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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Lydia Bultemeyer,  
Plaintiff,  
v.  
CenturyLink, Inc.,  
Defendant.

No. CV-14-02530-PHX-SPL

**ORDER**

15 Before the Court is Defendant’s Motion to Dismiss (Doc. 12) for failure to state a  
16 claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In response,  
17 Plaintiff seeks to stay the Court’s ruling pursuant to Rule 56(d) (Doc. 17), and seeks  
18 leave to file a surreply (Doc. 25). The motions are fully briefed and ready for decision.<sup>1</sup>

19 **I. Background**

20 On November 14, 2014, Plaintiff Lydia Bultemeyer filed a complaint against  
21 Defendant CenturyLink, Inc. (“CenturyLink”),<sup>2</sup> bringing one claim under the Fair Credit  
22 Reporting Act (“FCRA”), 15 U.S.C. § 1681b(f), and seeking class certification for all  
23 others similarly situated. (Doc. 1.) Plaintiff alleges that on April 6, 2014, she visited  
24 CenturyLink’s website, which both parties describe as a five-step process. (Docs. 1 ¶¶

25  
26 <sup>1</sup> Defendant seeks oral argument. However, given the preliminary stage of this case  
27 and the need for limited discovery in order to properly decide a summary judgment  
28 motion, an oral argument is not appropriate at this time.

<sup>2</sup> Defendant alleges that CenturyLink, Inc. is not the proper defendant as “it is a  
holding company and does not offer high speed internet service in Phoenix, Arizona.”  
(Doc. 12 at 1.)

1 17-18; 12 at 3-4.) In the first three steps, Plaintiff chose and customized her desired  
2 services. (Doc. 1 ¶¶ 18-21.) In the fourth step, Plaintiff entered her personal information  
3 and clicked on the “Next” button to proceed to step five. (Doc. 1 ¶¶ 18, 21.) Between  
4 steps four and five, CenturyLink ran a credit report. (Doc. 1 ¶ 24.) Step five asked for  
5 payment information. (Doc. 1 ¶ 21.) At this point, Plaintiff alleges she “changed her mind  
6 and decided not to place an order.” (Doc. 1 ¶ 22.) Plaintiff argues that, because she  
7 “never ordered services,” she did not initiate a business transaction with Defendant. (Doc.  
8 1 ¶ 25.) Plaintiff further alleges that, because she did not initiate a business transaction,  
9 CenturyLink obtained her credit report without a permissible purpose. (Doc. 1 ¶¶ 27, 48.)

## 10 **II. Legal Standard**

11 To survive a motion to dismiss, a complaint must contain “a short and plain  
12 statement of the claim showing that the pleader is entitled to relief” such that the  
13 defendant is given “fair notice of what the . . . claim is and the grounds upon which it  
14 rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P.  
15 8(a)(2); *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). The Court may dismiss a complaint  
16 for failure to state a claim under 12(b)(6) for two reasons: (1) lack of a cognizable legal  
17 theory, and (2) insufficient facts alleged under a cognizable legal theory. *Balistreri v.*  
18 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

19 A complaint must “state a claim to relief that is plausible on its face.” *Ashcroft v.*  
20 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). Facial plausibility  
21 requires the plaintiff to plead “factual content that allows the court to draw the reasonable  
22 inference that the defendant is liable for the misconduct alleged.” *Id.* “Where a complaint  
23 pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the  
24 line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*,  
25 550 U.S. at 557). Although a complaint “does not need detailed factual allegations,” a  
26 plaintiff must “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at  
27 555. This requires “more than labels and conclusions, and a formulaic recitation of the  
28 elements of a cause of action.” *Id.*

1 In reviewing a complaint for failure to state a claim, the Court must “accept as true  
2 all well-pleaded allegations of material fact, and construe them in the light most favorable  
3 to the non-moving party.” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir.  
4 2010). In comparison, “allegations that are merely conclusory, unwarranted deductions of  
5 fact, or unreasonable inferences” are not entitled to the assumption of truth, *id.*, and “are  
6 insufficient to defeat a motion to dismiss for failure to state a claim,” *In re Cutera Sec.*  
7 *Litig.*, 610 F.3d 1103, 1108 (9th Cir. 2010) (citation omitted). Although generally a court  
8 may not consider matters outside the pleadings in ruling on a Rule 12(b) motion, the  
9 court may consider evidence where (1) the complaint refers to the document; (2) the  
10 document is central to the plaintiff’s claim; and (3) no party questions the authenticity of  
11 the copy. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006).

