UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-cr-60171-SMITH

UNITED STATES OF AMERICA

v.

CINDI ELLIS DENTON,

Defendant.

UNITED STATES' UNOPPOSED MOTION FOR
PRELIMINARY ORDER OF FORFEITURE

Pursuant to 18 U.S.C. § 982(a)(2)(A) 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 (the "United States"), by and through the undersigned Assistant United States Attorney, hereby moves for the entry of a Preliminary Order of Forfeiture against Defendant Cindi Ellis Denton (the "Defendant") in the above-captioned matter. The United States seeks a forfeiture money judgment in the amount of $377,802.12. In support of this motion, the United States provides the following factual and legal bases.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On June 21, 2021, the United States filed an Information charging the Defendant with conspiracy to commit wire fraud in violation of 18 U.S.C. § 371. Information, ECF No. 20. The Information also contained forfeiture allegations, which alleged that upon conviction of a violation of 18 U.S.C. § 371, the Defendant shall forfeit any proceeds the defendant obtained, directly or indirectly, as the result of such violation pursuant to 18 U.S.C. § 982(a)(2)(A). *See id.* at 6.

On July 22, 2021, the Court accepted the Defendant's guilty plea to the Information. *See*

Minute Entry, ECF No. 31; Plea Agreement ¶ 1, ECF No. 33. As part of the guilty plea, the Defendant agreed to the entry forfeiture money judgment in the amount of $491,310.00[1] against her. Plea Agreement ¶¶ 13.

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. *See* Factual Proffer, ECF No. 34. The Factual Proffer also provided a basis for the forfeiture of property. *See id.* at 2.

II. MEMORANDUM OF LAW

A. Directly Forfeitable Property

All property constituting, or derived from, proceeds the defendant obtained directly or indirectly, ash the result of a wire fraud offense affecting a financial institution is subject to forfeiture. 18 U.S.C. § 982(a)(2)(A).

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. § 982(a)(2). 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).

[1] As discussed further below, the United States subsequently confirmed that the victim financial institution was able to recover $113,507.88. Therefore, the United States seeks a forfeiture money judgment in the amount of $377,802.12.

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); *see also United States v. Blackman*, 746 F.3d 137, 143-44 (4th Cir. 2014) ("The fact that a defendant is indigent or otherwise lacks adequate assets to satisfy a judgment does not operate to frustrate entry of a forfeiture order."). 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). The Court in imposing a forfeiture money judgment may rely on an agent's reliable hearsay. *See United States v. Stathakis*, 2008 WL 413782, at *14 n.2 (E.D.N.Y. Feb. 13, 2008).

C. Property Subject to Forfeiture in Instant Criminal Case

As described in the Defendant's Factual Proffer, from in or around June 2020, though in or around at least September 2020, the Defendant knowingly and willfully conspired with Individual 1, Individual 2, and others to submit and cause the submission of millions of dollars' worth of fraudulent Paycheck Protection Program ("PPP") loans. Factual Proffer at 1, ECF No. 34. The Defendant caused the submission of a PPP loan on behalf of her company, Emerald Jade Solutions, Inc. ("Emerald Jade"), that the Defendant knew contained materially false information. *Id.* at 2. As a result of the knowingly and willfully false representations made by the Defendant and her coconspirators in the loan documents, Bank Processor 1 approved the Emerald Jade loan, which Bank 1 funded by making an electronic wire transfer in the amount of $491,310.00 to the Emerald Jade bank account on June 3, 2020. *Id.*

The United States subsequently learned that in November 2020, the financial institution holding the Emerald Jade bank account closed the Emerald Jade bank account and returned the remaining balance of $113,507.88 to Bank 1.

Based on the record in this case, the total value of the proceeds traceable to the offense of conviction is $377,802.12, 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. § 982(a)(2)(A), 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 September 16, 2021, and there is no opposition/objection to the relief sought.

Respectfully submitted,

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ACTING UNITED STATES ATTORNEY

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