STATE OF MICHIGAN

IN THE OAKLAND COUNTY CIRCUIT COURT

REIFMAN LAW FIRM PLLC and
STEVEN WILLIAM REIFMAN,

Plaintiffs,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant.

Case No. 24-209753-CB

Hon. Victoria A. Valentine

GOLDSTEIN, BERSHAD & FRIED P.C.
By: Scott M. Kwiatkowski (P67871)
4000 Towne Center, Suite 1200
Southfield, MI 48075
(248) 355-5300
scott@bk-lawyer.net

Attorneys for Plaintiffs

DICKINSON WRIGHT PLLC
By: Aimee R. Gibbs (P70522)
Davina A. Bridges (P85597)
350 S. Main Street, Suite 300
Ann Arbor, MI 48104
(734) 623-1653
agibbs@dickinsonwright.com
dbridges@dickinsonwright.com

Attorneys for Defendant

OPINION AND ORDER REGARDING THE DEFENDANT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8)

At a session of said Court, held in the
County of Oakland, State of Michigan
September 24, 2025

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(8), which seeks dismissal of Plaintiffs' Complaint entirely. Plaintiffs filed a Response to which Defendant filed a Reply. The Court has reviewed the Parties' submissions and

heard oral arguments. For the reasons below, the Court GRANTS in part, and DENIES in part Defendant's Motion.

OPINION

I. BACKGROUND

A. FACTUAL OVERVIEW

Plaintiff Reifman Law Firm PLLC ("RLF") is a Michigan based law firm, and Plaintiff Steven William Reifman ("Reifman" and collectively the "Plaintiffs") is the manager and sole member of RLF.[1] Between 2019 and 2022, three lines of credit were opened in Plaintiffs' name with Defendant, JPMorgan Chase Bank NA ("Chase") ending in 6684, 0710, and 2091.[2] Plaintiffs allege that RLF's former employee, John Siwicki, who served as controller and had exclusive access to all of RLF's finances and accounts, fraudulently opened and used the lines of credit for his own nefarious purposes, unbeknownst to Plaintiffs and without Plaintiffs' authorization.[3] To date, balances on the lines of credit remain unpaid.[4] As a result, Chase has reported the negative balances to certain credit bureaus.[5]

B. PROCEDURAL HISTORY

Plaintiffs assert that Chase has refused to negate the balance on the lines of credit as reported to certain credit bureaus, despite their contention that Siwicki accessed the lines of credit without their authorization.[6] Plaintiffs filed the present Complaint against Chase seeking a declaratory ruling that the lines of credit were fraudulently obtained (Count I) and requesting

[1] Complaint, ¶¶ 2-4.
[2] *Id.* ¶ 7.
[3] *Id.* ¶¶ 8-11. A judgment was entered against Siwicki for $600,000.00 on October 6, 2023 (Complaint, Exhibit A).
[4] *Id.* ¶ 12.
[5] *Id.* ¶ 21.
[6] *Id.* ¶¶ 11-12.

damages under the MCPA (Count II). Defendant Chase now moves for summary disposition in its favor under MCR 2.116(C)(8) for both Counts I and II.

II. STANDARD OF REVIEW

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc,* 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182 Mich App 758, 763 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360 (1991). Exhibits attached to pleadings may be considered under MCR 2.116(C)(8) because they are part of the pleadings pursuant to MCR 2.113(C). *El-Khalil*, 504 Mich at 163.

"All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119 (1999); *Wade v Dep't of Corrections*, 439 Mich 158, 162 (1992). Unless the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery, the motion should be denied. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dep't of Transportation*, 456 Mich 331, 337 (1998).

III. DECLARATORY RELIEF CLAIM

A. ARGUMENTS

Plaintiffs assert that the Company's own controller executed a three-year embezzlement scheme from 2019 to 2022, during which he opened three credit cards in the Company's name and used same for his own personal gain without the authorization of Plaintiffs. Defendant argues that

this is a purely factual issue and is consequently not a proper basis for declaratory judgment which narrowly permits courts to render relief only as to questions of law, not fact.

Plaintiffs argue that there is an actual controversy between the Parties that requires this court's intervention. Chase has billed and sent collection demands to Plaintiffs, and Plaintiffs have disputed the alleged debts. Chase is in the business of collecting on its debts and Plaintiffs are currently in default for not having paid the debts allegedly owed to Chase. Plaintiffs assert there is an actual risk here, not a hypothetical risk – placing the Parties square in an actual controversy.

