

United States Court of Appeals  
For the Eighth Circuit

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No. 18-3698

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Leonard Luna, on behalf of himself and all others similarly situated

*Plaintiff - Appellant*

v.

Walmart Transportation, LLC, an Arkansas Corporation

*Defendant - Appellee*

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Appeal from United States District Court  
for the Western District of Arkansas - Fayetteville

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Submitted: August 9, 2019

Filed: August 14, 2019

[Unpublished]

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Before COLLTON, ERICKSON, and GRASZ, Circuit Judges.

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PER CURIAM.

In this action under the Fair Credit Reporting Act, Leonard Luna appeals following the district court's<sup>1</sup> Federal Rule of Civil Procedure 12(b)(6) dismissal for

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<sup>1</sup>The Honorable Timothy L. Brooks, United States District Judge for the Western District of Arkansas.

failure to state a claim. We find no basis for reversal. Even considering the allegations in a declaration Luna offered in response to the motion to dismiss, we conclude that the complaint would fail. See Phipps v. FDIC, 417 F.3d 1006, 1010 (8th Cir. 2005) (Rule 12(b)(6) dismissal may be affirmed on any basis supported by record); cf. Doe v. Dardenelle Sch. Dist., 928 F.3d 722, 727 (8th Cir. 2019) (reviewing denial of leave to amend for abuse of discretion, and questions of futility de novo). We also find that discovery was properly stayed after the court ruled from the bench that the first amended complaint was dismissed for failure to state a claim, and advised the parties a written order would be forthcoming. See First Commercial Trust Co., N.A. v. Colt's Mfg. Co., 77 F.3d 1081, 1083 n.4 (8th Cir. 1996) (litigants have no right to discovery absent plausible legal theory). The judgment is affirmed. See 8th Cir. R. 47B.

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