

1 Act (“RFDCPA”); and (4) breach of contract. Plaintiffs’ causes of action arise from
2 the following generally described allegations.

3 In 2009, Plaintiffs allegedly obtained a “home mortgage loan” from Impac, who
4 had retained Ocwen to act as the loan servicer. (FAC ¶¶17, 18). “At some point in
5 2012 or 2013, Plaintiffs began suffering financial difficulties in making their full
6 monthly payments upon the loan.” (FAC ¶23). In July 2013, Plaintiffs allegedly
7 received a document from Impac entitled “Loan Modification Agreement,” indicating
8 that the monthly payments were being reduced to \$310.09. (FAC ¶25). By letter dated
9 October 16, 2013, Ocwen informed Plaintiffs that their loan modification had been
10 approved, subject to submitting a notarized signed loan modification by October 26,
11 2013. (FAC ¶28). Plaintiffs complied with this requirement.

12 In December 2013, Plaintiffs began making the monthly \$310.09 payment.
13 However, Ocwen would not accept the payments, placed some of the payments in an
14 escrow account, and rejected others. (FAC ¶¶ 32-36). Plaintiffs contacted Impac and
15 were informed that the loan had, in fact, been modified. Impac also represented that
16 Ocwen “was really bad about paperwork, and instructed Plaintiffs to continue to make
17 their monthly payments.” “At some point in 2014,” Plaintiffs again contacted Ocwen
18 to inquire as to why their payments were not being accepted and were allegedly
19 informed that they were investigating the issue. (FAC ¶40).

20 Plaintiffs retained counsel in December 2014. Ocwen then allegedly represented
21 that it would not honor “the October 2013 modification agreement because it was not
22 a lucrative deal for Ocwen.” (FAC ¶45). The parties attempted to resolve their dispute.
23 The parties informal settlement discussions continued but ended in January 2017. At
24 that time, Plaintiffs discovered that Ocwen had been furnishing new information each
25 month to the credit reporting agencies indicating that Plaintiffs’ account was over 180
26 days past due and the monthly shortfall in payments was \$964. As of November 30,
27 2016, the account was allegedly past due by more than \$40,663. Had Defendants
28 honored the loan modification, allegedly, the account would be current.

1 In February 2017, Plaintiffs provided written dispute letters to all consumer
2 credit reporting agencies (Experian, Equifax, and Trans Union) informing them about
3 the allegedly false and misleading information being reported by Ocwen. (FAC ¶58).
4 The credit reporting agencies contacted Ocwen about Plaintiffs’ dispute letters. Ocwen
5 responded to the inquiry and represented that the reported past due amounts were
6 correct.

7 Plaintiffs allege that Ocwen failed “to conduct a reasonable re-investigation of
8 the disputed information, and failed to update/modify/delete inaccurate information.”
9 (FAC ¶64). Since April 5, 2016, Plaintiffs allege that they have received multiple
10 letters from Ocwen threatening to seek foreclosure upon the loan and take possession
11 of the property. Ocwen has never initiated foreclosure proceedings.

12 **DISCUSSION**

13 **Legal Standards**

14 Federal Rule of Civil Procedure 12(b)(6) dismissal is proper only in
15 "extraordinary" cases. United States v. Redwood City, 640 F.2d 963, 966 (9th Cir.
16 1981). Courts should grant 12(b)(6) relief only where a plaintiff's complaint lacks a
17 "cognizable legal theory" or sufficient facts to support a cognizable legal theory.
18 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). Courts should
19 dismiss a complaint for failure to state a claim when the factual allegations are
20 insufficient “to raise a right to relief above the speculative level.” Bell Atlantic Corp.
21 v. Twombly, 550 U.S. 544, 555 (2007) (the complaint’s allegations must “plausibly
22 suggest[]” that the pleader is entitled to relief); Ashcroft v. Iqbal, 556 U.S. 662 (2009)
23 (under Rule 8(a), well-pleaded facts must do more than permit the court to infer the
24 mere possibility of misconduct). “The plausibility standard is not akin to a ‘probability
25 requirement,’ but it asks for more than a sheer possibility that a defendant has acted
26 unlawfully.” Id. at 678. Thus, “threadbare recitals of the elements of a cause of action,
27 supported by mere conclusory statements, do not suffice.” Id. The defect must appear
28 on the face of the complaint itself. Thus, courts may not consider extraneous material

1 in testing its legal adequacy. Levine v. Diamantheset, Inc., 950 F.2d 1478, 1482 (9th
2 Cir. 1991). The courts may, however, consider material properly submitted as part of
3 the complaint. Hal Roach Studios, Inc. v. Richard Feiner and Co., 896 F.2d 1542, 1555
4 n.19 (9th Cir. 1989).

5 Finally, courts must construe the complaint in the light most favorable to the
6 plaintiff. Concha v. London, 62 F.3d 1493, 1500 (9th Cir. 1995), cert. dismissed, 116
7 S. Ct. 1710 (1996). Accordingly, courts must accept as true all material allegations in
8 the complaint, as well as reasonable inferences to be drawn from them. Holden v.
9 Hagopian, 978 F.2d 1115, 1118 (9th Cir. 1992). However, conclusory allegations of
10 law and unwarranted inferences are insufficient to defeat a Rule 12(b)(6) motion. In
11 Re Syntex Corp. Sec. Litig., 95 F.3d 922, 926 (9th Cir. 1996).

12 **The Motion to Dismiss**

13 The Statute of Limitations

14 Defendants contend that the FCRA and CCCRA claims are barred by their
15 respective statutes of limitations. The FCRA requires any claim to be filed within two
16 years of discovery, or five years from the date of the occurrence. 15 U.S.C. §1681p.
17 The CCCRA provides for a two year statute of limitations measured from the “date the
18 plaintiff knew of, or should have know of, the violation. . . .” Cal. Civ. Code §1785.33.

19 Defendants’ arguments are not persuasive on a Rule 12(b) motion. While the
20 FAC alleges that Plaintiffs discovered the allegedly inaccurate credit reporting in
21 February 2017, (FAC ¶¶49, 51, 76-90), Defendants speculate that Plaintiffs employed
22 an attorney in 2014 (in relation to the loan modification) and that counsel “should have
23 been monitoring their credit reporting around that time,” (Motion at p.11:22-23), and
24 therefore, Plaintiffs “should have known” of the alleged statutory violations in 2014.
25 This argument presents factual issues not appropriately addressed on a motion to
26 dismiss. See West v. State Farm Fire & Cas. Co., 868 F.2d 348, 350 (9th Cir. 1989)
27 (factual determinations are questions of fact for the jury).

28 In sum, the court denies the motion to dismiss based upon the statutes of

1 limitations.

2 The FCRA Claim

3 Defendants contend that Plaintiffs fail to allege a necessary element to a FCRA
4 claim. The essential duty of a furnisher of information to consumer reporting agencies
5 is to refrain from furnishing information “if the person knows or has reasonable cause
6 to believe that the information is inaccurate.” 15 U.S.C. §1681s-2(a)(1)(A).
7 Specifically, 15 U.S.C. §1681s-2(b)(1) imposes on a furnisher of information the duty
8 to provide complete and accurate information to consumer reporting agencies. To
9 accomplish this goal, the statutory scheme provides that the furnisher of information
10 conduct an investigation, review all relevant information, report the results of the
11 investigation to the consumer reporting agency, correct incomplete or inaccurate
12 information, and promptly act to correct the information. 15 U.S.C. §1681s-
13 2(b)(1)(A)-(E).

14 Defendants focus on 15 U.S.C. §1681s-2(b) and contend that Plaintiffs fail to
15 allege that “Ocwen’s investigation revealed that the credit information furnished was
16 incomplete, inaccurate, or unverifiable.” (Reply at p.4:4-5). Because “Plaintiffs do not
17 put forth any facts indicating that Ocwen’s investigation revealed that the information
18 furnished was incomplete, inaccurate, or unverifiable, their FCRA claim is
19 inadequately pled and fails as a matter of law.” (Reply at p.4:9-11).

20 At the pleading stage, Defendants’ arguments are not persuasive. The court is
21 required to accept as true all material allegations in the complaint. At the heart of
22 Plaintiffs’ claims lies the allegations that Plaintiffs and Defendants modified the terms
23 of the home loan to provide for lower payments, Defendants did not comply with the
24 material terms of the loan modification by reducing or accepting the monthly mortgage
25 payments, and Defendants falsely reported to consumer reporting agencies that
26 Plaintiffs were past due on their mortgage payments. (FAC ¶¶17-75, 82-86). The court
27 concludes that the FAC’s allegations give rise to an inference that Defendants failed
28 to provide accurate information about the loan modification to consumer credit

1 agencies, and therefore violated the FCRA. Whether Defendants had “reasonable cause
2 to believe the information [was] inaccurate,” 15 U.S.C. §1681s-2(a)(1)(A), presents
3 questions of fact not appropriately resolved on this motion to dismiss.

4 In sum, the court denies the motion to dismiss the FCRA claim.

5 The CCCRA Claim

6 A consumer may bring a private cause of action for violation of the CCCRA
7 where: (1) defendant furnished credit information to a consumer credit reporting
8 agency; (2) defendant knew, or should have known, that the credit information was
9 incomplete or inaccurate; and (3) plaintiff was the object of defendant's credit reporting
10 activity. Cal. Civ. Code §1785.25(a); 15 U.S.C. § 1681t(b)(1)(F); Carvalho v. Equifax
11 Info Servs., LLC, 629 F.3d 876, 888-89 (9th Cir. 2010).

12 The court concludes that the FAC adequately alleges a CCCRA claim.
13 Defendants are alleged to have provided false and misleading credit information to
14 consumer credit reporting agencies at the time when Defendants knew, or should have
15 known, that the alleged loan modification rendered the information provided to
16 consumer credit reporting agencies materially false and misleading. (FAC ¶95-110).
17 Nothing more is required to state a CCCRA claim.

18 In sum, the court denies the motion to dismiss the CCCRA claim.

19 The RFDCPA Claim

20 Defendants contend that the consumer mortgage loan to Plaintiffs is not a
21 consumer debt for purposes of RFDCPA and, even if it were, the claim is not pleaded
22 with the requisite specificity. These arguments are not persuasive.

23 For purposes of RFDCPA, Ocwen is a debt collector, collecting a debt. A “debt
24 collector” includes any person who, “in the ordinary course of business, regularly, on
25 behalf of himself or herself or others, engages in debt collection,” Cal. Civ. Code
26 §1788.2(c), and the term “debt means money, property or their equivalent which is due
27 or owing or alleged to be due or owing from a natural person to another person.” Id.
28 §1788.2(d). Here, Ocwen is collecting a debt that it services, originated by Impac, and

1 conducted “in the ordinary course of business.” Nothing more is required to allege that
2 Defendants are “debt collectors” for purposes of RFDCPA.

3 The court rejects the authorities cited by Defendants for the proposition that
4 residential mortgage loans do not qualify as “debt” for purposes of the RFDCPA.
5 Those authorities either involve foreclosure cases or, as noted by the Honorable Judge
6 Thomas J. Whelan, the legal conclusions of those authorities are based “on the faulty
7 premise” that the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692,
8 “which explicitly excludes loan servicers from its purview, is co-extensive with the
9 RFDCPA.” Roche v. Bank of America, N.A., 2013 WL 3450016 (S.D. Cal. July 9,
10 2013). The RFDCPA, unlike the FDCPA, does not explicitly exclude loan servicers
11 from its scope.

12 The court also rejects Defendants’ argument that the RFDCPA claim is
13 impermissibly vague and conclusory. In essence, Plaintiffs allege that Defendants
14 violated RFDCPA by providing letters to Plaintiffs each month from November 2013,
15 claiming that Plaintiffs owe an amount greater than the loan modified payment of
16 \$310.09. (FAC ¶113). The FAC alleges that Defendants violated several provisions
17 of the FDCPA by, in relation to collecting on a debt, claiming and reporting an amount
18 due greater than the loan modified payment. (FAC ¶¶ 112-115). These allegations
19 give rise to a RFDCPA claim.

20 In sum, the court denies the motion to dismiss the RFDCPA claim.

21 The Breach of Contract Claim.

22 Defendants challenge the heart of Plaintiffs’ claims by contending that the FAC
23 fails to plead a breach of contract claim with the requisite specificity. In order to state
24 a breach of contract claim, a party must allege: (1) the existence of a contract; (2)
25 plaintiff’s performance or excuse for non-performance; (3) defendant’s breach, and (4)
26 resulting damages to plaintiff. Careau & Co. v. Security Pac. Business Credit, Inc., 222
27 Cal.App. Ed 1371, 1388(1990).

28 Defendants contend that a breach of contract claim must be pleaded with

1 specificity under California law to include all material terms of the contract and to
 2 identify whether the contract is oral or written. The court rejects this argument. Unlike
 3 state law, in order to state a breach of contract claim in federal court, the pleading need
 4 only provide “the bare outlines of [a] claim” consistent with the federal notice pleading
 5 framework under Fed.R.Civ.P. 8(a). Bautista v. Lops Angeles Co., 216 F.3d 837, 843
 6 (9th Cir. 2000); see Erie R. Co. v. Tompkins, 304 U.S. 64 (1938). Furthermore,
 7 Plaintiffs allege that the parties entered into a written contract to modify the terms of
 8 the residential home loan, Plaintiffs made the requisite payments under the terms of the
 9 loan modification agreement, Defendants breached the contract by failing to accept the
 10 payments, and Plaintiffs suffered injury to their credit rating. (FAC ¶¶22-32, 33-39,
 11 122-126). Nothing more is required to state a claim under Rule 8(a).

12 In sum, the court denies the motion to dismiss in its entirety.

13 **IT IS SO ORDERED.**

14 DATED: August 23, 2017

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 Hon. Jeffrey T. Miller
 United States District Judge

17 cc: All parties

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