FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2014 JUN 11
CLERK'S OFFICE
AT BALTIMORE
BY [signature] DEPUTY

U.S. Department of Justice

United States Attorney
District of Maryland

Jefferson M. Gray
Assistant United States Attorney
Jefferson.M.Gray@usdoj.gov

Suite 400
36 S. Charles Street
Baltimore, MD 21201-3119

DIRECT: 410-209-4915
MAIN: 410-209-4800
FAX: 410-962-3091

June 10, 2014

Gerard P. Martin, Esquire
Rosenberg Martin Greenberg LLP
25 S. Charles Street, Suite 2115
Baltimore, Maryland 21201-3322

Re: *United States v.Mervyn Phelan, Sr.*
Criminal No. JKB-12-0103

Dear Mr. Martin:

This letter, together with the Sealed Supplement, states the terms of the plea agreement that has been offered to the defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by 5 p.m. this afternoon, it will be deemed withdrawn. The terms of the agreement are as follows:

The Offenses of Conviction

1. The defendant agrees to plead guilty to Counts 1, 18, and 44 of the Superseding Indictment currently pending against him in which he is charged, respectively, with conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349, wire fraud in violation of 18 U.S.C. § 1343, and obstruction of justice in violation of 18 U.S.C. § 1503. The defendant admits that he is, in fact, guilty of those offenses and will so advise the Court.

Elements of the Offenses

2. The elements of the offenses to which the defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows:

Wire Fraud Conspiracy

a. That the defendant and at least one other person entered into an unlawful agreement;

GOVERNMENT'S EXHIBIT NO. 1 (Phelan
CASE NO.: JKB-12-0103
IDENTIFICATION: 6/10/14
ADMITTED: 6/10/14

b. That the purpose of the agreement was to execute a scheme and artifice to defraud or to obtain money by means of materially false and fraudulent pretenses, representations and promises through the use of interstate wires, as charged in the Superseding Indictment; and

c. That the defendant knowingly and willfully became a member of the conspiracy.

Wire Fraud

a. That there was a scheme and artifice to defraud or to obtain money by means of materially false and fraudulent pretenses, representations and promises, as charged in the Superseding Indictment;

b. That the defendant knowingly and willfully participated in the scheme or artifice to defraud, with knowledge of its fraudulent nature and with the specific intent to defraud, or that he knowingly and intentionally aided and abetted others in the scheme; and

c. That in the execution of the scheme, the defendant caused the use of interstate wires, as specified in the Superseding Indictment and in the attached Statement of Facts.

Obstruction of Justice

a. There was a pending judicial proceeding;

b. The defendant had knowledge or notice of the proceeding; and

c. The defendant acted corruptly, that is with the intent to influence, obstruct, or impede that proceeding in its due administration of justice.

Penalties

3. The maximum sentence provided by statute for each of the offenses to which the defendant is pleading guilty is as follows: for both wire fraud conspiracy and for wire fraud, imprisonment for twenty (20) years, three (3) years supervised release, and a fine of $250,000 or the greater of twice the gross amount of loss or gain caused by the offense; and for obstruction of justice, imprisonment for ten years, three years supervised release and a fine of $250,000. In addition, the defendant must pay $300 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.[1] If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d),

[1] Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of $2,500 that remains unpaid 15 days after it is imposed, the defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

the Court orders otherwise. The defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked -- even on the last day of the term -- and the defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The defendant understands that by entering into this agreement, he surrenders certain rights as outlined below:

a. If the defendant had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the defendant, this Office, and the Court all agreed.

b. If the defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the defendant could be found guilty of any count. The jury would be instructed that the defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the defendant went to trial, the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The defendant would have the right to confront and cross-examine the government's witnesses. The defendant would not have to present any defense witnesses or evidence whatsoever. If the defendant wanted to call witnesses in his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

d. The defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

e. If the defendant were found guilty after a trial, he would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges against him. By pleading guilty, the defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

f. By pleading guilty, the defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the defendant understands that he may have to answer

the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

h. By pleading guilty, the defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status. The defendant recognizes that if he is not a citizen of the United States, pleading guilty may have consequences with respect to his immigration status. Under federal law, conviction for a broad range of crimes can lead to adverse immigration consequences, including automatic removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no one, including his attorney or the Court, can predict with certainty the effect of a conviction on immigration status. The defendant nevertheless affirms that he wants to plead guilty regardless of any potential immigration consequences.

Advisory Sentencing Guidelines Apply

5. The defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the "advisory guidelines range") pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

Factual and Advisory Guidelines Stipulation

6. This Office and the defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A hereto, and to the following applicable sentencing guidelines:

> The applicable guideline for the defendant's convictions under Counts 1 and 18 (which group together pursuant to U.S.S.G. § 3D1.2(d)) is U.S.S.G. § 2B1.1, which establishes a base offense level of **seven (7)** for wire fraud conspiracy and wire fraud. U.S.S.G. § 2B1.1(a). As noted below, see ¶ 7, the parties disagree with respect to the amount of the loss for which the defendant is criminally responsible, and with respect to two other potentially applicable enhancements under the § 2B1.1(b)(2)(A)(i) and § 3B1.1(b) of the Guidelines.
>
> Pursuant to U.S.S.G. § 3C1.1 & comment. (n.8) and § 3D1.2(c), the parties agree that the defendant's conviction for obstruction of justice under Count 44 groups together with the underlying fraud offenses, resulting in an additional increase of **two (2)** offense levels.

This Office does not oppose a **two (2)** level reduction in the defendant's adjusted offense level, based upon the defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional **one (1)** level decrease in recognition of the defendant's timely notification of his intention to plead guilty. This Office may oppose *any* adjustment for acceptance of responsibility if the defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty.

Guideline Factors Not Stipulated

7. The following advisory guidelines are in dispute:

a. The parties disagree as to the amount of loss that should be attributable to the defendant for purposes of the advisory sentencing guidelines. It is the government's position that the loss is more than $22 million, so that the offense level should be increased by **twenty (22)**. U.S.S.G. § 2B1.1(b)(1)(L). The defendant's position is that the loss amount attributable to him is more than $2.5 million, but less than $7 million, so that his offense level should be increased by **eighteen (18)**. U.S.S.G. § 2B1.1(b)(1)(J).

b. The parties disagree as to whether an enhancement based upon the number of victims under U.S.S.G. § 2B1.1(b)(2)(A)(i) is applicable. It is the government's position that the number of victims exceeds ten, and therefore, that **two (2)** levels should be added. It is the defendant's position that this enhancement is not applicable because the number of victims was less than ten, because investment entities like Namkeb, LLC and Repid, LLC.should be treated as single victims, rather than counting the number of individuals who were participants in these entities.

c. The parties further disagree as to whether a **three (3)** level enhancement is applicable based upon the defendant's role in the offense under U.S.S.G. § 3B1.1(b). The government submits that the defendant acted as a manager or supervisor in an offense that involved five or more participants, and is therefore subject to the enhancement. The defendant maintains that this enhancement is not applicable.

