UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

Case No.	2:12-cv-05808-SVW-AGR	Date	7/30/2020
Title	*Gabriel Felix Moran v. The Screening Pros, LLC et al*		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE
Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANT AND DECLINING SUPPLEMENTAL JURISDICTION OVER STATE LAW CLAIMS [68]

I. Introduction

Plaintiff Gabriel Felix Moran ("Plaintiff") filed a motion for summary judgment against Defendant The Screening Pros, LLC ("Defendant") on February 18, 2020. The Court then gave Plaintiff an opportunity to present supplemental evidence in response to arguments previously raised by Defendant. The Court now GRANTS summary judgment for Defendant on the three claims Plaintiff brings pursuant to the Fair Credit Reporting Act. The Court then DECLINES supplemental jurisdiction over Plaintiff's remaining state law claims and remands this lawsuit to Los Angeles County Superior Court.

II. Factual Background

a. *Circumstances leading to this lawsuit.*

Plaintiff is an individual who previously engaged in criminal conduct resulting in arrests and a series of misdemeanor convictions. Dkt. 68-3 at 1. Plaintiff claims that his criminal history resulted from his prior drug addiction, and that following treatment for his addiction, he sought to expunge these convictions from his record. *Id.* On or about February 1, 2010, he submitted a housing application to Maple Square, a low-income housing development in Fremont, California. *Id.* Maple Square hired

Initials of Preparer : PMC

Defendant to conduct a background check on Plaintiff. Dkt. 69-4 at 1. Plaintiff's housing application was denied following this background check, and Plaintiff was presented with a copy of the tenant screening report ("the Report") issued by Defendant. Dkt. 68-3 at 2; Dkt. 69-4, Ex. 5 (Defendant's tenant screening report on Plaintiff). Upon review of the tenant screening report and consultation with legal counsel, Plaintiff believed that the report contained inaccuracies and ultimately commenced a lawsuit against Defendant.[1]

b. *The tenant screening report issued by Defendant.*

The sole portion of the tenant screening report now disputed by Plaintiff states that on May 16, 2000, a criminal misdemeanor charge was filed against Plaintiff in Alameda, California for being "under the influence of a controlled substance." Dkt. 68-5. The Report further indicates that the charge was dismissed on March 2, 2004. *Id.* The Report that described this charge and dismissal was issued by Defendant on February 5, 2010. *Id.*

c. *Section 1681c of the FCRA and its 1998 amendment.*

Section 1681c(a) of the FCRA currently states in relevant part:

> [N]o consumer reporting agency may make any consumer report containing any of the following items of information:
> . . .

[1] Defendant makes certain evidentiary objections to the facts contained in the Tenant Screening Report in this case, arguing that they are not properly authenticated and do not establish the actual course of the proceedings in the criminal proceeding Plaintiff was involved in. Dkt. 69-11 at 3-4. But Plaintiff's Declaration of Devin Fok states that it was produced in discovery by Defendant, properly authenticating it. *See Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 777 n.23 (9th Cir. 2002); Dkt. 68-4 (Fok Declaration establishing production in discovery). The face of the Tenant Screening Report also discloses the inaccuracy in Plaintiff's report, because the filing date and the dismissal date as well as the date the report was issued are clearly apparent from the face of the report. *See* Dkt. 68-5. Regardless of the actual factual record of the proceedings (which the Court notes Defendant has never disputed), Plaintiff has adequately established an inaccuracy under binding Ninth Circuit precedent.

> (2) Civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.
> . . .
> (5) Any other adverse item of information, other than records of convictions of crimes[,][2] which antedates the report by more than seven years.

15 U.S.C. § 1681c(a) (emphasis added). Prior to Congress' 1998 amendment of the statute, it read as follows:

> ...no consumer reporting agency may make any consumer report containing any of the following items of information: ...
>
> (2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.
> . . .
> (5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.
>
> (6) Any other adverse item of information which antedates the report by more than seven years.

Congress' amendment to the statute in 1998 therefore allowed "records of convictions" more than seven years old to be disclosed indefinitely, records of arrest were transferred to a different subsection of the statute, the term "date of disposition" was removed from the statute, and records of indictment were transferred to the catchall for "adverse item[s] of information."

[2] The Ninth Circuit has indicated that a scrivener's error exists in the statute, as a comma is required to accurately interpret that subsection of the statute. *See* Dkt. 62 at 18 n.6.

Initials of Preparer PMC

III. Procedural Background

This lawsuit was initially filed in California state court on February 2, 2012. Dkt. 1, Ex. 1. The initial state court complaint pled only state law causes of action related to the tenant screening report issued by Defendant regarding Plaintiff. *Id.* On June 7, 2012, Plaintiff filed a First Amended Complaint ("FAC") in state court, which added the additional causes of action pursuant to the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 *et seq*. Dkt. 1, Ex. 5. On July 5, 2012, Defendant removed the lawsuit to this Court on the basis of federal question jurisdiction, 28 U.S.C. § 1331. Dkt. 1.

