UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-20290-CR-BLOOM

UNITED STATES OF AMERICA

v.

ERIC DEAN SHEPPARD,

Defendant.
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UNITED STATES' AMENDED[1] MOTION FOR
PRELIMINARY ORDER OF FORFEITURE

Pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2)(A), and the procedures set forth in 21 U.S.C. § 853, as incorporated by 18 U.S.C. § 982(b)(1) and 28 U.S.C. § 2461(c), and Rule 32.2 of the Federal Rules of Criminal Procedure, the United States of America, by and through the undersigned Assistant United States Attorney, hereby files this Amended Motion for the entry of a Preliminary Order of Forfeiture against Defendant Eric Dean Sheppard (the "Defendant") in the above-captioned matter. The United States seeks a forfeiture money judgment in the amount of $893,575, which represents the amount of proceeds the Defendant fraudulently obtained from a scheme to defraud that resulted in three funded Paycheck Protection Program ("PPP") loans and three funded Economic Injury Disaster Loans ("EIDL").

The undersigned respectfully submits that the forfeiture money judgement amount can be addressed during sentencing scheduled for June 7, 2024. The requested forfeiture money judgment

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[1]The undersigned was working on filing this Amended Motion today and the Court has since ordered the Defendant to file an expedited response to Government's Motion for Preliminary Order of Forfeiture [ECF No. 252]. *See* Paperless Order, ECF No. 254.

is tied directly to the Court's determination of *actual loss*, which has been extensively briefed by both the United States and the Defendant, and will be addressed at sentencing. *See* Gov't Resp. to Def.'s Obj. to PSI, ECF No. 241; Gov't Resp. in Opp. to Def.'s Mot. for New Trial, ECF No. 215; Def.'s Mot. for New Trial, ECF No. 205; Def.'s Sentencing Memo. & Obj. to PSI, ECF No. 263.

In support of this Motion, the United States provides the following factual and legal bases:

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On August 23, 2023, a federal grand jury returned a Superseding Indictment charging the Defendant in Counts 1–9 with wire fraud in violation of 18 U.S.C. § 1343, among other counts. *See* Superseding Indictment, ECF No. 60. The Superseding Indictment also contained forfeiture allegations, which alleged that upon conviction of a violation of 18 U.S.C. § 1343, the Defendant shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to such offense, pursuant to 18 U.S.C. § 981(a)(1)(C).[2] *See id.* at 9–10. The forfeiture allegations also stated the Government's intent to seek a forfeiture money judgment of at least approximately $893,145, the sum of which represents the total amount funds constituting, or derived from, proceeds traceable to the alleged offenses and *fraud scheme*.[3] *See id*. at 9.

On January 12, 2024, after a trial, a jury returned a verdict finding the Defendant guilty of on Counts 5, 7, 8, 9, 13, and 14. *See* Trial Minute Entries, ECF Nos. 143, 145–46, 149, 154, 156–

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[2] Because the Defendant's wire fraud scheme, in part, affected a financial institution, 18 U.S.C. § 982(a)(2)(A) is another basis for the Defendant to forfeit his proceeds. *See* 18 U.S.C. § 982(a)(2)(A). Under either 981(a)(1)(C) or 982(a)(2)(A), the Defendant must forfeit proceeds of his fraud scheme. As explained in detail *infra* n.6, although a reference to section 982(a)(2)(A) was mistakenly left off the Indictment and Superseding Indictment, the Court may still use section 982(a)(2)(A) as a basis for forfeiture against the Defendant.

[3] *United States v. McKay*, 506 F. Supp. 2d 1206, 1211 (S.D. Fla. 2007) (government is not required to specify the amount of forfeiture money judgment it will be seeking in the indictment); *aff'd*, 285 F. App'x. 637 (11th Cir. 2008).

61, 163–64, 175–76, 179, 180, & 185; Jury Verdict, ECF No. 190[4]. Specifically, the jury found the Defendant guilty of executing a wire fraud scheme—*spanning from April 2020 through March 2021*—to fraudulently obtain PPP loan and EIDL proceeds from private lenders and the U.S. Small Business Administration ("SBA") when the jury found the Defendant guilty of:

- submitting false and fraudulent Internal Revenue Service ("IRS") Form 941s in support of Alafaya Trails second-draw PPP loan application with WebBank (Count 5);
- submitting a false and fraudulent PPP second-draw loan application on behalf of Alafaya Trails to Northeast Bank (Count 7);
- submitting a false and fraudulent IRS Form 1065 in support of Alafaya Trails' second-draw PPP loan application with Northeast Bank (Count 8); and
- submitting a false and fraudulent PPP loan application, IRS Form 1065, and IRS Form 940 with Cross River Bank on behalf of HM Management (Count 9).

See Jury Verdict, ECF No. 190; Superseding Indictment 4–7. The jury also found the Defendant guilty of Aggravated Identity Theft in Counts 13 and 14.[5]

The United States Probation Office has since conducted a presentence investigation. The Final Presentence Investigation Report ("PSI"), which included information on the Defendant's

[4]There is a scrivener's error on the Verdict Form incorrectly indicating the Jury came to a verdict on January 12, 2023, instead of 2024.

[5] In Count 13, the Defendant was charged with the use of a falsified IRS Form 1065 tax return submitted to Northeast Bank in support of Alafaya Trails' PPP second-draw loan application, using the name, Employer Identification Number ("EIN"), Preparer Tax Identification Number ("PTIN"), of N.C.—the Defendant's accountant; and in Count 14, he was charged with the use of a falsified IRS Form 1065 tax return submitted to Cross River Bank in support of HM Management's PPP loan application, using the name, EIN, PTIN, of N.C. *See* Jury Verdict; Superseding Indictment 8.

relevant conduct and his financial condition, was filed on May 31, 2024. *See* PSI, ECF No. 246.

On June 3, 2024, the Court, upon Defendant's motion, acquitted the Defendant of Counts 13 and 14. *See* Omnibus Order on Def.'s Mot. for New Trial & Mot. for Acquittal 25, ECF No. 251.

On June 3, 2024, the United States filed a Motion for Preliminary Order of Forfeiture seeking a forfeiture money judgment in the amount of $893,575 against the Defendant. *See* Gov't Mot. for Preliminary Order of Forfeiture, ECF No. 252. The United States now files this Amended Motion for Preliminary Order of Forfeiture.

II. MEMORANDUM OF LAW

A. Directly Forfeitable Property

Any property constituting, or derived from, proceeds the defendant obtained directly or indirectly as a result of a violation of 18 U.S.C. § 1343 (wire fraud) affecting a financial institution is subject to forfeiture to the United States. *See* 18 U.S.C. § 982(a)(2)(A).[6] Moreover, any

[6] Fed. Crim. P. R. 32.2(a) requires the government to provide notice to a defendant, in an indictment or information, that it intends to seek the forfeiture of property as part of any sentence. A failure to cite a particular forfeiture statute, and its correction, is harmless so long as the allegations adequately informs the defendant that the Government intends to seek forfeiture of property. *See United States v. Wall*, 285 F. App'x. 675, 684 (11th Cir. 2008) (indictment that improperly cited § 982(a)(2) instead of § 981(a)(1)(C) was nevertheless sufficient to put defendants on notice that government was seeking forfeiture of the proceeds of the mail and wire fraud offenses); *see also United States v. Diaz*, 190 F.3d 1247, 1257 (11th Cir. 1999) ("The essential purpose of the notice [required by Rule 32.2(a)] is to inform the defendant that the government seeks forfeiture . . . ."); *United States v. Silvious*, 512 F.3d 364, 370 (7th Cir. 2008) (erroneous citation in the indictment did not prevent the defendant from receiving adequate notice as required by under Rule 32.2(a)). *But see*, *United States v. Annabi*, 746 F.3d 83, 85–86 (2d Cir. 2014) (holding that where the government fails cite an applicable forfeiture provision in the indictment, *and* fails to correct that error prior to the entry of final judgment, forfeiture is limited to what is authorized in the indictment, and of which the defendant had notice). In the Instant Case, the Defendant had adequate notice, *supra* page 1, of the Government's intent to forfeit the full amount of proceeds derived from his wire fraud scheme.

property, real or personal, which constitutes or is derived from proceeds traceable to the commission of any offense constituting a "specified unlawful activity (as defined in [18 U.S.C. 1956(c)(7)])" is subject to forfeiture to the United States. *See* 18 U.S.C. § 981(a)(1)(C). Wire fraud, in violation of 18 U.S.C. § 1343, is a "specified unlawful activity." *See* 18 U.S.C. §1956(c)(7)(A) (defining the term "specified unlawful activity" to include any act or activity constituting an offense listed in 18 U.S.C. § 1961(1), which includes wire fraud in violation of 18 U.S.C. § 1343). If a defendant is convicted of such violation, the Court "shall order" the forfeiture of property as part of the sentence. *See* 18 U.S.C. § 982(a)(2) (criminal forfeiture); 28 U.S.C. § 2461(c) (authorizing criminal forfeiture for any offense wherever civil forfeiture is authorized).

Criminal forfeiture is governed by the preponderance standard. *See United States v. Hasson*, 333 F.3d 1264, 1277 (11th Cir. 2003). Upon finding that property is subject to forfeiture by a preponderance, the Court:

> . . . must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment, directing the forfeiture of specific property, and directing the forfeiture of any substitute property if the government has met the statutory criteria. The court must enter the order without regard to any third party's interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

Fed. R. Crim. P. 32.2(b)(2)(A). Where a defendant is convicted of *wire fraud*—as is the case here—the Court is free to consider all conduct involving the same fraud scheme when determining a forfeiture amount, so long as the government proves by a preponderance of the evidence that the property to be forfeited was linked to the conduct. *See United States v. Holland*, 722 F. App'x 919, 928–929 (11th Cir. 2019).

B. Forfeiture Money Judgments

A forfeiture order may be sought as a money judgment. *See* Fed. R. Crim. P. 32.2(b)(1)(A), (2)(A); *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"). The forfeiture money judgment is final as to the defendant "[a]t sentencing—or at any time before sentencing if the defendant consents." *See* Fed. R. Crim. P. 32.2(b)(4)(A). No ancillary proceeding is required when forfeiture consists solely of a money judgment. *See* Fed. R. Crim. P. 32.2(c)(1). As additional property is identified to satisfy the forfeiture money judgment, the Court must order the forfeiture of such property. *See* Fed. R. Crim. P. 32.2(e)(1) ("[T]he court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that . . . is subject to forfeiture under an existing order of forfeiture but was located and identified after that order was entered; or . . . is substitute property . . . ."); *see also* Fed. R. Crim. P. 32.2(b)(2)(C).

The amount of the money judgment should represent the full sum of directly forfeitable property, regardless of the defendant's ability to satisfy the judgment at the time of sentencing. *See United States v. McKay*, 506 F. Supp. 2d 1206, 1211 (S.D. Fla. 2007) (adopting the majority rule); *see also United States v. Blackman*, 746 F.3d 137, 143–44 (4th Cir. 2014) ("The fact that a defendant is indigent or otherwise lacks adequate assets to satisfy a judgment does not operate to frustrate entry of a forfeiture order."). The Court determines the amount of the money judgment "based on evidence already in the record, including any written plea agreement, and any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable." Fed. R. Crim. P. 32.2(b)(1)(B). The Court in imposing a forfeiture money judgment may rely on an agent's reliable hearsay. *See United States v. Stathakis*, 2008 WL 413782, at *14 n.2 (E.D.N.Y. Feb. 13, 2008). The defendant's money judgment amount can be based on a reasonable estimate on the amount of property subject to forfeiture. *See, e.g., United States v. Roberts*, 660 F.3d 149, 166 (2d Cir. 2011); *United States v. Peithman*, 917 F.3d 635, 651 (8th Cir. 2019); *United States v. Vico*, 2016 WL 233407, at *7 (S.D. Fla. Jan. 20, 2016) (calculation of money judgment does not require mathematical exactitude; district court may make a reasonable extrapolation supported by a preponderance of the evidence).

