

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

UNITED STATES SECURITIES AND EXCHANGE)
COMMISSION,)

Plaintiff,)

v.)

MICHAEL E. KELLY; MICHAEL P. KELLY;)
DONALD L. KELLY; JOHN L. CORWIN;)
CORPORATIVO NOLA, S.A. DE C.V.; RESORT)
HOLDING INTERNATIONAL (RHI) S.A.;)
PANORAMA COMMUNITIES, S.A.; WORLD)
PHANTASY TOURS, INC. (VIAJES Y FANTASIA)
POR EL MUNDO, S.A.), ALSO D/B/A MAJESTY)
TRAVEL; GALAXY PROPERTIES MANAGEMENT,)
S.A.; YUCATAN RESORTS, S.A. DE C.V.; RESORT)
HOLDINGS INTERNATIONAL, S.A. de C.V.; MARK)
RUTTENBERG; RUTTENBERG & ASSOCIATES)
FINANCIAL MARKETING, INC.; MARK G.)
MEYER; MARK MEYER & ASSOCIATES, INC.;)
RICHARD E. RINER; SOUTHWEST INCOME)
MARKETING, INC.; GEORGE PHELPS, ALSO)
D/B/A SAFE ESTATE PLANS; JOHN E. TENCZA,)
ALSO D/B/A AMERICAN INVESTMENT)
MANAGEMENT GROUP, INC.; AMERICAN ELDER)
GROUP, L.L.C.; CARL Q. LEE; CARL LEE AND)
ASSOCIATES, INC.; ROY D. HIGGS; WARREN T.)
CHAMBERS; WILLIAM K. BOSTON, JR.;)
CENTURY ESTATE PLANNING, INC.,)

Defendants,)

and)

AVANTI MOTOR CORPORATION and DMK)
PROPERTIES, L.L.C.,)

Relief Defendants)

07C 4979
JUDGE BUCKLO
MAGISTRATE JUDGE KEYS
COMPLAINT

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (“Commission” or “SEC”), alleges as follows:

NATURE OF THE ACTION

1. From 1999 until 2005, Michael E. Kelly (“Kelly”) and others working with him perpetrated a massive fraud that victimized thousands of investors across the United States, raising at least \$428 million through the offer and sale of fraudulent and unregistered securities. These securities, called “Universal Leases,” were structured as timeshares in several hotels in Cancun, Mexico, coupled with pre-arranged servicing agreements with a purportedly independent leasing agent (the “Leasing Agent”) that promised investors a safe investment and guaranteed returns. As explained to investors, the Leasing Agent would rent their timeshares to others, pay investors a high, fixed rate of return, and when investors wanted out of the program, the Leasing Agent would buy back their timeshares from them for the full amount of their original investment.

2. Contrary to the representations made to Universal Lease investors, however, the rental arrangement with the Leasing Agent was a sham. Instead, for most of the scheme, Kelly and those under his control simply used new investor funds raised in the scheme to make illusory “rental income” payments to Universal Lease investors.

3. Using a network of insurance brokers who were not registered with the Commission and could not legally sell these securities (the “Selling Brokers”), Kelly targeted older Americans and their retirement savings, with more than \$136 million of the invested funds coming from IRA and other retirement accounts, and tens of millions more coming from

annuities and mutual fund money. Kelly paid these Selling Brokers huge commissions, undisclosed to investors, totaling more than \$72 million.

4. Kelly's Universal Lease scheme has now collapsed, and investor losses exceed \$310 million. Thousands of the defrauded investors are senior citizens, many of whom have lost most or all of their retirement savings.

5. As set out more fully herein, Kelly, a former Indiana resident, took a number of sophisticated and extraordinary steps to shield his scheme from interference by United States law enforcement authorities. For example, at the beginning of his scheme, Kelly moved himself and the others running the scheme to Mexico where, for the most part, they have remained. Kelly also used a number of Panamanian and Mexican corporations¹ to operate his scheme and transferred tens of millions of dollars of investor funds through these entities' foreign bank accounts, making it difficult for U.S. regulators to track all of the uses of investor funds and all of the sources of investor payments.

6. Kelly also failed to register these securities with the Commission as required under the federal securities laws, thereby denying investors the protections afforded to them by the detailed financial and other disclosures required by these laws.

