

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No.: 18-cv-001272-RBJ-KMT

LORENA ADAY,

Plaintiff,

v.

CAPITAL ONE BANK, (USA) NA,
MACHOL & JOHANNES, LLC,
RANDALL D. JOHANNES,
JACQUES A. MACHOL, III, and
HEATHER L. CANNON

Defendants.

ORDER

This matter is before the Court on the January 3, 2018 Recommendation of Magistrate Judge Kathleen M. Tafoya, ECF No. 49. The Recommendation addresses a motion for a more definite statement, ECF No. 21, filed by defendants Heather Cannon, Randall Johannes, Machol and Johannes, LLC, and Jacques Machol III [the “law firm defendants”] and a motion to dismiss, ECF No. 23, filed by defendant Capital One Bank [“Capital One”].¹ Judge Tafoya recommends that I grant the law firm defendants’ motion for a more definite statement. Judge Tafoya also recommends that I grant Capital One’s motion to dismiss with regard to plaintiff’s claims under the federal and state Fair Debt Collection Practices Act (FDCPA) and 15 U.S.C. § 1681s-(a), but deny the motion to dismiss with regard to plaintiff’s claims under 15 U.S.C. § 1681s-2(b) to give

¹ Law firm defendants sought leave to join Capital One’s motion to dismiss and Judge Tafoya granted this motion. ECF No. 31, 33. For simplicity, I will continue to refer to the motion to dismiss, ECF No. 23 as the Capital One motion to dismiss, noting that the law firm defendants have joined this motion.

plaintiff an opportunity to remedy this claim with a more definite statement. The Recommendation is incorporated herein by reference. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

The Recommendation advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation and that failure to make timely objections may bar de novo review by the district judge of the magistrate judge's proposed findings and recommendations. ECF No. 49 at 11. Despite this advisement, plaintiff did not file any objections.

“In the absence of timely objection, the district court may review a magistrate . . . [judge's] report under any standard it deems appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir.1991) (citing *Thomas v. Arn*, 474 U.S. 140, 150 (1985)) (stating that “[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings”).

The Court has reviewed the Recommendation. Based on this review, the Court concludes that the Magistrate Judge's analyses and recommendations are correct, and that “there is no clear error on the face of the record.” Fed. R. Civ. P. 72 advisory committee's note. Within its discretion, the Court has also conducted a de novo review of Judge Tafoya's Recommendation. Based upon that review, which involved reading the plaintiff's complaint, ECF No. 1, the law firm defendants' motion for a more definite statement, ECF No. 12, the plaintiff's response to that motion, ECF No. 21, Capital One's motion to dismiss, ECF No. 23, the plaintiff's response, ECF No. 26, and Capital One's reply, ECF No. 36, I agree Judge Tafoya's conclusions.

Therefore, the Court ADOPTS the Recommendation as the findings and conclusions of this Court.

Accordingly, it is ORDERED that the Recommendation of United States Magistrate Judge Tafoya [ECF No. 49] is AFFIRMED and ADOPTED. Accordingly, the motion for a more definite statement [ECF No. 21] is GRANTED and the motion to dismiss [ECF No. 23] is GRANTED IN PART and DENIED IN PART.

DATED this 26th day of February, 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read "R. Brooke Jackson", written in a cursive style. The signature is positioned above a horizontal line.

R. Brooke Jackson
United States District Judge