UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STACEY A. MAKELL,

      Plaintiff,

    v.

FEDCHOICE FEDERAL CREDIT UNION *et al*.,

      Defendants.

Civil Action No. 19-2364 (TJK)

MEMORANDUM OPINION

Plaintiff Stacey Makell, proceeding *pro se* and *in forma pauperis*, brought this action in August 2019 alleging a variety of claims related to her mortgage or the underlying property. ECF No. 1. Defendants subsequently moved to dismiss the complaint in several waves. Defendant FedChoice Federal Credit Union first moved alone. ECF No. 6. The following day, it jointly filed with Defendant CU Members Mortgage Colonial Savings, F.A., an additional motion to dismiss. ECF No. 9. At that point, the Court issued an order advising Plaintiff of her obligations under the Federal Rules of Civil Procedure and the local rules of this Court to respond to the motion. ECF No. 11 ("*Fox* Order I"). The Court specifically warned Plaintiff that if she did not respond to the motions by November 25, 2019, the Court could treat the motions as conceded. *Id.* However, despite the Court's warning, Plaintiff has yet to file an opposition to Defendant's motion, nor has she requested additional time to do so. Later, the third defendant, Transportation Federal Credit Union, also moved to dismiss. ECF No. 14. The Court issued another order advising Plaintiff of her obligations to respond to the motion. ECF No. 11 ("*Fox* Order II"). The Court again warned her that if she did not respond to the motion—this time by December 19, 2019—the Court could treat the motion as conceded. *Id.* Again, despite the

Court's warning, Plaintiff has failed to file an opposition to Defendant's motion, nor has she requested additional time to do so.

As the Court advised Plaintiff in the two *Fox* Orders, under Local Civil Rule 7(b), "the Court may treat . . . as conceded" a motion that the opposing party fails to respond to within 14 days. LCvR 7(b). *Fox* Orders I & II. In *Cohen v. Board of Trustees of the University of the District of Columbia*, the D.C. Circuit observed "tension between Local Rule 7(b) and Federal Rule 12(b)(6);" however, it nevertheless "reluctantly affirm[ed] the court's decision to grant the motion to dismiss" albeit holding that doing so with prejudice was "an abuse of discretion." 819 F.3d 476, 480, 481 (D.C. Cir. 2016). The *Cohen* court also noted that it "[had] yet to deem a 'straightforward application of Local Rule 7(b)' an abuse of discretion." *Id.* at 480 (quoting *Fox v. Am. Airlines, Inc.*, 389 F.3d 1291, 1294 (D.C. Cir. 2004)); *see also Washington All. of Tech. Workers v. United States Dep't of Homeland Sec.*, 892 F.3d 332, 344 (D.C. Cir. 2018) ("We have endorsed dismissing a complaint pursuant to Local Rule 7(b) if the plaintiff failed to timely file a response in opposition to the defendant's FRCP 12(b)(6) motion to dismiss."). Additionally, in *Jordan v. Ormond*, the D.C. Circuit held that "[t]he district court did not abuse its discretion in dismissing appellant's complaint pursuant to [LCvR] 7(b)" where a *pro se* plaintiff had missed the court's deadline by 25 days. No. 15-7151, 2016 WL 4098823, at *1 (D.C. Cir. July 22, 2016) (per curiam); *Jordan v. Ormond*, No. 15-1536 (RMC), 2015 WL 13055329 (D.D.C. Oct. 6, 2015) (Memorandum and Order). Moreover, other courts in this District have granted as conceded motions to dismiss in "straightforward" cases where a plaintiff simply fails to respond despite having been warned of the consequences. *See, e.g.*, *Voacolo v. Fed. Nat'l Mortg. Ass'n*, 224 F. Supp. 3d 39, 42 (D.D.C. 2016).

The Court finds the instant case to be similarly straightforward. 74 days have passed since the first two motions to dismiss were filed, and 47 days have passed since the third was filed. Despite being warned of the consequences, Plaintiff has not responded to Defendants' motions. Therefore, in a separate order, the Court will grant Defendants' motions to dismiss as conceded and dismiss the complaint without prejudice.

/s/ Timothy J. Kelly
TIMOTHY J. KELLY
United States District Judge

Date: December 23, 2019