UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-CR-20001-COOKE

UNITED STATES OF AMERICA

v.

DIAMOND BLUE SMITH,

Defendant.

PRELIMINARY ORDER OF FORFEITURE

THIS MATTER is before the Court upon motion of the United States of America (the "United States") for entry of a Preliminary Order of Forfeiture ("Motion") against Defendant Diamond Blue Smith (the "Defendant"). The Court has considered the Motion, is otherwise advised in the premises, and finds as follows:

On January 5, 2021, the United States filed an Information charging the Defendant with conspiracy to commit wire fraud in violation of 18 U.S.C. § 371. Information, ECF No. 15. The Information also contained forfeiture allegations, which alleged that upon conviction of a violation of 18 U.S.C. § 371, the Defendant shall forfeit any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as a result of such offense pursuant to 18 U.S.C. § 982(a)(2)(A). *See id.* at 7. The Information alleged that the property subject to forfeiture as a result of the alleged offense includes, but is not limited to: a 2010 black Ferrari 458 Italia, bearing vehicle identification number ZFF67NFA0A0175340 (the "Ferrari").[1] *See id.* at 15.

[1] The Ferrari was administratively forfeited by the Internal Revenue Service on February 3, 2021. *See* Exhibit A (Declaration of Administrative Forfeiture). Therefore, the United States is no longer seeking judicial forfeiture of the Ferrari.

On August 4, 2021, the Court accepted the Defendant's guilty plea to the Information. *See* Minute Entry, ECF No. 31; Plea Agreement ¶ 1, ECF No. 37. As part of the guilty plea, the Defendant agreed to a forfeiture money judgment in the amount of $1,134,782.00, which represents the value of the property subject to forfeiture. Plea Agreement ¶ 13.

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. 36. The Factual Proffer also provided a basis for the forfeiture of property. *See id.*

According to the Defendant's Factual Proffer, from in or around May 2020 until in or around at least August 2020, the Defendant knowingly and willfully conspired with James Stote, Phillip J. Augustin, and others to submit fraudulent Paycheck Protection Program ("PPP") loan applications. Factual Proffer at 1, ECF No. 36. In furtherance of the conspiracy, the Defendant caused the submission of two fraudulent PPP loans on behalf of his companies, Throwbackjerseys.com, LLC ("Throwbackjerseys.com") and Blue Star Records, LLC ("Blue Star Records"). *See id.* at 2.

As a result of the false representations on the Throwbackjerseys.com PPP loan application, on or about May 20, 2020, Bank 1 wired approximately $426,717.00 in loan proceeds to the Throwbackjerseys.com bank account, which the Defendant controlled. *See id.* at 4. As a result of the false representations on the Blue Star Records PPP loan application, on or about May 26, 2020, Bank 1 wired approximately $708,065.00 in loan proceeds to the Blue Star Records bank account, which the Defendant controlled. *See id.* at 5.

After receiving approximately $1,134,782.00 in total PPP loan proceeds, the Defendant spent the funds on himself and others, including purchasing luxury items, such as the Ferrari. *See id.* at 5-6. The Defendant also paid approximately $250,000.00 to Stote and Augustin as kickbacks

for their assistance in preparing and submitting the PPP loans. *See id.* at 6.

Based on the record in this case, the total value of the proceeds traceable to the offense of conviction is $1,134,782.00, which sum may be sought as a forfeiture money judgment pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure.

Accordingly, based on the foregoing, the evidence in the record, and for good cause shown, the Motion is **GRANTED**, and it is hereby **ORDERED** that:

1. Pursuant to 18 U.S.C. § 982(a)(2)(A) and Rule 32.2 of the Federal Rules of Criminal Procedure, a forfeiture money judgment in the amount of $1,134,782.00 is hereby entered against the Defendant.

2. The United States is authorized to conduct any discovery that might be necessary to identify, locate, or dispose of forfeited property, and to resolve any third-party petition, pursuant to Rule 32.2(b)(3), (c)(1)(B) of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(m).

3. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, this Order is final as to the Defendant.

4. The Court shall retain jurisdiction in this matter for the purpose of enforcing this Order, and pursuant to Rule 32.2(e)(1) of the Federal Rules of Criminal Procedure, shall amend this Order, or enter other orders as necessary, to forfeit additional specific property when identified.

DONE AND ORDERED in Miami, Florida, this 25th day of October 2021.

Marcia G. Cooke

MARCIA G. COOKE
United States District Judge