UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MELANIE CLARKE BPR OV TRUST, Plaintiff, -against- DEUTSCHE BANK TRUST COMPANY AMERICAS and ALDERMORE BANK PLC, Defendants.	Case No. 1:26-cv-1904-JPC

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

STANDARD OF REVIEW 2

ARGUMENT 3

A. This Court Lacks Personal Jurisdiction Over Aldermore 4

B. Both of Clarke's Claims for Violation of the TIA Fail 6

1. The Claims Fail Because She Lacks the Right to Bring a TIA Claim 6

2. Servicers Like Aldermore Do Not Assume TIA Duties 8

3. The Claims Fail Against DBTCA Because DBTCA Has No Relationship to Her Loan, and Clarke Pleads no Event of Default 8

C. Leave to Amend would be Futile 9

TABLE OF AUTHORITIES

Page(s)

Cases

Ashcroft v. Iqbal,
556 U.S. 662 (2009).....3

Ball v. Metallurgie Hoboken-Overpelt, S.A.,
902 F.2d 194 (2d Cir. 1990).....2

Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez,
305 F.3d 120 (2d Cir. 2002).....6

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007).....3

Blue Tree Hotels Inv. (Canada Ltd.) v. Starwood Hotels & Resorts Worldwide, Inc.,
369 F.3d 212 (2004).....7

Cuoco v. Moritsugu,
222 F.3d 99 (2d Cir. 2000).....3, 9

Dorchester Fin. Sec., Inc. v. Banco BRJ, S.A.,
722 F.3d 81 (2d Cir. 2013).....3

Freeplay Music, LLC v. Nian Infosolutions Priv. Ltd.,
2018 WL 3639929 (S.D.N.Y. July 10, 2018), *report and recommendation adopted*, 2018 WL 3632524 (S.D.N.Y. July 31, 2018) 5

Fulton v. Goord,
591 F.3d 37 (2d Cir. 2009).....9

Hesse v. Godiva Chocolatier, Inc.,
463 F. Supp. 3d 453 (S.D.N.Y. 2020).....7

Huelbig v. Aurora Loan Servs., LLC,
No. 10 CIV. 6215 RJH THK, 2011 WL 4348281 (S.D.N.Y. May 18, 2011), *report and recommendation adopted*, No. 10 CIV. 6215 RJH THK, 2011 WL 4348275 (S.D.N.Y. Sept. 16, 2011).....7

Neitzke v. Williams,
490 U.S. 319 (1989).....3

Nelson v. Brown,
2014 WL 4470798 (E.D.N.Y. Sept. 10, 2014) 8

Penguin Grp. (USA), Inc. v. Am. Buddha,
2013 WL 865486 (S.D.N.Y. Mar. 7, 2013) 6

Porina v. Marward Shipping Co.,
521 F.3d 122 (2d Cir. 2008).....2, 3, 5

Rothman v. Gregor,
220 F.3d 81 (2d Cir. 2000).....7

Semi-Tech Litig., LLC v. Bankers Tr. Co.,
353 F. Supp. 2d 460 (S.D.N.Y. 2005).....9

Tamam v. Fransabank Sal,
677 F. Supp. 2d 720 (S.D.N.Y. 2010).....2, 6

TufAmerica, Inc. v. Diamond,
968 F. Supp. 2d 588 (S.D.N.Y. 2013).....9

United States v. Ulloa,
511 F. App'x 105 (2d Cir. 2013) 1

Upic & Co. v. Kinder-Care Learning Centers, Inc.,
793 F. Supp. 448 (S.D.N.Y. 1992) 6

Vasquez v. Hong Kong & Shanghai Banking Corp., Ltd.,
477 F. Supp. 3d 241 (S.D.N.Y. 2020).....4

Statutes

15 U.S.C. §§ 77aaa et seq. 6

15 U.S.C. § 77ooo.....8, 9

Other Authorities

Federal Rule of Civil Procedure 4(k)(2) 5

Federal Rule of Civil Procedure 12(b)(2) 1, 2, 3

Federal Rule of Civil Procedure 12(b)(6) 1, 3

N.Y. C.P.L.R. § 302(a) 4

Defendants Deutsche Bank Trust Company Americas ("DBTCA") and Aldermore Bank Plc ("Aldermore") respectfully submit this memorandum of law in support of their motion to dismiss Plaintiff Melanie Clarke's First Amended Complaint (Dkt. No. 49) ("FAC"), with prejudice, pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

PRELIMINARY STATEMENT

This lawsuit is the latest in a series of attempts by Clarke, a United Kingdom resident, to halt and/or delay mortgage loan foreclosure proceedings in Coventry, England following issuance by the County Court at Coventry of an order of possession.

Clarke is member of the "sovereign citizen" movement,[1] which this circuit has described as "a loosely affiliated group who believe that the . . . governments lack . . . legitimacy and therefore have no authority to regulate their behavior." *United States v. Ulloa*, 511 F. App'x 105, 107 n.1 (2d Cir. 2013). She is a self-described "envoy" of the "Republic of Old Souls" (Dkt. 1 at ¶ 14), an organization that developed a protocol to "transition a living man or woman from a state-of-debtor-status within the 'public' system to a position of creditor-sovereignty within a 'private' jurisdiction." THE GREAT ESCAPE PROTOCOL, https://greatescapeprotocol.com/#about (last visited Apr. 21, 2026). The organization's website explains the "mortgage illusion": "You think banks lend you money, but they never risk a penny — your signature creates a negotiable instrument that you deposit with the bank and then abandon the deposit, your deposit creates the currency, you are the creditor not the debtor." *Id.*

Clarke initially filed a complaint in this action on March 6, 2026. After Defendants moved to dismiss (Dkts. 26 and 31), Clarke obtained leave to amend her complaint and filed the

[1] Clarke maintains a YouTube channel on which she has posted, among other things, "The Never Settle Podcast" in which she purports to chronicle her fight "against the corrupt British Legal System." *See* https://www.youtube.com/@Mel-Kate/featured.

FAC (Dkt. 45). Like her prior complaint, the FAC alleges causes of action for violations of Sections 315(c) and 316(b) of the Trust Indenture Act of 1938, as amended, (the "TIA"). The FAC fails for the same reasons Defendants identified in their prior motions to dismiss, namely:

- The Court lacks personal jurisdiction over Aldermore;
- Clarke cannot demonstrate that the TIA, a U.S. securities statute, is at all applicable to her loan or the UK trust that purportedly owns her loan;
- Even as to the trusts to which it applies, the TIA protects trust *investors*, not *borrowers*, like Clarke, whose loans were conveyed to those trusts and who lack standing to sue for TIA violations;
- The TIA does not impose statutory duties on servicers like Aldermore; and
- Clarke does not allege that an "Event of Default" occurred that could trigger "prudent person" duties under Section 315(c).

Clarke has had multiple opportunities to state claims and failed. Further leave to amend would be futile, and Defendants' motion to dismiss should be granted with prejudice.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(2) requires dismissal if a plaintiff cannot make a prima facie showing of jurisdiction over the defendant. *See Ball v. Metallurgie Hoboken-Overpelt, S.A.*, 902 F.2d 194, 196 (2d Cir. 1990) ("[A] plaintiff bears the burden of establishing jurisdiction over the defendant by a preponderance of the evidence[;] the plaintiff need make . . . a prima facie showing that jurisdiction exists prior to the holding of an evidentiary hearing."). The plaintiff must first demonstrate that either the federal or the New York State long-arm statute applies. *See Tamam v. Fransabank Sal*, 677 F. Supp. 2d 720, 731 (S.D.N.Y. 2010). The plaintiff must then demonstrate that "maintenance of the suit would not offend traditional notions of fair play and substantial justice" by demonstrating that the defendant has "sufficient minimum contacts with the forum to justify the court's exercise of personal jurisdiction." *Porina v. Marward Shipping Co.*, 521 F.3d 122, 127 (2d Cir. 2008). If sufficient minimum contacts are

established, a court must "consider whether the assertion of personal jurisdiction is reasonable under the circumstances of the particular case." *Id.* (internal quotation omitted). When adjudicating a motion pursuant to Rule 12(b)(2), a district court may "consider materials outside the pleadings." *Dorchester Fin. Sec., Inc. v. Banco BRJ, S.A.*, 722 F.3d 81, 86 (2d Cir. 2013).

Federal Rule of Civil Procedure 12(b)(6) exists to "streamline litigation by dispensing with needless discovery and factfinding" and to eliminate baseless claims. *Neitzke v. Williams*, 490 U.S. 319, 326-27 (1989). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 550 U.S. at 678. "[L]abels and conclusions" or "a formulaic recitation of the elements of a cause of action" that amount to a "naked assertion" are insufficient. *Id*. (quoting *Twombly*, 550 U.S. at 555, 557).

Dismissal with prejudice is warranted if leave to amend would be futile. *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) ("a futile request to replead should be denied").

ARGUMENT

Clarke attempts to plead two causes of action in the FAC: Count I against DBNTC for "Statutory Fiduciary Neglect" under § 315(c) of the TIA, and Count II against both Defendants for "Unlawful Non-Consensual Impairment of Light Tier Discharge under § 316(b) of the TIA. Both claims are meritless for numerous reasons. Clarke's claims against Aldermore fail because Aldermore is a foreign corporation that is not subject to the jurisdiction of this Court. Clarke's claims fail against both Defendants, among other reasons set forth below, because Clarke fails to plead any TIA duty owed to Clarke, let alone a breach of such duty.

A. This Court Lacks Personal Jurisdiction Over Aldermore

Aldermore has virtually no ties to the United States, let alone New York. It is a public limited company that is incorporated in the United Kingdom with its principal place of business in Reading, England. *See* Decl. of Anita John, dated April 28, 2026 (Dkt. No. 28) ("John Decl.") ¶ 3. Aldermore maintains no offices in the United States, owns no real property in the United States, and, until this past spring, conducted no business in the United States when it acquired a portfolio of approximately 650 loans, five of which involve borrowers residing in the United States.[2] *Id.* ¶¶ 4-5, 9. Accordingly, Aldermore is not subject to the jurisdiction of this Court.

The New York long-arm statute does not confer jurisdiction over Aldermore as to the conduct alleged in the FAC. "New York's long-arm statute identifies four categories of conduct that can justify exercise of specific personal jurisdiction over a defendant." *Vasquez v. Hong Kong & Shanghai Banking Corp., Ltd.*, 477 F. Supp. 3d 241, 252 (S.D.N.Y. 2020). A New York court "may exercise personal jurisdiction over any non-domiciliary" who "transacts any business within the state or contracts anywhere to supply goods or services in the state; or (2) commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or (3) commits a tortious act without the state causing injury to person or property within the state . . . ; or (4) owns, uses or possesses any real property situated within the state." N.Y. C.P.L.R. § 302(a); *see also Vasquez*, 477 F. Supp. 3d at 252. No prong of this test is satisfied based on Aldermore's minimal contacts with the forum: it conducts no business in New York, it has not committed a tortious act in the state or a tortious act outside New York that was felt in New York, and it does not own real property in New York. John Decl. ¶¶ 3-10.

[2] One of the 650 loans included in the portfolio acquired by Aldermore from Octane was made to a borrower resident in New York.

Nor does the federal long-arm statute apply. Federal Rule of Civil Procedure 4(k)(2) "allows the exercise of personal jurisdiction by a federal district court when three requirements are met: (1) the claim must arise under federal law; (2) the defendant must not be 'subject to jurisdiction in any state's courts of general jurisdiction'; and (3) the exercise of jurisdiction must be 'consistent with the United States Constitution and laws.'" *Porina v. Marward Shipping Co.*, 521 F.3d 122, 127 (2d Cir. 2008) (quoting Fed. R. Civ. P. 4(k)(2)). Here, exercising personal jurisdiction over Aldermore would violate constitutional principles of due process.

An exercise of jurisdiction over a foreign corporation only comports with due process if "sufficient minimum contacts" between Aldermore and the United States exist. *Porina v. Marward Shipping Co.*, 521 F.3d 122, 127 (2d Cir. 2008). "[D]etermining whether there are sufficient minimum contacts with the broader United States to support personal jurisdiction pursuant to Rule 4(k)(2) requires consideration of two different types of jurisdiction: general and specific." *Freeplay Music, LLC v. Nian Infosolutions Priv. Ltd.*, 2018 WL 3639929, at *13 (S.D.N.Y. July 10, 2018), *report and recommendation adopted*, 2018 WL 3632524 (S.D.N.Y. July 31, 2018). For general jurisdiction to exist, a foreign corporation's affiliations with the forum must be so continuous and systematic as to render it essentially at home in the forum." *Id.* at *13. "Specific personal jurisdiction is predicated on "an affiliatio[n] between the forum and the underlying controversy," and is only appropriate where the defendant's "in-forum activity sufficiently reflects the defendant's purposeful availment of the privilege of carrying on its activities" in the forum. *Id.* Neither general nor specific jurisdiction exists here. Clarke does not allege "continuous and systematic" connections between Aldermore and the United States because there are none. John Decl. ¶¶ 3-10. Nor does—or could—Clarke allege any facts that might demonstrate that Aldermore has purposefully availed itself of the United States. *Id.*

Even if Clarke could allege sufficient minimum contacts between Aldermore and the United States, she would need to demonstrate that exercising personal jurisdiction over Aldermore would be reasonable.[3] Imposing jurisdiction on Aldermore would be patently unreasonable here because (1) it would impose an undue burden on Aldermore to defend a suit related to a foreign foreclosure in United States courts; (2) the United States has no interest in adjudicating a claim related to a residential foreclosure in the United Kingdom; and (3) Clarke's interest in obtaining convenient and effective relief can and should be met through the courts of the country where she lives, where Aldermore is based, and where the property at the heart of Clarke's claims is located.

