

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(Trenton Division)

UNITED STATES OF AMERICA	:	
	:	Criminal No. 09-858
	:	
v.	:	Hearing: October 16, 2012
	:	
BENJAMIN PENA	:	Honorable Joel A. Pisano
	:	
	:	
Defendant.	:	

**GOVERNMENT’S MOTION FOR FORFEITURE AGAINST
DEFENDANT BENJAMIN PENA**

1. The Government requests that Defendant Benjamin Pena be ordered to pay at least \$1,000,000.00 in criminal forfeiture.
2. \$1,000,000.00 in criminal forfeiture is based on the guilty pleas and sentences of Robert Rubeck and Tamara Frankel, who each admitted that they caused between \$1 million and \$2.5 million in fraudulent VRS calls to be billed to the federal government.
3. Criminal defendants are jointly and severally liable for all reasonably foreseeable amounts obtained by any member of the criminal conspiracy. *E.g., United States v. Hurley*, 63 F.3d 1, 22 (1st Cir 1995) (ordering criminal forfeiture for a criminal defendant based on foreseeable amounts obtained by co-conspirators because “a member of a conspiracy is responsible for the foreseeable acts of other members of the conspiracy taken in furtherance of the conspiracy”); *United States v. Yass*, 636 F. Supp. 2d 1177, 1186 (D. Kan. 2009) (“the proper standard for criminal forfeiture for co-conspirators . . . encompasses joint and several liability for gross proceeds generated under a fraud scheme . . . [Defendant], as a convicted co-conspirator, is

liable for all of the proceeds generated by the mail fraud scheme.”); *United States v. Grant*, No. 05-1192, 2008 U.S. Dist. LEXIS 73479, at *4 (SDNY Sept. 25, 2008) (“Defendants [in a fraud scheme] can be ordered to forfeit the full amount of the proceeds of their crimes. Specifically, coconspirators are liable jointly and severally to forfeit the reasonably foreseeable proceeds of their criminal activity.”).

Here, because Defendant Pena was the co-conspirator who directed and paid Ruback and Frankel to make over \$1 million in fraudulent VRS calls, he is responsible for the reasonably foreseeable loss that they caused – an amount of at least \$1,000,000.

4. The Government respectfully requests entry of a \$1,000,000 order of forfeiture against Defendant Pena in the form of a money judgment.

5. Upon entry of an order of forfeiture against Defendant Pena pursuant to Fed. R. Crim. P. 32.2(b)(3), the Government requests authorization to conduct any discovery necessary to identify, locate, and present for forfeiture any assets of the Defendant which, pursuant to Fed. R. Crim. P. 32.2(e) and 21 U.S.C. § 853(p), may be available, as substitute assets, to satisfy the money judgment of \$1,000,000.

6. Pursuant to Fed. R. Crim. P. 32.2(b)(4), the Government requests that the Court’s order of forfeiture become final as to the Defendant at the time of sentencing and be made a part of the sentence and included in the judgment.

CONCLUSION

For the reasons stated herein, the Government respectfully requests this Court to: (1) enter an order of forfeiture against Benjamin Pena in the amount of \$1,000,000 in the form of a money judgment; (2) order the Government to permit taking discovery, as necessary, pursuant to Fed. R. Crim. P. 32.2(e) and 21 U.S.C. § 853(p); and (3) make the order of forfeiture against

Benjamin Pena part of his sentence, final at the time of sentencing, and included in the judgment.

Respectfully submitted,

Denis J. McInerney
United States Department of Justice
Chief, Criminal Division, Fraud Section

By: /s/ Robert Zink

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October 2012, I electronically filed the foregoing on PACER via the ECF system, which shall automatically serve an electronic copy of this paper on all counsel of record in the above-captioned case.

/s/ _____

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