

United States District Court
Eastern District of Michigan
Southern Division

United States of America,

Plaintiff,

v.

Case No. 13-cr-20600

Honorable Paul D. Borman

Farid Fata, M.D.,

Defendant.

Combined Application, and Brief in Support Thereof, to Amend Stipulated Preliminary Order of Forfeiture (ECF 154) Regarding Assets Administered in Oakland County Circuit Court Case No. 2013-137010, and for Order Directing the Deposit of Funds with Clerk of the Court and Restraining Distribution

The United States of America, by and through its attorneys, requests the Court to (1) amend the Stipulated Preliminary Order of Forfeiture (ECF 154) by removing from forfeiture “assets being administered in the action for the benefit of creditors, In RE Michigan Hematology-Oncology, PC, et al., Case No. 2013-137010, which is pending in State of Michigan In the Circuit Court for the County of Oakland” (“ABC Funds”), (2) order that Frank Simon remit the ABC Funds to the Clerk of the Court pending further order of the Court, and (3) order that Frank Simon deposit funds obtained from liquidating Farid Fata’s MHO Cash Balance Plan and 401(k) Profit Sharing Plan with the Clerk of the Court pending further order of the Court. In support of its Application, the government provides the following.

The ABC Funds

This Court entered an Amended Judgment and Commitment Order determining the amount of restitution that is due from Farid Fata (ECF 243), and entered a Stipulated Preliminary Order of Forfeiture against Farid Fata (ECF 154) forfeiting numerous assets to the United States.

The Stipulated Preliminary Order of Forfeiture (ECF 154), which Defendant signed, provides in pertinent part:

Defendant, on behalf of himself and on behalf of his interests in all companies in which he has an interest, (a) releases any and all interests in or claims to assets that are being administered in the action for the benefit of creditors, In RE Michigan Hematology-Oncology, PC, et al., Case No. 2013-137010, which is pending in State of Michigan In the Circuit Court for the County of Oakland (the “ABC case”) and agrees that those assets constitute proceeds of his offenses, and (b) consents to those assets being included in an Amended Preliminary Order of Forfeiture upon application of the government, at some future date, and/or used toward the payment of restitution in this criminal case, with the decision whether to have the assets forfeited or used directly toward restitution to be within the sole discretion of the government.

(ECF 154, ¶ 7). The ABC Funds were included in the Stipulated Preliminary Order of Forfeiture, but because the ABC Funds have not been physically transferred from the ABC case to the United States, the forfeiture proceedings concerning those assets can be terminated by the United States in favor of using those assets toward restitution. (ECF 154, ¶ 9, p. 8). The United States now seeks to use the ABC Funds from the ABC case toward the payment of restitution in this criminal case.

Accordingly, the government seeks, in the interest of justice, to discontinue the forfeiture of the ABC Funds being held in connection with the ABC case and obtain an order from the Court directing the Assignee in the ABC case, Frank Simon, to remit the ABC Funds to the Clerk of the Court to be held pending further order of the Court. Specifically, the government is seeking to have the following amounts which comprise the ABC Funds transferred from the Assignee, Frank Simon, to the Clerk of the Court (USDC MIE), Attn.: Financial, 231 W. Lafayette, Detroit MI 48226:

Seven Hundred Ninety-Six Thousand Nine Hundred Ninety Dollars and Ninety Seven Cents (\$796,990.97) held by the Assignee on behalf of Michigan Hematology-Oncology, PC.

Given that Defendant consented in the SPOF to the ABC Funds being used toward the payment of restitution there can be no basis for any objection to the relief requested in this Application.

On July 17, 2019, the court in In RE Michigan Hematology-Oncology, PC, et al., Case No. 2013-137010 (pending in State of Michigan In the Circuit Court for the County of Oakland) entered an Order authorizing the Assignee, Frank Simon, to stipulate to an order directing him to deposit the \$796,990.97 with the Clerk of the Court in this criminal case. (Exhibit A). The lawyer for the Assignee, Frank Simon, advised government counsel that he will transfer these funds to the Clerk of the Court upon receiving an order entered by this Court. Once these funds

are transferred to the Clerk of the Court in this criminal case, they will be available for distribution to the victims in this case.

