

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

RONALD E. SCHERER, SR.,

Plaintiff,

v.

Case No: 6:23-cv-2383-PGB-EJK

J.P. MORGAN CHASE & CO., J.P.  
MORGAN CHASE BANK, N.A.,  
STEVEN TIGGES, STUART G.  
PARCELL, ZEIGER, TIGGES &  
LITTLE, LLP, ALAN M.  
SHAPIRO, ALGENON L.  
MARBLEY, SUMMIT  
COMMUNITY BANK, SUDEEP  
BOSE, LISETTE GONZALEZ,  
LEON COSGROVE, LLP, LEON  
DEREK, JEFFREY PARTLOW,  
THE VANGUARD GROUP,  
PETER SKLAREW, DAVID A.  
HUBBERT, DAVID A. KATINSKY,  
INTERNAL REVENUE SERVICE,  
UNITED STATES DEPARTMENT  
OF JUSTICE, U.S. DEPARTMENT  
OF TREASURY, and UNITED  
STATES OF AMERICA,

Defendants.

**ORDER**

This cause comes before the Court on the United States's Notice of Substitution (the "Motion") (Doc. 10), filed January 17, 2024, which the Court construes as a Motion for Substitution. *Pro se* Plaintiff responded in opposition in two separate filings. (Docs. 13, 14.) The United States then filed a reply without leave of Court, which is

due to be stricken.<sup>1</sup> Upon consideration, the Motion will be granted.

On November 2, 2023, Plaintiff filed his Complaint in the Circuit Court in and for Volusia County, Florida, against a number of Defendants, alleging fraud and racketeering under Florida law. (Doc. 1-2.) The United States removed this action to federal court on December 12, 2023, because it is named as a Defendant in this action. 28 U.S.C. § 1442(a)(1); (Doc. 1 at 2).

The United States subsequently filed a Notice of Substitution, stating that, pursuant to 28 U.S.C. § 2679(d), the United States is substituted for Plaintiff's claims against individual Defendants Alan M. Shapiro, Peter Sklarew, David A. Hubbert, and David A. Katinsky. (Doc. 10 at 1.) Plaintiff alleges that these Defendants, who at the relevant times were employed by the United States Department of Justice's Tax Division as attorneys, breached their professional oaths in participating in the racketeering scheme with the other named Defendants. (Doc. 1-2 ¶¶ 50, 52, 53.)

The Westfall Act allows the United States Attorney General to certify that federal employee defendants were acting within the scope of their employment at the time of the incident out of which the plaintiff's claims arose. 28 U.S.C. § 2769(d)(1). After such certification, the civil action against the federal employees "shall be deemed an action against the United States," and the United States "shall be substituted as the party defendant." *Id.*

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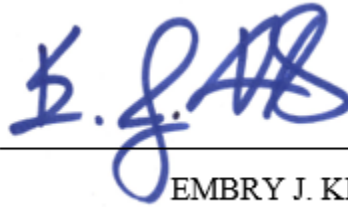
<sup>1</sup> Requests for relief of any type, such as the substitution of defendants, should be made in the form of a motion. *See* Local Rule 3.01(a). Responses to said motions should be contained in a single filing. *See* Local Rule 3.01(b). There is no right to file a reply, and leave of Court must be obtained prior to filing a reply. *See* Local Rule 3.01(d).

Pursuant to the Westfall Act, the Attorney General's delegate has certified that Defendants Alan M. Shapiro, Peter Sklarew, David A. Hubbert, and David A. Katinsky "were employees of the government acting in the scope of federal office or employment at the time of the incident out of which the plaintiff's claims arose." (Doc. 10-1.) Accepting this certification, the United States will be substituted as a party for these Defendants. *Osborn v. Haley*, 549 U.S. 225, 231 (2007) ("The United States, we hold, must remain the federal defendant in the action unless and until the District Court determines that the employee, *in fact*, and not simply as alleged by the plaintiff, engaged in conduct beyond the scope of his employment.") Despite Plaintiff's objection to the substitution, the certification of the Attorney General's delegate is sufficient at this stage of the litigation to replace their names with that of the United States.

Accordingly, it is **ORDERED** as follows:

1. The Clerk of Court is **DIRECTED** to **STRIKE** the United States's Response to Reply to Notice of Substitution. (Doc. 17.)
2. The United States's construed Motion for Substitution (Doc. 10) is **GRANTED**.
3. The Clerk of Court is **DIRECTED** to substitute the United States in for Defendants Alan M. Shapiro, Peter Sklarew, David A. Hubbert, and David A. Katinsky and **AMEND** the case caption accordingly.

**DONE** and **ORDERED** in Orlando, Florida on March 13, 2024.



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EMBRY J. KIDD  
UNITED STATES MAGISTRATE JUDGE