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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11 DAVID L. RAND,  
12 Plaintiff,  
13 v.  
14 CITIBANK, N.A.,  
15 Defendant.

Case No. 14-cv-04772 NC

**ORDER DENYING MOTION TO  
DISMISS PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

Re: Dkt. No. 12

16  
17 Plaintiff David Rand brings this action against Citibank alleging that Citibank  
18 obtained his credit report without authorization, made a false report to credit reporting  
19 agencies, and refused to remove incorrect information, in violation of federal and state law.  
20 Citibank now moves to dismiss the first amended complaint for failure to state a claim  
21 under Federal Rule of Civil Procedure 12(b)(6). Because the Court finds that Rand has  
22 sufficiently stated a claim for relief, the motion is DENIED.

23 **I. BACKGROUND**

24 **A. The Allegations of the Operative Complaint**

25 In analyzing claims under Federal Rule of Civil Procedure 12(b)(6), the Court  
26 assumes that all material facts alleged in the complaint are true. *Coal. For ICANN*  
27 *Transparency, Inc. v. VeriSign, Inc.*, 611 F.3d 495, 501 (9th Cir. 2010). The operative, first  
28 amended complaint alleges that Rand is a long-time customer of Citibank, who was a victim

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1 of identity theft in early 2014. Dkt. No. 10 ¶¶ 8-9. On June 14, 2014, an unknown  
2 individual attempted to obtain a Zales credit card from Citibank using Rand’s stolen  
3 information. *Id.* ¶ 10. This application did not contain Rand’s correct social security  
4 number. *Id.* Citibank then requested Rand’s credit report from a credit reporting agency in  
5 connection with the fraudulent credit application. *Id.* ¶ 12. Citibank denied the application  
6 due to the fact that the social security information provided was inaccurate. *Id.* ¶ 13. This  
7 left a “hard credit inquiry” on Rand’s credit report. *Id.* Shortly thereafter, Citibank  
8 received notice from both Rand and the credit reporting agency that the credit application  
9 was fraudulent and thus that the credit inquiry was unauthorized. *Id.* ¶¶ 16-19.

10 The first amended complaint further alleges that Rand repeatedly contacted Citibank  
11 seeking the removal of the unauthorized inquiry on his credit report and Citibank promised  
12 that it will remove it. *Id.* ¶¶ 19-22. Citibank informed Rand by letter that it was  
13 investigating his concerns about the fraudulent credit application and that it had submitted a  
14 request to the credit reporting agency to change the unauthorized “hard inquiry” to a “soft  
15 inquiry.” *Id.* ¶¶ 24-25. However, Citibank did not change the status of the credit inquiry on  
16 Rand’s credit report, and did not remove the unauthorized credit inquiry. *Id.* ¶ 26.  
17 Furthermore, that same month, Citibank rejected Plaintiff’s request for a line of credit  
18 increase in the amount of at least \$4,300. *Id.* ¶ 23. The sole reason given for this rejection  
19 was “excessive recent credit inquiries.” *Id.*

## 20 **B. Procedural History**

21 Rand initially filed this action in the Small Claims Court of the Superior Court of the  
22 State of California for the County of Santa Clara on September 29, 2014. Dkt. No. 1-1.  
23 The small claim alleged that Citibank violated 15 U.S.C. § 1681n. *Id.* at 3. On October 27,  
24 2014, Citibank removed the small claims case to this Court pursuant to 28 U.S.C. § 1331  
25 and § 1441(a) based on federal question jurisdiction and then moved to dismiss the  
26 complaint. Dkt. Nos. 1, 7. Instead of opposing the motion, Rand filed the first amended  
27 complaint. Dkt. No. 10.

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1 In his first amended complaint, Rand brings three claims against Citibank: (1) for  
2 violation of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s-2(b) by furnishing  
3 inaccurate information about Rand, failing to report the results of its investigation, and  
4 failing to modify, delete, or permanently block the inaccurate information; (2) for violation  
5 of FCRA, 15 U.S.C. § 1681b(f), by willfully and/or negligently obtaining information from  
6 a consumer reporting agency without having a permissible purpose; and (3) for violation of  
7 the California Consumer Credit Reporting Agencies Act (“CCCRAA”), Cal. Civ. Code, §  
8 1785.25(a) by intentionally processing a fraudulent credit application in Rand’s name,  
9 passing on adverse and incorrect credit information to credit agencies, and failing to correct  
10 the false information. Dkt. No. 10.

11 On December 4, 2014, Citibank moved under Federal Rule of Civil Procedure  
12 12(b)(6) to dismiss the first amended complaint for failure to state a claim. Dkt. No. 12.

13 The Court has federal question jurisdiction over the FCRA claims under 28 U.S.C.  
14 § 1331, and supplemental jurisdiction over the state law claim under 28 U.S.C. § 1367.  
15 Both parties consented to the jurisdiction of a United States Magistrate Judge under 28  
16 U.S.C. § 636(c). Dkt. Nos. 6, 8.

## 17 **II. LEGAL STANDARD**

18 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal  
19 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). On a  
20 motion to dismiss, all allegations of material fact are taken as true and construed in the light  
21 most favorable to the non-movant. *Coal. For ICANN Transparency, Inc.*, 611 F.3d at 501.  
22 The Court, however, need not accept as true “allegations that are merely conclusory,  
23 unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Secs. Litig.*,  
24 536 F.3d 1049, 1055 (9th Cir. 2008). While a complaint need not allege detailed factual  
25 allegations, it must contain sufficient factual matter, accepted as true, to “state a claim to  
26 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).  
27 A claim is facially plausible when it “allows the court to draw the reasonable inference that  
28 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678

1 (2009).

2 “[I]n dismissing for failure to state a claim under Rule 12(b)(6), ‘a district court  
3 should 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 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (quoting *Doe v. United States*, 58 F.3d  
6 494, 497 (9th Cir. 1995)).

### 7 III. DISCUSSION

#### 8 A. Rand States a Claim Under 15 U.S.C. § 1681b(f).

9 Citibank moves to dismiss Rand’s second cause of action under 15 U.S.C. § 1681b(f)  
10 on the basis that Citibank’s credit inquiry falls within a “permissible purpose” set forth in  
11 that section. Dkt. No. 12.

12 Congress enacted the FCRA in 1970 to regulate credit reporting agencies in order to  
13 ensure fair and accurate credit reporting. *See* 15 U.S.C. § 1681; *Gorman v. Wolpoff &*  
14 *Abramson, LLP*, 584 F.3d 1147, 1153 (9th Cir. 2009). Among other things, the FCRA  
15 imposes certain responsibilities on furnishers of information to credit reporting agencies.  
16 *See Gorman*, 584 F.3d at 1154. The FCRA expressly creates a private right of action for  
17 willful or negligent noncompliance with its requirements. *Id.*; 15 U.S.C. §§ 1681n & o.

18 Specifically, § 1681b(f) of the FCRA provides that “[a] person shall not use or obtain  
19 a consumer report for any purpose unless--(1) the consumer report is obtained for a purpose  
20 for which the consumer report is authorized to be furnished under this section; and (2) the  
21 purpose is certified in accordance with section 1681e of this title by a prospective user of  
22 the report through a general or specific certification.” 15 U.S.C. § 1681b(f). The  
23 circumstances under which a consumer report is authorized to be furnished are set forth in  
24 15 U.S.C. § 1681b(a). In this case, Citibank contends that its credit inquiry falls within the  
25 permissible purposes enumerated under either § 1681b(a)(3)(A) or § 1681b(a)(3)(F) of  
26 FCRA. Dkt. No. 14. The Court will now address the two asserted permissible purposes in  
27 turn.

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1           **1.       Credit Report Issued In Connection With a Credit Transaction**

2           Section 1681b(a)(3)(A) of FCRA provides that “any consumer reporting agency may  
3 furnish a consumer report . . . [t]o a person which it has reason to believe--(A) intends to  
4 use the information in connection with a credit transaction involving the consumer on  
5 whom the information is to be furnished and involving the extension of credit to, or review  
6 or collection of an account of, the consumer.” 15 U.S.C. § 1681b(a)(3)(A). This section  
7 “can be relied upon by the party requesting a credit report ‘only if the consumer initiates the  
8 transaction.’” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 675 (9th Cir. 2010) (quoting  
9 *Stergiopoulos v. First Midwest Bancorp, Inc.*, 427 F.3d 1043, 1047 (7th Cir. 2005)). The  
10 Ninth Circuit has held that a person is “involved” in a credit transaction for purposes of  
11 § 1681b(a)(3)(A) where she is “draw[n] in as a participant” in the transaction, but not where  
12 she is “oblige[d] to become associated” with the transaction. *Id.* (quoting *Andrews v. TRW,*  
13 *Inc.*, 225 F.3d 1063, 1067 (9th Cir. 2000), *rev’d on other grounds*, 534 U.S. 19 (2001)).

14           In *Andrews*, the district court granted summary judgment in favor of a credit reporting  
15 agency, holding that the agency had made the disclosures for a purpose permissible under §  
16 1681b(a)(3)(A), because the plaintiff, a victim of identity theft, was “involved” in the credit  
17 transaction initiated by the imposter, even though it was against her will. *Andrews*, 225  
18 F.3d at 1066. In reversing, the Ninth Circuit held that it was a question to be resolved by  
19 the jury as to whether the credit reporting agency had reason to believe that it was  
20 furnishing information in connection with a consumer transaction involving plaintiff. *Id.* at  
21 1064, 1067-68. The Ninth Circuit explained that it was “reluctant to conclude that  
22 Congress meant to harness any consumer to any transaction where any crook chose to use  
23 his or her [social security] number.” *Id.* at 1067.

24           Here, Citibank asserts that “[t]here is simply no allegation indicating that Citibank did  
25 not intend to use the information in connection with an extension of credit to Plaintiff.”  
26 Dkt. No. 14. The Court disagrees. The first amended complaint alleges that Rand was a  
27 victim of identity theft, and that Citibank either knew or should have known that Rand had  
28 not initiated the credit application because he was a longtime customer of Citibank, and

1 because the social security number was incorrect, which Rand asserts was a clear red flag.  
2 Dkt. No. 10 ¶¶ 8-10, 41-43. Construing these allegations in the light most favorable to  
3 Rand, he has sufficiently alleged that Citibank knew or should have known that he was  
4 “oblige[d] to become associated” with the transaction and thus was not “involved” in it for  
5 purposes of § 1681b(a)(3)(A). *See Pintos*, 605 F.3d at 675; *Andrews*, 225 F.3d at 1067.

6 Citibank attempts to distinguish *Andrews* on the basis that it involved a suit against a  
7 credit reporting agency and not a “regular user of credit reports,” and that the level of  
8 reasonable belief that the user of a credit report must have is lower than that of credit  
9 reporting agencies. Dkt. No. 14. The only support cited by Citibank for this proposition is  
10 dicta from *Bickley v. Equifax Info. Servs., LLC*, No. 10-cv-00678, 2013 WL 1932837, at \*4  
11 n.5 (W.D. Ky. May 8, 2013). The Court here does not need to determine if such a  
12 distinction is supported by the law in this Circuit because Rand has sufficiently alleged that  
13 Citibank knew or should have known that he did not initiate the credit transaction and that  
14 the credit report was thus not authorized by § 1681b(a)(3)(A). For the same reason,  
15 Citibank’s citations to cases where a credit report was obtained by mistake are inapposite.  
16 *See* Dkt. No. 14 at 5.

## 17 **2. Credit Report Issued In Connection With a Business Transaction**

18 Additionally, section 1681b(a)(3)(F) provides that “any consumer reporting agency  
19 may furnish a consumer report . . . [t]o a person which it has reason to believe-- . . . (F)  
20 otherwise has a legitimate business need for the information--(i) in connection with a  
21 business transaction that is initiated by the consumer; or (ii) to review an account to  
22 determine whether the consumer continues to meet the terms of the account.” 15 U.S.C.  
23 § 1681b(a)(3)(F). Citibank asserts that “the only reasonable inference to be drawn” from  
24 the complaint is that Citibank believed it was obtaining the credit report for a legitimate  
25 business need in connection with a business transaction initiated by the consumer. Dkt. No.  
26 14.

27 In support for this argument, Citibank cites to the Sixth Circuit’s decision in *Bickley*  
28 *v. Dish Network, LLC*, 751 F.3d 724 (6th Cir. 2014). *Bickley*, however, is not binding on

1 this Court and is distinguishable. In *Bickley*, an identity thief used plaintiff’s social security  
2 number in an attempt to open an account with defendant provider of satellite television  
3 services. *Id.* at 726. Defendant then contacted three credit reporting agencies to ascertain  
4 whether the name and social security number of the potential customer matched. *Id.* In  
5 affirming summary judgment for defendant on plaintiff’s FCRA claim, the Sixth Circuit  
6 found that defendant believed in good faith that plaintiff was the consumer initiating the  
7 transaction, and that its subsequent conduct was undertaken to assess the purported  
8 consumer’s eligibility for its business services and protect the consumer. *Id.* at 732-33.  
9 The Sixth Circuit held that defendant thus had a “legitimate business need” for the  
10 information and a “permissible purpose” to obtain plaintiff’s “consumer report” under  
11 U.S.C. § 1681b(a)(3)(F)(i). *Id.* at 732-33. *Bickley* did not involve a credit inquiry in  
12 connection with a credit application as in this case. Furthermore, unlike in *Bickley*, this  
13 case is at the pleading stage and Rand has sufficiently alleged that Citibank knew or should  
14 have known that he did not initiate the credit transaction.

15 Because the Court is not convinced that the only reasonable inference from the first  
16 amended complaint is that Citibank’s credit inquiry was authorized under FCRA, its motion  
17 to dismiss the second cause of action under 15 U.S.C. § 1681b(f) is DENIED.

18 **B. Rand States a Claim Under 15 U.S.C. § 1681s-2b and the CCCRAA.**

19 Citibank also moves to dismiss the remaining two causes of action under FCRA and  
20 CCCRAA on the basis that the first amended complaint fails to plead facts establishing that  
21 information furnished by Citibank to credit reporting agencies was inaccurate. Dkt. No. 12.

22 Section 1681s-2(b)(1) provides that, after receiving a notice of dispute “with regard  
23 to the completeness or accuracy of any information” provided to a credit reporting agency,  
24 the furnisher must:

- 25 (A) conduct an investigation with respect to the disputed information;
- 26 (B) review all relevant information provided by the consumer reporting agency  
27 pursuant to section 1681i(a)(2) . . . ;
- 28 (C) report the results of the investigation to the consumer reporting agency;

1 (D) if the investigation finds that the information is incomplete or inaccurate,  
2 report those results to all other consumer reporting agencies to which the  
3 person furnished the information and that compile and maintain files on  
4 consumers on a nationwide basis; and

5 (E) if an item of information disputed by a consumer is found to be inaccurate  
6 or incomplete or cannot be verified after any reinvestigation under paragraph  
7 (1), for purposes of reporting to a consumer reporting agency only, as  
8 appropriate, based on the results of the reinvestigation promptly--

- 9 (i) modify that item of information;
- 10 (ii) delete that item of information; or
- 11 (iii) permanently block the reporting of that item of information.

12 15 U.S.C. 1681s-2(b).

13 The CCCRAA provides that “[a] person shall not furnish information on a specific  
14 transaction or experience to any consumer credit reporting agency if the person knows or  
15 should know the information is incomplete or inaccurate.” Cal. Civ. Code § 1785.25(a).

16 Citibank argues that the Court should dismiss the first and third causes of action  
17 under FCRA and CCCRAA on the ground that Rand fails to allege that Citibank reported an  
18 actual inaccuracy because “Citibank received a credit application with Plaintiff’s  
19 information and subsequently made an inquiry into Plaintiff’s credit report in order to  
20 process the application received.” Dkt. Nos. 12, 14. However, Citibank’s argument is  
21 based on an overly narrow interpretation of inaccuracy and does not take into account all of  
22 the allegations of the complaint.

23 As the Ninth Circuit has held, an item on a credit report can be “incomplete or  
24 inaccurate” within the meaning of 15 U.S.C. § 1681s-2(b)(1)(D), “because it is patently  
25 incorrect, or because it is misleading in such a way and to such an extent that it can be  
26 expected to adversely affect credit decisions.” *Carvalho v. Equifax Info. Servs., LLC*, 629  
27 F.3d 876, 890 (9th Cir. 2010) (quoting *Gorman*, 584 F.3d at 1163). Likewise, a report  
28 violates the CCCRAA “when it is misleading or incomplete, even if it is technically  
accurate.” *See Cisneros v. U.D. Registry, Inc.*, 39 Cal. App. 4th 548, 579-80 (1995).

The first amended complaint here alleges that Citibank reported “incomplete or  
inaccurate” information to the credit reporting agency by informing the agency that Rand  
had applied for a credit card and that he had thereby authorized Citibank to conduct a credit



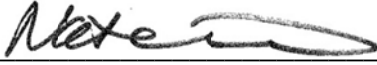
1 check, which resulted in a “hard credit inquiry” on Rand’s credit report. Dkt. No. 10 ¶¶ 10-  
2 13, 32, 47. When Citibank confirmed that this information was inaccurate in that Rand had  
3 not applied for a credit card and thus had not authorized the credit inquiry but rather that the  
4 application was fraudulent, Citibank failed to inform the credit reporting agencies of the  
5 same and failed to modify, delete, or permanently block the inquiry. *Id.* ¶¶ 19-26, 34-36.  
6 The complaint further alleges that this inaccurate or incomplete information adversely  
7 affected a credit decision in that Citibank denied Rand a line of credit based on “excessive  
8 recent credit inquiries” in Rand’s report. *Id.* ¶¶ 23, 27. Thus, the first amended complaint  
9 sufficiently alleges that Citibank reported information that was “misleading in such a way  
10 and to such an extent that it can be expected to adversely affect credit decisions.”  
11 *Carvalho*, 629 F.3d at 890. Accordingly, Citibank’s motion to dismiss the first and third  
12 causes of action is DENIED.

#### 13 IV. CONCLUSION

14 For the reasons set forth above, Citibank’s motion to dismiss the first amended  
15 complaint is denied.

16 IT IS SO ORDERED.

17 Date: February 6, 2015

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19 \_\_\_\_\_  
20 Nathanael M. Cousins  
21 United States Magistrate Judge  
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