IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SIREN LEWIS,

Plaintiff,

v.

GREAT LAKES EDUCATIONAL LOAN SERVICES,

Defendant.

OPINION AND ORDER

21-cv-746-wmc

Pro se plaintiff Siren Lewis alleged in her original complaint that defendant Great Lakes Educational Loan Services ("Great Lakes") was trying to collect a debt from her that she did not owe. The court allowed the case to proceed against Great Lakes on a Fair Debt Collection Practices Act ("FDCPA") claim, and later allowed Lewis to file an amended complaint. (Dkt. #22.) In her amended complaint, Lewis alleges claims under the FDCPA, Fair Credit Reporting Act (FCRA), Gramm-Leach-Bliley Act (GLBA), Fair Credit Billing Act (FCBA), General Education Provisions Act (GEPA), and other legal provisions against Great Lakes and new defendants Experian, Equifax, and Transunion ("major credit bureaus"). (Dkt. #22.)

Great Lakes has moved to dismiss Lewis's claims against it under Federal Rule of Civil Procedure 12(b)(6), and the court must screen the amended complaint under 28 U.S.C. § 1915(e)(2)(B) because Lewis proceeds in forma pauperis. (Dkt. #27.) The court will allow Lewis to proceed on her FCRA claims against the major credit bureaus, but it

will dismiss the remaining claims in the amended complaint.[1]

ALLEGATIONS OF FACT[2]

Great Lakes reported to the major credit bureaus that Lewis owed a student loan debt. Although Lewis never attended Remington College and notified defendants in 2021 that she did not owe the alleged debt, the major credit bureaus ignored her disputes. Defendants also have allegedly continued to "harass" Lewis even though they lack proof that she owes the alleged debt. (Dkt. #22 at 3.) The alleged debt appears on Lewis's credit report.[3]

Lewis alleges: (1) an FCRA claim against all defendants; (2) a GLBA claim against all defendants under 15 U.S.C. § 6802; (3) a GEPA claim against all defendants under 20 U.S.C. § 1234b(a)(1); (4) a fraud claim against all defendants under state law; (5) an FDCPA claim against Great Lakes under 15 U.S.C. § 1692c(c); (6) a FCBA claim against

[1] This is now Great Lakes' second motion to dismiss; the court granted the first motion to dismiss (dkt. #10) but allowed Lewis to file an amended complaint. Lewis has had two opportunities and the benefit of two motions to dismiss to state viable claims, so the dismissal of Lewis's claims will be with prejudice.

[2] The court draws these facts from Lewis's amended complaint. In reviewing Great Lakes' motion to dismiss, and in screening the amended complaint, the court accepts these facts as true and draws all reasonable inferences in Lewis's favor. *Jakupovic v. Curran*, 850 F.3d 898, 902 (7th Cir. 2017); *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011).

[3] Lewis further alleges that one or more defendants hired a third party and shared Lewis's information with that third party. The court has not considered this conclusory and vague allegation. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (a complaint must offer more than "labels and conclusions" or "naked assertions" without "further factual enhancement."). Should Lewis come upon the name of this third party, and other facts supporting the claim, she may promptly file for leave to amend.

Great Lakes under 15 U.S.C. § 1666; and (7) violations of federal criminal statutes.[4] Lewis seeks damages and injunctive relief.

OPINION

I. Great Lakes' motion to dismiss (dkt. #27)

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the complaint. *Gunn v. Cont'l Cas. Co.*, 968 F.3d 802, 806 (7th Cir. 2020). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

A. FDCPA claim

Since the FDCPA "applies only to debt collectors," *Neff v. Cap. Acquisitions & Mgmt. Co.*, 352 F.3d 1118, 1121 (7th Cir. 2003), Great Lakes contends that plaintiff's FDCPA claim still fails because she did not "make any new allegations that identify Great Lakes as a 'debt collector' within the meaning of the statute." (Dkt. #28 at 8.) The FDCPA defines a "debt collector" as a person whose principal business "is the collection of any debts" or who "regularly collects or attempts to collect . . . debts owed or due or asserted to be owed

[4] Lewis also alleges new claims for relief in her *responses* to Great Lakes' motion to dismiss. (Dkt. ##32, 33.) However, the court will not consider these new claims because "[i]t is a basic principle that the complaint may not be amended by the briefs in opposition to a motion to dismiss." *Thomason v. Nachtrieb*, 888 F.2d 1202, 1205 (7th Cir. 1989). Moreover, Lewis could have included these claims in her amended complaint and has not shown a reason for her delay in raising them.

or due another." 15 U.S.C. § 1692a(6). In contrast, a student loan servicer, like Great Lakes, that acquires the plaintiff's debt *before* default is not generally a debt collector for another under the FDCPA. *E.g.*, *Weber v. Great Lakes Educ. Loan Servs., Inc.*, No. 13-cv-291-wmc, 2014 WL 1683299, at *6 (W.D. Wis. Apr. 29, 2014); *Goodman v. Coronado Student Loan Tr.*, No. CV 21-2648 (JRT/LIB), 2022 WL 4000223, at *2 (D. Minn. Sept. 1, 2022) ("Many courts have held that a student loan servicer who begins servicing the loans prior to default is not a debt collector for FDCPA purposes" (collecting cases)). Thus, a plaintiff's failure to allege facts suggesting that the loan was in default when the servicer acquired it may be "fatal" to an FDCPA claim. *Mungo-Craig v. Navient Sols., Inc.*, No. 5:17-CV-5-BO, 2017 WL 3037566, at *3 (E.D.N.C. July 18, 2017); *see also Edmond v. Am. Educ. Servs.*, No. CIV.A. 10-0578 JDB, 2010 WL 4269129, at *5 (D.D.C. Oct. 28, 2010) ("Absent an allegation that plaintiff's loan was in default when [the loan servicer] acquired it, [the loan servicer] is not a debt collector and thus is not subject to the FDCPA.").

Even after an opportunity to replead, plaintiff does *not* allege that Great Lakes' principal business is the collection of debts *or* that it regularly collects or attempts to collect debts owed or due or asserted to be owed to another. Nor has plaintiff alleged that the loan was in default when Great Lakes acquired it as a student loan servicer. Thus, plaintiff has failed to cure the deficiencies with her FDCPA claim despite multiple opportunities, warranting its dismissal.

B. FCRA claim[5]

Because the FCRA imposes duties upon persons who furnish information to credit reporting agencies, *McKeown v. Sears Roebuck & Co.*, 335 F. Supp. 2d 917, 936 (W.D. Wis. 2004), Great Lakes also contends that plaintiff's FCRA claim fails absent an allegation that a major credit bureau asked it to investigate the accuracy of the alleged student loan debt. (Dkt. #28 at 6-7.) "Upon notice of a dispute from a credit reporting agency, § 1681s-2(b)(1) requires the entity furnishing the information to conduct a [reasonable] investigation regarding the dispute and to report its findings accordingly[.]" *Id.* The "duties imposed on providers of information under § 1681s-2(b) arise only *after* the entity furnishing the information receives notice from a consumer reporting agency that a consumer is disputing credit information." *Id.* (emphasis added); *see also Westra v. Credit Control of Pinellas*, 409 F.3d 825, 827 (7th Cir. 2005). Thus, unless plaintiff alleges that a major credit bureau notified Great Lakes that she was disputing the alleged debt, she has failed to state an FCRA claim against Great Lakes.

C. GLBA claim

Further, Great Lakes argues that plaintiff's claim against it under the GLBA fails for various reasons, including the fact that the GLBA does not create a private right of action. The GLBA requires that financial institutions "respect and protect the security and confidentiality of customers' nonpublic personal information." *Johnson v. Melton Truck*

[5] Plaintiff does not specify under which provision her FCRA claim arises. Consistent with its screening order, the court construes the amended complaint to allege a claim against Great Lakes under 15 U.S.C. § 1681s-2. (Dkt. #4 at 3-4.)

Lines, Inc., No. 14 C 07858, 2016 WL 8711494, at *9 (N.D. Ill. Sept. 30, 2016) (alteration adopted) (citing 15 U.S.C. § 6801). To begin, it is doubtful that Great Lakes is a "financial institution" under the GLBA, but the court need not decide this issue here because "[n]o private right of action exists for an alleged violation of the GLBA." *Dunmire v. Morgan Stanley DW, Inc.*, 475 F.3d 956, 960 (8th Cir. 2007); *see also, e.g.*, *Waypoint Mgmt. Consulting, LLC v. Krone*, No. CV ELH 19 2988, 2022 WL 2528465, at *61 (D. Md. July 6, 2022) ("Although several agencies, including the SEC, are tasked with enforcing the GLBA's provisions, the statute does not confer on consumers a right to sue for violations of its provisions." (alterations adopted)). Accordingly, plaintiff's GLBA claim against Great Lakes must be dismissed.

II. Screening the amended complaint (dkt. #22)

For the reasons explained below, the court's remaining screening of the amended complaint shows that none of plaintiff's other claims are viable either, except for the FCRA claims against the major credit bureau defendants.

A. FCRA claims against the major credit bureaus

Under the FCRA, a consumer reporting agency is required to follow reasonable procedures to assure maximum possible accuracy of the information contained in a consumer's credit report." *Henson v. CSC Credit Servs.*, 29 F.3d 280, 284 (7th Cir. 1994) (citing 15 U.S.C. § 1681e(b)).

"In order to state a claim under 15 U.S.C. § 1681e(b), a consumer must sufficiently allege that a credit reporting agency prepared a report containing inaccurate information."

Id. The FCRA also requires consumer reporting agencies "to reinvestigate when a consumer contends that her consumer report is inaccurate." *Ruffin-Thompkins v. Experian Info. Sols., Inc.*, 422 F.3d 603, 607 (7th Cir. 2005) (alterations adopted); *see also* 15 U.S.C. § 1681i ("[I]f the . . . accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly . . . of such dispute, the agency shall . . . conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate . . . ").

Plaintiff alleges that she notified the major credit bureaus that she disputed the debt to Great Lakes, but the bureaus ignored her dispute. This allegation states a claim under § 168li.

While plaintiff alleges that Transunion eventually reinvestigated her dispute, it still gave her an unfavorable decision, and thus she still states a claim against Transunion under § 1681i because her allegations at least support an inference that Transunion's reinvestigation was unreasonable. *See Henson*, 29 F.3d at 286 (allegation that Transunion "did not conduct a proper reinvestigation" stated a claim under § 1681i). Accordingly, plaintiff may proceed against the major credit bureaus under the FCRA.

B. GLBA claims

However, plaintiff's GLBA claims against the major credit bureaus fails because, as noted above, the GLBA does not create a private right of action.

C. GEPA claims

Next, the court understands plaintiff to be alleging a GEPA claim against all

defendants under 20 U.S.C. § 1234b(a)(1). The GEPA authorizes the Department of Education "to administer cost recovery actions for repayment of improperly disbursed grant funds." *Chauffeur's Training Sch., Inc. v. Spellings*, 478 F.3d 117, 126 (2d Cir. 2007) (citing 20 U.S.C. § 1234a). Section 1234b(a)(1) also governs the measure of recovery in such enforcement actions.

Under the latter provision, a federal education grant recipient "determined to have made an unallowable expenditure, or to have otherwise failed to discharge its responsibility to account properly for funds, [must] return funds in an amount that is proportionate to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which the recipient received the award." *See Ga. Dep't of Educ. v. U.S. Dep't of Educ.*, 883 F.3d 1311, 1315 (11th Cir. 2018) (citing 20 U.S.C. § 1234b(a)(1)). However, the GEPA provisions at issue only authorize enforcement actions to recover improperly disbursed grant funds if brought by the Department of Education. Accordingly, plaintiff has also failed to state a GEPA claim against any defendant.

