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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

STEVEN J. BRADY,  
ELENA M. BRADY,

Plaintiffs,

v.

WELLS FARGO BANK, NA.,  
WELLS FARGO HOME MORTGAGE,  
WELLS FARGO & COMPANY,

Defendants.

3:14-cv-00440-RCJ-WGC

**ORDER**

Before the court are Plaintiffs' Application to Proceed in Forma Pauperis (Doc. # 1)<sup>1</sup> and pro se Complaint (Doc. # 1-1).

**I. APPLICATION TO PROCEED IN FORMA PAUPERIS**

A person may be granted permission to proceed in forma pauperis if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915; Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that this provision applies to all actions filed in forma pauperis, not just prisoner actions).

In addition, the Local Rules of Practice for the District of Nevada provide: "Any person, who is unable to prepay the fees in a civil case, may apply to the Court for authority to proceed in forma pauperis. The application shall be made on the form provided by the Court and shall include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

"[T]he supporting affidavits [must] state the facts as to [the] affiant's poverty with some

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<sup>1</sup> Refers to court's docket number.

1 particularity, definiteness and certainty." U.S. v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981)  
2 (quoting Jefferson v. United States, 277 F.2d 823, 725 (9th Cir. 1960)). A litigant need not "be  
3 absolutely destitute to enjoy the benefits of the statute." Adkins v. E.I. Du Pont De Nemours &  
4 Co., 335 U.S. 331, 339 (1948).

5 The court has reviewed Plaintiffs' application and it appears they are unable to pay the  
6 filing fee; therefore, their application to proceed in forma pauperis (Doc. # 1) is granted.

## 7 II. SCREENING

### 8 **A. Standard**

9 28 U.S.C. § 1915 provides: "the court shall dismiss the case at any time if the court  
10 determines that...the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim upon  
11 which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune  
12 from such relief. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). This provision applies to all actions filed in  
13 forma pauperis, whether or not the plaintiff is incarcerated. See Lopez v. Smith, 203 F.3d 1122,  
14 1129 (9th Cir. 2000) (en banc); see also Calhoun v. Stahl, 254 F.3d 845 (9th Cir. 2001) (per  
15 curiam).

16 Dismissal of a complaint for failure to state a claim upon which relief may be granted is  
17 provided for in Federal Rule of Civil Procedure 12(b)(6), and this court applies the same  
18 standard under Section 1915(e)(2)(B) when reviewing the adequacy of the complaint or amended  
19 complaint. See Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000) (citation omitted). Review  
20 under 12(b)(6) is essentially a ruling on a question of law. See Chappel v. Lab. Corp. of America,  
21 232 F.3d 719, 723 (9th Cir. 2000).

22 In reviewing the complaint under this standard, the court must accept as true the  
23 allegations of the complaint, Hosp. Bldg. Co. v. Trustees of Rex Hosp., 425 U.S. 738, 740 (1976),  
24 construe the pleadings in the light most favorable to plaintiff, and resolve all doubts in the  
25 plaintiff's favor, Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). Allegations in pro se  
26 complaints are held to less stringent standards than formal pleadings drafted by lawyers, and  
27 must be liberally construed. See Hughes v. Rowe, 449 U.S. 5, 9 (1980); Haines v. Kerner, 404  
28 U.S. 519, 520-21 (1972) (per curiam); Hamilton v. Brown, 630 F.3d 889, 893 (9th Cir. 2011).

1 A complaint must contain more than a "formulaic recitation of the elements of a cause of  
2 action," it must contain factual allegations sufficient to "raise a right to relief above the  
3 speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading  
4 must contain something more...than...a statement of facts that merely creates a suspicion [of] a  
5 legally cognizable right of action." *Id.* (quoting 5 C. Wright & A. Miller, *Federal Practice and*  
6 *Procedure* § 1216, at 235-36 (3d ed. 2004)). At a minimum, a plaintiff should state "enough  
7 facts to state a claim to relief that is plausible on its face." *Id.* at 570; see also *Ashcroft v. Iqbal*,  
8 556 U.S. 662, 678 (2009).

9 A dismissal should not be without leave to amend unless it is clear from the face of the  
10 complaint that the action is frivolous and could not be amended to state a federal claim, or the  
11 district court lacks subject matter jurisdiction over the action. See *Cato v. United States*, 70 F.3d  
12 1103, 1106 (9th Cir. 1995) (dismissed as frivolous); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th  
13 Cir. 1990).

## 14 **B. Plaintiffs' Complaint**

### 15 **1. General Allegations**

16 Plaintiffs bring this action against defendants Wells Fargo Bank, N.A., Wells Fargo  
17 Home Mortgage, and Wells Fargo & Company (collectively, Wells Fargo), asserting violations  
18 of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681, and the Fair Debt Collection  
19 Practices Act (FDCPA), 15 U.S.C. § 1692. (Doc. # 1-1.) They also assert state law tort claims for  
20 invasion of privacy and negligent hiring and supervision. (*Id.*)

21 Plaintiffs assert that they bring this action regarding Wells Fargo's continued attempts to  
22 collect an alleged debt from Plaintiffs that Wells Fargo claims it is owed. (Doc. # 1-1 at 2 ¶ 5.)  
23 They contend that on June 26, 2014, they received a "dunning notice" from Wells Fargo's  
24 servicer which makes various claims by Wells Fargo regarding an alleged loan. (*Id.* ¶6.) This  
25 notice is attached as Exhibit A to the complaint. (Doc. # 1-1 at 9-12.) Plaintiffs contend that on  
26 June 30, 2014 and July 20, 2014, Plaintiffs served a Notice for Validation of Debt pursuant to the  
27 FDCPA, which required Wells Fargo, the "debt collectors" to validate/verify the alleged debt  
28 pursuant to 15 U.S.C. § 1692g. (*Id.* at 2 ¶ 7.)

1 Plaintiffs claim that they received a response through Wells Fargo's servicer on July 23,  
2 2014, that included a copy of an alleged Adjustable Rate Mortgage Note executed with World  
3 Savings Bank, FSB; however, the documentation did not identify Wells Fargo and Wells Fargo  
4 did not otherwise validate that Plaintiffs owe any debt to Wells Fargo. (Id. ¶ 8.)

5 Plaintiffs aver that on August 19, 2014, they obtained a consumer credit report from  
6 consumer credit reporting agencies Equifax and Transunion, and discovered that Wells Fargo  
7 was reporting the alleged debt to the consumer credit reporting agencies. (Id. ¶ 9.) They claim to  
8 have suffered economic harm as a result of the erroneous credit reporting and failure to validate  
9 the debt. (Id. ¶ 10.)

10 Plaintiffs also include the following allegation: "The above detailed conduct by the  
11 Defendant(s) has more to do with their deceptive and illegal acts in their attempt to collect the  
12 alleged debt, as opposed to any legitimacy of their alleged debt. The FDCPA, FCRA, relates to  
13 the Defendant(s) even if they were collecting a legitimate debt." (Id. ¶ 11.)

## 14 **2. FCRA Claim**

### 15 **a. Allegations**

16 Plaintiffs claim that Wells Fargo is a "credit furnisher" as that term is defined by the  
17 FCRA, and that the FCRA, and specifically 15 U.S.C. § 1681s-2(a), prohibits furnishers from  
18 reporting inaccurate or erroneous information about consumers, and places an affirmative duty  
19 on furnishers to correct and update information they know, or reasonably should know is  
20 inaccurate. (Id. at 3 ¶ 15.) The FCRA further requires furnishers to flag or otherwise provide  
21 notice to credit reporting agencies of any dispute by a consumer related to his or her credit  
22 information or history. (Id.) 15 U.S.C. § 1681s-2(b) imposes additional obligations on credit  
23 furnishers which are triggered once a credit reporting agency (CRA) notifies the furnisher it has  
24 received a notice of dispute from a consumer under 15 U.S.C. § 1681s-2(a)(2). (Id. ¶ 16.) The  
25 CRA is required to forward a consumer dispute verification form to the furnisher, and the  
26 furnisher is then required to verify the credit information and investigate its accuracy. (Id.) The  
27 furnisher is likewise required to: (a) conduct an investigation regarding the disputed information;  
28 (b) review all relevant information provided by the CRA; (c) report the results of the

1 investigation back to the CRA; (d) if the investigation finds the existing information is  
2 incomplete or inaccurate, to report back those results to the CRAs to whom the furnisher  
3 originally communicated the information about the consumer; and (e) to modify, delete, or  
4 permanently block the reporting of any item of information that is inaccurate, incomplete or  
5 which cannot be verified as accurate after a reinvestigation. (Id., citing 15 U.S.C.  
6 § 1681s-2(b)(1).)

7 Plaintiffs state that these duties are triggered when a furnisher receives notice of a dispute  
8 from a CRA, and that notice of a dispute that comes to a furnisher directly from a consumer does  
9 not trigger the duty to reinvestigate. (Id. ¶ 17.) Instead, the consumer must send notice of the  
10 dispute to the CRA, who in turn forwards the dispute to the furnisher. (Id.) Only then is the duty  
11 to investigate on the part of the furnisher triggered. (Id.) Plaintiffs therefore acknowledge that if  
12 a consumer sends notice of a dispute directly to the furnisher, the furnisher need not honor it  
13 (although they claim that direct notice of a dispute to the furnisher "likely" creates a legal  
14 obligation under § 1692g of the FDCPA). (Id.)

15 Plaintiffs then claim that Wells Fargo "failed to maintain, and failed to follow reasonable  
16 procedures to assure maximum possible accuracy of Plaintiffs' credit report" in violation of 15  
17 U.S.C. § 1681e(b). (Id. at 4 ¶ 18.) They further contend that Wells Fargo failed to conduct a  
18 proper and lawful reinvestigation. (Id.)

19 Plaintiffs maintain that Wells Fargo's conduct resulted in multiple denials of credit. (Id.  
20 at 4-5 ¶ 21.) They state that the "negligent and noncompliant acts may have been a direct  
21 violation of 15 U.S.C. §§ 1681(n), (o)." (Id. at 5 ¶ 21.)

## 22 **b. Analysis**

23 "Congress enacted the [FCRA], 15 U.S.C. §§ 1681-1681x, in 1970 'to ensure fair and  
24 accurate credit reporting, promote efficiency in the banking system, and protect consumer  
25 privacy.'" Gorman v. Wolpoff & Abramson LLP, 584 F.3d 1147, 1153 (9th Cir. 2009) (quoting  
26 Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47 (2007)). In fact, the FCRA specifically states:

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1 (a) Accuracy and fairness of credit reporting

The Congress makes the following findings:

2 (1) The banking system is dependent upon fair and accurate credit  
3 reporting. Inaccurate credit reports directly impair the efficiency of the banking  
4 system, and unfair credit reporting methods undermine the public confidence  
5 which is essential to the continued functioning of the banking system.

6 (2) An elaborate mechanism has been developed for investigating and  
7 evaluating credit worthiness, credit standing, credit capacity, character, and  
8 general reputation of consumers.

9 (3) [CRAs] have assumed a vital role in assembling and evaluating  
10 consumer credit and other information on consumers.

11 (4) There is a need to insure that [CRAs] exercise their grave  
12 responsibilities with fairness, impartiality, and a respect for the consumer's right  
13 to privacy.

14 (b) Reasonable procedures

15 It is the purpose of this subchapter to require that consumer reporting agencies  
16 adopt reasonable procedures for meeting the needs of commerce for consumer  
17 credit, personnel, insurance, and other information in a manner which is fair and  
18 equitable to the consumer, with regard to the confidentiality, accuracy, relevancy,  
19 and proper utilization of such information in accordance with the requirements of  
20 this subchapter.

21 15 U.S.C. § 1681.

22 "[T]o ensure that credit reports are accurate, the FCRA imposes some duties on the  
23 sources that provide credit information to the [CRAs], called 'furnishers' in the statute." Gorman,  
24 584 F.3d at 1153. Plaintiff alleges that Wells Fargo was a furnisher under the FCRA. The  
25 furnishers' duties can be found in 15 U.S.C. § 1681s-2. Subsection (a) of section 1681s-2  
26 imposes a duty on furnishers to provide accurate information. It prohibits a furnisher from  
27 reporting information that the furnisher knows or has reasonable cause to believe the information  
28 is inaccurate. 15 U.S.C. § 1681s-2(a)(1)(A). In addition, it prohibits a furnisher from furnishing  
information to a CRA if it has been notified by a consumer that the information is inaccurate and  
the information is in fact inaccurate. 15 U.S.C. § 1681s-2(a)(1)(B)(i), (ii). If the furnisher  
receives notice that the information furnished to a CRA is disputed by a consumer, the furnisher  
may not furnish the information to any CRA without notifying the CRA that the consumer  
disputes the information. 15 U.S.C. § 1681s-2(a)(3).

Subsection (b) of section 1681s-2 contains additional obligations on furnishers which are  
triggered by the receipt of notice of dispute under section 1681i(a)(2). 15 U.S.C. § 1681s-2(b)(1).

Section 1681i governs the procedure in a case of disputed accuracy. It provides:

[I]f the completeness or accuracy of any item of information contained in a  
consumer's file at a [CRA] is disputed by the consumer and the consumer notifies  
the [CRA] directly, or indirectly through a reseller, of such dispute, the [CRA]

1 shall, free of charge, conduct a reasonable reinvestigation to determine whether  
2 the disputed information is inaccurate and record the current status of the disputed  
3 information, or delete the item from the file in accordance with paragraph (5),  
before the end of the 30-day period beginning on the date on which the agency  
receives the notice of the dispute from the consumer or reseller.

4  
5 15 U.S.C. § 1681i(a)(1)(A). It goes on to state: "Before the expiration of the 5-business-day  
6 period beginning on the date on which a [CRA] receives notice of a dispute from any consumer  
7 or a reseller in accordance with paragraph (1), the [CRA] shall provide notification of the dispute  
8 to any person who provided any item of information in dispute, at the address and in the manner  
9 established with the person. The notice shall include all relevant information regarding the  
10 dispute that the agency has received from the consumer or reseller." 15 U.S.C. § 1681i(a)(2)(A).

11  
12 Thus, when a furnisher receives notice from a CRA pursuant to section 1681i(a)(2) of a  
13 dispute regarding the completeness or accuracy of information provided by the furnisher to a  
14 CRA, the furnisher is required to:

- 15 (A) conduct an investigation with respect to the disputed information;  
16 (B) review all relevant information provided by the [CRA] pursuant to section  
1681i(a)(2) of this title;  
17 (C) report the results of the investigation to the [CRA];  
18 (D) if the investigation finds that the information is incomplete or inaccurate,  
report those results to all other consumer reporting agencies to which the person  
19 furnished the information and that compile and maintain files on consumers on a  
nationwide basis; and  
20 (E) if an item of information disputed by a consumer is found to be inaccurate or  
incomplete or cannot be verified after any reinvestigation under paragraph (1), for  
21 purposes of reporting to a consumer reporting agency only, as appropriate, based  
on the results of the reinvestigation promptly--  
22 (i) modify that item of information;  
(ii) delete that item of information; or  
(iii) permanently block the reporting of that item of information.

23 15 U.S.C. § 1681s-2(b)(1)(A)-(E).

