

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 MARPU VENUGOPAL,

No. C 12-2452 CW

5 Plaintiff,

ORDER DENYING
MOTION TO DISMISS
(Docket No. 29)

6 v.

7 CITIBANK, NA,

8 Defendant.

9 _____/

10 Defendant Citibank, NA moves to dismiss Plaintiff Marpu
11 Venugopal's first amended complaint (1AC) for failure to state a
12 claim. Plaintiff opposes the motion. After considering the
13 parties' submissions and oral argument, the Court denies
14 Defendant's motion.¹

15 BACKGROUND

16 On January 22, 2013, Plaintiff filed a 1AC alleging that
17 Defendant reported inaccurate information about his finances to
18 various credit reporting agencies. 1AC ¶¶ 12-20. Specifically,
19 Plaintiff claims that Defendant reported an outstanding debt of
20 \$197,466 even though that debt had been discharged in a June 2009
21 bankruptcy proceeding. Id.

22 According to the 1AC, Plaintiff first learned of the
23 inaccuracy on May 2, 2011, when he received a credit report
24 claiming that he still owed an outstanding debt to Defendant. Id.
25 Three days later, on May 5, Plaintiff sent letters to the three

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27 ¹ The Court indicated at the hearing that it would grant
28 Defendant's motion with leave to amend. However, after further
consideration of the parties' papers, the Court finds that further
amendment is unnecessary.

1 credit reporting agencies who compiled the report -- Experian,
2 Equifax, and TransUnion -- to dispute the outstanding debt. Id.
3 The letters requested that the agencies conduct "a formal, full,
4 and complete investigation of the information [Defendant]
5 furnished" to the agencies about his finances. Id. ¶ 16.
6 Although Plaintiff himself never contacted Defendant to dispute
7 the debt, he alleges that Experian, Equifax, and TransUnion "sent
8 notice of his dispute" to Defendant. Id.

9 Two weeks after writing to the credit reporting agencies,
10 Plaintiff requested new credit reports to confirm that the
11 misreported debt had been removed. He has attached excerpts from
12 four of these credit reports to his 1AC. Id. ¶¶ 17-20, Ex. A.
13 Plaintiff concedes that three of these four reports show that
14 Defendant properly reported the discharge of his debt to Equifax
15 and TransUnion.² Id. ¶ 17. He asserts, however, that the fourth
16 report provides documentation of Defendant's reporting failure.

17 That report, issued by Experian on May 17, 2011, displays an
18 outstanding debt of zero dollars and notes that Plaintiff's
19 previous debt to Defendant was "included in Chapter 7 Bankruptcy
20 on June 23, 2009." Id., Ex. B, at 1. But the next page of the
21 report includes a debt timeline indicating that Plaintiff owed
22 Defendant an outstanding debt of \$197,466 between May 2009 and
23 March 2011. Id. at 2. Because the debt timeline does not refer
24 to his 2009 bankruptcy, Plaintiff alleges that the timeline shows
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27 ² Plaintiff initially argued that two of the four reports contained
28 evidence of Defendant's alleged reporting failures but conceded at the
hearing that only one report actually supports his allegations here.

1 that Defendant "re-reported the disputed overdue payments" after
2 he initiated his dispute with Experian. Id. ¶ 18.

3 Based on this report, Plaintiff asserts that Defendant
4 misreported his debt to Experian in violation of the Fair Credit
5 Reporting Act (FCRA), 15 U.S.C. § 1681s-2(b); the Consumer Credit
6 Reporting Agencies Act (CCRAA), Cal. Civ. Code § 1785.25; and the
7 Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200. Id.
8 ¶¶ 24-65.

9 LEGAL STANDARD

10 A complaint must contain a "short and plain statement of the
11 claim showing that the pleader is entitled to relief." Fed. R.
12 Civ. P. 8(a). On a motion under Rule 12(b)(6) for failure to
13 state a claim, dismissal is appropriate only when the complaint
14 does not give the defendant fair notice of a legally cognizable
15 claim and the grounds on which it rests. Bell Atl. Corp. v.
16 Twombly, 550 U.S. 544, 555 (2007). In considering whether the
17 complaint is sufficient to state a claim, the court will take all
18 material allegations as true and construe them in the light most
19 favorable to the plaintiff. NL Indus., Inc. v. Kaplan, 792 F.2d
20 896, 898 (9th Cir. 1986). However, this principle is inapplicable
21 to legal conclusions; "threadbare recitals of the elements of a
22 cause of action, supported by mere conclusory statements," are not
23 taken as true. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
24 (citing Twombly, 550 U.S. at 555). Although the court is
25 typically confined to consideration of the allegations in the
26 pleadings, when the complaint is accompanied by attached
27 documents, such documents are deemed part of the complaint and may
28 be considered in evaluating the merits of a Rule 12(b)(6) motion.

1 Corp., 282 F.3d 1057, 1059 (9th Cir. 2002) (describing furnisher's
2 duties under the FCRA). If the furnisher fails to carry out any
3 of these duties, the consumer who initiated the dispute may sue
4 the furnisher. 15 U.S.C. § 1681o; Nelson, 282 F.3d at 1059.

5 Here, Plaintiff asserts that Defendant breached its FCRA
6 duties by failing to notify Experian that his debt had been
7 discharged in a prior bankruptcy proceeding. As noted above, this
8 allegation is based entirely on the May 17, 2011 credit report
9 attached to Plaintiff's 1AC.

10 The May 17, 2011 credit report issued by Experian expressly
11 states that Plaintiff's debt to Defendant was "included in [his]
12 Chapter 7 Bankruptcy on June 23, 2009." 1AC, Ex. B, at 1.
13 However, another section of the credit report -- the debt
14 timeline -- indicates that Plaintiff owed a debt to Defendant
15 between May 2009 and March 2011. Construed in the light most
16 favorable to Plaintiff, this report supports Plaintiff's claim
17 that Citibank continued to misreport Plaintiff's debt history even
18 after Plaintiff initiated his dispute with Experian. Accordingly,
19 he has stated a valid claim under the FCRA.

20 B. Violations of the CCRAA (Second Cause of Action)

21 The CCRAA prohibits "furnish[ing] information on a specific
22 transaction or experience to any consumer credit reporting agency
23 if the person knows or should know the information is incomplete
24 or inaccurate." Cal. Civ. Code § 1785.25(a). The CCRAA imposes
25 civil liability for a broader range of conduct than the FCRA,
26 Mortimer, 2012 WL 3155563, at *5 ("Unlike the FCRA, the CCRAA
27 includes a private right of action to enforce the prohibition
28 against supplying incomplete or inaccurate consumer credit

1 information.”). Because Plaintiff has alleged sufficient facts to
2 support his FCRA claim, he has also alleged sufficient facts to
3 support his CCRAA claim.

4 C. Violations of the UCL (Third Cause of Action)

5 Plaintiff’s UCL claim is based on violations of the FCRA and
6 CCRAA. Because both of those claims survive, so, too, does his
7 UCL claim.

8 CONCLUSION

9 For the reasons set forth above, the Court DENIES Defendant’s
10 motion to dismiss (Docket No. 29). Defendant must file its answer
11 within twenty-one days of this order.

12 IT IS SO ORDERED.

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14 Dated: April 3, 2013

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CLAUDIA WILKEN
United States District Judge