

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KERMIT ALAN WASHINGTON
[DOB: 09/17/1951],

Defendant.

Case No. 16-____-__-CR-W-____

COUNT ONE

Corrupt Interference with the IRS
26 U.S.C. § 7212(a)
NMT: Three Years Imprisonment
NMT: \$250,000 Fine
NMT: One Year Supervised Release
Class E Felony

COUNT TWO

Conspiracy to Commit Wire Fraud
18 U.S.C. §§ 1343 and 1349
NMT: Twenty Years Imprisonment
NMT: \$250,000 Fine
NMT: Three Years Supervised Release
Class C Felony

COUNT THREE

Falsification of Records in Federal Investigation
18 U.S.C. §§ 1519 and 2
NMT: Twenty Years Imprisonment
NMT: \$250,000 Fine
NMT: Three Years Supervised Release
Class C Felony

COUNT FOUR

Aggravated Identity Theft
18 U.S.C. § 1028A(c)(5)
Two Years Imprisonment in Addition to Count Two
NMT: \$250,000 Fine
NMT: One Year Supervised Release
Class E Felony

\$100 Special Assessment for Each Count

INDICTMENT

THE GRAND JURY CHARGES THAT:

1. At times relevant to this Indictment:
 - a. KERMIT ALAN WASHINGTON (“WASHINGTON”) is a former professional basketball player who played with various franchises of the National Basketball Association (“NBA”) between 1973 and 1987.
 - b. From 2005 through 2015, WASHINGTON was employed as a regional representative with the National Basketball Players Association (“NBPA”), the labor union for current professional basketball players in the NBA.
 - c. Ronald Jack Mix (“Mix”), d/b/a the Law Offices of Ron Mix, of San Diego, California, is a former professional football player and is presently an attorney licensed in the state of California. Mix’s practice is focused on the filing of workers’ compensation claims on behalf of former professional athletes.
 - d. WASHINGTON is the founder and executive director of THE 6TH MAN FOUNDATION d/b/a PROJECT CONTACT AFRICA (“PROJECT CONTACT AFRICA” or “PCA”), a charitable organization whose stated purpose is “to support a medical clinic in Africa for needy families and children.” PCA is a nonprofit and tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.
 - e. Reza Davachi (“Davachi”) was the owner and operator of Rez Candles, Inc., which engaged in the online sales of software and novelty candles. Davachi, with Washington’s consent and approval, managed and operated the online eBay and PayPal accounts for PCA and maintained PCA’s website.
 - f. Casey Lee Ross and Rex Yang sold items under the the eBay and PayPal accounts for PCA.
 - g. The Internal Revenue Service (“IRS”) is an agency of the United States within the Department of the Treasury of the United States responsible for administering the tax laws of the United States.

COUNT ONE

Corrupt Interference with Internal Revenue Laws

2. The Grand Jury re-alleges and incorporates by reference Paragraph 1 as if fully set forth herein.

3. From at least in or about October 2010 and continuing thereafter up to and including the date of this Indictment, in the Western District of Missouri and elsewhere, KERMIT ALAN WASHINGTON did corruptly endeavor to obstruct or impede the due administration of the internal revenue laws by the following manner and means:

a. Soliciting former professional athletes, including those living in the Western District of Missouri and elsewhere, to make charitable donations to PCA that he diverted for his own personal benefit;

b. Referring professional athletes to Mix and the Law Offices of Ron Mix in exchange for referral payments purporting to be charitable donations to PCA that he diverted for his own personal benefit;

c. Using PCA to hide income on his 2010, 2011, 2012, and 2013 Forms 1040, U.S. Individual Income Tax Returns;

d. Filing false tax returns and causing others to file false tax returns;

e. Filing false Forms 990-EZ, Short Form Returns of Organization Exempt From Income Tax, on behalf of PCA that misrepresented the charitable contributions; and,

f. Falsifying PCA's corporate minutes and backdating documents related to PCA during the investigation.

Corrupt Acts

The corrupt acts taken by KERMIT ALAN WASHINGTON were the following, among others:

4. On or about June 25, 2010, WASHINGTON caused P.K. to send a \$10,000 check made payable to PCA.

5. On or about June 30, 2010, WASHINGTON deposited the \$10,000 check from P.K. into PCA's bank account.

6. On or about October 28, 2010, after making professional athlete referrals to Mix, WASHINGTON caused Mix to make a \$5,000 check payable to PCA.

7. On or about November 1, 2010, WASHINGTON deposited the \$5,000 check from Mix into PCA's bank account.

8. On or about December 8, 2010, WASHINGTON attempted to solicit a charitable donation for PCA from A.P., who at the time of receiving these solicitations, was in the Western District of Missouri where he resided.

9. On or about December 16, 2010, after making professional athlete referrals to Mix, WASHINGTON caused Mix to make a \$10,000 check payable to PCA.

10. On or about December 20, 2010, WASHINGTON deposited the \$10,000 check from Mix into PCA's bank account.

11. From January 1, 2010, through December 31, 2010, WASHINGTON diverted approximately \$17,914 of PCA funds for personal purchases and expenses of, among other things, jewelry, clothes, domestic airline flights, home furnishings, and credit card charges.

12. From January 1, 2010, through December 31, 2010, WASHINGTON diverted approximately \$13,870 in cash and \$41,400 to other accounts from the PCA bank account.

13. On or about March 24, 2011, WASHINGTON sent a solicitation via email to P.K.'s personal assistant requesting a donation for PCA and falsely representing that "[t]here is no and I mean no administration cost at all."

14. On or about March 29, 2011, WASHINGTON caused P.K. to send a \$10,000 check made payable to PCA.

15. On or about March 29, 2011, WASHINGTON deposited the \$10,000 check from P.K. into PCA's bank account.

16. On or about July 22, 2011, after making professional athlete referrals to Mix, WASHINGTON caused Mix to make a \$10,000 check payable to PCA.

17. On or about July 25, 2011, WASHINGTON deposited the \$10,000 check from Mix into PCA's bank account.

18. On or about December 30, 2011, after making professional athlete referrals to Mix, WASHINGTON caused Mix to make a \$15,000 check payable to PCA.

19. On or about December 30, 2011, WASHINGTON deposited the \$15,000 check from Mix into PCA's bank account.

20. From January 1, 2011, through December 31, 2011, WASHINGTON diverted approximately \$38,539 of PCA funds for personal purchases and expenses of, among other things, rent, clothes, restaurants, hotels, home furnishings, groceries, and credit card charges.

21. From January 1, 2011, through December 31, 2011, WASHINGTON diverted approximately \$16,707 in cash and approximately \$57,925 to other accounts from the PCA bank account.

22. On or about March 3, 2012, after making professional athlete referrals to Mix, WASHINGTON caused Mix to make a \$10,000 check payable to PCA.

23. On or about March 6, 2012, WASHINGTON deposited the \$10,000 check from Mix into PCA's bank account.

24. On or about May 15, 2012, after making professional athlete referrals to Mix, WASHINGTON caused Mix to make a \$10,000 check payable to PCA.

25. On or about May 16, 2012, WASHINGTON deposited the \$10,000 check from Mix into PCA's bank account.

26. On or about June 2012, WASHINGTON instructed Mix to make the checks payable to The 6TH Man Foundation instead of PCA.

27. On or about June 24, 2012, after making professional athlete referrals to Mix, WASHINGTON caused Mix to make a \$10,000 check payable to The 6TH Man Foundation.

28. On or about July 2, 2012, WASHINGTON deposited the \$10,000 check from Mix into PCA's bank account.

29. On or about July 31, 2012, WASHINGTON caused the NBPA to send a \$25,000 check made payable to The 6TH Man Foundation.

30. On or about August 2, 2012, WASHINGTON deposited the \$25,000 check into PCA's bank account.

31. On or about August 14, 2012, after making professional athlete referrals to Mix, WASHINGTON caused Mix to make a \$10,000 check payable to The 6TH Man Foundation.

32. On or about August 27, 2012, WASHINGTON deposited the \$10,000 check from Mix into PCA's bank account.

33. On or about October 18, 2012, after making professional athlete referrals to Mix, WASHINGTON caused Mix to make a \$10,000 check payable to The 6TH Man Foundation.

34. On or about October 26, 2012, WASHINGTON deposited the \$10,000 check from Mix into PCA's bank account.

35. On or about November 13, 2012, WASHINGTON caused P.K. to send a \$10,000 check payable to PCA.

36. On or about November 15, 2012, WASHINGTON deposited the \$10,000 check from P.K. into PCA's bank account.

37. From January 1, 2012, through December 31, 2012, WASHINGTON diverted approximately \$16,459 of PCA funds for personal purchase and expenses of, among other things, hotels, clothes, home furnishings, electronics, groceries, dental visits, entertainment, and credit card charges.

38. From January 1, 2012, through December 31, 2012, WASHINGTON diverted approximately \$44,295 in cash and approximately \$49,000 to other accounts from the PCA bank account.

