The Hon. John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. ERIC SHIBLEY, Defendant.	NO. CR20-174-JCC [PROPOSED] **COMBINED PRELIMINARY ORDER OF FORFEITURE AND ORDER OF FORFEITURE**

THIS MATTER comes before the Court on the United States' motion for entry of a Combined Preliminary Order of Forfeiture and Order of Forfeiture, seeking to forfeit, to the United States, Defendant Eric Shibley's interest in the following property (collectively, the "Subject Property"):

1. $49,500.86 in U.S. funds, seized on or about May 29, 2020 from Navy Federal Credit Union account #******7528, held in the name of Eric R. Shibley MD PLLC ("Subject Property 1");
2. $100,000.00 in U.S. funds, seized on or about May 29, 2020 from Wells Fargo account #******2378, held in the name of ES1 LLC ("Subject Property 2");

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3. $804,816.63 in U.S. funds, seized on or about May 27, 2020 from Wells Fargo account #******3536, held in the name of The A Team Holdings LLC ("Subject Property 3");

4. $114,440.00 in U.S. funds, seized on or about June 30, 2020 from Verity Credit Union account #***5390, held in the name of Dituri Construction LLC ("Subject Property 4");

5. $114,743.59 in U.S. funds, seized on or about June 30, 2020 from Verity Credit Union account #***5320, held in the name of SS1 LLC ("Subject Property 5"); and

6. A sum of money in the amount of $254,199, reflecting the remainder of the proceeds the Defendant personally obtained from the offenses ("Subject Property 6").

I. <u>Preliminary Order of Forfeiture</u>

The Court, having heard the United States' motion, as well as the evidence presented at trial, hereby FINDS entry of a Preliminary Order of Forfeiture regarding Subject Properties 1-5 is appropriate because:

A. <u>*Wire Fraud*</u>:

- The Defendant has been convicted of *Wire Fraud*, in violation of 18 U.S.C. §§ 1343 and 2, as charged in Counts 1 – 7 of the Indictment (Dkt. No. 31 at pp. 9 – 13);
- Property that constitutes or is traceable to proceeds of a *Wire Fraud* scheme is subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C), by way of 28 U.S.C. § 2461(c);
- The evidence presented at trial established that Subject Properties 1 – 5 constitute or are traceable to proceeds of the Defendant's *Wire Fraud* scheme;

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- The evidence in the record established the requisite nexus between Subject Properties 1 – 5 and the offense of conviction (*Wire Fraud*), pursuant to Federal Rule of Criminal Procedure ("Fed. R. Crim. P.") 32.2.(b)(1)(A)-(B).

B. *Bank Fraud*:

- The Defendant has been convicted of *Bank Fraud*, in violation of 18 U.S.C. §§ 1344(2) and 2, as charged in Counts 8 – 10 (Dkt. No. 31 at pp. 14 – 15) of the Indictment;
- Property that constitutes or is traceable to proceeds of a *Bank Fraud* scheme is subject to forfeiture pursuant to 18 U.S.C. § 982(a)(2);
- The evidence presented at trial established that Subject Properties 1 – 3 constitute or are traceable to proceeds of the Defendant's *Bank Fraud* scheme;
- The evidence in the record established the requisite nexus between Subject Properties 1 – 3 and the offense of conviction (*Bank Fraud*), pursuant to Fed. R. Crim. P. 32.2.(b)(1)(A)-(B).

C. *Money Laundering*:

- The Defendant has been convicted of *Money Laundering*, in violation of 18 U.S.C. §§ 1957 and 2, as charged in Counts 11 – 15 (Dkt. No. 31 at p. 16);
- Property involved in *Money Laundering* is subject to forfeiture pursuant to 18 U.S.C. § 982(a)(1);
- The evidence presented at trial established that Subject Properties 4 – 5 are involved in, or traceable to property involved in, one or more of the Defendant's *Money Laundering* offenses;

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- The evidence in the record established the requisite nexus between Subject Properties 4 – 5 and the offense of conviction (*Money Laundering*), pursuant to Fed. R. Crim. P. 32.2.(b)(1)(A)-(B).

II. <u>Order of Forfeiture</u>

The Court also FINDS entry of an Order of Forfeiture regarding the sum of money in the amount of $254,199, reflecting the unrecovered proceeds of the Defendant's *Wire Fraud* and *Bank Fraud* schemes (Subject Property 6), is appropriate because:

A. <u>*Wire Fraud*</u>:

- The proceeds of *Wire Fraud*, in violation of 18 U.S.C. §§ 1343 and 2, are subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C), by way of 28 U.S.C. § 2461(c);

B. <u>*Bank Fraud*</u>:

- The proceeds of *Bank Fraud*, in violation of 18 U.S.C. §§ 1344(2) and 2, are subject to forfeiture pursuant to 18 U.S.C. § 982(a)(2);

C. <u>*Based on the evidence presented at trial*</u>:

- The Defendant obtained proceeds of approximately $2,821,200 from his *Wire Fraud* and *Bank Fraud* schemes;
- The Defendant withdrew approximately $200,000 of these proceeds in bulk cash;
- The United States seized a total of approximately $1,183.501 (Subject Properties 1 - 5) with seizure warrants;
- Financial institutions recovered a total of approximately $1,383,500; and
- A sum of money in the amount of $254,199 reflects the remaining unrecovered proceeds received by the Defendant.

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NOW, THEREFORE, THE COURT ORDERS:

1. Pursuant to 18 U.S.C. §§ 981(a)(1)(C), by way of 28 U.S.C. § 2641(c), 18 U.S.C. § 982(a)(1), and 18 U.S.C. § 982(a)(2), the Defendant's interest in the Subject Property is fully and finally forfeited, in its entirety, to the United States;

2. Pursuant to Fed. R. Crim. P. 32.2(b)(4)(A)-(B), this Combined Preliminary Order and Order will become final as to the Defendant at the time he is sentenced, it will be made part of the sentence, and it will be included in the judgment;

3. The United States Marshals Service, and/or its authorized agents or representatives, shall maintain the Subject Property in its custody and control until further order of this Court;

4. No right, title, or interest in the above-identified sum of money in the amount of $254,199 exists in any party other than the United States;

5. Pursuant to Fed. R. Crim. P. 32.2(e), in order to satisfy the sum of money, in whole or in part, the United States may move to amend this Order, at any time, to include substitute property having a value not to exceed $254,199;

6. The forfeiture of the $254,199 sum of money is separate and distinct from any restitution that is ordered in this case.

7. The forfeiture of the $254,199 sum of money is personal to the Defendant and, pursuant to Fed. R. Crim. P. 32.2(c)(1), no third-party ancillary process is required before forfeiting it.

8. The Court will retain jurisdiction for the purpose of enforcing this Order and amending the Order as necessary pursuant to Fed. R. Crim. P. 32.2(e).

9. Pursuant to Fed. R. Crim. P. 32.2(b)(6) and 21 U.S.C. § 853(n), the United States shall publish notice of this Preliminary Order and the United States' intent to dispose of the above-identified property as permitted by governing law. The notice shall be posted on an official government website—www.forfeiture.gov—for at least 30 days. For any person known to have alleged an interest in this property, the United States shall, to the extent possible, also provide direct written notice to that person. The notice

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shall state that any person, other than the Defendant, who has or claims a legal interest in this property must file a petition with the Court within 60 days of the first day of publication of the notice (which is 30 days from the last date of publication), or within 30 days of receipt of direct written notice, whichever is earlier. The notice shall advise all interested persons that the petition:

a. shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in this property;

b. shall be signed by the petitioner under penalty of perjury; and

c. shall set forth the nature and extent of the petitioner's right, title, or interest in this property, as well as any facts supporting the petitioner's claim and the specific relief sought;

10. If no third-party petition is filed within the allowable time period, the United States shall have clear title to this property, and this Preliminary Order shall become the Final Order of Forfeiture as provided by Fed. R. Crim. P. 32.2(c)(2);

11. If a third-party petition is filed, upon a showing that discovery is necessary to resolve factual issues that it presents, discovery may be conducted in accordance with the Federal Rules of Civil Procedure before any hearing on the petition is held. Following adjudication of any third-party petitions, the Court will enter a Final Order of Forfeiture, pursuant to Fed. R. Crim. P. 32.2(c)(2) and 21 U.S.C. § 853(n), reflecting that adjudication; and

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12. The Court will retain jurisdiction for the purpose of enforcing the Preliminary Order, adjudicating any third-party petitions, entering a Final Order of Forfeiture, and amending the Preliminary or Final Order as necessary under Fed. R. Crim. P. 32.2(e).

IT IS SO ORDERED.

DATED this ______ day of ______________________, 2021.

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THE HON. JOHN C. COUGHENOUR
UNITED STATES DISTRICT JUDGE

Presented by:

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