

1 Defendant would not run their credit. Plaintiffs had been carefully monitoring their
2 credit scores in preparation for purchasing a home and were not authorizing credit
3 inquiries. On September 25, 2013, Defendant informed Plaintiffs that no credit inquiry
4 would be made and Plaintiffs agreed to accept the upgrade offer on that condition.
5 Plaintiffs allege they only agreed to the upgrade on the condition that Defendant would
6 not make an inquiry on Plaintiffs' credit reports.

7 Despite this agreement, on September 29, 2013, Defendant ran Plaintiffs' credit
8 without authorization. The unauthorized requests appeared and will continue to appear
9 on Plaintiffs' credit reports for two years. Plaintiffs additionally allege that the inquiries
10 have negatively impacted their credit scores and delayed their purchase of a home.

11 DISCUSSION

12 “[A] complaint must contain sufficient factual matter, accepted as true, to state
13 a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78
14 (2009). Motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) test
15 the sufficiency of this required showing. *N.M. State Inv. Council v. Ernst & Young*
16 *LLP*, 641 F.3d 1089, 1094 (9th Cir. 2011). “A claim is facially plausible ‘when the
17 plaintiff pleads factual content that allows the court to draw the reasonable inference
18 that the defendant is liable for the misconduct alleged.’” *Zixiang Li v. Kerry*, 710 F.3d
19 995, 999 (9th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 678).

20 Defendant moves to dismiss Plaintiffs' first claim arguing that Plaintiffs have
21 failed to allege the requisite willful conduct to support a claim for willful violation of
22 the FCRA. Defendant asserts that the allegations that Defendant specifically agreed
23 not to run Plaintiffs' credit and then ran it does not reflect a willful violation. Instead,
24 Defendant asks the Court to infer that Defendant mistakenly ran Plaintiffs' credit. At
25 this stage in the case, the Court is not inclined to infer Defendant ran Plaintiffs' credit
26 by mistake when it could just as easily infer that Defendant did so willfully. The
27 allegations that Defendant specifically agreed not to run Plaintiffs' credit, Plaintiffs'
28 conditioning their purchase of an upgrade on avoiding the inquiry, and Defendant

1 running Plaintiffs' credit are facts from which the Court can reasonably infer
2 Defendant's conduct was willful.


3 Defendant also moves to dismiss Plaintiffs' second claim arguing that Plaintiffs
4 have failed to allege the requisite actual damages to support a negligent violation of the
5 FCRA. Defendant asserts, without citation to binding authority, that Plaintiffs are
6 required to identify a specific denial of credit based exclusively on Defendant's
7 conduct. Defendant also challenges Plaintiffs' allegations that Defendant's
8 unauthorized credit inquiry negatively impacted their credit reports, will continue to
9 negatively impact their credit reports for two years, and that the negative impact
10 delayed their purchase of a home. As Plaintiffs acknowledge in Opposition, they will
11 ultimately be required to prove the truth of these allegations and the extent of the injury
12 suffered. However, accepting these allegations as true, as the Court must in
13 considering a motion to dismiss, Plaintiffs have sufficiently alleged actual damages in
14 support of their claim.

15 **CONCLUSION**

16 Defendant's motion to dismiss is **DENIED**. Defendant shall file an Answer to
17 the FAC on or before **December 22, 2014**.

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19 **IT IS SO ORDERED.**

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21 DATED: December 4, 2014

22 
23 Hon. Roger T. Benitez
24 United States District Judge

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