UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

THERESA HERRON,

Plaintiff,

Case No. 20-cv-0844-bhl

v.

CREDIT ONE BANK, et al.,

Defendants.

RULING ON ORDER TO SHOW CAUSE AND ORDER DENYING MOTION TO WITHDRAW

On March 29, 2021, the Court entered dismissal orders in this and three similar cases, all filed by the same counsel. In addition to dismissing the cases for lack of standing, the Court required Plaintiff's counsel, Paul Strouse and Thomas Napierala, to show cause why the Court should not sanction them for their handling of these cases. Counsel filed a response on April 12, 2021. (ECF No. 65.) They included a supporting declaration and exhibits filed under seal, but did not file a separate motion to seal, as required under General L.R. 79. (ECF No. 66.) Three days later, Napierala filed a motion to withdraw, citing differences with his co-counsel's litigation preferences and philosophy. (ECF No. 67.) Defendants Capital One Recovery Corporation, Credit One Bank, and Enhanced Recovery Company LLC have filed responses to Counsel's April 12 filing.

Counsel's primary response to the order to show cause is to plead reliance on a decision from Judge Adelman denying a motion to dismiss a similar case. *Allen v. Portfolio Recovery Assocs.*, No. 20-cv-0837 (E.D. Wis. Sept. 29, 2020). Counsel state that they "had been operating under the goo[d] faith assumption that the FCRA cases they filed had standing" because of Judge Adelman's ruling. (ECF No. 65 at 3.) Quoting from the *Allen* decision at length, they assert "Judge Adelman held that Plaintiff's duplicitous complaint had standing." (*Id.*) And they insist that the standing ruling in this case is "a contradictory holding from that of Judge Adelman."

(*Id*.) Finally, "[s]ince the complaint in this case is duplicitous of 20-C-0837, Plaintiff's counsel assumed that the duplicitous pleading, and the factual evidence plead were sufficient." (*Id*. at 4.)

In many ways, the response to the order to show cause typifies the level of care Counsel have employed throughout their handling of this and the other cases. As a basic matter, it is wrong to describe a case and complaint as having standing; the issue is whether a particular *plaintiff* has standing to pursue the claims presented in a case or complaint. Counsel's ham-handed attempt at discussing this issue is unfortunately par for the course. But the greater problem with is that Judge Adelman's decision in *Allen* **says not a word about standing!** The decision addresses only whether the complaint filed in that case (per Counsel's admission, a "cookie-cutter" version of the one filed here) included sufficient facts to survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6) and the plausibility standard under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). *See Allen*, Decision and Order at 2. Counsel's repeated insistence that they relied upon *Allen* for their standing arguments in this case suggests they have either failed to read Judge Adelman's decision or still do not understand the basics of Article III standing, despite having had four cases dismissed based on this fundamental jurisdictional doctrine.

The response is also plagued with errors. Counsel rely on their "goof" faith belief, and repeatedly call the nearly duplicative complaints they have filed, "duplicitous" complaints. They incorrectly filed their supporting documents under seal, without a separate motion for Court permission. This sloppiness and general disregard for the Local Rules fails to meet even the most basic expectations for federal court practitioners. While anyone can make a mistake in the hectic practice of law, the Court expects greater care than this, particularly in responding to an order to show cause. And, unfortunately, these blunders are simply a continuation of similar mistakes that have plagued this entire series of cases.[1]

Counsel also offer little response to the Court's questions about whether they filed this case for an improper purpose. As explained in the Court's prior order, Counsel's pre-lawsuit

[1] For example, Counsel made repeated case opening errors (incorrect cause of action; county code; party names); incorrectly re-filed the complaint with the request for summonses; incorrectly formatted the plaintiff's summonses; filed the magistrate judge jurisdiction form without indicating consent or refusal; unnecessarily asked the clerk to issue third-party subpoenas; filed a document in the wrong case; erroneously labelled a second amended complaint as a "third" amended complaint; failed to timely file a brief on standing as directed by a Court order; and failed to file a redacted version of a restricted document. *See Weeks v. Credit One Bank et al*., 20-cv-0836, *Butler v. 1st Franklin Financial Corp., et al*., 20-cv-0842, *Heuss v. Caliber Home Loans Inc., et al*., 20-cv-0843, *Herron v. Credit One Bank, et al*., 20-cv-0844.

conduct suggests they did not file this lawsuit to remedy a legitimate client problem but were instead setting Defendants up for "technical" violations of a consumer protection statute as a means of ginning up statutory attorney's fees. (ECF No. 64 at 5.) Counsel propose no innocent explanation for their conduct. Instead, Counsel simply repeat generic assertions that the credit agencies' differing reports of Plaintiff's status with each creditor necessarily means that the creditors were themselves inaccurately reporting the credit information. The Court explained why that is a flawed assumption in its March 29, 2021 Order. *See Weeks v. Credit One Bank*, No. 20-cv-836 at 1 (E.D. Wis. March 29, 2021).

Counsel's error-filled handling of this case and their failure to come forward with facts even suggesting a proper purpose for filing it warrant a sanction. The Court would be well within its discretion to compel Counsel to reimburse Defendants for all of their attorneys' fees. Counsel's shoddy handling of their response to the Order to Show Cause has not helped their position. But the Court will show them mercy and, using its inherent authority as well as the power to sanction under Rule 11, will only order Counsel to pay a sanction of $2000 to each remaining defendant, Credit One Bank, IC System Inc, Enhanced Recovery Company LLC, and Capital One Recovery Corporation. *See Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017) ("Federal courts possess certain inherent powers, not conferred by rule or statute, to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. That authority includes the ability to fashion an appropriate sanction for conduct which abuses the judicial process." (internal citations omitted)). While likely far less than defense counsel's actual fees, the Court believes an award of $2000 per defendant, or $8000 total, is sufficient to sanction Counsel for their repeated errors and misconduct and to deter them from engaging in similar behavior in the future.

Finally, the Court orders that both counsel, Paul Strouse and Thomas Napierala, are jointly and severally responsible for paying these sanctions. Napierala's request to abandon the sinking ship with the case already dismissed for lack of standing, and with an order to show cause pending, is denied. Counsel are to satisfy the awards within 60 days if they wish to avoid the possibility of further sanctions.

Accordingly, IT IS HEREBY ORDERED that, pursuant to the Court's inherent authority and under Fed. R. Civ. P. 11, Paul Strouse and Thomas Napierala shall be obligated, jointly and severally, to pay $2,000 to each of the following Defendants: Credit One Bank, IC System Inc,

Enhanced Recovery Company LLC, and Capital One Recovery Corporation. Payment shall be made within 60 days from the date of this order.

IT IS FURTHER ORDERED that Thomas Napierala's Motion to Terminate Representation of Plaintiff (ECF No. 67) is DENIED.

Dated at Milwaukee, Wisconsin on June 22, 2021.

s/ *Brett H. Ludwig*
BRETT H. LUDWIG
United States District Judge