B. THE LAW

"A suit for declaratory judgment is a judicial procedure whereby a court renders an opinion on a *question of law*." *Health Cent v Commr of Ins*, 152 Mich App 336, 347 (1986) (emphasis added). The corresponding Michigan Court Rule states, "[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." MCR 2.605(A)(1). In *UAW v Cent Michigan Univ Trustees*, 295 Mich App 486, 495 (2012), the Court of Appeals elucidated the "actual controversy" requirement as follows:

> An "actual controversy" under MCR 2.605(A)(1) exists when a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve legal rights. The requirement prevents a court from deciding hypothetical issues. However, by granting declaratory relief in order to guide or direct future conduct, courts are not precluded from reaching issues before actual injuries or losses have occurred. The essential requirement of an "actual controversy" under the rule is that the plaintiff pleads and proves facts that demonstrate an "adverse interest necessitating the sharpening of the issues raised."

Generally, an actual controversy exists where a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve the plaintiff's legal rights. *Citizens for Common Sense*

in Govt v Attorney Gen, 243 Mich App 43, 55 (2000).[7] A plaintiff must "plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised." *Id*. (citing *Shavers v Attorney General,* 402 Mich 554, 589 (1978) and *Fieger v Comm'r of Ins,* 174 Mich App 467, 470-471 (1988)). Where the injury sought to be prevented is merely hypothetical, a case of actual controversy generally does not exist. *Citizens for Common Sense in Govt*, 243 Mich App at 55.

C. ANALYSIS

Here, Plaintiffs request the Court issue a "declaratory ruling that the Lines of Credit were fraudulently obtained and Defendant has no enforceable remedy at law against Plaintiffs as they did not use the funds obtained."[8] In its Answer, and in response to Plaintiffs' allegation that Sawicki fraudulently and without authorization accessed the Lines of Credit for his own use, Defendant denies that the applications for lines of credit or subsequent transactions were unauthorized.[9] In other words, the Parties expressly dispute the factual circumstances under which the credit was obtained and/or maintained. Therefore, in Count I, Plaintiffs are asking this Court to render declaratory judgment as to a question of fact, disputed by the Parties. Plaintiffs are not exclusively requesting the court render an "opinion as to a question of law." *Health Cent v Commr of Ins*, 152 Mich App at 347.

[7] See also *Detroit v Michigan*, 262 Mich App 542, 551 (2004) (an actual controversy may exist where declaratory relief is needed to guide a plaintiff's future conduct); *Genesis Ctr, PLC v Comm'r of Financial & Ins Services*, 246 Mich App 531, 544 (2001) ("An actual controversy exists when a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve the plaintiffs legal rights.").
[8] Complaint, ¶ 20.
[9] Answer. ¶¶ 9, 11, 17-18.

Nevertheless, trial courts are empowered to issue declaratory judgment despite the existence of factual disputes. *Maxwell v Zawlocki*, unpublished opinion of the Court of Appeals, issued August 24, 2023 (Docket No. 362183), p 4. As our Supreme Court previously explained,

> Contemporary courts have repeatedly recognized that the purpose of the rule is to allow parties to avoid multiple litigation by enabling litigants to seek a determination of questions formerly not amenable to judicial determination, and that the rule is to be liberally construed to provide a broad, flexible remedy with a view to making the courts more accessible to the people. [*Allstate Ins Co v Hayes,* 442 Mich 56, 64-65 (1993) (citations and internal quotation marks omitted).]

Although the *Hayes* Court recognized that much older Supreme Court precedent, namely *Rott v Standard Accident Ins Co*, 299 Mich 384 (1941), had held that declaratory actions were improper when the issues involved questions of fact, the Court clarified that the older and "[n]arrow interpretations of the availability of declaratory relief were decisively rejected with the advent of GCR 1963, 521.[10] The drafters of the court rule recognized the usefulness of the action for declaratory judgment and intended to provide for the broadest type of declaratory judgment procedure." *Hayes*, 442 Mich 65-66 n 8. Thus, the case law cited by Defendant,[11] to conclude that declaratory relief is inappropriate in cases involving disputed questions of fact has been abrogated by the adoption of more recent court rules governing declaratory relief. See also *USAA Cas Ins Co v Martin*, unpublished opinion of the Court of Appeals, issued July 20, 2010 (Docket No. 292307), p 1. Accordingly, the existence of a factual dispute by the Parties does not, in and of itself, render the declaratory judgment claim dismissible under MCR 2.116(C)(8).

Considering the plain and unambiguous language of MCR 2.605(A)(1), to have standing there must be an "actual controversy" between the parties. "An 'actual controversy' under MCR

[10] "MCR 2.605 is comparable to GCR 1963, 521." *Durant v State*, 456 Mich 175, 209 n 37 (1997).
[11] *Rott v Standard Acc Ins Co*, 299 Mich 384 (1941); *Brown v Brodsky*, 348 Mich 16 (1957).

