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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff, v. MARTIN KAO, Defendant.	Crim. No. 21-00061 LEK RESPONSE TO TIFFANY JENNIFER LAM'S OBJECTION TO THE UNITED STATES' MOTION FOR ORDER AUTHORIZING APPLICATION OF DEFENDANT'S BOND DEPOSIT TO PAYMENT OF SPECIAL ASSESSMENT AND RESTITUTION (ECF NO. 149); EXHIBIT A; CERTIFICATE OF SERVICE

RESPONSE TO TIFFANY JENNIFER LAM'S OBJECTION TO THE UNITED STATES' MOTION FOR ORDER AUTHORIZING APPLICATION OF DEFENDANT'S BOND DEPOSIT TO PAYMENT OF SPECIAL ASSESSMENT AND RESTITUTION (ECF No. 149)

The United States of America, by and through its undersigned attorneys, hereby responds to Jennifer Tiffany Lam's Objection to the United States' Motion for Order Authorizing Application of Defendant Martin Kao's Bond Deposit to Payment of Defendant's Special Assessment and Restitution (ECF No. 149). Because Defendant's bail deposit consists of property owned by Defendant, the Court should overrule Lam's objection and grant the government's motion to apply the deposit to criminal penalties ordered as part of the judgment in this matter.

I. Factual Background

After being arrested pursuant to warrant and complaint, on October 8, 2020, Defendant Martin Kao posted a $2 million secured bond, all by way of cash deposit. At the time of posting the bond, Defendant filed a notarized "Affidavit of Cash Bail," in which he stated that "the $2,000,000.00 cash deposited as bail on the foregoing bond is ***owned by me and is to be returned to me*** . . . upon exoneration." ECF Nos. 14 (sealed version), 150 (redacted unsealed version) (emphasis added). The receipt issued by the Clerk's Office reflects that the "Payer" is Defendant. *Id.*

On May 6, 2021, a grand jury returned an indictment charging Defendant with three counts of wire fraud, in violation of 18 U.S.C. § 1343, and five counts of money laundering, in violation of 18 U.S.C § 1957. (ECF No. 21.) On September 7, 2022, Defendant pled guilty to all counts without a plea agreement. (ECF No. 76.)

On August 5, 2024, the United States filed the motion at issue, pursuant to 28 U.S.C. § 2044, requesting that the Court order that the $2,000,000.00 cash bail be applied to Defendant's criminal penalties upon Defendant's surrender for service of any term of imprisonment imposed by the Court (the "Turnover Motion"). (ECF No. 132.)

On February 13, 2025, Defendant was sentenced to 87 months imprisonment and, in relevant part, ordered to pay restitution in the amount of $12,841,490.00 and a special assessment of $800.00.[1] On the same day, at the hearing on the Turnover Motion—approximately six months after the Turnover Motion was filed—an attorney for Defendant's wife, Tiffany Jennifer Lam, appeared and filed an Objection to the Turnover Motion (the "Objection"). (ECF No. 149.)

In her Objection, Lam asserts that the $2 million cash bail was withdrawn on October 6, 2020 from a Merrill Lynch account ending in 2641 ("ML2641"), and that such account contained $3,000,000.00 at the time of the withdrawal. (ECF No. 149 at 4-5.) Lam claims that she has an interest in the $2,000,000.00 because

[1] The Court reserved determination as to whether additional restitution will be imposed in favor of PacMar f/k/a Navatek.

ML2641 was part of a purported "marital estate."[2] *Id.* at 3. Specifically, Lam claims that she has an ownership interest in "approximately $1,500,000" of the $2 million bail because ML2641 held $3 million at the time the bail money was withdrawn. *Id.* at 7.

A review of records relating to ML2641 reveal that ML2641 was held solely in the name of Defendant; it was not a joint account with Lam. *See* Exhibit A at BOA-317-308-DOJ-0000001 (signature card for ML2641 identifying solely Defendant as owner); MLPFS-00202-004-DOJ-0000135 (identifying ML2641 account as "single" ownership).

II. Argument

Pursuant to 28 U.S.C. § 2044:

> On motion of the United States attorney, the court shall order any money belonging to and deposited by or on behalf of the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon the defendant. . . . This section shall not apply to any third party surety.

28 U.S.C. § 2044.

[2] Lam repeatedly refers to a purported "Marital Agreement" that makes all property joint property, but that appears to refer merely to an alleged informal understanding between Lam and Kau, and not a written agreement. *See* ECF No. 149-1 ¶ J.

For the reasons below, Lam's argument, that some portion (allegedly $1.5 million of the $2 million bail money) belongs to her and is thus not subject to turnover, fails.

A. The government has shown, by a preponderance of the evidence, that the $2 million belongs to Defendant.

When evaluating a Section 2044 turnover motion, most courts that have addressed the issue have held that the government must prove, by a preponderance of the evidence, that the posted bond money belongs to the defendant. *See United States v. Hills,* No. 1:16-CR-329, 2022 WL 1127888, at *3 (N.D. Ohio Apr. 15, 2022) (collecting cases); *United States v. Srithongrung*, No. 4:19-CR-00752-7, 2023 WL 2232023, at *1 (S.D. Tex. Feb. 22, 2023).

In determining whether money belongs to a defendant, courts have found that a defendant's signing of the appearance bond as the owner of the posted property is strong evidence of ownership. *See Hills,* 2022 WL 1127888, at *4 ("defendants' representations under oath that they were the sole owners of the property offered to secure the bond is strong evidence that money deposited by each defendant belongs to them"); *Srithongrung,* 2023 WL 2232023, at *1 (cashier's check and affidavit are compelling evidence that money belonged to defendant); *see also United States v. Bell*, Cr. No. 20-2887, 2025 WL 319241, at *3-4 (S.D. Cal. Jan. 21, 2025) (ordering turnover where defendant controlled bank account that money was drawn from and receipt identified defendant as remitter).

Here, Defendant signed an affidavit attesting that "the foregoing bond is owned by me and is to be returned to me," and the receipt from the Clerk's Office lists the "payer" as Defendant. (ECF Nos. 14, 150.) Further, if as Lam claims, the bond was drawn from ML2641, it is significant that ML2641 was an individual account held solely in Defendant's name. Ex A at BOA-317-308-DOJ-0000001 (signature card for ML2641 identifying solely defendant as owner); MLPFS-00202-004-DOJ-0000135 (identifying ML2641 account as "single" ownership).

Lam ignores the above and claims that she is entitled to "approximately $1.5 million" of the $2 million dollar bond because ML2641 was part of a purported marital estate and held $3 million at the time the bond money was withdrawn. Lam's self-serving affidavit is insufficient to establish that any amount of the bond belongs to her, in light of the single ownership of the account in Defendant's name and Defendant's affidavit. Further, as discussed below, even if Lam were able to establish a marital interest in the property, there is absolutely no basis to claim that 75% of the $2 million posted belongs to her.[3]

Lam's Objection cites to *United States v. Gonzales*, and other district court cases, but such cases show only that, under certain factual circumstances – which

[3] Lam's assertion that she was the person who delivered the cashier's check, ECF No. 149 at 4, is immaterial. That only shows that the bond was posted "on behalf of the defendant," when viewed in context with other evidence. *Hills,* 2022 WL 1127888, at *4-5 (rejecting argument that third party that physically posted the bond necessarily had an ownership interest).

are not present here – a family member may be considered a third-party surety, and under such circumstances, bail money would not be available for turnover pursuant to 28 U.S.C. § 2044. However, all cases cited by Lam are inapposite. *See Gonzales,* Cr. No. 11-80211, 2013 WL 654918 (S.D. Fla. Feb. 21, 2023) (where bond co-signed by objecting third-party and others, government could not show that defendant owned the funds by merely relying on the fact that the defendant earned a substantial income from fraud scheme); *United States v. Arnold*, Cr. No. 18-30, 2020 WL 957415 (N.D. Miss. Feb. 27, 2020) (wife was third party surety where deposit receipt listed wife as the "Payer" and no evidence that money belonged to defendant); *United States v. Equere*, 916 F. Supp. 450 (E.D. Pa. 1996) (government agreed that bail money belonged to defendant's brother); *United States v. Sparger,* 79 F.Supp.2d 714 (W.D. Tex. 1999) (attorney was third party surety when he used his own money to post bond); *United States v. Salyer,* Cr. No. 10-61, 2014 WL 412088 (E.D. Cal. Feb. 3, 2014) (undisputed that sister's trust was the source of the bail money and that those funds were deposited with the understanding that they would be returned to the trust upon exoneration of the bond).

In light of Defendant's affidavit attesting to ownership of the $2 million cash bail posted and that the money should be returned to him upon exoneration of the bond, and the fact that the money was withdrawn from an account owned solely by

Defendant, the government has established by a preponderance of the evidence that the money "belongs" to Defendant. Therefore, Lam's objection should be overruled in its entirety.

B. Lam cannot establish a marital interest in the $2 million.

Without explicitly acknowledging the account from which the bail money was withdrawn (ML2641) **was not** jointly held, Lam—who is still married to Defendant—relies on cases relating to divorces to claim that (1) she should be entitled to 50% of the account balance of ML2641 ($3 million) at the time the $2 million bail money was withdrawn because ML2641 was part of a purported marital estate, and (2) that this Court should find that her alleged $1.5 million interest (50% of $3 million) should attach to the $2 million bond posted, and not the remaining $1 million in the account that the parties supposedly subsequently spent on attorneys' fees. (ECF No. 149 at 7.)

State divorce law principles have no application here. In *United States v. Real Prop. Located at 148 Maunalanikai Place in Honolulu, Hawaii*, a civil forfeiture action, the court analyzed whether a spouse has a vested marital interest in property held solely in the name of their spouse. *United States v. Real Prop. Located at 148 Maunalanikai Place in Honolulu, Hawaii*, No. CIV. 07-00049 HG LEK, 2008 WL 3166799, at *7-8 (D. Haw. Aug. 6, 2008). Upon its review of Hawaii divorce law, the court held that a "marital estate" can be determined only at the time of the conclusion of the evidentiary portion of a divorce trial. *Id.* (citing *Malek v. Malek v. Malek,* 8 Haw.App. 377, 380 (1989) and Haw. Rev. Sat. § 580-47, the statute governing division of property in a divorce). Further, the court determined that divorce law principles governing property distribution apply only in the event of divorce. *Id.*

Here, no divorce proceeding is pending. Lam cannot rely on divorce law to determine that she has a vested interest in money withdrawn from a bank account held solely in Defendant's name, and then posted with an affidavit attesting that Defendant is the owner and that the property should be returned to him.[4] *See Real Prop. Located at 148 Maunalanikai Place in Honolulu, Hawaii*, 2008 WL 3166799, at *8 (under Hawaii law, and law of many other states, equitable distribution of marital property in a divorce does not confer ownership interest independent of the divorce); *In re Radinick*, 419 B.R. 291, 294 (Bankr. W.D. Pa. 2009) (marital interest vests only upon judgement of divorce under New York and New Jersey law); *United States v. Abell*, 985 F.3d 111, 114 (1st Cir. 2021) (under

[4] Even if the account were jointly held, under Hawaii law, a debtor presumptively holds the entire joint bank account. *Traders Travel Int'l, Inc. v. Howser*, 69 Haw. 609, 615 (1988) (distinguishing a joint account from property held as tenancy-by-the-entirety and rejecting debtor's wife assertion that her interest in joint account could not be garnished); Haw. Rev. Stat. § 412:4-105. Further, here, the money being sought no longer resides in a bank account; it was withdrawn from the account and deposited by Defendant with the Court, along with a verification that the money belonged to him.

Massachusetts law, defendant's wife did not have vested property interest in account defendant held individually, so she lacked standing to challenge garnishment order against defendant's account to pay restitution obligation).

Even if this Court were to find that Lam has an interest in the $2 million bond – which it cannot – Lam's assertion that she is entitled to 75% of the bond money is meritless. Although it is possible that, in a divorce proceeding, a court could evaluate various equitable factors and determine that Lam has an interest in an account held solely in Defendant's name, no basis exists to believe that such an award would be a 50% interest.[5] *See Balogh v. Balogh*, 134 Haw. 29, 40 (2014) (no fixed percentage for determining division of marital assets). Lam has not presented any evidence for this Court to find such an interest, and it would be wholly inappropriate for this Court to engage in such speculative analysis given that no divorce proceeding exists to give rise to a "marital estate" that can be distributed.[6]

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[5] Even under Lam's fiction, her math does not add up. If, as Lam asserts, the $3 million in the account immediately before withdrawal of the $2 million bail was jointly owned, then each spouse owned $1.5 million, and therefore $1.5 million of the $2 million bail was owned by Defendant. Alternatively, if Lam's fiction involves a continuing 50% interest in property held by the Kao, then she owned only $1 million of the $2 million bail.

[6] Furthermore, any such analysis would require consideration of all property owned by Defendant and/or Lam to ascertain the entirety of the purported "marital estate," not merely the contents of one account, and to determine whether Defendant had dipped into Lam's purported 50% of the "martial estate."

III. Conclusion

Based on the foregoing, the government respectfully requests that the Court enter an order authorizing the Clerk of Court to apply the $2,000,000 cash bond previously posted by Defendant and presently held by the Clerk of Court to payment of Defendant's criminal penalties.

DATED: February 27, 2025, at Honolulu, Hawaii.

KENNETH M. SORENSON
Acting United States Attorney
District of Hawaii

/s/ Sydney Spector
By ______________________________
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CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, a true and correct copy of the foregoing was served on counsel of record using the Court's CM/ECF electronic filing system.

DATED: February 27, 2025, at Honolulu, Hawaii.

/s/ Sydney Spector
U.S. Attorney's Office