

IN THE CIRCUIT COURT OF THE EIGHTH
JUDICIAL CIRCUIT IN AND FOR
ALACHUA COUNTY, FLORIDA

RENDA OKIKE,
AMANDA OKIKE,
CHIDOZIE OKIKE,

CASE NO.: 01-2025-CA-001964

Plaintiffs,

v.

CAMPUS USA CREDIT UNION,

Defendant.

DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT

Defendant, Campus USA Credit Union ("Defendant" or "Campus USA"), by and through undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.140, hereby files this Motion to Dismiss Plaintiffs' Complaint for failure to state a cause of action. In support thereof, Campus USA states as follows:

ALLEGATIONS

Plaintiffs, Renda Okike, Amanda Okike and Chidozie Okike ("Plaintiffs"), have brought this action alleging discrimination under Fla. Stat. § 760.08 (Counts I, II, and III); intentional infliction of emotional distress (Count IV); negligence (Count V); unfair lending practices (Count VI); false reports to law enforcement in violation of Fla. Stat. § 837.05 (Count VII); and defamation (Count VIII). *See generally* Complaint. Plaintiffs' claims are premised on events that occurred on or about March 30, 2024, when Plaintiffs visited a Campus USA branch to apply for a loan. Complaint, ¶ 17. Plaintiffs allege a service representative helped Renda Okike and Amanda Okike complete their loan application. *Id.* Plaintiffs further alleged that Mr. Okike did not apply for a loan, but he answered questions that were directed at Amanda Okike during the

loan interview. *Id.* Plaintiffs allege the service representative “repeatedly asked how the three Plaintiffs were related,” which made Plaintiffs “feel very uncomfortable.” *Id.* Plaintiffs allege that Michelle Lowe (Branch Manager) informed them Renda Okike and Amanda Okike’s loan application was denied based on residency, charge-offs, and low credit scores. *Id.* ¶ 18.

Plaintiffs allege on or about April 1, 2024, a law enforcement officer visited their residence to conduct a welfare check. *Id.* ¶ 20. Plaintiffs allege they received a recording of the 911 call in which Campus USA “fabricated statements” to law enforcement. *Id.* ¶ 21-22. According to Plaintiffs, law enforcement came to their residence because Mr. Okike “was a black Nigerian man with two white women and that was why he was discriminated against.” *Id.* ¶ 27. Plaintiffs subsequently filed suit based on these events.¹

For the reasons discussed in detail below, Plaintiffs’ complaint should be dismissed in its totality for failure to state causes of action for which relief can be granted.

MEMORANDUM OF LAW

I. Motion to Dismiss Legal Standard

“A motion to dismiss is intended to test the legal sufficiency of a complaint.” *Fla. Bar v. Greene*, 926 So. 2d 1195, 1199 (Fla. 2006). While the trial court must accept the factual allegations in the complaint as true, the trial court need not accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions made by a party. *See W.R. Townsend Contracting, Inc v. Jensen Civil Const., Inc.*, 728 So. 2d 297, 300 (Fla. 1st DCA 1999). Dismissal with prejudice is proper where amendment of the complaint would be futile. *See*

¹ Plaintiffs originally filed suit in 2024, Case No. 01-2024-001241, and Defendant filed a motion to dismiss the Complaint on May 15, 2024. The motion to dismiss was based in part on Plaintiffs’ failure to exhaust their administrative remedies, and the suit was voluntarily dismissed by Plaintiffs on the same day. After completing the administrative process, Plaintiffs have now refiled their lawsuit asserting the same allegations and claims as in the original lawsuit.

Sonny Boy, L.L.C. v. Asnani, 879 So. 2d 25, 28 (Fla. 5th DCA 2004). Dismissal is warranted if the court determines that the complaint does not state a cause of action upon which relief can be granted. *Nero v. Cont'l Country Club R.O., Inc.*, 979 So. 2d 263, 267 (Fla. 5th DCA 2007).