Clarke cannot make the required prima facie showing that personal jurisdiction would be appropriate. As a result, "dismissal is mandated." *Penguin Grp. (USA), Inc. v. Am. Buddha*, 2013 WL 865486, at *6 (S.D.N.Y. Mar. 7, 2013).

B. Both of Clarke's Claims for Violation of the TIA Fail

Clarke fails to plead that the TIA is an applicable statute, nor does she plead that if it were, Defendants owed her any duty.

1. The Claims Fail Because She Lacks the Right to Bring a TIA Claim

Clarke seeks to pursue TIA claims but fails to plead that her loan is held in a TIA-qualified trust. The TIA applies to debt securities that are registered under U.S. law (15 U.S.C. §§ 77aaa et seq.) *See Upic & Co. v. Kinder-Care Learning Centers, Inc.*, 793 F. Supp. 448, 450

[3] Courts consider "five factors in evaluating the reasonableness of exerting jurisdiction: '(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies.'" *Tamam v. Fransabank Sal*, 677 F. Supp. 2d 720, 731 (S.D.N.Y. 2010) (quoting *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 129 (2d Cir. 2002)). "The weaker plaintiff's showing of minimum contacts, the more emphasis the court should place on the reasonableness inquiry." *Tamam*, 677 F. Supp. 2d at 731.

(S.D.N.Y. 1992) ("An indenture 'qualified' under the Trust Indenture Act of 1939 is an indenture which complies with the Act's substantive requirements, *see* 15 U.S.C. §§ 77jjj–77rrr, and under which a security has been issued, concerning which the required registration statement has been filed and has become effective.").. She pleads that her loan is held in "the Oak No. 5 PLC residential mortgage-backed securitization ('RMBS') pool" (FAC at 1), which is a United Kingdom securitization. *See* Oak No. 5 PLC Prospectus, https://www.aldermore.co.uk/media/yz3jxv3b/oak-5-prospectus.pdf, (last visited July 22, 2026), which Clarke previously excerpted and submitted to the Court (Dkt. 34 at 42-43).[4] The prospectus for this transaction makes clear that:

> The Notes have not been and will not be registered under the Securities Act or any state securities laws and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as defined in Regulation S) except pursuant to an exemption from registration requirements. Accordingly, the Notes are being offered and sold in offshore transactions in reliance on Regulation S.

Oak No. 5 PLC Prospectus, at 277. Accordingly, Clarke cannot establish that the TIA applies to the Oak No 5 PLC.

Clarke also fails to allege that she is an *investor* in a TIA-qualified trust and therefore fails to establish that she is owed any duties under the TIA or has rights to enforce alleged TIA breaches, which is fatal to her claims. *Huelbig v. Aurora Loan Servs., LLC*, No. 10 CIV. 6215

[4] To the extent the Court considers that document, it should take judicial notice of the entire document, not just the portion that Clarke selectively excerpted and filed with the Court. *See Hesse v. Godiva Chocolatier, Inc.*, 463 F. Supp. 3d 453, 463 (S.D.N.Y. 2020) ("[A] court may take judicial notice of information publicly announced on a party's website, as long as the website's authenticity is not in dispute and it is capable of accurate and ready determination, judicial notice should be taken.") (internal quotation marks omitted); *Blue Tree Hotels Inv. (Canada Ltd.) v. Starwood Hotels & Resorts Worldwide, Inc.*, 369 F.3d 212, 217 (2004) (explaining that courts may consider litigation filings on a 12(b)(6) motion); *Rothman v. Gregor*, 220 F.3d 81, 92 (2d Cir. 2000) (taking judicial notice of a document filed by a party in litigation as a "public record").

RJH THK, 2011 WL 4348281, at *8 (S.D.N.Y. May 18, 2011), *report and recommendation adopted*, No. 10 CIV. 6215 RJH THK, 2011 WL 4348275 (S.D.N.Y. Sept. 16, 2011) ("The Trust Indenture Act has no bearing whatsoever on Plaintiff's note and home mortgage, and Plaintiff—a borrower, not an investor—therefore lacks standing to pursue a claim under this Act.")[5] For example, Clarke's Count II is based on the "absolute unimpaired right of a beneficial holder" to receive certain payments (FAC at 5), but Clarke does not purport to be a beneficial holder of an interest (i.e., an investor) in the trust. Assuming arguendo that a Defendant had a duty to avoid impairment—or as to Count I, "prudent person" duties—under the TIA, those duties would have been owed to investors, not borrowers, like Clarke, whose loans are held in the trust, and Clarke would lack standing to assert a TIA-based claim. For the reasons set forth in this and the prior paragraph, the Court should dismiss both of Clarke's claims against both Defendants.

