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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Tanya Hamm,
10 Plaintiff,

No. CV-17-03821-PHX-JJT

ORDER

11 v.

12 Equifax Information Services LLC, *et al.*,
13 Defendants.

14 At issue is Defendant Trans Union LLC's ("Trans Union") Motion to Dismiss
15 (Doc. 22, Mot.), to which Plaintiff Tanya Hamm filed a Response (Doc. 27, Resp.), and
16 Defendant filed a Reply (Doc. 28, Reply). No party requested oral argument, and the
17 Court finds the Motion appropriate for resolution without such argument. *See* LRCiv
18 7.2(f). For the reasons that follow, the Court denies Defendant's Motion.

19 **I. BACKGROUND**

20 For some period of time, Plaintiff and her mother jointly held an account with
21 Synchrony Bank ("Synchrony"), which required the payment of monthly fees.¹ (Compl.
22 ¶ 8.) Despite Plaintiff's mother's Chapter 7 Bankruptcy in February 2017, Plaintiff
23 attempted to keep the account open by paying the next month's fee in a timely fashion.
24 (Compl. ¶ 9.) However, Synchrony refused to accept payment, informing Plaintiff that
25 the bank closed the account. (Compl. ¶ 10.) On August 5, 2017, Plaintiff performed a
26 routine check of her credit report with two credit reporting agencies ("CRA"), including

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28 ¹ Plaintiff names Synchrony as a Defendant in her Complaint; however, the parties
have since settled and stipulated to dismissal of the claims against Synchrony. (Docs 25,
34.)

1 Defendant. At that time, Plaintiff discovered—to her shock—that Defendant incorrectly
2 listed the status on her Synchrony trade line as “charged off,” rather than the correct
3 status of “closed.”² (Compl. ¶ 11.)

4 Subsequently, Plaintiff mailed a letter to Defendant disputing the status on her
5 credit report and requesting that Defendant correct the mistake. (Compl. ¶¶ 12, 13.)
6 Plaintiff included both a copy of her mother’s bankruptcy petition and an explanation of
7 the pertinent circumstances. (Compl. ¶ 13.) Defendant failed to respond to this letter and
8 did not update the incorrect status on Plaintiff’s credit report. (Compl. ¶¶ 16.)

9 On October 18, 2017, Plaintiff filed suit against Trans Union for its purported
10 violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681, *et seq.* In
11 particular, Plaintiff alleges that Defendant negligently and willfully failed to assure the
12 maximum accuracy of the information it reported and to conduct a reasonable
13 reinvestigation. (Compl. ¶¶ 44-56.) Defendant now moves for dismissal on two bases.
14 First, Defendant contends that Plaintiff fails to allege facts sufficient to establish Article
15 III standing—and thus, this Court’s subject matter jurisdiction. (Mot. at 12–13.) Second,
16 Defendant argues that Plaintiff fails to state a plausible claim upon which relief may be
17 granted for either a negligent or willful violation of the FCRA. (Mot. at 4–11.)

18 **II. LEGAL STANDARD**

19 “A motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1)
20 may attack either the allegations of the complaint as insufficient to confer upon the court
21 subject matter jurisdiction, or the existence of subject matter jurisdiction in fact.”
22 *Renteria v. United States*, 452 F. Supp. 2d 910, 919 (D. Ariz. 2006) (citing *Thornhill*
23 *Publ’g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979)). “Where the
24 jurisdictional issue is separable from the merits of the case, the [court] may consider the
25 evidence presented with respect to the jurisdictional issue and rule on that issue, resolving
26 factual disputes if necessary.” *Thornhill*, 594 F.2d at 733; *see also Autery v. United*

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28 ² Although not explicitly defined by Plaintiff in the Complaint, to “charge off” an
account receivable is “to treat [it] as a loss or expense because payment is unlikely.”
Black’s Law Dictionary 227 (7th ed. 1999).

1 *States*, 424 F.3d 944, 956 (9th Cir. 2005) (“With a 12(b)(1) motion, a court may weigh
2 the evidence to determine whether it has jurisdiction.”). The burden of proof is on the
3 party asserting jurisdiction to show that the court has subject matter jurisdiction. *See*
4 *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990).

5 When analyzing a complaint for failure to state a claim for relief under Rule
6 12(b)(6), the well-pled factual allegations are taken as true and construed in the light most
7 favorable to the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir.
8 2009). A plaintiff must allege “enough facts to state a claim to relief that is plausible on its
9 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Legal conclusions couched as
10 factual allegations are not entitled to the assumption of truth, *Ashcroft v. Iqbal*, 556 U.S.
11 662, 680 (2009), and therefore are insufficient to defeat a motion to dismiss for failure to
12 state a claim. *In re Cutera Sec. Litig.*, 610 F.3d 1103, 1108 (9th Cir. 2010).

