Appendix A

No. 19-1192

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 28, 2019
DEBORAH S. HUNT, Clerk

SAMANTHA DELANE RAJAPAKSE,

Plaintiff-Appellant,

v.

CREDIT ACCEPTANCE CORPORATION, et al.,

Defendants-Appellees.

ORDER

Samantha Delane Rajapakse, proceeding pro se, appeals a district court judgment dismissing her civil action asserting claims under the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681-1681x; the Truth in Lending Act (TILA), 15 U.S.C. §§ 1631-1651; the Fair Credit Billing Act (FCBA), 15 U.S.C. §§ 1666-1666j; the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692p; and the Magnuson-Moss Warranty Act (MMWA), 15 U.S.C. §§ 2301-2312. The district court certified that an appeal could not be taken in good faith and denied Rajapakse permission to proceed in forma pauperis on appeal. *See* 28 U.S.C. § 1915(a)(3). Rajapakse now requests permission from this court to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(5). She has also filed motions for appointment of counsel; for change of venue and to present to the house judiciary committee; for record on appeal, suspension of the rules and [injunction] or stay of property pending appeal; to amend the record on appeal; a petition for writ of mandamus; a supplement to petition for writ of mandamus, evidence on the record, and motion to withdraw change of venue; and a request for immediate hearing for petition for writ of mandamus.

Rajapakse filed a complaint against Credit Acceptance Corporation (CAC) and numerous individuals whom she alleged to be associated with CAC. She subsequently filed an amended

complaint, which identified additional defendants. In her amended complaint, Rajapakse asserted that she purchased a vehicle and a service warranty for the vehicle in 2014 but was unable to use the warranty for repairs to her vehicle because it was not honored at any dealership or repair shop when she attempted to use it. Rajapakse requested CAC "to remove the warranty off the installment loan" associated with the vehicle purchase. She claimed that "CAC cancelled the warranty part of the installment loan" in 2016 but did not credit her loan account for the correct amount. She also claimed that CAC failed to report payments that she made on her installment loan to the credit reporting agencies, which negatively affected her credit score, but that after she disputed the information, "all three credit bureaus . . . deleted CAC off all three of her reports in August 2017." Rajapakse's vehicle was repossessed in 2018. She sought monetary and injunctive relief.

Rajapakse filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56(a), and the defendants filed a motion to dismiss Rajapakse's amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). A magistrate judge recommended granting the defendants' motion to dismiss and denying Rajapakse's summary-judgment motion as moot.

First, the magistrate judge reasoned that Rajapakse's MMWA claim was subject to dismissal for lack of subject matter jurisdiction because it did not meet the minimum amount in controversy of $50,000 for MMWA claims. *See* 15 U.S.C. § 2310(d)(3)(B); *Golden v. Gorno Bros.*, 410 F.3d 879, 885 (6th Cir. 2005).

Second, the magistrate judge reasoned that Rajapakse's TILA claim was subject to dismissal because it was time-barred. A TILA claim must be filed "within one year from the date of the occurrence of the violation." 15 U.S.C. § 1640(e). Rajapakse's was filed more than one year from either the date of the vehicle loan or the date of the warranty credit.

Third, the magistrate judge reasoned that Rajapakse's FCBA claim was subject to dismissal because the FCBA applies to open-end rather than "closed-end credit transactions" like Rajapakse's "vehicle loan at issue in this case." The FCBA applies to "open end consumer credit

plan[s]," specifically credit card accounts. 15 U.S.C. § 1666(d); *see Gray v. Am. Express Co.*, 743 F.2d 10, 13 (D.C. Cir. 1984).

Fourth, the magistrate judge reasoned that Rajapakse's FDCPA claim was subject to dismissal because the FDCPA "applies only to debt collectors, not creditors attempting to collect their own debt." The magistrate judge noted that CAC was assigned Rajapakse's vehicle loan on the date of origination and cannot be considered a debt collector under the FDCPA because the loan was not in default at the time of assignment. An FDCPA claim can be brought only against a debt collector, which is "anyone who 'regularly collects or attempts to collect . . . debts owed or due . . . another.'" *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1721 (2017) (quoting 15 U.S.C. § 1692a(6)). The debt collector definition excludes those who attempt to collect a debt that "was not in default at the time it was obtained." 15 U.S.C. § 1692a(6)(F)(iii); *see Downs v. Clayton Homes, Inc.*, 88 F. App'x 851, 853 (6th Cir. 2004).

Fifth, the magistrate judge reasoned that Rajapakse's FCRA claim was subject to dismissal because (1) "there is no private cause of action for consumers against furnishers of information for failure to comply with [15 U.S.C.] §1681s-2(a), which addresses providing inaccurate information to the credit reporting agencies in the first instance"; (2) Rajapakse's claim that the defendants provided inaccurate information to the court but not the credit reporting agencies did not state a claim under the FCRA; and (3) although Rajapakse has a private cause of action under 15 U.S.C. § 1681s-2(b), she failed to allege that the defendants did not investigate her disputed debt with CAC "or comply with any other statutory duty" after being notified of the dispute by a credit reporting agency. The magistrate judge also pointed out that Rajapakse asserted "that the credit reporting agencies removed the debt from her credit reports after she disputed the debt," essentially contradicting "her claim that defendants violated the FCRA." The FCRA does not provide consumers with a private cause of action against furnishers of information based on the failure to correctly report information under § 1681s-2(a). *See, e.g.*, *Sanders v. Mountain Am. Fed. Credit Union*, 689 F.3d 1138, 1147 (10th Cir. 2012); *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 34 (3d Cir. 2011) (per curiam). But § 1681s-2(b) does allow a private cause of action for consumers

against furnishers of information. *Boggio v. USAA Fed. Sav. Bank*, 696 F.3d 611, 616 (6th Cir. 2012). When a furnisher of information receives notice from a credit reporting agency that a consumer disputes a debt, the FCRA requires the furnisher to take a number of actions in order to investigate adequately the dispute and to report the results of the investigation. *See* 15 U.S.C. § 1681s-2(b)(1)(A)-(E). The consumer bears the burden to show that a furnisher of information was notified by a credit reporting agency of the consumer's disputed debt and that the furnisher failed to comply with its statutory duty to investigate the dispute. *Boggio*, 696 F.3d at 618. Rajapakse did not make such allegations.

