

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA            )  
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  )           Criminal No. 18-CR-10399-DPW  
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  )  
BRIAN R. WALSHE,                        )  
  )  
  )           Defendant.

**PRELIMINARY ORDER OF FORFEITURE**

**WOODLOCK, S.D.J.**

WHEREAS, on October 31, 2018, a federal grand jury sitting in the District of Massachusetts returned a four-count Indictment charging Brian R. Walshe (the “Defendant”) with Wire Fraud, in violation of 18 U.S.C. § 1343 (Count One); Interstate Transportation For a Scheme to Defraud, in violation of 18 U.S.C. § 2314 (Count Two); Possession of Converted Goods, in violation of 18 U.S.C. § 2315 (Count Three); and Unlawful Monetary Transaction, in violation of 18 U.S.C. § 1957 (Count Four);

WHEREAS, the Indictment included a Fraud Forfeiture Allegation, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), which provided notice that the United States intended to seek the forfeiture, upon conviction of the Defendant of one or more of the offenses alleged in Counts One through Three of the Indictment, of any property constituting, or derived from, proceeds obtained directly or indirectly, as a result of such offenses;

WHEREAS, the property to be forfeited included, but was not limited to, the following:

- (a) \$80,000, to be entered in the form of a forfeiture money judgment; and
- (b) Two Shadow Paintings by Andy Warhol, Warhol Foundation Nos. PA65.049 and PA65.032;

WHEREAS, the Indictment also included a Money Laundering Forfeiture Allegation, pursuant to 18 U.S.C. § 982(a)(1), which provided notice that the United States intended to seek

the forfeiture, upon conviction of the Defendant of the offense alleged in Count Four of the Indictment, of any property, real or personal, involved in such offense, and any property traceable to such property;

WHEREAS, the property to be forfeited included, but was not limited to, the following:

- (a) \$80,000, to be entered in the form of a forfeiture money judgment;

WHEREAS, the Indictment further provided that, if any of the above-described forfeitable property, as a result of any act or omission by 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; (c) has been placed beyond the 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, the United States is entitled to seek forfeiture of any other property of the Defendant, pursuant to 28 U.S.C. § 2461(c) and 18 U.S.C. § 982(b), incorporating 21 U.S.C. § 853(p), up to the value of such assets described above;

WHEREAS, on April 1, 2021, at a hearing pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the Defendant pled guilty to Counts One, Two, and Four of the Indictment, pursuant to a written plea agreement signed by the Defendant on April 1, 2021;<sup>1</sup>

WHEREAS, in Section 7 of the written plea agreement, the Defendant agreed that the Court will, upon acceptance of the Defendant's guilty plea, enter an order of forfeiture as part of the Defendant's sentence, and that the order may include assets directly traceable to the Defendant's offenses, assets used to facilitate the Defendant's offenses, substitute assets and/or a

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<sup>1</sup> Pursuant to the terms of the written plea agreement, the United States agreed to dismiss Count Three of the Indictment at the Defendant's sentencing.

money judgment equal to the value of the property derived from, or otherwise involved in, the offenses;

WHEREAS, the assets to be forfeited specifically included, without limitation, the following:

- a. Two Shadow Paintings by Andy Warhol, Warhol Foundation Nos. PA65.049 and PA65.032 (the “Paintings”);<sup>2</sup> and
- b. \$225,000 in United States currency, to be entered in the form of an Order of Forfeiture (Money Judgment) (the “Money Judgment”);

WHEREAS, the Defendant admitted that the Paintings are subject to forfeiture on the grounds that they constituted, or were derived from, proceeds of the Defendant’s offenses, and that they were involved in the Defendant’s offenses, and the Defendant agreed to consent to the entry of an order of forfeiture against the Paintings;<sup>3</sup>

WHEREAS, in light of the Defendant’s admissions in the written plea agreement and his guilty plea on April 1, 2021, the United States has established the requisite nexus between the Paintings and the offenses to which the Defendant pled guilty, and accordingly, the Paintings are subject to forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c); and

WHEREAS, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Rule

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<sup>2</sup> The Paintings have not yet been recovered, and therefore, are not in Federal custody.

<sup>3</sup> The Defendant also admitted that \$225,000 is subject to forfeiture on the grounds that it represents the amount of proceeds that the Defendant obtained (directly or indirectly), and/or facilitating property, and/or property involved in the crimes to which the Defendant pled guilty, and the Defendant agreed to consent to the entry of a personal money judgment in the amount of \$225,000. The United States has separately requested the Court issue an Order of Forfeiture (Money Judgment) in the amount of \$225,000.

32.2(b)(2) of the Federal Rules of Criminal Procedure, the United States is now entitled to a Preliminary Order of Forfeiture against the Paintings.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The Court finds, pursuant to Rule 32.2(b)(1) of the Federal Rules of Criminal Procedure, that the United States has established the requisite nexus between the Paintings and the offenses to which the Defendant pled guilty.
2. The Court shall retain jurisdiction in this case for the purpose of enforcing this Order.
3. The Court finds that all of the Defendant's interests in the Paintings are hereby forfeited to the United States of America for disposition, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).
4. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States is hereby authorized to seize the Paintings and maintain them in its secure custody and control.
5. After the Paintings have been seized and taken into Federal custody, and pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), incorporating 21 U.S.C. § 853(n)(1), the United States shall publish, for thirty (30) consecutive calendar days on the government forfeiture website [www.forfeiture.gov](http://www.forfeiture.gov), notice of the Preliminary Order of Forfeiture and notice of the United States' intent to dispose of the Paintings.
6. In addition, after seizure of the Paintings by Federal authorities, and pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), incorporating 21 U.S.C. § 853(n)(1), the United States shall give, to the extent practicable, direct written notice to any person known to

have alleged an interest in the Paintings to be forfeited.

7. Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), incorporating 21 U.S.C. § 853(n)(2) and (3), the notice referred to above shall state: (a) that any person, other than the Defendant, asserting a legal interest in the Paintings shall, within sixty (60) days after the first day of publication on the government forfeiture website or within thirty (30) days after receipt of actual notice, whichever is earlier, file a petition with the United States District Court in Boston, Massachusetts, requesting a hearing to adjudicate the validity of his or her interest in the Paintings; and (b) that the petition shall be signed by the petitioner under the penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the Paintings, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the Paintings, any additional facts supporting the petitioner's claim, and the relief sought.

8. Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), incorporating 21 U.S.C. § 853(n)(7), following the Court's disposition of all petitions filed under 21 U.S.C. § 853(n)(6), or if no such petitions are filed following the expiration of the period provided in 21 U.S.C. § 853(n)(2) for the filing of such petitions, the United States of America shall have clear title to the Paintings.

9. Upon adjudication of all third party interests, this Court will enter a Final Order of Forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Rule 32.2(c) of the Federal Rules of Criminal Procedure, in which all interests will be addressed.

10. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, this Preliminary Order of Forfeiture will become final as to the Defendant at the time of his sentencing, will be part of the Defendant's criminal sentence, and will be included in the criminal judgment entered by this Court against him.

*/s/ Douglas P. Woodlock*

Dated: October 8, 2021

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DOUGLAS P. WOODLOCK  
Senior United States District Judge