

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**TERRY WAYNE KELLY AND  
KELLY MANAGEMENT, LLC,**

**Defendants,**

**Case No.  
3:19-cv-00585-DPJ-FKB**

**SEC’S MOTION FOR ENTRY OF PROPOSED JUDGMENTS**

Plaintiff Securities and Exchange Commission (“SEC”) respectfully files this Motion for Entry of Proposed Judgments Against Defendants Terry Wayne Kelly (“Kelly”) and Kelly Management, LLC (“Kelly Management”).

This action is related to SEC v. Arthur Lamar Adams and Madison Timber Properties, LLC, Case No. 18-cv-252-CWR-FKB (S.D. Miss.). As set forth in the Complaint, the SEC alleges that Kelly and Kelly Management, LLC sold fraudulent promissory notes offered by Adams and Madison Timber. The SEC and Defendants have agreed to settle pursuant to the terms provided in the Proposed Judgments. In

support of this Motion, the SEC has filed the accompanying Memorandum as well as the Consents of Defendants Kelly and Kelly Management, which memorialize their agreement to the terms of the settlement.<sup>1</sup>

Dated this 21st day of August, 2019.

Respectfully submitted,

/s/W. Shawn Murnahan

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<sup>1</sup> The Proposed Judgments have been provided to chambers by email in accordance with Section 5.B of the Court's Administrative Procedures for Electronic Case Filing.

OF COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I filed the foregoing SEC's Motion for Approval of Settlement and Entry of Proposed Judgment via the Court's ECF system, which will provide copies to all counsel of record. I also certify that I have separately emailed a copy of the foregoing to:

Joseph "Whit" Cooper, Esq.  
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P.O. Box 98  
Ashland, MS 38603  
wcooper@fareselaw.com  
*Counsel for Defendants Terry Wayne Kelly and Kelly Management, LLC*

Dated this 21st day of August, 2019.

Respectfully submitted,

/s/ W. Shawn Murnahan  
W. Shawn Murnahan

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TERRY WAYNE KELLY and  
KELLY MANAGEMENT, LLC,

Defendants.

Case No.

**CONSENT OF DEFENDANT TERRY WAYNE KELLY**

1. Defendant Terry Wayne Kelly ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as provided herein in paragraph 12 and except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the Judgment in the form attached hereto (the "Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violation of Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b) and 78o(a)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5]; and
- (b) permanently restrains and enjoins Defendant from violation of Sections 5 and 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77e

and 77q(a)].

3. Defendant agrees that the Court shall order disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] Defendant further agrees that the amounts of the disgorgement and civil penalty shall be determined by the Court upon motion of the Commission, and that prejudgment interest shall be calculated from October 11, 2016, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Defendant further agrees that in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of this Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

4. Defendant agrees that, if the Court orders any civil penalty against Defendant, he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Judgment, regardless of

whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

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

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

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

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

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

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

stating that Defendant has received and read a copy of the Judgment.

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

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Defendant's agreement to comply with the terms of Section 202.5(e),

Defendant: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes,

reached a good faith settlement.

Dated: 7/30/19

[Signature]  
Terry Wayne Kelly

On 7-30, 2019, Terry Wayne Kelly, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

[Signature]  
Notary Public  
Commission expires: My Comm. Exp. 2-29-2020



Approved as to form:

[Signature]

[Defense attorney's name, address, and telephone number]  
Attorney for Defendant

Joseph W Cooper  
PO Box 98  
Ashland, MS 38603  
662-224-6211

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TERRY WAYNE KELLY and  
KELLY MANAGEMENT, LLC,

Defendants.

Case No.

**CONSENT OF DEFENDANT KELLY MANAGEMENT, LLC**

1. Defendant Kelly Management, LLC ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as provided herein in paragraph 12 and except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the Judgment in the form attached hereto (the "Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violation of Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b) and 78o(a)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5]; and
- (b) permanently restrains and enjoins Defendant from violation of Sections 5 and 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77e

and 77q(a)].

3. Defendant agrees that the Court shall order disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant further agrees that the amounts of the disgorgement and civil penalty shall be determined by the Court upon motion of the Commission, and that prejudgment interest shall be calculated from October 11, 2016, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Defendant further agrees that in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that it did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of this Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

4. Defendant agrees that, if the Court orders any civil penalty against Defendant, it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Judgment, regardless of

whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

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

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

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

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

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

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

stating that Defendant has received and read a copy of the Judgment.

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

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Defendant's agreement to comply with the terms of Section 202.5(e),

Defendant: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes,

Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

Dated: 7-30-19

Kelly Management, LLC

By: [Signature]  
[Name of person signing for entity]

[Title] President

[Address] 196 Wright's Mier Rd.  
Madison, MS 39110

On 7-30, 2019, Wayne Kelly Jr., a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of Kelly Management, LLC as its President.

[Signature]  
Notary Public  
Commission expires:

My Comm. Exp. 2-29-2020



Approved as to form:

[Signature]  
[Defense attorney's name, address, and telephone number]  
Attorney for Defendant

Joseph W Cooper  
PO Box 98  
Ashland, MS 38603  
662-224-6211

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**TERRY WAYNE KELLY AND  
KELLY MANAGEMENT, LLC,**

**Defendants,**

**Case No.  
3:19-cv-00585-DPJ-FKB**

**SEC’S MEMORANDUM IN SUPPORT OF ITS MOTION  
FOR ENTRY OF PROPOSED JUDGMENTS**

Plaintiff Securities and Exchange Commission (“SEC”) respectfully files this Memorandum in Support of its Motion for Entry of Proposed Judgments Against Defendants Terry Wayne Kelly (“Kelly”) and Kelly Management, LLC (“Kelly Management”) (collectively, “Defendants”).

This case arises from the same facts before the Court in SEC v. Arthur Lamar Adams and Madison Timber Properties, LLC, Case No. 3:18-cv-252-CWR-FKB (S.D. Miss.). As set forth in the Complaint, Defendants Kelly and Kelly

Management sold investments in Madison Timber. In anticipation of the filing of this action, the parties engaged in settlement discussions and reached an agreement. This motion asks the Court to finalize the SEC's settlement with the Defendants by entering the Judgments that correspond with the Consent documents executed by Defendants. The SEC and the Defendants have agreed to all the terms set forth in the settlement documents.

### **PROPOSED SETTLEMENT WITH KELLY AND KELLY MANAGEMENT**

Specifically, Defendants consent to permanent injunctions against violations of Sections 5 and 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77e and 77q(a)], and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b) and 78o(a)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5]. Section 20(b) of the Securities Act and Section 21(d)(1) of the Exchange Act provide that the SEC may seek, and the Court may grant, a permanent injunction against violations of the federal securities laws. See 15 U.S.C. §§ 77t(b) and 78u(d)(1).

In addition, Defendants agree that the Court shall order disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendants further agree that the amounts of the disgorgement and civil penalty shall be determined by the Court upon motion of the SEC, and that prejudgment interest shall be calculated from October 11, 2016.

Defendants also consent to the following in connection with the SEC's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that they did not violate the federal securities laws as alleged in the Complaint; (b) Defendants may not challenge the validity of the Consents or the Judgments; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure.

The remaining substantive terms are set forth in the Consents and Judgments. Those items relate to, among other things, Defendants' obligations with respect to compliance as well as their waiver of certain procedural rights.

### **CONCLUSION**

Based on the foregoing, the SEC respectfully requests that the Court enter the proposed Judgments consented to by Kelly and Kelly management.

Dated this 21st day of August, 2019.

Respectfully submitted,

/s/W. Shawn Murnahan

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I filed the foregoing SEC's Memorandum in Support of its Motion for Approval of Settlement and Entry of Proposed Judgments via the Court's ECF system, which will provide copies to all counsel of record. I also certify that I have separately emailed a copy of the foregoing to:

Joseph "Whit" Cooper, Esq.  
Farese, Farese, & Farese PA  
P.O. Box 98  
Ashland, MS 38603  
wcooper@fareselaw.com  
*Counsel for Defendants Terry Wayne Kelly and Kelly Management, LLC*

Dated this 21st day of August, 2019.

Respectfully submitted,

/s/ W. Shawn Murnahan  
W. Shawn Murnahan