

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 99-10371-DJC
)	
JAMES J. BULGER,)	
Defendant.)	

UNITED STATES' MOTION FOR ORDER OF FORFEITURE (MONEY JUDGMENT)

The United States of America, by its attorney, Carmen M. Ortiz, United States Attorney for the District of Massachusetts, respectfully moves this Court for the issuance of an Order of Forfeiture (Money Judgment) in the above-captioned case pursuant to 18 U.S.C. § 1963, and Rule 32.2(b) of the Federal Rules of Criminal Procedure. A proposed Order of Forfeiture (Money Judgment) is submitted herewith. In support thereof, the United States sets forth the following:

1. On May 23, 2001, a federal grand jury sitting in the District of Massachusetts returned a forty-eight count Third Superseding Indictment charging defendant James J. Bulger (the "Defendant"), and others, with Racketeering Conspiracy, in violation of 18 U.S.C. § 1962(d) (Count One); Racketeering, in violation of 18 U.S.C. § 1962(c) (Count Two); Extortion Conspiracy: "Rent", in violation of 18 U.S.C. § 1951 (Count Three); Extortion of Kevin Hayes, in violation of 18 U.S.C. §§ 1951 and 2 (Count Four); Money Laundering Conspiracy, in violation of 18 U.S.C. § 1956(h) (Count Five); Money Laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2 (Counts Six through Twenty-Six); Money Laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i), 1956(a)(1)(B)(i) and 2 (Count Twenty-Seven); Possession of Firearms in Furtherance of Violent Crime, in violation of 18 U.S.C. §§ 924(c) and 2 (Count Thirty-Nine);

Possession of Machineguns in Furtherance of Violent Crime, in violation of 18 U.S.C. §§ 924(c) and 2 (Count Forty); Possession of Unregistered Machineguns, in violation of 26 U.S.C. §§ 5841, 5845(a), 5861(d), and 5871, and 18 U.S.C. § 2 (Count Forty-Two); Transfer and Possession of Machineguns, in violation of 18 U.S.C. §§ 922(o) and 2 (Count Forty-Five); and Possession of Firearms with Obliterated Serial Numbers, in violation of 18 U.S.C. §§ 922(k) and 2 (Count Forty-Eight).¹

2. The Third Superseding Indictment contained Racketeering Forfeiture Allegations, pursuant to 18 U.S.C. § 1963, which sought the forfeiture, as a result of the offenses in violation of 18 U.S.C. § 1962, as set forth in Counts One and Two, of (i) all interests the defendants have acquired and maintained in violation of 18 U.S.C. § 1962, wherever located, and in whatever names held; (ii) all interests in, securities of, claims against, and properties and contractual rights of any kind affording a source of influence over, any enterprise which the defendants have established, operated, controlled, conducted, and participated in the conduct of, in violation of 18 U.S.C. § 1962; and (iii) all property constituting, and derived from, any proceeds which the defendants obtained, directly or indirectly, from racketeering activity in violation of 18 U.S.C. § 1962.²

3. The Third Superseding Indictment further provided that, if any of the above-described forfeitable property, as a result of any act or omission by the Defendants, (a) cannot

¹ The Defendant was not charged in the remaining Counts of the Third Superseding Indictment.

² The Third Superseding Indictment also contained Money Laundering Forfeiture Allegations, pursuant to 18 U.S.C. § 982, which sought the forfeiture, as a result of the offenses in violation of 18 U.S.C. §§ 1956 and 1957, as set forth in Counts Five through Twenty-Seven, of all property, real and personal, involved in such offenses, and all property traceable to such property. Because the money laundering violations involved proceeds of his racketeering offenses, this Motion for Order of Forfeiture seeks entry of a money judgment for the proceeds of the Defendant's racketeering violations, proceeds that include the money involved in the money laundering charges.

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 is entitled to seek forfeiture of any other property of the Defendant, up to the value of such assets, pursuant to 18 U.S.C. § 1963(m).

4. On August 12, 2013, after a forty-one day jury trial, a jury found the Defendant guilty on the racketeering charges (Counts One and Two), as well as Counts Three, Five, Six through Twenty-Six, Twenty-Seven, Thirty-Nine, Forty, Forty-Two, Forty-Five, and Forty-Eight of the Third Superseding Indictment. *See* Docket No. 1304.

5. The Defendant's racketeering conspiracy spanned decades. As charged in the Third Superseding Indictment, the Defendant's racketeering conspiracy began "in or before 1972 and continu[ed] until in or about 2000." *See* Third Superseding Indictment, ¶ 1.

6. The evidence at trial established, and counsel for the Defendant submitted to the jury, that the interests acquired and maintained, *i.e.*, the proceeds from the Defendant's racketeering conspiracy totaled "millions upon millions upon millions of dollars." *See* Trial Transcript, Day 1, p. 42:15 – 42:19; and Day 36, p. 148:4 – 148:5.

7. More specifically, as detailed below, the gross proceeds generated from the Defendant's racketeering conspiracy totaled well over \$25 million. The following chart details the source and amount of certain proceeds of the RICO conspiracy, as well as reference to the relevant testimony regarding the proceeds figure.

Source	Proceeds	Testimony Citation	Description
Arthur Barrett	\$57,000	Trial Testimony, Kevin Weeks, Day 17, pp. 19:22 – 21:14.	Extortion
Anthony Attardo	\$80,000	Trial Testimony, Anthony Attardo, Day 20, pp. 78:10 – 79:15	Extortion
Michael Solimando	\$400,000	Trial Testimony, Michael Solimando, Day 22, pp. 139:7 – 143:24	Extortion
David Lindholm	\$250,000	Trial Testimony, David Lindholm, Day 23, pp. 155:2 – 155:23; Day 24, pp. 8:1 – 9:18	Extortion
Richard Buccheri	\$200,000	Trial Testimony, Richard Buccheri, Day 29, pp. 127:4 – 129:24	Extortion
James Katz	\$119,000	Trial Testimony, James Katz, Day 3, pp. 31:15 - 38:6	Rent on Bookmaking ³ <i>estimated at \$8,500 per year for 14 years</i>
Richard O'Brien	\$252,000	Trial Testimony, Richard O'Brien, Day 3, pp. 151:11 – 151:25, 155:14 – 156:3.	Rent on Bookmaking <i>estimated at \$1,500 per month for 14 years</i>
Charles Raso	\$204,000	Trial Testimony, Charles Raso, Day 7, p. 103:16 – 103:25	Rent on Bookmaking <i>estimated at \$1,000 per month for 17 years</i>

³ James Katz testified that from approximately 1979 - 1992, he paid “rent” of approximately \$1,000 per month during football season (approximately five months) and approximately \$500 per month the rest of the year (*i.e.*, \$8,500 per year). *See* Trial Transcript, James Katz, Day 3, pp. 31:17 – 32:11 and 37:5 – 38:6.

Source	Proceeds	Testimony Citation	Description
Burton “Chico” Krantz	\$339,000	Grand Jury Testimony, March 4, 1993, Chico Krantz, pp. 44:6 – 47:8 ⁴ (Attached in relevant part as <u>Exhibit A.</u>) (Filed under seal) ⁵	Rent on Bookmaking <i>estimated at \$750 per month for 1 year, \$1,000 per month for 2 years, \$1,500 per month for 2 years, and \$3,000 per month for 7.5 years</i>
Joseph Murray	\$500,000	Trial Testimony, Kevin Weeks, Day 16, pp. 177:4 – 178:8	Drug Distribution “Severance” Payment
Hobart Willis	\$250,000	Trial Testimony, Kevin Weeks, Day 16, pp. 179:23 – 180:13	Drug Distribution “Fine”
John “Red” Shea	\$15,000	Trial Testimony, Kevin Weeks, Day 16, pp. 184:10 – 185:24	Drug Distribution “Fine”
Paul Moore/ Jack Cherry	\$546,000	Trial Testimony, Paul Moore, Day 20, pp. 13:10 – 16:9	Drug Distribution “Rent” <i>estimated at \$1,500 per week for 7 years</i>
Paul Moore/ Jack Cherry	\$10,000	Trial Testimony, Paul Moore, Day 20, pp. 17:14 – 18:20	Drug Distribution “Fine”

