The Hon. John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. ERIC SHIBLEY, Defendant.	NO. CR20-174-JCC **MOTION FOR ENTRY OF A PROTECTIVE ORDER RESTRAINING CERTAIN FORFEITABLE PROPERTY** NOTE ON MOTION CALENDAR: November 6, 2020

I. RELIEF REQUESTED

The United States, by and through its undersigned counsel, moves pursuant to 21 U.S.C. § 853(e)(1)(A) for entry of a protective order restraining the following property pending resolution of this case (the "Subject Property"):

A. $49,500.86 in U.S. funds, seized on or about May 29, 2020 from Navy Federal Credit Union account #******7528, held in the name of Eric R. Shibley MD PLLC;

B. $100,000.00 in U.S. funds, seized on or about May 29, 2020 from Wells Fargo account #******2378, held in the name of ES1 LLC;

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C. $804,816.63 in U.S. funds, seized on or about May 27, 2020 from Wells Fargo account #******3536, held in the name of The A Team Holdings LLC**;**

D. $114,440.00 in U.S. funds, seized on or about June 30, 2020 from Verity Credit Union account #***5390, held in the name of Dituri Construction LLC; and

E. $114,743.59 in U.S. funds, seized on or about June 30, 2020 from Verity Credit Union account #***5320, held in the name of SS1 LLC.

As detailed below, and in the supporting declaration of Federal Bureau of Investigation ("FBI") Special Agent Kathleen Moran ("Moran Declaration"), this property is subject to forfeiture pursuant to the following: 18 U.S.C. § 981(a)(1)(C) by way of 28 U.S.C. § 2461(c), as property constituting or traceable to proceeds of Wire Fraud, in violation of 18 U.S.C. §§ 1343 and 2, as charged in Counts 1 – 7 of the Indictment (Dkt. No. 31 at pp. 9 – 13); pursuant to 18 U.S.C. § 982(a)(2), as property constituting or traceable to proceeds of Bank Fraud, in violation of 18 U.S.C. §§ 1344(2) and 2, as charged in Counts 8 – 10 (Dkt. No. 31 at pp. 14 – 15); and pursuant to 18 U.S.C. § 982(a)(1) as property involved in Money Laundering, in violation of 18 U.S.C. §§ 1957 and 2, or property traceable to such property, as charged in Counts 11 – 15 (Dkt. No. 31 at p. 16). Therefore, the Subject Property is forfeitable under 18 U.S.C. §§ 981(a)(1)(C) by way of 28 U.S.C. § 2641(c), 18 U.S.C. § 982(a)(1), and 18 U.S.C. § 982(a)(2).

The Subject Property should therefore remain in the United States' possession and available for forfeiture until this case is resolved.

II. RELEVANT PROCEDURAL FACTS

The Subject Property was seized in Washington State on or about May 27, May 29, and June 25, 2020 during the execution of five Warrants to Seize Property Subject to Forfeiture at financial institutions determined to have accounts owned and/or operated by Defendant Shibley. The seizure warrants were issued from two districts: the District of

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Columbia and the Western District of Washington. *See* SZ20-33, SZ20-39, SZ20-40 in the U.S. District Court for the District of Columbia; *see also* MC20-52 and MC20-53 in the U.S. District Court for the Western District of Washington, and; *see also* Moran Declaration, Ex. A, ¶ 4. These warrants were issued on the grounds that there is probable cause to believe that the accounts contain proceeds of violations of 18 U.S.C. § 1343 (Wire Fraud), or property traceable to such property, and/or pursuant to 18 U.S.C. § 981(a)(1)(A) and 18 U.S.C. § 984, on the grounds that there is probable cause to believe that they are property involved in violations of 18 U.S.C. § 1957 (Money Laundering) or traceable to such property. *See id.*

The three District of Columbia seizure warrants were issued pursuant to 18 U.S.C. § 981(a-b), authorizing seizure of property subject to forfeiture for such violations, and pursuant to 18 U.S.C. § 984, which applies to any civil forfeiture action commenced not more than one year from the date of the underlying offense for which the subject property constitutes funds deposited in a financial institution account.

In contrast, the two Western District of Washington warrants were dual civil and criminal forfeiture seizure warrants. The warrants were issued pursuant to 18 U.S.C. §§ 981and 984, as were the D.C. warrants, above. Additionally, however, the Washington warrants provided that property subject to civil forfeiture under Section 981, including proceeds of the above-referenced violations, is also subject to criminal forfeiture via 28 U.S.C. § 2461(c) and may be seized pursuant to 21 U.S.C. § 853(f).[1] Section 853(f) provides that a court may issue a criminal seizure warrant when it "determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that [a protective] order under [21 U.S.C. § 853(e)] may not be sufficient to assure the availability of the property for forfeiture." Accordingly, the two Washington warrants sought combined civil and

[1] The three District of Columbia warrants also cited to 21 U.S.C. § 853(f).

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criminal forfeiture seizure warrants to ensure the funds would be available for forfeiture in the criminal proceeding. Therefore, probable cause to forfeit the $114,440.00 and $114,743.59 in U.S. funds, identified in Paragraphs D and E, has already been established.

On June 29, 2020, the United States filed a Complaint against Defendant Shibley for *Wire Fraud*, in violation of 18 U.S.C. §§ 1343 and 2 and *Bank Fraud*, in violation of 18 U.S.C. §§ 1344 and 2. Dkt. No. 1.

After the Subject Property was seized, the FBI initiated administrative forfeiture proceedings against it pursuant to 18 U.S.C. § 983 – with the exception of the $804,816.63 in U.S. funds identified in Paragraph C, as detailed further below. *See* Moran Decl. Ex. A, ¶ 6. In FBI's administrative forfeiture procedure, Defendant Shibley made two separate claims to some of the seized Subject Property: first, to the $100,000.00 in funds identified in Paragraph B, above, which he submitted on July 28, 2020; and, second, to the $114,440.00 and $114,743.59 in funds identified in Paragraphs D and E, which he submitted on August 25, 2020.

Funds Seized	Account Name	Account	Seizure Date	Forfeiture Probable Cause Found	Admin. Claim Date
$49,500.86	Eric R Shibley MD PLLC	NFCU 7528	5-29-2020	Civil	None
$100,000.00	ES1 LLC	WF 2378	5-29-2020	Civil	7-28-2020
$804,816.63	The A Team Holdings LLC	WF 3536	5-27-2020	Civil	N/A
$114,440.00	Dituri Construction LLC	VCU 5390	6-30-2020	Civil & Criminal	8-25-2020
$114,743.59	SS1 LLC	VCU 5320	6-30-2020	Civil & Criminal	8-25-2020

Accordingly, pursuant to 18 U.S.C. § 983(a)(3)(A) – (C), the United States is required either to file a civil judicial forfeiture action against the funds identified in

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Paragraphs A - C, or to allege its forfeiture in this criminal case and take steps to maintain custody of it by October 26, 2020.

At this time, the United States is pursuing the Subject Property's criminal forfeiture and has given notice of this intent in the Indictment. *See* Dkt. No. 31, pp. 17 – 19. This declaration is submitted to provide facts stating the requisite probable cause for the Subject Property's continued restraint for the duration of the criminal case, including the criminal ancillary forfeiture process.

Currently, the Subject Property is in the custody of the United States Marshals Service.

III. GOVERNING LAW AND ARGUMENT

The United States requests the Court issue a protective order pursuant to 21 U.S.C. § 853(e)(1)(A) restraining the Subject Property for the duration of this case. Section 853(e)(1)(A) authorizes the Court to enter orders or to fashion other remedies to preserve the availability of property subject to criminal forfeiture. *See United States v. Monsanto,* 491 U.S. 600, 612 (1989) ("Under § 853(e)(1), the trial court 'may' enter a restraining order if the United States requests it[.]"). Where there is probable cause to believe the relevant property is forfeitable, the United States is generally allowed to restrain it. *See United States v. Kaley,* 571 U.S. 320, 323 (2014), 134 S. Ct. 1090, 1095 (2014) ("[P]re-trial asset restraint [is] constitutionally permissible whenever there is probable cause to believe that the property is forfeitable"); *see also Monsanto,* 491 U.S. at 615–16 (recognizing Section 853(e)(1) allows for the pretrial restraint of assets where there is probable cause to believe they are forfeitable, stating "[i]ndeed, it would be odd to conclude that the Government may not restrain property . . . based on a finding of probable cause, when we have held that . . . the Government may restrain *persons* where is a finding of probable cause").

Here, the Subject Property has been identified for forfeiture in the Indictment and the Forfeiture Bill of Particulars. *See* Dkt. No. 31, at 17 – 19; *see also* Dkt. No. 39. The facts reflecting the Subject Property's involvement in the Defendants' offenses – i.e.,

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stating probable cause for its forfeitability – are detailed in the supporting declaration of Special Agent ("SA") Kathleen Moran. Those facts include, but are not limited to: FBI, the Small Business Administration ("SBA"), and other federal law enforcement partners have been investigating the false and misleading pretenses Defendant Shibley made on COVID-19 relief loan applications he made to the SBA in the names of his businesses – including, among others: a $100,000 loan to Eric R Shibley, MD, PLLC; loans of $563,500 and $114,900 to Dituri Construction, LLC; loans of $95,750 and $100,000 to ES1, LLC; loans of $820,000 and $114,900 to SS1, LLC; and a $960,000 loan to The A Team Holdings LLC. Shibley obtained such loan proceeds as a result of his material misrepresentations about monthly payroll expenses, employees, and revenues of his business entities and his personal probation status. As a result of Defendant Shibley's scheme, he was unjustly enriched. Accordingly, the Subject Property was seized from bank accounts associated with his business entities pursuant to federal forfeiture seizure warrants.

Based on these and other facts detailed in SA Moran's Declaration, the United States submits there is probable cause to believe the Subject Property is subject to forfeiture. To preserve the Subject Property's availability for forfeiture, the United States respectfully requests that the Court enter a protective order permitting the Subject

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Property's continued restraint through the conclusion of this case, to include criminal ancillary forfeiture proceedings. A proposed order is submitted with this motion.

DATED this 26th day of October, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which automatically serves the parties of record.

s/Hannah G. Williams
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