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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LUIS MANUEL MORA, INDIVIDUALLY  
AND ON BEHALF OF THE CLASS,

Plaintiff,

v.

HARLEY-DAVIDSON CREDIT CORP., A  
CORPORATION, AND DOES 1 THROUGH  
10, INCLUSIVE,

Defendants.

1:08-cv-01453 OWW GSA

ORDER ON DEFENDANT'S MOTION  
TO DISMISS, OR IN THE  
ALTERNATIVE, MOTION TO  
STRIKE (DOC. 8)

I. INTRODUCTION.

Plaintiff Luis Manuel Mora ("Mora") filed this class action lawsuit against Defendant Harley-Davidson Credit Corporation ("HDCC") in the Superior Court of the State of California, County of Merced, on August 19, 2008. Plaintiff alleges HDCC violated California's Rees-Levering Automobile Sales Finance Act ("ASFA"), California Civil Code § 2981 et seq., and Unfair Competition Law, California Business and Professions Code § 17200 et seq., when it sent customers notices of its intent to dispose of repossessed vehicles that were defective under California law and attempted to collect deficiencies from debtors that were legally prohibited

1 because HDCC failed to strictly comply with ASFA's notice  
2 provisions. On September 26, 2008, Defendant HDCC filed a notice  
3 of removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 and the  
4 Class Action Fairness Act of 2005 ("CAFA").

5 Before the court for decision is Defendant's motion to  
6 dismiss, or in the alternative, motion to strike Plaintiff's  
7 claims to the extent they are based on alleged false reporting to  
8 credit reporting agencies. The motions are based on the ground  
9 that such claims are expressly preempted by the Fair Credit  
10 Reporting Act ("FCRA"), codified at 15 U.S.C. § 1681 et seq.  
11 Plaintiff opposes, arguing FCRA does not preempt the claims and  
12 Plaintiff's state claims are based on state consumer protection  
13 laws that are unrelated to FCRA.

## 14 15 II. BACKGROUND.

16 Plaintiff entered into a conditional sales contract to  
17 purchase a new 2006 Harley-Davidson motorcycle with financing  
18 arranged through Defendant HDCC. As a financed sale of a motor  
19 vehicle, Plaintiff asserts this transaction is controlled  
20 exclusively in California by ASFA. The selling dealer sold and  
21 assigned its interest in the sales contract to lienholder HDCC.  
22 Plaintiff contends that the motorcycle was plagued by defects  
23 that the dealer was unable to repair after numerous attempts. He  
24 voluntarily surrendered it to HDCC in August 2007.

25 Plaintiff alleges that on September 4, 2007, HDCC sent  
26 Plaintiff a notice of intent to dispose of a repossessed vehicle  
27 that failed to comply with ASFA and applicable provisions of the  
28 California Commercial Code. Plaintiff argues that, under ASFA,

1 if a lender fails to give a legally compliant notice before it  
2 sells or disposes of a repossessed or surrendered vehicle, it  
3 loses its right to any deficiency owed from the buyer and is  
4 prohibited from claiming or asserting any deficiency.

5 Accordingly, Plaintiff claims HDCC has no legal right to attempt  
6 to collect any claimed deficiency from him and a purported class  
7 of similarly situated former owners of Harley-Davidson  
8 motorcycles financed by HDCC. HDCC has both attempted to collect  
9 and successfully collected a claimed deficiency from Plaintiff.

10 Plaintiff seeks to represent a class of "all persons from  
11 whom HDCC and its associates, affiliates, and subsidiaries claims  
12 it is owed a deficiency that was invalid due to HDCC's defective  
13 NOTICE(S) and its failure to comply with the notice requirements  
14 of Rees-Levering." (Doc. 1-2, Complaint at 8.) Plaintiff  
15 asserts that the allegedly defective notice he received is a  
16 standard notice HDCC sends as a matter of common business  
17 practice to persons claimed to be liable to HDCC under its  
18 conditional sales contract covering HDCC repossessed vehicles.  
19 (*Id.* at 7.) Plaintiff asserts that, at least four years prior to  
20 the date of his complaint, HDCC has regularly collected and  
21 attempted to collect deficiencies from proposed class members in  
22 violation of ASFA. (*Id.*) Plaintiff is "unable to state the  
23 precise number of potential members of the proposed class because  
24 that information is in the sole possession of HDCC." (*Id.* at 8.)  
25 Plaintiff believes the size of the proposed class is "at least in  
26 the hundreds." (*Id.*)

