IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, ILLINOIS ATTORNEY GENERAL,	)	
Plaintiff,	)	
v.	)	**No. 14 C 2783**
CMK INVESTMENTS, INC. d/b/a ALL CREDIT LENDERS, an Illinois Corporation,	)	**Judge Ellis**
Defendant.	)	

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT

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Introduction

As All Credit Lenders discussed in its opening memorandum, the Illinois Department of Financial and Professional Regulation, Division of Financial Institutions ("IDFPR") -- the state agency responsible for enforcing compliance with consumer-credit laws and regulations -- has already brought and dismissed an attack on the fundamental legality of All Credit Lenders' revolving credit plan (and the agreement governing that plan -- *i.e.*, the Revolving Credit Plan Agreement and Disclosure ("Agreement")). Now Plaintiff -- another arm of the state -- seeks to retry those claims. But *res judicata* bars Plaintiff from doing so. Moreover, *res judicata* aside, Plaintiff's Complaint fails to sufficiently allege a claim for relief. Shorn of conclusory assertions, Plaintiff's attack focuses on two features of All Credit Lenders' revolving credit plan and Agreement: the account protection fee and the minimum-payment option. Plaintiff asserts that All Credit Lenders failed to properly disclose these loan features and that the features are substantively improper. As All Credit Lenders explained in its opening memorandum, however, the minimum-payment option and the account protection fee are completely proper under both state and federal law, and Plaintiff's argument simply ignores the existence of the Agreements attached to Plaintiff's Complaint (which control over the contradictory allegations in Plaintiff's Complaint).

In her response, Plaintiff ignores many of these problems with her claims. Rather than address these problems, Plaintiff disregards statutory language, misconstrues precedent, ignores fundamental policy considerations, and even suggests that, because Plaintiff is the Attorney General, basic pleading rules do not apply here. Plaintiff's Complaint should be dismissed.[1]

[1] As All Credit Lenders explained in its opening memorandum, although Plaintiff's complaint involves one count under the Consumer Fraud Act (count I) and one count under the Dodd-Frank Act (count II), the substance of Plaintiff's allegations under both counts is the same. Thus, for the most part, when discussing the substance of Plaintiff's claims, All Credit Lenders treats the two counts together. But where warranted by the arguments in Plaintiff's response, All Credit Lenders discusses the two counts separately.

A. Plaintiff's claims are barred by *res judicata*.

As All Credit Lenders discussed in its opening memorandum, this is the second action in which the state of Illinois has attacked the basic legality of All Credit Lenders' revolving credit plan and Agreement. See Def.'s Memorandum in Support of Its Motion to Dismiss Plaintiff's Complaint ("Opening Mem."), pp. 7-10. In the first action, IDFPR dismissed its claims. See Opening Mem., Ex. I-01; Pl.'s Response to Defendant's Motion to Dismiss Plaintiff's Complaint ("Pl.'s Resp."), Ex. 1. Of course, if (as Plaintiff now insists) the revolving credit plan and Agreement are illegal and dangerous, IDFPR would have continued its attack on their legality (governments do not lightly abandon such attacks). Despite IDFPR's judgment, Plaintiff here seeks to re-litigate the attack on the revolving credit plan and Agreement. See Pl.'s Compl., ¶¶ 179, 182. But Plaintiff's attack and the earlier action involve the same parties or their privies, the same claims, and a final judgment on the merits. And, as the Seventh Circuit has stressed, "[w]here a final judgment has been rendered on the merits of a claim, res judicata protects the finality of that judgment and prevents parties from undermining it by attempting to relitigate the claim." Palka v. City of Chicago, 662 F.3d 428, 437 (7th Cir. 2011). *Res judicata* bars Plaintiff's claims in this case.

1. Plaintiff and IDFPR are in privity for *res judicata* purposes.

As All Credit Lenders discussed in its opening memorandum, under Illinois law, *res judicata* applies to a prior judgment from an action involving "the [current] parties *or their privies*." Arlin-Golf, LLC v. Village of Arlington Heights, 631 F.3d 818, 821 (7th Cir. 2011) (noting that, to determine whether *res judicata* applies to a prior judgment arising in Illinois, federal courts apply Illinois *res judicata* law). And -- as federal courts in Illinois and the Seventh Circuit itself have repeatedly made clear -- the "Government, its officers, and its agencies are regarded as being in privity for *res judicata* purposes." Ward v. Jessie Brown V.A. Hosp., No. 05-3633, 2005 WL 3312601,

* 9 (N.D. Ill. Dec. 5, 2005); Licari v. City of Chicago, 298 F.3d 664, 667 (7th Cir. 2008) ("under Illinois law a government and its officers are in privity for purposes of res judicata").

In her response, Plaintiff (1) at times states the incorrect legal standard for applying *res judicata* to a party and (2) at times states the correct standard and then makes unconvincing, conclusory assertions to try to satisfy it.

First, although Plaintiff herself acknowledges that Plaintiff and IDFPR are both agencies of the Illinois government, Plaintiff nonetheless insists that -- because Plaintiff and IDFPR are not the same *party* -- *res judicata* does not apply here. See Pl.'s Resp., p. 19. To support this proposition, Plaintiff discusses at length cases from New York and Washington, D.C. finding that two government agencies are not the same *party* for *discovery* purposes. See Pl.'s Resp., p. 19-20. This is just misdirection. As the Seventh Circuit has made clear, the question for *res judicata* purposes is not whether two cases involve the same *parties*; the question is whether two cases involve "the parties *or their privies*."[2] Arlin-Golf, 631 F.3d at 821 (emphasis added); see also Licari, 298 F.3d at 667.

Second, apparently recognizing the deficiency in her "same parties" argument, Plaintiff also makes a couple of conclusory assertions about privity. See Pl.'s Resp., p. 19. But Plaintiff's privity argument is deficient on two important levels. On the first (and most obvious) level, Plaintiff's privity argument is deficient, because the argument flat-out ignores Seventh Circuit precedent

[2] To try to avoid this problem, Plaintiff cites a couple of Illinois Appellate Court cases finding that two government agencies were not the same *party*, and refusing to apply *res judicata*. See Pl.'s Resp., p. 19. But Plaintiff's reliance on these cases -- City of Chicago v. Illinois Worker's Compensation Commission, 2014 IL App (1st) 121507WC, ¶ 48-49, and Hannigan v. Hoffmeister, 240 Ill. App. 3d 1065, 1075-76 (1st Dist. 1992) -- is misplaced. These cases apply the wrong test. As the Seventh Circuit, the Illinois Supreme Court, and the Illinois Appellate Court itself have all explained, the test is whether two cases involve the same parties *or their privies*. See, e.g., Arlin-Golf, 631 F.3d at 821, Cooney v. Rossiter, 2012 IL 113227, ¶ 33 (2012), Semb's, Inc. v. Gaming & Entm't Mgmt.-Ill., LLC, 2014 IL App (3d) 130111, ¶¶ 14-15. Indeed, when the court in City of Chicago itself considered the collateral-estoppel question, the court applied the right test and found the government agencies were in privity. See 2014 IL App (1st) 121507WC, at ¶ 51-53.

establishing that Plaintiff and IDFPR are in privity.[3] See, e.g., Mandarino v. Pollard, 718 F.2d 845, 850 (7th Cir. 1983). On the second level, even putting aside that the Seventh Circuit has settled the privity-and-government-agencies issue, Plaintiff's privity argument is deficient, because the argument fails to adequately address the general rule governing privity determinations. As the Illinois Supreme Court has stated, "[t]he rule of privity [encompasses] … those who were not parties to the original action, if their interests were adequately represented by someone else." Cooney v. Rossiter, 2012 IL 113227, ¶ 33.

Here, IDFPR licenses, regulates and investigates -- and prosecutes -- lenders like All Credit Lenders to ensure compliance with all applicable laws and regulations.[4] IDFPR launched a frontal attack on the legality of the revolving credit plan and Agreement. See Opening Mem., Group Exs. C, E, F. Eventually, IDFPR dismissed that administrative action (and has not since challenged the fundamental legality of the revolving credit plan or Agreement). See id., Group Ex. K; see also Pl.'s Resp., Ex. 1. But in this action Plaintiff has re-launched the previously-dismissed attack. And Plaintiff -- like IDFPR -- argues that her goals include protecting consumers from improper loan products.[5] Plaintiff's interests and IDFPR's interests are aligned. So even if the Seventh Circuit had not already ruled that government agencies like Plaintiff and IDFPR are in privity (which it has), a finding of privity would be proper here.[6] See Cooney, 2012 IL 113227, at ¶ 33.

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[3] Plaintiff also argues that Plaintiff "is not an officer or agency of DFI or IDFPR, or vice versa." See Pl.'s Resp., p. 19. Fair enough. But that is not the question. The question is whether Plaintiff and IDFPR are both agencies of the Illinois government. See Licari, 298 F.3d at 667. They indisputably are.

[4] See http://www.idfpr.com/dfi/admin/summary.asp (last visited August 13, 2014).

[5] Compare http://www.illinoisattorneygeneral.gov/consumers/index.html (last visited August 13, 2014) (Attorney General seeks to "protect[] Illinois consumers and businesses victimized by fraud, deception, and unfair business practices") with http://www.idfpr.com/dfi/admin/summary.asp (last visited August 13, 2014) (IDFPR seeks "to insure [lenders] are in compliance with all applicable Illinois rules, regulations and statutes").

[6] Although at one point Plaintiff concedes that courts have found privity where the party to the earlier action adequately represented the interests of the non-party, Plaintiff also cites a three-decades-old decision -- Diaz

2. Because the present action and the administrative action involve the same nucleus of operative facts, the present action and the administrative action involve the same claims for *res judicata* purposes.

As All Credit Lenders discussed in its opening memorandum, courts applying Illinois law use a "transactional" test to determine whether two cases involve the same causes of action for *res judicata* purposes. See Opening Mem., p. 13. Under this test, as the Seventh Circuit has stated, "separate claims will be considered the same cause of action…if they arise from a common nucleus of operative facts, regardless of whether they assert different theories of relief." Arlin-Golf, 631 F.3d at 821 (internal quotation marks omitted) (alterations deleted). This test is consistent with *res judicata*'s underlying goals -- namely, to cut down on uncertainty and preserve "judicial economy by preventing piecemeal litigation. See Walsh Const. Co. of Ill. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., 153 F.3d 830, 832 (7th Cir. 1998) (finding dismissal proper under *res judicata*). Here, both the IDFPR action and the present action attack All Credit Lenders' revolving credit plan and Agreement. Thus, the two actions involve a common nucleus of operative facts.

In her response, Plaintiff does not address the transactional test. Rather, Plaintiff applies the incorrect test and then discusses two exceptions to the same-cause-of-action requirement. None of Plaintiff's three arguments is convincing.

First, Plaintiff argues that the two cases do not involve the same theories of relief. See Pl.'s Resp., p. 18. True. But as the Seventh Circuit has unequivocally stated, "separate claims will be considered the same cause of action…if they arise from a common nucleus of operative facts, *regardless of whether they assert different theories of relief*," and subsequent actions involving "the addition of

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v. City of Chicago, 601 F. Supp. 1251 (N.D. Ill. 1984) -- for the proposition that "privity exists if the nonparty [to the first action] fairly and actively participated in the first action." Pl.'s Resp., p. 19 (internal quotation marks omitted). Of course, as Plaintiff herself apparently concedes, such participation is not *necessary* to a finding of privity. See id. (mentioning the "alignment-of-interests" test for privity). In any event, speaking of participation, Plaintiff argues that Plaintiff "does not have any control or advisory authority over [IDFPR's] administrative proceedings or actions." See Pl.'s Resp., p. 20. But even 30 years ago, Diaz recognized that the "right to control" is not necessary to a finding of privity. See 601 F. Supp. at 1253-54.

new theories…[still] satisf[y] the [same-causes-of-action] requirement for applying res judicata." Arlin-Golf, 631 F.3d at 821 (emphasis added).

Second, Plaintiff argues that IDFPR does not have "jurisdiction or enforcement authority" under the Consumer Fraud Act, and therefore there was not a "full and fair opportunity" to litigate the present claims in the earlier proceeding. See Pl.'s Resp., p. 18. This argument fails on two fronts. For one thing, in making this argument, Plaintiff declines to mention (a) that Plaintiff also brings a claim here under the Dodd-Frank Act and (b) a "State regulator [like IDFPR] may bring a civil action or other appropriate proceeding to enforce the provisions of" the Dodd-Frank Act, 12 U.S.C. § 5552(1). For another thing, IDFPR can (quite obviously) bring an action against a lender who is violating Illinois lending law or engaging in unfair or deceptive practices (*i.e.*, engaging in conduct prohibited by the Consumer Fraud Act). See 205 ILCS 670/9 (stating that IDFPR can fine a lender or revoke its license if IDFPR finds that "[a]ny fact or condition exists which, if it had existed at the time of the original application for a license, clearly would have warranted [IDFPR's] refusing to issue the license").

Third, Plaintiff argues that, in the administrative forum, Plaintiff -- or, more correctly, Plaintiff's privity, IDFPR -- could not have obtained "the full measure of relief sought" in the present case. See Pl.'s Resp., p. 18. In this regard, Plaintiff notes that, in this case, Plaintiff seeks restitution and civil penalties under the Consumer Fraud Act. See id. But the Dodd-Frank Act provides for restitution and civil penalties too. See 12 U.S.C. § 5565 (available relief includes "restitution…[and] civil money penalties").[7]

[7] As a result, none of the cases Plaintiff cites to support her full-measure-of-relief argument actually supports that argument. In every one of those cases, there was a legal bar preventing the plaintiff in the first action from seeking the relief sought by the plaintiff in the second action. See Carver v. Nall, 172 F.3d 513, 516 (7th Cir. 1999) (finding *res judicata* did not apply where there was a jurisdictional bar to the plaintiff's seeking in the first action the relief sought in the second); Rooding v. Peters, 92 F.3d 578, 580-81 (7th Cir. 1996) (finding *res judicata* did not apply where the plaintiff's present claim had not accrued at the time of the earlier action); Campbell v. Ill. Dep't of Corrections, 907 F. Supp. 276, 278-79 (N.D. Ill. 1995) (finding *res judicata* did not

In short, IDFPR's action and this action -- both of which involve direct attacks on the legality of the revolving credit plan and Agreement -- involve the same claims.[8]

3. Because there was a dismissal pursuant to settlement in the administrative action, there was a final judgment on the merits in the administrative action.

As All Credit Lenders' discussed in its opening memorandum, federal courts have followed the line of Illinois cases finding that a stipulated dismissal pursuant to a settlement agreement operates as a final judgment on the merits for *res judicata* purposes. See, e.g., Johnson v. Orr, No. 07-5900, 2007 WL 4531798, * 3 (N.D. Ill. Dec. 19, 2007). Indeed, the Seventh Circuit has observed that, "under Illinois law a settlement agreement that a state court adopts and incorporates…is the equivalent of a consent decree," and it "operates to the same extent for *res judicata* purposes as a judgment entered after contest and is conclusive with respect to the matters which were settled by the judgment or decree." 4901 Corp. v. Town of Cicero, 220 F.3d 522, 529 (7th Cir. 2000) (citations omitted) (internal quotation marks omitted). In adopting this approach, these courts have recognized that "[a]ny other interpretation would effectively nullify all settlements because the same claim would be subject to the possibility of future litigation and double recovery." Fox v. Will County, No. 04-7309, 2012 WL 2129393, * 4 (N.D. Ill. June 8, 2012). Here, IDFPR issued numerous orders of fines attacking the legality of All Credit Lenders' revolving credit plan and Agreement. See Opening Mem., Group Exs. C, E, F. Yet IDFPR agreed to settle and dismiss those fines. See id., Ex. I-01. And the administrative law judge entered an order dismissing those fines

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apply where there was a jurisdictional bar to the plaintiff's seeking in the first action the relief sought in the second); Terry v. Watts Copy Sys., Inc., 329 Ill. App. 3d 382, 388 (4th Dist. 2002) (same).

[8] Because Plaintiff makes her "full-and-fair-opportunity" and "full-relief" arguments in challenging the identity-of-claims requirement, All Credit Lenders has also discussed these points in connection with this requirement. In some cases, the court has taken the same approach. In other cases, the court has considered these points as exceptions to *res judicata* generally (as opposed to *res judicata*'s same-claims requirement particularly). Compare Campbell, 670 F.3d 810 with Hayes v. City of Chicago, 670 F.3d 810, 815 (7th Cir. 2012). Here, regardless of where these arguments fit in, they should be rejected.

"pursuant to a settlement." See Pl.'s Resp., Ex. 1. This is a final judgment on the merits for *res judicata* purposes. See 4901 Corp., 220 F.3d at 529.

In her response, Plaintiff first suggests that this Court should not follow the line of Illinois authority finding dismissal pursuant to settlement constitutes a final judgment on the merits for *res judicata* purposes. Then Plaintiff makes two unconvincing attempts to distinguish this case from that authority. All three of Plaintiff's arguments should be rejected.

First, Plaintiff cites several Illinois court decisions finding that dismissal pursuant to settlement is not a final judgment on the merits for purposes of *res judicata*. See Pl.'s Resp., p. 16. Of course, in its opening memorandum, All Credit Lenders fully acknowledged that Illinois cases are divided on this point. See Opening Mem., p. 12. But the Seventh Circuit and courts in this district have followed the line of cases finding that a dismissal pursuant to settlement is a final judgment on the merits.[9] See 4901 Corp., 220 F.3d at 529; Johnson, 2007 WL 4531798, at * 3.

Second, Plaintiff argues that the settlement between All Credit Lenders and IDFPR was not incorporated into a judgment. See Pl.'s Resp., p. 16. Incorrect. As the order attached to Plaintiff's response clearly states, the fines at issue were dismissed "pursuant to a settlement." See Pl.'s Resp., Ex. 1. So Plaintiff's reliance on Carver v. Nall, 172 F.3d 513, 515 (7th Cir. 1999) -- a case in which there was in fact no dismissal entered pursuant to the settlement -- is obviously misplaced.

Third, Plaintiff argues that *res judicata* should not apply, because, although IDFPR agreed to dismiss the orders of fines, the settlement agreement and the dismissal order did not use the magic words "dismissal with prejudice." See Pl.'s Resp., p. 17. Plaintiff's argument is unpersuasive for at least two important reasons. For one, Plaintiff's argument is unpersuasive because it defies common

[9] Plaintiff also argues that -- because there was never a full hearing and adjudication of the fines against All Credit Lenders -- there could not have been a final judgment on the merits. See Pl.'s Resp., p. 17. That, however, is just another way of arguing that dismissal pursuant to settlement should not support *res judicata*. And that is an argument that the federal courts have rejected. See, e.g., 4901 Corp., 220 F.3d at 529.

sense: why would All Credit Lenders agree to a settlement that allowed IDFPR to resurrect the dismissed fines at will? For two, Plaintiff's argument is unpersuasive because it ignores the Seventh Circuit's repeated admonitions against "elevat[ing] form over substance." See, e.g., Roe v. Elyea, 631 F.3d 843, 855 (7th Cir. 2011) (rejecting formalistic argument). In the settlement agreement, IDFPR agreed to dismiss the fines. See Opening Mem., Ex. H-02. The administrative law judge then entered an order removing the fines from the call (which is IDFPR speak for dismissal) pursuant to settlement. See Pl.'s Resp., Ex. 1. That was over a year-and-a-half ago. Since then, IDFPR has repeatedly examined All Credit Lenders' revolving credit plan and Agreement, IDFPR has not attempted to reissue the dismissed fines, and IDFPR has not imposed any additional fines relating to the account protection fee or the minimum-payment option. See Opening Mem., Group Ex. K. Thus, for all intents and purposes, the fines were dismissed with prejudice.

To summarize, IDFPR -- the state agency specifically tasked with regulating lenders and enforcing lenders' compliance with applicable laws -- previously litigated and dismissed an attack on the basic legality of the revolving credit plan and Agreement. During the past two years, IDFPR has repeatedly examined the revolving credit plan and Agreement, and IDFPR has not once reasserted claims of illegality. But now Plaintiff -- another arm of the State's enforcement apparatus -- asserts that the revolving credit plan and Agreement were illegal all along. Plaintiff asks this Court to ignore IDFPR's authority and expertise. And, in so doing, Plaintiff insists that All Credit Lenders is liable for, among other things, enormous penalties and crippling monetary damages. This is precisely the type of litigation *res judicata* is meant to prohibit. Plaintiff's Complaint should be dismissed.

B. Even if Plaintiff's Complaint could survive *res judicata* (which it cannot), Plaintiff's Complaint would be subject to dismissal for failure to state a claim.

Since *res judicata* bars Plaintiff's claims, this Court can dismiss Plaintiff's Complaint without getting bogged down in the substance of Plaintiff's attack on the revolving credit plan and Agreement.

That said, Plaintiff's attack is also deficient as a matter of substance. To begin with, although there is a loan agreement attached to Plaintiff's Complaint, Plaintiff's assertions often conflict with the loan agreement attached to Plaintiff's Complaint or appear nonsensical in light of that loan agreement's terms. Moreover, although Plaintiff repeatedly asserts that the revolving credit plan is "structurally unfair and abusive," that All Credit Lender acted unfairly and deceptively, and that All Credit Lenders took "unreasonable advantage of the consumers' lack of understanding," these conclusory assertions merely parrot the elements of Consumer Fraud Act and Dodd-Frank Act claims. Of course, as the Seventh Circuit has stressed, "allegations in the form of legal conclusions are insufficient to survive a Rule 12(b)(6) motion," and "[t]hreadbare recitals of the elements of the cause of action, supported by mere conclusory statements, do not suffice." McReynolds v. Merrill Lynch & Co., 694 F.3d 873, 885 (7th Cir. 2012) (affirming dismissal under Rule 12(b)(6)) (alteration in original) (internal quotation marks omitted). This is particularly so where, as here, Plaintiff's conclusory assertions arise in the highly-regulated context of consumer lending with its detailed and specific disclosure laws (laws that Plaintiff never once alleges All Credit Lenders failed to comply with). See, e.g., 15 U.S.C. § 1601 et seq.; 12 C.F.R. § 1026.

Conclusory assertions aside, Plaintiff's attack focuses on two features of the revolving credit plan and Agreement: the account protection fee and the minimum payment option. All Credit Lenders discusses Plaintiff's attack on these features in turn.

1. Plaintiff's attack on the account protection fee fails.

a. Because All Credit Lenders complied with the IFSDA, Plaintiff cannot state a claim against All Credit Lenders for violating the IFSDA or charging too much for credit.

Plaintiff asserts that, in violation of the Consumer Fraud Act and the Dodd-Frank Act, All Credit Lenders violated the cap on interest in the Illinois Financial Services Development Act ("IFSDA"). But All Credit Lenders did not violate the IFSDA's cap on interest. And neither the

Consumer Fraud Act nor the Dodd-Frank Act permits Plaintiff to launch a generalized attack on the cost of credit under the revolving credit plan.

i. Plaintiff cannot establish a violation of the IFSDA.

Plaintiff argues that, if you treat the account protection fee as part of the interest-rate calculation for the revolving credit plan, the revolving credit plan's interest rate exceeds the interest-rate cap under the IFSDA. See Pl.'s Resp., pp.3-7. Therefore, Plaintiff argues that the revolving credit plan violates the IFSDA. Moreover, Plaintiff argues that, in offering a product that violates the IFSDA, All Credit Lenders violated the Consumer Fraud Act and the Dodd-Frank Act. But as All Credit Lenders discussed in its opening memorandum, Plaintiff's premise is wrong: the account protection fee *is not interest* under the IFSDA. See Opening Mem., pp. 18-25.

In her response, Plaintiff makes five arguments to try to avoid this conclusion. But none of these arguments succeeds.

First, Plaintiff argues that the "plain language" of the IFSDA requires the conclusion that the account protection fee is interest. See Pl.'s Resp., p. 4. Yet as discussed in All Credit Lenders' opening memorandum, just the opposite is true. To begin with, section 4 of the IFSDA provides that, in connection with a revolving credit plan (like All Credit Lenders'), a financial institution "*may charge and collect interest and other charges*." See 205 ILCS 675/4 (emphasis added). Moreover, section 6 of the IFSDA provides that *"[i]n addition to* or in lieu of interest" a financial institution may charge and collect "annual or other periodic fees for the privileges [like debt-suspension coverage] made available to the borrower under the plan." 205 ILCS 675/6 (emphasis added). So the plain language of the IFSDA shows that charges like the account protection fee (*i.e.*, debt-suspension coverage) are not interest. Further, IDFPR -- *i.e.*, the state regulator that administers the IFSDA -- has confirmed this reading. As IDFPR has explained, the allowable charges identified in the IFSDA "represent examples" and there is *no* restriction "on the possible 'other charges' which a financial institution may collect under a revolving credit plan." See Interpretive Letter 96-1 (January 24, 1996).[10]

Second, Plaintiff points out that, in 2011, the IFSDA was amended to impose a 36-percent cap on interest. See Pl.'s Resp., pp. 10-11. True. But this amendment capped *interest*; it did not cap "other charges." See 205 ILCS 675/4, 675/6. And, as the Supreme Court has stressed, the legislature "is presumed to be aware of an administrative…interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239-40 (2009). Here, the General Assembly presumably was aware of IDFPR's interpretation of the IFSDA distinguishing between interest and other charges. But the General Assembly did not cap non-interest charges (although there is now pending a bill that would amend the IFSDA to do so). See 205 ILCS 675/4, 675/6. As the Seventh Circuit reiterated just last year, the "preeminent canon of statutory interpretation" requires that courts "presume that [the] legislature says in a statute what it means and means in a statute what it says there." Patriotic Veterans, Inc. v. Indiana, 736 F.3d 1041, 1047 (7th Cir. 2013) (internal quotation marks omitted); see also Ohio Neighborhood Fin., Inc. v. Scott, ___ N.E.3d ___, 2014 WL 2609830, * 10 (Ohio June 11, 2014) (rejecting argument that legislature intended to impose lending limitations that it did not specify, and stating that "legislative inaction in the face of knowledge of longstanding statutory interpretation may suggest legislative intent to retain existing law").

Third, Plaintiff points out that section 6 of the IFSDA provides that a lender may collect interest and may collect other charges "as interest." See 205 ILCS 675/6. But contrary to Plaintiff's suggestion, this language does not say that such other charges *are* interest. And, under the federal Truth-in-Lending Act ("TILA"), charges for debt-suspension coverage like the account protection fee are *not* treated as interest. See 12 C.F.R. § 1026.4(b)(1), (b)(10); 12 C.F.R. 1026, Appx. G, table

[10] IDFPR's letter is attached as Exhibit B to All Credit Lenders' opening memorandum and *available at* http://www.idfpr.com/Banks/CBT/LEGAL/INTRLTR/btil9601.pdf (last visited Aug. 21, 2014).

G-17(b). As discussed in section 1b below, Plaintiff cannot demand different treatment of these charges under Illinois law. See Lanier v. Assocs. Fin., Inc., 114 Ill. 2d 1, 17 (1986).

Moreover, as the Seventh Circuit has succinctly stated, "[d]ifferent language in a separate clause in a statute [or bill] indicates [the legislature] intended distinct meanings." Barmes v. U.S., 199 F.3d 386, 389 (7th Cir. 1999). Here, in House Bill 537 amending the Consumer Installment Loan Act ("CILA") and the IFSDA, the General Assembly amended CILA to state, with regard to certain loans, that "[i]n no event shall the *annual percentage rate* on the loan transaction as calculated in accordance with the federal Truth in Lending Act exceed" a specified rate. See 205 ILCS 670/17.2(b)(3) (emphasis added). And in that same bill, the General Assembly amended the IFSDA to specify that, in connection with open-end credit (like All Credit Lenders' revolving credit plan) the creditor may not "charge *interest* in excess of" the specified rate. See 205 ILCS 675/3(a) (emphasis added). Thus, the General Assembly fully recognized the difference between "interest" under TILA and "annual percentage rate" under TILA (which can include non-interest charges). See 15 U.S.C. § 1606(a).

In addition, Plaintiff's reading of the statutory language disregards the Illinois Supreme Court's pronouncement (which Plaintiff herself cites) that "only those [charges] exacted as additional cost for the use of money" can constitute interest. See Equitable Life Assurance Society of the U.S. v. Scali, 38 Ill. 2d 544 (1967). Under Plaintiff's reading, *all* charges -- including insurance charges and returned-payment charges -- would be "interest." See Pl.'s Resp., p. 4 ("according to the plain language of the FSDA, *any Required Fees*…must be included *as interest*") (first emphasis added). But insurance and returned-payment charges are not assessed for the use of money. To the contrary, such charges are assessed for insurance coverage and, for example, bounced checks. See Scali, 38 Ill. 2d at 550-51; 12 C.F.R. § 1026.4(c)(2). Likewise, the account protection fee provides debt-suspension coverage to borrowers who lose their jobs or suffer a suspension of government benefits. See Pl.'s Compl., Ex. 1, p. 1. As the Agreement explains, because of the account protection fee, if the borrower becomes unemployed or stops receiving government benefits, he or she will receive a "suspension of payment under the account protection provision."[11] See id.

What is more, Plaintiff's reading of the statutory language -- under which all fees, including, for example, returned-payment fees are interest -- makes the *ex-ante* calculation of the interest rate impossible. A lender cannot know at the outset of the transaction whether -- *sometime in the future* -- a borrower is going to bounce a payment check. Plaintiff's plain-language argument produces absurd results. So that argument should be rejected. See Treadway v. Gateway Chevrolet Oldsmobile Inc., 362 F.3d 971, 976 (7th Cir. 2004) (courts "interpret statutes to avoid absurd results").

