UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

COREY ROCHE, **Plaintiff,** **v.** **SLM Corporation d/b/a SALLIE MAE BANK,** **Defendant.**	**Case No.: SACV 21-00985-CJC (JDEx)** **ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [Dkt. 55]**

I. INTRODUCTION

In this case, Plaintiff Corey Roche alleges that Defendant SLM Corporation, doing business as Sallie Mae Bank, unlawfully tried to collect and reported to consumer reporting agencies a debt that Plaintiff alleges was created as a result of identity theft. (Dkt. 1 [Complaint, hereinafter "Compl."].) Plaintiff asserts claims for violation of the Fair Credit Reporting Act (the "FCRA"), the California Consumer Credit Reporting Agencies Act (the "CCRAA"), the Rosenthal Fair Debt Collection Practices Act (the

"Rosenthal Act"), and the California Identity Theft Act (the "CITA"). (*Id.* ¶¶ 55–120.) Before the Court is Defendant's Motion for Summary Judgment. (Dkt. 55 [hereinafter "Mot."].) For the following reasons, Defendant's motion is **DENIED**.[1]

II. BACKGROUND

In 2017, a woman named Lawren Hill submitted two student loan applications for Morgan State University in Baltimore, Maryland to Defendant, with Plaintiff listed as a cosigner. (Dkt. 64-3 [Plaintiff's Response to Defendant's Statement of Uncontroverted Facts, hereinafter "SUF"] ¶¶ 2–4.) The loans were "auto-decisioned," which "means [they] went through a happy path," and there was "no need for a credit underwriter" or "fraud representative to look at the loan." (*Id.* ¶ 5.) In other words, the loans were approved without review by any person. (Dkt. 65-1 [Defendant's Response to Plaintiff's Statement of Genuine Disputes, hereinafter "SGD"] ¶ 89.) Accordingly, Defendant issued two student loans in the amounts of $17,000 and $22,000 to Ms. Hill, with Plaintiff listed as the cosigner. (SUF ¶¶ 6, 9–10.) The loans defaulted, and Defendant initiated collection proceedings. (SGD ¶ 119.)

In 2019, Plaintiff called Defendant to report his contention that the student loan debt in his name resulted from identity theft. (SUF ¶ 26.) Plaintiff told Defendant's fraud representative, Shawna Ward, that he had just learned of the loans after reviewing his credit file, and that he did not know Ms. Hill. (*Id.*) In 2020, Plaintiff faxed Defendant an Identity Theft Affidavit, which attached a Los Angeles Police Department Investigative Report regarding his identity theft claim. (*Id.* ¶ 31.) Defendant then

[1] Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for November 14, 2022 at 1:30 p.m. is hereby vacated and off calendar.

initiated an investigation of Plaintiff's claim, with Ms. Ward as the assigned investigator. (*Id.* ¶ 33.) Ms. Ward summarized her February 2020 investigation as follows:

> Sallie Mae received an identity theft affidavit and police report from Corey Roche advising that his name was added as a cosigner for two separate Sallie Mae private student loan accounts without his knowledge or permission. The borrower Lawren Hill was identified as an unknown person to Mr. Roche. The cosigner states []he became aware of these loans and their existence after receiving multiple collections calls from Sallie Mae. During the investigation the following information was reviewed and confirmed for the cosigner; the cosigners name, date of birth, social security number, permanent/current address (same), primary/work phone number (s), email address and employer name. This information was reviewed for both applications submitted for Mr. Corey Roche. This information was confirmed using 3rd party verification resource tools and pre (sic) a phone conversation with Mr. Roche and the fraud department. The IP addresses captured for the borrower and cosigner for both applications were both confirmed as a single address. The IP location for the first application submitted verified to the location of Laurel, Maryland. The IP location for the second application submitted verified to the location Morgan State University, in Baltimore, Maryland. Both locations could be linked to the borrower. Sallie Mae completed several phone call analyses. However, there were no recorded calls found associated with fraudulent activity regarding the way these loans were obtained. It should be noted that on 02-19-2019 the borrower spoke with Sallie Mae (interaction id 304087740240190219) to discuss available payments options. The borrower identified the cosigner as her uncle and stated he would be calling in to claim fraud due to a family falling out- and her inability to pay the Loans. The cosigner then contacted Sallie Mae's fraud department on 0228-2019 (interaction id 303901570890190228) regarding his allegation of identity theft/forgery with this unknown person- (the borrower). Based on the two calls, it would suggest the cosigner does know the borrower. Using resources available Sallie Mae was not able to substantiate the fraud claim submitted by, Mr. Corey Roche. He will remain as responsible.

(*Id.* ¶ 56; Dkt. 56-1 at 104–05.)

In May or June 2020, Defendant received Automated Credit Dispute Verification ("ACDV") forms from Experian and Equifax, which reflected Plaintiff's claim of identity theft. (SUF ¶¶ 60–61; Dkt. 54-4 [Experian], Dkt. 54-5 [Equifax].) Because it believed no new or additional information was provided with the ACDV forms, Defendant did not conduct a new investigation and instead relied on its prior investigation to conclude that the debt did not result from identity theft. (SUF ¶¶ 60–61; *see* SGD ¶ 148 ["Defendant conducted only one fraud investigation."].)

In this case, Plaintiff alleges that Defendant failed to sufficiently investigate his identity theft claim, reported a debt to creditors that it knew or should have known resulted from fraud, and misrepresented the character of the debt in trying to collect it. (*See* Compl. ¶¶ 55–120.) He asserts that he has never been friends with Ms. Hill, that he has never considered her to be her niece or godchild, that he did not give Ms. Hill permission to be a cosigner on any student loans, that he was not in Maryland when he purportedly signed the applications there, and that the applications contained inaccurate information about Plaintiff's employer, income, rent, checking and savings account, and work phone number that Plaintiff never would have listed if he had truly participated in filling out the applications. (Dkt. 64-2 [Plaintiff's Declaration] ¶¶ 3, 5, 7–15.)

III. LEGAL STANDARD

The Court may grant summary judgment on "each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Fed. R. Civ. P. 56(a). Summary judgment is proper where the pleadings, the discovery and disclosure materials on file, and any affidavits show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.*; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex*, 477

U.S. at 325. A factual issue is "genuine" when there is sufficient evidence such that a reasonable trier of fact could resolve the issue in the nonmovant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" when its resolution might affect the outcome of the suit under the governing law, and is determined by looking to the substantive law. *Id.* "Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* at 249.

When, as here, the nonmovant will have the burden of proof on an issue at trial, the moving party may discharge its burden of production by either (1) negating an essential element of the opposing party's claim or defense, *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158–60 (1970), or (2) showing that there is an absence of evidence to support the nonmoving party's case, *Celotex Corp.*, 477 U.S. at 325. Once this burden is met, the party resisting the motion must set forth, by affidavit, or as otherwise provided under Rule 56, "specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 256. A party opposing summary judgment must support its assertion that a material fact is genuinely disputed by (i) citing to materials in the record, (ii) showing the moving party's materials are inadequate to establish an absence of genuine dispute, or (iii) showing that the moving party lacks admissible evidence to support its factual position. Fed. R. Civ. P. 56(c)(1)(A)–(B). The opposing party may also object to the material cited by the movant on the basis that it "cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). But the opposing party must show more than the "mere existence of a scintilla of evidence"; rather, "there must be evidence on which the jury could reasonably find for the [opposing party]." *Anderson*, 477 U.S. at 252.

In considering a motion for summary judgment, the court must examine all the evidence in the light most favorable to the nonmoving party, and draw all justifiable inferences in its favor. *Id.*; *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809

F.2d 626, 630–31 (9th Cir. 1987). The court does not make credibility determinations, nor does it weigh conflicting evidence. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 456 (1992). But conclusory and speculative testimony in affidavits and moving papers is insufficient to raise triable issues of fact and defeat summary judgment. *Thornhill Publ'g Co. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

IV. DISCUSSION

Defendant moves for summary judgment on Plaintiff's claims under (1) the FCRA and the CCRAA, (2) the Rosenthal Act, and (3) the CITA.

A. The FCRA and CCRAA Claims

Defendant argues that summary judgment is appropriate on Plaintiff's FCRA and CCRAA claims because its investigation into Plaintiff's identity fraud claim was reasonable. (Mot. at 16–21.) To ensure the accuracy of credit reports, the FCRA places several responsibilities on "furnishers," the sources that provide information to credit reporting agencies. *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1153–54 (9th Cir. 2009). Once a credit reporting agency ("CRA") notifies the furnisher about a consumer dispute, the furnisher must conduct an investigation, review all relevant information the CRA provides, and report the results of the investigation to the CRA. 15 U.S.C. § 1681s-2(b)(1). If the furnisher determines that the consumer's dispute has merit, the furnisher must report those results to all other credit reporting agencies and modify, delete, or permanently block the reporting of erroneous information to credit reporting agencies. *Id.* Similarly, the CCCRAA prohibits furnishers from providing "information on a specific transaction or experience to any consumer credit reporting agency if the [furnisher] knows or should know that the information is incomplete or inaccurate." Cal. Civ. Code § 1785.25(a).

The investigation a furnisher conducts must be "reasonable." *See Gorman*, 584 F.3d at 1157. Summary judgment is generally an inappropriate way to decide the question of whether a furnisher's investigation was reasonable because of "the jury's unique competence in applying the reasonable man standard." *Id.* (cleaned up). Indeed, summary judgment on this question appropriate only "when only one conclusion about the conduct's reasonableness is possible." *Id.*; *see Gross v. CitiMortgage, Inc.*, 33 F.4th 1246, 1252 (9th Cir. 2022) ("Unless only one conclusion about the conduct's reasonableness is possible, the question is normally inappropriate for resolution at the summary judgment stage.") (internal quotation marks omitted). Given this high standard, "[t]he reasonableness of the procedures and whether the agency followed them will be jury questions in the overwhelming majority of cases." *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995).

Summary judgment is inappropriate on Plaintiff's FCRA and CCRAA claims because a reasonable jury could conclude that Defendant's investigation was not reasonable. For example, it is undisputed that Defendant did not conduct any further investigation when it received the ACDVs from Experian and Equifax in June 2020, and instead relied fully on its February 2020 investigation. (SUF ¶¶ 60–61; *see* SGD ¶ 148 ["Defendant conducted only one fraud investigation."].) A reasonable jury could conclude that relying on the February 2020 investigation was unreasonable. Notably, it is undisputed that Defendant knew the loan applications were electronically signed for both Ms. Hill and Plaintiff from the same IP address, despite the fact that they lived in different states. (SUF ¶¶ 49–50; SGD ¶¶ 114, 116, 126.) Yet Defendant did not investigate the issue because it believed "there are many scenarios where the IP addresses could be the same for the borrower and cosigner." (*Id.* ¶¶ 49–50; *see* SGD ¶ 91 ["During the investigation, Sallie Mae did not ask Plaintiff where he was located at the time the loans were applied for."]; *id.* ¶ 102 ["Sallie Mae did not believe that the fact that the Plaintiff was not in the location of the IP address when the loans were applied and signed

for was significant to the ID theft investigation."].) A reasonable jury could conclude that failing to investigate the IP address issue further was unreasonable. It is also undisputed that the applications contained inaccurate information about Plaintiff, including his checking and savings account information, his monthly rent amount, his monthly income, and his work phone number. (SGD ¶ 111.) Defendant did not attempt verify this information because Ms. Ward concluded she did not need it to verify Plaintiff's identity or whether there was any activity indicative of fraud. (SUF ¶ 47; *see id.* ¶ 48 [Ms. Mendes testifying that it was not material to Defendant whether or not the financial information on the application accurately described Plaintiff's employment income, checking account, savings account, gross annual income, and/or monthly rent or mortgage]; SGD ¶¶ 93–96 [Defendant did not request such information from Plaintiff during its investigation].) A reasonable jury could conclude that failing to verify this information in order to verify the cosigner's identity was unreasonable.

It is certainly possible that a jury could conclude that Defendant's investigation was reasonable. But because that is not the only conclusion a jury could reach, summary judgment is not appropriate on Plaintiff's FCRA and CCRAA claims. *See Gorman*, 584 F.3d at 1157; *Gross*, 33 F.4th at 1252.

B. The Rosenthal Act Claim

Defendant argues Plaintiff's Rosenthal Act claim is preempted by the FCRA, and that even if the claim is not preempted, Defendant is not a debt collector under the statute.

1. Preemption

Plaintiff alleges that Defendant violated the Rosenthal Act—which incorporates the provisions of the Fair Debt Collection Practices Act ("FDCPA")—by violating:

(1) "§ 1692e(2)(a) when it falsely represented the character, amount, or legal status of the debt in connection with collection thereof," and (2) "§ 1692f(1) when it collected or attempted to collect an amount not authorized by agreement or permitted by law."[2] (Compl. ¶ 120.) Defendant argues that summary judgment is appropriate on Plaintiff's Rosenthal Act claim because it is preempted by the FCRA. (Mot. at 21–22.)

In general, the FCRA does not displace state law except when state and federal law conflict. 15 U.S.C. § 1681t(a). However, the statute lists certain areas of state law it does displace including, for example, state law imposing requirements or prohibitions "relating to the responsibilities of persons who furnish information to consumer reporting agencies." 15 U.S.C. § 1681t(b)(1)(F). Accordingly, courts have concluded that allegations that a defendant violated § 1692e(8)—which prohibits communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed—to be preempted by the FCRA. *See, e.g.*, *Dewi v. Wells Fargo Bank*, 2012 WL 10423239, at *6 (C.D. Cal. Aug. 8, 2012); *Corby v. Am. Exp. Co.*, 2011 WL 4625719, at *7 (C.D. Cal. Oct. 5, 2011); *Pirouzian v. SLM Corp.*, 396 F. Supp. 2d 1124, 1130 (S.D. Cal. 2005).

However, the Court is not persuaded that Plaintiff's allegations that Defendant violated the Rosenthal Act by falsely representing to Plaintiff the character of the debt and attempting to collect an amount not authorized fall within the sections of FCRA that preempt state law. Courts have drawn a distinction when it comes to FCRA preemption between claims that relate to credit reporting—which are preempted—and claims that are unrelated to credit reporting—which are not. *Peters v. Discover Bank*, 649 F. App'x 405,

[2] Plaintiff voluntarily dismisses her claim that Defendant violated the Rosenthal Act by violating "§ 1692e(8) when it communicated credit information which it knew or should have known to be false." (*See* Compl. ¶ 120; Opp. at 9 n.2.)

408 (9th Cir. 2016) (explaining that a Rosenthal Act claim was preempted by the FCRA "to the extent th[e] claim relate[d] to credit reporting," and therefore addressing the Rosenthal Act claim "relat[ing] only to the debt collection portion of California Civil Code § 1788.18"); *Yu v. Tesla Energy Operations, Inc.*, 2022 WL 3575314, at *4 (C.D. Cal. Mar. 7, 2022) (concluding Rosenthal Act claims were preempted to the extent they "concern[ed] credit reporting by Tesla," but not to the extent they could "be construed as being unrelated to credit reporting"). Plaintiff's Rosenthal Act claim, which alleges that Defendant falsely represented the character of the debt and attempted to collect an amount not permitted by law, relates to debt collection rather than credit reporting. (*See* Compl. ¶ 120.) Because Plaintiff's Rosenthal Act claims do not relate to credit reporting, the FCRA does not preempt them. *See Peters*, 649 F. App'x 405, 408 (9th Cir. 2016); *Yu*, 2022 WL 3575314, at *4.

2. Debt Collector

Defendant next argues that summary judgment is appropriate on Plaintiff's Rosenthal Act claim because the fact that it "was the original lender for the loans and began servicing them prior to default" purportedly means it is not a "debt collector" regulated by that statute. (Mot. at 23.) But unlike the FDCPA, which defines "debt collector" only as an entity that collects debts due to another, 15 U.S.C. § 1692a(6), the Rosenthal Act defines "debt collector" to mean "any person who, in the ordinary course of business, regularly, *on behalf of that person or others*, engages in debt collection." Cal. Civ. Code § 1788.2(c) (emphasis added). Defendant is therefore a "debt collector" under the Rosenthal Act. *See Masuda v. Citibank, N.A.*, 38 F. Supp. 3d 1130, 1134 (N.D. Cal. 2014) ("Citibank qualifies as a debt collector under the Rosenthal Act because it attempted to collect a credit card debt on its own behalf.").

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C. The CITA Claim

Under the CITA, a "victim of identity theft" may bring an action for damages, civil penalties, and injunctive relief. *Satey v. JPMorgan Chase & Co.*, 521 F.3d 1087, 1092 (9th Cir. 2008); *see also* Cal. Civ. Code § 1798.93(a)–(c). A "victim of identity theft" means "a person who had his . . . personal identifying information used without authorization by another to obtain credit, goods, services, money, or property, and did not possess the credit, goods, services, money, or property obtained by the identity theft, and filed a police report in this regard." *Id.* § 1798.92(d).

Defendant argues that "there are too many factual inconsistencies for Plaintiff to be able to prove through a preponderance of evidence that he is indeed a 'victim of identity theft.'" (Mot. at 13.) But Defendant's arguments on this point largely turn on the credibility of competing witnesses. For example, Defendant argues Plaintiff made contradictory statements about whether he knew Ms. Hill and implausibly stated that he did not receive mail Defendant sent him about the loans (*see* SUF ¶¶ 9–25). (Mot. at 13–14.) It also points to Ms. Hill's competing statements that Plaintiff was her "uncle" or "god-uncle" and agreed to cosign her loans, and the fact that she told Defendant Plaintiff "would be calling in to claim fraud due to a family falling out" and that Plaintiff called Defendant a few days later to do just that. (*Id.*) But on summary judgment, the court does not make credibility determinations or weigh conflicting evidence. *Eastman Kodak*, 504 U.S. at 456. A jury will have to decide who is more credible in order to determine whether Plaintiff was a victim of identity theft.

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V. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is **DENIED**.

DATED: November 4, 2022

CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE