UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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| SHAWANNA RAPIER, Plaintiff, | |
| v. | No. 1:18-cv-270 |
| TODD WENZEL BUICK GMC, INC., Defendants. | HONORABLE PAUL L. MALONEY |

**OPINION**

This matter is before the Court on Defendant Todd Wenzel Buick GMC's motion to dismiss Plaintiff Shawanna Rapier's single-count complaint for violation of the Equal Credit Opportunity Act (ECOA). 15 U.S.C. § 1691 *et seq.* The motion will be granted in part and denied in part for the reasons set forth below.

## I. Factual Allegations

The following facts are alleged in Plaintiff's complaint and must be taken as true for purposes of Defendant's Rule 12 motion.

Plaintiff Shawanna Rapier was interested in buying a car on October 27, 2017, so she went to Todd Wenzel Buick GMC, a car dealership in Grand Rapids, Michigan. At the dealership, she received and partially completed an application for financing to purchase a vehicle. While Plaintiff came to the dealership interested in a vehicle made between 2006 and 2008, a car salesman told her that lenders would not finance older models of vehicles and instead suggested she look at newer models. Plaintiff was not interested in a vehicle with a higher monthly payment, so she left the dealership.

After leaving, the salesman twice called Plaintiff to tell her he could get a lower monthly rate for one of the 2014 vehicles. Plaintiff told him that she was not interested, and she did not return to the dealership.

On December 3, 2017, TWB sent an adverse action notice informing Plaintiff that it had denied her credit application. The notice advised that Plaintiff could request the specific reasons why her credit applicable had been denied by writing to TWB's financing director within sixty days. Plaintiff did so on January 9, 2018.

On January 17, 2018, TWB's finance director wrote back to Plaintiff and stated that the dealership had received an incomplete credit application from her, so it could not extend credit to her.

Plaintiff asserts that TWB took adverse action against Plaintiff by failing to provide financing on her requested terms. She also alleges that the response by TWB's finance director was not compliant because it did not explain why TWB regarded her application as incomplete.

## II. Legal Framework: Motion to Dismiss

A complaint must contain a short and plain statement of the claim showing how the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). The complaint need not contain detailed factual allegations, but it must include more than labels, conclusions, and formulaic recitations of the elements of a cause of action. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A defendant bringing a motion to dismiss for failure to state a claim under Rule 12(b)(6) tests whether a cognizable claim has been pled in the complaint. *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 436 (6th Cir. 1988).

To survive a motion to dismiss under Rule 12(b)(6), the plaintiff must provide sufficient factual allegations that, if accepted as true, are sufficient to raise a right to relief above the speculative level, *Twombly,* 550 U.S. at 555, and the "claim to relief must be plausible on its face" *Id.* at 570. "A claim is plausible on its face if the 'plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Ctr. for Bio-Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 369 (6th Cir. 2011) (quoting *Twombly*, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations omitted). If the plaintiff does not "nudge[] [his] claims across the line from conceivable to plausible, [his] complaint must be dismissed." *Twombly*, 550 U.S. at 570.

When considering a motion to dismiss, a court must accept as true all factual allegations, but need not accept any legal conclusions. *Ctr. for Bio-Ethical Reform,* 648 F.3d at 369. The Sixth Circuit has noted that courts "may no longer accept conclusory legal allegations that do not include specific facts necessary to establish the cause of action." *New Albany Tractor, Inc. v. Louisville Tractor, Inc.*, 650 F.3d 1046, 1050 (6th Cir. 2011). However, "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need *detailed* factual allegations"; rather, "it must assert *sufficient* facts to provide the defendant with 'fair notice of what the . . . claim is and the grounds upon which it rests." *Rhodes v. R&L Carriers, Inc.*, 491 F. App'x 579, 582 (6th Cir. 2012) (citing *Twombly*, 550 U.S. at 555) (emphasis added).

Generally, the Court can only look to the Complaint on a motion under Rule 12(b)(6). However, limited "other sources," such as "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice," may be considered. *Tellabs, Inc. v. Makor Issues & Rights*, Ltd., 551 U.S. 308, 322 (2007); *see Luis v. Zang*, 833 F.3d 619, 626 (6th Cir. 2016) (quoting *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008)) ("In evaluating a motion to dismiss, we 'may consider the complaint and any exhibits attached thereto, public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the complaint and are central to the claims contained therein.'"). Here, the written correspondence between Plaintiff and Defendant lies at the heart of Plaintiff's claim and may properly be considered on a motion to dismiss.

## III. Discussion

The ECOA, enacted in 1974, prohibits creditors from discouraging or discriminating against any credit applicant "with respect to any aspect of a credit transaction ... on the basis of race, color, religion, national origin, sex or marital status, or age." 15 U.S.C. § 1691(a). In 1976, Congress amended the ECOA to include a provision requiring creditors to provide applicants with written notice of the specific reasons why an adverse action was taken in regards to their credit. *See* 15 U.S.C. § 1691(d)(2)–(3); *see also Treadway v. Gateway Chevrolet Oldsmobile Inc.*, 362 F.3d 971, 975 (7th Cir. 2004). The Senate report accompanying the 1976 amendment indicates that in addition to further discouraging discriminatory practices, the notice requirement was intended to provide consumers with a "valuable educational benefit" and to allow for the correction of possible errors "[i]n those

cases where the creditor may have acted on misinformation or inadequate information." S. Rep. No. 94–589, at 4 (1976).

> The statutory text requires:
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> 2) Each applicant [for credit] against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—
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> (A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or
> (B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.
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> (3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

15 U.S.C. § 1691(d)(2)–(3). "Adverse action" is thereafter defined in § 1691(d)(6) as "a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested."

Thus to state a claim, Plaintiff must have pleaded that: (1) Defendant is a creditor, requiring it to comply with the ECOA; (2) Plaintiff is a credit applicant, entitling her to the protections of the ECOA; (3) Defendant's refusal to proceed with Plaintiff's application constituted an "adverse action"; and (4) Defendant failed to provide Plaintiff with an ECOA-compliant notice of its adverse action and an ECOA-compliant statement of reasons. *See Dorton v. Kmart Corp.*, 229 F. Supp. 3d 612, 621 (E.D. Mich. 2017) (citing *Madrigal v. Kline Oldsmobile, Inc.*, 423 F.3d 819, 822 (8th Cir. 2005)).

Many of the elements are undisputed: Plaintiff is an applicant, Defendant is a creditor, and TWB took an adverse action on Plaintiff's credit application.

However, Defendant argues that Plaintiff has failed to state a claim because the adverse action notice and statement of reasons complied with the ECOA. Plaintiff responds that the communications were not compliant because TWB failed to state the "true" reasons for its adverse action and that Defendant failed to delineate how Plaintiff's application was incomplete.

First, the Court concludes that TWB's December 3, 2017, correspondence to Plaintiff complied with the requirements for an adverse notice because it stated that TWB could not provide credit to Plaintiff and advised her of her ability to request the specific reasons financing had been denied. *See id.* § 1002.9(a)(2)(ii).

Plaintiff also attacks the statement of reasons sent by TWB on January 17, 2018https://ecf.miwd.circ6.dcn/graphics/smallarrowright.gif. There, TWB's financing director informed Plaintiff that her application was incomplete and encouraged her to call his office to complete an application. Upon review of Plaintiff's application, (ECF No. 17-2), Plaintiff's credit application was plainly incomplete. Plaintiff did not indicate the type of car she wanted to purchase, writing "??" in the column, and provided limited financial information about herself. When an applicant files an incomplete credit application, the creditor may take action by denying the application. *See* 12 C.F.R. § 1002.9(a)(ii) (eff. 2011).

Plaintiff first argues that the Court must accept her allegation that she completed a credit application as true, and that TWB denied the request on the grounds that it could not find a bank to purchase the financing contract. However, the Court need not accept as

true allegations that are blatantly contradicted by documents core to the proceedings. Here, the application submitted by Plaintiff is on the record and properly before the Court. Based on the actual document, the Court rejects Plaintiff's allegation that she completed a credit application. Therefore, Plaintiff has not presented a plausible claim for relief on her theory that the grounds given for denying her application were pretextual.

Similarly, Plaintiff's argument that she was denied credit because TWB could not find a bank to purchase the financing contract must fail for an additional reason. The sole allegation supporting this theory is Plaintiff's exchange with a TWB salesperson, who told her that "banks do not finance older cars." (ECF No. 14 at ¶ 14.) Taking the facts as pleaded by Plaintiff, this exchange was not a credit application because the salesperson merely explained basic lending practices and did not "evaluat[e] information about the consumer" to explain whether or not she would qualify for a loan. *See* 12 C.F.R. pt. 1002 Supp. I. Thus, Plaintiff has failed to state a plausible claim for relief under the ECOA arising out of this contact with the TWB salesperson.

However, a creditor must also explain what information was incomplete in the application and provide the applicant a reasonable amount of time to cure the incomplete information. *See* 12 C.F.R. 1002.9(c)(2) ("If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application.").

In light of the regulation just cited, Plaintiff has stated a claim that the statement of reasons provided by TWB violated the ECOA by failing to specify how her application was incomplete and failing to give her a reasonable amount of time to provide the requisite information.

Accordingly, the motion to dismiss will be **GRANTED IN PART AND DENIED IN PART**. To the extent that Plaintiff's claim relies on a theory that she was denied credit for a reason other than explained in the Notice of Reasons, she has not stated a plausible claim for relief. However, Plaintiff has plausibly claimed that TWB violated the ECOA by failing to explain how her submitted application was incomplete and by failing to give her an opportunity to cure the deficiencies in the application within a reasonable time.

## ORDER

As set forth above, the Court **GRANTS IN PART AND DENIES IN PART** Defendant's motion to dismiss (ECF No. 16).

**IT IS SO ORDERED.**

Date: February 12, 2019

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge