

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 11-cv-02971-WYD-KMT

TOUCHSTONE GROUP, LLC on behalf of itself and all others similarly situated,

Plaintiff,

v.

DANIEL J. RINK; TATUM, LLC; SFN GROUP, INC.; CHRISTOPHER FLANNERY;
ASTOR, WEISS, KAPLAN, & MANDEL LLP; ESTILL & LONG, LLC;
STEVEN GRANOFF, CPA;
KRASSENSTEIN, GRANOFF & UNGER, LLC;
CARBON DIVERSION, INC.;
TRACS GROWTH INVESTMENT; AND
JOHN DOES 1 - 100,

Defendants.

ORDER

THIS MATTER is before the Court on Plaintiff's Motion to Strike or Exclude, filed April 18, 2012 [ECF No. 43]. Therein, Plaintiff states that the document identified as Exhibit A attached to Defendants Tatum, LLC and SFN Group, Inc.'s Motion to Dismiss is not the same document referred to in paragraph 60 of Plaintiff's Class Action Complaint. Therefore, I find it is appropriate to convert the Motion to Dismiss to a Motion for Summary Judgment. Pursuant to the Federal Rules of Civil Procedure, if matters outside the pleadings are presented to and not excluded by the Court, a motion to dismiss pursuant to Rule 12(b)(6) shall be treated as a motion for summary judgment. Fed.R.Civ.P. 12(b); *Lucero v. Gunther*, 52 F.3d 874, 877 (10th Cir. 1995). Accordingly,

it is hereby

ORDERED that Plaintiff's Motion to Strike or Exclude, filed April 18, 2012 [ECF No. 43] is **DENIED**. It is

FURTHER ORDERED that Defendants Tatum, LLC and SFN Group, Inc.'s Motion to Dismiss Counts I, II, III, IV, VI and XI of Plaintiff's Complaint, filed March 29, 2012 [ECF No. 29] is converted to a Motion for Summary Judgment. It is

FURTHER ORDERED that any party who wishes to submit additional materials for the Court to consider in connection with the Motion for Summary Judgment may do in connection with the filing of its Response and Reply brief.

Dated: April 20, 2012

BY THE COURT:

s/ Wiley Y. Daniel _____
Wiley Y. Daniel
Chief United States District Judge