**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF FLORIDA**
**PENSACOLA DIVISION**

JULIO HERNANDEZ,

Plaintiff,

v. Case No: 3:19cv1987-RV/EMT

TRANS UNION LLC, OCWEN
LOAN SERVICING LLC,

Defendants.
______________________________/

**ORDER**

The plaintiff, Julio Hernandez, filed this action against the defendants, Trans Union LLC ("Trans Union") and Ocwen Loan Servicing LLC ("Ocwen"), alleging that they violated the Fair Credit Reporting Act ("FCRA") with respect to how they reported his mortgage account (the "Account").[1] Trans Union has filed a motion for judgment on the pleadings (doc. 38), and Ocwen moves for summary judgment (doc. 63). The plaintiff has filed responses in opposition to both motions, and the defendants have filed replies in further support.[2]

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1

The plaintiff originally asserted FCRA claims against Equifax Inc. as well, but he has settled with and dismissed that defendant by stipulation (docs. 39, 40).

2

In addition to the foregoing, the parties have filed myriad notices of supplemental authority and responses to the notices (docs. 52, 70, 74, 75, 76, 77, 78, 79, 80, 81). Most of these supplemental filings concern decisions by other district courts throughout the country. With the exception of one of these out-of-circuit district court cases, *Settles v. Trans Union LLC*, 2020 WL 6900302 (M.D. Tenn. Nov. 24, 2020), and the cases cited therein *infra*, the pending motions will be disposed of by looking closer to home in cases decided by and within the Eleventh Circuit.

## I. Standards of Review

*A. Judgment on the Pleadings*

"Judgment on the pleadings is appropriate where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law." *Cannon v. City of West Palm Beach, Fla.*, 250 F.3d 1299, 1301 (11th Cir. 2001). A motion for judgment on the pleadings is treated the same way as a motion to dismiss for failure to state a claim. *See Strategic Income Fund LLC v. Spear, Leeds & Kellog Corp.,* 305 F.3d 1293, 1295 n.8 (11th Cir. 2002). Thus, in considering a motion for judgment on the pleadings, I must accept the facts alleged in the complaint as true and view them in a light most favorable to the plaintiff. *See id.* If upon reviewing the pleadings it is clear that the plaintiff would not be entitled to relief under any of the facts that could be proved consistent with the allegations, I must dismiss the complaint. *See Horsley v. Rivera*, 292 F.3d 695, 700 (11th Cir. 2002).

*B. Summary Judgment*

Summary judgment is appropriate if all the pleadings, discovery, affidavits, and disclosure materials on file show that there is no genuine disputed issue of material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), (c). The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against any party who fails to make a showing sufficient to prove the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

Summary judgment is inappropriate "[i]f a reasonable factfinder evaluating the evidence could draw more than one inference from the facts, and if that inference introduces a genuine issue of material fact[.]" *Allen v. Board of Public Educ. for Bibb*

*County*, 495 F.3d 1306, 1315 (11th Cir. 2007). An issue of fact is "material" if it might affect the outcome of the case under the governing law. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248 (1986). It is "genuine" if the record, viewed as a whole, could lead a reasonable fact finder to return a verdict for the non-movant. *Id.*

In considering a motion for summary judgment, the record must be construed in the light most favorable to the non-movant; all reasonable inferences are drawn in her favor; and her evidence must be believed. *Allen*, 495 F.3d at 1315; *see also Shaw v. City of Selma, Ala.*, 884 F.3d 1093, 1098 (11th Cir. 2018).

## II. Background

The pertinent facts are undisputed and can be stated briefly.

In January 2006, the plaintiff obtained a residential mortgage loan that required monthly payments over a 30-year term ("the Loan"). Ocwen began servicing the Loan in February 2013. The plaintiff defaulted on the Loan by failing to make his monthly payment on July 1, 2015, and all subsequent payments due thereafter. As of July 1, 2015, the principal amount due under the Loan was $181,689.00.

On February 24, 2016, Ocwen approved a discounted payoff (a short sale) on the Loan. On March 7, 2016, the plaintiff signed a short sale agreement and sold the property securing the Loan to Boss Hog Properties for the total sum of $85,863.10. At the time the plaintiff sold the property on March 7, the principal amount due under the terms of the Loan was $181,689.00. The plaintiff admits that the Loan was at least 120 days past due at the time he paid it off pursuant to the short sale agreement. The short sale agreement provided as follows in Paragraph 10 of its Terms & Conditions:

> Credit Bureau Reporting. We will follow standard industry practice and report to the major credit reporting agencies that your mortgage was settled for less than full payment. We have no control over, or responsibility for, the impact of this report on your credit score.

On or about March 8, 2018, Trans Union issued a credit report that reported the plaintiff's Ocwen mortgage account as follows (emphasis added):

| | | | |
|---|---|---|---|
| Date Opened:<br>01/26/2006 | Responsibility:<br>Individual Account | Account Type:<br>Mortgage Account | Loan Type:<br>Conventional Real Estate Mtg |
| **Balance:**<br>**$0** | Date Updated:<br>03/07/2016 | Payment Received:<br>$0 | Last Payment Made:<br>06/02/2015 |
| High Balance:<br>$164,000 | **Pay Status:**<br>**Account 120 Days Past Due** | Terms:<br>Monthly for 360 months | **Date Closed:**<br>**03/07/2016** |

Maximum Delinquency of 120 days in 10/2015 for $6,279 and in 03/2016

**Remarks: >SETTLED-LESS THAN FULL BALANCE< CLOSED**
Estimated month and year that this item will be removed: 06/2022

| | 02/2016 | 01/2016 | 12/2015 | 11/2015 | 10/2015 | 09/2015 | 08/2015 | 07/2015 |
|---|---|---|---|---|---|---|---|---|
| Rating | 120 | 120 | 120 | 120 | 120 | 90 | 90 | 90 |

The plaintiff subsequently filed this case, alleging that the defendants violated the FCRA by reporting that the "pay status" of the Account was "120 days past due." He asserts that: "It is impossible and incorrect for an account that was paid off and brought current with a '0' balance as of March 07, 2016, to still be reporting as late as of March 8, 2018. Not only is the Ocwen account false on the face of the credit report, but this reporting is extremely misleading because it makes it look like the Plaintiff is still late on the account that was previously paid off in full." Complaint (doc. 1) at ¶ 15. According to the plaintiff, his credit report "should be reporting the account as 'current' and not 'past due.'" *Id.* at ¶ 39.

## III. Discussion

"The FCRA seeks to ensure 'fair and accurate credit reporting.'" *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1545 (2016) (quoting § 1681(a)(1)). "Under section 607(b) of the Act, a credit reporting agency, when preparing a credit report on a consumer, is required to 'follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.'" *Cahlin v.*

*General Motors Acceptance Corp.*, 936 F.2d 1151, 1156 (11th Cir. 1991) (quoting § 1681e(b)). The maximum possible accuracy standard requires that the report "be both factually correct and free from potential for misunderstanding." *Erickson v. First Adv. Background Servs*, — F.3d —, 2020 WL 7086059, at *1 (11th Cir. Dec. 4, 2020); *see also id.* at *4 ("to reach 'maximum possible accuracy,' information must be factually true and also unlikely to lead to a misunderstanding"). Notably, the Eleventh Circuit recently said the following in *Erickson*:

> [W]hether a report is misleading is an objective measure, one that should be interpreted in an evenhanded manner toward the interests of both consumers and potential creditors in fair and accurate credit reporting. . . . So when evaluating whether a report is accurate [under the FCRA], we look to the objectively reasonable interpretations of the report. If a report is so misleading that it is objectively likely to cause the intended user to take adverse action against its subject, it is not maximally accurate. *On the other hand, the fact that some user somewhere could possibly squint at a report and imagine a reason to think twice about its subject would not render the report objectively misleading.*

*Id.* (internal citation and quotation marks omitted) (emphasis added). And the Court had earlier stated in *Cahlin*:

> Although a credit reporting agency has a duty to make a reasonable effort to report "accurate" information on a consumer's credit history, *it has no duty to report only that information which is favorable or beneficial to the consumer.* Congress enacted FCRA with the goals of ensuring that such agencies imposed procedures that were not only "fair and equitable to the consumer," but that also met the "needs of commerce" for accurate credit reporting. *Indeed, the very economic purpose for credit reporting companies would be significantly vitiated if they shaded every credit history in their files in the best possible light for the consumer.*

