UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ADRIENNE L. PADGETT, individually and on behalf of persons similarly situated,

Plaintiff,

v. **Case No. 8:18-cv-1918-T-30CPT**

CLARITY SERVICES, INC.,

Defendant.
_____/

ORDER

THIS CAUSE comes before the Court upon Defendant's Motion to Dismiss Plaintiff's Class Action Complaint (Dkt. 24), Plaintiff's Response (Dkt. 29), and Defendant's Reply (Dkt. 32). The Court, having reviewed the motion, response, reply, and being otherwise advised in the premises, concludes that the motion should be granted and this action dismissed with prejudice.

INTRODUCTION

This action seeks to hold Defendant Clarity Services, Inc., a Credit Reporting Agency ("CRA"), liable under the Fair Credit Reporting Act ("FCRA") for reporting a debt that the Plaintiff Adrienne Padgett claims is illegal and invalid. The Court concludes that Padgett fails to state a claim under the FCRA, specifically 15 U.S.C. § 1681(b), because her complaint fails to allege that Clarity's credit report contained information that was factually inaccurate, as opposed to legally disputed. In other words, the question of whether Padgett's

debt was inaccurately reported is substantially different from the question of whether her debt was illegal or invalid. Here, the complaint focuses on the latter inquiry. The complaint asserts that Clarity should have determined the legal validity of the underlying debt before it reported it on Padgett's credit report. This collateral attack fails because the weight of authority holds that a CRA is not a tribunal charged with determining the underlying debt's legal validity. Accordingly, the complaint will be dismissed with prejudice.

BACKGROUND

I. The Underlying Debt

Plain Green, LLC is an online lender that represents itself as a Native American tribal-owned entity associated with the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana. Plain Green issued loans to consumers that purported to be subject to only the lending laws of the tribe.

In January 2018, Padgett "took out a short-term installment loan from Plain Green for $1,600." (Dkt. 1 at ¶15). The loan agreement specified the terms, including that payments of $196.54 would be due every two weeks. Padgett alleges that she obtained the loan online and that "Plain Green's website plainly disclose[d]" the APR and costs of the loan. *Id.* at ¶40. Plain Green's website, which the complaint references, also disclosed that:

> Plain Green, LLC, is a wholly owned company of the Chippewa Cree Tribe of Rocky Boy's Reservations, Montana; A Native American Tribe federally recognized by the government of the United States of America, and we operate within the boundaries of the reservation. By entering into an agreement with Plain Green, you are availing yourself upon the jurisdiction of the Tribe and fully understand and consent that any agreement entered into is subject to the laws and lending codes enacted by the Tribe's Federal recognized sovereign government.

(Dkt. 24-1).[1] Plain Green's website also stated that: "Because we may report your payment history to one or more credit bureaus, late or non-payment of your loan may negatively impact your credit rating." *Id.*

Padgett took out the loan with Plain Green and then made a loan payment of $700 to Plain Green in February 2018. Padgett does not contend she made any additional payments.

II. Clarity Reported the Underlying Debt

Plain Green reported to Clarity that it made an unsecured loan of $1,600 to Padgett on January 4, 2018. Clarity, a CRA that obtains tradeline information from lenders like Plain Green, then reported the debt on a July 13, 2018 credit report. The credit report noted Padgett's payment delinquencies on the debt. Specifically, Clarity reported a $3,031 "past due" and "balance" amount, a "manner of payment" that specified this was a "real time installment" loan that had been charged off, and an "amount manner of payment" indicating a charge-off amount of $6,062. (Dkt. 1 at ¶¶19-24).

Padgett alleges the credit report is inaccurate "because it reports that amounts are unpaid and charged-off when in fact, under clearly-established Florida law, the spurious loan to [Padgett] is void and uncollectible." *Id.* at ¶26.

III. Padgett Files This Lawsuit against Clarity under the FCRA

On August 3, 2018, Padgett filed this putative class action lawsuit against Clarity under the FCRA. She alleges that Clarity willfully violated the FCRA, specifically § 1681e(b), by reporting "illegal, void, and uncollectible loans" from Plain Green to the

[1]The parties do not dispute that the Court may take judicial notice of the language contained on Plain Green's website. (Dkts. 24-2, 29 at n.4).

residents of 18 "Included States." *Id.* at ¶¶ 9, 24-25. Padgett seeks statutory damages on behalf of a class of consumers "who took out a loan" from Plain Green "for $3,000 or less and have had a consumer report prepared by Clarity during the past five years in which Clarity reported that there was a balance due to Plain Green." She also seeks statutory damages on behalf of a subclass of consumers "who took out a loan" from Plain Green "for $3,000 or less and have had a consumer report prepared by Clarity during the past five years in which Clarity reported that an amount was past due to Plain Green." *Id.* at ¶78.

The complaint does not allege that Padgett disputed the Plain Green debt with Clarity. Rather, all of the FCRA claims rest on Clarity reporting the underlying debt. Padgett alleges that Clarity violated § 1681e(b) because Clarity should have known that Plain Green's "spurious" loans to the class members were "void and uncollectible." She avers that the "clearly-established" law of the 18 Included States would have placed Clarity on notice that these loans were void and uncollectible.

Clarity moves to dismiss the complaint in its entirety with prejudice. In a nutshell, Clarity argues that the complaint is "merely a collateral attack on the underlying legal validity of a loan between Plaintiff and Plain Green." The Court agrees. Accepting all of the facts as true, Padgett has not stated a claim under § 1681e(b).

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) allows a complaint to be dismissed for failure to state a claim on which relief can be granted. When reviewing a motion to dismiss, courts must limit their consideration to the well-pleaded allegations, documents central to or referred to in the complaint, and matters judicially noticed. *See La Grasta v. First Union Securities, Inc.*, 358 F.3d 840, 845 (11th Cir. 2004) (internal citations omitted); *Day v.*

Taylor, 400 F.3d 1272, 1276 (11th Cir. 2005). Furthermore, they must accept all factual allegations contained in the complaint as true, and view the facts in a light most favorable to the plaintiff. *See Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007).

Legal conclusions, though, "are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). In fact, "conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal." *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003). To survive a motion to dismiss, a complaint must instead contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (internal quotation marks and citations omitted). This plausibility standard is met when the plaintiff pleads enough factual content to allow the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (internal citations omitted).

DISCUSSION

15 U.S.C. § 1681e(b) states: "Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible *accuracy* of the information concerning the individual about whom the report relates." (emphasis added). "This language is not ambiguous; it creates an obligation on the part of the consumer reporting agency to ensure the preparation of accurate reports independent from § 1681i's reinvestigation requirement." *DeAndrade v. Trans Union LLC*, 523 F.3d 61, 67 (1st Cir. 2008).

Although the Eleventh Circuit has not directly addressed this issue, multiple circuit courts have held that the FCRA does not require a CRA like Clarity to adjudicate disputed debts. *See Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876 (9th Cir. 2010); *DeAndrade*

v. Trans Union LLC, 523 F.3d 61 (1st Cir. 2008); *Wright v. Experian Info. Sol., Inc.*, 805 F.3d 1232 (10th Cir. 2015); *Phillips v. Archstone Simi Valley, LLC*, — Fed.Appx. —, 2018 WL 5307801, at *1 (9th Cir. Oct. 25, 2018). As the Ninth Circuit aptly stated in *Carvalho*:

> With respect to the accuracy of disputed information, the CRA is a third party, lacking any direct relationship with the consumer, and its responsibility is to 're investigate' a matter once already investigated in the first place." *Gorman*, 584 F.3d at 1156–57 (quoting 15 U.S.C. § 1681i(a)(1)). Hence, a consumer disputing the legal validity of a debt that appears on her credit report should first attempt to resolve the matter directly with the creditor or furnisher, which "stands in a far better position to make a thorough investigation of a disputed debt than the CRA does on reinvestigation." *Id.* at 1156. A CRA is not required as part of its reinvestigation duties to provide a legal opinion on the merits. Indeed, determining whether the consumer has a valid defense "is a question for a court to resolve in a suit against the [creditor,] not a job imposed upon consumer reporting agencies by the FCRA." *DeAndrade*, 523 F.3d at 68. Nor is a CRA obligated not to report any information about the disputed item simply because the consumer asserts a legal defense. "[T]he 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." *Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1158(11th Cir.1991).

629 F.3d at 892.

Padgett's complaint fails in its entirety under § 1681e(b) because she does not allege that Clarity's reporting of the Plain Green debt was *inaccurate*. Padgett attempts to dance around this pleading deficiency by arguing that the debt was inaccurate because Clarity was placed on notice that debts from Plain Green in the Included States were illegal and uncollectible. She alleges that Plain Green should have known that the debts violated the clearly established law of the Included States. But this argument is akin to disputing the validity of the Plain Green debt—it does not establish that the debt was inaccurate or inaccurately reported.

If the Court permitted this lawsuit to continue, the Court would have to first determine the legality of Padgett's loan and then make a determination as to whether Clarity should

have anticipated—through its own independent research of Florida law—that a court of law would have declared the loan invalid. Placing such a high burden on a CRA is unsupported under the law, despite Padgett's vehement protestations about "old fashioned loan sharks" and "online payday lending companies that take advantage of desperate people to collect triple-digit interest rates, in blatant violation of state usury laws." (Dkt. 29). Padgett may ultimately be correct that these debts violate state usury laws but she must first pursue this claim against the lender of the alleged illegal debt. At the very least, Padgett could have disputed the debt with Clarity when it appeared on her credit report.

In sum, Padgett's FCRA claims fail because she does not adequately allege that the disputed debt was inaccurate. Her "inaccuracy" allegations are premised on a legal conclusion that her loan is uncollectible. This artful pleading tactic fails because it would place the burden on CRAs, like Clarity, to resolve the legal dispute about the underlying debt's validity before reporting the debt. But whether a debt is enforceable is a matter of law that can be resolved only in court. "Where a consumer merely asserts a legal challenge to the validity of an existing debt, he has failed to demonstrate a factual inaccuracy in the CRA's report of that debt." *Barsky v. Experian Info. Sols., Inc.*, No. 4:15-cv-1017-CDP, 2016 WL 4538526, at *2 (E.D. Mo. Aug. 30, 2019) (citing *DeAndrade*, 523 F.3d at 68); *see also Chiang v. Verizon New England Inc.*, 595 F.3d 26, 38 (1st Cir. 2010) ("a plaintiff's required showing is factual inaccuracy, rather than the existence of disputed legal questions"); *Pembroke v. Trans Union, LLC*, No. 16-CV-03194-CMA-STV, 2017 WL 6463254, at *6 (D. Colo. Dec. 19, 2017) (dismissing with prejudice FCRA claims that collaterally attacked the validity of the underlying debt).

It is therefore **ORDERED AND ADJUDGED** that:

1. Defendant's Motion to Dismiss Plaintiff's Class Action Complaint (Dkt. 24) is granted.
2. Plaintiff's Complaint is dismissed with prejudice.
3. The Clerk of Court is directed to close this case and terminate any pending motions as moot.

DONE and **ORDERED** in Tampa, Florida on December 13, 2018.

JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record