

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 SETH KOEUT,

12 Plaintiff,

13 v.

14 NAVIENT CORPORATION, a Delaware
15 Corporation; NAVIENT SOLUTIONS,
16 LLC, a Delaware Limited Liability
17 Company; EQUIFAX INFORMATION
18 SERVICES, LLC; and EXPERIAN
19 INFORMATION SOLUTIONS, INC.,

20 Defendants.

Case No.: 3:21-cv-01398-AJB-AHG

**ORDER GRANTING DEFENDANTS’
JOINT MOTION TO DISMISS
PLAINTIFF’S COMPLAINT WITH
LEAVE TO AMEND**

(Doc. No. 12)

21 Presently pending before the Court is Defendants Navient Corporation and Navient
22 Solutions, LLC’s (collectively, “Navient Defendants”) joint motion to dismiss Counts I
23 through IV of Plaintiff Seth Koeut’s (“Plaintiff”) Complaint. (Doc. No. 12.) The motion is
24 fully briefed, (Doc. Nos. 16 & 21), and the matter is suitable for determination on the
25 papers. For the reasons stated herein, the Court **GRANTS** the motion to dismiss Plaintiff’s
26 Complaint with leave to amend.

I. BACKGROUND

27 Plaintiff brings this action against Navient Defendants, Equifax Information
28 Services, LLC (“Equifax”), and Experian Information Solutions, Inc. (“Experian”) for

1 violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, et seq. (“FCRA”) and the
2 California Consumer Credit Reporting Agencies Act, Cal. Civ. Code §§ 1785.3 et. seq.
3 (“CCCRAA”). (Complaint (“Compl.”), Doc. No. 1, ¶ 1.) Between 2005 and 2009, Plaintiff
4 took out a federal student loan to pay for the educational costs associated with his medical
5 degree at Ponce School of Medicine. (*Id.* ¶ 34.) On or about July 9, 2009, Plaintiff took out
6 a second unsecured non-federal loan with Navient Defendants (“Navient Debt”) for job
7 application costs, and flight and travel expenses while he sought post-medical school
8 employment. (*Id.* ¶ 35.) This latter loan was a private loan, as it was not guaranteed by a
9 government unit. (*Id.*) On May 21, 2012, Plaintiff filed a Chapter 7 Bankruptcy Case in the
10 United States Bankruptcy Court for the Southern District of California, which allegedly
11 discharged the Navient Debt. (*Id.* ¶ 39.)

12 On January 18, 2021, Plaintiff discovered that Equifax and Experian were still
13 reporting his federal student loan and the Navient Debt, despite the Bankruptcy Court’s
14 ruling. (*Id.* ¶ 47.) The same day, Plaintiff disputed his federal student loan and the Navient
15 Debt with Equifax and Experian based upon the judgment entered in his prior bankruptcy
16 proceedings. (*Id.* ¶¶ 52, 58.) In both disputes, Defendants Equifax and Experian responded
17 to Plaintiff after their investigations that no change would be made to Plaintiff’s credit
18 report. (*Id.* ¶¶ 53, 59.) Plaintiff thereafter filed a second dispute with both Equifax and
19 Experian, and again the Navient Debt remained on his credit reports. (*Id.* ¶¶ 55–56, 60–
20 63.) On June 11, 2021, Plaintiff filed a third dispute with Experian and received a response
21 that the results would remain the same. (*Id.* ¶ 65.) On August 4, 2021, Plaintiff filed his
22 Complaint. (*See generally id.*) Navient Defendants thereafter filed the instant motion to
23 dismiss Plaintiff’s Complaint as to the first four claims for failure to state a claim upon
24 which relief may be granted, pursuant to Fed. R. Civ. P. 12(b)(6). (Doc. No. 12.)

25 II. LEGAL STANDARD

26 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the pleadings
27 and allows a court to dismiss a complaint upon a finding that the plaintiff has failed to state
28 a claim upon which relief may be granted. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.

1 2001). The court may dismiss a complaint as a matter of law for: “(1) lack of cognizable
2 legal theory or (2) insufficient facts under a cognizable legal claim.” *SmileCare Dental*
3 *Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996) (citation omitted).
4 However, a complaint survives a motion to dismiss if it contains “enough facts to state a
5 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
6 (2007).

7 Notwithstanding this deference, the reviewing court need not accept legal
8 conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for the
9 court to assume “the [plaintiff] can prove [he or she] has not alleged” *Associated Gen.*
10 *Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).
11 On the other hand, “[w]hen there are well-pleaded factual allegations, a court should
12 assume their veracity and then determine whether they plausibly give rise to an entitlement
13 to relief.” *Iqbal*, 556 U.S. at 679. The court only reviews the contents of the complaint,
14 accepting all factual allegations as true, and drawing all reasonable inferences in favor of
15 the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002).

