

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 05-282 (MJD/SRN)

UNITED STATES OF AMERICA, )  
 )  
 PLAINTIFF, )  
 v. ) MOTION FOR PRELIMINARY  
 ) ORDER OF FORFEITURE  
(1) CHRISTOPHER SMITH )  
 )  
 DEFENDANTS. )

The United States of America, by and through Rachel K. Paulose, United States Attorney for the District of Minnesota, and James S. Alexander, Assistant United States Attorney, respectfully moves this Court, pursuant to Title 18, United States Code, Section 982(a)(1), Title 21, United States Code, Section 853(a), and Fed.R.Crim.P. 32.2, for a Preliminary Order of Forfeiture in the above-captioned case and in support thereof represents to the Court the following:

1. On September 19, 2006 a federal grand jury sitting in the District of Minnesota returned a Third Superseding Indictment against defendant Christopher William Smith.

2. The Forfeiture Allegations of the Indictment sought the forfeiture of any and all property constituting, or derived from, any proceeds obtained by the defendants as a result of the violations alleged in Counts 1 through 4 and 9 of the Third Superseding Indictment pursuant to 21 U.S.C. § 853(a), including but not limited to the following property:

- a. \$89,335.00 in U.S. Currency surrendered to the Internal Revenue Service, Criminal Investigation Division, on February 3, 2006;

- b. \$198,120.00 in U.S. Currency surrendered to the Internal Revenue Service, Criminal Investigation Division, on February 3, 2006;
- c. \$1,850.00 in U.S. Currency surrendered to the Internal Revenue Service, Criminal Investigation Division, on February 3, 2006;
- d. \$13,757.96 in net proceeds from the sale of a 2005 Mercedes Benz, C55AMG, VIN WDBRF76J95F612084;
- e. \$139,720.00 in U.S. Currency surrendered to the Internal Revenue Service, Criminal Investigation Division, on March 24, 2006;
- f. \$50,000.00 in U.S. Currency surrendered to the Internal Revenue Service, Criminal Investigation Division, on March 31, 2006;
- g. \$90,000.00 in U.S. Currency surrendered to the Federal Bureau of Investigation, on April 10, 2006;<sup>1</sup>
- h. the real property located in Prior Lake, Minnesota, and legally described as Lot 11, Block 3, Cedarwood Estates, Scott County, Minnesota, together with its buildings, fixtures, improvements, and appurtenances;
- i. two Rolex watches purchased on or about December 22, 2004 from Osterman Jewelers, including a Rolex watch with serial number R7917441RB7824;
- j. any and all remaining funds in accounts held by the court appointed Receiver in connection with *United States v. Christopher William Smith et al.*, Civil No. 05-SC-895 (MJD/FLN).

The Forfeiture Allegations of the Third Superseding Indictment indicated that to extent the proceeds of the Controlled Substances

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<sup>1</sup>The Federal Bureau of Investigation commenced administrative forfeiture proceedings with respect to the \$90,000 that was seized on April 10, 2006. On December 22, 2006, a Declaration of Administrative Forfeiture was entered forfeiting the \$90,000 to the United States. This motion therefore does not seek the forfeiture of the \$90,000.

Act violations had been dissipated, or could not be located, the United States intended to seek the forfeiture of substitute property pursuant to 21 U.S.C. § 853(p).

3. On November 22, 2006, the jury returned a verdict finding defendant Christopher Smith guilty of Counts 1-9 of the Third Superseding Indictment.

4. Pursuant to Fed. R. Crim. P. 32.2(b)(4), "[u]pon a party's request in a case in which a jury returns a verdict of guilty, the jury must determine whether the government has established the requisite nexus between the property and the offense committed by the defendant." The parties agreed at the completion of trial that the forfeitures at issue would be determined by the Court.

5. Rule 32.2(b) of the Federal Rules of Criminal Procedure provides that:

(1) ***In General.*** As soon as practicable after a verdict or finding of guilt . . . on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay. The court's determination may be based on evidence already in the record, including any written plea agreement or, if the forfeiture is contested, on evidence or information presented by the parties at a hearing after the verdict or finding of guilt.

(2) **Preliminary Order.** If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment or directing the forfeiture of specific property without regard to any third party's interest in all or part of it. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

(3) **Seizing Property.** The entry of a preliminary order of forfeiture authorizes the Attorney General (or a designee) to seize the specific property subject to forfeiture; to conduct any discovery the court considers proper in identifying, locating, or disposing of the property; and to commence proceedings that comply with any statutes governing third-party rights. At sentencing—or at any time before sentencing if the defendant consents—the order of forfeiture becomes final as to the defendant and must be made a part of the sentence and be included in the judgment. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.

6. The only issue at this stage of the proceedings is whether a preliminary order of forfeiture should be entered as to defendant Smith which, pursuant to Fed. R. Crim. P. 32.2(b)(3), must be made a part of defendant Smith's sentence and included in the criminal judgment. The preliminary order of forfeiture is entered "without regard to any third party's interest in all or part of" the property being forfeited. See Fed. R. Crim. P. 32.2(b)(2). "Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary

proceeding under Rule 32.2(c).” *Id.* The sole remedy for third parties, if any, that may have an interest in property being forfeited to the United States is to file a claim pursuant to 21 U.S.C. § 853(n) as part of the ancillary proceeding under Fed. R. Crim. P. 32.2(c). See *United State v. Puig*, 419 F.3d 700, 703 (8th Cir. 2005) (the ancillary proceeding is the “only avenue by which a third-party claimant may seek to assert an interest in property that has been included in an indictment alleging that the property is subject to forfeiture”).<sup>2</sup>

7. This motion seeks a preliminary order of forfeiture pursuant to Fed. R. Crim. P. 32.2(b). This motion seeks the entry of a personal money judgment forfeiture against defendant Smith in the amount of \$24,240,747, as well as the forfeiture of the specific assets enumerated in the Forfeiture Allegations of the Third Superseding Indictment. In addition, this motion seeks an order pursuant to Fed. R. Crim. P. 32.2(b)(3) and 21 U.S.C. § 853(m) authorizing the United States to conduct discovery for the

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<sup>2</sup>The Advisory Committee Notes to the Federal Rules of Criminal Procedure emphasize that this is the correct procedure. “Under this scheme, the court orders the forfeiture of the defendant’s interest in the property - whatever that interest may be - in the criminal case. At that point, the court conducts a separate proceeding in which all potential third party claimants are given an opportunity to challenge the forfeiture by asserting a superior interest in the property. This proceeding does not involve relitigation of the forfeitability of the property; its only purpose is to determine whether any third party has a legal interest in the forfeited property.” Rule 32.2 Advisory Committee Notes.

purpose of identifying and locating property that is subject to forfeiture to the United States.<sup>3</sup>

#### **ARGUMENT**

##### **I. Forfeiture of Assets as Proceeds of Violations of the Controlled Substances Act.**

The Third Superseding Indictment alleged two separate bases for forfeiture. First, the Indictment alleged that certain properties are forfeitable under 21 U.S.C. § 853(a) because they were purchased with proceeds of the violations of the Controlled Substances Act alleged in Counts 1-4 and 9 of the Third Superseding Indictment, or constitute property traceable to such proceeds. Second, the Third Superseding Indictment also sought forfeiture under 18 U.S.C. § 982(a)(1) of all property, real or personal, involved in the conspiracy to commit money laundering alleged in Count 8, and all property traceable to such property.

Federal law authorizes the criminal forfeiture of "any property constituting, or derived from, any proceeds the person

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<sup>3</sup>The forfeiture of numerous vehicles, seized cash and other assets has already been completed in a separate civil action. *United States v. One 2004 Mercedes Maybach et al.*, Civil No. 05-1516 (MJD/AJB). Judgment was entered in the civil forfeiture action on June 15, 2006. In addition, a separate civil action is pending before this Court with respect to the residence located at 9260 Elm Court, Prior Lake, Minnesota. *United States v. 9260 Elm Court*, Civil No. 05-901 (MJD/AJB). As noted above, this real property was also identified for forfeiture in the Forfeiture Allegations in this criminal proceeding. The United States is seeking a preliminary order of forfeiture of this residence as part of this motion, and it is anticipated that the civil action will be dismissed. Additional forfeitures have been completed through administrative forfeiture proceedings.

obtained, directly or indirectly, as the result of" any violation of the Controlled Substances Act. 21 U.S.C. § 853(a). Forfeiture of property under section 853(a) "is mandatory, not discretionary." *United States v. Bieri*, 68 F.3d 232, 235 (8th Cir. 1995). The preponderance of the evidence standard of proof applies to a criminal forfeiture. *Id.* Moreover, under the relation-back doctrine, "[a]ll right, title, and interest in [forfeitable property] vests in the United States upon the commission of the act giving rise to forfeiture"). 21 U.S.C. § 853(c); *United States v. Totaro*, 345 F.3d 989, 993 (8th Cir. 2003). There is a rebuttable presumption that any property acquired during the time period when the Controlled Substances Act violations occurred are subject to forfeiture. 21 U.S.C. § 853(d). This presumption is also applicable where there is no other likely source for the property at issue other than violations of the Controlled Substances Act. *Id.*

For the reasons outlined below, the properties identified in the Forfeiture Allegations of the Third Superseding Indictment are subject to forfeiture because they constitute, or are traceable to, defendant Smith's violations of the Controlled Substances Act. Moreover, since a substantial portion of the drug proceeds have been dissipated, or are otherwise presently unavailable for forfeiture, a personal money judgment forfeiture should be entered as part of the sentence against defendant Smith.

