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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALBERT SAMIA

Plaintiff,

v.

EXPERIAN INFORMATION
SOLUTIONS, LLC, et al.,

Defendants.

Case No.: 21-cv-1015 W (WVG)

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTIONS TO
DISMISS [DOCS. 16, 29] WITH
LEAVE TO AMEND**

Pending before the Court are motions to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) filed by Defendant BBVA USA dba Compass Bank and Defendant USAA Federal Savings Bank. Plaintiff Albert Samia opposes both motions. The Court decides the matter on the papers submitted and without oral argument. Civ. L.R. 7.1(d)(1). For the reasons stated below, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants' motions [Docs. 16, 29] **WITH LEAVE TO AMEND**.

1 **I. BACKGROUND**

2 According to the Complaint, Plaintiff Albert Samia is the victim of identity theft.
3 (*Compl.* [Doc. 1] ¶ 15.) His identity was used to open accounts with Defendant BBVA
4 USA dba Compass Bank (“BBVA”) and Defendant USAA Federal Savings Bank
5 (“USAA”). (*Id.* ¶ 16.)

6 At some point, Samia filed a police report regarding the identity theft. (*Compl.* ¶
7 16.¹) He then “filed an FTC fraud affidavit with regards to the identity theft.” (*Id.* ¶ 17.)

8 Defendants USAA and BBVA reported the accounts opened by the identity thief
9 (the “Accounts”) to Samia’s “credit file maintained by EXPERIAN, EQUIFAX and
10 TRANS UNION (‘the CRAs’).” (*Compl.* ¶ 18.) Samia “disputed the accounts with the
11 CRAs and provided the police report and FTC fraud affidavit with the disputes.” (*Id.* ¶
12 19.) USAA and BBVA “failed to conduct a reasonable investigation within thirty days
13 from receipt of [Samia’s] dispute.” (*Id.* ¶ 20.) USAA and BBVA continued to maintain
14 a balance on the Accounts after they had knowledge Samia was the victim of identity
15 theft and continued to report the Accounts on his credit file. (*Id.* ¶¶ 21, 22.) Samia
16 contends the reporting was inaccurate because he “did not owe on the Accounts” and as a
17 result he has suffered “emotional distress and damage to his credit worthiness.” (*Id.* ¶¶
18 23, 24.)

19 On May 27, 2021, Samia filed this lawsuit. The Complaint asserts three causes of
20 action for: (1) Violation of the Fair Credit Reporting Act, 15 U.S. C. § 1681, *et seq.*
21 (“FCRA”); (2) the California Consumer Credit Reporting Agencies Act, Cal. Civ. Code §
22 1785, *et seq.* (“CCRAA”); and (3) Violation of the California Identity Theft Act, Cal.
23 Civ. Code § 1798.92, *et seq.* (“CITA”) Defendants BBVA and USAA now move to
24 dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6).

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¹ Samia’s Complaint includes two ¶ 16s.

1 **II. LEGAL STANDARD**

2 The Court must dismiss a cause of action for failure to state a claim upon which
3 relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6)
4 tests the legal sufficiency of the complaint. See Parks Sch. of Bus., Inc. v. Symington, 51
5 F.3d 1480, 1484 (9th Cir. 1995). A complaint may be dismissed as a matter of law either
6 for lack of a cognizable legal theory or for insufficient facts under a cognizable theory.
7 Balistreri v. Pacifica Police Dep’t., 901 F.2d 696, 699 (9th Cir. 1990). In ruling on the
8 motion, a court must “accept all material allegations of fact as true and construe the
9 complaint in a light most favorable to the non-moving party.” Vasquez v. L.A. Cty., 487
10 F.3d 1246, 1249 (9th Cir. 2007).

11 Complaints must contain “a short and plain statement of the claim showing that the
12 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Supreme Court has interpreted
13 this rule to mean that “[f]actual allegations must be enough to rise above the speculative
14 level.” Bell Atl. Corp. v. Twombly, 550 U.S. 554, 555 (2007). The allegations in the
15 complaint must “contain sufficient factual matter, accepted as true, to ‘state a claim to
16 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing
17 Twombly, 550 U.S. at 570).

18 Well-pleaded allegations in the complaint are assumed true, but a court is not
19 required to accept legal conclusions couched as facts, unwarranted deductions, or
20 unreasonable inferences. Papasan v. Allain, 478 U.S. 265, 286 (1986); Sprewell v.
21 Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001).

22 Leave to amend should be freely granted when justice so requires. See Fed. R.
23 Civ. P. 15(a). However, denial of leave to amend is appropriate when such leave would
24 be futile. See Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996); Plumeau
25 v. Sch. Dist. No. 40 Cty. of Yamhill, 130 F.3d 432, 439 (9th Cir. 1997).

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1 **III. DISCUSSION**

2 **A. FCRA Claim for Relief.**

3 Congress enacted the FCRA “to ensure fair and accurate credit reporting, promote
4 efficiency in the banking system, and protect consumer privacy.” Gorman v. Wolpoff &
5 Abramson, LLP, 584 F.3d 1147, 1153 (9th Cir. 2009). To ensure credit reports are
6 accurate, the FCRA imposes duties on “furnishers” of credit information to CRAs. Id.
7 Under § 1681s-2, furnishers of information are subject to two categories of
8 responsibilities. Id. at 1154. Subsection (a) details a furnishers duty to provide accurate
9 information to CRAs by, for example, requiring a furnisher to notify a CRA if the
10 consumer disputes information that the furnisher reported to the CRA. Id. citing 15
11 U.S.C. § 1681s-2(a)(3). Duties under this subsection may only be enforced by federal or
12 state agencies; there is no private right of action. Id. citing 15 U.S.C. § 1681s-2(c).

13 Subsection (b) “imposes a second category of duties on furnishers of information.”
14 Gorman, 584 F.3d at 1154. “These obligations are triggered ‘upon notice of dispute’—
15 that is, when a person who furnished information to a CRA *receives notice from the CRA*
16 that the consumer disputes the information.” Id. citing § 1681i(a)(2) (emphasis added).
17 The furnisher’s obligations involve, for example, “conducting an investigation with
18 respect to the disputed information.” § 1681s-(2)(b)(1)(A). With respect to these
19 obligations, the “FCRA expressly creates a private right of action for willful or negligent
20 non-compliance with its requirements.” Gorman, 584 F.3d at 1154. “To prevail on a
21 claim under section 1681s-2(b), a plaintiff must allege that: (1) she notified a CRA of a
22 dispute regarding the accuracy of an account; (2) the CRA notified the furnisher of the
23 information; and (3) the furnisher failed to take remedial measures required by statute.
24 Lara v. Experian Information Solutions, Inc., 2021 WL 927361, at * 2 (S.D. Cal. 2021)
25 (citing Kozlowski v. Bank of Am., N.A., 2018 WL 2096381, at *3 (E.D. Cal. 2018)).

26 Here, Defendants contend Samia has failed to state an FCRA claim for a number of
27 reasons. First, USAA argues the Complaint fails to allege the CRAs notified USAA
28 about Samia’s dispute. (*USAA P&A* [Doc. 16-1] 6:3–8.) Samia responds by citing cases

1 outside the Ninth Circuit that have held a plaintiff does not need to allege the CRA
2 provided notice to a furnisher of information. (*See Opp'n to USAA Mot.* [Doc. 27] 4:23–
3 28.) In *Lang v. TCF National Bank*, 249 Fed. Appx. 464 (7th Cir. 2007 (unpublished),
4 for example, the Seventh Circuit held that the plaintiff did not have to plead notice
5 because, among other reasons, CRAs are legally obligated to provide notice to a furnisher
6 of information and “[t]he FCRA does not require a CRA to tell a consumer when it
7 notifies a furnisher ... about the consumer’s dispute.” *Id.* at 466. “As a result a
8 consumer may not, at the time of filing a complaint, be in a position to allege that
9 notification.” *Id.*

10 Although this Court finds *Lang*’s analysis is persuasive, the Ninth Circuit has held
11 that a plaintiff’s private right of action under the FCRA is not triggered until a CRA
12 provides notice to the furnisher of information. *Gorman*, 584 F.3d at 1154. Based on this
13 holding, district courts within the Ninth Circuit have required plaintiff to allege facts
14 indicating notice. *See e.g. Kozlowski*, 2018 WL 2096381, at *4 (dismissing FCRA claim
15 because “Plaintiff does not allege ... that a consumer reporting agency notified the
16 furnisher ... of a dispute”); *Lara*, 2021 WL 927361, *3 (finding plaintiff alleged “Experian
17 notified Pennymac of the dispute”). Accordingly, this Court feels compelled to follow
18 these cases. Because Samia did not allege notice, his FCRA claim is insufficiently pled.

