

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	x
	:
UNITED STATES OF AMERICA	:
	:
-v.-	:
LARRY SEABROOK,	: GOVERNMENT’S MOTION
	: IN SUPPORT OF ITS PROPOSED
	: PRELIMINARY ORDER OF
	: FORFEITURE OF
Defendant.	: <u>SUBSTITUTE ASSETS</u>
	:
	: S1 10 Cr. 87 (DAB)
	:
-----	x

The United States of America hereby moves pursuant to Rule 32.2(e) of the Federal Rules of Criminal Procedure and Title 21, United States Code, Section 853(p), for the entry of a Preliminary Order of Forfeiture of Substitute Assets to include certain property of Larry Seabrook, as a substitute asset, to be applied towards the forfeiture money judgment that was entered against him on or about January 8, 2013.

**I. Background**

On or about September 13, 2011, Larry Seabrook (the “defendant”), was charged in a twelve-count Superseding Indictment, S1 10 Cr. 87 (DAB) (the “Indictment”), with receiving corrupt payments, in violation of 18 U.S.C. §§ 666(a)(1)(B) and 2 (Count One); use of interstate facilities to solicit and receive corrupt payments, in violation of 18 U.S.C. §§ 1952(a)(1) and (3), and 2 (Count Two); money laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2 (Count Three); conspiracy to commit fraud in connection with the New York City Council Discretionary Funding, in violation of 18 U.S.C. § 1349 (Count Four); mail fraud in connection with New York City Council Discretionary Funding, in violation of 18 U.S.C. §§ 1341 and 2 (Count Five); wire fraud in connection with New York City Council Discretionary Funding, in

violation of 18 U.S.C. §§ 1343 and 2 (Count Six); conspiracy to commit fraud in connection with the Council's FDNY Fire Diversity/Recruitment Initiative, in violation of 18 U.S.C. § 1349 (Count Seven); mail fraud in connection with the Council's FDNY Fire Diversity/Recruitment Initiative, in violation of 18 U.S.C. §§ 1341 and 2 (Count Eight); wire fraud in connection with the Council's FDNY Fire Diversity/Recruitment Initiative, in violation of 18 U.S.C. §§ 1343 and 2 (Count Nine); conspiracy to defraud a non-profit organization in connection with a job placement program funded by the Council, in violation of 18 U.S.C. §§ 1349 (Count Ten); mail fraud in connection with a job placement program funded by the Council, in violation of 18 U.S.C. §§ 1341 and 2 (Count Eleven); and wire fraud in connection with a job placement program funded by the Council, in violation of 18 U.S.C. §§ 1343 and 2 (Count Twelve).

The Indictment included a forfeiture allegation requiring the defendant to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One through Twelve of the Indictment. The Indictment also included a substitute asset provision providing notice that if as a result of the defendant's actions or omissions forfeitable property is unable to be located or obtained the United States will seek, pursuant to 21 U.S.C. § 853(p), the forfeiture of any other property of the defendant.

On or about July 26, 2012, a jury returned a guilty verdict against the defendant as to Counts Four through Twelve of the Indictment. On or about January 8, 2013, the defendant was sentenced and ordered to forfeit \$418,252.53 in United States currency, representing the amount of proceeds obtained as a result of the offenses charged in Counts Four through Twelve of the Indictment (the "Money Judgment").

## **II. The Location of Additional Assets**

As set forth in the Declaration of Forfeiture Support Associates Litigation Financial Analyst Steve Yagoda (the “Yagoda Declaration”), the United States has not been able to locate, obtain or collect the proceeds of the defendant’s offenses.

However, the United States has located the following asset of the defendant:

Any and all funds, benefits, rights to disbursements, or other property held on behalf of, or distributed to, LARRY SEABROOK, by the New York City Employee Retirement System, Pension Number 368879, and all property traceable thereto.

(the “Substitute Asset”). The United States is seeking to forfeit the defendant’s interest in any payments or disbursements to the defendant from the Substitute Asset and to have these payments from the Substitute Asset, once forfeited, applied towards the defendant’s outstanding Money Judgment. If the Money Judgment is ever fully satisfied, the United States will return all right, title, and interest in any remaining undistributed benefits, if any, from the Substitute Asset to the defendant.

For the following reasons, the Government respectfully requests that all of the defendant’s right, title and interest in the Substitute Asset, including any benefits to be paid from the Substitute Asset, be forfeited to the United States and applied towards the Money Judgment.

## **III. Discussion**

Seabrook is subject to a fully unsatisfied forfeiture money judgment and as a result, the United States is authorized to forfeit substitute assets, including New York City pension benefits held on his behalf. As a result of his conviction of Counts Four through Twelve of the Indictment, Seabrook is subject to a money judgment in the amount of \$418,252.53, imposed pursuant to Title 18, United States Code, Section 981(a)(1)(C). Section 981(a)(1)(C) requires the forfeiture of “all property, real and personal, which constitutes or is derived from proceeds

traceable to” a qualifying offense. Section 981(a)(1)(C) is made applicable to criminal cases by Title 28, United States Code, Section 2461(c), which incorporates the procedures of Title 21, United States Code, Section 853.

The forfeiture of substitute assets is authorized by Title 21, United States Code, Section 853(p), which provides that, if any forfeited property “(A) cannot be located upon the exercise of due diligence; (B) has been transferred, sold to or deposited with a third party; (C) has been placed beyond 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,” as a result of the defendant’s own actions or omissions, 21 U.S.C. § 853(p)(1), the “court shall order the forfeiture of any other property of the defendant, up to the value of property” so transferred or moved by the defendant, § 853(p)(2).

Additionally, Rule 32.2(e)(1) of the Federal Rules of Criminal Procedure further provides that-

[o]n the government’s motion, the court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that:

...

(B) is a substitute property that qualifies for forfeiture under an applicable statute.

Fed. R. Crim. P. 32.2(e)(1) (emphasis added).

Thus, the court must order the forfeiture of substitute assets to satisfy a money judgment where, as a result of the defendant’s actions or omissions, the United States is unable to locate or obtain the specific proceeds. *See* Fed. R. Crim. P. 32.2(e)(2)(A) (“If the government shows that the property is subject to forfeiture under Rule 32.2(e)(1), the court *must* . . . enter an order forfeiting that property, or amend an existing preliminary order of forfeiture to include it . . . .”

(emphasis added)); Fed. R. Crim. P. 32.2(e)(1)(B) (designating as subject to forfeiture “substitute property that qualifies for forfeiture under an applicable statute”); *United States v. Alamoudi*, 452 F.3d 310, 314 (4th Cir. 2006) (“Section 853(p) is not discretionary . . . . When the Government cannot reach the property initially subject to forfeiture, federal law requires a court to substitute assets for the unavailable tainted property”); *United States v. Capoccia*, No. 03 Cr. 35, 2009 WL 273301, at \*2 (D. Vt. Feb. 4, 2009) (citing *id.*). The Indictment and the jury’s verdict make clear that the diversion of funds from the City and other victims to third parties such as Seabrook’s associates and relatives, *see, e.g.*, Indictment ¶¶ 29, 53, 59-67, 93, was done as a result of acts or omissions of the defendant, authorizing forfeiture of substitute assets under Section 853(p). *See* § 853(p) (authorizing forfeiture of substitute assets when forfeitable property, inter alia, “as a result of any act or omission of the defendant— (A) cannot be located upon the exercise of due diligence; (B) has been transferred or sold to, or deposited with, a third party”).<sup>1</sup>

If there are other persons who claim an interest in the Substitute Asset, they will have an opportunity to challenge the Government’s entitlement to the Substitute Asset in the ancillary hearing phase of these proceedings. *See* 21 U.S.C. § 853(n); Fed. R. Crim. P. 32.2(c). Under Section 853(n) and Rule 32.2(e)(2), the government must provide notice of its intent to dispose

---

<sup>1</sup> The fact that the Substitute Asset consists of pension funds does not affect its forfeitability under Section 853(p). As part of a governmental plan, the Substitute Asset is not covered by ERISA. *See* 29 U.S.C. §§ 1002(32), 1003(b)(1). Any protections potentially applicable under state law, *see* N.Y. Const. art. V § 7; N.Y.C. Admin. Code § 13-181, are preempted by federal law from interfering with forfeiture under Section 853(p). *See, e.g., United States v. Lot 5, Fox Grove, Alachua County, Fla.*, 23 F.3d 359, 363 (11th Cir. 1994) (finding that civil forfeiture statute preempts Florida law preventing homes from forced sale); *United States v. Peterson*, 821 F. Supp. 2d 576, 588 (S.D.N.Y. 2011) (citing *id.*); *United States v. Galante*, No. 06 Cr. 161 (EBB), 2006 WL 3826701, at \*2 (D. Conn. Nov. 28, 2006) (finding state law would be preempted to the extent it required modification of restraining order and diminution in value of assets for which forfeiture was sought); *United States v. One Household Finance Check*, 769 F. Supp. 69, 73 (D. Conn. 1991) (preempting Connecticut law, allowing forfeiture of funds represented by check); *United States v. Speed Joyeros, S.A.*, 410 F. Supp. 2d 121, 125 (E.D.N.Y. 2006) (“This result under applicable federal conflicts of law principles is consistent with the general federal practice in forfeiture matters of referring to the law of the jurisdiction that created the property right to determine the petitioner’s legal interest. The effect of that property interest—i.e., whether it satisfies the requirements of the federal forfeiture statute—is necessarily a matter of federal law.”).

of the property to known interested parties. Persons alleging an interest in the forfeited property then have 30 days, from the date of last publication or actual notice, within which to petition this Court for a hearing to determine the validity of their claims. 21 U.S.C. § 853(n)(2). If there are no petitions filed or a petition is denied, the Court will enter a final order forfeiting the substitute property to the United States. The property will not be disposed of by the Government until all third party claims are resolved by the Court.

**IV. Conclusion**

The United States accordingly requests that its motion for forfeiture of substitute property be granted and that an order be entered forfeiting all of the defendant's right, title and interest in the Substitute Asset, including any benefits to be paid from the Substitute Asset.

Dated: New York, New York  
December 17, 2013

PREET BHARARA  
United States Attorney for the  
Southern District of New York

By:   
\_\_\_\_\_  
PAUL M. MONTELEONI  
One St. Andrew's Plaza  
New York, New York 10007  
(212) 637-2219

# Exhibit A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA

- v. -

LARRY SEABROOK,

Defendant.

----- x

:  
: **DECLARATION OF FORFEITURE**  
: **SUPPORT ASSOCIATE**  
: **FINANCIAL ANALYST**  
: **STEVEN YAGODA**  
: S1 10 Cr. 87 (DAB)

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

STEVEN YAGODA, under penalty of perjury, declares:

1. I am a Litigation Financial Analyst with Forfeiture Support Associates and work as a contractor for the United States Attorney’s Office, Southern District of New York (“USAO-SDNY”). I am assigned to the Asset Forfeiture Unit, where I provide financial analyst support for the Office’s criminal and civil asset forfeiture investigations and cases. Prior to my employment as a contractor for the USAO-SDNY, I was a Special Agent with the United States Customs Service and the Department of Homeland Security, Immigration and Customs Enforcement, for approximately 31 years. As a Special Agent, I conducted investigations involving money laundering, narcotics trafficking, terrorist financing, and customs fraud offenses, among others. I also participated in asset forfeiture investigations and asset tracing.

2. I respectfully make this declaration in connection with the Government’s application for a Substitute Asset Order of Forfeiture as to the following property: any and all funds, benefits, rights to disbursements, or other property held on behalf of, or distributed to, LARRY SEABROOK, by the New York City Employee Retirement System, Pension Number 368879, and all property traceable thereto. From my review of the case file, I am familiar with

the facts and circumstances of this forfeiture case. Because this declaration is being submitted for a limited purpose, I have not included in it everything I know about this forfeiture case.

Where the contents of documents and the actions, conversations, and statements of others are related herein, they are related in substance and in part.

### **Background**

3. On or about September 13, 2011, LARRY SEABROOK (the “defendant”), was charged in a twelve-count Superseding Indictment, S1 10 Cr. 87 (DAB) (the “Indictment”), with receiving corrupt payments, in violation of 18 U.S.C. §§ 666(a)(1)(B) and 2 (Count One); use of interstate facilities to solicit and receive corrupt payments, in violation of 18 U.S.C. §§ 1952(a)(1) and (3), and 2 (Count Two); money laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2 (Count Three); conspiracy to commit fraud in connection with the New York City Council Discretionary Funding, in violation of 18 U.S.C. § 1349 (Count Four); mail fraud in connection with New York City Council Discretionary Funding, in violation of 18 U.S.C. §§ 1341 and 2 (Count Five); wire fraud in connection with New York City Council Discretionary Funding, in violation of 18 U.S.C. §§ 1343 and 2 (Count Six); conspiracy to commit fraud in connection with the Council’s FDNY Fire Diversity/Recruitment Initiative, in violation of 18 U.S.C. § 1349 (Count Seven); mail fraud in connection with the Council’s FDNY Fire Diversity/Recruitment Initiative, in violation of 18 U.S.C. §§ 1341 and 2 (Count Eight); wire fraud in connection with the Council’s FDNY Fire Diversity/Recruitment Initiative, in violation of 18 U.S.C. §§ 1343 and 2 (Count Nine); conspiracy to defraud a non-profit organization in connection with a job placement program funded by the Council, in violation of 18 U.S.C. §§ 1349 (Count Ten); mail fraud in connection with a job placement program funded by the Council, in violation of 18 U.S.C. §§ 1341 and 2 (Count Eleven); and wire fraud in

connection with a job placement program funded by the Council, in violation of 18 U.S.C. §§ 1343 and 2 (Count Twelve).

4. The Indictment included a forfeiture allegation requiring the defendant to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One through Twelve of the Indictment.

5. The Indictment also included a substitute asset provision providing notice that if as a result of the defendant's actions or omissions forfeitable property is unable to be located or obtained the United States will seek, pursuant to 21 U.S.C. § 853(p), the forfeiture of any other property of the defendant.

6. On or about July 26, 2012, a jury returned a guilty verdict against the defendant as to Counts Four through Twelve of the Indictment.

#### **The Order of Forfeiture**

7. On or about January 8, 2013, the defendant was sentenced and ordered to forfeit to the United States \$418,252.53 in United States currency, representing the amount of proceeds the defendant obtained directly or indirectly as a result of the offenses charged in Counts Four through Twelve of the Indictment.

8. The evidence at trial demonstrated that the offenses that the defendant participated in had proceeds of approximately \$418,252.53, for which the defendant is liable.

#### **The Substitute Asset**

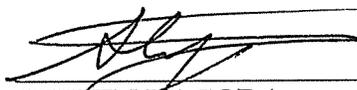
9. Since the date of the entry of the Order of Forfeiture, despite the exercise of due diligence in investigating the assets of the defendant, the Government has been unable to locate the proceeds of the defendant's offenses.

10. I have conducted an investigation into any other assets that the defendant might have to satisfy the Money Judgment against him. To date, the Government has located the following asset of the defendant:

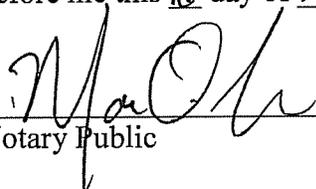
Any and all funds, benefits, rights to disbursements, or other property held on behalf of, or distributed to, LARRY SEABROOK, by the New York City Employee Retirement System, Pension Number 368879, and all property traceable thereto (the "Substitute Asset").<sup>1</sup>

I declare under penalties of perjury that the foregoing is true and correct, pursuant to 28 U.S.C. § 1746.

Dated: New York, New York  
December 16, 2013

  
STEVEN YAGODA  
Financial Analyst  
United States Attorney's Office,  
Southern District of New York

Sworn to or subscribed  
before me this 16<sup>th</sup> day of December 2013

  
Notary Public

MARCO DASILVA  
Notary Public, State of New York  
No. 01DA6145603  
Qualified in Nassau County  
My Commission Expires May 8, 2014

<sup>1</sup> The defendant is currently receiving pension benefits from the Substitute Asset.

# Exhibit B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X
	:
UNITED STATES OF AMERICA	:
	:
-v.-	:
	:
LARRY SEABROOK,	:
	:
Defendant.	:
	:
	:
-----	X

PRELIMINARY ORDER  
OF FORFEITURE OF  
SUBSTITUTE ASSETS

S1 10 Cr. 87 (DAB)

WHEREAS, on or about September 13, 2011, LARRY SEABROOK (the “defendant”), was charged in a twelve-count Superseding Indictment, S1 10 Cr. 87 (DAB) (the “Indictment”), with receiving corrupt payments, in violation of 18 U.S.C. §§ 666(a)(1)(B) and 2 (Count One); use of interstate facilities to solicit and receive corrupt payments, in violation of 18 U.S.C. §§ 1952(a)(1) and (3), and 2 (Count Two); money laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2 (Count Three); conspiracy to commit fraud in connection with the New York City Council Discretionary Funding, in violation of 18 U.S.C. § 1349 (Count Four); mail fraud in connection with New York City Council Discretionary Funding, in violation of 18 U.S.C. §§ 1341 and 2 (Count Five); wire fraud in connection with New York City Council Discretionary Funding, in violation of 18 U.S.C. §§ 1343 and 2 (Count Six); conspiracy to commit fraud in connection with the Council’s FDNY Fire Diversity/Recruitment Initiative, in violation of 18 U.S.C. § 1349 (Count Seven); mail fraud in connection with the Council’s FDNY Fire Diversity/Recruitment Initiative, in violation of 18 U.S.C. §§1341 and 2 (Count Eight); wire fraud in connection with the Council’s FDNY Fire Diversity/Recruitment Initiative, in violation of 18 U.S.C. §§ 1343 and 2 (Count Nine); conspiracy to defraud a non-profit organization in connection with a job placement program funded by the Council, in violation of 18 U.S.C. §§

1349 (Count Ten); mail fraud in connection with a job placement program funded by the Council, in violation of 18 U.S.C. §§ 1341 and 2 (Count Eleven); and wire fraud in connection with a job placement program funded by the Council, in violation of 18 U.S.C. §§ 1343 and 2 (Count Twelve);

WHEREAS, the Indictment included a forfeiture allegation requiring the defendant to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One through Twelve of the Indictment; and

WHEREAS, on or about July 26, 2012, the jury returned a guilty verdict against the defendant as to Counts Four through Twelve of the Indictment; and

WHEREAS, on January 8, 2013, the evidence at trial established that the forfeitable proceeds of the offenses was at least \$418,252.53; and

WHEREAS, on January 8, 2013, pursuant to Rule 32.2(b)(1) of the Federal Rules of Criminal Procedure and based on the evidence presented at trial, this Court entered an Order of Forfeiture against defendant, final as to him, forfeiting \$418,252.53 in United States currency, representing property, real or personal, constituting or derived from proceeds traceable to the commission of the offenses alleged in Counts Four through Twelve of the Indictment, and that defendant was liable for a forfeiture personal money judgment in the amount of \$418,252.53, said amount representing the amount of proceeds of the offense;

WHEREAS, the Money Judgment against the defendant remains fully unpaid;

WHEREAS, as a result of acts and omissions of the defendant, the Government, despite its exercise of due diligence, has been unable to locate or obtain the proceeds of the offenses of the defendant's conviction;

WHEREAS, the Government has identified the following specific asset in which the defendant has an ownership interest:

Any and all funds, benefits, rights to disbursements, or other property held on behalf of, or distributed to, LARRY SEABROOK, by the New York City Employee Retirement System, Pension Number 368879, and all property traceable thereto

(the “Substitute Asset”); and

WHEREAS, the United States is authorized, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(p), to seek forfeiture of all of the defendant’s rights, title and interest in the Substitute Asset, including any benefits to be paid from the Substitute Asset, as assets of Larry Seabrook to be applied in partial satisfaction of the money judgment against him;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. All of the defendant’s right, title and interest in the Substitute Asset, including any benefits to be paid from the Substitute Asset (“Forfeited Property”) is hereby forfeited to and vested in the United States of America, as substitute assets, pursuant to 18 U.S.C. § 982(b)(1) and 21 U.S.C. § 853(p), subject to the provisions of 21 U.S.C. § 853(n).

2. Any funds or payments subsequently seized from the Substitute Asset shall be applied to the satisfaction of the Money Judgment entered against the defendant, and in the event the Money Judgment is fully satisfied, the United States shall thereafter return all right, title, and interest in any remaining undistributed benefits (if any) from Substitute Asset to the defendant.

3. The United States is hereby authorized to take possession of the Forfeited Property and to hold such Forfeited Property in its secure custody and control.

4. All financial institutions having notice of this Preliminary Order of Forfeiture of Substitute Assets shall cooperate with the United States or its designee in turning over the Forfeited Property pursuant to this Preliminary Order of Forfeiture of Substitute Assets.

5. Pursuant to 21 U.S.C. § 853(n)(1), the United States Marshals Service forthwith shall publish at least once for three successive weeks, in a newspaper of general circulation, notice of this Preliminary Order of Forfeiture of Substitute Assets, notice of the United States' intent to dispose of the Forfeited Property in such manner as the United States may direct, and notice that any person, other than the defendant, having or claiming a legal interest in the above listed Forfeited Property must file a petition with the Court within 30 days of the final publication of notice or of receipt of actual notice, whichever is earlier.

6. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the Forfeited 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.

7. The United States may also, to the extent practicable, provide direct written notice to any person known to have an alleged interest in the Forfeited Property that is the subject of this Preliminary Order of Forfeiture of Substitute Assets, as a substitute for published notice as to those persons so notified.

8. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of Preliminary Order of Forfeiture of Substitute Assets, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of the

property, including depositions, interrogatories, requests for production of documents and to issue subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

9. Upon adjudication of all third-party interests, this Court will enter a final order of forfeiture pursuant to 21 U.S.C. § 853(n)(7) and Fed. R. Crim. P. 32.2(c)(2), in which all interests will be addressed.

Dated: New York, New York  
\_\_\_\_\_, 2013

SO ORDERED:

---

HONORABLE DEBORAH A. BATTS  
UNITED STATES DISTRICT JUDGE