

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

MICHAEL G. FAUROTE,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO.: 1:17-CV-129-TLS
)	
BANK OF AMERICA,)	
)	
Defendant.)	

OPINION AND ORDER

On March 3, 2017, Plaintiff Michael Faurote, proceeding pro se, filed his Complaint [ECF No. 8] against Defendant Bank of America in Indiana state court. The Defendant removed this action to federal court on March 31, 2017 [ECF No. 1]. The Defendant filed a Motion to Dismiss [ECF No. 11] on April 6, 2017. On June 2, 2017, the Court granted a stay of all Rule 26 requirements pending a ruling on the Defendant’s Motion to Dismiss [ECF No. 19]. On May 3, 2017, the Plaintiff filed for bankruptcy. (*See* ECF No. 20.) On June 5, 2017, the Court held this case in abeyance until September 5, 2017, at which point the Court would review the status of the bankruptcy proceedings [ECF No. 21]. On September 27, 2017, the Plaintiff submitted documentation showing that he had been declared bankrupt and that the bankruptcy proceedings had been closed on August 30, 2017 [ECF No. 23]. The Court granted the Defendant’s request that briefing on the Motion to Dismiss move forward and granted the Plaintiff twenty-eight days in which to file a response [ECF No. 25]. The deadline has passed for the Plaintiff to respond to the Defendant’s Motion to Dismiss, and this issue is now ripe for review.

BACKGROUND

The Plaintiff filed suit against the Defendant, alleging defamation, negligent enablement of identity fraud, and violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“the FDCPA”). (*See Compl.* 1, ECF No. 8.) Specifically, the Plaintiff alleged that the Defendant “violated requests for validation, disputed claim [sic]” and failed to “notify all credit reporting agencies.” (*Id.*) The Defendant argues that, not only is the Plaintiff’s claim for negligent enablement of identity fraud not cognizable, but also that he has failed to plead sufficient facts that plausibly establish that he is entitled to relief on any of his claims.

ANALYSIS

To state a claim under the federal notice pleading standards, a complaint must set forth a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Factual allegations are accepted as true and need only give “fair notice of what the . . . claim is and the grounds upon which it rests.” *EEOC v. Concentra Health Serv., Inc.*, 496 F.3d 773, 776–77 (7th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). However, a plaintiff’s allegations must show that his entitlement to relief is plausible, rather than merely speculative. *Tamayo v. Blagojevich*, 526 F.3d 1074, 1083 (7th Cir. 2008).

A. Defamation

In Indiana, “[t]o establish defamation, a plaintiff must prove the following elements: (1) a communication with defamatory imputation; (2) malice; (3) publication; and (4) damages.” *Collins v. Purdue Univ.*, 703 F. Supp. 2d 862, 875 (N.D. Ind. 2010). However, the Plaintiff has not alleged any defamatory communications made by the Defendant in his Complaint. Without identifying a defamatory statement, his claim fails. *See Brown v. Salvation Army*, 60 F. Supp. 3d

971, 980–81 (N.D. Ind. 2014). Without identifying a defamatory statement, the Court can neither determine whether the statement was made with malice, whether it was published to a third party, or whether the Plaintiff sustained damages as a result of the statement. Therefore, the Court will grant the Defendant’s Motion to Dismiss as to the Plaintiff’s defamation claim.

B. Negligent Enablement of Identity Fraud

There is no indication that a cause of action for negligent enablement of identify fraud exists under Indiana law. Moreover, the Plaintiff has not alleged any facts regarding what act by the Defendant was negligent, what identity fraud occurred, or how the Defendant’s negligent act was the proximate cause of such identity fraud. Therefore, the Court will grant the Defendant’s Motion to Dismiss as to the Plaintiff’s claim for negligent enablement of identity fraud.

C. FDCPA Violation

The FDCPA regulates the conduct only of debt collectors; creditors are specifically exempt from its provisions. *Woods v. Wells Fargo Fin. Bank*, 753 F. Supp. 2d 784, 791 (S.D. Ind. 2010) (“The FDCPA governs debt collectors, not creditors. A bank creditor seeking to collect on a debt does not become a ‘debt collector’ for purposes of the FDCPA.”); *Conner v. Howe*, 344 F. Supp. 2d 1164, 1170 (S.D. Ind. 2004) (“[U]nder the Act, creditors . . . are not subject to the provisions of the FDCPA.”). The FDCPA defines a “creditor” as “any person who offers or extends credit creating a debt or to whom debt is owed,” while a “debt collector” is “any person who . . . regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another.” 15 U.S.C. §§ 1692a(4), (6). The Plaintiff has alleged no facts that plausibly suggest that the Defendant is a debt collector. Rather, his allegation that the Defendant failed “to notify all credit reporting agencies” indicates that he

believes the Defendant to be a creditor. Therefore, the Plaintiff has not stated a claim under the FDCPA, and the Court will grant the Defendant's Motion to Dismiss as to this claim.

CONCLUSION

For these reasons, the Court GRANTS the Defendant's Motion to Dismiss [ECF No. 11] and DISMISSES this case WITHOUT PREJUDICE.

SO ORDERED on December 5, 2017.

s/ Theresa L. Springmann
CHIEF JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT