UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

NANCY ALANIS, Plaintiff, v. U.S. BANK NATIONAL ASSOCIATION, et al., Defendants.	§ § § § § § § § § § §	SA-23-CV-749-FB (HJB)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

To the Honorable United States District Judge Fred Biery:

This Report and Recommendation concerns the Motion for Summary Judgment filed by Plaintiff Nancy Alanis (Docket Entry 4) and Motion to Dismiss filed by Defendants U.S. Bank National Association ("U.S. Bank") and Nationstar Mortgage LLC ("Nationstar") (collectively "Defendants") (Docket Entry 38). Pretrial matters in this case have been referred to the undersigned for consideration. (Docket Entry 6.) For the reasons set out below, I recommend that Plaintiff's Motion for Summary Judgment (Docket Entry 4) be **DENIED WITHOUT PREJUDICE** and that Defendants' Motion to Dismiss (Docket Entry 38) be **GRANTED IN PART, DENIED IN PART**, and **DENIED AS MOOT IN PART.**

I. Jurisdiction.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1367, and 1441(a). Plaintiff asserts federal and state law claims over which the Court has original and supplemental jurisdiction, respectively. (*See* Docket Entry 1, at 3.) I have authority to issue this Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1).

II. Background.

On May 18, 2023, Plaintiff, proceeding *pro se,* filed her Verified Original Petition against Defendants in the 45th District Court, in Bexar County, Texas. (Docket Entry 1-3, at 2.) Counting the attachments, her petition was 252 pages in length. (*Id.* at 3–254.) Defendants removed the case to this Court on June 12, 2023. (Docket Entry 1.) The next day, Plaintiff moved for summary judgment. (Docket Entry 4.) Plaintiff subsequently filed a Verified First Amended Complaint (Docket Entry 32), which Defendants moved to dismiss. (Docket Entry 38.) Plaintiff and Defendants have responded to one another's respective motions. (*See* Docket Entries 37 and 51.)

III. Plaintiff's Motion for Summary Judgment

In the Fifth Circuit, courts have discretion to deny a motion for summary judgment as premature. *See Barnett v. Stafford Transp. of La.*, No. 1:20-CV-280, 2021 WL 2778281, at *1 (E.D. Tex. Mar. 12, 2021) (collecting cases). Though Rule 56 allows a party to move for summary judgment "at any time," the granting of summary judgment is limited until "after adequate time for discovery." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see Brown v. Miss. Valley State Univ.*, 311 F.3d 328, 333 (5th Cir. 2002) ("Summary judgment assumes some discovery."). Thus, a grant of summary judgment is premature and improper when basic discovery has not been completed. *Phongsavane v. Potter*, No. SA-05-CV-219-XR, 2005 WL 1514091, at *5 (W.D. Tex. June 24, 2005) (citing 10B CHARLES A. WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 2741 at 412-19 (3d 1998)).

Plaintiff moved for summary judgment *one day* after the case was removed to this Court. (*See* Docket Entries 1, 4.) To date, the Court has received no joint Rule 26(f) report from the parties; no scheduling order has been entered; and no discovery has taken place in this case. (*See* Docket Entries 37, at 3; 39; 40, at 2.) Accordingly, Plaintiff's motion for summary judgment

should be denied without prejudice as premature. *See, e.g.*, *Coleman v. Anco Insulations, Inc.*, 196 F. Supp. 3d 608, 611-12 (M.D. La. 2016) (denying as premature motion for summary judgment filed "prior to the commencement of formal discovery"); *Barnett*, 2021 WL 2778281, at *2-3 (denying as premature motion for summary judgment filed seventeen weeks before the close of discovery); *Phongsavane*, 2005 WL 1514091, at *5 (denying as premature motion for summary judgment filed before any answer had been filed or scheduling order entered).

IV. Defendants' Motion to Dismiss.

A complaint must contain "a short and plaint statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). The allegations therein must be "simple, concise, and direct." FED. R. CIV. P. 8(d)(1). The purpose of Rule 8 is to "[e]liminate prolixity in pleading and to achieve brevity, simplicity, and clarity." *Fortman v. Nissan Motor Co.*, No. 1-21-CV-660-RP, 2022 WL 2761372, at *1 (W.D. Tex. Mar. 31, 2022) (quoting *Gordon v. Green*, 602 F.2d 743, 746 (5th Cir. 1979). When a party violates Rule 8, the Court may order them "to file an amended complaint in compliance with the rules, limit pleadings to a certain number of pages, or dismiss the complaint without prejudice." *Desoto Grp., LLC v. Linetec Servs., LLC*, 339 F.R.D. 249, 251 (S.D. Miss. 2021) (citing *Barnes v. Tumlinson*, 597 F. App'x 798, 798–99 (5th Cir. 2015)).

