

12 MAG 2538

Approved: _____

EUGENE INGOGLIA / CHI T. STEVE KWOK
Assistant United States Attorneys

Before: HONORABLE GABRIEL W. GORENSTEIN
United States Magistrate Judge
Southern District of New York

- - - - - x
: SEALED (E4)
: COMPLAINT
UNITED STATES OF AMERICA
: Violations of
- v. - 18 U.S.C. §§ 1343 & 2;
: 15 U.S.C. §§ 78j(b) & 78ff;
ROBERT KELLY, 17 C.F.R. § 240.10b-5
: Defendant. COUNTY OF OFFENSE:
: NEW YORK
- - - - - x

SOUTHERN DISTRICT OF NEW YORK, ss.:

KEITH M. GARWOOD, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation, and charges as follows:

COUNT ONE
(Securities Fraud)

1. From at least in or about 2004, up to and including at least in or about November 2008, in the Southern District of New York and elsewhere, ROBERT KELLY, the defendant, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, KELLY solicited investors to buy shares in a company known as Wwebnet, Inc. on the basis of false representations that their

investments would be used to develop software for transmitting music, videos, and movies over the Internet.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5, and
Title 18, United States Code, Section 2.)

COUNT TWO
(Wire Fraud)

2. From at least in or about 2004, up to and including at least in or about November 2008, in the Southern District of New York and elsewhere, ROBERT KELLY, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, and sounds for the purpose of executing such scheme and artifice to defraud, to wit, KELLY solicited investors to wire money to various bank accounts on the basis of false representations that their investments would be used to develop software for transmitting music, videos, and movies over the Internet.

(Title 18, United States Code, Sections 1343 and 2.)

The bases for my knowledge and the foregoing charges are, in part, as follows:

3. I am a Special Agent with the New York Office of the Federal Bureau of Investigation of the Department of Justice ("FBI") and I have been personally involved in the investigation of this matter. I have been a Special Agent with the FBI working on white collar investigations for approximately 2.5 years. During this time, my responsibilities have included the investigation of violations of the federal securities fraud and wire fraud statutes, among others, and I have participated in numerous investigations of offenses involving such violations.

4. This affidavit is based on my conversations with others, including other agents with the FBI. It is also based on my review of numerous documents, including, but not limited to, bank records, e-mails, and investment solicitation documents that ROBERT KELLY, the defendant, provided to potential investors. This affidavit is further based on my conversations with individuals whom KELLY solicited to invest money, as well as conversations I had with individuals who were employed by KELLY

at various times from 2004 through 2009. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all of the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

Relevant Individuals and Entities

5. At all times relevant to this Complaint, ROBERT KELLY, the defendant, was the chief executive officer and chairman of the board of directors of Wwebnet, Inc.

6. Wwebnet, Inc., formerly known as ValuFlik, Inc., was incorporated in Nevada in or about July 2005. At all times relevant to this Complaint, Wwebnet, which had its principal office at 1230 Avenue of the Americas, 7th Floor, New York, New York 10020, was the sole owner of a United Kingdom entity called DirectChoice TV Communications, Ltd. ("DirectChoice" or "DCTV") that had offices in Chelsea, England. According to investment solicitation documents that ROBERT KELLY, the defendant, provided to potential investors, Wwebnet, Inc., its predecessor companies (including ValuFlik), and its subsidiaries (including DirectChoice) (collectively, "Wwebnet") were in the business of developing a software program that could provide consumers, via the Internet, "music, film, and video" content after the user downloaded the software program onto his or her computer.

7. Rymatics Software Ltd. ("Rymatics") was incorporated in the British Virgin Islands in or about August 2004. At all times relevant to this Complaint, ROBERT KELLY, the defendant, was the majority owner of Rymatics and was also its "Managing Member." According to an Agreement for Services, dated September 9, 2005, that was entered into between Rymatics (by KELLY in his capacity as Rymatics' "Managing Member") and Wwebnet (also by KELLY in his capacity as Wwebnet's Chief Executive Officer), Rymatics agreed "to provide software development, hardware acquisition, strategic software advice and web hosting services" to Wwebnet, in exchange for "a monthly service fee in the amount of \$95,000" (the "Rymatics Contract").

