UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DV DIAMOND CLUB
OF FLINT, LLC, *et al.*,

Plaintiffs,

Case No. 20-cv-10899
Hon. Matthew F. Leitman

v.

UNITED STATES SMALL BUSINESS
ADMINISTRATION, *et al.*,

Defendants.
_____/

ORDER SETTING BRIEFING SCHEDULE FOR PLAINTIFFS' RENEWED EMERGENCY MOTION FOR ENTRY OF A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION (ECF No. 12)

Plaintiffs "own and operate venues that present clothed, semi-nude, and/or nude performance entertainment, similar retail establishments, and businesses that service those establishments." (Mot., ECF No. 12, PageID.475.) Plaintiffs have each applied for loans, or attempted to apply for loans, under the Paycheck Protection Program (the "PPP") of the Coronavirus Aid, Relief, and Economic Security Act. Plaintiffs say that Defendants have promulgated and wrongly enforced against them an unconstitutional regulation that prevents banks from providing loans under the PPP to businesses that derive more than a *de-minimus* portion of their gross revenues from entertainment of a "prurient sexual nature." (*Id.*, PageID.472.)

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The Court held an on-the-record video conference with counsel for all parties on April 20, 2020, to discuss a schedule for Plaintiffs' emergency motion. During that conference, counsel for Defendants informed the Court that if Plaintiffs' counsel provided to Defendants' counsel completed and submitted loan applications from each of the Plaintiffs, Defendants would likely be able to set aside the funds that Plaintiffs requested in those applications while the Court decides the pending emergency motion. Assuming that the Defendants will be able to set aside those funds, the Court sets the following schedule with respect to Plaintiffs' motion:

- By no later than **12:00 p.m. on April 20, 2020**, Plaintiffs' counsel shall provide to Defendants' counsel all loan applications in his possession. Plaintiffs' counsel shall collect all loan applications not currently in his possession and provide those to Defendants' counsel by no later than **5:00 p.m. on April 20, 2020**.
- By no later than **5:00 p.m. on April 21, 2020**, Defendants shall inform the parties and the Court if the Defendants have set aside the funding requested by Plaintiffs in the loan applications. If the Defendants cannot set aside the requested funds, then the Court will convene a status conference with counsel to discuss what adjustments to the schedule, if any, are necessary.
- By no later than **April 24, 2020**, Defendants shall file their response to Plaintiffs' emergency motion.

- By no later than **9:00 a.m. on April 27, 2020**, Plaintiffs shall file a reply brief.
- The Court will schedule a Zoom hearing on Plaintiffs' motion for the week of April 27, 2020.
- A representative of the Small Business Association who can testify as a deponent under Federal Rule of Civil Procedure 30(b)(6) shall be made available for a deposition within **48 hours** of the Court's hearing on Plaintiffs' motion if the Court determines during the hearing that such a deposition is necessary to resolve the motion.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: April 20, 2020

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on April 20, 2020, by electronic means and/or ordinary mail.

s/ Holly A. Monda
Case Manager
(810) 341-9764