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 UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,	)	No. CR 08-59(B)- GW
)	
12 Plaintiff,	)	PLAINTIFF'S NOTICE OF MOTION
	)	AND MOTION FOR AN ORDER
13 v.	)	AMENDING FORFEITURE ORDER TO
	)	INCLUDE SUBSTITUTE ASSETS OR,
14 GERALD GREEN and	)	ALTERNATIVELY, TO APPLY
15 PATRICIA GREEN,	)	SUBSTITUTE ASSETS TO MONEY
	)	JUDGMENTS OF FORFEITURE
16 Defendants.	)	PURSUANT TO FED. R. CRIM. P.
	)	32.2(e); MEMORANDUM OF POINTS
	)	AND AUTHORITIES; DECLARATION,
	)	AND EXHIBITS IN SUPPORT
)	
	)	DATE: January 24, 2011
	)	TIME: 8:30 a.m.
	)	CTRM: 10 (Spring St.)
20)	

21 TO DEFENDANTS GERALD GREEN AND PATRICIA GREEN:

22 PLEASE TAKE NOTICE THAT on January 24, 2011 at 8:30 a.m., in
 23 courtroom 10 of the United States District Court, 312 No. Sprig
 24 Street, Los Angeles, California, before the Honorable George Wu,
 25 United States District Judge, the United States of America will
 26 and hereby does move pursuant to Fed. R. Crim. P. 32.2(e) for
 27 entry of an order amending the order of forfeiture entered August

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Defendants Gerald Green and Patricia Green were convicted of
4 Counts One through Seventeen of the Second Superseding Indictment
5 ("SSI"), and Patricia Green was convicted on Counts Twenty and
6 Twenty-One as well.¹ In addition to the twenty-one substantive
7 counts, the SSI included a forfeiture count pursuant to 18 U.S.C.
8 § 981(a)(1)(C), 28 U.S.C. § 2461(c) and 21 U.S.C. § 853 by which
9 the government sought all right, title and interest in any and
10 all property constituting or derived from proceeds traceable to
11 the violations alleged in Counts One through Ten of the SSI, and
12 a money judgment against defendants for the amount of said
13 proceeds in the event the direct proceeds were unavailable.

14 Based on the convictions, the district court (the Hon.
15 George Wu) entered a General Order of Forfeiture against
16 defendants on August 13, 2010, providing for the forfeiture of

17 (1) any and all property constituting or derived from,
18 proceeds obtained directly or indirectly from
19 defendants' violations of 18 U.S.C. §§ 371 and 15
20 U.S.C. § 78dd-2(a)(1), pursuant to 18 U.S.C. § 981(a)
21 (1)(C) and 28 U.S.C. [§] 2461(c);

22 (2) substitute property, if by any act or omission of
23 defendant the property described above, or any portion
24 thereof, cannot be located upon the exercise of due
25 diligence; has been transferred, sold or deposited with
26 a third party; has been placed beyond the jurisdiction
27 of the court; has been substantially diminished in

24 ¹ The Counts charged conspiracy to violate and particular
25 violations of the Foreign Corrupt Practices Act (Counts One
26 through Ten), money laundering (Counts Eleven through Seventeen),
27 and tax violations (Counts Twenty and Twenty-One). A true and
correct copy of the SSI is attached as exhibit 1 to the
Declaration of Steven R. Welk ("Welk Decl."). Copies of Gerald
Green's amended judgment and commitment order and Patricia
Green's judgment and commitment order are attached to the Welk
Decl. As exhibits 2 and 3, respectively.

1 value; or has been commingled with other property that
2 cannot be divided without difficulty.

3 Forfeiture Order at 2 (a copy of the Forfeiture Order is attached
4 to the Welk Declaration as exhibit 4).

5 In addition, the district court ordered "a personal money
6 judgment of criminal forfeiture . . . entered against each
7 defendant in the amount of \$1,049,465 plus the amount of each
8 defendants' share of the Artist Design Corp. Defined Benefit Plan
9 . . . , representing the amount of money defendants obtained as
10 proceeds of the offenses." Id. A money judgment of forfeiture
11 is a personal judgment that requires the defendants to pay the
12 total amount derived from the criminal activity. See *United*
13 *States v. Ginsburg*, 773 F.2d 798, 801-02 (7th Cir. 1985) (en
14 banc); *United States v. Casey*, 444 F.3d 1071, 1074-76 (9th Cir.
15 2006)).² To date, the Forfeiture Order has not been satisfied.

17
18 ² See, e.g., *Ginsburg* at 801-802 (money judgment requires
19 the defendant to pay the total amount derived from the criminal
20 activity, "regardless of whether the specific dollars received
21 from that activity are still in his possession"); *United States*
22 *v. Baker*, 227 F.3d 955 (7th Cir. 2000) (forfeiture order may
23 include a money judgment for the amount of money involved in the
24 money laundering offense, which acts as a lien against the
25 defendant personally); *United States v. Conner*, 752 F.2d 566, 576
26 (11th Cir. 1985) (because criminal forfeiture is *in personam*, it
27 follows defendant; the money judgment is in the amount that came
into his hands illegally; government not required to trace the
money to any specific asset); *United States v. Amend*, 791 F.2d
1120, 1127 (4th Cir. 1986) (same); *United States v. Robilotto*,
828 F.2d 940, 949 (2^d Cir. 1987) (following *Conner* and *Ginsburg*,
court may enter money judgment for the amount of the illegal
proceeds regardless of whether defendant retained the proceeds);
United States v. Voigt, 89 F.3d 1050, 1084, 1088 (3^d Cir. 1996)
(government entitled to personal money judgment equal to the
amount of money involved in the underlying offense); and *United*
States v. Corrado, 227 F.3d 543 (6th Cir. 2000) (*Corrado I*)
(ordering entry of money judgment for the amount derived from a
RICO offense).

1 The government seeks an amendment to the Forfeiture Order
2 allowing it to take custody of real property owned by defendant
3 Patricia Green -- specifically, the real property located at 9019
4 Lloyd Place, West Hollywood, California 90069 (the "Residence")³
5 -- and liquidate the property so that it can forfeit the net
6 proceeds to satisfy the outstanding money judgments, paying any
7 excess to defendants. The Residence is subject to treatment as
8 substitute property because the proceeds of the defendants'
9 offenses are otherwise unrecoverable as a result of acts or
10 omissions of defendants. 21 U.S.C. § 853(p)(1)(B). The
11 Residence is titled in the name of Patricia Green, a married
12 woman, as her sole and separate property.

13 **II. ARGUMENT**

14 **A. The Forfeiture Order in this Case May be Amended**

15 If property directly subject to forfeiture cannot be
16 located, has been transferred, sold or otherwise disposed of by
17 defendants, is beyond the jurisdiction of the court, or has been
18 commingled with other property as a result of any act or omission
19 of the defendant, "the court shall order the forfeiture of any
20 other property of the defendant, up to the value of any property"
21 directly subject to forfeiture. 21 U.S.C. § 853(p)(1)(B) and
22 (p)(2) (applicable here pursuant to 18 U.S.C. § 982(b)(1)).

23 Rule 32.2(e) of the Federal Rules of Criminal Procedure
24 describes the procedure for amending a prior order of forfeiture
25

26 ³ The legal description of the property is: Lot: 93; Tract:
27 6471; in the City of West Hollywood, California, as per map
recorded in Book 69 Page 38 in the office of the County Recorder
of Los Angeles County, California. The Parcel Number is: 4340-
017-026

1 to add additional directly forfeitable property and/or substitute
2 assets:

3 (e) Subsequently Located Property; Substitute Property.

4 (1) In General. On the government's motion, the court
5 may at any time enter an order of forfeiture or amend
6 an existing order of forfeiture to include property
7 that:

8 [¶](B) is substitute property that qualifies for
9 forfeiture under an applicable statute.

10 (2) Procedure. If the government shows that the
11 property is subject to forfeiture under Rule
12 32.2(e)(1), the court must:

13 (A) enter an order forfeiting that property, or
14 amend an existing preliminary or final order to
15 include it.

16 **B. The Residence Should Be Deemed Forfeitable Substitute
17 Property**

18 To obtain an order forfeiting substitute assets, the
19 Government must satisfy the court that the conditions set forth
20 in Section 853(p) have been met. *United States v.*
21 *Candelaria-Silva*, 166 F.3d 19, 42-43 (1st Cir. 1999). The
22 forfeiture of substitute assets is solely a matter for the court,
23 not a jury. Rule 32.2(e)(3); *Candelaria-Silva*, 166 F.3d at 43
24 (forfeiture of substitute assets is solely a matter for the
25 court; the amount of the money judgment puts an upper limit on
26 the amount that may be forfeited as a substitute asset).

27 The court may also order the forfeiture of substitute assets
to satisfy a money judgment where the money judgment represents
the value of the proceeds of the offense that cannot be forfeited
directly for one of the reasons set forth in Section 853(p).
Candelaria-Silva, 166 F.3d at 42-43 (once the government has
obtained a money judgment, it may forfeit defendant's real

1 property in partial satisfaction of that judgment); *United States*
2 *v. Baker*, 227 F.3d 955, 970 (7th Cir. 2000) (same).

3 Here, the Forfeiture Order includes both a general
4 forfeiture order and money judgments against defendants. The
5 Residence is titled in the name of Patricia Green, a married
6 woman, as her sole and separate property. The government has
7 been unable to locate the direct proceeds of the underlying
8 substantive offenses because defendants have either disposed of
9 said proceeds or otherwise made them unavailable for seizure.
10 The Residence, being the property of defendant, is therefore
11 subject to liquidation to satisfy the Forfeiture Order. See
12 *Candelaria-Silva*.

13 **III. THE MECHANICS OF THE PROPOSED AMENDED FORFEITURE ORDER**

14 The proposed order submitted by the government provides that
15 the government has the right to take custody of and sell the
16 Residence, and apply the net proceeds of sale to the outstanding
17 money judgments of forfeiture in the Forfeiture Order. To the
18 extent that any proceeds remain, those monies will be paid to
19 defendants.

20 **A. Seizure**

21 The Order provides for the seizure and sale of the
22 Residence.

23 **B. Determining Third Party Rights, if Any**

24 If the court enters the proposed order, third parties
25 claiming an interest in the Residence will be given an
26 opportunity to contest the forfeiture by asserting an ownership
27 interest superior to that of the defendants in an ancillary

1 proceeding pursuant to 21 U.S.C. § 853(n). Rule 32.2(e)(2).
2 Section II(C) of the current Forfeiture Order sets out the
3 procedures for notifying and determining the interests of third
4 parties in specific property to be forfeited in this matter, and
5 the proposed Amended Order repeats those provisions. If a third
6 party files a claim, the filing will trigger an ancillary
7 proceeding to determine whether the third party has a superior
8 legal interest in the Residence. 21 U.S.C. § 853(n) (2)-(7);
9 Fed. R. Crim. P. 32.2(c). Following notification to third
10 parties and completion of any necessary ancillary proceedings,
11 the government will submit, as appropriate, an amended final
12 order of forfeiture pursuant to Fed. R. Crim. P. 32.2(c).

13 **IV. CONCLUSION**

14 Based upon all of the foregoing, the government respectfully
15 requests that the Court amend the Forfeiture Order to allow the
16 government to take custody of and liquidate the Residence in
17 order to satisfy the Forfeiture Order.

18 Respectfully submitted,

19 DATED: November 19, 2010

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21 United States Attorney
22 ROBERT E. DUGDALE
23 Assistant United States Attorney
24 Chief, Criminal Division

25 /s/ Steven R. Welk
26 STEVEN R. WELK
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