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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 GOVERNMENT'S NOTICE OF MOTION AND MOTION TO DISMISS OR FOR SUMMARY JUDGMENT Date: October 15, 2025 Time: 10:00 a.m. Courtroom: Courtroom 8, 4th Floor Judge: Honorable P. Casey Pitts

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on October 15, 2025, at 10:00 a.m., or as soon thereafter as the parties may be heard, in Courtroom 8 of the Robert F. Peckham Federal Building and United States Courthouse, the United States of America will and hereby does move for a dismissal or summary adjudication of the claim to the real property located at 111 Belwood Gateway, Los Gatos, CA 95032, APN 527-31-019, asserted in the petition filed by third party Sandra Will.

This motion is based on Federal Rule of Criminal Procedure Rule 32, the accompanying Memorandum of Points and Authorities, the supporting declarations, the pleadings and documents on file in this action, and any argument and evidence the Court may permit at the hearing.

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INTRODUCTION

Cassie Will-Darnall defrauded victims out of $2,833,554. She claims she is committed to "ensuring that every penny is repaid." Dkt. 59 ("PSR"), ¶ 35). But repayment—in the form of restitution or forfeiture—will never happen if Will-Darnall is allowed to hide her assets.

In its application for a preliminary order of forfeiture, the government detailed Will-Darnall's efforts to hide the Belwood Property.[1] Dkt. 43 (the "Application"), at 7–11.[2] Among other things, Will-Darnall:

1. recorded a deed of trust for a $3.25 million loan on June 27, 2019 (Ex. Q[3]);
2. recorded a quitclaim deed transferring the property to a trust on August 15, 2019 (Ex. T);
3. recorded a deed of trust for a $1,900,850 loan on September 30, 2019 (Ex. U); and
4. signed a quitclaim deed transferring the property to her mother Sandra Will on June 20, 2020 (Ex. CC (the "2020 Quitclaim Deed")), after Will-Darnall repaid Will's $1,000,000 Loan with fraud proceeds.

None of these title documents reflect reality. Instead, Will-Darnall recorded them only to cloud title and evade creditors, including the government now. As evidence, neither Serenity Family Limited Partnership ("Serenity") nor Plato Global Ventures LLC (Nevis) ("Plato")—which each purportedly loaned Will-Darnall millions and secured those loans with the above two deeds of trust—have asserted any claim to the Belwood Property. In truth, neither likely ever loaned Will-Darnall a cent.

Only Will-Darnall's mother, Sandra Will, filed a claim asserting an interest in the Belwood Property. Dkt. 65 (the "Petition"). Will asserts that she has interests in both the Almaden Property and the Belwood Property, that her interests in those properties were acquired before Will-Darnall's crimes, and that the properties' forfeiture would constitute an excessive fine violating the Eighth Amendment. *Id* All of this, she claims, requires the Court to remove both properties from the final order of forfeiture announced at Will-Darnall's sentencing. *Id.*

[1] Defined terms retain the definitions provided in the Application.

[2] Citations to ECF-filed documents refer to the ECF-provided page number.

[3] Exhibit citations refer to exhibits filed with the Application, unless otherwise noted.

The government has conceded since the start that Will owns the Almaden Property. Application, at 6. And the government now relinquishes the forfeiture of the Almaden Property in this case. While the government can seek forfeiture of property owned by a third party, it need not forfeit the Almaden Property because—based on Serenity's and Plato's failures to file claims for the Belwood Property in this ancillary proceeding—it appears the Belwood Property has sufficient equity to satisfy both the forfeiture amount of the proceeds traced into that property—$746,372.98—and the forfeiture amount of the money judgment expected to be entered at sentencing—$1,406,594.56.[4]

Will's efforts to prevent the forfeiture of the Belwood Property, however, are futile. To prevail on her claim to all or part of the Belwood Property, Will must establish—by a preponderance of the evidence—that she meets one, or both, of the grounds for relief available to a petitioner in an ancillary proceeding under 21 U.S.C. § 853(n). Those grounds are: (1) that Will had a right, title, or interest in the Belwood Property that was either vested in Will or was superior to any right, title, or interest of Will-Darnall's at the time of the crimes; or (2) that Will was a bona fide purchaser for value of a right, title, or interest to the Belwood Property. *See* 21 U.S.C. § 853(n)(6).

Will cannot meet either of these grounds, and her Petition as to the Belwood Property should be dismissed for at least the following reasons:

First, Will has not pled adequate facts to assert a superior interest to Will-Darnall's interest in the Belwood Property under 21 U.S.C. § 853(n)(6)(A). In the Petition, Will bases her interest in the Belwood Property on the deed of trust securing Will's $1,000,000 Loan. Petition at 15–16; *see also* Ex. J (the "2019 Deed of Trust"). Will, thus, claims that by securing a loan with a deed of trust she obtained a "superior" interest to Will-Darnall, the property's then titleholder. *Id.* But Will herself correctly disposes of this exact logic on the preceding page of her Petition: "The existence of a deed of trust on [a] property . . . does not change the conclusion [that the titleholder, not a lienholder, is the legal owner of the property]." Petition at 15; *see also id.* (acknowledging that "A 'deed of trust carries none of the incidents of ownership of the property, other than the trustee's right to convey upon default . . . ."). Thus, as pled, the Petition does not state a colorable legal claim because the 2019 Deed of Trust did not

[4] The government also seeks forfeiture of the 6846 Account. Because that forfeiture is uncontested, the government does not address it here.

provide Will with any "superior" interest to Will-Darnall in the Belwood Property when Will-Darnall committed her crimes.

Second, Will has not pled adequate (let alone any) facts to support a claim that she had a vested interest in the Belwood Property before Will-Darnall's crimes, but that argument too would fail if asserted. As a beneficiary to the 2019 Deed of Trust, Will would have had an interest in the Belwood Property that had vested before Will-Darnall's crimes in 2020 (though that interest was not superior to Will-Darnall's interest). But that argument fails because Will acknowledges that Will-Darnall repaid Will's $1,000,000 Loan. *See* Dkt. 65-1 ("Will Decl."), ¶ 24 ("In May 2020, [Will-Darnall "sent me [Sandra Will] a check that covered the outstanding balance on the Bank of America loan."); *see also* Ex. AA (check dated June 15, 2020, to Will "for 111 Bell payoff"). Because Will-Darnall repaid the loan secured by the 2019 Deed of Trust, Will's interest in the Belwood Property predicated on the 2019 Deed of Trust has been extinguished.

Third, Will has not pled adequate (let alone any) facts to support a claim that she is a bona fide purchaser for value of the Belwood Property, which requires she establish: (1) an ownership interest in the Belwood Property, (2) which she received in exchange for a thing of value, and (3) with no awareness the government had a superior interest in the property at the time.

First, while, after the 2020 Quitclaim Deed, Will was listed as the owner on title of the Belwood Property, there is abundant evidence (unrefuted, and even acknowledged by Will) that her daughter Will-Darnall retained her ownership interest in the property after quitclaiming it to her mother, including:

1. Will-Darnall has continuously resided in the Belwood Property since 2012 (Will Decl., ¶¶ 11–12, 23);
2. Will-Darnall earned income for herself from the Belwood Property after the purported transfer by quitclaim to her mother Will, including $47,000 in tax year 2021 (Declaration of Special Agent Huling ("Huling Decl."), Ex. PP–QQ; *see also* Ex. RR);
3. Before repaying Will's $1,000,000 Loan, Will-Darnall consistently characterized her payments to Will as mortgage payments, not rent payments (Dkt. 65-7, at 5, 6, 8); and

4. Since repaying Will's $1,000,000 Loan, Will-Darnall has not paid Will any amounts for Will-Darnall's tenancy of the Belwood Property.

Thus, the 2020 Quitclaim Deed is a fraudulent transfer and is voidable as such.

Second, Will has not presented any evidence, documentary or otherwise, that she provided anything of value for the 2020 Quitclaim Deed to the Belwood Property. This alone is fatal to her claim for the Belwood Property under § 853(n)(6)(B).

Third, Will has not alleged, as she must, that she had no awareness of the government's interest in the Belwood Property when it was quitclaimed to her. Will simply cannot provide any credible alternative explanation why Will-Darnall quitclaimed the Belwood Property to Will after having just repaid Will's $1,000,000 Loan. This is particularly so because Will-Darnall and Will have a history of obfuscating title. Indeed, Will admits that she transferred the Almaden Property to Westward Properties, Inc., a Nevada entity registered to a felon whose conviction stemmed from marketing "asset-protection services" to its clients and its consultants, such as Will-Darnall. Given this history, Will knew or should have known about the government's interest in the Belwood Property when Will-Darnall quitclaimed it to Will in exchange for no consideration.

Finally, while Will claims that forfeiture of both the Belwood Property and the Almaden Property constitutes an excessive fine, the government has relinquished its claim to the Almaden Property, and, as a third party without an interest in the Belwood Property, Will lacks any standing to assert a constitutional violation stemming from its forfeiture. And, even if standing existed, the claim is baseless because courts routinely acknowledge that the government may seek equivalent amounts for forfeiture and restitution, both predicated on a defendant's financial gain from the scheme to defraud, which is what the government seeks here.

For these reasons and those that follow, the government respectfully submits that the Court in entering a final order of forfeiture at sentencing should leave intact the preliminary order of forfeiture contemplated by the Application, except for removing the Almaden Property from it.

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I. Factual and Procedural Background:

The government hereby supplements the record provided in the Application.

A. The Government Published Notice Of The Preliminary Order Of Forfeiture And Sent The Preliminary Order Of Forfeiture To Serenity And Plato, Though Neither Has Asserted A Claim.

On April 30, 2025, the Court entered the preliminary order of forfeiture. Dkt. 50. The government published notice of the preliminary order of forfeiture from May 2, 2025, through May 31, 2025, on forfeiture.gov, an official internet government forfeiture site. Dkt. 60. On June 2, 2025, the government served Serenity and Plato, both third parties with a potential interest in the Belwood Property. Dkt. 61; *see also* Dkt. 47 (reflecting service of the Application and its exhibits on Serenity and Plato). But neither Serenity nor Plato have appeared to contest forfeiture.

B. The Government Attempted To Serve Will Through Her Former Counsel.

On April 9, 2025, the government emailed copies of the Application to Will's counsel in *Sandra Will v. United States et al*., 24cv9030 (N.D. Cal.) ("Will's Lawsuit"). Phillips Declaration ("Phillips Decl."), Ex. SS. On April 21, 2025, Will's then counsel informed the government that its representation of Will was limited to Will's Lawsuit. Phillips Decl., Ex TT. The same day, the government served by first-class mail the Application on Will at the Almaden Property. Dkt. 48.

On May 8, 2025, Will's then counsel contacted the government, indicating he expected to represent Will-Darnall. Phillips Decl., Ex. TT. That never happened. Instead, by May 23, 2025, Will had retained new counsel and sought dismissal of Will's Lawsuit. Will's Lawsuit, Dkt. 15.

C. Will Filed a Claim Concerning Both the Almaden Property and the Belwood Property.

On June 6, 2025, Will filed a petition asserting a claim to both the Almaden Property and the Belwood Property.

1. The Almaden Property's Title History Reflects An Uncanny Parallel To The Government's Theory Of The Case, Evidencing Both Will's And Will-Darnall's Familiarity With "Asset Protection."

Will contends that the title history of the Almaden Property is "simple." Petition at 6. Of the events that punctuate its "simple" history, the following two are worth highlighting:

- On January 13, 2004, Will and her late husband, Robert Will, signed a quitclaim deed transferring their interest in the Almaden Property to Westward Properties, Inc. ("Westward") (Huling Decl., Ex. UU);[5] and
- On May 13, 2004, William S. Reed, President of Westward, signed a quitclaim deed transferring the Almaden Property to Sandra and Robert Will (*Id.*, Ex. VV).[6]

Will claims she "does not remember the circumstances surrounding" the transfer of the Almaden Property to Westward. Petition at 2. Will's inability to explain absolutely anything about such an unusual and significant title transfer raises concerns. And the following public information about Westward's President, William S. Reed, who worked with Will and Will-Darnall to complete the above transfers, compounds those concerns:

Reed was convicted in October of 2013 in the District of Nevada. Phillips Decl., Ex. XX. As a part of that conviction, Reed agreed to the following facts:

- On or about November 4, 1998, Reed and his business partner signed an agreement outlining a business venture, the Asset Protection Group, Inc. ("APG") (Phillips Decl., Ex. YY at 15);
- From 1999 to mid-2006, APG operated with its sole office located at 4601 W. Sahara, Suite #1, Las Vegas, Nevada (*Id*. at 16, 23);
- Reed authored a book entitled "Bulletproof Asset Protection," which purported to teach readers how to "hide" their assets from creditors, including the government (*Id*. at p 16);
- Reed helped clients hide assets by creating and using Nevada corporations that listed Reed as the nominee officer (*Id.*).
- APG also offered clients "friendly liens." These liens allowed APG clients to falsely protect equity in their real estate holdings against creditors. Through a nominee

[5] Notably, Will-Darnall participated in the transfer of the Almaden Property to Westward, as her name (then Cassie Will) is listed twice on the document. Huling Decl., Ex. UU. She also appears to have written "loans exceed value of property," (*id.*), which is potentially the purported basis for the transfer.

[6] Will asserts that Westward held title to the Almaden Property for only a month. Petition at 6. That is an understandable error, given the unusual title history. In fact, it appears that Westward held title to the Almaden Property for at least four months (from January 13, 2004, until May 13, 2004) and potentially longer. *See* Huling Decl., Ex. WW (July 28, 2004, Quitclaim of the Almaden Property).

corporation formed by APG, an APG client would execute a deed of trust in favor of the corporation against the client's property without any consideration (*Id.* at 17).

During their existence, APG and Westward shared an address. Huling Decl., Exs. ZZ, AAA.

The government supplements the public record with the following: Will-Darnall operated as a consultant for APG. *See* Declaration of Special Agent Ryan Rickey ("Rickey Decl."), ¶¶ 3–6. In APG's files Will-Darnall is listed as a consultant for Westward. Rickey Decl., ¶ 4. And Will-Darnall is separately listed in APG's files as serving as the consultant for "friendly liens" obtained from June 2004 through October 2005, associated with Louis Holdings and Wealth Protection, Inc. *Id.* ¶ 5. An APG consultant is someone who paid for access to APG's marketing materials. *Id.*, ¶ 6. Consultants could sign up clients for APG and sell them APG's various products and services directly, receiving a cut of the sales for their referrals. *Id.*

2. Will Concedes That Will-Darnall Repaid Will's $1,000,000 Loan And That Will-Darnall Has Occupied the Belwood Property Continuously Since 2012.

Will contends that the title and ownership history of the Belwood Property is "straightforward." Petition at 6. Despite this characterization, Will makes no effort to explain or even address the clouds on title, including the deed of trust for Serenity's $3.25 million loan (Ex. Q); the quitclaim deed transferring the property to a trust (Ex. T); the deed of trust for Plato's $1,900,850 loan (Ex. U); or even the 2020 Quitclaim Deed (Ex. CC), about which Will, as the recipient of title, might be expected to know something, anything.

Will's description of the Belwood Property's title and ownership tracks the government's characterization in the Application, including the following:

- In obtaining the BofA Loan, Will repaid existing debts secured by the Almaden Property and the Rosswood Property (Application at 6; Exs. D–E; Petition at 7; Will Decl. ¶ 19);
- Will used some of the BofA Loan and other money to pay off PLM Lender Services Inc.'s loan to Will-Darnall secured by the Belwood Property, clearing the property's title of any arm's-length loans (Application at 6; Ex. L; Petition at 7);
- Will-Darnall secured Will's $1,000,000 Loan with the 2019 Deed of Trust (Application at 6; Exs. I–J; Petition at 7); and

- Will-Darnall repaid Will's $1,000,000 Loan (Application at 11; ex. AA; *see* Will Decl. ¶ 24).

Will also concedes that Will-Darnall has continuously occupied the Belwood Property since 2012. Will Decl., ¶ 11–12, and 23.

Against this backdrop, Will asserts that the 2019 Deed of Trust gave her a "superior" interest in the Belwood Property to "any interest belonging to Ms. Will-Darnall." Petition at 15–16. Will further claims that, as to the Belwood Property, she was the "landlord" and Will-Darnall was her "tenant." *See* Will Decl., ¶ 22.

Will insists this is true even though Will admits that Will-Darnall repaid the loan which was secured by the 2019 Deed of Trust.[7] *See* Will Decl. ¶ 24. Will insists this is true even though Will's own evidence shows that Will-Darnall has not sent Will any amount concerning Will-Darnall's tenancy of the Belwood Property beyond the amounts owed for Will's $1,000,000 Loan. *See* Will Decl., ¶ 22 (detailing payments from January 2018 until March 2020). And Will insists this is true even though Will's own exhibits similarly reflect that Will-Darnall characterized her payments to Will not as rent payments but as mortgage payments. *E.g.*, Dkt. 65-7, at 5 ("Belwood mortgage"); 6 ("Belwood mortgage may"); 8 ("June payment mortg. Bel"); *see also* Ex. AA ("for 111 Bel payoff").

Finally, despite claiming Will-Darnall is simply a tenant of the Belwood Property, Will does not address why her purported tenant, Will-Darnall, earned income from a "rental on site" at the Belwood Property, including more than $47,000 from AirBnb in tax year 2021. *See* Huling Decl., Exs. PP–QQ; *see also* Ex. RR (asserting Will-Darnall's rent for the Belwood Property was "1500$ per month").

3. Will, As A Third Party, Asserts A Constitutional Violation.

In the longest section of the Petition, Will asserts that forfeiture of the Almaden and Belwood Property would constitute an excessive fine. Petition at 16–19. Much of her argument is predicated on the fact that Will herself has not been charged with any crime. *Id.* at 17. She also contends (incorrectly)

[7] Will offers no explanation why the 2019 Deed of Trust was not extinguished with a deed of reconveyance. Typically, the beneficiary and trustee of a deed of trust work together to reconvey title with the trustee executing and recording a deed of reconveyance following the beneficiary's request for reconveyance. Cal. Civ. Code § 2941. Here, the trustee had no record of the 2019 Deed of Trust, which provides at least a part of the answer. *See* Huling Decl., Exs. BBB–CCC.

that the maximum fine for Count 1 is $1 million and the maximum fine for Count 2 is $250,000. *Id.* at 18.

D. Will-Darnall Has Persisted In Claiming She Does Not Own The Belwood Property.

Will-Darnall and her attorney have asserted that the government have wrongfully sought the forfeiture of Will's properties. PSR, ¶ 78 ("Defense counsel advised the government is going after her *mother's properties* who had nothing to do with the underlying offense, *as repayment of loans*." (emphasis added)); *see also* Dkt. 73, at 2 ("[T]he government decided to take my mother's house to pay off *my business loan*." (emphasis added)). And, in the financial condition section of her PSR, on advice of counsel, Will-Darnall refused to provide any financial information, though she disclosed "a pending civil case with U.S. District Judge Pitts," (PSR ¶ 78), which the government understands to refer to Will's Lawsuit, not Will-Darnall's.

II. Legal Standard

A. Statutory Framework of Ancillary Proceedings

The procedure by which a third party may seek to recover an alleged interest in forfeited property in a criminal case is through the ancillary proceeding. *See* 21 U.S.C. § 853(n); 28 U.S.C. § 2461(c) (incorporating procedure set forth in 21 U.S.C. § 853 into criminal forfeiture proceedings); Fed. R. Crim. P. 32.2(c). "[T]he purpose of the ancillary proceeding is for the District Court . . . to amend orders of forfeiture and apportion assets when one or more third parties claim an interest in the property to be forfeited." *Willis Mgmt. (Vt.), Ltd. v. United States*, 652 F.3d 236, 246 (2d Cir. 2011). Only if a third party establishes a valid and superior interest in the forfeited property shall that property be stricken in whole or in part from the final order of forfeiture. 21 U.S.C. § 853(n)(6). If, however, the third party does not establish a valid and superior interest in the property, then the United States "shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee." 21 U.S.C. § 853(n)(7). Thus, the sole purpose of the ancillary proceeding under Section 853(n) is to determine ownership of a forfeited asset. *See United States v. Gordon*, 710 F.3d 1124, 1167–8 (10th Cir. 2013) (noting "third-party ownership disputes are generally deferred to ancillary proceeding" (cleaned up)).

A third-party petition must be filed within 30 days of either final publication by the government of notice of the forfeiture, or the claimant's receipt of notice of the order of forfeiture, whichever is earlier. 21 U.S.C. § 853(n)(2). Section 853(n)(3) further provides that:

> The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

21 U.S.C. § 853(n)(3). Thus, a third party must set forth the legal basis and all grounds for her claimed interest in the petition and may not later amend the petition to assert additional grounds for relief. *United States v. Soreide*, 461 F.3d 1351, 1355 (11th Cir. 2006) (holding that claims not asserted in petition were statutorily time-barred); *United States v. Strube*, 58 F. Supp. 2d 576, 585 (M.D. Pa. 1999) (rejecting third-party claims as untimely because they were not raised in petition but first asserted in response to government's motion to dismiss).

To state a claim in an ancillary proceeding, a third-party petitioner must first establish a "legal interest" in a particular asset within the meaning of 21 U.S.C. § 853(n)(2). *See United States v. Ribandeniera*, 105 F.3d 833, 834–35 (2d Cir. 1997); *see also United States v. Timley*, 507 F.3d 1125, 1129 (8th Cir. 2007) ("[A] party seeking to challenge the government's forfeiture of money or property . . . must first demonstrate a legal interest in the seized item sufficient to satisfy the court of its standing to contest the forfeiture." (cleaned up)).

In determining whether a party has demonstrated a legal interest, a court must look to the law of the jurisdiction that created the property right. *United States v. Nava*, 404 F.3d 1119, 1127 (9th Cir. 2005). The petitioner may prevail only upon showing, by a preponderance of the evidence, that:

> (A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest 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 under this section; or
>
> (B) 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 under this section[.]

21 U.S.C. § 853(n)(6)(A), (B).

B. Standard of Review

Ancillary proceedings are governed by Federal Rule of Criminal Procedure 32.2(c), which provides, in pertinent part: "[T]he court may, on motion, dismiss the petition for lack of standing, for failure to state a claim, or for any other lawful reason. For purposes of the motion, the facts set forth in the petition are assumed to be true." Fed. R. Crim. P. 32.2(c)(1)(A). The ancillary proceeding, which closely resembles a civil action, is generally governed by the same procedures as those set forth in the Federal Rules of Civil Procedure. *United States v. Mar. Life Caribbean Ltd.*, 913 F.3d 1027, 1036 (11th Cir. 2019) ("[A]n ancillary proceeding conducted under section 853(n) . . . is civil in nature.") (collecting cases). Accordingly, a motion to dismiss a third-party petition in a forfeiture proceeding prior to discovery or a hearing should be treated like a motion to dismiss a civil complaint under Rule 12(b) of the Federal Rules of Civil Procedure.

When ruling on such motions, the court presumes the facts set forth in the petitions to be true. Fed. R. Crim. P. 32.2(c)(1)(A); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). A court is not, however, "required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). As with motions to dismiss in civil cases, courts should allow the petitioner an opportunity to amend unless it is beyond doubt that amendment could not cure the deficiencies. *United States v. Furando*, 40 F.4th 567, 579–80 (7th Cir. 2022) (remanding a petition that was dismissed for lack of subject matter jurisdiction without first giving petitioner an opportunity to amend). And when the parties rely on extrinsic evidence, the motion to dismiss may be converted to a motion for summary judgment, with all parties given a reasonable opportunity to present pertinent material. Fed. R. Civ. P. 12(d).

III. Argument

A. Will's Claim To The Belwood Property Should Be Dismissed Because the 2019 Deed of Trust Did Not Give Her An Interest Superior To Will-Darnall's Interest.

Will argues that she had a "superior" interest in the Belwood Property to Will-Darnall in May 2020. Petition at 15 (citing 21 U.S.C. § 853(n)(6)(A)). Will bases this interest on the 2019 Deed of Trust, claiming a lien gave her a superior interest to the property's owner. *Id.* at 16.

Will's position is baseless. Under California law, a beneficiary to a deed of trust (a secured lender) does not have a superior interest to the trustor or settlor (the homeowner). *See generally*, 5 Cal. Real Est. § 13:2 (4th ed.) ("While technically the 'title' to the property security is in the trustee, the trustor retains the right to possession of the property and its rents and profits. The trustor can secure another trust deed by a lien on the property . . . . The trustor retains the right to sell, transfer, or devise the encumbered property, or grant an easement across it, without the consent of the beneficiary or trustee, even though the beneficiary may be able to demand a payment of the debt as a result of the transfer."); *see also Monterey S. P. P'ship v. W. L. Bangham, Inc.*, 49 Cal. 3d 454, 459–61 (1989); *cf.* Cal. Civ. Code § 2898 ("A mortgage or deed of trust given for the price of real property, at the time of its conveyance, has priority *over all other liens* created against the purchaser, subject to the operation of the recording laws." (emphasis added)).

Will acknowledges this is an accurate statement of California law in the preceding section of the Petition when discussing the Almaden Property. Petition at 15. And *Bailey v. Citibank, N.A.*, 66 Cal. App. 5th 335 (2021), relied on by Will in her argument concerning the Belwood Property, does not support a different conclusion.

In *Bailey*, the California Court of Appeal addressed whether a party's adverse possession of a property was adverse to a lender's rights under a preexisting deed of trust, requiring the deed of trust to be removed from title after the party obtained title by adverse possession. The court concluded that "[b]ecause . . . a trust deed beneficiary does not have a right of possession, but stands in substance as a lienholder, the occupation of the property by a person seeking to acquire title by adverse possession would not be considered hostile to the trust deed beneficiary whose rights under the preexisting trust deed would be unaffected." *Bailey*, 66 Cal. App. 5th, at 353. Will nowhere alleges that Will-Darnall

obtained her interest in the Belwood Property by adverse possession. In fact, she concedes that Will-Darnall has held title since 2016. Petition at 7. Thus, *Bailey* does not support a different conclusion.[8]

Because Will's sole claim to the Belwood Property is legally deficient under California law, the Petition should be dismissed as to the Belwood Property.

B. Will's Claim To The Belwood Property Should Be Dismissed Because Her Vested Interest In The Belwood Property Was Extinguished After Will-Darnall Repaid Will's $1,000,000 Loan.

Will could (but does not) argue that she had an interest in the Belwood Property that had vested before Will-Darnall's crimes based on the 2019 Deed of Trust. This argument (if made) would fail, too, however, because Will admits that Will-Darnall repaid her the amounts owed under Will's $1,000,000 Loan. Will Decl. ¶ 24; *see also* Application at 8 (asserting Will-Darnall "appeared to receive the value of only $607,629.02"), 11 (asserting Will-Darnall repaid Will $971,504.21 with the June 15 Check).

Under California law, repayment of a loan extinguishes the obligation. *Winnett v. Roberts*, 179 Cal. App. 3d 909, 922 (1986) ("Any time before foreclosure, a tender of the full amount properly due on a loan secured by a trust deed extinguishes the lien on the property . . . ."); *Nguyen v. Calhoun*, 105 Cal. App. 4th 428, 440 (2003) ("In sum, on adequate proof that payment has been properly made or tendered, the debt is satisfied and the lien is extinguished. If the lien has been extinguished, there can be no foreclosure sale."); *Singleton v. Hartford Fire Ins. Co.*, 127 Cal. App. 635, 642 (1932) ("The very moment the indebtedness ceases to exist and the note is canceled, there is an end to all other rights."); *see also* Cal. Civil Code § 1473.

Will might argue in her opposition that the 2019 Deed of Trust secured other loans to Will. She hints at this argument when stating that she loaned "Will-Darnall well over $1 million." Petition at 7. But Will cannot use the 2019 Deed of Trust as a catchall, securing all amounts—past, present, and future—ever loaned to Will-Darnall. Instead, the 2019 Deed of Trust secured only Will's $1,000,000

[8] Will also relies on *Gates Rubber Co. v. Ulman*, 214 Cal. App. 3d 356 (1989). *Ulman* is even less helpful because there the California Court of Appeal addressed whether the holder of an unrecorded option could exercise that option against a subsequent purchaser who acquired the property without actual or constructive knowledge of the option. The court held that where the possession of a tenant with an unrecorded option is consistent with the terms of a recorded lease that does not refer to an additional unrecorded option to purchase, and there are no circumstances indicating the tenant has additional rights, the purchaser does not have a duty to inquire of the tenant as to any other rights the tenant may possess. *Id*. at 370.

Loan as memorialized in the promissory note dated February 7, 2018.[9] Exs. I–J. Because Will-Darnall repaid Will's $1,000,000 Loan, the 2019 Deed of Trust has been extinguished, meaning Will no longer has a vested interest in the Belwood Property based on it.

Thus, this additional argument under (n)(6)(A) would fail, too, if made.

C. Will's Claim To The Belwood Property Should Be Dismissed Because Will Cannot Meet The Elements Required Under § 853(n)(6)(B) And Her Failure To Meet Any One Element Is Fatal.

Will could also (but does not) argue that she was a bona fide purchaser for value of the Belwood Property under 21 U.S.C. § 853(n)(6)(B) based on the 2020 Quitclaim Deed. That argument if made would fail for the following three reasons, though the Court need find in favor of the government as to only one to dismiss Will's claim to the Belwood Property under § 853(n)(6)(B).

1. Will Lacks A Legal Interest In The Belwood Property Because She Received Title To The Property Through A Fraudulent Transfer.

Under the Uniform Voidable Transactions Act (California Civil Code §§ 3439–3439.12),[10] a transfer of property is fraudulent as to both present and future creditors if it is made with actual intent to hinder, delay, or defraud any creditor of the debtor. Cal. Civ. Code § 3439.04(a)(1).

Among the badges of fraud indicating an intent to hinder, delay, or defraud a creditor, a court may consider whether: (1) the transfer was to an insider; (2) the debtor retained possession or control of the property after its transfer; (3) the transfer was disclosed or concealed; (4) before the transfer, the debtor had been threatened with litigation; (5) the transfer was of substantially all the debtor's assets; (6) the debtor absconded; (7) the debtor removed or concealed assets; (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred; (9) the debtor was insolvent or became insolvent shortly after the transfer was made; (10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and (11) the debtor transferred the essential assets

[9] A lender may include a clause allowing it to secure with one deed of trust multiple obligations. *See generally*, 5 Cal. Real Est. §§ 13:11–14 (4th ed.).The 2019 Deed of Trust and the promissory note memorializing Will's $1,000,000, however, are not drafted to include such a clause and Will nowhere suggests they do.

[10] The Act was formerly titled the Uniform Fraudulent Transfer Act (the "UFTA"), though in 2016 the California Legislature retitled it the Uniform Voidable Transaction Act (the "UVTA"). *See* Cal. Civ. Code § 3439.

of the business to a lienor that transferred the assets to an insider of the debtor. Cal. Civ. Code § 3439.04(b). None of these factors is determinative, and no minimum or maximum number of factors is required. *Aghaian v. Minassian*, 59 Cal. App. 5th 447, 456 (2020).

The record establishes that Will-Darnall transferred the Belwood Property to Will with the intent to hinder, delay, or defraud:

1. Will-Darnall transferred the Belwood Property to her mother, Will, an insider;
2. Will did not provide anything let alone a thing of reasonably equivalent value in exchange for the Belwood Property; [11]
3. Will-Darnall has continuously resided in the Belwood Property since 2012 (Will Decl., ¶¶ 11–12, 23);
4. Will-Darnall earned income from the Belwood Property after its transfer to Will including $47,000 in tax year 2021 (Huling Decl., Exs. PP–RR);
5. Will-Darnall never paid Will any rent for her tenancy of the Belwood Property, after repaying Will's $1,000,000 Loan (*cf.* Will Decl.¶ 22);
6. The quitclaim was concealed for four months, with Will delaying its recording until October 19, 2020 (ex. CC);
7. Before the transfer, Will-Darnall had been threatened with litigation, namely the Civil Suit (Application at 7) and should have expected a government investigation based on her fraudulent loan applications; and
8. After Will-Darnall poured $746,372.98 of fraud proceeds into the Belwood Property and just before quitclaiming it to Will, the Belwood Property constituted her largest asset.

Because the evidence supports the conclusion that Will-Darnall transferred her interest in the Belwood Property with the intent to hinder, delay, or defraud, the Court may set aside the transfer and hold that Will does not have a legal interest in the Belwood Property. Cal. Civ. Code § 3439.04(a)(1).

[11] Because Will provided nothing of value in exchange for title to the Belwood Property, the Court may separately set aside the transfer of title as constructively fraudulent. Cal. Civ. Code § 3439.04(a)(2).

United States v. Real Prop. Located at 5208 Los Franciscos Way, Los Angeles, Cal., 385 F.3d 1187 (9th Cir. 2004) is dispositive because, there, the Ninth Circuit affirmed both the forfeiture of real property and a holding that the transfer of the property was fraudulent under section 3494(a)(1) of the UVTA on a similar record, including the following facts:

1. the defendant transferred the property to an insider, her parents;
2. the defendant did not receive reasonably equivalent value for the transfer;
3. the defendant retained control and possession of the property after the transfer;
4. the defendant delayed recording the transfer and continued to represent that she was the property owner; and
5. the defendant knew she was being investigated by the government, when she transferred the property.

Id. at 1191; *see also, United States v. Peterson*, 820 F. Supp. 2d 576, 581–83 (S.D.N.Y. 2011) (applying California law and allowing forfeiture of real properties that had been transferred to domestic partner through actual and constructive fraud), aff'd sub nom. *United States v. Crew*, 537 F. App'x 3 (2d Cir. 2013). Here, as in *5208 Los Franciscos Way*, the record shows that Will-Darnall transferred her interest in the Belwood Property with actual intent to hinder, delay, or defraud under the UVTA.[12]

Thus, the Court should find that the transfer is void and that Will lacks an ownership interest in the Belwood Property based on the 2020 Quitclaim Deed. *See United States v. Coffman*, 612 F. App'x 278, 286 (6th Cir. 2015). ("Bare legal title, however, in the absence of assertions of dominion, control or some other indicia of ownership of or interest in the seized property, is insufficient to confer standing to challenge a forfeiture. This is so because people engaged in illegal activities often attempt to disguise

[12] Will may attempt to distinguish *Los Franscisos* by claiming that, there, the downpayment for the property was composed entirely of fraud proceeds. That point is not apparent from the decision. But if Will were to make that argument it would fail, as courts routinely hold real property is forfeitable when just the mortgage payments, not the downpayment, are traceable to the offense of conviction. *E.g., United States v. Miller*, 911 F.3d 229, 234 (4th Cir. 2018) (rejecting defendant's argument that "fraud proceeds used to pay interest but not principal on a mortgage are not traceable to equity in a property"); *United States v. Pole No. 3172, Hopkinton*, 852 F.2d 636, 639 (1st Cir. 1988) ("We agree that the interest acquired as a result of mortgage payments made with the proceeds of drug transactions should be forfeitable."). A contrary holding would create the unusual circumstance in which a defendant could acquire a home with a no-down-payment loan and then shield their crime proceeds from forfeiture simply by making their mortgage payments.

their interests in property by placing title in someone else's name." (cleaned up)); *see also* 18 U.S.C. § 983 (excluding from definition of "owner" in civil forfeiture proceedings "a nominee who exercises no dominion or control over the property"); *United States v. One Parcel of Land, Known as Lot 111–B*, 902 F.2d 1443, 1444 (9th Cir.1990) (per curiam) ("'[P]ossession of mere legal title by one who does not exercise dominion and control over the property is insufficient even to establish standing to challenge a forfeiture.'").

2. Will Did Not Provide Anything Of Value In Exchange For The Belwood Property.

Under California law, to be a bona fide purchaser for value, the buyer must purchase the property in good faith for value. *RNT Holdings, LLC v. United Gen. Title Ins. Co*., 230 Cal. App. 4th 1289, 1296 (2014). The value exchanged for the property need not be the "fair market value of the property (or anything approaching it)." *Melendrez v. D & I Inv., Inc.*, 127 Cal. App. 4th 1238, 1251 (2005). But the buyer need part with "something of value in exchange for the property." *Id.*

As detailed above, Will acknowledges that Will-Darnall repaid Will the amounts owed under the 2019 Deed of Trust and the promissory note memorializing Will's $1,000,000 Loan. And Will has not alleged that Will-Darnall received any amount in exchange for the Belwood Property when Will-Darnall quitclaimed it to Will. In short, there is no evidence that Will gave anything of value for the Belwood Property.

Thus, Will-Darnall's transfer of the Belwood Property through the 2020 Quitclaim Deed is nothing more than a gratuitous transfer, which is fatal to Will's ability to establish that she was a bona fide purchaser based on the 2020 Quitclaim Deed. *See United States v. Gutierrez*, 734 F. App'x. 441, 447 (9th Cir. 2018) (holding that petitioner could not establish that it was a bona fide purchaser for value under 21 U.S.C. § 853(n)(6)(B) when "there was no evidence presented that [claimant] contributed its . . . assets toward the purchase price of the property"); *see also United States v. Frykholm*, 362 F.3d 413, 417 (7th Cir. 2004) (petitioner who obtains an interest in insolvent defendant's property without giving something of equivalent value is engaged in a fraudulent conveyance and, thus, cannot be a bona fide purchaser); *United States v. Nicoll*, 711 F. App'x. 108, 111 (3d Cir. 2017) (petitioner who purchased real property with illegal proceeds she received as a gift from convicted defendant is not a bona fide

purchaser under § 853(n)(6)(B)); *United States v. Guerra*, 216 F. App'x. 906, 910–11 (11th Cir. 2007) (defendant's husband was not a bona fide purchaser in terms of § 853(n)(6)(B) because he gave no consideration in exchange for defendant's transfer of her property).

3. Will Knew Or Should Have Known That The Belwood Property Was Subject To Forfeiture When Transferred To Her.

California law requires that a bona fide purchaser have no knowledge or notice—actual or constructive—of the asserted rights of another. *RNT Holdings, LLC*, 230 Cal. App. 4th at 1296. In the context of forfeiture, this element addresses whether a petitioner had reason to know of the defendant's criminal activity and that the property defendant transferred to petitioner was subject to forfeiture. *Frykholm*, 362 F.3d at 416 (holding that a petitioner who remains willfully blind cannot claim to have been without reason to know that defendant's property was subject to forfeiture); *United States v. Parenteau*, 647 F. App'x. 601, 605 (6th Cir. 2016) (affirming dismissal of section 853(n) because at the time petitioner obtained assignment of interest in forfeited property he was not reasonably without cause to believe that property may be subject to forfeiture).

Will admits that Will-Darnall repaid her the amounts secured by the 2019 Deed of Trust. Will Decl., ¶ 24. And Will claims not to know the repayment was the result of Will-Darnall's fraud. *Id*. But Will makes no effort to explain why her daughter—after repaying Will in full—would transfer the Belwood Property to her. This fact alone merits the conclusion that Will should have known the Belwood Property was subject to forfeiture. But there is more.

Will and Will-Darnall both previously were involved in transferring real property in an apparent effort to avoid creditors, including the government. While Will does not remember the circumstances of the Almaden Property's transfer to Westward, she does not claim to have forgotten Will-Darnall's involvement with APG, generally. In that role, Will-Darnall consulted individuals, including likely her parents, in strategies to hide property from the government. Given this history and its clear parallel to the present circumstances, Will should have known that her daughter's transfer of the Belwood Property after having repaid her mother in full was intended to hide the Belwood Property from a creditor, namely the government.

D. While Will Lacks Standing From Asserting Constitutional Violations On Behalf Of Will-Darnall, Forfeiture of the Belwood Property is Not an Excessive Fine, In Any Event, Because It Is Proportional To Will-Darnall's Crimes.

Will claims that forfeiture of both the Almaden Property and the Belwood Property would constitute an excessive fine because she has not been charged with any crime. Petition at 17. The government has relinquished its claim to forfeit the Almaden Property in this case. And Will does not have any interest in the Belwood Property for the reasons stated in the above sections. Thus, Will lacks standing to assert a constitutional violation stemming from the forfeiture of the Belwood Property. *See United States v. Coffman*, 612 F. App'x. 278, 289 (6th Cir. 2015) (petitioner's Eight Amendment Excessive Fines claim failed because in ancillary proceeding she was not facing prosecution and therefore was not subject to the possibility of a fine and in any event she lacked an ownership interest in the assets subject to forfeiture); *United States v. Espada*, 128 F. Supp. 3d 555, 557 (E.D.N.Y. 2015) ("[Petitioner's] constitutional claim can be readily dismissed since she may not, in the context of an ancillary proceeding, vicariously assert constitutional claims on [a defendant's] behalf."); *United States v. Tarraf*, 725 F. Supp. 2d 625, 635 (E.D. Mich. 2010) (rejecting petitioner's Eighth Amendment argument because the excessive fines argument was defendant's to make); *see also United States v. Porchay*, 533 F.3d 704, 710 (8th Cir.2008) ("[The petitioner] was a third party to the forfeiture and has no standing to challenge the legality of the seizure under the Fourth Amendment."); *cf., Warth v. Seldin*, 422 U.S. 490, 499 (1975) ("[T]his Court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.").

Even if Will had standing to contest the forfeiture of the Belwood Property (which she does not), her excessive fines argument would fail because courts routinely hold that imposition of restitution and forfeiture together in a single judgment does not constitute an excessive fine because requiring a defendant to disgorge no more than twice the proceeds of her crimes cannot be disproportionate to the harm inflicted on the defendant's victims. *United States v. Shepherd*, 171 F. App'x 611, 616 (9th Cir. 2006) ("Here, the money judgment against [the defendant] is perfectly proportional with the amount of money he fraudulently obtained . . . . Since those funds are unavailable, the government can rightly use § 853(p) to forfeit substitute assets . . . . Thus, the forfeiture of the family home is proportional with the offense and does not constitute an excessive punishment."); *United States v. Rosin*, 263 F. App'x 16,

36–7 (11th Cir. 2008) (holding that ordering defendant to pay $3.7 million in forfeiture in addition to having to pay the same amount in restitution does not violate Eighth Amendment); *see also United States v. Newman*, 659 F.3d 1235, 1241 (9th Cir. 2011) (forcing defendant to pay both forfeiture and restitution "at worst" forces him to disgorge twice the value of the proceeds of his crime, which "is in no way disproportionate to the harm inflicted on government and society"); *cf. United States v. Omidi*, 125 F.4th 1283, 1287 (9th Cir. 2025) ("This case requires us to examine forfeiture, which is 'much broader' and 'serves an entirely different purpose' than restitution." (quoting *United States v. Lo*, 839 F.3d 777, 789 (9th Cir. 2016)).

By definition, forfeiture in an amount equivalent to the amount of the defendant's proceeds is exactly proportional to the gravity of the offense. Will appears to suggest otherwise by mistakenly claiming that the fines for Counts One and Two are $1,000,000, and $250,000, respectively. Petition at 18. In fact, Congress authorized for both Counts fines twice the amount sought by the government in forfeiture, here. 18 U.S.C. § 3571(d) ("If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of *twice* the gross gain or *twice* the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process" (emphasis added)). Thus, Will's claim as to an excessive fine is unavailing. *United States v. Bajakajian*, 524 U.S. 321, 322 (1998) ("[J]udgments about the appropriate punishment belong in the first instance to the legislature.").

IV. Conclusion

Based on the foregoing, the government respectfully submits that the Court in entering a final order of forfeiture at sentencing should remove the Almaden Property but otherwise leave intact the preliminary order of forfeiture contemplated by the Application.

DATED: July 25, 2025

Respectfully submitted,

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