

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:13-CV-00131-FDW-DCK**


TROPICAL NUT & FRUIT CO.,)
)
 Plaintiff,)
)
 vs.)
)
 FORWARD FOODS, LLC and)
 RECHARGE FOODS, LLC,)
)
 Defendants.)

ORDER

THIS MATTER is before the Court upon Plaintiff Tropical Nut & Fruit Co.’s Motion to Dismiss Count I of Defendants’ Counterclaims and to Strike Defendants’ Second and Third Defenses. (Doc. No. 23). In its Motion and accompanying Memorandum, (Doc. No. 24), Plaintiff argues that Count I of Defendants Forward Foods, LLC and Recharge Foods, LLC’s (collectively “Defendants”) Counterclaims should be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted, and that Defendants’ Second and Third defenses to Plaintiff’s claims should be stricken under Rule 12(b)(6) and 12(f)(2) on the grounds that they are insufficient defenses and essentially duplicate Count I of Defendants’ Counterclaims. Upon review by the Court, this Motion is **DENIED WITHOUT PREJUDICE**. Plaintiff is free to raise these issues again at summary judgment.

IT IS SO ORDERED.

Signed: July 16, 2013



Frank D. Whitney
Chief United States District Judge

