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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

PATRICK FIELD,
Plaintiff,
v.
EXPERIAN INFORMATION SOLUTIONS,
INC., et al.,
Defendants.

Case No. 16-cv-04635-BLF

**ORDER GRANTING EXPERIAN’S
MOTION TO DISMISS FIRST
AMENDED COMPLAINT WITH
LEAVE TO AMEND**

[RE: ECF 68]

Defendant Experian Information Solutions, Inc. (“Experian”) moves to dismiss Plaintiff Patrick Field’s first amended complaint (“FAC”) under Federal Rule of Civil Procedure 12(b)(6). For reasons discussed below, the motion is GRANTED WITH LEAVE TO AMEND.

I. BACKGROUND¹

Plaintiff filed for Chapter 13 bankruptcy protection on August 31, 2015 and his plan was confirmed on October 13, 2015. FAC ¶¶ 93, 98, ECF 46. On March 2, 2016, Plaintiff “ordered a three bureau report from Experian Information Solutions, Inc. to ensure proper reporting by Plaintiff’s Creditors.” *Id.* ¶ 99. He alleges that this report (“March 2016 Credit Report”) included fourteen different trade lines containing inaccurate, misleading, or incomplete information. *Id.* ¶ 100. Plaintiff neither attaches a copy of the March 2016 Credit Report nor provides specifics regarding the alleged inaccuracies contained therein. *Id.* He asserts only that “multiple trade lines continued to report Plaintiff’s accounts with past due balances, inaccurate balances, in collections, and/or charged off. Some accounts even failed to register that Plaintiff was making payments on the account through Plaintiff’s Chapter 13 plan.” *Id.*

¹ Plaintiff’s well-pled factual allegations are accepted as true for purposes of the motion to dismiss. *See Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011).

1 Plaintiff disputed the inaccurate trade lines via certified mail sent to three different credit
2 reporting agencies (“CRAs”), Experian, Equifax, Inc., and TransUnion, LLC on May 3, 2016.
3 FAC ¶ 101. Each CRA received Plaintiff’s dispute letter and in turn notified the entities that had
4 furnished the disputed information (“furnishers”) by means of automated credit dispute
5 verifications (“ACDVs”). *Id.* ¶ 103.

6 Plaintiff ordered a second three bureau report from Experian on June 7, 2016 (“June 2016
7 Credit Report”). FAC ¶ 104. That report revealed that numerous furnishers were continuing to
8 report his accounts inconsistently with industry standards. *Id.* ¶¶ 104-18.

9 Plaintiff filed this action on August 12, 2016, asserting violations of the Fair Credit
10 Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, and the California Consumer Credit Reporting
11 Agencies Act (“CCRAA”), California Civil Code § 1785.25(a), against multiple CRAs and
12 furnishers. Compl., ECF 1. Experian now moves to dismiss the FAC for failure to state a claim
13 upon which relief may be granted.

14 **II. LEGAL STANDARD**

15 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a
16 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation*
17 *Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d
18 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts
19 as true all well-pled factual allegations and construes them in the light most favorable to the
20 plaintiff. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the
21 Court need not “accept as true allegations that contradict matters properly subject to judicial
22 notice” or “allegations that are merely conclusory, unwarranted deductions of fact, or
23 unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008)
24 (internal quotation marks and citations omitted). While a complaint need not contain detailed
25 factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to
26 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
27 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the
28 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

1 **III. DISCUSSION**

2 The FAC contains two claims, one for violation of the FCRA (Claim 1) and the other for
3 violation of the CCRAA (Claim 2). Although the label of the CCRAA claim indicates that it is
4 asserted against “Defendants,” it is clear from the body of the FAC that the CCRAA claim is not
5 asserted against Experian. Accordingly, only the FCRA claim is asserted against Experian.
6 Experian moves to dismiss for failure to state a claim upon which relief may be granted.

7 “Congress enacted [the] FCRA in 1970 to ensure fair and accurate credit reporting,
8 promote efficiency in the banking system, and protect consumer privacy.” *Safeco Ins. Co. of Am.*
9 *v. Burr*, 551 U.S. 47, 52 (2007). To that end, the FCRA imposes specific obligations on CRAs,
10 furnishers, and other categories of persons not at issue here. *See generally* 15 U.S.C. § 1681 *et*
11 *seq.* Many of the obligations of CRAs are described in 15 U.S.C. § 1681i. That section provides
12 that if a consumer disputes “the completeness or accuracy of any item of information,” the CRA
13 must “conduct a reasonable reinvestigation to determine whether the disputed information is
14 inaccurate and record the current status of the disputed information, or delete the item.” 15 U.S.C.
15 § 1681i(a)(1). In addition, the CRA must provide notification of the dispute to the furnisher of the
16 information. 15 U.S.C. § 1681i(a)(2). Such notification by the CRA triggers the furnisher’s
17 obligation to conduct its own investigation. 15 U.S.C. § 1681s-2(b). The FCRA expressly creates
18 a private right of action for willful or negligent noncompliance with these requirements. 15
19 U.S.C. § 1681n & o.

20 Plaintiff’s FCRA claim against Experian is subheaded “Failure to Reinvestigate Disputed
21 Information.” FAC ¶¶ 130-31. Plaintiff alleges that after he “disputed the accounts mentioned
22 above” – which the Court takes to mean the fourteen trade lines in the March 2016 Credit Report
23 referenced earlier in the FAC – Experian was required to conduct a reasonable investigation and to
24 delete any information that was not accurate under 15 U.S.C. § 1681i-(a)(1). *Id.* ¶ 132. Plaintiff
25 claims that “[t]he most basic investigation required each CRA to send all relevant information via
26 an ACDV to the furnishers which they did not do.” *Id.* ¶ 133. Plaintiff alleges that because it did
27 not send all relevant information to the furnishers, Experian “failed to conduct a reasonable
28 investigation and failed to correct the misleading and or inaccurate statements.” *Id.* ¶ 134.

1 In the alternative, Plaintiff alleges that Experian “has its own independent duty to conduct
2 a reasonable investigation under 15 U.S.C. § 1681i(a)1.” FAC ¶ 135. Section 1681i(a)(1) does
3 not impose a freestanding duty to investigate; a CRA’s duties under that provision are triggered
4 only “if the completeness or accuracy of any item of information . . . is disputed by the consumer
5 and the consumer notifies the agency . . . of such dispute.” 15 U.S.C. § 1681i(a)(1) (emphasis
6 added). Thus it is unclear what Plaintiff means by “own independent duty” to investigate.
7 Plaintiff alleges that Experian “is not a passive entity” and that it “can and does suppress
8 inaccurate information from being reported when DFs provide inaccurate information.” FAC ¶¶
9 136-38. Plaintiff also alleges that Experian “would have known” that certain DFs were not
10 following industry standards in their reporting. *Id.* ¶¶ 141-44. The Court understands these
11 allegations to claim that regardless of what information was provided to Experian by furnishers,
12 Experian had an independent duty to “suppress” that information if it did not comply with industry
13 standards.

14 Experian moves to dismiss the FCRA claim on three grounds. First, Experian asserts that
15 Plaintiff has not alleged facts showing that Experian’s credit reporting was inaccurate. Second,
16 Experian argues that Plaintiff has not alleged facts showing an entitlement to damages under the
17 FCRA. And third, Experian asserts that Plaintiff has not alleged any facts showing that Experian’s
18 response to his dispute letter regarding the March 2016 Credit Report was improper.

19 **A. Inaccuracy**

20 The Ninth Circuit has observed that “[a]lthough the FCRA’s reinvestigation provision, 15
21 U.S.C. § 1681i, does not on its face require that an actual inaccuracy exist for a plaintiff to state a
22 claim, many courts, including our own, have imposed such a requirement.” *Carvalho v. Equifax*
23 *Info. Servs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010).² “Thus, even if a . . . CRA fails to conduct a
24

25 ² *Carvalho* involved claims asserted under the CCRAA, not the FCRA. *See Carvalho*, 629 F.3d at
26 881. However, in discussing the scope of the CCRAA, the Ninth Circuit drew heavily on cases
27 construing the FCRA, *see id.* at 889-91, and numerous courts have relied on *Carvalho*’s
28 explication of FCRA requirements when addressing FCRA claims, *see, e.g., Artus v. Experian*
Info. Sols., Inc., No. 5:16-CV-03322-EJD, 2017 WL 346022, at *3 (N.D. Cal. Jan. 24, 2017);
Jaras v. Experian Info. Sols., Inc., No. 16-CV-03336-LHK, 2016 WL 7337540, at *4 (N.D. Cal.
Dec. 19, 2016).

1 reasonable investigation or otherwise fails to fulfill its obligations under the FCRA, if a plaintiff
2 cannot establish that a credit report contained an actual inaccuracy, then the plaintiff’s claims fail
3 as a matter of law.” *Doster v. Experian Info. Sols., Inc.*, No. 16-CV-04629-LHK, 2017 WL
4 264401, at *3 (N.D. Cal. Jan. 20, 2017) (internal quotation marks and citation omitted).

5 In *Carvalho*, the Ninth Circuit noted that it previously had “explained that an item on a
6 credit report can be ‘incomplete or inaccurate’ within the meaning of the FCRA’s furnisher
7 investigation provision, 15 U.S.C. § 1681s-2(b)(1)(D), ‘because it is patently incorrect, or because
8 it is misleading in such a way and to such an extent that it can be expected to adversely affect
9 credit decisions.’” *Carvalho*, 629 F.3d at 890 (quoting *Gorman v. Wolpoff & Abramson, LLP*, 584
10 F.3d 1147, 1163 (2009)). The Ninth Circuit went on to affirm “‘the maxim of statutory
11 construction that similar terms appearing in different sections of a statute should receive the same
12 interpretation,’” *id.* (quoting *United States v. Nordbrock*, 38 F.3d 440, 444 (9th Cir. 1994)), and to
13 cite with approval a First Circuit case, *Chiang*, which the Ninth Circuit summarized as “deeming
14 the term ‘inaccurate’ in section 1681i(a) to be ‘essentially the same’ as the term ‘incomplete or
15 inaccurate’ in section 1681s-2(b),” *id.* (citing *Chiang v. Verizon New Eng. Inc.*, 595 F.3d 26, 37
16 (1st Cir. 2010)). Relying on *Carvalho*, district courts have “applied this ‘patently incorrect or
17 materially misleading’ standard to claims arising under various provisions of the FCRA that
18 involve the accuracy of information.” *Prianto v. Experian Info. Sols., Inc.*, No. 13-CV-03461-
19 TEH, 2014 WL 3381578, at *3 (N.D. Cal. July 10, 2014). In particular, courts in this district have
20 applied the “patently incorrect or materially misleading” standard to the inaccuracy requirement
21 under § 1681i. *See, e.g., Banneck v. HSBC Bank USA, N.A.*, No. 15-cv-02250-HSG, 2016 WL
22 3383960, at *6 (N.D. Cal. June 20, 2016); *Prianto*, 2014 WL 3381578, at *3.

23 Experian argues that the FAC does not satisfy this pleading standard. The Court agrees for
24 the reasons discussed below.

25 **1. Three Bureau Report**

26 Perhaps the most obvious deficiency in Plaintiff’s allegations against Experian is his
27 failure to allege that the inaccuracies in the “three bureau” March 2016 Credit Report upon which
28 his claim is based are attributable to *Experian* rather than one of the other CRAs. FAC ¶ 99.

