UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v. Case No. 3:22-cr-134-HLA-MCR

DESMOND DONDRE WILLIAMS

UNITED STATES' UNOPPOSED MOTION FOR
PRELIMINARY ORDER OF FORFEITURE FOR PROCEEDS

The United States moves the 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 a preliminary order of forfeiture for proceeds against the defendant in the amount of $39,327, representing the amount of proceeds he obtained as a result of his wire fraud offenses. 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 with conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349 (Count One), and with wire fraud, in violation of 18 U.S.C. § 1343 (Counts Two and Three). Doc. 1.

2. The Indictment also contained forfeiture allegations putting the defendant on notice that, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), the United States would seek a preliminary order of forfeiture for proceeds

in the amount of $86,581.80, representing the amount of proceeds obtained as a result of the offense. *Id.* at 2.

B. Finding of Guilt and Admissions Related to Forfeiture

3. On February 2, 2023, without the benefit of a plea agreement, the defendant pled guilty to Counts One through Three of the Indictment. Docs. 26, 23. The Court accepted the defendant's plea, adjudicated him guilty, and set the defendant's sentencing for March 29, 2023. Doc. 49.

4. The Factual Basis of the United States' Notice of Maximum Penalties, Elements of Offenses, Personalization of Elements and Factual Basis, (Doc. 25) states that in May 2021, Homeland Security Investigations (HSI) began investigating two Small Business Administration (SBA) Paycheck Protection Program (PPP) loan applications for a business, Tastebudz, associated with the defendant.

5. HSI determined that the business, Tastebudz, did not exist, and that the Form 1040 contained among other materially false statements that Tastebudz generated gross income of $78,655, and incurred multiple business and wage expenditures. *Id.* at 6. Both fraudulent PPP loan application and Form 1040's were sent from Florida to one of Womply's computers servers in Virginia or Oregon. *Id.*

6. Borrowing off a line of credit from the Federal Reserve, on April 28, 2021, Fountainhead funded the PPP loan for Tastebudz and deposited into the defendant's personal bank account $16,386.00, in PPP loan proceeds via an ACH deposit. *Id.* at 6-7. Again, borrowing off a line of credit from the Federal Reserve, on May 26, 2021, Benworth Capital funded the PPP loan for Tastebudz and deposited

into the defendant's personal bank account $22,941.00, in PPP loan proceeds via an ACH deposit. *Id.* at 7.

7. On August 4, 2022, HSI met with the defendant for a voluntary interview at a gas station in Live Oak. *Id.* at 9. The defendant stated in substance and among other things that he obtained PPP loans. *Id.* The money was deposited into his bank account, and he didn't own a business called Tastebudz. *Id.*

8. On March 8, 2023, the undersigned discussed this motion with defense counsel, who advised that the defense does not object to the forfeiture or relief sought in this motion.

II. Applicable Law

A. Forfeiture Authority

The forfeiture of assets obtained by the commission of violations of 18 U.S.C. §§ 1349 and 1343 are governed by Rule 32.2 and 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(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 traceable to a violation constituting "specified unlawful activity" as defined in 18 U.S.C. § 1956(c)(7). 18 U.S.C. § 981(a)(1)(C). The term "specified unlawful activity" includes offenses listed in 18 U.S.C. § 1956(c)(7). That statutory definition includes theft of government property offenses. *See* 18 U.S.C. § 1956(c)(7)(D).

Although 18 U.S.C. § 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. Section 853(a) provides that any person convicted of a pertinent offense "shall forfeit to the United States," among other things, "property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation."

B. Court's Determination of Forfeiture

Fed. R. Crim. P. Rule 32.2 governs the criminal forfeiture of property based on a defendant's conviction for the offense giving rise to the forfeiture. Fed. R. Crim. P. Rule 32.2(b)(1)(A) requires that as soon as practical after a verdict or finding of guilty on any count in an indictment or information for which criminal forfeiture is sought, the Court must determine what property is subject to forfeiture under the applicable statute.

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 a preliminary order of forfeiture for proceeds in favor of the United States. *See United States v. Padron*, 527 F.3d 1156, 1161-62 (11th Cir. 2008). Fed. R. Crim. P. Rule 32.2(b)(1)(A) provides that, where the government seeks a preliminary order of forfeiture for proceeds, the Court must determine the amount of money that the defendant will be ordered to pay.

Because the United States could not locate the specific property constituting or derived from the proceeds the defendant obtained from his wire fraud offenses, the United States seeks a preliminary order of forfeiture for proceeds against the defendant in the amount of $39,327, pursuant to Rule 32.2(b)(2). Consistent with the Notice of Maximum Penalties, Elements of Offense, and Factual Basis and based on the aforementioned supplemental review and conversations, the defendant obtained $39,327 in proceeds as a result of his wire fraud offenses. If the Court finds that at least $39,327 was obtained by the defendant, and that he has dissipated those proceeds, then it is appropriate for the Court to enter a preliminary order of forfeiture for proceeds against the defendant in that amount pursuant to Rule 32.2(b)(2).

III. <u>Conclusion</u>

For the reasons stated above, the United States requests that, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. 32.2(b)(2), the Court enter a preliminary order of forfeiture for proceeds against the defendant in the amount of $39,327.

The United States further requests that, because the $39,327 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 28 U.S.C. § 2461(c), forfeiture of any of the defendant's property up to the value of $39,327.

The United States further requests that the preliminary order of forfeiture for proceeds become final as to the defendant at sentencing.

As required by Rule 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 preliminary order of forfeiture for proceeds.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2023, 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/Mai Tran
MAI TRAN
Assistant United States Attorney