UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. Case No. 8:25-cr-481-TPB-LSG

CLARENCE GARDENER

UNITED STATES' MOTION
FOR 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 Federal Rule of Criminal Procedure 32.2(b)(2), to enter an order of forfeiture against the defendant in the amount of $261,253. In support, the United States submits the following.

MEMORANDUM OF LAW

I. Statement of Facts

A. Allegations Against the Defendant

1. The defendant was charged in an Indictment with wire fraud, in violation of 18 U.S.C. § 1343. Doc. 1.

2. The 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 seek an order of forfeiture in the amount of $261,253, representing the amount of proceeds the defendant obtained from his wire fraud scheme. *Id.* at 6.

B. Finding of Guilt

3. On April 30, 2026, without the benefit of a plea agreement, the defendant plead guilty to Count One of the Indictment. Docs. 39 and 42. The Court accepted the defendant's plea and adjudicated him guilty. Doc. 44.

4. The defendant's plea to the charge and the United States' Notice of Maximum Penalties, Elements of Offense, Personalization of Elements, and Factual Basis established that, in or about April 2020 and continuing through October 2020, the defendant submitted a false and fraudulent Small Business Administration Paycheck Protection Program (PPP) loan application for his business, Gardener Enterprises of Florida, LLC. Doc. 33 at 4. The loan application contained false representations about the business including (1) his business was operational prior to the start of the pandemic and (2) the business had 23 employees with an average monthly payroll of $104,502.00. *Id.* As a result of the material misrepresentations contained in the PPP loan application, Lender #1 transmitted an interstate wire of $261,253.00 to a Financial Institution #1 bank account controlled by the defendant located in the Middle District of Florida. *Id.* at 5.

II. <u>Applicable Law</u>

A. Forfeiture Statutes

Forfeiture in this case is governed by 18 U.S.C. § 981(a)(1)(C), which provides for the civil forfeiture of any property, real or personal, that constitutes or is derived from proceeds traceable to a violation of any offenses constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title). "Specified unlawful activity," as defined in 18 U.S.C. § 1956(c)(7)(D), includes activities described in section 1961(1), such as wire fraud (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 scheme, the United States seeks an order of forfeiture against the defendant in the amount of proceeds he obtained from his offense. 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).

Here, the United States is entitled to an Order of Forfeiture against the defendant for the entire amount of the wire fraud scheme, not just the proceeds of the specific substantive count to which the defendant pled guilty. "When a scheme is charged, even though only certain substantive counts are proved, the proceeds of the scheme are forfeitable." *United States v. Clark*, 13-10034-CR, 2016 WL 361560, at *2 (S.D. Fla. 2016) (citing *United States v. Hasson,* 333 F.3d 1264, 1279–1280 (11th Cir. 2003)); *see also United States v. Venturella*, 585 F.3d 1013, 1015 (7th Cir. 2009) (forfeiture in fraud case "forfeiture is not limited to the amount of the particular mailing but extends to the entire scheme").

Rule 32.2(b)(1) provides that the Court must determine the amount of money that the defendant will be ordered to pay. The Court's determination may be based on evidence submitted by the parties and accepted by the Court as relevant and reliable. Fed. R. Crim. P. 32.2(b)(1)(B). As was established by the United States' Notice of Maximum Penalties, Elements of Offense, Personalization of Elements, and Factual Basis, the defendant obtained at least $261,253 in proceeds as a result of his wire fraud scheme. If the Court finds that the defendant obtained at least $261,253 as a result of his wire fraud scheme and that the defendant has dissipated those proceeds, 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 Rule 32.2(b)(2), enter an Order of Forfeiture against the defendant in the amount of $261,253, for which he will be held liable.

The United States further requests that, because the $261,253 in proceeds was dissipated by the defendant, the United States may seek, as a substitute asset, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), forfeiture of any of the defendant's property up to the value of $261,253.

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 include the forfeiture order, directly or by reference, 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).

The United States further requests that the Court retain jurisdiction to order any substitute assets forfeited to the United States up to the amount of the order of forfeiture.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel of record.

s/Suzanne C. Nebesky
SUZANNE C. NEBESKY
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