1 Plaintiff alleges that he obtained the March 2016 Credit Report after confirmation of his Chapter
2 13 plan, and that “multiple trade lines continued to report Plaintiff’s accounts with past due
3 balances, inaccurate balances, in collections, and/or charged off. Some accounts even failed to
4 register that Plaintiff was making payments on the account through Plaintiff’s Chapter 13 plan.”
5 *Id.* ¶¶ 98-100. These allegations neither identify Experian as the reporting entity nor identify any
6 particular past due balances or other trade lines in the March 2016 Credit Report that were
7 inaccurate.

8 Plaintiff argues that the requisite specificity is provided in paragraphs 107-18 of the FAC.
9 Pl.’s Opp. at 4, ECF 85. Plaintiff does not allege that those allegations appeared in the March
10 2016 Credit Report upon which his claim is based, and in fact the referenced allegations follow
11 directly after Plaintiff’s description of how he obtained the June 2016 Credit Report. FAC ¶¶ 104-
12 18. Plaintiff does not allege that he disputed the June 2016 Credit Report; he obtained the June
13 2016 Credit Report “to ensure Plaintiff’s accounts had been updated.” *Id.* ¶ 104. Therefore
14 inaccuracies in the June 2016 Credit Report cannot form the basis of his claim.

15 Other courts in this district have dismissed FCRA claims based upon alleged inaccuracies
16 in three bureau reports where no specificity is provided as to which CRA reported the inaccuracies
17 in question. *See, e.g., Doster*, 2017 WL 264401, at *6 (“Plaintiff’s FAC makes only general and
18 unspecified allegations that his credit report, which was a three-bureau credit report, contained
19 inaccuracies and that the CRAs reported misleading and inaccurate information, but the FAC does
20 not allege any conduct that is specific to Experian.”). Because Plaintiff does not specify any
21 particular inaccuracies that were reported in the March 2016 Credit Report, and does not identify
22 Experian as the reporting entity, the FAC fails to state a claim of inaccurate reporting by Experian.

23 2. Reporting After Confirmation of Chapter 13 Plan

24 More fundamentally, to the extent that Plaintiff claims that it was inaccurate for Experian
25 to report delinquencies or past due balances after plan confirmation, that theory of liability has
26 been rejected by courts in this district and other districts within the Ninth Circuit. *See, e.g., Artus*
27 *v. Experian Info. Sols., Inc.*, No. 5:16-CV-03322-EJD, 2017 WL 346022, at *5 (N.D. Cal. Jan. 24,
28 2017) (collecting cases); *Doster*, 2017 WL 264401, at *6 (“[A]s a matter of law it is not

1 misleading or inaccurate to report a delinquent debt during the pendency of a bankruptcy.”);
2 *Polvorosa v. Allied Collection Serv., Inc.*, No. Case No. 2:16–CV–1508 JCM (CWH), 2017 WL
3 29331, at *3 (D. Nev. Jan. 3, 2017) (“[R]eporting delinquencies during the pendency of a
4 bankruptcy or during a bankruptcy’s automatic stay is not itself a violation of the FCRA.”).

5 Plaintiff argues that these decisions fail to recognize that a bankruptcy court’s order
6 confirming a Chapter 13 plan constitutes a binding final judgment regarding the rights and
7 liabilities of the debtor and his or her creditors. According to Plaintiff, because a confirmed plan
8 modifies the original debts, any post-confirmation reporting of pre-confirmation delinquencies or
9 balances is inaccurate. Plaintiff appears to be arguing that CRAs cannot report information
10 provided to them by furnishers without first independently evaluating the legal effect of a
11 confirmed Chapter 13 plan on such information.

12 In *Carvalho*, the Ninth Circuit noted that “reinvestigation claims are not the proper vehicle
13 for collaterally attacking the legal validity of consumer debts.” *Carvalho*, 629 F.3d at 892. In that
14 case, the allegedly inaccurate reporting involved a charge for medical services that the plaintiff,
15 Carvalho, claimed should have been paid by her insurance company. *Id.* at 882. After Carvalho
16 disputed the charge, several CRAs requested and received verification of the debt from the
17 furnisher. *Id.* The CRAs thereafter continued reporting the debt, but they added Carvalho’s
18 statement of dispute to her credit reports. *Id.* at 882-83. In rejecting Carvalho’s argument that the
19 CRAs were obligated to do more, the Ninth Circuit found that “[t]he fundamental flaw in
20 Carvalho’s conception of the reinvestigation duty is that credit reporting agencies are not
21 tribunals.” *Id.* at 891. The Ninth Circuit reasoned that CRAs “simply collect and report
22 information furnished by others” and thus are “ill equipped to adjudicate contract disputes.” *Id.*
23 For that reason, “courts have been loath to allow consumers to mount collateral attacks on the
24 legal validity of their debts in the guise of FCRA reinvestigation claims.” *Id.*

25 Plaintiff argues that *Carvalho* is distinguishable from the present case, because in
26 *Carvalho* there had been no adjudication of the rights and obligations of the debtor and the
27 creditor, whereas in the present case there has been such an adjudication in the form of an order
28 confirming Plaintiff’s Chapter 13 plan. Plaintiff’s argument is unpersuasive. *Carvalho* did not

1 turn on the lack of finality of the debt at issue, but rather on the Ninth Circuit’s conclusion that
2 CRAs are neither equipped nor obligated to determine the legal status of debts that have been
3 reported and verified by furnishers.

4 Plaintiff’s assertion of the legal effect of a Chapter 13 confirmation plan is unavailing for
5 other reasons as well. It is true that “[t]he provisions of a confirmed plan bind the debtor and each
6 creditor.” 11 U.S.C. § 1327(a). Thus a creditor seeking payment on a debt is entitled only to
7 those payments provided for under the plan, and “any issue decided under a plan is entitled to *res*
8 *judicata* effect.” *In re Blendheim*, 803 F.3d 477, 486 (9th Cir. 2015). However, the Court
9 declines to make the logical leap urged by Plaintiff that these authorities, governing the
10 relationships between parties to a bankruptcy action, make it a violation of the FCRA for a CRA
11 to report a historically accurate pre-confirmation debt or delinquency. Regardless of how the
12 rights and obligations of the parties to a bankruptcy are modified by a Chapter 13 plan, the
13 original debt did exist prior to confirmation and Plaintiff has cited no authority suggesting that
14 bankruptcy proceedings “erase” that historical fact for purposes of the FCRA.

15 Plaintiff’s reliance on *In re Luedtke*, No. 02-35082-svk, 2008 WL 2952530 (Bankr. E.D.
16 Wis. July 31, 2008), is misplaced. In *Luedtke*, the bankruptcy court concluded that a creditor
17 whose claim was modified by a Chapter 13 confirmation order had violated that order by
18 continuing to report the original debt to CRAs. *Id.* at *6. The court suggested that in addition to
19 seeking sanctions for violation of the confirmed plan, the debtor also could have sought relief
20 under the FCRA. *Id.* In making that suggestion, the bankruptcy court appeared to assume that the
21 creditor’s reporting of the original debt would have constituted an inaccuracy under the FCRA.
22 *Id.* at *5. That view, expressed in *dicta* by a bankruptcy court outside the Ninth Circuit almost a
23 decade ago, has not been adopted by the courts in this district. At least one court outside the
24 district has found the decision to be irrelevant to determination whether a plaintiff had pleaded a
25 viable FCRA claim. *See, e.g., Wylie v. TransUnion, LLC*, No. 3:16-CV-102, 2017 WL 835205, at
26 *5 n.6 (W.D. Pa. Mar. 2, 2017) (“[T]he question before the Court is whether Defendants reported
27 accurate information, not whether Defendant violated the bankruptcy code.”) (internal quotation
28 marks and citation omitted).

1 Moreover, with respect to the many debtors who fail to make all required plan payments,
2 the original debt terms ultimately are reinstated. *See Blendheim*, 803 F.3d at 487. Indeed,
3 historically accurate debts may be reported even after discharge, so long as the credit report
4 indicates that the debts were discharged in bankruptcy. *See Mortimer v. Bank of Am., N.A.*, No. C-
5 12-01959 JCS, 2013 WL 1501452, *9-11 (N.D. Cal. Apr. 10, 2013) (furnisher’s reporting that the
6 debt had been delinquent during the pendency of the bankruptcy was historically accurate and thus
7 not actionable under the FCRA where report also indicated that the debt had been discharged in
8 bankruptcy).

9 Plaintiff’s counsel argued at the hearing that allowing reporting of pre-confirmation
10 delinquencies or balances after a Chapter 13 plan has been confirmed will deprive debtors of
11 significant benefits that they expect to obtain through Chapter 13 bankruptcy. That issue is one
12 for Congress to resolve, not this Court. The Court’s task in evaluating Plaintiff’s FAC is to
13 determine whether the facts alleged therein make out a plausible claim that Experian’s credit
14 reporting was inaccurate. The Court simply is not persuaded that the reporting of a delinquency or
15 past due balance after plan confirmation is per se inaccurate under the FCRA.

16 However, it appears to be an open question whether such reporting could satisfy the
17 inaccuracy requirement if the report is unaccompanied by any indication that the consumer is in
18 bankruptcy. *See Devincenzi v. Experian Info. Sols., Inc.*, No. 16-CV-04628-LHK, 2017 WL
19 86131, at *7 (N.D. Cal. Jan. 10, 2017) (declining to decide whether allegations that the “credit
20 report contained no indication at all that the debts were the subject of a pending bankruptcy . . .
21 would be sufficient to state a claim” but granting plaintiff leave to attempt to assert FCRA claim
22 based on that theory). It is this Court’s view that it may well be possible for a plaintiff to allege
23 facts showing that the reporting of a pre-confirmation debt or delinquency is materially misleading
24 absent any reference to a pending Chapter 13 bankruptcy in the report, at least where a confirmed
25 plan governs the timing and amounts of post-confirmation payments on the debt.

26 Plaintiff has not alleged such facts here, as he has not identified any particular inaccuracy
27 contained in the March 2016 Credit Report upon which his claim is based, and has not stated
28 whether the March 2016 Credit Report mentioned his bankruptcy.

1 **3. Metro 2 Format**

2 In addition to his theory of FCRA liability based on the effect of plan confirmation,
3 Plaintiff asserts a related theory based on industry standards regarding credit reporting. He
4 devotes more than thirty paragraphs of the FAC to a tutorial on industry standards and in
5 particular the “Metro 2 format” adopted by the Consumer Data Industry Association (“CDIA”).
6 *See* FAC ¶¶ 37-71. According to Plaintiff, Metro 2 provides instruction on what updates must be
7 made when a bankruptcy is filed, and deviation from the Metro 2 format is inaccurate or
8 misleading. The Ninth Circuit has not spoken on the effect of the Metro 2 format, if any, on the
9 obligations of CRAs and furnishers under the FCRA. However, district courts within the Ninth
10 Circuit overwhelmingly have held that a violation of industry standards is insufficient, without
11 more, to state a claim for violation of the FCRA. *See, e.g., Doster*, 2017 WL 264401, at *5
12 (collecting cases); *Mestayer v. Experian Info. Sols., Inc.*, No. 15-CV-03645-EMC, 2016 WL
13 7188015, at *3 (N.D. Cal. Dec. 12, 2016).

14 The out-of-district cases cited by Plaintiff do not persuade this Court to take a contrary
15 view. In *Dreher v. Experian Info. Sols., Inc.*, No. 3:11-CV-00624-JAG, 2013 WL 2389878, at *7
16 (E.D. Va. May 30, 2013), the district court held that industry standards could be considered at the
17 summary judgment stage as part of the totality of evidence regarding the reasonableness of
18 Experian’s failure to identify the main source of disputed information. That ruling does not
19 advance Plaintiff’s argument that deviation from Metro 2 constitutes a per se inaccuracy under the
20 FCRA. In *Nissou-Rabban v. Capital One Bank (USA), N.A.*, No. 15CV1675 JLS (DHB), 2016
21 WL 4508241, at *5 (S.D. Cal. June 6, 2016), the district court held that the plaintiff had alleged a
22 claim under the FCRA where she alleged that Metro 2 was Synchrony’s chosen method of
23 reporting and that Synchrony’s deviation from Metro 2 might be misleading to such an extent as to
24 affect credit decisions. Courts in this district have found such allegations to be insufficient. *See,*
25 *e.g., Mestayer*, 2016 WL 7188015, at *3 (credit report that deviated from Metro 2 was not
26 misleading where report disclosed bankruptcy); *see also Doster*, 2017 WL 264401, at *5
27 (collecting cases). This Court finds the latter decisions to be better reasoned and therefore
28 concludes that allegations that a credit report deviated from the Metro 2 format is insufficient,

1 without more, to state a claim under the FCRA.

2 The Court does not mean to suggest that Metro 2 is wholly irrelevant to the evaluation of a
3 claim asserted under the FCRA. It may be that allegations of deviations from the Metro 2 format
4 could bolster other allegations of inaccuracy or be relevant to allegations of negligence on the part
5 of the reporting entity. However, Plaintiff's reliance on Metro 2 as an independent source of
6 liability under the FCRA is unavailing.

7 **B. Damages**

8 Experian also asserts that Plaintiff has failed to allege facts sufficient to entitle him to
9 recovery of damages. The FCRA creates a private right of action for willful or negligent
10 noncompliance with § 1681i. 15 U.S.C. §§ 1681n & o; *Gorman v. Wolpoff & Abramson, LLP*,
11 584 F.3d 1147, 1154 (2009). If a failure to comply with § 1681i is willful, the plaintiff may
12 recover either actual damages or statutory damages between \$100 and \$1,000, as well as any
13 appropriate punitive damages. 15 U.S.C. § 1681n(a). If a failure to comply with § 1681i is
14 negligent, the plaintiff is limited to recovery of "any actual damages sustained by the consumer as
15 a result of the failure." 15 U.S.C. § 1681o(a)(1). Experian contends that Plaintiff has not alleged
16 facts showing entitlement to recovery under either theory.

17 **1. Willfulness**

18 A defendant acts "willfully" for purposes of the FCRA if the defendant knowingly or
19 recklessly disregards its statutory duties. *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57-58
20 (2007). "[A] company subject to FCRA does not act in reckless disregard of it unless the action is
21 not only a violation under a reasonable reading of the statute's terms, but shows that the company
22 ran a risk of violating the law substantially greater than the risk associated with a reading that was
23 merely careless." *Id.* at 69. Thus a plaintiff seeking to recover damages under a willfulness theory
24 "must allege, at a minimum, that the defendant's reading of the FCRA is 'objectively
25 unreasonable.'" *Kirchner v. Shred-it USA Inc.*, No. 2:14-1437 WBS, 2014 WL 6685210, at *1
26 (E.D. Cal. Nov. 25, 2014) (quoting *Safeco*, 551 U.S. at 69).

27 As discussed above, Plaintiff has not sufficiently alleged that Experian's reporting
28 contained an actual inaccuracy. Even had he done so, he has not alleged any facts showing that

1 such inaccuracy was the result of Experian’s knowing or reckless disregard of its statutory duties.
2 Plaintiff argues in his opposition that Experian recklessly disregarded its statutory duties by failing
3 to reinvestigate Plaintiff’s dispute or correct the alleged inaccuracies as prescribed by industry
4 standards, when it knew that the disputed report deviated from Metro 2. As discussed, deviation
5 from the Metro 2 format alone is insufficient to state a violation of the FCRA.

