

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 09-00157-CR-W-SOW
)	
GARLAND HANKINS,)	
)	
Defendant.)	

**MOTION OF THE UNITED STATES FOR A PRELIMINARY
ORDER OF FORFEITURE, WITH SUPPORTING SUGGESTIONS**

The United States of America, by its undersigned counsel, respectfully submits its Motion for a Preliminary Order of Forfeiture in the above-entitled case for the reasons set forth in the following supporting suggestions. A proposed order is submitted with this motion.

SUPPORTING SUGGESTIONS

1. On May 19, 2009, a federal grand jury sitting in the Western District of Missouri, returned a three-count Indictment charging the defendant Garland Hankins in Counts One and Two. Count One charged that the defendant Garland Hankins and others, did knowingly and intentionally combine, conspire, confederate and agree with each other and others, to manufacture and distribute a mixture or substance containing a detectable amount of five-hundred grams or more of methamphetamine, contrary to the provisions of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846.

2. Count Two of the Indictment charged that the defendant Garland Hankins and others, did knowingly and intentionally combine, conspire, confederate and agree with each other and others, to possess a listed chemical, pseudoephedrine, with the intent to manufacture a controlled substance and to possess and distribute a listed chemical, pseudoephedrine, having reasonable

cause to believe it would be used to manufacture a controlled substance, in violation of 21 U.S.C. §§ 841(c)(1) and (2) and 846.

3. Forfeiture Allegation II of the Indictment sought forfeiture, pursuant to 21 U.S.C. § 853, against the defendant Garland Hankins of \$900,000 in United States currency which constituted or was derived from the proceeds traceable to the violations alleged on Counts One and Two of the Indictment. Forfeiture Allegation II also included a “substitute asset” provision pursuant to which the United States set forth its intention to seek forfeiture of other property of the defendant up to the value of the assets described therein if those assets, as a result of any act or omission of the defendant Garland Hankins,

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intention of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendant up to the value of the above-described forfeitable property, all in violation of 21 U.S.C. §§ 841 and 853, including but not limited to the following real property:

500 S.E. 30th Street, Oak Grove, Missouri 64075, together with its buildings, appurtenances, improvements, fixtures, attachments, and easements as described below:

That portion of the Southeast Quarter of the Northwest Quarter of Section 9, Township 48 North of Baseline, Range 29 West of the Fifth Principal Meridian, all in Jackson County, Missouri, being more particularly described as follows: Commencing at the Southeast corner of the Southeast Quarter of the Northwest

Quarter of said Section 9, said point also being the center of said Section 9; thence along the South line of said Quarter Quarter Section South 89 degrees 58 minutes 00 seconds West a distance of 651.60 feet to the point on the center of right-of-way of White Road, said point also being the true point of beginning, said point of beginning being the Southeast corner of a tract of record in Book I-1348 at Page 1675 in the Office of the Recorder for Jackson County, Missouri; thence continuing along said Quarter Quarter Section line, and along said center line of right-of-way South 89 degrees 58 minutes 00 seconds West a distance of 470.07 feet; thence leaving said Quarter Quarter Section line, and said center line of right-of-way North 00 degrees 21 minutes 28 seconds East a distance of 1294.29 feet to a point on the North line of the Southeast Quarter of the Northwest Quarter of said Section 9; thence along said Quarter Quarter Section line North 89 degrees 32 minutes 28 seconds East a distance of 467.29 feet; thence leaving said Quarter Quarter Section line along the East line of a tract of record in Book I-1348 at Page 1675 in the Office of the Recorder for Jackson County, Missouri, South 00 degrees 16 minutes 00 seconds West a distance of 1297.74 feet to the true point of beginning. Except that part platted as Spokani Ridge.

This real property should be forfeited as a substitute asset and the net proceeds applied against the money judgment owed by defendant Garland Hankins.

4. The Court's jurisdiction in this matter is founded upon 21 U.S.C. § 853, which provides that:

Any person convicted of a violation of this subchapter punishable by imprisonment for more than one year shall forfeit to the United States,

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

. . .

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter . . . that the person forfeit to the United States all property described in this subsection.

