

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

UNITED STATES OF AMERICA

v.

ANDRE LEE GAINES

Criminal Action No.

1:21-CR-206-1-JPB-1

MOTION TO SUBSTITUTE RESTITUTION PAYEE
AND BRIEF IN SUPPORT THEREOF

The United States of America, by Theodore S. Hertzberg, 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 March 29, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was enacted into federal law. The CARES Act was designed to provide emergency financial assistance to millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program("PPP").
2. In order to obtain a PPP loan, a qualifying business submitted a PPP loan application, which was signed by an authorized representative of the business.

The PPP loan application required the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application (Small Business Administration Form 2483), the small business (through its authorized representative) was required to provide, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. In addition, businesses applying for a PPP loan were required to provide documentation confirming their payroll expenses.

3. A PPP loan application was processed by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies. While it was the participating lender that issued the PPP loan, the loan was 100% guaranteed by the Small Business Administration ("SBA"). Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the SBA in the course of processing the loan.

4. PPP loan proceeds were required to be used by the business on certain permissible expenses- payroll costs, interest on mortgages, rent, and utilities. The PPP allowed the interest and principal on the PPP loan to be entirely forgiven if the business spent the loan proceeds on these expense items within a designated

period of time and used a defined portion of the PPP loan proceeds on payroll expenses.

5. On June 17, 2021, Andre Lee Gaines (“Gaines”) entered a negotiated plea of guilty to one count of making a false, fictitious, and fraudulent statement and representation to a department or agency of the United States in connection with a fraudulently obtained PPP loan for his company, Gaines Reservation and Travel, from Cross River Bank. (Doc. 4-1).

6. On October 8, 2021, this Court sentenced Gaines to five years’ probation and ordered him to pay restitution to Cross River Bank in the amount of \$782,508.70, jointly and severally with five defendants in a related case, *U.S. v. Thomas, et al.*, 1:20-cr-296-JPB, including defendants Jesika Blakely, Darrell Thomas, Teldrin Foster, John Gaines, and Carla Jackson. (Doc. 12.)¹

7. Pursuant to the CARES Act, the SBA purchased the guaranty on Gaines’ PPP loan (SBA Loan Number 8300887401) from Cross River Bank for a total of \$862,914.47, including \$806,710.00 of outstanding loan principal, \$32,003.17 in interest, and \$24,201.30 in processing fees and became subrogated to all rights of

¹ All five defendants ordered to pay restitution jointly and severely with Gaines in the related case, *U.S. v. Thomas, et al.*, 1:20-cr-296-JPB, have been sentenced and ordered to pay restitution to Cross River Bank in varying amounts. Separate motions are being filed in *Thomas* to change the amount of restitution the respective defendant owes to Cross River Bank in connection with Gaines’ PPP loan.

Cross River Bank. Attached as Exhibit A is the Notice of PPP Guaranteed Purchase Payment showing the SBA has purchased Gaines' loan from Cross River Bank.

8. The United States agrees that the SBA is entitled to compensation as subrogee of Cross River Bank in this case.

9. The Clerk of Court should be ordered to immediately begin making restitution payments in this case to the SBA.

Argument and Application of Law

10. 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 Gaines' 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.

11. 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.

12. In the present case, Cross River Bank has received full compensation with respect to its losses from the SBA. Accordingly, the United States requests that the Clerk of Court substitute the SBA as victim and disburse all restitution payments that Gaines makes to the SBA until the awarded restitution has been satisfied.

13. 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 Cross River 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 his criminal sentence.

Respectfully submitted this 14th day of July, 2025.

THEODORE S. HERTZBERG

United States Attorney

/s/ Vanessa A. Leo

Vanessa A. Leo

ASSISTANT UNITED STATES ATTORNEY

Georgia Bar No. 410598

600 United States Courthouse

75 Ted Turner Drive, S.W.

Atlanta, Georgia 30303

(404) 581-6037

Vanessa.Leo@usdoj.gov

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 this date, 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: July 14, 2025

/s/ Vanessa A. Leo
VANESSA A. LEO
ASSISTANT UNITED STATES ATTORNEY
Georgia Bar No. 410598
600 U.S. Courthouse
75 Ted Turner Drive, S.W.
Atlanta, Georgia 30303
404-581-6037
Vanessa.Leo@usdoj.gov