

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :
 :
 v. : **Criminal No. 21-367-3**
 :
MICHAEL BARONE :

ORDER OF FORFEITURE

AND NOW, this ____ day of _____, 2023, upon consideration of the Government's Motion for Order of Forfeiture, the Court concludes that it should grant the motion, and, therefore, it is hereby ORDERED as follows:

1. The Government's Motion for Order of Forfeiture is GRANTED.
2. As result of his guilty plea, Michael Barone is required, and has agreed, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), to forfeit his right, title and interest, in the proceeds that the defendant obtained as part of his participation in a conspiracy to steal copyrighted cable television shows and movies from legitimate video content providers and then record and sell access to this programming via the internet-based video delivery service, as charged in Counts 1 superseding indictment.
3. All property that constitutes or is derived from proceeds traceable to the commission of such offense is forfeited to the United States.
4. Based upon the defendant's guilty plea, and the facts set forth at the plea hearing and in the record as a whole, the sum of \$122,402.50 represents the value of property that constitutes or is derived from proceeds traceable to the commission of such offense which the defendant obtained.

5. Based upon the guilty verdict, and the facts set forth in the change of plea memo and in the record as a whole, the defendant dissipated or otherwise spent the proceeds that he obtained, and the government cannot locate the proceeds upon the exercise of due diligence, and one or more of the conditions in 21 U.S.C. § 853(p) have been met. Accordingly, pursuant to 21 U.S.C. § 853(p) and Federal Rule of Criminal Procedure 32.2(e)(1)(B), the government is authorized to seek forfeiture of substitute assets of the defendant up to the amount of \$122,402.50. The government may move at any time, pursuant to Federal Rule of Criminal Procedure 32.2(e)(1)(B), to amend this Order to forfeit specific property belonging to the defendant having a value up to the amount of the uncollected money judgment, as substitute assets.

6. Upon entry of this Order, the Attorney General or a designee, is authorized to seize any specific property subject to forfeiture that is identified in this Order, pursuant to Federal Rule of Criminal Procedure 32.2(b)(3).

7. Upon entry of this Order, the Attorney General or a designee, pursuant to Federal Rule of Criminal Procedure 32.2(b)(3) and 21 U.S.C. § 853(m), is authorized to conduct any discovery to identify, locate, and dispose of property subject to this Order and to address any third-party claims, including depositions, interrogatories, requests for production of documents, and subpoenas pursuant to Federal Rule of Civil Procedure 45.

8. Pursuant to Federal Rule of Criminal Procedure 32.2(b)(4), this Order shall become final as to the defendant at the time of sentencing and shall be made part of the defendant's sentence and included in the Judgment and Commitment Order.

9. The Court shall retain jurisdiction to enforce this forfeiture Order, and to amend it as necessary, pursuant to Federal Rule of Criminal Procedure 32.2(e).

10. The Clerk of Court shall provide a certified copy of this Order to counsel for the government and the Federal Bureau of Investigations.

HONORABLE HARVEY BARTLE, III
United States District Judge

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GOVERNMENT’S MOTION FOR ORDER OF FORFEITURE

The United States of America, by its attorneys, Jacqueline C. Romero, United States Attorney for the Eastern District of Pennsylvania, Matthew T. Newcomer, Assistant United States Attorney, and David Weisberg, Special Assistant United States Attorney, respectfully requests this Court to enter an Order of Forfeiture. In support of this motion, the government avers as follows:

1. On March 24, 2022, the grand jury for this district returned a superseding indictment charging the defendant, Michael Barone, with conspiracy, in violation of 18 U.S.C. § 371 (Count 1); circumvention of an access control device, in violation of 17 U.S.C. §§ 1201(a)(1)(A), 1204(a)(1) (Count 2); access device fraud, in violation of 18 U.S.C. § 1029(a)(2), (c)(1)(a)(i) (Counts 3 and 4); and wire fraud, in violation of 18 U.S.C. § 1343 (Counts 5 through 9). The superseding indictment also contained Notices of Forfeiture, which alleged that Barone’s interest in certain property was subject to forfeiture to the United States pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(2)(B), 1029(c)(1)(C), and 28 U.S.C. § 2461(c), all arising from the defendant’s participation in a conspiracy to steal copyrighted cable television shows and movies from legitimate video content providers and then record and sell access to this programming via the defendants’ internet-based video delivery service.

2. On August 16, 2022, the defendant, Michael Barone entered into a guilty plea, and pled guilty to Count 1 of the superseding indictment.

3. As a result of his guilty plea, Barone is required, and has agreed, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), to forfeit criminally any property, real or personal, which constitutes or is derived from the proceeds as charged in Count 1 of the superseding indictment.

4. Based on the guilty plea agreement, the facts incorporated as part of the change of plea memo, and the record as a whole, the government established that the defendant obtained \$122,402.50 in proceeds traceable to the defendant's participation in a conspiracy to steal copyrighted cable television shows and movies from legitimate video content providers and then record and sell access to this programming via the defendants' internet-based video delivery service.

