

STATE OF NEW YORK: FIRST DISTRICT COURT
COUNTY OF SUFFOLK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

KENNETH G. MARTINEZ (DOB: 04/02/1968),
SHAI SELLAM (DOB: 05/28/1974),
HAYIM JACOB BARKOL f/k/a KADIR BARKOL (DOB: 01/27/1980),
METROPOLITAN ENTERPRISES, INC.,
NEW ROUTE CONSULTING INC., and
LIFTING UP MANAGEMENT LLC,

Defendants.

FELONY COMPLAINT
DOCKET NO.

Philip V. Apruzzese
Assistant Attorney General
(518) 776-2364

STATE OF NEW YORK)
)
COUNTY OF SUFFOLK) ss.:

Investigator Mark Terra of the New York State Office of the Attorney General (“OAG”),
Shield Number 2426, deposes and states the following:

On or about the dates specified below, in Suffolk County, New York, and elsewhere, the
defendants KENNETH G. MARTINEZ, SHAI SELLAM, HAYIM JACOB BARKOL f/k/a
KADIR BARKOL, METROPOLITAN ENTERPRISES, INC., NEW ROUTE CONSULTING
INC., and LIFTING UP MANAGEMENT LLC, committed the following offenses:

FIRST COUNT – MONEY LAUNDERING IN THE SECOND DEGREE

From on or about and between October 30, 2013 and July 24, 2015, in the Town of Huntington, County of Suffolk, State of New York, and elsewhere, the defendants, KENNETH G. MARTINEZ, SHAI SELLAM, HAYIM JACOB BARKOL f/k/a KADIR BARKOL, METROPOLITAN ENTERPRISES, INC., NEW ROUTE CONSULTING INC., and LIFTING UP MANAGEMENT LLC, acting in concert, committed the crime of **Money Laundering in the Second Degree**, in violation of § 470.15(1)(b)(i)(A)(iii) of the Penal Law of the State of New York (a class C felony), knowing that the property involved in one or more financial transactions represented the proceeds of specified criminal conduct, conducted one or more such financial transactions which in fact involved the proceeds of specified criminal conduct, with the intent to promote the carrying on of specified criminal conduct, and the total value of the property involved in such financial transaction or transactions exceeded one hundred thousand dollars (\$100,000).

SECOND COUNT – GRAND LARCENY IN THE SECOND DEGREE

From on or about and between October 16, 2013 and April 2, 2015, in the Town of Huntington, County of Suffolk, State of New York, and elsewhere, the defendants, KENNETH G. MARTINEZ, SHAI SELLAM, HAYIM JACOB BARKOL f/k/a KADIR BARKOL, METROPOLITAN ENTERPRISES, INC., NEW ROUTE CONSULTING INC., and LIFTING UP MANAGEMENT LLC, acting in concert, committed the crime of **Grand Larceny in the Second Degree**, in violation of § 155.45(1) of the Penal Law of the State of New York (a class C felony), when, with the intent to deprive another of property and to appropriate the same to himself, herself, or to a third party, the defendants stole property from Signature Financial, LLC and the value of the property exceeded fifty thousand dollars (\$50,000.00).

THIRD COUNT – SCHEME TO DEFRAUD IN THE FIRST DEGREE

From on or about and between October 1, 2013 and July 24, 2015, in the Town of Huntington, County of Suffolk, State of New York, and elsewhere, the defendants, KENNETH G. MARTINEZ, SHAI SELLAM, HAYIM JACOB BARKOL f/k/a KADIR BARKOL, METROPOLITAN ENTERPRISES, INC., NEW ROUTE CONSULTING INC., and LIFTING UP MANAGEMENT LLC, acting in concert, committed the crime of **Scheme to Defraud in the First Degree**, in violation of Penal Law § 190.65(1)(b) (a class E felony), by engaging in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtained property with a value in excess of one thousand dollars (\$1,000.00) from one or more of such persons.

The defendants committed the above crimes in the following manner:

1. This felony complaint is based upon information and belief, with the sources of my information and the grounds for my belief being the investigation conducted by the Office of the New York State Attorney General; my review of bank records maintained by Santander Bank, N.A. of defendant METROPOLITAN ENTERPRISES, INC. (“METROPOLITAN”), accounts ending 6546 (“Metropolitan Operating Account”) and ending 6708 (“Metropolitan Payroll Account”); my review of bank records maintained by Wells Fargo, N.A. of METROPOLITAN, account ending 3863 (“Metropolitan WF Account”); my review of bank records maintained by TD Bank, N.A. of defendant, LIFTING UP MANAGEMENT LLC (“LIFTING UP”) account ending 5617 (“Lifting Up Account”); my review of bank records maintained by TD Bank, N.A. of defendant NEW ROUTE CONSULTING INC. (“NEW ROUTE”) accounts ending 4259 (“New Route Account”); my review of bank records maintained

by TD Bank, N.A. of NYC CONSTRUCTION SERVICE INC. (“NYC Construction”), account ending 1571 (“NYC Construction Account”); my review of financial records maintained by Bank of America, N.A. (“BOA”) related to METROPOLITAN’s contract numbers ending 0705, 0708, and 0710 (“BOA contract 0705,” “BOA contract 0708,” and “BOA contract 0710”); my review of financial records maintained by Baytree Financial Group LLC (“BFG”) related to METROPOLITAN’s contract number ending 1783 (“BFG contract”); my review of financial records maintained by Hudson Valley Bank (“HVB”) related to METROPOLITAN’s contract number 149 (“HVB contract”); my review of financial records maintained by Macrolease Corporation (“MC”) related to METROPOLITAN’s contract number ending 6228 (“MC contract”); my review of financial records maintained by Signature Financial LLC (“SF”) related to METROPOLITAN’s contracts ending 8002-8005 (collectively, “SF contracts”); my review of financial records maintained by Sterling National Bank (“SNB”) related to METROPOLITAN’s contract ending 2875 (“SNB contract”); my review of financial records maintained by Bank Leumi related to METROPOLITAN’s accounts ending 7901 and 9501 (“Bank Leumi records”); my discussions with representatives from the aforementioned financial institutions, whose identities are known to me; my review of documentation in Corporate Capital Services, Inc.’s (“CCS”) possession related to the defendants; my interviews of defendant KENNETH G. MARTINEZ (“MARTINEZ”); my discussions with the Port Authority of New York and New Jersey (“Port Authority”); a review of documents from the New York State Department of State (“NYS DOS”); and, my discussions with OAG Principal Auditor Investigator Jason Blair (“Auditor Blair”).

2. My review of the NYSDOS records show that defendant METROPOLITAN first filed an Application for Authority on June 29, 2006 for “Metropolitan Enterprises, Inc.” with a service of process address listed as “Metropolitan Enterprises NY, 49-47 31st Street, Long Island

City, New York 11101.” The Application was signed by defendant MARTINEZ as “President” and had his contact information listed as “Filed by.” A further reviews of the NYSDOS records related to METROPOLITAN show that MARTINEZ was listed as “Chief Executive Officer” on the Biennial Statements filed in June 2008 and June 2010. Additionally, MARTINEZ signed as “President” on the June 2010 filing, and updated the address of METROPOLITAN to “637 Court Street, Brooklyn, N.Y. 11231.”

3. My review of the Metropolitan Operating and Payroll Accounts show that the Business Banking Analyzed Checking Accounts were opened on or about September 3, 2013 in the name of “Metropolitan Enterprises, Inc.” The Universal Resolution for both the Metropolitan Operating Account and the Metropolitan Payroll Account, as well as the signature cards for each show that MARTINEZ is the sole signatory on the account, and is listed as “President” and “Owner.” A copy of MARTINEZ’s New York State issued Driver License was provided along with the account opening documents and lists an address of “637 Court Street, Brooklyn, NY 11231.” Additionally, my review of the Metropolitan WF Account shows that the Platinum Business Services Package account was opened on October 23, 2014, that MARTINEZ was the sole signor on this account, and is listed as “Sole Owner” listing the same Court Street address.

4. My review of the NYSDOS records show that defendant LIFTING UP first filed an Application for Authority on January 28, 2013 for “Lifting Up Management LLC” with a service of process address listed as “1712 East 4th Street, Apt. 2F, Brooklyn, NY 11223.” The Application was electronically signed by defendant BARKOL as “Authorized Person.”

5. My review of the Lifting Up Account shows that the Business Convenience Checking Account was opened on or about June 30, 2011 in the name of “Lifting Up Management LLC.” The Corporate Banking Resolution and signature card for the NYC

Construction Account show that BARKOL is the sole signatory on the account, and that he is listed as “President” and “Owner.”

6. My review of the NYC Construction Account shows that the Business Checking Account was opened on or about September 18, 2007 in the name of “NYC Construction Service Inc.” The Certificate of Authority for the Lifting Up Account and the signature card show that BARKOL is the sole signatory on the account, and is listed as “President.”

