UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-60066-CIV-COHN/SELTZER

ABRAHAM INETIANBOR, JOHNNY FRETWELL, LAUREN BROWN, THOMAS PETERSON, VIRGINIA FRY, and NELS PATE, JR., on behalf of themselves and a class of persons similarly situated,

Plaintiffs,

v.

CASHCALL, INC., and JOHN PAUL REDDAM,

Defendants.
_____/

**ORDER DENYING MOTION TO DISMISS AND COMPEL ARBITRATION**

**THIS CAUSE** is before the Court upon Defendants' Motion to Compel Arbitration and Motion to Dismiss the Fifth Amended Complaint [DE 220] ("Motion"). The Court has considered the Motion, Plaintiffs' Response [DE 230], Defendants' Reply [DE 240], and the record in this case, and is otherwise advised in the premises. For the reasons discussed below, the Court will deny the Motion.

## I. BACKGROUND

This case arises out of consumer loans that Florida residents applied for and received from non-party Western Sky Financial, LLC ("Western Sky"). See DE 217 ¶ 28 (5th Am. Compl.). Western Sky is a South Dakota company purportedly operating within the exterior boundaries of the Reservation of the Cheyenne River Sioux Tribe

("Tribe" or "CRST").[1] Id. ¶¶ 4, 22. Western Sky offered unsecured installment loans over the Internet to Florida residents in amounts varying from approximately $300 to $3,000 and bearing annual interest rates from approximately 90 percent to over 300 percent. Id. ¶¶ 46–47. Plaintiffs claim that Defendant CashCall, Inc. ("CashCall"), a California corporation, was the real or *de facto* lender for the Western Sky loans. Id. ¶¶ 15, 38, 42. Plaintiffs have also named as a Defendant John Paul Reddam, CashCall's President, Chief Executive Officer, and sole shareholder.

When Abraham Inetianbor initially brought this case, he was the sole Plaintiff. See DE 1. The operative Fifth Amended Complaint added five new Plaintiffs: Johnny Fretwell, Lauren Brown, Thomas Peterson, Virginia Fry, and Nels Pate, Jr. See DE 217. Each Plaintiff is a Florida resident who obtained a loan from Western Sky. Id. ¶¶ 11, 15–20. Each entered into a different standard-form version of the Western Sky loan agreement.[2] All agreements state that the loans were subject solely to the exclusive laws and jurisdiction of the Tribe. Each agreement also contains a mandatory arbitration clause, requiring disputes arising out of the agreement to be adjudicated by an authorized CRST representative in accordance with CRST's consumer dispute rules. The Court has already held, and the Eleventh Circuit has affirmed, that the arbitration clause in Inetianbor's loan agreement is unenforceable because the designated arbitral forum is unavailable. See Inetianbor v. CashCall, 768 F.3d 1346 (11th Cir. 2014).

In the Fifth Amended Complaint, Plaintiffs bring the following claims: (1) violation of Florida's usury statute, Fla. Stat. § 687.02; (2) violation of Florida's Deceptive and

[1] "[A] judge ruling on a defendant's motion to dismiss a complaint 'must accept as true all of the factual allegations contained in the complaint.'" Bell Atl. Corp. v. Twombly, 550 U.S. 544, 572 (2007) (citations omitted).

[2] Copies of Plaintiffs' loan agreements have been filed as DE 220-1 (Inetianbor), DE 220-2 (Fretwell), DE 220-3 (Brown), DE 220-4 (Peterson), DE 220-5 (Pate), and DE 220-6 (Fry).

Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 51.201–.213; (3) fraud; (4) violation of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681, et seq.; (5) defamation; (6) declaratory judgment; and (7) direct personal liability of Reddam. Plaintiffs bring these claims individually, on behalf of a class of similarly situated borrowers, or both.[3]

In their Motion, Defendants raise several objections to the Fifth Amended Complaint. First, Defendants argue that Plaintiffs Fretwell, Brown, Peterson, and Pate are required to arbitrate their claims. Second, Defendants move to dismiss this action for improper venue because the forum-selection clause in the agreements designates the CRST Tribal Court as the chosen forum for disputes not subject to arbitration. Third, Defendant Reddam moves to dismiss for lack of personal jurisdiction. Fourth, Defendants move to dismiss on choice-of-law grounds. Finally, Defendants argue that, should the Court conclude that Plaintiffs may bring claims under Florida law, certain claims must be dismissed for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

## II. LEGAL STANDARDS

### A. Arbitration

Section 2 of the Federal Arbitration Act ("FAA") mandates that courts must enforce arbitration provisions within a contract unless "such grounds exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA "requires a court to either stay or dismiss a lawsuit and to compel arbitration upon a showing that (a) the plaintiff entered into a written arbitration agreement that is enforceable 'under ordinary

[3] Plaintiffs have moved to certify select claims alleged in the Fifth Amended Complaint as a class action. See DE 206. That Motion currently remains pending before the Court.

state-law' contract principles and (b) the claims before the court fall within the scope of that agreement." Lambert v. Austin Ind., 544 F.3d 1192, 1195 (11th Cir. 2008) (citing 9 U.S.C. §§ 2–4). These requirements demonstrate Congressional intent to "ensure judicial enforcement of privately made agreements to arbitrate." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 219 (1985).

"Arbitration provisions will be upheld as valid unless defeated by fraud, duress, unconscionability, or another 'generally applicable contract defense.'" Parnell v. CashCall, Inc., 804 F.3d 1142, 1146 (11th Cir. 2015) (quoting Rent–A–Center, West, Inc. v. Jackson, 561 U.S. 63, 67–68 (2010)). A plaintiff challenging the enforcement of an arbitration agreement bears the burden to establish, by substantial evidence, any defense to the enforcement of the agreement. Bess v. Check Express, 294 F.3d 1298, 1306–07 (11th Cir. 2002).

**B. Personal Jurisdiction**

To withstand a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2), the plaintiffs must plead sufficient facts to establish a prima facie case of personal jurisdiction over the nonresident defendants. Fed. R. Civ. P. 12(b)(2); Diamond Crystal Brands, Inc. v. Food Movers Int'l, Inc., 593 F.3d 1249, 1257 (11th Cir. 2010). Where the defendants challenge jurisdiction by submitting evidence in support of their position, "the burden traditionally shifts back to the plaintiff[s] to produce evidence supporting jurisdiction." Id. (citation omitted).

A court must conduct a two-part analysis to determine whether it has personal jurisdiction over a defendant. Future Tech. Today, Inc. v. OSF Healthcare Sys., 218 F.3d 1247, 1249 (11th Cir. 2000) (citation omitted). First, the court must determine

whether the applicable state long-arm statute is satisfied. Id. A federal court is required to construe the state long-arm statute as would the state's supreme court. Lockard v. Equifax, Inc., 163 F.3d 1259, 1265 (11th Cir. 1998). Second, if the state long-arm statute is satisfied, the court must determine whether exercising jurisdiction over the defendant comports with the Constitution's requirements of due process and traditional notions of fair play and substantial justice. Future Tech. Today, Inc., 218 F.3d at 1249.

**C. Venue**

Federal Rule of Civil Procedure 12(b)(3) allows a party to move to dismiss a case for "improper venue." Fed. R. Civ. P. 12(b)(3). But when a party seeks to enforce a valid forum-selection clause requiring the dispute to be litigated in a non-federal forum, a motion to dismiss for *forum non conveniens*, and not a Rule 12(b)(3) motion for improper venue, is the appropriate means of enforcement. Atl. Marine Constr. Co. v. U.S. Dist. Court for the W. Dist. of Texas, —— U.S. ——, 134 S. Ct. 568, 580 (2013).

Under the doctrine of *forum non conveniens*, a district court has the inherent power to decline to exercise jurisdiction even when venue is proper. See Gulf Oil v. Gilbert, 330 U.S. 501, 506–07 (1947). To obtain a dismissal under this doctrine absent a forum-selection agreement, "the moving party must demonstrate that (a) an adequate alternative forum is available, (b) the public and private interest factors weigh in favor of dismissal, and (c) the plaintiff can reinstate his suit in the alternative forum without undue inconvenience or prejudice." Leon v. Millon Air, Inc., 251 F.3d 1305, 1310–11 (11th Cir. 2001). Typically, the plaintiff's choice of forum is afforded considerable deference, and the burden is on the movant. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241 (1981).

The presence of a valid forum-selection clause requires three adjustments to the court's usual *forum non conveniens* analysis. Atl. Marine, 134 S. Ct. at 581 & n.8. First, "the plaintiff's choice of forum merits no weight." Id. at 581–82. Second, the district court "should not consider arguments about the parties' private interests" and instead may only weigh public interests. Id. at 582. Third, when the plaintiff files suit in a different forum than the one pre-selected, the plaintiff's chosen venue's choice-of-law rules will not apply. Id. at 582. Under this analytical framework, the forum-selection clause will control unless "extraordinary circumstances unrelated to the convenience of the parties" outweigh the parties' contractual choice of forum. Id. at 575, 581.

**D. Rule 12(b)(6)**

Defendants may move to dismiss a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) if the plaintiffs have failed to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). "When considering a motion to dismiss, all facts set forth in the plaintiff[s'] complaint 'are to be accepted as true and the court limits its consideration to the pleadings and exhibits attached thereto.'" Grossman v. Nationsbank, N.A., 225 F.3d 1228, 1231 (11th Cir. 2000) (quoting GSW, Inc. v. Long Cty., 999 F.2d 1508, 1510 (11th Cir. 1993)). All "reasonable inferences" are drawn in favor of the plaintiffs. St. George v. Pinellas Cty., 285 F.3d 1334, 1337 (11th Cir. 2002).

To survive a Rule 12(b)(6) motion to dismiss, the complaint "does not need detailed factual allegations"; however, the "plaintiff[s'] obligation to provide the 'grounds' of [their] 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (2007) (internal citations omitted). "Factual allegations must be enough to raise

a right to relief above the speculative level . . . ." Id. The plaintiffs must plead enough facts to "state a claim that is plausible on its face." Id. at 570.

## III. DISCUSSION

### A. Arbitration

Defendants argue that Fretwell, Brown, Peterson, and Pate are required to arbitrate their claims under the terms of their loan agreements. The Court has already decided, and the Eleventh Circuit has affirmed, that the arbitration provisions are unenforceable as to Inetianbor. See Inetianbor, 768 F.3d 1346. Apparently conceding this point, Defendants do not attempt to enforce the arbitration agreement as to Inetianbor or Fry, whose arbitration agreement is substantially similar to Inetianbor's. Instead, Defendants argue that Fretwell, Brown, Peterson, and Pate, who have different versions of the loan agreement, are required to arbitrate their claims because they have not specifically challenged the "delegation clause."

A delegation provision is an agreement between the parties to arbitrate threshold issues concerning the arbitration agreement, including whether the agreement is enforceable. Parnell, 804 F.3d at 1146. Typically, "[w]hen an arbitration agreement contains a delegation provision and the plaintiff raises a challenge to the contract as a whole, the federal courts may not review his claim because it has been committed to the power of the arbitrator." Id. "[A]bsent a challenge to the delegation provision itself, the federal courts must treat the delegation provision as valid . . . and must enforce it . . ., leaving any challenge to the validity of the [a]greement as a whole for the arbitrator." Id. at 1146–47.

