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

JEREMY FAIR, No. C 16-5712 CW
Plaintiff, (Docket No. 48)

v.

EXPERIAN INFORMATION SOLUTIONS,
INC., et al.,
Defendants;

STEVEN DAHLEN, No. C 16-5714 CW
Plaintiff, (Docket No. 19)

v.

EXPERIAN INFORMATION SOLUTIONS,
INC., et al.,
Defendants;

PHILLIP MARINO, No. C 16-6367 CW
Plaintiff, (Docket No. 10)

v.

EXPERIAN INFORMATION SOLUTIONS,
INC., et al.,
Defendants;

AARON SMITH, No. C 16-6382 CW
Plaintiff,

v.

EXPERIAN INFORMATION SOLUTIONS,
INC., et al.,
Defendants;

1 JOSHUA HEATH,

No. C 17-418 CW

2 Plaintiff,

3 v.

4 EXPERIAN INFORMATION SOLUTIONS,
INC., et al.,

5 Defendants.

7 ORDER ON MOTIONS
8 TO DISMISS

9
10 Before the Court are multiple motions to dismiss.¹ In
11 Dahlen, No. 16-cv-5714, Defendant Experian Information Solutions,
12 Inc. moves to dismiss (Docket No. 19). Dahlen has filed an
13 opposition and Experian has filed a reply. In Marino, No. 16-cv-
14 6367, Defendant RoundPoint Mortgage Servicing Corporation moves to
15 dismiss (Docket No. 10). Marino has filed an opposition and
16 RoundPoint has filed a reply. After these cases were
17 consolidated, Experian also moved to dismiss Marino's Complaint,
18 simply incorporating by reference the motions to dismiss that it

19
20 ¹ At the hearing on these motions, Plaintiffs' attorney moved
21 to dismiss Fair, No. 16-cv-5712, with prejudice, terminating
22 motions to dismiss filed by Defendants Experian Information
23 Solutions, Inc. (Docket No. 20), Equifax, Inc. (Docket No. 23) and
24 Verizon Wireless Services, LLC (Docket No. 36) in that case;
25 Smith, No. 16-cv-6382, was also dismissed with prejudice,
26 terminating a motion to dismiss filed by Defendant Bank of
27 America, N.A. (Docket No. 28), rendering moot Bank of America's
28 Request for Judicial Notice (Docket No. 29) in that case, and
terminating the motion to dismiss filed by Experian against Smith
in Fair (Docket No. 48). Heath filed his Complaint on January 26,
2017, and it was consolidated on February 2. On March 22, Heath
settled with Defendant USCB, Inc., leaving only Experian as a
Defendant. Experian's response to Heath's Complaint is currently
due April 3.

1 filed in Fair and Dahlen (Docket No. 48). Having considered the
2 parties' papers and oral argument, the Court GRANTS Defendants
3 Experian and RoundPoint's Motions to Dismiss and grants leave to
4 amend.

5 BACKGROUND

6 The Complaints of Plaintiffs Dahlen and Marino are nearly
7 identical and the Court summarizes their allegations here. Dahlen
8 filed for Chapter 13 bankruptcy in October 2012 and Marino did so
9 in June 2014. Chapter 13 of the Bankruptcy Code allows
10 individuals receiving regular income to obtain relief from their
11 debts under a repayment plan that, if confirmed and fully carried
12 out, discharges the individual's debts according to the plan.

13 Bullard v. Blue Hills Bank, 135 S. Ct. 1686, 1690 (2015).

14 Dahlen's plan was confirmed in January 2013 and Marino's plan was
15 confirmed in August 2014. Neither Plaintiff alleges that he has
16 successfully paid off his debts or that his debts have been
17 discharged. Dahlen alleges that, under his plan, unsecured
18 creditors are allowed a zero percent disbursement of their filed
19 claims; Marino alleges 10.22 percent.

20 Both Plaintiffs ordered a three-bureau credit report from
21 Experian in March 2016. Dahlen noticed that six different account
22 descriptions on his report contained "inaccurate, misleading, or
23 incomplete information that did not comport with credit reporting
24 industry standards" and, specifically, that the documents
25 "continued to report Plaintiff's accounts with past due balances,"
26 inaccurate balances, or accounts in collections or charged off.
27 Dahlen, No. 16-cv-5714, Docket No. 1, Compl. ¶ 93. Marino noticed
28 that three different account descriptions on his report stated

1 past due or inaccurate balances. Marino, No. 16-cv-6367, Docket
2 No. 1, Compl. ¶ 106.

3 Both Plaintiffs disputed these alleged inaccuracies by mail
4 with the three consumer reporting agencies (CRAs) Experian,
5 Equifax, and TransUnion, LLC. Both Plaintiffs' letters stated
6 that they had filed for bankruptcy and that their creditors were
7 "not reporting the bankruptcy accurately or worse not at all;"
8 "requested each Creditor investigate the proper way to report
9 Plaintiff's bankruptcy;" and noted that they believed that after
10 they filed for bankruptcy their accounts should not be reported
11 with past due balance or any late payments, or as charged off,
12 sold or transferred. Dahlen, No. 16-cv-5714, Docket No. 1, Compl.
13 ¶ 95; Marino, No. 16-cv-6367, Docket No. 1, Compl. ¶ 108. Both
14 Plaintiffs allege that each CRA received their dispute letters and
15 forwarded the information to each data furnisher or, in the
16 alternative, that the CRAs did not forward their disputes.

17 Later in 2016, both Plaintiffs ordered a second credit report
18 to ensure that their accounts had been updated. Dahlen did so in
19 July and Marino did so in September. Dahlen "was pleased to
20 notice a significant amount of the inaccuracies had been updated
21 or removed" in his second report. Dahlen, No. 16-5714, Compl.
22 ¶ 98. His Equifax score had risen sixty-eight points and his
23 TransUnion score had risen seventy-six points. Marino does not
24 specify whether his score changed. However, some of the alleged
25 inaccuracies in the first reports were still present in the
26 second. Dahlen alleges his second report included a debt owed to
27 Defendant Wells Fargo Bank, N.A. as charged off, even though Wells
28 Fargo failed to file a proof of claim in his bankruptcy proceeding

1 and the trustee accordingly would not pay Wells Fargo. He alleges
2 Wells Fargo did not comply with the Metro-2 industry standard by
3 reporting this debt as charged off. Marino alleges that in his
4 second report RoundPoint inaccurately reported a "failure to pay"
5 on his account in the twenty-four month payment history even
6 though he "has never missed a payment to Defendant." Marino, No.
7 16-cv-6367, Docket No. 1, Compl. ¶ 111. He also asserts that
8 RoundPoint did not comply with the Metro-2 industry standard by
9 reporting a failure to pay.

10 LEGAL STANDARD

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

26 When granting a motion to dismiss, the court is generally
27 required to grant the plaintiff leave to amend, even if no request
28 to amend the pleading was made, unless amendment would be futile.

1 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911
2 F.2d 242, 247 (9th Cir. 1990). In determining whether amendment
3 would be futile, the court examines whether the complaint could be
4 amended to cure the defect requiring dismissal "without
5 contradicting any of the allegations of [the] original complaint."
6 Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990).

7 DISCUSSION

8 Both Plaintiffs bring two causes of action, one under the
9 Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq.,² and
10 one under the California Consumer Credit Reporting Agencies Act
11 (CCRAA), California Civil Code section 1785.1 et seq. Dahlen and
12 Marino bring the FCRA claim against their respective creditors,
13 Wells Fargo and RoundPoint (Creditor Defendants). Dahlen also
14 brings a FCRA claim against Experian and Equifax, and Marino
15 brings it against Experian (CRA Defendants). Both Plaintiffs
16 bring their CCRAA claim against only their respective Creditor
17 Defendants. Wells Fargo answered Dahlen's Complaint. Equifax has
18 neither moved to dismiss Dahlen's Complaint nor answered it.

19 Both Plaintiffs' claims as described in their Complaints
20 depend primarily on the legal theory that it is inaccurate under
21 the FCRA and the CCRAA to report a consumer's delinquent debts
22 after the consumer's bankruptcy plan has been confirmed. However,
23 "courts in this district have consistently held that it is not
24 misleading or inaccurate to report delinquent debts that have not
25 been discharged." Blakeney v. Experian Info. Sols., Inc., 2016 WL

27 ² All citations to U.S. Code sections are to Title 15 unless
28 otherwise stated.

1 4270244, at *5 (N.D. Cal.) (collecting cases); see also Jaras v.
2 Experian Info. Sols., Inc., 2016 WL 7337540, at *3 (N.D. Cal.);
3 Mortimer v. Bank of Am., Nat'l Ass'n, 2013 WL 1501452, at *4 (N.D.
4 Cal.). “[E]ven if a confirmation order constitutes a final
5 judgment, it constitutes a final judgment only as to ‘the manner
6 in which the debtor will discharge his financial obligations,’ not
7 the legal validity of the debt.” Jaras, 2016 WL 7337540, at *4
8 (citation omitted); see also Mestayer v. Experian Info. Sols.,
9 Inc., 2016 WL 631980, at *3 (N.D. Cal.); Biggs v. Experian Info.
10 Sols., Inc., 2016 WL 5235043, at *2 (N.D. Cal.); Adkins v.
11 Experian Info. Sols., Inc., 2016 WL 6841700, at *2 (N.D. Cal.).
12 Furthermore, “[i]f a debtor fails to comply with the Chapter 13
13 plan, the debtor's bankruptcy petition may be dismissed and the
14 debtor will then owe the entirety of the debt.” Jaras, 2016 WL
15 7337540 at *4 (citing 11 U.S.C. § 1307(c)(6)). “While it might be
16 good policy in light of the goals of bankruptcy protection to bar
17 reporting of late payments while a bankruptcy petition is pending,
18 neither the bankruptcy code nor the FCRA does so.” Mortimer v. JP
19 Morgan Chase Bank, Nat'l Ass'n, 2012 WL 3155563, at *3 (N.D.
20 Cal.).

21 Both Plaintiffs also point out that reporting a delinquency
22 during the pendency of a bankruptcy proceeding violates certain
23 credit industry reporting standards. However, neither Plaintiff
24 alleges that this is inherently inaccurate under the FCRA or
25 provides any authority to that effect, and case law indicates the
26 contrary. See Mestayer, 2016 WL 631980, at *4 (finding CCCRA
27 inaccurate reporting claim failed in part because plaintiff
28 “failed to point to any authority indicating that a failure to

1 comply with an industry standard is a failure to comply with the
2 law"); Mortimer v. Bank of Am., Nat'l Ass'n, 2013 WL 1501452, at
3 *12; Giovanni v. Bank of Am., Nat'l Ass'n, 2013 WL 1663335, at *6
4 (N.D. Cal.).

5 Because the CCRAA is substantially based on the FCRA,
6 judicial interpretation of the latter is persuasive as to the
7 former, and the rule that it is not inaccurate to report
8 delinquent debts prior to discharge applies in the CCRAA context.
9 Blakeney, 2016 WL 4270244, at *6. Accordingly, to the extent
10 Plaintiffs' claims rely on this theory they fail as a matter of
11 law.

12 At the hearing, Plaintiffs' counsel explained that the only
13 inaccuracy Dahlen now wishes to allege is a failure to report the
14 fact of his bankruptcy. Courts in this district have indicated
15 that this may constitute an inaccuracy under the FCRA. See Doster
16 v. Experian Info. Sols., Inc., 2017 WL 264401 at *6 (N.D. Cal.);
17 Connors v. Experian Info. Sols., Inc., 2017 WL 168493, at *5 (N.D.
18 Cal.); Keller v. Experian Info. Sols., Inc., 2017 WL 130285, at *8
19 (N.D. Cal.); Devincenzi v. Experian Info. Sols., Inc., 2017 WL
20 86131 (N.D. Cal.). Counsel conceded that Marino does not allege
21 that RoundPoint failed to report the fact of his bankruptcy; his
22 theory is an inaccuracy unrelated to his bankruptcy. It is not
23 clear whether Marino wishes to allege that Experian failed to
24 report the fact of his bankruptcy.

25 I. Fair Credit Reporting Act

26 A. Defendants' State of Mind

27 The FCRA creates a private right of action only for willful
28 or negligent noncompliance with its requirements. §§ 1681n

1 (willful), or (negligent); Gorman v. Wolpoff & Abramson, LLP, 584
2 F.3d 1147, 1154 (9th Cir. 2009). A plaintiff may recover actual
3 or statutory damages, as well as punitive damages and attorneys'
4 fees, for willful noncompliance, § 1681n, but only actual damages
5 for negligent noncompliance, § 1681o.

6 1. Willfulness

7 A plaintiff may demonstrate "willfulness" by showing a
8 "reckless disregard" of statutory duty. Safeco Ins. Co. of Am. v.
9 Burr, 551 U.S. 47, 56-60 (2007). Willfulness "may be alleged
10 generally." Fed. R. Civ. P. 9(b). As noted above, both
11 Plaintiffs plead generally that all Defendants acted willfully or
12 at least recklessly.

13 Marino adequately pleads that Creditor Defendant RoundPoint
14 acted willfully and RoundPoint does not challenge Marino's
15 Complaint on this basis.

16 Both Plaintiffs adequately plead that CRA Defendant Experian
17 acted willfully. Experian argues that Plaintiffs' allegations
18 rely on the legal theory rejected above and accordingly do not
19 allege that its reporting was actually inaccurate, let alone
20 willfully so. Experian further argues that even if Plaintiffs
21 were correct that it was reporting inaccurately, under Safeco they
22 would need to show that it relied on an "objectively unreasonable"
23 reading of the FCRA to show a reckless disregard of the statutory
24 requirements. Safeco, 551 U.S. at 69-70. However, as noted, both
25 Plaintiffs plead that CRA Defendants simply did not send all
26 relevant information to furnishers in response to the Plaintiffs'
27 disputes, a facial violation of the requirement in § 1681i(a)(2)
28 that CRAs notify furnishers of consumers' disputes. Failure to

1 send notice of the dispute to furnishers would also constitute a
2 straightforward violation of the reinvestigation requirement in
3 § 1681i(a)(1) because one of the basic elements of a
4 reinvestigation is to notify furnishers of a dispute. See White
5 v. Trans Union, LLC, 462 F. Supp. 2d 1079, 1083 (C.D. Cal. 2006).
6 Thus, both Plaintiffs' allegations that Experian failed to forward
7 their disputes to the furnishers is alone sufficient to imply that
8 any such failure was a willful violation of both § 1681i(a)(1) and
9 § 1681i(a)(2). See King v. Bank of America, Nat'l Ass'n, 2012 WL
10 4685993, at *6 (N.D. Cal.). However, neither Plaintiff pleads
11 sufficient facts to support an inference that Experian did fail to
12 notify furnishers of Plaintiffs' disputes.

13 Accordingly, both Plaintiffs' claims against Experian of
14 willful noncompliance under § 1681n must be dismissed with leave
15 to amend to reassert the claims supported by sufficient factual
16 allegations. And although Marino adequately plead Roundpoint's
17 willfulness, his claim against RoundPoint must be dismissed for
18 the reasons set forth below.

19 2. Negligence

20 Because a plaintiff may only recover actual damages for
21 negligent noncompliance, § 1681o, courts have "required a
22 plaintiff to plead actual damages in order to allege an FCRA claim
23 based on a negligent violation." Mortimer v. Bank of Am., Nat'l
24 Ass'n, 2013 WL 1501452, at *9 (collecting cases).

25 Both Plaintiffs plead that as a "direct and proximate result
26 of Defendants' willful and untrue communications" they have
27 suffered "actual damages including but not limited to inability to
28 properly reorganize under Chapter 13, reviewing credit reports

1 from all three consumer reporting agencies, time reviewing reports
2 with counsel, sending demand letters, diminished credit score, and
3 such further expenses in an amount to be determined at trial.”
4 Dahlen, No. 16-cv-5714, Docket No. 1, Compl. ¶ 136; Marino, No.
5 16-cv-6367, Docket No. 1, Compl. ¶ 149.

6 Both Plaintiffs have alleged sufficient actual damages under
7 the FCRA. In Saenz v. Trans Union, LLC, 621 F. Supp. 2d 1074,
8 1085 (D. Or. 2007), the plaintiff had “requested copies of his
9 credit report in order to ascertain whether Trans Union had
10 removed the disputed information, and incurred costs for copying
11 and faxing the documentary evidence he provided in connection with
12 his disputes.” Id. at 1084. The court found, “These out-of-
13 pocket costs constitute cognizable economic damages for FCRA
14 purposes.” Id. Here, both Plaintiffs plead that they ordered
15 second credit reports, spent time reviewing them with counsel, and
16 spent time drafting their dispute letters; the first and third of
17 these allegations are supported by their separate factual
18 pleadings. These alleged damages are sufficient to state a claim
19 under the FCRA.

20 Plaintiffs’ other two damages allegations--inability to
21 reorganize and diminished credit--add nothing. Neither Plaintiff
22 explains what sort of injury it is to be unable to “properly”
23 reorganize under Chapter 13. From Plaintiffs’ claim of diminished
24 credit scores, the Court could infer diminished access to credit.
25 And an actual denial of credit is not a prerequisite to recovery
26 under FCRA. Guimond v. Trans Union Credit Info. Co., 45 F.3d
27 1329, 1333 (9th Cir. 1995). Nonetheless, both Plaintiffs’
28 allegations of diminished access are conclusory at best. As noted

1 above, Dahlen pleads that his credit score improved between his
2 first and second reports, and Marino does not allege that his
3 score was affected. They simply do not plead sufficient facts
4 from which the Court can infer that this damage took place and was
5 the result of Defendants' actions.

6 In sum, both Plaintiffs adequately plead they have suffered
7 actual damages necessary to support a private right of action
8 under § 1681o.

9 B. Furnishers' Duties Under § 1681s-2(b)

10 The "FCRA imposes some duties on the sources that provide
11 credit information to CRAs, called 'furnishers' in the statute."
12 Gorman, 584 F.3d at 1153 (quoting Safeco, 551 U.S. at 52).
13 Creditor Defendant RoundPoint moves to dismiss Marino's claims
14 against it.³ The FCRA provides that, after receiving a notice of
15 dispute from a CRA, the furnisher shall:

- 16 (A) conduct an investigation with respect to the disputed
information;
- 17 (B) review all relevant information provided by the [CRA]
18 pursuant to section 1681i(a)(2) . . . ;
- 19 (C) report the results of the investigation to the [CRA];
- 20 (D) if the investigation finds that the information is
incomplete or inaccurate, report those results to all
21 other [CRAs] to which the person furnished the
information . . . ; and
- 22 (E) if an item of information disputed by a consumer is found
to be inaccurate or incomplete or cannot be verified
23 after any reinvestigation under paragraph (1) . . . (i)
24 modify . . . (ii) delete [or] (iii) permanently block the
reporting of that item of information [to the CRAs].

25
26 ³ As mentioned, Wells Fargo has not moved to dismiss Dahlen's
27 Complaint; however, Dahlen's claims against Wells Fargo suffer
28 from some of the same deficiencies as Marino's claims against
RoundPoint.

1 § 1681s-2(b)(1); see also Gorman, 584 F.3d at 1154.

2 Marino alleges that RoundPoint violated § 1681s-2(b) in two
3 ways: first, by failing to conduct a reasonable investigation into
4 the information Marino disputed, and second, by re-reporting
5 inaccurate information.

6 1. Reasonable Investigation Into Disputed
7 Information

8 "To state a claim under the FCRA against the Defendants as a
9 furnisher of credit information, the Plaintiff must allege that:
10 (1) he contacted the CRA; (2) the CRA pursued the claim; and (3)
11 the CRA contacted the Defendants regarding the dispute, triggering
12 the Defendants' duty to investigate." Mortimer v. Bank of Am.,
13 Nat'l Ass'n, 2013 WL 1501452, at *8 (citation omitted). Whether
14 an investigation "conducted by a furnisher in response to a
15 consumer's notice of dispute is reasonable depends in large part
16 on the allegations provided to the furnisher by the credit
17 reporting agency." Gorman, 584 F.3d at 1160 (citation and
18 alterations omitted).

19 As discussed above, Marino alleges that his dispute letter
20 challenged the manner in which his bankruptcy was being reported,
21 which does not allege an actual inaccuracy. He also alleges that
22 he asserted in his dispute letter that some accounts may not have
23 reported the fact of his bankruptcy at all. As discussed above,
24 this may constitute an inaccuracy under the FCRA. However, Marino
25 does not plead that his letter specified that RoundPoint was
26 failing to report the fact of his bankruptcy. Marino does not
27 allege that his dispute letter alleged other inaccuracies,
28 specifically, his payments to RoundPoint.

