NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 15 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GUIRGUIS EL-SHAWARY, AKA George El-Shawary, a Washington resident,

Plaintiff-Appellant,

v.

U.S. BANK NATIONAL ASSOCIATION, as Trustee for GSR Mortgage Loan Trust 2006-4F Mortgage Pass-Through Certificate Series 2006-4F; NATIONSTAR MORTGAGE, LLC, DBA Mr. Cooper, a foreign company; XOME, INC., a foreign company; QUALITY LOAN SERVICE CORPORATION OF WASHINGTON, solely as a nominal party and Trustee under RCW 61.24.130 et seq.; MCCARTHY & HOLTHUS, LLP, a California limited liability partnership,

Defendants-Appellees.

No. 21-36011

D.C. No. 2:18-cv-01456-JCC

MEMORANDUM[*]

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Submitted December 9, 2022[**]

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Seattle, Washington

Before: McKEOWN, MILLER, and MENDOZA, Circuit Judges.

I.

Guirguis El-Shawary appeals the district court's grant of summary judgment to Defendant-Appellees on his Washington Consumer Protection Act ("CPA") claims. We have jurisdiction to review the district court's summary judgment order under 28 U.S.C. § 1291, and we affirm.

The parties are familiar with the facts of this case, so we need not recite them here other than to state that El-Shawary brought claims against Defendant-Appellee Nationstar Mortgage LLC ("Nationstar") under the CPA alleging that Nationstar induced him to default on his home loan, and then after denying multiple requests for a loan modification, mediated with him in a bad faith and dilatory manner. After two rounds of mediation, El-Shawary eventually obtained a modified loan.

We review de novo a district court's decision granting summary judgment. *Chemehuevi Indian Tribe v. Newsom*, 919 F.3d 1148, 1150 (9th Cir. 2019). To prevail in a private CPA claim under Washington law, a plaintiff must prove "(1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a person's business or property, and (5) causation." *Panag v. Farmers Ins. Co. of Wash.*, 204 P.3d 885, 889 (Wash. 2009).

Finding that El-Shawary failed to submit evidence sufficient to show injury and causation, the district court limited its analysis to these elements only. On appeal, El-Shawary argues that there are triable issues of material fact as to whether Nationstar's conduct caused him three distinct injuries. We disagree.

First, there is no triable issue regarding whether any decrease in El-Shawary's credit score was attributable to Nationstar. Attempting to thwart summary judgment, El-Shawary proffered an August 2016 credit report (several months after defaulting), a 2021 Experian credit report showing his credit score as 697 (after obtaining the loan modification), and his own testimony that his credit score used to be higher. Although El-Shawary fails to point to a specific credit score, this court's review of the 2016 credit report reveals three possible credit scores (561, 577, and 611)—all of which are lower than the 2021 score of 697. In any event, the district court properly declined to consider El-Shawary's 2021 Experian credit report because it was not produced in discovery and instead was generated after Defendants moved for summary judgment. El-Shawary has also failed to identify any evidence of his credit score prior to default, except his own testimony that he "used to have a 780 credit score." This wholly uncorroborated testimony does not create a triable issue. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002) ("uncorroborated and self-serving" testimony does

not create a genuine issue of material fact) (quoting *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996)).

Second, El-Shawary also failed to submit evidence sufficient to support his allegation that Nationstar induced him into defaulting. We agree with the district court that the call log memorializing El-Shawary's call to Nationstar—which was also improperly before the district court—shows, at most, that El-Shawary called a Nationstar representative to inquire about a possible loan modification due to his inability to afford the current payment. This log shows little more than that and certainly does not indicate any facts from which the jury could reasonably infer that Nationstar's representative induced El-Shawary to default on his loan. El-Shawary also offered his 2018 declaration in which he attests that Nationstar's agent told him that he must first default on his loan to obtain relief. Aside from the fact that this declaration was improperly subscribed and thus not considered by the district court, El-Shawary's declaration is precisely the type of uncorroborated, self-serving testimony this court has held fails to create a genuine issue of material fact. *Villiarimo*, 281 F.3d at 1061.

Finally, Nationstar's failure to mediate in good faith during the first round of mediation does not create a fact issue on whether Nationstar's conduct caused El-Shawary to suffer an inflated loan balance. Though Washington law recognizes that "[w]here a more favorable loan modification *would* have been granted but for

bad faith in mediation, the borrower may have suffered an injury to property within the meaning of the CPA," *Frias v. Asset Foreclosure Servs., Inc.*, 334 P.3d 529, 538 (Wash. 2014) (emphasis added), El-Shawary fails to cite any evidence showing he was entitled to a loan modification at all, much less an earlier or more favorable one. That El-Shawary may have been able to afford payments on a modified loan at an earlier point has no bearing on whether he was entitled to one. *See McAfee v. Select Portfolio Servicing, Inc.*, 370 P.3d 25, 31 (Wash. Ct. App. 2016) (borrower could not show a CPA violation where there was no evidence that the lender violated any contractual loan modification obligations).

II.

El-Shawary also purports to challenge the district court's order denying his motion for reconsideration of the summary judgment ruling. However, El-Shawary's notice of appeal mentions only the order granting summary judgment and not the order denying his motion for reconsideration. Because this order was not separately appealed, we decline to consider it for lack of jurisdiction. *See Stone v. I.N.S.*, 514 U.S. 386, 401–02 (1995); *Whitaker v. Garcetti*, 486 F.3d 572, 585 (9th Cir. 2007).

AFFIRMED.