II. Counts I, II, and III for discrimination under Fla. Stat. 760.08 should be dismissed for failure to state a claim.

In Counts I, II, and III, Plaintiffs allege they were discriminated against by Campus USA on the basis of Chidozie Okike's race (black), gender (male), and national origin (Nigerian) in violation of the Florida Civil Rights Act ("FCRA"), Section 760.08, Florida Statutes. Counts I, II, and III should be dismissed for several reasons.

First, Campus USA (a financial institution) does not qualify as a place of "public accommodation" for purposes of Fla. Stat. § 760.08. *See Marius v. Iberia Bank*, 2025 WL 522551 (S.D. Fla. Feb. 18, 2025). In *Marius*, the plaintiff's complaint alleged racial discrimination under Part I of the FCRA. Under the FCRA, race-based discrimination is prohibited within "any place of public accommodation." Fla. Stat. § 760.08. "Places of public accommodations" are defined as "places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments." Fla. Stat. § 760.02(11). The Act then enumerates establishments that fit the definition, including:

- (a) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence.
- (b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.

- (c) Any motion picture theatre, theatre, concert hall, sports arena, stadium, or other place of exhibition or entertainment.
- (d) Any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

Fla. Stat. § 760.02(11)(a)–(d).

In *Marius*, the court interpreted these provisions and concluded the Act’s definition of “public accommodation” did not include financial institutions, such as banks and credit unions. In reaching its decision, the Court held that such a finding was consistent with similar analyses evaluating the definition of a place of public accommodation under the analogous Title II of the Civil Rights Act. *See Hatcher v. Servis First Bank*, 2016 WL 7336403, at *3 (N.D. Ala. Dec. 19, 2016) (“Title II only prohibits discrimination on the basis of race or color in ‘places of public accommodation,’ and banks are not included in Title II’s comprehensive list of public accommodations.”); *see also Akyar v. TD Bank US Holding Co.*, 2018 WL 4356734, at *5 (S.D.N.Y. Sept. 12, 2018) (“[T]he text of § 2000a does not explicitly include banks and courts have expressly concluded that banks are not places of public accommodation within the meaning of the provision.”) (citing 42 U.S.C. § 2000a(b)); *Denny v. Elizabeth Arden Salons, Inc.*, 456 F.3d 427, 429 (4th Cir. 2006) (“Congress has clearly delineated those entities that fall within Title II’s ambit, and [courts] are not at liberty to go beyond what it has plainly enacted.”). Accordingly, the Court in *Marius* held that because there was no showing that a financial institution qualified as a place of public accommodation under the FCRA, plaintiff’s claims under Fla. Stat. § 760.08 were dismissed. Plaintiffs have failed to set forth any allegations in their complaint to establish Campus USA is a place of public accommodation as defined by the FCRA and Florida Statutes. Furthermore, applying the holdings and principles taken from the legal authority cited above,

Counts I, II, and III of Plaintiffs' Complaint should be dismissed because Campus USA does not qualify as a place of public accommodation under the FCRA.

Second, Counts I, II, and III should be dismissed for lack of standing because on March 30, 2024, Plaintiff, Chidozie Okike, did not apply for and was not denied a loan by Campus USA. Consequently, Chidozie Okike did not suffer any discrimination or adverse action from Campus USA based on his alleged race, gender, or national origin. Since Chidozie Okike did not suffer any discrimination or adverse action (i.e., denial of a loan application) he simply has no standing to assert a claim for discrimination under the FCRA. Therefore, Counts I, II, and III, should be dismissed.

To the extent Plaintiffs Renda Okike and Amanda Okike are attempting to assert claims for associational discrimination under the FCRA based on their association with Chidozie Okike (an alleged Black Nigerian male) their claims should still be dismissed because associational discrimination is not a cognizable claim under the FCRA. *See Matamoros v. Broward Sheriff's Office*, 2 F.4th 1329 (11th Cir. 2021) (declining to hold that FCRA prohibited associational discrimination).

Therefore, Counts I, II, and III should be dismissed with prejudice because Plaintiffs have failed to establish that Campus USA is a place of public accommodation as defined under the FCRA. Furthermore, Plaintiff Chidozie Okike lacks standing to bring forth these claims because he did not suffer any discrimination or adverse act by Campus USA because he did not apply for nor was he denied a loan. Finally, Plaintiffs Renda and Amanda Okike lack standing because associational discrimination is not a cognizable claim under the FCRA.

III. Count IV for intentional infliction of emotional distress should be dismissed with prejudice because Plaintiffs fail to allege conduct sufficiently outrageous to establish a prima facie case.

Count IV should be dismissed because Plaintiffs have failed to set forth a sufficient factual basis to establish the alleged conduct was outrageous as required to support a claim for intentional infliction of emotional distress (“IIED”). To establish a *prima facie* case for IIED, Plaintiffs must set forth a sufficient factual basis to meet each of the following four elements: (1) the wrongdoer’s conduct was intentional or reckless (2) the conduct was outrageous; (3) the conduct caused emotional distress; and (4) the emotional distress was severe.” *Horizons Rehab., Inc. v. Health Care and Ret. Corp.*, 810 So. 2d 958, 964 (Fla. 5th DCA 2002). Outrageous conduct is that which goes “*beyond all bounds of decency and [is] regarded as atrocious and utterly intolerable in a civilized community.*” *Food Lion, Inc. v. Clifford*, 629 So. 2d 201, 202 (Fla. 5th DCA 1993); *see also Metropolitan Life Ins. Co. v. McCarson*, 467 So. 2d 277 (Fla. 1985) (emphasis added) (“Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the act, and lead him to exclaim, ‘Outrageous!’”). Florida Courts have held that “liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” *Scheller v. Am. Med. Int’l, Inc.*, 502 So. 2d 1268, 1271 (Fla. 4th DCA 1987).

The question of whether the alleged conduct is sufficiently egregious to meet the standard for IIED is a question of law to be determined by the Court. *See Baker v. Fla. Nat’l Bank*, 559 So. 2d 284, 287, 289 (Fla. 4th DCA 1990) (affirming trial court’s summary judgment order finding defendant’s conduct was not sufficiently outrageous). The alleged conduct must, if proven, support an award for punitive damages. *Donigan v. Nevins*, 785 So. 2d 573, 575 (Fla. 4th DCA 2001). Florida law places a high standard for evaluating whether the alleged conduct is sufficiently

outrageous to establish a claim for IIED. *See, e.g., Williams v. Worldwide Flight SVCS., Inc.*, 877 So. 2d 869, 870 (Fla. 3d DCA 2004) (employer’s intentional discrimination against former employee, including calling employee racial slurs in front of other employees, threats to create a false record of disciplinary action, false accusations of stealing, persistent threats of termination for no reason, and direction to perform work on aircraft in inclement and dangerous weather conditions, though reprehensible and offensive, was not sufficiently outrageous); *Foreman v. City of Port St. Lucie*, 294 F. App’x 554, 557 (11th Cir. 2008) (police officer pointing an (unknowingly) unloaded BB gun at someone’s chest and pulling the trigger was not sufficiently outrageous); *compare with Nims v. Harrison*, 768 So. 2d 1198, 1199 (Fla. 1st DCA 2000) (threats to kill a teacher and rape her and her children supported claim for IIED).

Furthermore, “the subjective response of the person who is the target of the actor’s conduct does not control the question of whether the tort occurred.” *State Farm Mut. Auto. Ins. Co. v. Novotny*, 657 So. 2d 1210, 1213 (Fla. 5th DCA 1995). Where a plaintiff’s response to the defendant’s conduct is not foreseeable, liability for the tort does not lie. *See id.* (holding plaintiff’s reaction to interview process regarding complaints of misconduct by company employees—crying and threatening to kill herself—was not foreseeable, and concluding claim for intentional infliction of emotional distress was not supportable).

In the *Marius* case discussed above, the Court considered an IIED claim in a similar context and held that the plaintiff – a bank customer who claimed she was prevented from opening an account at a bank branch on the basis of her race and was urged by a bank employee to instead “open her bank account with banks for ‘[B]lack people” – failed to state a claim for IIED because she did not allege conduct that was sufficiently outrageous to establish a claim for IIED. In *Marius*, the plaintiff’s factual allegations included a bank employee speaking to her “in a loud voice,”

“telling [her] that the City of Aventura would never allow a homeless shelter to be opened in the city,” encouraging plaintiff to seek out a bank “for [B]lack people,” initially refusing to return plaintiff’s documents to her, and ripping up some of plaintiff’s documents. The Court found these allegations were insufficient to support a claim for IIED, noting that “Florida courts have been reluctant to find claims for intentional infliction of emotional distress based solely on allegations of verbal abuse.” The Court went on to state as follows:

Indeed, Florida courts have rejected intentional-infliction-of-emotional-distress claims involving allegations describing far worse conduct than that described by Marius. *See Lopez*, 676 F.3d at 1236 (citing cases, for example, where a plaintiff alleged his supervisors called him “racially derogatory terms” and imposed various workplace related indignities upon him, *Williams v. Worldwide Flight Servs. Inc.*, 877 So.2d 869 (Fla. 3d DCA 2004)); and where a court described “vicious verbal attacks that included the use of humiliating language and racial epithets,” *Lay v. Roux Labs., Inc.*, 379 So.2d 451, 452 (Fla. 1st DCA 1980). So, even though the behavior Marius describes could be construed as “extremely reprehensible, racially hostile misconduct,” it nonetheless fails to satisfy Florida’s outrageousness requirement. *Lopez*, 676 F.3d at 1236; *Wilcox v. La Pensee Condo. Assn., Inc.*, No. 21-81565-CV, 2022 WL 2205412, at *3 (S.D. Fla. June 17, 2022) (Middlebrooks, J.) (“Only in the most extreme circumstances can words alone, even incredibly offensive ones, be sufficiently outrageous.”).

Defendant denies Plaintiffs’ allegations. Even if the allegations were true, they are far less egregious than those contemplated by the Court *Marius* and the jurisprudence relied on by the Court in *Marius* to reach its decision. Plaintiffs’ IIED claim fails as a matter of law because the conduct of which Plaintiffs complain is not sufficiently outrageous to support a claim for IIED. *See Baker*, 559 So. 2d at 287, 289. Here, Plaintiffs’ IIED claim is based solely on Campus USA allegedly “denying Ms. Renda and Ms. Amanda a personal loan, making multiple false statements to law enforcement . . . and discriminating against Mr. Okike.” Complaint, ¶ 69. These alleged actions fall well short of the outrageous conduct required to establish and claim for IIED and

simply do not arouse “resentment” by an average member of the community or lead anyone to exclaim “Outrageous!” *See McC Carson*, 467 So. 2d 277. If yelling racial slurs at an employee in front of other employees, making false accusations of stealing, threatening termination of employment for no reason, and pointing and pulling the trigger of a BB gun at someone’s chest are not sufficiently outrageous to establish a claim for IIED, then denying Plaintiffs a loan and calling in a welfare check are not outrageous and fail to establish a claim for IIED. *See Williams*, 877 So. 2d at 870; *Foreman*, 294 F. App’x at 557.

Plaintiffs fail to allege any facts to establish extreme and outrageous conduct or conduct that rises to the level of outrageousness required by Florida law. Accordingly, Count IV should be dismissed with prejudice for failure to state a cause of action.

IV. Count V for negligence should be dismissed for failure to state a cause of action.

Count V should also be dismissed because Plaintiffs have failed to set forth a sufficient factual basis to establish a claim for negligence because they have failed to set forth any evidence to overcome Florida’s Impact Rule. In Count V, Plaintiffs seek to recover for emotional distress allegedly caused by Defendant’s alleged negligence. *See* Complaint ¶82. It is well established by Florida’s jurisprudence that a claim for emotional distress caused by alleged negligence requires a physical impact. *See Fla. Dept. of Corr. v. Abril*, 969 So. 2d 201, 206 (Fla. 2007) (“The impact rule, as applied in Florida, requires that before a plaintiff can recover damages for emotional distress caused by the negligence of another, the emotional distress suffered must flow from physical injuries the plaintiff sustained in an impact.”) (emphasis added). Plaintiffs have failed to set forth any factual basis to overcome the Impact Rule, as they have not alleged their emotional distress flows from any physical injuries they sustained in a physical impact or that they were physically touched in any manner by Campus USA or due to Campus USA’s alleged negligent

conduct. Plaintiffs have failed to state a valid cause of action for negligence, and Count V should be dismissed.

Second, Plaintiffs have failed to allege that Defendant owed them a duty of care, which is required to state a cause of action for negligence. Under Florida law, to establish a *prima facie* case of negligence, Plaintiffs must prove: (1) duty, (2) breach, (3) actual cause, (4) proximate cause, and (5) damages. *United States v. Stevens*, 994 So. 2d 1062, 1066 (Fla. 2008). “The duty element ordinarily arises from four potential sources: (1) legislative enactments or administration regulations; (2) judicial interpretations of such enactments or regulations; (3) other judicial precedent; and (4) a duty arising from the general facts of the case.” *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 503 (Fla. 1992). The determination of the existence of a common law duty flowing from the general facts of a case depends upon an evaluation and application of the concept of foreseeability of harm to the circumstances alleged, which is a question of law to be determined by the Court. *Id.* at 502-04. Where a person's conduct is such that it creates a “foreseeable zone of risk” posing a general threat of harm to others, a legal duty will ordinarily be recognized to ensure that the underlying threatening conduct is carried out reasonably. *Stevens*, 994 So. 2d at 1067. Further, the “foreseeable zone of risk” test under Florida law determines whether a duty exists under our negligence law. *Id.*

Here, Plaintiffs allege that, as existing customers, they “were owed a duty of care.” Complaint, ¶ 72. Plaintiffs have not sufficiently alleged the duty of care they were allegedly owed, but it appears Plaintiffs believe Campus USA should have loaned them money simply because they were customers of the credit union. As a matter of law, Campus USA did not have a duty to approve Plaintiffs’ loan request. Furthermore, Campus USA did not owe Plaintiffs any additional

standard of care beyond that owed to all business invitees on its premises. As such, Plaintiffs have failed to allege a cause of action for negligence, and Count V should be dismissed.

V. Count VI for unfair lending practices should be dismissed because Florida does not recognize a common law cause of action for unfair lending.

Count VI should be dismissed because Florida does not recognize a common law cause of action for unfair lending practices.

Count VI alleges that Campus USA, as a financial institution, has a duty under Florida law to apply lending standards in a fair, consistent, and nondiscriminatory manner and in accordance with applicable state consumer protection laws. *See* Complaint ¶ 83. The Complaint further alleges that Campus USA's denial of a personal loan to Plaintiffs involved misleading, inconsistent, and opaque practices and Plaintiffs were forced to seek alternative high-interest credit elsewhere as a result of these unfair and inconsistent lending practices. *See* Complaint ¶¶ 84-87.

However, Florida does not recognize a common law cause of action for unfair lending. In addition, although Florida has enacted the Deceptive and Unfair Trade Practices Act ("FDUTPA"), which prohibits businesses from engaging in unfair or deceptive acts or practices in the conduct of any trade or commerce, Florida courts have held that FDUTPA does not apply to financial institutions such as banks and credit unions. *See Bankers Trust Co. v. Basciano*, 960 Sol 2d 773 (Fla. 5th DCA 2007) (dismissing plaintiff's FDUTPA claim against bank because FDUTPA did not apply to banks and savings and loan associations regulated by the state or the federal government, citing § 501.212(4), Fla. Stat. (2004)).

Accordingly, Count VI of Plaintiffs' Complaint should be dismissed for failure to state a cause of action because there is no common law cause of action for unfair lending and FDUTPA does not apply to Defendant.

VI. Count VII should be dismissed because Section 837.05, Florida Statutes, is a criminal statute and does not create a private cause of action

Count VII should also be dismissed because there is no civil cause of action in Florida for violation of the criminal perjury statute, Fla. Stat. 837.05.

Section 837.05, Florida Statutes, is a criminal statute that make perjury a criminal offense, stating as follows: “a person who knowingly gives false information to a law enforcement officer concerning the alleged commission of any crime, commits a misdemeanor of the first degree.” Fla. Stat. § 837.05.

Florida law is clear that Section 837.05 does not create a private cause of action for individuals. *See Broodnox v. Wal-Mart Stores E., LP*, 2016 WL 3619665, at *7 (N.D. Fla. June 14, 2016) (“Broodnox's claims under Florida Statutes §§ 817.40 and 837.05 ... are frivolous. A private individual cannot bring an individual action under a criminal statute, because the power to prosecute criminal cases is vested exclusively in the government.”); *Kawasaki Kisen Kaisha, Ltd. v. All City Used Auto Parts, Inc.*, 2008 WL 11433249, at *4 (M.D. Fla. Feb. 19, 2008) (“Count IV asserts a claim under Fla. Stat. §§ 837.05 and 817.419, criminal statutes proscribing the act of filing false reports to law enforcement authorities and punishing such an act as a first-degree misdemeanor. There is no indication that this statute creates a private right of action in tort. Thus, the Count must be dismissed.”).

Therefore, because no private cause of action exists for violation of section 837.05, Florida Statutes, Count VII of Plaintiffs’ Complaint should be dismissed with prejudice.

VII. Count VIII for defamation should be dismissed for failure to state a cause of action.

Count VIII should also be dismissed because Plaintiffs have failed to identify the specific statements at issue and because Defendant’s statements to law enforcement are privileged.

The elements of a cause of action for defamation are: “(1) the defendant published a false statement (2) about the plaintiff (3) to a third party and (4) that the falsity of the statement caused injury to the plaintiff.” *Valencia v. Citibank Int’l*, 728 So. 2d 330, 330 (Fla. 3d DCA 1999). Count VIII attempts to state a claim for defamation against Campus USA for allegedly publishing “false information.” *See* Complaint, ¶ 92. Plaintiffs allege Campus USA “wrote and sent an email to their corporate headquarters. This email was filled with false information . . . Campus USA also irresponsibly and without verifying the claims on the email, intentionally conveyed these false accusations to law enforcement.” *Id.*

Generalized statements cannot serve as the basis for a defamation claim. Here, Plaintiffs do not allege a particular statement by Campus USA that was false and defamatory. Plaintiffs’ allegation that Campus USA sent an email containing “false information” is not sufficient to establish a claim for relief.

In addition, Plaintiffs have not alleged malicious intent, which is required to overcome the qualified privilege when making statements to a police officer. *See Fridovich v. Fridovich*, 598 So.2d 65, 68–69 (Fla.1992) (holding that a qualified privilege exists for defamatory statements made to police when such statements are not made maliciously). Accordingly, Count VIII of Plaintiffs’ complaint should be dismissed for failure to state a cause of action for which relief can be granted.

CONCLUSION

For the foregoing reasons, Defendant, Campus USA Credit Union, respectfully requests the Court enter an order dismissing Plaintiffs’ Complaint with prejudice, together with such other and further relief as the Court deems just and proper.

CERTIFICATE OF CONFERRAL

I certify that conferral prior to filing is not required under rule 1.202.

Respectfully submitted,

/s/ Kelsey N. Ortiz

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of August, 2025, I electronically filed the foregoing with the Clerk of Alachua County by using the Florida Courts e-Filing Portal, which will send an automatic e-mail message to all parties registered with the e-Filing Portal system.

/s/ Kelsey N. Ortiz