

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON

**Nicholas P. Munt-Lovell v. RoundPoint Mortgage Servicing Corp. et
al.**

Munt-Lovell · No. 2:25-cv-01365-TL · Decided January 26, 2026

SUMMARY

The United States District Court for the Western District of Washington ruled on RoundPoint Mortgage Servicing Corporation’s motion to dismiss claims arising from allegedly inaccurate mortgage delinquency reporting. The court allowed part of the Fair Credit Reporting Act claim concerning reporting between September 2022 and February 2023 to proceed, while dismissing without prejudice the portions concerning December 2024 and June 2025 reporting. The court dismissed with prejudice the remaining FCRA and Washington-law claims against RoundPoint and granted leave to amend the surviving portion of Count I.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF
WASHINGTON 9 AT SEATTLE 10 11 NICHOLAS P. MUNT-LOVELL, CASE NO. 2:25-cv-
01365-TL 12 Plaintiff, ORDER ON MOTION TO DISMISS 13 v. 14 ROUNDPOINT
MORTGAGE SERVICING CORP. et al., 15 Defendants. 16 17 18 This matter is before the Court
on Defendant RoundPoint Mortgage Servicing 19 Corporation’s¹ (“Defendant RoundPoint”) Motion to Dismiss (Dkt.

No. 43). Having considered 20 Defendant RoundPoint’s motion, Plaintiff’s response (Dkt. No. 48), Defendant RoundPoint’s 21 reply (Dkt. No. 58), and the relevant record, the Court GRANTS IN PART and DENIES IN PART 22 Defendant’s motion. 23 1 Although there are three other defendants in this case—Experian Information Solutions Inc., Equifax Information 24 Services LLC, and TransUnion LLC—the instant motion is brought only by Defendant RoundPoint.

1 I. BACKGROUND 2 This action arises from Defendant RoundPoint’s allegedly false reporting of delinquency 3 related to Plaintiff’s mortgage. See generally Dkt. No. 6. The Court assumes familiarity with the 4 facts of this case. See generally *id.*; Dkt. No. 14 (Order on Motion for Temporary Restraining 5 Order). 6 II. LEGAL STANDARD 7 A defendant may seek dismissal when a plaintiff fails to state a claim upon which relief 8 can be granted.

Fed. R. Civ. P. 12(b)(6). In reviewing a Rule 12(b)(6) motion to dismiss, the 9 Court takes all well-pleaded factual allegations as true and considers whether the complaint 10 “state[s] a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 11 (2009) (quoting *Bell*

Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). While “[t]hreadbare 12 recitals of the elements of a cause of action, supported by mere conclusory statements,” are 13 insufficient, a claim has “facial plausibility” when the party seeking relief “pleads factual content 14 that allows the court to draw the reasonable inference that the defendant is liable for the 15 misconduct alleged.” Iqbal, 556 U.S. at 672. “When reviewing a dismissal pursuant to 16 Rule...

12(b)(6), ‘we accept as true all facts alleged in the complaint and construe them in the 17 light most favorable to plaintiff[], the non-moving party.’” DaVinci Aircraft, Inc. v. United 18 States, 926 F.3d 1117, 1122 (9th Cir. 2019) (alteration in original) (quoting Snyder & Assocs. 19 Acquisitions LLC v. United States, 859 F.3d 1152, 1156–57 (9th Cir. 2017)).

However, courts are 20 “not ‘required to accept as true allegations that contradict exhibits attached to the [c]omplaint or 21 matters properly subject to judicial notice, or allegations that are merely conclusory, unwarranted 22 deductions of fact, or unreasonable inferences.’” Seven Arts Filmed Ent. Ltd. v. Content Media 23 Corp. PLC, 733 F.3d 1251, 1254 (9th Cir.

2013) (quoting Daniels-Hall v. Nat’l Educ. Ass’n, 629 24 F.3d 992, 998 (9th Cir. 2010)). 1 A pro se complaint must be “liberally construed” and held “to less stringent standards 2 than formal pleadings drafted by lawyers.” Florer v. Congregation Pidyon Shevuyim, N.A., 639 3 F.3d 916, 923 n.4 (9th Cir. 2011) (quoting Erickson v. Pardus, 551 U.S. 89, 94 (2007)) (internal 4 quotation marks omitted).

Even so, a court should “not supply essential elements of the claim 5 that were not initially pled.” Henderson v. Anderson, No. C19-789, 2019 WL 3996859, at *1 6 (W.D. Wash. Aug. 23, 2019) (quoting Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257 7 (9th Cir. 1997)) (internal quotation marks omitted); see also Khalid v. Microsoft Corp., 409 F. 8 Supp. 3d 1023, 1031 (W.D.

Wash. 2019) (“[C]ourts should not have to serve as advocates for 9 pro se litigants.” (quoting Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987))). Further, “it is 10 axiomatic that pro se litigants, whatever their ability level, are subject to the same procedural 11 requirements as other litigants.” Muñoz v. United States, 28 F.4th 973, 978 (9th Cir. 2022) 12 (internal citations omitted).

Still, “[a] district court should not dismiss a pro se complaint without 13 leave to amend unless ‘it is absolutely clear that the deficiencies of the complaint could not be 14 cured by amendment.’” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (quoting Schucker 15 v. Rockwood, 846 F.2d 1202, 1203–04 (9th Cir. 1988)). Lastly, courts typically allow pro se 16 plaintiffs to amend their complaints in lieu of dismissal.

Yagman v. Garcetti, 852 F.3d 859, 867 17 (9th Cir. 2017). 18 III. DISCUSSION 19 Plaintiff brings six claims² against Defendant RoundPoint: (1) violation of the Fair Credit 20 and Reporting Act (“FCRA”), 15 U.S.C. § 1681s-2(b) (Dkt. No. 6 ¶¶ 21–23); (2) violation of the 21 FCRA, 15

U.S.C. § 1681s-2(a)(1)(F) and the Coronavirus Aid, Relief, and Economic Security 22 (“CARES”) Act (Dkt.

No. 6 ¶¶ 24–25); (3) violation of the FCRA, 15 U.S.C. § 1681e(b) (Dkt. 23 24 2 Counts I, II, and III are federal-law claims, and Counts IV, V, and VI are Washington state-law claims. 1 No. 6 ¶¶ 26–27); (4) negligent misrepresentation (id. ¶¶ 28–30); (5) intentional infliction of 2 emotional distress (“outrage”) (id. ¶¶ 31–32); and (6) violation of Washington Consumer 3 Protection Act (“WCPA”), Chapter 19.86 RCW (Dkt.

No. 6 ¶¶ 33–34). Counts 3 I, III, and V are 4 alleged against all Defendants; Counts II, IV, and VI are alleged against Defendant RoundPoint 5 only. The Court will address each count in turn. 6 A. Count I: Violation of the FCRA, 15 U.S.C. § 1681s-2(b) 7 Plaintiff alleges that Defendants “failed to conduct a reasonable investigation into 8 Plaintiff’s disputes, continued to report demonstrably false data, and verified it as accurate.” Dkt.

9 No. 6 ¶ 21. Further, Plaintiff claims that Defendants “knew or should have known the reporting 10 was inaccurate and failed to correct it.” Id. ¶ 22. Lastly, Plaintiff claims that he suffered actual 11 damages, including “loss of credit, emotional distress, and denial of financing.” Id. ¶ 23.

In 12 support of these general allegations, Plaintiff alleges that: Defendant RoundPoint “falsely 13 reported the mortgage account as 120 to 180 days delinquent” (id. ¶ 11); “Plaintiff disputed these 14 alleged inaccuracies multiple times” to Defendant RoundPoint and the consumer reporting 15 agencies (“CRA”) and “provided documentation confirming [Plaintiff’s] forbearance status and 16 mortgage assistance (id. ¶ 12); Defendant RoundPoint “refused to correct the errors and instead 17 confirmed their accuracy in dispute responses as late as December 5, 2024” (id. ¶ 13); Defendant 18 RoundPoint “admitted the reporting was erroneous” and stated it would correct the errors (id.

