

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Crim. No. 09-590 (GEB)  
: :  
: 18 U.S.C. §§ 981, 982,  
v. : 1343, 1344, 1957, and 2;  
: 28 U.S.C. § 2461  
: :  
DENIS KELLIHER : S U P E R S E D I N G  
: I N D I C T M E N T

The Grand Jury in and for the District of New Jersey,  
sitting at Trenton, charges:

COUNT ONE

(Bank Fraud - Floor Plan - KeyBank)

1. At times relevant to Count One of this Indictment:

(a) The defendant, DENIS KELLIHER, was a New Jersey resident and maintained homes in Toms River, Ocean County, New Jersey, and Monroe Township, Middlesex County, New Jersey. Defendant DENIS KELLIHER was an owner and operator of Cartec Motors, LLC, ("Cartec"), a New Jersey corporation with a place of business in Bordentown, Burlington County, New Jersey. Cartec was in the business of buying and selling new and used motor vehicles, including recreational vehicles.

(b) Floor plan financing was a type of asset-based financing commonly used in the automotive sales industry. In a common floor plan agreement, a lender extends a revolving line of credit to an auto dealer, which the auto dealer uses to purchase

vehicles for inventory. The lender then takes a security interest in the purchased vehicles. When the auto dealer sells a vehicle, the dealer is required to immediately repay the lender the amount loaned to purchase that particular vehicle. The floor plan agreement may also include provisions for payment of interest.

(c) KeyBank, N.A. ("KeyBank"), was a financial institution, as that term is defined in Title 18, United States Code, Section 20. On or about September 18, 2007, KeyBank entered into a Floor Plan Line of Credit and Security Agreement with Cartec (the "Floor Plan Agreement"). Defendant DENIS KELLIHER signed the Floor Plan Agreement and related documents as the Managing Member of Cartec. Pursuant to the Floor Plan Agreement, KeyBank extended a floor plan financing line of credit to Cartec in the amount of \$17.5 million. On or about December 4, 2007, KeyBank increased the floor plan line of credit available to Cartec to \$20.5 million. The Floor Plan Agreement specifically provided that, upon the sale of any financed unit, Cartec was to immediately pay KeyBank the full amount that KeyBank loaned in connection with that unit, plus interest.

(d) On or about January 22, 2008, Cartec established a checking account with KeyBank (the "Cartec KeyBank account"). Defendant DENIS KELLIHER was the only authorized signatory on and controlled the Cartec KeyBank account. In addition to

functioning as a business checking account, Key Bank credited Floor Plan Agreement advances to Cartec to the Cartec KeyBank account, and deducted Floor Plan Agreement payments by Cartec from the Cartec KeyBank account. As part of Cartec's banking relationship with KeyBank, KeyBank provided Cartec with an electronic terminal that allowed Cartec to scan items for deposit into, and to initiate wire transfers out of, the Cartec KeyBank account. KeyBank also made the proceeds of checks deposited into the Cartec KeyBank account available for immediate withdrawal, without waiting for the checks to clear.

2. Between in or about August, 2007, and in or about August, 2008, in Burlington County, in the District of New Jersey and elsewhere, the defendant,

DENIS KELLIHER,

knowingly and intentionally executed and attempted to execute a scheme and artifice to defraud KeyBank, and to obtain money, funds, credits, assets, securities, and other property owned by, and under the custody and control of KeyBank, by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice to defraud is set forth in sum below.

Object of the Scheme

3. It was the object of the scheme for defendant DENIS KELLIHER to obtain floor plan financing from KeyBank by means of

fraud, to make false representations to KeyBank to obtain advances pursuant to the Floor Plan Agreement, and to fraudulently sell financed vehicles "out of trust," or without paying off KeyBank upon the sale of the vehicle, all to obtain monies for personal enrichment and other business expenses.

The Scheme and Artifice to Defraud

4. It was part of the scheme and artifice that, on or about August 9, 2007, in connection with KeyBank's approval of Cartec's floor plan line of credit, defendant DENIS KELLIHER provided KeyBank with a false Personal Financial Statement. Specifically, this Personal Financial Statement, which purported to show defendant DENIS KELLIHER's assets and liabilities as of July 31, 2007, falsely listed the following assets:

(a) \$1,335,000 in equity in Future Real Estate Group, LLC ("Future"). Future owned the real property where Cartec was located in Bordentown, New Jersey. However, as of July 31, 2007, defendant DENIS KELLIHER had no ownership interest in Future. Instead, on or about January 1, 2006, defendant DENIS KELLIHER had resigned from Future, and transferred all of his interest in Future to another individual; and

(b) an unencumbered 2004 Lamborghini Murcielago (the "Lamborghini"), with an estimated value of \$225,000. Defendant DENIS KELLIHER, however, had no ownership interest in the Lamborghini. Instead, a Cartec customer, R.R., had provided the

Lamborghini to defendant DENIS KELLIHER to sell on R.R.'s behalf. R.R., however, retained ownership of the Lamborghini.

5. It was further part of the scheme and artifice that, on or about December 11, 2007, in connection with KeyBank's increase of the floor plan line of credit available to Cartec, defendant DENIS KELLIHER provided KeyBank with a false Continuing Guaranty, which defendant DENIS KELLIHER signed as a Member of Future, in which Future purported to guarantee the entire amount of floor plan financing that KeyBank extended to Cartec. As set forth in paragraph 4(b) above, defendant DENIS KELLIHER was not a member of, and had no ownership interest in, Future as of December 11, 2007.

6. It was further part of the scheme and artifice that defendant DENIS KELLIHER fraudulently obtained advances from KeyBank pursuant to the Floor Plan Agreement by falsely representing that Cartec owned vehicles that it did not own, and falsely stating that Cartec had purchased or intended to purchase vehicles that Cartec never purchased or intended to purchase.

7. It was part of the scheme or artifice that defendant DENIS KELLIHER sold vehicles that Cartec financed through the Floor Plan Agreement out of trust, and used the proceeds of these sales for personal and business expenses. In doing so, defendant DENIS KELLIHER made false statements to KeyBank regarding the ownership and location of these vehicles, and provided false

documents, including bogus sales agreements and forged checks, to KeyBank representatives.

8. It was part of the scheme that defendant DENIS KELLIHER's fraudulent conduct in financing vehicles that Cartec never owned, and selling vehicles out of trust, resulted in a loss to KeyBank of more than \$6.4 million in connection with loans for which KeyBank now holds no collateral.

All in violation of Title 18, United States Code, Section 1344 and Section 2.

COUNT TWO

(Bank Fraud - Check Kiting - KeyBank)

1. Paragraph 1 of Count One of this Superseding Indictment is re-alleged and incorporated by reference.

2. At all times relevant to Count Two of this Superseding Indictment, Commerce Bank, N.A., ("Commerce"), now known as T.D. Bank, N.A.; 1<sup>st</sup> Constitution Bank ("1<sup>st</sup> Constitution"); and Roma Bank ("Roma") were all financial institutions, as that term is defined in Title 18, United States Code, Section 20. Cartec maintained multiple checking accounts with Commerce. Defendant DENIS KELLIHER was an authorized signatory on several of these accounts, and controlled all of the Cartec checking accounts at Commerce. Cartec also maintained multiple checking accounts at 1<sup>st</sup> Constitution and Roma. Defendant DENIS KELLIHER was an authorized signatory on and controlled all of the Cartec checking accounts at 1<sup>st</sup> Constitution and Roma. In addition, defendant DENIS KELLIHER maintained a personal checking account at 1<sup>st</sup> Constitution.

3. Between in or about March, 2008, and in or about July, 2008, in Burlington, Ocean, and Middlesex Counties, in the District of New Jersey and elsewhere, the defendant,

DENIS KELLIHER,

knowingly and intentionally executed and attempted to execute a scheme and artifice to defraud KeyBank, and to obtain money,

funds, credits, assets, securities, and other property owned by, and under the custody and control of KeyBank, by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice to defraud is set forth in sum below.

#### Object of the Scheme

4. It was the object of the scheme for defendant DENIS KELLIHER to create artificial balances in the Cartec KeyBank account, and to divert those balances for his personal benefit and the benefit of Cartec, by continuously causing transfers between the Cartec KeyBank account and other accounts he controlled, including deposits of checks that defendant DENIS KELLIHER knew were drawn on accounts with insufficient funds, a practice commonly known as "check kiting."

#### The Scheme and Artifice to Defraud

5. It was part of the scheme and artifice that beginning at least as early as in or about March 2008, defendant DENIS KELLIHER caused checks to be written against accounts that he controlled, knowing that the accounts against which the checks were written did not contain sufficient funds to cover those checks (the "Insufficient Funds Checks").

6. It was further part of the scheme and artifice that defendant DENIS KELLIHER then deposited the Insufficient Funds Checks into the Cartec KeyBank account, in order to artificially

inflate the balance in the Cartec KeyBank account.

7. It was further part of the scheme and artifice that defendant DENIS KELLIHER took advantage of KeyBank's policy of making funds deposited into the Cartec KeyBank account immediately available for withdrawal by using proceeds of Insufficient Funds Checks to pay personal and business expenses, and also to transfer monies to other accounts that he controlled in order to cover other outstanding Insufficient Funds Checks written against those accounts, all before the Insufficient Funds Checks were returned unpaid by the banks against which they were drawn.

8. It was further part of the scheme and artifice that defendant DENIS KELLIHER caused the deposit of in excess of \$100 million in Insufficient Funds Checks, written against accounts that he controlled, into the Cartec KeyBank account, including the following:

(a) Approximately 7 checks, totaling approximately \$643,977.70, written against Cartec checking accounts at Commerce;

(b) Approximately 10 checks, totaling approximately \$23,008,514.29, written against Cartec checking accounts at Roma;

(c) Approximately 40 checks, totaling approximately \$9,457,596.90, written against defendant DENIS KELLIHER's personal checking account at 1<sup>st</sup> Constitution; and

(d) Approximately 69 checks, totaling approximately \$84,605,077.81, written against Cartec's checking account at 1<sup>st</sup> Constitution.

9. It was further part of the scheme and artifice that, after defendant DENIS KELLIHER wrote Insufficient Funds Checks and deposited them into the Cartec KeyBank account, he attempted to cover those Insufficient Funds Checks by transferring funds into the accounts against which the Insufficient Funds Checks were drawn, from other accounts that he controlled.

10. It was further part of the scheme and artifice that defendant DENIS KELLIHER continued to take advantage of KeyBank's immediate funds availability policy concerning deposit items, by immediately wire transferring the proceeds of Insufficient Funds Checks that he deposited into the Cartec KeyBank account back to the accounts against which the Insufficient Funds Checks were written in an effort to cover the Insufficient Funds Checks with the proceeds of those checks themselves.

11. It was further part of the scheme and artifice that when defendant DENIS KELLIHER initiated these wire transfers with KeyBank, he provided false descriptions for the purpose of the transfers in order to create the appearance that the wire transfers had a legitimate business purpose.

12. It was further part of the scheme and artifice that, as of July 14, 2008, the date that the last Insufficient Funds Check

was returned against the Cartec KeyBank account, the return of deposited Insufficient Funds Checks and resulting charges back against the account resulted in the account being overdrawn by more than \$7.4 million.

All in violation of Title 18, United States Code, Section 1344 and Section 2.

COUNT THREE

(Bank Fraud - Check Kiting - Commerce)

1. Paragraph 1 of Count One, and paragraphs 2 and 5 through 12 of Count Two, of this Superseding Indictment are re-alleged and incorporated herein.

2. At all times relevant to Count Three of this Indictment, Cartec maintained a checking account at Commerce with an account number ending in 5366 (the "Cartec Commerce account"). Defendant DENIS KELLIHER was an authorized signatory on and controlled the Cartec Commerce account. It was the policy of Commerce to make the proceeds of checks deposited into accounts such as the Cartec Commerce account available for withdrawal on the next business day, without waiting for checks to clear.

3. In or about July, 2008, in Burlington, Ocean, and Middlesex Counties, in the District of New Jersey and elsewhere, the defendant,

DENIS KELLIHER,

knowingly and intentionally executed and attempted to execute a scheme and artifice to defraud Commerce Bank, and to obtain money, funds, credits, assets, securities, and other property owned by, and under the custody and control of Commerce Bank, by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice to defraud is set forth in sum in paragraphs 5 through 12 of Count

Two of this Superseding Indictment and below.

Object of the Scheme

4. It was the object of the scheme for defendant DENIS KELLIHER to create artificial balances in the Cartec Commerce account, and to divert those balances for his personal benefit and the benefit of Cartec, by depositing Insufficient Funds Checks into the Cartec Commerce account, and then transferring and attempting to transfer those artificially inflated balances to other accounts that he controlled.

The Scheme and Artifice to Defraud

5. It was part of the scheme and artifice that, between on or about July 9, 2008, and on or about July 11, 2008, defendant DENIS KELLIHER caused the deposit of more than \$6 million in Insufficient Funds Checks, drawn on Cartec accounts at KeyBank and 1<sup>st</sup> Constitution, into the Cartec Commerce account. Prior to the deposit of these checks, the Cartec Commerce account had a balance of approximately \$683.87.

6. It was further part of the scheme and artifice that, on or about July 10, 2008, defendant DENIS KELLIHER, taking advantage of Commerce's next-day funds availability policy, attempted to cause the wire transfer of \$1.6 million from the Cartec Commerce account.

7. It was further part of the scheme and artifice that, on or about July 11, 2008, defendant DENIS KELLIHER caused the wire

transfer of \$205,000 from the Cartec Commerce account to a Cartec account at PNC Bank.

8. It was further part of the scheme and artifice that, when the Insufficient Funds Checks referred to in paragraph 5 above were all returned as unpaid, the Cartec Commerce account was overdrawn by more than \$200,000.

All in violation of Title 18, United States Code, Section 1344 and Section 2.

COUNTS FOUR AND FIVE

(Wire Fraud - VICTIM-1)

1. Paragraphs 1 and 4(b) of Count One, and paragraphs 2 and 5 through 12 of Count Two, of this Superseding Indictment are re-alleged and incorporated herein.

2. VICTIM-1 was an individual residing in Monmouth County, New Jersey, who was personally acquainted with defendant DENIS KELLIHER and was a Cartec customer. Between in or around July, 2007, and in or around May, 2008, at defendant DENIS KELLIHER's request, VICTIM-1 loaned defendant KELLIHER approximately \$1.85 million pursuant to a series of loan agreements.

3. Between in or about July, 2008, and in or about May, 2009, in Ocean, Middlesex, and Monmouth Counties, in the District of New Jersey and elsewhere, the defendant,

DENIS KELLIHER,

knowingly and intentionally devised a scheme and artifice to defraud VICTIM-1 and for obtaining money and property, namely, approximately \$500,000, from VICTIM-1 by means of materially false and fraudulent pretenses, representations, and promises, as set forth in sum below.

Object of the Scheme

4. It was the object of the scheme for defendant DENIS KELLIHER to obtain a \$500,000 loan from VICTIM-1 by means of fraud, to divert the loan proceeds for personal expenses and

other obligations, and to then make false statements and provide bogus checks and wire transfer receipts to VICTIM-1 to create the false impression that defendant DENIS KELLIHER would repay the loan.

The Scheme and Artifice to Defraud

5. It was part of the scheme and artifice that, in or about July, 2008, defendant DENIS KELLIHER approached VICTIM-1 and asked VICTIM-1 to loan him an additional \$500,000. VICTIM-1 agreed and, on or about July 18, 2008, defendant DENIS KELLIHER and VICTIM-1 entered into a Loan Agreement (the "Loan Agreement"). The Loan Agreement states, in sum and in substance, that defendant DENIS KELLIHER seeks a short term loan in order to obtain resources to purchase vehicles for sale.

6. It was part of the scheme and artifice that defendant DENIS KELLIHER pledged certain collateral as security for the loan set forth in the Loan Agreement, including the Lamborghini referenced in paragraph 4(b) of Count One of this Superseding Indictment. Defendant DENIS KELLIHER also provided the Lamborghini to VICTIM-1 for VICTIM-1's use. As set forth in paragraph 4(b) of Count One of this Superseding Indictment, defendant DENIS KELLIHER had no ownership interest in the Lamborghini. Instead, a Cartec customer, R.R., had provided the Lamborghini to defendant DENIS KELLIHER to sell on R.R.'s behalf.

7. It was part of the scheme and artifice that, on or

about July 18, 2008, VICTIM-1 wire transferred \$500,000 from two separate accounts that VICTIM-1 controlled to a Cartec account at 1<sup>st</sup> Constitution.

8. It was part of the scheme and artifice that, instead of using the loan proceeds to purchase vehicles for sale, as provided for in the Loan Agreement, defendant DENIS KELLIHER used the loan proceeds for other purposes, including making approximately \$12,000 in payments on personal loans, and transferring \$483,000 to the KeyBank Cartec account, to pay down the \$7.4 million overdraft that defendant DENIS KELLIHER created in that account through his check kiting activity described in paragraphs 5 through 12 of Count Two of this Superseding Indictment.

9. It was part of the scheme and artifice that, between October, 2008, and February, 2009, defendant DENIS KELLIHER provided VICTIM-1 with three checks toward repayment of the loan. None of the accounts against which these checks were drawn contained sufficient funds to cover the checks.

10. It was part of the scheme and artifice that, on or about March 24, 2009, defendant DENIS KELLIHER and VICTIM-1 entered into an agreement whereby VICTIM-1 would release the Lamborghini as collateral for the loan and return the Lamborghini to defendant DENIS KELLIHER. In exchange, defendant DENIS KELLIHER promised to give VICTIM-1 \$100,000 plus a 2008 Mercedes

Benz CLS550 (the "Mercedes"), with an agreed-upon value of \$55,000. The parties further agreed that the \$100,000 and \$55,000 value of the Mercedes would go toward paying down defendant DENIS KELLIHER's outstanding loan balance to VICTIM-1.

11. It was part of the scheme and artifice that, in or around March or April, 2009, the Mercedes was delivered to VICTIM-1, and VICTIM-1 returned the Lamborghini to defendant DENIS KELLIHER. In truth and in fact, however, the Mercedes was delivered to defendant DENIS KELLIHER by an individual who had agreed to purchase the Lamborghini from R.R. This individual delivered the Mercedes to defendant DENIS KELLIHER with the understanding that defendant DENIS KELLIHER would deliver the Mercedes to R.R., as part of the individual's payment for the Lamborghini.

12. It was part of the scheme and artifice that defendant DENIS KELLIHER never paid VICTIM-1 the \$100,000 that defendant DENIS KELLIHER promised to pay in exchange for VICTIM-1 returning the Lamborghini and releasing it as collateral. Instead, in or around April and May, 2009, defendant DENIS KELLIHER provided VICTIM-1 with a series of forged, altered, and otherwise bogus checks and wire transfer requests that purported to be in payment toward this \$100,000. On or about May 11, 2009, VICTIM-1 attempted to deposit one of these checks, a check in the amount of \$113,000 purportedly drawn on the account of "J.P./P.P.

L.L.C.," but the check was returned unpaid because no such account existed at the drawee bank.

13. On or about July 18, 2008, in Mercer and Monmouth Counties, in the District of New Jersey, and elsewhere, for the purpose of executing and attempting to execute this scheme and artifice to defraud, the defendant,

DENIS KELLIHER,

knowingly caused to be transmitted, by means of wire communication in interstate commerce, certain writings, signs, and signals, namely the following:

| <u>COUNT</u> | <u>INTERSTATE WIRE</u>   |
|--------------|--|
| 4            | Wire transfer of \$200,000 from VICTIM-1 to Cartec account at 1 <sup>st</sup> Constitution |
| 5            | Wire transfer of \$300,000 from VICTIM-1 to Cartec account at 1 <sup>st</sup> Constitution |

All in violation of Title 18, United States Code, Section 1343 and Section 2.

COUNTS SIX THROUGH EIGHT

(Money Laundering)

1. Paragraphs 1 and 4 of Count One, paragraphs 2 and 5 through 12 of Count Two, and paragraphs 2 through 13 of Counts Four and Five of this Superseding Indictment are re-alleged and incorporated herein.

2. On or about the dates set forth below, in Middlesex County, in the District of New Jersey and elsewhere, the defendant,

DENIS KELLIHER,

knowingly engaged in and attempted to engage in the following monetary transactions through financial institutions in criminally derived property of a value greater than \$10,000, such property having been derived from specified unlawful activity, namely, wire fraud as set forth in Counts Four and Five of this Superseding Indictment, contrary to Title 18, United States Code, Section 1343, and such transactions affecting interstate and foreign commerce:

| <u>COUNT</u> | <u>DATE</u>   | <u>TRANSACTION</u>  |
|--------------|---------------|---|
| 6            | July 18, 2008 | Transfer of \$12,500 from Cartec 1 <sup>st</sup> Constitution account to defendant DENIS KELLIHER's 1 <sup>st</sup> Constitution account. |
| 7            | July 18, 2008 | Wire transfer of \$183,000 from Cartec 1 <sup>st</sup> Constitution account to Cartec KeyBank account.                                    |

8

July 21, 2008

Wire transfer of \$300,000  
from Cartec 1<sup>st</sup>  
Constitution account to  
Cartec KeyBank account.

In violation of Title 18, United States Code, Section  
1957(a) and Section 2.

COUNT NINE

(Wire Fraud - VICTIM-2)

1. Paragraphs 1(a) and 4(b) of Count One, paragraphs 2 and 5 through 12 of Count Two, and paragraphs 5 through 12 of Counts Four and Five of this Superseding Indictment are re-alleged and incorporated herein.

2. Between in or about February, 2009, and in or about May, 2009, in Ocean and Middlesex Counties, in the District of New Jersey, and elsewhere, the defendant,

DENIS KELLIHER,

knowingly and intentionally devised a scheme and artifice to defraud VICTIM-2 and for obtaining money and property, namely, approximately \$410,000, from VICTIM-2 by means of materially false and fraudulent pretenses, representations, and promises, as set forth in sum below.

Object of the Scheme

3. It was the object of the scheme and artifice for defendant DENIS KELLIHER to obtain a \$410,000 loan from VICTIM-2 by means of fraud, to divert the loan proceeds to pay personal and unrelated business expenses, and to then make false statements and provide bogus checks to VICTIM-2 to create the false impression that defendant DENNIS KELLIHER would repay the loan.

The Scheme and Artifice to Defraud

4. It was part of the scheme and artifice that, in or about February, 2009, defendant DENIS KELLIHER approached VICTIM-2, a prior customer of Cartec, and asked VICTIM-2 for a loan in the amount of approximately \$410,000.

5. It was further part of the scheme and artifice that defendant DENIS KELLIHER made materially false representations to VICTIM-2 to induce VICTIM-2 to make the \$410,000 loan, including but not limited to the following:

(a) Defendant DENIS KELLIHER provided VICTIM-2 with a materially false personal financial statement for defendant DENIS KELLIHER as of December 31, 2008, which inflated defendant DENIS KELLIHER's net worth and failed to disclose that, in September 2008, KeyBank obtained a judgment for in excess of \$27 million against Cartec and defendant DENIS KELLIHER individually;

(b) Defendant DENIS KELLIHER falsely represented to VICTIM-2 that defendant DENIS KELLIHER intended to use the loan proceeds to purchase recreational vehicles to be re-sold for a profit;

(c) Defendant DENIS KELLIHER falsely represented to VICTIM-2 that defendant DENIS KELLIHER intended to invest \$410,000 of his own money into the purchase of the recreational vehicles; and

(d) Defendant DENIS KELLIHER pledged collateral for

the loan in which he had no ownership interest, including a 2009 Mercedes Benz S63 that defendant DENIS KELLIHER leased.

6. It was further part of the scheme and artifice that, on or about February 20, 2009, defendant DENIS KELLIHER executed, on behalf of himself and himself doing business as "Horizon Solutions," a Promissory Note and Loan Agreement, pursuant to which he agreed to repay a business entity controlled by VICTIM-2 the principal amount of \$410,000, plus \$75,000 or 50% of defendant DENIS KELLIHER's profits on the sale of motor coaches and vehicles, whichever was greater, by March 18, 2009.

7. It was further part of the scheme and artifice that, after VICTIM-2 advanced the \$410,000 in loan proceeds, defendant DENIS KELLIHER did not use the funds to purchase recreational vehicles, but instead diverted the proceeds to pay personal and unrelated business expenses, including obligations owed to others, including VICTIM-1 and R.R.

8. It was further part of the scheme and artifice that, after the maturity date of the loan passed, defendant DENIS KELLIHER falsely told VICTIM-2 that he had been unable to repay the loan because of delays relating to business dealings with a party in Canada.

9. It was further part of the scheme and artifice that, on or about April 13, 2009, defendant DENIS KELLIHER provided VICTIM-2 with a check in the amount of \$493,000 in repayment of

the loan that was drawn from an account that did not have sufficient funds to cover the check.

10. It was further part of the scheme and artifice that, on or about May 9, 2009, defendant DENIS KELLIHER provided VICTIM-2 with a check in the amount of \$295,000 in partial repayment of the loan. This check was written against an account in the name of "Horizon Solutions" that had previously been closed.

11. On or about February 24, 2009, in Middlesex County, in the District of New Jersey, and elsewhere, for the purpose of executing and attempting to execute this scheme and artifice to defraud, the defendant,

DENIS KELLIHER,

knowingly caused to be transmitted, by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, a wire transfer of \$410,000 from a bank account in the name of a business entity controlled by VICTIM-2, to an account at Metuchen Savings Bank in New Jersey that defendant DENIS KELLIHER controlled.

All in violation of Title 18, United States Code, Section 1343 and Section 2.

COUNTS TEN THROUGH SEVENTEEN

(Money Laundering)

1. Paragraphs 1(a) and 4(b) of Count One, paragraphs 2 and 5 through 12 of Count Two, paragraphs 5 through 12 of Counts Four and Five, and paragraphs 3 through 10 of Count Three of this Superseding Indictment are re-alleged and incorporated herein.

2. On or about the dates set forth below, in Middlesex County, in the District of New Jersey, and elsewhere, the defendant,

DENIS KELLIHER,

knowingly engaged in and attempted to engage in the following monetary transactions through financial institutions in criminally derived property of a value greater than \$10,000, such property having been derived from specified unlawful activity, namely, wire fraud as set forth in Count Nine of this Superseding Indictment contrary to Title 18, United States Code, Section 1343, and such transactions affecting interstate and foreign commerce:

| <u>COUNT</u> | <u>DATE</u>       | <u>TRANSACTION</u>  |
|--------------|-------------------|---|
| 10           | February 24, 2009 | Wire transfer of \$135,000 from Metuchen Savings Bank to a bank account in the name of S.H. |
| 11           | February 24, 2009 | Purchase of \$85,000 bank check from Metuchen Savings Bank payable to VICTIM-1              |

|    |                   |   |
|----|-------------------|---|
| 12 | February 25, 2009 | Purchase of \$17,012.30 bank check from Metuchen Savings Bank payable to Bank of America        |
| 13 | February 25, 2009 | Purchase of \$14,229.93 bank check from Metuchen Savings Bank payable to CountryWide            |
| 14 | February 25, 2009 | Purchase of \$23,729.08 bank check from Metuchen Savings Bank payable to M & T Bank             |
| 15 | February 25, 2009 | Purchase of \$15,244.68 bank check from Metuchen Savings Bank payable to Investors Savings Bank |
| 16 | February 25, 2009 | Purchase of \$20,642.74 bank check from Metuchen Savings Bank payable to Investors Savings Bank |
| 17 | February 25, 2009 | Purchase of \$20,100 bank check from Metuchen Savings Bank payable to R.R.                      |

In violation of Title 18, United States Code, Section 1957(a) and Section 2.

FORFEITURE ALLEGATION

The Grand Jury realleges and incorporates by reference the allegations contained in this Superseding Indictment for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Sections 981 and 982, and Title 28, United States Code, Section 2461.

As the result of committing the bank fraud and wire fraud offenses, in violation of 18 U.S.C. §§ 1343 and 1344, alleged in Counts One through Five and Nine of this Superseding Indictment, the defendant,

DENIS KELLIHER

shall forfeit to the United States a sum of money equal to \$14,967,820 in United States currency, consisting of:

(1) \$14,057,820 in United States currency constituting, or derived from, proceeds that defendant DENIS KELLIHER obtained, directly or indirectly, as the result of the bank fraud offenses, in violation of 18 U.S.C. § 1344, alleged in Counts One through Three of the Superseding Indictment, and subject to forfeiture pursuant to 18 U.S.C. § 982(a)(2)(A); and

(2) \$910,000 in United States currency that constitutes or is derived from proceeds traceable to the wire fraud offenses, in violation of 18 U.S.C. § 1343, alleged in Counts Four, Five, and Nine of the Superseding Indictment, and subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461.

If any of the above-described forfeitable property, as a result of any act or omission of defendant DENIS KELLIHER:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of defendant DENIS KELLIHER up to the value of the above forfeitable property.

In violation of Title 18, United States Code, Sections 981, 982, 1343, and 1344, and Title 28, United States Code, Section 2461.

A TRUE BILL

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FOREPERSON

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PAUL J. FISHMAN  
United States Attorney