

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19323

In the Matter of

SEAN KELLY,

Respondent.

MOTION BY DIVISION OF ENFORCEMENT FOR A FINDING THAT RESPONDENT
KELLY IS IN DEFAULT AND FOR IMPOSITION OF REMEDIAL SANCTIONS

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EXHIBIT 1: Complaint Securities and Exchange Commission v. Sean Kelly, Civil Action Number 1:18-CV-04939-TCB (United States District Court for the Northern District of Georgia) filed on August 6, 2018.

EXHIBIT 2: Declaration of Melissa Mitchell and accompanying Exhibits A-G

EXHIBIT 3: Final Judgment in Securities and Exchange Commission v. Sean Kelly et al., Civil Action Number 1:18-CV-04939-TCB (United States District Court for the Northern District of Georgia) entered on July 11, 2019.

I. BACKGROUND

On August 7, 2019, this matter was instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-3(f)]. Respondent Sean Kelly (“Respondent” or “Kelly”) was served with the Order Instituting Proceedings (“OIP”) on October 15, 2020, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice. *See Sean Kelly*, Admin. Release No. 34-91538, 2021 WL 1351212 (Apr. 12, 2021). Kelly had twenty days to file an answer, but failed to do so. As of the date of this motion, Kelly has not filed an answer.

By Order to Show Cause, Kelly was ordered to show cause by April 29, 2019 why the Commission should not find Kelly in default due to his failure to file an answer or to otherwise defend this proceeding. *Id.* Kelly failed to file anything with the Commission by April 29, 2019, or at any time thereafter, providing any reason or cause as to why he should not be found in default and have this proceeding determined against him.

This proceeding arises from a District Court action that the Commission previously filed against Kelly. Specifically, on October 25, 2018, a Complaint for Injunctive and Other Relief was filed against Kelly alleging that he raised at least \$1,000,000 from investors, promising that he would invest the funds in a variety of investment vehicles, and that he instead stole the money and spent it for things like Super Bowl tickets, luxury vacations, and cash withdrawals. The Complaint alleged that Kelly, operating through co-defendant companies he created and controlled (Lion’s Share & Associates, Inc. (“LS Associates”), Lionsshare Tax Services, LLC (“LS Tax”), and Lion’s Share Financial of East Cobb, Inc. (“LS Financial”)) (collectively “Lion’s Share”) conducted his scheme from at least 2014 through October 2018, when the Commission filed the

Complaint. *See* Exhibit 1 (Complaint); *see also* Exhibit 2 (Declaration of Melissa Mitchell (“Mitchell Decl.”))

On July 11, 2019, the court entered a Final Judgment by default against Kelly, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10-5], Sections 206(1) and (2) of the Advisers Act [15 U.S.C. § 80b-6], ordering that Kelly pay disgorgement of \$1,457,043.99 together with prejudgment interest thereon in the amount of \$289,586.82, for a total of \$1,746,630.81, and imposing a civil penalty in the amount of \$250,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. *See* Exhibit 3 (Final Judgment).

Accordingly, the Division now moves pursuant to Rules 155(a)(2) and 220(f) for a finding that the Respondent is in default, and the imposition of remedial sanctions. The Division submits that the Respondent should be barred from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, nationally recognized statistical rating organization (NRSRO), or investment company.

KELLY’S SCHEME TO STEAL INVESTOR ASSETS

Between 2014 and 2018, Kelly operated through various entities that he owned, controlled, and operated, including the above-referenced “Lion’s Share” entities. Mitchell Decl, ¶¶ 2-4, 15, 17. Kelly marketed his services to individuals, including veterans and elderly individuals in assisted living facilities. *Id.*, Exhibit E. He told those people that he would invest their money with various entities. *Id.*, Exhibit E. Instead, Kelly pocketed their money for himself

and forged documents to make it look like he had properly invested his customers' funds. *Id.* ¶¶15-21, Exhibit E. Kelly spent the money on mortgage payments, Super Bowl tickets, vacations, and large cash withdrawals. *Id.*, Exhibit E. All told, Kelly defrauded his victims out of more than \$1,000,000. *Id.*

Among the victims of Kelly's scheme was Dr. Sander Dorfzaun. In August 2018, Dr. Dorfzaun gave Kelly a check for \$5,000 made out to Lion's Share. *Id.* ¶15. Kelly told Dr. Dorfzaun that he would either invest the \$5,000 or deposit it into Dr. Dorfzaun's brokerage account for subsequent investment. *Id.* But, Kelly did neither. *Id.* ¶16.

Kelly also defrauded investors Bonnie Kirkland and Margaret Powell. As with Dr. Dorfzaun, the money that they gave Kelly was intended for investment purposes. *Id.* ¶17. But Kelly used it for his own personal expenses. *Id.*, Exhibit G, pp. 7-8.

To avoid detection, Kelly created phony account statements which he provided to the customers whose money he stole. An example is the phony statement that Kelly provided to investors Donald and Lydia Weems. *Id.* ¶18, Exhibit A. That statement listed various supposed investments in specific entities. But those entities confirm that they have no record of any investment by the Weems. *Id.* ¶¶18-21, Exhibits B, C, and D, *see also* Exhibit G, p. 8.

On January 4, 2019, Kelly pleaded guilty to a criminal information charging him with one count of mail fraud and one count of securities fraud for the same scheme described in the Commission's Complaint. *Id.* ¶¶ 22-23, Exhibit E and F. In connection with that guilty plea, Kelly admitted to the following:

Kelly, a registered stockbroker, offered securities and investment advice and marketed his services to a number of individuals including veterans and elderly individuals in assisted living facilities. As part of the scheme to defraud, Kelly falsely told numerous customers that he was investing their money with various

entities. But in reality, Kelly pocketed the funds for himself and forged documents to make it look like he had properly invested victim funds. Rather than invest the money for his clients, he spent the money on mortgage payments, Super Bowl tickets, vacations, and large cash withdrawals. During the timeframe of the scheme, Kelly defrauded numerous victims out of over \$1,000,000.

Id. ¶23, Exhibit F.

III. ARGUMENT

A. The Respondent Failed To Answer After Properly Being Served and Is In Default

Because the Respondent never responded to the OIP, he is in default. Rule 155(a) of the Commission’s Rules of Practice states that:

A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails: ...

- (2) to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding

Moreover, the OIP itself provides that “[i]f Respondent fails to file the directed Answer . . . , the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true” (OIP ¶ IV).

Rule 141(a)(2)(i) sets forth permissible methods of service of the OIP upon individuals, which include “delivering a copy of the order instituting proceedings to the individual,” and which defines “delivery” to include “handing a copy of the order to the individual;” Here, the Respondent was properly served with the OIP. *See Sean Kelly*, Admin. Release No. 34-91538, 2021 WL 1351212 (Apr. 12, 2021).

The Division requests that the Respondent be found to be in default, as he failed to timely file and serve an Answer, or respond in any way, after having been served with the OIP.

B. The Facts Alleged In the OIP Must Be Deemed True

As stated in the OIP, failure to file a directed answer may result in the Respondent being deemed in default and the proceedings may be determined against them upon consideration of the OIP, the allegations of which may be deemed to be true. OIP ¶ IV, *citing* Rules 155(a) and 220(f) and 310. Those facts which may be deemed true include:

1. Since 2000, Kelly was associated with several broker-dealers registered with the Commission. Most recently, from 2017 to 2018, he was associated with Center Street Securities, Inc., a broker-dealer registered with the Commission. Kelly also acted as an unregistered investment adviser by providing investment advice to his clients in exchange for compensation in connection with his business.
2. On July 11, 2019, a final judgment was entered against Kelly, permanently enjoining him from future violations of Sections 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Kelly, et al., Civil Action Number 1:18-CV-4939, in the United States District Court for the Northern District of Georgia.
3. The Commission’s complaint alleged that, from at least 2014 until October 2018, Kelly raised more than \$1,000,000 from at least 12 investors, promising that he would invest the investors’ funds in a variety of investment vehicles, including securities. The Complaint further alleged that, rather than investing the money that he raised from investors, Kelly stole it and spent it for things like Super Bowl tickets and luxury vacations.

As stated in Section III of the OIP, the purpose of this proceeding is not only to determine whether the above allegations are true, but what remedial action is appropriate in the public interest against the Respondent pursuant to Section 15(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Section 203(f) of the Advisers Act [15 U.S.C. § 80b-3(f)]. As the allegations may be deemed true

because the Respondent is in default, the remaining issue is the appropriate remedies to be imposed on him in the public interest.

C. The Appropriate Remedial Sanctions That Should Be Imposed Upon The Respondent In This Case

Pursuant to Section 15(b)(6) of the Exchange Act, the Respondent should be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization (NRSRO). Before imposing such a bar, the Commission or the administrative law judge must “review each case on its own facts to make findings regarding the respondent’s fitness to participate in the industry in the barred capacities,” and the decision “should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct.” *Ross Mandel*, Exchange Act Release No. 71668, 2014 SEC LEXIS 848 at *8 (Mar. 7, 2014) (internal quotation marks omitted). Thus, an industry bar sanction cannot be predicated solely on the allegations in the complaint in a Commission’s civil action if the Respondent defaulted in that proceeding. *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 SEC LEXIS 1657 at *3 (Apr. 23, 2015).

