

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 22-20290-CR-BLOOM/OTAZO-REYES

UNITES STATES OF AMERICA,

Plaintiff,

v.

ERIC DEAN SHEPPARD,

Defendant.

**DEFENDANT’S RESPONSE TO
THE GOVERNMENT’S NOTICE OF SUPPLEMENTAL AUTHORITY AT [D.E. 228]**

Both cases the government cites support Sheppard. They reaffirm that, under *Takhalov*: (1) there must be “intent to harm”; (2) the critical question is whether a misrepresentation goes to “the nature of the bargain”; and (3) a misrepresentation goes to the nature of the bargain when it implicates the victim’s financial interest—i.e., its *property interest*—in the transaction. *United States v. Watkins*, 42 F.4th 1278, 1282 n.5, 1287 (11th Cir. 2022); *United States v. Waters*, 937 F.3d 1344, 1351-57 (11th Cir. 2019). Thus, a defendant commits fraud by, for example, “misleading investors into believing the solicited funds would be used for business purposes,” *Watkins*, 42 F.4th at 1281, 1282 n.5, or misrepresenting his “creditworthiness,” *id.* at 1282 n.5 (citing *Waters*, 937 F.3d at 1357).

Here, PPP eligibility criteria were not material to the banks’ financial/property interests in the loans. [D.E. 218 at 12; Hrg. Tr. 52-54]. The banks were financially indifferent to whom they made PPP loans. In fact, the government’s asserted theory of harm is that the banks would have made the loans on the same financial terms to someone else. [Hrg. Tr. 39-40]. The government’s naked fraudulent-inducement theory fails under *Takhalov* and its progeny.

Dated: April 11, 2024.

Respectfully submitted,

NELSON MULLINS

One Biscayne Tower, 21st Floor
2 S. Biscayne Boulevard
Miami, FL 33131
Telephone: 305.373.9400

By: /s/ Christopher Cavallo

Christopher Cavallo
Florida Bar No. 0092305
Jayne C. Weintraub
Florida Bar No. 320382
Jonathan Etra
Florida Bar No. 686905

O'MELVENY & MYERS

By: /s/ Jason Zarrow
Jason Zarrow (admitted pro hac vice)
400 S. Hope Street
Los Angeles, CA 90071
(213) 430-8367

Jeffrey L. Fisher (admitted pro hac vice)
2765 Sand Hill Road
Menlo Park, CA 94025
(650) 473-2600

BLACK SREBNICK

201 South Biscayne Boulevard, Suite 1300
Miami, Florida 33131
Tel. (305) 371-6421

By: /s/ Howard Srebnick

HOWARD SREBNICK
Florida Bar No. 919063

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 11, 2024, the foregoing document was filed via the Court's CM/ECF system to all counsel of record.

By: /s/ Christopher Cavallo
Christopher Cavallo