

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-03-CR-W-FJG
)
TROY R. SOLOMON)
)
 Defendant.)

**UNITED STATES’ SUGGESTIONS IN REPLY TO DEFENDANT SOLOMON’S SUGGESTIONS IN
OPPOSITION TO THE MOTION OF THE UNITED STATES FOR AN ORDER OF FORFEITURE**

The United States of America respectfully submits the following suggestions in reply to defendant Solomon’s suggestions in opposition to the United States’ motion, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2, for a Preliminary Order of Forfeiture in the above-captioned case:

Reply Suggestions

Defendant Solomon has requested a hearing on the government’s motion for preliminary order for a forfeiture money judgment, and lodges several legal objections. As explained below, a hearing is unnecessary, but at any hearing the government will present evidence on alternative theories concerning the money judgment against Solomon.. Moreover, Solomon’s objections lack merit.

At trial, the government proved that Solomon, co-defendant Christopher Elder, former co-defendants Cynthia Martin and Lynn Rostie, unindicted co-conspirator Okozie, and others, conspired to obtain hydrocodone and other controlled substances from the Medicine Shoppe

Pharmacy in Belton, Missouri, for diversion for street sale in Houston, Texas. The evidence demonstrated that Solomon provided lists of stolen identities to Elder, with the lists organized by drug, which Elder used to write approximately 544 false and fraudulent prescriptions. No records existed for these patients at South Texas Wellness Center, and the drugs once received in Texas were not provided to patients but were instead taken away by Solomon and other co-conspirators. The evidence overwhelmingly demonstrated that all of the prescriptions written for these patients were illegitimate.

Beginning later in the conspiracy, Dr. Peter Okoze wrote thousands of prescriptions for Solomon, all of them obviously falsified. The prescriptions were written in large batches for patients with the same last name or whose names began with the same letter. Moreover, the evidence at trial showed that the drugs obtained through these prescriptions were not provided to the patients, but instead were diverted by Solomon and others working with him.

Viewed against this backdrop, Solomon's objections have no merit. Solomon argues that the business here was only "partly illegal," but the evidence at trial demonstrated beyond question that it was all illegal. The controlled substances provided by the Medicine Shoppe when filling the Houston prescriptions were all fraudulently obtained and were all diverted rather than going back to any patient (who were completely unaware that any prescription had been written in their name in the first place). There is no factual predicate in the record for Solomon's assertion.

Consequently, the \$991,114.00 represents proceeds of sales of these controlled substances from the Medicine Shoppe to the Houston defendants. As such, that amount is appropriate as the money judgment amount against Solomon. It is not required that the government prove that

Solomon has that amount in his possession. *United States v. Mislá-Aldarondo*, 478 F.3d 52, 73-74 (1st Cir. 2007) (“If the Government has proven that there was at one point an amount of cash that was directly traceable to the offenses, and that thus would be forfeitable under 18 U.S.C. § 982(a), that is sufficient for a court to issue a money judgment, for which the defendant will be fully liable whether or not he still has the original corpus of tainted funds—indeed, whether or not he has any funds at all.”).

In addition, this amount also represents the amount of money laundered by Solomon. The \$991,114.00 came from the United States Currency mailed by Solomon using UPS to co-conspirator Martin, and as such those funds were the subject of the money laundering counts as to which Solomon has been convicted. The money laundering theory provides an alternate basis for the money judgment against Solomon. *United States v. Huber*, 404 F.3d 1047, 1056 (8th Cir. 2005) (“Forfeiture under section 982(a)(1) in a money laundering case allows the Government to obtain a money judgment representing the value of all property ‘involved in’ the offense, including the money or other property being laundered (the corpus) and any property used to facilitate the laundering offense”; in a conspiracy case, the corpus is the funds the defendant conspired to launder, including commingled clean money).

Solomon’s objection based upon *United States v. Santos* is also not well placed. *Santos* was not intended to apply to cases involving drug proceeds. *United States v. Fleming*, 287 Fed. App. 150, (3rd Cir. 2008) (Justice Stevens’ concurrence makes clear that the profits test does not apply in drug cases); *United States v. Orosco*, 575 F. Supp.2d 1214, 1217-18 (D. Col. 2008) (agreeing with the Government that the holding in *Santos* applies only where the SUA is a federal gambling offense, and suggesting in dicta that it would not apply to the laundering of

drug proceeds).

Although Solomon has asked for a hearing, there does not appear to be a need for one. The government may rely on the evidence at trial where relevant, and here that evidence shows that none of the drugs involved went to actual patients, as well as other relevant facts concerning the scheme. Solomon does not appear to contest the amount of the money judgment other than as to facts already established at trial.

In any event, as noted in its prior pleading, the money judgment amount proposed against Solomon is a conservative figure, and there are other legitimate bases for calculating that amount. At a hearing, the government would present evidence of the street value of each of the 2 million dosage units diverted by Solomon as part of the conspiracy as another measure of the appropriate amount of the money judgment.

CONCLUSION

The United States requests that the Court enter the Preliminary Order of Forfeiture.

Respectfully submitted,

Beth Phillips
United States Attorney

/s/ James Curt Bohling

By James Curt Bohling, #54574
Assistant United States Attorney
Chief, Monetary Penalties Unit

Charles Evans Whittaker Courthouse
400 East 9th Street, 5th Floor
Kansas City, Missouri 64106
Telephone: (816) 426-3122
Email: curt.bohling@usdoj.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on November 12, 2010, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

Chip Lewis
2120 Welch Street
Houston, Texas 77019

/s/ James Curt Bohling

James Curt Bohling
Assistant United States Attorney