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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 JAMES LINLOR,

11 Plaintiff,

Case No.: 17-cv-0005-WQH-KSC

12 v.

ORDER

13 CHASE BANKCARD
14 SERVICES, INC. and CHASE
15 BANK USA, NATIONAL
ASSOCIATION,

16 Defendants.

17 HAYES, Judge:

18 The matter before the Court is the Motion for Attorneys' Fees filed by Defendants
19 Chase Bank USA, N.A. and Chase Bankcard Services, Inc. (ECF No. 93).

20 **I. Background**

21 On April 19, 2017, Plaintiff James Linlor filed the First Amended Complaint (ECF
22 No. 22) (the "FAC"). The FAC brings a claim against Defendants Chase Bankcard
23 Services, Inc. and Chase Bank USA, N.A. for violation of the Fair Credit Reporting Act
24 (FCRA), 15 U.S.C. § 1681s-2(b). (ECF No. 22 at 9).

25 On May 15, 2018, Defendants filed a Motion for Summary Judgment. (ECF No.
26 70). On August 7, 2018, the Court granted Defendants' Motion for Summary Judgment.
27 (ECF No. 90). On August 21, 2018 Defendants filed a Motion for Attorneys' Fees. (ECF
28

1 No. 93). Plaintiff did not file opposition. On September 17, 2018, Defendants filed a
2 Notice of Non-receipt of Opposition to Motion for Attorneys' Fees. (ECF No. 103).

3 **II. Contentions**

4 Defendants contend that Plaintiff, proceeding pro se, "asserted a frivolous claim that
5 defendants . . . violated the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. ("FCRA")
6 by furnishing inaccurate information regarding his credit card account. The only allegedly
7 inaccurate information were supposed fraudulent charges." (ECF No. 93 at 3). Defendants
8 assert that "there never were any fraudulent charges and Plaintiff knew this when he filed
9 his Complaint." *Id.* Defendants contend that they are entitled to \$101,650.90 in attorneys'
10 fees. *Id.* Defendants separately contend that the Court should grant the motion because
11 Plaintiff's failure to file opposition constitutes consent to the granting of Defendants'
12 motion under Local Rule 7.1(f)(3)(c). (ECF No. 103 at 2).

13 **III. Legal Standard**

14 The FCRA permits the prevailing party to recover attorneys' fees if an action was
15 "filed in bad faith or for purposes of harassment." 15 U.S.C. §§ 1681n(c); 1681o(b); *Rouse*
16 *v. Law Offices of Rory Clark*, 603 F.3d 699, 706 (9th Cir. 2010) *rev'd on other grounds by*
17 *Marx v. Gen. Revenue Corp.*, 568 U.S. 371 (2013); *River Oaks Homeowners Prot. Comm.,*
18 *Inc. v. Edington & Assocs.*, 32 F. App'x 929, 931 (9th Cir. 2002). The term "bad faith" is
19 not defined in the statute. In general, bad faith "is not simply bad judgment or negligence,
20 but rather it implies the conscious doing of a wrong because of dishonest purpose or moral
21 obliquity; . . . it contemplates a state of mind affirmatively operating with furtive design or
22 ill will." Black's Law Dictionary 139 (6th ed. 1990); *accord United States v. Manchester*
23 *Farming P'ship*, 315 F.3d 1176, 1183 (9th Cir. 2003) (applying Black's definition of bad
24 faith); *Shipley v. Trans Union Corp.*, 2006 WL 1515594, at *3 (W.D. Wash. May 25, 2006)
25 (same).

26 **IV. Ruling of the Court**

27 The Ninth Circuit has held a district court may properly grant an unopposed motion
28 pursuant to a local rule where the local rule permits, but does not require, the granting of a


1 motion for failure to respond. *See Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Civil
2 Local Rule 7.1(f)(3)(c) provides that “[i]f an opposing party fails to file the papers in the
3 manner required by Civil Local Rule 7.1.e.2, that failure may constitute a consent to the
4 granting of a motion or other request for ruling by the court.” Generally, public policy
5 favors disposition of motions on their merits. *See, e.g., Hernandez v. City of El Monte*, 138
6 F.3d 393, 399 (9th Cir. 1998). The Court declines to grant Defendants’ Motion on the basis
7 of Plaintiff’s failure to file opposition.

8 In this case, Plaintiff alleged that Defendants violated the FCRA when they failed to
9 report to the credit rating agencies that Plaintiff disputed the charges at issue. (ECF No.
10 22 at 6; 83 at 4–5). Defendants prevailed on summary judgment because the relevant case
11 law required Plaintiff to make a prima facie showing of inaccurate reporting to state a claim
12 under the FCRA, and Plaintiff ultimately failed to do so. (ECF No. 90 at 4). Although
13 Plaintiff failed to provide the requisite facts to maintain a FCRA claim, Defendants have
14 failed to establish that Plaintiff’s actions in initiating this matter constituted more than bad
15 judgment or negligence. Defendants have not established that Plaintiff brought this action
16 in subjective bad faith or for purposes of harassment, and the Court declines to award
17 attorneys’ fees in this matter.

18 **V. Conclusion**

19 IT IS HEREBY ORDERED that Defendants’ Motion for Attorneys’ Fees (ECF No.
20 93) is DENIED.

21 Dated: January 17, 2019

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23 Hon. William Q. Hayes
24 United States District Court
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