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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-21010-CR-MARTINEZ

UNITED STATES OF AMERICA,

vs.

JEAN RENE DUPerval.

Defendant.

**UNITED STATES' MOTION FOR ENTRY OF FORFEITURE MONEY JUDGMENT
AT SENTENCING AND INCORPORATED MEMORANDUM OF LAW**

The United States of America (hereinafter, the "United States" or the "Government"), by and through its undersigned attorney, hereby respectfully requests that the Court enter a personal forfeiture money judgment against the defendant, Jean Rene Duperval, in the amount of \$497,331 in United States currency at his sentencing hearing scheduled for May 21, 2012. Furthermore, the Government respectfully requests that the Court announce such forfeiture money judgment as part of the defendants' respective sentence and include it in the Judgment in this case, either directly or by reference, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure (hereinafter, "Fed. R. Crim. P."). The Government submits an incorporated memorandum of law and a proposed order of forfeiture herewith.

MEMORANDUM OF LAW

A. BRIEF PROCEDURAL HISTORY

1. A federal grand jury sitting in the United States District Court for the Southern District of Florida returned a twenty eight count true bill of indictment on January 19, 2012 (D.E. No.685) (hereinafter, the “Indictment”) charging the defendant with certain criminal violations.

2. The Indictment charged the defendants with having committed violations of Title 18, United States Code, Section 1956(h) (money laundering conspiracy) (Counts 8 and 9) and violations of Title 18, United States Code, Section 1956(a)(1)(B)(i) (money laundering) (Counts 10-28).

3. The Indictment also alleged that upon conviction of any of the violations alleged in Counts 8 through 28 of the Indictment, the defendant should forfeit to the United States any property, real or personal, involved in such violation or any property traceable to such property.

4. On March 12, 2012, a petit jury found the defendant guilty of Counts 8 through 28.

B. RELEVANT STATUTES AUTHORIZING FORFEITURE MONEY JUDGMENTS

2. Money Laundering Statutes (Counts 8-28)

Upon conviction of a violation of, or a conspiracy to violate, the federal money laundering statutes (18 U.S.C. § 1956), as alleged in Counts 9 through 21 of the Indictment, pursuant to Title 18, United States Code, Section 982(a)(1), the Government is permitted to seek criminal forfeiture of all right, title and interest belonging to a defendant so convicted in “in any property, real or personal, *involved in such offense*, or any property traceable to such property.” 18 U.S.C. § 982(a)(1) (emphasis added).

In addition to forfeiting specific property, a forfeiture money judgment is an authorized punishment that may be imposed against a defendant convicted of a violation of, or a conspiracy to

violate, the federal money laundering statutes. *See United States v. Seher*, 574 F.Supp.2d 1368 (N.D.Ga. 2007) (entering a forfeiture money judgment in the amount of \$1,610,400 against an individual defendant convicted of violating 18 U.S.C. §§ 1956(h) and (a)(3)(B) pursuant to 18 U.S.C. § 982(a)(1)); *see also United States v. Seher*, 652 F.3d 1344, 1372 n.30 (11th Cir. 2009) (stating that the Eleventh Circuit has expressly rejected the argument that district courts lack the authority to enter forfeiture money judgments generally and specifically affirming forfeiture money judgments imposed for violations of the federal money laundering statutes).

Courts have broadly interpreted the phrase “involved in the offense” in calculating the amount of money a defendant will be ordered to pay as a forfeiture money judgment upon conviction of a money laundering offense pursuant to Title 18, United States Code, Section 982(a)(1) to encompass “the money or other property being laundered (the corpus), any commissions or fees paid to the launderer, and any property used to facilitate the laundering offense.” *United States v. Puche*, 350 F.3d 1137, 1153 (11th Cir. 2003) (*quoting United States v. Bornfield*, 145 F.3d 1123, 1135 (10th Cir. 1998) (internal quotation marks omitted).

Further, the term “facilitate” in that context is defined broadly as well and means that in order to facilitate the money laundering offense, the property “need only make the prohibited conduct less difficult or more or less free from obstruction or hindrance.” *Id.* Although *mere* pooling or commingling of tainted and untainted funds in an account, without more, does not render the entire contents of that account subject to forfeiture, if a defendant pooled the funds in an effort to facilitate or disguise the illegal scheme, then forfeiture of commingled funds would be proper. *See United States v. Puche*, 350 F.3d at 1154 (*citing United States v. Bornfield*, 145 F.3d at 1135).

C. **RELEVANT CRIMINAL FORFEITURE PROCEDURE**

1. **Evidence**

The Court's determination of the amount of money that the defendants will be ordered to pay as a forfeiture money judgment "may be based on evidence already in the record . . . and on any additional evidence or information submitted by the parties and accepted by the [C]ourt as relevant and reliable." Fed. R. Crim. P. 32.2(b)(1)(B). Neither the Federal Rules of Evidence, nor any other rule, prohibits the admission and use by the Court of hearsay statements or any other information which the Court accepts as relevant and reliable. *See* Fed. R. Evid. 1101(d)(3) (stating that the Federal Rules of Evidence are inapplicable in sentencing proceedings); *Libretti v. United States*, 516 U.S. 29, 38-41, 116 S.Ct. 356, 133 L.Ed2d 271 (1995) (holding that forfeiture is part of the sentencing process); *see also* Fed. R. Crim. P. 32.2(b)(1)(B) (providing that "any additional evidence or information submitted by the parties and accepted by the [C]ourt as relevant and reliable" may be used to form the basis on which the Court makes its determination regarding forfeiture).

2. **Burden of Proof**

Because forfeiture is a part of sentencing, the Government is only required to establish the amount of money the defendant will be ordered to pay as a forfeiture money judgment by a preponderance of the evidence. *See United States v. Cabeza*, 258 F.3d 1256 (11th Cir. 2001) (*citing United States v. Dicter*, 198 F.3d 1284, 1290 (11th Cir. 1999) (the burden of proof on a forfeiture count is a preponderance of the evidence notwithstanding the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000))); *see also United States v. Elgersma*, 971 F.2d 690, 694-696 (11th Cir. 1992) (holding that forfeiture is part of the sentencing process and not an element of the crime itself; accordingly, because due process does not require the beyond a reasonable doubt standard to apply to the sentencing process, Congress has the authority to apply (and did apply) a

less strenuous standard of proof than the beyond a reasonable doubt standard to criminal forfeiture).

D. ARGUMENT

The defendant should be ordered to pay \$497,331 in United States currency to the United States as that is an amount of money equal in aggregate value to the property, real or personal, involved in the violations alleged in counts 8 through 28 of the indictment, or property traceable to such property.

The evidence presented at trial showed that Jean Rene Duperval was an official from 2003 to 2004, and that during that time and after he received bribes and kickbacks – totaling \$497,331 in United States currency – from two South Florida telecommunication companies, Terra Telecommunications and Cinergy Telecommunications, in exchange for providing various benefits to those companies. The evidence at trial also showed that he laundered the \$497,331 in the United States through the bank accounts of two South Florida companies, Crossover Records and Telecom Consulting Services, owned by his siblings. This conduct, along with other behavior in which the defendant engaged, formed the basis for the violations alleged in Counts 8 through 28 of the Indictment. Therefore, \$497,331 in United States currency is an amount of money equal in value to the property, real or personal, involved in the violations alleged in Counts 8 through 28 of the Indictment, or property traceable to such property.

E. CONCLUSION

For the reasons set forth herein the United States hereby respectfully requests that the Court enter a personal forfeiture money judgment against the defendant, Jean Rene Duperval, in the amount of \$497,331 in United States currency at his sentencing hearing scheduled for May 21, 2012, and to include such forfeiture money judgment when orally announcing the defendant's sentence and in the Judgment in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/Karen Moore
KAREN MOORE
ASSISTANT U.S. ATTORNEY