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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASSIE WILL-DARNALL,

Defendant.

SANDRA WILL,

Third Party Claimant.

Case No.: 5:24-CR-00292-PCP

THIRD PARTY CLAIMANT SANDRA WILL'S AMENDED PETITION FOR ANCILLARY PROCEEDING

Court: Courtroom 8, 4th Floor
Hearing Date: October 15, 2025
Hearing Time: 10:00 a.m.

TO: CRAIG H. MISSAKIAN, UNITED STATES ATTORNEY;
GALEN A. PHILLIPS, ASSISTANT UNITED STATES ATTORNEY;

PLEASE TAKE NOTICE that third party claimant Sandra Will petitions this Court for an ancillary proceeding to adjudicate the validity of her interests in property forfeited to the United States. This motion is based upon this memorandum of points and authorities and accompanying exhibits, the Eighth Amendment to the United States Constitution, 21 U.S.C. § 853(n), Federal Rule of Criminal Procedure 32.2(c), and all other applicable constitutional, statutory, and case authority, and all evidence and argument that may be presented at the hearing of this petition, to be heard at a date and time to be determined in Courtroom 8 of the Fourth Floor of the San Jose courthouse.

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INTRODUCTION

Pursuant to this Court's October 21, 2025 order, third party claimant and petitioner Sandra Will hereby files this amended petition for an ancillary proceeding concerning her interests in 111 Belwood Gateway in Los Gatos, California. Dkt. 103. Because "an amended complaint supersedes the original, the latter being treated thereafter as non-existent," Ms. Will also re-asserts her arguments concerning her interests in 306 Los Gatos-Almaden Way, Los Gatos, California, despite the fact the government indicated in prior pleadings and at the October 15, 2025 motion hearing that it was withdrawing its request for forfeiture of that property. *Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (quotations and citations omitted).

***

At to its core, the government seeks to forfeit, seize and eventually evict two women from their homes of more than a decade in order to collect, at most, $746,372.98 allegedly traced to the two properties. This is despite the fact the properties are worth significantly more than the portion that could allegedly be forfeited, and despite the fact the Court has already ordered Ms. Will-Darnall to pay restitution to the banks she defrauded in an amount to be determined at a hearing on December 3, 2025. Dkt. 95, 98 at 6.

Third party claimant Sandra Will bought the home at 306 Los Gatos Almaden Way in Los Gatos, California in 1991, and has lived in it as her primary residence since 1995. She was the beneficiary of a resulting trust in her favor on 111 Belwood Gateway in Los Gatos, California long before the fraud in this criminal case. Her claim to these properties arose long before the COVID-19 pandemic and the criminal conduct her daughter, defendant Cassie Will-Darnall, has admitted to before this Court. Ultimately, the government's efforts to forfeit Ms. Will's properties are nothing more than an attempt to strip an 86 year old woman, accused of no criminal wrongdoing, of the right to control the fate of her estate when she passes away.

The government was not entitled to forfeiture of Ms. Will's two properties because neither had a sufficient nexus to Ms. Will-Darnall's criminal conduct to justify forfeiture. The government's efforts at forfeiture, as identified by this Court, are "premise[d]…on evidence that money generated from Ms. Will-Darnall's criminal conduct was transferred into the Belwood property and used to

clear its title of certain liens." Dkt. 103 at 1. That theory, which the government failed to support with a citation to a single Ninth Circuit case, did not support forfeiture of the Belwood or Los Gatos Almaden properties. But because a third party claimant like Ms. Will has no legal right to challenge the forfeitability of property, all she can do is request an ancillary proceeding to determine her legal interests in the forfeited property.

Pursuant to 21 U.S.C. § 853(n) and Federal Rule of Criminal Procedure 32.2(c), Ms. Will petitions this Court to conduct an ancillary proceeding, asserting three claims: (1) Ms. Will had a vested interest and exclusive ownership of the home at 306 Los Gatos Almaden Way in 2020, (2) Ms. Will's interest in 111 Belwood Gateway by virtue of a resulting trust was superior to that of Ms. Will-Darnall at the time of the bank fraud, and (3) forfeiting Ms. Will's interests in the homes would violate the Eighth Amendment's prohibition on Excessive Punishment.

Thus, the preliminary order of forfeiture should be amended to remove the two homes.

STATEMENT OF FACTS

A. Ms. Will's interests in the Los Gatos homes.

The ownership and title history of 306 Los Gatos Almaden Road is simple. In 1991, Ms. Will and her late husband, Robert Will, purchased the property. Declaration of Sandra Will in Support of Amended Petition for Ancillary Proceeding ("Amend. Will Dec.") at ¶ 4; Declaration of Hanni M. Fakhoury in Support of Amended Petition for Ancillary Proceeding ("Amend. Fakhoury Dec."), Exh. A at US-0001621. The house was used as a rental until 1995, when the Wills moved into the home permanently. Amend. Will Dec. at ¶ 5. The title of the house changed in 1998 when the property was placed in a family trust. Amend. Fakhoury Dec., Exh. A at US-0001619. Title changed again in 2004 when the house was placed in the name of Westward Properties, Inc. Amend. Fakhoury Dec., Exh. A at US-0001618. Ms. Will does not remember the circumstances surrounding that transfer. Amend. Will Dec. at ¶ 8. A month after the title changed, it was placed back in the name of Robert and Sandra Will. Amend. Fakhoury Dec., Exh. A at US-0001618. Robert Will passed away in 2005. Amend. Will Dec. at ¶ 10; Dkt. 44-3, Declaration of Jennifer Barnard ("Barnard Dec."), Exh. C at US-0014075. In 2006, the house was placed back in the name of the family trust. Amend. Fakhoury Dec., Exh. A at US-0001618. Ultimately, the basic ownership of the property has not changed since it

was first purchased in 1991: the property has belonged to and been controlled by Ms. Will. Today, the Almaden house is worth approximately $2 million. Amend. Fakhoury Dec. at ¶ 7.

As for the ownership and title history of 111 Belwood Gateway, in April 2012 Ms. Will's daughter, Cassie Will, married Sheri Darnall. Amend. Fakhoury Dec., Exh. C at US-0001679. At the time of the marriage, the family purchased the home. Amend. Fakhoury Dec., Exh. B at US-0001274. In 2013, the property was placed in the names of both Cassie Will and Ms. Darnall. Amend. Fakhoury Dec., Exh. B at US-0001273.[1]

Ms. Will-Darnall filed for divorce in January 2016. Amend. Fakhoury Dec., Exh. C at US-0001679. In the divorce proceedings, it was agreed that Ms. Will-Darnall would buy out her ex-wife's share of the house, allowing Ms. Will-Darnall to keep the house as her own. Ms. Will supplied the money to buy out Ms. Darnall's share of the Belwood home. In spring 2016, Ms. Will took out a home equity line of credit ("HELOC") of approximately $500,000 from Bank of America, secured by the Almaden house. Amend. Will Dec. at ¶ 15. Much of that money, as well as other cash she had saved, went to Ms. Darnall. In a stipulated judgment signed on April 3, 2017, the parties agreed that Ms. Will-Darnall would be "awarded the real property located at 111 Belwood Gateway," and that Ms. Darnall has "received a buy-out from Cassie as to her interest in the Belwood Gateway property and has acquired real property in her name" in San Jose. Amend. Fakhoury Dec., Exh. D at US-0001662-63, US-0001666. In June 2016, the title of the Belwood house was changed via an interspousal transfer deed to remove Ms. Darnall. Amend. Fakhoury Dec., Exh. B at US-0001272; Dkt. 44-11, Barnard Dec., Exh. K at US-0014426. In connection with this transfer, Ms. Will-Darnall obtained a $665,000 mortgage on the property. Amend. Fakhoury Dec., Exh. B at US-0001272. The final judgment of dissolution, incorporating the stipulation, was filed in the Santa Clara County Superior Court on September 14, 2018. Amend. Fakhoury Dec., Exh. D at US-0001659.

In January 2018, Ms. Will took out a $1 million loan from Bank of America secured by the Almaden house. Amend. Will Dec. at ¶ 18. Bank of America first repaid the HELOC, which had a

[1] Cassie Will eventually changed her name to Cassie Will-Darnall. Although she is now divorced, she is charged in this Court under the name "Cassie Will-Darnall." To differentiate her from her mother Sandra Will, this brief refers to Sandra as "Ms. Will" and Cassie as "Ms. Will-Darnall."

balance of $487,509.71. Amend. Will Dec. at ¶ 19; Dkt. 44-5, Barnard Dec., Exh. E at US-0014194. It then repaid another loan with a balance of $162,496.33. Amend. Will Dec. at ¶ 19; Dkt. 44-5, Barnard Dec., Exh. E at US-0014194. The remaining proceeds totaled $348,114.69, which was given to Ms. Will as cash. Amend. Will Dec. at ¶ 19; Dkt. 44-5, Barnard Dec., Exh. E at US-0014194. Ms. Will took that money, as well as other money saved, to repay the mortgage on the Belwood house, which at the time had a balance of $607,629.02. Amend. Will Dec. at ¶ 19; Dkt. 44-8, Barnard Dec., Exh. H at US-0014385.

By this point, Ms. Will had spent well over $1 million for the purpose of obtaining the Bellwood home. Ms. Will had given her daughter the money needed to buy out Ms. Darnall's share of the home in 2017, and then paid off the remaining mortgage on the house the following year. Amend. Will Dec. at ¶ 20. These payments were documented through Ms. Will-Darnall signing a promissory note on February 7, 2018 and then later placing several deeds of trust on the Belwood house in favor of Ms. Will. Amend. Will Dec. at ¶ 20; Barnard Dec., Dkt. 44-9, Exh. I at US-0010714, Dkt. 44-10, Exh. J at US-0001297, Dkt. 44-16, Exh. P at US-0001294.