27 Plaintiff seeks: 1) a declaration that HDCC did not comply  
28 with AFSA and has no right to assert any deficiency claim against

1 any class member, 2) damages in the form of recovery for all  
2 class members of payments made to HDCC on the deficiency claims,  
3 compensation for damage to the credit records of class members,  
4 and actual damages, 3) an injunction prohibiting HDCC from future  
5 collection efforts and forcing it to disgorge profits, 4) to set  
6 aside judgments HDCC successfully sought and obtained against  
7 class members who it claimed owed a deficiency, and 5) attorney's  
8 fees.

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10 III. LEGAL STANDARD.

11 A. Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6).

12 A motion to dismiss under Rule 12(b)(6) tests the legal  
13 sufficiency of the complaint. *Novarro v. Black*, 250 F.3d 729,  
14 732 (9th Cir. 2001). While a complaint attacked by a Rule  
15 12(b)(6) motion to dismiss does not need detailed factual  
16 allegations, it is required to contain "more than labels and  
17 conclusions, and a formulaic recitation of the elements of a  
18 cause of action will not do. Factual allegations must be enough  
19 to raise a right to relief above the speculative level, on the  
20 assumption that all the allegations in the complaint are true  
21 (even if doubtful in fact)." *Bell Atlantic Corp. v. Twombly*, 550  
22 U.S. 544, 127 S.Ct. 1955, 1964-65 (2007); see also *Gilligan v.*  
23 *Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997) (issue is not  
24 whether plaintiff will ultimately prevail, but whether claimant  
25 is entitled to offer evidence to support the claim). Dismissal  
26 is warranted under Rule 12(b)(6) where the complaint lacks a  
27 cognizable legal theory or where the complaint presents a  
28 cognizable legal theory yet fails to plead essential facts under

1 that theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d  
2 530, 534 (9th Cir. 1984). In deciding a motion to dismiss, the  
3 court accepts as true all material factual allegations in the  
4 complaint and construes them in the light most favorable to the  
5 plaintiff. See *Newman v. Sathyavaglswaran*, 287 F.3d 786, 788  
6 (9th Cir. 2002).

7 The court need not accept as true allegations that  
8 contradict facts which may be judicially noticed. See *Mullis v.*  
9 *United States Bankruptcy Ct.*, 828 F.2d 1385, 1388 (9th Cir.  
10 1987). For example, matters of public record may be considered,  
11 including pleadings, orders, and other papers filed with the  
12 court or records of administrative bodies, see *Mack v. South Bay*  
13 *Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986),  
14 while conclusions of law, conclusory allegations, unreasonable  
15 inferences, or unwarranted deductions of fact need not be  
16 accepted. See *Sprewell v. Golden State Warriors*, 266 F.3d 979,  
17 988 (9th Cir. 2001); see also *Branch v. Tunnell*, 14 F.3d 449, 453  
18 (9th Cir. 1994) ("[A] document is not 'outside' the complaint if  
19 the complaint specifically refers to the document and if its  
20 authenticity is not questioned."). Allegations in the complaint  
21 may be disregarded if contradicted by facts established by  
22 exhibits attached to the complaint. *Sprewell*, 266 F.3d at 988.  
23 Thus when ruling on a motion to dismiss, the court may consider  
24 facts alleged in the complaint, documents attached to the  
25 complaint, documents relied upon but not attached to the  
26 complaint when authenticity is not contested, and matters of  
27 which the court may take judicial notice. *Parrino v. FHP, Inc.*,  
28 146 F.3d 699, 705-06 (9th Cir. 1988).

