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**United States District Court
Central District of California**

BUREAU OF CONSUMER FINANCIAL PROTECTION,

Plaintiff,

v.

CERTIFIED FORENSIC LOAN AUDITORS, LLC et al.,

Defendants.

Case No. 2:19-cv-07722-ODW (JEMx)

**ORDER DENYING DEFENDANTS’
MOTION TO DISMISS AND
MOTION FOR ENLARGEMENT OF
TIME AND GRANTING
WITHDRAWAL OF COUNSEL [42]
[43] [60] [65]**

I. INTRODUCTION

Plaintiff Consumer Financial Protection Bureau (the “Bureau”) filed this action against Defendants Certified Forensic Loan Auditors, LLC (“CFLA”) and Andrew P. Lehman (“Lehman”) (collectively “Defendants”)¹, to address violations of the Consumer Financial Protection Act (“CFPA”), and other consumer protection regulations. (*See* First Am. Compl. (“FAC”), ECF No. 29.) Now before the Court is Defendants’ Motion to Dismiss (“Motion”) the Bureau’s First Amended Complaint (“FAC”) for failure to state a claim. (Mot. to Dismiss (“Mot.”), ECF No. 42.) Defendants also move for enlargement of time to answer the Bureau’s FAC and leave for Atighechi Law Group, PC (“Atighechi”) to withdraw as Lehman’s Counsel. (Mot.

¹ The Bureau’s FAC also named Defendant Michael Carrigan, but Bureau and Carrigan stipulated to entry of final judgment against Carrigan on October 29, 2019. (*See* Stip. Final J., ECF No. 25.)

1 for Enlargement (“Mot. II”), ECF No. 43; Mot. for Withdrawal (“Mot. III”), ECF No.
2 60.) For the reasons that follow, the Court **DENIES** the Motion; **DENIES** the request
3 for enlargement of time; and **GRANTS** Lehman’s request to proceed *pro se*.²

4 **II. BACKGROUND**

5 The Bureau brings this action against CFLA and Lehman in connection with their
6 offering, advertising, marketing, and selling of purported financial-advisory and
7 mortgage-assistance-relief services. (FAC ¶ 2.) The Bureau alleges the following facts.
8 The Bureau is an independent agency of the United States charged with regulating the
9 offering and provision of consumer-financial products or services under federal
10 consumer financial law, including the CFPA and Regulation O. (FAC ¶ 4.) CFLA
11 operates through two separate limited liability companies that are incorporated under
12 the laws of the State of California and the State of Texas. (FAC ¶ 6.) Lehman is the
13 president and sole owner of CFLA, directs every facet of the business, and has
14 co-mingled his finances with CFLA. (FAC ¶¶ 7, 9.) CFLA and Lehman, acting alone
15 or in concert, provided “mortgage assistance relief services” as defined in Regulation
16 O, 12 C.F.R. section 101.5.2, and “financial advisory services” within the meaning of
17 the CFPA, 12 U.S.C. § 5481(15)(A)(viii), which included loan modification and
18 foreclosure relief services. (FAC ¶ 12.) Further, CFLA has ignored corporate
19 formalities. (FAC ¶ 9.) For instance, CFLA failed to keep accurate financial records
20 and failed to meet California’s state-tax requirements. (FAC ¶ 9.)

21 As of 2014, Defendants marketed and sold their services to consumers, held
22 themselves out as “The Nation’s Leading Experts in Foreclosure Defense,” and
23 represented that they provided a “[c]omplete turn-key lawsuit to sue your lender for
24 damages.” (FAC ¶¶ 14, 16, 24.) Defendants’ services included Securitization Audits
25 (“Audits”) and litigation documents, which they marketed as a “Quiet Title Package.”
26 (FAC ¶ 14.) Defendants told consumers that the Audits and litigation documents would

27
28 ² After considering the papers filed in connection with the motions, the Court deemed the matters appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15.

