UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 21-CR-10269
	)	
CHYNNA SAVATH	)	
	)	
Defendant.	)	

UNITED STATES' PROVISIONAL MOTION FOR ORDER OF FORFEITURE (MONEY JUDGMENT)

The United States of America, by its attorney, Rachael S. Rollins, United States Attorney for the District of Massachusetts, respectfully moves this Court for the issuance of an Order of Forfeiture (Money Judgment) in the above-captioned case pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) and Rule 32.2(b) of the Federal Rules of Criminal Procedure. A proposed Order of Forfeiture (Money Judgment) is submitted herewith. In her plea agreement, defendant Chynna Savath (the "Defendant"), agreed to entry of the requested order. *See* Docket No. 7 (Rule 11(c)(1)(C) plea agreement).

Significantly, the plea agreement has been offered pursuant to Rule 11(c)(1)(C) and this Court has not yet determined whether to accept the plea. The government respectfully requests the Court consider this motion if, and only if, the Court accepts the Plea Agreement.

In support thereof, the United States sets forth the following:

1. On September 13, 2021, the United States Attorney for the District of Massachusetts filed a two-count Information charging Wire Fraud, in violation of 18 U.S.C. § 1343 (Counts One and Two). *See* Docket No. 1.

2. The Information also included a Forfeiture Allegation, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), which provided notice that the United States intended to seek the forfeiture, upon conviction of the Defendant of one or more of the offenses alleged in Counts One and Two, of any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses. The property to be forfeited includes, but is not limited to, the following:

(a) $29,646 in United States currency, to be entered in the form of an Order of Forfeiture (Money Judgment).

3. The Forfeiture Allegation in the Information further provided notice that, if any of the above-described forfeitable property, as a result of any act or omission by the Defendant, (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, the United States is entitled to seek forfeiture of any other property of the Defendant, up to the value of such assets, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c).

4. On January 20, 2022, at a hearing pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the Defendant waived indictment and pleaded guilty to the two-count Information charging Wire Fraud, in violation of 18 U.S.C. § 1343 (Counts One and Two), pursuant to a written plea agreement the Defendant signed on September 8, 2021. *See* Docket Nos. 9, 10. The Plea Agreement was tendered pursuant to Rule 11(c)(1)(C) and has not yet been accepted by this Court.

5. In Section 7 of the plea agreement, the Defendant agreed to forfeit to the United States $29,646 in the form of a forfeiture money judgment on the grounds that such amount is equal to the amount of proceeds the Defendant derived from the offense. Attached to the written plea agreement is an agreed to statement of facts setting forth that through false statements the Defendant received a total of $29,646, with $4,746 received from the PPP loan program on or about July 2, 2020, and $24,900 received from the EDIL on or about July 27, 2020. *See* Docket No. 9.

6. Based on the Defendant's admission in the written plea agreement and agreed upon statement of facts and her guilty plea on January 20, 2022, and the plea agreement, the United States is entitled to an Order of Forfeiture consisting of a personal money judgment against the Defendant, in the amount of $29,646 in United States currency, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c). This amount represents the proceeds of the Defendant's crimes.

7. Pursuant to Rule 32.2(4)(A), Rule 11(c)(1)(C), and based upon the Defendant's consent to entry of the requested order, the Order of Forfeiture (Money Judgment) becomes final upon the Court's acceptance of the Defendant's guilty plea, and upon entry by this Court at sentencing. The instant motion and proposed order are filed in advance of sentencing, and before the Court has determined whether to accept the plea, in compliance with Rule 32.2(b)(2)(B) of the Federal Rules of Criminal Procedure, requiring the Court to allow a party an opportunity to "suggest revisions or modifications before the order becomes final." Although the government has requested the Court delay entry of the requested order unless and until the Court accepts the plea, by filing the instant motion and proposed order in advance of sentencing, the

Defendant has the opportunity to review the terms and conditions of the proposed Order and respond to the Court accordingly.

8. The entry of an Order of Forfeiture in the form of a personal money judgment is specifically authorized by Rule 32.2(b)(1) and (c)(1) of the Federal Rules of Criminal Procedure, and such orders of forfeiture are commonplace. *See, e.g., United States v. Ponzo*, 853 F.3d 558, 589-90 (1st Cir. 2017) (criminal forfeiture order may take several forms, including an *in personam* judgment against defendant for amount of money defendant obtained as proceeds of offense); *United States v. Zorrilla-Echevarria*, 671 F.3d 1, 11 n.15 (1st Cir. 2011) ("A criminal forfeiture may take the form of either (1) 'an in personam judgment against the defendant for the amount of money the defendant obtained as proceeds of the offense,' (2) forfeiture of specific assets related to criminal activity, or (3) forfeiture of 'substitute assets' if the specific assets are unavailable.") (citation omitted); *United States v. Hall*, 434 F.3d 42, 59 (1st Cir. 2006) (same).

9. Once the Order of Forfeiture is entered, the United States may move at any time, pursuant to Rule 32.2(e)(1)(B), to amend the Order to forfeit specific property of the Defendant, having a value up to the amount of the money judgment. *See Zorrilla-Echevarria*, 671 F.3d at 11 n.15 ("[a] money judgment permits the government to collect on the forfeiture order … even if a defendant does not have sufficient funds to cover the forfeiture at the time of the conviction, the government may seize future assets to satisfy the order"); *United States v. Saccoccia*, 564 F.3d 502, 506-07 (1st Cir. 2009) (once government obtains money judgment, it may move at any time to forfeit direct or substitute assets in partial satisfaction of that judgment).

10. Upon entry of the Order of Forfeiture, the United States may also, pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, "conduct any discovery the court

considers proper in identifying, locating or disposing of the property" that has been forfeited to the United States. Such discovery may include the taking of depositions of witnesses. *See* 21 U.S.C. § 853(m), as incorporated by 28 U.S.C. § 2461; *see also United States v. Saccoccia*, 354 F.3d 9, 15 (1st Cir. 2003) ("the government may utilize its enforcement powers under [18 U.S.C. §] 1963(k) to 'trace' tainted funds"); *United States v. Saccoccia*, 898 F. Supp. 53, 60 (D.R.I. 1995) (the United States can take depositions of defense counsel to determine source of their fees for the purpose of locating a pool of assets controlled by defendant that is subject to forfeiture). In addition, the reference in Rule 32.2(b)(3) to "any discovery the court considers proper" necessarily permits the court to authorize discovery under the Federal Rules of Civil Procedure. Such discovery includes, but is not limited to, the authority to issue a request for documents to a party under Rule 34 and to a non-party under Rules 34(c) and 45.

WHEREFORE, the United States requests that this Court, if, and only if, the Court accepts the plea agreement tendered pursuant to Rule 11(c)(1)(C), at sentencing:

(a) enter the Order of Forfeiture (Money Judgment) in the form submitted herewith;

(b) retain jurisdiction in this case for purposes of enforcing the forfeiture (Money Judgment);

(c) include the forfeiture, as set forth in the Order of Forfeiture (Money Judgment), in the oral pronouncement of the Defendant's sentence; and,

(d) incorporate the Order of Forfeiture (Money Judgment) in the criminal judgment entered against the Defendant, pursuant to Federal Rule of Criminal Procedure 32.2(b)(4).

Respectfully submitted,

RACHAEL S. ROLLINS
United States Attorney

By: /s/ *Carol E. Head*

CAROL E. HEAD
Assistant United States Attorney
United States Attorney's Office
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3213
carol.head@usdoj.gov

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