IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MEDFORD DIVISION

ANITA FRONEK,

Case No. 1:21-cv-0476-CL

Plaintiff,

v.

FINDINGS AND RECOMMENDATION

EXPERIAN INFORMATIONS SOLUTIONS, INC., *et al*,

Defendants.

CLARKE, Magistrate Judge.

Plaintiff Anita Fronek brings this action against Defendants Experian Information Solutions, Inc., Equifax Information Solutions, LLC, and PennyMac Loan Services, LLC, ("PennyMac"). The case comes before the Court on a motion for summary judgment (#61), filed by PennyMac, the only defendant remaining in the case. For the reasons below, the motion (#61) should be GRANTED.

LEGAL STANDARD

Summary judgment shall be granted when the record shows that there is no genuine dispute as to any material of fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The moving party has the initial burden of showing that no genuine issue of material fact exists.

Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc). The court cannot weigh the evidence or determine the truth but may only determine whether there is a genuine issue of fact. *Playboy Enters., Inc. v. Welles*, 279 F.3d 796, 800 (9th Cir. 2002). An issue of fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

When a properly supported motion for summary judgment is made, the burden shifts to the opposing party to set forth specific facts showing that there is a genuine issue for trial. *Id.* at 250. Conclusory allegations, unsupported by factual material, are insufficient to defeat a motion for summary judgment. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposing party must, by affidavit or as otherwise provided by Rule 56, designate specific facts which show there is a genuine issue for trial. *Devereaux*, 263 F.3d at 1076. In assessing whether a party has met its burden, the court views the evidence in the light most favorable to the non-moving party. *Allen v. City of Los Angeles*, 66 F.3d 1052, 1056 (9th Cir. 1995).

FACTUAL BACKGROUND

a. Plaintiff obtained a home mortgage loan in 2013 and entered into a forbearance plan on that loan in 2017.

On or about July 11, 2013, Plaintiff obtained a 30-year loan from Willamette Valley Bank doing business as Bank of Oregon in the amount of $158,163.00 at a fixed interest rate of 4.250% ("Loan"). Declaration of Connie Clark ("Clark Decl.") ¶ 5, Ex. A, Note, p. 1. Plaintiff's Promissory Note ("Note") requires Plaintiff to make monthly principal and interest payments of $778.07 through August 1, 2043. *Id.*

Plaintiff's repayment obligations under the Note are secured by a Deed of Trust recorded against real property located at 14675 Highway 234, Gold Hill, OR 97525 ("Property"). *Id.* at ¶ 6, Ex. B, Deed of Trust. Among other things, the Deed of Trust requires Plaintiff to meet her

payment obligations under the Note and pay into an escrow account for items such as taxes, assessments, and insurance. *Id.* at ¶ 6, Ex. B, Deed of Trust ¶¶ 1, 3. The Deed of Trust also explains the application of payments for the Loan, stating that payments received "shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) [required escrow] due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due." *Id.* at Ex. B, Deed of Trust ¶ 2. PennyMac is the current servicer of Plaintiff's loan and holds a beneficial interest in the Deed of Trust. *Id.* at ¶ 7, Ex. C, Assignment to PennyMac.

In 2017, Plaintiff began going through a financial hardship and entered into a USDA Special Forbearance Plan with PennyMac ("Forbearance Plan") on August 25, 2017. *Id.* at ¶ 9 Ex. D, Forbearance Plan; Declaration of Pavel Ekmekchyan ("Ekmekchyan Decl."), Ex. B, Fronek Depo. Tr. pp. 78:19-79:6, p. 80:2-18. The Forbearance Plan was a short-term temporary relief program to reduce Plaintiff's monthly loan payments which, at the time, totaled $1,089.08 (i.e., $778.07 principal and interest, plus required escrow due at the time). Clark Decl. ¶ 9 Ex. D, Forbearance Plan; Ekmekchyan Decl., Ex. B, Fronek Depo. Tr., pp. 85:8-86:4. Under the Forbearance Plan, PennyMac agreed temporarily to accept partial monthly loan payments of $451.36 for a period of six (6) months, beginning on September 1, 2017 through February 1, 2018. Clark Decl. ¶ 10, Ex. D, Forbearance Plan, p. 1; Ekmekchyan Decl., Ex. B, Fronek Depo. Tr., pp. 85:23-86:1. Further, among other things, the Forbearance Plan's relevant terms and conditions provided:

> Your account is presently due for August 1, 2017.
> ...
> The terms of your mortgage are not changed as a result of this Plan. You agree that all terms and provisions of your current Note and Security Instrument remain in full force, and you will comply with those terms. You also agree that nothing in the Plan shall be

> understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the loan documents.
> ...
> You agree that any payments made during the Plan term will be held in a temporary account until sufficient funds are in the account to pay your oldest delinquent monthly payment.
> ...
> Our acceptance and posting of any payment during the Plan does not waive any foreclosure actions and related activities. It also does not cure any default under your loan, unless the payments are sufficient to completely cure your entire default under your loan.
> ...
> During the term of the Plan, you will remain delinquent on your mortgage and your credit score may be impacted. In accordance with the requirements of the Fair Credit Reporting Act and the Consumer Data Industry Association, we will continue to report the delinquency status of your loan, as well as your entry into a forbearance plan, to credit reporting agencies.

Clark Decl., Ex. D, Forbearance Plan, p. 1-2.

During the Forbearance Plan period, Plaintiff made her forbearance payments. Clark Decl. ¶ 11 (September 15, 2017: $451.36; October 14, 2017: $451.36; November 13, 2017: $451.36; December 13, 2017: $451.36; January 16, 2018: $1,089.08; and February 12, 2018: $460.00). Because Plaintiff predominantly made only partial payments during the Forbearance Plan, PennyMac held Plaintiff's payments in a suspense account until there were sufficient funds to cover her oldest delinquent monthly Loan payment, which was consistent with the Forbearance Plan and is also consistent with the Deed of Trust's provisions regarding payment application. *Id.* at ¶ 12, Ex. D, Forbearance Plan, p. 2, Ex. B, Deed of Trust ¶ 2. Once there were sufficient funds in the suspense account to meet her required monthly payment (at the time, $1,089.08), PennyMac would then apply the funds to her oldest delinquent monthly loan payment. *Id.* at ¶ 12.

Thus, during the Forbearance Plan, PennyMac applied the following payments based on funds held in the Loan's suspense account: (a) on October 16, 2017, PennyMac applied

$1,089.08 from Plaintiff's suspense account to the Loan's past due August 1, 2017 payment, and (b) on December 13, 2017, PennyMac applied $1,089.08 from Plaintiff's suspense account to the Loan's past due September 1, 2017 payment. *Id.* at ¶ 12. In addition, on or about January 16, 2018, Plaintiff's payment of $1,089.08 was applied to the Loan's October 1, 2017 payment. *Id.* By the end of the Forbearance Plan on March 1, 2018, PennyMac still considered Plaintiff in default on the Loan because she failed to cure the entire default that had accrued during the forbearance. *Id.* at ¶¶ 11 15; Ekmekchyan Decl., Ex. B, Fronek Depo Tr., p. 101:11-14 (Q. "You did not pay the amount that PennyMac told you was due at the end of your forbearance plan, did you? A. No."). As of March 1, 2018, the November 1, 2017 payment and all subsequent payments remained outstanding. Clark Decl. ¶ 15, Ex. G, March 2018 Monthly Statement.

Based on Plaintiff's default, PennyMac invited Plaintiff to apply for a loan modification. *Id.* at ¶ 16. Ultimately, however, Plaintiff did not qualify for the requested loan modification under any available loan modification programs. *Id.* at ¶ 17, Ex. F, Loan Modification Denial; Ekmekchyan Decl., Ex. B, Fronek Depo Tr., p. 102:3-5.

b. Plaintiff filed a Chapter 13 Bankruptcy Petition in 2018.

On May 23, 2018, Plaintiff filed a Chapter 13 Bankruptcy Petition in the United States Bankruptcy Court, District of Oregon, Case No. 18-61609-tmr13 ("Bankruptcy Action"). *Id.* at ¶ 18, Ex. J; Complaint ("Compl.") ¶ 62 (#1). Under Plaintiff's Chapter 13 Plan ("BK Plan") which was confirmed on August 13, 2018, Plaintiff was required to "cure the default and maintain the contractual installment payments" for the Loan with PennyMac based on PennyMac's allowed claim in the Bankruptcy Action. *Id.* at Ex. K, BK Plan ¶ 4(b). To cure the default, among other things, the BK Plan required Plaintiff to make monthly payments to the trustee—$237 for 12 months and $325 thereafter. *Id.* at Ex. K, BK Plan ¶ 3, Ex. M, Order Confirming BK Plan ¶ 4\;

Compl. ¶ 64 (#1). ("the Plan provides for curing arrears; and was Confirmed on August 13, 2018. The chapter 13 trustee pays the arrears to PennyMac from the plan payment").

On July 20, 2018, PennyMac filed a Proof of Claim in the Bankruptcy Action based on its secured lien under the Deed of Trust. *Id.* at Ex. L, Proof of Claim. As of the date of Plaintiff's Bankruptcy Petition, the amount required to cure Plaintiff's default with PennyMac totaled "$7,057.56". *Id.* at Ex. L, Proof of Claim, p. 2; Compl. ¶ 63 (#1). Plaintiff's Bankruptcy Action is still currently pending. Ekmekchyan Decl., Ex. D, BK Docket; Ex. C., Fronek Depo. Tr. P. 135:2-3.

c. Plaintiff disputed PennyMac's reporting of Plaintiff's post-petition bankruptcy payments and loan status with Equifax in 2021, and PennyMac investigated in response.

In or around February 2021, Plaintiff sent a Notice of Dispute to one of the three major credit bureaus ("CRAs"), Equifax, disputing PennyMac's credit reporting ("Equifax Dispute"). *Id.* at ¶ 28; *see* Compl. ¶ 69 (#1).

In the Equifax Dispute, Plaintiff complained that PennyMac was incorrectly reporting her account post-bankruptcy. Specifically, Plaintiff's Equifax Dispute notice stated as follows:

> This account should not be reporting as closed. The account is open and active. I have continued to make payments. It is not a debt that will be included in the discharge of a chapter 13. Please update the balance, monthly payment, payment status to reflect the actual balance of the loan, the regular monthly payment, and that the payment status is current.... The aforesaid accounts are not being reported correctly since I filed bankruptcy. Additionally, the adverse reporting that has occurred post discharge needs to be removed. Please update the derogatory reporting post filing and/or mark disputed if you disagree.

Clark Decl. ¶ 29, Ex. N, Equifax Dispute, p. 2. In response to Plaintiff's Equifax Dispute, PennyMac states that:

> PennyMac investigated the dispute by first validating Plaintiff's account and then conducting a review of Plaintiff's account information. Following its investigation, PennyMac submitted its response electronically through the e-OSCAR portal on or about February 17, 2021. Attached as Exhibit O is a true and correct copy of a document captioned "ACDV Response Form". This ACDV Response Form contains the data from PennyMac's response to Plaintiff's Equifax Dispute. It is a document taken from PennyMac's system and is in an internal storage format.
>
> There are several columns contained in the ACDV Response Form. One column is entitled "Request Data" and another column is entitled "Response Data". The "Request Data" column contains the data provided by Equifax. The "Response Data' column contains PennyMac's response to Equifax's data. In connection with Plaintiff's credit dispute at issue, PennyMac reviewed all of the data fields contained on the ACDV Response Form as part of its investigation and made any necessary updates to reflect accurate account information for Plaintiff under the "Response Data" column.

Clark Decl. ¶ 30-31, Ex. O, ACDV Response Form. Notably, the ACDV Response Form indicates that PennyMac verified that Plaintiff's Loan was active as of February 4, 2021, which is indicated by a blank "Date Closed" field in the report. *Id.* ¶ 32(a). "A blank 'Date Closed' field denotes an active loan." *Id.* Here, Equifax's 'Request Data' column contained a blank field." *Id.* PennyMac asserts that, therefore, "PennyMac accurately did not change this field under 'Response Data' column." *Id.*

PennyMac asserts that the current balance on Plaintiff's Loan, the scheduled monthly payment, and the actual payment submitted, were all verified for accuracy, and no changes were made, due to being accurately reported already. *Id.* ¶ 32(b-d).

DISCUSSION

Plaintiff asserts a single claim against PennyMac for violations of section 1681s-2(b) of the FCRA. Plaintiff alleges PennyMac incorrectly reported that her mortgage is closed, and incompletely and inaccurately reported payment history "even though she has timely made all

payments since filing bankruptcy." Complt. ¶ 16 (#1). She also alleges that PennyMac failed to make a reasonable investigation after receiving notice of Plaintiff's dispute through the credit reporting agencies.

