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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.	**CASE NO. 5:24-CR-00292 PCP** **UNITED STATES' SUPPLEMENTAL SENTENCING MEMORANDUM**

Pursuant to the Court's grant of leave to both parties to file a supplemental memorandum of no more than five pages regarding sentencing in the above-captioned matter, the United States would show the following:

I. Persuasive authority from beyond the Ninth Circuit favors the application of a "sophisticated means" enhancement to Will-Darnall's conduct, and her arguments that the enhancement does not apply because of the government's means of prosecution and the pre-existing character of the shell companies utilized are unavailing.

In its sentencing memorandum, the United States confined its analysis to reliance upon applications of the "sophisticated means" enhancement throughout the Ninth Circuit, but would here offer to the Court persuasive instances from other circuits which support the application of the enhancement in this case.

The analysis by the Seventh Circuit is instructive in *United States v. Lundberg*, 990 F.3d 1087 (7th Cir. 2021). In *Lundberg*, the defendant misappropriated $5.8 million from her boyfriend's employer through the use of a corporate credit card. *Id.* at 1090-93. After trial, the district court applied a "sophisticated means" enhancement because, in the course of the spending spree with the corporate credit card, Lundberg had altered her boyfriend's tax forms and pay stubs so that they appeared to reflect her own income and used the documents to support a lease application for a 7,000 square-foot home in California. *Id.* at 1097.

In reviewing the application of the enhancement, the Seventh Circuit emphasized that "[t]he sophisticated means enhancement does not require a brilliant scheme, just one that displays a greater level of planning or concealment than the usual [fraud] case." *Id.* (brackets original) (citation omitted). The Seventh Circuit then concluded that "[t]he doctoring of another person's tax forms to support a lease application for a home paid for with the victim's money obviously goes above and beyond the activity inherent in wire fraud[.]" *Id.* The Seventh Circuit noted that under three separate precedents that concealing the source of money, falsifying payment stubs, and fabricating tax forms were each, independently, sufficient to constitute sophisticated means; and Lundburg did all three. *Id.*

By comparison, it is well within the scope of the Court's authority to apply a sophisticated means enhancement to Will-Darnall. The false tax documents, the false bank statements, and the deceptive voided checks can each independently support the application of what is a modest enhancement. Together, they comfortably support such an enhancement. As noted by the *Lundberg* court, the activity inherent in wire fraud requires only that the defendant (1) participated in a scheme to defraud; (2) had the intent to defraud; (3) used the wires in furtherance of the fraudulent scheme, and (not mentioned by the *Lundberg* court but included in the model jury instructions here) (4) made statements as part of the scheme which were material. As noted by the United States to the Court at the September 3, 2025, hearing, the forged documents were not essential to the task of "successfully" defrauding disaster loan programs, but rather served to substantially enhance the severity and complexity of Will-Darnall's scheme as compared to, for example, merely lying on the application that one operates a "beauty salon" when no such business exists or existed.

Will-Darnall offered the argument that because her fraud was discovered with relative haste, and

she was issued a target letter in advance of her federal charges, the fraud must therefore have been not sophisticated. The speed with which a fraud unravels is not relevant to the analysis of whether a "sophisticated means" enhancement applies, nor is the government's chosen method of prosecution. Rather, the speed of Will-Darnall's undoing relates more to the sophistication and determination of government efforts in identifying and prosecuting major fraud, and to the considerable sum of money Will-Darnall fraudulently obtained, which was naturally going to draw greater scrutiny.

Will-Darnall also emphasized that the pre-existing character of the shell corporations she utilized in making the fraudulent applications inhibits the Court from relying upon them for the purposes of applying a "sophisticated means" enhancement. However, the definition of a "shell corporation" does not regard whether the shell was previously something more substantive. A "shell corporation" is defined merely as "[a] corporation that has no active business and usu. exists only in name as a vehicle for another company's business operations." Corporation Definition, *Black's Law Dictionary* (12th ed. 2024), *available at* Westlaw. That a business may have previously sustained active business is of no consequence to its "shell" character; indeed, the shells on a beach from which the term is derived themselves once had life within them, but shells they remain. Neither company utilized by Will-Darnall had any active business at the time of the admitted fraud, and Alternative Health Services Inc. never had any active business. They are thus, for the purposes of the sentencing guidelines, "shell companies," both in the abstract and as here utilized in the sophisticated execution of the fraud.

For these reasons and all those reasons previously presented to the Court, the two-level "sophisticated means" enhancement should apply.

II. The United States will submit updated documentation for restitution purposes.

In its sentencing memorandum, the United States provided information regarding accrued prejudgment interest on the fraudulent loans obtained by Will-Darnall to support a restitution claim of more than $3 million. Since that time, the United States has obtained new documentation from the Small Business Administration to support its restitution claim.

As of the new certification by the SBA current to September 3, 2025, for the fraudulent loan issued through Cross River Bank to Alternative Health Services Inc., Will-Darnall owes $1,049,348.72. As of the new certification by the SBA current to September 3, 2025, for the fraudulent loan issued

through Fundbox, Inc. to Rosswood Properties, LLC, Will-Darnall owes $2,011,854.86.

The United States would thus revise its request to the Court to order restitution by Will-Darnall to the SBA in the amount of $3,061,203.58, plus such prejudgment interest as may continue to accrue until a restitution order is entered.

Because of the page limitations of the leave granted to this filing, and because the exhibits would exceed those limits, the United States refrains from their inclusion as exhibits hereto. The United States will submit updated documentation at an appropriate time prior to the final order of restitution.

III. Forfeiture need not be "final" at sentencing, but must be pronounced and "final" as to the defendant.

The Court expressed concern about the process of forfeiture in this matter. To clarify the government's previous oral representations, the Court need not rule on the final order at sentencing. Rather, per Fed. R. Crim. P. 32.2(b)(4)(A), the preliminary order of forfeiture becomes final as to the defendant at sentencing, which is distinct from the final order of forfeiture. Per Fed. R. Crim. P. 32.2(b)(4)(B), the Court must include the forfeiture when orally announcing the sentence.

Separate from the defendant's sentencing, the Court presides over any ancillary proceedings which may be necessary to determine third-party rights. Fed. R. Crim P. 32.2(c). The ancillary proceeding is not part of sentencing. Fed. R. Crim. P. 32.2(c)(4). When the ancillary proceeding is resolved, the Court enters the "Final Order" to address property which belongs to a third party who meets the requirements of 21 U.S.C. § 852(n).

The United States will be prepared to provide any further clarification as may be necessary at the final sentencing hearing.

DATED: September 8, 2025

Respectfully submitted,

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