1 provide them an effective defense to a foreclosure action or help them obtain loan
2 modifications. (FAC ¶ 21.) Defendants told consumers that the Audits and litigation
3 documents contained specific categories of cutting-edge, advanced analyses, and that
4 the Audits would uncover information that included defects in the assignment of a
5 consumer’s mortgage or in the securitization of the consumer’s mortgage. (FAC ¶ 22.)
6 Defendants also advertised to consumers that “in addition to the written report, a
7 purchase of an Audit includes the services of Carrigan as an ‘expert witness’ to testify
8 in consumers’ foreclosure proceedings or related litigation.” (FAC ¶ 16.)

9 In actuality, Defendants made no effort to determine whether the Audits could
10 help a consumer prevent foreclosure or obtain a favorable settlement either based on
11 the consumer’s jurisdiction or the consumer’s circumstances. (FAC ¶ 30.) Defendants
12 knew the Audits were worthless and even referred to the conclusions as “boilerplate”
13 and “garbage.” (FAC ¶ 31.) The Audits consisted largely of template materials and
14 contain legal conclusions and recommendations to the borrower. (FAC ¶ 15.)
15 Moreover, the litigation documents also consisted largely of template pleadings that
16 Defendants claim could be filed in connection with a homeowner’s response to a
17 foreclosure proceeding, including a civil complaint, *lis pendens*, and temporary
18 restraining order. (FAC ¶ 17.) The form, structure, and content of each Audit and
19 package of litigation documents were substantially similar to all others. (FAC ¶ 30.)
20 Defendants used neither experts to perform the Audits nor lawyers to prepare the Audits
21 and litigation documents. (FAC ¶¶ 40, 42.) CFLA is not attorney-owned or operated.
22 (FAC ¶ 43.) Therefore, Defendants concealed material facts regarding the Audits and
23 litigation documents from consumers and misrepresented the likely effectiveness of the
24 Audits and the qualifications of the individual that performed them in order to convince
25 consumers to purchase Defendants’ services. (FAC ¶ 45.)

26 Defendants charged and collected \$1,495 from consumers prior to producing and
27 delivering an Audit and its litigation documents. (FAC ¶ 18.) Ultimately, Defendants
28 sold more than 2,000 of these purported Audits to consumers. (FAC ¶ 20.)

1 Accordingly, the Bureau alleges that Defendants violated the CFPA, 12 U.S.C. §§ 5531,
2 5536(a), as well as Regulation O, 12 C.F.R. pt. 1015. (FAC ¶¶ 46–59.) The Bureau
3 asserts five counts against Defendants which include: (1) Advance Fees in Violation of
4 Regulation O; (2) Prohibited Representations in Violation of Regulation O; (3)
5 Deceptive Acts or Practices in Violations of the CFPA; (4) Abusive Acts or Practices
6 in Violation of the CFPA; (5) Violations of the CFPA Arising from Regulation O
7 Violations. (FAC ¶¶ 60–91.) Defendants now move to dismiss the Bureau’s Complaint,
8 enlargement of time, and withdrawal of counsel as to Lehman. (*See* Mots.)

9 III. LEGAL STANDARD

10 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable
11 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
12 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To
13 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading
14 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v. Jones*,
15 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to raise a
16 right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
17 555 (2007). That is, the complaint must “contain sufficient factual matter, accepted as
18 true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
19 662, 678 (2009) (internal quotation marks omitted).

20 The determination of whether a complaint satisfies the plausibility standard is a
21 “context-specific task that requires the reviewing court to draw on its judicial
22 experience and common sense.” *Id.* at 679. A court is generally limited to the pleadings
23 and “must construe all factual allegations set forth in the complaint . . . as true and . . .
24 in the light most favorable” to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668,
25 688 (9th Cir. 2001) (internal quotation marks omitted). But a court need not blindly
26 accept conclusory allegations, “unwarranted deductions of fact, and unreasonable
27 inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

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1 **IV. DISCUSSION**

2 The Court first considers Defendants’ motion to dismiss, then the motion for
3 enlargement, and finally the motion for withdrawal.

4 **A. Defendants’ Motion to Dismiss**

5 Although presented in a scrambled-egg fashion, Defendants contend that the
6 Court must dismiss the Bureau’s FAC for the following reasons: (1) the Bureau is an
7 unconstitutional agency; (2) Defendants fall within neither the CFPA nor Regulation O;
8 (3) the Bureau has failed to adequately allege claims pursuant to the CFPA or
9 Regulation O. (Mot. 11–21.) The Court addresses each argument in turn.