5. Therefore, based on the guilty plea, the facts established in the change of plea memo, and the record as a whole, the government avers that the sum of 122,402.50 is subject to forfeiture as a result of the defendant's guilty plea as to Count One of 1 of the superseding indictment. This amount and property represent the proceeds that Barone obtained as a result of his participation in a conspiracy to steal copyrighted cable television shows and movies from legitimate video content providers and then record and sell access to this programming via the defendants' internet-based video delivery service. to which he pled guilty and are subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c). *See Honeycutt v. United States*, 137 S. Ct. 1626 (2017) (defendant must forfeit the property that he himself acquired from the offense giving rise to the forfeiture); *United States v. Gjeli*, 867 F.3d 418, 426-27 (3d Cir. 2017) (applying *Honeycutt* to forfeitures of proceeds under 18 U.S.C. § 1963 and 18

U.S.C. § 981(a)(1)(C)); *United States v. Brown*, 694 Fed. App'x 57, 2017 WL 3404979 (3d Cir. Aug. 9, 2017) (applying *Honeycutt* to forfeitures of proceeds under 18 U.S.C. § 982(a)(2)); *United States v. Vampire Nation*, 451 F.3d 189, 202 (3d Cir. 2006) (*in personam* forfeiture money judgment may be entered against the defendant for the full amount of the criminal proceeds); Fed.R.Crim.P. 32.2(b)(1) (where the government seeks an order of forfeiture for criminal proceeds, the court must determine the amount of money that the defendant will be ordered to pay).

6. Based upon the guilty verdict, and the facts set forth at sentencing and in the record as a whole, the defendant has dissipated or otherwise spent some of the proceeds that he obtained, and the government cannot locate the proceeds upon the exercise of due diligence, and one or more of the conditions in 21 U.S.C. § 853(p) have been met. Accordingly, pursuant to 21 U.S.C. 853(p) and Federal Rule of Criminal Procedure 32.2(e)(1)(B), the government is authorized to seek forfeiture of substitute assets of the defendant up to the amount of \$122,402.50. 21 U.S.C. § 853(p); Fed. R. Crim. P. 32.2(b)(2).¹

¹ 21 U.S.C. § 853(p) provides that the government is entitled to the forfeiture of substitute property if, as a result of any act of the defendant, forfeitable property cannot be found upon the exercise of due diligence or has been transferred or deposited with a third party. Fed. R. Crim. P. 32.2(e)(1)(B) provides that the court may, at any time, amend an existing order of forfeiture to include substitute property. The government may forfeit substitute assets to satisfy a forfeiture money judgment. *See, e.g., United States v. Hall*, 434 F.3d 42, 58 n.7 (1st Cir. 2006) (substitute assets may be forfeited to satisfy a forfeiture order for a sum of money that the defendant, by his act or omission, has prevented the government from tracing); *United States v. Moses*, 2010 WL 3521725, at *9 (D. Vt. Sept. 7, 2010) (any property not forfeited as proceeds or facilitating property may be forfeited as substitute assets to satisfy the money judgment); *United States v. George*, 2010 WL 1740814, at *3 (E.D. Va. Apr. 26, 2010) (defendant ordered to forfeit annuity payments she was entitled to receive for the next ten years as substitute asset in partial satisfaction of money judgment); *United States v. Carroll*, 346 F.3d 744, 749 (7th Cir. 2003) (defendant may be ordered to forfeit “every last penny” he owns as substitute assets to satisfy money judgment).

7. The government requests authority to conduct discovery, in accordance with Federal Rule of Criminal Procedure 32.2(b)(3) and 21 U.S.C. § 853(m), to identify, locate, and dispose of property subject to forfeiture and to address any third-party claims.

8. The government also requests, and the defendant consents per the terms of his Guilty Plea Agreement, pursuant to Federal Rule of Criminal Procedure 32.2(b)(7), and in accordance with Supplemental Rule G(7) of the Federal Rules of Civil Procedure, that it be allowed to have an interlocutory sale of the property subject to forfeiture. The interlocutory sale of the property will not have a bearing on the ultimate question of forfeitability, but only allows for the preservation of value of the property subject to forfeiture.

WHEREFORE, for the reasons explained above, the government requests that this Court grant the motion and enter the attached Order of Forfeiture.

Respectfully submitted,

JACQUELINE C. ROMERO
United States Attorney

SARAH L. GRIEB
Assistant United States Attorney
Chief, Asset Recovery and
Financial Litigation Section

MATTHEW T. NEWCOMER
Assistant United States Attorney

/s/ David Weisberg

DAVID WEISBERG
Special Assistant United States Attorney

Date: January 11, 2023

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the GOVERNMENT'S
MOTION FOR ORDER OF FORFEITURE was filed electronically through the District Court
Electronic Case System and served upon:

Kathryn Roberts, Esq.
Counsel for the Defendant

/s/ David Weisberg

DAVID WEISBERG
Special Assistant United States Attorney

Date: January 11, 2023