There are several well-recognized factors that are to be considered in determining the appropriate remedy in the public interest. Those factors are: (1) the egregiousness of the Respondent’s actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) the sincerity of the Respondent’s assurances against future violations; (5) the Respondent’s recognition of the wrongful nature of their conduct; and (6) the likelihood that the Respondent’s occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979); *In the Matter of Bernath*, Initial Decision Release No. 993 at 4,

2016 SEC LEXIS 1222 *10-11 (April 4, 2016) (*Steadman* factors used to determine whether a bar is in the public interest, in a case where sanctions were imposed by summary disposition). The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *Bernath*, at *4 and *11, citing *In the Matter of Schield Mgmt Co.*, 58 S.E.C. 1197, 1217 n.46, 2006 SEC LEXIS 195, at *35-36 (Jan. 31, 2006) (revoking adviser's registration and barring majority owner from association).

Although no one factor is dispositive in determining the appropriate relief in the public interest, the record in the District Court action, Kelly's admissions in the criminal case, and the attached declaration and records establish the presence of each of the six *Steadman* factors.

Here, there can be little question that the conduct at issue was egregious, repeated and involved a high degree of scienter. From 2014 to October 2018, Kelly solicited his brokerage customers to write checks to Lion's Share, telling them that he would use their money to purchase specific investments for their accounts or that the money would be deposited into their brokerage account for the purchase of investments yet to be identified. Mitchell Decl. ¶¶3, 15, 17, Exhibits E and F. But, Kelly did not transfer his customers' money to any custodial brokerage account. Nor did he use the money to buy investment products directly from any company offering investments. *Id.*, ¶¶7, 16-21, Exhibits E and F. Rather, Kelly used his customers' money for his own personal expenditures, including travel, Super Bowl tickets, and mortgage payments. *Id.*, ¶¶15, 17, Exhibits E and F. In addition, Kelly would often simply withdraw large amounts of cash from the Lion's Share account into which he had deposited his customers' funds. *Id.*, ¶5, Exhibits E and F.

Kelly pleaded guilty to the facts detailed in the Commission’s Complaint in connection with the criminal case that followed shortly thereafter. On December 13, 2018, the U.S. Attorney’s Office for the Northern District of Georgia charged Kelly, by criminal information, with one count of mail fraud and one count of securities fraud arising from the same misconduct described in the Commission’s Complaint. *Id.*, ¶22, Exhibit E. On January 4, 2019, Kelly pleaded guilty to both counts of the criminal information stating, in part: “The Defendant admits that he is pleading guilty because he is in fact guilty of the crimes charged in Counts 1 and 2.” *Id.*, ¶23, Exhibit F. On January 13, 2019, U.S. District Judge Thomas Thrash sentenced Kelly to 60 months imprisonment (followed by three years of supervised release) and restitution of \$1,457,043.99. *Id.*, ¶24, Exhibit G. The restitution portion of that documents lists the 14 victims to receive pro rata portions of any restitution payments. Those victims include Dr. Sander Dorfzaun, Bennie Kirkland, Margaret Powell, and Donald and Lydia Weems, referenced above. *Id.*, Exhibit G pp. 8-9.

Kelly has defaulted on the underlying District Court action and failed to show cause why this proceeding should not be determined against him. There is every reason to believe that he may engage in this sort of misconduct again once he is released from prison. Respondent created his own opportunities for fraud, and stole from people who placed their trust in him. There is every reason to believe that he will create opportunities for future violations as soon as he is free to do so.

Finally, the violations are sufficiently recent to merit the requested sanctions. Kelly engaged in the misconduct as late as autumn 2018. The Commission filed an emergency civil action against him on October 25, 2018, and the Court entered final judgment in that action on July

11, 2019. *See* Exhibit A (Complaint); *see also* Exhibit C (Final Judgment). The Commission instituted this follow-on action on August 7, 2019.

IV. CONCLUSION

For the reasons set forth herein, Respondent Kelly should be found in default, and associational bars should be imposed against him.

Dated: December 27, 2021

Respectfully submitted,



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CERTIFICATE OF SERVICE

Undersigned Counsel for the Division of Enforcement hereby certifies that he has served a copy of the foregoing document by United Parcel Service – Overnight Mail:

Sean Kelly
Inmate Register Number: 71966-019
RRM Atlanta
RESIDENTIAL REENTRY OFFICE
719 McDonough Blvd. SE
Atlanta, GA 30315

And has filed it using eFAP System (Electronically Filings in Administrative Proceedings).

This 27th day of December, 2021



Pat Huddleston II

EXHIBIT 1

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**SEAN KELLY; LION'S SHARE &
ASSOCIATES, INC; LIONSSHARE TAX
SERVICES, LLC; AND LION'S SHARE
FINANCIAL OF EAST COBB, INC.,**

Defendants.

Civil Action File No.

COMPLAINT

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

OVERVIEW

1. This matter involves an ongoing fraudulent scheme by Sean Kelly, a registered stock broker, and various entities that he operates under the “Lion’s Share” umbrella. Defendants Lion’s Share & Associates, Inc. (“LS Associates”),

Lionsshare Tax Services, LLC (“LS Tax”), and Lion’s Share Financial of East Cobb, Inc. (“LS Financial”) (collectively “Lion’s Share”) are all involved in Kelly’s fraudulent scheme.

2. Since at least 2014, Kelly, through Lion’s Share, raised at least \$1,000,000 from at least 12 investors, promising that he would invest the funds in a variety of investment vehicles, such as CDs, private placements and real estate funds.

3. Rather than investing the money, Kelly stole it and spent his victims’ money for things like Super Bowl tickets, luxury vacations and cash withdrawals.

4. Many of Kelly’s victims are elderly retirees, and his victims include widows, veterans and people with disabilities.

5. Kelly treats Lion’s Share as his personal piggy bank, and he has transferred hundreds of thousands of dollars of investor money to bank accounts he controls to support his lifestyle. He has also withdrawn large quantities of investor money in cash throughout the course of the scheme, and the disposition of those funds is unknown.

6. Emergency relief is critical in this case. Kelly has continued to steal money from his victims even after having been interviewed by representatives of

the SEC's Office of Compliance Inspections and Examinations and then stole even more money after having received a subpoena from the SEC's Division of Enforcement.

VIOLATIONS

7. The Defendants have engaged in acts or practices that violated, or aided and abetted violations of Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)(1), 77q(a)(2), and 77q(a)(3)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and subsections (a), (b), and (c) of Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5 (a), (b), and (c)] and , Sections 206(1) and (2) of the Investment Advisers Act ("Advisers Act") of 1940 [15 U.S.C. § 80b-6]. Unless restrained and enjoined by this Court, defendants will continue to engage in acts and practices that violate and or aid and abet violations of these provisions.

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v], Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] and Sections 209(d) and 209(e) of

the Advisers Act [15 U.S.C. §§ 80b-9(b) and (d)] to enjoin Defendants from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

9. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v], Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14(a)].

10. Defendants, directly and indirectly, made use of the mails, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

11. Venue is proper in this Court because certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act, the Exchange Act and the Advisers Act occurred in the Northern District of Georgia and Defendants reside in this district.

THE DEFENDANTS

12. **Sean Kelly (CRD#2294170)**, age 49, is a resident of Marietta, Georgia. He is a registered representative of Center Street Securities, Inc., a registered

broker-dealer of securities. He is the owner and principal of various entities that operate under the “Lion’s Share” umbrella. Kelly has Series 6, 7, and 63 securities licenses. Kelly held himself out to clients as both a broker-dealer and an investment adviser.

13. **Lion’s Share Financial of East Cobb, Inc. (“LS Financial”)** is a Georgia corporation that was established in 2007. LS Financial has its principal place of business at 3535 Roswell Road, Suite 1, Marietta, Georgia 30062. Kelly is the CEO, CFO, registered agent and Secretary of LS Financial. On information and belief, Kelly was at all times the sole owner and operator of LS Financial, and LS Financial is an alter ego of Kelly.

14. **Lionsshare Tax Services, LLC (“LS Tax”)** is a Georgia LLC formed in 2009 that was administratively dissolved in 2016. Kelly used a bank account in the name of LS Tax in furtherance of his fraudulent scheme from at least January 2017 through the summer of 2018. On information and belief, Kelly was at all times the sole owner and operator of LS Tax, and LS Tax is an alter ego of Kelly.

15. **Lion’s Share & Associates, Inc. (“LS Associates”)** is held out to be an entity by Kelly, but its corporate status is unknown to the Commission.

Since at least summer 2018, Kelly used a bank account in the name of LS Associates in furtherance of his fraudulent scheme. On information and belief, Kelly was at all times the sole owner and operator of LS Associates, and LS Associates is an alter ego of Kelly.

THE FRAUDULENT SCHEME

16. Kelly operates using the “Lion’s Share” umbrella, primarily operating through LS Financial.

17. Kelly has been a stockbroker for at least 18 years.

18. He has also provided tax planning, insurance brokering and other financial services during that time.

19. Kelly solicits customers using a variety of techniques, including offering free tax preparation services for veterans and free retirement planning seminars in assisted living facilities.

20. Many of Kelly’s customers are elderly retirees.

21. Since at least 2014, Kelly has been stealing his customers’ investment funds.

22. The mechanics of the scheme are fairly simple. When Kelly's customers had funds that they desired to invest, he would sometimes have them make the check out to "Lion's Share."

23. He would then deposit the check into a bank account controlled by him.

24. Rather than investing the customer's money, Kelly would spend it on things like mortgage payments, Superbowl tickets and luxury vacations. He would also oftentimes withdraw large sums of cash from ATMs.

25. For example, Investors A and B are an elderly retired couple.

26. Investor A is a veteran, and he and his wife met Kelly after he advertised free tax preparation services for veterans. Shortly thereafter, they began investing their retirement savings through Kelly.

27. Beginning in 2014, Investors A and B provided Kelly with checks made out to Lion's Share worth hundreds of thousands of dollars for the purpose of being invested.

28. Kelly told Investors A and B that the money was invested in a variety of private placements, annuities, investment funds and real estate investment trusts.

29. In fact, Kelly spent most of the money he received from Investors A and B for his own personal use.

30. Kelly provided Investors A and B with fabricated statements purporting to come from the companies in which Investors A and B believed they were investing.

31. Kelly also provided Investors A and B with fabricated portfolio summaries showing investment values and returns for investments that had not been made.

32. Kelly wrote checks to Investors A and B that he told them represented returns on investments they believed they owned.

33. Kelly later deposited checks directly into Investors A's and B's bank account that he also told them came from returns on investments they believed they owned.

34. In fact, the "returns" were paid from the proceeds of investment checks written by other victims of Kelly.

35. Kelly solicited and received a \$20,000 check made out to Lion's Share from Investors A and B in September 2018. He told investors A and B that the money would be invested in a real estate investment fund.

36. By that time, Kelly was aware of the Commission's investigation that led to the filing of this action. Nevertheless, Kelly did not invest the \$20,000 as he represented that he would.

37. The real estate investment trust with which the \$20,000 should have been invested has no record of any investment by Investors A and B.

38. Several other companies in which Investors A and B believed they own investments have no record of their purported investments.

39. Investors C and D are a retired couple. In the fall of 2017, at Kelly's suggestion, they cashed in an annuity and provided two checks totaling \$25,000 to Kelly. The checks were made out to "Lion's Share."

40. Kelly told Investors C and D that he would invest the \$25,000.

41. Kelly deposited the checks in a bank account in the name of LS Tax that he controlled.

42. He did not invest the money, but instead he spent it for his own purposes.


43. At a meeting in August 2018 with Investors C and D, Kelly provided them with a "portfolio summary" showing their investments. The portfolio

summary did not reflect the \$25,000 they had given to Kelly nearly a year earlier.

44. At that time, when questioned, Kelly handwrote “+25,000” on the bottom of their portfolio summary and claimed that he was holding the money until a suitable investment could be identified.

45. Investor E is the retired manager of an assisted living facility.

46. Investor E has limited retirement savings.

47. Investor E received a large settlement from a lawsuit alleging that she took a 

48. In total, Investor E received close to \$100,000 from the settlement.

49. In a series of checks made out to “Lion’s Share,” Investor E provided Kelly \$98,000 to invest.

50. Kelly deposited Investor E’s checks into an account in the name of LS Tax that he controlled.

51. Kelly told Investor E that he would invest the money he received from Investor E.

52. Investor E trusted Kelly to invest the money in whatever investments he believed were in her best interest.

53. Kelly spent Investor E's money for his personal expenses rather than investing it.

54. Investor F has invested a large portion of his retirement savings with Kelly and Lion's Share.

55. In August 2018, Investor F gave Kelly a check for \$5,000 made out to "Lion's Share." Kelly told Investor F that he would deposit the \$5,000 into Investor F's brokerage account for subsequent investing.

56. Kelly deposited the check into a bank account in the name of LS Associates that is controlled by him.

57. Kelly did not deposit the \$5,000 into Investor F's brokerage account.

58. On information and belief, Kelly spent Investor F's \$5,000 for his own purposes.

59. Although the full extent of Kelly's fraudulent scheme is unknown to the SEC at this time, many other checks that appear to be from investors were deposited into the LS Tax account and LS Associates account and spent by Kelly.

60. Some of the checks from Kelly's customers appear on their face to have been for the purpose of investing. For example, Kelly deposited a check from a customer's closed out 401(k) account into the LS Tax account. He also deposited customer checks that had things such as "for CD" and "for invest" written in the memo line into that account.

61. On information and belief, Kelly has misappropriated more than \$1,000,000 from his customers over the past four years.

62. The Commission staff subpoenaed Kelly for testimony during the investigation that led to this action. Kelly's testimony was scheduled for October 24, 2018.

63. During a phone call with the Commission's lead investigator two days before the scheduled testimony, Kelly affirmed that he intended to testify at the scheduled time and stated that he would "come clean." Kelly did not show up for his scheduled testimony.

COUNT I—FRAUD
Violations of Section 17(a)(1) of the
Securities Act[15 U.S.C. § 77q(a)(1)]

64. Paragraphs 1 through 63 are hereby realleged and incorporated herein by reference.

65. Between at least 2014 and the present, Defendants Kelly and LS Financial, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

66. Defendants Kelly and LS Financial knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

67. While engaging in the course of conduct described above, Defendants Kelly and LS Financial acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

68. By reason of the foregoing, Defendants Kelly and LS Financial, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II—FRAUD

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

69. Paragraphs 1 through 63 are hereby realleged and incorporated herein by reference.

70. Between at least 2014 and the present, Defendants Kelly and LS Financial, in the offer and sale of the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities; all as more particularly described above.

71. By reason of the foregoing, Defendants Kelly and LS Financial, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III—FRAUD
Violations of Section 10(b) of the Exchange Act
[15 U.S.C. § 78j(b)] and Sections (a), (b), and (c) of
Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5 (a), (b), and (c)]

72. Paragraphs 1 through 63 are hereby re-alleged and are incorporated herein by reference.

73. Between at least 2014 and the present, Defendants Kelly and LS Financial, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a. employed devices, schemes, and artifices to defraud;
 - b. made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
 - c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities;
- all as more particularly described above.

74. Defendants Kelly and LS Financial knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to

defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Kelly and LS Financial acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

75. By reason of the foregoing, Defendants Kelly and LS Financial, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Sections (a), (b), and (c) of Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5(a), (b), and (c)].

COUNT IV—FRAUD
Violations of Sections 206(1) of the
Advisers Act [15 U.S.C. §§ 80b-6(1)]

76. The Commission realleges paragraphs 1 through 63 above.

77. From at least 2014 through the present, Defendant Kelly, acting as an unregistered investment adviser, used the mails and the means and instrumentalities of interstate commerce, directly and indirectly, employed devices, schemes and artifices to defraud one or more advisory clients and/or prospective clients.

78. Defendant Kelly knowingly, intentionally, and/or recklessly engaged in

the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, Defendant Kelly acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

79. By reason of the foregoing, Defendant Kelly, directly and indirectly, has violated, and, unless enjoined, Defendants will continue to violate Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)].

COUNT V—FRAUD
Violations of Section 206(2) of the
Advisers Act [15 U.S.C. § 80b-6(2)]

80. Paragraphs 1 through 63 are hereby realleged and are incorporated herein by reference.

81. From at least 2014 through the present, Defendant Kelly, acting as an unregistered investment adviser, by the use of the mails and the means and instrumentalities of interstate commerce, directly and indirectly, engaged in transactions, practices, and courses of business which would and did operate as a fraud and deceit on one or more advisory clients and/or prospective clients.

82. By reason of the foregoing, Defendant Kelly, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)].

COUNT VI—AIDING AND ABETTING FRAUD

83. The Commission realleges paragraphs 1 through 82 above.

84. Defendants LS Tax and LS Associates substantially assisted the violations set forth in Counts I through V above, by, among other things, planning, facilitating and/or directing the misappropriation of investor funds through bank accounts they controlled.

85. LS Tax and LS Associates knew the true purpose of the deposits and withdrawals from their bank accounts and knew that the misappropriation had not been disclosed to investors.

86. As a result of the conduct described above, LS Tax and LS Associates aided and abetted the violations set forth in Counts I through V above.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays for:

I.

A temporary restraining order, preliminary and permanent injunctions enjoining Defendants, their officers, agents, servants, employees, and attorneys from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; Sections

17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)]; and Sections 206(1) and (2) of the Advisers Act [15 U.S.C. § 80b-6].

II.

An order requiring an accounting by Defendants of the use of proceeds of the fraudulent conduct described in this Complaint and the disgorgement by Defendants of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

III.

An order pursuant to Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)] and Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] imposing civil penalties against Defendants.

IV.

An order freezing the assets of Defendants pending further order of the Court and requiring Kelly to surrender his passport.

V.

An order preventing Defendants from destroying or concealing documents until further order of this Court.

VI.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

JURY TRIAL DEMAND

The Commission hereby demands a trial by jury as to all issues that may be so tried.

This 25th day of October, 2018.

Respectfully submitted,

M. Graham Loomis
Regional Trial Counsel
Georgia Bar No. 457868
loomism@sec.gov

/s/Joshua A. Mayes
Joshua A. Mayes
Senior Trial Counsel
Georgia Bar No. 143107
mayesj@sec.gov

Attorneys for Plaintiff
Securities and Exchange Commission

950 East Paces Ferry Road, NE, Suite 900
Atlanta, GA 30326
Tel:(404) 842-7600
Facsimile: (404) 842-7679

EXHIBIT 2

DECLARATION OF MELISSA MITCHELL

Pursuant to 28 U.S.C. § 1746, the undersigned states as follows:

1. My name is Melissa Mitchell. I am over twenty-one years of age and have personal knowledge of the matters set forth in this declaration. I am a Senior Counsel in the Division of Enforcement of the United States Securities and Exchange Commission (“Commission”).
2. I was the lead investigator in the Commission’s investigation into Lion’s Share Financial of East Cobb, Inc. and Sean Kelly.
3. As part of the investigation, I reviewed bank records produced by JP Morgan Chase Bank for a checking account in the name of Lionsshare Tax Services, LLC from January 1, 2017 through August 2018 (the “LS Tax Records”).
4. The LS Tax Records show deposits of numerous checks from brokerage customers of Sean Kelly and few, if any, deposits from other sources.
5. The LS Tax Records show numerous cash withdrawals.
6. The LS Tax Records show expenditures for travel, for Super Bowl tickets, and for payments for Mr. Kelly’s mortgage.
7. From my review of the LS Tax Records, none of the money deposited into the account appeared to have been transferred to any custodial brokerage account or to any company offering investment products.

8. On September 11, 2018, after discussions with Mr. Kelly's then-counsel, Gregg Breitbart regarding scheduling, Mr. Breitbart accepted service of a subpoena on behalf of Mr. Kelly, requiring Mr. Kelly to appear for sworn testimony before the Commission staff.

9. To accommodate schedules, the date of Mr. Kelly's testimony was rescheduled to October 24, 2018 at 9:00 am at the Commission's Atlanta Regional Office.

10. On Friday, October 19, Kelly's attorney informed me that he had withdrawn from representing Kelly.

11. In response, I reached out to Kelly via voicemail and electronic mail to confirm the date of his testimony and to inquire about whether Kelly had retained new counsel and whether he planned to appear for his sworn testimony.

12. On Tuesday, October 23, 2018, Kelly called me at my office and told me that he planned to appear for testimony and "come clean."

13. Kelly did not appear for testimony on October 24.

14. As part of our investigation, I had several phone interviews with investors.

15. One such investor is Dr. Sander Dorfzaun. In August 2018, Dr. Dorfzaun gave Kelly a check for \$5,000 made out to "Lion's Share." Kelly told Dr. Dorfzaun that he would either invest the \$5,000 or deposit it into his brokerage

account for subsequent investing. Kelly deposited the check into a bank account in the name of LS Associates that is controlled by him.

16. I confirmed with Center Street Securities that the \$5,000 was not deposited into Dr. Dorfzaun's brokerage account.

17. I interviewed other investors whose checks I found in the LS Tax Records, including Bennie Kirkland and Margaret Powell. They both confirmed that the checks were intended for investment purposes and that they had not authorized Kelly to use their money for personal expenses.

18. In an effort to confirm whether any of the investments shown on Donald and Lydia Weems "portfolio summary" were in fact made, I spoke to and emailed with representatives of GPB Capital Holdings, which is shown as an investment in "Multi-LTD Partnership" on the portfolio summary. Attached as Exhibit A is a copy of the statement that Mr. Kelly provided to the Weems purportedly reflecting the investment.

19. Attached as Exhibit B is an email from outside counsel for the sponsor of the GPB Capital Holdings Fund stating that they have no record of an investment by the Weems.

20. I also spoke to and emailed with counsel for the Lodging Opportunity Fund REIT. Attached as Exhibit C is a copy of a statement that Mr. Kelly provided to the Weems purportedly reflecting the investment.

21. Attached as Exhibit D is an email from outside counsel for the sponsor of the Lodging Opportunity Fund REIT stating that they have no record of an investment by Weems.

22. On December 13, 2018, the U.S. Attorney's Office for the Northern District of Georgia charged Kelly, by criminal information, with one count of mail fraud and one count of securities fraud arising from the same misconduct described in the Commission's Complaint. I have attached a true and correct copy of the criminal information as Exhibit E hereto.

23. On January 4, 2019, Kelly pleaded guilty to both counts of the criminal information stating, in part: "The Defendant admits that he is pleading guilty because he is in fact guilty of the crimes charged in Counts 1 and 2." I have attached a true and correct copy of Kelly's Guilty Plea and Plea Agreement as Exhibit F hereto.

24. On January 13, 2019, U.S. District Judge Thomas Thrash sentenced Kelly to 60 months imprisonment (followed by three years of supervised release) and restitution of \$1,457,043.99. I have attached the Judgment in a Criminal Case as Exhibit G hereto. The restitution portion of that documents lists the 14 victims to receive pro rata portions of any restitution payments. Those victims include Dr.

Sander Dorfzaun, Bennie Kirkland, Margaret Powell, and Donald and Lydia Weems, referenced above in this declaration.

Melissa Mitchell

Melissa Mitchell

I declare under penalty of perjury that the foregoing is true and correct.

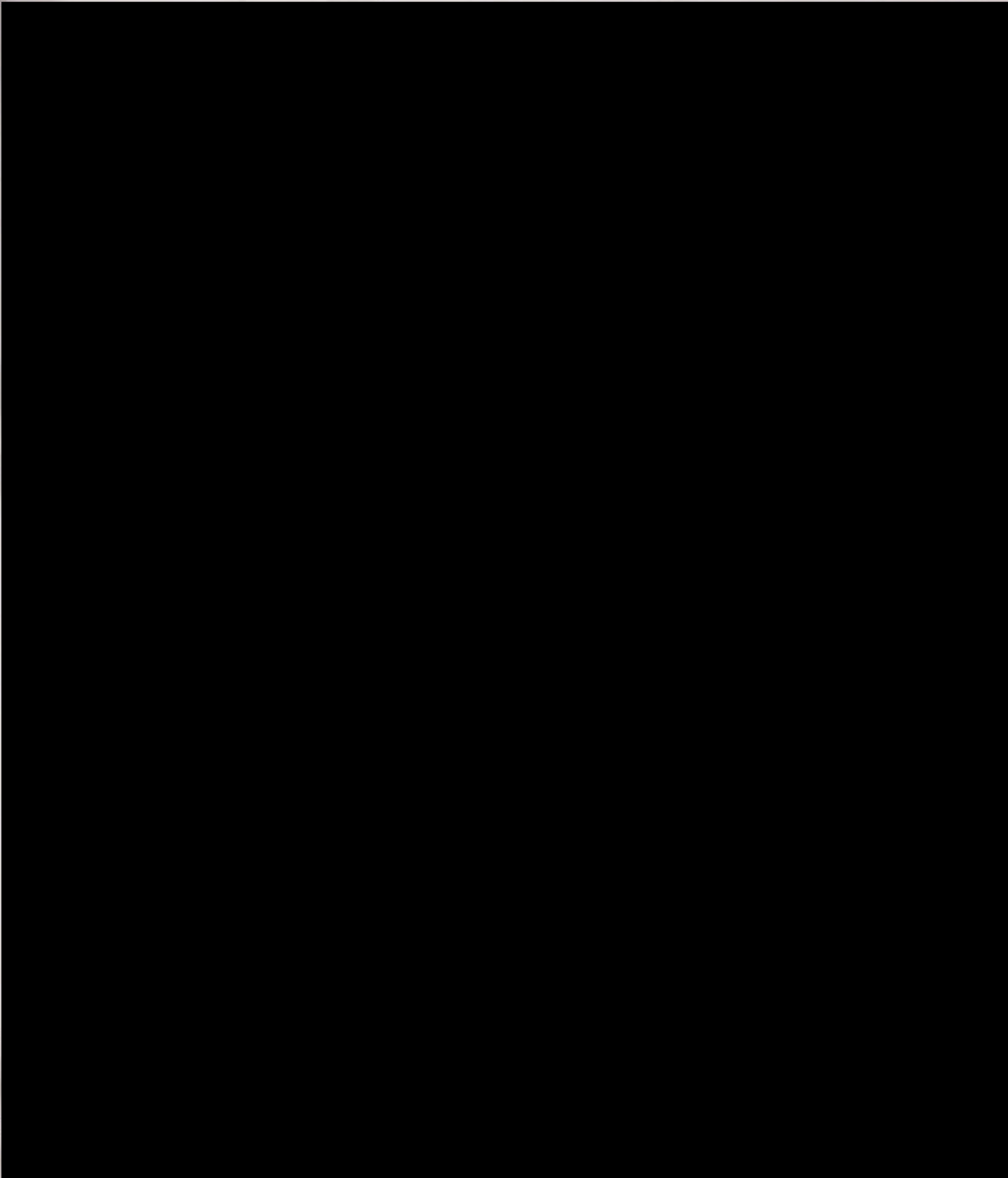
Executed on this 23rd day of December, 2021.

EXHIBIT A



Vision. Value. Trust.

CAPITAL

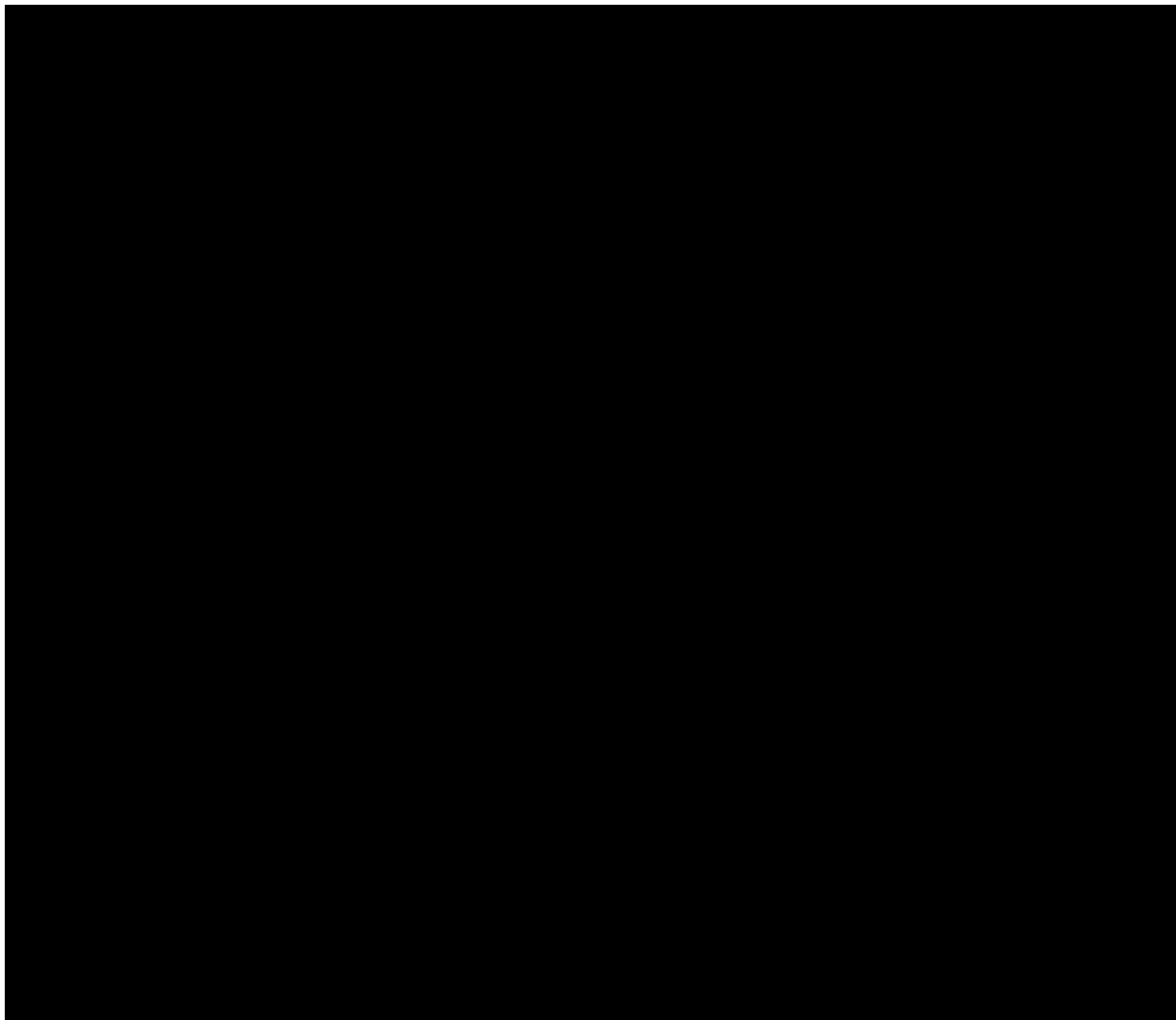


OS Received 12/27/2021

FOR ASSISTANCE OR QUESTIONS WITH THIS CORRESPONDENCE PLEASE CALL THE CLIENT SERVICES DEPARTMENT AT 678-213-5466 FORM:

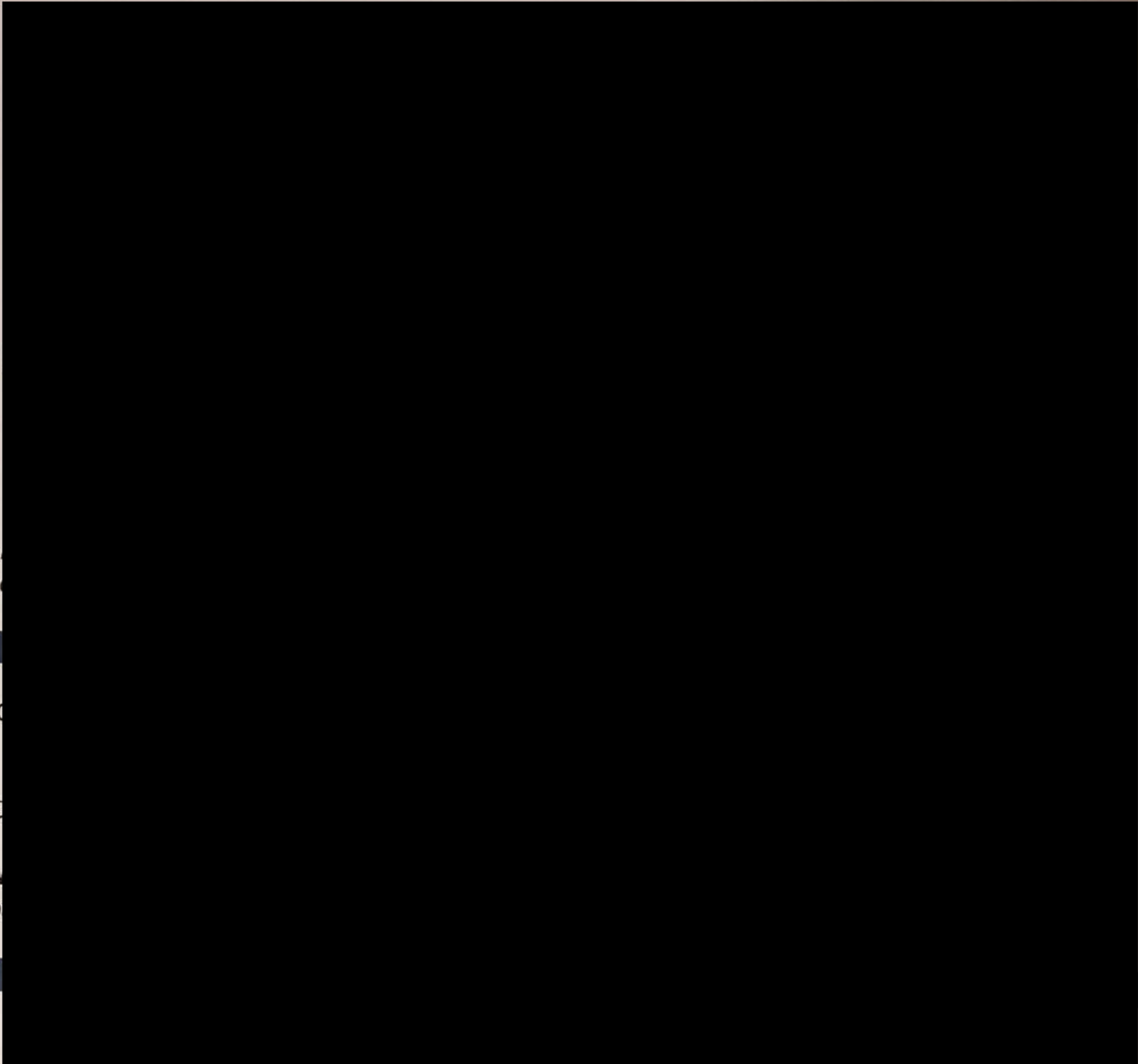
DCE-02 © 2016 GPB Capital Holdings, LLC | 535 West 24th Street, Floor 4 | New York, NY 10011 | GPB-Cap.com REV: 10-05-16

EXHIBIT B



CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

EXHIBIT C



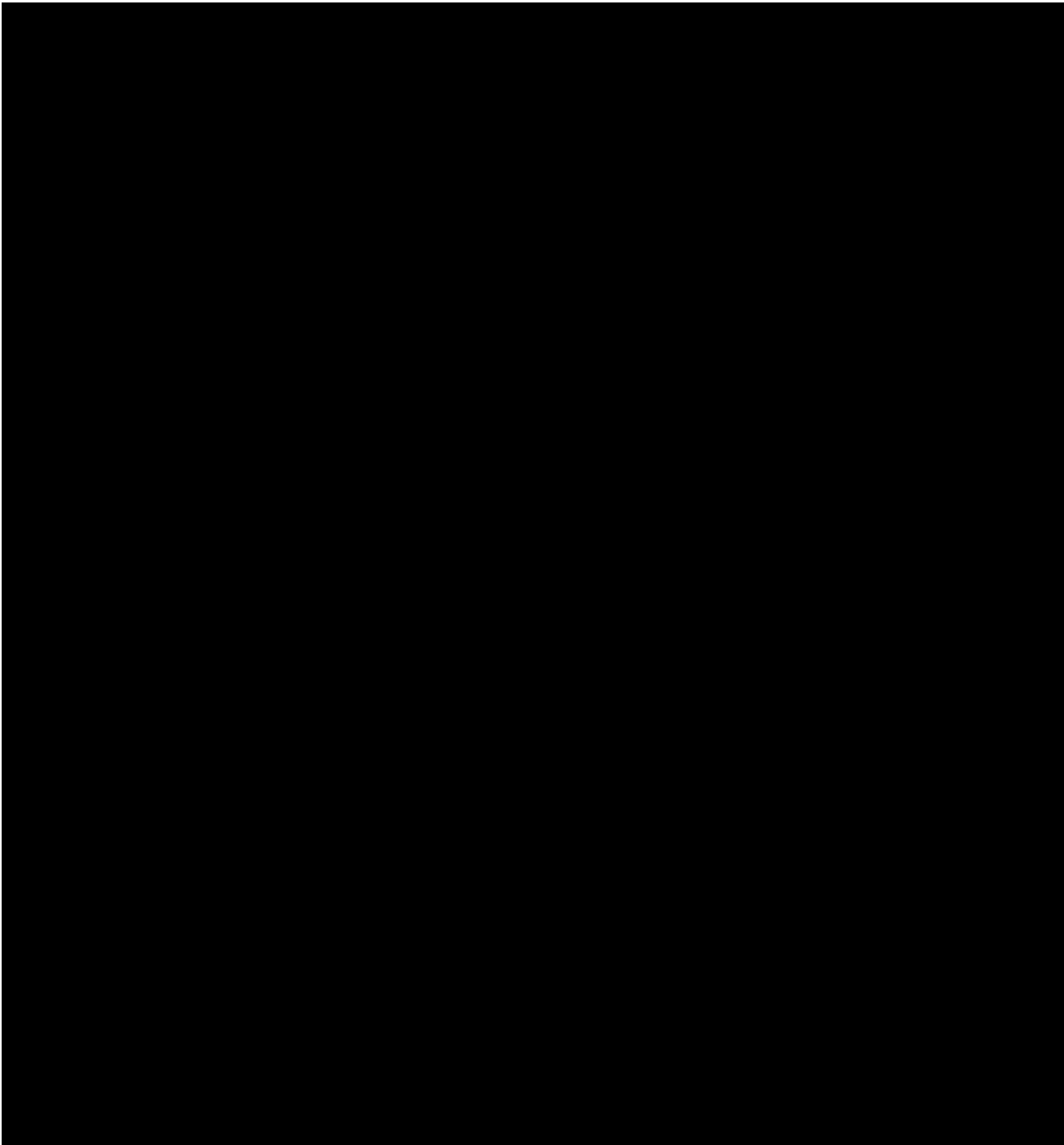
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OS Received 12/27/2021

Lodging Opportunity Fund, REIT 1635 43rd Street, South, Fargo, ND 58103

Please be advised that:

EXHIBIT D



Notice of Confidentiality: This message, including any attachments, is confidential and may be privileged. If you have received it by mistake, please notify the sender by return email or by telephone at (616) 264-3840, and delete this message from your system. Your assistance in correcting this error is appreciated.

EXHIBIT E

FILED IN OPEN COURT
U.S.D.C. Atlanta

DEC 13 2018

James N. Hatten, Clerk
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

SEAN KELLY

Criminal Information

No. 18-CR-00475

THE UNITED STATES ATTORNEY CHARGES THAT:

Count One
Mail Fraud

1. In or about January 2014 through in or about October 2018, in the Northern District of Georgia and elsewhere, the defendant, SEAN KELLY, with intent to defraud, did knowingly devise and intend to devise a scheme and artifice to defraud, by means of materially false and fraudulent pretenses and representations and by omissions of material facts, well knowing and having reason to know that said pretenses and representations were and would be false and fraudulent when made and caused to be made and that said omissions would be material.

2. During the timeframe of the scheme, KELLY, a registered stockbroker, offered securities and investment advice and marketed his services to a number of individuals including veterans and elderly individuals in assisted living facilities. As part of the scheme to defraud, KELLY falsely told numerous customers that he was investing their money with various entities. But in reality,

KELLY pocketed the funds for himself and forged documents to make it look like he had properly invested victim funds. Rather than invest the money for his clients, he spent the money on mortgage payments, Super Bowl tickets, vacations, and large cash withdrawals. During the timeframe of the scheme, KELLY defrauded numerous victims out of over \$1,000,000.

3. On or about October 11, 2016, in the Northern District of Georgia and elsewhere, the defendant, SEAN KELLY, for the purpose of executing the scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses and representations, did, with intent to defraud knowingly cause a check to be sent and delivered by the U.S. Postal Service and other private and commercial interstate carrier for the purpose of executing such scheme and artifice, namely, a \$6,000 check from victim M.P. to "Lion's Share," an umbrella term for a number of business entities under KELLY's control.

All in violation of Title 18, United States Code, Section 1341.

Count Two
Securities Fraud

4. The factual allegations set forth in Paragraph 2 of this Information are hereby re-alleged and incorporated by reference as if fully set forth herein.

5. From in or about January 2014 through in or about October 2018, in the Northern District of Georgia and elsewhere, the defendant, SEAN KELLY, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and the mails, in connection with the purchase and sale of securities, did use and employ, and cause to be used and

employed, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5.

Forfeiture Provision

6. As a result of committing the offense alleged in Count One, the defendant, SEAN KELLY, shall forfeit to the United States pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(2), and Title 28, United States Code, Section 2461, all property, real and personal, constituting or derived from proceeds traceable to the offense.

7. If, as a result of any act or omission of a defendant, any property subject to forfeiture:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or

- e. has been commingled with other property which cannot be subdivided without difficulty;
- f. the United States intends, pursuant to Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property.

BYUNG J. PAK
United States Attorney

CHRISTOPHER J. HUBER
Assistant United States Attorney
Georgia Bar No. 545627

600 U.S. Courthouse
75 Ted Turner Drive SW
Atlanta, GA 30303
404-581-6000; Fax: 404-581-6181

EXHIBIT F

ORIGINAL

GUILTY PLEA and PLEA AGREEMENT

United States Attorney
Northern District of Georgia

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
CRIMINAL NO. 1:18-CR-00475

The United States Attorney for the Northern District of Georgia ("the Government") and Defendant Sean Kelly, enter into this plea agreement as set forth below in Part IV pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure. Sean Kelly, Defendant, having received a copy of the above-numbered Information and having been arraigned, hereby pleads GUILTY to Counts 1 and 2.

I. ADMISSION OF GUILT

1. The Defendant admits that he is pleading guilty because he is in fact guilty of the crimes charged in Counts 1 and 2.

II. ACKNOWLEDGMENT & WAIVER OF RIGHTS

2. The Defendant understands that by pleading guilty, he is giving up the right to plead not guilty and the right to be tried by a jury. At a trial, the Defendant would have the right to an attorney, and if the Defendant could not afford an attorney, the Court would appoint one to represent the Defendant at trial and at every stage of the proceedings. During the trial, the Defendant would be presumed innocent and the Government would have the burden of proving him guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the witnesses against him. If the Defendant

wished, he could testify on his own behalf and present evidence in his defense, and he could subpoena witnesses to testify on his behalf. If, however, the Defendant did not wish to testify, that fact could not be used against him, and the Government could not compel him to incriminate himself. If the Defendant were found guilty after a trial, he would have the right to appeal the conviction.

3. The Defendant understands that by pleading guilty, he is giving up all of these rights and there will not be a trial of any kind.

4. By pleading guilty, Defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could have been filed.

5. The Defendant also understands that he ordinarily would have the right to appeal his sentence and, under some circumstances, to attack the conviction and sentence in post-conviction proceedings. By entering this Plea Agreement, the Defendant may be waiving some or all of those rights to appeal and to collaterally attack his conviction and sentence, as specified below.

6. Finally, the Defendant understands that, to plead guilty, he may have to answer, under oath, questions posed to him by the Court concerning the rights that he is giving up and the facts of this case, and the Defendant's answers, if untruthful, may later be used against him in a prosecution for perjury or false statements.

III. ACKNOWLEDGMENT OF PENALTIES

7. The Defendant understands that, based on his plea of guilty, he will be subject to the following maximum and mandatory minimum penalties:

As to Count 1

- a. Maximum term of imprisonment: 20 years.
- b. Mandatory minimum term of imprisonment: None.
- c. Term of supervised release: 0 year(s) to 3 years.
- d. Maximum fine: \$250,000.00, or twice the gain or twice the loss, whichever is greatest, due and payable immediately.
- e. Full restitution, due and payable immediately, to all victims of the offense(s) and relevant conduct.
- f. Mandatory special assessment: \$100.00, due and payable immediately.
- g. Forfeiture of any and all proceeds from the commission of the offense, any and all property used or intended to be used to facilitate the offense, and any property involved in the offense.

As to Count 2

- a. Maximum term of imprisonment: 20 years.
- b. Mandatory minimum term of imprisonment: None.
- c. Term of supervised release: 0 year(s) to 3 years.
- d. Maximum fine: \$250,000.00, or twice the gain or twice the loss, whichever is greatest, due and payable immediately.

- e. Full restitution, due and payable immediately, to all victims of the offense(s) and relevant conduct.
- f. Mandatory special assessment: \$100.00, due and payable immediately.
- h. Forfeiture of any and all proceeds from the commission of the offense, any and all property used or intended to be used to facilitate the offense, and any property involved in the offense.

8. The Defendant understands that, before imposing sentence in this case, the Court will be required to consider, among other factors, the provisions of the United States Sentencing Guidelines and that, under certain circumstances, the Court has the discretion to depart from those Guidelines. The Defendant further understands that the Court may impose a sentence up to and including the statutory maximum as set forth in this paragraph and that no one can predict his exact sentence at this time.

9. REMOVAL FROM THE UNITED STATES: The Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense to which the Defendant is pleading guilty. Indeed, because the Defendant is pleading guilty to this offense, removal is presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, however, and the Defendant understands that no one, including his attorney or the district court,

can predict to a certainty the effect of his conviction on his immigration status. The Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the consequence is his automatic removal from the United States.

IV. PLEA AGREEMENT

10. The Defendant, his counsel, and the Government, subject to approval by the Court, have agreed upon a negotiated plea in this case, the terms of which are as follows:

No Additional Charges

11. The United States Attorney for the Northern District of Georgia agrees not to bring further criminal charges against the Defendant related to the charges to which he is pleading guilty. The Defendant understands that this provision does not bar prosecution by any other federal, state, or local jurisdiction.

Sentencing Guidelines Recommendations

12. Based upon the evidence currently known to the Government, the Government agrees to make the following recommendations and/or to enter into the following stipulations.

Base/Adjusted Offense Level

13. The Government agrees to recommend and the Defendant agrees that:
- a. The applicable offense guideline is Section 2B1.1.
 - b. Defendant receive the 14-level upward adjustment pursuant to Section 2B1.1(b)(1)(H) for a loss amount over \$550,000.

- c. Defendant receive the 2-level upward adjustment pursuant to Section 2B1.1(b)(2)(A) for ten or more victims.
- d. Defendant not receive the 2-level upward adjustment pursuant to Section 2B1.1(b)(9).
- e. Defendant not receive the 2-level upward adjustment pursuant to Section 2B1.1(b)(11).

Victim-Related Adjustments

- 14. The Government agrees to recommend and the Defendant agrees that:
 - a. Defendant receive the 2-level upward adjustment pursuant to Section 3A1.1 because the defendant knew or should have known that a victim of the offense was a vulnerable victim.

Acceptance of Responsibility

15. The Government will recommend that the Defendant receive an offense level adjustment for acceptance of responsibility, pursuant to Section 3E1.1, to the maximum extent authorized by the guideline. However, the Government will not be required to recommend acceptance of responsibility if, after entering this Plea Agreement, the Defendant engages in conduct inconsistent with accepting responsibility. Thus, by way of example only, should the Defendant falsely deny or falsely attempt to minimize Defendant's involvement in relevant offense conduct, give conflicting statements about Defendant's involvement, fail to pay the special assessment, fail to meet any of the obligations set forth in the Financial Cooperation Provisions set forth below, or participate in additional

criminal conduct, including unlawful personal use of a controlled substance, the Government will not be required to recommend acceptance of responsibility.

