UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-20018-CR-ALTMAN

UNITED STATES OF AMERICA,

Plaintiff.

v.

MARLIN JEAN,

Defendant.

____________________________________/

PRELIMINARY ORDER OF FORFEITURE

THIS MATTER comes before the Court upon the Motion by the United States of America (the "United States") for a preliminary order of forfeiture (the "Motion") [ECF No. 53]. Having reviewed the Motion, the record, and the applicable law, the Court finds as follows with respect to forfeiture and the Defendant, Marlin Jean:

1. On January 20, 2022, a federal grand jury charged the Defendant in a four-count Indictment. As relevant here, Count 1 of the Indictment charged the Defendant with possession of fifteen or more unauthorized access devices, in violation of Title 18, United States Code, Section 1029(a)(3).

2. With respect to Count 1, and as relevant here, the Indictment sought forfeiture of any property constituting, or derived from, proceeds obtained directly or indirectly, as the result of such offense, pursuant to Title 18, United States Code, Section 982(a)(2)(B).

3. On December 21, 2022, the Defendant pled guilty to Counts 1 and 2 of the Indictment. On pages 5 and 6 of the Plea Agreement [ECF No. 44], the Defendant agreed to forfeit to the United States a forfeiture money judgment in the sum of $826,332.00 in U.S. currency. The

Defendant "further agree[d] that forfeiture is independent of any assessment, fine, cost, restitution, or penalty that may be imposed by the Court." In support of the guilty plea, the Defendant executed a Factual Proffer [ECF No. 43], which provides a factual basis for the forfeiture money judgment.

The federal government provides unemployment insurance ("UI") benefits for qualified people who are unable to work. State employment offices administer the UI system for the federal government. In California, the agency responsible for oversight of the state's UI system is the Employment Development Department ("EDD"). In March 2020, through the CARES Act, the federal government provided substantial UI funds to the states to help the American people during the economic crisis caused by the COVID-19 pandemic. For the times relevant to this case, the California EDD disbursed UI benefits primarily by issuing pre-paid Bank of America ("BofA") debit cards, to provide easily accessible UI assistance to eligible California UI claimants.

In 2021, Homeland Security Investigations ("HSI") agents began to develop information leading them to believe that the Defendant was engaged in fraudulent activities. In or around August 2021, they learned that he was traveling overseas and was scheduled to return to the United States that same month, through Miami International Airport ("MIA").

On or about August 15, 2021, the HSI agents and officers from U.S. Customs and Border Protection ("CBP") were present during the Defendant's arrival into MIA, where he and his travel companions were referred to secondary inspection.

During that secondary inspection, the CBP agents learned that the Defendant's travel companion was holding the Defendant's phone, and the Defendant ultimately confirmed that it was indeed his phone. Accordingly, pursuant to their border search powers as federal "customs officers," the HSI agents imaged the Defendant's phone in order to conduct a forensic search of its contents.

Most prominently, the Defendant's phone data contained files demonstrating the Defendant's use of illegally obtained access devices and the personal identifiable information ("PII") and means of identification of other individuals, in order to fraudulently open California EDD accounts in the names of approximately forty (40) individual victims.

Specifically, the phone evidence revealed that, starting in or around August 2021, the Defendant fraudulently opened California EDD UI accounts using the social security numbers ("SSNs") and PII (e.g., names, dates of birth) of the individual victims, and then caused the state agency to mail out unauthorized BofA debit cards (pre-paid with UI funds) to various residential addresses ("drop sites") throughout South Florida. Starting at around the same time, chats from the Defendant's phone also showed that the Defendant directed an accomplice named "R.E." to coordinate the pick-ups of EDD mailings from the drop sites, and then to deliver the mailings (containing the pre-paid BofA debit cards) to the Defendant.

Account records provided by the California EDD and BofA confirmed that the names and SSNs of real individual victims were used to fraudulently open multiple California EDD accounts—often more than one account per victim. For example, during a subsequent interview, victim "T.R." confirmed that he did not know the Defendant, that he did not authorize the Defendant to possess or use his name, date of birth, or SSN, and that he had never given anyone permission to apply for UI benefits under his name. In total, California EDD records showed that approximately $826,000 in UI funds were credited to those accounts opened in the name of the 40 individuals found on the Defendant's phone, from in or around August 2020 through in or around October 2021.

In addition to the California EDD accounts fraudulently opened in the name of those approximately forty (40) individuals, the Defendant's phone also contained evidence of approximately fifty-three (53) other unauthorized access devices—e.g., personal credit cards and debit cards from other banks, personal and business checks, etc.—belonging to other individuals and business victims.

Therefore, based on the foregoing, the Court hereby

ORDERED and ADJUDGE that:

1. The Motion [ECF No. 53] is **GRANTED**.

2. A forfeiture money judgment in the amount of $826,000 shall be entered against the Defendant, pursuant to Title 18, United States Code, Section 982(a)(2)(B), and Rule 32.2 of the Federal Rules of Criminal Procedure.

3. 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 Title 21, United States Code, Section 853(m).

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

5. 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 the Southern District of Florida on February 22, 2023.

ROY K. ALTMAN
UNITED STATES DISTRICT JUDGE

cc: counsel of record