10 *1. Defendants’ Constitutional Objections*

11 Defendants make two constitutional arguments as to why the Bureau cannot
12 assert claims, which include (1) the Bureau’s establishment violates separation of
13 powers; (2) the Bureau is an unconstitutional agency, and thus, it cannot bring an
14 enforcement action. (Mot. 11–13.) Defendants’ arguments fail. Binding precedent
15 holds that the Bureau as an organization and its establishment are constitutionally
16 permissible. *Consumer Fin. Prot. Bureau v. Seila Law LLC*, 923 F.3d 680, 683 (9th
17 Cir.), *cert. granted*, 140 S. Ct. 427 (2019). Therefore, Defendants motion to dismiss on
18 this basis is **DENIED**.

19 *2. Whether the CFPA and Regulation O Apply to CFLA and Lehman*

20 Defendants assert that the Bureau has failed to allege facts to establish that they
21 are subject to the CFPA or Regulation O. (Mot. 14–15.) However, Defendants’
22 arguments dispute the alleged facts and attempt to argue the merits of the case, rather
23 than address whether the Bureau has sufficiently pleaded. For instance, Defendants
24 contend that they do not sell Audits to consumers, the alleged Audits are “factual
25 informative material,” they provide only forensic audits, and thus, the Audits are not
26 services falling under the CFPA or Regulation O. (Mot. 14–15, 20–22.) At the pleading
27 stage, Defendants argument fails where the Court “must construe all factual allegations
28

1 set forth in the complaint . . . as true and . . . in the light most favorable” to the Bureau.
2 *Lee*, 250 F.3d at 688.

3 Here, the Bureau adequately pleads that Defendants are covered by the CFPA
4 and Regulation O. The CFPA holds that an entity providing financial advisory services
5 is one that “assist a consumer with . . . modifying the terms of any extension of credit,
6 or avoiding foreclosure.” 12 U.S.C. § 5481(15)(A)(viii)(II). Regulation O provides
7 that Mortgage Assistance Relief Service means sale of any service, plan, or program to
8 assist or attempt to assist the consumer with “[s]topping, preventing, or postponing any
9 mortgage or deed of trust foreclosure sale for the consumer’s dwelling, any repossession
10 of the consumer’s dwelling, or otherwise saving the consumer’s dwelling from
11 foreclosure or repossession.” 12 C.F.R. § 1015.2. The Bureau alleges that Defendants
12 market and sell Audit and litigation documents to consumers, which Defendants claim
13 will prevent foreclosure or modify the terms of their mortgage. (FAC ¶¶ 14–16, 21–
14 24.) For instance, the Bureau asserts that Defendants held themselves out as “The
15 Nation’s Leading Experts in Foreclosure Defense,” and provided a “[c]omplete turn-
16 key lawsuit to sue your lender for damages.” (FAC ¶¶ 14, 16, 24.) Moreover, before
17 providing mortgage-assistance-relief, Defendants charged and collected \$1,495 from
18 consumers before producing and delivering an Audit and litigation documents. (FAC
19 ¶ 18.) Therefore, as alleged, Defendants are subject to the CFPA and Regulation O.
20 *See Consumer Fin. Prot. Bureau v. Gordon*, 819 F.3d 1179, 1192–95 (9th Cir. 2016)
21 (finding the CFPA and Regulation O covered a defendant who offered forensic audits).

22 Accordingly, Defendants motion to dismiss on this basis is **DENIED**.

23 3. *Whether The Bureau Asserts a Claim Under CFPA and Regulation O*

24 Defendants assert two reasons why the Bureau’s third and fourth claims for
25 deceptive and abusive acts or practices in violation of the CFPA fail. First, Defendants
26 argue the Bureau has failed to plead facts establishing a substantial injury to consumers
27 or that the injury is not outweighed by countervailing benefits to homeowners.
28 (Mot. 15–18.) Second, Defendants argue the Bureau has failed to plead any facts that

1 Defendants have taken unreasonable advantage of consumers pursuant to section
2 5531(d). (Mot. 19.) The Bureau argues it has sufficiently pleaded all the requisite
3 elements of its claims and need not allege the facts demanded by Defendants. (Opp'n
4 to Mot. 9, ECF No. 47.)

5 First, Defendants argue that the Bureau has no authority under section 5531(a) to
6 bring claims pursuant to section 5531(d)(2)(A) and 5536(a)(1)(B) as the Bureau has not
7 alleged facts to establish that Defendants engaged in a practice likely to cause
8 substantial injury. (Mot. 17.) This argument is unpersuasive. The Bureau correctly
9 highlights that substantial injury and countervailing benefits are elements to an
10 unfairness claim under section 5531(c)(1), and not to the deceptive and abusive
11 practices claims that the Bureau pleads. (Opp'n 9.)

12 The Ninth Circuit holds that an act or practice is "deceptive" pursuant to section
13 5536(a)(1)(B) if: (1) "there is a representation, omission, or practice that," (2) "is likely
14 to mislead consumers acting reasonably under the circumstances," and (3) "the
15 representation, omission, or practice is material." *Gordon*, 819 F.3d at 1192. "An act
16 or practice is 'abusive' if, among other things, defendants have taken 'unreasonable
17 advantage of the consumer's lack of understanding of the material risks, costs, or
18 conditions' of, the service or product they are selling." *Consumer Fin. Prot. Bureau v.*
19 *Nationwide Biweekly Admin., Inc.*, No. 15-CV-02106-RS, 2017 WL 3948396, at *2
20 (N.D. Cal. Sept. 8, 2017) (quoting 12 U.S.C. § 5531(d)(2)(A)). Thus, substantial injury
21 and countervailing benefits are not requisite elements of the Bureau's third and fourth
22 claims for deceptive and abusive acts or practices. Therefore, Defendants motion to
23 dismiss on this basis is **DENIED**.

24 Second, Defendants argue that the Bureau cannot assert a claim under section
25 5531(d) because Defendants have not taken unreasonable advantage of consumers.
26 (Mot. 19.) Here, at the pleading stage, Defendants inappropriately argue the merits of
27 the Bureau's claims, and scantily state that the Bureau "failed to plead any facts." *See*
28 *Lee*, 250 F.3d at 688; (Mot. 19.) Not so. For instance, the Bureau alleged that

1 Defendants made numerous false and misleading representations by: telling consumers
2 that the Audits and litigation documents would provide them an effective defense to a
3 foreclosure action or help them obtain loan modifications (FAC ¶ 21); telling consumers
4 that the Audits and litigation documents would contain certain specific categories of
5 cutting-edge, advanced analyses, and that the Audits would uncover information that
6 included defects in the assignment or securitization of a consumer's mortgage (FAC ¶
7 22); and charging consumers up to \$1,495 for their services before providing any
8 mortgage-assistance-relief (FAC ¶ 18). Therefore, the Bureau has adequately pleaded
9 that Defendants took money from consumers by misleading consumers such that they
10 did not understand the true quality and effectiveness of the purchased services. *See* 12
11 U.S.C. § 5531(d)(2)(A); *Nationwide Biweekly Admin., Inc.*, 2017 WL 3948396, at *2.
12 Defendants motion to dismiss on this basis is **DENIED**.

13 **B. Request for Enlargement of Time to Answer FAC**

14 Defendants request that the Court grant them an enlargement of time to respond
15 to the Bureau's FAC. Defendants assert that CFLA California is suspended and cannot
16 respond to the Bureau's FAC until it is reinstated and revived. (Mot. II 2.) Therefore,
17 it requires additional time to start the process of revivor. (Mot. II 2–4.) Defendants
18 assert that CFLA California began the process on December 3, 2019, and estimates that
19 the suspended status should be lifted in or about March 2020. (Mot. II 4.) However,
20 Defendants have proffered no current information regarding the status of the revivor to
21 this Court. Therefore, the Court **DENIES without prejudice** Defendants' request for
22 enlargement of time to answer the FAC.

23 **C. Withdrawal of Counsel**

24 Defendant Lehman seeks to proceed *pro se* and have Atighechi withdraw as his
25 counsel. (*See* Mot. III.) Counsel asserts that Lehman desires to act as co-counsel during
26 trial, which is only possible if he is self-represented, and wishes autonomy in all aspects
27 of litigation including filing motions, discovery, and handling his trial. (Mot. III 3.)
28 Counsel noticed the motion for hearing on April 20, 2020, at 1:30 p.m., making any

1 written opposition due no later than March 31, 2020. C.D. Cal. L.R. 7-9. Lehman and
2 the Bureau did not file an opposition.

3 “An attorney may not withdraw as counsel except by leave of court.” C.D. Cal.
4 L.R. 83-2.3.2; *see also Darby v. City of Torrance*, 810 F. Supp. 275, 276 (C.D.
5 Cal. 1992). “A motion for leave to withdraw must be made upon written notice given
6 reasonably in advance to the client and to all other parties who have appeared in the
7 action . . . and must be supported by good cause.” C.D. Cal. L.R. 83-2.3.2. In
8 determining whether good cause is shown, a court may consider: “(1) the reasons why
9 withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the
10 harm withdrawal might cause to the administration of justice; and (4) the degree to
11 which withdrawal will delay the resolution of the case.” *Liang v. Cal-Bay Int’l, Inc.*,
12 No. 06-cv-1082–WMc, 2007 WL 3144099, at *1 (S.D. Cal. Oct. 24, 2007).

13 Counsel argues that permissive withdrawal is warranted because Lehman wishes
14 to proceed *pro se* and independently run his own defense. (Mot. III 3.) Lehman has
15 not challenged Counsel’s representations, and seeks to proceed *pro se*. (Decl. of
16 Andrew P. Lehman ¶¶ 12–16, ECF No. 60-1.) However, “[u]nless good cause is shown
17 and the ends of justice require, no substitution or relief of attorney will be approved that
18 will cause delay in prosecution of the case to completion.” C.D. Cal. L.R. 83-2.3.5.
19 Here, although Counsel’s withdrawal will leave Lehman *pro se*, it should not cause
20 delay or prejudice in this action. The Court has not set a trial date yet and no scheduling
21 conference date has been set, so the likelihood of delay is minimal. It is apparent from
22 Lehman’s Declaration that Counsel has notified Lehman in writing that Counsel seeks
23 leave to withdraw as his attorney and afforded Lehman time to seek substitute counsel.
24 (*See generally* Decl. of Andrew P. Lehman.) Further, the Court received no opposition
25 or objection to Counsel’s Motion, including from the Bureau or Lehman, indicating a
26 lack of prejudice to other litigants. Accordingly, the Court finds good cause to permit
27 Counsel to withdraw from representation.

28 As Counsel has established good cause for withdrawal, and it does not appear

1 that withdrawal will unduly prejudice the parties, harm the administration of justice, or
2 unduly delay the resolution of this case. Accordingly, the Court **GRANTS** Counsel's
3 Motion for Leave to Withdraw as Lehman's Counsel pending the conditions below.

4 **V. CONCLUSION**

5 For the reasons discussed above, the Court **DENIES** Defendants' Motion to
6 Dismiss (ECF No. 42), **DENIES** Defendants' Motion for Enlargement of Time (ECF
7 No. 43), and conditionally **GRANTS** Defendants' Motion for Leave to Withdraw as
8 Counsel for Defendant Lehman (ECF No. 60). Therefore, the Parties application for
9 order is **DENIED** as moot. (ECF No. 65.) It is hereby ordered that:

- 10 1. Counsel shall file with the Court a (Proposed) Order on Request for Approval
11 of Substitution or Withdrawal of Attorney, G-01 Order, providing Lehman's
12 contact information, including his mailing address, e-mail address, and
13 telephone number, **within five days** of the date of this Order.
- 14 2. Counsel may withdraw from representation of Lehman in this action upon
15 filing the (Proposed) Order.
- 16 3. Counsel shall serve a copy of this Order on Lehman and file a proof of such
17 service with the Court **within five days** of the date of this Order.

18
19 **IT IS SO ORDERED.**

20
21 May 20, 2020

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24 _____
25 **OTIS D. WRIGHT, II**
26 **UNITED STATES DISTRICT JUDGE**
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