

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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BRADLEY TEWINKLE,  
for himself and all others similarly  
situated,

Plaintiff,

19-CV-1002-JLS-HBS

v.

CAPITAL ONE, N.A., et al.,

Defendants.

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### **DECISION AND ORDER**

On July 31, 2019, Bradley TeWinkle commenced this putative class action under the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691, et seq. (“ECOA”). Dkt.

1. On August 30, 2019, the Court<sup>1</sup> referred this case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B).

Dkt. 10. On August 26, 2019, Defendant Capital One, N.A. moved to dismiss the Complaint. Dkt. 8. Plaintiff responded on September 20, 2019. Dkt. 15.

Defendant replied on September 27, 2019. Dkt. 18.

On December 11, 2019, Judge Scott issued a Report and Recommendation (“R&R”) recommending that Defendant’s motion should be granted without prejudice to Plaintiff having leave to “brief whether an Amended Complaint should

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<sup>1</sup> The Honorable Lawrence J. Vilardo was originally assigned to this case and made the referral to Magistrate Judge Scott. On January 6, 2020, this case was reassigned to the undersigned. Dkt. 23.

be allowed.” Dkt. 19. Plaintiff filed objections to the R&R on December 26, 2019, alleging that Judge Scott erred “in finding that revocation of Plaintiff’s existing credit relationship isn’t actionable under the ECOA” and in recommending dismissal “based on Defendant’s factual denial of Plaintiff’s well-pled allegation that Defendant failed to provide the required notice.” Dkt. 21 at 7-8. Plaintiff also argues that he sustained a concrete injury, and that the R&R erred in concluding otherwise. *Id.* at 8-9. Defendant filed a response on January 23, 2020 (Dkt. 24), and Plaintiff replied on February 12, 2020 (Dkt. 25).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

This Court has carefully reviewed the thorough R&R, the record in this case, the objection and response, and the materials submitted by the parties. Based on that *de novo* review, the Court accepts and adopts Judge Scott’s recommendation to grant Defendant’s motion to dismiss and to afford Plaintiff the opportunity to move for leave to amend. *See* Dkt. 19 at 11.


### CONCLUSION

For the reasons stated above and in the Report and Recommendation, Defendant’s motion to dismiss (Dkt. 8) is GRANTED. The Complaint (Dkt. 1) is dismissed without prejudice to a motion for leave to amend, to be filed **within 30**

**days of the date of this Order** and in accordance with Rule 15 of the Federal Rules of Civil Procedure and Local Rule 15. If such motion is made within 30 days of the date of this Order, then the case is referred back to Judge Scott for further proceedings consistent with the referral order of August 30, 2019. Dkt. 10. If no such application is timely made, then the dismissal is with prejudice, and the Clerk of Court shall close the case without further order.

SO ORDERED.

Dated: May 29, 2020  
Buffalo, New York

  
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JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE