UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-20290-CR-BLOOM

UNITED STATES OF AMERICA

v.

ERIC DEAN SHEPPARD,

Defendant.
__________________________________/

NOTICE ON FORFEITURE

The United States of America, by and through the undersigned Assistant United States Attorney, hereby files this notice on forfeiture. There have been several forfeiture filings, and the United States seeks to aid the Court by specifying and narrowing the forfeiture matters to be addressed at the hearing on restitution and forfeiture set for August 23, 2024.

The United States's operative motion is its Amended Motion for Preliminary Order of Forfeiture ("Motion"), ECF No. 255. *See also*, 1st Gov't Mot., ECF No. 252. After the United States filed its Motion, the Court narrowed the Defendant's relevant conduct to include only three Paycheck Protection Program ("PPP") loans fraudulently obtained—the gross proceeds of which total $443,575. Then, at the Defendant's June 7, 2024, sentencing, the Court imposed a general order of forfeiture against the Defendant pursuant to 18 U.S.C. § 981(a)(1)(C) and ordered the Government to submit a proposed order. *See* Minute Entry, ECF No. 265; Judgment, ECF No. 267; Not. on Forfeiture, ECF No. 264. Although the Court ordered forfeiture as part of the Defendant's sentencing, and the United States submitted a proposed order, no order of forfeiture has yet been entered on the docket. *Cf. McIntosh v. United States*, 144 S.Ct. 980 (2024) (holding that "the failure to enter a preliminary order [of forfeiture] does not bar a judge from ordering forfeiture at sentencing subject to harmless-error principles on appellate review").

At this time, the United States seeks only a forfeiture money judgment in the amount of $146,587, based on the April 15, 2020, Alafaya Trails PPP Loan, under 18 U.S.C. § 981(a)(1)(C). This is one of the loans on which the United States seeks restitution.

The United States no longer seeks this forfeiture under § 982(a)(2)(A). Both § 981(a)(1)(C) and § 982(a)(2)(A) require a defendant to forfeit the proceeds of the crime.[1] But while § 982(a)(2)(A) mandates forfeiture of gross proceeds, § 981(a)(1)(C) allows, in certain circumstances, for forfeiture of net proceeds. *United States v. Peters*, 732 F.3d 93, 99, 101–02 (2d Cir. 2013) (section 982(a)(2) requires forfeiture of gross proceeds or "receipts"). Under § 981, a defendant may obtain a reduction in forfeiture "to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim." 18 U.S.C. § 981(a)(2)(C); *see also Peters*, 732 F.3d at 101 n.2 (comparing § 982(a)(2) forfeiture to § 981(a)(2)(C)).

Here, Defendant has not repaid the loan for which the United States seeks forfeiture and there remains financial loss to victims. As a result, Defendant is not entitled to a reduction under § 981(a)(2)(C), and it now is immaterial whether the Court orders forfeiture under § 981(a)(1)(C) or § 982(a)(2)(A). Thus, the United States no longer seeks forfeiture under § 982(a)(2)(A).

Respectfully submitted,

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[1] Section 982(a)(2)(A) applies only where the fraud affects a financial institution.