Appendix C

ORDER FROM THE UNITED STATES COURT OF APPEALS

DENIAL OF APPEAL

S.D.N.Y. – N.Y.C.
20-cv-10473
Caproni, J.
Wang, M.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of August, two thousand twenty-two.

Present:

José A. Cabranes,
Joseph F. Bianco,
Alison J. Nathan,
Circuit Judges.

Samantha D. Rajapakse,

Plaintiff-Appellant,

v. 22-679

Seyfarth Shaw, et al.,

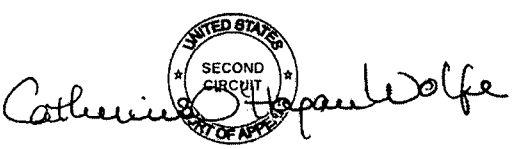
Defendants-Appellees,

Sey Farth Shaw,

Defendant.

Appellant, pro se, moves for in forma pauperis status. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



Appendix D

ORDER FROM THE UNTED STATES DISTRICT COURT FOR

THE SOUTHERN DISTRICT NEW YORK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMANTHA D. RAJAPAKSE, Plaintiff, -against- SEYFARTH SHAW, et al., Defendants.	20-CV-10473 (VEC) (OTW) **REPORT & RECOMMENDATION**

ONA T. WANG, United States Magistrate Judge:

To the Honorable VALERIE E. CAPRONI, United States District Judge:

Plaintiff Samantha D. Rajapakse, proceeding *pro se*, brings this action pursuant to the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681q, against Defendants Seyfarth Shaw LLP,[1] Robert Szyba, and Carla Lanigan (collectively, "Defendants"). Plaintiff alleges Defendants violated the FCRA during settlement discussions in another lawsuit in the Northern District of Georgia. Defendants have moved to dismiss Plaintiff's Amended Complaint ("AC"), and Plaintiff opposed. For the reasons stated below, I recommend that Defendants' motion be **GRANTED** without leave to amend. I also recommend granting, in part, Defendants' request for a filing injunction.

I. Facts

This case arises out of a lawsuit against Equifax, a consumer credit reporting agency, in the Northern District of Georgia (the "Georgia Action"), in which Plaintiff challenged allegedly

[1] Seyfarth Shaw LLP was incorrectly pled as "Seyfarth Shaw."

erroneous information on her credit report. *See Rajapakse v. Equifax Information, LLC,* 1:20-CV-00080 (TWT) (N.D. Ga.).[2] Judge Thomas W. Thrash, Jr. dismissed the Georgia Action as frivolous on July 26, 2021, explaining that "[t]o the extent that the Plaintiff [was] claiming damages as a result of the 2017 Equifax data breach, the Plaintiff is a member of the consumer class and those claims have been settled" and "[t]he remainder of the Plaintiff's claims [were] outlandish and incomprehensible." *See* Georgia Action, ECF 70 (appeal pending).

In this case, Plaintiff is suing Equifax's counsel in the Georgia Action for alleged misconduct related to their obtaining and handling her consumer information during settlement discussions in the Georgia Action. Plaintiff alleges, for example, that Defendants "intimidate[ed], harass[ed], and oppress[ed]" Plaintiff by "attempt[ing] to force [Plaintiff to] agree to an unreasonable settlement by using her credit report [or misinformation in her file] as leverage." (AC at 19; *see also* ECF 29 at 1) (describing the AC as alleging that Defendants "obtained [Plaintiff's] credit reporting account in an attempt to use the misinformation stated on her account to be removed by Equifax as part of the settlement agreement"). Plaintiff also suggests that, in the context of settlement discussions from June through December 2020, Defendants wrongfully impersonated a credit reporting agency by taking custody and control of her credit file and insisting that Plaintiff communicate with them, rather than Equifax directly. (AC at 3, 18; ECF 29 at 2). Plaintiff claims she was told that correcting information in her file was

[2] The Court may take notice of the public records on the docket of the Georgia Action. *Swiatkowski v. Citibank,* 446 F. App'x 360, 361 (2d Cir. Nov. 16, 2011) ("[W]here public records that are integral to a complaint are not attached to it, the court, in considering a Rule 12(b)(6) motion, is permitted to take judicial notice of those records.") (cleaned up); *Zappin v. Cooper,* No. 16-CV-5985 (KPF), 2018 WL 708369, at *7 (S.D.N.Y. Feb. 2, 2018), *aff'd,* 768 F. App'x 51 (2d Cir. 2019) (collecting cases for the proposition that "[i]n the Rule 12(b)(6) context, a court may take judicial notice of prior pleadings, orders, judgments, and other related documents that appear in the court records of prior litigation and that relate to the case *sub judice*.").

part of the settlement process, but that when Plaintiff refused to settle, Defendants altered, refused to correct, deactivated, and/or withheld access to her account. (AC at 8, 14, 29 at 2).

a. Exhibits to Plaintiff's Amended Complaint

As exhibits to her Amended Complaint, Plaintiff submitted numerous email chains documenting communications among Plaintiff and Defendants Szyba and Lanigan, as well as representatives of Equifax, between July and December 2020. (ECF 17) (the "Exhibits").[3] The exhibits are worth describing in detail since they are central to Plaintiff's claims. *See, e.g.*, ECF 29 at 6 (Plaintiff argues that the emails "should leave without question Defendants [sic] . . . liability") and ECF 31 at 5 (Defendants argue that the emails "contradict" Plaintiff's allegations and "demonstrate[] that there is nothing controversial or nefarious" in their "run-of-the-mill communications with Plaintiff").

First, in an email from July 26, 2020, Lanigan emailed Plaintiff to communicate a settlement offer of $15,000 and reiterate an offer to suppress items on her credit report. (ECF 17 at 6). Lanigan explained that Equifax could suppress items on Plaintiff's report but not guarantee an increase of her credit score and requested further information about issues raised by Plaintiff. *Id.* Their communication continued on August 3, 2020 regarding items Plaintiff wanted suppressed or removed and an incorrect "615" phone number supposedly linked to Plaintiff's account. *Id.* at 7-9. Lanigan also told Plaintiff: "Samantha, we're aware of your communication with Equifax. If you have any additional disputes, you can forward them to us. They have forwarded your recent correspondence to us. It's just easier to keep it all in one place." *Id.* On August 12, 2020, Lanigan confirmed that certain information had been

[3] Due to inconsistencies with the labeling of the Exhibits, I refer to page numbers rather than exhibit letters.

suppressed or removed from Plaintiff's report, sent Plaintiff an updated copy of her credit report, reported that a "615" phone number was not appearing on Plaintiff's report or in her file, and asked Plaintiff for more information regarding the phone number issue so that Lanigan could "look into it a bit more." *Id.* at 10. On August 20, 2020, Plaintiff emailed Lanigan about contacting Equifax regarding additional "serious issues that need[] to be removed," and Lanigan responded that "since we are representing Equifax in this matter, all communications should go through me." *Id.* at 11. Lanigan also expressed that she would be "more than happy" to help Plaintiff with issues she was having if provided with more information. *Id.* In response, Plaintiff sent another email regarding the "615" phone number supposedly linked to her account. *Id.* at 12. Though not explicitly stated, emails indicate that Plaintiff was having difficulty accessing her account because Equifax was attempting to verify her identify with the "615" phone number. *Id.* at 10, 12.[4]

About a month later, on September 28, 2020, Plaintiff emailed Lanigan saying she was unable to access her report, and Lanigan again said she would be "happy to look into this" and asked follow-up questions regarding Plaintiff's access issue. *Id.* at 14-15. Nearly two months later, Plaintiff sent an email stating, *inter alia*: "For 2 months I have been unable to review my credit report from [sic] Equifax website. I have sent you emails and screenshots of the issues which has [sic] been unresolved and you have informed your client not to speak to me regarding issues and access with my credit." *Id.* at 17. In response, Lanigan clarified that "any matters related to this litigation should be directed to myself and not Equifax. You are always

[4] While Plaintiff's subsequent filings reveal that the Exhibits omit various email communications from at least July and August 2020, the omitted emails show more of the same, *i.e.*, Lanigan requesting additional information from Plaintiff and confirming which items Plaintiff wanted suppressed from her report. (ECF 38 at 19, 25-26).

free to call or write Equifax with any unrelated disputes. I have, as a courtesy, assisted in relaying disputes for you that were unrelated . . . and those were investigated and you received a response, as is required." *Id.* at 16. Lanigan also stated that she confirmed with Equifax that there were no holds preventing Plaintiff from accessing her account, offered to verify that information on Plaintiff's account was correct while she further looked into Plaintiff's access issue, and asked Plaintiff further questions to try to ascertain why Plaintiff was unable to access her online account. *Id.*

On December 3, 2020, Plaintiff emailed Lanigan and Szyba asking for a copy of her credit report and for a "direct point of contract" to assist with her "online and credit reporting issue." *Id.* at 25. After Szyba provided a number to reach Equifax, Plaintiff responded that she was told by "Ritzy" that her account was "with a specialist" in "the office of consumer affairs" and that she was not permitted to speak with a supervisor. *Id.* at 23-25. Plaintiff and Szyba also discussed two additional items that Plaintiff wanted adjusted on her credit report. *Id.* On December 14, 2020, after receiving another email from Plaintiff about being unable to access her account, Szyba told Plaintiff that they were going to ask someone form Equifax to reach out to her directly, and, on December 18, 2020, Equifax Consumer Customer Care Team wrote Plaintiff that "the login issue you experienced has been resolved." *Id.* at 20-22. On December 28 and 29, 2020, Plaintiff emailed with an Equifax Supervisor, Darren Howard, because she was "back to not being able to get into [her] credit report online." *Id.* 18-19.

II. Procedural History

Plaintiff filed an initial complaint on December 9, 2020 (ECF 2), and received permission to proceed *in forma pauperis* on December 29, 2020. (ECF 7). On January 5, 2021, Judge

Stanton *sua sponte* dismissed the case pursuant to Federal Rule of Civil Procedure 8 because Plaintiff's complaint failed to allege any facts and appeared incomplete. (ECF 8 at 3). Plaintiff was allowed 60 days to file an amended complaint. *Id.* Plaintiff filed the operative Amended Complaint ("AC") on January 27, 2021,[5] alleging violations of the FCRA, 15 U.S.C. § 1681q, and various New York criminal statutes. (ECF 9). On February 8, 2021, Plaintiff filed a motion to compel discovery and for appointment of counsel. (ECF 10). The case was reassigned to Judge Caproni on March 12, 2021. On March 15, 2021, Judge Caproni dismissed the criminal claims asserted by Plaintiff for failure to state a claim, denied without prejudice Plaintiff's request for counsel, and denied as premature Plaintiff's motion to compel discovery. (ECF 13).

The case was referred to the undersigned for general pretrial purposes and dispositive motions on March 15, 2021. (ECF 12). Defendants filed a motion to dismiss the AC on May 18, 2021. (ECF 25-26). Plaintiff filed an opposition on May 24, 2021 (ECF 29), and Defendants filed a reply on May 28, 2021. (ECF 31). On June 1, 2021, Plaintiff filed a motion entitled "motion showing related damages amend complaint," seeking to amend or supplement her complaint with additional information regarding her damages. (ECF 34).

A telephonic Initial Pretrial Conference in accordance with Fed. R. Civ. P. 16(b) was originally scheduled for May 18, 2021 and then adjourned *sua sponte* to June 8, 2021. (ECF 16, 24). Following numerous filings detailing the parties' failed attempts to work together on a proposed case management plan (ECF 30, 32-33, 35-36), Plaintiff failed to appear for the June

[5] The Exhibits were separately filed on March 31, 2021. (ECF 17). Although the Exhibits were not timely filed, Defendants accept them as incorporated by reference into the AC. (ECF 26 n. 3).

8th conference. (ECF 42).[6] After having Defendants' counsel describe their efforts to make sure Plaintiff understood her obligation to appear for the conference and then provide a brief summary of the case, I stayed discovery pending decision on Defendants' motion to dismiss and stated that the Court did not currently require briefing responsive to ECF 34. The conference transcript was served on Plaintiff via email and regular mail on June 17, 2021. (ECF 41).

