

MOTION TO STRIKE PLAINTIFF’S ANSWER TO COUNTERCLAIMS

1. Pursuant to Federal Rule of Civil Procedure 12(f), Defendants hereby move the Court to strike Plaintiff Dianne Dorman’s Answer to Defendants’ Original Counterclaim filed on May 1, 2024, because it was untimely filed. Defendants respectfully show the Court as follows:

2. Under Rule 12(f), the Court may “strike from a pleading an insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). The Fifth Circuit has stated that motions to strike are generally disfavored. *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards*, 677 F.2d 1045, 1058 (5th Cir.1982). Although motions to strike are generally disfavored, a Rule 12(f) motion to strike is proper when the defense is insufficient as a matter of law. *Kaiser Aluminum & Chem. Sales, Inc.*, 677 F.2d at 1057; *see also Berry v. Lee*, 428 F.Supp.2d 546, 563 (N.D.Tex.2006). “Rule 12(f) motions require a showing of prejudice.” *Landmark Graphics Corp. v. Paradigm Geophysical Corp.*, 2007 WL 189333, at *1 (S.D. Tex. Jan. 22, 2007) (Rosenthal, J.). The Court possesses considerable discretion in ruling on a motion to strike. *FDIC v. Niblo*, 821 F.Supp. 441, 449 (N.D.Tex.1993).

3. Plaintiff filed the instant action on December 28, 2023, in the 48th Judicial District Court for Tarrant County, Texas, Cause No. 048-349030-23. (Doc. No. 1-1).

4. Defendants removed the case to this Court on January 8, 2024. (Doc. No. 1).

5. Defendants filed their Original Answer and Counterclaim against Plaintiff on January 12, 2024. (Doc. No. 6). Defendants asserted a counterclaim for non-judicial foreclosure and judicial foreclosure based on their authority to foreclose on the subject Property pursuant to the Security Instrument, as owners and holders of the Note, and as mortgagees of record. *Id.* at ¶¶ 28-50.

6. Plaintiff was served a copy of Defendants' Original Answer and Counterclaim through her attorney of record, Ryan Daniel, via the federal electronic court filing system on January 12, 2024.

7. Plaintiff was required to file an answer or other responsive pleading to Defendants' counterclaim within 21 days of service. Fed. R. Civ. P. 12(a)(1)(B). Thus, Plaintiff's answer or other responsive pleading was due on or around February 2, 2024.

8. Plaintiff filed an untimely Answer to Defendants' Original Counterclaim on May 1, 2024, as part of her First Amended Complaint. (Doc. No. 30 at ¶¶ 46-54).

9. The defenses asserted in Plaintiff's answer fail as a matter of law because they are untimely filed according to the federal rules. Moreover, this is not the first time that Plaintiff has disregarded clear pleading deadlines and Orders of this Court. (*See generally*, Doc. Nos. 5, 20, 26). The Court should not reward such behavior which prejudices Defendants by unduly delaying this proceeding. Defendants are further prejudiced because the deadline to amend pleadings, including their counterclaim, has already passed on April 1, 2024. (Doc. No. 10).

10. Based on the above reasons, Plaintiff's Answer to Defendants' Original Counterclaim at paragraphs 46-54 of Plaintiff's First Amended Complaint should be stricken in its entirety.

WHEREFORE, Defendants request that the Court grant this 12(f) Motion to Strike Plaintiff's Answer to Defendants' Original Counterclaim filed on May 1, 2024, and grant such other and further relief as the Court deems just and proper.

DEFENDANTS' ANSWER

1. The allegations in paragraph 1 are of no effect and require no response as this matter has been removed to federal court.

2. The allegations in the first sentence of paragraph 2 state a legal conclusion to which no response is required. The allegations in the second sentence of paragraph 2 are not factual allegations requiring a response. To the extent a response is required to any of the allegations in paragraph 2, Defendants deny the allegations.

3. The allegations in paragraph 3 require no response because Defendant Deutsche Bank has appeared in this action and does not contest in personam jurisdiction.

4. The allegations in paragraph 4 require no response because Defendant PHH has appeared in this action and does not contest in personam jurisdiction.

