

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION**

**SLIDE FIRE SOLUTIONS, LP,**

*Plaintiff,*

v.

**MERRICK BANK CORPORATION  
and CKC HOLDINGS, INC. d/b/a  
SIGNATURE CARD SERVICES,**

*Defendants.*

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**Civil Action No. 1:18-CV-00034-C**

**DEFENDANTS’ MOTION TO DISMISS PLAINTIFF’S FIRST AMENDED  
COMPLAINT UNDER FED. R. CIV. P. 12(b)(6)**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, Defendants **MERRICK BANK CORPORATION** (“Merrick”) and **CKC HOLDINGS, INC. d/b/a SIGNATURE CARD SERVICES** (“Signature” and, collectively with Merrick, “Defendants”) file this, Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint under FED R. CIV. P. 12(b)(6) (the “Motion”). In support thereof, Defendants would respectfully show unto this Court, as follows:

**SUM AND SUBSTANCE OF MOTION**

1. As set forth more fully in Defendants’ Brief in Support of Motion to Dismiss Plaintiff’s First Amended Complaint under FED R. CIV. P. 12(b)(6) (the “Brief”), Plaintiff Slide Fire Solutions, LP’s (“Plaintiff”) claims—as pleaded in its First Amended Complaint against Defendants (hereinafter, the “Complaint”)—should be dismissed because Plaintiff’s Complaint fails to state any claims upon which relief can be granted.

2. The United States Supreme Court’s well-known “fair notice” pleading requirements under *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and *Bell Atl. Corp. v. Twombly*,

550 U.S. 544, 555-56 (2007), require Plaintiff to state its allegations with enough clarity to enable Defendants and this Court to determine whether a claim has been sufficiently alleged. Plaintiff's Complaint categorically fails to meet the minimum pleading standards.

3. Indeed, Plaintiff's Complaint lacks direct allegations on material elements of its claims for: (1) breach of contract; (2) promissory estoppel; (3) money had and received; (4) breach of duty of good faith and fair dealing; (5) violations of the Texas Deceptive Trade Practices Act; (6) unjust enrichment; (7) money damages; and, (8) specific performance, which are necessary to be entitled to recovery against Defendants. *See* [Doc. 6, ¶¶ 18-51].

4. Rather, Plaintiff's Complaint is little more than a compilation of "unadorned, [ ] defendant-unlawfully-harmed-me accusation[s,]" of the type rejected by the Fifth Circuit. *See Singh v. RadioShack Corp.*, 882 F.3d 137, 2018 U.S. App. LEXIS 2904, \*8 (5th Cir. Feb. 6, 2018) (citing *Iqbal*, 556 U.S. at 678). Without more than the "threadbare recitals" and "conclusory statements" contained in Plaintiff's Complaint, Defendants and this Court are left speculating how Defendants allegedly breached the Merchant Agreement at issue in this case or an implied covenant of good faith and fair dealing arising therefrom, how Plaintiff has quasi-contract claims when all Parties agree the Merchant Agreement controls the rights, duties, and obligations between them, or exactly what actions by Defendants (other than merely furnishing and maintaining a bank account for Plaintiff's benefit) give rise to Plaintiff's DTPA claims. *See Cooper v. Harvey*, 108 F. Supp. 3d 463, 468 (N.D. Tex. 2015) (citing *Iqbal*, 556 U.S. at 678).

5. Defendants, therefore, respectfully request that this Court dismiss Plaintiff's case in its entirety pursuant to FED. R. CIV. P. 12(b)(6).

**PRAYER AND CONCLUSION**

**WHEREFORE PREMISES CONSIDERED**, Defendants Merrick Bank Corporation and CKC Holdings, Inc. d/b/a Signature Card Services pray that this Court grant Defendants' Motion to Dismiss under FED. R. CIV. P. 12(b)(6). Defendants further pray that Plaintiff's claims be dismissed with prejudice, that any and all relief requested by Plaintiff be denied, and that judgment be entered against Plaintiff with prejudice and in favor of Defendants. Defendants further pray for an award of reasonable and necessary attorneys' fees, costs, and post-judgment interest as provided by 28 U.S.C. § 1961,<sup>1</sup> and for all such other and further relief to which they show themselves entitled.

DATE: April 24, 2018

Respectfully submitted,

**DYKEMA COX SMITH**

*/s/ John C. Sokatch*

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<sup>1</sup> Pursuant to 28 U.S.C. § 1961, Defendants are entitled to post-judgment interest on its judgment recovered in this Court. *See also Art Midwest, Inc. v. Clapper*, 805 F.3d 611, 615 (5th Cir. 2015) (in diversity cases, federal law controls the award of post-judgment interest). Following the guidance of Section 1961(a), such interest should be calculated from the date of the entry of judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.

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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that on April 24, 2018, I electronically filed the foregoing document with the Clerk of Court for the U.S. District Court for the Northern District of Texas, Abilene Division, using the electronic case filing system of the Court. The electronic case filing system will send a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept the Notice as service of this document by electronic means:

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