7. Over time, a number of state regulatory agencies ordered Kelly and the entities through which he sold the Universal Leases to stop selling these unregistered securities. Struggling to keep the scheme alive with sufficient new investor funds due to pressure from state regulators, Kelly attempted to keep the scheme afloat by altering it in a variety of ways. For example, in early 2004, Kelly purportedly stopped selling the original Universal Lease in the

¹ Due to Kelly's use of entities with similar names based in three countries, this complaint uses a convention of adding a country-of-origin label after each entity's abbreviated name. Accordingly, United States based entities end with "US," Panamanian entities end with "Pan," and Mexican entities end with "Mex."

U.S., but instead, began selling a nearly identical product under the name “Residence Club Membership.” In mid-2004, the Universal Lease program changed Leasing Agents and unilaterally cut the return paid to investors. By mid-2005, the new Leasing Agent’s payments to investors had essentially ceased.

8. Kelly controlled all aspects of the scheme and used his two sons, Defendants Donald L. Kelly (“DL Kelly”) and Michael P. Kelly (“MP Kelly”) to assist him. Defendant John L. Corwin (“Corwin”), a former car salesman who had worked with Kelly in Indiana, also helped Kelly run the Universal Lease program.

9. Kelly issued and sold these investments through Mexican and Panamanian companies he owned and controlled during the scheme, including Yucatan Resorts, S.A. (“Yucatan Resorts Pan”), and Defendants Resort Holding International (RHI), S.A. (“RHI Pan”), Corporativo Nola, S.A. de C.V. (“Corporativo Mex”) and Panorama Communities, S.A. (“Panorama Pan”) (collectively, the “Issuers”). Kelly controlled all of these entities throughout their involvement in the scheme.

10. From late 1999 to mid-2004, Kelly used Defendant World Phantasy Tours, Inc. (Viajes Fantasia Por El Mundo S.A.), which also did business as Majesty Travel (“Majesty Pan”), as the purportedly large, independent leasing agent. In fact, Majesty Pan was a small, Panamanian travel agency controlled by Kelly. In mid-2004, Defendant Galaxy Properties Management S.A. (“Galaxy Pan”) purportedly purchased Majesty Pan and took over as the Leasing Agent. Kelly controlled this entity too.

11. Kelly used literally hundreds of Selling Brokers to market and sell the Universal Leases in the U.S. This complaint names as Defendants a number of the Selling Brokers who pocketed more than \$1 million in undisclosed commissions (“the Top Selling Brokers”). These

include Mark Ruttenberg (“Ruttenberg”) and his firm Ruttenberg & Associates Financial Marketing, Inc. (“Ruttenberg and Associates US”); Mark Meyer (“Meyer”) and his firm Mark Meyer & Associates, Inc. (“Meyer and Associates US”); Richard E. Riner (“Riner”) and his firm Southwest Income Marketing, Inc. (“Southwest Income US”); George L. Phelps, also doing business as Safe Estate Plans (“Phelps”); John E. Tencza (“Tencza,” also doing business as American Investment Management Group, Inc.), and his firm American Elder Group, L.L.C. (“American Elder US”); Carl Q. Lee (“Lee”) and his firm Carl Lee and Associates, Inc. (“Lee and Associates U.S.”); Roy D. Higgs (“Higgs”); and Warren T. Chambers (“Chambers”) and William K. Boston, Jr., (“Boston”), both working through their firm Century Estate Planning, Inc. (“Century Estate US”).

12. Each of the Top Selling Brokers recruited a number of new Selling Brokers to offer and sell Universal Leases (“down-line brokers”), and Kelly paid the Top Selling Brokers “override commissions” on their down-line brokers’ sales. The total commission paid to all tiers of brokers was typically 18% of the Universal Lease purchase price, and Kelly promised a second commission equal to one-half of the original commission (another 9% of the Universal Lease purchase price), if the brokers kept investors in the program for two (later three) years. Kelly paid each of the Top Selling Brokers more than \$1 million in Universal Lease commissions. None of the Top Selling Brokers was associated with a broker or dealer registered with the Commission during the offering.

13. Kelly used Defendant Resort Holdings International, S.A. de C.V. (“RHI Mex”) and Resort Holdings International, Inc. (“RHI U.S.”) to conduct Universal Lease operations in the United States, and used Yucatan Resorts Pan and Defendant Yucatan Resorts, S.A. de C.V. (“Yucatan Resorts Mex”) to hire the Selling Brokers.

14. By virtue of their conduct as alleged herein, Kelly and the other Defendants have engaged in transactions, acts, practices, and courses of business that constitute violations of Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), e(c), and q(a)]; Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5 [17 C.F.R. § 240.10b-5] and 10b-10 [17 C.F.R. § 240.10b-10] promulgated thereunder; and Section 15(a) of the Exchange Act [15 U.S.C. § 77o(a)], and, unless permanently enjoined, Defendants are likely to engage in future violations of these provisions.²

15. The Commission brings this civil enforcement action for a judgment: (a) permanently enjoining Kelly and the other Defendants from future violations of the antifraud and registration provisions of the federal securities laws; (b) requiring Defendants and Relief Defendants to disgorge their ill-gotten gains, along with prejudgment interest; (c) imposing civil penalties against Kelly and the other Defendants for their unlawful conduct; (d) appointing a Receiver to marshal the assets of Defendants and return funds to injured investors; and (e) such other relief as the Court deems appropriate.

JURISDICTION

16. The Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa].

THE DEFENDANTS

Persons Running the Scheme

17. **Michael E. Kelly** (Kelly), age 57, is a former resident of North Liberty, Indiana who, until recently, resided in Cancun, Mexico. Kelly is currently incarcerated in the

² The specific defendants against whom each injunction is sought, and the specific counts alleged against each defendant are set forth in Counts I through X herein.

Metropolitan Correctional Center in Chicago, Illinois where he is being held, pre-trial, on a criminal fraud complaint filed in the case of U.S.A v. Michael E. Kelly, Case No. 06-CR-964 in the United States District Court for the Northern District of Illinois. During the relevant period, Kelly created and controlled the Universal Lease program. Kelly controlled the companies that operated as the Issuers of the Universal Leases to U.S. investors (Yucatan Resorts Pan, Corporativo Mex, RHI Pan, and Panorama Pan), the Leasing Agents (Majesty Pan and Galaxy Pan), and the companies contracting with others (such as the Selling Brokers) to sell the Universal Lease in the U.S. (Yucatan Mex and RHI Mex). Kelly personally trained the Selling Brokers and, on at least one occasion, personally offered the Universal Lease to investors in the United States.

18. **Michael P. Kelly** (MP Kelly), age 29, is a former resident of North Liberty, Indiana now living in Cancun, Mexico. MP Kelly is one of Kelly's two sons. MP Kelly is a U.S. citizen. Among other things, MP Kelly signed Universal Lease contracts with investors on behalf of both the Issuers and the Leasing Agents. MP Kelly was in charge of Kelly's Cancun Universal Lease office during the time Universal Leases were sold as "Residence Club Memberships."

19. **Donald L. Kelly** (DL Kelly), age 29, is a former resident of North Liberty, Indiana now living in Cancun, Mexico. DL Kelly is one of Kelly's two sons. DL Kelly is a U.S. citizen. Among other things, DL Kelly transferred investor funds among accounts controlled by Kelly in order to make it appear that the periodic income payments to investors were coming from the purportedly independent Leasing Agent. DL Kelly also supervised the employees conducting the Leasing Agent's business.

20. **John L. Corwin** (Corwin), age 57, is a former resident of Mishawaka, Indiana,

now living in Cancun, Mexico. Corwin is a U.S. citizen. During the Universal Lease offering, Corwin, among other things, ran Kelly's Cancun Universal Lease office. Corwin was not involved in the Universal Leases sold as Residence Club Memberships.

Issuers and Leasing Agents

21. **Resort Holding International, (RHI) S.A.** (RHI Pan) is a Panamanian corporation that during the scheme was owned and controlled by Kelly. RHI Pan offered and sold Universal Leases to investors in the United States through the Selling Brokers. During the scheme, Kelly and others under his control caused more than \$80 million of Universal Lease investor funds to be transferred to RHI Pan's Panamanian bank accounts.

22. **Corporativo Nola, S.A. de C.V.** (Corporativo Mex) is a Mexican corporation that during the scheme was controlled and partly owned by Kelly. Corporativo Mex offered and sold Universal Leases to investors in the United States through the Selling Brokers. During the scheme, Kelly and others under his control caused more than \$61 million of Universal Lease investor funds to be transferred to Corporativo Mex's bank accounts in Mexico. Kelly, MP Kelly, and Kelly's daughter Lori, a non-defendant herein, were signatories on Corporativo Mex's bank accounts.

23. **Panorama Communities, S.A.** (Panorama Pan) is a Panamanian corporation that during the scheme was owned and controlled by Kelly and DL Kelly. During 2004 and early 2005, Panorama Pan offered and sold Universal Leases in the form of "Residence Club Memberships" to U.S. investors through the Selling Brokers. During the scheme, Kelly and others under his control caused more than \$8 million of U.S. investor funds to be transferred to Panorama Pan's Mexican and Panamanian bank accounts.

24. **World Phantasy Tours, Inc. (Viajes Fantasia Por El Mundo S.A.), also d/b/a Majesty Travel** (Majesty Pan) is a Panamanian corporation. From late 1999 to June 2004, Majesty Pan was the purportedly independent, third party management company (“Leasing Agent”) associated with Kelly’s Universal Lease offering. During this time, Kelly controlled Majesty Pan and funded its purported rental income payments to investors.

25. **Galaxy Properties Management, S.A.** (Galaxy Pan) is a Panamanian corporation that in June 2004 took over as the purportedly independent management company associated with the Universal Leases. Galaxy Pan was also the Leasing Agent used for the Universal Leases sold as Residence Club Memberships. Kelly, MP Kelly and DL Kelly controlled Galaxy Pan and funded its purported rental income payments to investors.

26. **Yucatan Resorts, S.A. de C.V.** (Yucatan Resorts Mex) is a Mexican corporation that during the scheme was owned and controlled by Kelly, MP Kelly and DL Kelly. Yucatan Resorts Mex contracted with many Selling Brokers for them to offer and sell the Universal Lease in the United States. During the scheme, Kelly and others under his control caused more than \$2.4 million of investor funds to be transferred to Yucatan Resorts Mex’s Mexican bank accounts, which Kelly controlled.

27. **Resort Holdings International, S.A. de C.V.** (RHI Mex) is a Mexican corporation that during the scheme was controlled by Kelly and MP Kelly. RHI Mex was purportedly a marketing company for Corporativo Mex, and it contracted with Kelly’s U.S. affiliate, RHI US, for it to offer Universal Leases to investors in the United States. During the scheme, Kelly and others under his control caused more than \$1 million of investor funds to be transferred to RHI Mex’s Mexican bank accounts.

Unregistered Broker Defendants

28. **Mark Ruttenberg** (Ruttenberg) and **Ruttenberg & Associates Financial Marketing, Inc.** (Ruttenberg and Associates US). Ruttenberg, age 60, is a resident of Bloomington, Illinois. Before working for Kelly's Universal Lease program, Ruttenberg worked for several broker-dealers that were registered with the Commission and passed the NASD's Series 1 and Series 63 examinations. During the relevant period, Ruttenberg owned and controlled Ruttenberg and Associates US, an Illinois corporation with its principal place of business in Bloomington, Illinois. Ruttenberg and Associates US contracted with Yucatan Resorts Mex to market the Universal Lease in the United States and to recruit Selling Brokers to offer and sell the Universal Lease in the United States. From late 1999 to March 2004, Ruttenberg and Ruttenberg and Associates US recruited hundreds of Selling Brokers who offered and sold Universal Leases to investors in the United States.

29. Kelly and others under his control paid Ruttenberg and Associates US more than \$6.4 million in commissions for the Universal Leases sold by their down-line brokers.

30. At all times during the period in which they sold Universal Leases, neither Ruttenberg nor Ruttenberg and Associates US was registered with the Commission as a broker or dealer and neither was associated with any registered broker or dealer.

31. **Mark G. Meyer** (Meyer) and **Mark Meyer & Associates, Inc.** (Mark Meyer and Associates US). Meyer, age 54, is a resident of Coppell, Texas. Before working for Kelly's Universal Lease program, Meyer worked for several broker-dealers registered with the Commission and passed the NASD's Series 6 and Series 63 examinations. Meyer incorporated Mark Meyer and Associates US, a Texas corporation with its principal place of business in Coppell, Texas, and conducted his insurance and Universal Lease business through it. Meyer

offered and sold Universal leases, and recruited others to do so.

32. Kelly and others under his control paid Meyer and Meyer and Associates US more than \$1.1 million in commissions for Meyer's Universal Lease sales and those of his down-line brokers.

33. At all times during the period in which they sold Universal Leases, neither Meyer nor Mark Meyer and Associates US was registered with the Commission as a broker and neither was a dealer or associated with any registered broker or dealer.

34. **Richard E. Riner** (Riner) and **Southwest Income Marketing, Inc.** (Southwest Income US). Riner, age 55, is a resident of San Marcos, Texas. Riner is President of Defendant Southwest Income US, a Texas corporation with its principal place of business in San Marcos, Texas. During the relevant period, Riner conducted his insurance and Universal Lease business through Southwest Income US. Riner offered and sold Universal Leases and recruited others to do so.

35. Kelly and others under his control paid Riner and Southwest Income US more than \$3.6 million in commissions for their Universal Lease sales and those of their down-line brokers.

36. At all times during the period in which they sold Universal Leases, neither Riner nor Southwest Income US was registered with the Commission as a broker or dealer and neither was associated with any registered broker or dealer.

37. **George L. Phelps** (Phelps). Phelps, age 53, is a resident of San Antonio, Texas. Phelps conducted business individually and under the name "Safe Estate Plans." Phelps offered and sold Universal Leases and recruited others to do so.

38. Kelly and others under his control paid Phelps more than \$1.8 million in

commissions for his Universal Lease sales and those of his down-line brokers.

39. At all times during the period in which he sold Universal Leases, Phelps was not registered with the Commission as a broker or dealer or associated with any registered broker or dealer.

40. **John E. Tencza** (Tencza) and **American Elder Group LLC** (American Elder US). Tencza, age 44, is a resident of Meridian, Idaho. Before working for Kelly's Universal Lease program, Tencza worked for several broker-dealers registered with the Commission and passed the NASD's Series 6 and Series 63 examinations. During the relevant period, Tencza was Manager of Defendant American Elder US, an Arizona limited liability company with its principal place of business in Scottsdale, Arizona. Tencza and American Elder US offered and sold Universal Leases and recruited a number of new Selling Brokers to do so. Tencza also sold Universal Leases doing business under the name "American Investment Management Group, Inc."

41. Kelly and others under his control paid Tencza and his firm more than \$1.5 million in commissions for Universal Lease sales and those of their down-line brokers.

42. At all times during the period in which they sold Universal Leases, neither Tencza nor American Elder US was registered with the Commission as a broker or dealer and neither was associated with any registered broker or dealer.

43. **Carl Q. Lee** (Lee) and **Carl Lee and Associates, Inc.** (Lee and Associates US). Lee, age 57, is a resident of Arlington, Texas. During the relevant period, Lee was President of Defendant Lee and Associates US, a Texas corporation with its principal place of business in Weatherford, Texas. Lee conducted his insurance and Universal Lease business through Lee and Associates US. Lee and his firm offered and sold Universal Leases and recruited others to do so.

44. Kelly and others under his control paid Lee and his firm more than \$1.4 million in commissions for their Universal Lease sales and those of their down-line brokers.

45. At all times during the period in which they sold Universal Leases, neither Lee nor Lee and Associates US was registered with the Commission as a broker or dealer and neither was associated with any registered broker or dealer.

46. **Roy D. Higgs** (Higgs). Higgs, age 64, is a resident of Henderson, Nevada. Higgs offered and sold Universal Leases and recruited a number of others to do so. Kelly and others under his control paid Higgs more than \$1.3 million in commissions for his Universal Lease sales and those of his down-line brokers.

47. At all times during the period in which he sold Universal Leases, Higgs was not registered with the Commission as a broker or dealer or associated with any registered broker or dealer.

48. **Warren T. Chambers** (Chambers), **William K. Boston** (Boston) and **Century Estate Planning, Inc.** (Century Estate US). Chambers, age 41, is a resident of Cedar Park, Texas. Boston, age 62, is a resident of Canton, Georgia. During the relevant period, Chambers was President and Boston was Vice-President of Defendant Century Estate US, a Texas corporation with its principal place of business in Cedar Park, Texas. Chambers and Boston, acting through Century Estate US, offered and sold Universal Leases and recruited a number of others to do so.

49. Kelly and others under his control paid Chambers, Boston and Century Estate US more than \$1.3 million in commissions, collectively, for their Universal Lease sales and those of their down-line brokers.

50. At all times during the period in which they sold Universal Leases, none of

Defendants Chambers, Boston and Century Estate US was registered with the Commission as broker or dealer and none was associated with any registered broker or dealer.

Relief Defendants

51. **Avanti Motor Corporation** (Avanti US) is a Nevada corporation that, during the scheme, had its principal place of business in Villa Rica, Georgia. On information and belief, Kelly relocated Avanti US to Mexico in 2006.

52. At all times during the Universal Lease scheme, Kelly, MP Kelly and/or DL Kelly owned and controlled Avanti US. Kelly and others under his control caused more than \$7.3 million of Universal Lease investor funds to be transferred to Avanti US's bank accounts. These funds were used primarily to finance Avanti US's operations. At no time during the Universal Lease scheme did Kelly or any other Defendant inform Universal Lease holders that any of the money raised from the Universal Lease offering was going to be used for Avanti US's operations.

53. **DMK Properties, LLC** (DMK US) is an Indiana Limited Liability Company formed in December 1999. DL Kelly is its owner and Secretary, and MP Kelly is its Treasurer. DMK US is purportedly in the "industrial leasing" business, leasing property that it owns. DMK US is purportedly the current owner of Avanti US.

54. Kelly and others under his control caused more than \$3.4 million of Universal Lease investor funds to be transferred to DMK US's U.S. bank accounts. At no time during the Universal Lease scheme did Kelly or any other Defendant inform Universal Lease holders that any of the money raised from the Universal Lease offering was going to be used for DMK's operations.

Non-Defendant Entities That Kelly Controlled

55. **Yucatan Resorts, S.A.** (Yucatan Resorts Pan), a non-defendant herein, was a Panamanian corporation until it was dissolved in December 2003. During the relevant period, Kelly controlled Yucatan Pan. From late 1999 to 2003, Yucatan Pan offered and sold Universal Leases to investors in the United States through the Selling Brokers. Yucatan Pan also contracted with many of the Selling Brokers for them to offer and sell Universal Leases in the United States. During the scheme, Kelly and others under his control transferred more than \$1 million of investor funds to Yucatan Resorts Pan's Panamanian bank accounts.

56. **Resort Holdings International, Inc.** (RHI US), a non-defendant herein, was a Nevada corporation that was incorporated in 1999 and filed articles of dissolution in December 2004. Kelly owned and controlled RHI US during the Universal Lease scheme, and was its President, Secretary and Treasurer. RHI US had its principal place of business in South Bend, Indiana, from which Kelly conducted his Universal Lease program's U.S. operations.

57. **Yucatan Investment Corporation** (Yucatan US), a non-defendant herein, was an Indiana corporation from January 1998 to December 2003. Kelly owned and controlled Yucatan US, and was its President. As alleged in further detail below, Kelly used Yucatan US to conduct an unregistered 9-month note offering that immediately predated the Universal Lease scheme. During the scheme, Kelly and others under his control transferred approximately \$8 million of Universal Lease investor funds to Yucatan US's bank accounts in the U.S. where the money was used, in part, to make principal and interest payments to investors in the note offering.

FACTUAL ALLEGATIONS

A. Prelude to the Universal Lease Scheme: The Yucatan US 9-Month Note Offering

58. In 1998 and 1999, before the Universal Lease offering began, Kelly and others working for him conducted an unregistered offering of millions of dollars of securities to investors in the form of 9-month 10.75% notes issued by Yucatan US (the “note offering”).

59. Throughout its existence, Kelly owned and controlled Yucatan US.

60. During 1998 and 1999, Yucatan US had offices for the note offering in the South Bend, Indiana area where Kelly lived.

61. In early 1999, Kelly hired Patrick Ballinger (“Ballinger”), a now two-time convicted felon, to take charge of the unregistered brokers selling the notes. During his participation in the note offering, Ballinger worked out of the South Bend office.

62. During the Yucatan US note offering, Kelly began spending a significant percentage of his time in Mexico. At all times during the note offering, however, Kelly controlled the South Bend office and all other aspects of the note offering.

63. Based on the SEC’s review of records available to date, Kelly and Yucatan US sold more than \$25 million of notes through the Yucatan US note offering.

64. The note offering permitted investors to accumulate income and/or extend the investment for another term at the end of the nine-month period. Many note offering investors elected to accumulate income or extend their investment or both.

65. During the period of the note offering, Kelly, through one or more Mexican corporations he owned or controlled, used a portion of these note proceeds to buy and renovate the Baccara Hotel, a small 36-room hotel in Cancun, Mexico.

66. In 1999 and 2000, a number of state securities agencies issued cease and desist

orders against the issuers of the notes and certain of the Selling Brokers, prohibiting further sales of the notes on the basis that the notes were unregistered securities and that the brokers also were not registered.

67. These cease and desist orders sharply curtailed the flow of new investor funds into Yucatan US. The drop in new investor funds created a cash flow problem for Kelly because Yucatan US did not have the money or a business plan that could pay the interest and the principal due to the existing note-holders. As a result, in the spring of 1999, Kelly and Ballinger began to develop a new financial product to replace the note offering.

B. The Creation of the Universal Lease

68. During their discussions in 1999 concerning the development of their new financial product to replace the 9-month notes, Kelly and Ballinger agreed that it was paramount that they be able to claim that the new financial product was not a “security” to state and federal securities regulators.

