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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

JUN 14 2013

Ref: F-13-00373


OCCL

This is an interim response to your April 6, 2013, Freedom of Information Act (FOIA) request asking to receive a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it FOIA case number F-13-00373.

The enclosed Report of Investigation concerning Lieutenant General David H. Huntoon, Jr. is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request, and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number F-13-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,


Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

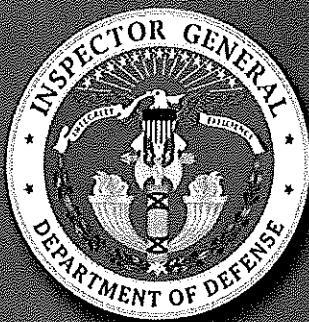
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Report No. H11L120171242

May 1, 2012

Inspector General

United States
Department of Defense



REPORT OF INVESTIGATION:
LIEUTENANT GENERAL DAVID H. HUNTOON
U.S. ARMY
SUPERINTENDENT
UNITED STATES MILITARY ACADEMY
WEST POINT, NY

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

MAY 1 2012

MEMORANDUM FOR ACTING INSPECTOR GENERAL

SUBJECT: Investigation of Alleged Misconduct Concerning Lieutenant General David H. Huntoon, U.S. Army, Superintendent, United States Military Academy, West Point, NY (Report No H11L120171242)

We recently completed an investigation to address allegations that while serving as the Superintendent, United States Military Academy, Lieutenant General David H. Huntoon, U.S. Army, (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) and misused Government resources and personnel for other than official purposes in violation of the JER and DoD Instruction (DoDI) 1315.09, "Utilization of Enlisted Personnel on Personal Staffs of General and Flag Officers."

(b)(6) (b)(7)(C)

We also conclude that LTG Huntoon improperly used Government personnel in violation of the JER and DoD Instruction (DoDI) 1315.09, "Utilization of Enlisted Personnel on Personal Staffs of General and Flag Officers." We found LTG Huntoon misused official time by using his (b)(6) (b)(7)(C) during the duty day to prepare and service an unofficial luncheon. We also conclude that on two occasions, LTG Huntoon improperly accepted gifts of services from his subordinates in violation of the JER. Finally, we conclude that LTG Huntoon misused his position to induce a benefit to a friend by requesting (b)(6) (b)(7)(C) care for (b)(6) (b)(7)(C) cats.

We provided LTG Huntoon the opportunity to comment on our tentative conclusions. In his response, dated April 13, 2012, LTG Huntoon stated he accepted full responsibility for his actions and provided documentation that, after receiving our tentative conclusions letter, he had appropriately compensated all parties concerned totaling \$1815. We recommend the Secretary of the Army consider appropriate corrective action with regard to LTG Huntoon.

C. St. Cyr
Charles E. St. Cyr
Assistant Deputy Inspector General
for Administrative Investigations

Attachment:
As stated

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REPORT OF INVESTIGATION:
LIEUTENANT GENERAL DAVID H. HUNTOON, U.S. ARMY

I. INTRODUCTION AND SUMMARY

We initiated this investigation to address allegations that while serving as the Superintendent, United States Military Academy (USMA), West Point, NY, Lieutenant General (LTG) David H. Huntoon (b)(6) (b)(7)(C) and misused Government resources and personnel for other than official purposes.¹ We substantiated the second allegation.

(b)(6) (b)(7)(C)

[REDACTED]

We also conclude that LTG Huntoon improperly used Government personnel for other than official purposes, improperly accepted gifts of services from subordinates, and misused his position to induce a benefit to a friend. We found LTG Huntoon misused his (b)(6) (b)(7)(C) during the duty day to prepare and service an unofficial luncheon. We also found that on two occasions, LTG Huntoon improperly accepted gifts of services from his subordinates. First, we found that the level of compensation provided by LTG Huntoon to his (b)(6) (b)(7)(C) was not sufficient given the amount of personal time and services rendered in support of an unofficial charity fundraiser dinner. Second, (b)(6) (b)(7)(C) provided driving lessons to LTG Huntoon's (b)(6) (b)(7)(C). Finally, we determined that LTG Huntoon misused his position to induce a benefit to a friend, (b)(6) (b)(7)(C), by requesting his (b)(6) (b)(7)(C) care for (b)(6) (b)(7)(C) cats.

In accordance with our established procedure, we provided LTG Huntoon the opportunity to comment on our tentative conclusions by correspondence dated March 28, 2012. In his response, dated April 13, 2012, LTG Huntoon, through counsel, stated he accepted full responsibility for his actions, he never intended to violate any regulation, and provided documentation that he had, after receipt of our tentative conclusions letter, appropriately compensated all parties for services rendered.²

¹ (b)(6) (b)(7)(C)

[REDACTED]

² While we have included what we believe is a reasonable synopsis of LTG Huntoon's response, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments from the

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

In July 2010, LTG Huntoon assumed duties as the Superintendent, USMA, after serving as the Director of the Army Staff (DAS) at the Pentagon. LTG Huntoon is responsible for the education, training, and leader development of approximately 4,400 cadets who ultimately receive commissions as Army officers. He reports directly to the Chief of Staff, U.S. Army.

(b)(6), (b)(7)(C)

On October 25, 2010, the Army Inspector General (IG) initiated a preliminary inquiry into allegations that LTG Huntoon improperly hired, and later promoted, the subordinate. The complaint also alleged that he improperly designated her as "Key and Essential," and thus entitled to USMA Government quarters, based on their personal relationship. The Army IG preliminary inquiry, with legal review, determined the allegations were not founded. The Acting Inspector General, U.S. Army, approved the report on March 29, 2011.

During the oversight review of the Army IG inquiry, this Office received a Memorandum for Record (MFR) prepared by an Associate Deputy General Counsel, Office of the General Counsel of the Army, dated June 2, 2011. The MFR documented the Associate Deputy General Counsel's telephone conversation the previous day with (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) LTG Huntoon's (b)(6), (b)(7)(C) at USMA. (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) also related that there were allegations that LTG Huntoon improperly utilized his (b)(6), (b)(7)(C) for unofficial or personal duties, (b)(6), (b)(7)(C)

response throughout this report where appropriate and provided a copy of the response to the Secretary of the Army together with this report.

³ The incoming chief of staff assumed office on October 1, 2010.

III. SCOPE

We interviewed 35 witnesses, to include LTG Huntoon and (b)(6) (b)(7)(C)⁴ We also interviewed the former and incumbent Vice Chiefs of Staff, U.S. Army; (b)(6), (b)(7)(C) and the following senior USMA leaders: the Commandant of Cadets; Dean of the Academic Board; Director of Intercollegiate Athletics; Garrison Commander; Director of Admissions; Commander, Keller Army Community Hospital; USMA Chief of Staff; USMA Staff Judge Advocate (SJA); and USMA Command Sergeant Major. We also interviewed other members of LTG Huntoon's staff, and additional senior officers. (b)(6) (b)(7)(C)

Further, we reviewed the Army IG preliminary inquiry concerning matters related to this investigation.

After conducting our initial fieldwork, we determined that the following allegations did not warrant further investigation and consider them not substantiated.

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

⁴ LTG Huntoon also provided a sworn statement subsequent to his testimony.

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

IV. FINDINGS AND ANALYSIS

(b)(6)

Standards

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)



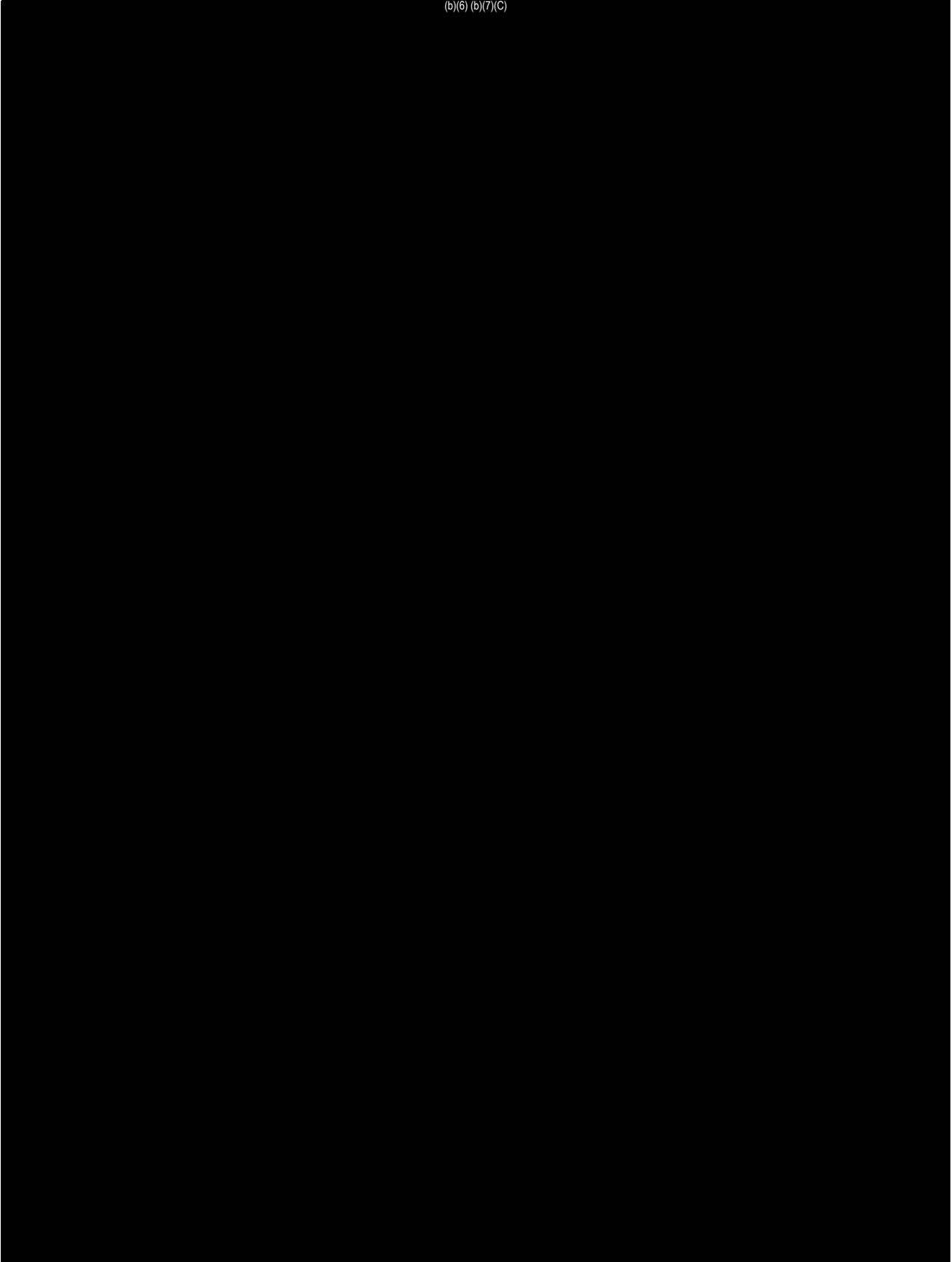
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(b)(6) (b)(7)(C)



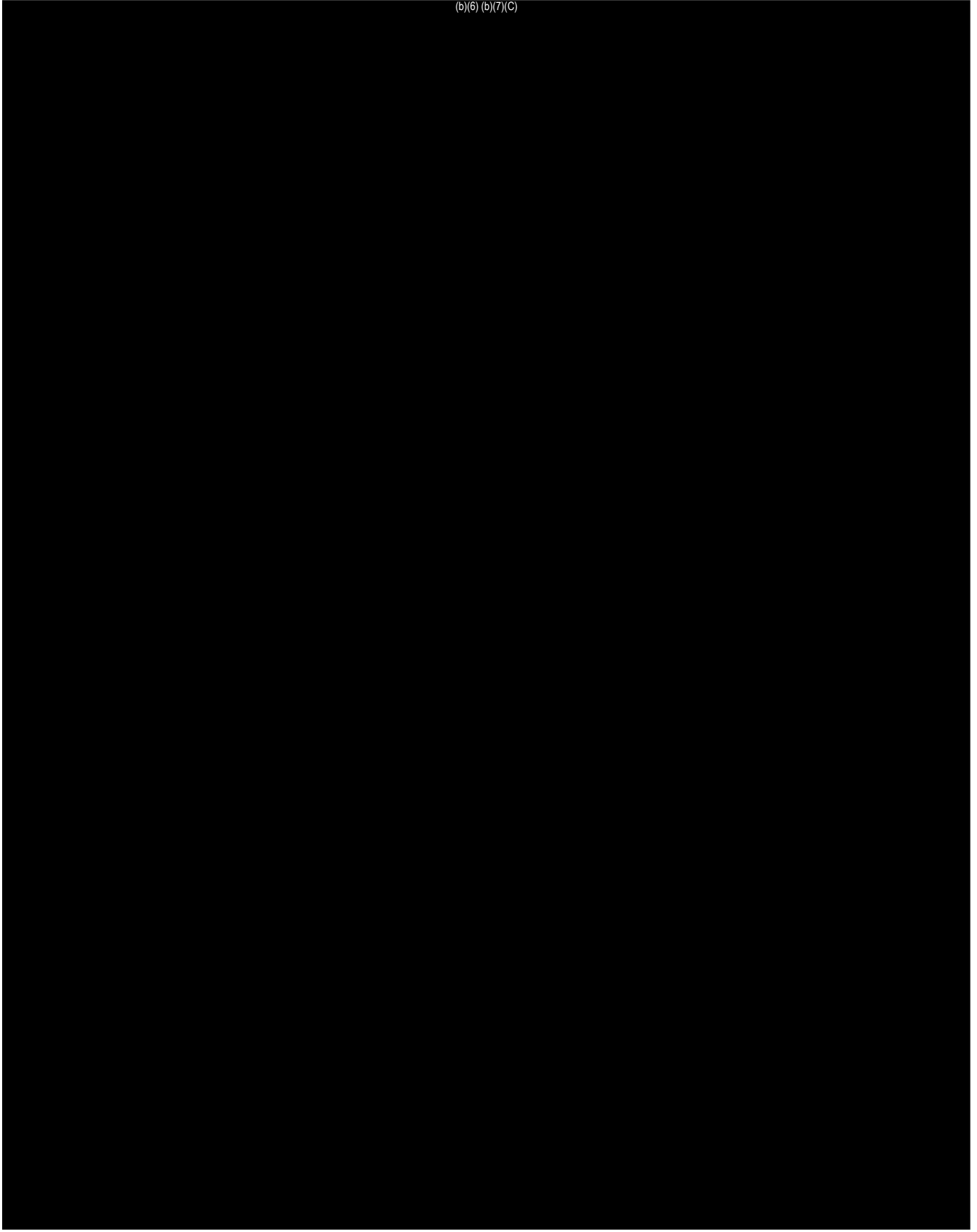
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(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)



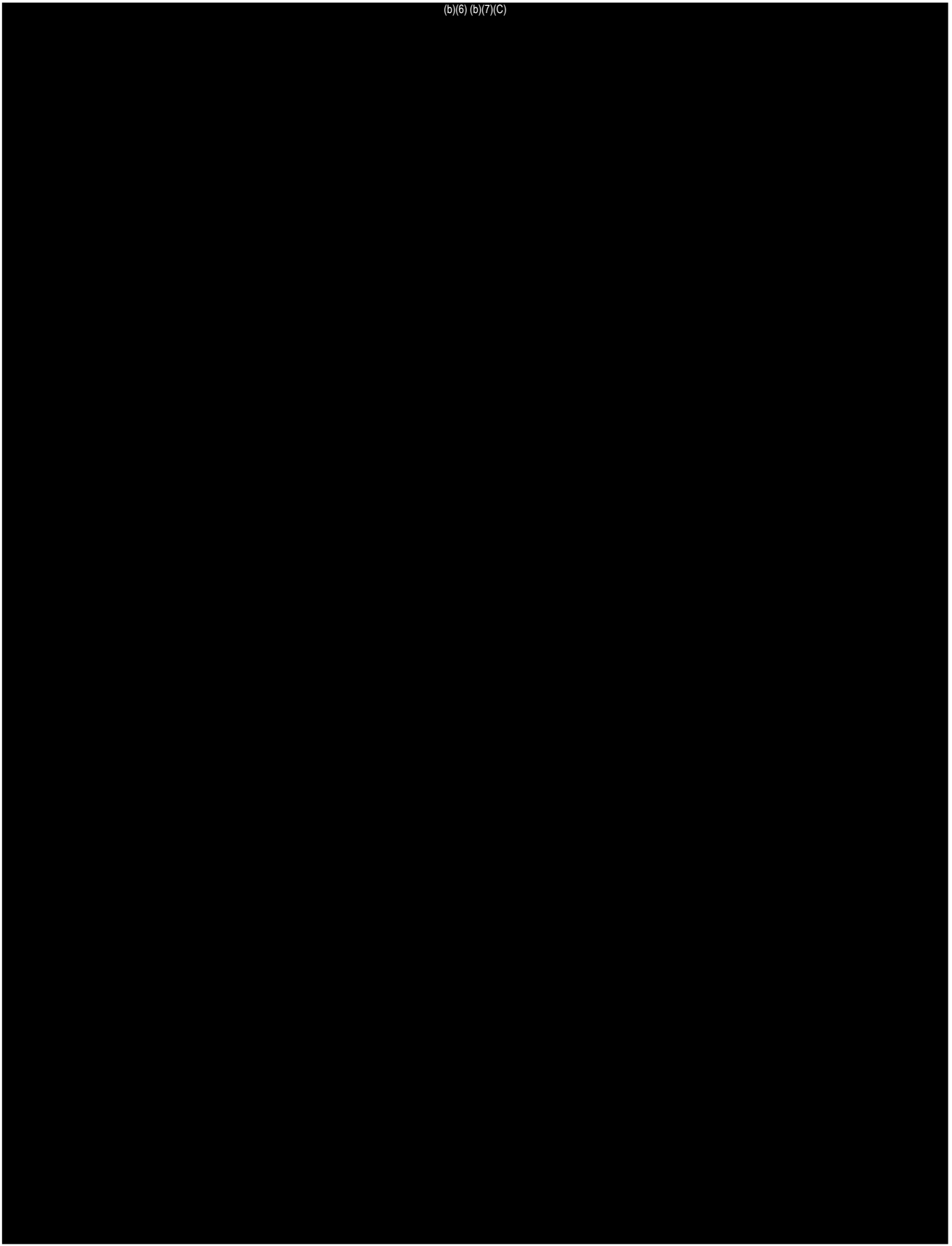
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(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)



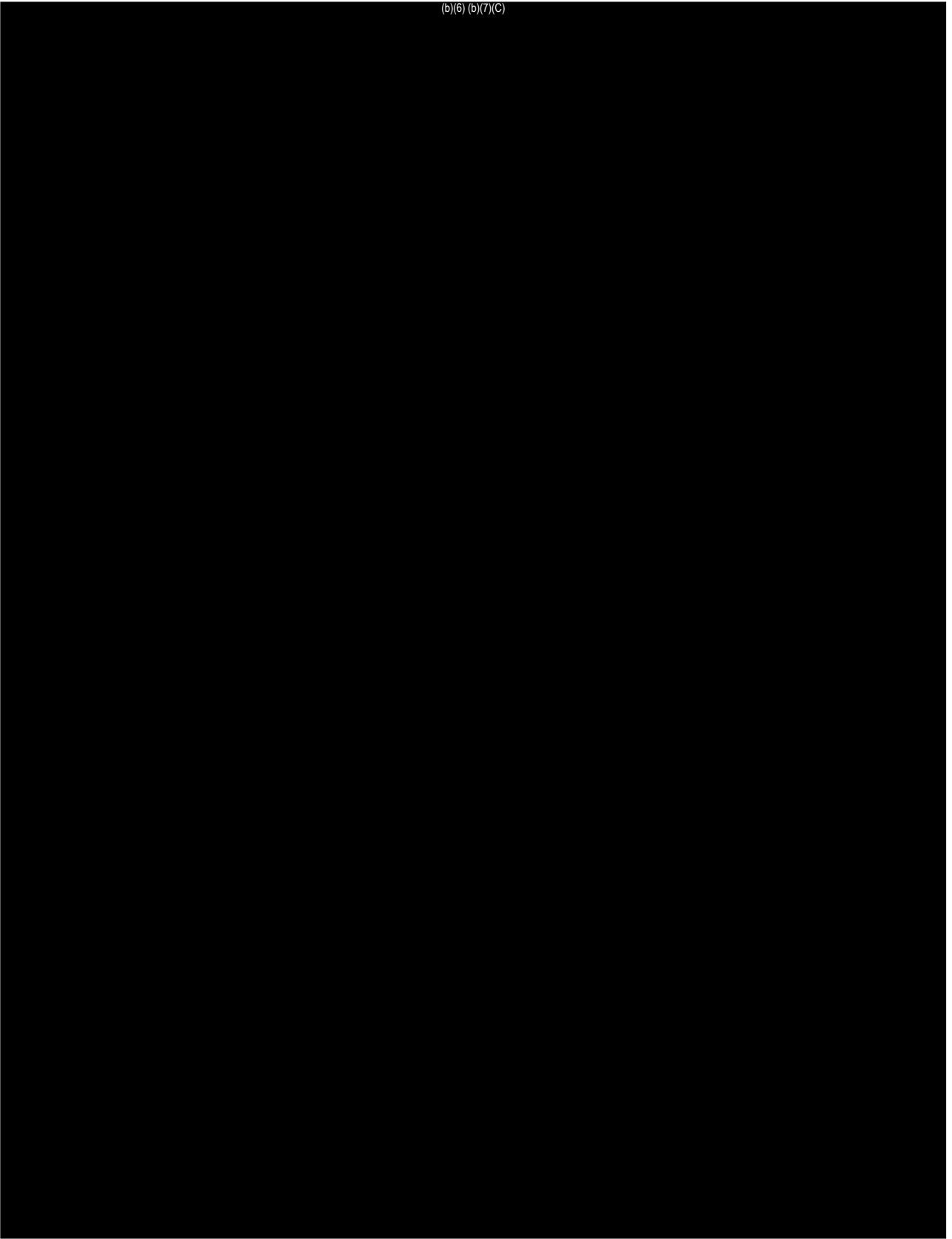
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(b)(6) (b)(7)(C)



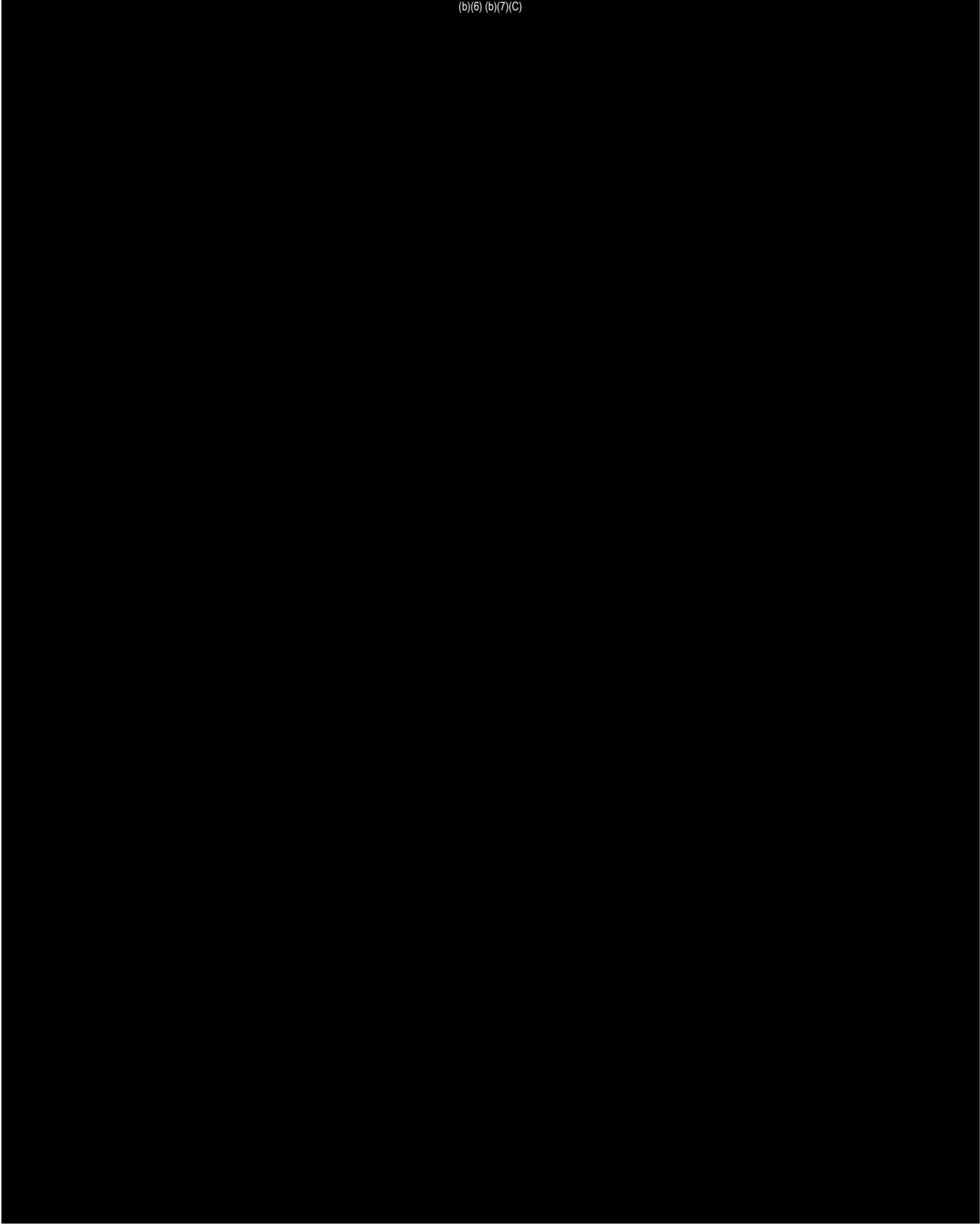
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(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)



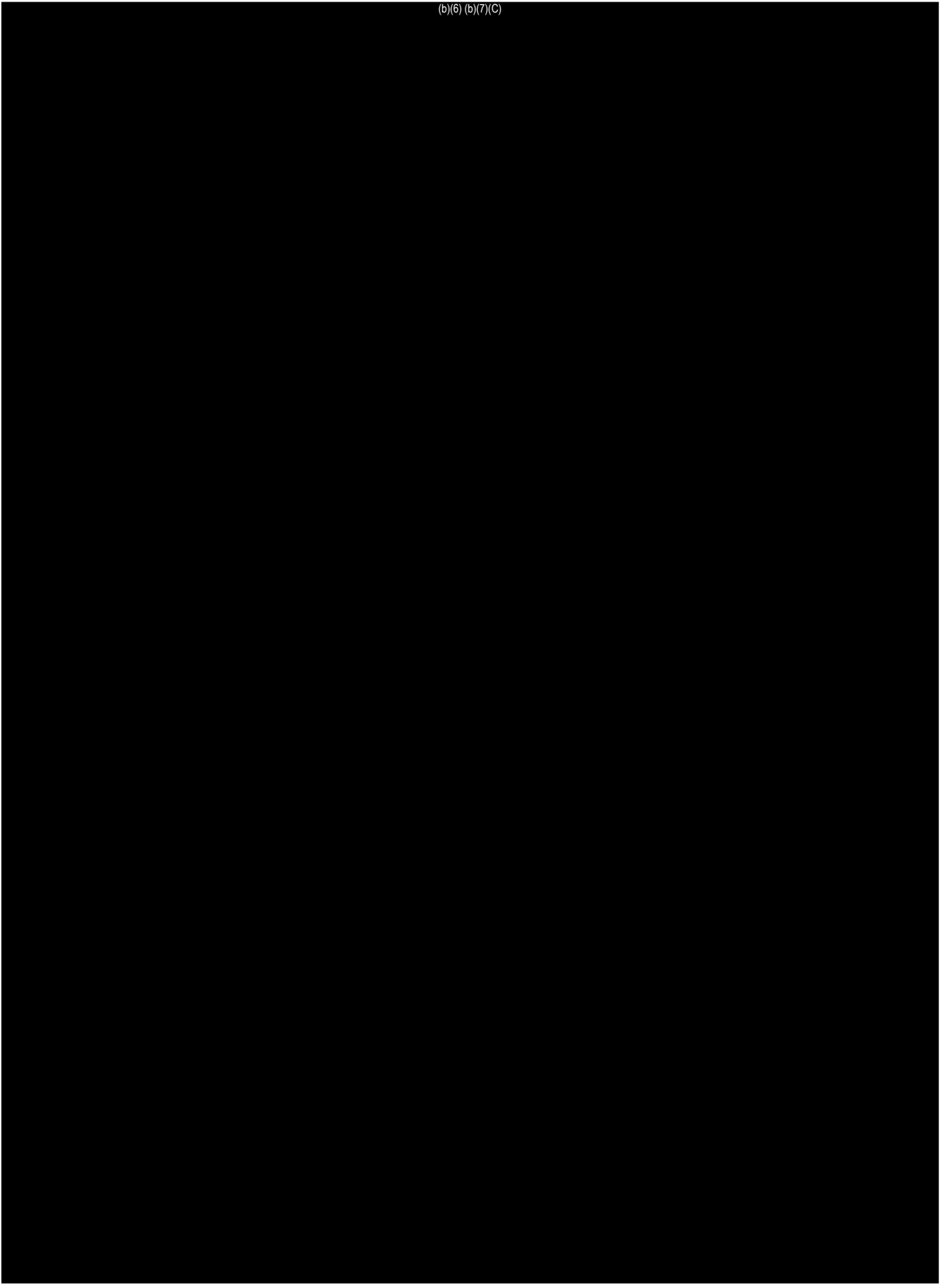
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(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)

B. Did LTG Huntoon misuse Government personnel for other than official purposes?

Standards

Title 10, United States Code, Section 3639 (10 U.S.C. 3639), "Enlisted members: officers not to use as servants," dated August 10, 1956

This provision states that no officer of the Army may use an enlisted member of the Army as a servant.

DoD 5500.7-R, "JER," dated August 30, 1993, including changes 1-6 (March 23, 2006)

Subpart A, "General Provisions," Section 2635.101, "Basic obligation of public service," provides general principles applicable to every employee. Section 2635.101(b) (14) mandates that employees endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. The section explains that whether particular circumstances create an appearance that the law or standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Subpart B, "Gifts from Outside sources," Section 2635.203, "Definitions," defines a gift as including any gratuity, favor, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

Subpart C, "Gifts Between Employees," Section 2635.302(b), "Gifts from employees receiving less pay," states that an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless the two employees are not in a senior-subordinate relationship and there is a personal relationship between the employees that would justify the gift.

Subpart G, "Misuse of Position," states:

In Section 2635.702(a), "Inducement or coercion of benefits." An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise to himself or to friends, relatives, or persons with whom the employee is affiliated in a non-governmental capacity.

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In Section 2635.705(b), "Use of a subordinate's time," that an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation. Additionally, the applicable example under Section 2635.705(b) affirms that directing or coercing a subordinate to perform personal services during non-duty hours constitutes an improper use of public office for private gain in violation of Section 2635.702 of the JER. The example further states that during non-duty hours, where an arrangement is entirely voluntary and appropriate compensation is paid, a subordinate may provide a service for a superior. If the compensation is not adequate, the service constitutes a "gift to a superior" in violation of the JER prohibitions regarding gifts between employees.

DoDI 1315.09, "Utilization of Enlisted Personnel on Personal Staffs of General and Flag Officers," dated October 2, 2007

This Instruction provides guidance regarding the allocation of enlisted aides to the individual Services and the duties that may properly be assigned to enlisted aides. The Instruction governs the utilization of enlisted personnel who are assigned to duty in public quarters and on the personal staffs of general and flag officers.

Section 3.1 states that enlisted aides are authorized for the purpose of relieving general and flag officers of those minor tasks and details which, if performed by the officers, would be at the expense of the officers' primary military and official duties. The duties of these enlisted personnel shall be concerned with tasks relating to the military and official responsibilities of the officers, to include assisting general and flag officers in discharging their official DoD social responsibilities in their assigned positions. The propriety of such duties is governed by the official purpose which they serve, rather than the nature of the duties.

With regard to the issues in this investigation, the Instruction permits enlisted aides to assist with the care, cleanliness, and order of assigned quarters, uniforms, and military personal equipment. Enlisted aides may be used to assist in the planning, preparation, arrangement, and conduct of official social functions and activities, such as receptions, parties, and dinners. Additionally, enlisted aides may assist in purchasing, preparing, and serving food and beverages in the officer's assigned quarters. They may accomplish tasks that aid the officer in the performance of his military and official responsibilities, including performing errands, providing security, and providing administrative assistance. However, Section 5.1 places limitations on the tasks that may be properly assigned to an enlisted aide, noting that:

No officer may use an enlisted member as a servant for duties that contribute only to the officer's personal benefit and that have no reasonable connection with the officer's official responsibilities.

AR 614-200, "Enlisted Assignments and Utilization Management," dated February 26, 2009, paragraph 8-11, states:

Enlisted aide duties must relate to the military and official duties of the General Officer and, thereby, serve a necessary military purpose. The propriety of duties is determined by the

official purpose they serve rather than the nature of the duties. In connection with the military and official functions and duties, enlisted aides may perform the following (list not all inclusive and provided only as a guide):

(1) Assist with care, cleanliness, and order of assigned quarters, uniforms, and military personal equipment.

(2) Perform as point of contact in the GO's quarters. Receive and maintain records of telephone calls, make appointments, and receive guests and visitors.

(3) Help to plan, prepare, arrange, and conduct official social functions and activities, such as receptions, parties, and dinners.

(4) Help to purchase, prepare, and serve food and beverages in the GO's quarters.

(5) Perform tasks that aid the officer in accomplishing military and official responsibilities, including performing errands for the officer, providing security for the quarters, and providing administrative assistance.

The Regulation does not preclude the employment of enlisted personnel by officers on a voluntary, paid, off-duty basis.

Facts

LTG Huntoon's (b)(6) (b)(7)(C) stated that on at least four occasions, he and (b)(6) (b)(7)(C) involuntarily supported unofficial events for LTG Huntoon. The (b)(6) (b)(7)(C) identified the four events as three luncheons hosted by (b)(6) (b)(7)(C) and a fund raising event known as the "Progressive Dinner." The (b)(6) (b)(7)(C) only recalled specifics for one of the three luncheons, which occurred on Monday, May 2, 2011, for the "War College Ladies" from Carlisle Barracks, Pennsylvania. The (b)(6) (b)(7)(C) stated the Progressive Dinner occurred the following Saturday, May 7, 2011.

The (b)(6) (b)(7)(C) also testified that LTG Huntoon's (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) had provided unofficial transportation to LTG Huntoon's (b)(6) (b)(7)(C) on several occasions by transporting (b)(6) (b)(7)(C) 14

LTG Huntoon's (b)(6) (b)(7)(C) confirmed (b)(6) (b)(7)(C) supported the two entertainment events which he understood were "unofficial." The (b)(6) (b)(7)(C) added that he believed the (b)(6) (b)(7)(C) volunteered to support the events. The (b)(6) (b)(7)(C) continued that he was unaware that the (b)(6) (b)(7)(C) ever objected to supporting the events.

(b)(6) (b)(7)(C)

War College Ladies Luncheon (Monday, May 2, 2011)

The (b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) informed him she required his support for the luncheon. He estimated that he and (b)(6) (b)(7)(C) worked about 10 hours each to support the event, which was attended by approximately 30 guests. The (b)(6) (b)(7)(C) explained their support consisted of developing the menu, purchasing the provisions, preparing and serving the food, and post-event clean-up. The (b)(6) (b)(7)(C) stated LTG Huntoon did not attend the luncheon and that (b)(6) (b)(7)(C) paid for the event with her personal funds.

The (b)(6) (b)(7)(C) testified the (b)(6) (b)(7)(C) requested his assistance in preparing for the luncheon. (b)(6) (b)(7)(C) explained there was never any discussion regarding whether or not the event was "official," or whether his or the (b)(6) (b)(7)(C) participation should be voluntary. (b)(6) (b)(7)(C) testified they worked approximately 7 hours each to support the event which was attended by approximately 15 guests. (b)(6) (b)(7)(C) corroborated that (b)(6) (b)(7)(C) paid for the event with personal funds.

LTG Huntoon's (b)(6) (b)(7)(C) testified he recalled the (b)(6) (b)(7)(C) prepared one (b)(6) (b)(7)(C) luncheon, which occurred during the duty day. The (b)(6) (b)(7)(C) believed that the (b)(6) (b)(7)(C) volunteered, but was not aware of any compensation.

In a sworn statement to this Office, LTG Huntoon provided bank records processed on April 20, 2011, which established LTG Huntoon's personal funds for \$275 were used to purchase provisions for the event.

Progressive Dinner (Saturday, May 7, 2011)

On February 25, 2011, the West Point Women's Club (WPWC) held its annual charity fundraiser on the USMA military reservation. The WPWC is an authorized private organization and during the fundraiser they auctioned off a "Progressive Dinner," which entailed a three course dinner with a different course of the meal served at the quarters of the Commandant, the Superintendent, and the Dean.

Two USMA Staff Judge Advocate legal opinions, general subject: West Point Women's Club (WPWC)-Viva! Las Vegas Night, stated the WPWC annual charity fund-raiser was a private event, and therefore was "unofficial."

The (b)(6) (b)(7)(C) stated that 14 people attended the dinner held on May 7, 2011. He stated that both he and (b)(6) (b)(7)(C) worked about 18 hours each to support the event and received a \$40 and \$30 Starbucks Gift Card, respectively, as compensation. The (b)(6) (b)(7)(C) stated the Huntoon's paid for the event with their personal funds.

The (b)(6) (b)(7)(C) testified the (b)(6) (b)(7)(C) requested his assistance in preparing for the event, but never indicated that he questioned the nature of the dinner or their participation. (b)(6) (b)(7)(C) confirmed the (b)(6) (b)(7)(C) account of the matter regarding the concept and approximate number of participants, and estimated they worked 13 hours each to support the event. (b)(6) (b)(7)(C) also confirmed that LTG Huntoon compensated them with a

Starbucks Gift Card each. (b)(6) (b)(7)(C) added the (b)(6) (b)(7)(C) was not pleased with the level of compensation for the amount of time and effort they provided.

In the referenced sworn statement, LTG Huntoon also declared the (b)(6) (b)(7)(C) and his (b)(6) (b)(7)(C) volunteered to support the event which was attended by eight guests.¹⁵ LTG Huntoon also stated he believed that the (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) each worked for four or five hours to support the dinner. LTG Huntoon explained the dinner concept was such that the winners dined first at BG Rapp's quarters for appetizers, then to his quarters for the entrée, and finally to BG Trainor's quarters for dessert. LTG Huntoon added that the food and associated items were financed with his personal funds, and provided this Office with bank documentation to that effect.

LTG Huntoon requested that these limited, unofficial instances, be placed in the context of his entire career of service. LTG Huntoon continued that he takes full responsibility for any violations of the (b)(6) (b)(7)(C) duties.

Transportation

LTG Huntoon's (b)(6) (b)(7)(C) stated he once volunteered to transport LTG Huntoon's (b)(6) (b)(7)(C) from the train station in Newark, New Jersey, to LTG Huntoon's quarters. The (b)(6) (b)(7)(C) explained that he drove LTG Huntoon's personally owned vehicle the roundtrip of approximately 100 miles which took approximately 3 hours.¹⁶ The (b)(6) (b)(7)(C) continued that the trip occurred on May 18, 2011, during the week in off-duty evening hours and that LTG Huntoon compensated him with \$60.00 and an \$8.00 lunch.

The (b)(6) (b)(7)(C) later stated that on two other occasions he volunteered to drive LTG Huntoon's (b)(6) (b)(7)(C) to the train station in Garrison, NY, using LTG Huntoon's personally owned vehicle. The (b)(6) (b)(7)(C) added that LTG Huntoon provided him a one-time payment of \$40.00, as well as an \$8.00 lunch on each occasion as compensation. The (b)(6) (b)(7)(C) estimated the roundtrip duration and distance as 30 minutes and 20 miles respectively.¹⁷

Personal Services

Driving Lessons: BG Rapp and the Director of Admissions testified to their belief that (b)(6) (b)(7)(C) provided driving lessons to LTG Huntoon's (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) confirmed that she did so. Our survey of three driving schools in the West Point area established an average rate for individual instruction of \$45 per hour.

Pet Care: The Director of Admissions and (b)(6) (b)(7)(C) testified that (b)(6) (b)(7)(C) was a close friend of the Huntoon family. The (b)(6) (b)(7)(C) testified that (b)(6) (b)(7)(C) had a

¹⁵ The West Point Women's Club representative confirmed eight guests attended the dinner.

¹⁶ MapQuest established the roundtrip duration and distance as 2:44 hours and 110 miles respectively.

¹⁷ MapQuest established the roundtrip duration and distance as 44 minutes and 22 miles respectively.

“strong relationship” with LTG Huntoon’s (b)(6) (b)(7)(C), and got along well with the entire Huntoon family. BG Rapp testified (b)(6) (b)(7)(C) had an “almost familial” relationship with the Huntoon family. (b)(6) (b)(7)(C) testified she had a personal relationship with the Huntoon family. LTG Huntoon testified (b)(6) (b)(7)(C) was known and welcome by his family. LTG Huntoon testified that in November or December 2010, (b)(6) (b)(7)(C) agreed to feed (b)(6) (b)(7)(C) cats, but was unable to do so and he agreed to perform that task. LTG Huntoon explained that after the first time, “it occurred to me this was not the right thing to do.” Subsequently, he requested his (b)(6) (b)(7)(C) assume that duty, which he did.

The (b)(6) (b)(7)(C) corroborated LTG Huntoon’s account of the matter. The (b)(6) (b)(7)(C) explained that LTG Huntoon stopped by his quarters one evening to “ask a favor” that he assume responsibility for feeding (b)(6) (b)(7)(C) cats. The (b)(6) (b)(7)(C) added that he also owns a cat and continues to feed (b)(6) (b)(7)(C) cats when she is away.

Discussion

We conclude that LTG Huntoon improperly used Government personnel for other than official purposes. We also conclude that LTG Huntoon improperly accepted gifts from his subordinates on at least two occasions: the Progressive Dinner, and by allowing (b)(6) (b)(7)(C) to provide driving lessons to (b)(6) (b)(7)(C). Additionally, we conclude that LTG Huntoon improperly induced his (b)(6) (b)(7)(C) to care for (b)(6) (b)(7)(C) cats, a misuse of his position. We further conclude that LTG Huntoon properly compensated his (b)(6) (b)(7)(C) for providing transportation for (b)(6) (b)(7)(C) outside of duty hours.

We found that the (b)(6) (b)(7)(C) luncheon, hosted by (b)(6) (b)(7)(C) was not related to LTG Huntoon’s duties as the Superintendent. The event occurred during duty hours and was supported by LTG Huntoon’s (b)(6) (b)(7)(C). We also found that the (b)(6) (b)(7)(C) prepared and serviced the Progressive Dinner, a private, unofficial dinner event auctioned off by the WPWC, which occurred outside normal duty hours. Even if the (b)(6) (b)(7)(C) volunteered to support the event, we found that they were inadequately compensated for their time. We also found that (b)(6) (b)(7)(C) provided driving lessons to LTG Huntoon’s (b)(6) (b)(7)(C) and that this service also constituted an improper gift. Furthermore, we found that LTG Huntoon acknowledged that (b)(6) (b)(7)(C) was a family friend. Therefore, LTG Huntoon’s request to the (b)(6) (b)(7)(C) a direct report to LTG Huntoon, to feed (b)(6) (b)(7)(C) cats, was a misuse of his position.

The JER prohibits an employee from using subordinates for unofficial business during duty hours. Additionally, the JER requires that if services are outside the duty day, the subordinate may volunteer to provide services if the senior provides appropriate compensation. However, if there is inadequate compensation, the service is considered a gift from a subordinate. The JER does provide certain criteria when a superior may accept a gift from a subordinate, but not in instances where the individuals are in a senior/subordinate relationship. The JER also prohibits an employee from inducing another person, including a subordinate, to provide a benefit to another person with whom the employee is affiliated in a nongovernmental capacity.

We determined that in the instance of the (b)(6) (b)(7)(C) luncheon, LTG Huntoon misused official time by using the (b)(6) (b)(7)(C) during the duty day to prepare and service the event. We also determined that on two occasions, LTG Huntoon improperly accepted gifts from his subordinates. First, regarding the Progressive Dinner, we determined that the level of compensation (Starbucks gift cards valued at \$30 and \$40) was not sufficient given the amount of personal time and services rendered in support of the dinner. Second, we determined that the driving lessons for LTG Huntoon's (b)(6) (b)(7)(C) constituted a gift of services, which LTG Huntoon cannot accept due to his supervisory relationship with (b)(6) (b)(7)(C). Finally, with respect to care of (b)(6) (b)(7)(C) cats, we found that LTG Huntoon's relationship with (b)(6) (b)(7)(C) was both personal as well as professional. We conclude that the cat care was provided to (b)(6) (b)(7)(C) as a friend and not in her professional capacity. Consequently, we determined that in requesting the (b)(6) (b)(7)(C) to care for (b)(6) (b)(7)(C) cats, LTG Huntoon misused his position to induce a benefit to a friend.

Accordingly, we determined LTG Huntoon misused Government personnel by improperly using (b)(6) (b)(7)(C) for other than official duties without adequate compensation, improperly accepted gifts of services from subordinates, and misused his official position to induce benefits to a friend.

Response to Tentative Conclusions

In his response to this Office, dated April 13, 2012, LTG Huntoon accepted full responsibility for his actions. LTG Huntoon provided documentation that he had researched labor rates for the events in question and compensated all parties concerned totaling \$1815.

After carefully considering LTG Huntoon's response, we stand by our conclusion that LTG Huntoon misused Government personnel for other than official purposes, improperly accepted gifts of services from subordinates, and misused his position to induce a benefit to a friend.

V. CONCLUSIONS

A. (b)(6) (b)(7)(C)
(b)(6) (b)(7)(C)

B. We conclude that LTG Huntoon improperly used Government personnel for other than official purposes, improperly accepted gifts of services from subordinates, and misused his position to induce a benefit to a friend.

VI. RECOMMENDATION

We recommend the Secretary of the Army consider appropriate corrective action with regard to LTG Huntoon.



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

JUL 30 2013

Ref: F-13-00373


OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it FOIA case number F-13-00373.

The enclosed reports of investigation concerning Dr. Carol E. Lowman and Vice Admiral James P. Wisecup are responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(5), which pertains to certain inter- and intra-agency communications protected by the deliberative process privilege, 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number F-13-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,


Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure(s):
As stated

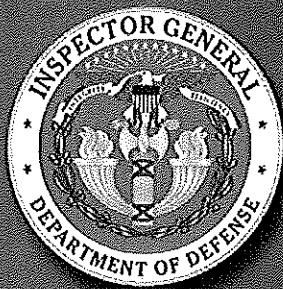
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Report No. 11-121391-398

November 9, 2012

Inspector General

United States
Department of Defense



REPORT OF INVESTIGATION:
DR. CAROL E. LOWMAN
SENIOR EXECUTIVE SERVICE

~~FOR OFFICIAL USE ONLY~~

REPORT OF INVESTIGATION:
DR. CAROL E. LOWMAN, SENIOR EXECUTIVE SERVICE

I. INTRODUCTION AND SUMMARY

We initiated this investigation to address allegations that Dr. Carol E. Lowman, while serving as Executive Director, U.S. Army Contracting Command (ACC), used her Government Travel Charge Card (GTCC) for unauthorized personal use, in violation of the Department of Defense Financial Management Regulation (DoD FMR); and that (b) (6), (b) (7)(C)

[REDACTED]

We substantiated one allegation. We conclude that Dr. Lowman improperly used her GTCC. We found that Dr. Lowman used the GTCC on two occasions for personal purchases at a designer cosmetics store and at a nail salon. The DoD FMR requires that the GTCC will only be used for official travel related expenses. We determined that Dr. Lowman's purchases were not related to official travel.

(b) (6), (b) (7)(C)

[REDACTED]

By letter dated September 14, 2012, we provided Dr. Lowman the opportunity to comment on the initial results of our investigation. On September 21, 2012, (b) (6), (b) (7)(C) signed for our letter by certified mail. Our Office made multiple attempts to contact Dr. Lowman after receiving no reply by the suspense date of September 28, 2012. Accordingly, we finalized our report of investigation without benefit of a response from Dr. Lowman.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

Dr. Lowman was appointed as the Executive Director, ACC, on September 27, 2011.² The ACC is a major subordinate command of the U.S. Army Materiel Command (AMC). Prior to her appointment as Executive Director, Dr. Lowman served as the Deputy Director, ACC, beginning in November 2009.

¹ (b) (6), (b) (7)(C)

[REDACTED]


² Dr. Lowman retired from Federal service on August 31, 2012.

On September 28, 2011, DoD IG received a DoD Hotline complaint alleging Dr. Lowman misused, and failed to pay in a timely manner, her GTCC.

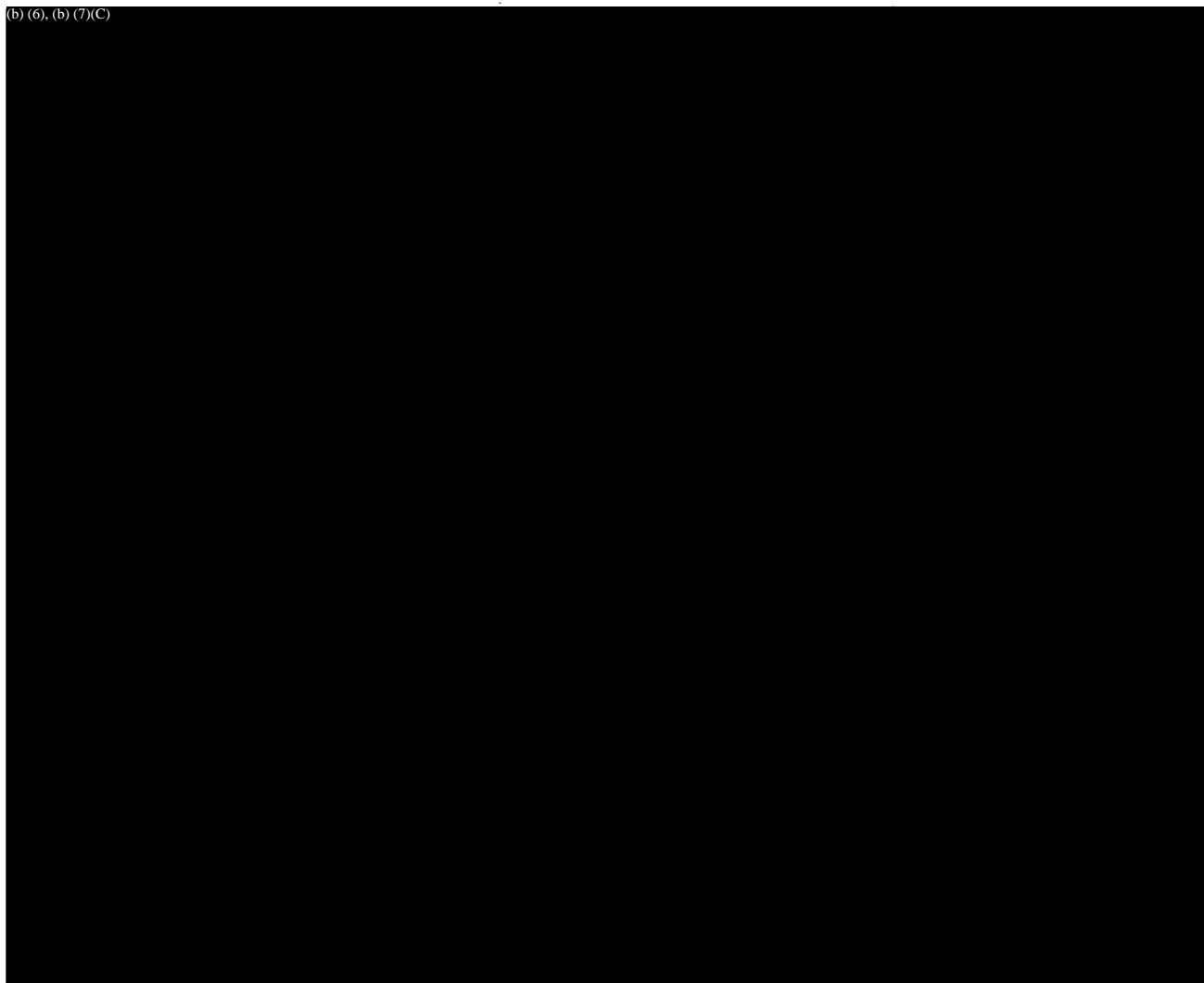
III. SCOPE

We interviewed Dr. Lowman and three witnesses with knowledge of matters under investigation. Additionally, we reviewed records from Defense Finance and Accounting Service (DFAS) and GTCC statements for official travel taken from September 2009 through December 2011.

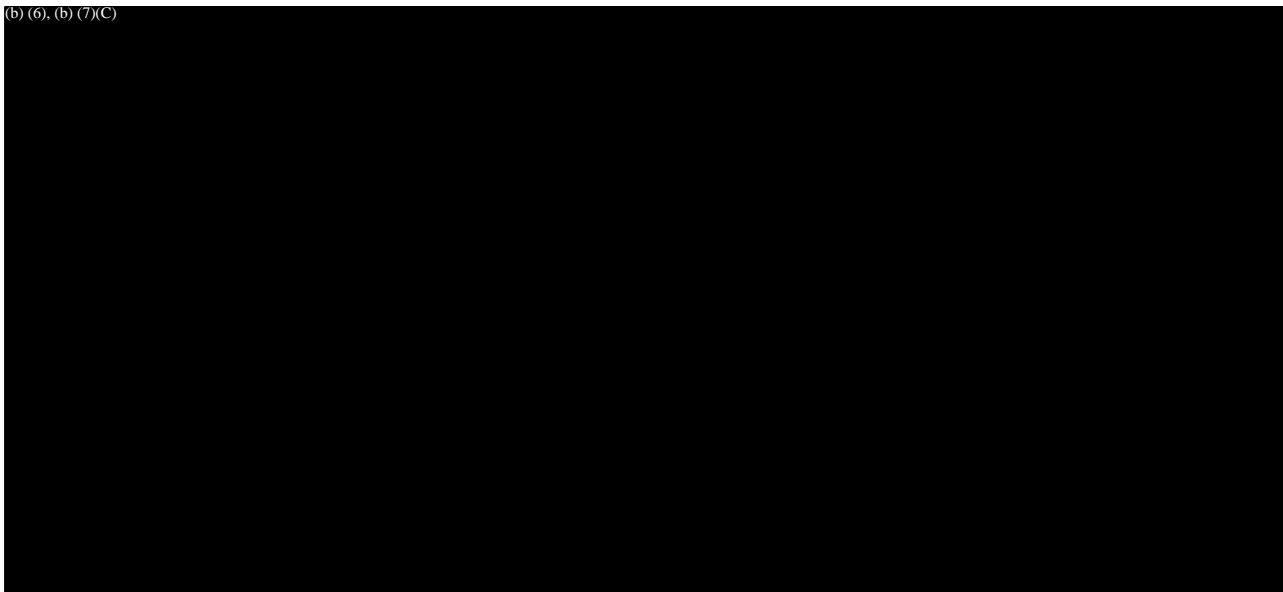
(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)



IV. FINDINGS AND ANALYSIS

A. Did Dr. Lowman use her GTCC for unauthorized personal use?

Standards

DoD 7000.14-R, "DoD Financial Management Regulation (FMR)," Volume 9, "Travel Policies and Procedures"

Chapter 3, "Department of Defense Government Travel Charge Card (GTCC)," dated August 2010, states in section 031003, that the misuse of the GTCC will not be tolerated. Commanders and supervisors will ensure GTCCs are issued only for official travel related expenses. Example of misuse include: expenses related to personal, family or household purposes. The cardholder, while in a travel status, may use the GTCC for non-reimbursable incidental travel expenses such as in-room movie rentals, personal telephone calls, exercise fees, and beverages, when these charges are part of a room billing and are reasonable.

Facts

The complaint alleged Dr. Lowman used her GTCC for unauthorized personal use.

A witness testified that during a (b) (6), (b) (7)(C) discovered Dr. Lowman had used her GTCC to pay for a manicure and pedicure. The witness related that in March or early April 2010 (b) (6), (b) (7)(C) briefed Dr. Lowman on the proper use of the GTCC.

Dr. Lowman's GTCC statements from September 2009 through December 2011 contained 300 transactions of which two, totaling \$124.78, were questionable. The first instance

was on August 2, 2010, for \$68.78 at Sephora in Arlington, Virginia.³ The second instance was on December 18, 2010, for \$56.00 at Nail Lytan in Atlanta, Georgia.

Dr. Lowman testified she mistakenly used her GTCC instead of her personal credit card. She stated, "that's my other absolute brain dump. One Sephora and one the nail place." Dr. Lowman also testified that no one ever informed her that these purchases were improper.

Dr. Lowman further testified that based on our investigation she directed an audit of her GTCC transactions and a review of all processes related to official travel.

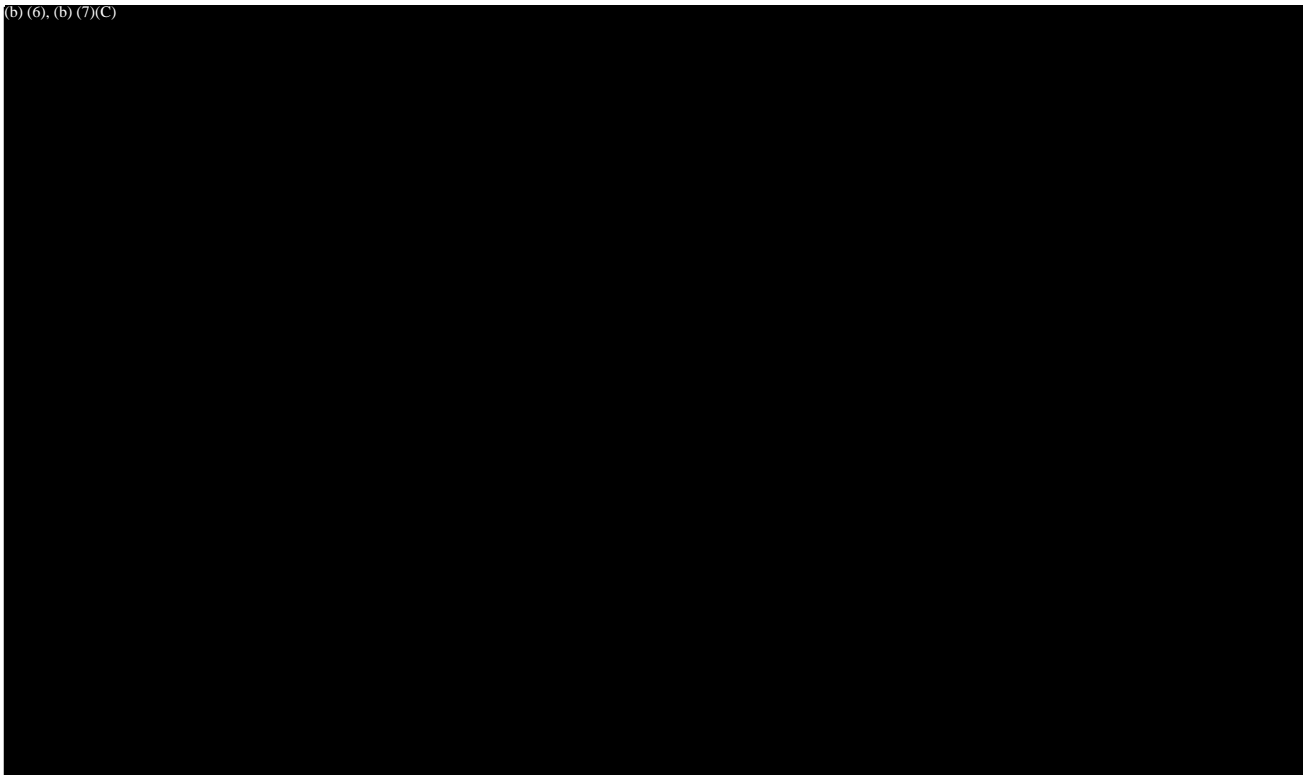
Discussion

We conclude Dr. Lowman used her GTCC for unauthorized personal use. We found two instances in which Dr. Lowman used her GTCC for personal purchases totaling \$124.78. The two purchases were at a designer cosmetics store and a nail salon.

The DoD FMR requires that the GTCC is only to be used for official travel related expenses. Additionally, the DoD FMR permits the use of the GTCC for non-reimbursable incidental travel expenses such as in-room movie rentals, personal telephone calls, exercise fees, and beverages, when these charges are part of a room billing and are reasonable.

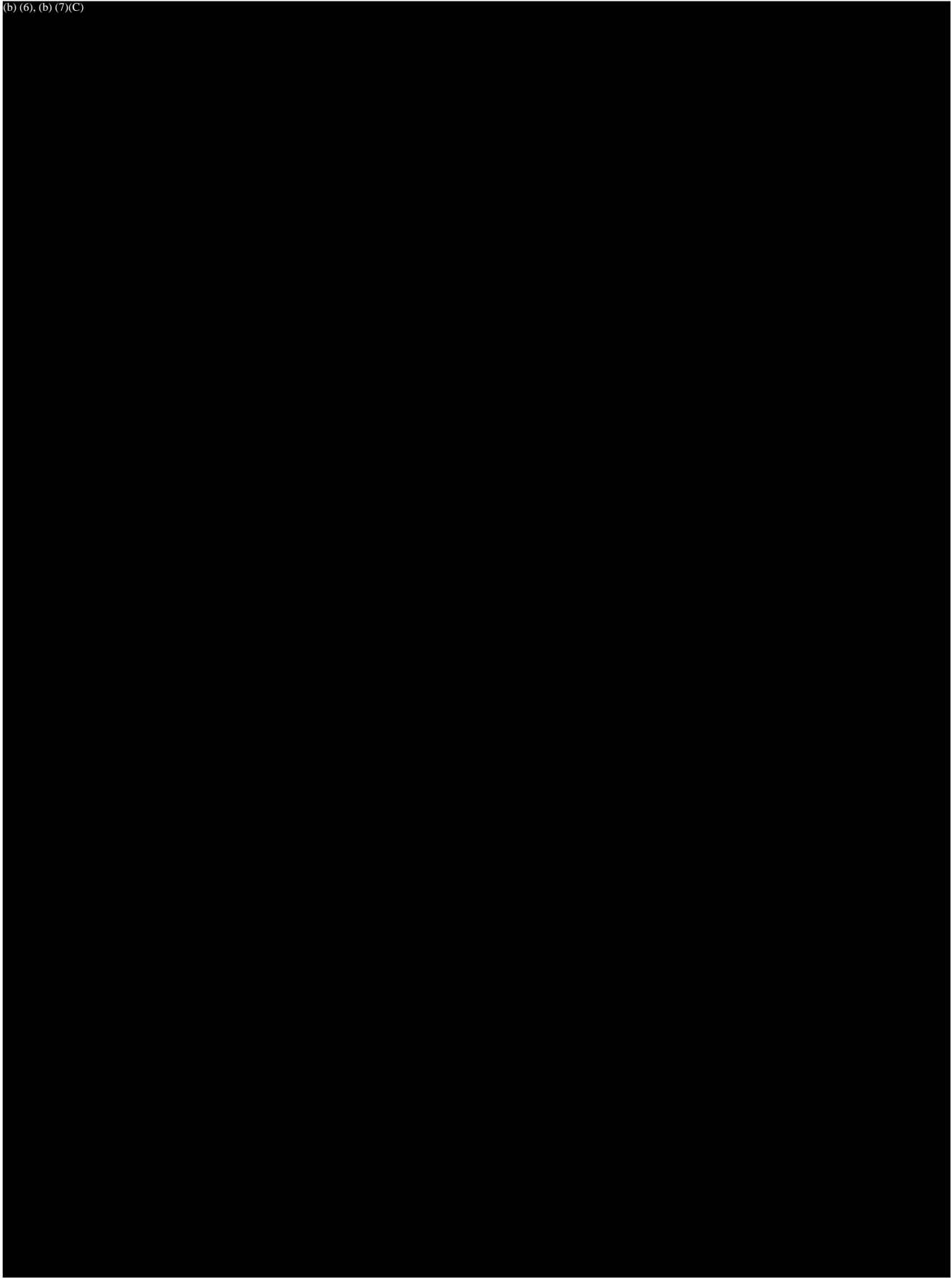
We determined that the two instances were not for official travel related expenses. Additionally, the charges were not part of a room billing. Accordingly, we determined that Dr. Lowman's use of the GTCC for purchases not related to official travel was improper.

(b) (6), (b) (7)(C)



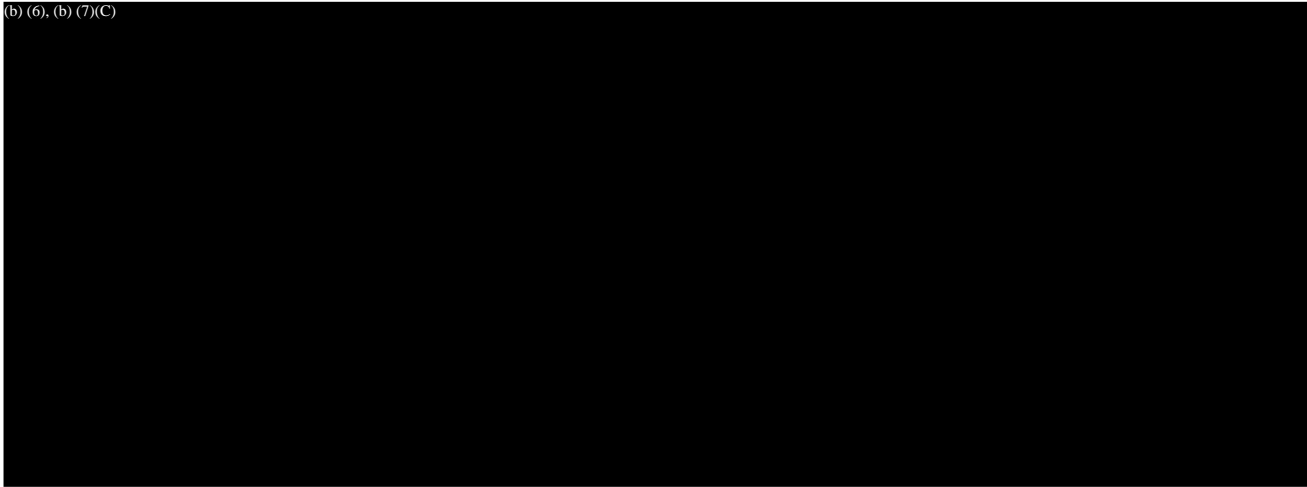
³ Sephora sells name brand and designer cosmetics and fragrances.

(b) (6), (b) (7)(C)



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(b) (6), (b) (7)(C)



V. CONCLUSIONS

A. Dr. Lowman used her GTCC for unauthorized purchases.

(b) (6), (b) (7)(C)



VI. RECOMMENDATION

We have no recommendation in this matter.

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Report No. 11-121391-398



Inspector General
Department of Defense

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Report No. 12-122820-079

June 27, 2012

Inspector General

United States
Department of Defense



REPORT OF INVESTIGATION:
VICE ADMIRAL JAMES P. "PHIL" WISECUP
UNITED STATES NAVY
NAVAL INSPECTOR GENERAL

~~FOR OFFICIAL USE ONLY~~



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

JUN 27 2012

MEMORANDUM FOR ACTING INSPECTOR GENERAL

SUBJECT: Report of Investigation Concerning Vice Admiral James P. "Phil" Wisecup,
U.S. Navy, (Report No. 12-122820-079)

We recently completed our investigation to address an allegation that while serving as the Naval Inspector General, Vice Admiral (VADM) James P. "Phil" Wisecup, U.S. Navy, improperly endorsed a non-Federal entity in a promotional video in uniform, without a disclaimer.

We substantiated the allegation. We found that Lincoln Military Housing (LMH) invited VADM Wisecup to participate in an interview as a satisfied customer. VADM Wisecup did not fully staff the LMH request and participated in the video-recorded interview in uniform on December 16, 2011. VADM Wisecup neither sought Department of the Navy approval nor signed or stated a disclaimer that his comments were his own and did not necessarily represent the views of the Department of Defense or U.S. Navy. The excerpts from the interview and VADM Wisecup's name were featured in a video posted to the Internet on December 30, 2011. Accordingly, we determined that VADM Wisecup's appearance in uniform and remarks, without a disclaimer, implied that he was an official Department of Defense spokesperson who sanctioned or endorsed the activities of LMH, a non-Federal entity.

In accordance with our established procedure, we provided VADM Wisecup the opportunity to comment on the initial results of our investigation. In his response, dated June 20, 2012, VADM Wisecup did not contest our preliminary findings and conclusions. After carefully considering VADM Wisecup's response, we stand by our conclusion. The report of investigation, together with VADM Wisecup's response, is attached.

We recommend the Secretary of the Navy consider appropriate corrective action with regard to VADM Wisecup.


Marguerite C. Garrison
Deputy Inspector General for
Administrative Investigations

Attachment:
As stated

~~FOR OFFICIAL USE ONLY~~

REPORT OF INVESTIGATION:
VICE ADMIRAL JAMES P. "PHIL" WISECUP, UNITED STATES NAVY

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address the self-reported allegation that Vice Admiral (VADM) James P. "Phil" Wisecup, while serving as the Naval Inspector General, Washington Navy Yard, improperly endorsed a non-Federal entity (NFE) in a promotional video in uniform, without a disclaimer, in violation of Department of Defense (DoD) 5500.07-R, "Joint Ethics Regulation (JER)," and Department of Defense Instruction (DoDI) 1334.01, "Wearing of the Uniform."

We substantiated the allegation that VADM Wisecup improperly endorsed an NFE. We found that Lincoln Military Housing (LMH) invited VADM Wisecup to participate in an interview as a satisfied customer. VADM Wisecup did not fully staff the LMH request and participated in the video-recorded interview in uniform on December 16, 2011. VADM Wisecup did not sign or state a disclaimer indicating his comments were his own and did not necessarily represent the views of the DoD or U.S. Navy. The edited video, posted to the Internet on December 30, 2011, featured VADM Wisecup in uniform providing positive comments about LMH.

The JER prohibits an employee from permitting the use of his Government position or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another, without a proper disclaimer. DoDI 1334.01 prohibits the wearing of the uniform by members of the Armed Forces when an inference of official sponsorship for the activity or interest may be drawn.

Accordingly, we determined that VADM Wisecup's appearance in uniform and remarks, without a disclaimer, implied that he was an official DoD spokesperson who sanctioned or endorsed the activities of LMH, an NFE.

Following our established practice, by letter dated June 15, 2012, we provided VADM Wisecup the opportunity to comment on the initial results of our investigation. In his written response, dated June 20, 2012, VADM Wisecup did not dispute our preliminary findings and conclusion, and reiterated his intent was merely "to convey a 'well done' to the Lincoln bosses" regarding the actions of the Washington Navy Yard LMH staff. After carefully considering VADM Wisecup's response, we stand by our conclusion.

This report sets forth our findings and conclusions based upon a preponderance of the evidence.

II. BACKGROUND

In April 2011, VADM Wisecup became the 38th Naval Inspector General and the senior investigative official in the Department of the Navy. In August 2011, VADM Wisecup and his family moved into quarters managed by LMH on the Washington Navy Yard.

LMH is a division of Lincoln Property Company, a commercial and residential property management company. LMH is the private partner in a public private venture that is governed by a business agreement in which the Navy has limited rights and responsibilities. The private entity is responsible for managing the construction, renovation, maintenance, and day-to-day maintenance along with services of the community. On August 1, 2005, LMH assumed management and maintenance responsibilities for most of the family housing communities in the Naval District of Washington including the Executive Homes located on the Washington Navy Yard. The LMH website reflects that LMH is not a Government entity or a Federal Government contractor.

On January 12, 2012, VADM Wisecup met with his staff and self-reported his appearance in the promotional video to the DoD IG, the Undersecretary of the Navy, and the Deputy Chief of Naval Operations. The same day, Naval Facilities Command coordinated with LMH to have the video removed from the Internet.

III. SCOPE

We interviewed VADM Wisecup and eight witnesses, including LMH officials, with knowledge of the matters under investigation. Additionally, we reviewed Government email records, and applicable standards and regulations.

IV. FINDINGS AND ANALYSIS

Did VADM Wisecup improperly endorse an NFE by appearing in a promotional video while in uniform?

Standards

DoD 5500.07-R, "Joint Ethics Regulation (JER)," August 23, 1993, including changes 1-7 (November 17, 2011)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees. Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, Code of Federal Regulations (CFR), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart G, "Misuse of Position," Section 2635.702, "Use of public office for private gain," states, in part, that an employee shall not use his public office for the endorsement of any product, service, or enterprise.

In Section 2635.702(b), “Appearance of governmental sanction,” except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by Section 2635.807(b).

In Section 2635.702(c), “Endorsements,” an employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except (1) In furtherance of statutory authority to promote products, services, or enterprises; or (2) As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency’s mission.

In Section 2635.807(b), “Reference to official position,” an employee who is engaged in teaching, speaking, or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking, or writing activity or to promote any book, seminar, course, program, or similar undertaking, except that an employee may use or permit the use of rank in connection with his teaching, speaking, or writing.

Section 2 of the JER incorporates 5 CFR, Part 3601, “Supplemental Standards of Ethical Conduct for Employees of the Department of Defense.”

Subsection 2-201a, “Designation of Separate Agency Components,” designates the Department of the Navy as a separate Agency within the Department of Defense.

Subsection 2-207, “Disclaimer for Speeches and Writings Devoted to Agency Matters,” states, in part, a DoD employee who uses or permits the use of his military grade as one of several biographical details given to identify himself in connection with speaking in accordance with 5 CFR 2635.807(b) shall make a disclaimer if the subject of the speaking deals in significant part with any ongoing program or operation of the DoD employee’s Agency and the DoD employee has not been authorized by appropriate Agency authority to present that material as the Agency’s position. Subparagraph 2-207(a) requires the disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its Components. Subparagraph 2-207(c) states where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation.

Chapter 3, “Activities with non-Federal Entities,” Section 3, “Personal Participation in Non-Federal Entities,” Subsection 3-300a, “Fundraising and Other Activities,” states, in part, employees may voluntarily participate in activities of NFEs as individuals in their personal capacities, provided they act exclusively outside the scope of their official positions.¹

¹ JER, Section 1-217, defines a “non-Federal entity” as a self-sustaining, non-Federal person or organization, established, operated, and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees or agents of the Federal Government.

Subparagraph 3-300a(1) further amplifies, except as provided for in 5 CFR 2635.807(b), DoD employees may not use or allow the use of their official titles, positions, or organization names in connection with activities performed in their personal capacities as this tends to suggest official endorsement or preferential treatment by DoD of any NFE involved. Military grade and military department as part of an individual's name may be used, the same as other conventional titles such as Mr., Ms., or Honorable, in relationship to personal activities.

DoDI 1334.01, "Wearing of the Uniform," dated October 26, 2005

This instruction sets limitations on wearing the uniform by members of the Armed Forces.

Paragraph 3, "Policy," Subparagraph 3.1, states, in part, that the wearing of the uniform by members of the Armed Forces is prohibited during or in connection with furthering commercial interests, when an inference of official sponsorship for the activity or interest may be drawn. The Instruction prohibits wearing of the uniform except when authorized by the competent Service authority, when participating in activities such as unofficial interviews, which may imply Service sanction of the cause for which the activity is conducted.

Facts

In the summer of 2011, VADM Wisecup moved into quarters on the Washington Navy Yard managed by LMH. He testified that after moving in, he created a list of discrepancies with the residence, which LMH either addressed or corrected within 24 hours. VADM Wisecup related that this was his fourth public private venture home and that he was not used to that level of service.

On November 8, 2011, VADM Wisecup forwarded (b) (6), (b) (7)(C) a draft email that he intended to send to the LMH (b) (6), (b) (7)(C) and requested an opinion on whether it was appropriate to send. The draft email read:

[The LMH (b) (6), (b) (7)(C)] and her team are by far/by far, the most engaged, helpful, and WILLING to help us ... they are competent and get things done, and that is impressive due to it's (sic) rarity. ... and I wanted someone in their leadership to know that.

Three minutes later, (b) (5), (b) (6), (b) (7)(C) Later that same day, VADM Wisecup's (b) (6), (b) (7)(C) forwarded the email to the (b) (6), (b) (7)(C)

The LMH (b) (6), (b) (7)(C) testified that in late November or early December 2011, the LMH Vice President informed her that LMH was creating a public relations video and looking for residents who were willing to go on film and comment about their good experiences with LMH. The LMH (b) (6), (b) (7)(C) related that she immediately thought of VADM Wisecup because she had just received a thank you note from him. The LMH (b) (6), (b) (7)(C) recalled that she told the LMH (b) (6), (b) (7)(C) to ask VADM Wisecup if he would

participate in the public relations video. The LMH (b) (6), (b) (7)(C) further testified that it was not unusual for LMH headquarters to request good news stories because the videos were used for LMH employee training and "Welcome Aboard" processing of newly assigned sailors.²

The LMH (b) (6), (b) (7)(C) testified that during the week of December 12, 2011, she called VADM Wisecup and left a voice message asking him to participate in a public relations video.³ (b) (6), (b) (7)(C) thought that she had mentioned in her voice message that the Vice President requested a video-recorded interview as a public relations event. (b) (6), (b) (7)(C) stated that prior to the interview she did not speak directly with VADM Wisecup and only spoke with VADM Wisecup's (b) (6), (b) (7)(C) in order to coordinate the interview.

VADM Wisecup testified that (b) (6), (b) (7)(C) voice message gave him the impression the interview would be with the LMH Chief Executive Officer so he (VADM Wisecup) could relay in person the excellent treatment he had received from the Washington Navy Yard LMH staff. He denied the voice message contained the terms "promotional video" or "public relations video." On December 13, 2011, immediately after listening to the voice message, VADM Wisecup informed (b) (6), (b) (7)(C) by email that the LMH (b) (6), (b) (7)(C) asked him to interview with (b) (6), (b) (7)(C) supervisors from Dallas as a "satisfied customer" and asked, "Can I do this?" Four minutes later (b) (6), (b) (7)(C), (b) (5)

VADM Wisecup, (b) (6), (b) (7)(C) all testified they were on official travel during the period the interview was being coordinated. VADM Wisecup and (b) (6), (b) (7)(C) were on official travel in Annapolis, Maryland. (b) (6), (b) (7)(C) was on official travel in Norfolk, Virginia. VADM Wisecup's official calendar indicated that all three were on temporary assigned duty for the period December 13-15, 2011. Additionally, the three testified the interview request did not receive VADM Wisecup's normal (b) (6), (b) (7)(C) review because they were all on official travel.

On December 15, 2011, by email the LMH (b) (6), (b) (7)(C) informed VADM Wisecup "our camera folks are here on Friday" and asked whether he would be available. VADM Wisecup responded to the (b) (6), (b) (7)(C) stating that he would be back in the Washington, D.C., area that night. VADM Wisecup carbon copied his reply to both (b) (6), (b) (7)(C) and asked them to call the (b) (6), (b) (7)(C) to schedule the interview. The (b) (6), (b) (7)(C) testified that he spoke to the (b) (6), (b) (7)(C) and scheduled the interview for 1500 on Friday, December 16, 2011.

On December 16, 2011, four hours before the scheduled interview with VADM Wisecup, the LMH (b) (6), (b) (7)(C) sent an email to the (b) (6), (b) (7)(C) Washington Navy Yard, and the Commander, Naval Installations Command, indicating that LMH:

² "Welcome Aboard" is a Navy colloquialism for the Navy Command Sponsor Program for newly assigned sailors and their families.

³ VADM Wisecup testified that he was on official travel when he received the voice message and he did not save it.

[W]ill have a camera crew at the Navy Yard this afternoon for a promotional video that Lincoln is working on. VADM Wisecup has graciously agreed to be interviewed for this project and the camera crew will be filming at Qtrs F.

VADM Wisecup testified that the interview was held in his quarters right before his holiday reception. VADM Wisecup related that because he planned to be in uniform during his holiday reception, he asked (b) (5), (b) (6), (b) (7)(C)

VADM Wisecup testified that the film crew was at his quarters when he arrived. The LMH (b) (6), (b) (7)(C) testified (b) (6) pulled VADM Wisecup aside before the interview began and asked him if he had “checked everything out legally.” (b) (6), (b) (7) stated that VADM Wisecup told (b) (6) that his legal department had “signed off on everything, he was fine.” VADM Wisecup denied this conversation ever occurred.

On December 30, 2011, a 64-second video titled, “Vice Admiral James P. “Phil” Wisecup on Lincoln Military Housing,” was posted to both YouTube and the LMH Cares websites. The video begins with a head and shoulder shot of an unnamed man wearing 3-star collar insignia on a khaki shirt saying, “The first place we lived in military housing was, my first flag assignment in Korea.”

At four seconds into the video, while the man continues to speak, a transparent two-line banner fades in on the lower portion of the screen and identifies the man as “VICE ADMIRAL JAMES P. “PHIL” WISECUP, U.S. NAVY.” This banner fades out at 8 seconds into the video. At 15 seconds, the video fades to white and three lines appear which read:

VICE ADMIRAL JAMES P. “PHIL” WISECUP
ON
LINCOLN MILITARY HOUSING

At 18 seconds into the video, VADM Wisecup begins to speak, “I mean I know these people.” At 19 seconds, the frame transitions back to the shot of VADM Wisecup as he continues, “I know them by name. I recognize them on the sidewalk when they’re coming to do things and things like that. All I have to do is send an email, or make a phone call and people actually do things.”

At 30 seconds into the video and as VADM Wisecup continues to speak, the scene transitions and displays for 4 seconds a Navy flag on a staff hanging outside Quarters F. At 34 seconds the image transitions back to the shot of VADM Wisecup as he states, “This house meets our needs, and far exceeds our expectations.” At 57 seconds, VADM Wisecup completes his remarks, the video fades to white, and the following four lines appear which ends the video:

LINCOLN
MILITARY
HOUSING
Every Mission Begins at Home™

~~FOR OFFICIAL USE ONLY~~

On January 11, 2012, (b) (6), (b) (7)(C) informed VADM Wisecup by email that a video of the interview had been posted to the Internet, which “certainly presents an endorsement issue.”

(b) (6), (b) (7)(C) testified that (b) (5)

He stated, “I thought it was the customer satisfaction survey meeting with the bosses from Texas. So, they obviously know he is an admiral living in flag housing. (b) (5)

VADM Wisecup testified that he did not know that the interview was going to be video-recorded until he received an email on Thursday morning (December 15, 2011), the day before the interview. The email from the LMH (b) (6), (b) (7)(C) included a reference to “camera folks.” When questioned about his thoughts at that point, VADM Wisecup stated he “assumed” the LMH executives were not available and “that instead of talking to people, I was going to be ... doing a video for the people [the LMH (b) (6), (b) (7)(C) wanted me to talk to.” VADM Wisecup related that he did not clarify the intent of the interview with LMH (b) (6), (b) (7)(C) and that it “didn’t register” with him to ask “what’s going on.” He stated he made “assumptions” about what he was going to do and the email did not “set off any alarm bells.”

VADM Wisecup also testified he was not aware that the interview would be video-recorded when he consulted with (b) (6), (b) (7)(C) about whether he could do the interview, and if there was a concern about being in uniform. VADM Wisecup denied LMH told him the interview would be part of a promotional video and also stated he never signed or made a verbal disclaimer regarding his comments about LMH. He further stated he was shocked when notified that his comments were included in a LMH video posted to the Internet.

VADM Wisecup further testified, “I kind of got tricked here or that’s probably not the right word to use, but I was not on the same wavelength” as the LMH staff with regard to the video interview. VADM Wisecup also commented, “bottom line is, I didn’t know what they were going to do with it.”

Discussion

We conclude that VADM Wisecup improperly endorsed an NFE in violation of the JER and DoDI 1334.01.

We found that LMH approached VADM Wisecup to participate in an interview after receiving his email complimenting the prompt, professional service provided by the LMH staff at the Washington Navy Yard. After consulting with (b) (6), (b) (7)(C), he accepted the invitation. VADM Wisecup expected a face-to-face meeting with senior LMH leadership, but on December 15, 2011, he became aware that the interview would be video-recorded. VADM Wisecup did not seek any clarification from the LMH (b) (6), (b) (7)(C) or request additional guidance from (b) (6), (b) (7)(C). We also found no evidence that VADM Wisecup signed or made a verbal disclaimer indicating his comments were his own and did not

necessarily represent the views of the DoD or U.S. Navy. On December 30, 2011, LMH posted a promotional video featuring VADM Wisecup in uniform on the Internet.

JER, Section 3-300a, permits DoD employees to voluntarily participate in activities of NFEs in their personal capacities, provided they act "exclusively outside the scope of their official positions." JER, Section 2635.702(b), requires that an employee shall not use or permit the use of his Government position, title or any authority associated with his position in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses the personal activities of another. JER, Section 2635.702(c) directs that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product or service. JER, Section 2-207, states that any speaking engagement, where military grade is publicized and the subject deals in significant part with any ongoing Agency program, requires a disclaimer that the views presented are those of the speaker and do not necessarily represent the views of the DoD or its Component. Finally, DoDI 1334.01 prohibits the wearing of the military uniform in connection with furthering commercial interests, when an inference of official sponsorship for the activity or interest may be drawn, unless authorized by the Secretary of the Navy.

We determined VADM Wisecup participated in a video-recorded interview with LMH officials, in uniform and without proper authorization, and that his positive comments related directly to LMH residences under the Navy's partnership agreement. We also determined the request from LMH was not vetted by the established review process because VADM Wisecup and (b) (6), (b) (7)(C) were on official travel. We acknowledge VADM Wisecup did not know that his comments would be inserted into an LMH promotional video, which was only available on the Internet for 2 weeks. We also acknowledge that once he became aware of the video, VADM Wisecup immediately self-reported and the video was removed. However, VADM Wisecup's personal participation in the promotional video in uniform, without a verbal or written disclaimer, emphasized his military status and affiliation, and, by implication, the authority associated with his public office. These factors could be perceived by DoD and non-DoD audiences that the DoD and U.S. Navy endorsed the activities of LMH, an NFE.

Response to Tentative Conclusion

In his response, dated June 20, 2012, VADM Wisecup wrote he did not recall "red flag" words such as "public relations video" or "promotional video." He reiterated his intent was merely "to convey a 'well done' to the Lincoln bosses ... Anything else was someone else's decision, which I had no control over." VADM Wisecup closed with "no one in my family benefitted in any way from this, or received any personal gain, from me making these comments."

After carefully considering VADM Wisecup's response, we stand by our conclusion in the matter.

V. CONCLUSION

We conclude that VADM Wisecup improperly endorsed an NFE.

VI. RECOMMENDATION

The Secretary of the Navy consider appropriate action.

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Report No. 12-122820-079



Inspector General
Department of Defense

~~FOR OFFICIAL USE ONLY~~



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

AUG - 6 2013

Ref: F-13-00373

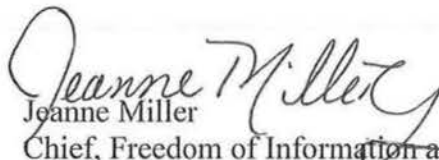
OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it FOIA case number F-13-00373.

The enclosed Report of Investigation concerning Major General Joseph F. Fil, Jr. is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(5), which pertains to certain inter- and intra-agency communications protected by the deliberative process privilege; 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number F-13-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,


Joanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

ALLEGED MISCONDUCT:
MAJOR GENERAL JOSEPH F. FIL, JR., UNITED STATES ARMY,
FORMER COMMANDING GENERAL, EIGHTH UNITED STATES ARMY AND
CHIEF OF STAFF, UNITED NATIONS COMMAND/COMBINED FORCES COMMAND/
UNITED STATES FORCES KOREA

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that Major General (MG) Joseph F. Fil, Jr. improperly accepted, and later failed to report, gifts given to him based on his official position as Commanding General, Eighth United States Army, and Chief of Staff, United Nations Command/Combined Forces Command/United States Forces Korea.¹ Based on information gathered in interviews conducted by the Federal Bureau of Investigation (FBI), the Defense Criminal Investigative Service (DCIS), and the U.S. Army Criminal Investigation Command (CID), and information provided by the U.S. Army Office of The Judge Advocate General, Financial Disclosure Management Office, we focused our investigation on allegations that MG Fil:

- Accepted gifts in violation of DoD 5500.7-R, “Joint Ethics Regulation (JER)”; and
- Failed to report gifts that exceeded the applicable monetary threshold in violation of the JER.

We substantiated the allegations. We conclude MG Fil improperly accepted a Montblanc pen set (pen set) with a U.S. market value above the permissible gift threshold,² and a leather briefcase (briefcase) costing approximately \$2,000. MG Fil also allowed (b)(6), (b)(7)(C) to accept a \$3,000 cash gift given because of MG Fil’s official position. We found that MG Fil accepted the gifts from (b)(6), (b)(7)(C), whom he met after he assumed command. The JER prohibits individuals from accepting gifts given based on their official position, but does provide for certain exceptions. We considered the JER exceptions and determined that none of the exceptions applied to the gifts in question. Accordingly, we conclude MG Fil improperly accepted gifts that were offered based on his official position.

¹ During his assignment as Commanding General, Eighth United States Army, and Chief of Staff, United Nations Command/Combined Forces Command/United States Forces Korea, Major General Fil held the grade of Lieutenant General (O-9). He reverted to his permanent grade of Major General (O-8) on September 20, 2011. We refer to him as Major General (MG) Fil in our report.

² The Joint Ethics Regulation defines market value as “the retail cost the employee would incur to purchase the gift.” Investigators were unable to determine the exact retail value in the United States of the pen set at the time of purchase. Review of pen set photos led investigators to conclude that the pens were most likely the Montblanc Meisterstück Classique model rollerball and ballpoint pens, with gold-plated furnishings. An October 12, 2011, review of the Montblanc website listed the value of the pens at \$385 each. After allowing for price increases from 2008 to 2011, investigators determined that the combined U.S. retail value of the pens, plus the presentation gift box and leather case, would have exceeded the 2008 gift value threshold of \$335.

We also conclude that MG Fil failed to report the gifts from (b)(6), (b)(7)(C) that exceeded the applicable monetary thresholds. We reviewed MG Fil's Standard Form 278, "Executive Branch Personnel Public Financial Disclosure Report," (SF 278) and information from the U.S. Army Financial Disclosure Management (FDM) System and found that MG Fil did not declare any of the gifts. Chapter 7 of the JER requires regular military officers whose pay grade is O-7 or above to file a financial disclosure report, which contains the source, a brief description, and the value of all gifts aggregating more than \$335 in value received by the filer during the reporting period from any one source. We determined that the pen set, briefcase, and cash gift all exceeded the reporting threshold and MG Fil was required to report them.

Following our established practice, by letter dated November 9, 2011, we provided MG Fil the opportunity to comment on our initial conclusions. In his response, dated November 15, 2011, MG Fil accepted full responsibility for his actions noting,

Although at the time I accepted these gifts in good conscience, believing I had met the requirements for an exemption to the JER, I fully acknowledge that I used poor judgment. I accept full responsibility for my actions and the findings.

MG Fil also provided evidence of steps he took to mitigate his improper acceptance of and failure to report the gifts. As evidence, MG Fil provided a copy of an amended SF 278, dated July 25, 2011, listing the gift items and a copy of a letter, dated July 8, 2011, and cashier's check returning the \$3000 cash gift to (b)(6), (b)(7)(C).³ In his letter to (b)(6), (b)(7)(C) MG Fil also expressed his intention of returning the pen set and briefcase to (b)(6), (b)(7)(C) should those items come back into his possession. MG Fil noted that he met with an attorney-advisor from the office of the Army Judge Advocate General in April 2011 to review a draft copy of his SF 278. He testified (b)(5)

(b)(5)

(b)(5), (b)(6), (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C)

³ On November 21, 2011, DoD IG investigators confirmed with the Director of Army Financial Disclosure Management that MG Fil submitted an amended Financial Disclosure Report (SF 278) on July 25, 2011.

(b)(5) [REDACTED]. We note that regardless of his attorney advisor's advice, as the filer and signatory MG Fil was responsible for the information reported on the SF 278; information he subsequently amended and submitted on a revised SF 278 dated July 25, 2011.

After carefully considering MG Fil's response, we stand by our conclusions in the matter.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

MG Fil arrived in the Republic of Korea (ROK) in February 2008, and served as the Commanding General, Eighth United States Army, and Chief of Staff, United Nations Command/Combined Forces Command/United States Forces Korea. MG Fil was reassigned to the United States in November 2010.

The JER acknowledges distinctions between gifts received because of an individual's official position and gifts received from personal friends. In general, however, gifts with an aggregate value above a specified threshold amount received from a single source in a calendar year period must be reported.⁴

III. SCOPE

We reviewed summaries of 13 FBI, DCIS, and Army CID interviews to include March 3 and 30, 2011, interviews of MG Fil. We further reviewed related documentary evidence, to include photographs of the pen set and briefcase, purchase records, financial data, travel data, and U.S. Government memoranda and records. We also reviewed applicable statutes, regulations, and policies.

IV. FINDINGS AND ANALYSIS

A. Did MG Fil improperly accept gifts?

Standards

DoD 5500.7-R, "JER," dated August 30, 1993

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, Code of Federal Regulations (C.F.R.), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

⁴ The aggregate value threshold in 2008 was \$335. The aggregate value threshold is periodically adjusted. It was adjusted in 2010 to \$350.

Subpart B, “Gifts from Outside Sources,” states:

In Section 2635.202

(a) *General Prohibitions* states that an employee shall not, directly or indirectly, solicit or accept a gift from a prohibited source or given because of the employee’s official position.

* * * * *

(c) *Limitations on use of exceptions* states an employee shall not accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain.

In Section 2635.203 *Definitions*

(b) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings, and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(c) *Market value* means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

* * * * *

(e) A gift is solicited or accepted because of the employee’s official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.

(f) A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee’s knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person’s relationship to the employee.

In Section 2635.204 *Exceptions*

(b) *Gifts based on a personal relationship.* An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

In Section 2635.205 *Proper disposition of prohibited gifts*

(a) An employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

(1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See Section 2635.203(c).

* * * * *

(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

(b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on his own initiative.

Facts

MG Fil's Relationship with (b)(6), (b)(7)(C)

The United States Forces Korea (USFK) (b)(6), (b)(7)(C) introduced MG Fil to (b)(6), (b)(7)(C) after MG Fil assumed command of Eighth United States Army in February 2008.

(b)(6), (b)(7)(C) does not speak English and relied upon (b)(6), (b)(7)(C) to translate for him when he was with MG Fil. In describing his relationship with MG Fil, (b)(6), (b)(7)(C) stated that he had dinner with MG Fil 10 to 20 times and had been to MG Fil's residence approximately 5 times. (b)(6), (b)(7)(C) often sponsored USFK events, such as buying tickets to the annual Eighth U.S. Army Ball to subsidize and facilitate U.S. soldiers' attendance.

⁵ (b)(6), (b)(7)(C)

MG Fil stated he communicated with (b)(6), (b)(7)(C) “using hand and arm signals.” He added that (b)(6), (b)(7)(C) never asked him for any official favors and that there was no “quid pro quo” exchange, and that he sponsored (b)(6), (b)(7)(C) to get an installation pass because (b)(6), (b)(7)(C) was a “good neighbor” to USFK.⁶

(b)(6) (b)(7) characterized (b)(6), (b)(7) as MG Fil's "golfing buddy" and believed they were real friends.

MG Fil and his family traveled on leave to China in 2009 and met (b)(6), (b)(7)(C) for part of the trip. They stayed in a Beijing hotel in which (b)(6), (b)(7)(C) had a commercial interest. MG Fil stated that he and (b)(6), (b)(7)(C) played golf during the trip and that he paid all of his own expenses. (b)(6), (b)(7)(C) stated that (b)(6), (b)(7)(C) gave him approximately \$2,000 to cover the cost of the hotel.

In both an undated memorandum and a memorandum dated May 18, 2010, MG Fil designated (b)(6), (b)(7)(C), among others, as a personal friend. MG Fil's justification was that he had known the individuals "for years" and asserted that their friendship was not based on MG Fil's official position. The memoranda did not provide any detailed information about the friendships.

Ethics Opinions Regarding Designation of Korean Nationals as Friends

Some time after being introduced to (b)(6), (b)(7)(C) MG Fil requested an ethics opinion regarding the designation of (b)(6), (b)(7)(C) among others, as his personal friend for JER purposes.⁷ On December 16, 2008, in a written response to this request, (b)(6), (b)(7)(C) U.S. Army, the USFK Judge Advocate (Judge Advocate), (b)(5)

[REDACTED]

(b) (5)

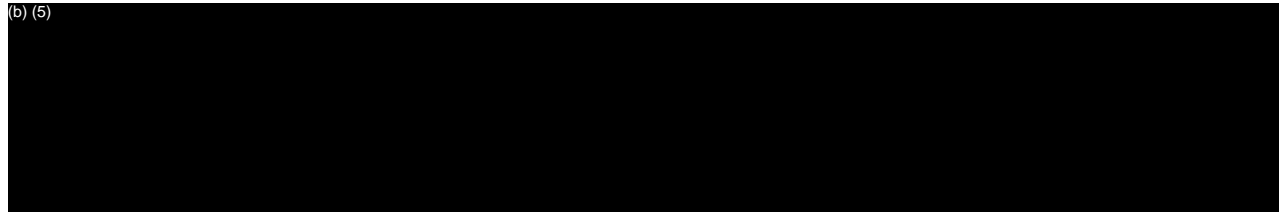
⁶ United States Forces Korea (USFK) has a formally established “Good Neighbor Program” designed to strengthen the alliance between the United States and the ROK by improving the understanding of USFK’s mission through personal engagement between local nationals and USFK personnel.

⁷ An individual may use a memorandum to document reasons he or she considers another individual to be a personal friend. A memorandum designating another individual as a “personal friend,” however, does not establish that the individual is, in fact, a personal friend of the signatory. The individuals must actually be personal friends.

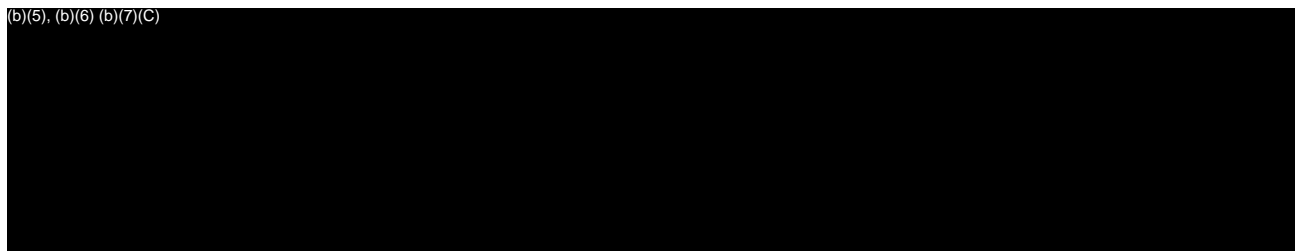
(b)(5)

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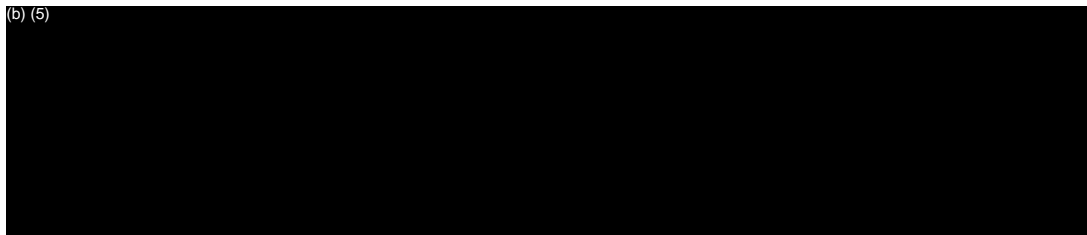
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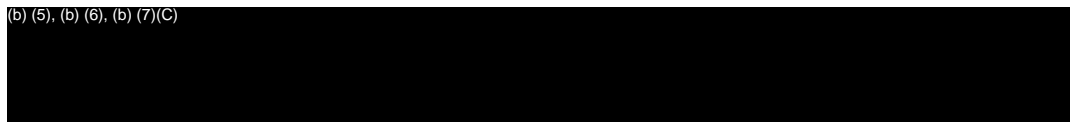
(b)(5), (b)(6) (b)(7)(C)

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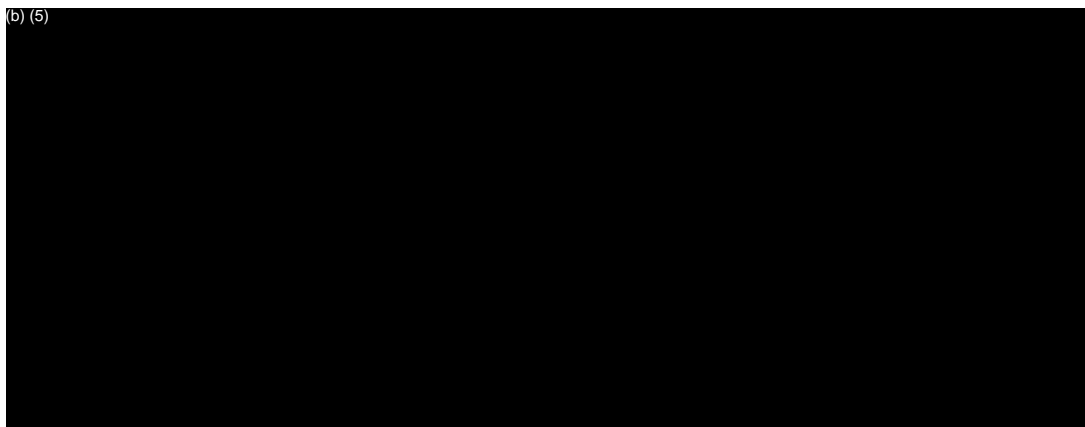
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(b) (5), (b) (6), (b) (7)(C)

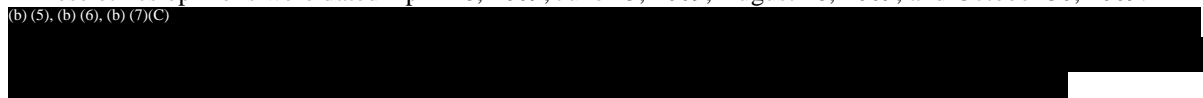
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(b) (5)

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⁸ These ethics opinions were dated April 28, 2009, June 25, 2009, August 28, 2009, and October 30, 2009. An

(b) (5), (b) (6), (b) (7)(C)

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(b) (5)

(b) (5), (b) (6), (b) (7)(C)

By memorandum dated January 4, 2010, the USFK Judge Advocate provided a memorandum with legal advice on the effect of designating someone a “personal friend,” and the impact such a decision might have on official decisions MG Fil might make in his capacity as the Eighth United States Army Commanding General and the USFK Chief of Staff. (b)(5)

(b)(5), (b)(6), (b)(7)(C)

On or about May 20, 2010, the Office of the Judge Advocate received the undated memorandum from MG Fil designating (b)(6), (b)(7)(C) and others as “personal friends.” In it, MG Fil noted only that he and his wife considered the individuals to be their personal friends for JER-related purposes, that he and his wife had known them “for years” and their relationship was not based on MG Fil’s official position.

MG Fil stated that he had received training on gift reporting and was aware of the restrictions and reporting requirements regarding gifts. He also recalled the contents of the January 4, 2010, ethics opinion provided to him about his relationship with (b)(6), (b)(7)(C)

Gifts

(b)(6), (b)(7)(C) stated that (b)(6), (b)(7)(C) told him that MG Fil was not permitted to accept gifts from a private party; however, since (b)(6), (b)(7)(C) was a registered friend, MG Fil was permitted to accept gifts from him. (b)(6), (b)(7)(C) also recalled that (b)(6), (b)(7)(C) told him that she kept a record of all gifts given to MG Fil. (b)(6), (b)(7)(C) stated MG Fil gave him many gifts, including: golf shoes, a shirt, cigars, alcohol, and chocolate. (b)(6), (b)(7)(C) also stated that MG Fil invited him to most off-post events that MG Fil sponsored.

(b)(6), (b)(7)(C) acknowledged giving MG Fil both the pen set and briefcase. Statements by (b)(6), (b)(7)(C) established that he paid approximately \$1,500 for the pen set and approximately \$2,000 for the briefcase. (b)(6), (b)(7)(C) stated he bought the pen set in April 2008 with his personal credit card,

and presented it to MG Fil approximately 2 to 3 months later as a gift. (b)(6), (b)(7)(C) stated the briefcase was a going away gift for MG Fil, and that (b)(6), (b)(7)(C) purchased it for him using his (b)(6), (b)(7)(C) corporate credit card. (b)(6), (b)(7)(C) presented the briefcase to MG Fil in September or October 2010.


MG Fil stated that he received the pen set, consisting of a ballpoint pen and a rollerball pen encased in a leather case, from (b)(6), (b)(7)(C). MG Fil stated he believed the pen set was expensive, possibly valued at \$150.

MG Fil also stated that he accepted several additional gifts from (b)(6), (b)(7)(C) including two golf bags and golf balls. After the initial interview, MG Fil provided a subsequent statement and disclosed that (b)(6), (b)(7)(C) had received \$3,000 in cash from (b)(6), (b)(7)(C) as a birthday gift in April 2010. MG Fil believed (b)(6), (b)(7)(C) could keep the money because of his personal relationship with (b)(6), (b)(7)(C).

We found no evidence that MG Fil sought a legal opinion regarding acceptance of the pen set, the briefcase, or the cash gift given to (b)(6), (b)(7)(C).

Discussion

We conclude MG Fil improperly accepted gifts in violation of the JER. We found that MG Fil accepted three significant gifts from (b)(6), (b)(7)(C): a pen set; a briefcase; and a \$3,000 cash gift given to (b)(6), (b)(7)(C). MG Fil met (b)(6), (b)(7)(C) when he assumed command in 2008. We found that MG Fil requested several ethics opinions about designating (b)(6), (b)(7)(C) as a personal friend and whether he (MG Fil) could accept gifts from (b)(6), (b)(7)(C). (b)(5), (b)(6), (b)(7)(C)



The JER prohibits employees from directly or indirectly soliciting or accepting a gift given because of the employee's official position. The definition of a gift also includes gifts given to a Government employee's spouse. The JER also provides for exceptions, such as gifts with a value under \$20. There is also an exception if the gift is given under circumstances which make it clear that the gift is motivated by a personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally paid for the gift.

We determined that MG Fil accepted gifts that were given to him based on his official position. We found no evidence of a prior personal relationship between (b)(6), (b)(7)(C) and MG Fil unaffiliated with MG Fil's official position. MG Fil's relationship with (b)(6), (b)(7)(C) did not begin until after he assumed command in February 2008. We also determined that (b)(6), (b)(7)(C) gave the pen set to MG Fil and the \$3000 cash gift to (b)(6), (b)(7)(C) before MG Fil designated (b)(6), (b)(7)(C) as a personal friend. We further determined that although MG Fil received the briefcase after designating (b)(6), (b)(7)(C) as a personal friend, the gift was not a personal gift because it was purchased using (b)(6), (b)(7)(C) corporate credit card. Moreover, we determined that the JER exceptions did not

apply to the gifts in question. Accordingly, we conclude MG Fil improperly accepted gifts in violation of the JER.

B. Did MG Fil fail to report gifts received?

Standards

DoD 5500.7-R “JER,” dated August 30, 1993

Chapter 7, “Financial and Employment Disclosure”

In Section 7-200, *Individuals Required to File*

Covered Positions. For purposes of this section, the following individuals are in “covered positions” and are required by the Ethics in Government Act of 1978, Public Law 95-521 (reference (b)) to file a Standard Form (SF) 278, Appendix C of this Regulation, with their DoD Component Designated Agency Ethics Official or designee as set out in subsection 7-205 of this Regulation, below:

Regular military officers whose pay grade is O-7 or above.

In Section 7-204, *Content of Report*

Instructions for completing the SF 278, Appendix C of this Regulation, are attached to the form. See detailed instructions at 5 C.F.R. 2634.301 through 2634.408 (reference (a)) in subsection 7-100 of this Regulation, above, for additional guidance or contact the local Ethics Counselor.

In Subsection 7-100, 5 C.F.R. 2634, “Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees”

In Section 2634.304, *Gifts and Reimbursements*

(a) *Gifts*. Except as indicated in Subsection 2634.308(b), each financial disclosure report filed pursuant to this subpart shall contain the identity of the source, a brief description, and the value of all gifts aggregating more than \$350 in value which are received by the filer during the reporting period from any one source.⁹ For in-kind travel-related gifts, include a travel itinerary, dates, and nature of expenses provided.

* * * * *

⁹ The \$350 amount represents the current aggregate value. See Footnote 4.

(d) *Aggregation exception.* Any gift or reimbursement with a fair market value of \$140 or less need not be aggregated for purposes of the reporting rules of this section.¹⁰ However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

Facts

A review of MG Fil's SF 278s disclosed real estate and investment information, but did not include the gifts he and (b)(6), (b)(7)(C) received from (b)(6), (b)(7)(C).

The instruction section on the SF 278 (Rev. 03/2000), Schedule B, Part II, *Gifts, Reimbursements and Travel Expenses*, states,

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than \$260 and (2) travel-related cash reimbursements received from one source totaling more than \$260.¹¹

The instruction added, "it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. Section 4111 or other statutory authority." It also listed exclusions, including gifts "received by your spouse or dependent child totally independent of their relationship to you."

In both an undated memorandum and a memorandum dated May 18, 2010, MG Fil designated (b)(6), (b)(7)(C) among others, as a personal friend of MG Fil and (b)(6), (b)(7)(C). The USFK (b)(6), (b)(7)(C) stated that he believed the Office of the Judge Advocate received the undated memorandum on or about May 20, 2010.

MG Fil acknowledged receiving a pen set and briefcase from (b)(6), (b)(7)(C). Statements by (b)(6), (b)(7)(C) established that he paid approximately \$1,500 for the pen set and approximately \$2,000 for the briefcase. MG Fil also informed investigators of a \$3,000 cash gift made by (b)(6), (b)(7)(C) to (b)(6), (b)(7)(C) in April 2010. He stated he did not report the cash gift because it was from a designated personal friend. (b)(6), (b)(7)(C) acknowledged the gift to investigators and recalled asking MG Fil if they could keep it. (b)(6), (b)(7)(C) stated that MG Fil told (b)(6), (b)(7)(C) they could keep it because (b)(6), (b)(7)(C) was a designated personal friend.

MG Fil stated that he did not report gifts from personal friends. MG Fil stated that he did not report the pen set on the SF 278 because he failed to "put the two together." He further stated that it never entered his mind to report gifts he received from personal friends on the

¹⁰ The \$140 amount represents the current aggregation exception. This amount is reviewed and adjusted as noted in Footnote 4.

¹¹ MG Fil completed an out-of-date SF 278 that did not accurately reflect the adjusted aggregate threshold value.

SF 278. On July 25, 2011, MG Fil submitted an amended SF 278 that included the gifts in question.

MG Fil surrendered the pen set and briefcase to investigators once his household goods shipment arrived from Korea. Evidence provided by MG Fil in response to our tentative conclusions established that he returned the \$3,000 cash gift to (b)(6), (b)(7)(C) in the form of a cashier's check mailed to (b)(6), (b)(7)(C) on July 14, 2011.

Discussion

We conclude that MG Fil failed to report gifts as required by the JER. We found that MG Fil received at least three gifts from (b)(6), (b)(7)(C) that exceeded the JER reporting threshold. The JER requires MG Fil to report annually on an SF 278 any gifts he, or his family members, received with an aggregate value of more than a specified threshold amount. The JER requires MG Fil to submit this information annually through his supervisor and Ethics Counselor.

We determined that MG Fil failed to report the pen set on his 2008 SF 278 and failed to report both the briefcase he received and the \$3,000 cash gift given to (b)(6), (b)(7)(C) on his 2010 SF 278. We note that the instructions on the SF 278 state that the filer should exclude gifts "received by your spouse or dependent child totally independent of their relationship to you." However, we determined that this provision was not applicable because (b)(6), (b)(7)(C) relationship with (b)(6), (b)(7)(C) was predicated on (b)(6), (b)(7)(C) relationship with (b)(6), (b)(7)(C). We note that on July 25, 2011, MG Fil submitted an amended SF 278 for calendar year 2010 reporting the pen set, which he should have reported on his 2008 SF 278, and the briefcase and cash gift which he should have reported on his 2010 SF 278. Accordingly, we conclude that MG Fil failed to report gifts, above the threshold, as required by the JER.

V. CONCLUSIONS

- A. MG Fil improperly accepted gifts.
- B. MG Fil failed to properly report gifts received.

VI. RECOMMENDATION

We recommend the Secretary of the Army consider appropriate corrective action with regard to MG Fil.



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

NOV - 4 2013

Ref: FOIA-2013-00373

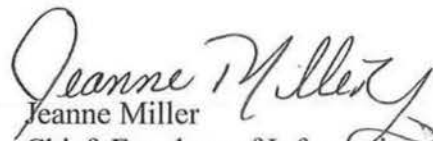
OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it FOIA case number FOIA-2013-00373.

The enclosed Report of Investigation concerning Mr. Stephen E. Calvery is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number FOIA-2013-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,


Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

FOR OFFICIAL USE ONLY

Report No. 20121204-000911

February 20, 2013

Inspector General

United States
Department of Defense



ALLEGED MISCONDUCT:
Mr. Stephen E. Calvery
Senior Executive Service
Director, Pentagon Force Protection Agency

Warning

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FOR OFFICIAL USE ONLY

REPORT OF INVESTIGATION:
MR. STEVEN E. CALVERY, SENIOR EXECUTIVE SERVICE

I. INTRODUCTION AND SUMMARY

We initiated an investigation to address allegations that Mr. Stephen E. Calvery, while serving as the Director, Pentagon Force Protection Agency (PFPA): misused his position; misused his subordinates; (b) (6), (b) (7)(C) improperly authorized the use of administrative leave; provided preferential treatment to a subordinate; (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

We substantiated the allegations that Mr. Calvery misused his position; misused his subordinates; improperly authorized the use of administrative leave; and engaged in a prohibited personnel practice by providing preferential treatment to a subordinate.

We conclude that Mr. Calvery misused his position in violation of Department of Defense (DoD) 5500.07-R, "Joint Ethics Regulation (JER)." We found that Mr. Calvery arranged for (b) (6), (b) (7)(C) who was not an employee of PFPA or DoD, to use the PFPA firing range. The JER requires that employees shall not use their public office for the private gain of relatives. We determined that family members of other PFPA employees were not offered the same benefit. Accordingly, we determined that Mr. Calvery misused his position to allow (b) (6), (b) (7)(C) access to the PFPA firing range, and use of a PFPA weapon, ammunition, and two PFPA firearms instructors.

We also conclude that Mr. Calvery misused his subordinates in violation of the JER. We found that Mr. Calvery had his office staff order and pick up his lunch and retrieve coffee for him. The JER requires that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit. Although Mr. Calvery paid for the lunches and coffee using his own funds, we determined that it was improper for Mr. Calvery to ask or allow his subordinates to routinely retrieve lunch or coffee for him. Additionally, Mr. Calvery's (b) (6), (b) (7)(C) felt obligated to get Mr. Calvery his lunch and believed that if (b) (6), (b) (7)(C) did not agree, (b) (6), (b) (7)(C) would have been reconsidered. Accordingly, we determined that Mr. Calvery misused his subordinates.

We further conclude that Mr. Calvery improperly authorized the use of administrative leave in violation of DoD Financial Management Regulation (FMR), DoD Instruction (DoDI) 1400.25, Volume 630, "DoD Civilian Personnel Management System: Leave," and Office of the Secretary of Defense (OSD) Administrative Instruction (AI) Number (No.) 67, "Leave Administration." We found that Mr. Calvery authorized administrative leave to PFPA employees who participated in the 2009 and 2010 Annual PFPA Golf Tournaments. The DoD

¹ The incoming complaints contained several additional allegations. Based on our investigation we determined those allegations did not merit further investigation, and discuss them in Section III of this report.

FMR, DoDI, and OSD AI No. 67 require that if administrative leave is authorized there must be a benefit to the agency's mission, a Government-wide recognized and sanctioned purpose or in connection with furthering a function of DoD. We determined that the golf tournament, although open to all PFPA employees, was not a DoD-sanctioned event and there was no perceived benefit toward PFPA's mission or a Government-wide recognized and sanctioned purpose. We determined the reason for authorizing administrative leave to participate in a golf tournament was not consistent with the examples cited in the regulations. Accordingly, we determined that Mr. Calvery improperly authorized the use of administrative leave.

We finally conclude that Mr. Calvery provided preferential treatment to a subordinate in violation of Title 5, United States Code, Section 2301, "Merit system principles," 5 U.S.C. 2302, "Prohibited personnel practices," and the JER. We found that Mr. Calvery selected a subordinate for promotion, (b) (6), (b) (7)(C), because he felt the subordinate would never get promoted in his current position. Mr. Calvery's action resulted in one of the three individuals recommended by the selection board being removed from the promotion list to accommodate the promotion of the subordinate. Title 5 U.S.C. requires that candidates be selected based on their ability, knowledge and skills after a fair and open competition, and the JER requires employees to act impartially and not give preferential treatment to any individual. We determined that Mr. Calvery selected the subordinate for promotion based on their relationship rather than on the subordinate's experience or scope of responsibilities. Accordingly, we determined that Mr. Calvery engaged in a prohibited personnel practice by providing preferential treatment to a subordinate.

We did not substantiate the remaining four allegations.

By letter dated October 25, 2012, we provided Mr. Calvery the opportunity to comment on the results of our investigation. In his response, via his counsel, dated December 7, 2012, Mr. Calvery disputed the substantiated conclusions, and wrote that his violations of applicable standards were unintentional. Mr. Calvery contended the different practices used by PFPA and the Secret Service (his former employer) contributed to his misunderstanding that (b) (6), (b) (7)(C) was eligible to use the PFPA firing range. Mr. Calvery also wrote that he believed his subordinates only used personal time to pick up his lunch or coffee, that his granting administrative leave for the PFPA Golf Tournament met the criteria outlined in the DoD Financial Management Regulation, and that he exercised his discretion when he selected (b) (6), (b) (7)(C) for promotion to (b) (6), (b) (7)(C). After reviewing the matters presented by Mr. Calvery, reexamining the evidence, and obtaining additional testimony, we stand by our conclusions.²

² While we have included what we believe is a reasonable synopsis of the response provided by Mr. Calvery, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments by Mr. Calvery where appropriate throughout this report and provided a copy of his full response to the Director, Administration and Management, Office of the Secretary of Defense, with this report.

We recommend the Director, Administration and Management, Office of the Secretary of Defense, consider appropriate action with regard to Mr. Calvery and the use of a (b) (6), (b) (7)(C) for the Director, PFPA. Additionally, we will notify the U.S. Office of Special Counsel of the substantiated allegation concerning the prohibited personnel practice.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

On May 3, 2002, in response to the September 11, 2001, terrorist attack against the Pentagon and the subsequent anthrax incidents, Deputy Secretary of Defense Paul Wolfowitz, established the PFPA as a DoD Agency under the cognizance of the Office of the Director of Administration and Management (A&M). This new agency absorbed the Defense Protective Service and its role of providing basic law enforcement and security for the Pentagon.

Mr. Calvery assumed duties as the Director, PFPA, on May 1, 2006. As the Director, Mr. Calvery is responsible for providing a full range of services to protect people, facilities, infrastructure, and other resources at the Pentagon Reservation and in DoD-occupied facilities in the National Capital Region.

III. SCOPE

We interviewed Mr. Calvery, and (b) (6), (b) (7)(C) with knowledge of the matters under investigation. We examined relevant documents and standards that govern the issues under investigation. We reviewed official email messages, memorandums, official personnel records, manpower documents, evaluation reviews, logistics budget, property accountability reports, and promotion packages.

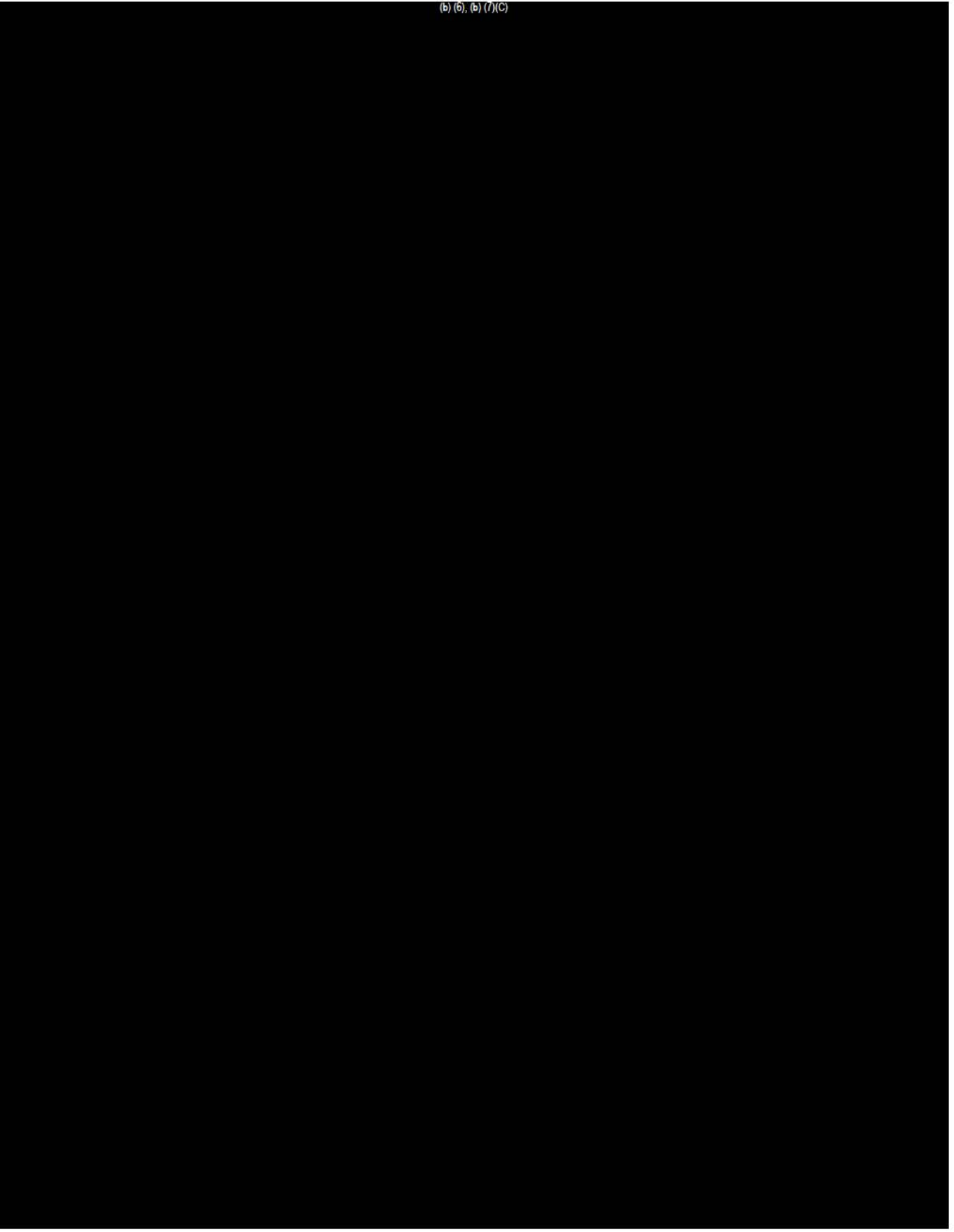
Our Office received two anonymous hotline complaints alleging misconduct by Mr. Calvery. The first complaint, dated March 16, 2011, alleged that Mr. Calvery abbreviated regularly scheduled firearms training in order for (b) (6), (b) (7)(C) to use the PFPA firing range, instructors, weapon, and ammunition. The second complaint, dated March 17, 2011, alleged that Mr. Calvery created a hostile work environment by (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) misusing his subordinates, (b) (6), (b) (7)(C) improperly authorizing administrative leave, (b) (6), (b) (7)(C)

By letter dated September 2, 2011, a U.S. Senator, on behalf of a constituent, asked this Office to review allegations of mismanagement by Mr. Calvery.

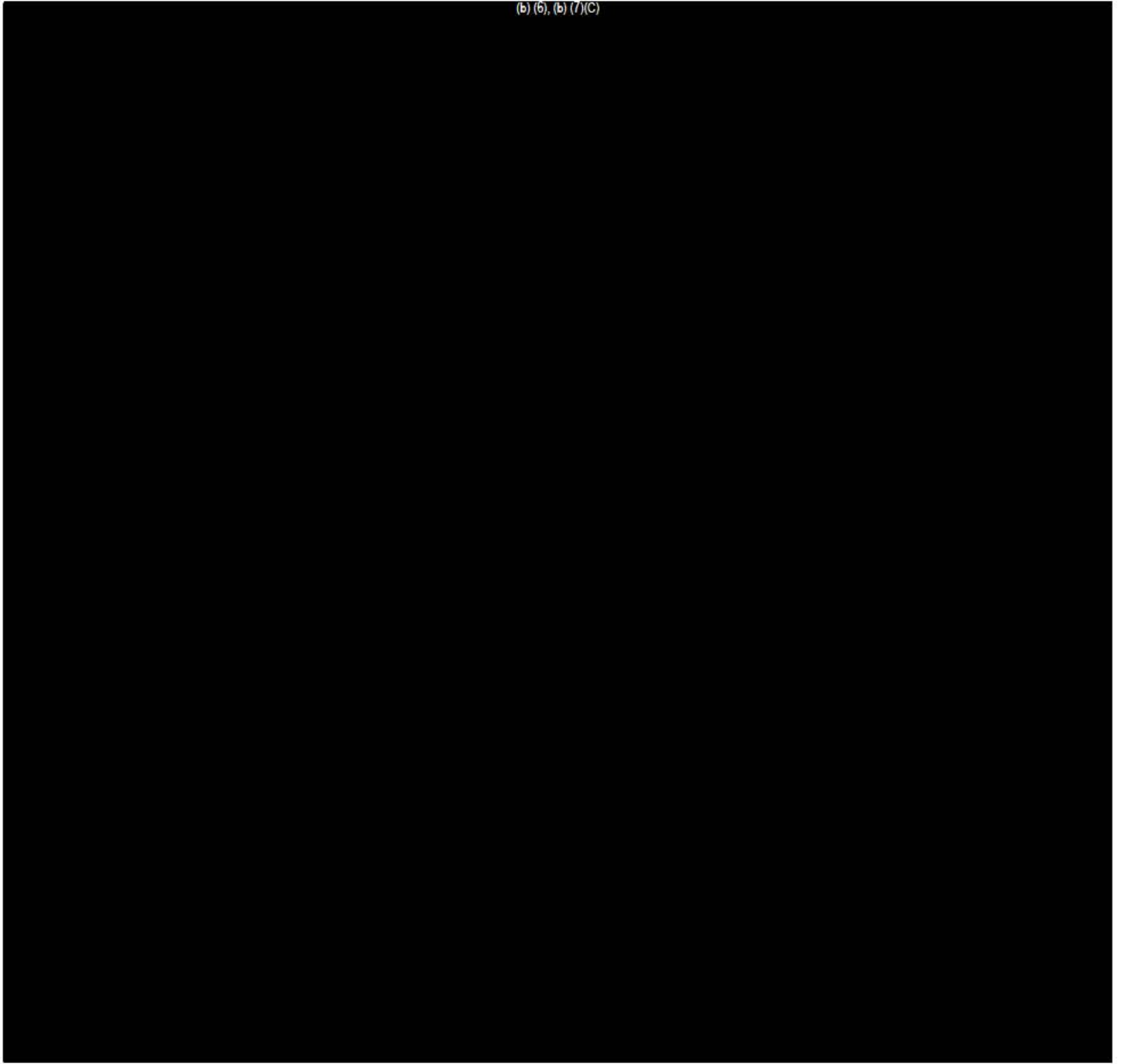
During our preliminary investigative work, we determined that the following issues, which the complainants alleged were violations, did not merit further investigation and consider them not substantiated.

(b) (6), (b) (7)(C)

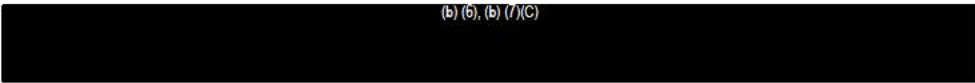


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(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)



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IV. FINDINGS AND ANALYSIS

A. Did Mr. Calvery misuse his position?

Standards

DoD 5500.07-R, "Joint Ethics Regulation (JER)," August 30, 1993, including changes 1-6 (November 29, 2007)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, CFR, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Section 2635.101, "Basic Obligation of Public Service," states that employees shall put forth honest effort in the performance of their duties.

Section 2635.702, "Use of Public Office for Private Gain," states that employees shall not use their public office for their own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or person with whom the employee is affiliated in a nongovernmental capacity.

Section 2635.704, "Use of Government Property," states that an employee has the duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.⁴

Section 2635.705, "Use of Official Time," states that unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

⁴ The JER defines Government property to include any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes Government vehicles.

(b) (6), (b) (7)(C)

Facts

The anonymous complaint alleged that Mr. Calvery allowed (b) (6), (b) (7)(C) to use a Government firing range, PFPA weapon, and ammunition; and that PFPA instructors provided personal instruction to (b) (6), (b) (7)(C). Additionally, the complaint alleged that a regularly scheduled class was shortened in order to accommodate Mr. Calvery's (b) (6), (b) (7)(C).

A review of personnel records established that (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

PFPA Training Directorate Administrative Instruction 9002-004, "Standing Operating Procedures, Use of PFPA Firearms Ranges by Outside Agencies," states that outside agencies can request to use the PFPA firing range. If approved, the Agency must provide their own targets, ammunition, and certified firearms instructors. The Instruction also requires all shooters to sign a "Pentagon Force Protection Agency Firearms Waiver Form," which relieves PFPA for any injuries/property damage.

Mr. Calvery's (b) (6), (b) (7)(C) testified that Mr. Calvery asked (b) (6), (b) (7)(C) to coordinate with (b) (6), (b) (7)(C) in order to escort his (Mr. Calvery's) (b) (6), (b) (7)(C) to the firing range. On January 11, 2011, the (b) (6), (b) (7)(C) emailed (b) (6), (b) (7)(C) to inform (b) (6), (b) (7)(C) that Mr. Calvery's (b) (6), (b) (7)(C) had been cleared by the (b) (6), (b) (7)(C), to use the PFPA Firing Range at the Pentagon and to set up a time. The (b) (6), (b) (7)(C) clarified that the event was not scheduled at that point.

(b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C) received a telephone call from the front office, a day or two before Mr. Calvery's (b) (6), (b) (7)(C) used the range, asking if time could be made available for Mr. Calvery's (b) (6), (b) (7)(C) to use the firing range. (b) (6), (b) (7)(C) related that (b) (6), (b) (7)(C) checked with (b) (6), (b) (7)(C) staff and was informed that it was possible and no class would be interrupted.

(b) (6), (b) (7)(C) testified that the (b) (6), (b) (7)(C) asked if there was time on the schedule for Mr. Calvery's (b) (6), (b) (7)(C) to use the range. (b) (6), (b) (7)(C) recalled reviewing the range schedule and scheduling (b) (6), (b) (7)(C) use where it would cause minimal impact on operations. (b) (6), (b) (7)(C) scheduled (b) (6), (b) (7)(C) to shoot at 1400 on January 13, 2011, in between work shifts when no one would be on the range. The witness stated that because (b) (6), (b) (7)(C) believed the request was an "internal thing," (b) (6), (b) (7)(C) did not have Mr. Calvery's (b) (6), (b) (7)(C) complete the required paperwork.

(b)(6) (b)(7)(C) testified that on January 13, 2011, two PFPA firearms instructors provided approximately 1 hour of training to Mr. Calvery's (b)(6) (b)(7) which consisted of basic shooting fundamentals and 30 minutes of dry fire or dry practice. The witness stated that Mr. Calvery's (b)(6) (b)(7) shot approximately 50 rounds of .40 caliber frangible ammunition at an approximate cost of \$17-\$18. The Ammunitions Log listed 150 rounds of .40 caliber frangible ammunition being used on January 13, 2011, for Mr. Calvery's (b)(6) (b)(7)(C) familiarization training with a PFPA-owned pistol.⁵

A PFPA Firing Range Training Schedule for the period January 10-14, 2011, did not list any training for Mr. Calvery's (b)(6) (b)(7).

Witnesses testified that other than Mr. Calvery's (b)(6) (b)(7) no other PFPA employee's family member had used the firing range. Witnesses related that using the firing range for other than official business would be inappropriate.

(b) (6), (b) (7)(C) testified that (b) (6) (b)(7) office did not coordinate with PFPA for Mr. Calvery's (b)(6) (b)(7) to conduct weapons familiarization.

Mr. Calvery testified that (b) (6), (b) (7)(C) asked if he could use the PFPA firing range before he attended training at the Federal Law Enforcement Training Center. Mr. Calvery related he told the (b) (6), (b) (7)(C) not to cancel any training when he checked for range availability. Mr. Calvery stated that he told the (b) (6), (b) (7)(C):

You tell me when's the best time to come. And we just want to come down and do a weapons familiarization. You know, we don't want anything special. You know, (b) (6), (b) (7)(C) is completely flexible. You tell me when the best time is.

Mr. Calvery testified that the (b) (6), (b) (7)(C) told him, "Thursday at 2:00 is the best time. Tell him to come then." Mr. Calvery stated that (b) (6), (b) (7)(C) used the PFPA firing range, weapon, ammunition, and targets. He related that (b) (6), (b) (7)(C) use of the firing range was as a law enforcement officer.

Mr. Calvery also testified he was not aware of any other PFPA employee's family member ever using the firing range. However, Mr. Calvery added that he would permit a PFPA employee's family member, who was joining another law enforcement agency, to use the firing range to familiarize with a firearm.

Mr. Calvery further testified that after (b) (6), (b) (7)(C) used the PFPA firing range, he (Mr. Calvery) (b) (6), (b) (7)(C). The PFPA firing range is co-located inside the Pentagon near the Remote Delivery Facility.

⁵ The estimated cost of 150 rounds of .40 caliber frangible ammunition was \$51-\$54.

Discussion

We conclude Mr. Calvery misused his position to provide a benefit to (b) (6), (b) (7)(C). We found that on January 13, 2011, Mr. Calvery's (b) (6), (b) (7)(C) received 1 hour of firearms training from two PFPA Firearms instructors, and used a PFPA weapon, targets, and 150 rounds of ammunition. We also found (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) had not coordinated for the official use of the PFPA firing range and equipment. We found no evidence a previously scheduled class was shortened in order to accommodate Mr. Calvery and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C)

We determined Mr. Calvery misused his position to allow (b) (6), (b) (7)(C) who was not an employee of PFPA or DoD, access to the PFPA firing range. Mr. Calvery's (b) (6), (b) (7)(C) used a PFPA weapon, ammunition, and the official time of two Government employees while using the range on January 13, 2011. We also determined other family members of PFPA employees were not offered the same benefit. Furthermore, while there is a process in place for outside agencies to request the use of the PFPA firing range and equipment, we determined that there was no official coordination or documentation between the (b) (6), (b) (7)(C) and PFPA, and the targets, ammunition, firearms, and instructors were from PFPA, and not the (b) (6), (b) (7)(C). Furthermore, PFPA employees did not fill out the required paperwork, most significantly the waiver form, for Mr. Calvery's (b) (6), (b) (7)(C). We further determined Mr. Calvery misused his position when he had (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) coordinated the unauthorized event. (b) (6), (b) (7)(C)

Response to Tentative Conclusion

In his response, Mr. Calvery wrote the violation was unintentional and due to different practices used by PFPA and the Secret Service (his former employer). He reasonably believed (b) (6), (b) (7)(C) and thus eligible to use the PFPA firing range. Mr. Calvery acknowledged he should have completed additional paperwork and ensured (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) targets, ammunition, and certified firearms instructors. Mr. Calvery apologized for his oversight and stated he was willing to reimburse the agency accordingly.

Our office confirmed with (b)(6) (b)(7)(C), that Mr. Calvery's (b)(6) (b)(7)(C) when he used the PFPA Firing Range, and that the required coordinating paperwork for the use of the range was not prepared. After considering Mr. Calvery's remarks and confirming (b)(6) (b)(7)(C) status, we stand by our conclusion and recommend recoupment.

B. Did Mr. Calvery misuse his subordinates?

Standards

DoD 5500.07-R, "JER," August 30, 1993, including changes 1-6 (November 29, 2007)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, CFR, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart A, "General Provisions," Section 2635.101, "Basic obligation of public service," states in paragraph (b)(14) that employees "endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part." The section explains that whether particular circumstances create an appearance that the law or standards have been violated "shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."

Subpart G, "Misuse of Position," states:

In Section 2635.702, "Use of public office for private gain," that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise to himself or to friends, relatives, or persons with whom the employee is affiliated in a non-governmental capacity.

In Section 2635.705(b), "Use of a subordinate's time," that an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

Facts

The anonymous complaint alleged Mr. Calvery's protocol staff regularly obtained lunch for him.

Five witnesses testified Mr. Calvery's office staff would bring him lunch and/or coffee/tea on a daily basis. One witness testified that Mr. Calvery never directed them to do it, but he would ask his office staff to pick up his lunch. Two witnesses testified that Mr. Calvery typically preordered his lunch at the Air Force or Navy mess and someone would pick the lunch up for him.

One witness testified the office staff's duties included getting Mr. Calvery his lunch and "lattes." The witness related that it was expected and if (b)(6) (b)(7) raised concerns over getting Mr. Calvery his lunch, they would think (b)(6) (b)(7) was not the right person for the job. Another witness testified that when (b)(6) (b)(7) worked for Mr. Calvery, (b)(6) (b)(7) ordered and picked up Mr. Calvery's lunch every day and had to have his coffee ready before he arrived in the morning.

Two witnesses testified (b)(6) (b)(7)(C), not Mr. Calvery, would ask the (b)(6) (b)(7)(C) to get Mr. Calvery's lunch. One witness testified that when (b)(6) (b)(7) arrived at PIPA, no one was getting Mr. Calvery his lunch, and so (b)(6) (b)(7) started it as a courtesy. (b)(6) (b)(7) further testified that Mr. Calvery had grown to expect someone to get his lunch and coffee. (b)(6) (b)(7) related that Mr. Calvery did not abuse it, "it's not a mandatory requirement whatsoever."

Three witnesses testified getting Mr. Calvery his lunch was not in their position description. The position description for an (b)(6) (b)(7)(C) did not list any duties or responsibilities commensurate with ordering and picking up lunches or coffee.

Seven witnesses testified Mr. Calvery always paid for his own lunch. One witness testified that the office staff maintained a cash fund to purchase Mr. Calvery's coffee, which Mr. Calvery replenished every week.

Mr. Calvery testified that occasionally, only when he was really busy, (b)(6) (b)(7)(C) would get him coffee and lunch. He stated that it has been going on for a while and related that "it's something that's kind of evolved. I've never directed or ordered (b)(6) (b)(7) to do that." He added that occasionally (b)(6) (b)(7)(C) also got him lunch. Mr. Calvery testified that he never coerced (b)(6) (b)(7)(C) into getting his lunch and that it was not commensurate with their duties. Mr. Calvery testified:

And I would hope if they felt uncomfortable doing it, they would tell me. And if they did feel uncomfortable, then that would be okay. You know, they wouldn't have to do that. And they don't have to do it now.

Discussion

We conclude Mr. Calvery misused his subordinates by regularly having his office staff order and pick up his lunch and retrieve coffee for him. Multiple witnesses testified that Mr. Calvery's staff performed these personal services on a routine basis. We found these duties were not part of any staff member's official duties. Mr. Calvery did not dispute accepting these services, but characterized the frequency as only on occasion.

The JER requires that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit. Additionally, an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

We determined it was improper for Mr. Calvery to have his (b) (6), (b) (7)(C) order and bring him his lunch. Mr. Calvery and witness testimony established that when Mr. Calvery was busy, his office staff ordered and retrieved his lunch from either the Air Force or Navy mess. Additionally, we found (b) (6), (b) (7)(C) bought him coffee each morning with money (b) (6), (b) (7) maintained for him. Although Mr. Calvery paid for the lunches and coffee using his own funds we determined that it was improper for Mr. Calvery to ask or allow his subordinates to routinely retrieve lunch or coffee for him. Finally, the (b) (6), (b) (7)(C) felt obligated to get Mr. Calvery his lunch and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

We also conclude these duties were expected as evidenced by the cash maintained by office staff, which was used for the daily purchase of Mr. Calvery's coffee.

Response to Tentative Conclusion

In his response, Mr. Calvery wrote that he never directed, coerced, induced or intimidated any subordinate to pick up his lunch or coffee. Mr. Calvery acknowledged that (b) (6), (b) (7)(C) would occasionally pick up lunch for him due to his back-to-back meetings and clarified that it was not a daily occurrence. He reiterated that he believed (b) (6), (b) (7) offered to do so because (b) (6), (b) (7) was already leaving the office for lunch or a break. Mr. Calvery added that in retrospect, he should have been clear to ensure his employees understood that he was not directing anyone to pick up his lunch or coffee. Mr. Calvery gave his assurance that he will be careful to avoid even the perception of impropriety and will not accept voluntary offers from employees that could be perceived as other than official duties. After carefully considering Mr. Calvery's response, we stand by our conclusion.

C. Did Mr. Calvery improperly authorize the use of administrative leave?

Standards

DoD Financial Management Regulation (DoD FMR), Volume 8, "Civilian Pay Policies and Procedures," Chapter 05 "Leave", dated September 2008

Section 051601, states, in part, that with regard to excused absences, "Agency heads or their designees have authority to grant excused absence in limited circumstances for the benefit of the agency's mission or a government-wide recognized and sanctioned purpose." Common situations where agencies generally excuse absence without charge to leave are: closure of

installations or activities, tardiness and brief absence,⁶ registering and/or voting, taking examinations, attending conferences or conventions, and representing employee organizations.

DoD Instruction (DoDI) 1400.25, Volume 630, DoD Civilian Personnel Management System: Leave, dated December 1996 (Administratively reissued April 6, 2009)

Paragraph 6, "Excused Absence," states, in part:

- In subparagraph a. that an excused absence refers to an authorized absence from duty without loss of pay and without charge to other paid leave. Periods of excused absence are considered part of an employee's basic workday even though the employee does not perform his or her regular duties. Consequently, the authority to grant excused absence must be used sparingly.
- In subparagraph b. that the Heads of the DoD Components or their designees shall delegate to the lowest practical level authority to grant excused absence.
- In subparagraph c. that Comptroller General decisions limit discretion to grant excused absence to situations involving brief absences. Where absences are for other than brief periods of time, a grant of excused absence is not appropriate unless the absence is in connection with furthering a function of the Department of Defense.
- In subparagraph d. that more common situations in which excused absence can be granted are for: voting, blood donation, permanent change of station, employment interview, counseling, certification, volunteer activities, emergency situations, physical examination for enlistment or induction, invitations for Congressional Medal of Honor holders, and funerals.

OSD Administrative Instruction (AI) Number 67, Subject: Leave Administration, dated December 27, 1988

Paragraph 15, "Administrative Excusals," states, in part:

- In subparagraph 15.1, that employees may be excused from duty without charge to leave or loss of compensation in accordance with FPM Supplement 990-2 and CPM Supplement 990-2 (references (b) and (c)).
- In subparagraph 15.2.1, that additionally, management officials may excuse employees from duty for reasonable amounts of time, normally not to exceed 8 hours.⁷

⁶ A brief absence is limited to periods of less than 1 hour.

⁷ Participation in an organizational golf tournament was not one of the examples authorized as an administrative excuse.

Facts

The anonymous complaint alleged that Mr. Calvery approved all employees who participated in the annual PFPA-sponsored golf tournament to take 4 hours of administrative leave. The complaint also alleged that not everyone was allowed to participate in the golf tournament.

Flyers reflected that the last three Annual PFPA Golf Tournaments were held on June 4, 2009; June 4, 2010; and June 24, 2011. Registration was open to all PFPA Government and contractor employees, as well as PFPA partners and guests.

(b)(6) (b)(7)(C) testified that the PFPA Golf Tournaments were not a DoD-sanctioned event. (b)(6) (b)(7) related that as an "MWR-type function" everyone was eligible to participate. (b)(6) (b)(7) stated that Mr. Calvery approved 4 hours of administrative leave for those that participated. (b)(6) (b)(7) further testified that (b)(6) (b)(7) did not know if Mr. Calvery had sought a legal opinion with regard to the granting of administrative leave.

The 2011 announcement for the Golf Tournament indicated that employees needed to be on a scheduled day off, or use annual leave to attend the tournament. (b)(6) (b)(7)(C) clarified that PFPA contractor employees who participated were required to take leave per their company guidelines.

On May 24, 2011, the (b)(6) (b)(7)(C), sent an email advising the PFPA Golf Tournament's point of contact, "Finally, we know of no legal method for granting employee administrative time to attend this Golf Tournament. Recommend, therefore, that all employees be required to take annual leave to attend the Golf Tournament if they are otherwise in a duty status."

Mr. Calvery testified that the PFPA Golf Tournament was one of several team building "esprit de corps" initiatives he established. He related that the golf tournament was started 3 to 4 years ago and it was open to all PFPA employees, of which approximately 100-150 participated. He further stated that the number of participants was regulated by the capacity of the golf course.

Mr. Calvery testified that the first year the tournament was held he approved 4 hours of administrative leave because, "I was told, and I believed and I still believe that that was in my authority to grant that because it was an Agency sponsored event." He clarified that during the planning process, although he could not recall who, someone recommended that he grant administrative leave.

I mean, I'm responsible --. I'm the responsible official. I mean, it was laid out as an option and I said, 'That sounds good. I think we should do it.' And I authorized it.

Mr. Calvery related that the first year of the tournament he did not seek any legal guidance prior to authorizing administrative leave. He recalled that during a subsequent tournament the Office of General Counsel advised that it was not a good idea to authorize

administrative leave. Mr. Calvery testified, "I personally still think it's within my authority, but to err on the side of caution, we decided that next year to have everybody take annual leave."

Discussion

We conclude that Mr. Calvery wrongfully authorized the use of administrative leave for PFPA employees who participated in the 2009 and 2010 Annual PFPA Golf Tournaments. We note that for the 2011 tournament, Mr. Calvery sought legal advice and required all employees to use annual leave to attend the tournament. We also conclude that the tournament did not exclude any one group of employees within PFPA.

The DoD FMR and DoDI 1400.25 provide that administrative leave is authorized when there is a benefit to the agency's mission, a Government-wide recognized and sanctioned purpose, or in connection with furthering a function of DoD. In addition to the DoD FMR and DoDI 1400.25, OSD AI No. 67 lists several situations where administrative leave could be granted.

We determined that Mr. Calvery wrongfully authorized administrative leave to PFPA employees participating in the PFPA Golf Tournament in 2009 and 2010. We also determined the golf tournament, although open to all PFPA employees, was not a DoD-sanctioned event and there was limited benefit toward PFPA's mission or a Government-wide recognized and sanctioned purpose. Further, we determined that authorizing administrative leave to participate in the golf tournaments was not an example cited in DoD regulations. Mr. Calvery may have had the authority to grant 4 hours of administrative leave, but could not do so for the purpose of playing golf.

Response to Tentative Conclusion

In his response, Mr. Calvery wrote that he sought appropriate guidance from his staff and that the annual golf tournament was a team-building event for PFPA and other partner organizations. He asserted the event was consistent with DoD policy, and the added liaison benefits with partner organizations strengthened PFPA's ability to complete its mission. Mr. Calvery offered in mitigation that he only granted administrative leave for four PFPA employees for the 2009 tournament.

DoD Regulations do not list a golf tournament as a common situation in which agencies generally grant excused absence. Golf tournaments are limited in attendance by the capacity of the golf course and interested golfers. Additionally, it is difficult to justify the golf tournament's benefit to the agency's mission or Government-wide recognized and sanctioned purpose when only four employees were granted administrative leave. Furthermore, he did not seek the advice of WHS OGC concerning the use of administrative leave to attend a golf tournament until 2011. After carefully considering Mr. Calvery's response, we stand by our conclusion.

D. Did Mr. Calvery provide preferential treatment to a subordinate?

Standards

Title 5, United States Code

Section 2301, "Merit system principles," states, in part, that Federal personnel management should be implemented consistent with the merit system principles:

- (1) recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity
- (8) that employees should be protected against arbitrary action, personal favoritism, or coercion for partisan political purposes.

Section 2302, "Prohibited personnel practices," Paragraph (b) states, in part, that any employee who has authority to take, directs other to take, recommend, or approve any personnel action, shall not, with respect to such authority:

- (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.
- (12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in Section 2301 of this title.

Paragraph (c) states that the head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring that agency employees are informed of the rights and remedies available to them.

DoD 5500.07-R, "JER," August 30, 1993, including changes 1-6 (November 29, 2007)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, CFR, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart A, "General Provisions," Section 2635.101, "Basic Obligation of Public Service," states in paragraph (b)(8) that employees shall act impartially and not give preferential treatment to any private organization or individual, but shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Facts

The anonymous complaint alleged that Mr. Calvery personally promoted (b) (6), (b) (7)(C) even though the promotion board "vigorously" recommended against it.

A senior official within PFPA testified that (b) (6) was surprised at how fast (b) (6), (b) (7)(C) was promoted. It was difficult to go from Police Officer to Sergeant to Lieutenant because experience was one of the things that counted as points, and he would have had fewer points in the experience part of the process. (b) (6) had no doubt that (b) (6), (b) (7)(C) was promoted because he was so close to "the flagpole." (b) (6) reiterated, "I mean it's obvious. There's no way."

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

The selection board results reflected that (b) (6), (b) (7)(C) was ranked (b) (6) out of 23 applicants. In an April 16, 2007, memorandum the (b) (6), (b) (7)(C) concurred with the selection board's recommendation to select and promote (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C). Personnel records reflected the promotion was effective on (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

A Selection Board rated the applicants based on answers to nine verbal and four written questions. The results, compiled on a spreadsheet, indicated that (b) (6), (b) (7)(C) was ranked (b) (6), (b) (7)(C) out of 17 applicants.

On February 25, 2009, (b) (6), (b) (7)(C) signed the Certificate of Eligibles for the position and selected three applicants for promotion; (b) (6), (b) (7)(C).

A PFPA Staff Action Summary, dated February 27, 2009, forwarded the Certificate of Eligibles and a brief biography of each applicant to Mr. Calvery requesting approval. The Staff Action Summary contained handwritten notes and initials. One of the handwritten notes on the front page is "ADD.- (b) (6), (b) (7)(C). On the second page of the Staff Action Summary there is a typed paragraph stating, (b) (6), (b) (7)(C) was competitively selected from (b) (6), (b) (7)(C) by Mr. Steven E. Calvery, (b) (6), (b) (7)(C).

Unlike the other

selectees, the paragraph about (b)(6) (b)(7)(C) did not summarize his current duties or education level.

The Certificate of Eligibles attached to the PFPA Staff Action Summary was also changed to reflect (b)(6) (b)(7)(C) selection. The handwritten and initialed changes included removing one of the previous selectees and adding (b)(6) (b)(7)(C). The changes were initialed by the (b)(6) (b)(7)(C).

Personnel records indicated that (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) testified that at Mr. Calvery's direction, (b)(6) (b)(7)(C) sat on the selection board for the (b)(6) (b)(7)(C) positions. The witness related that because at the time (b)(6) (b)(7)(C) the board ranked him (b)(6) (b)(7)(C) out of 15 applicants. The witness further testified that a month after the promotion board's recommendation, he discovered that (b)(6) (b)(7)(C) was one of the three selected for promotion to (b)(6) (b)(7)(C).

On April 3, 2009, the (b)(6) (b)(7)(C) emailed the (b)(6) (b)(7)(C) stating that as a (b)(6) (b)(7)(C) could not believe (b)(6) (b)(7)(C) was selected for (b)(6) (b)(7)(C) above many others who truly shined during the board proceedings." (b)(6) (b)(7)(C) added there was no doubt in (b)(6) (b)(7)(C) mind that there was preferential treatment in that (b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) selection set a terrible precedent for others who scored well above him.

(b)(6) (b)(7)(C) testified that when (b)(6) (b)(7)(C) approached Mr. Calvery about (b)(6) (b)(7)(C) promotion to (b)(6) (b)(7)(C), Mr. Calvery told (b)(6) (b)(7)(C) that it was his prerogative to promote (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) recalled the conversation:

Sir, do you recognize that you told me in a face-to-face that you're concerned about transparency?" "Yep." Well, this isn't transparent, sir. He's not qualified for the position. "Well, he made the cert." Yes, sir, but there were people ahead of him that made more points and did a good job impressing the board and he wasn't one of them, and the senior person on the board told -- he's not even a police officer -- told you that. "I have my -- it's my prerogative." Yes, sir.

Three senior members of PFPA testified they did not think (b)(6) (b)(7)(C) current duties and responsibilities were commensurate with other (b)(6) (b)(7)(C) in the PPD. A review of the PFPA position descriptions for (b)(6) (b)(7)(C) reflected that neither position description listed serving as a (b)(6) (b)(7)(C) as a specific duty or responsibility.

Mr. Calvery testified that it was his responsibility to ensure the right people were in the right job, and was adamant that, as the Director, it was his prerogative; "I think I have to have that ability to exercise that. If I don't then you know, I'm not fulfilling my responsibility."

Mr. Calvery stated that (b) (6), (b) (7)(C) was currently and had been (b) (6), (b) (7)(C) for the past 3 to 4 years. He related that (b) (6), (b) (7)(C) supervised some of (b) (6), (b) (7)(C) but he was not aware of any additional supervisory responsibilities. Mr. Calvery added, "You know, he (b) (6), (b) (7)(C) does other things. I'm, you know, I'm not that close to all the other issues that he works." Mr. Calvery stated that (b) (6), (b) (7)(C) was in a unique position and could not be compared to other (b) (6), (b) (7)(C).

Mr. Calvery further testified that the (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) promotion. He related, "I don't know if I overturned anything." He recalled that the situation was unique because (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) and almost became "persona non grata" within the PPD. Mr. Calvery testified that (b) (6), (b) (7)(C) would have never been promoted because the (b) (6), (b) (7)(C) told him many times that a (b) (6), (b) (7)(C) would never get promoted.

Mr. Calvery related that he added (b) (6), (b) (7)(C) to the promotion list because he did not want (b) (6), (b) (7)(C) to suffer from being (b) (6), (b) (7)(C). Mr. Calvery testified, "I didn't remove anybody from the list. I added him to the list when that promotion list came by, which is my prerogative." Mr. Calvery related that (b) (6), (b) (7)(C) met the minimum standards and was on the well-qualified list. He added that (b) (6), (b) (7)(C) was a loyal employee, "he does his job in an exemplary manner and I thought he needed to be promoted."

Discussion

We conclude Mr. Calvery engaged in a prohibited personnel practice by providing preferential treatment to a subordinate. We found that (b) (6), (b) (7)(C) has served as Mr. Calvery's (b) (6), (b) (7)(C) for several years and was promoted to (b) (6), (b) (7)(C) while serving in the same capacity. There were no improprieties with (b) (6), (b) (7)(C) promotion to (b) (6), (b) (7)(C). In February 2009, (b) (6), (b) (7)(C) was considered for one of three (b) (6), (b) (7)(C) positions available. A selection board did not recommend (b) (6), (b) (7)(C) for promotion and ranked him in the (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) approved the selections and routed the Certificate of Eligibles to Mr. Calvery for approval/concurrence. We also found that during the routing process, Mr. Calvery directed that (b) (6), (b) (7)(C) be added to the list - resulting in one of the selectees being removed from the promotion list. Mr. Calvery testified that it was his prerogative to select (b) (6), (b) (7)(C) for promotion because he felt that (b) (6), (b) (7)(C) would never get promoted in his current position because he was not (b) (6), (b) (7)(C).

5 U.S.C. 2301 requires approving officials to select and advance employees solely on the basis of relative ability, knowledge, and skills, after fair and open competition, and shall not grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment for the purpose of improving or injuring the prospects of any particular person for employment. 5 U.S.C. 2302 states that the head of each agency shall be responsible for the prevention of prohibited personnel practices, and prohibits actions that violate any law, rule, or regulation implementing or directly concerning the merit system principles contained in Section 2301. 5 U.S.C. 2302 and the JER requires employees to act impartially and not give

preferential treatment to any individual, and endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards.

We determined that Mr. Calvery selected (b) (6), (b) (7)(C) for promotion based on their relationship rather than on (b) (6), (b) (7)(C) experience or scope of responsibilities. The selection board objectively evaluated each candidate based on their ability, knowledge, and skills, after a fair and open competition, and selected three candidates for promotion to (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) was not one of the three candidates selected by the board's criteria and would not have been selected without Mr. Calvery's assistance. Mr. Calvery used his discretion and authority to arbitrarily add (b) (6), (b) (7)(C) to the list, but was unable to describe what experience or qualifications he had to merit promotion to (b) (6), (b) (7)(C). Mr. Calvery justified his decision on (b) (6), (b) (7)(C) loyalty and thought that he deserved to be promoted. Mr. Calvery, as the agency head responsible for the prevention of prohibited personnel practices, violated the merit systems principles. His actions resulted in one of the three individuals selected by the board for promotion being removed to accommodate (b) (6), (b) (7)(C) promotion.

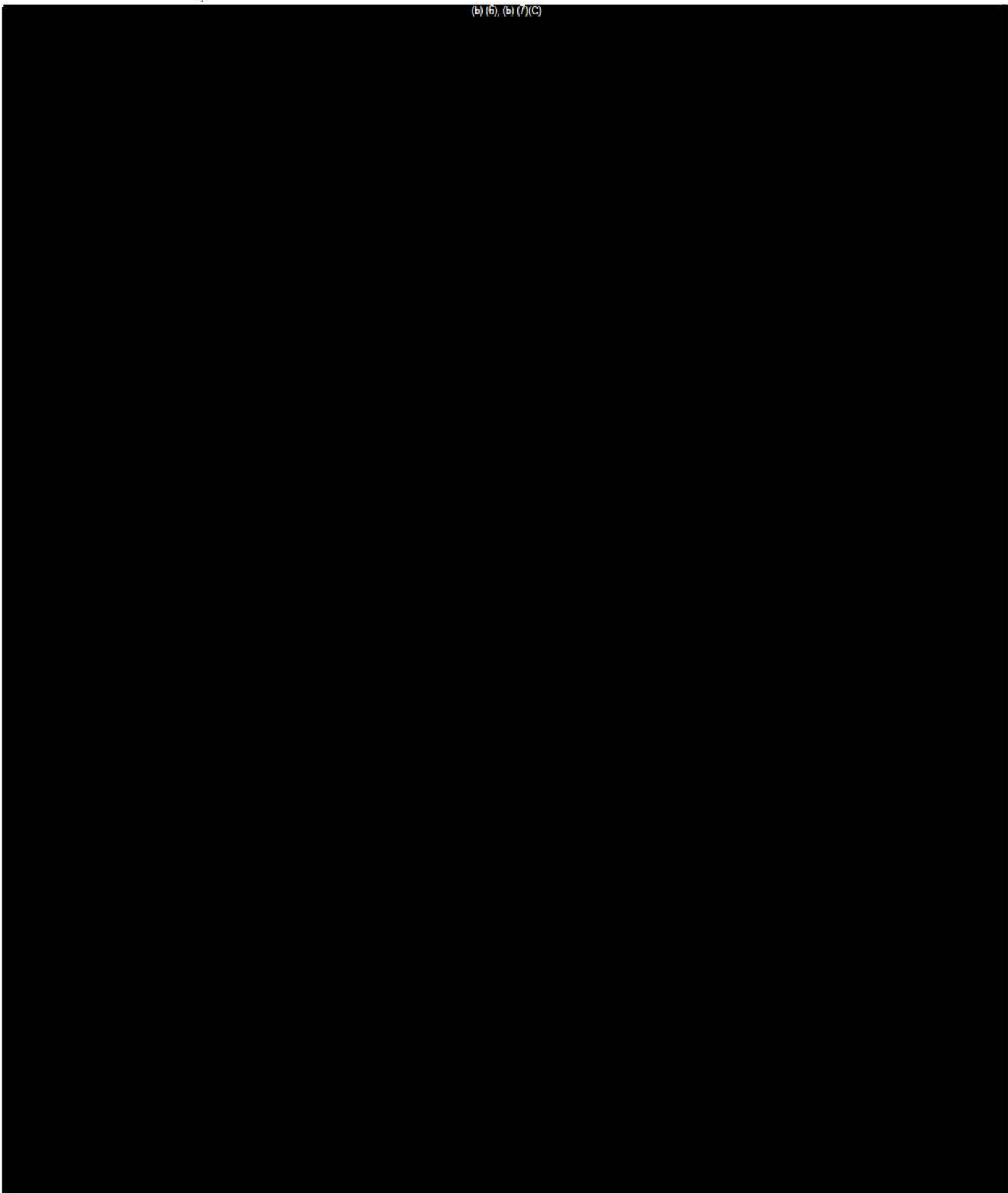
Accordingly, we conclude that Mr. Calvery engaged in a prohibited personnel practice by providing preferential treatment to a subordinate.

Response to Tentative Conclusion

In his response, Mr. Calvery denied having a personal interest in (b) (6), (b) (7)(C) promotion or pulling anyone off the promotion list to accommodate his selection. Mr. Calvery wrote that he exercised his discretion to ensure the agency was selecting the best and brightest for promotion. Additionally, Mr. Calvery explained (b) (6), (b) (7)(C)

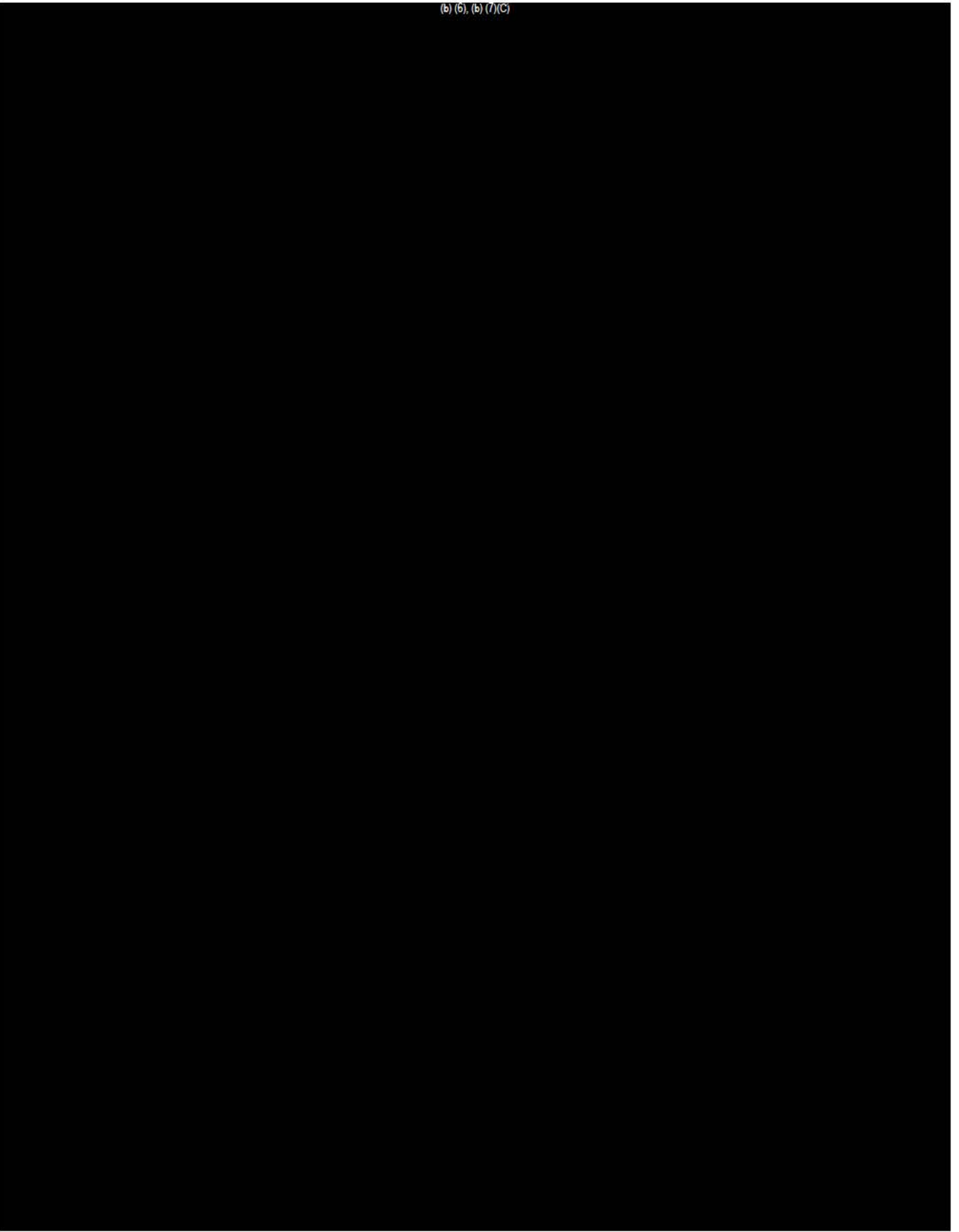
Mr. Calvery's personal interest in (b) (6), (b) (7)(C) promotion was evident when he testified he did not want (b) (6), (b) (7)(C) to "suffer" because of the "unique" situation of being (b) (6), (b) (7)(C). We interviewed (b) (6), (b) (7)(C). (b) (6) testified (b) (6) did not (b) (6), (b) (7)(C). (b) (6) stated (b) (6) made it abundantly clear to "everybody" that (b) (6) wanted the promotion and (b) (6) was disappointed when (b) (6) was not selected. After carefully considering Mr. Calvery's response and the additional testimony, we stand by our conclusion.

(b) (6), (b) (7)(C)



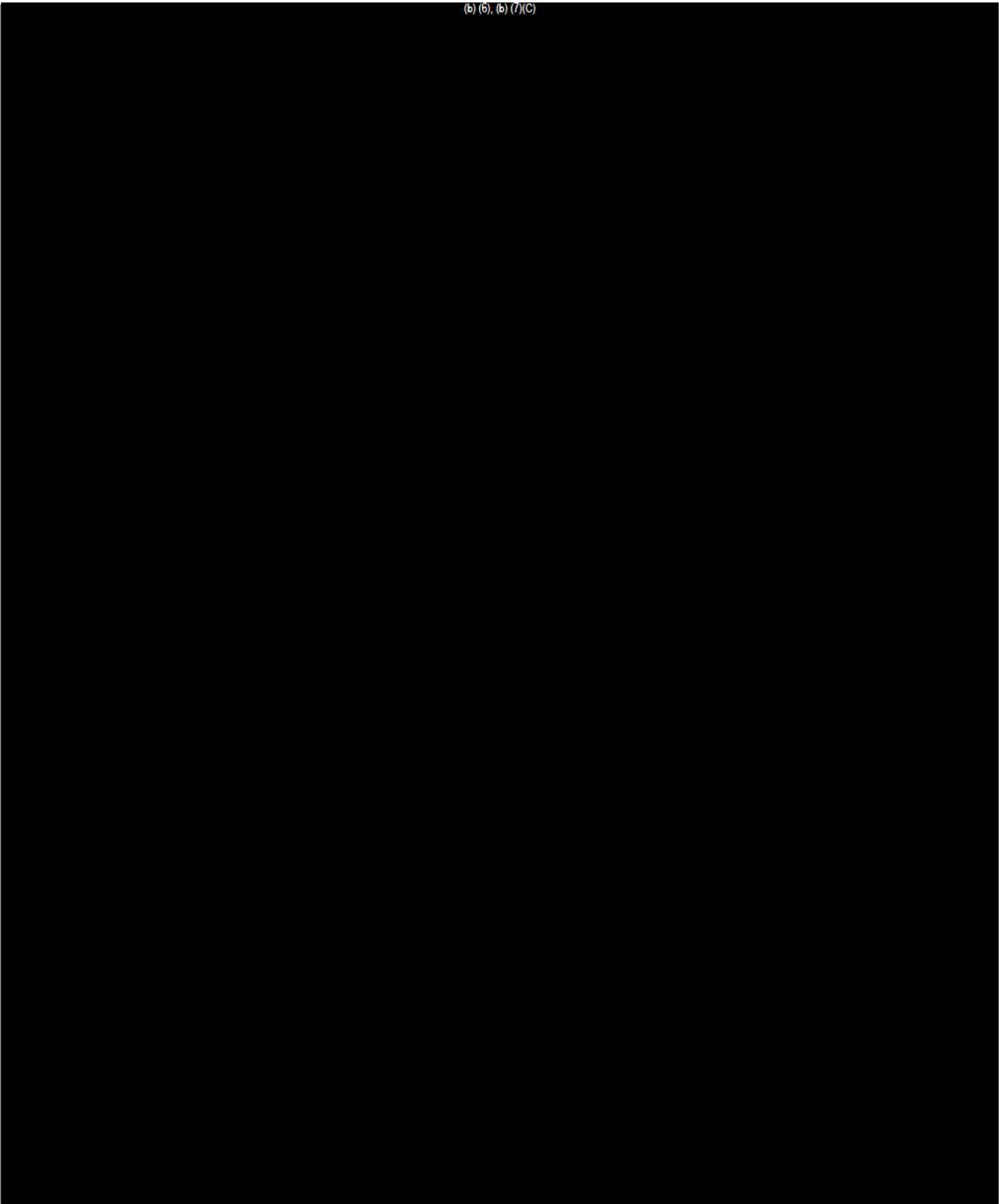
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(b) (6), (b) (7)(C)



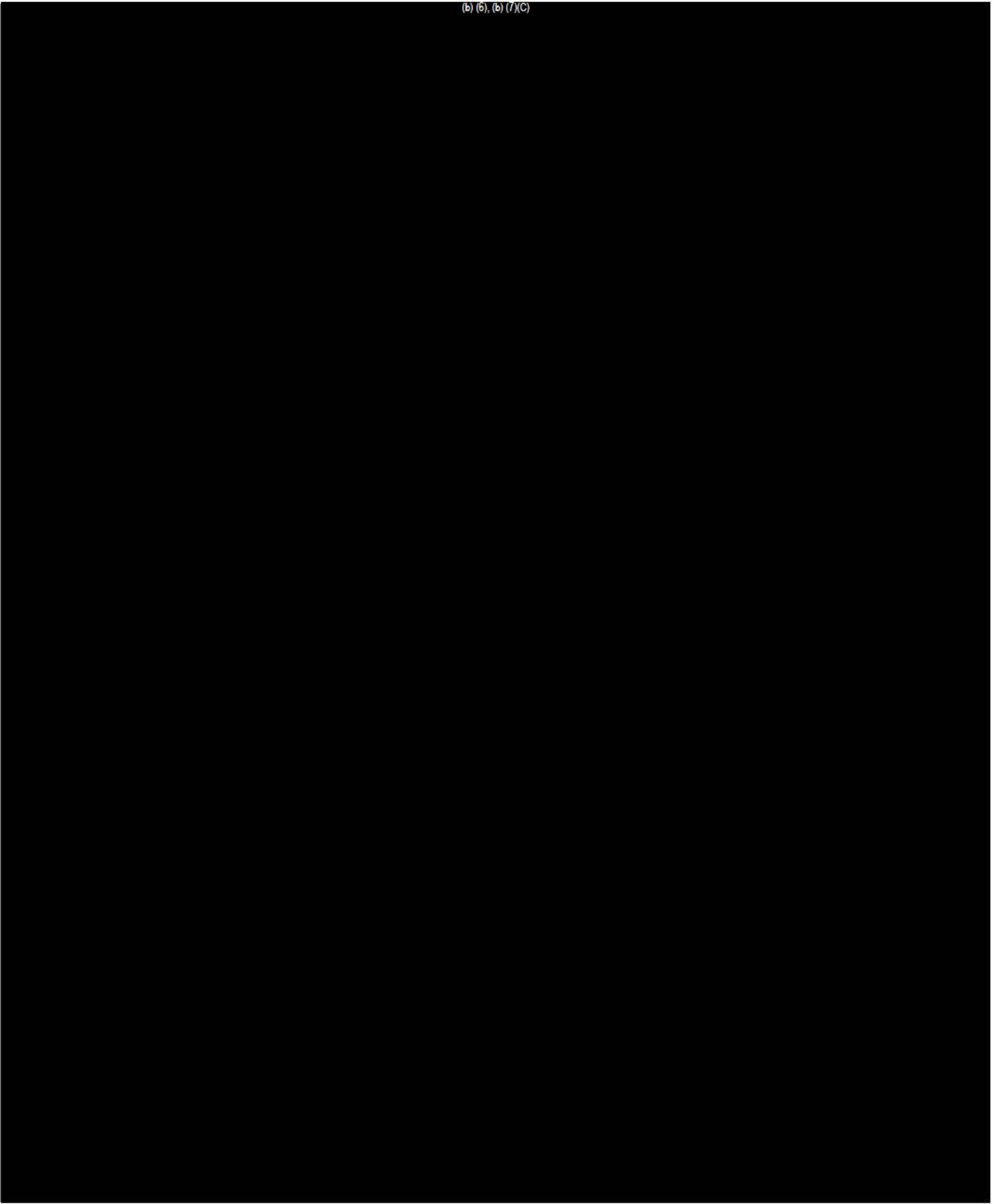
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(b) (5), (b) (7)(C)



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(b) (5), (b) (7)(C)



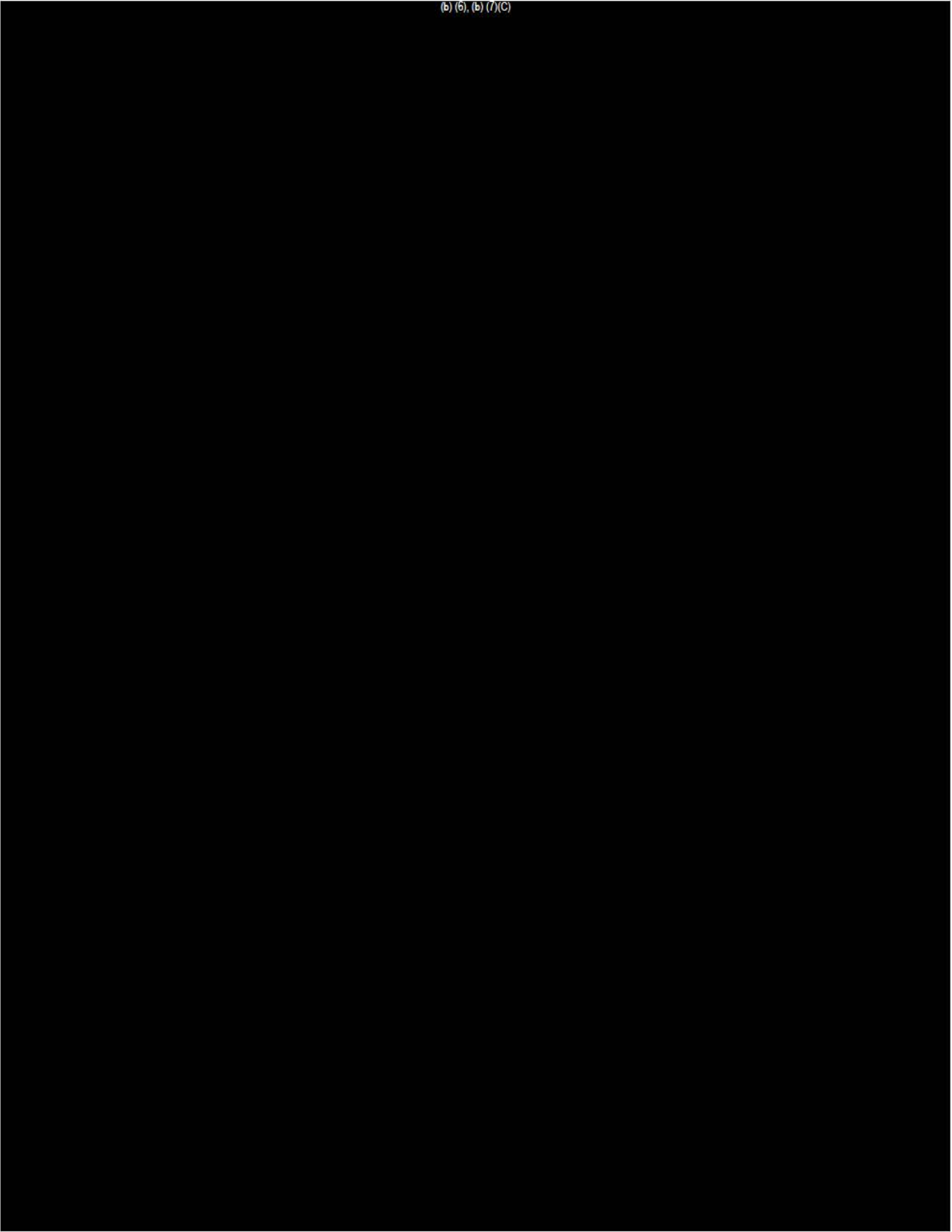
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(b) (5), (b) (7)(C)

(b) (5), (b) (7)(C)

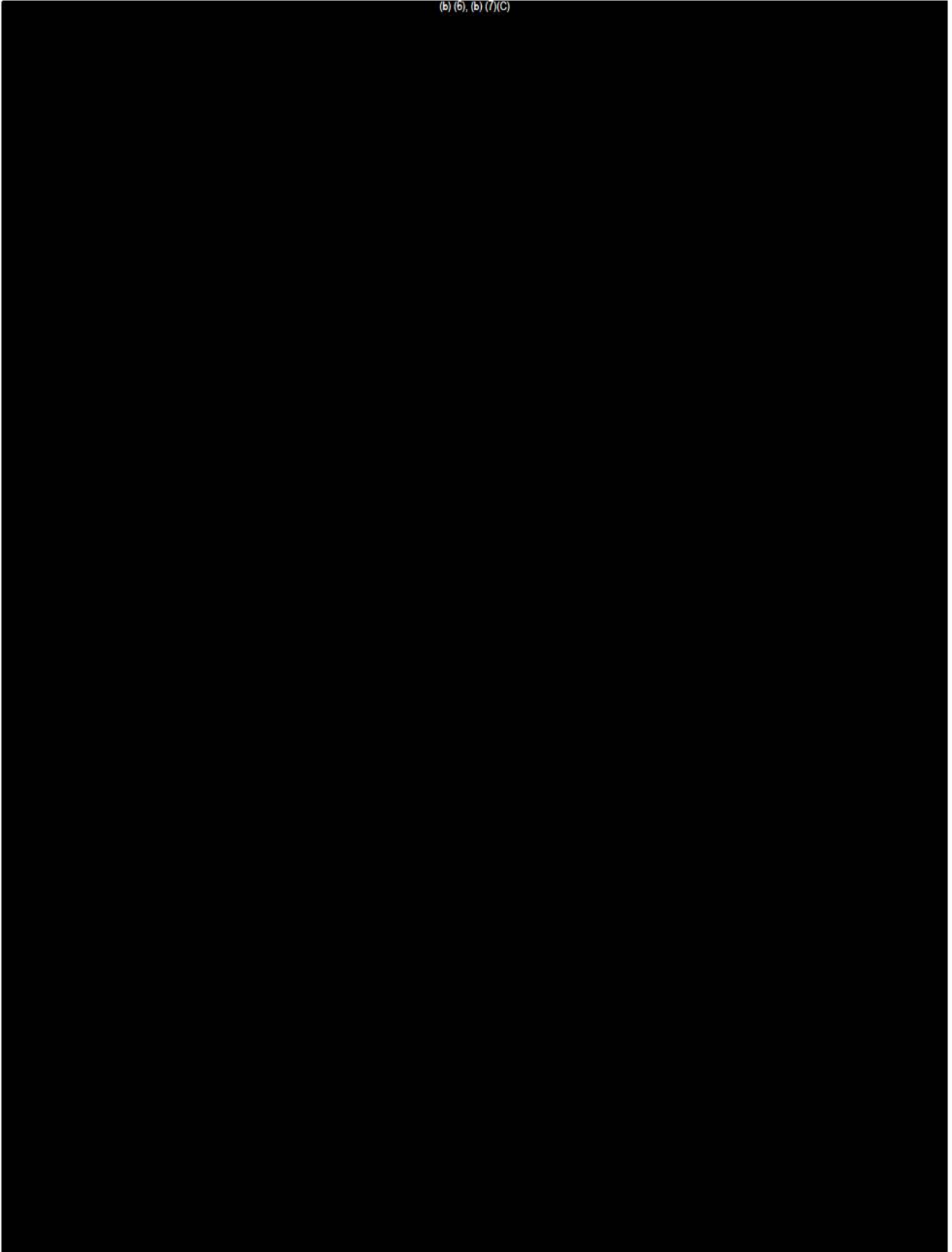
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(b) (6), (b) (7)(C)



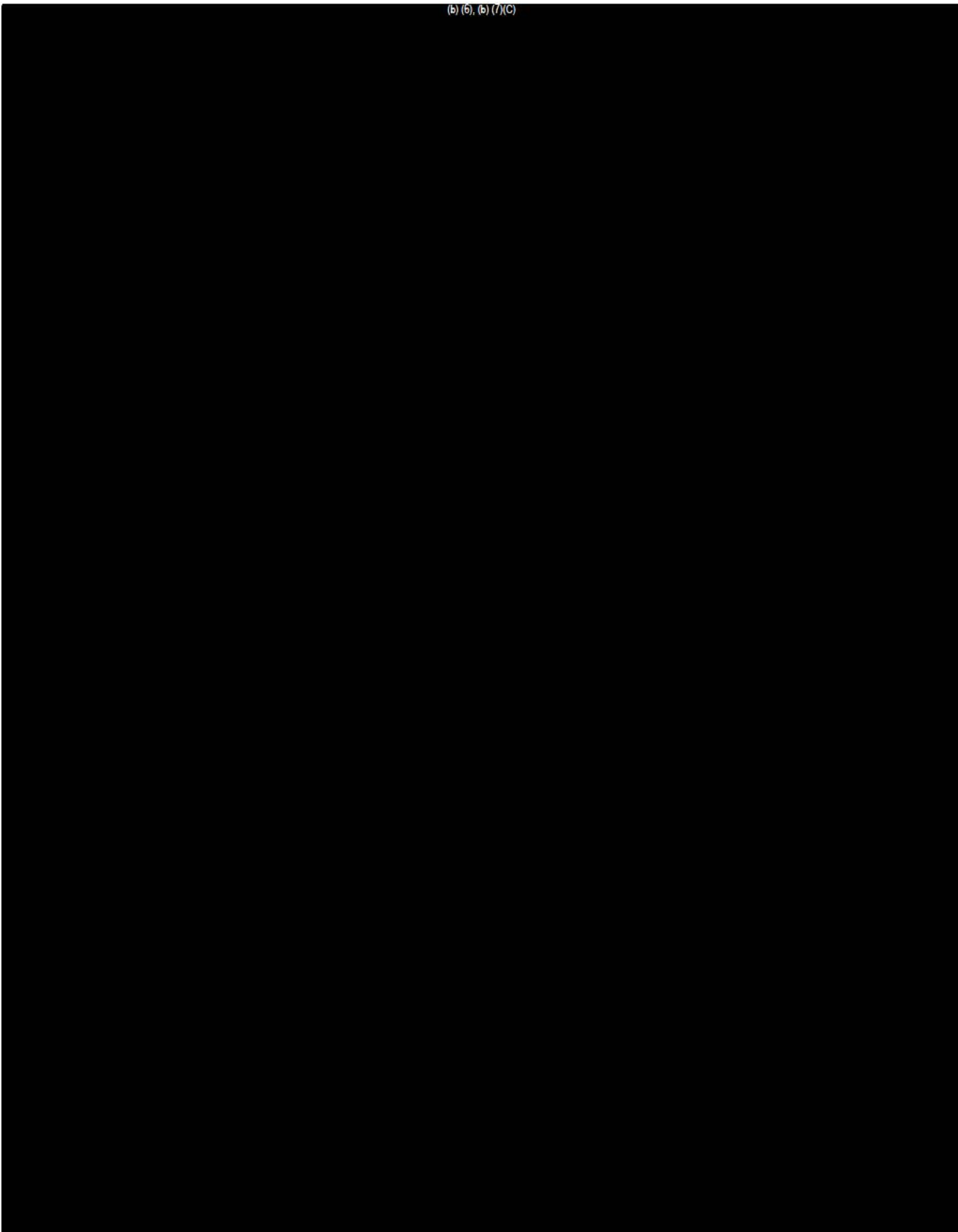
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(b) (5), (b) (7)(C)



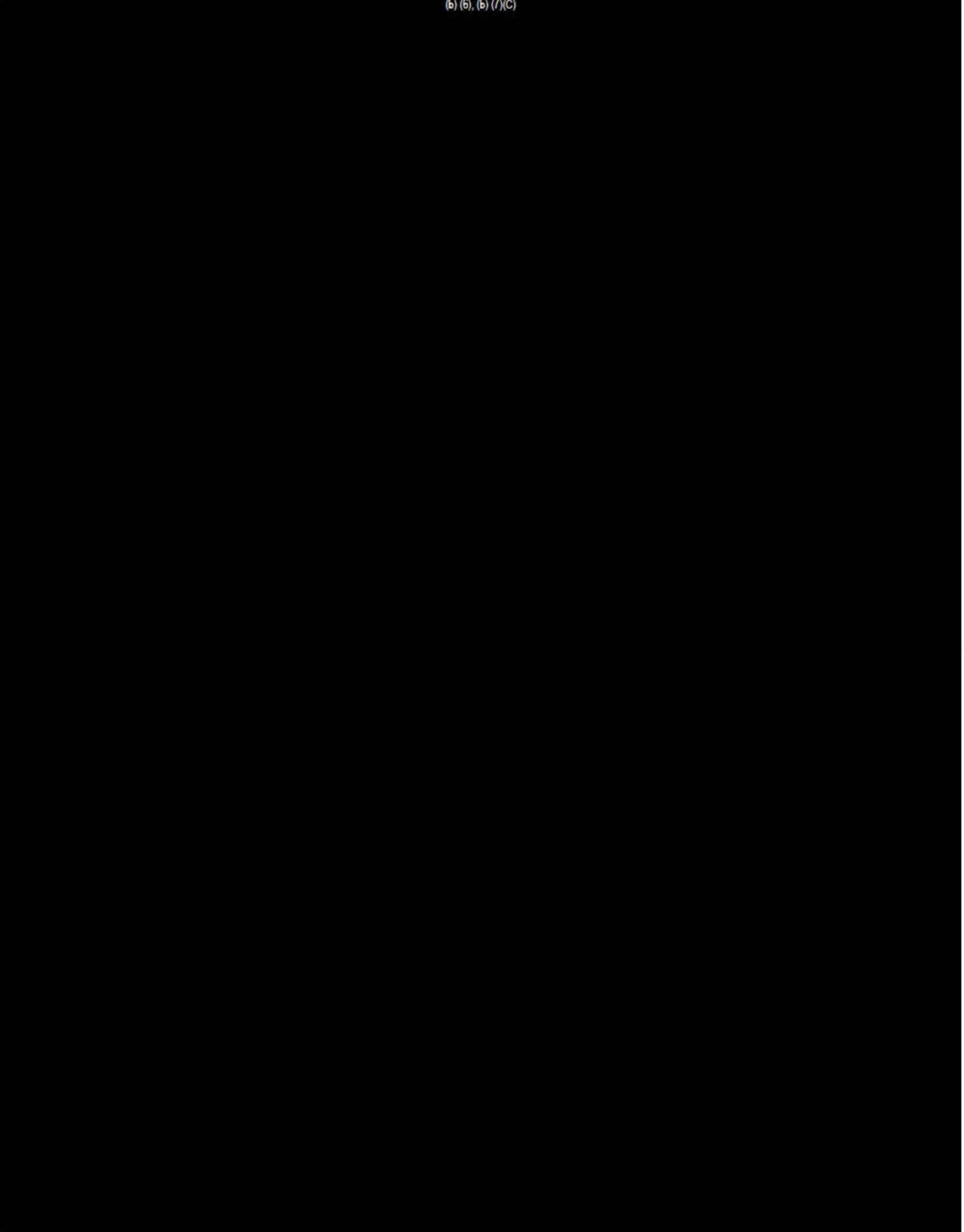
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(b) (5), (b) (7)(C)




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(b) (6), (b) (7)(C)



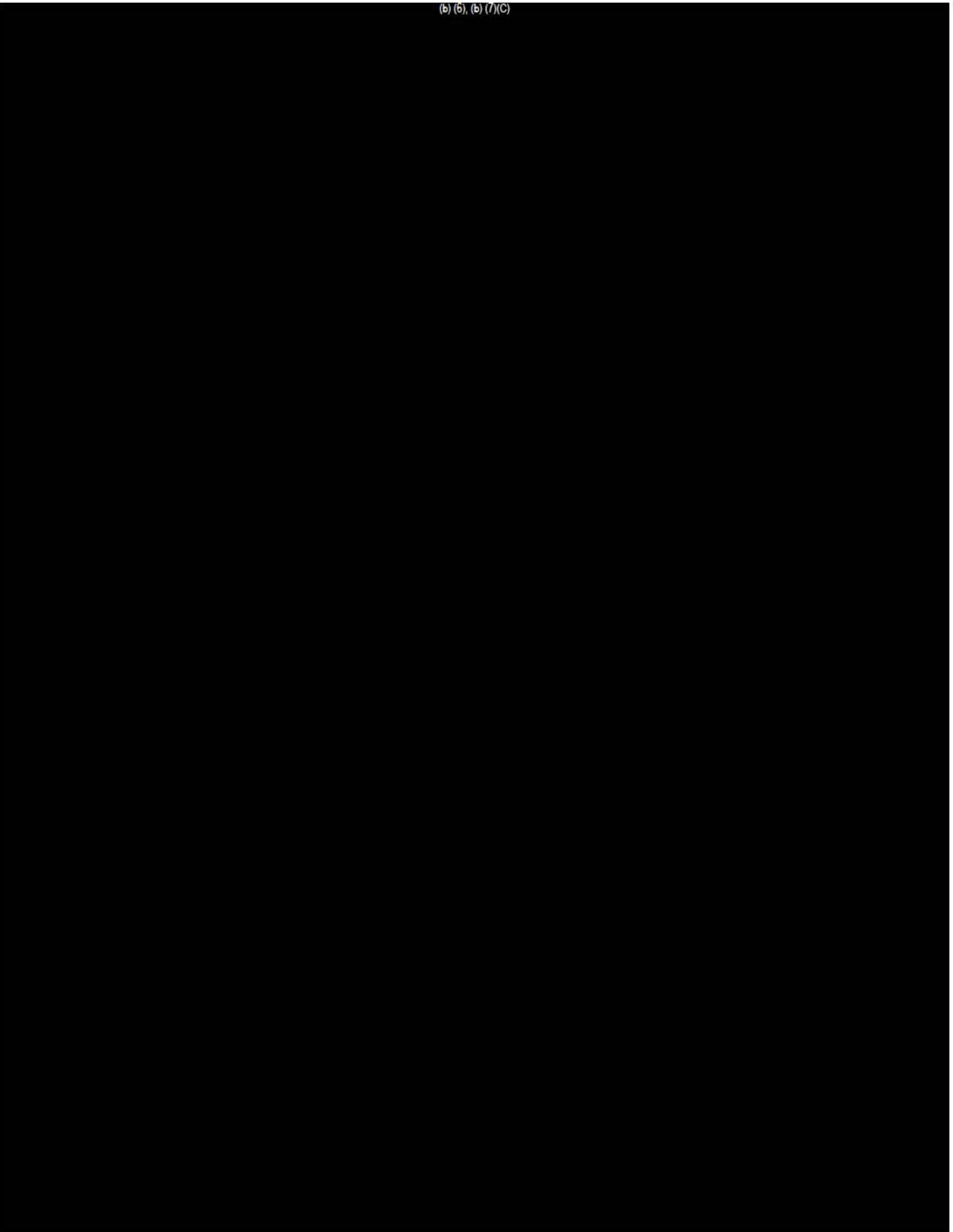
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(b) (6), (b) (7)(C)



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(b) (6), (b) (7)(C)



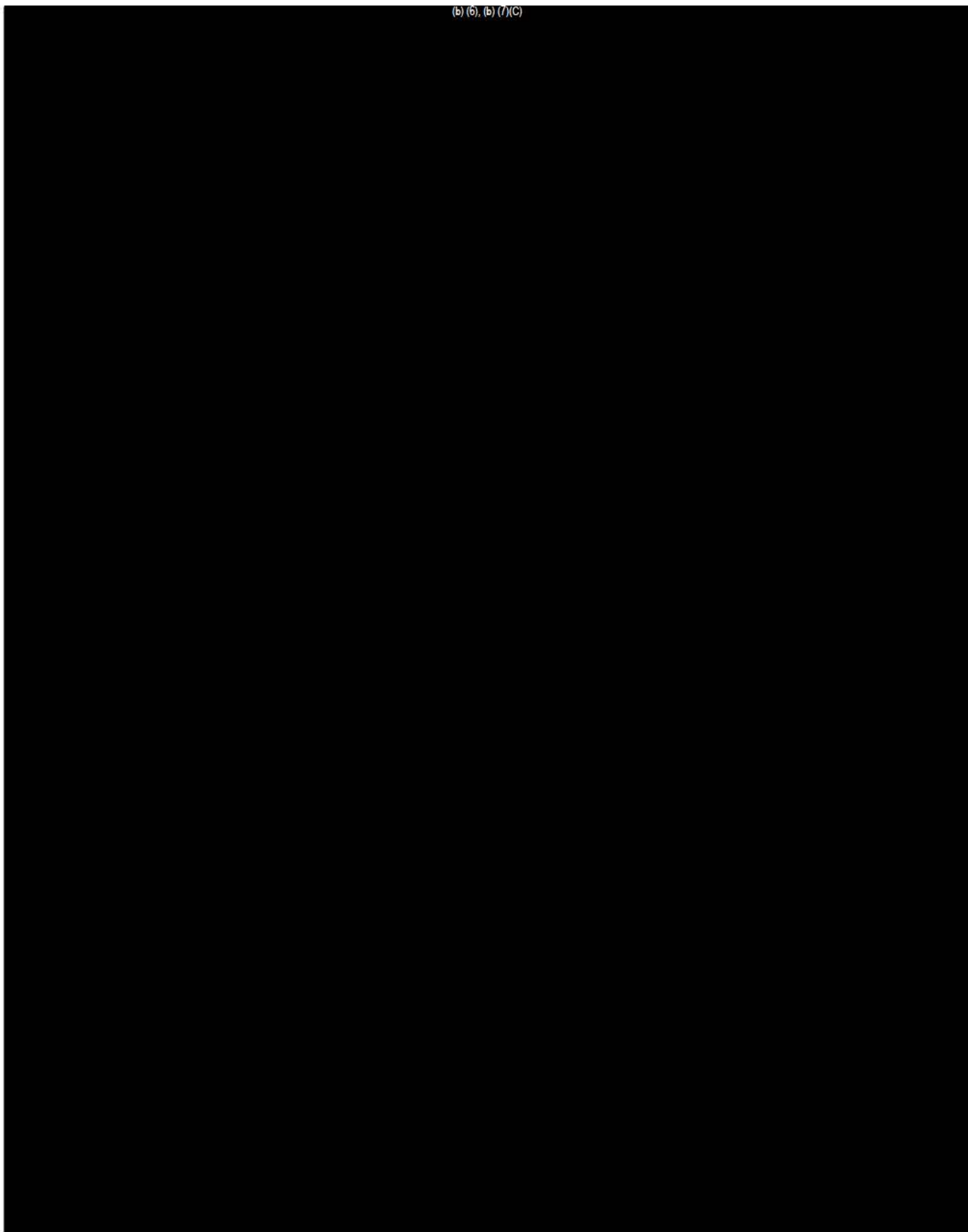
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(b) (6), (b) (7)(C)



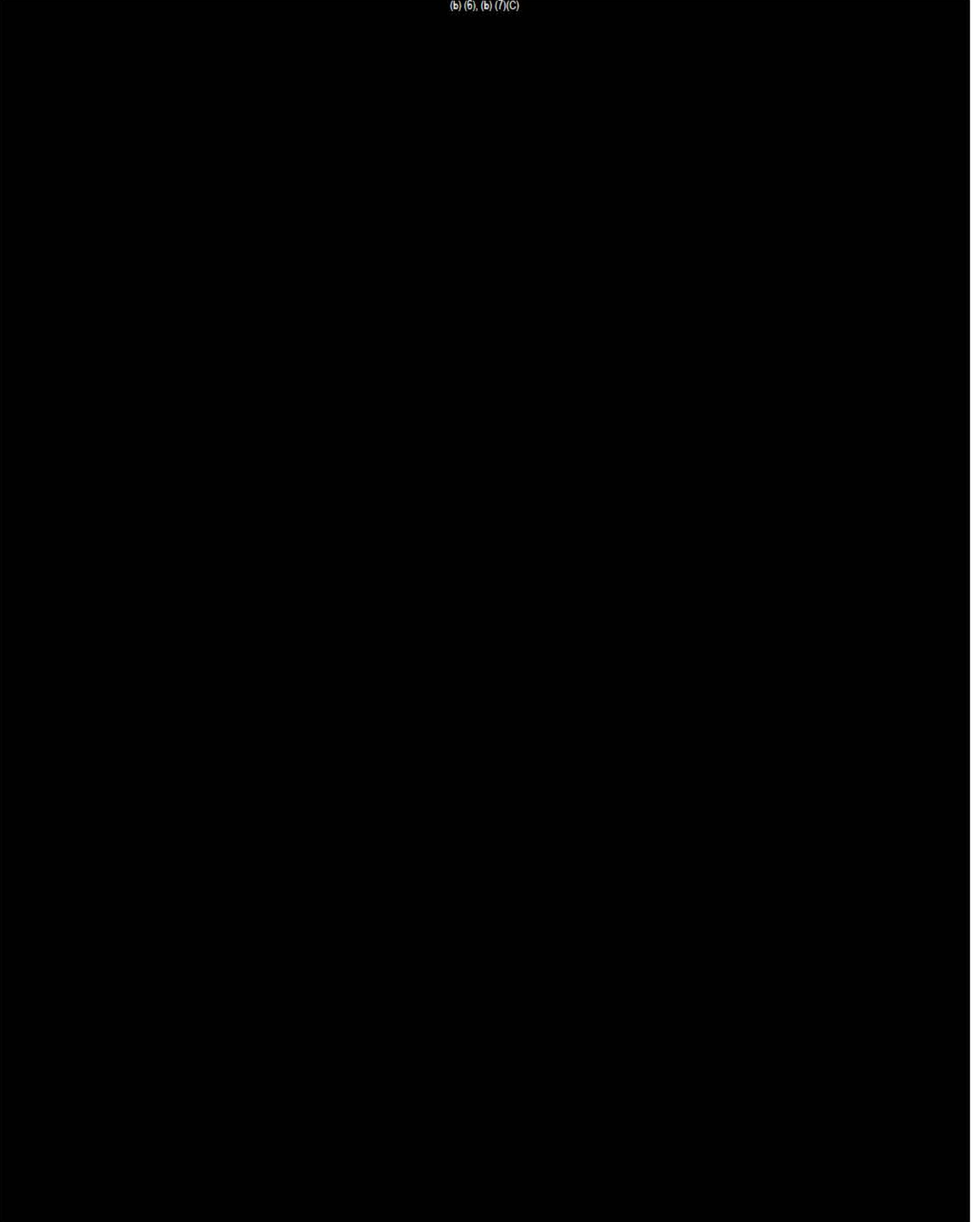
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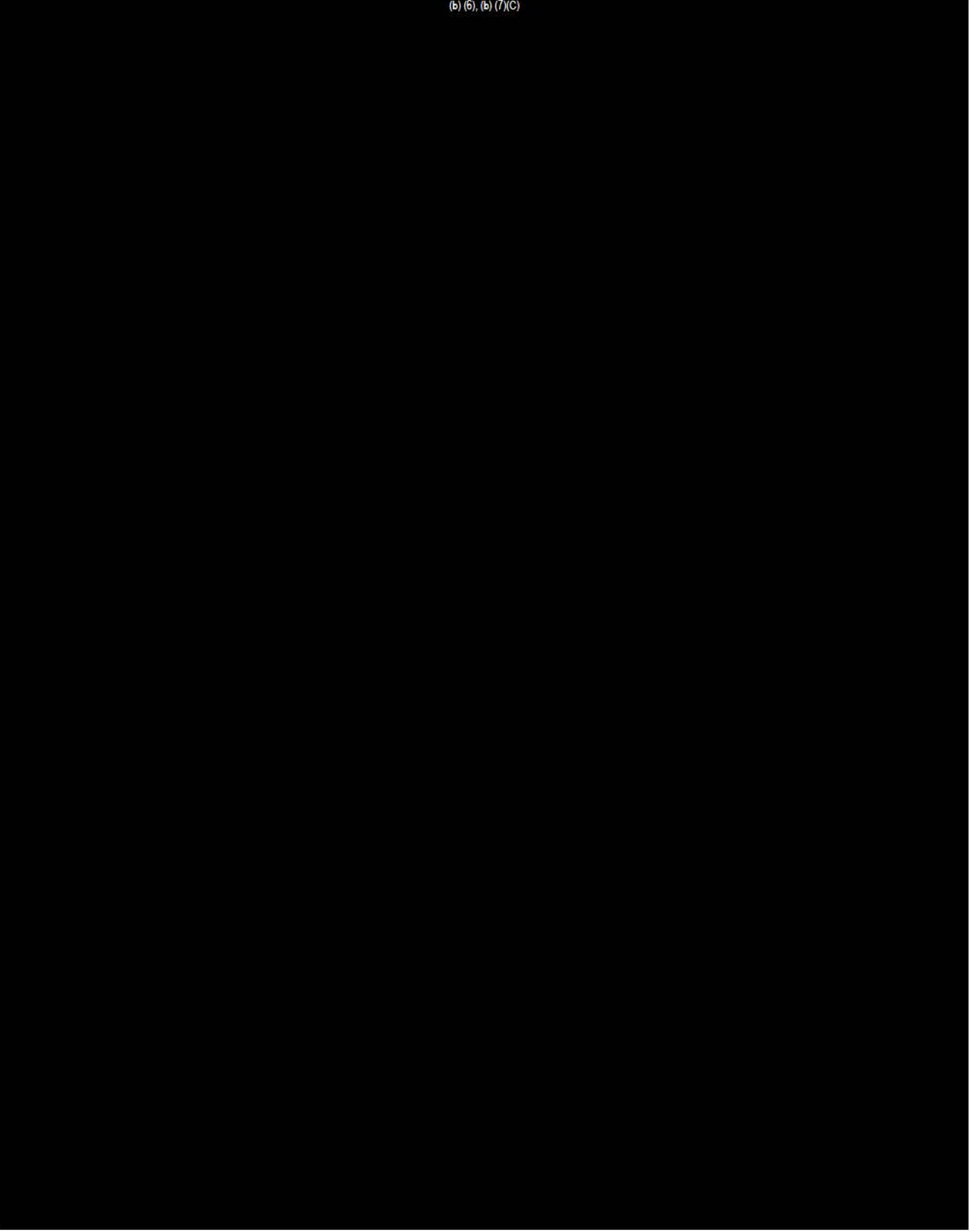
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(b) (6), (b) (7)(C)



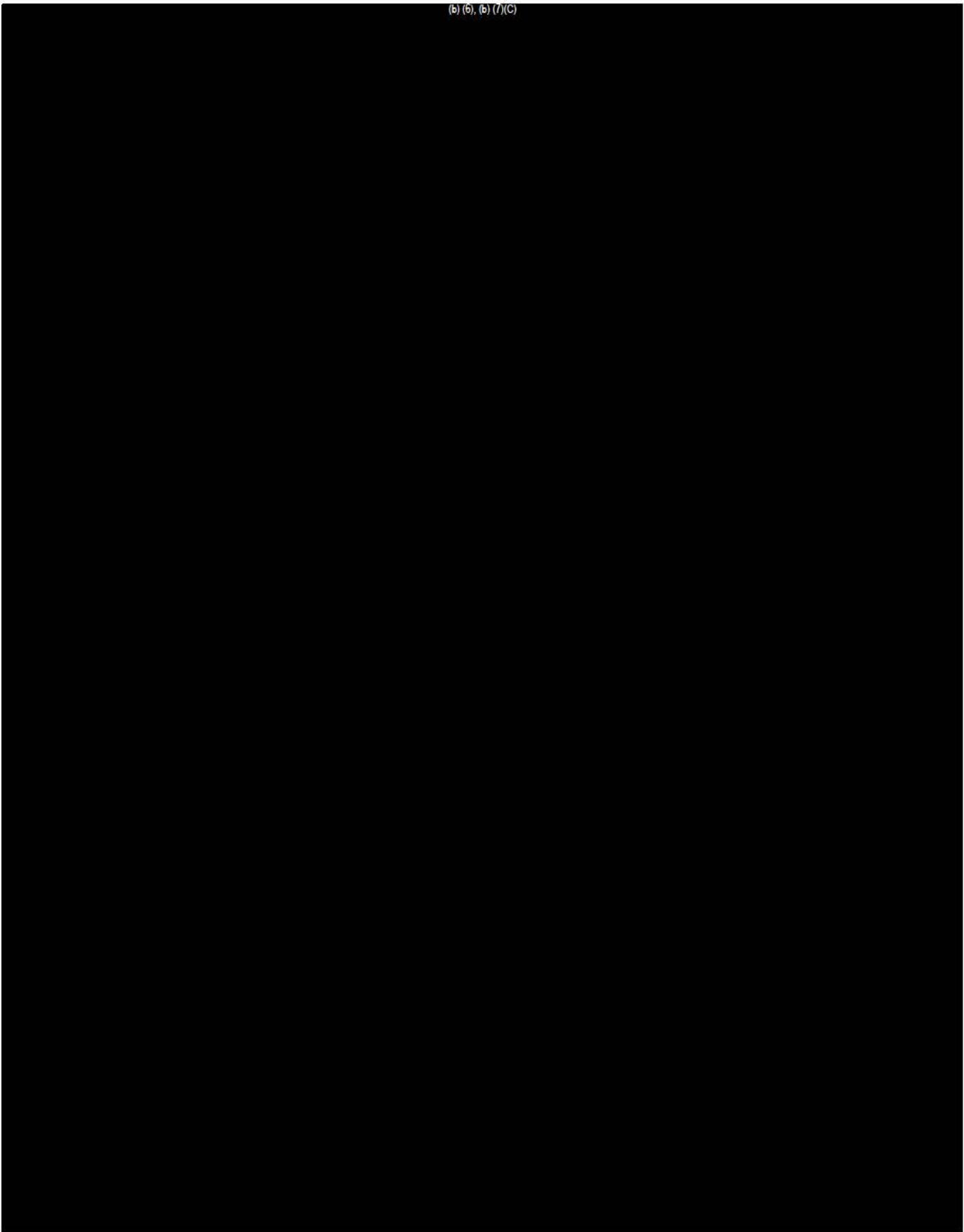
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(b) (6), (b) (7)(C)



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(b) (6), (b) (7)(C)



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(b)(6) (b)(7)(C)

V. OTHER MATTERS

During the conduct of the investigation, we questioned the use of a (b)(6) (b)(7)(C) position within PFPA, (b)(6) (b)(7)(C) for the Director. Mr. Calvery could not provide any written authorization for a (b)(6) (b)(7)(C) in accordance with DoD Publication 4500.36-R, paragraph C.2.2.2, and Appendix 1, paragraph AP1.2.9. Additionally, based on a position description for a (b)(6) (b)(7)(C) for the Director appears inconsistent with the duties and responsibilities associated with the grade of that position.

