UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

VENISHA BECKFORD,

Plaintiff,

v. Case No: 8:20-cv-2718-30SPF

CLARITY SERVICES, INC.,

Defendant.

ORDER

THIS CAUSE comes before this Court upon Defendant's Motion to Dismiss (Dkt. 49) and Plaintiff's Response in Opposition (Dkt. 54). The Court, having reviewed the motion, response, and being otherwise advised in the premises, concludes that the motion should be granted because Plaintiff's First Amended Complaint alleges facts that affirmatively demonstrate that Defendant did not violate the Fair Credit Reporting Act. Accordingly, this action will be dismissed with prejudice because any further amendment would be futile.

BACKGROUND

On November 18, 2020, Plaintiff Venisha Beckford filed her initial Complaint, alleging violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681, et seq., the Florida Consumer Collection Practices Act, Section 559.55, Florida Statutes, et seq., and Florida's Civil Remedies for Criminal Practices Act, Section 772.101, Florida Statutes, et seq. against Defendants Niibin, LLC ("Niibin"), LDF Holdings, LLC ("LDF Holdings"),

Jessi Lee Phillips Lorenzo ("Lorenzo"), Infinity Enterprise Lending Systems ("Infinity"), Christopher James Leyva ("Leyva"), Dean Financial Group, LLC ("Dean Financial"), Preferred Call Services, LLC ("Preferred Call Services"), James M. Bartlett ("Bartlett"), and Clarity Services, Inc. ("Clarity"). Subsequently, Beckford settled her claims against all Defendants except Clarity.

On April 5, 2021, Clarity filed a Motion to Dismiss Plaintiff's Complaint. Pursuant to Fed. R. Civ. P. 15(a)(1)(B), Beckford filed her First Amended Complaint on May 14, 2021, alleging violations of the FCRA against Clarity. (Dkt. 48). This case is at issue upon Clarity's Motion to Dismiss the First Amended Complaint. (Dkt. 49).

The First Amended Complaint alleges that Clarity, a consumer credit reporting agency, violated 15 U.S.C. § 1681b(a) when it provided a credit report regarding Beckford to Niibin, LLC, doing business as Cash Aisle, "when it had no reason to believe that Niibin had any legitimate permissible purpose to obtain credit reports – it knew or should have known that any certification regarding purpose and use was suspect based on its inability to verify basic information concerning Niibin." (Dkt. 48 at ¶176). Beckford further alleges that Clarity violated 15 U.S.C. § 1681e(a) "when it failed to make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report by accepting, without challenge or independent verification, the identity of 'Niibin LLC d/b/a Cash Aisle.'" *Id.* at ¶177.

The First Amended Complaint and Beckford's Response in Opposition to Clarity's Motion to Dismiss describe in great detail Niibin's unsavory business dealings. For example, Beckford contends that Niibin is an online loan shark, issuing payday loans through cashaisle.com and collecting interest on these loans at rates ranging from 589% to 829% per annum. Cash Aisle lends to consumers in 43 states across the U.S., including Florida, where the issuance of a loan with an annual interest rate greater than 45% is a third-degree felony. Fla. Stat. § 687.071(3). However, Niibin LLC claims to be an arm of the Lac du Flambeau Band of Lake Superior Chippewa Indians (the "LDF Tribe") and, relying on the LDF Tribe's sovereign immunity, contends that it is immune from prosecution under state usury laws. Beckford alleges that she has a good faith belief that Cash Aisle is actually operated by third-party, non-tribal investors who hire the LDF Tribe to serve as a straw owner so that they may claim the Tribe's sovereign immunity.

The crux of the FCRA claims against Clarity is that Clarity failed to verify that Cash Aisle is a legitimate business. Beckford contends that, regarding Cash Aisle, Clarity's records reflected an address at 572 Peace Pipe Road, Lac du Flambeau, WI 54538, which is a small residential apartment and not the home base of a large lending enterprise. Clarity did not have a phone number for Cash Aisle. Based on these two facts, Beckford contends that Clarity is aiding and abetting the proliferation of illegal payday lenders.

Clarity moves to dismiss the First Amended Complaint with prejudice. Clarity argues that Beckford's allegations belie any actionable claim under the FCRA because Beckford expressly pleads that (1) she received a loan from Cash Aisle and (2) Clarity

obtained the requisite certifications from Cash Aisle that a consumer report was sought to assess Beckford's credit-worthiness in connection with that credit transaction. As discussed further below, the Court agrees with Clarity that Beckford cannot state an actionable claim under the FCRA under the alleged facts. The Court also agrees with Clarity that any further amendment would be futile under these circumstances.

MOTION TO DISMISS STANDARD

Federal Rule of Civil Procedure 12(b)(6) allows a complaint to be dismissed for failure to state a claim on which relief can be granted. When reviewing a motion to dismiss, courts must limit their consideration to the well-pleaded allegations, documents central to or referred to in the complaint, and matters judicially noticed. *See La Grasta v. First Union Securities, Inc.*, 358 F.3d 840, 845 (11th Cir. 2004) (internal citations omitted); *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005). Courts must accept all factual allegations as true and view the facts in a light most favorable to the plaintiff. *See Erickson v. Pardus*, 551 U.S. 89, 93–94, 127 S. Ct. 2197, 2200, 167 L. Ed. 2d 1081 (2007).