During the next three weeks, Plaintiff made several filings seeking to elaborate on her medical condition and damages, moving for summary judgment, and reiterating her central allegation that Defendants illegally accessed, obtained, modified, and/or deleted her credit report. (ECF 38-40, 44-46, 48-49). On June 28, 2021, I issued an order reiterating that discovery was stayed pending decision on Defendants' motion to dismiss and restating that the Court did not currently require responsive briefing to Plaintiff's motions. (ECF 50).[7]

From September through November, Plaintiff made a multitude of additional filings, asking the Court to, *inter alia*, notify the Secret Service that Defendants are guilty of computer crimes under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, lift the stay of discovery, and grant summary judgment in Plaintiff's favor or default judgment against Defendants. (ECF 52, 55-60, 62). On December 1, 2021, Judge Caproni denied Plaintiff's request to lift the stay and denied without prejudice Plaintiff's remaining motions (including her motions to amend her complaint, for summary judgment, and for default judgment) filed after Defendants' motion to dismiss. (ECF 63). Judge Caproni also ordered that Plaintiff "must obtain leave from

[6] Plaintiff later informed the Court that she missed the conference because her medical issues caused her to "lose track of days." Plaintiff explained that she is a type 2 diabetic and was experiencing elevated sugar levels on June 8, 2021. (ECF 39 at 1; 44 at 2).

[7] On July 27, 2021, Defendants filed a letter informing the Court of the previous day's order of dismissal in the Georgia Action. (ECF 51).

[the undersigned] before filing any additional motions during the pendency of the discovery stay."[8] *Id.*

Following Judge Caproni's December 1st Order, Plaintiff filed motions, addressed to Chief Judge Swain, asking for the recusal of Judge Caproni and the undersigned from this matter, as well as seeking the intervention of the FBI. (ECF 64-65). In December 2021, Judge Caproni and I each denied Plaintiff's motion(s) for recusal on the grounds that, *inter alia*, prior adverse rulings are not evidence of bias. (ECF 66, 67). We both also reminded Plaintiff of her obligation to seek leave from the undersigned before filing any additional motions during the course of the discovery stay. I subsequently denied a motion for leave to amend filed by Plaintiff, as well as other motions that, in substance, asked Chief Judge Swain to overturn the interlocutory orders of the undersigned and Judge Caproni. (ECF 68-72). On December 16, 2021, Plaintiff filed a letter mailed to the Judicial Conference of the United States that detailed her alleged mistreatment in this case and the Georgia Action, and described cases filed by Plaintiff in other district courts. (ECF 73).

III. Discussion

a. Legal Standard

When presented with a motion to dismiss pursuant to Rule 12(b)(6), a court must accept as true all non-conclusory factual allegations in the complaint, together with the contents of documents integral to the complaint and any matters of which courts may take judicial notice,

[8] Pursuant to Judge Caproni's order, any request for leave: "(i) must be titled 'Request for Leave to File a Motion;' (ii) it may not exceed one page in length, and (iii) it should explain why Plaintiff should be permitted to file the motion, notwithstanding the discovery stay that is in effect. Any failure to adhere to this requirement may result in an order to show cause why sanctions, including dismissal of this case, should not be imposed against Plaintiff." *Id.*

and draw all reasonable inferences in favor of the plaintiff. *See Doe v. Columbia Univ.*, 831 F.3d 46, 48 (2d Cir. 2016); *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 191 (2d Cir. 2007). However, "a pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007)).

To survive a Rule 12(b)(6) motion to dismiss, the complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Thus, the non-conclusory factual allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. More specifically, Plaintiff must show "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. If the plaintiff has not "nudged [the] claims across the line from conceivable to plausible, [the] complaint must be dismissed." *Twombly*, 550 U.S. at 570.

As relevant here, a court is "obligated to afford a special solicitude to *pro se* litigants." *Tracy v. Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010); *accord Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009). Thus, when considering Plaintiff's submissions, the Court must interpret them "to raise the strongest arguments that they suggest." *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (per curiam) (internal quotation marks omitted). Nevertheless, "to survive a motion to dismiss, a *pro se* plaintiff must still plead sufficient facts to state a claim that

is plausible on its face." *Chukwueze v. NYCERS*, 891 F. Supp. 2d 443, 450 (S.D.N.Y. 2012) (internal citations omitted); *see, e.g., Green v. McLaughlin*, 480 F. App'x 44, 46 (2d Cir. 2012) (summary order) ("[*P*]*ro se* complaints must contain sufficient factual allegations to meet the plausibility standard."); *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (emphasizing that, even in *pro se* cases, courts "cannot invent factual allegations").

b. The FCRA

"The FCRA is a federal consumer protection statute enacted by Congress to ensure that consumer reporting agencies adopt reasonable procedures to protect the accuracy and confidentiality of consumer credit information." *Stonehart v. Rosenthal*, No. 01-CV-651 (SAS), 2001 WL 910771, at *3 (S.D.N.Y. Aug. 13, 2001); 15 U.S.C. § 1681(b). As relevant here, the FCRA defines a "consumer reporting agency" to be "any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages . . . in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties." *Id.* 1681a(f). Additionally, a "consumer report" is defined as "communication of any information by a consumer reporting agency bearing on a consumer[] . . . which is used or expected to be used or collected . . . for the purpose of serving as a factor in establishing the consumer's eligibility for" credit, employment, or another permissible purpose. 15 U.S.C. § 1681a(d).

While the FRCA mainly regulates credit reporting agencies, Section 1681b also protects consumers from third parties who willfully or negligently "use or obtain" a consumer report for an impermissible purpose. *See* 15 U.S.C. §§ 1681b (enumerating permissible purposes and prohibiting using or obtaining reports for other purposes); 1681n (providing liability for willful

noncompliance); 1681o (providing civil liability for negligent noncompliance). Additionally, Section 1681q imposes criminal liability on those who "knowingly and willfully obtain[] information on a consumer from a consumer reporting agency under false pretenses." *Balter v. Altschul*, No. 17-CV-6605 (BMC)(RML), 2018 WL 3118271, at *3 (E.D.N.Y. June 25, 2018) ("[Section 1681q] criminalizes a particular form of consumer fraud, where a defendant obtains a report to which he would not otherwise be entitled.").

