

1 KEVIN V. RYAN (CSBN 118321)
2 United States Attorney

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4 RICHARD
5 U.S. DISTRICT COURT
6 NO. DIST. OF CALIF. S.D.

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 **CR 03 20179**

12 UNITED STATES OF AMERICA,

No.

13 Plaintiff,

14 v.

15 MARCI O'KELLY,

16 Defendant.

VIOLATIONS: 18 U.S.C. § 1341 - Mail
Fraud; 18 U.S.C. § 1343 - Wire Fraud; 18
U.S.C. § 2314 - Interstate Transportation of
Stolen Goods; 18 U.S.C. § 981(a)(1)(C) and
28 U.S.C. § 2461(c) - Criminal Forfeiture.

SAN JOSE VENUE

17
18 INDICTMENT

19 The Grand Jury charges:

20 BACKGROUND

21 At all times relevant to this indictment:

22 1. Defendant Marci O'Kelly was employed by Apple Computer, Inc. ("Apple") as a
23 Graphics Design Budget Coordinator, in Cupertino, California.

24 2. In this role, defendant's duties included ordering graphic design and photography
25 equipment ("Photography Equipment") for Apple's business use from Apple's vendors. Apple
26 permitted defendant to order Photography Equipment that had been requested by authorized
27 employees at Apple. After placing such orders, Apple's vendors shipped Photography
28 Equipment and invoices to defendant at Apple. The invoices were then submitted to Apple's

1 accounts payable personnel and paid by Apple.

2 3. B&H Photo-Video-Pro Audio in New York, New York ("B&H") was one of Apple's
3 graphic design and photography equipment vendors.

4 4. eBay is an Internet website on which users can buy and sell many items, including
5 graphics design and photography equipment. This site acts as a venue for sellers to list items and
6 for buyers to bid on these items. Any electronic bids made on eBay pursuant to an auction are
7 routed through eBay's computer servers in San Jose, California.

8 5. Defendant's User ID name on eBay was "h20skigal," and an e-mail address she used in
9 connection with this account was "marci590@hotmail.com."

10 COUNTS ONE THROUGH THREE: (18 U.S.C. § 1341- Mail Fraud)

11 6. The allegations in paragraphs 1-5 are realleged and incorporated herein as if set forth in
12 full.

13 SCHEME TO DEFRAUD

14 7. On or about and between dates unknown to the Grand Jury, but beginning no later than
15 May 14, 2002 and ending no earlier than January 22, 2003, both dates being approximate and
16 inclusive, in the Northern District of California, and elsewhere, defendant

17 MARCI O'KELLY

18 did knowingly devise and intend to devise a scheme or artifice to defraud.

19 8. It was part of the scheme and artifice to defraud that defendant ordered Photography
20 Equipment from B&H for her personal financial gain without authorization from Apple.

21 9. It was further part of the scheme and artifice to defraud that defendant caused B&H in
22 New York to ship Photography Equipment using Federal Express to Apple in Cupertino.
23 Defendant then caused B&H to bill Apple, and for Apple to pay B&H for Photography
24 Equipment in the amount of approximately \$120,000.

25 10. It was further part of the scheme and artifice to defraud that, after receiving the
26 Photography Equipment from B&H without authorization, defendant auctioned the equipment on
27 eBay under the User ID "h20skigal" and kept all of the proceeds from those sales for her personal
28 gain.

1 THE USE OF THE MAILS

2 11. The allegations in paragraphs 1-10, including the scheme to defraud described therein,
3 are realleged and incorporated herein as if set forth in full.

4 12. On or about the dates listed below, in the Northern District of California and elsewhere,
5 for the purpose of executing the aforementioned scheme and artifice to defraud, defendant

6 MARCI O'KELLY

7 did knowingly cause to be delivered by a private or commercial interstate carrier the matter and
8 thing according to the direction thereon, as described below:

COUNT	DATE	SENDER	MAILING
1	05/14/02	B&H	Canon Optura 100-MC Digital Camcorder from New York, NY to Cupertino, CA
2	06/25/02	B&H	Canon Optura 100-MC Digital Camcorder from New York, NY to Cupertino, CA
3	01/22/03	B&H	Nikon Coolpix 3500 Digital Camera from New York, NY to Cupertino, CA

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16 All in violation of Title 18, United States Code, Section 1341.

17 COUNTS FOUR THROUGH EIGHT: (18 U.S.C. § 1343 - Wire Fraud)

18 13. The allegations in paragraphs 1-10, including the scheme to defraud described therein,
19 are realleged and incorporated herein as if set forth in full.