Legal conclusions, however, "are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). In fact, "conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal." *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003). To survive a motion to dismiss, a complaint must instead contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (internal quotation marks and citations omitted). This plausibility standard is met when the plaintiff pleads enough factual

content to allow the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (internal citations omitted).

DISCUSSION

Under the FCRA, a consumer reporting agency must have a "permissible purpose" to furnish a consumer report. 15 U.S.C. § 1681b. To satisfy this requirement, a consumer reporting agency need only have a "reason to believe" that the person requesting the report has a permissible purpose for doing so. *See, e.g., Harris v. Database Mgmt. & Mktg., Inc.*, 609 F. Supp. 2d 509, 514–15 (D. Md. 2009). The first and most well-recognized express permissible purpose under the FCRA is where the person requesting the report "intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished . . . ." 15 U.S.C. § 1681b(a)(3)(A) (emphasis added). As Clarity argues in its Motion, that is exactly what happened here.

Specifically, the First Amended Complaint's allegations reflect that Clarity furnished a consumer report to Cash Aisle, an online payday lender, in connection with Beckford's application for a loan with Cash Aisle. Based upon that report, Cash Aisle extended Beckford a loan—which she accepted. Yet, in her Response, Beckford argues: "Despite the fact that [she] obtained a payday loan from Cash Aisle, Clarity had a duty to prevent companies, like Cash Aisle, from obtaining [her] consumer report." (Dkt. 54). The FCRA does not impose such a duty. As this Court previously noted, *see Padgett v. Clarity Services, Inc.*, No. 18-cv-1918, 2018 WL 6628274, at *1 (M.D. Fla. Dec. 13, 2018),

"the weight of authority holds that a CRA is not a tribunal charged with determining the underlying debt's legal validity."

Here, it is undisputed based on the allegations of the First Amended Complaint that Beckford applied for and received credit from Cash Aisle. This is plainly a permissible purpose under the FCRA. *See Aleksic v. Clarity Servs., Inc.*, No. 13-cv-07802, 2015 WL 4139711, at *11 (N.D. Ill. July 8, 2015) (explaining that plaintiff's "assault on the integrity of the 'payday lending' industry generally [was] irrelevant," and ruling that "providing consumer credit reports in connection with a loan application is unquestionably a permissible purpose, and nothing in the FCRA carves out an exception for short-term, high-interest, or online loans"). Accordingly, because Beckford alleges facts that affirmatively demonstrate that Clarity did not violate § 1681b, her claim should be dismissed with prejudice.

Beckford's § 1681e(a) claim is also subject to dismissal with prejudice because it is well established that "a plaintiff bringing a claim that a reporting agency violated the reasonable procedures requirement of § 1681e must first show that the reporting agency released the report in violation of § 1681b." *Washington v. CSC Credit Servs. Inc.*, 199 F.3d 263, 267 (5th Cir. 2000). In other words, because Beckford's own allegations defeat her § 1681b claim, her claim under § 1681e(a) must also be dismissed. *See id.*; *see also Levine v. World Fin. Network Nat. Bank*, 554 F.3d 1314, 1319 (11th Cir. 2009) ("[W]e need not evaluate the procedures Experian maintained . . . [b]ecause . . . no investigation or procedure would have alerted Experian to the possibility of an impermissible use.");

Kunza v. Clarity Servs., Inc., No. CV 17-1165 (RHK/LIB), 2017 WL 4685060, at *2 (D. Minn. Oct. 16, 2017) ("For these reasons, Kunza's claim under 15 U.S.C. § 1681b fails. As a result, her claim under § 1681e(a), which mandates that consumer-reporting agencies maintain reasonable procedures to ensure reports are furnished only for permissible purposes, also fails."); *Perrill v. Equifax Info. Servs., LLC*, 205 F. Supp. 3d 869, 878 (W.D. Tex. 2016) ("[B]ecause Plaintiffs did not show Equifax willfully violated § 1681b(a)(3)(A), they have also failed to plead a willful violation of § 1681e(a).").

Finally, the Court concludes that further amendment would be futile. In this Circuit, denying leave to amend is "justified by futility when the complaint as amended is still subject to dismissal." *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1263 (11th Cir. 2004) (citation omitted). Notably, Beckford did not request further amendment, but, even if she had made such a request, the First Amended Complaint's allegations reflect that Beckford cannot add anything additional to plausibly allege any of her claims. The § 1681b(a) claim fails because Beckford concedes that Clarity furnished her consumer report to Cash Aisle as part of a credit transaction that she initiated and that resulted in her obtaining a loan from Cash Aisle. Because the allegations of the First Amended Complaint defeat Beckford's § 1681b(a) claim, her § 1681e(a) claim also fails. *See Padgett*, 2018 WL 6628274, at *4 (dismissing with prejudice and without leave to amend FCRA claims that collaterally attacked the validity of the underlying debt).

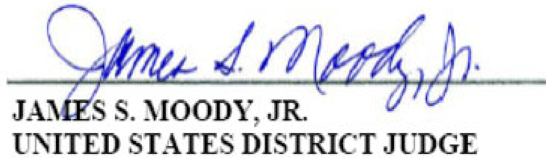
Accordingly, it is ORDERED AND ADJUDGED that:

1. Defendant's Motion to Dismiss (Dkt. 49) is granted.

2. The First Amended Complaint (Dkt. 48) is dismissed with prejudice.

3. The Clerk of Court is directed to close this case and terminate any pending motions as moot.

DONE and **ORDERED** in Tampa, Florida, this July 13, 2021.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record