UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	8:17-cv-02232-JVS-KES	Date	July 9, 2019
Title	Terry Carson v. Experian Information Solutions, Inc.		

Present: The Honorable	**James V. Selna, U.S. District Court Judge**

Lisa Bredahl	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) Order Regarding Motion to Dismiss and Motion for Judgment on the Pleadings**

Plaintiffs Stanford Buckles ("Buckles"), Theresa Tailford ("Tailford"), and Jeffery C. Ruderman ("Ruderman") (collectively, "Plaintiffs") allege that Defendant Experian Information Solutions, Inc., ("Experian"), a Credit Reporting Agency ("CRA"), violated the Fair Credit Reporting Act ("FCRA") by failing to disclose to them information required by § 1681g of the Act and failed to follow reasonable procedures to assure maximum possible accuracy of Plaintiffs' information as required by § 1681e(b). Plaintiffs have amended their complaint three times by stipulation, most recently on November 13, 2018. See Third Amended Complaint ("TAC"), Docket No. 57. Plaintiffs bring this action individually and on behalf of five classes. Id. ¶¶ 51-78. They allege three specific counts as follows.

Count One, brought by Plaintiffs and Classes 1 and 4:

(1) Violation of 15 U.S.C. §§ 1681g(a)(1), 1681g(a)(3) and (a)(5) and/or 1681e(b) by failing to include a list of all "soft" credit pulls on consumer disclosures for the 1-year period preceding the date of the request.

(2) Violation of 15 U.S.C. §§ 1681g(a)(3) and/or 1681e(b) by failing to include the name of all persons who had procured a consumer report (or end-users of that report as defined under § 1681e(e)(1)) for the one-year period preceding the date of the request.

(3) Violation of 15 U.S.C. §§ 1681g(a)(3) and (a)(5) and/or 1681e(b) by failing to include "behavioral data" it had in its collections on consumers.

Count Two, brought by Buckles, Tailford, and Class 2:

(1) Violation of 15 U.S.C. §§ 1681g(a)(3) and/or 1681e(b) by failing to include the name of all persons who had procured a consumer report (or end-users of that report as defined under § 1681e(e)(1)) for the one-year period preceding the date of the request.

Count Three, brought by Tailford and Classes 3 and 5:

(1) Violation of 15 U.S.C. §§ 1681g(a)(5) and/or 1681e(b) by failing to include a record of all inquiries received by it in the 1-year period that identified the consumer in connection with a credit or insurance transaction not initiated by the consumer.

(2) Violation of 15 U.S.C. §§ 1681g(a)(1) and/or 1681e(b) by failing to include the "employment data" it had in its collections on consumers.

See id. ¶¶ 79-92. Experian moves to dismiss the complaint for lack of subject matter jurisdiction, arguing Plaintiffs lack Article III standing. Mot., Docket No. 73-1. Alternatively, Experian moves for judgment on the pleadings. Id. Separately, Experian moves to stay discovery pending resolution of this motion, Docket No. 74, and to review the Magistrate Judge's order granting Plaintiffs' motion to compel discovery, Docket No. 76.

For the following reasons, the Court **grants** the motion to dismiss for lack of subject matter jurisdiction with leave to amend. Further, the Court **dismisses** as moot Experian's motion to stay discovery, **vacates** the Magistrate Judge's order granting Plaintiffs' motion to compel discovery, and **dismisses** as moot Experian's motion to review the Magistrate Judge's order.

I. BACKGROUND

A. Request for judicial notice

Plaintiffs filed a request for judicial notice ("RJN") in support of their opposition to Defendant's motion to dismiss or, alternatively, motion for judgment on the pleadings. RJN, Docket No. 84. Plaintiffs request that the Court take judicial notice of (1) an excerpt from Experian's response to Plaintiffs' second set of interrogatories, Ex. A, Docket 70-1 at 5; (2) a complaint filed by Experian in the U.S. District Court for the District of Arizona, Ex. B, Docket 70-1 at 7; (3) a document by which Experian allegedly markets

its ConsumerView products on its website, Ex. C, Docket No. 70-1 at 19; (4) a document allegedly marketing Experian's ConsumerView product for sale, Ex. D, Docket No. 70-1 at 32; (5) a page from Experian's website that describes its MetroNet product, Ex. E, Docket No. 70-1 at 37, and; (6) a report of the Federal Trade Commission, Ex. F, Docket No. 70-1 at 39. Defendant opposes this request ("ORJN"). ORJN, Docket No. 90.

When considering a motion to dismiss, a court typically does not look beyond the complaint in order to avoid converting a motion to dismiss into a motion for summary judgment. See Mack v. S. Bay Beer Distribs., Inc., 798 F.2d 1279, 1282 (9th Cir. 1986), overruled on other grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104 (1991). There are several exceptions to this rule that do not demand converting the motion to dismiss into one for summary judgment. Id. at 688. Under Federal Rule of Evidence 201, the Court may take judicial notice of "a fact that is not subject to reasonable dispute" if it is "generally known" in the jurisdiction or it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The Court may take judicial notice of material submitted as part of the complaint or, if not physically attached to the complaint, material if its authenticity is not contested and it is necessarily relied upon by the complaint. Galbraith v. Cty. of Santa Clara, 307 F.3d 1119, 1125 (9th Cir. 2002); United States v. Corinthian Colleges, 655 F.3d 984, 998-99 (9th Cir. 2011). Judicial notice is also appropriate for court filings and other matters of public record. Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006); U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992). A court "must take judicial notice if a party requests it and the court is supplied with the necessary information." See Fed. R. Evid. 201(c)(2); In re Icenhower, 755 F.3d 1130, 1142 (9th Cir. 2014).

Here, Exhibits A and B are court filings and therefore appropriately the subject of judicial notice. Exhibits C, D, and E are publicly available web pages, and thus their existence is are appropriately subject to judicial notice. Exhibit F is a government report that is a matter of public record. Thus, the Court takes notice of Exhibits A, B, C, D, E and F.

Defendant separately requests that the Court take notice of three news articles, (1) A Forbes news article titled "120 Million American Households Exposed in Massive ConsumerView Database Leak," Ex. 1; (2) a Huffington Post news article titled "Alteryx

Data Breach Exposes Information on 123 Million American Households," Ex. 2; and (3) an UpGuard blog post titled "Home Economics: How Life in 123 Million American Households Was Exposed Online," Ex. 3. Defendant's Request for Judicial Notice, Docket No. 73-2. Plaintiffs do not oppose this request.

A Court may take judicial notice of publications "to indicate what was in the public realm at the time, not whether the contents of those articles were in fact true." Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010) (quoting Premier Growth Fund v. Alliance Capital Mgmt., 435 F.3d 396, 401 n. 15 (3d Cir.2006)). Because these three exhibits are cited to or referenced by Plaintiffs in the TAC and they reflect what was in the public realm at the time, the Court takes judicial notice of Exhibits 1, 2, and 3 for this limited purpose.

B. Factual background

On October 6, 2017, UpGuard, a cyber-security research firm, discovered an Amazon cloud storage space that allegedly contained information regarding 123 million American households. Complaint, Docket No. 57 ¶¶ 36-37. This data, allegedly placed in cloud storage by data analytics company Alteryx, was stored so as to be accessible to over one million specified users. Id. The information did not include the names of individual consumers; however, it included 248 columns of specific data points, among them address, phone number, number of adults and children living in the dwelling unit, length of residence, and other, more detailed consumer purchasing data. Id. The data could be cross-referenced with voter registration data and associated with specific individuals. Id. ¶ 37. This information allegedly came from Experian's "Consumer View" product. Id.

The existence of this information was made public by UpGuard on December 19, 2017, and news stories regarding the information were published later that day. Id. Through these news stories, Plaintiffs became aware for the first time that Alteryx allegedly procured their information directly or indirectly from Experian, or that Experian was collecting, storing and selling behavioral information. Id.

Tailford procured a disclosure of her own information from Experian pursuant to Fair Credit Reporting Act ("FCRA") §1681g on October 10, 2017, which allegedly did not include behavioral information, employment data, including the dates of her

employment, or inquiry information indicating that Alteryx had procured his data from Experian. Id. ¶¶ 43-44. Tailford's Admin Report, an internal Experian document produced in discovery, listed third party inquiries from Charter Communication on February 17, 2017; Loanme Inc. on October 5, 2017; and Cap One NA on September 16, 2017. Id. Further, other third-party inquiries listed in the Admin Report included numerous dates of inquiry that did not appear on her October 10, 2017 disclosure. Id.

Buckles procured a §1681g disclosure from Experian on April 5, 2018, which allegedly did not include behavioral information or inquiry information indicating that Alteryx had procured his data from Experian. Id. ¶ 45. Buckles's Admin Report, produced in discovery, listed, among others, inquiries from Synchrony Bank on August 18, 2017, and other dates of inquiry from other third parties that did not appear on his April 5, 2018 disclosure. Id.

Ruderman procured a §1681g disclosure from Experian on May 14, 2018, which allegedly did not include behavioral information or inquiry information indicating that Alteryx had procured his data from Experian. Id.

II. LEGAL STANDARD

A. Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction

Dismissal is proper when a plaintiff fails to properly plead subject matter jurisdiction in the complaint. Fed. R. Civ. P. 12(b)(1). Pursuant to Article III of the Constitution, the Court's jurisdiction over the case "depends on the existence of a 'case or controversy.'" GTE Cal., Inc. v. FCC, 39 F.3d 940, 945 (9th Cir. 1994). A "case or controversy" exists only if a plaintiff has standing to bring the claim. Nelson v. NASA, 530 F.3d 865, 873 (9th Cir. 2008), rev'd on other grounds, 562 U.S. 134 (2011). "Because standing . . . pertain[s] to federal courts' subject matter jurisdiction, [it is] properly raised in a Rule 12(b)(1) motion to dismiss." Chandler v. State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1122 (9th Cir. 2010).

To have standing, "a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a

favorable decision." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc., 528 U.S. 167, 180–81 (2000); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992); Nelson, 530 F.3d at 873. "[E]ach element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation." Lujan, 504 U.S. at 561.

Although plaintiffs bear the burden of establishing standing, "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice." Skaff v. Meridien N. Am. Beverly Hills, LLC, 506 F.3d 832, 838 (9th Cir. 2007) (quoting Lujan, 504 U.S. at 561) (alteration in original). When a defendant's attack is "facial" (i.e., based solely on the allegations in the complaint), as it is here, the court presumes that the allegations in the complaint are true. Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004).

B. Rule 12(c) motion for judgment on the pleadings

Federal Rule of Civil Procedure 12(c) provides that a party may move for judgment on the pleadings after close of pleadings. Fed. R. Civ. P. 12(c). Judgment on the pleadings is appropriate when, taking allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law. Fleming v. Pickard, 581 F.3d 922, 925 (9th Cir. 2009). A motion for judgment on the pleadings is governed by the same standard as a motion to dismiss for failure to state a claim under Rule 12(b)(6). Aldabe v. Aldabe, 616 F.2d 1089, 1093 (9th Cir. 1980).

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). To overcome a motion to dismiss under Rule 12(b)(6), a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has "facial plausibility" if the plaintiff pleads facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In resolving a 12(b)(6) motion under Iqbal and Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true. Iqbal, 556 U.S. at 678. Second, and assuming the well-pleaded factual allegations are true, the Court must "determine whether they plausibly give rise to an entitlement to

relief." Id. at 679. This determination is "context-specific," requiring the Court to draw on its experience and common sense. Id. There is no plausibility, however, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Id.

III. DISCUSSION

A. 12(b)(1) motion to dismiss for lack of subject matter jurisdiction: concrete injury sufficient to bring claims under §§ 1681g(a)(1), (a)(3), and (a)(5)

In FCRA-based and all other cases, courts have subject matter jurisdiction over an action only if the plaintiff first establishes Article III standing. Cetacean Cmty v. Bush, 386 F.3d 1169, 1175 (9th Cir. 2004).[1] To establish Article III standing, the plaintiff must establish that he or she suffered an injury-in-fact; the defendant's conduct caused the plaintiff's injury; and the plaintiff's requested relief will likely redress the injury. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). An injury-in-fact, the central issue here, is an "invasion of a legally protected interest" that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." Id.

Experian challenges the sufficiency of Plaintiffs' alleged injury-in-fact, arguing that Plaintiffs have not shown that the information allegedly withheld constitutes or caused a concrete and particularized injury sufficient to confer standing. Mot. Docket No. 73-1 at 17-23.

A concrete injury does not necessarily mean that it must also be tangible. Spokeo, Inc. v. Robins, 136 S. Ct. 1540 (2016), as revised (May 24, 2016). The Supreme Court in Spokeo addressed the circumstances when an intangible harm, such as the violation of a statutory right, may be sufficiently concrete to satisfy the requirement of an injury-in-fact. Id. at 1555-56. A "bare procedural violation" of the FCRA, which results in no

[1] Plaintiffs raise putative class claims on behalf of five classes. In class actions, the named plaintiffs must first personally establish Article III standing before they can assert claims on behalf of the class. Warth v. Seldin, 422 U.S. 490, 501 (1975) ("[T]he plaintiff still must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants."). "[I]f none of the named plaintiffs purporting to represent a class establishes [Article III standing], none may seek relief on behalf of himself or any other member of the class." O'Shea v. Littleton, 414 U.S. 488, 494 (1974).

harm, for instance, the dissemination of an incorrect zip code, would not satisfy the requirement of concrete harm sufficient to support standing. Id. at 1550. However, Spokeo further instructs that "[t]he violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact; in such a case, a plaintiff need not allege any *additional* harm beyond the one identified by Congress." Id. at 1544 (emphasis provided); Dreher v. Experian Info. Sols., Inc., 856 F.3d 337, 346 (4th Cir. 2017) (finding violation of the FCRA may amount to concrete harm when the plaintiff "suffer[s] . . . the type of harm Congress sought to prevent when it enacted the FCRA").

On remand, the Ninth Circuit summarized the Spokeo test for standing that constitutes concrete injury. The test requires the Court to consider "(1) whether the statutory provisions at issue were established to protect [the plaintiff's] concrete interests (as opposed to purely procedural rights), and if so, (2) whether the specific procedural violations alleged in this case actually harm, or present a material risk of harm to, such interests." Robins v. Spokeo, Inc., 867 F.3d 1108, 1113 (9th Cir. 2017), cert. denied, 138 S. Ct. 931 (2018).

The first part of the Ninth Circuit test is satisfied because the "interests protected by the FCRA's procedural requirements are 'real,' rather than purely legal creations." Robins, 867 F.3d at 1114; Dutta v. State Farm Mut. Auto. Ins. Co., 895 F.3d 1166, 1175 (9th Cir. 2018). "[G]iven the ubiquity and importance of consumer reports in modern life—in employment decisions, in loan applications, in home purchases, and much more—the real-world implications of material inaccuracies in those reports seem patent on their face." Robins, 867 F.3d at 1114 (addressing § 1681e(b)). The second part of the test requires that we "consider whether, in the case before us, the procedural violation caused a real harm or material risk of harm." Dutta, 895 F.3d at 1174.

For a procedural violation of FCRA § 1681g to confer standing, some harm or material risk of harm based on incorrect consumer information must be alleged. See e.g. Benton v. Clarity Servs., Inc., No. 16-CV-06583-MMC, 2017 WL 345583, at *2 (N.D. Cal. Jan. 24, 2017) (dismissing alleged § 1681g violation for lack of standing because "the complaint d[id] not allege that any of the information for which the source was not provided was in any manner inaccurate . . . ."). In Dutta, the Ninth Circuit considered an employment-related provision of the FCRA, § 1681b(b)(3), which requires that before any adverse action based on a consumer's credit report be taken, the consumer be provided a copy of their report and a written description of their related rights. There,

despite the defendant's failure to provide Dutta his credit report in advance of its employment decision, he did not have standing because the adverse employment decision was based on accurate information in his credit report. Id. at 1176. Similarly, in Jaras, violation of § 1681s-2(b) did not confer standing because plaintiffs did not "make any allegations about how the alleged misstatements in their credit reports would affect any transaction they tried to enter . . . ." Jaras v. Equifax Inc., 766 F. App'x 492, 494 (9th Cir. 2019). Plaintiffs point to the dissent in Jaras to argue that the existence of adverse information in a consumer's credit report alone creates a material risk of harm because of the ubiquity and importance of credit reports. See Jaras, 766 F. App'x at 496 (Berzon, J., dissenting). But this is only true if plaintiffs allege that information in their report is inaccurate. Id. ("Nearly all Plaintiffs [in Jaras] state that inaccuracies in the reporting of their confirmed bankruptcy lowered their credit score."). Although Dutta and Jaras address sections of the FCRA not at issue here, they recognize that to confer standing, there must be a harm beyond the "bare procedural violation" of the FCRA's disclosure requirements.

Most on point here is the Sixth Circuit's recent decision in Huff v. TeleCheck Servs., Inc., 923 F.3d 458 (6th Cir. 2019), which addresses one of the FCRA provisions central to this action, § 1681g(a)(1). In that case, because the defendant's failure to disclose to Huff six erroneously-linked bank accounts in a § 1681g disclosure did not "injure him in any way," Huff could not claim a concrete injury sufficient for standing. Huff argued that failure to disclose the accounts "injured his concrete interests under the FCRA by robbing him of his right to monitor his file, which prevented him from disputing the accuracy of the links." Huff, 923 F.3d at 467 (quotations omitted). Rejecting this argument, the court reasoned that the withholding of information alone was insufficient to grant standing because it neither "made a difference in any credit determination" nor did Huff "take any action after receiving the undisclosed information, indicating he wouldn't have done anything even if he had received it earlier." Id. at 467. In sum, the incomplete disclosure had "no effect on Huff or his future conduct." Id. The court explained that the FCRA "never attempts to show how a technical impairment of a consumer's ability to monitor a credit report—that carries no actual consequences for the consumer—rises to the level of an Article III injury . . . ." Id. Thus, the consumer's impairment amounts to a "'bare procedural violation,' attenuated from any real harm or imminent risk of harm, that Congress cannot convert into Article III standing." Id. (quoting Spokeo, 136 S.Ct. at 1549).

Here, the FCRA provisions at issue, 15 U.S.C. §§ 1681g(a)(1), (a)(3), and (a)(5), respectively provide:

> (a) Information on file; sources; report recipients
>
> Every [CRA] shall, upon request . . . clearly and accurately disclose to the consumer:
>
> (1) All information in the consumer's file at the time of the request, except that– (B) nothing in this paragraph shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer . . . .
>
> (3)(A) Identification of each person . . . that procured a consumer report– (i) for employment purposes, during the 2-year period preceding the date on which the request is made; or (ii) for any other purpose, during the 1-year period preceding the date on which the request is made . . . .
>
> (5) A record of all inquiries received by the agency during the 1-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.

