NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 28, 2019*
Decided June 28, 2019

Before

JOEL M. FLAUM, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 19-1338

DEBORAH WALTON,
Plaintiff-Appellant,

v.

FIRST MERCHANTS BANK, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:18-cv-01784-JRS-DLP

James R. Sweeney II, *Judge.*

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* We have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

ORDER

Deborah Walton sued First Merchants Bank, its general counsel, and its CEO for allegedly discriminating against her in violation of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f. She also asserted that the defendants negligently shared her personal information without her consent. The district court dismissed the complaint for failure to state a claim, and Walton appeals. Because Walton did not plausibly state a claim for race discrimination or negligence, we affirm.

The amended complaint was dismissed under Federal Rule of Civil Procedure 12(b)(6), so we recount the facts as alleged in the complaint and its exhibits, making all reasonable inferences in Walton's favor. *Loja v. Main St. Acquisition Corp.*, 906 F.3d 680, 682-83 (7th Cir. 2018). We construe her pro se complaint liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

This suit arises from two disparate sets of events. In 2017, Walton sued the Bank for allegedly violating the Telephone Consumer Protection Act, 47 U.S.C. § 227. During the litigation, the Bank shared all her personal information, including her account numbers and Social Security number, with the law firm representing it. In turn, the Bank's lawyers publicly disclosed that information by filing unredacted documents on the electronic court docket, handing them to a court reporter during a deposition, and mailing a CD containing the documents to Walton herself. Walton alleges

that these disclosures were negligent under Indiana law.

Walton also had ongoing customer-service difficulties with the Bank, where she held checking and savings accounts and a personal loan. She alleges that, at various times, the Bank did not allow her to make deposits or withdraw available funds, failed to apply her loan payments, did not mail her statements to her, and ultimately closed her accounts without providing a reason. Walton, who is African American, claims that these events constitute race discrimination in violation of the Equal Credit Opportunity Act. She alleges that the defendants "have not treated White Customers in the same manner they have treated Black customers when it comes to Equal Credit Opportunities" and that they "have given other Customers that are not Black the benefit of protecting their personal information." Because the defendants violated the Act, she added, they were also negligent per se under Indiana law.

The district judge dismissed the amended complaint with prejudice. Walton had failed to state a negligence claim for multiple reasons, the judge said, including that she did not show that the defendants had breached any duty to her or that she had incurred any compensable injury. The judge also concluded that Walton had failed to state a claim under the Equal Credit Opportunity Act because she had not alleged that the Bank "mistreated her *because* of her race," and her allegations of discrimination were conclusory. Without a claim that the defendants violated the Act, Walton could not proceed on a claim that the defendants

were negligent per se. Finally, the judge ordered Walton, who had filed at least 20 cases in the district [sic] since 2003, to show cause why she should not be sanctioned for filing a frivolous lawsuit. *See* FED. R. CIV. P. 11(b)(1), (2).[1]

On appeal, Walton restates the allegations in her amended complaint and argues that she would have prevailed if she had been allowed to proceed to discovery. We review de novo the dismissal of a complaint under Rule 12(b)(6) for failure to state a claim upon which relief could be granted. *Estate of Davis v. Wells Fargo Bank*, 633 F.3d 529, 532-33 (7th Cir. 2011). A complaint must contain a short and plain statement of a claim, with factual allegations "sufficient to show that [the] claim has substantive plausibility." *Johnson v. City of Shelby*, 135 S. Ct. 346, 347 (2014); *see also* FED. R. CIV. P. 8(a); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The Equal Credit Opportunity Acts [sic] bans discrimination against any applicant, with respect to any aspect of a credit transaction, on the basis of race. 15 U.S.C. § 1691(a)(1). Therefore, Walton needed to allege that she was an "applicant" and that the defendants treated her less favorably because of her race. *See Estate of Davis*, 633 F.3d at 538. But it is unclear

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[1] Before Walton responded to the order to show cause, she appealed on the day after her complaint was dismissed with prejudice. That raised the possibility that the district court's decision was not "final." *See* 28 U.S.C. § 1291. But we determined, after the parties' briefing, that the district court retained jurisdiction over its order to show cause and that we would proceed to the merits.

whether Walton was an "applicant" of the Bank as defined in 15 U.S.C. § 1691a(b); she was, as best we can tell, a customer; she was not someone seeking "an extension, renewal, or continuation of credit."

Even if Walton can be considered an "applicant" under the Act, nothing in her complaint renders it plausible that the problems she encountered resulted from race discrimination. We have made it clear that plaintiffs alleging race discrimination need not provide great detail to state a claim. *See Swanson v. Citibank, N.A.*, 614 F.3d 400, 405 (7th Cir. 2010) (concluding that identifying the type of discrimination, when it occurred, and the perpetrator was sufficient); *see also Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 827 (7th Cir. 2014). But even though the burden was not high, Walton's complaint fell short.

Plausibility requires "more than a sheer possibility that a defendant has acted unlawfully"; plaintiffs must allege "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *West Bend Mut. Ins. Co. v. Schumacher*, 844 F.3d 670, 675 (7th Cir. 2016) (citing *Iqbal*, 556 U.S. at 678). Here, Walton has alleged no facts suggesting discrimination. She only describes various problems with the Bank's administration of her accounts. She identifies no Bank employees—not even the individual defendants—who acted in a discriminatory manner. The only allusions to race are her two statements that white customers were not mistreated. But no factual content supports this allegation or explains her awareness of how the Bank allegedly

treats its white customers. Her bare statements that the alleged customer-service failures were "clear" discrimination are insufficient. *McReynolds v. Merrill Lynch & Co., Inc.*, 694 F.3d 873, 886 (7th Cir. 2012) ("The assertion is merely a conclusion, unsupported by the necessary *factual* allegations to support a reasonable inference of discriminatory intent.") (citing *Iqbal*, 556 U.S. at 679).

Walton's claims under Indiana law also fail. A claim of negligence per se requires plaintiffs to show that the defendant violated a statute without an excuse. *Stachowski v. Estate of Rudman*, 95 N.E.3d 542, 544 (Ind. Ct. App. 2018). Here, there is no credible violation of the Act. And Walton's argument that she stated a common-law negligence claim premised on the sharing of her personal information is frivolous. The defendants permissibly shared her personal information with the attorneys representing them in a lawsuit that Walton filed against them. It is those attorneys, not the defendants, whom Walton accuses of then disclosing the information without her consent. In any case, the Bank did not act unreasonably because the attorneys representing it were statutorily authorized to acquire her information. 15 U.S.C. § 6802(e)(4). The one possible misstep—filing an unredacted document—was, again, not the action of the defendants and was, in any case, quickly remedied.

AFFIRMED

United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois 60604

May 23, 2019

By the Court:

DEBORAH WALTON, Plaintiff-Appellant, No. 19-1338 v. FIRST MERCHANTS BANK, et al., Defendants-Appellees.	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division. No. 1:18-cv-01784-JRS-DLP James R. Sweeney, II, Judge.

ORDER

A review of the section of the brief captioned "Jurisdictional Statement" filed by appellees reveals that appellees have not complied with the requirements of Circuit Rule 28(b). That rule requires an appellee to state whether or not the jurisdictional summary in an appellant's brief is "complete and correct." If it is not, the appellee must provide a "complete jurisdictional summary."

Appellees state that appellant's Statement "is not complete or correct." And, although appellees provide a jurisdictional statement, they fail to provide one that is both complete and correct. Specifically, appellees' statement fails to identify with specificity the "provision of the constitution" or "federal statute" involved in

the case. *See* Cir. Rule 28(a)(1). This information must be provided. It is insufficient to cite 28 U.S.C. § 1331.

Appellees' statement also fails to provide the necessary information to establish appellate jurisdiction, including all pertinent dates. *See* Circuit Rule 28(a)(2). This information must be provided. It is insufficient to cite 28 U.S.C. § 1291. Accordingly,

IT IS ORDERED that appellees file a paper captioned "Amended Jurisdictional Statement" on or before May 30, 2019, that provides the omitted information noted above and otherwise complies with all the requirements of Circuit Rule 28(b), and if appellant's brief is not complete and correct, Circuit Court Rule 28(a) also.

IT IS FURTHER ORDERED, that the Clerk DISTRIBUTE, along with the briefs in this appeal, copies of this order and appellees' "Amended Jurisdictional Statement" to the assigned merits panel.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[SEAL]

Everett McKinley Dirksen
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Room 2722 -
219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

May 3, 2019

By the Court:

No. 19-1338	DEBORAH WALTON, Plaintiff - Appellant v. FIRST MERCHANT'S BANK, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:18-cv-01784-JRS-DLP Southern District of Indiana, Indianapolis Division District Judge James R. Sweeney	

The following is before the court: **APPELLANT'S VERIFIED MOTION FOR ASSISTANCE FROM THE 7th CIRCUIT**, filed on May 2, 2019, by the pro se appellant.

A review of the court's docket indicates that each filing made by the appellees includes a certificate of service

certifying that counsel for the appellees served the appellant via United States mail.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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ORDER

April 29, 2019

Before

DAVID F. HAMILTON, *Circuit Judge*

No. 19-1338	DEBORAH WALTON, Plaintiff - Appellant v. FIRST MERCHANT'S BANK, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:18-cv-01784-JRS-DLP Southern District of Indiana, Indianapolis Division District Judge James R. Sweeney	

The following are before the Court:

1. **APPELLANT'S MOTION FOR CLARITY FROM THE 7th CIRCUIT COURT OF APPEALS CONCERNING DOCKET 1 AND DOCKET 62,**

filed on April 22, 2019, by Pro Se Appellant Deborah Walton.

2. **APPELLEE FIRST MERCHANTS BANK'S NOTICE OF DISTRICT COURT RULING ON WALTON'S MOTION FOR CLARITY (DKT. 15)**, filed on April 23, 2019, by counsel for Appellee First Merchants Bank.

IT IS ORDERED that the motion is **GRANTED** to the extent that this court clarifies that "Exhibit H" is not part of the record on appeal. The appellant may refer to her original complaint in her filings.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[SEAL]

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ORDER

April 4, 2019

By the Court:

No. 19-1338	DEBORAH WALTON, Plaintiff - Appellant v. FIRST MERCHANT'S BANK, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:18-cv-01784-JRS-DLP Southern District of Indiana, Indianapolis Division District Judge James R. Sweeney	

Upon consideration of the **MOTION FOR EXTENSION OF TIME TO FILE APPELLEE'S BRIEF**, filed on April 2, 2019, by counsel for the appellee,

IT IS ORDERED that the motion will be filed without court action. Briefing will proceed according to the court's order dated April 2, 2019.

United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois 60604

April 2, 2019

By the Court:

DEBORAH WALTON, Plaintiff-Appellant, No. 19-1338 v. FIRST MERCHANTS BANK, et al., Defendants-Appellees.	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division. No. 1:18-cv-01784 James R. Sweeney, II, Judge.

ORDER

On consideration of the jurisdictional papers filed by the parties,

IT IS ORDERED that this appeal shall proceed to briefing on the merits of the case. *See Otis v. City of Chicago*, 29 F.3d 1159, 1165-67 (7th Cir. 1994) (en banc). The remainder of the briefing schedule is as follows:

1. The appellees shall file their joint brief on or before May 3, 2019.

2. The appellant shall file her reply brief, if any, on or before May 24, 2019.

Appellant Walton is reminded that if she intends to seek review of the district court's disposition of the

show cause order, she must file a new notice of appeal. *See Cooke v. Jackson National Life Ins. Co.*, 882 F.3d 630 (7th Cir. 2018) (a judgment on the merits and an award of attorney's fees are separately appealable).

NOTE: **Counsel should note that the digital copy of the brief required by Circuit Rule 31(e) must contain the entire brief from cover to cover. The language in the rule that "[t]he disk contain nothing more than the text of the brief . . . " means that the disk must not contain other files, not that tabular matter or other sections of the brief not included in the word count should be omitted. The parties are advised that Federal Rule of Appellate Procedure 26(c), which allows for three additional days after service by mail, does not apply when the due dates of briefs are set by order of this court. All briefs are due by the dates ordered.**

United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois 60604

March 18, 2019

By the Court:

DEBORAH WALTON, Plaintiff-Appellant, No. 19-1338 v. FIRST MERCHANTS BANK, et al., Defendants-Appellees.	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division. No. 1:18-cv-01784-JRS-DLP James R. Sweeney, II, Judge.

ORDER

On consideration of Appellee First Merchants Bank's Memorandum on Jurisdictional Issues filed on March 15, 2019,

IT IS ORDERED that appellant file, on or before April 1, 2019, a response to appellee's filing, addressing the jurisdictional issue raised in appellee's Statement of Jurisdictional Issues filed on March 4, 2019.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[SEAL]

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ORDER

March 7, 2019

By the Court:

No. 19-1338	DEBORAH WALTON, Plaintiff - Appellant v. FIRST MERCHANT'S BANK, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:18-cv-01784-JRS-DLP Southern District of Indiana, Indianapolis Division District Judge James R. Sweeney	

Upon consideration of the **MOTION TO THE COURT TO INCLUDE DOCKET 115**, filed on March 6, 2019, by the pro se appellant,

IT IS ORDERED that the motion is **GRANTED** to the extent that the clerk shall send the appellant a copy of document 115 from the district court docket. Further, the appellant is reminded that the court will

United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois 60604

March 5, 2019

By the Court:

DEBORAH WALTON, Plaintiff-Appellant, No. 19-1338 v. FIRST MERCHANTS BANK, et al., Defendants-Appellees.	] Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division. No. 1:18-cv-01784-JRS-DLP James R. Sweeney, II, Judge.

ORDER

On consideration of Appellee First Merchants Bank's Statement on Jurisdictional Issues filed on March 4, 2019, in which appellee claims that "Walton's appeal is premature and this court lacks jurisdiction until a final appealable Order is issued by the District Court's ruling on the Order to Show Cause",

IT IS ORDERED that appellee file, on or before March 15, 2019, a memorandum on appellate jurisdiction that addresses cases such as *Buchanan v. United States* 82 F.3d 706, 708 (7th Cir. 1996) (per curiam) (a sanctions matter is collateral to merits of case), and *Barrow v. Falck*, 977 F.2d 1100, 1102 (7th Cir. 1992)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DEBORAH WALTON, Plaintiff, v. FIRST MERCHANTS BANK, et al., Defendant.	)	No. 1:18-cv-01784-JRS-DLP

Entry on Defendants' Motion to Dismiss

(Filed Feb. 20, 2019)

This matter is before the Court on Defendants' motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). (ECF No. 73.) This Court has jurisdiction over Plaintiffs federal-law claim pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over her state-law claims pursuant to 28 U.S.C. § 1367. In December 2018, the Court granted Plaintiff leave to amend her original complaint. (ECF No. 62.) After carefully considering the amended complaint, motion, response, and reply, the Court concludes that the motion should be **GRANTED**.

I. Background

This case arises from another case in this district, 1:17-cv-01888-JMS-MPB (the "2017 case"), in which

Plaintiff Deborah Walton ("Walton") alleges that Defendant First Merchants Bank ("FMB") violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, and breached a bank-account agreement. Here, Walton alleges that in the course of the litigation in the 2017 case, defendants FMB, Michael Rechin and Brian Hunt (collectively, "Defendants") shared her sensitive personal information, including her social security number, date of birth, home and cell phone numbers, and bank account numbers, with third parties without her consent. (ECF No. 66 ¶¶ 7-10.) Walton also alleges that Defendants discriminated against her on the basis of race.

More specifically, Walton, who proceeds *pro se* in the present suit, filed an amended complaint alleging three claims against FMB: (1) negligence, (2) violation of the Equal Credit Opportunity Act ("ECOA"), and (3) negligence *per se* arising from FMB's alleged violation of the ECOA. Defendants move for dismissal of all three counts of Walton's amended complaint.

II. Legal Standard

To survive a motion to dismiss, a complaint must "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim is "plausible" only if the plaintiff alleges "enough fact[s] to raise a reasonable expectation that discovery will reveal evidence" that supports the plaintiff's allegations. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Alternatively, a plaintiff's claim will be

dismissed if she "plead[s] facts that show that [s]he has no legal claim." *Atkins v. City of Chicago*, 631 F.3d 823, 832 (7th Cir. 2011). When evaluating the sufficiency of a complaint for the purposes of a motion to dismiss, the court must "construe [the complaint] in the light most favorable to the nonmoving party, accept well-pleaded facts as true, and draw all inferences in [the nonmovant's] favor." *Reger Dev., LLC v. Nat'l City Bank*, 592 F.3d 759, 763 (7th Cir. 2010). However, the complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests," and its "[f]actual allegations must . . . raise a right to relief above the speculative level." *Pisciotta v. Old Nat'l Bancorp*, 499 F.3d 629, 633 (7th Cir. 2007) (citations omitted). In reviewing a *pro se* plaintiff's claims, the court construes the allegations liberally. *Maddox v. Love*, 655 F.3d 709, 718 (7th Cir. 2011).

III. Discussion

A. Negligence

Walton alleges that the Defendants failed to protect her sensitive personal information in the course of litigation in the 2017 case. (ECF No. 66 at 2, ¶¶ 7-8.) Walton alleges that the Defendants were negligent when they shared Walton's personal information (1) with *Walton* during discovery (ECF No. 66 at 3, 10), (2) with FMB's lawyers during the course of the litigation in the 2017 case (ECF No. 66 at 2, ¶ 7; ECF No. 66 at 5, ¶ 23), and (3) with the court reporter during a deposition (ECF No. 66 at 3, ¶ 10.). Defendants argue that Walton

fails to state a claim for relief as to this claim, alleging that Walton has not shown an "unauthorized" disclosure of her personal information. (ECF No. 74 at 6.) Walton responds that the Defendants were negligent when FMB's lawyer, Brian Hunt, "instruct[ed]" FMB's outside counsel firm to "expose" Walton's personal information, including her social security number and credit application information to the "public" via the Court's docket system. (ECF No. 78 at 2.)

"To prevail on a negligence claim, the plaintiff must show (1) a duty owed to the plaintiff by the defendant; (2) a breach of that duty by allowing conduct to fall below the applicable standard of care; and (3) compensable injury proximately caused by the breach of duty." *Smith v. Walsh Constr. Co., II, LLC*, 95 N.E.3d 78, 84 (Ind. Ct. App. 2018). Walton fails to show at least two of the necessary elements of negligence; namely, that: (1) Defendants breached any duty to Walton and (2) Defendants proximately caused Walton compensable injury. More specifically, dismissal is proper for the following reasons.

First, Defendants did not breach any duty to Walton when they provided FMB's attorneys with Walton's personal information, or when FMB's attorneys shared Walton's information within the same law firm. *See* 15 U.S.C. § 6802(e)(4) (allowing a financial institution to share a consumer's "nonpublic" information with its attorneys). Moreover, Walton was proceeding *pro se* in the 2017 case. Thus, Defendants did not breach any duty to Walton by providing FMB attorneys with Walton's contact information, as contact between parties

to litigation is necessary under the Federal Rules of Civil Procedure. *See, e.g.*, Fed. R. Civ. P. 26(f) ("the parties must confer as soon as practicable"); Fed. R. Civ. P. 37(a)(1) (instructing parties to confer or attempt to confer in good faith). Accordingly, it is preposterous for Walton to allege that opposing counsel misused her personal information because they contacted her *about a pending lawsuit that she filed against their client.*

Similarly, Defendants did not breach any duty to Walton by providing Walton's personal information in deposition exhibits to the court reporter in the 2017 case. *See Peace v. Pollard*, No. 15-cv-481-pp, 2016 WL 3951148, at *2 (E.D. Wis. July 20, 2016) (classifying a court reporter as an "officer of the court" in the context of depositions). Defendants also did not breach any duty to Walton by producing Walton's *own* personal information to Walton during discovery, whether redacted or unredacted. Walton also fails to plead any compensable injury related to (1) the court reporter's exposure to Walton's personal information during deposition or to (2) Walton's receipt of her own personal information during discovery.

Second, Walton fails to show she was injured at all, much less that FMB caused her any compensable injury in any of the above complained of conduct or when FMB filed an unredacted document containing Walton's personal information in the 2017 case. Although Walton may have been upset by the appearance of her unredacted information on the court's docket, she fails to allege any *compensable* injury proximately caused by FMB's filing. Moreover, the judge in the 2017 case

ordered FMB to redact Walton's personal information and it complied. The court also ordered the previously filed, unredacted exhibit containing Walton's information sealed from public view. *See* 1:17-cv-1888 at ECF No. 178 and ECF No. 179. Even if the Court were to assume *arguendo* that FMB had breached some duty to Walton when it filed the unredacted document, Walton's claim would still fail, as she fails to sufficiently plead any *compensable* harm related to this incident.

Moreover, Walton has not alleged any plausible *misuse* of her personal information stemming from any of the complained of disclosures noted above. Therefore, Walton has failed to plead facts showing that any of the disclosures of her personal information were the result of Defendants' breach of a duty owed to her, or that any of the disclosures proximately caused Walton compensable harm. Walton has therefore failed to state a cognizable claim for negligence under Indiana law. Walton's negligence claim is **dismissed with prejudice**.

B. Race Discrimination (ECOA)

Next, Walton alleges that FMB discriminated against her on the basis of her race in violation of the ECOA. (ECF No. 66 at 6, ¶¶ 29-34.) Walton alleges that FMB violated the ECOA when it (1) failed to "apply [Walton's] funds to [her] [l]oan account" and (2) when it made changes to Walton's loan account without disclosing these changes to her. (ECF No. 66 at 3, ¶ 16; ECF No. 66 at 6, ¶ 32.) Walton also summarily alleges

that she was "clearly discriminated against . . . based on her race" and that FMB subjected her to disparate treatment as compared to "[w]hite [c]ustomers." (ECF No. 66 at 6, ¶ 34.)

To state a claim under the ECOA, a plaintiff must allege that (1) she was an "applicant," as defined by the ECOA and (2) she was treated less favorably because of her race. *See Estate of Davis v. Wells Fargo Bank*, 633 F.3d 529, 538 (7th Cir. 2011); *Moran Foods, Inc. v. Mid–Atlantic Market Dev. Co.*, 476 F.3d 436, 441 (7th Cir. 2007). The ECOA makes it illegal for creditors to "discriminate against any applicant, with respect to any aspect of a credit transaction . . . on the basis of race." 15 U.S.C. § 1691(a)(1). The statute defines "applicant" as "any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit." 15 U.S.C. § 1691a(b). Walton fails to plausibly allege either of these elements and dismissal is therefore proper on her ECOA claim.

As best as the Court can tell, the only facts in Walton's complaint that relate to her ECOA race discrimination claim are: (1) Walton is African American, (2) FMB made changes to Walton's loan account without telling her, and (3) FMB treated Walton less favorably than it treated its white customers. Although Walton alleges that she is African American, she fails to allege sufficient facts showing that FMB mistreated her *because* of her race. Walton's allegations on this point are conclusory. For example, Walton alleges that

FMB "clearly" discriminated against her on the basis of race but fails to present the Court with any facts to permit a plausible inference of discrimination. In addition, Walton alleges that FMB treated white customers better than it treated her, but alleges no facts relating to FMB's treatment of any similarly situated white customers. Absent any factual allegations, Walton's claim of discrimination amounts to no more than mere "labels" and "conclusions." *Twombly*, 550 U.S. 544 at 556 (2007). Walton has therefore failed to state a claim for violation of the ECOA upon which relief can be granted, and this claim is **dismissed with prejudice**.

C. Negligence *per se*

Because Walton has failed to state a claim for relief on her ECOA claim, she necessarily fails to state a claim for relief with respect to her negligence *per se* claim. Negligence *per se* "occurs when a violation of a statute or ordinance constitutes negligence as a matter of law." *Spierer v. Rossman*, 798 F.3d 502, 509 (7th Cir. 2015) Walton has failed to plead sufficient facts showing FMB's violation of the relevant statute, the ECOA, so her negligence *per se* claim also fails. This claim is therefore **dismissed with prejudice**.

IV. Sanctions

Courts typically show leniency to *pro se* litigants. *See, e.g.*, *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) ("A document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must

be held to less stringent standards than formal pleadings drafted by lawyers.") However, *pro se* litigants are not immune from sanction by virtue of their *pro se* status. *See Johnson v. State Farm Mut. Auto. Ins. Co.*, 641 F. Supp. 2d 748, 753 (C.D. Ill. July 6, 2009) ("While a court should be more lenient in assessing sanctions against a *pro se* litigant, when she persists . . . long after it should have been clear [her claims were meritless] sanctions should be imposed.").

Walton is no ordinary *pro se* litigant. Since 2003, Walton has filed *at least* twenty cases in this district court alone.[1] Walton should therefore be familiar with the filing requirements in federal court. Moreover, despite her *pro se* status, Walton is surely aware of the potential consequences for abuse of the judicial process. In several of Walton's earlier cases, the court ordered Walton to pay the opposing parties' attorney's

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[1] *See, e.g.*, *Walton v. First Merchants Bank*, 1:17-cv-1888-JMS-MPB; *Walton v. EOS CCA*, 1:15-cv-822-TWP-DML; *Walton v. Health & Hosp. Corp. of Marion Cty., Ind., Pub. Health Div.*, 1:06-cv-1128-LJM-WTL; *Walton v. JP Morgan Chase Bank, NA Home Loans*, 1:16-cv-447-TWP-DKL; *Walton v. Bank of America*, 1:14-cv-1237-SEB-DKL; *Walton v. BMO Harris Bank*, 1:16-cv-3302-WTL-DLP; *Walton v. Equifax Inc.*, 1:18-cv-225-SEB-DLP; *Walton v. Hyatt & Rosenbaum, P.A.*, No. 1:08-cv–1275–SEB–TAB; *Walton v. Springmill Streams Homeowners Assoc.*, 1:09-cv-01136-TWP-DML; *Walton v. Proffitt*, 1:04-cv-02028-LJM-WTL; *Walton v. Claybridge Homeowners Assoc.*, 1:03-cv-00069-LJM-WTL; *Walton v. City of Carmel*, 1:05-cv-00902-RLY-TAB; *Walton v. Rubin & Levin P.C.*, 1:05-cv-01132; *Walton v. Trans Union, LLC*, 1:07-cv-00372-WTL-DML; *Walton v. Claybridge Homeowners Assoc.*, 1:07-cv-01484-DFH-DML; *Walton v. Naijar*, 1:09-cv-01495-LJM-DML; *Walton v. Bank of America*, 1:11-cv-00685-SEB-DML; *Walton v. Freddie Mac*, 3:12-cv-00116; *Walton v. Chase Home Finance, LLC*, 1:11-cv-00417-JMS-MJD.

fees for Walton's frivolous filings. *See, e.g.*, *Walton v. Hyatt & Rosenbaum, P.A.*, 1:08-cv-1275-SEB-TAB; *Walton v. Springmill Streams Homeowners Assoc.*, 1:09-cv-1136-TWP-DML; *Walton v. First Merchants Bank*, 1:17-cv-1888. Indeed, Walton herself moved for sanctions in the 2017 case.

The Seventh Circuit has also warned Walton of the potential consequences for filing frivolous lawsuits. In *Walton v. Claybridge Homeowners Assoc.*, Walton alleged that a state judge in another case "ordered Walton 'into [s]lavery'" and "gave the rights in her land 'to an [a]ll [w]hite [g]roup of [p]eople" when the judge ruled against her in an easement dispute. 433 F. App'x 477, 478 (7th. Cir. 2011). The Seventh Circuit warned Walton that if she continued to file frivolous law suits in abuse of the judicial process, she could be assessed "monetary sanctions and restrictions on future suits." *Id.* at 480.

As explained above, the allegations in Walton's amended complaint—most notably her allegation that FMB shared her contact information with its attorneys and with *Walton herself*—are frivolous. *See* Fed. R. Civ. P. 11(b)(2). But even more troubling is the evidence—before the Court as an exhibit to Walton's own amended complaint (ECF No. 66-5 at 12)—that Walton filed this lawsuit to harass a witness (FMB's general counsel, Brian Hunt) from the 2017 case. During the deposition of Mr. Hunt in the 2017 case, Walton warned, "If I don't get it from him here, I'll get it from the next lawsuit. And you will be a party to—." Walton's threat was not idle: this is the "next lawsuit," and Mr. Hunt is indeed a defendant. But neither will the

Seventh Circuit's warning be idle: Walton is ordered to show cause why the allegations of her amended complaint do not violate Rule 11(b)(1) and (2).

V. Conclusion

For the foregoing reasons, Defendants' Rule 12(b)(6) motion to dismiss (ECF No. 73) is **GRANTED** and Walton's amended complaint is **dismissed with prejudice** for failure to state a claim upon which relief can be granted. Consequently, the Court **DENIES** Defendants' first motion to dismiss (ECF No. 10) as moot. It is further **ORDERED** that Walton shall, by February 28, 2019, **SHOW CAUSE** why Walton should not be assessed sanctions for violation of Fed. R. Civ. P. 11(h).

SO ORDERED.

Date: 2/20/2019 /s/ James R. Sweeney II
JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

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