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ATTORNEYS FOR PLAINTIFF
UNITED STATES OF AMERICA

FILED
SEP 19 2022
Clerk, U S District Court
District Of Montana
Billings

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. NATHAN NEPHI ZITO, Defendant.	CR 22- 113 -BLG- SPW INFORMATION ATTEMPTED MONOPOLIZATION Title 15 U.S.C. § 2 (Penalty: Ten years of imprisonment, $1,000,000 fine, and three years of supervised release)

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The United States of America, acting through its attorneys, charges:

BACKGROUND

At all times relevant to this Information:

1. The United States Department of Transportation ("U.S. DOT"), a federal agency under the executive branch of the Government of the United States, administers and distributes federal funds to state and local government agencies responsible for, among other things, the construction, maintenance, and rehabilitation of highways, bridges, and tunnels. Federal Highway Administration ("Federal Highway") is an agency within U.S. DOT and it supports state and local governments in the design, construction, and maintenance of the federal highways.

2. The Montana Department of Transportation ("MDOT") is an agency under the executive branch of the State of Montana, and it oversees construction, maintenance, and rehabilitation of transportation infrastructure in Montana. Similarly, the Wyoming Department of Transportation ("WYDOT"), an agency under the executive branch of the State of Wyoming, oversees construction, maintenance, and rehabilitation of transportation infrastructure in Wyoming.

3. Crack sealing is the process of filling cracks in asphalt or pavement to prevent water, sand, and dirt from damaging the substrate. MDOT and WYDOT invite contractors to compete for crack sealing projects on Montana and Wyoming highways and other public roadways and typically award projects to the lowest

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bidders. These crack sealing projects are often funded in whole or in part by U.S. DOT.

4. COMPANY A is a paving and asphalt contractor incorporated in the State of Montana and headquartered in Billings, Montana. The defendant, NATHAN NEPHI ZITO, is the owner and president of COMPANY A. Approximately 95% of COMPANY A's business comes from providing crack sealing services on publicly-funded highway projects.

5. COMPANY B is a paving and asphalt contractor. INDIVIDUAL 1 is the owner and president of COMPANY B.

6. COMPANY A and COMPANY B routinely compete for the same publicly-funded highway crack sealing projects and, in many instances, are the only two companies that submit bids for crack sealing projects administered by WYDOT and state departments of transportation in neighboring states.

7. Whenever in this Information reference is made to any act, deed, or transaction of a business organization, the allegation means that the business organization engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

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DESCRIPTION OF THE OFFENSE

8. In January 2020, ZITO telephoned INDIVIDUAL 1 to propose a "strategic partnership." INDIVIDUAL 1 reported ZITO's phone call to Federal Highway, which notified the U.S. DOT Office of Inspector General ("U.S. DOT OIG"). With INDIVIDUAL 1's cooperation, U.S. DOT OIG recorded additional phone calls between ZITO and INDIVIDUAL 1 between March and October 2020.

9. Over the course of those calls, ZITO proposed that COMPANY A and COMPANY B stop competing against each other by dividing territories in Montana, Wyoming, and neighboring states. Under the terms of this proposed market-allocation agreement, which ZITO laid out in a June 16, 2020 call, INDIVIDUAL 1's COMPANY B would stop bidding for publicly-funded highway crack sealing projects in Montana and Wyoming and ZITO's COMPANY A would do the same in South Dakota and Nebraska. ZITO proposed that COMPANY A pay COMPANY B $100,000 as additional compensation for COMPANY B's lost business in Montana and Wyoming.

10. From the outset, ZITO stated his intention to eliminate COMPANY B as a competitor in Montana and Wyoming. He told INDIVIDUAL 1 that if they agreed not to compete, their companies' revenue streams would be more stable and their margins would be higher.

11. ZITO proposed that COMPANY A and COMPANY B enter into a

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written contract that memorialized the market-allocation agreement, but obscured its effects. The written contract included an option to purchase COMPANY B, even though INDIVDIUAL 1 told ZITO that he had no intention of selling his company, and the sale of a piece of equipment valued significantly above its worth.

12. Ultimately, INDIVIDUAL 1 refused to enter into the sham agreement and rejected ZITO's invitation to divide territories and end competition between COMPANY A and COMPANY B in Montana, Wyoming, South Dakota, and Nebraska.

COUNT 1

Beginning at least as early as January 2020, and continuing until at least October 2020, in Billings, within Yellowstone County, in the State and District of Montana, and elsewhere, the defendant, NATHAN NEPHI ZITO, knowingly engaged in anticompetitive conduct with the intent to gain monopoly power in the markets for highway crack sealing services in Montana and Wyoming. There existed a dangerous probability that, had the defendant's proposed market allocation been effectuated, COMPANY A would have gained monopoly power in those markets. The defendant's conduct occurred in and affected interstate commerce. All in violation of 15 U.S.C. § 2.

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