8. Executive Consultants Services, Ltd. ("ECS") was incorporated in the British Virgin Islands in or about August 2004. At all times relevant to this Complaint, ECS was owned and operated solely by ROBERT KELLY, the defendant. Based on financial disclosure statements that Wwebnet filed in the United Kingdom, ECS purportedly provided "management" and "business set-

up" services to Wwebnet.

Overview of the Scheme To Defraud

9. Based on my interviews with individuals who invested in Wwebnet after speaking with ROBERT KELLY, the defendant, and my review of various solicitation documents that KELLY sent to investors, I have learned that KELLY solicited investors to wire their investments to various bank accounts on the basis of false representations that their investments would be used to develop software for transmitting music, videos, and movies over the Internet. Specifically, KELLY claimed that he needed money from investors to update the software, conduct additional research and development, purchase advanced computer equipment, and market the software application to entertainment companies. Many of these representations were false. Through these and other misrepresentations, KELLY obtained millions of dollars in investor funds.

10. Based on my interviews with Wwebnet's former Chief Technology Officer ("CTO") and others, I have learned that, contrary to the representations that ROBERT KELLY, the defendant, made to investors about how their money would be spent, the CTO and his team were not given the necessary resources to develop the software to perform the functions that KELLY described to investors. KELLY falsely told the CTO, in sum and substance, that because of a lack of funding, KELLY was unable to allocate adequate resources for software development and could do so only "when we get the money."

11. Based on my review of bank records, I have learned that ROBERT KELLY, the defendant, had in fact successfully solicited substantial amounts of money from investors. However, instead of using the money for legitimate business purposes such as software development, as he had told investors, KELLY diverted a substantial portion of investors' money for his own financial benefit. For example, KELLY transferred investors' money into an account in the Cayman Islands that he used to trade options and futures for his own financial benefit. Based on my analysis of bank records, from December 2004 up to and including September 2007, KELLY transferred at least \$2.11 million in investors' funds from Wwebnet's bank accounts into his personal options trading account in the Cayman Islands. Based on my review of bank records pertaining to the options trading account, all the money in that account was used to purchase options, and, as of May 2008, it had a zero account balance.

The Scheme To Defraud Victim-1, Victim-2, And Victim-3

12. I have interviewed various investors who bought shares of Wwebnet based on oral and written representations made by ROBERT KELLY, the defendant. Paragraphs 13 through 26 below set forth what I learned based on my interviews with three of these investors, and my review of various documents, including bank records and investment solicitation documents that these three investors received from KELLY.

Victim-1

13. Based on my interviews with an individual who invested over \$5.5 million in Wwebnet ("Victim-1"), as well as my review of interview reports prepared by other FBI agents, I have learned the following:

a. Victim-1 first met ROBERT KELLY, the defendant, through a mutual acquaintance. From at least in or about June 2004, through and including in or about November 2008, Victim-1 invested over \$5.5 million in Wwebnet. He did so by wiring money to Wwebnet's bank accounts pursuant to KELLY's instructions. In exchange, Victim-1 obtained shares of Wwebnet's stock.

b. During the time period when Victim-1 was investing in Wwebnet, Victim-1 kept in constant, sometimes daily, contact with KELLY. During these conversations, some of which occurred during face-to-face meetings in New York, New York, KELLY told Victim-1, in sum and substance, the following:

i. Wwebnet had developed a software program that was "ready to go" and that would enable any member of the general public, for a fee, to download songs, music videos, or movies directly onto his or her computer or mobile electronic device;

ii. However, Wwebnet needed additional money to "keep the technology updated" in anticipation of growing customer demands;

iii. To that end, Wwebnet had employed 10 programmers in Tulsa, Oklahoma, who were working full time on updating the software in a computer facility that was "state of the art" and "military secure";

iv. The technical team in Tulsa was spending approximately \$100,000 per month to improve the software.

c. As described below, the statements in subparagraph (b) above were false or misleading because KELLY diverted a substantial portion of investor proceeds, including Victim-1's investment, for purposes unrelated to software development.

d. Victim-1 made his last investment in Wwebnet on or about November 4, 2008, in the amount of \$150,000. Victim-1 currently owns approximately eight million shares of Wwebnet stock and has been unable to sell any of it. Victim-1 has not been able to recover any of his money, despite repeated efforts to do so.

14. I have obtained from Victim-1 copies of various written documents that Victim-1 received from ROBERT KELLY, the defendant, when KELLY requested investments from Victim-1. Based on my review of the documents, I have learned the following:

a. In a document titled "DirectChoice TV [DCTV] Communications Ltd. Confidential Business Plan, February 2004," the following statement appears under the heading, "Use of Proceeds," which I understand to refer to how investor money would be used: "The Company would be using these proceeds as follows: staff up the sales, marketing and programming teams; to roll out and aggressive advertising [sic] the DCTV and content owner branded channels across the US and UK; establish New York offices to begin penetrating the sports and TV industries, and Los Angeles offices to begin penetrating the film and videogame industry; and working capital needs."

b. As described below, the statements in paragraph 14(a) above were false or misleading because KELLY diverted a substantial portion of investor proceeds, including Victim-1's investment, for purposes unrelated to the stated purposes of programming, marketing, advertising, or business development.

15. At no point did ROBERT KELLY, the defendant, disclose to Victim-1 the existence of the Rymatics Contract, which, as described above, entitled Rymatics to be paid \$95,000 per month by Wwebnet. In his interviews with the FBI, Victim-1 stated, in sum and substance, that he would not have invested in Wwebnet had he known about the Rymatics Contract.

16. I have reviewed bank records for Wwebnet's bank account at JPMorgan Chase Bank ("Chase Account"), DirectChoice's bank account at the Royal Bank of Scotland ("RBS Account"), Rymatics' bank account in Gibraltar ("Gibraltar Account"), and

ECS's account in the Cayman Islands ("KELLY's Cayman Islands Options Trading Account"). I have learned that Wwebnet's Chase Account was maintained in New York, New York, during all times relevant to this Complaint. In addition, based on my review of these records, I have learned the following:

a. As set forth in the chart below, shortly after Victim-1 invested \$2 million in Wwebnet on or about February 7, 2007, about \$1 million was diverted, after various bank transfers, into KELLY's Cayman Islands Options Trading Account.

| Date | Amount | Withdrawn From | Deposited Into |
|---------|----------------|-----------------------------|--|
| 2/7/07 | \$2 million | Victim-1's bank account | Wwebnet's Chase Account |
| 2/8/07 | \$1.39 million | Wwebnet's Chase Account | DirectChoice's RBS Account |
| 2/12/07 | \$1.22 million | DirectChoice's RBS Account | Rymatics' Gibraltar Account |
| 2/16/07 | \$1 million | Rymatics' Gibraltar Account | KELLY's Cayman Islands Options Trading Account |

b. Just before Victim-1's \$2 million investment was deposited into Wwebnet's Chase Account on February 7, 2007, Wwebnet's Chase Account showed a negative balance of \$97 – i.e., the bank account was overdrawn by \$97. Just before the transfer of \$1.39 million from Wwebnet's Chase Account into DirectChoice's RBS Account on February 8, 2007, DirectChoice's RBS Account had a balance of approximately \$724. Just before the transfer of \$1.22 million from DirectChoice's RBS Account into Rymatics' Gibraltar Account on February 12, 2007, Rymatics' Gibraltar Account had a balance of approximately \$10,000. Despite the infusion of \$1.22 million into Rymatics' Gibraltar Account on February 12, 2007, that account had a balance of only approximately \$27,000 on February 16, 2007, because, as shown in the chart above, \$1 million was withdrawn on February 16, 2007, and transferred into KELLY's Cayman Islands Options Trading Account.

c. From late February to early March 2007, approximately \$405,000 in KELLY's Cayman Islands Options Trading Account was used to purchase various options, which expired unexercised in April 2007. As a result of trading losses, as of May 2008, KELLY's Cayman Islands Options Trading Account had a

zero account balance.

