

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**KATHLEEN KRAMEDAS
MCGUINESS**

Plaintiff

vs.

**KATHLEEN JENNINGS,
MARK DENNEY, AND
FRANK ROBINSON, IN THEIR
INDIVIDUAL CAPACITIES**

Defendants.

CIVIL ACTION NO.

**COMPLAINT FOR VIOLATIONS
OF THE 4TH, AND 14th
AMENDMENTS OF THE
CONSTITUTION OF THE UNITED
STATES AND SECTION 1983 OF
THE CIVIL RIGHTS ACT AND
COMMON LAW SLANDER**

Plaintiff, Kathleen McGuiness, by way of Complaint against Defendants Kathleen Jennings, Mark Denney, and Frank Robinson and says:

INTRODUCTION

1. This case seeks to protect and vindicate the fundamental constitutional rights of Plaintiff Kathleen Kramedas McGuiness (Plaintiff McGuiness) under the Fourth and Fourteenth Amendments to the United States Constitution through the statutory vehicle 42 U.S.C. § 1983 against Defendant Frank Robinson. In addition, Plaintiff McGuiness is seeking damages for claims of slander against Defendants Denney and Jennings.

2. Plaintiff McGuiness seeks a monetary judgment against Defendant Robinson, and a declaration that while acting under color of state law, his unconstitutional conduct—drafting an affidavit of probable cause, that Defendant Robinson knew or had reason to know was riddled with half-truths and false statements.¹

3. The basic purpose of § 1983 damages is to compensate persons for injuries caused by the deprivation of constitutional rights. *Carey v. Piphus*, 435 U.S. 247, 254 (1978); *Pryer v. C.O. 3 Slavic*, 251 F.3d 448, 453 (3d Cir. 2001)

Jurisdiction and Venue

4. Plaintiff McGuiness incorporates by reference complaint paragraphs one through three, as set forth fully here.

5. This Court has subject matter jurisdiction over the instant cause of action under 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1988.

6. Plaintiff McGuiness’ claims for declaratory and injunctive relief are further authorized by Federal Rules of Civil Procedure (“Fed. R Civ. P”) 57 and 65,

¹ “...where an officer knows, or has reason to know, that he has materially misled a magistrate on the basis for a finding of probable cause, ... the shield of qualified immunity is lost.” https://www.fletc.gov/sites/default/files/imported_files/training/programs/legal-division/downloads-articles-and-faqs/research-by-subject/civil-actions/liabilityforfalseaffidavits.pdf citing *Golino v. City of New Haven*, 950 F.2d 864, 871 (2d Cir. 1991), cert. denied, 505 U.S. 1221 (1992)

and by the general legal and inherent equitable powers of this Court. Title 42 U.S.C. §§ 1983 and 1988 authorizes Plaintiff's claims for damages.

7. Venue is proper under 28 U.S.C. § 1391(b) because Defendants reside, and the events occurred in the District of Delaware.

PARTIES

8. Plaintiff McGuiness served as Delaware State Auditor from January 2019 until October 2022.

9. Defendant Kathleen Jennings (Defendant Jennings) serves as Delaware's 46th Attorney General. At all times herein mentioned, Defendant Jennings was acting under the color of law in her individual capacity as an Attorney General for the State of Delaware.

10. Defendant Mark Denney has been the Director of the Delaware Department of Justice's Division of Civil Rights and Public Trust since April 2020. At all times mentioned herein, Defendant Denney was acting under the color of law in his individual capacity as a Deputy Attorney General for the State of Delaware. By information and belief, Defendant Denney is no longer employed by the State.

11. Defendant Frank Robinson is the Chief Special Investigator for the Office of Civil Rights and Public Trust. At all times herein mentioned, Defendant

Robinson was acting under the color of law in his individual capacity as Chief Special Investigator for the Office of Civil Rights and Public Trust.

**DEFENDANT ROBINSON USES FALSE INFORMATION TO OBTAIN A
SEARCH WARRANT AGAINST MCGUINESS**

12. Following a yearlong investigation and the use of an investigative Grand Jury, with great public fanfare, the State of Delaware’s Attorney General brought an Indictment against Plaintiff McGuiness on October 10, 2021.

13. On September 28, 2021, the State sought, obtained, and executed a Search Warrant at Auditor McGuiness’ office, for, among other things, “All invoices and payment records for My Campaign Group and Innovate Consulting between January 1, 2019, and July 1, 2021.” (A copy of the *Search Warrant and accompanying Probable Cause Affidavit* are attached hereto as Exhibit A.)

14. In support of its application for the Search Warrant, in paragraph 2 of the Probable Cause Affidavit, Defendant Robinson averred, “[Y]our affiant does not believe he has excluded any fact or circumstance that would tend to defeat the establishment of probable cause.”

15. In paragraph 23 of the Probable Cause Affidavit, Defendant Robinson alleged, “On or about August 5, 2020, and again on or about September 10, 2020, My Campaign Group invoices were split by AOA and paid in amounts of less than \$5,000.00. DEFENDANT engaged in at least three other contracts, for

\$45,000.00 each. Each of those contracts included individual payments over the \$5,000.00 reporting threshold. The MYCG contract was the only OAOA² no-bid contract of at least \$45,000.00 in which all payments were made below the \$5,000.00 reporting threshold.”

16. In further support of its application for the Search Warrant, Defendant Robinson alleged in paragraph 24 of the Probable Cause Affidavit that “On or about August 1, 2020, My Campaign Group submitted a single invoice for \$11,250.00. On August 5, 2020, My Campaign Group received two payments, one for \$4,875.00 and one for \$4,500.00. DEFENDANT later instructed an AOA employee to pay \$1,950.00 with a PayPal account, on September 10, 2020, which was done outside of the original \$45,000.00 purchase order with the Division of Accounting. Additional payments were made to My Campaign Group (“MyCG”) on September 10, 2020— one for \$4,350.00, and another for \$2,950.00. The \$2,950.00 payment was also made outside of the purchase order.”

17. Defendant Robinson and other unknown members of the Department of Justice provided false information and recklessly disregarded the truth in setting forth paragraphs 23 and 24 (as stated above).

² The Complaint interchangeably uses the acronyms “AOA” and “OAOA” referring to the Office of Auditor of Accounts.

18. Specifically, the information upon which Defendant Robinson and other unknown members of the Department of Justice relied did not support paragraphs 23 and 24 of the Affidavit of probable cause.

19. The allegations set forth in paragraphs 23 and 24 were demonstrably false when made. In particular:

a. On August 5, 2020, the OAOA made only *one* payment to My Campaign Group in the amount of \$9,375 for the full amount of the August 2020 invoice.

b. Because the August 2020 payment was in excess of \$5,000, *it was approved as required by the Division of Accounting.*

c. On September 22, 2020, the OAOA made only *one* payment to My Campaign Group in the amount of \$9,250.

d. Because the September 22, 2020 payment was in excess of \$5,000, *it was approved as required by the Division of Accounting.*

20. Paragraphs 23 and 24 are substantially similar to paragraphs 31 and 32 of the First Indictment, in which Defendant was charged on October 10, 2021. (A copy of the First Indictment is attached hereto as Exhibit B.)

21. Specifically, Defendant Robinson and other unknown members of the Department of Justice relied on sources such as a spreadsheet called “My Campaign

Group Payments _2019 to 2021.” (The “MCG Spreadsheet”). (A copy of the MCG Spreadsheet is attached hereto as Exhibit C.) The MCG Spreadsheet appears to list all payments made by the OAOA to My Campaign Group. Each payment listed includes, *inter alia*, a “payment reference number,” a method of payment, a date of payment, and an amount of payment.

22. The MCG Spreadsheet clearly shows that contrary to paragraphs 23 and 24 of the Probable Cause Affidavit and paragraphs 31 and 32 of the First Indictment, the August and September invoices from My Campaign Group were each paid by EFT payments in excess of \$5,000.

10	1044056	Electronic Funds Transfer	9,375.00	USD	8/6/2020	8/6/2020	Paid	MY CAMPAIGN GROUP LLC	509907
11	1056721	Electronic Funds Transfer	9,250.00	USD	9/22/2020	9/21/2020	Paid	MY CAMPAIGN GROUP LLC	509907

23. At the time that the search warrant was drafted, records available to Defendants Robinson and other unknown members of the Department of Justice maintained by the State’s automated and electronic accounting system called First State Financials (“FSF”) **showed that both invoice payments were, in fact, approved by the Division of Accounting as required by that agency’s regulations.** FSF records were in the possession of the Defendants and readily accessible to them, as they are accessible online by any State agency.

24. In fact, under oath, Defendant Robinson admitted to writing the warrant based on information he knew to be false at the time.

Q: You told the court under oath there were multiple payments under \$5,000 in September; correct?

A: Correct

Q: That's false.

A: Correct.

Q: And you knew it when you wrote the search warrant, right?

A: Correct.

(Transcript of Suppression Hearing, Pgs. 66-67, Lines 2-23, Lines 1-5 attached as Exhibit D)

25. In the Superseding Indictment by which Plaintiff was charged on March 28, 2022, Defendants made significant changes to paragraphs 31 and 32. Gone were the false allegations of multiple payments of less than \$5,000 on the August and September 2020 My Campaign Group invoices. Instead, the Superseding Indictment alleges—for the first time in this prosecution—that the subject invoices were “paid in multiple payments from multiple funding sources.”

(A copy of the *Superseding Indictment* is attached hereto as Exhibit E.)

26. The Search Warrant and accompanying Probable Cause Affidavit included the same false allegations that led the State to correct itself in paragraphs 31 and 32 of the Superseding Indictment (paragraphs 23 and 24 of the Probable Cause Affidavit).

27. The result was a finding of probable cause that would have been unjustified in their absence.

28. In turn, the Search Warrant should not have been issued absent the false information provided by the Defendants.

29. Paragraph 37 of the Probable Cause Affidavit purports to demonstrate probable cause for the State to seize records maintained by the OAOA video system from June 15, 2021, to July 1, 2021. It reads as follows:

“On or about June 25, 2021, an employee who is friends with former employees and whistleblowers to the misconduct at the Office of the Auditor of Accounts called the police to report an item stolen from within the office.”

30. The obvious implication of paragraphs 37 and 38 is that the Auditor Office’s video system might have recorded the theft of the employee’s item. However, Defendant Robinson and other unknown members of the Department of Justice knew no later than July 1, 2021, that the police officer who had investigated the theft had viewed the records of the video system and concluded that they did not depict the theft and that it was his opinion that the employee who reported the theft was “10-81” (a police communication code meaning “crazy”).

31. These observations were reported by the Auditor’s Officer to Deputy Attorney General Patricia Davis in an email dated July 1, 2021. (A copy of the *email*

chain is attached hereto as Exhibit F.) Despite the obviously exculpatory nature of the email, it was not produced by the State until April 8, 2022, as part of a document production of 511,266 files.

