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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.	**Case No.:** 5:24-CR-00292-PCP **THIRD PARTY CLAIMANT SANDRA WILL'S 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; SARAH E. GRISWOLD, ASSISTANT UNITED STATES ATTORNEY; AND JOHNNY E. JAMES, SPECIAL 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 on October 15, 2025, at 10:00 a.m. in Courtroom 8 of the Fourth Floor of the San Jose courthouse.

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INTRODUCTION

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 government will likely obtain a judgment at sentencing requiring defendant Cassie Will-Darnall to pay full restitution to the banks she defrauded, with interest.

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 mortgagee of 111 Belwood Gateway in Los Gatos, California since 2018 and at the time of 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. 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 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 ("Will Dec.") at ¶ 4; Declaration of Hanni M. Fakhoury ("Fakhoury Dec."), Exh. A at US-0001621. The house was used as a rental until 1995, when the Wills moved into the home permanently. Will Dec. at ¶ 5. The title of the house changed in 1998 when the property was placed in a family trust. Fakhoury Dec., Exh. A at US-0001619. Title changed again in 2004 when the house was placed in the name of Westward Properties, Inc. Fakhoury Dec., Exh. A at US-0001618. Ms. Will does not remember the circumstances surrounding that transfer. Will Dec. at ¶ 8. A month after the title changed, it was placed back in the name of Robert and Sandra Will. Fakhoury Dec., Exh. A at US-0001618. Robert Will passed away in 2005. 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. 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 $2.1 million. Fakhoury Dec. at ¶ 7.

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

Ms. Will-Darnall filed for divorce in January 2016. 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 agreed to help her daughter buy out Ms. Darnall's share of the Belwood home. In spring 2016, Ms. Will took out a home equity

[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."

line of credit ("HELOC") of approximately $500,000 from Bank of America, secured by the Almaden house. Will Dec. at ¶ 15. Much of that money, as well as other cash she had saved, ended up going 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. 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. 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. 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. 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. Will Dec. at ¶ 18. Bank of America first repaid the HELOC, which had a balance of $487,509.71. 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. 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. 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 Ms. Will-Darnall's mortgage on the Belwood house, which at the time had a balance of $607,629.02. Will Dec. at ¶ 19; Dkt. 44-8, Barnard Dec., Exh. H at US-0014385.

By this point, Ms. Will had lent Ms. Will-Darnall well over $1 million. Ms. Will had given her daughter the money needed to buy out Ms. Darnall's share of the Belwood home in 2017, and then paid off the remaining mortgage on the Belwood house the following year. Will Dec. at ¶ 20. To document and secure the loan, Ms. Will-Darnall signed a promissory note on February 7, 2018 and then later placed a deed of trust on the Belwood house in favor of Ms. Will. Will Dec. at ¶ 20; Barnard Dec., Dkt. 44-9, Exh. I at US-0010714, Dkt. 44-10, Exh. J at US-0001297.

As a result, by February 2018 Ms. Will was effectively the mortgagee of the Belwood house and Ms. Will-Darnall was her mortgagor. Although the agreement was not formalized as a mortgage, Ms. Will had basically taken out debt to purchase the Belwood property—both by buying out Ms. Darnall's share and then extinguishing the mortgage—and was responsible to Bank of America to make payments on the loan used to buy the property, notwithstanding the fact Bank of America's loan was secured by the Almaden house, not the Belwood house. Ms. Will received a monthly payment from her daughter. 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 a mortgage on the Belwood property. Fakhoury Dec., Exh. E.[2] The amounts matched—or 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. Will Dec. at ¶ 23. The Belwood house is worth approximately $2.6 million. Fakhoury Dec. at ¶ 8.

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

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 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

[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. Fakhoury Dec., Exh. E at US-0004746.

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. The government claimed, though, that two of the deeds "likely double count the same loan, and that loan was likely repaid in full by the time of their recording." *Id.* While acknowledging the "deed of trust securing Will's $1,000,000 Loan reflects an actual loan," the government asserted Ms. Will-Darnall "appeared to receive the value of only $607,629.02 in funds for that loan." *Id.* Noting it was "possible" that the $1 million loan covered other debts owed by Ms. Will-Darnall to Ms. Will, it nonetheless believed "the deed of trust secured Will's $1,000,000 Loan potentially overstates the amount of Will-Darnall's obligation to Will." *Id.* Ultimately, with respect to the Belwood property, the government alleged that by 2019 Ms. Will-Darnall had "encumbered the property with more than $6.7 million in purported loans" in "an effort…to render herself judgment proof" against civil creditors. *Id.*

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.

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).

[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.

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. 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 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 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.[4]

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—

[4] 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").

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. 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) (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. <u>Ms. Will had a superior interest in the Belwood house over Ms. Will-Darnall at the time of the bank fraud.</u>

As for the Belwood home, at the time of the bank fraud in May 2020, Ms. Will's interest in the house were "superior" to any interest belonging to Ms. Will-Darnall. 21 U.S.C. § 853(n)(6)(A). By

lending Ms. Will-Darnall $1 million to buy out Ms. Darnall's interest in the home in 2017, and then paying off Ms. Will-Darnall's mortgage in 2018, Ms. Will effectively became a mortgagee. This was not a gift from Ms. Will to Ms. Will-Darnall. A promissory note was signed, a deed of title recorded, and effective "rent" or mortgage payments made by Ms. Will-Darnall to her mother.

It is the 2019 recording of the deed of trust that gave Ms. Will an interest in the home superior to Ms. Will-Darnall before the bank fraud in May 2020, and before the quitclaim deed was filed. In California, while "recordation is not essential to legal recognition of a property interest" it does "affect[] its priority as against subsequent bona fide purchasers." *Gates Rubber Co. v. Ulman*, 214 Cal. App. 3d 356, 365 (1989) (citations and quotations omitted). Because the deed of trust was in place, Ms. Will's legal rights to the property at the time of the bank fraud in May 2020—including the right to "convey upon default"—were superior to any rights held by any other claimants, including Ms. Will-Darnall. *Bailey,* 66 Cal. App. 5th at 353. Ms. Will had the right to foreclose on the property in the event of a default by Ms. Will-Darnall at the time of the bank fraud in May 2020.

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). Thus, 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 appears to have 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. For Ms. Will-Darnall,

the maximum punishment for her conviction in Count 1 of bank fraud is 30 years imprisonment and a fine of no more than $1 million; the maximum punishment for her conviction in Count 2 for wire fraud is 20 years imprisonment and a fine of not more than $250,000. Dkt. 1 at 10; Dkt. 34 at 2-3. Despite the fact that the maximum financial punishment Ms. Will-Darnall faces is $1.25 million in fines, the government seeks to forfeit properties worth approximately $4.7 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. Ms. Will's estimate of the U.S. Sentencing Guidelines ("U.S.S.G.") fine calculation for Ms. Will-Darnall is that she is likely at an adjusted offense level of 20, and faces a fine range between $15,000 and $150,000. U.S.S.G. § 5E1.2(c)(3).[5] 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

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[5] That calculation is as follows: the two counts of conviction will be grouped together as one unit under U.S.S.G. § 3D1.2(d). The base offense level will be 7 under U.S.S.G. § 2B1.1(a)(1) because Ms. Will-Darnall has been convicted of crimes with a maximum punishment of more than 20 years. Because the intended loss amount was more than $3.5 but less than $9.5 million, there will be an additional 18 levels added to the offense level under U.S.S.G. § 2B1.1(b)(1)(J). Ms. Will-Darnall pleaded guilty and will likely receive a three level downward adjustment for acceptance of responsibility under U.S.S.G. §§ 3E1.1(a) and (b). Assuming she has no prior criminal history, she would receive a two level downward adjustment as a "zero point" offender under U.S.S.G. § 4C1.1. Thus, the resulting adjusted offense level is 20. It seems likely, however, that Ms. Will-Darnall does not have the ability to pay a fine given her indigent status. *See* U.S.S.G. § 5E1.2(a) ("The court shall impose a fine in all cases, except where the defendant establishes that he is unable to pay and is not likely to become able to pay any fine."); *see also* 18 U.S.C. § 3572 (setting forth factors for district court to consider "in determining whether to impose a fine, and the amount, time for payment, and method of payment").

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 government will likely seek restitution under both the Victim and Witness Protection Act of 1982, 18 U.S.C. § 3663, and the Mandatory Victims Restitution Act of 1997, 18 U.S.C. § 3663A. 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 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.

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.

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[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).

Dated: June 6, 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: June 6, 2025

s/ Sandra Will
SANDRA WILL