

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-2256

JAMAAL GITTENS,

Plaintiff - Appellant,

v.

EQUIFAX,

Defendant – Appellee,

and

TRANSUNION,

Defendant.

Appeal from the United States District Court for the Western District of North Carolina,
at Charlotte. Frank D. Whitney, Chief District Judge. (3:16-cv-00228-FDW-DSC)

Submitted: April 20, 2017

Decided: May 1, 2017

Before WILKINSON and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit
Judge.

Vacated and remanded by unpublished per curiam opinion.

Jamaal Gittens, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jamaal Gittens appeals from the district court's order dismissing without prejudice his action in which he alleged that Equifax failed to conduct a reasonable reinvestigation of disputed information on his credit report. The district court sua sponte dismissed the action pursuant to Fed. R. Civ. P. 4(m), after finding that Gittens failed to effect service upon Equifax within 90 days of the filing of the complaint.

Rule 4(m) provides: "If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant." Fed. R. Civ. P. 4(m). "As indicated by the plain language of Rule 4(m), notice to the plaintiff must be given prior to a sua sponte dismissal." *Thompson v. Maldonado*, 309 F.3d 107, 110 (2d Cir. 2002). Here, the court dismissed the action for failure to timely effect service upon Equifax, but failed to provide notice to Gittens prior to the dismissal. For this reason, we vacate the dismissal order and remand to the district court for further proceedings. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED