

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOC #: _____
DATE FILED: 1 / 16 / 15

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

WWEBNET, INC. and ROBERT L. KELLY,

Defendants.

12-CV-6581 (AT)

FINAL JUDGMENT AS TO DEFENDANT ROBERT L. KELLY

The Securities and Exchange Commission having filed a Complaint and Defendant Robert L. Kelly having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §§ 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$2,111,660, representing his profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest. This amount and prejudgment interest shall be deemed satisfied by the Order of Restitution entered against Defendant in a related criminal case in the Southern District of New York [*United States v. Robert Kelly*, 12 Cr. 0888 (PAC)], which orders Defendant to pay restitution of \$2,111,660.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and/or Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Defendant is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.


VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: January 16, 2015
New York, New York



ANALISA TORRES
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

WWEBNET, INC. and ROBERT L. KELLY,

Defendants.

12-CV-6581 (ANT)

CONSENT OF DEFENDANT ROBERT L. KELLY

1. Defendant Robert L. Kelly ("Defendant") acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *United States v. Robert Kelly*, 12 Cr. 0888 (S.D.N.Y.) (PAC), Defendant pleaded guilty to violation of 15 U.S.C. §§ 78j(b) and 78ff and 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2. In connection with that plea, Defendant admitted the facts set out in the transcript of his plea allocution that is attached as Exhibit A to this Consent. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in *United States v. Kelly*.

3. Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violation of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §

78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §§ 240.10b-5] and Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)]; and

(b) orders that Defendant is liable for disgorgement of \$2,111,600, representing his profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest, and that this amount and prejudgment interest shall be deemed satisfied by the Order of Restitution entered against Defendant in a related criminal case in the Southern District of New York [*United States v. Robert Kelly*, 12 Cr. 0888 (S.D.N.Y.) (PAC)], which orders Defendant to pay restitution of \$2,111,660;

(c) prohibits Defendant from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

(d) permanently bars Defendant from participating in an offering of penny stock.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In

addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges the guilty plea for related conduct described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; and (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

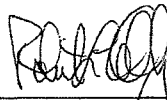
12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees,

expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: October 31, 2014



Robert L. Kelly

On October 31, 2014, Robert L. Kelly, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.



Notary Public

Commission expires: 02-14-2015

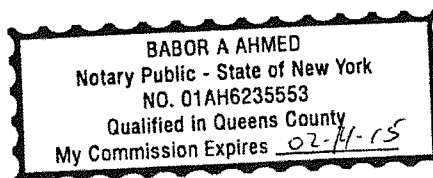


Exhibit A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

12 Cr. 0888 (PAC)

5 ROBERT KELLY,

6 Defendant.

7 -----x

8
9 March 11, 2014
11:07 a.m.

10 Before:

11 HON. PAUL A. CROTTY,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: BENJAMIN NAFTALIS

Assistant United States Attorney

18 SHER TREMONTE LLP

Attorneys for Defendant

19 BY: MICHAEL TREMONTE

20 FEDERAL DEFENDERS OF NEW YORK INC. (NYC)

Attorneys for Defendant

21 BY: MARK B. GOMBINER

22 - also present -

23 SA Keith Garwood, FBI

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1 (Mr. Gombiner not present)

2 THE CLERK: Your Honor, this is the matter of the
3 United States of America versus Robert Kelly, docket number 12
4 Crim. 888.

5 Counsel for the government, please state your
6 appearance.

7 MR. NAFTALIS: Good morning, your Honor. Benjamin
8 Naftalis for the government. I am joined by Special Agent
9 Keith Garwood of the FBI.

10 THE COURT: All right. Mr. Naftalis, Mr. Garwood, how
11 are you?

12 AGENT GARWOOD: Good morning, Judge.

13 THE CLERK: And the defendant?

14 MR. TREMONTE: Good morning, your Honor. Michael
15 Tremonte for Robert Kelly.

16 THE COURT: Is Mr. Gombiner going to come,
17 Mr. Tremonte?

18 MR. TREMONTE: Mr. Gombiner has an appearance in
19 another courtroom. He is going to try to come if he can.

20 THE COURT: All right. Mr. Kelly, how are you?

21 THE DEFENDANT: I am well, sir, thank you, under the
22 circumstances.

23 THE COURT: Mr. Tremonte, have you have explained the
24 procedures we are going to follow to Mr. Kelly?

25 MR. TREMONTE: Yes, I have, your Honor.

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1 THE COURT: We are going to take a plea of guilty this
2 morning?

3 THE DEFENDANT: That is correct, your Honor.

4 THE COURT: Marlon, would you swear Mr. Kelly, please.

5 (The defendant was sworn)

6 THE COURT: Please sit down, Mr. Kelly. Make yourself
7 comfortable.

8 First of all, Mr. Kelly, I want to advise you that you
9 are under oath and you have to answer truthfully the questions
10 I put to you. If you answer falsely, your answers could be
11 used against you in another prosecution for perjury or making
12 false statements. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And if I ask you anything you don't
15 understand and you want to clarify, please turn to Mr. Tremonte
16 and he will clarify it for you or he will bring up the issue
17 with me. All right?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Kelly, would you please state your
20 name for the record and give us your date of birth.

21 THE DEFENDANT: Robert Lyman Kelly, May 16, 1956.

22 THE COURT: And how far did you go in school,
23 Mr. Kelly?

24 THE DEFENDANT: I have my MBA from the University of
25 Michigan.

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1 THE COURT: All right. And are you currently under
2 the care of a physician or psychiatrist for any mental or
3 emotional problems?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you addicted to narcotics?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you had any drugs or alcohol or
8 medicines in the last 24 hours?

9 THE DEFENDANT: I had a little wine last night.

10 THE COURT: A glass of wine?

11 THE DEFENDANT: Two glasses of wine.

12 THE COURT: OK. How do you feel today?

13 THE DEFENDANT: I'm fine.

14 THE COURT: Is your mind clear?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you know what you are doing?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And you know what you are being charged
19 with?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You had an ample opportunity to talk with
22 the Federal Defenders and Mr. Tremonte about the charges
23 against you?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: Did you receive a copy of the Indictment?

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1 THE DEFENDANT: Yes, I did.

2 THE COURT: Have you talked with Mr. Tremonte about
3 pleading guilty?

4 THE DEFENDANT: Yes, I have.

5 THE COURT: Do you understand the consequences of
6 pleading guilty?

7 THE DEFENDANT: Yes, sir, I do.

8 THE COURT: Are you satisfied with the counsel and the
9 advice and the representation that has been given to you by
10 Mr. Tremonte and Mr. Gombiner?

11 THE DEFENDANT: They are excellent. Yes, sir.

12 THE COURT: Now, Mr. Kelly, you are giving up valuable
13 rights. We have to review those rights with you to make sure
14 that you understand.

15 First of all, you have the right to plead not guilty
16 to the offense charged against you and to persist in that plea.
17 Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You have a right to trial by a jury of 12
20 people. At trial you would be presumed innocent, the
21 government would have to prove your guilt beyond a reasonable
22 doubt, and the jury of 12 would have to be unanimous. Do you
23 understand?

24 THE DEFENDANT: Yes.

25 THE COURT: You have the right to the assistance to

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1 counsel for your defense; if necessary, to have the Court
2 appoint counsel at trial and at every other stage of the
3 proceeding. Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: Your attorneys, Mr. Tremonte and
6 Mr. Gombiner, could object to the government's evidence. You
7 would have the right to see and hear all the witnesses and have
8 your attorneys cross-examine them in your defense.

9 Do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: You have the right on your part,
12 Mr. Kelly, to decline to testify unless you voluntarily elected
13 to do so in your own defense. You have the right to testify
14 and present evidence and the issuance of subpoenas or
15 compulsory process to compel the attendance of witnesses to
16 testify in your defense.

17 Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that should you decide
20 not to testify or put on any evidence, these facts could not be
21 used against you and I would instruct the jury to not consider
22 your not testifying or your not putting on any evidence? Do
23 you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: By entering a plea of guilty, Mr. Kelly,

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1 if I accept that plea, there will be no trial and you will have
2 waived or given up your right to a trial as well as those
3 rights associated with a trial that I have just described to
4 you. Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And I will be able to sentence you just as
7 though the jury had returned a guilty verdict after a full
8 trial on the merits; do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Would you mark as Court Exhibit 1 the plea
11 agreement.

