

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:19-cr-605-WFJ-CPT

MICHAEL J. DACORTA

**UNITED STATES' MEMORANDUM  
OF LAW REGARDING FORFEITURE**

The United States of America submits the following memorandum regarding the procedure governing the forfeiture sought in this case.

**MEMORANDUM OF LAW**

The United States seeks an order of forfeiture against defendant Michael DaCorta in the amount of approximately \$7,128,410.65, which represents the proceeds the defendant obtained from his wire fraud and mail fraud conspiracy and the amount involved in the money laundering offense.

In the event that the defendant is convicted of Counts One and/or Two of the Superseding Indictment, this memorandum outlines why, pursuant to Federal Rule of Criminal Procedure 32.2(b)(5), the Court—and not the jury—should determine the amount of the order of forfeiture for the criminal proceeds obtained by the defendant.

**I. Background**

Count One of the Superseding Indictment charges the defendant with a wire fraud and mail fraud conspiracy, in violation of 18 U.S.C. § 1349. Count Two

charges the defendant with a money laundering offense, in violation of 18 U.S.C. § 1957. Doc. 39.

Should the defendant be convicted of Counts One and/or Two, the United States will seek an order of forfeiture in the amount of at least \$7,128,410.65, representing the amount of proceeds the defendant personally obtained from the wire fraud and mail fraud conspiracy, and the amount involved in the money laundering offense.

## **II. Applicable Statutes**

In sentencing a person convicted of a wire fraud and/or mail fraud conspiracy, the Court's authority to enter an order of forfeiture against the defendant is found in 18 U.S.C. § 981(a)(1)(C), which provides that the United States may civilly forfeit any property, real or personal, which constitutes or is derived from proceeds of any "specified unlawful activity," as defined in 18 U.S.C. § 1956(c)(7). A "specified unlawful activity" includes any offense listed in section 1961(1), which, in turn, includes any violation of sections 1341 (mail fraud) and 1343 (wire fraud). Pursuant to 28 U.S.C. § 2461(c), the government is authorized to forfeit this property criminally, and the procedures for the forfeiture and disposition of such property are governed by 21 U.S.C. § 853.

In addition, in sentencing a person convicted of a money laundering offense, the Court's authority to enter an order of forfeiture against the defendant is found in 18 U.S.C. § 982(a)(1), which provides that the United States may forfeit any

property, real or personal, involved in a violation of 18 U.S.C. § 1957, or any property traceable to such property.

### **III. Forfeiture Proceeding for Criminal Proceeds**

When a defendant no longer has the actual dollars in criminal proceeds or property directly traceable to forfeitable proceeds in his possession, or the government cannot locate that property, the defendant's obligation to forfeit simply takes the form of an order of forfeiture in favor of the United States. *United States v. Padron*, 527 F.3d 1156, 1161-62 (11th Cir. 2008). Federal Rule of Criminal Procedure 32.2(b)(1) provides that, where the government seeks an order of forfeiture, the Court must determine the amount of money that the defendant will be ordered to pay.

The Eleventh Circuit held that “a party is *not* entitled to a jury finding regarding a money judgment.” *United States v. Curbelo*, 726 F.3d 1260, 1278 (11th Cir. 2013) *cert. denied*, 134 S. Ct. 962, 187 L. Ed. 2d 822 (2014). Instead, “*the court must determine the amount of money that the defendant will be ordered to pay.*” *Id.* (quoting Rule 32.2(b)(1)(A)); *see also* Rule 32.2(b)(1) (“If the government seeks a *personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay.*”) (emphasis added). The Eleventh Circuit’s holding is consistent with that of other circuits. *See United States v. Phillips*, 704 F.3d 754, 769 (9th Cir. 2012) (holding there is no statutory right to have jury determine amount of

money judgment); *United States v. Gregoire*, 638 F.3d 962, 972 (8th Cir. 2011) (same); *United States v. Tedder*, 403 F.3d 836, 841 (7th Cir. 2005) (same).

Thus, because the United States seeks an order of forfeiture for the criminal proceeds obtained by the defendant, the defendant is not entitled to a jury determination on the order of forfeiture for the amount of proceeds in this case.

**V. Conclusion**

Should the defendant request a jury determination on the amount of the order of forfeiture for criminal proceeds, pursuant to Rule 32.2(b)(5), the United States asks that the Court deny the request, because there is no right to a jury determination of the amount of an order of forfeiture for proceeds.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 31, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel of record.

*s/ Suzanne C. Nebesky*

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SUZANNE C. NEBESKY

Assistant United States Attorney