### 12 **III. Discussion**

#### 13 **A. Documents Considered**

14 Here, Defendant attaches two exhibits: an Affidavit by Jon S. Luciano with  
15 attachments and a letter to Plaintiff’s lawyer with attachments. (Doc. 12-2.) The  
16 Complaint does not mention the Affidavit or the letter. The documents are central to the  
17 defense, but are not central to Plaintiff’s claims. The Court will not convert the motion to  
18 one for summary judgment given the early stage of the case and the lack of opportunity  
19 for discovery. Therefore, the Court will not consider any exhibits at this time.

#### 20 **B. Plaintiff’s FCRA Claim**

21 Here, Plaintiff provides a short and plain statement that gives fair notice of the  
22 claim and the grounds upon which it rests. Plaintiff states a cognizable legal theory and  
23 alleges facts that support that legal theory. Section 1681b of the FCRA governs when a  
24 credit report may be obtained. A consumer reporting agency may furnish a credit report  
25 to “a person which it has reason to believe ... has a legitimate business need for the  
26 information [] in connection with a business transaction that is initiated by the  
27 consumer...” 15 U.S.C. § 1681b(a)(3)(F)(i). Section 1681b further states that a “person  
28 shall not use or obtain a consumer report for any purpose unless (1) the consumer report

1 is obtained for a purpose for which the consumer report is authorized to be furnished  
2 under this section; and (2) the purpose is certified in accordance with section 607 [§  
3 1681e] by a prospective user of the report through a general or specific certification.” 15  
4 U.S.C. § 1681b(f) (brackets in original). Plaintiff alleges sufficient facts as to each of  
5 these elements.

6 Defendant asserts that it had a legitimate business purpose to obtain Plaintiff’s  
7 credit report because it obtained the information in connection with a business transaction  
8 initiated by the consumer, pursuant to § 1681b(a)(3)(F)(i). (Doc. 12 at 8.) Defendant  
9 “conducts the credit review on new customers alone to guard against identity fraud and to  
10 ensure that the customer meets [Defendant’s] established credit requirements for its  
11 monthly subscription-based telecommunications services.” (Doc. 12 at 3.) While  
12 Defendant’s arguments may be relevant to its defense, and perhaps even probative of  
13 whether it will ultimately prevail, it has little bearing on whether Plaintiff states a  
14 plausible claim for relief in the first instance. As such, the Court will deny Defendant’s  
15 Motion to Dismiss.<sup>3</sup>

#### 16 **IV. Expedited Case Management**

17 At this stage, there are two pertinent issues before the Court: (1) whether Plaintiff  
18 “initiated” a business transaction; and (2) whether Defendant had a legitimate business  
19 purpose to run Plaintiff’s credit report. Indeed, whether Defendant had a legitimate  
20 business purpose may turn on whether Plaintiff “initiated” a business transaction. The  
21 Court agrees that expedited discovery and bifurcated summary judgment briefing on  
22 these issues would serve the best interests in this case. In a forthcoming order setting a  
23 case management conference, the parties will be afforded an opportunity to propose  
24 expedited deadlines. The Court directs that expedited discovery should be limited to: (1)  
25 Defendant’s legitimate need to conduct a credit check analysis as part of its online

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27 <sup>3</sup> Plaintiff seeks leave to file a surreply (lodged at Doc. 26) to address new  
28 arguments raised in the reply and alleged misstatements (Doc. 25). Defendant does not  
oppose the request. (Doc. 27.) However, because the Court finds Plaintiff’s Complaint  
states a claim, the Court will deny the motion as moot. (Doc. 25.)


1 ordering process; (2) the timing of the credit check analysis between steps 4 and 5 of the  
2 online ordering process; (3) how the credit check affects the pricing of services, the need  
3 for a deposit, or stops the order from proceeding. In the parties' briefing, they are invited  
4 to address *Bickley v. Dish Network, LLC*, 751 F.3d 724 (6th Cir. 2014).

5 Accordingly,

6 **IT IS ORDERED:**

- 7 1. That Defendant's Motion to Dismiss (Doc. 12) is **denied**;
- 8 2. That Plaintiff's Motion for Leave to File Surreply (Doc. 25) is **denied** as  
9 moot; and
- 10 3. That Defendant shall have until **October 1, 2015** to file an answer to the  
11 complaint.

12 Dated this 18th day of September, 2015.

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15 Honorable Steven P. Logan  
16 United States District Judge