

1 **Background**

2 Plaintiffs each completed an application for employment with Defendant. (Doc. No.
3 6 at 8-9, ¶¶ 30, 34.) The application consisted of a series of forms, and one of those forms
4 contained a background check consent form (“Consent Form”). (Id. at 9, ¶ 37.) The
5 Consent Form contained a disclosure stating that a background check would be conducted
6 as part of the employment application process. Such a disclosure is required by the Fair
7 Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681b(b)(2)(A). The Consent Form contained
8 35 paragraphs providing the disclosure and related information, such as: an authorization
9 allowing other entities to disclose information about the applicant, a summary of consumer
10 rights in seven different states, a summary of consumer rights under the FCRA, and a list
11 of entities that enforce the FCRA. (Doc. No. 4-3.) Plaintiffs allege that the Consent Form
12 violates an FCRA requirement that the disclosure be made “in a document that consists
13 solely of the disclosure.” 15 U.S.C. § 1681b(b)(2)(A)(i).

14 **Discussion**

15 **I. Legal Standards**

16 A complaint must satisfy the pleading requirements of Federal Rule of Civil
17 Procedure 8 to evade dismissal under a Rule 12(b)(6) motion. Landers v. Quality
18 Commc’ns, Inc., 771 F.3d 638, 640-41 (9th Cir. 2014). Rule 8(a) requires “a short and
19 plain statement of the claim showing that the pleader is entitled to relief, in order to give
20 the defendant fair notice of what the claim is and the grounds upon which it rests.” Bell
21 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quotation marks and alteration notations
22 omitted). “To survive a motion to dismiss, a complaint must contain sufficient factual
23 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Hartmann
24 v. Cal. Dept. of Corr. & Rehab., 707 F.3d 1114, 1122 (9th Cir. 2013) (quoting Ashcroft v.
25 Iqbal, 556 U.S. 662, 678 (2009)). “A claim has facial plausibility when the plaintiff pleads
26 factual content that allows the court to draw the reasonable inference that the defendant is
27 liable for the misconduct alleged.” Iqbal, 556 U.S. at 678

1 Congress enacted the Fair Credit Reporting Act to “ensure fair and accurate credit
2 reporting . . . and protect consumer privacy.” Safeco Ins. Co. of America v. Burr, 551 U.S.
3 47, 52 (2007). As relevant here, the FCRA provides rules for obtaining consumer reports
4 used to determine whether a person is eligible for employment. 15 U.S.C.
5 § 1681a(d)(1)(B). The FCRA provides:

6 a person may not procure a consumer report, or cause a consumer report to be
7 procured, for employment purposes with respect to any consumer, unless—

8 (i) a clear and conspicuous disclosure has been made in writing to the
9 consumer at any time before the report is procured or caused to be
10 procured, in a document that consists solely of the disclosure, that a
11 consumer report may be obtained for employment purposes; and

12 (ii) the consumer has authorized in writing (which authorization may
13 be made on the document referred to in clause (i)) the procurement of
14 the report by that person.

15 15 U.S.C. § 1681b(b)(2)(A).

16 **II. Analysis**

17 **A. Plaintiffs’ Allegations Regarding the Stand-Alone Requirement**

18 Defendant seeks to dismiss Plaintiffs’ first two causes of action. (Doc. No. 7-1.)
19 Those causes of action are premised on violations of the FCRA. (See Doc. No. 6 at 16-18,
20 ¶¶ 62, 70.) The FCRA provides rules for obtaining consumer reports used to determine
21 whether a person is eligible for employment. 15 U.S.C. § 1681a(d)(1)(B). A consumer
22 report may not be procured for employment purposes unless “a clear and conspicuous
23 disclosure has been made in writing to the consumer.” 15 U.S.C. § 1681b(b)(2)(A)(i). The
24 disclosure is subject to a stand-alone requirement—the disclosure must be made “in a
25 document that consists solely of the disclosure.” Id. Here, Plaintiffs allege that Defendants
26 violated the stand-alone requirement by including extraneous information with the
27 disclosure.

28 The Federal Trade Commission (“FTC”) has provided guidance on the purpose of
the stand-alone requirement, explaining that Congress “specif[ied] a stand-alone disclosure
[requirement] so that consumers will not be distracted by additional information at the time

1 the disclosure is given.” F.T.C. Staff Opinion Letter to Steer (Oct. 21, 1997), 1997 WL
2 33791227 at *1 (“Steer Letter”).

3 Plaintiffs have sufficiently stated a claim that Defendant violated the stand-alone
4 requirement. As the FTC has explained, the purpose of the stand-alone requirement is to
5 prevent consumers from being distracted by additional information. See Steer Letter at *1;
6 F.T.C. Staff Opinion Letter to Willner (Mar. 25, 1999), 1999 WL 33932153 at *2 (“Willner
7 Letter”). It is true that “some additional information . . . may be included” in the disclosure;
8 however, that additional information cannot “confuse the consumer or detract from the
9 mandated disclosure.” F.T.C. Staff Opinion Letter to Coffey (Feb. 11, 1998), 1998 WL
10 34323748, at *2 (“Coffey Letter”). Here, Plaintiffs have plausibly alleged that they may
11 have been confused or distracted by the length of the Consent Form. Whether Plaintiffs
12 were actually confused or distracted is better left to a motion for summary judgment, where
13 the record will be more fully developed.

14 **B. Plaintiffs’ Allegations of Willfulness**

15 The FCRA imposes civil liability on “[a]ny person who willfully fails to comply
16 with any requirement imposed” by the FCRA. 15 U.S.C. § 1681n(a). A person may
17 “willfully” violate the FCRA by either knowingly or recklessly disregarding a statutory
18 duty. Safeco, 551 U.S. at 56-57. Defendant argues that Plaintiff cannot establish a willful
19 violation of the FCRA. (See Doc. No. 7-1 at 14.)

20 Willfulness does not need to be alleged with particularity. Fed. R. Civ. P. 9(b). The
21 FAC alleges that Defendant’s purported violations were willful. In support of their
22 willfulness allegations, Plaintiffs allege that Defendant knew or had reason to know that
23 its conduct violated the FCRA due to its communications with its consumer report vendors.
24 (Doc. No. 6 at 17, ¶ 65(d)). These allegations are sufficient to state a plausible claim of
25 willfulness under either a “knowing” standard or a “recklessly disregarding” standard. See,
26 Harris, 114 F. Supp. 3d at 870; Jones, 81 F. Supp. 3d at 333-34; Rawlings, 2015 WL
27 3866885, at *5-6; see also Reardon v. ClosetMaid Corp., No. 2:08-CV-01730, 2013 WL
28 6231606, at *10 (W.D. Pa. Dec. 2, 2013); Singleton v. Domino’s Pizza, LLC, No. CIV.A.

1 DKC 11-1823, 2012 WL 245965, at *4 (D. Md. Jan. 25, 2012). Whether Defendant’s
2 conduct was actually willful is a question better left to a motion for summary judgment,
3 where the record will be more fully developed.

4 **C. Article III Standing**

5 Defendant challenges Plaintiffs’ Article III standing to bring their first and second
6 causes of action. (Doc. Nos. 7-1 at 17; 14 at 10-12.) Both causes of action depend on
7 proving that Defendant provided extraneous information in the Consent Form. (See Doc.
8 No. 6 at 16-18, ¶¶ 62, 70.) Defendant argues that “providing additional information” does
9 not cause harm. (Doc. No. 14 at 10 n.6.) Therefore, according to Defendant, Plaintiffs have
10 only alleged a “bare procedural violation,” which is not enough to confer Article III
11 standing. See Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1550 (2016), as revised (May 24,
12 2016). In this case, whether Plaintiffs had a concrete injury in fact is better left to a motion
13 for summary judgment, where the record will be more fully developed. Thus, at this state
14 of the proceeding, Plaintiffs’ allegations are sufficient to survive a motion to dismiss.

15 Spokeo confirms this analysis. In Spokeo, the Supreme Court affirmed its previous
16 holdings in Federal Election Comm’n v. Akins and Public Citizen v. Department of Justice.
17 See Spokeo, 136 S.Ct. at 1549-50. In affirming these holdings, the Court explained that
18 “the violation of a procedural right granted by statute can be sufficient in some
19 circumstances to constitute injury in fact.” Id. at 1549. Akins and Public Citizen both
20 involved injuries stemming from violations of rights to information created by statute.
21 Federal Election Comm’n v. Akins, 524 U.S. 11, 20-25 (1998) (voters’ “inability to obtain
22 information” that Congress had decided to make public is a sufficient injury in fact to
23 satisfy Article III); Public Citizen v. Department of Justice, 491 U.S. 440, 449 (1989)
24 (organizations’ failure to obtain information subject to disclosure under statute “constitutes
25 a sufficiently distinct injury to provide standing to sue”). Here, Plaintiffs allege that they
26 were deprived of information because the Consent Form did not conform to the stand-alone
27 requirement. Thus, Plaintiffs have alleged sufficient injury to survive a motion to dismiss.
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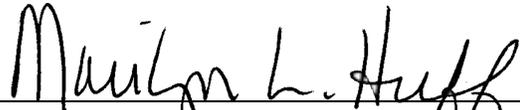
1 However, Defendant may challenge Plaintiffs' claims in a motion for summary judgment
2 if Plaintiffs cannot demonstrate a concrete injury in fact.

3 **Conclusion**

4 Based on these allegations, the Court denies Defendant's motion to dismiss.
5 Defendant must answer the complaint within thirty days of the date of this order.

6 **IT IS SO ORDERED.**

7 DATED: November 22, 2016

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10 MARILYN L. HUFF, District Judge
11 UNITED STATES DISTRICT COURT
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