C. Difference Between Forfeiture and Restitution

Both forfeiture and restitution are mandatory in criminal cases. *See United States v. Brummer*, 598 F.3d 1248, 1250–51 (11th Cir. 2010) (the word "shall" does not convey discretion and the district court was required to order forfeiture of the property in accordance with Fed. R. Crim. P. 32.2); 18 U.S.C. § 3664(f)(1)(A) (requiring district courts to order restitution in the full amount of each victim's losses). Although sometimes conflated, forfeiture and restitution serve different purposes. "While restitution seeks to make victims whole by reimbursing them for their losses, forfeiture is meant to punish the defendant by transferring his ill-gotten gains to the United States Department of Justice." *United States v. Joseph*, 743 F.3d 1350, 1354 (11th Cir. 2014) (citing *United States v. Browne*, 505 F.3d 1229, 1281 (11th Cir. 2007), *United States v. Venturella*, 585 F.3d 1013, 1019–20 (7th Cir. 2009), and *Libretti v. United States*, 516 U.S. 29, 39 (1995)). Because of this distinction, the Eleventh Circuit has repeatedly held that district courts cannot use restitution to offset the forfeiture amount ordered, or vice versa. *See United States v. Hernandez*, 803 F.3d 1341, 1343–44 (11th Cir. 2015); *Joseph*, 743 F.3d at 1354 ("In light of the statutory framework governing restitution and forfeiture, we hold that a district court generally has no authority to offset a defendant's restitution obligation by the value of forfeited property held by the government, which is consistent with the approach taken by the Fourth, Seventh, Eighth, Ninth, and Tenth Circuits."); *United States v. Bane*, 720 F.3d 818, 827 n.8 (11th Cir. 2013); *United States v. Hoffman-Vaile*, 568 F.3d 1335, 1344–45 (11th Cir. 2009); *Browne*, 505 F.3d at 1281 (finding defendant's disgorgement of illicit profits did not divest the United States of its forfeiture interest in the full amount of offense).

D. Property Subject to Forfeiture in Instant Criminal Case[7]

The Defendant was convicted on four of nine wire fraud counts.[8] Those convictions necessarily required the jury to find the Defendant guilty as to an essential element of those counts—that the Defendant devised the scheme to defraud private lenders and the SBA spanning from April 2020 and continuing through March 2021. *See* Jury Verdict; Superseding Indictment. Between April 2020 and March 2021, the below-listed private lenders and the SBA funded six of the Defendant's requested loans—relying on his fraudulent loan applications and fabricated supporting documents—totaling $893,575:

Date	Program	Lender	Entity	Amount Funded
4/15/2020	**PPP (1st Draw)**	**WebBank**	**Alafaya Trails**	**$146,587**
7/24/2020	**EIDL**	**SBA**	**HM Management**	**$150,000**

[7] As previously mentioned, the forfeiture money judgment amount in the Instant Case is tied directly to the Court's determination of *actual loss*, which appears to be, at least in part, the subject matter of the sentencing hearing schedule for June 7, 2023. Therefore, the undersigned respectfully submits that there is no need for a separate forfeiture hearing.

[8] Because the factual assertions supporting forfeiture were fully briefed in Government's Response in Opposition to Defendant's Motion for New Trial [ECF No. 215], and in United States' Response to Defendant's Objections to the Presentence Investigation Report [ECF No. 241], the United States hereby incorporates by reference ECF Nos. 215 and 241 and in this Motion generally summarizes the facts supporting the requested forfeiture money judgment.

Date	Program	Lender	Entity	Amount Funded
7/24/2020	**EIDL**	**SBA**	**Alafaya Trails**	**$150,000**
10/22/2020	**EIDL**	**SBA**	**HM Four**	**$150,000**
3/11/2021	**PPP (2nd Draw)**	**Northeast Bank**	**Alafaya Trails**	**$148,397**
3/12/2021	**PPP**	**Cross River Bank**	**HM Management**	**$148,591**

Those PPP loan and EIDL applications submitted by the Defendant grossly misrepresented the number of people employed by each business, the respective businesses' revenues and monthly payroll expenses, and the type of business the borrowing entities were engaged in, among other material misrepresentations. *See* PSI ¶ 15. In support of the Defendant's fabricated and misrepresented loan applications, the Defendant submitted falsified documents, including IRS and Florida Department of Revenue forms. *See id.* at ¶¶ 15, 23, 30, 37, 39, 42, 46, 48. In an effort to keep his illusion of legitimacy from unveiling, the Defendant took the fraud scheme a step further by flagrantly forging the signatures of others—including his accountant—on various documents submitted in support of his PPP loan and EDIL applications. *See id.* at ¶¶ 15, 33, 37, 42–43, 48–49, 53–54, 61.

i. The Defendant, Through Alafaya Trails, Fraudulently Obtained $444,984 in PPP Loan and EIDL Proceeds Between April 2020 and March 2021.

During the relevant time, WebBank, Northeast Bank, and the SBA funded $444,984 in PPP loan and EIDL proceeds on behalf of Alafaya Trails and disbursed the funds to the Defendant. WebBank, Northeast Bank, and the SBA relied on the Defendant's misrepresented loan applications and fabricated supporting documents when approving the respective loans, the proceeds of which the Defendant obtained as part of the ongoing wire fraud scheme.

Specifically, Alafaya Trails' April 15, 2020, PPP loan application with WebBank is an example showing the Defendant's wire fraud scheme was continuous, spanning from April 2020 to March 2021. On April 15, 2020, the Defendant submitted a PPP loan application on behalf of Alafaya Trails' to PayPal (a loan processor for WebBank). PSI ¶ 17. In the application, the Defendant claimed that Alafaya Trails had **eighty (80) employees**, a monthly payroll of $58,583, was engaged in commercial building construction, and was "doing business as" HM Management, among other material misrepresentations. *See id*.; Gov't Composite Ex. 17 (PayPal Records for Alafaya Trails). The evidence established that was untrue. Alafaya Trails did not have a single employee—a far cry from the eighty employees the Defendant claimed that Alafaya Trails employed. *See* Gov't Ex. 13-4 & 13-5 (Certifications of Lack of Record of Form 940 & 941 for Alafaya Trails); Gov't Ex. 16-2 (Fla. Dept. of Rev. No Records for Alafaya Trails); *see also* Gov't Composite Ex. 19 (PPP Second-Draw Application) (The jury found the Defendant guilty of Count 5, submission of false & fraudulent IRS Form 941s in support of Alafaya Trails' second-draw PPP loan with PayPal/WebBank.). In fact, the evidence showed that HM Management was the *only* business to ever report employees to the IRS—listing three employees in total. *See* PSI ¶¶ 15, 17. As a result of the Defendant's misrepresentations, WebBank approved the loan and disbursed $146,587 to a bank account controlled by the Defendant. *Id*. at ¶¶ 17–19.

However, the Defendant's fraud scheme did not stop with the Alafaya Trails' fraudulent April 15, 2020, PPP loan. Rather, the Defendant continued the scheme almost a year later when he applied to have the loan forgiven in May 2021. *Id*. at ¶ 20. In the Defendant's loan forgiveness application, he claimed that Alafaya Trails' payroll costs skyrocketed to $488,338.81 between May and October 2020. *See id*. In support of his false payroll expenses, the Defendant submitted a "PPP Labor Report," which falsely listed the Defendant and independent contractors as employees of Alafaya Trails. *See id.* Based on the Defendant's fraudulent application and supporting documents, PayPal approved the loan forgiveness, and the SBA reimbursed WebBank for the PPP loan. *See id.*; Gov't Composite Ex. 18 (Forgiveness Application).

While the Defendant argues that the SBA's loan forgiveness renders the PPP loan "not fraudulent," that argument is devoid of logic. *See* Def.'s Sentencing Memo & Obj. to PSI 14, n.6, ECF No. 236. As the evidence at trial showed, the Defendant fabricated the information in both the original application *and* the loan-forgiveness application, including fabricating IRS documents, among others, to support the illusion that he was entitled to receive the original PPP loan in the first place and its subsequent forgiveness. Frauds do not cancel each other out. Regardless of the SBA forgiving Alafaya Trails' April 15, 2020, PPP loan based on lies, the evidence established Alafaya Trails' many fraudulent statements. *See* PSI ¶ 20. The repayment of the PPP loan, if anything, simply swaps one victim (the bank) for another—the SBA.

Likewise, Alafaya Trails' July 24, 2020, EIDL proceeds also are derived from the Defendant's ongoing fraud scheme. In that EIDL application, the Defendant claimed Alafaya Trails employed only twelve (12) people, among other material misrepresentations. *See id.* at ¶24; Gov't Composite Ex. 24. The Defendant completed the EIDL application, along with EIDL applications for three other businesses he owned, using Nationwide Lending Direct's online portal. *See* PSI ¶ 22. Again, the evidence showed that Alafaya Trails never employed a single person—rendering the company's July 24, 2020, EIDL fraudulent. Based on the fraudulent application, the SBA approved the EIDL loan and disbursed $150,000. *See id.* at ¶ 25.