VI. CONCLUSIONS

A. Mr. Calvery misused his position by allowing (b)(6) (b)(7)(C) access to the PFPA firing range, and use of a PFPA weapon, ammunition, and two PFPA firearms instructors.

B. Mr. Calvery misused his subordinates by having his office staff order and pick up his lunch and retrieve coffee for him.

C. Mr. Calvery improperly authorized the use of Administrative Leave for the 2009 and 2010 PFPA Golf Tournaments.

D. Mr. Calvery engaged in a prohibited personnel practice by providing preferential treatment to a subordinate.

E. (b)(6) (b)(7)(C)

F. (b)(6) (b)(7)(C)

G. (b)(6) (b)(7)(C)

H. (b)(6) (b)(7)(C)

VII. RECOMMENDATIONS

A. The Director, Administration and Management, consider appropriate action regarding the substantiated allegations, to include recoupment of costs associated with (b)(6) (b)(7)(C) use of the PFPA firing range.

B. The Director, Administration and Management, consider appropriate action regarding the use of a (b)(6) (b)(7)(C) for the Director.

C. The DoD, Office of the Inspector General, will notify the U.S. Office of Special Counsel of the substantiated allegation concerning the prohibited personnel practice.

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20121204-000911



Inspector General
Department of Defense

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

NOV 19 2013

Ref: FOIA-2013-00373


OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it FOIA case number FOIA-2013-00373.

The enclosed Report of Investigation concerning Major General Frank J. Padilla is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(5), which pertains to certain inter- and intra-agency communications protected by the deliberative process privilege; 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number FOIA-2013-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,


Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

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H11121648

January 24, 2012

Inspector General

United States
Department of Defense



ALLEGED MISCONDUCT:
MAJOR GENERAL FRANK J. PADILLA
UNITED STATES AIR FORCE
FORMER COMMANDER, 10TH AIR FORCE

UNREDACTED ROI

Warning

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JAN 24 2012

ALLEGED MISCONDUCT
MAJOR GENERAL FRANK J. PADILLA
U.S. AIR FORCE RESERVE
FORMER COMMANDER 10th AIR FORCE
NAVAL AIR STATION JOINT RESERVE BASE
FORT WORTH, TEXAS

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that while serving as Commander, 10th Air Force, Major General (Maj Gen) Padilla:

- Improperly appointed his Inspector General (IG) as the Investigating Officer (IO) in a Commander-Directed Investigation (CDI), in violation of Air Force Instruction (AFI) 90-301, "Inspector General Complaints"; and

- (b)(6) (b)(7)(C)

We substantiated the first allegation. We conclude Maj Gen Padilla improperly appointed his IG as the IO in a CDI. We found that (b)(6) (b)(7)(C), United States Air Force Reserve (USAFR), served as the IG for the Headquarters, 10th Air Force. On May 17, 2010, Maj Gen Padilla appointed her to conduct a CDI into allegations made against (b)(6) (b)(7)(C) 306th Rescue Squadron (RQS). The AFI 90-301 in effect at that time prohibited commanders from using IGs and their staff members as IOs for CDIs. Accordingly, we determined Maj Gen Padilla violated the prohibition in AFI 90-301.

We did not substantiate the second allegation. (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

We provided Maj Gen Padilla the opportunity to comment on the preliminary results of our investigation by letter dated January 9, 2012. We received his response on January 12, 2012.¹ In his response, Maj Gen Padilla did not dispute the relevant facts we presented to him and accepted full responsibility for appointing (b)(6), (b)(7)(C) to conduct CDIs. He stated it was his understanding she had accomplished CDIs under a previous commander with the knowledge and tacit approval of Air Force Reserve Command (AFRC), so he elected to continue the practice. He further added that he found (b)(6), (b)(7)(C) report of investigation thorough, legally sufficient, and a solid foundation for the command actions he took in addressing (b)(6), (b)(7)(C) misconduct.

We appreciate Maj Gen Padilla's cooperation and timely response to the preliminary results of our investigation.

This report sets forth our findings and conclusions based upon a preponderance of the evidence.

¹ While we have included what we believe is a reasonable synopsis of Maj Gen Padilla's response, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments from the response throughout this report where appropriate and provided a copy of the response to the cognizant management officials together with this report.

II. BACKGROUND

Maj Gen Padilla commanded the 10th Air Force, Naval Air Station Joint Reserve Base at Fort Worth, Texas (TX) from May 2009 to November 2011. The 10th Air Force is one of three numbered air forces in the AFRC and includes a headquarters (HQ) staff, six fighter units, three rescue units, and other subordinate units. The command is responsible for more than 16,000 reservists and 940 civilians at 30 military installations throughout the United States.

Col Robert L. Dunn, USAFR, commanded the 920th Rescue Wing (RQW), a part of the 10th Air Force, until his retirement in September 2011. The 920th RQW is located at Patrick Air Force Base, Florida (FL). The 943rd Rescue Group (RQG), currently commanded by Col Harold L. Maxwell, USAFR, is part of the 920th RQW. The 306th RQS, an Air Force Reserve Combat Search and Rescue (CSAR) squadron, is part of the 943rd RQG. The 943rd RQG and 306th RQS are located at Davis-Monthan AFB, Arizona.

(b)(6) (b)(7)(C)

chain of command was Col Maxwell, Col Dunn, then Maj Gen Padilla.

The 306th RQS is a flying unit consisting of aircrew members (pilots, flight engineers, and pararescuemen) and various types of support personnel. Pararescuemen, or "PJs," are full-time AGR personnel. A PJ's mission is to recover downed and injured aircrew members in austere and non-permissive environments. PJs are trained to provide emergency medical treatment necessary to stabilize and evacuate injured personnel while acting in an enemy evading recovery role.

III. SCOPE

We interviewed the complainant, Maj Gen Padilla and two other individuals who had knowledge of the events at issue. We reviewed the IO appointment, CDI, personnel records, and other relevant documentation. We also reviewed Air Force instructions, and guidance the Air Force published for IOs conducting CDIs.

(b)(6) (b)(7)(C)

IV. FINDINGS AND ANALYSIS

A. Did Maj Gen Padilla improperly appoint his IG to conduct a CDI?

Standards

Air Force Instruction (AFI) 90-301, "Inspector General Complaints Resolution," dated May 15, 2008

Chapter 1, Section 1.31, "Commander-Directed Investigations (CDIs)," states, in part, that the primary purpose of a CDI is to gather, analyze and record relevant information about matters of primary interest to command authorities. Commanders should consult with their staff judge advocate before initiating a CDI. Commanders will not appoint IGs or IG staff members as inquiry or investigation officers for CDIs.

Facts

(b) (6), (b) (7)(C) has served as the 10th Air Force IG as a traditional reservist since 2008.² (b) (6), (b) (7)(C), confirmed, that numbered air forces in the AFRC were not authorized an IG. If a commander wanted an IG, he or she had to take an asset out of an existing personnel authorization. The Unit Manning Document (UMD) and (b) (6), (b) (7)(C) most recent OPR identified her as the "Special Assistant to the Commander, IG." Both documents indicated her Duty Air Force Specialty Code (DAFSC) as 87G (IG). Her OPR listed one of her duties as developing methods and control procedures to implement IG policies, and directing, conducting, and monitoring IG programs. Further, the 10th Air Force Staff Directory identified (b) (6), (b) (7)(C) as the IG.

(b) (6), (b) (7)(C) However, Maj Gen Padilla appointed her to conduct several CDIs, probably because she had been trained to conduct investigations.

In an email dated May 7, 2010, Col Maxwell asked Maj Gen Padilla for assistance in initiating a CDI into allegations of (b) (6), (b) (7)(C). Col Maxwell explained he had no one of sufficient rank available to serve as the IO. By appointment letter dated May 17, 2010, Maj Gen Padilla appointed (b) (6), (b) (7)(C) to conduct a CDI into allegations (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) completed the CDI on July 13, 2010.

Maj Gen Padilla testified (b) (6), (b) (7)(C) and served as a (b) (6), (b) (7)(C) at Fort Worth. He did not view her as the IG with responsibility for the

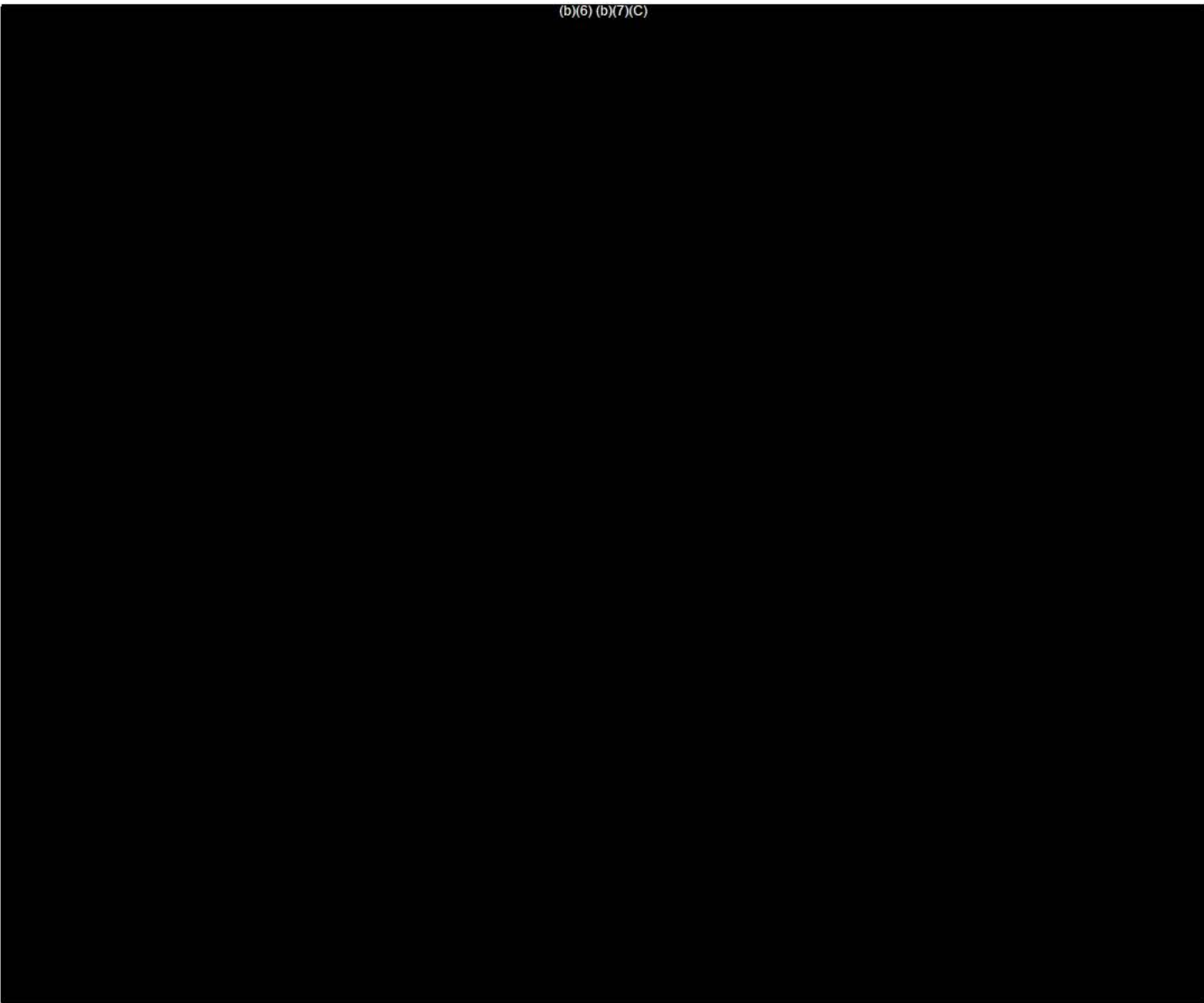
² A traditional reservist typically reports for duty one weekend each month and completes two weeks of annual training a year.

10th Air Force's subordinate units, which reported IG matters directly to the IG, AFRC. He knew (b) (6), (b) (7)(C) had experience in conducting CDIs, was extremely thorough, had enormous flexibility from her civilian job as a realtor, and as a traditional reservist she was always looking for man-days to perform extra work and special projects. He admitted to occasionally appointing her as the IO to conduct CDIs.

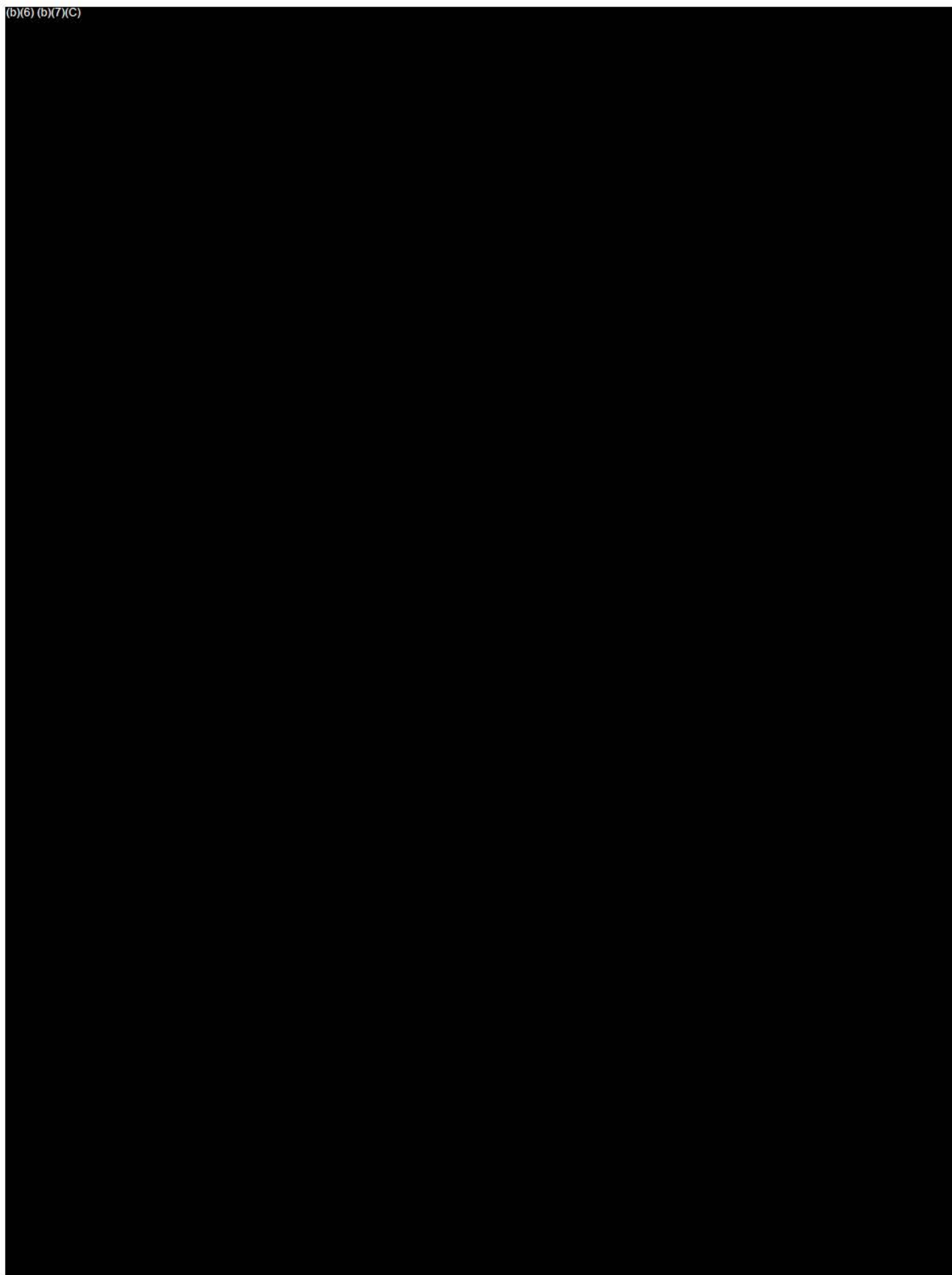
Discussion

We conclude that Maj Gen Padilla improperly appointed his IG as the IO in a CDI. We found (b) (6), (b) (7)(C) OPR, the UMD, and the staff directory identified (b) (6), (b) (7)(C) as the IG and that Maj Gen Padilla recognized her as the IG for his HQ staff. We also found Maj Gen Padilla appointed (b) (6), (b) (7)(C) to conduct a CDI. AFI 90-301, "Inspector General Complaints Resolution," prohibited commanders from using IGs and their staff members as IOs for CDIs.³

(b)(6) (b)(7)(C)

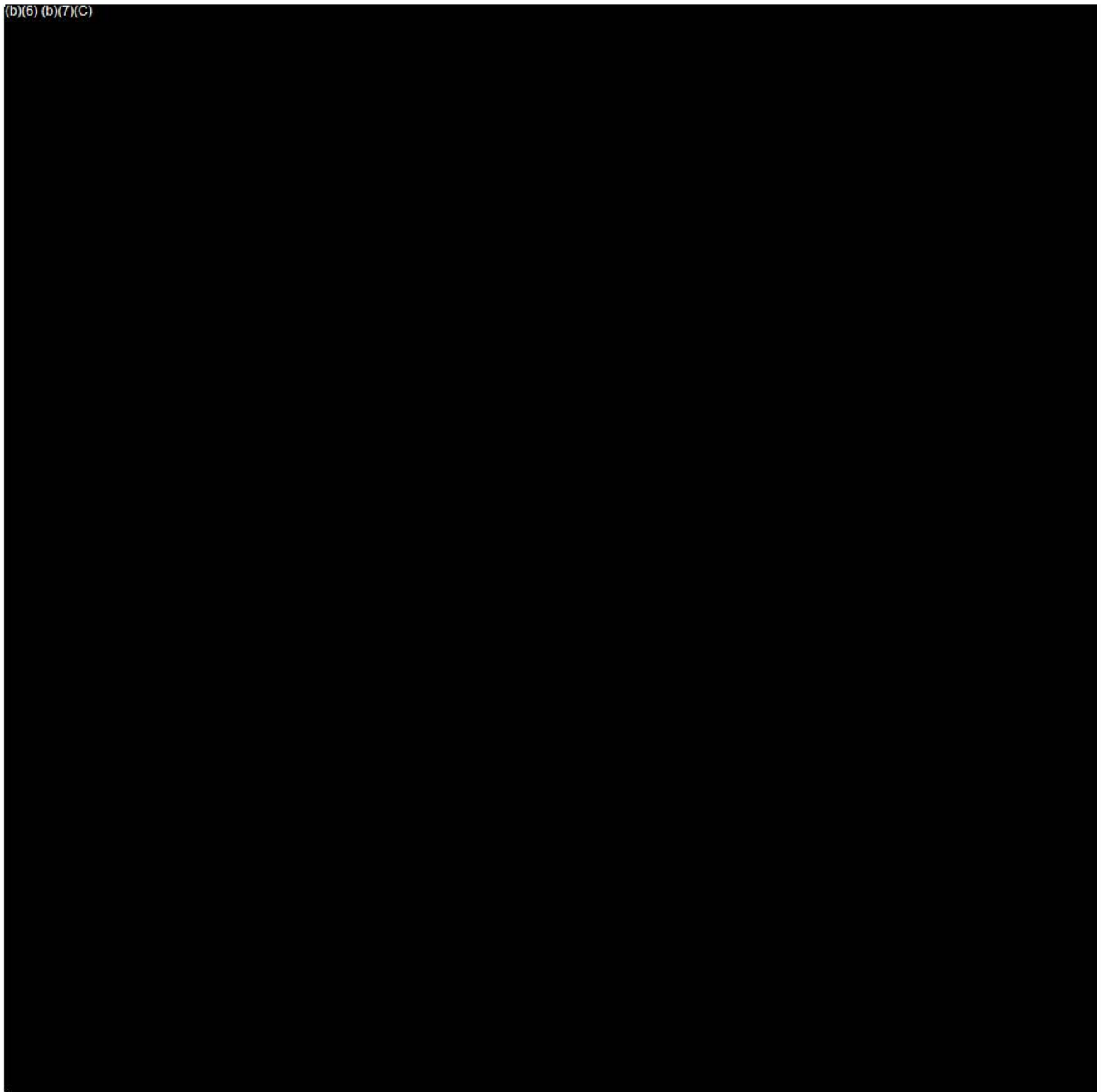


(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)



Appointment and Conduct of CDI

Maj Gen Padilla stated he required his commanders to keep him informed of alleged officer misconduct, but he did not as a rule withhold the authority to dispose of officer misconduct at his level. In this case, Col Maxwell asked Maj Gen Padilla for assistance in initiating a CDI into the allegations against (b)(6) (b)(7)(C). Maj Gen Padilla stated Col Maxwell was uncomfortable investigating allegations which had the potential to reflect negatively on his

(b)(6) (b)(7)(C)



superior, Col Dunn, since (b)(6) (b)(7)(C) misconduct allegedly occurred when Col Dunn, not Col Maxwell, commanded the 943rd RQG. Given these circumstances, Maj Gen Padilla decided to direct the investigation. On May 17, 2010, he appointed (b)(6) (b)(7)(C) as the IO for the CDI.

Maj Gen Padilla identified (b)(6) (b)(7)(C) (b)(6) (b)(7)(C), as (b)(6) (b)(7)(C). On May 20, 2010, two junior officers from the 306th RQS reported additional allegations against (b)(6) (b)(7)(C) to Col Maxwell. Maj Gen Padilla then expanded the scope of the CDI from 4 allegations to an investigation of 14 allegations.


On June 4, 2010, Col Maxwell, with (b)(6) (b)(7)(C) as a witness, advised (b)(6) (b)(7)(C) in writing that Maj Gen Padilla had directed a CDI concerning allegations of misconduct in the 306th RQS and that (b)(6) (b)(7)(C) was the investigating officer. (b)(6) (b)(7)(C) acknowledged the advisement by written endorsement on June 5, 2010.

(b)(5), (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

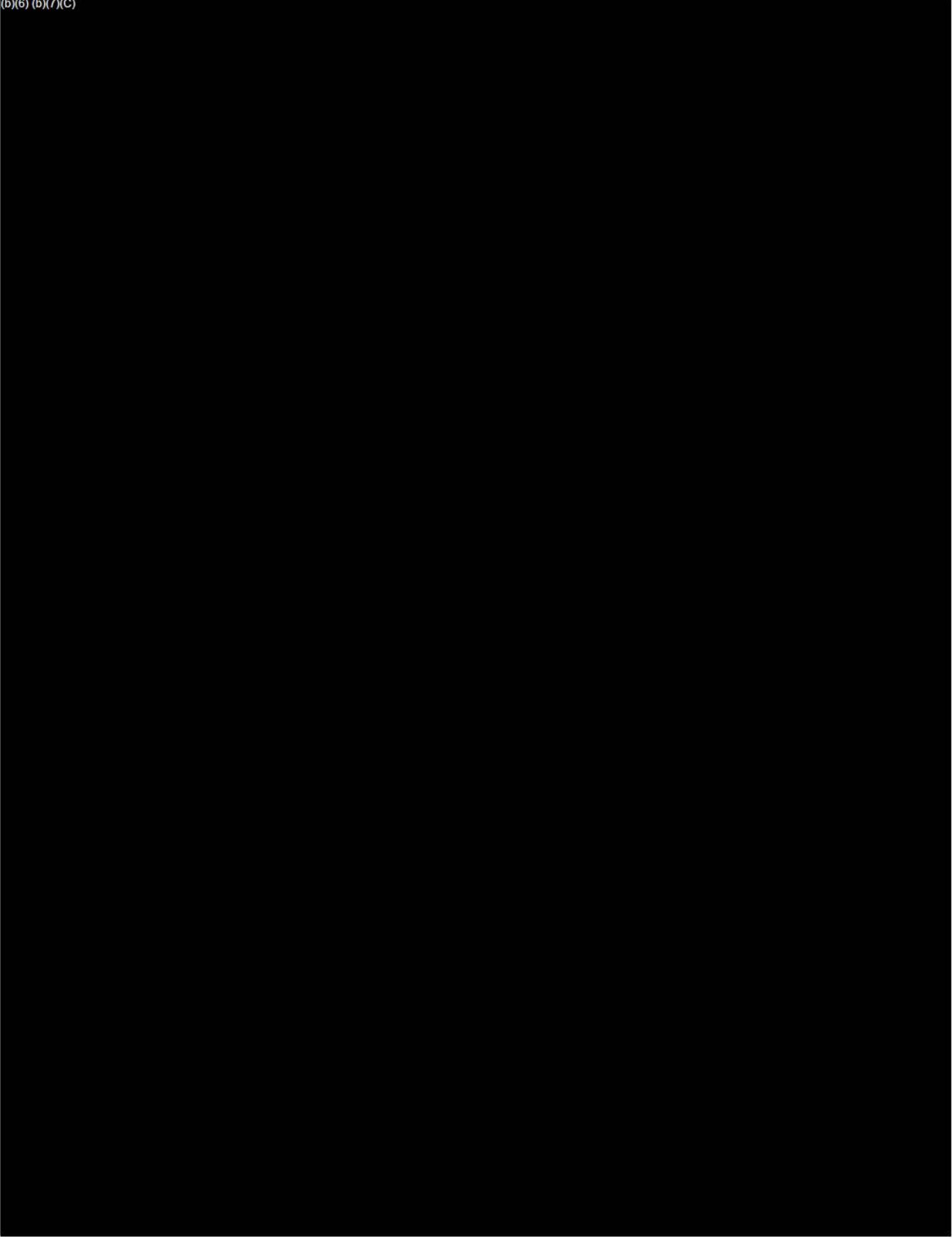
(b)(5), (b)(6) (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C)



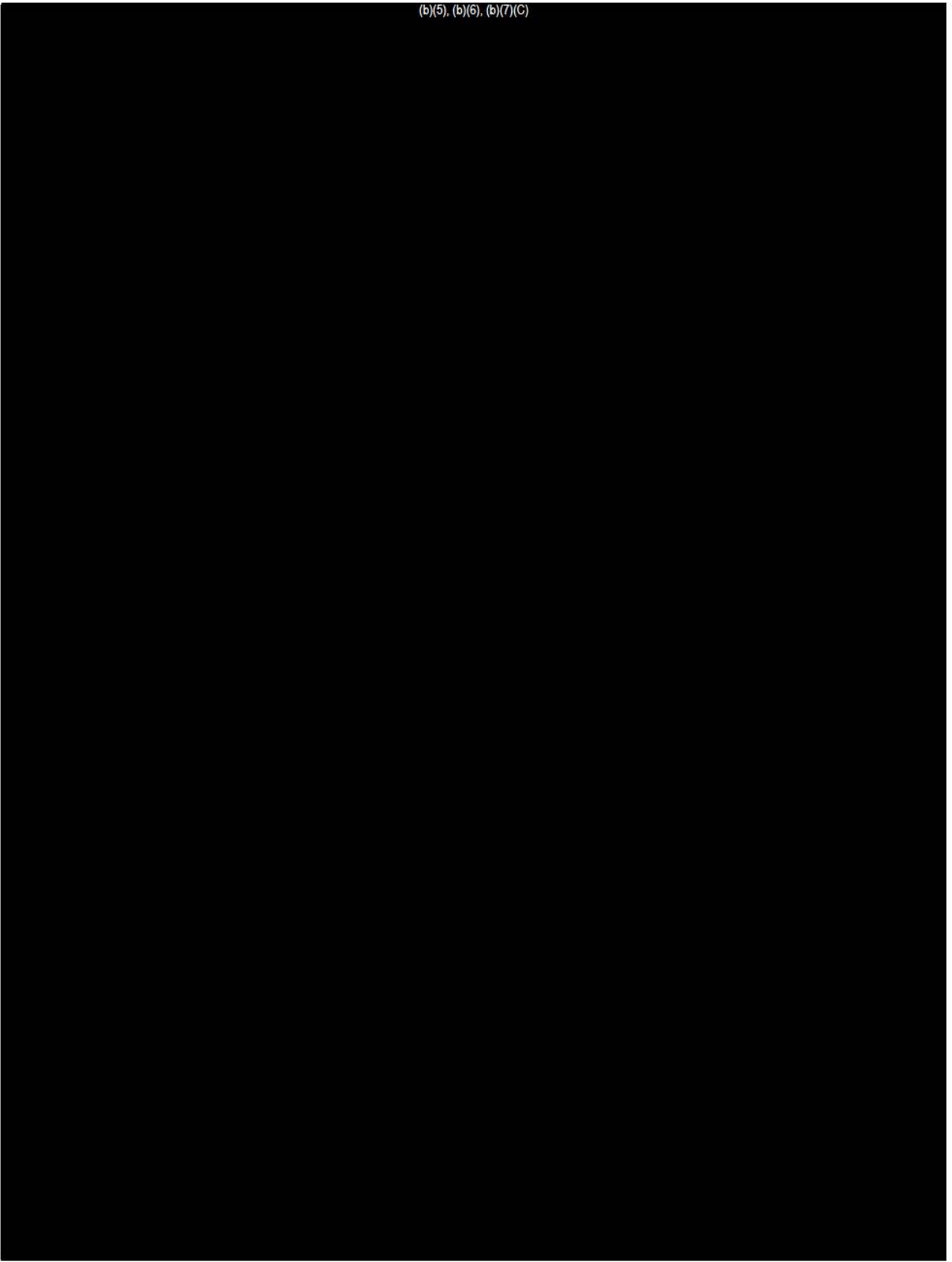
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(b)(6) (b)(7)(C)




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(b)(5), (b)(6), (b)(7)(C)



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(b)(5), (b)(6), (b)(7)(C)



V. CONCLUSIONS

A. Maj Gen Padilla improperly appointed his IG to serve as an investigating officer in a CDI.

B. (b)(6) (b)(7)(C)



VI. RECOMMENDATION

The Secretary of the Air Force consider appropriate corrective action with respect to Maj Gen Padilla.

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