

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 2:19-cr-189
)	
JAVAID PERWAIZ,)	
)	
Defendant.)	

MOTION FOR ENTRY OF A SECOND ORDER OF FORFEITURE

Comes now the United States of America, by counsel, and hereby moves this Honorable Court pursuant to Fed. R. Crim. P. 32.2(e) for the entry of a second order of forfeiture in this matter. The assets that the United States now seeks through this motion would be forfeited in partial satisfaction of the forfeiture monetary judgment set forth in the previously-filed motion for entry of a consent order of forfeiture (Document 189). Through this motion, the government seeks the forfeiture of the following: (1) the unearned portion of the appellate retainer; and (2) 1986 Mercedes-Benz 560SL Roadster with VIN # WDBBA48D6GA041644. The forfeiture of these assets, along with those in the proposed consent order of forfeiture, will not exceed the monetary judgment set forth in the proposed consent order of forfeiture.

Pursuant to Fed. R. Crim. P. 32.2(e)(1), upon the government’s motion, the Court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that “is substitute property that qualifies for forfeiture under an applicable statute.” In this case, the applicable substitute property statute is 21 U.S.C. § 853(p). Pursuant to 21 U.S.C. § 853(p)(2), “the court shall order the forfeiture of any other property of the defendant” where any one of the disjunctive prerequisites set forth in 21 U.S.C. § 853(p)(1) has been met. In the previously-filed proposed consent order of forfeiture, the defendant agreed that the prerequisites

of 21 U.S.C. § 853(p)(1) had been satisfied.

If the government shows that the property is forfeitable under Rule 32.2(e)(1), then the “court must enter an order forfeiting that property, or amend an existing preliminary or final order to include it.” Fed. R. Crim. P. 32.2(e)(2)(A). See United States v. Ferrario-Pozzi, 368 F.3d 5, 11 (1st Cir. 2004) (court retains jurisdiction under Rule 32.2(e) to amend generic forfeiture order to include property subject to forfeiture); United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Bank of California International), 980 F. Supp. 522, 524 (D.D.C. 1997) (the preliminary order may be amended as often as necessary to include additional property subject to forfeiture that the government identifies). The Advisory Committee notes to Rule 32.2(e) make clear that the Court retains jurisdiction to amend the order of forfeiture at any time to include substitute property. Ferrario-Pozzi, 368 F.3d at 11.

Pursuant to Fed. R. Crim. P. 32.2(b)(6) and 21 U.S.C. § 853(n), upon the entry of any order of forfeiture providing for the forfeiture of specific property, the United States must send a notice of forfeiture to and publish the forfeiture for potentially interested third parties. The second order of forfeiture the United States is now requesting is truly a second preliminary order of forfeiture. In other words, the usual ancillary process that follows the entry of any preliminary order of forfeiture that provides for anything other than a monetary judgment would also follow the entry of any second order of forfeiture in this case. See Fed. R. Crim. P. 32.2(e)(2)(B). The ancillary proceeding is governed by the provisions of Fed. R. Crim. P. 32.2(c) and 21 U.S.C. § 853(n).

Prior to filing this motion, the government filed a memorandum on outstanding forfeiture and restitution issues (Document 190). The government and the defense have conferred at length about forfeiture and restitution issues and were able to come to an agreement about certain

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of the filing (NEF) to all counsel of record.

By: /s/ Kevin Hudson
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SECOND ORDER OF FORFEITURE

IT APPEARING TO THE COURT that:

WHEREAS on May _____, 2021, this Court entered a Consent Order of Forfeiture pursuant to 18 U.S.C. § 982(a)(7), imposing a forfeiture judgment against the defendant in the amount of **\$2,276,089.51**.

AND WHEREAS the government has now moved for a second forfeiture for two assets which will partially satisfy the forfeiture money judgment.

AND WHEREAS the defendant has previously stipulated that and Court finds that the government has satisfied the prerequisites of 21 U.S.C. § 853(p).

Having considered the government’s motion, and deeming it proper so to do, **IT IS HEREBY ORDERED:**

1. The following property is hereby forfeited to the United States pursuant to 21 U.S.C. § 853(p):

Unearned portion of the appellate retainer held by the defendant’s present counsel; and

A 1986 Mercedes-Benz 560SL Roadster with VIN # WDBBA48D6GA041644.

2. The United States shall seize all forfeited property and shall take full and exclusive custody and control of the same.

3. The United States shall, to the extent practicable, provide direct written notice to any persons known to have alleged an interest in any property seized, and shall publish notice of this order in accordance with Federal Rule of Criminal Procedure 32.2(b)(6).

4. Any person other than the defendant asserting any legal interest in the property may, within thirty days of the publication of notice or the receipt of notice, whichever is earlier, petition the Court for a hearing to adjudicate the validity of their alleged interest in the property.

5. Following the Court's disposition of all timely petitions filed, a final order of forfeiture shall be entered. If no third party files a timely petition, this order shall become the *final* order of forfeiture, as provided by Fed. R. Crim. P. 32.2(c)(2), and the United States shall have clear title to the property, and shall dispose of the property in accordance with law.

Dated this _____ day of _____ 2021.

UNITED STATES DISTRICT JUDGE

I ASK FOR THIS:

RAJ PAREKH
ACTING UNITED STATES ATTORNEY

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