

FILED

MAY 02 2013

Clerk, U.S. District Court
District Of Montana
MissoulaIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

STEPHANIE M. SCHROEDER,

Plaintiff,

vs.

BANK OF AMERICA, LLC, also known
as FIA CARD SERVICES NA,

Defendant.

CV 12-132-M-DLC-JCL

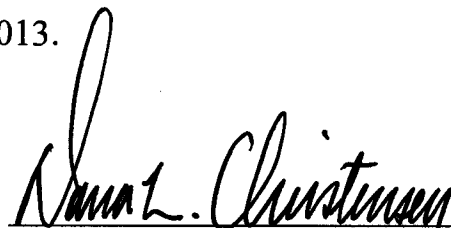
ORDER

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation on March 4, 2013, and recommended that the motion to dismiss (doc. 15) be granted in part and denied in part. Neither party timely objected to the Findings and Recommendation, and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Pending is a Rule 12(b)(6) motion to dismiss (doc. 15). At the outset, Judge Lynch found that Schroeder conceded the claim should be dismissed because no private right of action exists under 15 U.S.C. § 1681s-2(a). Also, in her Preliminary Pretrial Statement, Schroeder advised that her claim under the Montana Consumer Protection Act could be dismissed. Further, he found that her complaint, construed liberally, alleges a claim under 15 U.S.C. § 1681s-2(b) based upon FHI's reporting of erroneous information to three national credit agencies. Judge Lynch stated that based upon the record, the FIA has failed to sustain its burden on its 12(b)(6) motion as it pertains to Schroeder's claim under 15 U.S.C. § 1681s-2(b). After a review of Judge Lynch's Findings and Recommendation, I find no clear error. Accordingly,

IT IS ORDERED that Judge Lynch's Findings and Recommendation (doc. 33) are adopted in full. The motion to dismiss (doc. 15) is GRANTED with respect to the Montana Consumer Protection Act claim and the claim under 15 U.S.C. § 1681s-2(a) but DENIED with respect to the claim under 15 U.S.C. § 1681s-2(b).

DATED this 2nd day of May 2013.



Dana L. Christensen, Chief Judge
United States District Court