UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v. Case No. 2:22-cr-39-SPC-NPM

DANIEL JOSEPH TISONE

UNITED STATES' MOTION FOR ORDER OF FORFEITURE AND PRELIMINARY ORDER OF FORFEITURE FOR DIRECT ASSETS

Pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), 982(a)(2)(A), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2) of the Federal Rules of Criminal Procedure, the United States of America hereby files this motion for an order of forfeiture against the defendant in the amount of $2,617,447.17, representing the total amount of (1) proceeds he obtained from the wire fraud scheme charged in Count Two of the Indictment; (2) proceeds he obtained from the bank fraud scheme charged in Count Eight; and (3) funds involved in the illegal monetary transaction charged in Count Fourteen.

In addition, pursuant to 18 U.S.C. §§ 924(d)(1), 981(a)(1)(C), 982(a)(1), 982(a)(2)(A), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2), the United States moves for a preliminary order of forfeiture for the following assets, which (1) constitute or were derived from proceeds traceable to the wire fraud scheme (Count Two) and bank fraud scheme (Count Eight); (2) were involved in an illegal monetary transaction (Count Fourteen); and/or (3) were involved in the offense of the defendant being a convicted felon in possession of ammunition (Count Eighteen):

1. Approximately $64,813.43 seized from Bank of Clarke County account ending in 2616, held in the name of TEC Ventures LLC;

2. Approximately $832.26 seized from JP Morgan Chase account ending in 8870, held in the name of TEC Ventures LLC;

3. A 4.02 carat solitaire, oval cut, lab-grown diamond engagement ring, in custom 18K yellow-gold band setting, purchased from Friendly Diamonds, on or about September 17, 2021;

4. Real property located at 1001 10th Avenue South, Naples, Florida 34102, including all improvements thereon and appurtenances thereto, the legal description for which is as follows:

   Unit 101, OLDE NAPLES SEAPORT, a Condominium, according to the Declaration of Condominium thereof as recorded in Official Records Book 3869, Page 3913, as amended from time to time, of the Public Records of Collier County, Florida;

5. Real property located at 550 Starboard Drive, Naples, Florida 34103, including all improvements thereon and appurtenances thereto, the legal description for which is as follows:

   Lot 5, Block F, THE MOORINGS, UNIT NO. 6, in accordance with and subject to the plat thereof, recorded in Plat Book 8, pages 7 and 8, of the Public Records of Collier County, Florida; and

6. Assorted ammunition seized from the defendant's residence on or about March 31, 2022.

The United States further asks that, in accordance with his Amended Plea Agreement (Doc. 54 at 10-11), the order of forfeiture and preliminary order of forfeiture for direct assets become final as to the defendant at the time it is entered. In support of its motion, the United States submits the following memorandum of law.

MEMORANDUM OF LAW

I. Statement of Facts

A. Allegations Against the Defendant

1. The defendant was charged in an Indictment, in relevant part, with (1) a wire fraud scheme, in violation of 18 U.S.C. §§ 1343 and 2, (2) a bank fraud scheme, in violation of 18 U.S.C. §§ 1344 and 2, (3) illegal monetary transactions, in violation of 18 U.S.C. §§ 1957 and 2, and (4) being a convicted felon in possession of ammunition, in violation of 18 U.S.C. § 922(g)(1). Doc. 19.

2. The Indictment also contained forfeiture allegations putting the defendant on notice that, pursuant to 18 U.S.C. §§ 924(d)(1), 981(a)(1)(C), 982(a)(1), 982(a)(2)(A), and 28 U.S.C. § 2461(c), the United States would seek an order of forfeiture in the amount of approximately $2,617,447.17, representing the proceeds obtained from the offenses as well as the amount involved in the offenses, and the forfeiture of (1) approximately $64,813.43 seized from Bank of Clarke County account ending in 2616, held in the name of TEC Ventures LLC, (2) approximately $832.26 seized from JP Morgan Chase account ending in 8870, held in the name of TEC Ventures LLC, (3) a 4.02 carat solitaire, oval cut, lab-grown diamond engagement ring, in custom 18K yellow-gold band setting, purchased from Friendly Diamonds, on or about September 17, 2021, (4) a 2019 Tiara 34LS boat, hull number SSUKC007L819, (5) the real property located at 1001 10th Avenue South, Naples,

Florida 34102, (6) the real property located at 550 Starboard Drive, Naples, Florida 34103, and (7) assorted ammunition. *Id.* at 19-22.

B. Finding of Guilt and Admissions of Fact

3. On August 26, 2022, the defendant pled guilty to Counts Two (wire fraud scheme), Eight (bank fraud scheme), Fourteen (illegal monetary transaction) and Eighteen (convicted felon in possession of ammunition) before United States Magistrate Judge Nicholas P. Mizell, who recommended that the defendant's guilty plea be accepted. Docs. 55, 56. On August 29, 2022, United States District Judge Sheri Polster Chappell accepted the defendant's plea and adjudicated him guilty. Doc. 59. The defendant's sentencing is currently set for January 30, 2023.

4. On pages 19 through 28 of his Amended Plea Agreement (Doc. 54), the defendant admitted, among other things, that in March of 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was enacted to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program (PPP). Another source of relief was the Economic Injury Disaster Loan (EIDL) program, which was a Small Business Administration (SBA) program that provided low-interest financing to small businesses affected by declared disasters. Additionally, eligible businesses could apply for an EIDL advance of up to

$10,000, which was determined by the number of employees the applicant certified having and did not have to be repaid.

PPP loan applications were processed, approved, and funded by participating lenders and 100% guaranteed by the SBA. PPP loan proceeds were required to be used for certain permissible expenses. In December 2020, the SBA was authorized to guarantee Second Draw PPP loans under generally the same terms and conditions available under the original PPP (First Draw PPP loans). First Draw PPP loan borrowers were only eligible for Second Draw PPP loans if the borrower had 300 or fewer employees and experienced a revenue reduction of 25% or greater in 2020 relative to 2019.

To obtain an EIDL and advance, a qualifying business had to submit an application directly to the SBA and provide information about its operation, such as the number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. These figures were used by the SBA to calculate the EIDL and advance amount.

An additional source of relief for small and medium sized businesses affected by the COVID-19 pandemic was the Main Street Lending Program (MSLP), which was an emergency lending program established by the Federal Reserve Board. As part of the MSLP, the Federal Reserve Bank of Boston (FRBB) created MS Facilities LLC – a special-purpose vehicle that borrowed funds from the FRBB and used the funds to purchase participation in loans made by private lenders that conformed to the MSLP terms. Eligible MSLP borrowers would apply through a private lender and, if approved, the lender would originate and service the 5-year term loan, though it would sell a 95% participation at par to MS Facilities LLC. Interest repayment was deferred for the first year and principal repayment was deferred for two years.

The defendant owned and operated TEC Ventures, LLC (TEC Ventures), Rub a Dub, LLC, Rub a Dub Atlantic, LLC, Rub a Dub Eco Wash, LLC, Rub a Dub Marines, LLC, that had been incorporated in the State of Virginia and for which he had fraudulently sought PPP, EIDL, and MSLP loans. Additionally, the defendant owned and operated Rub a Dub Holdings, Inc. The defendant was a previously convicted felon as of October 24, 2007.

Between March 30, 2020, and November 9, 2020, the defendant electronically submitted four false and fraudulent EIDL applications that were approved by the SBA. In each EIDL application, the defendant falsely represented his businesses' gross revenues, costs of goods sold, and number of employees for each business to qualify for the loans. The defendant's false and fraudulent representations caused the SBA to approve a total of $562,200 in EIDL funds and $6,000 in EIDL Advance funds, which were deposited into accounts controlled by the defendant.

Between April 20, 2020, and March 31, 2021, the defendant submitted five fraudulent PPP applications (three First Draw PPP loan applications and two Second Draw PPP loan applications) to Blue Ridge Bank. In each application, the defendant falsely represented the business' number of employees and average monthly payroll. Additionally, the defendant falsely represented and certified that the PPP funds would be used to retain workers, maintain payroll, or make mortgage interest payments, lease payments, and utility payments.

In furtherance of the fraud, the defendant submitted fake quarterly federal tax returns for each applicant business that contained false representations about the business's quarterly payroll expenses. Additionally, the defendant unlawfully used the personal identifiable information (PII) of an individual to create fake payroll documents, which enabled him to fraudulently obtain a First Draw and Second Draw PPP loan for TEC Ventures. In total, the defendant's false and fraudulent representations caused Blue Ridge Bank to approve and fund a total of $573,954.17 in First Draw and Second Draw PPP loans, the funds of which were deposited into accounts that were opened and controlled by the defendant.

On or about November 9, 2020, the defendant submitted a false and fraudulent MSLP application to the Bank of Clarke County. In support of his application, the defendant submitted false and fraudulent corporate income tax returns and profit and loss statements. These materials falsely reported revenues earned and wages paid. The defendant's false and fraudulent representations caused Bank of Clarke County to approve a $1,500,000 MSLP loan for TEC Ventures, of which the funds were deposited into a Bank of Clarke County account ending in 2616, which was controlled and maintained by the defendant.