However, as Plaintiffs correctly point out, Fretwell, Brown, Peterson, and Pate need not specifically challenge the delegation clause in their agreements because they are entitled to the benefit of "the law of the case." "Under the 'law of the case' doctrine, the findings of fact and conclusions of law by an appellate court are generally binding in all subsequent proceedings in the same case in the trial court or on a later appeal."[4] This That And The Other Gift And Tobacco, Inc. v. Cobb Cty., Ga., 439 F.3d 1275, 1283 (11th Cir. 2006) (citing Heathcoat v. Potts, 905 F.2d 367, 370 (11th Cir. 1990)). This doctrine "bars relitigation of issues that were decided either explicitly or by necessary implication" in a prior appellate decision in the same case. Id. (citations omitted).

Here, Plaintiffs need not relitigate whether the delegation clause is valid because the Eleventh Circuit has already held that Inetianbor's arbitration agreement is unenforceable, and the same language that the Eleventh Circuit found objectionable appears in each Plaintiff's loan agreement. Specifically, each agreement has a provision entitled "Agreement to Arbitrate," which states: "You agree that any Dispute, except as provided below, will be resolved by Arbitration, which shall be conducted by the Cheyenne River Sioux Tribal Nation by an authorized representative in accordance with its consumer dispute rules and the terms of this Agreement." The loan agreements also define "Dispute" to include "any issue concerning the validity, enforceability, or scope of this loan or the Arbitration agreement." Relying on these same provisions, the Eleventh Circuit affirmed this Court's findings that the forum-selection clause was integral to the arbitration agreement, that the specified forum was unavailable, and that CashCall therefore could not use the arbitration agreement to compel Inetianbor to

[4] A judgment of the district court, until it is set aside or reversed, also constitutes the law of the case. Elgin Nat. Watch Co. v. Barrett, 213 F.2d 776, 779 (5th Cir. 1954).

arbitrate his claims. See Inetianbor, 768 F.3d at 1348. The Eleventh Circuit concluded that: (1) the "Agreement to Arbitrate" provision requires "some direct participation by the Tribe itself"; and (2) such participation is impossible because the Tribal authority neither authorizes arbitration nor has consumer dispute resolution rules to govern it. Id. at 1353–54. Therefore, by necessary implication, the same provisions in the new Plaintiffs' arbitration agreements are also unenforceable. Because there is no reason for Fretwell, Brown, Peterson, and Pate to attack the enforceability of their arbitration agreements under the law of the case, there also is no reason for them to challenge the Tribal Arbitrator's authority to make the enforceability determination under the delegation clause.

That Plaintiffs have different "Choice of Arbitrator" provisions in their respective agreements does not change this result. Inetianbor's "Choice of Arbitrator" provision requires arbitration to be conducted by "a Tribal Elder" or "a panel of three (3) members of the Tribal Counsel." DE 220-1 at 4. Fretwell, Brown, Peterson, and Pate have "Choice of Arbitrator" provisions that allow for administration of the arbitration by the American Arbitration Association ("AAA"), JAMS, or an arbitration organization mutually agreeable to the parties. However, as another district court in this Circuit recently observed about a Western Sky loan agreement like that of Fretwell, Brown, Peterson, and Pate, the "Choice of Arbitrator" clause "does not allow for a choice of arbitrator—only a choice of an arbitration administrator." Parnell v. CashCall, Inc., No. 4:14-CV-0024-HLM, 2016 WL 3356937, at *12 (N.D. Ga. Mar. 14, 2016). Consequently, the "Choice of Arbitrator" provision still requires the participation of the Tribe in ways that are impossible for the reasons stated by the Eleventh Circuit in this case. Id. at 14.

