**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MARYLAND**

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| **UNITED STATES OF AMERICA** | * | |
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| **v.** | * | **CRIMINAL NO. JKB-22-232** |
| | * | |
| **ALEXANDER BARABASH,** | * | |
| | * | |
| **Defendant** | * | |
| | * | |
| | ******* | |

**UNITED STATES' MOTION TO AMEND PRELIMINARY ORDER OF FORFEITURE TO INCLUDE SUBSTITUTE ASSET**

The United States of America, by its undersigned attorneys, respectfully moves this Court pursuant to Rule 32.2(e) of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(p) to amend the preliminary order of forfeiture previously entered on June 27, 2023 (ECF No. 32) to include the real property located at 5575 E. Sheena Drive, Scottsdale, Arizona, as a substitute asset in partial satisfaction of the Defendant's outstanding $1,295,000 money judgment. A proposed Preliminary Order of Forfeiture is submitted herewith. In support thereof, the United States sets forth the following:

## BACKGROUND

1. On March 24, 2023, the Defendant, Alexander Barabash, pled guilty to the wire fraud offense alleged in Count One of the Indictment. ECF. No. 19. As part of his guilty plea, the Defendant agreed to entry of an order of forfeiture to include a money judgment in the amount of at least **$1,295,000** in U.S. currency equal to the value of the property derived from, or otherwise involved in, the Defendant's offense. To date, the Defendant has not paid anything toward the money judgment.

2. The United States has learned that the Defendant owns the real property located at 5575 E. Sheena Drive, Scottsdale, Arizona.

3. The United States now seeks to forfeit the real property located at 5575 E. Sheena Drive, Scottsdale, Arizona, in partial satisfaction of the Defendant's forfeiture money judgment.

**ARGUMENT**

4. Title 21, United States Code, Section 853(p) provides that, if "as a result of any act or omission of the defendant" any property

> (A) cannot be located upon the exercise of due diligence;
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> (B) has been transferred or sold to, or deposited with, a third party;
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> (C) has been placed beyond the jurisdiction of the court;
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> (D) has been substantially diminished in value; or
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> (E) has been commingled with other property which cannot be divided without difficulty,

the "court shall order the forfeiture of any other property of the defendant, up to the value of any property" so transferred or moved by the defendant.

5. Rule 32.2(e)(1)(B) of the Federal Rules of Criminal Procedure provides that, on the Government's motion, "the court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that . . . is substitute property that qualifies for forfeiture under [21 U.S.C § 853(p)]." "Section 853(p) is not discretionary; rather, the statute mandates forfeiture of substitute assets when the tainted property has been placed beyond the reach of a forfeiture." *United States v. Alamoudi*, 452 F.3d 310, 314 (4th Cir. 2006) (internal quotation marks omitted).

6. "It is well-established that the Government may seek forfeiture of substitute assets when a defendant does not have the money to satisfy a money judgment." *United States v. Manlapaz*, 825 Fed. App'x 109, 116 (4th Cir. 2020); *see also United States v. Nejad*, 933 F.3d 1162, 1166 (9th Cir. 2019) (if the requirements of 21 U.S.C. § 853(p) are met, the court may amend the forfeiture order to include newly-identified substitute property to satisfy a personal money judgment); *United States v. Bermudez*, 413 F.3d 304, 306-07 (2d Cir. 2005) (affirming forfeiture of substitute assets in partial satisfaction of $14.2 million money judgment in a money laundering case); *United States v. Candelaria-Silva*, 166 F.3d 19, 42 (1st Cir. 1999) (once the government has obtained a money judgment, it may forfeit defendant's real property in partial satisfaction of that judgment); *United States v. Baker*, 227 F.3d 955, 968 n.1 (7th Cir. 2000) (same); *United States v. Carroll*, 346 F.3d 744, 748 (7th Cir. 2003) (defendant may be ordered to forfeit "every last penny" he owns as substitute assets to satisfy a money judgment); *United States v. Hill*, 46 Fed. App'x 838, 839 (6th Cir. 2002) (630 shares of stock could be forfeited as substitute assets to satisfy money judgment entered after property involved in money laundering scheme became unavailable).

7. Here, the Government has met the requirements of 21 U.S.C. § 853(p). As set forth in the attached declaration of Special Agent Daniel Scheler, as a result of the acts or omissions of the Defendant, proceeds of the Defendant's criminal offenses have not been located by the United States Secret Service upon the exercise of due diligence because the proceeds have been transferred or sold to, or deposited with, a third party; have been placed beyond the jurisdiction of this Court; or have been substantially diminished in value, or commingled with other property which cannot be divided without difficulty. *See* Exhibit 1 (Declaration of Special Agent Daniel Scheler).

8. Upon the issuance of the proposed Amended Preliminary Order of Forfeiture to include the substitute asset, pursuant to 21 U.S.C. § 853(n)(1) and Rule 32.2(b)(6)(C) of the Federal Rules of Criminal Procedure, the United States shall publish, for thirty (30) consecutive calendar days on the government forfeiture website www.forfeiture.gov, notice of the Amended Preliminary Order of Forfeiture, notice of the United States' intent to dispose of the substitute property, and notice that any person other than the Defendant having or claiming a legal interest in the substitute property, must file a petition with the Court within sixty (60) days after the first day of publication on the government forfeiture website or within thirty (30) days after receipt of actual notice, whichever is earlier.

9. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the substitute property, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title, or interest in the forfeited substitute property and any additional facts supporting the petitioner's claim and the relief sought.

10. The United States may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the substitute property that is the subject of the Amended Preliminary Order of Forfeiture as a substitute for published notice as to those persons so notified.

11. The United States also seeks authority to conduct any discovery that might be necessary to identify, locate, or dispose of forfeited property, pursuant to Rules 32.2(b)(3) and (c)(1)(B) of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(m).

WHEREFORE, the United States requests that this Court:

(a) enter the Amended Preliminary Order of Forfeiture in the form submitted herewith to include the real property located at 5575 E. Sheena Drive, Scottsdale, Arizona, as a substitute asset pursuant to Fed. R. Crim. P. 32.2(e)(1)(B) and 21 U.S.C. § 853(p); and

(b) retain jurisdiction for the purpose of enforcing the forfeiture.

Respectfully submitted,

Kelly O. Hayes
United States Attorney

By: /s/

Keelan F. Diana
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion to Amend Preliminary Order of Forfeiture to Include Substitute Assets, as well as the proposed Amended Preliminary Order of Forfeiture, were filed through the Electronic Case Filing system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing. I also caused a copy of the motion and proposed order to be mailed to the Defendant via certified mail at the following address:

Alexander Barabash
5575 E. Sheena Drive
Scottsdale, Arizona 85254

/s/____________________
Keelan F. Diana
Assistant United States Attorney