7. My review of the NYSDOS records show that defendant NEW ROUTE first filed a Certificate of Incorporation on September 9, 2014 for “New Route Consulting Inc.” with a service of process address listed as “c/o PSS ASO, Inc. 55 Northern Blvd, Ste 206, Great Neck, NY 11021.” The Certificate was electronically signed by defendant SELLAM as “Incorporator” and listed his name and the service of process address listed as filer’s information.

8. My review of the New Route Account shows that the TD Business Simple Checking Account was opened on or about April 2, 2015 in the name of “New Route Consulting Inc.” The General Business Resolution for the New Route Account and the signature card show that SELLAM is the sole signatory on the account, and that he is listed as “President.”

9. MARTINEZ admitted to me that he, SELLAM and BARKOL, were involved in “bogus equipment financing transactions.” MARTINEZ admitted that SELLAM and BARKOL were good friends, and that SELLAM introduced MARTINEZ and BARKOL years prior to the equipment financing transactions. MARTINEZ admitted that while he was the President of METROPOLITAN, SELLAM controlled all of METROPOLITAN’s business operations, including the purchase and sale of equipment. Moreover, MARTINEZ admitted that SELLAM would still run equipment transactions by MARTINEZ from at least October 2013 through April 2015 (“the relevant time period”).

10. MARTINEZ admitted that prior to the first equipment purchase between METROPOLITAN and LIFTING UP, which took place in October 2013, SELLAM setup a meeting with BARKOL and MARTINEZ at LIFTING UP's office on Richard Street, Brooklyn, New York. MARTINEZ admitted that the agreement between SELLAM, BARKOL, and him was that METROPOLITAN would purportedly purchase various types of equipment from one of BARKOL's companies: LIFTING UP or NYC Construction. METROPOLITAN would obtain financing for these transactions, and BARKOL would provide the funds back to METROPOLITAN to keep the business afloat.

11. Witness #1, whose identity is known to me, informed Investigator Louis Matirko of the PA that during the relevant time period, Witness #1 was a loan broker for CCS, and was involved with assisting METROPOLITAN in obtaining equipment purchase financing from a number of financing companies. A review of the CCS records show that this includes, but is not limited to, BOA, BFG, MC, HVB, SF, and SNB.

12. A review of the CCS records shows that their corporate office was located at 77 Arkay Drive, Suite B2, Hauppauge, County of Suffolk, New York 11788. CCS no longer in business and Witness #1 now works for Byline Financial Group ("Byline") out of the same location in Hauppauge, New York.

13. Witness #1 further informed Inv. Matirko that during the relevant time he dealt with MARTINEZ and SELLAM from METROPOLITAN. Witness #1 informed Inv. Matirko that although MARTINEZ was the president of METROPOLITAN on paper, SELLAM was the person who really ran the company and is who Witness #1 primarily dealt with. Moreover, Witness #1 informed Inv. Matirko that SELLAM stated he was the General Manager of METROPOLITAN, and that SELLAM was the person "who called the shots."

14. Furthermore, Witness #1 informed Inv. Matirko that SELLAM was the person who would contact Witness #1 to request assistance in obtaining financing to purchase equipment, and that MARTINEZ was the person Witness #1 would go to see to have the financing documents signed during the application process and when the finance company approved the equipment financing transaction. Witness #1 informed Inv. Matirko that Witness #1 personally spoke with MARTINEZ and SELLAM about the type of equipment METROPOLITAN was financing, the cost and the equipment seller. Additionally, Witness #1 stated to Inv. Matirko that Witness #1 remembers dealing with BARKOL on some of METROPOLITAN's financing, but knew him as "Kevin Barkol."

A. The Larceny from Signature Financial, LLC, the Scheme to Defraud Multiple Financial Institutions and the Laundering of the Proceeds to Promote the Ongoing Course of Conduct.

15. A review of the CCS records shows that METROPOLITAN utilized CCS to obtain financing from SF during the relevant time. A review of the SF records shows that SF was located at 68 South Service Road, Melville, Town of Huntington, County of Suffolk, State of New York, with a mailing address of 225 Broadhollow Road, Suite 132W, Melville, Town of Huntington, County of Suffolk, State of New York during the relevant time period.

16. A review of the SF contracts show that METROPOLITAN obtained a series of loans between October 2013 and March 2015 on the following dates and in the following amounts, listing LIFTING UP as the equipment supplier on the SF contracts:

Date	Contract Number Ending	Funding Amount
October 30, 2013	8002	\$268,228.92
April 2, 2014	8003	\$174,996.00
April 9, 2014	8003	\$174,996.00
June 4, 2014	8004	\$231,327.00
August 27, 2014	8005	\$313,500.00
March 20, 2015	8004	\$231,327.00
Total Funding		\$1,394,374.92

17. A review of the SNB contract show that METROPOLITAN obtained financing between February 2014 and August 2014 on the following dates and in the following amounts, listing LIFTING UP as the equipment supplier on the SNB contract:

Date	Contract Number Ending	Funding Amount
February 14, 2014	2875 (payment 1 of 2)	\$130,625.00
August 27, 2014	2875 (payment 2 of 2)	\$130,625.00
Total Funding		\$261,250.00

- i. Corporate Capital Services, Inc., Sterling National Bank, and Signature Financial, LLC – Financing for 200 Kenco Capstan Winches

18. A review of the CCS records show that METROPOLITAN utilized CCS as a loan broker with SF for SF Contract 8002. The UCC Financing Statement for SF Contract 8002 was signed by MARTINEZ as “President” on or about October 17, 2013. The UCC Financing Statement listed LIFTING UP as the vendor with an address of “201 Richards Street, Suite 107, Brooklyn, NY 11231.” The equipment description is “105 – Electric Capstan Winch KS200SE.”

SF records show Invoice Number 63, dated October 24, 2013 from LIFTING UP to METROPOLITAN, billing to CCS, for “Capstan winch 200.” The cost is listed as \$288,750.00, with a “deposit” having been made of \$20,521.08, for a net total of \$268,228.92. Wiring instructions list the Lifting Up Account at TD Bank. The Master Equipment Lease Agreement was dated October 24, 2013 by a representative of CCS and MARTINEZ on behalf of METROPOLITAN. MARTINEZ signed the “Delivery & Acceptance Document by Lessee” on October 24, 2013, stating METROPOLITAN “acknowledges that the Equipment described in the Equipment Lease Agreement accepted by [METROPOLITAN] on the date indicated above has been received in good repair, has been properly installed, tested and inspected and is operating satisfactorily in all respects for all [METROPOLITAN]’s intended uses and purposes at the location(s) specified in the Lease.”

19. A review of CCS and SF records show a copy of the “deposit check” number 60022 purportedly drawn from the Metropolitan Operating Account, dated October 23, 2013, payable to “Lifting Up Management,” in the amount of \$20,521.08 and signed by MARTINEZ. A review of the Metropolitan Operating Account show that this check was never cashed against the account. Moreover, a review of the Lifting Up Account show that this check was never deposited into the Lifting Up Account.

20. MARTINEZ admits that CCS informed him that METROPOLITAN would be required to place a deposit and provide a copy of the deposit check. Furthermore, the three defendants decided to provide a copy of check number 60022 to the lender to make it look like a deposit was made. MARTINEZ admitted that there was no intent to ever cash the check, and based on a review of the bank records from the Metropolitan Operating Account such check was in fact never cashed.

21. I am informed by Inv. Matirko that Witness #2, whose identity is known to me, stated that Witness #2 worked as the Office Administrator for LIFTING UP and NYC Construction from 2009 through 2014. Witness #2 informed Inv. Matirko that Quick Books accounting software was used to keep track of BARKOL's businesses, and that Witness #2 prepared invoices for the businesses. Witness #2 further stated to Inv. Matirko that prior to moving to the Richards Street address, LIFTING UP and NYC Construction shared office space with METROPOLITAN at the Court Street address.

22. Witness #2 informed Inv. Matirko that Witness #2 observed SELLAM performing the duties of a key manager of METROPOLITAN, including but not limited to running meetings, giving orders and making management type decisions. Witness #2 informed Inv. Matirko that SELLAM was a mentor to BARKOL, but not on the payroll of either of BARKOL's entities.

23. I am further informed by Inv. Matirko that Witness #2 stated the Richards Street address had storage for only approximately 8 winches, and that LIFTING UP only sold approximately 1-2 per week. Witness #2 informed Inv. Matirko that BARKOL would prepare invoices outside the Quick Books system by using an invoice form from Microsoft Word. BARKOL would then give these to Witness #2 so the invoice would be sequentially numbered and to properly account for the accounts receivable. Witness #2 stated to Inv. Matirko that Witness #2 does not recall ever seeing, processing, or preparing any invoice for the purchase of that many winches from any one customer.

24. Witness #3, whose identity is known to me, informed Inv. Matirko that Witness #3 is the owner of the company that manufactured and sold the Kenco Capstan Winches to LIFTING UP. Witness #3 informed Inv. Matirko that orders were placed by “Kevin Barkol” and that he personally picked up the Kenco Capstan Winches from Witness #3’s shop during the relevant time.

25. A review of packing slips from Witness #3’s business shows that LIFTING UP received only 109 Kenco Capstan Winches from September 24, 2012 through October 24, 2013. CCS and SF records show that LIFTING UP invoice number 63 indicates the purchase of 105 Kenco Capstan Winches by METROPOLITAN from LIFTING UP. A review of the Lifting Up Account shows that during this same time period, LIFTING UP was selling Kenco Capstan Winches to other companies as well, making it impossible to have sold 105 Kenco Capstan Winches to METROPOLITAN.

26. A review of the SNB contract shows that on November 15, 2013, MARTINEZ on behalf of METROPOLITAN entered into a Master Lease Agreement with SNB for the financing of an additional 95 Kenco Capstan Winches, again to be supplied by LIFTING UP. These 95 Kenco Capstan Winches were to be sold for \$261,250.00. SNB records show a LIFTING UP invoice number 53 dated February 11, 2014 with a ship to “637 Court Street, Brooklyn, New York 11231” and a bill to “Sterling National Bank, 42 Broadway, 3rd Floor, New York, New York, 10004.”

27. Witness #3 informed Inv. Matirko that by February 11, 2014, Witness #3 had only manufactured a total of 142 for LIFTING UP. A review of Witness #3’s packing slips confirms that BARKOL did not have 200 Kenco Capstan Winches to sell on the dates the items were purportedly sold.

28. I am informed by Auditor Blair that the Lifting Up Account received \$268,228.92 on or about October 30, 2013 from Signature Financial, LLC. I am further informed by Auditor Blair that on November 5, 2013 a \$50,000.00 check was deposited into the Metropolitan Operating Account. A review of the Lifting Up Account show that this was check number 2055 was drawn from the Lifting Up Account in the amount of \$50,000.00, dated November 4, 2013 and signed by BARKOL. Auditor Blair informs me that upon receipt of the \$50,000.00 from the Lifting Up Account to the Metropolitan Operating Account, \$30,000.00 was transferred to the Metropolitan Payroll Account for payroll purposes. The remaining \$20,000.00, plus additional funds from the Metropolitan Operating Account went to pay existing loans with Bank of America.

29. Moreover, I am informed by Auditor Blair that on November 13, 2013 a \$150,000.00 check was deposited into the Metropolitan Operating Account. A review of the Lifting Up Account shows that this was check number 2060 was drawn from the Lifting Up Account in the amount of \$150,000.00, dated November 13, 2013 and signed by BARKOL. A further review of the Metropolitan Operating Account shows that on November 12, 2013, the account was at \$47,305.07. Auditor Blair informs me that on the same day the \$150,000.00 check was deposited into the Metropolitan Operating Account, the following transactions were made: a payment to the NYC Department of Finance – Commissioner of Taxation in the amount of \$50,835.51; two payments to Santander Bank towards a preexisting loan in the amounts of \$28,111.23 and \$1,833.89; and a transfer to the Metropolitan Payroll Account for payroll purposes in the amount of \$10,000. According to Auditor Blair, additional payments and fees were made out of the Metropolitan Operating Account on November 13, 2013 totaling in excess of \$50,000.00, bringing the account balance down from \$197,305.07 to \$54,641.75.

30. I am further informed by Auditor Blair that on February 14, 2014, LIFTING UP received a wire from SNB for \$130,625.00 into the Lifting Up Account. On February 20, 2014, check number 2097 in the amount of \$130,000.00 was made payable to METROPOLITAN, signed by BARKOL and deposited into the Metropolitan Operating Account. On that same day, along with other funds in the Metropolitan Operating Account, a total of \$150,000.00 was transferred to the Metropolitan Payroll Account, and used to pay payroll and NYC District Council of Carpenters benefits. Auditor Blair further informs me that SNB made a second payment of \$130,625.00 on or about August 27, 2014, which is discussed in more detail below.

ii. Signature Financial, LLC – April 2, 2014 and April 9, 2014 Financing

31. A review of the CCS records show that METROPOLITAN utilized CCS as a loan broker with SF for SF Contract 8003. The Authorization Agreement for SF Contract 8003 was signed by MARTINEZ as “President” on or about March 28, 2014. SF records have a copy of LIFTING UP Invoice Number 62, dated March 25, 2014 with a ship to address of “637 Court Street, Brooklyn, NY 11231” and bill to of “Signature Financial LLC, 225 Broadhollow Road, Suite, 132W, Melville, NY 11747,” for 1,200 frames, 300 posts, and 2,400 braces. The cost total cost is listed as \$349,992.00, to be made in two equal payments of \$174,996. Wiring transfer information listed for the Lifting Up Account at TD Bank was provided as well.

32. The Master Equipment Lease Agreement was dated April 2, 2014 by a representative of SF and MARTINEZ as “President” on behalf of METROPOLITAN. MARTINEZ signed the “Delivery & Acceptance Certificate” on April 2, 2014, stating METROPOLITAN “the equipment has been fully delivered to and accepted by [METROPOLITAN] and is conforming to all agreements between the undersigned and Signature, and...any installation or other work necessary for the equipment to be placed in service has been completed in a satisfactory manner...SIGNATURE MAY RELY ON THIS

CERTIFICATE IN ADVANCING FUNDS.” A further review of the SF records show that on April 9, 2014, MARTINEZ sent an email titled “Authorization to release final payment,” stating “This email is to authorize the release of the balance of the funds due (\$174,996) to Lifting Up Management as the equipment has been delivered and accepted. Please let me know if you have any questions to help expedite the funding.”

33. A review of Bank Leumi records show that an appraisal of all METROPOLITAN inventory was taken in the Summer 2013 showing that METROPOLITAN had a total inventory of approximately \$9.8 million, including but not limited to 2,600 frames and 62,000 braces worth over \$700,000. Bank Leumi records further contained photos of the specified equipment from the appraisal. The Bank Leumi photos are near identical to the photos taken by an inspector on behalf of SF on or about April 7, 2014.

34. I am informed by Auditor Blair that the Lifting Up Account received \$174,996.00 on or about April 2, 2014 from Signature Financial, LLC. I am further informed by Auditor Blair that on April 2, 2014 a \$165,000.00 check was deposited into the Metropolitan Payroll Account. A review of the Lifting Up Account shows that this was check number 2103 was drawn from the Lifting Up Account in the amount of \$165,000.00, dated April 2, 2014 and signed by BARKOL. Auditor Blair informs me that upon receipt of the \$165,000.00 from the Lifting Up Account to the Metropolitan Payroll Account, \$75,000.00 was transferred to the Metropolitan Operating Account where the balance was negative \$125,419.73. Additionally, \$81,500.00 was paid to Certified Scaffolding & Hoisting, Inc. from the Metropolitan Payroll Account on April 2, 2014 to pay an existing debt.

35. I am further informed by Auditor Blair that the Lifting Up Account received an additional \$174,996.00 on or about April 9, 2014 from Signature Financial, LLC. Auditor Blair further informs me that on April 9, 2014 a check for \$170,000.00 was deposited into the

Metropolitan Payroll Account. A review of the Lifting Up Account shows that this was check number 2107 was drawn from the Lifting Up Account in the amount of \$170,000.00, dated April 9, 2014 and signed by BARKOL. Auditor Blair informs me that upon receipt of the \$170,000.00 from the Lifting Up Account to the Metropolitan Payroll Account, \$90,000.00 was transferred to the Metropolitan Operating Account where the balance was negative \$82,572.55. Following this transfer, a total of \$41,001.02 was drawn from the Metropolitan Operating Account in payments and fees resulting in a negative balance of \$33,573.57. Thereafter on April 10, 2014, an additional \$50,000.00 was transferred from the Metropolitan Payroll Account to the Metropolitan Operating Account to cover the negative balance.

iii. Signature Financial, LLC – June 4, 2014 and March 20, 2015 Financing of Hoists Already Collateralized by Bank of America, N.A.

36. A review of the CCS records show that METROPOLITAN utilized CCS as a loan broker with SF for SF Contract 8003. The Equipment Schedule for SF Contract 8004 was signed by MARTINEZ as “President” on or about June 2, 2014. SF records have a copy of LIFTING UP Invoice Number 86, dated May 30, 2014 with a ship to address of “637 Court Street, Brooklyn, NY 11231” and bill to of “Signature Financial LLC, 225 Broadhollow Road, Suite, 132W, Melville, NY 11747,” for 2 Stros/Rack and Pinion – Model NOV3242 UPF9 Dual Cage Hoists for a total cost of \$462,654.00, to be made in two equal payments of \$231,327.00. Wiring transfer information listed for the Lifting Up Account at TD Bank was provided as well.

37. MARTINEZ signed the “Delivery & Acceptance Certificate” on June 2, 2014, stating METROPOLITAN “the equipment has been fully delivered to and accepted by [METROPOLITAN] and is conforming to all agreements between the undersigned and Signature, and...any installation or other work necessary for the equipment to be placed in

service has been completed in a satisfactory manner...SIGNATURE MAY RELY ON THIS CERTIFICATE IN ADVANCING FUNDS.”