While the Court recognizes the FAA's strong presumption in favor of enforcing arbitration agreements, "fidelity to the law does not require a judge to be naïve or impractical." Smith v. W. Sky Fin., LLC, No. CV 15-3639, 2016 WL 1212697, at *7 (E.D. Pa. Mar. 4, 2016). One cannot ignore the context in which Defendants now seek to compel arbitration. Extensive litigation has taken place across the country in which both borrowers and government bodies have challenged the business practices of CashCall and its affiliates, including their use of questionable arbitration agreements. The Seventh Circuit found that a Western Sky arbitration agreement like Inetianbor's to be "a sham and an illusion" with "no prospect of a meaningful and fairly conducted arbitration." Jackson v. Payday Financial, LLC, 764 F.3d 765, 779 (7th Cir. 2014) (internal quotations omitted). Another court called an arbitration agreement similar to those of Fretwell, Brown, Peterson, and Pate "the product of fraud and overreaching." Parnell, 2016 WL 3356937 at *12. One judge remarked on the "odiousness of CashCall's apparent practice of using tribal arbitration agreements to prey on financially distressed consumers, while shielding itself from state actions to enforce consumer protection laws." Moses v. CashCall, Inc., 781 F.3d 63, 94 (4th Cir. 2015) (J. Davis concurring). These are the arbitration agreements that Defendants boldly ask the Court to enforce in their Motion.

Moreover, the Court cannot ignore CashCall's conduct throughout the course of the instant proceedings. CashCall has already forced Plaintiff Inetianbor to repeatedly attempt to arbitrate his claims in a Tribal forum that did not exist, with a designated "arbitrator" who was anything but impartial, under procedural rules that were illusory. Based on this record, Judge Restani, in her concurrence in the Eleventh Circuit decision

affirming this Court, called the forum-selection provision in Inetianbor's loan agreement "both procedurally and substantively unconscionable" and a "sham." Inetianbor, 768 F.3d at 1354–55 (J. Restani concurring). Defendants' motion to compel four of the five new Plaintiffs to arbitrate their claims in an imaginary forum with imaginary rules pursuant to contractual provisions already deemed unenforceable, if not unconscionable and a sham, is clearly nothing more than the latest in their brazen attempts to delay this litigation and avoid reaching the merits of the case. The Court finds no basis for granting such a motion.

**B. Personal Jurisdiction**

Reddam previously filed a Motion to Dismiss for Lack of Personal Jurisdiction with respect to the claims in the Fourth Amended Complaint. See DE 165. The Court denied that Motion, concluding that its "exercise of jurisdiction over Defendant Reddam is permissible under both Florida's long-arm statute and the Due Process Clause." DE 193 at 18. In seeking dismissal of the claims against Reddam in the Fifth Amended Complaint, Defendants now reassert many of the same arguments that the Court rejected earlier. Defendants have not provided any new and persuasive reasons for the Court to disturb its prior ruling.[5] Thus, for the same reasons set forth in the Court's prior Order, see DE 193 at 17–22, Defendant's motion to dismiss for lack of personal jurisdiction is denied.

**C. Venue**

Although Defendants request dismissal for improper venue under Rule 12(3)(b), the substance of their motion reveals that they actually seek dismissal under the

[5] Defendants do make a new argument that Plaintiffs' counsel "elicited no testimony whatsoever relating to whether any of [Reddam's] conduct was directed to the State of Florida" during his recent deposition. DE 220 at 10. This alone does not warrant a change in the Court's prior personal-jurisdiction analysis.

doctrine of *forum non conveniens* pursuant to the Tribal venue clause in Plaintiffs' loan agreements. In light of the extensive record in this case and prior briefing on this issue, the Court will construe Defendants' challenge to venue as a motion to dismiss for *forum non conveniens*.[6]

As explained above, a court typically must modify its *forum non convenience* analysis when a movant seeks to enforce a forum-selection clause. See Atl. Marine, 134 S. Ct. at 581–82. For this modified *forum non convenience* analysis to apply, however, "the forum-selection clauses in the Plaintiffs' loan agreements must be contractually valid and enforceable." Heldt v. Payday Fin., LLC, 12 F. Supp. 3d 1170, 1178 (D.S.D. 2014). The forum-selection clause in Plaintiffs' loan agreements is not enforceable because the selected forum lacks subject matter jurisdiction.