2.605(A)(1) exists when a declaratory judgment *is necessary to guide a plaintiff's future conduct* in order to preserve legal rights." *UAW v Cent Michigan Univ Trustees*, 295 Mich App at 495 (emphasis added). An actual controversy appears to exist in this case. Markedly, Plaintiffs seek a declaratory judgment "that the lines of credit were fraudulently obtained and Defendant has no enforceable remedy at law against Plaintiffs as they did not use the funds obtained."[12] Defendant contends that because Siwicki had already committed the alleged fraud, Plaintiffs do not require a declaratory judgment to guide its future conduct in order to preserve legal rights. However, Defendant has billed and sent collection demands to Plaintiffs, and Plaintiffs have disputed the alleged debts, and remain in default for not having paid the debts. Therefore, the legitimacy and collectability of these debts from Plaintiffs constitutes a live "actual controversy."

This Court finds the reasoning set forth in *Mercurio v Huntington Natl Bank*, 347 Mich App 662, 676 (2023) instructive. In Count I, the *Mercurio* plaintiff alleged that the guaranty should be declared unenforceable because there was a lack of consideration, and it was unconscionable, and in Count IV, the plaintiff sought a declaration that defendants owed and breached a legal duty to plaintiff under 13 CFR 120.140(f). *Id*. at 674. The trial court summarily dismissed the two counts on the basis that they concerned past injuries and did not seek guidance with respect to future conduct; therefore, there was no "actual controversy" as necessary to obtain declaratory relief under MCR 2.605. *Id*. at 675. While the Court of Appeals ultimately affirmed the trial court's dismissal, it did so on a completely different, alternate basis; and the panel expressly disagreed with the basis of the trial court's dismissal.

[12] Complaint, ¶ 20.

> With respect to Count I, contrary to the trial court's ruling, the enforceability of the guaranty did not concern a past injury at the time that the court rendered its ruling: There was yet to be an injury in relation to the guaranty. *In our view, an "actual controversy" necessitating guidance as to future conduct would have existed at the time the suit was commenced if the loans were in default, which was the case, and if the bank were making overtures to plaintiff about collecting on the defaulted loans pursuant to the personal guaranty. In such circumstances, plaintiff would be seeking an order to prevent a real and not merely hypothetical injury*. It is not clear to this panel whether the bank had communicated or indicated to plaintiff an intent to enforce the guaranty before or at the time plaintiff filed her complaint. Of course, we now know that the bank has filed a collections action against plaintiff in a separate suit. *Given the default and probable collectability problems related to the companies, we surmise that the threat of the bank seeking to enforce the guaranty was always real and likely; therefore, we tend to believe that the trial court erred by determining that there was no actual controversy for purposes of declaratory relief under MCR 2.605*. But we conclude that reversal is unwarranted because, as an alternate basis to affirm the court's summary dismissal of Count I, there was adequate consideration in support of the guaranty, and the guaranty was not unconscionable. [*Mercurio*, 347 Mich App at 675–76 (emphasis added).]

In light of the above reasoning, this Court concludes that for the sake of avoiding dismissal under MCR 2.116(C)(8), Plaintiffs have sufficiently pled a claim for declaratory relief based on an "actual controversy" under MCR 2.605. Defendant's motion for summary disposition of Count I is denied.

IV. MCPA CLAIM (COUNT II)

A. ARGUMENTS

Defendant argues that this claim fails because the MCPA specifically exempts transactions that are administrated by another statutory body. Here the credit card transactions at issue are governed by the Consumer Credit Protection Act, which regulates the issuance of credit. Also, the claim pertains to a business account (account 2091), and MCPA does not apply to transactions involving goods or services primarily for business or commercial use. Lastly, Defendant argues that the claim is preempted by the Fair Credit Reporting Act ("FCRA"), which provides the

exclusive framework for regulating the furnishing of consumer credit information to credit reporting agencies ("CRAs").

Plaintiffs fail to rebut Defendant's arguments or otherwise set forth any response in regard to this claim. At oral argument, Plaintiff dismissed this count.

B. THE LAW

The Michigan Consumer Protection Act ("MCPA"), MCL 445.901 *et seq,* is a remedial statute designed to "protect consumers in the purchase of goods and services" and to that end, it prohibits various methods, acts, and practices in trade or commerce and provides remedies for violations of the Act. MCL 445.904 specifically exempts from the Act, however, a lengthy list of transactions including "[a] transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States," MCL 445.904(1)(a). Markedly, the issuance of credit is regulated by the Consumer Credit Protection Act, 15 USC 1601 *et seq.* The chapter of the United State Code governing Consumer Credit Protection is administered by the Bureau of Consumer Financial Protection, 15 USC 1602(b), the Board of Governors of the Federal Reserve System, 15 USC 1602(c), and the Federal Trade Commission, 15 USC 1607(c), among others. See also *Newton v Bank West*, 262 Mich App 434, 439 (2004) (the MCPA does not apply to the lending activity of banks).

