IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

SHANE STOTT MICHAEL,

Plaintiff,

v.

FIRST INVESTORS FINANCIAL SERVICES,

Defendant.

Case No.: 3:25-cv-0785-AN

OPINION AND ORDER

Self-represented plaintiff Shane Stott Michael filed a complaint in state court against defendant First Investors Financial Services,[1] alleging violations of the Fair Debt Collections Practices Act ("FDCPA"), the Fair Credit Reporting Act ("FCRA"), and the Oregon Unlawful Trade Practices Act ("UTPA"). Numerous motions are pending before the Court. Plaintiff moves to remand the case to state court, for an order deeming certain matters admitted, and for rulings in his favor on all issues. Defendant moves to dismiss the action in its entirety for insufficient service and failure to state a claim, and for an order confirming that it does not need to respond to plaintiff's many filings. After reviewing the motions and related filings, the Court finds this matter appropriate for decision without oral argument. *See* Local R. 7-1(d). For the reasons that follow, defendant's motion to dismiss is GRANTED and all other motions are DENIED.

LEGAL STANDARDS

A. Motion to Remand

A court must remand an action back to state court if it determines that it lacks subject matter jurisdiction. 28 U.S.C. § 1447(c); *see also Kelton Arms Condo. Owners Ass'n v. Homestead Ins. Co.*, 346

[1] Defendant represents that it is now known as Stellantis Financial Services, Inc. *See* Corp. Disclosure Stmt., ECF 2.

F.3d 1190, 1192 (9th Cir. 2003). The only basis of subject matter relevant here is federal question jurisdiction under 28 U.S.C. § 1331, which grants federal district courts "jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." "In general, '[t]he presence or absence of federal-question jurisdiction is governed by the well-pleaded complaint rule, which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint.'" *Renteria-Hinojosa v. Sunsweet Growers, Inc.*, 150 F.4th 1076, 1091 (9th Cir. 2025) (alteration in original) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). Because "removal statutes are strictly construed against removal," the "defendant seeking removal has the burden to establish that removal is proper and any doubt is resolved against removability." *Luther v. Countrywide Home Loans Servicing LP*, 533 F.3d 1031, 1034 (9th Cir. 2008).

B. Motion to Dismiss

A defendant may move to dismiss a complaint for "failure to state a claim upon which relief can be granted" and "insufficient service of process." Fed. R. Civ. P. 12(b)(5)-(6).

1. *Failure to State a Claim*

A motion to dismiss for failure to state a claim should be granted when the allegations do not "'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678. "The plausibility standard . . . asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

When evaluating the sufficiency of a complaint, courts "accept as true all well-pleaded allegations of material fact, and construe them in the light most favorable to the non-moving party." *Daniels-Hall v. National Education Association*, 629 F.3d 992, 998 (9th Cir. 2010); *see Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012). "[A]llegations in a complaint . . . may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

"Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Although the court must draw all reasonable inferences from the factual allegations in favor of the plaintiff, *Newcal Indus., Inc. v. Ikon Off. Sol.*, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008), the court need not credit legal conclusions that are couched as factual allegations, *Iqbal*, 556 U.S. at 678.

2. *Insufficient Service of Process*

Plaintiff bears the burden of establishing sufficient service of process. *Aetna Bus. Credit, Inc. v. Universal Decor & Interior Design, Inc.*, 635 F.2d 434, 435 (5th Cir. 1981) ("When service of process is challenged, the party on whose behalf it is made must bear the burden of establishing its validity."); *see also Roller v. Herrera*, No. 3:18-CV-00057-HZ, 2018 WL 2946395, at *2 (D. Or. June 11, 2018) ("It is plaintiff's burden to establish the validity of service of process."). As a threshold matter, "a party does not waive service of process objections by removing to federal court." *Even v. Hebel*, No. 24-3726, 2025 WL 1409483, at *2 (9th Cir. May 15, 2025) (citing *Gen. Inv. Co. v. Lake Shore & M.S. Ry. Co.*, 260 U.S. 261, 268-69 (1922)). "When a case is removed from state court to federal court, the question whether service of process was sufficient prior to removal is governed by state law." *Whidbee v. Pierce County*, 857 F.3d 1019, 1023 (9th Cir. 2017). Therefore, because plaintiff attempted service on defendant before the case was removed, the sufficiency of the service is evaluated under Oregon law.

C. Local Rule 7-1

"[T]o encourage parties to resolve amicably disputes when possible, preserving judicial resources for those matters that require the court's intervention," Local Rule 7-1(a)(1) requires that the first paragraph of every motion include a certification that the moving party "'made a good faith effort through personal or telephone conferences to resolve the dispute'" and was unable to do so. *Thompson ex rel. Thorp Fam. Charitable Remainder Unitrust v. Federico*, 324 F. Supp. 2d 1152, 1172 (D. Or. 2004) (quoting Local R. 7-1(a)(1)). Although the requirement to actually confer is waived if any party is a self-represented adult in custody, *see* Local R. 7-1(a)(1)(C), all other litigants, including self-represented litigants, must comply, *Perryman v. Genoa Healthcare LLC*, No. 3:24-cv-01069-SB, 2024 WL 4648945, at *1 n.1 (D. Or. Nov. 1,

2024) ("Lawyers and self-represented litigants must comply with LR 7-1(a)." (citing *Ovitsky v. Oregon*, 594 F. App'x 431, 431-32 (9th Cir. 2015))). The Court may deny, without consideration of the merits, any motion that fails to meet the certification requirement of Local Rule 7-1(a)(1). *See* Local R. 7-1(a)(3); *see also Ovitsky*, 594 F. App'x at 431 (holding that "[t]he district court did not abuse its discretion by denying [the self-represented plaintiff's] motion . . . because [the] motion failed to comply with" Local Rule 7-1).

D. Standards for Self-Represented Litigants

A court must liberally construe the filings of a self-represented plaintiff and "afford the [plaintiff] the benefit of any doubt." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (quoting *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc)). Accordingly, filings by such litigants are held to a less stringent standard than filings prepared by lawyers. *Id.* Further, "'[u]nless it is absolutely clear that no amendment can cure the defect, . . . a [self-represented] litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action.'" *Garity v. APWU Natl. Lab. Org.*, 828 F.3d 848, 854 (9th Cir. 2016) (omission in original) (quoting *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam)). Nonetheless, a self-represented plaintiff "must still 'follow the same rules of procedure that govern other litigants.'" *In re Harris*, 596 F. App'x 581, 583 (9th Cir. 2015) (quoting *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997)).

BACKGROUND

On February 19, 2025, plaintiff filed a complaint in Washington County Circuit Court. *See* Compl., ECF 1-1.[2] In it, plaintiff alleges that defendant violated the FCRA, FDCPA, and UTPA by seeking to

[2] The attachment that defendant includes with its notice of removal and identifies as the complaint appears to include multiple documents with various titles. *See* Compl. 2 (all references to ECF pagination) ("Letter to the Honorable Court Regarding Defendant's Claims on FCRA & FDCPA," with a handwritten "Complaint" at the top); *id.* at 4 ("Re: Service of Process for First Investors Financial Services" (bold omitted)); *id.* at 5 ("Motion to Oppose Arbitration"); *id.* at 7 ("Re: Notice of Court Filing & Rejection of Arbitration Clause . . ."); *id.* at 8 ("RE: Filing of Civil Complaint Against First Investors Financial Services"). Defendant indicates that all of these documents, together, constitute the complaint. Not. of Removal, ECF 1, at ¶ 1 Plaintiff does not dispute this representation, and each of the documents appears to have been filed on the same day. Therefore, the Court treats ECF 1-1 as the whole complaint and cites to the CM/ECF pagination stamped at the top of each page.

collect on an automotive loan without validation, reporting contradictory information to credit bureaus, and attempting to repossess plaintiff's vehicle. *Id.* at 2-3, 5, 7.

A. Removal & Motion to Remand

On May 9, 2025, defendant filed a notice of removal from the Washington County Circuit Court Not. of Removal, ECF 1. Plaintiff timely filed an objection to removal and a motion to remand on May 12, 2025. Pl. Obj. to Removal, ECF 4; Pl. Mot. to Remand, ECF 5. Defendant timely filed a response in opposition to both of plaintiff's filings on May 19, 2025. Def. Resp. to Pl. Obj. & Mot., ECF 13. Plaintiff did not file a reply.

