

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK A. ELLISON,

Defendant.

Case No. 1:13-cr-00091-BLW

**MEMORANDUM DECISION AND  
ORDER**

**INTRODUCTION**

Before the Court is a claim from Erin Sundal for decedent Nita Coulter's remaining restitution from *USA v. Ellison, et. al.* For the reasons that follow, the Court will grant Nita Coulter's request.

**BACKGROUND**

On April 14, 2014, the Jury returned a guilty verdict against Defendant Mark A. Ellison on 44 counts of securities fraud. (Dkt. 502, 816.) A judgment of conviction was entered on August 25, 2014, finding Ellison guilty on counts 4 – 13, 36- 45, 49-52, 56, 62, 67, 72 – 80, and 82 – 89 of the Superseding Indictment. (Dkt. 21, 724.) In addition to a term of imprisonment and supervised release, the Court ordered Ellison to pay \$32,158,501.00 in restitution. Nov. 17, 2024, Restitution Order. (Dkt. 816.) As of February 15, 2024, Ellison still owed \$28,197,133.65 in restitution. (Dkt. 1054.)

The Court is tasked with distributing restitution payments deposited with the Court to the victims. Unfortunately, since the 2014 judgment, many of the victims entitled to restitution passed away and left unclaimed funds in possession of the Court.

As a result, the Clerk of the Court sent notice to individuals with a potential interest in the unclaimed funds. In response, claimant Erin Sundal submitted a request to have the unclaimed restitution payments related to decedent Nita Coulter released to her. In support of her request, Erin Sundal submitted the following documents: (1) a victim affidavit; (2) a copy of the certificate of death for Anita Louise Coulter; and, (3) a copy of an affidavit of succession of successor trustee.

### **LEGAL STANDARD**

Although money paid to federal courts generally must be deposited with the Treasury, courts are also allowed to deliver funds to their rightful owners. *See* 28 U.S.C. § 2041. Indeed, “[a]ny claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.” 28 U.S.C. § 2042. However, this means the claimant “bears the burden of affirmatively establishing his entitlement to the funds[.]” *In re Pena*, 974 F.3d 934, 940 (9th Cir. 2020); *see also Hansen v. United States*, 340 F.2d 142, 144 (8th Cir. 1965) (“the burden is upon the claimant to show his right to the fund.”).

## **ANALYSIS**

Erin Sundal has provided sufficient evidence to show she is entitled to receive Nita Coulter's remaining restitution. Anita Coulter's certificate of death shows that she passed away on November 24, 2021, as a resident of California. According to the certificate of death, Anita Coulter was also known as Nita Coulter. The notarized affidavit provided indicates that Erin Sundal was named as the Successor Trustee to the Nita Coulter Trust dated January 27, 2006, and that she assumed the powers and duties as successor trustee on or about December 21, 2021. The Nita Coulter Trust dated January 27, 2006, was recorded as Instrument No. 20211824803 on December 8, 2021, Official Records of Los Angeles County.

Under California law, a trustee has the power to collect, hold, and distribute trust property. Cal. Prob. Code § 16220 (West). Accordingly, as successor trustee, Erin Sundal is entitled to receive Nita Coulter's restitution and distribute it in accordance with Nita Coulter's estate plan.

**ORDER**

**NOW THEREFORE IT IS HEREBY ORDERED:**

- 1) Erin Sundal's request for Nita Coulter's unclaimed restitution payments from *USA v. Ellison, et. al.*, is **GRANTED**.
- 2) The Clerk of the Court shall release the funds to Erin Sundal, Successor Trustee of the Nita Coulter Trust dated January 27, 2006, to be disposed of in accordance with the Nita Coulter Trust dated January 27, 2006, and Nita Coulter's estate plan.



DATED: June 25, 2024

A handwritten signature in black ink, reading "B. Lynn Winmill". The signature is written in a cursive style with a horizontal line underneath.

B. Lynn Winmill  
U.S. District Court Judge