IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

DANIEL ERIC JAY

CRIMINAL INDICTMENT
1:20-CR-228-MHC-JKL
SECOND SUPERSEDING

Government's Notice Under Federal Rule of Evidence 902(11)

Pursuant to Federal Rule of Evidence 902(11), the United States of America hereby gives notice of its intent to offer into evidence at trial the attached Certificate of Insurance for United Community Bank, which was issued by the Federal Deposit Insurance Corporation (FDIC). In support of this notice, the Government shows the following:

As relevant here, the Indictment alleges that Defendant Jay participated in a scheme to defraud United Community Bank, in violation of the bank fraud statute, 18 U.S.C. § 1344. (Doc. 96, Count 5). To convict a defendant of bank fraud, the government must prove, among other things, that the victim bank was federally insured when the crime was committed. *United States v. Goldsmith*, 109 F.3d 714, 715 (11th Cir. 1997); *see also* 18 U.S.C. § 20 (stating that the term "financial institution," as used in the bank fraud statute, means—(1) an insured depository institution . . . of the Federal Deposit Insurance Act").

"To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." FED. R. EVID. 901(a).

Normally, in a case like this, the Government and the defendant would enter into a stipulation concerning the insured status of the victim bank. The Government provided the attached FDIC Certificate of Insurance to Defendant Jay approximately two years ago, as part of the Rule 16 discovery. There can be no reasonable dispute that the certificate is authentic. Nevertheless, Defendant Jay has indicated through counsel that he is unwilling to stipulate to United Community Bank's insured status. Defendant Jay has offered no reason for refusing to enter into such a stipulation.

The evidence that United Community Bank was insured by the FDIC is admissible in at least three ways:

1. **The attached FDIC Certificate of Insurance is a certified domestic record of a regularly conducted activity and is admissible under Federal Rule of Evidence 902(11).**

The Government requested that the FDIC provide proof of the insured status of United Community Bank from April 15, 2020 through May 1, 2020. In response, the FDIC provided the Government with the attached Certificate of Authenticity of Domestic Records of a Regularly Conducted Activity, Pursuant to Federal Rule of Evidence 803(6) and 902(11), certifying that United Community Bank was an insured depository institution on the dates in question (the "Certificate of Insurance").

Rule 902(11) of the Federal Rules Evidence states that certified domestic records of a regularly conducted activity are "self-authenticating [and] require no extrinsic evidence of authenticity in order to be admitted." FED. R. EVID. 902(11).

Rule 902(11) further states that, "[b]efore the trial . . . , the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them." *Id.*; *see also Phillips v. Mortg. Elec. Registration Sys., Inc.*, No. 5:09-CV-2507-TMP, 2013 WL 1498956, at *3 (N.D. Ala. Apr. 5, 2013) ("As a business record certified by a custodian under FRE 803(6), the records become self-authenticating under FRE 902(11).").

For the reasons set forth herein, the Government has complied with the requirements of Rule 902(11).

2. Evidence of United Community Bank's insured status is available on the FDIC's website, and records from government websites are self-authenticating and admissible under Federal Rule of Evidence 902(5).

"A book, pamphlet, or other publication purporting to be issued by a public authority" is self-authenticating. FED. R. EVID. 902(5). "Records from government websites fall within the ambit of Rule 902(5)." *United States v. Venture One Mortg. Corp.*, No. 13-CV-1872 W (JLB), 2016 WL 4768875, at *3 (S.D. Cal. June 10, 2016). The FDIC's website shows that United Community Bank has been insured by the FDIC since March 1, 1950. https://banks.data.fdic.gov/bankfind-suite/bankfind/details/16889. This information is self-authenticating under Rule 902(5). *See Venture One*, 2016 WL 4768875, at *3 (holding that "a record from the FDIC website . . . is self-authenticating under Rule 902(5)").

3. Under Federal Rule of Evidence 201(2), this Court can take judicial notice that United Community Bank has been insured by the FDIC since March 1, 1950.

The Court may take judicial notice of "a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(2). For example, courts "take judicial notice of information found on government agency websites." *Pradhan v. Citibank, N.A.*, No. 10-CV-03245-LHK, 2011 WL 90235, at *9 n.11 (N.D. Cal. Jan. 10, 2011) (granting Defendants' request, under Federal Rule of Evidence 201, for judicial notice of information found on FDIC's website); *see also Paralyzed Veterans of Am. v. McPherson,* 2008 WL 4183981 *5-6 (N.D. Cal. Sept. 9, 2008) (citing appellate and district court decisions taking judicial notice of information found on government agency websites).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 28, 2022, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system.

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