Plaintiff's live, Verified First Amended Complaint is 265 pages long, accompanied by 382 pages of exhibits. (*See* Docket Entries 32; 32-1.) A complaint this unwieldy utterly fails to comply with Rule 8. Accordingly, Plaintiff's Verified First Amended Complaint (Docket Entry 32) should be dismissed without prejudice.[1] *See, e.g.*, *Jaser v. AT&T Servs. Inc.*, No. 3:18-CV-3429-B-BH,

[1] Defendants also moved to dismiss on the grounds (1) that Plaintiff failed to obtain the Court's permission to proceed with this action, and (2) that her claims are *res judicata*, and (3) time-barred. (Docket Entry 38, at 14–18, 21–22.) Plaintiff is a vexatious litigant and the Court previously sanctioned her with a pre-filing injunction. *See Alanis v. Wells Fargo Bank, N.A.*, No. SA-21-CV-01261-JKP, 2022 WL 488152 (W.D. Tex. Feb. 17, 2022). But that order only enjoined

2020 WL 1329151, at *5 (N.D. Tex. Mar. 23, 2020) (dismissing 180-page complaint under Rule 8 because it was excessively lengthy and repetitious); *Armstrong v. Tygart*, No. A-12-CA-606-SS, 2012 WL 13071541, at *1–2 (W.D. Tex. July 9, 2012) (dismissing plaintiff's complaint under Rule 8 rather than "sifting through eighty mostly unnecessary pages in search of the few kernels of factual material relevant to his claims"); *Deperio v. Downey Sav. & Loan Ass'n F.A.*, No. 9-CV-446-MMA (AJB), 2009 WL 10672415, at *2–3 (S.D. Cal. Oct. 2, 2009) (dismissing 395-page complaint because it was "so lengthy, crammed with so many facts, and allege[d] so many causes of action that it [wa]s practically incapable of being deciphered, much less defended"). However, Plaintiff should be granted leave to file a second amended complaint—limited to 25 pages, including exhibits, plainly and concisely stating all of her claims. *See, e.g.*, *Jaser*, 2020 WL 1329151, at *6 (dismissing complaint but granting leave to file amended complaint of no more than 15 pages).

V. Conclusion and Recommendation

Based on the foregoing, I recommend that Plaintiff's Motion for Summary Judgment (Docket Entry 4) be **DENIED WITHOUT PREJUDICE** as premature and that Defendants' Motion to Dismiss (Docket Entry 38) be **GRANTED IN PART, DENIED IN PART**, and **DENIED AS MOOT IN PART.**

Alanis from "*filing any civil lawsuit in the Western District of Texas* without first obtaining permission from a judge of the Western District of Texas." *Id.* at *3 (emphasis added). It did not enjoin her from continuing to litigate cases originally filed in *state court* and then subsequently removed to federal court by Defendants. Defendants' *res judicata* and statute of limitations arguments may have merit, but should be denied as moot insofar as the Court dismisses Plaintiff's Verified First Amended Complaint (Docket Entry 32), with leave to amend, as the undersigned recommends. The merit, if any, of Defendants' *res judicata* and statute of limitations arguments will become more apparent once Plaintiff's claims are re-presented with concision and clarity.

Defendants' Motion to Dismiss (Docket Entry 38) should be **DENIED** to the extent that Defendants argue Plaintiff may not proceed with this case without first obtaining the Court's permission. *See* note 1, *supra*. It should be **GRANTED** to the extent that Plaintiff has not complied with Federal Rule of Civil Procedure 8(a)(2). Accordingly, I recommend that Plaintiff's Verified First Amended Complaint (Docket Entry 32) be **DISMISSED WITHOUT PREJUDICE,** and that Plaintiff be allowed to file a second amended complaint—**limited to no more than 25 pages, including exhibits**—plainly and concisely stating all of her claims. *See* FED. R. CIV. P. 8(a)(2). Finally, Defendants' Motion to Dismiss (Docket Entry 38) should be **DENIED AS MOOT** as to Defendants' *res judicata* and statute of limitations defenses. *See* note 1, *supra*.

VI. Notice of Right to Object

The United States District Clerk shall serve a copy of this Report and Recommendation on all parties by either (1) electronic transmittal to all parties represented by attorneys registered as a "filing user" with the Clerk of Court, or (2) by mailing a copy to those not registered by certified mail, return receipt requested. Written objections to this Report and Recommendation must be filed within **fourteen (14) days** after being served with a copy of the same, unless this time period is modified by the district court. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).

The parties shall file any objections with the Clerk of the Court and serve the objections on all other parties. An objecting party must specifically identify those findings, conclusions or recommendations to which objections are being made and the basis for such objections; the district court need not consider frivolous, conclusory, or general objections. *Battle v. U.S. Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings, conclusions, and recommendations contained in this report shall bar the party from a *de novo* determination by the district court. *Thomas v. Arn*, 474 U.S. 140, 149–52 (1985); *Acuña v. Brown & Root, Inc.*, 200 F.3d 335, 340 (5th Cir. 2000). Additionally, failure to file timely written objections to the proposed findings, conclusions, and recommendations contained in this Report and Recommendation shall bar the aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

SIGNED on January 31, 2024.

Henry J. Bemporad
United States Magistrate Judge