UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 19-5009 PSG (JEMx)	Date	September 16, 2020
Title	Cynthia Barrios v. Equifax Information Services, LLC, et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): **The Court GRANTS Defendant's motion for summary judgment**

Before the Court is a motion for summary judgment filed by Defendant American Honda Finance Corporation ("Honda"). *See* Dkt. #77 ("*Mot.*"). Plaintiff Cynthia Barrios ("Plaintiff") did not oppose the motion. The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the moving papers, the Court **GRANTS** Honda's motion for summary judgment.

I. Background

The Court has set forth the background of this dispute in previous orders and reiterates the relevant information here.

In 2013, Plaintiff leased a Honda Civic. *See Statement of Uncontroverted Facts*, Dkt. # 77-1 ("*SUF*"), ¶ 1. The terms of the lease required Plaintiff to make monthly payments of $167.47. *Id.* ¶ 3.

Plaintiff defaulted on her lease payments, and, under the terms of the lease, Defendant repossessed the Civic and sold it at an auction. *Id.* ¶¶ 4–8. After deducting the auction proceeds, Plaintiff still owed Defendant $4,230.40. *Id.* ¶ 9. Defendant demanded this outstanding balance, but Plaintiff never paid it. *Id.* ¶¶ 10–11. Defendant later "charged-off" Plaintiff's account, deeming payment unlikely. *Id.* ¶ 15.

In 2018, Plaintiff obtained credit reports from Equifax Information Services, LLC ("Equifax") and Trans Union, LLC ("Trans Union") and noticed that Honda was reporting that Plaintiff still owed it monthly payments of $167. *See Complaint*, Dkt. # 1 ("*Compl.*"), ¶¶ 8–9; *SUF* ¶¶ 16–17. Therefore, Plaintiff believed that Honda was inaccurately reporting its tradelines

("Errant Tradelines") on her Trans Union and Equifax credit disclosures because "[t]he accounts reflected by the Errant Tradelines [we]re charged off and closed. The Furnishers accelerated the payment schedule and closed the accounts. Plaintiff no longer has an obligation to make monthly payments. The Errant Tradelines should be reported with a monthly payment of $0." *See Compl.* ¶¶ 7, 10.

On June 9, 2019, Plaintiff filed this action against Honda and other defendants,[1] asserting violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 et seq. *See generally Compl.* Plaintiff's complaint states two causes of action against Honda: (1) negligent violation of the FCRA and (2) willful violation of the FCRA for failing to satisfy the obligations imposed by 15 U.S.C. § 1681s-2(b). *See id.* ¶¶ 19–70.

The complaint states that, after Plaintiff noticed the erroneous monthly payments in her Equifax and Trans Union credit disclosures, she submitted letters to Equifax and Trans Union disputing these Errant Tradelines. *See id.* ¶¶ 11, 12. Equifax and Trans Union forwarded the dispute to Honda. *See id.* ¶ 15. When Plaintiff did not receive her Equifax and Trans Union investigation results, she obtained her credit disclosures, which she discovered continued to report the allegedly inaccurate monthly payment. *See id.* ¶¶ 16, 17. Plaintiff alleges that, as a result of these actions, Plaintiff "suffered credit and emotional damages" and "experienced stress and anxiety." *See id.* ¶ 18.

Honda moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). *See generally Order Denying Defendants' Motion to Dismiss*, Dkt. # 45 ("*MTD Order*"). The Court denied Honda's motion, finding that (1) Plaintiff had sufficiently pled that her credit score was inaccurate because it erroneously reflected that she owed a $167 monthly payment, and (2) that she had adequately alleged that she had been adversely affected and damaged by the inaccuracy. *See id.* at 4–7. However, the Court noted that "Defendant[] may offer evidence tending to prove that the challenged reporting[,] taken as a whole[,] was not incorrect or misleading at a later stage of the proceedings." *Id.* at 6.

Honda now moves for summary judgment, arguing that the credit reports are neither incorrect nor misleading. *See Mot.* 12:22–19:14. The Court agrees, and, therefore, **GRANTS** Honda's motion for summary judgment.

[1] Co-defendants Equifax, Trans Union, and Don Roberto Jewelers, Inc., have all been dismissed with prejudice. *See* Dkts. # 59, 61, 69.

III. Legal Standard

A. Summary Judgment

"A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if 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).

A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and identifying those portions of the pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the nonmoving party will have the burden of proof at trial, the movant can prevail by pointing out that there is an absence of evidence to support the moving party's case. *See id.* If the moving party meets its initial burden, the nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56, "specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. Rather, it draws all reasonable inferences in the light most favorable to the nonmoving party. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987). The evidence presented by the parties must be capable of being presented at trial in a form that would be admissible in evidence. *See* Fed. R. Civ. P. 56(c)(2). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *See Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

B. The FCRA

The FCRA was enacted "to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy." *Gorman v. Wolpoff & Abramson,* 584 F.3d 1147, 1153 (9th Cir. 2009) (quoting *Safeco Ins. Co. of Am. v. Burr,* 551 U.S. 47 (2007)). In addition to regulating credit reporting agencies ("CRAs") to guarantee that consumer information is assembled, evaluated, and disseminated with "fairness, impartiality, and a respect for the consumer's right to privacy," the FCRA also "imposes some duties on the sources that provide credit information to CRAs[.]" *Id.* These sources, which the statute refers to as "furnishers of information," are most commonly "credit card issuers, auto dealers, department

and grocery stores, lenders, utilities, insurers, collection agencies, and government agencies." *Id.* at 1154 n.7 (quotation omitted).

Furnishers of information are subject to two distinct categories of responsibilities under 15 U.S.C. § 1681s-2. First, under subsection (a), furnishers of information have a duty to "provide accurate information," which, among other things, (1) prohibits reporting of information with actual knowledge of errors or after receiving notice of errors, *see* § 1681s-2(a)(1); (2) imposes a duty to correct and update inaccurate or incomplete information, *see* § 1681s-2(a)(2); and (3) imposes a duty to notify CRAs if any information reported has been disputed by the consumer, *see* § 1681s-2(a)(3).

Second, under subsection (b), once a furnisher of information receives notice from a CRA that a consumer disputes information that the furnisher provided, the furnisher must:

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

Gorman, 584 F.3d at 1154 (quoting 15 U.S.C. § 1681s-2(b)(1)).

The FCRA allows a private right of action for claims arising under subsection (b). *Id.* The private right of action can be alleged as either "willful or negligent noncompliance" with these requirements. *Rara v. Experian Info. Sols., Inc.*, No. 16-cv-06376-PJH, 2017 WL 1047020, at *3 (N.D. Cal. Mar. 20, 2017). In either situation, a "plaintiff must show that: (1) he found an inaccuracy in his credit report; (2) he notified a CRA; (3) the CRA notified the furnisher of the information about the dispute; and (4) the furnisher and/or CRA failed to

reasonably investigate the inaccuracy." *Id.*; *see also Biggs v. Experian Info. Sols., Inc.*, 209 F. Supp. 3d 1142, 1144 (N.D. Cal. 2016). A furnisher must conduct a "reasonable" investigation pursuant to § 1681s-2(b)(1). *Gorman*, 584 F.3d at 1157.

As mentioned above, an "inaccuracy" is a required element of these claims. *Rara*, 2017 WL 1047020, at *4 (citing *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010) ("Although the FCRA's reinvestigation provision, 15 U.S.C. § 1681i, does not on its face require that an actual inaccuracy exist for a plaintiff to state a claim, many courts, including our own, have imposed such a requirement."); *Gorman*, 584 F.3d at 1163 ("[A] furnisher does not report 'incomplete or inaccurate' information within the meaning of § 1681s–2(b) simply by failing to report a meritless dispute.")). To be inaccurate, information must be either "patently incorrect" or "misleading in such a way and to such an extent that it can be expected to adversely affect credit decisions." *Gorman*, 584 F.3d at 1163. "At a minimum, a plaintiff must prove that a creditor or consumer of credit reports"—as opposed to a lay person—would be misled by the reports. *Elsady v. Rapid Glob. Bus. Sols., Inc.*, No. 09–11659, 2010 WL 2740154, at *7 (E.D. Mich. Jul. 12, 2010).

III. Discussion

In this case, the alleged inaccuracies in Plaintiff's credit reports are that she owes a scheduled monthly payment of $167 under her lease agreement with Honda, even though Plaintiff's account was charged off and closed and she now only owes a single, accelerated lump sum payment of $4,230. *See Compl.* ¶ 10. Honda argues that, although Plaintiff does not owe the monthly payments, when viewed as a whole, the reports would not mislead a creditor or consumer of credit reports, and thus they were not inaccurate. *Mot.* 19:2–10. Therefore, Honda contends that the undisputed evidence demonstrates there is no "inaccuracy" in the reports, and the Court should award it summary judgment on both of Plaintiff's FCRA claims. *See id.* The Court agrees.

A recent decision from the Eastern District of Michigan is instructive. *See generally Thompson v. Equifax Info. Servs., LLC*, 441 F. Supp. 3d 533 (E.D. Mich. 2020). In *Thompson*, the plaintiff entered a contract to buy a car and agreed to pay monthly installments of $489.98. *Id.* at 537. Shortly thereafter, she defaulted. *Id.* Ultimately, the balance of the installment contract was accelerated so that the entire remaining balance on the loan—$10,008—immediately became due. *Id.* The plaintiff's account was later "charged off." *Id.*

Roughly two years later, the plaintiff obtained credit files from Equifax and Trans Union, which reported that she still owed monthly installments of $489 for her car. *Id.* The plaintiff alleged violations of the FCRA, arguing that the credit reports were inaccurate because the account was "charged off" and she only owed a single, accelerated lump sum payment of $10,008. *Id.* at 537–38.

The Court held that, despite the appearance of a technical inaccuracy, the reports were accurate and not misleading on their faces. *Id.* at 549. Various factors contributed to this conclusion. First, it was "clear from reading the trade line as a whole that the 'monthly payment' field [was] historical rather than current because other fields in the trade line state that the balance [was] '$10,008.'" *Id.* Second, "the 'payment status' [was] 'collection/charge-off.'" *Id.* Third, "the 'amount past due' [was] '$10,008.'" *Id.* Fourth, "the account's 'closed date' was [in the past]." Fifth, "the 'account status' [was] 'closed – derogatory.'" *Id.* And sixth, the plaintiff offered no evidence or argument "that a single creditor or consumer of credit reports was indeed misled by the trade line." *Id.* These same factors are present in this case.

Here, the Equifax report lists the balance and amount past due as $4,230. *See Declaration of S. Christopher Yoo*, Dkt. # 77-2 ("*Yoo Decl.*"), ¶ 7 & Ex. E. The payment status is listed as "Collection/Charge-Off." *Id.* The account status is "Closed" and the last date of payment is November 1, 2015. *Id.* Finally, the remarks state "Charged off account involuntary repossession." *Id.*

The Trans Union report is similar. *See Yoo Decl.* ¶ 8 & Ex. F. The balance and amount past due are listed as $4,230. *Id.* The payment status is listed as "Collection/Charge-Off." *Id.* The account status is "Closed – Derogatory," and the closed date is January 29, 2016. *Id.* Finally, the remarks state "Charged off as bad debt involuntary repossession; balance owing." *Id.*

Therefore, like in *Thompson*, the Court finds that the reports are not inaccurate or misleading merely because they list the monthly payments that Plaintiff owed before Honda accelerated the balance of her loan into a lump sum payment. *See Thompson*, 441 F. Supp. 3d at 549. Because the reports convey an unambiguous message—specifically, that Plaintiff defaulted on her monthly payments and now owes only a lump sum—no creditor or consumer of credit reports would be misled by them. This conclusion is bolstered by the fact that Plaintiff has not argued or offered any evidence that the reports misled anyone (except, possibly, herself). *See id.*

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In sum, the Court concludes that the undisputed evidence demonstrates that each report, when viewed as a whole by a creditor or consumer of credit reports, was not inaccurate. *See Gorman*, 584 F.3d at 1163 (noting that information must be either "patently incorrect" or "misleading in such a way and to such an extent that it can be expected to adversely affect credit decisions"); *Elsady*, 2010 WL 2740154, at *7 (finding that an allegedly inaccurate report must be misleading to a creditor or consumer of credit reports as opposed to a lay person). Accordingly, the Court **GRANTS** Honda's motion for summary judgment.

IV. Conclusion

For the foregoing reasons, the Court **GRANTS** Honda's motion for summary judgment. This order closes the case.

IT IS SO ORDERED.