

**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

August 28, 2014

**BY ECF**

The Honorable Paul A. Crotty  
United States District Judge  
Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street, Room 1350  
New York, NY 10007

**Re: United States v. Miguel Martinez  
09 Cr. 695 (PAC)**

Dear Judge Crotty:

The Government respectfully submits this letter to enclose for the Court's approval a stipulation resolving the Government's Motion in Support of its Proposed Preliminary Order of Forfeiture of Substitute Assets. The parties agree that approval of this stipulation will fully resolve the Motion, obviating the briefing schedule and September 23, 2014 conference.

Respectfully submitted,

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

By: /s/ Paul M. Monteleoni  
Paul M. Monteleoni  
Assistant United States Attorney  
(212) 637-2219

cc: Roberto Finzi, Esq. (by ECF and email)  
*Counsel for Miguel Martinez*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:
	:
-v.-	:
	:
MIGUEL MARTINEZ,	:
	:
Defendant.	:
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WHEREAS, on July 10, 2009, MIGUEL MARTINEZ (the “defendant”) was charged in a three-count Information, 09 Cr. 695 (PAC) (the “Information”), with conspiracy to commit honest services mail fraud, in violation of 18 U.S.C. §§ 1341, 1346 and 1349 (Count One), with mail fraud, in violation of 18 U.S.C. § 1341 (Count Two), and with conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h) (Count Three);

WHEREAS, the Information included a forfeiture allegation requiring the defendant to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One and Two of the Information, including but not limited to a sum of \$106,000 in United States currency, representing the amount of proceeds obtained as a result of the offenses charged in Counts One and Two of the Information;

WHEREAS, the Information 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;

WHEREAS, on July 16, 2009, the defendant pled guilty to Counts One, Two, and Three of the Information;

WHEREAS, on December 15, 2009, the defendant was sentenced and ordered to forfeit a sum of money of \$106,000, and on that day, the court issued a written Order of Forfeiture imposing a \$106,000 money judgment against the defendant (the "Money Judgment"), representing the amount of proceeds obtained as a result of the offenses charged in Counts One and Two of the Information;

WHEREAS, the Government contends that 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 full 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, MIGUEL MARTINEZ, by the New York City Employee Retirement System, Membership Number 558851, and all property traceable thereto.

(the "Substitute Asset");

WHEREAS, the defendant is now 43 years old and is not entitled to receive benefits from the Substitute Asset until he reaches the age of 57;

WHEREAS, on December 17, 2013, the United States filed a motion (the "Motion") seeking forfeiture, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(p), of all of the defendant's right, title and interest in the Substitute Asset, including any benefits to be paid from the Substitute Asset, as assets of the defendant to be applied in partial satisfaction of the Money Judgment;

WHEREAS, the defendant wishes to fully and finally resolve this matter;

WHEREAS, the defendant consents to the forfeiture of his right, title, and interest in the Substitute Asset;

WHEREAS, on or about December 21, 2009, the defendant was ordered to pay restitution in the amount of \$106,000 (the "Restitution Order"); and

WHEREAS, the United States intends, in an exercise of its discretion in light of the length of time before benefits may be paid from the Substitute Asset, to credit payments Martinez makes towards the Restitution Order towards the satisfaction of the Money Judgment;

IT IS HEREBY STIPULATED AND AGREED, by and between the United States of America, by and through its attorney, Preet Bharara, United States Attorney for the Southern District of New York, Assistant United States Attorney Paul M. Monteleoni, of counsel, and the defendant, and his counsel, Roberto Finzi, Esq. and Anand Sithian, Esq., 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 up to but not exceeding the value of the Money Judgment plus interest as computed herein (the "Forfeited Property"), is hereby forfeited to and vested in the United States of America as set forth herein, as substitute assets, pursuant to 18 U.S.C. § 981(a)(1)(C), 21 U.S.C. § 853(p), and 28 U.S.C. § 2461, subject to the provisions of 21 U.S.C. § 853(n).

2. The defendant agrees to continue to make restitution payments pursuant to the Restitution Order, and to do so in the amount of \$250 per month or as ordered by the Court ("Restitution Payments").

3. 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.

4. 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.

5. 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 Consent Preliminary Order of Forfeiture of Substitute Assets, as a substitute for published notice as to those persons so notified.

6. 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.

7. Upon entry of a final order of forfeiture vesting title to the Forfeited Property in the United States, the Money Judgment shall be deemed satisfied in full. Thereafter, the post-tax benefits from the Substitute Asset shall be paid by the New York City Employee Retirement System ("NYCERS") to the United States Marshals Service or its designee (the "Payments"). The United States Marshals Service or its designee shall be authorized to deposit the Payments in the Seized Asset Deposit Fund or Asset Forfeiture Fund, and the United States shall have clear title to such property.

8. When the total amount of the Payments reaches the total payoff amount set forth herein (the "Total Payoff Amount"), the United States shall thereafter advise NYCERS to discontinue payments to the United States Marshals Service and resume payments to the defendant or his heirs, beneficiaries, successors and assigns. The Total Payoff Amount shall be the value of the Money Judgment, plus interest as set forth below, subject to such credits as the United States may apply in its discretion (including, but not limited to, Restitution Payments). In calculating the Total Payoff Amount, the Money Judgment shall be deemed to accrue interest at the rate specified in 18 U.S.C. § 3612(f)(2) beginning on the date the Court enters this Order.


9. All financial institutions and third parties 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.

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10. The signature page of this Consent Preliminary Order of Forfeiture of Substitute Assets may be transmitted through facsimile or electronic means and executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

AGREED AND CONSENTED TO:

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


By:   
PAUL M. MONTELEONI  
Assistant United States Attorney  
One St. Andrew's Plaza  
New York, New York 10007  
Tel.: (212) 637-2219

8/26/14  
DATE

MIGUEL MARTINEZ  
DEFENDANT

By:   
MIGUEL MARTINEZ

8/22/2014  
DATE

By:   
ROBERTO FINZI, ESQ.  
ANAND SITHIAN, ESQ.  
Attorneys for Defendant  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Tel.: (212) 373-3311

8/25/14  
DATE

SO ORDERED:

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HONORABLE PAUL A. CROTTY  
UNITED STATES DISTRICT JUDGE

\_\_\_\_\_  
DATE