UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:17-CV-61216-WPD

SILVIA LEONES,
on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

RUSHMORE LOAN
MANAGEMENT SERVICES, LLC,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE is before the Court on Defendant Rushmore Loan Management Services, LLC's Motion to Dismiss Plaintiff Silvia Leones' First Amended Class Complaint [DE 11], filed on November 6, 2017. The Court has carefully considered the Motion, Plaintiff Silvia Leones' Response [DE 11], Defendant's Reply [DE 15], and is otherwise fully advised in the premises.

I. Background

Plaintiff Silvia Leones ("Plaintiff") commenced this action on June 27, 2017 [DE 1] and filed an Amended Complaint on October 2, 2017 [DE 6].

According to the allegations of the Amended Complaint, sometime prior to February 2016, Plaintiff allegedly defaulted on the loan obligation secured by a mortgage upon Plaintiff's home, which resulted in a predecessor in interest predecessor accelerating the loan and filing a separate mortgage foreclosure action. ¶¶ 26-28. Plaintiff does not allege that she has made any payments to her mortgage loan since February of 2016.

Defendant Rushmore Loan Management Services LLC ("Defendant" or "Rushmore") began servicing the loan and mortgage on October 17, 2016. [DE 6] at ¶ 31. For six consecutive

months beginning in January 2017 through May 2017, Defendant reported to various credit reporting agencies ("CRA")'s that Plaintiff's mortgage loan was 120 days or more delinquent. Plaintiff attached these CRA reports to her Amended Complaint. *See* [DE 6-2]. The CRA reports also state that foreclosure proceedings were initiated with regard to the mortgage loan. *See id.*

In July of 2017, Plaintiff reported two notices of disputes to two independent CRA's, including Equifax Information Services LLC ("Equifax") and Trans Union, LLC ("Trans Union"). [DE 6] at ¶¶ 12, 33. Equifax and Trans Union each received Plaintiff's notice of dispute and provided Rushmore with notification that Plaintiff was disputing the consumer information. ¶¶ 34-41. Nevertheless, in August of 2017, Rushmore continued to report to the CRA's that Plaintiff's mortgage loan was 120 days or more delinquent from January 2017-May 2017, and also included additional information that Plaintiff's mortgage loan was 120 days or more delinquent from June 2017-July 2017. ¶ 42.

Plaintiff alleges that Rushmore violated the Fair Credit Reporting Act, l5 U.S.C. §1681, *et seq.* ("FCRA"). Specifically, Plaintiff alleges that Rushmore is liable under § 1681n or §1681o for willfully or negligently violating § 1681s-2(b). Rushmore filed the instant Motion to Dismiss, arguing that Plaintiff's claims should be dismissed with prejudice.

II. Standard of Review

To adequately plead a claim for relief, Rule 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Under Rule 12(b)(6), a motion to dismiss should be granted only if the plaintiff is unable to articulate "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) (abrogating *Conley*, 355 U.S. at 41). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*, 550 U.S. at 556). The allegations of the claim must be taken as true and must be read to include any theory on which the plaintiff may recover. *See Linder v. Portocarrero*, 963 F. 2d 332, 334-36 (11th Cir. 1992) (citing *Robertson v. Johnston*, 376 F. 2d 43 (5th Cir. 1967)).

However, the court need not take allegations as true if they are merely "threadbare recitals of a cause of action's elements, supported by mere conclusory statements." *Iqbal*, 129 S. Ct. at 1949. In sum, "a district court weighing a motion to dismiss asks 'not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.'" *Twombly*, 550 U.S. at n. 8 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds, Davis v. Scherer*, 468 U.S. 183 (1984)).

In deciding a motion to dismiss, the Court must accept a complaint's well-pled allegations as true. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Such allegations must be construed in the light most favorable to the Plaintiff. *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1288 (11th Cir.2010). "In analyzing the sufficiency of the complaint, [the Court] limit[s] [its] consideration to the well-pleaded factual allegations, documents central to or referenced in the complaint, and matters judicially noticed." *La Grasta v. First Union Sec., Inc.*, 358 F.3d 840, 845 (11th Cir. 2004).

III. Discussion

Plaintiff alleges that Rushmore is liable under § 1681n or §1681o for willfully or negligently violating § 1681s-2(b) of the FCRA. Sections 1681n and 1681o provide for private rights of action against those who willfully or negligently fail to comply with the FCRA's requirements. To state a § 1681s-2(b) claim against a "furnisher" of information to CRA's –such

as Defendant Rushmore – the plaintiff must establish that: (1) she notified a CRA of a dispute related to his credit information; (2) the CRA then notified the furnisher of the information about the dispute; and (3) the furnisher failed to fulfill the obligations enumerated in § 1681s–2(b)(1). *See, e.g., Mohamed v. Select Portfolio Servicing, Inc.*, 215 F. Supp. 3d 85, 93 (D.D.C. 2016). The enumerated obligations require a furnisher receiving such a notice from a CRA to review all relevant information provided by the CRA and conduct an investigation with respect to the disputed information. *See* § 1681s-2(b)(1)(A), (B). If the furnisher determines that it provided incomplete or inaccurate information to the CRA, it must report the results of its investigation to all CRA's to whom it had provided such information and promptly modify, delete, or block that item of information. *See* § 1681s-2(b)(1)(D).

