

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

SPORT & WHEAT CPA PA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:20-cv-05425-TKW-HTC
	)	
SERVISFIRST BANK,	)	
SYNOVUS BANK, THE FIRST,	)	
and TRUIST BANK,	)	
	)	
Defendants.	)	

SERVISFIRST BANK’S RESPONSE TO PLAINTIFF’S MOTION FOR
EXTENSION OF TIME TO PREPARE OMNIBUS RESPONSE

Defendant ServisFirst Bank (“ServisFirst”) responds herein to Plaintiff Sport & Wheat’s Motion for Extension of Time to Prepare an Omnibus Response [Dkt. No. 76] to the pending Motions to Dismiss of ServisFirst, Truist Bank and The First. *See* Dkt. Nos. 49, 67 and 69. Plaintiff has had ample time to respond to ServisFirst’s motion, but ServisFirst’s objection is to Plaintiff’s request to submit an omnibus response.

ServisFirst’s concern regarding an omnibus response is that it may give Plaintiff the opportunity to try to muddy the clear, principal argument ServisFirst has made and may also permit Plaintiff to gloss over the arguments that only ServisFirst has made. It would invite Plaintiff to homogenize the three defendants’ arguments and to respond to that homogenized version while sidelining the

arguments made by only one defendant.

ServisFirst's principal argument is a simple one – in the CARES Act, Congress directed the SBA to “reimburse” lenders in precise amounts for their efforts in making PPP loans. *See* ServisFirst's Motion to Dismiss, Dkt. No. 49, at pp. 1-3, 7. Using the facts Plaintiff included in the Amended Complaint as to Borrower R, Congress directed the SBA to reimburse ServisFirst in the amount of \$4,708.25 for its efforts in making that loan. *See* Amended Complaint, Dkt. No. 21, at ¶ 90. Plaintiff's demand that this reimbursement amount be reduced by \$941.65 to compensate it for its work on Borrower R's loan application, *see id.* at ¶ 91, *contravenes federal law*. While ServisFirst believes that the First Interim Final Rule can and should be read consistently with the clear statutory language of the CARES Act, whether or not it can be is not of particular importance. *What is important is what Congress said*, and ServisFirst wants to make certain that Plaintiff responds directly, if it can, to that simple argument.

Further, ServisFirst makes arguments in seeking dismissal that other defendants have not made, arguments which it is concerned may get short shrift in an omnibus filing. For example, ServisFirst has argued that Plaintiff's unjust enrichment claim fails because ServisFirst cannot possibly have been unjustly enriched by being reimbursed in the exact amount that Congress dictated. *See* Dkt. No. 49, at pp. 24-25. By way of further example, ServisFirst has argued that

Plaintiff's unjust enrichment claims fails because it has not plausibly alleged that ServisFirst accepted any benefit claimed to have been conferred by Plaintiff. *See id.*, at pp. 23-24.

ServisFirst believes that its Motion to Dismiss warrants a separate response. Plaintiff of course can adopt arguments made in one brief in another to avoid duplication, but collapsing in one brief the arguments of different defendants simply because they overlap to some degree is likely to lead to confusion and will not likely aid the Court in resolving the motions. ServisFirst therefore requests that this Court deny Plaintiff's motion to the extent that it seeks leave to file an omnibus response.

This 9th day of July 2020.

/s/ Logan T. Matthews

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LOCAL RULE 7.1(F) WORD LIMIT CERTIFICATION

Pursuant to Northern District of Florida Local Rule 7.1(F), I certify that this Response to Plaintiff's Motion for Extension of Time to Prepare Omnibus Response is in compliance with the Court's word limit. According to the word processing program used to prepare this motion and memorandum, the document contains 481 words, exclusive of the case style, signature block, and this certification.

/s/ Logan T. Matthews

One of the Attorneys for Defendant
ServisFirst Bank

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 9th day of July, 2020, I served the foregoing via U electronic mail to the following CM/ ECF registrant(s):

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