The MHO Cash Balance Plan and 401(k) Profit Sharing Plan

The Stipulated Preliminary Order of Forfeiture (ECF 154), which Defendant signed, also provides in pertinent part:

Defendant, by signing below, on behalf of himself and on behalf of his legal interests in all of the companies in which he has an interest, surrenders any and all rights to \$1,035,304.61 in funds from Cor Clearing, bank account #57056663, in the name of Farid Fata TTEE Michigan Hematology Oncology (i.e., rights to funds in the Michigan Hematology Oncology, P.C. Cash Pension Plan), and agrees that such rights and funds shall be used toward the payment of any restitution order that is entered in this case.

Thomas E. Perez, Secretary of Labor, U.S. Department of Labor filed an action against Farid Fata and Michigan Hematology-Oncology, P.C. (“MHO”) titled *Thomas E. Perez, Secretary of Labor, US Department of Labor vs. Farid Fata et. Al.*, in the United States District Court Eastern District of Michigan (Case No. 15-cv-12583-VAR-MKM). As a result of that action, on October 22, 2015, an independent fiduciary, Frank Simon, was appointed pursuant to a Consent Order and Judgment. (15-cv-12583, ECF 8). The Consent Order provides Frank Simon with all authority to collect, liquidate, manage and distribute assets of the Michigan Hematology-Oncology, P.C. Cash Pension Plan (“MHO Cash Balance Plan”) and the Michigan Hematology-Oncology, P.C. Profit Sharing Plan (“MHO Profit Sharing Plan”).

On July 17, 2019, the court in In RE Michigan Hematology-Oncology, PC, et al., Case No. 2013-137010 (pending in State of Michigan In the Circuit Court for the County of Oakland) entered an Order authorizing the independent fiduciary, Frank Simon, to stipulate to an order directing him to deposit the funds obtained from liquidating Farid Fata's Cash Balance Pension Plan in the amount of \$290,063.33 and funds obtained from liquidating Farid Fata's CIG Securities Safe Harbor 401(k) Profit Sharing Plan in the amount of \$4,008.11 with the Clerk of the Court in this criminal case. (Exhibit A). The independent fiduciary, Frank Simon, is currently holding the \$290,063.33 and the \$4,008.11, and the lawyer for the independent fiduciary advised government counsel that the independent fiduciary will transfer these funds to the Clerk of the Court in this criminal case upon receiving an order entered by this Court. Once these funds are transferred to the Clerk of the Court in this criminal case, they will be available for distribution to the victims in this case.

Accordingly, the government is seeking an order directing the independent fiduciary, Frank Simon, to deposit with the Clerk of the Court (USDC MIE), Attn.: Financial, 231 W. Lafayette, Detroit MI 48226, the following funds:

- a. Two Hundred Ninety Thousand Sixty-Three Dollars and Thirty-Three Cents (\$290,063.33) obtained from liquidating Farid Fata's MHO Cash Balance Plan; and

- b. Four Thousand Eight Dollars and Eleven Cents (\$4,008.11) obtained from liquidating Farid Fata's CIG Securities Safe Harbor 401(k) Profit Sharing Plan.

While the government does not believe there should be any objection by Defendant to the above, since he signed the Stipulated Preliminary Order of Forfeiture and there is a Consent Judgment (referenced above), the government sent a draft of this Application and the proposed order to Mark Kriger, Defendant's attorney in the underlying criminal case, to seek concurrence. Mr. Kriger advised government counsel that he and Dr. Fata concur in the relief being requested herein.

Money Judgment

In consideration for Dr. Fata's concurrence in the relief requested, the government agrees to give Dr. Fata credit against his forfeiture money judgment for the amounts that are the subject of this Application (\$796,990.97, \$290,063.33 and \$4,008.11), a total of \$1,091,062.41. The government requests the Court to order that the amount *owed* by Defendant on his forfeiture money judgment is reduced by \$1,091,062.41.

Conclusion

The United States respectfully requests that the Court enter the proposed order, which will be submitted to the Court via ECF utilities.

Respectfully submitted,

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Dated: July 25, 2019

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2019, the foregoing was electronically filed using the ECF system which will send notification of such filing to all ECF participants.

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