UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v. **Case No. 6:24-cr-53-RBD-RMN**

SETH DOWNES

UNITED STATES' MOTION
FOR AN ORDER OF FORFEITURE

The United States moves this Court, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2(b)(2), to enter an order of forfeiture against the defendant in the amount of $194,000, representing the amount of proceeds the defendant obtained as a result of the conspiracy offense for which he is charged in Count One of the Superseding Indictment. In support thereof, the United States submits the following.

MEMORANDUM OF LAW

I. Statement of Facts

A. Allegations Against the Defendant

1. In pertinent part, the defendant was charged in a Superseding Indictment with conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349 (Count One). Doc. 115.

2. The Superseding Indictment contained forfeiture allegations putting the defendant on notice that, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), the United States would forfeit any property constituting, or derived from

proceeds the defendant obtained, directly or indirectly, as a result of such conspiracy. *Id.* at 14-15.

B. Findings of Guilt and Admissions Related to Forfeiture

3. A jury trial commenced, and at the conclusion of the trial, the jury found the defendant guilty on Counts One and Three of the Superseding Indictment. Docs. 237.

C. Relevant Facts Established at Trial

4. At trial, the United States introduced evidence that established that on or about July 2, 2020, the defendant and his co-conspirator committed wire fraud when they obtained $194,000 from a false and fraudulent PPP loan application, which was deposited into a bank account controlled by the defendant and his co-conspirator. *See* Government's Trial Exhibits 3c, 3d, 7a, 7c, and Docs. 115 & 237.

II. Applicable Law

A. Forfeiture Statute

The Court's authority to order forfeiture of property for a wire fraud conspiracy, in violation of 18 U.S.C. § 1349, is found in 18 U.S.C. § 981(a)(1)(C), which provides for the civil forfeiture of any property, real or personal, which constitutes or is derived from proceeds from any offense constituting "specified unlawful activity," or a conspiracy to commit such offense. The term "specified unlawful activity" includes offenses listed in 18 U.S.C. § 1961(1). 18 U.S.C. § 1956(c)(7)(A). Specifically, 18 U.S.C. § 1961(1)(B) includes as an offense any act

which is indictable under 18 U.S.C. § 1343. Pursuant to 28 U.S.C. § 2461(c), the United States is authorized to forfeit this property criminally utilizing the procedures set forth in 21 U.S.C. § 853.

B. Court's Determination of Forfeiture

Pursuant to Rule 32.2(b)(2), because the United States could not locate the specific property constituting or derived from the proceeds the defendant obtained from his wire fraud offenses, defendant's the United States seeks an order of forfeiture against the defendant in the amount of proceeds obtained from his offenses. Indeed, for cases in which a defendant no longer has the actual dollars or property traceable to proceeds in his/her possession, or the government cannot locate those assets, the obligation to forfeit simply takes the form of an order of forfeiture in favor of the United States. *See United States v. Padron*, 527 F.3d 1156, 1161-62 (11th Cir. 2008).

Rule 32.2(b)(1) provides that the court must determine the amount of money that the defendants will be ordered to pay. The Rule requires this be done as soon as practical after a verdict or finding of guilty, or after a plea of guilty is accepted. Fed. R. Crim. P. 32.2(b)(1)(A).

The Court's determination may be based on evidence already in the record, or any additional evidence submitted by the parties and accepted by the Court as relevant and reliable. Fed. R. Crim. P. 32.2(b)(1)(B). From the testimony and exhibits presented at trial, the United States established that the defendant obtained $194,000 from his participation in the wire fraud conspiracy. If the Court finds that the

defendant obtained at least $194,000 as a result of his participation in the wire fraud conspiracy and that the defendant has dissipated those proceeds, *see* Defendant's Presentence Investigation Report, Doc. 259 at ¶¶76-78 and Government's Trial Exhibit 30b, then it is appropriate for the Court to enter an order of forfeiture against the defendant in that amount pursuant to Rule 32.2(b)(2).

III. Conclusion

For the reasons stated above, the United States requests that the Court, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2(b)(2), enter an Order of Forfeiture against the defendant in the amount of $194,000. Any funds forfeited from Shawn Simmerer will not be applied to the defendant's Order of Forfeiture until Shawn Simmerer's Order of Forfeiture balance is $194,000.[1]

As required by Rule 32.2(b)(4)(B), the United States requests that the Court include the forfeiture when orally pronouncing the sentence and, in the judgment. *See* Fed. R. Crim. P. 32.2(b)(4)(B) and *United States v. Kennedy*, 201 F.3d 1324, 1326 (11th Cir. 2000).

[1] The United States will not collect more than $344,300 from all defendants.

The United States further requests that the Court retain jurisdiction to enter any further order necessary for the forfeiture and disposition of such property.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system that will send a notice of electronic filing to counsel of record.

s/Nicole M. Andrejko
NICOLE M. ANDREJKO
Assistant United States Attorney