69. Kelly and Ballinger knew at the time that if the financial product they sold was considered by regulators to be a security, they would be required to register the securities with federal and state securities regulators, make extensive financial disclosures, including disclosures about the anticipated use of proceeds, and would not be permitted to use unregistered brokers to sell their financial product or to pay those brokers substantial, undisclosed commissions.

70. Kelly and Ballinger attempted to portray the Universal Lease investment as a non-security in order to: (a) evade further scrutiny by securities regulators; (b) avoid the costs associated with registration; (c) avoid the comprehensive disclosures required under federal and state securities laws; (d) use their existing sales force of unregistered brokers to sell the product; and (e) pay them undisclosed commissions well in excess of what would be permitted for

securities sales.

71. Kelly and Ballinger also discussed and agreed that the new product needed to pay a high rate of return comparable to that of the 9-month notes, be "IRA friendly" (i.e., investors should be able to invest their IRA or other qualified retirement account funds into the new program), and be able to absorb the surrender charges incurred by those transferring funds from other investments, such as annuities.

72. The new program Kelly and Ballinger developed offered investors a "lease" which was, in essence, a timeshare in the Baccara hotel, coupled with an "option" to contract with a purportedly independent, third party management company to lease the timeshare to others and to pay the investor the rental proceeds.

73. Kelly, with Ballinger's assistance, wrote the first set of Universal Lease offering documents and was responsible for their contents. These documents included a brochure giving information on Kelly, the hotels, and the Universal Lease program (the "Offering Brochure"); a contract with one of the Issuers providing the investor with a timeshare in one of Kelly's Cancun hotels (the "Universal Lease Agreement"); a contract with the Leasing Agent providing for the rental (sometimes referred to herein as "subleasing") of the timeshare and payment of the represented rate of return on the amount paid for the timeshare (the "Servicing Agreement"); a "Beneficiary Designation Form;" and a "Lease Evaluation," which is discussed herein. These offering documents are collectively referred to herein as the "Offering Materials." As discussed in further detail below, the Offering Materials were revised from time to time. Kelly either prepared or was otherwise responsible for the contents of all versions of the Offering Materials used in offering and selling the Universal Leases.

74. Kelly also prepared or was otherwise responsible for the contents of a Broker

Hand Book, which was distributed to the Selling Brokers as part of Kelly's marketing of the program through them, along with a copy of the Universal Lease offering documents that were to be shown to investors. The Broker Hand Book included, among other materials, an Introduction to Program, a discussion of Universal Lease Purchase Options, a Universal Lease Application and Agreement, a Majesty Pan Service Agreement and Compensation Addendum, a Majestic Travel Brochure and a Yucatan Resorts Financial Plan.

75. In connection with the development of the Universe Lease offering, Kelly obtained an attorney opinion letter from Brantley Wright, an Indianapolis, Indiana attorney. In the opinion letter, Wright advised that, based upon certain stated assumptions, the Universal Lease "will more likely than not be found to not constitute the sale of a security." Among the assumptions Wright relied upon were: (1) neither the Issuer or anyone affiliated with the Issuer could lease or act as Leasing Agent; (2) there could be no sharing of profits or pooling of rental income from the timeshares; and (3) the offering documents and the selling agents could not stress the potential returns on an investment in the timeshares and must make clear that there were no guarantees that the timeshares could be leased, or the amount of rent that would result from leasing them. Later in the offering, Kelly obtained a second attorney opinion letter from Joel Held, a Dallas, Texas lawyer. This opinion letter contained these same false assumptions.

76. Kelly knowingly implemented the Universal Lease program in a manner that was contrary to these assumptions.

77. Although Wright's opinion letter called for an independent management company unaffiliated with Kelly and his hotels, Kelly and Ballinger knew that they did not have such a company to use with the Universal Lease offering. As a result, Kelly acquired control of a small Panamanian travel agency, Majesty Pan. From the commencement of the Universal Lease

offering in 1999 until approximately January 2004, Kelly and others under his control not only conducted the operations of both the Issuer and the purportedly independent Leasing Agent, but did so out of the very same office, using common staff for both. It was not until after the Pennsylvania Securities Commission sued Kelly's Universal Lease program that Kelly caused the Leasing Agent's files and some of Kelly's Universal Lease personnel to move to a different, nearby office location.

78. Despite Kelly's control over both the Issuer of the Universal Lease and Majesty Pan, he represented both orally and in various Offering Materials that Majesty Pan was the third party Leasing Agent and was independent from and unaffiliated with the Issuer.

79. Kelly also ignored and defied the stated assumption in Wright's opinion letter that there could be no sharing of profits or pooling of rental income. Instead, Kelly's payments to Universal Lease investors were based on a pooling of all investor funds, rather than profits from the rental of each investors specific unit. Bank records from U.S. bank accounts which Kelly used to initially deposit new Universal Lease investor funds show that from the commencement of the offering in 1999 until at least August 2003, the payments of purported subleasing income came almost exclusively from the Universal Lease investor's own investments, which were commingled in the same U.S. bank account, and not from any subleasing income.

80. Contrary to Wright's admonition on how the Universal Leases could be marketed in order to avoid being considered a security, Kelly, the Issuers, the Selling Brokers and the purportedly independent Leasing Agent consistently stressed the potential returns on an investment in the timeshares, and guaranteed an amount of rental income that would be paid from leasing them. As Kelly advised one group of prospective investors in Sun City, Texas at a marketing seminar held in May 2001: "Once you hire the third party management company, they

are solely responsible for your lease. All you have to do is sit home, and wait for your income.”

81. Under the Universal Lease program designed by Kelly and Ballinger, investors signed Universal Lease Agreements with one of Kelly’s Issuers that provided the investor with a 25 year “lease” (either one week each year, or one week every other year) of a timeshare in a hotel purportedly owned and controlled by Kelly in Cancun.

82. The Universal Lease offering created by Kelly and Ballinger offered three basic options. Option 1 permitted investors to simply use their lease as an ordinary timeshare, and take vacations at the Baccara hotel every year or two. Option 2 permitted investors to sublease the unit themselves. Option 3 permitted investors to use the purportedly independent Leasing Agent to sublease the unit for them, guaranteeing a fixed rate of return. Investors who selected Option 3 entered into a Servicing Agreement with the Leasing Agent at the same time that they signed their Universal Lease.

83. At the time that they created the Universal Lease offering, Kelly and Ballinger intended that all investors would select option 3, using the Leasing Agent purchased and controlled by Kelly. Kelly and Ballinger included options 1 and 2 in order to be able falsely to represent that the Universal Lease was not a security.

84. Although the Universal Leases nominally provided investors with the option of using the Universal Lease as timeshares, or of renting it to others through their own efforts, the Offering Brochure emphasized the Universal Lease as a good investment opportunity, and Kelly and the Selling Brokers aggressively marketed the Universal Lease program as an investment, not a vacation opportunity. As a result, based on the SEC’s review of more than 600 Universal Leases, more than 99 percent of the investors selected option 3, choosing to use the Leasing Agent rather than to use their timeshare units for personal vacations or be responsible themselves

for subleasing their units.

85. Option 1 was not a viable option for investors using IRA accounts to fund the investments, as the Universal Lease Agreement warned that the personal use of the timeshare unit by investors who funded their Universal Lease with IRA funds would be a “Prohibited Transaction,” leading to adverse tax consequences. More than \$136 million from IRA and other retirement accounts was invested in the Universal Leases; virtually none of these retirement fund investments was used toward Option 1 (the personal vacation use option).

86. None of the defendants informed prospective investors prior to the time of their investment decision whether they would get one timeshare or many, which timeshare they might get (i.e., which size of room or which floor), which week or weeks of the year, or even whether they would receive a timeshare for one week each year or for one week every other year.

87. Kelly, the Issuers, Leasing Agents and the Selling Brokers sometimes did not inform investors, orally or in writing, of the identity of the specific hotel for their timeshare until after investors had decided to invest.

88. Initially, Kelly used Yucatan Resorts Pan as the Issuer of the Universal Lease, and the timeshare was for Kelly’s Baccara Hotel. In the Offering Materials, Kelly claimed that Yucatan Resorts Pan managed the Baccara Hotel, and later, the Avalon Grand Hotel.

89. Later, Kelly also sold timeshares in two other hotels, the Avalon Grand and the Avalon Reef Club, Isla Mujeres. Of these three hotels, the 36 unit Baccara was the only one that was even operating during the first year of the scheme. According to various iterations of the Offering Brochure, the Avalon Grand was not opened until March of 2001, and the Avalon Reef Club, Isla Mujeres was not opened until early 2002. According to various Offering Materials, the Avalon Grand had 126 rooms. According to the Offering Brochures, the Isla Mujeres hotel