All Plaintiffs' loan agreements state, with only the slightest variation, that:

> **This Loan Agreement is subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation.** By executing this Loan Agreement, you, the borrower, hereby acknowledge and consent to be bound to the terms of this Loan Agreement, consent to the sole subject matter and personal jurisdiction of the Cheyenne River Sioux Tribal Court, and that no other state or federal law or regulation shall apply to this Loan Agreement, its enforcement or interpretation.

The agreements of all Plaintiffs except Inetianbor also state: "You further agree that you have executed this Loan Agreement as if you were physically present within the exterior boundaries of the Cheyenne River Indian Reservation . . . ."

This forum-selection provision is unenforceable because CRST Court does not have subject matter jurisdiction over Plaintiffs' claims. Although a party's consent in a

[6] Other courts have similarly construed a motion to dismiss for improper venue as motion to dismiss under the *forum non conveniens* doctrine where appropriate. E.g., Zurla Transp. LLC v. Enoble, Inc., No. 2:16-CV-00333-SPC-CM, 2016 WL 4162644, at *1 (M.D. Fla. Aug. 4, 2016); PNC Bank, N.A. v. Akshar Petroleum, Inc., No. 3:13-CV-436-J-34PDB, 2014 WL 1230689, at *3 (M.D. Fla. Mar. 25, 2014).

contract may establish personal jurisdiction, "a tribal court's authority to adjudicate claims involving nonmembers concerns its subject matter jurisdiction, not personal jurisdiction." Jackson, 764 F.3d at 783 (citing Nevada v. Hicks, 533 U.S. 353, 367 n.8 (2001)). A tribal court's subject matter jurisdiction over nonmembers depends upon a grant of judicial authority from Congress. Smith, 2016 WL 1212697, at *3. "Therefore, a nonmember's consent to tribal authority is not sufficient to establish the jurisdiction of a tribal court." Jackson, 764 F.3d at 783. Instead, the Court must ask whether the Tribal Court could exercise subject matter jurisdiction over Plaintiffs' claims apart from the forum-selection clauses in their loan agreements.

Native American "tribes do not, as a general matter, possess authority over non-Indians who come within their borders," and "a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction." Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. 316, 328 (2008) (citation omitted). There are two narrow situations in which a tribe may exercise jurisdiction over nonmembers: (1) "[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements"; and (2) "[a] tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." Montana v. United States, 450 U.S. 544, 566 (1981). These limited jurisdictional exceptions demonstrate that "[t]he question of a tribal court's subject matter jurisdiction over a nonmember . . . is

tethered to the nonmember's actions, specifically the nonmember's actions on the tribal land." Jackson, 764 F.3d at 782 n.42.

In addressing a forum-selection clause in Western Sky loan agreements nearly identical to Plaintiffs', the Seventh Circuit has held that the CRST Court lacked subject matter jurisdiction to entertain the claims of borrowers in Illinois. Id. at 782. The Seventh Circuit reasoned as follows:

> Here, the Plaintiffs have not engaged in *any* activities inside the reservation. They did not enter the reservation to apply for the loans, negotiate the loans, or execute loan documents. They applied for loans in Illinois by accessing a website. They made payments on the loans and paid the financing charges from Illinois. Because the Plaintiffs' activities do not implicate the sovereignty of the tribe over its land and its concomitant authority to regulate the activity of nonmembers on that land, the tribal courts do not have jurisdiction over the Plaintiffs' claims.

Id. The same analysis applies equally to Plaintiffs in this action and their activities in Florida. Consequently, Plaintiffs' actions do not fall within the Tribe's adjudicative authority, and without subject matter jurisdiction, the CRST Court is not a proper venue to adjudicate Plaintiffs' claims.

The certifications of certain Plaintiffs that their agreements were executed "as if" they were physically present on the Reservation have no bearing on the Tribe's subject matter jurisdiction. This provision is merely a "legal fiction" that has no effect on the Tribal-jurisdiction analysis. Smith, 2016 WL 1212697, at *4.

**D. Choice of Law**

The Court has already rejected CashCall's assertion of the Tribal choice-of-law clause. See DE 158; DE 166. After allowing limited discovery and supplemental briefing on the issue of governing law, the Court found the Tribal choice-of-law clause inapplicable because Inetianbor's loan transactions with Western Sky did not have a

"normal and reasonable relation" to the CRST forum. Id. The Court also held that Inetianbor's state-law claims were not subject to dismissal on choice-of-law grounds. DE 193 at 8. In seeking dismissal on the basis of choice of law in the instant Motion, Defendants have simply reasserted the same arguments previously rejected by the Court, and they have not articulated any reason why the addition of the five new Plaintiffs would alter the Court's prior conclusions. Accordingly, the Court rejects Defendants' renewed attempt to apply Tribal law without need for further elaboration.

**E. Rule 12(b)(6)**

Defendants move to dismiss Plaintiffs' claims for violation of FDUTPA (Claim 2), fraud (Claim 3), violation of the FCRA (Claim 4), defamation (Claim 5), and personal liability of Reddam (Claim 7). Defendants' motion to dismiss under Rule 12(b)(6) is largely a motion for reconsideration of the Court's prior Order granting in part and denying in part Defendants' Motion to Dismiss the Fourth Amended Complaint. See DE 193. In that Order, the Court held that Inetianbor had sufficiently stated a claim in the Fourth Amended Complaint for a violation of FDUTPA, fraud, defamation, and personal liability of Reddam. Id. at 23. The current versions of these claims in the Fifth Amended Complaint are similar in all material respects to the claims that the Court previously found to be properly pled. Defendants have made no strong argument why the Court should reach a different conclusion now.

Although the Court's prior Order dismissed Inetianbor's FCRA claim as insufficiently pled, there is no reason to dismiss the claim in its current form. The Court previously concluded that the Fourth Amended Complaint could not support a claim for violating 15 U.S.C. § 1681s–2(b) because nowhere did it allege that CashCall received

notice of a dispute from a credit reporting agency ("CRA"). Id. at 14–15. The FCRA claim in the Fifth Amended Complaint corrects this deficiency, documenting in great detail how Inetianbor filed multiple credit disputes with several CRAs and how the CRAs notified CashCall of these disputes. See id. ¶¶ 135–69.

Defendants argue that, even with these amendments, Inetianbor's FCRA claim remains inadequate because he has not factually supported his allegations that CashCall failed to conduct a reasonable investigation of Inetianbor's disputed information and that CashCall acted willfully in failing to comply with the FCRA. See DE 220 at 16–17. This argument improperly imposes a greater pleading standard than Rule 12(b)(6) requires. To survive a motion to dismiss, a complaint need only have "facial plausibility," meaning that "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at 556). The Fifth Amended Complaint's extensive factual allegations—including repeated notifications to CashCall of Inetianbor's credit disputes, unusual changes to Inetianbor's credit report after he sued CashCall, and manipulation of false information on his credit report to make it appear that he was admitting debt to CashCall—are more than sufficient to support a reasonable inference that CashCall failed to properly investigate the matter and willfully refused to report accurate information. That CashCall may have had a good faith basis for believing that Inetianbor's loan was legitimate and that the information reported to the CRAs was accurate does not alter the Court's analysis of whether Inetianbor has sufficiently stated a claim.

## IV. CONCLUSION

For the reasons set forth herein, it is hereby

**ORDERED AND ADJUDGED** that Defendants' Motion to Compel Arbitration and Motion to Dismiss the Fifth Amended Complaint [DE 220] is **DENIED**.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, on this 18th day of August, 2016.

JAMES I. COHN
United States District Judge

Copies provided to:
Counsel of record via CM/ECF