By February 2018 Ms. Will-Darnall was Ms. Will's tenant, making monthly payments to her mother. Amend. Will Dec. at ¶ 22. Bank records show Ms. Will was paid approximately $4,600 monthly from a bank account controlled by Ms. Will-Darnall from at least January 2019 through March 2020; the check memos indicate the payments were for the Belwood property. Amend. Fakhoury Dec., Exh. E.[2] The amounts were often less than the amount Ms. Will owed Bank of America in connection with the $1 million loan secured by the Almaden property. As of today, Ms. Will-Darnall has lived in the house for 13 years. Amend. Will Dec. at ¶ 23. The Belwood house is worth approximately $2.5 million. Amend. Fakhoury Dec. at ¶ 8.

B. <u>Cassie Will-Darnall is convicted of fraudulently obtaining a PPP loan in 2020.</u>

On May 29, 2024, a criminal Information was filed charging Ms. Will-Darnall with one count of bank fraud, in violation of 18 U.S.C. § 1344(2), and one count of wire fraud, in violation of 18

[2] The government's subpoena for Bank of America records only covered the time frame of January 2019 to May 2020, so no records survive from the signing of the promissory note in February 2018 to January 2019. Amend. Fakhoury Dec., Exh. E at US-0004746.

U.S.C. § 1343. Dkt. 1. The government alleged Ms. Will-Darnall schemed to defraud the Small Business Administration ("SBA") and bank lenders by submitting false and fraudulent applications for loans through the Paycheck Protection Program ("PPP") and Economic Injury Disaster Loan ("EIDL") program.

The government alleged that on May 20, 2020, Ms. Will-Darnall submitted a PPP loan application containing false information in the name of "non-operating" business Alternative Health Services, Inc., seeking a loan of $968,989. Dkt. 1 at 5, ¶ 20; Dkt. 1 at 6, ¶ 26. The loan was approved and funded the same day. Dkt. 1 at 6, ¶ 28. This fraudulently obtained loan formed the basis of Count One of the Information, charging bank fraud. Dkt. 1 at 7, ¶¶ 32-34. The government also alleged that on July 12, 2020, Ms. Will-Darnal submitted a second PPP loan application containing false information in the name of Rosswood Properties LLC, seeking a loan of $1.65 million. Dkt. 1 at 7, ¶ 29. The loan was approved and $1,864,565 was sent to Ms. Will-Darnall on July 21, 2020. Dkt. 1 at 7, ¶ 31. This fraudulently obtained loan formed the basis of Count Two of the Information, charging wire fraud. Dkt. 1 at 8, ¶¶ 35-37.

The Information also contained a forfeiture allegation, seeking forfeiture of the Belwood and Almaden properties, and a "forfeiture money judgment in the amount of $2,833,554, representing the total value of proceeds obtained directly or indirectly by the defendant from the commission of the offense of conviction." Dkt. 1 at 9. Two weeks after filing the Information, the government filed a notice of pendency of action (lis pendens) on both properties. Dkt. 9, 10. On August 19, 2024, the government filed a bill of particulars for forfeiture of property, identifying the two properties and $625,952.60 on deposit in a Vanguard brokerage account as forfeitable property. Dkt. 17.

On January 15, 2025, Ms. Will-Darnall entered a guilty plea without a plea agreement to both charges in the Information. Dkt. 35.

C. <u>The government seeks to forfeit the Los Gatos homes.</u>

On April 9, 2025, the government filed an application for a preliminary order of forfeiture. Dkt. 43. It began by noting that Ms. Will-Darnall "admitted to receiving $2,833,554 in fraud proceeds." Dkt. 43 at 1. It then requested forfeiture of the two Los Gatos homes, $625,952.60 in the Vanguard account, and a money judgment for $1,406,594.45. *Id.* Acknowledging the potential existence of

"third-party interests" in the homes, the government claimed those interests could be "adjudicated later" through an ancillary proceeding. *Id.* at 2. It explained, "while the heart of Will-Darnall's guilty pleas concerns conduct in 2020, the fraud proceeds were used to pay off preexisting loans from Will-Darnall's eighty-eight-year-old mother, Sandra Will…and Bank of America." *Id.*

The government asserted in 2018 "Will paid off Will-Darnall's loan…with $607,629.02, clearing the Belwood Property's title of any arm's-length loans. In turn, Will-Darnall agreed to repay Will $1,000,000 in monthly amounts that exactly matched Will's obligations to Bank of America under the BofA Loan." *Id.* at 4. The government noted the $1 million loan "contemplated Will-Darnall paying Will monthly $4,631.15—that is the exact amount that Will was obligated to pay for the BofA Loan." *Id.* at 3.

The government's application continued that in 2019, several deeds of trust were recorded on the Belwood property that purported to reflect loans from Ms. Will to Ms. Will-Darnall. Dkt. 43 at 4-5. One of those deeds of trust was to secure the $1 million loan Ms. Will had taken out from Bank of America, the proceeds of which were used to pay off the outstanding mortgage balance on the Belwood property the previous year. *Id.* at 5.

In 2020, Ms. Will-Darnall obtained the two PPP loans by fraud, totaling $2,833,554, that led to her criminal prosecution. As to the loan alleged in Count 1 of the Information, Ms. Will-Darnall fraudulently obtained $968,989.00 on May 20, 2020. *Id.* at 7. That money was deposited into a bank account she controlled. *Id.* On June 9, 2020, Ms. Will-Darnall transferred $938,000 into another bank account she controlled and then, on June 15, 2020, wrote a check to Ms. Will for $971,504.21. *Id.* at 7-8. Ms. Will deposited the check into her bank account and then repaid the Bank of America mortgage that was secured by the Almaden property. *Id.* at 8. The government asserted that using the lowest intermediate balance rule ("LIBR"), Ms. Will's payment to Bank of America "included up to $746,372.98 in funds directly traceable to the first count to which Will-Darnall pleaded guilty." *Id.* The government notably did not assert that Ms. Will had any knowledge the funds her daughter provided her with to repay the loan were obtained fraudulently.

Concerning the Belwood property, "despite having repaid Will's $1,000,000 Loan," the government noted Ms. Will-Darnall signed a quitclaim deed on June 20, 2020 transferring her

interests in the property to Ms. Will. *Id.*

As for the second fraudulently obtained loan that netted Ms. Will-Darnall $1,864,565.00, the government traced those funds to a Vanguard brokerage account that was opened by her on November 9, 2020. Dkt. 42 at 9. The next day, $1.6 million was transferred by Ms. Will-Darnall into the brokerage account; the money came from the same bank account that the fraudulently obtained PPP loan funds were deposited into in July 2020. *Id.*

Advocating for forfeiture of both homes, the government argued there was "a clear nexus between the first charge to which Will-Darnall has pleaded guilty and both the Belwood and the Almaden Properties." *Id.* at 13. That was because "$746,372.98 of fraud proceeds" was used to repay the $1 million loan, which removed Bank of America's deed of trust on the Almaden home that secured its loan to Ms. Will. Repaying Bank of America's loan also released the Belwood home from the 2018 deed of trust used to secure Ms. Will's loan to Ms. Will-Darnall. *Id.* It asserted that "fraud proceeds were used to repay loans on the Belwood and the Almaden Properties," and "that the two properties are inextricably intertwined is a fact of Will-Darnall's making." *Id.* The government noted "the Court need not determine the exact amount of funds that went into the Belwood and Almaden properties," and that "forcing the government to articulate a specific amount of equity that it seeks to forfeit from the Belwood and the Almaden Properties" was "unnecessary" since it was only seeking forfeiture of Will-Darnall's interests in the properties. *Id.*

While acknowledging that, at most, only "$746,372.98 of fraud proceeds" allegedly went into the properties, and explaining it had not bothered to "determine the exact amount of funds" that went into the properties, the government nonetheless not only sought to forfeit both properties—which are certainly worth more than $746,372.98—but noted it could, at the discretion of the Attorney General, dispose of the property as it saw fit. *Id.* at 13, 16. It dismissed any concerns about third party interests in the properties—such as Ms. Will's interest in not being evicted from the home she has owned and lived in for more than 30 years—by noting forfeiture has to "comply with any statute governing third-party rights." *Id.* at 16. And again, nowhere in its application did the government allege that Ms. Will had any knowledge of, or involvement with, the fraudulent PPP loan applications submitted by Ms. Will-Darnall.

No objection to the government's preliminary application for forfeiture was filed by Ms. Will-Darnall. The government did not serve its application on Ms. Will until April 21, 2025, which was the day the application was placed in the mail. Dkt. 48.

On April 30, 2025, this Court issued a preliminary order of forfeiture, ordering the forfeiture of the Belwood and Almaden homes, up to $625,962.60 on deposit in the Vanguard brokerage account, and a forfeiture money judgment in the amount of $1,406,594.56. Dkt. 50 at 1-2.

On June 6, 2025, Ms. Will filed her original petition for ancillary proceeding, asserting her interests in both properties were greater than Ms. Will-Darnall's interests at the time of the fraud. Dkt. 65. In its opposition to the petition, the government informed the Court it "now relinquishes the forfeiture of the Almaden Property in this case," and asked this Court to "remove the Almaden Property" from the final order of forfeiture. Dkt. 77 at 2, 20. But it continued to seek forfeiture of the Belwood home, moving this Court to dismiss Ms. Will's petition or grant it summary judgment. After hearing arguments from the parties, this Court issued an order on October 21, 2025, granting the government's motion to dismiss the petition with leave to amend. Dkt. 103 at 2.

ARGUMENT

"Criminal forfeiture statutes empower the Government to confiscate property derived from or used to facilitate criminal activity." *Honeycutt v. United States*, 581 U.S. 443, 447 (2017). The government interests served by such statutes include "'separating a criminal from his ill-gotten gains,'" and "'returning property, in full, to those wrongfully deprived or defrauded of it.'" *Id.* (quoting *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 629–630 (1989)). "Forfeiture relates back to the time of the criminal acts giving rise to the forfeiture," and the government's "interest in the property vests at the time the defendant commits the crime." *United States v. Lazarenko*, 476 F.3d 642, 647 (9th Cir. 2007).

The Information filed against Ms. Will-Darnall asserted forfeiture was justified under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c). Dkt. 1 at 8. Title 18 U.S.C. § 981(a)(1)(C) authorizes forfeiture of "Any property, real or personal, which constitutes or is derived from proceeds traceable

to a violation" of specified crimes, including bank fraud, in violation of 18 U.S.C. § 1344.[3] For its part, 28 U.S.C. § 2461(c) states the government may seek forfeiture in an Information against a defendant "charged in a criminal case with a violation of an Act of Congress for which the civil or criminal forfeiture of property is authorized." Following a conviction, "the court shall order the forfeiture of the property as part of the sentence." 28 U.S.C. § 2461(c). The procedures in Federal Rule of Criminal Procedure 32.2 and 21 U.S.C. § 853 apply to forfeitures under 28 U.S.C. § 2461(c).

The term "proceeds" is defined by statute to mean "property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense." 18 U.S.C. § 981(a)(2)(A). The term "obtains" is "interpreted according to its plain meaning," which is "'to come into possession of' or to 'get or acquire.'" *United States v. Prasad*, 18 F.4th 313, 319 (9th Cir. 2021) (interpreting criminal forfeiture statutes).

It is worth pausing to note that neither of the homes sought to be forfeited by the government were "derived from proceeds traceable" to the bank fraud charged in Count 1, 28 U.S.C. § 2461(c), or was property "obtained directly, or indirectly, as the result of the commission of the offense." 18 U.S.C. § 981(a)(2)(A). Both houses were purchased long before the COVID-19 pandemic and PPP fraud committed by Ms. Will-Darnall, and were purchased without any money obtained through the PPP loans. That fact distinguishes this case from the Ninth Circuit case cited by the government in its earlier pleadings to support its novel theory of forfeiture here. *See* Dkt. 77 at 16, n. 12. In *United States v. Real Property Located at 5208 Los Franciscos Way, Los Angeles, CA*, 385 F.3d 1187 (9th Cir. 2004), the property was purchased *after* the fraud, with fraudulent proceeds and after the purchaser was on notice that they were being investigated for fraud. 385 F.3d at 1189.[4]

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[3] Wire fraud is notably not on the list of covered crimes under the forfeiture statute invoked by the government here, 18 U.S.C. § 981(a)(1)(C). That crime is covered in § 981(a)(1)(D), a statute not mentioned in the government's forfeiture application.

[4] In its opposition to Ms. Will's original petition, the government cited out of circuit cases authorizing the forfeiture of property when tainted funds were used to make mortgage payments and other improvements on the property that increased the equity in the property. *See* Dkt. 77 at 16, n. 12 (citing *United States v. Miller*, 911 F.3d 229 (4th Cir. 2018) and *United States v. Pole No. 3172, Hopkinton*, 852 F.2d 636, 639 (1st Cir. 1988)). But even those cases impose limits on forfeiture, with the First Circuit noting "We do not believe, however, that forfeitability spreads like a disease from one infected mortgage payment to the entire interest in the property acquired prior to the payment.

The homes stands in sharp contrast to the money in the Vanguard account, which was clearly "obtained" through criminal activity. The Vanguard account was created after the criminal conduct, seemingly to invest and grow the fraudulently obtained loan proceeds. Both the funds and any investment earnings are clearly subject to criminal forfeiture. But the properties were not, and so the government was not entitled to forfeit them.

Unfortunately for Ms. Will, she cannot challenge the forfeitability of the properties. As noted earlier, the procedures set forth in 21 U.S.C. § 853 apply when the government seeks forfeiture under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c). In 21 U.S.C. § 853(k), Congress indicated that "no party claiming an interest in property subject to forfeiture under this section may" either "intervene in a trial or appeal of a criminal case involving the forfeiture of such property," or "commence an action at law or equity against the United States concerning the validity of his alleged interest in the property." 21 U.S.C. § 853(k). Instead, a "third party wishing to challenge a district court's criminal forfeiture order must do so in an ancillary proceeding under 21 U.S.C. § 853(n) and Federal Rule of Criminal Procedure 32.2." *United States v. 101 Houseco, LLC*, 22 F.4th 843, 847 (9th Cir. 2022); *see also Lazarenko*, 476 F.3d at 648 ("an ancillary proceeding constitutes the only avenue for a third party claiming an interest in seized property."). As a result, a third party cannot "include a claim that the property was not forfeitable in the first place." *101 Houseco, LLC*, 22 F.4th at 849. So Ms. Will seeks the only remedy available to her: requesting an ancillary proceeding.

If "a third party files a petition asserting an interest in the property to be forfeited, the court must conduct an ancillary proceeding." Fed. R. Crim. P. 32.2(c)(1). Even though the "preliminary order of forfeiture becomes final with respect to the defendant at sentencing," "the order is not final with respect to interested third parties until the conclusion of the ancillary proceeding." *United States v. Liquidators of Eur. Fed. Credit Bank*, 630 F.3d 1139, 1145 (9th Cir. 2011) (citing 21 U.S.C. § 853(n)(6)). The ancillary proceeding is separate from sentencing, and has its own "timing and procedure," which includes the possibility of "a hearing to resolve factual disputes." *Liquidators of*

After all, only the actual proceeds of [criminal activity] are forfeitable." *Hopkinton*, 852 F.2d at 639; *see also United States v. One 1980 Rolls Royce, VIN No. SRL39955*, 905 F.2d 89, 90 (5th Cir. 1990) (agreeing with claimant "that the legitimate portions of…properties are not subject to forfeiture.").

Eur. Fed. Credit Bank, 630 F.3d at 1145 (citing 21 U.S.C. § 853(n)(4); Fed. R. Crim. P. 32.2(c)(1), (4)).

To prevail at an ancillary proceeding, a petitioner must show by a preponderance of the evidence either that (1) the petitioner has a "legal right, title, or interest in the property" that was "vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property" or (2) "the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture." 21 U.S.C. § 853(n)(6)(A), (B). If the third party meets that standard, the district court should "amend the order of forfeiture" to accommodate those interests. 21 U.S.C. § 853(n)(6). In an ancillary proceeding, "state law determines what rights, title or interests the various claimants possess in that property." *United States v. Nava*, 404 F.3d 1119, 1128-29 (9th Cir. 2005).

Ms. Will can satisfy her burden as to both properties and so the preliminary order of forfeiture should be amended to remove the two Los Gatos homes.[5]

A. Ms. Will's interest in the Almaden property vested before Ms. Will-Darnall committed bank fraud in May 2020.

At the time Ms. Will-Darnall committed the bank fraud charged in Count 1—May 20, 2020—Ms. Will owned the Almaden house. Ms. Will has held title to the property since 1991 and Ms. Will-Darnall has *never* held title to that property. Amend. Will Dec. at ¶ 4.

The existence of a deed of trust on the property on May 20, 2020, in favor of Bank of America to secure the $1 million loan, does not change that conclusion. Under California law, "a deed of trust is a lien on the property." *Monterey S.P. Partnership v. W.L. Bangham, Inc.*, 49 Cal. 3d 454, 460 (1989). A "deed of trust carries none of the incidents of ownership of the property, other than the trustee's right to convey upon default, and in the absence of a special agreement conveys no right of possession to the trustee or beneficiary." *Bailey v. Citibank, N.A.*, 66 Cal. App. 5th 335, 353 (2021)

[5] Ms. Will is not challenging the forfeiture of the money in the Vanguard account or the government's request for a money judgment, which cannot be challenged in an ancillary proceeding in any event. *See* Fed. R. Crim. P. 32.2(c)(1) ("no ancillary proceeding is required to the extent the forfeiture consists of a money judgment").

(citing *Snyder v. Western Loan & Bldg. Co.*, 1 Cal. 2d 697, 701 (1934)). As one judge of this Court has explained, "California follows the lien theory of mortgages under which a lender (i.e., a mortgagee) 'does not get title, but simply obtains a lien,' on the Property." *In re Coyle*, 2016 WL 5673247, at *7 (N.D. Cal. Oct. 3, 2016) (quoting *Bank of Italy Nat'l Trust and Savings Ass'n v. Bentley*, 217 Cal. 644, 654 (1933)).

Implicit in the government's theory of forfeiture of the Almaden house is its belief that Ms. Will only became the legal owner of the house when Ms. Will-Darnall used proceeds from the PPP loan to repay Ms. Will's loan with Bank of America. But that is legally incorrect. Ms. Will was the owner of the house long before Ms. Will Darnall committed bank fraud; she did not become the owner of the house because Ms. Will-Darnall fraudulently obtained funds that removed a lien. Ms. Will has owned the house since 1991 and the existence of Bank of America's lien on the property does not change that conclusion.

Thus, the forfeiture order is invalid as to 306 Los Gatos Almaden because title was vested in Ms. Will, not Ms. Will-Darnall, at the time of the bank fraud on May 20, 2020 notwithstanding the existence of a lien held by Bank of America. *See* 21 U.S.C. § 853(n)(6)(A). The forfeiture order must therefore be amended to remove the Almaden house.

B. Ms. Will had a superior interest in the Belwood house over Ms. Will-Darnall at the time of the bank fraud.

As for the Belwood home, at the time of the bank fraud in May 2020, Ms. Will's interest in the house was "superior" to any interest belonging to Ms. Will-Darnall. 21 U.S.C. § 853(n)(6)(A). Because Ms. Will supplied the money Ms. Will-Darnall needed to both buy out Ms. Darnall's interest in the home in 2017, and then pay off Ms. Will-Darnall's mortgage in 2018, a resulting trust in favor of Ms. Will was created on the property.

A "resulting trust arises in favor of the payor of the purchase price of the property where the purchase price, or a part thereof, is paid by one person and the title is taken in the name of another." *Martin v. Kehl*, 145 Cal. App. 3d 228, 238 (1983). Such a trust "arises by operation of law from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest." *Lloyds Bank California v. Wells Fargo Bank*, 187 Cal. App. 3d 1038, 1042

(1986). "The law implies an obligation on the part of the one in whom title has vested to hold the property for the owner's benefit and eventually convey it to the owner. The trustee has no duties to perform, no trust to administer, and no purpose to pursue except the single purpose of holding or conveying the property according to the beneficiary's demands." *Estate of Yool*, 151 Cal. App. 4th 867, 874 (2007). It is true that "transactions between parent and child" are "presumed to be in the nature of gifts, advancements or bounties." *Lloyds Bank California*, 187 Cal. App. 3d at 1042. Yet that presumption can be overcome if the parties "manifest[] an intention that the transferee should not have the beneficial interest in the property." *In re Schechtman's Estate*, 162 Cal. App. 2d 365, 369 (1958).

Here, a resulting trust on the Belwood home was created in favor of Ms. Will notwithstanding the fact that Ms. Will-Darnall had title to the property until 2020. Ms. Will's money was used to pay for the home in the divorce proceeding in 2017, and then to extinguish the mortgage on the property in 2018. The purchase was not a gift to her daughter Ms. Will-Darnall, who paid rent to Ms. Will. The 2020 quitclaim deed placing title in Ms. Will is consistent with the "obligation on the part of the one in whom title has vested to hold the property for the owner's benefit and eventually convey it to the owner." *Yool*, 151 Cal. App. 4th at 874.

Thus, the forfeiture order is also invalid as to 111 Belwood Gateway because Ms. Will's interest in the property was superior to that of Ms. Will-Darnall at the time of the bank fraud on May 20, 2020. *See* 21 U.S.C. § 853(n)(6)(A). The forfeiture order must be amended to also remove the Belwood house.

C. Forfeiting Ms. Will's interests in the properties constitutes an excessive fine under the Eighth Amendment.

Even if this Court disagrees with the claims made by Ms. Will above, the forfeiture order should still be amended because forfeiting Ms. Will's interests in the homes would violate the Eighth Amendment's prohibition on "excessive fines."

The Eighth Amendment states "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. AMEND. VIII. The Supreme Court has made clear that forfeitures are "fines" under the Eighth Amendment when they "constitute

punishment for an offense." *United States v. Bajakajian*, 524 U.S. 321, 328 (1998).

Both "owners" and "claimants who assert possessory interests in the forfeited property" have standing to challenge a forfeiture order under the Eighth Amendment even if they are not a criminal defendant. *United States v. $100,348.00 in U.S. Currency*, 354 F.3d 1110, 1119 (9th Cir. 2004). They may even raise an Eighth Amendment challenge in a civil forfeiture proceeding "as a party 'punished' by the forfeiture," notwithstanding the nonexistence of a criminal case. *Id.* at 1121; *see also Hudson v. United States*, 522 U.S. 93, 103 (1997) ("The Eighth Amendment protects against excessive civil fines, including forfeitures."). Because Ms. Will is both an "owner" and a "claimant" of the properties, she has standing to challenge the constitutionality of the forfeitures under the Eighth Amendment.

A "punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." *Bajakajian*, 524 U.S. at 334. There are no "rigid set of factors" for the Court to consider when deciding whether a forfeiture is disproportionate. *United States v. Mackby*, 339 F.3d 1013, 1017 (9th Cir. 2003). But the Ninth Circuit "has often looked to" the factors identified in *Bajakajian*, which include "(1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused." *$100,348.00 in U.S. Currency*, 354 F.3d at 1122 (citing *Bajakajian*, 524 U.S. at 337-40).

Here, those factors support a finding that no forfeiture is necessary. As to the "nature and extent of the crime," Ms. Will has not been charged with a crime or accused of any wrongdoing. The government has never alleged that Ms. Will had any knowledge of, or involvement with, her daughter's criminal activities. To the extent the Court is looking at the "nature and extent" of Ms. Will-Darnall's criminal conduct, while it is certainly serious and deserves punishment, the criminal conduct does not justify the forfeiture of two properties that were neither obtained by the proceeds of criminal activity, nor involved or facilitated criminal activity.

On the issue of "whether the violation was related to other illegal activities," again Ms. Will has not been accused of engaging in any illegal activity. Ms. Will-Darnall pleaded guilty to all of the criminal conduct alleged against her, meaning there is no other criminal activity not accounted for in

the criminal case.

When it comes to assessing the "other penalties" for the offense, again Ms. Will has not been charged or convicted of any criminal activity and thus faces no other penalties. Ms. Will-Darnall received an 18 month prison sentence and no fine even though the maximum punishment for her conviction in Count 1 for bank fraud was 30 years imprisonment and a fine of up to $1 million or twice the gross gain or loss and the maximum punishment for her conviction in Count 2 for wire fraud was 20 years imprisonment and a fine of up to $250,000 or twice the gross gain or loss. Dkt. 1 at 10; Dkt. 34 at 2-3; Dkt. 95, Dkt. 98 at 2. Despite the fact the Court imposed no fine on Ms. Will, the government seeks to forfeit properties worth approximately $4.5 million combined in order to recover $746,372.98 allegedly traced to the properties. That sharp distinction between the maximum fine, the value of the properties and the amount of fraudulently obtained proceeds allegedly traced to the properties certainly renders the forfeiture here unconstitutionally disproportionate.

Moreover, the Ninth Circuit has noted that "the maximum penalties under the Sentencing Guidelines should be given greater weight than the statutory maximum because the Guidelines take into account the specific culpability of the offender." *$100,348.00 in U.S. Currency*, 354 F.3d at 1122. The Court found Ms. Will-Darnall's adjusted offense level was 20, and at a criminal history category of I, the advisory Sentencing Guidelines range was 33-41 months. Dkt. 94 at 6. That in turn triggered a fine range between $15,000 and $150,000. U.S. Sentencing Guidelines § 5E1.2(c)(3). Notably, the Court varied downward from that range and imposed an 18 month sentence and waived imposition of a fine given the fact Ms. Will-Darnall will be ordered to pay restitution. Given the significant gap in the financial penalties under the Sentencing Guidelines and the value of the properties the government seeks to seize, the forfeiture here is unconstitutionally disproportionate and excessive.

Finally, "the extent of the harm," while serious, is nonetheless disproportionate to the forfeiture sought by the government here. There is no question that defrauding banks and the government—particularly at the onset of the COVID-19 pandemic, a historic time of uncertainty, when the government was scrambling to mitigate the harms caused by that once in a lifetime event—warrants a strong punishment to deter others from engaging in similar behavior in the future. But, again, as

noted above, the government's efforts to forfeit property worth almost double the amount of actual loss caused to the government, and significantly more than the amount of money allegedly traced to the property, suggest that the forfeiture sought here is disproportionate to the harm caused.

Moreover, the government has other remedies available to it to recoup the money taken by Ms. Will-Darnall. The Court ordered Ms. Will-Darnall to pay restitution in an amount to be determined. The government may collect interest on the restitution amount,[6] place liens on property owned by Ms. Will-Darnall and garnish her wages or other government benefits—such as social security payments—in order to recover the restitution amount. The government may assert the Ninth Circuit has found it "is not an impermissible 'double recovery'" when a defendant is ordered to "pay both restitution and criminal forfeiture." *United States v. Newman*, 659 F.3d 1235, 1241 (9th Cir. 2011), *abrogated on other grounds, Honeycutt*, 581 U.S. at 454. But crucially, *Newman* noted the "constitutional limits" to forfeiture—including "the constitutional limit defined by the Excessive Fines Clause of the Eighth Amendment"—were "not at issue here" as "neither Defendant asserts that the district court's forfeiture orders implicate constitutional considerations." *Newman*, 659 F.3d at 1241, n. 4. Thus, this Court can consider the fact that Ms. Will-Darnall has to pay restitution for the full amount of the money she fraudulently obtained, which renders forfeiture here disproportionate under the Eighth Amendment.

Because forfeiting the houses is "excessive punishment" levied against Ms. Will in violation of the Eighth Amendment, the Court should amend the forfeiture order to remove the two houses.

[6] Though like a fine, the Court may waive interest if it "determines that the defendant does not have the ability to pay interest." 18 U.S.C. § 3612(f)(3)(A).

CONCLUSION

Ms. Will respectfully requests this Court conduct an ancillary proceeding and amend the forfeiture order to remove 306 Los Gatos Almaden and 111 Belwood Gateway.

Dated: November 11, 2025

Respectfully submitted,

MOEEL LAH FAKHOURY LLP

s/ Hanni M. Fakhoury
Hanni M. Fakhoury
Attorneys for Third Party Claimant Sandra Will

VERIFICATION

I, Sandra Will, declare under penalty of perjury that the factual statements contained in this Petition for Ancillary Proceeding are true to the best of my knowledge, information, and belief.

Dated: November 11, 2025

s/ Sandra Will
SANDRA WILL