UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-60293-CR-DIMITROULEAS

UNITED STATES OF AMERICA

v.

EDWARD MOISE,

Defendant.

UNITED STATES OF AMERICA'S 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 EDWARD MOISE (the "Defendant") in the above-captioned matter. The United States seeks a forfeiture money judgment in the amount of $175,022. In support of this motion, the United States provides the following factual and legal bases.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On October 26, 2021, the United States filed an Information charging the Defendant with conspiracy to commit bank fraud in violation of Title 18, United States Code, Section 371. Information, ECF No. 1. The Information also contained forfeiture allegations, which alleged that upon conviction of a violation of Title 18, United States Code, Section 371, the Defendant shall forfeit to the United States any property constituting, or derived from, any proceeds the Defendant obtained, directly or indirectly, as the result of such violation pursuant to Title 18, United States

Code, Section 982(a)(2)(A). *See id.* at 8.

On December 3, 2021, the Court accepted the Defendant's guilty plea to the one-count Information charging the Defendant with conspiracy to commit bank fraud, in violation of Title 18, United States Code, Section 371. *See* Minute Entry, ECF No. 10; Plea Agreement, ECF No. 11. As part of the guilty plea, among other provisions in the Plea Agreement, the Defendant agreed to the following:

> 13. The defendant agrees, in an individual and any other capacity, to forfeit to the United States voluntarily and immediately, any right, title, and interest to all property, real or personal, which constitutes or is derived from proceeds obtained directly or indirectly, as a result of the violation to which he is pleading guilty, pursuant to Title 18, United States Code, Section 982(a)(2)(A). In addition, the defendant agrees to forfeiture of substitute property pursuant to 21 U.S.C. § 853(p). The property subject to forfeiture includes, but is not limited to a forfeiture money judgment in an amount to be determined later, which sum represents the value of the property subject to forfeiture; and (*sic*)"

Plea Agreement ¶13, ECF No. 11.

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. 12.

II. MEMORANDUM OF LAW

A. Directly Forfeitable Property

Any property, constituting, or derived from, proceeds obtained, directly or indirectly, as a result of a conspiracy to commit bank fraud, in violation of Title 18, United States Code, Section 371, is subject to forfeiture, pursuant to Title 18, United States Code, Section 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)(A). 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).

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). The defendant's money judgment amount can be based on a reasonable estimate on the amount of property subject to forfeiture. *See, e.g., United States v. Roberts*, 660 F.3d 149, 166 (2d Cir. 2011); *United States v. Peithman*, 917 F.3d 635, 651 (8th Cir. 2019); *United States v. Vico*, Case No. 15-CR-80057-ROSENBERG/HOPKINS, 2016 WL 233407, at *7 (S.D. Fla. Jan. 20, 2016) (calculation of money judgment does not require mathematical exactitude; district court may make a reasonable extrapolation supported by a preponderance of the evidence).

C. Substitute Property

If directly forfeitable property is not available, the Court may order the forfeiture of substitute assets to satisfy a money judgment. *See* 21 U.S.C. § 853(p); Fed. R. Crim. P. 32.2(e); *United States v. Fleet*, 498 F.3d 1225, 1227-31 (11th Cir. 2007) (any property of the defendant may be forfeited as a substitute asset); *United States v. Knowles*, No. 19-14309, 2020 WL 3583413, at *1 (11th Cir. July 2, 2020) ("We've held that the word 'any' in § 853(p) is a broad word that 'does not mean some or all but a few, but instead means all . . . .'") (citing *Fleet*, 498 F.3d at 1229). Substitute assets are available for forfeiture upon a showing that, due to any act or omission of a defendant, directly forfeitable property:

(A) cannot be located upon the exercise of due diligence;
(B) has been transferred or sold to, or deposited with, a third party;
(C) has been placed beyond the jurisdiction of the court;
(D) has been substantially diminished in value; or
(E) has been commingled with other property which cannot be divided without difficulty.

21 U.S.C. § 853(p). The government may establish such unavailability through an agent's declaration. *See United States v. Seher*, 562 F.3d 1344, 1373 (11th Cir. 2009).

D. Property Subject to Forfeiture in Instant Criminal Case

From in or around June 2020, through in or around November 2020, the Defendant participated in a scheme to submit and cause the submission of false and fraudulent applications for loans and grants made available through the Small Business Administration to provide relief for the economic effects caused by the COVID-19 pandemic, including Paycheck Protection Program ("PPP") loans and Economic Injury Disaster Loans ("EIDL"); paid and facilitated the payments of kickbacks in furtherance of the scheme; and received the proceeds from fraudulent PPP loans and EIDLs submitted on behalf of companies under his control. Factual Proffer 1.

The Defendant requested a PPP loan in the approximate amount of $175,022 purportedly to pay a monthly payroll of approximately $70,009 for 31 employees for a company in the name of MLG. *See id.* at 2. Four quarterly IRS Forms 941 for 2019 with identical figures were attached to the PPP loan application, which purported to report that MLG had 31 salaried employees and total quarterly wages of $365,100. *Id.* The Florida Department of Revenue records for MLG in 2019 and 2020, however, showed that MLG reported no employees and had paid $0 in wages in 2019 and 2020. *Id.* Although the Defendant did not review the MLG PPP loan application or supporting tax documents, the Defendant knew that the MLG PPP loan application contained false information about the payroll obligations of the Defendant's company MLG to obtain PPP loan funds in excess of what MLG would otherwise be entitled. *Id.* at 3.

On or about June 19, 2020, Bank #1, a financial institution insured by the Federal Deposit Insurance Corporation ("FDIC"), deposited approximately $175,022 in PPP funds into MLG's business account, for which the Defendant was an authorized signatory. *Id.* at 3. MLG's business bank account balance before receiving the PPP loan was approximately $188.89. *Id.*

Based on the record in this case, the total value of proceeds traceable to the offense of conviction is $175,022, 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 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.

(This portion of the page is intentionally left blank.)

LOCAL RULE 88.9 CERTIFICATION

Pursuant to Local Rule 88.9, I hereby certify that the undersigned Assistant United States Attorney has conferred with defense counsel, Michael Gottlieb, Esq., via e-mail on March 14, 2022, and there is no objection to the relief sought.

Respectfully submitted,

JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY

By: */s/ Annika M. Miranda*
Annika M. Miranda
Assistant United States Attorney
Florida Bar No. 64975
99 N.E. 4th Street, 7th Floor
Miami FL, 33132-2111
Telephone: (305) 961-9303
E-mail: Annika.Miranda@usdoj.gov
Counsel for the United States of America