Fourth, turning from statutory language to statutory purpose, Plaintiff argues that the purpose behind the 2011 amendments to CILA and the IFSDA supports her position. See Pl.'s Resp., pp. 3-4. Plaintiff argues that these changes "were designed to combat abusive small-dollar loan products sold to vulnerable Illinois consumers that place them in an endless cycle of debt." See id. Yet in making these changes, the General Assembly did not *outlaw* open-end credit and specifically declined to cap fees for debt-suspension coverage (like the account protection fee) under open-end credit plans. See 205 ILCS 675/4. By contrast, under CILA, the legislature *did cap such fees*. See 205 ILCS 670/17.2(b)(3). The 2011 amendments to CILA and IFSDA do not support Plaintiff's position. They undermine it.

Fifth, Plaintiff argues that the account protection fee must be interest, because the account protection fee "functions as interest in its calculation -- charging, for example, $10 per every $50 of the consumer's outstanding cycle… ." See Pl.'s Resp., p.5. But there are many non-interest charges

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[11] To try to get around this flaw in her argument, Plaintiff simply insists that the account protection fee is a "mere subterfuge" and is not "bona fide." See Pl.'s Resp., pp. 4, 7. But Plaintiff does not even allege (let alone identify anything suggesting) that -- when a borrower lost his job or benefits -- All Credit Lenders refused to suspend the borrower's payments. So Plaintiff cannot avoid dismissal by relying on the "mere subterfuge" language from Scali and Andrews v. Cramer, 256 Ill. App. 3d 766 (1st Dist. 1993).

that are calculated in this way. And debt-suspension coverage like the account protection fee is typically (and non-controversially) one of these charges. See 12 C.F.R. 1026, Appx. G, table G-17(b). The question is not the manner of calculation; rather, as Plaintiff herself recognizes at times, the question is whether the fee is for the use of money or is for some other service (*e.g.*, debt-suspension coverage). The account protection fee falls into the latter category.

In sum, settled law and common sense doom Plaintiff's efforts to rewrite the IFSDA to turn debt-suspension coverage like the account protection fee into interest.

ii. Plaintiff cannot use the Consumer Fraud Act or the Dodd-Frank Act to attack the cost of credit.

In her response, Plaintiff attacks the cost of credit under the revolving credit plan. See Pl.'s Resp., pp. 1-7. But as discussed above and in All Credit Lenders' opening memorandum, the revolving credit plan's charges -- including the account protection fee -- are entirely proper under federal and state law. Nevertheless, Plaintiff suggests that -- even if the size of the account protection fee did not violate the IFSDA -- the size of the account protection fee violated the Consumer Fraud Act and the Dodd-Frank Act. Yet neither one of these statutes permits an attack on the cost of credit.

First, as to the Consumer Fraud Act, the Seventh Circuit just reiterated that even an "unconscionably high price generally is insufficient to establish a claim of unfairness" under the Consumer Fraud Act. Batson v. Live Nation Entertainment, Inc., 746 F.3d 827, 833 (7th Cir. 2014) (Wood, C.J.) (affirming dismissal of Consumer Fraud Act claim). If Plaintiff believes account protection fees should be capped, she should take the issue up with the General Assembly.

Second, as to the Dodd-Frank Act, that statute expressly provides that "[n]o provision of this title shall be construed as conferring authority…to establish a usury limit applicable to an extension of credit." 12 U.S.C. § 5517(o). Plaintiff cannot attack the cost of credit under the Dodd-Frank Act.

b. Because TILA establishes a comprehensive disclosure regime for credit transactions, Plaintiff cannot use the Consumer Fraud Act or the Dodd-Frank Act to demand additional or different credit disclosures.

In her response, Plaintiff insists that All Credit Lenders "misrepresented" the features of the account protection fee and so deceived consumers about the cost of credit under the revolving credit plan. See Pl.'s Resp., p. 2. But as All Credit Lenders discussed in its opening memorandum, TILA and Regulation Z specifically authorize -- indeed require -- the form in which All Credit Lenders disclosed the account protection fee. See 12 C.F.R. § 1026.4(b)(1), (b)(10) (distinguishing between interest, on the one hand, and "[c]harges or premiums paid for…debt suspension coverage" like the account protection fee, on the other); 12 C.F.R. 1026, Appx. G, table G-17(b) (mandating separate disclosure boxes for the annual percentage rate and the account protection fee). And, as the Seventh Circuit has unequivocally stated, "compliance with the disclosure requirements in the federal Truth in Lending Act is a defense to liability under the Illinois [Consumer Fraud] Act." Hoffman v. Grossinger Motor Corp., 218 F.3d 680, 684 (7th Cir. 2000) (recognizing that, where disclosure did not violate TILA, the disclosure was not actionable under the Consumer Fraud Act). Likewise, CFPB Director Cordray has unequivocally stated that, where TILA governs a transaction, an act or practice "would have to violate [TILA] in one or another respect" for that act or practice to be actionable under the Dodd-Frank Act. See *How Will the CFPB Function Under Richard Cordray: Hearing Before the Subcomm. on TARP, Financial Services and Bailouts of Public and Private Programs of the House Committee on Oversight and Government Reform*, 112th Cong. 99 (2012) (statement of Richard Cordray, CFPB Director) ("Cordray Statement").

The Illinois Supreme Court has long recognized the important policy rationales underlying such limitations. As the court has explained, a contrary conclusion would place creditors "in the anomalous position…of being guilty of…misrepresentation by specifically complying with the mandate of the Federal Truth in Lending Act." See Lanier, 114 Ill. 2d at 17 (rejecting Consumer Fraud Act claim where loan disclosure complied with TILA). [12]

In rejecting efforts to use the Consumer Fraud Act to alter or expand TILA's requirements, courts have recognized two important points.

First, as the United States Supreme Court has long recognized, TILA and Regulation Z contain comprehensive rules, specifically designed to govern disclosures in consumer-credit transactions. See Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 568 (1980) (rejecting effort to impose disclosures not required under Regulation Z). TILA and Regulation Z strike "a balance between competing considerations of complete disclosure and the need to avoid information overload." Id. As the Supreme Court has succinctly stated, TILA and Regulation Z recognize that "*[m]eaningful* disclosure does not mean *more* disclosure." Id. (emphasis in original). On the other hand, the "Consumer Fraud Act…does not mandate any particular form or subject of disclosure, but rather is a general prohibition of fraud and misrepresentation." Jackson v. S. Holland Dodge, Inc., 197 Ill. 2d 39, 46-47, 755 N.E.2d 462, 468 (2001) (rejecting effort to use the Consumer Fraud Act to require disclosures not required by TILA). Therefore, "*the Consumer Fraud Act's general prohibition of fraud and misrepresentation in consumer transactions d[oes] not require more extensive disclosure in [a] loan agreement than the disclosure required by the comprehensive provisions of the Truth in Lending Act*." Id. (emphasis added).

Second, if a plaintiff could use the Consumer Fraud Act to circumvent TILA, *ex ante* compliance determinations would be impossible. See id. A creditor would never know whether, in using a loan agreement that complies with federal law, the creditor will be found to have violated

[12] Plaintiff argues that this case is distinguishable from Lanier, because (a) this case does not involve insufficient-disclosure claims; (b) this case does not involve a "legal" product; and (c) this case involves an alleged violation of a specific statute (the IFSDA) as opposed to a "mere" violation of the Consumer Fraud Act. See Pl.'s Resp., pp. 5-6. But this case *does* involve allegations of insufficient disclosures, and the account protection fee *is legal*.

state law. This would destroy the uniform system of disclosures Congress sought to create with TILA. See Smith v. Cash Store Mgmt., Inc., 195 F.3d 325, 326 (7th Cir. 1999). Indeed, it would make compliance impossible.

c. Plaintiff cannot state a claim by simply pretending TILA compliance does not matter.

In her response, Plaintiff does not argue -- nor can Plaintiff argue -- that All Credit Lenders failed to comply with TILA. Instead, Plaintiff makes five arguments to try to get around the effect of TILA compliance on her claims. These arguments should be rejected.

First, Plaintiff argues that "TILA compliance is a red herring," because Plaintiff has asserted that All Credit Lenders "makes various misrepresentations about its product," including that the revolving credit plan "charges a very expensive Required [account protection] Fee, *unbeknownst to consumers*." See Pl.'s Resp., p. 7 (emphasis added). Plaintiff asserts that such claims "have nothing to do with disclosures." See id., pp. 7-8. In so doing, however, Plaintiff reads Illinois Supreme Court precedent way too narrowly.

The Illinois Supreme Court long ago rejected the idea that -- simply by using the label "misrepresentation" -- a plaintiff can successfully attack disclosures authorized by TILA. See Lanier, 114 Ill. 2d at 17. In this case, All Credit Lenders disclosed the account protection fee in the precise manner indicated in TILA and Regulation Z's model-form disclosure. See 12 C.F.R. 1026, Appx. G, table G-17(b). How can Plaintiff seriously assert that the fee was "unbeknownst" to borrowers? Rather than attempt to explain that (unexplainable) assertion, Plaintiff simply insists over and over that All Credit Lenders made "various" misrepresentations. But Plaintiff does not identify a single false statement in the Agreement. Nor could Plaintiff identify any such false statement. The Agreement clearly discloses the existence of the account protection fee, the amount of the account protection fee, and the method for computing the account protection fee. See Pl.'s Compl., Ex. 1.,

p. 1. Plaintiff's conclusory assertions about alleged misrepresentations do not square with the exhibits attached to Plaintiff's complaint.

Second, Plaintiff argues that "[i]t is well-settled that mere compliance with federal statute does not bar liability under the Consumer Fraud Act." See Pl.'s Resp., p. 8. But in the very first case that Plaintiff cites for this proposition -- Price v. Phillip Morris, Inc. -- the court *rejected* the plaintiffs' Consumer Fraud Act claim, and explained that, although mere "compliance with applicable federal law" does not bar liability under the Consumer Fraud Act, "liability under the Consumer Fraud Act is barred…if the action or transaction at issue is specifically authorized by laws administered by a [federal] regulatory body." 219 Ill. 2d 182, 240 (2005). That is precisely the case here. A federal regulatory body -- namely, the CFPB (and, before it, the Federal Reserve Board) -- administers TILA through Regulation Z. And TILA and Regulation Z specifically authorize, indeed mandate, All Credit Lenders' method for disclosing the account protection fee. See 12 C.F.R. § 1026.4(b)(1), (b)(10); 12 C.F.R. 1026, Appx. G, table G-17(b).

Nevertheless, Plaintiff insists that three other cases -- Martin v. Heinold Commodities, Inc., 163 Ill. 2d 33 (1994); Jenkins v. Mercantile Mortgage Co., 231 F. Supp. 2d 737 (N.D. Ill. 2002); and Heastie v. Community Bank of Greater Peoria, 690 F. Supp. 716 (N.D. Ill. 1988) -- support Plaintiff's "mere compliance" argument. Not so. In one of these cases, the court found that the defendant's conduct "was neither specifically authorized by the [federal regulator], nor in compliance with the [regulator's] regulations." See Martin, 163 Ill. 2d at 50. Here, just the opposite is true. In the other cases Plaintiff cites, the court found that, even if the defendant properly disclosed certain services, the plaintiff could state a claim against the defendant for failing to provide those services. See Jenkins, 231 F. Supp. 2d at 750-51 (the defendant disclosed that it would pay mortgage-recording fees to local officials, but did not actually pay those fees); Heastie, 690 F. Supp. at 721 (the defendants disclosed that defendant one was the lender, but defendant one was just a broker and defendant two was actually the lender). Here, Plaintiff has not alleged -- and cannot allege -- that, if a borrower lost his job or government benefits, All Credit Lenders refused to provide the promised account-protection coverage (*i.e.*, refused to suspend the borrowers' payments). Plaintiff's "mere compliance" argument should be rejected.

Third, Plaintiff argues that "absolutely nothing" in Director Cordray's statement about the abusive standard under the Dodd-Frank Act "expresses an opinion or statement that compliance with TILA is non-actionable under the Dodd-Frank Act's abusive standard." See Pl.'s Resp., 10. This argument fails the red-face test. In discussing the abusive standard, Director Cordray clearly stated that, where TILA governs a transaction, an act or practice "would have to violate [TILA] in one or another respect" for that act or practice to be actionable under the Dodd-Frank Act. See Cordray Statement. Plaintiff's contrary argument has no basis in reality.[13]

Fourth, Plaintiff argues that, in determining whether loan disclosures are sufficient, courts "routinely" conduct a factual inquiry beyond the face of the loan agreement. See Pl.'s Resp., pp. 13-14. But when a plaintiff attacks a loan disclosure itself, a determination of TILA compliance ends the court's inquiry. See Hoffman, 218 F.3d at 684; Jackson, 197 Ill. 2d at 46-47.

To try to avoid this conclusion, Plaintiff cites People ex rel. Hartigan v. Knecht Services, Inc., 216 Ill. App. 3d 843 (2d Dist. 1991) and State ex rel. King v. B&B Investment Group, Inc., 2014 WL 2893304 (N.M. June 26, 2014). But in Knecht Services, the Illinois Appellate Court

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[13] On a somewhat related point, in her response, Plaintiff argues that All Credit Lenders' "Constitutional Argument Against The Dodd-Frank Count Is Meritless." See Pl.'s Resp., p. 11. But All Credit Lenders did not actually attack the constitutionality of Dodd-Frank. All Credit Lenders merely stated that, absent Director Cordray's clarification, there would be a constitutional vagueness problem with the Dodd-Frank Act's abusive standard. See Opening Mem., p. 20 n. 11. In any event, although Plaintiff correctly notes that a statute is not impermissibly vague if it provides "fair warning of what is proscribed," Plaintiff incorrectly compares this case to a case challenging as vague the term "unfair" under the Consumer Fraud Act. As the court in that case pointed out, the term "unfair" has a long history of interpretation under the Federal Trade Commission Act, which the Consumer Fraud Act expressly incorporates. See Scott v. Assoc. for Childbirth at Hom, Int'l, 88 Ill. 2d 279, 290 (1981). The term "abusive" in the Dodd-Frank Act does not have any similar historical grounding. So Director Cordray's statement is particularly important here.

needed to look beyond the agreement to consider whether the services contracted for were actually provided. See 216 Ill. App. 3d at 857. There is no similar issue here. In B&B Investment Group, meanwhile, the New Mexico Supreme Court found that the defendant's employees had failed to accurately disclose the annual percentage rate, and that, based on the cost of the defendant's loan product, the loan product violated the New Mexico consumer fraud statute. See 2014 WL 2893304, * 6, 10. But here, as discussed above, All Credit Lenders properly disclosed the account protection fee as required under TILA. See 12 C.F.R. § 1026.4(b)(1), (b)(10); 12 C.F.R. 1026, Appx. G, table G-17(b). And this is not New Mexico. Plaintiff cannot use the Consumer Fraud Act or the Dodd-Frank Act to attack the cost of the revolving credit plan. See Batson, 746 F.3d at 833 (charging an "unconscionably high price generally is insufficient to establish a claim of unfairness" under the Consumer Fraud Act); 12 U.S.C. § 5517(o) ("[n]o provision of this title shall be construed as conferring authority…to establish a usury limit applicable to an extension of credit"). So Plaintiff's reliance on Knecht Services and B& Investment Group is seriously misplaced.[14]

[14] In B&B Investment Group, the New Mexico Supreme Court found that, as a group, borrowers who use alternative financial products (like payday loans) "exhibit certain cognitive biases that lead them to make decisions that are contrary to their interests" and "exhibit heuristic biases that work to their detriment." See 2014 WL 2893304, at * 4-6. Stated in plain English, the New Mexico Supreme Court said these borrowers are irrational and incapable of making intelligent decisions. See id. To support these (shockingly demeaning) generalizations, the court relied on testimony from a professor who studies consumer finance. See id., at * 5 n. 3. But experts in this field have disagreed strongly with the paternalistic borrowers-are-irrational approach. See Robert L. Clarke and Todd J. Zywicki, *Payday Lending, Bank Overdraft Protection, and Fair Competition at the Consumer Financial Protection Bureau*, 33 Rev. Banking & Fin. L. 235, 247-254 (2013) (discussing research on payday loan users, and observing that "those who use the product *generally are aware of the price and are satisfied with the product*") (emphasis added). Moreover, these experts recognize what the New Mexico Supreme Court apparently fails to comprehend: if alternative financial products are unavailable, people who need access to those products will be forced to elect less-desirable alternatives. See id. at 246-47. Here fortunately, since All Credit Lenders did not violate the Consumer Fraud Act or the Dodd-Frank Act, this Court need not wade into these kinds of legislative-style policy debates. See Powerex Corp. v. Reliant Energy Servs., Inc., 551 U.S. 224, 237 (2007) ("whether [certain] concern[s] outweigh[] [other concerns]…is a policy debate that belongs in the halls of Congress, not in the hearing room of this Court"); cf. Ohio Neighborhood Fin., Inc. v. Scott, ___ N.E.3d ___, 2014 WL 2609830, * 10 (Ohio June 11, 2014) (rejecting challenge to alternative loan product, and stating that "[i]t is not the role of the courts to establish legislative policy or to second-guess policy choices the [legislature] makes").

Fifth, Plaintiff argues that TILA does not preempt the Consumer Fraud Act. See Pl.'s Resp., p. 8. *Here's* your red herring: All Credit Lenders has never argued that TILA preempts the Consumer Fraud Act. On the contrary, All Credit Lenders has argued only that, because the disclosure of the account protection fee complies with TILA, *the Consumer Fraud Act itself bars Plaintiff's claims* that All Credit Lenders failed to sufficiently disclose the account protection fee. And in Price -- which, again, Plaintiff herself cites -- the Illinois Supreme Court recognized this important distinction. The court explained that, unlike preemption under TILA, exemption under the Consumer Fraud Act "is dependent on the intent of the Illinois General Assembly to allow regulated entities to engage in commercial conduct that might otherwise be alleged to be fraudulent or deceptive without the risk of civil liability, so long as the content is specifically authorized by [a] regulatory body." Price, 219 Ill. 2d at 273-74. Plaintiff's preemption argument is just more misdirection.

To summarize, in addition to conflicting with the IFSDA, Plaintiff's attack on the account protection fee disregards long-standing precedent on the effect of TILA compliance. Plaintiff's attack on the account protection fee should be dismissed.

2. Plaintiff's claims about the minimum-payment option fail.

a. Because Plaintiff's attack on the minimum-payment option involves an attack on open-end credit itself, Plaintiff's attack should be rejected.

In her response, Plaintiff argues that the minimum-payment option is improper, because it involves "a payment plan that has no pay-off deadline…, causing [borrowers] to be in an endless cycle of debt." See Pl.'s Resp., p. 7. But as All Credit Lenders explained in its opening memorandum, Plaintiff simply ignores how open-end credit (like All Credit Lenders' revolving credit plan) works.

Unlike with closed-end credit (a car loan, say), with open-end credit there generally is no pay-off deadline. On the contrary, as Regulation Z explains, in open-end credit the "[t]he amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor*) is generally made available* to the extent that any outstanding balance is repaid." 12 C.F.R. § 226.2(a)(20) (emphasis added). Open-end credit is completely legal under Illinois and federal law. See 205 ILCS 675/3; 12 C.F.R. § 1026.4(b). Indeed, the IFSDA was enacted to rectify "an adverse regulatory climate involving consumer revolving credit laws," to encourage financial institutions in Illinois to offer revolving credit plans, and to modernize and ease "the restrictions on consumer revolving credit plans" to make them "competitive with those offered by financial institutions located in other states." 205 ILCS 675/2. Thus, Plaintiff's attack on the minimum-payment option's operation should be rejected.

To try to avoid this conclusion, Plaintiff simply insists that the history of the IFSDA is irrelevant, because the Illinois General Assembly recently has enacted legislation to combat loan products that allegedly placed consumers "in an endless cycle of debt." See Pl.'s Resp., pp. 3-4. But Plaintiff's argument is unconvincing for at least two important reasons.

First, although the Illinois General Assembly has actively legislated consumer-lending, the Illinois General Assembly has not repealed the IFSDA or otherwise attempted to outlaw open-end credit. Moreover, unlike with closed-end credit, the General Assembly has specifically declined to require that open-end credit be fully amortizing (*i.e.*, structured so that, if a borrower makes all required payments when due, the borrower will pay off the loan by the end of a pre-set payment period). Contra 205 ILCS 675/3(b)(3) with 205 ILCS 670/15(e)(3). "If [the Illinois General Assembly] had intended to [create different rules], it could easily have done so." See Sebelius v. Cloer, 133 S. Ct. 1886, 1893 (2013) (rejecting the government's attempt to read into legislation limitations that Congress did not put there).

Second, in arguing that the lack of a fixed payoff deadline makes a loan improper, Plaintiff does not simply attack All Credit Lenders' revolving credit plan. On the contrary, Plaintiff attacks open-end credit (like credit cards) in general. Plaintiff obviously offers no authority to support the conclusion that all of our credit cards are illegal. So Plaintiff's fixed-payoff-deadline argument should be rejected.

b. Because All Credit Lenders' Agreement disclosed and explained the minimum-payment option to borrowers, Plaintiff's claim that All Credit Lenders failed to disclose and explain the minimum-payment option to borrowers should be rejected.

As All Credit Lenders pointed out in its opening memorandum, Plaintiff attaches copies of the Agreement to the Complaint. The Agreement -- which borrowers had to sign when opening an account -- specifically explains the effect of making minimum payments. See, e.g., Pl.'s Compl., Ex. 1, p. 2. Indeed, the Agreement does so *under a bold heading written in all capital letters*. See id. Nevertheless, in her Complaint, Plaintiff asserts that All Credit Lenders violated the Consumer Fraud Act and the Dodd-Frank Act by failing to advise consumers that, "in order for their principal balance to decrease, [they] need to pay more than the minimum amounts that Defendant instructs them to pay." Pl.'s Compl., ¶ 90. That is to say, Plaintiff asserts that All Credit Lenders misrepresented that the minimum payment "include[s] only interest and fees." Id., ¶ 179g. Here again, though, Plaintiff's own exhibits make Plaintiff's conclusory assertions look ridiculous. As Plaintiff's exhibits clearly state, the "total minimum payment will be the total interest charged for the billing cycle plus the Account Protection Fee and paper billing fee if any." See Pl.'s Compl., Ex. 1, p. 2. Moreover, before each payment due date, All Credit Lenders provided a periodic billing statement clearly stating: "When you make only the minimum payment, you will not reduce your principal balance." See Opening Mem., Ex. L, p. L-02.

Despite these written disclosures, in her response Plaintiff makes four arguments to try to salvage her claims that All Credit Lenders misrepresented the operation of the minimum-payment option. But none of Plaintiff's arguments is persuasive. On the contrary, Plaintiff's arguments (once again) ignore the Agreement's existence and its obvious effect on Plaintiff's claims.

First, Plaintiff argues that, in pointing out that the exhibits to Plaintiff's Complaint contradict the Complaint's assertions, All Credit Lenders relies on "inappropriate considerations on a 12(b)(6) motion to dismiss where Plaintiff's well-pleaded facts are taken as true." See Pl.'s Resp., pp. 10-11. The Seventh Circuit would disagree. Indeed, as the Seventh Circuit has made absolutely clear with regard to 12(b)(6) motions to dismiss, "[t]o the extent contracts contradict the Complaint, *the contracts trump the facts or allegations presented in the complaint*." Chicago Dist. Council of Carpenters Welfare Fund v. Caremark, Inc., 474 F.3d 463, 466 (7th Cir. 2007) (emphasis added) (affirming dismissal under Rule 12(b)(6)); see also McCauley v. City of Chicago, 671 F.3d 611, 616 (7th Cir. 2011) (affirming dismissal under Rule 12(b)(6), and stating that, "where an exhibit conflicts with the allegations of the Complaint, the exhibit typically controls"). Of course, this rule tracks what the Seventh Circuit has found to be one of Rule 12(b)(6)'s most-important features: it allows a court to weed out non-meritorious claims before the parties and the court "sink[] into" time-consuming, expensive discovery. See Brandt v. Schal Associates, Inc., 960 F.2d 640, 649 (7th Cir. 1992) (recognizing the importance of Rule 12(b)(6)).

Second, Plaintiff argues that, regardless of what the Agreement said, borrowers "did not know that the minimum payment did not include principal." See Pl.'s Resp., p. 13. But as All Credit Lenders discussed in its opening memorandum, "in Illinois, a party to a contract is charged with knowledge of and assent to a signed agreement." Johnson v. Orkin, LLC, 928 F. Supp. 2d 989, 1007 (N.D. Ill. 2013) (rejecting the plaintiff's efforts to avoid unambiguous terms of the contract). As the Seventh Circuit would tell Plaintiff in this case, "[t]o the extent [the borrowers] w[ere] ignorant of [the terms] under the loan agreement, it was because [they] refused to apprise [themselves] of those rights by reading the appropriate documents." Randazzo v. Harris Bank Palatine, N.A., 262 F.3d 663, 670 (7th Cir. 2001) (rejecting the borrower's fraud and mistake claims). And there is good reason for the Seventh Circuit's position. As Judge Easterbrook has explained, allowing a borrower's claims to go forward under such circumstances, "would undermine the validity of the written word and encourage people…to…come up with hard-to-refute tales of not reading or understanding the documents they sign." Novitsky v. Am. Consulting Eng'rs., L.L.C., 196 F.3d 699, 702 (7th Cir. 1999) (rejecting attempts to avoid the terms of a written agreement).

Third, Plaintiff argues that, although written agreements might bar private parties from making claims like the one Plaintiff makes here, this rule does not apply to Plaintiff, because she is the Attorney General. See Pl.'s Resp., 12. In other words, Plaintiff suggests that, when Plaintiff brings a lawsuit, Plaintiff gets to determine which rules apply. That suggestion is outrageous. Yet Plaintiff tells this Court that case law supports her position. In this regard, Plaintiff quotes the Illinois Appellate Court's observation in People ex rel. Hartigan v. Lann that "[a]n action filed by the Attorney General under the [Consumer Fraud] Act is essentially a law enforcement action designed to protect the public, not to benefit private parties." See Pl.'s Resp., p. 12 (quoting 225 Ill. App. 3d 236, 240 (1st Dist. 1992)).

But Lann had absolutely nothing to do with what the Attorney General suggests. The only question in Lann was whether private individuals are "parties" to an Attorney General action for discovery purposes (the answer is no). See 225 Ill. App. 3d at 241. Lann does not come anywhere close to supporting the proposition that -- just because Plaintiff is the Attorney General -- Plaintiff can properly allege that a defendant failed to provide information even where the documents attached to Plaintiff's Complaint show that the defendant actually provided that information. That suggestion is contrary to settled Seventh Circuit law. See Caremark, 474 at 466; cf. 7 Am. Jur. 2d Attorney General § 36 ("Absent a special provision, the attorney general must comply with the same rules of procedure as other litigants"). No court has every made such a radical pronouncement. And this Court ought not do so here.[15]

Fourth, Plaintiff argues that "simply because Plaintiff refers to [an] agreement or contract in reciting her claims does not make the claims contract-based when other unfair or deceptive practices are alleged." See Pl.'s Resp., p. 12. Fair enough. But as courts in Illinois have repeatedly recognized, when the "unfair or deceptive" practices a plaintiff alleges are the contract terms themselves, the plaintiff's unfair-and-deceptive practices claims are (obviously) based on the contract.[16] See, e.g., Quinn v. Ameriquest Mortgage Co., No. 03-5059, 2004 WL 316408, *2 (N.D. Ill. Jan. 26, 2004) (rejecting argument that fee disclosure violated the Consumer Fraud Act where disclosure was sufficient under TILA); Beckett v. H&R Block, Inc., 306 Ill. App. 3d 381, 387 (1st Dist. 1999) (rejecting argument that electronic-filing fee disclosure violated the Consumer Fraud Act where disclosure was proper under TILA).

In sum, Plaintiff cannot avoid dismissal by pretending the Agreement does not exist or does not say what it says.

Conclusion

Plaintiff's claims are barred by res judicata and are substantively deficient. Thus, for the reasons stated, All Credit Lenders respectfully requests that this Court dismiss Plaintiff's Complaint and grant any additional relief this Court deems appropriate.

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[15] As Plaintiff is well aware, when the *legislature* wants to alter the rules for Plaintiff, the legislature is fully capable of doing so expressly. See People ex. rel. Madigan v. United Constr. Of Am., Inc., 2012 IL App (1st) 120308, ¶¶ 8-9, 16 (rejecting Plaintiff's interpretation of the Consumer Fraud Act's intent provision, but recognizing that, unlike a private litigant, Plaintiff need not show the defendant's conduct proximately caused harm to individual consumers).

[16] For this reason, Plaintiff's reliance on Bires v. Waltom, LLC, 662 F. Supp. 2d 1019 (N.D. Ill. 2009) is misplaced. See Pl.'s Resp., p. 12. In Bires, because the plaintiff alleged that the defendant violated the Consumer Fraud Act by tricking the plaintiff into moving to a new town and then pressuring and coercing the plaintiff into signing an agreement, the court found the plaintiff stated (some) non-contract-based claims. See 662 F. Supp. 2d at 1036. Here, by contrast, Plaintiff challenges the terms of the Agreement itself.

Dated: September 18, 2014

CMK INVESTMENTS, INC. d/b/a ALL CREDIT LENDERS, Defendant

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CERTIFICATE OF SERVICE

I, Jonathan N. Ledsky, an attorney, hereby certify that a true and correct copy of the foregoing, **Defendant's Reply Memorandum In Support Of Its Motion To Dismiss Plaintiff's Complaint**, was on September 18, 2014 served electronically via CM/ECF e-Filing upon:

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s/ Jonathan N. Ledsky