1 However, the only inaccuracy Marino now alleges in his second
2 credit report was the inaccurate reporting of a failure to pay on
3 his RoundPoint account. This alleged inaccuracy is independent of
4 his bankruptcy. Because Marino does not allege that his dispute
5 letter raised any actual inaccuracy on RoundPoint's part, he has
6 not adequately plead that RoundPoint failed to investigate.

7 2. Re-reporting Inaccurate Information

8 A private plaintiff may bring a claim against a creditor for
9 failing to correct its reporting of "incomplete or inaccurate"
10 credit information after investigation. Gorman, 584 F.3d at 1162;
11 see also Drew v. Equifax Info. Servs., LLC, 690 F.3d 1100, 1108
12 (9th Cir. 2012) ("The most thorough investigation means nothing,
13 however, if the results of the investigation are not put to good
14 use.").

15 Marino alleges that, after receiving notice of his dispute,
16 RoundPoint violated § 1681s-2(b) by re-reporting inaccurate
17 account information to the CRAs concerning his alleged failure to
18 pay, resulting in an actual inaccuracy in his second report.
19 However, Marino does not allege that this inaccuracy was present
20 in his first credit report or that he raised the inaccuracy in his
21 dispute letter. The FCRA does not provide a private right of
22 action to enforce furnishers' independent duty under § 1681s-2(a)
23 to provide accurate information. § 1681s-2(c)(1). Furthermore,
24 Marino's pleading concerning the inaccuracy lacks sufficient
25 specificity. For example, he does not provide the terms of the
26 debt or allege that he consistently made timely payments pursuant
27 to those terms.

28

1 In sum, Marino's § 1681s-2(b) claim must be DISMISSED. If
2 Marino can truthfully allege that he raised actual inaccuracies
3 concerning RoundPoint's reporting in his dispute letter, he may be
4 able to state a claim against RoundPoint for failing to
5 investigate those inaccuracies. Accordingly, Marino's allegations
6 that RoundPoint failed to conduct a reasonable investigation are
7 dismissed WITH LEAVE TO AMEND to reassert the claim based on
8 actual inaccuracies, if any, raised in his dispute letter, if he
9 can do so without contradicting any of the allegations in his
10 original Complaint. Marino's re-reporting claim is likewise
11 dismissed WITH LEAVE TO AMEND to reassert the claim based on
12 actual inaccuracies, if any, raised in his dispute letter, if he
13 can do so without contradicting any of the allegations in his
14 original Complaint. Marino must include a clear statement of the
15 terms of the debt and the facts of his consistent timely payments
16 according to those terms. Attaching a copy of his dispute letter
17 to the Amended Complaint would be an efficient way of pleading
18 what it said.

19 C. CRAs' Duties Under § 1681i

20 The FCRA requires CRAs, in response to a dispute by a
21 consumer, to "conduct a reasonable reinvestigation to determine
22 whether the disputed information is inaccurate and record the
23 current status of the disputed information, or delete the item
24 from the file" within thirty days of receiving notice of the
25 consumer's dispute. § 1681i(a)(1)(A).

26 In order to state a claim for negligent violation of section
27 1681i, Plaintiff must establish that: 1) his credit files
28 contained inaccurate or incomplete information; 2) he
directly notified Defendant of the inaccuracy; 3) the dispute

1 is not frivolous or irrelevant; 4) Defendant failed to
2 respond to the dispute; and 5) Defendant's failure to
reinvestigate caused Plaintiff to suffer actual damages.

3 Taylor v. First Advantage Background Servs. Corp., 2016 WL
4 4762268, at *5 (N.D. Cal.). The same allegations are required for
5 a claim of willful violation except for actual damages. See
6 Saenz, 621 F. Supp. 2d at 1082. Section 1681i also requires that
7 within five days of receiving notice of the consumer's dispute,
8 CRAs must "provide notification of the dispute to any person who
9 provided any item of information in dispute." § 1681i(a)(2). The
10 Ninth Circuit has held that in order to state a claim against a
11 CRA under § 1681i, a plaintiff must identify an actual inaccuracy
12 in the credit report. Carvalho v. Equifax Info. Servs., LLC, 629
13 F.3d 876, 890 (9th Cir. 2010).

14 Both Plaintiffs allege separate violations of both of the
15 subsections cited above. Both Plaintiffs allege that the CRAs
16 failed to conduct reasonable reinvestigations in response to their
17 disputes. As explained above, Dahlen now wishes to allege only
18 that his second report failed to report the fact of his
19 bankruptcy; however, he does not allege this in his Complaint.
20 Furthermore, although Dahlen's dispute letter alleged that some
21 creditors' accounts were not reporting the fact of his bankruptcy,
22 he does not allege his dispute letter identified which creditors'
23 accounts were reporting this way or that Experian did so. Marino
24 may now wish to allege that his second report failed to report the
25 fact of his bankruptcy. Such an allegation would suffer from the
26 same deficiencies as Dahlen's. Marino also wishes to allege that
27 his second report inaccurately listed a failure to pay on his
28 RoundPoint account. Marino does not allege that his dispute

1 letter stated that he was current on his debt to RoundPoint.
2 Accordingly, neither Plaintiff adequately pleads that his dispute
3 letter adequately identified an actual inaccuracy sufficient to
4 trigger Experian's duty to reinvestigate.

5 Furthermore, neither Plaintiff adequately pleads that
6 Experian failed to conduct reasonable reinvestigations in response
7 to their disputes. In their pleadings on this point, both
8 Plaintiffs make two arguments. First, they claim, in the
9 alternative to allegations elsewhere, that the CRAs failed to
10 reinvestigate their disputes in that they failed to notify the
11 furnishers. They assert that "the most basic investigation
12 required each CRA to send all relevant information via an ACDV to
13 the furnishers which they did not do." Dahlen, No. 16-cv-5714,
14 Docket No. 1, Compl. ¶ 114; Marino, No. 16-cv-6367, Docket No. 1,
15 Compl. ¶ 126. This alternative pleading is conclusory. Neither
16 Plaintiff pleads any facts from which to infer that Experian
17 failed to notify furnishers. Neither Plaintiff identifies what
18 relevant information from their dispute letters Experian allegedly
19 failed to transmit to furnishers.

20 Both Plaintiffs also argue that each CRA had an independent
21 duty under § 1681i(a)(1) to conduct a reasonable reinvestigation.
22 Both Plaintiffs argue that CRAs are not "passive" entities "bound
23 to report whatever information a [furnisher] provides" and that
24 they can and do suppress inaccurate information. Dahlen, No. 16-
25 cv-5714, Docket No. 1, Compl. ¶ 117; Marino, No. 16-cv-6367,
26 Docket No. 1, Compl. ¶ 129. Both Plaintiffs assert that CRAs are
27 familiar with credit reporting standards and instruct furnishers
28 on how properly to report information when consumers are in

1 bankruptcy. Both Plaintiffs appear to allege that Experian was
2 required to reanalyze the information provided by furnishers and,
3 regardless of how it was reported in, to report it out only in a
4 way that conforms with credit reporting standards. Experian
5 argues that Plaintiffs are essentially asking the CRAs to review
6 and determine the legal implications of Chapter 13 plans. The
7 Ninth Circuit has held that the fundamental flaw in a "conception
8 of the reinvestigation duty" requiring legal analysis "is that
9 credit reporting agencies are not tribunals. They simply collect
10 and report information furnished by others." Carvalho, 629 F.3d
11 at 891. Accordingly, the Court finds Experian was not under an
12 independent duty under § 1681i(a)(1) to conform its reporting to
13 Plaintiffs' bankruptcy plans.

14 Experian also argues that neither Plaintiff demonstrates that
15 Experian is bound by Plaintiffs' confirmed plans in a way that
16 requires Experian to report debts as they may be modified under
17 the plan. This argument was addressed above. As discussed, it is
18 not inaccurate to report delinquent debts during the pendency of a
19 bankruptcy prior to discharge. See Blakeney, 2016 WL 4270244, at
20 *5.

21 Experian correctly points out that neither Plaintiff pleads
22 that Experian in particular violated the FCRA; both Plaintiffs
23 plead that they ordered reports from Experian, but not that
24 Experian was the CRA that reported the allegedly inaccurate
25 information.

26 For the foregoing reasons, Dahlen and Marino's § 1681i claims
27 against Experian must be DISMISSED. Both Plaintiffs' allegations
28 that Experian violated § 1681i(a)(1)(A) by failing to

1 reinvestigate are inadequately plead because they do not allege
2 that their dispute letters raised inaccuracies other than those
3 based entirely on an invalid legal theory. Both Plaintiffs'
4 allegations that Experian violated § 1681i(a)(2) by failing to
5 notify furnishers are inadequately plead because the pleadings are
6 conclusory. Accordingly, the claims are dismissed WITH LEAVE TO
7 AMEND. In any Amended Complaint, Plaintiffs may reassert the
8 allegations of a failure to reinvestigate if Plaintiffs can allege
9 actual inaccuracies that they identified in their dispute letters.
10 As Plaintiffs' counsel explained at the hearing, the actual
11 inaccuracies in question are the failure to report the fact of
12 Plaintiffs' bankruptcies, and in Marino's case an assertion that
13 his debt to RoundPoint was delinquent. Plaintiffs may reassert
14 the allegations of a failure to notify furnishers if they can
15 plead facts supporting a reasonable inference that Experian failed
16 to do so. The allegations in any Amended Complaint may not
17 contradict the allegations in Plaintiffs' original Complaints.

18 II. California's Consumer Credit Reporting Agencies Act
19 Under the CCRAA, it is unlawful to "furnish information on a
20 specific transaction or experience to any consumer credit
21 reporting agency if the person knows or should know the
22 information is incomplete or inaccurate." Cal. Civ. Code
23 § 1785.25(a). A claim under the CCRAA must be based on an actual
24 inaccuracy that renders the report "patently incorrect or
25 materially misleading." Carvalho, 629 F.3d at 889-91. As
26 discussed, it is not inherently inaccurate to report a debtor's
27 delinquent debts during the pendency of a bankruptcy proceeding.
28

1 Marino alleges RoundPoint violated the CCRAA in two ways.
2 First, he alleges that RoundPoint violated section 1785.25(a) by
3 knowingly reporting inaccurate information. However, as described
4 above, Marino does not unambiguously plead that he was always
5 current on all the terms of the debt he owed to RoundPoint. He
6 must include a clear statement of the terms of the debt and the
7 facts of his consistent timely payments according to those terms.
8 Accordingly, this claim is DISMISSED WITH LEAVE TO AMEND
9 consistently with this Order, if Marino can do so without
10 contradicting any of the allegations of the original Complaint.

11 Second, Marino alleges that RoundPoint failed to notify the
12 CRAs that the information was incorrect within thirty days of
13 receiving notice of his dispute, in violation of section
14 1785.25(f).⁴ Claims under this subsection are preempted by the
15 FCRA. Carvalho, 629 F.3d at 889. Accordingly, this claim is
16 DISMISSED WITHOUT LEAVE TO AMEND.

17 CONCLUSION

18 For the foregoing reasons, Experian and RoundPoint's Motions
19 to Dismiss are GRANTED (No. 16-cv-5712, Docket No. 48 (Experian as
20 to Marino); No. 16-cv-5714, Docket No. 19 (Experian as to Dahlen);
21 No. 16-cv-6367, Docket No. 10 (RoundPoint as to Marino)).
22 Dismissal is WITH LEAVE TO AMEND consistently with this Order.
23 Plaintiffs may amend only as specifically allowed in this Order.
24 Any additional amendments must be supported by a motion for leave
25

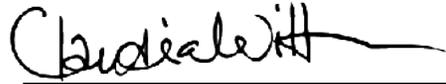
26
27 _____
28 ⁴ Plaintiffs cite section 1785.25(a) for this claim; however,
this requirement is found in subsection (f).

1 to amend. Any Amended Complaint permitted by this Order must be
2 filed within twenty-one days of the date of this Order.

3 Fair v. Experian Information Solutions, et al., No. 16-cv-
4 5712 is dismissed with prejudice, terminating motions to dismiss
5 filed by Defendants Experian (Docket No. 20), Equifax (Docket No.
6 23) and Verizon (Docket No. 36) in that case; and Smith v.
7 Experian Information Solutions, et al., No. 16-cv-6382 is also
8 dismissed with prejudice, terminating a motion to dismiss filed by
9 Defendant Bank of America (Docket No. 28) and rendering moot Bank
10 of America's Request for Judicial Notice (Docket No. 29) in that
11 case, as well as terminating the motion to dismiss filed by
12 Experian against Smith in Fair, No. 16-cv-5712 (Docket No. 48).

13 IT IS SO ORDERED.

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15 Dated: March 29, 2017



16 CLAUDIA WILKEN
17 United States District Judge
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