

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**May 08, 2024**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ELAINE KING,

Plaintiff,

v.

PENNYMAC LOAN SERVICES,  
LLC,

Defendant.

No. 4:24-CV-05002-MKD

ORDER GRANTING DEFENDANT’S  
MOTION TO DISMISS COMPLAINT  
PURSUANT TO FRCP 12(b)(6)

**ECF No. 4**

Before the Court is Defendant PennyMac Loan Services, LLC’s (“PennyMac’s”) Motion to Dismiss Complaint Pursuant to FRCP 12(b)(6). ECF No. 4. On May 3, 2024, the Court held a hearing. ECF No. 11. Benjamin J. Riley appeared on behalf of Plaintiff Elaine King. Claire L. Rootjes appeared on behalf of PennyMac.

Ms. King alleges violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, and the Washington Consumer Protection Act (“CPA”), RCW 19.86, stemming from PennyMac’s alleged failure to meet its credit

1 reporting obligations. ECF No. 1 at 8-9. PennyMac moves to dismiss for failure  
2 to state a claim. ECF No. 4. For the reasons stated herein, PennyMac’s motion is  
3 granted.

#### 4 **BACKGROUND**

5 In the Complaint, Plaintiff King alleges the following: on March 6, 2017,  
6 she obtained a home loan from PennyMac (“2017 Loan”) for the purchase of a  
7 property located in Pasco, Washington (the “Property”). ECF No. 1 at 7 ¶ 2.1.  
8 Ms. King entered into a Promissory Note and executed a Deed of Trust with  
9 PennyMac for the Property. *Id.*

10 On June 23, 2020, Ms. King filed for Chapter 13 bankruptcy and listed  
11 PennyMac as a secured creditor and mortgage servicer for the Deed of Trust. *Id.* at  
12 7 ¶ 2.2; *see also* Petition, *In re King*, No. 20-BK-1273 (Bankr. E.D. Wash. June 23,  
13 2020), ECF No. 1. At that time, Ms. King had made all payments on her  
14 obligations to PennyMac and was current on amounts owed. ECF No. 1 at 7 ¶ 2.2.

15 On September 9, 2021, the bankruptcy court converted Ms. King’s case to  
16 Chapter 7. *Id.*; *see also* Order Converting Case, *In re King*, No. 20-BK-1273  
17 (Bankr. E.D. Wash. Sept. 9, 2021), ECF No. 71. In December 2021, the  
18 bankruptcy court granted discharge and closed her case. ECF No. 1 at 7 ¶ 2.2;  
19 Discharge, Final Decree, and Certificate of Mailing, *In re King*, No. 20-BK-1273  
20 (Bankr. E.D. Wash. Dec. 8-11, 2021), ECF Nos. 89, 90, 91.

1 On May 20, 2022, Ms. King and PennyMac entered into a Loan  
2 Modification Agreement for the loan on the Property (“2022 Loan Modification”).  
3 ECF No. 1 at 7 ¶ 2.3. Ms. King has remained current on all payments through at  
4 least November 26, 2023, the date of the Complaint. *Id.* at 7 ¶ 2.4.

5 PennyMac has not reported to credit reporting agencies any current  
6 obligation owed by Ms. King or payments she has made since the bankruptcy. *Id.*  
7 at 7 ¶ 2.5. Ms. King has contacted PennyMac to demand the reporting be  
8 corrected. *Id.* at 7-8 ¶ 2.6. PennyMac has not responded and has refused to change  
9 its reporting. *Id.* Ms. King has been denied auto loans, home loans, and  
10 employment promotions since the events in question. *Id.* at 8 ¶ 2.7.

11 On December 4, 2023, Ms. King filed her Complaint in the Franklin County  
12 Superior Court. *Id.* at 1-2 ¶ 1. On January 3, 2024, PennyMac filed a notice of  
13 removal. ECF No. 1 at 1. On January 17, 2024, PennyMac filed the instant  
14 motion to dismiss. ECF No. 4.

### 15 LEGAL STANDARD

16 “To survive a [Fed. R. Civ. P. 12(b)(6)] motion to dismiss, a complaint must  
17 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
18 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*  
19 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Threadbare recitals of the  
20

1 elements of a cause of action, supported by mere conclusory statements, do not  
2 suffice.” *Id.* (citing *Twombly*, 550 U.S. at 555).

3 In considering a motion to dismiss for failure to state a claim, a court must  
4 accept as true the “well-pleaded factual allegations” and any reasonable inference  
5 to be drawn from them, but legal conclusions are not entitled to the same  
6 assumption of truth. *Id.* at 678-79. A complaint must contain either direct or  
7 inferential allegations respecting all the material elements necessary to sustain  
8 recovery under some viable legal theory. *Twombly*, 550 U.S. at 562 (citations  
9 omitted). “Factual allegations must be enough to raise a right to relief above the  
10 speculative level . . . on the assumption that all of the complaint’s allegations are  
11 true . . . .” *Id.* at 555 (citations omitted).

## 12 DISCUSSION

13 Ms. King brings two claims: (1) PennyMac failed its credit reporting  
14 obligations, violating the FCRA, and (2) PennyMac’s business practices were  
15 deceptive and harmful to the public, violating Washington’s CPA. ECF No. 1 at 8-  
16 9. Each claim is premised upon the theory that PennyMac should be, but is not,  
17 reporting Ms. King’s payments to credit reporting agencies. *See id.* at 8.

### 18 A. Fair Credit Reporting Act

19 The FCRA is aimed at ensuring “fair and accurate credit reporting[.]” *Syed*  
20 *v. M-I, LLC*, 853 F.3d 492, 496 (9th Cir. 2017) (quoting *Safeco Ins. Co. v. Burr*,

1 551 U.S. 47, 52 (2007)). 15 U.S.C. § 1681s-2 imposes duties and responsibilities  
2 on persons who furnish information to consumer reporting agencies (“CRAs”).  
3 Section 1681s-2(a) requires that furnishers of information provide only accurate  
4 and complete information, update and correct information, and notify CRAs of  
5 disputes over information.

6 If a consumer believes there is an error in her credit report, the consumer  
7 may dispute the accuracy of the report by notifying the CRA pursuant to Section  
8 1681i(a)(1)(A). The CRA must then provide notice of the dispute to the furnisher  
9 that provided the disputed information. 15 U.S.C. § 1681i(a)(2)(A). Upon notice  
10 of the dispute from the CRA, the furnisher must investigate and report its findings  
11 back to the CRA. 15 U.S.C. § 1681s-2(b)(1).

12 A furnisher faces civil liability to the consumer for willful or negligent  
13 noncompliance with its duty to investigate. 15 U.S.C. §§ 1681n, 1681o, 1681s-  
14 2(c); *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1154, 1162 (9th Cir.  
15 2009). “The purpose of [Section] 1681s-2(b) is to require furnishers to investigate  
16 and verify that they are in fact reporting complete and accurate information to the  
17 CRAs after a consumer has objected to the information in his file.” *Gorman*, 584  
18 F.3d at 1164.

19 *1. Notice from CRA*

20 PennyMac argues that Ms. King has failed to allege necessary elements of

1 her FCRA claim. ECF No. 4 at 9.

2 To succeed on a Section 1681s-2(b) claim against a furnisher, a plaintiff  
3 must demonstrate that “(1) [s]he found an inaccuracy in h[er] credit report; (2)  
4 [s]he notified a [CRA]; (3) the [CRA] notified the furnisher of the information  
5 about the dispute; and (4) the furnisher failed to investigate the inaccuracies or  
6 otherwise failed to comply with the requirements of” Section 1681s-2(b). *Biggs v.*  
7 *Experian Info. Sols., Inc.*, 209 F. Supp. 3d 1142, 1144 (N.D. Cal. 2016) (citation  
8 and quotation marks omitted); *Horsch v. Wells Fargo Home Mortg.*, 94 F. Supp.  
9 3d 665, 672 (E.D. Pa. 2015); *Lawrence v. Paramount Residential Mortg. Grp.,*  
10 *Inc.*, No. 19-CV-2103, 2021 WL 3578679, at \*5 (D. Or. May 4, 2021).

11 “Concerning the second element, it is well-established that proof of ‘a formal  
12 notice of consumer dispute from a [CRA]’ is required to prove a furnisher’s FCRA  
13 violation.” *Lawrence*, 2021 WL 3578679, at \*7 (quoting *Arikat v. JP Morgan*  
14 *Chase & Co.*, 430 F. Supp. 2d 1013, 1023-25 (N.D. Cal. 2006)).

15 Ms. King’s Complaint alleges that she “contacted [PennyMac] and  
16 demanded this reporting be corrected by [PennyMac]. To date, [PennyMac] has  
17 not responded to [Ms. King] and has thus refused to correct this reporting.” ECF  
18 No. 1 at 7-8 ¶ 2.6. At no point in her Complaint does Ms. King allege she notified  
19 a CRA of her dispute, or that a CRA provided formal notice of the dispute to  
20 PennyMac. *See generally id.*