32. By omitting these facts from paragraph 37 of the Probable Cause Affidavit, Defendant Robinson and other unknown members of the Department of Justice knew there was, in fact, no probable cause to believe that the OAOA's video system might contain evidence of a crime.

33. The Search Warrant issued nevertheless, and the State thereunder unconstitutionally seized evidence identified in bullets 6 and 7 of the Search Warrant as "All invoices and payment records for My Campaign Group and Innovate Consulting between January 1, 2019, and July 1, 2021" and recordings made by "The office video system to cover June 15, 2021, to July 1, 2021," respectively.

34. Plaintiff McGuiness, meanwhile, was unaware of the reckless falsity of paragraphs 23, 24, and 37 until the State took corrective steps in the Superseding Indictment and belatedly produced the documents two months after the Court's January 31, 2022 deadline for the filing of motions to suppress in her criminal case.

35. During McGuiness' criminal trial, Robinson admitted under oath that certain assertions in paragraphs 23 and 24 were false.

36. The Purchasing and Contracting Advisory Council establishes thresholds that trigger formal bidding procedures in the areas of material and Non-Professional Services, Public Works, and Professional Services. 29 *Del. Code* 6913(d)(4).

37. The Council does not require formal bidding for professional service contracts under \$50,000.00.

38. By information and belief, the Attorney General's office and other state agencies routinely use the same no-bid contracts as the one between the Auditor's Office and My Campaign Group.

DEFENDANT JENNINGS AND DENNEY'S STATEMENTS AGAINST MCGUINNESS AT THE OCTOBER 11th, 2021, PRESS CONFERENCE

39. On October 11, 2021, the Department of Justice, represented by Defendant Jennings, Defendant Denney, and Chief Deputy Attorney General, Alexander Mackler held a press conference announcing an indictment against Plaintiff McGuinness. **See below:**



Video: Delaware state Auditor Kathy McGuinness indicted on two felony charges

<https://www.delawareonline.com/videos/news/2021/10/11/delaware-state-auditor-kathy-mcguinness-indicted-two-felony-charges-attorney-general-kathy-jennings/6094498001/>

40. Defendant Jennings made the following statements concerning the charges against Plaintiff at the Press Conference (03:14, 4:31):

- a. Jennings stated that Plaintiff McGuinness was being indicted after a year-long investigation.
- b. McGuinness contracted the MyCampaignGroup as a consultant for the Auditor of Accounts office.
- c. McGuinness concocted a “sweetheart deal” by finding a “loophole” to avoid a competitive bidding process.
- d. McGuinness illegally structured a series of payments to the company in order to avoid public oversight.

e. McGuinness contracted the company a second time and created another deal which was structured to avoid public oversight and a competitive bidding process.

f. Defendant Jennings stated, “The defendant [McGuinness] also illegally structured a series of payments to My Campaign Group to remain under the state approval threshold.”

41. Defendant Denney made the following statements concerning the charges against Plaintiff at the Press Conference (15:16):

a. Vouching for the legitimacy of the facts included in the indictment by stating “...this indictment is as detailed and as thorough as an indictment that we’ve ever done in the State of Delaware, and for the reason of ensuring public trust and transparency in these cases, we wanted to be as specific as possible.”

b. Stating “She [McGuinness] structured a contract to avoid scrutiny, period.”

c. McGuinness manipulated invoices to avoid direct payment overview by the Division of Accounting. Defendant Jennings stated, “The defendant [McGuinness] also illegally structured a series of payments to My Campaign Group to remain under the state approval threshold.”

42. Defendant Jennings emphasized her involvement in the case by stating she was “laser beam focused on the prosecution and on the investigation.”

43. On the same date of the Press Conference, the State indicted Plaintiff McGuiness for five counts: (1) Conflict of Interest, (2) Felony Theft, (3) Non-Compliance with Procurement Law, (4) Official Misconduct, and (5) Act of Intimidation. (“Ex. B”).

44. Paragraphs 31 and 32 of the First Indictment contained the same factually false allegations that were alleged in paragraphs 23 and 24 of the probable cause affidavit supporting the search warrant.

45. Prior to trial, Plaintiff’s defense counsel filed a Motion to Suppress and Request for a *Franks* Hearing based on false allegations in the search warrant affidavit and subsequent indictments.

46. During the *Franks* hearing, Defendant Robinson agreed that he included facts in the affidavit of probable cause supporting the search warrant that he knew or should have known were false.

47. At the *Franks* hearing, Defendant Robinson never intimated that anyone else was responsible for drafting the affidavit.

48. In light of Defendant Robinson’s testimony, the trial court suppressed the seized ESI.

49. Plaintiff McGuiness' criminal jury trial began on June 14, 2022.

50. At trial, Director of the State's Division of Accounting, Jane Cole testified that MyCG did not receive two payments in violation of Section 6903(a).

(Excerpts of Cole's Testimony attached as Exhibit G)

51. Cole testified to the following:

Q. And anybody who wrote that My Campaign Group received two payments on September 10th of 2020 is making a false statement; isn't that correct?

A. Yes, it is.

(Excerpt of Cole's Testimony, C-91, lines 11-23 attached as Exhibit G)

52. In regard to a payment chart, Cole testified:

Q. And anybody who said that chart says My Campaign Group received multiple payments made an untrue statement; correct?

A. Correct.

(Excerpt of Cole's Testimony, C-101, lines 17-20 attached as Exhibit G)

53. In addition, Cole testified at trial that the Division of Accounting was contacted by the Defendants in the summer of 2021 about a particular set of invoices paid to a contractor called My Campaign Group. **(C-107, lines 7-12)**

54. Cole testified that she forwarded information regarding the approval of the vouchers to the Attorney General's Office sometime in July or early August of 2021. (C-111, lines 5-10)

55. In regard to notifying the Attorney General's office, Cole testified:

Q: So as of whenever you forwarded that information, July or early August of 2021, you told the Department of Justice that the Division of Accounting approved two vouchers since they exceeded \$5,000?

A: Correct.

Q: And so if anybody said that there were multiple payments all under \$5,000, that would be a false statement relating to August and September; right?

A: Correct.

Q: And anybody who had the benefit of reading this email would know it was a false statement; correct?

A: Correct.

(Excerpt of Cole's Testimony, C-111, lines 1-19 attached as Exhibit G)

56. For the first time at trial, Defendant Robinson testified that he was not the sole author of the affidavit submitted to the Superior Court to support the September 2021 search warrant (referenced above).

57. Defendant Robinson testified that the affidavit was written by a team.

58. At this time, Plaintiff is not aware of what other members of the Attorney General's team participated in providing the false information in the affidavit. Plaintiff reserves the right to amend the complaint to add those individuals.

59. Defendant Denney, Jennings, and Robinson possessed information contrary to the information submitted in the Probable Affidavit and original indictment and statements they made during the press conference.

60. On July 1, 2022, the jury found McGuiness not guilty of Counts Two and Five and guilty of Counts One, Three, and Four.

61. Judge Carpenter issued a Post Trial Decision dismissing the Structure charge ultimately deciding that Plaintiff's acts did not constitute a crime.

62. In pages 12-13 of his decision, Judge Carpenter writes:

“The procurement statute violation has been a difficult one for the State to establish as it is the classic example of trying to fit conduct into a statute for which it was never intended to address. The State's initial theory in the case was that the Defendant violated Section 6903(a) when she had manipulated a contract to ensure that when executed it did not violate the \$50,000 threshold to avoid placing it out for bid, conduct clearly contemplated by that section of the code. When it became evident there was no splitting of the initial contract into two or more separate ones, however, the State's theory mollified into a theory that when one intentionally breaks invoices down into smaller amounts to avoid the \$5,000 review threshold, such conduct would violate Section 6981 and be subject to the criminal

penalties listed in Section 6903(a). The problem with relying upon Section 6981 is that subchapter of Chapter 69 does not criminalize that conduct... **After reviewing the evidence, it appears that the MyCG contract was properly executed between the OAOA and MyCG because it was below the \$50,000 threshold and not subject to the provisions in Section 6981.**” *State v. McGuiness*, No. 2206000799 (Del. Super. Ct. Aug. 30, 2022)

63. In other words, Judge Carpenter determined that there never was a “structuring” crime. The only way the State was able to allege probable cause in the warrant was to concoct a crime that never occurred, and when McGuiness’ defense called them on it, the State re-indicted to allege an offense that doesn’t exist.

64. On October 19, 2022, McGuiness was sentenced to, *inter alia*, pay a \$10,000 fine, serve one year in custody at supervision Level 5, suspended for one year at supervision Level 1 and perform 500 hours of community service.

65. McGuiness filed a Notice of Appeal on November 18, 2022.

66. McGuiness’ appeal is still pending and scheduled for oral argument before the Delaware Supreme Court on September 20, 2023.

Count One—Fourth Amendment Violation Against Defendant Robinson
(42 U.S.C § 1983)

67. Plaintiff McGuiness incorporates by reference complaint paragraphs one through forty-four, as set forth fully here.

68. The Constitution prohibits a state official from making perjurious or recklessly false statements in support of a warrant. *Franks v. Delaware*, 438 U.S. 154, 165-66 (1978)

69. Here, it was determined at trial that the affidavit submitted by Defendant Robinson included false information.

70. The affidavit included the following falsities and/or misleading statements:

a. On or about August 1, 2020, My Campaign Group submitted a single invoice for \$11,250.00. On August 5, 2020, My Campaign Group received two payments, one for \$4,875.00 and one for \$4,500.00. DEFENDANT later instructed an AOA employee to pay \$1,950.00 with a PayPal account, on September 10, 2020, which was done outside of the original \$45,000.00 purchase order with the Division of Accounting. Additional payments were made to My Campaign Group on September 10, 2020— one for \$4,350.00, and another for \$2,950.00. The \$2,950.00 payment was also made outside of the purchase order.

b. On or about August 5, 2020, and again on or about September 10, 2020, My Campaign Group invoices were split by AOA and paid in amounts

of less than \$5,000.00. DEFENDANT engaged in at least three other contracts, for \$45,000.00 each. Each of those contracts included individual payments over the \$5,000.00 reporting threshold. The MYCG contract was the only OAOA no-bid contract of at least \$45,000.00 in which all payments were made below the \$5,000.00 reporting threshold.

71. The records available to the State and Robinson as maintained by the State's automated and electronic accounting system called First State Financials ("FSF") **showed that both invoice payments were, in fact, approved by the Division of Accounting as required by that agency's regulations.** FSF records were either in the possession of Robinson or were readily accessible to him, as they are accessible online by any State agency.

72. Paragraph 37 of the Probable Cause Affidavit purports to demonstrate probable cause for the State to seize records maintained by the OAOA video system from June 15, 2021, to July 1, 2021. It reads as follows:

"On or about June 25, 2021, an employee who is friends with former employees and whistleblowers to the misconduct at the Office of the Auditor of Accounts called the police to report an item stolen from within the office."

73. At the time of the affidavit containing the misleading information regarding the purported theft of stolen items from the office, Defendant Robinson

and other unknown members of the Department of Justice were aware that the police had investigated the claim and determined the report to be “crazy”.

74. By omitting these facts from paragraph 37 of the Probable Cause Affidavit, Defendant Robinson and other unknown members of the Department of Justice recklessly disregarded the truth. There was, in fact, no probable cause to believe that the OAOA’s video system might contain evidence of a crime.

75. Here, Defendant Robinson and other unknown members of the Department of Justice knowingly filed a false affidavit to secure a search warrant in violation of Section 1983.

76. There is no doubt that Defendant Robinson and other unknown members of the Department of Justice knew, or had reason to know, that the affidavit submitted materially misled a magistrate on the basis of a finding of probable cause. Therefore, they cannot claim qualified immunity as a defense.

77. The Search Warrant was issued based on these false statements, and the State unconstitutionally seized evidence identified in bullets 6 and 7 of the Search Warrant as “All invoices and payment records for My Campaign Group and Innovate Consulting between January 1, 2019, and July 1, 2021” and recordings made by “The office video system to cover June 15, 2021, to July 1, 2021,” respectively.

78. This is not a case where Defendant Robinson and other unknown members of the Department of Justice acted in good faith or relied on third parties who were lying.

79. Here, Defendants Robinson, and other unknown members of the Department of Justice were in possession of the facts they either knew were false or intentionally ignored the facts.

80. At trial, Defendant Robinson took the witness stand and admitted that he knew the information in the warrant was false.

81. As a direct and proximate result of Defendant Robinson and other unknown members of the Department of Justice's unlawful actions, Plaintiff McGuiness has suffered irreparable harm, including the loss of her fundamental liberty interests entitling her to declaratory relief and damages.

Count Two – Slander Per Se Against Defendants Kathy Jennings and Mark Denney

82. Plaintiff McGuiness repeats and realleges paragraphs 1 through 59 above as if specifically set forth herein.

83. In order to state a claim of defamation properly, a plaintiff must satisfy five elements: (1) defamatory communication; (2) publication; (3) the

communication refers to the plaintiff; (4) a third party's understanding of the communication's defamatory character; and (5) injury.

84. Slander is oral defamation.

85. If a statement defames Plaintiff in her trade, business, or profession, she need not show that the defamation caused an actual monetary loss in order to recover damages.

86. Defendants Denney and Jennings are not protected by absolute privilege afforded to attorneys in the context of litigation for any statements made to the press.

87. On October 11, 2021, during the Press Conference referenced above, both Defendant Denney and Jennings made false statements that Plaintiff McGuiness structured political payments to a consulting group as described above in order to avoid oversight by the State, specifically the Division of Accounting.

88. The Defendants intentionally or recklessly failed to determine the truth of the defamatory matter since at the time that the press conference was held, records available to Defendants Denney and Jennings as maintained by the State's automated and electronic accounting system called First State Financials ("FSF") **showed that both invoice payments were, in fact, approved by the Division of**

Accounting as required by that agency's regulations.

89. FSF records were either in the possession of the Defendants or readily accessible to them, as they are accessible online by any State agency.

90. At the press conference, Defendants Denney and Jennings emphasized their complete knowledge of the facts of the investigation and allegations in the indictment.

91. Defendant Denney stated the “indictment is the most detailed and as thorough as an indictment” as any in the history of the State.

92. Defendant Jennings stated she was “laser beam focused” on the facts of the investigation and “very focused” on the prosecution.

93. A large portion of the Press Conference focused on McGuiness creating a “sweetheart” deal by manipulating pay structure to avoid public scrutiny and direct payment overview, particularly by the Division of Accounting.

94. The statements made by Defendants Denney and Jennings concerning Plaintiff McGuiness, were known to be false at the time they were made (as admitted by Defendant Robinson) and caused injury to Plaintiff McGuiness.

95. The defamation defamed Plaintiff McGuiness’ profession and therefore she need not show an actual monetary loss. However, Plaintiff McGuiness did suffer actual monetary loss as a result of Defendants Denney and Jennings’

statements.

96. It was necessary for the Plaintiff to hire the undersigned attorney to file this lawsuit. Upon judgment, the Plaintiff is entitled to an award of attorney fees and costs under 42 U.S.C. § 1988 (b).

PRAYERS FOR RELIEF

97. The above paragraphs are repeated and incorporated herein by reference as if set in full.

98. Plaintiff demands judgment against Defendants Robinson, Denney, and Jennings, individually, jointly, and/or in the alternative for compensatory damages, punitive damages, attorney fees, interest and costs of suit, and such relief as the Court may deem just and equitable.

99. Plaintiff demands judgment against Defendants Robinson, Denney, and Jennings jointly and/or in the alternative for compensatory damages, attorney fees, interest and costs of suit, and such relief as the Court may deem just and equitable.

PLAINTIFF'S DEMAND FOR JURY TRIAL

100. Plaintiff asserts her rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule 38, a trial by jury on all issues.

THE POLIQUIN FIRM, LLC

By: /s/ Ronald G. Poliquin
Ronald G. Poliquin, Esquire
Delaware Bar ID No. 4447
1475 S. Governors Ave.
Dover, DE 19904
(302) 702-5501

Attorney for Plaintiff Kathleen McGuiness

Date: August 15, 2023

EXHIBIT A

**IN THE
SUPERIOR COURT
STATE OF DELAWARE**

IN THE MATTER OF:

**Delaware Offices of the Auditor of Accounts
820 N. French Street, Wilmington, DE, 19801 &
401 Federal Street, Dover, DE, 19901**

) **DAYTIME**
) **SEARCH**
) **WARRANT**
) **AND RETURN**

THE STATE OF DELAWARE TO: **Chief Investigator Franklin Robinson**
(**DOJ/DCRPT**) with the assistance of any police officer or constable or any other necessary or proper person(s) or assistance.

GREETINGS: Upon the annexed affidavit and application or complaint for a search warrant, as I am satisfied that there is probable cause to believe that certain property, namely:

1. **Time Sheets for any and all casual-seasonal employees from January 1, 2019 to September 10, 2021.**
2. **Any personnel files or Human Resources files for casual-seasonal employees that are contained within the Office of the Auditor of Accounts.**
3. **Any materials bearing a personalized Seal of the State of Delaware.**
4. **A listing or record of all employees and former employees who were subject to email monitoring or review by the Auditor of Accounts.**
5. **The State of Delaware computer(s) assigned to Kathleen McGuiness and Elizabeth McGuiness.**
6. **All invoices and payment records for My Campaign Group and Innovate Consulting between January 1, 2019 and July 1, 2021.**
7. **The office video system to cover June 15, 2021 to July 1, 2021.**
8. **Any work records relating to Elizabeth McGuiness' employment, including the contents of her desk, and any records of her job application.**

Which said property, records, articles, papers, devices, or things were, are, or will be used and/or possessed and/or represents evidence of a violation of the **Title 11, Section 841, Theft; Title 11, Section 1211, Official Misconduct; Title 11, Section 3532, Act of Intimidation.**

Is being concealed on the premises described in the annexed affidavit and application or complaint; NOW, THEREFORE, YOU ARE HEREBY COMMANDED, within **10 days** the date hereof to search the above-named person, persons, office, conveyance or place for the property specified in the annexed affidavit and application, and to search any occupant or occupants found in the house, office, place or conveyance above named for such property, serving this warrant and making the search in the daytime, or in the nighttime if the property to be searched is not a dwelling house, and, if the property, records, papers, articles, devices, or things, or any part thereof, be found there, to seize it, giving to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or leaving the copy and receipt at the place from which the property was taken and to prepare a signed inventory of the goods seized in the presence of the person from whose possession or premises the property was taken, if they are present, or, if they are not present, in the presence of at least one witness, and to return this warrant, accompanied by the written inventory, to me forthwith.

Dated this 28th Day of September, 2021

A handwritten signature in blue ink, appearing to read "Paul R. Wallace", written over a horizontal line.

The Honorable Paul R. Wallace
Judge of the Superior Court
New Castle County, State of Delaware

IN THE
SUPERIOR COURT
STATE OF DELAWARE

IN THE MATTER OF:
Delaware Offices of the Auditor of Accounts
820 N. French Street, Wilmington, DE, 19801 &
401 Federal Street, Dover, DE, 19901

) DAYTIME
) SEARCH
) WARRANT
) AND RETURN

NEW CASTLE COUNTY &
KENT COUNTY)
) SS.
STATE OF DELAWARE)

BE IT REMEMBERED, on this 28th Day of September 2021, before me, the HONORABLE

JUDGE PAUL R. WALLACE, personally appeared **Chief Investigator Franklin Robinson** who, being duly sworn, does depose and say that there is reason to believe and that he does believe that located in or at:

Delaware Offices of the Auditor of Accounts
820 N. French Street, Wilmington, DE, 19801 &
401 Federal Street, Dover, DE, 19901

That there has been and/or is now and/or will be located and/or concealed certain property, articles, papers or things, in or at said place(s), and/or things, or on the occupants thereof, namely:

1. Time Sheets for any and all casual-seasonal employees from January 1, 2019 to September 10, 2021.
2. Any personnel files or Human Resources files for casual-seasonal employees that are contained within the Office of the Auditor of Accounts.
3. Any materials bearing a personalized Seal of the State of Delaware.
4. A listing or record of all employees and former employees who were subject to email monitoring or review by the Auditor of Accounts.
5. The State of Delaware computer(s) assigned to Kathleen McGuiness and Elizabeth McGuiness.
6. All invoices and payment records for My Campaign Group and Innovate Consulting between January 1, 2019 and July 1, 2021.
7. The office video system to cover June 15, 2021 to July 1, 2021.
8. Any work records relating to Elizabeth McGuiness' employment, including the contents of her desk, and any records of her job application.

Which said property, papers, articles, and/or things were, are or will be possessed and/or represents evidence of a violation of the Title 11, Section 841, Theft; Title 11, Section 1211, Official Misconduct; Title 11, Section 3532, Act of Intimidation.

And the facts tending to establish probable cause for believing the foregoing grounds for the application exist are as follows.

Sec Attached Text

PROBABLE CAUSE

1. Your affiant, Chief Investigator Franklin Robinson, is an Investigator for the Division of Civil Rights and Public Trust ("DCRPT") of the Delaware Department of Justice. DCRPT Investigators are tasked with investigating, among other things, public corruption and misconduct by State of Delaware officials.
2. Your affiant can truly state that the statements contained in this affidavit are based in part upon information provided by witnesses, and other law enforcement officers, along with your affiant's experience and background as a Law Enforcement Officer. Since this affidavit is being submitted for the limited purpose of securing a search warrant, your affiant has not included each and every fact known concerning this investigation. However, your affiant does not believe he has excluded any fact or circumstance that would tend to defeat the establishment of probable cause. Your affiant has set forth only the facts that your affiant believes are necessary to establish probable cause.
3. Kathleen K. McGuiness ("DEFENDANT") is the duly elected Auditor of Accounts for the State of Delaware having been elected to that office in 2018 and sworn in on January 1, 2019.
4. At all times relevant to this warrant she was serving in her official capacity of Auditor of Accounts or entering into State contracts in anticipation of her official service.
5. In early March of 2020, the Office of Auditor of Accounts ("OAOA") employed several "casual-seasonal" employees. A casual-seasonal employee, under Delaware state employment code 29 Del. C. § 5903(17), may be employed by the State on a temporary basis in order to assist agencies. Casual-seasonal employees are required to work thirty (30) hours per week or less; otherwise, special permission is required annually. Generally, a full-time position in state employment works a 37.5-hour week.
6. On or about March 12, 2020, Delaware Governor John Carney declared a State of Emergency, to begin on March 13, 2020, in response to the COVID-19 outbreak. Following the State of Emergency, three casual-seasonal employees at the OAOA experienced a substantial reduction in available work hours.
7. On or about May 5, 2020, one casual-seasonal employee, EMPLOYEE 1, was told by DEFENDANT that her employment was ending because of lack of available work. This position was permitted to work a maximum of twenty-three (23) hours per week at the OAOA. EMPLOYEE 1 was terminated on or about May 18, 2020. From the State of Emergency onset until EMPLOYEE 1's termination on or about May 18, 2020, EMPLOYEE 1 worked a total of 42 hours, or 4.67 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 1 worked 65 hours, or 8.125 hours per week.
8. On or about June 13, 2020, a second casual-seasonal employee, EMPLOYEE 2, stopped working at the OAOA because of lack of available work, due to the pandemic. This position was permitted to work a maximum of twenty-nine-and-one-half (29.5) hours per week at the OAOA. From the State of Emergency onset until EMPLOYEE 2's final day on or about June 13, 2020, EMPLOYEE 2 worked a total of 64.5 hours, or 4.96 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 2 worked 187 hours, or 23.375

hours per week.

9. On or about July 6, 2020, a third casual-seasonal employee, EMPLOYEE 3, stopped working at the OAOA because of lack of available work, due to the pandemic. This position was permitted to work a maximum of twenty-nine-and-one-half (29.5) hours per week at the OAOA.
10. From the State of Emergency onset until EMPLOYEE 3's last day on or about July 6, 2020, EMPLOYEE 3 worked a total of 36.5 hours, or 2.28 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 3 worked 180 hours, or 22.5 hours per week.
11. On or about May 18, 2020, DEFENDANT hired her daughter, ("DAUGHTER"), then a senior in high school, as a casual-seasonal employee in the OAOA. DAUGHTER was permitted to work up to 37.5 hours per week, the maximum any Delaware casual-seasonal employee is allowed under Delaware law.
12. In August of 2020, DAUGHTER enrolled at College of Charleston (South Carolina).
13. DAUGHTER remained on OAOA payroll while enrolled in college. DAUGHTER was paid \$2,362.50 for hours accrued between August 29 and December 19, 2020.
14. As of August 28, 2021, DAUGHTER, a rising college sophomore, remains an OAOA employee. She was listed as the OAOA Public Information Officer until August 18, 2021 and is now listed as an "intern." She has been paid a total of approximately \$19,300 during state employment.
15. DAUGHTER's State of Delaware paychecks went into a joint bank account in which DEFENDANT is an owner.
16. During calendar year 2020, neither DAUGHTER nor FRIEND utilized the State's Virtual Private Network (VPN) to work remotely. OAOA entrance logs for six months from June to December 2020 indicate that DAUGHTER entered the office on fifteen (15) different dates, but none after August 10, 2020.
17. Title 29, Section 2906 of the Delaware Code sets forth the duties of the Auditor of Accounts. DEFENDANT, as State's elected Auditor of Accounts, advertises to "serve[] Delawareans by ensuring accountability in the use of taxpayer dollars to identify fraud, waste and abuse . . ."
18. During a political campaign in 2016, DEFENDANT utilized the services of My Campaign Group, reporting \$18,916.00 for political campaign consultant services.
19. My Campaign Group is a political campaign consultancy that "was formed to provide political candidates with comprehensive issues platforms – taking them from the campaign trail to elected office." It is a company designed "for your campaign needs." Their

promotional materials say that their work “should not be left up to less experienced campaign staff or interns to initiate. With MYCG as your trusted advisor, candidates will always be confident they are armed with solid information and reliable policies . . . throughout the campaign.” It continues, “[A] well-structured issues platform can meet all the expectations voters require in choosing a candidate – and that is where MYCG’s services come in.”

20. On or before November 12, 2019, while serving as the elected Auditor of Accounts, DEFENDANT approached My Campaign Group for a State contract for professional services. DEFENDANT informed My Campaign Group that, if the initial contract amount was less than \$50,000, the contract could be awarded without entering the public bidding process.
21. On or about December 19, 2019, DEFENDANT entered into a \$45,000.00 State contract with My Campaign Group for “communication services.” The contract was not submitted for public bidding, nor was it required to be because it totaled less than \$50,000.00.
22. Delaware Division of Accounting rules at the time, and prior to March 1, 2021, allowed for purchases or payments of \$5,000.00 or less to be processed without special approval by the Division of Accounting. The Budget and Accounting Policy Manual, before changing the threshold amount to \$10,000.00 on March 1, 2021, required that a purchase must not be split into multiple transactions under \$5,000.00 to circumvent the State Procurement Code.
23. On or about August 5, 2020, and again on or about September 10, 2020, My Campaign Group invoices were split by AOA and paid in amounts of less than \$5,000.00. DEFENDANT engaged in at least three other contracts, for \$45,000.00 each. Each of those contracts included individual payments over the \$5,000.00 reporting threshold. The MYCG contract was the only OAOA no-bid contract of at least \$45,000.00 in which all payments were made below the \$5,000.00 reporting threshold.
24. On or about August 1, 2020, My Campaign Group submitted a single invoice for \$11,250.00. On August 5, 2020, My Campaign Group received two payments, one for \$4,875.00 and one for \$4,500.00. DEFENDANT later instructed an AOA employee to pay \$1,950.00 with a Paypal account, on September 10, 2020, which was done outside of the original \$45,000.00 purchase order with the Division of Accounting. Additional payments were made to My Campaign Group on September 10, 2020 – one for \$4,350.00, and another for \$2,950.00. The \$2,950.00 payment was also made outside of the purchase order.
25. In total, OAOA paid My Campaign Group \$49,900.00 for the first contract.
26. In or about the month of September 2020, DEFENDANT approached My Campaign Group for another contract, again suggesting to structure the contract for less than \$50,000.00 in order to avoid the State’s public bidding process. DEFENDANT was informed that the second contract should instead proceed through the State’s public bidding process.
27. My Campaign Group has never had another State contract in Delaware or any other state.

28. In or before the month of September 2020, My Campaign Group's founder established a second company, Innovate Consulting, after a state employee in another state declined to agree to a taxpayer-funded contract with a political campaign company.
29. Innovate Consulting successfully bid for the OAOA contract on September 23, 2020. The contract was for a "subject matter expert and analyst on various topics," and "communication of reports about topics including, but not limited to education and healthcare," and assisting "with the writing and editing for initiatives." Between November 4, 2020 and February 12, 2021, OAOA paid Innovate Consulting \$77,500.00.
30. DEFENDANT, in anticipation of taking office, entered into a no-bid state contract with "Aloysius, Butler & Clark" on December 28, 2018 for "Marketing, Public Relation Services, Advertising, and Media Buying." This led to DEFENDANT creating a personalized version of the Seal of the State of Delaware to use on promotional materials.
31. DEFENDANT then expended state money on various purchases containing her personalized seal, including t-shirts, stationery, computer bags, and recreational items. DEFENDANT spent state money on \$1,375.00 on "custom seals," \$525.00 on "gold embossed decals," and \$271.00 on "gold embossed State Seal stickers."
32. DEFENDANT was informed by the Secretary of State in September of 2019 that she could not insert her name into the State Seal. DEFENDANT and her counsel have claimed, on numerous occasions between September 13, 2021 and September 21, 2021, that DEFENDANT was given written prior authorization to personalize the State Seal by the Secretary of State. However, counsel has not produced the prior authorization to the State, despite numerous requests. Similarly, the State has subpoenaed the Secretary of State for production of any correspondence with the OAOA related to the State Seal. The Secretary of State has indicated that he will seek to retain outside legal counsel to answer the State's subpoena.
33. DEFENDANT then spent state money purchasing numerous gold-colored Sharpie markers. DEFENDANT tasked her casual-seasonal employees with coloring over and concealing her name in the materials she purchased, including t-shirts and promotional handouts. The casual-seasonal employees were given this work while on State of Delaware time, being paid by the State.
34. DEFENDANT engaged in a course of conduct designed to surveil the communications of potential whistleblowers and witnesses against her.
35. DEFENDANT submitted thirty-seven (37) "e Records" requests to the Department of Technology and Information ("DTI") for her employees' email accounts. This enabled DEFENDANT to monitor several employees' email communications in real time. DEFENDANT monitored the email of at least one former employee who worked for a separate state agency.
36. DEFENDANT discriminated against employees who questioned her misconduct, and

enacted office policies to limit the personal activity of employees who associated with former employees.

37. On or about June 25, 2021, an employee who is friends with former employees and whistleblowers to the misconduct at the Office of the Auditor of Accounts called the police to report an item stolen from within the office.
38. In an interview on September 16, 2021, the current Chief of Staff informed your affiant and that the Auditor has control over – and access to – the office’s video surveillance system.
39. In an interview on September 27, 2021, DAUGHTER told investigators that she applied for her job at the OAOA. DAUGHTER said she was not sure who told her about the job, or if she read about it online, and that she was interviewed by the former Chief of Staff. DAUGHTER could not remember how she received her job offer. DAUGHTER said she had a state-issued laptop and that she did not use personal email or her personal phone for work.
40. Pursuant to Title 29, 2508(b). The Attorney General shall have the right of access at all times to the books, papers, records and other documents of any officer, department, board, agency, instrumentality or commission of the state government. In this case, the places to be searched are the state offices of the Auditor of Accounts. Though the Attorney General may have right of access to state records and that the expectations of privacy may be diminished in state offices, your affiant believes probable cause nonetheless exists to show that the offices of the Auditor of Accounts reasonable contain evidence of the crimes described above.

WHEREFORE, your affiant prays that a search warrant be issued authorizing the search of:

**Delaware Offices of the Auditor of Accounts
820 N. French Street, Wilmington, DE, 19801 &
401 Federal Street, Dover, DE, 19901**

AND THAT THIS WARRANT REMAIN UNDER SEAL UNTIL FURTHER ORDER OF THE COURT.

SWORN TO, or subscribed this 28th Day of September, 2021.


Chief Investigator Franklin Robinson
State of Delaware, Department of Justice



The Honorable Paul R. Wallace
Judge, Superior Court, State of Delaware

EXHIBIT D

**RULE 9 WARRANT
IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE)	
)	
V.)	INDICTMENT BY THE GRAND JURY
)	
KATHLEEN K. McGUINESS)	I.D. NO. 2110001942

The Grand Jury charges that:

Introduction and Background Relevant to All Charges

At all times material to this Indictment:

1. KATHLEEN K. MCGUINESS ("DEFENDANT") is the duly elected Auditor of Accounts for the State of Delaware, having been elected to that statewide office in 2018 and sworn in on January 1, 2019. At all times relevant to this Indictment she was serving in her official capacity of Auditor of Accounts or entering into State contracts in anticipation of her official service.
2. The Auditor of Accounts "conduct[s] postaudits of all the financial transactions of all state agencies" and has "sole responsibility" for the state's audits. The Auditor is responsible for ensuring that, among other criteria, "all expenditures have been legal and proper and made only for the purposes contemplated in the funding acts or other pertinent regulations." Audits must also "be made in conformity with generally accepted auditing principles and practices." The Auditor is permitted to "[e]mploy such qualified office personnel and trained and experienced field personnel as are required to carry out such duties[.]"
3. DEFENDANT is a Certified Fraud Examiner (CFE), a trade association membership that requires an entrance exam and "denotes proven expertise in fraud prevention,

detection and deterrence. CFEs around the world help protect the global economy by uncovering fraud and implementing processes to prevent fraud from occurring in the first place.”

COUNT ONE, A MISDEMEANOR

CONFLICT OF INTEREST: VIOLATION OF THE STATE OFFICIALS’ CODE OF CONDUCT, in violation of Title 29, Section 5805 of the Delaware Code.

4. In early March of 2020, the Office of Auditor of Accounts (“OAOA”) employed several “casual-seasonal” employees. A casual-seasonal employee, under Delaware state employment code, may be employed by the State on a temporary basis in order to assist agencies. Casual-seasonal employees are required to work thirty (30) hours per week or less; otherwise, special permission is required annually. Generally, a full-time position in state employment is based on a thirty-seven-and-one-half (37.5) hour week.

5. Early in her tenure, DEFENDANT assumed hiring decision-making for casual-seasonal employees. Full-time employees were discouraged from interacting with the casual-seasonal employees.

6. On or about March 12, 2020, Delaware Governor John Carney declared a State of Emergency, to begin on March 13, 2020, in response to the COVID-19 outbreak. Following the State of Emergency, three casual-seasonal employees at the OAOA experienced a substantial reduction in work hours.

7. On or about May 5, 2020, DEFENDANT informed one casual-seasonal employee, EMPLOYEE 1, that EMPLOYEE 1’s employment was ending because of lack of available work. EMPLOYEE 1 was terminated on or about May 18, 2020. From the State of Emergency onset until EMPLOYEE 1’s termination on or about May 18, 2020, EMPLOYEE 1

worked a total of 42 hours, or 4.67 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 1 worked a total of 65 hours, or 8.125 hours per week.

8. On or about June 13, 2020, a second casual-seasonal employee, EMPLOYEE 2, stopped working at the OAOA because of lack of available work, due to the pandemic. From the State of Emergency onset until EMPLOYEE 2's final day on or about June 13, 2020, EMPLOYEE 2 worked a total of 64.5 hours, or 4.96 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 2 worked a total of 187 hours, or 23.375 hours per week.

9. On or about July 6, 2020, a third casual-seasonal employee, EMPLOYEE 3, stopped working at the OAOA because of lack of available work, due to the pandemic. From the State of Emergency onset until EMPLOYEE 3's last day on or about July 6, 2020, EMPLOYEE 3 worked a total of 36.5 hours, or 2.28 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 3 worked a total of 180 hours, or 22.5 hours per week.

10. On or about May 18, 2020, DEFENDANT hired her daughter ("DAUGHTER"), then a senior in high school, as a casual-seasonal employee in the OAOA. Unlike the other casual-seasonal employees, DAUGHTER's casual-seasonal position permitted her to work up to 37.5 hours per week, the maximum any casual-seasonal employee is allowed under Delaware law.

11. On or about May 18, 2020, the final day of EMPLOYEE 1's employment, DEFENDANT also hired DAUGHTER's friend ("FRIEND"), then a senior in high school, as a casual-seasonal employee in the OAOA. FRIEND's position only permitted her to work up to 29.5 hours per week.

12. Neither DAUGHTER nor FRIEND were interviewed by OAOA staff prior to being hired. DAUGHTER had signed employment paperwork earlier, dated March 22, 2020. DEFENDANT provided the completed employment paperwork to her full-time staff and directed them to begin DAUGHTER's and FRIEND's employment. There was no public posting of the positions they filled. DEFENDANT did not delegate the hiring of her daughter to a subordinate.

13. DEFENDANT was the supervisor for DAUGHTER.

14. On or about DAUGHTER's first days as a state employee, DEFENDANT provided DAUGHTER with access to a state vehicle.

15. In August of 2020, DAUGHTER enrolled at College of Charleston (South Carolina). DAUGHTER remained on OAOA payroll while enrolled at college. DAUGHTER was paid \$2,362.50 for hours accrued between August 29 and December 19, 2020.

16. By late August, FRIEND enrolled in college and was not on OAOA payroll during the fall semester.

17. During calendar year 2020, DAUGHTER never utilized the State's Virtual Private Network (VPN) to work remotely. OAOA entrance logs for six months from June to December 2020 indicate that DAUGHTER entered the office on fifteen (15) different dates, but never between August 10 and her return from college in December of 2020.

18. State email records show that DAUGHTER sent zero emails from August 17, 2020 to December 11, 2020.

19. As of August 28, 2021, DAUGHTER, a rising college sophomore, remained an OAOA employee. She was listed as the OAOA Public Information Officer and is now listed as an "intern." She has been paid a total of approximately \$19,302.50 during state employment. FRIEND was paid approximately \$7,726.25.

20. DAUGHTER's State of Delaware paychecks were deposited into a bank account in which DEFENDANT is a named owner.

21. Paragraphs 1 through 20 are incorporated herein.

22. DEFENDANT, from on or about the 22nd day of March 2020 until on or about the 10th day of September 2021, as a Delaware elected official and a public servant for all three counties, and thereby a "state officer," did participate on behalf of the State of the Delaware in the review or disposition of any matter pending before the State in which she had a personal or private interest, which impaired her independence of judgment in the performance of her duties with respect to any matter by hiring her daughter, a close relative, and giving her daughter a position with advantages unavailable to other employees, including those whose work was discontinued during the State of Emergency, thereby allowing her daughter to accrue a financial benefit to a greater extent than such benefit would accrue to others who are members of the same class or group of persons, in violation of Title 29, Section 5805 of the Delaware Code.

COUNT TWO. A FELONY

#N _____

THEFT in violation of Title 11, Section 841 of the Delaware Code.

23. Paragraphs 1 through 22 are incorporated herein.

24. DEFENDANT, from on or about the 22nd day of March 2020 through on or about the 10th day of September 2021, as a Delaware elected official and a public servant for all three counties, did take, exercise control over, or obtain property of the State of Delaware, consisting of money valued at more than \$1,500.00, intending to deprive the State of Delaware of the money, or to appropriate it.

COUNT THREE. A MISDEMEANOR

#N _____

STRUCTURING: NON-COMPLIANCE WITH PROCUREMENT LAW in

violation of Title 29, Section 6903 of the Delaware Code.

25. Title 29, Section 2906 of the Delaware Code sets forth the duties of the Auditor of Accounts. DEFENDANT, as State's elected Auditor of Accounts, advertises to "serve[] Delawareans by ensuring accountability in the use of taxpayer dollars to identify fraud, waste and abuse . . ."

26. During a political campaign in 2016, DEFENDANT utilized the services of My Campaign Group, reporting \$18,916.00 for political campaign consultant services.

27. My Campaign Group is a political campaign consultancy that "was formed to provide political candidates with comprehensive issues platforms – taking them from the campaign trail to elected office." It is a company designed "for your campaign needs." Their promotional materials say that their work "should not be left up to less experienced campaign staff or interns to initiate. With MYCG as your trusted advisor, candidates will always be confident they are armed with solid information and reliable policies . . . throughout the campaign." It continues, "[A] well-structured issues platform can meet all the expectations voters require in choosing a candidate – and that is where MYCG's services come in."

28. On or before November 12, 2019, while serving as the elected Auditor of Accounts, DEFENDANT approached My Campaign Group for a State contract for professional services. DEFENDANT informed My Campaign Group that, if the initial contract amount was less than \$50,000, the contract could be awarded without entering the public bidding process.

29. On or about December 19, 2019, DEFENDANT entered into a \$45,000.00 State contract with My Campaign Group for “communication services.” The contract was not submitted for public bidding, nor was it required to be because it totaled less than \$50,000.00.

30. Delaware Division of Accounting rules at the time allowed for purchases or payments of \$5,000.00 or less to be processed without special approval by the Division of Accounting. The Budget and Accounting Policy Manual, before changing the threshold amount to \$10,000.00 on March 1, 2021, required that a purchase must not be split into multiple transactions under \$5,000.00 to circumvent the State Procurement Code.

31. On or about August 5, 2020, and again on or about September 10, 2020, My Campaign Group invoices were split by AOA and paid in amounts of less than \$5,000.00. DEFENDANT engaged in at least three other contracts, for \$45,000.00 each. Each of those contracts included individual payments over the \$5,000.00 reporting threshold. The My Campaign Group contract was the only OAOA no-bid contract of at least \$45,000.00 in which all payments were made below the \$5,000.00 reporting threshold.

32. On or about August 1, 2020, My Campaign Group submitted a single invoice for \$11,250.00. On August 5, 2020, My Campaign Group received two payments, one for \$4,875.00 and one for \$4,500.00. DEFENDANT later instructed an AOA employee to use his state purchase card to pay \$1,950.00 to My Campaign Group’s Paypal account, on September 10, 2020, which was done outside of the original \$45,000.00 purchase order with the Division of Accounting. Additional payments were made to My Campaign Group on September 10, 2020 – one for \$4,350.00, and another for \$2,950.00. The \$2,950.00 payment was also made outside of the purchase order.

33. In total, OAOA paid My Campaign Group \$49,900.00 for the first contract, originally set at \$45,000.

34. In or about the month of September 2020, DEFENDANT approached My Campaign Group for a second contract, again suggesting to structure the contract for less than \$50,000.00 in order to avoid the State's public bidding process. DEFENDANT was informed that the second contract should instead proceed through the State's public bidding process.

35. My Campaign Group has never had another State contract in Delaware or any other state.

36. In or before the month of September 2020, My Campaign Group's founder established a second company, Innovate Consulting, after a state employee in another state declined to agree to a taxpayer-funded contract with a political campaign company.

37. Innovate Consulting successfully bid for the OAOA contract on September 23, 2020. The contract was for a "subject matter expert and analyst on various topics," and "communication of reports about topics including, but not limited to education and healthcare," and assisting "with the writing and editing for initiatives." Between November 4, 2020 and February 12, 2021, OAOA paid Innovate Consulting \$77,500.00.

38. Paragraphs 25 through 37 are incorporated herein.

39. DEFENDANT, on or between the 28th day of December, 2018, and the 1st day of August, 2021, as an Delaware elected official and a public servant for all three counties, and with intent to avoid compliance with Chapter 69 of Title 29 of the Delaware Code, did willfully fragment or subdivide at least one contract for the purchase of professional services, by initially structuring at least one contract at an amount under fifty thousand dollars (\$50,000.00), and structuring some payments under those contracts to be less than five thousand dollars (\$5,000.00).

COUNT FOUR. A MISDEMEANOR

#N _____

OFFICIAL MISCONDUCT, in violation of Title 11, Section 1211(1) or 1211(3) of the Delaware Code.

40. DEFENDANT, as referenced in Count One, hired her daughter and her daughter's friend into state employment, affording her daughter benefits not available to other state employees.

41. DEFENDANT, as referenced in Count Three, structured payments in a no-bid contract to a political campaign consulting company.

42. Paragraphs 1 through 41 are incorporated herein.

43. DEFENDANT, on or between the 1st day of January, 2019, and the 1st day of August, 2021, as an Delaware elected official and a public servant for all three counties, and when intending to obtain a personal benefit in her capacity as Auditor of Accounts, or to cause harm to another person, committed an act constituting an unauthorized exercise of official functions, knowing that the act was unauthorized, in violation of Title 11, Section 1211(1) of the Delaware Code, or when intending to obtain a personal benefit in her capacity as Auditor of

Accounts, performed official functions in a way intended to benefit her own property or financial interests, under circumstances in which her actions would not have been reasonably justified in consideration of the factors which ought to have been taken into account in performing official functions, in violation of Title 11, Section 1211(3) of the Delaware Code – conduct which amounts to abuse of office, or Official Misconduct.

COUNT FIVE. A FELONY

#N _____

ACT OF INTIMIDATION, in violation of Title 11, Section 3532 of the Delaware Code.

44. Several whistleblowers expressed concerns about misconduct within OAOA, including but not limited to specific acts set forth in paragraphs 4 through 43, to the DEFENDANT, her staff, and the Delaware Department of Justice.

45. DEFENDANT engaged in a course of conduct designed to surveil the communications of potential whistleblowers and witnesses against her.

46. DEFENDANT submitted several dozen “e Records” requests to the Department of Technology and Information (“DTI”) for the contents of OAOA employees’ email accounts. This enabled DEFENDANT to monitor several employees’ email communications in real time. DEFENDANT monitored the email of at least one former employee who worked for a separate state agency.

47. DEFENDANT discriminated against employees who questioned her misconduct, and enacted office policies to limit the personal activity of employees who associated with former employees.

48. DEFENDANT, on or between the 1st day of March, 2019, and the 10th day of May, 2021, as a Delaware elected official and a public servant for all three counties, did knowingly and with malice attempt to prevent or dissuade any witness from attending or giving testimony at any proceeding or inquiry authorized by law.

A TRUE BILL

(FOREPERSON)

KATHLEEN JENNINGS
ATTORNEY GENERAL

A handwritten signature in blue ink, appearing to read 'K. Jennings', is written over a horizontal line.

DEPUTY ATTORNEY GENERAL

EXHIBIT C

Payment Reference ID	Payment Method	Amount	Currency	Creation Date	Payment Date	Payment Status	Supplier Name	Supplier ID	Supplier Location
984893	Electronic Funds Transfer	3,000.00	USD	1/14/2020	1/14/2020	Paid	MY CAMPAIGN GROUP LLC	509907	ACH
998811	Electronic Funds Transfer	3,000.00	USD	2/25/2020	2/24/2020	Paid	MY CAMPAIGN GROUP LLC	509907	ACH
1005154	Electronic Funds Transfer	3,225.00	USD	3/13/2020	3/12/2020	Paid	MY CAMPAIGN GROUP LLC	509907	ACH
1012901	Electronic Funds Transfer	4,200.00	USD	4/7/2020	4/7/2020	Paid	MY CAMPAIGN GROUP LLC	509907	ACH
1022804	Electronic Funds Transfer	4,200.00	USD	5/13/2020	5/13/2020	Paid	MY CAMPAIGN GROUP LLC	509907	ACH
1029990	Electronic Funds Transfer	4,350.00	USD	6/9/2020	6/8/2020	Paid	MY CAMPAIGN GROUP LLC	509907	ACH
1031851	Electronic Funds Transfer	4,950.00	USD	6/12/2020	6/12/2020	Paid	MY CAMPAIGN GROUP LLC	509907	ACH
1039921	Electronic Funds Transfer	4,350.00	USD	7/22/2020	7/22/2020	Paid	MY CAMPAIGN GROUP LLC	509907	ACH
1044056	Electronic Funds Transfer	9,375.00	USD	8/6/2020	8/6/2020	Paid	MY CAMPAIGN GROUP LLC	509907	ACH
1056721	Electronic Funds Transfer	9,250.00	USD	9/22/2020	9/21/2020	Paid	MY CAMPAIGN GROUP LLC	509907	ACH

EXHIBIT D

1 A. That's right.

2 Q. And you had it before you wrote the search
3 warrant; right?

4 A. Yes.

5 Q. And the spreadsheet from Division of Accounting
6 said one lump sum payment in August; right?

7 A. Right.

8 Q. And you knew that when you wrote the search
9 warrant; right?

10 A. Yes.

11 Q. And you told the court that there were multiple
12 payments in August, didn't you?

13 A. Yes.

14 Q. And that's false; right?

15 A. Yes.

16 Q. And you told a court under oath that there were
17 multiple payments under \$5,000 in September, multiple,
18 more than one; right?

19 A. There were more than one payment in September.

20 Q. That wasn't my question. You told the court
21 under oath there were multiple payments under \$5,000 in
22 September; correct?

23 A. Correct.

1 Q. That's false?

2 A. Correct.

3 Q. And you knew it when you wrote the search
4 warrant; right?

5 A. Correct.

6 MR. WOOD: No further questions, Judge.

7 THE COURT: Can I ask, as a result of the
8 search warrant, the execution of the search warrant, did
9 you receive documentation -- did you actually seize
10 documentation that day?

11 THE WITNESS: We were sent the My Campaign
12 Group invoices and the spreadsheet with the total amount
13 of the payment; we received that later via e-mail from
14 an employee of AOA.

15 THE COURT: So you didn't seize documents that
16 day. As a result of the search warrant, they provided
17 those documents to you.

18 THE WITNESS: Yes. They were e-mailed later.

19 THE COURT: Okay.

20 MR. WOOD: That's not my understanding, Judge.
21 There were lots of documents seized. The search warrant
22 that relates --

23 THE COURT: The next question is that the

EXHIBIT E

~~RULE 9 WARRANT-INDICTMENT~~
IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)	
)	INDICTMENT BY THE GRAND JURY
V.)	
)	
KATHLEEN K. McGUINESS)	I.D. NO. 2110001942

The Grand Jury charges that:

Introduction and Background Relevant to All Charges

At all times material to this Indictment:

1. KATHLEEN K. MCGUINESS ("DEFENDANT") is the duly elected Auditor of

Accounts for the State of Delaware, having been elected to that statewide office in 2018 and sworn in on January 1, 2019. At all times relevant to this Indictment she was serving in her official capacity of Auditor of Accounts or entering into State contracts in anticipation of her official service.

2. The Auditor of Accounts "conduct[s] postaudits of all the financial transactions of

all state agencies" and has "sole responsibility" for the state's audits. The Auditor is responsible for ensuring that, among other criteria, "all expenditures have been legal and proper and made only for the purposes contemplated in the funding acts or other pertinent regulations." Audits must also "be made in conformity with generally accepted auditing principles and practices." The Auditor is permitted to "[e]mploy such qualified office personnel and trained and experienced field personnel as are required to carry out such duties[.]"

3. DEFENDANT is a Certified Fraud Examiner (CFE), a trade association

membership that requires an entrance exam and "denotes proven expertise in fraud prevention,

detection and deterrence. CFEs around the world help protect the global economy by uncovering fraud and implementing processes to prevent fraud from occurring in the first place."

COUNT ONE, A MISDEMEANOR

CONFLICT OF INTEREST: VIOLATION OF THE STATE OFFICIALS' CODE OF

CONDUCT, in violation of Title 29, Section 5805 of the Delaware Code.

4. In early March of 2020, the Office of Auditor of Accounts ("~~DADA~~OAOA") employed several "casual-seasonal" employees. A casual-seasonal employee, under Delaware state employment code, may be employed by the State on a temporary basis in order to assist agencies. Casual-seasonal employees are required to work thirty (30) hours per week or less; otherwise, special permission is required annually. Generally, a full-time position in state employment is based on a thirty-seven-and-one-half (37.5) hour week.
5. Early in her tenure, DEFENDANT assumed hiring decision-making for casual-seasonal employees. Full-time employees were discouraged from interacting with the casual-seasonal employees.
6. On or about March 12, 2020, Delaware Governor John Carney declared a State of Emergency, to begin on March 13, 2020, in response to the COVID-19 outbreak. Following the State of Emergency, three casual-seasonal employees at the OAOA experienced a substantial reduction in work hours.
7. On or about May 5, 2020, DEFENDANT informed one casual-seasonal employee, EMPLOYEE ~~4~~1, that EMPLOYEE ~~4~~1's employment was ending because of lack of available work. EMPLOYEE ~~4~~1 was terminated on or about May 18, 2020. From the State of Emergency onset until EMPLOYEE ~~4~~1's termination on or about May 18, 2020, EMPLOYEE ~~4~~1

worked a total of 42 hours, or 4.67 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 1 worked a total of 65 hours, or 8.125 hours per week.

8. On or about June 13, 2020, a second casual-seasonal employee, EMPLOYEE 2, stopped working at the OAOA because of lack of available work, due to the pandemic. From the State of Emergency onset until EMPLOYEE 2's final day on or about June 13, 2020, EMPLOYEE 2 worked a total of 64.5 hours, or 4.96 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 2 worked a total of 187 hours, or 23.375 hours per week.

9. On or about July 6, 2020, a third casual-seasonal employee, EMPLOYEE 3, stopped working at the OAOA because of lack of available work, due to the pandemic. From the State of Emergency onset until EMPLOYEE 3's last day on or about July 6, 2020, EMPLOYEE 3 worked a total of 36.5 hours, or 2.28 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 3 worked a total of 180 hours, or 22.5 hours per week.

10. On or about May 18, 2020, DEFENDANT hired her daughter ("DAUGHTER"), then a senior in high school, as a casual-seasonal employee in the OAOA. Unlike the other casual-seasonal employees, DAUGHTER's casual-seasonal position permitted her to work up to 37.5 hours per week, the maximum any casual-seasonal employee is allowed under Delaware law.

11. On or about May 18, 2020, the final day of EMPLOYEE 4's employment, DEFENDANT also hired DAUGHTER's friend ("FRIEND"), then a senior in high school, as a casual-seasonal employee in the OAOA. FRIEND's position only permitted her to work up to 29.5 hours per week.

12. Neither DAUGHTER nor FRIEND were interviewed by OAOA staff prior to being hired. DAUGHTER had signed employment paperwork earlier, dated March 22, 2020. DEFENDANT provided the completed employment paperwork to her full-time staff and directed them to begin DAUGHTER's and FRIEND's employment. There was no public posting of the positions they filled. DEFENDANT did not delegate the hiring of her daughter to a subordinate.

13. DEFENDANT was the supervisor for DAUGHTER.

14. On or about DAUGHTER's first days as a state employee, DEFENDANT provided DAUGHTER with access to a state vehicle.

15. In August of 2020, DAUGHTER enrolled at College of Charleston (South Carolina). DAUGHTER remained on OAOA payroll while enrolled at college. DAUGHTER was paid \$2,362.50 for hours accrued between August 29 and December 19, 2020.

16. By late August, FRIEND enrolled in college and was not on OAOA payroll during the fall semester.

17. During calendar year 2020, DAUGHTER never utilized the State's Virtual Private Network (VPN) to work remotely. OAOA entrance logs for six months from June to December 2020 indicate that DAUGHTER entered the office on fifteen (15) different dates, but never between August 10 and her return from college in December of 2020.

18. State email records show that DAUGHTER sent zero emails from August 17, 2020 to December 11, 2020.

19. As of August 28, 2021, DAUGHTER, a rising college sophomore, remained an OAOA employee. She was listed as the OAOA Public Information Officer and is now listed as an "intern." She has been paid a total of approximately \$19,302.50 during state employment. FRIEND was paid approximately \$7,726.25.

20. DAUGHTER's State of Delaware paychecks were deposited into a bank account in which DEFENDANT is a named owner.

21. Paragraphs 1 through 20 are incorporated herein.

22. DEFENDANT, from on or about the ~~22nd~~22nd day of March 2020 until on or about the ~~10th~~10th day of September 2021, as a Delaware elected official and a public servant for all three counties, and thereby a "state officer," did participate on behalf of the State of the Delaware in the review or disposition of any matter pending before the State in which she had a personal or private interest, which impaired her independence of judgment in the performance of her duties with respect to any matter by hiring her daughter, a close relative, and giving her daughter a position with advantages unavailable to other employees, including those whose work was discontinued during the State of Emergency, thereby allowing her daughter to accrue a financial benefit to a greater extent than such benefit would accrue to others who are members of the same class or group of persons, in violation of Title 29, Section 5805 of the Delaware Code.

COUNT TWO. A FELONY

#N_____

THEFT in violation of Title 11, Section 841 of the Delaware Code. _____

23. Paragraphs 1 through 22 are incorporated herein.

24. DEFENDANT, from on or about the ~~22nd~~22nd day of March 2020 through on or about the 10th day of September 2021, as a Delaware elected official and a public servant for all three counties, did take, exercise control over, or obtain property of the State of Delaware, consisting of money valued at more than \$1,500.00, intending to deprive the State of Delaware of the money, or to appropriate it.

COUNT THREE. A MISDEMEANOR

#N_____

STRUCTURING: NON-COMPLIANCE WITH PROCUREMENT LAW in

violation of Title 29, Section 6903 of the Delaware Code.

25. Title 29, Section 2906 of the Delaware Code sets forth the duties of the Auditor of Accounts. DEFENDANT, as State's elected Auditor of Accounts, advertises to "serve[] Delawareans by ensuring accountability in the use of taxpayer dollars to identify fraud, waste and abuse . . ."

26. During a political campaign in 2016, DEFENDANT utilized the services of My Campaign Group, reporting \$18,916.00 for political campaign consultant services.

27. My Campaign Group is a political campaign consultancy that "was formed to provide political candidates with comprehensive issues platforms — taking them from the campaign trail to elected office." It is a company designed "for your campaign needs." Their promotional materials say that their work "should not be left up to less experienced campaign staff or interns to initiate. With MYCG as your trusted advisor, candidates will always be confident they are armed with solid ~~information~~infoiniation and reliable policies . . . throughout the campaign." It continues, "[A] well-structured issues platform can meet all the expectations voters require in choosing a candidate — and that is where MYCG's services come in."

28. On or before November 12, 2019, while serving as the elected Auditor of Accounts, DEFENDANT approached My Campaign Group for a State contract for professional services. DEFENDANT informed My Campaign Group that, if the initial contract amount was less than \$50,000, the contract could be awarded without entering the public bidding process.

29. On or about December 19, 2019, DEFENDANT entered into a \$45,000.00 State contract with My Campaign Group for "communication services." The contract was not submitted for public bidding, nor was it required to be because it totaled less than \$50,000.00.

30. Delaware Division of Accounting rules at the time allowed for ~~purchases~~purchase orders or payments of \$5,000.00 or less to be processed without special approval by the Division of Accounting. The Budget and Accounting Policy Manual, before changing the threshold amount to \$10,000.00 on March 1, 2021, required that a purchase must not be split into multiple transactions under \$5,000.00 to circumvent the State Procurement Code.

31. ~~On~~In or about August ~~5~~, 2020, and again ~~on~~in or about September ~~10~~, 2020, My Campaign Group invoices exceeded \$5,000.00 in total, but were split by ~~AOA and paid~~OAOA to be drawn from separate funding sources in amounts of less than \$5,000.00. ~~DEFENDANT engaged in at least three other contracts, for \$45,000.00 each. Each of those contracts included individual payments over the \$5,000.00 reporting threshold. The~~ In August, OAOA arranged for \$4,875.00 to be paid to My Campaign Group ~~contract was the only OAOA no-bid contract of at least \$45,000.00 in which all payments were made below the \$5,000.00 reporting threshold.~~

with COVID-19 (Coronavirus Relief Fund) funds, and \$4,500.00 to be paid to My Campaign Group from the OAOA's General Fund. In September ~~32. On or about August 1, 2020,~~ My Campaign Group submitted a single invoice ~~for~~to OAOA totaling \$11,250.00. ~~On August 5, 2020,~~ At DEFENDANT's direction, OAOA arranged for this invoice to be paid in multiple payments from multiple funding sources, each of which was under \$5,000. This included DADA using at least \$4,900.00 in state money from outside of the original purchase order. \$2,950.00 was coded to be drawn from the General Fund, and \$1,950 was coded to be paid with Coronavirus Relief Funds. These payments appeared to bring the total amount paid to My Campaign Group ~~received two payments, one for \$4,875.00 and one for~~ with electronic funds transfers to ~~\$49,900.00 for the first contract, which was originally set at \$4,500.00~~45,000.

32. On or about September 30, 2020, DEFENDANT ~~later~~ instructed an ~~AOA~~OAOA employee to use his state purchase card to pay another \$1,950.00 to My Campaign Group's founder's Paypal account, ~~on September 10, 2020, which was done outside of the original \$45,000.00 purchase order with the Division of Accounting. Additional payments were made to My Campaign Group on September 10, 2020 — one for \$4,350.00, and another for \$2,950.00. The \$2,950.00 payment was also made outside of the purchase order.~~ to satisfy the remaining balance on My Campaign Group's final invoice.

33. DEFENDANT engaged in at least three other contracts for \$45,000.00 each. Each of those contracts included individual payments over the \$5,000.00 reporting threshold. The My Campaign Group contract was the only OAOA no-bid contract of at least \$45,000.00 in which each payment was arranged to draw from a funding source in an amount of less than \$5,000.00.

33. ~~In total, OAOA paid My Campaign Group \$49,900.00 for the first contract, originally set at \$45,000.~~

34. In or about the month of September 2020, DEFENDANT approached My Campaign Group for a second contract, again suggesting to structure the contract for less than \$50,000.00 in order to avoid the State's public bidding process. DEFENDANT was informed that the second contract should instead proceed through the State's public bidding process.

35. My Campaign Group has never had another State contract in Delaware or any other state.

36. In or before the month of September 2020, My Campaign Group's founder established a second company, Innovate Consulting, after a state employee in another state declined to agree to a taxpayer-funded contract with a political campaign company.

37. Innovate Consulting successfully bid for the OAOA contract on September 23, 2020. The contract was for a "subject matter expert and analyst on various topics," and "communication of reports about topics including, but not limited to education and healthcare," and assisting "with the writing and editing for initiatives." Between November 4, 2020 and February 12, 2021, OAOA paid Innovate Consulting \$77,500.00. The purchase card payment

DEFENDANT instructed be paid into the founder's Paypal account was paid with state funds that were set aside for the Innovate Consulting contract.

38. Paragraphs 25 through 37 are incorporated herein.

39. DEFENDANT, on or between the 28th day of December, 2018, and the ~~4th~~^{1st} day of August, 2021, as an Delaware elected official and a public servant for all three counties, and with intent to avoid compliance with Chapter 69 of Title 29 of the Delaware Code, did willfully fragment or subdivide at least one contract for the purchase of professional services, by initially structuring at least one contract at an amount under fifty thousand dollars (\$50,000.00), and structuring some payments under those contracts to be less than five thousand dollars (\$5,000.00).

COUNT FOUR. A MISDEMEANOR

^{#N} OFFICIAL MISCONDUCT, in violation of Title 11, Section 1211(1) or 1211(3) of the Delaware Code.

40. DEFENDANT, as referenced in Count One, hired her daughter and her daughter's friend into state employment, affording her daughter benefits not available to other state employees.

41. DEFENDANT, as referenced in Count Three, structured payments in a no-bid contract to a political campaign consulting company. DEFENDANT performed this and other official functions in a way intended to obtain a personal benefit.

42. Paragraphs 1 through 41 are incorporated herein.

43. DEFENDANT, on or between the ~~4th~~^{1st} day of January, 2019, and the ~~4th~~^{25th} day of ~~August~~
March, 2021-2022, as an Delaware elected official and a public servant for all three counties, and

when intending to obtain a personal benefit in her capacity as Auditor of Accounts, or to cause harm to another person, committed an act constituting an unauthorized exercise of official functions, knowing that the act was unauthorized, in violation of Title 11, Section 1211(1) of the Delaware Code, or when intending to obtain a personal benefit in her capacity as Auditor of

~~RULE 9 WARRANT-INDICTMENT~~
IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)	
)	INDICTMENT BY THE GRAND JURY
V.)	
)	
KATHLEEN K. McGUINESS)	I.D. NO. 2110001942

The Grand Jury charges that:

Introduction and Background Relevant to All Charges

At all times material to this Indictment:

1. KATHLEEN K. MCGUINESS ("DEFENDANT") is the duly elected Auditor of

Accounts for the State of Delaware, having been elected to that statewide office in 2018 and sworn in on January 1, 2019. At all times relevant to this Indictment she was serving in her official capacity of Auditor of Accounts or entering into State contracts in anticipation of her official service.

2. The Auditor of Accounts "conduct[s] postaudits of all the financial transactions of

all state agencies" and has "sole responsibility" for the state's audits. The Auditor is responsible for ensuring that, among other criteria, "all expenditures have been legal and proper and made only for the purposes contemplated in the funding acts or other pertinent regulations." Audits must also "be made in conformity with generally accepted auditing principles and practices." The Auditor is permitted to "[e]mploy such qualified office personnel and trained and experienced field personnel as are required to carry out such duties[.]"

3. DEFENDANT is a Certified Fraud Examiner (CFE), a trade association

membership that requires an entrance exam and "denotes proven expertise in fraud prevention,

detection and deterrence. CFEs around the world help protect the global economy by uncovering fraud and implementing processes to prevent fraud from occurring in the first place."

COUNT ONE, A MISDEMEANOR

CONFLICT OF INTEREST: VIOLATION OF THE STATE OFFICIALS' CODE OF CONDUCT, in violation of Title 29, Section 5805 of the Delaware Code.

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5. Early in her tenure, DEFENDANT assumed hiring decision-making for casual-seasonal employees. Full-time employees were discouraged from interacting with the casual-seasonal employees.

6. On or about March 12, 2020, Delaware Governor John Carney declared a State of Emergency, to begin on March 13, 2020, in response to the COVID-19 outbreak. Following the State of Emergency, three casual-seasonal employees at the OAOA experienced a substantial reduction in work hours.

7. On or about May 5, 2020, DEFENDANT informed one casual-seasonal employee, EMPLOYEE ~~4~~1, that EMPLOYEE ~~4~~1's employment was ending because of lack of available work. EMPLOYEE ~~4~~1 was terminated on or about May 18, 2020. From the State of Emergency onset until EMPLOYEE ~~4~~1's termination on or about May 18, 2020, EMPLOYEE ~~4~~1

worked a total of 42 hours, or 4.67 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 1 worked a total of 65 hours, or 8.125 hours per week.

8. On or about June 13, 2020, a second casual-seasonal employee, EMPLOYEE 2, stopped working at the OAOA because of lack of available work, due to the pandemic. From the State of Emergency onset until EMPLOYEE 2's final day on or about June 13, 2020, EMPLOYEE 2 worked a total of 64.5 hours, or 4.96 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 2 worked a total of 187 hours, or 23.375 hours per week.

9. On or about July 6, 2020, a third casual-seasonal employee, EMPLOYEE 3, stopped working at the OAOA because of lack of available work, due to the pandemic. From the State of Emergency onset until EMPLOYEE 3's last day on or about July 6, 2020, EMPLOYEE 3 worked a total of 36.5 hours, or 2.28 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 3 worked a total of 180 hours, or 22.5 hours per week.

10. On or about May 18, 2020, DEFENDANT hired her daughter ("DAUGHTER"), then a senior in high school, as a casual-seasonal employee in the OAOA. Unlike the other casual-seasonal employees, DAUGHTER's casual-seasonal position permitted her to work up to 37.5 hours per week, the maximum any casual-seasonal employee is allowed under Delaware law.

11. On or about May 18, 2020, the final day of EMPLOYEE 4's employment, DEFENDANT also hired DAUGHTER's friend ("FRIEND"), then a senior in high school, as a casual-seasonal employee in the OAOA. FRIEND's position only permitted her to work up to 29.5 hours per week.

EXHIBIT F

McGuinness, Kathleen (Auditors)

From: Davis, Patricia (DOJ)
Sent: Friday, July 9, 2021 1:50 PM
To: Sewell, Alaina (Auditors)
Cc: Gulli, Amy (Auditors); McGuinness, Kathleen (Auditors)
Subject: RE: Scheduling a Meeting

Switch-MessageId: 38485da881444063a6f00ea5844220a0

Alaina: I don't think there is anything further that you or anyone in management over there needs to do with regard to the missing planner. Based on the information you've provided me, you guys sent an email around asking if anyone had seen the planner, the employee requested the police be called, and you called the police. I'm happy to hear you are cooperating with the police investigation and provided a copy of the surveillance footage. You are under no obligation to "close the loop" with the employee and I recommend you let this sleeping dog lie, unless or until we hear from the employee again.

Please do not hesitate to contact me if you need anything further from me on this.

Thanks,
Patty

Patricia A. Davis
Patricia A. Davis
Deputy State Solicitor
102 W. Water Street
Dover, DE 19904
(302) 257-3233 Phone
(302) 739-7652 Fax

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From: Sewell, Alaina (Auditors) <Alaina.Sewell@delaware.gov>
Sent: Friday, July 9, 2021 1:43 PM
To: Davis, Patricia (DOJ) <PatriciaA.Davis@delaware.gov>
Cc: Gulli, Amy (Auditors) <Amy.Gulli@delaware.gov>
Subject: RE: Scheduling a Meeting

Patty:

Update on RK Planner – Kathy has cooperated with Cpl. Creech and provided him with a USB drive of the camera footage he requested. We haven't heard from [REDACTED] (or anyone) about the planner at all this week and part of last week.... Should I ask [REDACTED] if she's located the planner yet? And if not, kindly ask her to please tell me if/when she does locate it?

During our internal investigation, no one has seen the planner or saw anyone else with it. Do you have any suggestions for next steps? I don't want to leave this situation hanging if there are additional steps that I can take.

Thanks, and happy Friday!

Alaina Sewell, Chief of Staff to the State Auditor

Delaware Office of Auditor of Accounts

Office: 302-857-3931 Alaina.Sewell@delaware.gov

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KATHLEEN
McGUINNESS
DELAWARE
STATE AUDITOR

REPORT FRAUD: 1-800-55-FRAUD



DE Auditor



DE Auditor



DE Auditor

From: Sewell, Alaina (Auditors)

Sent: Thursday, July 1, 2021 3:44 PM

To: Davis, Patricia (DOJ) <PatriciaA.Davis@delaware.gov>

Cc: Gulli, Amy (Auditors) <Amy.Gulli@delaware.gov>

Subject: RE: Scheduling a Meeting

Patty:

Update on situation #1RK Planner- The Capitol PD officer, Cpl. Creech, called me to say that it wasn't necessary for him to review the camera footage since we were doing our own internal investigation. Kathy wanted to be diligent in addressing this matter, so she requested that the officer review camera footage with her. On Tuesday, Cpl. Creech and Kathy reviewed the footage together, and it was determined that no one was seen taking Rachael's planner. The officer asked for a copy of the footage, and Kathy is complying with that request.

The cop also stated that he thought [REDACTED] was "10-81" and then he did the finger in a circle motion around the head to indicate he thought she was crazy. Cpl Creech also stated that he "knows about her" and she has a negative reputation among the Capitol PD. *The officer also said that [REDACTED] accused both Kathy and me for taking her planner.*

[REDACTED]

[REDACTED]

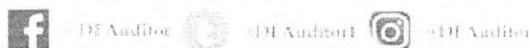
[REDACTED]

Thank you!

Alaina Sewell, Chief of Staff to the State Auditor
Delaware Office of Auditor of Accounts
Office: 302-857-3931 Alaina.Sewell@delaware.gov
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KATHLEEN
McGUINNESS
DELAWARE
STATE AUDITOR
REPORT FRAUD: 1-800-55-FRAUD



From: Sewell, Alaina (Auditors)
Sent: Monday, June 28, 2021 1:08 PM
To: Davis, Patricia (DOJ) <PatriciaA.Davis@delaware.gov>
Cc: Gulli, Amy (Auditors) <Amy.Gulli@delaware.gov>
Subject: Scheduling a Meeting

Patty,

Good afternoon and I hope all is well! It's my understanding that you're working with Amy on something right now that takes priority, but I'd like to schedule a meeting with you sometime this week per the advisement of DHR regarding two situations:

1. [REDACTED] missing planner. (I made sure to include you on my Friday recap email and my update email this morning to keep you informed on the latest).
2. [REDACTED]

I'm happy to provide more information if necessary. Please let me know your availability.

Thanks!

Alaina Sewell, Chief of Staff to the State Auditor

Delaware Office of Auditor of Accounts

Office: 302-857-3931 Alaina.Sewell@delaware.gov

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KATHLEEN
McGUINNESS
DELAWARE
STATE AUDITOR

REPORT FRAUD: 1-800-55-FRAUD



@DE Auditor



@DE Auditor1



@DE Auditor

EXHIBIT G

C-91

1 period; right?

2 A. Yes.

3 Q. My Campaign Group received one
4 electronic fund transfer as a result of those
5 August entries; correct?

6 A. Correct.

7 Q. And anybody who wrote that My
8 Campaign Group received two payments is
9 making a false statement; right?

10 A. Correct.

11 Q. And as a result of that September
12 10th payment, understanding there was a PCard
13 payment, the fact of the matter is that other
14 than the PCard payment -- and we'll get to
15 that -- My Campaign Group received one
16 payment on or about September 10th of 2020;
17 isn't that right?

18 A. That is correct.

19 Q. And anybody who wrote that My
20 Campaign Group received two payments on
21 September 10th of 2020 is making a false
22 statement; isn't that correct?

23 A. Yes, it is.

C-101

1 A. That is correct.

2 Q. There's nothing improper about it at
3 all?

4 A. No, there is not.

5 Q. There is nothing illegal about it at
6 all; right?

7 A. You are correct.

8 Q. And in that colored chart that
9 showed the different payment lines, you
10 weren't trying to say that My Campaign Group
11 was receiving multiple payments; right?

12 A. Correct.

13 Q. And that chart, in fact, does not
14 say that My Campaign Group was receiving
15 multiple payments; correct?

16 A. Correct.

17 Q. And anybody who said that chart says
18 My Campaign Group received multiple payments
19 made an untrue statement; correct?

20 A. Correct.

21 MR. DENNEY: Objection, Your Honor.

22 Can we approach?

23 (Sidebar conference held.)

C-111

1 Q. And you forwarded this information
2 on to the Attorney General's Office sometime
3 in July or early August of 2021; right?

4 A. Correct.

5 Q. So as of whenever you forwarded that
6 information, July or early August of 2021,
7 you told the Department of Justice that the
8 Division of Accounting approved two vouchers
9 since they exceeded \$5,000?

10 A. Correct.

11 Q. And so if anybody said that there
12 were multiple payments all under \$5,000, that
13 would be a false statement relating to August
14 and September; right?

15 A. Correct.

16 Q. And anybody who had the benefit of
17 reading this email would know it was a false
18 statement; correct?

19 A. Correct.

20 Q. And, here, the next paragraph, you
21 talk about the voucher that was pushed
22 back -- and that's the one that we saw in the
23 spreadsheet a little while ago and which we