EXHIBIT OO

U.S. Department of Justice

United States Attorney/Civil Division
Northern District of California

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March 4, 2025

VIA ELECTRONIC AND U.S. MAIL

John R. Setlich
Law Offices of John R. Setlich
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Chino, CA 91710
jrsetlich@setlichlegal.com

Re: *Will v. United States*, No. 24-cv-09030-PCP (N.D. Cal.)

Dear Mr. Setlich:

Dave Countryman forwarded your correspondence dated February 26, 2025 to me for response.

First, as noted in my email to you of February 28, 2025, service on the United States is governed by Federal Rule of Civil Procedure 4(*i*). Rule 4(*i*) requires the following:

(i) **Service Upon the United States, and Its Agencies, Corporations, Officers, or Employees**.

(1) United States. To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States Attorney for the district where the action is brought or to an Assistant United States Attorney or clerical employee whom the United States Attorney designates in a writing filed with the court clerk or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States Attorney's Office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) Agency; Corporations; Officer or Employee sued in an Official Capacity. To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(3) Officer or Employee sued individually. To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) Extending Time. The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

Under Federal Rule of Civil Procedure 12(a)(2), the United States has 60 days after service on the United States Attorney to file an answer or other response to a complaint. The time for the federal government defendant's response to the complaint will not begin to run until after this office is properly served with the summons and complaint.

Second, if you do serve the civil lawsuit that you have filed, it is subject to dismissal for failure to state a claim and for lack of jurisdiction, and our office intends to file a motion to dismiss on those grounds. A third party asserting a legal interest in property that is subject to forfeiture may petition the court for a hearing to adjudicate the validity of that third party's interest, but such a petition may only be asserted as an ancillary proceeding in the underlying criminal action. *See* 21 U.S.C. § 853(n)(2). The criminal forfeiture statute expressly bars a third party from commencing "an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section." 21 U.S.C. § 853(k)(2). Petitioning the court for an ancillary proceeding pursuant to 21 U.S.C. § 853(n) is the exclusive means for a third party to claim an interest in forfeited property. *See, e.g.*, *Libretti v. United States*, 516 U.S. 29, 44 (1995); *United States v. 101 Houseco, LLC*, 22 F.4th 843, 849 (9th Cir. 2022). Any collateral proceeding that challenges the seizure of property through criminal forfeiture, including an action asserting that the defendant holds no interest or title in the property, must be dismissed without leave to amend. *See Dennis v. United States*, No. 21-cv-02213, 2022 WL 4484022, at *2 (E.D. Cal. Sept. 27, 2022).

In addition, the asserted statutory basis for Plaintiff's second claim—Civil Code § 3345—does not support a free-standing cause of action for "elder abuse" but rather merely provides for *increased* monetary remedies for underlying statutory causes of action for unfair or deceptive acts or practices in certain circumstances. *See, e.g.*, *Hood v. Hartford Life & Acc. Ins. Co.*, 567 F. Supp. 2d 1221, 1229 (E.D. Cal. 2008). And even if it were an independently actionable substantive cause of action, you have identified no waiver of sovereign immunity that would permit such a claim to be asserted against the federal government. *See A.C.L. Computers & Software, Inc. v. United States*, No. 16-cv-01485-SK, 2017 WL 6060267, at *4 (N.D. Cal. Mar. 13, 2017), *aff'd*, 727 F. App'x 376 (9th Cir. 2018) (California unfair competition law does not contain a waiver of sovereign immunity). Accordingly, any such claim is subject to dismissal with prejudice for lack of subject matter jurisdiction. *See Davis v. United States Small Bus. Admin.*, No. 20-cv-1280, 2021 WL 681134, at *5 (C.D. Cal. Jan. 27, 2021).

A lis pendens was placed on the subject property because the government traced into the property proceeds of the fraud scheme to which Cassie Will-Darnall has pleaded guilty. *See United States v. Cassie Will-Darnall*, No. 24-cr-00292, Dkt. No. 35. In advance of her sentencing, the government will file an application for a preliminary order of forfeiture concerning the subject property. I understand that you believe that the subject property is not connected to Cassie Will-Darnall's criminal activities. As noted above, to the extent Ms. Will seeks to assert a legal interest in this property, she may do so at the appropriate time in an ancillary proceeding pursuant to 21 U.S.C. § 853(n). She may not, however, maintain a separate lawsuit to challenge the lis pendens or forfeiture. We request that you voluntarily dismiss the pending lawsuit to avoid unnecessary and fruitless civil litigation.

Very truly yours,

PATRICK D. ROBBINS
Acting United States Attorney

PAMELA T. JOHANN
Assistant United States Attorney
Chief, Civil Division