

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

UNITED STATES SECURITIES AND EXCHANGE )  
COMMISSION, )

Plaintiff, )

v. )

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

Defendants, )

and )

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

Relief Defendants )

07C 4979  
JUDGE BUCKLO  
MAGISTRATE JUDGE KEYS  
COMPLAINT

## **COMPLAINT**

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

### **NATURE OF THE ACTION**

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

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

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

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

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

5. As set out more fully herein, Kelly, a former Indiana resident, took a number of sophisticated and extraordinary steps to shield his scheme from interference by United States law enforcement authorities. For example, at the beginning of his scheme, Kelly moved himself and the others running the scheme to Mexico where, for the most part, they have remained. Kelly also used a number of Panamanian and Mexican corporations<sup>1</sup> to operate his scheme and transferred tens of millions of dollars of investor funds through these entities' foreign bank accounts, making it difficult for U.S. regulators to track all of the uses of investor funds and all of the sources of investor payments.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **JURISDICTION**

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

### **THE DEFENDANTS**

#### **Persons Running the Scheme**

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

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

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

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

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

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

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

#### **Issuers and Leasing Agents**

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

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

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



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

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

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

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

### Unregistered Broker Defendants

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Relief Defendants**

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

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

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

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

### **Non-Defendant Entities That Kelly Controlled**

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

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

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

## FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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



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

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

**B. The Creation of the Universal Lease**

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

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

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

securities sales.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

for subleasing their units.

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

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

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

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

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

had 56 one or two bedroom units and 94 hotel rooms.

90. Virtually all investors selected Option 3, and signed a Servicing Agreement with the Leasing Agent at the same time as they purchased their Universal Leases.

91. In the Servicing Agreement, the Leasing Agent guaranteed the rental of the investor's timeshare, agreed to collect the rent, and also agreed to pay the investor rental income and an additional "premium" in connection with a redemption option that purportedly gave each Universal Lease investor the right to redeem his or her Universal Lease at any time after two years (later changed to three years) for 100% of the initial purchase price (the "redemption option").

92. The Servicing Agreement provided each investor with three options for determining his or her income. Some of the Servicing Agreements set for these choices in a "Compensation Addendum" and other Servicing Agreements listed these options directly within the body of the agreement. Under option "A," the Leasing Agent agreed to pay 60% of the rental income collected on the investor's timeshare, and in addition, offered to buy the Universal Lease from the investor anytime after the 25<sup>th</sup> month of the Lease for the original purchase price, plus pay a 5% per year "premium" in connection with the redemption option. Under this option, the Leasing Agent would not actually pay the 5% "premium" until it purchased the investor's Universal Lease at some point in the future. Based on the SEC's review of more than 600 Universal Lease records, approximately 11% of Universal Lease investors selected option A.

93. Under option "B," the Leasing Agent agreed to pay 6% (reduced to 4% in 2002) of the purchase price as rental income, and also offered to purchase the Universal Lease after the 25<sup>th</sup> month at the original purchase price, plus a 5% per year premium. As with Option A, the Leasing Agent would not pay the investor the premium for the redemption option until some

time in the future when the investor actually sold back the Universal Lease. Based on a review of more than 600 Universal Lease records, less than 1% of Universal Lease investors selected this option.

94. Under option "C," which was by far the most popular, comprising more than 87% of all investors based on the SEC's review of more than 600 Universal Lease records, the Leasing Agent would pay 6% (later, 4%) of the purchase price as purported rental income, plus the same 5% per year premium for the redemption option, with investors getting paid the 5% premium each year, "earning you the equivalent of 11%."

95. Investors also had the choice of receiving their payments monthly, quarterly, annually, or they could allow their income to "accumulate" in the program. Investors were told that if they elected to "accumulate," the income due them would be added to the "value" of their Universal Lease and future returns would be computed on this compounded principal balance. Based on a sampling of more than 600 Universal Lease records, more than half of all Universal Lease investors elected to accumulate their income purportedly earned pursuant to their Servicing Agreements.

96. As is alleged below, these important representations in the Servicing Agreement concerning the source of income to investors and the implied viability of an investment program based on the leasing efforts of an experienced, large independent third party Leasing Agent were false.

### **C. Commencement of the Universal Lease Program**

97. By late 1999, Kelly, Yucatan Pan and Majesty Pan began offering the Universal Lease through the Selling Brokers.

98. Kelly directed that the Universal Leases be offered to, among other prospective



investors, the existing 9-month note holders. Kelly's purpose in so doing was to have them "roll" their notes into an investment in a Universal Lease, thereby delaying the need to return the 9-month note holders' principal.

99. Kelly marketed the program in the United States through RHI US, which, according to Kelly's Offering Materials, was acting as the U.S. distribution agent for the Universal Lease program. At all relevant times, Kelly owned and controlled RHI US. RHI US was dissolved in December 2004.

100. Kelly required each Selling Broker to attend a training conference at one of his hotels in Mexico prior to selling the Universal Leases. Kelly paid each Selling Broker's expenses for attending the training. At these conferences, Kelly personally trained the Selling Brokers, orally repeating and emphasizing the misrepresentations contained in the Broker Hand Books and Offering Brochures that he distributed to them, as set forth herein.

101. Kelly represented to the Selling Brokers that he owned and managed all of the hotels through which he and the Issuers were offering timeshare investments via the Universal Leases.

102. Kelly's Selling Brokers marketed the Universal Leases to U.S. investors using the same sales pitch and Offering Materials that Kelly had provided them at their training conferences.

103. The minimum investment permitted for a Universal Lease was \$5,000, but most investors invested substantially more than that, with many investing more than \$100,000 and some investing as much as \$1 million or more.

104. Shortly after commencing the Universal Lease offering in the fall of 1999, Kelly fired Ballinger and hired Ruttenberg and his firm Ruttenberg and Associates US to market the

Universal Lease and to recruit more brokers. By early 2000, Kelly's Universal Lease program was up and running in the offices of Yucatan US in South Bend, Indiana. In addition, Kelly opened a Universal Lease office in a hotel room at the Baccara Hotel in Cancun from which he controlled the Universal Lease operations. Sometime later, in approximately November 2000, Kelly purchased an office building in downtown Cancun and moved his Cancun Universal Lease operations to that location.

105. As part of their marketing of the Universal Leases, the Selling Brokers typically gave prospective investors the Offering Brochure and orally explained the Universal Lease.

106. At the time of the investment, investors were given and signed both the Universal Lease Agreement and the Servicing Agreement.

107. Investors also completed at the time of purchase of the Universal Leases, a "Beneficiary Designation Form" with beneficiaries for the Universal Lease in the case of their death. Included on this form was an Owner questionnaire which asked basic information about the purchaser and their finances. Investors were given the choice not to provide any financial information, and in many cases, that box was checked. In addition, this form included a "Lease Evaluation" section which stated: "The undersigned represents that the current value of my liquid assets (cash and assets easily converted into cash) is sufficient to provide for my current needs and possible future needs and contingencies, and, I (we) have such knowledge and experience in financial and business matters that I (we) am (are) capable of evaluating the risks and merits of this Universal Lease Program." As alleged herein, Kelly and the other Defendants misrepresented and concealed so many material facts such that Universal Lease purchasers were, in fact, unable to evaluate the risks and merits of the Universal Lease program.

**D. Misrepresentations and Omissions of Material Fact Made to Investors**

108. In connection with the offer and sale of Universal Leases, Kelly, the Issuers, the Leasing Agents and the Selling Brokers, both orally and in the Offering Materials given to prospective investors, made numerous material misrepresentations and omissions of fact.

109. Kelly, the Issuers, the Leasing Agents and the Selling Brokers misrepresented, both in the offering documents and orally, that the Universal Lease was a safe, high income-producing investment, and one that was “suitable” for rollovers from IRAs and other retirement accounts and from existing annuities. In fact, and as described in greater detail below, this investment program was not safe, not high-income producing, and not suitable for IRA retirement accounts.

110. The Offering Brochure falsely touted Kelly’s business acumen and lengthy experience in “successful international corporate operations” and hotel operations. In fact, at the time of the commencement of the Universal Lease offering in 1999, Kelly had virtually no track record in international corporate operations or hotel operations.

111. The Offering Brochure falsely represented that the Issuer was a “leading International Resort Development and Leasing Company of exclusive Caribbean Vacation Properties.” In fact, the Issuer had only recently been formed at the time of the commencement of the Universal Lease offering, and Kelly had only one hotel property under active management, the 36-room Baccara Hotel.

112. Kelly, the Issuers, the Leasing Agents and the Selling Brokers all represented, both orally and in the Offering Materials, that the Leasing Agent was a large, well-established, independent travel agency which would rent the investors’ timeshares to others and pay the investors their income. These representations were false and misleading.

113. In fact, the Leasing Agent was not large, not well established, and not independent. The Leasing Agent was actually a small Panamanian travel agency controlled by Kelly. The same few people working for Kelly -- namely, Defendants MP Kelly, DL Kelly, Corwin and the office staff working for them at their direction and under their supervision -- received, completed, signed, copied and filed the Leasing Agents' Servicing Agreements and prepared and sent the checks to investors. MP Kelly signed the Servicing Agreements on behalf of the Leasing Agent using a false signature, and also wrote letters to investors on Majesty Pan (and later, Galaxy Pan) letterhead. Indeed, up until January 2003, Kelly did not even use a separate bank account for the Leasing Agent, and instead, paid investors out of the very same U.S. Bank accounts into which Kelly had caused their investments to be deposited.

114. During the latter stages of the scheme, in mid-2004, Kelly replaced Majesty Pan with a new Leasing Agent, Galaxy Pan. Kelly, the Issuers, the Leasing Agent and the Selling Brokers falsely represented to prospective investors, both orally and in offering documents, that Galaxy Pan, like its predecessor Leasing Agent Majesty Pan, was independent from Kelly and his Issuers. In fact, however, Kelly controlled Galaxy Pan at all times during its participation in the Universal Lease scheme, just as he had controlled Majesty Pan. For example, Kelly directed one of his employees, Gabriel Escalante, to open Majesty Pan's Florida bank account and Galaxy Pan's California bank account. Escalante was the authorized check signer on at least the Majesty Pan account. Kelly, ML Kelly and DL Kelly caused funds to be transferred into these accounts and directed payments to be made to investors out of these accounts.

115. Kelly, the Issuers, the Leasing Agents and the Selling Brokers also guaranteed to investors, both orally and in the Offering Materials, that the Leasing Agent's payments to them would be 11% per year (reduced to 9% in 2002), and that the payment would consist of rental

income, guaranteed at an annual rate of 6% (later 4%), plus a 5% annual premium paid by the Leasing Agent in connection with the redemption option. These representations as to the source of investor income, and the implied representations as to the viability of the subleasing business through the Leasing Agent, were false and misleading.

116. In fact, from the inception of the scheme until at least August 2003, all so-called "income" payments to investors came from U.S. bank accounts funded almost exclusively from new Universal Lease investor dollars, and not from the Leasing Agent's rental receipts. From late 1999 to the end of 2002, payments to investors came directly from the U.S. accounts of Kelly's Issuers that were funded by new Universal Lease investments. Beginning in January 2003, Kelly and those under his control made payments to investors from a new account that he had opened in Florida in the name of Majesty Pan, but Kelly caused this account to be funded from his Issuers' U.S. accounts which, in turn, were funded by new Universal Lease investments. From the beginning of the scheme through August 2003, new investor funds made up more than 99% of the total deposits into these accounts.

117. In September 2003, in an apparent attempt to conceal the source of the Leasing Agent's payments to investors, Kelly began transferring new investor funds from U.S. accounts to Panamanian and Mexican accounts held in the name of his Issuers. These Panamanian and Mexican accounts then transferred money back to the Majesty Pan account to fund the Leasing Agent's payments to investors. These transfers off-shore-and-then-back-again continued until the Majesty Pan account was closed in June 2004. Galaxy Pan then took over as Leasing Agent and began making the income payments to investors from its California account. Kelly and those under his control, including DL Kelly, funded Galaxy Pan's investor payments from accounts at several Mexican banks.

118. The Offering Brochure also stressed a redemption option that provided each Universal Lease purchaser with the right to sell back his or her Universal Lease from the Leasing Agent for the full amount of the purchase price beginning two years after such purchaser's investment. This redemption option, according to the Offering Brochure, could be exercised at any time thereafter, regardless of how many years of income each Universal Lease holder had received and how few years remained on the 25-year timeshare. As stated in the Offering Brochure: "In fact, as a Leaseholder, *you have the option to redeem your Universal Lease for the full purchase price or higher after two years.*" (italics in original).

119. Kelly stressed this redemption option to the Selling Brokers at the training conferences.

120. Kelly, the Issuers, the Leasing Agents and the Selling Brokers all stressed this redemption option to prospective investors.

121. This redemption option was not economically feasible. Consequently, the representations concerning the redemption option and the financial protection it gave to investors were false and misleading.

122. Kelly, the Issuers and the Leasing Agents knew that this redemption option was not feasible and that they could not honor the option for all investors.

123. The Selling Brokers also knew, or were reckless in not knowing, that the redemption option likely could not be honored for all investors, since, among other things, the Selling Brokers were themselves receiving a substantial percentage of the investor's investment principal (between 18 and 27 percent), and since the value of the 25-year lease would tend to decrease over time, as fewer years remained in each investor's timeshare interest.

124. Kelly, the Issuers and the Leasing Agents modified slightly this redemption

option in later Offering Brochures, stating that it would begin three years after the initial investment, instead of two years. Even after this change, Kelly, the Issuers and the Leasing Agent continued to tell their clients that they could get their entire initial investment back at any time after three years, and the Selling Brokers continued to orally represent this fact to prospective investors. As a result, the Selling Brokers continued to make the redemption option a selling point as it was the way investors could get their money out of the program. Kelly, the Issuers, the Selling Agents and the Selling Brokers told investors that they had the “right” to have their lease repurchased at any time by either the Issuer or the Leasing Agent under these terms.

125. In reality, the ability of Majesty Pan to redeem the investors’ Universal Leases for the full initial purchase price was entirely contingent upon Kelly and the Selling Brokers’ ability to continue to raise a steady stream of new investor funds, which Kelly could then use to buy out those existing investors who requested the return of their principal. In short, there was no large independent and successful third party management company standing behind the redemption option. Instead, investors had only Kelly’s fund-raising abilities to safeguard their principal.

126. By 2005, or earlier, Kelly and the other Defendants stopped honoring the redemption rights promised to Universal Lease investors.

127. In addition to affirmative misrepresentations, Kelly and the other Defendants who marketed the Universal Leases failed to disclose a host of facts that rendered misleading the statements they made about the represented rate of return, the redemption option and the safety of the Universal Leases. Kelly and the other Defendants failed to disclose, among other things, that Kelly was using the investors’ funds to: (1) pay huge commissions to the Selling Brokers, totaling in excess of \$70 million; (2) make income and principal payments to other Universal

Lease investors, totaling in excess of \$100 million; (3) make interest and principal payments, in excess of \$8 million, to investors who had invested in Kelly's prior 9-month note offering; and (4) fund Kelly's U.S. car company, Avanti US, with more than \$7.3 million of investor funds and his "industrial leasing" business, DMK US, with more than \$3.4 million of investor funds. These uses of investor proceeds, undisclosed to investors, virtually guaranteed the result here: that the Universal Lease program would ultimately collapse and that investors would lose all or a substantial portion of their investments.

128. Finally, while touting his business acumen and his success in international corporate business operations, Kelly failed to disclose that a growing number of state securities agencies had barred him and several of his entities from selling the 9-month notes and the Universal Lease. All of these facts also belied the statements made to investors that an investment in a Universal Lease was safe and suitable for IRAs or other retirement funds.

129. These state enforcement actions included at least the following during the period in which the Universal Lease sales were ongoing:

- a. On April 2, 2001, the Wisconsin Department of Financial Institutions, Division of Securities issued an Order of Prohibition and Revocation against Kelly and Yucatan Resorts Mex. These orders were later revoked and replaced by an Order of Prohibition (Consent) issued against Yucatan Resorts Mex on April 4, 2003. As part of this settlement Yucatan Mex agreed to relief including: that it was prohibited from any further sales of its securities in Wisconsin unless it registered them; that it was enjoined from violating Wisconsin's anti-fraud statutes; and that it would not hire agents in the state to sell its securities without proper registration.



- b. On October 22, 2002, the Pennsylvania Securities Commission (“Penn. Commission”) issued a Summary Order to Cease and Desist against Yucatan Resorts Pan and one of the Selling Brokers, ordering them to stop offering and selling the Universal Lease Program and to stop violating the Pennsylvania securities laws against fraudulently selling securities, selling unregistered securities, and selling securities through unregistered brokers. On March 11, 2003, the Penn. Commission issued Cease and Desist orders against Phelps and another of the Selling Brokers for the same violations. The Penn. Commission later filed a similar action in Pennsylvania State Court against Yucatan Pan, RHI US, Kelly, Phelps, and several other Selling Brokers. That action was eventually settled. On January 12, 2004, pursuant to the settlement, the Penn. Commission rescinded the above orders, and the Commonwealth Court of Pennsylvania entered an Order of Permanent Injunction against Yucatan Resorts Pan and RHI US that ordered Yucatan Resorts Pan and RHI US to: (1) repay all Pennsylvania investors for their Universal Lease investments; (2) pay \$75,000 for the Penn. Commission’s investigative and legal costs; (3) be enjoined from selling securities in Pennsylvania in violation of the Pennsylvania securities laws; and (4) be barred from acting as a promoter, officer, director or a partner of an issuer as defined by the Pennsylvania securities laws.
- c. On February 12, 2003, an Order to Cease and Desist issued by the Minnesota Department of Commerce against RHI US.

- d. On March 18, 2003, a Temporary Order to Cease and Desist issued by the Arizona Securities Corporation against Kelly, Yucatan Resorts, Inc., Yucatan Resorts Pan, RHI US, RHI Pan, Majesty Pan, and Lori Kelly. This matter was eventually settled and on March 2, 2006, resulted in a Final Order and Order of Permanent Injunction against Kelly, Yucatan Resorts, Inc., Yucatan Resorts Pan, RHI US, and RHI Pan. The final order included restitution for Arizona investors in the amount of more than \$20 million, which was to be paid with an initial \$4 million payment and additional payments over time in semi-annual installments of \$2.548 million. The Defendants made their required initial payment and then paid only a part of their next installment payment.
- e. On January 4, 2004, a Cease and Desist Order issued by the Maryland Securities Commission against Yucatan Resorts Pan, Yucatan Resorts, Majesty Pan, and Kelly.
- f. On March 24, 2004, a Cease and Desist Order issued by the Indiana Secretary of State, Securities Commissioner, against Yucatan Resorts, Inc. d/b/a Yucatan Resorts, S.A., Resort Holdings International, Inc. d/b/a Resort Holdings International, S.A., World Phantasy Tour Inc. d/b/a Majesty Travel, Avalon Resorts, and Kelly on March 24, 2004. This order required the above respondents to cease and desist from offering or selling unregistered securities in Indiana.

130. Kelly, the Issuers, the Leasing Agents and the Selling Brokers each failed to inform prospective investors about these state regulatory actions.

**E. Attempts to Modify the Universal Lease Offering Materials**

131. Over time, the Offering Materials changed in various minor ways, typically becoming less specific. For example, by the spring of 2003, the specific reference to the percentage return available by contracting with the Leasing Agent was deleted from the Offering Brochure. Nonetheless, the Selling Brokers continued to make the rate of return part of their pitch, and the rate of return continued to be specified in the Compensation Addenda to the Servicing Agreements that they gave to investors. As a result, the essential representations in the offering remained consistent with those described above.

132. Another change to the Offering Materials concerned Kelly's addition of a "Disclosure Statement" to his Offering Materials, beginning in 2001. Kelly began requiring that investors sign a "Disclosure Statement" when purchasing a Universal Lease, which repeated language from the Offering Brochure that the purchaser had the right use their Universal Lease, rent it to others through their own efforts, or to use a "3<sup>rd</sup> Party Servicing Company," and which also advised the purchaser that Kelly's Issuer was not promoting the timeshare it sold to them "for investment purposes" and that the Issuer was not making any investment guarantee to the investor.

133. The intent of this disclosure statement was to further give the appearance that the investments were not securities, as the Universal Lease offering faced increasing scrutiny from state securities regulators.

134. Notwithstanding this Disclosure Statement, Kelly, the Issuers, the Leasing Agents and the Selling Brokers, both orally and in the Offering Materials, continued to aggressively market the Universal Lease for investment purposes. Additionally, the Leasing Agent and Issuer continued to remain under Kelly's common control.

135. Moreover, while the Disclosure Statement advised the that *Issuer* was not making any investment guarantee, the Offering Materials continued to make it clear that it was the *Leasing Agent* (and not the Issuer) which guaranteed the rental of the investors' timeshare and the payment of the investors' fixed rate of return, and which also was to buy back the lease back if investors sought to exercise their redemption rights.

**F. Residence Club Memberships**

136. In March 2004, Corwin sent the Selling Brokers a letter stating that there would be no further Universal Lease sales in the United States. However, a few days later he sent a second letter advising the Selling Brokers of other "programs" that could still be sold, including Residence Club Memberships. Residence Club Memberships were a second generation Universal Lease, albeit with a new name and new offering documents.

137. As before, Kelly personally trained Selling Brokers in Cancun concerning the Residence Club Memberships. Kelly explained that it was essentially "the same" as the Universal Lease, except that the new paperwork could not state the rate of return that was being represented orally to investors. The Selling Brokers repeated these oral assurances of a rate of return to prospective Residence Club Membership investors.

138. The offering brochure for the Residence Club Memberships did not include any discussion about the use of a Leasing Agent. However, as with the initial Universal Leases, investors signed an agreement for a timeshare with one of Kelly's Issuers (Panorama Pan) and simultaneously entered into a Servicing Agreement with Kelly's Leasing Agent (Galaxy Pan) to rent their timeshare and to pay them a fixed rate of return of 9% per year. The Galaxy Pan Servicing Agreement contained a rate sheet from which the Selling Brokers could show purchasers the amount of compensation they would be paid. As with the initial Universal

Leases, Residence Club Membership investors signed an agreement for a timeshare with one of Kelly's Issuers (Panorama Pan) and simultaneously entered into a Servicing Agreement with Kelly's Leasing Agent (Galaxy Pan) to rent their timeshare and to pay them a fixed rate of return of 9% per year.

139. Corwin continued to administer the existing Universal Leases, but Kelly replaced him with MP Kelly with respect to the administration of the Residence Club Memberships.

140. Kelly, the Issuers, the Leasing Agents and the Selling Brokers continued to sell Residence Club Memberships, and a few limited Universal Leases, until early 2005.

141. After designating Galaxy Pan as the new Leasing Agent in 2004, Kelly caused Galaxy Pan to unilaterally cut the return paid to investors to approximately 5%. Galaxy Pan made intermittent payments after this time, but by mid-2005, its payments to investors had essentially ceased.

142. Ultimately, Kelly's scheme fell apart, as he became unable to raise sufficient funds to continue paying existing investors their promised returns.

143. In total, based on available records, Kelly and the other Defendants in this action raised at least \$428 million from the original Universal Lease scheme from as many as 10,000 investors or more, plus at least \$8.6 million from the sale of Residence Club Memberships in 2004 and 2005.

144. U.S. Investor losses in the Universal Lease scheme, based on the bank records made available to the SEC, currently exceed \$310 million.<sup>3</sup> This amount reflects the total

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<sup>3</sup> This \$310 million shortfall constitutes the difference between the principal amount of \$428 million invested by all known Universal Lease purchasers in the United States less all amounts paid back to such investors, regardless of the characterization of payments as income or redemptions or other, based on available records. The loss amount would be significantly higher if the calculation of the amount also included the 11% (later 9%) annual income promised to investors, or prejudgment interest on the \$310 million shortfall amount.

amount invested in the Universal Lease program by U.S. investors less amounts paid back to investors in the form of purported “income” or return of principal.

**G. Defendants’ Roles in the Scheme**

**Kelly**

145. Kelly designed the Universal Lease program.

146. Throughout the operation of the Universal Lease scheme, Kelly, directly or indirectly, controlled the Universal Lease program, the Issuers, the Leasing Agents, and the bank accounts into which investor funds were deposited and from which payments were made to investors.

147. At all times during which the Issuers and the Leasing Agents were involved in the Universal Lease scheme, Kelly possessed, directly or indirectly, the power to direct or control their activities and did in fact control their activities. These activities included, without limitation: designing the Universal Lease program; preparing and determining the content of all written materials provided to the Selling Brokers and prospective investors; marketing the Universe Lease offering; operating the Universal Lease program; and determining and directing the use of investor funds.

148. Kelly created, approved or was otherwise responsible for the contents of all of the offering documents, promotional materials and informational materials provided to the Selling Brokers, including, without limitation, all of the Offering Materials and the Broker Hand Book.

149. Kelly personally trained the Selling Brokers and signed their commission checks.

150. Kelly, directly or indirectly, owned or controlled RHI Mex and Yucatan Mex at all times during the scheme.

151. Kelly, directly or indirectly, owned or controlled each Issuer during the time he used it to offer and sell Universal Leases to investors.

152. Kelly, directly or indirectly, owned or controlled the Leasing Agents during the time he used them to contract with Universal Lease purchasers.

153. Kelly personally solicited U.S. investors who attended sales presentations in Cancun, Mexico. Kelly made at least one sales presentation to elderly investors in Texas in May 2001.

154. At all times during the scheme, Kelly, directly or indirectly, controlled the bank accounts into which new Universal Lease investor funds were deposited and the accounts from which investors were paid.

155. Kelly, directly or indirectly, controlled the use of funds invested in the Universal Leases.

**The Issuers: Yucatan Pan, Corporativo Mex, RHI Pan and Panorama Pan.**

156. At various times during the period in which the Universal Lease scheme operated, Kelly used different Issuers through which he sold his Universal Leases.

157. Initially, Kelly sold Universal Leases to U.S. investors through Yucatan Resorts Pan. According to the Offering Materials, Yucatan Resorts Pan managed the Baccara and Avalon Grand Hotels.

158. During the scheme, Kelly and others under his control caused more than \$1 million of Universal Lease investor funds to be transferred to Yucatan Resorts Pan's Panamanian bank accounts. Yucatan Resorts Pan dissolved in December 2003.

159. By late 2001, Kelly began using RHI Pan as an additional Issuer in the sale of Universal Leases to U.S. investors.

160. During the scheme, Kelly and others under this control caused more than \$80 million of Universal Lease investor funds to be transferred to RHI Pan's Panamanian bank accounts. Kelly controlled, directly or indirectly, these accounts.

161. Beginning in approximately June 2002, Kelly also used Corporativo Mex as an Issuer through which he sold Universal Leases to U.S investors. An application to register Universal Leases as timeshares (and not as securities) with Texas in 2002 states that Corporativo Mex owned the Avalon Grand, and that Kelly was Corporativo Mex's sole owner and is its CEO.

162. During the Universal Lease scheme, Kelly and others he controlled caused more than \$61 million of Universal Lease investor funds to be deposited into Corporativo Mex's Mexican and Panamanian bank accounts, which Kelly controlled, directly or indirectly.

163. Beginning in approximately 2004, Kelly used Panorama Pan as the Issuer through which he sold Residence Club Memberships to U.S. investors.

164. During the scheme, Kelly and others under his control caused more than \$8 million of investor funds to be transferred to Panorama Pan's Panamanian bank accounts. Kelly and DL Kelly controlled some or all of Panorama Pan's accounts

165. Each of the Issuers used similar Offering Materials, containing the same core misrepresentations and omissions described above.

**The Leasing Agents: Majesty Pan and Galaxy Pan**

166. Kelly used two different entities as Leasing Agents for his Universal Lease investments: Majesty Pan and Galaxy Pan.

167. These Leasing Agents were necessary participants in the offerings of the Universal Lease investments, as they provided the Servicing Agreements through which investors were to receive their stream of income from the investments, and the right to a return of



principal through the redemption option.

168. Kelly used Majesty Pan, which did business as “Majesty Travel,” as the Leasing Agent for the Universal Lease scheme from its inception in 1999 until approximately June 2004.

169. During the scheme, Kelly controlled Majesty Pan and Kelly and those under his control funded its purported rental income payments to investors.

170. In approximately June 2004, Kelly replaced Majesty Pan with Galaxy Pan as the Leasing Agent for all existing and new Universal Leases, including all Universal Leases sold as Residence Club Memberships.

171. During the scheme, Kelly, MP Kelly and DL Kelly controlled Galaxy Pan and funded its payments to investors.

**Other Offering Participant Entities Named As Defendants:  
Yucatan Resorts Mex and RHI Mex.**

172. During the scheme, Kelly owned or controlled Yucatan Resorts Mex.

173. During the scheme, Yucatan Resorts Mex contracted with many Selling Brokers for them to offer and sell the Universal Lease.

174. During the scheme, Kelly and others he controlled caused more than \$2.4 million of Universal Lease investor funds to be transferred to Yucatan Resorts Mex’s Mexican bank accounts, which were controlled by Kelly.

175. During the scheme, Kelly owned or controlled RHI Mex.

176. During the scheme, RHI Mex was purportedly a marketing company for Corporative Mex, one of the Issuers.

177. During the scheme, RHI Mex contracted with RHI US to offer Universal Leases in the United States.

178. During the scheme, Kelly and others he controlled caused more than \$1 million of Universal Lease investor funds to be transferred to RHI Mex's bank accounts.

**Other Individual Defendants Who Helped Kelly to Run the Scheme:  
Corwin, MP Kelly and DL Kelly**

179. Corwin and ML Kelly substantially participated in the unregistered Universal Lease offerings. During the operation of the Universal Lease scheme, Corwin ML Kelly and DL Kelly knowingly aided and abetted Kelly, the Leasing Agents, the Issuers, and the Selling Brokers in perpetrating the fraudulent Universal Lease scheme.

180. From late 1999 until at least March 2004, Corwin in charge of Kelly's Cancun Universal Lease office and directly supervised its operations. During this time, Corwin reported directly to Kelly on all Universal Lease matters with the exception of the Residence Club Memberships. Corwin helped Kelly train the Selling Brokers, supervised them, approved their advertising, reviewed their commissions, and helped revise the offering documents over time. Corwin earned a commission of one-half percent on all Universal Lease sales.

181. For much of the scheme, MP Kelly signed the Universal Lease Agreements on behalf of the Issuers, and also signed the Servicing Agreements on behalf of the supposedly independent Leasing Agent using a false signature.

182. Beginning in 2004, MP Kelly supervised the Universal Lease offering conducted under the Residence Club Membership name. In May of 2005, MP Kelly fired Corwin and took over as manager of the Universal Lease operations.

183. MP Kelly also wrote letters to investors on Galaxy Pan letterhead that purported to be from "Galaxy Management," indicating that Galaxy Pan was a new, independent management company that would take over as the Leasing Agent and continue to pay them. By doing so, MP Kelly misrepresented the source of the letters to conceal the fact that the Leasing

Agent was affiliated with Kelly and his Issuers. MP Kelly also held a general power to act on behalf of the Issuer RHI Pan, was its Secretary, and together with Kelly and DL Kelly, owned it.

184. By 2002, DL Kelly was responsible for the Leasing Agent's operations, and people working for him prepared the Leasing Agent's checks to investors and processed its paperwork. DL Kelly was also responsible for moving the money necessary to fund the Leasing Agent's payments to investors and also participated in the movement of millions of dollars of investor funds to entities controlled by Kelly. DL Kelly also supervised the commission payments to the Selling Brokers. He was a director and legal representative for the Issuer RHI Pan, and together with Kelly and MP Kelly, owned it. DL Kelly also held a general power to act for Panorama Pan, the last Issuer, and was one of its directors.

185. Corwin, MP Kelly and DE Kelly were all aware of the fraudulent nature of the Universal Lease program during their participation in it, and also knew that they and the other Defendants in this lawsuit were operating the program in a manner that was inconsistent with the representations made to investors, including, but not limited to representations about the independence of the Leasing Agent, the source of investor payments, and the amount of renting of investors' timeshares actually accomplished by the Leasing Agents.

#### **Top Selling Brokers**

186. At the beginning of the scheme, Kelly hired Ruttenberg and his firm Ruttenberg and Associates US to market the Universal Lease and to recruit other brokers to sell it. Ruttenberg and Ruttenberg Associates US were highly successful in recruiting brokers and over time brought hundreds of new Selling Brokers into the Universal Lease scheme. Most of the Selling Brokers were independent insurance agents who were not registered to sell securities, but who nonetheless offered and sold the Universal Lease securities to their existing insurance

clients.

187. Ruttenberg and Associates US earned an override commission on all of its down-line brokers' Universal Lease sales. These down-line brokers sold more than \$200 million in Universal Leases and Kelly paid Ruttenberg and Associates US more than \$6.4 million in override commissions for their sales. In addition to recruiting Selling Brokers, Ruttenberg and Ruttenberg and Associates US provided their brokers with a variety of services. They supplied them with offering documents, conducted training, designed advertising brochures to send to prospective brokers, explained the details of the Universal Lease to prospective brokers (as Kelly had explained it), reviewed and approved Selling Broker advertising pieces, answered questions about Universal Lease forms and generally acted as a liaison between the down-line Selling Brokers and their clients on the one hand, and the Issuers and Leasing Agent on the other.

188. A number of the Selling Brokers, including some recruited by Ruttenberg and Ruttenberg and Associates US, reside in the Northern District of Illinois. During Kelly's scheme these Selling Brokers residing in the District offered and sold thousands of dollars of Universal Leases in this District to investors also residing here. The Universal Lease forms for these investors were prepared in the District, and were mailed or sent by Federal Express to Kelly's South Bend Indiana office, or to Ruttenberg and Associates US office in Bloomington, Illinois.

189. Kelly arranged for prospective brokers to get a free trip to Cancun so that they could conduct "due diligence," and be trained on the Universal Lease program. While in Cancun, the Selling Brokers stayed for free at one of Kelly's hotels where they were given a tour of the hotel properties. During their stay, Kelly made a presentation on the Universal Lease program and how to sell it to their clients. In his presentations, Kelly stressed the convenience and high level of income paid to those that used the "independent, third party management

company” included in the program. Kelly also told the Selling Brokers that the Universal Lease was safe, and stressed the redemption option as part of the safety of the program. Kelly did not tell the Selling Brokers of any known risks for the program.

190. Kelly represented to the Selling Brokers that the Universal Lease was not a security, relying on his legal opinion letter and the fact that they used an independent, third party management company to rent the Universal Lease timeshares. Kelly also explained that in order to avoid selling the Universal Lease as a security, the Selling Brokers must explain to prospective purchasers that they had three choices for their timeshare: use it, rent it to others by their own efforts, or hire the independent management company which would then pay them the fixed rate of return. During the Selling Brokers’ stays in Cancun, no one from the Leasing Agent was present.

