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SPORT & WHEAT CPA PA, a Florida	:	
corporation, individually and on behalf of	:	Case No. 3:20-cv-05425-
a class of similarly situated businesses and	:	TKW-HTC
individuals,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
SERVISFIRST BANK INC.; SYNOVUS	:	
BANK; THE FIRST, A NATIONAL	:	
BANKING ASSOCIATION; and	:	
TRUIST BANK,	:	
	:	
Defendants.	:	
	-x	

Pursuant to Local Rule 7.1(I), Defendant Synovus Bank (“Synovus”) respectfully seeks leave to file a reply memorandum in support of its Motion to Dismiss the Amended Complaint, ECF No. 46. Plaintiff Sport & Wheat CPA PA’s (“S&W”) improper reliance on extrinsic evidence, which it has appended to its opposition brief, ECF No. 56 (“Opp. Br.”), and admitted reversal from the legal positions advanced in its Amended Complaint constitute “extraordinary circumstances” sufficient to permit Synovus an opportunity to respond.

First, Synovus seeks to address S&W's improper reliance on extrinsic evidence in violation of the rule that "[a] court's review on a motion to dismiss is limited to the four corners of the complaint." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009); *Hayes v. U.S. Bank Nat'l Ass'n*, 648 F. App'x 883, 887 (11th Cir. 2016). S&W has filed with its opposition brief 20 pages of previously unproduced text messages, ECF Nos. 56-1, -2, upon which it relies "[t]o add substance to [S&W's] allegation[s]" and "present additional context," Opp. Br. at 4, 9. S&W has also attached to its opposition brief excerpts of a recent Rule 30(b)(6) deposition, ECF No. 56-3, which is currently the subject of a Motion to Terminate based on S&W's misconduct during the deposition. See ECF No. 52. That matter is before Magistrate Judge Cannon, with a hearing scheduled for July 9, 2020. In a reply memorandum, Synovus seeks the opportunity to address the impropriety of S&W's reliance on this extrinsic evidence, particularly given its disputed nature, at the motion to dismiss stage.

Second, after stating in the Amended Complaint that the Paycheck Protection Program is subject to the regulations governing the Section 7(a) loan program and, in particular, that Small Business Administration Form 159 "must" be submitted as a precondition to agent compensation, Am. Compl. ¶¶ 43, 65-67, S&W in its opposition reverses course and explicitly states it "recedes from its position that the general Section 7(a) SBA requirements apply." Opp. Br. 28.

S&W states that it “has reconsidered its position and now argues that Form 159 and other SBA formalities are not required.” *Id.* at 21-22. To justify this blatant about face, S&W purports to rely on “extremely recent authority”—namely a June 8, 2020 bankruptcy court decision striking down an SBA rule that debtors in bankruptcy are not eligible to receive loans under the Paycheck Protection Program. *See id.* at 28 (citing *In re Gateway Radiology Consultants, P.A.*, 2020 WL 3048197 (Bankr. M.D. Fla. June 8, 2020)). In a reply memorandum, Synovus seeks to explain why this new authority is inapposite and why S&W’s original position on this issue is correct.

For these reasons, Synovus respectfully requests leave to file a memorandum replying to S&W’s opposition brief and in support of its Motion to Dismiss the Amended Complaint. As set out in the proposed order attached hereto as Exhibit A, Synovus respectfully requests that such reply memorandum be required to be filed within seven days of the Court’s granting this Motion.

Dated: Washington, D.C.

June 26, 2020

By: /s/ Paul J. Nathanson

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LOCAL RULE 7.1(F) WORD LIMIT CERTIFICATION

Pursuant to Northern District of Florida Local Rule 7.1(F), I certify that this Motion for Leave to File a Reply Memorandum is in compliance with the Court's word limit. According to the word processing program used to prepare this motion and memorandum, the document contains 521 words, exclusive of the case style, signature block, and this certification.

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