

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 19-cv-00106-RM-NYW

BRIAN BATH,

Plaintiff,

v.

TRANS UNION, LLC;

Defendant.

AMENDED RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Magistrate Judge Nina Y. Wang

This matter comes before the court on Plaintiff Brian Bath (“Plaintiff” or “Mr. Bath”)’s Motion for Voluntary Dismissal (“Motion for Voluntary Dismissal” or “the Motion”) [#184, filed August 14, 2019]. The Motion was referred to this Magistrate Judge pursuant to 28 U.S.C. § 636(b); the Order Referring Case dated January 29, 2019 [#59]; and the Memorandum dated August 15, 2019 [#185]. Upon consideration of the Motion, this court respectfully **RECOMMENDS** that the Motion for Voluntary Dismissal be **GRANTED IN PART and DENIED IN PART**.

Plaintiff filed this action in Denver District Court on December 10, 2018, and it was removed to this court on January 11, 2019. [#1 at 2]. Plaintiff asserted a host of individual claims against various financial institutions and credit reporting agencies. [#3]. Over the ensuing months, most of the Defendants moved to dismiss the case, the undersigned recommended that those motions be granted, and the presiding judge, the Honorable Raymond P. Moore, adopted the

Recommendation and granted the various Motions to Dismiss. [#88; #89; #145; #174; #182]. Following that Order of Dismissal and numerous settlements, the only Defendant remaining in this action is Trans Union LLC (“Trans Union”), which filed an answer and non-dispositive Motion to Strike which was granted. [#90; #136; #182].

Mr. Bath then filed the instant Motion for Voluntary Dismissal on August 14, 2019, seeking to withdraw his claims and to have the court “order and waive all Pacer fees, past, present, and future.” [#184]. The Motion did not include a certificate of conferral and so the undersigned ordered that any Response be docketed by August 23. [#186]. Though the court expected that Trans Union, the only defendant left in this action, would file a response, dismissed-Defendant American Express Company filed the only Response that indicated that the relief was moot as to that party. [#187].

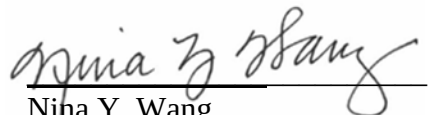
In the absence of any response indicating opposition, the court finds that the Motion for Voluntary Dismissal should be construed as unopposed. *Augustine v. Exec. in Charge I.R.S.*, No. CIV.A. 06-CV-02514-MS[K], 2007 WL 247719, at *1 n.1 (D. Colo. Jan. 26, 2007). As TransUnion did not sign the Motion but merely failed to oppose, Rule 41(a)(1)(A)(ii) would not be an appropriate basis for granting the Motion. For this reason, the court believes dismissal without prejudice is appropriate under the circumstances.

As to Mr. Wallace’s request that the court “waive all Pacer fees,” both past and present, this court respectfully **RECOMMENDS** that his request that all PACER fees be **DENIED**, particularly given Plaintiff’s pattern of litigation conduct spanning from 2011 to the present in this District. See Ex. 1 (List of cases filed by Plaintiff as Brian William Wallace and Brian Edmond Bath).

Accordingly, it is **RESPECTFULLY RECOMMENDED** that Plaintiff's Motion for Voluntary Dismissal [#184] be **GRANTED** pursuant to Federal Rule of Civil Procedure 41(a)(2) and his request that all PACER fees be **DENIED**.¹

DATED: September 9, 2019

BY THE COURT:


 Niha Y. Wang
 United States Magistrate Judge

¹ Within fourteen days after service of a copy of the Recommendation, any party may serve and file written objections to the Magistrate Judge's proposed findings and recommendations with the Clerk of the United States District Court for the District of Colorado. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *In re Griego*, 64 F.3d 580, 583 (10th Cir. 1995). A general objection that does not put the District Court on notice of the basis for the objection will not preserve the objection for *de novo* review. "[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review." *United States v. One Parcel of Real Property Known As 2121 East 30th Street, Tulsa, Oklahoma*, 73 F.3d 1057, 1060 (10th Cir. 1996). Failure to make timely objections may bar *de novo* review by the District Judge of the Magistrate Judge's proposed findings and recommendations and will result in a waiver of the right to appeal from a judgment of the district court based on the proposed findings and recommendations of the magistrate judge. *See Vega v. Suthers*, 195 F.3d 573, 579-80 (10th Cir. 1999) (District Court's decision to review a Magistrate Judge's recommendation *de novo* despite the lack of an objection does not preclude application of the "firm waiver rule"); *International Surplus Lines Insurance Co. v. Wyoming Coal Refining Systems, Inc.*, 52 F.3d 901, 904 (10th Cir. 1995) (by failing to object to certain portions of the Magistrate Judge's order, cross-claimant had waived its right to appeal those portions of the ruling); *Ayala v. United States*, 980 F.2d 1342, 1352 (10th Cir. 1992) (by their failure to file objections, plaintiffs waived their right to appeal the Magistrate Judge's ruling). *But see Morales-Fernandez v. INS*, 418 F.3d 1116, 1122 (10th Cir. 2005) (firm waiver rule does not apply when the interests of justice require review).