Following Defendant's filing of a motion to dismiss, this Court initially denied Defendant's motion with regard to the first cause of action alleged under the FCRA, and granted it on the second cause of action under the FCRA. Dkt. 18 at 7-11. The Court also dismissed Plaintiff's claims under California's Investigative and Consumer Reporting Agencies Act ("ICRAA"), Cal. Civ. Code §§ 1786 *et seq.*, finding them to be unconstitutionally vague given the existence of a separate set of California statutes contained in California's Consumer Credit Reporting Agencies Act ("CCRAA"), Cal. Civ. Code §§ 1785 *et seq.*, applicable to the consumer report disputed in this lawsuit. Dkt. 18 at 11-15. The Court also dismissed Plaintiff's two causes of action under California's Unfair Competition Law (the "UCL"), Cal. Bus. Prof. Code § 17200 *et seq.*, on the basis that injunctive and restitutionary relief were foreclosed to Plaintiff. *Id.* at 16-18.

Defendant then filed a motion for reconsideration, a motion for judgment on the pleadings, and a motion for summary judgment. Dkt. 20; Dkt. 24; Dkt. 29. The Court ultimately granted the motion for reconsideration with regard to the first two FCRA claims, and also granted summary judgment with regard to the final FCRA claim asserted (the third cause of action). Dkt. 40.

In reaching that decision, the Court reconsidered its prior decision regarding the proper treatment of 15 U.S.C. § 1681c(a)(5)'s definition of the seven-year reporting period for criminal record information, which runs from the "date of the reported event." *Id.* at 6. The Court concluded that when a criminal charge was dismissed before trial, prior guidance issued by the Federal Trade Commission ("FTC") strongly suggested that "date of the reported event" should be considered the "date of disposition," i.e. the date of the dismissal of the charge. *Id.* The Court therefore concluded that given the factual allegations in Plaintiff's FAC, that reporting a charge filed in 2000 and ultimately dismissed in

2004 (the "2000 Charge") in the tenant screening report did not violate § 1681c(a)(5) because the dismissal fell within the seven-year period preceding the issuance of the background report. *Id.*

Plaintiff appealed the Court's decision to the Ninth Circuit. Dkt. 43. After staying the appeal while the California Supreme Court considered the constitutionality of the tandem ICRAA and CCRAA consumer reporting regimes, the Ninth Circuit issued a decision reversing and remanding this Court's prior Order on Nov. 11, 2019. Dkt. 62. The Ninth Circuit's opinion found that this Court's ruling regarding the unconstitutional vagueness of the ICRAA was foreclosed in light of the California Supreme Court's decision in *Connor v. First Student Inc.*, 423 P.3d 953 (Cal. 2018) (finding the ICRAA not unconstitutionally vague), which the Court previously found barred Plaintiff's claims under the ICRAA. *Id.* at 11-12. The Ninth Circuit declined to address additional arguments raised regarding preemption of the ICRAA by the FCRA and that a provision of the ICRAA bars lawsuits under the ICRAA that are also addressed by claims pursuant to the FCRA. *Id.* at 12-14.

The Ninth Circuit also reversed this Court's decision regarding the FCRA claims, and the proper reporting period for dismissed criminal charges under the FCRA. The Court found that the seven-year reporting window for a criminal charge begins on the date of entry, rather than the date of disposition. Dkt. 62 at 19-24. The Ninth Circuit therefore concluded that the inclusion of the 2000 Charge on the tenant screening report issued by Defendant fell outside of the permissible seven-year window, and that Plaintiff had adequately stated a claim under the FCRA on the basis of that improperly reported information in the tenant screening report. *Id.* at 25.

On remand, Plaintiff filed a motion for summary judgment, seeking summary judgment on Plaintiff's First and Second causes of action, each under the FCRA, as well as the Fourth, Fifth, Seventh, Eighth, and Ninth causes of action for violation of the ICRAA. Dkt. 68. After reviewing Defendant's motion and the procedural history of this case, the Court gave Plaintiff an opportunity to present any additional evidence in response to arguments raised in Defendant's prior motion, permitting the Court to grant summary judgment for either party at this time. *See* Dkt. 75; Fed. R. Civ. P. 56(f) (after giving notice and a reasonable time to respond, court may grant summary judgment for a nonmovant).

Initials of Preparer PMC

IV. Legal Standard

Summary judgment should be granted where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of . . . [the factual record that] demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party satisfies its initial burden, the non-moving party must demonstrate with admissible evidence that genuine issues of material fact exist. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585–86 (1986) ("When the moving party has carried its burden under Rule 56 . . . its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.")

A material fact for purposes of summary judgment is one that "might affect the outcome of the suit" under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue of material fact exists where "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* Although a court must draw all inferences from the facts in the non-movant's favor, *id.* at 255, when the non-moving party's version of the facts is "blatantly contradicted by the record, so that no reasonable jury could believe it, [the] court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007).

V. Analysis

a. *The alleged FCRA violations.*

Under 15 U.S.C. § 1681o(a), a consumer reporting agency that "*negligently* violates its obligations to a consumer under the [FCRA] is liable to the consumer for his or her actual damages, as well as costs and attorney's fees." *Avetisyan v. Equifax Info. Servs. LLC*, 2015 WL 12656951, at *5 (C.D. Cal. Mar. 25, 2015) (quotations omitted). Furthermore, under 15 U.S.C. § 1681n(a), a consumer reporting agency is liable for the *willful* violation of its FCRA obligations and a plaintiff may recover actual damages, attorney's fees, and punitive damages. *Id.* A plaintiff who alleges a 'bare procedural violation' of the FCRA, 'divorced from any concrete harm,' fails to satisfy Article III's injury-in-fact

requirement." *Syed v. M-I, LLC*, 853 F.3d 492, 499 (9th Cir. 2017) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016)).

i. *Plaintiff has not established a "willful" violation of the FCRA*

An FCRA violation is willful if it is made either knowingly or with reckless disregard for the requirements imposed under the Act. *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 56-60 (2007). A CRA acts in "reckless disregard" for purposes of the FCRA where its actions involve "an unjustifiably high risk of harm that is either known or so obvious that it should be known." *Id.* at 68 (internal quotation marks omitted). *Safeco* further held that a violation of FCRA was neither willful nor reckless when it relied on an interpretation of law that "albeit erroneous, was not objectively unreasonable." *Id.* at 69. A willful violation of a provision of the FCRA entitles the plaintiff to actual damages or statutory penalties between $100 and $1,000 as well as punitive damages and attorney's fees and costs. 15 U.S.C. §1681n(a)(1) and (2).

Plaintiff bases his argument for a "willful" violation of the FCRA exclusively on the fact that the Ninth Circuit ultimately concluded that the language of 15 U.S.C. § 1681c(a) permits consumer reporting of a criminal charge for only seven years following the date of the entry of the charge, rather than the date of disposition. Dkt. 68-1 at 10-12. Plaintiff asserts that (1) the Ninth Circuit implicitly held that "the case could potentially support willfulness", (2) "throughout the *Moran* opinion, the 9th Circuit found Defendant's interpretation to be in direct conflict with the plain language of the statute", and (3) that other courts in the Ninth Circuit have found this statutory interpretation analysis to be "clear" in similar contexts. *Id.*

The Court disagrees with Plaintiff's interpretation of the Ninth Circuit's opinion. The Ninth Circuit did not state or imply that Defendant's interpretation of § 1681c was unreasonable, and expressly stated that the issue of statutory interpretation was one of "first impression." *See* Dkt. 62 at 15. Plaintiff overstates the degree to which the Ninth Circuit opinion found the language of the statute to be unambiguous. *See id.* at 19 ("While § 1681c(a)(5) does not specifically state the date that triggers the reporting window, the plain language of the statute *suggests* that for a criminal charge, the date of entry begins the seven-year window.") (emphasis added), 21-24 (considering both legislative history and regulatory guidance issued *after* Defendant's report was issued). The Court cannot read the majority

opinion to suggest that Defendant's interpretation of the statute in any way unreasonable, although it was ultimately incorrect. *Cf. Syed*, 853 F.3d at 504-06 (9th Cir. 2017) (finding that when the FCRA' statutory language unambiguously forecloses a party's interpretation, it constitutes a "willful" violation).

Additionally, this Court analyzed the relevant language in § 1681c(a) at length, and ultimately found it sufficiently ambiguous to reverse its initial ruling upon reconsideration. *Compare* Dkt. 18 at 4-10 *with* Dkt. 40 at 3-7. Judge Kleinfeld's dissent also found the statutory language to "plainly make the dismissal reportable," offering additional substantial evidence that Defendant's interpretation "was not objectively unreasonable," even if the majority opinion adopted a different interpretation. Dkt. 62 at 25-44.

Finally, Plaintiff's argument that the district court in *Dunford v. Am. DataBank, LLC,* 64 F. Supp. 3d 1378 (N.D. Cal. 2014) clearly disagreed with Defendant's interpretation of § 1681c(a) does not accurately characterize the holding of that case and provides no support for a finding of willfulness. The *Dunford* court analyzed criminal charges in a background report that were both filed and dismissed more than seven years before her consumer report was issued. 64 F. Supp. 3d at 1392-93 (disputed dismissed charges from March 2006, more than seven years before report was issued on June 13, 2013). That court's conclusion that "[i]t is quite clear that stand-alone dismissed charges (more than seven years old) must be omitted under the Act" applies to dismissal occurring more than seven years before the date of the report, unlike the disputed 2000 Charge in this case, which was dismissed less than seven years before the tenant screening report was issued. *Id.*

The Court finds as a matter of law that Defendant's decision to include the 2000 Charge that was dismissed in 2004 cannot constitute a "willful" violation on this basis, because Defendant's interpretation of § 1681c(a), "albeit erroneous, was not objectively unreasonable." *Safeco*, 551 U.S at 68. The Court GRANTS summary judgment to Defendant with regard to Plaintiff's claims for willful violation of the FCRA.

ii. *Defendant's violation of 15 U.S.C. § 1681c(a)(5) was not negligent.*

The Court additionally does not find that Defendant's improper reporting of the 2000 Charge constitutes a "negligent" violation of the FCRA, as is required to create liability to Plaintiff in the

Initials of Preparer : PMC

absence of willfulness. *See* 15 U.S.C. § 1681o ("Any person who is *negligent* in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer"). "Negligence" is "[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm . . . the doing of what a reasonable and prudent person would not do under the particular circumstances . . . ." Black's Law Dictionary (11th ed. 2019). Because Plaintiff's sole argument that the inclusion of the 2000 Charge was negligent is that Defendant did not properly interpret the relevant statute, the Court concludes that Defendant's negligence is a question of law to be resolved by the Court at summary judgment. *See United States v. Stephens*, 237 F.3d 1031, 1033 (9th Cir. 2001) ("[t]he proper interpretation of a statute is a question of law").

As both this Court and the Ninth Circuit recognized, the question regarding the proper reporting date for a dismissed charge was one of "first impression." *See* Dkt. 62 at 15. There is no evidence in the record, or argument by Plaintiff at summary judgment, that any of the information included by Defendant in the report was factually inaccurate, only that (as the Ninth Circuit held), Defendant incorrectly interpreted § 1681c(a)(5) to permit reporting the 2000 Charge more than seven years after its date of entry. At the time that Defendant issued the report, the FTC's only guidance on this issue indicated that the seven-year reporting period ran from the date of disposition. *See* Dkt. 40 at 4-6 (summarizing 1990 FTC guidance). This guidance was rescinded only after Defendant issued the disputed report here. *See* Dkt. 62 at 19-20 (discussing the language of the statute and drawing additional support for the Ninth Circuit's conclusion based on the FTC "rescinding" the 1990 guidance in 2011, after the report was issued). And as discussed in Judge Kleinfeld's dissent, an amicus brief filed with the Ninth Circuit, and the declaration of Anne Fortnoy submitted by Defendant in support of summary judgment, "the [statute] has been interpreted for decades to permit [credit reporting agencies] to report the dismissal of an indictment when the dismissal occurred within seven years of the report." Dkt. 62 at 41; Dkt. 69-5 at 7-8 (discussing legislative history of 1998 amendment and FTC decision to rescind guidance in 2011, after the report regarding Plaintiff was issued). The declaration submitted by Defendant's founder and president Gary Glucroft ("Glucroft") also corroborates this, stating that in

Initials of Preparer : PMC

seminars and annual training he attended from 2006 to 2012, he was repeatedly informed that dismissed criminal cases may be reported for seven years following the date of dismissal. *See* Dkt. 68-11 at 2.[3]

Congress's amendment to the FCRA in 1998 did remove the express reference to "date of disposition" in the § 1681c, and the Ninth Circuit found that this amendment "suggests" that Congress intended to change the triggering date for the seven-year reporting period from the date of disposition to the date of entry. Dkt. 62 at 19. But the Ninth Circuit also expressly declined to utilize a canon of construction that would have supported an inference that the date of disposition remained the trigger date for the seven-year reporting period. *Id.* at 21 (acknowledging that Congress' 1998 amendment expressly referenced "date of entry" for civil suits, civil judgments, and records of arrest, but not for adverse items like the 2000 Charge). The Ninth Circuit also concluded that the legislative history of the 1998 amendment supported their interpretation of the statute because it limited the reporting period for certain categories of information (civil suits, civil judgments, and records of arrests), but also recognized that the amendment made records of conviction reportable forever, acknowledging that this creates support for an alternative view of the legislative history. Dkt. 62 at 22; *see also id.* at 34-36 (Kleinfeld, J. dissenting, and reaching a different conclusion regarding the legislative history).

Put simply— this Court previously reconsidered its interpretation of the statutory language, the Ninth Circuit resolved the question in part through reference to FTC guidance and amicus briefs filed after Defendant issued the disputed report, and the Ninth Circuit expressly acknowledged that there was countervailing evidence in the legislative history and amended language, before concluding that Defendant's interpretation was incorrect as a matter of law. The plain language of the FCRA and its requirement that any violation of the FCRA be "negligent" to create a private right of action requires the Court in these circumstances to conclude that Defendant's incorrect interpretation of § 1681c(a)(5) was not a "negligent" violation of the FCRA.

iii. *Because Defendant's violation of 15 U.S.C. § 1681c was not negligent, Plaintiff has not established a claim under 15 U.S.C. § 1681e.*

[3] The Court acknowledges that individual statements made to Glucroft at these hearings are inadmissible hearsay if offered to prove the truth of the matter asserted, but Glucroft would be able to testify at trial to the fact that they were made to him. The Court finds in this context that such statements (though incorrect given the Ninth Circuit's interpretation of the 1998 amendment) are relevant to the question of Defendant's negligence in these circumstances.

Initials of Preparer PMC

Section 1681e requires consumer reporting agencies to "reasonable procedures designed to avoid violations of section 1681c of this title . . ." and to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." 15 U.S.C. § 1681e)(a)-(b); *see also Warner v. Experian Info. Sols., Inc.*, 931 F.3d 917, 921 (9th Cir. 2019).

Plaintiff first argues that Defendant's procedures were not reasonable because it did not independently verify the accuracy of criminal records it purchased from third-party vendors. Dkt. 68-1 at 5. But there is no evidence in the record showing that Defendant's reporting of the 2000 Charge was factually inaccurate, only that it did not fall within the properly defined seven-year reporting window of § 1681c(a)(5). Defendant's violation of § 1681c(a)(5) has no causal connection to whether Defendant was unreasonable in failing to adopt procedures to independently verify the accuracy of any criminal records report it purchased from third-party vendors. Because the improper reporting of the 2000 Charge resulted from Defendant's interpretation of § 1681c(a)(5)'s statutory language and additional verification of the information's accuracy would not have influenced that decision, it does not constitute evidence that Defendant failed to maintain reasonable procedures to avoid the specific violation of § 1681c Plaintiff has established. *See, e.g. Lawrence v. Trans Union LLC*, 296 F. Supp. 2d 582, 588 (E.D. Pa. 2003) (negligent violation of § 1681e requires any inaccuracy to be *caused by* consumer reporting agency's failure to follow reasonable procedures).

Plaintiff also references portions of Defendant's credit reporting procedures that address the Consumer Credit Reporting Agencies Act ("CCRAA") (the sister credit reporting statute to the ICRAA that Plaintiff also brings charges under). *See* Dkt. 68-12 (Defendant's Criminal Reporting Policies). Plaintiff argues that Defendant violated § 1681e(b) because a portion of Defendant's policy related to the CCRAA stated that:

> A consumer credit reporting agency shall not report records of arrest, indictment, information, misdemeanor complaint or conviction of a crime, that from the date of disposition, release, or parole, antedate the report by more than seven years. These items of information shall no longer be reported if it is learned in the case of a conviction that a full pardon has been granted or in the case of an arrest, indictment, information, or misdemeanor complaint a conviction did not result.

Initials of Preparer PMC

Dkt. 68-12 at 1. This language essentially parrots the language of Section 1785.13(6) of the CCRAA. *See* Cal. Civ. Code § 1785.13(6).

Plaintiff argues that the inclusion of this language in Plaintiff's credit reporting policy shows that Plaintiff did not maintain reasonable procedures to avoid violation of § 1681c of the FCRA, because it did not follow this portion of its own policy that Plaintiff argues would have prevented reporting the 2000 Charge. Dkt. 68-1 at 6-7. The Court disagrees with this argument because this portion of Defendant's policy also bars reporting of charges that would be permitted by § 1681c of the FCRA, which permits reporting of *any* adverse item of information within the seven-year reporting window beginning with the date of entry, regardless of whether it resulted in a conviction or was dismissed. The mere fact that Defendant's policy took notice of the more restrictive language in the CCRAA does not constitute evidence that it did not maintain reasonable procedures to prevent *FCRA* violations. It is relevant only to whether Defendant maintained reasonable procedures to prevent potential violation of that separate state reporting statute, a question this Court does not reach in this Order.

The Court concludes that Plaintiff has not submitted sufficient evidence to establish that Defendant lacked reasonable procedures to avoid violation of § 1681c, because the violation Plaintiff has established arose from Defendant's incorrect interpretation of that statute, rather than any failure to maintain reasonable procedures for reporting such information.

iv. *Plaintiff has not established through admissible evidence that Defendant was ever notified of his "dispute" for purposes of 15 U.S.C. § 1681i.*

Section 1681i provides that consumer reporting agencies must "conduct a reasonable reinvestigation" when an item in the consumer's credit file "is disputed by the consumer and *the consumer notifies the agency directly* ... of such dispute." 15 U.S.C. § 1681i(a)(1)(A) (emphasis added); *see also Warner v. Experian Info. Sols., Inc.*, 931 F.3d 917, 920–21 (9th Cir. 2019). The Court finds that Plaintiff cannot establish a violation of 15 U.S.C. § 1681i because he has not established through

admissible evidence that Defendant had notice of a dispute that would trigger a duty to reinvestigate during the relevant time period.[4]

Defendant's founder and president Glucroft describes at length in his declaration Defendant's policy for documenting disputes made by consumers. *See* Dkt. 68-11 at 3. He declares that he has personally reviewed all records and interviewed employees, and that Defendant has no record of receiving any written dispute from Plaintiff or anyone representing him, prior to the filing of this lawsuit. *Id.* at 4.

Plaintiff previously produced a letter in this lawsuit purporting to have been sent to Defendant by Jesse Hsieh ("Hsieh"), a lawyer with East Bay Community Law Center ("EBCLC"), on Plaintiff's behalf. *See* Dkt. 34, Ex. D. The letter appears to contain at least one substantial factual inaccuracy, stating that "on or about February 10, 2011" Defendant issued a background check on Plaintiff. *Id.* The actual tenant screening report both parties have submitted to the Court states that it was issued on February 5, 2010. *See* Dkt. 68-5; Dkt. 69-4, Ex. 5. Additionally, the denial of Plaintiff's housing application submitted by Defendant is dated February 5, 2010. Dkt. 69-4, Ex. 6.

Plaintiff's prior counsel, Hsieh, has not testified or submitted a declaration to the Court establishing that he sent a letter to Defendant. The only evidence that the letter was actually sent to Defendant is contained in Plaintiff's declaration, where he states that Hsieh "submitted a written letter on my behalf. However, I never received a response and Mr. Hsieh told me that Defendant never responded to him either." Plaintiff's declaration does not establish how he has personal knowledge of Hsieh's transmission of the letter to Defendant, Hsieh's statement to Plaintiff is inadmissible hearsay, and there is no other evidence in the record to suggest that the letter was sent or received by Defendant. Because Plaintiff has not met his burden of production with regard to whether he actually submitted a

