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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CASSIE WILL-DARNALL, Defendant. SANDRA WILL, Third Party Petitioner.	CASE NO. CR-24-00292-PCP **UNITED STATES' REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED PETITION** Date: March 25, 2026 Time: 10:00 a.m. Courtroom: Courtroom 8, 4th Floor Judge: Honorable P. Casey Pitts

INTRODUCTION

On paper, Cassie Will-Darnall owns nothing. In her presentence investigation report, Will-Darnall disclosed no assets. And a search of Will-Darnall's name across title records returns a null set.

Given Will-Darnall's penchant for hiding assets, this is not a surprise. It is precisely the point. And it is easy (and right, if past is prologue) to think Will-Darnall will never own anything on paper again. If Will-Darnall's efforts to shield assets are indulged, then the restitution and forfeiture imposed by this Court would be uncollectable, a pyrrhic victory.

Whether the government can collect anything from Will-Darnall, at this point, depends on this Court's answer to just one question: Does Will-Darnall or Sandra Will own 111 Belwood Gateway—a property in which Will-Darnall has continuously resided since taking exclusive title to it in 2016; a property that Will-Darnall claimed was her sole property in a 2017 marital settlement; a property that Will-Darnall claimed was her sole property in obtaining alleged third-party loans in 2019; a property into which Will-Darnall poured $746,372.98 of fraud proceeds in 2020; and a property from which Will-Darnall has exclusively earned income, including from a rental in 2021 and now since Will's *maybe* caretaker recently moved into it. In short, one cannot seriously dispute whether Will-Darnall owns the Belwood Property—regardless of what it says on paper.

And yet, every attempt has been made to stop the government from recovering the proceeds of Will-Darnall's crimes from the Belwood Property, where she hid them. When this case was indicted, Will sued the government for elder abuse, imperfectly alleging that the property was somehow Will's because of a 1981 inheritance of a separate property. *See* Will's Lawsuit. The case was quietly dropped when it became apparent Will's then attorney also represented Will-Darnall (ex. TT), suggesting the suit was the first shot across the bow of Will-Darnall, not Will. Dkt. 77 at 10.

Now, in the ancillary proceeding, the forfeitability of the Belwood Property has been attacked through a parade of implausibles:

- First, it was the 2019 Deed of Trust that gave Will a superior interest in the Belwood Property despite Will's acknowledgment on the preceding page that a lienholder's interest in a property is not superior to the titleholder's.

- Second, Will pivoted to claim that unspecified, unsecured loans to Will-Darnall gave Will a superior interest in the property despite unequivocal precedent that unsecured creditors lack standing to assert a claim in the ancillary proceeding.
- Third, Will's counsel alleged at the hearing on Will's claim that he had received more evidence to support Will's interest in the property despite not a single page of this evidence having been provided to the government to date.
- Fourth, Will alleged that she and Will-Darnall intended from the start to form an equitable trust (namely, a resulting trust), despite all allegations showing that they merely have a commonplace relationship (namely, that of a lender to a borrower).
- Fifth, Will now claims the Court should deny imposing forfeiture because of a recent decision, despite the fact that Will concedes she cannot contest forfeitability and despite the fact the decision is not inconsistent with precedent and provides zero guidance concerning the imposition of forfeiture and restitution in a criminal sentence in any event.

Any port in a storm. The matter has come full circle. In Will's Lawsuit, Will acted as Will-Darnall's proxy. And now, in this proceeding too, Will's real goal is not to establish her interest in the Belwood Property. It is to act as Will-Darnall's nominee to prevent the government from recovering fraud proceeds.

The Court should—and must—now end this shell game, which began years ago when the Belwood Propoerty was encumbered with millions of dollars of sham loans. Will's third-party claim to the Belwood Property should be dismissed with prejudice—and without a hearing—because:

1. Will has not and cannot allege the requisite intent to establish a resulting trust, which is fatal to her amended claim and is sufficient to end the ancillary proceeding;
2. The Supreme Court's recent decision in *Ellingburg v. United States*, No. 24-482, 2026 WL 135982 (U.S. Jan. 20, 2026) does not alter longstanding precedent, even if the Court indulges Will's role as Will-Darnall's proxy; and
3. Will's ceaseless shapeshifting is antithetical to the strict pleading and timing requirements of forfeiture proceedings.

I. Argument

A. Because Will Has Not And Cannot Allege The Requisite Intent To Plead A Resulting Trust, Will's Newest Claim Is Defective As A Matter Of Law.

As established in the motion to dismiss, whether a party has adequately alleged a resulting trust turns on whether the party has alleged that, at the time title transferred to the trustee, the parties intended for the trustee to hold title while the beneficiary held the beneficial interest in the property. Dkt. 115, at 12–16. Will did not meet that burden in her amended claim. Nor has she resuscitated the theory in her opposition.

Indeed, Will does not allege that, when Will-Darnall took exclusive title to the Belwood Property in 2016 (Ex. K[1]), Will-Darnall and Will intended for Will to obtain the beneficial interest in the property. Nor does Will allege that Will has ever held a beneficial interest in the Belwood Property.

Of course, as the government proved, Will cannot plausibly allege the requisite intent between herself and Will-Darnell, because, among other things:

- Will-Darnall has resided at the Belwood Property since taking exclusive title to it;
- Will has never held a beneficial interest in the Belwood Property;
- Will-Darnall has represented to the world that the Belwood Property is her exclusive property (including in a settlement agreement and by encumbering it with third-party loans); and
- Will's own conduct reflects her belief that Will-Darnall held both title and beneficial interest in the property, including by Will's decision to secure multiple loans to Will-Darnall with the Belwood Property (*e.g.*, Exs. J, O, and P).

This is fatal to Will's amended claim. *See Lloyds Bank California v. Wells Fargo Bank*, 187 Cal. App. 3d 1038, 1042 (Ct. Ap. 1986).

Instead of alleging the requisite intent, Will focuses entirely on the fact that she provided an unspecified amount of money to Will-Darnal, which amount was not intended to be a gift. Dkt. 122, 12–13. Even if true, the Court need not and should not superimpose an equitable remedy on what is plainly

[1] Exhibit citations refer to exhibits filed in dkts. 44, 45, 78, and 79, unless otherwise noted.

a commonplace relationship (as in, lender to borrower). Without the requisite intent, what Will alleges at most is that she loaned Will-Darnall money in 2017 as an unsecured creditor and in 2018 as a secured creditor. That is not enough to establish a resulting trust. *See Majewsky v. Empire Constr. Co.*, 2 Cal. 3d 478, 485 (1970).

Separately, and as previously established, any unsecured loans Will provided to Will-Darnall are insufficient to establish standing in the ancillary proceeding. Dkt. 91 at 3 (collecting cases). And, as this Court already correctly concluded, the secured loan (namely, the 2019 Deed of Trust) is also insufficient to support a claim under 853(n)(6)(A). Dkt. 103 (dismissing Will's claim to a superior interest in the Belwood Property based on deed of trust).[2]

Because Will has not adequately pled a resulting trust, her amended claim should be dismissed with prejudice.

B. *Ellingburg*, A Procedural Decision, Does Not Overturn Binding Supreme Court Precedent That Forfeiture Is Mandatory Or Binding Circuit Court Precedent That Forfeiture And Restitution Can Be Imposed In The Same Criminal Sentence.

As the Court and Will have each acknowledged, Will may not contest forfeitability. *See* Dkt. 103 at 1; Dkt. 65 at 13. Still, out of an abundance of caution, the government addresses Will's belated argument that *Ellingburg* upends Congress's intent and settled law holding that forfeiture is mandatory and may not be offset by restitution.

In *Ellingburg*, the Supreme Court held that restitution under the Mandatory Victims Restitution Act (MVRA) constitutes "criminal punishment" for purposes of the Ex Post Facto Clause. 2026 WL 135982, at *2–3. The Court addressed this narrow issue to determine whether retroactive application of the MVRA violated the constitutional prohibition on ex post facto laws. Critically, the Court nowhere addressed whether restitution and forfeiture may be imposed together for the same offense; nor did it address the Double Jeopardy Clause or the Excessive Fines Clause.

[2] In a cryptic sentence, Will is potentially attempting to articulate yet another theory of standing. Dkt. 122 at 13("At the time of the fraud, Ms. Will had an interest in the Bellwood [*sic*] home, secured by a deed of trust, though *undocumented by legal deed of title*." (emphasis added)). To the extent Will is claiming an ownership interest in the Belwood Property based on a deed of trust, there is no authority to support such a claim. To the extent Will is alleging something else, the government reserves all rights.

Will's attempt to bootstrap—on Will-Darnall's behalf—*Ellingburg*'s procedural holding into a prohibition on ordering both restitution and forfeiture fails for at least the following reasons:

First, the *Ellingburg* Court itself recognized that Congress intended restitution under the MVRA to be multipurposed, serving distinct punitive and compensatory ends:

> [T]he MVRA seeks to compensate crime victims, *a nonpunitive goal* . . . . Congress intended restitution under the MVRA *to both* punish and *compensate*.

2026 WL 135982, at *3 (emphasis added). Contrary to Will's alarmism, as the *Ellingburg* Court acknowledged, Supreme Court precedent has long acknowledged that restitution includes a punitive dimension. *See* 2026 WL 135982, at *3 (discussing *Manrique v. United States*, 581 U.S. 116, 118 (2017) ("Sentencing courts are required to impose restitution *as part of the sentence for specified crimes*." (emphasis added)); *Pasquantino v. United States*, 544 U.S. 349, 365 (2005) ("The purpose of awarding *restitution in this action is . . . to mete out appropriate criminal punishment* . . . ." (emphasis added)); *Paroline v. United States*, 572 U.S. 434, 456 (2014) ("The primary goal of restitution is *remedial or compensatory*, *but it also serves punitive purposes*, and is *imposed by the government at the culmination of a criminal proceeding and requires conviction of an underlying crime*." (emphasis added)).

But the fact that restitution has a punitive dimension, including for application of the Ex Post Facto Clause, does not mean restitution serves only punitive goals. Nor does it mean restitution cannot be imposed with other punitive remedies, such as a custodial sentence, a fine, or forfeiture. *Accord* 2026 WL 135982, at *2 ("[R]estitution is imposed together with other criminal punishments such as imprisonment and fines."). This is particularly the case for forfeiture because Congress has mandated forfeiture, much like restitution under the MVRA, is mandatory. 28 U.S.C. § 2461(c) ("If the defendant is convicted of the offense giving rise to the forfeiture, the court *shall order* the forfeiture of the property as part of the sentence in the criminal case . . . ."); *see United States v. Monsanto*, 491 U.S. 600, 607 (1989) ("Congress could not have chosen stronger words to express its intent that forfeiture be mandatory in cases where § 853 applied [which section includes identical language to 28 U.S.C. § 2461(c).]"); *United States v. Waked Hatum*, 969 F.3d 1156, 1162 (11th Cir. 2020) ("The Supreme

Court has made clear that when Congress provides that a district court shall order forfeiture, it could not have chosen stronger words to express its intent that forfeiture be mandatory." (cleaned up)).

Second, consistent with the Supreme Court's acknowledgment in *Ellingburg* that compensating crime victims is a nonpunitive goal (2026 WL 135982, at *3), every circuit court to consider the issue has held that forfeiture and restitution are separate remedies that serve distinct purposes and do not constitute double recovery. *See United States v. Newman*, 659 F.3d 1235, 1241 (9th Cir. 2011); *United States v. Torres*, 703 F.3d 194, 204 (2d Cir. 2012) ("Eight other Circuits to have considered orders of forfeiture and restitution in the face of double recovery, due process-type challenges have affirmed their concurrent imposition.") (collecting cases); *United States v. Blackman*, 746 F.3d 137, 143 (4th Cir. 2014) ("Forfeiture is mandatory even when restitution is also imposed. These two aspects of a defendant's sentence serve distinct purposes: restitution functions to compensate the victim, whereas forfeiture acts to punish the wrongdoer."); *United States v. Kasali*, 111 F.4th 637, 649 (5th Cir. 2024) ("Restitution is remedial in nature; its goal is to make the victim whole. Forfeiture is punitive; it seeks to disgorge any profits or property an offender obtains from illicit activity"); *United States v. Navarrete*, 667 F.3d 886, 888 (7th Cir. 2012) ("It might seem that a defendant should never have to pay more than his victim's loss, and therefore that a forfeiture order and a restitution order should be considered alternative rather than cumulative punishments. But the cases hold otherwise"); *United States v. McGinty*, 610 F.3d 1242, 1248 (10th Cir. 2010) ("Nothing in the statutory scheme permitted the district court to reduce the mandated criminal forfeiture order because the defendant also had to satisfy his obligation to pay restitution."); *United States v. Jelen*, No. 18-1284, 2024 WL 686155, at *2 (3d Cir. Feb. 20, 2024) ("[R]estitution is different from forfeiture[.]"); *United States v. Joseph*, 743 F.3d 1350, 1354 (11th Cir.2014) ("While restitution seeks to make victims whole by reimbursing them for their losses, forfeiture is meant to punish the defendant by transferring his ill-gotten gains to the United States Department of Justice.").

The Supreme Court's prior precedent acknowledging that restitution has a punitive component—which pre- and post-dated *Newman*—did not overturn *Newman*. *E.g.*, *Pasquantino*, 544 U.S. at 365 (2005); *Paroline*, 572 U.S. at 456 (2014); *Manrique*, 581 U.S. at 118 (2017). Neither does *Ellingburg*. Because the reasoning of *Ellingburg* is consistent with *Newman*, Will's Hail Mary pass to overturn it

fails. *See Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) ("We hold that the issues decided by the higher court need not be identical in order to be controlling. Rather, the relevant court of last resort must have undercut the theory or reasoning underlying the prior circuit precedent *in such a way that the cases are clearly irreconcilable*." (emphasis added)).

Finally, Will's Excessive Fines Clause claim still fails for the reasons previously articulated. In short, imposition of a restitution and forfeiture worth twice the loss caused by a defendant, as contemplated here, is not an excessive fine. Dkts. 77, at 24–25; 91 at 6–7.

C. Will's Amended Petition Remains Untimely And Should Be Denied Without Consideration of Its Merits.

The ancillary proceeding is not intended to give a claimant endless bites at the apple. The requirements of § 853(n) are strictly construed for good reason. *See, e.g.*, *United States v. Lamid*, 663 F. App'x. 319, 323 (5th Cir. 2016) (noting that, "*Because of the substantial danger of false claims* in forfeiture proceedings, federal courts require strict compliance with [21 U.S.C. § 853(n)(3)]." (emphasis added)).

Criminal Rule 32.2(c) was adopted to govern forfeiture proceedings because "it would *not be appropriate* to make the Civil Rules applicable in all respects." Fed. R. Crim. P. 32.2 Advisory Committee Notes to Subdivision (c) (emphasis added). Rule 32.2 "describes several fundamental areas in which procedures analogous to those in the Civil Rules may be followed," including "the filing of a motion to dismiss," (*id.*) and several provisions of Rule 32.2 expressly incorporate certain Civil Rules (*see* Fed. R. Crim. P. 32.2(b)(6)(C), (D), (c)(1)(B)). But leave to file or amend out of time is not mentioned and neither Fed. R. Civ. P. 15(c) nor 6(b)(1) are incorporated anywhere in Criminal Rule 32.2.

Of course, a court may permit amendment of a timely claim to correct a technical defect or to plead additional facts to substantiate a timely, previously asserted theory. *See, e.g.*, *United States v. Swartz Fam. Tr.*, 67 F.4th 505, 520 (2d Cir. 2023); *United States v. Furando*, 40 F.4th 567, 579–80 (7th Cir. 2022). But what is impermissible is to allow a claimant to allege an entirely new theory predicated on new evidence, shifting the goalposts as Will has multiple times. *E.g.*, *United States v. Welch*, No. 23-3309, 2024 WL 4879474 (9th Cir. Nov. 25, 2024).

Notably, Will makes no effort to distinguish *Welch*. That case is dispositive. There, the Ninth Circuit affirmed denial of leave to amend when the claimant "failed to explain why he was previously unable to discover the information set forth in his motion to amend, and the district court properly characterized the facts described in that motion as new grounds for relief." Here, Will has offered no explanation for why she could not have asserted her resulting trust theory in her original petition. Indeed, she relies on the exact same evidence and the exact same declaration she submitted with her original petition. *Compare* Dkt. 65 *with* Dkt. 104.

Will claims that the 30-day deadline in 21 U.S.C. § 853(n)(2) is clearly a claims processing rule. But Will cites no authority for that holding. Instead, Will selectively quotes *United States v. Osborn*, 357 F. App'x 109, 109–10 (9th Cir. 2009), where the Ninth Circuit affirmed a district court's refusal to allow a party to plead outside 853(n)(2)'s 30-day window.

Will's invocation of Federal Rule of Civil Procedure 15(c)(1)(B) fares no better. That rule—which is nowhere incorporated in Criminal Rule 32.2—permits an amendment to relate back when it "asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out . . . in the original pleading." But relation back under Rule 15(c) does not rescue claims asserted outside a statutory deadline when those claims constitute new grounds for relief.

Mayle v. Felix, 545 U.S. 644 (2005), which Will cites, undermines her position. There, the Supreme Court held that an amended habeas petition relates back only when the new claim arises from a "common core of operative facts" with the original claim. *Id.* at 664. The Court emphasized, however, that relation back does not permit assertion of claims based on different conduct or legal theories merely because they involve the same general subject matter. *Id.* at 656–61.

Here, Will's original petition was predicated on the 2019 Deed of Trust, a security interest. Her amended petition now asserts an equitable ownership interest based on an alleged resulting trust created in 2016, when exclusive title to the Belwood Property was transferred to Will-Darnall. These theories involve different transactions, different time periods, and fundamentally different legal relationships. The original claim was based on Will's status as a secured creditor. The new claim asserts Will was always the true beneficial owner. These are not claims arising from a "common core of operative facts."

Because it is untimely, Will's amended claim should be dismissed without consideration of its merits.

CONCLUSION

Without a hearing, the Court should grant the government's motion to dismiss the first amended petition, dismiss Will's claim with prejudice, and enter a final order of forfeiture including the following:

1. Up to $746,372.98 in equity resulting from the sale of the Belwood Property;
2. A money judgment of $1,406,594.56; and
3. All funds up to $625,952.60 on deposit in a Vanguard account ending in 6846, and all interest accrued since seizure of those funds.

DATED: February 6, 2025

Respectfully submitted,

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