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United States of America

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD AYVAZIAN,  
Aka "Richard Avazian" and  
"Iuliia Zhadko," et al.

Defendants.

No. CR 20-00579-SVW-3

GOVERNMENT'S APPLICATION FOR  
PRELIMINARY ORDERS OF  
FORFEITURE AGAINST DEFENDANT  
ARTUR AYVAZIAN

Sentencing Hearing

Date: October 18, 2021

Time: 11:00 a.m.

Courtroom: 10A

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

Plaintiff United States of America, by and through its  
counsel of record, the United States Attorney for the Central  
District of California and Assistant United States Attorney

1 Brent A. Whittlesey, hereby applies for issuance of a  
2 Preliminary Orders of Forfeiture ("POFs") lodged  
3 contemporaneously herewith,<sup>1</sup> pursuant to Fed. R. Crim. P. 32.2(b)  
4 and with respect to questions 1 through 24 and defendant's  
5 guilty conviction on Counts One, Two through Twelve, Thirteen  
6 through Twenty, Twenty-four, and Twenty-six of the First  
7 Superseding Indictment as to the following property  
8 ("Forfeitable Property") to be forfeited to the United States of  
9 America:

10 a. \$74,557.79 in bank funds seized from Bank of America  
11 account number ending in 7695 held in the name of Allstate  
12 Towing & Transport LLC;

13 b. \$65,990.43 in bank funds seized from Bank of America  
14 account ending in 9700 held in the name of Runyan Tax Service  
15 Inc.;

16 c. The real property located at 4910 Topeka Drive,  
17 Tarzana, California, APN: 2176-029-031, more particularly  
18 described as:

19 DESCRIPTION: THE LAND REFERRED TO HEREIN IS SITUATED IN THE  
20 COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS  
21 DESCRIBED AS FOLLOWS:

22 PARCEL 1:

23 THOSE PORTIONS OF LOT 71 and 72 OF TRACT 2605, IN THE CITY  
24 OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,  
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26 <sup>1</sup> The government has lodged a total of four POFs - one for each  
27 of the three real properties described below and one for the  
28 remaining assets. Individual POFs are required for each parcel  
of real property because orders purporting to effect title to  
multiple parcels of real property cannot be recorded.

1 AS PER MAP RECORDED IN BOOK 27 PAGE 55 ET SEQ. OF MAPS, AND  
2 THAT PORTION OF PARCEL "A" OF PARCEL MAP L.A. NO. 2015 AS  
3 PER MAP FILED IN BOOK 32 PAGE 19 OF PARCEL MAPS, IN THE  
4 OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS  
5 FOLLOWS:

6 BEGINNING AT A POINT IN THE CENTERLINE OF TOPEKA DRIVE, 40  
7 FEET WIDE, AS SHOWN ON SAID MAP, DISTANT THEREON SOUTH 15°  
8 10' 00" WEST 178.55 FEET FROM THE NORTHEASTERLY TERMINUS OF  
9 THAT CERTAIN COURSE IN THE CENTERLINE OF TOPEKA DRIVE SHOWN  
10 ON SAID MAP AS HAVING A BEARING OF NORTH 15° 10' 00" EAST  
11 AND LENGTH OF 1055.19 FEET;

12 THENCE SOUTH 74° 50' 00" EAST 56.09 FEET TO THE BEGINNING  
13 OF A TANGENT CURVE, CONCAVE TO THE NORTHWEST, HAVING A  
14 RADIUS OF 129.86 FEET;

15 THENCE EASTERLY ALONG SAID CURVE 128.40 FEET; TO THE TRUE  
16 POINT OF BEGINNING;

17 THENCE TANGENT TO SAID CURVE NORTH 48° 30' 50" EAST 147.14  
18 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE  
19 SOUTHEAST, HAVING A RADIUS OF 100.05 FEET;

20 THENCE EASTERLY ALONG SAID CURVE, 125.14 FEET, A RADIAL  
21 LINE TO SAID POINT BEARS NORTH 30° 10' 46" EAST;

22 THENCE NORTH 10° 52' 46" EAST 45.32 FEET;

23 THENCE SOUTH 84° 29' 18" EAST 182.82 FEET;

24 THENCE SOUTH 04° 13' 10" WEST 195.63 FEET TO A POINT IN A  
25 CURVE CONCAVE WESTERLY HAVING A RADIUS OF 175.31 FEET; A  
26 RADIAL LINE TO SAID POINT BEARS NORTH 62° 22' 50" EAST;  
27  
28

1 THENCE CONTINUING EASTERLY AND SOUTHERLY ALONG SAID CURVE  
2 THROUGH A CENTRAL ANGLE OF  $50^{\circ} 06' 30''$  AN ARC DISTANCE OF  
3 153.32 FEET;

4 THENCE TANGENT TO SAID CURVE SOUTH  $22^{\circ} 29' 20''$  WEST 63.38  
5 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE  
6 NORTHWEST HAVING A RADIUS OF 375.00 FEET;

7 THENCE SOUTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL  
8 ANGLE OF  $13^{\circ} 52' 00''$  90.76 FEET TO THE BEGINNING OF A  
9 REVERSE CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF  
10 161.89 FEET;

11 THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL  
12 ANGLE OF  $17^{\circ} 46' 00''$  50.20 FEET TO THE BEGINNING OF A  
13 REVERSE CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF  
14 75.69 FEET;

15 THENCE SOUTHWESTERLY AND WESTERLY ALONG SAID CURVE, THROUGH  
16 A CENTRAL ANGLE OF  $33^{\circ} 58' 30''$  44.88 FEET TO A POINT OF  
17 CUSP IN THE NORTHERLY LINE OF SAID PARCEL "A" SAID  
18 NORTHERLY LINE BEING A CURVE CONCAVE SOUTHWESTERLY HAVING A  
19 RADIUS OF 30.00'; A RADIAL LINE TO SAID POINT BEARS SOUTH  
20  $38^{\circ} 26' 10''$  EAST;

21 THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE  
22  $116^{\circ} 31' 20''$  AN ARC DISTANCE OF 61.01 FEET;

23 THENCE SOUTH  $10^{\circ} 54' 50''$  EAST 92.71 FEET;

24 THENCE SOUTH  $80^{\circ} 16' 17''$  WEST 20.00 FEET;

25 THENCE NORTH  $31^{\circ} 28' 33''$  WEST 120.33 FEET;

1 THENCE NORTH 22° 17' 48" WEST 20.00 FEET TO THE BEGINNING  
2 OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 55.69  
3 FEET;

4 THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL  
5 ANGLE OF 49° 06' 52" AN ARC DISTANCE OF 47.74 FEET TO THE  
6 BEGINNING OF A REVERSE CURVE CONCAVE SOUTHEASTERLY HAVING A  
7 RADIUS OF 181.89 FEET;

8 THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL  
9 ANGLE OF 17° 46' 00" AN ARC DISTANCE OF 56.40 FEET TO THE  
10 BEGINNING OF A REVERSE CURVE CONCAVE NORTHWESTERLY HAVING A  
11 RADIUS OF 355.00 FEET;

12 THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL  
13 ANGLE OF 12° 45' 16" AN ARC DISTANCE OF 79.03 FEET;

14 THENCE NORTH 67° 12' 02" WEST 268.30 FEET;

15 THENCE NORTH 15° 10' 00" EAST 43.00 FEET;

16 THENCE NORTH 47° 02' 30" WEST 175.00 FEET TO THE TRUE POINT  
17 OF BEGINNING.  
18

19 PARCEL 2:

20 THE RIGHT OF INGRESS AND EGRESS FOR SAID PROPERTY OVER A  
21 ROADWAY EASEMENT FROM TOPEKA DRIVE OVER THAT PORTION OF LOT  
22 71, OF TRACT NO. 2605, IN THE CITY OF LOS ANGELES, COUNTY  
23 OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN  
24 BOOK 27, PAGE 55, ET SEQ., OF MAPS, IN THE OFFICE OF THE  
25 COUNTY RECORDER OF SAID COUNTY, INCLUDED WITHIN A STRIP OF  
26 LAND 30.00 FEET IN WITH, LYING 15.00 FEET ON EACH SIDE OF  
27 THE FOLLOWING DESCRIBED CENTER LINE:  
28

BEGINNING AT THE SOUTHWESTERLY CORNER OF THE LAND CONVEYED TO CIRELLA G. SMITH AND HUSBAND, BY DEED RECORDED JULY 8, 1943 AS INSTRUMENT NO. 118, IN BOOK 20132 PAGE 100, OFFICIAL RECORDS, SAID CORNER BEING DISTANT 261.45 FEET NORTHERLY FROM THE SOUTHWESTERLY CORNER OF LOT 71, SAID TRACT 2605; THENCE NORMAL TO THE EASTERLY LINE OF TOPEKA DRIVE, SOUTH 74° 50' 00" EAST 36.09 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 129.86 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE, 128.40 FEET; THENCE TANGENT TO SAID CURVE, NORTH 48° 30' 50" EAST 147.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 100.05 FEET; THENCE EASTERLY ALONG SAID CURVE, 144.70 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 48° 37' 10" EAST, 161.06 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 175.31 FEET, THENCE SOUTHERLY ALONG SAID CURVE, 217.57 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 22° 29' 20" WEST 42.15 FEET TO A POINT.

d. The real property located 834 Calle La Primavera, Glendale, California, APN: 5663-036-33, more particularly described as:

Parcel 1:

Lot 56 of Tract No. 45375, in the City of Glendale, County of Los Angeles, State of California, as per map recorded in Book 1128, Page(s) 55 to 63 inclusive of Maps, in the office of the County Recorder of said County.

1 Except therefrom all oil and minerals in, on and under said  
2 land as reserved by Benjamin Dreyfus in deeds recorded in  
3 Book 101, Pages 551 and in Book 107, Page 447 both of  
4 Deeds, in said Office of the County Recorder.

5 Parcel 2:

6 Non-exclusive easements for access, ingress, egress,  
7 encroachments, maintenance, repair, drainage, support and  
8 other purposes, all as described in the Master Declaration  
9 recorded March 7, 1989 as Instrument No. 1989-354873 and  
10 any amendments thereto.

11 e. The real property located at 74203 Anastacia Lane,  
12 Palm Desert, California, APN: 684-331-008, more particularly  
13 described as:  
14

15 Parcel 1:

16 Lot 56 of Tract No. 45375, in the City of Glendale, County  
17 of Los Angeles, State of California, as per map recorded in  
18 Book 1128, Page(s) 55 to 63 inclusive of Maps, in the  
19 office of the County Recorder of said County.

20 Except therefrom all oil and minerals in, on and under said  
21 land as reserved by Benjamin Dreyfus in deeds recorded in  
22 Book 101, Pages 551 and in Book 107, Page 447 both of  
23 Deeds, in said Office of the County Recorder.

24 Parcel 2:

25 Non-exclusive easements for access, ingress, egress,  
26 encroachments, maintenance, repair, drainage, support and  
27 other purposes, all as described in the Master Declaration  
28

1 recorded March 7, 1989 as Instrument No. 1989-354873 and  
2 any amendments thereto.

3 This application, which deals solely with the Forfeitable  
4 Property, is supported by the finding of guilt as to defendant,  
5 the finding by the jury that defendant's interest in the  
6 Forfeitable Property is subject to forfeiture to the United  
7 States, and the matters set forth in the accompanying Memorandum  
8 of Points and Authorities.

9 DATED: September 1, 2021 Respectfully submitted,

10  
11 TRACY L. WILKISON  
Acting United States Attorney

12 SCOTT M. GARRINGER  
13 Assistant United States Attorney  
Chief, Criminal Division

14 /s/Brent A. Whittlesey  
15 BRENT A. WHITTLESEY  
16 Assistant United States Attorney  
Asset Forfeiture Section

17 Attorneys for Plaintiff  
18 UNITED STATES OF AMERICA  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendant was found guilty to Counts One, Two through Twelve, Th, Thirteen through Twenty, Twenty-four, and Twenty-six of the First Superseding Indictment in this case, charging him with a violation of 18 U.S.C. § 1349 (conspiracy to commit wire fraud and bank fraud), a violation of 18 U.S.C. § 1343 (wire fraud), a violation of 18 U.S.C. § 1344(s) (bank fraud and attempted bank fraud), a violation of 18 U.S.C. §§ 1028A(a)(1) (aggravated identity theft), and a violation of 18 U.S.C. § 1956(h) (conspiracy to commit money laundering). After the verdict was returned, the jury determined that defendant's interest in the following Forfeitable Property:

a. \$74,557.79 in bank funds seized from Bank of America account number ending in 7695 held in the name of Allstate Towing & Transport LLC;

b. \$65,990.43 in bank funds seized from Bank of America account ending in 9700 held in the name of Runyan Tax Service Inc.;

c. The real property located at 4910 Topeka Drive, Tarzana, California, APN: 2176-029-031;

d. The real property located 834 Calle La Primavera, Glendale, California, APN: 5663-036-33; and

e. The real property located at 74203 Anastacia Lane, Palm Desert, California, APN: 684-331-008 was forfeited to the United States.