**A. General Background**

Chad Vetter is employed as a Special Agent with the Internal Revenue Service, Criminal Investigation Division. Vetter Tr. (Nov. 13, 2006) p.3. Agent Vetter started investigating Christopher Smith and others in approximately November 2004. *Id.* Agent Vetter conducted a financial investigation to determine where the proceeds from the pharmacy scheme were being deposited, and to trace the money to determine how the proceeds were being spent. *Id.* p. 8-9. Agent Vetter prepared Exhibit 701 which was introduced at trial, which summarizes the deposits from pharmacy sales into various bank accounts. Exhibit 701 documents the deposit of a total of \$24,240,747 in proceeds from pharmacy sales into various bank accounts. *Id.* p. 11.<sup>4</sup> This number represents the gross proceeds of the Online Payment Solutions pharmacy operation.<sup>5</sup> Vetter Tr. (Nov. 14, 2006) p. 30-31.

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<sup>4</sup>The bank records which formed the basis for Government Exhibit 701 were introduced into evidence at trial. See Government Exhibit 708 (Advanced Financial Services account statements); Government Ex. 721 (signature cards and statements for RXorderfill.com #XXXXXX2065, for the period 9/11/04 - 6/30/05); Government Ex. 724 (Customer account setup and statement for RXorderfill.com); Government Ex. 725 (signature cards and statements for Revenue Doctors, Inc. XXXXXX5299, for the period 1/31/04 - 9/30/05); Government Ex. 733 (account statements for Online Payment Solutions #XXXXXXXX6955, for the time period 1/2/04 - 7/31/05); Government Ex. 734 (checks and withdrawals on Online Payment Solutions #XXXXXXXX6955).

<sup>5</sup>Online Payment Solutions was incorporated on September 19, 2002, by Christopher Smith. Vetter Tr. p. (Nov. 13, 2006) 13-14; Govt. Ex. 915 (Articles of Incorporation).

Several different bank accounts were used to receive the proceeds of the online / telemarketing pharmacy operation. Online Payment Solutions used an account at U.S. Bank. Vetter Tr. (Nov. 13, 2006) p. 11-12; Govt. Exs. 733 (account statements) and 734 (checks and withdrawals). The records for the Online Payment Solutions account at U.S. Bank document the deposits made in connection with the credit card sales of Xpress Pharmacy Direct. *Id.* p. 15.

Online Payment Solutions also maintained two accounts at Crown Bank, that were opened by defendant Smith's father Scott Smith. Vetter Tr. (Nov. 13, 2006) p. 16; Govt. Exs. 715 and 716 (bank records). Deposits from drug sales by Online Payment Solutions were made into these two accounts. *Id.* p. 17.

Advanced Financial Svcs. maintained two accounts at Wells Fargo Bank which received the proceeds from pharmaceutical sales, primarily sales paid for with money orders and cash-on-delivery sales. See Government Exhibit 701; Vetter Tr. (Nov. 13, 2006) p. 12. Advanced Financial Services was incorporated by Alton Poe on December 3, 2004. Poe Tr. p. 46-47; Govt. Ex. 916. The address for Online Payment Solutions was listed on the Articles of Incorporation for Advanced Financial Services. *Id.* Certificates of assumed names were executed so that the COD (cash on delivery) transactions could be deposited by Advanced Financial Services. Poe was paid a 5% commission for performing this service. *Id.* p.

48-50. The COD transactions arrived by Federal Express and were subsequently deposited into the Advanced Financial Services account at Wells Fargo Bank. *Id.* p. 51; Government Ex. 708 (account statements for Wells Fargo Bank Advanced Financial Services account number XXX-XXX4145).

In addition, proceeds from the sale of prescription drug orders placed through Xpress-rx.com flowed through an account maintained by Bruce Lieberman at Commerce Bank, and were then deposited into the Online Payment Solutions account at U.S. Bank. Vetter Tr. (Nov. 13, 2006) p.25-30; Govt. Ex. 706. Xpress-rx.com was owned by Christopher Smith. Vetter Tr. (Nov. 14, 2006) p. 87. Customers placed on-line orders through Xpress-Rx.com. Vetter Tr. (Nov. 13, 2006) p. 26. The orders would flow through to Online Payment Solutions. *Id.* The credit transactions were processed by DuTrac Community Credit, a merchant account. *Id.* Central Bancard used DuTrac Community Credit to process their credit card transactions. *Id.* p. 27. The proceeds from the credit card orders were transferred to the Rxorderfill account maintained by Bruce Lieberman at Commerce Bank. *Id.* p. 27; Poe Tr. p. 41-42. The funds were subsequently dispersed as directed by Chris Smith into accounts maintained by Online Payment Solutions at U.S. Bank and Crown Bank, or to purchase vehicles. Govt. Ex. 707; Poe Tr. p. 41-42. Proceeds from approximately \$12 million in sales were deposited into the Commerce Bank account. Vetter Tr. p. 28;

Government Ex. 710 (\$11,922.134 in drug proceeds were deposited to Commerce Bank between January 21 and May 12, 2005); Govt. Exs. 721, 724, 725 and 727 (Commerce Bank records for Rxorderfill.com and Revenue Doctors). Of this amount, approximately \$8 million was transferred to the Online Payment Solutions U.S. Bank account, and an additional approximately \$1.5 million was wired to Crown Bank. Vetter Tr. (Nov. 13, 2006) p. 28; Govt. Ex. 710. The deposits, transfers and withdrawals were summarized on Government Exhibit 710. Vetter Tr. (Nov. 13, 2006) p. 29. Government Exhibits 710 and 711 also reference \$922,167 in cash withdrawals made by Bruce Lieberman during the time frame from May 11-13, 2005. *Id.* p. 29-31; Govt. Exs. 721, 724, 725 and 727 (Commerce Bank records for Rxorderfill.com and Revenue Doctors). Agent Vetter has not been able to trace what happened to the cash that Lieberman withdrew. *Id.* p. 30.

Defendant Christopher Smith used the proceeds of pharmacy sales to acquire extensive assets, and to amass considerable amounts of cash. Government Exhibit 719 lists some of the assets purchased by wire transfer for Smith with a value of over \$10,000. Vetter Tr. (Nov. 14, 2006) p. 10; Govt. Ex. 719. Government Exhibit 720 lists some of the assets acquired by defendant Smith with proceeds from the Online Payment Solutions pharmacy scheme. Govt. Ex. 720; Vetter Tr. (Nov. 14, 2006) p. 17-18. Agent Vetter traced the purchase of the assets referenced on Government Exhibit

720 to the Online Payment Solutions prescription drug business. *Id.* p. 18-19. These purchases included numerous luxury vehicles and defendant Smith's residence in Prior Lake, Minnesota. *Id.* In addition, \$2,920,375 in cash was withdrawn from Wells Fargo Bank between January and May 2005. Government Exs. 713 and 720. Based on his investigation, Agent Vetter did not discover any source of income for defendant Smith besides the online pharmacy business in late 2004 through 2005. Vetter Tr. (Nov. 14, 2006) p. 20.

**B. Personal Money Judgment Forfeiture.**

A forfeiture order may take the form of a money judgment. *United States v. Huber*, 404 F.3d 1047, 1056 (8th Cir. 2005) ("Forfeiture under section 982(a)(1) in a money-laundering case allows the government to obtain a money judgment representing the value of all property 'involved in' the offense, including 'the money or other property being laundered.'"); *United States v. Vampire Nation*, 451 F.3d 189, 202 (3rd Cir. 2006) (expressly rejecting the argument that a forfeiture order must order the forfeiture of specific property; as an *in personam* order, it may take the form of a judgment for a sum of money equal to the proceeds the defendant obtained from the offense, even if he no longer has those proceeds); *United States v. Hall*, 434 F.3d 42, 59 (1st Cir. 2006) (the district court may order the defendant to forfeit a sum of money equal to the proceeds that he earned but did not retain, this reflects the nature of criminal forfeiture as "a

sanction against the individual defendant rather than a judgment against the property itself"); *United States v. Watkins*, 320 F.3d 1279 (11th Cir. 2003) (drug case; \$100,000 money judgment imposed by district court, cash found in defendant's residence forfeited as substitute asset); *United States v. Casey*, 444 F.3d 1071, 1074-76 (9th Cir. 2006).

As discussed above, evidence that was introduced at trial documents total deposits of \$24,240,747 in proceeds from defendant Smith's sale of illegal controlled substances into various bank accounts. See Government Ex. 701; Vetter Tr. (Nov. 13, 2006) p. 11. Based on this evidence, the United States seeks the entry of a personal money judgment forfeiture against defendant Smith in the amount of \$24,240,747. Defendant Smith should, however, be given a credit against this judgment for the net value of the specific property forfeited in this and other related forfeiture actions. This would include the net value of all property forfeited in *United States v. One 2004 Mercedes Maybach et al.*, Civil No. 05-1516 (MJD/AJB). The \$24,240,747 represents the gross proceeds of the Online Payment Solutions pharmacy operation. Vetter Tr. (Nov. 14, 2006) p. 30-31. However, proceeds for forfeiture purposes means gross receipts; defendant Smith is not entitled to a credit against this amount for the costs associated with his illegal activities. See *United States v. Hively*, 437 F.3d 752, 763 (8th Cir. 2006) (defining proceeds for purposes of a RICO forfeiture as

"gross receipts from the illegal activity"); *citing United States v. Simmons*, 154 F.3d 765, 769-70 (8th Cir. 1998); *United States v. Reiner*, 397 F.Supp.2d 101, 105 (D.Me. 2005).

