UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CONSUMER FINANCIAL PROTECTION BUREAU, Plaintiff, v. HEIGHTS FINANCE HOLDING CO. f/k/a SOUTHERN MANAGEMENT CORPORATION; COVINGTON CREDIT OF ALABAMA, INC; SOUTHERN FINANCE OF TENNESSEE, INC.; COVINGTON CREDIT OF GEORGIA, INC.; SOUTHERN FINANCE OF SOUTH CAROLINA, INC.; COVINGTON CREDIT OF TEXAS, INC.; COVINGTON CREDIT, INC.; and QUICK CREDIT CORPORATION Defendants.	Civil Action No.: 6:23-CV-04177-JDA

DEFENDANTS' REPLY TO PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITIES REGARDING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Defendants, by and through undersigned counsel, hereby reply to Plaintiff's Notice of Supplemental Authorities regarding Defendants' Motion for Judgment on the Pleadings (ECF No. 102) ("Notice").

The district court's order in *Consumer Financial Protection Bureau v. Active Network, LLC* does not address whether the CFPB has proper funding from the "combined earnings" of the Federal Reserve System in accordance with the Supreme Court's decision in *CFPB v. Comm. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 441 (2024). *See CFPB v. Active Network, LLC*, No. 4:22-cv-00898-ALM, 2024 WL 4437639 (E.D. Tex. Oct. 7, 2024) (ECF No. 28). Indeed, the order's analysis is limited to the plausibility of the pleadings. *Id.* at *2.

Similarly, the magistrate judge's recommendation in *Texas v. Colony Ridge, Inc.* does not address the merits of Defendants' "combined earnings" argument in the pending Motion for Judgment on the Pleadings. *Texas v. Colony Ridge, Inc.*, No. 4:24-cv-00941, 2024 WL 4553111 (S.D. Tex. Oct. 11, 2024). Instead, the relevant issue in *Texas v. Colony Ridge, Inc.* was whether the CFPB's funding from the Federal Reserve System had any bearing on whether the State of Texas could bring a federal claim under the Consumer Financial Protection Act ("CFPA"). *See Colony Ridge, Inc.,* 2024 WL 4553111, at *4–5. More specifically, Section 5552(b)(1)(A) of the CFPA requires state agencies to give the CFPB notice before filing a CFPA claim in federal court. *See* 12 U.S.C. § 5552(b)(1)(A). The magistrate judge's recommendation merely noted that the pre-suit notice requirement does *not* require the CFPB to respond to the notice or take any other action, and therefore, defendants in that case failed to show "how any alleged lack of agency [CFPB] funding would deprive this court of jurisdiction to entertain" the State of Texas' federal claim. *Colony Ridge, Inc.*, 2024 WL 4553111, at *5.

Finally, the district court's order in *Consumer Financial Protection Bureau v. SoLo Funds, Inc.* is distinguishable because the defendants in that case incorrectly framed the "combined earnings" argument as a *statutory* issue. Def.'s Mem. P. & A. Supp. Mot. Dismiss Am. Compl. at 4–5, *CFPB v. SoLo Funds, Inc.*, No. 2:24-cv-04108-RGK-AJR (C.D. Cal. Sept. 3, 2024), ECF No. 35-1, at 9–10. As a result, the district court did not attempt to interpret the relevant statutory language because the defendants failed to assert appropriate remedies for a *statutory* violation. *CFPB v. SoLo Funds, Inc.*, No. 2:24-cv-04108-RGK-AJR, 2024 WL 4553110, at *2 (C.D. Cal. Oct. 17, 2024). Here, Defendants have squarely raised a *Constitutional* issue in connection with their "combined earnings" argument (ECF No. 71, pp. 1–2) and discussed, at length, the appropriate remedies for the *Constitutional* violation (ECF No. 71, pp. 7–14).

Dated: October 30, 2024

Respectfully submitted,

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