

Approved: Randall W. Jackson  
RANDALL W. JACKSON/DANIEL C. RICHENTHAL  
Assistant United States Attorneys

Before: HONORABLE DEBRA FREEMAN  
United States Magistrate Judge  
Southern District of New York

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UNITED STATES OF AMERICA : SEALED AMENDED COMPLAINT  
  
v. : Violations of  
18 U.S.C. §§ 2, 1341, 1343,  
JOSEPH LOMBARDO and : 1349, and 1512(c)  
CAROLYN KAUFMAN, :  
County of Offense:  
New York  
Defendants. :

- - - - - X

SOUTHERN DISTRICT OF NEW YORK, ss.:

KENNETH JACOUTOT, being duly sworn, deposes and says that he is a Special Agent with the United States Department of Labor, Office of the Inspector General ("DOL"), and charges as follows:

COUNT ONE

1. From at least in or about May 2011 up to and including in or about March 2013, in the Southern District of New York and elsewhere, JOSEPH LOMBARDO, the defendant, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, willfully and knowingly, did, for the purpose of executing such scheme and artifice and attempting to do so, deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, to wit, LOMBARDO attempted to execute a scheme to defraud the National Basketball Players Association ("NBPA") through the use of a fraudulent \$3 million contract between the NBPA and Prim Capital Corporation, a company founded and managed by LOMBARDO, and the use of commercial interstate carriers.

(Title 18, United States Code, Sections 1341, 1349 and 2.)

## COUNT TWO

2. From at least in or about May 2011 up to and including in or about March 2013, in the Southern District of New York and elsewhere, JOSEPH LOMBARDO, the defendant, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses, representations and promises, willfully and knowingly, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, LOMBARDO attempted to execute in a scheme to defraud the NBPA through the use of a fraudulent \$3 million contract between the NBPA and Prim Capital Corporation and the use of interstate telephone calls and emails.

(Title 18, United States Code, Sections 1343, 1349 and 2.)

## COUNT THREE

3. From at least in or about May 2012 up to and including in or about March 2013, in the Southern District of New York and elsewhere, JOSEPH LOMBARDO and CAROLYN KAUFMAN, the defendants, willfully, knowingly and corruptly attempted to and did conceal a document with the intent to impair the document's availability for use in an official proceeding, and corruptly attempted to and did obstruct, influence, and impede an official proceeding, to wit, LOMBARDO and KAUFMAN concealed the existence of a fraudulent \$3 million contract between the NBPA and Prim Capital and provided false testimony regarding the creation and concealment of the contract to a grand jury sitting in the Southern District of New York.

(Title 18, United States Code, Sections 1512(c) and 2.)

The bases for my knowledge and the foregoing charge are, in part, as follows:

4. I have been a Special Agent with the United States Department of Labor, Office of the Inspector General since 2005. Since joining DOL, I have conducted numerous investigations of unlawful criminal activity, and have conducted or participated in the execution of search warrants, debriefings of witnesses, and reviews of documents, recordings and other evidence. I have been involved personally in the investigation of this matter. I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, including interviews I have conducted, my examination of reports and records, and my

conversations with witnesses and other law enforcement officers. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

#### BACKGROUND

5. In 2012, DOL began an investigation regarding possible criminal activity at the National Basketball Players Association ("NBPA"), the registered union of the players of the National Basketball Association ("NBA"). The investigation revealed that since at least in or about 2001, Prim Capital Corporation ("Prim") had been performing various services for the NBPA. The investigation also revealed that Prim was the primary outside vendor entrusted with the NBPA's investments and finances. Based in Ohio, Prim has been headed since its founding by JOSEPH LOMBARDO, the defendant, and has less than ten employees. In September of 2005, the NBPA entered into a formal contractual relationship with Prim, under which Prim was to provide various financial services (the "2005 Contract"). The terms of the 2005 Contract provided that, among other things, Prim would: (i) conduct financial seminars for all thirty NBA teams; (ii) review the performance of the investments related to the NBPA 401(k) plan; (iii) assist the Chief Financial Officer of the NBPA in evaluating and monitoring investments; (iv) review financial services and investments of individual NBA players; and (v) provide various other services to the NBPA and its members. The contract provided that, "[i]n exchange for Prim providing these services, the NBPA shall pay Prim an annual fee of \$350,000," and that the term of the agreement was from the date of execution until June 30, 2006. The contract further provided that the NBPA would have the option of extending the contract "from year to year by serving written notice on Prim by May 31st of each year." The contract also provided that "[t]ermination of this Agreement . . . may be for any reason, as determined in the sole and absolute discretion of the terminating party" and that the agreement could be terminated upon the occurrence of any of several specified events. The contract was signed by the Executive Director of the NBPA, the Secretary/Treasurer of the NBPA, and JOSEPH LOMBARDO, the defendant.

6. I have spoken with a number of current and former employees of the NBPA and Prim. Based on these interviews, I am aware that, after the execution of the 2005 Contract, Prim provided services to the NBPA pursuant to the 2005 Contract.

Furthermore, although no written extension of the 2005 Contract was ever executed, Prim continued to provide services beyond the June 30, 2006 termination date through 2012. Moreover, in certain of the years after 2006, Prim received compensation from the NBPA exceeding the \$350,000 amount specified in the 2005 Contract.

#### THE INVESTIGATION

7. On or about May 16, 2012, DOL served a grand jury subpoena on Prim requiring a representative of the company to appear and produce certain materials to a grand jury in the Southern District of New York. Among other things, the subpoena required Prim to produce all agreements between Prim and the NBPA. The subpoena also required the production of various financial records related to Prim's relationship with the NBPA, and "[a]ll correspondence related to the above-referenced records, including e-mails, memoranda, notes, files, or records relating to meetings [or] conversations concerning the NBPA and its financial records."

8. In response to the subpoena, later in 2012, Prim produced a set of records, including numerous e-mails between employees of Prim and employees of the NBPA, as well as two recorded telephone calls between JOSEPH LOMBARDO, the defendant, and other individuals. This set of records also included the 2005 Contract. Prim did not produce any other contracts between the NBPA and Prim at this time.

9. In 2012, the NBPA retained a law firm ("the Law Firm") to conduct an internal review of the NBPA. During the course of this internal review, representatives of the Law Firm interviewed a number of NBPA employees and certain employees of Prim, collected and reviewed records maintained by the NBPA and Prim. In January 2013, the Law Firm indicated to various employees at the NBPA that it was in the final stages of its review and planned to release a report on its findings in the near future.

10. On or about January 15, 2013, Prim produced to DOL's office in New York, New York, a copy of a contract between Prim and the NBPA, which purported to have been executed in March of 2011 (the "Purported 2011 Contract"). On the same day, Prim produced a copy of this contract to the Law Firm's office in New York, New York. In 2012, the Law Firm had requested copies of any agreements between Prim and the NBPA. Prim sent these documents to DOL and the Law Firm via Federal Express. The previous day, Prim sent an e-mail to representative of the Law Firm indicating

that the Federal Express package was forthcoming. The general structure and language of the Purported 2011 Contract appeared to be similar to that of the 2005 Contract. Several important aspects of the Purported 2011 Contract, however, were different, including the following:

a. As noted above, the signatories for the 2005 Contract had been the Executive Director of the NBPA, the Treasurer/Secretary of the NBPA, and JOSEPH LOMBARDO, the defendant. The signatories, however, for the Purported 2011 Contract were Gary Hall, the former General Counsel of the NBPA, Purvis Short, the Director of Player Programs for the NBPA, and JOSEPH LOMBARDO, the defendant. Thus, the highest ranking employee of the NBPA and the NBA player elected to oversee the union's finances approved the 2005 Contract. For the Purported 2011 Contract, however, no NBA player/NBPA officer served as a signatory; only two lower-ranking members of the NBPA staff apparently served as signatories.

b. As described above, the term of the 2005 Contract was one year, with an option for an annual one-year renewal going forward. Under the terms of the Purported 2011 Contract, the term of the agreement was "five years from the date of execution." The fee charged by Prim, moreover, had almost doubled, rising to \$602,000 per year from \$350,000 per year.

c. Under the terms of the 2005 Contract, Prim had been required to maintain liability insurance "in an amount not less than \$5 million." The terms of the 2005 Contract further required that the insurer have a specified rating and indicated that the NBPA had the right to terminate the contract if Prim failed to deliver a certificate of acceptable insurance coverage within 30 days of the execution of the contract. Under the terms of the Purported 2011 Contract, Prim was required only to obtain and maintain "liability insurance in an amount not less than \$1.0 million." Thus, in spite of the substantially larger payments to Prim under the Purported 2011 Contract, Prim was required to maintain only one-fifth of the insurance coverage it previously had been required to maintain. Moreover, the Purported 2011 Contract included no provisions specifying the required rating of the insurer, the timeline under which insurance had to be obtained, or the right of the NBPA to terminate the contract if appropriate insurance was not obtained.

d. Finally, while the 2005 Contract had been terminable for "any reason," including several specified reasons, the Purported 2011 Contract included a provision which stated,

"[t]his agreement cannot be cancelled or revoked while in effect for any reason by the NBPA."

11. Upon examination of the Purported 2011 Contract, several factors indicated that the signature for Gary Hall, the former General Counsel of the NBPA, may be fraudulent. First there was a significant delay between the purported execution date of the contract and the date on which it was ultimately disclosed. The contract was purportedly signed on March 2, 2011. Gary Hall passed away on or about May 16, 2011. Prim, however, did not produce the contract to the Law Firm or to DOL until January of 2013. Second, I have spoken with employees of the finance department of the NBPA, and none were aware of the existence of the Purported 2011 Contract during the time when Mr. Hall was alive; indeed, none had seen it until Prim produced it in 2013. Third, I have reviewed Gary Hall's actual signature on several documents he executed in his capacity as General Counsel for the NBPA. The signature on the Purported 2011 Contract bears no resemblance to the authentic Gary Hall signatures I have reviewed.

#### LOMBARDO'S GRAND JURY TESTIMONY

12. In January of 2013, JOSEPH LOMBARDO, the defendant, appeared before a grand jury in the Southern District of New York and provided sworn testimony under penalty of perjury. I have reviewed a transcript of this appearance. After being advised of his rights before the grand jury, LOMBARDO made a number of statements with regard to the creation of the Purported 2011 Contract and to the intentional withholding of the contract from DOL after Prim was served with a subpoena in May of 2012. Among other things, LOMBARDO testified, in sum and substance unless otherwise quoted, that:

a. At any given time during their financial relationship, Prim had helped manage as much as \$250,000,000 for the NBPA.

b. During the time period that LOMBARDO negotiated the contract, the only NBPA employee with whom he had spoken about the details of the contract was Gary Hall. Although LOMBARDO was purportedly negotiating the details of a sensitive multimillion dollar contract, all of LOMBARDO's communications with Hall had been over the phone or in person, and there had been no e-mails, faxes or letters between him and Hall.

c. After LOMBARDO and Gary Hall verbally agreed on the terms of the Purported 2011 Contract, LOMBARDO asked Hall,

"Who do you want on [the contract]?" and Hall allegedly responded: "Put Purvis on and put me on," as signatories for the Purported 2011 Contract. LOMBARDO stated that he had not asked Hall why the NBPA would make this change from the signatories of the 2005 Contract.

d. After LOMBARDO drafted the Purported 2011 Contract, he traveled from Prim's offices in Ohio to the NBPA's offices in New York, and physically brought the Purported 2011 Contract to Gary Hall's office at NBPA headquarters. According to LOMBARDO, Hall had instructed him: "sign it, if I'm not there, you know, don't worry about it, just leave it." After LOMBARDO traveled to New York and reached Gary Hall's office, Gary Hall was not present. LOMBARDO therefore allegedly left the Purported 2011 Contract, bearing LOMBARDO's signature, in Hall's office.

e. Several weeks after LOMBARDO allegedly left the Purported 2011 Contract in Gary Hall's office, LOMBARDO spoke to Gary Hall on the phone, and Gary Hall stated that LOMBARDO should return to New York to retrieve the executed contract. According to LOMBARDO, Hall stated: "If I'm there, I'll give it to you. If not, go in my office and get it, there's an envelope there with your name on it." LOMBARDO later flew again from Ohio to Gary Hall's office in New York and found the contract in an envelope on Gary Hall's desk, executed with the signatures of Hall and Purvis Short. According to LOMBARDO, after he brought the contract back to Prim's offices in Ohio, he discovered that the signature block next to Hall's signature was not dated. LOMBARDO claimed that he "called Gary Hall and [] said, 'Yours isn't dated.' He said 'Date mine the same as yours.'" At that point, LOMBARDO instructed his assistant to put the same date next to Hall's signature as appeared next to LOMBARDO's signature. According to LOMBARDO, Purvis Short's signature was already dated. LOMBARDO then made copies of it and gave a copy to his partner, CAROLYN KAUFMAN, the defendant. Again, LOMBARDO stated that all of this was accomplished without any e-mails, faxes or other corroborative electronic communications. I have attached a copy of the signature page for the 2011 Contract as Exhibit A to this Complaint.

f. When Prim was served with the 2012 grand jury subpoena, he learned of the subpoena. In describing what, in summary, the subpoena had requested, LOMBARDO stated: "[i]t asked for everything, contracts, everything." LOMBARDO testified that, even though he knew he was required to produce all contracts, he had intentionally directed Prim employees not to produce the Purported 2011 Contract because of alleged concerns at Prim that producing it would be harmful to the executive director of the

NBPA. LOMBARDO testified that, in 2013, he eventually decided to produce the Purported 2011 Contract "[b]ecause we were withholding evidence."

#### THE FRAUDULENT CONTRACT

13. I have interviewed employees of the finance department of the NBPA and reviewed certain of their communications with Prim in 2011. Based on these conversations, I am aware that, on or about March 30, 2011, NBPA finance staff requested that Prim send a copy of the most recent operative contract between Prim and the NBPA. On March 30, 2011, Prim sent to the NBPA a copy of the 2005 Contract. No mention was made of a more recent contract.

14. I have interviewed Purvis Short, one of the purported signatories of the Purported 2011 Contract. Mr. Short informed me, in sum and substance, that he had not signed the Purported 2011 Contract and that he was unaware of how his apparent signature became affixed to the contract. Mr. Short further informed me that the execution of such a contract was outside of the scope of his responsibilities at the NBPA.

15. I have interviewed an individual ("Individual-1"), who provided information about the creation of the 2011 Contract. Individual-1 informed me, in sum and substance, that the Purported 2011 Contract was created at Prim months after the death of Gary Hall in May of 2011. Individual-1 further informed me that, subsequent to the death of Gary Hall, JOSEPH LOMBARDO, the defendant, had requested the creation of a signature stamp capable of stamping a signature in the name "Gary A. Hall."

16. After interviewing Individual-1, DOL obtained records from an office supply store located near the headquarters of Prim. These records revealed that in December of 2011, the office supply store received a request to manufacture a signature stamp capable of stamping a signature in the name "Gary A. Hall." After producing the signature stamp, the office supply store retained a digital image of the signature. The "Gary A. Hall" signature in the office supply store's records is identical to the signature on the Purported 2011 Contract. I have attached a copy of one of the office supply store's records, containing an image of the digital signature, as Exhibit B to this Complaint.

17. I have reviewed internal communications which took place in or about December of 2011 among employees at Prim discussing the creation and drafting of the Purported 2011 Contract. In these communications, Prim employees discussed on-



going edits to a contract, which appeared to have been the Purported 2011 Contract, even though the contract was purportedly signed in March 2011. For example:

a. On December 5, 2011, a Prim employee sent to the assistant of JOSEPH LOMBARDO, the defendant, an email with the subject line "Electronic copy of changes," which included the provisions discussed above providing that the Purported 2011 Contract would have a five-year term and could not be cancelled or revoked by the NBPA for any reason.

b. On December 13, 2011, LOMBARDO's assistant sent a Prim employee an email with the subject line "contract," which read "I sent a copy to your printer. Can you please look it over and mark up anything where it looks like the formatting is off? I incorporated the changes that Joe had you write up."

#### RECORDINGS

18. I have reviewed a number of recordings of conversations between JOSEPH LOMBARDO, the defendant, and others. In certain of these recordings, LOMBARDO can be heard attempting to influence the testimony of others before the grand jury and discussing others' grand jury testimony. Summaries of certain of the recordings are set forth below.

a. In a recording of a conversation that occurred in or about February of 2013, LOMBARDO instructed an individual about how this individual should testify before the grand jury. Specifically, LOMBARDO stated: "they are going to probably ask you 'Did you hear Joe talk to Gary Hall?' I don't know if you heard me or not. I mean, I just told you to fill in the date and that's what you remember." Later in the same conversation, LOMBARDO stated, "I would have been back in the office on Thursday or Friday, uh, it was either one of those two weekends or in between there I told you to fill in the date, period. Okay. We're home free." Based on my review of this recording and other information I have reviewed during the course of the investigation, I believe that when LOMBARDO stated "I just told you to fill in the date and that's what you remember," he was attempting to instruct this individual to omit details of what he knew about the creation of the Purported 2011 Contract during his testimony before the grand jury. I also believe that when LOMBARDO stated, "Okay. We're home free," he was referring to his belief that if this individual followed his instructions with regard to testimony before the grand jury, LOMBARDO and Prim would avoid prosecution.

b. In a recording of a conversation that occurred later on the same day, LOMBARDO gave instructions to CAROLYN KAUFMAN, the defendant, about how KAUFMAN should respond to questions in the grand jury. Specifically, LOMBARDO stated, "and if they ask you about it, the only thing they're going to say, they would say to you is um, 'you're going to collect 12b-1 fees and this?' And our whole thing was we were going to consolidate it, we were going to just take a flat fee, there was only going to be a flat fee, and it used to be you were going to waive the 12b-1 fees." In response, KAUFMAN stated "Right." Later in the same conversation, LOMBARDO stated that his "life is in the hands" of KAUFMAN. LOMBARDO stated that "the dates on the contract and you saw the names on the contract. Uh, after this, they're not going to call us anymore." Based on my review of this recording and other information I have reviewed during the course of the investigation, I believe that when LOMBARDO stated "and if they ask you about it, the only thing they're going to say, they would say to you is um, 'you're going to collect 12b-1 fees and this?,'" he was attempting to instruct KAUFMAN to provide false information about the justification for the Purported 2011 Contract before the grand jury. I also believe that when KAUFMAN stated "Right," she was acknowledging that she intended to do so. I believe that when LOMBARDO stated that his life was "in the hands" of KAUFMAN, he was referring to the fact that he faced possible prosecution if she did not agree to provide false information to the grand jury. I also believe that when LOMBARDO stated "Uh, after this, they're not going to call us anymore," he was referring to his belief that if KAUFMAN provided this information, they would avoid further scrutiny by the grand jury and law enforcement.

c. In a recording of a conversation that occurred in or about February of 2013, LOMBARDO attempted to convince an individual ("Individual-2") to provide false information if contacted in connection with the investigation of the Purported 2011 contract. Specifically, during this conversation, Individual-2 stated to LOMBARDO, "I may even have called [another individual] and said 'Joe wanted me to make these changes. What do you know?' I may have done that." LOMBARDO responded, "These are the changes that were made. I didn't tell you to make changes. These are the changes that were made." LOMBARDO further stated, "That's important because [another individual] drew this contract up, you know, months before that, okay?" Individual-2 responded "Okay." LOMBARDO later stated that, "the important part is that [another individual] was made aware of the changes, I know what the changes are . . . . But you talked to [the other individual]." Individual-2 responded "Probably." LOMBARDO stated, "Well you gotta be-". Individual-2 responded, "I know. I'm not

100% certain but again, if maybe he could send it to me, maybe that will help me remember." LOMBARDO stated, "Well you just told me that you talked to him." Individual-2 responded, "I'm pretty sure we talked to him and I think you were there too talking to him." LOMBARDO stated, "I know but I don't want it to just be me talking to him." Based on my review of this recording and other information I have reviewed during the course of the investigation, I believe that when LOMBARDO stated, "These are the changes that were made. I didn't tell you to make changes. These are the changes that were made," he was attempting to instruct Individual-2 to provide false information to investigators regarding changes between the 2005 Contract and the Purported 2011 Contract.

d. In a recording of another conversation that occurred in or about February of 2013, LOMBARDO again attempted to convince Individual-2 to provide false information if contacted in connection with the investigation of the Purported 2011 contract. During this conversation, LOMBARDO stated, "It's important that we didn't doctor this document up, okay? That, I, that you didn't doctor this document up or anything like that. When we, these changes were already made prior to this document, okay? Are you following what I'm saying? And you have here replace 3, replace 2. It's a play on words, it can be taken either way. But I'm so sensitive about it that I want it, you know, I want it spelled out clearly that these changes were made, you follow what I'm saying?" Individual-2 stated, "I really need to look at it first. I don't, I don't follow what you're saying." LOMBARDO stated "Let me explain it as it's been explained to me, okay? Not that it, you know, it can be taken either way, alright? But I want it to be definitive, that we did not doctor this thing up. Meaning that we were replacing the, at the time." Based on my review of this recording and other information I have reviewed during the course of the investigation, I believe that when LOMBARDO stated "It's important that we didn't doctor this document up, okay?" he was referring to communications between Individual-2 and other Prim employees indicating that the Purported 2011 Contract was still being edited months after it was supposedly signed. I also believe that LOMBARDO was referring to the fact that it was important to him that Individual-2 not say anything to investigators which could suggest that LOMBARDO had fraudulently created the Purported 2011 Contract.

e. In a recording of another conversation that occurred in or about February of 2013, LOMBARDO again attempted to convince Individual-2 to provide false information if contacted in connection with the investigation of the Purported 2011 Contract. During this conversation, Individual-2 stated, "I

remember what was going on, okay? You guys had agreed to these changes and you asked me to type up something that worded them. That's all I remember." LOMBARDO then stated, "Here, here here, We, those changes were already made to a contract like seven months ago, okay? And when I came and talked to you, I told you what Todd wanted to know- what were they? That's how I remember it. You did not take a document and redo a document, that's very very important." LOMBARDO further stated, "well you know, lawyers are sensitive and they play on words." Individual-2 stated "I never touched any document," LOMBARDO stated, "Okay. Because sooner or later, and I'm hoping it doesn't get to this, they may call you, and just tell them the truth." LOMBARDO further stated, "We didn't do anything wrong, and you know what? Everyone gets nervous under shit like this and when an accusation is made that we doctored a document, everybody gets nervous, alright? That's why I called you, because you're in our computer in 7 months after the fact. Understand?" Later in the conversation, LOMBARDO stated, "You typed this up. These were the changes that were in another document. That is very, very important, okay?" LOMBARDO later stated, "You may have taken, you may have looked at a document and saw what was there, what was changed, okay? Or you may have looked, you know, and saw, you know, but the key is that you did not, we did not make this contract up in December, okay? [My assistant] had done this, probably 6 or 7 months prior." Based on my review of this recording and other information I have reviewed during the course of the investigation, I believe that when LOMBARDO stated "sooner or later, and I'm hoping it doesn't get to this, they may call you," he was referring to his belief that Individual-2 would possibly be called to appear before the grand jury. I also believe that when LOMBARDO stated "Everyone gets nervous under shit like this and when an accusation is made that we doctored a document, everybody gets nervous, alright? That's why I called you, because you're in our computer in 7 months after the fact," he was referring to his belief that there was an investigation of the circumstances surrounding the Purported 2011 Contract, and that Individual-2 was potentially an important witness because there were emails in the Prim computer system showing Individual-2 was editing the Purported 2011 Contract in late 2011, although the document purported to have been signed in March of 2011. I also believe that when LOMBARDO stated "the key is that you did not, we did not make this contract up in December, okay? [My assistant] had done this, probably 6 or 7 months prior," he was requesting that Individual-2 provide false information to the grand jury or investigators about the creation date of the Purported 2011 Contract.

### KAUFMAN'S GRAND JURY TESTIMONY

19. On or about February 21, 2013, CAROLYN KAUFMAN, the defendant, appeared before a grand jury in the Southern District of New York and provided sworn testimony under penalty of perjury. I have reviewed a transcript of this appearance. After being advised of her rights before the grand jury, KAUFMAN made a number of statements with regard to the creation of the Purported 2011 Contract and to the intentional withholding of the contract from DOL after Prim was served with a subpoena in May of 2012. Among other things, KAUFMAN testified, in sum and substance unless otherwise quoted, that:

a. KAUFMAN has worked at Prim since 1999, and she was currently the "President of the advisory firm within Prim Capital." In that capacity, one of her clients had been the NBPA.

b. KAUFMAN brought a copy of the Purported 2011 Contract with her to the grand jury, in compliance with a request for documents related to the Purported 2011 Contract in a grand jury subpoena. KAUFMAN stated that she had searched for any e-mails or other documents related to the Purported 2011 Contract, but stated that she did not find any.

c. KAUFMAN stated that the change in Prim's fee from the 2005 Contract to the Purported 2011 Contract occurred because "the way the money was established was different, but I think when you added it all up together it was the same . . . There was a fee, and then there was 12b-1 fees and then we put it all together."

d. KAUFMAN stated that she had been aware of the May 2012 subpoena requiring the production of any agreements between Prim and the NBPA. KAUFMAN claimed, however, that she was not aware of an intentional effort to not disclose the contract. According to KAUFMAN, just before the release of the Law Firm report in 2013, she and others at Prim "were going through to make sure everything was done before we had filed everything away in one of the storage boxes and decided to take another look just to be sure because this was certainly a serious matter." At this point, KAUFMAN stated, they discovered that they had not disclosed the Purported 2011 Contract, along with one other e-mail attachment. Thus, according to Kaufman, among the thousands of responsive documents Prim disclosed to the government in response to the subpoena, the one document Prim mistakenly omitted was the purported operative contract between Prim and the NBPA.

e. KAUFMAN stated that she had "no discussion" with JOSEPH LOMBARDO, the defendant, or anyone else, apart from her lawyer, about her grand jury testimony before her appearance before the grand jury.

20. I have compared a handwriting exemplar of CAROLYN KAUFMAN, the defendant, to the "Gary A. Hall" signature on the Purported 2011 Contract. The handwriting of KAUFMAN's signature appears to be the same as the handwriting used for the "Gary A. Hall" signature on the Purported 2011 Contract.

CONCLUSION

21. I have reviewed documents produced pursuant to subpoena by Prim and the NBPA, and I have spoken to employees of both entities. At no point have any of these individuals been able to produce the original, signed version of the Purported 2011 Contract.

WHEREFORE, deponent requests that JOSEPH LOMBARDO and CAROLYN KAUFMAN, the defendants, be arrested and imprisoned or bailed, as the case may be.



\_\_\_\_\_  
KENNETH JACOUTOT  
Special Agent  
United States Department of Labor

Sworn to before me this  
24nd of April, 2013



\_\_\_\_\_  
HONORABLE DEBRA FREEMAN  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK

9. Fax Signature. This agreement shall be valid and binding if executed by the parties by fax, in such case; the parties shall thereafter execute this Agreement in duplicate original. This Agreement shall become effective upon its execution by both parties.

If the above accurately sets forth our agreement, please indicate your acceptance of the terms by executing the Agreement in the indicated signature line below.

Prim Capital Corporation

JOSEPH A. LOMBARDO 3/2/11  
By: Joseph A. Lombardo Date  
Managing Director

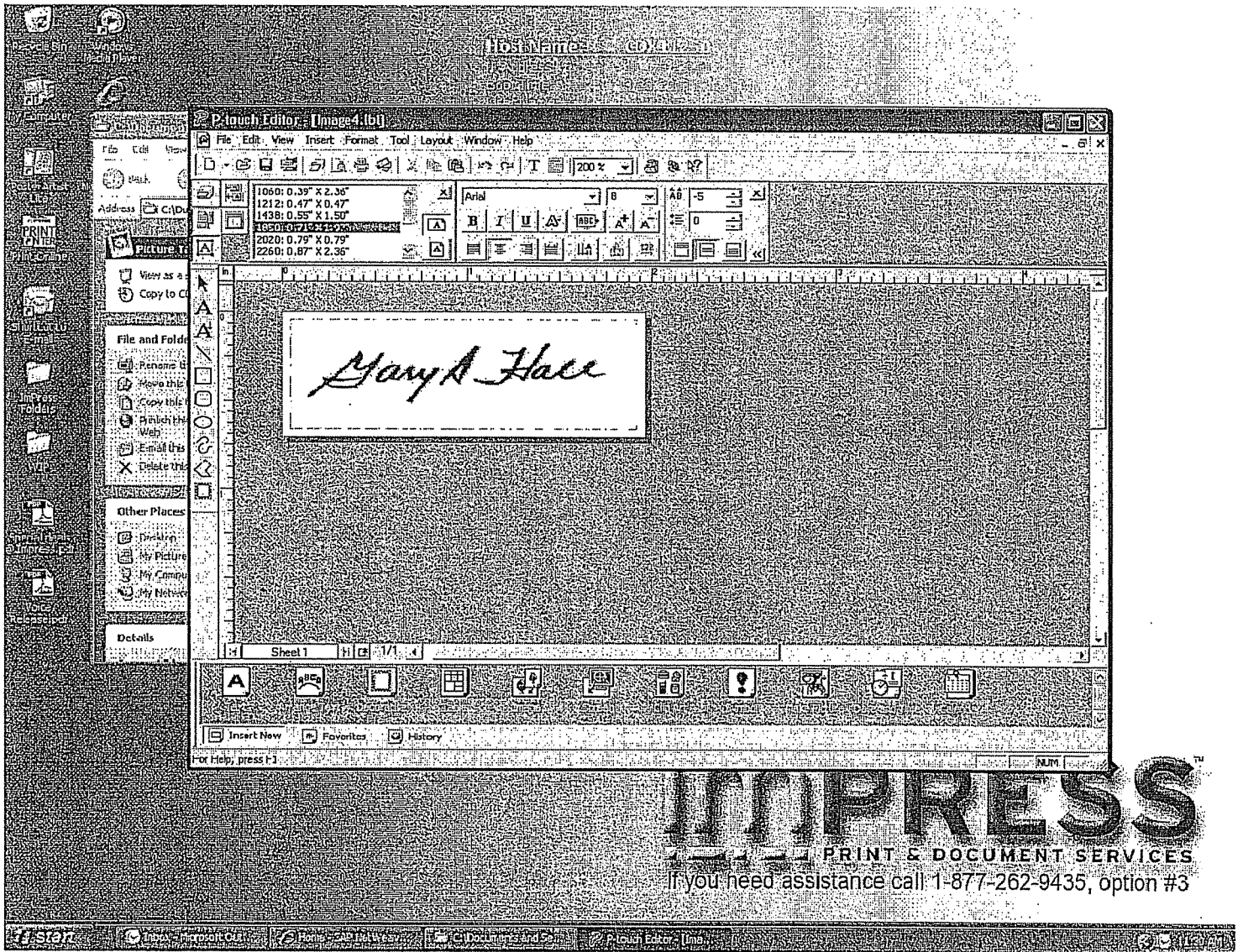
National Basketball Players Association (NBPA)

Gary A. Hall 3/2/11  
By: Gary Hall Date  
General Counsel

National Basketball Players Association (NBPA)

Purvis Short 3/8/11  
By: Purvis Short Date  
Director of Player Programs





GOVERNMENT  
EXHIBIT  
B