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NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Patrick Neill,

No. CV-16-04326-PHX-JJT

10 Plaintiff,

ORDER

11 v.

12 Experian Information Solutions, Inc., *et al.*,13 Defendants.
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15 At issue is Defendant Trans Union, LLC's ("Trans Union") Motion for Judgment
16 on the Pleadings (Doc. 39, Mot. for J. on the Pleadings ("MJOP")), to which Plaintiff
17 Patrick Neill filed a Response (Doc. 51, Resp.) and Trans Union filed a Reply (Doc. 52).
18 Defendant Experian Information Solutions, Inc. ("Experian") joined in Trans Union's
19 Motion (Doc. 41) and also filed a Reply (Doc. 53). On the same day as he filed the
20 Response to Trans Union's Motion, Plaintiff also filed a Motion for Leave to File a
21 Second Amended Complaint (Doc. 50), to which Trans Union filed a Response (Doc. 54)
22 and Plaintiff filed a Reply (Doc. 55). For the reasons set forth below, the Court will deny
23 Defendants' Motion under Federal Rule of Civil Procedure 12(c) and grant Plaintiff's
24 Motion under Federal Rule of Civil Procedure 15.

25 **I. BACKGROUND**

26 In September 2014, Plaintiff signed a one-year residential lease ending on
27 September 1, 2015, with Park Kiely apartments. (Doc. 16, First Am. Compl. ("FAC")
28 ¶ 5.) In August 2015, Plaintiff informed the Park Kiely leasing office that he would not

1 renew his lease. (FAC ¶ 6.) On August 30, 2015, Plaintiff signed a Resident’s Notice of
2 Intent to Vacate. (FAC ¶ 7.) The notice included the following provision: “I understand
3 that I am NOT giving the required written notice and acknowledge that necessary
4 deductions will be made from my security deposit and other fees may be due under the
5 term of my lease.” (FAC ¶ 7.) However, the original lease did not require Plaintiff to
6 submit a written notice to end the lease. (FAC ¶ 8.)

7 In October 2016, Plaintiff obtained his credit files from Defendants. Both files
8 listed a debt owed to Park Kiely of \$6,509.00. (FAC ¶ 9.) On October 25, 2016, Plaintiff
9 submitted letters to both Defendants disputing the Park Kiely debt. (FAC ¶ 10.) In
10 November, Plaintiff received the investigation results from both Defendants. (FAC ¶¶ 12-
11 13.) The Trans Union file listed a debt owed to Park Kiely of \$6,509.00, and the Experian
12 file listed a debt owed to Park Kiely of \$6,543.00. (FAC ¶¶ 12-13.)

13 In the FAC, the operative pleading, Plaintiff asserts various violations of the Fair
14 Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), against Defendants.
15 Defendants now move for judgment on the pleadings based on Plaintiff’s failure to
16 sufficiently plead his claims. (Docs. 39, 41.)

17 In response, although he contests Defendants’ Motion, Plaintiff filed a Motion for
18 Leave to File a Second Amended Complaint. (Doc. 50.) In relevant part, the proposed
19 Second Amended Complaint (“SAC”) adds an allegation related to Plaintiff’s claims that
20 Defendants failed to follow reasonable procedures in preparing an accurate credit report
21 in violation of 15 U.S.C. § 1681e(b) and Defendants violated § 1681i by failing to
22 conduct reasonable reinvestigations to determine the accuracy of Plaintiff’s disputed debt
23 information.

24 **II. LEGAL STANDARDS**

25 Rule 12(c) permits a party to move for judgment on the pleadings “[a]fter the
26 pleadings are closed but within such time as not to delay the trial.” A Rule 12(c) motion
27 is functionally identical to a Rule 12(b) motion to dismiss for failure to state a claim, and
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1 the same legal standard applies to both motions. *Dworkin v. Hustler Magazine, Inc.*, 867
2 F.2d 1188, 1192 (9th Cir. 1989).

3 Specifically, a complaint must include “only ‘a short and plain statement of the
4 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair
5 notice of what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v.*
6 *Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957));
7 *see also* Fed. R. Civ. P. 8(a). A dismissal for failure to state a claim can be based on either
8 (1) the lack of a cognizable legal theory or (2) insufficient facts to support a cognizable
9 legal claim. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). “While a
10 complaint attacked by a Rule 12(b)(6) motion does not need detailed factual allegations, a
11 plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more
12 than labels and conclusions, and a formulaic recitation of the elements of a cause of action
13 will not do.” *Twombly*, 550 U.S. at 555 (citations omitted). The complaint must thus
14 contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
15 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550
16 U.S. at 570).

17 “Rule 15(a) declares that leave to amend shall be freely given when justice so
18 requires.” *Foman v. Davis*, 371 U.S. 178, 182 (1962) (citation and internal quotation
19 marks omitted). “In exercising its discretion with regard to the amendment of pleadings, a
20 court must be guided by the underlying purpose of Rule 15—to facilitate a decision on the
21 merits rather than on the pleadings or technicalities.” *Eldridge v. Block*, 832 F.2d 1132,
22 1135 (9th Cir. 1987) (citation and internal quotation marks omitted).

23 However, the policy in favor of allowing amendments is subject to limitations.
24 After a defendant files a responsive pleading, leave to amend is not appropriate if the
25 “amendment would cause prejudice to the opposing party, is sought in bad faith, is futile,
26 or creates undue delay.” *Madeja v. Olympic Packers*, 310 F.3d 628, 636 (9th Cir. 2002)
27 (citation and internal quotation marks omitted). “Futility alone can justify the denial of a
28 motion for leave to amend.” *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2003).

1 **III. ANALYSIS**

2 Congress enacted the FCRA to ensure fair and accurate credit reporting, to
3 promote efficiency in the banking system, and to protect consumer privacy. *Gorman v.*
4 *Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1153 (9th Cir. 2009).

5 A prerequisite for bringing a claim against a credit reporting agency under either
6 § 1681e or § 1681i is evidence of an inaccuracy in the credit report. *Guimond v. Trans*
7 *Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995); *see also Carvalho v. Equifax*
8 *Info. Servs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010) (“Although the FCRA’s
9 reinvestigation provision, 15 U.S.C. § 1681i, does not on its face require that an actual
10 inaccuracy exist for a plaintiff to state a claim, many courts, including our own, have
11 imposed such a requirement.”)

12 **A. Accuracy of Report**

13 “In order to make out a *prima facie* violation under § 1681e(b), a consumer must
14 present evidence tending to show that a credit reporting agency prepared a report
15 containing inaccurate information.” *Guimond*, 45 F.3d at 1333; *see also Loomis v. U.S.*
16 *Bank Home Mortg.*, 912 F. Supp. 2d 848, 855 (D. Ariz. 2012). Because the FCRA does
17 not impose strict liability based on an inaccurate report, Defendants can escape liability
18 by showing that they followed reasonable procedures in preparing the report. *Guimond*,
19 45 F.3d at 1333. However, “reasonableness of the procedures and whether the agency
20 followed them will be jury questions in the overwhelming majority of cases.” *Id.*

21 Defendants first move for judgment on the pleadings because the credit file
22 Plaintiff obtained from Defendants was not a “consumer report” within the meaning of
23 the statute. (MJOP at 5–6.) Relying on the definition in §1681a(d), Defendants claim that
24 in order to qualify as a “consumer report” for purposes of § 1681e liability, the report
25 must be delivered to a third party. Defendants cite to cases from the Eleventh and
26 Seventh Circuits to argue that “a ‘consumer report’ is different from a consumer
27 disclosure that is provided to a consumer as record of his own credit file,” and “there
28 cannot be a consumer report without delivery to a third party.” (MJOP at 5–6.)

1 However, the statute does not explicitly require delivery to a third party in order to
2 be a “consumer report.” *See* § 1681a(d). Rather, a consumer report is “any written, oral,
3 or other communication . . . bearing on a consumer’s credit worthiness . . . which is used
4 or expected to be used . . . for credit or insurance . . . purposes [or] employment
5 purposes.” *Id.* Cases in this District have declined to follow the interpretation that a
6 consumer report differs from a file pulled for the consumer’s own records. *See, e.g.,*
7 *Cairns v. GMAC Mortg. Corp.*, No. CV-04–1840–PHX–SMM, 2007 WL 735564, at *3
8 (D. Ariz. Mar. 5, 2007). Indeed, the Ninth Circuit has indicated its disapproval of the idea
9 that a consumer report necessitates delivery to a third party. *See Guimond*, 45 F.3d at
10 1333 (“[W]e find that a failure to comply with §1681e(b) is actionable even absent a
11 denial of credit. Accordingly, the district court erred in finding that any liability under
12 § 1681e(b) was predicated, as a matter of law, on the occurrence of some event—denial
13 of credit or *transmission of the report to third parties.*”) (emphasis added). Further, the
14 statutory definition states that a consumer report is one that is *expected* to be used for
15 credit or employment purposes. Plaintiff could pull his file for any number of reasons to
16 establish credit, without requiring Defendants to deliver the report directly to a third
17 party.

18 Because Plaintiff sufficiently alleged that Defendants prepared an inaccurate
19 report, Plaintiff has presented a *prima facie* violation under § 1681e. Under *Guimond*, the
20 fact-finder generally determines whether Defendants followed reasonable procedures in
21 preparing the credit files. Accordingly, the Court denies Defendants’ Motion with respect
22 to § 1681e.

23 **B. Reasonable Reinvestigation**

24 Defendants also contend that Plaintiff did not sufficiently allege that they failed to
25 conduct reasonable reinvestigations under § 1681i. (MJOP at 6.) Under the Federal
26 Rules’ standard for pleading, a court may dismiss a complaint only if the allegations are
27 insufficient to plausibly state a claim. *Iqbal*, 556 U.S. at 678. To state an FCRA claim, a
28 consumer first needs to allege facts supporting an inference that the consumer reporting

1 agency prepared an inaccurate report, *Baker v. Trans Union LLC*, No. CV-10-8038-PHX-
2 NVW, 2010 WL 2104622, at *4 (D. Ariz. May 25, 2010), which Plaintiff has done.

3 Though the Court notes that Plaintiff’s allegations are not extensively detailed, the
4 Court is satisfied that the allegations are sufficient to plausibly state a §1681i claim.
5 Defendants contend the alleged facts do not provide enough information to show that
6 they did not conduct reasonable reinvestigations; however, Plaintiff is not required to
7 prove his case in the Complaint. *See Iqbal*, 556 U.S. at 677–78. While Plaintiff may not
8 have all the evidence necessary at this point to prove his case—and indeed Plaintiff is
9 faced with the problem of alleging what did not happen—Plaintiff has alleged sufficient
10 facts to support an inference that Defendants did not conduct reasonable reinvestigations
11 under § 1681i. For example, from the allegation that Plaintiff contacted Defendants but
12 their reinvestigation results continued to state that Plaintiff owed the Park Kiely debt, the
13 Court can infer Defendants may not have reasonably conducted the reinvestigations.

14 Because the Court finds that Plaintiff has pled sufficient facts to support his claim
15 that Defendants did not conduct reasonable reinvestigations, the Court denies
16 Defendants’ Motion with respect to § 1681i.

17 **C. Collateral Attack on the Underlying Debt**

18 Lastly, Defendants rely on *Carvalho* to argue that Plaintiff’s claims constitute a
19 collateral attack on the underlying debt, and that the FCRA “is not the proper vehicle for
20 collaterally attacking the legal validity of debt appearing on the consumer report.” (MJOP
21 at 4.)

22 As Plaintiff notes in his Response, the facts of *Carvalho* materially differ from the
23 allegations in the case at bar. (Resp. at 5.) In *Carvalho*, the plaintiff obtained medical
24 services from Bayside Medical Group. 629 F.3d at 882. The plaintiff had signed an
25 agreement that stated she be would be responsible for payment in the event that her
26 insurance company did not pay. *Id.* Neither she nor her insurance company ever remitted
27 payment for the services. *Id.* The debt later appeared on the plaintiff’s credit report. *Id.*

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1 In her dispute letters to the credit reporting agencies, the plaintiff alleged that it
2 was her insurance company who “wrongfully refused to pay” the medical bill. *Id.* Later,
3 she argued Bayside “failed to timely and properly” bill her insurer. *Id.* at 883. The crux of
4 the plaintiff’s argument, therefore, was not that the information reported was
5 inaccurate—the plaintiff herself admitted that it was technically accurate—but rather that
6 it was “misleading because she was not legally obligated to pay Bayside until Bayside
7 had properly billed her insurer.” *Id.* at 891.

8 The court in *Carvalho* granted summary judgment because the plaintiff failed to
9 establish a requisite element of a *prima facie* reinvestigation claim: inaccuracy. *Id.* at 892.
10 Here, Plaintiff has sufficiently alleged that Defendants reported inaccurate information on
11 his credit files. The question remaining is whether Defendants were reasonable in their
12 preparation of those files and their reinvestigations of the disputed information.

13 Further, under Defendants’ reading of the statute, any alleged violation of § 1681i
14 would constitute a collateral attack on the underlying debt. The purpose of the statute and
15 the consumer protections FCRA seeks to ensure would be eviscerated if the Court were to
16 adopt Defendants’ interpretation. Accordingly, the Court rejects Defendants’ argument
17 that Plaintiff’s claim serves only as a collateral attack on the underlying debt.

18 **D. Motion to Amend**

19 In his Motion to Amend, Plaintiff seeks only to add one allegation to the FAC. As
20 indicated above, the addition of this allegation is not futile. The Court therefore grants
21 Plaintiff’s Motion to Amend under Rule 15(a).

22 **IT IS THEREFORE ORDERED** denying Defendant Trans Union LLC’s
23 Motion for Judgment on the Pleadings (Doc. 39).

24 **IT IS FURTHER ORDERED** denying Defendant Experian Information
25 Solutions, Inc.’s Motion for Judgment on the Pleadings (Doc. 41).

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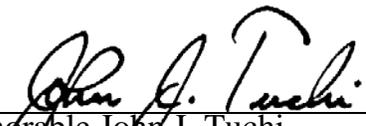
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IT IS FURTHER ORDERED granting Plaintiff's Motion for Leave to File a Second Amended Complaint (Doc. 50). Plaintiff shall file the Second Amended Complaint on the docket by September 6, 2017.

Dated this 31st day of August, 2017.



Honorable John J. Tuchi
United States District Judge