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OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT (APRIL 9, 2021)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

EMMANUEL EDOKOBI,

Plaintiff-Appellant,

v.

TOYOTA MOTOR CREDIT CORPORATION; SUNTRUST BANK,

Defendants-Appellees.

No. 20-1243

Appeal from the United States District Court for the District of Maryland, at Greenbelt.
Paul W. Grimm, District Judge.
(8:19-cv-00248-PWG)

Before: WYNN, THACKER, and RUSHING, Circuit Judges.

PER CURIAM:

Emmanuel Edokobi appeals the district court's order granting the Defendants' motions for summary judgment and denying as moot his motion to dismiss SunTrust Bank's counterclaim. We have reviewed the record and find no reversible error. Accordingly, we

affirm for the reasons stated by the district court. *Edokobi v. Toyota Motor Credit Corp.*, No. 8:19-cv-00248-PWG (D. Md. Mar. 2, 2020). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED.

MEMORANDUM OPINION AND ORDER OF THE DISTRICT COURT OF MARYLAND (MARCH 2, 2020)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

EMMANUEL EDOKOBI,

Plaintiff,

v.

TOYOTA MOTOR CREDIT CORP. ET AL.,

Defendants.

Case No.: PWG-19-248

Before: Paul W. GRIMM,
United States District Judge.

Emmanuel Edokobi brought this suit against Toyota Motor Credit Corporation and SunTrust Bank regarding two contested payments of $536.34 from his SunTrust bank account to his Toyota car loan that resulted in overdraw charges. Before this suit began, Toyota sent Edokobi a reimbursement check for $536.34 and SunTrust refunded the related overdraw fees for the one charge he disputed, but Edokobi did not cash the check because he wanted to sue for emotional and punitive damage. As a result, Edokobi filed this action, alleging 30 counts of breach of contract and common

law and statutory duties and seeking a total of $2,880,000 in damage. SunTrust filed a counterclaim for breach of contract for Edokobi's unpaid overdrawn account balance. Pending before me are Defendants' motions for summary judgment.[1] For the reasons explained below, summary judgment is granted in favor of the Defendants against Edokobi on Edokobi's claims, and in favor of SunTrust against Edokobi on SunTrust's breach of contact claim.

I. Background

The Court finds the following material and undisputed facts established by the record.

On May 21, 2012, Edokobi opened a deposit account with SunTrust bank (the "SunTrust Account" or "Account."). ECF No. 65-3. At that time, Edokobi signed the Personal Account Signature Card and thereby agreed that his use of the Account "shall be governed by the rules and regulations for this account." *Id.* Edokobi "acknowledge[d] receipt of such rules and regulations and the funds availability policy" and that "the funds availability policy has been explained." *Id.*

The SunTrust Rules and Regulations for Deposit Accounts (the "Rules and Regulations") provide that the relationship between Edokobi and SunTrust is contractual in nature, that SunTrust "is not in any way acting as a fiduciary to [Edokobi]," and that "no

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[1] The motions are fully briefed. *See* ECF Nos. 65, 66, 78, 82, 83. A hearing is not necessary. *See* Loc. R. 105.6 (D. Md. 2018). Also pending is Edokobi's motion to dismiss SunTrust's counterclaim. ECF No. 39. Because I grant SunTrust's motion for summary judgment on their counterclaim, Edokobi's motion to dismiss the counterclaim is denied as moot.

special relationship exists" between Edokobi and SunTrust. ECF No. 65-4. The Rules and Regulations also provide that SunTrust "has no duty to investigate or question items, withdrawals, or the application of funds." *Id.* Further, the Rules and Regulations contain detailed provisions that explain SunTrust may charge overdraft fees, that Edokobi will pay any fees applied to his account that are included in the Personal Deposit Fee Schedule, that it is Edokobi's responsibility to monitor his account to ensure that sufficient funds are available, and that he is liable for all amounts charged to the account. *Id.* If there is a dispute about any item debited from the account, the Rules and Regulations require Edokobi to notify SunTrust within 60 days. *Id.* The Rules and Regulations also provide that SunTrust may close the account without advanced notice. *Id.*

In accordance with the Rules and Regulations, SunTrust issued monthly account statements to Edokobi and made the statements available for his review electronically, at his selection. ECF No. 65-2 at ¶ 5. At various times when Edokobi used the account, he was charged overdraft item fees when there were insufficient funds to cover debits and maintenance fees when the average daily balance fell below the minimum threshold to avoid a fee. *Id.* at ¶¶ 6, 7.

On October 24, 2015, Edokobi executed a Retail Installment Sale Contract ("RISC") to finance the purchase of a 2014 Nissan Altima. *See* ECF No. 66-1. The RISC was assigned to Toyota. *Id.* The RISC explained that the relationship between Edokobi and Toyota was contractual in nature and provided that: "This contract, along with all other documents signed by you in connection with the purchase of this vehicle,

comprise the entire agreement between you and us affecting this purchase" and "You agree to the terms of this contract." *Id.* Under the terms of the RISC, Edokobi was obligated to make monthly payments of $268.17 to Toyota. *Id.* There was no penalty for pre-payment. *Id.*

Edokobi made payments to Toyota pursuant to the RISC in varying amounts from his SunTrust Account. From January 26, 2016 to June 27, 2018, thirty-eight separate electronic debits were transmitted to Toyota from the Account for amounts including $268.17, $100.00, $170.00, $266.00, $200.00, $138.85, $180.00, $88.17, $536.34, $268.34, $276.71, $227.80 and $268.00. *See* ECF No. 65-2 at ¶ 9. The present dispute concerns two payments for $536.34 that were made using Toyota's online payment system. ECF No. 66-4 at ¶ 5. The online payment system is driven by the account user, and Toyota only receives payments through the online system that are authorized by the user. *Id.* Toyota does not have access to a user's online account to initiate payments. *Id.*

On September 26, 2017, an electronic debit to Toyota for $536.34 was charged to Edokobi's account. The payment was initiated using the Toyota online payment system and was received by Toyota. ECF No. 66-4 at ¶ 5. The debit resulted in an overdraft fee. *Id.* at ¶ 7. Based on the SunTrust Rules and Regulations, if Edokobi wanted to dispute this debit with SunTrust, he was required to do so within 60 days of September 27, 2017, when SunTrust made the monthly account statement available for Edokobi's review. ECF No. 65-2 at ¶ 10. Edokobi did not dispute the charge within that time period.

On June 27, 2018, an electronic debit to "Toyota Pay" for 268.17 and an electronic debit to "Toyota Financial" for $536.34 were charged to Edokobi's account. ECF Nos. 65-5; 78-1. The $536.34 payment was initiated using the Toyota online payment system and was received by Toyota. ECF No. 66-4 at ¶ 5. SunTrust processed the items, which resulted in an overdraft balance and a $36.00 overdraft fee. ECF Nos. 65-5; 78-1.

On June 28, 2018, Edokobi submitted a written statement to SunTrust disputing the $536.34 charge from the previous day, alleging that he did not authorize Toyota to debit the Account. ECF No. 65-6. On July 3, 2018, Edokobi sent a follow up written statement to SunTrust, again disputing the charge. ECF No. 65-7.[2]

In light of Edokobi's letters, SunTrust referred the matter to its Fraud Assistance Center. After reviewing the claim, SunTrust's Fraud Assistance Center informed Edokobi that it would not be reimbursing the $536.34 electronic debit to Edokobi because of Edokobi's participation in undisputed transactions with Toyota and its determination that no error occurred. ECF No. 65-8. SunTrust also recommended contacting Toyota to resolve the dispute. *Id.* In response, on July 21, 2018 Edokobi sent SunTrust a document titled "Legal Notice," in which he again demanded return of the $536.34 electronic debit and

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2 Attached to this letter was a letter from Toyota dated June 28, 2018 that stated, "This letter is to confirm that you verbally authorized a one-time ACH electronic bill payment to Toyota Motor Credit Corp. on 06/26/2018 . . . [for] $268.17." *Id.* This appears to relate to the $268.17 payment to Toyota that was posted on June 27, 2018, which is not disputed in this case.

threatened legal action if SunTrust did not do so. ECF Nos. 65-9; 78-16.

Separately, on July 30, 2018, Toyota received a request for reimbursement from Edokobi. ECF No. 66-4 ¶ 11. Two days later, on August 1, 2018, Toyota granted Edokobi's request and sent him a check for $536.34. *Id.* at ¶ 12; ECF No. 78-18.

As of July 26, 2018, Edokobi had an overdrawn balance of negative $512.19 as a result of the June 27, 2018 debits to Toyota and the resulting $36.00 overdraft fee, other unrelated personal debits and an additional $36.00 overdraft fee related to those purchases, and a monthly $10.00 account maintenance fee. ECF Nos. 65-5; 78-1.

On August 14, 2018, SunTrust initiated a telephone conference with a SunTrust representative, a Toyota representative, and Edokobi to address the dispute. During the call, Edokobi acknowledged that he received the $536.34 refund check but said that he would not deposit it because he wanted to sue for damage. *See* ECF No. 65-2; 65-10; 78-17, 78-19. The SunTrust representative's summary of the call describes the exchange as follows:

> [M]erchant stated they have received correspondence from the client concerning the two payments and they have already issued the client a refund check in the amount of $536.34 sent via fed-ex courier on 8/1/18. . . . [M]erchant ask[ed] have you not received it yet. The Client said yes I have it and I am not going to process it. Client said that he is going to return the check to the merchant because he want[s] to sue Toyota for 5 million

> dollars in damage and suffering. Per client told the merchant that he is taking them to the supreme court and if [they] don't believe them to look up his name.

ECF No. 65-10.

Following the call, on August 15, 2018 SunTrust's Fraud Assistance Center sent Edokobi another letter informing him that he did not provide any additional details that would change the original decision in his case, and that his claim for SunTrust to reimburse the debit (for which he had already received a check from Toyota) was again denied. ECF No. 65-11. Nonetheless, SunTrust refunded the two $36.00 overdraft fees that were assessed following the June 27, 2018 debits. ECF No. 65-12. SunTrust also applied a monthly $10.00 maintenance fee to Edokobi's account, resulting in a negative balance of $450.19 as of August 28, 2018. *Id.* On August 31, 2018, SunTrust closed Edokobi's account, with Edokobi owing the $450.19 balance. Edokobi's account statement showing the account closing and negative balance of $450.19 was made available for Edokobi's review on September 25, 2018. *Id.*; ECF No. 65-2 at ¶ 20. Edokobi has not paid the $450.19 balance. ECF No. 65-2 at ¶ 21; *see also* ECF Nos. 78-15, 78-26, 78-27.

In sum, Toyota sent Edokobi a check for the $536.34 debit he disputed and SunTrust reimbursed Edokobi for the two overdraft charges related to the debit. The reimbursement check would have resolved the overdraw balance on Edokobi's SunTrust account. But Edokobi never deposited the check, and instead filed this suit seeking $2,880,000 in damage. Edokobi alleges 30 counts in his complaint, including breach of contract, breach of fiduciary duty, unjust enrichment,

aiding and abetting, promissory estoppel, "malicious acts of tampering," civil conspiracy, "conspiracy to negligence," violations of the Maryland commercial code, violations of the Maryland Consumer Protection Act, and violations of the federal Fair Debt Collection Practices Act. SunTrust filed a counterclaim for the $450.19 balance on Edokobi's account.

Edokobi's suit has consumed a significant amount of the parties' and judicial resources. Since the time it was assigned to me, Edokobi filed an interlocutory appeal to the Fourth Circuit, which was later voluntarily dismissed, *see* ECF No. 27; filed a suit against me in state court, which was removed to this Court and is pending before Judge Hazel, *see Edokobi v. Grimm*, GJH-19-cv-905 (D. Md.); filed a motion to remove me from this case and sent it to Chief Judge Bredar, who took no action on it, and which I then denied, *see* ECF Nos. 33, 34; filed a motion for reconsideration of my decision not recuse myself, which was denied, *see* ECF No. 42; filed a motion to reopen discovery to hire an independent computer forensic experts, which Magistrate Judge Simms denied, *see* ECF No. 84; filed an interlocutory appeal to the Fourth Circuit of Magistrate Judge Simms' decision, which was voluntarily dismissed, *see* ECF No. 91; and filed a motion for leave to submit the sworn affidavits of Toyota and SunTrust employees to the Federal Bureau of Investigation for criminal prosecution for allegedly committing perjury, which was granted on the basis that this Court has no involvement for this type of request, *see* ECF No. 84. With the assistance of Magistrate Judge Simms, discovery has now closed. Pending before me are Defendants' motions for summary judgment.

II. Standard of Review

Summary judgment is proper when the moving party demonstrates, through "particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials," that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), (c)(1)(A); *see Baldwin v. City of Greensboro*, 714 F.3d 828, 833 (4th Cir. 2013). If the party seeking summary judgment demonstrates that there is no evidence to support the nonmoving party's case, the burden shifts to the nonmoving party to identify evidence that shows that a genuine dispute exists as to material facts. *See Celotex v. Catrett*, 477 U.S. 317 (1986). The existence of only a "scintilla of evidence" is not enough to defeat a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). Instead, the evidentiary materials submitted must show facts from which the finder of fact reasonably could find for the party opposing summary judgment. *Id.* If this initial burden is met, the opposing party may not rest on the mere allegations in the complaint. *Id.* at 247-48. The opposing party "must come forward with specific facts showing that there is a genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, summary judgment is appropriate. *Anderson*, 477 U.S. at 248-49. On a motion for summary judgment, the facts are considered in the light most favorable to the non-moving

party, drawing all justifiable inferences in his favor. *Ricci v. DeStefano*, 557 U.S. 557, 585-86 (2009).

Because Plaintiff is self-represented, his submissions are liberally construed. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007); Fed. R. Civ. P. 8(f) ("All pleadings shall be so construed as to do substantial justice"); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (claims of self-represented litigants are held "to less stringent standards than formal pleadings drafted by lawyers").

III. Analysis

In his 30-count complaint, Edokobi included some claims against Toyota and SunTrust individually and some claims against both. SunTrust filed its counterclaim against Edokobi. I discuss each in turn.

a. Breach of Contract

In Counts 1 through 7 and 22 of the Complaint, Edokobi alleges breach of contract by Toyota for the $536.34 debits on September 26, 2017 and June 27, 2018. Essentially Edokobi alleges that Toyota "took" the payments without his authorization and failed to account for all payments. In Maryland, "[t]he elements of a claim for breach of contract include 'contractual obligation, breach, and damage.'" *Tucker v. Specialized Loan Servicing, LLC*, 83 F. Supp. 3d 635, 655 (D. Md. 2015) (quoting *Kumar v. Dhanda*, 17 A.3d 744, 749 (Md. Ct. Spec. App. 2011)). Edokobi fails to provide any facts to support his claim for breach of contract.

As described above, the relationship between Edokobi and Toyota is contractual in nature and governed by the RISC. The RISC provides that Edokobi is obligated to make monthly payments of

$268.17, but may make additional payments without penalty. Although Edokobi alleges that Toyota "took" the payments, he provides not factual support for this contention. The record shows that the two $536.34 payments in question were initiated from Edokobi's online account that required Edokobi's authentication to be made. ECF No. 66-4 at ¶¶ 5-7. Toyota lacks the ability to initiate online payments on behalf of Edokobi. *Id.* at 7. And in either case all payments that were made were either credited to Edokobi's account or returned to Edokobi at his request. *Id.* at ¶ 13; ECF No. 66-3. Therefore Edokobi fails to establish that Toyota breached the contractual obligations in the RISC. Summary judgment is granted in favor of Toyota on these counts.

b. Breach of Fiduciary Duty

In Counts 8 and 9 of the Complaint, Edokobi asserts claims against SunTrust for breach of fiduciary duty. ECF No. 2 at ¶¶ 108-21. Edokobi asserts that by operating a bank account with SunTrust, it owed him a fiduciary duty. *Id.* at ¶¶ 110, 124. Edokobi alleges that SunTrust breached that alleged duty by failing to notify him of the $536.34 payments in September 2017 and June 2018. *Id.* at ¶¶ 111, 118.

The record establishes that SunTrust did not owe a fiduciary duty to Edokobi. The relationship between SunTrust and Edokobi was contractual in nature. The Rules and Regulations regarding that contractual relationship specifically state that SunTrust "is not in any way acting as a fiduciary to [Edokobi]," and that "no special relationship exists" between Edokobi and SunTrust. ECF No. 65-4. The Rules and Regulations also provide that SunTrust "has no duty to investigate

or question items, withdrawals, or the application of funds." *Id.* And there are no special circumstances that would warrant the establishment of a duty here. *See Parker v. Columbia Bank*, 604 A.2d 521, 532 (Md. Ct. Spec. App. 1992) ("Courts have been exceedingly reluctant to find special circumstances sufficient to transform an ordinary contractual relationship between a bank and its customer into a fiduciary relationship or to impose any duties on the bank not found in the loan agreement.") Therefore SunTrust is entitled to summary judgment on these claims.

c. Unjust Enrichment

In Counts 10 and 11 of the Complaint, Edokobi asserts claims against SunTrust for unjust enrichment. ECF No. 2 at ¶¶ 122-27. In Maryland, a claim for unjust enrichment requires three elements:

1. A benefit conferred upon the defendant by the plaintiff;
2. An appreciation or knowledge by the defendant of the benefit; and
3. The acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.

Hill v. Cross Country Settlements, LLC, 936 A.2d 343, 351 (2007). The purpose of this type of claim "is not aimed at compensating the plaintiff, but at forcing the defendant to disgorge benefits that it would be unjust for him to keep.'" *Id.* (quoting *Mass Transit Admin. v. Granite Const. Co.*, 471 A.2d 1121, 1126 (1984)) (alterations in original). Edokobi alleges that

SunTrust enriched itself by failing to return the $536.34 that Toyota "took" from his Account in September 2017 and June 2018 and by failing to return the overdraft charges that resulted from each debit.

