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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RONNIE MILLER,  
  
Plaintiff,  
  
vs.  
  
BANK OF AMERICA, NATIONAL  
ASSOCIATION; BAC HOME LOANS  
SERVICING, L.P.; EXPERIAN SERVICES  
CORPORATION; EQUIFAX INC.;  
TRANSUNION CORPORATION; and  
DOES 1 through 20, inclusive,  
  
Defendants.

CASE NO. 3:11-cv-02588-MMA  
(BGS)

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

[Doc. No. 12]

On November 14, 2011, Defendant Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, L.P., (“BAC” or “Defendant”) filed a motion to dismiss Plaintiff Ronnie Miller’s first amended complaint (“FAC”) for failure to state a claim upon which relief can be granted. [Doc. No. 12-1.]<sup>1</sup> Plaintiff filed an opposition to Defendant’s motion to dismiss [Doc. No. 17], and Defendant filed a reply [Doc. No. 19]. On January 13, 2012, the Court deemed the matter suitable for decision on the papers and without oral argument pursuant to Civil Local Rule 7.1(d)(1). [Doc. No. 20.] For the reasons set forth below, the Court **GRANTS** Defendant’s motion to dismiss.

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<sup>1</sup> Defendants Experian Services Corporation, TransUnion Corporation, and Equifax Inc. answered in November 2011. [See Doc. Nos. 9-10, 15.]

1 **BACKGROUND**

2 This action arises from events related to Plaintiff’s short sale of real property located at 2436  
3 Adirondack Row #2, San Diego, California 92139 (the “Property”), which resulted in Defendant  
4 BAC reporting inaccurate information on Plaintiff’s credit report. [FAC, Doc. No. 1, Exh. A. ¶11.]<sup>2</sup>  
5 Plaintiff originally purchased the Property in December 1991 for \$73,950 through lender United  
6 Savings Association of Texas. [Id.]<sup>3</sup> On or about December 8, 2005, Plaintiff refinanced the  
7 Property through First Magnus Financial Corporation, obtaining a loan in the amount of \$240,000.  
8 [Id. ¶12.] Ultimately, Plaintiff decided to sell the Property and sold it for \$118,437 via a short sale  
9 on November 18, 2008. [Id. ¶16.] Plaintiff alleges at the time of the short sale he was informed that  
10 this type of transaction would reflect less negatively on his credit report than a foreclosure. [Id.  
11 ¶17.] According to Plaintiff, he was also told that although the short sale would leave a negative  
12 mark on his credit report, he would be able to refinance his primary residence two years after the  
13 short sale. [Id.]

14 In or around February 2010, Plaintiff checked his credit report in anticipation of refinancing  
15 his primary residence later that year and learned for the first time that Defendant incorrectly reported  
16 the short sale of the Property as a foreclosure. [Id. ¶18.] Plaintiff contacted Defendant regarding the  
17 inaccuracy and received two letters in response, dated April 19, 2010 [Doc. No. 1, Exh. 1] and April  
18 26, 2010 [Id. Exh. 2], each stating his request for credit correction was approved and formal requests  
19 were sent to the credit reporting agencies, Equifax Credit Information Services, Experian Services  
20 Corporation, TransUnion Corporation, and Innovis Data Solutions. [FAC ¶19.] Thereafter, Plaintiff  
21 called Defendant on June 7, July 2, July 14, July 16, July 17, July 19, and August 2, 2010, to check  
22 the status of the correction. [Id. ¶¶22, 25-26, 29.] During each call, Plaintiff was assured the request  
23 for a credit correction had been sent to the credit reporting agencies. [Id.]

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26 \_\_\_\_\_  
27 <sup>2</sup> Because this matter is before the Court on a motion to dismiss, the Court must accept as true  
28 the allegations of the complaint in question. *Hosp. Bldg. Co. v. Rex Hosp. Tr.*, 425 U.S. 738, 740  
(1976). All facts cited are taken from Plaintiff’s FAC unless otherwise noted.

<sup>3</sup> While it is unclear whether Plaintiff purchased the Property as an investment, it appears not  
to be his primary residence.

1 On October 26, 2010, Plaintiff and his loan officer ran a credit report to determine Plaintiff's  
2 eligibility to refinance the loan on his primary residence. [*Id.* ¶32.] The report showed two 30-day  
3 late payments and a foreclosure on the Property. [*Id.* ¶33.] Plaintiff alleges these negative marks on  
4 his credit report made him ineligible to refinance his primary residence loan. [*Id.* ¶36.]  
5 Accordingly, Plaintiff notified Equifax, TransUnion, and Experian on November 9, 2010 about  
6 Defendant BAC's negative and inaccurate reporting. [*Id.* ¶40.] All three agencies replied that the  
7 credit report on the Property did not show any late payments. [*Id.* ¶¶41-43.] Plaintiff therefore  
8 alleges the credit reporting agencies are "fraudulently giving out misinformation to the lenders so as  
9 to allow the lenders to deny credit and/or to allow the lenders to offer higher interest rates for  
10 consumers." [*Id.* ¶45.] Plaintiff also asserts Defendant BAC continues to willfully and inaccurately  
11 report Plaintiff's credit history with respect to the Property. [*Id.* ¶44.]

12 Plaintiff filed this action in the Superior Court of California, San Diego Judicial District,  
13 Central Division on September 23, 2011. [Doc. No. 1 ¶1.] Plaintiff's FAC alleges seven causes of  
14 action for: (1) Violation of the Consumer Credit Reporting Agencies Act, Cal. Civ. Code  
15 §1785.25(a); (2) Violation of the Consumer Credit Reporting Agencies Act, Cal. Civ. Code  
16 §1785.14(b); (3) Violation of Consumer Credit Reporting Agencies Act, Cal. Civ. Code §1785.16;  
17 (4) Negligence; (5) Intentional infliction of emotional distress; (6) Negligent infliction of emotional  
18 distress; and (7) Violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§17200  
19 *et seq.* On November 7, 2011, Defendant Equifax Inc. removed the complaint to this Court based on  
20 federal question jurisdiction because Plaintiff's Unfair Competition Law claim is premised on  
21 violations of federal law. [*Id.*] On November 14, 2011, Defendant BAC filed a motion to dismiss  
22 Plaintiff's entire FAC under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim  
23 upon which relief can be granted.

#### 24 LEGAL STANDARD

25 A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint. *Navarro v. Block*,  
26 250 F.3d 729, 732 (9th Cir. 2001). "While a complaint attacked by a Rule 12(b)(6) motion to  
27 dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of  
28 his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the

1 elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief  
2 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal  
3 marks and citations omitted).

4 In reviewing a motion to dismiss under Rule 12(b)(6), the court must assume the truth of all  
5 factual allegations and must construe them in the light most favorable to the nonmoving party.  
6 *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-8 (9th Cir. 1996). Legal conclusions need not be  
7 taken as true merely because they are cast in the form of factual allegations. *Roberts v. Corrothers*,  
8 812 F.2d 1173, 1177 (9th Cir. 1987); *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).  
9 Similarly, “conclusory allegations of law and unwarranted inferences are not sufficient to defeat a  
10 motion to dismiss.” *Pareto v. Fed. Deposit Ins. Corp.*, 139 F.3d 696, 699 (9th Cir. 1998).

11 When a claim is dismissed for failure to state a claim, leave to amend should be granted  
12 “unless the court determines the allegation of other facts consistent with the challenged pleadings  
13 could not possibly cure the deficiency.” *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th  
14 Cir. 1992) (quoting *Schrieber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir.  
15 1986)). In other words, a court may grant a motion to dismiss and dismiss the claim with prejudice  
16 where amendment would be futile. *Reddy v. Litton Indus.*, 912 F.2d 291, 296 (9th Cir. 1990).

## 17 DISCUSSION

### 18 **I. CALIFORNIA’S UNFAIR COMPETITION LAW**

19 Plaintiff’s seventh cause of action asserts Defendant BAC violated California’s Unfair  
20 Competition Law (“UCL”) by using unfair, unlawful, and fraudulent business practices with respect  
21 to the credit reporting of the Property. [FAC ¶¶84-85.] While Plaintiff’s complaint contains minimal  
22 detail, his allegations are based on two primary theories. First, Plaintiff asserts Defendant violated  
23 the UCL’s unlawful prong by providing Plaintiff and his representatives with false, deceptive and  
24 misleading information in violation of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C.  
25 1692 *et seq.* [*Id.* ¶87.] Next, Plaintiff alleges Defendant failed to comply with provisions in the Fair  
26 Credit Reporting Act (“FCRA”), 15 U.S.C. 1681 *et seq.*, by failing to investigate and correctly report  
27 credit information, which violates the unlawful, fraudulent, and unfair prongs of the UCL. [*Id.* ¶¶84-  
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1 85.] In response, Defendant moves to dismiss Plaintiff’s entire UCL claim on the ground that it is  
2 preempted by section 1681t(b)(1)(F)(ii) of the FCRA. [Doc. 12-1, p. 4.]<sup>4</sup> The Court agrees, in part.

3 **(A) Unlawful Business Practices Predicated on FDCPA Violations**

4 The FDCPA aims to eliminate abusive debt collection practices by prohibiting debt  
5 collectors from using false, deceptive, or misleading practices in connection with the collection of  
6 debts. 15 U.S.C. §§1692(e), 1692e; *Winter v. I.C. Sys.*, 543 F. Supp. 2d 1210, 1212 (S.D. Cal.  
7 2008). The statute defines a debt as “any obligation or alleged obligation of a consumer to pay  
8 money . . . .” 15 U.S.C. § 1692a(5). To bring a FDCPA action against a debt collector, the debt  
9 collector’s misconduct must have occurred during an attempt to collect a present debt. *Winter*, 543  
10 F. Supp. 2d at 1214 (quoting *Zimmerman v. HBO Affiliate Grp.*, 834 F.2d 1163, 1167 (3d Cir.  
11 1987)). Accordingly, conduct by a *former* debt collector—even if otherwise prohibited—is not  
12 actionable under the statute because the activities must occur “in connection” with a present debt  
13 collection proceeding. *Id.* at 1213 (quoting *Posso v. Asta Funding Inc.*, 2007 U.S. Dist. LEXIS  
14 83741 \*3 (N.D. Ill. Nov. 9, 2007)). For example, if the debtor has settled the debt (or paid the debt  
15 in full) and the debt collector has acknowledged satisfaction of the debt, then an action under the  
16 FDCPA cannot be sustained. *Narog v. Certegy Check Serv.*, 759 F. Supp. 2d 1189, 1193 (N.D. Cal.  
17 2011).

18 *Narog* is instructive. In *Narog*, the plaintiff alleged the defendant inaccurately reported a  
19 debt to credit reporting agencies in violation of the FDCPA. *Id.* The court granted the defendant’s  
20 motion to dismiss without leave to amend because the conduct alleged occurred after the debt  
21 collection process terminated. *Id.* In effect, the plaintiff’s FDCPA claim failed because it was not  
22 based on an existing debt and there were no ongoing debt collection proceedings. *Id.* Also, the  
23 plaintiff’s credit history report reflected a \$0 balance on the account, which the court concluded was  
24 dispositive evidence that a debt no longer existed, and that the debt collector had acknowledged  
25 there was no debt owed. *Id.*

26 As in *Narog*, Defendant BAC’s misconduct is not actionable under the FDCPA because it  
27 occurred after Plaintiff’s debt with Defendant was settled. Plaintiff alleges Defendant made false  
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<sup>4</sup> Defendant erroneously cites 15 U.S.C. §1681t(b)(1)(F)(ii) as 15 U.S.C. §181t(b)(1)(F)(ii).

1 statements regarding the status of his request to correct the inaccuracies in his credit report  
2 beginning in April 2010. [FAC ¶¶ 20, 22, 25-26, 28-31.] However, when Plaintiff sold the  
3 Property via short sale in November 2008, Plaintiff satisfied its debt to BAC. [*Id.* ¶¶ 12-13.] Thus,  
4 BAC’s allegedly wrongful conduct occurred more than a year after the debt was settled. The credit  
5 reports from October and December 2010 attached to Plaintiff’s complaint confirm that the BAC  
6 account is closed and has a current balance of \$0. [*Id.* Exhs. 3-4.] Therefore, Plaintiff cannot state a  
7 claim under the FDCPA because BAC’s allegedly false statements cannot be deemed to be “in  
8 connection” with a present debt collection proceeding. Because Plaintiff cannot seek recovery under  
9 the FDCPA for misconduct that occurred after the pertinent debt was settled, the Court concludes  
10 leave to amend would be futile and Plaintiff’s claim is subject to dismissal with prejudice. In  
11 addition, the alleged FDCPA violation cannot serve as a predicate act for a UCL claim.

12 **(B) Unlawful Business Practices Predicated on FCRA Violations**

13 The FCRA requires credit reporting agencies to adopt reasonable procedures related to the  
14 collection, communication, and use of consumer credit information to ensure fair and accurate credit  
15 reporting. 15 U.S.C. §1681e; *Roybal v. Equifax*, 405 F. Supp. 2d 1177, 1181 (E.D. Cal. 2005). To  
16 attain this goal, the FCRA places duties on the persons who furnish credit reporting agencies with  
17 information such as BAC. 15 U.S.C. §1681s-2; *Gorman v. Wolpoff & Abramson LLP*, 584 F.3d  
18 1147, 1153 (9th Cir. 2008).

19 Section 1681s-2 sets forth two categories of duties for furnishers of credit information.  
20 *Wang v. Asset Acceptance LLC*, 2010 U.S. Dist. LEXIS 91946 \*6-7 (N.D. Cal. July 27, 2010). First,  
21 subsection (a) restricts furnishers from reporting information if they “know or have reasonable cause  
22 to believe” the information is inaccurate. 15 U.S.C. §1681s-2(a)(1). This subsection also requires  
23 furnishers to correct and update information if they later determine the reported information is  
24 inaccurate. *Id.* at §s-2(a)(2). Private plaintiffs cannot bring an action against furnishers of credit  
25 information under this subsection. *Gorman*, 584 F.3d at 1154 (stating the duties imposed on  
26 furnishers under section 1681s-2(a) are enforceable only by federal or state agencies).

27 Second, under subsection (b), when a furnisher is notified by a credit reporting agency that a  
28 consumer disputes the reported information, the furnisher is required to review, investigate, and

1 compile a report regarding the disputed information. 15 U.S.C. §1681s-2(b); *Wang*, 2010 U.S. Dist.  
2 LEXIS 91946 \*7. Consumers may bring a private right of action under subsection (b), but only if  
3 they first notify the national credit reporting agencies of the disputed information and the furnisher  
4 fails to conduct a reasonable investigation. *Nelson v. Equifax Info. Serv.*, 522 F. Supp. 2d 1222,  
5 1231 (C.D. Cal. 2007).

6 In this case, Plaintiff predicates a UCL claim on allegations that Defendant violated  
7 subsections (a) and (b), because BAC reported inaccurate information to the credit reporting  
8 agencies and failed to conduct a reasonable investigation after being notified that Plaintiff disputed  
9 the report. [FAC ¶¶84-86.] Plaintiff cannot bring a private cause of action under subsection (a), but  
10 may be able to bring a successful private action under subsection (b). Plaintiff notified the credit  
11 reporting agencies in April, June, and November 2010 that he disputed the information reported by  
12 Defendant BAC, but Defendant failed to investigate and remedy the inaccurate report. [*Id.* ¶¶21, 23-  
13 24, 40.] However, Plaintiff has not pled an independent cause of action under the FCRA. Instead,  
14 Plaintiff alleges Defendant's conduct in violation of the FCRA constitutes a UCL claim.  
15 Accordingly, the Court must examine whether the FCRA preempts Plaintiff's theory under the UCL.

16 In an effort to maintain a uniform set of duties across all furnishers of credit information,  
17 Congress included an express preemption clause in the FCRA. *Gorman*, 584 F.3d at 1153; 15  
18 U.S.C. §1681t(b)(1)(F). Under section 1681t(b)(1)(F) of the FCRA, states cannot impose any  
19 requirements or prohibitions on furnishers' duties to report accurately and correct identified  
20 discrepancies as set forth in section 1681s-2.<sup>5</sup> The majority of district courts in this Circuit have  
21 interpreted section 1681t(b)(1)(F) as a total preemption provision. *Davis v. Md. Bank*, 2002 U.S.  
22 Dist. LEXIS 26468 \*39 (N.D. Cal. June 19, 2002) (finding a majority of district courts have held  
23 that the FCRA preempts both state statutory and common law causes of action). The district courts  
24 read the FCRA's preemption clause to preclude all state common law and statutory claims, to effect  
25 Congress' intent to limit a plaintiff's recovery against furnishers of credit information to only the  
26 remedies provided under the FCRA. *See Howard v. Blue Ridge Bank*, 371 F. Supp. 2d 1139, 1144

