

## Attachment A - Statement of Facts

### Facts Relating to Counts One through Three

1. In the summer of 2005, Blackwater was contacted by the U.S. government about the possibility of providing support to U.S. government efforts to assist the government of Southern Sudan (GoSS). The government decided not to seek Blackwater's assistance. Subsequently, on or about October 5, 2005, on its own initiative, Blackwater Security Consulting, one of the corporate entities affiliated with the trade name Blackwater Worldwide and its successor-in-interest, Xe Services, LLC (collectively, "Blackwater/Xe"), entered into a consulting agreement with an outside consulting group to facilitate the development of business relationships with the GoSS on behalf of Blackwater/Xe. Between 2005 and 2007, Blackwater/Xe made payments of approximately \$400,000 or more to this consulting group for its Sudan-related services.
2. In early October 2005, representatives from this consulting group traveled to Sudan for the purpose of securing an audience with officials from the GoSS and to assist Blackwater/Xe's efforts in obtaining a business relationship with the GoSS.
3. On or about October 31, 2005, the president of this consulting group, Consultant 1, wrote a letter to a senior Blackwater/Xe official advising him of the specific business opportunities in Sudan that Consultant 1 was attempting to develop for Blackwater/Xe, including building barracks, roads, bridges, de-mining roads, security and training for GoSS security and armed forces.
4. In November 2005, another individual (Blackwater/Xe Employee 1) acting on behalf of Blackwater/Xe entered into discussions with the GoSS concerning Blackwater/Xe providing the following services:
  - a. A 30-person PSD (Protective Security Detail) for President Salva Kiir to be trained at Blackwater/Xe facilities;
  - b. Secure communications to include Global System for Mobile Communications (GSM) phones for the President and Cabinet; secure email accounts; and Iridium satellite phones for the areas where GSM phones could not function;
  - c. A full range of data collection and monitoring technology;
  - d. A HUMINT (human intelligence) collection team; and
  - e. Further training for the Sudanese People's Liberation Army (SPLA)
5. In November, 2005, Blackwater/Xe Employee 1 placed an order with CryptoPhone in Berlin, Germany, for the purchase of ten GSMK CryptoPhone G10s. The cost of these phones was approximately \$18,000 and was charged to Blackwater/Xe's Sudan Initiative cost code.

6. In November 2005, Blackwater/Xe received an invoice from GMPCS Personal Communications to Blackwater/Xe USA for approximately \$12,000 for six Iridium 9505A Satellite Phones with 500 prepaid minutes for each.
7. In late November 2005, some of these Iridium phones were delivered to GoSS officials by Blackwater/Xe employees or agents.
8. On November 24, 2005, Blackwater/Xe Employee 1 sent an email to senior Blackwater/Xe executives, and advised that "the comm gear is being delivered in Nairobi so as not to violate any sanction/import laws."
9. On or about November 28, 2005, Blackwater/Xe Employee 1 sent an email from Africa to Blackwater/Xe officials. Blackwater/Xe Employee 1 wrote: "Toys were delivered and they are now functioning. There are some special things we need to know about setting up the CryptoPhones. I will explain upon return . . ."
10. A State Department official has reported that on or about December 22, 2005, representatives from Blackwater/Xe met with State Department officials from the Sudan Program Group and the Office of the Directorate of Defense Trade Controls (DDTC). The State Department official has further reported that during the meeting, Blackwater/Xe presented their planned activities regarding Sudan and Blackwater/Xe was advised of the various licenses that would be required before attempting to conduct business in Sudan. In January of 2006, Blackwater/Xe Employee 1 ordered six additional CryptoPhones and directed others to bill the phones to the Sudan billing code.
11. On or about January 30, 2006, Consultant 1 sent an email to Blackwater/Xe Employee 1 entitled "DHL instructions." Consultant 1 provided an address in Nairobi, Kenya, and shipping instructions for sending the phones. Consultant 1 wrote, "Please DHL the phones . . . per the above instructions. . . . the phones should be taken out of their boxes and sent with a PROFORMA invoice addressed to [another individual] and his company which states that these phones are SAMPLE PHONES NOT FOR SALE with a value of \$20 USD per phone. This is important to do and is SOP for sending phones. Otherwise there may be exorbitant customs fees."
12. On or about February 1, 2006, Blackwater/Xe Employee 1 caused a shipment to be sent through FedEx according to the instructions he received from Consultant 1.
13. On or about February 12, 2006, an associate of Consultant 1 gave Blackwater/Xe Employee 1 approximately \$37,000 in U.S. currency, which was represented to be payment for the Iridium Phones (and phone cards). Blackwater/Xe Employee 1 then traveled by plane with the money to Kenya.
14. On or about May 1, 2006, a senior GoSS official signed a letter addressed to Blackwater/Xe Employee 1. This official expressed his interest in training GoSS security details at Blackwater/Xe's facility as soon as possible, and for Blackwater/Xe to help create and implement security sector reform programs. This official stated, "Your recent visit to Juba and Rumbek have proven to me that you are committed to our needs and [another official's] visit to your training facility last month further reinforced to me your

ability to help us and have an immediate impact on the security of the people of Southern Sudan.” This official further stated, “I realize we face the issue of sanctions against the Government of Sudan by the United States Government. [P]lease let us know if we can help in speaking to the United States Government.”

15. On or about July 14, 2006, senior Blackwater/Xe executives met with the Assistant Secretary of State, Bureau of African Affairs. The Assistant Secretary has reported that during the meeting, she indicated that the only two avenues to pursue providing assistance to the GoSS would be a geographical “carve out” of the Sudan sanctions or an OFAC waiver made by the President. Blackwater/Xe eventually submitted a request for such a waiver, but it was never approved.
16. On or about October 6, 2006, Blackwater/Xe Employee 1 sent an email to senior Blackwater/Xe executives entitled “Sudan.” Consultant 1 stated: “My intent is to re-deliver this paper [“Executive Summary on Sudan”] to [a senior GoSS official].” The Executive Summary outlined Blackwater/Xe’s capabilities for Southern Sudan. It highlighted Blackwater/Xe’s concept of operations, and described Blackwater/Xe’s ability to assist in jointly training all SPLA, military, law enforcement and border security units. It also included a description of capabilities to assist with national security strategy and technology for security, intelligence initiatives, and defense and procurement.
17. On or about October 9, 2006, Blackwater/Xe Employee 1 sent an email to Consultant 1 and a GoSS representative titled “PSD Proposal.” The email stated: “Here are the requested documents. Please review, sign, and return as appropriate. Additionally, please see that the appropriate people ([GoSS officials]) get a copy of the attached paper.” Attached to the email was a document titled, “Basic and Advanced Protective Security Detail Training Proposal for the Government of Uganda.” This Proposal outlined the training to be performed, the payment terms, and a contract acceptance section.
18. On October 13, 2006, an Executive Order was signed (E.O. 13412) which continued the sanctions against Sudan but excluded specified areas of Southern Sudan from the full extent of the previous sanction-imposing executive order. Notwithstanding E.O. 13412, the restrictions set forth under the International Traffic in Arms Regulations, 22 C.F.R. 126.1, remained in place against all parts of Sudan, including Southern Sudan.
19. On or about October 16, 2006, Blackwater/Xe Employee 1 sent an email with the name of a senior GoSS representative in the subject line. Blackwater/Xe Employee 1 instructed: “Please explain to him ([the senior official]) that the paperwork is moving. We need a signature on the proposal and the 50% deposit. Remember, the money has to come from a Ugandan government account, and we have to have a Ugandan security forces contact info to get this finished.”
20. On or about October 24, 2006, Blackwater/Xe submitted the official Technical Assistance Agreement (TAA) to the DDTC for the PSD between Blackwater/Xe and the GoSS.

