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**United States District Court  
Central District of California**

KRISTAL ALVAREZ,  
  
Plaintiff,  
  
v.  
  
GALPIN MOTORS, INC., et al.,  
  
Defendants.

Case No 2:22-cv-01598-ODW (MRWx)

**ORDER GRANTING TRANS  
UNION’S MOTION TO  
DISMISS [22]; GRANTING  
AMERICAN HONDA FINANCE  
CORPORATION’S MOTION TO  
DISMISS [23]; and DENYING  
EQUIFAX’S JOINDER [37]**

Defendant Trans Union LLC and Defendant American Honda Finance Corporation (“Honda Finance” or “AHFC”) each move to dismiss the claims Plaintiff Kristal Alvarez asserts against them in her operative Amended Complaint. (Trans Union Mot., ECF No. 22; AHFC Mot., ECF No. 23; *see* Notice of Removal Ex. A (“Am. Compl.”), ECF No. 1-1.) Defendant Equifax Information Services LLC seeks to join in Trans Union’s Motion to Dismiss. (Joinder, ECF No. 37.) After carefully considering the papers filed in connection with the Motions and Joinder, the Court deemed the matters appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15. For the reasons that follow, the Court **GRANTS** Trans Union’s and Honda Finance’s Motions and **DENIES** Equifax’s Joinder.

1 **A. Trans Union Motion to Dismiss**

2 Alvarez brings a single claim against Trans Union, for violation of the Fair  
3 Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681e(b). (Am. Compl. ¶¶ 111–24.)  
4 Trans Union moves to dismiss this claim pursuant to Federal Rule of Civil Procedure  
5 (“Rule”) 12(b)(6) and noticed the motion hearing on April 18, 2022. (See Notice of  
6 Mot. 1, ECF No. 22.) Alvarez was thus required to file any opposition no later than  
7 March 28, 2022. See C.D. Cal. L.R. 7-9 (requiring a party opposing a noticed motion  
8 to file an opposition no later than twenty-one days before the designated hearing date).  
9 On April 11, 2022, two weeks after the deadline to oppose, the Court received  
10 Alvarez’s Opposition to Trans Union’s Motion. (Opp’n TU Mot., ECF No. 40.)

11 Central District Civil Local Rule (“Local Rule”) 7-12 provides that a failure to  
12 timely file a required responsive document such as an opposition may be deemed as  
13 consent to the granting of the motion. See also *Ghazali v. Moran*, 46 F.3d 52, 54  
14 (9th Cir. 1995) (upholding district court’s dismissal of plaintiff’s complaint based on  
15 plaintiff’s failure to oppose motion as required by local rules). Prior to dismissing an  
16 action, or a defendant, pursuant to a local rule, courts must weigh: (1) the public  
17 interest in expeditious resolution of cases, (2) the court’s need to manage its docket,  
18 (3) the risk of prejudice to the defendants, (4) public policy favoring disposition of  
19 cases on the merits, and (5) the availability of less drastic measures. See *Ghazali*,  
20 46 F.3d at 53 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)).  
21 “Explicit findings with respect to these factors are not required.” *Ismail v. County of*  
22 *Orange*, No. SACV 10-00901 VBF (AJW), 2012 WL 12964893, at \*1 (C.D. Cal.  
23 Nov. 7, 2012) (first citing *Henderson*, 779 F.2d at 1424; and then citing *Malone v.*  
24 *U.S. Postal Serv.*, 833 F.2d 128, 129 (9th Cir. 1987), *cert. denied*, 488 U.S. 819  
25 (1988)). In *Ghazali*, the Ninth Circuit found these factors satisfied where the plaintiff  
26 received notice of the motion and had ample opportunity to respond yet failed to do  
27 so. See 46 F.3d at 54.

1 The Court has considered the *Ghazali* factors and finds they support granting  
2 Trans Union’s Motion. Although Alvarez is proceeding pro se, she was properly  
3 served with Trans Union’s Motion, and Trans Union’s attorney attempted several  
4 times to confer with Alvarez prior to filing the Motion. (See Certificate of Service,  
5 ECF No. 23-3; Decl. Kristin L. Marker ¶¶ 5–7, ECF No. 22-1.) Therefore, Alvarez  
6 received notice of the Motion and had sufficient opportunity to timely respond but  
7 failed to do so. Alvarez signed her Opposition on April 9, 2022, nearly two weeks  
8 after her deadline, and offers no explanation for her delay in opposing Trans Union’s  
9 Motion. (See generally Opp’n TU Mot.) As such, the Court finds granting Trans  
10 Union’s Motion as unopposed is appropriate. See C.D. Cal. L.R. 7-12; *Ghazali*,  
11 46 F.3d at 54.

12 The Court also considers Trans Union’s Motion on its merits and finds that  
13 Alvarez fails to state a claim against Trans Union in her Amended Complaint. To  
14 state a claim under § 1681e(b) of the FCRA, a plaintiff must establish that the credit  
15 reporting agency prepared a report containing inaccurate information; however, an  
16 agency will *not* be liable if it establishes that it followed reasonable procedures.  
17 *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995). Thus,  
18 “[l]iability under § 1681e(b) is predicated on the reasonableness of the credit reporting  
19 agency’s procedures in obtaining credit information.” *Id.*

20 Here, Alvarez’s sole allegation against Trans Union is that it “failed to follow  
21 any reasonable procedures to maximum [sic] possible accuracy of the information in  
22 reports that it prepared.” (Am. Compl. ¶ 124.) Alvarez does not allege that Trans  
23 Union prepared any credit report in her name or that such a report contained  
24 inaccurate information. (See *id.* ¶¶ 111–24.) Moreover, Alvarez does not allege any  
25 facts related to procedures or policies that were purportedly unreasonable, nor how  
26 Trans Union’s purported failure to follow reasonable procedures caused Alvarez any  
27 damages. (See *id.*) Thus, Alvarez fails to state a claim against Trans Union for  
28 violation of the FCRA. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“To survive

1 a motion to dismiss, a complaint must contain sufficient factual matter, accepted as  
2 true, to state a claim to relief that is plausible on its face.” (internal quotation marks  
3 omitted)).

4 Even were the Court to consider Alvarez’s untimely opposition, the same result  
5 obtains. In her Opposition, Alvarez fails to coherently address the above deficiencies.  
6 (See Opp’n TU Mot.) Although a pro se complaint must be construed liberally, a  
7 “liberal interpretation . . . may not supply essential elements of the claim that were not  
8 initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268  
9 (9th Cir. 1982).

10 Accordingly, the Court **GRANTS** Trans Union’s Motion to Dismiss Alvarez’s  
11 claim against it, as unopposed and for failure to state a claim. As the Court cannot  
12 find that any amendment would be futile, dismissal is **with leave to amend** to address  
13 the above-noted deficiencies. *Carrico v. City & Cnty. of San Francisco*, 656 F.3d  
14 1002, 1008 (9th Cir. 2011). Amendment beyond the permitted scope will be  
15 dismissed or stricken.

16 **B. Honda Finance Motion to Dismiss**

17 Alvarez asserts seven claims against Honda Finance: (1) violation of the  
18 California Consumers Legal Remedies Act; (2) violation of the Song-Beverly  
19 Consumer Warranty Act; (3) violation of the California Unfair Competition Law;  
20 (4) Breach of Implied Warranty of Merchantability; (5) Negligence;  
21 (6) Unconscionability; and (7) Manufacturer Defect. (Am. Compl. ¶¶ 29–110.)  
22 Honda Finance moves to dismiss all claims against it on the ground that Alvarez has  
23 named the wrong defendant. (AHFC Mot. 1.) Honda Finance argues that all of  
24 Alvarez’s allegations against it demonstrate Alvarez’s mistaken belief that Honda  
25 Finance is an automobile manufacturer, when in truth Honda Finance is a finance  
26 company that provides loans in connection with the purchase or lease of vehicles.  
27 (*Id.*; Req. Judicial Notice Ex. 1, ECF No. 23-1 (Honda Finance’s “Statement of  
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1 Information” filed with the California Secretary of State, certifying that Honda  
2 Finance’s business is “Wholesale and Retail Financing”).)

3 Like Trans Union, Honda Finance noticed its Motion for hearing on April 18,  
4 2022. Similarly, then, Alvarez’s deadline to oppose Honda Finance’s Motion was  
5 March 28, 2022. *See* C.D. Cal. L.R. 7-9. Alvarez did not oppose Honda Finance’s  
6 Motion, timely or otherwise, nor has she filed any other response. Consideration of  
7 the *Ghazali* factors here likewise convinces the Court that granting the Motion as  
8 unopposed is appropriate. Honda Finance served Alvarez with the Motion, so she had  
9 notice of the Motion and sufficient opportunity to respond but failed to do so.  
10 Granting Honda Finance’s Motion is even more warranted where, unlike Trans  
11 Union’s Motion discussed above, Alvarez did not oppose or respond to Honda  
12 Finance’s Motion at all. Moreover, Alvarez’s Opposition to Trans Union’s Motion  
13 cannot be construed as also opposing Honda Finance’s Motion because the Opposition  
14 does not mention or allude in any way to Honda Finance or its arguments, and it  
15 expressly refers only to Trans Union and Trans Union’s counsel. (*See generally*  
16 *Opp’n TU Mot.*)

17 Accordingly, pursuant to Local Rule 7-12 and *Ghazali*, the Court **GRANTS**  
18 Honda Finance’s Motion as unopposed and **DISMISSES** Alvarez’s Amended  
19 Complaint as to Honda Finance. As Alvarez elected not to oppose and therefore  
20 consented to the Court dismissing Honda Finance, dismissal of Honda Finance is  
21 **without leave to amend.**

### 22 **C. Equifax Joinder**

23 As discussed above, Trans Union noticed its Motion for hearing on April 18,  
24 2022, meaning Alvarez’s Opposition was due by March 28, 2022. After Alvarez  
25 failed to timely oppose Trans Union’s Motion, on April 2, 2022, Equifax filed its  
26 Joinder in Trans Union’s Motion. Equifax argues that all the reasons set forth in  
27 Trans Union’s Motion apply equally to it. (*See Joinder 1.*)

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1 The Court finds Equifax's Joinder improper for several reasons. First, a  
2 defendant may not delay its request to join a dispositive motion until a plaintiff fails to  
3 oppose the motion. By doing so here, Equifax deprived Alvarez of notice that Equifax  
4 sought dispositive relief and an opportunity to respond. Second, Equifax has filed an  
5 Answer to the Amended Complaint, (*see* Notice of Removal Ex. A ("Equifax  
6 Answer"), ECF No. 1-1), and is therefore prohibited from joining Trans Union's  
7 Rule 12(b)(6) Motion, *see* Fed. R. Civ. P. 12(b) (prohibiting parties from moving for  
8 dismissal under Rule 12(b)(6) after having answered). Equifax acknowledges this  
9 inconsistency and requests that the Court consider its Joinder as a Motion for  
10 Judgment on the Pleadings pursuant to Rule 12(c). (Joinder 2 n.1.) The Court  
11 declines to permit Equifax to circumvent the notice requirements of federal motion  
12 practice in this way. Equifax's Joinder is **DENIED** without prejudice to Equifax  
13 filing a regularly noticed motion pursuant to the Federal and Local Rules.

14 **D. Conclusion**

15 For the reasons discussed above, Trans Union's Motion to Dismiss is  
16 **GRANTED with leave to amend.** (ECF No. 22.) Honda Finance's Motion to  
17 Dismiss is **GRANTED without leave to amend.** (ECF No. 23.) Equifax's Joinder is  
18 **DENIED.** (ECF No. 37.)

19 Alvarez may file a Second Amended Complaint, to be **RECEIVED by the**  
20 **Court no later than June 10, 2022.** If Alvarez files a timely Second Amended  
21 Complaint, Defendants shall Answer or otherwise respond in accordance with  
22 Rule 15(a)(3). **If the Court does not RECEIVE a Second Amended Complaint**  
23 **from Alvarez by the date above, the dismissal in favor of Trans Union will**  
24 **convert to a dismissal with prejudice** and the case will proceed on the current  
25 pleadings against the remaining Defendants.

26 Alvarez is advised that the Federal Pro Se Clinic offers free information and  
27 guidance to individuals who are representing themselves in federal civil actions. The  
28 Los Angeles Clinic operates by appointment only. Appointments are available either

1 by calling the Clinic or by using an internet portal. The Clinic can be reached at (213)  
2 385-2977, ext. 270 or through an online request at: [http://prose.cacd.uscourts.gov/los-](http://prose.cacd.uscourts.gov/los-angeles)  
3 [angeles](http://prose.cacd.uscourts.gov/los-angeles). Clinic staff can respond to many questions with a telephonic appointment or  
4 through an email account. It may be more convenient to email questions or schedule a  
5 telephonic appointment. Staff can also schedule an in-person appointment at their  
6 location in the Roybal Federal Building and Courthouse, 255 East Temple Street,  
7 Suite 170, Los Angeles, California 90012. **Alvarez is encouraged to visit the Clinic**  
8 **or otherwise consult with an attorney prior to filing a Second Amended**  
9 **Complaint.**

10  
11 **IT IS SO ORDERED.**

12  
13 May 10, 2022

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16 **OTIS D. WRIGHT, II**  
17 **UNITED STATES DISTRICT JUDGE**