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October 10, 2023

Honorable Mary Kay Vyskocil
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

VIA ECF

Re: United States v. Adedayo Ilori
21 Cr. 746 (MKV)

Dear Judge Vyskocil:

In the Order dated October 4, 2023, the Court noted "that no issues have been raised with the Court by Mr. Ilori in advance of sentencing" By this letter, defendant Adedayo Ilori ("Ilori") respectfully raises one financial issue.

Forfeiture

The government contends that Ilori should be held liable for the entire forfeiture amount of $1,039,424.27. Govt Sent. Memo, p. 14. Ilori submits that he should be required to forfeit only the property he actually acquired, in other words, the funds he personally obtained. As he stated in his original sentencing memorandum, "The gross receipts in this case are $1,039,625 and are [also] attributable to Chris Recamier, Mr. Ilori's conspirator … This total does not reflect gross receipts that Mr. Ilori received individually."

In *United States v. Honeycutt*, 581 U.S. 433, 454 (2017), the Supreme Court held that drug crime forfeiture pursuant to 21 U.S.C, § 853(a)(1) "is limited to property the defendant himself actually acquired as a result of the crime." *Honeycutt* addressed forfeiture and joint and several liability in the context of the narcotic offense forfeiture statute, 21 U.S.C, § 853(a)(1). Although the Second Circuit has discussed the applicability of *Honeycutt* to forfeiture statutes other than 21 U.S.C, § 853(a)(1), the Court has not directly rendered a decision on the issue. *See United States v. Beras*, 2023 U.S. Dist. LEXIS 80243 (S.D.N.Y), *5-6 (The Second Circuit has not yet ruled whether Honeycutt extends to forfeiture orders under 18 U.S.C. § 982(a)(1)). However, the Court has strongly indicated that it may view *Honeycutt* as applicable to money laundering forfeiture. *See United States v Tanner*, 942 F.3d 60, 67-68 (2d Cir. 2019) (Although the Court indicated that it "had not yet fully defined the parameters of *Honeycutt*," it analyzed the contested forfeiture order in that case, one sought pursuant to the money laundering forfeiture statute, under the *Honeycutt* standard, although ultimately concluding that *Honeycutt* did not bar joint and several liability in that case because each co-conspirator at one time possessed the total proceeds of the kickback scheme).[1]

With respect to offense property, Federal Rule of Criminal Procedure 32.2 provides, "If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense." Fed. R. Crim. P. 32.2(b)(1)(A). After a defendant is convicted of an offense on proof beyond a reasonable doubt, the government must establish by a preponderance of evidence that, as a result of the offense, the property at issue is subject to criminal forfeiture. *United States v. Fruchter,* 411 F.3d 377, 383 (2d Cir. 2005).

The government has not established that Ilori personally "actually acquired" the entire $1,039,424. In fact, the evidence establishes, and co-defendant Chris Recamier's ("Recamier) guilty plea indicates, that Recamier actually acquired a portion of the proceeds.[2] The government, in its sentencing submission as to Recamier stated that he "illegally profited" from the instant crimes and that of the "$1 million in relief funds successfully obtained, Ilori **and** Recamier transferred the money to accounts **they** controlled …" Govt. Recamier Sent. Memo, pp. 6,7 (emphasis added).

Additional Objection to the Presentence Investigation Report ("PSR")

The above discussed Court Order caused me to reread the financial penalties sections of the PSR. Upon revieing the "Restitution" section on page 39 of the PSR, I noticed a cosmetic "cut and paste" error which Ilori respectfully requests be corrected. In this section, the second sentence states, "As stipulated in defendant's plea agreement, $1,072,062.47 is owed to the Small Business Administration." Since Ilori did not enter a plea, no such stipulation exists and he requests that this sentence be stricken from the PSR.

Thank you for Your Honor's consideration of this letter.

Very truly yours,
Sanford Talkin
Sanford Talkin

cc: AUSA Juliana Murray (by ECF)

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[1] Defendant respectfully directs the Court's attention to *United States v. Kenner*, 443 F.Supp 354 (E.D.N.Y. 2020) where the district court rejected this argument.

[2] As discussed in detail during Recamier's sentencing hearing, he was not subject to forfeiture because the statute to which he plead guilty did not provide for forfeiture. Recamier Sent. Tr. pp. 7-10.