

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DARRIAN RACHEL, : Case No. 1:14-cv-228
 :
 Plaintiff, : Judge Timothy S. Black
 : Magistrate Judge Karen L. Litkovitz
vs. :
 :
 COMMUNICATING ARTS CREDIT UNION, :
 :
 Defendant. :

DECISION AND ENTRY: (1) ADOPTING THE REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE (Doc. 4) IN PART; (2) OVERRULING PLAINTIFF'S OBJECTION (Doc. 6); (3) DISMISSING PLAINTIFF'S COMPLAINT (Doc. 3) WITHOUT PREJUDICE; (4) CERTIFYING THAT AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH AND DENYING LEAVE TO APPEAL IN FORMA PAUPERIS; AND (5) TERMINATING THIS CASE

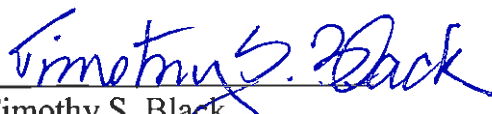
This case is before the Court on the Report and Recommendation of United States Magistrate Judge Karen L. Litkovitz. (Doc. 4). The Magistrate Judge recommends that Plaintiff's Complaint be dismissed with prejudice for lack of subject matter jurisdiction and, alternatively, for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12 (b)(1) and (6). The Magistrate Judge further recommends that the Court certify that an appeal would not be taken in good faith. Plaintiff filed an Objection (Doc. 6) which fails to address the dispositive conclusion of the Magistrate Judge that this Court lacks subject matter jurisdiction. The issues are now ripe for decision.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), upon reviewing Plaintiff's filings and the comprehensive findings of the Magistrate Judge *de novo*, the

Court: (1) **ADOPTS** the Report and Recommendation of the Magistrate Judge insofar as it recommends dismissal for lack of subject matter jurisdiction (Doc. 4); (2) **OVERRULES** Plaintiff's Objection (Doc. 6); (3) **DISMISSES** Plaintiff's Complaint (Doc. 3) in its entirety **WITHOUT PREJUDICE** for lack of subject matter jurisdiction;¹ (4) **CERTIFIES** that an appeal would not be taken in good faith, thus, **DENYING** Plaintiff leave to appeal *in forma pauperis*; and (5) **TERMINATES** this case.²

IT IS SO ORDERED.

Date: _____


Timothy S. Black
United States District Judge

¹ The Magistrate Judge recommends that the Complaint be dismissed with prejudice. “[A] dismissal for failure to state a claim is considered an adjudication on the merits with full preclusive effect in later litigation, while a dismissal for lack of subject-matter jurisdiction does not operate as a merits adjudication and is presumably granted without prejudice.” *Allstate Ins. Co. v. Global Med. Billing, Inc.*, 520 F. App’x 409, 411 (6th Cir. 2013) (citing *Pratt v. Ventas, Inc.*, 365 F.3d 514, 523 (6th Cir. 2004)). The Court, finding the lack of subject matter jurisdiction dispositive, makes no conclusion with regard to the Magistrate Judge’s alternative finding that the Complaint fails to state a claim upon which relief may be granted. Accordingly, the Court dismisses Plaintiff’s claims without prejudice.

² Following the filing of the Report and Recommendation, Plaintiff filed a Motion in which she communicates a settlement offer to Defendant. (Doc. 7). Plaintiff’s Motion requires no action by the Court. Accordingly, the Clerk is **ORDERED** to **TERMINATE** Plaintiff’s Motion (Doc. 7) on the Court’s docket.