**C. Forfeiture of \$569,025 in cash surrendered to the Internal Revenue Service and the Federal Bureau of Investigation between February 3, 2006 and April 10, 2006.**

Between January 26, 2005 and May 6, 2005, \$2,920,375 in cash was withdrawn from the Advanced Financial Svcs. Account at Wells Fargo Bank. Govt. Exs. 713, 720; Vetter Tr. (Nov. 14, 2006) p. 19-20. The cash was delivered by Brinks delivery trucks. *Id.* p. 19-20, 26. The summary of cash withdrawals on Government Exhibit 713 was derived from the Wells Fargo Bank statements. *Id.* p. 20. Alton Poe explained at trial that Advanced Financial Svcs. signed up for vault services at Wells Fargo Bank. This allowed Advanced Financial Svcs. to go online and buy cash from the central vault. Poe Tr. p. 52. Brinks armored car delivery service was hired to deliver the cash. *Id.* Cash was delivered to the Online Payment Solutions Office on a weekly basis, and the goal was to deliver \$125,000, which was the maximum allowable amount. *Id.* p. 52-53. Poe estimated that "a little under \$3 million in cash came in" on this basis. *Id.* Poe would deliver the cash to Smith:

It would come in initially to Suite 155 and I was back there. I would receive it. It comes in a large brick that is plastic. We had a safe in the back, but it doesn't fit. So essentially I would put it in my briefcase and take it to Mr. Smith normally and then he would take it from there.

Poe Tr. p. 53. Smith took some of the money home, and took some of the money to the home of his father Scott Smith, who had a safe. *Id.* p. 54.

Various individuals have informed law enforcement officers about large amounts of cash that were stored by or at the direction of Christopher Smith. Affidavit of Special Agent Chad Vetter ("Vetter Aff.") ¶6. Anita Smith participated in a proffer interview with law enforcement officers on February 1, 2006. Ms. Smith advised that she traveled to the U.S. Courthouse on or about May 20, 2005 with Christopher Smith. After a hearing before the Honorable Michael J. Davis, defendant Smith left the courthouse by himself in a cab. *Id.* He returned home later that evening with duffle bags of cash. Ms. Smith estimated that there was over \$1 million in the duffle bags. She assisted defendant Smith with wrapping the cash in "seran" wrap, and placing the wrapped bundles in cereal boxes. Ms. Smith stated that she later helped defendant Smith hide the cereal boxes full of cash in a boathouse at the home of Smith's mother (Candace Meili). *Id.*

Fritz Meili, defendant Smith's stepfather and the husband of Candace Meili, participated in proffer interviews on February 14 and March 24, 2006. Vetter Aff. ¶7. Meili stated that he was aware that Christopher Smith had hidden money in his boathouse basement in June 2005. Smith told Meili about the money after Smith returned from the Dominican Republic. Meili stated that the

funds were kept in cash bundles that were either shrink wrapped or wrapped in foil and placed in Apple Jacks or Cheerios cereal boxes. *Id.* Meili estimated that there were about ten to twelve cereal boxes. Later, on or about July 1, 2005, Meili moved the money out of the cereal boxes and placed the bundles of cash in two fabric backpacks. Meili placed the backpacks in a crawlspace deeper inside the boathouse. *Id.*

As outlined in the Affidavit Of Special Agent Chad Vetter, between February 3, 2006 and April 10, 2006, \$569,025 in cash was voluntarily surrendered to law enforcement agents. This cash constitutes proceeds of defendant's Controlled Substance Act violations, and is subject to forfeiture pursuant to 21 U.S.C. § 853(a).

**\$89,335.00, \$198,120.00 and \$1,850.00 in U.S. Currency**

During a proffer interview with Fritz Meili on February 14, 2006, Meili advised that sometime between January 3 and January 6, 2006, he received a call from John Nelson. Vetter Aff. ¶8. Meili and Nelson subsequently met at Sweeney's Bar in St. Paul. Nelson gave Meili a white envelope. The envelope contained a note from Chris Smith which stated something like "Fritz please give John Nelson \$200,000. There's a backpack in the basement boathouse. He has not been paid for legal fees." *Id.*

Approximately one week later, Meili and Nelson met again at Sweeney's. Vetter Aff. ¶9. Prior to the meeting, Meili packed a

shoe box with twenty bundles of money. Meili gave the box of money to Nelson during the meeting at Sweeney's. On or about January 25, 2006, Meili met with Nelson again. Nelson indicated that there were new violations that he was alleged to be involved with. Nelson gave the shoebox of money back to Meili. Meili stored the cash in his boathouse with the rest of the money received from defendant Smith. *Id.*

On February 1, 2006, Fritz Meili and Candace Meili met with Attorney Joseph Friedberg. Vetter Aff. ¶10. Meili indicated that he had received approximately \$200,000 back from John Nelson. Later that day, Meili placed the approximately \$200,000 in a styrofoam container and gave the money to an investigator for Attorney Friedberg. A day later, Meili delivered a backpack containing nine bundles of cash to Attorney Friedberg. *Id.*

On February 3, 2006, law enforcement officers were directed to meet attorney Joseph Friedberg at the Office of the United States Attorney at the Federal Courthouse in Minneapolis. Vetter Aff. ¶11. Friedberg turned over a two-wheeled cart containing a small white cooler and a brown paper bag to law enforcement officers. Friedberg stated that the bag contained cash from Chris Smith, and the cooler contained cash from attorney John Nelson. Friedberg stated that the portion of the money provided by Smith came from the residence of Smith's mother and stepfather. *Id.*

On February 6, 2006, Special Agent Vetter transported the cash

referenced above to the Office of the Internal Revenue Service, Criminal Investigation Division. Vetter Aff. ¶12. The cash was photographed. Agent Vetter noted that a large portion of the hundred dollar bills contained consecutive serial numbers. The consecutive serial numbers would be consistent with the cash having been withdrawn in bulk from a bank such as Wells Fargo Bank. The cash was transported to Wells Fargo Bank, where it was counted. One cashier's check was issued for \$89,335, which represented the cash provided by Smith. A second cashier's check was issued for \$198,120, which represented the cash provided by Nelson. The funds received from Attorney Friedberg on February 3, 2006, also included an additional \$1,850.00 in U.S. currency that was initially miscounted by the bank, and therefore not included in the sums of \$89,225 and \$198,120 referenced above. *Id.*

**\$139,720.00 in U.S. currency**

On March 24, 2006, Special Agent Vetter went to the United States Attorney's Office on the 6th floor of the U.S. Courthouse in Minneapolis, Minnesota. Vetter Aff. ¶13. Vetter, along with several other agents, met with Fritz Meili, and his attorney, Richard Lind. Richard Lind handed IRS Special Agents Ken Fry and Chad Vetter a box which was taped shut. Mr. Lind reported that the box contained cash that Fritz Meili was holding for Chris Smith. *Id.* The cash was transported to the offices of the Internal Revenue Service, where it was photographed and counted. *Id.* ¶14.

The cash was subsequently taken to Wells Fargo Bank, which counted the money, and then issued a cashier's check in the amount of \$139,720. *Id.*

**\$50,000.00 in U.S. currency**

On March 31, 2006, Special Agent Vetter met with Scott Smith and his attorney, Deborah Ellis, at the United States Attorney's office for a proffer interview. Vetter Aff. ¶15. During the proffer session, Scott Smith voluntarily turned over a plastic bag containing a large amount of U.S. currency. Scott Smith, who is the defendant's father, indicated that in late December 2005 or January 2006, attorney John Nelson requested that they meet. During a meeting at a Target store, Nelson handed him \$50,000 wrapped in plastic. Nelson told Smith that he would be receiving instructions about what to do with the money. Nelson told Smith to be careful because the bills were sequential. Smith stated that he suspected that the money came from Fritz and Candace Meili. *Id.* The cash was later inspected and counted. *Id.* ¶16. Vetter noted that the serial numbers of the one hundred dollar bills were in consecutive order. The cash was taken to Wells Fargo Bank, which issued a cashier's check in the amount of \$50,000. *Id.*

In sum, evidence was introduced at trial that between January and May 2005, \$2,920,375 was withdrawn from the Advanced Financial Svcs. Account at Wells Fargo Bank and delivered by Brinks Trucks to businesses associated with defendant Smith in Burnsville,

Minnesota. As outlined above, numerous witnesses have provided information that they assisted defendant Smith in concealing and storing large amounts of cash. A preponderance of the evidence exists that the \$569,025 constitutes direct proceeds of defendant Smith's violations of the Controlled Substances Act, and that the cash is therefore subject to forfeiture pursuant to 21 U.S.C. § 853(a).

**D. Forfeiture of the real property located in Prior Lake, Minnesota, and legally described as Lot 11, Block 3, Cedarwood Estates.**

On or about December 28, 2004, Christopher Smith purchased a residence located at 9260 Elm Court, Prior Lake, Minnesota, legally described as Lot 11, Block 3, Cedarwood Estates, Scott County, Minnesota ("the real property"). Vetter Aff. ¶17. The record owners of the real property are Christopher Smith and Anita Smith, husband and wife, by virtue of a Warranty Deed dated December 28, 2004, and filed of record with the Scott County Recorder on March 23, 2005. *Id.*

The real property was purchased with proceeds of the online / telemarketing pharmacy scheme. The real property was purchased with U.S. Bank cashier's check Number 506836451 dated December 28, 2004, from Online Payment Solutions, Inc., payable to Christopher Smith in the amount of \$1,115,367.46. This check was drawn on the Online Payment Solutions account at U.S. Bank. A copy of the cashier's check and the counter withdrawal slip are attached to the

Affidavit of Chad Vetter as Exhibit A; see also Vetter Tr. (Nov. 14, 2006) p. 6-7; Govt. Exs. 720, 734.

**E. Forfeiture of any and all remaining funds in accounts held by the court appointed Receiver in connection with *United States v. Christopher William Smith et al.*, Civil No. 05-895 (MJD/SRN).**

Special Agent Vetter has reviewed the account statements for U.S. Bank account number X-XXX-XXXX-2520, which is maintained by Andrew Luger, as court appointed receiver in connection with *United States v. Christopher William Smith et al.*, Civil No. 05-895 (MJD/SRN). Vetter Aff. ¶19. This account was opened on June 2, 2005. This account had a balance of \$890,977.87 as of June 30, 2007. A summary of the deposits to this account between June 2, 2005 and June 30, 2007, is attached to the Affidavit of Special Agent Chad Vetter as Exhibit B. Based on Agent Vetter's review of the account records, and as discussed in the summary attached as Exhibit B to Special Agent Vetter's Affidavit, the funds held by the Receivership account were derived from proceeds of the online / telemarketing pharmacy operation conducted by Christopher Smith and others.

**F. Forfeiture of \$922,167 in Drug Proceeds Withdrawn As Cash By Bruce Lieberman between May 11 and May 13, 2005.**

The evidence introduced at trial indicates that between May 11 and May 13, 2005, Bruce Lieberman withdrew \$922,167 in cash from several different bank accounts. See Government Exs. 710 and 711; Vetter Tr. (Nov. 13, 2006) p. 29-31; Govt. Exs. 721, 724, 725 and

727 (Commerce Bank records for Rxorderfill.com and Revenue Doctors). Agent Vetter has not been able to trace what happened to the cash that was withdrawn by Lieberman. *Id.* p. 30. However, the funds withdrawn as cash constitute direct proceeds of defendant Smith's violations of the Controlled Substances Act and, as such, are subject to forfeiture pursuant to 21 U.S.C. § 853(a). As addressed further below, the United States is seeking court authorization pursuant to 21 U.S.C. § 853(m) to determine the present location of the cash withdrawn by Bruce Lieberman. Moreover, this motion is only seeking the forfeiture of defendant Smith's interest in this cash. To the extent that Bruce Lieberman or other third parties may have a claim to any or all of the withdrawn cash, such claims should properly be resolved in the ancillary proceeding pursuant to 21 U.S.C. § 853(n) and Fed. R. Crim. P. 32.2(c).

**G. Forfeiture of \$13,757.96 in net proceeds from the sale of a 2005 Mercedes Benz C55AMG.**

A 2005 Mercedes Benz C55AAMG was purchased by Christopher Smith from Sears Imported Autos, Inc., Minnetonka, Minnesota, on or about October 11, 2004, for \$56,635.00 plus sales taxes and other fees. Vetter Aff. ¶22. The vehicle was paid for with undated checks of \$1,000 and \$31,000 from Online Payment Solutions, Inc.'s U.S. Bank account number X-XXX-XXXX-6955, plus financing in the amount of \$29,084.03. A seizure warrant was previously obtained for this vehicle in May 2005. However, the United States was

unable to locate the vehicle for seizure at that time. Mercedes Benz credit was successful in obtaining the return of the vehicle to the United States from Canada. Mercedes Benz sold the vehicle to pay off the loan, and remitted the excess amount of \$13,757.96 that was realized from the sale to the United States. *Id.*

**H. Forfeiture of a Rolex watch purchased on or about December 22, 2004 from Osterman Jewelers.**

A Rolex certificate of purchase revealed that a Rolex watch, serial number F159286, style R7917441RB7824, was purchased on or about December 22, 2004 at Osterman Jewelers in the name of Anita Smith. *Vetter Aff.* ¶19 and Ex. C. Online Payment Solutions account statements reveal that on December 22, 2004, a purchase was made in the amount of \$5,553.98 from Osterman Jewelers, Bloomington, Minnesota. The Visa purchase was posted to the Online Payment Solutions Inc. account at U.S. Bank on December 24, 2004. *Id.* and Ex. C.

**I. Forfeiture of Deposit Held by Braemer Mailings.**

On May 5, 2005, check number 7200 in the amount of \$16,000, was negotiated in the Online Payment Solutions account number X-XXX-XXXX-6955. *Vetter Aff.* ¶21 and Ex. E. This check was a deposit for future mailings to be undertaken by Braemer Mailings on behalf of Online Payment Solutions. Upon information and belief, these funds are still being held by Braemer Mailings.

**J. Funds Held by Bardo, France**

The property alleged to be subject to forfeiture includes funds estimated at approximately \$400,000 held in reserve with Bardo, France. Vetter Aff. ¶23. The money held by Bardo France represents the proceeds of the illegal online pharmacy generated during 2004, when Christopher Smith retained Bardo France for merchant account processing services. *Id.* Bardo France processed credit card transactions placed by customers of Smith's online pharmacy. The funds that are currently being held in reserve with Bardo represent proceeds from the sale of illegal controlled substances that Bardo held onto for purposes of repaying customers and/or credit card companies for charge-backs. Because those charge-backs did not materialize, the funds should have been returned to Smith. However, before Bardo France could return the money, Smith's entities were shut down by court order in May 2005. Efforts by the court-appointed receiver to contact Bardo France for a voluntary return of the money have been unsuccessful. *Id.*

**II. Forfeiture of Assets Involved In, Or Traceable To, Money Laundering Violations.**

Properties involved in money laundering transactions are subject to forfeiture to the United States. Title 18, United States Code, Section 982(a)(1) provides that "[t]he court, in imposing sentence on a person convicted of an offense in violation of section 1956, section 1957 or section 1960 of this title, shall order that the person forfeit to the United States any property,

real or personal, involved in such offense, or any property traceable to such property.”

Property ‘involved in’ an offense ‘include[s] 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. Hawkey*, 148 F.3d 920, 928 (8th Cir. 1998), *citing* *United States v. Bornfield*, 145 F.3d 1123, 1135 (10th Cir. 1998); *United States v. Huber*, 404 F.3d 1047 (8th Cir. 2005).

A personal money judgment forfeiture should also be entered against defendant Smith in the amount of \$24,240,747 based on his conviction of the money laundering conspiracy in Count 8 of the Third Superseding Indictment. *United States v. Huber*, 404 F.3d 1047, 1056 (8th Cir. 2005) (“Forfeiture . . . in a money-laundering case allows the government to obtain a money judgment representing the value of all property ‘involved in’ the offense, including the ‘the money or other property being laundered.’”). As outlined in Government Exhibit 701 which was introduced into evidence at trial, and as discussed during the trial testimony of Special Agent Chad Vetter, the total amount of \$24,240,747 was involved in the money laundering conspiracy under Count 8 of the Third Superseding Indictment. All of the specific property that the United States is seeking to forfeit is directly related to the money laundering conspiracy. The \$569,025 in cash turned in to law enforcement agents during the early months of 2006 is traceable to the cash withdrawn from Wells Fargo Bank. Other assets, including defendant

Smith's Prior Lake residence, the \$922,167 in drug proceeds withdrawn as cash by Bruce Lieberman between May 11 and May 13, 2005, the remaining funds in the Bardo France account, the Rolex watch, the Braemer Mailings deposit, and the \$13,757.96 in net proceeds from the sale of a 2005 Mercedes Benz C55AMG, were all involved in, or traceable to, the money laundering conspiracy under Count 8 of the Third Superseding Indictment, because they constitute, or were paid for with, funds from the various bank accounts involved in the money laundering conspiracy. See Government Ex. 701. Similarly the funds currently held in U.S. Bank account number X-XXX-XXXX-2520, which is maintained by Andrew Luger, as court appointed receiver in connection with *United States v. Christopher William Smith et al.*, Civil No. 05-895 (MJD/SRN), are directly traceable to the accounts involved in the money laundering conspiracy. In sum, in addition to being subject to forfeiture under 21 U.S.C. § 853(a), the assets at issue are subject to forfeiture to the United States under 18 U.S.C. § 982(a)(1) because they were involved in, or traceable to, the money laundering conspiracy under Count 8 of the Third Superseding Indictment.

**III. Motion For An Order Allowing Discovery To Identify Additional Assets Subject To Forfeiture.**

The United States also seeks the entry of an order pursuant to Rule 32.2(b)(3), Federal Rules of Criminal Procedure, authorizing the government to conduct discovery for the purpose of identifying

and locating assets forfeited to the United States, property traceable to such assets, or assets of the defendant that may be substituted up to the value of the forfeited assets. Rule 32.2(b)(3), Federal Rules of Criminal Procedure, authorizes the Government, upon the entry of a preliminary order of forfeiture, to "conduct any discovery the court considers proper in identifying, locating, or disposing of the property" that has been forfeited to the United States. Such discovery may include the taking of depositions of witnesses. See 21 U.S.C. § 853(m); *United States v. Saccoccia*, 898 F. Supp. 53 (D.R.I. 1995) (Government can take depositions for the purpose of locating assets controlled by the defendant that are subject to forfeiture). In addition, the reference in Rule 32.2(b)(3) to "any discovery the court considers proper" necessarily permits the court to authorize discovery under the Federal Rules of Civil Procedure. Such discovery includes, but is not limited to, the authority to issue a request for documents to a party under Rule 34 and to a non-party under Rules 34(c) and 45.

The United States has already located numerous items of property for forfeiture in this action. However, certain property has not yet been located. For example, the government does not presently have knowledge as to the disposition of the \$922,167 that was withdrawn by Bruce Lieberman from several bank accounts from May 11 through May 13, 2005. See 21 U.S.C. § 853(m) (authorizing

discovery for the purpose of identifying and locating property declared forfeited). Moreover, discovery may also be needed to locate additional items of property to satisfy a portion of the personal money judgment forfeiture that is being sought in this motion. Therefore, the government seeks an order authorizing discovery to locate assets subject to forfeiture, and to locate additional assets to be used to satisfy the personal money judgment being requested against defendant Smith. The court is also requested to retain jurisdiction over this action pursuant to Rule 32.2(e) to forfeit any subsequently discovered directly forfeitable or substitute property, and to dispose of any third-party claims to such assets.

WHEREFORE, the United States moves this Court for a Preliminary Order of Forfeiture: 1) entering a personal money judgment forfeiture against defendant Smith in the amount of \$24,240,747; 2) forfeiting the specific assets enumerated above to the United States; and 3) authorizing the government to conduct discovery as needed to locate assets subject to forfeiture, and to

locate additional assets to be used to satisfy the personal money judgment being requested against defendant Smith.

Respectfully submitted,

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