6 **2. Negligence**

7 In order to recover under a negligence theory, Plaintiff must plead and prove actual
8 damages resulting from Experian’s violation of the FCRA. 15 U.S.C. § 1681o(a)(1). Plaintiff’s
9 FCRA claim against Experian is based on his allegations that after Plaintiff disputed information
10 in the March 2016 Credit Report, Experian failed to reinvestigate. *See* FAC ¶¶ 131-45. However,
11 he does not allege facts showing that he suffered any damages flowing from Experian’s alleged
12 failure. *See id.*

13 Accordingly, the FAC is subject to dismissal on the ground that Plaintiff has failed to
14 allege facts showing an entitlement to damages.

15 **C. Lack of Factual Specificity**

16 Experian’s final argument is that Plaintiff has not provided any factual basis for his
17 allegation that Experian’s response to his dispute letter was inadequate. The Court agrees.

18 Plaintiff alleges that after he disputed the March 2016 Credit Report, Experian was
19 required to conduct a reasonable investigation and to delete any information that was not accurate.
20 FAC ¶ 132. Plaintiff then claims that each CRA was required “to send all relevant information via
21 an ACDV to the furnishers which they did not do.” *Id.* ¶ 133. When a consumer disputes
22 information on a credit report, the CRA must provide notification of the dispute to the furnisher of
23 the information. 15 U.S.C. § 1681i(a)(2). Thus an allegation that Plaintiff disputed a particular
24 account reported in the March 2016 Credit Report, and that Experian failed to notify the furnisher
25 of the disputed information, would state a claim under the FCRA, assuming that all other pleading
26 requirements regarding inaccuracy and damages were satisfied. However, as discussed above,
27 Plaintiff’s allegations regarding the asserted inaccuracies in the March 2016 Credit Report do not
28 identify any particular account or item of information reported by Experian. Moreover, elsewhere

1 in the FAC Plaintiff alleges that “each CRA received Plaintiff’s dispute letter and in response sent
2 Plaintiff’s dispute to each DF via an ACDV.” FAC ¶ 103. Based on that allegation, it would
3 appear that Experian *did* satisfy its notification obligations under the FCRA.

4 Plaintiff also alleges that Experian would have known that the furnishers’ reporting of
5 certain accounts deviated from the industry standard, but Experian did not suppress that inaccurate
6 information. FAC ¶¶ 141-44. Plaintiff does not identify any specific errors or inaccuracies that
7 Experian should have suppressed. Plaintiff alleges only that Experian “would have known” that
8 “failure to report a CII given that a Chapter 13 was filed” and “reporting a past due balance post
9 confirmation” do not comport with industry standards. *Id.* These allegations are not sufficient to
10 state a claim under 15 U.S.C. § 1681i(a)(1).

11 Plaintiff’s conclusory allegation that Experian “failed to conduct a reasonable
12 investigation,” *id.* ¶ 134, likewise is inadequate to state a claim under the FCRA. *See O’Connor v.*
13 *Capital One, N.A.*, No. CV 14-00177-KAW, 2014 WL 2215965, at *7 (N.D. Cal. May 29, 2014)
14 (No FCRA claim stated where plaintiff “fails to offer any factual allegations supporting his
15 contention that Defendant’s investigation of his disputed account was unreasonable”).

16 Accordingly, Experian’s motion to dismiss Plaintiff’s FCRA claim is GRANTED.

17 **IV. ORDER**

- 18 (1) Defendant Experian’s motion to dismiss the FAC is GRANTED WITH LEAVE
19 TO AMEND;
- 20 (2) Leave to amend is limited to the FCRA claim discussed in this order; Plaintiff may
21 not add new claims or parties without express leave of the Court;
- 22 (3) Any amended pleading shall be filed on or before May 15, 2017; and
- 23 (5) Failure to meet the May 15 deadline to file an amended complaint or failure to cure
24 the deficiencies identified in this Order will result in a dismissal of Plaintiff’s
25 claims with prejudice.

26
27 Dated: April 24, 2017


BETH LABSON FREEMAN
United States District Judge