

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RONNIE LITTLETON,
Plaintiff,

v.

SUNTRUST MORTGAGE, INC., et al.,
Defendants.

Case No. [5:15-cv-01836-EJD](#)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

Re: Dkt. No. 16

Plaintiff Ronnie Littleton (“Plaintiff”) filed this action in Santa Clara County Superior Court against Defendants Experian Information Solutions, Inc., Equifax, Inc., SunTrust Mortgage, Inc. (“SunTrust”), FedLoan Servicing, and Military Star for alleged violations of (1) the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s-2(b), (2) the California Consumer Credit Reporting Agencies Act, California Civil Code § 1785.25(a), (3) and the Unfair Competition Law, California Business and Professions Code § 17200. FedLoan Servicing removed the action to this court under 28 U.S.C. § 1331.

SunTrust now moves to dismiss Plaintiff’s Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). See Docket Item No. 16. Plaintiff opposes the motion. See Docket Item No. 21. This matter is suitable for decision without oral argument pursuant to Civil Local Rule 7-1(b). Accordingly, the hearing scheduled for August 6, 2015, is VACATED. Having carefully considered the pleadings filed by the parties, the court finds, concludes and orders as follows:

1. On a Rule 12(b)(6) motion to dismiss for failure to state a claim, the complaint is construed in the light most favorable to the non-moving party, and all material allegations in the complaint are taken to be true. Sanders v. Kennedy, 794 F.2d 478, 481 (9th Cir. 1986). This rule

1 does not apply to legal conclusions - “[t]hreadbare recitals of the elements of a cause of action,
2 supported by mere conclusory statements, do not suffice” to state a claim. Ashcroft v. Iqbal, 556
3 U.S. 662, 663 (2009). While a complaint does not need detailed factual allegations to survive a
4 12(b)(6) motion, plaintiffs must provide grounds demonstrating their entitlement to relief. Bell
5 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Thus, the plaintiff must allege sufficient
6 factual allegations “to raise a right to relief above the speculative level.” Id. This threshold is
7 reached when the complaint contains sufficient facts to allow the court to draw a reasonable
8 inference that the defendant is liable for the alleged misconduct. Iqbal, 556 U.S. at 678.

9 2. Although the FCRA generally prohibits “[a] person” from furnishing information
10 “relating to a consumer” to any consumer reporting agency “if the person knows or consciously
11 avoids knowing that the information is inaccurate,” a consumer cannot sue a furnisher based
12 simply on the communication of inaccurate information. 15 U.S.C. § 1681s-2(a); see Nelson v.
13 Chase Manhattan Mortgage Corp., 282 F.3d 1057, 1059 (9th Cir. 2002). Instead, a consumer has
14 a private right of action against a furnisher if, after receiving notice that information is disputed,
15 the furnisher fails to reasonably undertake one of the following duties: “conduct an investigation
16 with respect to the disputed information,” “review all relevant information provided by the
17 consumer reporting agency,” “report the results of the investigation to the consumer reporting
18 agency,” and “if the investigation finds that the information is incomplete or inaccurate, report
19 those results to all other consumer reporting agencies to which the person furnished the
20 information and that compile and maintain files on consumers on a nationwide basis.” 15 U.S.C.
21 § 1681s-2(b).

22 3. SunTrust argues the FCRA claim is insufficient because Plaintiff failed to describe
23 what information SunTrust allegedly communicated to the consumer reporting agencies, as well as
24 why this information was inaccurate. The court agrees these facts are necessary to state a claim
25 under § 1681s-2(b) that is plausible rather than merely speculative. See Lyles v. Ford Motor
26 Credit Co., No. SACV 12-1736 AG (RNBx), 2013 U.S. Dist. LEXIS 58804, at *11, 2013 WL
27 987723 (C.D. Cal. Mar. 11, 2013) (“Courts have held that consumers asserting Section 1681s-2(b)

1 violations based on ‘furnishing inaccurate information [] must identify which information is
2 inaccurate.’”). Plaintiff’s unspecific allegations alluding to “misleading and or inaccurate
3 balances or past due balances owed” with regard to some unidentified account is not enough for
4 SunTrust, or any other furnisher defendant for that matter, to understand the basis for any potential
5 liability.

6 4. In a related argument, SunTrust also argues that Plaintiff failed to differentiate
7 between the furnisher defendants by alleging, in one sentence, that all of them “failed to conduct a
8 reasonable investigation and reported falsely to at least Experian Information Solutions, Inc. or all
9 three bureaus a misleading and or inaccurate balance or past due balance owed on the account and
10 or listed the account as transferred and or charged off.” Coupled with the lack of facts detailing
11 the alleged inaccurate information and who it was furnished by, this “everyone did everything
12 allegation” is particularly problematic. See Yost v. Nationstar Mortg., No. 1:13-cv-00745-AWI-
13 SAB, 2013 U.S. Dist. LEXIS 128504, at *7-8, 2013 WL 4828590 (E.D. Cal. Sept. 9, 2013) (“A
14 plaintiff suing multiple defendants ‘must allege the basis of his claim against each defendant to
15 satisfy Federal Rule of Civil Procedure 8(a)(2), which requires a short and plain statement of the
16 claim to put defendants on sufficient notice of the allegations against them.’”). Without knowing
17 what information Plaintiff believes is inaccurate, and by attributing a list of potential conduct
18 against all of the furnisher defendants by using the “and or” connector, it is impossible for any of
19 them to know exactly what Plaintiff has placed at issue.

20 5. In short, Plaintiff’s Complaint suffers from defects most often seen when an
21 unspecific form complaint is not modified to fit the facts of a particular case. Plaintiff must
22 provide better tailored allegations for this case to proceed, at least in federal court. He will be
23 permitted leave to amend to address the defects in her pleading. See Schreiber Distrib. Co. v.
24 Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir.1986) (holding that leave to amend should
25 be freely allowed “unless the court determines that the allegation of other facts consistent with the
26 challenged pleading could not possibly cure the deficiency.”).

27 Based on the foregoing, SunTrust’s Motion to Dismiss is GRANTED. The FCRA claim is

1 DISMISSED WITH LEAVE TO AMEND. With the dismissal of the only federal claim asserted
2 in the Complaint, the court declines to exercise supplemental jurisdiction over Plaintiff's related
3 state law claims. They will be dismissed for lack of jurisdiction. See 28 U.S.C. § 1367(c)(3);
4 Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988); Acri v. Varian Assocs., Inc., 114
5 F.3d 999, 1000 (9th Cir.1997) (en banc).

6 Any amended complaint must be filed on or before **August 19, 2015**. Plaintiff is advised
7 that, although leave to amend has been permitted, he may not add new claims or new parties to
8 this action without first obtaining Defendants' consent or leave of court pursuant to Federal Rule
9 of Civil Procedure 15.

10
11 **IT IS SO ORDERED.**

12 Dated: August 4, 2015

13 
14 EDWARD J. DAVILA
15 United States District Judge

16
17
18
19
20
21
22
23
24
25
26
27
28