1 PennyMac does not dispute that it is a furnisher subject to the FCRA's  
2 Section 1681s-2 regulations. *See* ECF No. 4 at 5. Therefore, FCRA provisions  
3 requiring that furnishers report information known to be accurate and complete  
4 apply to PennyMac. 15 U.S.C. § 1681s-2(a). However, civil liability cannot be  
5 premised upon violations of Section 1681s-2(a) alone. 15 U.S.C. § 1681s-2(c)(1).  
6 A lawsuit such as this one may proceed only under Section 1681s-2(b), which  
7 provides civil liability where a furnisher fails to act accordingly after a CRA gives  
8 it notice of a dispute. 15 U.S.C. § 1681s-2(b)-(c). Ms. King offers no authority to  
9 the contrary, and the sole case she cites to defend her FCRA claim uses the above  
10 analysis. *See* ECF No. 7 at 3 (citing *Marchisio v Carrington Mortg. Servs., LLC*,  
11 919 F.3d 1288, 1301-02 (11th Cir. 2019) (describing procedure under Sections  
12 1681i, 1681n, 1681s-2)).

13 Without the allegation that Ms. King notified a CRA, she fails to state a  
14 legally cognizable claim for relief under the FCRA. *See Gorman*, 584 F.3d at  
15 1162; *Biggs*, 209 F. Supp. 3d at 1144; *Lawrence*, 2021 WL 3578679, at \*7;  
16 *Horsch*, 94 F. Supp. 3d at 672.

## 17 2. *Reporting Inaccurate or Incomplete Information*

18 PennyMac also argues that the alleged inaccuracy underlying Ms. King's  
19 claims is not an inaccuracy. ECF No. 4 at 5.

20 In addition to the more procedural prerequisites of Section 1681s-2, a

1 plaintiff must also allege that the furnisher actually provided incomplete or  
2 inaccurate information. *Biggs*, 209 F. Supp. 3d at 1144; *Lawrence*, 2021 WL  
3 3578679, at \*5; *Gorman*, 584 F.3d at 1163; *see also Carvalho v. Equifax Info.*  
4 *Servs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010) (explaining that the Ninth Circuit  
5 requires Section 1681i plaintiffs to “make a ‘prima facie showing of inaccurate  
6 reporting’”) (citation omitted). Information is considered incomplete or inaccurate  
7 if it is patently incorrect or misleading in such a way, and to such an extent, that it  
8 can be expected to adversely effect a consumer’s credit. *Gorman*, 584 F.3d at  
9 1163 (citations and quotation marks omitted). Reporting disputed information  
10 without noting the dispute may amount to reporting “incomplete or inaccurate”  
11 information within the meaning of the FCRA. *Id.* Although it is a factual  
12 question, the Ninth Circuit has commented that failing to report a meritless dispute  
13 is unlikely to be materially misleading, but failing to report a bona fide dispute  
14 may give rise to liability. *Id.* (citations omitted).

15 Ms. King alleges that PennyMac “is not reporting any current obligation  
16 owed by [Ms. King] on [Ms. King’s] credit history [and] is not reporting any  
17 payment history . . . on the Home Loan Modification or the original Deed of Trust  
18 obligation owed to [PennyMac].” ECF No. 1 at 7 ¶ 2.5. More generally, she  
19 alleges that PennyMac “has failed to disclose and correctly report [her] payment  
20 history on her obligation to [PennyMac].” *Id.* at 8 ¶ 3.1. PennyMac argues that it



1 has no obligation to report the payments at issue because Ms. King’s Chapter 7  
2 bankruptcy discharged her 2017 Loan, and no subsequent reportable obligation has  
3 arisen. ECF No. 4 at 5, 8-9.

4 The Court is constrained to the factual allegations in the Complaint. The  
5 parties have not provided any extraneous documentation of the 2022 Loan  
6 Modification, Ms. King’s current or past PennyMac accounts or their status, or  
7 PennyMac’s reports to CRAs.<sup>1</sup> In their absence, the instant Order should not be  
8 read to comment on the legal significance of those documents.

9 Ms. King’s “allegation” that PennyMac must report her post-bankruptcy  
10 payments is a legal conclusion. ECF No. 1 at 7 ¶ 2.1-2.7. Legal conclusions are  
11 not entitled to the presumption of truth. *See Iqbal*, 556 U.S. at 678. For her theory  
12 to survive dismissal, she must allege “sufficient factual matter, accepted as true,”  
13 indicating that there was a reportable payment that PennyMac failed to report. *See*

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15 <sup>1</sup> There are procedural grounds for the Court to review such documents at this  
16 stage. *See United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003) (At the  
17 Fed. R. Civ. P. 12(b)(6) stage, “[a] court may . . . consider certain materials—  
18 documents attached to the complaint, documents incorporated by reference in the  
19 complaint, or matters of judicial notice—without converting the motion to dismiss  
20 into a motion for summary judgment.”).

1 *id.* at 678. As other district courts have concluded, debt for which a person is not  
2 personally obliged is not relevant to a credit report, “because a person’s credit  
3 report by definition provides information about the debts owed by that person.”  
4 *Horsch*, 94 F. Supp. 3d at 675; *Lamando*, 2024 WL 264034, at \*5. The failure to  
5 report payments on a debt not personally owed is not as a material inaccuracy for  
6 the purposes of Section 1681s-2. *See Lamando*, 2024 WL 264034, at \*5  
7 (collecting cases). From the face of the Complaint, none of Ms. King’s alleged  
8 obligations appear to be reportable.

9       Starting with the 2017 Loan, the Chapter 7 bankruptcy discharged  
10 Ms. King’s personal obligation. *See Lamando*, 2024 WL 264034, at \*5-6 (quoting  
11 *Johnson v. Home State Bank*, 501 U.S. 78, 82-83 (1991)). Ms. King does not  
12 allege that this personal debt was reaffirmed in bankruptcy or later reestablished.

13       Regarding the 2022 Loan Modification, Ms. King broadly characterizes the  
14 agreement as an “obligation” but does not allege it is a personal obligation. *See*  
15 ECF No. 1 at 7 ¶ 2.5, 8 ¶ 3.1. But as PennyMac argues, the 2022 Loan  
16 Modification “could not, and did not, act to re-obligate [Ms. King] personally on  
17 the discharged debt.” ECF No. 4 at 8. In fact, the bankruptcy code suggests it  
18 would be illegal for PennyMac to attempt to reestablish Ms. King’s 2017 Loan  
19 following discharge in bankruptcy. *See Lamando*, 2024 WL 264034, at \*5-6; 11  
20 U.S.C. § 524(c)(1)-(3).

1           Finally, Ms. King suggests PennyMac must report payments towards the  
2 “Deed of Trust obligation[.]” ECF No. 1 at 8 ¶ 3.1. In Washington, a “deed of  
3 trust secures a mortgage, which is a lien on the property functioning as security for  
4 the debtor’s obligation to pay.” *OneWest Bank, FSB v. Erickson*, 367 P.3d 1063,  
5 1078 n.14 (Wash. 2016). Ms. King does not allege she is personally obliged on the  
6 instrument, and the law indicates she cannot be.

7           To the extent that Ms. King’s payments were made to prevent foreclosure on  
8 her home, and were therefore reportable, she offers no authority supporting the  
9 theory. ECF No. 7 at 4. District courts across the country appear to consistently  
10 hold to the contrary. *See, e.g., Lamando*, 2024 WL 264034, at \*7 (“[T]here  
11 appears to be a consensus that a credit report which indicates a discharge in  
12 bankruptcy, without mention of subsequent payments, is accurate as there is no  
13 legal requirement to report such payments.”) (citing *Horsch*, 94 F. Supp. 3d at 675;  
14 *Lawrence*, 2020 WL 6689371, at \*3; and others).

15           In sum, there is insufficient factual matter alleged to support Ms. King’s  
16 legal theory that PennyMac is not reporting payments it is required to report.  
17 Accordingly, Ms. King has failed to state a claim upon which relief can be granted  
18 under the FCRA.  
19  
20

1        **B. Consumer Protection Act**

2            “To prevail in a private CPA claim, the plaintiff must prove (1) an unfair or  
3 deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the  
4 public interest, (4) injury to a person’s business or property, and (5) causation.”  
5 *Panag v. Farmers Ins. Co. of Wash.*, 204 P.3d 885, 889 (Wash. 2009) (citation  
6 omitted). “Whether a particular act or practice is ‘unfair or deceptive’ is a question  
7 of law.” *Id.* at 894 (citation omitted). To demonstrate an act was “unfair or  
8 deceptive” under Washington’s CPA, a plaintiff must show that the act “had the  
9 capacity to deceive a substantial portion of the public.” *Id.*

10            In response to the instant Motion, Ms. King argues that PennyMac contacted  
11 her about modifying her loan and promissory obligation. ECF No. 7 at 4. She  
12 characterizes this interaction as “inducement to enter into a loan modification.” *Id.*  
13 at 4-5. This “inducement” allegation does not appear in her Complaint. All that  
14 the Complaint alleges about the loan modification is that, “[o]n or about May 20,  
15 2022, [Ms. King] modified her home loan with [PennyMac] and entered into a  
16 Loan Modification Agreement for her Property.” ECF No. 1 at 7 ¶ 2.3. Further  
17 on, she repeats the legal assertion that PennyMac’s failure to report payments  
18 pursuant to the 2022 Loan Modification was improper, adding the further legal  
19 assertion that these actions were “deceptive and harm the public.” *Id.* at 8 ¶ 3.2.



