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G. WILLIAM HUNTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

G. WILLIAM HUNTER,

Plaintiff,

V.

DEREK FISHER, as President of the Executive Committee of the National Basketball Players Association and in his individual capacity, JAMIE WIOR, THE NATIONAL BASKETBALL PLAYERS ASSOCIATION, a Delaware corporation, and DOES 1 THROUGH 10, inclusive,

Defendants.

Case No. LC100771

**DECLARATION OF DAVID CUMMINGS  
IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS' ANTI-  
SLAPP MOTIONS**

Date: December 6, 2013

Time: 8:30 a.m.

Dept.: D

Judge: Hon. Huey Cotton

Complaint Filed: May 16, 2013

1 I, David Cummings, do hereby declare:

2 1. I am the owner of D.E.K. Media LLC, a company specializing in marketing, public  
3 relations, and new media productions. D.E.K. Media was retained by the National Basketball  
4 Players Association ("NBPA" or the "union") in 2011 to provide public relations and media strategy  
5 consulting. Prior to forming D.E.K. Media, I was a sports writer and covered professional sports,  
6 including professional basketball, for 11 years for the New York Daily News and Miami Herald,  
7 after which I became an editor for ESPN the Magazine.

8 2. I understand that the former Executive Director of the NBPA, G. William (Billy)  
9 Hunter, is engaged in litigation with the NBPA, Derek Fisher, and Jamie Wior. I also understand  
10 that this Declaration will be used to support Mr. Hunter in his lawsuit. I make this declaration  
11 voluntarily. To the extent I attempt to directly quote any person in this Declaration, I am recalling  
12 the words spoken to the best of my recollection. If called to testify, I would be able to competently  
13 testify about the matters contained in this declaration.

14 3. This Declaration does not include every fact I know about Mr. Hunter, Mr. Fisher, or  
15 Ms. Wior but rather is limited to what I understand to be information relevant to the motions now  
16 before the Court.

17 4. I am familiar with the history of labor relations between the National Basketball  
18 Association ("NBA") and the NBPA based on my time covering the NBA as a sports writer. I was  
19 involved in the 2011 collective bargaining agreement ("CBA") between the NBA and the NBPA due  
20 to my work as a consultant for the NBPA. I was never in the room during the actual negotiations,  
21 but I was sometimes present in the room for sidebar conversations with NBPA staff.

22 5. I met Ms. Wior through her work on behalf of the NBPA related to press relations  
23 and media strategy. I do not believe Ms. Wior held a formal position with the union during the CBA  
24 negotiations, but her interactions with me, and interactions with others that I observed, made it  
25 appear as if she indeed held such a formal position.

26 6. For example, I was present at a players meeting in Las Vegas. I understood that this  
27 particular meeting was open only to NBPA staff members and players. Ms. Wior was present and,  
28 being neither a player nor NBPA staff member, she was asked to leave. Ms. Wior made it clear that

1 only Mr. Fisher could demand that she leave the meeting. As a result, she stayed.

2 7. On another occasion, I recall that NBPA staff members Mr. Hunter, Ronald  
3 Klempner, Yared Alula, and David Kiefer drafted a memo that would be circulated to all players to  
4 update them on the status of the CBA negotiations. The draft memo was shared with Mr. Fisher and  
5 Ms. Wior, and they re-wrote the entire memo. The contents of the memo were so substantially  
6 changed, the union refused to allow it to be sent on union letterhead or with any Executive  
7 Committee members' signature (other than Mr. Fisher's signature).

8 8. After October 2011, while I no longer participated in meetings related to the CBA  
9 negotiations, I continued to participate in meetings with NBPA staff related to media strategy.  
10 When an agreement was reached on the 2011 CBA, I found that the press coverage characterized the  
11 terms of the new CBA as a "win" for the owners. A true and correct copy of an example of these  
12 press reports is attached to this Declaration as Exhibit 1. Some of the same press reports assigned  
13 blame to Mr. Hunter for what were viewed as less advantageous terms for the players.

14 9. I am aware that, in April or May of 2012, the union hired the Paul Weiss law firm to  
15 conduct an investigation into the union's business practices. I am familiar with some of the  
16 allegations made by Paul Weiss in the report on the investigation.

17 10. For example, I know that Paul Weiss criticized Mr. Hunter for employing his  
18 children. This charge left me incredulous because it was widely known within the NBPA and in  
19 professional basketball circles that Mr. Hunter's children were employed by the union.

20 11. Indeed, I know from experience that the hiring of one's own children is widely  
21 practiced in professional basketball. For example, Michael D'Antoni, an NBA head coach, has  
22 employed his brother with the New York Knicks and now with the Los Angeles Lakers. Paul Silas,  
23 formerly head coach of the Charlotte Bobcats, employed his son as an assistant coach. Mike Malone  
24 has been hired to coach the Sacramento Kings commencing with the 2013-14 season, and he has  
25 appointed his dad to his coaching staff. Don Nelson served as head coach of the Dallas Mavericks  
26 from 1997-2005 and employed his son as an assistant coach.

27 12. Similarly, I was startled when Mr. Fisher claimed that he did not know that Alexis  
28 Hunter worked for a law firm hired by the union. In my experience, it was widely known that Alexis

1 worked for the union's outside law firm. I view Mr. Fisher's statement as an effort by Mr. Fisher to  
2 accuse Mr. Hunter of covering up the fact that Alexis worked at a law firm representing the union.  
3 Based on my experience, Mr. Hunter never hid that fact.

4 13. Prior to the union's termination of Mr. Hunter, the NBPA informed me by way of a  
5 February 1, 2013 email that my services were no longer needed. Ms. Wior was copied on the email.  
6 I did not understand why Ms. Wior, who as far I knew was not NBPA staff, was copied on this  
7 email. A true and correct copy of the email is attached to this Declaration as Exhibit 2.

8 14. After the players voted to terminate Mr. Hunter, Mr. Fisher spoke at a press  
9 conference and accused Mr. Hunter of lying to, and dividing, the union. Although Mr. Hunter was  
10 not mentioned by name, it was clear to me that Mr. Fisher was referring to Mr. Hunter. There is no  
11 one else Mr. Fisher could be referring to. Many press reports following the press conference wrote  
12 that Mr. Fisher was talking about Mr. Hunter. A true and correct copy of an example of these press  
13 reports is attached to this Declaration as Exhibit 3.

14  
15 I declare under penalty of perjury, under the laws of the State of California, that all  
16 statements contained in this Declaration are true and correct.

17  
18 Executed August 7, 2013 in Montclair, New Jersey.

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22 DAVID CUMMINGS  
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# **EXHIBIT 1**



**Patrick Rishie**, Contributor  
I cover the economics of the sports industry.

BUSINESS | 11/28/2011 @ 12:20PM | 6,055 views

# NBA Owners Win Big with New Collective Bargaining Agreement



Image by Keth Allison via Flickr

*Whew!*

That's the phrase that best sums the collective emotions of owners and players alike as [news broke this weekend](#) of a tentative labor deal between NBA players and owners.

Make no mistake...the owners won HUGE in these negotiations.

But fear not for the players, as they will retain the title as the highest-paid athletes in professional team sports. And they will still

benefit from various intricacies that will enable them a certain degree of financial flexibility and team mobility.

An assessment of the proposed new NBA collective bargaining agreement... with the acknowledgement that the final details have yet to be ironed out, ratified and voted upon by owners and players alike.

## What have the owners won?

### 1) Lots o' cash

Owners will now get between 49-51% of basketball related income (BRI), whereas before they only received 43%. Based on 2010-11 BRI of \$3.8 billion, that's a revenue transfer of roughly \$270 million from players to owners.

Billy Hunter is saying the players will receive 51% of BRI in 2011-12, but players overall take will be cut by one-fifth in 2011-12 since a 66-game schedule means that one-fifth of the season will be missed...or one-fifth of players' salaries.

Last year, players received approximately \$2.2 billion in salaries and benefits. Based on a 51% revenue share and a 20% reduction in games played, that amount falls to \$1.6 billion for the abbreviated 2011-12 season.

With average salaries estimated at slightly over \$5 million and median salaries roughly \$2.5 million, transferring \$270 million away from

approximately 450 players amounts to an average reduction of roughly \$610,000 per season per player.

*2) Greater checks and balances upon big spending clubs which may positively impact competitive balance*

Though small-market teams do not benefit by the continued existence of “sign and trade” deals, higher luxury tax rates will clearly make teams think twice before making certain resource allocation decisions.

In 2010-11, 3 teams (Orlando, Los Angeles, Dallas) paid \$20.1 M, \$19.9 M, and \$18.9 M respectively in luxury taxes. This was when the luxury tax rate was merely *dollar-for-dollar* (or a 100% tax rate).

The new CBA is proposing that such teams that exceed the luxury tax threshold by over \$15 million pay taxes more than threefold the overage (or a tax rate over 300%). This would imply that these 3 teams would have owed more than \$60 million each in luxury taxes.

Unlike baseball’s luxury tax system, this puts real teeth into the luxury of outspending your competitors. Because it is unlikely that any of these teams makes an operating profit if they taxes increase threefold.

### **What did the players win?**

The chance to get back on the courts this year and minimize public relations damage in the court of public opinion.

The only *wins* for the players weren’t really even wins as much as they were maintaining a certain degree of financial flexibility and player mobility that the owners were trying to strip from them.

### **What were the players able to *maintain* and/or *avoid*?**

*1) No reductions in rookie contracts or minimum salaries.*

*2) No reductions in maximum contract lengths or maximum salary increases.*

In fact, players finishing rookie scale contracts can receive a maximum salary of 30% of the team’s salary cap if he signs with his prior team and meets certain performance criteria. This is up from the 25% cap value from the previous deal.

*3) The owners wanted an unlimited escrow system, but the players were able to keep the system at just 10% of their salary.*

This is a classic case of the owners shooting for the moon because they had the players over a barrel.

Over the course of the last agreement between the 2005-06 and 2010-11 seasons, owners kept between 8-10% of players’ salary in escrow in case league revenues aren’t enough to meet revenue projections.

As the [chart here shows](#), in 4 of the 6 seasons above the owners were able to use money held in escrow to completely account for revenue shortfalls. In only one season was escrow money not enough to cover revenue shortfalls, and last season players’ salaries and benefits were shy of 57% of BRI by \$26 million...meaning that owners didn’t need any of the escrow money.

In short, the owners' desire to seek an unlimited escrow amount to make them financially whole would have only been required during the 2008-09 season, or 1 out of 6 seasons. And now that players will be receiving an even smaller percentage of revenues, it is highly unlikely this scenario would materialize.

That the owners *conceded* to relent on this issue is a laughable concession because they relented nothing here relative to the last deal. And if the escrow percentage is fixed at 10% of salaries and benefits throughout the duration of the new CBA, they will have actually gained added financial protection.

4) *Teams can still utilize "mid-level exceptions" to sign players even if it puts them over the luxury tax threshold (owners had wanted to eliminate this option);*

As background:

- Mid-level exceptions allow teams to sign any free agent up to the league's average salary

- For teams that don't exceed the luxury tax threshold by more than \$4 million, this means allowing max salaries of \$5 million with 4-year max contract length;

- For teams that exceed the luxury tax threshold by more than \$4 million, they are limited to max salaries of \$3 million with 3 year max contracts.