Pursuant to Rule 32.2(b), the government now applies for the entry of the Preliminary Order of Forfeiture of the Forfeitable Property (the proposed order is lodged contemporaneously herewith). The government also requests that the forfeiture of the Forfeitable Property be stated orally at defendant's sentencing and set forth in defendant's Judgment and Commitment Order.

## **II. ARGUMENT**

### **A. The Jury Found the Required Nexus Between Defendant's Crime and the Forfeitable Property**

Rule 32.2 of the Federal Rules of Criminal Procedure provides, in pertinent part:

As soon as practicable after entering a guilty verdict or accepting a plea of guilty or nolo contendere on any count in an indictment or information with regard to which criminal forfeiture is sought, the court must determine whether the government has established the requisite nexus between the property and the offense. . . . The court's determination may be based on . . . any written plea agreement . . . .

Fed. R. Crim. P. 32.2(b)(1). The Advisory Committee Notes for this provision explain that for the preliminary order of forfeiture, the court must determine "if the property was subject to forfeiture under the applicable statute, e.g., whether the property represented the proceeds of the offense . . . ." Advisory Committee Notes to Rule 32.2, subdivision (a) (2000 Adoption). The standard of proof regarding the forfeitability of property in a criminal case is preponderance of the evidence. See United States v. Najjar, 300 F.3d 466,

1 485-86 (4th Cir. 2002); United States v. Shryock, 342 F.3d 948,  
2 991 (9th Cir. 2003) (following Najjar); United States v.  
3 DeFries, 129 F.3d 1293, 1312 (D.C. Cir. 1997); United States v.  
4 Hernandez-Escarsega, 886 F.2d 1560, 1576-77 (9th Cir. 1989)  
5 (interpreting language in 21 U.S.C. § 853); United States v.  
6 Bieri, 21 F.3d 819 (8th Cir. 1994) (§ 853).

7 Thus, the only question before the Court in connection with  
8 the requested entry of the proposed Preliminary Order is whether  
9 the evidence before the Court is enough to establish by a  
10 preponderance of the evidence that there is a nexus between the  
11 specific property to be forfeited, and the offenses to which  
12 defendant was found guilty. See Rule 32.2(b)(1).

13 The existence or extent of third-party interests in the  
14 specific property will be determined after the entry of the  
15 preliminary order. See United States v. Lazarenko, 476  
16 F.3d 642, 648 (9th Cir. 2007) ("Upon a finding that the property  
17 involved is subject to forfeiture, a court must promptly enter a  
18 preliminary order of forfeiture without regard to a third  
19 party's interests in the property."). The preliminary order  
20 should be entered promptly in order to avoid unnecessary delay  
21 in the forfeiture process and resolve potential third party  
22 rights. United States v. Yeje-Cabrera, 430 F.3d 1, 15 (1st Cir.  
23 2005). The defendant need not be present when the preliminary  
24 order is entered. United States v. Segal, 495 F.3d 826, 837-38  
25 (7th Cir. 2007).

26 The government is not required to establish the defendant's  
27 ownership of the property either to seize it or to obtain a  
28

1 preliminary order of forfeiture, and third parties are  
2 prohibited from intervening in the criminal case, and cannot  
3 complain that they have to wait for the ancillary proceeding to  
4 assert their rights. Almeida v. United States, 459 F.3d 377,  
5 381 (2d Cir. 2006); 18 U.S.C. § 1963(i). As explained in the  
6 Advisory Committee Notes to Rule 32.2 (2000), the Rule was  
7 revised with the intent to eliminate confusion over whether the  
8 extent of the defendant's ownership interest should be  
9 determined by the finder of fact. The new rule clarified that  
10 the only question upon conviction or a guilty plea is whether  
11 there is a nexus between the violation of which the defendant  
12 has been convicted (or to which he has pled) and the property  
13 sought - if there is, the court should enter an order forfeiting  
14 "whatever interest a defendant may have in the property without  
15 having to determine exactly what that interest is."<sup>2</sup> A  
16 defendant cannot object to the entry of a preliminary order on  
17 the ground that the property at issue does not belong to him.  
18 United States v. Schlesinger, 396 F. Supp. 2d 267, 273 (E.D.N.Y.  
19 2005).

