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United States District Court, M.D. Florida,
Tampa Division.

CENTENNIAL BANK, Plaintiff,
v.
SERVISFIRST BANK INC., et al., Defendants.

Case No. 8:16-cv-88-T-36JSS
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Signed 09/15/2017

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ORDER

Charlene Edwards Honeywell, United States District Judge

***1** This cause comes before the Court upon four motions to dismiss filed by Defendants Jonathan Zunz (Doc. 217), Gwynn Davey and Patrick Murrin (Doc. 218), Gregory W. Bryant (Doc. 218), and ServisFirst Bank, Inc. (Doc. 220), to which Plaintiff Centennial Bank has responded in opposition (Docs. 227, 228, 229, 330). The Court, having considered the parties' submissions and being fully advised of the premises, will GRANT-IN-PART the motions, as set forth more specifically below.

I. Background [1]

In this diversity action, Plaintiff Centennial Bank ("Centennial") sues four former employees—Gregory W. Bryant, Patrick Murrin, Gwynn Davey, and Jonathan Zunz—and their new employer, ServisFirst Bank, Inc. ("ServisFirst"), alleging various state-law claims arising from the employees' simultaneous resignation and relocation to ServisFirst. The Court previously ordered Centennial to provide a more definite statement of its claims. Doc. 193. Centennial responded by filing a 173-page, 48-count Second Amended Complaint ("the SAC"). Doc. 199. The defendants move to dismiss all claims with prejudice.

The relevant facts are discussed in more detail as they pertain to each claim. In brief, Centennial acquired Bay Cities Bank ("Bay Cities") in a merger transaction that was announced on June 17, 2015, and closed on October 1, 2015. Doc. 199 at ¶¶ 10b, 10d. Centennial retained several key Bay Cities employees, including the individual defendants in this case. Bryant was the president and CEO of Bay Cities, Murrin was the chief risk manager, and Davey was the market president for Hillsborough County. *Id.* at ¶¶ 10c, 417, 425, 433. Zunz was a close friend of Bryant, a protégé of Davey, and a senior commercial lender with several years of experience at Bay Cities. *Id.* at ¶ 10a.

As part of the acquisition, Bryant, Murrin, and Davey (collectively, the "Former Officers") each signed an employment contract with Centennial that included non-compete, non-solicitation, and confidentiality provisions. *Id.* at ¶¶ 25, 30, 32. The following discussion refers to these agreements as the "Centennial Bryant Agreement," the "Centennial Murrin Agreement," the "Centennial Davey Agreement," and collectively, the "Centennial Agreements." Bryant also previously executed a non-compete agreement with Bay Cities, which is referred to below as the "Bay Cities Non-Compete." *Id.* at ¶ 13. Centennial further alleges that the Former Officers and Zunz are contractually-obligated to comply with the Bay Cities Ethics Code and the Centennial Ethics Code. *Id.* at ¶¶ 12, 33.

The gravamen of the SAC is that Bryant induced Centennial to acquire Bay Cities with promises that he would remain in Centennial's employ, and that Bryant did so in order to obtain a $2.1 million golden parachute. *Id.* at ¶¶ 10b, 10d. But even before the acquisition closed, Bryant—with the assistance of Davey, Murrin, and Zunz—began looking for different employment. *Id.* at ¶ 10f. Ultimately, on December 31, 2015,

the Former Officers and Zunz simultaneously resigned from Centennial. *Id.* at ¶ 63. On or around January 1, 2016, the Former Officers and Zunz began working for ServisFirst. *Id.* at ¶¶ 137, 187, 207.

***2** As detailed below, Centennial brings a number of breach-of-contract claims against the Former Officers and Zunz, which are based on their alleged violations of the Centennial Agreements, the Bay Cities Non-Compete, the Bay Cities Ethics Code, and the Centennial Ethics Code. Centennial also brings various claims for tortious interference against Bryant and ServisFirst, based on their purported interference with Centennial's customer and employee relationships. In addition, Centennial alleges claims for specific performance, conversion, fraud, breach of fiduciary duty, misappropriation of trade secrets, civil conspiracy, violations of the Florida Securities and Investor Protection Act ("FSIPA"), Fla. Stat. §§ 517.211, 517.301 and violation of the Florida Civil Remedies for Criminal Practices Act ("FCRCPA"), Fla. Stat. §§ 772.104, 815.04.

While the Court expresses no opinion on the ultimate merit of Centennial's claims, the majority of the defendants' challenges are premature. As explained below, the SAC states plausible causes of action, except with respect to two of the breach-of-contract claims (Counts 17 and 21) and the statutory claims pursuant to FSIPA and FCRCPA (Counts 44 through 47).

II. Standard

To survive a motion to dismiss, a pleading must include a "short and plain statement of the claim showing that the pleader is entitled to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). Labels, conclusions and formulaic recitations of the elements of a cause of action are not sufficient. *Id.* at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Furthermore, mere naked assertions are not sufficient. *Id.* A pleading must contain sufficient factual matter, which, if accepted as true, would "state a claim to relief that is plausible on its face." *Id.* (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

III. Discussion

ServisFirst's Tortious Inteference with the Bay Cities Non-Compete (Count 1)

Bryant's Breach of the Bay Cities Non-Compete (Counts 10 to 14)

In Count 1, Centennial alleges that ServisFirst tortiously interfered with Bryant's Bay Cities Non-Compete by causing him to relocate to ServisFirst. In Counts 10 through 14, Centennial alleges that Bryant breached various provisions of the Bay Cities Non-Compete. In order to prevail, Centennial must establish, as a threshold matter, that the Bay Cities Non-Compete was a valid contract. *Johnson Enters. of Jacksonville, Inc. v. FPL Grp., Inc.*, 162 F.3d 1290, 1321 (11th Cir. 1998); *Beck v. Lazard Freres & Co., LLC*, 175 F.3d 913, 914 (11th Cir. 1999).

In their respective motions to dismiss, Bryant and ServisFirst argue that the Bay Cities Non-Compete was no longer enforceable at the time of the challenged conduct because it was extinguished by Bryant's more recent employment agreement with Centennial. In particular, they maintain that not only did the Centennial Bryant Agreement impose new agreements concerning confidentiality, non-competition, and non-solicitation, it specifically stated: "This Agreement sets forth the entire understanding between the parties and the subject matter hereof and may not be modified, changed or amended, except by a writing signed by both parties." Doc. 199-2 at 70, 72-74. In support of their argument, Bryant and ServisFirst rely on a portion of the Magistrate Judge's May 17, 2016, Report and Recommendation ("the R&R"), which recommended denying Centennial's motion for injunctive relief, and which was adopted by this Court on August 11, 2016. Docs. 131, 173. Citing the R&R, Bryant and ServisFirst contend that the Court already determined that the Bay Cities Non-Compete was "superseded" by the Centennial Bryant Agreement. Doc. 131 at 13 ("pursuant to the unambiguous contract language, the Centennial Agreement superseded the Bay Cities Non-Compete Agreement"). Bryant also argues that the facts alleged in the SAC establish a novation of the Bay Cities Non-Compete.

***3** As an initial matter, the Court finds that the R&R did not conclusively resolve the issue of whether the parties intended to extinguish the Bay Cities Non-Compete. Rather,

the Magistrate Judge specifically stated that "Centennial has not established, *at this point*, that the parties intended to have both agreements operative at the same time." Doc. 131 at 13 (emphasis added).

Second, the novation argument is premature because it requires a factual determination regarding the parties' intent. Under Florida law, a novation requires "(1) the existence of a previously valid contract; (2) the agreement to make a new contract; (3) the intent to extinguish the original contractual obligation; and (4) the validity of the new contract." *S.N.W. Corp. v. Hauser*, 461 So. 2d 188, 189 (Fla. 4th DCA 1984). "Intent may be inferred from the totality of the circumstances surrounding the transaction," but "is generally a question of fact for a jury." *Aronowitz v. Health-Chem Corp.*, 513 F.3d 1229, 1237 (11th Cir. 2008) (internal quotation marks omitted). Only "where the terms of a written agreement are not in doubt," is the issue a question of law for the court. *Id.* (internal quotation marks omitted).

Contrary to Bryant's suggestion, the Centennial Bryant Agreement does not specifically mention, let alone extinguish, the Bay Cities Non-Compete—although it does specifically mention and cancel a separate agreement. Doc. 199 at ¶ 31. And the Bay Cities Non-Compete itself provides that it shall "survive[ ] the termination of [Bryant's] employment and "be binding upon and inure to the benefit of [Bay Cities'] successors." *Id.* at ¶ 31 n.1. Further, the Bay Cities Non-Compete requires Bryant to provide written notice within 30 days if he believes he is no longer bound by the Bay Cities Non-Compete, and it states that failure to provide such notice operates "as a waiver of [Bryant's] contentions that [he] is no longer bound by this Agreement." *Id.* The SAC alleges that Bryant did not provide such notification. *Id.* Given these facts, the SAC plausibly suggests there was no intent to terminate the Bay Cities Non-Compete.

In a separate challenge, ServisFirst argues that it had no knowledge of the Bay Cities Non-Compete and therefore could not have tortiously interfered with the agreement. *Johnson Enters. of Jacksonville, Inc.*, 162 F.3d at 1321. In response, Centennial correctly observes that knowledge need not be pleaded with particularity, and the SAC does allege that ServisFirst knew of the agreement. Doc. 199 at ¶ 131; *see* Fed. R. Civ. P. 9(b) ("knowledge ... may be alleged generally"). Notably, ServisFirst concedes that it did know of the Bay Cities Non-Compete, at the latest, when this action was filed. Doc. 220 at 7.

Bryant and ServisFirst raise no other challenge to Count 1 and Counts 10 through 14. The motions to dismiss these counts will, therefore, be denied.

ServisFirst's Tortious Interference with the Centennial Agreements

(Counts 2, 3, and 4)

In Counts 2, 3, and 4, Centennial alleges that ServisFirst tortiously interfered with the employment agreements between Centennial and Bryan, Davey, and Murrin. Under Florida law, a claim for tortious interference with a contractual relationship requires: (1) the existence of a contract, (2) the defendant's knowledge of the contract, (3) the defendant's intentional procurement of the contract's breach, (4) absence of any justification or privilege, and (5) damages resulting from the breach. *Johnson Enters. of Jacksonville, Inc.*, 162 F.3d at 1321; *Tamiami Trail Tours, Inc. v. Cotton*, 463 So. 2d 1126, 1127 (Fla. 1985).

***4** ServisFirst argues that the SAC fails to plausibly allege that ServisFirst possessed knowledge of the Centennial Agreements. As stated above, Centennial is not required to plead knowledge with particularity. And the SAC supports an inference that ServisFirst knew of the Centennial Agreements because Bryant and Murrin emailed the agreements to ServisFirst's employees. Doc. 199 at ¶¶ 55, 58, 60, 157.

ServisFirst also argues that the Centennial Agreements were never breached by the Former Officers. But as discussed in connection with the breach-of-contract claims below, Centennial adequately alleges breaches of the Centennial Agreements.

ServisFirst further maintains that the SAC fails to allege that ServisFirst "intentionally" procured a breach of the Centennial Agreements. However, the SAC alleges, among other facts, that ServisFirst entered into indemnification agreements with Bryant, Davey, and Murrin to induce their relocation to ServisFirst. Doc. 199 at ¶¶ 175, 195, 215. ServisFirst's decision to indemnify the Former Officers permits an inference that ServisFirst intended to procure a breach of the Centennial Agreements.

Finally, ServisFirst contends that any interference was privileged. In particular, ServisFirst argues that the SAC alleges that ServisFirst is a direct competitor of Centennial (Doc. 199 at ¶ 169), which allows ServisFirst to act to protect its own business interests. *Romika-USA, Inc. v. HSBC Bank USA, N.A.*, 514 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007) ("Under Florida law, a company's actions are justified when undertaken to protect its own business interests, such as to reduce the risk of loss.").

In advancing this argument, ServisFirst overlooks a corollary to the rule: the privilege applies only if a competitor "employ[s] means that are not improper." *Morsani v. Major League Baseball*, 663 So. 2d 653, 657 (Fla. 2d DCA 1995). "In other words, the privilege does not encompass the purposeful causing of a breach of contract." *McCurdy v. Collis*, 508 So. 2d 380, 384 (Fla. 1st DCA 1987). Moreover, the question of privilege is "highly fact dependent and requires an examination of the defendant's conduct, its motive, and the interests it sought to advance." *Howard v. Murray*, 184 So. 3d 1155, 1167 (Fla. 1st DCA 2015) (internal quotation marks omitted).

Based on the facts alleged in the SAC, the Court finds that the issue of privilege is better addressed on a more developed record. *Morsani*, 663 So. 2d at 657; *Se. Integrated Med., P.L. v. N. Fla. Women's Physicians, P.A.*, 50 So. 3d 21, 24 (Fla. 1st DCA 2010). The motion to dismiss Counts 2, 3, and 4 will be denied.

ServisFirst's Tortious Interference with Centennial's Customers

(Count 5)

In Count 5, Centennial alleges that ServisFirst tortiously interfered with its customer relationships. In Florida, the elements of a claim for tortious interference with a business relationship are: (1) the existence of a business relationship, (2) the defendant's knowledge of the relationship, (3) the defendant's intentional and unjustified interference with the relationship, and (4) damage to the plaintiff as a result of the breach of the relationship. *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So. 2d 812, 814 (Fla. 1994). In contrast to a claim for tortious interference with a contract, a business relationship "need not be evidenced by an enforceable contract." *Id.*; 32 Fla. Jur. 2d Interference § 6. Nonetheless, the alleged business relationship must be "evidenced by an actual and identifiable understanding or agreement which in all probability would have been completed if the defendant had not interfered." *Ethan Allen, Inc.*, 647 So. 2d at 815.

***5** ServisFirst argues that the SAC fails to comply with this Court's October 14, 2016 Order, which dismissed the previous complaint and, among other things, instructed Centennial to clarify the relationships with which ServisFirst allegedly interfered. *See* Doc. 193 at 7. Consistent with that instruction, the SAC now includes facts alleging that the Former Officers solicited specific Centennial customers on behalf of ServisFirst, including "Customer S," "Customer P," and "Customer B." Doc. 199 at ¶¶ 70, 81. ServisFirst may clarify the precise nature of these customer relationships through proper discovery, but for purposes of the instant motion, Centennial satisfies notice pleading standards.

ServisFirst also argues that its purported knowledge of the customer relationships may not be imputed from an agent, such as Bryant, because "the agent's conduct raises a clear presumption that he would not communicate to the principal the facts in controversy." Doc. 220 at 15 (citing *Nerbonne, N.V. v. Lake Bryan Int'l Props.*, 685 So. 2d 1029, 1031 (Fla. 5th DCA 1997)). But ServisFirst fails to explain how such a "clear presumption" appears on the face of the SAC. Additionally, "[t]he general rule is well settled that a principal is chargeable with notice or knowledge received by his agent while acting within the scope of his authority." *Joel Strickland Enters., Inc. v. Atl. Disc. Co.*, 137 So. 2d 627, 629 (Fla. 1st DCA 1962).

ServisFirst next argues that the SAC fails to sufficiently allege "intentional" interference. However, ServisFirst's arguments on this front appear to pertain to the extent of damages that Centennial suffered, an issue that is not appropriate for resolution on a motion to dismiss. Doc. 220 at 16-17. ServisFirst also briefly asserts a privilege for its conduct, but that argument fails for the same reasons discussed with respect to Counts 2, 3, and 4.

Based on the foregoing, the motion to dismiss will be denied as to Count 5.

Bryant's Tortious Interference with the Davey and Murrin Centennial Agreements

(Counts 6 and 7)

In Counts 6 and 7, Centennial alleges that Bryant tortiously interfered with Davey's and Murrin's employment agreements with Centennial by recruiting them to work with Bryant at ServisFirst. Bryant raises a number of arguments in support of dismissal, but each is unavailing.

First, Bryant argues that none of the incorporated factual allegations demonstrate that he actually recruited Murrin or Davey. Yet, the allegations of the SAC, when read collectively, permit an inference that Bryant recruited both Davey and Murrin, given that he "participated heavily" in drafting their offer letters from ServisFirst and took responsibility for forwarding their resignation letters to Centennial. Doc. 199 at ¶¶ 61, 63.

Second, Bryant maintains that the SAC fails to allege that Davey and Murrin actually breached their employment agreements. But as discussed in connection with the breach-of contract-claims below, Centennial adequately alleges breaches of the Davey and Murrin Centennial Agreements. And contrary to Bryant's suggestion, a claim for tortious interference with an at-will employment relationship is viable assuming that the interference is "direct and unjustified." *Ferris v. S. Fla. Stadium Corp.*, 926 So. 2d 399, 402 (Fla. 3d DCA 2006).

Third, Bryant maintains that any interference on his part was justified as lawful business competition. As explained with respect to the claims against ServisFirst, a privilege does not apply to "the purposeful causing of a breach of contract," *McCurdy*, 508 So. 2d at 384, and resolution of this issue is not well-suited to a motion to dismiss. *Howard*, 184 So. 3d at 1167.

The motion to dismiss Counts 6 and 7 will be denied.

Bryant's Tortious Interference with Centennial's Employee Relationships

(Count 8)

***6** In Count 8, Centennial alleges that Bryant tortiously interfered with Centennial's employee relationships, including Centennial's relationships with Davey, Murrin, and Zunz. In addition to the arguments already addressed above, Bryant maintains that the allegations relating to Zunz, and two other employees, Jennifer Noel and Alma Bizares, are insufficient to allege tortious interference. The thrust of those allegations is that Bryant sent offer letters to Zunz, Noel, and Bizares, and also arranged for Noel to be placed at an interim employer before she moved to ServisFirst. Doc. 199 at ¶¶ 61, 68, 89. In addition, the SAC alleges that Bryant recruited other Centennial employees by placing blind advertisements in the Tampa Bay Business Journal ("TBBJ"), and by leaving copies of the ads on employees' desks, along with blank job application forms. *Id.*

Once again, Bryant's challenges are premature. For instance, Bryant contends that the allegation that Noel was placed in an interim position does "not even make sense" because Bryant made no effort to put Davey, Murrin, or Zunz in an interim position. Doc. 219 at 7. While Bryant may wish to present that argument to a factfinder, questions regarding Bryant's intent are simply not appropriate for resolution on a motion to dismiss.

Bryant also insists that the TBBJ advertisements were expressly authorized under the Centennial Bryant Agreement, but he overlooks the fact that the agreement specifically prohibited advertisements that "target the employees of Centennial." Doc. 199-2 at 73. Bryant further argues that there is no allegation that Bizares ever left Centennial to work for ServisFirst, but he appears to acknowledge that this issue relates to damages. Doc. 219 at 7.

Accordingly, Bryant's motion to dismiss Count 8 will be denied.

Bryant's Tortious Interference with Centennial Customer Relationships

(Count 9)

In Count 9, Centennial alleges that Bryant interfered with Centennial's relationships with its customers, which is similar

to the claim brought against ServisFirst in Count 5. As noted in connection with that count, the SAC sufficiently alleges that Bryant solicited specific Centennial customers on behalf of ServisFirst. Doc. 199 at ¶¶ 70, 81. Centennial is not required to plead this claim with any additional particularity.

Bryant alternatively argues that the SAC fails to allege that his actions "were intended to damage Centennial." Doc. 219 at 9. Bryant misapprehends the case law, which requires Centennial to establish an intent to damage a business relationship, not the existence of a "vendetta against Centennial." *Id.*; *Ethan Allen, Inc.*, 647 So. 2d at 814. As discussed above, the SAC plausibly alleges intentional interference. Doc. 199 at ¶¶ 70, 81. The motion to dismiss Count 9 will be denied.

Former Officers' Breach of the Confidentiality Provision

(Counts 15, 20, and 23)

In Counts 15, 20, and 23, Centennial alleges that Bryant, Davey, and Murrin breached a confidentiality provision in their respective employment agreements (Section 8 for Davey and Murrin and Section 9 for Bryant), which requires the Former Officers, among other things, "not to use, duplicate, produce, distribute, disclose or otherwise disseminate confidential information and trade secrets[.]" Doc. 199 at ¶¶ 294, 323. Centennial alleges that the Former Officers violated this provision by (1) downloading and using customer contact lists, and (2) using the information stored in their "intellects" for the benefit of ServisFirst. *Id.* at ¶¶ 297, 326.

Relying on the R&R and trade-secret case law, the Former Officers argue that Centennial may prohibit the Former Officers from using the contact lists only if Centennial itself developed the lists and the lists are not available by other means. Doc. 218 at 6. But the SAC alleges that Centennial's "Confidentiality Policy" defines "confidential information" to include customers lists. Doc. 199 at ¶¶ 35, 324. The Court therefore finds that the disclosure of the contact lists plausibly alleges the disclosure of "confidential information" within the meaning of the Centennial Agreement. *See* *Inland Rubber Corp. v. Helman*, 237 So. 2d 291, 295 (Fla. 1st DCA 1970) ("The above excerpt from the agreement makes it clear that as between the parties the customer lists, methods of doing business, etc., were to be regarded between them as confidential information.")

***7** With respect to information in the Former Officers' intellects, they argue that Centennial cannot restrict the use of personal knowledge. In response, Centennial correctly points out that there is authority to support such a claim. In *Proudfoot Consulting Co. v. Gordon*, the Eleventh Circuit held that a confidentiality provision extended to an employee's knowledge about the employer's business, pricing information, methodology, and products. 576 F.3d 1223, 1234 (11th Cir. 2009).

The claim against Bryant alleges that he disclosed additional information, including forecasts, loan reports, and a Dunn and Bradstreet report. Doc. 199 at ¶¶ 297, 44, 59, 65. Bryant argues that the reports are merely a compilation of publicly–available data and that the allegations regarding the forecasts are impermissibly vague. Again, however, Centennial is not required to plead its claim with specificity, and the Confidentiality Policy specifically defines "confidential information" to encompass not only customer lists, but management reports, sales information, estimates, price lists, profit information, and projections. *Id.* at ¶ 295. Bryant may assert his arguments at a later stage, if appropriate, but for purposes of the instant motions, Centennial states a plausible claim.

The motions to dismiss Counts 15, 20, and 23 will, therefore, be denied.

Former Officers' Breach of the Non-Compete Provision

(Counts 16, 21, and 24)

In Counts 16, 21, and 24, Centennial alleges that Bryant, Davey, and Murrin breached a non-compete clause in their respective employment agreements (Section 9 for Davey and Murrin and Section 10 for Bryant), which prohibits the Former Officers from "either directly or indirectly ... engag[ing] in banking business" in defined territories. Doc. 199 at ¶¶ 302, 331. For Murrin and Davey, the defined territory is Hillsborough County. For Bryant, the defined territory is Sarasota, Manatee, Hillsborough, and Pinellas Counties. *Id.*

Davey correctly points out that the allegations incorporated by reference in Count 21 allege no activity by Davey within Hillsborough County whether "direct" or "indirect." Doc. 218 at 10; *see, e.g.*, Doc. 199 at ¶¶ 81c, 81d, 81h. In response to the motion, Centennial identifies no such allegations. Doc. 228 at 8-9. Accordingly, Count 21 will be dismissed.

By contrast, the claim against Murrin and Bryant alleges that they "actively competed with Centennial in Tampa, Florida and met with a potential client in an attempt to capitalize on an opportunity[.]" Doc. 199 at ¶ 81b. Murrin maintains that this isolated allegation does not plausibly allege that he engaged in "banking business," and Bryant raises a similar challenge. Doc. 218 at 14-15; Doc. 219 at 13-14. But the allegations in the SAC, and the attached emails between Murrin and the customer, at least plausibly allege customer development, as explained in the next section. Doc. 199-10 at 67-68. The parties may address the meaning of the term "banking business," and whether the challenged conduct qualifies as banking business, on a proper dispositive motion.[2] The motions to dismiss Counts 16 and 24 will be denied.

Former Officers' Breach of the Non-Solicitation Provision

(Counts 18, 22, and 25)

In Counts 18, 22, and 25, Centennial alleges that Bryant, Davey, and Murrin breached a non-solicitation clause in their employment agreements (Section 10 for Davey and Murrin and Section 11 for Bryant), which prohibits the actual or attempted solicitation, diversion, and appropriation of "any business from any of Centennial's customers" for a period of one year. Doc. 199 at ¶¶ 314, 337.

***8** Davey argues that the SAC alleges only that she updated her LinkedIn profile, spoke at a civic luncheon and said she was "able to construct loan," and communicated with "Customer B" and "Customer P," none of which constitutes improper solicitation. Doc. 218 at 12-13; Doc. 199 at ¶¶ 98, 81d, 81f, 81i. Putting aside the question of whether updating a LinkedIn profile constitutes improper solicitation, the Court finds that the remaining allegations plausibly allege actual or attempted solicitation. And contrary to Davey's contention, Centennial is not required to plead these facts with greater detail.

Murrin argues that the only allegation against him—that he met with a former customer at the customer's office in Tampa—is not sufficient to demonstrate unlawful solicitation absent some detail regarding the substance of their conversations. *See* Doc. 199 at ¶ 81b. However, the emails attached to the SAC indicate that Murrin contacted the customer, provided his current contact information, stated that he would follow up by phone later that day, and then arranged a meeting with both himself and Bryant, whom he described as "the CEO of the Tampa Bay Region of ServisFirst." Doc. 199-10 at 67-68. At least one reasonable inference is that Murrin was attempting to solicit this customer on behalf of ServisFirst.

Bryant takes a different tack, arguing that the Magistrate Judge previously determined that his "email blasts" to Centennial customers did not constitute solicitation because they simply announced his departure from Centennial. Doc. 131 at 22. Yet, the Magistrate Judge did not address Bryant's subsequent emails with those customers, in which he promised to discuss one customer's "banking needs" and discussed a customer's relationship with Centennial. Doc. 199 at ¶ 70; *see* Doc. 131 at 7, 21-22. Bryant also fails to meaningfully address other incidents alleged in the SAC, including the fact that he assisted a customer with moving business to ServisFirst, that he had a lunch meeting with "Customer P," that he forwarded ServisFirst's earnings report to a number of Centennial customers, and that he solicited business from "Customer S" by making an advantageous credit card offer. Doc. 199 at ¶¶ 81a, 81c, 81e, 81v; *see* Doc. 219 at 15 n.5. Absent a more focused challenge, the Court finds that these allegations plausibly allege actual or attempted solicitation.

The motions to dismiss Counts 18, 22, and 25 will be denied.

Bryant's Breach of the Employee Non-Solicitation Clause

(Count 17)

In Count 17, Centennial alleges that Bryant violated Section 12 of his employment agreement by soliciting Centennial employees to work for ServisFirst. In particular, the Centennial Bryant Agreement stated:

> Employee agrees that during the one (1) year period following voluntary or involuntary termination of his employment, he will not ... solicit, recruit or hire away or attempt to solicit, recruit or hire away, any employee of Centennial or its affiliates to another person or entity providing products or services that are competitive with Centennial[.]

Doc. 199 at ¶ 308. Centennial alleges that Bryant violated this provision by recruiting Davey and Murrin and by placing the blind advertisements in the TBBJ, which targeted other Centennial Employees. *Id.* at ¶ 309.

In the motion to dismiss, Bryant argues that the challenged conduct took place before his resignation, and, as the Magistrate Judge previously determined, the employee non-solicitation clause only applies to post-employment conduct. Doc. 131 at 24. In response, Centennial fails to address this issue. Doc. 227 at 12. Count 17 will, therefore, be dismissed.

Bryant's Specific Performance

(Count 19)

***9** In Count 19, Centennial seeks specific performance of the Bay Cities Non-Compete and the Centennial Bryant Agreement. In his motion to dismiss, Bryant argues that this claim is now moot because the non-compete provisions were only enforceable for one year. Doc. 219 at 16-17.

In response, Centennial maintains that the one-year period is equitably tolled during any period that Bryant was in breach of the agreements. Centennial cites language in the Bay Cities Non-Compete, which states that "[t]he time restrictions applicable to [the noncompete provisions] shall be tolled during the period of any breach of this Agreement." Doc. 199-1 at 21; *Proudfoot Consulting Co.*, 576 F.3d at 1226, 1241 (affirming application of a tolling provision). And although the Centennial Bryant Agreement does not include an express tolling provision, Centennial contends that Florida law permits tolling even in the absence of such a provision. *E.g.*, *Capelouto v. Orkin Exterminating Co. of Fla.*, 183 So. 2d 532, 534 (Fla. 1966).

Bryant's motion fails to address the issue of tolling. The motion to dismiss Count 19 will be denied.

Former Officers' and Zunz's Breach of Ethics Codes

(Counts 26 to 33)

Counts 26 through 33 allege claims against the Former Officers, as well as Zunz, for breaches of Bay Cities Ethics Code and the Centennial Ethics Code. In their respective motions to dismiss, the defendants maintain that these claims fail as a matter of law because "[i]t is well established Florida law that policy statements contained in employment manuals do not give rise to enforceable contract rights in Florida unless they contain specific language which expresses the parties' explicit mutual agreement that the manual constitutes a separate employment contract." *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1273 (11th Cir. 2009) (quoting *Quaker Oats Co. v. Jewell*, 818 So.2d 574, 576–77 (Fla. 5th DCA 2002)).

The bulk of the authority cited by the defendants pertains to employment policies that included a specific disclaimer that the policy was not to be interpreted as a contract. *E.g.*, *Vega*, 564 F.3d at 1273 (noting that the compensation plan stated that it was "not intended and shall not be read to create any express or implied contract or promise of specific treatment or benefits"). [3] Here, the defendants point to no disclaimer.

The other cases on which the defendants rely turn on the fact that the parties manifested no mutual assent. *E.g.*, *Caravello v. Am. Airlines, Inc.*, 315 F. Supp. 2d 1346, 1352 (S.D. Fla. 2004); *Caster v. Hennessey*, 727 F.2d 1075, 1076-77 (11th Cir. 1984). Here, however, the Bay Cities Ethics Code specifies that compliance with its provisions "is a condition of employment" and that the obligations survive termination. Doc. 199 at ¶ 12; Doc. 199-1 at 2, 13-16. In addition, the defendants signed forms acknowledging that they understood these provisions. *Id.* Similarly, the defendants signed an acknowledgment stating that they agreed to comply with the Centennial Ethics Code. Doc. 199

at ¶ 33. And the SAC further alleges that these ethics codes are required under the Bank Bribery Act. *Id.* at ¶¶ 10f, 12, 33.

***10** The defendants cite no case with similar facts that would support dismissal of these claims as a matter of law. *Cf. In* *Bank of Am., N.A. v. Crawford*, No. 2:12-CV-691-FTM-99, 2013 WL 593743, at *3 (M.D. Fla. Feb. 15, 2013) (holding that a non-solicitation clause in an ethics code was enforceable). The defendants may renew their challenges, which involve fact-intensive questions regarding the parties' intent, at a later stage, if appropriate. The motions to dismiss Counts 26 through 33 will be denied.

Former Officers' and Zunz's Misappropriation of Trade Secrets

(Count 34)

Count 34 alleges that the Former Officers and Zunz misappropriated trade secrets in violation of Florida's Uniform Trade Secrets Act ("FUTSA"), Fla. Stat. §§ 688.001, *et seq*. In order to establish a claim under FUTSA, Centennial must allege that (1) Centennial possessed secret information and took reasonable steps to protect its secrecy, and (2) the secret was misappropriated, either by one who knew or had reason to know that the secret was improperly obtained or by one who used improper means to obtain it. *Del Monte Fresh Produce Co. v. Dole Food Co.*, 136 F. Supp. 2d 1271, 1291 (S.D. Fla. 2001).

The defendants first argue that the trade secrets identified in the SAC – contact lists, deposit list, and loan lists – are not protected trade secrets because they are based on public information. *See* Doc. 199 at ¶¶ 394, 66-67. Similar to the argument raised with respect to Counts 15, 20, and 23, the defendants rely on a number of facts outside the SAC to demonstrate that the information in the contact lists and loan lists is publicly-available. *See* Doc. 199 at 36-37. As a result, the defendants' argument is not appropriate for resolution on a motion to dismiss. *See also* *Furmanite Am., Inc. v. T.D. Williamson, Inc.*, 506 F. Supp. 2d 1134, 1141 (M.D. Fla. 2007) (denying summary judgment on "fact-intensive" questions of whether information constitutes a trade secret).

The defendants next argue that they did not use the requisite "improper means" to obtain the trade secrets, a term which is statutorily-defined to include "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means." Fla. Stat. § 688.002(1). The Former Officers contend that they had no duty to maintain the secrecy of the contact lists because they developed the lists themselves, but again, that argument assumes facts outside the SAC. Likewise, Zunz improperly relies on a declaration he filed in response to the motion for injunctive relief. Doc. 217 at 11.

The motions to dismiss Count 34 will, therefore, be denied.

Defendants' Conversion of Confidential Information

(Counts 35 to 39)

Counts 35 through 39 plead claims for conversion against each of the defendants. "In Florida, a conversion is an unauthorized act which deprives another of his identifiable property permanently or for an indefinite time." *Rosenthal Toyota, Inc. v. Thorpe*, 824 F.2d 897, 902 (11th Cir. 1987). "[T]o state a claim for conversion, one must allege facts sufficient to show ownership of the subject property and facts that the other party wrongfully asserted dominion over that property." *Edwards v. Landsman*, 51 So. 3d 1208, 1213 (Fla. 4th DCA 2011).

As an initial matter, the defendants argue that Centennial cannot premise a claim for conversion on marketing and financial information contained in the "intellects" of Bryant, Davey, Murrin, and Zunz. *E.g.*, Doc. 199 at ¶¶ 409, 433. Under Florida law, however, conversion may be asserted over an intangible interest, including an interest in a business venture such as "good will of a business." *In re Corbin's Estate*, 391 So. 2d 731, 732-733 & n.1 (Fla. 3d DCA 1980) (citing with approval a treatise suggesting that "an idea" could be converted).

***11** With respect to the conversion of the contact lists and other documents, the defendants claim that Centennial fails to allege any facts demonstrating their present intent to deprive Centennial of its property, such as a "demand and refusal" to return the documents. *Rosenthal Toyota, Inc.*, 824 F.2d at 902 ("[T]he essence of conversion is not the possession of property by the wrongdoer, but rather such possession in conjunction with a present intent on the part of the wrongdoer

to deprive the person entitled to possession of the property, which intent may be, but is not always, shown by demand and refusal."). But Centennial plausibly alleges that the initial taking of the information was unauthorized and unlawful, which suffices to survive the motions to dismiss. Doc. 199 at ¶¶ 35-36, 66. *Matheson Tri-Gas, Inc. v. Sheehan*, No. 8:11-CV-401-T-23MAP, 2011 WL 1832708, at *4 (M.D. Fla. May 13, 2011) ("If either the 'taking' is unlawful or a demand is futile, no demand is necessary.").

ServisFirst additionally argues that Centennial was not deprived of its contact lists, deposit lists, or loan lists because it retained copies of these materials. Doc. 220 at 18. Yet, at least one Florida court has held that "[i]t is not necessary for a person to deprive another of exclusive possession of their property in order to be liable for conversion." *Warshall v. Price*, 629 So. 2d 903, 904 (Fla. 4th DCA 1993) (holding that patient list could be converted even though defendant only took a copy of the list from computer).

ServisFirst also argues that the SAC fails to allege that the contact lists were taken at ServisFirst's direction, particularly because the lists were taken weeks before Bryant, Murrin, Davey, and Zunz resigned. Doc. 220 at 18. Nonetheless, a conversion claim is actionable even assuming that ServisFirst merely received converted property. *Joseph v. Chanin*, 940 So. 2d 483, 486 (Fla. 4th DCA 2006); *Goodwin v. Alexatos*, 584 So. 2d 1007, 1011 (Fla. 5th DCA 1991).

The motions to dismiss Counts 35 through 39 will be denied.

Bryant's Fraudulent Inducement

(Count 40)

In Count 40, Centennial alleges that Bryant fraudulently induced Centennial to enter into the merger with Bay Cities and to retain the Former Officers by misrepresenting his intent to stay after the acquisition. Doc. 199 at ¶¶ 447-449. Under Florida law, a claim for fraudulent inducement requires: "(1) a false statement concerning a material fact; (2) the representor's knowledge that the representation is false; (3) an intention that the representation induce another to act on it; and (4) consequent injury by the party acting in reliance on the representation." *Butler v. Yusem*, 44 So. 3d 102, 105 (Fla. 2010) (internal quotation marks omitted). Pursuant to Rule 9(b) of the Federal Rules of Civil Procedure, Centennial "must state with particularity the circumstances constituting fraud or mistake."

Bryant first argues that Count 40 fails to plead the alleged misrepresentations with the requisite particularity. Count 40 incorporates several paragraphs by reference. Doc. 199 at ¶ 445. Read collectively, three of those paragraphs allege that on or around June 2, 2015, prior to the acquisition of Bay Cities Bank, Bryant misrepresented to Tracy French, the CEO of Centennial, that "he and his senior management would remain in place and loyal" to Centennial if the deal went through. Doc. 199 at ¶¶ 19, 24. The Court finds that these allegations are sufficiently specific.

Bryant alternatively maintains that a promise to act in the future is not actionable as a fraudulent misrepresentation. Doc. 219 at 19. Bryant is correct that, as a general rule,"a false statement of fact, to be a ground for fraud, must be of a past or existing fact, not a promise to do something in the future." *Wadlington v. Cont'l Med. Servs., Inc.*, 907 So. 2d 631, 632 (Fla. 4th DCA 2005) (internal quotation marks omitted). However, an exception to this rule exists "where the promise to perform a material matter in the future is made without any intention of performing or made with the positive intention not to perform." *Id.* (internal quotation marks omitted). The SAC supports an inference that Bryant never intended to fulfill his promise, given that Bryant was meeting with prospective employers just weeks after the merger was announced. Doc. 199 at ¶¶ 453, 10, 44.

