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1. [Ballard v. Pac. Logistics Corp., 2019 U.S. Dist. LEXIS 62121](#)

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## [Ballard v. Pac. Logistics Corp.](#)

United States District Court for the Central District of California

February 25, 2019, Decided; February 25, 2019, Filed

CV 18-10320 DSF (JCx)

### Reporter

2019 U.S. Dist. LEXIS 62121 \*

DWAYNE BALLARD, on behalf of himself and others similarly situated, Plaintiff, v. PACIFIC LOGISTICS CORP., etc., et al., Defendants.

### Core Terms

allegations, cause of action, disclosure, argues, defense motion, consumer, pleaded, damages, willful, fails, adverse action, Reporting, online

**Counsel:** [\*1] For Dwayne Ballard, on behalf of himself and others similarly situated, Plaintiff: Anthony J Orshansky, LEAD ATTORNEY, Alexandria R Kachadoorian, Justin K Kachadoorian, Counselone PC, Beverly Hills, CA USA.

For Pacific Logistics Corp., an Arizona Corporation, Defendant: Clint D Robison, LEAD ATTORNEY, O'Hagan Meyer - Woodland Hills, Woodland Hills, CA USA; Samantha Leigh Barron, O'Hagan Meyer LLP, Woodland Hills, Ca; Woodland Hills, Ca, O'Hagan Meyer, Woodland Hills, CA USA.

**Judges:** Dale S. Fischer, United States District Judge.

**Opinion by:** Dale S. Fischer

### Opinion

Order GRANTING in PART and DENYING in PART Defendant's Motion to Dismiss Plaintiff's Complaint (Dkt. 10)

Defendant Pacific Logistics Corp. moves to dismiss Plaintiff Dwayne Ballard's Complaint in its entirety. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. The motion is GRANTED in PART and DENIED in PART.

### I. FACTUAL ALLEGATIONS

On around October 2017, Plaintiff applied for a job with Defendant. Compl. ¶ 15. In connection with Plaintiff's employment application, Defendant conducted a background check. Id. Plaintiff does not recall seeing or signing any disclosure or authorization for a background check. Id. ¶ 20. Plaintiff [\*2] was subsequently advised by Defendant that as a result of a background report procured or caused to be prepared by Defendant, Plaintiff would not be hired by Defendant. Id. ¶ 15. Plaintiff did not receive a copy of the background report before Defendant informed Plaintiff that he would not be hired. Id. ¶ 26.

### II. LEGAL STANDARD

Rule 12(b)(6) allows an attack on the pleadings for failure to state a claim on which relief can be granted. "[W]hen ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint." Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (per curiam). However, a court is "not bound to accept as true a legal conclusion couched as a factual allegation." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Id. (quoting Twombly, 550 U.S. at 557) (alteration in original) (citation omitted). A complaint must "state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. This means that the complaint must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. There must be "sufficient allegations of underlying facts to give fair notice and to enable [\*3] the opposing party to defend itself effectively . . . and factual allegations that are taken as true must plausibly

suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." [Starr v. Baca, 652 F.3d 1202, 1216 \(9th Cir. 2011\)](#).

Ruling on a motion to dismiss will be "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—that the pleader is entitled to relief." [Iqbal, 556 U.S. at 679](#) (alteration in original) (citation omitted) (quoting [Fed. R. Civ. P. 8\(a\)\(2\)](#)).

### III. DISCUSSION

Defendant moves to dismiss all six of Plaintiff's Causes of Action under [Rule 12\(b\)\(6\)](#).

#### **A. Plaintiff's First Cause of Action — Violation of FCRA § 1681b(b)(2)(A)**

Plaintiff's First Cause of Action alleges a violation of [§ 1681b\(b\)\(2\)\(A\)](#) of the Fair Credit Reporting Act (FCRA) in that Defendant failed to provide him with a clear and conspicuous written disclosure before it procured a consumer report about him.

Defendant argues that Plaintiff fails to state a claim because he fails to plead facts about any document that he actually viewed or executed. But it [\*4] is not clear to the Court whether Plaintiff's claim is that Defendant procured a customer report without providing *any* written disclosure, or that Defendant did provide a disclosure, but it was insufficient under the FCRA.

Plaintiff does not affirmatively allege that he signed **no** disclosure form at all. He alleges only that he "does not recall seeing or signing any disclosure [or] authorization whatsoever." Compl. ¶ 20. This is not sufficient to state a claim that Defendant failed to provide any written disclosure.

Nor does Plaintiff specifically allege that he signed an inadequate disclosure. Plaintiff makes various allegations about a current online disclosure form, taken from Defendant's online job application, that he alleges is inadequate. *Id.* ¶¶ 21-24.<sup>1</sup> But Plaintiff does not plead

that he applied for a job online and would therefore have had to complete an online job application (and sign the disclosure provided in such application). Further, Plaintiff does not allege that the publicly available form is identical to or similar to the disclosure form he completed with his job application.

Whether Plaintiff's claim is that Defendant failed to provide any disclosure, or that the disclosure [\*5] Defendant did provide was insufficient, Plaintiff fails to state a plausible claim for relief under [§ 1681b\(b\)\(2\)\(A\)](#). Defendant's motion to dismiss Plaintiff's First Cause of Action is GRANTED, with leave to amend.

#### **B. Plaintiff's Second Cause of Action — Violation of FCRA § 1681b(b)(3)(A)**

Plaintiff's Second Cause of Action alleges Defendant took adverse action against him based in whole or in part on a consumer report, without providing a copy of the report and a description of Plaintiff's rights.

Defendant first argues Plaintiff fails to plead sufficient facts to establish that Defendant took an adverse action against him in violation of the FCRA. The FCRA defines "adverse action" as "a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee." [15 U.S.C. § 1681a\(k\)\(1\)\(B\)\(ii\)](#). Defendant cites a district court case holding that an adverse action must be a final—rather than a preliminary—employment decision. Mot. at 15 (citing [Magallon v. Robert Half Int'l, Inc., 311 F.R.D. 625, 633 \(D. Or. 2015\)](#)).

Here, Plaintiff pleads that he was "advised by Defendant that as a result of a background report . . . procured or caused to be prepared by Defendant, Plaintiff would not be hired by Defendant." Compl. ¶ 15. Plaintiff also pleads that in October 2017 Defendant declined to hire [\*6] him due to information contained in his background report. *Id.* ¶ 25. Plaintiff has sufficiently alleged Defendant took a final adverse action against him.

Defendant next argues Plaintiff's complaint fails to plead facts establishing a willful violation of the FCRA. Plaintiff seeks statutory and punitive **damages** under [15 U.S.C. § 1681n\(a\)](#), which imposes liability only for willful statutory noncompliance. A person may "willfully" violate

<sup>1</sup> The Court takes **no** position on whether Plaintiff states a

claim that the current online disclosure form violates the FCRA.

the FCRA by either knowingly or recklessly disregarding a statutory duty. See [Safeco Ins. Co. of Am. v. Burr](#), 551 U.S. 47, 56-58, 127 S. Ct. 2201, 167 L. Ed. 2d 1045 (2007).

Willfulness need not be pleaded with particularity. See [Fed. R. Civ. P. 9\(b\)](#). The Complaint alleges Defendant knew or had reason to know that its conduct violated the FCRA as evidenced by statements in its current application materials that specifically referenced the FCRA, and its communications or consultations with one or more consumer reporting agencies, among other allegations. Compl. ¶ 28. Plaintiff's allegations sufficiently state a plausible claim that Defendant's conduct was willful. See also [Feist v. Petco Animal Supplies, Inc.](#), 218 F. Supp. 3d 1112, 1115 (S.D. Cal. 2016) ("Whether Defendant's conduct was actually willful is a question better left to a motion for summary judgment, where the record will be more fully developed.").

Defendant's motion to dismiss Plaintiff's Second Cause [\*7] of Action is DENIED.

### **C. Plaintiff's Third Cause of Action — Violation of FCRA § 1681b(f)**

Plaintiff's Third Cause of Action alleges Defendant failed to provide proper certifications to the consumer reporting agency regarding its use of consumer reports, and because it used Plaintiff's consumer report for an improper purpose in violation of California law. Compl. ¶ 59.

Defendant argues that, as with Plaintiff's Second Cause of Action, Plaintiff's Complaint fails to plead facts establishing a willful violation of the FCRA. As explained above, Plaintiff's allegations sufficiently state a plausible claim that Defendant's conduct was willful.

Defendant's motion to dismiss Plaintiff's Third Cause of Action is DENIED.

### **D. Plaintiff's Fourth and Fifth Causes of Action — Violations of ICRAA**

Plaintiff's Fourth and Fifth Causes of Action allege Defendant violated the California Investigative Consumer Reporting Agencies Act (ICRAA).

Defendant first argues that the ICRAA and FCRA claims for extraneous information overlap, and Plaintiff cannot

concurrently seek relief under both statutes for the same alleged omission. Mot. at 21 (citing [Cal. Civ. Code § 1786.52](#)). [Cisneros v. U.D. Registry, Inc.](#), 39 Cal. App. 4th 548, 581, 46 Cal. Rptr. 2d 233 (1995), provides -- in the context of the FCRA and the Consumer Credit Reporting Agencies Act (CCRAA) [\*8]<sup>2</sup> -- that the election of remedies requirement applies only when there is a "prior action pending under federal law, and someone brings a later action under state law." Following [Cisneros](#),<sup>3</sup> the Court finds [§ 1786.52](#) does not bar a plaintiff from simultaneously bringing claims under both the ICRAA and the FCRA.

Defendant next argues that Plaintiff has failed to plead facts sufficient to support his claim for **actual damages** under the ICRAA. However, Plaintiff is entitled to \$10,000 in statutory **damages** per violation if he prevails. See [Cal. Civ. Code § 1786.50\(a\)\(1\)](#).<sup>4</sup> Plaintiff has sufficiently pleaded **damages** to recover as an individual.

Finally, Defendant argues that, as with Plaintiff's FCRA claims, Plaintiff's complaint fails to plead facts establishing a willful violation of the ICRAA. For the same reasons outlined above in the Court's discussion of Plaintiff's FCRA claims, Plaintiff's factual pleading regarding willfulness is sufficient.

Defendant's motion to dismiss Plaintiff's Fourth and Fifth Cause of Action is DENIED.

<sup>2</sup>The CCRAA and the ICRAA contain identical election of remedies provisions. Compare [Cal. Civ. Code § 1785.34](#) (CCRAA) with [Cal. Civ. Code § 1786.52](#) (ICRAA). The Court therefore concludes that [Cisneros](#) applies to the election of remedies provision under the ICRAA.

<sup>3</sup>The Court must defer to the decisions of the California Court of Appeal absent convincing evidence the California Supreme Court would decide the matter differently. See [Carvalho v. Equifax Info. Servs., LLC](#), 629 F.3d 876, 889 (9th Cir. 2010).

<sup>4</sup>This statutory remedy is not available for class actions. See [Cal. Civ. Code § 1786.50\(a\)\(1\)](#). Plaintiff argues he has adequately pleaded **actual damages** in the form of lost income and by the invasion of his privacy. See Dkt. 12 (Opp'n), at 21 (citing Compl. ¶¶ 10, 15, 25, 45, 54, 70, 80, 84, 91). These paragraphs don't quite say what Plaintiff claims, nor are the injuries he cites in his Opposition all alleged in the Complaint. Nevertheless, the Court finds Plaintiff has sufficiently (though barely) pleaded that he suffered **actual damages** due to Defendant's purported violation of the ICRAA.

United States District Judge

**E. Plaintiff's Sixth Cause of Action — Violation of the UCL**

End of Document

Plaintiff's Sixth Cause of Action alleges Defendant violated California's Unfair Competition Law (UCL), Cal. Bus. Code [\*9] [§ 17200, et seq.](#)

Defendant argues Plaintiff's UCL claim fails because it is entirely contingent on Plaintiff's other claims. Because other causes of action remain, dismissal on this ground is not warranted.

Defendant next argues that Plaintiff has failed to properly allege a claim for monetary relief under the UCL, because such relief is limited to restitution. See [Korea Supply Co. v. Lockheed Martin Corp.](#), 29 Cal. 4th 1134, 1149, 131 Cal. Rptr. 2d 29, 63 P.3d 937 (2003) (holding that to show entitlement to restitution a plaintiff must allege a vested interest in the money he seeks to recover.). Because Plaintiff's allegations are based on the denial of employment, rather than a vested financial interest, he has failed to allege a vested interest.

But Plaintiff may seek injunctive relief under the UCL regardless of whether he can seek restitution. See [Clayworth v. Pfizer, Inc.](#), 49 Cal. 4th 758, 790, 111 Cal. Rptr. 3d 666, 233 P.3d 1066 (2010) ("[T]he right to seek injunctive relief under [the UCL] is not dependent on the right to seek restitution; the two are wholly independent remedies.").

Defendant's motion to dismiss Plaintiff's Sixth Cause of Action is DENIED.

**IV. CONCLUSION**

Defendant's motion to dismiss is GRANTED in PART and DENIED in PART. Leave to amend is GRANTED. An amended complaint may be filed and served **no** later than March 18, 2019. Failure to file by that date will waive the right to [\*10] do so. The Court does not grant leave to add new defendants or new claims. Leave to add new defendants or new claims must be sought by a separate, properly noticed motion.

IT IS SO ORDERED.

Date: February 25, 2019

/s/ Dale S. Fischer

Dale S. Fischer