1 B. Motion to Strike Pursuant to Fed. R. Civ. P. 12(f).

2 Rule 12(f) provides that "redundant, immaterial,  
3 impertinent, or scandalous matter" may be stricken from any  
4 pleading. Fed. R. Civ. P. 12(f). A motion to strike is limited  
5 to pleadings. *Sidney-Vinsein v. A.H. Robins Co.*, 697 F.2d 880,  
6 885 (9th Cir. 1983). Motions to strike are disfavored and  
7 infrequently granted. *Pease & Curren Refining, Inc. v.*  
8 *Spectrolab, Inc.*, 744 F.Supp. 945, 947 (C.D. Cal. 1990),  
9 *abrogated on other grounds by Stanton Road Assocs. v. Lohrey*  
10 *Enters.*, 984 F.2d 1015 (9th Cir. 1993). Such motions should be  
11 granted only where it can be shown that none of the evidence in  
12 support of the allegation is admissible. *Id.*

13  
14 IV. DISCUSSION.

15 Defendant moves to dismiss Plaintiff's claims to the extent  
16 they are based on allegations relating to Defendant's duties as a  
17 furnisher of information to credit reporting agencies. Plaintiff  
18 makes a number of allegations in his complaint related to HDCC's  
19 conduct in reporting information to credit reporting agencies.  
20 First, Plaintiff alleges:

21 Plaintiff is informed and believes that HDCC and/or its  
22 agents regularly report or communicate to consumer  
23 credit reporting organizations that purported  
24 deficiencies following disposition of repossessed  
25 vehicles pursuant to the unlawful practices described  
26 herein are bad debts when, in fact, Plaintiff and other  
27 similarly-situated persons are not liable for said  
28 deficiencies as a matter of law, as set forth above.

(Doc. 1-2, Complaint at ¶12.) Plaintiff also contends that one  
of the questions of law and fact common to the proposed class is  
"whether HDCC falsely reported deficiencies as valid debts to

1 credit reporting organizations." (*Id.* at ¶17.) Finally,  
2 Plaintiff asserts that class members "who have been subject to  
3 efforts by HDCC or its agents or successors to collect the  
4 invalid debts or who have had negative information on the invalid  
5 debts reported to credit reporting agencies are entitled to  
6 compensation for damage to their credit and/or other damages."  
7 (*Id.* at ¶21.) Defendant argues FCRA preempts any state claims  
8 related to furnishers of information to credit reporting agencies  
9 and their responsibilities.

10  
11 A. Federal Pre-emption

12 State law is pre-empted under the Supremacy Clause of  
13 Article VI of the United States Constitution in three  
14 circumstances. First, Congress can define explicitly the extent  
15 to which its enactments pre-empt state law. See *Shaw v. Delta*  
16 *Air Lines, Inc.*, 463 U.S. 85, 95-98 (1983). Pre-emption  
17 fundamentally is a question of congressional intent, see  
18 *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 299 (1988), and  
19 "when Congress has made its intent known through explicit  
20 statutory language, the courts' task is an easy one." *English v.*  
21 *General Elec. Co.*, 496 U.S. 72, 78-79 (1990).

22 Second, in the absence of explicit statutory language, state  
23 law is pre-empted where it regulates conduct in a field that  
24 Congress intended the Federal Government to occupy exclusively.  
25 *Id.* Such an intent may be inferred from a "scheme of federal  
26 regulation ... so pervasive as to make reasonable the inference  
27 that Congress left no room for the States to supplement it," or  
28 where an Act of Congress "touch[es] a field in which the federal

1 interest is so dominant that the federal system will be assumed  
2 to preclude enforcement of state laws on the same subject." *Rice*  
3 *v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). The  
4 Supreme Court has emphasized that where the field Congress is  
5 said to have pre-empted includes areas that have "been  
6 traditionally occupied by the States," congressional intent to  
7 supersede state laws must be "'clear and manifest.'" *Jones v.*  
8 *Rath Packing Co.*, 430 U.S. 519, 525 (1977) (quoting *Rice v. Santa*  
9 *Fe Elevator Corp.*, 331 U.S. at 230).

10 Finally, state law is pre-empted to the extent that it  
11 actually conflicts with federal law. The Supreme Court has found  
12 pre-emption where it is impossible for a private party to comply  
13 with both state and federal requirements, see *Florida Lime &*  
14 *Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963), or  
15 where state law "stands as an obstacle to the accomplishment and  
16 execution of the full purposes and objectives of Congress." *Hines*  
17 *v. Davidowitz*, 312 U.S. 52, 67 (1941).

18  
19 B. As Applied to FCRA.

20 FCRA sets forth its relationship to state law in § 1681t,  
21 entitled "Relation to State laws":

22 (a) In general

23 Except as provided in subsections (b) and (c) of this  
24 section, this subchapter does not annul, alter, affect,  
25 or exempt any person subject to the provisions of this  
26 subchapter from complying with the laws of any State  
27 with respect to the collection, distribution, or use of  
28 any information on consumers, or for the prevention or  
mitigation of identity theft, except to the extent that  
those laws are inconsistent with any provision of this  
subchapter, and then only to the extent of the  
inconsistency.



1 15 U.S.C. § 1681t(a).

2 FCRA provides for general exceptions to § 1681t(a) in §  
3 1681t(b):

4 (b) General exceptions. No requirement or prohibition may  
5 be imposed under the laws of any State-

6 (1) with respect to any subject matter regulated under-

7 (F) section 1681s-2 of this title, relating to the  
8 responsibilities of persons who furnish  
9 information to consumer reporting agencies, except  
10 that this paragraph shall not apply-

11 (i) with respect to section 54A(a) of chapter  
12 93 of the Massachusetts Annotated Laws (as in  
13 effect on September 30, 1996); or

14 (ii) with respect to section 1785.25(a) of the  
15 California Civil Code (as in effect on  
16 September 30, 1996).

17 15 U.S.C. § 1681t(b) (1) (F).

18 From these sections, it is clear that while generally the  
19 FCRA does not preempt state law, it sets forth exceptions that do  
20 provide for preemption in certain cases. Specifically, no  
21 "requirement or prohibition" under state law can be imposed  
22 regarding the subject matter regulated under 15 U.S.C. § 1681s-2,  
23 which relates to "the responsibilities of persons who furnish  
24 information to consumer reporting agencies." 15 U.S.C. § 1681s-2  
25 reads in part:

26 (a) Duty of furnishers of information to provide  
27 accurate information

28 (1) Prohibition

(A) Reporting information with actual knowledge  
of errors

A person shall not furnish any information  
relating to a consumer to any consumer reporting  
agency if the person knows or has reasonable

1                   cause to believe that the information is  
2                   inaccurate.

3           Plaintiff contends that the FCRA was not intended to pre-  
4           empt the field. It is evident field pre-emption does not apply  
5           from § 1681t(a)'s command that "this subchapter does not annul,  
6           alter, affect, or exempt any person subject to the provisions of  
7           this subchapter from complying with the laws of any State"  
8           relating to collecting or distributing information on consumers  
9           except to the extent state laws are inconsistent with § 1681t.  
10          See *Credit Data of Arizona, Inc. v. State of Arizona*, 602 F.2d  
11          195, 197 (9th Cir. 1979). Plaintiff further argues that FCRA  
12          plainly limits its preemption of state regulations "only to the  
13          extent of the inconsistency" with those regulations. This is  
14          inaccurate. The plain language of § 1681t(b)(1)(F) expressly  
15          preempts any state law relating to the duties of furnishers of  
16          information to consumer reporting agencies. In addition, while  
17          15 U.S.C. §§ 1681t(b)(1)(F)(i) and (ii) exempt a specific  
18          Massachusetts law and California Civil Code § 1785.25(a) from  
19          such preemption, Plaintiff does not assert any claims under  
20          Massachusetts law or California Civil Code § 1785.25(a) and thus  
21          no exception applies here to the express pre-emption of state law  
22          relating to furnishers of information to consumer reporting  
23          agencies.

