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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER SHEPARD,
Plaintiff,
v.
EQUIFAX INFORMATION
SERVICES, LLC.,
Defendant.

No. 2:17-cv-01118-KJM-CKD

ORDER

In this Fair Credit Reporting Act case, plaintiff alleges defendant repeatedly included erroneous information in plaintiff's credit report despite plaintiff's numerous attempts to correct the errors. Defendant has moved for summary judgment. For the following reasons, the court DENIES the motion.

I. BACKGROUND

Defendant Equifax Information Services, LLC ("Equifax") is a consumer reporting agency ("CRA") as defined in the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681–1681x. Undisputed Material Fact ("UMF") 1, ECF No. 48-31.¹ As a CRA, Equifax gathers information

¹ The court has determined whether a material fact is disputed by reviewing plaintiff's responses, ECF No. 48-31, to defendant's statement of undisputed material facts, ECF No. 42. Where plaintiff identifies a dispute, the court refers to the fact as a Disputed Fact ("DF").

1 about consumers from various sources, including banks, collection agencies and court records, to
2 create credit files. UMF 2. This case concerns credit reports Equifax created for plaintiff
3 Christopher Shepard (“Shepard”).

4 Equifax contends it maintains detailed procedures to ensure the consumer
5 information it reports is accurate. DF 4. These procedures include accepting credit information
6 only from data furnishers Equifax deems reasonably reliable based on Equifax’s investigations, the
7 source’s reputation and the source’s business relationship with Equifax. DF 5. Equifax receives
8 credit information from furnishers in a standard electronic format and it runs computerized quality
9 checks before adding data to its consumer database. DF 6–7. In these quality checks, Equifax
10 determines whether the data is in the proper format and whether it deviates from Equifax’s expected
11 norms based on its prior experience with the furnisher. DF 8. As relevant here, Equifax has deemed
12 Diversified Consultants, Inc. (“DCI”) a reliable source of information based on the history of its
13 relationship with DCI. DF 29.

14 Equifax also maintains policies and procedures governing its reinvestigation of
15 information consumers dispute as inaccurate. DF 9. When Equifax receives a consumer dispute,
16 it assigns the dispute a unique confirmation number, locates the consumer’s credit file and opens
17 an Automated Consumer Interview System (“ACIS”) case to track its reinvestigation process.
18 UMF 10–12. Equifax then reviews and considers all relevant information, including documentation
19 provided by the consumer. DF 13. When possible, Equifax updates its information. DF 14. But
20 when Equifax is unable to verify the accuracy of the disputed information, it notifies the data
21 furnisher of the dispute. DF 17. Equifax typically initiates such inquiries with its furnishers by
22 sending a form, referred to as an Automated Consumer Dispute Verification (“ACDV”), by email.
23 UMF 18. Through ACDVs, Equifax communicates with furnishers by using pre-defined codes and
24 narrative phrases and, when necessary, by adding additional information in a “FCRA Relevant
25 Information” field. UMF 19–20. After receiving an ACDV from Equifax, a furnisher is generally
26 required to conduct its own investigation, the results of which it reports back to Equifax. UMF 21.
27 When the reinvestigation is complete, Equifax takes necessary action and reports the results to the

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1 consumer along with a summary of the consumer’s FCRA rights, additional steps he or she may
2 take, and Equifax’s procedures used to reinvestigate the dispute. UMF 22–23.