The parties agree that the defendant's final adjusted offense level, after the resolution of the disputed guideline factors and the adjustment for acceptance of responsibility, should be no higher than **thirty-three (33)** and no lower than **twenty-four (24)**. U.S.S.G. § 3D1.3(b).

8. The defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a

career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

9. This Office and the defendant agree that with respect to the calculation of the advisory guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines will be raised or are in dispute. Either party will be free to argue for a variance sentence under 18 U.S.C. § 3553(a), but must notify the Court, the United States Probation Officer and this Office, in writing, at least fourteen days in advance of the sentencing of the facts or issues the party intends to raise in connection with any such argument. The parties agree that a failure to provide such notice constitutes a waiver of the right to argue for a sentence outside of the final advisory guideline range.

Obligations of the United States Attorney's Office

10. At the time of sentencing, this Office will recommend that the Court impose a sentence of incarceration upon the defendant of sixty (60) months. This Office further will recommend full restitution in the amount of the actual loss caused by the defendant's offenses, including the full amount of the loss for which the Court finds the defendant to have been criminally responsible at sentencing. This Office will also move to dismiss the remaining counts that still remain open after sentence is imposed.

The defendant understands, however, that the Government's willingness to make the sentencing recommendation set forth above is contingent upon both Mr. Grantham and Mr. Phelan entering pleas of guilty today as contemplated by the plea agreements tendered to defense counsel on this date. If Mr. Grantham does not plead guilty, then the government will be released from the above limit on its sentencing recommendation, and may recommend any sentence within the Guidelines range found by the Court to be applicable at sentencing.

11. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the defendant's background, character and conduct, including but not limited to conduct that is the subject of counts that the government has agreed to dismiss at sentencing.

Forfeiture

12. The defendant understands that the Court will, upon acceptance of his guilty plea, enter an order of forfeiture as part of his sentence, and that the order will include assets directly traceable to his offense, substitute assets and/or a money judgment equal to the value of the property subject to forfeiture. Specifically, as a consequence of the defendant's plea of guilty to Count 1, charging a violation of 18 U.S.C. § 1349, the Court will order the forfeiture of all proceeds obtained or retained as a result of the offense, pursuant to § 982(a)(2)(A).

13. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change-of-plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

Assisting the Government with Regard to the Forfeiture

14. The defendant agrees to assist fully in the forfeiture of the foregoing assets. The defendant agrees to disclose all of his assets and sources of income to the United States, and to take all steps necessary to pass clear title to the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. The defendant also agrees to give this Office permission to request and review his federal and state income tax returns, and any credit reports maintained by any consumer credit reporting entity, until such time as the money judgment is satisfied. In this regard, the defendant agrees to complete and sign a copy of IRS Form 8821 (relating to the voluntary disclosure of federal tax return information) as well as whatever disclosure form may be required by any credit reporting entity.

Waiver of Further Review of Forfeiture

15. The defendant further agrees to waive all constitutional, legal and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also agrees not to challenge or seek review of any civil or administrative forfeiture of any property subject to forfeiture under this agreement, and will not assist any third party with regard to such challenge or review or with regard to the filing of a petition for remission of forfeiture.

Waiver of Statute of Limitations

16. The defendant understands and agrees that should the conviction following his plea of guilty pursuant to this agreement be vacated for any reason, then any prosecution that is not time-barred as of the date of the signing of this agreement (including any indictment or counts that this Office has agreed to dismiss at sentencing) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this agreement and the commencement or reinstatement of such prosecution. The defendant agrees to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date this plea agreement is signed.

Waiver of Appeal

17. In exchange for the concessions made by this Office and the defendant in this plea agreement, this Office and the defendant waive their rights to appeal as follows.

a. The defendant knowingly waives all right, pursuant to 28 U.S.C. § 1291 or otherwise, to appeal the defendant's conviction.

b. The defendant and this Office knowingly waive all right, pursuant to 18 U.S.C. § 3742 or otherwise, to appeal whatever sentence is imposed (including the right to appeal any issues that relate to the establishment of the advisory guidelines range, the determination of the defendant's criminal history, the weighing of the sentencing factors, and the decision whether to impose and the calculation of any term of imprisonment, fine, order of forfeiture, order of restitution, and term or condition of supervised release), except as follows: (i) the defendant reserves the right to appeal any term of imprisonment to the extent that it exceeds the final guideline range found by the Court to be applicable; (ii) and this Office reserves the right to appeal any term of imprisonment to the extent that it is below the final guideline range found by the Court to be applicable.

c. Nothing in this agreement shall be construed to prevent the defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), or from appealing from any decision thereunder, should a sentence be imposed that resulted from arithmetical, technical, or other clear error.

d. The defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Obstruction or Other Violations of Law

18. The defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that the defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The defendant acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Court Not a Party

19. The defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. The defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the defendant will receive. The defendant agrees that no one has made such a binding prediction or promise.

Entire Agreement

20. This letter supersedes any prior understandings, promises, or conditions between this Office and the defendant and, together with the Sealed Supplement, constitutes the complete plea agreement in this case. The defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the defendant and this Office other than those set forth in this letter and the Sealed Supplement and none will be entered into unless in writing and signed by all parties.

If the defendant fully accepts each and every term and condition of this agreement, please sign and have the defendant sign the original and return it to us promptly.

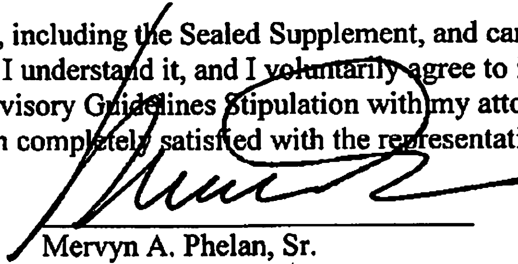
Very truly yours,

Rod J. Rosenstein
United States Attorney

By:

Jefferson M. Gray
Kathleen O. Gavin
Assistant United States Attorneys

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.



6/10/14
Date

Mervyn A. Phelan, Sr.

I am Mr. Phelan's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement, with him. He advises me that he understands and accepts its terms. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

6/10/14
Date

Gerard P. Martin, Esquire

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2014 JUN 11 A 8: 04
CLERK'S OFFICE

Attachment A

Statement of Facts

The defendant, Mervyn A. Phelan, Sr., stipulates and agrees that if this case had proceeded to trial, the government would have proven the following facts beyond a reasonable doubt. The defendant stipulates and agrees that the following facts do not encompass all of the evidence that would have been presented had this matter proceeded to trial.

At all times material to this plea agreement, defendant Mervyn A. Phelan, Sr. was a resident of Newport Beach, California, and was employed by a company called Insurance Annuity Group Underwriters, LLC, or IAGU. IAGU represented itself to be a loan brokerage and lending company that was engaged in the business of obtaining financing for real estate development projects. Although Phelan identified himself on emails and other documents only as the "Senior Underwriter" of IAGU, he was IAGU's principal decision-maker, controlled the company's finances, and effectively functioned as the company's chief executive officer.

IAGU began operating under that name sometime after September 2009. Over the course of the next two years, various other entities were also listed on the IAGU letterhead and in employee signature blocks, including Preferred Senior Holding, LLC ("PSH"), Teachers Annuity Group ("TAG"), Workmen's Life Insurance Company ("WLIC"), and other variations of these names. These other entities, however, were little more than shell corporations with a bank account. IAGU and its various subsidiaries and related entities (which will be collectively referred to here as "IAGU") all occupied the same office suite at 610 Newport Center Drive in Newport Beach, California.

During the time period between 2009 and 2011 that is relevant to this case, Gregory E. Grantham, who was a licensed attorney and a resident of California, was employed as IAG's General Counsel (while also conducting a private practice with part of his time). Sean Krondak

was also employed by IAGU from the fall of 2009 through the relevant time period in 2011 with the title of Vice-President – Loan Officer and Underwriting. Although Krondak's title suggested that he was superior to Phelan in IAGU's company hierarchy, Krondak in fact acted merely as an assistant to Phelan and Grantham.

Between 2009 and August 2011, IAGU successfully brokered only one small commercial loan, which was not related to the events described below. IAGU never had sufficient capital to actually fund loans itself, and in fact, never did fund any loans from its own resources. Because IAGU had little success in actually brokering loans, it earned few commissions. The company's income instead consisted almost entirely of engagement and underwriting fees, which IAGU charged to prospective borrowers in return for its efforts to locate sources of financing for real estate development projects. Beginning in the spring of 2010, Phelan aspired to purchase control of an inactive Arizona life insurance company and then to use that as a vehicle to acquire a large collection of section 403(b) teachers' retirement accounts that could be used to finance direct lending activity by IAGU. Because IAGU's own financial resources were so limited, however, Phelan needed to persuade outside investors to help finance these acquisitions.

Patrick Belzner was a resident of Maryland. Beginning in about the start of 2009, and continuing until at least August 2011, Belzner worked for a Maryland real estate development business known as the McCloskey Group, LLC ("McCloskey Group").

Brian McCloskey was the registered agent and owner of the McCloskey Group. McCloskey also owned several other Maryland corporate entities that were related to the McCloskey Group, including, but not limited to: (a) 1100 Columbia York PA LLC; (b) Claire's Lane, LLC; and (c) Kellen Property & Investment LLC.

Kevin Sniffen was an attorney, licensed to practice law in the State of Maryland. At all times relevant to this case, Sniffen maintained an escrow account at Wachovia Bank which had an account number ending in # 8685 (hereinafter "the Wachovia escrow account"); on occasion, he also made use of additional escrow accounts at Wachovia Bank with account numbers ending in # 0766 and # 4719.

The Escrow Account Fraud Scheme

Beginning in the fall of 2009 and continuing until August 2011, Belzner defrauded various individuals and investment partnerships in Maryland through a fraudulent scheme whereby he persuaded various individuals to loan the McCloskey Group large sums of money, ostensibly for the purpose of demonstrating "liquidity" or cash reserves to various lenders from whom the McCloskey Group was seeking financing for real estate development projects. Belzner promised these individuals that these funds would be kept safe in an escrow account under Sniffen's control, and that he and McCloskey would have no access to the funds. In fact, once the funds were received into Sniffen's escrow account, Belzner caused McCloskey to remove the funds, with no effective objection from Sniffen, and these funds were then used to pay creditors and meet other expenses of the McCloskey Group and Belzner personally.

In the spring of 2009, the McCloskey Group purchased a property located in southern Pennsylvania known as 1100 Columbia York, where McCloskey hoped to develop a senior living apartment and condominium complex. By the fall of 2009, McCloskey had engaged Phelan and IAGU to obtain a loan from the Federal Department of Housing and Urban Development ("HUD") to enable the McCloskey Group to develop the Columbia York property. Phelan told McCloskey that his company's chances of obtaining the loan would be improved if he was able to show a certain level of cash reserves or "liquidity." This prompted Belzner and

McCloskey to borrow $2.250 million from an individual named Mr. S.G., who was told that his funds would be placed in an escrow account under the control of attorney Sniffen and would only be used to establish the necessary amount of liquidity so that the McCloskey Group could obtain the HUD loan for the Columbia York property. Once the funds from Mr. S.G. were received, however, Belzner bullied Sniffen and McCloskey into letting him steal the funds, most of which were then used to pay back other individuals to whom Belzner owed money, but some of which were used to finance the ongoing operations of the McCloskey Group.

In May 2010, McCloskey traveled out to Newport Beach to hear an IAGU-sponsored presentation concerning its proposed acquisition of Workmen's Life Insurance Company (WLIC), an inactive company that nevertheless still owned a valid license allowing it to conduct business issued by the State of Arizona. Phelan suggested to McCloskey and other real estate developers that if they assisted IAGU by putting up the funds necessary to acquire ownership of WLIC, the company could then become a potential source of loans to finance their acquisition and development of real estate. McCloskey was interested, both because he wanted to obtain loans to finance various real estate projects and because he needed funds to repay the money misappropriated from Mr. S.G.

Phelan, in turn, saw the McCloskey Group as a potential source of financing and underwriting fees for IAGU. Phelan also hoped that the McCloskey Group would assist IAGU in its acquisition of WLIC. Finally, Phelan further urged McCloskey at various times to provide the funds necessary for IAGU and/or WLIC to qualify for investment tax credits that it hoped to obtain from the State of Connecticut.

Accordingly, for the next 15 months, Phelan and his fellow IAGU employees Grantham and Krondak conspired with and aided and abetted McCloskey and Belzner, helping them to

persuade other potential escrow account lenders to provide their funds to the McCloskey Group and then making false representations to those lenders indicating that funding on various McCloskey Group projects was imminent in order to discourage them from pressing demands for the return of their escrow funds, or from taking legal action to compel the return of the funds they had lent to the McCloskey Group. However, Phelan maintains that he did not know until ???? that Belzner and McCloskey were stealing the funds that were placed in Sniffen's escrow account. The government's position is that McCloskey informed Phelan in May 2010 that the escrow funds lent by Mr. S.G. had been stolen from Sniffen's escrow account, and that after that time, he either knew that the escrow funds lent by the subsequent lenders were being stolen as well, or was at the very least willfully blind to that fact.

In return for Phelan's and Grantham's assistance in making false representations both to encourage potential new escrow account lenders to loan money to the McCloskey Group, and then to lull those lenders into postponing demands for the return of their funds, the McCloskey Group made or caused to be made payments totaling approximately $557,000 to IAGU between July 9, 2010 and June 15, 2011. These funds were used to fund the continued operations of IAGU and its related entities, including the payment of salaries to Phelan and Grantham, as well as enabling Phelan to make outstanding lease payments he owed on his personal residence in Newport Beach. In addition, Belzner and McCloskey caused the McCloskey Group and related entities to put up a total of $725,000 in a series of installments between July 29, 2010 and October 7, 2010 which was ultimately used by IAGU to acquire WLIC in the latter part of 2011. (In contrast, IAGU was able to put up only $20,000 of its own funds to help finance this acquisition.)

Once the investors transferred their funds into the escrow accounts, Belzner directed McCloskey to remove those funds from the escrow accounts without the knowledge or permission of the lenders. Belzner and McCloskey used the majority of the stolen funds to pay for their personal and business expenses; to make partial repayments to earlier lenders, and to pay extension fees to some of the victim lenders to keep them from demanding the return of their money on the dates originally scheduled when the loans failed to fund. They also used $250,000 in stolen escrow funds to make payments to IAGU.[1]

Among the actions that Phelan took to assist Belzner and McCloskey by helping to dissuade individuals who had previously lent money to the McCloskey Group for purposes of establishing liquidity from demanding the return of their funds or pursuing legal action against the McCloskey Group were the following.

In April and August 2009, Mr. R.R. had loaned a total of $3.955 million to the McCloskey Group for the purposes of satisfying what he understood to be the liquidity requirements in connection with three real estate development loans it was seeking. Belzner and McCloskey stole these funds and were unable to pay them back within the time period mandated by their loan agreements with Mr. R.R. When none of the loans had funded by August 2010, Mr. R.R. and his counsel, Mr. R.B., began pressing for the return of his funds. After Belzner and McCloskey employed various other means to put off Mr. R.R. and his counsel, they requested and received Phelan's and Grantham's assistance in persuading Mr. R.R. to continue to forbear from acting on his remedies to compel the return of the funds.

[1] These payments consisted of $30,000 on October 18, 2010, which came from Mr. G.C.'s escrow funds; $20,000 on January 21, 2011, which came from Mr. E.M.'s escrow funds; and $200,000 on June 15, 2011, which came from the Murcielago, LLC escrow funds. Another $53,000 in payments made by Belzner and McCloskey to IAGU came directly out of Kevin Sniffen's # 8685 escrow account (on December 20 & 21, 2010 and May 17, 2011).

For example, on December 2, 2010, Grantham prepared and sent by e-mail to the escrow account lender Mr. R.R., with a copy to Mr. R.B., several letters "clarifying the reserve requirements, the insurer's funding condition, and the land draws on your loans." These letters made it appear that IAGU had made substantial progress in obtaining three loans for the McCloskey Group, but that it was necessary for the funds to continue to remain in Sniffen's escrow account for a further period of time. In particular, Grantham's letter addressing the "IAG Financing Commitment" represented that IAGU had obtained the agreement of Phoenix Life Insurance Company to extend a $20 million loan to IAGU, when in fact, no loan had been agreed to by Phoenix, and IAGU had made no significant progress in obtaining financing for any of the three projects. The letter relating to the reserve requirements further represented that IAGU's "underwriting guidelines" required that prospective borrowers must "demonstrate sufficient reserves," which were to be placed "with an IAGU approved closing attorney to be held until actual closing occurs. Kevin Sniffen, Esq. has been approved by IAGU in this regard." Grantham's letter further stated that the required amount of reserves for the three loans IAGU was then processing for the McCloskey Group totaled $4.474 million – a number that was selected to match the amount of Mr. R.R.'s money that, with interest, was supposedly being held in Sniffen's escrow account. After sending these letters to Mr. R.B. and McCloskey, Grantham forwarded the email to Phelan the next day.

In addition, on or about February 11, 2011, Grantham prepared a letter addressed to McCloskey, with a copy to Mr. R.R.'s attorney R.B., falsely representing that three loans brokered by IAGU on behalf of various McCloskey Group entities in the amounts of $1.775 million, $3.14 million, and $1.5 million were scheduled to close on February 23rd, February 28th, and in March 2011 respectively, so that the escrow funds could thereafter be returned to

Mr. R.R. In fact, IAGU had no funding or agreed participants for any of the three loans as of the date of Grantham's letter, and had made no significant progress in obtaining any, as both Grantham and Phelan knew. Grantham first transmitted this letter by email to Belzner, McCloskey and Phelan for their review, and then sent it by email to attorney R.B. On March 10, 2011, Grantham subsequently used a script provided by Belzner (on which Phelan was copied) to send a lengthy email to Mr. R.R.'s attorney, Mr. R.B., falsely representing that "funding will definitely occur by the 19th" on the Estates of McCormick transaction, and that his "best estimate" was that the loan on the Brigadoon Marina transaction would close in "the later part of the week of the 21st of March." Grantham also sent a further lengthy email to attorney R.B. on May 11, 2011 that once again was based upon a script provided by Belzner (which was likewise copied to Phelan) falsely representing that the closing on the Estates of McCormick loan was imminent at that time.

No closings of loans brokered by IAGU to any of the McCloskey entities took place on the dates indicated in Grantham's February 11th letter, or at any time thereafter. Instead, for the remainder of the spring and into the summer of 2011, Belzner, McCloskey, Sniffen, Grantham, and Phelan continued to provide false and fraudulent excuses and explanations to attorney R.B. as to why the settlements on the loans supposedly being pursued by IAGU had not occurred, coupled with further deceptive assurances that the settlements were imminent. IAGU in fact never made any significant progress on obtaining funding for any of the transactions (1100 Columbia York, Brigadoon Marina, Estates of McCormick, and Claire's Lane) that were referenced in these letters and emails.

Similarly, Phelan and Grantham assisted Belzner and McCloskey in lulling and dissuading the escrow account lender Mr. S.G. from taking action to compel the return of his

funds. Mr. S.G. had loaned the McCloskey Group a total of $3.115 million between December 2009 and January 2011 in connection with what he understood were efforts to obtain financing to develop a McCloskey Group-owned property called 1100 Columbia York. On March 9, 2011, Phelan and Grantham produced a letter on IAGU letterhead, signed in Grantham's name and directed to McCloskey, which falsely reported that the recordation process for the 1100 Columbia York project had been delayed, but that the problem was resolved and the process would be completed by March 11. On March 10, IAGU employee Sean Krondak emailed this letter to McCloskey, who added the sentence, "We are finally getting to the funds after all this time" and then forwarded it to Mr. S.G., as well as Sniffen, Belzner, and Phelan. In fact, there was no recordation problem with this transaction; funding for the transaction was not imminent, and, indeed, no lender had made a commitment on the project and funding never occurred.

Likewise, Mr. G.C., along with a personal friend of his and his counsel Mr. J.O., had lent a total of approximately $4.05 million in November 2009 and October 2010 to meet what Belzner, Phelan, and McCloskey represented were IAGU's requirements for closing a $28 million loan for the 1100 Columbia York project. These funds were likewise removed by Belzner and McCloskey. Belzner and McCloskey represented to Mr. G.C. and his associates that the funds they had loaned were being held in an escrow account under the control of IAGU, which was not the case. This made it appear that IAGU was a necessary party to any agreement to release and return the escrow funds to Mr. G.C. and his associates.

Accordingly, on October 5, 2010, Sean Krondak of IAG transmitted a letter to McCloskey (on which Belzner, Mr. G.C., and Phelan were all copied) over Phelan's signature in which Phelan represented that he was acting as the escrow agent for the funds previously tendered by Mr. G.C. and his associates that were being held in escrow relating to the HUD loan

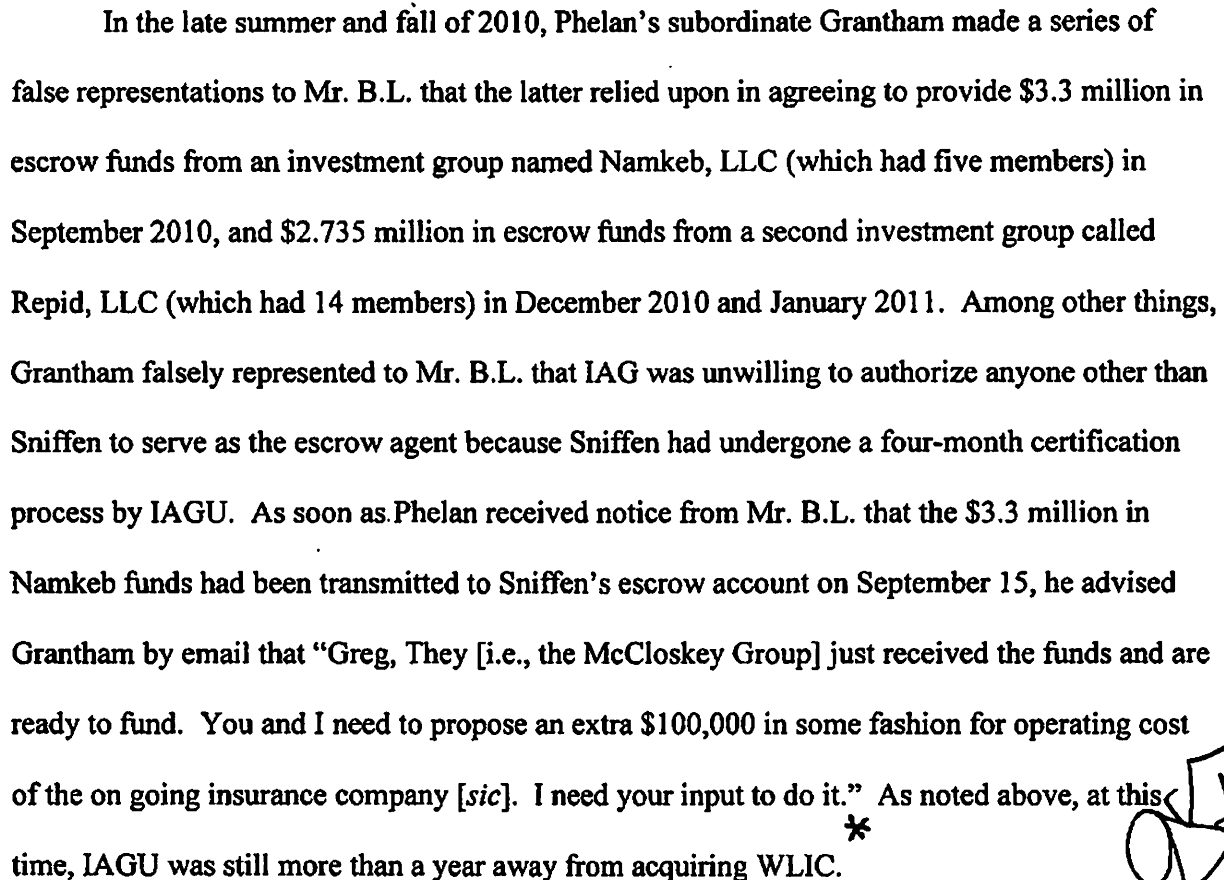
application for 1100 Columbia York. Just over a month later, on November 8, 2010, Phelan transmitted a letter by email to McCloskey with a copy to Mr. G.C. in which he falsely represented that funding on the HUD loan for 1100 Columbia York was expected before the end of the year; that "We are in receipt of all necessary documents and paperwork that we have requested from you as the owner and lender"; and that "the escrow account is holding $4,350,000.00." On both of these letters, Phelan used the letterhead of his former employer WMCI Financial. Belzner and McCloskey did transfer $30,000 in funds received from Mr. G.C. to IAGU from Sniffen's # 8685 escrow account on October 18, 2011, but these funds were simply used by IAGU to meet its ongoing business expenses.

Phelan continued to co-operate with Belzner's request that he pretend IAGU was holding the G.C.-related escrow account monies until shortly before the scheme collapsed in the summer of 2011. In an email in late February 2011, for example, after pleading with Belzner and McCloskey to "pull $500,000 for Workmen's," Phelan noted that "Pat, your comments to [Mr. G.C.] about payment next week puts me in harm's way, because you convince him that I'm holding his money and that['s] really wrong and bad[,] according to Greg." On March 4, 2011, Phelan sent McCloskey, Mr. G.C., and Mr. J.O. an email in which he stated that "We have spoken to the lender and they are initiating the wire today. . . . Upon our receipt of funds and instruction letter we will notify all as to such receipt." Far from being true, Phelan's communication was simply an almost *verbatim* restatement of a proposed text that Belzner had sent him earlier that day. On April 11th, Grantham, again in compliance with instructions from Belzner received earlier that day, sent an email to Mr. J.O. falsely representing that he would soon "authorize the wires for funding and release of the escrow funds" on the 1100 Columbia York Project, thereby making it appear to Mr. J.O. that funding had been received from a lender

and that Grantham was acting as the escrow agent and was in possession of Mr. G.C.'s escrow funds. And on April 21, 2011, after receiving $92,000 in funds transmitted from Sniffen's # 8685 escrow account the previous day, Phelan caused three payments totaling $90,000 to be made to Mr. G.C. as extension payments in compensation for the ongoing delay in returning the escrow funds provided by him and his associates.

Although Phelan and Grantham in their communications with Mr. G.C. and his counsel made it sound as if Belzner and McCloskey were independent businessmen with whom they were dealing on an arm's length basis, in reality the four men were in constant communication with each other and carefully coordinated their responses to Mr. G.C.'s and his counsel's inquiries and demands for the return of his funds. Indeed, in an email from Phelan to McCloskey on May 29, 2011, Phelan stated that "Greg feels that he is 'aiding and abetting' by acknowledging all the BS . . Pat [Belzner] requires of him in dealing with [J.O.] who is a licensed attorney. Another words [*sic*] he feels he is deep into a conspiracy with Pat making misrepresentations when he knows it's not true that he is holding the [G.C.] funds."

Phelan and Grantham also assisted Belzner and McCloskey in their scheme by helping to persuade prospective escrow account lenders to conclude their transactions and to persuade them that it was necessary to place their funds under Sniffen's control, rather than that of some other escrow agent. For example, in the late summer of 2010, Belzner and McCloskey represented to Mr. B.L., an investment adviser, that they needed to show $3.3 million in "liquidity" in order to obtain loans from WLIC to finance the three real estate projects (including 1100 Columbia York), and that IAGU was a related brokerage company that was underwriting the loans for the three projects. In fact, at the time, Phelan and IAGU were still well over a year away from even acquiring WLIC.



In the late summer and fall of 2010, Phelan's subordinate Grantham made a series of false representations to Mr. B.L. that the latter relied upon in agreeing to provide $3.3 million in escrow funds from an investment group named Namkeb, LLC (which had five members) in September 2010, and $2.735 million in escrow funds from a second investment group called Repid, LLC (which had 14 members) in December 2010 and January 2011. Among other things, Grantham falsely represented to Mr. B.L. that IAG was unwilling to authorize anyone other than Sniffen to serve as the escrow agent because Sniffen had undergone a four-month certification process by IAGU. As soon as Phelan received notice from Mr. B.L. that the $3.3 million in Namkeb funds had been transmitted to Sniffen's escrow account on September 15, he advised Grantham by email that "Greg, They [i.e., the McCloskey Group] just received the funds and are ready to fund. You and I need to propose an extra $100,000 in some fashion for operating cost of the on going insurance company [*sic*]. I need your input to do it." As noted above, at this time, IAGU was still more than a year away from acquiring WLIC.

Beginning in the latter part of January 2011, Mr. B.L. repeatedly demanded explanations for the delay in funding the loans supposedly being sought by IAGU on behalf of the McCloskey Group; proof that the escrow funds were still in place; and ultimately, the return of all of the Namkeb and Repid funds. In order to conceal the fact that the funds loaned by Namkeb and Repid were not available to be returned, and to persuade Mr. B.L. to continue to defer action to compel the return of these funds, Belzner, McCloskey, Phelan, Grantham, and Krondak responded to Mr. B.L.'s demands by making numerous false statements, both orally and in writing, sending him false documents and engaging in other deceptive practices, including but not limited to temporarily inflating the balance of the Sniffen escrow account, making partial "lulling" payments to Mr. B.L., and lying about the status of the funding for the projects and the

identity of lenders who had purportedly agreed to be "participants" in the transactions. These actions and attendant discussions among Belzner, McCloskey, Phelan, and Grantham included: the transmission of a letter by email from Grantham in California to Mr. B.L. in Maryland on February 2, 2011 falsely representing that WLIC (which IAGU had not even acquired at that time) had "obtained a participant for the entire package of [McCloskey Group] loans," which were expected to close on February 7th; the transmission of an email from Belzner to Phelan on February 23, 2011, which was intended to serve as a guide for Phelan's telephone conversations with Mr. B.L., which among other things cautioned Phelan that Mr. B.L. believed that "First and foremost Brian and I are brothers – Brian and Pat McCloskey," and which further instructed Phelan to falsely tell Mr. B.L. that "you are funding loans through Workmen's Life" and that 'Kevin needs to have the escrow until funding because of your participant['s] requirements for each of these deals"; the transmission of an email from Phelan in California (which was copied to Grantham) to Mr. B.L. on March 10, 2011 falsely representing that Necker, Turkey Point, and three other McCloskey loans "will begin funding next week," using a script transmitted from Belzner earlier that same day; another email sent from Krondak on behalf of IAGU to Belzner and McCloskey in Maryland on March 31, 2011 attaching a bogus participation agreement purportedly executed by a lender that was intended to make it appear that the funding of one of the loans was imminent; another email sent from Phelan to Mr. B.L. on April 6, 2011 falsely representing that "funds ha[ve] arrived for all transactions," using a script that had been transmitted from Belzner to Phelan (with a copy to Grantham) earlier that day; and an email dated May 7, 2011 in which Phelan outlined a proposed (and entirely false) explanation that could be given to Mr. B.L. for the continued delay in returning the Namkeb and Repid funds to him. On April 5 and April 6, 2001, Krondak, acting with the knowledge and on the instructions

of Phelan, Belzner, and McCloskey, also supplied Mr. B.L. with fabricated WLIC bank statements reflecting large balances that gave the appearance that loan participants had already wired $24 million in funds to IAGU, and that IAGU was therefore ready to fund the loans to the McCloskey Group.

Phelan, together with Grantham, also played an important role in persuading Mr. E.M., a Prince George's County real estate developer who specialized in hotel properties, to place $1.050 million in an escrow account controlled by attorney Sniffen in connection with financing he was seeking from IAGU for a hotel project in Bowie, Maryland. These funds were likewise then stolen by Belzner and McCloskey. In late September 2010, Mr. E.M. got in contact with Phelan and Grantham, whom he had been advised might be able to locate the financing he needed. In their subsequent dealings with Mr. E.M., Phelan and Grantham represented that an IAGU-affiliated company known as TAG and WLIC would be the actual lenders (although IAGU was then still a long time away from actually gaining control of WLIC or of any assets that could finance lending activity by it). In October 2010, Phelan and Grantham traveled to Maryland to meet with Mr. E.M. and members of his development team at the planned site of the hotels in Prince George's County. Phelan and Grantham asked Belzner and McCloskey to accompany them to the meeting with Mr. E.M. and his project team to serve as references for the ability of TAG and its related entities, including WLIC, to get financing deals done. Belzner played an active part in Mr. E.M.'s subsequent discussions with Phelan and Grantham. Throughout their discussions with Mr. E.M., Belzner represented that his name was "Patrick McCloskey," without objection or correction by either Grantham or Phelan, both of whom knew that this was not Belzner's true name.

Phelan and Grantham advised Mr. E.M. that it would be necessary for his company to satisfy a "liquidity" requirement on each loan by placing substantial sums in what they described as a bonded escrow account under the control of Kevin Sniffen, an attorney who had been previously approved by them. Initially, Grantham informed Mr. E.M. that he would be required to place a total of $4.3 million in this escrow account. Mr. E.M. balked at this requirement, but ultimately agreed to place approximately $1,100,000 in the escrow account. Phelan and Grantham further represented that this amount would be refunded at the time of the closing on the construction loans for the first two hotels, which was scheduled to occur on March 25, 2011.

On or about January 21, 2011, Mr. E.M. executed an escrow agreement with Sniffen which provided that he would act as the Escrow Agent responsible for holding the funds for the benefit of Mr. E.M.'s company, and that the funds would be returned to his company either on the closing date of the loan or, in any event, no later than March 31, 2011. Mr. E.M. arranged for two wire transfers totaling $1,050,000 to be sent to Sniffen's Wachovia Bank escrow account # 8685. On January 31, 2011, Mr. E.M. caused an additional $100,000 to be wired to Sniffen's # 8685 escrow account, and Mr. E.M. sent another $100,000 on February 9, 2011, after Grantham transmitted a commitment letter on TAG/WLIC letterhead to him that day relating to a construction loan he was seeking for the construction of a third hotel on the Bowie parcel.

Between January 21, 2011 and February 14, 2011, without Mr. E.M.'s knowledge or authorization, McCloskey removed almost all of the funds deposited in the escrow account by Mr. E.M. He wired $20,000 to IAGU; the remainder was used to pay creditors and other expenses of Belzner and McCloskey and transferred to other McCloskey-related entities. On February 15, Grantham prepared and sent a letter by email to both McCloskey and Mr. E.M. falsely representing that WLIC (which, again, IAGU did not yet own at that time) had "internal

February 15, Grantham prepared and sent a letter by email to both McCloskey and Mr. E.M. falsely representing that WLIC (which, again, IAGU did not yet own at that time) had "internal capital and commitments from participants, to fund up to Sixty Million Dollars in mortgage loans."

Once Mr. E.M.'s funds were placed in Sniffen's escrow account, Phelan and Grantham worked actively with Belzner and McCloskey to dissuade Mr. E.M. from seeking the return of his funds within the time frame specified by the escrow agreement. For example, on February 22, Belzner sent to Phelan by email a proposed false explanation that could be given to Mr. E.M. "to get [him] off the plate and push him for a few weeks" so that he did not press for the return of his funds until mid-March. At the end of this email, Belzner further instructed Phelan that Mr. E.M. "has with Kevin $3.565M that will be refunded to him at closing. – *This is what he thinks*" (emphasis added), thus making it clear that this was not actually true. (This e-mail was sent the day before Belzner sent Phelan the February 23 email discussed above in which he briefed him on the false representations he had made to Mr. B.L. about the transactions involving Namkeb and Repid.) Phelan made minor changes to Belzner's text (which suggested that IAGU's loan participant –of which there was none at that time – needed a third party to review his contractor's cost estimate) and sent it to Mr. E.M. the following day, indicating that this would likely delay final approval of the loans until March 10. Phelan concluded this email by stating, "I apologize for the unfortunate delay".

When the promised funding was not obtained by March 21, Mr. E.M. demanded the return of all his funds from Sniffen by no later than March 31. Sniffen forwarded his email to Belzner, McCloskey, and Phelan, who in turn forwarded it to Grantham. Belzner then responded by instructing Phelan to send Mr. E.M. "an extension for the commitment letter to be extended

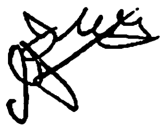
until April 15, 2011, while also cautioning him that he should "send [this] to Murphy and copy Kevin. Also, *blind copy me and Brian after you send*" (emphasis added), in order to cover up the collusion between them that had produced these actions. In compliance with Belzner's instructions to Phelan, Grantham prepared extension letters for each of the three loans extending the repayment dates to April 15 and transmitted these by email to Mr. E.M. on that same day. Phelan and Grantham were both well aware at the time that IAGU was nowhere close to obtaining loans to finance construction of any of the three hotels. None of the financing that Mr. E.M. had sought from Phelan and Grantham in connection with the construction of the three hotels ever materialized, and Mr. E.M. never received back any of the $1.250 million he transferred to the Sniffen escrow account between January 21st and February 14th.

Finally, in the late spring of 2011, Phelan and Grantham again assisted Belzner in persuading a potential escrow account lender to place their funds in an escrow account subject to Sniffen's control. By mid-May 2011, Phelan was substantially in arrears on the lease payments he owed on his residence in Newport Beach, and had reached out to Belzner and McCloskey for assistance. Belzner and McCloskey promised Phelan that they would send him ~~$150,000~~ 100,000 to help cover his outstanding lease payments, as reflected by an email that McCloskey sent to Phelan on May 29th. In that same email, McCloskey referred to the amounts that had been taken from the escrow lenders, and how he hoped to deal with the situation:

> All the $ I owe out . . . . is my problem. I have never been looking for you & Greg to get stuck with the debt. I am looking for the life company [WLIC] to help me differr [*sic*] the debt as long as possible . . . . but never removing my name or my responsibility out of the equation.
>
> We need to think clearly on how to finish all of our needs to all of our benefits.

In mid-May, 2011, at the same time that Phelan began pressing Belzner very hard for help in paying off the outstanding lease payments on his residence, Belzner began to explore the

possibility of obtaining another $1.2 million loan of additional funds from an investment company named Murcielago, LLC (which in turn served as an investment vehicle for its owner, Mr. T.S.). The deal moved quickly, and on May 25th, McCloskey transmitted documents concerning the Murcielago transaction to Phelan and indicated he believed it would be completed soon. (In this email, McCloskey also advised Phelan that "Kevins account got over drawn by 46k.") Subsequently, however, Mr. S.N., who was outside counsel to Murcielago, proposed in his negotiations with Belzner that he serve as the escrow agent for the $1.2 million, rather than Sniffen. In response, Belzner had Grantham send an e-mail to Mr. S.N. on June 7, 2011, on which Sniffen, McCloskey, and Phelan were also copied. In this e-mail and in a subsequent telephone call with Mr. S.N. and Phelan, Grantham falsely represented that Sniffen had to serve as the escrow agent because he was the "designated closing agent approved by our investment committee." In fact, IAGU did not have an investment committee; key decisions were simply made by Phelan with input from Grantham. After receiving Grantham's e-mail and two "letters of intent for financing" that he prepared and transmitted to McCloskey the following day, Murcielago agreed to make the requested $1.2 million loan and the funds were transmitted to an escrow account (# 0766) at Wachovia Bank controlled by Sniffen on June 13th. All but $100 was then removed from this account by Belzner, McCloskey and Sniffen over the course of the next three days. Most of these funds were used to pay other creditors or to meet other expenses of the McCloskey Group, but $200,000 of the Murcielago escrow funds were wired to IAGU on June 15th. Of these funds, ~~$125,000~~ $100,000 were used to pay a lease-to-purchase option on Phelan's Newport Beach residence and the balance were used to meet other expenses of IAG.



Phelan agrees that the false or fraudulent statements above attributed to him and Grantham were material to the individuals who were prospective or previous escrow account

lenders and were known by him to be false or fraudulent at the time they were made. The government's position is that Phelan is therefore criminally responsible for the indicated losses suffered by the following prospective escrow account investors after Phelan or his subordinate Grantham knowingly made materially false or fraudulent representations to them: (1) Mr. B.L., Namkeb, LLC, and Repid, LLC ($6.035 million loaned for purposes of establish liquidity; final loss suffered on overall investment of $4.040 million); (2) Mr. E.M. ($1.250 million loaned and subsequently lost in transactions where Phelan had advance knowledge and played a direct role in obtaining the funds); (3) Mr. T.S./Murcielago, LLC ($1.2 million loaned and lost).

The government further maintains that Phelan conspired with Belzner, Grantham, and McCloskey, and aided and abetted them in persuading the following individuals who had previously loaned the funds indicated to the McCloskey Group, to desist from demanding the immediate return of their funds or to forbear from exercising their authorized legal remedies to compel Belzner and McCloskey to return the funds they had loaned: (1) Mr. R.R. (actual loss of $3.955 million); (2) Mr. S.G. (total amount invested $3.840 million; net loss suffered of $3.115 million); (3) Mr. G.C., Mr. J.O., and a personal friend of Mr. G.C.'s (total amount invested $4.050 million; net loss suffered of $3.840 million). Accordingly, the total loss in the government's view for which Phelan is criminally responsible is ~~$18.780~~ $20.330 million.

Phelan maintains that the total amount of the loss for which he is criminally responsible is ~~$??~~ not less than $2.5 million nor more than $7.0 million, consisting of the escrow funds received and subsequently stolen from ?? [still needs to be defined by Gerry Martin; explain reason(s) why he acknowledges criminal responsibility with regard to these: e.g., by this time, he concedes he knew the funds were being stolen, etc.]. He maintains that while he otherwise made the various false statements identified above, he did not do so with the knowledge that Belzner and McCloskey intended to steal the escrow funds, or that

he was helping Belzner and McCloskey to put off the date when the escrow account lenders would discover that their funds had been stolen.

Obstruction of Justice

In the summer and fall of 2012, a federal grand jury, duly impaneled and sworn in the District of Maryland, was investigating the conduct of Patrick Belzner and others regarding the escrow fraud scheme. On September 26, 2012, federal grand jury subpoenas *duces tecum* were served on IAGU, defendant Phelan, Grantham, and Krondak in connection with that investigation. The subpoenas specifically sought any and all documents and records that were possessed or controlled by Phelan, Grantham, Krondak or IAGU relating to any actual, prospective, or contemplated commercial or business transactions of any kind, including but not limited to real estate transactions and loan agreements or financial guarantees, that involved IAGU or any of the victim investors, their attorneys or business entities, as well as any records relating in any way to Belzner, McCloskey, or Sniffen.

Upon receipt of the grand jury subpoenas, Phelan, Grantham, and Krondak met to discuss how they would respond to the subpoenas. They agreed that they would not produce certain responsive records that were then on their computers or otherwise within their possession, custody or control, because those particular records would reveal their involvement in, and knowledge of, the fraudulent escrow scheme.

Krondak then reviewed the emails and other records contained on his computer. He selected certain responsive records to withhold and thus conceal from the grand jury. Krondak copied the remaining responsive records from his computer onto three CD-Rom discs and provided them to Grantham for review. After Grantham reviewed these, he advised Krondak that he had removed several additional responsive records from the CDs. Grantham likewise

reviewed the emails and other records on his computer and selected certain responsive records to withhold and thus conceal from the grand jury. Grantham and Krondak produced the CDs on November 19, 2012 by shipping them via overnight mail to the Federal Bureau of Investigation in Baltimore, Maryland. Grantham and Krondak both included in that shipment a fully-executed form entitled Certification Under Federal Rules of Evidence 803(6) and 902(11), in which they certified, under penalty of perjury, that the records on the CDs were the responsive records sought by the grand jury subpoena.

Among the records that defendant Phelan, along with Grantham and Krondak, intentionally concealed and withheld from the grand jury were the following.

1. Email and letter from Grantham to Mr. B.L., dated February 2, 2011 at 8:45 a.m. purporting to confirm that six loans on projects being developed by the McCloskey Group would close on Monday, February 7, 2011.

In fact, none of these loans had been approved by any lender at that time, and they did not close on that date, or ever.

2. Email from Belzner to Phelan and McCloskey, dated February 23, 2011 at 4:45 p.m.

In this e-mail, Belzner described to Phelan the false information that Belzner had already provided to two different victim investors, B.L. and E.M. Belzner began the email by stating that "[Mr. B.L.] knows the following: First and foremost Brian and I are brothers – Brian and Pat McCloskey." Belzner also instructed Phelan as to particular false statements that Phelan needed to make to both B.L. and E.M. regarding alleged funding and "participants" in order to continue to deceive B.L. and E.M. and further the fraud scheme.

3. Email from Grantham to McCloskey dated March 2, 2011 at 12:04 p.m. with attached letter dated March 1st falsely representing that "We have spoken to our participant about the timeline and have been advised and instructed to inform you, our borrower, that the funding on this USDA loan will be concluded by March 11, 2011," which was further identified as "the outside or worst case date".

This loan likewise was never approved by any participant and never funded.

4. Email from McCloskey to Krondak and Phelan, dated April 6, 2011 at 5:50 a.m. relating to Mr. B.L.

In this email, McCloskey told Krondak that he would be sending Krondak a false bank statement that Krondak was to send to Phelan and B.L. to make it appear that IAGU had received the necessary funds from a participant to fund a large development loan for a McCloskey Group project, when in fact, it had received no such funds nor was there any lending participant in the first place.

5. Email from McCloskey to Krondak and Phelan, dated April 6, 2011 at 6:07 a.m. with the subject line "Emailing CCF04062011_00000.pdf"

In this e-mail, sent a short time after the above April 6 email, McCloskey instructed Krondak as to when to send out the false bank statement, which he also attached to the email message. Specifically, he warned Krondak not to send the bank statement to B.L. until a certain time later that day, because there was "a time on the statement. For safety reasons ... maybe create the email when you get in .. send it to me ONLY ... let me double check & then I'll give you the go ahead."

6. Email from Grantham to Mr. R.R. dated April 7, 2011 at 2:21 p.m. falsely representing that the loan for the 75th Street Partners – Ocean City transaction was "on track to close next week" and that the participant (lender) had "sent in its share of the funds for the closing."

Likewise, there was no participant; no funds had been received; and this loan never closed.

7. Email from Belzner to Phelan and McCloskey, dated April 19, 2011 at 12:39 p.m. relating to Mr. B.L.

In this email, directed specifically to Phelan, Belzner set out the false story that he had told B.L. to explain why IAGU had not provided funding, as previously promised, from an

alleged participant by the name of "American." In fact, there was no such participant, as Grantham, Krondak, Phelan, Belzner and McCloskey all knew. Belzner further instructed Phelan on what Phelan should tell B.L. that he was doing to get the funding. Belzner ended the email by stating: "Be cordial and don't take Ben as being antagonistic, I have him in a good spot. Appease him and tell Ben what Ben wants to hear from what I explained above."

8. Email dated May 7, 2011 at 12:33 p.m. from Phelan to Belzner, McCloskey, and Grantham setting out a proposed (and fictional) explanation to be sent to Mr. B.L. to explain the continued delay in funding the loans to the McCloskey Group.

9. Email dated May 11, 2011 at 11:44 a.m. from Belzner to Grantham, Phelan, and McCloskey providing a draft script for a letter to be sent to McCloskey and attorney R.B., providing various false justifications for the continued delay of the funding of the Estates of McCormick loan; Belzner's email instructed Grantham to "Add legal ease [*sic*] so that it makes sense and expand on the titlev issue that I have addressed."

These withheld emails were material to the grand jury's investigation of the fraud scheme and the involvement of Grantham and others.

At all times, in connection with the conduct discussed above, defendant Phelan acted knowingly and willfully.

I have read this Statement of Facts and carefully reviewed it with my attorney. I agree that the United States could prove these facts at trial and that I am guilty of the conduct described above, although I continue to reserve my right to dispute the amount of the loss for which I am criminally responsible, as set forth in the plea agreement and above.

6/10/14
Date

Mervyn A. Phelan, Sr.