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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Nicholaus Fischer,

No. CV-15-02075-PHX-JJT

10 Plaintiff,

ORDER

11 v.

12 SunTrust Mortgage Incorporated, *et al.*,13 Defendants.
14

15 At issue is Defendant SunTrust Mortgage, Inc.'s (SunTrust) Motion to Dismiss
16 (Doc. 19, MTD), to which Plaintiff Nicholaus Fischer filed a Response (Doc. 23, Resp.)
17 and SunTrust filed a Reply (Doc. 38, Reply). For the reasons that follow, the Court will
18 deny the Motion in part and grant it in part.

19 **I. BACKGROUND**

20 When analyzing a complaint for failure to state a claim for relief under Federal
21 Rule of Civil Procedure 12(b)(6), the Court accepts as true Plaintiff's non-conclusory,
22 material allegations in the Amended Complaint and construes them in the light most
23 favorable to Plaintiff. *See Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th
24 Cir. 2002) (citing *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588
25 (9th Cir. 1996)). Plaintiff alleges the following in his Amended Complaint.¹ (Doc. 30,
26 Am. Compl.)

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28 ¹ The parties filed a Stipulation to Amend Complaint (Doc. 22) to correct the name of Defendant "Equifax, Inc." to "Equifax Information Services, LLC," and the Court granted the Stipulation (Doc. 27). In this Order, the Court cites the Amended Complaint

1 SunTrust is a mortgage company that offers servicing, origination, and
2 transaction-based real estate services. (Am. Compl. at 2.) Plaintiff purchased a home in
3 2007, and Crestar Mortgage provided the original mortgage on the home. (Am. Compl. at
4 4–5.) Later, SunTrust either purchased the debt or began acting as the mortgage servicer.
5 (Am. Compl. at 5.) On or about June 1, 2010, Plaintiff stopped making payments on his
6 loans with SunTrust, and on January 20, 2011, SunTrust foreclosed on Plaintiff’s
7 property via Trustee Sale. (Am. Compl. at 5.) SunTrust then began inaccurately reporting
8 the debt on Plaintiff’s credit report and to credit reporting agencies (the Agencies) as a
9 “charge off.” (Am. Compl. at 6.) Plaintiff did not learn that SunTrust was reporting the
10 charge off until around March 2015. (Am. Compl. at 6.)

11 In July 2015, Plaintiff sent dispute letters to SunTrust and the Agency Defendants
12 in this lawsuit notifying them of the inaccurate reporting. (Am. Compl. at 6.) The
13 Agencies notified SunTrust that Plaintiff was contesting the information SunTrust
14 provided to them. (Am. Compl. at 8.) SunTrust made no attempt to investigate the dispute
15 raised by Plaintiff and continued reporting Plaintiff’s mortgage as a charge off. (Am.
16 Compl. at 8.)

17 In his Amended Complaint, Plaintiff alleges two claims against SunTrust: (1)
18 negligent and willful violations of the Fair Credit Reporting Act (FCRA), 15 U.S.C. §
19 1671 *et seq.* (Am. Compl. at 7–11); and (2) violations of the Fair Debt Collection
20 Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.* (Am. Compl. at 11–12). SunTrust now
21 moves to dismiss both claims.²

22 **II. LEGAL STANDARD**

23 Federal Rule of Civil Procedure 12(b)(6) is designed to “test[] the legal sufficiency
24 of a claim.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A dismissal under Rule
25

26 as there is no material difference between the Complaint (Doc. 1) and the Amended
27 Complaint (Doc. 30).

28 ² The Agencies TransUnion LLC and Experian Information Solutions
Incorporated have been dismissed from this action. The only remaining Agency is
Equifax Information Services LLC; it has not taken a position as to this Motion.

