UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

CASE NO. 5:24-cv-00700

ANNA WHITE FERRARACCIO
Plaintiff

v.

NEW PEOPLE's BANK
Defendant
______________________/

PLAINTIFF's RESPONSE TO MOTION TO DISMISS SECOND AMENDED COMPLAINT

Plaintiff by and through her undersigned counsel hereby responds to the Motion to Dismiss Second Amended Complaint in this matter and states as follows:

1. Plaintiff brings this action against a former lender that loaned monies to her businesses (which were personally guaranteed by the Plaintiff) and personally for her residence. Count I of the Complaint alleges claims for violations of the Equal Credit Opportunity Act ("ECOA"). Count II of the Complaint alleges claims under the Fair Housing Act ("FHA"). Defendant has moved to dismiss the Second Amended Complaint. Because the Second Amended Complaint states causes of action, the Motion should be denied. Both of Plaintiff's causes of action should be broadly construed to promote Congressional intent as well as the August 7, 2025 Executive Order of President Donald Trump which has directed that lending institutions may not promote policies and practices that allow financial institutions to deny or restrict services based upon political beliefs and religious beliefs.

2. In support of the Motion to Dismiss, Defendant attaches 15 non authenticated

and hearsay documents which should not be considered by this Court on a Motion to Dismiss. The Federal Rules of Civil Procedure allow dismissal of a claim for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(b). While the pleading need not assert detailed allegations, it must "state claims to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). A claim is plausible on it face "when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 544 (2007). A well-pleaded complaint may proceed even if it strikes the court that actual proof of the asserted facts is improbably and that recovery is unlikely. *Twombly*, 550 US at 555. The complaint must be liberally construed, with all reasonable references drawn in the light most favorable to the plaintiff. *Rodriguez v. Rutter*, 310 Fed. Appx. 623, 626 (5th Cir. 2009). As a general rule, when deciding whether to grant a Motion to Dismiss, a court may not look beyond the allegations of the Complaint. *Scanlan v. Tex. A&M Univ*, 343 F.3d 533, 536 (5th Cir. 2003); *Zimmeck v. Marshall University Board of Governors*, 2014 WL 108668 *4 (S.D. W. Va. January 10, 2014) The only exception to this rule is where the referenced exhibits are referenced in the complaint and central to the Plaintiff claims. *Truong v. Magnolia Fleet, LLC*, 724 F.Supp.3d 568, 573-574 (E.D. La. 2024). Where this exception does not apply, a district court may only consider documents outside of the complaint by converting a Motion to a Summary Judgment Motion. *Rodriguez*, 310 Fed. Appx. at 626. In this matter the fifteen exhibits are not attached to the Complaint and the undersigned is not even willing to admit they are authentic or are central to the claims. Most of them are hardly legible. The undersigned would object to converting this matter to a summary judgment, at this time, without an opportunity for discovery.

3. The EOCA "is an anti-discrimination statute which prohibits creditors from discrimination in the extension of credit." *Brown v Interbay Funding, LLC*, 417 F.Supp.2d 573, 578 (D. Del. 2006). It was enacted to protect consumers from discrimination by financial institutions. *Id.* To establish a prima facie case under the EOCA, a Plaintiff must demonstrate that (1) she was a member of a protected class; (2) she applied for credit from Defendant; (3) she was qualified for the credit and (4) despite qualifications she was denied credit. *Id.* EOCA claims can be prosecuted based upon disparate treatment and/or disparate impact. *Caroll v. Walden University, LLC*, 650 F.Supp.3d 342, 360 (D. Md. 2022). Each of these elements of an EOCA claim have been plead in the Second Amended Complaint. *See, Mathews v. New Century Mortg. Corp*., 185 F.Supp.2d 874, 887 (S.D. Oh. 2002)(Motion to Dismiss EOCA claims denied where Plaintiffs alleged they were discriminated against in the terms of loans based upon their sex, marital status, or age); *Carroll*, 650 F.Supp.3d at 363 (D. Md. 2022)(denial of Motion to Dismiss EOCA claims based upon the broad protective reach of the EOCA)*; Consumer Financial Protection Bureau v. Townstone Financial, Inc*., 107 F.4th 768 (7th Cir. 2024)(reversal of dismissal of EOCA claims). Defendant contends that Plaintiff fails to set forth a cause of action for violations of the EOCA arguing that Defendant took no adverse action in violation of the ECOA. Under the ECOA an "adverse action" is defined as "a denial or revocation of credit, a change in the terms of an existing credit arrangement or a refusal to grant credit in substantially the amount or substantially the terms requested". *Kivel v. Wealthspring Mortg. Corp*., 398 F.Supp.2d 1049, 1054 (D. Minn. 2005). This language has been broadly construed to include transactions that are merely tied to the credit transaction. *See, Carroll v. Walden University, LLC*, 650 F.Supp.3d at 360 (EOCA claims stated a cause of action

against educational institution based upon its dissertation practices). Defendant argues that adverse actions don't include "any action for forbearance relating to an account taken in connection with inactivity, default or delinquency as to that account." However that is a very narrow exception and the allegations of the Second Amended Complaint encompass a range of activities that are much broader than this very narrow exception. *See, Thomspon v Luxury Cars, Inc*., 2015 WL 12843203 *2 (D. Or. 9/4/15)(Plaintiffs claims could not be based upon repossession by lender, but could be based upon denial or revocation of credit). Based upon the foregoing, Defendants Motion to Dismiss Count I of the Second Amended Complaint should be denied.

4. As to Count II, Defendant argues that Plaintiff has no standing to bring these claims under the FHA referring to the 15 exhibits that should not be considered on this Motion to Dismiss. The FHA provides

> It shall be unlawful for any person or
> other entity whose business includes
> engaging in residential real estate related
> transactions to discriminate
> against any person in making available
> such a transaction, or in the terms
> or conditions of such a transaction, because
> of race, color, religion, sex, handicap, familial status, or
> national origin

42 U.S.C. § 3605(a). The FHA defines "dwelling" as "any building, structure, or portion of which is occupied as or designed or intended for occupancy as a residence by one or more families..." 42 U.S.C. § 3602(b). In the Second Amended Complaint, the Plaintiff alleges that her FHA claims pertain to her residential real estate. Arguably, if even part of the Spa loan involved residential property of the Plaintiff or a place where Plaintiff lived, which is that is alleged in the Second Amended Complaint, there is coverage

under the FHA and Plaintiff states a cause of action. This is especially true where the FHA definition of "aggrieved person" as a basis for standing reflects a congressional intent to confer standing broadly. *Bank of America Corp. v City of Miami, Fla*. 581 U.S. 189, 198 (2017). According to the Supreme Court, the test for standing under the FHA is whether the Plaintiff's interests fall within the zone of interests protected by the law invoked. *Id.* at 196-197. In the *Bank of America* case, the Supreme Court held that a City even had standing to bring FHA claims since the statutory protections were within its zone of interest for it to recover damage such as lost tax revenues and extra municipal expenses. *Id* at 197 and 201; *See also, National Community Reinvestment Coalition v. Accredited Home Lenders Holding Company,* 573 F.Supp.2d 70, 75 (D.D.C. 2008)(denial of Motion to Dismiss FHA claims based upon standing); *County of Cook v. HSBC North America Holdings, Inc*., 314 F.Supp.3d 950 (E.D. Ill. 2018)(Motion to Dismiss denied where County brought claims under FHA under disparate impact and treatment claims). Based upon the foregoing, the Motion to Dismiss Count II of the Second Amended Complaint should be denied.

WHEREFORE, the Plaintiff respectfully requests that this Court enter an Order denying the Motion to Dismiss Second Amended Complaint in this matter and for any other relief this Court deems just and proper under the circumstances.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been e-mailed this 15 day of August 2025, and e-filed this 18th day of August 2025: William S. Winfrey, PO Box 1159, Princeton, WV 24740-1159.

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