B. Motion to Dismiss

On May 16, 2025, defendant filed a motion to dismiss for insufficient service and failure to state a claim. Def. Mot. to Dismiss ("Def. MTD"), ECF 8. Plaintiff timely responded in opposition on May 19, 2025. Pl. Resp. Opp'n to Def. MTD, ECF 9; Pl. Ex. C, ECF 10. Plaintiff also submitted numerous other filings, two of which the Court construes as supplemental responses to defendant's motion to dismiss.[3] *See* Pl. Clarification & Resp. to Def. Assertions ("Pl. 1st Suppl. Resp."), ECF 14; Pl. Resp. Opp'n to Def. MTD & Formal Not. of Legal Contradictions ("Pl. 2d Suppl. Resp."), ECF 18. Defendant timely filed a reply in support of its motion on June 2, 2025. Def. Reply Supp. MTD, ECF 22.

B. Other Motions

On June 17, 2025, plaintiff filed a "Motion to Enforce Federal Rule of Civil Procedure 8." *See* ECF 28. Defendant timely filed a response in opposition on June 30, 2025, ECF 30. Plaintiff timely filed a reply in support on July 1, 2025, ECF 32.

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[3] Given that plaintiff is self-represented, the Court exercises its discretion to permit and consider ECFs 14 and 18, which are both expressly styled as responses to defendant's motion to dismiss. However, to the extent that plaintiff intends the various other notices and affidavits filed on the docket (e.g. ECFs 11, 12, 15, 16, 17, 19, 20, 21, 23, 24) to serve as further supplemental responses to defendant's motion to dismiss, such supplemental responses are improper under the Local Rules and the Court declines to consider them. *See* Local R. 7-1(e)(3) ("Unless directed by the Court, no further briefing [beyond one response and one reply] is allowed.").

On July 24, 2025, defendant filed a "Motion for a Procedural Order in Response to Plaintiff's Unauthorized Filings," ECF 38. Plaintiff timely filed a response on July 28, 2025, ECF 39, and defendant timely filed a reply in support on August 8, 2025, ECF 41.

On August 11, 2025, plaintiff filed a "Motion Regarding Exhibit A8," ECF 42. Defendant filed a timely response, *see* ECF 43, and plaintiff timely replied, *see* ECF 46.

DISCUSSION

A. Plaintiff's Motion to Remand

Plaintiff argues that this Court lacks subject matter jurisdiction, and the case should therefore be remanded back to state court, because (1) defendant was not named in the complaint, (2) there is no federal question jurisdiction, and (3) defendant's removal was not timely. *See* Pl. Obj. to Removal 1-2.[4] For the reasons described next, all of plaintiff's arguments fail, and the Court concludes that there is federal subject matter jurisdiction here and therefore denies plaintiff's motion to remand.

First, although it is true that plaintiff did not "name [or serve] Stellantis Financial Services Inc. as a defendant," Pl. Mot. to Remand 3 (bold omitted), that is because plaintiff brought suit against defendant in its prior name, First Investors Financial Services, *see* Corp. Disclosure Stmt., ECF 2, at 2; *see also Stellantis Closes Previously Announced Acquisition of First Investors Financial Services Group*, https://www.stellantis.com/en/news/press-releases/2021/november/stellantis-closes-previously-announce-acquisition-of-first-investors-financial-services-group (Nov. 1, 2021) ("Stellantis . . . is pleased to announce completion of the acquisition of . . . First Investors Financial Services Group ("First Investors") . . . , which has been renamed Stellantis Financial Services US Corp. . . .").[5] Plaintiff's apparent

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[4] Neither plaintiff's objection to removal nor his motion to remand contain the conferral certification required by Local Rule 7-1(a). Although that would usually be an independent basis to the deny the motion, *see* Local R. 7-1(a)(3), the Court considers the merits of plaintiff's filings because motions to remand implicate the Court's subject-matter jurisdiction.

[5] Although, a court generally cannot "consider material outside the pleading when assessing the sufficiency of a complaint," it may take judicial notice of facts "not subject to reasonable dispute" because they are "generally known" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998-99 (9th Cir. 2018); *see also* Fed. R. Evid. 201(b). Such judicially noticeable facts include "defendants' corporate name changes

confusion about defendant's name change is understandable, but the Court is not aware of any authority suggesting that such confusion precludes a defendant from seeking removal.

Second, there is federal question jurisdiction "'when a federal question is presented on the face of the plaintiff's properly pleaded complaint.'" *Renteria-Hinojosa*, 150 F.4th at 1091 (quoting *Caterpillar Inc.*, 482 U.S. at 392). Plaintiff asserts that the complaint merely "referenced federal statutes" and that his "claims arose chiefly under Oregon state law." Pl. Obj. to Removal 1. These assertions are undermined by even a cursory review of the complaint. The FCRA and FDCPA are federal statutes raising federal questions. *See* 15 U.S.C. § 1681 *et seq.*; 15 U.S.C. § 1692 *et seq.* Both are asserted on the face of plaintiff's complaint. *See* Compl. 2-3 (discussing at length why defendant should be subject to the FCRA and FDCPA and stating that defendant holds "legal responsibility under both federal and state statutes"); *id.* at 5 ("Plaintiff has filed a Complaint for Declaratory Relief, Injunctive Relief, and Damages against Defendant for violations of: The Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692g[,] The Fair Credit Reporting Act (FRCA), 15 U.S.C. § 1681s-2[, and] Oregon's Unlawful Trade Practices Act (UTPA) ORS 646.607." (bold omitted)). In plaintiff's own words, he brings claims for "violations of federal . . . consumer protection laws." *Id.* at 8. The Court has original jurisdiction over the two causes of action created by federal law. *See Franchise Tax Bd. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 8-9 (1983). While those federal claims are in the case, the Court also has supplemental jurisdiction over plaintiff's state law claim. *See* 28 U.S.C. § 1367(a).

Third and finally, plaintiff contends that defendant's removal is not timely because the removal notice "was filed nearly 80 days after the initial complaint and only after Plaintiff's filings made clear that further relief was being pursued." *Id.* at 2. Even where there is federal jurisdiction over a suit, a defendant may forfeit its right to a federal forum by failing to timely file for removal. *See Cantrell v. Great Republic Ins. Co.*, 873 F.2d 1249, 1253-54 (9th Cir. 1989). Federal law requires defendants to file a notice of removal

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and mergers" located on public websites and not factually challenged. *Pineda v. Wells Fargo Bank, NA*, 695 F. App'x 316, 317 (9th Cir. 2017).

within "30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading." 28 U.S.C. § 1446(b)(1). Although plaintiff's complaint was filed on February 19, 2025, his own motion to remand represents that the complaint was not actually provided to defendant until April 12, 2025. Pl. Mot. to Remand 1 ("Defendant First Investors Financial Services, the original named party, was served on April 12, 2025, after initial sheriff service attempts failed in March 2025." (bold omitted)). Defendant filed its notice of removal in federal court on May 9, 2025, less than thirty days after receiving the complaint. *See generally* Not. of Removal. Therefore, because the Court has subject matter jurisdiction and defendant's removal was timely, plaintiff's motion to remand must be denied.

B. Defendant's Motion to Dismiss

1. *Failure to State a Claim*

The allegations in the complaint are legally insufficient as to all three of plaintiff's claims. The Court considers each claim in turn.

a. FCRA

First, regarding plaintiff's FCRA claim, the only private right of action under the FCRA against furnishers of information to credit reporting agencies ("CRAs") is for violations of 15 U.S.C. § 1681s-2(b). *See Nelson v. Chase Manhattan Mortg. Corp.*, 282 F.3d 1057, 1060 (9th Cir. 2002). Section 1681s-2(b) requires a furnisher that receives notice from a CRA of a dispute to:

> (A) conduct an investigation with respect to the disputed information;
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> (B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;
>
> (C) report the results of the investigation to the consumer reporting agency;
>
> (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information . . . ; and
>
> (E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), . . . promptly [correct the reporting of that information to CRAs].