3 Years ago, on an unspecified date, Shepard and his former wife divorced. Shepard
4 Decl., ECF No. 48-1, ¶ 2. In late 2015, Shepard closed an AT&T Wireless account, UMF 26, and
5 the outstanding AT&T bill was sent to his ex-wife and remained unpaid, Shepard Decl. ¶ 2. In
6 May 2016, the AT&T account was assigned to DCI, a debt collector, with a \$225 outstanding
7 balance. UMF 27-28; *see* ECF No. 48-4 (letter from DCI identifying DCI as “a debt collector”).
8 DCI then reported the account to Equifax as an unpaid account in collections and Equifax reported
9 the account in Shepard’s credit report. UMF 27–28. Shepard first became aware of the bill when
10 it was reported on his credit report, and he then paid the entire balance on August 9, 2016. UMF
11 33; Shepard Decl. ¶¶ 2–3; *see* Pl.’s Ex. 1, ECF No. 48-3 (AT&T Wireless statement reflecting Aug.
12 9, 2016 payment of \$225). Nonetheless, Shepard’s credit report prepared by Equifax continued to
13 report the AT&T Wireless account as a “[c]ollections” account with an “unpaid” \$225 balance,
14 though the reports noted Shepard disputed the information. Shepard Decl. ¶ 4; Pl.’s Ex. 6, ECF
15 No. 48-8 at 50² (May 25, 2017 Equifax report); Pl.’s Ex. 7, ECF No. 48-9 at 5 (May 25, 2017 three
16 credit bureau report).

17 Over the next year, Shepard made multiple unsuccessful attempts to have the correct
18 \$0 balance reflected on his Equifax report, including submitting ten disputes to Equifax, making
19 multiple phone calls to DCI, AT&T and Equifax, and submitting two disputes to the Consumer
20 Financial Protection Bureau (“CFPB”). Those disputes, as relevant here, are briefly summarized
21 below.

22 On July 8, 2016, Shepard filed his first dispute with Equifax, using Equifax’s online
23 dispute system. UMF 35. Shepard represented the account “was paid to ATT when the account
24 was closed” and requested Equifax verify its information. UMF 35–38; Pl.’s Ex. 8, ECF No. 48-
25 10. Equifax contacted DCI by ACDV that same day, and six days later, DCI employee Kylee
26 Nettles verified the \$225 balance. DF 39–40. DCI added a note to the account indicating Shepard

27 ² The court’s citations to the parties’ briefs and exhibits refer to ECF page numbers, not internal
28 pagination.

1 disputed the information reported and Equifax provided Shepard with the results of the
2 reinvestigation. UMF 41–2.³

3 On September 19, 2016, Shepard submitted a second online dispute to Equifax,
4 again disputing the balance. UMF 43–46. Shepard’s dispute report stated: “I paid this account
5 with ATT before it was sent to collections they verified on Sept 15th 2016 [sic] over the phone this
6 collections [sic] should not be on my credit. The balance is 0 and the collection should have never
7 been reported.” UMF 46. That day, Equifax again contacted DCI through ACDV, and, eleven
8 days later, DCI employee Madison Hudson verified the \$225 balance. UMF 48–49. DCI updated
9 the account to include the comment “account information disputed by consumer” and Equifax sent
10 Shepard its reinvestigation results UMF 50– 51.

11 Shepard submitted his third online dispute on December 12, 2016, claiming the
12 account was paid in August 2016. UMF 52–54. The dispute was forwarded to DCI through ACDV
13 and DCI employee Casey Burden verified the \$225 balance on December 20, 2016. UMF 57.⁴

14 On December 22, 2016, Shepard submitted a telephonic dispute with Equifax. UMF
15 60–63. Shepard explained he had contacted DCI and “they said that they will update this
16 information on his file and be deleted [sic] on his credit report” UMF 62. Shepard filed an
17 online dispute the same day. UMF 68. That day, Equifax forwarded both of Shepard’s December
18 22, 2016 disputes to DCI through ACDV. UMF 64, 71; *see* Pl.’s Ex. 12, ECF No. 48-14; Pl.’s Ex.
19 13, ECF No. 48-15.

20 On December 28, 2016, DCI employee Courtney Bryant submitted to Equifax an
21 automated universal data form (“AUD”) report, marked “AUD Control#: 82402320,” which
22 indicated Shepard’s AT&T account had “0” balance. Pl.’s Ex. 19, ECF No. 48-21; *see also* Pl.’s
23 Ex. 25, ECF No. 48-27, at 3 (Equifax designee Pamela Smith testimony explaining an AUD “is one
24 way that [a furnisher] can update [a consumer’s] account information” with a CRA). The next day,

25 ³ For every reinvestigation identified hereafter, DCI added a note indicating Shepard disputed the
26 reported information and Equifax sent Shepard the results of each reinvestigation.

27 ⁴ Plaintiff’s responses to defendant’s statement of undisputed facts repeats paragraph 57 twice.
28 Here, the court cites both paragraphs plaintiff identified as 57.

1 on December 29, 2016, DCI employee Courtney Bryant verified the \$225 balance in responding to
2 the ACDV on Shepard's December 22, 2016 telephonic dispute and, separately, the ACDV
3 concerning Shepard's December 22, 2016 online dispute. UMF 65, 72.

4 On January 12, 2017, Shepard submitted another online dispute to Equifax. UMF
5 74; *see* Pl.'s Ex. 14, ECF No. 48-16. He attached a copy of an email⁵ from DCI stating DCI
6 "requested a credit report deletion for this matter on your behalf," and providing confirmation
7 number 82402320. UMF 76; Pl.'s Ex. 14 at 4. The number 82402320 is also the "AUD Control
8 #" in the December 28, 2016 AUD that DCI employee Courtney Bryant submitted to Equifax. *See*
9 Pl.'s Ex. 19. Equifax contacted DCI through ACDV and Courtney Bryant verified the balance on
10 January 16, 2017. UMF 77-78.

11 Shepard submitted another online dispute a week later, on January 19, 2017,
12 attaching a January 19, 2017 letter from DCI to Shepard advising the account was "paid in full,"
13 but noting the letter would be invalid if the payment was returned. UMF 81, 83; Pl.'s Ex. 15, ECF
14 No. 48-17. Equifax contacted DCI through ACDV, and DCI employee Elaine Brantley verified
15 the \$255 balance as outstanding. UMF 84-85. Also on January 19, 2017, Shepard submitted a
16 dispute by facsimile to Equifax, attaching the same letter from DCI. UMF 88-89; Pl.'s Ex. 16,
17 ECF No. 48-18. DCI employee, Leesandra Arocho, verified the \$225 balance through ACDV.
18 UMF 91-92.

19 On January 26, 2017, DCI submitted a second AUD report to Equifax, reflecting a
20 "0" balance on the AT&T account. Pl.'s Ex. 20, ECF No. 48-22.

21 On February 7, 2017, Shepard submitted another dispute, this time by mail, again
22 attaching DCI's January 19, 2017 letter and an AT&T statement showing a "\$0.00" balance. UMF
23 95-96; Pl.'s Ex. 17, ECF No. 48-19. In response to Equifax's ACDV, DCI employee Leesandra
24 Arocho verified the \$225 balance. UMF 98-99.

25 On March 17, 2017, DCI submitted its third AUD report to Equifax, again reporting
26 a "0" balance on the AT&T account. Pl.'s Ex. 21, ECF No. 48-23. On May 17, 2017, DCI sent a

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28 ⁵ The date of this email is illegible in both parties' exhibits, though it responds to an earlier email
from Shepard dated December 28, 2016.

1 letter to Shepard stating the “account has been paid in full and [DCI] will no longer be servicing
2 this account.” Pl.’s Ex. 3, ECF No. 48-5. DCI further stated it “ha[d] submitted a trade line update
3 as paid to the credit reporting agencies” and provided AUD confirmation number 83510211.⁶ *Id.*
4 On May 24, 2017, Shepard submitted a new dispute to Equifax by telephone. UMF 102. In
5 response, DCI employee Elaine Brantley verified the balance through ACDV. UMF 105–06; Pl.’s
6 Ex. 18, ECF No. 48-20.

7 On May 26, 2017, Shepard filed the instant suit. ECF No. 1. In September 2017,
8 Equifax removed the AT&T account from Shepard’s credit file. DF 32.

9 II LEGAL STANDARD

10 A court will grant summary judgment “if . . . there is no genuine dispute as to any
11 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The
12 “threshold inquiry” is whether “there are any genuine factual issues that properly can be resolved
13 only by a finder of fact because they may reasonably be resolved in favor of either party.” *Anderson*
14 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

15 The moving party bears the initial burden of showing the district court “there is an
16 absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S.
17 317, 325 (1986). Then the burden shifts to the non-movant to show “there is a genuine issue of
18 material fact” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585 (1986).
19 In carrying their burdens, both parties must “cit[e] to particular parts of materials in the record . . . ;
20 or show [] that the materials cited do not establish the absence or presence of a genuine dispute, or
21 that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P.
22 56(c)(1); *see also Matsushita*, 475 U.S. at 586 (“[the non-movant] must do more than simply show
23 that there is some metaphysical doubt as to the material facts”). “Only disputes over facts that
24 might affect the outcome of the suit under the governing law will properly preclude the entry of
25 summary judgment.” *Anderson*, 477 U.S. at 247–48.

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⁶ Neither party submitted an actual AUD report bearing this confirmation number.

1 In deciding summary judgment, the court draws all inferences and views all
2 evidence in the light most favorable to the non-movant. *Matsushita*, 475 U.S. at 587–88. “Where
3 the record taken as a whole could not lead a rational trier of fact to find for the [non-movant], there
4 is no ‘genuine issue for trial.’” *Id.* at 587 (quoting *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391
5 U.S. 253, 289 (1968)). District courts should act “with caution in granting summary judgment,”
6 and have authority to “deny summary judgment in a case where there is reason to believe the better
7 course would be to proceed to a full trial.” *Anderson*, 477 U.S. at 255. A trial may be necessary
8 “if the judge has doubt as to the wisdom of terminating the case before trial,” *Gen. Signal Corp. v.*
9 *MCI Telecomms. Corp.*, 66 F.3d 1500, 1507 (9th Cir. 1995) (quoting *Black v. J.I. Case Co.*, 22
10 F.3d 568, 572 (5th Cir. 1994)), “even in the absence of a factual dispute[.]” *Rheumatology*
11 *Diagnostics Lab., Inc v. Aetna, Inc.*, No. 12-05847, 2015 WL 3826713, at *4 (N.D. Cal. June 19,
12 2015) (quoting *Black*, 22 F.3d at 572).

13 III. DISCUSSION

14 A. Reasonable Preparation Procedures

15 Under the FCRA’s reasonable procedures provision, a CRA preparing a consumer
16 report “shall follow reasonable procedures to assure maximum possible accuracy of the information
17 concerning the individual about whom the report relates.” *Shaw v. Experian Info. Sols., Inc.*, 891
18 F.3d 749, 755 (9th Cir. 2018) (quoting 15 U.S.C. § 1681e(b)) (footnote omitted). “Liability under
19 this reasonable procedures provision is predicated on the reasonableness of the credit reporting
20 agency’s procedures in obtaining credit information.” *Id.* (internal quotation marks omitted)
21 (quoting *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995)). A CRA
22 is not liable for erroneous reports if it can demonstrate it followed reasonable procedures to assure
23 maximum accuracy when preparing the credit report. *Guimond*, 45 F.3d at 1333. But “the
24 reasonableness of a [CRA’s] procedures is ‘normally a question for trial unless the reasonableness
25 or unreasonableness of the procedures is beyond question.’” *Shaw*, 891 F.3d at 755 (quoting *Cortez*
26 *v. Trans Union, LLC*, 617 F.3d 688, 709 (3d Cir. 2010)); *Guimond*, 45 F.3d at 1333 (“The
27 reasonableness of the procedures and whether the agency followed them will be jury questions in
28 the overwhelming majority of cases.”).

1 Equifax contends it is entitled to summary judgment because it deemed DCI a
2 reliable source of information based on its “history” with DCI, because Equifax runs “computerized
3 quality checks” on data before adding that data to Equifax’s database, and because “Shepard offers
4 no evidence that Equifax has reason to believe that DCI was not a reasonably reliable source of
5 information.” Mot., ECF No. 43, at 8–10. As to DCI’s reliability, Equifax provides a declaration
6 from its own Legal Support Leader, Celestina Gobin, who states, “DCI is an entity that Equifax has
7 determined to be a reliable source of information based upon the history of their relationship” and
8 “DCI did not report the Account with any other account numbers.” Def.’s Ex. O, ECF No. 42-15,
9 at ¶¶ 34-35. This is Equifax’s only evidence of DCI’s reliability.

10 On this record, a triable issue of fact remains regarding whether Equifax reasonably
11 believed DCI was a reliable furnisher of information and thus whether Equifax’s preparation
12 procedures were reasonable. Shepard’s evidence indicates DCI repeatedly submitted conflicting
13 information to Equifax, reporting Shepard’s AT&T account had a “0” balance with one report and
14 then verifying the \$225 balance as owing with the next. These conflicting reports were sometimes
15 issued only a day apart and sometimes, conceivably at least, by the same DCI representative.
16 *Compare* Pl.’s Ex. 19 at 2 (Dec. 28, 2016 DCI AUD report authorized by “Courtney Bryant”
17 reflecting a zero balance for the AT&T account), *with* Pl.’s Ex. 12 (Dec. 29, 2016 ACDV response
18 from “Courtney Bryant” verifying \$225 balance still owed). Because Equifax omitted any
19 reference to the AUDs in its opening brief, it addresses them only in reply, and unpersuasively at
20 that, arguing it is “legally entitled to rely on DCI’s reporting” and could not “have known which of
21 the conflicting information reported to Equifax was accurate” because it is not obligated to
22 “privileg[e] the AUDs over the ACDV emails.” Reply at 5. The mere fact that Equifax repeatedly
23 received conflicting information that required it to privilege some DCI information over other
24 conflicting DCI information suggests Equifax had reason to doubt DCI’s reliability.

25 Notably, all evidence of DCI’s unreliability is drawn from Equifax’s
26 reinvestigations, which Shepard contends violated 15 U.S.C. § 1681i(a)(1)(A), discussed below.
27 In persuasive decisions, courts have observed that claims challenging a CRA’s reasonable reporting
28 procedures under 15 U.S.C. § 1681e(b) differ from claims challenging a CRA’s reasonable

1 reinvestigation procedures under 15 U.S.C. § 1681i(a)(1)(A). *See, e.g., Grigoryan v. Experian Info.*
2 *Sols., Inc.*, 84 F. Supp. 3d 1044, 1069–71 (C.D. Cal. 2014). Because the latter concerns only
3 whether the CRA used reasonable procedures in obtaining credit information, courts also have
4 found “evidence of inadequacies in [a CRA’s] reinvestigation procedures under § 1681i . . . is not
5 probative of the fact that [a CRA] ha[s] violated § 1681e(b)” *Id.* (granting summary judgment
6 on reasonable preparation claim because plaintiff “failed to adduce any evidence that [furnishers]
7 are not reputable sources” despite finding a triable issue of fact as to CRA’s reinvestigation
8 procedures).

9 Here, however, Equifax argues its procedures are reasonable in part because DCI is
10 a reliable reporter, relying only on vague and conclusory references to its “history” with DCI, while
11 evidence before the court supports an inference that Equifax could or should not reasonably have
12 considered DCI a reliable source. *Cf. id.* at 1068 (“Grigoryan adduces no evidence, and does not
13 argue, that defendants had reason to believe that BOA, Sequoia, and CMI were not reputable
14 sources of information”). Moreover, as Shepard notes, Equifax produced at least two credit reports
15 after receiving the conflicting information from DCI. Opp’n, ECF No. 48, at 9–10. In light of this
16 evidence, and observing that the reasonableness of a CRA’s procedures is generally a question
17 reserved to the trier of fact, the court cannot conclude Equifax is entitled to judgment as a matter
18 of law on this claim. In sum, a reasonable jury could conclude Equifax did not “follow reasonable
19 procedures to assure maximum possible accuracy of the information concerning the individual
20 about whom the report relates.” *See Shaw*, 891 F.3d at 755. The motion is DENIED in this respect.

21 B. Reasonable Reinvestigation

22 When a consumer disputes the accuracy of his or her file with the CRA, the CRA
23 “shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed
24 information is inaccurate and record the current status of the disputed information, or delete the
25 item from the file” 15 U.S.C. § 1681i(a)(1)(A). Whether a CRA’s reinvestigation was
26 reasonable depends on the circumstances of the case. *Shaw*, 891 F.3d at 756 (citing *Gorman v.*
27 *Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1160 (9th Cir. 2009)).

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1 The record before the court precludes summary judgment on this claim. Despite
2 evidence suggesting DCI repeatedly submitted conflicting information to Equifax, nothing in the
3 record indicates Equifax’s procedures were equipped to recognize much less respond to these
4 discrepancies when Equifax reinvestigated Shepard’s disputes. For example, Shepard expressly
5 alerted Equifax to an AUD report from DCI confirming the “0” balance, but Equifax either did not
6 review this report or chose to believe DCI’s conflicting verification of the \$225 balance. *Compare*
7 *Pl.’s Ex. 14 at 4* (Jan. 12, 2017 dispute with attached DCI email confirming it requested Equifax
8 indicate a “0” balance on the account and providing report confirmation number 82402320), *with*
9 *Pl.’s Ex. 19, ECF No. 48-21 at 2* (Dec. 28, 2016 DCI AUD with “AUD Control # 82402320”), *and*
10 *Pl.’s Ex. 14 at 2* (Jan. 16, 2017 ACDV from DCI verifying \$225 owing in response to Shepard’s
11 Jan. 12, 2017 dispute). In fact, an Equifax representative testified that Equifax employees
12 conducting reinvestigations do not have access to AUDs. *Pl.’s Ex. 25 at 9*. That same
13 representative testified that AUDs are “one way that [a furnisher] can update [a consumer’s]
14 account information,” *id.* at 3, and it is not clear to the court how reinvestigation procedures
15 precluding the ability to consult AUDs can be considered reasonable.

16 Equifax appears to argue it need not consult AUDs to conduct a reasonable
17 reinvestigation, or employ any method outside the ACDV process, because that process is “far more
18 thorough and reliable” than any alternative. *Reply at 6*. But other courts have found, “where a
19 CRA is affirmatively on notice that information received from a creditor may be suspect, it is
20 unreasonable as a matter of law for the agency to simply verify the creditor’s information through
21 the ACDV process without additional investigation.” *See Bradshaw v. BAC Home Loans Servicing,*
22 *LP, 816 F. Supp. 2d 1066, 1073–74* (D. Or. 2011) (collecting cases); *see also Johnson v. MBNA*
23 *Am. Bank, NA, 357 F.3d 426, 430* (4th Cir. 2004) (“[T]he plain meaning of ‘investigation’ clearly
24 requires some degree of careful inquiry by creditors.”). *Cf. Wood v. Credit One Bank, 277 F. Supp.*
25 *3d 821, 851* (E.D. Va. 2017) (granting plaintiff summary judgment where evidence showed CRA
26 conducted only “cursory” review of disputes).

27 With evidence supporting an inference that Equifax’s reinvestigation procedures
28 were unable to account for AUDs, and gave weight to information Equifax should have known was

1 unreliable, there is a triable issue of fact as to the reasonableness of those procedures. Equifax’s
2 motion is DENIED in this respect as well.

3 C. Credit Denials

4 The FCRA permits a plaintiff to recover actual damages for a CRA’s negligent non-
5 compliance with FCRA provisions. 15 U.S.C. § 1681o(a)(1). Denial of credit is not a prerequisite
6 to recovery under this FCRA provision, and a consumer may recover actual damages for emotional
7 distress and humiliation. *Guimond*, 45 F.3d at 1333. Further, “absent some authority stating that
8 a denial of credit, and not mere credit inaccuracies, are necessary for recovery under FCRA, the
9 issue of causation should [] be[] left for a fact finder to determine.” *Id.* Nonetheless, some courts
10 have held that “to create an issue of fact as to causation, a plaintiff must produce evidence that the
11 alleged inaccurate entry was a ‘substantial factor’ in the denial of credit, adverse credit, or other
12 harm.” *See Bradshaw*, 816 F. Supp. 2d at 1075.

