

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 08-00026-01/02-CR-W-FJG
	)	
MARY LYNN ROSTIE,	)	
	)	
and	)	
	)	
CYNTHIA S. MARTIN,	)	
	)	
Defendants.	)	

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

The United States of America, by its undersigned counsel, respectfully submits its Motion for an 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 February 6, 2008, a federal grand jury sitting in the Western District of Missouri, returned a twenty-four count Indictment against the defendants Mary Lynn Rostie, Cynthia S. Martin, Troy R. Solomon, and Christopher L. Elder. Count One charged that the defendants Mary Lynn Rostie, Cynthia S. Martin, Troy R. Solomon, and Christopher L. Elder, did knowingly and intentionally combine, conspire, confederate and agree with each other and others, to knowingly and intentionally distribute, dispense, and possess with intent to distribute and dispense Schedule III, IV, and V controlled substances, including but not limited to, hydrocodone, a Schedule III controlled substance, both in its generic name and brand name

forms, such as Lortab and Lorcet; alprazolam, a Schedule IV controlled substance, in its generic form and brand name forms, such as Xanax; and promethazine with codeine, a Schedule V controlled substance, in its generic form and brand name forms, such as Phenergan with codeine; other than for a legitimate medical purpose and not in the usual course of professional practice - thus rendering them unlawful and invalid prescriptions, in violation of 21 U.S.C. § 841(a)(1).

2. Count Two of the Indictment charged that the defendants Mary Lynn Rostie, Cynthia S. Martin, and Troy R. Solomon, did knowingly and intentionally combine, conspire, confederate, and agree with each other and other persons, to conduct financial transactions affecting interstate commerce in violation of 18 U.S.C. § 1956(a)(1)(A)(i) and (B)(i), which transactions involved the proceeds of specified unlawful activity, that is, conspiracy to illegally distribute and dispense controlled substances in violation of 21 U.S.C. § 846, with the intent to promote the carrying on of the specified unlawful activity and knowing that the transactions were designed in whole and in part to conceal and disguise the activity and that while conducting and attempting to conduct such financial transactions, the defendants knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of 18 U.S.C. § 1956(h).

3. Counts Three through Six of the Indictment charged that the defendants Mary Lynn Rostie, Troy R. Solomon, and Christopher L. Elder, aiding and abetting each other and others, did knowingly and intentionally distribute and dispense Schedule III and IV controlled substances, other than for a legitimate medical purpose and not in the usual course of professional practice, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(D), and (b)(2), and 18 U.S.C.

§ 2.

4. Counts Seven through Ten of the Indictment charged that the defendants Mary Lynn Rostie, Christopher L. Elder, and Troy R. Solomon, aiding and abetting each other and others, to knowingly and intentionally distribute and dispense Schedule III, Schedule IV, and Schedule V controlled substances, as set forth below, other than for a legitimate medical purpose and not in the usual course of professional practice, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(D), (b)(2), and (b)(3) and 18 U.S.C. § 2.

5. Counts Eleven and Twelve of the Indictment charged that the defendants Mary Lynn Rostie and Troy R. Solomon, aiding and abetting each other and others, knowingly and intentionally distributed and dispensed a Schedule V controlled substance, as set forth below, other than for a legitimate medical purpose and not in the usual course of professional practice, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(3), and 18 U.S.C. § 2.

6. Count Thirteen of the Indictment charged that the defendant Mary Lynn Rostie, did knowingly, intentionally, and unlawfully aid, abet and willfully cause the use of a communication facility, that is, a facsimile, in committing, and causing and facilitating the commission of, acts constituting a felony under 21 U.S.C. § 841(a)(1), that is, the unlawful dispensing and unlawful distribution of hydrocodone, a Schedule III controlled substance, and alprazolam, a Schedule IV controlled substance, all in violation of 21 U.S.C. §§ 843(b) and (d) and 18 U.S.C. § 2.

7. Count Fourteen of the Indictment charged that the defendant Mary Lynn Rostie, maintained a commercial business bank account which was used to receive funds from sales of illegally distributed and dispensed controlled substances, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2.

8. Count Fifteen of the Indictment charged that the defendant Mary Lynn Rostie, maintained a commercial business bank account which was used to receive funds from sales of illegally distributed and dispensed controlled substances, in violation of 18 U.S.C. §§ 1957 and 2.

9. Counts Sixteen through Twenty of the Indictment charged that the defendant Mary Lynn Rostie, maintained a commercial business bank account which was used to receive funds from sales of illegally distributed and dispensed controlled substances, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2.

10. Counts Twenty-One through Twenty-Four of the Indictment charged that the defendant Cynthia S. Martin, maintained a bank account which was used to receive funds from sales of illegally distributed and dispensed controlled substances.

11. The Forfeiture Allegation of the Indictment sought a personal money judgment against the defendants Mary Lynn Rostie, Cynthia S. Martin, Troy R. Solomon, and Christopher L. Elder, for \$991,114 in United States currency in that such sum in the aggregate, was received in exchange for the unlawful dispensing and unlawful distribution of controlled substances or is traceable to the offenses.

12. On September 4, 2008, the defendant Mary Lynn Rostie entered into a plea agreement with the United States in which she agreed to plead guilty to Counts One and Two of the Indictment charging violations of 21 U.S.C. §§ 841(a)(1), (b)(1)(D), (b)(2), (b)(3), and 846; and 18 U.S.C. § 1956(h); and consented to the entry of a money judgment in the amount of \$991,114.00 in United States currency.

13. On December 18, 2008, the defendant Cynthia S. Martin entered into a plea

agreement with the United States in which she agreed to plead guilty to Counts One and Two of the Indictment charging violations of 21 U.S.C. §§ 841(a)(1), (b)(1)(D), (b)(2), (b)(3), and 846; 18 U.S.C. § 1956(h); and consented to the entry of a money judgment in the amount of \$660,742.00 in United States currency<sup>1</sup>.

14. The United States has not, as of this date, identified specific assets that were derived from the offenses for which the defendants Mary Lynn Rostie and Cynthia S. Martin have pleaded guilty. Nor has the United States yet identified any property of the defendants that could be forfeited as a substitute asset in accordance with 21 U.S.C. § 853(p). The Indictment included real property located at 15704 Richmond Avenue, Belton, Missouri and real property located at 7906 E. 159<sup>th</sup> Street, Belton, Missouri as substitute property for the money judgment. However, the United States has determined that there is not a sufficient amount of equity in the properties to forfeit.

15. The entry of a Final 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. Such orders of forfeiture are commonplace. *See United States v. Baker*, 227 F.3d 955 (7th Cir. 2000) (a forfeiture order may include a money judgment for the amount of money involved in the money laundering offense; the money judgment acts as a lien against the defendant personally for the duration of his prison term and beyond); *United States v. Candelaria-Silva*, 166 F.3d 19 (1st Cir. 1999) (criminal forfeiture order may take several forms: money judgment, directly

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<sup>1</sup>On July 12, 2010, a jury found defendant Troy Solomon guilty of Counts One through Twelve and defendant Christopher Elder guilty of Counts One and Three through Ten. The United States filed a separate motion for an order of forfeiture requesting a money judgment in the amount of \$991,114 from these defendants on October 25, 2010.

forfeitable property, and substitute assets); *United States v. Davis*, 177 F. Supp.2d 470 (E.D. Va. 2001) (same, following *Candelaria-Silva*); *United States v. Conner*, 752 F.2d 566, 576 (11th Cir. 1985) (because criminal forfeiture is *in personam*, it follows defendant; it is a money judgment against the defendant for the amount of money that came into his hands illegally; the Government is not required to trace the money to any specific asset); *United States v. Ginsburg*, 773 F.2d 798, 801-02 (7th Cir. 1985) (*en banc*) (criminal forfeiture is a personal judgment that requires the defendant to pay the total amount derived from the criminal activity, “regardless of whether the specific dollars received from that activity are still in his possession”); *United States v. Amend*, 791 F.2d 1120, 1127 (4th Cir. 1986) (same); *United States v. Robilotto*, 828 F.2d 940, 949 (2d Cir. 1987) (following *Conner* and *Ginsburg*; the court may enter a money judgment for the amount of the illegal proceeds regardless of whether defendant retained the proceeds); *United States v. Navarro-Ordas*, 770 F.2d 959, 969 (11th Cir. 1985) (court may enter “personal money judgment” against the defendant for the amount of the illegally obtained proceeds); *United States v. Voigt*, 89 F.3d 1050, 1084, 1088 (3d Cir. 1996) (the Government is entitled to a personal money judgment equal to the amount of money involved in the money laundering offense); *United States v. Holland*, 160 F.3d 377, 380 (7th Cir. 1998) (defendant ordered to pay judgment equal to value of property concealed from bankruptcy court and subsequently laundered); *United States v. Corrado*, 227 F.3d 543 (6th Cir. 2000) (*Corrado I*) (remanding case to the district court to enter money judgment for the amount derived from a RICO offense); *United States v. Saccoccia*, 823 F. Supp. 994, 1006 (D.R.I. 1993) (money judgment for the amount laundered, \$136 million, entered against each defendant), *aff’d*, 58 F.3d 754 (1st Cir. 1995); *United States v. Sokolow*, 1995 WL 113079 at \*1 (E.D. Pa. 1995) (because money is fungible, the Government

need not receive the identical money involved in the money laundering offense so long as the amount involved is known), *aff'd*, 81 F.3d 397 (3d Cir. 1996); *United States v. Cleveland*, 1997 WL 537707 at \*11 (E.D. La. 1997) (the Government is entitled to a money judgment equal to the amount of money that defendant laundered in money laundering case); *United States v. Stewart*, 1998 WL 720063 (E.D. Pa. 1998) (court enters money judgment for “aggregate sum of all money laundering counts for which defendant was convicted”), *aff'd as modified*, 185 F.3d 112 (3d Cir. 1999); *United States v. Henry*, 850 F. Supp. 681, 683 (M.D. Tenn. 1994) (court enters money judgment for \$191,206, which was the amount of Medicare fraud proceeds defendant was convicted of laundering), *aff'd*, 64 F.3d 664, 1995 WL 478635 (6th Cir. 1995) (Table); *United States v. Delco Wire and Cable Co., Inc.*, 772 F. Supp. 1511 (E.D. Pa. 1991) (criminal forfeiture is “like a money judgment that runs against the defendant until satisfied in full”; judgment entered for \$10 million, which was the amount of the racketeering proceeds).

16. Once the Final Order of Forfeiture is entered, the Government 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, as substitute assets. *See United States v. Candelaria-Silva*, 166 F.3d 19 (1st Cir. 1999) (once the Government has obtained a money judgment, it may forfeit defendant’s real property in partial satisfaction of that judgment); *United States v. Baker*, 227 F.3d 955 (7th Cir. 2000) (same); *United States v. Numisgroup Intl. Corp.*, 169 F. Supp. 2d 133 (E.D.N.Y. 2001) (Rule 32.2(e) authorizes forfeiture of substitute assets to satisfy a money judgment, including a judgment based on the value of the missing proceeds and the value of the missing facilitating property); *United States v. Harrison*, 2001 WL 803695 (N.D. Ill. 2001) (entry of money judgment as part of preliminary order of forfeiture gives Government

opportunity later to satisfy the judgment by seeking forfeiture of substitute assets; Rule 32.2(e)); *United States v. Davis*, 177 F. Supp.2d 470 (E.D. Va. 2001) (if property cannot be forfeited as directly traceable to the offense, it can be forfeited as a substitute asset and used to satisfy the money judgment).

WHEREFORE, by virtue of the plea agreements, a money judgment should be entered against the defendants Mary Lynn Rostie and Cynthia S. Martin.

Accordingly, the United States respectfully requests that this Court enter a final order of forfeiture as proposed in the attached order.

Respectfully submitted,

Beth Phillips  
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By

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on November 10, 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/ Rudolph R. Rhodes, IV  
Rudolph R. Rhodes IV  
Assistant United States Attorney