IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

UNITED STATES OF AMERICA,

Plaintiff,

v. Civil Action No. 5:24-cv-00456

RYAN BAILEY and RKB, INC.,

Defendants.

COMPLAINT

This is an action by the United States of America ("United States") against Defendants RKB, Inc., ("Defendant RKB") and Ryan Bailey, individually ("Defendant Bailey"), (collectively referred to as the "Defendants"), to recover treble damages and civil penalties under the False Claims Act ("FCA"), 31 U.S.C. §§ 3729-33, civil penalties under the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA"), partially codified at 12 U.S.C. § 1833a, and to recover money for common law or equitable causes of action for contractual damages and unjust enrichment based upon Defendants' receipt of Paycheck Protection Program ("PPP") loan funds and COVID-19 Economic Injury and Disaster Loan ("EIDL") funds which were used for unauthorized purposes in violation of federal and common law.

JURISDICTION AND VENUE

1. This action arises under the FCA, FIRREA, and the common law.

2. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1345 because the United States is the plaintiff. The Court also has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1367(a).

3. The Court has personal jurisdiction over Defendants under 31 U.S.C. § 3732(a) because Defendants can be found, reside, or transact business in this District, or have committed the alleged acts in this District and the acts that they committed in violation of 31 U.S.C. § 3729 occurred in this District.

4. Venue is proper in this district under 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b) as Defendants can be found in this District and/or the subject transactions took place in this District.

PARTIES

5. Plaintiff, United States of America, guarantees and funds certain loans through the Small Business Administration ("SBA").

6. Defendant Bailey is a resident of Raleigh County, West Virginia, and is the 100% owner of Defendant RKB.

7. Defendant RKB is a West Virginia corporation with its principal place of business listed as being located in Raleigh County, West Virginia.

THE PAYCHECK PROTECTION PROGRAM

8. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to the millions of Americans 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"). The program was modified and extended thereafter.

9. 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 to be eligible to obtain the PPP loan. In the PPP loan application (SBA 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.

10. 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 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 and subsequent forgiveness process.

11. 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.

12. The application process to obtain a PPP loan required the eligible recipient to make the following good faith certifications and acknowledgments:

a. That the applicant was eligible to receive a PPP loan under the rules in effect at the time the application was submitted (the "PPP Rules");

b. That the uncertainty of current economic conditions made the loan request necessary to support the ongoing operations of the eligible recipient;

c. That the applicant was in operation on February 15, 2020, had not permanently closed, and was either an eligible self-employed individual, independent contractor, or sole proprietorship with no employees, or had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC;

d. That the funds would be used to retain workers and maintain payroll; or make payments for mortgage interest, rent, utilities, or other covered costs under the PPP Rules;

e. That if the funds were knowingly used for unauthorized purposes, the federal government may pursue recovery of loan amounts and/or civil or criminal fraud charges;

f. That not more than 40 percent of the loan proceeds may be used for non-payroll costs;

g. That documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities would be provided to the lender if required;

h. That the eligible recipient had not received and would not receive another loan under the PPP;

i. That the information provided in the application and the information provided in all supporting documents and forms was true and accurate in all material respects;

j. That the applicant understood that knowingly making a false statement to obtain a guaranteed loan from SBA was punishable under the federal criminal and civil laws; and

k. That the lender would confirm the eligible loan amount using the documents submitted by the applicant.

ECONOMIC INJURY AND DISASTER LOANS ("EIDL")

13. The CARES Act also established the SBA's COVID-19 Economic Injury and Disaster Loan ("EIDL") program.

14. Under the EIDL program, the SBA offered EIDL loans that were low-interest, fixed-rate, and long-term loans intended to meet operating expenses, including payroll, rent/mortgage, utilities, and other ordinary business expenses, and to pay business debt incurred at any time.

15. Unlike PPP loans, EIDL loans were submitted directly to, and processed by, the SBA.

16. In advance of distributing the EIDL loan, SBA required the borrower to file a certification, under penalty of perjury, that they were eligible to apply for an EIDL loan.

17. The borrower understood that knowingly making a false statement to obtain a guaranteed loan from SBA was punishable under the federal criminal and civil laws.

18. The borrower was also required to certify that the EIDL loan proceeds would be used as working capital to alleviate the economic injury caused by COVID.

19. The borrower was also informed in the loan documents that failure to use the proceeds from an EIDL loan could result in civil and criminal penalties as well as contractual and other damages as permitted by law.

THE FALSE CLAIMS ACT ("FCA")

20. The FCA provides, in pertinent part, that any person who:

> (a)(1)(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; [or]
>
> (a)(1)(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

is liable to the United States for three times the amount of damages which the United States sustains, plus a civil penalty per violation. 31 U.S.C. § 3729(a)(1).

21. FCA penalties are regularly adjusted for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. See 28 U.S.C. § 2461 note. For violations occurring after November 2, 2015, the civil penalty amounts currently range from a minimum of $13,946 to a maximum of $27,894. 28 C.F.R. § 85.5.

22. For purposes of the FCA, the terms "knowing" and "knowingly"

> (A) mean that a person, with respect to information—
>
> > (i) has actual knowledge of the information;
> >
> > (ii) acts in deliberate ignorance of the truth or falsity of the information; or
> >
> > (iii) acts in reckless disregard of the truth or falsity of the information; and
>
> (B) require no proof of specific intent to defraud.

31 U.S.C. § 3729(b)(1).

23. Under the FCA, the term "claim" includes requests to the United States for payment, whether made directly or indirectly to the United States. *Id.* § 3729(b)(2)(A).

24. The FCA defines "material" to mean "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property. *Id.* § 3729(b)(4).

THE FINANCIAL INSTITUTIONS REFORM, RECOVERY AND ENFORCEMENT ACT OF 1989 (FIRREA)

25. Section 951 of FIRREA, as amended, codified at 12 U.S.C. §1833a, provides that the Attorney General may recover civil penalties of up to $1 million per violation against persons who commit specified violations as established by a preponderance of the evidence. 28 C.F.R. § 85.5 (the maximum civil penalty was increased to $2,449,575 for assessments after January 30, 2023 for which violations occurred after November 2, 2015). The statute further provides that the Attorney General alternatively may recover the amount of any gain to the person committing the violation, or the amount of the loss to a person other than the violator stemming from such conduct, up to the amount of the gain or the loss. *Id.* The predicate violations identified in Section 951 that can form the basis for liability under FIRREA include, among others: (a) knowingly or willfully making a materially false or fraudulent statement on a loan application to a federally insured financially institution (18 U.S.C. § 1001); (b) making a false statement on a loan application to a financial institution, "the accounts of which are insured by the Federal Deposit Insurance Corporation" (18 U.S.C. § 1014); and (c) knowingly making a false statement for the purpose of influencing a decision by the Administrator of the SBA or to obtain a loan, money, or anything of value under the SBA's 7(a) program, including the PPP and EIDL programs (15 U.S.C. § 645(a)).

26. Section 1109(i) of the CARES Act provides that PPP loans are SBA loans for the purposes of 15 U.S.C. § 645.

27. EIDL loans are SBA loans for the purposes of 15 U.S.C. § 645.

ALLEGATIONS

28. It is a violation of the FCA to knowingly obtain an SBA-guaranteed PPP loan which is not supplied in compliance with the PPP Rules, and to subsequently obtain forgiveness

of such loan. Defendants, through Defendant Bailey was individually and as President of Defendant RKB, were involved in obtaining a PPP loan and subsequently involved in obtaining forgiveness of that subject loan, in violation of the FCA.

29. Defendants applied for and received an SBA-guaranteed PPP loan in the amount of $166,517.40, which was disbursed on or about June 1, 2020, based upon misrepresentations in a loan application submitted to a financial institution.[1] In the PPP loan application, Defendant RKB, by and through its sole owner, Defendant Bailey, knowingly misrepresented that the PPP loan would only be used for authorized purposes. However, a portion of the proceeds from the PPP loan was not used for authorized purposes, and this misrepresentation caused Defendants to receive loan proceeds in excess of what they would have been entitled, if any at all.

