

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

JAMES G. RIGBY,  
Plaintiff,

vs.

FIA CARD SERVICES, N.A., d/b/a  
BANK OF AMERICA,  
Defendant.

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CIVIL ACTION NO. 11-00373-KD-M

ORDER

After due and proper consideration of all portions of this file deemed relevant to the issue raised, and a *de novo* determination of those portions of the Report and Recommendation to which objection is made, the Report and Recommendation of Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) and dated November 21, 2011, is hereby **ADOPTED** as the opinion of this Court. Accordingly, it is **ORDERED** that Defendant’s Motion to Dismiss (Docs. 8,9) is **GRANTED** as follows: Count I is **dismissed with prejudice** since there is no billing error and therefore no violation of the FCBA; although Plaintiff voluntarily dismisses Count II without prejudice in his Response, Count II is **dismissed with prejudice**; Counts III and IV are **dismissed with prejudice** since Plaintiff fails to state a claim upon which relief may be granted.

**DONE and ORDERED** this the **21<sup>st</sup>** day of **December 2011**.

/s/ Kristi K. DuBose  
**KRISTI K. DuBOSE**  
**UNITED STATES DISTRICT JUDGE**