Victim-2

17. Based on my interviews with an individual who invested \$400,000 in Wwebnet ("Victim-2"), I have learned the following:

a. Victim-2 invested a total of \$400,000 in Wwebnet in exchange for shares of Wwebnet's stock. Victim-2 made his last investment in September 2005 in the amount of \$200,000.

b. Before he invested in Wwebnet, Victim-2 spoke with ROBERT KELLY, the defendant, in person and on certain occasions in New York, New York. According to Victim-2, KELLY stated, in sum and substance, the following:

i. Wwebnet had an "advanced product" comparable to Apple i-Tunes;

ii. Additional investment funds were needed to spend on "servers" and "software development"; and

iii. The money would give Wwebnet a much needed "kick start" to finalize the software and enter into contracts to obtain entertainment content from media companies.

c. As described below, the statements in subparagraph (b) above were false or misleading because KELLY diverted a substantial portion of investor proceeds, including of Victim-2's investment, for purposes unrelated to software and business development.

d. For the past few years, Victim-2 has attempted, on multiple occasions, to contact ROBERT KELLY, the defendant, through telephone and e-mail to inquire about his investment in Wwebnet. KELLY did not return Victim-2's messages. Victim-2 has been unable to sell any of his Wwebnet shares or get any of his money back.

18. I have obtained from Victim-2 copies of various written documents that Victim-2 received from ROBERT KELLY, the defendant, when KELLY was soliciting investments from Victim-2. Based on my review of these materials, I have learned the following:

a. In a document entitled "DirectChoice TV [DCTV] Communications Ltd. Confidential Business Plan, November

1, 2004," investors were told that their funds "are required" to "roll out and advertise the channel across the UK and America," "establish Los Angeles offices to begin penetrating the film industry," and "provide full protection for any cash burn until March 2006."

b. As described below, the statements in paragraph 18(a) were false or misleading because KELLY diverted a substantial portion of investor proceeds, including of Victim-2's investment, for purposes other than the stated purposes of advertising, business development, or overhead expenses.

19. ROBERT KELLY, the defendant, never disclosed to Victim-2 the existence of the Rymatics Contract. In Victim-2's interviews with the FBI, Victim-2 stated, in sum and substance, that he would not have invested in Wwebnet had he known about the Rymatics Contract.

20. I have reviewed bank records for DirectChoice's RBS Account, Rymatics' Gibraltar Account, and KELLY's Cayman Islands Options Trading Account. Based on my review of these records, I have learned the following:

a. As set forth in the chart below, shortly after Victim-2 invested \$200,000 in Wwebnet on or about September 1, 2005, approximately \$158,000 was diverted for ROBERT KELLY's, the defendant's, financial gain. Specifically, a total of approximately \$128,000 (consisting of one wire transfer in the amount of \$63,000, and another wire transfer in the amount of \$65,000) went into KELLY's Cayman Islands Options Trading Account after various bank transfers. Another \$10,045 went into a bank account held in KELLY's own name ("KELLY's Personal Bank Account"), an account that was maintained in New York, New York, during all times relevant to this Complaint. Finally, \$20,045 went into another ECS account in Gibraltar that KELLY controlled ("KELLY's ECS Gibraltar Account").

| Date | Amount | Withdrawn From | Deposited Into |
|---|-----------|-----------------------------|--|
| 9/1/05 | \$200,000 | Victim-2's bank account | DirectChoice's RBS Account |
| <i>\$63,000 Transferred Into KELLY's Cayman Islands Options Trading Account</i> | | | |
| 9/14/05 | \$63,367 | DirectChoice's RBS Account | Rymatics' Gibraltar Account |
| 9/15/05 | \$63,000 | Rymatics' Gibraltar Account | KELLY's Cayman Islands Options Trading Account |
| <i>Another \$65,000 Transferred Into KELLY's Cayman Islands Options Trading Account</i> | | | |
| 9/29/05 | \$95,045 | DirectChoice's RBS Account | Rymatics' Gibraltar Account |
| 10/3/05 | \$65,000 | Rymatics' Gibraltar Account | KELLY's Cayman Islands Options Trading Account |
| <i>\$10,045 Transferred Into KELLY's Personal Bank Account</i> | | | |
| 9/29/05 | \$10,045 | DirectChoice's RBS Account | KELLY's Personal Bank Account |
| <i>\$20,045 Transferred Into KELLY's ECS Account in Gibraltar</i> | | | |
| 9/29/05 | \$20,045 | DirectChoice's RBS Account | KELLY's ECS Gibraltar Account |

b. Shortly before Victim-2's \$200,000 investment was deposited into DirectChoice's RBS Account on September 1, 2005, DirectChoice's RBS Account had a balance of \$20,579. Between September 1, 2005 and September 14, 2005, additional money from various other investors totaling approximately \$344,000 was deposited into DirectChoice's RBS Account. From September 14, 2005 through September 29, 2005, there were no additional deposits into DirectChoice's RBS Account.