D. FCBA claim

Plaintiff has also alleged an FCBA claim against Great Lakes under 15 U.S.C. § 1666, but it is not viable. (Dkt. #22 at 3.) The FCBA is an amendment to the Truth in Lending Act (TILA) and "aims to protect the consumer against inaccurate and unfair credit billing and credit card practices." *Krieger v. Bank of Am., N.A.*, 890 F.3d 429, 433 (3d Cir. 2018). However, "[t]he FCBA applies only to open-end credit transactions, and, chiefly, to credit card accounts." *Petronykoriak v. Equifax Info. Servs. LLC*, No. 19-CV-10784, 2019

WL 4278171, at *3 (E.D. Mich. Sept. 10, 2019).

Specifically, plaintiff's FCBA claim fails for two, independent reasons. *First*, the FCBA is a part of the TILA, *Am. Exp. Co. v. Koerner*, 452 U.S. 233, 234 (1981); *Krieger*, 890 F.3d at 433; and TILA liability does not extend to student loan servicers like Great Lakes, *Iroanyah v. Bank of Am.*, 753 F.3d 686, 688 n.2 (7th Cir. 2014); *Dawoudi on behalf of Plaintiff v. Nationstar Mortg. LLC*, 448 F. Supp. 3d 918, 928 (N.D. Ill. 2020). *Second*, the alleged "student loans at issue in this case do not qualify as open end credit plans." *Issawi v. Am. Educ. Servs.*, No. 17-CV-532-JPG-RJD, 2017 WL 4518367, at *2 (S.D. Ill. Oct. 10, 2017). Either way, plaintiff also cannot proceed on this claim against Great Lakes.

E. Federal criminal statutes

Plaintiff renews her allegations of violations of various federal criminal statutes, including 18 U.S.C. §§ 241 and 242. The court dismissed these claims in its initial screening order and reaffirms this decision. (Dkt. #4 at 4.) Plainly, plaintiff does not have a "private right of action to sue in federal court for violations of federal criminal statutes," including §§ 241 and 242. *Gardner v. Harvard Univ.*, No. 21-cv-503-wmc, 2023 WL 2163083, at *5 (W.D. Wis. Feb. 22, 2023).

F. Fraud claims

Finally, plaintiff alleges that defendants have committed fraud because they are not licensed to do business in Texas, where she apparently received communications from them. But plaintiff herself lacks standing to challenge defendants' alleged lack of a Texas business license. *Cf. Retired Chicago Police Ass'n v. City of Chicago*, 76 F.3d 856, 862 (7th

Cir. 1996) ("[T]he general rule of standing is that an injured party must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."). Regardless, plaintiff's allegations are too conclusory to state a fraud claim. Plaintiff does not discuss the content of these communications in any meaningful detail or otherwise explain how defendants misled or injured her. *See* Fed. R. Civ. P. 9(b) ("In alleging fraud . . . a party must state with particularity the circumstances constituting fraud"). Thus, she has failed to state a fraud claim under state law.

In sum, plaintiff may proceed on her FCRA claims against the major credit bureaus, but the court will dismiss the remaining claims in the amended complaint with prejudice. As noted, plaintiff has had two opportunities to state viable claims, and there is no indication that a further leave to amend would yield any other viable claims. Plaintiff has run out of opportunities to pursue defendant Great Lakes further. *See Bogie v. Rosenberg*, 705 F.3d 603, 609 (7th Cir. 2013) ("Leave to amend need not be granted . . . if it is clear that any amendment would be futile.").

ORDER

IT IS ORDERED that:

1. Plaintiff is GRANTED leave to proceed on her FCRA claims against Experian, Equifax, and Transunion. The clerk of court shall amend the case caption to include these three new defendants.

2. The remaining claims in the amended complaint are DISMISSED with prejudice.

3. Defendant Great Lakes Educational Loan Services' motion to dismiss (dkt. #27), is GRANTED and Great Lakes is DISMISSED from this lawsuit.

4. The court expects the parties to treat each other and the court with respect. Any abusive or threatening comments or conduct may result in sanctions, including entry of judgment against the offending party.

5. The clerk of court is directed to ensure that the United States Marshals Service serves defendants with a copy of plaintiff's amended complaint and this order. Plaintiff should not attempt to serve defendants on her own at this time.

6. The clerk of court is directed to send plaintiff a copy of this order.

Entered this 22nd day of June, 2023.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge