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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KRISTEN MUEHLENBERG,  
Plaintiff,  
v.  
EXPERIAN INFORMATION SOLUTIONS,  
INC., et al.,  
Defendants.

Case No. [17-cv-00392-WHO](#)

**ORDER FOR FURTHER BRIEFING ON  
CONSIDERATION OF EVIDENCE  
BEYOND THE COMPLAINT**

Re: Dkt. No. 41

In connection with their Motion to Dismiss the Second Amended Complaint [Dkt. No. 41], defendants Chase Bank USA, N.A. and JPMorgan Chase Bank, N.A. (“the Chase Defendants”) also moved to file under seal certain exhibits [Dkt. No. 40], including copies of plaintiff’s credit reports. The Chase Defendants cite to and rely on these documents in their Motion to Dismiss without explaining why they should be permitted to refer to materials beyond the Second Amended Complaint [Dkt. No. 38], nor do they move to judicially notice these documents.

“When ruling on a Rule 12(b)(6) motion to dismiss, if a district court considers evidence outside the pleadings, it must normally convert the 12(b)(6) motion into a Rule 56 motion for summary judgment, and it must give the nonmoving party an opportunity to respond.” *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003) (citing Fed. R. Civ. P. 12(b)). “A court may, however, consider certain materials,” such as “documents incorporated by reference in the complaint, . . . without converting the motion to dismiss into a motion for summary judgment.” *Id.* at 908. A document “may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff’s claim.” *Id.*

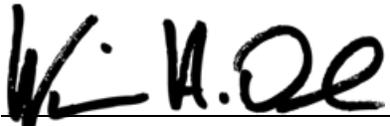
While I am inclined to find that these documents are incorporated by reference in her Second Amended Complaint because she refers extensively to them and they form the basis of

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both her claims, plaintiff has not addressed whether these documents should be considered nor objected to their filing. Plaintiff is hereby ordered to address, in no more than five pages, whether she objects to the incorporation of her credit reports by reference by **November 13, 2017** and how her interpretation of them differs from Chase's in the event that I do consider them. Any response by the Chase Defendants of no more than five pages must be filed by **November 15, 2017**. The hearing on the Chase Defendants' Motion to Dismiss the Second Amended Complaint shall be continued to **November 22, 2017** at 10 a.m.

**IT IS SO ORDERED.**

Dated: November 8, 2017

  
\_\_\_\_\_  
William H. Orrick  
United States District Judge