

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DAVID W. NEELEY,

Plaintiff,

v.

Civil Action No. 2:22-cv-10

SYNCHRONY BANK,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 22],
GRANTING DEFENDANT'S MOTION TO DISMISS [ECF NO. 7],
DENYING PLAINTIFF'S MOTION TO REMAND [ECF NO. 13],
AND DISMISSING ACTION WITHOUT PREJUDICE**

On June 30, 2022, the plaintiff, David Neeley ("Neeley"), proceeding pro se commenced this action in the Magistrate Court of Pocahontas County, West Virginia [ECF No. 1-1], alleging that the defendant, Synchrony Bank ("Synchrony"), violated the Fair Credit Reporting Act. Thereafter, Synchrony removed this case to this Court. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloi [ECF No. 5]

On July 29, 2022, Synchrony moved to dismiss Neeley's complaint for failure to state a claim [ECF No. 7]. On August 15, 2022, Neeley moved to remand this case to state court [ECF No. 13]. On September 28, 2022, the magistrate judge entered a Report and Recommendation ("R&R"), recommending that the Court deny Neeley's motion to remand because it has federal question

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jurisdiction over this matter, pursuant to 28 U.S.C. § 1331 [ECF No. 22 at 4-5]. He also recommended that the Court grant Synchrony's motion to dismiss and dismiss this case without prejudice because Neeley has failed to state a claim upon which relief may be granted. Id. at 5-9.

The R&R informed Neeley that he had fourteen (14) days from the date of service of the R&R to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." It further warned him that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." Plaintiff accepted service of the R&R on October 4, 2022 [ECF No. 24]. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciro v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will

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uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Finding none, the Court:

1. **ADOPTS** the R&R [ECF No. 22];
2. **GRANTS** Synchrony's motion to dismiss for failure to state a claim [ECF No. 7];
3. **DENIES** Neeley's motion to remand [ECF No. 13]; and
4. **DISMISSES** this action **WITHOUT PREJUDICE**.

It is so **ORDERED**.

The Clerk is directed to strike this case from the Court's active docket and transmit copies of this Order to counsel of record via electronic means and the pro se Plaintiff via certified mail, return receipt requested, at the last known address as shown on the docket.

DATED: January 17, 2023



THOMAS S. KLEE, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA