

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

Truist Bank (“Truist”), ServisFirst Bank (“ServisFirst”), and The First, A National Banking Association (“The First”) (collectively, the “Defendants”) submit¹ this Opposition to Plaintiff’s Motion for Leave to Amend the Complaint, which was filed on August 31. *See* D.E. 89.

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Plaintiff seeks to change the record by amending contentions and adding additional evidence in a Second Amended Complaint, yet willingly accepts this Court's ruling of dismissal of the prior First Amended Complaint.

Defendants respectfully request that the Court deny Plaintiff's request because it is futile, as Plaintiff itself admits. D.E. 89 at 1 ("accept[ing] the ruling of the Court [dismissing its Amended Complaint]" and conceding that "this proposed Second Amended Complaint may be subject to dismissal again"); *id.* at 3-4 (conceding that "the core legal issues have already been briefed once, and [Plaintiff] is under no illusion that the Court will reverse itself on those matters"); *id.* at 4 ("Because nothing is being significantly changed here, [Plaintiff] expects that the Court would likely dismiss this complaint again."). "[A] motion for leave to amend may appropriately be denied . . . where amendment would be futile." *In re Engle Cases*, 767 F.3d 1082, 1109 (11th Cir. 2014). Indeed, the Eleventh Circuit routinely upholds district court denials of plaintiffs' motions to amend complaints where such amendments are futile. *See, e.g., Johnson v. Ga. Dept. of Veterans Serv.*, 791 F. App'x 113, 116 (11th Cir. 2019) (affirming the district court's denial of the plaintiff's motion for leave to amend where the amendment would be futile); *Broughton v. U.S. Bank, N.A.*, 571 F. App'x 891, 892 (11th Cir. 2014) (affirming the district court's dismissal for failure to state a claim and denial of the plaintiff's motion for leave to amend complaint where plaintiff conceded in

that his prior complaint was “rendered futile” by precedent); *Patel v. Ga. Dept. BHDD*, 485 F. App’x 982, 983 (11th Cir. 2012) (affirming the district court’s order granting the defendant’s motion to dismiss and denying the plaintiff’s motion for leave to amend where the amendment would be futile); *Travelers Cas. & Sur. Co. of Am. v. Reznick Grp., P.C.*, 271 F. App’x 833, 836 (11th Cir. 2008) (same); *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1263 (11th Cir. 2004) (same).

Because Plaintiff admits that its proposed amendment is futile—and because such amendment is, in fact, futile—Defendants respectfully request that this Court deny Plaintiff’s Motion for Leave to Amend the Complaint. If the Court grants Plaintiff’s motion, Defendants request that the Court give them the opportunity to move to dismiss the Second Amended Complaint and require Plaintiff to respond to those motions before dismissing the Second Amended Complaint.

Respectfully submitted this 2nd day of September 2020.

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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 Opposition To Plaintiff's Motion For Leave To Amend The Complaint 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 502 words.

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CERTIFICATE OF SERVICE

I certify that on September 2, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all attorneys of record.

/s/ Cheryl L. Haas
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