**Right to Answer Questions, Correct Misstatements,
and Make Recommendations**

16. The parties reserve the right to inform the Court and the Probation Office of all facts and circumstances regarding the Defendant and this case, and to respond to any questions from the Court and the Probation Office and to any misstatements of fact or law. Except as expressly stated elsewhere in this Plea Agreement, the parties also reserve the right to make recommendations regarding application of the Sentencing Guidelines. The parties understand, acknowledge, and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed.

Right to Modify Recommendations

17. With regard to the Government's recommendation as to any specific application of the Sentencing Guidelines as set forth elsewhere in this Plea Agreement, the Defendant understands and agrees that, should the Government obtain or receive additional evidence concerning the facts underlying any such recommendation, the Government will bring that evidence to the attention of the Court and the Probation Office. In addition, if the additional evidence is sufficient to support a finding of a different application of the Guidelines, the Government will not be bound to make the recommendation set forth elsewhere

in this Plea Agreement, and the failure to do so will not constitute a violation of this Plea Agreement.

Sentencing Recommendations

Judicial Economy

18. Based on the factors set forth in 18 U.S.C. § 3553(a), the parties agree to recommend that the Defendant receive a one-level downward variance at sentencing. This variance is predicated on the Defendant's expeditiously entered plea of guilty and the resulting conservation of limited judicial and prosecutorial resources.

Specific Sentence Recommendation

19. Unless the Defendant engages in conduct inconsistent with accepting responsibility, as described more fully in paragraph 15, the Government agrees to recommend that the Defendant be sentenced at the low end of the adjusted guideline range.

Restitution

20. The Defendant agrees to pay full restitution to the Clerk of Court for distribution to all victims of the offense(s) to which he is pleading guilty and all relevant conduct, including, but not limited to, any counts dismissed as a result of this Plea Agreement. The Defendant understands that the amount of restitution owed to each victim will be determined at or before sentencing, but agrees that the total of such restitution is at least \$550,000. The Defendant also

agrees to cooperate fully in the investigation of the amount of restitution, the identification of victims, and the recovery of restitution for victims.

Financial Cooperation Provisions

Special Assessment

21. The Defendant understands that the Court will order him to pay a special assessment in the amount of \$200.

Fine/Restitution - Terms of Payment

22. The Defendant agrees to pay any fine and/or restitution imposed by the Court to the Clerk of Court for eventual disbursement to the appropriate account and/or victim(s). The Defendant also agrees that the full fine and/or restitution amount shall be considered due and payable immediately. If the Defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, he agrees that the custodial agency and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The Defendant understands that this payment schedule represents a minimum obligation and that, should Defendant's financial situation establish that he is able to pay more toward the fine and/or restitution, the Government is entitled to pursue other sources of recovery of the fine and/or restitution. The Defendant further agrees to cooperate fully in efforts to collect the fine and/or restitution obligation by any legal means the Government deems appropriate. Finally, the Defendant and his counsel agree that the Government may contact the Defendant regarding the

collection of any fine and/or restitution without notifying and outside the presence of his counsel.

Financial Disclosure

23. The Defendant agrees that Defendant will not sell, hide, waste, encumber, destroy, or otherwise devalue any such asset worth more than \$10,000 before sentencing, without the prior approval of the Government. The Defendant understands and agrees that Defendant's failure to comply with this provision of the Plea Agreement should result in Defendant receiving no credit for acceptance of responsibility.

24. The Defendant agrees to cooperate fully in the investigation of the amount of forfeiture, restitution and fine; the identification of funds and assets in which he has any legal or equitable interest to be applied toward forfeiture, restitution and/or fine; and the prompt payment of restitution or a fine.

25. The Defendant's cooperation obligations include: (A) fully and truthfully completing the Department of Justice's Financial Statement of Debtor form, and any addenda to said form deemed necessary by the Government, within ten days of the change of plea hearing; (B) submitting to a financial deposition or interview (should the Government deem it necessary) prior to sentencing regarding the subject matter of said form; (C) providing any documentation within his possession or control requested by the Government regarding his financial condition and that of his household; and (D) fully and truthfully answering all questions regarding his past and present financial condition and

that of his household in such interview(s); and (E) providing a waiver of his privacy protections to permit the Government to access his credit report and tax information held by the Internal Revenue Service.

26. So long as the Defendant is completely truthful, the Government agrees that anything related by the Defendant during his financial interview or deposition or in the financial forms described above cannot and will not be used against him in the Government's criminal prosecution. However, the Government may use the Defendant's statements to identify and to execute upon assets to be applied to the fine and/or restitution in this case. Further, the Government is completely free to pursue any and all investigative leads derived in any way from the interview(s)/deposition(s)/financial forms, which could result in the acquisition of evidence admissible against the Defendant in subsequent proceedings. If the Defendant subsequently takes a position in any legal proceeding that is inconsistent with the interview(s)/deposition(s)/financial forms—whether in pleadings, oral argument, witness testimony, documentary evidence, questioning of witnesses, or any other manner—the Government may use the Defendant's interview(s)/deposition(s)/financial forms, and all evidence obtained directly or indirectly therefrom, in any responsive pleading and argument and for cross-examination, impeachment, or rebuttal evidence. Further, the Government may also use the Defendant's interview(s)/deposition(s)/financial forms to respond

to arguments made or issues raised sua sponte by the Magistrate or District Court.

Recommendations/Stipulations Non-binding

27. The Defendant understands and agrees that the recommendations of the Government incorporated within this Plea Agreement, as well as any stipulations of fact or guideline computations incorporated within this Plea Agreement or otherwise discussed between the parties, are not binding on the Court and that the Court's failure to accept one or more of the recommendations, stipulations, and/or guideline computations will not constitute grounds to withdraw his guilty plea or to claim a breach of this Plea Agreement.

Limited Waiver of Appeal

28. LIMITED WAIVER OF APPEAL: To the maximum extent permitted by federal law, the Defendant voluntarily and expressly waives the right to appeal his conviction and sentence and the right to collaterally attack his conviction and sentence in any post-conviction proceeding (including, but not limited to, motions filed pursuant to 28 U.S.C. § 2255) on any ground, except that the Defendant may file a direct appeal of an upward departure or upward variance above the sentencing guideline range as calculated by the district court. Claims that Defendant's counsel rendered constitutionally ineffective assistance are excepted from this waiver. The Defendant understands that this Plea Agreement does not limit the Government's right to appeal, but if the Government initiates a

direct appeal of the sentence imposed, the Defendant may file a cross-appeal of that same sentence.

Miscellaneous Waivers

FOIA/Privacy Act Waiver

29. The Defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act of 1974, Title 5, United States Code, Section 552a.

No Other Agreements

30. There are no other agreements, promises, representations, or understandings between the Defendant and the Government.

In Open Court this 4 day of January, 2019.

Courtney O'Donnell

SIGNATURE (Attorney for Defendant)

Courtney O'Donnell

Sean P. Kelly

SIGNATURE (Defendant)

Sean Kelly

Christopher J. Huber

SIGNATURE (Assistant United States Attorney)

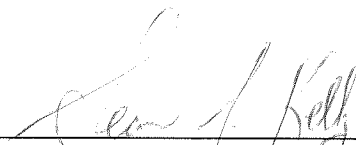
Christopher J. Huber

Stephen H. McClain

SIGNATURE (Approving Official)

Stephen H. McClain

I have read the Information against me and have discussed it with my attorney. I understand the charges and the elements of each charge that the Government would have to prove to convict me at a trial. I have read the foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea Agreement, and I voluntarily agree to them. I also have discussed with my attorney the rights I may have to appeal or challenge my conviction and sentence, and I understand that the appeal waiver contained in the Plea Agreement will prevent me, with the narrow exceptions stated, from appealing my conviction and sentence or challenging my conviction and sentence in any post-conviction proceeding. No one has threatened or forced me to plead guilty, and no promises or inducements have been made to me other than those discussed in the Plea Agreement. The discussions between my attorney and the Government toward reaching a negotiated plea in this case took place with my permission. I am fully satisfied with the representation provided to me by my attorney in this case.



SIGNATURE (Defendant)
Sean Kelly

1-4-19

DATE

I am Sean Kelly's lawyer. I have carefully reviewed the charges and the Plea Agreement with my client. To my knowledge, my client is making an informed and voluntary decision to plead guilty and to enter into the Plea Agreement.

Courtney O'Donnell
SIGNATURE (Defense Attorney)
Courtney O'Donnell

1/4/19
DATE

Federal Defender Program, Inc.
101 Marietta Street, NW, Suite 1500
Atlanta, Georgia 30303

Sean Kelly

164720 State Bar of Georgia Number

Filed in Open Court

This ___ day of _____, 20__

By _____
FILED IN OPEN COURT
U.S.D.C. Atlanta

JAN 04 2019

JAMES N. HATTEN, Clerk
By: [Signature] Deputy Clerk

U. S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIMINAL ACTION NO.:	1:18-CR-00475
DEFENDANT'S NAME:	SEAN KELLY
PAY THIS AMOUNT:	\$200

Instructions:

1. Payment must be made by **certified check** or **money order** payable to:
Clerk of court, U.S. District Court
personal checks will not be accepted
2. Payment must reach the clerk's office within 30 days of the entry of your guilty plea
3. Payment should be sent or hand delivered to:
Clerk, U.S. District Court
2211 U.S. Courthouse
75 Ted Turner Drive S.W.
Atlanta, Georgia 30303
(Do Not Send Cash)
4. Include defendant's name on **certified check** or **money order**.
5. Enclose this coupon to insure proper and prompt application of payment.
6. Provide proof of payment to the above-signed AUSA within 30 days of the guilty plea.

EXHIBIT G

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA v. SEAN KELLY)))))))	JUDGMENT IN A CRIMINAL CASE Case Number: 1:18-CR-475-TWT-1 USM Number: 71966019 <u>Courtney O'Donnell</u> Defendant's Attorney
--	---------------------------------	---

THE DEFENDANT:

The defendant pleaded guilty to count(s) 1 & 2.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1341	Mail Fraud	October 2018	1
15 U.S.C. §§ 78j(b) and 78ff	Securities Fraud	October 2018	2

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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.

6/13/2019
 Date of Imposition of Judgment

/s/ Thomas W. Thrash
 Signature of Judge

THOMAS W. THRASH, U. S. DISTRICT JUDGE
 Name and Title of Judge

6/17/2019
 Date

DEFENDANT: SEAN KELLY
CASE NUMBER: 1:18-CR-475-TWT-1

Judgment -- Page 2 of 9

Judgment in a Criminal Case
Sheet 2 -- Imprisonment

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for: 60 months on each of Counts 1 and 2, to run concurrently **for a total term of imprisonment of 60 months.**

The court makes the following recommendations to the Bureau of Prisons: that Defendant be designated to FPC-Montgomery for service of his sentence, and that Defendant be designated to the most intensive residential drug treatment program available under the Bureau of Prisons' rules, regulations, and criteria, including, if appropriate, the 500-hour Bureau of Prisons drug treatment program.

The defendant shall report for service of sentence at the institution designated by the Bureau of Prisons as notified by the Bureau of Prisons.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: SEAN KELLY
CASE NUMBER: 1:18-CR-475-TWT-1

Judgment -- Page 3 of 9

Judgment in a Criminal Case
Sheet 3 -- Supervised Release

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 3 years on each of Counts 1 and 2, to run concurrently **for a total term of supervised release of 3 years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance.
4. You must pay any restitution that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release at the monthly rate of \$150, plus 25% of gross income in excess of \$2,500 (\$30,000 per year). Restitution payments must be made to Clerk, U.S. District Court, Northern District of Georgia, 2211 U.S. Courthouse, 75 Ted Turner Dr. SW, Atlanta, GA 30303.
5. You must cooperate in the collection of DNA as directed by the probation officer.

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

DEFENDANT: SEAN KELLY
CASE NUMBER: 1:18-CR-475-TWT-1

Judgment -- Page 4 of 9

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see Overview of Probation and Supervised Release Conditions, available at: www.uscourts.gov

I understand that a violation of any of these conditions of supervised release may result in modification, extension, or revocation of my term of supervision.

Defendant's Signature _____ Date _____

USPO's Signature _____ Date _____

DEFENDANT: SEAN KELLY
CASE NUMBER: 1:18-CR-475-TWT-1

Judgment -- Page 5 of 9

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following additional standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court, and bring about improvements in your conduct and condition.

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office to a search conducted by a United States Probation Officer.

DEFENDANT: SEAN KELLY
CASE NUMBER: 1:18-CR-475-TWT-1

Judgment -- Page 6 of 9

SPECIAL CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following special conditions of supervision.

You must make a full and complete disclosure of your finances and submit to an audit of your financial documents at the request of your probation officer.

You must not incur new credit charges or open additional lines of credit without approval of your probation officer.

You must participate in a program of drug/alcohol treatment and testing, which may include an evaluation. You must abstain from alcohol use. If able, you must contribute to the cost of services for such treatment not to exceed an amount determined reasonable by your probation officer in conformance with the U.S. Probation Office Sliding Scale for Treatment Services.

DEFENDANT: SEAN KELLY
CASE NUMBER: 1:18-CR-475-TWT-1

Judgment -- Page 7 of 9

Judgment in a Criminal Case
Sheet 5 -- Criminal Monetary Penalties

CRIMINAL MONETARY PENALTIES

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

Special Assessment

TOTAL \$200

Fine

TOTAL WAIVED

The Court finds that the defendant does not have the ability to pay a fine and/or the cost of incarceration as well as Restitution. The Court will waive the fine and the cost of incarceration in this case.

Forfeiture

Forfeiture of the defendant's right, title, and interest in any property is hereby ordered consistent with the Plea Agreement. If applicable, the United States shall submit a proposed order of forfeiture forthwith.

Restitution

TOTAL \$1,457,043.99, minus any sums already recovered through other means.

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>Restitution Ordered</u>
Bloom	\$25,000.00
Brooks	\$50,000.00
Cameron	\$20,000.00
Crosbie	\$260,961.56
Dorfzaun	\$5,000.00
Harden	\$27,000.00
Hilgeman	\$30,000.00
Kirkland	\$5,000.00

DEFENDANT: SEAN KELLY
CASE NUMBER: 1:18-CR-475-TWT-1

Judgment -- Page 8 of 9

<u>Name of Payee</u>	<u>Restitution Ordered</u>
Lumsden	\$90,000.00
McDonald	\$50,000.00
Mueller	\$85,000.00
Dearing Trust (Mueller)	\$185,000.00
Pearson	\$37,000.00
Powell	\$6,000.00
Romsiewicz	\$25,000.00
Thompson	\$15,000.00
Weems	\$499,278.15
<u>Williams</u>	<u>\$41,804.28</u>
TOTALS	<u>\$1,457,043.99</u>

*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

**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: SEAN KELLY
CASE NUMBER: 1:18-CR-475-TWT-1

Judgment -- Page 9 of 9

Judgment in a Criminal Case
Sheet 6 -- Schedule of Payments

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A. Lump sum payment of \$ due immediately, balance due:
 not later than _____, or
 in accordance with C, D, E, or F below; or
- B. Payment to begin immediately (may be combined with: C, D, or F below): or
- C. Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$_____ over a period of _____ (e.g., months or years), to commence _____ days (e.g., 30 or 60 days) after the date of this judgment; or
- D. Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ over a period of (e.g., months or years), to commence days (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. Payment during the term of supervised release will commence within days (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F. Special instructions regarding the payment of criminal monetary penalties:

Any restitution payment made that is not payment in full, must be paid in monthly installments from any wages you earn in prison, during any period of incarceration, and the defendant must pay, at a minimum, the greater of \$25 or 50% of the deposits in your inmate trust account per quarter. Any portion of the restitution that is not paid in full at the time of your release from imprisonment will become a condition of supervision and be paid to the Clerk, U. S. District Court, Northern District of Georgia for distribution to the victims at a monthly rate of \$150 plus 25% of the defendant's gross income in excess of \$2,500 per month (\$30,000 per year).

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Civil Action File No.
1:18-cv-4939

SEAN KELLY; LION'S SHARE &
ASSOCIATES, INC; LIONSSHARE TAX
SERVICES, LLC; AND LION'S SHARE
FINANCIAL OF EAST COBB, INC.,

Defendants.

~~FILED~~ FINAL DEFAULT JUDGMENT

In this enforcement action brought by the United States Securities and Exchange Commission ("SEC"), the Defendants have failed to answer the Commission's Complaint, which was duly served upon them. [Dkts. 8, 25, 26, and 27.] On June 14, 2019, the Clerk entered default as to the Defendants by docket entry. Upon motion of the SEC [Dkt. 33] for a default judgment, and for good cause shown, the Court hereby enters this Final Default Judgment against the Defendants.

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants’ officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants 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:

- (1) to employ any device, scheme, or artifice to defraud;
- (2) 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
- (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants’ officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined from violating Sections 206(1) and (2) of the Investment Advisers Act (“Advisers Act”) of 1940 [15 U.S.C. § 80b-6] in acting as an investment advisor and by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (1) to employ any device, scheme, or artifice to defraud any client or prospective client;
- (2) to engage in any transaction, practice, or course of business which operates as fraud or deceit upon any client or prospective client

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants’ officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are jointly and severally liable for disgorgement of \$1,457,043.99

representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$289,586.82, for a total of \$1,746,630.81. Defendants shall satisfy this obligation by paying the amount due to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendants may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendants may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Sean Kelly as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendants.

The Commission shall hold the funds (collectively, the “Fund”) and may propose a plan to distribute the Fund subject to the Court’s approval. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court’s judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. Any amounts deposited into the registry of the Court as a result of the sale of properties by the Court-appointed liquidation agent shall be credited towards the amount due under this paragraph. In addition, any payments made towards restitution in the criminal case styled U.S. v. Kelly, No. 1:18-cr-00475-TWT (N.D. Ga.), shall be credited towards the amount due under this paragraph. Defendants shall provide notice to counsel for the Commission and to this Court of any such restitution payments.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants shall be liable, jointly and severally, for a civil penalty in the amount of

YEB \$ 250,000.00 to the Securities and Exchange Commission pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendants shall make this payment within 14 days after entry of this Final Judgment.

Defendants may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendants may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Sean Kelly as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

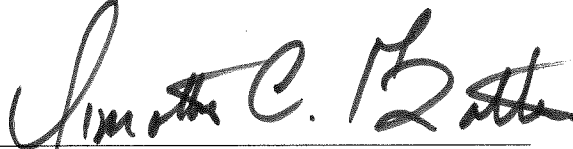
Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendants. The Commission shall send the funds paid pursuant to this Final Judgment to the United

States Treasury. Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VI.

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 and for the purpose of potentially distributing any funds collected pursuant hereto to the Defendants' victims.

Dated: July 11, 2019


UNITED STATES DISTRICT JUDGE