Post-Discharge Bankruptcy and FCRA Review

1. **Pre-filing**
    a. Prepare client for what their credit report will look like during the case
    b. Discuss what the FCRA process will be like post-discharge
        i. Important to plant the seed, especially in chapter 13 clients. The more excited the client, the more likely they will participate post-discharge
        ii. Be careful about discussing prior to having a retainer agreement signed, See: Credit Repair Organizations Act (CROA)
            1. Cannot induce a client to pay you to file them in bankruptcy by promising them credit report review (for now).
            2. But also consider pending legislation
2. **Maintain relationship with Debtor Post discharge**
    a. Send letters/emails/texts to client offering to give their credit report a free examination to ensure that their creditors have properly reported and that the CRAs have properly adjusted the report.
        i. correspondence should contain an introductory explanation of the service and that you ARE NOT asking for compensation in return for reviewing the report.
        ii. Correspondence should contain simple step by step instructions on how to retrieve their report in the manner your firm prefers.
            1. Some attorneys wait AT LEAST 60 days from discharge. If done earlier the report could still be subject to the post-discharge sweep.
            2. Annualcreditreport.com or direct purchase if the client has used their free one already. Regardless of what service you use, be careful of terms and conditions (arbitration clauses).
            3. Give instructions on credit monitoring services and their implications. (What is credit Karma, how is it useful and why they may want to use it).
        iii. Some attorneys send stamped envelope for the client to return the report if Annualcreditreport.com or mail-in FACTA request is used.
    b. Send correspondence client to follow up

3. Begin Mining Process/review report

a. Reporting should show:
   i. Zero Current Balance
   ii. "included in bankruptcy" or "discharged in bankruptcy" notation
   iii. There should be no status updates after the filing of the bankruptcy petition

b. Common Errors/what should not be on report post-discharge
   i. Mortgage and auto loans often completely wiped away improperly
   ii. Debt Collectors continue to report after discharge
      1. Discharged accounts showing balances
      2. Look for date of status update or date last reported
   iii. Cars that have been reaffirmed in Chapter 7
   iv. Nothing in Pay Status
   v. Post-discharge inquiries from creditors who were included in the bankruptcy
   vi. Late or missed payment notations during the pendency of the bankruptcy
      1. This applies especially to student loans and mortgages
   vii. Long-term debts or Non-dischargeable debts (like student loans) that are not reporting a proper post-discharge balance.

c. Compare report to bankruptcy discharge
   i. Review petition
      1. Review all subsequently uploaded schedules and mailing matrices
         a. In most districts, service not needed for discharge in chapter 7. If creditor did not receive notice then be clear in dispute.
         b. Avoid "Legal vs. Factual", be sure that your district has caselaw.
   ii. Review plan
      1. Make sure to focus on mortgage and automotive debts inside the plan or reaffirmed
   iii. Review any notices of final cure and motions to deem current. *See* R. Bank. P. 3002.1
      1. Compare to balance listed on report
      2. Sometimes also a FDCPA violation

d. Explain error and consequences of the error to the client
    i. Phone call or email to client…but maybe this would be a good time to give them an opportunity to actually meet with someone in person to see the error.
        1. How this can harm them going forward
        2. How can you fix it
        3. What to do next

4. Retain Client

a. Send retainer via Email or Mail (with return envelope).
    i. Give client opportunity to ask questions
    ii. Include letter with retainer that explains that they are welcome to ask questions about the retainer prior to signing and that they may ask another attorney about the agreement if they wish.

5. Aid Debtor in Disputing debt/is a dispute needed?

a. Dispute the debt if 1681i or 1681s-2(b) claim.
b. Depending on the type of inaccuracy and the type of potential defendant you may be able to sue right away under 1681e(b) and no dispute is needed
    i. Is the harm material?
    ii. Do not <u>have to</u> dispute if only against a CRA/1681e claim. If only against CRA, the dispute could be a gamble for bigger damages.
        1. What does the client want? Are they litigious or do they want to give the bureaus more chances?
c. Ghost write dispute letter with/for client and make sure that they review and ratify it.
    i. It's important the letter is unique. CRAs have an algorithm that can tell if they are "form letters".
    ii. Disputes should include as much supporting documentation as possible, including bankruptcy filings (e.g. petition, plan, discharge order, etc.)
        1. Make it INCREDIBLY CLEAR that the CRA/furnisher is making an error. The more evidence and clarity, they better case you can make that the furnisher did not properly reinvestigate the account.
        2. (Petition, plan, discharge order, etc.)
        3. RESPA/Reg X documents, if applicable

d. Other types of inaccuracies may require a dispute and allowance of time for a reinvestigation as authorized by section 1681i(a)(1)(A).
    i. How many is enough? Too many?
    ii. Dispute again for more damages?
        1. Often a waste of time Will not add significant damages for post-bankruptcy cases.

6. Litigate!

Credit Reporting After Bankruptcy: Six Myths and Counter – Arguments

Myth* #1: *"A person won't be able to build their credit score after bankruptcy."
It's true that bankruptcy can damage a credit score, but this assumes the person had a perfect score to begin with. In reality, people who are considering bankruptcy have likely already missed payments and had bills sent to collections, meaning their credit score is already struggling. In this case, filing for bankruptcy is like getting an F on a test when your GPA is already at 1.2—it doesn't make much of a difference.

Although bankruptcy stays on a credit report for seven to ten years, credit scores weigh recent activity more heavily than past issues. After about two years, even bankruptcy has a much smaller effect on a credit score. This is because credit-scoring bureaus understand that a person's current financial situation is much more representative of their ability to pay bills than their past financial situation. A person who struggled two years ago might be in a great financial position, especially if they have disposable income due to bankruptcy.

So during the two years following a bankruptcy, debtors have the chance to rebuild their credit by adopting healthier financial habits. By surrounding their old, negative history with new, positive credit behaviors, they can improve their score—just like a student who starts earning A's and B's can rebuild their GPA. With this improvement, even people who have been through a bankruptcy can qualify for better financial products and regain access to opportunities such as homeownership and lower interest rates, not to mention the ability to build wealth.

This brings us to a related myth …

Myth #2: "A person should avoid bankruptcy to protect their credit score."
In reality, avoiding bankruptcy can prolong the damage to a person's credit score rather than protect it. When individuals are already struggling financially, they often continue missing payments because they lack the resources to stay current on their bills. This cycle of missed payments and accounts sent to collections causes their credit score to keep deteriorating. By delaying the decision to file for bankruptcy, the individual is not protecting their credit score but instead allowing it to suffer further.

Filing for bankruptcy can actually allow a person to begin rebuilding their credit more quickly than if they continue struggling to stay afloat. While bankruptcy initially causes a drop in a person's credit score, it wipes out a substantial portion of their debt, which can stop the downward spiral. Once the bankruptcy process is complete, they can take proactive steps toward financial recovery and rebuilding their credit score—potentially bouncing back faster than if they had continued struggling to manage insurmountable debt.

Moreover, it's important to consider the emotional toll that delaying bankruptcy takes on individuals. The years of financial stress and anxiety caused by mounting bills, creditor

harassment, and fear of insolvency can be far more damaging than the temporary hit to their credit score. By encouraging clients to take action sooner, attorneys can help them regain control over their finances and begin working toward a stable financial future.

Myth #3: "A person won't qualify for the credit that is necessary to build their score."

Contrary to the belief that credit is unattainable post-bankruptcy, specific financial tools are designed to help individuals rebuild their credit. Namely, secured credit cards and credit-builder loans offer accessible options for people with poor credit, providing the same positive impact as traditional credit cards and installment loans.

It works like this:

To achieve a strong credit score after bankruptcy, a person needs to open new lines of credit and show credit-scoring bureaus that they've used the bankruptcy to change their financial habits. Specifically, a person should open three credit cards (secured or unsecured) and an installment line of credit.

Secured credit cards function similarly to traditional credit cards but require a security deposit. Responsible use—making purchases and paying the balance on time—can help rebuild credit in the same way that on-time payments for a Platinum Card from American Express will help rebuild credit.

Credit-builder programs are offered nationwide, specifically to help people rebuild their credit scores. These programs allow the borrower to make fixed payments over time, which are reported to credit bureaus, helping to rebuild the debtor's credit profile. (An example of this would be the Credit Rebuilder Program through Evergreen Financial Counseling, an approved credit-counseling and debtor-education nonprofit. See here.)

By using secured credit cards and credit-builder loans, debtors can demonstrate responsible financial behavior, leading to an improved credit profile. This consistent, positive credit behavior contributes to a better credit score, paving the way for future financial opportunities.

Myth #4: "A person should wipe their hands clean of credit after bankruptcy."
The truth is, to rebuild credit and even leverage it to build wealth, people need to actively use credit after bankruptcy. While it might seem safer to avoid credit altogether, doing so can actually hinder financial recovery.
After bankruptcy, responsible use of credit is key to improving a person's credit score. Tools like secured credit cards, credit-builder loans, and other small lines of credit provide a way for clients to demonstrate positive financial behavior. Making on-time payments and keeping balances low will show creditors they can responsibly manage debt, helping to restore their credit profile over time.
Not only can people regain a strong credit score by using credit wisely, but they can also leverage that score to access opportunities like lower interest rates, better loan terms,

and financial tools that help build long-term wealth. Bankruptcy isn't the end of credit—it's an opportunity to start fresh and use credit as a stepping stone toward financial stability and growth.

Myth #5: "Rebuilding a credit score is complicated."
The truth is, while credit reporting agencies don't disclose their exact algorithms, we know what factors influence a credit score. The five key components are:

1. Payment History (35%) – Whether payments are made on time.
2. Amounts Owed (30%) – How much debt a person has compared to their available credit (credit utilization).
3. Length of Credit History (15%) – How long credit accounts have been open.
4. Credit Mix (10%) – The variety of credit types, such as credit cards and installment loans.
5. New Credit (10%) – The number of recently opened credit accounts or inquiries.

Rebuilding credit after bankruptcy is not as complicated as it might seem. Here are four critical steps to begin improving a credit score:

1. Get errors off the credit reports.
   Errors such as duplicate collection notices or accounts still marked as late, even though they were included in the bankruptcy, can hurt a person's score. Correcting these inaccuracies directly impacts payment history, the most important factor in a credit score.
2. Get correct information included on the credit reports.
   Often mortgage servicers will not report mortgage payments during a Chapter 13 case or if the mortgage was not reaffirmed in Chapter 7.
   Using a Request for Information under RESPA, with the FCRA dispute method, homeowners can obtain copies of their annual mortgage payment history and including that with credit report by submitting it as evidence with a dispute.

3. Open three credit cards and an installment line of credit.
   This combination allows your clients to rebuild good credit around their old bad credit. It addresses the need for a "healthy mix" of credit, improving their credit mix, a factor that shows creditors they can manage different types of credit responsibly. While opening new accounts may cause a temporary drop in a new credit score (by a few points for a few months), this impact is minor and will fade as the borrower demonstrates responsible credit use over time.

4. Keep balances low and pay on time.
   After opening new credit accounts, keeping balances low (ideally under 30% of the credit limit) and making timely payments is crucial. This ties into both amounts owed (credit utilization) and payment history, which are the two largest contributors to a credit score.

Myth 6: “Dispute everything on a credit report, and see what sticks and what doesn’t!”

The truth is, disputing everything on a credit report is not only ineffective but can backfire. Credit reporting agencies and creditors can flag and dismiss "frivolous" disputes, and filing false disputes is illegal. But most importantly, it’s unnecessary.

This can lead to countersuits against the debtor’s attorney under the Credit Repair Organization Act (CROA), often seeking disgorgement of all fees paid, not just for credit repair services, but potentially even bankruptcy fees if credit repair services were and inducement to file bankruptcy. The recently introduced ESCRA Act would provide a safe harbor for bankruptcy attorneys. This risk can also be addressed by providing these credit repair services for free to any discharged debtor in your region (not just your own clients.

Let’s start with this: When a person disputes something on a credit report, the item is “suppressed” while the creditor/credit-scoring bureau investigates. But the truth will eventually resurface, and the person’s credit score will revert to its accurate state. Beyond that, if a person disputes too many items that are actually accurate, the credit-scoring bureaus will deem any future disputes as frivolous, and they won’t be investigated.

Moreover, derogatory accounts will eventually fall off a credit report if they remain inactive. However, when someone engages with these accounts, the clock can reset, keeping them on the report longer than necessary. This means the strategy could actually backfire, prolonging the damage to a person's credit score.

The real path to credit recovery is adopting the habits of someone with good credit. By paying bills on time, keeping balances low, and maintaining a healthy mix of credit, people will naturally see their credit improve. Over time, these positive behaviors will outweigh older negative marks, leading to lasting financial stability and better credit—without the need for risky dispute tactics.

Promoting Financial Rehabilitation

The overarching goal of bankruptcy is financial rehabilitation, not punishment. Giving debtors accurate information about rebuilding their credit helps them take the necessary steps toward financial stability and independence. By opening new credit lines and demonstrating responsible financial habits, debtors can position themselves for long-term success, avoid future financial crises, and reduce the likelihood of repeat bankruptcy filings.

LAW OFFICES OF

John T. Orcutt

1738-D Hillandale Road • Durham, NC 27705
(919) 286-1695 • fax (919) 286-2704

Equifax
P.O. Box 105069
Atlanta, GA 30374-0241

Experian National Consumer Assistance Center
P.O. Box 4500
Allen, TX 75013,

TransUnion Consumer Disclosure Center
P.O. Box 2000
Chester PA 19022

Re: Consumer: John Smith
Social Security No.: - -6789
Date of Birth: 08/11/75

Statement of Disputed Consumer Credit Report Information

To Whom it May Concern

I have been retained (Please see the attached Limited Power of Attorney) by John Smith to file, pursuant to 15 U.S.C. § 1681i (b), a **Statement of Disputed Credit Report Information** with your organizations regarding the following debt(s)

Crassus Creditor

Doevenmuhle Mortgage Inc.

John Smith disputes these debts for the following reason(s):

Discharged: John Smith filed a Chapter 7 bankruptcy in the Middle, case number , on September 30, 2018, and received a discharge of this debt on August 1, 2018.

As shown on the attached payment history provided by Doevenmuhle/Ameris Bank, the borrower has made all payments due during the period from January 1, 2020 through November 30, 2022, on time (as evidenced by the absence of any assesed late fees.)

We request that, pursuant to 15 U.S.C. § 1681i(c), that your organization clearly note that these debts are disputed by John Smith and include the above statement in John Smith's consumer credit report, in any subsequent consumer reports containing information relating to the above debts.

Please do not hesitate to contact me should you have any questions or concerns about this matter.

Very Truly Yours,

Law Offices of John T. Orcutt

Edward C. Boltz

enclosure as indicated

fcrasdi.wpt (7/28/15)

cc:

John Smith

LAW OFFICES OF

John T. Orcutt

1738-D Hillandale Road • Durham, NC 27705
(919) 286-1695 • fax (919) 286-2704

Equifax
P.O. Box 105069
Atlanta, GA 30374-0241

Experian National Consumer Assistance Center
P.O. Box 4500
Allen, TX 75013,

TransUnion Consumer Disclosure Center
P.O. Box 2000
Chester PA 19022

Re: Consumer: John Smith
Social Security No.: - -6789
Date of Birth: 08/11/75

Request for Re-investigation of Disputed Consumer Credit Report Information

To Whom it May Concern:

I have been retained (Please see the attached Limited Power of Attorney) by John Smith to request that your organization reinvestigate, pursuant to 15 U.S.C. § 1681i(a)(1)(A), the following entries on his consumer credit report:

Crassus Creditor

Doevenmuhle Mortgage Inc.

John Smith disputes these debts for the following reason(s):

Discharged: John Smith filed a Chapter 7 bankruptcy in the Middle, case number , on September 30, 2018, and received a discharge of this debt on August 1, 2018.

As shown on the attached payment history provided by Doevenmuhle/Ameris Bank, the borrower has made all payments due during the period from January 1, 2020 through November 30, 2022, on time (as evidenced by the absence of any assesed late fees.)

We accordingly request that your organization, within thirty (30) days of the receipt of this request, either reinvestigate, these disputed debts and record the current status of the disputed information **OR** delete the disputed information.

We request that you promptly provide the results of this re-investigation, pursuant to 11 U.S.C. § 1681i(a)(6), to both myself and John Smith at the following addresses:

Edward C. Boltz
Law Offices of John T. Orcutt
1738-D Hillandale Road
Durham NC 27705

John Smith
123 Elm Street
Durham, NC 12345-

Additionally, we request that, pursuant to 11 U.S.C. § 1681i(a)(7), you provide a description of the reinvestigation procedures, including the business name, address and telephone number of any furnisher of information contacted in connection with the reinvestigation, for any of the above debts which were not deleted from John Smith consumer credit report.

Lastly, if any of the above debts are deleted, either due to inaccuracy or as the accuracy of the information could not be verified, OR any other notation as to the disputed information, other than a **Statement of Disputed Credit Report Information** filed by John Smith, by or through counsel, is included in the consumer credit report, we request that, pursuant to 15 U.S.C. § 1681i(d), you notify both myself and John Smith, at the addresses listed above.

Please do not hesitate to contact me should you have any questions or concerns about this matter.

Very Truly Yours,

Law Offices of John T. Orcutt

Edward C. Boltz

enclosure as indicated

fcraartr.wpt (7/27/15)

cc:

John Smith

Name: [redacted]	Case# [redacted]	District: MN	Filed: 1/17/24
CONV:	Disc: 4/30/24	Trustee:	CR#2 Pulled: 7/29/24
Source: Experian.com	BK Chap: 7	CR#1 Pulled: 5/22/24	Dispute Sent: 6/14/24

7/29/24, 1:25 PM Experian

experian.

[redacted]

CREDIT ACCEPTANCE CORP $3,212

Exceptional payment history Balance updated May 05, 2024

Account info

Account name	CREDIT ACCEPTANCE CORP	Balance	$3,212
Account number	110446XXX	Balance updated	May 05, 2024
Original creditor	-	Original balance	$4,162
Company sold	-	Paid off	23%
Account type	Auto Loan	Monthly payment	$183
Date opened	Jul 05, 2023	Last Payment Date	Apr 05, 2024
Open/closed	Open	Terms	30 Months
Status	Open/Never late.	Responsibility	Individual
Status updated	May 2024	Your statement	-

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2024	✓	✓	✓	✓	✓	-	-	-	-	-	-	-
2023	-	-	-	-	-	-	-	✓	✓	✓	✓	✓

✓ Current / Terms met - Data Unavailable

Contact info

Address PO BOX 513 SOUTHFIELD, MI 48037

Phone number By mail only

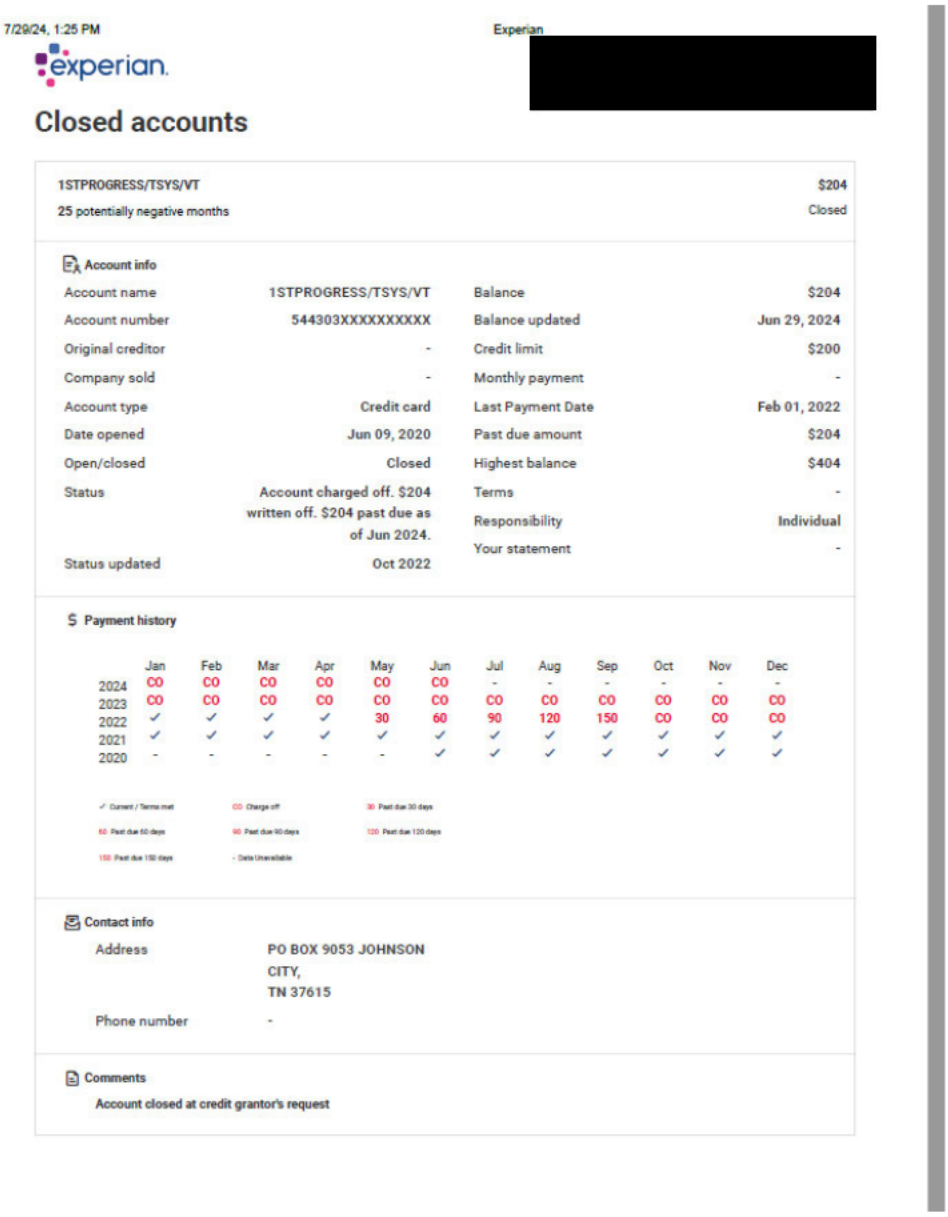
Comments

-

Page 5

Experian CR 2 Notes: Still reporting balance. No reaff filed. Client is still in possession and making payments, balance not updated since filing.

Experian CR 1 Notes (p.4): I have filed a chapter 7 bankruptcy and received a discharge. There should be no balance or past due balance, and the CII should be updated to an E. Please update this account.



7/29/24, 1:25 PM Experian [redacted]

experian.

Closed accounts

1STPROGRESS/TSYS/VT — $204
25 potentially negative months — Closed

Account info

Account name	1STPROGRESS/TSYS/VT	Balance	$204
Account number	544303XXXXXXXXXX	Balance updated	Jun 29, 2024
Original creditor	-	Credit limit	$200
Company sold	-	Monthly payment	-
Account type	Credit card	Last Payment Date	Feb 01, 2022
Date opened	Jun 09, 2020	Past due amount	$204
Open/closed	Closed	Highest balance	$404
Status	Account charged off. $204 written off. $204 past due as of Jun 2024.	Terms	-
		Responsibility	Individual
Status updated	Oct 2022	Your statement	-

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2024	CO	CO	CO	CO	CO	CO	-	-	-	-	-	-
2023	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO
2022	✓	✓	✓	✓	30	60	90	120	150	CO	CO	CO
2021	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
2020	-	-	-	-	-	✓	✓	✓	✓	✓	✓	✓

✓ Current / Terms met · CO Charge off · 30 Past due 30 days · 60 Past due 60 days · 90 Past due 90 days · 120 Past due 120 days · 150 Past due 150 days · - Data Unavailable

Contact info

Address: PO BOX 9053 JOHNSON CITY, TN 37615

Phone number: -

Comments

Account closed at credit grantor's request

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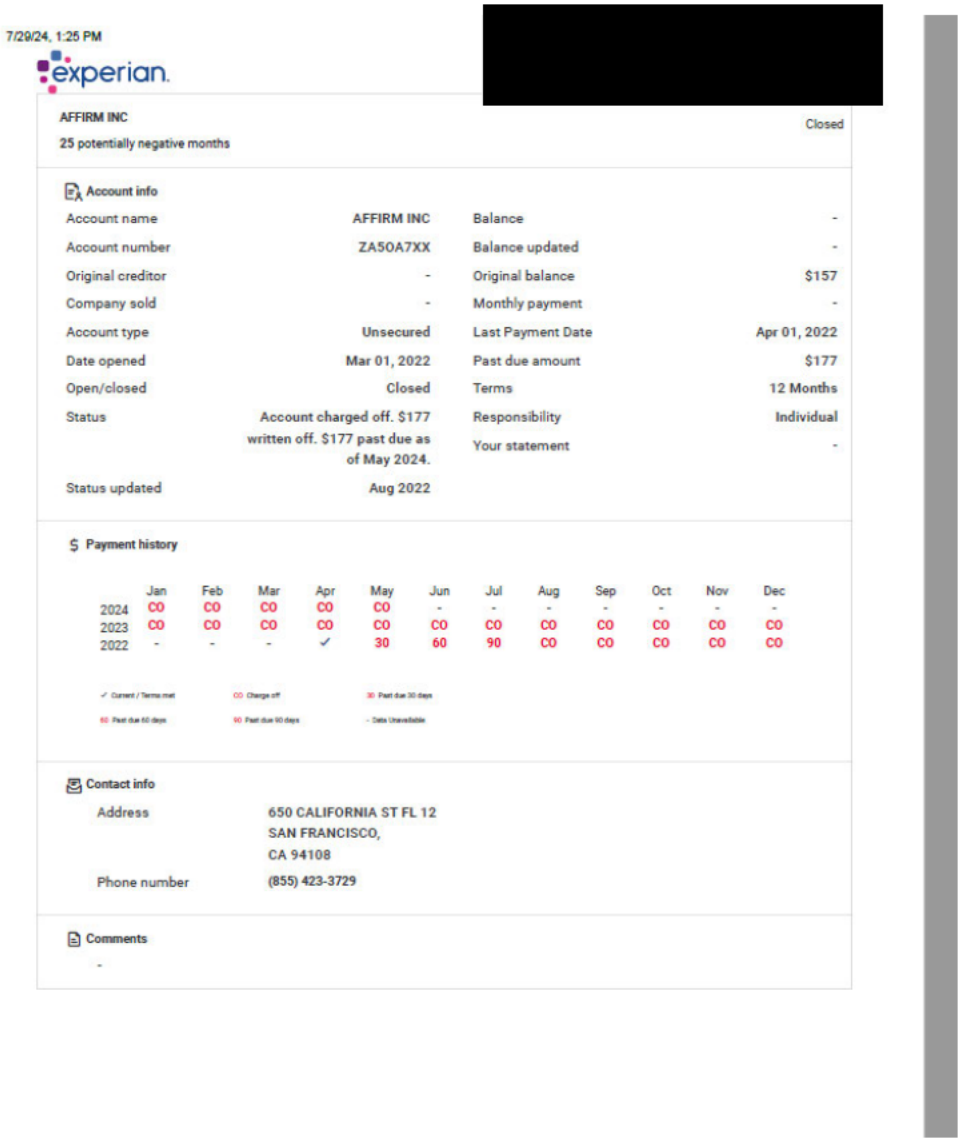
Experian CR 2 Notes: Still reporting balance/charge-off status/post-discharge charge-offs in payment history

Experian CR 1 Notes (p.5): I have filed a chapter 7 bankruptcy and received a discharge. There should be no balance or past due balance, the account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.



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[redacted]

AFFIRM INC — Closed

25 potentially negative months

Account info

Account name	AFFIRM INC	Balance	-
Account number	ZA50A7XX	Balance updated	-
Original creditor	-	Original balance	$157
Company sold	-	Monthly payment	-
Account type	Unsecured	Last Payment Date	Apr 01, 2022
Date opened	Mar 01, 2022	Past due amount	$177
Open/closed	Closed	Terms	12 Months
Status	Account charged off. $177 written off. $177 past due as of May 2024.	Responsibility	Individual
		Your statement	-
Status updated	Aug 2022		

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2024	CO	CO	CO	CO	CO	-	-	-	-	-	-	-
2023	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO
2022	-	-	-	✓	30	60	90	CO	CO	CO	CO	CO

✓ Current / Terms met CO Charge off 30 Past due 30 days

60 Past due 60 days 90 Past due 90 days - Data Unavailable

Contact info

Address	650 CALIFORNIA ST FL 12 SAN FRANCISCO, CA 94108
Phone number	(855) 423-3729

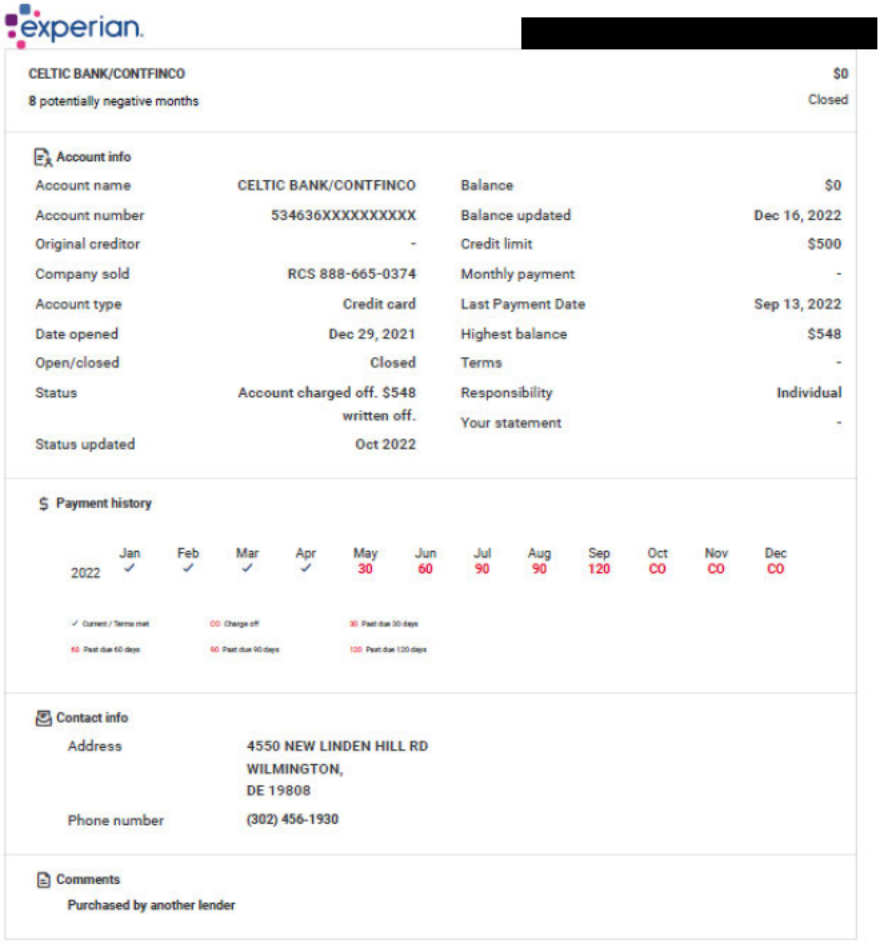
Comments

-

Page 10

Experian CR 2 Notes: Still reporting charge off status, post-discharge charge-off in payment history.

Experian CR 1 Notes (p.6): I have filed a chapter 7 bankruptcy and received a discharge. There should be no balance or past due balance, the account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.



experian.

[redacted]

CELTIC BANK/CONTFINCO $0

8 potentially negative months Closed

Account info

Account name	CELTIC BANK/CONTFINCO	Balance	$0
Account number	534636XXXXXXXXXX	Balance updated	Dec 16, 2022
Original creditor	-	Credit limit	$500
Company sold	RCS 888-665-0374	Monthly payment	-
Account type	Credit card	Last Payment Date	Sep 13, 2022
Date opened	Dec 29, 2021	Highest balance	$548
Open/closed	Closed	Terms	-
Status	Account charged off. $548 written off.	Responsibility	Individual
		Your statement	-
Status updated	Oct 2022		

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2022	✓	✓	✓	✓	30	60	90	90	120	CO	CO	CO

✓ Current / Terms met CO Charge off 30 Past due 30 days
60 Past due 60 days 90 Past due 90 days 120 Past due 120 days

Contact info

Address 4550 NEW LINDEN HILL RD
WILMINGTON,
DE 19808

Phone number (302) 456-1930

Comments

Purchased by another lender

Experian CR 2 Notes: Still reporting charge off status.

Experian CR 1 Notes (p.8): I have filed a chapter 7 bankruptcy and received a discharge. This account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.

7/29/24, 1:25 PM Experian

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[redacted]

DOMINION ENERGY SOUTH $274
52 potentially negative months Closed

Account info

Account name	DOMINION ENERGY SOUTH	Balance	$274
Account number	621011XXXXXXX	Balance updated	Jan 22, 2024
Original creditor	-	Original balance	$274
Company sold	-	Monthly payment	-
Account type	Utility	Last Payment Date	Dec 28, 2018
Date opened	Aug 21, 2018	Past due amount	$274
Open/closed	Closed	Terms	-
Status	Account charged off. $274 written off. $274 past due as of Jan 2024.	Responsibility	Individual
		Your statement	-
Status updated	Oct 2019		

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2024	CO	-	-	-	-	-	-	-	-	-	-	-
2023	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO
2022	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO
2021	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO
2020	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO
2019	-	-	-	-	-	-	-	-	-	CO	CO	CO

CO: Charge-off - : Data Unavailable

Contact info

Address 220 OPERATION WAY #
MCJ3 CAYCE,
SC 29033

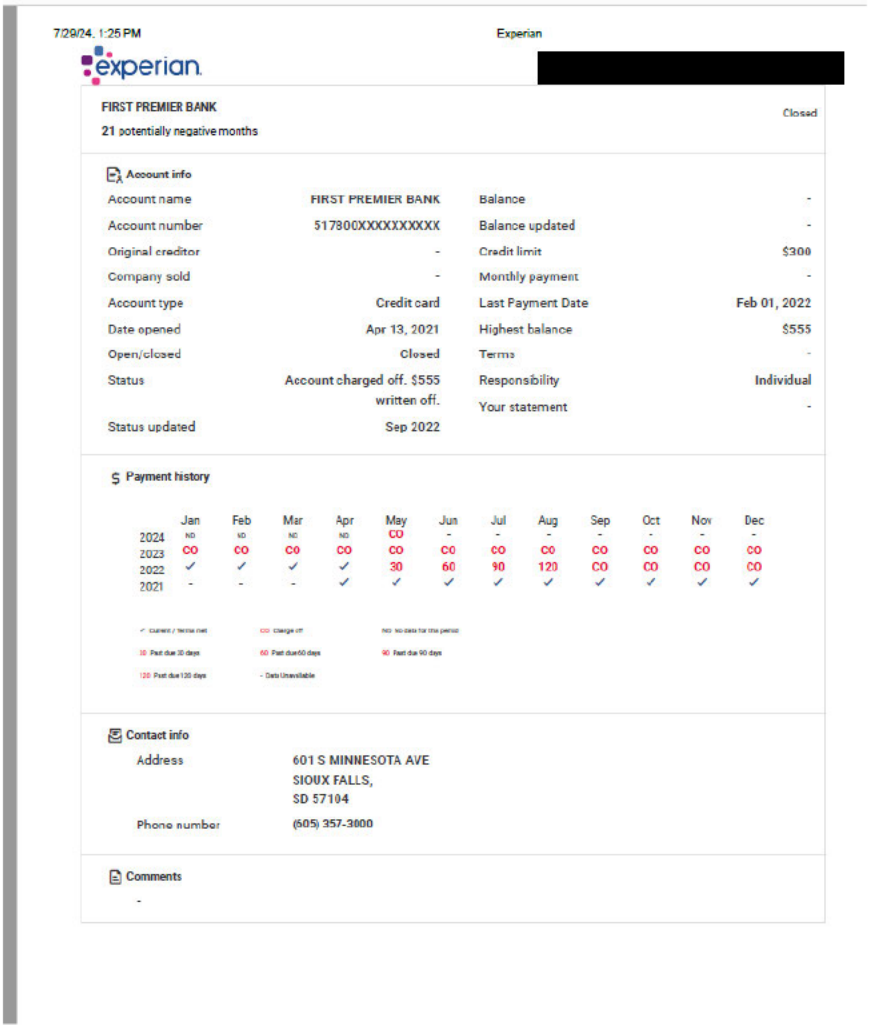
Phone number (800) 251-7234

Comments

Account closed at credit grantor's request

Experian CR 2 Notes: Still reporting balance/past due balance/charge off status.

Experian CR 1 Notes (p.10): I have filed a chapter 7 bankruptcy and received a discharge. There should be no balance or past due balance, the account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.



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experian.

[redacted]

FIRST PREMIER BANK Closed

21 potentially negative months

Account info

Account name	FIRST PREMIER BANK	Balance	-
Account number	517800XXXXXXXXX	Balance updated	-
Original creditor	-	Credit limit	$300
Company sold	-	Monthly payment	-
Account type	Credit card	Last Payment Date	Feb 01, 2022
Date opened	Apr 13, 2021	Highest balance	$555
Open/closed	Closed	Terms	-
Status	Account charged off. $555 written off.	Responsibility	Individual
		Your statement	-
Status updated	Sep 2022		

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2024	ND	ND	ND	ND	CO	-	-	-	-	-	-	-
2023	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO
2022	✓	✓	✓	✓	30	60	90	120	CO	CO	CO	CO
2021	-	-	-	✓	✓	✓	✓	✓	✓	✓	✓	✓

✓ Current / Terms met CO Charge off ND No data for this period

30 Past due 30 days 60 Past due 60 days 90 Past due 90 days

120 Past due 120 days - Data Unavailable

Contact info

Address: 601 S MINNESOTA AVE
SIOUX FALLS,
SD 57104

Phone number: (605) 357-3800

Comments

-

Experian CR 2 Notes: Still reporting charge off status.

Experian CR 1 Notes (p.12): I have filed a chapter 7 bankruptcy and received a discharge. This account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.

7/29/24, 1:25 PM Experian

experian.

[redacted]

GET IT NOW LLC

Closed

19 potentially negative months

Account info

Account name	GET IT NOW LLC	Balance	-
Account number	933245XXXXXXXXXXX	Balance updated	-
Original creditor	-	Original balance	$3,532
Company sold	-	Monthly payment	-
Account type	Sales Contract	Last Payment Date	Apr 07, 2022
Date opened	Feb 25, 2022	Terms	25 Months
Open/closed	Closed	Responsibility	Individual
Status	Paid, Closed. $3,360 written off.	Your statement	-
Status updated	May 2024		

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2024	180	180	180	✓	CLS	-	-	-	-	-	-	-
2023	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO
2022	-	-	✓	✓	✓	30	60	C	CO	CO	CO	CO

✓ Current / Terms met C Collection CO Charge off

CLS Closed 30 Past due 30 days 60 Past due 60 days

180 Past due 180 days - Data Unavailable

Contact info

Address 5501 HEADQUARTERS DR
PLANO,
TX 75024

Phone number (972) 801-1200

Comments

Account information disputed by consumer (Meets requirement of the Fair Credit Reporting Act)

Page 16

Experian CR 2 Notes: Still reporting balance write-off.

Experian CR 1 Notes (p.13): I have filed a chapter 7 bankruptcy and received a discharge. This account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.

7/29/24, 1:25 PM Experian

experian.

[redacted]

GLOBAL LENDING SERVICE $7,041

21 potentially negative months Closed

Account info

Account name	GLOBAL LENDING SERVICE	Balance	$7,041
Account number	200029XXXX	Balance updated	May 31, 2024
Original creditor	-	Original balance	$13,921
Company sold	-	Monthly payment	-
Account type	Auto Loan	Last Payment Date	Mar 07, 2023
Date opened	Mar 29, 2021	Past due amount	$7,041
Open/closed	Closed	Terms	60 Months
Status	Repossession. $7,041 past due as of May 2024.	Responsibility	Individual
		Your statement	-
Status updated	Dec 2022		

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2024	R	R	R	R	R	-	-	-	-	-	-	-
2023	R	R	R	R	R	R	R	R	R	R	R	R
2022	✓	✓	✓	✓	30	✓	✓	✓	✓	30	60	R
2021	-	-	-	✓	✓	✓	✓	✓	✓	✓	✓	✓

✓ Current / Terms met R Repossession 30 Past due 30 days

60 Past due 60 days - Data Unavailable

Contact info

Address 1200 BROOKFIELD BLVD
STE GREENVILLE,
SC 29607

Phone number (866) 464-0269

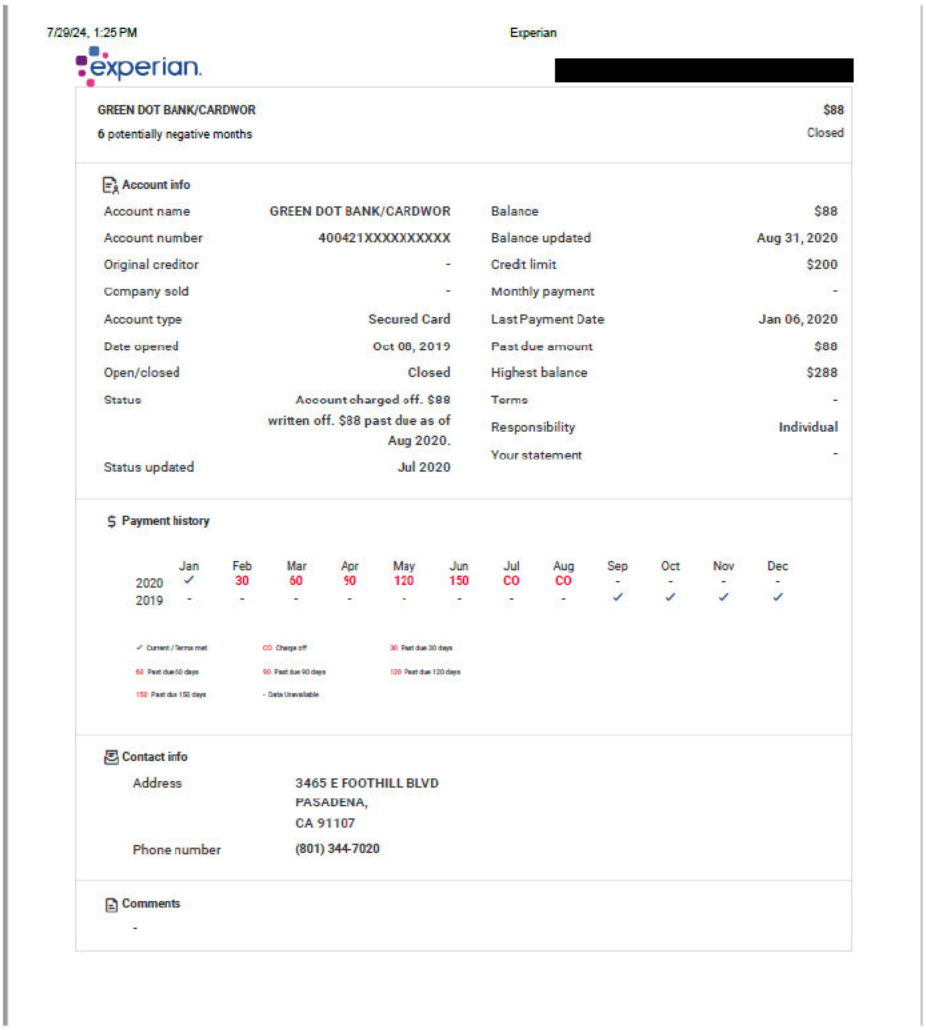
Comments

-

Page 17

Experian CR 2 Notes: Still reporting balance/past due balance/repossession status. Repossession reporting in payment history post-discharge.

Experian CR 1 Notes (p.14): I have filed a chapter 7 bankruptcy and received a discharge. This account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.



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experian.

[redacted]

GREEN DOT BANK/CARDWOR $88
6 potentially negative months Closed

Account info

Account name	GREEN DOT BANK/CARDWOR	Balance	$88
Account number	400421XXXXXXXXXX	Balance updated	Aug 31, 2020
Original creditor	-	Credit limit	$200
Company sold	-	Monthly payment	-
Account type	Secured Card	Last Payment Date	Jan 06, 2020
Date opened	Oct 08, 2019	Past due amount	$88
Open/closed	Closed	Highest balance	$288
Status	Account charged off. $88 written off. $88 past due as of Aug 2020.	Terms	-
		Responsibility	Individual
Status updated	Jul 2020	Your statement	-

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2020	✓	30	60	90	120	150	CO	CO	-	-	-	-
2019	-	-	-	-	-	-	-	-	✓	✓	✓	✓

✓ Current / Terms met CO Charge off 30 Past due 30 days
60 Past due 60 days 90 Past due 90 days 120 Past due 120 days
150 Past due 150 days - Data Unavailable

Contact info

Address 3465 E FOOTHILL BLVD
PASADENA,
CA 91107

Phone number (801) 344-7020

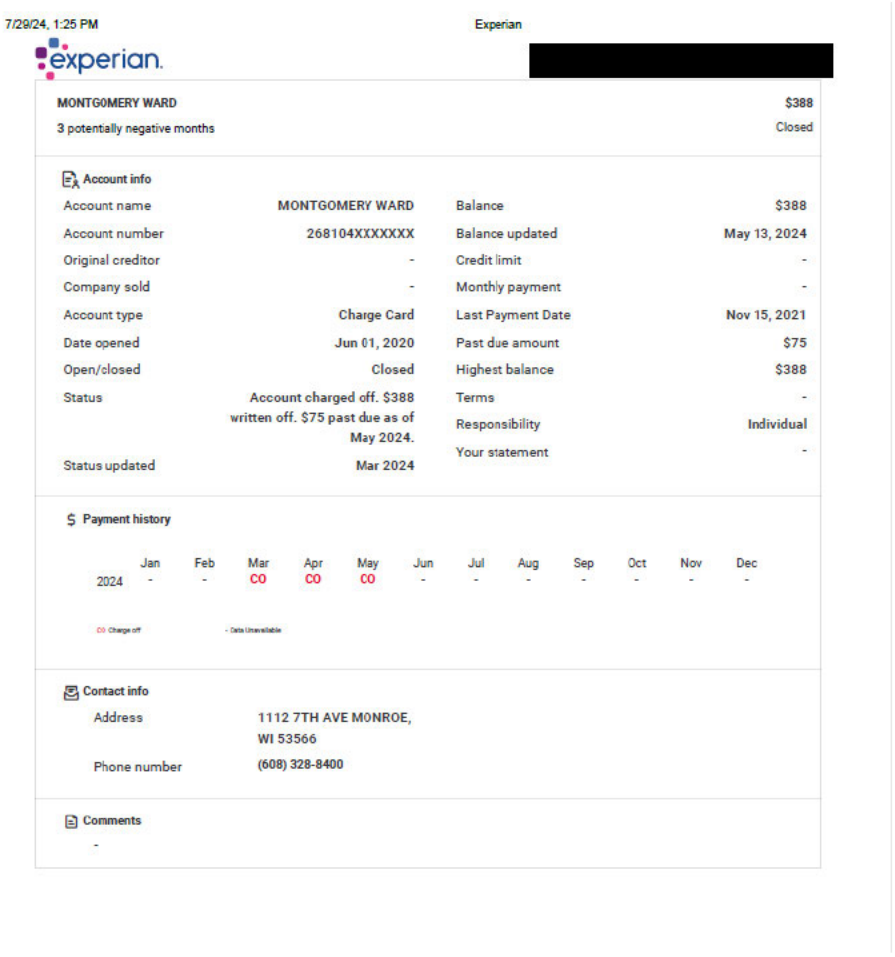
Comments

-

Page 18

Experian CR 2 Notes: Still reporting balance/past due balance/charge off status.

Experian CR 1 Notes (p.15): I have filed a chapter 7 bankruptcy and received a discharge. There should be no balance or past due balance, the account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.



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[redacted]

MONTGOMERY WARD $388

3 potentially negative months Closed

Account info

Account name	MONTGOMERY WARD	Balance	$388
Account number	268104XXXXXXX	Balance updated	May 13, 2024
Original creditor	-	Credit limit	-
Company sold	-	Monthly payment	-
Account type	Charge Card	Last Payment Date	Nov 15, 2021
Date opened	Jun 01, 2020	Past due amount	$75
Open/closed	Closed	Highest balance	$388
Status	Account charged off. $388 written off. $75 past due as of May 2024.	Terms	-
		Responsibility	Individual
Status updated	Mar 2024	Your statement	-

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2024	-	-	CO	CO	CO	-	-	-	-	-	-	-

CO Charge off - Data Unavailable

Contact info

Address 1112 7TH AVE M0NROE, WI 53566

Phone number (608) 328-8400

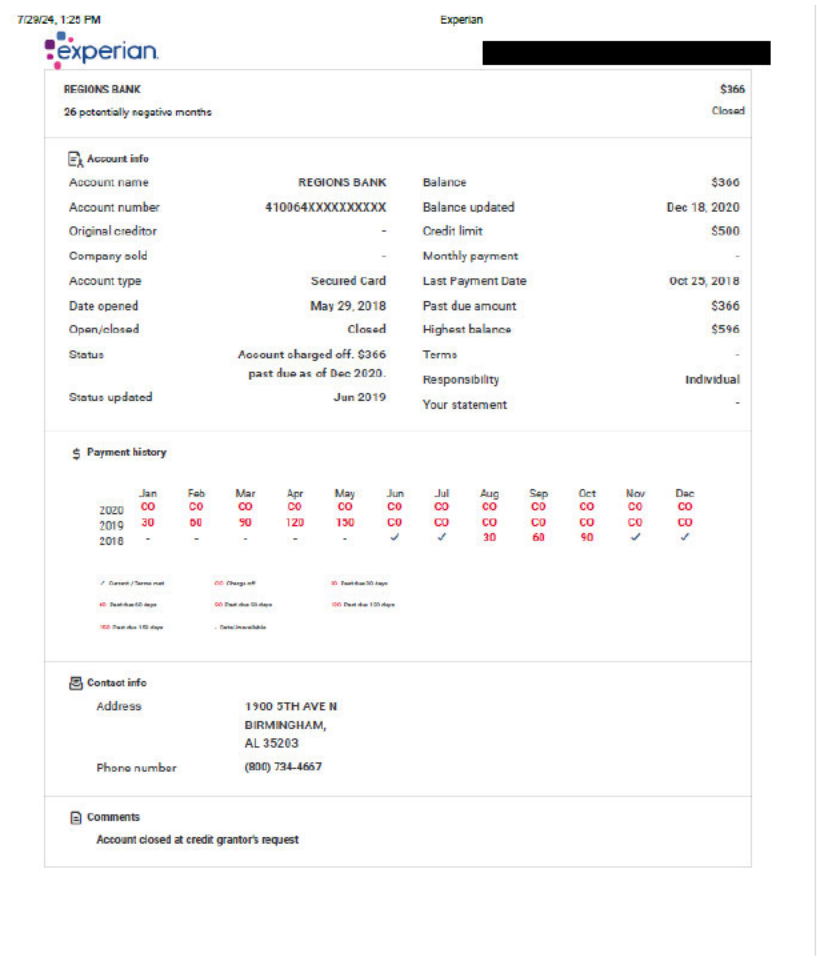
Comments

-

Page 20

Experian CR 2 Notes: Still reporting balance/past due balance/charge off status, charge-off in payment history post-discharge.

Experian CR 1 Notes (p.15): I have filed a chapter 7 bankruptcy and received a discharge. There should be no balance or past due balance, the account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.



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experian [redacted]

REGIONS BANK $366
26 potentially negative months Closed

Account info

Account name	REGIONS BANK	Balance	$366
Account number	410064XXXXXXXXX	Balance updated	Dec 18, 2020
Original creditor	-	Credit limit	$500
Company sold	-	Monthly payment	-
Account type	Secured Card	Last Payment Date	Oct 25, 2018
Date opened	May 29, 2018	Past due amount	$366
Open/closed	Closed	Highest balance	$596
Status	Account charged off. $366 past due as of Dec 2020.	Terms	-
		Responsibility	Individual
Status updated	Jun 2019	Your statement	-

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2020	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO
2019	30	60	90	120	150	CO	CO	CO	CO	CO	CO	CO
2018	-	-	-	-	-	✓	✓	30	60	90	✓	✓

✓ Current / Terms met CO Charge off 30 Past due 30 days
60 Past due 60 days 90 Past due 90 days 120 Past due 120 days
150 Past due 150 days - Data Unavailable

Contact info

Address 1900 5TH AVE N
BIRMINGHAM,
AL 35203

Phone number (800) 734-4667

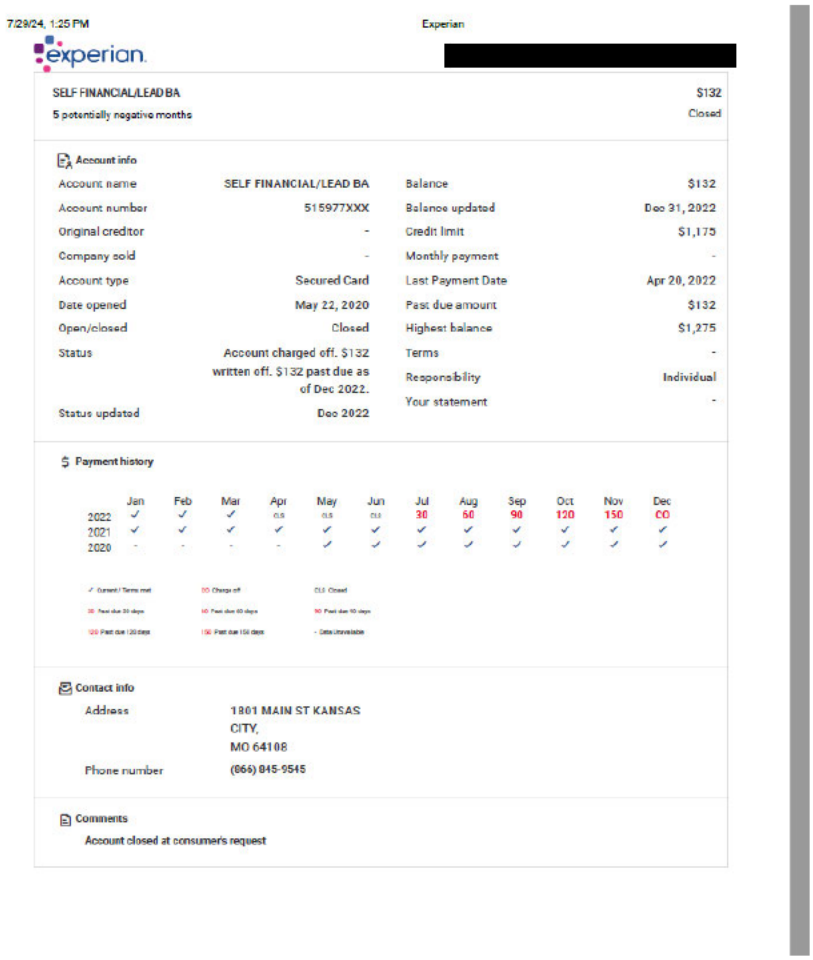
Comments

Account closed at credit grantor's request

Page 21

Experian CR 2 Notes: Still reporting balance/past due balance/charge off status.

Experian CR 1 Notes (p.18): I have filed a chapter 7 bankruptcy and received a discharge. There should be no balance or past due balance, the account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.



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experian.

[redacted]

SELF FINANCIAL/LEAD BA $132
5 potentially negative months Closed

Account info

Account name	SELF FINANCIAL/LEAD BA	Balance	$132
Account number	515977XXX	Balance updated	Dec 31, 2022
Original creditor	-	Credit limit	$1,175
Company sold	-	Monthly payment	-
Account type	Secured Card	Last Payment Date	Apr 20, 2022
Date opened	May 22, 2020	Past due amount	$132
Open/closed	Closed	Highest balance	$1,275
Status	Account charged off. $132 written off. $132 past due as of Dec 2022.	Terms	-
		Responsibility	Individual
		Your statement	-
Status updated	Dec 2022		

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2022	✓	✓	✓	CLS	CLS	CLS	30	60	90	120	150	CO
2021	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
2020	-	-	-	-	✓	✓	✓	✓	✓	✓	✓	✓

✓ Current / Terms met CO Charge off CLS Closed
30 Past due 30 days 60 Past due 60 days 90 Past due 90 days
120 Past due 120 days 150 Past due 150 days - Data Unavailable

Contact info

Address 1801 MAIN ST KANSAS CITY, MO 64108
Phone number (866) 845-9545

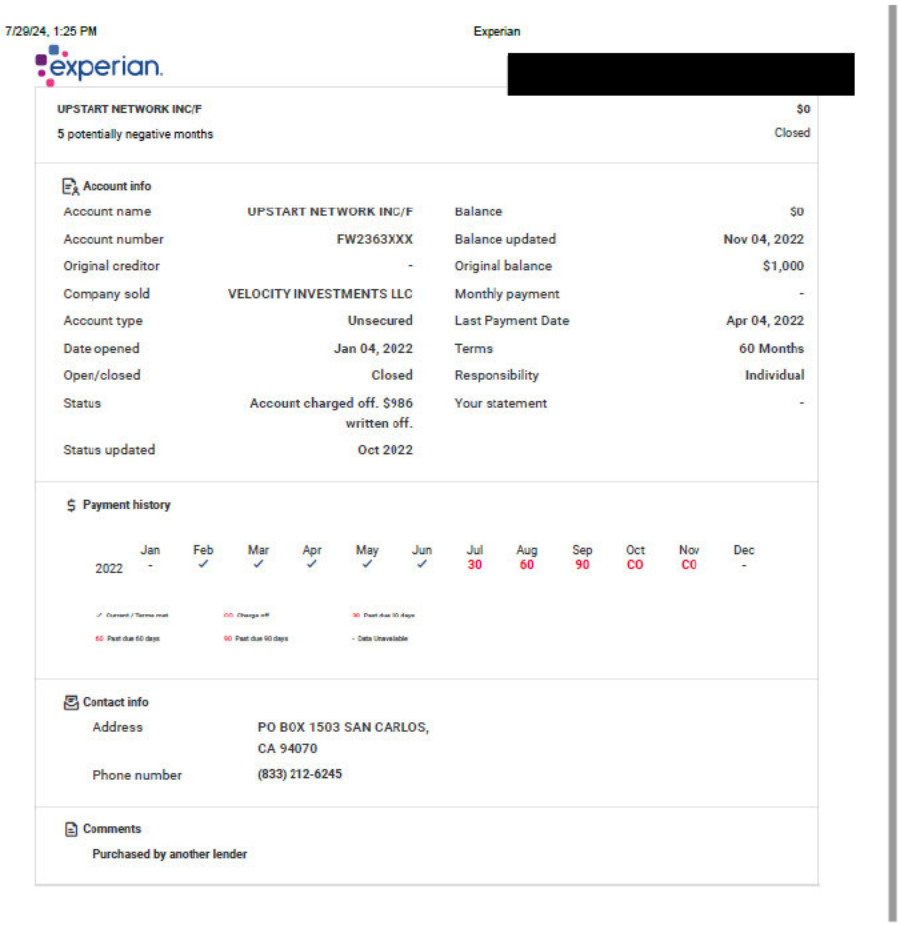
Comments

Account closed at consumer's request

Page 22

Experian CR 2 Notes: Still reporting balance/past due balance/charge off status.

Experian CR 1 Notes (p.19): I have filed a chapter 7 bankruptcy and received a discharge. There should be no balance or past due balance, the account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.



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experian.

[redacted]

UPSTART NETWORK INC/F $0

5 potentially negative months Closed

Account info

Account name	UPSTART NETWORK INC/F	Balance	$0
Account number	FW2363XXX	Balance updated	Nov 04, 2022
Original creditor	-	Original balance	$1,000
Company sold	VELOCITY INVESTMENTS LLC	Monthly payment	-
Account type	Unsecured	Last Payment Date	Apr 04, 2022
Date opened	Jan 04, 2022	Terms	60 Months
Open/closed	Closed	Responsibility	Individual
Status	Account charged off. $986 written off.	Your statement	-
Status updated	Oct 2022		

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2022	-	✓	✓	✓	✓	✓	30	60	90	CO	CO	-

✓ Current / Terms met CO Charge off 30 Past due 30 days

60 Past due 60 days 90 Past due 90 days - Data Unavailable

Contact info

Address PO BOX 1503 SAN CARLOS, CA 94070

Phone number (833) 212-6245

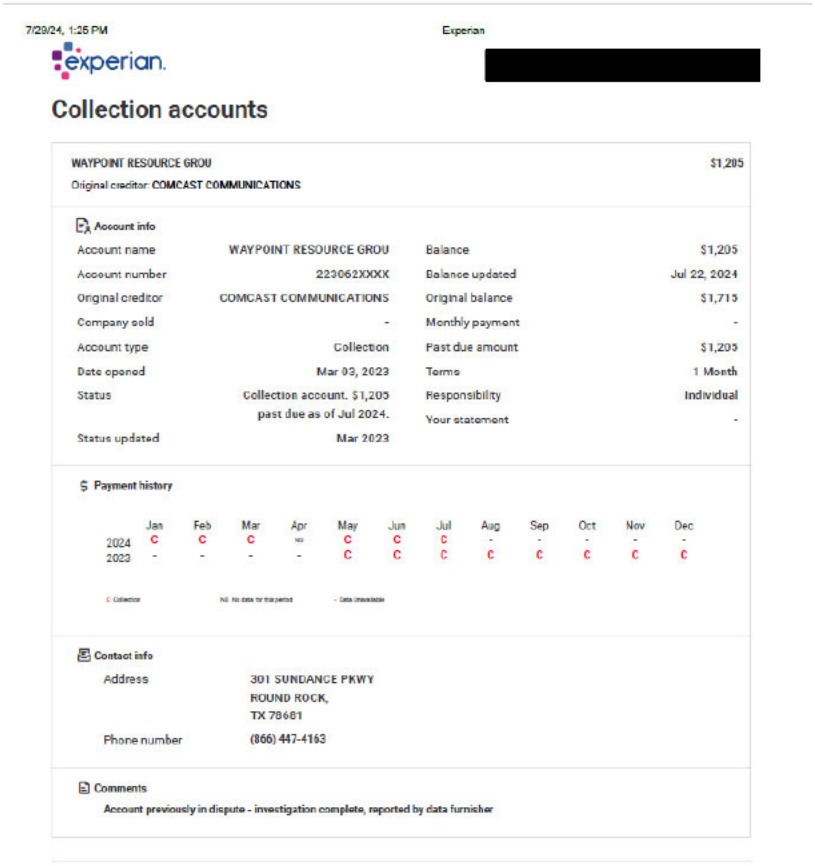
Comments

Purchased by another lender

Page 25

Experian CR 2 Notes: Still reporting charge off status.

Experian CR 1 Notes (p.22): I have filed a chapter 7 bankruptcy and received a discharge. This account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.



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experian.

[redacted]

Collection accounts

WAYPOINT RESOURCE GROU $1,205

Original creditor: COMCAST COMMUNICATIONS

Account info

Account name	WAYPOINT RESOURCE GROU	Balance	$1,205
Account number	223062XXXX	Balance updated	Jul 22, 2024
Original creditor	COMCAST COMMUNICATIONS	Original balance	$1,715
Company sold	-	Monthly payment	-
Account type	Collection	Past due amount	$1,205
Date opened	Mar 03, 2023	Terms	1 Month
Status	Collection account. $1,205 past due as of Jul 2024.	Responsibility	Individual
		Your statement	-
Status updated	Mar 2023		

Payment history

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2024	C	C	C	NO	C	C	C	-	-	-	-	-
2023	-	-	-	-	C	C	C	C	C	C	C	C

C Collection NO No data for this period - Data unavailable

Contact info

Address: 301 SUNDANCE PKWY
ROUND ROCK,
TX 78681

Phone number: (866) 447-4163

Comments

Account previously in dispute - investigation complete, reported by data furnisher

Page 26

Experian CR 2 Notes: Still reporting balance/past-due balance/derogatory marks in payment history post-discharge.

Experian CR 1 Notes (p.26): have filed a chapter 7 bankruptcy and received a discharge. There should be no balance or past due balance, the account should not reflect a charge off status, and the CII should be updated to an E. Please update this account.

LIMITED POWER OF ATTORNEY

I, John Smith, hereby grant a limited power of attorney to Edward C. Boltz and the Law Offices of John T. Orcutt, P.C. for the express purposes of filing **Requests for Re-investigation of Disputed Consumer Credit Report Information** and **Statements of Disputed Consumer Credit Report Information**.

I hereby direct, pursuant to FTC Official Staff Commentary §609 item 4, any consumer reporting agency to whom any such documents are sent by Edward C. Boltz or the Law Offices of John T. Orcutt, P.C. to treat said documents as if they had been sent by me directly.

I further request that any responses by any consumer reporting agency to said documents be sent to both myself and the Law Offices of John T. Orcutt, P.C. at the following addresses:

Edward C. Boltz
Law Offices of John T. Orcutt
1738-D Hillandale Road
Durham NC 27705

John Smith
123 Elm Street
Durham, NC 12345-

This the _____ day of _____, _____.

_____
John Smith
Social Security No.: - -6789
Date of Birth: 08/11/75

Notarization: fcrapoa.wpt (2015)

Sworn and subscribed before me on_____.

_____
Signature of Notary Public

Affix Seal or Stamp

Commission expires: _____

User Name: Elliot Gale
Date and Time: Monday, August 19, 2024 11:17:00AM PDT
Job Number: 231481027

Document (1)

1. *Keller v. New Penn Fin., LLC (In re Keller), 568 B.R. 118*
   Client/Matter: -None-

Keller v. New Penn Fin., LLC (In re Keller)

United States Bankruptcy Appellate Panel for the Ninth Circuit

March 23, 2017, Argued and Submitted at Sacramento, California; May 26, 2017, Filed

BAP No. EC-16-1152-BJuTa

Reporter
568 B.R. 118 *; 2017 Bankr. LEXIS 1421 **; Bankr. L. Rep. (CCH) P83,114; 77 Collier Bankr. Cas. 2d (MB) 1290

In re: ROBERT C. ***KELLER*** and FINLEY JONES ***KELLER***, Debtors.ROBERT C. ***KELLER***; FINLEY JONES ***KELLER***, Appellants, v. NEW PENN FINANCIAL, LLC dba SHELLPOINT MORTGAGE SERVICING; THE BANK OF NEW YORK MELLON fka THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWMBS, INC., CHL MORTGAGE PASS-THROUGH TRUST 2004-HYB5, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2004-HYB5, Appellees.

Prior History: [1]** Appeal from the United States ***Bankruptcy*** Court for the Eastern District of California. Bk. No. 12-22391. Hon. Christopher D. Jaime, ***Bankruptcy*** Judge, Presiding.

*In re **Keller**, 2016 Bankr. LEXIS 2052 (Bankr. E.D. Cal., May 17, 2016)*

Core Terms

credit reporting, reporting, automatic stay, ***bankruptcy*** court, past due, confirmation, injunction, postpetition, collection, overdue, codebtor, cases, discharged, credit report, contempt, coerce, delinquent payment, ***per se violation***, prepetition, delinquent, accuracy, domestic, violates, collect a debt, harass, credit information, obligations, Mortgage, notation, bureau

Case Summary

Overview

HOLDINGS: [1]-The ***bankruptcy*** court did not err in determining that the act of postpetition credit reporting of overdue or delinquent payments is not a ***per se violation*** of *11 U.S.C.S. § 362(a)(6)*; [2]-The ***bankruptcy*** court did not err in determining that the credit reporting did not violate the confirmation order under *11 U.S.C.S. § 1327(a)*. The confirmed plan was entirely silent on the issue of credit reporting.

Outcome

The ***bankruptcy*** court's order was affirmed.

LexisNexis® Headnotes

Bankruptcy Law > ... > Judicial Review > Standards of Review > Clear Error Review

Bankruptcy Law > ... > Judicial Review > Standards of Review > De Novo Standard of Review

HN1[] **Standards of Review, Clear Error Review**

The ***bankruptcy*** appellate panel reviews the ***bankruptcy*** court's conclusions of law de novo and its findings of fact for clear error. De novo review requires that the panel consider a matter anew, as if no decision had been made previously. Factual findings are clearly erroneous if they are illogical, implausible or without support in the record.

Bankruptcy Law > ... > Judicial Review > Standards of Review > De Novo Standard of Review

Bankruptcy Law > Administrative Powers > Automatic Stay > Scope of Stay

HN2[] **Standards of Review, De Novo Standard of Review**

The ***bankruptcy*** appellate panel reviews de novo the ***bankruptcy*** court's determination as to whether the automatic stay provisions of *11 U.S.C.S. § 362* have been violated.

Bankruptcy Law > ... > Judicial Review > Standards of Review > Abuse of Discretion

Civil Procedure > Sanctions > Contempt > Civil Contempt

HN3 **Standards of Review, Abuse of Discretion**

The ***bankruptcy*** appellate panel reviews the ***bankruptcy*** court's decision regarding civil contempt for abuse of discretion.

Bankruptcy Law > ... > Automatic Stay > Scope of Stay > Claims Against Debtors

HN4 **Scope of Stay, Claims Against Debtors**

11 U.S.C.S. § 362(a)(6) stays "any act to collect, assess, or recover a claim against the debtor that arose before" the filing of the petition. This provision generally prohibits creditors from making demand on a debtor to pay a prepetition debt or engaging in communications with the debtor in an effort to collect the debt. The ***bankruptcy*** appellate panel holds that postpetition credit reporting of overdue or delinquent payments, without more, does not violate the automatic stay as a matter of law.

Bankruptcy Law > ... > Automatic Stay > Scope of Stay > Claims Against Debtors

HN5 **Scope of Stay, Claims Against Debtors**

The few cases addressing the issue of negative credit reporting in the context of *11 U.S.C.S. § 362*, in addition to Mortimer and Giovanni, hold that postpetition negative credit reporting alone is not an act to collect a debt in violation of the stay; such reporting must have been done with the intent to harass or coerce the debtor to pay the reported debt. Inaccurate credit reporting, without evidence of creditor's intent to coerce debtor into paying the reported debt, does not violate the automatic stay as a matter of law.

Bankruptcy Law > ... > Automatic Stay > Scope of Stay > Claims Against Debtors

HN6 **Scope of Stay, Claims Against Debtors**

In the Ninth Circuit, negative credit reporting, standing alone, is insufficient to show a violation of the automatic stay under *11 U.S.C.S. § 362(a)(6)*.

Bankruptcy Law > ... > Automatic Stay > Scope of Stay > Claims Against Debtors

HN7 **Scope of Stay, Claims Against Debtors**

A reason for reporting a delinquent debt that does not have a direct purpose of collecting the debt is to share information relevant to credit granting decisions: A distinction must be made between acts which have as their direct and natural purpose the collection of debts and acts which have some other lawful purpose but could also be used (or, more accurately, misused) to coerce payment of a debt. The reporting of a delinquent debt to a credit reporting agency is not inherently an act to collect a debt but rather to share information relevant to credit granting decisions. A creditor reports both performing and delinquent accounts in the expectation that other credit grantors will do the same, enhancing each creditor's ability to evaluate proposed credit transactions and to avoid extending credit or making loans to poor credit risks.

Business & Corporate Compliance > Banking & Finance > Consumer Protection > Fair Credit Reporting
Banking Law > Consumer Protection > Fair Credit Reporting

Governments > Legislation > Interpretation

HN8 **Consumer Protection, Fair Credit Reporting**

Section 1681c(a)(1) (*15 U.S.C.S. § 1681c(a)(1)*) of the *Fair Credit Reporting Act* permits the credit reporting of ***bankruptcies*** for a period of up to ten years. Courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intent to the contrary, to

regard each as effective.

Bankruptcy Law > ... > Automatic Stay > Scope of Stay > Claims Against Debtors

HN9[] **Scope of Stay, Claims Against Debtors**

The act of postpetition credit reporting of overdue or delinquent payments while a ***bankruptcy*** case is pending is not a ***per se violation*** of *11 U.S.C.S. § 362(a)(6)*.

Bankruptcy Law > ... > Plans > Plan Confirmation > Effects of Confirmation

Civil Procedure > Sanctions > Contempt > Civil Contempt

Evidence > Burdens of Proof > Clear & Convincing Proof

HN10[] **Plan Confirmation, Effects of Confirmation**

A violation of the confirmation order under *11 U.S.C.S. § 1327(a)* is an act of contempt and may be remedied under *11 U.S.C.S. § 105*. For contempt, the moving party must show by clear and convincing evidence the contemnors violated a specific and definite order of the court.

Counsel: Scott J. Sagaria of Sagaria Law, P.C. argued for appellants Robert C. ***Keller*** and Finley Jones ***Keller***.

B. Ben Mohandesi of Yu Mohandesi LLP argued for appellees New Penn Financial, LLC dba Shellpoint Mortgage Servicing and Bank of New York Mellon fka The Bank of New York as Trustee for the Certificateholders of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2004-HYB5, Mortgage Pass-Through Certificates, Series 2004-HYB5.

Judges: Before: BRAND, JURY and TAYLOR, ***Bankruptcy*** Judges.

Opinion by: BRAND

Opinion

[*119] BRAND, ***Bankruptcy*** Judge:

Chapter 13[1] debtors Robert and Finley ***Keller*** ("Debtors") appeal an order denying **[*120]** their motion for contempt and sanctions for violating the automatic stay and confirmation order against New Penn Financial, LLC dba Shellpoint Mortgage Servicing ("Shellpoint") and the Bank of New York Mellon fka The Bank of New York as Trustee for the Certificateholders of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2004-HYB5, Mortgage Pass-Through Certificates, Series 2004-HYB5 (collectively "Defendants"). The issue before the ***bankruptcy*** court was whether **[**2]** a creditor's postpetition reporting of overdue or delinquent payments to a credit reporting agency ("CRA"), regardless of the information's accuracy, is a ***per se violation*** of *§ 362(a)(6)* and constitutes prohibited collection activity.

This question is an issue of first impression before the Panel. We hold that it is not, and we AFFIRM.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Debtors filed their chapter 13 ***bankruptcy*** case on February 7, 2012. Shellpoint is the servicer of the loan secured by Debtors' residence. Prepetition arrears on the loan were approximately $11,400.

Debtors' fifth amended chapter 13 plan, confirmed by the ***bankruptcy*** court, provided for payment of the prepetition arrears; maintenance of ongoing contractual installments due on the loan would be paid by the chapter 13 trustee. Debtors made all payments under the plan. Prepetition arrears were cured by March 31, 2015. At the time of Debtors' contempt motion, the trustee was making the ongoing monthly loan payments under the plan.

In January 2016, Mrs. ***Keller*** obtained a 3-bureau credit report (Experian, Equifax and Transunion) containing the following information Shellpoint furnished to these three CRAs about the loan:

> Payment History: **[**3]** 120 to 90 days late on all three bureau reports for March 2014 through December 2015.
> Payment Status: Account reported as "past due 150

---

[1] Unless specified otherwise, all chapter, code and rule references are to the ***Bankruptcy*** Code, *11 U.S.C. §§ 101-1532*, and the *Federal Rules of **Bankruptcy** Procedure, Rules 1001-9037*.

days," "at least 120 days or more then four payments past due" and "120 days past due."
Past Due Balance: All three bureau reports list the account as $9,297.00 past due.

Bankruptcy Status: Shellpoint failed to report that the account was included in or part of a chapter 13 repayment plan.

Mr. ***Keller***'s 3-bureau credit report contained similar information furnished by Shellpoint:

Payment History: 120 to 90 days late on all three bureau reports for March 2014 through March 2015.
Past Due Balance: All three bureau reports list the account as $9,297.00 past due.

On January 27, 2016, Mr. ***Keller*** was denied credit in the purchase of a new vehicle. The denial letter indicated that Mr. ***Keller*** was an "Unacceptable Credit Risk" and that credit was denied "based in whole or in part on information obtained on a report" from Experian.

Debtors moved for contempt and sanctions against Defendants for violating the automatic stay and confirmation order. Debtors argued that by reporting misleading and inaccurate information on their credit reports — i.e., that the account was **[**4]** severely delinquent and with a past due balance — Defendants had willfully acted to collect on a debt that was subject to the **[*121]** automatic stay and confirmation order in violation of §§ 105, 362 and 1327.

In support of their stay violation claim, Debtors argued that reporting of an account which has been included in a chapter 13 ***bankruptcy*** as "past due" or "late" is a ***per se violation*** of the automatic stay, because reporting late payments or past due balances is classic collection activity under § 362(a)(6). Debtors argued that such reporting did more than acknowledge that the debt still exists; it suggested that Debtors had failed to perform and served no other purpose than to coerce them into paying the debt directly to Shellpoint, despite the trustee's payments.

Debtors also argued that the exception to the automatic stay under § 362(b)(2)(E), added by *BAPCPA* in 2005, that allows credit reporting of overdue child support obligations, conversely means that negative credit reporting otherwise falls within the coverage of § 362(a) and constitutes prohibited collection activity under § 362(a)(6). Debtors contended legislative history of this added exception supported their argument; the Congressional Record states that § 362(b)(2)(E) was added "[t]o facilitate **[**5]** the domestic support collection efforts by governmental units . . . ." H.R. Rep. No. 109-31(I), at 17 (2005).

Lastly, Debtors relied on *In re Sommersdorf, 139 B.R. 700 (Bankr. S.D. Ohio 1992)*, a published case supporting their position.

At the hearing, Debtors' counsel clarified that the issue before the ***bankruptcy*** court was not the accuracy of what was reported to the CRAs but rather whether reporting that a payment is past due or late violates the automatic stay. The ***bankruptcy*** court confirmed that the legal issue to be decided was "whether past-due credit reporting is a ***per se violation*** of § 362," and took the matter under submission. Hr'g Tr. (Apr. 5, 2016) 8:25-9:7; 10:19-24.

In a written memorandum, the ***bankruptcy*** court denied Debtors' motion for contempt and sanctions for violation of the automatic stay and confirmation order. Debtors timely appealed the ensuing order.

II. JURISDICTION

The ***bankruptcy*** court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A) and (L). We have jurisdiction under 28 U.S.C. § 158.

III. ISSUES

1. Did the ***bankruptcy*** court err in determining that the act of postpetition credit reporting of overdue or delinquent payments is not a ***per se violation*** of § 362(a)(6)?

2. Did the ***bankruptcy*** court err in determining that the credit reporting did not violate the confirmation order under § 1327(a)?

IV. [**6] STANDARDS OF REVIEW

HN1[⬆] We review the ***bankruptcy*** court's conclusions of law de novo and its findings of fact for clear error. *Hansen v. Moore (In re Hansen), 368 B.R. 868, 874 (9th Cir. BAP 2007)*. "De novo review requires that we consider a matter anew, as if no decision had been made previously." *Francis v. Wallace (In re Francis), 505 B.R. 914, 917 (9th Cir. BAP 2014)*. Factual findings are clearly erroneous if they are illogical, implausible or

without support in the record. *Retz v. Samson (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010)*.

HN2[] We review de novo the ***bankruptcy*** court's determination as to whether the automatic stay provisions of *§ 362* have been violated. *Palm v. Klapperman (In re Cady), 266 B.R. 172, 178 (9th Cir. BAP 2001)*, aff'd, *315 F.3d 1121 (9th Cir. 2003)*; **[*122]** *Advanced Ribbons & Office Prods., Inc. v. U.S. Interstate Distrib., Inc. (In re Advanced Ribbons & Office Prods., Inc.), 125 B.R. 259, 262 (9th Cir. BAP 1991)* (the scope of the automatic stay under *§ 362(a)(6)* is "a legal issue which we review **de novo**").

HN3[] We review the ***bankruptcy*** court's decision regarding civil contempt for abuse of discretion. *Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003)*. Underlying factual findings made in connection with a civil contempt order are reviewed for clear error. Id.

V. DISCUSSION

A. The *bankruptcy* court did not err in determining that the act of postpetition credit reporting of overdue or delinquent payments is not a *per se violation* of *§ 362(a)(6)*.

HN4[] *Section 362(a)(6)* stays "any act to collect, assess, or recover a claim against the debtor that arose before" the filing of the petition. This provision generally prohibits creditors from making demand on a debtor to pay a prepetition debt or engaging in communications with the debtor **[**7]** in an effort to collect the debt. Debtors contend that Shellpoint violated *§ 362(a)(6)* by postpetition reporting of overdue or delinquent loan payments, because such credit reporting is a prohibited collection activity.

We hold that postpetition credit reporting of overdue or delinquent payments, without more, does not violate the automatic stay as a matter of law.

Two district court decisions in the Northern District of California have expressly rejected the argument that postpetition credit reporting of overdue or delinquent payments is a ***per se violation*** of the automatic stay.[2] See *Giovanni v. Bank of Am., N.A., 2012 U.S. Dist. LEXIS 178914, 2012 WL 6599681, at *5 (N.D. Cal. Dec. 18, 2012)*; *Mortimer v. JP Morgan Chase Bank, N.A., 2012 U.S. Dist. LEXIS 108576, 2012 WL 3155563, at *3 (N.D. Cal. Aug. 2, 2012)*.

In Mortimer, the debtor argued that the automatic stay prohibited the bank's reporting of delinquent payments while the ***bankruptcy*** case was pending, contending that such reporting "violated the letter and the spirit of *11 U.S.C. § 362*." *2012 U.S. Dist. LEXIS 108576, 2012 WL 3155563, at *3*. The district court rejected that argument, holding that:

> *Section 362* does not stand for the proposition that an individual is not obliged to make timely payments on his accounts while his petition for ***bankruptcy*** is pending. Rather, *§ 362* limits collection activities in pursuit of claims that arose before the ***bankruptcy*** petition. While it might be good policy in light of the goals of ***bankruptcy*** **[**8]** protection to bar reporting of late payments while a ***bankruptcy*** petition is pending, neither the ***bankruptcy*** code nor the [*Fair Credit Reporting Act*] ("FCRA") does so.

Id.

In Giovanni, the debtor argued that the bank's reporting of late payments once she filed her ***bankruptcy*** case was a "'prohibited creditor shenanigan'" and violated *§ 362*. *2012 U.S. Dist. LEXIS 178914, 2012 WL 6599681, at *5* (quoting *In re Sommersdorf, 139 B.R. at 702*). Relying on Mortimer, the district court rejected debtor's argument and further noted that the debtor cited no case in which a court found negative postpetition credit reporting alone to be a violation of the automatic stay. *2012 U.S. Dist. LEXIS 108576, [WL] at *5-6*.

Debtors contend the ***bankruptcy*** court erred by relying on Mortimer and its progeny because those cases dealt only with "accuracy under the FCRA and not *§ 362*." While it is true that *Mortimer* and **[*123]** *Giovanni* were decided in the context of the FCRA, it is clear that the argument Debtors raise here with respect to *§ 362* was also raised and rejected in both cases.[3]

We also reject Debtors' argument that the ***bankruptcy***

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[2] Debtors' counsel in this case also represented the plaintiffs in Giovanni and Mortimer.

[3] In another case, Debtors' attorneys attempted to distinguish Mortimer, arguing that the case "focused on the automatic stay." *Mestayer v. Experian Info. Sols., Inc., 2016 U.S. Dist. LEXIS 19265, 2016 WL 631980, at *3 (N.D. Cal. Feb. 17, 2016)*.

court erred by relying on Mortimer but failing to acknowledge the "split of authority" regarding the issues presented in Mortimer, citing *Grantham v. Bank of Am., N.A., 2012 U.S. Dist. LEXIS 167439, 2012 WL 5904729 (N.D. Cal. Nov. 26, 2012)* and *Venugopal v. Digital Fed. Credit Union, 2013 U.S. Dist. LEXIS 43829, 2013 WL 1283436, at *3 (N.D. Cal. Mar. 27, 2013)*. The issue in both *Grantham* and *Venugopal* was the accuracy of the credit reporting **[**9]** and claims under the FCRA and its California counterparts, not whether the credit reporting violated the automatic stay.

We note the dearth of case law on the precise issue before us. Most courts have addressed this issue in the context of the discharge injunction. The discharge injunction serves as a broad injunction against a wide range of collection activities for discharged debts. See *§ 524(a)(2)*. Debtors fault the ***bankruptcy*** court for relying on such cases for its ruling, arguing that these cases stand merely for the proposition that reporting certain types of credit information, such as a balance or a mere existence of a debt, is not collection activity that runs afoul of *§ 362* or *§ 524*. Debtors argue that while such information may have an "adverse" effect on a credit report (the term the ***bankruptcy*** court used and Debtors take issue with), it has a different purpose and effect than "overdue" or "delinquent" payment reporting and is distinguishable from the "mere act of credit reporting."

We understand the distinction Debtors attempt to make here but conclude that, because the standard for violations of the automatic stay and the discharge injunction are similar,[4] the discharge injunction cases are **[**10]** relevant and persuasive. These cases stand for the proposition that negative credit reporting, without more, does not violate the discharge injunction. The debtor must show that the credit reporting was done with the purpose of coercing the debtor to pay the reported debt.

In *Mahoney v. Washington Mutual, Inc. (In re Mahoney), 368 B.R. 579 (Bankr. W.D. Tex. 2007)*, the issue before the ***bankruptcy*** court was whether reporting a discharged debt constitutes an "act" to collect the debt in violation of the discharge injunction. The court held that the mere reporting of credit information about a debtor is not an act to collect a discharged debt within the meaning of the statute, unless the evidence shows there is a linkage between the act of reporting and the collection or recovery of the discharged debt. *Id. at 584*.[5] The following courts are in agreement. See *Montano v. First Light Fed. Credit Union (In re Montano), 488 B.R. 695, 710 (Bankr. D. N.M. 2013)* (reporting discharged debt as "past due" is facially permissible and does not constitute a ***per se violation*** of the discharge injunction, but such act could be found to violate the discharge injunction if its objective effect was to pressure debtor into paying the discharged debt); *Russell **[*124]** v. Chase Bank USA (In re Russell), 378 B.R. 735, 742 (Bankr. E.D.N.Y. 2007)* (reporting a discharged debt can violate the discharge injunction if done for the specific purpose of coercing payment); *Lohmeyer v. Alvin's Jewelers (In re Lohmeyer), 365 B.R. 746, 750 (Bankr. N.D. Ohio 2007)* (same); *Smith v. Am. Gen. Fin. Inc. (In re Smith), 2005 Bankr. LEXIS 2481, 2005 WL 3447645, at *3 (Bankr. N.D. Iowa Dec. 12, 2005)* ("past due" credit **[**11]** report notation can be a violation of the discharge injunction if made with the intent to collect a debt); *Helmes v. Wachovia Bank, N.A. (In re Helmes), 336 B.R. 105, 109 (Bankr. E.D. Va. 2005)* (bank that mistakenly reported debt as "past due" rather than discharged, absent any other evidence that it did so with intent to collect the debt, did not violate the discharge injunction); *Irby v. Fashion Bug (In re Irby), 337 B.R. 293, 296 (Bankr. N.D. Ohio 2005)* (reporting of discharged debt does not run afoul of the discharge injunction unless it is also coupled with other actions undertaken by the creditor to collect or recover on the debt); *In re Goodfellow, 298 B.R. 358, 362 (Bankr. N.D. Iowa 2003)* (finding a violation of the automatic stay and discharge injunction based on creditor's reporting of the debtor's debt as "past due" in addition to its collection letters and threatening phone calls to debtor attempting to collect the debt); *Vogt v. Dynamic Recovery Servs. (In re Vogt), 257 B.R. 65, 71 (Bankr. D. Colo. 2000)* (false credit reporting, if not done to extract payment of the debt, is not an act proscribed by the Code).

The other line of cases addressing the issue of negative postpetition credit reporting involve alleged violations of the codebtor stay under *§ 1301*. Debtors contend the ***bankruptcy*** court erred by relying on these cases, because they largely stand for the proposition that the codebtor stay exists to protect the debtor rather than the codebtor, and suggest that **[**12]** a codebtor's recourse

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[4] See *ZiLOG, Inc. v. Corning (In re ZiLOG), 450 F.3d 996, 1008 n.12 (9th Cir. 2006)*.

[5] The Mahoney court also aptly notes that unauthenticated copies of credit reports or conclusory allegations that furnishing credit information is done with intent to collect a debt will not serve as competent evidence of a creditor's attempt to collect a debt. *368 B.R. at 592-94*.

for standing purposes may lie with the FCRA rather than the Code.

While the purpose of the codebtor stay and standing may have been at issue in these cases, they too hold that negative credit reporting, without more, does not violate the codebtor stay. See *In re Burkey, 2012 Bankr. LEXIS 5516, 2012 WL 5959991, at *4 (Bankr. N.D.N.Y. Nov. 28, 2012)* ("Though there is little case law addressing whether reporting negative information to a credit reporting agency constitutes an act to collect a debt, the court is persuaded by those courts that hold the credit reporting must be part of a broader effort to collect the debt to be a violation of the codebtor stay[.]"); *In re Juliao, 2011 Bankr. LEXIS 4583, 2011 WL 6812542, at *4 (Bankr. E.D. Mich. Nov. 29, 2011)* (bank's reporting of codebtor's past due payments to CRAs was not an act to collect the debt and therefore did not violate *§ 1301*); *Singley v. Am. Gen. Fin. (In re Singley), 233 B.R. 170, 173 (Bankr. S.D. Ga. 1999)* (for a violation of the automatic stay under *§ 362* or the codebtor stay under *§ 1301* there needs to be a showing that an adverse report to a credit bureau was made with the intent to harass or coerce the debtor and/or the codebtor into paying the prepetition debt).

Finally, ***HN5***[↑] the few cases addressing the issue of negative credit reporting in the context of *§ 362*, in addition to *Mortimer* and *Giovanni*, hold that postpetition negative credit reporting alone is not an act to collect a debt in **[**13]** violation of the stay; such reporting must have been done with the intent to harass or coerce the debtor to pay the reported debt. See *In re Haley, Case No. 15-10712, 2016 Bankr. LEXIS 4602 (Bankr. D. Nev. Sept. 8, 2016)* (inaccurate credit reporting, without evidence of creditor's intent to coerce debtor into paying the reported debt, does not violate the automatic stay as a matter of law); *Weinhoeft v. Union Planters **[*125]** Bank, N.A. (In re Weinhoeft), 2000 Bankr. LEXIS 2246, 2000 WL 33963628, at *2 (Bankr. C.D. Ill. Aug. 1, 2000)* ("Even if it is shown that the Bank's reports to the credit-reporting agencies contain truthful information [about debtors' delinquent mortgage payments], such a report, if made with the intent to harass or coerce a debtor into paying a pre-petition debt, could be deemed a violation of the automatic stay."); Smith v. United Student Aid Funds, Inc. (In re Smith), 2000 WL 33710884, at *4 (Bankr. D.S.C. Feb. 3, 2000) (rejecting debtor's argument that postpetition negative credit reporting violated *§ 362(a)(6)* and concluding that reporting was not an act to collect because it did not extract payment even if it promoted it). See also *Hickson v. Home Fed. of Atlanta, 805 F. Supp. 1567, 1573 (N.D. Ga. 1992)*, aff'd, *14 F.3d 59 (11th Cir. 1994)* ("*Section 362* contains no language prohibiting creditors or any other party from making legitimate reports [of delinquent mortgage payments] to credit agencies regarding parties that have filed for ***bankruptcy***.").[6]

Notably, none of the cases cited above held that negative credit reporting, as a matter of law, is **[**14]** a collection activity that violates *§ 362*, *§ 524* or *§ 1301*. The only case supporting Debtors' argument is Sommersdorf. There, the ***bankruptcy*** court held that the codebtor stay under *§ 1301* was violated when the creditor bank had reported an auto loan debt as "written off" when in fact the loan was paid in full under the debtor's chapter 13 plan. As a result of a negative credit report, the codebtor was unable to obtain a home loan. *139 B.R. at 701*. The bank argued that federal banking audit requirements required it to charge off any amount that was more than four months in arrears. Id. Rejecting this argument, the court held:

> As the ***bankruptcy*** court noted, although Debtors appeared to raise accuracy of the report as an issue in their motion, counsel at oral argument stated that accuracy of the credit information reported was irrelevant to whether or not negative credit reporting violated the automatic stay. Accordingly, the court addressed the issue without considering accuracy. Because Debtors affirmatively abandoned the accuracy issue at oral argument they have waived it on appeal. See *Reynoso v. Giurbino, 462 F.3d 1099, 1110 (9th Cir. 2006)* (citing *Russell v. Rolfs, 893 F.2d 1033, 1038-39 (9th Cir. 1990)*; *Sheehan v. Marr, 207 F.3d 35, 42 (1st Cir. 2000)* (appellate court need not consider issue so explicitly abandoned below).
>
> [T]here is a distinction between an internal bank accounting **[**15]** procedure and the placing of a notation on an obligor's credit report. We find that the latter most certainly must be done in an effort to effect collection of the account. See, *In re Spaulding, 116 B.R. 567, 570 (Bankr. S.D. Ohio 1990)* . . . . Such a notation on a credit report is, in

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[6] Debtors contend the ***bankruptcy*** court found that the information Shellpoint furnished was inaccurate. Debtors fail to cite to the record where that finding was made, and we do not see where the court made any such finding. Debtors continue that the ***bankruptcy*** court erred by not considering the accuracy of the credit report; it could have found a ***per se violation*** of the reporting of overdue payments when such a report was inaccurate.

> fact, just the type of creditor shenanigans intended to be prohibited by the automatic stay. H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 342 (1977) reprinted in 1978 U.S. Cong. & Admin. News 5787, 6298 (omitted).

Id. Cf. *Bruno v. First USA Bank (In re Bruno), 356 B.R. 89, 91 (Bankr. W.D.N.Y. 2006)* (credit reporting could constitute an act to collect a debt, but because creditor's reporting of the debt occurred prepetition the court declined to extend the discharge injunction to cause the creditor, post-discharge, to update its reporting of discharged debt).

[*126] We respectfully do not find *Sommersdorf* persuasive. First, the Sommersdorf court provided little analysis to support its holding, and what authority it did rely upon does not support it. It cited the Congressional Record, which is silent on credit reporting but speaks only of debtors feeling pressured to pay prepetition debts when contacted by creditors on the telephone. *139 B.R. at 701*. Its reliance on *Spaulding* is also misplaced. Spaulding did not involve credit reporting but rather letters sent **[**16]** directly to the debtor from her bank about closing her account due to the ***bankruptcy*** filing, the closing of the debtor's account and the bank's withholding of some of the account funds. *116 B.R. at 570*. The debtor contended that the creditor's actions violated the automatic stay. Id. Because of the absence of any evidence that the bank intentionally attempted to collect or recover a debt, the court granted the bank summary judgment. *Id. at 570-71*. Thus, Spaulding does not stand for the proposition that negative credit reporting is an act to collect a debt in violation of *§ 362(a)(6)*. As the ***bankruptcy*** court so eloquently put it in Mahoney: "The rhetoric in Sommersdorf writes checks that the authorities cannot cash." *368 B.R. at 586*.

Second, as the ***bankruptcy*** court recognized and as we have pointed out with the above cases, *Sommersdorf's* per se analysis has been rejected or largely not followed. In addition, there were other affirmative acts and facts on which the court could have concluded that the creditor's negative credit reporting was done for the purpose of attempting to collect the debt. Prior to filing the motion alleging the stay violation, the debtor requested the creditor to remove the charge-off notation but the creditor refused. **[**17]** Also, the creditor was receiving a 100% payment of its claim and could not have prevailed on a motion for relief from stay. Lastly, Sommersdorf is inconsistent with Ninth Circuit law, which requires evidence indicating harassment or coercion to establish a violation under *§ 362(a)*.

In *Morgan Guar. Tr. Co. of N.Y. v. Am. Sav. & Loan Ass'n, 804 F.2d 1487, 1491 (9th Cir. 1986)*, the issue was whether presentment of the debtor's bearer notes to a third party bank postpetition violated the automatic stay under *§ 362(a)(6)*. The Ninth Circuit Court of Appeals held that "the language and purposes of *section 362(a)* do not bar mere requests for payment unless some element of coercion or harassment is involved."[7] Likewise, an act does not violate the stay unless it immediately or potentially threatens the debtor's possession of his or her property, such that the debtor is required to take affirmative acts to protect his or her interest. Id. We fail to see how negative credit reporting, standing alone, could be a violative act.

In *Zotow v. Johnson (In re Zotow), 432 B.R. 252, 259 (9th Cir. BAP 2010)*, the Panel held in the context of a motion alleging a creditor's violation of the automatic stay under *§ 362(a)(6)*, that "one distinguishing factor between permissible and prohibited communications is evidence indicating harassment or coercion." Thus,***HN6***[⬆] in this circuit, negative credit reporting, standing **[**18]** alone, is insufficient to show a violation of the automatic stay under *§ 362(a)(6)*.[8]

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[7] Congress amended *§ 362* in 1985 to provide that presentment of a negotiable instrument is not a violation of *§ 362(a)*, as now codified in *§ 362(b)(11)*. However, we believe the Ninth Circuit's holding that mere requests for payment do not constitute a stay violation absent coercion or harassment relevant and is still good law.

[8] We also note *Bell v. Clinic Labs. of Haw. (In re Bell), 2008 Bankr. LEXIS 4730, 2008 WL 8444796 (9th Cir. BAP Feb. 11, 2008)*. In that case, a chapter 13 ***bankruptcy*** petition was filed in October 2005 and the plan paid off early, resulting in a discharge on March 13, 2007. Despite receiving notice of the ***bankruptcy***, the creditor continued to send debtor over seventeen demand letters between 2006 and 2007. The creditor also retained a collection agency to pursue the prepetition debt, and thereafter the collection agency reported the discharged debt to the CRAs.

The only issue before the Panel was whether the ***bankruptcy*** court abused its discretion in denying debtor's request for attorney's fees once the creditor was found to have willfully violated the automatic stay. *2008 Bankr. LEXIS 4730, [WL] at *2*. While the negative credit reporting was one factor supporting debtor's claim for damages, the Panel did not conclude that the creditor's negative reporting, standing alone, violated the automatic stay. Rather, this fact combined with the creditor's other overt collection acts — sending seventeen

[*127] Debtors want us to hold that the act of reporting overdue or delinquent payments during the pendency of a chapter 13 ***bankruptcy*** is collection activity that violates the automatic stay because its sole purpose is to coerce a debtor into paying the debt. We **[**19]** reject this argument because it presumes that no other reasons explain why a creditor would furnish negative credit information to CRAs. We believe the ***bankruptcy*** court in *Helmes* stated it best in rejecting this same argument:

> The debtor asserts that the only reason for a creditor to submit such a derogatory report is to collect the debt. The debtor is certainly correct that such a derogatory notation on a credit report may have the effect of causing some debtors to pay the discharged debt, but that does not prove that it was submitted with that intention. The argument assumes that there is no other reason why such a derogatory report would be submitted and, concludes that it must have been submitted with the proscribed intent. The debtor's argument fails if there is another reason why the derogatory report was made.

336 B.R. at 109. In Helmes, another reason for the negative credit reporting was mistake.

Another ***HN7***[⬆] reason for reporting a delinquent debt that does not have a direct purpose of collecting the debt is to share information relevant to credit granting decisions:

> [A] distinction must be made between acts which have as their direct and natural purpose **[**20]** the collection of debts and acts which have some other lawful purpose but could also be used (or, more accurately, misused) to coerce payment of a debt. The reporting of a delinquent debt to a credit reporting agency is not inherently an act to collect a debt but rather to share information relevant to credit granting decisions. A creditor reports both performing and delinquent accounts in the expectation that other credit grantors will do the same, enhancing each creditor's ability to evaluate proposed credit transactions and to avoid extending credit or making loans to poor credit risks.

In re Jones, 367 B.R. 564, 569 (Bankr. E.D. Va. 2007).[9]

[*128] We are also not persuaded by Debtors' argument with respect to *§ 362(b)(2)(E)*. That provision, added by *BAPCPA* in 2005, excepts from the automatic stay "the reporting of overdue support owed by a parent to any consumer reporting agency as specified in *section 666(a)(7)* of the Social Security Act." Debtors contend that since the act of reporting overdue domestic support obligations has been listed as an exception to the automatic stay in *§ 362(b)*, then all other instances of overdue credit reporting must be prohibited by *§ 362(a)*.

Prior to *BAPCPA*, the automatic stay did not bar commencement of an action or proceeding to establish **[**21]** paternity, to establish or modify an order for alimony, maintenance or support, or to collect such debts from property that was not property of the estate. However, *BAPCPA* revamped the way the automatic stay applies to domestic matters. Under the new *§ 362(b)*, it is now easier for a spouse to bring or to continue actions against the debtor regarding child custody, visitation matters, domestic violence issues, or pursuit of state remedies for nonpayment of domestic support obligations such as the suspension of a driver's, occupational or professional license, and to report overdue support debts to credit agencies. See 17 J. Bankr. L. & Prac. 3 Art. 1, Edward W. Vopat, Domestic Support Obligations Under the Revised ***Bankruptcy*** Code (2008).

Thus, *BAPCPA's* expansion with respect to domestic relation proceedings in *§ 362(b)* clearly evidenced congressional intent to expand and clarify which domestic relation proceedings are not covered by the automatic stay. Therefore, we disagree with Debtors that the addition of *§ 362(b)(2)(E)* necessarily implies that all other instances of negative credit reporting are barred by the automatic stay.

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collection letters during the postpetition period — is what violated the stay because the creditor was clearly "attempt[ing] to collect a prepetition debt." *2008 Bankr. LEXIS 4730, [WL] at *3*.

In other words, the Panel in Bell concluded that the debtor had met his burden of proving that the creditor's cumulative communications were coercive and harassing. This is consistent with the law of this circuit.

[9] Debtors cite *In re Thistle, 1998 Bankr. LEXIS 2110, 1998 WL 35412015 (Bankr. E.D. Va. July 7, 1998)*, which they claim held "reporting the debt to the credit bureau as 'bad debt' with a past due balance could hardly have any purpose except to coerce the debtors into paying the debt." They also accuse the ***bankruptcy*** court for having cited Thistle improperly. We could not locate Debtors' quoted passage anywhere in Thistle.

Furthermore, to read § 362(b)(2)(E) as Debtors suggest — that it creates a singular and exclusive exception **[**22]** to § 362(a) for credit reporting — flies in the face of ***HN8***[↑] § 1681c(a)(1)[10] of the FCRA, which permits the credit reporting of ***bankruptcies*** for a period of up to ten years, and would require the court to conclude that Congress intended to invalidate that FCRA provision through an amendment of § 362(b)(2)(E). Debtors' interpretation of § 362(b)(2)(E) would be at odds with what Congress has intended in § 1681c(a)(1) of the FCRA. See Morton v. Mancari, 417 U.S. 535, 551, 94 S. Ct. 2474, 41 L. Ed. 2d 290 (1974) ("[C]ourts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intent to the contrary, to regard each as effective."); Posadas v. Nat'l City Bank of N.Y., 296 U.S. 497, 503, 56 S. Ct. 349, 80 L. Ed. 351 (1936) (when Congress passes two statutes that may touch on the same subject, we give effect to both unless doing so would be impossible).

Accordingly, we hold that ***HN9***[↑] the act of postpetition credit reporting of overdue or delinquent payments while a ***bankruptcy*** case is pending is not a ***per se violation*** of § 362(a)(6).

B. The *bankruptcy* court did not err in determining that the credit reporting did not violate the confirmation order under § 1327(a).

HN10[↑] A violation of the confirmation order under § 1327(a) is an act of contempt **[*129]** and may be remedied under § 105. In re Dendy, 396 B.R. 171, 179-80 (Bankr. D.S.C. 2008). For contempt, the moving party must show by clear and convincing evidence the **[**23]** contemnors violated a specific and definite order of the court. Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002).

Debtors argued that Shellpoint's reporting of past due balances on Debtors' credit reports violated the confirmation order. First, Debtors argued Shellpoint was bound by the chapter 13 plan, and its actions of reporting past due payments to CRAs failed to conform to the plan's terms. Second, § 2.08(b)(5) of the plan required that "[p]ostpetition payments made by Trustee and received by the holder of Class 1 claims shall be applied as if the claim were current and no arrearage existed on the date the case was filed." Thus, argued Debtors, the plan required Shellpoint "to report all timely made postpetition payments as being current as though no default existed," and Shellpoint had failed to comport its reporting of the account with this requirement. Defendants countered that Debtors' plan was silent about credit reporting, and § 2.08(b)(5) of the plan did not refer to credit reporting as Debtors had argued; it only governed the manner in which payments of the arrearage would be applied to the claim.

The ***bankruptcy*** court found that the confirmation order did not require Defendants to report — or not report — anything regarding Debtors' credit information. The **[**24]** confirmation order neither directed nor prohibited credit reporting. Debtors were reading too much into § 2.08(b)(5), attempting to make the word "applied" synonymous with "report." The court reasoned that in order to reach the conclusion Debtors suggested, it would have to infer a nexus between the application and reporting of payments. In other words, the court would have to read into the plan what the plan did not expressly state. Hence, this meant — at least with respect to credit reporting — Debtors' confirmed plan was not definite and specific. Accordingly, Defendants could not be found in contempt.

We perceive no error in the ***bankruptcy*** court's ruling. The confirmed plan is entirely silent on the issue of credit reporting. Debtors contend that "applied" necessarily includes "reporting" but fail to cite any authority for this contention. To the extent Debtors contend the postpetition credit reporting is erroneous and does not match Defendants' application of Debtors' loan payments under the confirmed plan, as the ***bankruptcy*** court noted, the remedy for that is not in the Code but perhaps in the FCRA.

VI. CONCLUSION

For the reasons stated above, we AFFIRM.

[10] See 15 U.S.C. § 1681c(a)(1). See also In re Kuehn, 563 F.3d 289, 291 (7th Cir. 2009) (reviewing § 1681c and noting that within ten years from the date of discharge a prospective creditor may consider discharged debts (minus a few exceptions under the Code) in determining creditworthiness and reasoning that "yesterday's failure to pay is a proper basis for tomorrow's refusal to extend credit.").

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McGarvey v. USAA Sav. Bank (In re McGarvey)

United States Bankruptcy Court for the Eastern District of California

February 21, 2020, Decided

Case No. 15-28908-E-13, Adv. Proc. No. 18-2053, Docket Control No. DKM-3

Reporter
613 B.R. 285 *; 2020 Bankr. LEXIS 494 **; 2020 WL 889351

In re WILLIAM NORBERT ***McGARVEY*** and SARAH MARIE ***McGARVEY***, Debtors.SARAH ***McGARVEY***, Plaintiff, v. ***USAA*** SAVINGS BANK, Defendant.

Core Terms

consumer, reporting, Furnisher, inaccurate, update, bankruptcy case, credit report, collection, delinquent, credit reporting, consumer reporting agency, pleadings, terms, allegations, automatic stay, misleading, discharged, asserts, bankruptcy filing, confirmation, inaccuracy, inaccurate ***information***, ***consumer*** report, accurate ***information***, concrete, information provided, Bureau, motion for judgment, industry standard, decisions

Case Summary

Overview
HOLDINGS: [1]-Debtor's claims that creditor violated the FCRA by failing to remove certain information from credit reports were without merit because debtor's assertions that FCRA was violated by failing to change the amount of the obligation to zero, failing to delete the accurate collection/transaction history, and failing to inaccurately state that the obligation was not in collection were contrary to the plain language of the FCRA and the statutory legislative intent; [2]-Debtor did state a claim that failure to update the information furnished to the credit reporting agencies was a violation of the automatic stay.

Outcome
Motion for judgment on pleadings granted for defendant except stay violation claim.

LexisNexis® Headnotes

Governments > Legislation > Interpretation

HN1[] **Legislation, Interpretation**

When determining issues arising under a statutory scheme, one's analysis begins with the statutes as enacted and the plain language thereof. The basic direction from the United States Supreme Court is that Congress says in a statute what it means and means in a statute what it says.

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Judgments

Civil Procedure > Judgments > Pretrial Judgments > Judgment on Pleadings

HN2[] **Adversary Proceedings, Judgments**

Fed. R. Civ. P. 12(c) providing for a party moving for judgment on the pleadings is incorporated into the bankruptcy adversary proceeding process by *Fed. R. Bankr. P. 7012*. A motion for judgment on the pleadings does not include matters outside the pleadings at issue, and if outside matters are included, then the motion is one for a summary judgment. *Fed. R. Civ. P. 12(d)*, *Fed. R. Bankr. P. 7012*.

Civil Procedure > Judgments > Pretrial Judgments > Judgment on Pleadings

HN3[] **Pretrial Judgments, Judgment on Pleadings**

On a motion for judgment on the pleadings under *Fed. R. Civ. P. 12(c)*, the allegations of the non-moving party must be accepted as true, while the allegations of the

moving party, which have been denied, are assumed to be false. Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. Dismissal is proper only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim that would entitle him to relief. While the court must construe the complaint and resolve all doubts in the light most favorable to the plaintiff, the court does not need to accept as true conclusory allegations or legal characterizations.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Civil Procedure > Judgments > Pretrial Judgments > Judgment on Pleadings

HN4 **Motions to Dismiss, Failure to State Claim**

A motion for judgment on the pleadings based on *Fed. R. Civ. P. 12(c)* is a functional equivalent of a motion to dismiss under *Fed. R. Civ. P. 12(b)*, requiring the same underlying analysis. Thus, for a complaint to withstand a *Rule 12(c)* motion for judgment on the pleadings, it must contain more detail than bare assertions that are nothing more than a formulaic recitation of the elements required for the claim. Courts must draw upon their experience and common sense when evaluating the specific context of the complaint and whether it contains the necessary detail to state a plausible claim for relief. The factual content on the face of the complaint-not conclusory statements in the pleading-and reasonable inferences drawn from those facts must plausibly suggest that the plaintiff could be entitled to relief for the pleading to survive a *Rule 12(c)* motion.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

HN5 **Motions to Dismiss, Failure to State Claim**

In discussing the basic pleading requirements in connection with a motion to dismiss brought under *Fed. R. Civ. P. 12(b)(6)*, the Ninth Circuit Court of Appeals determined that the court may consider allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice. However, the court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. Nor is the court required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.

Civil Procedure > ... > Pleadings > Complaints > Requirements for Complaint

HN6 **Complaints, Requirements for Complaint**

The United States Supreme Court has provided the following guidance with respect to a short plain statement needing to be more than merely parroting a statute or legal theory. A plaintiff cannot plead the bare elements of his cause of action, affix the label general allegation, and expect his complaint to survive a motion to dismiss. Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. A plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do.

Business & Corporate Compliance > Banking & Finance > Consumer Protection > Fair Credit Reporting
Banking Law > Consumer Protection > Fair Credit Reporting

HN7 **Consumer Protection, Fair Credit Reporting**

True and accurate credit history to maintain a credit reporting system as enacted by Congress does not allow a creditor to "sell" or a consumer to "buy off" a false credit history by deleting accurate information, including that of late or non-payment of financial obligations.

Business & Corporate Compliance > Banking & Finance > Consumer Protection > Fair Credit Reporting
Banking Law > Consumer Protection > Fair Credit Reporting

HN8 **Consumer Protection, Fair Credit Reporting**

The Fair Credit Reporting Act (FCRA) and its statutory scheme for credit reporting is built on a foundation of both accuracy and fairness in the information reported to credit reporting agencies (CRAs) and information provided by Furnishers on ***information*** about ***consumers***, as stated in 15 U.S.C.S. § 1681(a).

Business & Corporate Compliance > Banking & Finance > Consumer Protection > Fair Credit Reporting
Banking Law > Consumer Protection > Fair Credit Reporting

HN9 **Consumer Protection, Fair Credit Reporting**

The Fair Credit Reporting Act (FCRA) imposes an affirmative obligation on a Furnisher to update previously furnished information to a credit reporting agency (CRA) when the Furnisher discovers that it is inaccurate or after being notified of an inaccuracy by the ***consumer***, if such ***information*** is actually inaccurate. 15 U.S.C.S. § 1681s-2(a)(2).

Business & Corporate Compliance > Banking & Finance > Consumer Protection > Fair Credit Reporting
Banking Law > Consumer Protection > Fair Credit Reporting

HN10 **Consumer Protection, Fair Credit Reporting**

15 U.S.C.S. § 1681c provides specific provisions relating to the ***information*** included in ***consumer*** reports by credit reporting agencies (CRAs). In 15 U.S.C.S. § 1681c(a)(1)-(5) Congress limits the time that specific information may be included on a consumer report-including the 10-year period for bankruptcy information. In 15 U.S.C. § 1681c(d), Congress further provides that what additional information about bankruptcy cases must be included by a CRA on the consumer report. The FCRA does not include other special reporting or furnishing requirements for bankruptcy information, other than the requirement that it be accurate.

Bankruptcy Law > ... > Plans > Plan Confirmation > Effects of Confirmation

HN11 **Plan Confirmation, Effects of Confirmation**

While during a Chapter 13 bankruptcy case the terms of a Chapter 13 plan bind the creditors and debtor to the terms thereunder for the payments (if any) to be made on the creditors' claims, such modified contracts of what existed when the case was filed between the parties is not a final modification until the Chapter 13 plan is completed. 11 U.S.C.S. § 1327(a). If the debtor does not complete the plan and the case is dismissed or converted to one under Chapter 7, the former Chapter 13 plan and its modifications are of no further effect between the parties.

Bankruptcy Law > ... > Plans > Plan Confirmation > Effects of Confirmation

Bankruptcy Law > Discharge & Dischargeability > Individuals With Regular Income
Business & Corporate Compliance > Bankruptcy > Discharge & Dischargeability > Individuals With Regular Income

HN12 **Plan Confirmation, Effects of Confirmation**

While the terms of a Chapter 13 plan may modify the terms for the payment of the obligation owing to creditors for the term of the plan, and thereafter if the Chapter 13 plan is completed as permitted by 11 U.S.C.S. § 1322 and § 1325, mere confirmation does not permanently alter the obligation. Confirmation of a chapter 13 plan is not a discharge. Instead, confirmation of a chapter 13 plan fixes the terms upon which claims are to be settled, subject to modification by the court. Unless the chapter 13 debtor receives a discharge under *11 U.S.C.S. § 1328*, creditors are barred from recovering their claims only until the dismissal of the chapter 13 case and only to the extent that payment was received under the plan. Upon failure by the debtor to obtain a discharge under *§ 1328*, allowed claims remain due and owing, except to the extent that actual payment was in fact made, because in such circumstances the chapter 13 case will ordinarily be dismissed or converted to chapter 7, nullifying the effect of the plan. A composition plan under chapter 13 therefore ultimately binds creditors only to the extent that there is compliance by the debtor with the payment terms of the plan resulting in a discharge under *§ 1328(a)*, unless the court grants a discharge under *§ 1328(b)*.

Business & Corporate Compliance > Bankruptcy > Discharge & Dischargeability > Effect of Discharge
Bankruptcy Law > Discharge & Dischargeability > Effect of Discharge

Bankruptcy Law > Discharge & Dischargeability > Individuals With Regular Income
Business & Corporate Compliance > Bankruptcy > Discharge & Dischargeability > Individuals With Regular Income

HN13 **Discharge & Dischargeability, Effect of Discharge**

The significant, economic-life altering event is the completion of the Chapter 13 plan and the entry of the debtor's discharge. *11 U.S.C.S. § 1328* provides that after completion of all payments required under the Chapter 13 plan the court shall issue a discharge of debt, except as excluded in *§ 1328*. Only when the discharge has been entered is the enforceability of the obligation and the payment terms thereof permanently changed.

Business & Corporate Compliance > Banking & Finance > Consumer Protection > Fair Credit Reporting
Banking Law > Consumer Protection > Fair Credit Reporting

HN14 **Consumer Protection, Fair Credit Reporting**

With respect to what Congress under the FCRA requires to be furnished to a credit reporting agency, it is not inaccurate information, misstating the amount of the obligation, deleting accurate history of the transaction, or not reporting accurate current information in exchange for a payment that is required, or permitted, by the Congress in the FCRA. It is exactly the opposition - only accurate, truthful ***information*** - whether the ***consumer*** finds that ***information*** advantageous (making it easier to obtain future credit) or challenging (the amount of the unpaid obligations and transaction history showing the consumer's challenges in paying back credit obtained).

Business & Corporate Compliance > ... > Discharge & Dischargeability > Effect of Discharge > Protection of Debtors
Bankruptcy Law > Discharge & Dischargeability > Effect of Discharge > Protection of Debtors

HN15 **Effect of Discharge, Protection of Debtors**

Once a bankruptcy discharge is entered, the creditor cannot attempt, as a matter of federal law, to enforce a debt as a personal obligation of the consumer. The creditor holding a discharged obligation cannot seek to obtain payment, obtain a judgment against the consumer, cannot enforce a pre-bankruptcy judgment that is subject to the discharge against the consumer personally (or any of the consumer's assets for which the creditor is not holding a pre-bankruptcy lien), and will not be competing with any new creditors who are doing business with the post-discharge consumer.

Business & Corporate Compliance > ... > Discharge & Dischargeability > Effect of Discharge > Protection of Debtors
Bankruptcy Law > Discharge & Dischargeability > Effect of Discharge > Protection of Debtors

HN16 **Effect of Discharge, Protection of Debtors**

The sanctity to the discharge injunction to those in the bankruptcy world is that when a person files bankruptcy creditors are stayed as provided in *11 U.S.C.S. § 362(a)*, subject to some statutory exceptions, from seeking to enforce pre-bankruptcy obligations.

Bankruptcy Law > Administrative Powers > Automatic Stay > Violations of Stay

HN17 **Automatic Stay, Violations of Stay**

With respect to violations of the automatic stay, there is the affirmative duty on the person violating the stay to correct the violation, not on the bankruptcy debtor to force the person to correct the violation.

Counsel: [1]** For Sarah ***McGarvey***, Plaintiff (18-02053): Joseph Angelo, LEAD ATTORNEY, Roseville, CA; Elliot Gale, LEAD ATTORNEY, Roseville, CA; Kyle W. Schumacher, LEAD ATTORNEY, San Antonio, TX.

For ***USAA*** Savings Bank, Defendant (18-02053): Joshua N. Kastan, San Francisco, CA; Jaime Y. Ritton,

LEAD ATTORNEY, San Francisco, CA.

For William Norbert ***McGarvey***, aka Bill Norbert ***McGarvey***, Debtor (15-28908): Matthew J. DeCaminada, Sacramento, CA.

For Sarah Marie ***McGarvey***, fka Sarah Marie DiGregorio, fka Sarah Marie Dee, Joint Debtor (15-28908): Matthew J. DeCaminada, Sacramento, CA.

Trustee (15-28908): David Cusick, acramento, CA.

Judges: Ronald H. Sargis, United States Bankruptcy Judge.

Opinion by: Ronald H. Sargis

Opinion

[*290] MEMORANDUM OPINION AND DECISION

Sarah ***McGarvey*** ("Plaintiff-Debtor") filed this Adversary Proceeding on April 27, 2018, seeking relief against ***USAA*** Savings Bank ("Defendant"). On July 6, 2018, Plaintiff-Debtor filed an Amended Complaint. Dckt. 18. Defendant filed a Motion to Dismiss, which resulted in the court granting relief and dismissing all claims in the Amended Complaint except the claim based on the alleged failure to include in, update, or amend the information provided by Defendant about the Plaintiff-Debtor to **[**2]** consumer reporting agencies to disclose that the debt was included in the pending bankruptcy case of Plaintiff-Debtor. Civil Minutes, Dckt. 29; Order, Dckt. 30. Defendant filed its Answer (Dckt. 33) on September 6, 2018. The court has issued its pre-trial conference Scheduling Order which provides that Discovery closes on May 31, 2019. Order, Dckt. 36.

Defendant filed a Motion for Judgment on the Pleadings. Dckt. 41. Defendant asserts that the Amended Complaint fails to state a claim, when applying the pleading standards enunciated by the United States Supreme Court in *Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009)*; and *Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)*, and judgment should be entered for Defendant. *Id.*

HN1[⬆] The determination of this Motion lies in two Congressionally enacted statutory schemes - the Bankruptcy Code and **[*291]** the *Federal Fair Credit Reporting Act ("FCRA")*. As the United States Supreme Court and law professors have taught generations of law students and lawyers, when determining issues arising under a statutory scheme, one's analysis begins with the statutes as enacted and the plain language thereof.[1]

Upon review of the Motion for Judgment on the Pleadings and supporting documents, Opposition pleadings, and the arguments of the respective counsel, the Motion **[**3]** is granted and judgment shall be entered for Defendant ***USAA*** Savings Bank on all claims, except for the allegation that failure to report the obligations as being included in Plaintiff-Debtor's bankruptcy case (it being alleged that the "Metro 2 Code D" is necessary to make the information accurate) is a violation of the automatic stay.

Definitions of Terms Used In Addressing Federal Fair Credit Reporting Act Issues

Congress has created specific defined terms for the persons and conduct subject to the limitations, rights, powers, and authorizations imposed under the Federal Fair Credit Reporting Act (*15 U.S.C. § 1681 et. seq*). As in the present Adversary Proceeding, these specifically defined terms get used in a general way, leading to confusion in the application of the law. In this Decision, the following terms are used by the court:
[*292]

Go to table1

Motion for Judgment on the Pleadings

Defendant asserts that it is entitled to a Judgment on the Pleadings as provided in *Federal Rule of Civil Procedure 12(c)*, asserting in its Motion (Dckt. 41) the following:

---

[1] *See* *Hartford Underwriters Insurance Company v. Union Planters Bank, N.A., 530 U.S. 1, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000)*; *United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989)*. The basic direction from the United States Supreme Court is that Congress says in a statute what it means and means in a statute what it says. *Connecticut Nat. Bank v. Germain, 503 U.S. 249, 254, 117 L. Ed. 2d 391, 112 S. Ct. 1146 (1992)*; (quoting *Caminetti v. United States, 242 U.S. 470, 485, 61 L. Ed. 442, 37 S. Ct. 192 (1917)*); *United Savings Association of Texas v. Timbers of Inwood Forest Associates, LTD., 484 U.S. 365, 371, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988)*.

1. "First, the Fair Credit Reporting Act does not require a creditor to report a bankruptcy filing to the credit bureaus. The federal statute only limits the reporting of a bankruptcy filing for ten (10) years in the event that a bankruptcy filing is reported."[2] *Id.*, p. 2:18.5-21.5.

2. "Second, without an element of harassment or coercion, ***USAA*** SB [Defendant] did not attempt to try to collect ***McGarvey***'s delinquent debt when it allegedly did not include ***McGarvey***'s bankruptcy filing." *Id.*, p. 2:24.5-26.5.

3. "Until the debt has been discharged in bankruptcy, the delinquent debt still exists. Because the reporting of an existence of a debt does not equate to an attempt to collect on a debt, the same analysis can be used when a creditor decides to report (or not report) a bankruptcy filing." *Id.*, p. 2:26.5-28.5, 3:1.5-2.5.

4. "A bankruptcy filing does not change the existence of a debt. It is **[*293]** only when the debtor has completed all of her obligations under the Bankruptcy Code and receives a discharge **[**6]** does the filing affect the status of the delinquent account. As such, the omission of reporting a bankruptcy filing is not an attempt to collect a debt, but rather reporting the existence of the debt." *Id.*, p. 2:2.5-7.5.

Defendant filed a Reply to Plaintiff's Opposition, providing specific responses to the Opposition and expanding the discussion of the law. Reply, Dckt. 48. Key points addressed in the Reply include: (1) The case law cited by Plaintiff-Debtor does not address whether Defendant has a legal obligation to report a bankruptcy filing; (2) Plaintiff-Debtor ignores the distinction between a bankruptcy filing and discharge; (3) The FCRA does not require a creditor to furnish information that a bankruptcy case has been filed by a consumer; and (4) A credit report is not inaccurate because the creditor does not furnish information to the CRA that a bankruptcy case has been filed by a consumer.

In asserting that the FCRA does not impose an affirmative burden on a furnisher of information to report bankruptcy filings, "but only prohibits a creditor from reporting bankruptcy filings for more than ten (10) years if the creditor chooses to report the bankruptcy filing," Defendant cites the court **[**7]** to *15 U.S.C. 1681c(a)(1)* and 16 C.F.R. § Part 600, Appendix, pp. 558-59 (2011). Points and Authorities, p. 11:21-25, Dckt. 43. While accurately stating a portion of the FCRA, this ignores the requirement that accurate information must be provided.[3]

Plaintiff-Debtor's Opposition

Plaintiff-Debtor filed an Opposition on February 14, 2019. Dckt. 47. Plaintiff-Debtor first argues that the merely "reporting" (not stating who has such obligation to "report") is not sufficient to give a "reader" accurate information about a "specific trade line." *Id.*, p. 4:9-12. The alleged inaccuracy of the information furnished by Defendant arises **[**8]** under *15 U.S.C. § 1681s-2* (which is the specific section of the FCRA addressing obligations of Furnishers to provide accurate and correct inaccurate information).

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[2] As discussed below, this statement is accurate in how long a bankruptcy can be on a credit report that is provided by a CRA, but does not impose a prohibition on a furnisher of information (such as a creditor) providing accurate, truthful information to a CRA. The Parties to this Adversary Proceeding blend the distinct limitations and affirmative obligations that Congress has imposed on furnishers of ***information*** and the ***consumer*** reporting agencies that assemble and then sell consumer credit reports.

[3] Additionally, when the court went to review 16 C.F.R. § Part 600 and the Appendix referenced by Defendant, the search on LEXIS returned the information that "PART *600 WAS REMOVED AND RESERVED. SEE 76 FR 44462, 44463*, JULY 26, 2011.] A review of *76 FR 44462* discloses that the 1990 Commentary referenced by Defendant was rescinded, stating (emphasis added):

> The 1996 Amendments expanded the duties of consumer reporting agencies ("CRAs"), and also increased the obligations of users of consumer reports, particularly employers.
>
> Most significantly, **the 1996 Amendments imposed duties on a class of entities not previously treated by the FCRA--furnishers of information to CRAs**--by including requirements related to accuracy and the handling of disputes by the entities that provided information to CRAs.
>
> . . .
>
> Accordingly, for the reasons set forth above, under the authority of *15 U.S.C. 1681s*, the Commission amends Title 16, Chapter I, Code of Federal Regulations, by removing and reserving *part 600*.

The information that a obligation for which the Furnisher has provided information to a CRA must include disclosure that the obligation is part of a pending Chapter 13 plan so that a future lender considering making a loan to a debtor in a pending Chapter 13 case would know what obligations are included in a Chapter 13 plan and which debts are not.

[*294] JUDGMENT ON THE PLEADINGS STANDARD AND APPLICABLE LAW

HN2[] *Federal Rule of Civil Procedure 12(c)* providing for a party moving for judgment on the pleadings is incorporated into the bankruptcy adversary proceeding process by *Federal Rule of Bankruptcy Procedure 7012*. A motion for judgment on the pleadings does not include matters outside the pleadings at issue (here the Complaint), and if outside matters are included, then the motion is one for a summary judgment. *Fed. R. Civ. P. 12(d)*, *Fed. R. Bankr. P. 7012*. The court has not allowed such matters outside the pleadings to be presented and has before it a motion based on the Amended Complaint filed by Plaintiff-Debtor.

HN3[] On a motion for judgment on the pleadings under *Federal Rule of Civil Procedure 12(c)*, the allegations of the non-moving party must be accepted as true, while the allegations of the moving party, **[**9]** which have been denied, are assumed to be false. *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1548 (9th Cir. 1989)*. Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. *Id.* Dismissal is proper only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim that would entitle him to relief. *New.Net, Inc. v. Lavasoft, 356 F. Supp. 2d 1090, 1115 (C.D. Cal. 2004)*. While the court must construe the complaint and resolve all doubts in the light most favorable to the plaintiff, the court does not need to accept as true conclusory allegations or legal characterizations. *Id.* (*citing General Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church, 887 F.2d 228, 230 (9th Cir. 1989)*; *McGlinchy v. Shell Chemical Co., 845 F.2d 802, 810 (9th Cir. 1988)*).

HN4[] A motion for judgment on the pleadings based on *Federal Rule of Civil Procedure 12(c)* is a functional equivalent of a motion to dismiss under *Federal Rule of Civil Procedure 12(b)*, requiring the same underlying analysis. *Dworkin v. Hustler Magazine, Inc., 867 F.2d 1188, 1192 (9th Cir. 1989)*. Thus, for a complaint to withstand a *Rule 12(c)* motion for judgment on the pleadings, it must contain more detail than "bare assertions" that are "nothing more than a formulaic recitation of the elements" required for the claim. *Ashcroft v. Iqbal, 556 U.S. 662, 681, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)*. Courts must draw upon their "experience and common sense" when evaluating the specific context of the complaint and whether it contains the necessary detail to state a plausible **[**10]** claim for relief. *Id. at 679*. The factual content on the face of the complaint—not conclusory statements in the pleading—and reasonable inferences drawn from those facts must plausibly suggest that the plaintiff could be entitled to relief for the pleading to survive a *Rule 12(c)* motion. *See id. at 677*.

HN5[] In discussing the basic pleading requirements in connection with a motion to dismiss brought under *Federal Rule of Civil Procedure 12(b)(6)*, the Ninth Circuit Court of appeals determined that the court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007)*. However, the court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001)*. Nor is the court "required to accept legal **[*295]** conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged." *Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994)* (citations omitted)

HN6[] In considering whether the First Amended Complaint survives the Motion for Judgment on the Pleadings, the United States Supreme Court has provided the following guidance with respect to a "short plain statement" needing to be more than merely parroting a statute or legal theory. A plaintiff cannot **[**11]** "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal, 556 U.S. 662, 687, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)*. Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)* ("[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of

action's elements will not do.").

REVIEW OF FIRST AMENDED COMPLAINT

The court's consideration of the Motion now before it begins with the First Amended Complaint. This sets the stage to consider Defendant's Motion. The one cause of action which has survived the prior motion to dismiss and remains before the court in this Adversary Proceeding has been stated by the court in the Order on the Motion to Dismiss as:

> 1. The claim stating relief for the alleged failure of Defendant to update, correct, or include in the ***information*** reported to the ***consumer*** reporting agencies that the asserted obligation owed to Defendant is included in or subject to Plaintiff-Debtor's bankruptcy case.

Order, Dckt. 30.

Review of First Amended Complaint[4]

The court has identified the following **[**12]** as the short plain statement of a claim in the First Amended Complaint upon which the relief relating to the failure to include information about the bankruptcy case in the information furnished by Defendant to the CRA:

A. Plaintiff-Debtor commenced her Chapter 13 bankruptcy case (15-28908) on November 16, 2015. First Amended Complaint ¶ 2, Dckt. 18.

B. The Consumer Data Industry Association (the "CDIA") is an international trade association for the consumer credit, mortgage reporting, employment and tenant screening and collection services industry. *Id.* ¶ 9.

C. The CDIA has adopted a standard electronic data reporting format called the Metro 2 Format. *Id.* ¶ 9.

D. The Metro 2 Format is the credit reporting industry standard for accurate credit reporting. *Id.* ¶ 11.

E. The credit reporting industry at large depends on the Metro 2 Format. *Id.* ¶ 12.

F. The CDIA produces a consumer reporting resource guide ("CRRG"). **[*296]** *Id.* ¶ 14. This guide "acknowledges" the collection aspects of credit reporting. *Id.*

G. The CRRG "instructs" data furnishers not to report ongoing delinquencies once a bankruptcy is filed. *Id.* ¶ 15. Instead, CRRG "instructs" data furnishers to report "no data" in the payment history **[**13]** and to update the balances to indicate "zero balances."[5]

H. A guide published by the CDIA recommends creditors fill out a ***Consumer Information Indicator*** ("CII") where a consumer has a special condition such as bankruptcy. *Id.* ¶ 14-19.

I. The CDIA recommends using CII designation "D" to indicate a consumer has filed bankruptcy to indicate that creditors are not free to collect against the consumer. *Id.* ¶ 20-24.

J. Creditors "often" use credit reporting as a means to coerce payment from debtors. *Id.* ¶ 26.

K. "Specifically, when consumers become delinquent on their debts creditors will often warn consumers that failure to pay their delinquent balance will result in their delinquency being reported to the major credit reporting agencies." *Id.* ¶ 27.

L. Creditors like Defendant knows that reporting delinquent debts is "part and parcel to the credit world's debt collection activity." *Id.* ¶ 28.[6]

---

[4] The court has included the level of detail in the pleadings to demonstrate the clear pleading by Plaintiff-Debtor in asserting the claim for relief. This not only shows a good example of pleading, but facilitates the analysis of these issues, including how in the "real world" many of the concepts and defined terms of and activities relating to consumer reports covered by the FCRA become blurred.

[5] As the court addressed with the respective counsel at the hearing, an "industry guide" which purports to instruct furnishers of data to a CRA to provide incorrect data, such as stating that an obligation has a zero balance when that is not he amount of the unpaid obligation, is not consistent with the Federal Fair Credit Reporting Act which exists to, in part, ensure that there is accurate ***information*** on a ***consumer*** credit report. See discussion *infra* of Congressional statutorily stated purpose served by the enactment of the FCRA and the enforcement of its provisions.

[6] This reference to credit reporting as being the "credit world's debt collection activity" may be a reference to ***consumer*** reports containing positive ***information***, such as payment of obligations (including amounts), and negative information, such as unpaid obligations (including amounts). As discussed

M. Defendant "as a policy to enhance collection activities will call and send letters to debtors warning that failure to pay a debt will result in a delinquency being reported to the main credit bureaus." *Id.* ¶ 35.

N. Defendant reports delinquencies for the purpose of coercing debtors to pay. *Id.* ¶ 34.[7]

O. Defendant **[**14]** knows that by failing to report the CCI "D" designation to indicate a consumer filed bankruptcy, together with continued reporting of the delinquency, that the Plaintiff-Debtor would be coerced into making payments because Defendant "knows that such reporting **[*297]** alerts other lenders that this debt SHOULD be paid but has not been paid." *Id.* ¶ 36.

P. Defendant was sent actual notice by the Bankruptcy Noticing Center via electronic mail of the automatic stay in Plaintiff-Debtor's Chapter 13 bankruptcy case, filed on November 16, 2015. *Id.* ¶ 38.

Q. Post-filing, Defendant continued to report on Plaintiff-Debtor's credit report that her account was in collections with a past-due balance owed. *Id.* ¶ 39.

R. Plaintiff-Debtor disputed Creditor's reported information with the three major consumer reporting agencies. *Id.* ¶ 40. The Complaint asserts that by not reporting is using the "D" code for the Metro 2, such failure created inaccurate information stating that the debtor "should be paid" but was not.[8]

S. Plaintiff-Debtor asserts that the dispute was sent by the three major consumer reporting agencies to Defendant. *Id.* ¶ 41. The dispute was that Defendant's obligation should include the information **[**15]** that it was subject to Plaintiff-Debtor's Chapter 13 bankruptcy case. *Id.* ¶ 42.

T. Defendant filed two separate claims in Plaintiff-Debtor's Chapter 13 bankruptcy case on January 26, 2016. *Id.* ¶ 43.

U. Notwithstanding having notice of the Chapter 13 Bankruptcy Case, Defendant "continued to report on Plaintiff-Debtor's credit report that money was owed and that the account as in collections." *Id.* ¶ 45

V. Defendant's employee Beverly Bain ("Bain") received notice of Plaintiff-Debtor's dispute over the credit reporting and her bankruptcy filing, but intentionally failed to update the CII and continued reporting delinquency in an attempt to coerce payment. *Id.* ¶ 46-51.

W. Defendant's failure to update the information provided to use the Metro 2 Code "D" to show that the reported unpaid obligation was included in the pending Chapter 13 Case is stated to have been done with knowledge of, intentionally to "exert pressure on Plaintiff[-Debtor] and coerce payment." *Id.* ¶¶ 48-51

X. "As it currently stands, the only way for Plaintiff[-Debtor] to remove the collections notation and past-due balance from her ***USAA*** account is to pay ***USAA*** what it is reporting is owed, despite ***USAA*** filing claims in Plaintiff[-Debtor]'s **[**16]** case in order to be paid." *Id.* ¶ 55.

At this juncture the court needs to address the assertion that Plaintiff-Debtor, as a consumer, can "remove" otherwise accurate information from her credit report. ***HN7***[↑] As discussed below, Plaintiff-Debtor has not provided the court with legal authority that mere payment of a delinquent obligation allows the CRA or data furnisher to expunge the record of accurate information relating to an obligation. True and accurate credit history to maintain a credit reporting system as

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below, Congress enacted the FCRA so that there would be accurate information to be used by future creditors. That accurate negative information might be something a consumer would seek to avoid or to remediate to enhance that consumer's ability to obtain credit in the future is the consumer's choice, as opposed to it being forced by a creditor (such as when a creditor obtains a wage garnishment or levy on a bank account). While consumer credit may be viewed as more of a "necessity" in 21st Century America, it is still the consumer's choice in obtaining such credit.

[7] The First Amended Complaint does not allege that this statement would be false - that the account was not in "collections." It is not alleged that there was not an obligation that was owed or that Defendant could not attempt to "collect" what was owed as permitted by the Bankruptcy Code.

[8] Plaintiff-Debtor's use of the word "should be paid" has an interesting qualitative patina. Debts generally should be paid, except as otherwise provided by law. At oral argument Plaintiff-Debtor stated that this meant that not using the "D" code showing that the debt was included in a pending bankruptcy case, it is an affirmative statement by Defendant that it can be actively working to collect the debt notwithstanding the filing of the bankruptcy case.

enacted by Congress **[*298]** does not allow a creditor to "sell" or a consumer to "buy off" a false credit history by deleting accurate information, including that of late or non-payment of financial obligations. Paragraph 55 of the First Amended Complaint indicates a belief by Plaintiff-Debtor and her counsel that the FCRA allows a consumer to *purchase* inaccurate data to be placed in his or her credit report.

> Y. It is asserted, without stating any acts other than the non-use of the Metro 2 D code, that Defendant is attempting to receive payment from Plaintiff-Debtor directly as well as under Plaintiff-Debtor's Chapter 13 Plan. *Id.* ¶ 56.
>
> Z. Defendant's failure to use the Metro 2 D code constitutes **[**17]** a violation of the automatic stay because:
>
> > 1. Defendant's acts were intentional and with prior knowledge of the automatic stay, *Id.* ¶¶ 60-61;
> >
> > 2. Such acts by Defendant were unreasonable. *Id.* ¶ 60.
> >
> > 3. Defendant was aware of the Chapter 13 Bankruptcy Case and Defendant failed to update the information provided to the CRA to include the Metro 2 D code showing that the obligation was included in Plaintiff-Debtor's Chapter 13 Bankruptcy Case. *Id.* ¶ 62.
> >
> > 4. Defendant failed to update the account information, ignored Plaintiff-Debtor's dispute and industry guidelines. *Id.* ¶ 63.
> >
> > 5. Defendant intended to harm Plaintiff-Debtor's credit score by failing to update the information to include the Metro 2 D code by harming Plaintiff-Debtor's credit score. *Id.* ¶ 64.
> >
> > 6. By failing to use the Metro 2 D code, "the only way for Plaintiff[-Debtor] to address the derogatory and inaccurate reporting is for her to pay the balance that ***USAA*** indicates is owed."[9] *Id.* ¶ 65.[10]
> >
> > 7. "Had ***USAA*** updated the CII to reflect the bankruptcy filing Plaintiff[-Debtor]'s credit would not be harmed and it would not appear that she still owed money to **[*299]** ***USAA*** or that ***USAA*** was actively collecting on the account."[11] *Id.* ¶ 66.

FAIR CREDIT [18] REPORTING ACT**

The court begins with a review of the plain language of the FCRA as enacted by Congress. The court will then review the respective case law citations, many unpublished decisions, cited by the Parties.

HN8[⬆] This court begins with the expressly stated

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[9] This repeats Plaintiff-Debtor's assertion that a ***consumer*** can remove negative ***information***, a debt not timely paid, by belatedly paying it. The court is unaware of any provisions of the Federal Fair Credit Reporting Act that allow a furnisher of information to delete otherwise accurate information as the "pay off" for a consumer belatedly paying a debt.

[10] Congress expressly provides in the FCRA a statutory dispute structure, imposing obligations not only on the Furnisher to respond, but the CRA to only provide accurate information. These include: [1] *15 U.S.C. § 1681c(f)* requiring a CRA to include in the consumer report that an item of information is disputed by the consumer; [2] *15 U.S.C. § 1681s-2(a)(3)* imposing duty of Furnisher to provide notice of a consumer dispute to the CRA; [3] *15 U.S.C. § 1681s-2(a)(8)* creating the ability of ***consumer*** to dispute ***information*** directly with the Furnisher; and [4] *15 U.S.C. § 1681s-2(b)* imposing duties on Furnisher to conduct investigation and report conclusions not only to the consumer but also to the CRA.

In citing to these statutory provisions that are part of a complex statutory structure, the court acknowledges that many consumers are the "least sophisticated consumers" to be afforded the protection under the FCRA. For consumers who have the advantage of having knowledge counsel representing them, as in the present case, these rights and powers can be relatively exercised. Additionally, as discussed below, a Furnisher seeking to abuse the FCRA as part of a scheme to get monies from a least sophisticated consumer in violation of the Bankruptcy Code will have other conduct to move money from the consumer to the Furnisher, such as demanding payment, and not merely have the least sophisticated creditor worry about how the asserted inaccurate information, will impact future credit scores for that least sophisticated consumer.

[11] As addressed above, notwithstanding the filing of bankruptcy, the Plaintiff-Debtor still owed the obligation to Defendant and Defendant could attempt to "collect" the obligation as permitted by the Bankruptcy Code - which in Plaintiff-Debtor's Chapter 13 case appears to be by filing the proofs of claim. Further, at the time of the bankruptcy case and this Adversary Proceeding Plaintiff-Debtor has not obtained a discharge. *11 U.S.C. § 524*, discussed *infra*.

Congressional findings and intent in the FCRA itself set forth in 15 U.S.C. § 1681. The FCRA and its statutory scheme for "credit reporting" is built on a foundation of both accuracy and fairness in the information reported to CRAs and information provided by Furnishers on ***information*** about ***consumers***, as stated in 15 U.S.C. § 1681(a), which states (emphasis added):

> (a) Accuracy and fairness of credit reporting
>
> The Congress makes the following findings:
>
> (1) The **banking system is dependent upon fair and accurate credit reporting**. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.
>
> (2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.
>
> (3) **Consumer reporting agencies have assumed a [**19] vital role** in assembling and evaluating ***consumer*** credit and other ***information*** on ***consumers***.
>
> (4) There is a need **to ensure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect** for the consumer's right to privacy.

The information is not only to be fair for the consumer, but **accurate** for everyone who uses the consumer report. Congress continues addressing the purpose for this federal statutory scheme, stating:

> (b) Reasonable procedures
>
> It is the purpose of this subchapter to require that consumer reporting agencies adopt **reasonable procedures for meeting the needs of commerce for consumer credit**, personnel, insurance, and other information in a manner which **is fair and equitable to the consumer**, with regard to the confidentiality, **accuracy**, relevancy, **and proper utilization of such information** in accordance with the requirements of this subchapter.

15 U.S.C. § 1681(b) (emphasis added). While procedures for the use of the information in commerce adopted are to be fair and equitable for the consumer, they must exist to provide accurate information.

With respect to the conduct of and duties of Furnishers who provide information to CRAs, the FCRA includes **[**20]** the following **[*300]** provisions in 15 U.S.C. § 1681s-2 provide:

> (a) Duty of furnishers of information to provide accurate information
>
> (1) Prohibition
>
> (A) Reporting information with actual knowledge of errors
>
> A person **shall not furnish any *information*** relating to a ***consumer*** to any consumer reporting agency **if the person knows or has reasonable cause to believe that the information is inaccurate**.
>
> (B) Reporting information after notice and confirmation of errors A person shall not furnish ***information*** relating to a ***consumer*** to any consumer reporting agency if—
>
> (i) the **person has been notified by the consumer**, at the address specified by the person for such notices, that **specific information is inaccurate**; and
>
> (ii) the **information is, in fact, inaccurate**.

15 U.S.C. § 1681s-2(a)(1) (emphasis added). As provided above, a Furnisher must provide accurate information, and not provide inaccurate information when discovered or notified by a ***consumer***, *if such* ***information*** *is actually inaccurate*, and not merely because it is disputed by the consumer.

HN9[⬆] The FCRA imposes an affirmative obligation on a Furnisher to update previously furnished information to a CRA when the Furnisher discovers that it is inaccurate or after being notified of an inaccuracy by **[**21]** the ***consumer***, *if such* ***information*** *is actually inaccurate*.

> (2) Duty to correct and update information. A person who—
>
> (A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

> (B) **has furnished** to a ***consumer*** reporting agency ***information*** that the person **determines is not complete or accurate, shall promptly** notify the consumer reporting agency of that determination and **provide to the agency any corrections to that information**, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

15 U.S.C. § 1681s-2(a)(2) (emphasis added).

HN10[↑] For the CRAs, Congress provides in 15 U.S.C. § 1681c specific provisions relating to the ***information*** included in ***consumer*** reports by CRAs. In 15 U.S.C. § 1681c(a)(1)-(5) Congress limits the time that specific information may be included on a consumer report - including the 10-year period for bankruptcy information, stating:

> (a) ***Information*** excluded from ***consumer*** reports. Except as authorized under subsection (b), no consumer reporting agency **[**22]** may make any consumer report containing any of the following items of information:
>
> (1) Cases under title 11 of the United States Code or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

In 15 U.S.C. § 1681c(d), Congress further provides that what additional information about bankruptcy cases must be included by a CRA on the ***consumer*** report:

> (d) ***Information*** required to be disclosed.
>
> **[*301]** (1) Title 11 ***information***. Any ***consumer*** reporting agency that furnishes a ***consumer*** report that contains ***information*** regarding any case involving the consumer that arises under title 11, United States Code, **shall include in the report an identification of the chapter of such title 11 under which such case arises if provided** by the source of the information. If any case arising or filed under title 11, United States Code, is withdrawn by the consumer before a final judgment, the consumer reporting agency **shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal**.

The FCRA does not include other special reporting or furnishing requirements for bankruptcy **[**23]** information, other than the requirement that it be accurate.

Regulations For the Fair Credit Reporting Act

The Consumer Financial Protection Bureau has under the *Dodd Frank Act* rule making authority for a number of federal consumer protection statutory acts, including the FCRA. 12 U.S.C. § 5512. The Consumer Financial Protection Bureau has issued Regulations for implementation of the FCRA. 12 C.F.R. 1022.1 et. seq. With respect to the duties of a Furnisher to provide accurate information and to update or correct inaccurate information, the Regulations provide the following definitions:

> § 1022.41 Definitions.
> For purposes of this subpart and appendix E of this part, the following definitions apply:
> (a) Accuracy means that information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer correctly:
>
> (1) **Reflects the terms of and liability** for the account or other relationship;
> (2) Reflects the consumer's performance and other conduct with respect to the account or other relationship; and
> (3) Identifies the appropriate consumer.
>
> . . .
> (d) Integrity means that information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer:
>
> (1) **[**24]** Is substantiated by the furnisher's records at the time it is furnished;
> (2) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and
> (3) Includes the information in the furnisher's possession about the account or other relationship that the Bureau has:
>
> (i) Determined that the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and

> (ii) Listed in section I(b)(2)(iii) of appendix E of this part [the credit limit, if in the furnisher's possession].

12 C.F.R. 1022.41(a), (d).

REVIEW OF CITATIONS BY THE PARTIES AND ADDITIONAL CASES

The Parties have presented the court with the opportunity to consider an area of non-bankruptcy law which is intertwined with most of the consumers and consumer creditors that appear in this court. Many of the authorities cited are unreported decisions.

[*302] Defendant opens with the decision in *Abbot v. Experian Info. Solutions, Inc., 179 F. Supp. 3d 940, 946 (N.D. Cal. 2016)*, for the proposition that a violation of the FCRA does not automatically make a violation of the automatic stay. However, the conclusion reached by the **[**25]** District Court in *Abbot* does not appear to be quite as absolute as stated by Defendant. The ruling by the District Court in *Abbot*, which involved the CRA, not the Furnisher of information to a CRA, includes:[12]

> Credit Bureau argues that, as a matter of law, reporting historically accurate balances during the pendency of a bankruptcy can not be inaccurate or incomplete under the FCRA. Mot. at 8-9. **However, courts in this district have found that reporting delinquent payments during bankruptcy may be misleading depending on the circumstances, including whether the report fails to indicate that a charge is disputed or part of a bankruptcy**. *See Mortimer v. Bank of Am., N.A., 2013 U.S. Dist. LEXIS 51877, 2013 WL 1501452, at *4 (N.D. Cal. Apr. 10, 2013)* (finding that reporting delinquencies during the pendency of bankruptcy is not misleading so long as the creditor reports that the account was discharged through bankruptcy and the outstanding balance is zero); *Venugopal v. Digital Fed. Credit Union, 2013 U.S. Dist. LEXIS 43829, 2013 WL 1283436, at *3 (N.D. Cal. Mar. 27, 2013)* (holding that reporting of historically accurate debt may violate the FCRA when the reporting did not include that the debt was discharged in bankruptcy or that the debt was in dispute). Accordingly, the Court turns to Plaintiff's particular allegations.
>
> In the instant case, Plaintiff asserts that Credit Bureau's reporting is inaccurate because **[**26]** it is inconsistent with Plaintiff's Chapter 13 bankruptcy plan. However, **Plaintiff does not allege the terms of the Chapter 13 bankruptcy plan; that the balance owed to Credit Bureau was included in the bankruptcy plan; or that the debt has either been paid or discharged**. Nor does **Plaintiff indicate whether Credit Bureau's reporting included a notation about the pending bankruptcy or any disputes**. Plaintiff seems to recognize these failures, as Plaintiff's opposition attempts to explain—in general terms—Plaintiff's bankruptcy plan. See Opp. at 2-3. However, Plaintiff cannot avoid dismissal by alleging new facts in an opposition to a motion to dismiss. *See Schneider v. Cal. Dep't of Corr., 151 F.3d 1194, 1197 n.1 (9th Cir. 1998)* ("In determining the propriety of a *Rule 12(b)(6)* dismissal, a court may not look beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition to a defendant's motion to dismiss."). Accordingly, Plaintiff fails to allege that Credit Bureau's reporting was inaccurate or incomplete because it was inconsistent with Plaintiff's Chapter 13 bankruptcy plan.

Abbot v. Experian Info. Solutions, 179 F. Supp. 3d 940, 946 (N.D. Cal. 2016). Though **[*303]** the cases cited in *Abbot* make reference to situations where there is a dispute or the debt was discharged, the District Court Judge goes further to state that one of the **[**27]** missing allegations in the complaint in *Abbot* was a failure to assert that the Furnisher failed to include that the debt was included in the debtor's then pending bankruptcy case.

Going to the Ninth Circuit Court of Appeals, Defendant then directs the court to *Carvalho v. Equifax Info. Servs., LLC, 629 F.3d 876, 890 (9th Cir. 2010)*, for the proposition that Plaintiff-Debtor must assert an "actual

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[12] The court has included extensive quotations from prior cases of other courts than merely summarizing them. There are two reasons for this. First, to paraphrase the Hon. Loren S. Dahl from decades ago, "if the prior decisions provide a clear, thoughtful analysis, quote it and do not merely make it a summary argument." Second, this pulls together into one place for the Parties and others the analyzes of the judges in decisions that are often summarized in argument by opposing parties in this type of FCRA ligation as being absolutely supportive of their position and fatal to their opponents. As shown, these decisions are not nearly as diametrically in conflict, but rather work in developing the application of the FCRA.

inaccuracy" in the information furnished by Defendant. However, that decision related to the reinvestigation requirement imposed under the FCRA (15 U.S.C. § 1681i) when the ***consumer*** disputes ***information*** that was furnished. Thus, for a consumer to assert a claim that a Furnisher failed to fulfill its obligation to reinvestigate the disputed ***information***, the ***consumer*** must show that there was actually inaccurate information for which reinvestigation was warranted.[13]

While the court is directed to *Carvalho*, the present claim being asserted is not that Defendant failed to reinvestigate when Plaintiff-Debtor disputed the information, but that the information was inaccurate because Defendant failed to include in the information furnished that the obligation was subject to Plaintiff-Debtor's bankruptcy case (one of the possible violations indicated in the *Abbot* case cited by Defendant). **[**28]**

The Plaintiff-Debtor directs the court to *Doster v. Experian Info. Solutions, Inc., 2017 U.S. Dist. LEXIS 8412, 2017 WL 264401, *4 (N.D. Cal. 2017)*. The court in *Doster* dismissed with prejudice that plaintiff's contention that the information in the report about the debts was inaccurate because they were not stated based on the terms of the Chapter 13 Plan. Rather than paraphrasing Judge Lucy H. Hoh's decision, the court quotes her detailed analysis which discusses these issues and various referenced cases as follows:

> However, the Court has repeatedly rejected Plaintiff's argument [that a confirmation order is a final judgment which fixes the amount of debt owed, and that therefore once a chapter 13 plan is confirmed a creditor is bound by the terms of the plan and a credit report must therefore reflect only the terms of the plan]. In *Blakeney v. Experian Info. Sols., Inc., 2016 U.S. Dist. LEXIS 107916, 2016 WL 4270244 (N.D. Cal. Aug. 15, 2016)*, this Court held that although reporting delinquent payments may be misleading if the debts have been discharged in bankruptcy, **"it is not misleading or inaccurate to report delinquent debts that have not been discharged."** *2016 U.S. Dist. LEXIS 107916, [WL] at *5*. In *Jaras v. Experian Info. Solutions, Inc., 2016 U.S. Dist. LEXIS 176155, 2016 WL 7337540, at *3 (N.D. Cal. Dec. 19, 2016)*, **this Court held that "as a matter of law, it is not misleading or inaccurate to report delinquent debts during the pendency of a bankruptcy proceeding prior to the discharge of the debts**." Other courts in this district have consistently **[**29]** reached the same conclusion. *See Mortimer v. JP Morgan Chase Bank, N.A., 2012 U.S. Dist. LEXIS 108576, 2012 WL 3155563, at *3 (N.D. Cal. Aug. 2, 2012)* ("*Mortimer I*") ("While it might be good policy in light of the goals of bankruptcy protection to bar reporting of late payments while a bankruptcy petition is pending, neither the bankruptcy code nor the FCRA does so."); *Mortimer v. Bank of Am., N.A., 2013 U.S. Dist. LEXIS 51877, 2013 **[*304]** WL 1501452, at *4 (N.D. Cal. Apr. 10, 2013)* ("*Mortimer II*") (finding that reporting delinquencies during the pendency of bankruptcy is not misleading so long as the creditor reports that the account was discharged through bankruptcy and the outstanding balance is zero); *Giovani v. Bank of Am., N.A., 2012 U.S. Dist. LEXIS 178914, 2012 WL 6599681, at *6 (N.D. Cal. Dec. 18, 2012)* ("*Giovani I*") (holding that it was not misleading or inaccurate for a furnisher to report overdue payments on debtor's account during pendency of Chapter 7 bankruptcy petition but prior to discharge); *Giovanni v. Bank of Am., 2013 U.S. Dist. LEXIS 55585, 2013 WL 1663335, at *6 (N.D. Cal. Apr. 17, 2013)* ("*Giovanni II*") (same); *Harrold v. Experian Info. Sols., Inc., 2012 U.S. Dist. LEXIS 133385, 2012 WL 4097708, at *4 (N.D. Cal. Sept. 17, 2012)* ("[R]eports of delinquencies in payment while bankruptcy proceedings are still ongoing is not 'incomplete or inaccurate' information.").

As discussed at length in *Blakeney, Jaras*, and other cases, the legal status of a debt does not change until the debtor is discharged from bankruptcy. *11 U.S.C. § 1328*; *Blakeney, 2016 U.S. Dist. LEXIS 107916, 2016 WL 4270244, at *6* ("Plaintiff is not entitled to receive a discharge of debts covered under Plaintiff's Chapter 13 bankruptcy plan until Plaintiff has completed all payments provided for under the Chapter 13 bankruptcy **[**30]** plan."). Confirmation of a payment plan is not sufficient to alter the legal status of a debt, because if a debtor fails to comply with the Chapter 13 plan, the debtor's bankruptcy petition can be dismissed, in which case the debt will be owed as if no petition for bankruptcy was filed. *See In re Blendheim, 803 F.3d 477, 487 (9th Cir. 2015)* ("[D]ismissal returns to the creditor all the

[13] In *Carvalho* the Ninth Circuit Court of Appeals recognized that the FCRA was not intended to create litigation where there was no inaccurate information and that the reinvestigation obligations when a dispute was raised are violated when there was some inaccuracy for which reinvestigation was warranted.

property rights he held at the commencement of the Chapter 13 proceeding."); *see also* Elliott, 150 B.R. at 40 ("[E]ven if a confirmed Chapter 13 plan did bar challenges to the underlying claims, res judicata would not apply where the confirmed plan had been dismissed."). Thus, **a confirmation order does not constitute a final determination of the amount of the debt, and it is not misleading or inaccurate to report delinquent debt during the pendency of a bankruptcy proceeding but before discharge**. In short, even if Plaintiff is correct that Plaintiff's credit report did not reflect the terms of Plaintiff's Chapter 13 bankruptcy plan, this would not be an inaccurate or misleading statement that could sustain a FCRA claim against Experian.

Plaintiff's invocation of "industry standards" does not undermine this conclusion. FAC ¶ 80 ("Post confirmation the accepted accurate credit **[**31]** reporting standard for reporting balances is to report the balance owed under the Chapter 13 plan terms."). Indeed, this Court recently rejected an identical "industry standards" argument in Devincenzi v. Experian Information Solutions, 2017 U.S. Dist. LEXIS 3741, 2017 WL 86131 (N.D. Cal. Jan. 10, 2017); Keller v. Experian Information Solutions, 2017 U.S. Dist. LEXIS 5735, 2017 WL 130285 (N.D. Cal. Jan. 13, 2017); and Connors v. Experian Info. Sols., Inc., 2017 U.S. Dist. LEXIS 6338, 2017 WL 168493 (N.D. Cal. Jan. 17, 2017). As this Court explained in *Devincenzi, Keller*, and *Connors*, courts in this district have **repeatedly held that accurately reporting a delinquent debt during the pendency of a bankruptcy is not rendered unlawful simply because a plaintiff alleges that the reporting, though accurate, was inconsistent with industry standards.** ***Devincenzi***, 2017 U.S. Dist. LEXIS 3741, 2017 WL 86131, at *6; ***Keller***, 2017 U.S. Dist. LEXIS 5735, 2017 WL 130285, at *7; ***Connors***, 2017 U.S. Dist. LEXIS 6338, 2017 WL 168493, at *4. For example, in *Mortimer II*, the Court held that "[t]o the extent **[*305]** that the account was delinquent during the pendency of the bankruptcy, failure to comply with the CDIA guidelines does not render the report incorrect." 2013 U.S. Dist. LEXIS 51877, 2013 WL 1501452, at *12. Similarly, *in* Sheridan v. FIA Card Servs., N.A., 2014 U.S. Dist. LEXIS 19417, 2014 WL 587739 (N.D. Cal. Feb. 14, 2014), the court followed *Mortimer* in "reject[ing] the argument that failure to comply with industry standards violates the FCRA where the information itself is nonetheless true." 2014 U.S. Dist. LEXIS 19417, [WL] at *5. Additionally, in Mestayer v. Experian Information Solutions, Inc., 2016 U.S. Dist. LEXIS 171528, 2016 WL 7188015 (N.D. Cal. Dec. 12, 2016) ("*Mestayer III*"), the court held that at least when a credit report acknowledges the existence of a pending bankruptcy, reporting a delinquent debt during the pendency of a bankruptcy is not inaccurate or misleading "even if [the report] otherwise **[**32]** did not fully comply with" industry standards. 2016 U.S. Dist. LEXIS 171528, [WL] at *3; see also Mestayer v. Experian Info. Solus., Inc., 2016 U.S. Dist. LEXIS 80007, 2016 WL 3383961 (N.D. Cal. June 20, 2016) (same); Hupfauer v. CitiBank, N.A., 2016 U.S. Dist. LEXIS 112227, 2016 WL 4506798 (N.D. Ill. Aug. 19, 2016) (citing *Mortimer* for the proposition that "Plaintiff's argument that Experian's reporting deviated from guidelines set by the Consumer Data Industry Association is beside the point, **as these guidelines do not establish the standards for accuracy under the FCRA**."). The same is true here.

Doster v. Experian Information Solutions, Inc., 2017 U.S. Dist. LEXIS 8412, 2017 WL 264401 (N.D. Cal. 2017) (emphasis added).

Plaintiff-Debtor has countered with Nissou-Raban v. Capital One Bank (USA), N.A., 2016 U.S. Dist. LEXIS 81373, 2016 WL 4508241 (S.D. Cal. June 6, 2016), for the proposition that alleging a violation of reporting standards can in some circumstances be sufficient to state a claim under the FCRA. The *Nissou-Raban* court rejected the contention that furnishing information about the debt while the bankruptcy case proceedings were pending (pre-discharge) were a violation of the FCRA, that court concluding:

> Collection activities are automatically stayed when a person files for bankruptcy. 11 U.S.C. § 362(a). **It does not follow, however, that reporting on debts in a way that reflects their status at the time bankruptcy proceedings were pending**, instead of their status after the debt was discharged, **is inaccurate**. The Court agrees with other district courts that have addressed this question that **otherwise accurate negative credit reporting is not retroactively [**33] made inaccurate because a bankruptcy petition later discharged the debt**. *See, e.g.,* Giovanni v. Bank of Am., N.A., No. C 12-02530 LB, 2012 U.S. Dist. LEXIS 178914, 2012 WL 6599681, at *5-6 (N.D. Cal. Dec. 18, 2012); Mortimer v. JP Morgan Chase

> Bank, N.A., No. C 12-1936 CW, 2012 U.S. Dist. LEXIS 108576, 2012 WL 3155563, at *3 (N.D. Cal. Aug. 2, 2012). Thus, **pleading facts that show a furnisher reported information that was accurate while bankruptcy was pending** but before the debt was discharged **does not, as a matter of law, provide the predicate inaccuracy necessary to state an FCRA or CCRAA** claim. *See* Giovanni, 2012 U.S. Dist. LEXIS 178914, 2012 WL 6599681, at *6; Mortimer, 2012 U.S. Dist. LEXIS 108576, 2012 WL 3155563, at *3.

Nissou-Raban v. Capital One Bank (USA), N.A., 2016 U.S. Dist. LEXIS 81373, 2016 WL 4508241 *3 (S.D. Cal. June 6, 2016) (emphasis added).

However, the court in *Nissou-Raban* did deny that defendant's motion for judgment on the pleadings based on an allegation that the failure of a furnisher of information to follow the Metro 2 standard could result in there being some misleading information that was otherwise accurately reported.

The court has also been directed to Conrad v. Experian Info. Solutions, Inc., ***[*306]*** 2017 U.S. Dist. LEXIS 68641 (N.D. Cal. 2017). In *Conrad*, the District Court was ruling on a furnisher's motion to dismiss. The motion was granted with leave to amend. The District Court rejected that plaintiff's contention that reporting the accurate contractual obligation during the pending of a bankruptcy case was inaccurate information. Conrad v. Experian Info. Solutions, Inc., 2017 U.S. Dist. LEXIS 68641, *13-14 (N.D. Cal. 2017). The Conrad court cited to a string of ten Northern District **[**34]** decisions so holding (all recently issued in 2017, the same year as the *Conrad* decision). The court granted with prejudice the motion to dismiss claims that failure to report the terms of a Chapter 13 bankruptcy plan after confirmation, in the place of the contractual terms, but before discharge is a violation of the FCRA. 2017 U.S. Dist. LEXIS 68641, [WL] at 14.

With respect to the assertion that violations of industry standards are sufficient to state a claim under the FCRA, the *Conrad* court stated:

> According to Conrad, the industry standard for reporting balances and monthly payments post-confirmation is to report in accordance with the terms of the Chapter 13 plan and list CII Code "D." 2017 U.S. Dist. LEXIS 68641, [WL] at 7. **Conrad alleges that a failure to list code "D" makes it appear as if "a consumer has not addressed outstanding debt obligations through the bankruptcy process" and that creditors are free to collect despite the stay, causing "a more negative inference regarding a consumer's credit worthiness**." *Id.* Conrad argues that Wells Fargo's reporting is inaccurate because they reported the pre-petition debts, rather than plan terms. 2017 U.S. Dist. LEXIS 68641, [WL] at 10-11.

To support his argument, Conrad relies on *Nissou-Rabban v. Capitol One Bank (USA), N.A.*, where the court held that **[**35]** the plaintiff plausibly stated a claim under the FCRA by alleging a data furnisher failed to comply with Metro 2 by reporting an account as "charged off" rather than CII code "D" or "no data," and that such reporting may be misleading to those making credit decisions. No. 15-cv-01675, 2016 U.S. Dist. LEXIS 81373, 2016 WL 4508241, *4-*5 (S.D. Cal. June 6, 2016). **The Court notes that many courts in this district have distinguished or disagreed with *Nissou-Raban***. See, e.g., Devincenzi, 2017 U.S. Dist. LEXIS 3741, 2017 WL 86131, at *6 ("[A]t most *Nissou-Raban* stands for the proposition that a furnisher that reports delinquent debts during the pendency of a bankruptcy should also report the fact that a bankruptcy is pending so that creditors know that those delinquent debts may be discharged in the future."); Anderson, 2017 U.S. Dist. LEXIS 33366, 2017 WL 914394, at *6 ("**[D]istrict courts within the Ninth Circuit overwhelmingly have held that a violation of industry standards is insufficient, without more, to state a claim for violation of the FCRA.")**; Doster, 2017 U.S. Dist. LEXIS 8412, 2017 WL 264401, at *5 (collecting cases); Mestayer v. Experian Info. Sols., Inc., No. 15-cv-03645 EMC, 2016 U.S. Dist. LEXIS 171528, 2016 WL 7188015, at *3 (N.D. Cal. Dec. 12, 2016) (holding that reporting accurate information but deviating from Metro 2 format was not misleading where bankruptcy also reported).

As discussed above, an item on a credit report **may be inaccurate under the FCRA's** investigation **[**36]** provision if 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.**'" *Carvalho, 629 F.3d at 890* (quoting *Gorman, **[*307]** 584 F.3d at 1163* and 15 U.S.C. § 1681s-2(b)(1)(D)). Conrad alleges that in the credit report, Wells Fargo not only did not include the terms of

> the Chapter 13 plan, but also failed to report CII code "D" alerting lenders that the account was subject to Conrad's bankruptcy and did not mention the bankruptcy at all. Dkt. No. 15 at 10.
>
> This case is distinguishable from the cases disapproving of *Nissou-Raban* because Conrad explicitly alleges that **Wells Fargo did not even mention the bankruptcy's existence**. . . . **It is therefore plausible that the failure to comply with industry standards** [to disclose that the debt was included in a pending bankruptcy case] **was "misleading in such a way and to such an extent that it [could] be expected to adversely affect credit decisions**." *Carvalho, 629 F.3d at 890*

*Conrad v. Experian Info. Solutions, Inc., 2017 U.S. Dist. LEXIS 68641, *14-18, 2017 WL 1739167*

In *Lugo v. Experian Info. Solutions, Inc., 2017 U.S. Dist. LEXIS 76856 (N.D. Cal. 2017)*, the court addressed the failure of a Furnisher to update the information previously provided that stated the obligation had been "charged off" after the debtor had completed her Chapter 13 plan and obtained a discharge of the obligation. Though granting the motion to dismiss, the **[**37]** District Court in *Lugo* did so with leave to amend, stating:

> Given the **functional difference between a confirmation and a discharge**, Plaintiff may be able to make out a plausible claim under these factual circumstances. However, she has not yet done so. Again, the **FCRA requires Plaintiff to show her credit report contained an inaccuracy, either because the information "'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* (quoting *Sepulvado v. CSC Credit Servs., Inc., 158 F.3d 890, 895 (5th Cir. 1998)*). Because the FAC does not explain what is meant by "charged off" in the manner used by TD Bank on her credit report, and does not explain how that status is inconsistent with a bankruptcy discharge, she has not satisfied the first element of an FCRA claim. The court cannot presume the designation is inaccurate or misleading; Plaintiff must plausibly allege it.
>
> Based on this discussion, the FCRA claim against TD Bank will be dismissed with leave to amend.

2017 U.S. Dist. LEXIS 76856, 2017 WL 2214641 (emphasis added).[14]

[*308] Recent Ninth Circuit Court of Appeals Decisions

At oral argument, Plaintiff-Debtor's counsel informed the court that a decision on a FCRA matter he had on appeal before the Ninth Circuit was pending **[**38]** and was anticipated to be issued shortly. The court has now reviewed that decision, *Jaras v. Equifax Inc., 766 Fed. Appx. 492 (9th Cir. 2019)*. In *Green*, the consumer plaintiffs (represented by current Plaintiff-Debtor's counsel) asserted that the failure of CRAs to report debts and furnishers of information to update information provided from the terms of the contract to be the terms as stated in Chapter 13 plans were inaccuracy violations under the FCRA.

The Ninth Circuit Panel in *Green*, splitting 2-1, affirmed the dismissal of the consumers' complaint on standing grounds based on the Supreme Court decision in *Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016)*. In *Spokeo*, a decision involving the FCRA,

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[14] The difference between a "charged-off" debt and one for which a bankruptcy discharge has been obtained is significant. A creditor "charges-off" a debt when it appears difficult to collect or has aged past a certain date as required by applicable regulation. This can also afford the creditor some tax benefits, the "charge-off" being a bad loss deduction against then current profits. The creditor may continue to try and collect (or sell it to someone else to try and collect) the debt. The "charge-off" does not change the legal enforceability of the debt.

See, The Structure and Practices of the Debt Buying Industry, Federal Trade Commission January 2013; Market Snapshot: Online Debt Sales, Consumer Financial Protection Bureau January 2017.

However, after a discharge in bankruptcy is obtained, a permanent statutory injunction goes into effect prohibiting the enforcement of that debt as a personal liability of the debtor, debtor's exempt assets, debtor's post-bankruptcy acquired assets, and community property assets in which the debtor has an interest. *11 U.S.C. § 524(a)*. While not extinguishing the debt and the debt continuing to exist (*Dewsnup v. Timm, 502 U.S. 410. 418-419, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992)*; *Long v. Bullard, 117 U.S. 617, 620-621, 6 S. Ct. 917, 29 L. Ed. 1004 (1886)*) the creditor holding the discharged debt will not be competing with post-bankruptcy creditors for payment of new credit extended the post-discharge debtor. Thus, there is a significant difference between the two.

the Supreme Court addressed the requirement that there must be an alleged (concrete) injury in fact, not merely an alleged statutory violation for a consumer to have standing to assert a claim for the violation of the FCRA. The Supreme Court rejected the contention that merely alleging a statutory violation was sufficient injury to confer standing. *Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1548-49, 194 L. Ed. 2d 635 (2016)*. In discussing the concept of the "concrete" injury necessary to confer standing, the Supreme Court noted that "concrete" was not necessarily "tangible," with Congress having the power to create sufficient intangible injuries for which standing **[**39]** would exist in federal court. *Id. at 1549*.

With respect to the FCRA and the rights Congress has created therein concerning possible inaccurate information, the Supreme Court concluded:

> In the context of this particular case, these general principles tell us two things: On the one hand, Congress plainly sought to curb the dissemination of false information by adopting procedures designed to decrease that risk. On the other hand, Robins cannot satisfy the demands of Article III by alleging a bare procedural violation. A violation of one of the FCRA's procedural requirements may result in no harm. For example, even if a consumer reporting agency fails to provide the required notice to a user of the agency's ***consumer information***, that information regardless may be entirely accurate. In addition, not all inaccuracies cause harm or present any material risk of harm. An example that comes readily to mind is an incorrect zip code. It is difficult to imagine how the dissemination of an incorrect zip code, without more, could work any concrete harm.

Id. at 1550.

On remand, in *Spokeo* the Ninth Circuit Court of Appeals' decision on what are sufficient "concrete" damages to allege an actionable claim under the FCRA, includes **[**40]** the following analysis:

> This second requirement makes clear that, in many instances, **a plaintiff will not be able to show a concrete injury simply by alleging that a consumer-reporting [*309] agency failed to comply with one of FCRA's procedures**. For example, a reporting agency's failure to follow certain FCRA requirements may not result in the creation or dissemination of an inaccurate consumer report. *See Spokeo II, 136 S. Ct. at 1550*. In such a case, the statute would have been violated, but that violation alone would not materially affect the consumer's protected interests in accurate credit reporting.
> . . .
>
> Nevertheless, Robins is not correct that any FCRA violation premised on some inaccurate disclosure of his information is sufficient. In *Spokeo II*, the Supreme Court explicitly rejected the notion that every minor inaccuracy reported in violation of FCRA will "cause [real] harm or present any material risk of [real] harm." *Id. at 1550* (majority opinion). The Court gave the example of an incorrectly reported zip code, opining, "It is difficult to imagine how the dissemination of an incorrect zip code, without more, could work any concrete harm." *Id.* The Court left open the question of what other sorts of information would "merit **[**41]** similar treatment." *Id. at 1550 n.8*.
>
> Thus, ***Spokeo II* requires some examination of the nature of the specific alleged reporting inaccuracies to ensure that they raise a real risk of harm to the concrete interests that FCRA protects**. See *Strubel, 842 F.3d at 190* ("[E]ven where Congress has accorded procedural rights to protect a concrete interest, a plaintiff may fail to demonstrate concrete injury where violation of the procedure at issue presents no material risk of harm to that underlying interest."). Put slightly differently, the Court suggested that even if Congress determined that inaccurate credit reporting generally causes real harm to consumers, it cannot be the case that every trivial or meaningless inaccuracy does so. *See id.* Unfortunately, the Court gave little guidance as to what varieties of misinformation should fall into the harmless category, beyond the example of an erroneous zip code.
> . . .
>
> Further, determining whether any given inaccuracy in a credit report would help or harm an individual (or perhaps both) is not always easily done. For example, in support of Robins, the Consumer Financial Protection Bureau has argued that even seemingly flattering inaccuracies can hurt an individual's employment prospects **[**42]** as they may cause a prospective employer to question the applicant's truthfulness or to determine that he is overqualified for the position sought. Even if their likelihood actually to harm Robins's job search

> could be debated, the inaccuracies alleged in this case do not strike us as the sort of "mere technical violation[s]" which are too insignificant to present a sincere risk of harm to the real-world interests that Congress chose to protect with FCRA. *In re Horizon Healthcare, 846 F.3d at 638*; see also *Spokeo II, 136 S. Ct. at 1556 (Ginsburg, J., dissenting)* (describing Robins's allegations as "[f]ar from an incorrect zip code"). Robins's complaint thus sufficiently alleges that he suffered a concrete injury. *See In re Horizon Healthcare, 846 F.3d at 638-41*; *Strubel, 842 F.3d at 190*.

Robins v. Spokeo, Inc., 867 F.3d 1108, 1115-1117 (9th Cir. 2017).

In 2019 the Ninth Court of Appeal had the opportunity to address the issues in *Jaras v. Equifax Inc., 766 Fed. Appx. 492, 2019 U.S. App. LEXIS 8743 (9th Cir. 1999)*. Two judges of the Ninth **[*310]** Circuit Panel in *Jaras* affirmed the dismissal of the complaint for failing to state a claim upon which relief could be granted under FCRA, stating:

> By contrast, Plaintiffs here **do not make any allegations about how the alleged misstatements in their credit reports would affect any transaction they tried to enter or plan to try to enter**—and it is not obvious that they would, given that Plaintiffs' bankruptcies themselves cause them **[**43]** to have lower credit scores with or without the alleged misstatements. They have therefore said nothing that would distinguish the alleged misstatements here from the inaccurate zip code example discussed by the Supreme Court in Spokeo. Indeed, Plaintiffs have not alleged that they tried to enter any financial transaction for which their credit reports or scores were viewed at all, or that they plan to imminently do so, let alone that the alleged inaccuracies in their credit reports would make a difference to such a transaction. Unlike the plaintiff in Spokeo, **Plaintiffs did not say anything about what kind of harm they were concerned about, other than making broad generalizations about how lower FICO scores can impact lending decisions generally**—without any specific allegation that lower FICO scores impact lending decisions regarding individuals who are already in Chapter 13 bankruptcy. Without any allegation of the credit report harming Plaintiffs' ability to enter a transaction with a third party in the past or imminent future, Plaintiffs have failed to allege a concrete injury for standing.

*Jaras v. Equifax, Inc., 766 Fed. Appx. 492, 2019 U.S. App. LEXIS 8743 at *7-8*.

The third judge on the *Jaras* panel dissented, concluding that requiring pleading of an actual **[**44]** impact on a previous or imminent transaction to be beyond the requirements of the FCRA and the Constitution. She noted that given the widespread use of credit report ***information***, often without the ***consumer*** having knowledge of its use and the consumer's creditworthiness being considered, the harm flowing from such inaccurate information will be occurring without the consumer being knowingly engaged in a transaction. *766 Fed. Appx. 492, Id. at *10-11*, dissent to the decision of the majority of the Panel.

This split in the *Jaras* Ninth Circuit panel may reflect a policy difference arising from differing views of a consumer creditor report. First, there is a "*per se* violation" view, that any alleged inaccuracy is sufficient to show an alleged "concrete" harm for a consumer to have his or her day in court (without pre-determining whether there are any actual damages which flow therefrom or whether it is a sufficient "inaccuracy" for there to be an FCRA violation) given the ubiquitous and importance in . . . "modern life" of the ***information*** provided on a ***consumer*** credit report (Dissent, *Id.* at 10). On the other hand, the federal courts have the basic requirement that a plaintiff cannot "plead the bare elements of his cause of action, **[**45]** affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal, 556 U.S. 662, 687, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)*. Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)* ("[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do."). As discussed below, these two views may not be so far apart, but only require that a plaintiff allege not only a violation of the letter **[*311]** of the law, but how such violation could result in a harm to the plaintiff which Congress seeks to prevent in the FCRA.

DISCUSSION

Defendant seeks to bring this litigation to a conclusion

as a matter of law, based upon the factual matters to establish plausible grounds for the relief sought stated by Plaintiff-Debtor in the First Amended Complaint. Plaintiff-Debtor's focus is that since a Chapter 13 plan has been confirmed, though not completed, the only proper, relevant, "accurate" information concerning debt would be that the debt is subject to the as of yet uncompleted Chapter 13 Plan, and there is no final bankruptcy alternation of the **[**46]** claim.

HN11[] While during a Chapter 13 bankruptcy case the terms of a Chapter 13 plan bind the creditors and debtor to the terms thereunder for the payments (if any) to be made on the creditors' claims, such "modified contracts" of what existed when the case was filed between the parties is not a final modification until the Chapter13 plan is completed. *See* 11 U.S.C. § 1327(a); if the debtor does not complete the plan and the case is dismissed or converted to one under Chapter 7, the former Chapter 13 plan and its modifications are of no further effect between the parties. *Harris v. Viegelahn, 575 U.S. 510, 135 S. Ct. 1829, 1838, 191 L. Ed. 2d 783 (2015)*.

HN12[] While the terms of a Chapter 13 plan may modify the terms for the payment of the obligation owing to creditors for the term of the plan, and thereafter if the Chapter 13 plan is completed as permitted by 11 U.S.C. § 1322 and § 1325, "mere" confirmation does not permanently alter the obligation. As discussed in COLLIER ON BANKRUPTCY,

> [C]onfirmation of a chapter 13 plan is not a discharge. Instead, confirmation of a chapter 13 plan fixes the terms upon which claims are to be settled, subject to modification by the court.
>
> Unless the chapter 13 debtor receives a discharge under *section 1328*, creditors are barred from recovering their claims only until the dismissal of the chapter **[**47]** 13 case and only to the extent that payment was received under the plan. Upon failure by the debtor to obtain a discharge under *section 1328*, allowed claims remain due and owing, except to the extent that actual payment was in fact made, because in such circumstances the chapter 13 case will ordinarily be dismissed or converted to chapter 7, nullifying the effect of the plan. A composition plan under chapter 13 therefore ultimately binds creditors only to the extent that there is compliance by the debtor with the payment terms of the plan resulting in a discharge under *section 1328(a)*, unless the court grants a discharge under *section 1328(b)*.

8 COLLIER ON BANKRUPTCY P 1327.02 (16TH 2019).

HN13[] The significant, economic-life altering event is the completion of the Chapter 13 plan and the entry of the debtor's discharge. *11 U.S.C. § 1328*, providing that after completion of all payments required under the Chapter 13 plan the court shall issue a discharge of debt, except as excluded in *§ 1328*. Only when the discharge (discussed *infra*) has been entered is the enforceability of the obligation and the payment terms thereof permanently changed.

In considering the "no material issues of fact remaining to be resolved" stated by Plaintiff-Debtor in the First Amended Complaint to establish plausible **[**48]** grounds for the relief sought, the court distills these relevant plausible grounds to be:

> **[*312]** A. Plaintiff-Debtor commenced her bankruptcy case on November 16, 2015.
> B. Prior to the commencement of the bankruptcy case, Defendant had furnished information to CRAs that Debtor's obligation to Defendant had been placed in collection and there was a past due balance owed.
> C. Defendant filed two proofs of claim in the bankruptcy case.
>
> 1. There are no allegations that Plaintiff-Debtor objected to the claims or that there are any disputes as to the amount of the claims.
>
> D. Even though Plaintiff-Debtor had commenced a bankruptcy case, Defendant continued to allow the information that: (1) Plaintiff-Debtor owed money to Defendant and (2) the obligation that Plaintiff-Debtor owed Defendant was in collections to remain on Plaintiff-Debtor's consumer report.
> E. Plaintiff-Debtor asserts that the Consumer Data Industry Association has developed the Metro 2 format for credit reporting, as the "expert" on accurate credit reporting.
>
> F. When a consumer files bankruptcy, the Metro 2 Code "D" is to be furnished, to show that a Chapter 13 bankruptcy petition has been filed, a case is pending, but no discharge has **[**49]** been entered.
> G. Defendant failed to update the information it furnished to the CRAs to report that the obligation owed to Defendant was included in a pending bankruptcy case.
> H. Further, under the Metro 2 Format, it advises Furnishers to state that an obligation's balance is $0.00, notwithstanding the true dollar amount and change the payment history to "no data," rather

than stating the accurate dollar amount and the accurate payment history.

I. By failing to furnish information that the obligation was included in a current bankruptcy case, and failing to alter the information to inaccurately state that the obligation $0.00 and also delete the accurate payment history so that the credit report would have inaccurate information, Defendant was attempting to make the Plaintiff-Debtor pay the obligation outside of bankruptcy.

J. Plaintiff-Debtor asserts that the only way for Plaintiff-Debtor to "remove" the accurate collections information and the accurate amount of the obligation from her consumer credit report would be to pay Defendant.

K. Therefore, because of Plaintiff-Debtor and Plaintiff-Debtor's counsel's belief that Plaintiff-Debtor could have accurate ***information*** removed from her **[**50]** ***consumer*** credit report, which would then render the information left inaccurate, it is asserted that Defendant violated the automatic stay.

L. By failing to alter the amount of the obligation to $0.00 and state an inaccurate amount rather than the undisputed amount that is owed and by failing to remove the accurate history of the obligation so that there was no credit report history of the unpaid obligation, it is asserted that damages have been incurred by Plaintiff-Debtor.

For the majority of what is asserted, Plaintiff-Debtor and Plaintiff-Debtor's counsel misunderstand what Congress requires to be furnished to a CRA. *HN14*[↑] It is not inaccurate information, misstating the **[*313]** amount of the obligation, deleting accurate history of the transaction, or not reporting accurate current information in exchange for a payment that is required, or permitted, by the Congress in the FCRA. It is exactly the opposition - only accurate, truthful ***information*** - whether the ***consumer*** finds that ***information*** advantageous (making it easier to obtain future credit) or challenging (the amount of the unpaid obligations and transaction history showing the consumer's challenges in paying back credit obtained).

Though **[**51]** noted above, it is worth quoting Plaintiff-Debtor and Plaintiff-Debtor's counsel's assertion in the First Amended Complaint that:

> 55. As it currently stands, the **only way for Plaintiff[-Debtor] to remove the collections notation and past-due balance from her *USAA* account is to pay *USAA*** what it is reporting is owed, despite ***USAA*** filing claims in Plaintiff[-Debtor]'s case in order to be paid.

First Amended Complaint ¶ 55, Dckt. 18. Plaintiff-Debtor has not provided the court with any law that supports the assertion that Plaintiff-Debtor can sanitize her consumer credit report, or force Defendant to sanitize it, and remove the accurate amount of the obligation that she owes and the accurate transaction/payment history information.

Plaintiff-Debtor has not provided the court with any law by which a trade association can enact guidelines or a standard of practice to override the Congressionally enacted statutory requirements of the FCRA that the ***information*** in a ***consumer*** credit report be accurate. The very nature of what is argued — that the amount of Plaintiff-Debtor's obligation can be misstated to be $0.00 and the collection/transaction history be deleted — runs contrary to the fundamental **[**52]** reason underlying the FCRA, "The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system." *15 U.S.C. § 1681*.

Even applying the more liberal standards discussed in the dissent in *Jaras*, Plaintiff-Debtor has not stated any legal grounds for Defendant not changing accurate information and not deleting accurate collection/transaction information (thereby making the information furnished and shown on the consumer report inaccurate and false) as violating the FCRA. Plaintiff-Debtor's disgust with Defendant saying that the account is in "collection," notwithstanding Plaintiff-Debtor having filed bankruptcy does not make it inaccurate. Defendant is "collecting" the obligation, *abet*, as limited by the Bankruptcy Code.

Plaintiff-Debtor makes general, wide sweeping allegations that creditors furnish information about unpaid debts to CRAs as part of their efforts to obtain payment. Such may be a byproduct of furnishing such ***information*** for ***consumers*** who would prefer to show a debt they **[**53]** owed, even if delinquently paid, as paid. Some consumers do not have that financial ability and the obligation will show as unpaid - which is accurate information.

What Plaintiff-Debtor does not allege is anything that Defendant did as part of demands for payment, attempts to obtain payment, or "inducements" for

payment outside of what is permitted under the Bankruptcy Code. Rather, Plaintiff-Debtor and Plaintiff-Debtor's counsel demonstrate a misunderstanding (or blatant misstatement) of the law - believing that Plaintiff-Debtor could "buy" a deletion of the collection/transaction history by paying **[*314]** Defendant outside of bankruptcy. It is true, that if Plaintiff-Debtor were to voluntarily pay Defendant in full (in a manner that would not violate the Bankruptcy Code, even if not required to do so as provided in the Chapter 13 plan, then Defendant would update the information furnished to show that the outstanding unpaid obligation was $0.00. But no such "demand" for payment was made by Defendant, no such payment made by Plaintiff-Debtor, and the outstanding, unpaid obligation of Plaintiff-Debtor is not zero.

Rather, Plaintiff-Debtor argues that she has suffered because she and her counsel **[**54]** believe that she can alter the consumer credit report to state inaccurate information. Such belief is not consistent with the law.

Plaintiff-Debtor's assertions that failing to change the amount of the obligation to $0.00, to delete the accurate collection/transaction history, and to inaccurately state that the obligation was not in collection are contrary to the plan language of the FCRA and the statutory legislative intent.

Therefore, the court grants the motion and will enter judgment for Defendant on all claims in the First Amended Complaint, with the exception of the one claim stated below that the failure to update the information provided to disclose that the claim is included in a pending bankruptcy case.

Plaintiff-Debtor's assertions that failing to change the amount of the obligation to $0.00, to delete the accurate collection/transaction history, and to inaccurately state that the obligation was not in collection are contrary to the plan language of the FCRA and the statutory legislative intent.

Failure to Report that the Obligation Was Included In a Pending Bankruptcy Case

The other asserted improper conduct is that Defendant did not update the information on the obligation **[**55]** it furnished to the CRA to show that the obligation was included in a pending bankruptcy case. Defendant asserts that there is no affirmative obligation requiring a furnisher to update information to state that an obligation is included in a pending bankruptcy case. Presumably, Defendant would further assert that even when the obligation has been discharge and Defendant could not legally attempt to enforce the obligation as a personal liability of Plaintiff-Debtor, that it is not required to update the information that the debt has been discharged.

Discharge Granted - Violation of Discharge Injunction

For those practicing in the area of bankruptcy, few legal points are as sanctified as the bankruptcy discharge and statutory injunction flowing therefrom. ***HN15***[↑] Once the discharge is entered, the creditor cannot attempt, as a matter of federal law, to enforce that as a personal obligation of the consumer. The creditor holding a discharged obligation cannot seek to obtain payment, obtain a judgment against the consumer, cannot enforce a pre-bankruptcy judgment that is subject to the discharge against the consumer personally (or any of the consumer's assets for which the creditor is not holding **[**56]** a pre-bankruptcy lien), and will not be competing with any "new" creditors who are doing business with the post-discharge consumer.

Failing to disclose that the debt has been discharged and cannot be enforced personally, may well be highly inaccurate ***information*** left on a ***consumer***'s credit report. It may well cause other potential new lenders who want to do business with the post-discharge debtor to refrain due to what (improperly) appears to be an outstanding, enforceable obligation.

However, Plaintiff-Debtor has not alleged, and cannot allege, that Defendant **[*315]** did not update the information provided to the credit reporting agencies had not been updated to state that the obligation was discharged for a very simple reason — Plaintiff-Debtor has not yet been granted a discharge of the obligation owed to Defendant.

Plan Confirmed, No Discharge - Violation of the Automatic Stay

HN16[↑] Second, in sanctity to the discharge injunction to those in the bankruptcy world, is that when a person files bankruptcy creditors are stayed as provided in *11 U.S.C. § 362(a)*, subject to some statutory exceptions, from seeking to enforce pre-bankruptcy obligations. Chapter 13 plans will take three to five years to complete. During that **[**57]** time, a debtor may well be operating a sole proprietorship business, seek to rent a new abode, or otherwise take other steps in life as part

of their ongoing financial reorganization. Some of these steps may require obtaining new post-bankruptcy credit or third-parties considering a debtor's financial conduct during the performance of the bankruptcy plan.

Plaintiff-Debtor asserts that Defendant's failure to update the information furnished to the CRAs that the obligation owed to Defendant is part of an open bankruptcy case is a violation of the automatic stay in an attempt to force the Plaintiff-Debtor to pay the pre-petition debt other than as provided in the Chapter 13 plan. Plaintiff-Debtor asserts that the failure to include such information is part of a coordinated, intentional debt collection effort to coerce Plaintiff-Debtor to pay the obligation notwithstanding the bankruptcy case and the protections afforded under the Bankruptcy Code. Plaintiff-Debtor asserts that Defendant did so, well aware of Plaintiff-Debtor's demands for the information to be corrected.

The allegations of how and what was done by virtue of not updating the information provided with the Metro Code 2 D to **[**58]** force Plaintiff-Debtor to pay the debt in violation of the automatic stay include:

> 36. ***USAA*** knows that by not reporting the CII "D" AND reporting an account delinquent its reporting the debt in a manner that would coerce payments because ***USAA*** knows that such reporting alerts other lenders that this debt SHOULD be paid but has not been paid.
> . . .
> 42. Plaintiff's dispute letter indicated that she had filed for chapter 13 bankruptcy protection and the account needed to be updated to reflect the bankruptcy.
> . . .
>
> 48. Ms. Bain ignored the ACDV and Plaintiff's dispute and instead confirmed to Equifax Information Services, LLC that Plaintiff's account with ***USAA*** was in fact in collections without making any reference to the underlying chapter 13 bankruptcy proceeding.
>
> 49. To be clear, despite ***USAA*** having actual knowledge of the bankruptcy filing and despite ***USAA*** being put on specific notice that they were NOT reporting the bankruptcy ***USAA*** intentionally chose NOT to report the bankruptcy.
>
> 50. Ms. Bain's lack of an update in response to Plaintiff's dispute was done intentionally in order to allow for ***USAA*** to continue its collection efforts.
>
> 51. Ms. Bain knew that failure to update the CII would exert **[**59]** more pressure on Plaintiff and coerce payment.
>
> 52. ***USAA*** did not update its reporting on Plaintiff's credit report to reflect that the account was included in bankruptcy despite being aware of the bankruptcy.
> . . .
>
> **[*316]** 54. By failing to update its reporting on Plaintiff's credit report ***USAA***'s intent is that Plaintiff will make a payment on the account despite Plaintiff being in an active bankruptcy.
> . . .
>
> 63. Instead of updating the account to reflect the bankruptcy filing, ***USAA*** ignored Plaintiff's dispute and industry guidelines on how to report accounts subject to a chapter 13 bankruptcy and took affirmative steps to confirm that the collections and charge-off notation was correct.
>
> 64. ***USAA***'s intent for not reporting the CII was to continue its collection efforts against Plaintiff by harming her credit score.
>
> 65. By not reporting the correct CII the only way for Plaintiff to address the derogatory and inaccurate reporting is for her to pay the balance that ***USAA*** indicates is owed.

First Amended Complaint, ¶ 36; Dckt. 18 (emphasis in original).

The Ninth Circuit Court of Appeals discussed the automatic stay and the obligations of a party violating the stay in *Sternberg v. Johnston, 595 F.3d 937 (9th Cir. 2009)*. ***HN17***[⬆] In short, there is the affirmative **[**60]** duty on the person violating the stay to correct the violation, not on the bankruptcy debtor to force the person to correct the violation. In the plain language of the Ninth Circuit Court of Appeals:

> To comply with his "affirmative duty" under the automatic stay, Sternberg needed to do what he could to relieve the violation. He could not simply rely on the normal adversarial process. See *Johnston Envt'l Corp. v. Knight (In re Goodman), 991 F.2d 613, 615-16 (9th Cir. 1993)* (holding that parties who attempted to exempt a debtor from their unlawful detainer action with a unilateral stipulation still violated the automatic stay because "the stipulation might not [have] accomplish[ed] its intended purpose" and thus the parties "could have,

> and should have, pursued the orthodox remedy: relief from the automatic stay"). At a minimum, he had an obligation to alert the state appellate court to the conflicts between the order and the automatic stay. As we have explained before, "[t]he automatic stay is intended to give the debtor a breathing spell from his creditors." *Goichman v. Bloom (In re Bloom), 875 F.2d 224, 226 (9th Cir. 1989)* (internal quotation marks omitted). The state court order intruded upon Johnston's "breathing spell." Sternberg did not act to try to fix that problem.
> . . .
>
> Johnston [the debtor] was not required to ask Sternberg **[**61]** [the creditor] to modify the order for Sternberg's violation to be willful. See *In re Del Mission Ltd., 98 F.3d at 1151-52* (concluding that the retention of taxes was a violation of the stay even though the debtor never requested their return). Likewise, Sternberg needed neither to make some collection effort nor to know that his actions were unlawful for his violation to be willful. See *Eskanos, 309 F.3d at 1214-15* (rejecting the law firm's assertion that something more than maintaining an active collection action was needed to violate the stay); *In re Goodman, 991 F.2d at 618* ("Whether the [defendant] believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' . . . ." (internal quotation marks omitted)). All that is required is that Sternberg "knew of the automatic stay, and [his] actions in violation of the stay were intentional." *Eskanos, **[*317]** 309 F.3d at 1215*. Both of these elements were satisfied here.

Sternberg v. Johnson, Id. at 944-945.

At this juncture, it is alleged that not updating the credit report is done as part of and has the effect of pressuring a bankruptcy debtor to pay a debt. Such is alleged, but not yet proven. This contention is focused on the accuracy of the information and not, as above, an assertion that the FCRA and Bankruptcy Code work to have a creditor put false or inaccurate **[**62]** information on the credit report.

Such is alleged, but not yet proven. This contention is focused on the correct accuracy of the information and not, as above, an assertion that the FCRA and Bankruptcy Code work to have a creditor put false or inaccurate information on the credit report.

These allegations are very specific and for which "The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." *Fed. R. Bankr. P. 9011(b)(3)*. The Plaintiff is proceeding to the opportunity to present the evidence of such activities and how the failure to update the information using the Metro 2 Code D was part of the collection activities that violated the automatic say.

The court denies the Motion with respect to the claim asserted that the failure to update the information furnished to the CRAs that this debt owed by this Plaintiff-Debtor to this Defendant creditor was included in the pending Chapter 13 case, which is asserted to be the Metro 2 Code "D" was a violation of the automatic stay.

Therefore, judgment is granted for Defendant ***USAA*** Savings Bank on all claims asserted **[**63]** by Plaintiff-Debtor in the First Amended Complaint except the claim that failure of Defendant to update the information furnished to the CRAs was a violation of the automatic stay. One unified judgment will be entered in this Adversary Proceeding after this one remaining claim is adjudicated.

The court shall enter a separate order granting judgment for Defendant on all claims except the one asserting that failure to update the information provided to CRAs to disclose that the obligation reported is subject to a pending bankruptcy case.

This Memorandum Opinion and Decision constitutes the court's findings of fact and conclusions of law for this Motion for Judgment on the Pleadings.

Dated: February 21, 2020

By the Court

/s/ Ronald H. Sargis

Ronald H. Sargis, Judge

United States Bankruptcy Court

[EDITOR'S NOTE: The following court-provided text does not appear at this cite in B.R.]

[*none] ORDER RE MOTION FOR JUDGMENT ON THE PLEADINGS

The Motion for Judgment on the Pleadings filed by

USAA Savings Bank ("Defendant") having been presented to the court; Findings of Fact and Conclusions of Law being stated in the Civil Minutes for the hearing; upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted for Defendant and against **[**64]** Plaintiff-Debtor Sarah ***McGarvey*** on all claims stated in the First Amended Complaint, except for the claim based on the failure to update the information provided by Defendant to consumer reporting agencies to state that the obligation owed to Defendant was the subject of a pending bankruptcy case is asserted to be a violation of the automatic stay.

The court shall enter one unified judgment in this Adversary Proceeding upon the adjudication of the one remaining claim.

Dated: February 21, 2020

By the Court

/s/ Ronald H. Sargis

Ronald H. Sargis, Judge

United States Bankruptcy Court

Table1 (Return to related document text)

"FCRA"	Federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et. seq.
"Furnisher"	A person who provides ***information*** about a ***consumer*** to a consumer reporting agency. 15 U.S.C. § 1681s-2.
"Consumer Reporting Agency" ("CRA")	"[A]ny person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating ***consumer*** **[**4]** credit ***information*** or other ***information*** on ***consumers*** for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." 15 U.S.C. § 1681a(f). The three main, easily recognizable consumer reporting agencies are Experian, Equifax, and TransUnion. Consumer Financial Protection Bureau List of Consumer Reporting Agencies, 2019. https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-companies-list.pdf
"Consumer"	An individual for whom the information in the credit report relates. 15 U.S.C. § 1681a(c), (d).
"Consumer Report" (also referred to as a "Credit Report")	Consumer Report is any written, oral, or other communication of any ***information*** by a ***consumer*** reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance (primarily for family or household purposes), employment purposes; or as authorized under **[**5]** the FCRA. 15 U.S.C. § 1681a(d).

Table1 (Return to related document text)

End of Document

Pittman v. Rocket Mortg. LLC

Superior Court of California, County of Los Angeles

August 2, 2023, Decided

22STCV32781

Reporter
2023 Cal. Super. LEXIS 77107 *

LINDA E PITTMAN, vs ROCKET MORTGAGE LLC

Core Terms

Mortgage, inaccurate, agencies, reporting, notice, borrowers, actual damage, credit report, mortgage loan, Demurrer, alleges, leave to amend, credit-reporting, foreclosure, disputes, letters, nominal, paying, cases

Counsel: **[*1]** For Plaintiff(s): No Appearances.

For Defendant(s): No Appearances.

Judges: Honorable William F. Highberger, Judge.

Opinion by: William F. Highberger

Opinion

Civil Division

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 06/21/2023 for Hearing on Demurrer-without Motion to Strike, now rules as follows:

Demurrer to Complaint: Sustained with leave to amend to plead actual damages.

The demurrer was timely noticed, came for hearing on June 21, 2023, and was taken under submission. The Court now overrules the Demurrer in part and grants it in part, allowing plaintiff leave to file an Amended Complaint pleading actual damages with greater specificity. File by September 15, 2023.

Defendant makes several separate attacks on the pleading.

The first is that defendant Rocket Mortgage's alleged responsibility for the inaccurate credit reporting is not clearly alleged and the real culprits for any misreporting are the three credit-reporting agencies who furnished the credit reports which Plaintiff claims to be inaccurate. For purposes of notice pleading, the Court is not persuaded. The Complaint alleges at paragraph 33 that each of the three credit-reporting agencies provided **[*2]** inaccurate information about the status of Plaintiff's mortgage loan with Defendant Rocket:

On February 8, 2022 Plaintiff reviewed credit reports from Experian, Equifax, and TransUnion. Plaintiff noticed a delinquent and adverse trade line on these credit reports relating to the Account. Specifically, Rocket Mortgage was inaccurately reporting her mortgage as closed and with no payment history, despite the fact that the Account was open and Plaintiff was making timely payments every month.

Plaintiff further alleges in her Complaint at paragraphs 36 and 37 that her dispute letters to the three agencies were intended to put Rocket on notice of the inaccuracy and that on information and belief such disputes were passed on to Rocket by each of the agencies:

36. Plaintiff's dispute letters specifically put Rocket Mortgage on notice that the Account should not be listed as closed and with no balance or payment history, as the Account was open and current at the time of Plaintiff's bankruptcy filing, and Plaintiff has continued to make all payments on the Account on time.

37. Plaintiff is informed and believes that each CRA received Plaintiff's dispute letter and sent the disputes to Rocket Mortgage **[*3]** via an ACDV through e OSCAR.

Finally, Plaintiff goes on to allege that when she pulled an updated report from each agency, the status of her mortgage loan remained unchanged, showing as "closed" and that this was inconsistent with its true status as a continuing debt confirmed in her Chapter 13

bankruptcy plan and a debt which was being timely serviced by her each month. This is more than sufficient to tie Defendant Rocket to the alleged inaccurate reporting even though the reports came to Plaintiff from each of the three agencies and she never communicated directly with Rocket.

Next, based on several District Court authorities which are not binding on this Court, Defendant claims that reporting a home mortgage as closed after a bankruptcy case has initiated is not inaccurate and thus not a violation of the fair-credit reporting laws. As to the three cases cited by Defendant[1] which involved borrowers who obtained a nominal discharge of their personal obligation of each such mortgage loan by the operation of a Chapter 7 bankruptcy and the discharge from debt resulting therefrom, they are not on point. There the three borrowers each kept paying the nominally discharged debt since failure **[*4]** to do so would have led to a foreclosure on their personal residence. So, while they in fact were paying the mortgage current to avoid foreclosure and eviction, it was also legally true that each borrower had been relieved of any further responsibility to pay the debt, justifying the "closed" report by the lender, at least in the view of those courts. The Court is not persuaded that the holding and reasoning in two unpublished District Court cases[2] involving Chapter 13 borrowers should be followed by this Court, and accordingly chooses not to do so.

We do not know at this stage exactly what, if anything, Rocket chose to report to each of the three agencies during the pendency of Plaintiff's Chapter 13 bankruptcy, with a resulting temporary stay by the creditors of their right to litigate to collect an overdue debt. Whether the reports actually made by Rocket comported with industry practice consistent with Metro II Format and the e Oscar platform is a question for another day and this ruling is not intended to foreclose defendant from renewing those arguments once the true nature of the reports relative to Plaintiff from Rocket, if **[*5]** any, are determined. Plaintiff concedes her actual damages allegations could stand improvement, and she is given leave to amend to address this aspect of the pleading challenge.

End of Document

[1] *Groff v. Wells Fargo Home Mortgage, Inc., 108 F. Supp. 3d 537 (E.D. Mich. 2015)*; *Horsch v. Wells Fargo Home Mortgage, 94 F. Supp. 3d 665 (E.D. Pa. 2015)*; and *Dixon v. Green Tree Servicing, LLC, 2015 U.S. Dist. LEXIS 61648 (N.D. Ind. May 11, 2015)*.

[2] *Tusen v. M&T Bank, 2017 WL 4990524 at *3 (D. Minn. Oct. 31, 2017)*; and *Lawrence v. Paramount Residential Mortgage Group, Inc.*, 2021 U.S. Dist. LEXIS 151959 (D. Or. 2021), adopting Magistrate's Report at *2021 U.S. Dist. LEXIS 152498*.