Sixth, the magistrate judge reasoned that Rajapakse's fraud claim was subject to dismissal because it was not pleaded with the requisite particularity. A party alleging fraud "must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). "Rule 9(b) 'requires a plaintiff (1) to specify the allegedly fraudulent statements; (2) to identify the speaker; (3) to plead when and where the statements were made; and (4) to explain what made the statements fraudulent.'" *Ross v. PennyMac Loan Servs.*, 761 F. App'x 491, 493 (6th Cir. 2019) (quoting *Republic Bank & Tr. Co. v. Bear Stearns & Co.*, 683 F.3d 239, 247 (6th Cir. 2012)).

Over Rajapakse's objections, the district court adopted the magistrate judge's report and recommendation, granted the defendants' motion to dismiss, dismissed Rajapakse's amended complaint, and denied as moot Rajapakse's motion for summary judgment. The district court concluded that Rajapakse's objections failed to address the magistrate judge's "basis for dismissal" of her claims, failed to demonstrate "any error in the Magistrate Judge's analysis" of her claims, or failed to "even mention the Magistrate Judge's analysis" of her claims. To the extent that Rajapakse objected to the magistrate judge's recommended dismissal of each of her claims, the district court overruled her objections. Rajapakse filed a timely appeal and the current motions to proceed in forma pauperis and miscellaneous motions, petition, and request.

This court may grant a motion to proceed in forma pauperis if it determines that an appeal would be taken in good faith and the movant is indigent. *See Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006). A frivolous appeal, one that "lacks an arguable basis either in law or in fact,"

would not be taken in good faith. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also Coppedge v. United States*, 369 U.S. 438, 445 (1962).

For the reasons discussed by the magistrate judge and adopted by the district court, an appeal in this case would be frivolous. *See Neitzke*, 490 U.S. at 325. Accordingly, the motions to proceed in forma pauperis and all other pending motions, petition, and request are **DENIED**. Unless Rajapakse pays the $505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMANTHA RAJAPAKSE,

Plaintiff,

v.

CREDIT ACCEPTANCE CORP., *et al*,

Defendant.
_____/

Case No. 17-cv-12970
Hon. Matthew F. Leitman

ORDER (1) OVERRULING PLAINTIFF'S OBJECTIONS (ECF #140) TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION (ECF #136), (2) ADOPTING THE MAGISTRATE JUDGE'S RECOMMENDED DISPOSITION (ECF #136), (3) GRANTING DEFENDANTS' MOTION TO DISMISS (ECF #123), (4) DISMISSING PLAINTIFF'S FIRST AMENDED COMPLAINT (ECF #41), (5) DENYING PLAINTIFF'S REMAINING MOTIONS AS MOOT (ECF ##119, 127, 129, 134, 139), AND (6) CERTIFYING THAT AN APPEAL COULD NOT BE TAKEN IN GOOD FAITH

Plaintiff Samantha Rajapakse, proceeding pro se and in forma pauperis, brings this action against Credit Acceptance Corporation ("CAC") and several individual defendants who are allegedly associated with CAC. Rajapakse's pleadings and claims are not easy to understand. Her claims appear to arise out of a vehicle retail installment contract ("RIC") that Rajapakse entered into when she purchased a 2007 Chevrolet Trailblazer. The RIC listed CAC as an assignee, and it appears that the RIC was assigned to CAC when Rajapakse purchased her vehicle. Rajapakse seems to allege that her vehicle came with a service warranty; that service facilities refused

to honor the warranty; and that CAC still required her to pay for the warranty and to pay the installment payments under the RIC even though the warranty was not being honored. Rajapakse's First Amended Complaint (ECF #41) appears to assert claims against the Defendants under a number of federal statutes, including the Fair Credit Reporting Act, the Truth in Lending Act, the Fair Credit Billing Act, the Fair Debt Collection Practices Act, and the Magnuson-Moss Warranty Act.

The assigned Magistrate Judge has issued a Report and Recommendation in which she recommends that the Court grant the motion to dismiss filed by Defendants, dismiss all of Rajapakse's claims, and deny as moot Rajapakse's motion for summary judgment and her other remaining motions (the "R & R"). (*See* ECF #136.) Rajapakse has filed objections to the R & R (the "Objections"). (*See* ECF #140.)

The Objections contain baseless attacks on the ethics and impartiality of the assigned Magistrate Judge. Rajapakse leaps to the erroneous conclusion that because the Magistrate Judge has made rulings adverse to her, the Magistrate Judge must be biased and dishonest. She has made similar meritless and unsupported attacks on the Magistrate Judge in earlier filings. (*See, e.g.*, Motion for Recusal, ECF #51 at Pg. ID 443-46; Motion for Recusal, ECF #101 at Pg. ID 766-70; Motion for Discovery, ECF #139 at Pg. ID 1148-53.) In the Objections, Rajapakse even

suggests that the Magistrate Judge committed "perjury" in one of the Magistrate Judge's rulings. (Objections, ECF #140 at Pg. ID 1173-74.)

This is not the first time that Rajapakse has hurled groundless allegations of misconduct at a federal judicial officer who has ruled against her. As United States District Judge John T. Fowlkes, Jr., said when he dismissed another action filed by Rajapakse:

> Plaintiff's filings primarily attack the integrity of this Court without going into the substance of the case at hand. There is no basis for Plaintiff to claim that this Court has at any time disadvantaged her based on her race, socioeconomic status, or *pro se* status. Nor has this Court ever lacked impartiality in this matter. The dismissal of this claim is completely a function of poor pleading and lack of merit.

Rajapakse v. Wells Fargo Home Mortgage, 2015 WL 4164172 at * 4, n.1 (W.D. Tenn., July 9, 2015). Judge Fowlkes deemed Rajapakse's filings so abusive that he enjoined her from filing future pro se actions in the Western District of Tennessee without first obtaining leave of court. *See Rajapakse v. Wells Fargo Home Mortgage*, W.D. Tenn., Case No. 15-02216 at Dkt. No. 52. In other federal civil actions that Rajapakse has filed pro se, she has attacked the impartiality of the presiding federal judicial officers in motions for recusal that did not warrant relief.[1]

[1] *See, e.g., Reed-Rajapakse v. Memphis Light Gas and Water,* W.D. Tenn. Case No. 12-02807 at Dkt. No. 59 (motion for recusal) and Dkt. No. 61 (order denying motion for recusal); *Rajapakse v. Baker Donelson Bearman Caldwell & Berkowitz, P.C.*, et al., W.D. Tenn. Case No. 13-02328 at Dkt. No. 11 (motion for recusal) and Dkt. No. 15 (order denying motion for recusal).

Like her filings in the civil action before Judge Fowlkes, Rajapakse's Objections – to the extent that they move beyond the personal attacks on the Magistrate Judge in the instant case – are largely "incomprehensible." *Rajapakse v. Wells Fargo Home Mortgage*, 2015 WL 4164172 at *4, n.1. Moreover, Rajapakse does not address the bases on which the Magistrate Judge recommended dismissal. Rajapakse has not even come close to showing that the Magistrate Judge erred in any way. Accordingly, the Court **OVERRULES** the Objections (ECF #140), **ADOPTS** the Magistrate Judge's recommended disposition (ECF #136 at Pg. Id 1126), **GRANTS** Defendants' motion to dismiss (ECF #123), **DISMISSES** Rajapakse's First Amended Complaint (ECF #41) with prejudice, **DENIES AS MOOT** all of Rajapakse's remaining motions (ECF ##119, 127, 129, 134, 139), and **CERTIFIES** that **AN APPEAL CANNOT BE TAKEN IN GOOD FAITH.**

I

Where a party objects to a portion of a Magistrate Judge's Report and Recommendation, the Court reviews that portion *de novo*. *See* Fed. R. Civ. P. 72(b)(3); *Lyons v. Comm'r of Soc. Sec.*, 351 F. Supp. 2d 659, 661 (E.D. Mich. 2004). The Court has no duty to conduct an independent review of the portions of a Report and Recommendation to which a party has not objected. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985).

II

Before turning to the R & R and the Objections, the Court wishes to address Rajapakse's repeated claim that the Magistrate Judge failed to account for her status as a pro se litigant and held her to unfair standards. These claims have no merit. The Magistrate Judge continually recognized the appropriate legal standard to be applied to Rajapakse given her pro se status.[2] Furthermore, on several occasions the Magistrate Judge advised Rajapakse that the Court's pro se clinic was available to assist. (*See, e.g.*, Order, ECF #118 at Pg. ID 906.) And the Magistrate Judge even attempted to appoint counsel for Rajapakse (*see, e.g.*, Notice Regarding Appointment of Counsel, ECF #87; Order Conditionally Appointing Counsel, ECF #99) – something that is rarely done in civil cases – but Rajapakse declined the offer. (*See* Motion to Withdrawal Counsel, ECF #113.) Simply put, Rajapakse was held to the proper standard and offered more help than most pro se litigants. She has no basis on which to complain about her treatment.

[2] *See, e.g.*, the R & R, ECF #136 at Pg. ID 1112 (stating that "in view of Rajapakse's status as a pro se litigant, the Court permits some leeway in evaluating her filings" and applies a "less stringent standard"); Report and Recommendation, ECF #57 at Pg. ID 497 (making same point); Order, ECF #69 at Pg. ID 573 (making same point); Order, ECF #118 at Pg. ID 907 (making same point).

III

A

In the R & R, the Magistrate Judge first recommended that the Court dismiss Rajapakse's claim under the Magnuson-Moss Warranty Act (MMWA) for lack of subject matter jurisdiction. (R & R, ECF #136 at Pg. ID 1114-15.) Rajapakse does not address this basis for dismissal in the Objections. Instead, she attempts to make other points about her claim under the MMWA. But since Rajapakse has not shown any error in the Magistrate Judge's conclusion that the Court lacks subject matter jurisdiction over the MMWA claim, Rajapakse's other observations about that claim are beside the point. Accordingly, to the extent that the Objections contain any objections to the Magistrate Judge's recommendation that the Court dismiss the MMWA claim, those objections are **OVERRULED**.

B

The Magistrate Judge recommended that the Court dismiss Rajapakse's Truth in Lending Act (TILA) claim as time-barred under the applicable statute of limitations. (R & R, ECF #136 at Pg. ID 1115-16.) In the Objections, Rajapakse does not attempt to show any error in the Magistrate Judge's analysis on this point.

Instead, she attempts to make other observations about her TILA claim.[3] But since Rajapakse has not shown any error in the Magistrate Judge's conclusion that the TILA claim is time-barred, Rajapakse's other observations about that claim are beside the point. Accordingly, to the extent that the Objections contain any objections to the Magistrate Judge's recommendation that the Court dismiss the TILA claim, those objections are **OVERRULED**.

C

The Magistrate Judge recommended that the Court dismiss Rajapakse's claim under the Fair Credit Billing Act (FCBA) on the ground that the FCBA does not apply to Rajapakse's car loan. (*Id.* at Pg. ID 1116-17.) It appears that Rajapakse may have attempted to address this portion of the R & R in her Objections. (Objections, ECF #140 at Pg. ID 1184-85.) But Rajapakse's discussion of the FCBA is incomprehensible and is not supported by a citation to any case law. (*See id.*) Accordingly, to the extent that the Objections contain any objections to the Magistrate Judge's recommendation that the Court dismiss the FCBA claim, those objections are **OVERRULED**.

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[3] Rajapakse notes – without any argument or analysis – that she previously filed another action in this Court against CAC. (Objections, ECF #140 at Pg. ID 1183.) The Magistrate Judge acknowledged the filing of the prior action and explained that the prior action did not toll the limitations on Rajapakse's TILA claim because that action did not contain a TILA claim. (R & R, ECF #136 at Pg. ID 1116 n.3.) Rajapakse has not attempted to show that the Magistrate Judge erred in reaching that conclusion.

D

The Magistrate Judge recommended that the Court dismiss Rajapakse's Fair Debt Collection Practices Act (FDCPA) claim on the ground that CAC "is not a debt collector as defined by the FDCPA." (R & R, ECF #136 at Pg. ID 1118.) Rajapakse's Objections do not respond to, or even mention, the Magistrate Judge's analysis of her FDCPA claim. Accordingly, to the extent that the Objections contain any objections to the Magistrate Judge's recommendation that the Court dismiss the FDCPA claim, those objections are **OVERRULED**.

E

The Magistrate Judge recommended that the Court dismiss Rajapakse's claims under the Fair Credit Reporting Act (FCRA) on the grounds that (1) there was no private right of action for a violation of at least one of the provisions of the Act under which Rajapakse brought her claim, (2) the provisions of the Act cited by Rajapakse did not apply to her allegations that CAC provided inaccurate information to the Court, and (3) Rajapakse did not plausibly allege CAC violated the pertinent sections of the Act when it provided purportedly inaccurate information to the credit reporting agencies. (Objections, ECF #140 at Pg. ID 1118-24.) In the Objections, Rajapakse does not specifically address the Magistrate Judge's analysis of her FCRA claims. Instead, she attempts to make other observations about her claims under the Act. But her points concerning her claims do not show how the claims are viable

notwithstanding the flaws highlighted by the Magistrate Judge. Accordingly, to the extent that the Objections contain any objections to the Magistrate Judge's recommendation that the Court dismiss the FCRA claims, those objections are **OVERRULED**.

F

Finally, the Magistrate Judge recommended that the Court dismiss Rajapakse's fraud claim "because she has not pleaded it with any particularity as required by Federal Rule of Civil Procedure 9(b)." (R & R, ECF #136 at Pg. ID 1124.) Rajapakse's Objections do not counter or even mention the Magistrate Judge's analysis of her fraud claim. Accordingly, to the extent that the Objections contain any objections to the Magistrate Judge's recommendation that the Court dismiss the fraud claim, those objections are **OVERRULED**.

IV

For the reasons stated above, this Court **OVERRULES** Rajapakse's Objections (ECF #140), **ADOPTS** the Magistrate Judge's recommended disposition (ECF #136 at Pg. ID 1126), **GRANTS** Defendants' motion to dismiss (ECF #123), and **DISMISSES** Rajapakse's First Amended Complaint (ECF #41) with prejudice. Having dismissed the First Amended Complaint, the Court **DENIES AS MOOT** all of Rajapakse's remaining motions (ECF ##119, 127, 129, 134,139).

V

Finally, the Court **CERTIFIES** that an appeal of this order cannot be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A). Rajapakse has not even attempted to rebut the Magistrate Judge's determination that all of her claims fail as a matter of law. Instead, she has devoted much of her efforts in this case to lobbing baseless attacks on the ethics and impartiality of the Magistrate Judge – attacks much like those she has made against several other federal judicial officers. This action should end now.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: February 27, 2019

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on February 27, 2019, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(810) 341-9764

Appendix C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMANTHA RAJAPAKSE,

Plaintiff

v.

CREDIT ACCEPTANCE CORP, *et al*,

Defendant(s).
_____/

Case No. 17-12970

Matthew F. Leitman
United States District Judge

Stephanie Dawkins Davis
United States Magistrate Judge

REPORT AND RECOMMENDATION
DEFENDANTS' MOTION TO DISMISS (Dkt. 123) and PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT, TO EXPEDITE, TO COMPEL, and TO AMEND SUMMARY JUDGMENT (Dkt. 119, 127, 129, 134)

I. PROCEDURAL HISTORY

Plaintiff, Samantha Rajapakse, filed this complaint against Credit Acceptance Corporation (CAC) and a number of individual defendants on September 8, 2017 relating to a car loan. (Dkt. 1). Rajapakse filed an amended complaint on March 5, 2018. (Dkt. 40). The amended complaint alleges claims under the Fair Credit Reporting Act (FCRA), the Truth in Lending Act (TILA), the Fair Credit Billing Act (which is an amendment to TILA), the Fair Debt Collection Practices Act (FDCPA), and the Magnuson-Moss Warranty Act (MMWA), along with a common-law fraud claim. (Dkt. 40, Amended Complaint). District Judge Matthew F. Leitman referred this matter to the undersigned for all pretrial

proceedings. (Dkt. 8). On October 25, 2018, defendants filed a motion to dismiss the amended complaint, which is fully briefed. (Dkt. 123-125). Additionally, Rajapakse previously filed a motion for summary judgment (Dkt. 119), and subsequently filed a motion to expedite the return of her vehicle (Dkt. 127), a motion to compel the return of her vehicle (Dkt. 129), and a motion to amend her motion for summary judgment. (Dkt. 134).[1] Because they were recently filed, no responses to these motions have yet been filed.

For the reasons set forth below, the undersigned **RECOMMENDS** that defendants' motion to dismiss be **GRANTED**, and that Rajapakse's pending motions be **TERMINATED** as moot.

II. FACTUAL BACKGROUND

On January 7, 2014, Rajapakse entered into a Retail Installment Contract (RIC) with 1 Stop Auto Sales (the Dealership) for the purchase of a 2007 Chevrolet Trailblazer, which included a service warranty. (Dkt. 32, Ex. 1-A, Pg ID 229-233). The RIC provided that Rajapakse was to make 48 monthly installment payments of $361.13 each. *Id.* The RIC explicitly designated CAC as "Assignee" on the contract. *Id.* Rajapakse says that both the Dealership and CAC told her that she could use the service warranty at any dealership or repair shop. *Id.* However,

[1] Notably, Rajapakse's previous motions for injunctive relief, some of which sought the return of her vehicle, were all rejected by the Court. (Dkt. 57, 65).

she alleges that she repeatedly tried to use the service warranty without success. (Dkt. 40, p. 3). Rajapakse says she told CAC that the warranty was not honored at multiple locations, but CAC refused to remove the warranty from the installment loan. She also sought assistance from the Better Business Bureau, before finally, in July 2016, CAC cancelled the warranty and stated that it would adjust the loan accordingly. (Dkt. 40, p. 4). Rajapakse states that she continued to pay the loan until January 2017. *Id.* In the meantime, according to the amended complaint, CAC never sent Rajapakse any other statements relating to her loan. *Id.* At some point however, Rajapakse reviewed her credit report and noticed that it showed the original balance on her RIC was $10,889.24 with a past due amount reported by CAC of $5,624.24. *Id.* Rajapakse maintains that payments from February 2014 to August 2014 were not reported on her credit report, an omission that caused her credit report (presumably referring to the rating) to be low. *Id.* The amended complaint also details Rajapakse's claim that her vehicle was wrongfully repossessed on February 4, 2018. (Dkt. 40, p. 4).

Rajapakse asserts that CAC's actions in this matter violate the TILA. (Dkt. 40, p. 5). She alleges that CAC provides dealers with an incentive to sell warranties on vehicles that have been previously damaged, but the warranties are not honored and later cannot be located. *Id.* Further, Rajapakse complains that CAC continued to demand payment for the warranty, while at the same time

disclaiming any responsibility for performing on the warranty. Rajapakse contends that CAC also violated TILA and the MMWA in applying the pro-rated rebate amount of $157.36 because their calculation is wrong. *Id.* She contends that CAC's actions constitute common law fraud. *Id.*[2]

Rajapakse previously filed a similar lawsuit against CAC in 2016 arising out of the same RIC, which was dismissed without prejudice based on the parties' arbitration agreement. (*See* Case No. 16-13144, Dkts. 26, 27). As explained in the Report and Recommendation issued by the undersigned in the 2016 case, the RIC contains an agreement to arbitrate, which the undersigned concluded encompassed all claims asserted by Rajapakse in that lawsuit. (Case No. 16-13144, Dkt. 24). The Report and Recommendation was adopted by the District Court and Rajapakse's 2016 complaint was dismissed in favor of the arbitration agreement. (Case No. 16-13144, Dkts. 26, 27). Rajapakse's motion for reconsideration of the dismissal was denied. (Dkt. 31).

III. ANALYSIS AND CONCLUSION

A. Standard of Review

To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must first comply with Rule 8(a)(2), which requires "'a short and plain statement of the claim

[2] While Rajapakse's amended complaint mentions the Fair Debt Collection Practices Act at the very beginning (Dkt. 40, p. 2), this statute is not discussed anywhere in the body of the amended complaint. Thus, it is not clear whether Rajapakse asserts a claim under this statute.

showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). A plaintiff is also obliged "to provide the grounds of his [or her] entitlement to relief," which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Ass'n of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 548 (6th Cir. 2007) (quoting *Twombly*, 550 U.S. at 555 (citations and quotation marks omitted)).

The Supreme Court raised the bar for pleading requirements beyond the old "no-set-of-facts" standard of *Conley v. Gibson*, 355 U.S. 41, 78 (1957), that had prevailed for the last few decades. *Courie v. Alcoa Wheel & Forged Products*, 577 F.3d 625, 2009 WL 2497928, *2 (6th Cir. 2009) (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)); *see also Twombly*, 550 U.S. at 555. In *Iqbal*, the Supreme Court explained that a civil complaint only survives a motion to dismiss if it "contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 677. The Sixth Circuit observed that this new standard is designed to screen out cases that, while not utterly impossible, are "implausible." *Courie*, at *2. "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." *Iqbal*, 556 U.S. at 678. And

although the Court must accept all well-pleaded factual allegations in the complaint as true, it need not "'accept as true a legal conclusion couched as a factual allegation.'" *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)); *see also Iqbal*, 556 U.S. at 678.

In ruling on the City's motion, the Court may consider the pleadings of the parties, including copies of any written instrument(s) attached to a pleading as their attachment thereto renders them a part of the pleading under Rule 10(c). *See also Commercial Money Center, Inc. V. Illinois Union Ins. Co.*, 508 F.3d 326, 335-336 (6th Cir. 2007) (Motion for judgment on the pleadings was not converted to motion for summary judgment by court's consideration of documents that were not attached to counterclaim but were attached to the complaint and the answer to counterclaim). The undersigned also recognizes that generally if a court considers matters outside of the pleadings, the court must convert the motion into one for summary judgment under Rule 56. However, "[w]hen a court is presented with a 12(b)(6) motion, it 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." *Bassett v. Nat'l Coll. Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008); *see also Weiner v. Klais & Co.*, 108 F.3d 86, 89 (6th Cir. 1997) (noting that the Sixth Circuit has "held that 'documents that a

defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to h[is] claim'") (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)). Here, defendants purport to attach the parties' contract as an exhibit to the motion to dismiss but did not actually do so. However, the undersigned may properly consider the parties' contract, because it is mentioned in the amended complaint and is part of the record. *See Amini v. Oberlin Coll.*, 259 F.3d 493, 502 (6th Cir. 2001) (quoting *Nieman v. NLO, Inc.*, 108 F.3d 1546, 1554 (6th Cir. 1997) (The court may consider "'matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint,'" without converting the motion to dismiss into one for summary judgment.).

B. Analysis

To begin with, in view of Rajapakse's status as a *pro se* litigant, the Court permits some leeway in evaluating her filings. However, even applying the less stringent standard afforded *pro se* litigants in reviewing the allegations of their complaints, the contours of Rajapakse's claims are difficult to discern. *See Jourdan v. Jabe*, 951 F.2d 108 (6th Cir. 1991) ("[W]hile *pro se* litigants may be entitled to some latitude when dealing with sophisticated legal issues, acknowledging their lack of formal training, there is no cause for extending this margin to straightforward procedural requirements that a layperson can

comprehend as easily as a lawyer."). Notably, Rajapakse does not address the substance of defendants' arguments regarding the merits of any of her claims. Rather she focuses on restating the allegations in her complaint. (Dkt. 124). And, as discussed in more detail below, Rajapakse's amended complaint does not specify which statutory provisions were violated and simply fails to state any claim on which relief may be granted.

Additionally, Rajapakse argues that defendants did not timely file their motion to dismiss and that they should be judicially estopped from proceeding with their motion to dismiss because they never filed an answer to the complaint. Rajapakse misapprehends defendants' obligation to file an answer and the timeliness of their motion to dismiss. Rajapakse filed her amended complaint on March 5, 2018. (Dkt. 40). On March 16, 2018, defendants timely filed their motion to dismiss in lieu of an answer to the complaint (Dkt. 44), which is expressly permitted under the Federal Rule of Civil Procedure. Fed.R.Civ.P. 12(b)(6) (The defense of failure to state a claim on which relief may be granted may be raised by motion before pleading if a responsive pleading is allowed). On July 19, 2018, defendants withdrew their motion to dismiss and separately moved for an extension of time to answer or otherwise respond to the amended complaint, in light of the stay of proceedings entered by the Court. (Dkt. 104, 105). On September 10, 2018, the Court lifted the stay and granted defendants' motion,

permitting defendants 45 days from the date the stay was lifted to answer or otherwise respond to the amended complaint. (Dkt. 118, p. 4). Defendants timely filed their motion to dismiss the amended complaint on October 25, 2018, exactly 45 days after the stay was lifted. (Dkt. 123). Thus, Rajapakse's complaints about the untimeliness of defendants' motion to dismiss are without merit.

1. Magnuson-Moss Warranty Act

With respect to the warranty, Rajapakse says that the RIC included a warranty on the subject vehicle, but that the warranty was either breached or fraudulent since it was not honored when she attempted to use it. As a result, she requested that it be removed. She also claims that CAC provided incentives for dealers to offer a warranty on previously-damaged cars, with no intention of honoring them. The Court need not, and indeed, cannot, address the merits of Rajapakse's MMWA claim because she has not sufficiently pleaded that she meets the requirements for subject matter jurisdiction for this claim. As explained by the Sixth Circuit in *Golden v. Gorno Bros., Inc.*, 410 F.3d 879, 881-882 (6th Cir. 2005), subject matter jurisdiction over an MMWA claim requires a minimum of $50,000 to be in controversy:

> However, the jurisdiction of [MMWA claims] is subject to an amount in controversy requirement. The applicable portion of the Act provides, "No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection ... (B) if the amount in controversy is less than the sum or value of $50,000 (exclusive of interests

> and costs) computed on the basis of all claims to be determined in this suit."

Id. at 882 (quoting 15 U.S.C. § 2310(d)(3)(B); *see also Sanford v. Ektelon/Prince Sports Group, Inc.*, 1999 WL 33537914 (D. Neb. 1999) ("The statutory scheme requires that each individual claim must be $25.00 or more and that the entire amount in controversy must be at least $50,000.00."). Notably, the *Golden* court determined that interest paid over the life of the loan is not included in calculating the amount in controversy. *Golden*, 410 F.3d at 885. Here, even considering Rajapakse's entire loan amount of approximately $17,000 (*including* interest), nothing in her amended complaint suggests that her claims, even considered in the aggregate, meet the jurisdictional threshold of $50,000. Thus, the Court does not have subject matter jurisdiction over Rajapakse's MMWA claim, and this claim must be dismissed.

2. Truth in Lending Act

In addition, Rajapakse's TILA claim is barred by the statute of limitations. A TILA claim must be filed within "one year from the date of occurrence of the violation." *Lester v. Wow Car Co.*, 2014 WL 2567087, at *7 (S.D. Ohio June 6, 2014) (quoting 15 U.S.C. § 1640(e)), aff'd, 601 Fed. Appx. 399 (6th Cir. 2015). While not entirely clear from the amended complaint, it appears that any alleged TILA violations would have to have occurred either at the time of the loan origination on January 7, 2014 or when the warranty rebate was issued on July 7,

2016. Rajapakse filed this lawsuit on September 8, 2017, more than one year after each of these events. Thus, any TILA claim is barred by the statute of limitations and must be dismissed.[3]

3. Fair Credit Billing Act

As to Rajapakse's claim under the FCBA, this statute does not apply to the vehicle loan at issue in this case. As explained in *Crenshaw v. Experian Info. Sols., Inc.*, 2015 WL 3771691, at *3 (N.D. Ohio June 17, 2015), the FCBA applies "only to open-end credit transactions, and, chiefly, to credit card accounts." *Id.* (quoting *Jacobs v. Wells Fargo & Co.*, 2011 WL 5120408, at *2-3 (S.D. Ohio Oct. 27, 2011)). It does not apply to closed-end credit transactions. *Id.* (citing *Stroman v. Bank of America Corp.* 852 F.Supp.2d 1366, 1374 (N.D. Ga. 2012) ("The FCBA's protections do not extend to closed-end credit, such as the mortgage loan at issue in this case."); *Roybal v. Equifax*, 405 F.Supp.2d 1177, 1180 (E.D. Cal. 2005) ("By its very terms, the FCBA's billing error section applies solely to creditors of open end credit plans.")); *see also Burnstein v. Saks Fifth Avenue & Co.*, 208 F.Supp.2d 765, 772 (E.D. Mich. 2002), aff'd 85 Fed. Appx. 430 (6th Cir. 2003) (The FCBA and its implementing regulations (Regulation Z), 12 C.F.R. §§ 226.1 *et seq.*, "set forth the procedures to be followed when a creditor receives

[3] Notably, Rajapakse did not bring a TILA claim in her prior lawsuit, Case No. 16-13144. Thus, there is no possibility that the limitations period for this claim was tolled during the pendency of that lawsuit.

notice from a consumer of an alleged billing error in the consumer's credit card account."). Based on the foregoing authority, the FCBA does not apply to the loan transaction at issue in this case. Thus, Rajapakse's FCBA claim must be dismissed.

4. Fair Debt Collection Practices Act

Rajapakse's FDCPA must also fail as it applies only to debt collectors, not creditors attempting to collect their own debt. *Colson v. Wilmington Sav. Fund Soc'y*, 2018 WL 345174, at *6 (E.D. Mich. Jan. 10, 2018) (citing 15 U.S.C. § 1692a(6)); *MacDermid v. Discover Fin. Servs.*, 488 F.3d 721, 734 (6th Cir. 2007). In this case, CAC was an assignee under the RIC dated January 7, 2014. (Dkt. 32, Ex. 1-A, Pg ID 229-233). As explained in *Colson*, when a creditor assigns a debt to another, the assignee may or may not satisfy the definition of a debt collector under the FDCPA:

> For an entity that did not originate the debt in question but acquired it and attempts to collect on it, that entity is either a creditor or a debt collector depending on the default status of the debt at the time it was acquired. The same is true of a loan servicer, which can either stand in the shoes of a creditor or become a debt collector, depending on whether the debt was assigned for servicing before the default or alleged default occurred. *Wadlington v. Credit Acceptance Corp.*, 76 F.3d 103, 106–8 (6th Cir. 1996); *see also Perry v. Stewart Title Co.*, 756 F.2d 1197, 1208 (5th Cir. 1985).