5. The allegations in paragraph 5 are of no effect and require no response because this matter has been removed to federal court. Defendants do not contest venue.

6. The allegations in paragraph 6 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 6.

7. Defendants lack knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 7. To the extent a response is required, Defendants deny the allegations in paragraph 7.

8. With respect to the allegations in paragraph 8, Defendants admit only that the pertinent loan documents speak for themselves and deny any remaining allegations in paragraph 8.

9. Defendants lack knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 9. To the extent a response is required, Defendants deny the allegations in paragraph 9.

10. Defendants deny the allegations in paragraph 10.

11. Defendants deny the allegations in paragraph 11.

12. Defendants deny the allegations in paragraph 12.

13. Defendants deny the allegations in paragraph 13.

14. Defendants deny the allegations in paragraph 14.

15. Defendants deny the allegations in paragraph 15.

16. The allegations in paragraph 16 require no response. To the extent a response is required, Defendants incorporate by reference all preceding paragraphs.

17. The allegations in paragraph 17 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited case law speaks for itself and deny any remaining allegations.

18. The allegations in paragraph 18 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited statute speaks for itself and deny any remaining allegations.

19. The allegations in paragraph 19 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited case law speaks for itself and deny any remaining allegations.

20. The allegations in paragraph 20 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited case law and statute speak for themselves and deny any remaining allegations.

21. Defendants deny the allegations in paragraph 21.

22. Defendants deny the allegations in paragraph 22. Defendants further deny Plaintiff is entitled to the relief sought in paragraph 22 or any other relief.

23. The allegations in paragraph 23 require no response. To the extent a response is required, Defendants incorporate by reference all preceding paragraphs.

24. The allegations in paragraph 24 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited statutes speak for themselves and deny any remaining allegations.

25. The allegations in paragraph 25 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited case law and statute speak for themselves and deny any remaining allegations.

26. The allegations in paragraph 26 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only that the cited statute speaks for itself and deny any remaining allegations.

27. Defendants deny the allegations in paragraph 27.

28. The allegations in paragraph 28 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited case law and statute speak for themselves and deny any remaining allegations.

29. The allegations in paragraph 29 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited statute speaks for itself and deny any remaining allegations.

30. The allegations in paragraph 30 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited statute and case law speak for themselves and deny the remaining allegations.

31. Defendants deny the allegations in the first sentence of paragraph 31. The remaining allegations in paragraph 31 state legal conclusions to which no response is required. To

the extent a response is required, Defendants admit only the cited statutes speak for themselves and deny any remaining allegations.

32. The allegations in paragraph 32 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited case law and statute speak for themselves and deny any remaining allegations.

33. The allegations in paragraph 33 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited case law and statute speak for themselves and deny any remaining allegations.

34. The allegations in paragraph 34 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited case law and statute speak for themselves and deny any remaining allegations.

35. The allegations in paragraph 35 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited case law speaks for itself and deny any remaining allegations.

36. Defendants deny the allegations in paragraph 36.

37. Defendants deny the allegations in paragraph 37, including each of its subparts (a.-d.).

38. Defendants deny the allegations contained in paragraph 38. Defendants further deny Plaintiff is entitled to the relief sought in paragraph 38 or any other relief.

39. The allegations in paragraph 39 require no response. To the extent a response is required, Defendants incorporate by reference all preceding paragraphs.

40. The allegations in paragraph 40 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited regulation speaks for itself and deny any remaining allegations.

41. The allegations in paragraph 41 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited regulation speaks for itself and deny any remaining allegations.

42. The allegations in paragraph 42, including each of its subparts (a.-c.), state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited regulation speaks for itself and deny any remaining allegations.

43. Defendants deny the allegations in paragraph 43.

44. Defendants deny the allegations in paragraph 44.

45. Defendants deny the allegations contained in paragraph 45. Defendants further deny Plaintiff is entitled to the relief sought in paragraph 45 or any other relief.

