UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 5:18-cv-02191-SB (KKx)	Date: November 16, 2020

Title: *Deatra Dehorney v. Ocwen Loan Servicing, LLC, et al.*

Present: The Honorable	**STANLEY BLUMENFELD, JR., U.S. District Judge**
Victor Cruz Deputy Clerk	N/A Court Reporter
Attorney(s) Present for Plaintiff(s): None Appearing	Attorney(s) Present for Defendant(s): None Appearing

Proceedings: **ORDER GRANTING MOTION TO DISMISS FIRST AMENDED COMPLAINT (DKT. NO. 44)**

Defendants PHH Mortgage Corporation, Successor by Merger to Ocwen Loan Servicing, LLC (Ocwen), Mortgage Electronic Registration Systems, Inc. ("MERS"), and Deutsche Bank National Trust Company, as Trustee for Securitized Asset Backed LLC Trust 2007-BR4 Mortgage Pass-Through Certificate Services 2007-BR4's ("Deutsche Bank") (Defendants) have filed a Motion to Dismiss the First Amended Complaint (Motion). (Dkt. No. 44.) Plaintiff Deatra Dehorney, in pro se, filed an opposition to the Motion (entitled "Reply to Motion to Dismiss"). (Dkt. No. 49.) Defendants filed their reply to the opposition on October 20, 2020. (Dkt. No. 51.) For the reasons stated below, the Court **GRANTS** the Motion.

I. BACKGROUND

A. FACTUAL BACKGROUND

On September 8, 2020, Plaintiff filed her First Amended Complaint ("FAC"), asserting two claims—one for wrongful foreclosure and the other for violation of the Fair Credit Reporting Act (FCRA). Attached to the FAC, without explanation, are loan-related and foreclosure documents.

Plaintiff alleges that she obtained a loan in 2006 from New Century Mortgage Corporation for $309,414 (the "First Loan"), which was secured by a deed of trust (Senior DOT) against the real property located at 11772 Happy Hills Lane, Victorville, CA 92392 (Property). (FAC at 53; Defendants' Request for Judicial Notice ("RJN"), Ex. A, Dkt. No. 45.)[1] MERS was identified as the beneficiary under the Senior DOT. (RJN, Ex. A.) On the same date, Plaintiff obtained a second loan from New Century Mortgage for $77,353 (Second Loan), which was secured by a second and subordinate deed of trust on the Property. (FAC at 53; RJN, Ex. B.)

The First Loan was sold to Barclays Bank PLC on or about February 14, 2007, and the Second Loan was sold to Goldman Sachs Mortgage Company on or about February 28, 2007. (FAC ¶ 16; *id.* at 53.) On January 14, 2014, MERS assigned the Senior DOT to Deutsche Bank. (*Id.* ¶ 16, p. 45; RJN, Ex. C.)

At some point, Plaintiff defaulted on her monthly mortgage payments. On January 29, 2016, Deutsche Bank recorded a notice of default (NOD) against the Property. (RJN, Ex. D.) Plaintiff alleges she applied for "another" loan modification from Ocwen on February 11, 2016. (FAC ¶¶ 24, 27.) Plaintiff also contacted Ocwen to ask about the modification and seek information about a notice

[1] Defendants request judicial notice of Property records in the official files of San Bernardino County (Exhibits A through F), court documents from Plaintiff's action in San Bernardino County Superior Court, Case No. CIVDS1401592 (Exhibits G through J), and the unpublished opinion from the California Court of Appeal, Case No. E065493, in that action (Exhibit K). The request is **GRANTED** to the extent that it is limited to indisputable facts of public record. *See Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (court may take "judicial notice of *undisputed* matters of public record" under Fed. R. Evid. 201(b) when considering a motion to dismiss).

that her payments during the trial period were past due. (*Id.*) Plaintiff also alleges she was illegally contacted during her application for a modification (*id.* ¶ 26), that Ocwen refused to negotiate a settlement with "Keep Your Home California" (*id.* ¶ 28), and that she was inappropriately asked for her ethnic background during the modification application process. (*Id.* ¶ 30.)

The First Loan remained in default, and on May 25, 2018, the trustee under the Senior DOT, Western Progressive, LLC, recorded a notice of sale (NOS) against the Property. (*Id.* at 31; RJN, Ex. E.) On August 31, 2018, trustee Western Progressive, LLC sold the Property at a nonjudicial foreclosure sale by a credit bid to Deutsche Bank. The Deed Upon Sale against the Property was recorded on September 7, 2018. (RJN, Ex. F.)

B. PROCEDURAL HISTORY

1. The Original Action

On February 14, 2014, Plaintiff commenced an action against Ocwen, MERS, and Deutsche Bank in San Bernardino County Superior Court (the "Original Action"). (FAC ¶ 13.) The trial court sustained a demurrer to all causes of action with leave to amend. (RJN, Ex. G.) Plaintiff filed an amended complaint. (RJN, Ex. H.) The trial court sustained a demurrer to the amended complaint without leave to amend as to the causes of action for: (1) fraud; (2) fraudulent concealment; (3) conspiracy; (4) produce the note; (5) distress; and (6) quiet title. (RJN, Ex. I.) The trial court overruled the demurrer to the cause of action for cancellation of instrument. (*Id.*)

On September 30, 2015, Defendants filed a motion for summary judgment on Plaintiff's remaining cause of action for cancellation of instrument. The trial court heard the motion and entered judgment in Defendants' favor on February 11, 2016. (RJN, Ex. J.) Plaintiff appealed.

2. The State Appeal

On January 5, 2018, the California Court of Appeal, Fourth Appellate District, Division Two, affirmed the judgment in an unpublished decision. (RJN, Ex. K; *Deatra Dehorney v. Securitized Asset, et al.*, No. E065493, 2018 WL 300288 (Cal. Ct. App. 2018).)

In describing the factual allegations in the amended complaint, the Court of Appeal noted that Plaintiff "alleged problems with the approval and execution of her loans," including forgery and deception. *Id*. at *3. Plaintiff also alleged that the assignment of the DOT was invalid. The Court of Appeal then described the asserted claims:

> In her first three claims, she sought relief for fraudulent conduct during the sale of her property. Claim one alleges New Century committed fraud by intentionally misrepresenting or concealing from her the fact she was not qualified for her loans. Claim two alleges defendants worked together to fraudulently conceal the fact she was not qualified for her loans. Claim three alleges defendants conspired to keep her from learning she was not qualified for her loans . . . .
>
> In three other claims, she attacked Deutsche Bank's right to foreclose. Claim four sought cancellation of the deed of trust assigned to Deutsche Bank as trustee based on the allegation defendants used a robo-signer to assign the deed of trust. Claim five sought to require defendants to produce the original note on her property before beginning foreclosure proceedings. Claim seven sought to quiet title in her property (Code Civ. Proc., § 761.020) because Deutsche Bank "is claiming ownership via the mortgage assignment that was fraudulently obtained." She alleges Deutsche Bank does not have any right, claim or interest in the property and requests a declaration that as of December 23, 2006 (the purchase date) all right, title, and interest in the property be vested in her.
>
> In claim 6, she alleged defendants intentionally inflicted emotional distress by threatening her with letters, phone calls, and visits as part of their efforts to foreclose on her property. . . .

Id. at *4.

The Court of Appeal concluded that the trial court did not err in sustaining the fraud-based claims asserted in the first three causes of action because Plaintiff did not allege and could not show that she justifiably relied on the alleged false representations. The court next found that Defendants were not required under California law to produce the original note as a condition of nonjudicial foreclosure, and that Plaintiff could not state claims for infliction of emotional distress based on the facts of this case and legal requirements. The court also

rejected the quiet title claim, an equitable claim that could not be established without satisfying an outstanding payment obligation. *Id*. at *7-9.

Turning to the cancellation claim, the Court of Appeal held that Plaintiff lacked standing to challenge the DOT assigned to Deutsche Bank as trustee. Plaintiff challenged the assignment on two theories—the assignment by MERS was untimely; and the assignment was executed by an authorized "robo-signer." Citing *Yvanova v. New Century Mortgage Corp*., 62 Cal. 4th 919 (2016), the Court of Appeal noted that a borrower (like Plaintiff) has standing to raise defects of an assignment only when the defects renders the assignment void (not voidable), and then only in a post-foreclosure action. The court concluded that Plaintiff lacked standing not only because she sought pre-foreclosure relief, but also because the challenged defects, if successful, would only render the assignment voidable (not void). The court further found that the challenge to the "robo-signer's" authority was "without factual support." *Id*. at *10-11.

3. This (Second) Action

Plaintiff filed the instant action against Defendants in San Bernardino County Superior Court on August 30, 2018. (Compl., Dkt. No. 1-1.) The Complaint brought eight causes of action for (1) wrongful foreclosure; (2) preliminary and permanent injunction; (3) conspiracy to induce one to pay a fraudulent debt; (4) cancellation of instrument; (5) produce the note; (6) quiet title; (7) violation of FDCPA; and (8) violation of FCRA. (*Id.*) Defendants removed the action to federal court on October 16, 2018. (Not. of Removal, Dkt. No. 1.) The action was assigned to Judge R. Gary Klausner on October 18, 2018. (Dkt. No. 5.)

On October 23, 2018, Defendants filed a motion to dismiss. (Dkt. No. 9.) Plaintiff failed to oppose, and on November 30, 2018, Judge Klausner issued an Order to Show Cause why Defendants' motion should not be deemed unopposed and ordered Plaintiff to file her opposition by December 7, 2018. (OSC, Dkt. No. 17.) Plaintiff filed an opposition on December 6, 2018 (Dkt. No. 18) and filed an amended opposition on January 2, 2019. (Dkt. No. 22.) On January 8, 2019, Judge Klausner granted Defendants' motion and dismissed with prejudice Plaintiff's causes of action for wrongful foreclosure, conspiracy to induce one to pay a fraudulent debt, cancellation of instrument, produce the note, quiet title, and violation of the Fair Debt Collection Practices Act (FDCPA). (Order, Dkt. No. 23.) Judge Klausner dismissed Plaintiff's cause of action for violation of the

FCRA without prejudice. (*Id.*) Plaintiff failed to amend her sole remaining cause of action.

On January 29, 2019, Defendants filed a motion to dismiss after Plaintiff failed to amend. (Dkt. No. 25.) Plaintiff failed to oppose the motion. On February 26, 2019, Judge Klausner granted Defendants' motion and dismissed the case with prejudice. (Dkt. No. 27.) Plaintiff appealed. (Dkt. No. 30.)

4. The Ninth Circuit Appeal

On July 22, 2020, the Ninth Circuit affirmed the dismissal of Plaintiff's claims for conspiracy, injunctive relief, cancellation of instruments, production of the note, quiet title, and violation of the FDCPA as barred by res judicata. (Mem. Dispo., Dkt. No. 39.)

However, the Ninth Circuit vacated and remanded Plaintiff's claims for wrongful foreclosure and violation of the FCRA. (*Id.*) The court vacated the dismissal of the wrongful foreclosure claim, stating:

> During the pendency of this appeal, this court decided *Perez v. Mortgage Electronic Registration Systems, Inc.*, 959 F.3d 334, 340 (9th Cir. 2020), which held that "California law does not permit preemptive actions to challenge a party's authority to pursue foreclosure before a foreclosure has taken place." Here, [Plaintiff's] prior state court action was resolved before the foreclosure occurred. Accordingly, we vacate and remand for the district court to consider in the first instance the application of *Perez* to [Plaintiff's] wrongful foreclosure claim in the context of California's primary rights theory.

Dehorney v. Ocwen Loan Servicing, LLC, 814 F. App'x 297, 298 (9th Cir. 2020).

The court also vacated the dismissal of the FCRA claim, concluding that dismissal with prejudice for violating an order to amend the claim within seven days was not warranted. *Id*.

5. On Remand from the Ninth Circuit

On remand, Judge Klausner ordered Plaintiff to file the FAC no later than September 4, 2020. (Dkt. No. 41.) Plaintiff filed her FAC on September 8, 2020. (Dkt. No. 42.) Defendants filed the Motion on September 22, 2020, which was set

for hearing on October 26, 2020. (Dkt. No. 43.) The case was transferred to this Court on October 1, 2020. (Dkt. No. 48.)

On October 19, 2020, this Court rejected Plaintiff's unauthorized filing of a second amended complaint, noting that Plaintiff failed to seek leave as required by Fed. R. Civ. P. 15(a)(2) (requiring written consent or leave of court after 21 days of the initial pleading). (Dkt. No. 50.) On October 20, 2020, the Court vacated the hearing on the Motion and took the matter under submission pursuant to Local Rule 7.15. (Dkt. No. 52.) On October 27, 2020, Plaintiff submitted an ex parte "Request for Emergency Filing," seeking leave to amend. (Dkt. No. 53.) The ex parte request is **DENIED**, though the Court shall grant leave to amend on the FCRA claim, as explained below.

II. LEGAL STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "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). Pro se pleadings are to be construed liberally. *Hebbe v. Pliler*, 627 F.3d 338, 342 n.7 (9th Cir. 2008).

In resolving a 12(b)(6) motion under *Twombly*, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Nor must the Court "'accept as true a legal conclusion couched as a factual allegation.'" *Id.* at 678-80 (quoting *Twombly*, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, 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, but there is no plausibility "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." *Id.*

III. DISCUSSION

This case is on remand from the Ninth Circuit to consider Plaintiff's two remaining claims: wrongful foreclosure and violation of the FCRA. Specifically,

the Ninth Circuit instructed the Court to consider whether Plaintiff's wrongful foreclosure claim is barred under principles of res judicata in light of the Ninth Circuit's recent opinion in *Perez v. Mortgage Electronic Registration Systems, Inc.*, 959 F.3d 334, 340 (9th Cir. 2020). (*See* Mem. Dispo. at 3.) The Ninth Circuit also held that dismissing Plaintiff's FCRA claim after only giving her seven calendar days to amend was improper. (*Id.*)

A. RES JUDICATA BARS PLAINTIFF'S WRONGFUL FORECLOSURE CLAIM.

1. The Doctrine of Res Judicata

"Res judicata, or claim preclusion, prohibits lawsuits on any claims that were raised or could have been raised in a prior action." *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002) (internal quotation marks, citations, and emphasis omitted). The claims in this case are barred under this doctrine if California law would give them preclusive effect. *See Southeast Resource Recovery Facility Authority v. Montenay Intern. Corp.*, 973 F.2d 711, 714 (9th Cir. 1992).

California law precludes a party from relitigating "(1) the same claim, (2) against the same party, (3) when that claim proceeded to a final judgment on the merits in a prior action." *Adam Bros. Farming, Inc. v. Cnty. of Santa Barbara*, 604 F.3d 1142, 1148 (9th Cir. 2010) (citing California law). There is no question that the Original Action involved the same parties (RJN, Ex. H), and that it resulted in a final judgment on the merits. *See Boeken v. Philip Morris USA, Inc.*, 48 Cal. 4th 788, 793 (2010) ("dismissal with prejudice is the equivalent of a final judgment on the merits"). The only issue, as stated in the Ninth Circuit's decision in this case, is whether there is an identity of claims.

2. The "Primary Right" Principle

An identity of claims exists if they derive from the same "primary right." *Boeken*, 48 Cal. 4th at 797-98. Claims derive from the same primary right when they involve the same duty and the same wrong, even if pursued under different legal theories seeking different forms of relief. *Id*. at 798. As the California Supreme Court has explained, a primary right is "the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced." *Id*. As a result, "[t]he critical focus of primary rights analysis 'is the harm suffered.'" *Brodheim v. Cry*, 584 F.3d 1262,

1268 (9th Cir. 2009) (citation omitted). The addition of new supporting facts, like the inclusion of new legal theories to redress the same harm, does not alter the primary right at stake. *Id*.

Under California law, successive claims challenging the propriety of a lender's foreclosure implicate the same primary right. *See Gillies v. JPMorgan Chase Bank, N.A.*, 7 Cal. App. 5th 907, 910 (2017) (multiple lawsuits asserting "similar allegations of claimed wrongful foreclosure procedures and [bank's] standing to foreclose" are based on the same primary right). Federal courts have relied on this principle in concluding that a borrower is precluded, under the primary rights theory of res judicata, from bringing multiple lawsuits to challenge the right of the lender (or its assignee(s)) to foreclose on the property used to secure the loan. As one court stated in defining the primary right:

> [T]he primary right for which Plaintiff seeks redress is her right to the foreclosed property. The harm for which Plaintiff sought relief in state court is the same harm for which she now seeks to hold Defendants liable—the allegedly wrongful foreclosure of her property. The actions in state court and this Court concern the same property, same deeds, and same foreclosure sale. Because Plaintiff has already filed an action challenging Defendants' authority to foreclose, she may not file another seeking to challenge the foreclosure on different grounds.

Lomeli v. JPMorgan Chase Bank, N.A., No. CV1504022-MWF, 2015 WL 12746210, at *6 (C.D. Cal. Oct. 5, 2015). The cases reaching the same conclusion are legion. *See e.g.*, *Harold v. Wells Fargo Bank, N.A.*, No. 19-CV-08020-JST, 2020 WL 3867203, at *4 (N.D. Cal. May 29, 2020) (defining the primary right as the right against unlawful foreclosure); *Worthy v. Nationstar Mortg., LLC*, No. EDCV 17-01645 JAK (SPx), 2018 WL 1942405, at *5 (C.D. Cal. Mar. 2, 2018) (same and listing cases); *Miller v. Wholesale Am. Mortg., Inc.*, No. 17-CV-05495-LB, 2018 WL 306714, at *5 (N.D. Cal. Jan. 5, 2018) (same and listing cases)

Here, Plaintiff's claim for wrongful foreclosure is premised on the same alleged wrong and the same alleged harm as previously asserted in the Original Action. In the Original Action, as described by the Court of Appeal, Plaintiff brought three claims "attack[ing] Deutsche Bank's right to foreclose" based on factual allegations of an invalid and fraudulently obtained mortgage assignment. *Dehorney*, 2018 WL 300288, at *4. Simply stated, she claimed that the assignment of the Senior DOT was void, the First Loan involved fraud, and Defendants did not hold the note. Based on the alleged wrongful foreclosure, Plaintiff "sought

cancellation of the deed of trust assigned to Deutsche Bank" and a "declaration that as of December 23, 2006 (the purchase date) all right, title, and interest in the property be vested in her." *Id*. In this successive lawsuit, Plaintiff alleges various defects in the foreclosure process that caused the loss of her house. (FAC ¶ 23, at 18 (alleging that Defendants "used void documents" to intimidate her); *see also* ¶¶ 24-26, at 19-20 (alleging other defects). At their core, these allegations involve the same claimed injury (i.e., loss of the Property) arising out of the same purported wrongdoing (i.e., unlawful foreclosure). In terms of res judicata, "[t]he *primary right* was the right not to be wrongfully deprived of [the Property]; and the corresponding duty was the duty not to wrongfully deprive a person of [the Property]." *Boeken*, 48 Cal. 4th at 798 (emphasis in original).

3. The Impact of *Perez*

The Court now considers "the application of *Perez* to [Plaintiff's] wrongful foreclosure claim in the context of California's primary rights theory," as directed by the Ninth Circuit. 814 F. App'x at 298.

In *Perez*, the plaintiff homeowners brought two separate, pre-foreclosure actions against MERS and the two banks holding their respective mortgages. The issue in that case was "whether California law permits borrowers to bring judicial actions to challenge a foreclosing party's authority to foreclose on the borrower's property before a foreclosure has taken place." 959 F.3d 334, 336. After noting that the California Supreme Court expressly left that question open in *Yvanova*, *id*. at 338, the Ninth Circuit concluded that "California law does not permit preemptive actions to challenge a party's authority to pursue foreclosure before a foreclosure has taken place." *Id.* at 339-40.

Perez does not affect the primary rights analysis in this case. It is true that Plaintiff could not pursue a claim for wrongful foreclosure in the Original Action. Indeed, this was one of the holdings on appeal in that state action. *Dehorney*, 2018 WL 300288, at *10-11 (following intermediate appellate authority denying pre-foreclosure standing after noting that *Yvanova* had left open that question). The Ninth Circuit in *Perez* reached the same conclusion two years later. But this conclusion does not change the fact that Plaintiff previously sued asserting the same primary right—the right not to be wrongfully deprived of the Property. For purposes of the primary rights analysis, "[i]t matters not that [Plaintiff] has a new theory of wrongful foreclosure." *Gillies*, 7 Cal. App. 5th at 914.

Nor does it matter, for purposes of res judicata, that Plaintiff lacked standing to assert the claim when she elected to file suit. Plaintiff's asserted primary right—the right not to be wrongfully deprived of the Property—implicates the same primary right as those decided in the Original Action, whether Plaintiff's wrongful foreclosure action was brought pre-foreclosure or post-foreclosure. California law does not appear to recognize a timing exception to the primary rights theory. *See, e.g., Russell v. Wells Fargo Bank, N.A.*, 2018 WL 4520086, *5 (Cal. Ct. App. Sept. 21, 2018) (applying res judicata even though plaintiff lacked standing to bring a pre-foreclosure claim).[2]

Moreover, Plaintiff's standing problem was not solely one of timing. The Court of Appeal in the Original Action found that Plaintiff lacked standing to challenge the nonjudicial foreclosure for two separate reasons: (1) the foreclosure had not yet been completed (a timing issue); and (2) the alleged defects that formed the basis of the challenge would only render the assignment voidable (a permanent standing impediment). *Dehorney*, 2018 WL 300288, at *10-11. Thus, the Court of Appeal actually decided the merits of a principal claim made in support of Plaintiff's wrongful foreclosure theory, finding that she could not pursue that claim (even post-foreclosure).[3]

In sum, each of the elements of res judicata has been established. The Motion to dismiss the wrongful foreclosure claim is therefore **GRANTED**. The dismissal is with prejudice because the deficiency is incurable. *See Knappenberger v. City of Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009) (no leave to amend when amendment would be futile).

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[2] Federal courts are "not precluded from considering unpublished state court opinions." *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 943 n.4 (9th Cir. 1997)

[3] The primary rights doctrine is not so broad as to ensnare the FCRA claim in this case. As explained, the primary right at issue in the Original Action was the right not to be wrongfully deprived of the Property. This primary right is different from the right to an accurate credit report. The Court therefore rejects the defense contention that the FCRA claim is based on the primary right that Defendants committed fraud or identity theft at loan origination. (*Id.* (citing FAC ¶¶ 38, 39, 41).)

B. PLAINTIFF'S FCRA CLAIM IS DEFICIENTLY PLEADED.

To prevail on a FCRA claim, Plaintiff must plead four elements:

> (1) a credit reporting inaccuracy existed on plaintiff's credit report; (2) plaintiff notified the consumer reporting agency that plaintiff disputed the reporting as inaccurate; (3) the consumer reporting agency notified the furnisher of the alleged inaccurate information of the dispute; and (4) the furnisher failed to investigate the inaccuracies or further failed to comply with the requirements in 15 U.S.C. 1681s-2(b) (1)(A)-(E).

Denison v. Citifinancial Servicing, LLC, No. C 16-00432-WHA, 2016 WL 1718220, at *2 (N.D. Cal. Apr. 29, 2016) (citing *Nelson v. Chase Manhattan Mortg. Corp.*, 282 F.3d 1057, 1059 (9th Cir. 2002)).

Judge Klausner previously dismissed Plaintiff's FCRA claim, finding that she failed to allege elements (2) through (4) above. (*See* Order at 6-7.) Defendants argue that Plaintiff still fails to plead these elements. (Mot. at 13-14.) Construing Plaintiff's FAC liberally, she appears to allege that Ocwen reported false information to credit agencies, that she informed Ocwen of the erroneous credit information, and that Ocwen refuses to correct it. (FAC ¶¶ 10, 38.) However, Plaintiff does not allege that *she* informed a credit reporting agency of inaccurate information on her credit report. Nor does Plaintiff identify the credit agency to which Ocwen furnished the inaccurate information or allege that the credit agency informed Ocwen of the inaccuracies. Finally, Plaintiff fails to allege nonconclusory facts that Ocwen failed to conduct a reasonable investigation of inaccurate reporting.

In sum, Plaintiff's FCRA claim remains deficiently pleaded. Defendants' Motion is **GRANTED** on this basis and the claim is **DISMISSED** without prejudice. See *Knappenberger*, 566 F.3d at 942 (leave to amend should be granted when amendment may cure the pleading deficiency).

* * *

For the foregoing reasons, Defendants' Motion is **GRANTED**. Plaintiff's wrongful foreclosure claim is **DISMISSED with prejudice**. Plaintiff's FCRA claim is **DISMISSED without prejudice** and the Court **GRANTS** Plaintiff leave to amend the FCRA claim only. If Plaintiff wishes to file a second amended complaint, she must do so within **fourteen (14) days** of the date of this order. The

pleading should be entitled "Second Amended Complaint." The previously unauthorized second amended complaint, submitted on October 19, 2020, is stricken.