936 F.2d at 1158 (emphasis added).

Therefore, in determining if a credit report is both true and unlikely to lead to misunderstanding, the report must be reviewed and considered in its entirety, instead of focusing on a single field of data. *E.g., Erickson*, 2020 WL 7086059, at *4 (user must look at the credit report objectively and not merely "squint" at one portion); *see also Meeks v. Equifax Info. Servs., LLC*, 2019 WL 1856411, at *6 (N.D. Ga. Mar. 4, 2019) (must view account "as a whole"), *adopted* 2019 WL 1856412 (N.D. Ga. Apr. 23, 2019); *Gibson v. Equifax Info. Servs., LLC*, 2019 WL 4731957, at *4 (M.D. Ga. July 2, 2019) (quoting *Meeks* and holding same); *Seay v. Trans Union LLC*, 2019 WL 4773827, at *5 (M.D. Ga. Sept. 30, 2019) (quoting *Meeks* and holding same); *Her v. Equifax Info. Servs., LLC*, 2019 WL 4295279, at *2 (N.D. Ga. Aug. 9, 2019) (must consider "entirety" of the credit report to determine if the information is inaccurate or misleading).

On the facts of this case, when the Account is viewed in its entirety, it becomes abundantly clear that it was accurately reported and does not misleading suggest that the plaintiff is "still late" on the Account. On its face, the credit report reflects that as of March 8, 2018, the Account (1) *had a balance of $0*; (2) was last updated on March 7, 2016; (3) *was closed on March 7, 2016*; (4) was 120 days past due from October 2015 through March 2016; (5) was settled for less than the full balance; and (6) *had no past due amount*. Objectively, no reasonable creditor looking at the report would be misled into believe that the plaintiff was "still late" on the Account.

I am in full agreement with the district court decision in *Settles v. Trans Union LLC*, 2020 WL 6900302 (M.D. Tenn. Nov. 24, 2020), which rejected the exact same argument that the plaintiff is advancing here—indeed, *the plaintiff in that case was represented by the same attorney in this case*—and concluded that:

The Court finds that the reported information, taken as a whole, is neither inaccurate nor materially misleading. The report provides payment history showing that Plaintiff was at least 120 days late each month from May 2013 to January 2014, states that the account was closed in February 2014, and does not provide any account payment information past that date. Plaintiff admits that [he] never brought the account current—instead, he defaulted, and the account was closed while it was more than 120 days past due. Reporting a "pay status" as "120 days past due date" in these circumstances would not reasonably mislead a creditor to believe Plaintiff is currently past due on this loan. . . . *In fact, reporting a pay status of "current" or "paid as agreed" as advocated by Plaintiff could imply that Plaintiff fulfilled his loan obligations by paying the loan in full when he actually defaulted.*

Many courts have found that reporting historical account data is neither inaccurate nor misleading. *See e.g., Jones v. Equifax Info. Servs., LLC*, No. 2:18-cv-2814, 2019 WL 5872516 (M.D. Tenn. Aug. 8, 2019) (finding that a credit report showing a monthly payment obligation when the account was closed and had a zero-dollar balance was not materially misleading because "a reasonable prospective lender would understand [that] the report showed a past obligation only"); *Thomas v. Equifax Info. Servs., LLC*, 2020 WL 1987949 (S.D. Ohio Apr. 27, 2020) (finding no reasonable person would be misled into believing that [the plaintiff] had any ongoing monthly obligation on this installment loan" when the account was reported closed with a zero-dollar balance); *Euring v. Equifax Information Servs., LLC*, No. 19-cv-11675, 2020 WL 1508344 (E.D. Mich. Mar. 30, 2020) (finding nothing false or materially misleading about the "monthly payment" information on plaintiff's credit reports in light of the other information that appears on those reports).

* * *

> Considering the totality of the information reported, the Court finds that the report is neither inaccurate nor materially misleading. Plaintiff does not allege that any creditor was misled by the information reported and the Court finds it implausible that a creditor would be misled into believing Plaintiff is currently 120 days past due on his payment obligation each month when the reporting of the account states that the account was closed in February 2014 and has a zero-dollar balance. As stated above, to establish any FCRA violation Plaintiff must show that the credit report is patently incorrect or materially misleading. Because he cannot do so, the claims in this case will be DISMISSED.

*Id.* at *4-*5 (emphasis added). I agree with this reasoning and result, which applies equally here.

**IV. Conclusion**

For these reasons, Trans Union's motion for judgment on the pleadings (doc. 38), and Ocwen's motion for summary judgment (doc. 63), are hereby GRANTED. The Clerk is directed to enter judgment for the defendants, award taxable costs, and close this case.

DONE and ORDERED this 10th day of December, 2020.

/s/ Roger Vinson
ROGER VINSON
Senior United States District Judge