⁴ As a part of sentencing, the Court may consider “reliable” evidence, which can include hearsay. *Libretti v. United States*, 516 U.S. 29, 49 (1995) (forfeiture is a part of sentencing); *United States v. Ali*, 619 F.3d 713, 720 (7th Cir. 2010) (because forfeiture is part of sentencing, less stringent evidentiary standards apply in the forfeiture phase of the trial; the evidence need only be “reliable”); *United States v. Capoccia*, 503 F.3d 103, 109 (2d Cir. 2007) (Rule 32.2(b)(1) allows the court to consider “evidence or information,” making it clear that the court may consider hearsay; this is consistent with forfeiture being part of the sentencing process where hearsay is admissible.”). This evidence may include evidence from the “guilt phase” of the trial. *Capoccia*, 503 F.3d at 109.

⁵ Because this testimony was obtained in a Grand Jury proceeding, the United States submits Exhibit A under seal. The United States does not object to the unsealing of this exhibit, however, as it is filed in connection with a judicial proceeding. See Fed. R. Crim. P. 6(e)(3)(E)(i)

Source	Proceeds	Testimony Citation	Description
William Shea/ Joe Tower	\$5,740,800	Trial Testimony, Joe Tower, Day 15, pp. 36:2 – 39:19; and William Shea, Day 15, pp. 133:19 – 144:7	Drug Distribution Net Proceeds 1980 – 1983 <i>estimated at \$300 per kilo for 72 kilos moved every 2 weeks (x 26) x 2 (for Towers and Shea) for 4 years</i> Plus Drug Distribution “Rent” 1980 - 1983 <i>estimated at \$6,000 per week for 4 years</i>
William Shea/ Joe Tower	\$15,000,000	Trial Testimony, William Shea, Day 15, pp. 143:10 – 144:7	Drug Distribution Gross Proceeds 1984 – 1986 <i>estimated at \$5 million per year for 3 years</i>
Michael Caruana	\$200,000	Trial Testimony, Stephen Flemmi, Day 25, p. 156:3 – 156:25	Drug Distribution “Fine”
Frank Lepere	\$1,000,000	Trial Testimony, Stephen Flemmi, Day 25, p. 157:7 – 157:10	Drug Distribution “Rent”
Total	\$25,162,800		

8. Forfeiture, which is part of sentencing, is subject to a preponderance of the evidence standard, and it is the Government’s burden to establish the forfeitability of the property, or the total proceeds of the violations, by that standard. *United States v. Dicter*, 198 F.3d 1284, 1289 (11th Cir. 1999) (because forfeiture is part of sentencing, preponderance of the evidence standard applies); *United States v. DeFries*, 129 F.3d 1293, 1312 (D.C. Cir. 1997) (in light of *Libretti*, burden of proof in RICO case is preponderance of the evidence). *See also United States*

v. Cianci, 218 F. Supp. 2d 232, 234-35 (D.R.I. 2002) (forfeiture for RICO violation determined by preponderance of the evidence).

9. Based upon the guilty findings on the racketeering charges, the money judgment entered against the Defendant should reflect the total gross proceeds of the RICO conspiracy, and not just the Defendant's own profit from the conspiracy.⁶ *United States v. Corrado*, 227 F.3d 543, 554-55 (6th Cir. 2000) (Corrado I) (all defendants in a RICO case are jointly and severally liable for the total amount derived from the scheme; the Government is not required to show that the defendants shared the proceeds of the offense among themselves, nor to establish how much was distributed to a particular defendant); *United States v. Corrado*, 286 F.3d 934, 938 (6th Cir. 2002) (Corrado II) (same; because person who collected the proceeds was able to do so because of his participation in a scheme, all members of the scheme are jointly and severally liable). *See also United States v. Candelaria-Silva*, 166 F.3d 19, 44 (1st Cir. 1999) (even minor participants in drug conspiracy are jointly and severally liable for forfeiture of the full amount of the proceeds; no Eighth Amendment violation.).

10. Forfeitures based upon convictions of RICO violations are based on gross proceeds. *United States v. Hurley*, 63 F.3d 1, 21 (1st Cir. 1995). In rejecting defendants' argument in *Hurley* that "proceeds" under 18 U.S.C. § 1963(a) meant net profits, the First Circuit held that

Section 1963(a)(3) was added by Congress to other RICO forfeiture provisions in 1984, and its legislative history explains without qualification that "the term 'proceeds' has been used in lieu of the term 'profits' in order to alleviate the unreasonable burden on the government of proving net profits." S.Rep. No. 225,

⁶ The United States previously forfeited assets from other defendants in this matter. *See* Docket Nos. 345 (Kevin O'Neil forfeiture order); 548, 549, 550 (Stephen Flemmi turn over order and forfeiture order); 554 (Kevin Weeks forfeiture order).

98th Cong., 2d Sess. 199 (1984). In *Russello v. United States*, 464 U.S. 16, 104 S. Ct. 296, 78 L. Ed.2d 17 (1983), the Supreme Court made clear its desire for generous construction of the RICO forfeiture provisions, in line with Congress' unusual command that RICO (although a criminal statute) be broadly interpreted. See *id.* at 27, 104 S. Ct. at 302-03. Given the legislative history and *Russello*, the broader definition of "proceeds" seems to us a rather easy call.

Id. (emphasis added). See also *United States v. Saccoccia*, 58 F.3d 754, 785 (1st Cir. 1995).

11. The Supreme Court's plurality decision in *United States v. Santos*, 553 U.S. 507 (2008) has not altered this interpretation. In *Bucci*, the Court of Appeals for the First Circuit upheld a forfeiture instruction for "gross proceeds," holding that "the question of whether the forfeiture instruction the district court gave Bucci's jurors complied with First Circuit precedent is an easy call; it did." *United States v. Bucci*, 582 F.3d 108, 122 (1st Cir. 2009). In *Bucci*, the relevant forfeiture statute was not 18 U.S.C. § 1963(a), it was 21 U.S.C. § 853. In finding, however, that the appropriate instruction was forfeiture of "gross proceeds" rather than "gross profits," the First Circuit turned to case law construing 18 U.S.C. § 1963(a) because "case law under 18 U.S.C. § 1963 is persuasive in construing 21 U.S.C. § 853, and vice versa." *Id.* (quoting *United States v. White*, 116 F.3d 948, 950 (1st Cir.1997)). In noting that both statutes reference "profits or other proceeds", the Court, citing *Hurley*, held that the legislative history of § 1963 makes clear that "proceeds" was purposefully used to provide for forfeiture of gross proceeds, and not profits. *Id.* Because, as the First Circuit in *Hurley* and *Bucci* made clear, the gross proceeds of a RICO enterprise are forfeitable, there is no deduction for expenses of the organization. *Hurley*, 63 F.3d at 21; *Bucci*, 582 F.3d at 122.

12. In this case, the gross proceeds of the RICO conspiracy were well over the \$25,162,800 requested in the United States' motion for entry of a money judgment. For example, as discussed above, the proceeds of the RICO enterprise include all the proceeds of the gambling

arm of the organization. In this motion, the United States does not seek the entirety of the gaming proceeds, but the lesser figure of the bookmaking “rent” received by the Defendant and his co-conspirators. Likewise, although the proceeds calculation includes some of the gross proceeds of the drug distribution of the RICO enterprise (*i.e.*, \$15 million for 1984 – 1986), the other figures used for the narcotics arm of the enterprise are either net profits, or the more conservative figure of the drug rent or fines imposed by the Defendant and his co-conspirators. In addition, although the evidence at trial included testimony that the enterprise’s drug distribution continued until 1990, the government’s proceeds calculation stops after William Shea stepped down from the operation in 1986. *See* Trial Testimony, Kevin Weeks, Day 17, p. 9:16 – 9:19. The money judgment figure, therefore, does not include drug distribution proceeds from 1987 through 1990.

13. Accordingly, based on the evidence and testimony presented at trial and the Jury’s August 12, 2013 verdict as to the Defendant, the United States is entitled to an Order of Forfeiture (Money Judgment) consisting of a personal money judgment against the Defendant, in the amount of \$25,162,800 in United States currency, pursuant to 18 U.S.C. § 1963(m) and Rule 32.2(b)(1)(A).⁷ This amount represents proceeds of, and interests acquired and maintained as a result of, the Defendant’s racketeering conspiracy.⁸

⁷ The forfeiture allegation in the indictment need not list the total amount of proceeds, and entry of a money judgment in excess of any amount that may have been included in a forfeiture allegation of an indictment is proper. *See United States v. Segal*, 495 F.3d 826, 838 (7th Cir. 2007) (entry of money judgment for \$30 million was proper where indictment described the property subject to forfeiture of “at least \$20 million.”).

⁸ When a defendant is convicted of multiple offenses that give rise to forfeiture of the same property, or proceeds, the total amount of proceeds should be adjusted to avoid double counting. *See, e.g. United States v. McKay*, 506 F. Supp. 2d 1206, 1214 (S.D. Fla. 2007) (if defendant is convicted of more than one offense giving rise to the forfeiture of the same property, the amount of the forfeiture should be adjusted to avoid double counting). In the instant case, the proceeds

14. The entry of an Order of Forfeiture in the form of a personal money judgment is specifically authorized by Rule 32.2(b)(1) and (c)(1) of the Federal Rules of Criminal Procedure, and such orders of forfeiture are commonplace. *See, e.g., United States v. Hall*, 434 F.3d 42, 59 (1st Cir. 2006) (criminal forfeiture order may take several forms, including an *in personam* judgment against defendant for amount of money defendant obtained as proceeds of offense). *See also Candelaria-Silva*, 166 F.3d at 42 (criminal forfeiture orders may take several forms: money judgment, directly forfeitable property, and substitute assets).

15. Once the Order of Forfeiture (Money Judgment) is entered, the United States may move at any time, pursuant to Rule 32.2(e)(1)(B), to amend the Order to forfeit specific property of the Defendant, having a value up to the amount of the money judgment. *See United States v. Saccoccia*, 564 F.3d 502, 506-507 (1st Cir. 2009) (once government obtains money judgment, it may move at any time to forfeit direct or substitute assets in partial satisfaction of that judgment).

16. Upon entry of the Order of Forfeiture (Money Judgment), the United States may also, pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, “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) (making Section 853 applicable to all criminal forfeiture cases); *see also United States v. Saccoccia*, 898 F. Supp. 53, 60 (D.R.I. 1995) (the United States can take depositions of defense counsel to determine source of their fees for the purpose of locating a pool of assets controlled by defendant that is subject to forfeiture). In addition, the reference in Rule

generated from the violations on which the Defendant was convicted overlap, and for this reason the money judgment is limited to the proceeds generated from the racketeering and racketeering conspiracy violations.

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.

WHEREFORE, by virtue of the jury’s guilty verdict as to the Defendant, an Order of Forfeiture (Money Judgment) in the amount of \$25,162,800 in United States currency should be entered against the Defendant. The United States respectfully requests that this Court enter the Order of Forfeiture (Money Judgment) in the form submitted herewith.

Respectfully submitted,

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Date: September 20, 2013

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion and the proposed order were filed through the Electronic Case Filing system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Mary B. Murrane
Mary B. Murrane
Assistant United States Attorney

Date: September 20, 2013