

CAUSE NO. 202489215

DENNIS CULTER  
*Plaintiff,*

VS.

SELECT PORTFOLIO SERVICING, INC.  
AND MANIHO, LLC  
*Defendants.*

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

133<sup>RD</sup> JUDICIAL DISTRICT

**DEFENDANT'S ORIGINAL ANSWER**

Defendant, Select Portfolio Servicing, Inc. (“SPS” or “Defendant”) files this Original Answer to Plaintiff Dennis Culter’s (“Plaintiff”) Original Petition, Application for Injunctive Relief, and Request for Disclosures and would respectfully show unto the Court as follows:

**GENERAL DENIAL**

Defendant, pursuant to Rule 92 of the Texas Rules of Civil Procedure, generally denies all of the claims as alleged by Plaintiff and respectfully prays that Plaintiff be required to prove his claims as alleged by a preponderance of the evidence or such higher standard as may be applicable.

**AFFIRMATIVE DEFENSES**

1. Plaintiff failed to state a claim upon which relief may be granted and therefore each of Plaintiff’s claims should be dismissed.
2. Defendant pleads that Plaintiff has failed to plead and prove conditions precedent to recovery herein.
3. Defendant pleads the statute of frauds.
4. Defendant pleads waiver, estoppel, and ratification.

5. Defendant pleads a failure of consideration for any breach of contract claim, if any, that is outside the terms of the written loan documents.

6. Defendant pleads that Plaintiff lacks standing.

7. Defendant pleads the statute of limitations.

8. Defendant pleads *res judicata* and collateral estoppel.

9. Defendant pleads judicial estoppel and all forms of estoppel.

10. Defendant pleads that the “economic loss rule” precludes any and all tort claims by Plaintiff.

11. Plaintiff’s claims are precluded, in whole or part, because any alleged acts and/or omissions of Defendant was not the cause of Plaintiff’s alleged damages. Rather, Plaintiff’s damages, if any, were proximately caused by the act, omissions, or breaches of other persons and/or entities, including Plaintiff, and the acts, omissions or breaches were intervening and superseding causes of Plaintiff’s damages, if any.

12. Plaintiff’s damages, if any, were proximately caused by the acts, omissions, or breaches of other persons and entities, including Plaintiff, and the acts, omissions, or breaches were intervening and superseding causes of Plaintiff’s damages, if any. Defendant pleads the doctrine of comparative responsibility as provided in Chapter 33 of the TEX. CIV. PRAC. & REM. CODE, and its application to any tort claim (intentional or otherwise) of the Plaintiff that may be alleged against Defendant.

13. Plaintiff has failed to mitigate his damages, if any.

14. Defendant is not liable for the act, omissions, or conduct of other persons or entities not authorized to act on behalf of it and Defendant is not liable for the act, omissions of its agents, if any, who exceeded the scope of their authority.

15. Any claim for punitive or exemplary damages is subject to the limitations and constraints of Due Process found in the Fifth and Fourteenth Amendments to the United States Constitution.

16. Defendant pleads bankruptcy tolling, common law tolling, equitable tolling, abandonment of any alleged acceleration of the subject loan obligations, and all tolling of the statute of limitations available at law or in equity, including but not limited to tolling under §16.063 of the Texas Civil Practice and Remedies Code.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays that Plaintiff take nothing by reason of the claims alleged against it, that Defendant recover its taxable court costs, and that Defendant recover such other and further relief to which this Court deems it to be justly entitled.

Respectfully submitted,

HIRSCH & WESTHEIMER, P.C.

By: /s/ Michael F. Hord Jr.

Michael F. Hord Jr.

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of January 2025, a true and correct copy of the foregoing document was served as follows:

Erick DeLaRue  
The Law Office of Erick DeLaRue, PLLC  
2800 Post Oak Boulevard, Suite 4100  
Houston, Texas 77056  
**Via E-Service**

/s/ Michael F. Hord Jr.  
Michael F. Hord Jr.

Unofficial Copy Office of Marilyn Burgess District Clerk

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Erick Escamilla on behalf of Michael Hord  
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#### Case Contacts

| Name             | BarNumber | Email                        | TimestampSubmitted  | Status |
|------------------|-----------|------------------------------|---------------------|--------|
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| Eric Mettenbrink |           | emettenbrink@hirschwest.com  | 1/3/2025 1:20:06 PM | SENT   |
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