5. In discussing 21 U.S.C. § 853 and the related provision for forfeiture under 18 U.S.C.

§ 1963 (RICO), the Senate Report notes that this language "emphasizes the mandatory nature of criminal forfeiture, requiring the Court to order forfeiture in addition to any other penalty imposed." S. Rep. No. 225 98th Cong., 2d Sess. 200, 211, reprinted in 1984 U.S. Code Cong. & Ad. News 3383, 3394. Thus, according to the relevant statute, the Court must enter a Preliminary Order of Forfeiture in favor of the United States and against the defendant's interests in property found to have been acquired, maintained, or used in violation of the underlying forfeiture statute. Alexander v. United States, 509 U.S. 544, 562-563 (1993); United States v. Monsanto, 491 U.S. 600, 606-607 (1989); United States v. Carpenter, 317 F. 3d 618, 626 (6th Cir. 2003); United States v. Hill, 167 F.3d 1055, 1073-74 (6th Cir. 1999); United States v. Bieri, 68 F.3d 232, 235 (8th Cir. 1995).

6. The forfeiture of a certain proceeds dollar amount, as here, is considered an in personam money judgment against the defendant that can be satisfied from any property held by or for the benefit of the defendant. See United States v. Huber, 404 F. 3d 1047, 1056(8th Cir. 2005); United States v. Baker, 227 F.3d 955, 970 (7th Cir. 2000); United States v. Candelaria-Silva, 166 F. 3d 19, 42 (1st Cir. 1999); United States v. Simmons, 154 F. 3d 765, 769-770 (8th cir. 1998); United States v. Robilotto, 828 F.2d 940 (2d Cir. 1987); United States v. Navarro-Ordas, 770 F.2d 959, 970 (11th Cir. 1985); United States v. Conner, 752 F.2d 566 (11th Cir. 1985); United States v. Ginsburg, 773 F.2d 798 (7th Cir. 1985).

7. Rule 32.2(b)(1)(A) and (B), 32.2(b)(2)(A) and (B), and 32.2(b)(3), Federal Rules of Criminal Procedure, provide that:

(b)(1)(A) As soon as practicable after a verdict or finding of guilty, or after a plea of guilty or *nolo contendere* is accepted, 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.

(b)(1)(B) The court's determination may be based on evidence already in the record, including any written plea agreement, and any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable. If the forfeiture is contested, on either party's request the court must conduct a hearing after the verdict or finding of guilty.

(b)(2)(A) If the court finds that property is subject to forfeiture, it shall promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment, directing the forfeiture of specific property, and directing the forfeiture of any substitute property if the government has met the statutory criteria. The court must enter the order without regard to any third party's interest in the property. 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).

(b)(2)(B) Unless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant under Rule 32.2(b)(4).

(b)(2)(C) If, before sentencing, the court cannot identify all the specific property subject to forfeiture or calculate the total amount of the money judgment, the court may enter a forfeiture order that:

- (i) lists any identified property;
- (ii) describes other property in general terms; and
- (iii) states that the order will be amended under Rule 32.2(e)(1) when additional specific property is identified or the amount of money judgment has been calculated.

(b)(3) 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. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.

8. On January 20, 2010, the defendant Garland Hankins appeared before this court and pleaded guilty to Counts One and Two of the Indictment charging violations of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), (c)(1) and (2) and 846; and consented to the entry of a money judgment in the amount of \$900,000 in United States currency. Accordingly, the requisite nexus between the property to be forfeited (money judgment) and the offenses supporting the forfeiture, of which the defendant was found guilty (Counts One and Two), has been established.

9. Upon the issuance of a Preliminary Order of Forfeiture and pursuant to 21 U.S.C. § 853, the United States will publish for at least 30 consecutive days on the government's official web site, www.forfeiture.gov, notice of the Preliminary Order of Forfeiture, notice of the United States Marshal Services' intent to dispose of the property in such manner as the Attorney General may direct and notice that any person, other than the defendant Garland Hankins, having or claiming a legal interest in the property must file a petition with the Court (and serve a copy on Bruce Rhoades, Assistant United States Attorney) within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the property, shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title or interest in the forfeited property and any additional facts supporting the petitioner's claim and the relief sought. The United States may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the Preliminary Order of Forfeiture, as a substitute for published notice as to those persons so notified.

10. In accordance with the provisions of 21 U.S.C. § 853 and Rule 32.2(b)(3) of the

Federal Rules of Criminal Procedure, the United States requests that it be permitted to undertake whatever discovery is necessary to identify, locate, or dispose of property subject to forfeiture, or substitute assets for such property.

WHEREFORE, the United States respectfully requests that this Court enter an Order of Forfeiture forfeiting the \$900,000 in United States currency to the United States.

Respectfully submitted,

Beth Phillips
United States Attorney

By

/s/ Bruce Rhoades
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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2010, the foregoing motion was electronically filed with the Clerk of the Court using the CM/ECF system for electronic delivery to all counsel of record.

/s/ Bruce Rhoades
Bruce Rhoades
Assistant United States Attorney