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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA

- v. -

RAPHAEL MARTINEZ,

Defendant.

- x

STIPULATION AND ORDER

S2 22 Cr. 251 (LJL)

WHEREAS, on or about June 9, 2023, the Court entered a Consent Preliminary Order of Forfeiture as to Substitute Assets (the "Order of Forfeiture"), forfeiting all of Defendant Rafael Martinez's right, title and interest in any and all funds on deposit in Citibank Account No.: 9346614051, held in the name of MBE Capital Partners LLC (the "Subject Account"), as a substitute asset;

WHEREAS, on or about August 24, 2023, the Government seized $4,027,156.37 on deposit in the Subject Account (the "Seized Funds");

WHEREAS, the Federal Reserve Bank of San Francisco (the "FRB-SF") has advised the Government of its ownership interest in $2,197,050.48 of the Seized Funds (the "FRB-SF Funds");

WHEREAS, the FRB-SF has provided the Government with documentation concerning its claim to the FRB-SF Funds; and

WHEREAS, the Government and the FRB-SF have agreed to resolve their respective interest in the FRB-SF Funds without further litigation;

IT IS HEREBY STIPULATED AND AGREED, by and between the United States of America, by its attorney Damian Williams, United States Attorney, Assistant United States

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Attorneys, Katherine Reilly, Micah Fergenson, and Steven Kochevar of counsel, and FRB-SF and its counsel, Avery Belka, Esq., Deputy General Counsel, that:

1. Upon entry of this Stipulation and Order, the Government shall return the FRB-SF Funds to FRB-SF in a manner consistent with the United States Treasury Automated Clearing House ("ACH") Form to be completed by FRB-SF through its attorney.

2. FRB-SF withdraws any claim to the remaining $1,830,105.89 of the Seized Funds (the "Forfeitable Funds"), and FRB-SF will not contest the administrative, civil or criminal forfeiture of the Forfeitable Funds, and agrees that it will not file a claim or a petition for remission or mitigation or otherwise contest the forfeiture of the Forfeitable Funds, and will not assist anyone else in doing so.

3. FRB-SF represents that it is the sole owner of the FRB-SF Funds and agrees to hold harmless the United States (including but not limited to the DOJ, UST, and the SDNY-USAO), and any agents and employees of the United States, from any and all claims in connection with or arising out of the transfer of the FRB-SF Funds to FRB-SF that are based on the alleged inaccuracy of such representation, including but not limited to any third-party claims of ownership of the FRB-SF Funds.

4. The Government's agreement to this Stipulation and Order is expressly premised upon the truthfulness, accuracy and completeness in every material part of the representations made by FRB-SF and its counsel.

5. FRB-SF further waives all rights to service or notice of any administrative, civil, or criminal forfeiture proceeding with respect to the Forfeitable Funds.

6. FRB-SF is hereby barred from asserting, or assisting others in asserting, any claim, including third party claims and any claim for attorney's fees and costs, against the United

States or any of its agents and employees, including the United States Department of Treasury ("UST"), and the United States Attorney's Office: Southern District of New York (the "USAO-SDNY"), as well as any and all employees, officers, and agents of the UST, and the USAO-SDNY in connection with, or arising out of, the United States' seizure, restraint, custody or control over the Seized Funds.[1]

7. The parties hereby waive all rights to challenge or contest the validity of this Stipulation and Order.

8. Each party shall bear its own costs and attorney's fees.

9. This Stipulation and Order constitutes the complete agreement of the parties and may not be amended without express written authorization from all parties.

10. This Court shall have exclusive jurisdiction over the interpretation and enforcement of this Stipulation and Order.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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[1] Nothing in this agreement limits FRB-SF's ability to seek compensation from the Small Business Administration (the "SBA"), including compensation that may be derived from any portion of the Seized Funds that may be sought by the SBA.

11. The signature page of this Stipulation may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

AGREED AND CONSENTED TO:

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: ______________________________ 9-23-23
KATHERINE REILLY DATE
MICAH FERGENSON
STEVEN KOCHEVAR
Assistant United States Attorneys
1 St. Andrew's Plaza
New York, New York 10007
(212) 637-6521/2190/2262

FEDERAL RESERVE BANK OF SAN FRANCISCO

By: Avery Belka 9/21/2023
AVERY BELKA, ESQ. DATE
Deputy General Counsel,
Federal Reserve Bank of San Francisco

SO ORDERED:

______________________________ 9/25/2023
HON. LEWIS J. LIMAN DATE
UNITED STATES DISTRICT JUDGE