12 Mr. Kelly, if you turn to the last page. Can I ask
13 you, is that your signature on this document?

14 THE DEFENDANT: Yes, it is.

15 THE COURT: Have you had a chance to talk to
16 Mr. Tremonte and Mr. Gombiner about this?

17 THE DEFENDANT: Yes, I have.

18 THE COURT: Is this the complete agreement that you
19 have with the government?

20 THE DEFENDANT: Yes, it is.

21 THE COURT: You didn't leave anything out, did you?

22 THE DEFENDANT: No, sir.

23 THE COURT: You don't have any questions for
24 Mr. Tremonte now?

25 THE DEFENDANT: No, sir, I don't.

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1 THE COURT: OK. Did anybody make any threats or
2 promises to get you to sign this agreement?

3 THE DEFENDANT: No.

4 THE COURT: Now, you are charged, Mr. Kelly, with
5 securities and wire fraud to defraud various investors with
6 regard to Wwebnet.

7 In charge one, which is the securities fraud charge,
8 it has a maximum sentence of 20 years' imprisonment, a maximum
9 fine of the greatest of \$5 million, twice the gross pecuniary
10 gain derived from the offense or twice the loss to someone
11 other than yourself, a maximum term of three years of
12 supervised release, and a mandatory \$100 special assessment.

13 Count Two charges you with wire fraud, and this, too,
14 carries a maximum sentence of 20 years' imprisonment, a maximum
15 fine of the greatest of \$250,000, twice the gross pecuniary
16 gain derived from the offense or twice the loss to somebody
17 other than yourself, a maximum term of three years' supervised
18 release, and a mandatory \$100 special assessment.

19 Do you understand, those are the maximums that could
20 be imposed?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: The maximums for Counts One and Two is 40
23 years. Do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: If you violate the terms of your

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1 supervised release, you can be given further time in jail; do
2 you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, in addition to pleading guilty,
5 according to this agreement, Mr. Kelly, you are also admitting
6 the forfeiture allegations of Count One and Two; do you
7 understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And I have before me a Consent Preliminary
10 Order of Forfeiture Money and Judgment. Did you sign this
11 agreement this morning?

12 THE DEFENDANT: Yesterday, sir.

13 THE COURT: You signed it yesterday. Have you talked
14 to Mr. Tremonte and Mr. Gombiner about it?

15 THE DEFENDANT: Yes, I did.

16 THE COURT: All right. I will sign this, if I accept
17 the plea, at the conclusion of this proceeding.

18 Now, did you review with Mr. Tremonte how the
19 guidelines are calculated?

20 THE DEFENDANT: Yes, sir, I did.

21 THE COURT: At the bottom of page 2 going over to the
22 top of page 3?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you see that your offense level is
25 calculated at 26; that you are challenging -- you are reserving

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1 your right to challenge the four-level increase that is
2 attributable to your being an officer or director of a
3 publicly-traded company, and you maintain that at the time this
4 was not a publicly-traded company. But the offense level is
5 calculated at 26 and the Criminal History Category is I, which
6 results in a guideline range of 63 to 78 months.

7 Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And if you are successful in your argument
10 about the four-level increase, your offense level will be 22
11 and your Criminal History Category of I, resulting in a
12 guidelines' sentence of 41 to 51 months.

13 Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So it's likely that you will be doing --
16 some of your time will be served in prison. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, the guidelines which had been
19 calculated by your attorney and by the U.S. Attorney's Office
20 are not binding on the Probation Office and they are not
21 binding on me; do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: The guidelines are discretionary, not
24 mandatory, and the sentence that is going to be imposed upon
25 you is strictly up to me. Do you understand?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: And I am specifically not making any
3 promises to you, Mr. Kelly, about the sentence that I will
4 impose upon you; do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, in your sentence -- in addition to
7 pleading guilty, Mr. Kelly, you are also giving up your right
8 to file a direct appeal or challenge in a collateral attack any
9 sentence which is 63 to 78 months or below; do you understand?

10 THE DEFENDANT: I do, yes.

11 THE COURT: So you are giving up your right to a trial
12 and your right to appeal the sentence that I am going to impose
13 on you if it is within a certain parameter; do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. And on page 5, it says, in the
16 first full paragraph, you are acknowledging that you're
17 accepting this agreement and deciding to plead guilty because
18 you are in fact guilty; is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Naftalis, is there anything else about
21 this letter agreement of March 7 that you want me to call to
22 Mr. Kelly's attention?

23 MR. NAFTALIS: Your Honor, only that the letter also
24 speaks to restitution that will be set at sentencing.

25 THE COURT: Thank you.

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1 On page 2, Mr. Kelly, counsel for the government
2 reminds me that I should tell you that you are further agreeing
3 to make restitution in the amount of \$2,111,600, in accordance
4 with Title 18, United States Code, Sections 3663, 3663(a) and
5 3664. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Anything else, Mr. Naftalis?

8 MR. NAFTALIS: No, your Honor. Thank you.

9 THE COURT: Mr. Tremonte, anything else you want me to
10 call to Mr. Kelly's attention.

11 MR. TREMONTE: No. Thank you, your Honor.

12 THE COURT: All right. Mr. Naftalis, could you please
13 rise now and tell us, explain what the charges are in Count One
14 and Count Two of the Indictment?

15 MR. NAFTALIS: Yes, your Honor.

16 THE COURT: What each of the essential elements are of
17 those charges, and what your proof would be to establish these
18 elements beyond a reasonable doubt?

19 MR. NAFTALIS: Absolutely, your Honor.

20 As to Count One, your Honor, which charges the
21 defendant with securities fraud -- and that Count One is from
22 about 2004 to 2008 -- the elements are as follows.

23 That in connection with the offering or sale of
24 securities, the defendant did any one of the following: First,
25 employed a device, scheme, or artifice to defraud; or, two,

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1 obtain money or property by means of untrue statements or
2 material facts, or failed to state material facts which made
3 what was said under the circumstances misleading; or, three,
4 engaged in an act, practice, or course of business that
5 operated or would operate as a fraud or deceit onto the
6 purchaser; second, that the defendant acted willfully,
7 knowingly, and with the intent to defraud; and, third, that the
8 defendant used, or caused to be used, any means or
9 instrumentality of transportation or communication in
10 interstate commerce or the use of the mails in furtherance
11 thereof.

12 As to Count Two, which charges wire fraud, your Honor,
13 as to the same timeframe, from about 2004 through 2008, first,
14 that there was a scheme or artifice to defraud, to obtain money
15 or property by materially false and fraudulent pretenses,
16 representations or promises, as alleged in the Indictment;
17 second, the defendant knowingly and willfully participated in
18 the scheme or artifice to defraud with the knowledge of its
19 specific nature and with the intent to defraud; and, third,
20 that in execution of that scheme, the defendant used or caused
21 to be used the interstate wires.

22 Your Honor, the government would prove as to both
23 counts that they occurred or acts occurred in the Southern
24 District of New York. And as to the securities fraud count,
25 your Honor, that at least one transaction or act in furtherance

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1 of that -- actually not an act in furtherance, it is a
2 substantive, but at least one investment was made in the United
3 States, it was a domestic transaction, and that the parties
4 found themselves in the U.S.

5 As to the evidence at trial, your Honor, the
6 government would present lay witness testimony in the form of
7 investors or victims. It would present law enforcement
8 testimony in the form of analysis of bank statements and
9 financial analysis. It would present paper documents and
10 physical evidence in the form of bank statements, subscription
11 agreements, leases, photographs, and the like.

12 And, your Honor, that evidence would prove beyond a
13 reasonable doubt both counts in the Indictment.

14 THE COURT: Mr. Tremonte, do you know of any reason
15 why Mr. Kelly should not plead guilty?

16 MR. TREMONTE: I do not, your Honor.

17 THE COURT: All right. Mr. Kelly, could you please
18 rise now and tell us in your own words what you did?

19 THE DEFENDANT: Yes, sir. I will.

20 In connection with the marketing and sale of Wwebnet's
21 stock to investors in communications that I had by phone and
22 via email with investors in New York State and elsewhere, I
23 omitted to state certain material facts which made the
24 information that I provided to investors about Wwebnet under
25 the circumstances misleading. In particular, at various times,

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1 including but not limited to February of 2007, I omitted to
2 state that a large portion of the proceeds of certain
3 investments in Wwebnet were not being used to pay for Wwebnet
4 operations but, rather, were being transferred ultimately to
5 ECS, a company that I controlled, which is unrelated to
6 Wwebnet, and into ECS Securities' trading account under my
7 exclusive control.

8 I acted knowingly and willfully in that I deliberately
9 omitted to state these facts.

10 THE COURT: What does ECS stand for?

11 THE DEFENDANT: Executive Consultants Services.

12 THE COURT: And this was a vehicle you used to take
13 the money that was raised from investors and you invested it
14 for your own personal use; is that right?

15 THE DEFENDANT: It was used in the ECS trading
16 account, and it was a vehicle used to transfer the funds.

17 THE COURT: Is that adequate for your purposes,
18 Mr. Naftalis?

19 MR. NAFTALIS: It is, your Honor.

20 THE COURT: Now, Mr. Kelly, let me ask you. You are
21 reading from a statement?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Is that the statement, that you adopt
24 those words -- you worked that out with your lawyer, is that
25 correct?

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1 THE DEFENDANT: Yes.

2 THE COURT: But those are your own words?

3 THE DEFENDANT: They are my own words, sir.

4 THE COURT: OK. All right.

5 MR. NAFTALIS: Your Honor, may I have one minute with

6 Mr. Tremonte?

7 THE COURT: Yes.

8 (Pause)

9 MR. TREMONTE: Your Honor, just half a second.

10 THE COURT: Yes.

11 (Pause)

12 THE DEFENDANT: If I could --

13 MR. TREMONTE: I'm sorry. Your Honor, after
14 conferring with the government, Mr. Kelly had just a little bit
15 more to say on the last element, which is the element of
16 knowingly and willfully.

17 THE COURT: All right. Go ahead.

18 THE DEFENDANT: Sir, I acted knowingly and willfully
19 in that I deliberately omitted to state these facts and with a
20 conscious purpose to prevent investors from knowing them.

21 THE COURT: Is that adequate for your purposes now,
22 Mr. Naftalis?

23 MR. NAFTALIS: Yes, your Honor. Thank you.

24 (Mr. Gombiner present)

25 THE COURT: And Mr. Gombiner has now arrived. Thank

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1 you, Mr. Gombiner.

2 Mr. Tremonte, is that adequate for your purposes?

3 MR. TREMONTE: Yes, your Honor.

4 THE COURT: All right. Please be seated.

5 It is the finding of the Court, in the case of the
6 United States of America against Robert Kelly, 12 Criminal 888,
7 that Mr. Kelly is fully competent and capable of entering an
8 informed plea, Mr. Kelly is aware of the nature of the charges
9 and the consequences of a plea of guilty, and the plea of
10 guilty is knowing, is voluntary, is supported by an independent
11 basis in fact containing each of the essential elements of the
12 offense. I therefore accept the plea, and adjudge Mr. Kelly
13 guilty of Counts One, as charged in 12 Criminal 888.

14 Having found Mr. Kelly guilty, I will now sign the
15 Consent Preliminary Order of Forfeiture and Money Judgment.
16 This order was given to me this morning. It's signed by
17 Mr. Kelly, Mr. Naftalis, Mr. Tremonte, and I'll so order it and
18 date it today.

19 (Pause)

20 There are two copies. I will sign both copies. I
21 will give these to Mr. Ovalles.

22 Do we have a date for sentencing, Marlon?

23 THE CLERK: Sentencing is set for Thursday, July 17th,
24 at 3 p.m., your Honor.

25 THE COURT: The bail is continued, Mr. Naftalis?

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1 MR. NAFTALIS: No objection, your Honor.

2 THE COURT: All right. I'll see you --

3 MR. NAFTALIS: Just so I can clarify, your Honor. As
4 to your acceptance of the plea, it was as to both Counts One
5 and Two of the Indictment?

6 THE COURT: I thought I said that, but if I didn't, I
7 accept the plea as to Counts One and Two --

8 MR. NAFTALIS: Thank you, your Honor.

9 THE COURT: -- and adjudge him guilty of Counts One
10 and Two in 12 Criminal 888. I think I said that but it bears
11 repeating --

12 MR. NAFTALIS: Thank you, your Honor.

13 THE COURT: -- if there is any doubt about it.
14 Anything else?

15 MR. TREMONTE: No, your Honor.

16 THE COURT: Now, Mr. Tremonte, I want to thank you for
17 pitching in the way you did. This case goes back to some
18 funding difficulties we were having with the Federal Defenders.
19 I'm glad those difficulties are more or less behind us. But I
20 want to thank you for your services in the intervening year and
21 a half which it took us to work out these funding problems.
22 Thank you.

23 MR. TREMONTE: Thank you, your Honor.

24 THE COURT: Anything else, Mr. Gombiner?

25 MR. GOMBINER: No. Thank you.

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1 THE COURT: Thank you very much.

2 Thank you, Mr. Kelly.

3 THE DEFENDANT: Thank you, Judge.

4 THE CLERK: This court stands in recess.

5 THE COURT: I take it I don't have to remind you on
6 the record, everybody has to cooperate with Probation so they
7 can get their work done. They are short-staffed themselves.
8 They are down nine positions.

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