng was theirs. He was not readily available. His title—and I cannot say that Ding Ming Feng himself—

[. . .]

MR. FAULKNER: D-i-n-g M-i-n-g F-e-n-g. I hope I spelled that right. In any event, I don't think we will be seeing him in the United States.

However, he—we were—it was represented to the tribunal and represented to us in the arbitration that he no longer worked for ZTE. But we were able to find that he worked for ZTE Holdings. Holdings, for most of us, suggests a superior company. . . .

And that position is one of the four positions named in paragraphs 40 and 41 of the Factual Resume attached to the plea bargain stating those people will be terminated, removed, and not allowed to get anymore money from ZTE.

[. . .]

On the limitations issue—

THE COURT: All right. Hold on.

[. . .]

THE COURT: Judge Kendall, are you making an appearance in this case?

[. . .]

THE COURT: I guess if you want to speak, you might want to.

MR. KENDALL: Yes, I do.

[. . .]

But you don't know what you don't know. . . . if . . . what is before the Court is the Factual Resume from the federal criminal case, and of particular interest would be paragraphs 57 through 68 of the Factual Resume which outlines the conduct which was engaged in.

[. . .]

MR. KENDALL: . . . what's interesting, what kind of leaps off the page, is this involves in-house counsel of ZTE.

Number two, they lied to their own lawyers there. Their own lawyers didn't know what was going on.

Number three, they put in place a 13-member—13 IT folks who were the, euphemistically named, the contract induction something or another team. Anyway, all of them had to sign NDAs which had a penalty clause of $1 million per if they disclosed what they were doing. And what they were doing was scrubbing the hard drives.

Once again, you know, you don't know what you don't know. But all of this conduct was contemporaneous with this arbitration, and it involved their general counsel which—not general counsel; let me back off that. I don't know that that's for sure, but certainly in-house counsel.

[. . .]

MR. DAVIS: . . . certainly, one would think that if you, as an entity or an individual, would be willing to lie to the FBI and to federal prosecutors, it is not a stretch to think that you would hide the ball from your lawyers in an arbitration in Dallas, Texas, as well as the arbitrator.

[. . .]

MR. DAVIS: At the first final arbitration hearing, UTE had issued—or had asked Judge Lopez, the arbitrator, to issue a subpoena for Ashley Yablon—who had been the in-house counsel for ZTE U.S.A.—for the very reason, they said, you've got to hear about all of this Iran stuff and all the experts and the fact that they were hiding and destroying documents.

And we said that that's just utterly irrelevant and a waste of time.

[. . .]

MR. DAVIS: They didn't get him served. I don't know why. He was not an employee of ZTE at that time, so ZTE had no control over him. If they didn't get him served, didn't get him there to testify, that was their lack of diligence.

[. . .]

MR. DAVIS: . . . in fact, Mr. Ding did testify at the first final hearing, and it was on the record because a record was maintained of that hearing. And he testified, sure, with an interpreter, and it was on Skype. And they asked him questions, and he said that he didn't know anything and/or he denied everything they asked him.

Well, you know, that's a shocker. I mean, they were asking him, Isn't it true that you are an international criminal? Isn't it true that you, you know, violate laws all over the country?

And he is like, I don't know what you are talking about, no.

Now, was he lying? I don't know. But they got their opportunity to cross-examine him right in front of Judge Lopez by Skype.

[. . .]

THE COURT: But you don't think Justice Gonzalez might have had a different perspective based upon the plea of guilty?

[. . .]

THE COURT: I understand that. That's why the distinction for me—that's why I asked about the criminal proceedings, is there is a huge difference between a plea of guilty or a conviction versus mere allegations or an investigation. . . .

[. . .]

MR. DAVIS: . . . And if the obstruction of justice had to do with, like they said, efforts that were made to keep documents from being produced and lying to the attorneys, all of that is in there. . . .

MR. DAVIS: . . . also they—they were hit with the federal statute for lying to a federal official, . . .

[. . .]

MR. DAVIS: . . . that doesn't change the statute of limitations. . . .

[. . .]

MR. DAVIS: . . . the real reason they lost their contract was the government of Liberia stepped in and said, you are not competent to perform it. . . .

[. . .]

MR. FRIEDMAN: An investigator that we had hired at the beginning of the case with Judge Lopez, a year after—or two years after we tried the case with Judge Lopez, had finally located documents in Liberia that demonstrated that—the commission agreements that were made with these ministers that had awarded the contracts to UTE.

[. . .]

MR. FRIEDMAN: Everything we asked for from ZTE, they told us, "We don't have it." "We don't know where it is." "It doesn't exist."

It existed. It all existed. We never got it.

Part of the reason we didn't get it is because there was an ongoing criminal investigation that we didn't know about, that they weren't going to give us documents about because they didn't want to be convicted criminally, and they weren't worried about this arbitration. They didn't care about a judgment in the arbitration. They were

caring about criminal convictions that we didn't know was occurring.

We did subpoena Ashley Yablon. We did get Ashley Yablon served. ZTE did send lawyers to the court, and they argued sufficiently to quash that subpoena after Judge Lopez had given us that subpoena.

So Ashley Yablon was off the table. They did everything they could to prevent us from getting evidence to put on in hearing number one and hearing number two.

[. . .]

MR. FRIEDMAN: . . . Justice Gonzalez says,

"Adverse inferences against respondents were not warranted because claimant failed to prove that respondents acted with subjective intent to conceal or destroy discoverable evidence."

[. . .]

THE COURT: Irrespective of all of that, they didn't get the bid. Your client got the bid.

MR. FRIEDMAN: Right.

THE COURT: And they fought it through the whole system in Liberia, more than once, to where you actually had a law that was passed to say that you all had it.

MR. FRIEDMAN: Correct.

[. . .]

MR. FRIEDMAN: But they were able to go behind UTE and take that contract away based on the plans and specifications that they had presented

to the Liberian Telecommunications Commission. They couldn't get the contract with nothing.

And the plans and specifications that they had and that they presented to the Liberian Telecommunications Commission were identical—not similar, they were identical from what they took from UTE.

THE COURT: But that's all known.

MR. FRIEDMAN: No. We weren't able to proffer it. We showed that they had taken all of UTE's plans. They had taken UTE's confidential and proprietary information. They had copied everything on Narasimha's computer.

But ZTE claimed they had no documents. They had no documents demonstrating anything they produced to the Liberian Telecommunications Commission. They had no communications with the Liberian Telecommunications Commission. They had no evidence of payments from the Liberian Telecommunications Commission. They had no invoices to the Liberian Telecommunications Commission.

So they made it nearly impossible for us to put on the case we wanted to put on.

And it is beyond belief that the second largest company—or the largest telecommunications company in China keeps no records about a multi-hundred-million-dollar project that they are engaged in and are still engaged in in Liberia. It is beyond belief.

[. . .]

MR. FAULKNER: . . . as to your question about prescription or limitations, ZTE was still shipping equipment in violation of the attempted award of the bid to UTE as recently as about six months before the arbitration—before the litigation was filed.

. . . as to what Justice Gonzalez could have seen, had we been allowed to have full information, we believe that legitimate access to their hard drives and to their discovery would allow us to show that they continue to be interrupting limitations and prescription all the way up until a couple of months before the suit was filed, . . .

[. . .]

UNITED STATES OF AMERICA v. ZTE
CRIMINAL INFORMATION
(MARCH 7, 2017)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

ZTE CORPORATION

No. 3-17CR-0120K

INFORMATION

The United States Attorney for the Northern District of Texas charges:

COUNT ONE
Conspiracy to Unlawfully Export
(Violation of 50 U.S.C. § 1705; 31 C.F.R. Part 560; 15 C.F.R. § 764.2(a)-(e))

Beginning on or about January 1, 2010, and continuing through on or about April 1, 2016, in the Northern District of Texas, and elsewhere, the defendant, ZTE Corporation, did knowingly and willfully conspire and agree with others known and unknown to the United States to export, re-export, and transship, and cause the export, re-export, and transshipment of U.S. goods, specifically servers, switches, routers,

and other component parts of a cellular network infrastructure through China and to Iran without having first obtained the required export license(s) from the United States Department of the Treasury, Office of Foreign Assets Control.

In violation of 50 U.S.C. § 1705; 31 C.F.R. Part 560; 15 C.F.R. § 764.2(a)-(e).

COUNT TWO
Obstruction of Justice
(Violation of 18 U.S.C. § 1503)

Beginning in or about November 2013, and continuing through on or about April 1, 2016, in the Northern District of Texas, and elsewhere, the defendant, ZTE Corporation, did corruptly influence, obstruct, and impede, and endeavor to influence, obstruct, and impede the due and proper administration of the law under which a grand jury investigation was being held by (i) hiding data regarding its 2013-2016 sales to Iran, thereby causing ZTE Corporation's defense counsel to unwittingly provide false information to attorneys for the Department of Justice and federal law enforcement agents, and (ii) deleting all communications related to this cover-up.

In violation of 18 U.S.C. § 1503.

COUNT THREE
False Statements to Federal. Investigators
(Violation of 18 U.S.C. § 1001)

On or about July 8, 2015, in the Northern District of Texas, the defendant, ZTE Corporation, in a matter within the jurisdiction of the executive branch of government, namely the United States Department of

Justice's Federal Bureau of Investigation, did knowingly and willfully make a materially false, fictitious, and fraudulent statement and representation, to wit, that ZTE Corporation was complying with the laws and regulations of the United States.

In violation of 18 U.S.C. § 1001.

NOTICE OF CRIMINAL FORFEITURE

Pursuant to 28 U.S.C. § 2461(c), and 18 U.S.C. § 981(a)(1)(C), the United States gives notice to the defendant, ZTE Corporation, that upon conviction of the violations charged in Count One, all property which constitutes or is derived from proceeds traceable to those violations is subject to forfeiture. The property subject to forfeiture includes, but is not limited to, the following property:

$143,496,266 in United States Currency.

The defendant is notified that a money judgment for $143,496,266 may be imposed against the defendant and in favor of the United States.

Substitute Assets

In the event that the property subject to forfeiture as a result of any act or omission of the defendant:

a. cannot be located upon exercise of due diligence;

b. has been placed beyond the jurisdiction of the Court;

c. has been transferred or sold to, or deposited with a third party;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States to seek forfeiture of any other property of the defendant up to the value of such property pursuant to 18 U.S.C. § 982(b)(1), incorporating 21 U.S.C. § 853(p).

Respectfully submitted,

John R. Parker
United States Attorney

/s/ J. Mark Penley
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/s/ Elizabeth L. D. Cannon
Trial Attorney
National Security Division
U.S. Department of Justice

UNITED STATES OF AMERICA v. ZTE
FACTUAL RESUME
(MARCH 6, 2017)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

ZTE CORPORATION

No. 3-17CR-0120K

It is hereby agreed by and between ZTE Corporation (ZTEC), its attorneys, Clifford Chance LLP and Burleson, Pate & Gibson LLP, and the United States Attorney's Office for the Northern District of Texas and the United States Department of Justice, National Security Division (collectively, the Department), that the following is true, correct and can be used in support of the defendant's plea of guilty:

ELEMENTS OF THE OFFENSE

COUNT ONE
Conspiracy to Unlawfully Export
(Violation of 50 U.S.C. § 1705, 31 C.F.R. Part 560; and 15 C.F.R. Part 764.2(d))

In order to prove the offense of Unlawfully Conspiring to Export, the government must prove each of the following elements beyond a reasonable doubt:

First:

That two or more persons came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the Information;

Second:

That the Defendant, knowing the unlawful purpose of the plan, willfully joined in it;

Third:

That the object of the unlawful plan was to export and cause the export of U.S. origin items from the United States to Iran without a license from the U.S. government.

COUNT TWO
Corruptly Obstructing the Administration of Justice
(Violation of 18 U.S.C. § 1503)

In order to prove the offense of Obstruction of Proceedings before Departments, Agencies or Congress, the government must prove each of the following elements beyond a reasonable doubt:

First:

That on or about the dates in the Information, there was a proceeding pending before a grand jury;

Second:

That the defendant knew of the pending proceeding; and

Third:

That the defendant acted corruptly with the specific intent to influence, obstruct, or impede that judicial proceeding in its due administration of justice.

COUNT THREE
False Statement to a Federal Agency
(Violation of 18 U.S.C. § 1001)

In order to prove the offense of False Statement to a Federal Agency, as alleged in Count Three of the Information, the government must prove each of the following elements beyond a reasonable doubt:

First:

That the defendant made a false statement to an agency or department of the United States Government;

Second:

That the defendant made the statement intentionally and willfully, knowing that it was false;

Third:

That the statement was material; and

Fourth:

That the defendant made the false statement for the purpose of misleading the agency or department of the United States Government.

STIPULATED FACTS

Introduction

1. This Factual Statement is made pursuant to, and is part of, the Plea Agreement dated _____, between the United States Attorney's Office for the Northern District of Texas and the National Security Division of the United States Department of Justice (collectively, "DOJ") and the defendant, ZTE Corporation ("ZTEC"). If this case were to go to trial, the government would be prepared to prove the following, and the Defendant now admits the following facts are true and correct:

2. ZTEC is the largest publicly-traded telecommunications manufacturer in the People's Republic of China (PRC), and the fourth largest telecommunications manufacturer in the world. ZTEC products are manufactured in Shenzhen, PRC, and sold to customers globally. ZTEC has subsidiaries located all over the world, including the United States.

3. Starting in January 2010, and continuing through March 2016 (the "relevant time period"), ZTEC violated U.S. law by causing the export of goods from the United States to the Islamic Republic of Iran (Iran) in violation of U.S. economic sanctions. ZTEC's most senior managers constructed an elaborate scheme to evade detection by U.S. authorities. The company, along with its co-conspirators, including ZTE Parsian,

Beijing 8 Star, Chinese Company A, Iran Company A, and Iran Company B, purchased U.S.-origin parts and then transshipped, exported, or reexported those parts, either as a component of a larger system or separately, from China to Iran without a license from the Department of Treasury's Office of Foreign Assets Control ("OFAC"). During the course of the conspiracy, ZTE Parsian and Beijing 8 Star acted as alter egos of ZTEC.

4. During the relevant time period, ZTEC was incorporated and headquartered in Shenzhen, China. It maintained a U.S. subsidiary, ZTE USA, located in Richardson, Texas, and a subsidiary in Tehran, Iran, ZTE Parsian. Its shares are listed on the Shenzhen and Hong Kong Stock Exchanges.

5. Beijing 8 Star Co. International ("8S") was registered in China in 2009 as a trading company. It was incorporated by two ZTEC employees as a side business for those employees and originally was not part of ZTEC. As described in greater detail below, beginning in 2010, ZTEC identified 8S as a possible vehicle for hiding its shipments of U.S.-origin items to Iran. It intended to use 8S to export U.S.-origin items from China to ZTEC customers in Iran. As part of this plan, ZTEC supplied 8S with necessary capital and took over control of the company.

6. Chinese Company A ("CCA") was registered in the PRC in 1990. Its principal place of business is in Jiangsu, China. It is a large manufacturer and its parent company is listed on the Shanghai Stock Exchange. Beginning in 2014, CCA began exporting U.S.-origin items from China to Iran on behalf of ZTEC.

7. During the relevant time period, neither ZTEC, nor 8S, nor CCA applied for or obtained an export license from OFAC for the U.S.-origin items they shipped, to Iran.

Applicable Law

The International Emergency Economic Powers Act

8. The International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1701 *et seq.,* gave the President of the United States broad authority to regulate exports and other international transactions in times of national emergency. IEEPA controls are triggered by an Executive Order declaring a national emergency based on an "unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States." Pursuant to the authority under IEEPA, the President and the executive branch have issued orders and regulations governing and prohibiting certain practices and transactions with respect to various sanctioned nations by U.S. persons or involving U.S.-origin goods.

9. It is a crime for a person to willfully commit, willfully attempt to commit, willfully conspire to commit, or willfully cause a violation of any license, order, regulation, or prohibition issued under IEEPA, 50 U.S.C. § 1705.

Iranian Transactions and Sanctions Regulations

10. On March 15, 1995, the President issued Executive Order 12957, finding that "the actions and policies of the Government of Iran constitute an unusual and . . . .

[. . .]

18. Exporters and reexporters are not required under the EAR to seek authorization from both the Commerce Department and OFAC for exports or reexports subject to both the EAR and the ITSR. Instead, an authorization granted by OFAC is considered authorization for purposes of the EAR as well.

Illegal Transactions with Iran, Pre-March 2012

19. In or around early 2010, ZTEC began bidding on two different Iranian projects. One was with Iran Company A (ICA), the other with Iran Company B (ICB). Each contract was worth hundreds of millions of U.S. Dollars (USD) and required U.S.-origin components—both controlled and EAR 99 commodities—for use in the final products.

Iran Company a Contract

20. ICA is a telecommunications company located in Tehran, Iran. It has a monopoly over Iran's fixed line infrastructure, and until 2010 was Iran's largest cellular operator, Internet service provider, and data communication operator.

21. On or about February 23, 2010, ICA and ZTEC reached an initial agreement in which ZTEC would provide equipment to ICA to expand the existing telecommunication networks in Iran within three years.

22. On or about December 28, 2010, the parties finalized and signed a supply contract. The contract is signed by four parties: ICA (signed for by its Vice Chairman and Managing Director), ZTEC (signed for by its Commercial Manager), 8S (signed for by its

Manager), and ZTE Parsian (signed for by its Managing Director). According to the contract, ZTEC agreed to supply the "self-developed equipment" to ICA, collect payment for the project, and manage the whole network. 8S was responsible for "relevant third-party equipment," which primarily meant parts that would be subject to U.S. export laws. ZTE Parsian was to provide locally purchased materials and all services. The ICA project is described as a "network optimization" and required several pieces of network equipment, including Internet Protocol multimedia systems, Next Generation Network, Switches, Optical Access, digital subscriber line access multiplexers (DSLAM), Routers, LAN Switches, Transmissions, Terminals, Value Added Service, Internet Protocol Televisions, Core networks, 2G/3G/LTE BTS, and operational support systems. It also included a law enforcement surveillance function and accompanying software, the ZTEC-manufactured ZXMT system.

23. According to the terms of the contract, the contract was to remain valid until December 31, 2015. The contract price was €98,639,361 (equivalent to approximately $129,584,000). The original contract was subsequently modified in two amendments. The first amendment increased the value of the contract to approximately $160 million. The final amendment decreased the amount of ZTEC-manufactured parts to be included and increased the number of U.S.-origin items to be included, without changing the value of the contract.

24. ZTEC was well aware that it required U.S.-origin component parts to fulfill its contract with ICA. It was also aware that U.S. export laws prohibited ZTEC from transshipping or reexporting U.S.-origin

component parts to Iran without a license from the U.S. government, and that it was highly unlikely that the U.S. government would grant such a license . . . . Consequently, ZTEC intended for 8S to be an "isolation . . .

[. . .]

32. The contract—called a "framework agreement" between ZTEC and ICB was signed November 22, 2010. The framework agreement states that ICB was to create and operate the first 2G/3G and 4G ready private mobile telecommunications network in Iran. The framework agreement was valued at €1,450,000,000 (approximately $1,986,355,000). ZTEC was awarded a piece of the overall framework agreement, and was to supply ICB with the equipment and services necessary to set up 1000 cell tower sites around Iran. The agreement between ZTEC and ICB was signed by the Chairman of ICB; the Commercial Manager for ZTEC; the Manager of 8S; and the Managing Director of ZTE Parsian.

33. As with the ICA contract, ZTEC was responsible for, among other things, providing the necessary "self-developed products." 8S's responsibilities included providing U.S.-origin equipment. ZTE Parsian was to provide services and locally made equipment for the project.

34. 8S was intended to play the same "isolation" role that it was intended to have in the ICA contract. It was supposed to sign a purchasing contract with ZTE Kangxun, which is ZTEC's international procurement aim. ZTE Kangxun would serve as a purchasing agent for 8S, buying the embargoed goods from the United States and reselling them to 8S. 8S

was then responsible for exporting those goods from China to Iran.

35. As with the ICA contract, however, 8S's lack of business reputation made it a poor choice to serve as the isolation company, and ZTEC itself wound up shipping the U.S.-origin items from China to Iran.

36. ICB issued the first purchase order for ZTEC on or about December 26, 2010, which specified 1,002 radio access network ("RAN") sites ZTEC would manufacture and install for ICB. The total price for the purchase order, after a discount, was approximately $165,000,000. In May 2011, ICB and ZTEC modified the purchase order. Instead of supplying equipment for 1000 sites, ZTEC would manufacture and install equipment for only 500 sites. That number was further decreased in March 2012 to 150 RAN sites and again in April 2012 to 130 RAN sites. Though the number of sites decreased, the U.S. dollar value of the purchase order remained the same at approximately $165,000,000.