I. PennyMac is entitled to summary judgment because the undisputed evidence shows that Plaintiff's FCRA claim fails as a matter of law.

Congress enacted the FCRA to ensure accurate reporting about the "credit worthiness credit standing, credit capacity, character, and general reputation of consumers." 15 U.S.C. § 1681(a)(2). Under FCRA, consumers are entitled to request copies of their credit report from TransUnion, Equifax, and Experian, i.e., the country's "Big Three" credit reporting agencies. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2201 (2021). As the Ninth Circuit has explained, "CRAs receive credit information about borrowers and consumers from data furnishers, such as mortgage lenders and credit card companies. Furnishers generally report their data to CRAs using an agreed-upon format, known as Metro 2." *Shaw v. Experian Info. Sols., Inc.*, 891 F.3d 749, 752 (9th Cir. 2018). If a consumer believes any credit information is inaccurate on their credit reports, the FCRA allows the consumer to file a dispute with the credit reporting agency. See 15 U.S.C. § 1681i(a). The FCRA only "creates a private right of action against 'furnishers'—individuals and entities who furnish information to CRAs—for noncompliance with duties imposed under 15 U.S.C. § 1681s-2(b)." *Hughes v. IQ Data Int'l, Inc.*, No. 15-CV-05118-BLF, 2016 WL 7406993, at *2 (N.D. Cal. Dec. 22, 2016) (*citing Gorman v. Wolpoff & Abramson*, LLP, 584 F.3d 1147, 1154 (9th Cir. 2009)). Section 1681s-2(b) "imposes certain obligations on a furnisher, such as a duty to conduct an investigation, when the furnisher receives notice from a CRA that a consumer disputes information reported by the furnisher." *Id.*

To prevail on an FCRA claim under Section 1681s-2(b), a plaintiff must establish the following essential elements: "(1) the furnisher provided incomplete or inaccurate information to

a CRA; (2) the plaintiff notified the CRA of the inaccuracy and the CRA then notified the furnisher; (3) the furnisher failed to conduct a reasonable investigation into the dispute and/or provide a corrected report to the CRA; and (4) the furnisher's actions caused the plaintiff actual damages." *Lawrence v. Paramount Residential Mortg. Grp., Inc.*, 2020 WL 6689371, at *2 (D. Or. July 20, 2020); *see also Hughes*, 2016 WL 7406993, at *2. Notably, the accuracy of reporting and reasonable investigation elements are separate and distinct. If the disputed reporting at issue is accurate, whether or not the furnisher conducted a reasonable investigation is immaterial. *See Carvalho v. Equifax Info. Servs. LLC,* 629 F.3d 876, 890 (9th Cir. 2010) (the FCRA requires "that an actual inaccuracy exist for a plaintiff to state a claim").

In this case, Plaintiff fails to establish that PennyMac provided incomplete or inaccurate information to a CRA. Moreover, PennyMac has provided undisputed evidence that the investigation conducted after Plaintiff gave notice was reasonable. For both reasons, PennyMac is entitled to summary judgment.

A. Plaintiff has not established that PennyMac furnished incomplete or inaccurate information to a CRA.

To survive summary judgment, a plaintiff bears the threshold burden to make "a prima facie showing of inaccurate reporting." *Shaw*, 891 F.3d at 756 (affirming summary judgment for defendant); *Nissou-Rabban*, 2016 WL 4508241 at *3 ("a plaintiff must plead an actual inaccuracy"); *Hernandez v. Bank of Am., N.A.*, 2016 WL 5508812, at *3 (D. Nev. Sept. 27, 2016) ("a plaintiff must first show that an inaccuracy existed in his credit reports"). "A plaintiff's required showing [under § 1681s–2(b)] is factual inaccuracy, rather than the existence of disputed legal questions." *Biggs v. Experian Info. Sols., Inc.*, 209 F. Supp. 3d 1142, 1144 (N.D. Cal. 2016). "[A] credit entry can be 'incomplete or inaccurate' within the meaning of the FCRA

'because it is patently incorrect, or because it is misleading in such a way and to such an extent that it can be expected to adversely affect credit decisions.'" *Gorman*, 584 F.3d at 1163.

Failure to show an actual inaccuracy in connection with the disputed credit reporting is fatal to an FCRA plaintiff's claim. *See, e.g., Mitchell v. Specialized Loan Servicing LLC*, 2022 WL 17883609, at *1 (9th Cir. Dec. 23, 2022) (affirming summary judgment on FCRA claim, in part, because the plaintiff was required, but failed, to "'make a prima facie showing that' [the furnisher's] reporting was inaccurate, as he must to state a FCRA claim"); *Hernandez*, 2016 WL 5508812, at *4 (granting summary judgment on the accuracy element only, stating that because "the record establishes that the information Defendant reported in this case was not inaccurate, the Court finds that Plaintiff fails to state an FCRA claim....The Court does not reach Defendant's remaining arguments[.]");

Here, Plaintiff alleges that PennyMac inaccurately reported her post-bankruptcy payments by reporting "D" (for no data), rather than reporting an "ongoing payment history." Compl. ¶¶ 15, 78 (#1). In response, PennyMac argues that Metro 2 Guidelines require furnishers to report "D" each month under the PHP during a debtor's pending Chapter 13 bankruptcy proceeding. *See, e.g.,* Clark Decl. ¶ 23 (during a Chapter 13, "Metro 2 requires furnishers to report a 'D' in the payment history profile, which means no data is available for that particular month."); Ekmekchyan Decl. Ex. B, Jimenez Depo Tr., p. 66:20-22, ("Q. Does D represent that no payment history is reported this month? A. D represents no data."); Compl. ¶¶ 42-43, 58 (#1) ("Metro 2 indicator 'D' entered in the payment history means 'no payment history reported/available this month'").

Courts have agreed with this contention by PennyMac. *See Giovanni v. Bank of Am., Nat. Ass'n*, 2013 WL 1663335, at *2 (N.D. Cal. Apr. 17, 2013) ("The CDIA instructs credit

furnishers to 'report the value indicator 'D' or 'no data' in the payment history section during a bankruptcy…'"). Plaintiff has not provided any authority to dispute this contention.

Moreover, another court in the District of Oregon has rejected an argument similar to the one that Plaintiff makes here – that failure to report ongoing monthly payments during a pending bankruptcy qualifies as an inaccuracy under the FCRA:

> The weight of authority makes clear that credit reporting "that does not reflect the terms in the debtor's Chapter 13 plan after confirmation, but before discharge," is not inaccurate… it is not misleading for a furnisher or CRA to provide information that does not fully encapsulate a debtor's loan payment obligations or history during a pendency of a bankruptcy.

Lawrence, 2021 WL 3578679, at *7 (D. Or. May 4, 2021) *(citing Conrad v. Experian Info. Sols., Inc.*, 2017 WL 1739167, at *5 (N.D. Cal. May 4, 2017)). In that case, the court granted summary judgment in favor of the furnisher based in part on this reasoning. *Id.* at *8-9. The court further explained:

> Plaintiff has not cited to, and the Court is not aware of, any authority holding, either directly or by analogy, that the FCRA imposes liability for: (1) failing to disclose ongoing mortgage payments on an account subject to discharge; or (2) reporting "no data" or a CII "D" code on such an account once a bankruptcy has been initiated.

Id. Similarly, in this case, Plaintiff has not cited to any authority that reporting "D" for no data is a reporting inaccuracy such that PennyMac has violated the FCRA.

Plaintiff has established that she was making payments under her Chapter 13 Bankruptcy Plan, but she has not shown that she was making the contractually obligated payments under the terms of her mortgage loan, and indeed the evidence in the record is that she was not. She has not shown that PennyMac's reporting of "D" for no data was an inaccurate way to report the fact that she was making payments during the pendency of her bankruptcy that fulfilled her obligation under the terms of the bankruptcy plan, but not under the terms of the Loan. Plaintiff has

therefore failed to make a prima facie showing of inaccurate reporting. This is fatal to her claim under the FCRA, and PennyMac is entitled to summary judgment.

B. Even if Plaintiff made a prima facie showing of inaccurate reporting, her claim still fails because PennyMac has provided undisputed evidence that the investigation conducted was reasonable.

If Plaintiff shows an inaccurate reporting, she must then establish that "the furnisher failed to conduct a reasonable investigation into the dispute and/or provide a corrected report to the CRA." *Lawrence*, 2020 WL 6689371, at *2. Among other things, these duties require furnishers to "conduct an investigation with respect to the disputed information", "review all relevant information provided by the consumer with the notice", and "notify each consumer reporting agency to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate." 15 U.S.C. § 1681s-2(b)(1); *see also Drew v. Equifax Info. Servs., LLC*, 690 F.3d 1100, 1107 (9th Cir. 2012).

