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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 BRIAN SHIN, an individual,
11 Plaintiff,
12 v.
13 CITIZENS BANK, N.A., doing
14 business as Citizens One Home
15 Loans,
16 Defendant.

Case No.: 17-cv-1435-WQH-WVG

ORDER

17 The matter before the Court is the Motion to Dismiss (ECF No. 8) filed by Defendant
18 Citizens Bank, N.A.

19 **I. Background**

20 On July 17, 2017, Plaintiff Brian Shin initiated this action by filing a Complaint (ECF No.
21 1) against Defendant Citizens Bank, N.A. (“Citizens”). The Complaint brings causes of
22 action under the California Consumer Credit Reporting Agencies Act, California Civil
23 Code § 1785.25, and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b).
24 (Complaint at 1). On September 14, 2017, Citizens filed a Motion to Dismiss Plaintiff’s
25 Complaint. (ECF No. 8). On September 30, 2017, Shin filed an Opposition to Defendant’s
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1 Motion to Dismiss. (ECF No. 10). On October 6, 2017, Citizens filed a Reply in Support
2 of Motion to Dismiss. (ECF No. 11).¹

3 On October 13, 2017, Citizens filed a Notice of Lodging Authority Re Reply in
4 Support of Motion to Dismiss Plaintiff’s Complaint. (ECF No. 13). Also on October 13,
5 2017, Shin filed Objections and Requests to Strike Defendant Citizen Bank, N.A.’s Notice
6 of Lodgment, requesting that the Court strike Citizen’s Notice of Lodging Authority. (ECF
7 No. 14). The Court grants Shin’s request to strike Citizen’s Notice of Lodging Authority
8 (ECF No. 13).

9 **II. Allegations of the Complaint**

10 At some point in the year 2005, Plaintiff obtained a purchase money
11 mortgage loan from Countrywide. Countrywide issued the loan as two
12 separate loans [(the “Loans”)], and as a result documented the purchase
13 money mortgage loan as both a first mortgage and a second mortgage
14 [(collectively, the “Mortgages”)]. At some point thereafter, Countrywide
15 became insolvent, and Bank of America purchased all Countrywide accounts,
16 including Plaintiff’s first and second mortgages. At some point thereafter,
17 Bank of America sold the first mortgage to another creditor, while also selling
18 the second mortgage to Citizens.

19 (Complaint at ¶¶ 5-8).

20 At some point in 2012, the new owner of the first mortgage began
21 foreclosing upon the property. The property was ultimate [sic] sold at a
22 Trustee’s Sale [on] January 10 [T]he monies netted by the first mortgage
23 owner after the Trustee’s Sale resulted in more than what was owed upon the
24 first mortgage, which resulted in the surplus monies being paid to Citizens as
25 partial payment towards what was then owed to Citizens upon the second
26 [loan (the “Loan”)].

27 *Id.* at ¶¶ 9-11.

28 ¹ On October 10, 2017, Shin filed an Objection and Request to Strike Portions of Defendant Citizen Bank, N.A.’s Reply. (ECF No. 1). Shin requested that the Court strike (1) Citizen’s citation to an unpublished state court of appeal ruling, (2) the arguments in footnote four of Citizen’s Reply (ECF No. 11), and (3) Citizen’s citations to “court rulings that were not contained within its initial moving papers.” *Id.* Shin’s requests to strike portions of Citizen’s Reply are denied.

1 “Citizens has been falsely reporting [the Loan] as having an outstanding recent
2 balance, was charged off, and that Plaintiff still has personal liability upon the account.”
3 *Id.* at ¶ 14. “Citizens has been updating the reporting of the account every month since
4 January 2013 to increase the balance that Citizens alleges is owed upon the account by the
5 amount that Citizens alleges is owed each month.” *Id.* at ¶ 15.

6 Citizens knew, or should have known, that the account must be reported as a
7 \$0.00 balance owed, or at least include a notation that Plaintiff has no personal
8 liability upon the account by virtue of CCP § 580b, because a simple review
9 of the initial account documents from Countrywide confirms that the account
was a purchase money second mortgage.

10 *Id.* at ¶ 46. “CCP § 580b prevents deficiency liability of any kind after a sale or foreclosure
11 when the loan in question is secured by a borrower’s home.” *Id.* at ¶ 13.

12 By letters dated March 16, 2017, Plaintiff submitted written disputes to
13 the three consumer credit reporting agencies Experian, Equifax, and Trans
14 Union. In Plaintiff’s dispute letters, he specifically explained that the account
15 reported by Citizens was a purchase money second mortgage and specifically
16 explained that the foreclosure netted some monies to Citizens and specifically
17 explained that the account should be reported as \$0.00 balance owed and that
18 he has no personal liability pursuant to CCP § 580b. Each of the credit
19 reporting agencies . . . informed Plaintiff that they had received his dispute
20 letters and that they each notified Citizens of the dispute, had forwarded to
21 Citizens of the basis of Plaintiff’s dispute, and received a response from
22 Citizens. Upon receiving the results of the dispute from each credit reporting
23 agency in April of 2017, Plaintiff discovered that Citizens persisted in its
24 claim to each credit reporting agency that the account has an outstanding
25 recent balance, but also update the account to reflect a new balance owed by
adding to the allegedly outstanding balance the most recent monthly payment.
Plaintiff has had multiple telephone conversations with employees of Citizens
wherein he specifically advised them of the problem, with each phone call
resulting in the employee telling Plaintiff that they are not going to update the
credit reporting and that they are going to continue reporting the account as
they have been.

26 *Id.* at ¶¶ 17–21.

27 **III. Standard of Review**

1 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state a
2 claim upon which relief can be granted.” Federal Rule of Civil Procedure 8(a)(2) provides
3 that “[a] pleading that states a claim for relief must contain . . . a short and plain statement
4 of the claim showing that the pleader is entitled to relief.” “A district court’s dismissal for
5 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is proper if there is
6 a ‘lack of a cognizable legal theory or the absence of sufficient facts alleged under a
7 cognizable legal theory.’” *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir.
8 2011) (quoting *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990)).

9 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
10 requires more than labels and conclusions, and a formulaic recitation of the elements of a
11 cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting
12 Fed. R. Civ. P. 8(a)). “To survive a motion to dismiss, a complaint must contain sufficient
13 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
14 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim
15 has facial plausibility when the plaintiff pleads factual content that allows the court to draw
16 the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*
17 (citation omitted). “When there are well-pleaded factual allegations, a court should assume
18 their veracity and then determine whether they plausibly give rise to an entitlement to
19 relief.” *Id.* at 679.

20 **IV. Discussion**

21 California Civil Code § 1785.25(a) states “A person shall not furnish information on
22 a specific transaction or experience to any consumer credit reporting agency if the person
23 knows or should know the information is incomplete or inaccurate.” 15 U.S.C. § 1681s-
24 2(b) states “A person shall not furnish information relating to a consumer to any consumer
25 reporting agency if (i) the person has been notified by the consumer, at the address specified
26 by the person for such notices, that specific information is inaccurate; and (ii) the
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1 information is, in fact, inaccurate.” In 2005, the year in which Shin obtained the Mortgages
2 and Loans, California Code of Civil Procedure § 580b² stated:

3 No deficiency judgment shall lie in any event . . . under a deed of trust or
4 mortgage on a dwelling for not more than four families given to a lender to
5 secure repayment of a loan which was in fact used to pay all or part of the
purchase price of that dwelling occupied, entirely or in part, by the purchaser.

6 See 1989 Cal. Legis. Serv. 698.

7 Citizens contends that Shin’s claims should be dismissed because the information
8 that it provided credit reporting agencies concerning the balance on the Loan was not
9 “inaccurate” because “Section 580b does not erase Plaintiffs’ debt.” (ECF No. 8-1 at 11).³
10 Shin contends that Citizens did provide “incomplete or inaccurate” information to credit
11 reporting agencies when it informed them of the balance on the Loan without noting that
12 Shin is not personally liable for that balance. (ECF No. 10 at 14).

13 The Court of Appeals was presented with similar arguments in *Kuns v. Ocwen Loan*
14 *Servicing, LLC*, 611 F. App’x 398 (9th Cir. 2015). In that case,

15 Kuns allege[d] that because his former home was bought with a purchase
16 money mortgage and sold through a nonjudicial foreclosure, he had no
17 personal liability for the deficiency that resulted from the foreclosure sale.
18 Cal. Code Civ. Proc. §§ 580b, 580d. Ocwen was nonetheless reporting the
deficiency amount to credit reporting agencies Kuns allege[d] that

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20 ² California Code of Civil Procedure § 580b has since been amended. However, it is not “very clear”
21 from the text of § 580b that the California Legislature intended the amendments to apply retroactively,
22 and the Court has not been presented with any convincing extrinsic evidence to that effect. *Evangelatos*
23 *v. Superior Court*, 753 P.2d 585, 642 (Cal. 1988). Consequently, the Court declines to apply the
24 amendments to § 580b retroactively, and the 2005 version of § 580b governs the Mortgages and Loans.
See Prianto v. Experian Info. Sols., Inc., No. 13-CV-03461-TEH, 2014 WL 3381578, at *4 n.2 (N.D. Cal.
25 July 10, 2014); *Murphy v. Ocwen Loan Servicing, LLC*, No. 2:13-CV-555-TLN-EFB, 2014 WL 2875635,
26 at *1 n.2 (E.D. Cal. June 24, 2014).

27 ³ Citizens also contends that Shin’s claims must be dismissed because they are based on § 580b and
28 the allegations in the Complaint do not demonstrate that Shin qualifies for the protections of § 580b
because the Complaint does not allege that Shin ever occupied the property that he purchased with the
Loan. *Id.* Shin alleges that “§ 580b prevents deficiency liability of any kind after a sale or foreclosure
when the loan in question is secured by a borrower’s *home*,” and that he qualifies for the protections of §
580b. *Id.* at ¶¶ 13, 46 (emphasis). The Court finds that, based on these allegations, it is reasonable to
assume that Shin occupied the property that he purchased using the Loan.

1 Ocwen’s reporting of the deficiency, without being accompanied by
2 additional information to indicate Kuns’ lack of personal liability, violated
3 Ocwen’s obligation under California’s Consumer Credit Reporting Agencies
4 Act (“CCRAA”) to not report information that Ocwen ‘knows or should know
5 . . . is incomplete or inaccurate.’ Cal. Civ. Code § 1785.25(a). The district
6 court concluded that Ocwen had no ‘affirmative duty’ under the CCRAA to
7 indicate that the deficiency could not be collected from Kuns, and dismissed
8 the complaint.

9 *Kuns*, 611 F. App’x at 399 (omissions in original). The Court of Appeals stated that
10 information provided to a credit reporting agency is “inaccurate” under California Civil
11 Code § 1785.25(a) and 15 U.S.C. § 1681s-2(b) when “it is misleading in such a way and to
12 such an extent that it can be expected to adversely affect credit decisions.” *Id.* (citing
13 *Carvalho v. Equifax Info. Servs.*, 629 F.3d 876, 890 (9th Cir. 2010) (quoting *Gorman v.*
14 *Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009))). Applying that standard,
15 the Court of Appeals concluded that “Kuns’s allegation that Ocwen’s reporting was
16 ‘incomplete or inaccurate’ regarding his personal liability for the foreclosure deficiency
17 stated a claim under CCRAA § 1785.25.” *Id.* at 400.

18 Shin alleges that Citizens “has been reporting the Loan as having an outstanding
19 recent balance,” and “has been updating the reporting of the account every month . . . to
20 increase the balance . . . by the amount that Citizens alleges is owed each month.”
21 Complaint at ¶¶ 14–15. Shin also alleges that Citizens has been reporting “that Plaintiff
22 still has personal liability” for the Loan. *Id.* at ¶ 14. Shin’s allegations that Citizens has
23 been reporting that the Loan has an outstanding balance that is increasing monthly and that
24 Shin is still personally liable for that balance sufficiently allege that Citizens has be
25 providing credit reporting agencies information that “is misleading in such a way and to
26 such an extent that it can be expected to adversely affect credit decisions.” *Kuns*, 611 F.
27 App’x at 399 (citing *Carvalho*, 629 F.3d at 890 (quoting *Gorman, LLP*, 584 F.3d at 1163)).
28 Consequently, the Complaint alleges that Citizens has provided “inaccurate” information
to credit reporting agencies under California Civil Code § 1785.25(a) and 15 U.S.C. §
1681s-2(b). *Id.* The Complaint states claims for violations of California Civil Code §

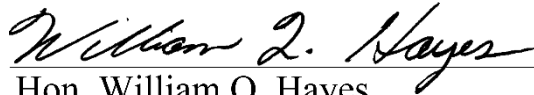
1 1785.25(a) and 15 U.S.C. § 1681s-2(b).⁴

2 **V. Conclusion**

3 IT IS HEREBY ORDERED that:

- 4 1. Shin’s request to strike Citizen’s Notice of Lodging Authority, *see* ECF No. 14, is
5 GRANTED. The Clerk of the Court is instructed to STRIKE Citizen’s Notice of
6 Lodging Authority (ECF No. 13) from the record.
- 7 2. The Motion to Dismiss (ECF No. 8) is GRANTED. The Complaint (ECF No. 1) is
8 DISMISSED without prejudice and with leave to file a motion to file an amended
9 complaint within thirty days of the date of this order. If no motion is filed, the Court
10 will direct the clerk to close the case.

11 Dated: January 30, 2018


12 Hon. William Q. Hayes
13 United States District Court
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27 ⁴ Citizens also contends that Shin’s claims should be dismissed without leave to amend under *Carvalho*
28 “because Plaintiff does not allege a *factual* inaccuracy.” ECF No. 8-1 at 12 (emphasis in original) (citing
Carvalho, 629 F.3d at 890). That argument is foreclosed by the Court of Appeals’ analysis in *Kuns*, 611
F. App’x 398 (citing *Carvalho*, 629 F.3d at 890).