UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-20420-CR-JEM

UNITED STATES OF AMERICA

vs.

ARMANDO ARIEL DE LEON,

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 Armando Ariel De Leon (the "Defendant"). The Court has considered the Motion, is otherwise advised in the premises, and finds as follows:

On September 7, 2022, the United States filed an Information charging the Defendant in Count 1 with conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349. Information, ECF No. 28. The Information also contained forfeiture allegations, which alleged that upon conviction of a violation of 18 U.S.C. § 1349, the Defendant shall forfeit any property constituting or derived from proceeds obtained as a result of the offense. *See id.* at 6-7.

On October 25, 2022, the Court accepted the Defendant's guilty plea to Count 1 of the Information. *See* Minute Entry, ECF No. 52; Plea Agreement ¶ 1, ECF No. 54. As part of the guilty plea, the Defendant agreed to a forfeiture money judgment in the amount of $464,002.44. Specifically, among other provisions in the Plea Agreement, the Defendant agreed to the following:

> 13. The defendant agrees, in an individual and any other capacity, to forfeit to the United States voluntarily and immediately, any right, title, and interest

> to any property, real or personal, which constitutes or is derived from proceeds obtained directly or indirectly, as a result of the commission of the offense, in violation of 18 U.S.C. § 1349[], pursuant to Title 18, United States Code, Section 982(a)(2)(A). In addition, the defendant agrees to forfeiture of substitute property pursuant to 21 U.S.C. § 853(p). The property subject to forfeiture includes, but is not limited to:
>
> > a. a forfeiture money judgment in the sum of $464,002.44 in United States currency, which sum represents the value of any property constituting or derived from proceeds the defendant obtained as the result of the commission of the offense.

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

On January 6, 2023, the U.S. Probation Department issued a presentence investigation report ("PSI"). PSI, ECF No. 61. The PSI identifies Defendant as owning 14939 Southwest 59th Street, Miami, Florida 33193. *Id.* ¶ 90.

As Defendant agreed in his Factual Proffer:

i. The Paycheck Protection Program

The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to the millions of Americans who were suffering from the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP").

In order to obtain a PPP loan, a qualifying business submitted a PPP loan application, which was signed by an authorized representative of the business. The PPP loan application required the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application, the small business (through its authorized representative) was required to provide, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. In addition, businesses applying for a PPP loan were required to provide documentation confirming their payroll expenses.

A PPP loan application was processed by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies. While it was the participating lender that issued the PPP loan, the loan was 100% guaranteed by the SBA. Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the SBA in the course of processing the loan.

PPP loan proceeds were required to be used by the business on certain permissible expenses—payroll costs, interest on mortgages, rent, and utilities. The PPP allowed the interest and principal on the PPP loan to be entirely forgiven if the business spent the loan proceeds on these expense items within a designated period of time and used a defined portion of the PPP loan proceeds on payroll expenses.

ii. The Economic Injury Disaster Loan Program

Another related response to the COVID-19 outbreak was an expansion of an existing disaster-related program – the Economic Injury Disaster Loan ("EIDL") – to provide for loan assistance (including $10,000 advances) for small businesses and other eligible entities for loans up to $2 million. The EIDL proceeds could have been used to pay fixed debts, payroll, accounts payable, and other bills that could have been paid had the disaster not occurred; however, such loan proceeds were not intended to replace lost sales or profits, or for the expansion of a business.

Unlike certain other types of SBA-guaranteed loans, EIDL funds were issued directly from the United States Treasury, and applicants applied for EIDL funds directly through the SBA via an online portal and application. The EIDL application process, which also used certain outside contractors for system support, collected information concerning the business and the business owner, including: information about the gross revenues for the business prior to January 31, 2020; and the cost of goods sold. Applicants electronically certified that the information provided was true and accurate and were warned that any false statement or misrepresentations to the SBA, or any misapplication of loan proceeds may result in sanctions, including criminal penalties.

EIDL applications were received in and processed using computer servers located in the states of Iowa, Virginia, and Washington. EIDL disbursement payments were initiated by the SBA using computer servers located in the state of Colorado, which transmitted the payment information to the Treasury using computer servers located in the state of Virginia.

iii. Overview of the Defendant's Conspiracy

From January 2021 through at least July 2021, the Defendant agreed with Daniel Hernandez ("Hernandez") and others to submit false and fraudulent Economic Injury Disaster Loan ("EIDL") and Paycheck Protection Program ("PPP") applications and share in a percentage of the resulting fraudulent loans. The Defendant and Hernandez had previously worked together at Bank 1 until the Defendant's dismissal from the bank in January 2021. Bank 1 was headquartered in New Jersey with branches in the Southern District of Florida. It was an approved SBA lender of PPP loans and insured by the Federal Deposit Insurance Corporation ("FDIC").

The Defendant executed a series of tasks in furtherance of the conspiracy, including but not limited to the following. The Defendant helped co-conspirators open bank accounts at Bank 1 to allow them to apply for fraudulent PPP loans at the bank. The Defendant prepared and submitted to the SBA over 50 false and fraudulent EIDL applications on behalf of co-conspirators. The Defendant monitored the conspiracy's fraudulent PPP and EIDL applications, maintaining spreadsheets that catalogued the relevant information of each application. And the Defendant received, on behalf of himself and Hernandez, certain commissions from co-conspirators who received fraudulent loans. For example, on approximately February 25, 2021, the Defendant deposited into a bank account he controlled at Bank 2 and ending in 1225 a cashier's check from Bank 1 for $29,400. The check had been purchased by the owner of AC Export Express Corp., which had recently received a fraudulent PPP loan from Bank 1 in the amount of $488,320. The cashier's check was the Defendant and Hernandez's commission for their assistance with securing the fraudulent loan.

Based on the record in this case, the total value of the proceeds traceable to the offense of conviction is $464,002.44, which sum may be sought as a forfeiture money judgment pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure.

The United States has also not been able to locate all of the directly forfeitable property. It is the conclusion of Special Agent Darin Didier that other directly forfeitable property cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty. *See* Decl. (attached as Exhibit to Motion). Thus, pursuant to 21 U.S.C. § 853(p), the United States is authorized to forfeit substitute property, and the following property should be forfeited to satisfy the forfeiture money judgment:

i. Real property located at 14939 Southwest 59th Street, Miami, Florida 33193, including all buildings, fixtures, appurtenances, improvements, attachments and easements found therein or thereon,

Also known as: Lot 33, Block 15, West Miller Heights Section 4, a Subdivision, according to the Plat thereof, recorded in Plat Book 134, Page 66, of the Public Records of Miami-Dade County, Florida.

Parcel Identification No. 30-4928-025-1270

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 $464,002.44 is hereby entered against the Defendant.

2. Pursuant to 21 U.S.C. § 853(p), the following substitute property is hereby forfeited and vested in the United States of America:

ii. Real property located at 14939 Southwest 59th Street, Miami, Florida 33193, including all buildings, fixtures, appurtenances, improvements, attachments and easements found therein or thereon,

Also known as: Lot 33, Block 15, West Miller Heights Section 4, a Subdivision, according to the Plat thereof, recorded in Plat Book 134, Page 66, of the Public Records of Miami-Dade County, Florida.

Parcel Identification No. 30-4928-025-1270.

3. Any duly authorized law enforcement agency may seize and take possession of the forfeited property according to law.

4. The United States shall send and publish notice of the forfeiture in accordance with Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(n).

5. 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).

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

7. 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.

It is further **ORDERED** that upon adjudication of all third-party interests, if any, the Court will enter a final order of forfeiture as to the property in which all interests will be addressed. Upon notice from the United States that no claims have been filed within 60 days of the first day of publication or within 30 days of receipt of notice, whichever is earlier, then, pursuant to Rule 32.2(c)(2) of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(n)(7), this Order shall become a Final Order of Forfeiture and any duly authorized law enforcement agency shall dispose of the property in accordance with applicable law.

DONE AND ORDERED in Miami, Florida, this 3 day of February 2023.

HON. JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE