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-05425-TKW-HTC

JOINT REPORT PURSUANT TO FRCP 26(f) AND
<u>THE COURT'S INITIAL SCHEDULING ORDER</u>

On June 15, 2020, Plaintiff Sport & Wheat CPA, PA ("S&W"), Defendant Synovus Bank ("Synovus"), Defendant ServisFirst Bank ("ServisFirst"), and Defendant Truist Bank ("Truist") conferred pursuant to Federal Rule of Civil Procedure 26(f) and Paragraph 2(a) of this Court's Initial Schedule Order. (Defendant The First, N.A., was not yet served and did not participate in the conference.) The parties' joint report regarding that conference, including their respective positions, is contained below.

1. MAGISTRATE JUDGE JURISDICTION

The parties conferred regarding Magistrate Judge jurisdiction over this case.

2. NATURE AND BASIS OF CLAIMS AND DEFENSES

a. Plaintiff Sport & Wheat.

This is a nationwide class action seeking relief on behalf of accounting firms and others, whose work made it possible for banks for earn fees from the federal government.

Sport & Wheat is a small, two-partner accounting firm in Pace, Fla. Its many small business clients approached it, even before the passage of the CARES Act on March 27, 2020, about applying for relief under that law, and specifically the "Paycheck Protection Program." The PPP provides grant money to small business in the form of fast, forgiveable loans made private banks and 100% guaranteed and funded by the Small Business Administration. The point of the PPP was to keep small businesses alive during virus-caused shutdowns.

Sport & Wheat assisted a number of its clients with applications for these loans. Pulling together the payroll and other information needed, filling in loan applications, and communicating with banks regarding these loans was Sport &

Wheat's job and it was overwhelming. There was intense competition for the PPP funds, and Sport & Wheat, as well as the defendant banks, worked around the clock to process as many loans as possible. In many situations, Sport & Wheat was the navigator, communicating directly with banks, advocating for clients, interacting with bank web sites, and signing documents on behalf of its clients. And in many situations, the banks were directly aware of and even encouraged Sport & Wheat's involvement.

In doing so, Sport & Wheat acted as an "agent" for federal-law purposes, as well as a person conferring a benefit on a third party for state-law purposes.

The relevant regulation requires that banks, who are receiving generous fees from the federal government for their work in making these risk-free loans, must share a portion of those fees with any "agent" who assisted a borrower—here, Sport & Wheat's many small business clients.

Despite this regulation, and in violation of state law, the Defendants in this action refused to pay Sport & Wheat anything for its work; so, this suit was filed. By contrast, other banks have agreed to pay Sport & Wheat its rightful fee, and other banks around the country have also agreed to pay fees owed to other accounting firms.

Sport & Wheat asserts various causes of action, including contract implied in law, unjust enrichment, and conversion. Sport & Wheat also seeks declaratory and injunctive relief to the extent this is necessary to permit the Defendants to settle Sport & Wheat's claims.

Defendants' refusal to pay agents' claims is a systemic, nationwide practice. Hence, this case also contains a nationwide class action allegation and a Florida-wide subclass. Sport & Wheat seeks relief on behalf of similarly situated "agents," including accounting firms, consultants, and others listed in the relevant regulations.

The Court asked the parties to make a "good faith attempt to identify the principal factual and legal issues in dispute." The parties do agree that the interpretation of the CARES Act, including the section that created the PPP, and the regulations implementing it, are legal issues in dispute. The parties also disagree on whether this case is susceptible to class action treatment.

It is also plain that the parties also disagree on the application of the Florida law of unjust enrichment (and, likely, by extension, the application of similar laws in other states). The factual issues in dispute at this time would appear to center on how the Defendants treated Sport & Wheat during the time it was assisting borrowers, and the communications Defendants had with Sport & Wheat and other class members.

b. Defendant Synovus Bank.[1]

As explained more fully in Synovus's Motion to Dismiss the Amended Complaint, this case involves the Paycheck Protection Program ("PPP"), created as part of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (the "CARES Act" or "the Act"). The CARES Act is part of the Federal government's response to the economic hardship caused by the COVID-19 pandemic. To provide emergency assistance to small businesses affected by the pandemic, the PPP significantly expanded the Small Business Administration's ("SBA") 7(a) loan program for small businesses and provided a mechanism by which borrowers could receive funds to cover payroll and other expenses and, in certain circumstances, have their loans forgiven by the government. PPP loans are processed and disbursed through private lenders such as Synovus, and those lenders receive a statutory processing fee from the government for each approved loan.

Plaintiff S&W is an accounting firm. S&W claims it assisted a client with an application to Synovus for a PPP loan. S&W does not allege that Synovus

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[1] Plaintiff did not circulate its portions of this Joint Report until 3:36pm on Monday, June 29, 2020—the day the report was due to the Court. In Section 2(a) above Plaintiff appears to attempt to make various representations regarding what the parties do or do not agree to in this case, but Plaintiff would not accept any edits to that section. As a result and given the press of time, all Defendants object to Plaintiff's Section 2(a) above.

authorized any such work; in fact S&W admits Synovus did not authorize such work and stated that it would not pay agent fees. Instead, S&W alleges that the CARES Act and SBA regulations thereunder create an absolute *entitlement* to fees for any agent who *claims* to have assisted a PPP borrower in preparing an application. S&W insists that lenders must pay those fees even where, as here, the lender in no way authorized the agent's activities. As explained in Synovus's motion to dismiss the amended complaint, the CARES Act created no such entitlement and does not even provide a private right of action. For these and other reasons under Florida law, all of Plaintiff's claims are meritless.

On May 17, 2020, Synovus promptly moved to dismiss Plaintiff's initial complaint. Ten days later, on May 27, 2020, Plaintiff rendered its initial complaint a nullity by filing an amended complaint which, among other things, added two defendants and attempted to remedy multiple blatant pleading deficiencies. Synovus promptly moved to dismiss Plaintiff's amended complaint, which is based on the same flawed legal theory as Plaintiff's initial complaint. Because of this Court's order requiring that discovery go forward despite the pending motion to dismiss, ECF No. 16, the parties proceeded with discovery.

c. Defendant Truist Bank.

As noted by Synovus above, this case involves the Paycheck Protection Program ("PPP"), which was created as part of the Coronavirus Aid, Relief, and

Economic Security Act, Pub. L. 116-136 (the "CARES Act" or "the Act") and in response to the economic crisis caused by the COVID-19 pandemic. The PPP expands an existing federal program—the Small Business Administration's ("SBA") 7(a) loan program—and provides government-backed loans to small businesses so that they can cover payroll and other expenses and thus "weather" the pandemic. Like other SBA 7(a) loans, PPP loans are processed and disbursed through private lenders (such as Truist), and those lenders receive a statutory processing fee from the government for each approved loan. Importantly, although the SBA has issued regulations *limiting* the maximum amount of fees, if any, that an agent assisting a borrower in preparing a PPP loan application may receive,[2] there is no affirmative entitlement to any such agent fees.

Plaintiff S&W claims that it assisted at least one Truist customer with an application to Truist for a PPP loan. Because of its alleged assistance, S&W claims that it is an "agent" and that it is entitled to a portion of the statutory processing fee paid to Truist. However, S&W does not allege that: (i) it sought authorization from Truist to do any work, (ii) Truist authorized it to do any work, or (iii) Truist agreed to compensate it for doing any work. Instead, S&W argues

[2] Truist has not yet responded to Plaintiff's Complaint and has until July 3 to do so. (D.E. 43). Truist expressly reserves any and all rights, claims, remedies, and defenses it has or may have, including as to the SBA's authority to issue such regulations.

that the CARES Act and its regulations create an absolute right to fees for any "agent" who *claims* to have assisted a PPP borrower in preparing an application, regardless of the nature of the assistance provided or whether the lender authorizes the agent's activities. But, this is simply not what the Act provides. S&W is unable to identify a federal cause of action or state a claim under federal law, and also fails to state any claim under Florida law. For these and other reasons, Plaintiff's claims are meritless. Truist will, and reserves the right to, further expound upon its position and defenses in its forthcoming motion to dismiss.

d. Defendant ServisFirst Bank.

As explained more fully in ServisFirst's Motion to Dismiss the Amended Complaint (Doc. 49), Congress expressly directed the SBA to "reimburse" lenders for their efforts in processing PPP loans, and Congress set specific amounts for that "reimbursement." *See* 15 U.S.C. § 636 (a)(36)(P) (directing that "[t]he Administrator shall reimburse a lender" in specified amounts and further directing that the "reimbursement … shall be made not later than 5 days after the disbursement of the covered loan."). Plaintiff S&W now asks the Court to ignore this clear Congressional directive and divert millions of dollars of statutorily-mandated fees to unknown third parties. On behalf of all "agents," S&W demands that lenders pay everyone who claims to have helped a borrower obtain a PPP loan—regardless of whether the "agent" had any agreement with a lender. There is no legal basis for this demand and ServisFirst respectfully submits that this case should be dismissed now in its entirety. Because of this Court's order requiring that discovery go forward despite the pending motion to dismiss, (Doc. 16), the parties have conferred and are prepared to proceed with discovery, as outlined below.

3. POSSIBILITY FOR PROMPT SETTLEMENT OR RESOLUTION

Based on the parties' conference, the possibility for prompt settlement or resolution of this case is unlikely.

4. WHETHER THE INITIAL SCHEDULING ORDER SHOULD BE REVISED OR AMENDED

a. Plaintiff Sport & Wheat.

Yes, the current scheduling order should be amended, for the following reasons:

(1) Truist and TheFirst were not even parties at the time the Court entered the Order, and as Truist points out, it accepted service on June 3. The schedule should be modified to accommodate their entry in the case.

(2) The Defendants are large corporate entities who have extensive contacts and files. For example, Synovus has approximately 300 branches and brought 400 employees into the process of processing loans; it processed about 20,000 loan applications. Truist says it is the sixth-largest commercial bank in the Nation and it

closed over 75,000 loans—the fourth-highest total of PPP loans in the Nation.[3] TheFirst made approximately 3,000 PPP loans and has approximately 350 agents already on file (with an unknown number of agents whom, like Sport & Wheat, it deterred from payment).

(3) The amount of electronic discovery that could occur in a case like this is unknown, but potentially large. Loan data will be found in complex banking systems that were likely designed literally overnight to accommodate the new federal law, as well as changes in SBA guidance from day to day. To assess this information, Sport & Wheat anticipates the Defendants will take substantial time to do it.

(4) The Order does not differentiate between fact discovery and expert discovery. In this case, expert testimony in the form of accountants testifying to industry standards and norms is likely to be offered. The current Order does not give very much time to finish fact discovery before expert reports would be due.

(5) This is a putative class action, and there should be a schedule regarding class certification briefing.

Sport & Wheat proposes the following dates, as requested by the Court's order, ¶ 2(a)(iv):

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[3] Small Business Administration, *Paycheck Protection Program(PPP) Report* (June 20, 2020), *available at* https://www.sba.gov/sites/default/files/2020-06/PPP_Report_200620-508.pdf.

Joinder of other parties	October 1, 2020
Amendments to the pleadings	October 1, 2020
Close of fact discovery	November 1, 2020
Motion for class certification due	November 15, 2020
Expert reports due from both sides	December 1, 2020
Discovery taken against experts	December 1, 2020 to January 15, 2021
Filing of *Daubert* motions	February 15, 2021
Opposition briefs due	March 1, 2021
Filing of any summary judgment motions	By March 15, 2021
Opposition briefs due	April 15, 2021

Sport & Wheat submits this schedule on the understanding that the Defendants will promptly produce ESI and there will not be significant disputes regarding its production. In the event the parties cannot resolve these matters, these dates would likely have to change.

b. Defendant Synovus Bank.

In Synovus's view, the Court's May 18, 2020 Initial Scheduling Order contains reasonable dates and deadlines and should not be revised or amended.

c. Defendant Truist Bank.

Truist respectfully requests that all dates set forth in the Initial Scheduling Order be extended by 60 days. Plaintiff filed its original complaint against Defendants Synovus and ServisFirst on April 26, 2020. Thereafter, but before Truist was named as a Defendant, the Court entered its Initial Scheduling Order. More than a month after Plaintiff filed its original complaint, Plaintiff filed the Amended Complaint, naming additional parties, including Truist. Truist accepted service of the Amended Complaint on June 3, 2020. Because Truist was only recently named and served in this case, Truist respectfully requests an additional 60 days be added to all deadlines.

d. Defendant ServisFirst Bank.

ServisFirst agrees that the Court's May 18, 2020 Initial Scheduling Order contains reasonable dates and deadlines and should not be revised or amended.

5. PARTIES' RESPECTIVE DISCOVERY REQUIREMENTS

a. Plaintiff Sport & Wheat.

Sport & Wheat requires sufficient discovery to prove its individual claims, but also class allegations and to certify a class under Rule 23.

The default discovery limits on interrogatories, requests for admissions, and requests for production are acceptable.

However, the 10-deposition limit in Fed. R. Civ. P. 30(a)(2)(A)(i) should not be implemented here. This is a complex, five-party action governed by both federal law and state law, and the Defendants are large entities who control scores of potentially relevant witnesses.

Sport & Wheat proposes that it be permitted to take 40 depositions, in total, and that each Defendant be permitted to take 10. The reason for this "uneven" number is simple: Sport & Wheat must pursue a case against each of the separate defendants separately. Thus, 40 depositions to take against four Defendants is not an extraordinarily high number. In response to the defendants, Sport & Wheat points out that it was efficient and appropriate to file one civil action, not four, where the defendants have taken similar positions, and it should not be penalized for doing that. Moreover, common legal issues do not necessarily make for common depositions.

Further, 40 depositions is not unreasonable given the giant size of some of the banks involved and the nationwide scope of the putative class.

Regarding Sport & Wheat's necessary document discovery, it will seek from the Defendants information about their contacts with agents and with borrowers; it will also seek Defendants' understanding of the meaning of the PPP regulation and information about how they implemented it. These documents will be found at bank headquarters, but also in the personal files of people who made contact with agents. Sport & Wheat is willing to consider "sampling" or limited, targeted discovery requests made against each defendant.

b. Defendant Synovus Bank.

In Synovus's view, the Court's May 18, 2020 Initial Scheduling Order contains reasonable dates, deadlines, and procedures for discovery and should not be revised or amended.

Synovus further believes that the limit for the number of depositions set forth in Federal Rule of Civil Procedure 26(a)(2)(A) is appropriate and should apply in this case. Plaintiff chose to join four unrelated banks as defendants in this case knowing of the limitation set forth in Rule 26(a)(2)(A). That was Plaintiff's decision. Further, as written, Plaintiff's proposal above would allow Plaintiff to take more than 10 depositions of a given defendant by limiting the number of deposition Plaintiff took of another Defendant. That is not contemplated by the text or the spirit of Rule 26(a)(2)(A).

c. Defendant Truist Bank.

For the reasons set forth above, Truist respectfully requests that all dates set forth in the Initial Scheduling Order be extended by 60 days. Truist joins in Synovus' opposition to the enlargement of number of depositions for the same reasons stated by Synovus and because Plaintiff has argued here and in favor of an MDL that there are common issues among all the Defendants.

d. Defendant ServisFirst Bank.

ServisFirst agrees that the Court's May 18, 2020 Initial Scheduling Order contains reasonable dates and deadlines and should not be revised or amended. ServisFirst also joins in Synovus' opposition to the enlargement of number of depositions for the same reasons stated by Synovus and because Plaintiff has argued here and in favor of an MDL that there are common issues among all the Defendants.

6. WHETHER ANY PARTY WILL LIKELY REQUEST OR PRODUCE INFORMATION FROM ELECTRONIC OR COMPUTER-BASED MEDIA

a. Plaintiff Sport & Wheat.

Yes, Sport & Wheat has sought and will seek electronic information. This falls into three main categories:

- **Loan system information.** Data from systems about loans, about agents' contact and communications with each Defendant, and data showing whether an agent has been compensated. It may also including loan applications submitted to banks showing agents' names.

- **Internal communications.** Primarily, e-mails and other records of defendants' decisions whether to pay agents fees as required by the PPP. Also, communications to lower-level employees about these policies.

- **External communications.** Primarily, e-mails, text messages, and web-based communications between Defendants and Sport & Wheat and the putative class members.

At this time, Sport & Wheat is largely in the dark about the state of these systems. Not one Defendant came to the Rule 26(f) meeting with any information regarding its systems. All Synovus would say is that its production would be limited to reasonably available data. Synovus also expressly refused to identify the names of any computer systems or databases, and said that if Synovus used "an abacus" to keep its books, Sport & Wheat was not entitled to see the abacus. Truist indicated it was in the process of gathering information and could not give specifics. ServisFirst was "not in a position" to discuss ESI. Accordingly, the parties were not able to discuss, *e.g.*, anything about "the format and media" of ESI requests or production. ISO, ¶ (2)(a)(vi)(3). That was despite Sport & Wheat's willingness to do so.

However, Sport & Wheat believes that the relevant data should all be readily available in Defendants' systems, since the CARES Act was signed just three months ago. No resort to backup tape or other heroic efforts should be expected.

Sport & Wheat anticipates that most of the Defendants will raise various financial privacy or business processes objections to the production of internal loan files.

Regarding the production of inadvertently produced material, no party discussed this at the planning meeting. However, Sport & Wheat is fine to follow the Defendants' suggestions to observe Rule 502(b) and all of Rule 26. Sport & Wheat is confident the parties will work out such matters as professionals.

Sport & Wheat also has taken reasonable steps to protect all potentially relevant and discoverable data.

b. Defendant Synovus Bank.[4]

Synovus has served discovery requests on S&W and expects that S&W will search S&W's electronic and computer-based media for responsive documents reasonably available to it and will produce such documents as they are kept in the ordinary course of business. Synovus intends to do the same. Synovus anticipates that it will produce ESI to the parties either via a secure online sharing service such as Dropbox or by flash drive. Synovus has taken reasonable measures to preserve potentially discoverable data from alteration or destruction in the ordinary course of business or otherwise. With respect to procedures to deal with inadvertent production of privileged or protected information, Synovus believes it is appropriate for the parties and the Court to adhere to Federal Rule of Evidence 502(b) and Federal Rule of Civil Procedure 26(b)(5)(B).

[4] In connection with the preparation of this report, Plaintiff has attempted to make representations regarding statements made by other parties during the conference despite the fact that no court reporter was present and no transcript exists. Plaintiff even attempted to make some such representations in a draft circulated at 6:50pm on June 29, 2020—the day the report was due to the Court. Synovus objects.

Synovus disputes S&W's representation above that it is "largely in the dark about the state of [Synovus'] systems." S&W took a Rule 30(b)(6) deposition of Synovus on June 18, 2020 and engaged in an examination of Synovus' corporate representative regarding computer software and programs used by Synovus as well as other technical matters. Additionally, Synovus disputes Plaintiff's representation above that "not one Defendant came to the Rule 26(f) meeting with any information regarding its systems," which is utterly vague.

c. Defendant Truist Bank.

Truist expects that the parties will request information from electronic or computer-based media. Accordingly, Truist will search its electronic and computer-based media for responsive documents that are reasonably available and will produce such documents as they are kept in the ordinary course of business as required under the Federal Rules of Civil Procedure. Truist expects that Plaintiff will do the same. Truist anticipates that it will produce ESI to the parties electronically, where size permits (such as via a FTP link), or by portable storage device (e.g., Universal Serial Bus (USB) flash drive) delivered by U.S. Mail, Federal Express, United Parcel Service, or courier. Truist has taken reasonable measures to preserve potentially discoverable data from alteration or destruction in the ordinary course of business or otherwise.

With respect to procedures to deal with inadvertent production of privileged or protected information, Truist agrees that it is appropriate for the parties and the Court to adhere to Federal Rule of Evidence 502(b) and Federal Rule of Civil Procedure 26(b)(5)(B).

d. Defendant ServisFirst Bank

ServisFirst will issue discovery requests in due course and expects that S&W will search S&W's electronic and computer-based media for responsive documents reasonably available to it and will produce such documents as they are kept in the ordinary course of business. ServisFirst intends to do the same. ServisFirst anticipates that it will produce ESI to the parties either via a secure online sharing service such as Dropbox or by flash drive. ServisFirst has taken reasonable measures to preserve potentially discoverable data from alteration or destruction in the ordinary course of business or otherwise. With respect to procedures to deal with inadvertent production of privileged or protected information, ServisFirst believes it is appropriate for the parties and the Court to adhere to Federal Rule of Evidence 502(b) and Federal Rule of Civil Procedure 26(b)(5)(B).

7. GOOD FAITH ESTIMATE REGARDING TRIAL READINESS

a. Plaintiff Sport & Wheat.

Sport & Wheat believes the case can be ready for trial by June 1, 2021. It will be a jury trial.

b. Defendant Synovus Bank.

Synovus estimates that this case will be ready for trial in 120 days. Synovus further believes that a bench trial would be appropriate.

c. Defendant Truist Bank.

Truist estimates that this case will be ready for trial by February 2021 and believes that a bench trial is appropriate.

d. Defendant ServisFirst Bank.

ServisFirst estimates that this case will be ready for a bench trial in 120 days.

8. WHETHER CASE SHOULD BE MADE SUBJECT TO THE MANUAL FOR COMPLEX LITIGATION

a. Plaintiff Sport & Wheat.

Yes. This is a substantial, nationwide class action, involving thousands of agents. Plainly, the principles in the Manual for Complex Litigation could guide and assist the Court and the parties in supervising this action.

Moreover, the case is presently a "related action" in MDL 2950, *In re Paycheck Protection Program (PPP) Agent Fees Litig.* The Judicial Panel on Multidistrict Litigation has set the hearing on another plaintiff's motion to transfer this case to another district on July 30. All in all, approximately 40 federal cases could be made an MDL and transferred elsewhere. The MCL suggests that a court in this posture "should not automatically stay discovery," should not "automatically postpone rulings on pending motions," and should not "generally suspend further proceedings." MCL § 20.131.

Assuming the action remains in this Court, it would be a good idea for the Court to require periodic conferences with the parties, as set out in MCL § 11.42. A monthly status conference with the parties to discuss discovery and to resolve disputes—perhaps by video rather than by resort to slow and expensive briefing processes—would be welcomed. The assistance of the Magistrate Judge would be quite helpful. Sport & Wheat would be willing to facilitate the agenda.

It also could be useful for the Court to consider coordination of schedules or discovery plans with courts overseeing other actions where the Defendants have been named. Both Synovus and Truist are defendants in other actions within the federal system. The MCL has a lengthy section about this, Section 20.14, "Coordination Between Courts." Among the potential suggestions there include sharing discovery responses between courts. "Filing or cross-filing deposition notices, interrogatories, and requests for production in related cases will make the product of discovery usable in all cases." It continues, "Relevant discovery already completed should ordinarily be made available to litigants in the other cases." Sport & Wheat is willing to consider coordinating its efforts with other plaintiffs in other courts, providing that it is not prejudiced in terms of time or access to discovery.

The Court should definitely also consider the tools in MCL § 11.423, "Other Practices to Save Time and Expense." In particular, this section is always helpful.

> *Informal discovery.* The court should encourage counsel to exchange information, particularly relevant documents, without resort to formal discovery (see section 11.13). Early exchanges can make later depositions more efficient. Informal interviews with potential witnesses can help determine whether a deposition is needed, inform later discovery, and provide the basis for requests for admissions through which the results of informal discovery are made admissible at trial.

Sport & Wheat has repeatedly offered to conduct informal interviews of witnesses—such as IT people, to help understand the location and structure of ESI. Thus far, no defendant has offered to do this. The result is the need to go through a difficult Rule 30(b)(6) process that still does not produce much helpful information.

The section on "Conference depositions," in which several witnesses are sworn simultaneously and questions are posed to the group as a whole, could also be useful. MCL § 11.423.

Sport & Wheat is extremely willing to be flexible and creative in the conduct of discovery. This can only reduce costs, speed the delivery of relevant facts, and eliminate wasteful or duplicative discovery responses. The Court's supervision and, so to speak, "thumb on the scale" when it comes to seeking voluntary cooperation, would be a benefit to all.

Finally, a word regarding Defendants' positions. As the Court will read, each Defendant believes this is a simple, "no-brainer" dispute which the Court should promptly dismiss. The parties obviously have a disagreement about the fundamental value of the claims at stake. Sport & Wheat does not agree that the sole federal legal issue advanced by some of the defendants is dispositive of the case. Sport & Wheat's silence here does not indicate its assent.

b. Defendant Synovus Bank.

This case should not be made "subject to" the Manual for Complex Litigation. There is a simple reason for that: this case is not complex. It involves a claim for $1,633. The case is also not suitable for class treatment. *See, e.g.*, Synovus's Motion to Dismiss the Amended Complaint, ECF 46 at 31-33.

Additionally, this case should not be made "subject to" the Manual for Complex Litigation because the Manual "does not have the force of law and cannot undermine Supreme Court precedent or the decisions of" the Eleventh Circuit that are binding on this Court. *In re Pharmacy Benefit Managers Antitrust Litig.*, 582 F.3d 432, 442 (3d Cir. 2009); *see also* Introduction to the Manual for Complex Litigation, Fourth, Ann. Manual Complex Lit. Introduction (4th ed.) (recognizing that the Manual "should not be cited as[ ] authoritative legal or administrative policy" and that "the Manual's recommendations and suggestions are merely that").

c. Defendant Truist Bank.

Truist agrees with Synovus that this case is not complex and that this case is not suitable for class treatment. This case involves one fundamental issue: whether federal law and regulations require private lenders such as Defendants to pay alleged agents, such as Plaintiff, for their purported work in assisting small businesses apply for and obtain PPP loans. Accordingly, the Manual for Complex Litigation is not necessary.

d. Defendant ServisFirst.

ServisFirst agrees that this case should not be made subject to the Manual for Complex Litigation. This is a straight-forward case that is unsuitable for class treatment, and Federal Rule of Civil Procedure 23 provides ample guidance for this Court to assess S&W's putative class claims.

Dated: June 29, 2020

Respectfully submitted,

/s/ William F. Cash III

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