UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v. **Case No. 6:21-cr-16-WWB-DCI**
(Forfeiture)

DON V. CISTERNINO

UNITED STATES' MOTION FOR ENTRY OF AN ORDER FORFEITURE AND A PRELIMINARY ORDER OF FORFEITURE FOR DIRECTLY TRACEABLE ASSETS

The United States respectfully moves this Court, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2(b)(2), to enter an order of forfeiture in an amount of $7,210,000, representing the amount of proceeds the defendant obtained as a result of his wire fraud scheme, and a Preliminary Order of Forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2(b)(2), which, upon entry, shall become final as to the defendant as to the following:

1. approximately $446,580.86 seized from Wells Fargo Bank account #1040205207573, held in the name of Victor A. Cisternino and/or Mary Jo Cisternino;

2. approximately $439,576.96 seized from TD Bank account #7919290655, held in the name of Victor A Cisternino and/or Mary J Cisternino;

3. approximately $94,726.07 seized from JP Morgan Chase Bank account #650710970, held in the name of Victor A. Cisternino and/or Mary J. Cisternino;

4. approximately $5,000.21 seized from JP Morgan Chase Bank account #3838760727, held in the name of Victor A. Cisternino and/or Mary J. Cisternino; and

5. approximately $86,039.88 seized from Citibank account #6866323510, held in the name of Denise L. Pieck and/or ITF Keith Pieck.

In support thereof, the United States submits the following memorandum of law.

MEMORANDUM OF LAW

I. Statement of Facts

1. On February 3, 2021, an eight count Indictment was returned. In pertinent part, Count Two charged the defendant with wire fraud, in violation of 18 U.S.C. § 1343. Doc. 1.

2. The Indictment also contained forfeiture allegations, which notified the defendant that the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), would seek to forfeit any property constituting, or derived from, proceeds obtained directly or indirectly, as a result of the wire fraud violations, including the funds held in the above-referenced accounts.[1] *Id*. at 11-13.

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[1] The indictment also included a piece of real property located in Chuluota, FL for forfeiture. However, as explained the defendant's plea agreement, Doc. 30, that property was forfeited in *United States v. Real Property Located at 3018 Kingfisher Point., Chuluota, FL 32766,* Case No. 2306-Orl-PGB-EJK at Doc. 23, and, as a result, will not be forfeited in these proceedings.

3. On September 12, 2022, the United States and the defendant entered into a plea agreement. Doc. 30. In paragraph nine of his plea agreement, entitled "Forfeiture of Assets," the defendant admitted that the funds held in the above bank accounts were proceeds obtained from his wire fraud scheme that were transferred to his family members, and that he obtained $7,210,000 from his wire fraud scheme. *Id.* at 7. Lastly, the defendant admitted that as a result of his acts and omissions, the proceeds not recovered by the United States through the forfeiture of the directly traceable assets listed above were transferred to third parties and could not be located by the United States upon the exercise of due diligence. *Id*. at 8.

4. On September 20, 2022, the defendant pled guilty to Count Two of the Indictment and the Court accepted the plea of guilty and adjudicated the defendant guilty as to Count Two. Doc. 34. The defendant is scheduled to be sentenced on January 5, 2023. Doc. 35.

II. <u>Applicable Law</u>

A. Applicable Forfeiture Statutes

The Court's authority to order forfeiture of property for wire fraud, in violation of 18 U.S.C. § 1343, is found in 18 U.S.C. § 981(a)(1)(C), which provides for the civil forfeiture of any property, real or personal, which constitutes or is derived from proceeds from any offense constituting "specified unlawful activity." The term "specified unlawful activity" includes offenses listed in 18 U.S.C. § 1961(1). 18 U.S.C. § 1956(c)(7)(A). Specifically, 18 U.S.C. § 1961(1)(B) includes as an offense any act which is indictable under 18 U.S.C. § 1343. Although § 981(a)(1)(C) is a civil forfeiture statute, 28 U.S.C. § 2461(c) authorizes the criminal forfeiture of any property that can be forfeited civilly using the procedures for the criminal forfeiture and disposition of property set forth in 21 U.S.C. § 853.

B. Law Regarding the Forfeiture of Directly Traceable Assets

Rule 32.2(b)(1) requires that if the United States seeks the forfeiture of specific property, the Court must determine whether the United States has established the requisite nexus between the property and the offense. In so doing, the Court makes both a factual determination regarding the sufficiency of the nexus between the offense and the property sought for forfeiture, and a legal finding as to what property is subject to forfeiture.

C. Law Regarding the Entry of an Order of Forfeiture

Pursuant to Rule 32.2(b)(2), because the United States could not locate all of the specific property constituting or derived from the proceeds the defendant obtained from his wire fraud scheme, the United States seeks an order of forfeiture against the defendant in the amount of proceeds he obtained from the scheme.[2] Indeed, for cases in which a defendant no longer has the actual dollars or property traceable to proceeds in his/her possession, or the government cannot locate those assets, the

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[2] The net proceeds from the forfeiture of the directly forfeitable assets will be credited to and reduce the amount the United States shall be entitled to forfeit as substitute assets pursuant to 21 U.S.C. § 853(p).

obligation to forfeit simply takes the form of an order of forfeiture in favor of the United States. *See United States v. Padron*, 527 F.3d 1156, 1161-62 (11th Cir. 2008).

Rule 32.2(b)(1) provides that the court must determine the amount of money that the defendant will be ordered to pay. The Court's determination may be based on evidence submitted by the parties and accepted by the Court as relevant and reliable. Fed. R. Crim. P. 32.2(b)(1)(B).

Even though the defendant only pled guilty to a substantive wire fraud count, because the defendant was charged with fraud offenses alleged as a continuing scheme, he liable for the full amount obtained from the scheme even though the defendant only pled guilty to a substantive wire fraud offense. *See United States v. Lo,* 839 F.3d 777 (9th Cir. 2016) (government is entitled to a forfeiture money judgment in the amount of the proceeds obtained as a result of the entire fraud scheme even though defendant pleaded to only some of the fraud counts); *United States v. Venturella*, 585 F.3d 1013, 1015, 1016–17 (7th Cir. 2009) (forfeiture in a mail fraud case "is not limited to the amount of the particular mailing but extends to the entire scheme"; defendant's guilty plea to one substantive count involving $477 rendered her liable for money judgment of $114,000); *United States v. Holland*, 722 F. App'x. 919 (11th Cir. 2018) (where defendant is convicted of wire fraud, court in calculating a forfeiture money judgment is free to consider uncharged conduct involving the same fraud scheme, so long as government proves by a preponderance of the evidence that the property to be forfeited was linked to the conduct); *Cf. United*

States v. Hasson, 333 F.3d 1264, 1279 n.19 (11th Cir. 2003) (court in a money laundering case may not impose a forfeiture order based on a money laundering offense with which defendant was not charged or for which he was acquitted, but if he is convicted of a conspiracy, the forfeiture may be based on amounts defendant conspired to launder, including amounts derived from uncharged substantive conduct, or substantive counts for which he has been acquitted).

III. Factual Basis Supporting the Order of Forfeiture and Forfeiture of Directly Traceable Assets

The defendant admitted in his Plea Agreement that he fraudulently obtained a $7.2 million Paycheck Protection Program ("PPP") loan by falsely claiming that his New York company, MagnifiCo Inc. ("MagnifiCo"), had 441 employees and an average monthly payroll of $2.9 million. In fact, MagnifiCo had few, if any, employees other than the defendant. In support of his PPP loan application, the defendant submitted falsified bank statements, fake tax returns, and 441 fake Form W-2s for his purported employees. For many of the purported employees, he used the stolen names and Social Security numbers of identity theft victims. Factual Basis at 23-36.

The funds the defendant fraudulently obtained were not used for their required purposes, but instead used by the defendant on luxury items or to make payments to his girlfriend or family members. *Id*. at 31. Specifically, the defendant gave $1,440,000 of the fraudulently obtained funds to his father via check. *Id*. at

32. Those funds were initially deposited into Wells Fargo Bank account #1040205207573, held in the name of Victor A. Cisternino and/or Mary Jo Cisternino. *Id*. at n.3. Thereafter, in July 2020, $550,000 of those funds were transferred to TD Bank Account #7919290655 held in the name of Victor A Cisternino and/or Mary J Cisternino. In August 2020, $100,000 of the $1,440,000 was "split-deposited" into JP Morgan Chase Bank Account #650710970 held in the name of Victor A. Cisternino and/or Mary J. Cisternino ($95,000) and JP Morgan Chase Bank Account #3838760727 held in the name of Victor A. Cisternino and/or Mary J. Cisternino ($5,000). The defendant's parents ultimately transferred $86,039.88 in fraud proceeds from TD Bank Account #7919290655 to the defendant's sister's account - Citibank Account Number 6866323510 held in the name of Denise L Pieck ITF Keith Pieck. *Id*. The fraud proceeds remaining in these accounts were ultimately seized by the IRS. *Id*. at 36.

If the Court finds that the United States has established the requisite nexus between the funds sought for forfeiture and the violation charged in Count Two of the Indictment, then it is appropriate for the Court to enter a Preliminary Order of Forfeiture, forfeiting to the United States all right, title, and interest in the funds with 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2).

IV. <u>Conclusion</u>

WHEREFORE, the United States respectfully requests that this Court enter an Order of Forfeiture for the $7,210,000 in proceeds the defendant obtained as a result of his wire fraud scheme, and a preliminary order of forfeiture forfeiting to the United States the funds in above-referenced accounts, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2), Federal Rules of Criminal Procedure.

As required by Rule 32.2(b)(4)(B), the United States further requests that the Court include the forfeiture when orally announcing the sentence, and include the forfeiture order in the judgment. *See United States v. Kennedy*, 201 F.3d 1324, 1326 (11th Cir. 2000) and Fed. R. Crim. P. 32.2(b)(4)(A) and (B).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Michael Shay Ryan, Esquire

s/Nicole M. Andrejko
NICOLE M. ANDREJKO
Assistant United States Attorney