15 U.S.C. § 1681s-2(b)(1). Therefore, to state a claim under Section 1681s-2(b), a plaintiff must allege facts tending to show that: "(1) the furnisher of information received notice of the dispute from a [CRA]; (2) it failed to perform a reasonable investigation upon receiving such notice; (3) the failure to investigate was willful or negligent; and (4) plaintiff was harmed." *Baldin v. Wells Fargo Bank, N.A.*, No. 3:12-cv-00648-AC, 2013 WL 6388499, at *7 (D. Or. Dec. 6, 2013) (citing *Saucedo v. Bank of Am, N.A.*, No. 3:11-cv-00813-MO, 2011 WL 6014008, at *3 (D. Or. Dec. 1, 2011)). Even a liberal reading of plaintiff's complaint fails to establish these elements. Plaintiff alleges that defendant is "furnishing data to credit bureaus," Compl. 3, but fails to identify whose data is being furnished, what specific credit information defendants provided to CRAs, when or whether plaintiff notified the CRAs or defendant that he disputed the information, the basis for that dispute, defendant's response to the dispute, or the way(s) in which plaintiff was harmed by defendant's alleged failure to investigate and correct any error. Plaintiff's bare allegations of "deceptive credit reporting," *id.* at 5; "Unlawful Credit Reporting & Collection Practices," *id.* at 7; and reporting of "conflicting delinquency information," *id.* at 8 (bold omitted), are not sufficient to state a claim. *See Iqbal*, 556 U.S. at 678 (holding that "[t]hreadbare" and "conclusory" allegations are insufficient to state a claim for relief).

Plaintiff's supplemental responses do not alter the Court's conclusion as to the insufficiency of the complaint. In one filing, plaintiff identifies alleged discrepancies in the information defendant provided to CRAs after the complaint was filed. *See* Pl. Ex. C 1. The Court is limited to the facts on the face of plaintiff's complaint and cannot consider new facts or evidence asserted in response to defendant's motion to dismiss. *See Schneider v. Cal. Dep't of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) ("[A] court *may not* look beyond the complaint to a plaintiff's moving papers."). Regardless, even if the Court could consider these new facts, they would still be insufficient. The fact of a reporting discrepancy, alone, does not show that plaintiff reported that discrepancy to either a CRA or defendant, that defendant failed to investigate or correct the discrepancy, nor that plaintiff was plausibly harmed by the discrepancy. Plaintiff has failed to state a claim under the FCRA.

b. FDCPA

Second, regarding plaintiff's FDCPA claim, to state a claim under FDCPA, a plaintiff must allege "(1) that [they are] a consumer; (2) that the debt arises out of a transaction entered into for personal purposes; (3) that the defendant is a debt collector; and (4) that the defendant violated one of the provisions of the FDCPA." *Freeman v. ABC Legal Servs., Inc.*, 827 F.Supp.2d 1065, 1071 (N.D. Cal. 2011). Defendant argues that the complaint "fails to allege even a single fact to establish that" it is a debt collector. Def. MTD 6. To establish that defendant is a debt collector under the FDCPA, plaintiff must allege facts tending to show that defendant: (1) "uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts," or (2) "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). Original creditors are not considered debt collectors under the FDCPA. *De Dios v. Int'l Realty & Invs.*, 641 F.3d 1071, 1074 (9th Cir. 2011). The Court can locate in the complaint only one assertion relating to whether defendant is a debt collector:

> If [defendant] is collecting a debt on behalf of another entity or if the loan has been assigned for collection purposes, they qualify as a debt collector under the FDCPA and must comply with its strict regulations. Even if they claim to be the original creditor, many courts have ruled that deceptive or misleading collection tactics can bring an entity under FDCPA coverage.

Compl. 3. These equivocal nature of these assertions aside, allegations that defendant is "collecting a debt on behalf of another," that it is collecting on a "loan that has been assigned" to it, or that it is collecting on a debt it originated all fail under Ninth Circuit law. *Schlegel v. Wells Fargo Bank, N.A.*, 720 F.3d 1204, 1208 (9th Cir. 2013) (holding that a plaintiff who alleged that some part of the defendant's business involved debt collection and that the defendant collected on debts assigned to it failed to establish that defendant was a debt collector); *De Dios*, 641 F.3d at 1074 ("[A] creditor to whom the debt was originally owed[] is not considered a debt collector.").[6] Therefore, plaintiff's FDCPA claim must also be dismissed.

[6] Because plaintiff's failure to adequately allege that defendant is a debt collector is, alone, a sufficient basis to dismiss plaintiff's FDCPA claim, the Court does not reach any of the other FDCPA elements. Nonetheless, if plaintiff chooses to file an amended complaint, he will need to allege specific facts showing that all four of the elements identified above are satisfied. *See generally Freeman*, 827 F.Supp.2d at 1071.

c. UTPA

Finally, regarding plaintiff's UTPA claim, the complaint asserts a violation of Oregon Revised Statutes ("ORS") § 646.607. Compl. 5. However, "only the state can prosecute trade practices declared unlawful by ORS 646.607." *Horton v. Nelson*, 252 Or. App. 611, 619, 288 P.3d 967 (2012). Several of plaintiff's responses to defendant's motion to dismiss also reference ORS § 646.608. *See* Pl. Resp. 1; Pl. 1st Suppl. Resp. 1. New causes of action asserted in response to a motion to dismiss—like new facts—cannot properly be considered. *Cf. La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1089 (9th Cir. 2010) (holding that a plaintiff may not "effectively amend its Complaint by advancing a new theory . . . in its response to a motion for summary judgment"). However, even if plaintiff's complaint could be read to assert claims broadly under other provisions of the UTPA, it lacks any specific factual allegations from which the Court could conclude that defendant violated ORS § 646.708. To state a claim for relief, plaintiff would need to identify the specific provision of ORS § 646.708 that he believes defendant violated and allege concrete facts supporting that claim. Because the complaint fails to do so, plaintiff's UTPA claim must also be dismissed.

2. *Insufficient Service of Process*

The Court's conclusion that the allegations in the complaint are insufficient as to all three of plaintiff's claims is, alone, a sufficient reason to grant defendant's motion to dismiss. However, the Court addresses the alternative basis for dismissal raised in defendant's motion, insufficient service of process, as it constitutes an independent basis for dismissal and so as to provide guidance to plaintiff should he choose to file an amended complaint.

Although defendant's submissions make clear that it has received actual notice of the suit, defendant nonetheless contends that plaintiff's complaint should be dismissed for insufficient service of process. As surprising as it may be to most non-lawyers (and perhaps even to some lawyers, too), service of process is an area of the law where form often triumphs over function, and actual notice is largely irrelevant. *See Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) ("[W]ithout substantial compliance with [Federal] Rule [of Civil Procedure] 4 'neither actual notice nor simply naming the defendant in the complaint will provide personal jurisdiction.'" (quoting *Benny*, 799 F.2d at 492)); *Davis Wright Tremaine, LLP v. Menken*, 181 Or. App. 332, 338-39, 45 P.3d 983 (2002) ("[U]nder Oregon's sufficiency of service rules and related jurisprudence, actual notice is, essentially, irrelevant." (citing *Jordan v. Wiser*, 302 Or. 50, 60, 726 P.2d 365 (1986)). As such, the question is not whether defendant is aware of this lawsuit (it obviously is), but whether plaintiff substantially complied with Oregon Rule of Civil Procedure 7. *See Whidbee*, 857 F.3d at 1023 (observing that state law governs objections to service attempted before removal).

Oregon law provides that service of process may be accomplished by "by mailing true copies of the summons and the complaint to the defendant by first class mail and by any of the following: certified, registered, or express mail with return receipt requested." Or. R. Civ. P. 7 D(2)(d)(i). Although plaintiff served the summons by certified mail, defendant points out that there is no evidence in the record that plaintiff also served the summons by *first class* mail, as required by the rule. *See* Def. MTD 4; *see also* Not. of Removal Ex. C, ECF 1-3, at 195-96 (notice filed by plaintiff in state court indicating that plaintiff effectuated service of process by certified mail on April 11, 2025, but making no mention of first class mail). Plaintiff has not rebutted defendant's assertions of inadequate service.[7]

Under Oregon law, "[p]laintiff has the burden of demonstrating adequate service." *Card v. Pipes*, 398 F. Supp. 2d 1126, 1131 (D. Or. 2004) (citing *Pham v. Faber*, 152 Or.App. 634, 955 P.2d 257 (1998)). Because plaintiff has failed to carry that burden, Federal Rule of Civil Procedure 12(b)(5) is an independent basis to dismiss the complaint. However, "in 'all cases removed from any State court to any district court of the United States,' a plaintiff may serve process upon removal if service of process was defective or was not attempted before removal." *Whidbee*, 857 F.3d at 1023 (emphasis omitted) (quoting 28 U.S.C. § 1448). Therefore, if plaintiff chooses to file an amended complaint, within thirty days of filing the amended

[7] Failure to respond in opposition to an argument put forward in an opening motion constitutes concession of the uncontested issue. *See Jenkins v. County of Riverside*, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005) (holding that the plaintiff abandoned claims that she did not defend in opposition to the defendant's motion for summary judgment); *cf. Aramark Facility Servs. v. SEIU Local 1877*, 530 F.3d 817, 824 (9th Cir. 2008) (plaintiff waived issues not adequately briefed).

complaint, plaintiff shall serve defendant with the summons and the amended complaint in accordance with Federal Rule of Civil Procedure 4. The Court takes this opportunity to direct plaintiff to the service-related resources for self-represented litigants available on the District's website. *See* Representing Yourself, https://www.ord.uscourts.gov/index.php/representing-yourself.

C. Remaining Motions

Finding that dismissal is appropriate under both Rule 12(b)(5) and 12(b)(6), the Court denies as moot all remaining motions. The remaining motions either do not generally concern the issues relating to removal or dismissal, are otherwise improper,[8] or are rendered irrelevant by the Court's rulings on the motions to remand and dismiss.

CONCLUSION

For the reasons stated herein, plaintiff's motion to remand, ECF 5, is DENIED, and defendant's motion to dismiss, ECF 8, is GRANTED. Accordingly, plaintiff's complaint is DISMISSED without prejudice and with leave to amend, and all other pending motions are DENIED as moot. Specifically, because the Court cannot say that it is "'absolutely clear that no amendment can cure the defect[s]'" identified in this Opinion and Order, *Garity*, 828 F.3d at 854 (quoting *Lucas*, 66 F.3d at 248), the Court grants plaintiff leave to file an amended complaint within thirty (30) days addressing the deficiencies identified in this Opinion and Order. To facilitate review of any amended complaint, plaintiff is encouraged to organize his complaint by claim (e.g., FCRA, FDCPA, UTPA) and use numbered paragraphs to list the specific facts that he alleges show that defendant violated each law. If plaintiff fails to file an amended complaint within thirty (30) days, judgment will be entered against plaintiff without further notice.

In light of plaintiff's status as a self-represented litigant, and in the interest of avoiding unnecessary and wasteful expenditures of resources, defendant may file a waiver of service of summons within seven

[8] Plaintiff's "Motion to Enforce Federal Rule of Civil Procedure 8," ECF 28, asks the Court to deem certain matters admitted. His "Motion Regarding Exhibit A8 (Defendant's Admission of Debt Transfer)," ECF 42, asks the Court to rule in plaintiff's favor on all issues. Both of these motions lack Local Rule 7-1(a) conferral certifications, which is alone a sufficient basis upon which to deny them. *See* Local R. 7-1(a)(3).

(7) days of plaintiff filing any amended complaint. If defendant waives service accordingly, it shall answer or otherwise respond to the amended complaint within sixty (60) days of plaintiff filing the amended complaint. If defendant declines to waive service, plaintiff must serve a summons and the amended complaint on defendant within thirty (30) days of filing the amended complaint and must promptly thereafter file proof of service with the Court. Defendant shall then file an answer or responsive motion within seven (7) days of being served with the summons and amended complaint.

IT IS SO ORDERED.

DATED this 31st day of March, 2026.

Adrienne E Nelson

Adrienne Nelson
United States District Judge