13 Shepard states under penalty of perjury that he “applied for and was denied credit
14 with Chase during Equifax’s inaccurate reporting of the [AT&T] Account” and “Chase informed
15 [him] that [he] was denied due to an active derogatory account on [his] credit.” Shepard Decl. ¶ 11.
16 The AT&T account was the only account in collections showing on his credit report. *Id.* Shepard
17 also states he had been saving to purchase a home and “was ready to apply for a home loan” but
18 was told by “a mortgage broker who explicitly referenced the [AT&T] Account [that] . . . [he]
19 would not be approved for a home loan until the AT&T account was updated to ‘paid.’” *Id.* ¶ 12.⁷

20 The parties submit dueling expert reports on whether Shepard’s denial of credit can
21 be attributed to the allegedly erroneous balance. *Compare* Mot. at 14–15 (summarizing Equifax
22 expert’s opinion that Equifax accurately reported the AT&T account was in collections and
23 “[w]hether a collection account shows a balance or not has no effect on a consumer’s ability to
24 obtain credit,” and arguing Shepard was likely denied credit because of other derogatory accounts
25 in his credit history), *with* Opp’n at 14 (summarizing Shepard expert’s opinion lenders often use
26 automated decision making in credit decisions and will automatically deny credit to applicants with

27 ⁷ Shepard also seeks damages for emotional distress, but Equifax clarified it does not seek
28 summary judgment on this portion of Shepard’s claim. *See* Reply at 8.

1 collection accounts and unpaid balances more than 120 days past due). Equifax also contends
2 Shepard has no admissible evidence he was denied credit by Chase and cannot rely on his
3 speculation he would have been denied a mortgage loan to establish damages. Mot. at 16–17.
4 While Shepard’s ability ultimately to establish he was denied credit by Chase and was precluded
5 from obtaining a home loan because of Equifax’s alleged misconduct is far from assured, these are
6 disputed issues and the court declines to decide them prematurely. The motion is DENIED on this
7 claim as well.

8 D. Willful Violation of FCRA

9 Certain damages are available under the FCRA only if the plaintiff shows the CRA
10 willfully failed to comply with the statute. *See* 15 U.S.C. § 1681n(a); *Safeco Ins. Co. of Am. v.*
11 *Burr*, 551 U.S. 47, 56–57 (2007). FCRA violations committed in reckless disregard of statutory
12 duties satisfy the willful violation requirement. *Safeco*, 551 U.S. at 57. Reckless disregard
13 “conduct violating an objective standard,” satisfied when a defendant’s action is both “a violation
14 under a reasonable reading of the statute’s terms, [and] shows that the company ran a risk of
15 violating the law substantially greater than the risk associated with a reading that was merely
16 careless.” *Id.* at 68–69.

17 Citing its reinvestigation of each of Shepard’s disputes, Equifax argues Shepard
18 cannot meet the willfulness showing necessary to sustain his claim. Mot. at 18. For the reasons
19 discussed above, however, a reasonable juror could find Shepard’s allegations and supporting
20 evidence, if accepted, constitute willful violations of the FCRA. The motion on this claim too is
21 DENIED.

22 IV. CONCLUSION

23 For reasons explained above, defendant’s motion is DENIED, resolving ECF No.
24 41.

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This matter is set for a final pretrial conference on May 31, 2019 at 10:00 a.m. The parties shall file the Joint Final Pretrial Conference Statement as required by the court by fourteen (14) days before.

IT IS SO ORDERED.

DATED: April 9, 2019.



UNITED STATES DISTRICT JUDGE