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28 <sup>5</sup> Section 1681t(b)(1)(F) of the FCRA provides an exception for claims brought under section 1785.25(a) of the California Consumer Credit Reporting Act. 15 U.S.C. §1681t(b)(1)(F)(I). However, as explained below in section II, Plaintiff cannot adequately state a claim under this statute.

1 (N.D. Cal. 2005); *Guillen v. Bank of Am. Corp.*, 2011 U.S. Dist. LEXIS 98860 \*20-21 (N.D. Cal.  
2 Aug. 31, 2011). As a result, the FCRA preempts claims brought under California’s UCL insofar as  
3 they relate to the responsibilities of furnishers of credit information governed by section 1681s-2 of  
4 the FCRA. *Mora v. Harley-Davidson Credit Corp.*, 2009 U.S. Dist. LEXIS 61851 \*14 (E.D. Cal.  
5 July 7, 2009); *Janti v. Encore Cap. Grp.*, 2010 U.S. Dist. LEXIS 78199 \*22-23, 26 (S.D. Cal. Aug.  
6 3, 2010).

7 Here, Plaintiff’s allegations against Defendant BAC relate exclusively to the responsibilities  
8 of furnishers of credit information as set forth under sections 1681-2(a) and (b). Plaintiff asserts  
9 BAC’s failure to conduct a reasonable investigation after he notified BAC of the discrepancy, in  
10 violation of section 1681s-2(b), constitutes an unlawful business practice prohibited by the UCL.  
11 [FAC ¶¶ 84, 86.] However, because the FCRA expressly preempts all state common law and  
12 statutory claims regulating the duties of furnishers of credit information, Plaintiff’s theory under the  
13 UCL is completely preempted. Accordingly, Plaintiff’s UCL claim is dismissed with prejudice  
14 because amendment would be futile.

## 15 **II. CALIFORNIA CONSUMER CREDIT REPORTING ACT**

16 In his first cause of action, Plaintiff alleges Defendant BAC violated section 1785.25(a) of  
17 the California Consumer Credit Reporting Act (“CCRA”) by knowingly furnishing inaccurate  
18 information to the national consumer credit reporting agencies. [FAC ¶¶50, 52.]<sup>6</sup> Defendant argues  
19 Plaintiff’s CCRA claim should be dismissed because a private plaintiff cannot bring an action  
20 against a furnisher of credit information under the Act. [Doc. 12-1 pp. 2-3.] Particularly, Defendant  
21 asserts section 1785.31, which allows private plaintiffs to bring an action under the CCRA, does not  
22 apply to actions against furnishers of credit information. [*Id.*] The Court agrees.

23 Generally, section 1782.31 of the CCRA allows private plaintiffs to bring an action for  
24 damages suffered as a result of violations of the Act. Cal. Civ. Code §1785.31. However, section  
25 1785.31 only extends to private plaintiffs bringing CCRA claims against credit reporting agencies  
26 and users of information. *Pulver v. Avco Fin. Serv.*, 182 Cal. App. 3d 622, 633 (Cal. Ct. App. 1986).  
27 Private plaintiffs cannot bring CCRA claims against a furnisher of credit information. *Davis*, 2002

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28 <sup>6</sup> Plaintiff’s second and third causes of action for violations of the CCRA are brought against Defendants Experian, TransUnion, and Equifax. [FAC ¶¶54, 62.]



1 U.S. Dist. LEXIS 26468 \*43 (citing *Pulver*, 182 Cal. App. 3d at 633). Here, Plaintiff alleges  
2 Defendant BAC is a furnisher of information; Plaintiff makes no allegations that Defendant is a user  
3 of information or a credit reporting agency. [FAC ¶50.] Thus, section 1785.31 does not authorize  
4 Plaintiff to bring a CCRA claim against Defendant. Accordingly, to the extent Plaintiff attempts to  
5 bring a CCRA claim against Defendant BAC in its capacity as a furnisher of credit information, he  
6 cannot do so and the claim is dismissed without prejudice.

### 7 **III. COMMON LAW TORT CLAIMS**

#### 8 **(A) Negligence**

9 In his fourth cause of action for negligence, Plaintiff asserts Defendant BAC breached its  
10 duty of care by not finalizing an investigation into Plaintiff's request for credit correction and  
11 reporting inaccurate information to the national credit reporting agencies. [FAC ¶¶44, 70.] Like the  
12 UCL claim, Defendant argues the FCRA preempts Plaintiff's negligence claim and that it should be  
13 dismissed because it relates exclusively to the duties set forth under section 1681s-2. [Doc. 12-1, p.  
14 3.] In response, Plaintiff asserts the FCRA does not preempt his claim because he adequately pled  
15 "willful intent to injure" as required under section 1681h(e) of the FCRA. [Doc. 17, pp. 5-6.]

16 Section 1681h(e) exempts certain state tort claims from preemption, if the plaintiff pleads the  
17 defendant acted with malice or willful intent to injure. *See* 15 U.S.C. §1681h(e) (exempting  
18 negligence, defamation, and invasion of privacy common law claims). District courts have grappled  
19 with defining a workable relationship between sections 1681h(e) and 1681t(b)(1)(F). *See El-*  
20 *Aheidab*, 2012 U.S. Dist. LEXIS 19038 \*20-21. As explained above in section I(B), the FCRA  
21 places certain responsibilities on furnishers of credit information to ensure fair and accurate credit  
22 reporting. *Gorman*, 584 F.3d at 1153. Under section 1681t(b)(1)(F), states cannot impose any  
23 requirements or prohibitions on the duties of furnishers of credit information as set forth under  
24 section 1681s-2. Even the Ninth Circuit has recognized the tension between these two provisions.  
25 *Gorman*, 584 F.3d at 1165-67. The tension arises because a majority of district courts interpret  
26 section 1681t(b)(1)(F) as expressly preempting all state common law and statutory claims against  
27 furnishers of information, while section 1681h(e) suggests certain state claims might not be  
28 preempted if the plaintiff pleads malice or willful intent to injure. *Id.* at 1165.

1           In *El-Aheidab*, the District Court for the Northern District of California considered how to  
2 reconcile sections 1681h(e) and 1681t(b)(1)(F). The Court finds the rationale in *El-Aheidab*  
3 persuasive. The district court concluded section 1681t(b)(1)(F) completely preempts all state law  
4 causes of action, despite the exceptions noted in section 1681h(e), for three primary reasons.  
5 *El-Aheidab*, 2012 U.S. Dist. LEXIS 19038 \*26-30. First, the district court explained that reading  
6 section 1681t(b)(1)(F) as a broad preemption clause does not render section 1681h(e) superfluous or  
7 inapplicable. *Id.* at 28. Even though section 1681h(e) preempts a narrow set of state common law  
8 tort claims, it does not prevent section 1681t(b)(1)(F) from preempting a broader range of claims.  
9 *Id.* at 29 (citing *Purcell v. Bank of America*, 659 F.3d 622, 625 (7th Cir. 2011)). Because section  
10 1681t(b)(1)(F) only preempts state common law and statutory claims against furnishers of credit  
11 information with respect to their duties set forth in section 1681s-2, it is not inconsistent with  
12 section 1681h(e), which applies against other parties and in other circumstances. *See id.* (holding  
13 “§1681t(b) leaves other provisions of the Act untouched, and such provisions are still subject to  
14 §1681h(e)’s more limited preemption clause.”). Accordingly, the district court in *El-Aheidab* held  
15 that a plaintiff cannot sustain a state common law or statutory claim related to the duties set forth in  
16 section 1681s-2, even if a plaintiff alleges a defendant reported false information with malice or  
17 willful intent to injure. *See id.* at 28-30.

18           Second, the district court concluded section 1681t(b)(1)(F) applies to common law  
19 negligence claims because under the plain language of the statute—“laws of any state”—literally  
20 encompasses state statutory and common law claims. *Id.* at 26 (citing *Erie R.R. v. Tompkins*, 304  
21 U.S. 64, 78 (1938) (holding “laws of any state” includes not only the laws declared by the  
22 legislature, but those determined by the judiciary)). Lastly, the district court reasoned that Congress  
23 would not create a comprehensive preemption scheme that was only applicable to state statutory  
24 claims, because a plaintiff could dress up a statutory violation as a common law claim even if they  
25 involve the same underlying conduct. *El-Aheidab*, 2012 U.S. Dist. LEXIS 19038 \*27.

26           Applying the rationale in *El-Aheidab*, Plaintiff’s negligence claim is preempted by section  
27 1681t(b)(1)(F). BAC negligently reported inaccurate information to the credit reporting agencies  
28 and failed to investigate and remedy Plaintiff’s request for a credit correction. [FAC ¶¶44, 70.]

1 Plaintiff's allegations put his negligence claim within the purview of section 1681s-2, because they  
2 clearly involve duties and responsibilities required of furnishers of credit information. 15 U.S.C.  
3 §1681s-2(a) (furnishers must accurately report credit information); *Id.* at §s-2(b) (furnishers must  
4 undergo an investigation after receiving notice of inaccurate reporting). Because the wrongful  
5 conduct is regulated under section 1681s-2, section 1681t(b)(1)(F) applies to preempt Plaintiff's  
6 negligence claim despite his allegations that Defendant acted with the willful intent to injure.  
7 Accordingly, because Plaintiff's negligence claim is preempted, amendment would be futile and this  
8 cause of action is dismissed with prejudice.

9 **(B) Intentional and Negligent Infliction of Emotional Distress**

10 Plaintiff alleges claims for intentional and negligent infliction of emotional distress based on  
11 BAC's conduct during the course of Plaintiff's contractual relationship with Defendant. [FAC ¶76.]  
12 As discussed above in section III(A), Plaintiff's state-based emotional distress claims are preempted  
13 by the FCRA and subject to dismissal with prejudice, to the extent they are based on BAC's  
14 inaccurate reporting and failure to investigate. [FAC ¶73.] Moreover, to the extent these claims are  
15 based on conduct that would otherwise be actionable, Defendant correctly argues Plaintiff's  
16 emotional distress claims are barred by the statute of limitations. [Doc. No. 12-1, p. 5.]

17 In California, intentional and negligent infliction of emotional distress claims have a two-  
18 year statute of limitations. Cal. Civ. Proc. §335.1; *Walker v. Boeing Corp.*, 218 F. Supp. 2d 1177,  
19 1183 (C.D. Cal. 2002) (finding California's personal injury one-year (now two) statute of limitations  
20 bars plaintiff's negligent and intentional infliction of emotional distress claims because the plaintiff  
21 did not file the suit until three years after the conduct complained of had taken place). Here,  
22 Plaintiff alleges Defendant falsely accused Plaintiff of making late payments during his contractual  
23 relationship with Defendant. [FAC ¶76.] Plaintiff's relationship with BAC ended in November  
24 2008 when Plaintiff sold the Property. [*Id.* ¶18.] Because Plaintiff did not file this action until  
25 September 2011, almost three years after his contractual relationship ended with Defendant,  
26 Plaintiff's emotional distress claims are barred by the two-year statute of limitations.<sup>7</sup> Accordingly,

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28 <sup>7</sup> In his Opposition to Defendant's Motion to Dismiss, Plaintiff provides no indication that he could not have discovered Defendant's conduct earlier, except with respect to the inaccurate credit reporting, which is preempted by the FCRA.

1 the Court grants Defendant's motion to dismiss and dismisses these claims with prejudice.

2 CONCLUSION

3 For the reasons set forth above, the Court **GRANTS** Defendant's motion to dismiss [Doc.  
4 No. 12-1], and **ORDERS** as follows:


5 (i) Plaintiff's first cause of action is **DISMISSED WITHOUT PREJUDICE** and with  
6 leave to amend.

7 (ii) Plaintiff's fourth, fifth, sixth, and seventh causes of action are **DISMISSED WITH**  
8 **PREJUDICE** and without leave to amend.

9 (iii) If Plaintiff wishes to proceed with this action, he must file a second amended  
10 complaint that remedies the deficiencies noted above, no later than **April 2, 2012**.

11 **IT IS SO ORDERED.**

12 DATED: March 14, 2012



Hon. Michael M. Anello  
United States District Judge

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