

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

UNITED STATES OF AMERICA

v.

DANIEL ERIC JAY

Criminal Action No.

1:20-cr-00228-MHC-02

MOTION TO SUBSTITUTE RESTITUTION PAYEE
AND BRIEF IN SUPPORT THEREOF

The United States of America, by Ryan K. Buchanan, United States Attorney, and Vanessa A. Leo, Assistant United States Attorney for the Northern District of Georgia, respectfully requests an order substituting a restitution payee pursuant to 18 U.S.C. § 3663A, and in support shows:

Background Information

1. On June 23, 2023, Defendant Daniel Eric Jay (“Jay”) was convicted of conspiracy to commit wire fraud and bank fraud in connection with the Paycheck Protection Program (“PPP”) a federal loan program and ordered to pay \$4,465,865.55 in criminal restitution to the following victims jointly and severally with Maurice Fayne (Case No. 1:20-CR-228-01) and Michael Sargent (Case No. 1:21-CR-219):

- a. United Community Bank;
- b. U.S. Small Business Administrative/DFC;

- c. Jimia Cain;
- d. Sean Frank;
- e. Laura Wolf;
- f. Robert Tuscana;
- g. Amanda Napier;
- h. Marla Newman;
- i. Jeanne Johnston;
- j. Mike Rubial;
- k. Linda Appleby;
- l. Alejandro Davila;
- m. Edie Lenaburg;
- n. Ruben Azrak;
- o. Terrance Miller;
- p. Ken Pritchett;
- q. Elizabeth Baun;
- r. John Baun;
- s. Tameika Price;
- t. Jamar Rucker; and
- u. Sherrie Odom.

(Doc. 319.)

2. Individual PPP loans were issued by private/approved lenders who received and processed PPP applications and supporting documentation and then made loans using the lenders own funds/ which were 100% guaranteed by the Small Business Administration ("SBA").

3. The SBA is an executive branch agency of the United States government that provides support to entrepreneurs and small businesses. The SBA's mission is to maintain and strengthen the nation's economy by enabling the establishment and viability of small businesses and by assisting in the economic recovery of communities after disasters. As part of this effort, the SBA provides relief by enabling and providing loans through banks, credit unions, and other lenders.

4. Jay submitted a PPP loan application to United Community Bank containing materially false information and received a PPP loan in the amount of \$2,045,300.00.

5. As evidenced by the Notice of PPP Guaranteed Purchase Payment, attached hereto as Exhibit A, the SBA purchased the guaranty on the PPP loan obtained and became subrogated to all rights of United Community Bank.

6. The United States agrees that the SBA is entitled to compensation as subrogee of United Community Bank.

7. The Clerk of Court should be ordered to immediately begin making restitution payments to the SBA.

Argument and Application of Law

8. 18 U.S.C. § 3664(f)(1)(A) requires the Court to order restitution in the full amount of each victim's loss. The Mandatory Victims Restitution Act defines

a victim as “a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered.” 18 U.S.C. § 3663A. The SBA suffered a proven financial loss as result of Jay’s fraud yet possesses no hope of being made whole with the judgement as it currently reads. Thus, the United States recommends substituting the SBA as restitution payee in this matter.

9. The United States does not seek to alter the court’s judgment ordering the defendant’s liability to pay the total amount of restitution originally imposed. The United States merely requests an adjustment to the disbursement of restitution payments in compliance with 18 U.S.C. § 3664(j)(1), which provides:

If a victim has received compensation from insurance or any other source with respect to a loss, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

10. In this case, United Community Bank has received compensation with respect to the loss in this case from the SBA. Accordingly, the United States requests that the Clerk of Court substitute the SBA as victim and disburse all restitution payments to the SBA until the awarded restitution has been satisfied.

11. A proposed order is submitted to the Court contemporaneously for its consideration.

WHEREFORE, the United States respectfully requests that the Court substitute the Small Business Administration for United Community Bank as the restitution payee in the above-captioned case. This amendment would not change the balance of Defendant's restitution debts and therefore would not substantively alter her criminal sentence.

Respectfully submitted this 14th day of November 2024.

RYAN K. BUCHANAN
UNITED STATES ATTORNEY

/s/ Vanessa A. Leo
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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1B and 7.1D, that the foregoing response has been typed using 13-point Book Antiqua font.

/s/ Vanessa A. Leo
VANESSA A. LEO
Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that on November 14, 2024, the foregoing document was electronically filed using the Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to all parties who have appeared in this case under the Court's Electronic Case Filing program.

Dated: November 14, 2024.

/s/ Vanessa A. Leo
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