

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
NEW YORK

**Divon Daniel Wray v. Experian Information Solutions, Inc., et al.**

Wray · No. 1:25-CV-1393 (MAD/MJK) · Decided February 20, 2026

SUMMARY

This Order and Report-Recommendation addresses Divon Daniel Wray’s pro se Fair Credit Reporting Act claims against Experian Information Solutions, Equifax Information Services, and TransUnion. The court recommends dismissal without prejudice and with leave to amend, concluding that Wray failed to allege a concrete injury sufficient for Article III standing and failed to plead plausible claims under the FCRA. The court grants Wray’s application to proceed in forma pauperis and recommends a 45-day period for amendment if the district court adopts the recommendation.

OPINION

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK Divon Daniel Wray, sss—<—sSSSSSS Plaintiff, V. 1:25-CV-1393 (MAD/MJK) Experian Information Solutions, Inc. et al. Defendants. Divon Daniel [REDACTED] Mitchell J. Katz, U.S. Magistrate Judge To the Honorable Mae A. D’Agostino, U.S. District Court Judge ORDER & REPORT-RECOMMENDATION On October 7, 2025, Divon Daniel Wray began this action by filing a Complaint.

(Dkt. 1). He also moved for leave to proceed in forma pauperis (“IFP”). (Dkt. 2). Wray alleges violations of the Fair Credit Reporting Act (“FCRA”). 15 U.S.C. § 1681 et seq. The Clerk sent Wray’s Complaint and [FP application to this Court for review. (Dkts. 1, 2).

I. BACKGROUND Wray sues Experian Information Solutions, Inc., Equifax Information Services, LLC, and TransUnion, LLC, (“Defendants”) under the FCRA alleging violations of 15 U.S.C. §§ 1681. (Dkt. 1 at 2-3 and 4f 7-9).! Wray claims that Defendants operate as “consumer reporting agencies.” U/d.). Wray further alleges that on August 12, 2025, he submitted “disputes” to Defendants relating to an allegedly fraudulent Verizon account that appeared on his credit reports.

(Dkt. 1 at 4 8). About two months after submitting his disputes, Wray filed this Complaint. (Dkt. 1 at 1). In his Complaint, Wray argues that Defendants violated the FCRA in five different ways. (Dkt. 1 at J 6- 28).

First, that Defendants “failed to follow reasonable procedures to assure maximum possible accuracy of the information they reported regarding [Wray],” in violation of 15 U.S.C. § 1681e(b).

(Dkt. 1 at 94 33- 34). As examples, Wray alleges that details of a Department of Education account, Mohela account, and Lead Bank account are inconsistent or absent from his credit reports.

(Dkt. 1 at 4] 18-20). 1 The page numbers cited are those produced by the Electronic Case Filing “ECF”) system. Second, Wray claims that Defendants failed to conduct reasonable reinvestigations after his disputes, in violation of 15 U.S.C. § 1681i. (Dkt. 1 at § 41).

In his words: “Defendants merely ‘parroted’ information received from the furnishers without independently reevaluating the extensive information and proof provided by Wray.” (Dkt. 1 at ¶ 18). Third, that Defendants “failed to block information resulting from identity theft,” in violation of 15 U.S.C. § 1681c-2. (Dkt. 1 at §§] 50-51). Fourth, that Defendants did not maintain reasonable procedures to prevent reinsertion, and unlawfully reinserted, previously deleted information onto his credit reports, in violation of 15 U.S.C § 1681(a)(5)(b).

(Dkt. 1 at 420). For this argument, Wray’s Complaint includes a list of several accounts that had been allegedly deleted and reinserted into his various credit reports. (Dkt. 1 at 4] 21-23). Fifth, that Defendants improperly disclosed his credit reports because of several allegedly unauthorized credit inquiries. (Dkt. 1 at { 63). Wray argues that Defendants’ violation of the FCRA entitle him to “actual damages in an amount to be determined at trial, but not less than \$74,000; statutory damages for each willful violation of the FCRA pursuant to 15 U.S.C. § 1681n; costs of this action and reasonable attorney’s fees pursuant to 15 U.S.C. §§ 1681n and 1681o;” injunctive relief; and “other and further relief that the Court may deem just and proper.” (Dkt.

1 at § 65) (cleaned up). II. FP APPLICATION Wray declares that he is unable to pay the filing fee in his JFP application. (Dkt. 2). After reviewing his application and supporting documents, this Court finds that Wray is financially eligible for JF’P status.

I. STANDARD OF REVIEW Alongside determining whether Wray meets the financial criteria to proceed JFP, the Court must also consider whether Wray’s complaint sets forth sufficient allegations considering 28 U.S.C. § 1915. That Section provides that the Court may dismiss a complaint, or a portion of the complaint, at any time if the Court determines that the action is (i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915 (e)(2)(B)(i)-(ii). To determine if an action is frivolous, the Court must consider whether the complaint lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), abrogated on other grounds by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and 28 U.S.C. § 1915. Dismissal of frivolous actions prevents abuse of court process and discourages the waste of judicial resources.

Neitzke, 490 U.S. at 327; *Harkins v. Eldredge*, 505 F.2d 802, 804 (8th Cir. 1974) (per curiam). While true that the Court must show liberality toward pro se litigants— and must use extreme caution in ordering sua sponte dismissal of a pro se complaint before the adverse party has been served and has had an opportunity to respond—the court still has a responsibility to determine that a claim is not frivolous before permitting the action to proceed.

*Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 363 (2d Cir. 2000) (per curiam) (finding that a district court may dismiss a frivolous complaint sua sponte even when plaintiff has paid the filing fee). IV. DISCUSSION The Court recommends that the District Court dismiss Wray's Complaint for two reasons.

First, Wray has failed to allege any “concrete” injury sufficient to confer standing. Second, Wray has not adequately stated claims under the FCRA. Therefore, the Court recommends that the District Court dismiss Wray's Complaint. A. The District Court should Dismiss Wray's Complaint because he has not alleged a “concrete” injury sufficient to confer standing.

The District Court should dismiss Wray's Complaint because he fails to allege any injury sufficient to confer standing. To have standing, a plaintiff must allege an injury in fact that is concrete and particularized.

Here, Wray has not pleaded a concrete and particularized injury. So, the District Court should dismiss his Complaint for lack of standing. Wray's Complaint alleges no injury sufficient to confer standing. To establish standing, “a plaintiff must show,” among other things, “an ‘injury in fact.’” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157- 58 (2014) (quotation omitted).

An injury must be “concrete and particularized” and “actual or imminent,” not “conjectural or hypothetical.” *Jd.* at 158. Concerning the FCRA specifically, “a bare procedural violation, divorced from any concrete harm fails to satisfy the injury-in-fact requirement of Article III.” *Zlotnick v. Equifax Info. Serus., LLC*, 583 F. Supp. 3d 387, 391 (E.D.N.Y. 2022) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016), as revised (May 24, 2016) (cleaned up).

At the pleading stage “standing allegations need not be crafted with precise detail, nor must the plaintiff prove the allegations of his injury.” *Fin. Guar. Ins. Co. v. Putnam Advisory Co., LLC*, 783 F.3d 395, 401-02 (2d Cir. 2015) (quotation omitted). But still, a plaintiff must answer the core question of standing: “What's it to you?” See *FDA uv. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024) (citation omitted).

And to answer that question, a plaintiff must allege facts “that affirmatively and plausibly suggest that he has standing to sue.” *Amidax Trading Grp. v. S.W.LF.T. SCRL*, 671 F.3d 140, 145 (2d Cir. 2011). Wray's Complaint does not plausibly allege facts suggesting that he has standing as to any of his five claims.

For each FCRA claim, Wray states the required elements. See (Dkt. 1 at §[] 31-64). He further asks for “[actual] damages,” “[p]unitive damages,” and “[c]osts of this action and reasonable attorney’s fees. (Dkt. 1 at 4 65) (cleaned up).

For example, he alleges that the Defendants’ alleged violations are “sufficient to mislead prospective creditors acting reasonably under the circumstances and to adversely affect credit decisions regarding the Plaintiff”? (Dkt. 1 at 935), but he does not allege that he has actually suffered any adverse credit decisions. Similarly, he alleges that the Defendants’ violations “have directly and proximately caused Plaintiff to suffer concrete damages” (Dkt.

1 at 9/44, 51) but does not plead these damages. Wray does not allege any facts suggesting that he has suffered any “concrete and particularized” harm sufficient to confer standing. See *Amidax*, 671 F.3d at 145 (a plaintiff must allege facts “that affirmatively and plausibly suggest that [she] has standing to sue.”). And without allegations linking Defendants’ actions to any harm, Wray’s Complaint contains nothing more than a list of alleged procedural violations followed by “unadorned, the-defendant- unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 622, 678 (2008).

Without more, this is insufficient to confer standing. See *Gross v. TransUnion, LLC*, 607 F. Supp. 3d 269, 273 (E.D.N.Y. 2022) (cleaned up) (explaining that a plaintiff fails to establish standing if “[t]he alleged harms are not expenses, costs, any specific lost credit opportunity, or specific emotional injuries.”). At bottom, the District Court should dismiss Wray’s Complaint because his conclusory allegations fail to show how Defendants’ alleged errors caused Wray to suffer a “concrete and particularized harm.” B. The District Court should dismiss Wray’s Complaint because he has not pleaded sufficient facts to survive this initial review.

Should the District Court decide that Wray has standing, the Court recommends that the District Court dismiss the Complaint because Wray has failed to plausibly allege sufficient facts for any claim under the FCRA. Below, the Court will discuss each of Wray’s FCRA allegations. 1. Wray fails to allege that Defendants followed improper procedures while generating and reinvestigating his credit reports.

The District Court should dismiss Wray’s Complaint because he fails to plausibly plead that Defendants’ have violated 15 U.S.C. §§ 1681e(b) and 1681i. Section 1681e(b) requires a plaintiff to show that a defendant lacked reasonable procedures to assure credit accuracy. Section 1681i requires a plaintiff to show that a defendant lacked reasonable procedures to reinvestigate disputed credit information.

Because Wray’s Complaint fails to plausibly allege that Defendants’ lack reasonable investigation and reinvestigations procedures, he has failed to state a claim. Therefore, the Court recommends that the District Court dismiss Wray’s Complaint. Wray has not plausibly pleaded that Defendants

violated Section 15 U.S.C. § 1681e(b). Section 1681e(b) creates liability if a credit reporting agency (“CRA”) fails “to follow reasonable procedures to assure maximum possible accuracy.” 15 U.S.C. § 1681e(b).

To raise a claim under § 1681e(b), a plaintiff must show that “(1) the consumer reporting agency was negligent [or willful] in that it failed to follow reasonable procedures to assure the accuracy of its credit report; (2) the consumer reporting agency reported inaccurate information about the plaintiff; (3) the plaintiff was injured; and (4) the consumer reporting agency’s negligence [or willfulness] proximately caused the plaintiff’s injury.” *Taylor v. Experian Info.*

*Sols., Inc.*, 5:24-CV-188 (DNH/MJK), 2024 WL 618741, at \*4 (N.D.N.Y. Feb. 14, 2024) (citations omitted). Wray has not plausibly stated a claim under Section 1681(e)(b). Rather, 10 Wray simply states that he has “identified significant inconsistencies in the reporting of accounts across all three Defendants’ credit reporting systems, further evidencing their failure to maintain reasonable procedures to assure maximum possible accuracy.” (Dkt. at §]7) (cleaned up).

Indeed, Wray appears to argue that because there were alleged errors, Defendants’ must not have maintained reasonable procedures. That is not enough. See *Gaft v. Mitsubishi Motor Credit of Am.*, No. 07- CV-527, 2009 WL 3148764 (S.D.N.Y. Sept. 22, 2009) (explaining that an “inaccurate entry of credit information, in and of itself, is not a violation of the FCRA; rather... [the] plaintiff must allege that the [CRA] failed, through negligence or intention, to follow reasonable procedures to ensure the accuracy of the information.”).

Wray’s Section 16811 claim fares no better. Section 16811 creates procedures that CRAs must follow to investigate disputes concerning the accuracy of reported information. These procedures include reinvestigating a consumer’s record within a reasonable period after a consumer “directly conveys’ a dispute about the “completeness or accuracy of an item on his credit report” to the consumer reporting agency.

*Podell v. Citicorp Diners Club*, 112 F.3d 98, 101 (2d Cir. 1997) (citing 15 U.S.C. § 16811(a)). What constitutes a 11 “reasonable” reinvestigation depends on the circumstances of the allegations. See *Jones v. Experian Info. Solutions, Inc.*, 982 F. Supp. 2d 268, 272 (S.D.N.Y. 2018) (citation omitted).

Here, Wray fails to make any plausible claims regarding Defendants’ reinvestigation procedures. Wray states that “Defendants’ conducted ‘sham’ reinvestigations by merely parroting information received from furnishers without conducting an independent evaluation of the disputed information and [his] evidence.” (Dkt. 1 at 42). But Wray fails to allege any facts concerning the specific procedures that Defendants took to reinvestigate his allegedly inaccurate credit reports.

See *Nguyen v. Ridgewood Sav. Bank*, No. 14-CV-1058, 2015 WL 2354308, at \*11 (E.D.N.Y. May 15, 2015) (dismissing plaintiffs complaints because he “fail[ed] to make any allegations regarding

either the procedures followed or investigations by Trans Union, Equifax or Experian... in order to support a Section 1681i claim.”).

As it stands, Wray’s Section 1681i arguments rest on “naked assertion[s]” devoid of “further factual enhancement” which is not enough to show “grounds” for any “entitlement to relief.” *Twombly*, 550 U.S. at 555, 557 (2006). And so, the District Court should dismiss Wray’s 15 U.S.C. §§ 1681e(b) and 1681i claims because he has failed to state a claim upon which relief can be granted.

2. Wray has failed to state a claim under 15 U.S.C. § 1681c-2. The District Court should dismiss Wray’s Complaint because he fails to plausibly plead that Defendants violated 15 U.S.C. § 1681c-2 which requires a CRA to block credit information that the consumer identifies as resulting from identity theft.

Because it is unclear whether Wray submitted the required paperwork to trigger Defendants’ duty to block his credit information, he has failed to state a claim upon which relief can be granted. Therefore, the Court recommends that the District Court dismiss Wray’s Complaint.

Under Section 1681c-2, a CRA has a duty to “block the reporting of any information” in a consumer’s file that the consumer identifies as resulting from identity theft. To trigger the CRA’s duty to block the reporting of information, the consumer must provide the CRA with “(1) proof of the identity of the consumer; (2) a copy of the identity theft report; (3) the identification of the information resulting from the alleged identity theft; and (4) a statement by the consumer affirming that the disputed information does not relate to any transaction by the consumer.” *Phipps v. Experian*, No. 20-CV-3368, 2020 WL 3268488, at \*4 (S.D.N.Y. June 15, 2020) (quoting 15 U.S.C. § 1681c-2(a)). Although Wray claims that he has submitted some of the required paperwork—like a Federal Trade Commission Identity Theft Report—he has not alleged additional facts sufficient to plausibly state that Defendants violated their FCRA duties. And like his 15 U.S.C. §§ 1681e(b) and 1681i claims, Wray fails “to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570.