The record demonstrates that SunTrust was not unjustly enriched. To begin, no benefit was conferred upon SunTrust for processing the $536.34 payments on behalf of Toyota. Those payments were applied to Edokobi's account or reimbursed to Edokobi, and no part of those funds was retained by SunTrust. ECF No. 66-3. For the overdraw charges that resulted from the September 2017 debit, Edokobi failed to contest the charges within the 60-day period required by the Rules and Regulations. For the June 2018 charges, SunTrust eventually refunded the two $36.00 overdraft fees. ECF No. 65-12. And in any case, Edokobi has not provided any facts that would establish the retention of those overdraft fees in accordance with the Rules and Regulations would be unjust. Therefore **SunTrust is entitled to summary judgment on these** claims.

d. Aiding and Abetting

In Counts 12 and 13 of the Complaint, Edokobi asserts claims against SunTrust for aiding and abetting. ECF No. 2 at ¶¶ 134-43. In Maryland, to establish aiding and abetting liability, the plaintiff must establish underlying tortious conduct. *See Alleco Inc. v. Harry & Jeanette Weinberg Found., Inc.*, 665 A.2d 1038, 1050 (1995) ("[C]ivil aider and abettor liability, somewhat like civil conspiracy, requires that there exist underlying tortious activity in order for the alleged aider and abettor to be held liable."). As the basis for his claim, Edokobi alleges that SunTrust owed a fiduciary duty to him and that SunTrust aided

and abetted Toyota taking the $536.34 payments from his Account in September 2017 and June 2018.

As explained above, the record establishes that SunTrust did not owe a fiduciary duty Edokobi. Further, as discussed herein, Edokobi has not provided facts to establish liability on any of his 30 alleged counts or any other theory of tortious conduct. Thus there is no underlying tortious conduct on which aiding and abetting liability can be premised. Therefore SunTrust is entitled to summary judgment on these claims.

e. Maryland Credit Grantor Closed End Credit Provisions

In Counts 14, 15, and 21 of the Complaint, Edokobi alleges Toyota violated the Credit Grantor Closed End Credit Provisions of the Maryland Commercial Code, §§ 12-1001, *et seq.* ("CLEC"). The CLEC contains statutory protections for creditors and borrowers regarding the terms of their contractual relationship, including with respect to interest rates, charges, and other fees. *See generally*, Md. Code, Com. Law, §§ 12-1001, et seq.

In Count 14, Edokobi alleges that Toyota violated CLEC § 12-1001(i). ECF No. 2 at ¶¶ 144-52. That section provides the definition of an installment loan, and states "'Installment loan' means a loan repayable in scheduled periodic payments of principal and interest." Md. Code, Com. Law, § 12-1001(i). In Count 15, Edokobi alleges that Toyota violated CLEC § 12-1001(e)(1). ECF No. 2 at ¶¶ 152-60. That section is part of the definition of a commercial loan, and states in full: "(e) 'Commercial loan' and 'extension of credit for a commercial purpose' mean an extension of credit made: (1)

Solely to acquire an interest in or to carry on a business or commercial enterprise; or (2) To any business or commercial organization." Md. Code Com. Law § 12-1001(e)(1). And in Count 21, Edokobi alleges that Toyota violated CLEC § 12-1018(A)(2). ECF No. 202-08. That section provides remedies for violations of the CLEC, and states, "Except for a bona fide error of computation, if a credit grantor violates any provision of this subtitle the credit grantor may collect only the principal amount of the loan and may not collect any interest, costs, fees, or other charges with respect to the loan." Md. Code, Com. Law § 12-1018. As the basis for each of these counts, Edokobi asserts that Toyota "took" the $536.34 payments without his authorization and did not pay the SunTrust overdraw charges.

To begin, Edokobi cites two definitions and a remedies provision of the CLEC; he does not cite any actual violations of the CLEC. But to the extent the Complaint can be construed to state a violation of the CLEC because the $536.34 payments were not "scheduled periodic payments," or that Toyota was somehow obligated to pay the SunTrust overdraft fees, Edokobi fails to provide any facts to support his claim. As explained above, pursuant to the RISC Edokobi can make payments above $268.17 with no prepayment penalty. The record shows that Toyota did not "take" the payments as they must be initiated and authorized by the online account user. And Edokobi provides no facts to support the contention that Toyota is obligated to pay the SunTrust overdraft fees. Therefore Toyota is entitled to summary judgment on these claims.

f. Fair Debt Collection Practices Act

In Counts 16 and 17 of the Complaint, Edokobi asserts claims against Toyota and SunTrust for violations § 1692f and § 1692e of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.* ECF No. 2 at ¶¶ 161-75. Section 1692e prohibits a "debt collector" from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C.. § 1692e. Similarly, § 1692f prohibits a "debt collector" from using "unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f. Edokobi alleges that Toyota and SunTrust violated these sections by "taking" $536.34 from his Account in September 2017 and June 2018.

"To succeed on a FDCPA claim a plaintiff must demonstrate that (1) the plaintiff has been the object of collection activity arising from consumer debt, (2) the defendant is a debt [] collector as defined by the FDCPA, and (3) the defendant has engaged in an act or omission prohibited by the FDCPA." *Stewart v. Bierman*, 859 F. Supp. 2d 754, 759 (D. Md. 2012), *aff'd sub nom. Lembach v. Bierman*, 528 F. App'x 297 (4th Cir. 2013) (internal quotation marks and citation omitted). The FDCPA defines a "debt collector" as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6).

SunTrust is not a debt collector as defined by the FDCPA. Instead, its role here is simply that of processing electronic debits. Its activity in this regard

is covered separately by the Rules and Regulations and its duties under the Electronic Funds Transfer Act, 15 U.S.C. §§ 1693-1693r, its implementing regulation, 12 C.F.R. § 1005.1-1005.20, and other rules and guidelines including the Operating Rules and Guidelines of the National Automated Clearing House Association. Moreover, Edokobi presents no facts that indicate SunTrust's conduct violated the FDCPA.

Toyota argues that it too is not a debt collector as defined by the FDCPA, that the collection of the payments pursuant to the RISC is not a debt collection activity, and that in any case it did not engage in an act or omission prohibited by the FDCPA. Setting aside whether the collection of payments under the RISC qualifies as a debt collection activity or makes Toyota a debt collector, Edokobi has provided no facts to establish that Toyota engaged in "false, deceptive, or misleading representations" or "unfair and unconscionable means" to collect the payments. The record establishes that the payments were made using Edokobi's online account and that Toyota does not have access to the account to initiate payments in this way. ECF No. 66-4 at ¶¶ 5-7. Moreover, when Edokobi disputed the June 2018 charge with Toyota, Toyota reimbursed him within two days. *Id.* at ¶¶ 11-12. Therefore Toyota and SunTrust are entitled to summary judgment on these claims.

g. Maryland Consumer Protection Act

In Counts 18, 19, and 23 of the Complaint, Edokobi asserts claims against Toyota and SunTrust for violations of Sections 13-301 and 13-302 of the Maryland Consumer Protection Act ("CPA"), Md. Code Com. Law § 13-101, *et seq.* ECF No. 2 at ¶¶ 176-92,

215-22. Section 13-301 prohibits "[u]nfair, abusive, or deceptive trade practices." Md. Code, Com. Law § 13-301. Section 13-302 states, "Any practice prohibited by this title is a violation of this title, whether or not any consumer in fact has been misled, deceived, or damaged as a result of that practice." *Id.* § 13-302. Edokobi alleges that Toyota and SunTrust violated these provisions by allowing the withdrawal and "taking" of the $536.34 payments in September 2017 and June 2018.

As discussed above, the record shows that the $536.34 payments in question were initiated from Edokobi's online Toyota account that required Edokobi's authentication to be made. ECF No. 66-4 at ¶¶ 5-7. Toyota lacks the ability to initiate online payments on behalf of Edokobi. *Id.* at 7. And in either case, all payments that were made were either credited to Edokobi's account or returned to Edokobi at his request. ECF No. 66-3. Edokobi failed to dispute the September 2017 charges within the 60-day period required by the Rules and Regulations. For the June 2018 charges, SunTrust refunded the two $36.00 overdraft fees. ECF No. 65-12. Edokobi has not presented any facts that establish SunTrust and Toyota engaged in "[u]nfair, abusive, or deceptive trade practices" or committed any other violation of the CPA. Therefore Toyota and SunTrust are entitled to summary judgment on these claims.

h. Maryland Confidential Records Act

In Count 20 of the Complaint, Edokobi asserts a claim against SunTrust for violating § 1-302 the Maryland Confidential Records Act ("MCFRA"), Md. Code, Fin. Inst. § 1-301, *et seq.* ECF No. 2 at ¶¶ 193-

201. Section 1-302 of the MCFRA prohibits a financial institution from disclosing the financial records of one of its customers to any person, unless an exception applies. One such exception is when "[t]he customer has authorized the disclosure to that person." Md. Code, Fin. Inst. § 1-302. Edokobi alleges that SunTrust violated this provision by disclosing his bank account to Toyota, which allowed Toyota to "take" the September 2017 and June 2018 payments of $536.34 without his authorization.

The record demonstrates that Edokobi gave SunTrust authorization to disclose his Account information to Toyota. Under the Rules and Regulations, the parties agreed that "[SunTrust] will disclose information to a third party about your Account or your [electronic] transfers . . . when it is necessary to complete transfers. . . . " ECF No. 65-4. It is undisputed that Edokobi used his Account to make payments to Toyota for his car loan. Edokobi presents no facts that demonstrate that SunTrust failed to follow the terms of their contract. Therefore SunTrust is entitled to summary judgment on this claim.

i. Promissory Estoppel

In Count 24 of the Complaint, Edokobi asserts claims against Toyota and SunTrust for promissory estoppel. ECF No. 2 at ¶¶ 223-37. In *Pavel Enterprises, Inc. v. A.S. Johnson Co.*, 674 A.2d 521, 532 (Md. 1996), the Maryland Court of Appeals adopted a four-part test to evaluate promissory estoppel claims:

1. a clear and definite promise;

2. where the promisor has a reasonable expectation that the offer will induce action or forbearance on the part of the promisee;
3. which does induce actual and reasonable action or forbearance by the promisee; and
4. causes a detriment which can only be avoided by the enforcement of the promise.

Id.

Edokobi alleges that SunTrust made him a promise to protect his money and that Toyota made him a promise to provide correct and fair accounting services, and that he relied on these promises to his detriment. However, the record establishes that the "promises" that were made to Edokobi were contractual in nature and governed by the Rules and Regulations and terms of the RISC for SunTrust and Toyota respectively. The Rules and Regulations specifically provided that SunTrust "has no duty to investigate or question items, withdrawals, or the application of funds." ECF No. 65-4. Edokobi provides no facts to support a claim that SunTrust made a promise to treat his Account in any other way than that provided by the Rules and Regulations. And with respect to Toyota, Edokobi provides no facts to support a claim that Toyota's accounting of Edokobi's account is inaccurate. *See* ECF No. 66-3. Nor does Edokobi alleges facts to support the claim the Toyota breached the terms of the RISC or any other promise. Therefore Toyota and Suntrust are entitled to summary judgment on these claims.

j. "Malicious Acts of Tampering"

In Counts 25 and 26 of the Complaint, Edokobi asserts claims against SunTrust for "malicious acts of tampering." ECF No. 2 at ¶¶ 238-43. Edokobi bases this cause of action on SunTrust closing his Account. "Malicious acts of tampering" does not exist as a cause of action under Maryland law. In any case, the Rules and Regulations provide that SunTrust may close the Account without advanced notice. ECF No. 65-4. Edokobi presents no facts that demonstrate SunTrust closing his account was malicious or was otherwise a violation of the Rules and Regulations. Therefore SunTrust is entitled to summary judgment on these claims.

k. Civil Conspiracy

In Counts 27 and 28 of the Complaint, Edokobi asserts claims against Toyota and SunTrust for civil conspiracy. ECF No. 2 at ¶¶ 250-62. "In Maryland, 'conspiracy' is not a separate tort capable of independently sustaining an award of damage in the absence of other tortious injury to the plaintiff." *Capital Lighting & Supply, LLC v. Wirtz*, No. JKB-17-3765, 2018 WL 3970469, at *15 (D. Md. Aug. 20, 2018) (quoting *Lloyd v. Gen. Motors Corp.*, 916 A.2d 257, 284 (Md. 2007) (internal quotation marks omitted, emphasis in original). Edokobi alleges that Toyota and SunTrust conspired against him to withdraw the $536.34 payments from his account. However, Edokobi has not provided any facts that demonstrate Toyota and SunTrust tortiously injured Edokobi or otherwise conspired against him. Therefore Toyota and SunTrust are entitled to summary judgment on these claims.

l. "Conspiracy to Negligence"

In Count 29 of the Complaint, Edokobi asserts claims against Toyota and SunTrust for "conspiracy to negligence." ECF No. 2 at ¶¶ 263-68. Edokobi alleges that Toyota and SunTrust committed "conspiracy to negligence" because they knew that Edokobi had made a payment to Toyota of $268.17 on June 27, 2018, and therefore never should have "taken" the payment of $536.34 on the same day.

"Conspiracy to negligence" is not a cause of action in Maryland. To the extent that Edokobi alleges conspiracy regarding a tortious injury committed by Toyota and SunTrust, these claims fail for the reasons discussed above for the civil conspiracy claims in Counts 27 and 28. To the extent that Edokobi alleges negligence, Edokobi has not provided any facts that would establish SunTrust or Toyota owed him a duty other than those found in the contractual terms of their agreements or that they breached those duties. Therefore Toyota and SunTrust are entitled to summary judgment on these claims.

m. Intentional Infliction of Emotional Distress

In Count 30 of the Complaint, Edokobi asserts claims against Toyota and SunTrust for intentional infliction of emotional distress. ECF No. 2 at ¶¶ 263-68. In Maryland, an intentional infliction of emotional distress claim requires the plaintiff to prove facts showing:

> (1) the conduct in question was intentional or reckless; (2) the conduct was extreme and outrageous; (3) there was a causal connection

> between the conduct and the emotional distress; and (4) the emotional distress was severe.

Arbabi v. Fred Meyers, Inc., 205 F. Supp. 2d 462, 465-66 (D. Md. 2002) (citing *Harris v. Jones*, 380 A.2d 611, 614 (Md. 1977). "'Maryland courts have cautioned that the tort of intentional infliction of emotional distress should be imposed sparingly, and its balm reserved for those wounds that are truly severe and incapable of healing themselves.'" *Id.* (quoting *Figueiredo-Torres v. Nickel*, 584 A.2d 69, 75 (Md. 1991) (internal quotation marks omitted, citations omitted in original).

Edokobi alleges that Toyota and SunTrust intentionally inflicted emotional distress on him by allowing Toyota to "take" $536.34 from his Account without authorization. Edokobi also states that he "lives on limited income whereby every dim in Plaintiff's Bank Account matters a lot to Plaintiff." ECF No. 2 at ¶ 271. While the Court recognizes that Edokobi feels aggrieved in this case, he does not provide facts to support a claim for intentional infliction of emotional distress. The record establishes that the $536.34 payments in question were initiated from Edokobi's online Toyota account that required Edokobi's authentication to be made and that Toyota lacks the ability to initiate online payments on his behalf. ECF No. 66-4 at ¶¶ 5-7. And in any event, all payments that were made were either credited to Edokobi's account or returned to Edokobi at his request. ECF No. 66-3. As to the SunTrust overdraw charges, Edokobi did not contest the charges that resulted from the September 2017 debit within the 60-day period required by the Rules and Regulations and SunTrust eventually refunded the two $36.00 overdraft fees. ECF No. 65-12. At a

minimum, Edokobi fails to provide facts to establish that this conduct was "intentional or reckless" or "extreme and outrageous." *Arbabi v. Fred Meyers, Inc.*, 205 F. Supp. at 465-66. Therefore Toyota and SunTrust are entitled to summary judgment on these claims.

n. SunTrust's Counterclaim for Breach of Contract

SunTrust filed a counterclaim for breach of contract based on the $450.19 outstanding overdraft balance on Edokobi's Account. ECF No. 15. The parties addressed this claim in their summary judgment briefing and it is ripe for review.

As discussed above, the relationship between Edokobi and SunTrust is contractual in nature and governed by the Personal Account Signature Card, ECF No. 65-3, and the Rules and Regulations, ECF No. 65-4. The Rules and Regulations provide that "[y]ou agree to not overdraw or attempt to overdraw your Account and to ensure that there are sufficient available funds in your Account in advance to cover all debits, holds and other items that are charged to your Account." ECF No. 65-4. If there is an item that would cause an overdraft, the Rules and Regulations state, "we may honor the check or other item and create an overdraft." *Id.* (emphasis in original). Further, the Rules and Regulations provide that "[y]ou agree to deposit sufficient funds to cover any overdraft and any penalties assessed immediately upon notice of any overdraft, and to reimburse us for any costs, including but not limited to reasonable attorney's fees, we incur in collecting any overdraft from you." *Id.*

The record shows that as a result of the debits to Toyota of $268.17 and $536.34 on June 27, 2018, a

$36.00 overdraft item fee, a $10.00 monthly maintenance fee, other unrelated personal debits and a resulting $36.00 extended overdraft item fee, Edokobi's Account had a balance of negative $512.19 as of July 26, 2018. ECF Nos. 65-5; 78-1. Edokobi was issued a reimbursement check from Toyota for $536.34 on August 1, 2018. ECF Nos. 66-4 ¶ 12; 78-18. This would have resolved the negative balance in his SunTrust Account, but Edokobi did not deposit the check because he wanted to sue for damage. *See* ECF Nos. 65-2, 65-10, 78-17, 78-19.

On August 14, 2018, following the telephone conference with Edokobi and Toyota, SunTrust refunded Edokobi the two $36.00 overdraft fees that were assessed following the June 27, 2018 debits. ECF No. 65-12. SunTrust applied a monthly $10.00 maintenance fee to Edokobi's account on August 28, 2018. *Id.* This resulted in a negative balance of $450.19 when SunTrust closed the account on August 31, 2019. *Id.* Edokobi's account statement showing the account closing and negative balance of $450.19 was available for Edokobi's review on September 25, 2018. *Id.*; ECF No. 65-2. Edokobi has not paid the $450.19 balance. ECF No. 65-2.

In sum, the record shows that Edokobi was contractually obligated to deposit sufficient funds to cover any overdraft and associated fees and that Edokobi has a $450.19 balance of overdraft items and fees that he has not paid. Therefore SunTrust is entitled to a judgment of $450.19 on its breach of contract counterclaim.

o. Award of Costs

SunTrust moves for its costs. ECF No. 65-1 at 23. Toyota does not specifically request costs, but asks for "any further relief deemed necessary and appropriate by this Court." ECF No. 66 at 2. Federal Rule of Civil Procedure 54(d)(1) provides, "Unless a federal statute, these rules, or a court order provides otherwise, costs – other than attorney's fees – should be allowed to the prevailing party." As I have previously stated, "The rule makes clear that, in the ordinary course, a prevailing party is entitled to an award of costs." *Levy v. Saint Gobain Ceramiques Avancees Desmarquest*, No. PWG-04-492, 2006 WL 8456786, at *1 (D. Md. Oct. 16, 2006) (citing *Constantino v. American S/T Achilles*, 580 F.2d 121, 123 (4th Cir. 1978); *Cherry v. Champion Int'l Corp.*, 186 F.3d 442, 446 (4th Cir. 1999); *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 352 (1981); *Teague v. Bakker*, 35 F.3d 978, 995-96 (4th Cir. 1994)).

For the reasons discussed above, Toyota and SunTrust are the prevailing parties on all of Edokobi's claims and SunTrust is the prevailing party on its counterclaim. Therefore costs, but not attorneys' fees, will be awarded to Toyota and SunTrust. In accordance with 28 U.S.C. § 1920, these costs may include:

(1) Fees of the clerk and marshal;

(2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and the costs of making copies of any materials where the

copies are necessarily obtained for use in the case;

(5) Docket fees under section 1923 of this title;

(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920. Toyota and SunTrust will each submit a bill of costs pursuant to 28 U.S.C. § 1920 for the Court's review and, upon approval, inclusion in the Judgment against Edokobi.

IV. Conclusion

In sum, Toyota and SunTrust are entitled to summary judgment on all 30 of Edokobi's claims. SunTrust is entitled to summary judgment on its breach of contract counterclaim against Edokobi in the amount of $450.19. Toyota and SunTrust are awarded their costs upon review by the Court.

ORDER

For the reasons stated above, it is, this 2nd day of March, 2020, hereby ORDERED that:

1. SunTrust's Motion for Summary Judgment, ECF No. 65, is GRANTED in favor of SunTrust and against Edokobi;

2. Edokobi's claims against SunTrust are DISMISSED WITH PREJUDICE;

3. Judgment against Edokobi in favor of SunTrust is GRANTED on SunTrust's counterclaim. SunTrust is awarded $450.19;

4. Edokobi's motion to dismiss SunTrust's counterclaim, ECF No. 39, is DENIED as moot;
5. Toyota's Motion for Summary Judgment, ECF No. 66, is GRANTED in favor of Toyota and against Edokobi;
6. Edokobi's claims against Toyota are DISMISSED WITH PREJUDICE;
7. Toyota and SunTrust are AWARDED their reasonable costs; each is directed to file a bill of costs for the Court's review and approval;
8. The CLERK is directed to CLOSE this case;
9. The CLERK will send a copy of this Memorandum Opinion and Order to Plaintiff and counsel for Defendants.

/s/
Paul W. Grimm
United States District Judge

MEMORANDUM OPINION AND ORDER OF THE DISTRICT COURT OF MARYLAND (MAY 24, 2019)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

EMMANUEL EDOKOBI,

Plaintiff,

v.

TOYOTA MOTOR CREDIT CORP. ET AL.,

Defendants.

Case No.: PWG-19-248

Before: Paul W. GRIMM,
United States District Judge.

Plaintiff Emmanuel Edokobi has filed a motion demanding that I reconsider my decision denying his request to reply to Defendants' amended answers. Mot. for Recons., ECF No. 38. His motion—which warns that he will file additional civil cases against me, should I decline to grant the relief he seeks—asserts that my April 23, 2019 decision violated his constitutional rights and proved once more that I am biased against him. *See id.* at 2.

A.

There are several points I intend to make in this Order, and I will begin with one I already have made twice before. *See* Mar. 20, 2019 Ltr. Order, ECF No. 29: Apr. 23, 2019 Ltr. Order, ECF No. 37. To put it as simply as possible, this Court has a pre-motion procedure that is followed in all cases assigned to me. The central directive, which Mr. Edokobi repeatedly has ignored, is as follows: "Any party wishing to file a motion first will serve on all parties and file with the Court a letter (not to exceed three pages, single spaced) containing a brief description of the planned motion and a concise summary of the factual and legal support for it." ECF No. 6. This procedure serves several functions. In particular, as the letter order establishing the procedure explains, it gives me the opportunity "to schedule an expedited telephone conference (usually within a week) to discuss the requested motion and to determine whether the issues may be resolved or otherwise addressed without the need for formal briefing." *Id.* Mr. Edokobi, in filing his motion for reconsideration, once again has failed to comply with the procedure—despite a warning that his continued noncompliance "may subject him to sanctions for contempt." Apr. 23, 2019 Ltr. Order. If Mr. Edokobi continues to disregard the orders of this Court regarding procedures that must be followed, any filing of his that violates such orders will be stricken from the docket.

B.

I will address next the substance of Mr. Edokobi's motion for reconsideration. Rule 54(b) of the Federal Rules of Civil Procedure governs motions to reconsider

an interlocutory order. *See* Fed. R. Civ. P. 54(b) (providing that interlocutory orders "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities"). The Fourth Circuit has not stated a standard for review of a Rule 54(b) motion, but it has said that, "generally at least, a review of an interlocutory order under Rule 54 is not subject to the restrictive standards of motions for reconsideration of final judgments under Rule 60." *Fayetteville Inv'rs v. Commercial Builders, Inc.*, 936 F.2d 1462, 1472 (4th Cir. 1991); *see also Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514 (4th Cir. 2003). Nor is the standard for Rule 59(e) binding on review under Rule 54. *See Am. Canoe Ass'n*, 326 F.3d at 514; *Cezair v. JPMorgan Chase Bank, NA.*, No. DKC-13-2928, 2014 WL 4955535, at *1 (D. Md. Sept. 30, 2014). Nonetheless, "courts frequently look to these standards for guidance in considering such motions." *Cezair*, 2014 WL 4955535, at * 1; *see also Peters v. City of Mt. Rainier*, No. GJH-1 4-955, 2014 WL 4855032, at *3 n.1 (D. Md. Sept. 29, 2014) (looking to Rule 60(b) standard); *Harper v. Anchor Packing Co.*, No. GLR-12-460, 2014 WL 3828387, at *1 (D. Md. Aug. 1, 2014) (looking to Rule 59(e) standard).

A Rule 59(e) motion "need not be granted unless the district court finds that there has been an intervening change of controlling law, that new evidence has become available, or that there is a need to correct a clear error [of law] or prevent manifest injustice." *Robinson v. Wix Filtration Corp. LLC*, 599 F.3d 403, 411 (4th Cir. 2010); *see also Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 674 F:3d 369, 378 (4th Cir. 2012). Rule 60(b) provides overlapping, but broader, bases for relief from a court order, including that there

has been "mistake, inadvertence, surprise, . . . excusable neglect[,] . . . newly discovered evidence[,] . . . fraud . . . , misrepresentation, or misconduct"; that "the judgment is void" or "has been satisfied"; or "any other reason that justifies relief." Fed. R. Civ. P. 60(b).

Mr. Edokobi has not demonstrated that any of these circumstances apply here. His motion asserts, without support, that my ruling on his motion for leave to reply to the Defendants' amended answers violated his constitutional and legal rights. *See* Mot. for Recons. Nowhere, though, does he specifically identify any errors of law in my order. Nor could he, as my ruling was entirely consistent with the Federal Rules of Civil Procedure and therefore violated no "right" of Mr. Edokobi's, whether constitutional or procedural.

My April 23, 2019 letter order explained why a reply was unwarranted under the circumstances of this case. To summarize, "[t]he Federal Rules of Civil Procedure limit the pleadings allowed in a federal case." *Hoff v. Nicolaus*, No. 11-3601, 2012 WL 1965456, at *2 (D. Md. 2012). Under Rule 7(a), a party may file a reply to an answer only "if the court orders one." Fed. R. Civ. P. 7(a); *see United States v. Clayton*, 465 B.R. 72, 81 (M.D.N.C. 2011); *Garner v. Morales*, 237 F.R.D. 399, 400 (S.D. Tex. 2006). Generally; unless a defendant's answer includes a counterclaim,[1] a reply will be unnecessary because the Federal Rules require courts to treat allegations raised in an answer as though they

[1] One of the defendants in this case, SunTrust Bank, has in fact filed a counterclaim. *See* ECF No. 15. It did so, though, in a separate pleading, rather than as a part of its answer or amended answer. And I note, in any event, that my April 23, 2019 letter order authorized Mr. Edokobi to file an answer to SunTrust's counterclaim. *See* Apr. 23, 2019 Ltr. Order.

had been denied. *See* Fed. R. Civ. P. 8(b)(6). In other words, an answer that is not accompanied by a counterclaim (as is the case here) alleges no claims against Mr. Edokobi that require a response. And, as the above cited cases make clear, any allegations contained in the answers to which Mr. Edokobi wants to respond are treated as if they had been denied. *See Uhde v. Bitsky*, No. 03-C-323-C, 2003 WL 23315778, at *1 (W.D. Wis. Sept. 24, 2003) ("Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court directs a reply to be filed. No such order has been made in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7 (a). Fed. R. Civ. P. 8(a) provides that a party is deemed to deny averments in pleadings to which a response is not allowed. Therefore, although plaintiff is not permitted to respond to defendants' answer, the court considers that he has denied the factual statements and affirmative defenses raised in that answer."). Moreover, as my letter order also explained, a reply to a defendant's answer is unlikely to be of value because any factual inaccuracies that may be contained in an answer are better addressed through the pretrial discovery process. *See* Apr. 23, 2019 Ltr. Order (citing *Johnson v. Balt. City Police Dept*, No. WDQ-12-646, 2013 WL 1833021, at *3 (D. Md. Apr. 30, 2013)).

Mr. Edokobi's sense of aggrievement appears to derive from his mistaken belief that other judges in this Court have granted him the opportunity to file a reply to a defendant's answer, whereas I have not. By way of example, on page two of his motion for reconsideration, he contrasts my order with orders issued in another case he has filed in this court, *Edokobi v. U.S. Department of Justice*, No. TDC-17-3639. To

prove his point, Mr. Edokobi has attached these orders as exhibits to his motion. The first is an April 1, 2019 order in which Judge Chuang authorized Mr. Edokobi to file a response to the defendants' motion to dismiss. *See* ECF No. 38-1. The second is an April 11, 2019 letter from the Clerk of the Court which similarly notified Mr. Edokobi that he has a "right" to file a response to the defendants' motion to dismiss (or, alternatively, for summary judgment). *See* ECF No. 38-2.

Mr. Edokobi is mistaken, and his arguments are without merit. While Judge Chuang's orders in *Edokobi v. U.S. Department of Justice* each authorized him to file a "response" to a defense filing, that filing was a motion, not an answer, and Mr. Edokobi has overlooked the critical difference between the two. A motion is a request for the court to issue an order, and it must state with particularity the grounds for the order, as well as the specific relief sought. Fed. R. Civ. P. 7(b)(1). Thus, by its very nature, a defense motion asks the court to issue an order that may affect the plaintiff's rights, and for that very reason the Local Rules of this Court recognize that the party against whom a motion was filed will have an opportunity to respond to the motion "[u]nless otherwise ordered by the Court." Loc. R. 105.2.a. In sharp contrast, as explained above, a defendant's answer to a plaintiff's complaint is a pleading—not a motion. And where it asserts no counterclaim, it is not a filing requiring a reply. That is exactly why the rules do not permit one unless the court, exercising its discretion, orders one to be filed. I have already explained why permitting a reply to the defendant's answer was not warranted in

this case, and why Mr. Edokobi was not entitled to the relief that he sought.

For these reasons, Mr. Edokobi's motion for reconsideration (ECF No. 38) is denied.

C.

There is another point that must be addressed here. It concerns Mr. Edokobi's threats to sue me (again) if I refuse to grant his motion, as I now have done. Over the past few weeks, Mr. Edokobi's filings in this case have included several such threats. The first in this series can be found in his motion for reconsideration, in which he states:

> 9. Plaintiff by this Motion asserts that; Plaintiff will take these Actions; if Judge Grimm Refuses to Reconsider His Order Denying Plaintiff's Leave of the Court to File Responses to TMCC and SunTrust's Amended Answers to Plaintiff's Complaint.
>
> 10. That Plaintiff will file a legal action against Judge Grimm.
>
> . . .
>
> 14. Plaintiff by this Motion asserts that; it is Plaintiff's Conviction that; Plaintiff will file two or more legal actions against Judge Grimm because, Judge Grimm Mistreats Plaintiff by Denying Plaintiff's Equal Protection Rights; and that; Plaintiff will continue to file Civil Actions against Judge Grimm until Plaintiff receives equal treatments.

Mot. for Recons. 2 (emphasis added). Mr. Edokobi included identical threats in his May 10, 2019 "objection" to Chief Judge Bredar's April 9, 2019 letter explaining that the chief judge lacks authority over his case. *See* Objection 6, ECF No. 40. The same threats also appeared in a motion for reconsideration Mr. Edokobi filed on May 3, 2019 in another case before me. *See* Mot. for Recons. 2, *Edokobi v. SunTrust*, No. PWG-19-1071 (D. Md. May 3, 2019), ECF No. 19.

The bedrock of the legal system of this country is that the courts must be open to the public as a place to bring legitimate disputes for resolution. Access to the courts is not restricted to those who are represented by counsel, and unrepresented individuals like Mr. Edokobi enjoy the privilege of being able to file civil actions without counsel. But with that privilege comes responsibility: to follow the rules of procedure and local rules of the court; to comply with court orders; and to comport oneself in the cases one files in the same manner expected of parties represented by counsel. That means, here, that Mr. Edokobi may not bring or maintain actions in bad faith, or without a legal or factual basis. *See* Fed. R. Civ. P. 11(b). It likewise means that in his dealings with opposing parties, counsel, and the Court, lie is obligated to be professional and civil. Those who employ tactics that interfere with the proper functioning of the legal system abuse it and properly are subject to sanctions, including contempt of court. *See* Fed. R. Civ. P. 11(c)(1).

Mr. Edokobi's threats to file additional lawsuits against me if his motion for reconsideration is not granted constitute a gross abuse of the civil justice system he seeks to employ to resolve his claims against the defendants in this case. This is especially

so because Mr. Edokobi well knows that judges are entitled to immunity from suit in the performance of their judicial functions, having been informed of this in *Edokobi v. Motz*, No. DKC-13-3378, 2013 WL 6713290, at *2 (D. Md. Dec. 18, 2013). There, in dismissing a complaint Mr. Edokobi had filed against another judge of this Court, Judge Chasanow informed him:

> It is well-settled law that judges are entitled to immunity to suit in the performance of their judicial functions. The doctrine of judicial immunity is founded upon the premise that a judge, in performing his or her judicial duties, should be free to act upon his or convictions without threat of suit for damage. Therefore, a judge is absolutely immune from liability for his or her judicial acts even if his or her exercise of authority is flawed by the commission of grave procedural errors. Further, judicial immunity shields from suit, not just from assessment of damage.

Id. (internal citations and quotation marks omitted). A litigant who, with knowledge of the doctrine of judicial immunity, nevertheless threatens to file suit against a judge presiding over a case that he has brought based upon rulings made by that judge in the performance of his or her judicial duties is acting in bad faith, and with an improper purpose. This is a clear violation of Fed. R. Civ. P. 11(b)(1) and may result in the imposition of sanctions pursuant to Fed. R. Civ. P. 11(c). *See Sevier v. Hickenlooper*, No. 17-1750-WJM-NYW, 2017 WL 4337990, at *4 (D. Colo. Sept. 29, 2017) (cautioning that continued ad hominem attacks, insults, and threats against a magistrate judge "will not be tolerated" and may result in

sanctions, "including being held in contempt of Court"); *Engle v. Collins*, No. 09-451, 2012 WL 5342493 (S.D. Ohio Oct. 29, 2012) (reminding a plaintiff who threatened to sue the judge "that his pro se status will not shield him from sanctions under Fed. R. Civ. P. 11"), *report and recommendation adopted*, 2013 WL 866476 (S.D. Ohio Mar. 7, 2013). Mr. Edokobi's threats are contemptuous in tone and menacing in content, and—given the lack of merit in both his motion for reconsideration and his threats to file lawsuits against the undersigned if it is not granted, notwithstanding his knowledge that judges are immune to such suits—I cannot view the motion as having been filed in good faith. Mr. Edokobi is warned: any further threats relating to this Court's rulings will prompt me to issue an order to show cause why he should not be sanctioned pursuant to Fed. R. Civ. P. 11(c). *See* Fed. R. Civ. P. 11(c); *Davis v. Kvalheim*, No. 07-566-Orl-31KRS, 2007 WL 1602369, at *2 (M.D. Fla. June 1, 2007) (warning a vexatious litigant who sued the judge that "further frivolous and abusive filings" would result in sanctions). Possible sanctions may include a finding of contempt or the dismissal with prejudice of his claims in this suit. *See Barnett v. Hall, Estill, Hardwick, Gable. Golden & Nelson, P.C.*, No. 18-64-TCK-FHM, 2018 WL 3023094, at *3 (N.D. Okla June 18, 2018); *Sevier*, 2017 WL 4337990, at *4.

D.

There is a final matter that must be addressed in this Order. As discussed in my April 15, 2019 letter order, Mr. Edokobi's dissatisfaction with my administration of this case prompted him both to file suit against

me in the Circuit Court for Montgomery Country[2] and to file a motion in this Court seeking my recusal on the basis of that suit. ECF No. 34. Among the reasons I denied that motion, all of which are detailed in the letter order, one bears repeating: if judges routinely disqualified themselves when a disgruntled litigant sued them based on actions taken in the performance of their judicial duties, this would permit (or even encourage) vexatious litigants to try to manipulate and abuse the judicial system by manufacturing an appearance of partiality or bias. Here, given Mr. Edokobi's current threats to initiate additional suits against me in connection with my rulings in this case, I feel it is appropriate again to explain why recusal remains unwarranted. In this regard, I am informed by Advisory Opinion 103 of the Federal Judicial Conference Committee on Codes of Conduct. Pursuant to this guidance, titled "Disqualification Based on Harassing Claims Against Judge," a judge is not automatically disqualified from participating in a case brought by a litigant who has filed a lawsuit against the judge (so long as the case in which the judge has been sued is not assigned to the judge who was sued) because

> [j]udicial immunity usually will be a complete defense against a new complaint of this nature, and the court in which the complaint is filed likely will dismiss it as frivolous. In such circumstances, the mere fact that a litigant has filed a new frivolous complaint against a judge based on the judge's official actions

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2 That suit has since been removed to this Court and is pending before another judge of this Court. *See Edokobi v. Grimm*, No. GJH-19-905.

> will not disqualify the judge from continuing to preside over the earlier, unrelated matter brought by the same litigant. The same holds true when a litigant who previously filed a complaint naming a judge subsequently files an unrelated case against others that is assigned to the named judge.
>
> . . . A complaint filed against a judge that is subject to prompt dismissal on judicial immunity grounds will not ordinarily give rise to a reasonable basis to question the judge's impartiality in unrelated cases filed against others by the same litigant. Such a nonmeritorious complaint, standing alone, will not lead reasonable minds to conclude that the judge is biased against the litigant or that the judge's impartiality can reasonably be questioned, and thus will not require the judge to recuse.

Committee on Codes of Conduct, Disqualification Based on Harassing Claims Against Judge, Advisory Opinion No. 103 (June 2009), *available at* https://www.uscourts.gov/sites/default/files/guide-vol02b-ch02-2019_final.pdf.

The suit that Mr. Edokobi has brought against me clearly relates to my performance of my official duties as a judge, and his threats to file additional suits against me clearly relate to his disagreement with rulings that I have made against him in this case, again in my official capacity as the presiding judge. Therefore, as Mr. Edokobi himself knows fully well from his prior lawsuit against Judge Motz of this Court, which was dismissed on the basis of absolute judicial immunity, his current suit and threatened

future suits are likewise subject to prompt dismissal under that same doctrine. Thus, as Advisory Opinion No. 103 makes clear, under these circumstances, his nonmeritorious current and threatened future suits "will not lead reasonable minds to conclude" that I am biased. *Id.* For that reason, upon careful reexamination, I have determined that there continues to be no legitimate basis for me to recuse myself from this case.

ORDER

For the reasons stated above, it is, this 24th day of May, 2019, hereby ORDERED that:

1. Plaintiff Emmanuel Edokobi's Motion for Reconsideration (ECF No. 38) IS DENIED; and
2. Plaintiff IS CAUTIONED that any further threats directed toward the Court will be subject to the imposition of sanctions, which may include a finding of contempt or the dismissal with prejudice of his claims in this suit.
3. Plaintiff's threats to bring additional lawsuits against me do not constitute grounds for my recusal.

/s/
Paul W. Grimm
United States District Judge

LETTER ORDER DENYING PLAINTIFF'S MOTION TO REASSIGN THE CASE (APRIL 15, 2019)

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

RE: *Edokobi v. Toyota Motor Credit Corp. et al.*
8:19-cv-00248-PWG

Dear Counsel and Mr. Edokobi:

This case was assigned to me on January 28, 2019. Its life since then, though short, has been eventful, with Plaintiff Emmanuel Edokobi repeatedly attempting to circumvent my authority over the case. In the course of just a few weeks, Plaintiff has filed an interlocutory appeal to the Fourth Circuit, *see* ECF No. 21; sued me in state court; and filed a motion to remove me from this case, see Mot. for Removal, ECF No. 32. The interlocutory appeal ended in a voluntary dismissal, see ECF No. 27, but both the lawsuit against me and the motion for my removal remain pending.

Plaintiff's argument for reassigning this case to a different judge is that I "cannot in good conscience provide an unbiased decision" because of his pending lawsuit against me (which, I note, has since been removed to this Court and is now before a different judge). Mot. for Removal ¶ 5. Plaintiff insists that he "will not participate" in the proceedings before me unless and until the case is reassigned. *Id.* ¶ 4.

Federal law requires a district court judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455. In the Fourth Circuit, the test of impartiality is objective: the question, generally, is whether "a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial." *United States v. Cherry*, 330 F.3d 658, 665 (4th Cir. 2003).

In circumstances where litigation between a judge and a litigant was entirely unrelated to the judge's performance of his judicial duties, then a reasonable person might well have a reasonable basis for questioning that judge's impartiality to rule on the litigant's suit against other parties, if assigned to the judge involved in separate litigation with the plaintiff. But that is not the situation at hand. Here, there were no grounds for seeking my disqualification when Defendants removed Plaintiff's state court complaint to this court. The grounds for Plaintiff's recusal motion did not arise until a few weeks later, and it was Plaintiff's own actions – in filing his suit against me – that created them.

Federal courts have tended to eye circumstances like these warily, and with good reason. As the Seventh Circuit has noted, a per se rule requiring a judge's recusal "would allow litigants to judge shop by filing a suit against the presiding judge." *In re Taylor*, 417 F.3d 649, 652 (7th Cir. 2005). It is for this reason, chiefly, that there "is no rule that requires a judge to recuse himself from a case, civil or criminal, simply because he was or is involved in litigation with one of the parties." *Taylor*, 417 F.3d at 652; *see also United States v. Watford*, 692 F. App'x 108, 110 n.1 (4th Cir.

2017); *Azubuko v. Royal*, 443 F.3d 302, 304 (3d Cir. 2006); *In re Hipp*, 5 F.3d 109, 116-17 (5th Cir. 1993).

It has been noted that the prospect of judicial bias is especially remote when the suit against the judge is "meritless." *Taylor*, 417 F.3d at 652. While it will be up to the judge assigned Plaintiff's suit against me to rule on its merits, I observe that it is based on my performance of my official duties in connection with a case Plaintiff had previously filed in this court. *See Edokobi v. M & M Mortg. Servs. Inc.*, 13-3707-PWG. In that case, I dismissed Plaintiff's claims, he appealed, and the Fourth Circuit affirmed the judgment. *See M & M Mortg.*, 13-3707-PWG (D. Md. 2014), ECF Nos. 19, 20, 26. At the very least, then, the merits of Plaintiff's suit against me are highly questionable. And because the suit explicitly concerns actions taken in the performance of my official duties as a judge, the doctrine of judicial immunity is plainly implicated. *See Mireles v. Waco*, 502 U.S. 9, 11 (1991); *Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir. 1985). Were I to grant Plaintiff's recusal motion under these conditions, it would permit him to engage in the exact type of forum shopping that the above-referenced cases condemned.

Finally, with respect to the Plaintiff's ultimatum that he "will not participate" in this case unless and until it is "assigned to a different Judge," Mot. for Removal ¶ 4, that is his choice to make. But should he fail to respond to motions filed by the Defendants or to comply with court orders, then he runs the risk of his case being dismissed.

For all of these reasons, Plaintiff's motion to reassign the case to another judge (ECF No. 32) is

denied. This Court's Scheduling Order (ECF No. 13) remains in effect, and the case will proceed.

Although informal, this is an Order of the Court and shall be docketed as such.

Sincerely,

/s/
Paul W. Grimm
United States District Judge

LETTER ORDER OF THE DISTRICT COURT OF MARYLAND PROVIDING MATERIAL SUPPORT TO RESPONDENTS (MARCH 20, 2019)

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

RE: *Edokobi v. Toyota Motor Credit Corp. et al.*
8:19-cv-00248-PWG

Dear Counsel and Mr. Edokobi:

This letter order addresses two filings Plaintiff Emmanuel Edokobi has submitted in this case. Each filing is styled, somewhat confusingly, as "response motion in opposition" to an answer filed by one of the two defendants in this case, Toyota Motor Credit Corp. ("TMCC") and SunTrust Bank. *See* ECF No. 17 (purporting to "respond" to TMCC's answer); ECF No. 18 (purporting to "respond" to SunTrust's answer). Each also contains a motion to strike the defendant's affirmative defenses or, alternatively, a motion for a more definite statement.

Plaintiff's filings appear to assume that Defendants are seeking to dismiss his Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. To be clear, though, Defendants have not filed a motion to dismiss the Complaint.[1] That being the case, the portions of Plaintiff's filings that purport to respond in opposition to such a motion are, at best, premature.

[1] I do note that TMCC's answer concludes with a one-sentence request "that the court dismiss the Complaint with prejudice and/or enter judgment in [Defendants'] favor," but this sort of

Turning to Plaintiff's motions to strike Defendants' affirmative defenses, or, alternatively, for a more definite statement, I note that these motions do not comply with the pre-motion procedure I outlined in my January 29, 2019 letter order. ECF No. 6. That order requires any party wishing to file a substantive motion to first "serve on all parties and file with the Court a letter (not to exceed three pages, single spaced) containing a brief description of the planned motion and a concise summary of the factual and legal support for it." *Id.* I will overlook Plaintiff's noncompliance in this instance only, but I caution the parties to review the pre-motion procedure. I expect their full compliance with the procedure as the case moves forward; failure to do so will result in the striking of the filing without further notice.

Plaintiff's grievance with the Defendants' answers, it seems, is that they each list 10 or more affirmative defenses - many of which, he contends, are inapplicable to the legal issues in this case. His motions urge me to strike these affirmative defenses or, alternatively, require Defendants to elaborate on their applicability in this case.

It is true that Rule 12(f) of the Federal Rules of Civil Procedure authorizes courts to strike an "insufficient defense" from a pleading. *See* Fed. R. Civ. P. 12

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boilerplate plea for a dismissal — not uncommon in answers to complaints in federal court — does not qualify as a motion to dismiss and will not be treated as such here. *See* Loc. R. 105.1 ("Any motion . . . shall be filed with the Clerk and be accompanied by a memorandum setting forth the reasoning and authorities in support of it."); *see also Crosky v. Ohio Dep't of Rehab. & Corr.*, No. 09-400, 2010 WL 3061816, at *2 (S.D. Ohio Aug. 3, 2010).

(f). It is equally true, though, that "Rule 12(f) motions are generally viewed with disfavor 'because striking a portion of a pleading is a drastic remedy and because it is often sought by the movant simply as a dilatory tactic.'" *Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 347 (4th Cir. 2001) (quoting 5A A. Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1380, 647 (2d ed. 1990)); *see Farrell v. Pike*, 342 F. Supp. 2d 433, 441 (M.D.N.C. 2004) ("[A] Rule 12(f) motion to strike pleadings should be reserved for egregious violations."). "The decision whether to strike an affirmative defense is discretionary and courts generally refrain from striking affirmative defenses absent a showing that not doing so would unfairly prejudice the movant." *Lockheed Martin Corp. v. United States*, 973 F. Supp. 2d 591, 592 (D. Md. 2013); *see Baron v. Directv*, 233 F. Supp. 3d 441, 443-44 (D. Md. 2017) ("[C]ourts generally refrain from striking affirmative defenses in the absence of a showing that by not doing so, the movant would be unfairly prejudiced.").

Plaintiff's motions, though considerably longer than Defendants' pleadings, are nearly as conclusory as the lists of affirmative defenses he urges me to strike. To cite just a few examples, he argues TMCC's waiver defense should be struck because "there is no Waiver," its illegality defense because "there is no Illegality," its lathes defense because "there are no Laches," and its statute-of-limitations defense" because "there are [sic] no. Statute of Limitations." Resp. to TMCC Answer ¶¶ 64-67, ECF No. 17. While it may well be that some of the listed affirmative defenses

were mere "boilerplate,"[2] *see Cincinnati Ins. Co. v. Kreager Bros. Excavating. Inc.*, No. 12-470JD-APR, 2013 WL 3147371, at *2 (N.D. Ind. June 18, 2013), Plaintiff has not shown that is the case. More critically, he has not explained how the lists of affirmative defenses subject him to unfair prejudice - particularly as Plaintiff may seek discovery from Defendants as to the factual basis supporting their affirmative defenses, and, should they be lacking, they are subject to a motion for summary judgment to eliminate them from the case. *See Sprint Nextel Corp. v. Simple Cell, Inc.*, No. CCB-13-617, 2013 WL 3776933, at *9 (D. Md. July 17, 2013). Accordingly, his motion to strike is denied.

Similarly, while I can appreciate Plaintiff's desire to press Defendants to explain the applicability of the listed defenses, I am denying his motions for a more definite statement. Rule 12(e) authorizes parties to "move for a more definite statement of a pleading to which a responsive pleading is allowed." Fed. R. Civ. P. 12(e) (emphasis added). Rule 12(e) motions are more typically filed by a defendant who wants to require a plaintiff to expand on the factual allegations in a complaint. Here, though, it is the plaintiff who seeks to force the defendants to bolster their answers. This

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[2] As a practical matter, it is understandable that Defendants would want to cover their bases in this case, given that Plaintiff has asserted no less than 30 claims. *See* Compl., ECF No. 2. That said, in submitting an answer, defense counsel certifies that "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," the asserted defenses "are warranted by existing law or by a nonfrivolous argument." Fed. R. Civ. P. 11(b)(2). If, after discovery, it becomes clear that the asserted defenses are patently untenable, counsel may be subjected to sanctions.

might be permissible if, under Rule 7(a)(7), I had ordered Plaintiff to file a reply to Defendants' answer, but I have not taken that step here. That being the case, neither of Defendants' answers constitutes "a pleading to which a responsive pleading is allowed," and so Rule 12(e) does not apply.

With all of that said, Defendants should not assume that 1 consider their answers (ECF Nos. 7, 8) satisfactory. Rule 8(b) requires defendants to "admit or deny the allegations" in a complaint. *See* Fed. R. Civ. P. 8(b)(1)(B). It further states that a denial "must fairly respond to the substance of the allegation." Fed. R. Civ. P. 8(b)(2). While the Federal Rules do permit general denials of the sort Defendants have filed here, these are acceptable only in "extremely rare" circumstances. *Farrell*, 342 F. Supp. 2d at 441.

Rule 8(b)(3) authorizes general denials where the defendant "intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds." Fed. R. Civ. P. 8(b)(3) (emphasis added). Here, Plaintiff's Complaint runs 35 pages and contains 283 numbered paragraphs. If even one of those paragraphs is accurate, then the proper response would be to specifically admit that allegation. *See id.* ("A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.").

An answer should indicate exactly which of the asserted facts in a complaint are in dispute, both for the plaintiff's benefit and for the court's. Unless Defendants are prepared to attest, in good faith, that every single statement of fact in Plaintiff's 35-page Complaint is false, their answers cannot be said to comply with the Federal Rules. Accordingly, I am

ordering Defendants to file amended answers that properly respond to Plaintiff's allegations, in compliance with Rule 8(b). *See* Fed. R. Civ. P. 1. They shall do so not later than April 5, 2019.

Moving forward, my Scheduling Order and Discovery Order remain in effect. *See* ECF Nos. 13, 14. The discovery process is under way. Defendants, for now, retain the option of filing a pre-motion letter notifying the Court of their intent to seek a judgment on the pleadings under Rule 12(c), should they wish to take that step.

Although informal, this is an Order of the Court and shall be docketed as such.

Sincerely,

/s/

Paul W. Grimm
United States District Judge

LETTER ORDER REGARDING THE FILING OF MOTIONS (JANUARY 29, 2019)

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

RE: *Edokobi v. Toyota Motor Credit Corp. et al.*
8:19-cv-00248-PWG

In order to promote the just, speedy, and inexpensive resolution of this case, *see* Fed. R. Civ. P. 1, the following procedure will be followed with respect to the filing of substantive motions (such as motions to dismiss, to amend the pleadings, or case dispositive motions); discovery motions (such as motions to compel, motions for a protective order, or motions seeking the imposition of sanctions); and post-judgment motions or other motions following dismissal of the case (such as motions for attorneys fees, motions for reconsideration, and motions to reopen). Any party wishing to file a motion first will serve on all parties and file with the Court a letter (not to exceed three pages, single spaced) containing a brief description of the planned motion and a concise summary of the factual and legal support for it. If the intended motion is a discovery motion, counsel shall confer with one another concerning the dispute and make good faith attempts to resolve the differences between them before filing the letter regarding the dispute, and the party filing the letter also shall file a certificate that complies with Local Rule 104.7. Unless I notify you otherwise, no response to the letter should be filed. I will review the letter and determine whether to

schedule an expedited telephone conference (usually within a week) to discuss the requested motion and to determine whether the issues may be resolved or otherwise addressed without the need for formal briefing. Where it would be more efficient simply to approve the request to file the motion, I will issue an order directing that the motion may be filed.

If a telephone call is scheduled and the issues raised cannot be resolved during that call, I will consult with you to set a reasonable briefing schedule. If the letter described above is filed within the time allowed by the Federal Rules of Civil Procedure, Local Rules of Court, or any order issued by me in which to file the motion that the letter addresses, the time for filing the motion will be tolled to permit the scheduling of the telephone conference without the need to request an extension of time.

Although informal, this is an Order of the Court and shall be docketed as such.

/s/
Paul W. Grimm
United States District Judge

Additional material from this filing is available in the Clerk's Office.