24  
25 Congress made clear that a private right of action only exists for violations of subsection  
26 (b). 15 U.S.C. § 1681s-2(c)(1). Thus, to the extent Plaintiffs argue that Wells Fargo violated  
27 subsection (a) by providing incomplete or inaccurate information to CRAs (Doc. # 1-1 at 3 ¶ 15),  
28 they cannot state such a claim.

1 With respect to Plaintiffs' claim that Wells Fargo violated the provisions of subsection  
2 (b), Plaintiffs acknowledge the deficiency of their claim in their Complaint. The duties in  
3 subsection (b) are triggered by the receipt of a notice of dispute from a CRA to the furnisher. See  
4 15 U.S.C. § 1681s-2(b)(1). Plaintiffs specifically allege:

5 In § 1681s-2(b) duties arise only after a furnisher receives notice of dispute from a  
6 CRA. Notice of a dispute to a furnisher by a consumer directly does not trigger a  
7 furnisher's duty to reinvestigate under § 1681s-2(b). ... This indirect 'filtering'  
8 mechanism must be followed by a consumer to give rise to a duty of investigation  
under the FCRA to the furnisher. A furnisher need not honor a dispute received  
directly from a consumer, whether oral or written, under the FCRA.

9 (Doc. # 1-1 at 3 ¶ 17.)

10 Plaintiffs allege they received a notice from Wells Fargo alerting them to an alleged loan  
11 debt, and in turn, Plaintiff served on Wells Fargo a "notice for validation of debt" pursuant to the  
12 FDCPA. (Doc. # 1-1 at 2 ¶¶ 6-7.) Then, Plaintiffs received a response through Wells Fargo's  
13 servicer including a copy of a mortgage note executed with another bank (not Wells Fargo). (Id.  
14 ¶ 8.) Thereafter, Plaintiffs obtained a consumer credit report from two CRAs and discovered  
15 Wells Fargo was reporting this alleged debt to these CRAs. (Id. ¶ 9.) Nowhere do Plaintiffs  
16 include an allegation that they sent a notice of dispute to the CRAs, who in turn notified the  
17 purported furnisher, Wells Fargo, so as to trigger the duties imposed by 15 U.S.C. § 1681s-2(b).

18 Finally, Plaintiffs assert that Wells Fargo violated 15 U.S.C. § 1681e(b) by failing to  
19 maintain and follow reasonable procedures to assure maximum possible accuracy of Plaintiffs'  
20 credit report. (Doc. # 1-1 at 4 ¶ 18.) This provision, however, is not applicable to furnishers, as  
21 Plaintiffs allege Wells Fargo to be. Instead, it is applicable to CRAs.

22 As a result, Plaintiffs fail to state a claim upon which relief may be granted under the  
23 FCRA against Wells Fargo. Plaintiffs shall be given an opportunity to amend their complaint, if  
24 possible, to correct the deficiencies noted herein as to their claim for relief predicated on 15  
25 U.S.C. § 1681s-2(b).

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1                   **3. FDCPA Claim**

2                           **a. Allegations**

3                   In their general allegations, Plaintiffs aver that Wells Fargo is a "debt collector" under  
4 section 1692a(6) of the FDCPA, and were attempting to collect a debt used for a "household  
5 purpose" as defined in section 1692a(5) of the FDCPA. (Doc. # 1-1 at 2 ¶ 11, 6 ¶ 33.)

6                   Plaintiffs claim that they served Wells Fargo with a Notice of Dispute in compliance with  
7 15 U.S.C. § 1692g, which triggered Wells Fargo's obligation to provide Plaintiffs with  
8 verification of the alleged debt and to cease all collection activity until that was done. (Doc. # 1-  
9 1 at 6 ¶ 35.) Plaintiffs contend that Wells Fargo has provided no proof of their alleged debt and  
10 continue with their efforts to collect the debt. (Id.)

11                   Plaintiffs go on to state that other possible violations of the FDCPA include: (A) section  
12 1692d—engaging in conduct in connection with the collection of a debt that was harassing,  
13 oppressive or abusive; (B) section 1692e(8)—requiring debt collectors to communicate the  
14 disputed status of a debt if the debt collector knows or should know the debt is disputed;  
15 (C) section 1692e(8) and 1692j—threatening or communicating false credit information,  
16 including the failure to communicate that a debt is disputed; (D) section 1692j—using unfair or  
17 unconscionable means to collect or attempt to collect a debt; (E) section 1692f—attempting to  
18 collect an amount not authorized by the agreement creating the debt or permitted by law; and  
19 (F) section 1692f(6)—taking or threatening to unlawfully repossess or disable the consumer's  
20 property. (Doc. # 1-1 at 6-7 ¶ 36.)

21                   Plaintiffs claim that Wells Fargo knew it was not entitled to collect the alleged debt, and  
22 that Wells Fargo knew they could not provide a contract executed by Plaintiffs which  
23 demonstrated an obligation to Wells Fargo. (Id. at 7 ¶¶ 37-38.) Plaintiffs assert that their  
24 consumer credit reports were damaged. (Id. at 7 ¶ 39.)

25                           **b. Analysis**

26                   The FDCPA was enacted "to eliminate abusive debt collection practices by debt  
27 collectors, to insure that those debt collectors who refrain from using abusive debt collection  
28 practices are not competitively disadvantaged, and to promote consistent State action to protect

1 consumers against debt collection abuses." 15 U.S.C. § 1692(e). "In furtherance of these  
2 purposes, the FDCPA bans a variety of debt collection practices and allows individuals to sue  
3 offending debt collectors." Schlegel v. Wells Fargo Bank, NA, 720 F.3d 1204, 1208 (9th Cir.  
4 2013).

5 The FDCPA defines a "debt" as "any obligation or alleged obligation of a consumer to  
6 pay money arising out of a transaction in which the money, property, insurance, or services  
7 which are the subject of the transaction are primarily for personal, family, or household  
8 purposes, whether or not such obligation has been reduced to judgment." 15 U.S.C. § 1692(5).

9 Under the FDCPA, a "debt collector" is: "any person who uses any instrumentality of  
10 interstate commerce or the mails in any business the principal purpose of which is the collection  
11 of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or  
12 due or asserted to be owed or due another." 15 U.S.C. § 1692(6). Plaintiffs' Complaint, therefore,  
13 "must plead 'factual content that allows the court to draw the reasonable inference' that Wells  
14 Fargo is a debt collector." Schlegel, 720 F.3d at 1208 (citing Iqbal, 556 U.S. at 678; Dougherty v.  
15 City of Covina, 654 F.3d 892, 900-01 (9th Cir. 2011)).

16 Plaintiffs have not alleged that the principal purpose of Wells Fargo's business is the  
17 collection of debts, or that Wells Fargo regularly collects or attempts to collect debts owed or  
18 due or asserted to be owed or due to another. Instead, they merely allege that Wells Fargo  
19 attempted to collect this alleged debt from them. This allegation does not fit either requirement  
20 under the FDCPA—that a principal purpose of Wells Fargo's business is debt collection or that  
21 Wells Fargo regularly collects or attempts to collect debts owed to another.

22 Moreover, Plaintiffs provide no factual allegations to support the inclusion of the  
23 "possible" violation of sections 1692d, e(8), j, f, or f(6) of the FDCPA. They must include facts  
24 to support a plausible claim for relief under these sections.

25 Plaintiffs shall have an opportunity to amend their complaint to cure the noted  
26 deficiencies, if possible.

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for relief from prior papers that are not carried forward in the amended complaint will no longer be before the court. Plaintiffs shall clear title the amended complaint as such by placing the words "AMENDED COMPLAINT" on page 1 in the caption, and shall place the case number above the words "AMENDED COMPLAINT." Plaintiffs are cautioned that if they fail to file an amended complaint within the proscribed time period, the action will be dismissed.

**IT IS SO ORDERED.**

August 25, 2014.



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WILLIAM G. COBB  
UNITED STATES MAGISTRATE JUDGE