

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

| | | |
|---|---|----------------------------------|
| MARPU VENUGOPAL, |) | Case No.: 5:12-CV-06067 EJD |
| |) | |
| Plaintiff, |) | ORDER DENYING DEFENDANT’S |
| |) | MOTION TO DISMISS |
| v. |) | |
| |) | |
| DIGITAL FEDERAL CREDIT UNION, an |) | |
| FDIC insured corporation and DOES 1–100 |) | [Re: Docket No. 10] |
| inclusive, |) | |
| Defendants. |) | |

Presently before the Court is Defendant Digital Federal Credit Union’s (“Defendant”) Motion to Dismiss Plaintiff Marpu Venugopal’s (“Venugopal”) Complaint. The Court found this matter appropriate for determination without oral argument pursuant to Civil Local Rule 7–1(b), and therefore vacated the associated hearing. Having reviewed the parties’ papers, the Court has determined that Defendant’s Motion will be DENIED.

I. Background

The factual allegations below have been pleaded by Plaintiff in the Complaint. On March 18, 2009, Plaintiff filed a voluntary Chapter 7 bankruptcy petition in Bankruptcy Court of the Northern District of California which listed an unsecured debt in favor of Defendant in the amount of \$26,102.00. Compl. ¶ 12–13, Notice of Removal Ex. A, Docket Item No. 1. Throughout the

1 petition Plaintiff disputed this debt. Id. ¶¶ 14–15. On June 23, 2009, Plaintiff’s Bankruptcy petition
2 was granted; he alleges that this amounted to a discharge of all dischargeable debts including the
3 unsecured debt owed to Defendant. Id. ¶ 14. Plaintiff also alleges that the discharge order relates
4 back to the date he filed for bankruptcy. Id. ¶ 15. He also claims that Defendant was notified of this
5 discharge the following day, on June 24, 2009. Id. ¶ 14.

6 Two years later, on May 2, 2011, Plaintiff pulled his Informative Research Credit Report
7 from the credit reporting agencies (“CRAs”) Experian, Transunion, and Equifax. Id. ¶ 15. Plaintiff
8 alleges that the “report indicates that [Defendant] reported overdue payments on Plaintiff’s credit
9 account to all three CRA’s each month from the time Plaintiff filed for bankruptcy up until entry of
10 the [Bankruptcy] discharge order.” Id. On May 5, 2011, Plaintiff sent a letter to the CRAs
11 requesting investigation of the information Defendant furnished to the CRAs so they could compile
12 Plaintiff’s credit report. Id. ¶ 16. Plaintiff disputes the accuracy of Defendant’s reporting and, as
13 noted, disputed the debt during the bankruptcy proceedings. Id.

14 On May 17, 2011, Plaintiff received his Informative Research credit report, which was a
15 compilation of the reports from Equifax, Experian, and Transunion. Id. ¶ 17. Plaintiff alleges that
16 Defendant continued to misreport the overdue payments to Experian and did not report that
17 Plaintiff disputed the accuracy of this information. Id. ¶¶ 17–19. Plaintiff notes that Defendant
18 discontinued reporting this information to Equifax or Transunion. Id. ¶ 17.

19 On October 12, 2012, Plaintiff filed his Complaint in Santa Clara County Superior Court in
20 which he brought forth three causes of action against Defendant and Does 1–100: (1) violation of
21 the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681s-2(b); (2) violation of California
22 Consumer Credit Reporting Agencies Act (CCCRAA), Cal. Civ. Code § 1785.25(a); and (3)
23 violation of California’s Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200. On
24 November 29, 2012, Defendant removed the Complaint to this Court, which has jurisdiction to
25 hear the case under 28 U.S.C. §§ 1331, 1367.

1 **II. Legal Standard**

2 Federal Rule of Civil Procedure 8(a) requires a plaintiff to plead each claim with sufficient
3 specificity to “give the defendant fair notice of what the . . . claim is and the grounds upon which it
4 rests.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotations omitted). A
5 complaint which falls short of the Rule 8(a) standard may be dismissed if it fails to state a claim
6 upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). “Dismissal under Rule 12(b)(6) is
7 appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a
8 cognizable legal theory.” Mendondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir.
9 2008). Moreover, the factual allegations “must be enough to raise a right to relief above the
10 speculative level” such that the claim “is plausible on its face.” Twombly, 550 U.S. at 556–57.

11 When deciding whether to grant a motion to dismiss, the court generally “may not consider
12 any material beyond the pleadings.” Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d
13 1542, 1555 n.19 (9th Cir. 1990). The court must accept as true all “well-pleaded factual
14 allegations.” Ashcroft v. Iqbal, 556 U.S. 662 (2009). The court must also construe the alleged facts
15 in the light most favorable to the plaintiff. Love v. United States, 915 F.2d 1242, 1245 (9th Cir.
16 1988). “[M]aterial which is properly submitted as part of the complaint may be considered.”
17 Twombly, 550 U.S. at 555. But “courts are not bound to accept as true a legal conclusion couched
18 as a factual allegation.” Id.

19
20 **III. Discussion**

21 **A. Claim 1: Violation of the Fair Credit Reporting Act (FCRA)**

22 Plaintiff’s first cause of action is that Defendant violated the FCRA by reporting inaccurate
23 or incomplete information to at least one of the CRAs. Specifically, Plaintiff contends that
24 Defendant inaccurately reported to Experian that Plaintiff owed an unsecured debt (in the amount
25 of \$26,102.00) to Defendant during the pendency of the bankruptcy proceedings. Compl. ¶ 26.
26 Plaintiff asserts that this information was inaccurate “because it suggests that that [Plaintiff]’s
27
28

1 credit] account was still collectable and because the discharge order, which removed Plaintiff's
2 legal obligation to pay [Defendant], relates back to the date Plaintiff filed for bankruptcy." Id. ¶ 15.

3 The FCRA imposes distinct duties on CRAs and furnishers of credit information so as to
4 ensure accurate and complete credit reporting. See 15 U.S.C. § 1681 et seq.; Gorman v. Wolpoff &
5 Abramson, LLP, 584 F.3d 1147, 1155–56 (9th Cir. 2008) (“[A] primary purpose for the FCRA [is]
6 to protect consumers against inaccurate and incomplete credit reporting.”). Subsection 1681i(a)(2)
7 requires that CRAs provide notice of a dispute to the corresponding furnisher within five business
8 days of receiving the dispute from the consumer. Subsection 1681s–2(b) imposes four duties on
9 furnishers of credit information subsequent to receipt of notice from a CRA. Nelson v. Chase
10 Manhattan Mortg. Corp., 282 F.3d 1057, 1059 (9th Cir. 2002). Upon receiving notice from a CRA,
11 a furnisher must: (1) conduct an investigation; (2) review all relevant information provided by the
12 CRA; (3) report the results of the investigation to the CRA; and (4) if inaccurate or incomplete
13 information is discovered, report this result “to all [nationwide] consumer reporting agencies to
14 which the person furnished the information.” Id. (quoting 15 U.S.C. § 1681s–2(b)). Since a private
15 right of action against furnishers exists only for duties imposed by § 1681s–2(b), notice from the
16 CRA to the furnisher is an essential allegation for a prima facie case under the FCRA. See Gorman,
17 584 F.3d at 1154.

18 The Court first notes that Plaintiff has sufficiently pleaded the underlying notice
19 requirement of a prima facie FCRA claim. Plaintiff alleges that on May 5, 2011 he submitted
20 written notice to the CRAs disputing the accuracy of the overdue payments reported during his
21 bankruptcy. Compl. ¶¶ 10, 16, 24. He also alleges that the CRAs contacted Defendant about this
22 dispute pursuant to their duties under 15 U.S.C. § 1681i(a)(2). Id. Therefore, these allegations are
23 sufficient to conclude that Defendant received the requisite notice about the disputed information
24 on Plaintiff's CRA report. See Montgomery v. Wells Fargo Bank, No. C12-3895 TEH, 2012 WL
25 5497950, at *5 (N.D. Cal. Nov. 13, 2012). Accordingly, the Court finds that Plaintiff has
26 adequately alleged that Defendant received notice of the dispute.
27
28

1 The Court next turns to the question of whether Plaintiff has sufficiently alleged that
2 Defendant did not meet its investigatory and reporting duties under the FCRA. In support of its
3 Motion to Dismiss, Defendant primarily contends that the information it reported was accurate, and
4 therefore, Defendant could not have fallen short of its obligations. See Def.’s Mot. to Dismiss 6
5 (“Because the information reported to Experian was accurate, the investigation by [Defendant] was
6 necessarily reasonable”); see also id. at 2 (“ . . . [T]he information reported to the credit
7 bureaus was accurate at the time it was reported . . . [a]nd therefore, [Defendant’s] investigation
8 into Plaintiff’s dispute was reasonable, barring any liability under the [FCRA].”). Defendant
9 contends that the information was accurate because it was merely reporting on Plaintiff’s credit
10 history; part of Plaintiff’s credit history, Defendant notes, is that at the time of the bankruptcy
11 proceedings Plaintiff owed Defendant the unsecured debt of \$26,102.00. See id. at 4.

12 The Court disagrees with this line of reasoning. The FCRA not only requires that furnishers
13 report information that is accurate, but it also requires that the information be complete so as to not
14 be misleading. 15 U.S.C. § 1681s-2(b)(1). A claim of a violation of § 1681s-2(b) need not allege
15 that the furnished information is “patently incorrect”; a pleading could sufficiently state a claim if
16 it alleges that the report is “misleading in such a way and to such an extent that it can be expected
17 to adversely affect credit decisions.” Gorman, 584 F.3d at 1163 (finding that a furnisher could be
18 held liable under the FCRA where that furnisher accurately reported an account as “delinquent” but
19 failed to note that the consumer had disputed the debt); see also Montgomery, No. C12-3895 TEH,
20 2012 WL 5497950, at *4–5.

21 In this case, while Defendant’s reporting to Experian about the alleged debt may have been
22 technically accurate, it still could have been misleading so as to materially alter the understanding
23 of the debt. Defendant failed to report to Experian that Plaintiff’s debt had been discharged as a
24 result of the bankruptcy petition. Defendant also failed to report that the debt was in dispute. The
25 incompleteness of the reporting could be misleading so as to form the basis of a FCRA claim. See
26 Gorman, 584 F.3d at 1163. This allegation is indeed contained in the Complaint: “[The information
27 Defendant continued to provide Experian] was inaccurate because it suggests that that [Plaintiff’s
28

1 credit] account was still collectable and because the discharge order, which removed Plaintiff's
2 legal obligation to pay [Defendant], relates back to the date Plaintiff filed for bankruptcy." Compl.
3 ¶ 26.

4 The Court also finds that Plaintiff has sufficiently pleaded the remaining elements of an
5 FCRA claim. Plaintiff alleges that after completing its investigation, Defendant did not correct the
6 reporting of this information to Experian in violation of the FCRA. Id.; see also 15 U.S.C. § 1681s-
7 2(b) (requiring furnishers to report a finding of incomplete or inaccurate information to the CRAs).
8 The Complaint also states that after the investigation Defendant withdrew the inaccurate or
9 incomplete information from its report to Transunion and Equifax, but not to Experian. Compl.
10 ¶ 17. This supports Plaintiff's contention that Defendant did or could have discovered the
11 inaccurate or incomplete nature of the original reporting through a reasonable investigation, yet
12 failed to rectify that inaccuracy or incompleteness in violation of § 1681s-2(b). See Hanks v.
13 Talbots Classics Nat. Bank, No. C 12-2612 SI, 2012 WL 3236323, at *3 (N.D. Cal. Aug. 6, 2012).

14 Accordingly, and drawing reasonable inferences in Plaintiff's favor, the Court finds that the
15 Complaint sufficiently states a claim that Defendant breached its duty under the FCRA to conduct
16 a reasonable investigation and report to Experian that the information about Plaintiff's debt was
17 inaccurate, incomplete or misleading.

18
19 **B. Claim 2: Violation of California Consumer Credit Reporting Agencies Act**

20 Plaintiff's second cause of action is for a violation of the CCCRAA, which provides, in
21 pertinent part, that "[a] person shall not furnish information on a specific transaction or experience
22 to any consumer credit reporting agency if the person knows or should know the information is
23 incomplete or inaccurate." Cal. Civ. Code § 1785.25(a). The statutes also provides for a private
24 right of action to enforce this provision. Id. §§ 1785.25(g), 1785.31(a). "[B]ecause the CCRAA 'is
25 substantially based on the Federal Fair Credit Reporting Act, judicial interpretation of the federal
26 provisions is persuasive authority and entitled to substantial weight when interpreting the
27
28

1 California provisions.’’ Carvalho v. Equifax Info. Servs. LLC, 629 F.3d 876, 889 (9th Cir. 2010)
2 (quoting Olson v. Six Rivers Nat’l Bank, 111 Cal. App. 4th 1, 12 (2003)).

3 Defendant’s Motion to Dismiss vis-à-vis Plaintiff’s CCCRAA claim essentially iterates its
4 argument with regard to Plaintiff’s FCRA claim: that the information Defendant provided to
5 Experian was accurate. Because the Court has already rejected that argument and found that
6 Plaintiff has stated a cause of action for a FCRA violation, it also finds that Plaintiff has stated a
7 cause of action for a violation of the CCCRAA sufficient to withstand Defendant’s motion.

8
9 **C. Claim 3: Violation of California’s Unfair Competition Law**

10 Plaintiff’s third cause of action is for a violation of the UCL’s unlawful prong predicated
11 upon the alleged violation of the CCCRAA. See Cal. Bus. & Prof. Code § 17200 et seq.
12 (prohibiting unlawful business acts). The UCL has been found to be a proper mechanism of
13 enforcement of the CCCRAA. See Mortimer v. J.P. Morgan Chase Bank, No. C 12-1936 CW,
14 2012 WL 3155563, at *6 (N.D. Cal. Aug. 2, 2012); Montgomery, No. C12-3895 TEH, 2012 WL
15 5497950, at *3. As this Court has found that Plaintiff has sufficiently alleged a violation of the
16 CCCRAA, Plaintiff’s UCL cause of action has been sufficiently pleaded so as to withstand
17 Defendant’s motion.

18 Defendant raises two arguments in support of its contention that the UCL claim should be
19 dismissed. First, Defendant contends that Plaintiff has not met the UCL’s statutory standing
20 requirements, under which a plaintiff must allege that he or he “has suffered injury in fact and has
21 lost money or property as a result of the unfair competition.” See Cal. Bus. & Prof. Code §§ 17204,
22 17535; Cal. Civ. Code § 1780(a). However, Plaintiff alleges that he has suffered, among other
23 things, an impediment on his ability to obtain further credit. See Compl. ¶¶ 40–41. Allegations of a
24 diminished credit score or impairment of credit have been found to satisfy the UCL’s standing
25 requirement. See King v. Bank of Am., N.A., No. C-12-04168 JCS, 2012 WL 4685993, at *8 (N.D.
26 Cal. Oct. 1, 2012) (finding that the plaintiff had standing where he alleged “continued impairment”
27
28

1 to his credit score). Accordingly, the Court finds that Plaintiff has standing to pursue his UCL
2 claim and rejects Defendant's argument to the contrary.

3 Second, Defendant claims that Plaintiff's UCL claim is preempted by federal law, namely
4 the FCRA and the Bankruptcy Code. With regard to the FCRA, the Gorman court held that the
5 FCRA preempts state statutes that impose additional legal duties or rules of law. 584 F.3d at 1171-
6 72. Here Plaintiff's claim under the UCL does not seek to hold Defendant liable to any additional
7 requirements or duties than would the FCRA; rather, Plaintiff is seeking to utilize the UCL as a
8 mechanism of enforcement of same duties Defendant has under the FCRA and CCCRAA. As such,
9 Plaintiff's UCL claim is not preempted by the FCRA. See El-Aheidab v. Citibank (South Dakota),
10 N.A., No. C-11-5359 EMC, 2012 WL 506473, at *8 (N.D. Cal. Feb. 15, 2012) (finding that the
11 plaintiff's UCL claim was not preempted by the FCRA since no additional substantive duties
12 would be imposed upon Defendant).

13 As for the Bankruptcy Code, the Court also disagrees with Defendant. Plaintiff's UCL
14 cause of action seeks to enforce the accuracy and completeness of credit reporting and involves an
15 inquiry distinct from whether Plaintiff's debt was actually discharged during the bankruptcy
16 proceedings. See Hanks, No. C 12-2612 SI, 2012 WL 3236323, at *4-5 (finding that the
17 Bankruptcy Code would not preclude an FCRA claim in a similar context); King, No. C-12-04168
18 JCS, 2012 WL 4685993, at *9 (same). As such, the Court finds that Plaintiff's UCL claim is not
19 precluded by the Bankruptcy Code.

20
21 **IV. Conclusion and Order**

22 For the foregoing reasons, Defendant's Motion to Dismiss is DENIED. The parties are
23 ordered to comply with the schedule set in the Court's Case Management Order filed on March 4,
24 2013. See Docket Item No. 16.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: March 27, 2013



EDWARD J. DAVILA
United States District Judge