Plaintiff argues that Rushmore violated *See* § 1681s-2(b) of the FCRA because its report to the CRA's that Rushmore's report to various CRA's that Plaintiff's mortgage loan was 120 days or more delinquent from January-May of 2017 was inaccurate or misleading and, despite Rushmore receiving notice from the CRA's of Plaintiff's dispute of this information, Rushmore failed to investigate and correct that reported information.

For six consecutive months beginning in January 2017 through May 2017, Defendant reported to various CRA's that Plaintiff's mortgage loan was 120 days or more delinquent. *See* [DE 6-2]. The CRA reports also state that foreclosure proceedings were initiated with regard to Plaintiff's mortgage loan. *See id.* Plaintiff does not dispute that she failed to make mortgage payments since at least February of 2016. Plaintiff cannot genuinely dispute the accuracy of the reported information. Rather, she contends that Rushmore's reported information was somehow incomplete because the state court mortgage foreclosure action accelerated the mortgage so that Plaintiff no longer had the ability and/or obligation to make monthly payments on her mortgage.

Reported information can be technically accurate but incomplete in certain circumstances whereby an omission creates a misleading impression. *Bauer v. Target Corp.*, No. 8:12-CV-978-T-AEP, 2012 WL 4054296, at *3 (M.D. Fla. Sept. 14, 2012) (citing *Saunders v. Branch Banking & Trust Co.*, 526 F.3d 142, 148 (4th Cir. 2008). *See also Chiang v. Verizon New England Inc.*, 595 F.3d 26, 36–37 (1st Cir. 2010) ("Mere incompleteness, however, is not enough; the incompleteness must be such as to make the furnished information misleading in a material sense."). Here, the reported information regarding Plaintiff's mortgage loan account – that it was 120 days or more delinquent and that foreclosure proceedings were initiated – was both accurate and complete. The Court finds no merit in Plaintiff's contention that the reported information was rendered incomplete by create a misleading impression because the mortgage foreclosure action accelerated the mortgage.

Alternatively, Plaintiff has alleged at best a legal defense to the debt, not a factual inaccuracy in Rushmore's reporting. This is an insufficient basis for her asserted FCRA claims against a furnisher under § 1681s-2(b).[1] *See, e.g. Bauer v. Target Corp.*, No. 8:12-CV-00978-AEP, 2013 WL 12155951, at *13 (M.D. Fla. June 19, 2013) ("a furnisher's duty to investigate extends to *factual* inaccuracies, not legal disputes") (citation omitted); *Chiang*, 595 F.3d at 38 (holding that, to prevail in a suit against a furnisher, plaintiff has the burden to prove a "factual inaccuracy, rather than the existence of disputed legal questions" to prove liability under § 1681s–2(b) for a failure to report an inaccuracy).

Further, as the reported information was not inaccurate or incomplete, Rushmore had no further duty to investigate. Stated another way, where the reported information was accurate and

[1] Moreover, while the Court not need reach the merits of Plaintiff's legal assertion that she no longer had the ability and/or obligation to make monthly mortgage payments following the initiation of the foreclosure lawsuit, Plaintiff appears to misapprehend the terms of the mortgage. *See* [DE 6-6] Mortgage at ¶ 19 ("Borrower's Right to Reinstate After Acceleration"); *Deutsche Bank Tr. Co. Americas v. Beauvais*, 188 So. 3d 938, 947 (Fla. 3rd DCA 2016) ("This provision, while addressing only a borrower's right to cure, confirms that after acceleration, the borrower is not obligated to pay the entire accelerated balance due to cure but, until a final judgment is entered, need only bring the loan current to avoid foreclosure. Stated another way, despite acceleration of the balance due and the filing of an action to foreclose, the installment nature of a loan secured by such a mortgage continues until a final judgment of foreclosure is entered and no action is necessary to reinstate it via a notice of "deceleration" or otherwise.").

complete, Plaintiff cannot plausibly allege damages based on the furnisher's alleged failure to conduct a reasonable investigation or reinvestigation. *See Hinkle v. Midland Credit Mgmt., Inc.*, 827 F.3d 1295, 1302 (11th Cir. 2016) ("Section 1681s–2(b) contemplates three potential ending points to reinvestigation: *verification of accuracy*, a determination of inaccuracy or incompleteness, or a determination that the information 'cannot be verified.'") (emphasis added); *Bauer*, 2013 WL 12155951, at *9 ("Target's investigation, which verified Bauer's information, was reasonable simply because the reported balance of the debt was accurate."). Therefore, the FCRA claims shall be dismissed.[2]

IV. Conclusion

Based upon the foregoing, it is **ORDERED AND ADJUDGED** as follows**:**

1. Defendant's Motion to Dismiss [DE 11] is **GRANTED**;
2. The above-styled action is **DISMISSED WITH PREJUDICE**;
3. The Clerk is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers in Fort Lauderdale, Broward County, Florida this 11th day of December, 2017.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Counsel of Record

[2] Since amendment would be futile, the dismissal is with prejudice. Under Rule 15, leave to amend should be freely given "when justice so requires." Fed. R. Civ. P. 15(a)(2). The Court need not grant leave to amend, however, where such amendment would be futile. *Patel v. Georgia Dep't BHDD*, 485 F. App'x 982, 982 (11th Cir. 2012).