Moreover, on March 11, 2021, the Defendant applied for a second-draw PPP loan on behalf of Alafaya Trails with Northeast Bank. *Id*. at ¶ 41. In the fraudulent PPP loan application, the Defendant again misrepresented the number of people employed by Alafaya Trails and the wages allegedly paid to these purported employees. *See id*. at ¶¶ 41–45. This time, however, the Defendant claimed Alafaya Trails employed nineteen (19) people—down from eighty (80) and, coincidently, lowered around the time when SBA directed lenders to prioritize businesses with twenty (20) or fewer employees. *See id*. ¶¶ at 36, 41. Despite the decrease in purported employees, the Defendant still claimed Alafaya Trails paid $59,359 in monthly wages—almost the same amount the Defendant claimed he paid when the company purportedly employed eighty (80) people. *See id*. at ¶¶ 17, 36, 41. As a result of the fraudulent PPP loan application and the fabricated—and forged—supporting documents, Northeast Bank funded the PPP loan and deposited $148,397 into a bank account controlled by the Defendant. *See id*. at ¶ 45.

The jury found the Defendant guilty, in Superseding Indictment Counts 7, 8, and 13, of submitting false and forged documents as part of his scheme to fraudulently obtain PPP loan proceeds on behalf of Alafaya Trails. *See* Jury Verdict; Superseding Indictment. Specifically, in Counts 7, 8, and 13, the Jury found the Defendant used the name, Employer Identification Number, and Preparer Tax Identification Number of his accountant, N.C., on a falsified IRS Form 1065 submitted in support of the March 11, 2021, fraudulent PPP loan application on behalf of Alafaya Trails with Northeast Bank. *See* Superseding Indictment 7–8; Jury Verdict.

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ii. The Defendant, Through HM Management, Fraudulently Obtained $298,591 in PPP Loan and EIDL Proceeds Between April 2020 and March 2021.

The evidence at trial established that HM Management was the *only* company that *historically* employed between two to three individuals, with tax year 2018 being the last time HM Management reported paying any employees. PSI ¶¶ 15, 23, 30, 37, 39, 42, 46, 48. Nonetheless, as part of a flurry of fraudulent EIDL applications the Defendant filed on July 24, 2020, the Defendant claimed that HM Management had fourteen (14) employees, gross revenues of $1,540,000, and a cost of goods sold of $850,000. *See id.* at ¶ 23. To obtain the EIDL loan, and in support thereof, the Defendant supplied Nationwide with a false and forged 2019 tax return listing fake salaries and wages. *See* PSI ¶ 23; Gov't Composite Ex. 62. IRS and Florida Department of Revenue records refute the claims made in the EIDL application. *See id.* at ¶¶ 15, 23, 30, 37, 39, 42, 46, 48.

What's more, the jury found the Defendant guilty of submitting false and forged documents to Cross River Bank as part of his scheme to fraudulently obtain PPP loan proceeds on behalf of HM Management. *See* PSI ¶¶ 46–50; Jury Verdict. Specifically, the Jury found, in Counts 9 and 14, that the Defendant used the name, EIN, and PTIN of his accountant, N.C., on a falsified IRS Form 1065 submitted in support of HM Management's March 12, 2021, PPP loan application with Cross River Bank. *See* Superseding Indictment 7–8; Jury Verdict. Although the Defendant has since been acquitted of Count 14 (Aggravated Identify Theft), the Court found the Defendant's use of his accountant's means of identification for the IRS forms lent credibility to the fraud. *See* Omnibus Order on Def's Mot. for New Trial & Mot. for Acquittal 25.

As a result of these fraudulent PPP loan and EIDL applications, and the falsified supporting documents, Cross River Bank funded a $148,591 PPP loan and the SBA funded a $150,000 EIDL, both of which were deposited into bank accounts controlled by the Defendant. *See* PSI ¶ 50.

iii. The Defendant, Through HM Four, Fraudulently Obtained $150,000 in EIDL Proceeds Between October 2020 and November 2021.

As previously mentioned, the Defendant's fraud scheme spanned various businesses owned by the Defendant. Although the Defendant was acquitted of Counts 1, 3, 4, and 11, relating to the submission HM Four's EIDL application, the Defendant's scheme to defraud included other conduct associated with HM Four's EIDL, which extended from October to November 2020. The evidence at trial showed the Defendant's conduct included numerous wire transmissions containing false information, some of which the Defendant acknowledged when he testified. For instance, one-day after the SBA questioned the validity of certain information the Defendant submitted in support of an EIDL application for HM Six, LLC, he switched his tactic and applied for another EIDL on behalf of HM Four, LLC using his wife's name. *See* PSI ¶ 29; Gov't Composite Ex. 26. The Defendant admitted that he pretended to be his wife when applying for the EIDL loan—a fraud. *See* Tr. 1/9/24 A.M., at 83–84.

