UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

MARIO ESPARZA and BEATRIZ CARVAJAL,

Plaintiffs.

VS.

WELK RESORT GROUP, INC.,

Defendant.

CASE NO. 14CV1278 BEN (JMA)

ORDER DENYING MOTION TO **DISMISS**

[Docket No. 8]

Defendant Welk Resort Group, Inc. moves to dismiss Plaintiffs Mario Esparza and Beatriz Carvajal's First Amended Complaint ("FAC"). Defendant asserts that the FAC fails to allege willful conduct by Defendant to support a willful violation of the Fair Credit Reporting Act ("FCRA") and fails to allege actual damages as required for a negligent violation of the FCRA. Plaintiffs have filed an Opposition to the motion. (Docket No. 9.) Defendant has filed a Reply. (Docket No. 10.) Because the Court finds Plaintiffs have adequately alleged willful conduct and actual damages, the motion to dismiss is **DENIED**.

25

26

BACKGROUND¹

Plaintiffs allege that Defendant offered Plaintiffs a membership upgrade to the Welk Resorts Platinum Group. Plaintiffs indicated they were only interested if

27

28

¹The following background is drawn from the allegations of Plaintiffs' FAC. The Court is not making any factual findings, but rather only summarizing the relevant facts alleged for purposes of evaluating Defendant's motion to dismiss.

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

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

DISCUSSION

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

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

- 2 - 14cv1278

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

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

CONCLUSION

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

IT IS SO ORDERED.

DATED: December 4, 2014

Hon. Roger T. Benitez United States District Judge

- 3 - 14cv1278