
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:20-cv-08459-FWS-PLA
Title: Cynthia Soler v. Trans Union LLC, *et al.*

Date: July 13, 2022

Present: **HONORABLE FRED W. SLAUGHTER, UNITED STATES DISTRICT JUDGE**

Melissa H. Kunig
Deputy Clerk

N/A
Court Reporter

Attorneys Present for Plaintiff:

Attorneys Present for Defendant:

Not Present

Not Present

**PROCEEDINGS: ORDER DENYING DEFENDANT’S MOTION TO DISMISS
PLAINTIFF’S COMPLAINT [117]**

Before the court is Defendant Trans Union, LLC’s (“Defendant”) Motion to Dismiss Plaintiff Cynthia Soler’s (“Plaintiff”) Complaint. (Dkt. 117 (“Motion” or “Mot.”).) Plaintiff opposes the Motion. (Dkt. 119 (“Opposition” or “Opp.”).) Based on the state of the record, as applied to the applicable law, the court **DENIES** the Motion.

I. Relevant Background

The parties are familiar with the facts and procedural history in this matter. In summary, this case concerns two student loan accounts with balances of \$0 and statuses of “120 Days Past Due.” (Dkt. 64 at 1.) Defendant’s representative consulted an internal copy of Plaintiff’s consumer disclosure and confirmed to Plaintiff that her student loan accounts were 120 days past due, and their statuses were last updated on December 8, 2015. (*Id.* at 2.) Defendant sent the dispute to Nelnet Servicing, LLC¹ through the Automated Consumer Dispute Verification System (“ACDV”), who verified the student loans accounts as reporting accurately. (*Id.*) Defendant sent Plaintiff the results of Nelnet’s investigation on September 15, 2018. (*Id.*) The report explained “Pay Status” refers to “[t]he current status of the account” and “[f]or inactive

¹ Plaintiff filed a notice of settlement of her claims against Nelnet on November 16, 2021. (Dkt. 59.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:20-cv-08459-FWS-PLA

Date: July 13, 2022

Title: Cynthia Soler v. Trans Union LLC, *et al.*

accounts or accounts that have been closed and paid, Pay Status represents the last known status of the account.” (*Id.* at 2-3.)

Plaintiff claims she was injured because Defendant’s conduct resulted in her inability to obtain a credit card through Chase Bank and her applications to refinance her mortgage were denied. (*Id.* at 3.) Plaintiff also claims she has been diagnosed with Barrett’s esophagus, a medical condition aggravated by stress. (*Id.*) Plaintiff testified at her deposition that her acid reflux worsened in March or April of 2020, when she was experiencing significant stress due to a COVID-19-imposed shutdown of her business, which she was diagnosed with several years prior. (*Id.*) Soler claims she began to experience emotional distress in 2016 or 2017, when she began to apply to refinance her mortgage, and that she suffered significant stress after sending the dispute letter to Trans Union in September 2018, resulting in her inability to sleep due to the “worry and anguish.” (*Id.*)

On December 1, 2020, the court denied Defendant’s Motion to Dismiss Plaintiff’s Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt. 21.) Defendant moved for reconsideration of the court’s Order on Defendant’s Motion to Dismiss, which the court denied on January 5, 2021. (Dkt. 31.) On November 29, 2021, the court denied Defendant’s Motion for Summary Judgment, finding several triable issues of fact based on Plaintiff’s claims, which are set forth in more detail below. (Dkt. 64.) Defendant moved for reconsideration of the court’s Order on Defendant’s Motion for Summary Judgment, which the court denied on January 20, 2022. (Dkt. 74.) Defendant also moved for certification of interlocutory review of the court’s Order on Defendant’s Motion for Summary Judgment, which was denied on March 15, 2022. (Dkt. 78.) Trial in this matter is scheduled to begin on July 26, 2022. (Dkt. 116.)

III. Legal Standard

A. Motion to Dismiss under Rule 12(b)(1)

Under Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss a case for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). “Federal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute.” *Gunn*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:20-cv-08459-FWS-PLA

Date: July 13, 2022

Title: Cynthia Soler v. Trans Union LLC, *et al.*

v. Minton, 568 U.S. 251, 257 (1994) (citation and internal quotation marks omitted); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998) (“The requirement that jurisdiction be established as a threshold matter ‘spring[s] from the nature and limits of the judicial power of the United States’ and is ‘inflexible and without exception.’”) (citation and internal quotation marks omitted).

Under Rule 12(b)(1), a defendant’s challenge to subject matter jurisdiction may be either facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack “accepts the truth of plaintiff’s allegations but asserts that they ‘are insufficient on their face to invoke federal jurisdiction.’” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (quoting *Safe Air for Everyone*, 373 F.3d at 1039). By contrast, a factual attack “contests the truth of the plaintiff’s factual allegations, usually by introducing evidence outside of the pleadings.” *Id.*

B. Article III Standing

Article III standing requires a plaintiff to show they “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins (Spokeo II)*, 578 U.S. 330, 338 (2016) (citations omitted). “[T]he party invoking federal jurisdiction bears the burden of establishing these elements.” *Id.* (citation and internal punctuation marks omitted).

“To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Id.* at 339 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). Though the “‘fairly traceable’ and ‘redressability’ components for standing overlap and are two facets of a single causation requirement” they “are distinct in that traceability examines the connection between the alleged misconduct and injury, whereas redressability analyzes the connection between the alleged injury and requested relief.” *Mecinas v. Hobbs*, 30 F.4th 890, 899 (9th Cir. 2022) (citations and some internal quotation marks omitted).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:20-cv-08459-FWS-PLA

Date: July 13, 2022

Title: Cynthia Soler v. Trans Union LLC, *et al.*

III. Discussion

A. Plaintiff Has Sufficiently Established an Injury in Fact to Survive a Rule 12(b)(1) Motion to Dismiss

Defendant argues the court lacks subject matter jurisdiction because Plaintiff has not established an injury in fact.² (*See Mot.* at 2-3.) “In evaluating [Plaintiff’s] claim of harm,” the court considers “(1) whether the statutory provisions at issue were established to protect his concrete interests (as opposed to purely procedural rights), and if so, (2) whether the specific procedural violations alleged in this case actually harm, or present a material risk of harm to, such interests.” *Robins v. Spokeo, Inc. (Spokeo III)*, 867 F.3d 1108, 1113 (9th Cir. 2017). Defendant acknowledges “[t]he first prong is satisfied because the FCRA was established to protect consumers’ concrete interests.” (*Mot.* at 7 (citing *Hogue v. Silver State Schools Credit Union*, 814 Fed. App’x. 230, 232 (9th Cir. 2020)).) However, Defendant argues that the second prong is not satisfied because Plaintiff has not established a “concrete” injury in fact. (*Id.* at 7-8.)

As a threshold matter, the court agrees that the FCRA was enacted to protect consumers’ interests. *Spokeo III*, 867 F.3d at 1113-15 (finding “Congress established the FCRA provisions

² Defendant does not argue Plaintiff’s claims fail to meet the other requirements of Article III standing; namely, that her alleged injuries are not “fairly traceable” to Defendant or “redressable.” However, the court finds Plaintiff’s claims satisfy these requirements because “there is little doubt that a defendant’s alleged violation of a statutory provision ‘caused’ the violation of a right created by that provision” and “statutes like the FCRA frequently provide for monetary damages, which redress the violation of statutory rights.” *Robins v. Spokeo, Inc. (Spokeo I)*, 742 F.3d 409, 414 (9th Cir. 2014), *vacated and remanded on other grounds*, 578 U.S. 330 (2016); *see also Syed v. M-I, LLC*, 853 F.3d 492, 499 (9th Cir. 2017) (“By providing a private cause of action for violations of Section 1681b(b)(2)(A), Congress has recognized the harm such violations cause, thereby articulating a ‘chain[] of causation that will give rise to a case or controversy.’”) (citations omitted).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:20-cv-08459-FWS-PLA

Date: July 13, 2022

Title: Cynthia Soler v. Trans Union LLC, *et al.*

at issue,” including 15 U.S.C. § 1681e(b), “to protect consumers’ concrete interests”). Accordingly, the court finds the first prong regarding whether Plaintiff’s claim of harm establishes an injury in fact is satisfied.

