UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

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

SHAWN MICHAEL SIMMERER

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 $344,300, 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, including, but not limited to, an order of forfeiture in the amount of $344,300. *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 through Nine of the Superseding Indictment. Docs. 233.

C. Relevant Facts Established at Trial

4. At trial, the United States introduced evidence that established that on or about April 2020, and continuing through in or about July 2021, the defendant committed wire fraud by submitting three false and fraudulent PPP loan applications. As a result of submitting those fraudulent PPP loan applications, the defendant wrongfully obtained $344,300 in proceeds as a result of his fraudulent conduct ($108,100 from PPP Loan #1, $42,200 from PPP Loan #2, and $194,000 from PPP Loan #3). *See* Government's Trial Exhibits 1b, 1c, 2c, 2d, 3c, and 3d. The defendant was a signor on all three accounts into which the fraud proceeds were deposited. *See* Government's Trial Exhibits 6a, 6c, 7a, 7c, 10a, and 10b.

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, 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 $344,300 from his participation in the wire fraud conspiracy. If the Court finds that the defendant obtained $344,300 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. 258 at ¶¶82-83 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 $344,300, of which $194,000 is joint and several with his co-defendant, Seth Downes.[1] The United States further requests that the order of forfeiture become final as to the defendant at sentencing.

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

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

(11th Cir. 2000). 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