Plaintiff's Opposition to Defendant's Motion to Dismiss

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Marisol Tenley,
Plaintiff,

-against-

Brackwell Hollow Exhibits, Inc.,
Defendant.

26 Civ. 99917 (QXZ)

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE AMENDED COMPLAINT (ECF No. 21) AND IN SUPPORT OF PLAINTIFF'S CONDITIONAL CROSS-MOTION FOR LEAVE TO AMEND

Fed. R. Civ. P. 12(b)(6), 12(d) and 15(a)(2)

Marisol Tenley
Plaintiff, appearing pro se
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Plaintiff **Marisol Tenley** ("Plaintiff"), appearing without a lawyer under 28 U.S.C. § 1654, opposes the motion of Defendant **Brackwell Hollow Exhibits, Inc.** ("Defendant") to dismiss the Amended Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure (ECF No. 21) (the "Motion").

This opposition consists of the following papers:

1. this memorandum of law;
2. the Declaration of Marisol Tenley, dated October 14, 2026 (the "Opposition Declaration"), with Exhibits A through D;
3. Plaintiff's Notice of Conditional Cross-Motion for leave to amend, filed as a separate document, because leave to amend is relief that goes beyond denial of the Motion;
4. the proposed Second Amended Complaint, attached to the Opposition Declaration as Exhibit C;
5. a [Proposed] Order; and
6. a Certificate of Service.

Plaintiff responds to Defendant's notice of motion, Defendant's memorandum of law (ECF No. 22) ("Def. Mem.") and the Declaration of Corwin Ashdale (ECF No. 23) (the "Defense Declaration").

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This is a claim for unpaid fees under a signed contract. The Amended Complaint pleads that Plaintiff designed an exhibition for Defendant in two phases, that Defendant accepted each phase in writing, that Defendant opened the exhibition to the public using Plaintiff's work, and that Defendant then did not pay $96,400 of the agreed $148,000. It attaches the contract and both written acceptances.

The Motion does not argue that those documents are false or that they do not say what the Amended Complaint says they say. It makes three other points. It calls the allegations of performance "conclusory" (Def. Mem. at 5). It relies on a declaration and two documents that are not in the pleading, to argue that the parties later cancelled the second phase (Def. Mem. at 8). It asks that any dismissal be with prejudice (Def. Mem. at 12).

None of these points supports dismissal. The Amended Complaint pleads dates, deliverables, acceptances

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and amounts, not labels. The outside documents may not be used to contradict it on a motion under Rule 12(b)(6). And even on Defendant's own account, the first phase was performed and the payment for it was not made, so the claim could not be dismissed as a whole. If the Court finds any part of the pleading too thin, Plaintiff asks for leave to file the proposed Second Amended Complaint, which supplies the detail that Defendant says is missing.

The following facts are alleged in the Amended Complaint (ECF No. 14) ("Am. Compl.") and shown in the documents attached to it, which are part of the pleading under Fed. R. Civ. P. 10(c).

A. The parties and jurisdiction. Plaintiff is an exhibition designer and a citizen of New Jersey. (Am. Compl. ¶ 4.) Defendant is a corporation incorporated in Delaware with its principal place of business in New York. (Id. ¶ 5.) The amount in controversy, exclusive of interest and costs, is $96,400, which exceeds $75,000. (Id. ¶ 6.) The Court has jurisdiction under 28 U.S.C. § 1332(a), and the Motion does not dispute it.

B. The Agreement. On January 12, 2026, the parties signed the Exhibition Design Services Agreement (the "Agreement"). (Am. Compl. ¶ 9 and Ex. A.) Plaintiff agreed to deliver the gallery layout and construction drawings ("Phase 1") and the graphic and lighting package ("Phase 2"). Defendant agreed to pay $148,000 in three parts: $51,600 on signing, $48,200 within 30 days after acceptance of Phase 1, and $48,200 within 30 days after acceptance of Phase 2. (Id. ¶¶ 10-11; Ex. A § 4.) Section 6 provides that a phase is accepted when Defendant's project director confirms acceptance by email. (Id. ¶ 12; Ex. A § 6.) Section 11 provides that the Agreement may be changed only by a writing signed by both parties. (Id. ¶ 13; Ex. A § 11.) Section 14 selects New York law. (Id. ¶ 14; Ex. A § 14.)

C. Plaintiff's performance. Plaintiff delivered all of the Phase 1 drawings on March 2, 2026. (Id. ¶ 16.) On March 9, 2026, Defendant's project director, Delphine Orrick, wrote by email: "Phase 1 is accepted. Please proceed to Phase 2." (Id. ¶ 17; Ex. B at 1.) Plaintiff delivered the full Phase 2 package on April 27, 2026. (Id. ¶ 19.) On May 4, 2026, Delphine Orrick wrote: "Phase 2 is accepted. Thank you for the fast turnaround." (Id. ¶ 20; Ex. B at 2.) On May 8, 2026, Defendant opened the exhibition to the public, built from the Phase 1 drawings and with the Phase 2 graphics and lighting. (Id. ¶ 21.)

D. Defendant's breach. Defendant paid the $51,600 deposit and nothing more. (Id. ¶ 22.) The Phase 1 payment fell due on April 8, 2026 and the Phase 2 payment on June 3, 2026. (Id. ¶¶ 23-24.) On June 10, 2026, Plaintiff sent Defendant a written demand for both. (Id. ¶ 25.) Defendant did not pay, and did not say that any work was late, incomplete or defective. (Id. ¶ 26.) Plaintiff's loss is $96,400, the sum of the two unpaid installments, plus interest. (Id. ¶ 28.)

Plaintiff filed the original complaint on July 20, 2026. Defendant moved to dismiss it on August 24, 2026. On September 8, 2026, within 21 days after service of that motion, Plaintiff amended once as a matter of course under Fed. R. Civ. P. 15(a)(1)(B), and added the delivery dates, the acceptance emails and the exhibition opening. (ECF No. 14.) The Court extended Defendant's time to respond to the Amended Complaint to October 1, 2026. (ECF No. 19.)

Defendant filed the present Motion on October 1, 2026 and served it on Plaintiff by mail the same day. Local Civil Rule 6.1(b) allows 14 days after service for opposition papers. Excluding the day of service under Fed. R. Civ. P. 6(a)(1)(A), the fourteenth day is Thursday, October 15, 2026. Because service was by mail, Fed. R. Civ. P. 6(d) adds three days, to October 18, 2026, a Sunday, so the period runs to the end of Monday, October 19, 2026 under Rule 6(a)(1)(C). The assigned judge's Individual Practices and the

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orders in this case do not set a different schedule. These papers are served on October 14, 2026 and are timely on either count. No earlier extension of this deadline was requested.

A complaint needs "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To survive a motion under Rule 12(b)(6), it "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 is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

The standard has limits in both directions. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. But the Supreme Court does "not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570.

When ruling on a motion to dismiss, "a judge must accept as true all of the factual allegations contained in the complaint." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). In addition, "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Id. (internal quotation marks omitted). Plaintiff prepared the Amended Complaint without a lawyer. It meets the ordinary standard, and any doubt about its wording should be read in Plaintiff's favor.

POINT I

THE AMENDED COMPLAINT STATES A CLAIM FOR BREACH OF CONTRACT

To state a claim in federal court for breach of contract under New York law, "a complaint need only allege (1) the existence of an agreement, (2) adequate performance of the contract by the plaintiff, (3) breach of contract by the defendant, and (4) damages." Harsco Corp. v. Segui, 91 F.3d 337, 348 (2d Cir. 1996). The Agreement selects New York law, and Defendant argues the Motion under New York law. (Def. Mem. at 4.) The Amended Complaint pleads facts for each element.

A. Existence of an agreement. The Amended Complaint identifies the Agreement by title, date, parties and terms, and attaches a signed copy. (Am. Compl. ¶¶ 9-14; Ex. A.) Defendant concedes that it signed. (Def. Mem. at 2.) This element is not in dispute.

B. Adequate performance by Plaintiff. Defendant's main argument is that performance is pleaded in a "conclusory" way. (Def. Mem. at 5.) The pleading shows otherwise. A conclusory allegation would say only that Plaintiff "performed all obligations." The Amended Complaint says what was due, what was delivered, on which date, who accepted it and in what words. (Am. Compl. ¶¶ 16-20.) It attaches the two emails in which Defendant's own project director accepted the work in the way that Section 6 of the Agreement requires. (Ex. B at 1-2.) It also alleges that Defendant built and opened the exhibition with that work. (Am. Compl. ¶ 21.) From a written acceptance of each phase and the public use of both, the reasonable inference is that Plaintiff performed.

Defendant answers that the Amended Complaint does not list each drawing, each revision and each meeting. (Def. Mem. at 6.) Rule 8 does not ask for that. Twombly rejects "heightened fact pleading of specifics." 550 U.S. at 570. The number and content of the drawings are matters for discovery.

C. Breach by Defendant. The Amended Complaint identifies the clause that was breached (Section 4),

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the two payments that fell due under it, the date of each, and the fact that neither was paid. (Am. Compl. ¶¶ 22-26.) Defendant does not say that it paid. A failure to pay a stated sum on a stated date under a stated clause gives Defendant full notice of the claim.

D. Damages. Plaintiff pleads a loss of $96,400, which is the unpaid Phase 1 installment of $48,200 plus the unpaid Phase 2 installment of $48,200. (Id. ¶ 28.) The amounts come from Section 4 of the attached Agreement. Nothing is speculative.

Defendant cites Iqbal for the rule that conclusions are not assumed true. (Def. Mem. at 5.) Plaintiff does not ask the Court to accept a conclusion. Plaintiff asks the Court to accept, as it must at this stage, the pleaded facts listed above. Those facts state each element, and the Motion should be denied.

POINT II

DEFENDANT'S FACTUAL DISPUTES AND OUTSIDE EXHIBITS CANNOT SUPPORT DISMISSAL

Defendant's second argument depends on the Defense Declaration and the two documents attached to it: an internal message log (Exhibit 1) and an unsigned page titled "Scope Change Order No. 1" (Exhibit 2). From these, Defendant argues that Phase 2 was cancelled before it was delivered. (Def. Mem. at 8-10.) The argument fails for four reasons.

A. The documents are outside the pleading. The Amended Complaint does not attach, quote or mention either document. They are not written instruments that are "an exhibit to a pleading" under Fed. R. Civ. P. 10(c). Nor are they integral to the pleading. A court may consider a document that a complaint does not attach when the complaint relies heavily on its terms and effect, but a plaintiff's reliance on the document in drafting the complaint is a necessary condition. Chambers v. Time Warner, Inc., 282 F.3d 147, 153-54 (2d Cir. 2002). Plaintiff relied on the Agreement and the acceptance emails. Plaintiff did not rely on Defendant's internal messages, which Plaintiff had never seen, or on a page that Plaintiff refused to sign.

B. The Court should exclude them. When matters outside the pleadings are presented on a Rule 12(b)(6) motion, the court may exclude them or must treat the motion as one for summary judgment under Rule 56, with "a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. P. 12(d); see Chambers, 282 F.3d at 154. Exclusion is the right course here. No discovery has taken place, the Motion was not presented under Rule 56, and Defendant, which is represented by counsel, did not serve on Plaintiff the notice with the full text of Rule 56 that Local Civil Rule 12.1 requires when a represented party relies on outside matters against a party without a lawyer. If the Court is inclined to convert the Motion instead, Plaintiff asks for notice, for the discovery described in the Opposition Declaration, and for a reasonable opportunity to submit evidence.

C. The documents would raise a question of fact, not answer one. On a motion to dismiss, the pleaded facts are accepted as true. Erickson, 551 U.S. at 94. The Amended Complaint alleges that Phase 2 was ordered, delivered, accepted in writing and used. (Am. Compl. ¶¶ 17-21.) The assertion that it was cancelled contradicts those allegations, including the statement of Defendant's own project director on May 4, 2026 that "Phase 2 is accepted." (Ex. B at 2.) The Agreement also says that changes must be in a writing signed by both parties. (Ex. A § 11.) Exhibit 2 to the Defense Declaration bears no signature. A contest between an unsigned page and a written acceptance cannot be decided against the pleader on this Motion.

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D. The argument does not reach Phase 1. Exhibit 2, on its own words, concerns Phase 2 only. Nothing in the Motion explains why the $48,200 due for Phase 1 was not paid. Even if every word of the Defense Declaration were considered and believed, the claim for breach of the Phase 1 payment term would remain, and the claim could not be dismissed in full.

POINT III

IN THE ALTERNATIVE, THE COURT SHOULD GRANT LEAVE TO AMEND

The Court need not reach this point if it denies the Motion. If it finds any element insufficiently pleaded, it should grant leave to amend and deny Defendant's request for dismissal with prejudice.

After the one amendment that Rule 15(a)(1) allows as of right, a party may amend with the opposing party's written consent or the court's leave, and the "court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Plaintiff asked Defendant's counsel for consent on October 9, 2026. Counsel declined. (Opposition Declaration ¶ 13.) "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." Foman v. Davis, 371 U.S. 178, 182 (1962). Foman names the reasons that may justify refusal, such as undue delay, bad faith, repeated failure to cure deficiencies by earlier amendments, undue prejudice to the opponent, and futility. Id. None is present.

A. No undue delay or bad faith. Plaintiff moves with this opposition, less than three months after filing the case and 13 days after the Motion was served.

B. No repeated failure to cure. Plaintiff has amended once. That amendment answered Defendant's first motion by adding delivery dates, acceptances and use. The present objections, that individual drawings and meetings are not listed and that Phase 2 was cancelled, were not made in the first motion.

C. No undue prejudice. No discovery has been taken, no scheduling order has been entered and no trial date has been set. The proposed pleading concerns the same Agreement, the same two phases and the same two unpaid installments.

D. No futility. The proposed Second Amended Complaint (Exhibit C) adds: (1) the sheet number and title of each Phase 1 drawing and each Phase 2 graphic and lighting file; (2) the date and participants of each review meeting; (3) the full text of both acceptance emails; (4) the fact that Plaintiff received the unsigned "Scope Change Order No. 1" on April 6, 2026, rejected it in writing the same day, and was told by Delphine Orrick to "continue as planned"; and (5) the date on which each Phase 2 element was installed. These are facts, not conclusions. Each bears on an element that Defendant says is not pleaded.

As Local Civil Rules 7.1(a)(4) and 15.1(a) require, Plaintiff files a separate notice of motion for this relief and attaches the proposed pleading. Local Civil Rule 15.1(a) does not require a pro se party to provide a version that shows the differences from the earlier pleading. For the convenience of the Court, the new paragraphs of Exhibit C are listed above by subject.

For these reasons, Plaintiff **Marisol Tenley** respectfully requests that the Court:

(a) deny Defendant's Motion to dismiss the Amended Complaint (ECF No. 21) in full;

(b) exclude the Defense Declaration (ECF No. 23) and its exhibits from consideration on the Motion, or, if the Court converts the Motion under Fed. R. Civ. P. 12(d), give Plaintiff notice, time for discovery under Fed. R. Civ. P. 56(d) and a reasonable opportunity to present all pertinent material;

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(c) in the alternative, if the Court finds any part of the Amended Complaint insufficient, grant Plaintiff's conditional cross-motion under Fed. R. Civ. P. 15(a)(2) for leave to file the proposed Second Amended Complaint (Exhibit C);

(d) deny Defendant's request that any dismissal be with prejudice; and

(e) grant any other relief that the Court finds just and proper.

Plaintiff does not request oral argument and is available if the Court wishes to hear it.

Dated: Fairhollow, New Jersey
October 14, 2026

Respectfully submitted,

/s/ Marisol Tenley**Marisol Tenley**
Plaintiff, appearing pro se
418 Larkspur Court, Fairhollow, New Jersey 07099
m.tenley@example.com
(201) 555-0148

CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.1(c)

I, Marisol Tenley, certify under Local Civil Rule 7.1(c) that this memorandum of law was prepared with a computer and contains 2,894 words. In stating this number I relied on the word count of the word-processing program used to prepare it. The count includes material in footnotes and endnotes and leaves out the caption, the table of contents, the table of authorities, the signature block and the required certificates. The memorandum complies with the limit of 8,750 words.

Dated: October 14, 2026

/s/ Marisol Tenley**Marisol Tenley**

1. Notice of conditional cross-motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Marisol Tenley, Plaintiff, -against- **Brackwell Hollow Exhibits, Inc.**, Defendant.
26 Civ. 99917 (QXZ)

NOTICE OF PLAINTIFF'S CONDITIONAL CROSS-MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law, the Declaration of Marisol Tenley dated October 14, 2026 and its exhibits, the proposed Second Amended Complaint attached as Exhibit C, and all prior papers in this action, Plaintiff **Marisol Tenley** will move this Court, before The Honorable Quillan X. Zeller, at 500 Pearl Street, New York, New York 10007, on a date and at a time to be designated by the Court, for an order under Rule 15(a)(2) of the Federal Rules of Civil Procedure and Local Civil Rule 15.1(a):

1. granting Plaintiff leave to file the proposed Second Amended Complaint, if and to the extent that the

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Court finds the Amended Complaint (ECF No. 14) insufficient on Defendant's Motion (ECF No. 21);

2. directing that Plaintiff file it within 14 days after the order, or deeming it filed on the date of the order; and

3. granting any other relief that the Court finds just and proper.

PLEASE TAKE FURTHER NOTICE that, under Local Civil Rule 6.1(b), and unless the Court's Individual Practices or an order provide otherwise, papers in opposition to this cross-motion must be served within 14 days after service of these papers, and reply papers within seven days after service of the opposition.

Dated: October 14, 2026

/s/ Marisol Tenley**Marisol Tenley**
Plaintiff, appearing pro se
418 Larkspur Court, Fairhollow, New Jersey 07099
m.tenley@example.com
(201) 555-0148

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Marisol Tenley, Plaintiff, -against- **Brackwell Hollow Exhibits, Inc.**, Defendant.
26 Civ. 99917 (QXZ)

DECLARATION OF Marisol Tenley IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND IN SUPPORT OF CONDITIONAL CROSS-MOTION

I, Marisol Tenley, declare under 28 U.S.C. § 1746:

1. I am the Plaintiff. I am over 18 years of age. I make this declaration from personal knowledge, and I am competent to testify to the facts stated in it.

2. I make this declaration for three purposes: to place before the Court documents that are already part of the Amended Complaint; to support my conditional cross-motion for leave to amend; and, only if the Court decides to consider the Defense Declaration and convert the Motion under Rule 12(d), to show that its account is disputed and that I need discovery. I do not ask the Court to consider paragraphs 7 through 12 or Exhibit D in deciding whether the Amended Complaint states a claim.

Documents that are part of the pleading

3. Exhibit A is a true and correct copy of the Exhibition Design Services Agreement that I signed with Defendant on January 12, 2026. It is Exhibit A to the Amended Complaint.

4. Exhibit B is a true and correct copy of two emails that I received from Delphine Orrick, dated March 9, 2026 and May 4, 2026. It is Exhibit B to the Amended Complaint.

Proposed pleading

5. Exhibit C is the proposed Second Amended Complaint. I prepared it after I received the Motion. I have personal knowledge of the facts it adds about my own drawings, files, meetings and emails.

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6.

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Exhibit C does not add a party or a new claim. It adds detail about the work, its acceptance and the document that Defendant calls a change order.

Facts that respond to the Defense Declaration, offered only if the Motion is converted

7. On April 6, 2026, an assistant in Defendant's office emailed me an unsigned page titled "Scope Change Order No. 1." It proposed to remove Phase 2 from the project.

8. I did not sign it. I replied by email the same day: "I do not agree to this change. Phase 2 is under way." Exhibit D is a true and correct copy of that email and the reply described in the next paragraph.

9. The same afternoon, Delphine Orrick replied to me by email: "Understood, please continue as planned."

10. I delivered Phase 2 on April 27, 2026. Nobody at Defendant told me, before or after delivery, that Phase 2 had been cancelled. I attended the opening on May 8, 2026 and saw the Phase 2 graphics and lighting installed in every gallery.

11. I had never seen the internal message log attached to the Defense Declaration before I received the Motion. I was not a participant in those messages.

12. I cannot now present all the facts needed to oppose a motion for summary judgment, because they are held by Defendant. I need: (a) the complete messages about Phase 2 from April 6, 2026 to May 8, 2026, including those left out of the log; (b) a deposition of Delphine Orrick, who accepted both phases and did not submit a declaration; and (c) Defendant's payment approval records for both installments. I expect these to show who decided not to pay and why. I have not been able to obtain them because discovery has not opened.

Request for consent

13. On October 9, 2026, I emailed Thaddeus Quillfeather, Esq., counsel for Defendant, and asked whether Defendant would consent in writing to the filing of a Second Amended Complaint. Counsel replied the same day that Defendant would not consent.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 14, 2026, at Fairhollow, New Jersey.

/s/ Marisol Tenley**Marisol Tenley**
418 Larkspur Court, Fairhollow, New Jersey 07099
m.tenley@example.com
(201) 555-0148

INDEX OF EXHIBITS TO THE OPPOSITION DECLARATION

Exhibit A: Exhibition Design Services Agreement, dated January 12, 2026 (Exhibit A to the Amended Complaint). Redacted: Plaintiff's bank account on the payment page, shown only by its last four digits, 4471; Plaintiff's taxpayer-identification number, shown only by its last four digits.

Exhibit B: Emails from Delphine Orrick to Plaintiff accepting Phase 1 (March 9, 2026) and Phase 2 (May 4, 2026) (Exhibit B to the Amended Complaint). No redaction.

Exhibit C: [Proposed] Second Amended Complaint, with its exhibits. Offered in support of the

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conditional cross-motion.

Exhibit D: Emails of April 6, 2026 between Plaintiff and Delphine Orrick about the unsigned page titled "Scope Change Order No. 1." Offered only if the Motion is converted under Fed. R. Civ. P. 12(d). No redaction.

Each exhibit starts on a new page, carries its letter on the first page, and is complete unless the index says that a part is redacted. Redactions follow Fed. R. Civ. P. 5.2(a).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Marisol Tenley, Plaintiff, -against- **Brackwell Hollow Exhibits, Inc.**, Defendant.
26 Civ. 99917 (QXZ)

[PROPOSED] ORDER DENYING DEFENDANT'S MOTION TO DISMISS

Defendant **Brackwell Hollow Exhibits, Inc.** moved under Fed. R. Civ. P. 12(b)(6) to dismiss the Amended Complaint (ECF No. 21). Plaintiff **Marisol Tenley** opposed the motion and cross-moved, conditionally, for leave to amend under Fed. R. Civ. P. 15(a)(2). Having considered the papers, and for good cause shown, it is hereby

ORDERED that the matters outside the pleadings submitted with the motion (ECF No. 23) are excluded under Fed. R. Civ. P. 12(d) and were not considered; and it is further

ORDERED that Defendant's motion to dismiss the Amended Complaint (ECF No. 21) is DENIED; and it is further

ORDERED that Plaintiff's conditional cross-motion for leave to amend is DENIED AS MOOT, without prejudice to a later motion; and it is further

ORDERED that Defendant must serve and file its answer to the Amended Complaint (ECF No. 14) within 14 days after notice of this Order.

SO ORDERED.

Dated: New York, New York
Date: [to be completed by the Court]

[Signature of the Court]
The Honorable Quillan X. Zeller
United States District Judge

CERTIFICATE OF SERVICE

I, Marisol Tenley, declare under 28 U.S.C. § 1746:

1. On October 14, 2026, I served true and complete copies of the following papers: Memorandum of Law with Certificate of Compliance; Notice of Conditional Cross-Motion; Declaration of Marisol Tenley with Exhibits A through D, including the proposed Second Amended Complaint; and [Proposed] Order.

2. I served them on the attorney of record for Defendant **Brackwell Hollow Exhibits, Inc.** by mailing

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them, in a sealed envelope with first-class postage prepaid, deposited with the United States Postal Service at the Fairhollow, New Jersey post office, addressed as follows:

Thaddeus Quillfeather, Esq.
Quillfeather & Maddocks LLP
900 Example Plaza, Suite 1200, New York, New York 10000

3. On the same day, I submitted the same papers by email to the Court's Pro Se Intake Unit for filing on the docket.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 14, 2026, at Fairhollow, New Jersey.

/s/ Marisol Tenley**Marisol Tenley**
418 Larkspur Court, Fairhollow, New Jersey 07099
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