37. From January 2010 through December 2012, ZTEC sent approximately 20 shipments to ICB. The total cost incurred by ZTEC for the items it shipped to ICB was approximately $25.4 million, and the total cost of the U.S.-origin items was approximately $11.8 million (*see* Appendix C). The items included various component parts from U.S. manufacturers. The shipments also included numerous products that were on the CCL and thus controlled (*see* Appendix D, listing the pertinent ECCNs for controlled products shipped under the ICB contract).

38. The U.S.-origin items that ZTEC shipped to ICB in Iran were procured by ZTEC in the same manner as those sent to ICA—as part of bulk orders

from its suppliers, which ZTEC placed monthly or weekly depending on its global needs. When ZTEC purchased the U.S.-origin items, it did so knowing that some number of each U.S.-origin item would be sent to Iran pursuant to the Iranian contracts, either as a component part of a larger ZTEC system or shipped separately.

39. Neither ZTEC, nor ICB, nor 8S ever sought or obtained licenses from OFAC to transship or reexport these U.S.-origin items to Iran, though they knew at the time that licenses were required.

Changing the Structure

40. In early 2011, ZTEC determined that the use of 8S was insufficient to hide ZTEC's connection to the export of U.S.-origin goods to Iran. Senior management of ZTEC ordered that a company-level export control project team study, handle, and respond to the company's export control risks. By September 2, 2011, four senior managers had signed a proposal addressing these issues. Among the primary goals established by the proposal was to identify and establish new isolation companies (also described as "cut-off companies"), which would be responsible for supplying U.S. component parts necessary for projects in embargoed countries. The isolation companies would conceal ZTEC's role in the scheme and would insulate ZTEC from export control risks. The document was signed by the ZTEC General Counsel; Executive Vice President for Sales; Executive Vice President of Logistics; and ZTEC CEO.

41. Among other things, the document states:

> At present, the biggest risk is Iran's ongoing project(s). . . . [I]n 2010, the U.S. passed the "Comprehensive Iran Sanctions, Accountability, and Divestment Act," applying stronger sanctions against Iran. At the end of 2010, our company signed a four-party project contract with Iran customer(s), adopting semi cut-off method, *i.e.* our company provides our self-manufactured equipments [sic] to the customer(s) and our company's cooperating company provides sensitive U.S. procured items to the customer(s). . . . Since the capital credit and capability of our company's cooperating company are weak, the project execution is more difficult. Therefore, currently most of the operations are actually done by ZTE Corporation; the risk cut-off is not effective.

42. This proposal also stated that ZTEC had been sending U.S.-origin parts to numerous sanctioned countries, such as Iran, Sudan, North Korea, Syria and Cuba, without the necessary licenses from the U.S. government.

Reuters Article and Decision to Resume Shipments to Iran

43. In or about March 2012, *Reuters* published an article detailing ZTEC's sale of equipment to ICA, and it highlighted the ZXMT surveillance system. The article stated that the ZXMT system contained U.S.-origin component parts. In response, the Department of Commerce, BIS, served ZTE USA with an administrative subpoena, asking for the ICA contract and packing list mentioned in the article. The U.S. Attor-

ney's office for the Northern District of Texas subsequently opened its grand jury investigation and the FBI served ZTE USA with criminal subpoenas as detailed below.

44. In response to the article and investigations, ZTEC shipped back to China from Iran several U.S.-origin items that ZTEC had shipped to ICA. It did not return any U.S. equipment that it had shipped to ICB. In the summer of 2012, ZTEC made a decision to temporarily cease sending new U.S. equipment to Iran.

45. Beginning in or around mid-2013, however, ZTE Parsian began urging ZTEC to resume business with ZTEC's Iranian customers. The ZTE Parsian sales team in Iran invited a small group of ZTEC executives to Tehran to have ZTEC better understand the pressure the Iran office was under from ZTEC's Iranian customers. Following that visit, senior management at ZTEC, including the CEO and Executive Vice Presidents, decided to resume business with the Iranian customers. ZTEC feared they would be subject to penalty provisions in their Iranian contracts. Also of concern was maintaining their bank performance guarantees. By November 2013, ZTEC had resumed its business with Iran, and beginning in July 2014, ZTEC began shipping U.S.-origin parts to Iran once again without the necessary licenses.

Identifying Other Isolation Companies

46. Given the weaknesses associated with 8S and the proposal signed by senior management in September 2011, ZTEC sought out and identified other intermediary companies that would be better able to obfuscate ZTEC's role in the illegal exports.

47. ZTEC established a committee in 2013 to identify and evaluate possible options. The committee used various criteria to analyze the options, including the candidate company's (1) sales volume, (2) willingness to cooperate with ZTE, (3) size, and (4) cost. Ultimately, ZTEC identified CCA.

48. CCA was utilized mostly for shipments related to the ICA and ICB contracts, between 2013 and 2016. As described above, CCA is a large manufacturer in China. Its parent company is listed on the Shanghai Stock Exchange. In 2013, CCA was looking to expand and had an established import/export business that ZTEC could leverage.

49. On or around December 2, 2013, ZTEC and CCA signed a framework agreement. The scope of work described in the agreement was for a period of three years, with an option to renew for an additional year. The contract value was approximately $163,000,000. ZTEC was identified in the agreement as the seller, with CCA as the buyer. According to the terms of the agreement, the seller would notify the buyer when the goods were ready. The buyer was then responsible for collecting the goods from the seller. A provision in the agreement admonished the CCA to follow all export laws, including those of the United States.

50. CCA was fully aware of the U.S. government's investigation into ZTEC's shipments to Iran. The primary purpose of the contract was for CCA to obtain products from ZTEC and export them to the Iranian customer. The agreement, though, says nothing about ICA, ICB, or Iran. It was signed by the CEO of CCA and the Commercial Manager for ZTE Parsian. The ZTEC Chairman had authorized the Commercial Manager to sign on behalf of ZTEC.

51. CCA, in turn, signed contracts with ICA and ICB. The ICA contract was signed in or around February 2014. It stated that ICA would purchase from CCA the telecommunications items for various Iranian provinces according to three purchase orders totaling approximately $95,169,000.

52. Under the plan, CCA placed purchase orders with ZTEC for all parts ordered by ICA—both U.S.-origin items and ZTEC-manufactured items. ZTEC then purchased or manufactured the requisite items, which CCA picked up from ZTEC's warehouse. CCA then shipped all of the items to ICA. ZTEC stripped its logo off of all communications with ICA and all items shipped to ICA.

53. Between January 2014 and January 2016, ZTEC prepared 10 shipments for CCA that included U.S.-origin items, knowing and intending that CCA would then ship those items to ICA in Iran (*see* Appendix A). The total cost incurred by ZTEC of the items shipped to ICA was approximately $13.7 million dollars, including approximately $6.3 million worth of U.S.-origin items. The shipments included U.S. cellular-network parts from various U.S. companies. The last date that goods left the ZTEC warehouse for CCA destined for ICA was on or about January 20, 2016. Neither ZTEC, nor CCA, nor ICA applied for or received the necessary export licenses from the U.S. government.

54. ZTEC and CCA established the same system for sales to ICB. On or about March 19, 2014, ICB and CCA signed a contract worth approximately $100,154,880. The stated contract term was three years. The ICB contract called for the installation of 553 cell sites. Additional items were to be delivered to

ICB's warehouse in Iran. To fulfill the contract, CCA placed purchase orders with ZTEC. As with the ICA contract, ZTEC purchased or manufactured all relevant equipment—both U.S.-manufactured and ZTEC-manufactured—and prepared them for pick-up at its warehouse by CCA.

55. Between July 2014 and January 2016, ZTEC prepared 24 shipments for CCA, knowing and intending that CCA would then ship those items to ICB in Iran (*see* Appendix C). The cost incurred by ZTEC of the items shipped in these shipments was approximately $11.1 million, including approximately $2.7 million of U.S.-origin items. The shipments included U.S. cellular-network parts from various U.S. companies. The last date that goods left the ZTEC warehouse for. CCA destined for ICB was on or about January 29, 2016. Neither ZTEC, nor CCA, nor ICB applied for or received the necessary export licenses from the U.S. government.

56. Between January 2010 through January 2016, ZTEC, either directly or indirectly through 8S and CCA, shipped approximately $32.2 million of U.S.-origin items to Iran without obtaining the proper export licenses from the U.S. government.

Obstructing the United States Government Investigation

57. As mentioned above, the FBI began its investigation into ZTEC shortly after the. *Reuters* article was published. The FBI served a seizure warrant on ZTE USA on or about July 20, 2012, for a laptop the FBI had already imaged and returned. On or about August 13, 2012, the FBI served the first grand jury subpoena on ZTE USA for documents and records related to all sales to Iran. The FBI served two addi-

tional subpoenas for documents and records on the company and its outside counsel on or about September 17, 2012, and January 27, 2015. In addition, on or about October 4, 2014, October 17, 2014, and November 12, 2014, the FBI conducted searches of various ZTE USA offices. Law enforcement agents also served subpoenas to appear before the grand jury on several senior ZTE USA and ZTEC managers during 2013 and 2014.

58. Despite its knowledge of the ongoing grand jury investigation, ZTEC took several steps to conceal relevant information from the U.S. government and, moreover, took affirmative steps to mislead the U.S. government.

59. In the summer of 2012, ZTEC asked each of the employees who were involved in the Iran sales to sign nondisclosure agreements in which the employees agreed to keep confidential all information related to the company's exports to Iran.

60. During meetings on or about August 26, 2014, December 2, 2014, November 20, 2015, December 21, 2015, January 8, 2016, and March 18, 2016, defense counsel for ZTEC, unaware that the statements ZTEC had given to counsel for communication to the government were false, represented to the Department of Justice and federal law enforcement agents that the company had stopped doing business with Iran, and therefore was no longer violating U.S. export controls and sanctions laws. In advance of defense counsel's meetings with the U.S. government, senior managers at ZTEC had reviewed the statements made by defense counsel and approved them, knowing then and there that the statements were false.

61. Similarly, on July 8, 2015, in-house counsel for ZTEC accompanied outside counsel in a meeting with the Department of Justice and federal law enforcement agents and reported that ZTEC was complying with the regulations and laws of the United States. That statement was false.

62. Additionally, ZTEC, pursuant to defense counsel's request, hired an outside thin ("Forensic Accounting Firm") to review ZTEC's computer systems and identify information related to Iran sales. During the years 2013-2016, the Forensic Accounting Firm conducted an ongoing review of ZTEC's data and systems and provided an analysis of ZTEC's sales to Iran. The dollar figures and shipping information identified in the analysis conducted by the Forensic Accounting Firm were presented by defense counsel to the U.S. government on several occasions. ZTEC was aware of why the Forensic Accounting Firm was reviewing its systems and knew that the analysis was being reported to the Department of Justice and U.S. law enforcement. ZTEC was also aware that the government had been seeking the sort of information the Forensic Accounting Firm was gathering and that the government would likely present such information to the grand jury.

63. On or about April 6, 2016, defense counsel, at the direction of ZTEC, advised attorneys for the Department of Justice that ZTEC senior management had lied to defense counsel and, consequently, to the U.S. government in the meetings at which defense counsel had made factual representations to the government. To avoid detection of its 2013-2016 resumed sales to Iran, ZTEC had taken steps to hide

data related to those transactions in its computer systems from the Forensic Accounting Firm.

64. In January 2016, when defense counsel asked that the Forensic Accounting Firm be given greater access to all of ZTEC's systems to finalize the internal investigation for purposes of providing information to the U.S. government, ZTEC's then-CEO advised three senior managers that the IT department needed to hide all information related to the post-March 2012 Iran business from the Forensic Accountant Firm.

65. To accomplish this, ZTEC formed the "contract data induction team" ("CDIT"). The team was comprised of approximately 13 people whose job it was to "sanitize the databases" of all information related to the 2013-2016 Iran business. The team identified and removed from the databases all data related to those sales.

66. In addition, ZTEC established an auto-delete function for the email accounts of those 13 individuals on the CDIT, so their emails were deleted every night—a departure from its normal practices to ensure there were no communications related to the hiding of the data. The members of the CDIT also signed nondisclosure agreements agreeing not to share information about the CDIT or suffer a 1 million RMB penalty.

67. As a result, when defense counsel presented what was supposed to be final information about ZTEC's sales to Iran to the U.S. government on or about January 8, 2016, and March 18, 2016, the numbers defense counsel presented were false. Senior managers at ZTE had reviewed the numbers before defense counsel presented them and approved them, knowing then and there that those numbers were false.

68. Because ZTEC and ZTEC senior managers created an elaborate system to hide the 2013-2016 Iran data, authorized the false information that ZTEC defense counsel unwittingly provided to attorneys for the Department of Justice and federal law enforcement agents, and took steps to delete all communications related to this cover-up, the company obstructed the due administration of justice.

AGREED TO AND SIGNED this 6th day of March 2017.

Respectfully submitted,

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