

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEONARD RIBEIRO,  
Plaintiff,  
v.  
RICKENBACKER GROUP, INC.; EXPERIAN  
INFORMATION SOLUTIONS, INC.; and  
EQUIFAX INFORMATION SERVICES LLC,  
Defendants.

No. C 10-04648 CW  
ORDER REGARDING  
NOTICE OF DISMISSAL  
AS TO DEFENDANT  
EQUIFAX INFORMATION  
SERVICES LLC AND  
DENYING AS MOOT  
DEFENDANT EXPERIAN  
INFORMATION  
SOLUTIONS INC.'S  
MOTION TO DISMISS  
(Docket No. 12)

Plaintiff Leonard Ribeiro initiated this lawsuit on October 14, 2010. On November 9, 2010, Defendant Equifax Information Services LLC answered Plaintiff's complaint. On November 17, 2010, Defendant Experian Information Solutions, Inc., moved to dismiss Plaintiff's complaint. Defendant Rickenbacker Group, Inc., has not appeared in this action.

On December 2, 2010, Plaintiff filed an amended complaint. At 10:18 a.m. on December 3, 2010, Plaintiff filed a notice of voluntary dismissal, stating that his claims against all Defendants were dismissed without prejudice. (Docket No. 14.) At 11:56 a.m. that same day, Plaintiff filed another notice of voluntary dismissal, stating that the dismissal of his claims against Experian was with prejudice. (Docket No. 15.)

Federal Rule of Civil Procedure 41(a)(1)(A) affords a plaintiff the absolute right to dismiss an action without a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment" or "a

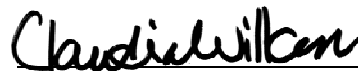
1 stipulation of dismissal signed by all parties who have appeared."

2 Equifax has answered Plaintiff's complaint. Thus, Plaintiff  
3 may not voluntarily dismiss his claims against it without either a  
4 stipulation or a court order. His filing of an amended complaint  
5 did not reinstate his right under Rule 41(a)(1) to dismiss his  
6 claims against Equifax. See, e.g., Forties B LLC v. Am. West  
7 Satellite, Inc., 2010 WL 2594297, at \*2 (S.D.N.Y.) (stating that  
8 "the answer to the original complaint terminated plaintiffs'  
9 ability to withdraw the action unilaterally as to the answering  
10 defendants") (citing Tedeschi v. Barney, 95 F.R.D. 182 (S.D.N.Y.  
11 1982)); Armstrong v. Frostie Co., 453 F.2d 914, 916 (4th Cir.  
12 1971). The Court deems Plaintiff's notice of dismissal concerning  
13 Equifax a motion to dismiss without prejudice his claims against  
14 it. Within three days of the date of this Order, Equifax may file  
15 an opposition to Plaintiff's motion. In the alternative, Equifax  
16 may file a statement of non-opposition or decline to respond, in  
17 which case Plaintiff's claims against it will be dismissed without  
18 prejudice.

19 Neither Rickenbacker nor Experian have answered or filed a  
20 motion for summary judgment. Accordingly, Plaintiff's claims  
21 against Rickenbacker are dismissed without prejudice and his claims  
22 against Experian are dismissed with prejudice. The Court DENIES as  
23 moot Experian's motion to dismiss. (Docket No. 12.)

24 IT IS SO ORDERED.

25  
26 Dated: 12/16/210



CLAUDIA WILKEN  
United States District Judge