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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jamel Hyatt,

10 Plaintiff,

11 v.

12 Velocity Portfolio Group, et al.,

13 Defendants.
14

No. CV-23-08520-PCT-DWL

ORDER

15 Pending before the Court is a Rule 12(b)(6) motion to dismiss filed by Defendant
16 Radius Global Solutions LLC (“RGS”). For the following reasons, the motion is granted.

17 **BACKGROUND**

18 On July 31, 2023, Plaintiff (who is proceeding *pro se*) initiated this action by filing
19 a complaint. (Doc. 1-1.)

20 The complaint begins by explaining that “[t]his is a civil action for actual, statutory
21 damages . . . pursuant to the Fair Credit Reporting Act.” (*Id.* ¶ 1.) As relevant to RGS,¹
22 Plaintiff alleges that when he “obtained his consumer credit report from Transunion,” he
23 “found that . . . RGS obtained his TransUnion consumer report on August 4th of[] 2021,
24 and April 5th of[] 2023.” (*Id.* ¶¶ 8, 10.) Plaintiff alleges that RGS had “no permissible
25 purpose” in obtaining his credit report on those dates because he “had no account whereby
26 Defendant could claim permissible purpose.” (*Id.* ¶ 35.) Elsewhere, Plaintiff elaborates
27 that he never had an account *directly* with RGS. (*See, e.g., id.* ¶ 12 [“Plaintiff does not nor
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¹ The complaint also names “velocity portfolio group” as a Defendant. (*Id.* ¶ 5.)

1 has ever had an ‘account’ with Defendant.”]; *id.* ¶ 15 [“Defendant claims that the plaintiff
2 has an alleged account referred to GPS, which gave them a permissible purpose to review
3 the plaintiff’s consumer report. Plaintiff re-alleges that he has no account with the
4 defendant as defined in Electronic Fund Transfer Act 15 U.S.C. § 1693a(2).”]; *id.* ¶ 34
5 [“Plaintiff has never had any business dealings or accounts with, made an application for
6 credit from, applied for employment with, applied for insurance from or received an offer
7 of credit from Defendant RGS.”].) Based on these allegations, Plaintiffs asserts a claim
8 against RGS in Count Two for violating 15 U.S.C. § 1681. (*Id.* ¶¶ 28-39.)

9 Attached to the complaint is a letter RGS wrote to Plaintiff on July 21, 2023. (*Id.*
10 at 11.) In relevant part, the letter states: “RGS had a permissible purpose to access your
11 credit report via its attempt to collect on your debt. . . . The creditor, Cavalry SPV I, LLC,
12 referred your account to RGS, a debt collector, on April 2, 2020 [and again on later dates].
13 Therefore, RGS had a permissible purpose for obtaining your credit report. . . . It merely
14 reviewed your credit profile in connection with its collection efforts.” (*Id.*)

15 On October 16, 2023, RGS filed the pending motion to dismiss. (Doc. 8.)

16 On October 31, 2023, Plaintiff filed a response. (Doc. 9.)

17 On November 3, 2023, RGS filed a reply. (Doc. 10.)

18 On November 13, 2023, Plaintiff filed an unauthorized sur-reply. (Doc. 11.)

19 DISCUSSION

20 I. Legal Standard

21 “[T]o survive a motion to dismiss [under Rule 12(b)(6)], a party must allege
22 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its
23 face.” *In re Fitness Holdings Int’l, Inc.*, 714 F.3d 1141, 1144 (9th Cir. 2013) (internal
24 quotation marks omitted). “A claim has facial plausibility when the plaintiff pleads factual
25 content that allows the court to draw the reasonable inference that the defendant is liable
26 for the misconduct alleged.” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).
27 “[A]ll well-pleaded allegations of material fact in the complaint are accepted as true and
28 are construed in the light most favorable to the non-moving party.” *Id.* at 1144-45 (citation

1 omitted). However, the court need not accept legal conclusions couched as factual
2 allegations. *Iqbal*, 556 U.S. at 679-80. Moreover, “[t]hreadbare recitals of the elements of
3 a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* at 678.
4 The court also may dismiss due to “a lack of a cognizable legal theory.” *Mollett v. Netflix,*
5 *Inc.*, 795 F.3d 1062, 1065 (9th Cir. 2015) (citation omitted).

6 II. The Parties’ Arguments

7 RGS contends that Count Two “fails as a matter of law” because “[t]he law is
8 clear—a debt collector is permitted to pull a consumer’s credit report in connection with
9 the collection of a debt. Thus, RGS obtained plaintiff’s credit report with a permissible
10 purpose and is entitled to judgment as a matter of law.” (Doc. 8 at 2.) According to RGS,
11 “numerous courts”—including *Baker v. Trans Union LLC*, 2010 WL 2104622 (D. Ariz.
12 2010), *Hasbun v. Cnty. of Los Angeles*, 323 F.3d 801 (9th Cir. 2003), *Layne-Williams v.*
13 *Radius Glob. Sols., LLC*, 2022 WL 17251665 (S.D.N.Y. 2022), and *Arnold v. Northland*
14 *Group, Inc.*, 2019 WL 2419470 (S.D.N.Y. 2019)—“have held the ‘collection of an
15 account’ includes a collection agency’s attempt to collect a debt.” (*Id.* at 5-6.) RGS also
16 contends that the materials attached to Plaintiff’s complaint demonstrate that “RGS
17 obtained plaintiff’s credit report in connection with the collection of a debt owed to
18 [Cavalry].” (*Id.* at 6-7.) RGS concludes: “Plaintiff does not dispute that RGS was
19 collecting an account owed to Cavalry, only that he does not owe an account to RGS, which
20 is irrelevant.” (*Id.* at 7, footnote omitted.)

21 In response, Plaintiffs contends that RGS’s motion should be denied because “trial
22 is not supposed to be conducted in a complaint.” (Doc. 9 at 1.) Plaintiff also reiterates, as
23 alleged in his complaint, that he did not have an account directly with RGS. (*Id.* [“[RGS]
24 has no account with the Plaintiff . . .”].) Next, Plaintiff argues that the motion includes
25 improper allusions to unspecified “hearsay.” (*Id.*) Finally, Plaintiff faults RGS for failing
26 to provide “any document that alleges a transfer and assignment between [Cavalry] or any
27 other debt collector via the Consumer Financial Protection Bureau [(‘CFPB’) portal]” and
28 otherwise “fail[ing] to provide adequate documentation, including an original credit

1 agreement or contract that would establish the terms and conditions of the alleged account,
2 thereby calling into question the validity of the alleged account RGS claims to have been
3 referred.” (*Id.* at 2.)

4 In reply, RGS summarizes its position as follows: “Plaintiff’s argument that he did
5 not have an account with RGS is irrelevant and inconsistent with the plain language of the
6 FCRA and well-settled case law. The Complaint and documents plaintiff attached to the
7 Complaint establish RGS made a credit inquiry in relation to collection of a debt.” (Doc.
8 10 at 4.) RGS also cites *Kermani v. L. Off. of Joe Pezzuto, LLC*, 993 F. Supp. 2d 1187
9 (C.D. Cal. 2014), *Pyle v. First Nat. Collection Bureau*, 2012 WL 5464357 (E.D. Cal. 2012),
10 and *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28 (3d Cir. 2011), as additional authorities
11 supporting its position. (*Id.* at 3-4.) Finally, RGS contends that Plaintiff’s hearsay and
12 inadequate documentation arguments are unavailing because RGS simply relied on the
13 materials Plaintiff attached to his complaint, which are properly before the Court when
14 assessing a Rule 12(b)(6) challenge. (*Id.* at 5-6.)

15 In his unauthorized sur-reply, Plaintiff contends that “he has no account with RGS
16 or any other party” and “without an account with the Defendant no permissible purpose
17 could have been granted to RGS, or any party.” (Doc. 11 at 1.) As for his hearsay
18 argument, Plaintiff contends that “Defendant has not provided any factual evidence . . . that
19 supports RGS’s claim as a retained debt collector with authority to pull Mr. Hyatt’s
20 consumer report.” (*Id.*)

21 III. Analysis

22 The Court agrees with RGS that Count Two must be dismissed for failure to state a
23 claim.

24 In *Nayab v. Capital One Bank (USA), N.A.*, 942 F.3d 480 (9th Cir. 2019),² the Ninth
25 Circuit addressed the pleading standards that apply when (as here) a plaintiff asserts a claim
26 for “obtaining a credit report for a purpose not authorized under the FCRA.” *Id.* at 490.
27 The court concluded that such a “consumer-plaintiff [need not] plead the third-party’s

28 ² Neither party cited *Nayab*, which is unfortunate in light of *Nayab*’s clear applicability here.

1 actual unauthorized purpose in obtaining the credit report to survive a motion to dismiss”
2 and “need allege only facts giving rise to a reasonable inference that the defendant obtained
3 his or her credit report in violation of § 1681b(f)(1).” *Id.* at 493. *See also id.* at 495
4 (“Capital One, as the defendant, has the burden of pleading it had an authorized purpose to
5 acquire Nayab’s credit report. . . . [P]lacing the burden on the plaintiff would be unfair, as
6 it would require the plaintiff to plead a negative fact that would generally be peculiarly
7 within the knowledge of the defendant. Holding otherwise would effectively bar
8 meritorious claims from ever coming to light and frustrate Congress’ attempt to protect
9 consumers’ privacy.”) (footnote and citation omitted). The court further concluded that
10 the plaintiff had pleaded sufficient facts to raise a reasonable inference of an impermissible
11 purpose because she not only “pleaded that she did not have a credit relationship with
12 Capital One of the kind specified in 15 U.S.C. § 1681b(a)(3)(A)–(F)” but also “put[]
13 forward factual assertions which negative each permissible purpose for which Capital One
14 could have obtained her credit report and for which [she] could possibly have personal
15 knowledge.” *Id.* at 496 (emphasis omitted). The court then identified the following
16 specific topics on which the plaintiff provided such negative factual allegations:

- 17 (1) Plaintiff did not initiate any credit transaction with Defendant as
18 provided in 15 U.S.C. § 1681b(a)(3)(A).
- 19 (2) Plaintiff was not involved in any credit transaction with Defendant
20 involving the extension of credit to, or review or collection of an account of,
21 the consumer as provided in 15 U.S.C. § 1681b(a)(3)(A).
- 22 (3) Plaintiff is not aware of any collection accounts, including any
23 accounts that were purchased or acquired by Defendant that would permit
24 Defendant to obtain Plaintiff’s credit report as provided in 15 U.S.C.
25 § 1681b(a)(3)(A).
- 26 (4) Plaintiff does not have any existing credit accounts that were subject
27 to collection efforts by Defendant as provided in 15 U.S.C. § 1681b(a)(3)(A).
- 28 (5) Plaintiff did not engage Defendant for any employment relationship
as provided in 15 U.S.C. § 1681b(a)(3)(B).
- (6) Plaintiff did not engage Defendant for any insurance as provided in

1 15 U.S.C. § 1681b(a)(3)(C).

2 (7) Plaintiff did not apply for a license or other benefit granted by a
3 governmental instrumentality as provided in 15 U.S.C. § 1681b(a)(3)(D).

4 (8) Plaintiff did not have an existing credit obligation that would permit
5 Defendant to obtain her credit report as provided in 15 U.S.C.
6 § 1681b(a)(3)(E).

7 (9) Plaintiff did not conduct any business transaction nor incur any
8 additional financial obligations to Defendant as provided in 15 U.S.C.
9 § 1681b(a)(3)(F).

10 (10) Defendant's inquiry for Plaintiff's consumer report information falls
11 outside the scope of any permissible use or access included in 15 U.S.C.
12 [§]1681b.

13 *Id.* The court concluded: "These are factual allegations that, when taken as true, rule out
14 many of the potential authorized purposes for obtaining a credit report." *Id.* at 496-97.

15 Plaintiff's complaint is deficient under these standards. Although Plaintiff alleges
16 that he did not have a *direct* credit relationship with RGS, the absence of such a relationship
17 is, by itself, insufficient to create a reasonable inference that RGS lacked a permissible
18 purpose in obtaining his credit report. Instead, under *Nayab*, Plaintiff must also "put[]
19 forward factual assertions which negative each permissible purpose for which [RGS] could
20 have obtained [his] credit report." *Id.* at 496. Those factual allegations are lacking here.³

21 Finally, because Plaintiff's claim against RGS is subject to dismissal, the Court must

22 ³ Although the Court agrees with RGS's broader point that Count Two is subject to
23 dismissal, the Court is unpersuaded by RGS's argument that Plaintiff conceded the
24 existence of a permissible purpose by including, as an attachment to his complaint, a letter
25 in which RGS claimed its purpose in obtaining the credit report was to collect a debt
26 Plaintiff owed to Cavalry. Even assuming the letter is properly considered part of the
27 complaint . . . without converting the motion to dismiss into a motion for summary
28 judgment."), it at most reflects RGS's position as to why RGS obtained the credit report
and does not connote Plaintiff's acceptance of the factual accuracy of that position. *Cf.*
Nayab, 942 F.3d at 945 n.3 ("At oral argument, Capital One argued that *Nayab* should be
aware of the actual purpose behind Capital One obtaining her credit report. Counsel for
Capital One stated that the alleged purpose may be included within a code on
documentation sent to the consumer. However, this would identify only Capital One's
alleged purpose, not necessarily the actual purpose.").

1 address whether Plaintiff should be granted leave to amend. *Ebner v. Fresh, Inc.*, 838 F.3d
2 958, 963 (9th Cir. 2016) (“In dismissing for failure to state a claim, a district court should
3 grant leave to amend even if no request to amend the pleading was made, unless it
4 determines that the pleading could not possibly be cured by the allegation of other facts.”)
5 (citation omitted).

6 Rule 15(a) of the Federal Rules of Civil Procedure “advises the court that ‘leave [to
7 amend] shall be freely given when justice so requires.’” *Eminence Cap., LLC v. Aspeon,*
8 *Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citation omitted). “This policy is ‘to be applied
9 with extreme liberality.’” *Id.* (citation omitted). Thus, leave to amend should be granted
10 unless “the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3)
11 produces an undue delay in litigation; or (4) is futile.” *AmerisourceBergen Corp. v.*
12 *Dialysist W., Inc.*, 465 F.3d 946, 951 (9th Cir. 2006). Here, RGS does not make any
13 arguments regarding prejudice, bad faith, or undue delay and it seems at least theoretically
14 possible—particularly in light of the assertion in his sur-reply that he “has no account with
15 RGS or any other party” (Doc. 11 at 1)—that Plaintiff could allege additional facts to cure
16 the deficiencies identified in this order. Accordingly, and in light of Plaintiff’s *pro se*
17 status, leave to amend will be granted.

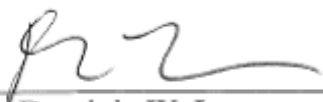
18 Accordingly,

19 **IT IS ORDERED** that:

20 1. RGS’s motion to dismiss (Doc. 8) is **granted**. Plaintiff’s claim in Count Two
21 against RGS is dismissed.

22 2. Plaintiff may file a First Amended Complaint within 14 days of the issuance
23 of this order. Any changes shall be limited to attempting to cure the deficiencies raised in
24 this order and Plaintiff shall, consistent with LRCiv 15.1(a), attach a redlined version of
25 the pleading as an exhibit.

26 Dated this 6th day of February, 2024.

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Dominic W. Lanza
United States District Judge