19 ¶ 14); and Defendant RoundPoint never corrected the errors (id. ¶ 15), which resulted in a 20 massive reduction in Plaintiff’s credit score and denial of cash-out refinancing (id. ¶¶ 16, 18). 21 In Defendant RoundPoint’s motion to dismiss, it argues that Plaintiff fails to state a claim 22 for which relief can be granted with regard to Count I because (1) some of the claims in Count I 23 3 Plaintiff titled each alleged violation in the Claims for Relief section of his Complaint as a “Count.” Therefore, the 24 Court will also refer to them by “Count.” 1 are time-barred; and (2) Plaintiff’s allegations regarding the remainder of the incidents included 2 in Count I are false.

See Dkt. No. 43 at 8. 3 1. Alleged Delinquencies Between September 2022 and February 2023 4 Defendant RoundPoint asserts that Plaintiff’s claims regarding reporting about his 5 mortgage account between September 2022 and February 2023 are barred by the statute of 6 limitations for FCRA claims. See id. 7 The statute of limitations for FCRA claims is “not later than the earlier of[:] (1) 2 years 8 after the date of discovery by the plaintiff of the violation that is the basis for such liability; or 9 (2) 5 years after the date on which the violation that is the basis for such

liability occurs.” 15 10 U.S.C. § 1681p(1)–(2). “A statute-of-limitations defense, if ‘apparent from the face of the 11 complaint,’ may properly be raised in a motion to dismiss.” *Seven Arts Filmed Ent.*, 733 F.3d at 12 1254 (quoting *Conerly v. Westinghouse Elec.*

Corp., 623 F.2d 117, 119 (9th Cir. 1980)). 13 However, “statutes of limitations are affirmative defenses, not pleading requirements.” *Diamond 14 Resorts U.S. Collection Dev., LLC v. Pandora Mktg., LLC*, 656 F. Supp. 3d 1073, 1087 (C.D. 15 Cal. 2023) (quoting *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), overruled on other 16 grounds by *Albino v. Baca*, 747 F.3d 1162 (9th Cir.

2014)). In addition, on a motion to dismiss, it 17 is the defendant’s burden to prove that a reasonably diligent plaintiff would have discovered the 18 facts constituting the alleged violation. See *Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 654 19 (2010). Discovery covers facts that the plaintiff knows, as well as facts that a reasonably diligent 20 plaintiff would have known.

Id. at 644. 21 Here, Plaintiff asserts that from September 2022 through February 2023, Defendant 22 RoundPoint “falsely reported the mortgage account as 120 to 180 days delinquent.” Dkt. No. 6 23 ¶ 11. Plaintiff filed his complaint on July 28, 2025, which is within five years of the alleged 24 violation. *Id.* But Defendant asserts that Plaintiff should have discovered the violations 1 immediately, such that the two-year statute-of-limitations period should apply.

See Dkt. No. 43 2 at 8; Dkt. No. 58 at 2. 3 First, the only evidence of untimeliness that Defendant RoundPoint provides to the Court 4 are forbearance letters that it sent to Plaintiff discussing delinquency. All of these letters, 5 however, are dated within two years of when Plaintiff filed his complaint. See, e.g., Dkt. No. 43- 6 1 (Feb. 2024 Forbearance Letter); Dkt.

No. 43-2 (June 2024 Forbearance Letter); Dkt. No. 43-3 7 (Sep. 2024 Forbearance Letter); Dkt. No. 43-4 (Dec. 2024 Forbearance Letter); Dkt. No. 43-5 8 (Feb. 2025 Forbearance Letter); Dkt. No. 43-6 (Mar. 2025 Forbearance Letter).

Therefore, the 9 letters are clearly insufficient to meet Defendant’s burden of proving a discovery date within the 10 two-year statute of limitations. 11 Second, Plaintiff asserts in his reply that he did not discover the alleged misreporting 12 until October 2024. Dkt. No. 48 at 4.

The Court cannot consider this information, because “[i]t is 13 axiomatic that [a] complaint may not be amended by the briefs in opposition to a motion to 14 dismiss.” *Frenzel v. AliphCom*, 76 F. Supp. 3d 999, 1009 (N.D. Cal. 2014) (quoting *Car 15 Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1107 (7th Cir. 1984)); see also *Merriman Blum 16 v. Amazon.com, Inc.*, No. C25-977, 2025 WL 3754248, at *4 (W.D.

Wash. Dec. 29, 2025) (“A 17 plaintiff may not amend its pleading via its responsive brief.”); *Rohani v. Rubio*, No. C24-389, 18 2025 WL 1503950, at *11 (W.D. Wash. May 27, 2025)

(“Plaintiffs cannot amend their 19 complaint via a response brief.”). Nevertheless, Plaintiff’s assertion in his response brief 20 highlights that a factual dispute exists on this issue, which is not proper for the Court to resolve 21 on a motion to dismiss.

See *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1003 (9th Cir. 22 2018) (noting “prohibition against resolving factual disputes at the pleading stage”); *Dahlia v. 23 Rodriguez*, 735 F.3d 1060, 1076 (9th Cir. 2013).

The Court further notes that the case cited in 24 1 support of Defendant’s position was decided on a motion for summary judgment. See Dkt. 2 No. 43 at 8 (citing *Grigoryan v. Experian Info. Sols., Inc.*, 84 F. Supp. 3d 1044 (C.D. Cal. 2014)). 3 For these reasons, the Court finds that Defendant RoundPoint has not met its burden of 4 proving either that Plaintiff discovered the allegations, or that Plaintiff reasonably should have 5 discovered the allegations within the two-year statute-of-limitations period.

Therefore, Plaintiff’s 6 claims regarding reports about his mortgage account from September 2022 through February 7 2023 survive Defendant RoundPoint’s motion to dismiss. 8 2. December 2024 and June 2025 Alleged Delinquencies 9 Defendant RoundPoint asserts that Plaintiff’s claims regarding Defendant RoundPoint’s 10 December 2024, and June 2025 delinquency reports are false and asks the Court to take judicial 11 notice of the Parties’ applicable agreements.

Dkt. No. 43 at 8. 12 On a motion to dismiss, a court may “consider certain materials—documents attached to 13 the complaint, documents incorporated by reference in the complaint, or matters of judicial 14 notice—without converting the motion to dismiss into a motion for summary judgment.” *United 15 States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

Under incorporation by reference, a court 16 may “consider documents in situations where the complaint necessarily relies upon a document 17 or the contents of the document are alleged in a complaint, the document’s authenticity is not in 18 question and there are no disputed issues as to the document’s relevance.” *Coto Settlement v. 19 Eisenberg*, 593 F.3d 1031, 1038 (9th Cir.

2010). A document may be incorporated by reference 20 “if the plaintiff refers extensively to the document or the document forms the basis of the 21 plaintiff’s claim.” *Ritchie*, 342 F.3d at 908. 22 Plaintiff stated in his complaint that he entered into a forbearance plan, and that 23 Defendant RoundPoint failed to report Plaintiff’s account as current during and after the 24 forbearance plan, in violation of the CARES Act and CFPB guidelines.

Dkt. No. 6 ¶¶ 9–10. He 1 also alleges Defendant RoundPoint misreported him as delinquent in June 2025, while he was in 2 a trial modification plan and not yet in default on its terms. *Id.* ¶ 17. It is Defendant 3 RoundPoint’s alleged violations of the terms of the forbearance plan and trial modification plan 4 that underlie Plaintiff’s claims in Count I. In its motion, Defendant RoundPoint references the 5 forbearance plans and trial modification plan. 4 Plaintiff entered the

terms of agreement within 6 those forbearance plans as it relates to the December 2024 and June 2025 alleged delinquencies.

7 Dkt. No. 43 at 8–10. Further, the authenticity and relevance of the forbearance plans and trial 8 modification plan are not in dispute, as both Parties rely on them. Id.; see generally Dkt. No. 6. 9 As such, the Court will consider Defendant RoundPoint’s arguments and exhibits as to the 10 forbearance plans. 11 Relevant to this particular portion of Count I, Plaintiff entered several three-month 12 forbearance plans.

Dkt. No. 43 at 9. The series of three-month forbearance plans Plaintiff entered 13 and renewed ended on November 30, 2024. Id. These three-month forbearance plans did not 14 include the mortgage payment that was due in May 2024. Id. Each of the forbearance plan letters 15 sent to Plaintiff explicitly stated, “At the end of this Forbearance Plan, the amounts temporarily 16 reduced or suspended under the plan will become due in full.

At that time, all standard mortgage 17 collection outreach activities will resume.” Dkt. No. 43-1 at 2; Dkt. No. 43-2 at 2; Dkt. No. 43-3 18 at 2. The September 2024 forbearance plan ran through November 30, 2024. Dkt. No. 43-3. 19 Plaintiff did not enter another forbearance plan until December 16, 2024, meaning there was a 20 16-day window during which his mortgage was not in forbearance.

Dkt. No. 43-4 (Dec. 2024 21 Forbearance Letter). As a result, between the expiration of the September 2024 forbearance (i.e., 22 November 30, 2024), and the contract date for the new December forbearance plan (i.e., 23 4 While Plaintiff’s complaint references a forbearance plan in the singular, Plaintiff entered multiple forbearance 24 plans because he was required to reapply for forbearance when each plan ended.

See Dkt. Nos. 43-1–43-6. 1 December 16, 2024), Defendant RoundPoint asserts Plaintiff was delinquent, specifically for the 2 May 2024 mortgage payment. Dkt. No. 43 at 10. The actual forbearance plans contradict 3 Plaintiff’s allegation that the December 2024 delinquency was fabricated, especially as the 4 complaint is silent about the 16-day gap between forbearance plans and whether any payment 5 was made to bring the account out of delinquency.

6 As to the June 2025 alleged delinquency, “the parties entered into a series of forbearance 7 plans again in 2025, which culminated in the offering of a trial modification plan on April 30, 8 2025.” Id.; see also Dkt. No. 43-5 (Feb. 2025 Forbearance Letter); Dkt. No. 43-6 (Mar. 2025 9 Forbearance Letter); Dkt. No. 43-7 (Apr. 2025 Trial Plan Letter).

The April 2025 trial plan letter 10 explicitly states that Plaintiff owed \$3,677.02 on June 1, 2025. Dkt. No. 43-7 at 3. Further, 11 Defendant RoundPoint’s April 2025 letter notified Plaintiff that he was still delinquent. Id. at 5, 12 6.

The letter explicitly states, “We will continue to report the delinquency status of the loan to 13 credit reporting agencies as well as your entry into a trial period plan in accordance with the 14 requirements of the Fair Credit Reporting Act and the Consumer Data Industry Association 15 requirements.” Id. at 5 (emphasis added).

The letter goes on to notify Plaintiff that “[y]ou agree 16 that the servicer will hold the trial period payments in an account until sufficient funds are in the 17 account to pay your oldest delinquent monthly payment.” Id. at 6 (emphasis added). While 18 Plaintiff attempts to claim that he was not delinquent on June 5, 2025, due to the trial 19 modification, his complaint is silent about (1) his actually making a payment of \$3,677.02 on or 20 by June 1, 2025; and (2) that if he did make such a payment, it was enough to get him out of 21 delinquency.

See generally Dkt. No. 6. It appears Plaintiff incorrectly believed that entering a 22 trial plan meant that he was no longer delinquent. Id. ¶ 17. As a result, on June 5, 2025, 23 Defendant RoundPoint reported that Plaintiff was delinquent on his May 2024 mortgage 24 payment. Dkt. No. 43 at 10. 1 The alleged violation of the terms of the forbearance plans and trial modification plan 2 form the bases of Plaintiff’s claims in Count I. However, Defendant RoundPoint submitted to the 3 Court the actual letters sent to Plaintiff that outlined the plan agreements.

The plain language of 4 the forbearance and trial modification plans related to Defendant RoundPoint’s reporting of 5 Plaintiff’s delinquencies in December 2024 and June 2025 directly contradicts the allegations in 6 Plaintiff’s complaint.