20 Here, the jury has already determined that the defendant's  
21 interest in the Forfeitable Property was subject to forfeiture

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22  
23 <sup>2</sup> Criminal forfeiture is part of the defendant's sentence,  
24 so it is available only if the defendant is convicted of the  
25 underlying substantive offense. Lazarenko, supra. If the  
26 defendant is convicted, his interest in the property must be  
27 forfeited regardless of what that interest is, so it is not  
28 necessary to determine the extent of the interest. The only  
issues left to be determined concerning ownership are those of  
non-defendant third parties, whose interests are determined in  
the ancillary process. Only after that process is complete does  
the government obtain a Final Order of Forfeiture.

1 to the United States as 1) property constituting or derived from  
2 proceeds obtained, directly or indirectly, as a result of the  
3 offenses traceable to one or more violations of 18 U.S.C.  
4 §§ 1349, 1343, 1344(2), and 18 U.S.C. § 1028A(a) property  
5 involved in or traceable to violations of 18 U.S.C. § 1957. As  
6 such, the requirements of Rule 32.2(b) have been met and the  
7 proposed Preliminary Order should be entered.

8 **B. The Mechanics of the Criminal Forfeiture**

9 The Preliminary Order of Forfeiture becomes final as to the  
10 defendant at the time of sentencing (or before sentencing, if  
11 defendant consents). Rule 32.2(b)(3). After entry of the  
12 preliminary order, the second phase of the forfeiture  
13 proceedings may begin, to determine whether any third party  
14 rights may exist in the specific property to be forfeited. Fed.  
15 R. Crim. P. 32.2(c)(1).

16 Accordingly, the government respectfully requests that the  
17 Court enter the proposed Preliminary Orders of Forfeiture lodged  
18 contemporaneously herewith, authorizing the government to seize  
19 the property subject to forfeiture (to the extent it has not  
20 already done so) and to commence proceedings governing  
21 third-party rights. Fed. R. Crim. P. 32.2(b)(3). The government  
22 will publish notice generally. Following such notification and  
23 completion of any necessary ancillary proceedings, the  
24 government will submit, as appropriate, final orders of  
25 forfeiture pursuant to Fed. R. Crim. P. 32.2(c).

26 **III. FORFEITURE MUST BE PRONOUNCED AT SENTENCING**

27 At sentencing, pursuant to Rule 32.2(b)(3) of the Federal  
28 Rules of Criminal Procedure, the "order of forfeiture becomes

1 final as to the defendant and shall be made a part of the  
2 sentence and included in the judgment."

3 The Court must pronounce the forfeiture conditions orally  
4 as part of the sentence imposed on the defendant, and must  
5 include the forfeiture in the judgment and commitment order.  
6 See United States v. Gaviria, 116 F.3d 1498, 1530 (D.C. Cir.  
7 1997) (forfeiture portion of the defendant's sentence must be  
8 announced in his presence pursuant to Fed. R. Crim. P. 43(a)).  
9 The government recommends the following language be read to the  
10 defendant and modified as necessary for inclusion in the  
11 judgment and commitment order at the time of his sentencing:

12 Pursuant to 21 U.S.C. § 853 and Counts One, Two  
13 through Twelve, Thirteen through Twenty, Twenty-four  
14 and Twenty-six of the First Superseding Indictment,  
15 defendant ARTUR AYVAZYAN has forfeited all of his  
16 right, title, and interest in the specific property  
17 more particularly described in the Preliminary Orders  
18 of Forfeiture entered on [date].

19 ///

20 ///

1 **IV. CONCLUSION**

2 For the foregoing reasons, the government respectfully  
3 requests that the Court forthwith enter the proposed Preliminary  
4 Orders of Forfeiture lodged herewith.

5 DATED: \_September 1, 2021 Respectfully submitted,

6 TRACY L. WILKISON  
7 Acting United States Attorney

8 SCOTT M. GARRINGER  
9 Assistant United States Attorney  
Chief, Criminal Division

10 /s/Brent A. Whittlesey  
11 BRENT A. WHITTLESEY  
12 Assistant United States Attorney  
Asset Forfeiture Section

13 Attorneys for Plaintiff  
14 UNITED STATES OF AMERICA  
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