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E-FILED: May 16, 2012

NOT FOR CITATION
 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

GARNER BECKETT,

No. C11-00246 HRL

Plaintiff,

**INTERIM ORDER RE DEFENDANT'S
MOTION FOR ATTORNEY'S FEES AND
COSTS**

v.

MACYSDSNB and DOES 1-5,

Defendants.

Plaintiff Garner Beckett previously moved to dismiss his sole claim for relief under the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681s-2(b). Defendant Macy's Credit and Customer Services, Inc. (Macy's)¹ opposed that motion. The main point of contention was whether the FCRA claim should be dismissed with prejudice or whether dismissal should be without prejudice to plaintiff to pursue a state court action. The court found that Macy's would not be prejudiced by dismissal without prejudice as requested by plaintiff. Nevertheless, the court granted Macy's request to condition such dismissal on payment of Macy's reasonable fees and costs incurred (with certain limitations on the fees and costs that could be recovered). (Dkt. 52, February 14, 2012 Order).

The matter is now before the court on defendant's motion for attorney's fees and costs. In his opposition to that motion, plaintiff indicates that he might not pursue a state court action after all—a sentiment that suggests to this court that he may now be willing to agree to a

¹ Defendant says that it erroneously was sued as "MACYSDSNB."

1 dismissal *with* prejudice. The only reason the fees/costs issue is on the table is because plaintiff
2 wanted to dismiss his FCRA claim *without* prejudice to pursue a state court lawsuit.
3 Accordingly, the court directs plaintiff to clarify his intentions: Does he wish to dismiss this
4 action with or without prejudice? Plaintiff shall file a response within 10 days from the date of
5 this order.

6 Meanwhile, the May 29, 2012 motion hearing is vacated, and Mr. Christman's request to
7 appear at that hearing by phone is denied as moot. After review of plaintiff's response to this
8 order, the court may issue further orders or re-set the hearing, as may be appropriate, with
9 respect to defendant's pending fees/costs motion.

10 SO ORDERED.

11 Dated: May 16, 2012



HOWARD B. LLOYD
UNITED STATES MAGISTRATE JUDGE

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7 Counsel are responsible for distributing copies of this document to co-counsel who have not
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