191. Brokers who sold the Universal Lease signed contracts to do so with Yucatan Resorts Pan or Yucatan Resorts Mex. Their contracts spelled out the compensation to be paid, called “commissions,” which were determined as a percentage of sales.

192. Although brokers contracted with Yucatan Resorts Pan or Yucatan Resorts Mex, those entities did not pay the broker commissions. Early on, Kelly paid the brokers from accounts in the name of Yucatan US (the entity selling the 9-month note program) and Yucatan Resorts. Later Kelly paid the brokers from accounts in the name of RHI US or RHI SA. The Selling Brokers took the money from whatever source it came.

193. Kelly paid the Selling Brokers substantial commissions for selling the Universal Lease, with individual Selling Brokers typically getting between 10% and 15% of the amount of each Universal Lease. Brokers that recruited other brokers into the program were also paid an “override commission” on their down-line brokers’ sales. As a result, there were often several

tiers of brokers paid a commission on any one sale, with the total commission paid to all tiers of brokers typically equaling 18%.

194. Kelly also promised a second commission, equal to one-half the original commission, typically 9%, if the broker(s) kept their investors in the program for 2 years (later changed to 3 years). During the scheme, Kelly paid the Selling Brokers more than \$72 million in commissions.

195. On several occasions, Kelly conducted "sales blitzes" during which he paid the Selling Brokers an even higher commission for raising new investor money.

196. The Selling Brokers named as Defendants in this action -- termed the "Top Selling Brokers" in this complaint -- are among those who were paid the most in Universal Lease commissions. With the exception of Ruttenberg and his firm, each of the Top Selling Brokers actively solicited Universal Lease investors directly, provided them with the offering documents, explained the investment to investors, answered questions, collected the completed paperwork and the investors' funds, and sent the completed package to Kelly's Universal Lease offices. In so doing, the Top Selling Brokers repeated the same misrepresentations and omissions as were included in the Offering Brochures.

197. Each Top Selling Broker also recruited down-line brokers. Each was paid in excess of \$1 million in commission-based compensation for their Universal Lease sales and the sales of their down-line brokers. Set forth in the chart below is a break-down of commissions that each Top Selling Broker received, based on the SEC's review of available records. It is possible that Top Selling Brokers received more than these amounts:

<b>Name of Top Selling Broker</b>	<b>Commissions Received, Based on Available Records</b>
Ruttenberg/Ruttenberg and Assoc. US	\$6,479,731.31
Riner/Southwest Income US	\$3,633,839.10
Phelps	\$1,804,115.46
Tencza/American Elder Group US	\$1,595,155.82
Lee/Lee and Associates US	\$1,440,657.57
Higgs	\$1,356,298.75
Chambers/Boston/Century Estate US	\$1,349,330.53
Meyer/Meyer and Associates US	\$1,151,236.12

198. The Top Selling Brokers, both while recruiting other unregistered brokers to sell Universal Leases and while recommending the Universal Lease offering directly to investors, simply parroted Kelly's false statements about the Leasing Agent, the source of investor payments, the rate of return, the redemption option, and the safety of the Universal Lease, without conducting sufficient due diligence regarding the truth of these representations.

199. In particular, the Top Selling Brokers conducted little or no investigation about the Leasing Agent, which was the critical part of the Universal Lease program, since it was, according to Kelly and the Offering Materials, the only entity responsible for paying the annual returns and repurchasing the Universal Lease from the investor for 100% of its original purchase price. The Top Selling Brokers failed to disclose to investors that they knew little or nothing about the Leasing Agent other than what Kelly had told them.

200. The Top Selling Brokers also failed to disclose the huge commissions, ranging from 18-27% of the purchase price of the Universal Lease, which Kelly was paying to them and to the other Selling Brokers.

#### **H. Violations of Section 5 of the Securities Act**

##### **(i) The Universal Leases Were Securities.**

201. The Universal Leases were investment contracts, and therefore, securities covered

by the federal securities laws.

202. Virtually all of the Universal Lease purchasers purchased their Universal Leases as investments.

203. Universal Lease purchasers paid for their investments in three principle ways: (i) writing checks for their investment to the Issuers; (ii) transferring IRA funds to an IRA custodian which then wrote checks or wired funds to the Issuers; or (iii) rolling over their nine-month note (which they had previously paid for with an investment of money).

204. Kelly's Universal Lease scheme included a pooling of interests between investors on the one hand and Kelly, the Issuers and the Leasing Agents on the other. As presented to investors, their funds would go to the Issuers in return for a timeshare in one of Kelly's hotels, with the investor's return to come from the Leasing Agent's rental of that timeshare. The successful leasing of their timeshares, in turn, required the existence of both a desirable hotel destination to attract potential timeshare renters, and on a successful Leasing Agent capable of renting the timeshares. Thus, as presented to investors, their expectation of a return was tied to the success of Kelly's Issuers' hotel operations, and of the Leasing Agent. This pooling of interests is further reflected in Kelly's control of both the Issuers and the Leasing Agents which, in reality, made one common enterprise out of two purportedly independent companies.

205. The Universal Lease scheme also included the pooling of interests among investors. While each investor was told they received a specific timeshare, the rental agreement with the Leasing Agent was not contingent on the rental of their specific timeshare, or on the amount of money received for such rental; rather, their return of 11% (and later, 9%) of the amount invested was guaranteed. Thus, the investors were all equally dependent upon the overall success of the Leasing Agent and Kelly's hotel operations. And since Kelly funded the



Leasing Agents payments, each investor was actually investing in the common enterprise of Kelly's hotel operations. Thus, investors were making an investment in Kelly's business, which was to pay them a fixed rate of return.

206. In addition, although concealed from investors, from the beginning of the scheme through at least August 2003, the investors' pooled funds were used to make income and principal payments to other investors.

207. Kelly, the Issuers, the Leasing Agents and the Selling Brokers marketed, offered and sold the Universal Leases in a manner such that investors expected their profits to come solely from the efforts of others.

**(ii) The Universal Lease Offering Was Unregistered.**

208. No registration statement was ever filed with the Commission in connection with any of the Universal Lease sales.

**(iii) Kelly, MP Kelly, Corwin the Issuers, the Leasing Agents and the Selling Brokers, and Each of Them, Were Substantial Factors and Necessary Participants in the Universal Lease Sales.**

209. From 1999 through 2004, Kelly, the Issuers, the Leasing Agents, RHI Mex, Yucatan Resorts, Mex, MP Kelly, Corwin, and the Top Selling Brokers, directly or indirectly, offered or sold securities in the form of Universal Leases to thousands of investors throughout the United States.

210. Kelly created the scheme, drafted the offering documents, and on at least one occasion, directly offered the Universal Lease to investors in the United States.

211. Kelly also controlled the Issuers and Leasing Agents, trained the Selling Brokers and paid their commissions, and was therefore a substantial factor and a necessary participant in all of the Universal Lease sales.

212. Each of the Issuers, Leasing Agents and Selling Brokers sold Universal Leases to investors in the United States, and each was a substantial factor and necessary participant in the sale of Universal Leases. The Issuers and Leasing Agents signed investment documents, and the sales were effectuated by the Selling Brokers.

213. Yucatan Resorts Mex contracted with many Selling Brokers for them to sell the Universal Lease in the United States, and was thereby a substantial factor and a necessary participant in the offer and sale of Universal Leases.

214. RHI Mex was a marketing company for one of the Issuers and hired RHI US to offer the Universal Lease in the United States, and was thereby a substantial factor and a necessary participant in the offer and sale of Universal Leases.

215. Each of the Top Selling Brokers (except Ruttenberg and his firm Ruttenberg and Associates US) directly offered and sold Universal Leases and was paid substantial commissions for doing so.

216. Ruttenberg and Ruttenberg and Associates US recruited hundreds of other unregistered brokers to offer and sell Universal Leases, supplied training, offering materials and office support, acted as liaison between them and the Universal Lease offices, and earned more than \$6.4 million in commissions for their sales. The other Top Selling Brokers also recruited other brokers and were paid for their down-line brokers' sales. As a result, each was a substantial factor or necessary participant in the sales they procured and those of their down-line brokers.

217. Corwin and MP Kelly were also each a substantial factor or a necessary participant in the offer and sale of Universal Leases. Corwin helped Kelly prepare offering documents, supervised the Selling Brokers, and ran the Universal Lease office in Cancun.

Corwin was also paid a commission on all Universal Lease sales, with the exception of those sold as Residence Club memberships.

218. MP Kelly signed Universal Lease Agreements on behalf of the Issuers, and signed the Service Agreement (using a false name) on behalf of the Leasing Agent, thus misrepresenting the relationship between them. In addition, during 2004 MP Kelly took over primary responsibility for the Universal Leases sold under the Residence Club Membership name. MP Kelly was also legal representative for one Issuer, RHI Pan, and held a general power to act on behalf of it.

219. The above activities by the Kelly, MP Kelly, Corwin, the Issuers, the Leasing Agents, the Top Selling Brokers, Yucatan Resorts Mex and RHI Mex constitute, for each of them, a *prima facie* violation of Sections 5(a) and 5(c).

220. None of the Defendants in this action attempted to seek or comply with any exemption to the registration requirements of the federal securities laws in connection with the sale of the Universal Lease securities.

### COUNT I

#### **Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]**

**(Kelly, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston, and Century Estate US)**

221. Paragraphs 1 through 220 are incorporated herein by reference.

222. As is set forth more fully herein, Kelly, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and

Associates US, Higgs, Chambers, Boston and Century Estate US, in the offer or sale of securities, by the use of the means and instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly employed devices, schemes or artifices to defraud.

223. Kelly, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US knowingly or recklessly engaged in the fraudulent conduct described above.

224. By reason of the foregoing, Kelly, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

## COUNT II

### **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)]**

**(Kelly, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston, and Century Estate US)**

225. Paragraphs 1 through 220 are incorporated herein by reference.

226. Kelly, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers,

Boston and Century Estate US, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly have obtained money or property by means of untrue statements of material fact or 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; or engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon purchaser of securities.

227. By reason of the foregoing, Kelly, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US violated 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**

#### **Violations of 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]**

**(Kelly, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston, and Century Estate US)**

228. Paragraphs 1 through 220 are realleged and incorporated by reference.

229. Kelly, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails: (a)

used or employed a device, scheme, or artifice to defraud; (b) made untrue statements of material fact or omitted 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) and engaged in acts, practices, or courses of business which operated or would operate as a fraud and deceit upon the purchasers and prospective sellers of such securities.

230. Kelly, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US acted knowingly or recklessly when they engaged in the fraudulent conduct described above.

231. By reason of the foregoing, Kelly, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

#### **COUNT IV**

##### **Control Person Liability Pursuant to Section 20(a) of the Exchange Act**

**[15 U.S.C. § 77t(a)]**

**(Kelly)**

232. Paragraphs 1 through 220 are realleged and incorporated by reference.

233. At all relevant times, to the allegations in this Complaint, Kelly controlled Yucatan Resorts Pan, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan and Majesty Pan.

234. By reason of the foregoing, and pursuant to Section 20(a) of the Exchange Act

[15 U.S.C. § 78t(a)], Kelly is liable for Yucatan Resorts Pan, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan and Majesty Pan's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

**COUNT V**

**Aiding and Abetting Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder  
[15 U.S.C. § 78t(e)]**

**(MP Kelly, DL Kelly and Corwin)**

235. Paragraphs 1 through 220 are realleged and incorporated by reference.

236. As set forth in paragraphs 228 through 231 above, Kelly, Yucatan Resorts Pan, Corporativo Pan, RHI Pan, Panorama Pan, Majesty Pan and Galaxy Pan violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §§ 240.10b-5].

237. By their conduct described herein, MP Kelly, DL Kelly and Corwin each knowingly provided substantial assistance to Kelly Yucatan Resorts Pan, Corporativo Pan, RHI Pan, Panorama Pan, Majesty Pan and Galaxy Pan in their unlawful conduct alleged in paragraphs 228 through 231 above.

238. By reason of the foregoing, MP Kelly, DL Kelly and Corwin aided and abetted Kelly, Yucatan Resorts Pan, Corporativo Pan, RHI Pan, Panorama Pan, Majesty Pan and Galaxy Pan's violations of 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, thereby violating Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

## COUNT VI

### Violations of Section 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)]

**(Kelly, MP Kelly, Corwin, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Yucatan Resorts Mex, RHI Mex, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phelps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston, and Century Estate US)**

239. Paragraphs 1 through 220 are realleged and incorporated herein by reference.

240. Kelly, MP Kelly, Corwin, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Yucatan Resorts Mex, RHI Mex, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phelps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US directly and indirectly, and notwithstanding that there was no applicable exemption: (i) made use of means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement was in effect; (ii) for the purpose of sale or delivery after sale, carried and/or caused to be carried through the mails or in interstate commerce, by means or instruments of transportation, securities as to which no registration statement was in effect; and (iii) made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement had been filed.

241. No valid registration statement was filed with the Commission in connection with Kelly, MP Kelly, Corwin, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Yucatan Resorts Mex, RHI Mex, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phelps, Tencza, American Elder US, Lee, Lee and



Associates US, Higgs, Chambers, Boston and Century Estate US's sales of, and offers to sell, securities in the Issuers identified in this complaint.

242. By reason of the foregoing, Kelly, MP Kelly, Corwin, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Yucatan Resorts Mex, RHI Mex, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phelps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US violated Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)].

## COUNT VII

### **Violations of Section 15(a) of the Exchange Act [15 U.S.C. § 77o(a)]**

**(Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phelps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston, and Century Estate US)**

243. Paragraphs 1 through 220 are realleged and incorporated by reference.

244. Defendants Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phelps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US, by the conduct described above, directly or indirectly made use of the mails or the means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce, the purchase or sale of securities, without registering with the Commission as a broker or dealer.

245. By engaging in the conduct described in above, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phelps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston, and Century Estate

US, violated Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

**COUNT VIII**

**Violations of Rule 10b-10 of the Exchange Act  
[17 C.F.R. § 240.10b-10]**

**(Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston, and Century Estate US)**

246. Paragraphs 1 through 220 are realleged and incorporated by reference.

247. By their conduct set forth above, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US, effected for the account of a customer, or induced the purchase or sale by such customer, of a security without, at or before completion of such transaction, giving or sending to such customer written notification disclosing the source and amount of any other remuneration received or to be received by them in connection with the transaction.

248. By failing to disclose to their customers the commissions paid and to be paid to them and their down-line brokers, as alleged above, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phleps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US violated Rule 10b-10 of the Exchange Act [17 C.F.R. § 240.10b-10].

**COUNT IX**

**Aiding and Abetting Their Entities Violations of Rule 10b-10 of the Exchange Act  
[17 C.F.R. § 240.10b-10]**

**(Ruttenberg, Meyer, Riner, Tencza, Lee, Chambers and Boston)**

249. Paragraphs 1 through 220 are incorporated herein by reference.

250. As alleged above, Ruttenberg, Meyer, Riner, Tencza, Lee, Chambers and Boston carried out their Universal Lease operations through corporate entities (Ruttenberg through Ruttenberg and Associates US; Meyer through Meyer and Associates US; Riner through Southwest Income US; Tencza through American Elder US; and Chambers and Boston through Century Estate US).

251. Ruttenberg, Meyer, Riner, Tencza, Lee, Chambers and Boston, through their entities, effected for the account of a customer, or induced the purchase or sale by such customer, of a security without, at or before completion of such transaction, giving or sending to such customer written notification disclosing the source and amount of any other remuneration received or to be received by them in connection with the transaction.

252. By their conduct described above, Ruttenberg, Meyer, Riner, Tencza, Lee, Chambers and Boston knowingly provided substantial assistance to Ruttenberg and Associates US, Meyer and Associates, US, Southwest Income US, American Elder US, and Century Estate US in the violations alleged in paragraphs 242 through 244 above.

253. By their conduct alleged above, Ruttenberg, Meyer, Riner, Tencza, Lee, Chambers and Boston aided and abetted violations of Rule 10b-10 of the Exchange Act. [17 C.F.R. § 240.10b-10]

## **COUNT X**

### **Equitable Claim Against the Relief Defendants**

#### **(Avanti US and DMK US)**

254. Paragraphs 1 through 220 are incorporated herein by reference.

255. Avanti US and DMK US, directly or indirectly, received funds or benefited from the use of such funds, which are the proceeds, or are traceable to the proceeds, of the unlawful

activity alleged above.

256. Avanti US and DMK US have no legitimate claim to these funds that they received or from which they otherwise benefited, directly or indirectly.

257. Based upon the allegations set forth above, the Avanti US and DMK US have been unjustly enriched by their direct or indirect receipt of or benefit from investor funds.

258. The Commission is entitled to an order requiring Avanti US and DMK US to disgorge all of the proceeds of investor funds they received or from which they benefited, either directly or indirectly.

### **RELIEF REQUESTED**

WHEREFORE, the Commission requests that this Court enter a judgment:

A. Finding that the each of Defendants committed the violations alleged against them herein;

B. Permanently enjoining and restraining Defendants Kelly, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phelps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US from further violations of Section 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(1), (2) and (3)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5];

C. Permanently enjoining and restraining Defendants MP Kelly, DL Kelly and Corwin from aiding and abetting further violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5];

D. Permanently enjoining and restraining Defendants Kelly, MP Kelly, Corwin,

Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Yucatan Resorts Mex, RHI Mex, Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phelps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US from further violations Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)];

E. Permanently enjoining and restraining Defendants Ruttenberg, Ruttenberg and Associates US, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phelps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US, from further violations of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] and Rule 10b-10 under the Exchange Act [17 C.F.R. § 240.10b-10];

F. Permanently enjoining and restraining Defendants Ruttenberg, Meyer, Riner, Tencza, Lee, Chambers and Boston from aiding and abetting further violations of Rule 10b-10 under the Exchange Act [17 C.F.R. § 240.10b-10];

G. Finding that Kelly was a “control person” of Yucatan Resorts, Pan, Corporativo Mex, RHI Pan, Panorama Pan, Majesty Pan and Galaxy Pan for purposes of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)];

H. Ordering Defendants Kelly, MP Kelly, Corwin, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Yucatan Resorts Mex, RHI Mex, Ruttenberg, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phelps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US each to disgorge all ill-gotten gains and unjust enrichment realized by each of them from their unlawful conduct, gained directly or indirectly from the conduct complained of herein, together with prejudgment interest thereon; and specifically Ordering Defendants Kelly, Yucatan Resorts, Pan, Corporativo

Mex, RHI Pan, Panorama Pan, Majesty Pan and Galaxy Pan jointly and severally to pay as disgorgement the full amount of the all funds raised through the Universal Lease offering, less amounts previously returned to investors, plus prejudgment interest thereon;

I. Ordering Relief Defendants Avanti US and DMK US to disgorge all funds they received from the Defendants ill-gotten gains or by which they have been unjustly enriched, including without limitation all Universal Lease investor funds transferred to them or used for their benefit, plus prejudgment interest thereon;

J. Ordering Defendants Kelly, MP Kelly, Corwin, Corporativo Mex, RHI Pan, Panorama Pan, Galaxy Pan, Majesty Pan, Yucatan Resorts Mex, RHI Mex, Ruttenberg, Meyer, Meyer and Associates US, Riner, Southwest Income US, Phelps, Tencza, American Elder US, Lee, Lee and Associates US, Higgs, Chambers, Boston and Century Estate US each to pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

K. Appointing a Receiver over Kelly, MP Kelly, DL Kelly, Corwin, Yucatan Resorts, Pan, Corporativo Mex, RHI Pan, Panorama Pan, Majesty Pan, and Galaxy Pan, Yucatan Resorts Mex, RHI Mex, Avanti US and DMK US and other entities under these Defendants' ownership or control, for the purposes of identifying and marshaling their assets, and distributing to injured investors funds collected by the Receiver or paid into the registry of the Court.

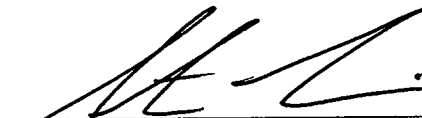
L. Establishing a Fair Fund, pursuant to Section 308 of the Sarbanes-Oxley Act of 2002, into which all disgorgement, prejudgment and post judgment interest, and civil penalties obtained through this action will be deposited and then distributed to injured Universal Lease investors pursuant to a plan of distribution to be submitted by the Plaintiff (and Receiver, if a Receiver is appointed) and approved by the Court;

M. Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered and to entertain any suitable application or motion for additional relief within the jurisdiction of the Court; and

N. Granting such other and additional relief as this Court deems just and proper.

Dated: September 5, 2007

Respectfully Submitted,



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Steven J. Levine (Illinois Bar. No. 6226921)  
John J. Sikora, Jr. (Illinois Bar No. 6217330)  
Kristopher S. Heston (Illinois Bar No. 6204816)

Attorneys for Plaintiff  
U.S. Securities and Exchange Commission  
175 West Jackson Boulevard, Suite 900  
Chicago, Illinois 60604  
Telephone: (312) 353-7390  
Facsimile: (312) 353-3381