**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF LOUISIANA**

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| **UNITED STATES OF AMERICA** | * | **CRIMINAL DOCKET NO.** |
| **v.** | * | **SECTION:** |
| **THOMAS D. KERRY** | * | **VIOLATION: 18 U.S.C. 152(1)** |
| | * | |

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## FACTUAL BASIS

If this case had gone to trial, the Government would prove the following beyond a reasonable doubt through competent evidence and tangible exhibits:

On or about August 24, 2005, the defendant, Thomas D. Kerry, filed a voluntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Eastern District of Louisiana (the "bankruptcy court"), Case Number 05-17373 (the "bankruptcy case"). The debtor signed the bankruptcy schedules and statements, declaring under penalty of perjury that the schedules and statements were true, correct, and complete.

Barbara Rivera-Fulton was appointed as the Chapter 7 trustee (the "trustee") in the bankruptcy case. On or about November 28, 2005, the first meeting of the creditors was held in the bankruptcy case, at which meeting Thomas D. Kerry testified under oath that the bankruptcy petition, schedules, and statements were true, correct, and contained a complete list of all debtor assets. The trustee asked specific questions regarding the existence of other property or assets. Kerry at no time stated that any property or proceeds from property was exempt from the estate and not to be included as assets nor had any questions as to whether or not specific property or assets needed to be listed. These verbal assertions, as well as the signed bankruptcy schedules and statements, were false as they knowingly and fraudulently concealed certain assets that were required to be disclosed.

The Office of the United States Trustee ("UST") and the trustee received information that the debtor had failed to include all of his family's assets in the schedules and statements. Specifically, the UST and the trustee learned that the debtor failed to list the following assets which belonged to the estate: an Option Xpress money market and cash account with a balance in excess of fifty-thousand dollars ($50,000) on the petition date.

The approximately $50,000 in the Option Xpress money market and cash account was funded from a 2004 sale of real property in Covington, Louisiana that netted the Kerry's $154,875. The difference of approximately $100,000 has been expended by Kerry.

After the trustee became aware of the concealed assets, and learned that the assets belonged to the estate, turnover proceedings began to obtain and administer the concealed assets for the benefit of creditors.

Kerry employed the services of an attorney to file his bankruptcy petition. The attorney stated that at no time did Kerry express confusion as to whether or not the assets should or should not be

listed. The above information comes from an investigation conducted by Special Agents of the Federal Bureau of Investigation, the Office of the United States Trustee, an analysis of numerous records, as well as interviews conducted during the investigation.

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| THOMAS D. KERRY<br>Defendant | Date |
| JON MAESTRI<br>Assistant United States Attorney | Date |
| ROBERT MARRERO<br>Counsel for Defendant | Date |