

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLARK COUNTY
BANCORPORATION,

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION, and FEDERAL
DEPOSIT INSURANCE
CORPORATION-RECEIVER,

Defendants.

CASE NO. C14-5816 BHS

ORDER DENYING
DEFENDANT’S MOTION TO
DISMISS AND REQUESTING
RESPONSES

This matter comes before the Court on Defendant Federal Deposit Insurance Corporation-Receiver’s (“FDIC-R”) motion to dismiss third amended complaint (Dkt. 77).

On August 12, 2015, Plaintiff Clark County Bankcorporation (“CCB”) filed a third amended complaint. Dkt. 77. On October 22, 2015, FDIC-R filed the instant motion to dismiss. Dkt. 77. On November 25, 2015, CCB responded and voluntarily withdrew its second and third claims for relief. Dkt. 83. On December 17, 2015, FDIC-R replied. Dkt. 86.

1 In this case, CCB's complaint is virtually identical to its complaint in what FDIC-
2 R refers to as the "Companion Litigation," which is *Clark County Bancorporation v.*
3 *FDIC*, Cause No. 3:14-cv-05852BHS (W.D. Wash). There are some minor differences
4 such as footnote material included in the main paragraphs instead of in footnotes, but
5 otherwise the complaints contain almost identical allegations. On November 23, 2015,
6 the Court denied FDIC-R's motion to dismiss CCB's breach of contract claim in the
7 Companion Litigation stating that "FDIC-R has sufficient notice of the claim against it
8 and it is time to move to the merits of the parties' dispute." *Id.*, Dkt. 62. Likewise, it is
9 time to move to the interpretation and substance of the disputed contract and FDIC-R
10 fails to provide any reason to conclude otherwise. Therefore, the Court **DENIES** FDIC-
11 R's motion to dismiss, and CCB shall file a new complaint consistent with its voluntary
12 withdrawal of claims.

13 Furthermore, the Court requests responses to the issue of consolidation with the
14 Companion Litigation. In order to conserve the Court and the parties' resources, it seems
15 readily evident that almost identical complaints should be prosecuted in a consolidated
16 action. Responses may be filed no later than February 12, 2016.

17 **IT IS SO ORDERED.**

18 Dated this 4th day of February, 2016.

19
20 

21 BENJAMIN H. SETTLE
22 United States District Judge