

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

HANIT OHAION, )  
 )  
 Plaintiff, )  
 vs. )  
 BANK OF AMERICA, N.A., )  
 )  
 Defendant. )

Case No.: 2:21-cv-02198-GMN-BNW

ORDER

Pending before the Court is the Motion to Dismiss, (ECF No. 18), filed by Defendant Bank of America, N.A. (“Defendant”). Plaintiff Hanit Ohaion (“Plaintiff”) filed a Response, (ECF No. 19), to which Defendant filed a Reply, (ECF No. 22). For the reasons discussed below, Defendant’s Motion to Dismiss is **GRANTED**.

**I. BACKGROUND**

This action arises from a dispute regarding the accuracy of information reported on Plaintiff’s credit report. (See generally Compl., ECF No. 1). Specifically, Plaintiff alleges that Defendant furnished inaccurate information to a consumer reporting agency<sup>1</sup> when Defendant reflected the current payment status of Plaintiff’s credit account with Defendant as “charged off”<sup>2</sup> even though Plaintiff paid and closed this account and no longer had any obligation to pay Defendant. (Id. ¶¶ 12–14). Plaintiff further alleges that she disputed the information on her consumer report, but Defendant failed to reasonably investigate her dispute. (Id. ¶¶ 19–22).

Based on these allegations, Plaintiff brought two causes of action against Defendant under the

<sup>1</sup> The consumer reporting agency is Equifax Information Services, LLC. (Compl. ¶ 6). Plaintiff originally named Equifax as a Defendant in this action as well, but Plaintiff dismissed her claims against Equifax. (See Order Granting Stipulation, ECF No. 27).

<sup>2</sup> “Charge off” is a term of art for credit providers, understood as writing off a debt as a loss because payment is unlikely.” *Makela v. Experian Info. Solutions, Inc.*, No. 6:21-cv-00386-MC, 2021 WL 5149699, at \*3 (D. Or. Nov. 4, 2021) (citing *Charge Off*, Black’s Law Dictionary (11th ed. 2019)).

1 Fair Credit Reporting Act (“FCRA”): one for willful violation of the FCRA and one for  
2 negligent violation of the FCRA. (*Id.* ¶¶ 42–62). Defendant now seeks to dismiss Plaintiff’s  
3 Complaint. (*See generally* Mot. Dismiss, ECF No. 18).

## 4 **II. LEGAL STANDARD**

5 Dismissal is appropriate under Rule 12(b)(6) where a pleader fails to state a claim upon  
6 which relief can be granted. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
7 555 (2007). A pleading must give fair notice of a legally cognizable claim and the grounds on  
8 which it rests, and although a court must take all factual allegations as true, legal conclusions  
9 couched as factual allegations are insufficient. *Twombly*, 550 U.S. at 555. Accordingly, Rule  
10 12(b)(6) requires “more than labels and conclusions, and a formulaic recitation of the elements  
11 of a cause of action will not do.” *Id.* “To survive a motion to dismiss, a complaint must contain  
12 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its  
13 face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A  
14 claim has facial plausibility when the plaintiff pleads factual content that allows the court to  
15 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* This  
16 standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

17 “Generally, a district court may not consider any material beyond the pleadings in ruling  
18 on a Rule 12(b)(6) motion.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542,  
19 1555 n.19 (9th Cir. 1990). “However, material which is properly submitted as part of the  
20 complaint may be considered.” *Id.* Similarly, “documents whose contents are alleged in a  
21 complaint and whose authenticity no party questions, but which are not physically attached to  
22 the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss.” *Branch v.*  
23 *Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994) (overruled on other grounds by *Galbraith v. Cty. of*  
24 *Santa Clara*, 307 F.3d 1119 (9th Cir. 2002)). On a motion to dismiss, a court may also take  
25 judicial notice of “matters of public record.” *Mack v. S. Bay Beer Distribs.*, 798 F.2d 1279,

1 1282 (9th Cir. 1986). Otherwise, if a court considers materials outside of the pleadings, the  
2 motion to dismiss is converted into a motion for summary judgment. Fed. R. Civ. P. 12(d).

3 If the court grants a motion to dismiss for failure to state a claim, leave to amend should  
4 be granted unless it is clear that the deficiencies of the complaint cannot be cured by  
5 amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Pursuant  
6 to Rule 15(a), the court should “freely” give leave to amend “when justice so requires,” and in  
7 the absence of a reason such as “undue delay, bad faith or dilatory motive on the part of the  
8 movant, repeated failure to cure deficiencies by amendments previously allowed, undue  
9 prejudice to the opposing party by virtue of allowance of the amendment, futility of the  
10 amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

### 11 **III. DISCUSSION**

12 In the instant Motion, Defendant argues that dismissal is proper because Plaintiff lacks  
13 Article III standing. (Mot. Dismiss 8:1–9:24, ECF No. 18). Additionally, Defendant avers that  
14 Plaintiff’s claims fail as a matter of law because Defendant’s reporting was accurate. (*Id.* 4:13–  
15 7:23). Conversely, Plaintiff asserts that she alleged an injury-in-fact sufficient for Article III  
16 standing and alleged cognizable FCRA claims. (*See generally* Resp., ECF No. 19). The Court  
17 will evaluate each argument in turn.

#### 18 **A. Article III Standing**

19 “The irreducible constitutional minimum of standing” is comprised of three elements:  
20 (1) The plaintiff must have suffered an “injury-in-fact,” which is a “concrete and  
21 particularized” invasion of a legally protected interest; (2) there must be a “causal connection”  
22 between the plaintiff’s injury and the defendant’s action; and (3) it must be “likely” that the  
23 plaintiff’s injury will be “redressed by a favorable decision.” *Lujan v. Defs. of Wildlife*, 504  
24 U.S. 555, 560–61 (1992) (citation omitted). “The party invoking federal jurisdiction bears the  
25 burden of establishing these elements.” *Id.* at 561.

1 The Supreme Court evaluated the “injury-in-fact” requirement pursuant to an alleged  
2 violation of the FCRA in *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016). In *Spokeo*, the plaintiff  
3 alleged that the defendant inaccurately reported certain information about the plaintiff. 578 U.S.  
4 at 333. The Supreme Court determined that a violation of the FCRA alone is insufficient to  
5 establish an injury-in-fact. *Id.* at 342. A plaintiff alleging an FCRA violation must demonstrate  
6 that the violation caused harm or presented a material risk of harm. *Id.* The Supreme Court  
7 illustrated this rule with two examples of FCRA violations that may not give rise to Article III  
8 standing: (1) a mere violation of the FCRA’s procedural requirements, such as if a consumer  
9 reporting agency fails to provide the required notice to a user of the agency’s consumer  
10 information but the information is entirely accurate; and (2) a violation of the FCRA’s mandate  
11 to not report inaccuracies when the alleged inaccuracies do not cause harm or present any  
12 material risk of harm, such as the inaccurate reporting of a plaintiff’s zip code. *Id.*

13 The Court ultimately remanded the case to the Ninth Circuit without deciding whether  
14 the alleged infractions were sufficiently concrete. *Id.* On remand, the Ninth Circuit determined  
15 that the plaintiff sufficiently alleged a concrete injury by asserting that the defendant “caused  
16 actual harm to [his] employment prospects by misrepresenting facts that would be relevant to  
17 employers, and that he suffers from anxiety, stress, concern, and/or worry about his diminished  
18 employment prospects as a result” of the defendant’s inaccurate reporting. *Robins v. Spokeo, Inc.*,  
19 867 F.3d 1108, 1117 (9th Cir. 2017) (internal quotations omitted).

20 Here, Plaintiff alleges that Defendant inaccurately reported the payment status of her  
21 account as “charged off.” (Compl. ¶ 12). As a result of the alleged inaccurate reporting,  
22 Plaintiff claims that she “suffered concrete harm in the form of loss of credit, loss of ability to  
23 purchase and benefit from credit, a chilling effect on applications for future credit, and the  
24 mental and emotional pain, anguish, humiliation and embarrassment of credit denial.” (*Id.*  
25 ¶ 27). Based on these allegations, inaccurately reporting an account as “charged off” is

1 “substantially more likely” to cause concrete injury than the incorrect zip code example  
2 provided by the Supreme Court. *See Robins*, 867 F. 3d at 1117. Further, the Court finds that  
3 Plaintiff sufficiently alleges an injury that affects Plaintiff in a “personal and individual way.”  
4 *See Spokeo*, 578 U.S. at 339. Therefore, Plaintiff has met her burden of establishing an injury-  
5 in-fact that is concrete and particularized based on the harm alleged. *See Harris v. Nissan-*  
6 *Infiniti LT*, No. 2:17-cv-191-JCM-VCF, 2018 WL 387397, at \*4 (D. Nev. Jan. 11, 2018)  
7 (holding that plaintiff who allegedly suffered credit denials, fear of credit denials, out of pocket  
8 expenses and emotional distress plead concrete injury sufficient to satisfy Article III’s injury-  
9 in-fact requirement). Having found that Plaintiff has Article III standing, the Court next  
10 evaluates the facial plausibility of Plaintiff’s claims under the FCRA.

## 11 **B. FCRA Claims**

12 Congress adopted the FCRA to ensure that information furnishers and credit reporting  
13 agencies “exercise their grave responsibilities” through adopting “reasonable procedures” that  
14 ensure that a consumer’s report is accurate. *See* 15 U.S.C. § 1681. To sustain a valid FCRA  
15 claim against a furnisher, the plaintiff must allege: (1) that the furnisher provided inaccurate  
16 information to the credit reporting agency; (2) that the credit reporting agency notified the  
17 furnisher of the dispute; and (3) that the furnisher failed to conduct a reasonable investigation  
18 into the disputed information. *Harris*, 2018 WL 387397, at \*2 (citing *Gorman v. Wolpoff &*  
19 *Abramson, LLP*, 584 F.3d 1147, 1154 (9th Cir. 2009)).

20 The threshold question in a FCRA claim against a furnisher is whether the plaintiff  
21 alleged that the furnisher provided inaccurate information to the credit reporting agency. *See*  
22 *Abeyta v. Bank of Am.*, No. 2:15-cv-02320-RCJ-NJK, 2016 WL 1298109, at \*2 (D. Nev. Mar.  
23 31, 2016) (dismissing complaint when “[n]o allegation of actual falsity [had] been made”). But  
24 technically correct information may still be considered inaccurate for purposes of the FCRA:  
25 “An item on a credit report can be inaccurate ‘because it is patently incorrect, or because it is

1 [materially] misleading in such a way and to such an extent that it can be expected to adversely  
2 affect credit decisions.” *Florence v. Cenlar Fed. Savings & Loan et al.*, No. 2:16-cv-0587-  
3 GMN-NJK, 2018 WL 1145804, at \*4 (D. Nev. Mar. 1, 2018) (citing *Carvalho v. Equifax*  
4 *Information Services, LLC*, 629 F.3d 876, 890 (9th Cir. 2010)).

5 The allegedly inaccurate credit report item at issue here is a “charge off,” which is “a  
6 term of art for credit providers, understood as writing off a debt as a loss because payment is  
7 unlikely.” *Makela v. Experian Info. Solutions, Inc.*, No. 6:21-cv-00386-MC, 2021 WL  
8 5149699, at \*3 (D. Or. Nov. 4, 2021) (citing *Charge Off*, Black’s Law Dictionary (11th ed.  
9 2019)). A creditor charges off a debt when it “no longer considers the account balance an asset  
10 for accounting purposes.” *Christian v. Equifax Info. Servs., LLC*, No. 18-13682, 2020 WL  
11 2087869, at \*4 (E.D. Mich. Apr. 30, 2020). “Banks are in fact required under Federal  
12 Regulations to charge off debt that is past due by over 180 days.” *Artemov v. TransUnion, LLC*,  
13 No. 20-cv-1892 (BMC), 2020 WL 5211068, at \*3 (E.D.N.Y. Sept. 1, 2020).

14 “But charging off a debt does not diminish the legal right of the original creditor to  
15 collect the full amount of the debt.” *Butnick v. Experian Info. Sols., Inc.*, No. 20:cv-1631-PKC-  
16 RLM, 2021 WL 395808, at \*4 (E.D.N.Y. Feb. 4, 2021) (internal quotation marks omitted).  
17 “Any other conclusion would be illogical; it would simply encourage a consumer to take out  
18 massive amounts of debt and wait around six months for it to be wiped away.” *Artemov*, 2020  
19 WL 5211068, at \*4. Moreover, when “a debt which has been charged off by the creditor and is  
20 later settled for an amount less than the original balance due,” the account retains the  
21 derogatory reference of “charged off” because “[t]his information, which reflects the efforts  
22 required to collect a debt, is clearly of interest to potential creditors and would be effectively  
23 hidden by a credit report that treated the account as being in good standing.” *Cahlin v. Gen.*  
24 *Motors Acceptance Corp.*, 936 F.2d 1151, 1158 (11th Cir. 1991).

25 ///

## 1           **1. Actual Falsity**

2           Defendant argues that Plaintiff fails to state a claim because Defendant’s reporting of  
3 Plaintiff’s account as “charged off” was accurate. (Mot. Dismiss 4:13–7:23). Plaintiff responds  
4 that the “information was inaccurate because the payment status field indicates that the account  
5 is currently in a ‘charge off’ status despite the fact that it had been closed and paid to the  
6 satisfaction of the lender with a \$0 balance.” (Resp. 3:7–9). Plaintiff relies heavily on the  
7 Eleventh Circuit decision in *Cahlin* and asserts that “*Cahlin* stands for the proposition that past  
8 derogatory information should remain on the credit report, *but only with reference to the*  
9 *payment history section.*” (Resp. 7:14–15) (emphasis added).

10           In *Cahlin*, the derogatory information was an “I9” rating, which “signifies that the  
11 account has been charged off or is a bad debt.” 936 F.2d at 1155. Like the Defendant in this  
12 case, the defendants in *Cahlin* continued to report the account as charged off even after the  
13 plaintiff settled the debt for an amount less than the full balance due.<sup>3</sup> *Id.* at 1158. The  
14 Eleventh Circuit affirmed the grant of summary judgment in favor of defendants because the  
15 plaintiff failed to show that the defendants had reported any “inaccurate” information. *Id.* at  
16 1154. Specifically, the Eleventh Circuit concluded that the plaintiff’s account, “even if  
17 reported today, might be reported as an ‘I9’ with a zero balance.” *Id.* 1159.

18           Upon review of the *Cahlin* opinion, it appears that this case actually supports  
19 Defendant’s position, not Plaintiff’s. Indeed, Plaintiff’s Equifax Report, which Plaintiff  
20 included as an exhibit to her Response, indicates that the status of the account in question is  
21 charged off and the balance of the account is zero—the very reporting that *Cahlin* determined is  
22 accurate for an account that was charged off and later settled. (*See* Equifax Report at 4, Ex. A

---

23  
24 <sup>3</sup> The Complaint does not allege when Plaintiff paid off her account or whether she settled the debt for less than  
25 the amount due. (*See generally* Compl.). Defendant asserts that Plaintiff settled her debt for less than the amount  
due after the debt was charged off. (*See* Mot. Dismiss 7:7–10). Plaintiff does not dispute Defendant’s assertion,  
but states more vaguely that her account “had been closed and paid to the satisfaction of the lender with a \$0  
balance.” (Resp. 3:7–9).

1 to Resp., ECF No. 19-1).<sup>4</sup> The Court disagrees that *Cahlin* recognized that any notation  
2 regarding the charge-off must be relegated to the payment history section. Accordingly, the  
3 Court finds that Defendant’s reporting was, technically speaking, accurate.

## 4 **2. Materially Misleading**

5 Even if a furnisher’s reporting is technically accurate, information may nonetheless be  
6 inaccurate for purposes of the FCRA if it is “materially misleading.” *See Florence*, 2018 WL  
7 1145804, at \*4. Plaintiff argues that continuing to report her account as charged off is  
8 materially misleading under the FCRA.<sup>5</sup> (Resp. 4:22–23). Plaintiff again relies on nonbinding  
9 authority to support her argument. In *Koropoulos v. Credit Bureau, Inc.*, the defendant  
10 reported the plaintiff’s loan as having a current status of “I9” with a “0” balance. 734 F.2d 37,  
11 38 (D.C. Cir. 1984). The D.C. Circuit concluded that dismissal of the plaintiff’s FCRA claims  
12 “by summary judgment on the grounds that the information in the report was technically  
13 accurate . . . was improper” because a genuine issue of fact remained “as to whether the report  
14 was sufficiently misleading.” *Id.* at 42. Specifically, the D.C. Circuit noted that the report  
15 could be found to be misleading because the plaintiff repaid the debt in full and the defendant  
16 did not suffer a total loss. *Id.*

17 The Ninth Circuit has not adopted *Koropoulos*. *See Shaw v. Experian Info. Solutions,*  
18 *Inc.*, 891 F.3d 749, 757 n.4 (9th Cir. 2018) (“Far from adopting [*Koropoulos*] in full, we have  
19 quoted it parenthetically only a handful of times, and only in support of the unremarkable  
20 definition of ‘inaccurate.’”). In the Ninth Circuit, “incomplete or inaccurate” items within the  
21 meaning of the FCRA’s furnisher investigation provision includes technically accurate  
22 information that is “misleading in such a way and to such an extent that it can be expected to  
23

---

24 <sup>4</sup> The Court considers the Equifax Report in the Motion to Dismiss stage under the doctrine of incorporation by  
25 reference because the Complaint “necessarily relies” on the Report and the Report’s authenticity and its  
relevance is not disputed. *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010).

<sup>5</sup> Defendant’s Reply does not address Plaintiff’s argument that Defendant’s reporting was materially misleading.  
(*See generally* Reply, ECF No. 22).



1 adversely affect credit decisions.” *Carvalho*, 629 F.3d at 890 (quoting *Gorman v. Wolpoff &*  
2 *Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009)).

3 Plaintiff argues that “[r]eporting the current status of the account as a “charge off”  
4 despite the fact that it had been satisfied is materially misleading because it makes it appear as  
5 though Plaintiff is less creditworthy than she really is.” (Resp. 8:7–9). But Plaintiff offers no  
6 legal citation other than *Koropoulos* supporting the proposition that continuing to accurately  
7 report an account as charged off after the debtor has paid is misleading to the extent that it can  
8 be expected to adversely affect credit decisions.<sup>6</sup>

9 Lastly, Plaintiff argues that the “algorithms that generate credit scores interpret the  
10 ‘payment status’ section as a current status, thus nullifying the effect that the credit report,  
11 viewed as a whole, may have on the account status section.” (Resp. 15:23–16:2) (internal  
12 citation omitted). Although the Complaint alleges that this aspect of the credit scoring  
13 algorithms would cause a lower credit score to be generated for a charged off account status  
14 than a closed account status, (*see* Compl. ¶ 15), Plaintiff fails to allege how this fact is  
15 misleading. Indeed, Plaintiff cites to case law that suggests a charged off account, even one  
16 that has been paid off, *should* retain derogatory remarks. *See Cahlin*, 936 F.2d at 1158. The  
17 Court concludes that the accurate reporting of a charged off account is not misleading.

18 In sum, nowhere in her Complaint or her Response to the instant Motion does Plaintiff  
19 articulate what, exactly, Defendant reported inaccurately. Because it is not inaccurate to  
20 continue to report an account as charged off after a debtor settled the account for less than the  
21 full balance, Plaintiff must allege some other fact demonstrating how Defendant’s reporting  
22 was inaccurate, or how Defendant’s reporting was so misleading that it should be considered

---

23  
24 <sup>6</sup> Plaintiff additionally cites to non-binding case law on the tangentially related topic of pay status claims. (*See*  
25 Resp. 8:6– 11:3). The Court does not find these cases persuasive or relevant because, unlike a previously  
delinquent account that is no longer delinquent because the debtor paid, a charged off account remains charged  
off even after the debtor pays. *Compare Barrow v. Trans Union, LLC*, No. 20-cv-3628, 2021 WL 1424681, at \*1  
(E.D. Pa. Apr. 13, 2021) *with Cahlin*, 936 F2d 1151.

1 inaccurate under the FCRA. Absent a plausible allegation of actual falsity or materially  
2 misleading reporting, the Court must GRANT Defendant’s Motion.<sup>7</sup> *See Abeyta*, 2016 WL  
3 1298109 at \*2.

4 **C. Leave to Amend**

5 Rule 15(a)(2) of the Federal Rules of Civil Procedure permits courts to “freely give  
6 leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). The Ninth Circuit “ha[s]  
7 held that in dismissing for failure to state a claim under Rule 12(b)(6), ‘a district court should  
8 grant leave to amend even if no request to amend the pleading was made, unless it determines  
9 that the pleading could not possibly be cured by the allegation of other facts.’” *Lopez v. Smith*,  
10 203 F.3d 1122, 1127 (9th Cir. 2000) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir.  
11 1995)).

12 The Court finds that Plaintiff may be able to plead additional facts to support her FCRA  
13 claims. Accordingly, the Court will grant Plaintiff leave to file an amended complaint. Plaintiff  
14 shall file her amended complaint within fourteen (14) days of the date of this Order.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

---


24 <sup>7</sup> Defendant asks the Court to take judicial notice of the Automated Credit Dispute Verification, attached to the  
25 instant Motion as Exhibit A. (Mot. Dismiss 4:10–11); (Automated Credit Dispute Verification, Ex. A to Mot.  
Dismiss, ECF No. 18-1). Because the Court GRANTS Defendant’s Motion without relying on Defendant’s  
Exhibit, the Court does not address whether judicial notice of Defendant’s Exhibit is appropriate.

1 **V. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss, (ECF No. 18), is  
3 **GRANTED.**

4 **IT IS FURTHER ORDERED** that Plaintiff shall have fourteen (14) days from the date  
5 of this Order to file an amended complaint. Failure to file an amended complaint by the  
6 required date shall result in the Court dismissing Plaintiff's claims with prejudice.

7 **DATED** this 2 day of March, 2023.

8  
9   
10 \_\_\_\_\_  
11 Gloria M. Navarro, District Judge  
12 UNITED STATES DISTRICT COURT  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25