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**United States District Court
Central District of California**

RAINA GUSTAFSON,
Plaintiff,

v.
EXPERIAN INFORMATION
SOLUTIONS INC.; SYSTEMS &
SERVICES TECHNOLOGIES, INC.;
HSBC BANK USA NATIONAL
ASSOCIATION; DOES 1–10, inclusive,
Defendants.

Case No. 2:14-cv-01453-ODW(Ex)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
SYSTEMS & SERVICES
TECHNOLOGIES, INC.’S MOTION
TO DISMISS [14]**

I. INTRODUCTION

Plaintiff Raina Gustafson alleges that Defendant Systems & Services Technologies, Inc. (“SST”) violated myriad federal and state debt-collection laws by allegedly “double reporting” a debt. Gustafson contends that SST inaccurately reported the same \$705 debt twice, though under different names and with different account numbers, and failed to accurately conduct an investigation after receiving dispute notice from her and Defendant Experian Information Solutions Inc. Various federal-law provisions limit her ability to privately enforce her claims and preempt portions of her state-law claims. But the Court finds that she has adequately pleaded

1 the remainder of her claims. The Court therefore **GRANTS IN PART** and **DENIES**
2 **IN PART** SST’s Motion to Dismiss.¹ (ECF No. 14.)

3 **II. FACTUAL BACKGROUND**

4 SST is a loan servicing and payment processing company, which reports
5 delinquent debts to credit bureaus and is a “furnisher” under the federal Fair Credit
6 Reporting Act (“FCRA”), 15 U.S.C. §§ 1681–81x. (Compl. ¶ 2.)

7 On February 8, 2012, Gustafson obtained a copy of her Experian credit report
8 and discovered two entries for an SST account. (*Id.* ¶ 8.) The first account read
9 “SST/CIGPFICORP, Account #1970xxxxxx; Status: charged off \$705; Status Details:
10 this account is scheduled to continue on record until March 2014.” (*Id.*) The second
11 entry listed “SST/SYNOVUS, Account #403624000702xxx; Status: Closed \$705
12 written off.” (*Id.*)

13 In February 2012, September 2013, October 2013, November 2013, December
14 2013, and January 2014, Gustafson requested that Experian investigate and remove
15 one of the SST accounts that was allegedly being double reported. (*Id.* ¶ 16.)

16 Gustafson obtained subsequent credit reports on October 22, 2013, and
17 November 11, 2013, and noted the same two SST entries. (*Id.* ¶¶ 10–11.) The
18 November 2013 report further stated that the credit grantor had verified the accuracy
19 of the entries and would not engage in further investigation of Gustafson’s disputes.
20 (*Id.* ¶ 11.)

21 On February 26, 2014, Gustafson filed this action against, among others, SST,
22 alleging violations of FCRA; California’s Rosenthal Fair Debt Collection Practices
23 Act (“RFDCPA”), Cal. Civ. Code §§ 1788–88.3; the federal Fair Debt Collection
24 Practices Act (“FDCPA”), 15 U.S.C. §§ 1692–92p; and the California Consumer
25 Credit Reporting Agencies Act (“CCCRAA”), Cal. Civ. Code §§ 1785.1–85.6. (ECF
26 No. 1.) On April 23, 2014, SST moved to dismiss Gustafson’s Complaint under
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28 ¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 Federal Rule of Civil Procedure 12(b)(6). (ECF No. 14.) Gustafson timely opposed.
2 (ECF No. 17.) That Motion is now before the Court for decision.

3 III. LEGAL STANDARD

4 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable
5 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
6 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To
7 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading
8 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v.*
9 *Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to
10 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550
11 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual matter,
12 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*
13 *Iqbal*, 556 U.S. 662, 678 (2009).

14 The determination whether a complaint satisfies the plausibility standard is a
15 “context-specific task that requires the reviewing court to draw on its judicial
16 experience and common sense.” *Id.* at 679. A court is generally limited to the
17 pleadings and must construe all “factual allegations set forth in the complaint . . . as
18 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of L.A.*, 250 F.3d
19 668, 688 (9th Cir. 2001). But a court need not blindly accept conclusory allegations,
20 unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden*
21 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

22 As a general rule, a court should freely give leave to amend a complaint that has
23 been dismissed. Fed. R. Civ. P. 15(a). But a court may deny leave to amend when
24 “the court determines that the allegation of other facts consistent with the challenged
25 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well*
26 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir.1986); *see Lopez v. Smith*, 203 F.3d
27 1122, 1127 (9th Cir. 2000).

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5 **IV. DISCUSSION**

6 The Court finds that some of Gustafson’s claims are preempted by federal law
7 or limited to government enforcement. But the Court finds that Gustafson properly
8 pleaded the remaining claims.

9 **A. FCRA**

10 FCRA prohibits, among other things, “furnishers of information” from
11 providing information to a credit-reporting agency that they know or have to reason to
12 believe is inaccurate about a consumer. 15 U.S.C. § 1681s-2(a)(1)(A). If a furnisher
13 receives notice of a consumer dispute from a credit-report agency, FCRA obligates the
14 furnisher to conduct a reasonable investigation of the disputed information. § 1681s-
15 2(b)(1)(A); *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1157 (9th Cir.
16 2009) (interpreting the word “investigation” to mean a “reasonable” investigation).

17 FCRA empowers an individual to bring a private right of action against any
18 “person” who either willfully fails to comply with the Act’s requirements, § 1681n, or
19 who negligently fails to do so, § 1681o. But FCRA expressly limits a private action
20 against a furnisher to only damages arising out of a furnisher’s failure to comply with
21 the investigation requirements triggered upon a credit-reporting-agency dispute notice.
22 § 1681s-2(c)(1). That is, a consumer has no ability to bring suit against a furnisher for
23 failure to conduct a reasonable investigation when the consumer disputes the
24 information directly with the furnisher. *Id.* Enforcement of, among others, § 1681s-
25 2(a) is left to federal and state agencies and officials. § 1681s-2(d).

26 SST argues that a consumer has no private right of action against a furnisher of
27 information under 15 U.S.C. § 1681s-2(a), because enforcement is limited to
28 government agencies. To the extent that Gustafson alleges a § 1681s-2(b) failure-to-
investigate claim, SST asserts that the record is clear that SST promptly investigated
Gustafson’s dispute and reported the investigation’s results to the credit-reporting
agencies. Finally, SST contends that FCRA empowers CIGPFI as a debt purchaser
to separately report its account. SST attached a copy of Plaintiff’s credit report to its

1 Motion. SST claims that it reported the Synovus debt as charged-off, whereas it
2 reported the CIGPFI active collection account as delinquent consistent with FCRA.

3 Gustafson does not dispute that a private person may not bring her own claim
4 under § 1681s-2(a). Rather, she contends that she brings her FCRA claim under
5 § 1681s-2(b) by alleging that SST failed to properly investigate her claim after being
6 informed of the dispute by Experian. Plaintiff also disputes SST’s reliance upon her
7 credit report, arguing that SST failed to properly authenticate it and that the Court may
8 not consider it on a Rule 12(b)(6) motion. Lastly, Gustafson claims that there is no
9 authority presented that permits a furnisher to double report the same debt in the
10 manner as SST did.

11 In her Complaint, Gustafson does not actually cite to any particular FCRA
12 sections when alleging that SST violated the Act. But many of her allegations
13 bespeak a violation of § 1681s-2(a) in that SST allegedly provided inaccurate
14 information to the credit-reporting agencies. To the extent that Gustafson attempts to
15 bring these claims, she has no private right of action to enforce them. § 1681s-2(c)(1).

16 Gustafson also alleges that SST “failed to correct the errors [on her credit
17 report] and failed to undertake sufficient investigation upon being notified of the
18 errors [by Experian].” (Compl. ¶ 18.) This allegation makes out a § 1681s-2(b)
19 claim, which is subject to private enforcement by Gustafson.

20 A host of problems plague SST’s arguments that the record purportedly
21 establishes that SST properly investigated the dispute. First, the Court must accept
22 Gustafson’s factual allegations as true at this stage—including that SST failed to
23 investigate the dispute. SST may not turn this Motion to Dismiss into a mini-trial of
24 Gustafson’s FCRA claim by arguing that Plaintiff’s factual allegations are “untrue.”

25 Second, even if the Court may consider Gustafson’s credit report under the
26 incorporation-by-reference doctrine, SST wholly failed to authenticate it.² SST

27 ² SST also violated Local Rule 5.2-1 by failing to redact what appears to be Gustafson’s home
28 address. Continued failures to comply with any applicable rules will subject counsel to sanctions
within this Court’s discretion under Local Rule 83-7.

1 simply attached the report to its Motion with no accompanying declaration from a
2 person with personal knowledge of its origin and accuracy. The Court thus gives
3 short shrift to the document.

4 Finally, SST misrepresents what the report says, further straining its credibility.
5 SST states, “Here, SST/Synovus reported the debt as charged-off, whereas
6 SST/CICPFI [*sic*] reports the active collection account as delinquent.” (Mot. 7:2–3.)
7 But in reality, the credit report at Exhibit A establishes the exact opposite, which then
8 does absolutely nothing to bolster SST’s argument that FCRA entitled CIGPFI to
9 report the debt it purchased from Synovus as delinquent. (Mot. Ex. A.)

10 SST correctly points out that the Federal Trade Commission has interpreted
11 FCRA to permit a furnisher to report an account as both charged-off and delinquent if
12 both of those events occur. Statement of General Policy or Interpretation;
13 Commentary on the Fair Credit Reporting Act, 55 FR 18804-01, 18818 (May 4,
14 1990). Gustafson maintains that the double entries were not accurate and thus that
15 FCRA does not allow the reporting in the manner done by SST. But any inaccuracy
16 in reporting is not privately actionable per § 1681s-2(c)(1). So even if Gustafson were
17 correct that FCRA does not allow the two tradelines that SST included on her report,
18 she may not maintain her claim for those alleged violations.

19 The Court therefore **GRANTS** SST’s Motion **WIHTOUT LEAVE TO**
20 **AMEND** with respect to any of Gustafson’s claims for violations of § 1681s-2(a) or
21 for double reporting. The Court **DENIES** the Motion on all other FCRA grounds,
22 including violation of § 1681s-2(b).

23 **B. FDCPA**

24 Congress enacted the FDCPA to eliminate abusive debt collection practices,
25 including the harassment and abuse of consumers. 15 U.S.C. § 1692(e). “To
26 effectuate this purpose, the Act prohibits a ‘debt collector’ from making false or
27 misleading representations and from engaging in various abusive and unfair

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1 practices.” *Izenberg v. ETS Servs., LLC*, 589 F. Supp. 2d 1193, 1198 (C.D. Cal.
2 2008); 15 U.S.C. §§ 1692(d)–(f).

3 Gustafson alleges that SST violated three different FDCPA provisions:
4 §§ 1692d, 1692e, and 1692f. (Compl. ¶ 25(a)–(c).) Section 1692d prohibits a debt
5 collector from engaging in “any conduct the natural consequence of which is to
6 harass, oppress, or abuse any person in connection with the collection of a debt.”
7 Neither may a debt collector “use any false, deceptive, or misleading representation or
8 means in connection with the collection of any debt,” such as falsely representing the
9 character or legal status of the debt or threatening to take an action that cannot be
10 legally done. § 1692e. Further, the FDCPA proscribes the use of “unfair or
11 unconscionable means to collect or attempt to collect any debt,” including collecting
12 any amount not permitted by law. § 1692f.

13 Citing to *Kohut v. Trans Union LLC*, No. 04 C 2854, 2004 WL 1882239 (N.D.
14 Ill. Aug. 11, 2004), SST argues that “it is not ‘false, deceptive, or misleading’ to
15 report that a consumer failed to pay a debt after it went to collection when that
16 consumer also failed to pay the debt before it went to collection.” *Id.* at *2. SST thus
17 recapitulates its argument that double reporting—such as the two tradelines for
18 SST/Synovus and SST/CIGPFI—is not actionable under the FDCPA.

19 But Gustafson distinguishes *Kohut*, pointing out that unlike in that case, the
20 parties here dispute whether the tradelines are accurate in the first place. Gustafson
21 also cites her own case which established that a furnisher double reporting the same
22 debt could be actionable under the FDCPA. *See Morris v. Risk Mgmt. Alternatives,*
23 *Inc.*, 203 F.R.D. 336, 339 (N.D. Ill. 2001) (finding only that double reporting created a
24 common legal question sufficient for class certification).

25 SST’s reliance on *Kohut* is misplaced. In that case, the court specifically noted
26 that “the parties agree[d] that [the furnisher’s] report was accurate.” 2004 WL
27 1882239, at *2. But here, Gustafson disputes whether the two tradelines were
28 accurate. If she is correct that the double entries are not accurate, then that reporting

1 would constitute a “false, deceptive, or misleading representation” actionable under
2 the FDCPA. *See* § 1692e. SST also does not dispute Gustafson’s §§ 1692d and 1692f
3 allegations. The Court accordingly **DENIES** SST’s Motion on all FDCPA grounds.

4 **C. RFDCPA**

5 The California Legislature explicitly incorporated the FDCPA’s provisions into
6 the RFDCPA, including the proscriptions in §§ 1692d–f. Cal. Civ. Code § 1788.17.
7 SST simply reiterates its FDCPA arguments with respect to Gustafson’s RFDCPA
8 claim. Since the Court denied SST’s Motion with respect to the federal claim, the
9 Court similarly **DENIES** SST’s Motion on all RFDCPA grounds.

10 **D. CCCRAA**

11 Gustafson also alleges that SST violated the CCCRAA. The Act provides that a
12 “person shall not furnish information on a specific transaction or experience to any
13 consumer credit reporting agency if the person knows or should know the information
14 is incomplete or inaccurate.” Cal. Civ. Code § 1785.25(a). This section’s commands
15 are “nearly identical” to those in § 1681s-2(a) of FCRA. *Gorman*, 584 F.3d at 1172.

16 While FCRA expressly preempts any state requirements or prohibitions with
17 respect to the subject matter regulated under 15 U.S.C. § 1681s-2(a), Congress
18 specifically exempted California Civil Code section 1785.25(a) from preemption.
19 This exclusion works a strange result. A plaintiff may not bring a private action to
20 enforce violations relating to inaccurate information under FCRA, but she may bring
21 one on the same basis under the CCCRAA. Equally as strange, while a plaintiff may
22 bring a failure-to-investigate claim under FCRA, Congress did not exempt
23 CCCRAA’s failure-to-investigate provision from preemption. *Carvalho v. Equifax*
24 *Info. Servs., LLC*, 629 F.3d 876, 889 (9th Cir. 2010) (holding that FCRA preempts
25 section 1785.25(f) relating to failure to investigate upon receipt of dispute notice from
26 a credit-reporting agency).

27 SST argues that Gustafson’s CCCRAA claim fails with her FCRA claim and
28 that the “record” contradicts her failure-to-investigate claim. SST also points out that

1 FCRA preempts CCCRAA's attempt to regulate failures to investigate. But
2 Gustafson contends that her CCRAA claims relies upon section 1785.25(a), which
3 Congress saved from the preemption chopping block.

4 To the extent that Gustafson brings a failure-to-investigate claim under the
5 CCCRAA, FCRA preempts that claim. The Court thus **GRANTS** SST's Motion on
6 that ground **WITHOUT LEAVE TO AMEND**. But Gustafson's litany of false-
7 information allegations survives FCRA preemption and is actionable under
8 section 1785.25(a). The Court accordingly **DENIES** the Motion on this basis.

9 **V. CONCLUSION**

10 For the reasons discussed above, the Court **GRANTS IN PART** and **DENIES**
11 **IN PART** SST's Motion to Dismiss as enumerated above. (ECF No. 14.) Since the
12 Court denies leave to amend on the grounds for which it grants SST's Motion, SST
13 shall file its answer to the Complaint within 14 days.

14 **IT IS SO ORDERED.**

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16 May 21, 2014

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19 **OTIS D. WRIGHT, II**
20 **UNITED STATES DISTRICT JUDGE**