[4] Plaintiff's creative assertion in his supplemental brief that events that occurred after the amended complaint asserting causes of action under the FCRA constitute "notice" of a dispute is wholly unsupported by FCRA caselaw. Dkt. 76 at 8-9. Without an amendment to the Complaint, Plaintiff cannot rely on conduct that arose after the lawsuit was filed in order to establish that a dispute for the purposes of 15 U.S.C. § 1681i had been made by Plaintiff.

dispute to Defendant prior to filing this lawsuit, the Court GRANTS summary judgment to Defendant on the third cause of action for violation of 15 U.S.C. § 1681i.[5]

v. *Whether Plaintiff has suffered actual damages as a result of the inaccuracy in the tenant screening report.*

Plaintiff also argues in the alternative that he has presented adequate evidence to find actual damages suffered by Plaintiff as a result of inaccuracies in the tenant screening report. In Defendant's prior motion for summary judgment (filed in 2012) and Defendant's more recent Opposition brief, Defendant argues that Plaintiff has not established the existence of any "actual damages" resulting from the inaccuracy in the tenant screening report, precluding him from establishing a cause of action under the FCRA. Dkt. 69 at 14-19; Dkt. 29 at 13-14. The Court addresses these arguments below because it finds that the lack of actual damages constitutes an alternative ground for granting summary judgment to Defendant.

1. *Expenses Incurred*

Plaintiff argues in his Reply brief that he incurred out of pocket expenses in connection with his efforts to correct the tenant screening report's alleged inaccuracies. Dkt. 68-1 at 12-13. In particular, Plaintiff states in his supporting declaration that he paid for a 2-and-a-half hour train ride from Lathrop, California to Berkeley, California to receive assistance in disputing the contents of Defendant's Report with the assistance of attorney Hsieh and the EBCLC. Dkt. 68-3 at 2-3. Plaintiff also cites to a letter filed on his behalf by Hsieh disputing the contents of the tenant screening report issued by Defendant. Dkt. 34, Ex. 4.

[5] The Court also notes that even if the letter had been sent, it is not at all clear that a letter disputing the inclusion of certain dismissed charges in the tenant screening report, without in any way objecting to the *accuracy* or *completeness* of those reports, would necessarily constitute a dispute. The procedures called for in § 1681i plainly requires consumer reporting agencies (and resellers) to verify whether factual information is or is not accurate, and delete it if inaccurate or incomplete *See generally* 15 U.S.C. § 1681i. As described at length above, Plaintiff's theory of the case focuses exclusively on the incorrect inclusion of the 2000 Charge in the disputed report, and includes no argument or evidence that the information contained in the report was factually inaccurate or omitted information necessary to prevent it from being "materially misleading." *See Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010); *see also Dennis v. BEH-1, LLC*, 520 F.3d 1066, 1069 (9th Cir. 2008).

Although the Ninth Circuit has not yet determined whether expenses incurred in connection with an inaccuracy in a consumer report can be considered "actual damages" for the purposes of the FCRA, a substantial number of district courts have adopted the rule stated by the Second Circuit in *Casella v. Equifax Credit Info. Servs.*, 56 F.3d 469 (2d Cir. 1995), which held that expenses incurred solely to notify consumer reporting agencies regarding errors in the report, rather than to "force their compliance with any specific provision of the statute, cannot be compensable as "actual damages' for a violation of the FCRA." *Id.* at 474; *see, e.g. Basconcello v. Experian Info. Sols., Inc.*, 2017 WL 1046969, at *11 (N.D. Cal. Mar. 20, 2017) (adopting *Casella*); *Gadomski v. Equifax Info. Servs., LLC*, 2018 WL 2096862, at *5 (E.D. Cal. May 7, 2018); *Burrows v. Experian Info. Sols., Inc.*, 2017 WL 1046973, at *11 (N.D. Cal. Mar. 20, 2017).

The Court finds that the evidence submitted by Plaintiff does not establish that any of these expenses were incurred to "force [Defendant's] compliance" with the FCRA, most notably because FCRA violations were not even a part of this lawsuit prior to Plaintiff's amendment of the state court complaint on June 7, 2012. *See* Dkt. 1, Ex. 5. The letter sent by Hsieh on behalf of Plaintiff regarding the alleged inaccuracies in Plaintiff's tenant screening report solely references California's ICRAA, and does not even mention the FCRA. *See* Dkt. 34, Ex. 4. The Court finds that because these expenses were not incurred to force Defendant to comply with the FCRA, they cannot constitute "actual damages" for the purposes of a cause of action arising under that statute.

2. *Denial of Housing based on Reporting of Dismissed Charge*

Plaintiff also briefly argues that triable issues of material fact exist with regard to whether the denial of housing by Maple Square was based on the improperly included dismissed charge in the tenant screening report. Dkt. 76 at 6 n.7. Plaintiff has not submitted evidence in support of this assertion, but objects to the Declaration of Mark Rodriguez ("Rodriguez"), the Maple Square manager at the time Plaintiff's housing application was denied. Dkt. 69-4. Rodriguez states that that the Maple Square denied Plaintiff housing on the basis of his misdemeanor criminal conviction that occurred on June 7, 2006, and that Maple Square's denial of Plaintiff's rental application had nothing to do with dismissed 2000 Charge that was improperly included on the tenant screening report. Dkt. 69-4 at 3.

Initials of Preparer PMC

While Plaintiff's objection to Rodriguez's lack of personal knowledge with regard to the reason for Plaintiff's denial is appropriate, Rodriguez has properly established a foundation for introduction of the documents he attaches to his declaration. *Id.* at 2 (stating that he is a custodian of records for Maple Square). Rodriguez can also (given his position as assistant manager) testify to Maple Square's standard procedure for screening prospective tenants and his statement that through its "normal procedure" it restricts housing to individuals who have criminal convictions within the last five years, which can be considered by the Court. *Id.* The Resident Selection Criteria Form attached to Rodriguez's declaration corroborates this declared procedure, stating that:

> A criminal record verification may be made on all persons 18 years and older who will occupy the apartment. Cause for the application to be rejected includes, **but may not be limited to**, the **conviction of**:
>
> 1. Illegal drug activity of any kind.
> 2. Child Abuse, child molestation or negligence involving a child.
> 3. Assault and/or battery or any violent act(s) against another person.
> 4. Vandalism.

Dkt. 69-4, Ex. 4 (emphasis added). Finally, Rodriguez also properly authenticated the actual "Letter of Ineligibility" provided by Maple Square to Plaintiff. *Id.* Ex. 6. The letter expressly states that his application was denied on the basis of "other misdemeanors." The Court finds that this evidence, which Plaintiff does not dispute apart from his evidentiary objections, establishes that the denial of housing by Maple Square was not based on the improperly included 2000 Charge, but on Plaintiff's (properly reported) 2006 misdemeanor conviction.

3. *Emotional Distress Damages*

The term "actual damages" in the FCRA permits recovery for emotional distress and humiliation. *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995); *see also Drew v. Equifax Info. Sys., LLC*, 690 F.3d 1100, 1109 (9th Cir. 2012). While the Ninth Circuit has not yet addressed the specific type of evidence necessary to support an award of emotional distress damages under the FCRA, district courts have applied the Ninth Circuit's more general standard for emotional distress damages in

FCRA cases. *See Zhang v. Am. Gem Seafoods, Inc.*, 339 F.3d 1020 (9th Cir. 2003); *see also Peterson v. Am. Express*, 2016 WL 1158881, at *7 (D. Ariz. Mar. 23, 2016); *Grigoryan v. Experian Info. Sols., Inc.*, 84 F. Supp. 3d 1044, 1086–87 (C.D. Cal. 2014). "To survive summary judgment on an emotional distress claim under the FCRA, Plaintiff must submit evidence that reasonably and sufficiently explains the circumstances of his injury and does not resort to mere conclusory statements." *Taylor v. First Advantage Background Servs. Corp*, 207 F. Supp. 3d 1095, 1105 (N.D. Cal. 2016) (quotations and citations omitted).

Plaintiff argues that he has presented adequate evidence of emotional distress damages arising from the erroneous inclusion of the 2000 Charge on his tenant screening report. Plaintiff submits a declaration asserting that "when I saw a copy of the report, I was completely devastated. I saw various dismissed charges on the report which should not have been disclosed." Dkt. 68-3 at 2. Plaintiff also submits evidence from his deposition, where he describes being "discouraged and disappointed" upon seeing the dismissed charges on his tenant screening report. Finally, following this Court's Order instructing Plaintiff to submit any additional evidence for consideration before the Court considered granting summary judgment for Defendant on any causes of action, Plaintiff also submitted a declaration by his sister, Teresa Reyez, which states in relevant part that Plaintiff was "completely devastated" when his background check results came back disclosing various dismissed charges, without further elaboration. Dkt. 76-1 at 21.[6]

Defendant argues in response that (1) Plaintiff is precluded from seeking emotional distress damages because he did not affirmatively allege them in his operative Complaint, and (2) that the evidence Plaintiff has submitted is not sufficient to establish that Plaintiff experienced compensable emotional distress as a result of the erroneous inclusion of the 2000 Charge on his tenant screening report. Dkt. 69 at 16-19.

In Plaintiff's FAC filed in state court, he sought "compensatory, special, general, and punitive damages according to proof against all Defendants." Dkt. 1, Ex. 5 at 17. Because under California law,

[6] Reyez' conclusory declaration additionally states that Plaintiff became extremely depressed "following the denial of his housing application" but because the Court finds that there is no evidence that the improperly included dismissed charge played any role in the denial of housing, this statement does not suggest Plaintiff's alleged depression was attributable to seeing the improperly included 2000 Charge. *See* Part V.a.ii.2.

general damages can encompass damages for emotional distress, the Court finds that Plaintiff has sufficiently alleged the existence of potential emotional distress damages. *See Rozario v. Richards*, 2015 WL 13403898, at *5 (C.D. Cal. May 14, 2015) (emotional distress damages considered general damages); *Ward v. Nat'l Entm't Collectibles Ass'n, Inc.*, 2012 WL 12885073, at *7 (C.D. Cal. Oct. 29, 2012) ("the fact that Ward's complaint pleads only general damages is not fatal to his prayer for emotional distress damages"). The Court finds that Plaintiff's FAC adequately placed Defendant on notice of the possibility of emotional distress damages.

However, the Court does not find that Plaintiff has met his burden at summary judgment of presenting sufficient evidence of emotional distress damages to permit a fact-finder to conclude that he suffered damages cognizable under the FCRA. Plaintiff offers no detail whatsoever beyond the conclusory statement that he was "devastated" and "discouraged and disappointed," and fails to "explain[] the circumstances of his injury in reasonable detail. . . ." *Taylor*, 207 F. Supp. 3d at 1105 (N.D. Cal. 2016) While in the non-FCRA context the Ninth Circuit has held that a plaintiff's own testimony without any objective evidence of emotional distress can be sufficient to survive summary judgment and permit a jury award for such damages, the relevant testimony in that case was far more detailed than what has been submitted by Plaintiff. *See Zhang*, 339 F.3d at 1041-42 (upholding a jury verdict and noting that that plaintiff's detailed testimony regarding the damage to his reputation and credibility permitted the jury to find that "he was greatly hurt and humiliated by his termination and the manner in which it was carried out").

Plaintiff's conclusory statements that he felt "devastated" and "discouraged" upon seeing the dismissed charges on his credit report, without any additional detail or explanation of those feelings or how they caused Plaintiff distress or humiliation, are not sufficient to permit a reasonable jury to conclude that Plaintiff suffered emotional distress damages based on seeing the 2000 Charge. The limited portions of Plaintiff's deposition testimony that elaborates on these conclusory statements only relate to Plaintiff's feelings of discouragement regarding the denial of his housing application. *See* Dkt. 69 at 233, 240 (plaintiff's testimony that he was affected "physically and mentally" because he was "looking forward to getting this place" and that he was discouraged by the "lost housing" caused by the report). As discussed above, there is no evidence in the record to suggest that the improperly included 2000 Charge caused Plaintiff to be denied housing by Maple Square, rather than his more recent criminal conviction that was properly included in the report.

_____ : _____

Initials of Preparer

PMC

District courts in the Ninth Circuit that have permitted a claim for emotional distress damages to survive summary judgment based solely on a plaintiff's declaration require substantially more detailed evidence of a plaintiff's emotional distress, even in circumstances where they have declined to require objective evidence of medical or psychological damages. *See Avetisyan v. Equifax Info. Servs. LLC*, 2015 WL 12656951, at *11 (C.D. Cal. Mar. 25, 2015) (finding that Plaintiff's declaration that she had suffered a miscarriage, "severe emotional distress, mental anguish, and health complications, and suffered personal and family problems, sleeplessness, high levels of stress and anxiety because of the fraudulent, derogatory credit information...." sufficient evidence to submit the question of emotional distress damages to a jury); *Grigoryan v. Experian Info. Sols., Inc.*, 84 F. Supp. 3d 1044, 1089 (C.D. Cal. 2014) (declaration describing in detail stress, anxiety, and sleep deprivation resulting from inaccuracies in credit report sufficient to create triable question for jury); *Nelson v. Equifax Info. Servs., LLC*, 522 F. Supp. 2d 1222, 1235 (C.D. Cal. 2007); *Alonso*, 962 F. Supp. 2d at 1201-02 (E.D. Cal. 2013) (similar analysis in context of a different federal consumer protection statute); *see also Drew*, 690 F.3d at 1109 (finding that testimony from plaintiff and a psychological expert explaining post-traumatic stress experienced as a result of inaccurate credit reporting constituted sufficient evidence of emotional distress damages to survive summary judgment).

Because the Court finds that Plaintiff has not provided sufficient evidence to establish the existence of any actual damages related to the inaccuracy in the disputed tenant screening report, the Court would alternatively GRANT summary judgment to Defendant with regard to Plaintiff's first three causes of action arising under the FCRA based on the fact that Plaintiff has not established any the existence of any actual damages based on Defendant's violation of the FCRA. *Syed*, 853 F.3d at 505 (actual damages required to establish a claim for negligent violation of the FCRA).

b. *Having fully adjudicated the federal causes of action, the Court declines supplemental jurisdiction over the remaining state law claims.*

Having granted summary judgment to Defendant as to the FCRA claims, the Court next considers whether it should decline supplemental jurisdiction over the remaining claims under the ICRAA and the UCL. "[P]endent jurisdiction is a doctrine of discretion, not of plaintiff's right." *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 172 (1997). Federal courts may decline supplemental jurisdiction under any of the following circumstances:

Initials of Preparer : PMC

> (1) if the claim raises a novel or complex issue of state law, (2) if the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) if the district court has dismissed all claims over which it has original jurisdiction, or (4) if in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c).

By resolving Plaintiff's FCRA claims at the summary judgment stage of litigation, the Court has disposed of all claims over which it has original jurisdiction. Where "all federal law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988). California's ICRAA was only recently declared constitutional by the California Supreme Court, and the Court finds that principles of comity favor permitting those claims to be adjudicated by California state courts. *Connor v. First Student, Inc.*, 423 P.3d 953 (2018). The Court therefore REMANDS the remaining state law claims to Los Angeles Superior Court.

VI. Conclusion

The Court DENIES Plaintiff's motion for summary judgment and GRANTS Defendant's motion for summary judgment with regard to Plaintiff's claims under the FCRA, for each of the separate reasons articulated above. The Court DECLINES to exercise supplemental jurisdiction over the remaining state law claims under the ICRAA and UCL and therefore REMANDS the lawsuit to California state court.

_____ : _____

Initials of Preparer

PMC