

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	Case No. 06 CR 964
)	
vs.)	
)	Hon. Ronald A. Guzman
MICHAEL E. KELLY)	
)	
Defendant.)	

**MOTION AND MEMORANDUM FOR
FINAL RESTITUTION FUND DISTRIBUTION**

The Special Master, Douglas A. Doetsch, by and through his counsel, files this *Motion and Memorandum for Final Restitution Fund Distribution* (the “**Final Restitution Fund Distribution Motion**”),¹ wherein he moves this Court to approve a final distribution of the Restitution Fund in the amount of **\$17,000,000** (the “**Final Restitution Fund Distribution**”) in accordance with the procedures set forth herein. In support of this motion, the Special Master states as follows:

BACKGROUND

1. On November 20, 2012, this Court entered the *Order Approving Distribution of Restitution Fund* (“**First Distribution Order**”) in which the Court approved a first distribution

¹ This Final Distribution Motion supersedes the *Motion and Memorandum for Second Distribution of Restitution Fund* filed on January 22, 2014 [Dkt. No.1745]. Concurrent with the filing of this Final Distribution Motion, the Special Master will file a notice withdrawing Dkt. No. 1745.

amount of \$50,000,000 (“**First Distribution**”) to all Eligible Victims [Dkt. No. 1500].² Attached as Exhibit C to the *Motion and Memorandum for Distribution of Restitution Fund* (“**First Distribution Motion**”) [Dkt. No. 1488] was a list of the First Distribution Eligible Victims that set forth each Victim’s Total Restitution Amount (“**TRA**”) and the amount of each Victim’s First Distribution restitution check (the “**First Distribution Eligible Victim List**”). Victims identified as having a zero or negative TRA on the First Distribution Eligible Victim List were not entitled to participate in the First Distribution or any subsequent distribution.

2. The Claims Processing Agent has determined that there are 8,388 Victim Claims (consisting of 9,137 individuals due to joint claims). Of the 8,388 Victims identified by the Claims Processing Agent, 7,078 were determined to be eligible to participate in the First Distribution due to a positive TRA.

FIRST DISTRIBUTION

3. Pursuant to the terms of the First Distribution Order [Dkt. No. 1500], and as verified in the **Affidavit of Claims Processing Agent** attached as **Exhibit A**, the Claims Processing Agent :

- a. Received the sum of \$50,020,000 into a bank account at Fifth Third Bank in the name of “Special Master, Kelly Restitution Fund” (the “**Distribution Account**”), with \$50,000,000 to be used to fund the First Distribution and \$20,000 to be used to pay for bank fees and costs;
- b. Distributed checks on December 11 and 12, 2012, in the amount of \$50,000,000 to the 7,078 First Distribution Eligible Victims in the amounts indicated on the First Distribution Eligible Victim List, which was attached as Exhibit C to the

² Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Claims Procedure Orders [Dkt. Nos. 419, 460].

First Distribution Motion [Dkt. No. 1488], via the United States Postal Service First Class Regular Mail;

- c. Mailed the “Letter to First Distribution Eligible Victims,” identified as Exhibit D to the First Distribution Motion, along with the physical check for each eligible Victim, informing Victims that the deadline to cash such First Distribution check was one hundred and twenty (120) calendar days from receipt, but in no event later than April 19, 2013. After this deadline, the Victim’s First Distribution check would be voided and the Victim would forfeit the right to participate in a future distribution;
 - d. Mailed the “Letter to Co-Victim Claimants,” identified as Exhibit E to the First Distribution Motion, to all Co-Victims who did not receive physical checks in the mail, advising them of the address to which the check would be mailed; and
 - e. Mailed a copy of the “Letter to First Distribution Eligible Victims” to the Co-Victims to advise them of the date of the actual distribution, the deadline for negotiating such check and the consequences of their failure to do so.
4. In addition, because many Victims in this matter are deceased, the Claims Processing Agent has worked closely with the heirs of deceased Victims to assist them in negotiating the First Distribution checks that were made payable to the estate of the decedent (“**Estate Checks**”). On April 5, 2013, the Claims Processing Agent sent a letter to all known representatives and/or heirs of deceased Victims informing them of the procedure to negotiate their First Distribution check, which involved a Small Estate Affidavit (**Exhibit B - “Small Estate Affidavit Letter”**). On April 8, 2013, this Court entered an order approving the use of Small Estate Affidavits to re-issue First Distribution checks to the appropriate heirs or authorized

representatives and extending the deadline for cashing such Estate Checks to May 20, 2013 (“**Order Approving Use of Small Estate Affidavits**”) [Dkt. No. 1594].

5. The Claims Processing Agent received forty-six (46) Small Estate Affidavits from heirs and/or next of kin of deceased Victims requesting that their First Distribution check be re-issued to the appropriate heir as authorized by the estate procedures of the decedent’s state law. The Claims Processing Agent reviewed each request and denied six (6) requests due to inadequate information, and approved forty (40) such requests. The forty (40) Small Estate Affidavits approved by the Claims Processing Agent were then submitted to the United States Attorney’s Office for its final review and approval. All forty (40) requests for approval were obtained, and the First Distribution checks were re-issued to the appropriate heirs (**Exhibit C – “List of Reissued First Distribution Checks Pursuant to Small Estate Affidavit”**).

6. On July 9, 2013, the Claims Processing Agent also mailed a letter to the First Distribution Eligible Victims with outstanding checks as of that date (**Exhibit D - “Second Notice to First Distribution Eligible Victims”**), which constituted a final notice to negotiate their First Distribution checks and reminded them of the consequences of failing to do so.

**EXCLUSION OF FIRST DISTRIBUTION ELIGIBLE VICTIMS
WHO FAILED TO CASH FIRST DISTRIBUTION CHECKS**

7. Of the 7,078 First Distribution Eligible Victims who were eligible for a First Distribution check, all but 138 successfully negotiated their checks. The remaining 138 outstanding First Distribution checks equal \$834,703.92 (“**Unclaimed Victims**”). A list of the Unclaimed Victims from the First Distribution is attached hereto as **Exhibit E (“Unclaimed Victim List”)**. The Claims Processing Agent has used its best efforts to locate these Unclaimed Victims and/or their heirs in order to issue new checks to them at their current address. The Claims Processing Agent has undertaken various efforts in this regard, including the following

actions: performed internet searches for new location information and/or evidence of death of Victim; internet searches for heirs, relatives, or next of kin; use of investigative tools such as TLO, Accurint and other skip tracing tools to obtain new contact information and/or evidence of death for the Victim, and/or to locate any heirs, relatives, or next of kin; made numerous phone calls to funeral homes, relatives, neighbors, or any next of kin; reviewed all lease documents to locate heirs, relatives or next of kin; wrote letters to Victims at their last known address; and wrote letters to Victim heirs and/or next of kin regarding assistance with negotiating First Distribution checks made payable to the estate of a decedent (*see also* “**Affidavit of Claims Processing Agent**” – **Exhibit A**). Although the Claims Processing Agent was able to locate several hundred Victims through these diverse efforts, the vast majority of the remaining 138 Unclaimed Victims have not been located³, and none of their First Distribution checks have been

³ After review and analysis of the results of the search detailed in Footnote 4 below to assess verifiability of the additional information, the Claims Processing Agent strongly believes that no further action is warranted on 132 (of 138) claims on the Unclaimed Victim List, because they fall into one or more of the following categories:

1. Current address not found (43);
2. No valid contact information to pursue (32);
3. Victim or Next-of-Kin chose not to cash checks because they wanted to be done with the matter, or did not wish to deal with probate/small estate affidavit due to inability to obtain or because the check amount was not worth the effort (19);
4. Victim or Next-of-Kin failed to provide requested probate or small estate affidavit documents or respond to calls regarding same (31);
5. No mail return, Victim or Next-of-Kin called office and was given instruction or did not return the calls of the Claims Processing Agent and did not cash the check (7).

The remaining 6 (of 138) claims on the Unclaimed Victim List fall into one of the two following categories:

1. Possible new address claims: (3)

cash and stop payment orders on these checks have been processed. The Special Master does not believe that taking further action on the few outstanding claims discussed in Footnote 3 is warranted, given that their inclusion in the Final Restitution Fund Distribution would, as discussed in Paragraph 8 below, undercut the integrity of the claims processing procedure and contravene the intent of the First Distribution Order to provide finality to the list of Eligible Victims.⁴

8. The First Distribution Order [Dkt. No. 1500] provides that any First Distribution checks which are returned or which have not been cashed within one hundred and twenty (120) days from the date of the mailing of such checks (and in no event later than April 19, 2013, later extended to May 20, 2013), will be voided, the right to receive such payments will terminate, subject only to the sole discretion of the Special Master, and the amounts otherwise distributable to such First Distribution Eligible Victims shall be returned to the Restitution Fund and disposed of according to the Court's further instructions. The Special Master believes that great effort has

2. Miscellaneous claims: (3)

⁴ "The First Distribution Amount checks which are returned or which have not been cashed within one hundred and twenty (120) calendar days from the date of mailing of such checks and in no event later than April 19, 2013, will be void, the right to receive such payments will terminate, subject only to the sole discretion of the Special Master, and the amounts otherwise distributable to such First Distribution Eligible Victims shall be returned to the Restitution Fund and disposed of according to the Court's further instructions and that the Claims Processing Agent will, in the mailing of the First Distribution Amount checks, warn First Distribution Eligible Victims of this potential loss of rights and the need to promptly cash their checks by including copies of a "Letter to First Distribution Eligible Victims" substantially in the form attached as Exhibit D to the Distribution Motion and further that such Victims shall have no right to participate in future distributions, be removed from the list of Victims, and that the Claims Processing Agent shall have no further duty to locate these Victims or notify these Victims of future hearings, motions, orders or developments in this case." Order Approving Distribution of Restitution Fund ¶ 5 [Dkt. No. 1500].

been made to locate these Unclaimed Victims, but with no tangible success⁵; therefore, the Special Master recommends, in accordance with the First Distribution Order, that the claims of these 138 Unclaimed Victims be stricken from the list of Eligible Victims for the Final Restitution Fund Distribution and the amounts of their First Distribution checks (\$834,703.92) be added to the monies available for the Final Restitution Fund Distribution to the remaining Eligible Victims (such remaining Eligible Victims, the “**Final Distribution Eligible Victims**”).

RELATED ACTIONS

9. In addition to the instant criminal proceeding (hereafter referred to as “*Kelly I*”), the Securities and Exchange Commission (the “**Commission**”) filed a related civil enforcement action against Michael Kelly in 2007, *Securities and Exchange Commission v. Michael E. Kelly, et al.*, Case No. 1:07-cv-4979 (N.D. Ill. 2007) (the “*SEC Action*”) (Hon. Elaine E. Bucklo). Final Judgments were entered in the *SEC Action* against defendants Michael P. Kelly and Donald L. Kelly on December 18, 2015 [Dkt. Nos. 265 and 266, respectively], ordering them to pay civil penalties of \$25,000 each, and a Final Judgment was entered against defendants Mark G. Meyer and his related entity, Mark Meyer Associates, on June 7, 2011 [Dkt. No. 59], ordering them, jointly and severally, to pay \$1,727,933.25 in disgorgement, and also civil penalties of \$120,000 and \$600,000, respectively.

⁵ A new search for the remaining 138 Unclaimed Victims was undertaken by the United States Department of Justice in the latter half of 2016. After examining the results of such search, the Special Master believes that no further action should be taken. The process to verify the potential additions to the Final Restitution Fund Distribution would take a substantial amount of time, further delaying the Final Restitution Fund Distribution. Many of the Victims are elderly and have waited more than four years since the First Distribution to receive closure. To delay the process any longer in order to include a small number of additional Victims in the Final Restitution Fund Distribution is, in the judgment of the Special Master, unjustifiable.

10. In addition to *Kelly I* and the *SEC Action*, a second related criminal action was filed against Michael E. Kelly in November 2012, *U.S. v. Michael E. Kelly, et al.* (1:12-cr-00875 (N.D. Ill. 2012) (“*Kelly II*”) (Hon. Ronald A. Guzman), charging him with one additional count of securities fraud arising from the same fraudulent scheme underlying *Kelly I* and the *SEC Action*. Kelly pled guilty and a judgment of conviction and restitution order (“**Restitution Order**,” copy attached as **Exhibit F**) was entered on December 13, 2012, sentencing him to 60 months imprisonment and ordering him to pay \$342,143,221.14 in restitution. [Dkt. No. 20]. The Restitution Order also appointed Douglas A. Doetsch as Special Master in *Kelly II*, under the same terms agreed in *Kelly I*, including the same claims procedure, and further ordered that the claims procedure conducted to date in *Kelly I* shall apply to and shall continue as a restitution mechanism in *Kelly II*. [Dkt. No. 20].

11. On September 30, 2016, on motion of the Commission, an Order Establishing Fair Fund and Transferring Funds to a Related Criminal Proceeding for Distribution (the “**Fair Fund Transfer Order**,” copy attached as **Exhibit G**) was entered in the *SEC Action* [Dkt. No. 277]. The Fair Fund was established from funds deposited with the Registry of the Court account in the *SEC Action* pursuant to Final Judgments entered in that action, and from payments to the Commission submitted by the defendants Michael P. Kelly, Donald L. Kelly and Mark G. Meyer pursuant to their respective Final Judgments. The Fair Fund Transfer Order further directed that the funds presently in the Registry of the Court account in the *SEC Action*, and all funds currently held at the Commission (and any future funds the Commission may collect pursuant to judgments entered in the *SEC Action*), totaling approximately \$76,354.58 in the aggregate (the “**Fair Funds Transfer**”), be transferred to the Registry of the Court account in

Kelly II, for distribution by the Special Master in that case. The Fair Funds Transfer has been completed and the funds will be available for the Final Restitution Fund Distribution.

FINAL RESTITUTION FUND DISTRIBUTION

12. The Special Master has an account at UBS which, as of December 31, 2016, had a balance of \$19,788,378.04 (the “**Restitution Account**”) and an account at Fifth Third Bank out of which distributions to Victims are processed and which, as of December 31, 2016, had a balance of \$838,096.92^{6,7} (the “**Distribution Account**”). In addition, the Special Master will receive \$76,354.58 from the Fair Funds Transfer through the related *SEC Action*, as detailed in Paragraph 11 above. Thus, the total funds available to the estate will be **\$20,727,219.50** (\$19,788,378.04 plus \$838,096.92 plus \$76,354.58 plus \$24,389.96).⁸

13. The Special Master recommends holding back from the available funds a contingency reserve of **\$ 3,727,219.50** (the “**Contingency Reserve**”) for the payment of accrued but unpaid expenses as well as future expenses to operate the estate, including the payment of professional fees and costs, and to cover future, unknown contingencies. A detailed breakdown of the Contingency Reserve is attached as **Exhibit H**.

⁶ Net of First Distribution wire transfer fees of \$104.97.

⁷ The \$838,096.92 balance remaining in the Distribution Account as of December 31, 2016 consists of: (1) \$834,703.92 in uncashed First Distribution checks for the 138 Unclaimed Victims; (2) \$3,219.00 in interest earned on the Distribution Account funds; and (3) \$174.00 in unused funds from the \$20,000 originally placed in the Distribution Account to cover bank costs and fees of the First Distribution.

⁸ The additional \$24,389.96 was received from a Credicorp Bank, S.A., account in Panama in the name of Mirador del Este, S.A. (the “**Mirador Funds**”). Because the Mirador Funds were received on January 13, 2017, they are not reflected in the December 31, 2016 account balances.

14. The Special Master recommends that, as in the First Distribution, the Special Master use the Positive Pay feature offered by Fifth Third Bank to monitor fraud in the cashing of distribution checks. The expected cost of Positive Pay is \$20,000.00. There are already sufficient funds in the Distribution Account balance as of December 31, 2016 (\$838,096.92) to cover the Positive Pay expenses of the Final Restitution Fund Distribution, and the Special Master recommends that \$20,000.00 be maintained in the Distribution Account to pay those Positive Pay expenses.

15. In summary, the Final Restitution Fund Distribution breakdown is as follows:

Available Funds	\$20,727,219.50
Less: Contingency Reserve Hold Back	(\$3,727,219.50)
Distribution Amount	\$17,000,000.00

15. All distributions to Victims and payments to Fifth Third Bank for Positive Pay are made out of the Distribution Account. When the \$838,096.92 Distribution Account balance as of December 31, 2016 is reduced by the \$20,000.00 Positive Pay provision, the net balance in the Distribution Account available to fund the \$17,000,000 Final Restitution Fund Distribution is \$818,096.92. The Special Master therefore recommends that **\$16,181,903.08** (\$17,000,000 less \$818,096.92) be transferred from the Restitution Account to the Distribution Account. The Contingency Reserve shall be held in the Restitution Account and applied to the expenses and contingencies as may be approved by the Court in the future. It is anticipated that the Contingency Reserve will be maintained until 2021, at which time the Special Master shall petition the Court to transfer any remaining funds to the Registry of the Court account in the *Kelly II* case, in which the Restitution Order was entered against Kelly. In the unlikely event that a substantial amount of funds remains in the Contingency Reserve until 2021, the Special Master

may instead petition the Court to approve another distribution to the Victims. Given the extent of the remaining contingencies, however, and the costs of such a distribution, the Special Master expects that the Final Restitution Fund Distribution as proposed herein shall be the final distribution.

16. The Special Master recommends that each Final Distribution Eligible Victim receive a *pro-rata* share of the Final Restitution Fund Distribution, which shall be referred to as each Victim's "**Final Distribution Amount.**" Each Eligible Victim's Final Distribution Amount shall be determined by multiplying \$17,000,000 by a fraction: the numerator of which is each Final Distribution Eligible Victim's individual TRA and the denominator of which is the sum of all Final Distribution Eligible Victims' TRAs ("**Final Distribution Fraction**"). The "**Final Distribution Eligible Victim List,**" attached as **Exhibit I**, is a list of all Final Distribution Eligible Victims, together with their Victim ID number, their TRAs, their Final Distribution Fractions and their Final Distribution Amounts. By removing the 138 Unclaimed Victims from the First Distribution Eligible Victim List of 7,078, there are now 6,940 Victims eligible to receive a Final Restitution Fund Distribution.

17. The Special Master recommends that only Final Distribution Eligible Victims identified on the Final Distribution Eligible Victim List be entitled to participate in this Final Restitution Fund Distribution, and any possible future distributions, from the Restitution Fund and that any individual or entity not listed on the Final Distribution Eligible Victim List be forever barred from making claims against the Restitution Fund, the Special Master or the Claims Processing Agent (either in their personal or representative capacities) or their employees, attorneys, officers, directors or agents for any claim whatsoever.

18. The Special Master recommends that the Final Distribution Eligible Victims be provided ninety (90) days from the date of mailing to negotiate or deposit their Final Restitution Fund Distribution check. The Special Master further recommends that if a Final Distribution Eligible Victim has not negotiated or deposited his/her distribution check within ninety (90) days of mailing, that, after such time, the checks be voided, the right to receive such payments be terminated (subject only to the sole discretion of the Special Master) and the amounts otherwise distributable to such Final Distribution Eligible Victims be returned to the Restitution Fund and disposed of according to the Court's further instructions. The Special Master further recommends that those Final Distribution Eligible Victims who do not negotiate or deposit their distribution checks within ninety (90) days of mailing shall have no right to participate in future distributions, if any, shall be removed from the list of Eligible Victims, and that the Claims Processing Agent shall have no further duty to locate these Victims or notify these Victims of future hearings, motions, orders or developments in this case. The Special Master recommends that each Final Distribution Eligible Victim be provided a letter, substantially in the form attached as **Exhibit J** herein ("**Final Distribution Letter**"), informing them of the consequences of failing to cash the Final Restitution Fund Distribution check by the deadline indicated therein.

19. There are many Final Distribution Eligible Victim claims that are jointly owned by more than one individual residing at separate addresses. The Special Master therefore recommends mailing a copy of the Final Distribution Letter to each Co-Victim advising them of the named payee and the address where the Final Restitution Fund Distribution check was mailed, the deadline for cashing the check and the consequences of their failure to do so.

20. As occurred in the First Distribution, it is anticipated that a number of Final Restitution Fund Distribution checks will be made out to deceased victims, and that the

representatives and/or family members of such victims will inform the Special Master, the Claims Processing Agent, the U.S. Attorney's Office and/or others that they are unable to cash or negotiate the checks. The Special Master therefore recommends that this Court enter a separate and specific order approving use of small estate affidavits or other such similar small estate probate documents as authorized by deceased victims' state laws, as provided to the Claims Processing Agent by representatives of deceased victims' estates, to re-issue Final Distribution Checks to the appropriate heirs or authorized representatives.

21. Following the Final Restitution Fund Distribution, there will remain a number of contingencies outstanding with respect to the administration of the Restitution Fund, some of which may require the expenditure of funds. Therefore, as discussed in Paragraph 15 above, the Special Master anticipates that the Contingency Reserve will be maintained until 2021. The Special Master recommends that he remain in his position until such time as the remaining contingencies are resolved. The Special Master expects that, following the Final Restitution Fund Distribution, his activities will be limited to the resolution of such contingencies. Accordingly, the Special Master does not anticipate that any resources will be spent in the acquisition and disposition of further assets.

PRAYER FOR RELIEF

WHEREFORE, the Special Master requests that the Court enter an order as follows:

(a) Finding that the Special Master and the Claims Processing Agent have taken all reasonable steps in conducting the First Distribution and have complied with the Court's prior orders in conducting the First Distribution;

(b) Finding that the claims of the 138 Unclaimed Victims from the First Distribution listed on the Unclaimed Victim List, attached as **Exhibit E**, have properly been stricken from the

list of Victims eligible for the Final Restitution Fund Distribution, and the amounts of their unclaimed First Distribution checks (\$834,703.92) shall be added to the monies available for the Final Restitution Fund Distribution to the remaining Eligible Victims, in accordance with the terms of the First Distribution Order;

(c) Finding that the Final Distribution Eligible Victim List, attached as **Exhibit I**, and the actions of the Claims Processing Agent in compiling the Final Distribution Eligible Victim List, are ratified, and the determinations of Total Restitution Amount (“**TRA**”) and the Final Distribution Amount for each approved Eligible Victim constitute final and binding determinations of TRA and Final Distribution Amount for each Eligible Victim;

(d) Finding that all claims of individuals and/or entities not specifically listed as Eligible Victims on the Final Distribution Eligible Victim List, as well as all individuals and/or entities listed on the Unclaimed Victim List, attached as **Exhibit E**, are hereby forever barred and may not be asserted against the Restitution Fund, the Special Master or Claims Processing Agent (either personally or in their representative capacities), or their employees, agents, attorneys and accountants;

(e) Approving the transfer of **\$16,181,903.08** from the Restitution Fund to Fifth Third Bank for deposit into the Distribution Account;

(f) Approving that **\$17,000,000** be distributed out of the Distribution Account to the Final Distribution Eligible Victims in accordance with the Final Distribution Amounts set forth on the Final Distribution Eligible Victim List (**Exhibit I**);

(g) Finding that **\$20,000** shall be maintained in the Distribution Account to pay bank fees and costs of Positive Pay.

(h) Ordering that the Claims Processing Agent (i) distribute the Final Distribution Amounts to the Final Distribution Eligible Victims as provided on the Final Distribution Eligible Victim List within forty-five (45) calendar days after entry of the order approving the Final Restitution Fund Distribution, and, further, (ii) that the distribution shall be made to the Final Distribution Eligible Victims at each Victim's last known address contained in the records of the Claims Processing Agent and that the checks be mailed via *United States First Class Mail*; (iii) the burden is on the Final Distribution Eligible Victims to notify the Claims Processing Agent of a Final Distribution Eligible Victim's current address and other contact information, and of insuring that a Final Distribution Eligible Victim's name and/or proper contact information are contained in the Claims Processing Agent's records; (iv) the Claims Processing Agent is under no duty or obligation to attempt to determine current address and other contact information for any Final Distribution Eligible Victim; and (v) that the Claims Processing Agent implement the security procedures of Positive Pay to ensure the proper negotiation of each Final Restitution Fund Distribution check;

(i) Ordering that Final Restitution Fund Distribution checks which are returned or which have not been cashed within ninety (90) calendar days from the date of mailing of such checks (but in no event later than _____ 2017), will be void, the right to receive such payments will terminate, subject only to the sole discretion of the Special Master, and the amounts otherwise distributable to such Final Distribution Eligible Victims shall be returned to the Restitution Fund and disposed of according to the Court's further instructions; and ordering that the Claims Processing Agent will, in the mailing of the Final Restitution Fund Distribution checks, warn Final Distribution Eligible Victims of this potential loss of rights and the need to promptly cash their checks by including a copy of the Final Distribution Letter, substantially in

the form attached as **Exhibit J** and incorporated herein by reference; and further ordering that such Victims shall have no right to participate in future distributions, if any, shall be removed from the list of Final Distribution Eligible Victims, and that the Claims Processing Agent shall have no further duty to locate these Victims or notify these Victims of future hearings, motions, orders or developments in this case;

(j) Ordering that, because of the joint ownership of claims and in conjunction with the mailing of the Final Restitution Fund Distribution checks, the Claims Processing Agent shall mail via *United States First Class Mail* a copy of the Letter to Final Distribution Eligible Victims to each Co-Victim reflected in the Claims Processing Agent's records advising them of the named payee and the address to which the check was mailed, provided however, that failure of the Claims Processing Agent to mail the Letter to Co-Victim Claimants or failure of the Victims or Co-Victims to receive such letters, shall not give rise to any claim against the Claims Processing Agent, the Special Master or their employees, attorneys, accountants or agents, as the copy of this letter is meant to provide a courtesy notice and does not convey substantive rights to Victims or Co-Victims;

(k) Providing that a separate and specific order will issue approving use of small estate affidavits or other such similar small estate probate documents as authorized by deceased victims' state laws, as provided to the Claims Processing Agent by representatives of deceased victims' estates, to re-issue Final Restitution Fund Distribution checks to the appropriate heirs or authorized representatives of the deceased victims' estates, in accordance with the administrative procedures specified in such order.

(l) Ordering that, in order to effectuate the distribution of the Final Distribution Amount and all subsequent distributions, if any, the Court releases and discharges the Special

Master and the Claims Processing Agent (both in their personal and representative capacities) and their attorneys, accountants, employees, officers, directors and agents and all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing and distribution of checks and determination of claims filed pursuant to the Claims Procedure or otherwise involved in the administration of the estate, from any act or omission arising out of such involvement in all prior, current and future distributions; and

(m) Ordering that the Kelly Restitution Fund indemnify, defend and hold harmless the Special Master and the Claims Processing Agent (both in their personal and representative capacities) and their attorneys, accountants, employees, officers, directors and agents and all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing and distribution of checks and determination of claims filed pursuant to the Claims Procedure or otherwise involved in the administration of the estate (the “**Indemnified Parties**”), from and against all actions pending or threatened, whether at law or in equity, in any forum, from liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable attorneys’ and other professionals’ fees and costs, arising from conduct or omission of the Indemnified Parties in connection with this case.

(n) Ordering that the Special Master shall remain in his position until 2021 or such earlier time when, in his judgment, the remaining contingencies have been resolved, which such role of the Special Master after the Final Restitution Fund Distribution shall be limited to resolving such contingencies and the Special Master shall not pursue the recovery of further assets for addition to the Restitution Fund.

DATED: February 28, 2017

Respectfully submitted,

DOUGLAS A. DOETSCH, not individually but
solely as the Court-appointed Special Master

By: /s/Alison E. Krueger
Alison E. Krueger

Alison E. Krueger (ARDC No. 6317124)
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606-4637
Tel: (312) 782-0600
Fax: (312) 701-7711
Counsel to the Special Master

United States of America v. Michael E. Kelly
Case No. 06-CR-964

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TO
MOTION AND MEMORANDUM FOR
FINAL RESTITUTION FUND DISTRIBUTION

- A. Affidavit of Claims Processing Agent;
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- C. List of Reissued First Distribution Checks Pursuant to Small Estate Affidavits;
- D. Second Notice to First Distribution Eligible Victims;
- E. Unclaimed Victim List;
- F. Restitution Order in *Kelly II*, filed December 13, 2012;
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USA v. Michael E. Kelly
Case No.: 06-cr-964

EXHIBIT A
to
MOTION AND MEMORANDUM FOR
FINAL RESTITUTION FUND DISTRIBUTION

Affidavit of Claims Processing Agent

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	Case No. 06 CR 964
)	
vs.)	
)	Hon. Ronald A. Guzman
MICHAEL E. KELLY)	
)	
Defendant.)	

AFFIDAVIT OF PHILLIP S. STENGER, CLAIMS PROCESSING AGENT

PHILLIP S. STENGER, being duly sworn, says:

1. I am the Claims Processing Agent for the above-referenced matter and am competent to attest to the matters set forth herein, and do so based on my own personal information, knowledge and beliefs.

2. Pursuant to the Order Approving Distribution of Restitution Fund (“**First Distribution Order**”) [Dkt. No. 1500], the Claims Processing Agent has accomplished the following:

A. Received the sum of USD \$50,020,000 from the Special Master, \$50,000,000 to be used for the First Distribution (“**First Distribution**”), and \$20,000 to be used for bank fees and costs¹, which was deposited into the bank account at Fifth Third Bank in the name of the Special Master, Kelly Restitution Fund (the “**Distribution Account**”);

¹ The total bank service charges and fees incurred in the First Distribution were \$19,826.00 through December 31, 2016.

B. The balance in the Distribution Account as of December 31, 2016, is \$838,096.92 and is broken down as follows: (1) \$834,703.92 in uncashed First Distribution checks for the 138 Unclaimed Victims we have still been unable to locate and/or who have failed or refused to negotiate their First Distribution checks; (2) \$3,219.00 in interest earned on the account; and (3) \$174.00 in unused funds from the \$20,000 originally placed in the Distribution Account for banking fees and costs.

C. Distributed checks on December 11 and 12, 2012, in the amount of \$50,000,000 to the First Distribution Eligible Victims with a positive Total Restitution Amount (“TRA”) as provided on the First Distribution Eligible Victim List which was attached as Exhibit C to the *Motion and Memorandum for Distribution of Restitution Fund* (“**First Distribution Motion**”) [Dkt. No. 1488] via United States Postal Service First Class Regular Mail

i. Mailed the “Letter to First Distribution Eligible Victims,” identified as Exhibit D to the First Distribution Motion, along with the physical First Distribution check, informing Victims that the deadline to cash such First Distribution check was one hundred and twenty (120) calendar days, but in no event later than April 19, 2013 (later extended to May 20, 2013). After this deadline, the Victim’s First Distribution check would be voided and the Victim would forfeit the right to participate in a future distribution;

ii. Mailed the “Letter to Co-Victim Claimants” identified as Exhibit E to the First Distribution Motion, to all Co-Victims who did not receive physical checks in the mail, advising them of the address to which the check would be mailed; and

iii. Mailed a copy of the "Letter to First Distribution Eligible Victims" to the Co-Victims to advise them of date of the actual distribution, the deadline for negotiating such check and the consequences of their failure to do so.

3. The Claims Processing Agent identified 8,388 Victim Claims (consisting of 9,137 individuals due to joint claims). Of that 8,388 Victims, 7,078 were determined to be eligible to participate in the First Distribution due to a positive TRA and were mailed a First Distribution check.

4. The last mailing to all victims prior to the First Distribution produced 1,047 pieces of returned mail due to bad addresses. The Claims Processing Agent has undertaken the following efforts to ensure that all additional mailings, including the First Distribution check, would reach the First Distribution Eligible Victims, and to assist the First Distribution Eligible Victims and/or their heirs with any issues which may have prevented the negotiation of their checks:

- A. Use of specialized investigative databases such as TLO and Accurant to search for updated contact information for victims, possible relatives, and/or deceased information;
- B. Review of Michael E. Kelly lease documents to locate alternative addresses for the victim and/or his or her heirs, relatives, or next of kin;
- C. Reverse of victim phone numbers to obtain addresses;
- D. Phone calls to last known contact for victim, funeral homes, relatives, possible relatives, neighbors and/or next of kin;

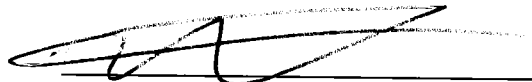
E. Written correspondence to victims at their last known address and/or recently located address reminding them of the deadline to cash their check and the ramifications of failing to do so;

F. Distribution of emails to those victims for whom we had a known email address requesting updated contact information; and

G. Written correspondence to heirs and/or representatives of victim's estate providing assistance as to negotiating the First Distribution checks made payable to the estate of victims and informing them of the ramifications of failing to negotiate such check.

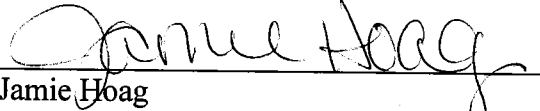
5. Through the efforts of the Claims Processing Agent, we have been able to locate 908 of the original 1,047 victims for whom we had bad addresses on file; however despite these efforts, there remain 138 Unclaimed Victims whom we have still been unable to locate and/or who have failed or refused to negotiate their First Distribution check. The total amount of the outstanding First Distribution checks for these 138 victims is \$834,703.92.

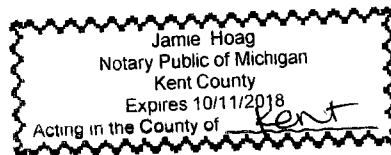
Dated: February 20, 2017


Phillip S. Stenger
Claims Processing Agent, Affiant

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

Signed and sworn to before me in Kent County, Michigan,
on the 20th day of February, 2017.


Jamie Hoag
Notary Public, State of Michigan, County of Kent
My commission expires: 10/11/2018



USA v. Michael E. Kelly
Case No.: 06-cr-964

EXHIBIT B

To

MOTION AND MEMORANDUM FOR
FINAL RESTITUTION FUND DISTRIBUTION

Small Estate Affidavit Letter

STENGER & STENGER

A MICHIGAN PROFESSIONAL CORPORATION

PHILLIP S. STENGER
ADMITTED IN MI, KY, MN, GA & CO
KAY GRIFFITH HAMMOND
ADMITTED IN MI
LAURA D. DUSTON
ADMITTED IN MI, KY, CA, CO & MD
JOSEPH M. JAMMAL
ADMITTED IN MI & MN
DUSTIN H. ALLEN
ADMITTED IN IN
AMANDA BREWSTER
ADMITTED IN MI
OF COUNSEL:
LEE T. SILVER
ADMITTED IN MI
DOUGLAS W. VAN ESSEN
ADMITTED IN MI

2618 EAST PARIS AVENUE, S.E.
GRAND RAPIDS, MICHIGAN 49546

TOLL FREE: (877) 482-4119

FACSIMILE: (800) 429-5805

EMAIL: CLAIMSAGENT@STENGERLAW.COM

OF COUNSEL:
DENISE M. HALLETT
ADMITTED IN IN
MELISSA Y. HOFFMAN
ADMITTED IN NJ & PA
DANIEL A. MANCINI
ADMITTED IN NJ & PA
BRETT P. RILEY
ADMITTED IN CO & WY
JESSICA WASSENBERG
ADMITTED IN MN
CINQUE AXAM
ADMITTED IN GA
DANIELLE P. ROBERTS
ADMITTED IN GA

April 5, 2013

VIA REGULAR UNITED STATES FIRST CLASS MAIL

Re: *United States v Michael E. Kelly*
TIME SENSITIVE MATTER

Dear Representative of Kelly Victim's Estate:

On November 20th, 2012, the Honorable Ronald A. Guzman entered his *Order Approving Distribution of Restitution Fund* (the "**Order**") directing the Claims Processing Agent to make a first distribution of the Restitution Fund in the amount of \$50,000,000.00. On December 12, 2012 distribution checks were mailed to each eligible victim, or if deceased, to the victim's surviving spouse or appropriate representative. The Order provides that the distribution checks must be cashed within 120 days of the date of the check, and in no event later than April 19th, 2013. Checks which are returned or have not been cashed by April 19th, 2013, will become permanently null and void, any right to receive such payment and all future payments from the Kelly Restitution Fund will terminate and the amount otherwise distributable to the victim shall be disposed of according to the provisions set by the Court.

Our records indicate that to date the distribution check mailed to you on December 12, 2012 on behalf of a deceased Kelly victim has still not been cashed. It has come to our attention that some of the representatives who have received checks made payable to the estate of a victim have had some difficulty negotiating the check. Although the Claims Processing Agent and the Special Master do not represent the victims in this matter, cannot assist you in complying with the law in your jurisdiction, and cannot provide you with legal advice, we do want to make you aware of a process that may assist in administering this check.

If a probate estate was never opened for a deceased victim, some states have what is called a "Small Estate Affidavit" procedure which might provide you with a low cost and relatively simple way of administering this check. This procedure basically involves a signed/notarized affidavit completed by the surviving spouse, or, in some states, another heir, who can attest that it has been at least 30 days or more from the date of the decedent's death (varies by state), that a probate estate has not been opened for the decedent, that the estate is

United States v. Michael E. Kelly
Letter to Representatives of Victim's Estate
Page 2

valued at less than a certain amount (varies by state), and that the person signing the affidavit is entitled to receive the asset on behalf of him/herself or others similarly situated. Some states have their own format they prefer, and others do not. With a few exceptions, these Small Estate Affidavits do not have to be filed with the court and there is no filing fee and/or other fee involved. Again, you are encouraged to consult with your own legal counsel about this and any other legal matter.

If you conclude that the applicable state law authorizes the use of such a procedure in your circumstances, you can submit the completed Small Estate Affidavit to our office at: Kelly Claims Processing Agent, c/o Stenger & Stenger PC, 2618 East Paris Ave, SE, Grand Rapids, Michigan 49546, along with a copy of the death certificate for the Kelly victim. We will then obtain approval from the United States Attorney's Office to reissue the check in the name of the surviving spouse or heir.

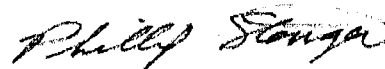
Please note, however, that if a probate estate has been previously opened for the decedent, you will need to re-open the estate in order to administer this check and a small estate affidavit will not suffice. If you are having difficulty administering a check made payable to the estate of a victim, and there has not been a probate estate opened for the decedent, please contact your personal attorney, the local probate court or the legal aid clinic in your area for assistance in obtaining a small estate affidavit.

The Court has extended the deadline for cashing the distribution checks made payable to an estate from April 19, 2013 to **May 20, 2013**. All information must be submitted to our office prior to this deadline. If you need additional time past this date to administer this check, please provide our office with a written request for an extension of time. Any requests for an extension must be received by our office prior to the **May 20, 2013** deadline.

We hope this information is helpful to you. If you have any questions or concerns, please do not hesitate to contact my office at: Phone: (877) 482-4119 or via email at: claimsagent@stengerlaw.com.

Very truly yours,

STENGER & STENGER, P.C.



Phillip S. Stenger

USA v. Michael E. Kelly
Case No.: 06-cr-964

EXHIBIT C
to
MOTION AND MEMORANDUM FOR
FINAL RESTITUTION FUND DISTRIBUTION

List of Reissued First Distribution Checks Pursuant to Small Estate Affidavit

List of Approved

Small Estate Affidavits As of 1-15-14

Claim Number	Initial Distribution Amount
MK000137	\$3,392.70
MK000397	\$15,836.53
MK000453	\$1,099.86
MK000981	\$11,508.34
MK001267	\$8,453.00
MK001478	\$14,613.76
MK001608	\$3,964.04
MK001840	\$6,769.25
MK002169	\$3,404.86
MK002334	\$27,776.24
MK002354	\$4,160.51
MK002509	\$1,261.51
MK002671	\$3,147.19
MK003130	\$5,706.87
MK003200	\$4,614.14
MK003230	\$3,895.57
MK003956	\$1,257.91
MK004037	\$14,861.58
MK004407	\$925.46
MK004498	\$19,477.81
MK004983	\$6,048.86
MK005494	\$3,957.41
MK005582	\$1,511.62
MK005839	\$14,736.49
MK005909	\$2,324.68
MK006092	\$13,003.45

List of Approved

Small Estate Affidavits As of 1-15-14

MK006192	\$2,665.54
MK006783	\$2,593.10
MK007054	\$2,662.13
MK007206	\$4,762.79
MK007335	\$8,798.29
MK007774	\$3,353.42
MK008727	\$8,357.28
MK008732	\$2,534.61
MK008806	\$1,438.45
MK009238	\$134.16
MK009705	\$11,684.91
MK009812	\$6,054.08
MK009841	\$1,705.51
MK010797	\$10,845.72
Total: 40	\$265,299.63

USA v. Michael E. Kelly
Case No.: 06-cr-964

EXHIBIT D
to
MOTION AND MEMORANDUM FOR
FINAL RESTITUTION FUND DISTRIBUTION

Second Notice to First Distribution Eligible Victims

STENGER & STENGER

A MICHIGAN PROFESSIONAL CORPORATION

PHILLIP S. STENGER
ADMITTED IN MI, KY, MN, GA & CO
KAY GRIFFITH HAMMOND
ADMITTED IN MI
LAURA D. DUSTON
ADMITTED IN MI, KY, GA, CO & MD
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AMANDA BREWSTER
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OF COUNSEL:
LEE T. SILVER
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JESSICA WASSENBERG
ADMITTED IN MN
CINQUE AXAM
ADMITTED IN CA
DANIELLE P. ROBERTS
ADMITTED IN CA

July 9, 2013

VIA U.S. FIRST CLASS MAIL

[INSERT NAME AND ADDRESS]

Re: *United States v Michael E. Kelly*
Case No. 06-CR-964, United States District Court (ND of IL)
TIME SENSITIVE MATTER

Dear [INSERT NAME]:

We represent the Claims Processing Agent in the above-referenced matter. Our records indicate that you have either been identified as a victim in this matter or a potential heir or representative of an identified victim.

On November 20, 2012, the United States District Court for the Northern District of Illinois approved an initial distribution to identified victims from the Michael E. Kelly Restitution Fund. Initial distribution checks were mailed by our office to identified victims on December 11th and 12th, 2012. Our records indicate that to date your initial distribution check has not been cashed and remains outstanding.

This letter hereby serves as your **FINAL NOTICE** that *if the initial distribution check is not cashed by July 31, 2013, the initial distribution check will become permanently void and your right to receive any future distributions from the Restitution Fund will be terminated.*

If you have any questions or concerns, please do not hesitate to contact us at: Phone: (877) 482-4119 or via email at: claimsagent@stengerlaw.com.

Very truly yours,

STENGER & STENGER, P.C.

Laura D. Duston
Attorney for Claims Processing Agent

USA v. Michael E. Kelly
Case No.: 06-cr-964

EXHIBIT E
to
MOTION AND MEMORANDUM FOR
FINAL RESTITUTION FUND DISTRIBUTION

Unclaimed Victim List

File Number	TRA	Dist 1 Amount
MK000012	\$809.93	\$118.36
MK000266	\$12,511.98	\$1,828.47
MK000399	\$401,736.54	\$58,708.83
MK000426	\$173.21	\$25.31
MK000429	\$6,724.14	\$982.65
MK000528	\$6,349.68	\$927.93
MK000585	\$39,392.61	\$5,756.74
MK000606	\$5,000.00	\$730.69
MK000696	\$396.00	\$57.87
MK000786	\$25,387.51	\$3,710.07
MK000846	\$40,057.80	\$5,853.95
MK000854	\$5,000.00	\$730.69
MK000879	\$5,000.00	\$730.69
MK000904	\$98,216.72	\$14,353.16
MK000957	\$584.91	\$85.48
MK000975	\$4,494.26	\$656.78
MK001026	\$27.41	\$4.01
MK001070	\$78,833.72	\$11,520.57
MK001111	\$122,359.61	\$17,881.34
MK001142	\$47,618.05	\$6,958.79
MK001311	\$66,486.83	\$9,716.23
MK001357	\$196,508.43	\$28,717.28
MK001410	\$44,059.36	\$6,438.73
MK001412	\$83,576.48	\$12,213.67
MK001443	\$22,780.04	\$3,329.02
MK001511	\$69,937.50	\$10,220.50

File Number	TRA	Dist 1 Amount
MK001527	\$25,000.00	\$3,653.44
MK001717	\$97,653.07	\$14,270.79
MK001718	\$39,581.24	\$5,784.31
MK001783	\$9,804.64	\$1,432.83
MK001802	\$37,227.71	\$5,440.37
MK001966	\$259.86	\$37.98
MK002015	\$22,275.94	\$3,255.35
MK002108	\$10,539.39	\$1,540.20
MK002109	\$60,896.90	\$8,899.33
MK002139	\$25,000.00	\$3,653.44
MK002288	\$12,580.40	\$1,838.47
MK002352	\$22,214.07	\$3,246.31
MK002515	\$30,000.00	\$4,384.13
MK002532	\$36,682.93	\$5,360.76
MK002535	\$47,701.20	\$6,970.94
MK002685	\$108,419.77	\$15,844.21
MK002715	\$90,000.00	\$13,152.39
MK002933	\$7,000.00	\$1,022.96
MK003213	\$33,229.46	\$4,856.07
MK003231	\$104,462.81	\$15,265.95
MK003254	\$20,862.04	\$3,048.73
MK003342	\$28.66	\$4.19
MK003515	\$37,637.82	\$5,500.30
MK003619	\$25,595.80	\$3,740.51
MK003907	\$5,000.00	\$730.69
MK003923	\$14,587.46	\$2,131.78

File Number	TRA	Dist 1 Amount
MK003945	\$115,828.49	\$16,926.90
MK004031	\$15,500.00	\$2,265.13
MK004066	\$21,364.83	\$3,122.21
MK004089	\$46,604.04	\$6,810.60
MK004090	\$103,254.25	\$15,089.33
MK004110	\$4,668.74	\$682.28
MK004214	\$1,255.36	\$183.46
MK004237	\$5,000.00	\$730.69
MK004370	\$9,628.69	\$1,407.11
MK004512	\$25,116.18	\$3,670.42
MK004518	\$9,520.32	\$1,391.28
MK004526	\$16,307.73	\$2,383.17
MK004791	\$12,003.13	\$1,754.11
MK004845	\$1,892.91	\$276.63
MK004859	\$1,896.68	\$277.18
MK005025	\$143,772.25	\$21,010.54
MK005139	\$22,454.52	\$3,281.45
MK005223	\$40,263.93	\$5,884.08
MK005435	\$2,663.98	\$389.31
MK005858	\$4,600.00	\$672.23
MK005968	\$7,953.46	\$1,162.30
MK005972	\$50,956.22	\$7,446.62
MK006075	\$2,642.05	\$386.10
MK006090	\$8,467.03	\$1,237.35
MK006099	\$20,905.69	\$3,055.11
MK006105	\$1,135.53	\$165.94

File Number	TRA	Dist 1 Amount
MK006168	\$33,629.39	\$4,914.52
MK006179	\$22,871.70	\$3,342.42
MK006255	\$17,888.34	\$2,614.16
MK006331	\$5,000.00	\$730.69
MK006694	\$343.20	\$50.15
MK006708	\$1,363.56	\$199.27
MK006753	\$87.51	\$12.79
MK006799	\$1,012.63	\$147.98
MK006938	\$80,464.05	\$11,758.83
MK006951	\$176.03	\$25.72
MK007027	\$10,000.00	\$1,461.38
MK007045	\$4,670.63	\$682.55
MK007062	\$9,270.97	\$1,354.84
MK007138	\$57,704.64	\$8,432.82
MK007183	\$934,563.16	\$136,574.85
MK007277	\$12,216.03	\$1,785.22
MK007351	\$19,645.80	\$2,870.99
MK007559	\$8,191.46	\$1,197.08
MK007571	\$60,852.12	\$8,892.78
MK007642	\$5,000.00	\$730.69
MK007790	\$794.77	\$116.15
MK007876	\$203.14	\$29.69
MK007877	\$736.42	\$107.62
MK007930	\$17.24	\$2.52
MK007965	\$22,370.85	\$3,269.22
MK008003	\$51,982.00	\$7,596.53

File Number	TRA	Dist 1 Amount
MK008019	\$266.99	\$39.02
MK008107	\$120,927.52	\$17,672.06
MK008349	\$3,920.80	\$572.98
MK008350	\$1,667.38	\$243.67
MK008374	\$34,200.00	\$4,997.91
MK008394	\$22,937.50	\$3,352.03
MK008613	\$9,464.99	\$1,383.19
MK008802	\$29,172.33	\$4,263.18
MK008847	\$19,651.83	\$2,871.87
MK008879	\$98,831.09	\$14,442.94
MK008948	\$455,165.01	\$66,516.74
MK009181	\$12,275.46	\$1,793.91
MK009275	\$6,742.80	\$985.38
MK009317	\$24,571.20	\$3,590.78
MK009349	\$33,453.29	\$4,888.78
MK009407	\$23,000.00	\$3,361.17
MK009441	\$17,447.09	\$2,549.68
MK009442	\$5,646.46	\$825.16
MK009499	\$117,110.73	\$17,114.28
MK009576	\$14,015.64	\$2,048.21
MK009661	\$48,851.53	\$7,139.05
MK009735	\$5,000.00	\$730.69
MK009786	\$9,716.72	\$1,419.98
MK009794	\$4,068.16	\$594.51
MK009803	\$4,086.61	\$597.21
MK009837	\$5,154.65	\$753.29

File Number	TRA	Dist 1 Amount
MK009934	\$57,025.21	\$8,333.53
MK010184	\$40,829.46	\$5,966.72
MK010200	\$131.10	\$19.16
MK010225	\$3,136.56	\$458.37
MK010334	\$65,646.54	\$9,593.43
MK010343	\$20,686.43	\$3,023.07
MK010551	\$27,545.80	\$4,025.48
MK010805	\$4,442.81	\$649.26
	<u>\$5,711,765.23</u>	<u>\$834,703.92</u>

USA v. Michael E. Kelly
Case No.: 06-cr-964

EXHIBIT F
to
MOTION AND MEMORANDUM FOR
FINAL RESTITUTION FUND DISTRIBUTION

Restitution Order in Kelly II, filed December 13, 2012

Pam

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

NORTHERN District of ILLINOIS

UNITED STATES OF AMERICA

v.

MICHAEL E. KELLY

JUDGMENT IN A CRIMINAL CASE

Case Number: 12 CR 875-1

USM Number: 31814-018

Jeffrey B. Steinback

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) one
- pleaded nolo contendere to count(s) which was accepted by the court.
- was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
15USC Sections 77q(a) and 77x	Fraudulent Sale of Securities	12/22/2006	1

The defendant is sentenced as provided in pages 2 through 300 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
- Count(s) is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 13, 2012
Date of Imposition of Judgment

Ronald A. Guzman
Signature of Judge

Ronald A. Guzman - U.S. District Court Judge
Name and Title of Judge

2/4/2013
Date

U.S. DISTRICT COURT
CLERK
2013 FEB -8 PM 3:03

DEFENDANT: Kelly, Michael E.
CASE NUMBER: 12 CR 875-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Sixty (60) Months, time considered served.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Kelly, Michael E.
CASE NUMBER: 12 CR 875-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: Two (2) Years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed 104 tests per year.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Kelly, Michael E.
CASE NUMBER: 12 CR 975-1

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule.

The defendant shall provide the probation officer with access to any requested financial information.

DEFENDANT: Kelly, Michael E.
 CASE NUMBER: 12 CR 875-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>		<u>Fine</u>		<u>Restitution</u>
TOTALS	\$ 100.00		\$		\$ 342,143,221.14

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
See order of restitution and victim list			

TOTALS	\$ _____	\$ 342,143,221.14
---------------	----------	-------------------

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Defendant: Kelly, Michael E.
Case Number: 12 CR 875-1
District: Northern Illinois
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	No. 12 CR 875
)	Hon. Ronald A. Guzman
MICHAEL E. KELLY)	

ORDER OF RESTITUTION

Defendant Michael E. Kelly has entered a plea of guilty to the charge set forth in the Information in this case. The Court has accepted the plea and this matter comes on to be heard for sentencing.

As part of defendant's written plea agreement filed in this case, and as admitted under oath before this Court, defendant has acknowledged that he devised and executed a scheme to defraud investors by fraudulently offering and selling, and causing the fraudulent offer and sale of, investments primarily in nine month notes and in so-called universal leases. Defendant further acknowledged that as a result of his scheme to defraud, he raised approximately \$500,000,000 through the fraudulent offer and sale of these investments to more than 8000 investor-victims.

The Court and the parties are aware that in criminal case number 06 CR 964, in which defendant Kelly is charged with additional criminal offenses in connection with his scheme to defraud, defendant agreed to the appointment of a Special Master for the purpose of marshaling assets in which defendant had an interest, liquidating those assets, and paying the

Defendant: **Kelly, Michael E.**
Case Number: **12 CR 875-1**
District: **Northern Illinois**
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proceeds as restitution to the victims as identified and in amounts determined in accord with procedures established by this Court.

This Court and the parties are also aware that the Special Master has substantially completed the process of identifying victims and determining the amounts owed to each victim according to procedures and rulings entered by the Court. The Special Master has reported to the Court and the parties the identities of the victims and the amounts of restitution owed to each, denominated as "Total Restitution Amount" ("TRA") Those victims and the TRA owed to each are set forth in the spreadsheet attached hereto as Exhibit A.¹ Defendant has acknowledged, as set out in Exhibit A, that the total amount of restitution owed to the identified investor-victims is at least \$342,143,221.14, minus any credit for funds repaid by the Special Master appointed with defendant's consent in case number 06 CR 964 prior to sentencing.

Pursuant to Title 18, United States Code, Section 3663(a)(3), defendant Kelly has agreed in this case to make restitution to the investor-victims of the scheme to defraud charged and to the entry of an order by the Court to pay restitution to the victims in accord with and in the amounts determined by the Court. Defendant has further agreed to the appointment of the Special Master in this case under the same terms to which defendant agreed in case number 06 CR 964, including the same claims procedure. Defendant has also agreed that the claims procedure conducted to date in 06 CR 964 shall apply to this case, and

¹ Exhibit A identifies victims only by a number. The Court, defendant Kelly and the government are aware of the names and addresses of each victim.

Defendant: Kelly, Michael F

Case Number: 12 CR 875-1

District: Northern Illinois

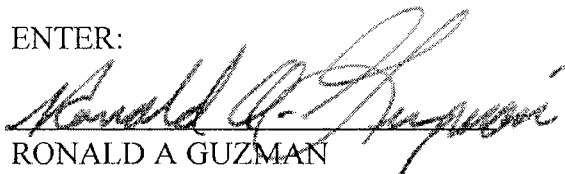
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shall continue as a restitution mechanism in this case. The Court concurs that these steps present the most efficient and expeditious process by which restitution may be made.

WHEREFORE, pursuant to Title 18, United States Code, Section 3663(a)(3), IT IS ORDERED that:

1. Defendant Kelly pay restitution to each and every victim identified in Exhibit A in the amounts designated as "Total Restitution Amount;"
2. Douglas A. Doetsch is appointed as Special Master in this case under the same terms as in case number 06 CR 964 including the same claims procedure;
3. The claims procedure conducted to date in 06 CR 964 shall apply to this case, and shall continue as a restitution mechanism in this case;
4. The Special Master shall make restitution payments to the extent that defendant Kelly's liquidated assets minus expenses permit; and,
5. Defendant Kelly is responsible for the payment of all restitution amounts not paid by the Special Master.

ENTER:


RONALD A GUZMAN
UNITED STATES DISTRICT JUDGE

12/13/2012
DATED

USA v. Michael E. Kelly
Case No.: 06-cr-964

EXHIBIT G
to
MOTION AND MEMORANDUM FOR
FINAL RESTITUTION FUND DISTRIBUTION

*Fair Fund Transfer Order in SEC Action,
filed September 30, 2016*

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

United States Securities and Exchange Commission,	:	
	:	
Plaintiff,	:	Civil Action No. 1:07cv4979
	:	
v.	:	Honorable Elaine E. Bucklo
	:	
Michael E. Kelly, et al.,	:	
	:	
Defendants,	:	
	:	

**ORDER ESTABLISHING FAIR FUND AND
TRANSFERING FUNDS TO A RELATED CRIMINAL
PROCEEDING FOR DISTRIBUTION**

The Court, having reviewed the Securities and Exchange Commission’s (“Commission”) Motion to Establish a Fair Fund and Transfer Funds to a Related Criminal Proceeding For Distribution and for good cause shown,

IT IS HEREBY ORDERED:

1. The Motion is GRANTED.
2. A Fair Fund is established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Act of 2010 [15 U.S.C. § 7246(a)], from the funds: (1) deposited with the Registry of the Court in this matter under the case name designation “*SEC v. Michael E. Kelly, et. al.*” pursuant to the Final Judgments entered in this case, plus interest earned on those funds, minus court registry fees and other fees and expenses; and (2) from the payments to the Commission submitted by the Defendants Michael P. Kelly, Donald L. Kelly, and Mark G. Meyer pursuant to their respective Final Judgments (the “Fund”).

3. The Clerk of the Court shall transfer the funds presently in the Registry of the Court account in this matter to the Registry of the Court account for the related criminal proceeding, *US v. Michael E. Kelly*, No. 1:12-cr-00875 (N.D. Ill. 2012), for distribution by the Special Master in that case.

4. The Commission shall transfer all funds currently held at the Commission in this matter to the Registry of the Court account for the related criminal proceeding, *US v. Michael E. Kelly*, No. 1:12-cr-00875 (N.D. Ill. 2012), for distribution by the Special Master in that case.

5. Any future funds that the Commission may collect pursuant to judgments entered in this case are to be transferred to the Registry of the Court account for the above-referenced criminal proceeding for distribution, without further order of this Court.

SO ORDERED.

Dated: September 30, 2016



UNITED STATES DISTRICT JUDGE

USA v. Michael E. Kelly
Case No.: 06-cr-964

EXHIBIT H
to
MOTION AND MEMORANDUM FOR
FINAL RESTITUTION FUND DISTRIBUTION

Contingency Reserve

CONTINGENCY RESERVE

Pending and Future Estimated Professional Fees and Expenses

Professional Fees & Expenses	Invoices Outstanding through 12/31/2016	Future Estimated Fees & Expenses	Total
Mayer Brown LLP	\$ 474,490.58	\$ 400,000.00	\$ 874,490.58
Frontera Capital Advisors, LLC	\$ 6,101.00	\$ 100,000.00	\$ 106,101.00
Morgan & Morgan	\$ 14,311.66	\$ 13,000.00	\$ 27,311.66
Del Valle Torres, S.C.	\$ 65,559.89	\$ 20,000.00	\$ 85,559.89
Jauregui y Del Valle, S.C.	\$ 3,349.50	\$ 6,000.00	\$ 9,349.50
Stenger & Stenger P.C.	\$ 108,683.17	\$ 310,000.00	\$ 418,683.17
Ortega Abogados	\$ -	\$ 21,000.00	\$ 21,000.00
CiBanco, S.A., Institucion de Banca Multiple (Mexican Resitution Trust) Fees	\$ 40,600.00	\$ -	\$ 40,600.00
CiBanco, S.A., Institucion de Banca Multiple (Mexican Resitution Trust) Indemnity	\$ -	\$ 10,000.00	\$ 10,000.00
Deloitte Touche Tohmatsu Limited - Accounting Expenses	\$ -	\$ 20,000.00	\$ 20,000.00
Totals	\$ 713,095.80	\$ 900,000.00	\$ 1,613,095.80

\$ 1,613,095.80

Other	
Contingency Provision	\$ 2,114,123.70

\$ 2,114,123.70

CONTINGENCY RESERVE:

\$ 3,727,219.50