39. On or about March 1, 2013, after making professional athlete referrals to Mix, WASHINGTON caused Mix to make a \$25,000 check payable to The 6TH Man Foundation.

40. On or about March 15, 2013, WASHINGTON deposited the \$25,000 check from Mix into PCA's bank account.

41. On or about August 21, 2013, in order to receive a charitable contribution, WASHINGTON caused S.B., who at the time was in the Western District of Missouri where he resided, to hire Mix.

42. On or about September 4, 2013, after making professional athlete referrals to Mix, WASHINGTON caused Mix to make a \$5,000 check payable to The 6TH Man Foundation.

43. On or about September 16, 2013, WASHINGTON deposited the \$5,000 check from Mix into PCA's bank account.

44. On or about December 16, 2013, after making professional athlete referrals to Mix, WASHINGTON caused Mix to make a \$20,000 check payable to The 6TH Man Foundation.

45. On or about December 31, 2013, WASHINGTON deposited the \$20,000 check from Mix into PCA's bank account.

46. From January 1, 2013, through December 31, 2013, WASHINGTON diverted approximately \$23,733 of PCA funds for personal purchases and expenses of, among other things, rent, clothes, home furnishings, restaurants, personal training, groceries, and domestic airline flights.

47. From January 1, 2013, through December 31, 2013, WASHINGTON diverted \$32,771 in cash and approximately \$48,200 to other accounts from the PCA bank account.

48. On or about August 9, 2011, WASHINGTON submitted to the Oregon Secretary of State an "Application for Reinstatement/Reactivation" for PCA to maintain its corporate status in Oregon as a nonprofit entity.

49. On or about January 12, 2012, WASHINGTON filed through interstate wire communications an "Amended Annual Report" with the Oregon Secretary of State in which he used T.G.'s name and address, without T.G.'s knowledge or consent, on the state filing to be the registered agent and "Secretary" of PCA.

50. On or about July 25, 2013, WASHINGTON filed through interstate wire communications a Form 990-EZ, Short Form Return of Organization Exempt from Income Tax,

for 2012 in which he named T.G. as the “Secretary” of PCA without T.G.’s knowledge or consent.

51. On or about June 19, 2014, WASHINGTON filed through interstate wire communications a Form 990-EZ, Short Form Return of Organization Exempt from Income Tax, for 2013 in which he named T.G. as the “Secretary” of PCA without T.G.’s knowledge or consent.

52. On or about January 19, 2015, WASHINGTON filed through interstate wire communications an “Amended Annual Report” with the Oregon Secretary of State in which he used T.G.’s name and address, without T.G.’s knowledge or consent, on the state filing to be the registered agent and “Secretary” of PCA.

53. On or about August 15, 2011, WASHINGTON filed a false Form 1040, U.S. Individual Income Tax Return, for 2010 that failed to report the diverted income.

54. On or about August 28, 2012, WASHINGTON filed a false Form 1040, U.S. Individual Income Tax Return, for 2011 that failed to report the diverted income.

55. On or about February 14, 2013, WASHINGTON filed a false Form 1040, U.S. Individual Income Tax Return, for 2012 that failed to report the diverted income.

56. On or about February 18, 2014, WASHINGTON filed a false Form 1040, U.S. Individual Income Tax Return, for 2013 that failed to report the diverted income.

57. On or about April 7, 2015, WASHINGTON caused an email to be sent to a federal agent based in the Western District of Missouri, with an attached draft copy of the PCA Form 990-EZ tax return for 2014, falsely reporting he was paid \$10,000 as compensation by PCA.

58. On August 23, 2015, WASHINGTON and Individual G backdated and falsified corporate minutes and other corporate documents related to PCA that falsely claimed that PCA had board meetings on specific dates in January 2012, 2013, 2014, and 2015.

All in violation of Title 26, United States Code, Section 7212(a).

COUNT TWO

Conspiracy to Commit Wire Fraud eBay and PayPal

The Grand Jury repeats and re-alleges the allegations contained in Paragraphs 1, 48 through 52, 57, and 58 of this Indictment.

59. From on or about January 1, 2004, and up to the date of this Indictment, in the Western District of Missouri and elsewhere, the defendant, KERMIT ALAN WASHINGTON, did knowingly combine, conspire, confederate and agree with others known and unknown to the Grand Jury, to commit offenses against the United States, namely, wire fraud, that is: having devised and intending to devise a scheme and artifice to defraud e-commerce and online payment businesses and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises and for purposes of executing such scheme and artifice, transmit and cause to be transmitted by means of wire communications in interstate commerce, any writings, signs, signals, and sounds, in violation of Title 18, United States Code, Section 1343.

The Purpose of the Conspiracy

60. The object and purpose of the conspiracy was for WASHINGTON and other co-conspirators to unjustly and fraudulently enrich themselves by defrauding eBay, PayPal, the customers, and donors.

Manner and Means

61. It was part of the conspiracy that WASHINGTON and co-conspirator Reza Davachi (“Davachi”) would and did create an eBay and PayPal charity merchant account in the name of PCA.

62. It was part of the conspiracy that WASHINGTON would and did allow, permit, and encourage Davachi and others to use PCA’s name, tax-exempt status, and IRS Employee Identification Number (“EIN”), with eBay and PayPal, so that Davachi and others could avoid substantial listing and registration fees incurred in operating online, for-profit businesses.

63. It was part of the conspiracy that WASHINGTON and Davachi would and did recruit other individuals, including Casey Lee Ross (“Ross”), who resided at the time and continues to reside in the Western District of Missouri, and Rex Yang (“Yang”), as well as others, both known and unknown to the Grand Jury, to list and sell items through eBay and PayPal.

64. It was part of the conspiracy that WASHINGTON and others would and did make false and fraudulent representations to eBay, PayPal, and customers, that “100%” of the proceeds from the online eBay sales benefited PCA.

65. It was part of the conspiracy that WASHINGTON would and did provide Davachi with numerous items, including memorabilia autographed by former and current professional NBA players, to sell on eBay under the guise that all of the online eBay sales benefited PCA’s charitable mission.

66. It was part of the conspiracy that WASHINGTON would and did receive payments from Davachi, in exchange for allowing Davachi and others to use the tax-exempt status of PCA to make personal profits.

Overt Acts

In furtherance of the conspiracy, and for the purpose of bringing about its unlawful objectives, WASHINGTON and others, both known and unknown to the Grand Jury, committed the following acts, among others:

67. On or about January 16, 2004, WASHINGTON and Davachi created an eBay and PayPal charity merchant account for PCA, which was created on behalf of the PCA charity using WASHINGTON's personal Social Security Number and date of birth, as well as the IRS Employee Identification Number issued to PCA.

68. Beginning in January 2009, Davachi recruited Ross, Yang, and others as "direct sellers" for PCA, via interstate wire communications in the form of text messages or emails, with WASHINGTON's knowledge and approval.

69. On or about April 7, 2009, Davachi sent Yang a wire communication through instant message, writing, "anything on what would be your final donation...on the charity program...Kermit bugged me again about it."

70. On or about April 22, 2009, Davachi sent Yang a wire communication through instant message, writing, "I really need the 50% to be donated from the first donation before kermit (sic) tells me to remove the name from the direct seller list."

71. On or about June 4, 2009, Davachi sent a series of wire communications via instant message to Ross, who at all times was within the Western District of Missouri, informing Ross of the benefits of selling through eBay as a "direct seller" for PCA and how much money Ross could save by avoiding the eBay and PayPal fees assessed on for-profit businesses by selling through the PCA charity.

72. On or about August 26, 2009, Davachi sent a series of wire communications via instant message to Ross, writing that if Ross used the PCA eBay charity store to sell his items he could “get up to 200-300 sales per month, my normal fee would have been 5k but after charity (it’s) \$700.”

73. On or about April 26, 2010, Ross sent a series of wire communications via instant message to Davachi, writing “Need to get my ebay added to the charity sometime here in a (sic) the near future...selling over 100 items a month at around 80-100 a piece...Killing me in fees,” and Davachi responds, “yes as the charity can use the donations :)... your fees would drop 50% on all succesful (sic) auctions...since 50% would be going to the charity.”

74. On or about May 12, 2010, Ross sent a series of wire communications via instant message to Davachi, writing, “I have listed some items under the charity... Will send fees at end of month if thats ok or I can do weekly,” and Davachi responds, “montly (sic) is fine.”

75. On or about August 3, 2010, Davachi sent a series of wire communications via instant message to Ross, writing, “they went and limited you right when you were taking full advantage of the charity thing,” and Ross responds, “they limited me...reinstated me...limited me last night...reinstated me...then limited me this morning.”

76. On or about April 17, 2012, Davachi sent WASHINGTON a wire communication via email telling WASHINGTON what information he needed to provide to PayPal to permit Davachi to continue using and managing the PCA PayPal account.

77. On or about April 20, 2012, and again on May 4, 2012, Davachi wire-transferred \$1,000 into PCA’s bank account.

78. Beginning in May of 2012, and continuing through December 2014, Davachi wire-transferred approximately \$2,000 per month into PCA's bank account in exchange for the use of PCA's PayPal account.

79. On or about October 3, 2012, WASHINGTON forwarded to Davachi an email WASHINGTON received from an eBay representative summarizing her conversation with WASHINGTON about Davachi's perceived misuse of PCA's charity through eBay.

80. On or about October 3, 2012, WASHINGTON sent an email to Davachi, writing, "Rez, Just got back from Africa...Are you putting any money in for 6th man this month?"

81. On or about October 10, 2012, Davachi wire-transferred \$2,000 into PCA's bank account.

82. On or about September 8, 2014, federal agents based in the Western District of Missouri purchased items online from PCA's eBay charity store operated by Davachi. All in violation of Title 18, United States Code, Sections 1343 and 1349.

COUNT THREE

Falsification of Records in Federal Investigation

The Grand Jury repeats and re-alleges the allegations contained in Paragraphs 1 and 58 of this Indictment.

83. Between on or about August 23, 2015, and August 26, 2015, in the Western District of Missouri and elsewhere, the defendant, KERMIT ALAN WASHINGTON, did knowingly falsify, and make a false entry, in a record and document, that is, numerous purported board of directors meeting minutes for PROJECT CONTACT AFRICA for 2012, 2013, 2014, and 2015, with the intent to impede, obstruct, and influence the investigation into the fraudulent use of the PROJECT CONTACT AFRICA charity, a matter that the defendant contemplated and knew was

within the jurisdiction of the Department of Homeland Security, which is a department and agency of the United States, all in violation of Title 18, United States Code, Sections 1519 and 2.

COUNT FOUR

Aggravated Identity Theft

The Grand Jury repeats and re-alleges the allegations contained in Paragraphs 1, 49 through 52, and 59 through 82 of this Indictment.

84. Between on or about August 6, 2008, and January 19, 2015, in the Western District of Missouri and elsewhere, the defendant, KERMIT ALAN WASHINGTON, did knowingly transfer, possess, and use, without lawful authority, the means of identification of another, that is, the defendant used the name, personal, and business addresses of a real person, T.G., in numerous official state and federal filings on behalf of PROJECT CONTACT AFRICA during and in relation to the felony of conspiracy to commit wire fraud, all in violation of Title 18, United States Code, Section 1028A(c)(5).

DATED: May 23, 2016

A TRUE BILL:

___/s/ Helen A. Chaffin _____
Foreperson

TAMMY DICKINSON
United States Attorney

___/s/ Patrick Daly _____
PATRICK DALY
Assistant United States Attorney

___/s/ James Curt Bohling _____
JAMES CURT BOHLING
Assistant United States Attorney

___/s/ Ryan Raybould _____
RYAN RAYBOULD
Trial Attorney, DOJ, Tax Division

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

CRIMINAL CASE COVER SHEET

Division of Filing <input checked="" type="checkbox"/> Western <input type="checkbox"/> Central <input type="checkbox"/> Southwestern	<input type="checkbox"/> St. Joseph <input type="checkbox"/> Southern	Place of Offense <u>Jackson</u> County and elsewhere	Matter to be Sealed <input checked="" type="checkbox"/> Secret Indictment <input type="checkbox"/> Juvenile
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Defendant Information

Defendant Name Kermit Washington
 Alias Name _____
 Birthdate 09/17/1951

Related Case Information

Superseding Indictment/Information Yes No if yes, original case number _____
 New Defendant Yes No
 Prior Complaint Case Number, if any _____
 Prior Target Letter Case Number, if any _____

U.S. Attorney Information

AUSA Patrick D. Daly

Interpreter Needed

Yes Language and/or dialect _____
 No

Location Status

Arrest Date _____
 Currently in Federal Custody
 Currently in State Custody
 Currently on Bond
 Writ Required Yes No
 Warrant Required Yes No

U.S.C. Citations

Total # of Counts 4

Set	Index Key/Code/Offense Level	Description of Offense Charged	Count(s)
1	26:7212A.F/1500/4	Corrupt or Forcible Interference	1
2	18:1343.F/4700/4	Fraud by Wire, Radio, or Television	2
3	18:1519.F/1602/4	Destruction, Alternation, or Falsification of Records in Federal Investi	3
4	18:1028A.F/4991/4	Fraud with Identification Documents	4

Date 5/23/16 Signature of AUSA /s/ Patrick D. Daly