

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LISA MESSANO,
Plaintiff,
v.
EQUIFAX, INC., et al.,
Defendants.

Case No. [16-cv-05697-HSG](#)

**ORDER DISMISSING PLAINTIFF’S
FCRA CLAIM AGAINST EQUIFAX
AND DIRECTING PLAINTIFF TO FILE
STATEMENT RE: FCRA CLAIM
AGAINST BANK OF AMERICA**

On October 5, 2016, Plaintiff filed the current suit against Experian Information Solutions, Inc. (“Experian”); Bank of America, National Association (“Bank of America”); and Equifax, Inc. (“Equifax”). Dkt. No. 1 (“Compl.”). Plaintiff asserted claims against all defendants under the Fair Credit Report Act (“FCRA”), as well as a claim under the California Consumer Credit Reporting Agencies Act (“CCCRA”) against Bank of America. Id. ¶¶ 109–43 (citing 15 U.S.C. §§ 1681i(a)(1), 1681s-2(b); Cal. Civ. Code § 1785.25(a)).¹

On May 8, 2017, the Court granted Equifax’s motion to dismiss Plaintiff’s FCRA claim, with leave to amend within 28 days. Dkt. No. 56. The June 5, 2017 deadline to amend has passed and Plaintiff has filed neither an amended complaint nor a notice of intent not to file an amended complaint. Dismissal is therefore warranted under Rule 41(b). See Fed. R. Civ. P. 41(b); *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065 (9th Cir. 2004) (“The failure of the plaintiff eventually to respond to the court’s ultimatum—either by amending the complaint or by indicating to the court that it will not do so—is properly met with the sanction of a Rule 41(b) dismissal.”).


¹ Plaintiff cited § 1681s-2(b) as a basis of only her FCRA claim against Bank of America, not her FCRA claims against Experian and Equifax. Compare Compl. ¶ 110 (Bank of America) with id. ¶¶ 120, 123. Plaintiff also asserted FCRA and CCCRA claims against Does 1–100. Id. ¶¶ 109–43.

1 The Court thus **DISMISSES** Plaintiff's FCRA claim against Equifax.

2 On May 31, 2017, the Court granted the stipulation for dismissal with prejudice as to
3 Experian. Dkt. No. 60. The only remaining defendant in this case, Bank of America, has so far
4 failed to appear, despite being served with the summons, complaint, and civil cover sheet. Dkt.
5 No. 15. It is not clear whether Plaintiff intends to proceed with her FCRA claim against Bank of
6 America. Therefore, the Court **DIRECTS** Plaintiff, by June 15, 2017, to file either (1) a statement
7 of one page or less indicating that she intends to proceed with her FCRA claim against Bank of
8 America, or (2) a notice of dismissal of under Rule 41(a)(1)(A). See Fed. R. Civ. P. 41(a)(1)(A)
9 (“[T]he plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal
10 before the opposing party serves either an answer or a motion for summary judgment . . .”). If
11 Plaintiff decides to proceed, the Court will order Plaintiff and Bank of America to appear at a
12 further case management conference. If Plaintiff fails to make one of the required filings
13 described above by June 15, 2017, she will risk dismissal of her FCRA claim against Bank of
14 America under Rule 41(b).²

15 **IT IS SO ORDERED.**

16 Dated: 6/9/2017

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19 HAYWOOD S. GILLIAM, JR.
20 United States District Judge

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28 ² If Plaintiff declines to proceed with her FCRA claim against Bank of America, the Court will
decline to exercise supplemental jurisdiction over her CCCRA claim against that defendant. See
28 U.S.C. § 1367(c)(3); Sanford v. Member Works, Inc., 625 F.3d 550, 561 (9th Cir. 2010).