c. Shortly before the September 14, 2005 transfer of \$63,367 from DirectChoice's RBS Account into the Rymatics' Gibraltar Account, Rymatics' Gibraltar Account had an account balance of only \$10,500. Despite the infusion of \$63,367 into Rymatics' Gibraltar Account on September 14, 2005, that account had a balance of only approximately \$10,900 on the next

day because, as shown in the chart above, \$63,000 was withdrawn on September 15, 2005, and transferred into KELLY's Cayman Islands Options Trading Account.

d. Shortly before the September 29, 2005 transfer of \$95,045 into the Rymatics' Gibraltar Account, that account had a balance of approximately \$10,800. Despite the infusion of \$95,045 into Rymatics' Gibraltar Account on September 29, 2005, that account had a balance of only approximately \$40,000 on October 3, 2005 because, as shown in the chart above, \$65,000 was withdrawn on October 3, 2005, and transferred into KELLY's Cayman Islands Options Trading Account.

Victim-3

21. Based on my interviews with an individual who invested \$250,000 in Wwebnet ("Victim-3"), I have learned the following:

a. On or about December 14, 2006, Victim-3 invested a total of \$250,000 in Wwebnet in exchange for receiving shares of Wwebnet's stock.

b. Before he invested in Wwebnet, Victim-3 spoke in person with ROBERT KELLY, the defendant, on multiple occasions and at certain times in New York, New York. According to Victim-3, KELLY stated, in sum and substance, the following:

i. Wwebnet's "proprietary software" was "fully operational," "ready to go," and so "revolutionary" that "it is going to put Blockbuster out of business";

ii. Although the technology was originally developed by an entity called Rymatics, Wwebnet now owned the fully developed technology;

iii. Wwebnet was not paying Rymatics anything and did not owe Rymatics anything;

iv. Investor funds were needed to facilitate entertainment companies to sign agreements with Wwebnet to use its technology to deliver entertainment content to consumers; and

v. KELLY had all of his money committed to Wwebnet and would only profit when the company went public.

c. As described below, the statements in subparagraph (b) above were false or misleading because KELLY at

times diverted investor money by first transferring the money to various Rymatics' accounts and then further diverting the money for his own personal benefit.

22. I have obtained from Victim-3 a copy of a document called "Valu Flik, Inc. Confidential Business Plan, January 2006" that ROBERT KELLY, the defendant, provided Victim-3 before Victim-3 made his investment. In that document, the following representations were made about Wwebnet, its technology, and the use of funds:

a. Wwebnet's technology was said to be the work of a "strong product development team" based in a "state-of-the-art facility in Tulsa, Oklahoma." Moreover, "R&D is performed and owned by Rymatics, Ltd."

b. Under the heading "Use of Proceeds," the following paragraph appears: "The Company would be using these proceeds as follows: staff up the sales, marketing and programming teams; to roll out and aggressive advertising [sic] the VALU FLIK and content owner branded channels across the US and UK; establish New York offices to begin penetrating the sports and TV industries; and establish Los Angeles offices to begin penetrating the film and videogame industry; and working capital needs."

c. As described below, the statements in paragraphs 22(a) and (b) were false or misleading because KELLY diverted a substantial portion of investor proceeds to purposes unrelated to programming, research and development, marketing, or business expansion.

23. After Victim-3 invested in Wwebnet, Victim-3 received an e-mail, dated December 22, 2006, from ROBERT KELLY, the defendant, containing passcode information and various website links that purportedly would enable Victim-3 to "download the channel" "for private review." In the e-mail, KELLY stated that the program was a "demo[]" that was not yet ready for "commercial use," but was "created to demonstrate the channel to" [a television broadcast company] I know you appreciate and understand." In describing the procedure to use the "demo," KELLY stated that the program had "a small bug in the scroll bar," that Victim-3 had to "limit your selections to the following [categories]" to "avoid the problem," and that the "shopping cart" feature of the program was "a bit clunky." However, according to Victim-3, even though he followed KELLY's instructions, he was unable to get the program started.

24. When Victim-3 next spoke with ROBERT KELLY, the defendant, Victim-3 told KELLY about the difficulty that Victim-3 had in running the program. In response, KELLY said, in sum and substance, that the "technology was ready to go," that Victim-3 should "not worry," and the company was "close to going live with the technology." After these reassurances, Victim-3 did not pursue the topic further. However, when Victim-3 attempted to reach KELLY again by phone in or about 2008 about his investment, Victim-3 was unable to reach KELLY. Shortly thereafter, KELLY told Victim-3, in sum and substance, that because Wwebnet was attempting to become a publicly traded company – an attempt that was later aborted, as I learned from my review of documents and my interviews with various investors – KELLY had to limit his contacts with Wwebnet investors, including Victim-3, and was restricted in his ability to discuss details about the company.

25. At no point did ROBERT KELLY, the defendant, disclose to Victim-3 the existence of the Rymatics Contract. In his interviews with the FBI, Victim-3 stated, in sum and substance, that he would not have invested in Wwebnet had he known about the Rymatics Contract.

26. For the past few years, Victim-3 repeatedly instructed his broker to sell the Wwebnet shares, but without success, because Victim-3 could not find a buyer who was willing to purchase his shares. Despite repeated efforts, Victim-3 has been unable to recover any of his investment money.

KELLY's Statements To Investors About Wwebnet Misrepresented
The Actual State Of The Company

27. I have spoken with the individual who began working for Wwebnet in or about 2004 and served as its Chief Technology Officer (the "CTO"), from in or about late 2005 until his resignation on or about April 9, 2009. Based on my interviews with the CTO, I have learned the following:

a. In 2004, the CTO received a call from ROBERT KELLY, the defendant, whom the CTO had met a few years earlier at a technology conference. During this call, KELLY recruited the CTO to work for Wwebnet. According to KELLY, the CTO's task involved developing an online delivery system that could transmit, via the Internet, entertainment content to users' computers or mobile electronic devices.

b. After the CTO accepted the offer to work for Wwebnet, KELLY assigned the CTO to work in a 600-square-foot office inside a standard office building in Tulsa, Oklahoma (the

"Tulsa Office"). During all relevant times when the CTO was employed by Wwebnet, the Tulsa Office had regular office furniture and a few small Dell desktop computers. The CTO had never seen any on-site servers or any "state of the art" computer equipment at the Tulsa Office — in fact, the CTO did most of his work on his personal laptop computer.

c. Along with two colleagues, the CTO worked exclusively on "demos" that KELLY said he needed to show potential investors and representatives from various entertainment companies. According to the CTO, "demos" are prototypes that attempt to show how a computer program, once developed, is expected to look and function. Wwebnet's "demos" were incapable of actually delivering entertainment content to consumers in the general public. For example, Wwebnet's "demos" did not have any "e-commerce" capability that could process customers' online payments or keep track of fee-splitting arrangements with advertisers or entertainment companies. Nor could Wwebnet's "demos" transmit content to mobile electronic devices.

d. In order to turn "demos" into a functioning online delivery system that would enable consumers to download entertainment content through the Internet, Wwebnet would need to hire at least five full-time programmers to write additional computer codes, purchase powerful computer work stations and computer servers, and obtain licensing rights to various software programs to incorporate into the system that Wwebnet was building. Even under the best case scenario, with all the resources that the CTO and his team would need and with all employees working full-time and devoting all work hours to the project, the development process would take approximately half a year.

e. The CTO repeatedly asked KELLY for money and other resources to turn Wwebnet's "demos" into a functioning product, but to no avail. Wwebnet's Tulsa Office never had a budget to spend on research and development. At the same time, KELLY never asked the Tulsa Office to do anything beyond preparing "demos." When the CTO asked KELLY for the necessary resources to move beyond the "demos" stage, KELLY stated, in sum and substance, "We'll get there when we get the money."

f. On multiple occasions from 2004 through 2009, the CTO read press releases about Wwebnet that KELLY circulated through group emails. For example, the CTO recalls reading a press release, dated October 18, 2006, that stated, in relevant part, the following: "WWEBNET technology provides an interactive

active distribution channel that delivers up to DVD-quality video and audio directly to users' desktops, without having to visit a web site. . . . [I]t automatically delivers information about new content availability directly to the customers' PC or hardware device, in accordance with their music preferences." After reading this press release, the CTO told KELLY that the press release overstated what Wwebnet's system was capable of doing in that it would require tremendous investments of time and resources before the technology could deliver as advertised. In response, KELLY stated, in sum and substance, that there was not enough money to move beyond the "demos" stage and that "we can build it out later" after obtaining additional investment funds. The CTO recalls having numerous similar conversations with KELLY along these same lines after he received other press releases that KELLY circulated.

g. Throughout the entire period that he was employed by Wwebnet, the CTO was unaware of any services or products that Wwebnet received from Rymatics. Other than the Tulsa Office, the CTO was unaware of any other developmental team that was working on technology issues for Wwebnet.

h. Including salaries paid to the CTO and his two colleagues at the Tulsa Office, rent, and other office-related expenses, the CTO estimates that the Tulsa Office was spending, at most, \$40,000 per month throughout the period from in or about 2004 through in or about 2009.

28. I have reviewed certain e-mail correspondence between the CTO and ROBERT KELLY, the defendant. Based on my review of these e-mails, I learned, among other things, the following:

a. On March 12, 2009, the CTO sent KELLY an e-mail that stated, in relevant part, the following: "I have pointed out to you in dozens of emails over the years that the software platform which is constantly pitched as fully functional and ready to support millions of users had serious back end issues, no customer support system, no help system, no billing system, and more. You told me again, that once we got financed, we would fix all that stuff and just keep making demo channels so we can get the investment. . . . I haven't been given the opportunity to correctly build out the products that you are saying we have."

b. On April 9, 2009, the CTO sent KELLY his resignation e-mail. Among other things, the CTO wrote: "There was never a software development team created to build the

systems and there was never an operational plan for achieving success [N]ew business plans were created time and again with only basic underlying software components to support them. The software . . . was never built to fulfill operational needs. And there has been zero financial transparency. Since day one, I have had no clue whatsoever where we stand with funding, planning, and contracts. . . . I was astonished that we had received so much money in investment. How could we have brought on so much capital to build the company and still have no budget to create stable operational systems? . . . I believe the company has basically failed in every single facet except for sales of stock to investors."

ROBERT KELLY's Statements To The FBI

29. On July 8, 2010, ROBERT KELLY, the defendant, voluntarily agreed to be interviewed by two agents with the FBI. During that interview, KELLY stated, in sum and substance, the following:

a. When asked how he spent money received from individual investors, KELLY stated that he used the money "to keep the lights going" for the ongoing business, to service the software, and to pay employees;

b. His compensation for his work for Wwebnet was \$360,000 a year;

c. He never "co-mingle[d]" funds between his business and personal bank accounts;

d. Rymatics did not maintain bank accounts in its own name that were independent of Wwebnet; hence, all business-related deposits went into, and all business-related expenses came out of, bank accounts maintained by Wwebnet, of which KELLY was the sole check signer;

e. Other than DirectChoice's bank account with the Royal Bank of Scotland, neither Wwebnet nor its affiliated entities had overseas bank accounts.

KELLY Misappropriated Approximately \$2.11 Million In Investors' Money

30. As set forth in the following chart, based on my review of bank records for Wwebnet (including both DirectChoice's RBS Account and Wwebnet's Chase Account), Rymatics, and KELLY's Cayman Islands Options Trading Account, I have learned that, from

in or about December 2004, up to and including in or about September 2007, ROBERT KELLY, the defendant, caused at least \$2.49 million of investor proceeds to be transferred from Wwebnet's bank accounts into Rymatics' Gibraltar Account.¹ During this time period, at least \$2.11 million was transferred into KELLY's Cayman Island Options Trading Account from Rymatics' Gibraltar Account.

| Date of Transfer from Wwebnet to Rymatics' Gibraltar Account | Amount | Date of Transfer from Rymatics' Gibraltar Account to KELLY's Cayman Islands Options Trading Account | Amount |
|--|----------------------|---|--------------------|
| 12/23/04 | \$110,000 | 12/31/04 | \$110,000 |
| 3/21/05 4/1/05 | \$56,772 \$40,000 | 4/5/05 | \$96,000 |
| 4/26/05 5/26/05 | \$40,000 \$22,000 | 6/1/05 | \$62,000 |
| 6/28/05 6/28/05 | \$55,000 \$55,000 | 7/1/05 | \$110,000 |
| 9/1/05 | \$55,000 | 9/6/05 | \$55,000 |
| 9/14/05 | \$63,367 | 9/15/05 | \$63,000 |
| 9/29/05 | \$95,000 | 10/03/05 | \$65,000 |
| 8/29/06 | \$100,000 | 9/1/06 | \$50,000 |
| 2/12/07 | \$1,218,729 | 2/16/07 | \$1,000,293 |
| 9/4/07 | \$581,455 | 9/6/07 | \$500,307 |
| Totals: | \$2,492,323 | | \$2,111,600 |

¹ Despite periodic inflows of funds into Rymatics' Gibraltar Account, Rymatics' Gibraltar Account typically had an account balance that was just over \$10,000 throughout the time period from 2005 through 2007, as infusions of funds were often depleted, after only a few days, by transfers into KELLY's Cayman Island Options Trading Account.

31. Based on my review of bank records pertaining to ROBERT KELLY's, the defendant's, Cayman Islands Options Trading Account, I have learned that all the money in that account was used to purchase options. As a result of trading losses, as of May 2008, KELLY's Cayman Islands Options Trading Account had a zero account balance.

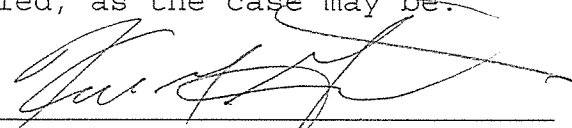
32. In addition to diverting investors' money offshore to trade options, I have learned, based on my review of records for Wwebnet's Chase Account and KELLY's Personal Bank Account, that ROBERT KELLY, the defendant, also used investor money to benefit himself in other ways, including transferring money into his personal bank account and paying his personal taxes.

a. For example, between October 2, 2007 and October 5, 2007, money from various investors totaling approximately \$576,000 was deposited into various Wwebnet accounts. Before these deposits, these accounts had a combined balance of approximately \$99,000. Between October 2, 2007 and October 17, 2007, KELLY transferred a total of \$105,000 from these Wwebnet accounts into his own Personal Bank Account. Before these transfers, KELLY's Personal Bank Account had a balance of approximately \$1,000. On or about October 18, 2007, a check written by KELLY, in the amount of \$87,578 and payable to the United States Internal Revenue Service, cleared his Personal Bank Account. The memo line of the check states, "[Form] 1040 2006 Taxes" and provides KELLY's social security number.

b. Also on or about October 18, 2007, another check written by KELLY, in the amount of \$8,825 and payable to New York State's Department of Taxation, cleared his Personal Bank Account. The memo line of this check states, "2006 Taxes" and provides KELLY's social security number.

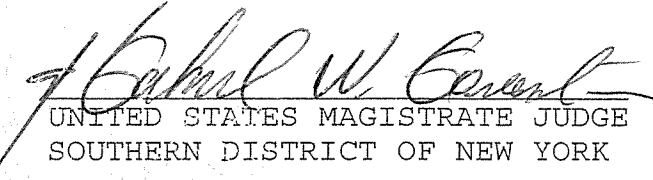
WHEREFORE, deponent prays that a warrant be issued for the arrest of ROBERT KELLY, the defendant, and that he be arrested and imprisoned or bailed, as the case may be.

SEP 27 2012



KEITH M. GARWOOD
Special Agent
Federal Bureau of Investigation

Sworn to before me this
____ day of September, 2012



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK