

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA :
 :
 versus : CRIMINAL NO. 19-63-JWD-EWD
 :
 JOHN PAUL FUNES :

MOTION FOR ENTRY OF
PRELIMINARY ORDER OF FORFEITURE

NOW INTO COURT COMES the United States of America, by and through undersigned counsel, who moves this Court for the Entry of a Preliminary Order of Forfeiture in the form of a Forfeiture Money Judgment in an amount equal to the value of the gross proceeds traceable to the commission of the offenses charged in the Bill of Information to which he has pled guilty. The amount of this judgment will be determined by the Court at or before sentencing based on the relevant conduct. The United States further seeks leave to conduct discovery pursuant to Rule 32.2(b)(3), Federal Rules of Criminal Procedure.

In support of this motion a memorandum is attached hereto.

UNITED STATES OF AMERICA, by

BRANDON J. FREMIN
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UNITED STATES DISTRICT COURT
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MEMORANDUM IN SUPPORT OF MOTION FOR ENTRY OF
PRELIMINARY ORDER OF FORFEITURE

I. BACKGROUND

On June 4, 2019, a Bill of Information was returned against John Paul Funes in the Middle District of Louisiana.

The Bill of Information contained a forfeiture allegation seeking forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 982(a)(1), and 28 U.S.C. § 2461(c), and provided notice to Funes that upon conviction of Counts One and Two of the Bill of Information, the United States would seek to forfeit all property, real and personal, involved in the offense, or constituting or derived from proceeds obtained, directly or indirectly, as a result of the violation. It further provided that if any of the forfeitable property, as a result of any act of omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with a third party;
- c. has been placed beyond the jurisdiction of the court
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty, the

United States of America would be entitled to a forfeiture money judgment and would be allowed to forfeit substitute property pursuant to 21 U.S.C. § 853(p) in satisfaction of the forfeiture money judgment.

On May 29, 2019, the defendant entered into a Rule 11 Plea Agreement and thereafter pleaded guilty to Count One of the Bill of Information charging him with Wire Fraud in violation of 18 U.S.C. § 1343, and to Count Two of the Bill of Information charging him with Money Laundering in violation of 18 U.S.C. § 1956. In his Plea Agreement, the defendant understood and agreed to the forfeiture allegation, and explicitly agreed to forfeit to the United States all property, real or personal, that constitutes or is derived from proceeds traceable to the offense charged in Count One of the Bill of Information, and all property, real or personal, involved in the offense charged in Count Two of the Bill of Information, including a sum of money equal to the amount of the proceeds of the offense. The defendant consented to the entry of a personal money judgement in an amount that the Court determined represented the proceeds of the offenses or was involved in the offenses. He further understood that the Court may order a personal money judgment against him in such an amount.

Based on his Plea Agreement, the defendant further understood that forfeiture of his property, including by payment of a money judgment, would not be treated as satisfaction of any fine, restitution, cost of imprisonment, or other penalty which may be imposed upon him as part of his sentence. The defendant further understood that, separate and apart from his sentence in this case, the United States could also institute civil or administrative forfeiture proceedings of any property, real or personal, which is subject to forfeiture.

The defendant further agreed to fully and truthfully disclose the existence, nature, and location of all assets and to fully and completely assist the United States in the recovery and forfeiture of all forfeitable assets, including taking all steps as requested by the United States to pass clear title to forfeitable assets to the United States. The defendant agreed to hold the United States, its agents, and its employees harmless from any claims whatsoever in connection with the seizure or forfeiture of property pursuant to the Court's forfeiture orders.

The defendant also waived the following: (1) all statutory and constitutional defenses to the forfeiture, including any claim that the forfeiture constitutes an excessive fine or punishment; (2) any failure by the Court to ensure at sentencing that the defendant is aware of the forfeiture or to incorporate the forfeiture in the judgment as required by Fed. R. Crim. P. 32.2(b)(4)(B); and (3) any failure by the Court to inform the defendant of, and determine that the defendant understood, the applicable forfeiture prior to accepting the defendant's pleas.

II. AUTHORITIES

With regard to entering a Preliminary Order of Forfeiture, Federal Rules of Criminal Procedure 32.2 provides, in relevant part, that:

“As soon as practical . . . after a plea of guilty . . . is accepted . . . if the government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay . . . and must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment”

Fed. R. Crim. P. 32.2(b)(1)(A) and (b)(2)(A).

Pursuant to Federal Rules of Criminal Procedure 32.2(b)(1)(A) and (B), in determining what amount the defendant should be ordered to pay as a money judgment, the Court may rely on “evidence already in the record, including any written plea agreement, and on any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable.” The district court should enter a preliminary order of forfeiture “sufficiently in advance of sentencing to allow the parties to suggest revisions or modification before the order becomes final” which occurs at sentencing. *United States v. Schwartz* 503 Fed.Appx. 443, 447, (6th Cir. 2012)

III. ARGUMENT

The defendant understood and agreed in his Plea Agreement to consent to the entry of a Forfeiture Money Judgment against him in an amount determined by the Court. Additionally, the

defendant understood and agreed with the summary of the Factual Basis read into the record during re-arraignment which set forth the basis for the Court's acceptance of his plea.

Background

At all relevant times, the defendant was a resident of Baton Rouge, Louisiana, and was employed as President of the Our Lady of the Lake Foundation (the "Foundation"), a non-profit organization that supports the Our Lady of the Lake Regional Medical Center. Beginning in or about 2012 and continuing through September of 2018, within the Middle District of Louisiana, Funes knowingly executed a scheme to defraud the Foundation and to obtain money from the Foundation by means of material false and fraudulent representations.

The Scheme

The defendant executed the scheme through a variety of means. Most often, the defendant executed the scheme by preparing, signing, and submitting "Payment Authorization Vouchers" that would cause the Foundation's accounting personnel to issue checks for the payees, amounts, and purposes reflected on the voucher. Because of his position at the Foundation, the defendant could approve his own vouchers, which enabled him to submit dozens of false and fraudulent vouchers that misrepresented the purpose of the checks without scrutiny.

For example, the defendant repeatedly used the services of a charter flight company in Houma, Louisiana, for his own personal benefit, unbeknownst to the Foundation. In connection with the flights, the defendant submitted numerous vouchers in which he fraudulently represented that Foundation funds were necessary to pay the flight company to make time-sensitive "outbound patient transports" from Our Lady of the Lake Children's Hospital. The defendant gained control of the checks and forwarded them to the flight company, which enabled the defendant to continue using the flight company's services for his own personal benefit. On December 31, 2017, for instance, the defendant chartered a flight to take his family and friends to Tampa, Florida, to attend

a New Orleans Saints game, and then to Orlando, Florida, to attend the Citrus Bowl, before returning to Baton Rouge on January 1, 2018, at a cost to the Foundation of more than \$14,000. As part of the scheme, and to help conceal the scheme, the defendant directed the flight company to mail the Foundation's invoices to a post office box that the defendant privately maintained in Baton Rouge, which prevented the Foundation from receiving the invoices and learning the routes of the flights.

As another example, the defendant submitted numerous vouchers in which he fraudulently represented that funds were necessary to provide gift cards for cancer patients. The defendant gained control of the checks issued by the Foundation based on the vouchers and used the checks to purchase hundreds of Wal-Mart and Visa gift cards. Instead of having Foundation staff distribute the cards to the cancer patients, however, the defendant unilaterally distributed the cards in his sole discretion, and often used the cards for his own personal benefit, unbeknownst to the Board.

As part of the scheme, the defendant also submitted numerous vouchers in which he falsely represented that funds were required to pay for home medical care and other expenses for a Children's Hospital patient. The defendant caused the Foundation to issue 11 checks to Individual A and 7 checks to Individual A's daughter (Individual B), both of whom lived in Florida, totaling approximately \$107,000. Neither Individual A nor Individual B nor any of their family members was or had ever been a patient of the hospital.

The defendant's scheme also included the following: (a) submitting and approving dozens of payments to individuals who did little to no work for the Foundation but to whom the defendant wanted to provide financial assistance, including Individual C, who received approximately \$180,000 in Foundation funds; (b) in at least one case, creating and submitting invoices in the name of a purported vendor to whom the defendant wanted to send money, for what he claimed

were legitimate expenses, without disclosing all material information about the expenses to the Foundation (such as, for example, creating and submitting invoices in the name of Individual D without disclosing that he had created the invoices himself and that Individual D would funnel a portion of the funds he received from the Foundation back to the defendant personally); and (c) submitting and approving vouchers that caused the Foundation to purchase tickets to numerous sporting events (*e.g.*, LSU football and baseball games, New Orleans Saints games), based on the defendant's representation that the tickets would be used for legitimate Foundation business, without disclosing that the defendant would sometimes use the tickets for purely personal reasons and/or sell the tickets to others and retain the payments for the tickets in his personal bank account.

Wirings

In furtherance of the scheme, the defendant caused numerous interstate wirings. For instance, on or about May 21, 2015, based on a payment authorization voucher in which he represented that the check was needed to fund gift cards for cancer patients, the defendant obtained Check No. 17831, payable to Wal-Mart, in the amount of \$9,500, drawn on the Foundation's bank account at Capital One Bank. The defendant took the check to the Wal-Mart on College Drive in Baton Rouge and tendered the check as payment for more than a dozen gift cards. Upon Wal-Mart's receipt of the check, Wal-Mart deposited the check into its bank account at Bank of America, which in turn created an electronic image of the check and sent the image, electronically, to the Federal Reserve Bank in Atlanta, Georgia. Upon its receipt of the check image, the Federal Reserve Bank processed the check by debiting the Foundation's account at Capital One and crediting Wal-Mart's account at Bank of America.

Transactions Involving Fraudulent Proceeds of Unlawful Activity

In numerous instances, the defendant conducted financial transactions involving the proceeds of the fraudulent scheme. After fraudulently causing the payments to Individuals A and

B described above, for instance, the defendant directed Individuals A and B to funnel the majority of the funds (approximately \$63,000) back to him, by writing personal checks back to him and sending him cashier's checks and money orders, which he deposited into one of his personal bank accounts. The defendant thereby knowingly and intentionally conducted financial transactions affecting interstate commerce, knowing that the funds involved were the proceeds of specified unlawful activity, that is, mail fraud, with the intent to conceal or disguise the nature, location, source, ownership, and control of such proceeds.

For example, in May of 2014, the defendant submitted and approved a voucher requesting a \$9,500 check to Individual A, purportedly as a grant to a Children's Hospital patient. On May 22, 2014, based on the fraudulent payment request, the Foundation issued a check (No. 957646) for \$9,500 to Individual A. The defendant mailed the check to Individual A, who received the check and deposited it into her bank account at Wells Fargo in Florida. At the defendant's request, however, Individual A then sent a large portion of the funds back to the defendant. Specifically, on June 6, 2014, Individual A sent the defendant a check (No. 2361) for \$5,500 drawn on her bank account. The defendant received the check and, on June 14, 2014, deposited the check into one of his personal bank accounts at Iberia Bank in Baton Rouge, knowing that the transaction involved the proceeds of unlawful activity.

In August of 2018, the Foundation's finance department began an internal audit of the expenses described above. In response, the defendant fraudulently created numerous documents designed to conceal what he had done. For instance, the defendant created a memorandum that purported to show that the Foundation's Board of Directors had adopted a program to contract with the flight company to transport patients who needed urgent cancer treatment to the St. Jude Children's Research Hospital, in Memphis, Tennessee. The defendant also created fictitious invoices, complete with fictitious patient names and dates of birth, which falsely indicated that the

flights he had chartered had been round-trip flights between Baton Rouge and Memphis to transport hospital patients. In fact, the memorandum and other documents prepared by the defendant were fictitious, and none of the flights were used to transport hospital patients. The defendant also created false documents intended to conceal his fraudulent gift card purchases and provided several of the documents to the Foundation.

The defendant and the United States agree that the loss caused by the defendant's scheme was more than \$550,000.

Since the United States seeks only the forfeiture in the form of a money judgment and not of specific property, the United States will not publish notice of the order granting the money judgment.¹

In accordance with the provisions of Rule 32.2, the United States requests that it be permitted to undertake whatever discovery necessary to identify, locate, or dispose of the property subject to forfeiture or substitute assets for such property, and that this Preliminary Order of Forfeiture become final as to this defendant at sentencing. *United States v. St. Pierre*, 809 F. Supp. 2d 538, 547 (E.D. La. 2011) (providing that the preliminary order of forfeiture will become final as to the defendant at sentencing pursuant to Rule 32.2(b)(4)).

¹ Rule 32.2(6)(A) states that, “[i]f the court orders the forfeiture of specific property, the United States must publish notice of the order and send notice” A money judgment is not specific property.

IV. RELIEF

Based upon the plea agreement, the factual basis read into the record during the defendant's re-arraignment, and the record in this case, the United States respectfully requests this Court enter the proposed Preliminary Order of Forfeiture ordering a Forfeiture Money Judgment against the defendant John Paul Funes. The United States further requests that it be allowed to conduct discovery pursuant to Rule 32.2.