Not only did the Defendant claim to be his wife when applying for the EIDL, but he also falsely represented that HM Four had three employees, gross revenues of $950,000, cost of goods sold of $250,000, and lost rental income due to Covid-19 pandemic of $450,000. *See* PSI ¶ 30. And when the SBA requested to see an actual bank statement, the Defendant lied again. This time, on November 16, 2020, the Defendant transferred $60,000 from Alafaya Trails' bank account to HM Four's account—which account was opened the same day he applied for the EIDL. *See* Gov't Exs. 5, 39-11, 39-12, 58-4–58-7. The Defendant then submitted the bank statement to the SBA on

November 17, 2020; transferring back $50,000 to Alafaya Trails afterwards. *See* Tr. 1/9/24 P.M., at 12–13; Gov't Exs. 39-12, 58-5, 58-7. The Defendant even admitted that he sent the November 17, 2020 email to the SBA with the bank statement attached, and that the email contained false information about the HM Four account. *See* Tr. 1/9/24 P.M. at 13-14; Gov't Ex. 58-4. Based on the fraudulent application, and falsified supporting documents, the SBA approved and funded a $150,000 EIDL for HM Four.

III. CONCLUSION

The record in this case shows the Defendant's repetitive and unrelenting efforts to game the system through falsified and forged documents. Every funded PPP and EIDL loan was obtained through the same, continuing wire fraud scheme spanning from April 2020 to March 2021, and the false and forged documents submitted by the Defendant all constitute relevant conduct of his scheme to defraud. As previously mentioned, *supra* page 4, where a defendant is convicted of *wire fraud*—as is the case here—the Court is free to consider all conduct involving the same fraud scheme when determining a forfeiture amount, so long as the government proves by a preponderance of the evidence that the property to be forfeited was linked to the conduct—which the Government has done in the Instant Case. *See Holland*, 722 F. App'x at 928–929.

Therefore, a reasonable estimate of the total value of the proceeds traceable to the offenses of conviction is $893,575, which sum may be sought as a forfeiture money judgment pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure. *See, e.g.*, *Roberts*, 660 F.3d at 166; *Peithman*, 917 F.3d at 651; *Vico*, 2016 WL 233407, at *7 (calculation of money judgment does not require mathematical exactitude; district court may make a reasonable extrapolation supported by a preponderance of the evidence).

Accordingly, the Court should issue the attached proposed order, which provides for the entry of a forfeiture money judgment against the Defendant; the inclusion of the forfeiture as part of the Defendant's sentence and judgment in this case; and permission to conduct discovery to locate assets ordered forfeited.

In the alternative, if the Court decides a separate forfeiture hearing after sentencing is necessary, the Court should issue—at the time of sentencing—a general order of forfeiture against the Defendant attached hereto as Exhibit A.

WHEREFORE, pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2)(A), and the procedures set forth in 21 U.S.C. § 853 and Rule 32.2 of the Federal Rules of Criminal Procedure, the United States respectfully requests the entry of the attached order.

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

DEFENDANT'S OPPOSITION AND LOCAL RULE 88.9 CERTIFICATION

Pursuant to Local Rule 88.9, I hereby certify that the undersigned counsel conferred with defense counsel on June 1 and June 4, 2024, regarding the Defendant's position on the relief sought. Defense counsel has represented that the Defendant opposes the proposed forfeiture, citing the reasons expressed in briefs filed in *United States v. Waked*, 969 F.3d 1156 (11th Cir. 2020), *cert. denied*, 142 S. Ct. 72, 211 L. Ed. 2d 12 (2021), and *United States v. Javat*, No. 20-13310, 2022 WL 703940 (11th Cir. Mar. 9, 2022). The Defendant also objects to forfeiture as to any of the acquitted counts and forfeiture related to any loans already repaid.

By: *s/ Mitchell E. Hyman*
Mitchell Evan Hyman
Assistant United States Attorney