A furnisher's duties under Section 1681s-2(b)(1) are only triggered upon receiving a notice of dispute from a CRA. *Gorman*, 584 F.3d at 1157. In response to a dispute notice, "[t]he pertinent question is [] whether the furnisher's procedures were reasonable in light of what it learned about the nature of the dispute from the description in the CRA's notice of dispute." *Id.*; *accord Westra v. Credit Control of Pinellas*, 409 F.3d 825, 827 (7th Cir. 2005) ("[i]nvestigation in this case was reasonable given the scant information it received regarding the nature of [plaintiff's] dispute."). Summary judgment is proper upon a finding that a furnisher engaged in a reasonable investigation of a consumer's dispute. *See, e.g., Personius v. Specialized Loan Servicing LLC*, 2017 WL 6942649, at *4 (C.D. Cal. Nov. 22, 2017) (granting summary judgment in favor of furnisher SLS after finding SLS's investigation was reasonable, stating "SLS

reviewed the information given to it from Experian which included Plaintiff's written dispute, verified that the information reported to Experian matched SLS' internal account records, and concluded that no error had occurred—no FCRA furnisher liability can be established against SLS.").

Here, Plaintiff's Equifax Dispute notice stated:

> This account should not be reporting as closed. The account is open and active. I have continued to make payments. It is not a debt that will be included in the discharge of a chapter 13. Please update the balance, monthly payment, payment status to reflect the actual balance of the loan, the regular monthly payment, and that the payment status is current.... The aforesaid accounts are not being reported correctly since I filed bankruptcy. Additionally, the adverse reporting that has occurred post discharge needs to be removed. Please update the derogatory reporting post filing and/or mark disputed if you disagree.

Clark Decl. ¶ 29, Ex. N, Equifax Dispute, p. 2.

PennyMac employee Evelyn Jimenez investigated Plaintiff's Equifax Dispute. During her deposition, Ms. Jimenez testified that her title is "credit corrections specialist 3", she has been employed with PennyMac for 5 years, and her job responsibilities include reviewing and responding to credit disputes. Ekmekchyan Decl., Jimenez Depo. Tr., pp. 7:16-8:2. As part of her investigation, Ms. Jimenez testified that she reviewed Plaintiff's Equifax Dispute letter, including Plaintiff's attached payments, in connection with reviewing the ACDV. *Id.* at pp. 83:23-85:14. Further, Ms. Jimenez testified that she reviewed PennyMac's internal system of record to research Plaintiff's account information. *See id.* at pp. 62:4-6] ("A. ...all of our system is going to be utilized to respond to an ACDV. So, we would... respond per what we reviewed within our system"); *id.* at p. 67:4-69:14 (explaining that she reviewed multiple parts of PennyMac's system and also reviewed PACER to obtain bankruptcy details such as "chapter and filing date, and if it's active, dismissed, or discharge[d]").

Upon completion of PennyMac's investigation, it is undisputed that PennyMac submitted its response to the Equifax Dispute within e-OSCAR on February 17, 2021. *Id.* at. Ex. O, ACDV Response Form; Ekmekchyan Decl., Ex. C, Jimenez Depo. Tr., p. 77:23- 25 ("Q. And then do you see this last section titled, date? A. Yes. Q. …That reflects you reviewed this ACDV on February 17th, 2021, correct? A. That's the date that I responded, yes."). In addition, upon submitting the ACDV response through e-OSCAR, Ms. Jimenez also documented her response in PennyMac's system. *Id.*, Jimenez Depo. Tr., p. 98:24-2; Ex. 9 (refencing the Loan's servicing notes attached as Exhibit 9, plaintiff's counsel asked: "Are these your notes?" and Ms. Jimenez responded "Yes").

Based on all of the above, is undisputed that PennyMac, through Ms. Jimenez, "conducted an investigation with respect to the disputed information." Ms. Jimenez "reviewed all relevant information provided by" Plaintiff's Equifax Dispute notice, as well as PennyMac's systems, and the bankruptcy information that she could view through PACER. She also "notified" Equifax of that determination, submitting the ACDV response through e-OSCAR, and "provided any correction to that information necessary to make the information… accurate." Therefore, PennyMac's investigation of Plaintiff's Equifax Dispute notice was reasonable as a matter of law.

Plaintiff also claims that PennyMac failed to reasonably investigate a dispute she made through Experian. However, as discussed above, a furnisher's duties under Section 1681s-2(b)(1) are only triggered upon receiving a notice of dispute from a CRA. *Gorman*, 584 F.3d at 1157. Here, PennyMac has submitted evidence stating that:

> Aside from the Equifax Dispute, PennyMac has no record of receiving any other credit reporting disputes submitted by Plaintiff to any of the other CRAs in connection with the Loan between December 2019 through September 2021, including from Experian.

Clark Decl. ¶ 35. Plaintiff has not submitted any evidence to dispute this fact. Therefore, PennyMac is entitled to summary judgment as to this claim as well.

II. Evidentiary objections should be overruled.

Both parties raise evidentiary objections. PennyMac's objections and the underlying evidence submitted are not material to the Court's analysis of the legal claims above. Therefore, those objections should be overruled. Plaintiff's objections should also be overruled, for the reasons below.

First, PennyMac raises objections concerning Plaintiff's Declaration (#66, 66-10), asserting that a number of paragraphs contain improper testimony and opinions about PennyMac's credit reporting without laying a proper foundation or basis for such opinions. Similarly, PennyMac claims these paragraphs are inadmissible hearsay and that they are irrelevant, along with certain other paragraphs concerning Transunion, which are irrelevant because none of the allegations in the Complaint dispute PennyMac's reporting to Transunion. The Court agrees that many of these objections have merit. However, as none are material to the Court's dispositive analysis of the legal claims, the objections should be overruled.

Second, Plaintiff raises evidentiary objections to the Declaration of Connie Clark, PennyMac's Authorized Representative. Ms. Clark is First Vice President, Loan Servicing Administration in PennyMac's credit reporting department. Plaintiff also objects to Exhibit O, appended to Ms. Clark's Declaration. The Court agrees with PennyMac that these objections are not well taken.

The statements contained in Ms. Clark's declaration are based on PennyMac's account records and business records. *See, e.g.*, Dkt. 63, Clark Decl. ¶¶ 32-33 (explaining how PennyMac verified as accurate various fields in the ACDV at issue based on PennyMac's records, including

the "Current Balance", "Date Closed", Plaintiff's "Actual Payment", among others). Nothing about Ms. Clark's review of the business records and testimony based on those records (e.g., the payment history) constitutes inadmissible hearsay because it is based on her personal review and knowledge of PennyMac's records.

Similarly, PennyMac is not using Exhibit O, the ACDV Response Form, as proof of the truth of the information contained therein, but rather to show what PennyMac reported to Equifax. This is a non-hearsay purpose. *See, e.g., Interactive Health LLC v. King Kong USA, Inc.*, 2008 WL 11342660, at *2 (C.D. Cal. Dec. 5, 2008) (explaining court overruled hearsay objection where evidence was "admitted for non-hearsay purpose—to show that calls were made and what was stated"). Nonetheless, the Court agrees that, even if Exhibit O constituted hearsay, the document falls within the business records exception. *See* FRE 803(6); Dkt. 63, Clark Decl. ¶ 3 (declaring the requisite elements supporting application to business records exception to the hearsay rule—e.g., "The matters contained within the Loan Records [which includes credit reporting history such as the ACDV] are entered by persons with knowledge at the time of the transaction, occurrence, or event referred to therein, or were made within a reasonable time thereafter. The Loan Records are maintained in the ordinary course of PennyMac's regular business activities of its mortgage servicing and reflect regularly conducted business practices.... All individuals maintaining PennyMac's business records are under a business duty to maintain accurate records."). For these reasons, Plaintiff's evidentiary objections should be overruled.

RECOMMENDATION

For the reasons above, PennyMac's motion for summary judgment (#61) should be GRANTED. Both parties' evidentiary objections should be overruled. Judgment should be entered on behalf of PennyMac.

This Findings and Recommendation will be referred to a district judge. Objections, if any, are due no later than fourteen (14) days after the date this recommendation is entered. Id objections are filed, any response is due within fourteen (14) days after the date the objections are filed. *See* FED. R. CIV. P. 72, 6.

Parties are advised that the failure to file objections within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

DATED this 26 day of April, 2024.

MARK D. CLARKE
United States Magistrate Judge