UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-CR-20011-COOKE

UNITED STATES OF AMERICA

v.

DAVID TYLER HINES,

Defendant.

UNITED STATES' UNOPPOSED MOTION FOR
PRELIMINARY ORDER OF FORFEITURE

Pursuant to 18 U.S.C. § 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 of America (the "United States"), by and through the undersigned Assistant United States Attorney, hereby moves for the entry of a Preliminary Order of Forfeiture against Defendant David Tyler Hines (the "Defendant") in the above-captioned matter. The United States seeks a forfeiture money judgment in the amount of $3,984,557.00 and the forfeiture of certain property in satisfaction thereof. In support of this motion, the United States provides the attached Declaration of Postal Inspector Bryan Masmela of the United States Postal Inspection Service ("USPIS") and the following factual and legal bases.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On January 8, 2021, the United States filed an Information charging the Defendant in Count 1 with wire fraud in violation of 18 U.S.C. § 1343, ECF No. 1. The Information also contained forfeiture allegations, which alleged that upon conviction of a violation of 18 U.S.C. § 1343, the Defendant shall forfeit any property constituting, or derived from, proceeds the defendant obtained directly or indirectly, as the result of such violation. *See id.* at 4. The Information alleged that the property subject to forfeiture as a result of the alleged offense includes, but is not limited to (collectively, the "Property"):

i. All funds held by Bank of America formerly on deposit in account number 898077556016 held in the name of Cash in Holdings LLC;

ii. All funds held by Bank of America formerly on deposit in account number 898096330857 held in the name of Unified Relocation Solutions, LLC;

iii. All funds held by Bank of America formerly on deposit in account number 898099756470 held in the name of Promaster Movers, Inc.;

iv. All funds held by Bank of America formerly on deposit in account number 898105927423 held in the name of Unified Relocation Solutions LLC; and

v. a 2020 Lamborghini Huracán with vin ZHWUF4ZF3LLA13255.

See id.

On February 10, 2021, the Court accepted the Defendant's guilty plea to Count 1 of the Information. *See* Minute Entry, ECF No. 38; Plea Agreement ¶ 2, ECF No. 40. As part of the guilty plea, the Defendant agreed to the forfeiture of the Property and a forfeiture money judgment in the amount of $3,984,557.00. Plea Agreement ¶ 12, ECF No. 40.

In support of the guilty plea, the Defendant executed a Factual Proffer, and the Court found that there was a factual basis to support the Defendant's conviction. *See* Factual Proffer, ECF No. 41. The Factual Proffer also provided a basis for the forfeiture of property. *See id.* at ¶7.

II. MEMORANDUM OF LAW

A. Directly Forfeitable Property

All property constituting, or derived from, proceeds the defendant obtained directly or indirectly, ash the result of a wire fraud offense affecting a financial institution is subject to forfeiture. 18 U.S.C. § 982(a)(2)(A).

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 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).

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).

C. Property Subject to Forfeiture in Instant Criminal Case

According to the Defendant's factual proffer, the Defendant applied for multiple Paycheck Protection Program ("PPP") loans to Bank A on behalf of his companies ("the Companies"). Factual Proffer at ¶ 6, ECF No. 41. In his PPP loan applications, the Defendant made a number of false and fraudulent representations. *Id.* As discussed in Postal Inspector Masmela's attached declaration, based on those false and fraudulent representations, Bank A disbursed $3,984,557.00 to the Companies' accounts. *Id.* at ¶ 7. Further, Postal Inspector Masmela's declaration also described how PPP loans were used to fund and/or purchase the Property.

Based on the record in this case, the total value of the proceeds traceable to the offense of conviction is $3,984,557.00, which sum may be sought as a forfeiture money judgment pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure.

In addition, also based on the record in this case, the following specific property is directly subject to forfeiture, pursuant to 18 U.S.C. § 982(a)(2)(A):

i. All funds held by Bank of America formerly on deposit in account number 898077556016 held in the name of Cash in Holdings LLC;

ii. All funds held by Bank of America formerly on deposit in account number 898096330857 held in the name of Unified Relocation Solutions, LLC;

iii. All funds held by Bank of America formerly on deposit in account number 898099756470 held in the name of Promaster Movers, Inc.;

iv. All funds held by Bank of America formerly on deposit in account number 898105927423 held in the name of Unified Relocation Solutions LLC; and

v. a 2020 Lamborghini Huracán with vin ZHWUF4ZF3LLA13255.

WHEREFORE, pursuant to 18 U.S.C. § 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.

LOCAL RULE 88.9 CERTIFICATION

Pursuant to Local Rule 88.9, I hereby certify that the undersigned counsel has conferred with defense counsel via e-mail on February 26, 2021, and there is no opposition/objection to the relief sought.

Respectfully submitted,

ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

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