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NOT FOR PUBLICATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 Vicki Everts,

No. CV-15-02023-PHX-JJT

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Plaintiff,

ORDER

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v.

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PMR Progressive LLC, *et al.*,

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Defendants.

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At issue is Defendant Corelogic Credco, LLC's Motion to Dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure (Doc. 18, MTD), to which Plaintiff filed a Response (Doc. 22, Resp.), and Defendant filed a Reply (Doc. 24, Reply). For the reasons set forth below, the Court will deny Defendant's Motion to Dismiss under Rule 12(b)(6). The Court will also set a hearing to address Plaintiff's request for sanctions.

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I. BACKGROUND

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In considering Defendant's Motion to Dismiss, the Court construes as true Plaintiff's allegations in the Complaint. *See Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002) (citing *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996)). Plaintiff Vicki Everts and her husband, Charles Everts, filed Chapter 7 bankruptcy in the Central District of California on March 31, 2009. (Doc. 1, Compl. ¶ 10.) The Evertses received a discharge of their Chapter 7 bankruptcy on September 29, 2009. (Compl. ¶ 11.) The bankruptcy proceeding

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1 resulted in a complete discharge of all unsecured debts and did not result in any payments
2 made to unsecured creditors. (Compl. ¶ 12.)

3 In 2014, Ms. Everts attempted to obtain pre-approval to purchase a new home.
4 (Compl. ¶¶ 15–16.) Ms. Everts alleges that she was not able to obtain a mortgage because
5 of inaccurate reporting by Defendant PMR Progressive, LLC (PMR) of a debt that was
6 included in her 2009 bankruptcy discharge. (Compl. ¶ 17.) PMR is in the practice of
7 furnishing consumer information to consumer reporting agencies and is engaged in the
8 practice of collecting debts. (Compl. ¶ 3.)

9 In May 2014, Ms. Everts submitted a written dispute to Defendant Experian
10 Information Solutions, Inc. (Experian), a credit reporting agency. (Compl. ¶¶ 5, 18.)
11 Experian allegedly did not take any action on Ms. Everts’s dispute, and the debt remained
12 on Ms. Everts’s credit report. (Compl. ¶ 20.) In May 2014, Ms. Everts also submitted a
13 written dispute to Defendant CoreLogic Credco, LLC (Credco), a reporting agency.¹
14 (Compl. ¶ 21.) Ms. Everts alleges on “information and belief” that Credco is engaged in
15 the business of assembling, evaluating, and disbursing information for the purpose of
16 furnishing consumer reports. (Compl. ¶ 4.) Ms. Everts alleges that Credco and Experian
17 disburse consumer reports to third parties for monetary compensation. (Compl. ¶ 6.)

18 In the written dispute to Credco, Ms. Everts explained that the debt from PMR had
19 been discharged. (Compl. ¶ 21.) She attached a copy of the discharge and notice of
20 bankruptcy filing to show that the debt was invalid. (Compl. ¶ 21.) On June 24, 2014,
21 Credco responded to Ms. Everts’s dispute and confirmed the reporting of the PMR debt
22 through Experian. (Compl. ¶ 22.) Ms. Everts alleges on “information and belief” that
23 Credco failed to conduct a meaningful investigation of her dispute. (Compl. ¶ 23.)
24 Ms. Everts alleges that because of Credco’s failure to conduct a meaningful investigation,
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27 ¹ Ms. Everts refers to Credco as a reporting agency in the Complaint but defines
28 Credco as furnishing consumer reports under the Fair Credit Reporting Act (FCRA), 15
U.S.C. § 1681a(d). (Compl. ¶ 4.) Ms. Everts refers to Credco as a consumer reporting
agency in her Response to the Motion to Dismiss. (Resp. at 8.)

1 she had to pay PMR \$477.00, a discharged debt in her bankruptcy, to have her mortgage
2 application approved. (Compl. ¶¶ 24–25.)

3 On October 8, 2015, about a year after Ms. Everts attempted to obtain pre-
4 approval to purchase a new home and learned that her Chapter 7 bankruptcy had not been
5 reported as discharged, Ms. Everts filed a Complaint in this Court alleging three causes of
6 action, one of which is against Credco.² (Compl. ¶¶ 28–47.) The third cause of action
7 alleges that Credco and Experian, in violation of the Fair Credit Reporting Act (FCRA),
8 15 U.S.C. § 1681i(a)(2)(A), failed to conduct reasonable reinvestigations to determine
9 whether Ms. Everts’s debt information in dispute was accurate, and that Credco and
10 Experian, in violation of 15 U.S.C. § 1681e(b), failed to follow reasonable procedures.
11 (Compl. ¶¶ 40–47.) Credco moved to dismiss for failure to state a claim under Rule
12 12(b)(6). In her response to the Motion to Dismiss, Ms. Everts concedes that Credco is
13 exempt from obligations under Section 1681i(a)(2)(A) but maintains that Credco violated
14 Section 1681e(b). (Resp. at 3.)

15 II. LEGAL STANDARD

16 When analyzing a complaint for failure to state a claim for relief under Rule
17 12(b)(6), the well-pled factual allegations are taken as true and construed in the light
18 most favorable to the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th
19 Cir. 2009). Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a pleading must
20 contain a “short and plain statement of the claim showing that the pleader is entitled to
21 relief,” *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009), in order to “give the defendant
22 fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
23 *Twombly*, 550 U.S. 544, 555 (2007).

24 A complaint attacked by a Rule 12(b)(6) motion does not need detailed factual
25 allegations. *Id.* at 555. However, a complaint is properly dismissed if it does not plead

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27 ² The first cause of action alleges PMR provided inaccurate information to the
28 credit reporting agencies in violation of the FCRA, 15 U.S.C. §§ 1681n, 1681o. (Compl.
¶¶ 28–33.) The second cause of action alleges PMR provided a false representation of
“the character, amount, or legal status of any debt” in violation of the Fair Debt
Collection Practices Act (FDCPA), 15 U.S.C. § 1692e(2)(a). (Compl. ¶¶ 34–39.)

1 enough facts to “state a claim to relief that is plausible on its face.” *Id.* at 570; *see In re*
2 *Cutera Sec. Litig.*, 610 F.3d 1103, 1107 (9th Cir. 2010). The plausibility standard asks for
3 more than a “sheer possibility” of the defendant’s alleged unlawful conduct. *Iqbal*, 556
4 U.S. at 662, 678. A complaint that pleads facts that are “merely consistent with” a
5 defendant’s liability “stops short of the line between possibility and plausibility of
6 ‘entitlement to relief.’” *Id.* at 678. “[D]etermining whether a complaint states a plausible
7 claim is context-specific, requiring the reviewing court to draw on its experience and
8 common sense.” *Id.* at 663–64.

9 The pleading must contain something more than a “bare averment” that the
10 pleader wants compensation and is entitled to it. *Twombly*, 550 U.S. at 555. A complaint
11 must call for enough facts to raise a “reasonable expectation that discovery will reveal
12 evidence of illegal agreement.” *Id.* at 556. Legal conclusions couched as factual
13 allegations are not entitled to the assumption of truth, *Iqbal*, 556 U.S. at 680, and
14 therefore are insufficient to defeat a motion to dismiss for failure to state a claim. *In re*
15 *Cutera Sec. Litig.*, 610 F.3d at 1108. Dismissal is proper on a Rule 12(b)(6) motion when
16 (1) there is either no cognizable legal theory or (2) there are insufficient facts to support a
17 cognizable legal claim. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
18 1990). A well-pled complaint may proceed even if the court concludes that actual proof
19 of the alleged facts is improbable and recovery is unlikely. *Twombly*, 550 U.S. at 556. A
20 plaintiff is entitled to amend the complaint before dismissal if the defective complaint can
21 be cured. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

22 Generally, a district court may not consider material outside the pleadings when
23 deciding a Rule 12(b)(6) motion. *Lee v. City of L. A.*, 250 F.3d 668, 688 (9th Cir. 2001).
24 To consider outside material would convert a motion to dismiss into a motion for
25 summary judgment. *Id.*; Fed. R. Civ. P. 12(b)(6). There are two exceptions to this general
26 rule: (1) a court may consider material properly submitted as part of the complaint, and
27 (2) a court may take judicial notice of, and properly consider, matters of public record.
28 *Lee*, 250 F.3d at 688.

1 **III. ANALYSIS**

2 **A. Failure to State a Claim Under Rule 12(b)(6)**

3 Defendant Credco contends that the claims against it should be dismissed for two
4 reasons: (1) Plaintiff fails to allege Defendant is a consumer reporting agency; and (2)
5 Plaintiff fails to allege Defendant prepared a report containing inaccurate information.
6 (MTD at 4); 15 U.S.C. §1681e(b). The Court rejects Defendant’s arguments.

7 **1. Consumer Reporting Agency**

8 Defendant contends that Plaintiff fails to state a claim under Section 1681e(b)
9 because Plaintiff does not allege Defendant is a consumer reporting agency. (MTD at 4.)
10 The definition of a consumer reporting agency includes four elements: (1) the company
11 works in exchange for compensation; (2) it regularly assembles or evaluates information
12 about consumers; (3) its purpose in doing so is to furnish consumer reports to third
13 parties; and (4) it utilizes interstate commerce to achieve these aims. *See* 15 U.S.C.
14 § 1681a(f); *McCalmont v. Fed. Nat. Mortg. Ass’n*, No. CV-13-2107-PHX-HRH, 2014
15 WL 3571700, at *4 (D. Ariz. July 21, 2014); *Zabriskie v. Fed. Nat. Mortg. Ass’n*, 109 F.
16 Supp. 3d 1178, 1183 (D. Ariz. 2014). Plaintiff alleges that Defendant is a reporting
17 agency that is regularly engaged in the business of assembling, evaluating, and disbursing
18 consumer reports to third parties for monetary compensation. (Compl. ¶¶ 4, 6.) Further,
19 Plaintiff alleges that around May 2014, she submitted a written dispute to Defendant, and
20 on June 24, 2014, Defendant provided its reinvestigation results to Plaintiff. (Compl.
21 ¶¶ 21–22.)

22 Plaintiff’s allegations allow the Court to draw reasonable inferences that all four
23 elements of the definition of a consumer reporting agency are satisfied. The Court
24 construes the Complaint in the light most favorable to the non-moving party and takes
25 allegations and reasonable inferences as true. *Walter v. Drayson*, 538 F.3d 1244, 1247
26 (9th Cir. 2008). Accordingly, the Court finds that Plaintiff has sufficiently alleged that
27 Defendant is a consumer reporting agency as defined under Section 1681a(f).

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1 11.) Sanctions must be imposed when either, (1) a motion has been filed for an improper
2 purpose, or (2) a motion is “frivolous.” *Townsend v. Holman Consulting Corp.*, 929 F.2d
3 1358, 1362 (9th Cir. 1990). The word frivolous refers to a filing that is both baseless and
4 made without a reasonable and competent inquiry. *Id.* The purpose of Rule 11 is to deter
5 baseless or improper filings and to streamline the administration and procedure set forth
6 by the federal courts. *Id.* at 1063; *see Maisonville v. F2 Am., Inc.*, 902 F.2d 746, 748 (9th
7 Cir. 1990).

8 On October 8, 2015, the Court ordered that the parties must meet and confer prior
9 to filing a motion to dismiss. (Doc. 5.) Defendant filed its Rule 12(b)(6) Motion on
10 November 13, 2015, but it is unclear whether the parties met and conferred and whether
11 Defendant thus frivolously filed its Rule 12(b)(6) Motion. Attached to the Reply,
12 Defendant submitted a chain of emails, which the Court considers for the limited purpose
13 of the sanctions issue. On November 12, 2015, at 2:36 p.m., Defendant’s counsel emailed
14 Plaintiff’s counsel of its intent to file the Motion to Dismiss the next day. (Doc. 24-1,
15 Ex. A.) In the same email, Defendant’s counsel states, “[p]lease let this email serve as our
16 attempt to meet and confer regarding these issues as required by the Court’s October 5,
17 2015 Order.”³ (Doc. 24-1, Ex. A.) Defendant’s counsel’s first email to Plaintiff’s counsel
18 also references an “initial call,” however it is unclear whether the parties discussed the
19 Motion to Dismiss during that “initial call.” (Doc. 24-1, Exs. A, C.) Additionally, in the
20 email, Defendant’s counsel states its understanding that Plaintiff’s counsel was checking
21 email although he was travelling. (Doc. 24-1, Ex. A.) Plaintiff’s counsel’s email response
22 states that he finds Defendant’s counsel’s previous email, the apparent attempt to meet
23 and confer, did not comply with the Court’s Order. (Doc. 24-1, Ex. B.) On November 13,
24 2015, after submitting the Motion to Dismiss, Defendant filed a Notice of Certification of
25 Conferral. (Doc. 21.)

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28 ³ It appears Defendant inadvertently noted the date of the Order as October 5
rather than October 8. (Doc. 24-1, Ex. A.)

1 The Court's October 8, 2015 Order makes clear there must be a meeting and
2 conferral before filing a motion to dismiss. Because the parties dispute whether they met
3 and conferred in accordance with the Court's Order, yet Defendant filed a Notice of
4 Certification of Conferral, there may be grounds for sanctions under Rule 11. As such,
5 the Court will order a hearing to determine whether the parties met and conferred and if
6 sanctions should be imposed for failure to comply with the Court's October 8, 2015
7 Order.

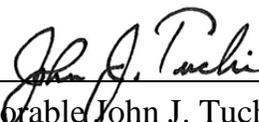
8 **IV. CONCLUSION**

9 Plaintiff Ms. Everts has stated a claim under Rule 8(a)(2) of the Federal Rules of
10 Civil Procedure alleging that Defendant Credco, a consumer reporting agency, failed to
11 conduct a reasonable reinvestigation under 15 U.S.C. § 1681e(b).

12 IT IS THEREFORE ORDERED denying Defendant's Motion to Dismiss pursuant
13 to Federal Rule of Civil Procedure 12(b)(6) (Doc. 18).

14 IT IS FURTHER ORDERED that a telephonic hearing regarding Rule 11
15 sanctions is set for Wednesday, April 6, 2016 at 10:00 a.m. (Arizona time) before District
16 Judge John J. Tuchi. Chambers will email the parties dial-in information prior to the
17 hearing.

18 Dated this 29th day of March, 2016.

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22 Honorable John J. Tuchi
23 United States District Judge
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