UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-20290-CR-BLOOM

UNITED STATES OF AMERICA

vs.

ERIC DEAN SHEPPARD,

Defendant.
_________________________________/

NOTICE ON FORFEITURE

The United States of America (the "United States" or "Government"), by and through the undersigned Assistant United States Attorney, hereby files this notice on forfeiture.

The following property listed in the Superseding Indictment was previously identified as subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C): real property located at 180 Bal Cross Drive, Bal Harbour, Florida 33154-1390 (the "Property"). *See* Superseding Indictment 9–10, ECF No. 60.[1] On September 20, 2023, the Court granted the Defendant's motion to retain the jury following the guilt phase of the trial; having the jury determine the forfeitability of specific assets. *See* Paperless Order, ECF No. 104; Def.'s Mot. to Bifurcate Forfeiture, ECF No. 81. The trial is schedule to begin on November 27, 2023. *See* Order, ECF No. 112; Minute Entry, ECF No. 129.

The United States is no longer pursuing judicial forfeiture of the Property as a *directly forfeitable asset*. Instead, and in the event that the Defendant is found guilty, the United States will seek to forfeit the Property as a *substitute asset*, pursuant to 21 U.S.C. § 853(p), to satisfy any

[1] Prior to a federal grand jury's return of the Superseding Indictment, the Property was identified as subject to forfeiture in a Bill of Particulars filed by the United States on July 15, 2022. *See* Bill of Particulars, ECF No. 16.

potential forfeiture money judgment ordered by the Court. *See generally* Superseding Indictment 9–10.

Because the United States is no longer seeking to forfeit specific assets, the Court—not the jury—determines what property is subject to forfeiture upon the Defendant's conviction, which may take the form of a personal money judgment. *See* Fed. R. Crim. P. 32.2(b)(1)(A) ("If the Government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay."); *see also United States v. Padron*, 527 F.3d 1156, 1162 (11th Cir. 2008) (holding that Federal Rules of Criminal Procedure "explicitly contemplate the entry of money judgments in criminal forfeiture cases"); *United States v. Curbelo*, 726 F.3d 1260, 1278 (11th Cir. 2013) ("We remain persuaded that the court, not a jury, should determine the amount of a money judgment forfeiture.").

Once the Court enters a forfeiture money judgment, the Government may establish its right to forfeit substitute property—a defendant's other property, up to the value of the judgment—pursuant to 21 U.S.C. § 853(p). Substitute asset forfeiture under 21 U.S.C. § 853(p) is mandatory, and there is no right to have a jury determine whether substitute assets may be forfeited. *See United States v. Alamoudi*, 452 F.3d 310, 314 (4th Cir. 2006) ("an order authorizing forfeiture of *substitute* assets pursuant to § 853(p) does not require a jury determination because it does not at all increase the amount of forfeiture. Rather, § 853(p) simply requires the court to allow the Government to seize substitute property when the defendant has placed the assets initially sought—and to which the Government is legally entitled—beyond the court's reach") (emphasis in original) (citations omitted).

[Intentional Blank Space]

As such, there are no forfeiture matters for the jury to decide and no need to retain the jury after the guilt phase of the trial.

Respectfully submitted,

MARKENZY LAPOINTE
UNITED STATES ATTORNEY

By: *s/ Mitchell E. Hyman*
Mitchell Evan Hyman
Assistant United States Attorney
Florida Bar No. 125405
U.S. Attorney's Office
99 N.E. 4th Street, 7th Floor
Miami, Florida 33132-2111
Telephone: (305) 961-9283
E-mail: Mitchell.Hyman@usdoj.gov