30. Defendants also applied for and received an SBA EIDL loan[2] which was paid and funded in separate installments (and eventually totaled a loan principal amount of $2,000,000) beginning on November 13, 2021, and ending on February 25, 2022. In the EIDL loan application, the Defendants certified and represented that they would use the proceeds of the EIDL loan solely as working capital to alleviate the economic disaster caused by COVID occurring in the month of January 31, 2020, and continuing thereafter. However, a portion of the proceeds from the EIDL loan was not used for that authorized purpose, and this misrepresentation caused Defendants to receive loan proceeds in excess of what they would have been entitled, if any at all.

31. The United States investigated and determined that $160,000 of the proceeds of the PPP loan was used for unauthorized purposes.

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[1] The PPP loan was assigned number 7736717207.
[2] The EIDL loan was assigned number 9795818208.

32. The United States investigated and determined that $1,974,900, of the proceeds of the EIDL loan was used for unauthorized purposes.

33. False statements and documents submitted to the SBA by the Defendants were material to the receipt of the PPP loan and to the forgiveness of the PPP loan.

34. False statements and documents submitted to the SBA by the Defendants were material to the receipt of the EIDL loan.

35. The Defendants still owe the balance of the EIDL loan.

The United States realleges and incorporates all paragraphs above of this Complaint as fully set forth herein in all Counts listed below:

FIRST CAUSE OF ACTION
(FCA: Causing Presentment of False Claims)
(31 U.S.C. § 3729(a)(1)(A))

36. The United States repeats and re-alleges the above paragraphs as if fully set forth herein.

37. Defendant Bailey, individually and on behalf of Defendant RKB, knowingly requested and obtained a PPP loan for an amount they were not entitled to, in violation of the federal laws and rules regarding PPP loans.

38. Defendant Bailey, individually and on behalf of Defendant RKB, knowingly requested and received forgiveness of the PPP loan, despite their failure to comply with the federal laws and rules regarding PPP loans.

39. Defendant Bailey, individually and on behalf of Defendant RKB, knowingly requested and obtained an EIDL loan for an amount they were not entitled to, in violation of the federal law and the SBA's rules regarding EIDL loans.

40. By virtue of these false claims, the United States was damaged for $160,000 of the proceeds of the PPP loan and $1,974,900 of the proceeds of the EIDL loan, plus any other costs or interest, and is entitled to treble damages under the FCA, plus civil penalties for each violation.

SECOND CAUSE OF ACTION
False Claims Act, 31 U.S.C. § 3729(a)(1)(B)
Making or Using False Records or Statements

41. The United States repeats and re-alleges the above paragraphs as if fully set forth herein.

42. Defendant Bailey, individually and on behalf of Defendant RKB, subsequently knowingly submitted PPP forgiveness applications that misrepresented their eligibility for loan forgiveness.

43. By virtue of these false statements, the United States was damaged for $160,000 of the PPP loan and the processing fees paid to the bank which issued the loan, plus any other costs or interest, and is entitled to treble damages under the FCA, plus civil penalties for each violation.

44. Defendant Bailey, individually and on behalf of Defendant RKB, knowingly submitted an EIDL loan application that contained misrepresentations regarding their intended use of the of the EIDL loan proceeds in violation of federal law and the SBA's rules regarding EIDL loans.

45. By virtue of these false claims, the United States was damaged for $1,974,900 of the proceeds of the EIDL loan, plus any other costs or interest, and is entitled to treble damages under the FCA, plus civil penalties for each violation.

<u>THIRD CAUSE OF ACTION</u>
<u>Contractual Damages Under The EIDL Loan Agreement</u>

46. The United States repeats and re-alleges the above paragraphs as if fully set forth herein.

47. Under the terms of the EIDL loan agreement, "Whoever wrongfully misapplies the proceeds of an SBA disaster loan shall be civilly liable to the Administrator in an amount equal to one-and-one half times the original principal amount of the loan under 15 U.S.C. 636(b)."

48. Defendant Bailey, individually and on behalf of Defendant RKB, knowingly misapplied the proceeds of the EIDL loan and did not use the proceeds of the EIDL loan for the purposes authorized by federal law, the SBA's rules regarding EIDL loans, and the terms of the EIDL loan.

48. By virtue of the breach of the terms of the EIDL loan agreement and the violation(s) of federal law, the SBA's rules regarding EIDL loans, and the terms of the EIDL loan, the United States is entitled to one-and-one half times the original principal amount of the loan as contractual damages and all applicable interests and costs associated with the EIDL loan.

<u>FOURTH CAUSE OF ACTION</u>
False Statements to the SBA
12 U.S.C. § 1833a (FIRREA)

49. The United States repeats and re-alleges the above paragraphs as if fully set forth herein.

50. This is a claim for civil penalties under FIRREA, 12 U.S.C. §1833a, as amended.

51. Defendants, for the purposes of fraudulently obtaining a federally guaranteed PPP loan and inducing the SBA to forgive the loan and also to fraudulently obtain an EIDL loan, in

violation of 12 U.S.C. §1833a, unlawfully, willfully and knowingly made false statements or certifications to SBA Lenders and the SBA in violation of 15 U.S.C. §645(a).

52. Defendant Bailey, individually and on behalf of Defendant RKB, signed the PPP loan agreement and the EIDL loan agreement, thereby knowingly falsely representing that they would "comply with all SBA guidance" as it applied to the PPP and EIDL loans. These false statements were knowingly false and made for the purpose of influencing the SBA to obtain PPP and EIDL loan proceeds in violation of 15 U.S.C. § 645(a).

53. Because of Defendants' acts, they are liable for civil penalties up to the maximum mount authorized under 12 U.S.C. § 1833a(b).

FIFTH CAUSE OF ACTION
Payment under Mistake of Fact/Restitution

54. The United States repeats and re-alleges the above paragraphs as if fully set forth herein.

55. This is a claim for the recovery of monies the United States paid directly or indirectly to Defendant Bailey, individually and on behalf of Defendant RKB, as a result of mistaken understandings of fact.

56. The United States' mistaken understandings of fact were material to its decision to approve and then forgive the PPP loan provided to Defendant Bailey, individually and on behalf of Defendant RKB, as well as the EIDL loan. The United States acted in reasonable reliance on the truthfulness of the statements contained in the PPP loan application, the PPP forgiveness application, and the application for the EIDL loan.

57. Thus, the United States is entitled to damages in the amount of the PPP and EIDL loans, plus any other amounts to be determined at trial.

SIXTH CAUSE OF ACTION
Unjust Enrichment

58. The United States repeats and re-alleges the above paragraphs as if fully set forth herein.

59. This is a claim for the recovery of monies by which Defendant Bailey, individually and on behalf of Defendant RKB, have been unjustly enriched.

60. By obtaining PPP funds to which they were not entitled, Defendant Bailey, individually and on behalf of Defendant RKB, were unjustly enriched, and the United States is entitled to damages in the amount of $160,000 in PPP funds plus loan processing fees and interest, and in the amount of $1,974,900 in EIDL funds plus loan processing fees and interest, together with any other damages to be determined at trial.

PRAYER FOR RELIEF AND JURY DEMAND

The United States requests that the Court enter judgment against the Defendants and grant the following relief:

1. On the First and Second Causes of Action, under the False Claims Act, a judgment against the Defendants, jointly and severally, for damages trebled as required by law, and such civil penalties as are required by law, together with all such further relief as may be just and proper;

2. On the Third Cause of Action, contractual damages as set forth in the EIDL loan agreement for one-and-one half times the original principal amount of the EIDL loan;

3. On the Fourth Cause of Action, civil penalties under FIRREA, 12 U.S.C. §1833a as permitted by law;

4. On the Fifth Cause of Action, an award of damages for the United States the amount mistakenly paid to Defendant Bailey, individually and on behalf of Defendant RKB;

5. On the Sixth Cause of Action, an award of damages for the amount that Defendant Bailey, individually and on behalf of Defendant RKB, were unjustly enriched;

6. An award of pre- and post-judgment interest, costs, and filing fees; and

7. Such other damages and relief as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

The United States demands a jury trial in this case pursuant to Federal Rule of Civil Procedure 38(b) of all claims and issues so triable.

Respectfully submitted,

WILLIAM S. THOMPSON
United States Attorney

s/Fred B. Westfall, Jr.
WV State Bar No. 3992
Assistant United States Attorney
Attorney for United States
300 Virginia Street East
Room 4000
Charleston, WV 25301
Phone: 304-345-2200
Fax: 304-347-5443
E-mail: fred.westfall@usdoj.gov
Counsel for Plaintiff United States of America