2. Servicers Like Aldermore Do Not Assume TIA Duties

Clarke attempts to plead that Aldermore violated the TIA (Count II), but the TIA governs indenture trustees, *see, e.g.*, 15 U.S.C. § 77ooo, and does not impose statutory obligations on loan servicers whose duties are established via contract among transacting parties. Aldermore is a loan servicer and, even if the Oak No. 5 PLC had been subject to the TIA—would not have TIA duties. Accordingly, Count II should be dismissed as to Aldermore for this reason.

3. The Claims Fail Against DBTCA Because DBTCA Has No Relationship to Her Loan, and Clarke Pleads no Event of Default

Clarke's claims against DBTCA fail for two additional reasons.

[5] *See also Nelson v. Brown*, 2014 WL 4470798, at *5 (E.D.N.Y. Sept. 10, 2014) (dismissing a TIA claim filed by a pro se plaintiff where "the plaintiff allege[d] no facts establishing that he [fell] within the scope of protected investors contemplated by the [TIA]" and provided no "evidence of any indenture whatsoever").

First, Clarke alleges that DBTCA acts as the indenture trustee of the Oak No. 5 PLC, but the prospectus for that trust(*see* Dkt. 34 at 42-43) identifies a different entity as performing the trustee roles (Note Trustee and Security Trustee). *See* Oak No. 5 PLC Prospectus, at 236 (Plaintiff previously excerpted and submitted to the Court). "If a document relied on in the complaint contradicts allegations in the complaint, the document, not the allegations, control, and the court need not accept the allegations in the complaint as true." *TufAmerica, Inc. v. Diamond*, 968 F. Supp. 2d 588, 592 (S.D.N.Y. 2013). Clarke's allegations that DBTCA owed duties with respect to the Oak No. 5 PLC are not plausible.

Second, Count I of the FAC alleges that DBTCA violated "a strict post-default 'prudent person' standard of care" under TIA § 315(c) after Clarke allegedly served a "Notice of Adverse Claim" on DBTCA. FAC at 4-5. However, under the TIA, an indenture trustee only assumes prudent person duties upon the occurrence of an event of default that is defined in the governing indenture. *See* 15 U.S.C. §§ 77ooo(a)-(c); *see Semi-Tech Litig., LLC v. Bankers Tr. Co.*, 353 F. Supp. 2d 460, 472 (S.D.N.Y. 2005). Clarke does not allege any contractually defined event of default occurred under the indenture.[6] Accordingly, Clarke has failed to plead that DBTCA assumed, let alone breached, prudent person duties under TIA § 315(c).

C. Leave to Amend would be Futile

The Court should dismiss Clarke's claims with prejudice, because leave to amend a second time would be futile. *See Fulton v. Goord*, 591 F.3d 37, 45 (2d Cir. 2009) ("We are normally accommodating to motions for leave to amend pro se complaints but may deny them "when amendment would be futile."); *Cuoco*, 222 F.3d at 112 (stating that where "better

[6] As explained above, even if an applicable event of default had occurred, the indenture trustee's prudent person duties would be owed to trust investors, not loan borrowers.

pleading will not cure" pleading deficiencies, any repleading would "be futile"). Repleading cannot create jurisdiction for this Court over Aldermore. Nor can repleading convert Clarke from a borrower to a trust investor or convert the Oak No. 5 PLC into a U.S. registered offering. Accordingly, repleading should not be permitted.

Dated: New York, NY
July 22, 2026

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ *Michael S. Kraut*

Michael S. Kraut
Matthew E. Cooper
101 Park Avenue
New York, NY 10178
(212) 309-6000
michael.kraut@morganlewis.com
matthew.cooper@morganlewis.com

Attorneys for Defendants Deutsche Bank Trust Company Americas and Aldermore Bank, Plc

CERTIFICATE OF COMPLIANCE

Pursuant to the Individual Practices of Magistrate Judge Barbara Moses, I, Matthew E. Cooper, hereby certify that this Memorandum of Law in Support of Defendants Motion to Dismiss does not exceed the page limit set forth in Rule 2(h), and otherwise complies with the formatting rules set out in Local Civ. R. 11.1(b).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 22nd day of July, 2026, at New York, New York.

/s/ Matthew E. Cooper
Matthew E. Cooper