Also, the MCPA is inapplicable to business transactions, as it applies only to conduct "of a business providing goods, property or services, primarily for personal, family or household purposes." MCL 445.902(d); see also *Slobin v Henry Ford Health Care,* 469 Mich 211, 216-17 (2003) ("[T]he MCPA ... does not apply to purchases that are primarily for business purposes"), citing with approval *Zine v Chrysler Corp*, 236 Mich App 261, 273 (1999) and *Jackson County*

Hog Producers, Inc v Consumers Power Co, 234 Mich App 72, 84-86 (1999); *McDonald v Thomas M Cooley Law School*, 724 F3d 654, 661 (CA 6, 2013).

The Fair Credit Reporting Act ("FCRA") provides the exclusive framework for regulating the furnishing of consumer credit information to credit reporting agencies. See 15 USC 1681 *et seq*. The FCRA explicitly preempts state law claims relating to the responsibilities of persons who furnish information to consumer reporting agencies. 15 USC 1681t(b)(1)(F). See *Scott v First S Natl Bank*, 936 F3d 509, 519 (CA 6, 2019) (FCRA "preempts state common law claims involving a furnisher's reporting of information to consumer reporting agencies"); *McKenna v Dillon Transp, LLC*, 97 F4th 471, 476 (CA 6, 2024) (affirming dismissal of the plaintiffs state law claims because they were preempted by the FCRA).

C. ANALYSIS

Plaintiffs fail to address any of the substantive arguments made by Defendant, thereby warranting dismissal of this claim. See *FMB-First Mich Bank v Bailey*, 232 Mich App 711, 716-17 (1998) (the trial court granted summary disposition because the defendant failed to meaningfully respond to any of the persuasive arguments the third-party defendants raised, and the Court of Appeals affirmed, holding that the issue was abandoned because it was no adequately addressed by the defendant); *Newton v Bank West,* 262 Mich App 434, 437 n 2 (the failure to properly address an issue constitutes abandonment of the issue); *Houghton v Keller*, 256 Mich App 336, 339-340 (2003) ("failure to properly address the merits of [one's] assertion of error constitutes abandonment of the issue . . . nor may he give issues cursory treatment with little or no citation of supporting authority"); *Walters v Nadell,* 481 Mich 377, 388 (2008) ("[t]rial Courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute"). See also *Russell v Ear Nose & Throat Consultants*,

unpublished per curiam opinion of the Court of Appeals, issued October 27, 2022 (Docket No. 358642), p 5 (affirming dismissal where the plaintiff did not adequately brief her arguments in response to the defendants' motion for summary disposition); *Compatible Laser Products, Inc v Main St Fin Supplies*, unpublished opinion of the Court of Appeals, issued September 20, 2016 (Docket No. 323122), p 12 (affirming the trial court's dismissal where the plaintiffs failed to respond to the argument made). [13]

Plaintiffs do not challenge the balance of the Defendant's substantive arguments. Thus, Plaintiffs have abandoned any contra argument to Defendant's position/analysis that this claim fails because (i) the MCPA specifically exempts transactions that are administrated by another statutory body, namely, the CCPA in this case, which regulates the issuance of credit; and (ii) the claim is preempted by the FCRA. At oral argument, Plaintiff dismissed this count. Accordingly, this claim (Count II) is dismissed by stipulation and pursuant to MCR 2.116(C)(8).

During oral arguments on the Motion for Summary Disposition, both Plaintiffs and Defendant stipulated to dismissal of Count III, despite a Count III not being pled in the Complaint or otherwise presented in the Parties' pleadings or motion.

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that Defendant's Motion for Summary Disposition under MCR 2.116(C)(8) is **DENIED** as to Count I of Plaintiffs' Complaint;

[13] Although unpublished opinions of the Court of Appeals are not binding precedent, MCR 7.215(C)(1), they may, however, be considered instructive or persuasive. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145 n 3 (2010); *In re Application of Indiana Michigan Power Co*, 275 Mich App 369, 380 (2007).

IT IS FURTHER ORDERED that Defendant's Motion for Summary Disposition under MCR 2.116(C)(8) is **GRANTED** as to Count II of Plaintiffs' Complaint.

IT IS FURTHER ORDERED that, pursuant to the Parties' stipulation, Defendant's Motion for Summary Disposition under MCR 2.116(C)(8) is **GRANTED** as to Count III of Plaintiffs' Complaint.[14]

IT IS SO ORDERED.

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 9/24/25

[14] The Court must note that a Count III was not pled in the Complaint or otherwise set forth in any of the Parties pleadings and only came to light when the Parties mentioned a third claim during oral arguments.