5) *Teams can still utilize "sign and trade" deals throughout the new agreement, though their ability to do so will be hindered in year 3 of the agreement (owners wanted to eliminate this completely for teams over the luxury tax threshold).*

As background:

- If a team is about to lose a player to free agency and they wish to get something in return, they can re-sign the player and then trade their rights to another team;

- This benefits the player because players re-signed by their existing teams can earn higher pay increases under NBA rules, and it benefits the team because now they can get more trade value in exchange for the traded player;

- Carmelo Anthony was "extended" last season by his current team at the time (Denver Nuggets), and then traded to the NY Knicks for numerous players who actually helped to turn around the Nuggets season and push them into the playoffs;

- Chris Paul, Dwight Howard, and Deron Williams could all fall into this category within the next 2 seasons.

So though nice that players may still have this option over the next 2 seasons, starting in 2013-14 teams can only do sign-and-trade as long as they don't exceed the luxury tax threshold by more than \$4 million.

This caveat will unquestionably impact players' earnings potential during the rest of the new CBA.

### **Who were the biggest losers of the NBA lockout?**

Player agents.



With revenue being transferred from players to owners, with a shortened season ahead, and with constraints imposed on how mid-level exceptions and sign-and-trade deals will work during the majority of the new deal, agents will be the ones feeling the biggest relative hit to their wallets.

Which is largely why the agents, many of whom come from a legal background, wanted to pursue the litigious route much earlier in these negotiations than actually happened.

### **Is the timing of the resolution surprising?**

Not at all.

Though the league staged a 50-game season in 1999-2000, the shortened season left an incomplete taste in the mouths of many.

Not only does a resolution now salvage an additional fifth of the season and thus providing more legitimacy to the season, but it allows the league to make its triumphant return on Christmas Day.

Christmas Day has become to the NBA what Thanksgiving has been to the NFL. So from a public relations perspective, no better time to re-enter the public's eye than make the largest and loudest splash possible.

\*\*\*\*\*

*Dr. Patrick Rishe is the Director of Sportsimpacts, a national sports marketing consulting firm that has conducted research with Super Bowls, Final Fours, Ryder Cups, professional sports teams and college athletic departments. He is also an Associate Professor of Economics at Webster University in St Louis.*

*Follow Patrick on Twitter @SportsDocRock or visit [www.sportsimpacts.net](http://www.sportsimpacts.net)*

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**This article is available online at:**

**<http://www.forbes.com/sites/prishe/2011/11/28/nba-owners-win-big-with-new-collective-bargaining-agreement/>**

# **EXHIBIT 2**

From: Theresa Clark Messer <[REDACTED]>  
Subject: Services for the NBPA  
Date: February 1, 2013 10:57:36 PM EST  
To: dcummings [REDACTED]  
Cc: Ron Klemperer <[REDACTED]>, Jamie Wlor <[REDACTED]>, "Sarohlo, Christina Guerola"  
<[REDACTED]>, "Slack, Devin" <[REDACTED]>

In the course of reviewing its relationships with third-party vendors, the National Basketball Players Association (NBPA) has determined that your services are no longer required, effective immediately. Invoices for any services that have already been performed must be submitted by no later than **February 8, 2013**. If any services are ongoing, or if you believe that you have an agreement to perform future services for the NBPA, please advise us **immediately**. If you have any questions or concerns, please contact Theresa Clark Messer at [REDACTED] or at [REDACTED].

# **EXHIBIT 3**

**The New York Times**

February 16, 2013

# N.B.A. Players Dismiss Union Leader

By **HOWARD BECK**

HOUSTON — **Billy Hunter** was fired as executive director of the N.B.A. players union on Saturday, with a bold, decisive vote and a public rebuke.

Twenty-four player representatives voted unanimously to dismiss Hunter, ending a sometimes tumultuous 16 1/2-year tenure. The move was announced by the union president, Derek Fisher, who led the drive to oust Hunter over business practices that have drawn the scrutiny of three government agencies.

“Going forward, we will no longer be divided, misled, misinformed,” Fisher said in a news conference. “This is our union, and we have taken it back.”

Hunter was fired after a lively two-hour meeting attended by about 40 players, including the All-Stars LeBron James, Tyson Chandler and Russell Westbrook. James and Jerry Stackhouse were the two most forceful voices in the room, according to two people at the meeting. James, the league’s biggest star, and Stackhouse, a respected veteran, “literally drove the discussion” and rallied the players to make the change, the witnesses said.

Hunter was not present for the decision. According to his representatives, he was not invited to the meeting.

In a statement, Hunter denounced this “extremely troubling process” and hinted at a probable legal challenge, presumably to claim the \$10.5 million remaining on his contract, which runs through 2016.

Hunter, 70, said that denying him the chance to defend his record “violates every tenet of fairness upon which the union was founded.” As of Saturday evening, he had not been directly notified of his firing.

“During the days and weeks ahead, my legal team and I will begin carefully reviewing the actions taken and statements made against me in the meeting room in my absence,” Hunter said in his statement, which is posted at [gbillyhunter.blogspot.com](http://gbillyhunter.blogspot.com).

“I look forward to gathering the evidence showing how certain individuals made sure the outcome was preordained.”

That last sentence was most likely a reference to Fisher, who began pushing for an outside audit of Hunter's management after the 2011 lockout.

After initial resistance from Hunter and other players on the executive committee, Fisher succeeded in getting that audit. The result was a 469-page [report](#), released last month, that charged Hunter with nepotism, poor management and abuse of union resources.

Hunter remains the subject of a criminal probe by the United States attorney's office, as well as of investigations by the Department of Labor and the New York attorney general.

The next battle between Hunter and the union is likely to be over his pay. If the union fired him "for cause," it would be freed of any contractual obligations. Under the terms of Hunter's contract, that would require the union to prove embezzlement, theft, larceny, material fraud or "other acts of dishonesty," failure to perform his duties, or conviction of a felony.

Although the audit, conducted by the law firm Paul, Weiss, Rifkind, Wharton & Garrison, found no criminal wrongdoing, it concluded that Hunter had put his own interests ahead of the union's, and it recommended that the players reconsider his employment.

The audit also concluded that Hunter's contract was not properly approved in 2010 and was thus unenforceable — a position that the union would probably take in court, and that Hunter's lawyers would surely challenge.

In his statement, Hunter indicated that he would challenge the legitimacy of the board that fired him, suggesting that the union had violated its bylaws.

"I do not consider today's vote the end, only a different beginning," Hunter said.

Because of the pending government investigations, and the likelihood of a lawsuit, Fisher kept his remarks brief. He spoke for three minutes and declined to take questions. But his comments were pointed as he alluded to Hunter's attempts to fight the dismissal.

"We want to make it clear that we are here to serve only the best interests of the players," Fisher said. "No threats, no lies, no distractions will stop us from serving our membership. We do not doubt that this process will possibly continue in an ugly way."

Hunter had served as executive director since July 1996, succeeding Simon Gourdine, who was fired earlier that year. (Gourdine challenged his dismissal and was later awarded \$900,000 by an arbitration panel.)

Many longtime union officials and staff members, who chafed under Hunter's management style, privately rejoiced when Hunter was placed on indefinite leave earlier this month. On Saturday, one joked about "breaking out the bubbly."

Ron Klempner, the union's deputy counsel, is serving as the interim executive director.

Hunter guided the union through three collective bargaining agreements and two costly lockouts, each of which ended with the players accepting a smaller share of league revenue and more restrictions on player contracts.

Commissioner David Stern, who negotiated each of those deals with Hunter, declined to comment on his adversary's exit, but said, "We await notification from the union as to who we should be dealing with."

The players also elected a new executive committee Saturday, filling seven vacancies. The new members are Stackhouse, James Jones, Roger Mason Jr., Chris Paul, Andre Iguodala, Stephen Curry and Willie Green. They join the committee holdovers Matt Bonner and Fisher, whose term as president ends in June.