Before turning to the second prong, the court notes it has previously made several relevant findings in its Order on Defendant’s Motion for Summary Judgment. The court found that several triable issues of fact exist in this case, specifically as to whether:

1. “[A] reasonable jury could find the narrative in the pay status field as of the September 2018 [Credit] Report ([“Credit Report”]) was inaccurate or misleading because it was incomplete,” (Dkt. 64 at 6);
2. “[A] credit report issued to a third party would include the same information on the [Credit] Report – that [Plaintiff’s] [student loan] [a]ccounts were 120 days past due,” (*id.* at 6-7);
3. The Credit Report should be interpreted as “modif[ying] the pay status field to show the status is that of the last date it was updated,” or, “that since the Accounts were updated in 2015, the pay status has remained at 120 days past due,” (*id.* at 7);
4. Defendant’s “procedures were undertaken to ensure maximum possible accuracy in light of the evidence before the [c]ourt that [Defendant] modified the procedures through which consumer information appears on its credit reports,” (*id.* at 8);
5. Defendant’s “procedures are reasonable” considering its “role in creating those procedures,” (*id.* at 8);
6. Defendant’s “exclusive reliance on ACDV [investigation] procedures was reasonable,” (*id.* at 8-9);
7. Plaintiff “was denied credit as a result of the [Credit] Report” considering her testimony that “she tried to refinance her mortgage, but several lenders turned her down because of the pay status on her [Credit] Report,” the Credit Report’s “list of inquiries,” and Plaintiff’s testimony “that when she purchased a car, she was offered an interest rate of 6.25% because her Report indicated she had late payments,” (*id.* at 9);
8. Plaintiff’s “medical conditions were aggravated to some degree by [Defendant’s] actions,” (*id.* at 9-10);

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:20-cv-08459-FWS-PLA

Date: July 13, 2022

Title: Cynthia Soler v. Trans Union LLC, *et al.*

9. Plaintiff “sustained emotional damages,” considering testimony she “has been unable to sleep and because she believes she is overpaying on her mortgage by approximately one thousand dollars each month due to her alleged inability to refinance,” (*id.* at 10); and
10. Defendant “acted recklessly,” if a jury found in favor of Plaintiff on the accuracy of Defendant’s reporting, the reasonableness of its procedures in generating the Credit Report, and whether it conducted a reasonable investigation, (*id.* at 10).³

Considering the record, in particular these previous findings, as applied to the applicable law, the court finds Plaintiff has adequately shown a concrete injury to survive the Motion. *See Fernandez v. CoreLogic Credco, LLC.*, 2022 WL 891226, at *6 (S.D. Cal. Mar. 25, 2022) (finding allegations report contained misleading statement about plaintiff that was sent to mortgage loan company sufficient to state a concrete injury in fact for Article III standing purposes); *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208-209 (2021); (plaintiffs whose credit reports containing misleading U.S. Department of Treasury Office of Foreign Asset Control alerts and that were disseminated to third parties had Article III standing). The fact that Plaintiff also seeks damages for emotional distress does not change the outcome here. *See Gross v. CitiMortgage, Inc.*, 33 F.4th 1246, 1252 (9th Cir. 2022) (damages under the FCRA “could include recovery for the emotional distress and humiliation allegedly caused by [defendant’s] reports and [plaintiff’s] resulting financial difficulties”) (citation and internal quotation marks omitted). Accordingly, the court finds Plaintiff has sufficiently established an injury in fact supporting Article III Standing.

Defendant argues that (1) the evidence in this case shows “Plaintiff’s Trans Union credit file was not disseminated to any third-party creditor nor is there any evidence of an adverse credit decision,” (Mot. at 8); and (2) “Plaintiff’s unsupported claim of emotional distress cannot satisfy her burden to establish an injury-in-fact based solely on her illogical speculation that her Nelnet accounts are misleading where no creditor was actually misled,” (Mot. at 13). As set

³ The court previously affirmed its findings on its findings of triable issues of fact when it denied Defendant’s Motion for Reconsideration on the court’s Orders on Defendant’s Motion for Summary Judgment, and Defendant does not argue the court should revisit them for a third time. (*See generally* Dkts. 31, 74; Mot.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:20-cv-08459-FWS-PLA

Date: July 13, 2022

Title: Cynthia Soler v. Trans Union LLC, *et al.*

forth above, the court has previously considered these arguments and found triable issues of fact exist as to them, which, as Plaintiff notes, Defendant does not address in the Motion. The court has also previously considered and rejected Defendant’s arguments regarding deposition testimony in this case. (*See also* Dkt. 74 at 4 (“The[] differing interpretations of the testimony of the same deponent underscore the Court’s finding that a triable issue remains as to whether a credit report provided to a third party would include the information that Soler’s Accounts were ‘120 days past due.’”)). Accordingly, Defendant inadequately sets forth persuasive reasons for the court to revisit its previous findings or otherwise depart from its prior rulings.⁴

B. Defendant’s Arguments Regarding Other Case Law

Defendant argues that the court should follow several out-of-circuit district courts applying the Supreme Court’s June 25, 2021, decision in *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021), and find Plaintiff has not established an injury in fact. (*See* Mot. at 11, 16.) As a threshold matter, the Supreme Court decided *Ramirez* five months before the court denied Defendant’s Motion for Summary Judgment on November 29, 2021, (Dkt. 64); seven months before the court denied Defendant’s Motion for Reconsideration of that Order on January 20, 2022, (Dkt. 74); and nine months before the court found “the issue of whether

⁴ Defendant requests the court to judicially notice three unpublished orders from separate litigations in the Eastern District of New York in which plaintiffs’ claims were dismissed for lack of Article III standing: *Nathan v. Trans Union, LLC et al.*, No. 1:22-CV-00471-BMC (E.D.N.Y. April 19, 2022); *Thompson v. Equifax Information Services, LLC, et al.*, 2:20-CV-06101 (E.D.N.Y. March 31, 2022), *Wan v. Trans Union, LLC, et al.*, 1:22-CV-00115 (E.D.N.Y. March 30, 2022). (*See* Mot. at 11-12; *id.* Exhs. A-C.) The court agrees with Defendant that these orders are properly subject to judicial notice. *U.S. v. Navarro*, 800 F.3d 1104, 1109 n.3 (9th Cir. 2015) (taking “judicial notice of several unpublished district court orders”). “However, upon reviewing the orders, which are not binding on this [c]ourt” and which concern plaintiffs who failed to plausibly allege harm and/or that the credit reports were shared with third parties, “the Court finds them to be distinguishable or otherwise unpersuasive here, to the extent that they conflict with the discussion” in this Order. *See Vincent v. BMW of N. Am., LLC*, 2019 WL 8013093, at *3 n.4 (C.D. Cal. Nov. 26, 2019) (citation omitted).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:20-cv-08459-FWS-PLA

Date: July 13, 2022

Title: Cynthia Soler v. Trans Union LLC, *et al.*

[Defendant’s] reporting was inaccurate or misleading appear[ed] to turn on questions of fact” and denied Defendant’s motion for an order certifying interlocutory review of that Order (Dkt. 78 at 2). Defendant does not argue these findings are erroneous. (*See generally* Mot.)

As reflected in the court’s analysis in its previous Orders, the other cases Defendant argues in the Motion reflect “[a] growing consensus among many other courts in districts across the country” that a court may determine the accuracy of a credit report as a matter of law, (see Dkt. 16-17), “are not binding on the [c]ourt and present[] the same analysis as the cases [Defendant] cited in support of its [earlier] motion[s],” (see Dkt. 31 at 2). *See also Camreta v. Greene*, 563 U.S. 692, 709 n.7 (“A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.”) (citation and internal quotation marks omitted).⁵ Of the fourteen cases Defendant argues support its argument, only one was decided after the court found Plaintiff raised triable issues of fact in its Order on Defendant’s Motion for Summary Judgment. And, in that case, the plaintiff did not plausibly allege that the “120 days past due” reporting was “inaccurate” and pleaded damages in a “general and conclusory” fashion. *See Naimi-Yazdi v. JPMorgan Chase Bank, N.A.*, No. 5:21-CV-04390-EJD, 2022 WL 2307068, at *2-3. Again, the court has previously found triable issues of fact as to whether Plaintiff’s “120 days past due” status was inaccurate and reported to third parties, and whether that reporting adversely affected the rate at which she sought to refinance her mortgage refinance and health conditions. (*See* Dkt. 64 at 6-8, 9-10.) As such, *Naimi-Yazdi* is inapposite.

⁵ When the court considered this argument from Defendant for a second time, it found that these cases did not establish a difference of opinion within the Ninth Circuit. (Dkt. 78 at 3-4 (Defendant “cites cases in district courts in Florida, Pennsylvania, and Tennessee in which the courts purportedly determined as a matter of law that the ‘pay status’ reporting was not misleading That some district courts outside of the Ninth Circuit have so found does not constitute a substantial ground for a difference of opinion.”).)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:20-cv-08459-FWS-PLA

Date: July 13, 2022

Title: Cynthia Soler v. Trans Union LLC, *et al.*

III. Disposition

For the reasons set forth above, the court **DENIES** the Motion. The Final Pretrial Conference scheduled for **July 14, 2022, at 8:30 a.m.**, (Dkt. 115, 118), shall remain in place. The Jury Trial set on **July 26, 2022, at 8:30 a.m.**, (Dkt. 115, 118), shall remain as scheduled.

The Clerk shall serve this minute order on the parties.

Initials of Deputy Clerk: mku