Courts have recognized that an implied cause of action under Section 1681q—the provision relied on by Plaintiff—must be read in conjunction with the impermissible purpose prohibition in 1681b, meaning that 1681q only "provides for civil liability when a credit report user willfully and knowingly obtains a credit report under false pretenses *for an impermissible purpose*." *Stonehart*, WL 910771, at *3 (emphasis added). Accordingly, "[t]o determine [S]ection 1681q liability, the courts first look to section 1981b to see if the purpose of the request was permissible. If it was, then there is no section 1681q liability." *Balter*, 2018 WL 3118271, at *3; *Trikas v. Universal Card Servs. Corp.*, 351 F. Supp. 2d 37, 43 (E.D.N.Y. 2005) ("[S]ince the court finds that [defendant] did not act with an impermissible purpose [under § 1681b] this precludes liability under § 1681q as a matter of law.").[9]

Here, Defendants argue that Plaintiff cannot state a FCRA claim (under Section 1681b or 1681q) because they did not obtain Plaintiff's consumer report as a third party and did not

[9] *See also Stonehart*, WL 910771, at *3 ("If a user requests information from a consumer reporting agency for a purpose not permitted by section 1681b, while representing to the agency that the report will be used for a permissible purpose, the user may be subject to civil liability for obtaining information under false pretenses. Conversely, where a permissible purpose for obtaining a credit report is demonstrated, then, as a matter of law, the information cannot have been obtained under false pretenses.").

obtain or use it for an impermissible purpose or under false pretenses. For the reasons state below, I agree.

i. Defendants are not Third Parties under the FCRA.

Defendants correctly argue that Plaintiff's FLSA claim fails because they did not obtain Plaintiff's consumer information as "third parties," but rather as agents of Equifax representing them in litigation. While the FCRA regulates the disclosure of consumer information to third parties, such regulation does not extend to communications between a consumer reporting agency and its agents, including its lawyers. *See, e.g., Norman v. Lyons*, No. 3:12-CV-4294-B, 2013 WL 655058, *2-3 (N.D. Tex. Feb. 22, 2013).

In *Norman v. Lyons*, for example, the Northern District of Texas dismissed a FCRA suit against Experian's attorneys for obtaining the plaintiff's credit file in the course of defending Experian in another case. *Id.* More specifically, the *Norman* court found that the plaintiff could not establish the existence of a "consumer report" under the FCRA because (a) "one cannot prove the existence of a 'consumer report' unless the report was furnished to a third party" and (b) since a party's counsel is the legal agent of the client, "when the FCRA refers to 'third parties,' that term does not include counsel hired to represent the consumer reporting agency." *Id.*[10] Other courts have reached analogous holdings. *See Mostofi v. Experian Info. Sols., Inc.*, No. 13-CV-2828 (DKC), 2014 WL 3571804, at *2 (D. Md. July 18, 2014) ("[B]ecause an attorney representing a CRA in defense of litigation concerning the contents of a credit report is not a

[10] In *Norman*, the court emphasized that a contrary interpretation of the FCRA would lead to the conclusion that "a credit reporting agency sued over inaccurate information in a credit report would not be allowed to provide the disputed credit report to its own attorneys without violating the FCRA. The [c]ourt has found no support for [that] interpretation of the FCRA." *Id.* *3. This interpretation is especially untenable given that companies "may appear in the federal courts only through licensed counsel." *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 201–02 (1993).

'third party,' a CRA sharing the consumer's credit file with that counsel does not turn the file into a 'consumer report' within 15 U.S.C. § 1681b, and Plaintiff does not have a viable claim."); *Goracke v. Atchison Hosp. Ass'n*, No. 17-CV-2664 (JAR), 2019 WL 2005881, at *12 (D. Kan. May 7, 2019) ("[I]t is well-established that an attorney is an agent of their client when acting on behalf of their client. Accordingly, the Court finds that [counsel] was acting as the attorney-agent of the [defendant] when conducting her internal investigation."); *Mattiaccio v. DHA Grp., Inc.*, 21 F. Supp. 3d 15, 23 (D.D.C. 2014) (dismissing FCRA suit against counsel and finding counsel was not a third party for purposes of the FCRA, noting "there is nothing in the FCRA that would require the imposition of independent FCRA obligations on an attorney-agent to the detriment of the attorney-client relationship"); *Hartman v. Lisle Park Dist.*, 158 F.Supp.2d 869, 876-77 (N.D. Ill. 2001) (dismissing FCRA suit against counsel for allegedly creating a consumer report about employee-plaintiff while conducting a workplace investigation because, due to the fiduciary and agency relationship between attorney and client, "[w]hen an attorney conducts for an employer/client an investigation of an employee's dealings with the employer, he is acting *as* the client," not as a third party for purposes of the FCRA).[11]

It is undisputed that Equifax retained Defendants as counsel in the Georgia Action and that Defendants obtained Plaintiff's credit information from Equifax in the context of defending against and pursuing settlement discussions in the Georgia Action. As Equifax's litigation counsel, Defendants were acting as Equifax's agents and not as third parties for FCRA purposes when obtaining and handling Plaintiff's credit information, such as when communicating with

[11] *See also, e.g., Veal v. Geraci*, 23 F.3d 722, 725 (2d Cir. 1994) ("The relationship between an attorney and the client he or she represents in a lawsuit is one of agent and principal."); *Chevron Corp. v. Salazar*, 275 F.R.D. 422, 426 (S.D.N.Y. 2011) ("Lawyers are agents for their clients.").

Plaintiff about her credit disputes and report.[12] Accordingly, no consumer report was furnished to Defendants under the FCRA. Thus, for the same reasons stated by *Norman* and the other above-cited cases, Plaintiff does not have a cognizable FCRA claim against Defendants.

c. Defendants did not Access Plaintiff's Credit Information for an Impermissible Purpose or Under False Pretenses.

Still, even assuming Equifax did furnish Plaintiff's consumer report to Defendants as third parties within the meaning of the FCRA (which they did not), Plaintiff fails to plausibly allege that Defendants obtained or used Plaintiff's consumer for an impermissible purpose or under false pretenses, let alone that their conduct was negligent or willful.

As initial matter, Plaintiff's conclusory statements that Defendants had an impermissible purpose and acted negligently or willfully are insufficient to state a claim. *See, e.g., Campbell v. Conserve Accts. Receivable Mgmt.*, No. 16-CV-02072 (AMD) (MDG), 2016 WL 3212084, at *2 (E.D.N.Y. June 8, 2016) (holding that plaintiff's "conclusory allegation" without "any specific facts that could support that assertion" was "insufficient, as a matter of law, to state a claim that the defendant pulled her credit report for an impermissible purpose"); *Braun v. United Recovery Sys.*, LP, 14 F. Supp. 3d 159, 167 (S.D.N.Y. 2014) (collecting cases for the proposition that plaintiff must "allege specific facts as to defendant's mental state when defendant accessed plaintiff's credit report" and may not rely on conclusory statements). Thus, Plaintiff's

[12] Though Plaintiff's opposition brief alternatively suggests that Defendants should be treated as a credit reporting agency under the FCRA, neither the statutory definition of credit reporting agencies in Section 1681a(f) nor the above-cited case law involving FCRA claims against counsel support such an argument. *See also Kidd v. Thomson Reuters Corp.*, 25 F.3d 99, 104–05 (2d Cir. 2019) (dismissing FCRA claim where defendant did not specifically intend to furnish consumer reports and thus did not qualify as a consumer reporting agency); *Hunt v. Conroy*, No. 1:13-CV-1493, 2014 WL 1513871, at *6 (N.D.N.Y. Apr. 16, 2014) (rejecting argument that defendant law firm was a consumer reporting agency under the FCRA); *Wright v. Zabarkes*, No. 7-CV-7913 (DC), 2008 WL 872296, at *3 (S.D.N.Y. Apr. 2, 2008) (same), *aff'd*, 347 F. App'x 670 (2d Cir. 2009).

vague accusations that Defendants obtained and used her credit report to intimidate and harass her and force her into an unreasonable settlement need not be credited, particularly where the Exhibits only illustrate benign, good faith discussions between Plaintiff and Defendants.

Moreover, the allegations in the AC and the Exhibits suggest that Defendants obtained Plaintiff's consumer information for a permissible purpose: Defendants' representation of Equifax in the Georgia Action. The FCRA explicitly permits consumer reporting agencies to provide consumer reports to third parties they have reason to believe have a "legitimate business need for the information." 15 U.S.C. 1681b(a)(3)(F). Where a litigant affirmatively puts a consumer report at issue, courts find that opposing parties and their counsel have a legitimate business need, and thus permissible purpose, for obtaining the report. *See, e.g., Daniel v. DTE Energy*, No. 11–13141, 2013 WL 4502151, at *3 (E.D. Mich. Aug. 22, 2013) ("Plaintiff's lawsuit alleging improper reporting of the debt provided defendant with a legitimate need for plaintiff's credit report to defend against plaintiff's claims."); *Redmond v. Elizabethtown Motors*, Inc., No. 3:10-CV-10-S, 2011 WL 2174310, at *2-3 (W.D. Ky. June 2, 2011) ("The very subject of this case is the credit report which was obtained by [defendant]. [Defendant] was clearly within its right to provide its counsel the purportedly offending item and for counsel to seek relevant information concerning the document.").[13] Since Plaintiff put her credit report at issue by suing Equifax in the Georgia Action, Defendants had a legitimate

[13] *See also Hill v. Ocwen Loan Servicing*, LLC, 369 F. Supp. 3d 1324, 1342-43 (N.D. Ga. 2019) ("Several courts have held that a creditor can properly access a consumer report where it is sued or threatened with litigation related to the credit reporting . . . . Drawing on the reasoning of the cases summarized above, obtaining a credit report after being notified of reporting errors is a permissible purpose under the circumstances."); *Mostofi*, WL 3571804, at *3 ("[I]t was necessary for defense counsel to obtain a current copy of the report to examine the veracity of Plaintiff's claims.").

business need to obtain and use Plaintiff's credit file to defend against and/or try to settle that action. Thus, Plaintiff fails to sufficiently allege that Defendants obtained her credit report for impermissible purposes or under false pretenses, let alone that they acted negligently or willfully.

IV. Leave to Amend

Under Federal Rule of Civil Procedure 15(a)(2), "[l]eave to amend is to be freely given when justice requires." *Freidus v. Barclays Bank PLC*, 734 F.3d 132, 140 (2d Cir. 2013). It is within the Court's discretion to grant or deny leave to amend. *See McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 200 (2d Cir. 2007). Still, a *pro se* plaintiff should be afforded leave to amend "at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000). Courts will deny leave to amend in cases of, among other things, "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and/or] futility of amendment." *Ruotolo v. City of N.Y.*, 514 F.3d 184, 191 (2d Cir. 2008) (internal citation omitted); *see Lucente v. Int'l Bus. Machines Corp.*, 310 F.3d 243, 258 (2d Cir. 2002) ("Where it appears that granting leave to amend is unlikely to be productive, however, it is not an abuse of discretion to deny leave to amend.") (quoting *Ruffolo v. Oppenheimer & Co.*, 987 F.2d 129, 131 (2d Cir. 1993)).

I recommend that Plaintiff be denied leave to amend. Plaintiff has already been granted one opportunity to amend her complaint and "even the most liberal reading of Plaintiff's allegations cannot give rise to a cause of action against Defendants under the FCRA," at the

very least because Defendants do not constitute third parties under the statute, and also because they permissibly obtained Plaintiff's report in the context of defending against the Georgia Action. *Norman*, 2013 WL 655058, at *3; *see Balter*, 2018 WL 3118271, at *3 (E.D.N.Y. June 25, 2018) (dismissing Section 1681q claim where defendant had permissible purpose of obtaining credit report on behalf of client and denying leave to amend because "[t]he problem with plaintiff's complaint is substantive and cannot be cured by better pleading"). Moreover, the Exhibits suggest only ordinary, benign interactions between Plaintiff and Defendants, and my review of Plaintiff's numerous subsequent filings requesting, *inter alia*, summary judgment in her favor and leave to amend her complaint reaffirm that allowing Plaintiff leave to amend would be futile; Plaintiff's filings show that though Plaintiff is dissatisfied with the handling of her credit report and the outcome of the Georgia Action and may subjectively believe she has been wronged, she does not have a cause of action against Defendants.[14]

[14] Plaintiff raises several additional potential claims in her subsequent filings, but none have merit. For example, though Plaintiff states that Defendants abused their authority as officers of the court in violation of 42 U.S.C. § 1983 (ECF 38 at 5), Plaintiff cannot state a Section 1983 claim against Defendants because "a private attorney is not a state actor." *Caldwell v. Cohen*, No. 21-CV-5039 (LTS), 2021 WL 3193030, at *4 (S.D.N.Y. July 26, 2021) (quoting *Sklodowska-Grezak v. Stein*, 236 F. Supp. 3d 805, 809 (S.D.N.Y. 2017)). Plaintiff also cannot state a claim under the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030, which prohibits an enumerated list of computer crimes and creates a private cause of action in certain situations where a defendant intentionally accesses (or hacks) a computer without, or in excess of, authorization; Plaintiff, however, has not suggested Defendants obtained her credit report through unauthorized access into any device or that Plaintiff sustained damage to her computer. (ECF 52). *United States v. Valle*, 807 F.3d 508, 511, 528 (2d Cir. 2015) (holding that a defendant exceeds authorized access "only when he obtains or alters information that he does not have authorization to access for any purpose which is located on a computer that he is otherwise authorized to access"); *see, e.g., Deutsch v. Hum. Res. Mgmt., Inc.*, No. 19-CV-5305 (VEC), 2020 WL 1877671, at *3-5 (S.D.N.Y. Apr. 15, 2020) (surveying case law and emphasizing that CFAA addresses hacking, not allegations of misuse of access, and only narrowly provides for damages related to assessing impairment of and resecuring plaintiff's computer); *Nanobeak Biotech Inc. v. Barbera*, No. 20-CV-07080 (LLS), 2021 WL 1393457, at *4 (S.D.N.Y. Apr. 13, 2021) (same). Lastly, Plaintiff's allegations do not state a claim for common law fraud because, *inter alia*, Plaintiff has not suggested she actually relied on any false representations by Defendants or provided facts, "beyond speculation and conclusory allegations, that give rise to a strong inference of fraudulent intent." (ECF 34 at 8); *Grayson v. Equifax Credit Info. Servs.*, No. 18-CV-6977 (MKB), 2021 WL 2010398, at *10 (E.D.N.Y. Jan. 29, 2021).

V. Pleading Injunction

In addition to recommending that the Court grant Defendants' motion to dismiss Plaintiff's AC without leave to amend, I also recommend that the Court enjoin Plaintiff from commencing any new civil actions in this Court related to Defendants' representation of Equifax in the Georgia Action.[15]

The issuance of a filing injunction "is a serious matter, for access to the Courts is one of the cherished freedoms of our system of government." *Raffe v. Doe*, 619 F. Supp. 891, 898 (S.D.N.Y. 1985) (internal citations omitted). Still, it is well-established that "in exceptional circumstances . . . a district court possesses the authority to enjoin a litigant [who abuses the judicial process] from further vexatious litigation." *Brady v. John Goldman, Esq.*, No. 16-CV-2287 (GBD) (SN), 2016 WL 8201788, at *8 (S.D.N.Y. Dec. 5, 2016) (internal citations omitted), *report and recommendation adopted*, 2017 WL 111749 (S.D.N.Y. Jan. 11, 2017), *aff'd*, 714 F. App'x 63 (2d Cir. 2018); *see In re Sassower*, 20 F.3d 42, 44 (2d Cir. 1994) ("With respect to civil litigation, courts have recognized that the normal opportunity to initiate lawsuits may be limited once a litigant has demonstrated a clear pattern of abusing the litigation process by filing vexatious and frivolous complaints.").

The Second Circuit has instructed district courts to consider the following factors in determining whether to impose a filing injunction:

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the

[15] Defendants request a filing injunction in their motion to dismiss briefing. (ECF 26 at 14-17).

> courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Iwachiw v. New York State Dep't of Motor Vehicles, 396 F.3d 525, 528 (2d Cir. 2005) (quoting *Safir v. United States Lines, Inc.*, 792 F.2d 19, 24 (2d Cir. 1986). "Ultimately," the Second Circuit summarized, "the question the [district] court must answer is whether a litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties." *Safir*, 792 F.2d 19, 24.

The first factor weighs heavily in favor of granting a filing injunction. Plaintiff has a history of vexatious, harassing litigation that has been recognized by, and led to filing injunctions in, other courts. *See Rajapakse v. Equifax Information, LLC,* 1:20-CV-00080 (TWT) (N.D. Ga. July 26, 2021) (ECF 69) (enjoining Plaintiff from making further motions without permission in light of Plaintiff's "history of asserting frivolous claims, including filing a barrage of documents that have impugned the integrity of the courts and individual judges"); *Rajapakse v. Wells Enter.*, No. C20-4002 (LTS), 2020 WL 364124, at *1-2 (N.D. Iowa Jan. 21, 2020) (observing that "Plaintiff has a history of filing vexatious litigation in other federal courts" and a "documented history of abusing judicial processes"); *Rajapakse v. Credit Acceptance Corp.*, No. 17-CV-12970, 2019 WL 948767, at *3 (E.D. Mich. Feb. 27, 2019) (certifying that appeal from motion to dismiss decision could not be taken in good faith, emphasizing Plaintiff's history of making "incomprehensible" filings and "lobbing baseless attacks on the ethics and impartiality" against numerous federal judicial officers), *aff'd* No. 19-1192, 2021 WL 3059755 (6th Cir. Mar. 5, 2021); *Rajapakse v. Wells Fargo Home Mortg.*, et al., No. 2:15-CV-02216 (JTF) (CGC) (W.D. Tenn. Aug. 14, 2015) (ECF 52) (granting filing injunction because Plaintiff continued filing "documents containing unsupported and unfounded allegations" after the Court ruled that

Plaintiff's filings were "incomprehensible" and "completely a function of poor pleading and lack of merit"); *Reed v. State of Tenn.*, No. 2:06-CV-02756 (HMP) (TMP), (W.D. Tenn. Oct. 13, 2008) (ECF 46) (enjoining Plaintiff, who filed suit under her maiden name, from filing further documents in that case or bringing additional cases related to a mortgage loan and recognizing that "Plaintiff's conduct in bringing this action demonstrates a marked propensity to abuse the judicial system in an attempt to harass the defendants as well as the Court"). Plaintiff's abusive tactics have continued in this case, as Plaintiff has made more than twenty lengthy, often incomprehensible, motions since the Court stayed discovery pending decision on Defendants' motion to dismiss on June 8, 2021. These motions include, *inter alia*, repeated motions for summary judgment, requests for the intervention and notification of the FBI and United States Secret Service, and other motions making baseless attacks against Judge Caproni and the undersigned.

The remaining factors also support granting a filing injunction. Plaintiff has certainly burdened the Court and its personnel with numerous lengthy, confusing, and unnecessary filings. Moreover, in light of the docket in the Georgia Action, which features multiple motions where Plaintiff makes the same or similar allegations against Defendants (ECF 43, 46-50, 52, 62, 65), it is questionable whether Plaintiff initiated this action in good faith rather than as an attempt to (further) harass Defendants or obtain quicker, more favorable results in a different forum. Moreover, it is at least unlikely that Plaintiff maintained an objective good faith expectation of prevailing after her motions were uniformly denied in the Georgia Action and her claims against Equifax were dismissed as frivolous on July 26, 2021. Additionally, while Plaintiff is proceeding *pro se*, "a court's special solicitude towards *pro se* litigants does not

extend to the willful, obstinate refusal to play by the basic rules of the system upon whose very power the plaintiff is calling to vindicate [her] rights." *Lipin v. Hunt*, 573 F. Supp. 2d 836, 845 (S.D.N.Y. 2008) (internal citations omitted); *see also Edwards v. Barclays Servs. Corp.*, No. 19-CV-9326 (GBD) (GWG), 2020 WL 2087749, at *8 (S.D.N.Y. May 1, 2020) ("[Plaintiff] is not represented by counsel and thus must bear full responsibility for bringing the suits in question."), *report and recommendation adopted*, 2020 WL 3446870 (S.D.N.Y. June 24, 2020). Lastly, Plaintiff's demonstrated history of vexatious, harassing lawsuits and abusive, duplicative filings in this case and the Georgia Action suggest that Plaintiff will continue to file lawsuits in the absence of an injunction.[16]

With the understanding that "injunctions should be narrowly tailored to the specific circumstance," *Carrington v. Graden*, No. 18-CV-4609 (KPF), 2020 WL 5503537, at *6 n.2 (S.D.N.Y. Sept. 11, 2020), I recommend that Plaintiff be enjoined from filing any new civil actions in this Court related to Defendants' representation of Equifax in the Georgia Action. This filing injunction would not prevent Plaintiff from appealing any decision in this case.

VI. Conclusion

For the foregoing reasons, I recommend that Defendants' motion to dismiss (ECF 25) be **GRANTED** and Plaintiff be **DENIED** leave to file a second amended complaint.[17] I also

[16] Indeed, ECF 63 already required Plaintiff to obtain leave from the undersigned before filing additional motions during the pendency of the discovery stay in this action, and Plaintiff filed at least four additional motions without requesting leave. (ECF 64, 65, 70, 71).

[17] Because Plaintiff's AC does not survive dismissal under Fed. R. Civ. P. 12(b)(6) and amendment would be futile, the Court need not address Defendants' alternative argument that the AC fails to conform to the pleading requirements of Fed. R. Civ. P. 8. *See Maack v. Wyckoff Heights Med. Ctr.*, No. 15-CV-3951 (ER), 2016 WL 3509338, at *18 n. 25 (S.D.N.Y. June 21, 2016); *Middleton v. United States*, No. CV 10-6057 (JFB) (ETB), 2011 WL 7164452, at *4 (E.D.N.Y. June 28, 2011), *report and recommendation adopted*, 2012 WL 394559 (E.D.N.Y. Feb. 7, 2012).

recommend enjoining Plaintiff from filing any new civil actions in this Court related to Defendants' representation of Equifax in the Georgia Action.

VII. Objections

In accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have **fourteen (14)** days (including weekends and holidays) from receipt of this Report to file written objections. *See* Fed. R. Civ. P. 6 (allowing three (3) additional days for service by mail). A party may respond to any objections within **fourteen (14) days** after being served. Objections, and any responses to objections, shall be addressed to the Hon. Valerie E. Caproni. Any requests for an extension of time for filing objections must be directed to Judge Caproni. **FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW.** *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Wesolek v. Canadair Ltd.*, 838 F.2d 55, 58 (2d Cir. 1988); *McCarthy v. Manson*, 714 F.2d 234, 237-38 (2d Cir. 1983). If Plaintiff wishes to review, but does not have access to, cases cited herein that are reported on Westlaw, she should request copies from Defendants. *See Lebron v. Sanders*, 557 F.3d 76, 79 (2d Cir. 2009).

The Clerk of Court is respectfully directed to mail a copy of this Report and Recommendation to the *pro se* Plaintiff.

Respectfully submitted,

s/ Ona T. Wang

Ona T. Wang
United States Magistrate Judge

Dated: February 18, 2022
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMANTHA D. RAJAPAKSE,

Plaintiff,

-against-

SEYFARTH SHAW; ROBERT SZYBA, PARTNER; CARLA LANIGAN, COUNSEL,

Defendants.

20-CV-10473 (VEC)

ORDER ADOPTING REPORT& RECOMMENDATION

VALERIE CAPRONI, United States District Judge:

WHEREAS on December 9, 2020, Plaintiff Samantha Rajapakse, proceeding *pro se*, filed a complaint against the law firm Seyfarth Shaw (incorrectly pled as Sey Farth Shaw), Dkt. 1;

WHEREAS on January 27, 2021, Plaintiff filed an amended complaint, naming Seyfarth Shaw as well as Robert Szyba and Carla Lanigan, two attorneys employed by the law firm, as Defendants, Dkt. 9;

WHEREAS Plaintiff asserted causes of action under the Fair Credit Reporting Act, 15 U.S.C. § 1681q, and various New York criminal statutes, related to Defendants' representation of Equifax in *Rajapakse v. Equifax Information, LLC*, 20-CV-00080 (N.D. Ga. July 26, 2021), *id.*;

WHEREAS on March 15, 2021, the Court dismissed Plaintiff's claims based on New York criminal statutes for failure to state a claim, Dkt. 13;

WHEREAS on March 15, 2021, the Court referred this case to Magistrate Judge Wang for general pretrial management and for the preparation of reports and recommendations ("R&Rs") on any dispositive motions, Dkt. 12;

WHEREAS on May 18, 2021, Defendants moved to dismiss the complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6), *see* Dkt. 26, and for "sanctions on Plaintiff to curtail

her from filing future pleadings (including motions) in this District without prior permission," *id.* at 14;

WHEREAS on May 24, 2021, Plaintiff responded in opposition to the motion, Dkt. 29, and on May 28, 2021, Defendants replied in support of their motion, Dkt. 31;

WHEREAS on February 18, 2022, Judge Wang entered an R&R, recommending that the Court grant Defendants' motion to dismiss, that Plaintiff be denied leave to file a second amended complaint, and that Plaintiff be enjoined from filing any new civil actions in this Court related to Defendants' representation of Equifax in *Rajapakse v. Equifax Information, LLC,* 20-CV-00080 (N.D. Ga. July 26, 2021), Dkt. 74 at 21–22;

WHEREAS in the R&R, Judge Wang notified the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), they had fourteen days to file written objections to the R&R's findings, *id.* at 22 (using bold font);

WHEREAS Judge Wang further noted that failure to file objections would result in both the waiver of objections and the preclusion of appellate review, *id.*;

WHEREAS on February 18, 2022 at 5:14 P.M., the R&R was sent to the *pro se* Plaintiff via electronic notification at the email address she provided to the Court;[1]

WHEREAS on February 23, 2022, the R&R was also mailed to the *pro se* Plaintiff;

WHEREAS the parties' deadline to file objections was March 4, 2022;

WHEREAS no objections were filed by either party by the deadline;

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[1] On December 9, 2020, Plaintiff consented to electronic service of notices and documents in this case, affirming that she has "regular access to [her] email account and to the internet and will check regularly for Notices of Electronic filing;" that she has "established a PACER account;" that she understands she "will no longer receive paper copies of case filings, including motions, decisions, orders, and other documents;" that she will "promptly notify the Court if there is any change in [her] personal data, such as name, address, or e-mail address" or if she wishes "to cancel this consent to electronic service;" and that she "must regularly review the docket sheet of [her] case so that [she does] not miss a filing." *See* Consent to Electronic Service, Dkt. 3 at 1.

WHEREAS on March 9, 2022, the *pro se* Plaintiff filed a letter claiming that she had called the Clerk's office and had been informed that Judge Wang had submitted an R&R and that her response deadline was March 4, 2022, Dkt. 75;

WHEREAS in the same letter, Plaintiff denied having previously received a copy of the R&R and asked for an extension so she could file "an answer to the report" after she received it, *id.*;

WHEREAS on March 10, 2022, the Court extended Plaintiff's deadline to file objections to the R&R to March 18, 2022, Dkt. 76;[2]

WHEREAS on March 10, 2022 at 11:53 A.M., Chambers emailed the R&R and the Court's endorsement extending the objections deadline to the *pro se* Plaintiff;

WHEREAS on March 10, 2022, the Clerk of Court mailed the R&R and the Court's endorsement extending the objections deadlines to the *pro se* Plaintiff via certified mail;[3]

WHEREAS no objections were received by the March 18, 2022 deadline, nor have any objections been received to date;

WHEREAS in reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge," 28 U.S.C. § 636(b)(1)(C);

WHEREAS when, as here, no party objects to the R&R, the Court may accept the R&R provided that "there is no clear error on the face of the record," *Heredia v. Doe*, 473 F. Supp. 2d

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[2] In its endorsement, the Court stated: "Any objections to the R&R must be uploaded to the docket by Friday, March 18, 2022. The Court reminds Plaintiff that if she is mailing her objections to the *pro se* office for them to upload on the docket, she must account for those few days in submitting her objections; the objections must be on the docket by March 18, 2022. Any responses by Defendants to any objections are due no later than Friday, March 25, 2022. The Court will not extend either of those deadlines further." *See* Endorsement, Dkt. 76.

[3] According to the tracking information (*see* tracking number 7019 1120 0000 8895 2427), on March 14, 2022, the mailing arrived at the address Plaintiff previously provided the Court.

462, 463 (S.D.N.Y. 2007) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *see also* Fed. R. Civ. P. 72(b) advisory committee's note;

WHEREAS an error is clear when the reviewing court is left with a "definite and firm conviction that a mistake has been committed," *see Cosme v. Henderson*, 287 F.3d 152, 158 (2d Cir. 2002) (quoting *McAllister v. United States*, 348 U.S. 19, 20 (1954)); and

WHEREAS careful review of the R&R reveals that there is no clear error;

IT IS HEREBY ORDERED that the R&R is adopted in full, Defendants' motion to dismiss is GRANTED, and Plaintiff's claims are DISMISSED with prejudice. Plaintiff is DENIED leave to file a second amended complaint for the reasons discussed in the R&R.

IT IS FURTHER ORDERED that, for the reasons discussed in the R&R, Plaintiff is enjoined from filing any new civil actions in this Court related to Defendants' representation of Equifax in *Rajapakse v. Equifax Information, LLC*, 20-CV-00080 (N.D. Ga. July 26, 2021).

IT IS FURTHER ORDERED that, because the R&R gave the parties adequate warning, *see* R&R, Dkt. 74 at 22 (using bold font and capital letters), the failure to file any objections to the R&R precludes appellate review of this decision. *See Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision.").

IT IS FURTHER ORDERED that because appellate review is precluded, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and, therefore, permission to proceed *in forma pauperis* for purposes of appeal is denied.

The Clerk of Court is respectfully directed to terminate the open motion at docket entry 25 and to close this case. The Clerk is further directed to mail a copy of this Order to the *pro se* Plaintiff and to note the mailing on the docket.

SO ORDERED.

Date: March 23, 2022
New York, NY

VALERIE CAPRONI
United States District Judge

Appendix B

ORDER FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DENIAL SEPTEMBER 30, 2022

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of September, two thousand twenty-two.

Samantha D. Rajapakse,

Plaintiff - Appellant,

v.

Seyfarth Shaw, Robert Szyba, Partner, Carla Lanigan, Counsel,

Defendants - Appellees,

Sey Farth Shaw,

Defendant.

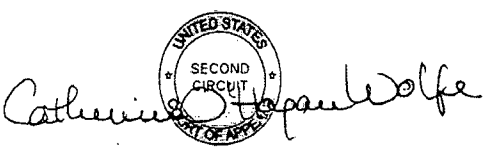
ORDER

Docket No: 22-679

Appellant Samantha D. Rajapakse, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



Additional material from this filing is available in the Clerk's Office.