16 III. DISCUSSION

17 Navient Defendants move to dismiss each of Plaintiff’s claims against them—
18 specifically, the first four claims under the FCRA and CCCRAA. The Court will address
19 the merits of each of Defendants’ requests in turn.

20 A. Plaintiff’s First Claim for Willful Failure to Investigate Under the 21 FCRA

22 Plaintiff’s first claim against Navient Defendants is based upon § 1681s-2(b) of the
23 FCRA for allegedly failing to conduct a reasonable investigation into Plaintiff’s disputes
24 with Equifax and Experian (“Disputes”), and willfully failing to properly modify, delete,
25 or block the reporting of inaccurate, unlawful, and false negative information to Defendants
26 Experian and Equifax. (Compl. ¶¶ 72, 73.)

27 “To ensure that credit reports are accurate, the FCRA imposes duties on entities
28 called ‘furnishers,’ which are the sources that provide credit information to credit reporting

1 agencies [(“CRA”).]” *Snyder v. Nationstar Mortg. LLC*, No. 15-cv-03049-JSC, 2015 WL
2 7075622, at *3 (N.D. Cal. Nov. 13, 2015) (citing *Gorman v. Wolpoff & Abramson, LLP*,
3 584 F.3d 1147, 1153–54 (9th Cir. 2009)). Under the FCRA, one such duty is “triggered”
4 when a furnisher “receives notice from the CRA that the consumer disputes the
5 information.” *Langan v. United Servs. Auto. Ass’n*, 69 F. Supp. 3d 965, 978 (N.D. Cal.
6 2014) (quoting *Gorman*, 584 F.3d at 1154) (internal quotation marks omitted). “Upon
7 receiving such a notice, the furnisher is required to conduct an investigation with respect
8 to the disputed information and to take steps to ensure that any errors are corrected.” *Id.*
9 (quoting 15 U.S.C. § 1681s-2(b)) (internal quotation marks omitted). “‘If an item of
10 information disputed by a customer is found to be inaccurate or incomplete’ following an
11 investigation, the furnisher must modify, delete or block reporting of that information.”
12 *Finley v. Transunion*, No. 17-cv-07165-HSG, 2020 WL 408987, at *2 (N.D. Cal. Jan. 24,
13 2020) (quoting 15 U.S.C. § 1681s-2(b)(1)).

14 FCRA section 1681s-2(b) provides a private right of action to challenge a furnisher's
15 failure to investigate and report results after receiving notice of a dispute. *See Gorman*, 584
16 F.3d at 1154. To prevail on a claim under section 1681s-2(b), a plaintiff must allege that:
17 (1) he notified a CRA of a dispute regarding the accuracy of an account; (2) the CRA
18 notified the furnisher of the information; and (3) the furnisher failed to take the remedial
19 measures required by statute. *See Kozlowski v. Bank of Am., N.A.*, No. 1:18-cv-00131-
20 DAD-EPG, 2018 WL 2096381, at *3 (E.D. Cal. May 4, 2018) (citing *Matracia v. JP*
21 *Morgan Chase Bank, N.A.*, No. 2:11-190 WBS JFM, 2011 WL 5374776, at *3 (E.D. Cal.
22 Nov. 4, 2011)).

23 In support of their motion, Navient Defendants argue that Plaintiff fails to adequately
24 plead: (1) the existence of information provided to Navient Defendants by any CRA that
25 Defendants failed to consider in their investigation; (2) facts indicating that Navient
26 Defendants failed to consider all relevant information; and (3) the false, negative, or
27 inaccurate information that Navient Defendants allegedly failed to correct or delete after
28 their alleged receipt of Plaintiff’s Disputes from the CRAs. (Doc. No. 12-1 at 17.) The

1 Court agrees. Plaintiff asserts that Navient Defendants “failed to conduct a reasonable
2 investigation into Plaintiff’s Dispute” after being notified of the Disputes by Defendants
3 Equifax and Experian regarding inaccurate and delinquent information for the Navient
4 Debt. (Compl. ¶ 72.) Further, Plaintiff states that Navient Defendants “failed to exercise
5 reasonable care when notified of the dispute” by “willfully failing to properly modify,
6 delete, or block the reporting of the inaccurate, unlawful, and false negative information
7 regarding the Navient Debt[.]” (*Id.* ¶ 73.) However, Plaintiff merely recites the elements
8 of a § 1681s-2(b)(1) claim and fails to explain how Navient Defendants failed to properly
9 investigate the dispute or that Navient Defendants failed to consider all relevant
10 information.

11 Accordingly, the Court **GRANTS** Defendant’s motion to dismiss Plaintiff’s first
12 cause of action for willful failure to investigate **WITH LEAVE TO AMEND**.

13 **B. Plaintiff’s Second Claim for Negligent Failure to Investigate**

14 Plaintiff’s next claim under the FCRA is based upon a negligent failure to
15 investigate. (Compl. at 13–14.) “To prove a negligent violation [under the FCRA], a
16 plaintiff must show that the defendant acted pursuant to an objectively unreasonable
17 interpretation of the statute.” *Marino v. Ocwen Loan Servicing LLC*, 978 F.3d 669 (9th Cir.
18 2020) (citing *Syed v. M-I LLC*, 853 F.3d 492, 505 (9th Cir. 2017)).

19 Navient Defendants seek to dismiss this claim based upon Plaintiff’s alleged failure
20 to show that his private student loan was discharged. (Doc. No. 12-1 at 19.) Whether
21 Plaintiff’s loan with Navient Defendants was an unsecured loan or a private student loan
22 is a disputed issue of fact to be determined by the fact finder and thus inappropriate for the
23 Court to determine at this stage. However, the Court finds that, similar to Plaintiff’s first
24 claim for willful failure to investigate, Plaintiff’s Complaint recites the elements of
25 § 1681s-2(b)(1) with conclusory language without additional facts, and has thus failed to
26 plead a negligent failure to investigate.

27 On these grounds, the Court **GRANTS** Defendant’s motion to dismiss Plaintiff’s
28 second cause of action for negligent failure to investigate **WITH LEAVE TO AMEND**.

1 **C. Plaintiff’s Third and Fourth Claims Under the CCCRAA**

2 In his third and fourth causes of action, Plaintiff alleges that Navient Defendants
3 failed to comply with the CCCRAA. (Compl. at 14–17.) Section 1785.25(a) provides that
4 “[a] person shall not furnish information on a specific transaction or experience to any
5 consumer credit reporting agency if the person knows or should know the information is
6 incomplete or inaccurate.” Cal. Civ. Code § 1785.25(a). “The statutory term ‘should have
7 known’ imparts a test of reasonableness.” *Holmes v. NCO Fin. Services, Inc.*, 538 F. App’x
8 765, 766 (9th Cir. 2013) (citing *Shultz v. Dep’t of Army*, 886 F.2d 1157, 1160 (9th Cir.
9 1989)). “The critical question . . . is thus whether a reasonable [furnisher] . . . would have
10 known” that the furnished information was incomplete or inaccurate. *Id.*

11 Navient Defendants assert in their motion to dismiss that Plaintiffs fail to provide a
12 basis on which to find that Navient Defendants knew or should have known that the loan
13 was discharged when they responded to Plaintiff’s credit disputes. The Court agrees.

14 The Court finds that Plaintiff has not sufficiently pled facts amounting to claims
15 under the CCCRAA. Plaintiff fails to explain how the Navient Defendants knew or should
16 have known that the furnished information was incomplete or inaccurate. For example,
17 Plaintiff asserts that Navient Defendants were “actually aware of the inaccurate
18 information being furnished by them” and “willfully fail[ed] to properly modify, delete, or
19 block the reporting of the inaccurate and unlawful false negative information,” without
20 more information. (Compl. ¶¶ 93, 94.) Plaintiff’s claim under § 1785.25(f) similarly fails,
21 as he merely states that Navient Defendants “failed to review the information provided by
22 Plaintiff and did not perform any true investigation into the accuracy of the information it
23 was furnished[.]” (*Id.* ¶ 102.) Plaintiff’s allegations are devoid of any factual basis to
24 support an inference that Navient Defendants reported any specific inaccurate information
25 or failed to use reasonable procedures to assure the accuracy of information contained in
26 his credit report.


27 Thus, the Court dismisses the third and fourth causes of action **WITH LEAVE TO**
28 **AMEND.**

1 **IV. CONCLUSION**

2 For the reasons set forth above, the Court **GRANTS** the Navient Defendants' motion
3 to dismiss **WITH LEAVE TO AMEND**. (Doc. No. 12.) Should Plaintiff choose to do so,
4 where leave is granted, he must file an amended complaint curing the deficiencies noted
5 herein by **November 2, 2021**.

6
7 **IT IS SO ORDERED.**

8 Dated: October 18, 2021

9 
10 Hon. Anthony J. Battaglia
United States District Judge