

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

SPORT & WHEAT CPA PA,
a Florida corporation, individually and
on behalf of a class of similarly situated
businesses and individuals,

Plaintiff,

v.

SERVISFIRST BANK INC.;
SYNOVUS BANK;
THE FIRST, A NATIONAL
BANKING ASSOCIATION; and
TRUIST BANK,

Defendants.

Case No. 3:20-cv-5425-TKW-HTC

**PLAINTIFF SPORT & WHEAT'S
MOTION TO FILE EXHIBITS UNDER SEAL**

Sport & Wheat moves for leave to file certain exhibits under seal. This motion is in accordance with Loc. R. 5.5(C).

The exhibits are text messages that are at issue in connection with Synovus's motion to terminate its own deposition, ECF No. 52. This motion is set for hearing on July 9. Sport & Wheat will deal with the merits of that motion in a separate brief; suffice it to say, Sport & Wheat does not agree with what Synovus has said there or what Synovus did at the deposition—namely, Synovus walked out.

Synovus moves to terminate the deposition, asserting a basis under Rule 30(d). In reality, 100% of the reason Synovus walked out is over questions relating to these text messages that two of its employees exchanged with a principal in Sport & Wheat. The word “text” or “texts” appears on practically every single page of the motion other than those that have nothing to do with the deposition itself. Synovus complains of “redactions,” Mot. at 4, that Sport & Wheat supposedly made from various texts, and also complains that the texts lacked “context,” *id.* at 4, n.5.

Synovus has all of those texts which were used with the witness at the deposition (and indeed, since these are bank employees writing to customers in the course of their jobs, has always had access to them). But so that there is no confusion about what documents are at issue or what was done at the deposition, Sport & Wheat would like to file, under seal, the *complete* set of text messages that its counsel had in his possession at the time Synovus’s deposition was taken. Synovus has made some very extreme attacks on Sport & Wheat and its counsel. It is essential that the Court have access to these documents, if it wants, so that it can judge for itself if Sport & Wheat, or its lawyers, engaged in the extreme misconduct that Synovus asserts it did. Among other things, the Court should see what was “redacted” and why that was done. Sport & Wheat has a right to defend itself.

Sport & Wheat seeks to file this full set of texts *under seal* for a couple of related reasons. Foremost among them is the privacy of the Sport & Wheat employee, the two Synovus employees, and the people they were discussing—none of whom likely anticipated that their private text messages would wind up on the public docket. Among these texts are references to personal matters, including some significant medical news about third persons, and some texts which may not paint the bank employees in the best light. Sport & Wheat has no interest in embarrassing any individual. This case is about fair compensation and that is all.

Also, there are discussions of private financial matters of the mutual clients of both Synovus and Sport & Wheat. Sport & Wheat is obligated under Fla. Stat. § 90.5055, the accountant-client privilege, to safeguard its clients' information from public disclosure. Filing under seal will allow the Court to judge the merits of Synovus's motion without injuring Sport & Wheat's own customers.

Finally, Sport & Wheat would like the Court to understand that it has conferred with Synovus on this motion and been rebuffed. Initially, Synovus wanted these text messages; that's why it walked out of the deposition, and indeed it claimed, incorrectly, in its recent motion that "plaintiffs' counsel . . . said he would send the unredacted documents" the very day after the deposition, Mot. at 12, n.7.

Today, however, Synovus stated that it saw no purpose in filing the same texts with the Court under seal and refused to consent to this motion.

Sport & Wheat does not understand the position flip. If Synovus intends to accuse Sport & Wheat of malfeasance in connection with taking this deposition, then it ought to agree the Court should see the evidence. The fact that Synovus did not attach even one of these disputed documents to its *own* motion is very telling.

Sport & Wheat is aware of the portion of Loc. R. 5.5(D) which states that, where feasible, a redacted version of a sealed document must be filed on the public docket. Sport & Wheat asks that the Court provide instruction on complying with this rule at or after the July 9 hearing, and asks that it be relieved of compliance until the Court issues an order.

In conclusion:

1. Sport & Wheat seeks leave to file text messages involving two Synovus employees under seal.

2. Sport & Wheat asks the Court to provide instruction relating to Loc. R. 5.5(D) at or after the July 9 hearing.

Sport & Wheat appreciates the Court's consideration.

Dated: June 30, 2020

Respectfully submitted,

/s/ William F. Cash III

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CERTIFICATE REGARDING COMPLIANCE WITH LOC. R. 7.1(B)

Sport & Wheat sought Synovus's consent today. Synovus stated that it would not agree to this motion.

/s/ William F. Cash III

CERTIFICATE OF WORD COUNT UNDER LOC. R. 7.1(F)

I certify that the core of this brief contains 784 words, including headers, footnotes, and quotations.

/s/ William F. Cash III