

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JOY COULTER,
Plaintiff,

v.

CAPITAL ONE FINANCIAL
CORPORATION, et al.,
Defendants.

Case No. [15-cv-03122-BLF](#)

**ORDER (1) DISSOLVING ORDER TO
SHOW CAUSE; (2) DIRECTING
PLAINTIFF TO FILE FOR CLERK'S
ENTRY OF DEFAULT AGAINST
DEFENDANT UNITED FINANCE
WITHIN 30 DAYS; AND (3)
DISMISSING DEFENDANT FIRST
NATIONAL CREDIT CARD WITHOUT
PREJUDICE**

[Re: ECF 34]

On December 21, 2015, the Court issued an order to show cause why Defendants First National Credit Card, Inc. and United Finance should not be dismissed from this action for failure to serve. ECF 34.

On January 20, 2016, Plaintiff responded to the order to show cause and indicated that Defendant United Finance had been served on June 10, 2015 while this action was pending in state court before it was removed to federal court. ECF 39 at 1. Plaintiff has filed a copy of the proof of that service at docket number 38. *See* ECF 38. As to Defendant First National Credit Card, Inc., Plaintiff notes that it inadvertently served the wrong party and does not oppose the dismissal of First National Credit Card, Inc. without prejudice.

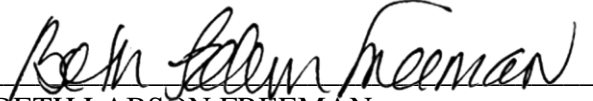
Accordingly, the Court DISSOLVES the order to show cause. Since under Fed. R. Civ. P. 12(a), a defendant must serve an answer “within 21 days after being served with the summons and complaint,” and Defendant United Finance has not done so, the Court ORDERS Plaintiff to file

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

for a clerk’s entry of default on or before February 26, 2016. Finally, the Court DISMISSES this action against Defendant First National Credit Card, Inc. without prejudice.

IT IS SO ORDERED.

Dated: January 29, 2016


BETH LABSON FREEMAN
United States District Judge