24          Here Plaintiff seeks damages for harm to class members'  
25          credit and possible injunctive relief, although the complaint is  
26          unclear as to the latter. Title 15 U.S.C. § 1681s-2(a)  
27          specifically requires furnishers of credit information to provide  
28          accurate information. Plaintiff alleges HDCC provided false

1 and/or inaccurate reporting of class members' deficiencies to  
2 credit reporting agencies. Because FCRA regulates furnishers'  
3 provision of accurate information to credit agencies and Congress  
4 intended this to be exclusive, any state claim with respect to  
5 false or inaccurate reporting is pre-empted.

6 Plaintiff argues FCRA does not pre-empt state consumer  
7 statutes that are unrelated to credit reporting, like ASFA and  
8 the UCL. Here Plaintiff misses the point. Whether Plaintiff  
9 seeks relief under ASFA or the UCL, allegations of false  
10 reporting to credit agencies relate to "the responsibilities of  
11 persons who furnish information to consumer reporting agencies"  
12 as regulated under 15 U.S.C. § 1681s-2. To the extent Plaintiff  
13 asserts claims based on HDCC's alleged false reporting, such  
14 claims are expressly pre-empted by FCRA.

15 No Ninth Circuit or other circuit authority has been located  
16 that is directly on point. However, in dicta in *Gorman*, the  
17 Ninth Circuit took the position that all state law claims related  
18 to furnishers' reporting duties are expressly pre-empted:

19 "Although § 1681t(b)(1)(F) appears to preempt all state law  
20 claims based on a creditor's responsibilities under § 1681s-2, §  
21 1681h(e) suggests that defamation claims can proceed against  
22 creditors as long as the plaintiff alleges falsity and malice."  
23 *Gorman v. Wolpoff & Abramson, LLP*, 552 F.3d 1008, 1026 (9th Cir.  
24 2009). A number of district courts have reached the same  
25 conclusion. See *Howard v. Blue Ridge Bank*, 371 F.Supp.2d 1139,  
26 1144 (N.D. Cal. 2005) (finding UCL claim preempted because  
27 "Congress intended the FCRA to preempt state laws regarding the  
28 duties of furnishers and the remedies available against them,

1 rather than allowing different liabilities for furnishers  
2 depending on the state of suit"); *Roybal v. Equifax*, 405  
3 F.Supp.2d 1177, 1181 (E.D. Cal. 2005) (finding UCL claim, among  
4 others, pre-empted and stating "[o]n its face, the FCRA precludes  
5 all state statutory or common law causes of action that would  
6 impose any "requirement or prohibition" on the furnishers of  
7 credit information"); *Jaramillo v. Experian Information*  
8 *Solutions, Inc.*, 155 F.Supp.2d 356, 361-62 (E.D. Pa.2001) ("it is  
9 clear from the face of section 1681t(b)(1)(F) that Congress  
10 wanted to eliminate all state causes of action 'relating to the  
11 responsibilities of persons who furnish information to consumer  
12 reporting agencies' "); *Hasvold v. First USA Bank*, 194 F.Supp.2d  
13 1228, 1239 (D. Wyo. 2002) ("federal law under the FCRA preempts  
14 plaintiff's claims [for defamation and invasion of privacy]  
15 against the defendant relating to it as a furnisher of  
16 information"); *Riley v. General Motors Acceptance Corp.*, 226  
17 F.Supp.2d 1316, 1322 (S.D. Ala. 2002) (finding preemption of  
18 state tort claims for negligence, defamation, invasion of privacy  
19 and outrage, and acknowledging that "there is no question that  
20 the statutory prohibition precludes suits under state consumer  
21 protection laws").

## 22 23 V. CONCLUSION.

24 For the reasons set forth above, Defendant's motion to  
25 dismiss and strike Plaintiff's claims as they relate to alleged

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1 false and/or inaccurate reporting by Defendant to credit  
2 reporting agencies is GRANTED.

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4 **IT IS SO ORDERED.**

5 **Dated: July 7, 2009**

/s/ Oliver W. Wanger  
**UNITED STATES DISTRICT JUDGE**

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