CLARE E. CONNORS #7936
United States Attorney
District of Hawaii

GLENN S. LEON
Chief, Fraud Section
Criminal Div., U.S. Dept. of Justice

CRAIG S. NOLAN
SYDNEY SPECTOR #11232
Assistant U.S. Attorney
Room 6100, PJKK Federal Building
300 Ala Moana Blvd.
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958
Email: Craig.Nolan@usdoj.gov
Sydney.Spector@usdoj.gov

JENNIFER BILINKAS
Trial Attorney
U.S. Dept. of Justice
Criminal Division, Fraud Section
1400 New York Avenue, N.W.
Washington, D.C. 20005
Telephone: (202) 305-3928
Email: Jennifer.Bilinkas@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff, v. MARTIN KAO, Defendant.	Crim. No. 21-00061 LEK UNITED STATES' MOTION FOR ENTRY OF A FORFEITURE MONEY JUDGMENT AND PRELIMINARY ORDER OF FORFEITURE AS TO SPECIFIC PROPERTY; PROPOSED ORDER OF FORFEITURE (MONEY JUDGMENT) AND PRELIMINARY ORDER OF FORFEITURE (SPECIFIC PROPERTY); CERTIFICATE OF SERVICE

UNITED STATES' MOTION FOR ENTRY
OF A PRELIMINARY ORDER OF FORFEITURE

Pursuant to Fed. R. Crim. P. 32.2(b), the United States of America, by and through its undersigned attorneys, moves this Court for the entry of a forfeiture money judgment against defendant Martin Kao in the amount of $12,841,490.00 and preliminary order of forfeiture as to the following property seized on or about September 30, 2020:

i. $693,986.72 seized from defendant's business operating account Central Pacific Bank ("CPB") Account No. xxxxxx9145;

ii. $8,000,000.00 seized from defendant's business investment account Merrill Lynch Account No. xxx-x3506;

iii. $2,000,000.00 seized from defendant's personal investment account Merrill Lynch Account No. xxx-x2641; and

iv. $20,200.00 from defendant's personal checking account First Hawaiian Bank ("FHB") Account No. xx-xx1787

(collectively, the "Specific Forfeitable Property").

BACKGROUND

On May 6, 2021, a multi-count Indictment was filed charging defendant Martin Kao with three counts of wire fraud, in violation of 18 U.S.C. § 1343 (Counts 1 through 3) and five counts of money laundering, in violation of 18 U.S.C § 1957 (Counts 4 through 8), and providing notice that, upon conviction, the government would seek forfeiture.

On September 7, 2022, defendant Martin Kao pled guilty to all Counts, without a plea agreement. In advance of the change of plea, the Government submitted a letter to the Court, dated September 6, 2022, outlining the factual basis for each of the counts. ECF No. 102. During the change of plea hearing, defendant Martin Kao agreed that the following facts (the facts relevant to the forfeiture sought herein) were accurate. Sept. 7, 2022 Tr. ("Tr.") 33:10-38:18:

- During the period of March 2020 through July 2020, Defendant owned 99% of Navatek LLC and served as its Chief Executive Officer. ECF No. 102, Factual Basis at ¶ 1.
- From approximately March 2020 through July 2020, Defendant knowingly submitted and caused to submitted false and fraudulent applications for Paycheck Protection Program ("PPP") loans to Bank 1 and Bank 2, which resulted in Defendant fraudulently obtaining $12,841,490.00 in PPP funds, to which he was not entitled. The funds were deposited into Navatek LLC's CPB account ending in 9145. *Id.* at ECF No 102 at ¶¶ 3-12, 14-23; *see also* Tr. at 21:8-26:17, 39:20-23.
- Defendant made the following transactions from the Navatek LLC CPB bank account ending in 9145 that received the $12,841,490 in fraudulently-obtained PPP funds. Each transaction contained more

than $10,000 of the proceeds of the wire fraud to which defendant pled guilty:

Date of Transaction	**Description of Transaction**	**Disposition of Funds**	**Transaction Amount**
04/21/2020	Check no. 31029 payable to NAVATEK, LLC	Deposited into Navatek's Merrill Lynch account no. XXX-X3506	$2,000,000
04/22/2020	Check no. 30986 payable to MARTIN KAO	Deposited into Defendant's Personal Merrill Lynch account no. XXX-X2641	$2,000,000
04/29/2020	Check no. 31124 payable to NAVATEK, LLC	Deposited into Navatek's Merrill Lynch account no. XXX-X3506	$3,000,000
05/07/2020	Check no. 31127 payable to NAVATEK, LLC	Deposited into Navatek's Merrill Lynch account no. XXX-X3506	$3,000,000
05/18/2020	Check no. 31249 payable to MARTIN KAO	Deposited into Defendant's Personal FHB account no. XX-XX1787	$20,200
		TOTAL	$10,020,200

Id. at ¶ 36; *see also* Tr. 31:6-32:13.

On or about September 30, 2020, the government seized certain funds (the Specific Forfeitable Property) held in the CPB account that received the fraudulently-obtained PPP funds, and from the Merrill Lynch and FHB Accounts to which Defendant subsequently transferred the illegal proceeds.

The government now seeks a forfeiture money judgment in the amount of $12,841,490.00 (the total amount of fraudulently-obtained PPP funds) and entry of a Preliminary Order of Forfeiture as to the Specific Forfeitable Property.

ARGUMENT

Rule 32.2 of the Federal Rules of Criminal Procedure provides, in pertinent part:

> As soon as practicable after . . . a plea of guilty . . . is accepted, on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay.

Fed. R. Crim. P. 32.2(b)(1)(A). The court's determination as to the requisite nexus and the amount of a money judgment "may be based on evidence already in the record . . . and any additional evidence or information submitted by the parties and accepted by the court as relevant or reliable." Fed. R. Crim. P. 32.2(b)(1)(B); *see also United States v. Creighton,* 52 Fed. Appx. 31, 36 (9th Cir. 2002) (hearsay evidence permissible in determining forfeiture). If forfeiture is contested, either party may request a hearing. Fed. R. Crim. P. 32.2(b)(1)(B). The court "must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment [or] directing the forfeiture of specific property . . . ." Fed. R. Crim. P. 32.2(b)(2)(A). Unless doing so is impractical, such order must be entered sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final. Fed. R. Crim. P. 32.2(b)(2)(B).

The only question before the Court is whether the evidence before the Court is enough to establish, by a preponderance of the evidence, that the requisite nexus exists between the forfeitable property and the offenses to which the defendant has pled guilty.[1] *See* Rule 32.2(b)(1); *see also United States v. Shryock*, 342 F.3d 948, 991 (9th Cir. 2003) (standard of proof regarding the forfeitability of property in a criminal case is preponderance of the evidence). Where the statutory prerequisites are met, forfeiture is mandatory. *See United States v. Depue,* 585 Fed. Appx. 388, 388-89 (9th Cir. 2014) ("Because the Government included notice of forfeiture in its criminal information, entry of a forfeiture judgment against [defendant] is mandatory . . . , and the district court erred in refusing to enter such a judgment at the Government's request.").

---

[1] The existence or extent of third-party interests in the specific property is determined after the entry of the preliminary order. *See United States v. Lazarenko*, 476 F.3d 642, 648 (9th Cir. 2007).

A. The Court Should Enter a Forfeiture Money Judgment in the Amount of $12,841,490.00

Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, a person convicted of wire fraud in violation of 18 U.S.C. § 1343[2], shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to that offense. 18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461. "Proceeds" is "property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense." 18 U.S.C. § 981(a)(2)(A). The amount of the forfeiture is not what the defendant earned, but what was "obtained" as a result of the commission of the offense. *United States v. Lo,* 839 F.3d 777, 793 (9th Cir. 2016); *United States v. Prasad*, 18 F.4th 313, 319 (9th Cir. 2021). Additionally, because a wire fraud offense necessarily includes a fraudulent scheme as a whole, "the proceeds of the crime of conviction consist of the funds involved in that fraudulent scheme, including additional executions of the scheme that were not specifically charged or on which the defendant was acquitted." *Lo,* 839 F.3d at 793.

Here, Defendant obtained $12,841,490.00, which constitutes proceeds of the wire fraud offenses in Counts 1 and 2 to which Defendant pled guilty.

---

[2] Wire fraud is a specified unlawful activity as defined in 18 U.S.C. § 1956(c)(7).

Specifically, as a result of Defendant's false statements to Bank 1 in Navatek LLC's PPP loan application, Defendant obtained $10,000,000 on April 18, 2020. ECF No. 106, Factual Basis at ¶ 12. As a result of Defendant's false statements to Bank 2 in connection with a Navatek subsidiary's PPP loan application, Defendant obtained $2,841,490 on May 6, 2020. *Id.* at ¶ 22. Although the fraudulently-obtained PPP funds were deposited into an account in the name of Navatek LLC, Defendant was 99% owner of Navatek LLC and had control of the account. *Id.* at ¶¶ 1, 36.

Additionally, pursuant to 18 U.S.C. § 982(a)(1), a person convicted of a violation of 18 U.S.C. § 1957 shall forfeit any property, real or personal, involved in such violation and property traceable to such violation. 18 U.S.C. § 982(a)(1).

Here, defendant pled guilty in Counts 4 through 8 to violating 18 U.S.C. § 1957 by engaging in monetary transactions that contained over $10,000 in criminally derived property (here, the fraudulently-obtained PPP loans). *Id.* at ¶ 36. The total funds involved in such § 1957 violations, and thus subject to forfeiture, is $10,020,000. Because at least some of the funds involved in each § 1957 transaction (over $10,000 of each transaction) is included in calculation of the forfeiture money judgment amount based on a proceeds theory, the Government takes a conservative approach, and does not seek a forfeiture money judgment greater than the $12,841,490.

Accordingly, the government is entitled to a forfeiture money judgment in the amount of $12,841,490.00 (the “Forfeiture Money Judgment”), pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. §2461, as proceeds of the wire fraud. Further, $10,020,000 of the Forfeiture Money Judgment is subject to forfeiture, pursuant to 18 U.S.C. § 982(a)(1), as property involved in a violation of 18 U.S.C. § 1957 (Counts 4 through 8).

B. The Court Should Enter a Preliminary Order of Forfeiture as to the Specific Forfeitable Property

In addition to the entry of the Forfeiture Money Judgment, the Government requests that the Court enter a preliminary order of forfeiture as to the Specific Forfeitable Property, namely:

i. $693,986.72 seized from defendant’s business operating account CPB Account No. xxxxxx9145;

ii. $8,000,000.00 seized from defendant’s business investment account Merrill Lynch Account No. xxx-x3506;

iii. $2,000,000.00 seized from defendant’s personal investment account Merrill Lynch Account No. xxx-x2641; and

iv. $20,200.00 from defendant’s personal checking account FHB Account No. xx-xx1787.

Here, Defendant’s fraudulently-obtained PPP funds were deposited into CPB account ending in 9145. ECF No. 106, Factual Basis at ¶¶ 12, 22. Various transactions were then made (totaling $10,020,200) from that CPB account to

Merrill Lynch accounts ending in 3506 and 2641, and an FHB account ending in 1787. *Id.* ¶ 36.

The $693,986.72 seized from CPB Account No. xxxxxx9145 constitutes proceeds of the wire fraud to which Defendant pled guilty and is forfeitable pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461. The other Specific Forfeitable Property (the property seized from the Merrill Lynch and FHB accounts) is property involved in the 18 U.S.C. § 1957 violations to which Defendant pled guilty, and is subject to forfeiture pursuant 18 U.S.C. § 982(a)(1).

Upon final forfeiture of the Specific Forfeitable Property, Defendant will be entitled to a credit against the amount remaining due on the forfeiture money judgment, in the net amount of the Specific Forfeitable Property that is forfeited.

//

//

//

//

//

//

//

//

//

CONCLUSION

As the government has proven the requisite basis for forfeiture, the requirements of Rule 32.2(b) have been met and the proposed Order of Forfeiture (Money Judgment) and Preliminary Order of Forfeiture (Specific Property) should be entered.

DATED: Honolulu, Hawaii, August 15, 2023.

Respectfully submitted,

CLARE E. CONNORS
United States Attorney
District of Hawaii

/s/ Sydney Spector
By________________________
SYDNEY SPECTOR
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, a true and correct copy of the foregoing was served on counsel of record using the Court's CM/ECF electronic filing system.

DATED: August 15, 2023, at Honolulu, Hawaii.

/s/ Sydney Spector
U.S. Attorney's Office