Colson, at * 6 (quoting *Bridge v. Ocwen Federal Bank, FSB*, 681 F.3d 355, 359 (6th Cir. 2012) (citing 15 U.S.C. § 1692a(6)(F)(iii))). Thus, "an entity attempting to collect on a debt is only a debt collector if the borrower was in default at the time the debt was acquired." *Id.* Here, even assuming that CAC is not the originator of the debt in question, Rajapakse has not alleged, nor does it appear that the loan was in default at the time CAC acquired it, given that CAC acquired it on the very same day that Rajapakse purchased the vehicle and the loan was originated. (Dkt. 32, Ex. 1-A, Pg ID 232) ("FOR VALUE RECIEVED, Seller hereby assigns and transfers all Seller's right, title and interest in and to this Contract, and in and to the Vehicle described herein, to CREDIT ACCEPTANCE CORPORATION ('Assignee'), its successors and assigns, pursuant to and accordance with the terms and conditions set forth in the existing dealer agreement between Seller and Assignee in effect on the date hereof."). Thus, CAC is not a debt collector as defined by the FDCPA and Rajapakse cannot state such a claim against CAC.

5. Fair Credit Reporting Act

As defendants point out in their brief, Rajapakse purports to allege in the amended complaint that CAC violated the FCRA in the following ways. First, Rajapakse alleges:

> [1] It has been established by court records in submission that Credit Acceptance Corporation has kept a poor

> performance on the account related to providing accurate information to the credit bureaus and to this court in an attempt to make one accurate than another Credit Acceptance Corporation (hereinafter Furnisher) violated Rajapakse by intentionally reporting missing payments not applied on her credit report from February 2014 to August 2017 and from September 2016 to January 2017 causing her credit score to drop.

(Dkt. 40, Pg ID 298-299). Second, Rajapakse alleges the following:

> [2] Credit Acceptance Corporation continue to report the balance of the original loan as $10,889.34 to the credit bureaus and provide the original contact of $17,334, 34 to the court as the original amount. After Rajapakse disputed her report twice in August 2017 and February 2017 in which all three credit bureaus removed Credit Acceptance Corporation off her credit as outline in the Fair Credit Reporting Act. Credit Acceptance Corporation violated this act by presenting a payment history with supporting affidavit stating the higher amount was more accurate than the amount reported to the credit bureaus after Rajapakse filed two disputes with all three credit bureaus.

(Dkt. 40, Pg ID 299). Third, Rajapakse alleges the following:

> [3] Credit Acceptance Corporation violated 15 U.S.C. § 1681s by knowingly providing to the three credit bureaus the information provides to the three credit bureaus information believe to be inaccurate after being notified of the inaccuracy. CAC is the sole person who furnished information to the credit bureaus on Rajapakse's credit and use the inaccuracy to take possession of her vehicle and in attempting to validate the error to the court to show justification.

(Dkt. 40, Pg ID 299).

In the view of the undersigned, Rajapakse's amended complaint simply does not plead the factual content necessary for the Court to draw a reasonable inference that defendants are liable for any violation of the law. Therefore, she fails to state a claim under the FCRA. As explained in *LaBreck v. Mid-Mich. Credit Bureau*, 2016 WL 6927454, at *2 (W.D. Mich. Nov. 28, 2016), the FCRA regulates the field of consumer reporting and governs the collection and use of consumer credit information. The purpose of the Act is "to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer." 15 U.S.C. § 1681(b). The Act covers three main actors: (1) credit reporting agencies; (2) users of consumer reports; and (3) furnishers of information to credit reporting agencies. *LaBreck*, at *2 (citing *Ruggiero v. Kavlich*, 411 F.Supp.2d 734, 736 (N.D. Ohio 2005)). Like the plaintiff in *LaBreck*, it appears from the instant complaint that plaintiff considers defendants to be "furnishers of information" within the meaning of 15 U.S.C. § 1681s-2(a). *LaBreck* notes that while § 1681s-2 does not define "furnisher," courts have defined the term as "any entity which transmits information concerning a particular debt owed by a particular customer to consumer reporting agencies." *Carney v. Experion Information Solutions, Inc.*, 57 F.Supp.2d 496, 501 (W.D. Tenn. 1999). The FCRA imposes two general duties on furnishers of information

to a credit reporting agency: (1) a duty to provide accurate information, § 1681s-2(a); and (2) a duty to undertake an investigation upon receipt of notice of dispute from a consumer reporting agency, § 1681s-2(b). *LaBreck*, at *2.

In Paragraph 1 quoted above from Rajapakse's amended complaint, she alleges that CAC provided inaccurate information to the court and to credit reporting agencies. As an initial observation, the law does not suggest that providing inaccurate information to the court is a violation of the FCRA – though doing so is certainly not advisable. Further, there is no private cause of action for consumers against furnishers of information for failure to comply with § 1681s-2(a), which addresses providing inaccurate information to the credit reporting agencies in the first instance. *Id.* (citing *Sanders v. Mountain America Fed. Credit Union*, 689 F.3d 1138, 1147 (10th Cir. 2012); *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 34 (3d Cir. 2011); *Nelson v. Chase Manhatten Mortg. Corp.*, 282 F.3d 1057, 1059-60 (9th Cir. 2002); *Elsady v. Rapid Global Business Solutions, Inc.*, 2010 WL 2740154, at *5 (E.D. Mich. Jul. 12, 2010); *Ruggiero*, 411 F. Supp. 2d at 736; *Carney*, 57 F.Supp.2d at 502). Rather, the statute limits enforcement of the duty to provide accurate information to specific federal agencies and officials. *LaBreck*, at *2 (citing 15 U.S.C. § 1681s-2(d)). Thus, Rajapakse cannot sue defendants for allegedly furnishing inaccurate information under § 1681s-2(a).

In Paragraph 2 of Rajapakse's amended complaint quoted above, she seems to posit, in part, the theory that defendants violated the FCRA by providing inaccurate affidavits and other information to this court. That is, Rajapakse claims that what defendants told the Court about her debt was inconsistent with what they were reporting to the credit reporting agencies. Importantly, Rajapakse asserts that the information provided to the court was inaccurate, not what was provided to the credit reporting agencies. Accordingly, these allegations do not state any viable claim under the FCRA.

In Paragraphs 2 and 3 quoted above, Rajapakse also appears to be invoking § 1681s-2(b), which does provide a private legal cause of action. *Boggio v. USAA Fed. Sav. Bank*, 696 F.3d 611, 616 (6th Cir. 2012). A claim under § 1681s-2(b) claim requires a plaintiff to allege and prove: 1) that the duties under § 1681s-2(b) were triggered by the defendants' receipt of notice from a consumer reporting agency that the information at issue was being disputed by the plaintiff; and 2) that the defendant did not comply with its statutorily required duty to investigate the dispute. *Baker v. JP Morgan Chase Bank*, 2017 WL 395092, at *4 (M.D. Tenn. Jan. 30, 2017), report and recommendation adopted sub nom. *Baker v. JP Morgan Chase Bank*, 2017 WL 841141 (M.D. Tenn. Mar. 2, 2017) (citing *Downs v. Clayton Homes, Inc.*, 88 Fed. Appx. 851, 853-54 (6th Cir. Feb. 9, 2004); *Burgess*, 2010 WL 1752028 at *2). Importantly, "the duty of a furnisher of credit

information to investigate a credit dispute under Section 1681s-2(b) is triggered only after the furnisher receives notice of the dispute from a consumer reporting agency. Notification from a consumer is insufficient." *Baker*, at *4 (quoting *Westbrooks v. Fifth Third Bank*, 2005 WL 3240614, *4 (M.D. Tenn. Nov. 30, 2005)).

Viewing Rajapakse's complaint in the light most favorable to her, she has arguably alleged in her complaint that she disputed a debt with a credit reporting agency and the agency, in turn, provided CAC notice of such a dispute, thereby triggering the duty to investigate by defendants as a furnisher. However, Rajapakse has not alleged that defendants failed to conduct such an investigation or comply with any other statutory duty. Indeed, it is not clear from the allegations in the amended complaint how defendants are alleged to have violated the FCRA. *See Moore v. Capital One Serv., LLC*, 2013 WL 1136725, at *3 (W.D. Mich. Feb. 26, 2013) (report and recommendation adopted in 2013 WL 1129608) ("to state a claim, plaintiff must allege that he complained to a credit reporting agency, that the credit reporting agency notified defendant of the dispute, and that the defendant failed to conduct a reasonable investigation or other specific duty established by the FCRA"). Rather, Rajapakse's allegations in Paragraph 3 recite the elements of a claim under § 1681s-2(b) without any factual support delineating which statutory duty(ies) defendants violated. *See Strohmeyer v. Chase Bank* USA, 2018 WL

2669991 (E.D. Tenn. June 4, 2018) (Conclusory allegations of a dispute debt are insufficient to state a claim); *Anderson v. Northstar Mortgage LLC*, 2018 WL 3328059, *4 (M.D. Tenn. July 6, 2018) (The plaintiff failed to state an FCRA claim where he did not allege any facts suggesting the defendant failed to "investigate such a dispute, review information provided by a CRA, report the results of its investigation, or take action based on the results of any investigation, or that it otherwise violated its obligations under § 1681s-2(b)."). Moreover, Rajapakse's allegations suggest that the credit reporting agencies removed the debt from her credit reports after she disputed the debt. (*See* Dkt. 40, Pg ID 299) ("After Rajapakse disputed her report twice in August 2017 and February 2017 in which all three credit bureaus removed Credit Acceptance Corporation off her credit as outline in the Fair Credit Reporting Act."). This allegation would seem to contradict any claim that defendants violated their duties under § 1681s-2(b). Because the amended complaint contains insufficient factual allegations to support a claim under § 1681s-2(b) and because allegations in the complaint contradict her claim that defendants violated the FCRA, Rajapakse has failed to state a claim on which relief may be granted under § 1681s-2(b).

6. Fraud

Finally, Rajapakse's fraud claim also fails because she has not pleaded it with any particularity as required by Federal Rule of Civil Procedure 9(b). This

case is similar to the circumstances presented in *Freund v. Deutsche Bank Nat'l Tr. Co.*, 2014 WL 12658843, at *3 (E.D. Mich. Oct. 22, 2014), where the plaintiff mentioned the word "fraud" only once in his complaint. The court concluded that, even construing the complaint liberally to assert a claim of fraud, the plaintiff failed to meet the heightened pleading requirements of Rule 9(b), which require plaintiffs to plead the "who, what, when, where, why and how of the alleged fraud." *Id.* Here, Rajapakse's only allegation regarding her fraud claim in her amended complaint is as follows:

> Credit Acceptance Corporation breach of warranty presented a common law of fraud due to the existent or preexisting fact the warranty purchased CAC nor dealers or affiliates had no intentions of honoring such service, knowing made the impression or false claim of the warranty, the representation of the warranty was intended for Rajapakse to rely on the warranty, Rajapakse has reasonably to rely on it, and a result she was injured by its breach.

(Dkt. 40, p. 6). Rajapakse provides, at most, a portion of the "what," but no specific details regarding the "who," "when," "where" and "why" to support her fraud claim and has not met the pleading requirements of Rule 9(b). Thus, her fraud claim fails on the merits.

V. RECOMMENDATION

For the reasons set forth above, the undersigned **RECOMMENDS** that defendants' motion to dismiss be **GRANTED**, and that Rajapakse's remaining motions be **TERMINATED** as moot.[4]

The parties to this action may object to and seek review of this Report and Recommendation but are required to file any objections within 14 days of service, as provided for in Federal Rule of Civil Procedure 72(b)(2) and E.D. Mich. Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987).

Any objections must be labeled as "Objection No. 1," "Objection No. 2," etc. Any objection must recite precisely the provision of this Report and Recommendation to which it pertains. Not later than 14 days after service of an

[4] On January 27, 2019, plaintiff filed a document entitled "To the Honorable District Court of the Eastern District," in which, amongst other things, plaintiff advises the Court of information relating to the recent return of some of her property. (Dkt. 135). The filing is not a motion and does not request any relief. Therefore, the undersigned makes no recommendation concerning the same, but rather by this footnote simply acknowledges its content and the sentiment conveyed therein.

objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed.R.Civ.P. 72(b)(2); E.D. Mich. Local Rule 72.1(d). The response must specifically address each issue raised in the objections, in the same order, and labeled as "Response to Objection No. 1," "Response to Objection No. 2," etc. If the Court determines that any objections are without merit, it may rule without awaiting the response.

Date: January 30, 2019

s/Stephanie Dawkins Davis
Stephanie Dawkins Davis
United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on January 30, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send electronic notification to all counsel and/or parties of record.

s/Tammy Hallwood
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