19 USAA and BBVA also argue Samia fails to allege “non-speculative and specific
20 damages” because he asserts “only vague allegations of ‘emotional distress and damage
21 to his credit worthiness.’” (*USAA P&A* 6:17–24; *BBVA P&A* [Doc. 29-1] 5:14–27.) In
22 his opposition, Samia essentially argues that because he seeks damages that are
23 recoverable under the FCRA, his allegations are sufficient. (*Pl’s Opp’n to BBVA* 5:8–
24 6:9.) The Court agrees with Defendants.

25 In *Sion v. SunRun, Inc.*, 2017 WL 952953 (N.C. Cal. 2017), plaintiff alleged she
26 “was affected personally” by defendant’s violation of the FCRA in that she “felt her
27 privacy had been invaded and that her personal and private information had been
28 disclosed to Defendant.” *Id.* * 2. As a result, plaintiff alleged she suffered emotional

1 distress and “Defendant increased the risk that Plaintiff will be injured if there is a data
2 breach on Defendant’s computer systems....” Id. In finding plaintiff failed to adequately
3 allege damages, the court recognized that although “actual damages can include
4 emotional distress, ‘a plaintiff must support her claim for pain and suffering, with
5 something more than [her] own conclusory allegations,’ such as specific claims of
6 genuine injury.” Id. (quoting Dewi v. Wells Fargo Bank, 2012 WL 10423239, at 8–9
7 (C.D. Cal. 2012) (some internal quotation marks omitted). The court then distinguished
8 plaintiff’s conclusory and unsupported allegations from damage allegations found
9 sufficient in other cases:

10 In Drew [v. Equifax Info. Servs., LLC], for example, the plaintiff “and his
11 psychological expert explained how the identity theft caused Drew grave
12 post-traumatic stress due to his weakened condition and his continued
13 association with the fraudulent accounts exacerbated his condition.” Drew,
14 690 F.3d [1100, 1109 (9th Cir. 2012)]. This is more specific than any of the
15 allegations in Sion’s FAC. The same distinction can be drawn with Guimond
16 v. Trans Union Credit Info. Co., where the plaintiff alleged that she suffered
17 “emotional distress, manifested by sleeplessness, nervousness, frustration,
18 and mental anguish resulting from the incorrect information in her credit
19 report.” 45 F.3d 1329, 1332 (9th Cir. 1995). Neither case stands for the
20 proposition that a bald assertion of emotional distress suffices to show actual
21 damages.

22 Id. (internal bracket omitted).

23 Here, Samia alleges that as a result of Defendants’ acts, “Plaintiff suffered
24 emotional distress and damage to his credit worthiness.” (*Compl.* ¶ 24.) There are no
25 facts supporting either allegation. Because Samia fails to provide any facts supporting
26 his damages claims, his FCRA claim fails for this additional reason.

27 USAA and BBVA next contend Samia’s FCRA claim is insufficiently pled
28 because he failed to allege other facts, such as (1) the timing of Defendants’ violation or
Samia’s discovery of the violation, (2) identification of the accounts, (3) the specific
inaccuracies, (4) how the accounts were improperly reported, or (5) how Defendants
failed to properly investigate the dispute. (*USAA P&A* 6:8–13; *BBVA P&A* 5:2–13.) The

1 Court disagrees with this argument.

2 Samia alleges that the accounts with USAA and BBVA were opened by someone
3 who stole his identity. (*Compl.* ¶¶ 15–16.) Based on this allegation it is obvious that the
4 “accounts” at issue are the USAA and BBVA accounts in Samia’s name. Similarly, the
5 specific inaccuracies are obvious: the very existence of the accounts in Samia’s name
6 since he contends he did not open the accounts. How the accounts were improperly
7 reported and USAA’s failure to investigate is also clear: given the allegation that he was
8 the victim of identity theft—a fact which must be assumed as true at this stage—it is
9 reasonable to infer that USAA’s and BBVA’s continued reporting of the accounts in his
10 name indicates their investigation into whether he opened the accounts was unreasonable.

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12 **B. CCRAA Claim for Relief**

13 The CCRAA provides that “[a] person shall not furnish information on a specific
14 transaction or experience to any consumer credit reporting agency if the person knows or
15 should know the information is incomplete or inaccurate.” Cal. Civ. Code § 1785.25(a).
16 Defendants challenge Samia’s CCRAA claim on many of the same grounds as his FCRA
17 claim.

18 Defendants argue Samia fails to provide sufficient details, such as (1) the identity
19 of the accounts, (2) the accuracy of the accounts (3) Defendants’ reporting of the
20 accounts or (4) the dates Defendants were notified of the dispute. (*USAA’s P&A* 7:3–15,
21 7:21–8:2; *BBVA P&A* 5:2–13.) As discussed above, the Court finds that given Samia’s
22 claim that he was the victim of identity theft and did not open the accounts, Defendants’
23 argument lacks merit.

24 Defendants next argue Samia’s damage allegations are insufficient. (*USAA P&A*
25 7:15–20; *BBVA P&A* 5:14–27.) For the reason discussed above, the Court agrees and on
26 this basis will dismiss this claim.

1 **C. CITA Claim for Relief.**

2 CITA “allows the ‘victim of identity theft’ to bring an action for damages, civil
3 penalties, and injunctive relief against a ‘claimant to establish that the person is a victim
4 of identity theft in connection with the claimant’s claim against that person.’” Satey v.
5 JPMorgan Chase & Co., 521 F.3d 1087, 1092 (9th Cir. 2008) (quoting Cal. Civ. Code §
6 1798.93(a) and (c)). A “claimant” is defined as “a person who has or purports to have a
7 claim for money or an interest in property in connection with a transaction procured
8 through identity theft.” Cal. Civ. Code § 1798.92(a). The term is limited to someone
9 who has a present interest in the “claim for money or ... property,” and “not a person
10 who had an interest in a disputed debt at some point in the past....” Satey, 521 F.3d at
11 1093. The term “victim of identity theft” means “a person who had his or her personal
12 identifying information used without authorization by another to obtain credit, goods,
13 services, money, or property, and did not use or possess the credit, goods, services,
14 money, or property obtained by the identity theft, and filed a police report in this regard
15 pursuant to Section 530.5 of the Penal Code.” Cal. Civ. Code § 1798.92(d).

16 Defendants argue Samia’s CITA claim fails to allege facts showing USAA and
17 BBVA are “claimants” under the statute. (*USAA P&A* 8:8–26; *BBVA* 3:24–4:6.) The
18 Court disagrees. Samia alleges the identity thief opened accounts with BBVA and
19 USAA, which have “a balance.” (*Compl.* ¶¶ 16, 21.) At this stage in the litigation, it is
20 reasonable to infer that the “balance” relates to a debt in connection with a transaction.
21 And, because USAA and BBVA continue to report the balance on the accounts, it is also
22 reasonable to infer they are continuing to claim an interest in the money owed on the
23 “balance.” Thus, at this stage in the litigation, the Court finds Samia has plead sufficient
24 facts to demonstrate USAA and BBVA are “claimants.”

25 Next, Defendants argue Samia’s allegations are insufficient to establish he is the
26 victim of identity theft. (*USAA P&A* 9:15–18; *BBVA* 4:17–24.) Assuming for the sake of
27 argument that alleging he is the victim of identity theft is insufficient, Samia also alleges
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1 he filed a police report and an FTC fraud affidavit. (*Compl.* ¶¶ 16, 17.) The Court finds
2 these allegations sufficient to establish he is the victim of identity theft.


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4 **IV. CONCLUSION AND ORDER**

5 For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART**
6 Defendants' motions [Docs. 16, 29] and **ORDERS** as follows:

- 7 1. The cause of actions for violation of the FCRA and CCRAA are
8 **DISMISSED WITH LEAVE TO AMEND** as to Defendants USAA and
9 BBVA. The motions are denied as to the CITA cause of action.
10 2. Samia's First Amended Complaint must be filed on or before **February 15,**
11 **2022.**

12 **IT IS SO ORDERED.**

13 Dated: February 1, 2022

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16 Hon. Thomas J. Whelan
17 United States District Judge
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