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 Experian Information Solutions, Inc.

13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN FRANCISCO DIVISION

17 KAMLESH BANGA,  
 18 Plaintiff,  
 19 v.  
 20 EXPERIAN INFORMATION SOLUTIONS;  
 21 KOHLS; FIRST USA, NA, and Does 1 through  
 22 10 inclusive,  
 23 Defendants.

Case No. 4:08-cv-04147-SBA

**~~PROPOSED~~ ORDER  
 GRANTING DEFENDANTS'  
 MOTIONS FOR SUMMARY  
 JUDGMENT**

Complaint Filed: August 29, 2008  
 Trial Date: None Set

1 In this action, Defendant Kohl's Department Stores ("Kohl's") filed a motion for  
2 summary judgment or, in the alternative, for summary adjudication. Defendant Experian  
3 Information Solutions also filed a summary judgment motion. Plaintiff filed papers in opposition  
4 to these motions. The Court considered all papers submitted in support of, and in opposition to,  
5 defendants' summary judgment motions. Also, on February 23, 2010, the Court conducted an  
6 extensive hearing during which defendants presented argument in favor of, and plaintiff presented  
7 argument in opposition to, defendants' motions for summary judgment.

8 At the hearing on February 23, 2010, the Court granted defendants' motions for summary  
9 judgment in their entirety for the reasons set forth below.

10 As to the summary judgment motion of Kohl's:

11 (1) The first cause of action in plaintiff's first amended complaint ("complaint") alleged  
12 "willful/negligent wrongful procurement of credit report," based on alleged violations of the Fair  
13 Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681, *et seq.* Plaintiff alleged that such violations  
14 occurred because Kohl's allegedly made two account review (or "soft") inquiries concerning  
15 plaintiff's credit after she closed her Kohl's account.

16 At the hearing, plaintiff conceded that Kohl's is entitled to summary judgment on  
17 Plaintiff's claim for a willful violation of the FCRA. Even if she had not so conceded, this Court  
18 would have summarily adjudicated this claim against her. The Court finds the reasoning of  
19 *Levine v. World Fin. Network Nat'l Bank*, 554 F.3d 1314 (11th Cir. 2009), *Wilting v. Progressive*  
20 *County Mut'l Ins. Co.*, 227 F.3d 474 (5th Cir. 2000), and *Banga v. Nat'l Credit Union*, 2009 U.S.  
21 Dist. LEXIS 93449, at \*9 (N.D. Cal. October 6, 2009) persuasive and concludes that, even if  
22 Kohl's made the inquiries concerning plaintiff's credit after she closed her account, as she  
23 alleges, this would not give rise to a "willful" claim under 15 U.S.C. § 1681n. It is not  
24 objectively unreasonable to read § 1681b(a)(3) as permitting inquiries on closed accounts.

25 (2) Kohl's is also entitled to summary judgment on plaintiff's claim for negligent  
26 violation of the FCRA under 15 U.S.C. § 1681o. In order to prove a claim for negligent violation  
27 of the FCRA, the plaintiff must demonstrate "actual damages sustained" as a result of the non-  
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1 compliance. 15 U.S.C. § 1681o. The only category of damages alleged by plaintiff in her  
2 complaint as result of the alleged negligent violation of the FCRA was “mental anguish.” (FAC ¶  
3 41.) However, on June 11, 2009, plaintiff withdrew all claims for emotional distress damages.  
4 (Docket No. 94.) As such, she cannot prove actual damages and thus lacks a viable claim under  
5 15 U.S.C. § 1681o. Even if plaintiff had evidence of actual damages, which she does not, the  
6 Court would nevertheless summarily adjudicate the negligent FCRA claim against her based on  
7 the reasoning of *Levine v. World Fin. Network Nat’l Bank*, 554 F.3d 1314 (11th Cir. 2009).  
8 “Account review” is a permissible purpose to access a consumer report, and the text of the FCRA  
9 does not distinguish between open and closed accounts. 15 U.S.C. 1681b(a)(3)(A). It is  
10 reasonable to construe “account” to encompass both open and closed accounts. *Levine*, 554 F.3d  
11 at 1318. Thus, even accepting plaintiff’s allegation that the inquiry Kohl’s made on her account  
12 was made after she attempted to close the account, the Court concludes that such conduct is not a  
13 negligent violation of the FCRA.

14 (3) As a part of her first cause of action, Plaintiff also contended that Kohl’s had violated  
15 California Civil Code Section 1785.20.1. Section 1785.20.1 deals with firm offers of credit, and  
16 requires that certain content be included in solicitations for firm offers of credit. Among other  
17 reasons, Kohl’s is entitled to summary judgment on this claim because plaintiff offered no  
18 evidence that Kohl’s had made her a firm offer of credit. At the hearing, Plaintiff conceded that  
19 Kohl’s had not made her a firm offer of credit. Indeed, her complaint does not even allege that  
20 Kohl’s made her a firm offer of a credit.

21 (4) Plaintiff’s sixth cause of action included a claim that Kohl’s violated California’s  
22 Unfair Competition Law (“UCL”), Cal. Bus. and Prof. Code § 17200 *et seq.* In order to proceed  
23 with a claim against Kohl’s under the UCL, plaintiff must show that she is entitled to restitution  
24 from Kohl’s. *Walker v. Geico Gen. Ins. Co.*, 558 F.3d 1025 (9th Cir. 2009); *Buckland v.*  
25 *Threshold Enterprises, Ltd.*, 155 Cal. App. 4th 798, 817 (2007). That is, Plaintiff must show that  
26 the alleged wrongful conduct of Kohl’s caused her to lose money or property and that Kohl’s is in  
27 possession of that money or property. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th  
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1 1134, 1149 (2003) (Under the UCL, restitution is only available for “money or property that  
2 defendants took directly from plaintiff.”) Plaintiff offered no evidence that the alleged wrongful  
3 conduct of Kohl’s caused her to lose money or property or that Kohl’s is in possession of any  
4 money or property that belongs to her. At the hearing, plaintiff conceded that Kohl’s did not have  
5 possession of any money or property that belonged to her.

6 For these reasons, Kohl’s is entitled to summary judgment on all of plaintiff’s claims  
7 against it.

8 As to Experian’s Summary Judgment Motion:

9 (1) The third cause of action in plaintiff’s complaint alleged “Experian’s Willful  
10 Wrongful Distribution of Credit Report,” based on alleged violations of the Fair Credit Reporting  
11 Act (“FCRA”), 15 U.S.C. §§ 1681, *et seq.* Plaintiff alleged that such violations occurred because  
12 Experian released her credit information for account review purposes to Kohl’s and First USA,  
13 NA (“First USA”) after she closed her accounts with these creditors.

14 At the hearing, plaintiff conceded that Experian is entitled to summary judgment on  
15 plaintiff’s claim for a willful violation of the FCRA as to the Kohl’s and First USA account  
16 review inquiries. Even if she had not so conceded, this Court would have summarily adjudicated  
17 this claim against her. The Court finds the reasoning of *Levine v. World Fin. Network Nat’l Bank*,  
18 554 F.3d 1314 (11th Cir. 2009), *Wilting v. Progressive County Mut’l Ins. Co.*, 227 F.3d 474 (5th  
19 Cir. 2000), and *Banga v. Nat’l Credit Union*, 2009 U.S. Dist. LEXIS 93449, at \*9 (N.D. Cal.  
20 October 6, 2009) persuasive and concludes that, even if Experian released her credit information  
21 for account review inquiries these accounts, as she alleges, this would not give rise to a “willful”  
22 claim under 15 U.S.C. § 1681n. It is not objectively unreasonable to read § 1681b(a)(3) as  
23 permitting inquiries on closed accounts.

24 (2) Experian is also entitled to summary judgment on plaintiff’s claim for negligent  
25 violation of the FCRA under 15 U.S.C. § 1681o regarding the release of her information for  
26 account review purposes to Kohl’s and First USA. In order to prove a claim for negligent  
27 violation of the FCRA, the plaintiff must demonstrate “actual damages sustained” as a result of  
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1 the non-compliance. 15 U.S.C. § 1681o. On June 11, 2009, plaintiff withdrew all claims for  
2 emotional distress damages. (Docket No. 94.) In addition, Plaintiff has adduced no evidence to  
3 show that she was actually damaged by Experian’s actions. As such, she cannot prove actual  
4 damages and thus lacks a viable claim under 15 U.S.C. § 1681o. Even if plaintiff had evidence of  
5 actual damages, which she does not, the Court would nevertheless summarily adjudicate the  
6 negligent FCRA claim against her based on the reasoning of *Levine v. World Fin. Network Nat’l*  
7 *Bank*, 554 F.3d 1314 (11th Cir. 2009). “Account review” is a permissible purpose to access a  
8 consumer report, and the text of the FCRA does not distinguish between open and closed  
9 accounts. 15 U.S.C. § 1681b(a)(3)(A). It is reasonable to construe “account” to encompass both  
10 open and closed accounts. *Levine*, 554 F.3d at 1318. Thus, the Court concludes that Experian’s  
11 release of her credit information for account review purposes to her former creditors was not  
12 impermissible under 15 U.S.C. § 1681b(a)(3)(A) and therefore is not a negligent violation of the  
13 FCRA.

14 (3) Plaintiff’s complaint also alleges that Experian violated the FCRA both negligently  
15 and willfully when its employee provided a declaration on behalf of World Savings and Loan  
16 Association (“World Savings”) motion for summary judgment in an Alameda County Superior  
17 Court case in July 2007. The Court finds no evidence that Experian “sold” her credit information  
18 to World Savings as alleged in paragraph 35 of plaintiff’s complaint. Plaintiff conceded at the  
19 hearing that her objection to the declaration was overruled by the Alameda County Superior  
20 Court on the grounds that World Savings was legally entitled to the information contained in the  
21 declaration. The Court finds that this issue was actually decided and determined by a valid final  
22 judgment by the Alameda County Superior Court in granting World Savings’ Motion for  
23 Summary Judgment. Accordingly, the Court concludes that Plaintiff is collaterally estopped from  
24 raising this issue against Experian in this lawsuit. *Arizona v. California*, 530 U.S. 392, 414  
25 (2000). Plaintiff’s complaint also alleges that Experian breached its settlement agreement from  
26 her previous case against Experian. The Court finds nothing in the settlement agreement that  
27 would proscribe Experian’s employee from making such a declaration.  
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1 (4) Plaintiff's fifth cause of action brings claims against Experian for "Willful/Negligent  
2 Sale of Credit Report For Promotional Purposes." Plaintiff settled her previous lawsuit against  
3 Experian and dismissed the action with prejudice pursuant to a written settlement agreement on  
4 April 23, 2007. Therefore, any of plaintiff's claims arising before that date are barred by the  
5 doctrine of claim preclusion. *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1051 (9th Cir.  
6 2005); *Concha v. London*, 62 F.3d 1493, 1507-08 (9th Cir. 1995). Plaintiff conceded at the  
7 hearing that all her claims under her fifth cause of action relate to conduct occurring prior to April  
8 23, 2007 and that her fifth cause of action was therefore barred. Accordingly, the Court  
9 concludes that plaintiff's fifth cause of action against Experian is barred by the doctrine of claim  
10 preclusion.

11 (5) Plaintiff's sixth cause of action included a claim that Experian violated California's  
12 Unfair Competition Law ("UCL"), Cal. Bus. and Prof. Code § 17200 *et seq.* In order to proceed  
13 with a claim against Experian under the UCL, plaintiff must show injury in fact that entitles her to  
14 restitution from Experian. *Walker v. Geico Gen. Ins. Co.*, 558 F.3d 1025 (9th Cir. 2009);  
15 *Buckland v. Threshold Enterprises, Ltd.*, 155 Cal. App. 4th 798, 817 (2007). That is, Plaintiff  
16 must show that Experian's alleged wrongful conduct caused her to lose money or property and  
17 that Experian is in possession of that money or property. *Korea Supply Co. v. Lockheed Martin*  
18 *Corp.*, 29 Cal. 4th 1134, 1149 (2003) (Under the UCL, restitution is only available for "money or  
19 property that defendants took directly from plaintiff.") There is no evidence in the record that  
20 Experian caused plaintiff to lose money or property. Plaintiff conceded at the hearing that her  
21 UCL claims against Experian do not ask for restitution, but for disgorgement of profits relating to  
22 Experian's sale of her credit information. (Complaint ¶82). Plaintiff's request for disgorgement  
23 of these profits is non-restitutionary in nature, and is not recoverable under the UCL. *See Korea*  
24 *Supply Co, supra*, at 1148-49 (2003).

25 For these reasons, Experian is entitled to summary judgment on all of plaintiff's claims  
26 against it.

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IT IS SO ORDERED.

Dated: 3/17/10



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