46. Paragraph 46 contains Plaintiff's response to Defendants' counterclaims. Thus, no response from Defendants is required. To the extent a response is required, Defendants deny Plaintiff's allegations in paragraph 46. Defendants incorporate by reference and reallege herein all allegations, requests for relief, and any other statements in their counterclaim. Defendants further state they are entitled to all relief sought by their counterclaims.¹

47. Paragraph 47 contains Plaintiff's response to Defendants' counterclaims. Thus, no response from Defendants is required. To the extent a response is required, Defendants deny Plaintiff's allegations in paragraph 47. Defendants incorporate by reference and reallege herein

¹ Defendants' answer and responses to Paragraphs 46-54 of the Complaint are asserted subject to and without waiving the Defendants' 12(f) Motion to Strike Plaintiff's Answer to Counterclaims plead herein.

all allegations, requests for relief, and any other statements in their counterclaim. Defendants further state they are entitled to all relief sought by their counterclaims.

48. Paragraph 48 contains Plaintiff's response to Defendants' counterclaims. Thus, no response from Defendants is required. To the extent a response is required, Defendants deny Plaintiff's allegations in paragraph 48. Defendants incorporate by reference and reallege herein all allegations, requests for relief, and any other statements in their counterclaim. Defendants further state they are entitled to all relief sought by their counterclaims.

49. Paragraph 49 contains Plaintiff's response to Defendants' counterclaims. Thus, no response from Defendants is required. To the extent a response is required, Defendants deny Plaintiff's allegations in paragraph 49. Defendants incorporate by reference and reallege herein all allegations, requests for relief, and any other statements in their counterclaim. Defendants further state they are entitled to all relief sought by their counterclaims.

50. Paragraph 50 contains Plaintiff's response to Defendants' counterclaims. Thus, no response from Defendants is required. To the extent a response is required, Defendants deny Plaintiff's allegations in paragraph 50. Defendants incorporate by reference and reallege herein all allegations, requests for relief, and any other statements in their counterclaim. Defendants further state they are entitled to all relief sought by their counterclaims.

51. Paragraph 51 contains Plaintiff's response to Defendants' counterclaims. Thus, no response from Defendants is required. To the extent a response is required, Defendants deny Plaintiff's allegations in paragraph 51. Defendants incorporate by reference and reallege herein all allegations, requests for relief, and any other statements in their counterclaim. Defendants further state they are entitled to all relief sought by their counterclaims.

52. Paragraph 52 contains Plaintiff's response to Defendants' counterclaims. Thus, no response from Defendants is required. To the extent a response is required, Defendants deny Plaintiff's allegations in paragraph 52. Defendants incorporate by reference and reallege herein all allegations, requests for relief, and any other statements in their counterclaim. Defendants further state they are entitled to all relief sought by their counterclaims.

53. Paragraph 53 contains Plaintiff's response to Defendants' counterclaims. Thus, no response from Defendants is required. To the extent a response is required, Defendants deny Plaintiff's allegations in paragraph 53. Defendants incorporate by reference and reallege herein all allegations, requests for relief, and any other statements in their counterclaim. Defendants further state they are entitled to all relief sought by their counterclaims.

54. Paragraph 54 contains Plaintiff's response to Defendants' counterclaims. Thus, no response from Defendants is required. To the extent a response is required, Defendants deny Plaintiff's allegations in paragraph 54. Defendants incorporate by reference and reallege herein all allegations, requests for relief, and any other statements in their counterclaim. Defendants further state they are entitled to all relief sought by their counterclaims.

55. The allegations in paragraph 55 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only the cited case law speaks for itself and deny any remaining allegations.

56. With respect to the allegations in paragraph 56, Defendants admit only that Plaintiff seeks such relief and otherwise denies any remaining allegations. Defendants further deny Plaintiff is entitled to such relief or any other relief.

57. With respect to the allegations in paragraph 57, Defendants admit only that Plaintiff seeks such relief and otherwise denies any remaining allegations. Defendants further deny Plaintiff

is entitled to such relief or any other relief. Defendants further state Plaintiff's attorney fees are neither reasonable nor necessary.

58. Defendants deny the allegations in paragraph 58.

Defendants deny that Plaintiff is entitled to any of the relief sought in the Prayer of the Complaint or any other relief. Defendants further seek all relief sought by the counterclaims and incorporate all allegations and requests for relief contained in their counterclaims herein by reference, including but not limited to a declaration from the Court that (1) Defendants are authorized to enforce the power of sale in the Security Instrument through foreclosure of the subject Property pursuant to Texas Property Code section 51.002, the Note and Security Instrument; or (2) alternatively, a judgment foreclosing Defendants' lien and order of sale. Defendants further seek to recover their attorneys' fees and costs. Except as expressly admitted, qualified, or otherwise pleaded, Defendants deny all allegations contained in the Complaint.²

DEFENDANTS' AFFIRMATIVE AND OTHER DEFENSES

Without conceding the burden of proof, Defendants assert the following affirmative defenses:

1. Plaintiff fails to state a claim on which relief can be granted, and therefore, each of Plaintiff's claims should be dismissed.
2. Plaintiff's claims are barred, in whole or in part, by doctrines of unclean hands, laches, and/or other equitable doctrines.
3. Plaintiff's claims are barred, in whole or in part, by the statute of frauds.

² Plaintiff's "Prayer" was not numbered in the First Amended Complaint.

4. Plaintiff's claims and damages, if any, are subject to and/or barred by the terms of any relevant and applicable contracts or agreements.

5. Plaintiff's claims are barred, in whole or in part, by the economic loss doctrine.

6. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, in all of its forms, quasi-estoppel, waiver, ratification, release, and/or other equitable doctrines.

7. Plaintiff's damages are barred, in whole or in part, by Plaintiff's failure to mitigate.

8. Plaintiff's claims are barred by set-off, off-set, and recoupment, and PHH and Deutsche Bank claim all credits available to them.

9. Plaintiff's claims are barred, in whole or in part, by the doctrines of judicial estoppel, res judicata, and collateral estoppel.

10. Plaintiff's claims are barred or limited, in whole or in part, by the doctrine of proportionate responsibility. Any loss or damage allegedly suffered by Plaintiff was caused by the conduct of Plaintiff or other parties.

11. Plaintiff's attorneys' fees are not recoverable, reasonable, or necessary and are barred, in whole or in part, by failing to present a demand or making an excessive demand.

12. Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to allege and prove facts sufficient to support a right to relief.

13. Plaintiff's claims are barred, in whole or in part, because one or more of the material obligations of the Note and Security Instrument has not been satisfied by Plaintiff.

14. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

15. Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to satisfy a condition precedent.

16. Plaintiff's claims are barred, in whole or in part, by the release provisions contained in the subject loan modification agreement(s).

17. Any alleged wrongful acts or omissions of Defendants, if and to the extent such acts or omissions occurred, were legally excused or justified and were not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

18. Plaintiff's claims are barred, in whole or in part, by Defendants' compliance with applicable statutes and regulations.

19. Plaintiff's claims are barred, in whole or in part, by rescission and/or waiver.

20. Plaintiff's claims are barred, in whole or in part, by subrogation in all of its forms, including equitable or contractual.

21. PHH and Deutsche Bank reserve the right to plead such other and/or affirmative defenses which cannot be anticipated at this time, but which may become apparent and applicable during the pendency of this lawsuit, by reason of future discovery.

WHEREFORE, PREMISES CONSIDERED, PHH and Deutsche Bank request that the Court, upon final hearing hereof, render a judgment that Plaintiff take nothing by way of her claims against Defendants, that this action be dismissed with prejudice, and that Defendants recover their attorneys' fees and costs and have all other relief, at law or in equity, to which they may be justly entitled.

Respectfully submitted,

/s/ Taneska L. Jones

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**COUNSEL FOR DEFENDANTS DEUTSCHE
BANK AND PHH**

CERTIFICATE OF CONFERENCE

I conferred with Plaintiff's counsel, Ryan Daniel, on May 29, 2024, regarding the Motion to Strike Plaintiff's Answer to Counterclaims plead herein via phone/text message. Mr. Daniel advised that Plaintiff is opposed to the relief sought in the motion.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May 2024, a true and correct copy of the foregoing instrument was served on the following counsel of record *via ECF and/or email* according to the Federal Rules of Civil Procedure:

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/s/ Taneska L. Jones

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