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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 15-2901

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UNITED STATES OF AMERICA

v.

DAVID NICOLL

\* MELISSA [sic] SINGH,  
Appellant

\*(Pursuant to Rule 12(a),  
Fed. R. App. P.)

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Appeal from the United States District Court  
for the District of New Jersey,  
(D.C. Criminal Action No. 2-13-cr-00385-001)  
District Judge: Honorable Stanley R. Chesler

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Submitted Under Third Circuit LAR 34.1(a)  
September 27, 2017.

Before: AMBRO, KRAUSE, and CONTI<sup>♦</sup>, *Circuit  
Judges*

Opinion filed: September 28, 2017.

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<sup>♦</sup> Honorable Chief Judge Joy Flowers Conti, District Court  
Judge for the Western District of Pennsylvania, sitting by designation.

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OPINION\*

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*AMBRO, Circuit Judge*

David Nicoll purchased a blood testing laboratory that became the center of a bribery and kickback scheme by which he would pay bribes to physicians to induce them to refer their patients' blood samples to his laboratory. He pled guilty to the charges against him and, as part of the plea agreement, agreed to forfeit all of his rights, title, and interest in property listed in the agreement. One item of real property on that list was a Manhattan condominium worth approximately \$700,000 that was purchased by Appellant Melissa [sic] Singh. She had a romantic relationship with Nicoll, and he gave her the necessary funds using the laboratory's company account (that is, it was purchased with illegal kickbacks he received while running his criminal enterprise). Singh holds title to the property and has been in exclusive possession of it.

The District Court entered a First Preliminary Order of Forfeiture that included the condominium. Singh filed a third-party petition claiming an interest in the property but the Court dismissed it. It determined that Singh had purchased the unit with money furnished by Nicoll from the proceeds of his criminal activity and thus it was properly forfeited. It also found

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\* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

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that, because Singh purchased the condominium with money given to her as a gift, she was not a *bona fide* purchaser of the unit and could not claim a third-party interest in it under the criminal forfeiture statute, 21 U.S.C. § 853. Singh appeals.

In criminal forfeiture proceedings, the Government must establish “the requisite nexus between the [forfeited] property and the offense.” Fed. R. Crim. P. 32.2(b)(1)(A). A court will then make a preliminary forfeitability determination “based on evidence already in the record, *id.* at 32.2(b)(1)(B), and which is made without regard to any third party’s interest in the property,” *id.* at 32.2(b)(2)(A). By statute, a third party cannot challenge an order of preliminary forfeiture in criminal proceedings over property forfeited to the Government as a result of a criminal conviction. 21 U.S.C. § 853(k). Instead, a third party claiming an interest in forfeited property may file an ancillary proceeding in which he or she demonstrates that interest. *Id.* § 853(n). Only if the third party has established it has a vested right in the property superior to that of the defendant, or it is a *bona fide* purchaser of the property, will the court amend the preliminary forfeiture order. *United States v. Lavin*, 942 F.2d 177, 185 (3d Cir. 1991) (citing 21 U.S.C. § 853(n)(6)(A) and (B)).

Singh asserts that the District Court erred in permitting the Government to demonstrate the requisite nexus after the property was listed in the preliminary forfeiture order. She claims the Government must make that demonstration prior to the property’s entry in the order, and thus the District Court erred,

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affecting her rights in the proceeding. She is incorrect. We need not address whether the District Court committed procedural error afoul of Rule 32.2 because, even if it did, that error is irrelevant to Singh's claimed third-party interest.

Rule 32.2 creates a bifurcated forfeiture procedure for all interested parties. At the first stage, only the Government and defendant are involved – the court makes a preliminary forfeiture determination “without regard to any third party’s interest,” which can only be considered later after the preliminary order is issued. Fed. R. Crim. P. 32.2(b)(2)(A). At this stage, the “requisite nexus” analysis affects only the rights of the defendant. That is, the Rule’s purpose is to require that the Government demonstrate why forfeiture of the defendant’s property is appropriate to ensure that it does not wrongly seize property unrelated to a defendant’s criminal activity. It is a procedural safeguard to protect the defendant. *See Libretti v. United States*, 516 U.S. 29, 41 (1995) (Rules regarding criminal forfeiture generally “attach heightened procedural protections to imposition of criminal forfeiture as punishment for certain types of criminal conduct.”). Third parties are immaterial to the requisite nexus analysis. Indeed, they are expressly barred from intervening in it. 21 U.S.C. § 853(k).

The second stage of the forfeiture proceedings allows third parties to file ancillary proceedings and establish their superseding or *bona fide*-purchaser interests in the forfeited property. Fed. R. Crim. P. 32.2(c). But this does not provide the opportunity to re-litigate

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matters pertinent to the prior stage of the proceedings from which that third party was statutorily excluded. That is what Singh attempts to do here. Whether the District Court followed the exact steps outlined in Rule 32.2(b) is of no import to her. Per the Rule and the forfeiture statute, any error would implicate Nicoll's property rights, not Singh's.<sup>1</sup> The only relevant question on appeal as it pertains to Singh is whether the District Court correctly determined that she did not possess a superior property interest or was not a *bona fide* purchaser of the condominium (and thus whether she had a third-party interest in the property for the purpose of forfeiture).

Turning to that question, the District Court concluded that Singh had no superior property right "at the time of the commission of the acts which gave rise to the forfeiture of the property," as required by 21 U.S.C. § 853(n)(6)(A). It is undisputed that she purchased the condominium during the commission of Nicoll's criminal scheme. The Court also determined that, because Singh admitted that the condominium was obtained with money given to her by Nicoll as a gift, she was not a *bona fide* purchaser of it as alternatively required by 21 U.S.C. § 853(n)(6)(B). *See United States v. Kennedy*, 201 F.3d 1324, 1335 (11th Cir. 2000).

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<sup>1</sup> Furthermore, the District Court eventually determined that the Government met its burden in demonstrating the requisite nexus between the condominium and proceeds from Nicoll's criminal activity before entering the final forfeiture order. To the extent there was any procedural error in making this determination, that is Nicoll's appeal to take (as it implicates only his rights), and he does not pursue such an appeal.

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Singh does not contest these findings. Under the forfeiture statute she has no third-party interest in the property that warrants its excision from the stipulated list of property in the forfeiture order.

Accordingly, we affirm.

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

NOT FOR PUBLICATION

|                         |   |                          |
|-------------------------|---|--------------------------|
| UNITED STATES           | : | <b>Criminal Action</b>   |
| OF AMERICA,             | : | <b>No. 13-0385 (SRC)</b> |
|                         | : |                          |
| v.                      | : | <b>OPINION AND</b>       |
|                         | : | <b>ORDER</b>             |
| DAVID NICOLL,           | : |                          |
|                         | : | (Filed Feb. 21, 2017)    |
| Defendant.              | : |                          |
|                         | : |                          |
| MELISA SINGH,           | : |                          |
|                         | : |                          |
| Third-Party Petitioner. | : |                          |

**CHESLER**, District Judge

This matter comes before the Court upon the motion of Third-Party Petitioner Melisa Singh (“Petitioner”) to reconsider the Court’s Final Order of Forfeiture (“Final Order of Forfeiture” or “Final Order”) dated January 26, 2016. (Docket No. 136). The Government opposes the motion. (Docket No. 142.) The Court has considered the parties’ submissions and proceeds to rule without oral argument. For the reasons stated herein, Petitioner’s motion will be denied.

**I. BACKGROUND**

The Court incorporates the factual and procedural history set forth in its earlier Opinions in this matter (Docket No. 114; Docket No. 119; Docket No. 120), and only briefly recounts that history here. In April of 2013,

the Government charged Defendant David Nicoll (“Defendant”) in a physician-bribery scheme. Defendant pleaded guilty. Pursuant to the plea deal, Defendant consented to the forfeiture of property and admitted that such property had a nexus with the unlawful acts to which he pled guilty. Included in that list of property is Condominium Unit 4H located at 635 West 42 Street, New York, New York (“the Condominium”). Petitioner had purchased the Condominium on January 31, 2008, using money that Defendant had given her.

On October 23, 2013, this Court entered a First Preliminary Order of Forfeiture with respect to the Condominium. Petitioner filed a petition asserting her interest in the Condominium, claiming that it belonged to her. The Government then moved to dismiss the petition, and the Court, by Opinion and Order dated April 29, 2015, granted the Government’s motion. On that same day, the Court also ordered the Government to show cause why it should not vacate its Preliminary Order of Forfeiture with respect to the Condominium, due to a lack of a nexus between the Condominium and Defendant’s criminal acts.

Subsequently, Petitioner moved for reconsideration of the Court’s April 29, 2015, Opinion and Order dismissing her petition. On July 9, 2015, the Court denied that motion for reconsideration. By a separate Opinion and Order issued on the same date, the Court also discharged its prior Order to Show Cause based on a finding that the Government had demonstrated the requisite nexus between the Condominium and Defendant’s criminal acts. On August 6, 2015, Petitioner

filed a notice of appeal with respect to the Court's April 29, 2015, Order dismissing her petition; the Court's July 9, 2015, order denying her motion for reconsideration of the April 29, 2015, Order; and the Court's July 9, 2015, Order discharging its prior Order to Show Cause.

On January 21, 2016, the Government submitted a proposed Final Order of Forfeiture as to the Condominium. Petitioner opposed entry of such order. After consideration of the parties' submissions, the Court issued the Final Order of Forfeiture as to the Condominium on January 26, 2016. Petitioner subsequently filed a motion to stay enforcement of the Final Order, which the Court granted on March 2, 2016. Now before the Court is Petitioner's motion for reconsideration of the Final Order of Forfeiture.

## II. DISCUSSION

A court may grant a motion for reconsideration if the moving party shows one of the following: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Banda v. Burlington County*, 263 F. App'x 182, 183 (3d Cir. 2008) (citing *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999)). Such motions "are not an opportunity to argue what could have been, but was not, argued in the original set of moving and responsive papers," *Bowers v. NCAA*, 130 F. Supp. 2d 610, 613

(D.N.J. 2001), and a party's "mere disagreement" with the Court's decision does not warrant reconsideration, *Yurecko v. Port Auth. Trans. Hudson Corp.*, 279 F. Supp. 2d 606, 609 (D.N.J. 2003). Similarly, the moving party's burden on a motion for reconsideration cannot be met through a "recapitulation of the cases and arguments considered by the court before rendering its original decision." *G-69 v. Degnan*, 748 F. Supp. 274, 275 (D.N.J. 1990) (internal citation omitted). In short, reconsideration is "an extraordinary remedy" and should only to [sic] be granted "sparingly." *NL Indus., Inc. v. Commercial Union Ins. Co.*, 935 F. Supp. 513, 516 (D.N.J. 1996) (citing *Maldonado v. Lucca*, 636 F. Supp. 621, 630 (D.N.J. 1986)).

Petitioner's motion in the present case fails to establish any of the above grounds for reconsideration. Petitioner cites no intervening change in case law, no new evidence, and no error of law or fact made by the Court. Petitioner contends only that "[i]t does not appear that the Court considered the substance of the parties' submissions regarding the [January 26, 2016] Order prior to signing it." (Docket No. 136, Motion for Reconsideration ("Pet. Mov. Br."), at 1.) In support of this contention, Petitioner asserts that "the Order was not submitted on consent," that Petitioner had filed opposition to the proposed Order, and that the Court had issued the Final Order of Forfeiture on the same day that her opposition was filed. (Pet. Mov. Br., at 1-2.) Petitioner's suggestion appears to be that the Court did not consider her opposition to the Final Order of Forfeiture. As the Government notes in its opposition,

however, the Court had received the [sic] both the Government's letter in support of the Final Order of Forfeiture and Petitioner's opposition thereto the [sic] before issuing the Order. Therefore, Petitioner's contention is without merit. As Petitioner cites no other basis for reconsideration of the Final Order, her motion for reconsideration will be denied.

Therefore, the Court having considered the submissions of the parties; for the foregoing reasons, and for good cause shown;

**IT IS** on this 21st day of February, 2017;

**ORDERED** that Petitioner's motion for reconsideration (Docket No. 136) be and is hereby **DENIED**.

/s Stanley R. Chesler  
STANLEY R. CHESLER  
United States District Judge

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NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

|                         |   |                         |
|-------------------------|---|-------------------------|
| UNITED STATES           | : | <b>Criminal Action</b>  |
| OF AMERICA,             | : | <b>No. 13-385 (SRC)</b> |
|                         | : |                         |
| v.                      | : | <b>OPINION AND</b>      |
|                         | : | <b>ORDER</b>            |
| DAVID NICOLL,           | : |                         |
|                         | : | (Filed Jul. 9, 2015)    |
| Defendant.              | : |                         |
|                         | : |                         |
| MELISA SINGH,           | : |                         |
|                         | : |                         |
| Third-Party Petitioner. | : |                         |

**CHESLER**, District Judge

This matter comes before the Court upon the motion filed by third-party petitioner Melisa Singh (“Petitioner” or “Ms. Singh”) to reconsider the dismissal of her petition. The Government opposes the motion. The Court has considered the parties’ submissions and proceeds to rule without oral argument. For the reasons that follow, the Court will deny the motion.

**I. BACKGROUND**

The Court incorporates the factual and procedural history set forth in its earlier Opinion in this matter (Doc. No. 114), and only briefly recounts that history here. In April of 2013, the Government charged Defendant Nicoll in a physician-bribery scheme. Defendant pleaded guilty. Pursuant to the plea deal,

Defendant consented to the forfeiture of property and admitted that such property had a nexus with the unlawful acts to which he pleaded guilty. Included in that list of property is Condominium Unit 4H located at 635 West 42 Street, New York, New York (“the Condominium”). Petitioner Singh lives in the Condominium and holds title to it. She purchased the property on January 31, 2008, with money that Defendant gave her.

On October 23, 2013, this Court entered a First Preliminary Order of Forfeiture with respect to the Condominium. Ms. Singh filed a petition asserting her interest in the Condominium, claiming that it belongs to her. The Government moved to dismiss the petition. In an Opinion and Order dated April 29, 2015, this Court dismissed Ms. Singh’s petition. Petitioner now moves this Court to reconsider that decision.

## **II. Discussion**

In the District of New Jersey, a motion for reconsideration is governed by Local Civil Rule 7.1(i). That Rule provides that a party may move for reconsideration “within 14 days after the entry of the order or judgment on the original motion” by the court. L.Civ.R. 7.1(i). The moving party must, in the supporting brief, indicate “the matter or controlling decisions which the party believes the Judge or Magistrate Judge has overlooked.” *Id.* A court may not grant a motion for reconsideration unless the moving party shows one of the following: “(1) an intervening change in the controlling

law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.” See *Banda v. Burlington County*, 263 F. App’x 182, 183 (3d Cir. 2008) (citing *Max’s Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999)). A party’s “mere disagreement” with the Court’s decision does not warrant reconsideration. *Yurecko v. Port Auth. Trans. Hudson Corp.*, 279 F. Supp. 2d 606, 609 (D.N.J. 2003). The moving party bears a heavy burden that cannot be met through “recapitulation of the cases and arguments considered by the court before rendering its original decision.” *G-69 v. Degnan*, 748 F. Supp. 274, 275 (D.N.J. 1990) (internal citation omitted).

Here, in the motion for reconsideration, Petitioner argues that this Court erred by denying her standing to litigate her rights to the Condominium, and by foreclosing her ability to contest the forfeiture. The Court disagrees. In its earlier decision, the Court did not find that Petitioner lacked standing to litigate her rights to the Condominium; to the contrary, the Court entertained Petitioner’s arguments as to whether her rights were superior to the Government’s under the governing statutory provisions. The Court found that Petitioner failed to satisfy the two exclusive statutory bases for relief. With respect to Petitioner’s additional argument that the Government failed to demonstrate a “nexus” between the Condominium and Defendant’s criminality, the Court indeed found that Petitioner lacked standing to levy such a challenge. Petitioner cites to no new or overlooked authority suggesting that

third-parties are permitted to weigh in on that inquiry. For that reason, Petitioner's motion must be denied.

To summarize the Court's earlier analysis, Petitioner has standing to contest forfeiture exclusively through the provisions of 21 U.S.C. § 853(n). *Libretti v. United States*, 516 U.S. 29, 44 (1995); *United States v. Rashid*, 373 F. App'x 234, 238 (3d Cir. 2010). That provision requires Petitioner to establish, "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; the court shall amend the order of forfeiture in accordance with its determination.

[21 U.S.C. § 853(n)(6)].

Applying those provisions, the Court found that Petitioner failed to demonstrate entitlement to relief. Section 853(n)(6)(A) requires Petitioner to establish that her interest in the property was superior to

Defendant's "at the time of the commission of the acts which gave rise to the forfeiture of the property under this section[.]" Petitioner asserted that she received the funds from Defendant and bought the Condominium in January of 2008. The Government's forfeiture interest "relates back" to when Defendant's unlawful acts began, and Defendant's conspiracy ran from "between 2006 and 2013." Petitioner's interest, which arose in January of 2008, could not have constituted the superior ownership interest in 2006.

Section 853(n)(6)(B) requires Petitioner to demonstrate that she "is a bona fide *purchaser* for value of the right, title, or interest in the property[.]" (Emphasis added). The Court must accept the facts of Ms. Singh's petition as true, *see* Fed. R. Crim. P. 32.2(c)(1)(A), and Petitioner admits "that Nicoll gave Petitioner a gift of money, which Petitioner used in her purchase of the" Condominium. (Docket Entry 63, Page 2). Applying the plain language of the statute, one who has received a gift of money cannot be a "purchaser" of it. *See, e.g., United States v. Kennedy*, 201 F.3d 1324, 1335 (11th Cir. 2000). The Court thus found that Petitioner could not recover under Subsection (B).

Having failed to demonstrate entitlement to relief through the only available avenues, Petitioner's motion effectively reargues that she should be permitted to challenge the nexus between the Condominium and Defendant's crimes. While the Court does see value in that position, it nevertheless finds binding authority to suggest that a third-party may not levy such a challenge. *See United States v. Nolasco*, 354 F. App'x 676,

679-81 (3d Cir. 2009); *United States v. Lavin*, 942 F.2d 177, 185 (3d Cir. 1991). Moreover, the substantial weight of outside authority appears to outright foreclose such arguments. See *United States v. Holy Land Found. for Relief & Dev.*, 722 F.3d 677, 689-90 (5th Cir. 2013); *United States v. Davenport*, 668 F.3d 1316, 1321 (11th Cir. 2012); *United States v. White*, 675 F.3d 1073, 1077-78 (8th Cir. 2012); *United States v. Andrews*, 530 F.3d 1232, 1236-37 (10th Cir. 2008); *DSI Associates LLC v. United States*, 496 F.3d 175, 184-85 (2d Cir. 2007); *United States v. Dejanu*, 163 F. App'x 493, 498 (9th Cir. 2006). Although some courts have taken a different approach, see *United States v. Reckmeyer*, 836 F.2d 200, 206 (4th Cir. 1987), *United States v. Lazarenko*, 476 F.3d 642, 650 (9th Cir. 2007), the Third Circuit Court of Appeals has, to date, not adopted that position.

In short, in its earlier decision, the Court recognized Petitioner's standing to levy a collateral challenge to the forfeiture, albeit one confined by the governing statutes. Apart from concluding that Petitioner did not qualify under those provisions, the Court indeed found that Petitioner was not permitted to raise additional challenges, including those pertaining to the "nexus" inquiry.<sup>1</sup> Petitioner now fails to provide any reason why this Court should reconsider that decision.

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<sup>1</sup> The Court did, *sua sponte*, Order the Government to provide additional evidence to demonstrate the nexus between the Condominium and Defendant's crimes. The Government accordingly submitted additional evidence to that effect. In an Opinion and Order filed alongside this one, the Court has now found the

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**III. CONCLUSION**

For the reasons above, the Court will deny Petitioner's motion. Therefore,

**IT IS** on this 9th day of July, 2015,

**ORDERED** that Petitioner's motion [docket entry 115] be and hereby is **DENIED**.

s/ Stanley R. Chesler  
STANLEY R. CHESLER  
United States District Judge

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nexus demonstration to have been adequately made, and the preliminary forfeiture of the Condominium will not be disturbed.

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NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

---

UNITED STATES  
OF AMERICA,

v

DAVID NICOLL,

Defendant.

---

**Criminal Action  
No. 13-385 (SRC)**

**OPINION  
AND ORDER**

(Filed Jul. 9, 2015)

**CHESLER**, District Judge

This matter comes before the Court upon the Court's April 29, 2015 Order (Doc. No. 114), which directed the Government to show cause as to why the Court should not vacate its preliminary order of forfeiture with respect to Condominium Unit 4H located at 635 West 42 Street, New York, New York ("the Condominium"). In response to the Court's Order, the Government filed an in camera submission, with the consent of the attorneys who represent Defendant David Nicoll and third-party petitioner Melissa [sic] Singh. The Court executed a sealing order as to that submission. Having reviewed the Government's papers, the Court is now satisfied that the Government has demonstrated the requisite nexus between Defendant Nicoll's criminal acts and the Condominium. The Court will accordingly discharge its Order to Show Cause, and it will not vacate the preliminary order of forfeiture.

## **I. Background**

This Court thoroughly reviewed the factual and procedural background of this matter in an earlier Opinion (Doc. No. 114), and will only briefly recount it here. In April of 2013, the United States Government charged Defendant Nicoll in connection with a physician-bribery scheme. Defendant pleaded guilty. Pursuant to the plea deal, Defendant consented to the forfeiture of property and admitted that such property had a nexus with the unlawful acts to which he pleaded guilty. Included in that list of property is the Condominium. Petitioner Singh lives in the Condominium and holds title to it. She purchased the property on January 31, 2008, with money that Defendant gave her.

On October 23, 2013, this Court entered a First Preliminary Order of Forfeiture with respect to the Condominium. Ms. Singh filed a petition asserting her interest in the Condominium, claiming that it belongs to her. The Government moved to dismiss the petition. In an Opinion and Order dated April 29, 2015, this Court dismissed Ms. Singh's petition. The Court nevertheless found that the Government had relied exclusively upon Defendant's stipulation that a nexus exists between the Condominium and his crimes, which was insufficient. *See Libretti v. United States*, 516 U.S. 29, 43 (1995); Advisory Committee Notes to Fed. R. Crim. P. 32.2(b). The Court therefore directed the Government "to submit additional factual stipulations, affidavits, and/or other documentary evidence of its choosing, which will make the necessary nexus

showing.” (Doc. No. 114). The Court instructed that if the Government failed to carry its burden, it would “vacate the portion of the preliminary order that pertains to the Condominium Unit.” (*Id.*).

## II. Discussion

The issue before the Court is “whether the government has established the requisite nexus between” the Condominium and Defendant’s criminal acts. *See* Fed. R. Crim. P. 32.2. The Court must assess if the Condominium would have not been acquired “but-for” Defendant’s crimes. *United States v. Ofchinick*, 883 F.2d 1172, 1183 (3d Cir. 1989). The Government must make this demonstration by a preponderance of the evidence. *United States v. Sandini*, 816 F.2d 869, 876 (3d Cir. 1987); *United States v. Voigt*, 89 F.3d 1050, 1082, 1087 (3d Cir. 1996). For the reasons that follow, the Court finds that the Government has met its burden.

In response to this Court’s Order, the Government submitted the Declaration of an FBI Special Agent, together with five documentary exhibits. The Declaration establishes that the proceeds from Defendant’s business, Biodiagnostic Laboratory Services, LLC (“BLS”), were tainted by a widespread bribery scheme. Specifically, the Court gathers from the Declaration that: prior to the implementation of the bribery scheme, BLS was not a profitable venture; then, between 2006 and 2012, BLS generated over \$100 million in profits through referrals from doctors whom BLS bribed. Not every dollar from BLS came from the

criminal scheme, and indeed BLS generated substantial funds through legitimate means. Yet the Government need not trace each dollar in BLS coffers to a criminal rather than a legitimate operation. The Government has instead shown that “the very nucleus of [the BLS] business model [was] rotten and malignant” and that its “entire operation was permeated with fraud.” *United States v. Warshak*, 631 F.3d 266, 332 (6th Cir. 2010). Because BLS depended on massive fraud, BLS’s proceeds are tainted by criminality. See *United States v. Farkas*, Crim. No. 10-200-LMB, 2011 WL 5101752, at \*3 (E.D. Va. Oct. 26, 2011) (“[B]ecause [Defendants’] fraudulent activity enabled [their corporation] to remain in the business of obtaining mortgage funding, securitizing mortgages, and selling mortgage-backed securities, ‘proceeds’ must be interpreted sufficiently broadly to capture the [their] gross receipts even if those receipts cannot be directly attributable to, for example, a particular fraudulent loan.”), *aff’d*, 474 F. App’x 349 (4th Cir. 2012).

Having accepted the Government’s demonstration that BLS proceeds trace to Defendant’s criminal acts, the Court is also satisfied that BLS proceeds allowed for the purchase of the Condominium. Specifically, the Government’s submission outlines the following: BLS deposited all profits from its unlawful scheme into a BLS Operating Account; from there, Defendant Nicoll’s distributions from the scheme were transferred from the BLS Operating Account to Defendant’s PNC Bank Account in his name; Defendant then transferred funds from his PNC Bank Account to his account at

Valley National Bank; finally, and critically, the Condominium was purchased with funds from the Valley National Bank account. Additionally, the Valley National Bank Account was funded almost entirely from the PNC Bank Account which, in turn, was funded almost entirely from the BLS Operating Account.

These facts adequately demonstrate a link between the purchase of the Condominium and BLS proceeds, and a connection between BLS proceeds and the bribery scheme. In tandem, a nexus demonstration has been made between the Condominium and Defendant's crimes.

## **I. CONCLUSION**

For the reasons above, the Court finds that the Government has demonstrated by a preponderance of the evidence that a "nexus" exists between Defendant's criminality and the Condominium. Therefore,

**IT IS** on this 9th day of July, 2015,

**ORDERED** that the Court's Order to Show Cause (Docket Entry 114) be and hereby is **DISCHARGED**; and the Preliminary Order of Forfeiture shall not be vacated.

s/ Stanley R. Chesler  
STANLEY R. CHESLER  
United States District Judge

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NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

|                         |   |                         |
|-------------------------|---|-------------------------|
| UNITED STATES           | : |                         |
| OF AMERICA,             | : | <b>Criminal Action</b>  |
|                         | : | <b>No. 13-385 (SRC)</b> |
| v.                      | : |                         |
| DAVID NICOLL,           | : | <b>OPINION</b>          |
|                         | : | <b>AND ORDER</b>        |
| Defendant.              | : | (Filed Apr. 29, 2015)   |
| MELISA SINGH,           | : |                         |
| Third-Party Petitioner. | : |                         |

**CHESLER**, District Judge

This matter comes before the Court upon the Government’s motion to dismiss the amended third-party petition of Melisa Singh (“Petitioner” or “Ms. Singh”). Petitioner opposes the motion. The Court has considered the parties’ submissions and proceeds to rule without oral argument. For the reasons that follow, the Court will grant the Government’s motion. For the reasons also provided herein, however, the Court will order the Government to show cause as to why this Court should not, *sua sponte*, vacate its preliminary order of forfeiture with respect to the Condominium Property located at 635 West 42 Street, New York, New York, 10036 (See Document Entry 41, Ex. A, Par. 3).

## **I. BACKGROUND**

The issue before the Court involves a dispute regarding property that was preliminarily forfeited pursuant to criminal proceedings.

In April of 2013, the United States (“the Government”) charged Defendant David Nicoll (“Defendant”) in connection with a physician-bribery scheme. In June of that year, Defendant entered a plea deal with the Government and he pleaded guilty to numerous offenses.

Pursuant to the plea deal, Defendant consented to the forfeiture of specific property (“the Specific Property”), and Defendant admitted that such property had a nexus with the unlawful acts to which he pleaded guilty. Included in that list of property is Condominium Unit 4H (“the Condominium Unit”), which is located at 635 West 42 Street, New York, New York 100136 [sic], “together with its appurtenances, improvements, fixtures and accompanying rights and privileges (including, but not limited to, parking spaces), and any deposits, securities or escrowed funds held in connection with such property.” (Docket Entry 41, Ex A., Par. 3). The Condominium Unit is worth approximately \$700,000.

Petitioner Melisa Singh lives in the Condominium Unit and holds title to it. She purchased the property on January 31, 2008, with money that Defendant gave her. Since that time, Singh has paid the maintenance, taxes, fees, and other costs for the unit, and she has been in exclusive possession of it. Defendant has never owned nor resided in the unit.

On October 23, 2013, this Court entered a First Preliminary Order of Forfeiture. The Government filed a notice of forfeiture on March 27, 2014, and it published a notice of forfeiture with respect to the Condominium Unit online.

On April 10, 2014, Ms. Singh filed a petition asserting her interest in the Condominium Unit; she filed an amended petition on June 26th. She claims that the property belongs to her because she purchased it from a developer in January of 2008. She further asserts that even though Defendant gave her the money to purchase the property, she had no reason to know of Defendant's illegal conduct.

In October of 2014, the Government moved to dismiss Ms. Singh's third-party petition. In support of its motion, the Government argues that the property at issue was properly forfeited. The Government emphasizes that Petitioner admittedly purchased the Condominium Unit with money that Defendant gave her, and because that money came from criminal conduct, the property became forfeitable proceeds of criminality. Finally, the Government urges that Petitioner cannot be a bona fide purchaser for value, as Defendant gave her the money as a gift.

Petitioner opposes the motion. She argues that the Government has not made any evidentiary showing whatsoever that the Condominium Unit traces to Defendant's criminal activity, and she argues that she has indeed stated a prima facie claim to the property as a bona fide purchaser of it. Petitioner highlights that the

sole support of any nexus between the condominium and Defendant's criminality is a blanket provision in Defendant's plea agreement, and she contends that Defendant has no right to sign away property that is not his. Petitioner notes that the charging documents against Defendant did not contain allegations of specific criminal acts before 2009, and therefore her purchase of the property could not have stemmed from Defendant's criminality.

## **II. DISCUSSION**

### **A. Third-Party Petitions for Forfeited Property**

Under the applicable statutory framework, Petitioner Singh was barred from participating in Defendant's criminal proceedings, and barred from intervening to challenge the preliminary forfeiture. *See* 21 U.S.C. § 853(k) (“[N]o party claiming an interest in property subject to forfeiture under this section may – (1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or (2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property[.]”).

Instead, Petitioner is limited to challenging the forfeiture exclusively through the provisions set forth in 21 U.S.C. § 853(n) (“Section 853(n”). *Libretti v. United States*, 516 U.S. 29, 44 (1995) (“[T]hird-party claimants can establish their entitlement to return of the assets only by means of the hearing afforded under

21 U.S.C. § 853(n).”); *United States v. Rashid*, 373 F. App’x 234, 238 (3d Cir. 2010) (“Section 853(n) . . . provides the exclusive means for asserting [such] a legal interest[.]”).

In this ancillary proceeding, Petitioner must “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).

Under Section 853(n)(6), the Court must amend the preliminary order of forfeiture if Petitioner is able to establish, “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; the court shall amend the order of forfeiture in accordance with its determination.

[21 U.S.C. § 853(n)(6)].

In an ancillary forfeiture proceeding, “the court may, on motion, dismiss the petition for lack of standing, for failure to state a claim, or for any other lawful reason.” Fed. R. Crim. P. 32.2(c)(1)(A). When disposing of a motion to dismiss a third-party petition, the Court assumes the facts set forth in the petition to be true. *Id.*

### **B. Petitioner’s Standing to Challenge Nexus**

At the heart of Ms. Singh’s petition is an argument that the Government has not provided any evidence to establish a nexus between the Condominium Unit and Defendant’s criminal acts, as is required. The Government counters that Petitioner lacks standing to raise such a challenge, and as such, that her claim should be dismissed under Rule 32.2(c)(1)(A). Having surveyed the federal authority on this issue, this Court finds the Government’s position to be persuasive, and it will accordingly dismiss the petition.

The Third Circuit has observed that Section 853(n) provides relief only to those third-party petitioners who can prove ownership of property under the subsections of Section 853(n)(6). *See United States v. Nolasco*, 354 F. App’x 676, 679-81 (3d Cir. 2009) (comparing Section 853(n) proceedings to quiet-title actions and stating that “[o]wnership is the only relevant issue in a Section 853(n) ancillary proceeding.”). The Court has further found that Congress did not enact Section 853(n) “to serve as a vehicle by which all innocent third

parties who are aggrieved by an order of criminal forfeiture can petition for judicial relief.” *United States v. Lavin*, 942 F.2d 177, 185 (3d Cir. 1991). Instead, Congress “intended to accord standing to only [the] two narrow classes of third parties” delineated in the statute. *Id.*

In express language, the Second, Fifth, Ninth, and Eleventh Circuits have held that third-party petitioners may not challenge an underlying forfeitability. See *United States v. Holy Land Found. for Relief & Dev.*, 722 F.3d 677, 689-90 (5th Cir. 2013) (“[Petitioners] challenge the district court’s jurisdiction to seize [the] forfeitable assets. . . . [Yet they] are foreclosed from raising this argument because it is an impermissible third-party challenge to the forfeiture[.]”); *United States v. Davenport*, 668 F.3d 1316, 1321 (11th Cir. 2012) (“[Petitioner] lacked standing to challenge the . . . determination of forfeitability. . . . [Petitioner] may not relitigate the merits of a forfeitability determination.”); *DSI Associates LLC v. United States*, 496 F.3d 175, 184-85 (2d Cir. 2007) (rejecting third-party challenge to forfeiture and quoting Advisory Committee notes which provide that the ancillary proceeding “does not involve relitigation of the forfeitability of the property; its only purpose is to determine whether any third party has a legal interest in the forfeited property.”); *United States v. Dejanu*, 163 F. App’x 493, 498 (9th Cir. 2006) (“Whether the criminal forfeiture of the property was proper is not an issue subject to litigation by third parties in an ancillary proceeding.”).

With specific reference to the precise issue presented in this case, the Eighth and Tenth Circuits have held that third-party petitioners cannot challenge a forfeiture by arguing that no nexus exists. *See United States v. White*, 675 F.3d 1073, 1077-78 (8th Cir. 2012) (“[Petitioner may] establish her interest in the forfeited property as it compares to the interests of the government . . . [but the ancillary proceeding] does not allow her to relitigate the nexus between the criminal acts . . . and the forfeited proceeds[.]”); *United States v. Andrews*, 530 F.3d 1232, 1236-37 (10th Cir. 2008) (“[Petitioners argue] that the government did not meet its burden of proving the requisite nexus. . . . [Yet] a third party has no right to challenge the preliminary order’s finding of forfeitability; rather, the third party is given an opportunity . . . to assert any ownership interest that would require amendment of the order.”).

This Court acknowledges that in 1987, the Fourth Circuit Court of Appeals held that a third-party petitioner could challenge the underlying forfeitability of contested property. *See United States v. Reckmeyer*, 836 F.2d 200, 206 (4th Cir. 1987). Moreover, despite *Dejanu*, supra, 163 F. App’x at 498, the Ninth Circuit appears to have permitted a petitioner to do the same. *See United States v. Lazarenko*, 476 F.3d 642, 650 (9th Cir. 2007). Both sides in this matter also cite numerous District Court opinions to support their position. In particular, Petitioner relies heavily upon *United States v. Bailey*, 926 F. Supp. 2d 739, 745 (W.D.N.C. 2013), a case in which the Court ruled in favor of a third-party

nexus challenge. Because it sits in the Fourth Circuit, the Court in *Bailey* was obliged to follow *Reckmeyer*.

Despite some authority to the contrary, this Court finds that a clear majority of federal authority precludes a third-party challenge to an underlying forfeiture, and that the Third Circuit appears to have voiced support for that position. Accordingly, the Court holds that Petitioner lacks standing to levy a challenge to the nexus, and that aspect of her petition will be dismissed.

### **C. The Government's Demonstration of Nexus**

Although Ms. Singh lacks standing to challenge the nexus between the Condominium Unit and Defendant's crimes, her petition has brought to this Court's attention the need to revisit that issue. Procedurally, the Court's inquiry is separate and apart from the ancillary proceedings, and as explained above, Petitioner has no standing to weigh in on it.

To support the requisite nexus, the Government has thus far pointed solely to Defendant's stipulation that one exists, and his plea admission that the unlawful conspiracy began in 2006. A criminal defendant's nexus stipulation is not binding. A defendant who seeks a favorable plea deal from the Government may be motivated to endorse forfeiture even if no nexus exists. That concern is heightened if the defendant has no personal interest in the property at issue. *See* Advisory Committee Notes to Fed. R. Crim. P. 32.2(b) (“[A] defendant who has no interest in property has no

incentive, at trial, to dispute the government's forfeiture allegations.").

Accordingly, this Court is not required to find that a nexus exists on the basis of Defendant's admission. The United States Supreme Court has expressly held as follows:

We do not mean to suggest that a district court must simply accept a defendant's agreement to forfeit property, particularly when that agreement is not accompanied by a stipulation of facts supporting forfeiture[.]

[*Libretti v. United States*, 516 U.S. 29, 43 (1995)].

The Supreme Court in *Libretti* emphasized that the district court had not simply relied upon the parties' stipulation: "Contrary to the suggestion of the dissent, the District Court did not rest its forfeiture order on nothing more than Libretti's stipulation that certain assets were forfeitable. In fact, there is ample evidence that the District Court both understood the statutory requisites for criminal forfeiture and concluded that they were satisfied on the facts of this case at the time the sentence was imposed," and the Supreme Court then extensively reviewed the evidence offered in support of forfeiture. *Id.* at 44-48.

Procedurally, the inquiry sanctioned in *Libretti* took place at the preliminary forfeiture stage. Yet it is difficult to see why this Court may not now – before it enters the preliminary order as a final one – cautiously ensure that the statutory requirements underpinning forfeiture are satisfied. While this Court does not

follow the holding of *Bailey* with respect to third-party nexus challenges, *Bailey* does highlight a Court's inherent power to ensure, on its own volition, that its orders are adequately supported:

[T]he Government has offered no authority to suggest that once a preliminary order of forfeiture is entered, a court is prohibited from revisiting the determination of nexus sua sponte. . . . The Government's argument that [the preliminary order's] nexus finding somehow binds this Court in perpetuity and precludes any reconsideration of that determination is simply without any legal support. *Like any other interlocutory order, the preliminary order of forfeiture is subject to revision prior to entry of a final judgment in this case.* The Government's contention, then, that the Court cannot revisit this determination in light of the evidence now before it is without merit.

[*United States v. Bailey*, 926 F. Supp. 2d 739, 763-64 (W.D.N.C. 2013) (emphasis added)].

Exercising that authority, this Court holds that the Government's nexus agreement with Defendant does not, without more, satisfy the Court that the Condominium Unit indeed traces to Defendant's criminality. *See* Fed. R. Crim. P. 32.2 ("If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense."); *see also United States v. Voigt*, 89 F.3d 1050, 1082, 1087 (3d Cir. 1996) (holding that forfeiture in money

laundrying case had to be proven by a preponderance of the evidence, and noting that “the government must prove by a preponderance of the evidence that the property it seeks . . . has some nexus to the property ‘involved in’ the money laundrying offense.”).

This Court will therefore direct the Government to submit additional factual stipulations, affidavits, and/or other documentary evidence of its choosing, which will make the necessary nexus showing. If the Government does not carry its burden, the Court will vacate the portion of the preliminary order that pertains to the Condominium Unit.

#### **D. Petitioner’s Remaining Contentions**

Separate from the nexus issue, Petitioner secondarily asserts that she qualifies for relief under Section 853(n). In other words, Petitioner contends that even if she is limited to proving ownership, she can do so. Yet because Petitioner falls outside the two narrow categories set forth by Section 853(n), the Court must also dismiss these contentions.

First, Section 853(n)(6)(A) would require Petitioner to establish that her interest in the property was superior to Defendant’s “at the time of the commission of the acts which gave rise to the forfeiture of the property under this section[.]” Petitioner asserts that she received the funds from Defendant and purchased the Condominium Unit in January of 2008. The Government’s forfeiture interest “relates back” to the time when Defendant’s unlawful acts began, and Defendant

pleaded guilty to an unlawful conspiracy that ran from “between 2006 and 2013.” (Docket Entry 34, Page 1). Petitioner’s interest, which arose in January of 2008, could not have constituted the superior ownership interest in 2006.<sup>1</sup>

Second, Section 853(n)(6)(B) requires Petitioner to demonstrate that she “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[.]” (Emphasis added). The Court must accept the facts of Ms. Singh’s petition as true, *see* Fed. R. Crim. P. 32.2(c)(1)(A), and critically, Petitioner admits “that she, for a period of time, had a personal relationship with [Defendant] Nicoll, and that Nicoll gave *Petitioner a gift of money*, which Petitioner used in her purchase of the Subject Premises.” (Docket Entry 63, Page 2) (emphasis added). Applying the plain language of the statute, one who has received a gift of money cannot be a “purchaser” of it. *See, e.g., United States v. Kennedy*, 201 F.3d 1324, 1335 (11th Cir. 2000) (“The criminal forfeiture provisions provide only two ways for third parties to establish their interest in forfeited property; and one of them is emphatically *not* that the criminal defendant gave the third party a

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<sup>1</sup> Moving forward, if the Government does not prove a “nexus” to criminality dating before January of 2008, it is conceivable that Petitioner could then state a claim under Section 853(n)(6)(A). Yet as a practical matter, if the Government fails to meet its burden, the Court will vacate the underlying forfeiture of the Condominium Unit, and Petitioner’s title will not be disturbed.

gift.”) (emphasis in original). Petitioner therefore cannot recover under this subsection either.

All told, Petitioner has failed to demonstrate any plausible entitlement to relief under the two categories established by Section 853(n). The petition must therefore be dismissed.

### III. CONCLUSION

For the reasons above, the Court will grant the Government’s motion to dismiss Ms. Singh’s amended third-party petition, and it will order the Government to show cause as to why the Court should not vacate the aspect of the preliminary forfeiture order which pertains to the Condominium Unit. Therefore,

**IT IS** on this 29th day of April, 2015,

**ORDERED** that the Government’s motion [docket entry 79] to dismiss the amended third-party petition be and hereby is **GRANTED**; and it is further

**ORDERED** that Ms. Singh’s Amended Petition [docket entry 63] be and hereby is **DISMISSED**; and it is further

**ORDERED** that the Government shall show cause to the undersigned, in writing, by Friday, June 12, 2015, as to why this Court should not vacate the portion of its Preliminary Order which pertained to the Condominium Unit [document entry 41, ex. A, par. 3].

App. 38

s/ Stanley R. Chesler  
STANLEY R. CHESLER  
United States District Judge

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App. 39

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 15-2901

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UNITED STATES OF AMERICA

v.

DAVID NICOLL

\* MELISSA [sic] SINGH,  
Appellant

\*(Pursuant to Rule 12(a),  
Fed. R. App. P.)

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Appeal from the United States District Court  
for the District of New Jersey,  
(D.C. Criminal Action No. 2-13-cr-00385-001)  
District Judge: Honorable Stanley R. Chesler

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Before: SMITH, *Chief Judge*, McKEE, AMBRO,  
CHAGARES, JORDAN, HARDIMAN, GREENAWAY,  
Jr., VANASKIE, KRAUSE, RESTREPO, *Circuit  
Judges* and CONTI<sup>♦</sup>, *Chief District Judge*

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<sup>♦</sup> Honorable Chief Judge Joy Flowers Conti, District Court  
Judge for the Western District of Pennsylvania, sitting by design-  
nation.

**SUR PETITION FOR REHEARING**

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court *en banc*, is denied.

By the Court,

s/ Thomas L. Ambro, Circuit Judge

Dated: November 28, 2017

SLC/cc: Counsel of Record

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