***12** Bryant further argues that the fraud claim is precluded as a matter of law because the Centennial Bryant Agreement expressly contradicts the alleged misrepresentation. *See Hillcrest Pac. Corp. v. Yamamura*, 727 So. 2d 1053, 1056 (Fla. 4th DCA 1999) ("A party cannot recover in fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in a later written contract."). In particular, Bryant points out that Section 6 of the agreement stated that Bryant was employed at-will and for no specific period of time, and Section 2 stated that the agreement would terminate upon the earlier of Bryant's resignation or a one-year term. Doc. 219 at 20; Doc. 199-2 at 71. In addition, the merger agreement included an express integration clause providing that it "supersedes all prior agreements and understandings, both written and oral, between the parties[.]" Doc. 199-2 at 46. Section 14 of the Centennial Bryant

Agreement included a similar integration clause. Doc. 199-2 at 74.

After the parties briefed this issue, the Eleventh Circuit issued a published decision holding that, under Florida law, an integration clause would not preclude a fraudulent-inducement claim. *Glob. Quest, LLC v. Horizon Yachts, Inc.*, 849 F.3d 1022, 1027-29 (11th Cir. 2017). At the very least, this decision undermines Bryant's argument to the extent that it is based on the integration clauses. The Court will, therefore, deny the motion to dismiss without prejudice to Bryant raising the issue on a dispositive motion, if appropriate.

Bryant's Fraudulent Concealment

(Count 41)

In Count 41, Centennial brings a parallel fraud claim, alleging that Bryant induced Centennial to enter into the Bay Cities merger by failing to disclose his intent to resign from Centennial. Doc. 199 at ¶ 461. Under Florida law, a claim for fraudulent concealment requires that: (1) the defendant concealed or failed to disclose a material fact, (2) the defendant knew or should have known the material fact should be disclosed, (3) the defendant knew that his concealment of or failure to disclose the material fact would induce the plaintiff to act, (4) the defendant had a duty to disclose the material fact, and (5) the plaintiff detrimentally relied on the misinformation. *Hess v. Philip Morris USA, Inc.*, 175 So. 3d 687, 691 (Fla. 2015).

Bryant first contends that Centennial fails to plead the fourth element, a duty to disclose, because no such duty exists in an arms-length transaction. Doc. 219 at 22. Florida law is clear that "[w]here a party in an arm's-length transaction undertakes to disclose information, all material facts must be disclosed." *Friedman v. Am. Guardian Warranty Servs., Inc.*, 837 So. 2d 1165, 1166 (Fla. 4th DCA 2003). Here, the SAC plausibly alleges that Bryant undertook to disclose at least some details about this future with Centennial. *E.g.*, Doc. 199 at ¶¶ 10, 24.

Bryant also argues that even if he concealed his intent to leave Centennial, that fact was not "material." In particular, he notes that Centennial—unlike its predecessor, Bay Cities—did not contract with him for any particular term of employment. While that fact may support an inference that Bryant's tenure was not material to Centennial, it does not warrant dismissal of Centennial's claim. Based on the facts alleged in the SAC, including Centennial's willingness to offer Bryant a generous compensation package, a competing inference exists that Bryant's continued employment was material to Centennial.

Bryant's motion to dismiss Count 41 will be denied.

Bryant's Breach of Fiduciary Duties and Duty of Loyalty

(Count 42)

***13** In Count 42, Centennial alleges that Bryant breached his fiduciary duties and his duty of loyalty. To state a claim for breach of fiduciary duty under Florida law, Centennial must allege (1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages proximately caused by the breach. *Minotty v. Baudo*, 42 So. 3d 824, 835-36 (Fla. 4th DCA 2010).

Bryant argues that, under Florida law, an employee may lawfully plan a competing business without breaching any duty to his employer. But Florida law also holds that an employee is not entitled to engage in disloyal acts or solicit customers prior to the end of his employment. *Bank of Am., N.A. v. Crawford*, No. 2:12-CV-691-FTM-99, 2013 WL 593743, at *3 (M.D. Fla. Feb. 15, 2013); *Mortg. Now, Inc. v. Stone*, No. 3:09CV80/MCR/MD, 2012 WL 4478950, at *11 (N.D. Fla. Sept. 20, 2012). For the reasons stated in connection with the other claims against Bryant, Centennial adequately alleges disloyal acts and improper solicitation. The motion to dismiss Count 42 will be denied.

Davey's and Murrin's Aiding and Abetting Breaches of Fiduciary Duty

(Count 43)

In Count 43, Centennial alleges that Davey and Murrin aided and abetted Bryant's breaches of fiduciary duty. In Florida, a claim for aiding and abetting requires "(1) an underlying violation on the part of the primary wrongdoer; (2) knowledge of the underlying violation by the alleged aider and abettor; and (3) the rendering of substantial assistance in committing the wrongdoing by the alleged aider and abettor." *Perlman*

v. Wells Fargo Bank, N.A., 559 F. App'x 988, 993 (11th Cir. 2014) (internal quotation marks omitted). "Substantial assistance occurs when a defendant affirmatively assists, helps conceal or fails to act when required to do so, thereby enabling the breach to occur." *Aquent LLC v. Stapleton*, 65 F. Supp. 3d 1339, 1350 (M.D. Fla. 2014) (internal quotation marks omitted).

Davey and Murrin argue that the SAC fails to adequately plead the second and third elements of knowledge and substantial assistance. However, the SAC alleges that, among other things, Davey and Murrin aided Bryant with the solicitation of Centennial customers. Doc. 199 at ¶¶ 81, 98. Whether that assistance actually occurred and whether it was "substantial" are questions better addressed on a more developed record, where the Court is not limited to the four corners of the complaint and its attachments. The motion to dismiss Count 43 will be denied.

Bryant's Violations of the FSIPA

(Counts 44 to 46)

In Counts 44 through 46, Centennial alleges that Bryant committed securities fraud in violation of Fla. Stat. §§ 517.211 and 517.301, in connection with the Bay Cities merger. Section 517.211(2) provides, in relevant part:

> Any person purchasing or selling a security in violation of s. 517.301 ... is jointly and severally liable to the person selling the security to or purchasing the security from such person *in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security*.

Fla. Stat. § 517.211(2) (emphasis added). The SAC alleges claims for damages, rather than rescission. Doc. 199 at ¶¶ 499, 512, 523.

In the motion to dismiss, Bryant argues that the only proper remedy under Fla. Stat. § 517.211(2) is rescission because Centennial has not sold its stock in Bay Cities. In response, Centennial contends that as a result of the acquisition, the Bay Cities stock has been "converted and dispersed" to shareholders and "it's as if it has been sold." Doc. 227 at 24. Relying on Delaware law, Centennial further argues that a rescission would be impractical. *Id.* But Centennial cites no authority under Florida law to support these arguments, and the facts on which Centennial relies are not alleged in the SAC. Centennial also neglects to address Bryant's alternative argument that the SAC fails to claim the type of damages allowed under Fla. Stat. § 517.11(4).

***14** Based on the foregoing, the Court finds that Centennial fails to allege a plausible claim for damages under Fla. Stat.§ 517.211. Counts 44, 45, and 46 will be dismissed.

Former Officers' and Zunz's Violations of FCRCPA

(Count 47)

In Count 47, Centennial alleges that the Former Officers and Zunz engaged in a pattern of racketeering activity in violation of Fla. Stat. § 772.103. In their motions to dismiss, the defendants argue that this claim is frivolous because Centennial fails to allege the "continuity" element, which requires either a pattern of past criminal conduct or a threat of future criminal conduct. *Daedalus Capital LLC v. Vinecombe*, 625 F. App'x 973, 976 (11th Cir. 2015).

The Court agrees that Centennial fails to allege a plausible claim. At best, the SAC alleges that the defendants unlawfully accessed and transferred confidential information over a two-week period. Doc. 199 at ¶ 527. A two-week period is not sufficient to state a racketeering claim based on past conduct. *Jackson v. BellSouth Telecomms.*, 372 F.3d 1250, 1266 (11th Cir. 2004) (under parallel federal RICO statute, holding that "the great weight of authority suggests that nine months is a wholly insufficient interlude"). And the SAC includes no allegation suggesting that there is a threat of future criminal conduct. Count 47 will, therefore, be dismissed.

Defendants' Civil Conspiracy

(Count 48)

Count 48 alleges that all of the defendants engaged in a civil conspiracy to interfere with the prospective business advantage of Centennial. In Florida, a conspiracy claim requires "(a) a conspiracy between two or more parties, (b) to do an unlawful act or to do a lawful act by unlawful means, (c) the doing of some overt act in pursuance of the conspiracy, and (d) damage to [the] plaintiff as a result of the acts performed pursuant to the conspiracy." *Olson v. Johnson*, 961 So. 2d 356, 359 (Fla. 2d DCA 2007) (internal quotation marks omitted) (alteration in original). "The basis for the conspiracy must be an independent wrong or tort which would constitute a cause of action if the wrong were done by one person." *Kee v. Nat'l Reserve Life Ins. Co.*, 918 F.2d 1538, 1541 (11th Cir. 1990) (internal quotation marks omitted).

The defendants first contend that the SAC fails to allege any underlying unlawful act. Doc. 217 at 16. The SAC alleges that the "unlawful act" is the defendants' tortious interference with the prospective business advantage of Centennial. Doc. 199 at ¶ 536. For the reasons explained above, the SAC states plausible tortious-interference claims, and Centennial thus sufficiently alleges an underlying unlawful act.

The defendants alternatively maintain that the conspiracy claim is simply a repackaged version of Centennial's contract claims and is "inconsistent with the fundamental division between contract and tort actions." *Alhassid v. Bank of Am., N.A.*, 60 F. Supp. 3d 1302, 1317-18 (S.D. Fla. 2014). However, the defendants cite no case holding that tortious interference cannot form the predicate unlawful act for a conspiracy. Absent some authority to the contrary, the Court holds that Centennial states a plausible claim. The motions to dismiss Count 48 will, therefore, be denied.

ServisFirst's Motion to Strike

***15** ServisFirst alternatively moves to strike the SAC as a shotgun pleading. Doc. 220 at 2-4. But as the foregoing discussion makes clear, Centennial states plausible claims for relief, and the factual bases for those claims is clear. ServisFirst's motion to strike will be denied.

IV. Conclusion

Upon consideration, it is **ORDERED** that the Motions to Dismiss (Docs. 217, 218, 219, 220) are **GRANTED IN PART** to the extent that the following counts are **DISMISSED**: Count 17 (Bryant's Breach of the Employee Non-Solicitation Clause), Count 21 (Davey's Breach of the Non-Compete Provision), Counts 44 through 46 (FSIPA Violations), and Count 47 (FCRCPA Violation). The Motions to Dismiss are otherwise **DENIED**, and ServisFirst's Alternative Motion to Strike (Doc. 220) is **DENIED**. Defendants shall answer the Second Amended Complaint in accordance with the Federal Rules of Civil Procedure.

DONE AND ORDERED in Tampa, Florida this 15th day of September, 2017.

All Citations

Slip Copy, 2017 WL 11632487

Footnotes

1 The following facts are derived from the Second Amended Complaint (Doc. 199), the allegations of which the Court accepts as true in ruling on the motions to dismiss. *Linder v. Portocarrero*, 963 F.2d 332, 334 (11th Cir. 1992); *Quality Foods de Centro Am., S.A. v. Latin Am. Agribusiness Dev. Corp. S.A.*, 711 F.2d 989, 994 (11th Cir. 1983).

2 In the R&R, the Magistrate Judge defined "banking business" with reference to the statutory definition of "general commercial banking business" in Fla. Stat. § 658.12. Doc. 131 at 19.

3 *See also* *Sleit v. Ricoh Corp.*, No. 807-CV-724T-23TBM, 2007 WL 2565967, at *1 (M.D. Fla. Aug. 31, 2007) (noting existence of disclaimer); *Freese v. Wuesthoff Health Sys., Inc.*, No. 6:06CV175-ORL-31JGG, 2006 WL 1382111, at *8 (M.D. Fla. May 19, 2006) (same); *Cucinotta v. CVS Pharmacy, Inc.*, No. 8:12-CV-1194-T-33AEP, 2012 WL 4009682, at *2 (M.D. Fla. Sept. 12, 2012) (same); *LaRocca v. Xerox Corp.*, 587 F. Supp. 1002, 1004 (S.D. Fla. 1984) (same); *Quaker Oats Co.*, 818 So. 2d at 576 (same).