**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 23-CR-20295-ALTONAGA/DAMIAN**

**UNITED STATES OF AMERICA**

**v.**

**ARASHIO HARRIS,**

**Defendant.**

**UNITED STATES' MOTION FOR**
**PRELIMINARY ORDER OF FORFEITURE**

Pursuant to 18 U.S.C. § 981(a)(1)(c) 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, by and through the undersigned Assistant United States Attorney, hereby moves for the entry of a Preliminary Order of Forfeiture against Defendant Arashio Harris in the above-captioned matter. The United States seeks a forfeiture money judgment in the amount of $432,051. In support of this motion, the United States provides the following factual and legal bases.

## I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On July 14, 2023, the United States filed an Information charging the Defendant in Count 1 with wire fraud in violation of 18 U.S.C. § 1343. Information, 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 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), as incorporated by 28 U.S.C. § 2461(c). *Id.* at 8.

On August 9, 2023, the Court accepted the Defendant's guilty plea to Count 1 of the Information. *See* Minute Entry, ECF No. 9; Plea Agreement, ECF No. 10. As part of the guilty plea, the Defendant agreed to the forfeiture of all right, title, and interest to any property, real or personal, which constitutes proceeds traceable to the offense of conviction pursuant to 18 U.S.C. § 981(a)(1)(C), as made applicable by 28 U.S.C. § 2461(c). ECF No. 10 at 5.

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. Factual Proffer, ECF No. 11. The Factual Proffer also provided a basis for the forfeiture of property. *Id.* at 5-8. The United States Probation Office has since conducted a presentence investigation, which included information on the Defendant's financial condition. *See* Presentence Investigation Report, ECF No. 20.

## II. MEMORANDUM OF LAW

### A. Directly Forfeitable Property

Any property, real or personal, which constitutes or is derived from proceeds traceable to the violation of 18 U.S.C. § 1343, is subject to forfeiture to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C), made applicable to criminal charges by 28 U.S.C. § 2461(c).

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. § 981(a)(1)(C); 28 U.S.C. § 2461(c). 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). 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).

**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)).

**D. Property Subject to Forfeiture in Instant Criminal Case**

As set forth in the Factual Proffer, ECF No. 11, and the Presentence Investigation Report, ECF No. 20, the Defendant was the owner and president of companies The Good Family Property Solutions Inc. and Flying Lions LLC. ECF No. 11 at 1; ECF No. 20 at ¶¶ 76, 77. The Defendant was the sole signatory on Good Family's checking account at Wells Fargo Bank and a signatory on Flying Lion's checking account at Wells Fargo Bank. ECF No. 11 at 5. The Defendant, through Good Family, submitted a fraudulent application to the Small Business Administration (SBA) seeking and obtaining an Economic Injury Disaster Loan (EIDL) and an EIDL advance, which together totaled $23,500. ECF No. 11 at 5-6; ECF No. 20 at ¶ 22. The Defendant, through Good

Family, submitted fraudulent applications for two Paycheck Protection Program (PPP) loans, allowing him to fraudulently obtain a first-draw PPP loan of $129,275 in July 2020, and a second-draw PPP loan of $129,276 in April 2021. ECF No. 11 at 7-8; ECF No. 20 at ¶¶ 24-27. The Defendant, using Flying Lions, fraudulently applied for and obtained from the SBA an EIDL for $150,000. ECF No. 11 at 6; ECF No. 20 at ¶ 23. All loans were disbursed to the accounts at Wells Fargo described above. ECF No. 11 at 6-8.

Based on the record in this case, the total value of the proceeds traceable to the offense of conviction is of $432,051 in U.S. currency, which sum may be sought as a forfeiture money judgment pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure.

Accordingly, the Court should issue the attached proposed order, which provides for the entry of a forfeiture money judgment against the Defendant; the forfeiture of specific property; 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.

WHEREFORE, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), 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 October 24, 2023, and there is no objection to the relief sought.

Respectfully submitted,

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