21. Around October 30, 2006, senior Blackwater/Xe officials began to circulate among themselves a draft agreement with the GoSS that contemplated Blackwater/Xe providing “[i]mprovement, design, construction, lending and consulting in connection with business development and commercial enterprise, including manufacturing, services, and natural resources, potentially to include construction of an oil pipeline from the Jonglei Basin to Lamu Port in Kenya.” The draft agreement also contemplated that upon execution of the agreement, GoSS would make a \$100 million escrow deposit.
22. On or about October 31, 2006, Blackwater/Xe submitted a request letter to the DDTC seeking authorization for a subsidiary to make a proposal to the GoSS for the provision of a “threat assessment and security study of Southern Sudan,” portions of which may constitute a “defense service” under the ITAR. That authorization was never granted.
23. On or about November 3, 2006, Consultant 1 stated he understood the GoSS was prepared to spend a minimum of \$300 million in the first year of the contract; that the GoSS wanted Blackwater/Xe to assist in the construction and security of an oil pipeline to Lamu; and that upper-echelon GoSS officials envisioned a project scope of \$15 billion over 5-6 years.
24. On or about November 6, 2006, Blackwater/Xe officials were advised that the DDTC had determined that the arms embargo remained in place despite E.O. 13412 and Sudan would remain listed in Section 126.1. It was relayed that only “U.S. Government provided assistance” programs involving ITAR-controlled articles or services would be permitted.
25. On November 10, 2006, Blackwater/Xe officials were advised regarding what activities they were allowed to perform, and what activities they were prohibited from performing in Sudan after the issuance of E.O. 13412. Blackwater/Xe was advised that: “Blackwater/Xe would be able to travel to Southern Sudan and pay for food and lodging. They would also be able to engage in commercial arrangements (i.e., not implicating the transfer of defense articles or services) with the GoSS and/or the SPLM/A outside of the petroleum industry.” Regarding the Arms Embargo, the company was advised that it remained in effect and that “Sudan was subsequently added to the list in ITAR 126.1 which prohibits even making a proposal to export or sell defense articles or services to Sudan without written approval from DDTC.” The company was further advised, “Nonetheless and in any event, Blackwater/Xe may not, under ITAR 126.1(e), make a ‘proposal to sell or transfer any defense articles, defense services or technical data...to any country referred to in this section...or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of [DDTC].” Blackwater /Xe was told that “[t]he term ‘proposal’ is not defined in the ITAR, but has been generally understood to mean sufficient terms on which the recipient could make the decision to buy.”
26. On or about November 15, 2006, Blackwater/Xe Employee 1 sent an email to senior Blackwater/Xe executives providing an update on the meeting which was held the night before with senior GoSS/SPLA military officials. Employee 1 stated: “Verbally, they agreed to the contract...they set next Tuesday for the signing...TOs will include

assessment, AN-26s, training, and logistics hub.” Consultant 1 further noted that “we should expedite the costing process for the assessments and the ANs, and an initial logistics site to be in Juba. Consultant 1 stated that he and another Blackwater/Xe representative met with the SPLA’s banker and that “GoSS/SPLA do have the ability to pay \$300 mm/yr for defense.” Around mid-November 2006, Blackwater/Xe officials decided that a wholly-owned subsidiary of Blackwater/Xe named Samarus Company Ltd. would serve as the contracting party with the GoSS. Samarus was incorporated in Cyprus.

27. On or about November 20, 2006, a senior GoSS official sent a letter to Blackwater/Xe which stated, “We are going to pay 50% of your money and sign contract as directed by the President yesterday.” Blackwater/Xe officials explored establishing an escrow account at various foreign banks in which to place GoSS funds. No bank would agree to establish the account, however.
28. Ultimately, however, officials from GoSS decided not to execute the agreement. Blackwater/Xe never provided any of the services contemplated under any of the draft agreements, nor received any funds from the GoSS for any of those potential services.

#### **Facts Relating to Counts Four through Six**

29. Total Intelligence Solutions (TIS) is a subsidiary of Blackwater/Xe. In 2008, TIS provided training to Canadian foreign military personnel. This training included “mirror image training.” The mirror image course exposes students to various social, moral and religious norms within the broader cultural context. For this specific training, the emphasis was on terrorist cells, their belief systems and techniques. The purpose of the training is to provide students with a greater understanding of how a terrorist cell works, thereby enhancing their ability to undermine and break-up such cells.
30. Certain aspects of the TIS mirror image training programs involve ITAR-controlled material. In order to provide foreign military officials with such training, a Technical Assistance Agreement (TAA) or other authorization from the DDTC is required.
31. Beginning on June 8, 2008, TIS provided mirror image training to certain Canadian troops. While TIS had sought approval of the TAA by the DDTC to perform such training, no such approval was given before the training took place and was completed.
32. Before TIS commenced mirror image training on June 8, 2008, Blackwater/Xe compliance personnel informed TIS personnel that that DDTC approval of the TAA was required before such training could take place. A TIS official responsible for the training indicated that in late May 2008, he was informed by a TIS employee that the Department of Defense had indicated that it anticipated the training being approved by the DDTC. On that basis, and despite being advised by Blackwater/Xe compliance personnel that training may not proceed without DDTC approval, the TIS official permitted the training to go forward. Further, prior to this particular incident, between 2006 and 2008, mirror image training programs were conducted for Canadian military personnel in which DDTC approval was not obtained until after the training had already taken place.

33. In or about April 2006, Blackwater/Xe created a prototype for an armored military personnel carrier known as the Grizzly. Blackwater/Xe Employee 2, a Blackwater/Xe executive who was placed in charge of Blackwater/Xe's manufacturing division, tasked that division with developing the Grizzly. In June 2006, Blackwater/Xe Employee 3 was hired by Blackwater/Xe to manage day-to-day operations of the Grizzly project.
34. In July of 2006, Blackwater/Xe Employee 3 identified Mecatron Design Ltd. (Mecatron), a company based in the Channel Islands, to provide design and engineering services for the Grizzly.
35. Immediately after Mecatron was retained, its founder, a permanent resident of the United States (Mecatron Employee 1) and two other individuals (Mecatron Employees 2 and 3), both Swedish nationals and foreign persons under the ITAR, began working on the project. Mecatron Employees 2 and 3 both had access to technical data related to the project. No TAA or DSP-5 license applications for Mecatron Employees 2 or 3 were submitted at the time they began to work on the Grizzly project.
36. Beginning in June of 2007, Blackwater/Xe export compliance officials began to solicit information from the manufacturing division regarding the Grizzly project, including the identity of any foreign nationals working on the project, and what exposure these foreign nationals had or would have to sensitive data and materials.
37. On a number of occasions from June 2007 through January of 2008, Blackwater/Xe export compliance personnel advised managers on the Grizzly program that neither Mecatron nor foreign-national Mecatron employees were permitted to work on the Grizzly project until a TAA has been submitted and approved.
38. On August 22, 2007, Blackwater/Xe submitted a Voluntary Disclosure to the DDTC relating to a number of foreign nationals working at Blackwater/Xe, including Mecatron Employee 2. In response to a DDTC request, on October 15, 2007, Blackwater/Xe sent further information to the DDTC. This information included the assertion that "Blackwater/Xe has ceased to export Technical Data . . . to the four foreign persons," and that Mecatron Employee 2 would "stop work as a contractor and not return to the Blackwater/Xe site until an approved DSP-5 was obtained." Without the knowledge of the export compliance office within Blackwater/Xe, Mecatron Employee 2 continued to work on the Grizzly project throughout the period after Blackwater/Xe submitted his DSP-5 license application and to the time his employment with Mecatron ended in December of 2007. The DSP-5 license was approved in November 2007.
39. In January of 2008, Blackwater/Xe Employee 2 issued a request that contractor badges be issued to Mecatron Employee 1 and Mecatron Employee 3. The export compliance officials at Blackwater/Xe reissued a written notification to Blackwater/Xe Employee 2 and others that there were no current authorizations in place for Mecatron foreign national personnel to be engaged in Blackwater/Xe work or have access to any technical data.

40. On January 24, 2008, Blackwater/Xe submitted another voluntary disclosure related to Mecatron to the DDTC. The disclosure identified Mecatron Employees 1, 2, and 3 as the foreign nationals who had unlicensed access to technical data relating to the Grizzly project. Unbeknownst to the export compliance officials at Blackwater/Xe, Mecatron Employee 2 ceased employment with Mecatron the previous December, and a fourth foreign national, Mecatron Employee 4, began working on the project on January 7, 2008.
41. On February 5, 2008, Blackwater/Xe finalized and submitted a TAA seeking authorization for Mecatron to work on the Grizzly project. On February 7, 2008, a DDTC official contacted a Blackwater/Xe export compliance official seeking assurances that Mecatron and all Mecatron foreign national employees had ceased work on the Grizzly project pending TAA approval. Blackwater/Xe tendered a written response to the official that day representing that Mecatron and its employees had ceased working on the project. Unbeknownst to that export compliance official, Mecatron Employees 3 and 4 continued to work on the project during the pendency of the TAA application, which was approved on March 13, 2008. No DSP-5 application had been submitted for Mecatron Employee 4 and he was not included in the TAA application.
42. From June to September 2008, Mecatron Employees 1, 3, and 4 continued to work on the Grizzly project until Blackwater/Xe severed its relationship with Mecatron on September 24, 2008.
43. From October 2004 to March 2006, Blackwater/Xe on multiple occasions shipped ammunition and body armor to both Iraq and Afghanistan without obtaining prior approval by the DDTC.

#### **Facts Relating to Counts Seven through Twelve**

44. On or about January 29, 2003, Blackwater/Xe Employee 4 took possession of two Steyr machine guns on behalf of Blackwater/Xe. Despite Blackwater/Xe's possession of these machine guns, Blackwater/Xe did not register them with the ATF. Instead, the two weapons remained registered to the Camden County Sheriff's Office. These machine guns were turned over to investigative authorities in 2008.
45. During the month of February 2005, Camden County Sheriff's Major 1 completed a terrorist-target assessment relative to Camden County, North Carolina, that called for the acquisition by the Sheriff's Department of automatic weapons such as AK-47s and also raised the possibility that Blackwater/Xe could purchase the weapons on behalf of the Sheriff's Department.
46. On or about February 24, 2005, Blackwater/Xe Employee 2 and Camden County Sheriff's Major 1 caused a letter (drafted by Blackwater/Xe Employee 2) to be sent on Camden County Sheriff's Department letterhead to Century Arms, Inc., for the purchase of seventeen automatic AK 47s.

47. On or about February 24, 2005, Blackwater/Xe Employee 2 and Camden County Sheriff's Major 1 caused a letter (drafted by Blackwater/Xe Employee 2) to be sent on Camden County Sheriff's Department letterhead to Bushmaster Firearms International, LLC, for the purchase of seventeen automatic M4s.
48. On or about May 5, 2005, Camden County Sheriff's Major 1 issued an Exemption Certificate from the Camden County Sheriff's Department to Bushmaster for the non-tax transfer of the machineguns to be delivered to Blackwater/Xe.
49. On or about June 20, 2005, Blackwater/Xe Employee 4 and Camden County Sheriff's Major 1 signed a "Memorandum of Agreement" between the Camden County Sheriff's Department and Blackwater/Xe which stated that Blackwater/Xe financed the purchase of seventeen Bushmaster M4s for use by the Camden County Sheriff's Office.
50. On or about July 13, 2005, Blackwater/Xe Employee 4 and Camden County Sheriff's Major 1 signed a "Memorandum of Agreement" between the Camden County Sheriff's Department and Blackwater/Xe which stated that Blackwater/Xe financed the purchase of seventeen Romanian AK 47 rifles for use by the Camden County Sheriff's Office.

#### **Facts Relating to Counts Thirteen through Seventeen**

51. On or about March 19, 2005, five firearms, specifically, one Bushmaster M4 rifle, three Glock handguns, and one Remington shotgun were presented to the King of Jordan and/or his entourage at Blackwater/Xe's facility in Moyock, North Carolina, during the King's visit to the Blackwater/Xe facility.
52. Between June and August of 2005, Blackwater/Xe employees, including Blackwater/Xe Employee 4, completed four ATF Form 4473s regarding these five firearms representing that these employees had purchased the firearms when, in fact and as these employees were aware, these weapons had previously been given to the King of Jordan and his entourage.