1 12(b)(6) for failure to state a claim can be based on either (1) the lack of a cognizable
2 legal theory or (2) insufficient facts to support a cognizable legal claim. *Balistreri v.*
3 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint must provide more
4 than “labels and conclusions” or a “formulaic recitation of the elements of a cause of
5 action;” it must contain factual allegations sufficient to “raise a right to relief above the
6 speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While “a
7 complaint need not contain detailed factual allegations [] it must plead ‘enough facts to
8 state a claim to relief that is plausible on its face.’” *Clemens v. DaimlerChrysler Corp.*,
9 534 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Twombly*, 550 U.S. at 570). “A claim has
10 facial plausibility when Plaintiff pleads factual content that allows the court to draw the
11 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
12 *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). The plausibility
13 standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.*

14 When analyzing a complaint under Rule 12(b)(6), “[a]ll allegations of material
15 fact are taken as true and construed in the light most favorable to the nonmoving party.”
16 *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996). However, legal conclusions
17 couched as factual allegations are not given a presumption of truthfulness, and
18 “conclusory allegations of law and unwarranted inferences are not sufficient to defeat a
19 motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998). In ruling upon a
20 motion to dismiss, the court may consider only the complaint, any exhibits properly
21 included in the complaint, and matters that may be judicially noticed pursuant to Federal
22 Rule of Evidence 201. *See Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir.
23 1988); *Isuzu Motors Ltd. v. Consumers Union of U.S., Inc.*, 12 F. Supp. 2d 1035, 1042
24 (C.D. Cal. 1998).

25 **III. ANALYSIS**

26 **A. FCRA Claim**

27 The FCRA regulates creditors and other entities who furnish credit information to
28 the Agencies. 15 U.S.C. § 1681s-2. Under the FCRA, furnishers must report accurate

1 information to the Agencies and must investigate a consumer's dispute about reported
2 information when an Agency notifies a furnisher of a dispute. § 1681s-2(a), (b). Upon
3 receiving notice, a furnisher has a statutory duty to investigate and correct the
4 information, if necessary. § 1681s-2(b). If a furnisher fails to investigate, respond to, or
5 correct the disputed information, then the FCRA provides a private right of action for the
6 affected individual to sue the furnisher. *See id.*; § 1681n, o; *Nelson v. Chase Manhattan*
7 *Mortg. Corp.*, 282 F.3d 1057, 1059 (9th Cir. 2002).

8 Although the FCRA prohibits furnishers from providing inaccurate information to
9 the Agencies, it does not provide a private right of action to individuals for violations of
10 that provision. *See* § 1681s-2(a); *Nelson*, 282 F.3d at 1059 (stating only federal or state
11 officials may bring actions for § 1681s-2(a) violations). Under the statute, private actions
12 for violations of the FCRA brought under § 1681o must address conduct violating
13 § 1681s-2(b) as opposed to 2(a).

14 SunTrust argues Plaintiff's pleadings are insufficient because they fail to allege:
15 (1) any recognized cause of action under the FCRA; (2) any inaccurate reporting; (3)
16 facts that give rise to a duty for SunTrust to investigate Plaintiff's dispute; and (4) that
17 SunTrust failed to investigate, or unreasonably investigated, Plaintiff's dispute. (MTD at
18 5-9.) Should those arguments fail, SunTrust asserts that at least Plaintiff's claim for
19 willful violations should be dismissed because Plaintiff does not plead any facts showing
20 knowing or reckless conduct. (MTD at 9-10.)

21 **1. Negligent Violation of the FCRA**

22 Plaintiff claims SunTrust negligently violated the FCRA when it reported his
23 foreclosed mortgage as a charge off to the Agencies and failed to investigate or correct
24 the misreporting after receiving notification of the error. (Am. Compl. at 8-9.)

25 **a. Recognized Cause of Action Under the FCRA**

26 SunTrust argues that the Court must dismiss Plaintiff's claim because he only
27 alleges that SunTrust inaccurately reported information under § 1681s-2(a), which is not
28 privately actionable under the FCRA. (MTD at 5-6.) However, contrary to SunTrust's

1 contention, Plaintiff also alleges that SunTrust failed to investigate and correct the
2 inaccurate reports after the Agencies notified it of Plaintiff's dispute. (Am. Compl. at 8.)
3 Further, the Amended Complaint cites both § 1681s-2(a) and (b) (Am. Compl. at 8), and
4 Plaintiff alleges conduct that is only prohibited under § 1681s-2(b) (Am. Compl. at 8).
5 Thus, Plaintiff alleges a recognized cause of action under § 1681s-2(b) of the FCRA.

