

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA §

v. §

Cr. No. H-09-342

ROBERT ALLEN STANFORD §

a/k/a/ Sir Allen Stanford §

a/k/a Allen Stanford, §

LAURA PENDERGEST-HOLT §

a/k/a/ Laura Pendergest §

a/k/a Laura Holt, §

GILBERT LOPEZ, §

MARK KUHRT, §

and §

LEROY KING, §

Defendants. §

Unopposed Motion for an Order Authorizing Alternative Victim Notification

The United States files this unopposed motion requesting an order authorizing the same victim notification procedures that the Court already approved in the related case of *United States v. James Davis*, No. H-09-335. The existence of tens of thousands of victims in this case, the fact that identification and contact information for all victims is not yet known, and the dispersed geographic location of the victims renders individual victim notice impractical. Consistent with this Court’s order in the related *Davis* case and orders courts have issued in other large-scale fraud cases involving thousands of victims, the United States requests Court authorization to

comply with the Justice For All Act using the alternative procedure of publishing notice of court proceedings on the websites of both the Department of Justice and the Stanford Financial Group Receivership and allowing victims to submit their views via electronic or regular mail.

Background

On February 17, 2009, the Securities and Exchange Commission filed an emergency civil injunctive action in the Northern District of Texas against Stanford International Bank, Ltd. (“SIBL”), Robert Allen Stanford, James M. Davis, and Laura Pendergest-Holt, alleging that the defendants were committing an ongoing multibillion dollar fraud. The district court entered a temporary restraining order, an asset freeze, and appointed Ralph S. Janvey, of Krage & Janvey, as Receiver for all the defendants. Since the February 17, 2009 Order, Mr. Janvey has been responsible for protecting and preserving SIBL investor funds and Stanford-affiliated company assets. The Receiver has been operating the website <http://www.stanfordfinancialreceivership.com/> to provide information to victims.

On June 18, 2009, a federal grand jury returned a 21-count Indictment against Stanford, Pendergest-Holt, Mark Kuhrt, Gilbert Lopez, and Leroy King, charging each with one count of conspiracy to commit mail, wire and securities fraud; seven counts of wire fraud; ten counts of mail fraud; and one count of conspiracy to commit

money laundering. In addition, Stanford, Pendergest-Holt and King were charged with one count of conspiracy to obstruct an SEC investigation and one count of obstruction of an SEC investigation. The indictment also seeks forfeiture from all of the defendants.

On June 19, 2009, the United States filed a three-count information against Davis, the former chief financial officer for SIBL and its parent company Stanford Financial Group charging him with conspiracy to commit mail fraud, wire and securities fraud; mail fraud ; and conspiracy to obstruct a SEC investigation stemming from the same \$7 billion fraud scheme alleged in this case. *See United States v. Davis*, H-09-335. On July 14, 2009, this Court issued an order in *Davis* authorizing the United States to provide notice to victims in that case—the same CD investors who would qualify as victims in this case—via a public website because individual notice to the tens of thousands of victims was impracticable. *See Davis*, Docket Entry # 12. That public notice via website was used to solicit victim input concerning the plea Davis entered on August 27, 2009. *See Davis*, Docket Entry # 30.

Legal Analysis

The Justice For All Act provides certain rights in federal criminal proceedings, including (i) the right to notice of any public court proceedings involving the crime; (ii) the right to be reasonably heard at any public proceedings involving the release,

plea, or sentencing of a defendant; and (iii) the reasonable right to confer with the attorney for the Government in the case. See 18 U.S.C. § 3771(a). A "crime victim" is defined as "a person directly or proximately harmed as a result of the commission of a Federal offense." *Id.* § 3771(e). The district court has a duty to ensure that the crime victim is afforded the rights guaranteed by the Act. *Id.* § 3771(b).

In cases involving "multiple victims," the court has discretion to adopt procedures to streamline the Act's application. Specifically, Section 3771(d)(2) of the Act provides as follows:

In a case where the court finds that the number of crime victims makes it impractical to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong proceedings.

Given that there are tens of thousands of potential victims in this case, and that the Receiver appointed by the district court in Dallas is in the best position to ultimately identify CD investors affected by the alleged scheme, this case fits within section 3771(d)(2)'s "multiple crime victims" provision because it is impractical to give individualized notice to each potential victim.

In addition to this Court's order in *Davis*, courts have authorized alternative compliance with the Justice For All Act in other fraud cases in which the large

number of potential victims made direct notification by mail impractical or unduly burdensome. *See United States v. Bernard L. Madoff*, Mag. No. 08-2375 (DC) (S.D.N.Y. 2009) (permitting the government to satisfy the Justice For All Act by posting notices about scheduled public proceedings on the United States Attorney's Office website, including notice prior to the plea proceeding scheduled in the case, and by securing an agreement to have the court-appointed trustee to include on its website a link to the United States Attorney's Office website) (attached as Exhibit A); *United States v. Skilling and Lay*, Cr. No. H-04-25 (S.D. Tex. 2006) (permitting the government to satisfy the victim's notice requirement by posting notice on the Department of Justice's website and by providing notice to counsel in the shareholders' civil class action lawsuit) (attached as Exhibit B); *United States v. Fastow*, Cr. No. H-02-0655 (S.D. Tex. 2006) (directing government to publish notice about sentencing in one national newspaper and one local newspaper on two occasions, and by posting the information on the Department of Justice website) (attached as Exhibit C); *United States v. Howard and Krautz*, Cr. No. H-03-93-04 (S.D. Tex. 2006) (authorizing government to comply with the Act by posting notice on the Department of Justice's website and by giving notice to lead counsel in parallel class action lawsuit) (attached as Exhibit D). Indeed, given the large number of victims in this case and their global reach, this case presents a paradigmatic example

of a scenario in which individual notice is impractical under Section 3771 (d)(2), and alternative notice as described below would be appropriate.¹

Proposed Alternative Compliance

The United States proposes that it comply with the Justice For All Act by publishing information about this case on the Department of Justice website, located at <http://www.usdoj.gov/criminal/vns/>. Since July 14, 2009, this victim notification website, which is used in a number other cases, has provided a homepage specifically for this case with information about court proceedings as well as links to key filings and court rulings. The website also provides victims with an email address and phone number to which they can submit comments expressing their views any developments in this case. Such website notification was the mechanism for notice in the *Madoff* and *Lay/Skilling* cases. See Exhibits A, B.

¹ In *In re Dean*, 527 F.3d 391 (5th Cir. 2008), the Fifth Circuit found that the government's motion requesting authorization to provide notice to victims through non-traditional methods pursuant to Section 3771(d)(2) should not have been granted. In *Dean*, an explosion of a refinery killed fifteen and injured more than 170. *Id.* at 392. The government argued that it would be impracticable and prejudicial to be required to consult with the more than 170 victims during plea negotiations. *Id.* As there were fewer than 200 victims, and because the government had not established "that notification itself would have been too cumbersome, time-consuming, or expensive or that not all victims could be identified and located," the court held that an order pursuant to Section 3771(d)(2) was inappropriate. *Id.* at 395. The Stanford case is distinguishable from the British Petroleum explosion at issue in *Dean* because the number of victims here is far greater, the victims are not yet fully identified, and the victims are dispersed around the globe as apposed to *Dean* in which the 170 victims were concentrated in the Southern District of Texas.

In addition, the United States requests that the Court order the Receiver to provide a link on its website (<http://www.stanfordfinancialreceivership.com/>) to the Department of Justice victim website for this criminal case. The Receiver's website, which has been operating and providing information to SIBL victims for more than a year, provides comprehensive information related to the civil case filed by the SEC. Victims accessing the Receiver's website thus have notice of the criminal proceedings and the ability to comment on future developments in the case. A similar link on the Receiver's website was part of the notification procedures in the *Madoff* case, *see* Exhibit A, and in *Enron* cases notice was provided to lead counsel in the civil securities actions, *see* Exhibits B, D.

Conclusion

For the reasons discussed above, individualized notice is impractical in this case and the proposed procedures are reasonable to give effect to the rights of potential victims in this case. The United States therefore respectfully requests that the Court grant this motion and enter the proposed Order. Count for all four defendants stated that they are unopposed to this motion.

Respectfully submitted,

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