

No. 25-

IN THE
Supreme Court of the United States

EVA MIGLIORE, BY HER NEXT FRIEND
JOSEPH MIGLIORE,

Petitioner,

v.

SUNLIGHT FINANCIAL LLC AND
CROSS RIVER BANK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

CARY L. FLITTER
Counsel of Record
ANDREW M. MILZ
JODY THOMAS LOPEZ-JACOBS
EDWARD M. FLITTER
FLITTER MILZ, P.C.
1814 East Route 70
Suite 350
Cherry Hill, NJ 08003
(856) 396-0600
cflitter@consumerslaw.com

Counsel for Petitioner

121012



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

As a bulwark to protect consumer privacy and the highly sensitive content of consumer credit reports, the Fair Credit Reporting Act (FCRA) strictly limits the dissemination and use of consumer reports to select “permissible” purposes “and no other.” 15 U.S.C. § 1681b(a); b(f). Under the FCRA, it is a permissible purpose to use or obtain a consumer report “in connection with a credit transaction involving the consumer,” but only if the transaction is “initiated by the consumer.” 15 U.S.C. § 1681b(a)(3)(A), subject to 15 U.S.C. § 1681b(c). If the transaction is not initiated by the consumer, using or obtaining the consumer report is permissible if “the consumer authorizes” it. 15 U.S.C. § 1681b(c). The Seventh and Ninth Circuits have so held.

Is it permissible for a company to use or obtain a credit report without the consumer’s initiation of a credit transaction or authorization, as the Third Circuit held below in this case of forgery and fraud—thereby allowing a company to pull a credit report on any person at any time without their participation or consent?

PARTIES TO THE PROCEEDING

Petitioner, Appellant-Plaintiff below, is Eva Migliore. As Ms. Migliore is a senior citizen who is infirm, she is proceeding by and through her son, Joseph Migliore.

Respondents, Appellees-Defendants below, are Sunlight Financial, LLC and Cross River Bank.

Also party to the case below were Vision Solar, LLC, Vision Solar NJ, LLC, and Jon Seibert, but they are not involved in this petition.

RULE 29.6 STATEMENT

Petitioner, Eva Migliore, is not a business organization but rather a natural individual.

STATEMENT OF RELATED CASES

Eva Migliore, by her next friend Joseph Migliore v. Vision Solar LLC, Vision Solar NJ LLC, Jon Seibert, Sunlight Financial LLC and Cross River Bank, No. 1:23-cv-02623-CPO, U. S. District Court for the District of New Jersey. Judgment entered March 28, 2024.

Eva Migliore, by her friend Joseph Migliore v. Vision Solar LLC, Vision Solar NJ LLC, Jon Seibert, Sunlight Financial LLC and Cross River Bank, No. 24-1679, U. S. Court of Appeals for the Third Circuit. Judgment entered October 22, 2025.

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INTRODUCTION

Eva Migliore was at home in her private “no solicitations” senior community when a door-to-door salesman knocked on her door promising “free” solar panels.¹ He showed no documents and never mentioned financing. The salesman then created a fake email address to access a loan application on the Respondent Sunlight Financial LLC’s electronic platform and forged Migliore’s signature on a \$99,000 loan from Respondent Cross River Bank. In doing so, both lender Respondents used Migliore’s credit report to create a credit transaction without her knowledge or authorization. Migliore sued the Respondents alleging they used or obtained her consumer report without a permissible purpose in violation of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681b(f).

A consumer credit report² is a trove of sensitive personal information including a consumer’s financial accounts, debt load, pay histories, credit card balances, mortgage loans, past employment, maiden (or other)

1. This is a common sales pitch, ostensibly premised on the availability of government incentives. But it is false. *See* FTC, *How to avoid getting burned by solar or clean energy scams*, available at <https://consumer.ftc.gov/consumer-alerts/2024/08/how-avoid-getting-burned-solar-or-clean-energy-scams>, last visited March 17, 2026.

2. “Consumer report” is a broadly defined term in the FCRA that covers all manner of files collected on consumers. It includes, but is not limited to, traditional credit reports such as those prepared by, e.g., TransUnion, Equifax, and Experian. 15 U.S.C. § 1681a(d)(1). Migliore here uses the terms “consumer report” and “consumer credit report” interchangeably.

names, date of birth, current and historical addresses, collection accounts, and other private data.³

Recognizing the vast potential for abuse, Congress passed the FCRA to tightly regulate the acquisition and use of consumer credit reports. The FCRA limits dissemination of consumer reports to a few specified statutory permissible purposes. “Subject to subsection (c),” a “credit transaction involving the consumer” can be a permissible purpose. 15 U.S.C. § 1681b(a)(3)(A). But, subsection (c) provides that when a credit transaction is “not initiated by the consumer,” a company can only use or obtain a credit report if the “consumer authorizes” it, 15 U.S.C. § 1681b(c)(1)(A), or it involves a firm offer of credit or insurance. 15 U.S.C. § 1681b(c)(1)(B).⁴

For 20 years, the rule has been settled by the Seventh Circuit and more recently by the Ninth Circuit that a company “may rely on section 1681b(a)(3)(A) only if the consumer initiates the transaction.” *Stergiopoulos v. First Midwest Bancorp, Inc.*, 427 F.3d 1043, 1047 (7th Cir. 2005); *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 675 (9th Cir. 2010), cert. denied, 562 U.S. 1134 (2011). Identity theft victims do not initiate or authorize any credit transaction, so the courts have recognized that the

3. See Consumer Financial Protection Bureau, *What is a credit report?*, available at <https://www.consumerfinance.gov/ask-cfpb/what-is-a-credit-report-en-309>, last visited March 17, 2026; Equifax, *What Information Is in a Credit Report?*, available at <https://www.equifax.ca/personal/education/credit-report/articles/-/learn/what-information-is-in-a-credit-report>, last visited March 17, 2026.

4. A firm offer of credit or insurance is not at issue in this case.

victim is not a participant in and thus not “involved” in a “credit transaction involving the consumer” under this subsection. *Andrews v. TRW, Inc.*, 225 F.3d 1063, 1067 (9th Cir. 2000), rev’d on other grounds, *TRW, Inc. v. Andrews*, 534 U.S. 19 (2001).

But now the Third Circuit has gone in a very different direction holding that whether a consumer applies for credit or consents to release of her consumer report “is not pertinent to whether she stated a [Fair] Credit Reporting Act claim.” (App. 68a). The court below held that the Respondents did not violate the FCRA when they obtained and used Migliore’s credit report because the forged solar panel “loan” was a “credit transaction involving the consumer” under 15 U.S.C. § 1681b(a)(3)(A) although neither initiated nor authorized by the consumer. (App. 68a). This creates a circuit split.

The opinion below is based on the patent legal error of relying exclusively on application of the § 1681b(a)(3)(A) language regarding “credit transaction involving the consumer” when the introduction to § 1681b(a) expressly conditions that language as “[s]ubject to subsection (c).” And subsection (c) eliminates use of subsection (a)’s “involving” language when “any credit or insurance transaction . . . is not initiated by the consumer,” precisely the uncontroverted situation here. Congress specifically precluded the panel’s focus on Petitioner’s putative involvement by requiring instead that the inquiry focus on whether she initiated the credit transaction. She did not, and the panel failed to even acknowledge that consideration.

The Third Circuit’s mistakes are of fundamental importance to consumers nationwide. The holding creates a broad “credit transaction” exception to the FCRA’s privacy safeguards—an exception that, when applied or followed, would swallow the rule. The ruling would greenlight any company to pull credit reports on *any* consumer at *any* time, without their authorization even though the consumer is not involved in, and did nothing to initiate, a credit transaction—merely because the prospective lender wished to create one. This is an untenable result, untethered to the statute, and contrary to the consumer privacy protection goals of the FCRA. The writ of certiorari should be granted.

OPINIONS BELOW

The opinion of the District of New Jersey (No. 1:23-cv-02623-CPO) dismissing Migliore’s Second Amended Complaint is unpublished and available at 2024 WL 1327947 (D.N.J. 2024). (App. 1a-28a).

The Third Circuit’s affirmance of dismissal by way of initial opinion dated October 22, 2025, is published at 158 F.4th 514 (3d Cir. 2025). (App. 29a-48a). This opinion was vacated by order dated November 21, 2025 after panel rehearing. (App. 49a-50a).

The instant petition concerns the amended opinion of the Third Circuit dated November 21, 2025, issued after panel rehearing, which is published at 160 F.4th 79 (3d Cir. 2025). (App. 51a-69a).

JURISDICTION

The date of the Third Circuit’s original judgment was October 22, 2025. The date of the grant of panel rehearing and denial of *en banc* review was November 21, 2025. Petitioner was granted extension until April 10, 2026 to file the instant petition.

This Court has jurisdiction under 28 U.S.C. § 1254(1), as the petition concerns an appeal in a civil matter decided by the United States Court of Appeals for the Third Circuit, No. 24-1679.

RELEVANT STATUTORY PROVISIONS

Under the Fair Credit Reporting Act, “[a] person shall not use or obtain a consumer report for any purpose unless (1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under [§ 1681b]; and (2) the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.” 15 U.S.C. § 1681b(f).

In affirming dismissal, the Third Circuit found Respondents’ procurement of the credit report of Ms. Migliore to meet the permissible purpose of a “credit transaction involving the consumer,” relying on 15 U.S.C. § 1681b(a)(3)(A). That section reads:

(a) In general—Subject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other: . . .

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;

15 U.S.C. § 1681b(a)(3)(A) (emphasis added). The incorporated “subsection (c),” to which § 1681b(a)(3)(A) is “subject” provides:

(c) Furnishing reports in connection with credit or insurance transactions that are not initiated by consumer

(1) In general—A consumer reporting agency may furnish a consumer report relating to any consumer pursuant to subparagraph (A) or (C) of subsection (a)(3) in connection with any credit or insurance transaction that is not initiated by the consumer only if—

(A) the consumer authorizes the agency to provide such report to such person; or

(B) (i) the transaction consists of a firm offer of credit or insurance; . . .

[elements required to claim firm offer of credit; not at issue here].

15 U.S.C. § 1681b(c)(1).

STATEMENT OF THE CASE

I. STATUTORY BACKGROUND

The Fair Credit Reporting Act (FCRA) regulates consumer reporting agencies, furnishers of information, and users of consumer reports. 15 U.S.C. § 1681, *et seq.* One of the FCRA's animating purposes is “respect for the consumer’s right to privacy.” 15 U.S.C. § 1681(a)(4); *see also* S. Rep. No. 91-517, at 1 (1969) (FCRA enacted “to prevent an undue invasion of the individual’s right of privacy in the collection and dissemination of credit information.”); *TRW, Inc. v. Andrews*, 534 U.S. 19, 23 (2001) (FCRA enacted “to protect consumer privacy”).

The FCRA protects privacy of consumer data in multiple ways, most importantly by limiting the circumstances under which consumer reporting agencies may disclose—and prospective users may obtain—information about the consumer, through 15 U.S.C. § 1681b, the “permissible purpose” provision.

The FCRA sets forth a discrete list of permissible purposes, stating that “[s]ubject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other[.]” 15 U.S.C. § 1681b(a). Subsection § 1681b(c) explicitly references § 1681b(a)(3)(A), stating that a report can be furnished “pursuant to subparagraph (A) or (C) of

subsection (a)(3),” where the credit transaction at issue was “not initiated by the consumer” only if one of two conditions is met: the consumer authorizes the issuance of the report, or the transaction qualifies as a “firm offer of credit or insurance[.]” 15 U.S.C. § 1681b(c)(1).

The Federal Trade Commission (FTC), which was charged with regulatory enforcement of the FCRA for the first forty years of its existence, is of the long-held view that a creditor has a permissible purpose only if the consumer initiates the credit transaction or authorizes the release of credit data. *See* FTC Advisory Opinion to Karen Coffey, 1998 WL 34323748, at *1 (Feb. 11, 1998); FTC Advisory Opinion to Phil Landever, 1999 WL 33932139, at *1 (Oct. 12, 1999).

II. RELEVANT FACTS⁵

Eva Migliore (“Migliore”) is a senior citizen from Whiting, NJ who lives in a senior community with conspicuous signs that prohibit solicitations. (Complaint ¶43-44). In October 2022, a salesperson from a company called Vision Solar solicited Migliore at her home, offering her “free” solar panels. (Id. ¶45).

Migliore did not sign anything during the interaction. No contract documents—paper or electronic—were provided or shown to Migliore at or near the time of the solicitation. At no point during the solicitation did the salesperson mention financing or a loan. (Id. ¶47-49).

5. Taken from Migliore’s Second Amended Complaint (“Complaint”) filed on August 15, 2023, *see* ECF 35 of the district court docket.

After installation, Migliore first learned of a “Solar Energy System Long-Term Loan Agreement” in her name dated October 28, 2022 (“Loan”). The Loan described Sunlight Financial and stated “We are excited to partner with Vision Solar LLC to help you go solar!” The Loan purports to obligate Migliore to make monthly payments to Cross River Bank for 25 years, with the Total of Payments amounting to \$99,749.82. (Id. ¶158-59).

The 21-page “Loan” document was sent to an email address that does not belong to Migliore but was nonetheless “reviewed” and “signed” through that email. (Complaint ¶163-64). The email used for the loan signing and delivery (evamigliore7@yahoo.com) was created to look legitimate—it transposed letters in Migliore’s name—changing it to “Migilore” instead of “Migliore,” and added the digit “7.” The DocuSign Certification demonstrates the electronic signatures are forgeries, signed by the salesman who controlled the fake email address. (Id. ¶157, 63).

On October 28, 2022, the day of the sales visit, Sunlight and Cross River Bank, without notice or permission, obtained and used Migliore’s consumer reports from Experian and Trans Union to determine whether Migliore met their credit requirements. (Id. ¶190). Sunlight and Cross River are listed as the users of Migliore’s report. (Id.). At no point during Migliore’s interaction with the sales agent did he (or anyone else) disclose that her consumer report would be accessed. (Id. ¶192). Sunlight and Cross River’s fraudulent transaction could not have proceeded but for them obtaining Migliore’s consumer reports. (Id. ¶194).

Sunlight and Cross River still consider Migliore bound by the \$99,000 fraudulent Loan. (3d Cir. Oral arg. rec. at 24:27-25:00).

III. THE DISTRICT COURT'S FCRA RULING BASED ON AN INAPPLICABLE "IMPOSTER" THEORY

Sunlight and Cross River Bank filed a Motion to Dismiss the Second Amended Complaint. On March 28, 2024, the district court entered an Opinion granting Sunlight's and Cross River Bank's Motion to Dismiss. (App. 1a-28a). In dismissing the FCRA count, the district court analogized the sales agent to an "imposter" outside the Respondents' control, and dismissed the FCRA claim on that basis (App. 23a). The court did not address that the salesman was known to the Respondents, and was granted access and trained on Sunlight Financial's loan application platform. (Complaint ¶34-41).

IV. THE THIRD CIRCUIT'S RULING READS THE CONSUMER "INITIATION" REQUIREMENT OUT OF THE STATUTE

In its Amended Opinion of November 21, 2025, issued after granting panel rehearing (App. 51a-69a), the Third Circuit affirmed the Rule 12(b)(6) dismissal of Migliore's FCRA claim. The court held the Respondents were permitted to obtain Migliore's credit report, reasoning there was a "credit transaction involving the consumer," relying on 15 U.S.C. § 1681b(a)(3)(A) (App. 68a). However, the Third Circuit did not reckon with the threshold language of § 1681b(a), which makes that section "[s]ubject to subsection (c)," which in turn requires consumer initiation or authorization of a transaction, 15

U.S.C. § 1681b(e). The Third Circuit did not distinguish or address the contrary rulings of the Seventh and Ninth Circuits that recognize consumer “initiation” or authorization is a prerequisite.

The Third Circuit accepted as true the allegations of identity theft: “Migliore protests she did not apply for credit; the sales representative applied for credit in her name without her consent. We take that to be true.” (App. 68a). Under a faithful reading of the plain statutory language, the acknowledgment of the lack of consumer participation, initiation, or authorization should have established that Migliore stated a claim for relief under the FCRA and led to reversal. But it did not.

Instead, the Third Circuit articulated a new rule: “Section 1681b(f) bars obtaining or using a credit report for an improper purpose, not applying for credit by an improper means or in someone else’s name.” (App. 68a). This holding has no grounding in the statute or caselaw. If, by “improper means,” the court is referring to Sunlight Financial’s loan platform that allows access to credit reports without either consumer involvement and initiation or authorization, that is not a permissible purpose. Applying for credit in someone else’s name is always an impermissible purpose when accomplished without either consumer involvement and initiation or the consumer’s authorization.⁶

6. See, e.g., *Jones v. Federated Fin. Rsrv. Corp.*, 144 F.3d 961 (6th Cir. 1998) and *Yohay v. City of Alexandria Employees Credit Union, Inc.*, 827 F.2d 967, 972 (4th Cir. 1987), demonstrating the courts have long held that banks are themselves liable for impermissible credit pulls when someone with access to the bank’s systems obtains a credit report.

The sole authority for the Third Circuit’s analysis, as revised after rehearing, was *Domante v. Dish Networks, LLC*, 974 F.3d 1342, 1346 (11th Cir. 2020). But *Domante* dealt with a very different permissible purpose provision: 15 U.S.C. § 1681b(a)(3)(F)(i)—legitimate business need—a purpose not raised on appeal by either party. It also dealt with an anonymous imposter, not someone who can be identified and was afforded the privilege of accessing the lender’s platform with his own credentials. Without noting the different statutory section at issue, the Third Circuit echoed the Eleventh Circuit’s statement: “the [FCRA] does not explicitly require a user of consumer reports to confirm beyond doubt the identity of potential consumers before requesting a report.” (App. 68a). Like the Third Circuit’s *ipse dixit*, that statement finds no roots in the statute or its animating purposes. But if, *arguendo*, *Domante* is deemed correct, that only deepens the circuit split.

The FCRA is not a strict liability statute. FCRA claims are only actionable if the consumer can prove a willful or negligent violation. 15 U.S.C. § 1681n, § 1681o; *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 58 (2007). If any user (including the Respondents) acted with due care in obtaining and using Migliore’s credit report, there is no civil liability.⁷ As such, the FCRA already provides

7. Conversely, if facts in discovery support Migliore’s allegations in the Complaint (at ¶¶ 80-86, 121) that the lender Respondents knew or should have known that salesmen were using their systems to pull credit reports without consent to put consumers in loans they never knew of or authorized, liability would be a jury question. *See, e.g., Brown v. Vivint Solar, Inc.*, 2020 WL 1332010 (M.D. Fla. Mar. 23, 2020) (denying summary judgment to third-party lender where there was evidence

protection to innocent lenders who, through no fault of their own, are duped by a fraudster using their systems. The issue below was whether Migliore stated a claim upon which relief could be granted under the FCRA when Respondents obtained and used her consumer credit report ostensibly to further a phony “credit transaction” that Migliore did not initiate and one in which she was not involved.

The Third Circuit’s initial opinion dated October 22, 2025 included a paragraph acknowledging the other permissible purposes that are required to be “initiated by the consumer.” (App. 47a). On rehearing, when Migliore pointed out that consumer initiation is required here, too, as 15 U.S.C. § 1681b(a)(3)(A) is subject to § 1681b(c), the Third Circuit simply excised this whole paragraph in its Amended Opinion dated November 21, 2025, but otherwise left the opinion—and its ultimate holding—intact. (App. 68a-69a).

REASONS FOR GRANTING THE WRIT

I. THE THIRD CIRCUIT CREATED A CIRCUIT SPLIT WITH THE SEVENTH AND NINTH CIRCUITS

The Third Circuit’s interpretation of 15 U.S.C. § 1681b(a)(3)(A) conflicts with the settled holdings of two sister courts of appeals.

salespersons altered plaintiff’s email addresses to facilitate credit pulls and lender “knew or should have known that there was a possibility that the loan applications were not, in fact, submitted by Plaintiffs.”).

In *Stergiopoulos v. First Midwest Bancorp, Inc.*, 427 F.3d 1043 (7th Cir. 2005), the consumer sued when a car dealer, unbeknownst to the consumer, shopped his loan application to a potential lender. The Seventh Circuit affirmed dismissal of the claim because the consumer had indeed initiated the transaction. But in so doing, the court held “[a]n entity may rely on subparagraph [§ 1681b(a)(3) (A)] only if the consumer initiates the transaction. A third party cannot troll for reports, nor can it request a report on a whim. Rather, there must be a direct link between a consumer’s search for credit and the bank’s credit report request.” *Id.* at 1047.

In *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665 (9th Cir. 2010), cert. denied, 562 U.S. 1134 (2011), the consumer claimed a debt collector, PCA, had no permissible purpose to obtain her credit report. *Id.* at 672. The Ninth Circuit agreed: “Pintos did not initiate the transaction that resulted in PCA requesting her credit report. . . . § 1681b(a) (3)(A) can be relied upon by the party requesting a credit report ‘only if the consumer initiates the transaction.’” *Pintos*, 605 F.3d at 675 (cleaned up). *En banc* rehearing resulted in an amended opinion solidifying this holding with reference to § 1681b(c): “Pintos did not authorize the reporting agency to supply her report and the transaction did not consist of ‘a firm offer of credit or insurance,’ under § 1681b(c). Nobody contends otherwise.” *Pintos*, 605 F.3d at 676 n.2.

Both *Stergiopoulos* and *Pintos* relied on *Andrews v. TRW, Inc.*, 225 F.3d 1063 (9th Cir. 2000), rev’d on other grounds, *TRW, Inc. v. Andrews*, 534 U.S. 19 (2001). There, the Ninth Circuit held that an identity theft victim is

not “involved” in a credit transaction for purposes of § 1681b(a)(3)(A).⁸

Similarly, Migliore had no role in this unwanted credit transaction. No one informed her of any credit transaction or loan. Migliore did not “initiate” this transaction, did not “authorize” it, and was not “involved” in it as a participant. Migliore was no more “involved” in this \$99,000 loan than an innocent shop owner whose checkbook is stolen is “involved” in the cashing of forged checks. *See Alexander v. Moore & Assocs., Inc.*, 553 F. Supp. 948 (D. Haw. 1982) (victim of a credit card scam not “involved” in the crime within contemplation of FCRA).

The opinion below, even as modified on panel rehearing, does not honor the statutory text, vitiates consumer privacy protections by creating a permissible use where none exists, and creates a split with two other circuits who ruled (correctly) on this issue years ago.

II. THE QUESTION PRESENTED IS OF FUNDAMENTAL IMPORTANCE—THE THIRD CIRCUIT’S DECISION ERODES CRUCIAL PRIVACY SAFEGUARDS IN THE FCRA

In enacting the FCRA permissible purpose requirement, Congress balanced the needs of commerce against consumers’ privacy rights. The FCRA at § 1681b

8. This Court reversed on other grounds (two of the impermissible credit pulls were beyond the statute of limitations). *TRW, Inc. v. Andrews*, 534 U.S. 19 (2001). On remand, the Ninth Circuit reiterated by published order that the substantive aspects of its earlier opinion remained intact. *Andrews v. TRW, Inc.*, 289 F.3d 600 (9th Cir. 2001).

strikes that balance by permitting businesses to obtain consumer credit data in connection with transactions initiated by consumers, which do not create substantial privacy concerns, but requiring something more when the consumer does not come to the creditor first.

But circumstances where the consumer did not initiate or authorize the transaction or receive a firm offer of credit fall on the opposite side of this balance, impacting consumers' privacy rights and giving them nothing in return.

The panel found that 15 U.S.C. § 1681b does not bar “applying for credit by an improper means or in someone else’s name.” (App. 68a). But this new pronouncement cannot be squared with the plain statutory language nor the longstanding case law. Moreover, the panel’s decision undermines the FCRA’s privacy protections by sanctioning creditors’ access to consumer information any time that consumer is *remotely connected* to a credit transaction. The Third Circuit’s holding effectively adds a broad “credit transaction” exception to the FCRA’s credit report privacy protections—an exception that, if allowed, would swallow the rule.

Such an overly expansive and ungrounded reading of “credit transaction involving the consumer” can cripple the Act’s privacy protections. On a spring day, one may see 20 couples lined up at an open house to view a newly listed home. Can the real estate agent pull credit reports on all of them, without authorization and before an offer to buy is tendered, because the successful bidder will almost surely seek a mortgage loan, i.e., a “credit transaction?”

Can the local car dealer, eager to spend his time with the most credit-qualified shoppers, now secretly pull a credit report on every potential customer who walks through the door to kick the tires because the consumer is “involved” in a credit transaction as a would-be buyer? The statute, the FTC,⁹ and the Seventh and Ninth Circuits say “no.”

The Third Circuit’s circular reasoning—that the use was permissible because it involved a credit transaction—would mean that a prospective lender would always have a permissible purpose when it contemplates a credit transaction, regardless of the consumer’s knowledge of, consent to, or authorization of the credit transaction.

If the opinion below stands, it can be read to allow anyone to indiscriminately pull credit reports from *any* consumer, at *any* time, without their authorization, even though the consumer did nothing to initiate the credit transaction. This Court should intervene to correct this extra-textual holding.

9. See FTC (Coffey), 1998 WL 34323748, at *1; FTC (Landeaver), 1999 WL 33932139, at *1.

III. THIS CASE IS AN APPROPRIATE VEHICLE FOR RESOLVING THE QUESTION PRESENTED BECAUSE OF THE INCREASING PREVALENCE OF ONLINE AND ELECTRONIC LENDING

Online consumer lending is exploding.¹⁰ New technologies have made it increasingly easier to obtain consumers' credit reports for these credit transactions. This case is emblematic of the increasing use of proprietary software in the solar industry (and many others) to consummate credit contracts, including through fraud.¹¹ This mirrors what is happening at car dealerships, where electronic contracts have made financing fraud equally commonplace.¹²

10. Stewart Watterson, "Datos Matrix: The Leading U.S. Providers of Consumer Lending Origination Systems," DATOS INSIGHTS (Nov. 19, 2025), <https://datos-insights.com/reports/datos-matrix-the-leading-u-s-providers-of-consumer-lending-origination-systems/#:~:text=Report-,Datos%20Matrix:%20The%20Leading%20U.S.%20Providers%20of%20Consumer%20Lending%20Origination,usage%20increasing%2071%25%20since%202022.>

11. Annelise Lederer & Andrew Kusher, Center for Responsible Lending, *The Shady Side of Solar Financing*, Center for Responsible Lending at 5 (July 2024), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-shady-side-solar-financing-jul2024.pdf>, last visited March 17, 2026.

12. *See, e.g.*, Diana Hembree, *Forbes*, *E-Contract Abuse Alert: How Car Dealers Can Fake Your Auto Loan* (April 15, 2017), <https://www.forbes.com/sites/dianahembree/2017/04/15/e-contract-abuse-alert-how-car-dealers-can-fake-your-auto-loan/>, last visited March 18, 2026.

Under the Third Circuit’s novel rule, a lender may lawfully obtain a consumer’s credit report merely because the lender unilaterally involved the consumer in the credit transaction, even though the consumer never initiated nor authorized any credit transaction at all. Carving the “subsection (c)” requirements for a credit transaction out of Congress’s clear and careful drafting places the privacy rights of all consumers at risk.

Absent intervention here, there will be an irreconcilable patchwork of statutory credit report privacy rights. In the Seventh and Ninth Circuits, the claimed “credit transaction involving the consumer” applies only if the consumer initiates the transaction or authorizes it, as the Act provides. In the Third Circuit, neither of the statutory qualifiers of initiation or authorization is now required, effectively creating an extra-textual “credit transaction” exception at odds with the plain requirements of the FCRA. This split cannot stand.

CONCLUSION

This Court should grant the petition for certiorari.

Respectfully submitted,

CARY L. FLITTER

Counsel of Record

ANDREW M. MILZ

JODY THOMAS LOPEZ-JACOBS

EDWARD M. FLITTER

FLITTER MILZ, P.C.

1814 East Route 70

Suite 350

Cherry Hill, NJ 08003

(856) 396-0600

cfitter@consumerslaw.com

Counsel for Petitioner

APPENDIX

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**APPENDIX A — OPINION OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF NEW
JERSEY GRANTING LENDER DEFENDANTS’
MOTION TO DISMISS (MARCH 28, 2024)**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

No. 23-cv-02623

EVA MIGLIORE,

Plaintiff,

v.

JON SEIBERT *et al.*,

Defendants.

Filed March 28, 2024

OPINION

O’HEARN, District Judge.

This matter comes before the Court upon Motions to Dismiss filed by Vision Solar NJ LLC, and Jonathan Seibert (together the “Vision Solar Defendants”), (ECF No. 36), and Defendants Sunlight Financial LLC and Cross River Bank (together, the “Lender Defendants”), (ECF No. 38), as a well as a Motion to Seal filed by Sunlight Financial LLC. (ECF No. 41).¹ For the following reasons,

1. Vision Solar LLC was a defendant in this action and also joined in the Vision Solar Defendants’ Motion to Dismiss.

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the Motion to Dismiss filed by the Lender Defendants is **GRANTED**, the Motion to Dismiss filed by the Vision Solar Defendants is **GRANTED IN PART AND DENIED IN PART**, and the Motion to Seal filed by Sunlight Financial is **GRANTED**.

I. BACKGROUND²

In October 2022, a sales representative visited Plaintiff Eva Migliore’s (“Plaintiff”) Whiting, New Jersey home to solicit the installation of solar panels. (Pl.’s Second Am. Compl., ECF No. 35, ¶ 45). Plaintiff initially resisted the procedure, but the agent assured her that if she agreed immediately, he could proceed at no cost to her. (ECF No. 35, ¶¶ 45–46). Plaintiff verbally agreed to the installation, (ECF No. 35, ¶ 47), and the panels were installed in January 2023. (ECF No. 35, ¶ 53). The representative did not disclose that the solar panels would be subject to a financing agreement or provide any documentation of such an agreement. (ECF No 35, ¶¶ 47–49).

Vision Solar contacted Plaintiff to arrange for an inspection of the solar panels, leading Joseph Migliore to

However, Vison Solar LLC filed a Suggestion of Bankruptcy on December 29, 2023, (ECF No. 54), and on January 3, 2024, the Court terminated this action against it and administratively terminated its Motion to Dismiss. (ECF No. 55). Thus, the Court does not consider or determine the viability of any claims against that entity.

2. The Court accepts the factual allegations in the Second Amended Complaint as true and will view all facts in the light most favorable to Plaintiff as the non-moving party. *Evancho v. Fisher*, 423 F.3d 347, 351 (3d Cir. 2005).

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investigate the installation. (ECF No. 35, ¶ 55). Documents were then emailed to Plaintiff, including a “Summary of Key Loan Terms” and a “Solar Energy System Long-Term Loan Agreement Promissory Note,” dated October 28, 2022 (the “25-Year Loan”). (ECF No. 35, ¶¶ 58–60). Plaintiff discovered other documents, including a “Solar Purchase Disclosure Form” and an “ADI Registration Form,” bearing the signature of Jonathan Seibert, CEO of one or more Vision Solar entities. (ECF No. 35, ¶¶ 77–89). The 25-Year Loan purports to obligate Plaintiff to pay \$99,749.82 to finance the installation of the solar panels. (ECF No. 35, ¶ 59). All documents bear electronic signatures in Plaintiff’s name, though Plaintiff denies signing them. (ECF No. 35, ¶¶ 59, 62, 65). The documents appear to have been sent to an email address that does not belong to Plaintiff and signed by a user of that email address. (ECF No. 35, ¶¶ 57, 64, 70, 73). Plaintiff notified Defendants she wished to cancel the transactions in February 2023, but Defendants denied the request and consider her bound by the agreements. (ECF No. 35, ¶ 62–63, 74).

II. PROCEDURAL HISTORY

On May 15, 2023, Plaintiff filed a Complaint asserting claims against all Defendants for violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq* (the “NJFCA”) (Count I), identity theft in violation of N.J.S.A. 2C:21-17.4 (the “Identity Theft Statute”) (Count II), common law fraudulent concealment (Count III), and violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(f), 1681n, 1681o (the “FCRA”) (Count IV). (Pl.’s

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Compl., ECF No. 1, ¶¶ 107–138). The Complaint also asserts a claim against Cross River Bank for violations of the Truth in Lending Act, 15 U.S.C. § 1601(a) (“TILA”). (Pl.’s Compl., ECF No. 1, ¶¶ 139–49).

Plaintiff filed an Amended Complaint on June 6, 2023. (ECF No. 11). The Lender Defendants filed a Motion to Dismiss on July 26, 2023. (ECF No. 31).

Plaintiff again amended the Complaint on August 15, 2023 (the “Second Amended Complaint”). (ECF No. 35). The Vision Solar Defendants filed a Motion to Dismiss on August 21, 2023. (ECF No. 36). And the Lender Defendants filed a Motion to Dismiss on August 29, 2023. (ECF No. 38). On September 18, 2023, Plaintiff filed Opposition to both motions. (ECF Nos. 42, 43). The Lender Defendants replied on September 25, 2023, (ECF No. 44), and filed a Notice of supplementary authority in support of their Motion to Dismiss on October 5, 2023. (ECF No. 45). The Vision Solar Defendants did not reply. Sunlight Financial filed a Motion to Seal, (ECF No. 46), on October 9, 2023, seeking to permanently seal Exhibit A to the Lender Defendants’ Motion to Dismiss, (ECF No. 39), and the unredacted version of Plaintiff’s Opposition to the Lender Defendants’ Motion to Dismiss. (ECF No. 41).

On November 7, 2023, Defendant Sunlight Financial filed a Suggestion of Bankruptcy notifying the Court that it filed for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. (ECF No. 50). Because the filing of a chapter 11 petition operates a stay of pending

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litigation against a debtor, on November 7, 2023, the Court ordered the Clerk of the Court to terminate this action against Sunlight Financial and administratively terminate its pending Motion to Dismiss and Motion to Seal. (ECF No. 51). On March 3, 2024, Plaintiff and Defendant Sunlight Financial stipulated that Sunlight Financial had confirmed a chapter 11 plan of reorganization and that Sunlight Financial should be reinstated in this action and its Motions should be reactivated. (ECF No. 57). On March 18, 2024, the Court did so. (ECF No. 58).

III. LEGAL STANDARD

A pleading is sufficient if it contains “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). In deciding a motion to dismiss, a district court asks “not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 563 n.8, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974)); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 684, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (“Our decision in *Twombly* expounded the pleading standard for ‘all civil actions’); *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (“*Iqbal* . . . provides the final nail in the coffin for the ‘no set of facts’ standard that applied to federal complaints before *Twombly*.”).

In deciding a Rule 12(b)(6) Motion, the court may only consider the facts alleged in the pleadings, any

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attached exhibits, and any matters of judicial notice. *S. Cross Overseas Agencies, Inc. v. Kwong Shipping Grp. Ltd.*, 181 F.3d 410, 426 (3d Cir. 1999). The court may also consider “an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff’s claims are based on the document.” *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993). If any other matters outside the pleadings are presented to the court, and the court does not exclude those matters, a Rule 12(b)(6) motion will be treated as a summary judgment motion. Fed. R. Civ. P. 12(d).

IV. DISCUSSION

Plaintiff’s claims arise from an alleged scheme by which a sales representative—implied, but not outright stated to be an employee of a Vision Solar entity—fraudulently induced Plaintiff to agree to the installation of solar panels on her home under the pretense that such installation would be at no cost to her, and thereafter forged her signature on a financing agreement obligating her to pay for them. Plaintiff alleges that this scheme gives rise to claims against all Defendants on several theories, including that the sales representative acted as an agent on behalf of all Defendants and that all Defendants directly furthered the scheme. In an apparent effort to sweep all Defendants into as many claims as possible, Plaintiff’s Second Amended Complaint contains overly inclusive language and broad factual allegations. Yet, she fails to plead certain fraud claims with the particularity required under Federal Rule of Civil Procedure 9(b). And she fails

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to plead sufficient facts showing an agency relationship between the sales representative and Jonathan Seibert, Sunlight Financial, or Cross River Bank. While Plaintiff's claims against Vision Solar NJ, LLC survive, all other claims fail, except for that alleging a NJCFA violation by Jonathan Seibert.³

A. Vision Solar Defendants' Motion to Dismiss on the Grounds that an Audio Recording of a Phone Call "Nullifies" Plaintiff's Claims Against Them

The Vision Solar Defendants move to dismiss Counts I-IV against them on the grounds that an audio recording of a telephone call (the "Welcome Call") between Plaintiff and representatives of Vision Solar "nullifies" Plaintiff's claims. The Court cannot consider the Welcome Call at this procedural stage, and the Vision Solar Defendants' Motion to Dismiss on these grounds must therefore be denied.

"A court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document." *Pension Benefit Guar. Corp.* 998 F.2d at 1196.

3. Plaintiff alleges in conclusory fashion that Cross River Bank is subject to all claims that Plaintiff asserts against Vision Solar and Sunlight Financial under the FTC Holder Rule. (ECF No. 35, ¶ 28). To the extent Plaintiff intends by this allegation to assert an independent basis for relief against Cross River Bank, this allegation fails to plead any supporting facts showing entitlement to relief and must be disregarded. *Twombly*, 550 U.S. 544, 563 n.8, 127 S. Ct. 1955, 167 L. Ed. 2d 929.

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A complaint is “based on” a document if the document is (1) integral to or (2) explicitly relied upon in the complaint. *See In re Burlington Coat Factory*, 114 F.3d 1410, 1426 (3d Cir. 1997) (internal citation omitted). Documents may be “integral to a complaint” when the contents of the documents provide the basis of a plaintiff’s claim. *Lepore v. SelectQuote Ins. Servs.*, No. 22-3390, 2023 U.S. App. LEXIS 32354, 2023 WL 8469761, at *3 (3d Cir. Dec. 7, 2023) (finding documents are integral to a complaint when they “establish the right that the plaintiff claims was infringed or when they constitute the unlawful conduct for which the plaintiff seeks to recover.”). And documents are “explicitly relied upon” when the complaint specifically mentions or cites them. *Id.*

As a threshold matter, the Welcome Call is not “undisputedly authentic” as required for consideration at this stage. *Pension Benefit Guar. Corp.* 998 F.2d at 1196. To show evidence is authentic, “the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Fed. R. Evid. 901(a). The Vision Solar Defendants included the Welcome Call as Exhibit A with their Motion to Dismiss, (ECF No. 36-4). However, they provide absolutely nothing to support the authenticity of this audio file, such as an affidavit or certification as to its content. They provide no information as to when this recording was made, who the participants are, when it took place, whether it represents all of the communications between the parties, etc. Without such information, the Court cannot even conclude the Welcome Call is authentic. Fed. R. Evid. 901(a).

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Even if the Welcome Call *was* undisputedly authentic, the Second Amended Complaint is not “based on” the Welcome Call, and it thus cannot be considered. The Second Amended Complaint does not “explicitly rel[y] upon” the Welcome Call because it does not mention or cite it or the communications therein. *Lepore*, 2023 U.S. App. LEXIS 32354, 2023 WL 8469761, at *3. And the Welcome Call is not “integral to” the Second Amended Complaint because Plaintiff does not allege any right established or wrongdoing based upon the call that gives rise to her claims. *Lepore*, 2023 U.S. App. LEXIS 32354, 2023 WL 8469761, at *3. The rights for which Plaintiff seeks to recover—fraudulent concealment, identity theft, and violations of the NJCRA, FCRA, and TILA—emerge from the common law and statute and consist of misrepresentations by the sales representative, forgeries of her signature, and impermissible access of her credit report—none of which are alleged to have occurred during the Welcome Call. The Second Amended Complaint is thus in no way “based on” the Welcome Call, and the Court cannot consider it at this stage. *Burlington Coat Factory*, 114 F.3d at 1426.

In support of their argument that the Welcome Call can be considered at this stage, the Vision Solar Defendants rely on *Pinkney v. Meadville Pa.*, No. 21-1051, 2022 U.S. App. LEXIS 13824, 2022 WL 1616972 (3d Cir. 2022). In *Pinkney*, a party who was arrested but later released sued a police officer for false arrest. The plaintiff alleged that an interview with a third party—which the officer cited as the basis for the arrest—failed to provide probable cause for his detainment. The Third Circuit determined that the

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district court should have considered an audio recording of that interview upon a motion to dismiss the false arrest claim. The *Pinkney* Court reached this conclusion because plaintiff's claim was fundamentally based on the content of the interview, and the audio recording, which was undeniably authentic, provided a contemporaneous record of that content. Unlike the recording in *Pinkney*, the Welcome Call is not undeniably authentic. And while it may relate to some of Plaintiff's claims, it certainly does not provide an all-encompassing, contemporaneous recording of all of the events upon which Plaintiff bases her claims.

The Court declines to convert the pending motion to a motion for summary judgment as Plaintiff is clearly entitled to adequate discovery. Vision Solar NJ LLC does not argue any other grounds for Dismissal, and that entity's Motion to Dismiss must therefore be denied in its entirety.

B. Motions to Dismiss by Jonathan Seibert and the Lender Defendants

Jonathan Seibert moves to dismiss all claims against him on the grounds that he cannot be individually liable for any action he may have taken through his capacity as an officer of Vision Solar. The Lender Defendants move to dismiss Plaintiff's Claims against them because Counts I-III cannot hold them responsible for the conduct of the sales representative and also fail to satisfy Rule 9(b)'s requirement that claims of fraud be stated with particularity. The Lender Defendants further argue

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that Count IV fails to adequately allege they violated the FCRA, and Count V fails because Plaintiff cannot state a TILA claim related to a credit agreement that she alleges is invalid. Plaintiff alleges facts that support Jonathan Seibert's potential liability for NJCFA violations in Count I but not for the claims alleged in Counts II-IV. And Plaintiff fails to allege facts supporting any claim against the Lender Defendants. The Court therefore denies Jonathan Seibert's Motion to Dismiss with respect to Count I and grants his Motion with respect to Counts II-IV. The Court grants the Motion to Dismiss filed by the Lender Defendants in its entirety.

1. Count 1: Violations of the New Jersey Consumer Fraud Act

Plaintiff fails to allege sufficient facts to support a claim that the Lender Defendants engaged in unlawful conduct under the NJCFA but plausibly alleges facts that Jonathan Seibert could be personally liable for violations of that Act. Therefore, the Lender Defendants' Motion to Dismiss must be granted as to Count I, and Mr. Seibert's Motion must be denied as to Count I.

To state a claim under the NJCFA, a plaintiff must show: "(1) unlawful conduct by defendant; (2) an ascertainable loss by plaintiff; and (3) a causal relationship between the unlawful conduct and the ascertainable loss." *Cole v. Wells Fargo Bank, N.A.*, 790 F. App'x 460, 466 (3d Cir. 2019). As remedial legislation, the NJCFA is construed liberally in favor of consumers. *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 647 A.2d 454, 461 (NJ 1994).

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Unlawful conduct includes (1) affirmative acts; (2) knowing omissions; and (3) regulation violations. *Frederico v. Home Depot*, 507 F.3d 188, 202 (3d Cir. 2007). The NJCFA identifies among affirmative acts “deception, fraud . . . [and] misrepresentation,” *Allen v. V & A Bros.*, 208 N.J. 114, 26 A.3d 430, 440 (N.J. 2011), though this category is otherwise “intentionally open-ended.” *Arcand v. Brother Int’l Corp.*, 673 F. Supp. 2d 282, 296 (D.N.J. 2009). Regulation violations contemplate only violations of regulations promulgated under the NJCFA. *Mickens v. Ford Motor Co.*, 900 F. Supp. 2d 427, 436 (D.N.J. 2012). An ascertainable loss may be demonstrated by showing “[a]n improper debt or lien against a consumer-fraud plaintiff.” *Cox*, 647 A. at 464. And causation requires showing a “causal nexus” between the unlawful conduct and the loss. *Mladenov v. Wegmans Food Markets, Inc.*, 308 F.R.D. 127, 132 n.3 (D.N.J. 2015).

NJCFA claims must be pleaded with particularity under Rule 9(b). *Slim CD, Inc. v. Heartland Payment Sys.*, No. 06-2256, 2007 U.S. Dist. LEXIS 62536, 2007 WL 2459349 (D.N.J. Aug. 22, 2007). To satisfy this standard, plaintiffs must “identify specific actions taken by the defendant, when and where those actions were taken, and the identity and role of individual actors” in the alleged fraud. *Simner v. LG Elecs. U.S.A., Inc.*, No. 21-13322, 2023 U.S. Dist. LEXIS 76814, 2023 WL 3173698, at *6 (D.N.J. May 1, 2023).

*Appendix A***i. Claim Against Jonathan Seibert Under the NJCFA**

Plaintiff alleges sufficient facts to state a claim that Jonathan Seibert may be personally liable for a violation of the NJCFA through the allegation that he signed and submitted to the State of New Jersey a “Solar Purchase Disclosure Form” and an “ADI Registration Form” that obligated Plaintiff on the 25-Year Loan. This act satisfies the NJCFA’s “unlawful conduct” requirement because a fraudulent filing constitutes a “misrepresentation” regarding the integrity of the documents, which is an “affirmative act” of misconduct under the NJCFA.⁴ *Allen*, 26 A.3d at 440. Plaintiff has also alleged ascertainable losses in the form of an “improper debt” because of her alleged obligation to the 25-Year Loan. *Cox*, 647 A.2d at

4. The “intentionally open-ended” nature of the definition of “affirmative acts,” *Mickens*, 900 F. Supp. 2d at 436, and the NJCFA’s broad construction in favor of consumer protection further weigh toward this conclusion. *Cox*, 647 A.2d at 461. Mr. Seibert’s purported filing may also be an act of criminal fraud. N.J.S.A. 2C:21-3, titled “frauds relating to public records” imposes penalties upon a person who, “knowing that a written instrument contains a false statement or false information, offers or presents it to a public office or public servant with knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.” Violations of statutes outside of the NJCFA regulations may constitute “affirmative acts” of unlawful conduct within the meaning of that Act. *See, e.g., In re Cohen*, 191 B.R. 599, 608 (D.N.J. 1996) (finding landlord’s violation of local rent control statute constitutes “affirmative act” of unlawful conduct for purposes of the NJFCA).

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464. And Plaintiff has alleged a “causal nexus” between the unlawful conduct and her loss by alleging that she would not be obligated under the Loan if Mr. Seibert had not filed the documents. *Mladenov*, 308 F.R.D. at 132 n.3.

Mr. Seibert argues that he cannot be held personally liable under the NJCFA because he signed the documents in his corporate capacity, and the corporate form shields him from liability. “[A] director or officer of a corporation does not incur personal liability for its torts *merely by reason* of his official character. *North Am. Steel Connection, Inc. v. Watson Metal Prods. Corp.*, 515 Fed. Appx. 176, 182 (3d Cir. 2013) (internal citation omitted) (emphasis added). But, “employees and officers of a corporation may . . . bear individual liability to consumers” for individual conduct that violates the NJCFA, even if they engaged in that conduct through the corporation. *Id.* at 136; *see also G & F Graphic Servs., Inc. v. Graphic Innovators, Inc.*, 18 F. Supp. 3d 583, 587 (D.N.J. 2014) (“Liability will be imposed on an individual [under the CFA] when that specific individual has engaged in conduct prohibited by the CFA.”) (internal citations omitted). The corporate form therefore does not shield Mr. Seibert from liability for personally signing and filing the ADI and the Solar Purchase Disclosure Form, even if he acted through Vision Solar in doing so. *Allen*, 26 A.3d at 441. Plaintiff has thus plausibly stated a claim against Mr. Seibert under the NJCFA.

*Appendix A***ii. Claims Against the Lender Defendants Under the NJCFA**

Plaintiff fails to state a claim against the Lender Defendants for violation of the NJCFA because she does not plead with particularity that they engaged in “unlawful conduct” as required by the Act. Plaintiff alleges that “Defendant Sunlight’s deceptive conduct and misrepresentations, including with respect to its role in obligating Plaintiff to the 25-Year Loan, violate N.J.S.A. 56:8-2 and constitute an unconscionable commercial practice,” and therefore unlawful conduct under the NJCFA. (ECF No. 35, ¶ 113). But Plaintiff does not describe the “deceptive conduct,” or the content of any “misrepresentations” allegedly made by Sunlight Financial. This vague and conclusory allegation of Sunlight Financial’s undefined “role” in purported wrongdoing fails to “identify specific actions taken by the defendant” as required to state a claim for fraud under Rule 9(b). *Simner*, 2023 U.S. Dist. LEXIS 76814, 2023 WL 3173698, at *6.

Plaintiff also alleges she states a claim because the “failure [of the Lender Defendants] to provide Plaintiffs the 25-Year Loan and RSA, as applicable, violates . . . N.J.S.A. 56:8-2.22.” (ECF No. 35, ¶ 115). The cited regulation provides, “[i]t shall be an unlawful practice for any person . . . to *require or request [a] consumer to sign any document as evidence . . . of [a] sales transaction . . . unless he shall at the same time provide the consumer with a full and accurate copy of the document.*” N.J.S.A. § 56:8-2.22. (emphasis added). Plaintiff argues that Defendants

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requested her signature by causing the documents to be emailed to the incorrect email address. (ECF No. 35, ¶¶ 64, 67). But this allegation is illogical and inconsistent with the other allegations in the Second Amended Complaint: Defendants could not have requested nor required Plaintiff to sign the document by intentionally sending it to an incorrect email address where she could not access it, let alone sign it, in an effort to commit fraud and forgery. Because Plaintiff fails to allege any actual request or requirement that she sign the challenged documents, she fails to sufficiently allege under the NJCFA that either Sunlight Financial or Cross River Bank engaged in unlawful conduct by regulatory violation under N.J.S.A. § 56:8-2.22, an essential element of an NJCFA claim. Thus, Count I of the Second Amended Complaint must be dismissed against the Lender Defendants without prejudice.

2. Count II: Identity Theft Under N.J.S.A. § 2C:21-17.4

Plaintiff does not allege facts that the Lender Defendants or Jonathan Seibert stole her identity or that any agency relationship existed between these Defendants and the alleged identity thief. Therefore, motions to dismiss filed by these Defendants must be granted as to Count II.

The Identity Theft Statute “imposes liability for obtaining the personal identifying information of another person and using that information, or assisting another person in using that information, to pretend to be the

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victim.” *Fogarty v. Household Fin. Corp. III*, No. 14-4525, 2015 U.S. Dist. LEXIS 23064, 2015 WL 852071, at *15 (D.N.J. Feb. 25, 2015) (citing N.J.S.A. § 2C:21-17.4). Civil actions under this statute lie only against the identity “thief” who actually steals the identity and any principal for whom the thief acts as an agent. *See Reilly v. Vivint Solar*, No. 18-12356, 2021 U.S. Dist. LEXIS 14088, 2021 WL 261084, at *10 (D.N.J. Jan. 26, 2021) (upholding an identity theft claim where a plaintiff adequately alleged that a corporate “defendant (or its agent, and therefore it) was the thief of Plaintiff’s information”); *Fogarty*, 2015 U.S. Dist. LEXIS 23064, 2015 WL 852071, at *15 (finding plaintiff could not state a claim under the Identity Theft Statute against third party who had no role in actual theft of identity); *see also Piscitelli v. Classic Residence by Hyatt*, 408 N.J. Super. 83, 973 A. 2d 948, 967 (N.J. Super. Ct., App. Div. 2009) (explaining that liability under the Identity Theft Statute “is directed against the thief”).

The only specific act of identity theft Plaintiff alleges is the sales representative’s forgery of her signature on the 25-Year Loan and other documents. (ECF No. 39, ¶ 72). Plaintiff thus identifies the sales representative as the alleged “identity thief,” and offers no facts suggesting any other Defendant stole her identity. Thus, any claim that Jonathan Seibert or the Lender Defendants are liable for identity theft must rely on a theory that the sales representative acted as their agent.

“An agency relationship is created when one party consents to have another act on its behalf, with the principal controlling and directing the acts of the agent.”

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Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc., 42 F.3d 1421, 1434 (3d Cir. 1994). To plead liability on an agency theory, plaintiffs “must allege facts sufficient to allow such a relationship to be proven at trial.” *Jurimex v. Avis Rent a Car System, LLC*, 65 Fed. Appx. 803, 808 (3d Cir. 2003).⁵ However, they are “not required to have extensive proof at the complaint stage.” *Id.*

Here, Plaintiff fails to allege sufficient facts showing an agency relationship between the sales representative and Mr. Seibert. To the extent Plaintiff contends that the sales representative is a Vision Solar employee, no agency relationship exists between Mr. Seibert and the representative by virtue of this role. *Belmont v. MB Partners, Inc.*, 708 F.3d 470, 489 (3d Cir. 2013) (“A corporate employee typically acts on behalf of the

5. Plaintiff contends that mere allegations of an agency relationship always survive dismissal, citing *Jurimex* wherein the Third Circuit has “held that discovery is necessary when an agency relationship is alleged, thereby implicitly allowing allegations of agency to survive a facial attack.” 65 F. App’x at 808. However, this ignores and is contrary to the immediately preceding sentence: “*Jurimex* must allege facts sufficient to show such a relationship to be proven at trial.” *Id.* Plaintiff’s interpretation would also exempt agency relationships from the Third Circuit’s dictate that, under *Twombly* and *Iqbal*, “stating a claim requires a complaint with enough factual matter (taken as true) to suggest [a] required element” *Phillips*, 515 F.3d at 234. Plaintiff’s interpretation is incorrect. Agency relationships are not subject to any special exemption from the pleading requirements of Rule 12(b)(6), and plaintiffs must plead “enough facts to raise a reasonable expectation that discovery will reveal evidence of” the relationship. *Id.*

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corporation, not its owner or officer . . . so that there is no agency relationship between an officer or director and an employee.”) (citing *Meyer v. Holley*, 537 U.S. 280, 286, 123 S. Ct. 824, 154 L. Ed. 2d 753 (2003)).⁶ And Plaintiff pleads no facts showing that Mr. Seibert otherwise “controlled or directed” the sales representative in his personal capacity or that the representative acted on his behalf. *Am. Tel. & Tel. Co.*, 42 F.3d at 1434.

Plaintiff also fails to plead the existence of an agency relationship between the sales representative and the Lender Defendants. The only specific fact Plaintiff alleges in support of such a relationship is that an agreement between the Lender Defendants and Vision Solar (the “Financing Program Agreement”) gave the Lender Defendants authority to direct the actions of the sales representative. (Pl.’s Second Am. Compl., ECF No. 35, ¶ 36). However, the referenced agreement describes a contractual relationship by which Vision Solar employees and third-party sales representatives sourced and transmitted loan applications to Sunlight Financial, which reviewed those applications, made credit approval decisions, and then sent loan documents back to the

6. Plaintiff refers to the representative as “Defendants’ sales agent” throughout the Complaint and does not explicitly state that the representative was a Vision Solar employee. (ECF No. 39, ¶¶ 2, 45, 48, 72, 92). However, Plaintiff implies that the sales representative was a Vision Solar employee by, among things, indicating that Vision Solar installed the solar panels and falsely assumed power of attorney on her behalf. (ECF No. 35, ¶¶ 80, 82–85, 93).

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representatives for execution by borrowers.⁷ (Financing Program Agreement, ECF No. 39, ¶¶ 3.3–4). Nothing in the agreement suggests that Sunlight Financial controlled or directed sales representatives’ solicitation of loan applications beyond providing training in compliance and the use of its technology. (ECF No. 39, ¶ 9.1(a)). And the agreement expressly provides that Sunlight Financial executes loan agreements on its own behalf. (ECF No. 39, ¶ 16.8). The Financing Program Agreement thus provides no support for the existence of an agency relationship between Sunlight Financial and the sales representative. *See Grimmitt v. Sunlight Fin. LLC*, No. 23-00084, 2023 U.S. Dist. LEXIS 178134, 2023 WL 6449447, at *7 (D.W.V Oct. 3, 2023) (finding that a nearly identical arrangement did not create an agency relationship between Sunlight Financial and another solar panel installer); *Carrier v. Bank of America, N.A.*, No. 12-104, 2014 U.S. Dist. LEXIS 12138, 2014 WL 356219, at *5 (finding no agency relationship between lender and title agent who sourced loan applications). Furthermore, the Financing Program Agreement does not mention Cross River Bank and, therefore provides no basis that the sales representative was its agent.

7. The Lender Defendants attached the Financing Program Agreement as Exhibit A to their Motion to Dismiss. (ECF No. 39). As discussed herein, an extrinsic document may be considered upon a motion to dismiss if the Complaint is “based upon” the document. *Pension Benefit Guar. Corp.*, 998 F.2d at 1196. The Second Amended Complaint cites the Program Agreement as evidence of an agency relationship, and therefore “explicitly relies” upon it. *Id.* The Second Amended Complaint is therefore partially “based on” the Agreement, and it is properly considered here.

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Plaintiff thus fails to plead sufficient facts to support a claim based on agency between the sales representative and Mr. Seibert and/or the Lender Defendants. Absent any such relationship, Plaintiff fails to allege a plausible claim for identity theft against the Lender Defendants or Jonathan Seibert. Count II must therefore be dismissed without prejudice as to these Defendants.

3. Count III: Common Law Fraudulent Concealment and Nondisclosure

Plaintiff fails to allege fraudulent concealment with particularity as to Jonathan Seibert, and the Lender Defendants, and their Motions to Dismiss Count III must therefore be granted. To state a claim for common law fraudulent concealment, a plaintiff must allege that the defendant “(1) had a duty to disclose (2) a material fact (3) that plaintiff could not discover without defendant disclosing it; (4) that defendant intentionally failed to disclose that fact; and (5) the plaintiff was harmed by relying on the nondisclosed.” *Polhill v. FedEx Ground Package Syst.*, 604 Fed. Appx. 104, 107 n.2 (3d Cir. 2015) (citing *Rosenblit v. Zimmerman*, 166 N.J. 391, 766 A.2d 749, 757–58 (2001)). Rule 9(b) applies to such claims. *Id.* at 108.

Plaintiff alleges in conclusory terms that all Defendants are liable for fraudulent concealment because they all failed to disclose to Plaintiff the existence of the 25-Year Loan and associated documents. (ECF No. 35, ¶¶ 128–33). Plaintiff’s only specific allegation as to any party’s role in this concealment is that the sales representative forged

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Plaintiff's signature and sent documents to an incorrect email address. (ECF No. 35, ¶58, 63, 70). These allegations fail to identify with particularity the role Mr. Seibert, Sunlight Financial, or Cross River Bank played in the alleged fraud. *Simner*, 2023 U.S. Dist. LEXIS 76814, 2023 WL 3173698, at *6; *Grant v. Turner*, 505 F. App'x, 107, 112 (3d Cir. 2012) (“[B]y lumping all [defendants] together and naming them as a group, each defendant has not been properly or sufficiently placed on notice of the exact nature of the claims asserted, as these claims apply to each defendant.”). And as discussed herein, no agency relationship exists by which Mr. Seibert or the Lender Defendants are otherwise liable for the sale representative's actions. Plaintiff therefore fails to allege fraudulent nondisclosure against these Defendants with the particularity required to state fraud claims under Rule 9(b). Count III must therefore be dismissed without prejudice.

4. Count IV: Violation of the Fair Credit Reporting Act

Plaintiff fails to allege facts that Mr. Seibert personally accessed her credit report and alleges that Sunlight Financial and Cross River Bank did so under circumstances that cannot support an FCRA Claim. Therefore, the Motions to Dismiss filed by the Lender Defendants and Jonathan Seibert must be granted as to Count IV.

To prevail on an FCRA claim, plaintiffs must prove a defendant “(1) accessed Plaintiff's consumer credit report

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without a permissible purpose and (2) defendant did so negligently or willfully.” *Reilly*, 2021 U.S. Dist. LEXIS 14088, 2021 WL 261084, at *6. “There is no violation of [the FCRA] when a creditor obtains a credit report due to an imposter’s application for credit even though the identity theft victim did not make the application.” *Glanton v. DirecTV, LLC*, 172 F. Supp. 3d 890, 896 (D.S.C. 2016) (collecting cases); *see also Mathews v. Verizon Commc’ns Inc.*, No. 19-21442, 2020 U.S. Dist. LEXIS 158270, 2020 WL 5201407, at *7 (D.N.J. Sept. 1, 2020 (holding that a defendant may not be liable for identity theft where “Plaintiff was . . . a victim of identity theft, and Defendant obtained Plaintiff’s credit report as a result of an inquiry from a third party.”).

Plaintiff’s only specific allegation of an FCRA violation is that the sales representative submitted false loan applications to the Lender Defendants that caused them to impermissibly access her credit reports. (ECF No. 35, ¶¶ 31, 91, 93). Plaintiff thus alleges that the Lender Defendants unlawfully accessed her credit reports because of identity theft. “[T]here is no violation [of the FCRA] . . . even though the identity theft victim did not make the application” under these circumstances. *Glanton*, 172 F. Supp. 3d at 896; *see also Mathews*, 2020 U.S. Dist. LEXIS 158270, 2020 WL 5201407, at *7. And Plaintiff offers no other specific allegations of FCRA violations that are entitled to the assumption of truth. Plaintiff therefore alleges no facts that Jonathan Seibert or the Lender Defendants violated the FCRA, and Count IV must be dismissed without prejudice.

*Appendix A***5. Count V: Violation of the Truth in Lending Act**

Cross River Bank’s Motion to Dismiss must be granted as to Count V because Plaintiff cannot plausibly allege a TILA claim when she simultaneously alleges the credit agreement at issue is invalid. The Truth in Lending Act requires creditors to disclose certain information “to the person *obligated* on a consumer credit transaction.” *Cahalan v. Ameriquest Mortg. Co.*, No. 05-0309, 2006 U.S. Dist. LEXIS 28522, 2006 WL 1312961, at *2 (W.D. Pa. May 10, 2006) (citing 15 U.S.C. § 1631) (emphasis added). TILA thus offers no remedy when a challenged transaction is invalid, including because of forgery. *See, e.g., Jensen v. Ray Kim Ford, Inc.*, 920 F.2d 3, 4 (7th Cir. 1990) (finding TILA “does not reach the forged document which created no obligation”); *Cahalan*, 2006 U.S. Dist. LEXIS 28522, 2006 WL 1312961, at *2 (finding Plaintiff could not assert a TILA claim when he separately challenged the validity of the credit agreement at issue); *Walker v. Michael W. Colton Tr.*, 47 F. Supp.2d 858, 865 (E.D. Mich. 1999) (“[A]llegedly forged documents receive no protection under TILA”). Accordingly, courts routinely dismiss TILA claims where plaintiffs allege the challenged credit agreement was forged or falsified. *See, Jensen*, 920 F.2d at 4 (affirming dismissal of TILA claim based on forged contract because TILA only provides a remedy for persons “obligated” on a valid consumer credit transaction); *Islam v. Lee’s Motors*, 2018 U.S. Dist. LEXIS 170998, 2018 WL 4771884, at *3–4 (E.D.N.Y. Sept. 30, 2018) (finding plaintiff “fails to satisfy the threshold requirement” of obligation on a TILA claim where plaintiff also alleged his signature

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on credit agreement was forged, and the agreement was therefore void); *Walker*, 47 F. Supp. 2d at 866 (“[T]aking as true the factual allegations asserted . . . this Court has no choice but to dismiss plaintiff’s TILA claim because such allegedly forged documents receive no protection under TILA.”); *Fillmore v. Markham Motors Outlet*, No. 95-7439, 1996 U.S. Dist. LEXIS 6031, 1996 WL 238733, at *2 (N.D. Ill. May 3, 1996) (dismissing *sua sponte* a TILA claim where Plaintiff alleged the credit agreement at issue was forged). In the Second Amended Complaint, Plaintiff repeatedly claims that her signature was forged on the 25-Year Loan. (ECF No. 39, ¶¶ 5, 62, 66, 93, 124). Such forged documents “receive no protection under TILA,” and Count V must be dismissed.⁸

C. Lender Defendants’ Motion to Seal

Sunlight Financial moves to permanently seal Exhibit A to the Motion to Dismiss filed by the Lender Defendants, (ECF No. 39), as well as Plaintiff’s unredacted Opposition to the Motion to Dismiss Filed by the Lender Defendants. (ECF No. 41). No party opposes the motion. Good cause exists to seal these documents, and Sunlight Financial’s Motion is therefore granted.

It is well-settled that there exists a “common law public right of access to judicial proceedings and records,”

8. Plaintiffs are permitted to plead in the alternative. Fed. R. Civ. P. 8(d)(2) (“A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.”). However, Plaintiff did not do so here.

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In re Cendant Corp., 260 F.3d 183, 192 (3d Cir. 2001). The moving party bears the burden of overcoming this presumption of public access and must demonstrate that a “good cause” exists to protect the material at issue. *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994). Good cause exists only when the moving party makes a particularized showing that disclosure will cause a “clearly defined and serious injury” and is not established where a party merely provides “broad allegations of harm, unsubstantiated by specific examples or articulated reasoning.” *Id.* (quoting *Cipollone v. Liggett Grp., Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986)). Local Civil Rule 5.3, which governs motions to seal, dictates that the party seeking to seal documents must describe (a) the nature of the materials at issue, (b) the legitimate private or public interests that warrant the relief sought, (c) the clearly defined and serious injury that would result if the relief sought is not granted, and (d) why a less restrictive alternative to the relief sought is not available. L. Civ. R. 5.3.

Exhibit A to the Lender Defendants’ Motion to Dismiss, (ECF No. 39), and certain portions of the unredacted version of Plaintiff’s Opposition to the Lender Defendants’ Motion to Dismiss, (ECF No. 41), respectively consist of the Financing Program Agreement and extensive quotations from that agreement. The Financing Program Agreement memorializes a confidential business arrangement between Sunlight Financial and Vision Solar. It includes Sunlight Financial’s loan criteria and term agreements with contractors, among other sensitive business information. Sunlight Financial asserts

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that it has a legitimate privacy interest in maintaining the confidentiality of its business agreements, trade secrets, and commercial information, and a breach of this confidentiality can result in serious injury through reduced standing in the marketplace as competitors learn of its business practices. *See Goldenberg v. Indel, Inc.*, 2012 U.S. Dist. LEXIS 479, 2012 WL 15909, at *3 (D.N.J. Jan. 3, 2012). The Lender Defendants further assert that no less restrictive alternative to sealing Exhibit A exists because the Financing Program Agreement includes sensitive business material throughout its text, and redaction is therefore not a viable alternative. Sealing the unredacted version of the Opposition is minimally restrictive because a narrowly redacted version remains available on the public docket.

The Lender Defendants meet all of the elements required to support their Motion to Seal Exhibit A to the Lender Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint, (ECF No. 39), and Plaintiff's unredacted Opposition to the Motion to Dismiss Filed by the Lender Defendants, (ECF No. 41). As such, good cause exists for the protection of this material, and the Court grants this Motion.

V. CONCLUSION

For the foregoing reasons, the Motion to Dismiss filed by Defendants Jonathan Seibert and Vision Solar NJ LLC, (ECF No. 36), is **GRANTED IN PART AND DENIED IN PART**, and the Motion to Dismiss filed by Defendants Sunlight Financial LLC and Cross River Bank, (ECF

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No. 38) is **GRANTED**. The Motion to Seal filed by Sunlight Financial LLC, (ECF No. 46), is **GRANTED**. An appropriate Order accompanies this Opinion.

/s/ Christine P. O'Hearn
CHRISTINE P. O'HEARN
United States District Judge

**APPENDIX B — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT
(OCTOBER 22, 2025)**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1679

EVA MIGLIORE, BY HER FRIEND
JOSEPH MIGLIORE,

Appellant,

v.

VISION SOLAR LLC; VISION SOLAR NJ LLC;
JON SEIBERT; SUNLIGHT FINANCIAL LLC;
CROSS RIVER BANK

Appeal from the United States District Court
for the District of New Jersey
(District Court No. 1:23-cv-02623)
District Judge: Honorable Christine P. O’Hearn

Argued on September 16, 2025

Before: BIBAS, MONTGOMERY-REEVES,
and AMBRO, *Circuit Judges.*

(Opinion Filed: October 22, 2025)

OPINION OF THE COURT

*Appendix B**AMBRO, Circuit Judge*

A door-to-door salesman offered senior citizen Eva Migliore “free” rooftop solar panels for her home in New Jersey. They weren’t free. Soon, her son discovered she owed nearly \$100,000 to lenders who claimed she took out a loan to finance the panels. Migliore sued the salesman’s company, its CEO, and the lenders for defrauding her. The District Court dismissed her claims against the lenders, primarily because she failed plausibly to allege the salesman was acting on their behalf. As sympathetic as this case is, we must affirm.

I. BACKGROUND

These are the facts as Migliore alleges them. Sunlight Financial LLC and Cross River Bank (the “lenders”) finance home solar energy systems. Sunlight operates a financial services platform that enables homeowners to finance home improvements with loans originated by third-party lenders like Cross River. Sunlight and Cross River work with Vision Solar, which markets home solar systems, pitches customers on the lenders’ financing options, and then designs, makes, installs, and services the panels. Vision Solar comprises two entities: Vision Solar, LLC and Vision Solar NJ, LLC (collectively “Vision Solar,” unless otherwise indicated). Jon Seibert is the CEO of each. The relationship between the lenders and Vision Solar is governed by a contract called the Financing Program Agreement (“FPA”).

In October 2022, a Vision Solar sales representative came to Migliore’s door and offered her free solar panels. She hesitated. But when the salesman pressed

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her, Migliore accepted the offer. The salesman never mentioned, showed, or asked her to sign any paperwork. During or shortly after the visit, the lenders obtained her consumer credit reports.

A few months later, Vision Solar installed the panels and called Migliore to turn them on. It was then her son, Joseph, learned about the panels and demanded to see documentation. Vision Solar informed him it had sent the documents to the wrong email address because of a “clerical error.” Instead of sending them to her email address, which includes her last name, “Migliore,” it had emailed them to a slightly different one, misspelling her last name as “Migilore.” Once Vision Solar sent Migliore and her son the documents, they learned the terms for the first time.

What they read stunned them: a sales agreement purporting to obligate Migliore to pay Vision Solar for the panels; a document styled as a “Power of Attorney,” purporting to authorize Vision Solar to apply for credit on her behalf; and a 25-year loan agreement, listing Sunlight Financial as the “Envelope Originator,” purporting to obligate Migliore to pay Cross River Bank \$99,749.82 for financing the purchase. All were digitally signed and initialed in her name, even though she had never seen any of them before. Migliore and her son soon realized what had happened: the salesman made a fake email address, sent the documents there, and forged her signature.¹

1. Migliore’s experience seems to reflect a pattern of misconduct by Vision Solar. *See* App. 97-98 (describing the Connecticut Attorney General’s allegations that Vision Solar regularly commits similar abuses).

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Making matters worse, the solar panels were no use to Migliore. Her house is shaded by trees. And her roof failed inspection.

Understandably, Migliore had no interest in paying nearly \$100,000 for solar panels she did not buy and could not use, so she tried to cancel. Less understandably, the companies refused.

Migliore turned to litigation. In May 2023, she sued the Vision Solar entities, Seibert, Sunlight, and Cross River in the U.S. District Court for the District of New Jersey for violating federal and New Jersey law. As relevant here, she sued Sunlight and Cross River for violating the New Jersey Consumer Fraud Act (“Consumer Fraud Act”), N.J. STAT. ANN. § 56:8-1 *et seq.*, directly and through Vision Solar’s salesman, and for violating directly a provision of the Fair Credit Reporting Act (“Credit Reporting Act”), 15 U.S.C. § 1681b(f).

Seibert and the Vision Solar entities moved to dismiss the complaint. Sunlight and Cross River did the same. Then Vision Solar, LLC filed for bankruptcy, so the District Court terminated it from the action. In March 2024, the Court granted Sunlight and Cross River’s motion to dismiss without prejudice. It also granted Vision Solar’s motion to dismiss, but only in part, allowing some of the claims against Seibert and Vision Solar NJ, LLC to proceed. Migliore then voluntarily dismissed her surviving claims against Seibert and Vision Solar NJ, LLC. She appeals the dismissal of her claims against the lenders.

*Appendix B***II. JURISDICTION AND STANDARD OF REVIEW**

The District Court had federal question jurisdiction over the Credit Reporting Act claim, 28 U.S.C. § 1331; 15 U.S.C. § 1681p, and supplemental jurisdiction over the related state-law claims, 28 U.S.C. § 1367.

We have jurisdiction over this appeal under 28 U.S.C. § 1291. It confers “jurisdiction of appeals from all final decisions of the district courts of the United States.” 28 U.S.C. § 1291. “[A] dismissal without prejudice and with leave to amend isn’t a final order.” *Weber v. McGrogan*, 939 F.3d 232, 237 (3d Cir. 2019). However, “a clear and unequivocal intent to decline amendment and immediately appeal that leaves no doubt or ambiguity can allow us to exercise jurisdiction.” *Id.* at 240. Under the “stand on the complaint” doctrine, “the mere *intent* to forego further amendment [can] satisfy finality” without the need to “seek[] and receiv[e] a final order” from a district court. *Id.* at 238.

That is what we have here. The District Court dismissed Migliore’s claims against Sunlight Financial and Cross River Bank without prejudice. Then Migliore filed a “Notice of Intent to Stand on [the] Second Amended Complaint,” declining the opportunity to amend. App. 165. The District Court dismissed the claims against Vision Solar NJ, LLC and Seibert following Migliore’s voluntary dismissal. And Migliore notified us that she formally abandons her claims against the bankrupt Vision Solar, LLC. “That representation suffices to convert the District Court’s ruling into a final decision appealable

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under § 1291.” *Dzielak v. Whirlpool Corp.*, 83 F.4th 244, 259 (3d Cir. 2023). Because its order now counts as final, we have jurisdiction.

With that jurisdiction, we review *de novo* the grant of a Rule 12(b)(6) motion to dismiss. *Falcone v. Dickstein*, 92 F.4th 193, 202 (3d Cir. 2024). Like the District Court, we ask whether the complaint states a claim for relief, taking all factual allegations as true, disregarding legal conclusions, and drawing all reasonable inferences in the plaintiff’s favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009); *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (*en banc*).

III. DISCUSSION

Migliore claims Sunlight Financial and Cross River Bank violated the state Consumer Fraud Act, N.J. STAT. ANN. § 56:8-1 *et seq.*, and the federal Credit Reporting Act, 15 U.S.C. § 1681b(f). Her primary theory is that Vision Solar’s salesman acted as the lenders’ agent, defrauding her on their behalf. Accordingly, we first consider vicarious liability, then consider direct liability.

A. Migliore failed to plead that Sunlight Financial and Cross River Bank are vicariously liable under the New Jersey Consumer Fraud Act for the actions of Vision Solar’s sales representative.

New Jersey’s Consumer Fraud Act was “designed to combat sharp practices and dealings that victimized consumers by luring them into purchases through

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fraudulent or deceptive means.” *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 647 A.2d 454, 461 (N.J. 1994) (quotation omitted). To state a claim under it, a plaintiff must plausibly allege “1) unlawful conduct by defendant; 2) an ascertainable loss by plaintiff; and 3) a causal relationship between the unlawful conduct and the ascertainable loss.” *Bosland v. Warnock Dodge, Inc.*, 197 N.J. 543, 964 A.2d 741, 749 (N.J. 2009).

Migliore claims the lenders are vicariously liable for Vision Solar’s sales representative’s violations of the statute. Generally, we are liable only for our own actions. Sometimes, however, a principal is liable for its agent’s conduct. *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1437 (3d Cir. 1994). Vicarious (acting for another) liability mitigates “the injustice in allowing a principal to place agents in the marketplace, to allow the agents to complete contracts on the principal’s behalf, to profit from the agents’ misrepresentations, and then to disclaim liability for the agents’ actions while benefitting from the fraud.” *Id.* at 1438.

Before we turn to the merits, we clarify the pleading standard. Migliore argues agency allegations need not satisfy the ordinary standard for surviving a Rule 12(b) (6) motion to dismiss. She relies on our nonprecedential opinion in *Jurimex Kommerz Transit G.M.B.H. v. Case Corporation*, which said “discovery is necessary when an agency relationship is alleged, thereby implicitly allowing allegations of agency to survive a facial attack.” 65 F. App’x 803, 808 (3d Cir. 2003).

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Her reliance on *Jurimex* is misplaced. The case predicated this proposition on the generous pleading standard of its day—the standard of *Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)—under which “a complaint may be dismissed ‘only if it is certain that no relief could be granted under any set of facts which could be proven.’” *Id.* (quoting *Rossmann v. Fleet Bank (RI) Nat’l Assoc.*, 280 F.3d 384, 387 (3d Cir. 2002)). The Supreme Court has overruled this standard. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 560-63, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (concluding the “no set of facts” standard is “best forgotten”); *Iqbal*, 556 U.S. at 670 (“*Twombly* retired the *Conley* no-set-of-facts test[.]”); *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 230-32 (3d Cir. 2008) (holding *Twombly* “disavowed . . . the ‘no set of facts’ language”).

Today, to survive a motion to dismiss, a plaintiff must allege facts sufficient to make it “plausible” the defendant is liable. *Doe v. Univ. of Scis.*, 961 F.3d 203, 208 (3d Cir. 2020). So to claim a defendant is vicariously liable, a plaintiff must allege facts sufficient to make it plausible the primary wrongdoer was the defendant’s agent. *See Phillips*, 515 F.3d at 234 (holding complaint must contain “enough factual matter (taken as true) to suggest the required element[s]” of each claim) (quotation omitted); *Covington v. Int’l Ass’n of Approved Basketball Offs.*, 710 F.3d 114, 117-18 (3d Cir. 2013) (subjecting vicarious liability claims to *Twombly* and *Iqbal* standard). There is no agency exception to the plausible-pleading requirement.

We turn, then, to agency. “An agency relationship is created when one party consents to have another act on

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its behalf, with the principal controlling and directing the acts of the agent.” *Covington*, 710 F.3d at 120 (quoting *Winback*, 42 F.3d at 1434). Agents are fiduciaries for their principals. *See Winback*, 42 F.3d at 1439 (quoting Restatement (Second) of Agency § 14N, cmt. b); *Kaye v. Rosefelde*, 223 N.J. 218, 121 A.3d 862, 869 (N.J. 2015).

Under New Jersey law, there are two types of agents: employees and some independent contractors. *Winback*, 42 F.3d at 1434-35. Employees are agents subject to their employer’s control over the time, manner, and method of work. *Id.* at 1435. Independent contractors are agents only when subject to their principal’s “general control and direction,” particularly as to the results of the work. *Id.* Independent contractors who are not subject to their principal’s control are not agents. *Id.*

In *Winback*, we identified several indicia for when a sales representative is an agent. *See id.* at 1438-39. First, the sales representative is empowered “to conduct and conclude” transactions for the principal. *Id.* at 1438 & 1439 n.19. Second, “the representative is empowered to speak as the principal,” *id.* at 1439 n.19, or to “hold [himself] out as the principal itself,” *id.* at 1438. Third, the principal “exercise[s] control over how its company is represented to third parties.” *Id.* at 1439 n.19. And fourth, “the principal benefits financially from the contracts.” *Id.* at 1438. No matter what, only a sales representative who is a fiduciary for the principal is an agent of the principal. *See id.* at 1439.

Migliore has plausibly alleged Vision Solar’s salesman met two of these criteria. She alleges that he financially

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benefitted the lenders by marketing their offerings to new borrowers. And she claims the lenders exercised some control over how the sales representative portrayed them. But from there, she falters.

Migliore has not plausibly alleged the sales representative could “conduct and conclude” sales for the lenders or “bind the[m] in contracts.” *See Winback*, 42 F.3d at 1438, 1439 n.19. Nowhere does she allege the salesman could approve a loan application, issue a loan, or make any binding agreement on their behalf. In fact, the FPA provides that Sunlight and originators like Cross River set the borrowing criteria, accept applications directly through their online platform, decide whether to approve applicants for credit, communicate those decisions, and convey the documentation to the applicants for execution. Her conclusory allegations that the sales representative had the power to transact for the lenders, *see, e.g.*, App. 86, cannot surmount the FPA’s direct specifications to the contrary. *See Vorchheimer v. Philadelphian Owners Ass’n*, 903 F.3d 100, 111-12 (3d Cir. 2018).

Migliore has not plausibly alleged Sunlight and Cross River authorized Vision Solar’s sales representative to hold himself out as acting for the lenders. *See Winback*, 42 F.3d at 1438, 1439 n.19, 1440 n.20. The FPA mandates Vision Solar, LLC market the panels to potential customers under its own name, not Sunlight’s. It directs Vision Solar to use Sunlight’s name where, but only where, required by law or necessary to prevent applicants from confusion about who originates or owns the loans. And the FPA restricts Vision Solar’s use of Sunlight’s and its lenders’ trademarks.

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Nor has Migliore plausibly alleged Vision Solar's sales representative was a fiduciary for Sunlight Financial or Cross River Bank. "A fiduciary relationship arises between two persons when one person is under a duty to act for or give advice for the benefit of another on matters within the scope of their relationship." *F.G. v. MacDonell*, 150 N.J. 550, 696 A.2d 697, 704 (N.J. 1997) (citing Restatement (Second) of Torts § 874 cmt. a (1979)). "When a company agrees to render a service or sell a product, a contract normally will define the scope of the parties' specific obligations." *Saltiel v. GSI Consultants, Inc.*, 170 N.J. 297, 788 A.2d 268, 280 (N.J. 2002). Accordingly, "fiduciary duties are not imposed in ordinary commercial business transactions" governed by contracts. *Alexander v. CIGNA Corp.*, 991 F. Supp. 427, 438 (D.N.J. 1998), *aff'd*, 172 F.3d 859 (3d Cir. 1998) (Table). In this context, courts typically find "[t]he scope of [an independent contractor's] legal obligations to the [principal] was defined by its express contractual undertaking." See *Pepe v. Twp. of Plainsboro*, 337 N.J. Super. 209, 766 A.2d 837, 842 (N.J. Super. Ct. App. Div. 2001). Beyond conclusory allegations that Vision Solar's salesman acted for the benefit of the lenders, Migliore does not allege any facts from outside the FPA that would speak to a fiduciary relationship. And nothing in it purports to produce one. In fact, the FPA expressly disclaims creating any form of agency relationship. App. 134. Of course, contractual disclaimers of agency are not dispositive. *Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A.2d 69, 78-79 (N.J. 1960). What matters most is the course of the relationship. *Sears Mortg. Corp. v. Rose*, 134 N.J. 326, 634 A.2d 74, 79 (N.J. 1993). But the FPA does not advance Migliore's case.

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Migliore insists Sunlight Financial and Cross River Bank exercised enough control over Vision Solar's sales representative to render him their agent despite these defects. Yet she has not plausibly alleged they did.

She points to the lenders' authority to mandate that sales representatives participate in training sessions on sales, marketing, and compliance, and to terminate any third-party sales organizations to which Vision Solar delegated responsibilities. However, we have held the powers to train, evaluate, and discipline independent contractors, without more, do not establish sufficient control for vicarious liability. *See Covington*, 710 F.3d at 120.

Migliore also asks us to infer control from the facts the lenders required sales representatives to use Sunlight's lending technology, set specific terms and conditions for sales, and reviewed the products on offer, the methods of presenting them, and the contract documents. But none of these allegations plug the three glaring gaps in her case. They do not suggest the sales representative could "conclude transactions" for the lenders. *See Winback*, 42 F.3d at 1438, 1439 n.19. They do not suggest he could speak as the lenders. *See id.* And they do not suggest he was a fiduciary for the lenders. *See id.* at 1439. As a result, they are not enough to make it plausible he was their agent.

At oral argument, Migliore pressed us to hold Sunlight liable for the salesman's forgery because the firm supplied the technology he used to perpetrate it: a lending platform that enables homeowners to apply for loans with digital

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contracts affixed with digital signatures. By providing the means, she argued, Sunlight assumed responsibility for the salesman's fraudulent ends. We reject this bid to expand vicarious liability. Because the "touchstone of an agency relationship" is "the right to control," what matters is not whether the principal provided the contractor the means, but whether the principal could control how the contractor used them. *See Gov't of V.I. v. Richards*, 618 F.2d 242, 244, 17 V.I. 623 (3d Cir. 1980). *See also I.H. ex rel. Litz v. Cnty. of Lehigh*, 610 F.3d 797, 811-12 (3d Cir. 2010). Migliore has not shown the lenders had that power.

To shore up her position, Migliore cites two cases finding agency relationships under roughly comparable circumstances. Neither persuades us. In *Lopez v. New Jersey Sun Tech, LLC*, a Pennsylvania homeowner sued none other than Sunlight Financial for a similar solar panel sale through a different sales organization. 3:24-CV-01354, 2025 U.S. Dist. LEXIS 9797, 2025 WL 260326, at *1 (M.D. Pa. Jan. 21, 2025). The court held the plaintiff plausibly alleged the sales representative was Sunlight's agent. 2025 U.S. Dist. LEXIS 9797, [WL] at *8. But it let the complainant off easy, applying the *Jurimex* rule "allowing allegations of agency to survive a facial attack." *See* 2025 U.S. Dist. LEXIS 9797, [WL] at *8 (quoting *Jurimex*, 65 F. App'x at 808). That was a mistake.

The other case, *Acevedo v. Sunnova Energy Corporation*, concerned a significantly different contract under California law. 738 F. Supp. 3d 1268 (C.D. Cal. 2024). There, the plaintiff alleged that Sunnova, the defendant lender, required the sales agents to register with a state

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labor board as the lender's employees. *Id.* at 1277. The plaintiff also alleged the sales representatives could apply for loans on behalf of their customers. *Id.* at 1274. Here, by contrast, Migliore does not allege Vision Solar's sales representatives are the lenders' employees in any sense. And she does not allege the lenders authorized the sales representatives to apply for loans for potential borrowers. These distinctions draw the California lender closer to the California sales representatives than Sunlight Financial and Cross River Bank are to Vision Solar's salesman, showing greater control by Sunnova and greater authority to transact by its sales representative.

Migliore thus failed plausibly to allege Vision Solar's sales representative was an agent of Sunlight Financial or Cross River Bank. Consequently, she does not adequately plead the lenders are vicariously liable for his violations of the Consumer Fraud Act.

B. Migliore failed to plead that Sunlight Financial and Cross River Bank are directly liable for violating the New Jersey Consumer Fraud Act.

Agency aside, Migliore claims Sunlight Financial and Cross River Bank are directly liable for violating two provisions of New Jersey's Consumer Fraud Act, §§ 56:8-2 and 56:8-2.22. Section 56:8-2 prohibits "unconscionable" commercial practices, as well as "deception, fraud . . . or the knowing . . . concealment, suppression, or omission of any material fact." N.J. STAT. ANN. § 56:8-2. Section 56:8-2.22 makes it unlawful "to require or request [a] consumer to sign any document as evidence . . . of [a]

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sales transaction . . . unless [one] shall at the same time provide the consumer with a full and accurate copy of the document.” N.J. STAT. ANN. § 56:8-2.22.

Consumer Fraud Act claims are subject to Federal Rule of Civil Procedure 9(b). *Frederico v. Home Depot*, 507 F.3d 188, 200 (3d Cir. 2007). It requires pleading fraud with particularity. “Under that standard, the complaint must describe the time, place, and contents of the false representations or omissions, as well as the identity of the person making the statement and the basis for the statement’s falsity.” *City of Warren Police and Fire Ret. Sys. v. Prudential Fin.*, 70 F.4th 668, 680 (3d Cir. 2023).

The District Court correctly concluded Migliore’s allegations lack the particularity Rule 9(b) requires. First, she claims “Sunlight’s deceptive conduct and misrepresentations, including with respect to its role in obligating Plaintiff to the 25-Year Loan,” were unconscionable in violation of § 56:8-2. App. 100. These allegations do not identify the deceptive conduct or the content of the alleged misrepresentations. *See City of Warren*, 70 F.4th at 680.

Second, Migliore claims she pled a violation of § 56:8-2 by alleging Sunlight Financial and Cross River Bank deliberately sent the loan agreement to the wrong email address. However, her argument implicitly relies on the agency theory we have rejected already. Her only relevant, nonconclusory allegations attribute the failure to send her the contract to the sales representative’s creation of a fake email address and his decision to send the contract

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to that address. Because Migliore failed to plead the sales representative acted as the lenders' agent, she cannot, without more, hold them liable for his diversion of the contract.

Third, Migliore claims the lender defendants' "failure to provide [her] the 25-Year Loan" and sales agreement violated § 56:8-2.22. App. 100. The District Court correctly determined she failed to state a claim because she alleged conduct this provision does not cover. In essence, § 56:8-2.22 bars requesting or demanding a consumer sign an agreement without providing that person a copy. But Migliore alleges Sunlight Financial and Cross River Bank never asked her to sign the contract, much less required her to sign it to prove the loan. To the contrary: it was sent to the wrong email address so she would not have the chance to sign it herself.

Even assuming the defendants requested she sign the agreement, Migliore's claim would fail for two independent reasons. First, she did not plead with particularity which defendant (or defendants) made this request. Although she alleges the agreement assigns roles to Sunlight Financial and Cross River Bank, she does not specify which entity requested her signature (if either). The most relevant allegation says merely that "Defendants requested [Migliore] sign the 25-Year Loan by causing the document to be emailed to [her] at the incorrect email address, through which the 25-Year Loan was signed." App. 92. In a case with five defendants, the word "Defendants" does not provide "the identity of the person" who allegedly wronged her. *See Frederico*, 507 F.3d at 201 (holding

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plaintiff's failure to identify which specific individual employed by defendant made the false remark sank claim under Rule 9(b)). *See also Institutional Investors Group v. Avaya, Inc.*, 564 F.3d 242, 253 (3d Cir. 2009) (holding Rule 9(b) "requires plaintiffs to plead the who, what, when, where and how") (quotation omitted). So this claim fails under Rule 9(b). Second, to the extent Migliore identified who requested her signature and failed to provide the document, she pointed to the sales representative. So understood, this claim fails with her agency claims.

C. Migliore failed to plead that Sunlight Financial and Cross River Bank violated the Fair Credit Reporting Act.

Migliore also claims Sunlight Financial and Cross River Bank are directly liable for violating the federal Credit Reporting Act. "Congress enacted [it] to 'ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy.'" *Kirtz v. Trans Union LLC*, 46 F.4th 159, 162 (3d Cir. 2022) (quoting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52, 127 S. Ct. 2201, 167 L. Ed. 2d 1045 (2007)). To those ends, 15 U.S.C. § 1681b(f) prohibits anyone from obtaining or using a credit report unless "the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section." *Gelman v. State Farm Mut. Auto. Ins. Co.*, 583 F.3d 187, 192 n.10 (3d Cir. 2009). Accordingly, to state a § 1681b(f) claim, the plaintiff must plausibly allege "(i) that there was a 'consumer report' within the meaning of the statute; (ii) that the defendant used or obtained it; and (iii) that the

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defendant did so without a permissible statutory purpose.” *Bickley v. Dish Network, LLC*, 751 F.3d 724, 728 (6th Cir. 2014) (quotation and emphasis omitted).

No doubt Migliore plausibly alleged Sunlight Financial and Cross River Bank obtained and used her credit report. The question is whether they accessed her credit report for a permissible purpose.

They did. A creditor is permitted to obtain a consumer’s credit report “to use the information in connection with a ‘credit transaction involving the consumer.’” *Bibbs v. Trans Union LLC*, 43 F.4th 331, 341 n.15 (3d Cir. 2022) (quoting 15 U.S.C. § 1681b(a)(3)(A)). By her own statements, that is what the lenders did: obtain Migliore’s credit report and use it “to determine whether she met Defendants’ credit requirements” for a 25-year loan of nearly \$100,000. App. 91-92, 96-97.

Migliore protests she did not apply for credit; the sales representative applied for credit in her name without her consent. We take that to be true. But it is not pertinent to whether she stated a Credit Reporting Act claim. Section 1681b(f) bars obtaining or using a credit report for an improper purpose, not applying for credit by an improper means or in someone else’s name. As the Eleventh Circuit observed in rejecting an identity theft claim like Migliore’s, “the [Credit Reporting Act] does not explicitly require a user of consumer reports to confirm beyond doubt the identity of potential consumers before requesting a report.” *Domante v. Dish Networks, LLC*, 974 F.3d 1342, 1346 (11th Cir. 2020).

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Moreover, unlike other provisions of the Credit Reporting Act, the “credit transaction” provision contains no requirement that it be “initiated by the consumer.” Compare 15 U.S.C. 1681b(a)(3)(F)(i) (permitting obtaining credit report “in connection with a business transaction . . . *initiated* by the consumer”) (emphasis added) with 15 U.S.C. § 1681b(a)(3)(A) (permitting obtaining credit report “to use the information in connection with a credit transaction *involving* the consumer”) (emphasis added). The Congress that drafted the Credit Reporting Act knew how to limit the permissible grounds for accessing a credit report to consumer-initiated transactions. It did so in the “legitimate business need” provision. It did not in the “credit transaction” provision. That difference suggests there is no requirement Migliore initiated the credit transaction. *Cf. Kelly v. RealPage, Inc.*, 47 F.4th 202, 218-19 (3d Cir. 2022) (finding it “telling” that “other sections [of the Credit Reporting Act] specify when the consumer’s authorization is needed”). What matters is whether Sunlight Financial and Cross River Bank obtained Migliore’s credit report “to use the information in connection with a credit transaction involving the consumer.” 15 U.S.C. § 1681b(a)(3)(A). Again, they did.

Migliore protests the lenders did not have a permissible purpose because they were trying to defraud her. This argument relies on the same agency theory addressed above. So it fails for the same reasons. She cannot impute the sales representative’s forgery to the lenders.

* * *

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Due to a salesman's deception and forgeries, Eva Migliore owed nearly \$100,000 for solar panels she did not buy and could not use. Her claims demand sympathy for her and raise rancor toward the perpetrators of this cringeworthy scam. She might have had viable claims against the salesman's company and its CEO. But she abandoned them. Today, we hold the claims she pressed on appeal—against Sunlight Financial and Cross River Bank—are not viable. She has not plausibly alleged the salesman was their agent, so she cannot hold them liable for his misconduct. And she has not plausibly alleged the lenders themselves broke the law. We might wish otherwise, but we must affirm the District Court's dismissal of her claims.

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**APPENDIX C — ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT GRANTING PETITION FOR
REHEARING AND DENYING PETITION FOR
REHEARING *EN BANC* (NOVEMBER 21, 2025)**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1679
(District Court No. 1:23-cv-02623)

EVA MIGLIORE,
BY HER FRIEND JOSEPH MIGLIORE,

Appellant,

v.

VISION SOLAR LLC; VISION SOLAR NJ LLC;
JON SEIBERT; SUNLIGHT FINANCIAL LLC;
CROSS RIVER BANK

Present: CHAGARES, Chief Judge, HARDIMAN,
SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER,
MATEY, PHIPPS, FREEMAN, MONTGOMERY-
REEVES, CHUNG, BOVE, MASCOTT, Circuit Judges
and AMBRO, Senior Judge

ORDER

The petition for panel rehearing filed by appellant,
Evan Migliore, in the above-entitled case having been
submitted to the judges who participated in the decision

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of this Court, panel rehearing is **granted**. The Clerk is directed to file the amended opinion contemporaneously with this order. The amended opinion removes a paragraph of dicta regarding the Fair Credit Reporting Act. As the revisions do not affect the disposition of the appeal, the judgment will remain as filed.

The petition for rehearing en banc filed by appellant, Eva Migliore, in the above-entitled cases having been submitted to all available circuit judges of the circuit in regular active service, and no judge of the circuit in regular active service, asked for rehearing en banc, rehearing en banc is **denied**.

BY THE COURT,

/s/ THOMAS L. AMBRO
Circuit Judge

Dated: November 21, 2025
cc: All Counsel of Record

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**APPENDIX D — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT,
AS AMENDED (NOVEMBER 21, 2025)**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1679

EVA MIGLIORE, BY HER FRIEND
JOSEPH MIGLIORE,

Appellant,

v.

VISION SOLAR LLC; VISION SOLAR NJ LLC;
JON SEIBERT; SUNLIGHT FINANCIAL LLC;
CROSS RIVER BANK

Appeal from the United States District Court
for the District of New Jersey
(District Court No. 1:23-cv-02623)
District Judge: Honorable Christine P. O’Hearn

Argued on September 16, 2025

Before: BIBAS, MONTGOMERY-REEVES,
and AMBRO, *Circuit Judges.*

(Opinion Filed: November 21, 2025)

OPINION OF THE COURT

*Appendix D**AMBRO, Circuit Judge*

A door-to-door salesman offered senior citizen Eva Migliore “free” rooftop solar panels for her home in New Jersey. They weren’t free. Soon, her son discovered she owed nearly \$100,000 to lenders who claimed she took out a loan to finance the panels. Migliore sued the salesman’s company, its CEO, and the lenders for defrauding her. The District Court dismissed her claims against the lenders, primarily because she failed plausibly to allege the salesman was acting on their behalf. As sympathetic as this case is, we must affirm.

I. BACKGROUND

These are the facts as Migliore alleges them. Sunlight Financial LLC and Cross River Bank (the “lenders”) finance home solar energy systems. Sunlight operates a financial services platform that enables homeowners to finance home improvements with loans originated by third-party lenders like Cross River. Sunlight and Cross River work with Vision Solar, which markets home solar systems, pitches customers on the lenders’ financing options, and then designs, makes, installs, and services the panels. Vision Solar comprises two entities: Vision Solar, LLC and Vision Solar NJ, LLC (collectively “Vision Solar,” unless otherwise indicated). Jon Seibert is the CEO of each. The relationship between the lenders and Vision Solar is governed by a contract called the Financing Program Agreement (“FPA”).

In October 2022, a Vision Solar sales representative came to Migliore’s door and offered her free solar panels. She hesitated. But when the salesman pressed

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her, Migliore accepted the offer. The salesman never mentioned, showed, or asked her to sign any paperwork. During or shortly after the visit, the lenders obtained her consumer credit reports.

A few months later, Vision Solar installed the panels and called Migliore to turn them on. It was then her son, Joseph, learned about the panels and demanded to see documentation. Vision Solar informed him it had sent the documents to the wrong email address because of a “clerical error.” Instead of sending them to her email address, which includes her last name, “Migliore,” it had emailed them to a slightly different one, misspelling her last name as “Migilore.” Once Vision Solar sent Migliore and her son the documents, they learned the terms for the first time.

What they read stunned them: a sales agreement purporting to obligate Migliore to pay Vision Solar for the panels; a document styled as a “Power of Attorney,” purporting to authorize Vision Solar to apply for credit on her behalf; and a 25-year loan agreement, listing Sunlight Financial as the “Envelope Originator,” purporting to obligate Migliore to pay Cross River Bank \$99,749.82 for financing the purchase. All were digitally signed and initialed in her name, even though she had never seen any of them before. Migliore and her son soon realized what had happened: the salesman made a fake email address, sent the documents there, and forged her signature.¹

1. Migliore’s experience seems to reflect a pattern of misconduct by Vision Solar. *See* App. 97-98 (describing the Connecticut Attorney General’s allegations that Vision Solar regularly commits similar abuses).

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Making matters worse, the solar panels were no use to Migliore. Her house is shaded by trees. And her roof failed inspection.

Understandably, Migliore had no interest in paying nearly \$100,000 for solar panels she did not buy and could not use, so she tried to cancel. Less understandably, the companies refused.

Migliore turned to litigation. In May 2023, she sued the Vision Solar entities, Seibert, Sunlight, and Cross River in the U.S. District Court for the District of New Jersey for violating federal and New Jersey law. As relevant here, she sued Sunlight and Cross River for violating the New Jersey Consumer Fraud Act (“Consumer Fraud Act”), N.J. STAT. ANN. § 56:8-1 *et seq.*, directly and through Vision Solar’s salesman, and for violating directly a provision of the Fair Credit Reporting Act (“Credit Reporting Act”), 15 U.S.C. § 1681b(f).

Seibert and the Vision Solar entities moved to dismiss the complaint. Sunlight and Cross River did the same. Then Vision Solar, LLC filed for bankruptcy, so the District Court terminated it from the action. In March 2024, the Court granted Sunlight and Cross River’s motion to dismiss without prejudice. It also granted Vision Solar’s motion to dismiss, but only in part, allowing some of the claims against Seibert and Vision Solar NJ, LLC to proceed. Migliore then voluntarily dismissed her surviving claims against Seibert and Vision Solar NJ, LLC. She appeals the dismissal of her claims against the lenders.

*Appendix D***II. JURISDICTION AND STANDARD OF REVIEW**

The District Court had federal question jurisdiction over the Credit Reporting Act claim, 28 U.S.C. § 1331; 15 U.S.C. § 1681p, and supplemental jurisdiction over the related state-law claims, 28 U.S.C. § 1367.

We have jurisdiction over this appeal under 28 U.S.C. § 1291. It confers “jurisdiction of appeals from all final decisions of the district courts of the United States.” 28 U.S.C. § 1291. “[A] dismissal without prejudice and with leave to amend isn’t a final order.” *Weber v. McGrogan*, 939 F.3d 232, 237 (3d Cir. 2019). However, “a clear and unequivocal intent to decline amendment and immediately appeal that leaves no doubt or ambiguity can allow us to exercise jurisdiction.” *Id.* at 240. Under the “stand on the complaint” doctrine, “the mere *intent* to forego further amendment [can] satisfy finality” without the need to “seek[] and receiv[e] a final order” from a district court. *Id.* at 238.

That is what we have here. The District Court dismissed Migliore’s claims against Sunlight Financial and Cross River Bank without prejudice. Then Migliore filed a “Notice of Intent to Stand on [the] Second Amended Complaint,” declining the opportunity to amend. App. 165. The District Court dismissed the claims against Vision Solar NJ, LLC and Seibert following Migliore’s voluntary dismissal. And Migliore notified us that she formally abandons her claims against the bankrupt Vision Solar, LLC. “That representation suffices to convert the District Court’s ruling into a final decision appealable

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under § 1291.” *Dzielak v. Whirlpool Corp.*, 83 F.4th 244, 259 (3d Cir. 2023). Because its order now counts as final, we have jurisdiction.

With that jurisdiction, we review *de novo* the grant of a Rule 12(b)(6) motion to dismiss. *Falcone v. Dickstein*, 92 F.4th 193, 202 (3d Cir. 2024). Like the District Court, we ask whether the complaint states a claim for relief, taking all factual allegations as true, disregarding legal conclusions, and drawing all reasonable inferences in the plaintiff’s favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009); *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (*en banc*).

III. DISCUSSION

Migliore claims Sunlight Financial and Cross River Bank violated the state Consumer Fraud Act, N.J. STAT. ANN. § 56:8-1 *et seq.*, and the federal Credit Reporting Act, 15 U.S.C. § 1681b(f). Her primary theory is that Vision Solar’s salesman acted as the lenders’ agent, defrauding her on their behalf. Accordingly, we first consider vicarious liability, then consider direct liability.

A. Migliore failed to plead that Sunlight Financial and Cross River Bank are vicariously liable under the New Jersey Consumer Fraud Act for the actions of Vision Solar’s sales representative.

New Jersey’s Consumer Fraud Act was “designed to combat sharp practices and dealings that victimized consumers by luring them into purchases through

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fraudulent or deceptive means.” *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 647 A.2d 454, 461 (N.J. 1994) (quotation omitted). To state a claim under it, a plaintiff must plausibly allege “1) unlawful conduct by defendant; 2) an ascertainable loss by plaintiff; and 3) a causal relationship between the unlawful conduct and the ascertainable loss.” *Bosland v. Warnock Dodge, Inc.*, 197 N.J. 543, 964 A.2d 741, 749 (N.J. 2009).

Migliore claims the lenders are vicariously liable for Vision Solar’s sales representative’s violations of the statute. Generally, we are liable only for our own actions. Sometimes, however, a principal is liable for its agent’s conduct. *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1437 (3d Cir. 1994). Vicarious (acting for another) liability mitigates “the injustice in allowing a principal to place agents in the marketplace, to allow the agents to complete contracts on the principal’s behalf, to profit from the agents’ misrepresentations, and then to disclaim liability for the agents’ actions while benefitting from the fraud.” *Id.* at 1438.

Before we turn to the merits, we clarify the pleading standard. Migliore argues agency allegations need not satisfy the ordinary standard for surviving a Rule 12(b) (6) motion to dismiss. She relies on our nonprecedential opinion in *Jurimex Kommerz Transit G.M.B.H. v. Case Corporation*, which said “discovery is necessary when an agency relationship is alleged, thereby implicitly allowing allegations of agency to survive a facial attack.” 65 F. App’x 803, 808 (3d Cir. 2003).

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Her reliance on *Jurimex* is misplaced. The case predicated this proposition on the generous pleading standard of its day—the standard of *Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)—under which “a complaint may be dismissed ‘only if it is certain that no relief could be granted under any set of facts which could be proven.’” *Id.* (quoting *Rossmann v. Fleet Bank (RI) Nat’l Assoc.*, 280 F.3d 384, 387 (3d Cir. 2002)). The Supreme Court has overruled this standard. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 560-63, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (concluding the “no set of facts” standard is “best forgotten”); *Iqbal*, 556 U.S. at 670 (“*Twombly* retired the *Conley* no-set-of-facts test[.]”); *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 230-32 (3d Cir. 2008) (holding *Twombly* “disavowed . . . the ‘no set of facts’ language”).

Today, to survive a motion to dismiss, a plaintiff must allege facts sufficient to make it “plausible” the defendant is liable. *Doe v. Univ. of Scis.*, 961 F.3d 203, 208 (3d Cir. 2020). So to claim a defendant is vicariously liable, a plaintiff must allege facts sufficient to make it plausible the primary wrongdoer was the defendant’s agent. *See Phillips*, 515 F.3d at 234 (holding complaint must contain “enough factual matter (taken as true) to suggest the required element[s]” of each claim) (quotation omitted); *Covington v. Int’l Ass’n of Approved Basketball Offs.*, 710 F.3d 114, 117-18 (3d Cir. 2013) (subjecting vicarious liability claims to *Twombly* and *Iqbal* standard). There is no agency exception to the plausible-pleading requirement.

We turn, then, to agency. “An agency relationship is created when one party consents to have another act on

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its behalf, with the principal controlling and directing the acts of the agent.” *Covington*, 710 F.3d at 120 (quoting *Winback*, 42 F.3d at 1434). Agents are fiduciaries for their principals. *See Winback*, 42 F.3d at 1439 (quoting Restatement (Second) of Agency § 14N, cmt. b); *Kaye v. Rosefelde*, 223 N.J. 218, 121 A.3d 862, 869 (N.J. 2015).

Under New Jersey law, there are two types of agents: employees and some independent contractors. *Winback*, 42 F.3d at 1434-35. Employees are agents subject to their employer’s control over the time, manner, and method of work. *Id.* at 1435. Independent contractors are agents only when subject to their principal’s “general control and direction,” particularly as to the results of the work. *Id.* Independent contractors who are not subject to their principal’s control are not agents. *Id.*

In *Winback*, we identified several indicia for when a sales representative is an agent. *See id.* at 1438-39. First, the sales representative is empowered “to conduct and conclude” transactions for the principal. *Id.* at 1438 & 1439 n.19. Second, “the representative is empowered to speak as the principal,” *id.* at 1439 n.19, or to “hold [himself] out as the principal itself,” *id.* at 1438. Third, the principal “exercise[s] control over how its company is represented to third parties.” *Id.* at 1439 n.19. And fourth, “the principal benefits financially from the contracts.” *Id.* at 1438. No matter what, only a sales representative who is a fiduciary for the principal is an agent of the principal. *See id.* at 1439.

Migliore has plausibly alleged Vision Solar’s salesman met two of these criteria. She alleges that he financially

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benefitted the lenders by marketing their offerings to new borrowers. And she claims the lenders exercised some control over how the sales representative portrayed them. But from there, she falters.

Migliore has not plausibly alleged the sales representative could “conduct and conclude” sales for the lenders or “bind the[m] in contracts.” *See Winback*, 42 F.3d at 1438, 1439 n.19. Nowhere does she allege the salesman could approve a loan application, issue a loan, or make any binding agreement on their behalf. In fact, the FPA provides that Sunlight and originators like Cross River set the borrowing criteria, accept applications directly through their online platform, decide whether to approve applicants for credit, communicate those decisions, and convey the documentation to the applicants for execution. Her conclusory allegations that the sales representative had the power to transact for the lenders, *see, e.g.*, App. 86, cannot surmount the FPA’s direct specifications to the contrary. *See Vorchheimer v. Philadelphian Owners Ass’n*, 903 F.3d 100, 111-12 (3d Cir. 2018).

Migliore has not plausibly alleged Sunlight and Cross River authorized Vision Solar’s sales representative to hold himself out as acting for the lenders. *See Winback*, 42 F.3d at 1438, 1439 n.19, 1440 n.20. The FPA mandates Vision Solar, LLC market the panels to potential customers under its own name, not Sunlight’s. It directs Vision Solar to use Sunlight’s name where, but only where, required by law or necessary to prevent applicants from confusion about who originates or owns the loans. And the FPA restricts Vision Solar’s use of Sunlight’s and its lenders’ trademarks.

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Nor has Migliore plausibly alleged Vision Solar's sales representative was a fiduciary for Sunlight Financial or Cross River Bank. "A fiduciary relationship arises between two persons when one person is under a duty to act for or give advice for the benefit of another on matters within the scope of their relationship." *F.G. v. MacDonell*, 150 N.J. 550, 696 A.2d 697, 704 (N.J. 1997) (citing Restatement (Second) of Torts § 874 cmt. a (1979)). "When a company agrees to render a service or sell a product, a contract normally will define the scope of the parties' specific obligations." *Saltiel v. GSI Consultants, Inc.*, 170 N.J. 297, 788 A.2d 268, 280 (N.J. 2002). Accordingly, "fiduciary duties are not imposed in ordinary commercial business transactions" governed by contracts. *Alexander v. CIGNA Corp.*, 991 F. Supp. 427, 438 (D.N.J. 1998), *aff'd*, 172 F.3d 859 (3d Cir. 1998) (Table). In this context, courts typically find "[t]he scope of [an independent contractor's] legal obligations to the [principal] was defined by its express contractual undertaking." *See Pepe v. Twp. of Plainsboro*, 337 N.J. Super. 209, 766 A.2d 837, 842 (N.J. Super. Ct. App. Div. 2001). Beyond conclusory allegations that Vision Solar's salesman acted for the benefit of the lenders, Migliore does not allege any facts from outside the FPA that would speak to a fiduciary relationship. And nothing in it purports to produce one. In fact, the FPA expressly disclaims creating any form of agency relationship. App. 134. Of course, contractual disclaimers of agency are not dispositive. *Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A.2d 69, 78-79 (N.J. 1960). What matters most is the course of the relationship. *Sears Mortg. Corp. v. Rose*, 134 N.J. 326, 634 A.2d 74, 79 (N.J. 1993). But the FPA does not advance Migliore's case.

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Migliore insists Sunlight Financial and Cross River Bank exercised enough control over Vision Solar's sales representative to render him their agent despite these defects. Yet she has not plausibly alleged they did.

She points to the lenders' authority to mandate that sales representatives participate in training sessions on sales, marketing, and compliance, and to terminate any third-party sales organizations to which Vision Solar delegated responsibilities. However, we have held the powers to train, evaluate, and discipline independent contractors, without more, do not establish sufficient control for vicarious liability. *See Covington*, 710 F.3d at 120.

Migliore also asks us to infer control from the facts the lenders required sales representatives to use Sunlight's lending technology, set specific terms and conditions for sales, and reviewed the products on offer, the methods of presenting them, and the contract documents. But none of these allegations plug the three glaring gaps in her case. They do not suggest the sales representative could "conclude transactions" for the lenders. *See Winback*, 42 F.3d at 1438, 1439 n.19. They do not suggest he could speak as the lenders. *See id.* And they do not suggest he was a fiduciary for the lenders. *See id.* at 1439. As a result, they are not enough to make it plausible he was their agent.

At oral argument, Migliore pressed us to hold Sunlight liable for the salesman's forgery because the firm supplied the technology he used to perpetrate it: a lending platform that enables homeowners to apply for loans with digital

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contracts affixed with digital signatures. By providing the means, she argued, Sunlight assumed responsibility for the salesman's fraudulent ends. We reject this bid to expand vicarious liability. Because the "touchstone of an agency relationship" is "the right to control," what matters is not whether the principal provided the contractor the means, but whether the principal could control how the contractor used them. *See Gov't of V.I. v. Richards*, 618 F.2d 242, 244, 17 V.I. 623 (3d Cir. 1980). *See also I.H. ex rel. Litz v. Cnty. of Lehigh*, 610 F.3d 797, 811-12 (3d Cir. 2010). Migliore has not shown the lenders had that power.

To shore up her position, Migliore cites two cases finding agency relationships under roughly comparable circumstances. Neither persuades us. In *Lopez v. New Jersey Sun Tech, LLC*, a Pennsylvania homeowner sued none other than Sunlight Financial for a similar solar panel sale through a different sales organization. 3:24-CV-01354, 2025 U.S. Dist. LEXIS 9797, 2025 WL 260326, at *1 (M.D. Pa. Jan. 21, 2025). The court held the plaintiff plausibly alleged the sales representative was Sunlight's agent. 2025 U.S. Dist. LEXIS 9797, [WL] at *8. But it let the complainant off easy, applying the *Jurimex* rule "allowing allegations of agency to survive a facial attack." *See* 2025 U.S. Dist. LEXIS 9797, [WL] at *8 (quoting *Jurimex*, 65 F. App'x at 808). That was a mistake.

The other case, *Acevedo v. Sunnova Energy Corporation*, concerned a significantly different contract under California law. 738 F. Supp. 3d 1268 (C.D. Cal. 2024). There, the plaintiff alleged that Sunnova, the defendant lender, required the sales agents to register with a state

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labor board as the lender's employees. *Id.* at 1277. The plaintiff also alleged the sales representatives could apply for loans on behalf of their customers. *Id.* at 1274. Here, by contrast, Migliore does not allege Vision Solar's sales representatives are the lenders' employees in any sense. And she does not allege the lenders authorized the sales representatives to apply for loans for potential borrowers. These distinctions draw the California lender closer to the California sales representatives than Sunlight Financial and Cross River Bank are to Vision Solar's salesman, showing greater control by Sunnova and greater authority to transact by its sales representative.

Migliore thus failed plausibly to allege Vision Solar's sales representative was an agent of Sunlight Financial or Cross River Bank. Consequently, she does not adequately plead the lenders are vicariously liable for his violations of the Consumer Fraud Act.

B. Migliore failed to plead that Sunlight Financial and Cross River Bank are directly liable for violating the New Jersey Consumer Fraud Act.

Agency aside, Migliore claims Sunlight Financial and Cross River Bank are directly liable for violating two provisions of New Jersey's Consumer Fraud Act, §§ 56:8-2 and 56:8-2.22. Section 56:8-2 prohibits "unconscionable" commercial practices, as well as "deception, fraud . . . or the knowing . . . concealment, suppression, or omission of any material fact." N.J. STAT. ANN. § 56:8-2. Section 56:8-2.22 makes it unlawful "to require or request [a] consumer to sign any document as evidence . . . of [a]

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sales transaction . . . unless [one] shall at the same time provide the consumer with a full and accurate copy of the document.” N.J. STAT. ANN. § 56:8-2.22.

Consumer Fraud Act claims are subject to Federal Rule of Civil Procedure 9(b). *Frederico v. Home Depot*, 507 F.3d 188, 200 (3d Cir. 2007). It requires pleading fraud with particularity. “Under that standard, the complaint must describe the time, place, and contents of the false representations or omissions, as well as the identity of the person making the statement and the basis for the statement’s falsity.” *City of Warren Police and Fire Ret. Sys. v. Prudential Fin.*, 70 F.4th 668, 680 (3d Cir. 2023).

The District Court correctly concluded Migliore’s allegations lack the particularity Rule 9(b) requires. First, she claims “Sunlight’s deceptive conduct and misrepresentations, including with respect to its role in obligating Plaintiff to the 25-Year Loan,” were unconscionable in violation of § 56:8-2. App. 100. These allegations do not identify the deceptive conduct or the content of the alleged misrepresentations. *See City of Warren*, 70 F.4th at 680.

Second, Migliore claims she pled a violation of § 56:8-2 by alleging Sunlight Financial and Cross River Bank deliberately sent the loan agreement to the wrong email address. However, her argument implicitly relies on the agency theory we have rejected already. Her only relevant, non-conclusory allegations attribute the failure to send her the contract to the sales representative’s creation of a fake email address and his decision to send the contract

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to that address. Because Migliore failed to plead the sales representative acted as the lenders' agent, she cannot, without more, hold them liable for his diversion of the contract.

Third, Migliore claims the lender defendants' "failure to provide [her] the 25-Year Loan" and sales agreement violated § 56:8-2.22. App. 100. The District Court correctly determined she failed to state a claim because she alleged conduct this provision does not cover. In essence, § 56:8-2.22 bars requesting or demanding a consumer sign an agreement without providing that person a copy. But Migliore alleges Sunlight Financial and Cross River Bank never asked her to sign the contract, much less required her to sign it to prove the loan. To the contrary: it was sent to the wrong email address so she would not have the chance to sign it herself.

Even assuming the defendants requested she sign the agreement, Migliore's claim would fail for two independent reasons. First, she did not plead with particularity which defendant (or defendants) made this request. Although she alleges the agreement assigns roles to Sunlight Financial and Cross River Bank, she does not specify which entity requested her signature (if either). The most relevant allegation says merely that "Defendants requested [Migliore] sign the 25-Year Loan by causing the document to be emailed to [her] at the incorrect email address, through which the 25-Year Loan was signed." App. 92. In a case with five defendants, the word "Defendants" does not provide "the identity of the person" who allegedly wronged her. *See Frederico*, 507 F.3d at 201 (holding

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plaintiff's failure to identify which specific individual employed by defendant made the false remark sank claim under Rule 9(b)). *See also Institutional Investors Group v. Avaya, Inc.*, 564 F.3d 242, 253 (3d Cir. 2009) (holding Rule 9(b) "requires plaintiffs to plead the who, what, when, where and how") (quotation omitted). So this claim fails under Rule 9(b). Second, to the extent Migliore identified who requested her signature and failed to provide the document, she pointed to the sales representative. So understood, this claim fails with her agency claims.

C. Migliore failed to plead that Sunlight Financial and Cross River Bank violated the Fair Credit Reporting Act.

Migliore also claims Sunlight Financial and Cross River Bank are directly liable for violating the federal Credit Reporting Act. "Congress enacted [it] to 'ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy.'" *Kirtz v. Trans Union LLC*, 46 F.4th 159, 162 (3d Cir. 2022) (quoting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52, 127 S. Ct. 2201, 167 L. Ed. 2d 1045 (2007)). To those ends, 15 U.S.C. § 1681b(f) prohibits anyone from obtaining or using a credit report unless "the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section." *Gelman v. State Farm Mut. Auto. Ins. Co.*, 583 F.3d 187, 192 n.10 (3d Cir. 2009). Accordingly, to state a § 1681b(f) claim, the plaintiff must plausibly allege "(i) that there was a 'consumer report' within the meaning of the statute; (ii) that the defendant used or obtained it; and (iii) that the

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defendant did so without a permissible statutory purpose.” *Bickley v. Dish Network, LLC*, 751 F.3d 724, 728 (6th Cir. 2014) (quotation and emphasis omitted).

No doubt Migliore plausibly alleged Sunlight Financial and Cross River Bank obtained and used her credit report. The question is whether they accessed her credit report for a permissible purpose.

They did. A creditor is permitted to obtain a consumer’s credit report “to use the information in connection with a ‘credit transaction involving the consumer.’” *Bibbs v. Trans Union LLC*, 43 F.4th 331, 341 n.15 (3d Cir. 2022) (quoting 15 U.S.C. § 1681b(a)(3)(A)). By her own statements, that is what the lenders did: obtain Migliore’s credit report and use it “to determine whether she met Defendants’ credit requirements” for a 25-year loan of nearly \$100,000. App. 91-92, 96-97.

Migliore protests she did not apply for credit; the sales representative applied for credit in her name without her consent. We take that to be true. But it is not pertinent to whether she stated a Credit Reporting Act claim. Section 1681b(f) bars obtaining or using a credit report for an improper purpose; it does not bar applying for credit by an improper means or in someone else’s name. As the Eleventh Circuit observed in rejecting an identity theft claim like Migliore’s, “the [Credit Reporting Act] does not explicitly require a user of consumer reports to confirm beyond doubt the identity of potential consumers before requesting a report.” *Domante v. Dish Networks, LLC*, 974 F.3d 1342, 1346 (11th Cir. 2020).

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Migliore protests the lenders did not have a permissible purpose because they were trying to defraud her. This argument relies on the same agency theory addressed above. So it fails for the same reasons. She cannot impute the sales representative's forgery to the lenders.

* * *

Due to a salesman's deception and forgeries, Eva Migliore owed nearly \$100,000 for solar panels she did not buy and could not use. Her claims demand sympathy for her and raise rancor toward the perpetrators of this cringeworthy scam. She might have had viable claims against the salesman's company and its CEO. But she abandoned them. Today, we hold the claims she pressed on appeal—against Sunlight Financial and Cross River Bank—are not viable. She has not plausibly alleged the salesman was their agent, so she cannot hold them liable for his misconduct. And she has not plausibly alleged the lenders themselves broke the law. We might wish otherwise, but we must affirm the District Court's dismissal of her claims.

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**APPENDIX E — JUDGMENT OF THE
UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT (DECEMBER 15, 2025)**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1679

EVA MIGLIORE,

by her friend Joseph Migliore,

Appellant,

v.

VISION SOLAR LLC; VISION SOLAR NJ LLC;
JON SEIBERT; SUNLIGHT FINANCIAL LLC;
CROSS RIVER BANK

Appeal from the United States District Court
for the District of New Jersey
(District Court No. 1:23-cv-02623)
District Judge: Honorable Christine P. O’Hearn

Argued on September 16, 2025

Before: BIBAS, MONTGOMERY-REEVES, and
AMBRO, *Circuit Judges*

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JUDGMENT

This cause came on to be heard on the record before the United States District Court for the District of New Jersey and was argued September 16, 2025.

On consideration whereof it is,

ORDERED and **ADJUDGED** by this Court that the judgment of the District Court entered March 28, 2024, is hereby **AFFIRMED**.

Costs are not taxed.

All of the above in accordance with the Opinion of this Court.

ATTEST:

/s/ Patricia S. Dodszuweit
Clerk

Dated: October 22, 2025