Accordingly, the Court cannot draw the reasonable inference that 7 Defendant RoundPoint is liable for the misconduct alleged. 8 * * * 9 Therefore, the Court GRANTS IN PART and DENIES IN PART Defendant RoundPoint’s motion 10 to dismiss Count I. As to the alleged violations between September 2022 and February 2023, 11 Plaintiff has sufficiently stated a claim, thus Defendant RoundPoint’s motion is therefore 12 DENIED.

As to the alleged violations in December 2024 and June 2025, Plaintiff has failed to 13 state a claim for which relief can be granted, and Defendant RoundPoint’s motion is therefore 14 GRANTED, and the Court DISMISSES WITHOUT PREJUDICE this portion of the claim. 15 B. Count II: Violation of FCRA, 15 U.S.C. § 1681s-2(a)(1)(F), and CARES Act 16 Next, Plaintiff brings a claim under 15 U.S.C. § 1681s-2(a)(1)(F) and the CARES Act.

17 Dkt. No. 6 ¶¶ 24–25. Plaintiff attempts to amend his complaint in his reply brief by claiming that 18 he actually pleads Count II under 15 U.S.C. § 1681s-2(b). Dkt. No. 48 at 3. But Plaintiff’s 19 complaint clearly asserts 15 U.S.C. § 1681s-2(a)(1)(F) as the basis for Count II. Dkt. No. 6 at 5I. 20 As previously stated, a complaint cannot be amended in an opposition brief.

See supra Section 21 III.A.1. 22 Defendant RoundPoint correctly points out that “[t]here is no private right of action for 23 individuals against furnishers like RoundPoint under subsection (a)

of 15 U.S.C. § 1681s-2.” 24 Dkt. No. 43 at 11. Section 1681s-2(c)(1) provides, “Except as provided in section 1 1681s(c)(1)(B) of this title, sections 1681n and 1681o of this title do not apply to any violation 2 of... subsection (a) of this section, including any regulations issued thereunder[.]” 15 U.S.C. 3 § 1681s-2(c)(1).

Further, Section 1681s-2(d) provides, “The provisions of law described in 4 paragraphs (1) through (3) of subsection (c) (other than with respect to the exception described in 5 paragraph (2) of subsection (c)) shall be enforced exclusively as provided under section 1681s of 6 this title by the Federal agencies and officials and the State officials identified in section 1681s of 7 this title.” 15 U.S.C. § 1681s-2(d); see also *Dvorak v. AMC Mortg.*

Servs., Inc., No. C06-5072, 8 2007 WL 4207220, at *3 (E.D. Wash. Nov. 26, 2007) (“Enforcement of § 1681 s-2(a) is vested 9 exclusively in federal and state officials.”) (citing *Nelson v. Chase Manhattan Mortg. Corp.*, 282 10 F.3d 1057, 1059 (9th Cir.2002)).

Because Plaintiff is a private individual, he cannot bring a 11 claim under 15 U.S.C. § 1681s-2(a) (1)(F). 12 Therefore, as to Count II, Plaintiff has failed to state a claim for which relief can be 13 granted. Accordingly, the Court GRANTS Defendant RoundPoint’s motion and DISMISSES WITH 14 PREJUDICE Count II. 15 C. Count III: Violation of FCRA – 15 U.S.C. § 1681e(b) 16 Plaintiff brings this count under Section 1681e(b), which provides, “whenever a 17 consumer reporting agency prepares a consumer report it shall follow reasonable procedures to 18 assure maximum possible accuracy of the information concerning the individual about whom the 19 report relates.” 15 U.S.C. §1681e(b) (emphasis added).

In Plaintiff’s complaint, he asserts, “This 20 is an action for damages arising from the repeated, willful, and negligent violations... by 21 Defendant RoundPoint Mortgage Servicing Corporation (“RoundPoint”), and the consumer 22 reporting agencies Experian, Equifax, and TransUnion (collectively, ‘CRAs’).” Dkt. No. 6 ¶ 1. 23 (emphasis added). 24 Defendant RoundPoint makes clear it is a mortgage furnisher, not a CRA.

Dkt. No. 43 at 1 12. Nowhere in Plaintiff’s response does he address this argument that Defendant RoundPoint 2 makes. See generally Dkt. No. 48. “Failure to respond to an argument may be treated as an 3 admission that the argument has merit.” *Bds. of Trs. of the Cement Masons & Plasterers Health 4 & Welfare Tr. v. Concreteman, Inc.*, No. C13–1698, 2014 WL 1884496, at *3 (W.D.

Wash. May 5 12, 2014); see also LCR 7(b)(2). In addition, Plaintiff’s complaint itself concedes Defendant 6 RoundPoint is not a CRA, instead asserting that RoundPoint “is a mortgage loan servicer.” Dkt. 7 No. 6 at ¶ 6. Based upon the plain language of the statute, Plaintiff cannot bring a claim against 8 Defendant RoundPoint under this statute, because Defendant RoundPoint is not a consumer 9 reporting agency.

10 Therefore, as to Count III, Plaintiff fails to state a claim for which relief can be granted, 11 and the Court therefore GRANTS Defendant RoundPoint's motion and DISMISSES WITH PREJUDICE 12 Count III. 13 D. Counts IV, V, and VI: Washington Law Claims 14 Plaintiff alleges the following Washington state-law claims: Count IV—negligent 15 misrepresentation; Count V—intentional infliction of emotional distress (“outrage”); and Count 16 VI—violation of Washington Consumer Protection Act, Chapter 19.86 RCW 19.86.

Dkt. No. 6 17 at 5–6. Defendant RoundPoint argues that all Washington state-law claims should be dismissed 18 because a provision in the FCRA, 15 U.S.C. § 1681t(b)(1)(F), preempts any state law claim. Dkt. 19 No. 43 at 12.

In response, Plaintiff asserts that he is allowed to proceed with his claims because 20 “Section 1681h(e) allows state tort claims where the furnisher acted with ‘malice or willful intent 21 to injure.’” Dkt. No. 48 at 4. Plaintiff goes on to argue that because Defendant RoundPoint 22 knowingly furnished false delinquencies, even after admitting that its prior reporting was wrong, 23 Defendant RoundPoint's actions were with malice or willful intent to injure and, therefore, 24 survive.

Id. 1 The FCRA includes two provisions—15 U.S.C. §§ 1681h(e) and 1681t(b)(1)(F)—that 2 restrict state-law claims against furnishers of information. Section 1681h(e), which Plaintiff 3 relies on, states, 4 Except as provided in sections 1681n and 1681o of this title, no consumer may bring any action or proceeding in the nature of 5 defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, 6 any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed 7 pursuant to section 1681g, 1681h, or 1681m of this title, or based on information disclosed by a user of a consumer report to or for a 8 consumer against whom the user has taken adverse action, based in whole or in part on the report except as to false information 9 furnished with malice or willful intent to injure such consumer.

10 15. U.S.C. § 1681h(e). On the other hand, section 1681t(b)(1)(F) states, “No requirement or 11 prohibition may be imposed under the laws of any State with respect to any subject matter 12 regulated under section 1681s-2 of this title, relating to the responsibilities of persons who 13 furnish information to consumer reporting agencies[.]” Id. § 1681t(b)(1)(F).

Pertinent to 14 Defendant RoundPoint, which is a furnisher of information to CRAs, section 1681s-2 governs 15 the “[d]uty of furnishers of information to provide accurate information.” Id. § 1681s-2(a). 16 While Section 1681h(e) implies that some state-law claims can proceed, section 17 1681t(b)(1)(F) indicates that all state-law claims are preempted. Courts use three approaches to 18 interpret the two FCRA provisions: the total preemption approach, the statutory approach, and 19 the temporal approach.

Shiver v. Ally Fin., No. C19-0189, 2019 WL 2902500, at *3 (C.D. Cal. 20 Feb. 22, 2019); Subhani v. JPMorgan Chase Bank, Nat'l Ass'n, No. C12-1857, 2012 WL 21 1980416, at *3 (N.D. Cal. June 1, 2012). Plaintiff asserts that "[t]he Ninth Circuit recognizes 22 such claims as outside FCRA preemption," citing Gorman v. Wolpoff & Abramson, LLP, 584 23 F.3d 1147, 1168–69 (9th Cir.

2009). Dkt. No. 48 at 4. However, Plaintiff is incorrect. Instead, the 24 Ninth Circuit in Gorman declined to adopt an approach, stating, "Attempting to reconcile the two 1 sections has left district courts in disarray," and holding that, "In the end, we need not decide this 2 issue." Gorman, 584 F.3d at 1166–67. 3 Notably, "[t]he majority of courts in the Ninth Circuit have favored the total preemption 4 approach, determining that § 1681t(b)(1)(F) totally preempts all state statutory and common law 5 causes of action which fall within the conduct proscribed under § 1681s–2." Shiver, 2019 WL 6 2902500, at *3 (internal quotation marks removed) (collecting cases); see also Mohamed v. Navy 7 Fed.

Credit Union, No. C25-4174, 2025 WL 2337124, at *3 (N.D. Cal. Aug. 12, 2025) 8 (dismissing complaint, including a state-law defamation claim, because "[t]he majority of district 9 courts in the Ninth Circuit favor the total preemption approach."). Further, the circuit courts that 10 have addressed this issue also have found state statutory and common-law causes of action based 11 upon conduct regulated under § 1681s–2 to be completely preempted by § 1681t(b)(1)(F).

See 12 Hennessey v. Radius Glob. Sols. LLC, No. C24-5654, 2024 WL 5119824, at *11 (W.D. Wash. 13 Dec. 16, 2024) (citing Purcell v. Bank of America, 659 F.3d 622, 624–25 (7th Cir. 2011) and 14 Macpherson v. JP Morgan Chase Bank, N.A., 665 F.3d 45, 48 (2d Cir. 2011)). This Court agrees 15 and joins these courts in adopting the total preemption approach. 16 Courts will typically allow pro se plaintiffs to amend their complaints in lieu of dismissal 17 unless amendment would be futile because no set of facts can cure the deficiencies.

Yagman, 852 18 F.3d at 867. Here, because the claims are preempted, amendment would be futile, and the claims 19 must be dismissed with prejudice. 20 Therefore, the Court GRANTS Defendant RoundPoint's motion and DISMISSES WITH 21 PREJUDICE Counts IV, V, and VI, because they are preempted state-law claims. 22 * * * 23 Because courts typically allow pro se plaintiffs to amend their complaints in lieu of 24 dismissal, see id., the Court GRANTS Plaintiff leave to file an amended complaint in this case that 1 consistent with this Order (1.e., Plaintiff cannot include any claims the Court has dismissed 2 || with prejudice).

3 IV. CONCLUSION 4 Accordingly, Defendant RoundPoint's Motion to Dismiss (Dkt. No. 43) is GRANTED IN 5 || PART and DENIED IN PART. It is hereby ORDERED: 6 (1) As to Count I: (1) the claims between September 2022 and February 2023, 7 Defendant RoundPoint's motion to dismiss 1s DENIED; and (2) the claims from 8 December 2024 and June 2025, Defendant RoundPoint's motion to dismiss is 9 GRANTED but DISMISSED WITHOUT PREJUDICE.

10 (2) As to Counts II, III, IV, V, and VI, Defendant RoundPoint's motion to dismiss is 11 GRANTED, and these Counts are DISMISSED WITH PREJUDICE. 12 (3) Plaintiff is GRANTED leave to amend his complaint as to Count I within 30 days of 13 this Order.

Therefore, any amended complaint is due by February 25, 2026. If 14 Plaintiff fails to file an amended complaint by February 25, 2026, his case 15 SHALL proceed (1) against Defendant Roundpoint only with respect to Count 16 I and Plaintiff's claims regarding the reporting about his mortgage account 17 between September 2022 and February 2023 and (2) against all other 18 Defendants with respect to Counts I and ITI.

19 20 Dated this 26th day of January, 2026. 22 Tana Lin 73 United States District Judge 24 ORDER ON MOTION To DISMISS — 15