38. A review of SF records show MARTINEZ provided the location of the Hoists to SF in March 2015 and that SF conducted an inspection of the Hoists at the job sites reported by MARTINEZ on March 19, 2015. The Serial Numbers for the Hoists were recorded as 21305B and 21340A. However, a review of BOA contract 0705 and 0708 show that the Stros Hoists Serial Number 21305B and 21340A, respectively, were obtained from Urban Construction Equipment Ltd., not LIFTING UP. Additionally, a review of the records shows that both were ultimately financed by BOA with ^{out} SF's knowledge that the equipment was already encumbered. A review of BOA contract 0705 shows that METROPOLITAN obtained funding for the Stros Hoist Serial Number 21305B on or about January 30, 2014 in the amount of \$354,273.63. A review of BOA contract 0708 shows that METROPOLITAN obtained funding for the Stros Hoist Serial Number 21340A on or about March 21, 2014 in the amount of \$276,627.00.

39. Moreover, I am informed by Inv. Matirko that Witness #2 states that LIFTING UP did not have Hoists, did not recall seeing any, and did not recall processing any invoices for Hoists.

40. I am informed by Auditor Blair that the Lifting Up Account received \$231,327.00 on or about June 4, 2014 from Signature Financial, LLC. I am further informed by Auditor Blair that on June 6, 2014 a \$125,000.00 check and a \$75,000 check were deposited into the Metropolitan Payroll Account. A review of the Lifting Up Account shows check numbers 2145 and 2146 were drawn from the Lifting Up Account in the amount of \$125,000.00 and \$75,000.00, respectively, were dated June 6, 2014 and both were signed by BARKOL. Auditor Blair informs me that upon receipt of the \$200,000.00 from the Lifting Up Account to the Metropolitan Payroll Account, over \$46,000.00 went as payments to the NYC District Council of

Carpenters Union on June 6, 2014, and \$150,000.00 was transferred to the Metropolitan Operating Account on June 9, 2014 where the balance was negative \$250,374.37.

41. I am further informed by Auditor Blair that the Lifting Up Account received an additional \$231,327.00 on or about March 20, 2015 from Signature Financial, LLC. Auditor Blair further informs me that on March 23, 2015 a check for \$160,000.00 was deposited into the Metropolitan WF Account. A review of the Lifting Up Account shows that this was check number 2249 was drawn from the Lifting Up Account in the amount of \$160,000.00, dated March 23, 2015 and signed by BARKOL. A review of the Metropolitan WF Account shows that \$30,000.00 and \$25,000.00 was withdrawn on March 20, 2015 and March 25, 2015, respectively. Additionally, over \$40,000.00 was used for payroll on March 24, 2015.

42. Auditor Blair informs further informs me that upon receipt of the \$160,000.00 from the Lifting Up Account to the Metropolitan WF Account, nine checks totaling \$21,600.00 were made payable to NEW ROUTE and were deposited into the New Route Account on April 2, 2015. A review of the New Route Account shows that these nine checks, each for \$2,400.00 and signed by MARTINEZ were used to open this account where SELLAM was the sole signatory.

43. I am further informed by Auditor Blair that an additional \$10,000.00 check was made payable to NEW ROUTE and deposited into the New Route Account on April 17, 2015. Moreover, I am informed that MARTINEZ signed another METROPOLITAN check from the Metropolitan WF Account on May 8, 2015 payable to NEW ROUTE in the amount of \$20,000.00. Furthermore, a withdrawal from the Metropolitan WF Account in the amount of \$5,000.00 took place on or about May 26, 2015 with the funds being used to purchase a cashier's check in the same amount, payable to NEW ROUTE and deposited into the New Route Account. I am informed by Auditor Blair that an additional three checks, each for \$2,400.00 were drawn

from the Metropolitan WF Account on June 5, 2015, signed by MARTINEZ, made payable to NEW ROUTE and deposited into the New Route Account. Additionally, Auditor Blair informs me that a two checks totaling \$40,000.00 were drawn from the Metropolitan WF Account on July 24, 2015, signed by MARTINEZ, made payable to NEW ROUTE, and deposited into the New Route Account. In total, between April 2, 2015 and July 24, 2015, NEW ROUTE received over \$100,000 from METROPOLITAN.

iv. Signature Financial, LLC and Sterling National Bank's Financing – August 27, 2014 Financing

44. A review of the CCS records show that METROPOLITAN utilized CCS as a loan broker with SF for SF Contract 8005. The Master Lease Agreement for SF Contract 8005 was signed by MARTINEZ as "President" on or about August 21, 2014. SF records have a copy of LIFTING UP Invoice Number 89, dated August 20, 2014 with a ship to address of "Metropolitan Enterprise Inc., 637 Court Street, Brooklyn, NY 11231" and bill to of "Signature Financial LLC, 225 Broadhollow Road, Suite, 132W, Melville, NY 11747," for 5,500 frames and 11,000 braces. The cost total cost is listed as \$313,500.00. Wiring transfer information listed for the Lifting Up Account at TD Bank was provided as well.

45. MARTINEZ signed the "Delivery & Acceptance Certificate" on August 27, 2014, stating METROPOLITAN "the equipment has been fully delivered to and accepted by [METROPOLITAN] and is conforming to all agreements between the undersigned and Signature, and...any installation or other work necessary for the equipment to be placed in service has been completed in a satisfactory manner...SIGNATURE MAY RELY ON THIS CERTIFICATE IN ADVANCING FUNDS." A further review of the SF records show that on August 26, 2014, MARTINEZ confirmed that all items and their quantities have been received by METROPOLITAN.

46. As stated above, a review of Bank Leumi records show that an appraisal of all METROPOLITAN inventory was taken in the Summer 2013 showing that METROPOLITAN had a total inventory of approximately \$9.8 million, including but not limited to 2,600 frames and 62,000 braces worth over \$700,000. Bank Leumi records further contained photos of the specified equipment from the appraisal. The Bank Leumi photos are near identical to the photos taken by an inspector on behalf of SF on or about August 26, 2014.

47. I am informed by Auditor Blair that the Lifting Up Account received \$313,500.00 on or about August 27, 2014 from Signature Financial, LLC. Additionally, my review of the SNB contract shows that the purportedly completed delivery of the remaining Kenco Capstan Winches was completed on or about August 27, 2014. I am informed by Auditor Blair that the Lifting Up Account received \$130,625.00 as the second part of this payment on August 27, 2014. I am further informed by Auditor Blair that on or about September 3, 2014 a \$250,000.00 check was deposited into the Metropolitan Operating Account. A review of the Lifting Up Account shows that this was check number 2174 was drawn from the Lifting Up Account in the amount of \$250,000.00, dated September 3, 2014 and signed by BARKOL. Auditor Blair informs me that upon receipt of the \$250,000.00 from the Lifting Up Account to the Metropolitan Operating Account, the account was at a negative balance of \$8,784.59. Over \$190,000.00 was used in payments towards existing debt and fees on September 3, 2014 and September 4, 2014, including over \$19,000.00 in payments back to SF. Moreover, \$20,000.00 was transferred to the Metropolitan Payroll Account, where there was a negative balance of \$49,781.88.

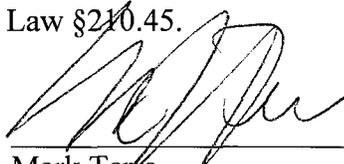
48. Additionally, Auditor Blair informed me that on or about September 3, 2014, BARKOL wrote a check to himself personally from the Lifting Up Account in the amount of \$30,000.00. Moreover, \$130,000 was paid out of the Metropolitan Payroll Account on or about

September 5, 2014, back to the Lifting Up Account. Thereafter, the Lifting Up Account issued check number 2192 in the amount of \$200,000.00 and check number 2193 in the amount of \$250,000.00 on October 8, 2014 and October 10, 2014, respectively. The check for \$200,000.00 was deposited back to the Metropolitan Payroll Account on or about October 9, 2014 and the check for \$250,000.00 was deposited back to the Metropolitan Operating Account on or about October 10, 2014 to cover a negative balance of \$65,841.91.

49. To date, METROPOLITAN has not paid back any monies or provided any equipment to SNB. Representatives from SNB inform me that had they known that the equipment did not exist or that the funding was being used not to purchase materials and equipment, but to promote the ongoing course of conduct, SNB would not have provided funding totaling \$261,250.00.

50. During the relevant time, METROPOLITAN paid back approximately \$356,298.80 to SF. Additionally, SF was able to repossess the Stros Hoists for \$122,000.00, leaving BOA without the ability to obtain the Stros Hoists that they first had claim to. In total, SF is still out \$916,076.12. Representatives from SF inform me that had they known that the equipment did not exist, existed but was already collateralized, or that the funding was being used not to purchase materials and equipment, promote the ongoing course of conduct, SF would not have provided funding totaling \$1,394,374.92 to the defendants.

False statements made herein are punishable
as a class A Misdemeanor pursuant to Penal Law §210.45.



Mark Terra
Investigator
New York State Office of the Attorney General

Dated: July 30, 2019
Central Islip, New York