15 U.S.C. § 1681g(a). For the purposes of § 1681g(a)(1), a consumer file[2] includes all information the CRA might furnish or has furnished in a consumer report on that customer. Shaw, 891 F.3d at 759. "Consumer report" is defined by the FCRA as

> any written, oral, or other communication of any information by a [CRA] bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics,

[2]The term consumer "file" is defined by the FCRA as including "all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored." 15 U.S.C. § 1681a(g).

> or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (A) credit or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized under section 1681b of this title.

15 U.S.C. § 1681a(d).

Plaintiffs allege non-disclosure of three types of information in violation of 15 U.S.C. §§ 1681g(a)(1), (a)(3), and (a)(5): "soft" credit inquiries or "pulls," consumer behavioral data, and employment data. See TAC, Docket No. 57. Plaintiffs allege that Experian's failure to disclose third party inquiry information, "depriving Plaintiffs and Class members of information[,] . . . . subjects each consumer to a concrete informational injury by making it impossible for the consumer to verify that the disclosure [of information to a third party] was for a permissible purpose." Id. ¶ 25. Similarly, Plaintiffs allege Experian's failure to disclose behavioral and employment data deprived them "of their opportunity to meaningfully consider and address the dissemination of their PII [personally identifiable information] . . . as well as meaningfully authorize disclosure . . . ." Id. ¶ 41. Experian responds that there was no concrete harm done to Plaintiffs because the right to receive, review, and dispute information in their own file "does not state any actual, real-world harm" and because Plaintiffs "have not alleged that any specific information in their file . . . was incomplete or inaccurate, such that the inability to review and dispute that information actually injured them." Mot. Docket No. 73-1 at 13-14.

Plaintiffs rely on Syed v. M-I, LLC, 853 F.3d 492 (9th Cir.), cert. denied, 138 S. Ct. 447 (2017), to argue that where a statute contains a right to information that implicates a consumer's privacy interests, the consumer has adequately alleged Article III standing. Opp'n., Docket No. 83 at 23-26. Their contention overlooks the context of the dispute in Syed. There, unlike in this case, the FCRA provision at issue *prohibited* an employer from procuring an employee's credit report without their express consent. See 15 U.S.C. § 1681b(b)(2)(A). Section 1681g contains no such prohibition, nor does it empower a consumer to withhold a CRA's transmission of their information to a third party. See 15 U.S.C. § 1681g. Thus, § 1681g does not implicate a consumer's privacy interest to the same extent. Rather, "[t]he purpose of the [FCRA's] disclosure requirement [in § 1681g] is to provide the consumer with an opportunity to dispute the accuracy of

information in his file." Huff, 923 F.3d at 470 (quoting Hauser v. Equifax, Inc., 602 F.2d 811, 817 (8th Cir. 1979)).

Plaintiffs fail to allege a concrete injury or material risk of injury sufficient to confer Article III standing. The inability to completely assess their own information due to omissions in their § 1681g disclosures is not a sufficiently concrete injury to confer standing. Plaintiffs do not allege that any of the information that Experian disclosed to or withheld from them is inaccurate. Nor do they allege that any adverse credit, employment, or other decision has been made in reliance upon inaccurate Experian information. Because Plaintiffs fail to show how Defendant's alleged violation of the FCRA amounts to more than a "bare procedural violation," they have not pled a concrete injury sufficient to confer Article III standing to bring their § 1681g claims.

B. Motion for judgment on the pleadings: liability under FCRA § 1681e(b)

15 U.S.C. § 1681e(b) provides that "[w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." 15 U.S.C. § 1681e(b). "Liability under § 1681e(b) is predicated on the reasonableness of the credit reporting agency's procedures in obtaining credit information." Guimond, 45 F.3d at 1333. To state a claim under § 1681e(b), a consumer must show that a CRA prepared a report containing inaccurate information. Id.; Shaw, 891 F.3d at 755. Information is considered "inaccurate" when it is either "patently incorrect" or is "misleading in such a way and to such an extent that it can be expected to adversely affect credit decisions." Shaw, 891 F.3d at 756 (quoting Gorman v. Wolpoff & Abramson, LLP, 584 F.3d 1147, 1163 (9th Cir. 2009) (applying § 1681s-2(b) definition of "inaccurate" to § 1681e(b)). Transmission of a credit report or denial of credit as a result of inaccurate credit report information is not necessary. Guimond, 45 F.3d at 1333; Baker v. Trans Union LLC, No. CV-10-8038-PCT-NVW, 2010 WL 2104622, at *4 (D. Ariz. May 25, 2010).

Here, Plaintiffs allege that "[b]y failing to disclose all information it has related to its inquiries to consumers, Experian violated Section 1681e(b) because it failed to disclose information which would have permitted consumers to fully appreciate and understand who had procured information on them." TAC, Docket No. 57 ¶ 23. They similarly allege that Experian violated § 1681e(b) by "failing to disclose either the

'behavioral' data or 'employment' to consumers" because such alleged withholdings "failed to disclose information which would have permitted consumers to fully appreciate and understand the data that was being reported on them and the context in which it is being reported so that they could dispute it if necessary." Id. ¶ 35. Because Plaintiffs do not allege that any information Experian disclosed or failed to disclose is inaccurate, or "can be expected to adversely affect credit decisions," they fail to state a claim under § 1681e(b).

C. Leave to amend the complaint

"[L]eave to amend should be granted unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986). Here, Plaintiffs have failed to plead a concrete injury sufficient to support standing to raise claims under §§ 1681g(a)(1), (a)(3), and (a)(5). They have also failed to state a claim under § 1681e(b). Dismissal with leave to amend is appropriate because Plaintiffs have not previously sought the Court's leave to amend the Complaint and could allege facts that support standing. See Missouri ex rel. Koster v. Harris, 847 F.3d 646, 656 (9th Cir. 2017) ("Plaintiffs have not satisfied the requirements [for] ... standing. In theory, Plaintiffs could allege ... facts that might support standing. As a result, the complaint should have been dismissed without prejudice."); Jaras, 766 F. App'x at 495. Thus, Plaintiffs are granted 30 days leave to amend the TAC to cure the deficiencies identified in this order.

D. Motion to stay discovery and motion to review the magistrate judge's order

Experian moves to stay discovery pending resolution of Experian's motion to dismiss or motion for judgment on the pleadings. Docket No. 74. The Court disposes of Experian's motion to dismiss and motion for judgment on the pleadings herein. Thus, the motion to stay discovery is **dismissed** as moot.

On April 19, 2019, the Magistrate Judge granted in part Plaintiffs' motion to compel discovery. Docket No. 72. Experian moves for the Court to review the Magistrate Judge's order and deny Plaintiffs' motion to compel discovery. Docket No. 76. Because the Magistrate Judge's assessment of the relevance of discovery inquiries was based on the TAC, which is modified pursuant to this order, the Court **vacates** the Magistrate

Judge's order to compel discovery and remands the matter for consideration consistent with the scope of Plaintiffs' claims not dismissed by this order. While many of the Magistrate Judge's relevance determinations may remain unchanged, the Court's grant in part of Experian's motion for judgment on the pleadings affects the scope of discovery such that reconsideration is warranted. Experian's motion to reconsider the Magistrate Judge's order is thus **dismissed** as moot.

IV. CONCLUSION

For the foregoing reasons, the Court **grants** the motion to dismiss for lack of subject matter jurisdiction and **grants** the motion for judgment on the pleadings. Plaintiffs are granted thirty (30) days leave to amend their pleading to address deficiencies identified in this order.

Further, the Court **dismisses** as moot Experian's motion to stay discovery, **vacates** the Magistrate Judge's order granting Plaintiffs' motion to compel discovery, and **dismisses** as moot Experian's motion to review the Magistrate Judge's order.

IT IS SO ORDERED.

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