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UNITED STATES OF AMERICA

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CASSIE WILL-DARNALL, Defendant.	Case No. CR-24-00292-PCP APPLICATION OF THE UNITED STATES FOR PRELIMINARY ORDER OF FORFEITURE

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INTRODUCTION

The defendant Cassie Will-Darnall has admitted to receiving $2,833,554 in fraud proceeds. Dkt. 34 ("Plea Admission"), at 3. Will-Darnall's admission raises the question: What happened to the money? Fortunately for this Court—tasked with answering this question, among others—this question has an obvious answer once one follows the money.

As detailed below, the fraud proceeds were used to extinguish loans on two real properties. Will-Darnall used the rest of the money to pay credit-card debt; invest in a money-market fund, stocks, and cryptocurrency; and make sundry purchases. In short, while some of the money can be reclaimed, some has vanished, spent in a flurry after Will-Darnall obtained more than $2,833,554 in victim funds.

The government submits this application to reclaim the money that it can and to obtain a money judgment for the remainder that it cannot. Through this application, the government seeks a preliminary order of forfeiture of the following property (the "Subject Property"):

- Real Property located at 111 Belwood Gateway, Los Gatos CA 95032, Santa Clara County, APN 527-31-019 (the "Belwood Property");
- Real Property located at 306 Los Gatos Almaden Rd., Los Gatos, CA 95032, Santa Clara County, APN 527-46-002 (the "Almaden Property"); and
- All funds up to $625,952.60 on deposit in a Vanguard account ending in 6846 (the "6846 Account"), and all interest accrued since seizure of those funds.

The government also seeks a money judgment for $1,406,594.56, which amount represents a conservative estimate of the approximate value of the fraud proceeds that Will-Darnall dissipated. The money judgment would place the government in the position of a judgment creditor as to Will-Darnall, allowing it to later satisfy the debt by seeking the forfeiture of substitute assets owned by Will-Darnall.

Once granted, the preliminary order of forfeiture will become a final order of forfeiture *as to the defendant* at sentencing. This should come as no surprise to the defendant, who acknowledged in her change of plea that forfeiture was a consequence of both convictions and received proper notice of the government's intent to seek forfeit in both the initial charging document and a subsequently filed bill of particulars.

Third-party interests in the Subject Property, if any, will be adjudicated later. Indeed, after sentencing, pursuant to the timing articulated in 21 U.S.C. § 853(n)(2), any third party claiming a legal interest in the Subject Property may petition this Court for a hearing. At that hearing, the Court adjudicates the validity of the claimant's alleged interest in the property in a process known as the ancillary proceeding. The occurrence of the ancillary proceeding entitles the government to take discovery pursuant to the Federal Rules of Civil Procedure.

But consideration of potential third-party interests at this point puts the cart before the horse. Simply put, for now, this application presents just two questions for this Court to answer:

> **First**, for the entry of a preliminary order of forfeiture concerning the Subject Property, has the government established by a preponderance of the evidence a nexus between the counts to which Will-Darnall pleaded guilty and the Subject Property?
>
> **Second**, for the entry of a money judgment, has the government established by a preponderance of the evidence that Will-Darnall received $2,833,554 in fraud proceeds, of which Will-Darnall spent at least $1,406,594.56, requiring a money judgment in that amount?

The government respectfully submits that this Court should affirmatively answer both questions because **(1)** proceeds of the two counts to which Will-Darnall has pleaded guilty are directly traceable to the Subject Property and **(2)** Will-Darnall spent at least $1,406,594.56 in fraud proceeds, leaving the government to pursue the only remaining relief available for that amount, a money judgment. Thus, the Court should enter the preliminary order of forfeiture now and orally announce the final order of forfeiture as to Will-Darnall at sentencing, which is set for April 23, 2025.

I. Factual and Procedural Background:

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 ("Will"), and Bank of America. To make sense of those loans as well as other encumbrances on the title of the Belwood Property, this factual and procedural background begins in 2018. It includes a discussion of Will-Darnall's efforts to become judgment proof by encumbering the Belwood Property with various sham liens, a discussion of Will-Darnall's charged conduct, including tracing the fraud proceeds to the

Subject Property, and a discussion of subsequent procedural developments, ending with Will-Darnall's admission of guilt to the information's two counts, from which this application follows.

A. The Almaden Property Was Encumbered To Clear Title On The Belwood Property.

On January 24, 2018, Will signed a promissory note concerning Loan No. 278796661 from Bank of America (the "BofA Loan"). Declaration of Special Agent Barnard ("Barnard Decl."), Ex. A.[1] The BofA Loan contemplated Will receiving a $1,000,000 loan secured by the Almaden Property and Will making a monthly payment of $4,631.16 to Bank of America. *Id*.; *see also* Ex. B.

As of at least January 24, 2018, Will was the sole titled owner of the Almaden Property. *See* Ex. C. Will also then owned the following real property: 1868 Rosswood Dr., San Jose, CA 95124 (the "Rosswood Property"); 3570 Cactus Shadow St., # 201, Las Vegas, NV 89129; 3460 Cactus Shadow St., # 204, Las Vegas, NV 89129; and 84 Water St., Dundee, NY 14837. Ex. D.

While the BofA Loan was for $1,000,000, at closing, Will paid off two existing debts. Ex. E. One of those debts was a Bank of America home equity line of credit ("HELOC") secured by the Almaden Property with an outstanding balance of approximately $487,509.71. Exs. D and E. The other was a Nationstar loan secured by the Rosswood Property with an outstanding balance of approximately $162,496.33. Exs. D and E.

After deducting those two repayments and additional costs, Will received $348,114.69 in funds from the BofA Loan. Ex. E. That amount was wired, on January 29, 2018, into a Bank of America account in Will's name associated with an account number ending in 9108 (the "9108 Account"). *See* Exs. F and G. Will owned and controlled the 9108 Account.[2] Ex. G.

On February 2, 2018, Will obtained a cashier's check drawn on the 9108 Account in the amount of $607,629.02 to be paid to the order of PLM Lender Services Inc. (the "February 2018 Check"). Ex. H. The memo line of the February 2018 Check reads: "Cassie V. Will SC15282POO[.]" *Id*. Of the $607,629.02 included in the February 2018 Check, a portion of the funds came from the BofA Loan. Barnard Decl., ¶ 4.

[1] Unless otherwise noted, citations to exhibits refer to exhibits to the Declaration of Special Agent Barnard.

[2] While Robert V. Will is listed on statements for the 9108 Account, too, he was deceased as of May 1, 2005. Ex. C.

Will-Darnall signed a promissory note dated February 7, 2018, reflecting a $1,000,000 loan from her mother, Will ("Will's $1,000,000 Loan"). Ex. I. Will's $1,000,000 Loan contemplated Will-Darnall paying Will monthly $4,631.16—that is, the exact amount that Will was obligated to pay for the BofA Loan. Id. In fact, Will's $1,000,000 Loan incorporated the amortization schedule included with the BofA Loan. *Id*. at 2 (referencing Bank of America Loan No. 278796661). Purportedly, on the same day, Will-Darnall signed a deed of trust, securing Will's $1,000,000 Loan with the Belwood Property, though Will-Darnall did not then record the deed of trust on the property's title.[3] Ex. J.

On February 16, 2018, PLM Loan Management Services, Inc. ("PLM") signed a deed of reconveyance concerning loan SC15282POO, which had been secured by the Belwood Property. Ex. L. The deed of reconveyance reflects that PLM had been paid in full for loan SC15282POO. Id. As a result, PLM reconveyed to Will-Darnall the deed of trust recorded by PLM on the Belwood Property. Id. Thus, Will paid off Will-Darnall's loan from PLM 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 obligation to Bank of America under the BofA Loan.

B. Will-Darnall Clouds Title On The Belwood Property After Being Sued In An Apparent Effort To Become Judgment Proof.

On November 19, 2018, a lawsuit was filed in the Superior Court of California for the County of Santa Clara, styled as *Spieker Companies, Inc., v. Rosswood Properties, LLC, Cassie Will-Darnall, et al.*, 18CV338308 (the "Civil Suit"). Ex. M. In the Civil Suit, Spieker alleges $474,141.22 in damages resulting from Rosswood Properties, LLC, of which at the time Will-Darnall was a principal, breaching various rental lease agreements with Spieker.[4] *Id*.

On March 6, 2019, a deed of trust dated February 26, 2019, was recorded against the Belwood Property. Ex. O. That deed of trust secured a $500,000 loan from Will to Will-Darnall, which was made on July 26, 2016. *Id*.

[3] As of June 10, 2016, Will-Darnall was the sole titled owner of the Belwood Property. Ex. K.

[4] On June 8, 2022, an abstract of judgment was recorded on the title of the Belwood Property. Ex. N. That abstract of judgment reflects a judgment of $424,321.84 owed by Will-Darnall, among others, stemming from the Civil Suit. *Id*. Thus, Spieker apparently prevailed in the Civil Suit.

On June 28, 2019, the following three deeds of trust were recorded against the Belwood Property:

1. A deed of trust dated July 26, 2016, reflecting a $570,000 loan from Will to Will-Darnall (Ex. P);
2. The deed of trust securing Will's $1,000,000 Loan (Ex. J); and
3. A deed of trust dated June 27, 2019, reflecting a $3.25 million loan from Serenity Family Limited Partnership to Will-Darnall (Ex. Q).

The deeds of trust dated February 26, 2019, and July 26, 2016, likely reflect the same loan from Will to Will-Darnall, though the deeds describe the loan amount as $500,000 and $570,000, respectively. In July of 2016, Will acquired a $500,000 HELOC from Bank of America. Ex. R. Given Will's practice of obtaining money from Bank of America for Will-Darnall's benefit, Will conceivably could have loaned Will-Darnall $500,000 from the HELOC. *E.g.*, Ex. I. As detailed above, however, that HELOC, was repaid when Will received the BofA Loan in 2018. *See* Ex. E. In other words, the deeds of trust dated February 26, 2019, and July 26, 2016, if still on title,[5] likely double count the same loan, and that loan was likely repaid in full by the time of their recording.

The deed of trust securing Will's $1,000,000 Loan reflects an actual loan. But critically Will-Darnall appeared to receive the value of only $607,629.02 in funds for that loan. *See* Ex. H. It is possible that Will's $1,000,000 Loan subsumed an existing debt Will-Darnall owed Will (that is, the HELOC). But Will also used the BofA Loan to repay a loan with an outstanding balance of $162,496.33 secured by the Rosswood Property. Ex. F. Thus, the deed of trust secured Will's $1,000,000 Loan potentially overstates the amount of Will-Darnall's obligation to Will.

The deed of trust dated June 26, 2016, is a sham. Serenity Enterprises Family Limited Partnership is a Wyoming Limited Partnership affiliated with Will-Darnall. Barnard Decl., ¶¶ 5–7. The purported loan, however, is from Serenity Family Limited Partnership, reflecting an apparent typographical error. There is no evidence that Will-Darnall received any amount—let alone $3.25

[5] On May 31, 2019, three deeds of release were apparently recorded on title for the Belwood Property. The government does not have copies of those three deeds, though one might concern the release of the deed of trust dated February 26, 2019.

million—from either Serenity Family Limited Partnership or Serenity Enterprises Family Limited Partnership. Barnard Decl., ¶ 8. There is also no evidence that Will-Darnall made any effort to repay this purported loan. Barnard Decl., ¶ 9. Thus, the deed of trust reflecting the $3.25 million loan, thus, appears to be an effort to cloud title on the Belwood Property.[6]

Will-Darnall's efforts to shield her asset, however, did not stop there. On August 14, 2019, Will-Darnall signed a quitclaim deed, conveying her interest in the Belwood Property to Will-Darnall as trustee of the Cassie V. Will-Darnall Trust (the "Will-Darnall Trust") dated May 8, 2017. Ex. T. This quitclaim deed was recorded on title to the Belwood Property the next day. *Id*.

On September 25, 2019, Will-Darnall signed a deed of trust securing the Belwood Property for an alleged $1,900,850 loan from Plato Global Ventures LLC to Will-Darnall.[7] Ex. U. Plato's loan to Will-Darnall is a sham, too. Plato is potentially a Nevis LLC affiliated with Will-Darnall. Barnard Decl., ¶ 10; Ex. PP. There is no evidence that Will-Darnall received any amount—let alone $1.9 million—from Plato.[8] Barnard Decl., ¶ 11. There is also no evidence that Will-Darnall made any effort to repay this purported loan. Barnard Decl., ¶ 12.

Thus, after her mother, Will, paid off the remaining arm's-length loan secured by the Belwood Property, Will-Darnall encumbered the property with more than $6.7 million in purported loans, likely reflecting an effort by Will-Darnall to render herself judgment proof.

C. Will-Darnall Fraudulently Applies For More Than $7 Million In COVID-Relief Loans, Is Funded For $968,989, Then Transfers Most Of Those Fraudulently Obtained Funds Directly To Her Mother Will.

Will-Darnall submitted two fraudulent applications for Economic Injury Disaster Loans ("EIDLs") on March 31 and April 11, 2020, respectively. Those EIDLs were declined. Barnard Decl., ¶ 13.

[6] As early as August 2013, Will-Darnall had apparently recorded on title for the Belwood Property loans of dubious authenticity. *See, e.g.*, Ex. S.

[7] Notably, Will-Darnall signed the deed of trust in her individual capacity (that is, not as trustee to the Will-Darnall Trust), even though, according to the quitclaim dated August 14, 2019, Will-Darnall no longer had an interest in the Belwood Property at the time of Plato's purported loan.

[8] Absent extraordinary circumstances, it also would be unusual for a third-party lender to secure a loan against a property as apparently encumbered as the Belwood Property was in September 2019.

Will-Darnall submitted a fraudulent Paycheck Protection Program ("PPP") loan application on April 1, 2020. That PPP loan was declined. On April 3, 2020, Will-Darnall submitted the same PPP loan application, including minor revisions. That PPP loan was declined. In aggregate, Will-Darnall sought $6,625,000 in PPP loans through those two PPP loan applications. Barnard Decl., ¶ 14.

On May 20, 2020, Will-Darnall submitted a fraudulent PPP loan application in the name of Alternative Health Services Inc. for $968,989.00. Plea Admission, at 2; *see* Ex. V. On June 4, 2020, the loan was funded, and $968,989.00 was deposited into the Wells Fargo Bank account of Rosswood LLC with an account number ending in 7528 (the "7528 Account"). Ex. W. Will-Darnall owned and controlled the 7528 Account. Ex. X.

On June 9, 2020, Will-Darnall transferred $938,000 from the 7528 Account to the Wells Fargo Bank account of Soda Springs LLC with an account number ending in 4912 (the "4912 Account"). Exs. W and Y. Will-Darnall owned and controlled the 4912 Account. Ex. Z. Using the lowest intermediate balance rule ("LIBR"), a forensic accounting principal, the $938,000 transfer to the 4912 Account was composed of funds entirely, directly traceable to the first count to which Will-Darnall has pleaded guilty.[9] Barnard Decl., ¶ 16.

[9] Throughout this application the government traces money using the lowest intermediate balance rule ("LIBR"). As United States District Judge Gillmor of the District of Hawaii has explained:

> LIBR is an accounting principal used to calculate which funds are subject to forfeiture in an account containing both tainted and legitimate funds. . . . LIBR posits that when commingled funds are in an account, legitimate funds are withdrawn first, leaving the tainted funds in the account. When there is insufficient legitimate funds to cover a specific withdraw, then tainted funds are used to cover the withdraw. The balance of tainted funds in the account is reduced according to the amount needed to make the withdraw. This reduced balance of tainted funds is considered the intermediate balance of the tainted funds. If legitimate funds are added to the account later, the intermediate balance of tainted funds in the account does not increase. Over the course of time, as deposits and withdraws are made into an account, the LIBR keeps track of the intermediate balance of tainted funds in the account. For example, if an account contains $1,000 of tainted funds and $1,000 of legitimate funds totaling $2,000, then so long as at least $1,000 remains the account at the time of seizure, $1,000 will be considered tainted and, therefore, subject to forfeiture. If however, at some point the balance of funds in the account drops below $1,000, for example to $800, and there is no evidence that additional tainted funds were added to the account, the lowest intermediate balance of tainted funds would be at most $800. Regardless of how much money was in the account at the time of seizure, the LIBR would only allow forfeiture of $800 because that would be the lowest intermediate balance of tainted

On June 15, 2020, Will-Darnall wrote a check to Will drawn on the 4912 Account in the amount of $971,504.21 (the "June 15 Check"). Ex. AA. Using LIBR, $746,372.98 of the June 15 Check is directly traceable to the first count to which Will-Darnall pleaded guilty. Barnard Decl., ¶ 17.

D. The June 15 Check, Composed Of Largely Fraud Proceeds, Extinguished Loans On Both The Belwood Property And The Almaden Property.

On June 15, 2020, the June 15 Check was deposited into the 9108 Account. Ex. BB. The memo line for the June 15 Check reads "111 Bel payoff," (Ex. AA) a reference to Will-Darnall's repaying Will's $1,000,000 Loan and noting the repayment was related to the Belwood Property.

Despite having repaid Will's $1,000,000 Loan, Will-Darnall, as trustee of the Will-Darnall Trust, signed a quitclaim deed dated June 20, 2020, transferring the Will-Darnall Trust's interest in the Belwood Property to Will.[10] Ex. CC.

On June 22, 2020, a $972,094.93 payment was made from the 9108 Account to a Bank of America mortgage account held in Will's name and associated with an account number ending in 6661. Ex. BB; *see also* Ex. EE. The payment extinguished the BofA Loan, which encumbered the Almaden Property. Ex. BB; *see also* Ex. EE. Using LIBR, the $972,094.93 payment to Bank of America, as repayment for the BofA Loan, included up to $746,372.98 in funds directly traceable to the first count to which Will-Darnall pleaded guilty. Barnard Decl., ¶ 18.

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funds in the account.

United States v. Haleamau, 887 F. Supp. 2d 1051, 1057 (D. Haw. 2012) . The same court also discussed at length the propriety of using LIBR in a variety of contexts, including forfeiture. *See generally*, *Id*. at 1056–57 (collecting cases); *cf. Luis v. United States*, 578 U.S. 5, 22 (2016) (acknowledging that "[c]ourts use tracing rules in cases involving fraud").

[10] That quitclaim deed was not recorded on title until October 19, 2020. Ex. CC. In a note to her accountant, Will-Darnall later stated that she quitclaimed the Belwood Property to Will because Will-Darnall allegedly "defaulted" on Will's $1,000,000 Loan. *See* Ex. DD. The June 15 Check contradicts Will-Darnall's stated reason for quitclaiming the Belwood Property to Will.

E. Will-Darnall Deposits Nearly $2,000,000 In Fraudulently Obtained Proceeds Into A Vanguard Account, Transfers The Fraud Proceeds To Another Vanguard Account, And Then Transfers The Fraud Proceeds To Yet Another Account And Back, Dissipating Much Of The Funds, Until Their Seizure.

On July 12, 2020, Will-Darnall submitted a fraudulent loan application in the name of Rosswood Properties LLC for $1,650,500.00. Plea Admission at 3; Ex. FF. On July 22, 2020, the loan was funded and $1,864,565.00.00 was deposited into the 7528 Account. Plea Admission at 3; Exs. GG, HH.

On November 9, 2020, Will-Darnall opened an account at Vanguard associated with an account number ending in 8205 (the "8205 Account"), which account Will-Darnall owned and controlled. Ex. II. The 8205 Account was an individual brokerage account, in which Will-Darnall invested in a money-market fund and stocks. On November 10, 2020, Will-Darnall transferred $1,600,000 from the 7528 Account to the 8205 Account. Ex. JJ. On November 17, 2020, Will-Darnall transferred $230,000 from the 7528 Account to the 8205 Account. Id. Pursuant to LIBR, except for $54.15, all of the $1,830,000 included in these two transfers is directly traceable to the second count to which Will-Darnall has pleaded guilty. Barnard Decl., ¶ 19.

On November 27, 2020, Will-Darnall transferred $100,000 from the 4912 Account to the 8205 Account. Ex. JJ. Pursuant to LIBR, all of the $100,000 included in this transfer is directly traceable to the first count to which Will-Darnall has pleaded guilty. Barnard Decl., ¶ 20.

Between November 10, 2020, and February 2, 2021, the 8205 Account did not receive any deposits beyond the three previously described deposits. Thus, except for $54.15 in clean funds, the account received exclusively funds traceable to the two counts to which Will-Darnall has pleaded guilty. Barnard Decl., ¶¶ 19–20.

On February 2, 2021, Will-Darnall transferred $1,876,616.41 from the 8205 Account to a Vanguard account associated with an account number ending in 6846 held in the name of "Alternative Health Service Inc" (the "6846 Account"). Ex. KK. Will-Darnall owned and controlled the 6846 Account, an organizational brokerage account. Ex. LL. Pursuant to LIBR, of the $1,876,616.41 transferred to the 6846 Account, all of it constituted funds directly traceable to the two counts to which Will-Darnall pleaded guilty. Barnard Decl., ¶ 21.

Between February 2, 2021, and May 31, 2023, funds were withdrawn from the 6846 Account and transferred to the 4912 Account in increments ranging from $3,000 to $400,000. Barnard Decl., ¶ 22. Pursuant to LIBR, Will-Darnall transferred $1,027,000 in fraud proceeds from the 6846 Account to the 4912 Account. Id. Will-Darnall dissipated some of those funds at restaurants and through purchases of various things including items from Amazon and payments to airlines. *Id*.

Pursuant to LIBR, Will-Darnall transferred approximately $489,000 in loan proceeds from the 4912 Account back into the 6846 Account. Barnard Decl., ¶ 23. As of on or about May 31, 2023, the 6846 Account had a balance of $625,952.60. Barnard Decl., ¶ 24. Using LIBR, the government was able to determine the entirety of the $625,952.60 consisted proceeds directly traceable to the two counts to which Will-Darnall has pleaded guilty. Barnard Decl., ¶ 25.

On June 29, 2023, the government obtained a seizure warrant for all funds up to $625,952.60 held in the 6846 Account and their appreciated value based on the government's tracing of the proceeds connected to Will-Darnall's scheme to defraud to all funds held in the 6846 Account. Declaration of AUSA Phillips ("Phillips Decl."), Ex. MM. As of March 31, 2025, those funds have appreciated to at least $680,586.46. Phillips Decl., Ex. NN.

F. Will-Darnall Is Charged By Information Including A Forfeiture Allegation and Pleads Open While Acknowledging Forfeiture Penalties.

On May 29, 2024, Will-Darnall, was charged by an information with violations of Title 18, United States Code, Sections 1344(2) (Bank Fraud) and 1343 (Wire Fraud). Dkt. 1, at 8–9. In the information, the government sought criminal forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c). *Id*. And the government identified the property subject to forfeiture as follows:

- 111 Belwood Gateway, Los Gatos CA 95032, Santa Clara County, APN 527-31-019;
- 306 Los Gatos Almaden Rd., Los Gatos, CA 95032, Santa Clara County, APN 527-46-002; 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. *Id*.

On June 12, 2024, the government filed lis pendens against both the Belwood Property and the Almaden Property. On August 19, 2024, the government filed a bill of particulars, providing notice of the government's intent to seek forfeiture of the Subject Property. Dkt. 17.

On December 13, 2024, Will filed a civil complaint in the United States District Court for the Northern District of California, styled as *Sandra Will, v. The United States of America and Does 1-10*, 5:24CV09030, which has since been assigned to this Court. A summons has not been issued in that matter. And the complaint remains unserved, a defect of which plaintiff's counsel has been advised. *See* Phillips Decl., Ex. OO.

On January 15, 2025, Will-Darnall pleaded guilty before this Court without a plea agreement to Counts One and Two of the Information. In the Plea Admission, Will-Darnall acknowledged that forfeiture was a penalty of both counts to which she was pleading guilty. Plea Admission, at 2. While Will-Darnall has admitted her criminal conduct, the parties have reached no agreement concerning the scope of forfeiture, raising doubts about the extent to which Will-Darnall accepts responsibility for her crimes.

II. Legal Standard

Rule 32.2 of the Federal Rules of Criminal Procedure addresses criminal forfeiture procedure. Rule 32.2(b)(1)(A) provides that as soon as practicable after accepting a plea of guilty on any count for which criminal forfeiture is sought, the court shall determine what property is subject to forfeiture under the applicable statute. If forfeiture of specific property is sought, the Court shall determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a money judgment against the defendant, the Court shall determine the amount of money that the defendant will be ordered to pay.

Rule 32.2(b)(1)(B) provides that the Court's determination may be based on evidence already in the record, "including any written plea agreement[.]" If the forfeiture is contested, as here, the Court may determine the nexus of the specific property to the offense based on evidence or information before the Court or presented by the parties.

The standard of proof is preponderance of the evidence. *See United States v. Shryock*, 342 F.3d 948, 991 (9th Cir. 2003) ("We therefore join all other circuit courts of appeals that have considered the

question, and conclude that *Apprendi* [*v. New Jersey*, 530 U.S. 466 (2000),] does not disturb the rule that statutorily-prescribed forfeiture is constitutional when supported by the preponderance of the evidence." (emphasis added)).

As to the Subject Property, the only question before the Court at this stage and in connection with the requested entry of the proposed preliminary order of forfeiture is whether the evidence before the Court is sufficient to establish, by a preponderance of the evidence, the existence of a nexus between the Subject Property, and the offenses to which defendant has pleaded guilty. *See* Rule 32.2(b). Rule 32.2(b)(2) states that if the Court finds that property is subject to forfeiture, it shall enter a preliminary order of forfeiture setting forth the amount of any money judgment or directing the forfeiture of the specific property without regard to any third party's interest in all or part of it.

The existence of third-party interests in the Subject Property is not before the Court at this time. *See* Rule 32.2(b)(2)(A) ("Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c)."); *see also United States v. Lazarenko*, 476 F.3d 642, 648 (9th Cir. 2007) ("Upon a finding that the property involved is subject to forfeiture, a court must promptly enter a preliminary order of forfeiture without regard to a third party's interests in the property." (emphasis added)). The ancillary proceeding can be completed once the preliminary order of forfeiture becomes final as to the defendant, upon the Court announcing such at sentencing and including it in the judgment, per Rule 32.2(b)(4).[11]

As a result, the government is not required to establish the defendant's ownership of the property to obtain a preliminary order of forfeiture. *See United States v. Yeje-Cabrera*, 430 F.3d 1, 15 (1st Cir. 2005) (explaining that the primary purpose of Rule 32.2 is to preserve the resources of court and third parties by deferring the ownership issue to the ancillary proceeding and avoiding duplicative litigation); *see also United States v. Nava*, 404 F.3d 1119, 1132 (9th Cir. 2005) (district court properly instructed jury that questions of ownership "were not before them"); *Almeida v. United States*, 459 F.3d 377, 381 (2d Cir. 2006) ("The statutory wording makes sufficiently clear that criminal forfeiture is not a measure

[11] The ancillary proceeding concerns third party interests in property forfeited as to the defendant. Because a money judgment does not result in the forfeiture of any specific property, it is exempt from the ancillary proceeding. *See* Rule 32.2(c)(1).

restricted to property owned by the criminal defendant . . . . The likelihood that some property involved in an offense will be owned by persons other than the criminal defendant is reflected in the provision for an ancillary proceeding.").

As explained in the Advisory Committee Notes to Rule 32.2 (2000), the Rule was revised with the intent to eliminate confusion over whether the extent of the defendant's ownership interest should be determined by the finder of fact. The new rule clarified that the only question upon conviction or a guilty plea is whether there is a nexus between the violation of which the defendant has been convicted (or to which he or she has pled) and the property sought; if there is, the court should enter an order forfeiting "whatever interest a defendant may have in the property without having to determine exactly what that interest is." *See* Advisory Committee Notes to Rule 32.2, subdivision (b) (2000 Adoption) ("The new rule resolves these difficulties by postponing the determination of the extent of the defendant's interest until the ancillary proceeding."). As such, under the current version of Rule 32.2, a defendant cannot object to the entry of a preliminary order of forfeiture on the grounds that the property at issue does not belong to her or him. *United States v. Schlesinger*, 396 F. Supp. 2d 267, 273 (E.D.N.Y. 2005) ("However, the extent of the Defendant's ownership or interest in the property is not at issue in determining whether the court should enter a preliminary order of forfeiture. The extent of the defendants' interest in the property and any other party's interest will be decided, if necessary, in an ancillary hearing."); *see also* Advisory Committee Notes to Rule 32.2, subdivision (b) (2000 Adoption) ("The defendant would have no standing to object to the forfeiture on the ground that the property belonged to someone else.").

III. Argument

A. The Nexus Between The Belwood Property And The Almaden Property And Defendant's Crime Is Established By Tracing The Funds From Will-Darnall's First Successful Fraudulent PPP Loan To Those Properties.

There is a clear nexus between the first charge to which Will-Darnall has pleaded guilty and both the Belwood and the Almaden Properties. As detailed above (*supra* I.d.), Will-Darnall used $746,372.98 of fraud proceeds to repay Will's $1,000,000 Loan. This payment released the Belwood Property from the deed of trust dated February 7, 2018 (as in, Ex. I). Fraud proceeds from the first count to which Will-Darnall has pleaded guilty were then used to repay the BofA Loan, releasing the Almaden Property from

the deed of trust dated January 24, 2018 (as in, Ex. B). Thus, funds derived from the first offense to which Will-Darnall has pleaded guilty are directly traceable to both the Belwood and the Almaden Properties.

Will-Darnall may object and claim that the government cannot trace the same proceeds to two separate properties. That objection, if made, would be incorrect and premature. It is indisputable that fraud proceeds were used to repay loans on the Belwood and the Almaden Properties. That the two properties are inextricably intertwined is a fact of Will-Darnall's making. Will, potentially at Will-Darnall's direction, served as a proxy to obtain funds from Bank of America that were then used to repay loans secured by the Belwood Property, the Almaden Property, and the Rosswood Property. The BofA Loan was then repaid using funds directly traceable to Will-Darnall's first count of conviction.

At this stage, the Court need not determine the exact amount of funds that went into the Belwood and Almaden Properties. Indeed, it could not on this record. Presently, the net equity in the Belwood Property is—if the various encumbrances on title are presumed accurate—less than - $4,000,000. The Belwood Property has also apparently been quitclaimed to Will, meaning Will-Darnall has at least on paper relinquished any interest in the property. Forcing the government to articulate a specific amount of equity that it seeks to forfeit from the Belwood and the Almaden Properties, at this stage, is unnecessary as this application seeks only the forfeiture of Will-Darnall interest in those properties. *See Schlesinger*, 396 F. Supp. at 273.

Because fraud proceeds tied to the first count to which Will-Darnall has pleaded guilty can be directly traced to the Belwood and Almaden Properties, those properties should be forfeited as to Will-Darnall. 18 U.S.C. § 981(a)(1)(C) (providing for the forfeiture of real property derived from proceeds traceable to violations of 18 U.S.C. §§ 1344 and 1343 (through the incorporation of any offense constituting a specified unlawful activity)).

B. The Government Has Established The Requisite Nexus Between The 6846 Account And The Defendant's Crimes By Tracing The Funds From Will-Darnall's Two Fraudulently Obtained PPP Loans To The 6846 Account.

The funds held in the 6846 Account at the time of their seizure are funds directly traceable to the two counts to which Will-Darnall has pleaded guilty or the appreciation of those fraudulently obtained funds. Barnard Decl., ¶¶ 19–25. Thus, the requisite nexus between the 6846 Account and the

defendant's crimes is established. The government is also entitled to any appreciation accrued to the fraud proceeds. *See United States v. Afriyie*, 929 F.3d 63, 73 (2d Cir. 2019) (holding "forfeiture [pursuant to section 981(a)(1)(C)] may extend to the appreciation of funds acquired through illegal transactions"); *United States v. Hill*, 46 F. App'x 838, 839 (6th Cir. 2002) ("[B]ecause this case merely involves the appreciated value of the forfeited 616 shares, the district court properly ordered the forfeiture of the appreciated value of the stock."); *cf. United States v. Betancourt*, 422 F.3d 240, 251 (5th Cir. 2005) ("That [defendant] used his drug proceeds to generate a very large return by winning the Texas lottery is of no import in the forfeiture analysis.").

C. A Money Judgment Of $1,406,594.56 Is Warranted Because That Amount Reflects A Conservative Approximation Of The Amount Of Fraud Proceeds Dissipated By Will-Darnall .

A money judgment is required when the proceeds of a defendant's offenses have been spent. *Cf. United States v. Nejad*, 933 F.3d 1162, 1165 (9th Cir. 2019) ("In the absence of such a conflict, our rationale for allowing district courts to impose personal money judgments remains undisturbed by the reasoning of Honeycutt. We have regarded such judgments as necessary to avoid undermining Congress' objectives in enacting mandatory forfeiture sanctions, pointing in particular to the substitute-property provision found in 21 U.S.C. § 853(p). Section 853(p) states that if the tainted property subject to forfeiture is unavailable due to certain acts or omissions of the defendant, the court must order the forfeiture of 'any other property of the defendant'—including untainted assets—up to the value of the directly forfeitable property." (citations omitted)).

Here, the government conservatively estimates that of the $2,833,544 in fraud proceeds that Will-Darnall received, she spent at least $1,406,594.56. That amount reflects $2,833,544 (as in, her net gain) minus the sum of $746,372.98 (as in, the amounts the government traced to the Almaden and Belwood Properties) and $680,586.46 (as in, the amounts the government traced to the 6846 Account plus their appreciation, which the government need not include but does for simplicity's sake).

Because Will-Darnall spent at least $1,406,594.56 in fraud proceeds, the government is entitled to a money judgment in that amount.

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IV. Procedure Following Issuance of Preliminary Order of Forfeiture

Rule 32.2(b)(3) provides that the entry of a preliminary order of forfeiture authorizes the Attorney General (or a designee) to seize the specific property subject to forfeiture; to conduct any discovery the court considers proper in identifying, locating, or disposing of the property; and to commence proceedings that comply with any statute governing third-party rights. The court may include in the order of forfeiture any conditions reasonably necessary to preserve the property's value pending any appeal.

Upon the issuance of a Preliminary Order of Forfeiture and pursuant to Title 21, United States Code, Section 853(n), and Rule G(4)(a)(iv) of the Supplemental Rules for admiralty or Maritime Claims and Asset Forfeiture Actions, the United States will publish on www.forfeiture.gov, a government website for at least thirty days, notice of this Order, notice of its intent to dispose of the property in such manner as the Attorney General may direct, and notice that any person, other than the defendant, having or claiming a legal interest in the property must file a petition with the Court and serve a copy on Galen A. Phillips, Assistant United States Attorney, 450 Golden Gate Avenue, Box 36055, San Francisco, CA 94102, within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the property, shall be signed by the petitioner under penalty of perjury, shall set forth the nature and extent of the petitioner's right, title or interest in the forfeited property, and any additional facts supporting the petitioner's claim and the relief sought. The United States may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the Preliminary Order of Forfeiture, as a substitute for published notice as to those persons so notified.

Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, this Preliminary Order of Forfeiture shall become final as to defendant at the time of sentencing and shall be made part of defendant's sentence and included in defendant's judgment. The Court must pronounce the forfeiture conditions orally as part of the sentence imposed on defendant, and must include the forfeiture in the judgment and commitment order. *See* Fed. R. Crim. P. 32.2(b)(4)(B); *see also United States v. Gaviria*,

116 F.3d 1498, 1530 (D.C. Cir. 1997) (per curiam) (forfeiture portion of the defendant's sentence must be announced in her presence pursuant to Fed. R. Crim. P. 43(a)).

The government recommends that the following language be read to defendant and modified as necessary for inclusion in the judgment and commitment order at the time of her sentencing: Pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), the information, and the bill of particulars, defendant Cassie Will-Darnall has forfeited all of her right, title, and interest in the specific property more particularly described in the Preliminary Order of Forfeiture entered on [date], and the government shall be entitled to a money judgment of $1,406,594.56.

CONCLUSION

The United States therefore moves this Court to enter the accompanying proposed Preliminary Order of Forfeiture which provides for the following:

a. authorizes the forfeiture of the Subject Property to the United States;

b. enters a $1,406,594.56 money judgment;

c. directs the United States, through its appropriate agency, to seize the forfeited property forthwith;

d. authorizes the government to conduct discovery in order to identify, locate, or dispose of property subject to forfeiture in accordance with Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure;

e. directs the United States to publish on a government website for at least thirty days, notice of this Order, notice of the government's intent to dispose of the property in such manner as the Attorney General may direct and provide notice that any person, other than the defendant, having or claiming a legal interest in the subject property must file a petition with the Court and serve a copy on government counsel within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier; and

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f. the Court retains jurisdiction to enforce the Preliminary Order of Forfeiture, and to amend it as necessary, pursuant to Federal Rule of Criminal Procedure 32.2(e).

DATED: April 9, 2025

Respectfully submitted,

PATRICK D. ROBBINS
Acting United States Attorney

/s/
GALEN A. PHILLIPS
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she caused a copy of the following documents:

- APPLICATION OF THE UNITED STATES FOR PRELIMINARY ORDER OF FORFEITURE
- [PROPOSED] PRELIMINARY ORDER OF FORFEITURE

to be served this date by CM/ECF Electronic Case Filing Notification and/or United States Mail Delivery and Electronic Mail Delivery upon the person(s) below at the place(s) and address(es) which is the last known address(es):

Varell Laphalle Fuller 55 South Market Street Suite 820 San Jose, CA 95113 Email: Varell_Fuller@fd.org Attorney for Defendant	John R. Setlich LAW OFFICES OF JOHN R. SETLICH 15342 El Prado Road Suite 200B Chino, California 91710 Email: jrsetlich@setlichlegal.com Attorney for Sandra Will

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 9th day of April 2025 at San Francisco, California.

_____/S/_____
CAROLYN JUSAY
FSA Paralegal
Asset Forfeiture Unit