In total, approximately $2,617,447.17 in fraudulently obtained EIDL, PPP, and MSLP loan funds were deposited into accounts controlled and maintained by the defendant which were misused for his own personal enrichment. The fraudulently obtained loan funds were also used to purchase a 2019 Tiara 34LS boat, a 4.02 carat diamond engagement ring, and the real property located at 1001 10th Avenue South, #101, Naples, FL 34102, and the real property located at 550 Starboard Drive, Naples, FL 34103.

On March 30, 2022, the Federal Bureau of Investigation executed a federal search warrant at the defendant's residence where they discovered hundreds of rounds of assorted ammunition in the defendant's master bedroom and garage.

On the date the ammunition was discovered in the defendant's residence, he had already been convicted of multiple felony offenses. Additionally, an interstate nexus expert with the Bureau of Alcohol, Tobacco, Firearms, and Explosives examined the assorted ammunition and determined it had been manufactured outside of the State of Florida, thus it had traveled in or affected interstate or foreign commerce before coming into the defendant's possession.

C. Admissions Relating to Forfeiture

5. In paragraph 9 of his Amended Plea Agreement, pursuant 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), 982(a)(2)(A), 28 U.S.C. § 2461(c), the defendant agreed to forfeit $2,617,447.17 in proceeds he admits he obtained as a result of the commission of the wire fraud and bank fraud schemes, as well as the amount involved in the

illegal monetary transaction. Doc. 54 at 7. The defendant further admitted that as a result of the acts and omissions of the defendant, aside from the assets described above, the proceeds have been transferred to third parties and cannot be located by the United States upon the exercise of due diligence. *Id.* at 9. The defendant further agreed to forfeit approximately $64,813.43 seized from Bank of Clarke County account ending in 2616, held in the name of TEC Ventures LLC; approximately $832.26 seized from JP Morgan Chase account ending in 8870, held in the name of TEC Ventures LLC; a 4.02 carat diamond engagement ring; a 2019 Tiara 34LS boat, hull number SSUKC007L819; the real property located at 1001 10th Avenue South, Naples, Florida 34102; the real property located at 550 Starboard Drive, Naples, Florida 34103; and assorted ammunition, more specifically described on page two, above, which the defendant agreed constitute proceeds of the offenses and/or property involved in the offenses.[1] *Id.* at 7-8.

[1] The United States agreed to the allow the defendant until up to 30 days prior to sentencing to sell and liquidate most of the directly traceable assets and to apply any sale proceeds to the anticipated restitution order in this case. *See Id.* at 8, Doc. 41. The defendant sold the 2019 Tiara boat and deposited those funds with the Clerk of Court. Doc. 46. Therefore, the United States is no longer seeking the forfeiture of the boat. The remaining assets have not been sold, however, and the defendant has confirmed that he is now delinquent on the mortgages on both real properties. Therefore, in order to preserve its interest, the United States is filing this motion for preliminary orders of forfeiture for all remaining assets, including the two real properties. In the event the defendant is able to complete the sale of either real property prior to sentencing, however, the United States has agreed to continue efforts to facilitate the sale and application of those funds to the restitution order, including filing a motion to vacate any preliminary order of forfeiture for these properties.

II. Applicable Law

The United States is entitled to an order of forfeiture against the defendant, and to forfeit the assets, identified above, pursuant to 18 U.S.C. § 981(a)(1)(C). The United States may civilly forfeit, pursuant to 18 U.S.C. § 981(a)(1)(C), any property, real or personal, which constitutes or is derived from proceeds of any "specified unlawful activity," as defined in 18 U.S.C. § 1956(c)(7). A "specified unlawful activity" also includes any offense listed in section 1961(1), which, in turn, includes any violation of section 1343 (wire fraud scheme). In addition, the United States is entitled to civilly forfeit, pursuant to 18 U.S.C. § 924(d), any firearm and ammunition involved in any knowing violation of 18 U.S.C. § 922(g)(1). Because the United States is entitled to civilly forfeit proceeds of such offenses and/or the ammunition, it may criminally forfeit the proceeds and/or assets pursuant to 28 U.S.C. § 2461(c), which authorizes the criminal forfeiture of any property that can be forfeited civilly, using the procedures set forth in 21 U.S.C. § 853.

Additionally, the United States is entitled to an order of forfeiture against the defendant, and to forfeit the assets, identified above, pursuant to 18 U.S.C. § 982(a)(2)(A), which provides for the forfeiture of any property which constitutes, or is derived from, proceeds obtained directly or indirectly, as a result of a bank fraud scheme (18 U.S.C. § 1344).

Finally, the United States is entitled to an order of forfeiture against the defendant and to forfeit the assets, identified above, pursuant to 18 U.S.C. §

982(a)(1), which provides for the forfeiture of any property, real or personal, involved in an illegal monetary transaction (18 U.S.C. § 1957), or any property traceable to such property.

A. Order of Forfeiture

For cases in which a defendant no longer has the actual dollars or property traceable to proceeds in his possession, or the government cannot locate those assets, the 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, where the government seeks an order of forfeiture, the Court must determine the amount of money that the defendant will be ordered to pay.

Here, the United States is entitled to an Order of Forfeiture against the defendant for the entire amount of the wire fraud and bank fraud schemes, not just the proceeds of the specific substantive counts to which the defendant pled guilty. "When a scheme is charged, even though only certain substantive counts are proved, the proceeds of the scheme are forfeitable." *United States v. Clark*, 13-10034-CR, 2016 WL 361560, at *2 (S.D. Fla. 2016) (citing *United States v. Hasson,* 333 F.3d 1264, 1279–1280 (11th Cir. 2003)); *see also United States v. Venturella*, 585 F.3d 1013, 1015 (7th Cir. 2009) (forfeiture in fraud case "forfeiture is not limited to the amount of the particular mailing but extends to the entire scheme").

The defendant admitted that he has dissipated the criminal proceeds that he obtained from his offenses. Doc. 54 at 9. Because the United States could not locate all of the specific property constituting or derived from the proceeds the defendant obtained from wire fraud and bank fraud schemes, the United States seeks an order of forfeiture against the defendant in the amount of $2,617,447.17, pursuant to Rule 32.2(b)(2). As the defendant has agreed, he obtained $2,617,447.17 in proceeds as a result of the wire fraud and bank fraud schemes. If the Court finds that at least $2,617,447.17 was obtained by the defendant, and that he has dissipated those proceeds, then it is appropriate for the Court to enter an order of forfeiture against the defendant in that amount pursuant to Rule 32.2(b)(2).

B. Direct Assets

Rule 32.2(b)(1) provides that, when the government seeks to forfeit specific property, the Court must determine whether the government has established the requisite nexus between the property and the defendant's crimes. Fed. R. Crim. P. 32.2(b)(1). As the defendant has agreed, the assets identified above constitute or were derived from proceeds traceable to the wire fraud and bank fraud schemes, and/or were involved in an illegal monetary transaction, and, with regards to the ammunition, were possessed by the defendant, a convicted felon; therefore the direct assets are subject to forfeiture, pursuant to 18 U.S.C. §§ 924(d)(1), 981(a)(1)(C), 982(a)(1), 982(a)(2)(A), and 28 U.S.C. § 2461(c).

III. Conclusion

For the reasons stated above, the United States requests that, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), 982(a)(2)(A), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2), the Court enter an order of forfeiture against the defendant in the amount of $2,617,447.17, for which he will be held liable.

The United States further requests that, because the $2,617,447.17 in proceeds was dissipated by the defendant, the United States may seek, as a substitute asset, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1) and/or 28 U.S.C. § 2461(c), forfeiture of any of the defendant's property up to the value of $2,617,447.17.

The United States further requests that, pursuant to 18 U.S.C. §§ 924(d)(1), 981(a)(1)(C), 982(a)(1), 982(a)(2)(A), and 28 U.S.C. § 2461(c), and Rule 32.2(b)(2), the Court enter a preliminary order of forfeiture for the assets identified on page two, above. The net proceeds from the forfeiture and sale of any specific assets will be credited to and reduce the amount the United States shall be entitled to forfeit as substitute assets.

The United States further requests that, in accordance with his Amended Plea Agreement (Doc. 54 at 10-11), the order of forfeiture and preliminary order of forfeiture for direct assets become final as to the defendant at the time it is entered.

Upon issuance of the Preliminary Order of Forfeiture for Direct Assets, the United States will provide written notice to all third parties known to have an alleged legal interest in the property and will publish notice on the Internet at www.forfeiture.gov of its intent to forfeit the property. Determining whether a third party has any interest in the property must be deferred until a third-party files a claim in an ancillary proceeding under Rule 32.2(c).

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

The United States further requests that the Court retain jurisdiction to address any third-party claim that may be asserted in these proceedings, to enter any further order necessary for the forfeiture and disposition of such property, and to order any substitute assets forfeited to the United States up to the amount of the order of forfeiture.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 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 counsel of record.

s/Suzanne C. Nebesky
SUZANNE C. NEBESKY
Assistant United States Attorney