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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

\$192,765.09 IN BANK FUNDS,

Defendant.

No. CV 16-08732-PSG-SK
[proposed] CONSENT JUDGMENT OF FORFEITURE

DAVID A. GILL, CHAPTER 7 TRUSTEE
FOR THE ESTATE OF PROCARE MOBILE
RESPONSE, LLC,

Claimant.

This action was filed on November 22, 2016. Notice was given and published in accordance with law and claimant David A. Gill, Chapter 7 Trustee ("Trustee") for the estate of Procure Mobile Response, LLC ("Claimant")¹ filed a timely claim to contest the

¹ On January 13, 2015 (the "Petition Date"), Procure Mobile Response, LLC (the "Debtor") filed a voluntary petition for relief

1 forfeiture of the defendant bank funds on January 11, 2017. There
2 are no other statements of interest or answers,² and the time for
3 filing such statements of interest and answers has expired.
4 Plaintiff United States of America (the "government") and Claimant
5 have reached an agreement that is dispositive of the claim to the
6 defendant bank funds in this action. The parties have requested that
7 the Court enter this Consent Judgment of Forfeiture.

8 WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

9 A. This Court has jurisdiction over this action pursuant to 28
10 U.S.C. §§ 1345 and 1355 and over the parties hereto.

11 B. The Complaint for Forfeiture states a claim for relief
12 pursuant to 18 U.S.C. §§ 981(a)(1)(A) and 984.

13 C. Notice of this action has been given in accordance with
14 law. For purpose of this action, all potential claimants to the
15 defendant bank funds other than Claimant are deemed to have admitted
16 the allegations of the Complaint. The allegations set out in the
17 Complaint are sufficient to establish a basis for forfeiture.

18 D. The United States of America shall have Judgment as to
19 \$69,380.40 of the defendant bank funds, together with all interest
20 earned by the government on that portion of the defendant bank funds
21 since the date of seizure, and no other person or entity shall have
22

23 under chapter 11 of title 11 of the United States Code (the
24 "Bankruptcy Code"). The petition was filed with the United States
25 Bankruptcy Court for the Central District of California, Los Angeles
26 Division (the "Bankruptcy Court"), and assigned case number 2:15-bk-
10469-WB (the "Bankruptcy Case"). On or about April 21, 2015, the
27 Bankruptcy Case was converted to one under chapter 7 of the
Bankruptcy Code. David A. Gill is the chapter 7 trustee.

28 ² On January 5, 2017, Zinovy Ganopolsky filed a claim, but
withdrew that claim on March 28, 2017.

1 any right, title or interest therein.

2 E. The remaining \$123,384.69 of the defendant bank funds,
3 together with any interest earned on that amount since the date of
4 seizure, shall be paid to Claimant by the United States Marshals
5 Service ("USMS") no later than 60 days from the date of entry of this
6 Judgment, through its counsel, John N. Tedford, IV, Danning, Gill,
7 Diamond & Kollitz, LLP, 1900 Avenue of the Stars, 11th Floor, Los
8 Angeles, California 90067. Claimant shall deposit the sum of
9 \$54,004.29 (the "Segregated Funds") in a segregated account (the
10 "Segregated Account"), to be disbursed in accordance with paragraphs
11 F and G below. The balance shall be free and clear funds of the
12 estate.

13 F. The Segregated Funds shall be earmarked for payment as
14 follows: (i) Within ten business days after receipt of the Segregated
15 Funds, the Trustee shall pay, from the Segregated Funds, all of the
16 undisputed Priority Wage Claims in the Bankruptcy Case;³ (ii) The
17 Trustee shall reserve \$12,475.00 for Charles Bowen's claim until (a)
18 the Trustee and the claimant agree on the amount of the claim
19 entitled to allowance and priority under § 507(a)(4) of the
20 Bankruptcy Code (if any), or (b) the Bankruptcy Court enters an order
21 determining the amount of the claim entitled to allowance and

22
23 ³ In the Bankruptcy Case, the deadline for creditors (except
24 governmental units) to file proofs of claims was September 8, 2015
25 (the "Claims Bar Date"). Prior to the Claims Bar Date, 20 of the
26 Debtor's former employees filed proofs of claims asserting claims for
27 unpaid wages, salaries, commissions, vacation pay, severance pay and
28 sick leave pay entitled to priority under § 507(a)(4) of the
Bankruptcy Code (collectively the "Priority Wage Claims"). The
aggregate amount of the Priority Wage Claims is \$54,004.29. A
schedule identifying the Priority Wage Claims is attached as Exhibit
A.

1 priority under § 507(a)(4) of the Bankruptcy Code. The Trustee shall
2 then pay, from the Segregated Funds, the agreed-upon or Court-
3 determined amount entitled to priority; and (iii) The Trustee shall
4 comply with applicable non-bankruptcy law with respect to the
5 reporting, withholding and payment of federal and state income taxes,
6 social security taxes, unemployment taxes, Medicare taxes and any
7 other like taxes required to be withheld from an employee's paycheck.
8 Such amounts shall be withheld and paid from the funds that would
9 otherwise be paid to each respective holder of a Priority Wage Claim.

10 G. If the amount paid by the Trustee for any claim listed in
11 paragraph F is less than the amount reserved to pay that claimant's
12 Priority Wage Claim as scheduled in Exhibit A, the difference shall
13 be disbursed from the Segregated Funds within 30 days from the date
14 of payment or the date on which it is determined by agreement or by
15 the Bankruptcy Court that no payment is due, as follows: (i) one-half
16 to the United States of America; and (ii) one-half to Claimant, as
17 free and clear funds of the estate. Any funds paid to the United
18 States of America pursuant to Paragraph G shall be made payable to
19 the USMS and sent to counsel for the government. Those funds shall
20 be deemed forfeited pursuant to the Consent Judgment of Forfeiture
21 and no other person or entity shall have any right, title or interest
22 therein.

23 H. Claimant has released the United States of America, its
24 agencies, agents, and officers, including employees and agents of the
25 Federal Bureau of Investigation and Health and Human Services, from
26 any and all claims, actions or liabilities arising out of or related
27 to this action, including, without limitation, any claim for
28 attorney's fees, costs or interest which may be asserted on behalf of

1 Claimant, whether pursuant to 28 U.S.C. § 2465 or otherwise. Nothing
2 in this stipulation or the proposed consent judgment is intended as,
3 nor should anything in this stipulation or the proposed consent
4 judgment be interpreted as an admission by Claimant of any fact
5 alleged by Plaintiff in its complaint filed in this action, or any
6 liability or wrongdoing. Further, nothing in this Stipulation or the
7 proposed consent judgment is intended to be, or shall be interpreted
8 as, a waiver or release of Medicare claims submitted by Procure
9 Mobile Response, LLC, and the Trustee, and appeals relating to the
10 rejection of such claims..

11 I. The Court finds that there was reasonable cause for the
12 institution of these proceedings. This Consent Judgment of
13 Forfeiture shall be construed as a certificate of reasonable cause
14 pursuant to 28 U.S.C. § 2465.

15
16 Dated: 7/10/17

PHILIP S. GUTIERREZ

THE HONORABLE PHILIP S. GUTIERREZ
UNITED STATES DISTRICT JUDGE

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1 Approved as to form and content:

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DATED: July 6, 2017

Respectfully submitted,

SANDRA R. BROWN
Acting United States Attorney
LAWRENCE S. MIDDLETON
Assistant United States Attorney
Chief, Criminal Division

_____/s/_____

STEVEN R. WELK
Assistant United States Attorney
Chief, Asset Forfeiture Section

JENNIFER Resnick
Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

DATED: July 6, 2017

DANNING, GILL, DIAMOND & KOLLITZ, LLP

_____/s/_____

JOHN N. TEDFORD, IV

Attorneys for Claimant
DAVID A. GILL, CHAPTER 7 TRUSTEE FOR
THE ESTATE OF PROCARE MOBILE RESPONSE,
LLC