6 **b. Allegations of Inaccurate Reporting**

7 SunTrust also argues that the Court must dismiss Plaintiff's claim because it fails
8 to plausibly allege that SunTrust's reporting of the debt is inaccurate or unlawful. (MTD
9 at 6-7.)

10 To the extent Plaintiff claims that SunTrust's Reporting of the subject debt is
11 unlawful because it cannot report, in any form, that Plaintiff had a debt he did not honor,
12 that claim is foreclosed and subject to dismissal, as the law does not preclude accurate
13 reporting of the debt.³ But whether or not Plaintiff predicates his claim on the above

14 ³ Plaintiff notes that Arizona's anti-deficiency statute, A.R.S. § 33-814(G),
15 renders any deficiency remaining on his mortgage uncollectable. From that he urges that
16 § 33-814(G) prohibits any reporting of that deficiency, including reporting as a charge
17 off, on his credit report after foreclosure. (Am. Compl. at 6.) In response, SunTrust
18 asserts Arizona's anti-deficiency statute only prevents creditors from bringing deficiency
19 actions to hold the debtor personally responsible for paying any remaining debt after
applying the proceeds of the foreclosure, but does not completely erase the existence of
the debt. (MTD at 6-7.)

20 The Arizona legislature intended the anti-deficiency statute to prevent lenders
21 from judicially pursuing any collateral, other than the qualifying residential home, to
22 satisfy a deficiency remaining after a foreclosure. *BMO Harris Bank, N.A. v. Wildwood
23 Creek Ranch, LLC*, 340 P.3d 1071, 1073 (Ariz. 2015). The statute is silent as to
24 restrictions or requirements for reporting an uncollectable deficiency to the Agencies
25 after foreclosure, and there appears to be no Arizona case law addressing this issue. But
26 California has an anti-deficiency statute nearly identical to Arizona's. Cal. Civ. Proc.
27 Code § 580(b). And Defendant has identified case law from federal district courts in
28 California concluding that statute does not preclude the accurate reporting of debt
covered by the anti-deficiency statute. *See Murphy v. Ocwen Loan Servicing, LLP*, No.
2:13-CV-0555-TLN-EFB, 2014 WL 651914, at *5 (E.D. Cal. Feb. 19, 2014). While this
out-of-district case has no precedential value, its reasoning and result are wholly
persuasive. The purpose of credit reporting is to provide potential lenders and service
providers information on the risk levels associated with potential borrowers or customers.
Even where an anti-deficiency statute has operated to render a defaulted mortgage debt

1 argument, the claim is based on the additional theory that SunTrust’s reporting was
2 unlawful because it was *inaccurate*. The Amended Complaint focuses on SunTrust’s
3 “illegally reporting the debt on Plaintiff’s credit report *as a Charge Off*” and continuing
4 to do so monthly following the foreclosure. (Am. Compl. at 6)(emphasis added). Plaintiff
5 also contends SunTrust violated § 1681s–2(b) by failing to update or add any notice to
6 his credit report that he disputed the reporting, and incorrectly reporting the balance of
7 that debt. (Am. Compl. at 6–7, 11.)

8 That the FCRA claim should be understood as based on allegations of inaccurate
9 reporting is further supported by the argument in Plaintiff’s Response. (Doc. 23.) The
10 gravamen of Plaintiff’s argument on pages eight through ten of the Response is precisely
11 this – that the term “charge-off,” as used in SunTrust’s report concerning Plaintiff, does
12 not comport with the standard definition of the term within the industry and therefore
13 inaccurately represents the status of Plaintiff’s debt.

14 Whether there is a standard definition of “charge off” in the credit reporting
15 industry, whether SunTrust used the term inconsistently with it, and whether any such
16 inconsistency amounts to inaccurate reporting within the meaning of FCRA, are matters
17 for another day, but taking Plaintiff’s allegation as true for purposes of this Motion, as the
18 Court must, Plaintiff has stated a claim under FCRA on which relief may be granted.
19 Defendant could have violated the FCRA by inaccurately reporting the debt and or by
20 failing to investigate upon receipt of the dispute and continuing to report a disputed debt
21 without any notation of the dispute. *See Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d
22 1147, 1164 (9th Cir. 2009) (finding “[a] disputed credit file that lacks a notation of
23 dispute may well be ‘incomplete or inaccurate’ within the meaning of the FCRA, and the
24 furnisher has a privately enforceable obligation to correct the information after notice”);
25 *Samuelson v. Green Tree Servicing, LLC*, No. CV-13-00656-PHX-DGC, 2013 WL

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28 uncollectible, the fact that a borrower defaulted on that debt and the circumstances of that
default is highly relevant information to potential lenders.

1 5634110, at *2 (D. Ariz. Oct. 15, 2013). Plaintiff's Amended Complaint sufficiently
2 pleads a violation of the FCRA under § 1684s-2(b).

3 **c. Duty to Investigate**

4 SunTrust also argues Plaintiff fails to allege sufficient facts showing the Agencies,
5 rather than just Plaintiff, reported the dispute to SunTrust, and thus SunTrust was under
6 no obligation to investigate. (MTD at 7-8.) However, Plaintiff clearly alleges the
7 Agencies, not just Plaintiff, reported the dispute to SunTrust so SunTrust's argument has
8 no merit. (Am. Compl. at 8.)

9 **d. Failure to Investigate**

10 SunTrust contends the Court must dismiss Plaintiff's FCRA claim because he does
11 not sufficiently allege that SunTrust failed to conduct a reasonable investigation of
12 Plaintiff's dispute. (MTD at 8-9.) Plaintiff alleges that despite receiving notification and
13 supporting details of the dispute, SunTrust took no action and made no changes to the
14 reported information. (Am. Compl. at 6-8.) Specifically, Plaintiff alleges SunTrust failed
15 to notify him or the Agencies with the results of the investigation it conducted, if any.
16 (Am. Compl. at 8.)

17 SunTrust cites several cases in support of its argument that Plaintiff's Amended
18 Complaint fails to state a valid claim. *See Gorman*, 584 F.3d at 1153; *O'Connor v.*
19 *Capital One, N.A.*, No. CV-14-00177-KAW, 2014 WL 2215965, at *7 (N.D. Cal. May
20 29, 2014); *Berbery v. Asset Acceptance, LLC*, No. CV 12-4417-CAS(PLAX), 2013
21 WL 1136525, at *5 (C.D. Cal. Mar. 18, 2013); *Iyigun v. Cavalry Portfolio Services, LLC*,
22 No. CV-12-8682, 2013 WL 93114, at *1 (C.D. Cal. Jan. 8, 2013).

23 None of the cases SunTrust cites justify dismissal here. *O'Connor* and *Iyigun*
24 turned on pleadings devoid of the details Plaintiff provides in his Amended Complaint.
25 *See* 2014 WL 2215965, at *2 (discussing plaintiff's repetitious and disorganized
26 complaint that was largely copied and pasted sections of the underlying statutes); 2013
27 WL 93114, at *1-2 (characterizing plaintiff's allegations as conclusory recitations of the
28 elements of the FCRA claim without any specific relation to any single defendant).

1 Unlike those cases, Plaintiff's Amended Complaint provides sufficient detail to give
2 notice to SunTrust regarding the necessary investigation. In *Berbery*, the defendant
3 responded to the plaintiff's dispute and noted the dispute on the plaintiff's credit report,
4 and the plaintiff failed to plead any additional facts suggesting that the defendant's
5 investigation was unreasonable. 2013 WL 1136525, at *5. By contrast, here, Plaintiff
6 alleges specific inaccuracies with SunTrust's reporting, indicates that he did not receive
7 any response from SunTrust regarding his dispute, and alleges that his credit report
8 remained unchanged at the time he filed his Amended Complaint.

9 Also in contrast to the current case, *Gorman* was decided on a motion for
10 summary judgment, not a motion to dismiss. 584 F.3d at 1151. At that stage, the plaintiff
11 had the opportunity to pursue discovery and the burden of showing the defendant's
12 failure to reasonably investigate the dispute. Plaintiff is positioned differently and has not
13 yet had the benefit of discovery, nor does he bear the burden that exists at summary
14 judgment. On a motion to dismiss, Plaintiff's allegations that the Agencies notified
15 SunTrust of the dispute, that SunTrust failed to complete any investigation, and that
16 SunTrust failed to respond to both Plaintiff and the Agencies after Plaintiff sent dispute
17 letters, is sufficient factual content that allows the Court to draw the reasonable inference
18 that SunTrust is liable for the misconduct alleged. *See Gorman*, 584 F.3d at 1163;
19 *Warring v. Green Tree Servicing LLC*, No. CV-14-0098-PHX-DGC, 2014 WL 2605425,
20 at *3 (D. Ariz. June 11, 2014); *Samuelson*, 2013 WL 5634110, at *2.

21 Plaintiff's negligent violation of the FCRA claim survives SunTrust's Motion to
22 Dismiss.

23 **2. Willful Violation of the FCRA**

24 Plaintiff also alleges that SunTrust's FCRA violations are willful. (Am. Compl. at
25 8-9.) Willful violations of the FCRA occur when the defendant acts with actual
26 knowledge or with reckless disregard as to whether its conduct violates the Act. § 1681n;
27 *Safeco Ins. Co., v. Burr*, 551 U.S. 47, 57 (2007). Conditions of the mind, such as
28 knowledge, may be alleged generally at the pleading stage. Fed. R. Civ. P. 9(b).

1 SunTrust argues Plaintiff's Amended Complaint lacks any facts that would allow
2 an inference of knowing or reckless violations. (MTD at 9–10.) SunTrust contends its
3 conduct cannot be reckless because *Safeco* establishes that SunTrust's actions must be
4 objectively unreasonable in light of a clearly established legal rule to rise to the level of
5 reckless misconduct, and reporting Plaintiff's foreclosed mortgage as a charge off, even if
6 incorrect, is not objectively unreasonable as a matter of law. (MTD at 9–10.) Plaintiff
7 alleges, however, that SunTrust, after receiving notice of Plaintiff's dispute from the
8 Agencies, willfully failed to follow clear statutory provisions requiring it to reasonably
9 investigate Plaintiff's disputes. (Am. Compl. at 7–9.)

10 Taking Plaintiff's allegations as true, the Court finds he has plausibly pled a
11 willful violation by alleging SunTrust failed to conduct any investigation, because failing
12 to do so would be objectively unreasonable in light of the clearly established statute
13 requiring furnishers to reasonably investigate upon receiving notification of a dispute
14 from an Agency. *See* § 1681s–2(b); *Safeco*, 551 U.S. at 69–70. Unlike in *Safeco*, where
15 the lower court ruled on a motion for summary judgment, the Court does not consider the
16 reasonableness of SunTrust's interpretation of the FCRA and its actions, but rather
17 whether Plaintiff adequately pled a willful violation. *See Safeco*, 551 U.S. at 52; *Haley v.*
18 *TalentWise, Inc.*, No. C13-1915, 2014 WL 1648480, at *2 (W.D. Wash. Apr. 23, 2014).

19 SunTrust also cites *Long v. Tommy Hilfiger U.S.A., Inc.*, 671 F.3d 371 (3d Cir.
20 2012) in support of its argument. However, *Long* fails to justify dismissal because the
21 alleged violation in that case was not clearly prohibited by the statutory text. By contrast,
22 in *Haley*, the court refused to dismiss the willfulness count on facts similar to those here
23 because the objective reasonableness of the defendant's interpretation of the statute could
24 not be decided as a matter of law. 2014 WL 1648480, at *2. Thus, Plaintiff's allegations
25 are sufficient to state a plausible claim for a willful violation of the FCRA.

26 **B. FDCPA Claim**

27 The FDCPA applies only to debt collectors who engage in practices prohibited by
28 the Act in an attempt to collect a consumer debt. *Mansour v. Cal-Western Reconveyance*

1 *Corp.*, 618 F. Supp. 2d 1178, 1182 (D. Ariz. 2009). Congress defined “debt collector”
2 under the FDCPA to include, “any person who uses any instrumentality of interstate
3 commerce or the mails in any business the principal purpose of which is the collection of
4 any debts, or who regularly collects or attempts to collect, directly or indirectly, debts
5 owed or due or asserted to be owed or due another.” § 1692a(6); *Diessner v. Mortg. Elec.*
6 *Registration Sys.*, 618 F. Supp. 2d 1184, 1188 (D. Ariz. 2009), *aff’d*, 384 F. App’x. 609
7 (9th Cir. 2010).

8 SunTrust argues Plaintiff fails to allege facts to support an inference that SunTrust
9 is a debt collector under the FDCPA. (MTD at 10–12.) Plaintiff alleges SunTrust is a
10 mortgage servicer who engages in the practice of collecting debt (Am. Compl. at 2), and
11 that SunTrust serviced or purchased Plaintiff’s mortgage prior to foreclosure (Am.
12 Compl. at 5). Plaintiff also states that SunTrust proceeded with a non-judicial foreclosure
13 by foreclosing on the property via Trustee Sale. (Am. Compl. at 6; Resp. at 8.)

14 The Ninth Circuit has not explicitly addressed the issue of whether mortgagees
15 and their assignees are “debt collectors” and whether non-judicial foreclosure actions
16 constitute debt collection under the FDCPA. *See Diessner*, 618 F. Supp. 2d at 1188.
17 Other circuits, and district courts in this circuit, have held that mortgagees and their
18 beneficiaries are not debt collectors subject to the FDCPA. *See id*; *Perry v. Stewart Title*
19 *Co.*, 756 F.2d 1197, 1208 (5th Cir. 1985). District courts have also held that “the activity
20 of foreclosing on [a] property pursuant to a deed of trust is not collection of a debt within
21 the meaning of the FDCPA.” *See Diessner*, 618 F. Supp. 2d at 1189 (citing *e.g.*,
22 *Mansour*, 2009 WL 1066155 at *2; *Gallegos v. Recontrust Co.*, No. CV-08-2245 WQH
23 (LSP), 2009 WL 215406, at *3 (S.D. Cal. Jan. 29, 2009); *Castro v. Exec. Tr. Servs., LLC*,
24 No. CV-08-2156-PHX-LOA, 2009 WL 438683, at *6 (D. Ariz. Feb. 23, 2009)).

25 Here, Plaintiff does not allege that he was in default when SunTrust began
26 servicing his mortgage, but rather argues that SunTrust engaged in a non-judicial
27 foreclosure. He points to no authority supporting the position that SunTrust, who took
28 over Plaintiff’s mortgage for servicing, is a “debt collector” or that a non-judicial

1 foreclosure constitutes the collection of a debt subject to the FDCPA. The Court is guided
2 by the case law discussed and, in the absence of any contrary authority, the Court will
3 dismiss Plaintiff's claim under the FDCPA. *See Diessner*, 618 F. Supp. 2d at 1188–89;
4 *Mansour*, 618 F. Supp. 2d at 1182.

5 If a defective complaint can be cured, a plaintiff is entitled to amend the complaint
6 before the action is dismissed. *See Lopez v. Smith*, 203 F.3d 1122, 1127–30 (9th Cir.
7 2000). Courts have held that in a situation like the present case – where the defendant is a
8 mortgagee or beneficiary who proceeded with non-judicial foreclosure – the defendant is
9 not considered a debt collector subject to the FDCPA and Plaintiff cannot cure his
10 Amended Complaint where his claim is legally barred. Accordingly, Plaintiff is not
11 entitled leave to amend his Amended Complaint as to his FDCPA claim, and that claim is
12 dismissed with prejudice.

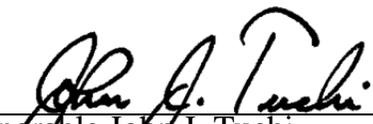
13 **V. CONCLUSION**

14 Plaintiff alleges sufficient facts to survive SunTrust's Motion to Dismiss as to his
15 negligent and willful FCRA claims. The Court dismisses Plaintiff's FDCPA claim with
16 prejudice.

17 **IT IS THEREFORE ORDERED** granting in part and denying in part SunTrust's
18 Motion to Dismiss (Doc. 19). Plaintiff's Second Cause of Action is dismissed with
19 prejudice.

20 **IT IS FURTHER ORDERED** that SunTrust shall file an Answer to the First
21 Cause of Action in the Amended Complaint within 14 days of the date of entry of this
22 Order.

23 Dated this 10th day of May, 2016.

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25 
26 Honorable John J. Tuchi
27 United States District Judge
28