20 THE USE OF THE WIRES

21 14. On or about the dates listed below, in the Northern District of California and elsewhere,
22 for the purpose of executing the aforementioned scheme and artifice to defraud, the defendant

23 MARCI O'KELLY

24 did knowingly transmit and cause to be transmitted in interstate and foreign commerce, by means
25 of a wire communication, certain signs and signals, as described below:

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COUNT	DATE	WIRE
4	05/21/02	An electronic communication from an eBay user in Las Vegas, Nevada to eBay in San Jose, California, containing a winning bid of \$810.00 for a Nikon Coolpix 5000 Digital Camera auctioned by defendant under the User ID "h20skigal."
5	06/20/02	An electronic communication from an eBay user in Levittown, Pennsylvania to eBay in San Jose, California, containing a winning bid of \$970.00 for a Canon Optura 100-MC Digital Camcorder auctioned by defendant under the User ID "h20skigal."
6	07/06/02	An electronic communication from an eBay user in Kent, Washington to eBay in San Jose, California, containing a winning bid of \$810.00 for a Canon Optura 100-MC Digital Camcorder auctioned by defendant under the User ID "h20skigal."
7	08/15/02	An electronic communication from an eBay user in Plantation, Florida to eBay in San Jose, California, containing a winning bid of \$850.00 for a Canon Optura 100-MC Digital Camcorder auctioned by defendant under the User ID "h20skigal."
8	10/22/02	An electronic communication from an eBay user in McLean, Virginia to eBay in San Jose, California, containing a winning bid of \$4,200.00 for a Nikon Professional Digital SLR Camera D1X auctioned by defendant under the User ID "h20skigal."

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

COUNT NINE: (18 U.S.C. § 2314 - Interstate Transportation of Stolen Goods)

15. The allegations in paragraphs 1-5 are realleged and incorporated herein as if set forth in full.

16. On or about and between dates unknown to the Grand Jury, but beginning no later than May 14, 2002 and ending no earlier than January 22, 2003, both dates being approximate and inclusive, in the Northern District of California, and elsewhere, defendant

MARCI O'KELLY

did knowingly transport in interstate commerce goods, wares and merchandise, of the value of at

1 least \$5,000, knowing the same to have been stolen, converted and taken by fraud, as set forth
2 below:

3	DATE	FROM	TO	GOODS
4	05/24/02	Santa Clara County, CA	Las Vegas, NV	Nikon Coolpix 5000 Digital Camera
5	08/28/02	Santa Clara County, CA	Plantation, FL	Canon Optura 100-MC Digital Camcorder
6	10/24/02	Santa Clara County, CA	McLean, VA	Nikon Professional Digital SLR Camera D1X
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8				

9 All in violation of Title 18, United States Code, Section 2314.

10 FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) -
11 Criminal Forfeiture)

12 17. The allegations contained in Counts One-Nine of this Indictment are hereby realleged
13 and by this reference fully incorporated herein for the purpose of alleging forfeiture pursuant to
14 the provisions of 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. 2461(c).

15 18. As a result of the offenses alleged in Counts One-Nine, the defendant

16 MARCI O'KELLY

17 shall forfeit to the United States all property, constituting and derived from proceeds traceable to
18 said offenses.

19 If any of said property, as a result of any act or omission of the defendant-

20 (1) cannot be located upon the exercise of due diligence;

21 (2) has been transferred or sold to or deposited with, a third person;

22 (3) has been placed beyond the jurisdiction of the Court;

23 (4) has been substantially diminished in value; or

24 (5) has been commingled with other property which cannot be subdivided without difficulty;

25 any and all interest defendants have in other property shall be vested in the United States and

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1 forfeited to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) & 28 U.S.C. § 2461(c).

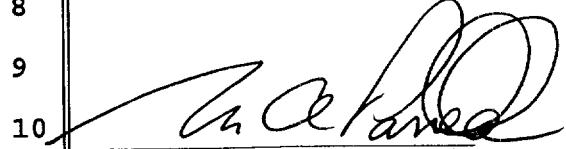
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3 DATED:
4 12/17/03

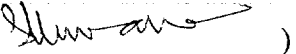
A TRUE BILL

5 
6 GRAND JURY FOREPERSON

7 KEVIN V. RYAN
8 United States Attorney

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10 MATTHEW A. PARRELLA
11 Chief, San Jose Branch Office

12 (Approved as to form: )
13 AUSA Kewalramani

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