Respectfully submitted,

UNITED STATES OF AMERICA, by
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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

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JOHN PAUL FUNES

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CRIMINAL NO. 19-63-JWD-EWD

PRELIMINARY ORDER OF FORFEITURE

WHEREAS, on June 4, 2019, Bill of Information was returned against John Paul Funes in the Middle District of Louisiana and the Bill of Information contained a Forfeiture Allegation seeking forfeiture pursuant to 18 U.S.C. § 982(a) and 21 U.S.C. § 853(p), and provided notice to the defendant that upon conviction, the United States would seek to forfeit any property, real or personal, that constitutes or is derived from proceeds traceable to the wire fraud and money laundering violations; and

WHEREAS, the defendant entered into a Rule 11 Plea Agreement on May 29, 2019, and thereafter he pled guilty to Count One of the Bill of Information charging him with Wire Fraud in violation of 18 U.S.C. § 1343 and Count Two charging him with Money Laundering in violation of 18 U.S.C. § 1956; and

WHEREAS, in his Plea Agreement, Funes understood that, in accordance with the Notice of Forfeiture in the Indictment, he agreed to forfeit any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense charged in Count Four of the Indictment. Therefore, he agreed to forfeit to the United States a sum of money equal to such proceeds in United States currency and consent to entry of a personal money judgment against him in such amount. The defendant specifically understood that the Court may order him to forfeit a sum of money equal to the amount of money involved in the offense but not less than \$550,000; and

WHEREAS, based on his Plea Agreement, he understood that forfeiture of his property, including by payment of a money judgment, would not be treated as satisfaction of any fine, restitution, cost of imprisonment, or other penalty which may be imposed upon him as part of his sentence, and that, separate and apart from his sentence in this case, the United States could also institute civil or administrative forfeiture proceedings of any property, real or personal, which is subject to forfeiture;

WHEREAS, the defendant further agreed to fully and truthfully disclose the existence, nature, and location of all assets and to fully and completely assist the United States in the recovery and forfeiture of all forfeitable assets, including taking all steps as requested by the United States to pass clear title to forfeitable assets to the United States; and

WHEREAS, the defendant further waived all statutory and constitutional defenses to the forfeiture, including any claim that the forfeiture constituted an excessive fine or punishment; that any failure by the Court to ensure at sentencing that the defendant is aware of the forfeiture or to incorporate the forfeiture in the judgment as required by Fed. R. Crim. P. 32.2(b)(4)(B); that any failure by the Court to inform the defendant of, and determine that the defendant understands, the applicable forfeiture prior to accepting the defendant's plea; and

WHEREAS, the United States has filed a Motion for Entry of a Preliminary Order of Forfeiture which seeks a Forfeiture Money Judgment against the defendant now, with the actual amount being determined by this Court at or before sentencing.

IT IS HEREBY ORDERED that a Forfeiture Money Judgment against the defendant, John Paul Funes, in favor of the United States of America is hereby entered.

IT IS FURTHER ORDERED that this Forfeiture Money Judgment will be amended under Fed.R.Crim.P. 32.2(e)(1) when the amount of the money judgment has been determined by this Court at or before sentencing.

IT IS FURTHER ORDERED that pursuant to Fed.R.Crim.P. 32.2, once this forfeiture money judgment is amended under Rule 32.2(e)(1), it shall become the Final Order of Forfeiture at the time of the defendant's sentencing and shall be made part of the sentence and included in the Judgment.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction to enforce the Preliminary Order of Forfeiture and to amend it as necessary, pursuant to Fed.R.Crim.P. 32.2(e).

IT IS FURTHER ORDERED that in accordance with the provisions of Rule 32.2, the United States is permitted to undertake whatever discovery necessary to identify, locate, or dispose of the property in satisfaction of the Forfeiture Money Judgment.

SIGNED this ____ day of _____ 2019.

JOHN W. deGRAVELLES, JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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UNITED STATES OF AMERICA :
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 JOHN PAUL FUNES :

CERTIFICATE OF SERVICE

I certify that on July 2, 2019, a copy of the foregoing *Motion for Entry of Preliminary Order of Forfeiture, Memorandum In Support of Motion for Entry of Preliminary Order of Forfeiture*, and a proposed *Order* was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all parties/counsel of record by operation of the court’s electronic filing system.

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