13 In ruling upon a motion to dismiss for failure to state claim, a court may consider
14 only the complaint, any exhibits properly included in the complaint, and matters that may
15 be judicially noticed pursuant to Federal Rule of Evidence 201. *See Mir v. Little Co. of*
16 *Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988); *Isuzu Motors Ltd. v. Consumers Union of*
17 *U.S., Inc.*, 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998). The court may take judicial notice
18 of facts “not subject to reasonable dispute” because they are either: “(1) generally known
19 within the territorial jurisdiction of the trial court or (2) capable of accurate and ready
20 determination by resort to sources whose accuracy cannot reasonably be questioned.”
21 Fed. R. Evid. 201; *see also Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001)
22 (noting that the court may take judicial notice of undisputed “matters of public record”).
23 The court may disregard allegations in a complaint that are contradicted by matters
24 properly subject to judicial notice. *Daniels–Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998
25 (9th Cir. 2010).

26 **III. ANALYSIS**

27 The Court first addresses the jurisdictional basis of Defendant’s Motion before
28 moving to its arguments under Rule 12(b)(6).

1 **A. Article III Standing**

2 To bring a justiciable lawsuit into federal court, Article III of the Constitution
3 requires that a plaintiff have “the core component of standing.” *Lujan v. Defenders of*
4 *Wildlife*, 504 U.S. 555, 560 (1992). To satisfy Article III’s standing requirements, a
5 plaintiff must show that she suffered a “concrete and particularized” injury that is “fairly
6 traceable to the challenged action of the defendant,” and that a favorable decision would
7 likely redress the injury. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*,
8 528 U.S. 167, 180–81 (2000). In the complaint, the plaintiff must “alleg[e] specific facts
9 sufficient” to establish standing. *Schmier v. U.S. Court of Appeals for Ninth Circuit*, 279
10 F.3d 817, 821 (9th Cir. 2002). If the Plaintiff fails to allege such facts, the Court should
11 dismiss the Complaint. *See, e.g., Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d
12 1115, 1123 (9th Cir. 2010).

13 With respect to the FCRA, allegations of a “bare procedural violation, divorced
14 from any concrete harm,” does not satisfy the requirements of Article III standing.
15 *Spokeo, Inc. v. Robins (Spokeo II)*, 136 S. Ct. 1540, 1549–50 (2016). Thus, courts look
16 to the nature of the alleged reporting inaccuracy to “ensure [the inaccuracies] raise a real
17 risk of harm to the concrete interests that the FCRA protects.” *Robins v. Spokeo, Inc.*
18 *(Spokeo III)*, 867 F.3d 1108, 1116 (9th Cir. 2017) (finding inaccuracies that “may be
19 important to [those] making use of a consumer report” sufficiently “concrete” under
20 Article III).

21 Defendant challenges only the first prong of the Article III inquiry—whether
22 Plaintiff’s alleged injury is sufficiently concrete to confer standing. (Mot. at 12–13.)
23 However, Plaintiff’s allegations are more than sufficient to meet her burden. In particular,
24 Plaintiff alleges that Defendant incorrectly listed an account with Synchrony as “charged
25 off”—i.e. that Synchrony stopped attempting collections on a debt because Plaintiff was
26 unlikely to pay—rather than listing the account as closed. As a result of this inaccuracy,
27 Plaintiff has “refrain[ed] from applying for new credit or more favorable terms on
28 existing credit lines” and has experienced “undue stress and anxiety.” (Compl. ¶ 17.)

1 Undoubtedly, users of Plaintiff’s credit report may find it important that a lender
2 abandoned attempting to collect a debt from Plaintiff because any attempt was futile. *See*
3 *Spokeo III*, 867 F.3d at 1117 (holding that information about the plaintiff’s “age, marital
4 status, educational background, and employment history . . . may be important” to users
5 of a credit report). The Court thus cannot conclude that the alleged accuracy in this case
6 is “too insignificant to present a sincere risk of harm.” *Id.* Accordingly, Plaintiff’s
7 allegations are sufficient to establish Article III standing.

8 **B. Plaintiff’s FCRA Claims**

9 In the Complaint, Plaintiff brings two claims against Defendant. First, Plaintiff
10 alleges that Defendant negligently and willfully failed to “maintain and/or follow
11 reasonable procedures” when assuring the accuracy of Plaintiff’s information, in
12 violation of 15 U.S.C. § 1681e(b). (Compl. ¶ 47, 54.) Second, Plaintiff claims Trans
13 Union negligently and willfully failed to “conduct a reasonable reinvestigation” after
14 receiving her letter of dispute, as required by 15 U.S.C. § 1681i. (Compl. ¶ 48, 55.)
15 Defendant moves to dismiss Plaintiff’s claims under both sections of the FCRA.

16 **1. 15 U.S.C. § 1681e**

17 Congress enacted the FCRA to ensure fair and accurate credit reporting, to
18 promote efficiency in the banking system, and to protect consumer privacy. *Gorman v.*
19 *Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1153 (9th Cir. 2009). A prerequisite for
20 bringing a claim against a credit reporting agency under either § 1681e or § 1681i is
21 evidence of an inaccuracy in the credit report. *See Carvalho v. Equifax Info. Servs., LLC*,
22 629 F.3d 876, 890 (9th Cir. 2010); *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d
23 1329, 1333 (9th Cir. 1995) (“To make out a *prima facie* violation under § 1681e(b), a
24 consumer must present evidence tending to show that a credit reporting agency prepared
25 a report containing inaccurate information.”). An item on a credit report may be
26 inaccurately reported “because it is patently incorrect, or because it is misleading in such
27 a way and to such an extent that it can be expected to adversely affect credit decisions.”
28 *Gorman*, 584 F.3d at 1163 (quoting *Sepulvado v. CSC Credit Servs. Inc.*, 158 F.3d 890,

1 895 (5th Cir. 1998)). The FCRA does not impose strict liability on an inaccurate report,
2 and a defendant may avoid liability if it can show that it followed reasonable procedures
3 in preparing a report. *Guimond*, 45 F.3d at 1333. However, “reasonableness of the
4 procedures and whether the agency followed them will be jury questions in the
5 overwhelming majority of cases.” *Id.*

6 In its Motion, Defendant first argues that the purported inaccuracy is a legal
7 question rather than the type of factual inaccuracy that can give rise to liability under the
8 FCRA. (Mot. at 4–6.) However, taking Plaintiff’s allegations as true, that is not the case.
9 In the Complaint, Plaintiff specifically alleges that her account with Synchrony was
10 closed, rather than “charged off.” (Compl. ¶¶ 7–16.)³ As plead, Plaintiff contends that her
11 Trans Union credit report contains factual inaccuracies because she contends that her
12 account was not charged off. Accordingly, Plaintiff has met her *prima facie* burden of
13 demonstrating that her credit report contained an inaccuracy.⁴

14 Defendant next argues that Plaintiff fails to “allege and prove that the procedures
15 followed by Trans Union were unreasonable.” (Mot. at 6–7.) As this Court—and the
16 Ninth Circuit—have repeated frequently, a plaintiff need only allege that her credit report
17 contained an inaccuracy to make her *prima facie* case—and survive a motion to
18 dismiss—under § 1681e. *See Guimond*, 45 F.3d at 1333; *Neill v. Experian Info. Sols.*,
19 *Inc.*, No. CV-16-04326-PHX-JJT, 2017 WL 3838671, at *2 (D. Ariz. Sept. 1, 2017);
20 *Loomis v. U.S. Bank Home Mortg.*, 912 F. Supp. 2d 848, 855 (D. Ariz. 2012). Although
21 Defendant may well present evidence at summary judgment demonstrating that its

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23 ³ To this point, Defendant’s assertion that “Plaintiff” acknowledges that her
24 account “had an outstanding” balance blatantly misrepresents what Plaintiff alleges in the
in the Complaint. (*See* Mot. at 4.)

25 ⁴ Although Defendant offers a number of cases which it purports are applicable to
26 the Motion at hand, each case is easily distinguishable. (*See* Resp. at 5–6.) For example,
27 both *Deandrade v. Trans Union LLC*, 523 F.3d 61 (1st Cir. 2008) and *Pagazani v.*
28 *Equifax Info. Servs., LLC*, 2016 WL 2997586 (S.D. Fla. May 25, 2016) dealt with
motions for summary judgment, and thus are of limited applicability to the standard
necessary to survive a motion to dismiss. Similarly, the Court in *Hupfauer v. Citibank,*
N.A., 2016 WL 44506798 (N.D. Ill. Aug. 19, 2016) granted a motion to dismiss only after
determining, based on documents properly incorporated into the complaint, that the
CRA’s report was not inaccurate. *Id.* at *4–5.

1 procedures were reasonable, that is a question for another day. At this point, Plaintiff's
2 allegations are sufficient for the Court to infer that Defendant's procedures were
3 unreasonable.

4 Next, Defendant contends that Plaintiff fails to sufficiently plead that she suffered
5 damages as a result of Defendant's purported violation. Under the FCRA, a plaintiff may
6 recover for damages incurred as a result of "emotional distress." *Drew v. Equifax Info.*
7 *Servs., LLC*, 690 F.3d 1100, 1109 (9th Cir. 2012); *Guimond*, 45 F.3d at 1333. Here,
8 Plaintiff has plead that "she has refrain[ed] from applying for new credit" and has
9 "experienced undue stress and anxiety" as a result of Defendants violations. (Compl ¶¶
10 17, 49, 56.) Because the FCRA specifically contemplates the recovery of emotional
11 distress damages, Plaintiff's allegations are, once more, sufficient to survive Defendant's
12 Motion.⁵ *See Wheeler v. Trans Union LLC*, No. CV-17-03328-PHX-JAT, 2018 WL
13 2431876, at *4 (D. Ariz. May 30, 2018).

14 2. 15 U.S.C. § 1681i

15 Under §1681i of the FCRA, a CRA must conduct a reasonable reinvestigation
16 when a consumer disputes the accuracy of her credit report and she contacts the CRA
17 directly with her dispute. *See Acton v. Bank One Corp.*, 293 F. Supp. 2d 1092, 1097 (D.
18 Ariz. 2003). Specifically, once notified by the consumer of the potential error, the CRA
19 must reinvestigate the claim within 30 days. *Id.* at 1098. For the purpose of a motion to
20 dismiss, courts have held that a plaintiff states a claim under § 1681i when she alleges:
21 (1) that her credit report contained an inaccuracy; (2) that she notified the CRA of her
22 dispute and requested a reinvestigation; and (3) that the CRA did not remove the
23 inaccuracy. *See Neill*, 2017 WL 3838671, at *3.

24 As the Court has previously discussed, Plaintiff has sufficiently alleged that her
25 Trans Union credit report contained an inaccuracy. (Compl. ¶ 11.) Plaintiff also alleges
26 both that she notified Defendant of her dispute and that the inaccuracy remained after she
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28 ⁵ Similarly, the Court rejects Defendant's argument that Plaintiff's purported
damages are too speculative to have been caused by Defendant. (*See Mot.* at 8-9.)

1 contacted Defendant. (Compl. ¶¶ 12–13, 16.) Accordingly, Plaintiff’s Complaint states a
2 claim under §1681i.

3 **3. Willfulness**

4 Finally, Defendant moves to dismiss Plaintiff’s willfulness claims under both §
5 1681e and § 1681i, arguing that Plaintiff’s allegations are conclusory. (Mot. at 10–11.) A
6 company willfully violates the FCRA when it “knowingly or recklessly violate[s]” the
7 statute. *Shaw*, 891 F.3d at 760 (citing *Safeco*, 551 U.S. at 57). “A defendant acts in
8 reckless disregard when its action both is ‘a violation under a reasonable reading of the
9 statute’s terms’ and ‘shows that the company ran a risk of violating the law substantially
10 greater than the risk associated with a reading that was merely careless.’” *Id.* (quoting
11 *Safeco*, 551 U.S. at 69). Conditions of the mind, such as knowledge, may be alleged
12 generally at the pleading stage. Fed. R. Civ. P. 9(b).

13 In the Complaint, Plaintiff alleges that Defendant “willfully failed to maintain
14 and/or follow reasonable procedures to assure maximum possible accuracy of the
15 information it reported” and “willfully failed to conduct a reasonable reinvestigation.”
16 (Compl. ¶¶ 54-55.) Because Plaintiff may allege conditions of the mind generally,
17 Plaintiff’s allegations are sufficient to survive Defendant’s Motion.

18 **IV. CONCLUSION**

19 As recounted above, Plaintiff’s Complaint states a plausible claim for negligent
20 and willful violations of the FCRA under both § 1681e and § 1681i. Similarly, Plaintiff
21 establishes that she has Article III standing to bring her claims. Accordingly,

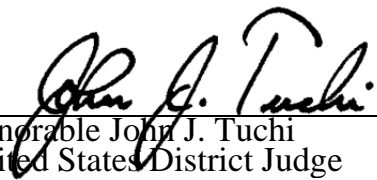
22 **IT IS THEREFORE ORDERED** denying Defendant’s Motion to Dismiss
23 (Doc. 22).

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IT IS FURTHER ORDERED that Defendant Trans Union LLC shall file an Answer to Plaintiff's Complaint no later than August 14, 2018

Dated this 24th day of July, 2018.



Honorable John J. Tuchi
United States District Judge