Therefore, the Court recommends dismissing Wray’s complaint. See *Phipps*, 2020 WL 3268488, at \*4 (noting that it is “unclear from the complaint whether [the pro se plaintiff] provided [the defendant-CRA] with the required information” and granting the plaintiff leave to amend “and plead facts showing that he provided [the defendant-CRA] with the information required under § 1681c-2(a) and that it failed to comply with its duties under the statute”).

The FTC Identity Theft Report is attached to the Complaint at Dkt. 1, p. 22. A review of this exhibit reveals that it lacks material details that are required to plead a claim under this section of the FCRA. 3. Wray fails to state a claim under 15 U.S.C. § 1681b because he does not plausibly allege that Defendants provided his credit report to third parties.

The Court recommends that the District Court dismiss Wray's Complaint because he fails state a claim under 15 U.S.C. § 1681b. To plausibly plead a Section 1681b claim, a plaintiff must show that credit information was improperly disseminated to third parties and that the defendant did not maintain reasonable procedures to prevent credit information dissemination.

Wray has failed to plausibly plead either. Therefore, the Court recommends that the District Court dismiss Wray's Complaint. "Section 1681b generally specifies the circumstances under which a consumer report may be furnished and used and protects consumer privacy by limiting access to consumer credit reports." *Moore v. Experian*, No. 23-CV-673, 2023 WL 7169119, at \*5 (S.D.N.Y. Oct. 18, 2023), report and recommendation adopted, 2023 WL 7166158 (S.D.N.Y. Oct. 31, 2023) (cleaned up). Section 1681b differs from other FCRA provisions because "liability under Section 1681b typically attaches to third parties who willfully or negligently 'use or obtain' a consumer report for an impermissible purpose." *Id.* (cleaned up). Still, liability 15 may attach to a CRA where a third party accessed or used a consumer report for an impermissible purpose provided the CRA "either willfully or negligently fail[ed] to maintain reasonable procedures designed to avoid violations of" Section 1681b.

*Pietrafesa v. First Am. Real Estate Info. Servs.*, No. 1:05-CV-1450 (LEX), 2007 WL 710197, at \*3 (N.D.N.Y. Mar. 6, 2007) (cleaned up). To determine whether the CRA maintained reasonable procedures, "the standard of conduct is what a reasonably prudent person would do under the circumstances." *Hines v Equifax*, No. 19-CV-6701, 2022 WL 2841909, at \*23 (E.D.N.Y. July 16, 2022) (cleaned up).

Wray does not plausibly allege a § 1681b claim against Defendants because the Complaint does not allege that Defendants provided his consumer report to a third party, "which is fatal to any claim that [Defendants] impermissibly shared [his] report." *Moore*, 2023 WL 7169119, at \*6.

On this basis alone, Wray's Complaint is subject to dismissal. That said, Wray's Complaint does provide a list of alleged credit inquiries made without any "permissible purpose." See (Dkt. 1 at 63- 64). But his claim still fails because he does not plausibly allege that 16 Defendants "either willfully or negligently fail[ed] to maintain reasonable procedures" to prevent an improper furnishing of information.

*Pietrafesa*, 2007 WL 710197, at \*38. Indeed, "[m]erely stating that the violation was 'willful' or 'negligent' without more is insufficient." *Perez v. Experian*, No. 20-CV-9119, 2021 WL 4784280, at \*11 (S.D.N.Y. Oct. 14, 2021) (citation omitted).

Because Wray does not plausibly allege that his credit information was disseminated to third parties, the District Court should dismiss his Complaint. But even if Wray had plausibly alleged that his credit information was disseminated to third parties, his claim would still fail because he has not alleged that a third party sought or used his information for an impermissible purpose.

See Taylor, 2024 WL 618741. Moreover, Wray has failed to plausibly plead facts to support the allegations that Defendants willfully or negligently failed to maintain reasonable procedures to prevent improper furnishing of information. See *Perl v. Am. Exp.*, No. 11-CV-7374, 2012 WL 1783338, at \*2 (S.D.N.Y. Jan. 19, 2012) (dismissing part of the pro se plaintiffs' complaint because they did not provide enough additional facts for the court to infer willful or negligent violations of the FCRA).

17 In the end, Wray has pleaded no facts suggesting that Defendants disseminated his credit information to third parties. Wray has also not pleaded any facts suggesting that even if Defendants had disseminated his credit information, they acted with anything other than good faith.

In consequence, the District Court should dismiss Wray's Complaint because he has failed to state a claim under 15 U.S.C. § 1681b. 4. Wray's 15 U.S.C. § 1681i(a)(5)(A) claim fails because he does not allege that Defendants improperly reinserted information after reinvestigation.

The District Court should dismiss Wray's Complaint because he fails to plausibly allege that Defendants have violated 15 U.S.C. § 1681i(a)(5)(A). Section 1681i(a)(5)(A) requires a plaintiff to plausibly plead that a CRA improperly reinserted credit information into a credit report. Wray has not done so.

Therefore, the Court recommends that the District Court dismiss Wray's Complaint. Section 1681i(a)(5)(A) of the FCRA requires that a consumer reporting agency delete information disputed by a consumer from the consumer's file if that information cannot be verified pursuant to a "reinvestigation under paragraph (1)." 15 U.S.C. § 1681i(a)(5)(A)(); see also *id.* § 1681i(a)(1).

Section 1681i(a)(5)(B) provides: "If any information is deleted from a consumer's file pursuant to subparagraph 18 (A), the information may not be reinserted in the file by the consumer reporting agency unless the person who furnishes the information certifies that the information is complete and accurate." *Id.* § 1681i(a)(5)(B)G). And if a consumer reporting agency reinserts any previously deleted information, it must "notify the consumer of the reinsertion in writing not later than 5 business days after the reinsertion." *Id.* § 1681i(a)(5)(B)(1i); see also *Phipps*, 2020 WL 3268488, at \*2 (S.D.N.Y.

June 15, 2020) (describing FCRA reinsertion procedure). So, to state a valid claim for failure to notify under Section 1681i(a)(5)(B), "the re-reported information must have been deleted pursuant to a § 1681i(a)(1) reinvestigation." *Wimberly v. Experian Info. Sols.*, No. 1:18-CV-6058, 2021 WL 326972 (S.D.N.Y. Feb. 1, 2021) (quotation omitted). Wray's proposed reinsertion claim fails for two reasons.

First, Wray does not plausibly allege that Defendants reinserted previously deleted information regarding a tradeline that had previously been deleted. (Dkt. 1 at 954-60). And because the

tradeline was not deleted from Wray's file pursuant to a reinvestigation, any alleged reinsertion did not trigger the notice requirement.

Therefore, Defendants cannot be liable for failure to notify Wray of reinserted information. See *Wimberly*, 2021 WL 326972. Second, even if the alleged reinsertion did trigger the notice requirement, Wray has not pleaded any injury whatsoever for this claim. See (Dkt. 1 at 454-60). And a plaintiff must show, among other things, a concrete and particularized injury to "affirmatively and plausibly suggest that he has standing to sue." *Amidax*, 671 F.3d at 145.

Because Wray fails to plead any injury under this count, the Court recommends that the District Court dismiss Wray's Complaint. V. OPPORTUNITY TO AMEND Generally, before the court dismisses a pro se complaint or any part of the complaint sua sponte, the court should afford a plaintiff the opportunity to amend at least once; however, leave to re-plead may be denied where any amendment would be futile.

See *Ruffolo v. Oppenheimer & Co.*, 987 F.2d 129, 131 (2d Cir. 1993). Futility is present when the problem with plaintiffs causes of action is substantive such that better pleading will not cure it. See *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (citation omitted). 20 Here, the Court recommends that Wray be allowed to amend his Complaint because he may be able to plead facts that give him standing and that invoke one or more of the statutory sections that he references.

VII. CONCLUSION WHEREFORE, based on the findings above, it is ORDERED, that Wray's motion to proceed in forma pauperis (Dkt. 2) is granted; and it is further RECOMMENDED, that the Complaint (Dkt. 1) be DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO AMEND; and it is further RECOMMENDED, that if the District Court adopts this recommendation, Wray be given forty-five (45) days to amend their Complaint to the extent authorized, and that Wray be advised that any amended pleading must be a COMPLETE PLEADING, WHICH WILL SUPERSEDE THE ORIGINAL, and that Wray must include all remaining facts and causes of action in the amended complaint.

No facts or claims from the original complaint may be incorporated by reference; and it is further 21 RECOMMENDED, that if the District Court adopts this recommendation, and Wray does not elect to amend their Complaint within the imposed deadline, the case be dismissed in its entirety, with prejudice; and it is further RECOMMENDED, that if the District Court adopts this recommendation, and Wray files a proposed amended complaint, the proposed amended complaint be returned to me for review of the amended complaint and any orders relating to service on the Defendants, and it is ORDERED that the Clerk provide Wray with a copy of this Report- Recommendation and Order, along with copies of the unpublished decisions cited herein in accordance with the Second Circuit decision in *Lebron v. Sanders*, 557 F.3d 76 (2d Cir.

2009) (per curiam). Pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.1(c), the parties have fourteen (14) days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court. FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW. *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir.

1998) (citation omitted); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72. Nyyeckel} Ke Digitally signed by \ Mitchell J Katz Date: 2026.02.20 Dated: February 20, 2026 1003.12 -05'00! Hon. Mitchell J. Katz > U.S. Magistrate Judge 2024 WL 618741 In determining whether an action is frivolous, the court must 2024 WL 618741 consider whether the complaint lacks an arguable basis in Only the Westlaw citation is currently available. law or in fact.

*Neitzke v. Williams*, 490 U.S. 319, 325 (1989), United States District Court, N.D. New York. abrogated on other grounds by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and 28 U.S.C. § 1915. Dismissal of frivolous *Sharmell TAYLOR*, Plaintiff, actions is appropriate to prevent abuses of court process as V. well as to discourage the waste of judicial resources.

*Neitzke*, *EXPERIAN INFORMATION* 490 U.S. at 327; *Harkins v. Eldredge*, 505 F.2d 802, 804 (8th SOLUTIONS, INC., Defendant, Cir. 1974). Although the court has a duty to show liberality toward pro se litigants and must use extreme caution in 5:24-CV-188 (DNH/MJK) ordering sua sponte dismissal of a pro se complaint before the | adverse party has been served and has had an opportunity to Signed February 14, 2024 respond, the court still has a responsibility to determine that a claim is not frivolous before permitting a plaintiff to proceed.

*Attorneys and Law Firms Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 363 (2d Cir. 2000) (finding that a district court may dismiss *SHARMELL TAYLOR*, Plaintiff, pro se. a frivolous complaint sua sponte even when plaintiff has paid the filing fee). ORDER and REPORT-RECOMMENDATION To survive dismissal for failure to state a claim, the complaint Mitchell J. Katz, United States Magistrate Judge must contain sufficient factual matter, accepted as true, to ° state a claim that is “plausible on its face.” *Ashcroft v. \*1 The Clerk has sent to the court for review a pro se Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*

*Corp. v. complaint filed by plaintiff Sharmell Taylor*, in which she ly, 550 U.S. 544, 570 (2007)). “Threadbare recitals has asserted claims against defendant Experian Information of the elements of a cause of action, supported by mere Solutions INC (“Experian”) under the Fair Debt Collection conclusory statements, do not suffice.” /d. (citing *Bell Atl. Practices Act (FDCPA)*, 15 U.S.C. § 1692; the Fair Credit ©0/”P-» 950 U.S. at 555).

Reporting Act (FCRA), 15 U.S.C. § 1681; and state law. (Dkt. No. 1) (“Compl.”). Plaintiff has also moved to proceed in In addition, Fed. R. Civ. P. 8(a)(2) requires that a pleading forma pauperis (“IFP”). (Dkt. No. 2). contain a “short and plain statement of the claim showing that the

pleader is entitled to relief.” Although Rule 8 does not require detailed factual allegations, it does “demand[ ] I. IFP Application more than an unadorned, the-defendant-unlawfully-harmed-Plaintiff declares in her IFP application that she is unable me accusation.” *Houston v. Collerman*, No. 9:16-CV-1009 to pay the filing fee.

(Dkt. No. 2). After reviewing her (BKS/ATB), 2016 WL 6267968, at \*2 (N.D.N.Y. Oct. 26, application and supporting documents, this court finds that 2016) (quoting *Ashcroft*, 556 U.S. at 678). A pleading that plaintiff is financially eligible for IFP status. contains allegations that “ “are so vague as to fail to give the defendants adequate notice of the claims against them’ However, in addition to determining whether plaintiff meets is subject to dismissal.” /d. (citing *Sheehy v. Brown*, 335 F. the financial criteria to proceed IFP, the court must also App'x 102, 104 (2d Cir.

2009)). The court will now turn consider the sufficiency of the allegations set forth in the — to a consideration of plaintiffs complaint under the above complaint in light of 28 U.S.C. § 1915, which provides that standards. the court shall dismiss the case at any time if the court determines that the action is (i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) TI.

Complaint seeks monetary relief against a defendant who is immune \*2 Plaintiff alleges that defendant Experian operates a from such relief. 28 U.S.C. § 1915 (e)(2)(B)(i)-(iii). “credit collection agency.” (Compl. at 7). ' Plaintiff further states that on October 18, 2023, she sent a “dispute” to Experian, “disputing the reporting of transactions on 2024 WL 618741 the plaintiffs consumer report that were not authorized seeks injunctive relief in the removal of the disputed account to be furnished by the consumer.” (/d.).

On November from the consumer report. (/d.). 2, 2023, Experian “responded to the plaintiff sending out dispute results.” (/d.). On December 3, 2023, plaintiff reached out to Experian for the second time regarding DISCUSSION the transactions still being reported on the consumer report without authorization.” (/d.).

On December 22, Il. The Fair Debt Collection Practices Act 2023, Experian “responded with an identical letter and the The FDCPA prohibits deceptive and misleading practices by transactions were still being reported.” (/d. at 7-8). “debt collectors.” *Anderson v. Experian*, No. 19-CV-8833, 2019 WL 6324179, at \*2 (S.D.N.Y. Nov. 26, 2019) (quoting 1 The page numbers cited are those produced by the 15 U.S.C. § 1692e).

The statute seeks to “eliminate abusive Electronic Case Filing (“ECF”) system. debt collection practices by debt collectors, to insure that.... those debt collectors who refrain from using abusive debt The complaint alleges four counts against Experian.

First,.. we. □: collection practices are not competitively disadvantaged, and plaintiff states a cause of action for “Defamation of Character.. Per Se.” (id. at 6). Specifically, plaintiff alleges that to

promote consistent State action to protect consumers from abusive debt collection practices.” *Kropelnicki v. Siegel*, 290 F.3d 118, 127 (2d Cir. 2002).

(quoting 15 U.S.C. § 1692(e)) and damaging statements about the plaintiff.” (*Id.*). Plaintiff... ce. h It of Experian's defamation (internal quotation marks omitted). “To accomplish these states | at, as a result of Experian's actions, the FDCPA creates a private right of action for debtors plaintiff has suffered “negligent infliction of emotional and.. gs fi ‘al di » Id who have been harmed by abusive debt collection practices. financial distress.” (*Id.*).

*Anderson v. Experian*, 2019 WL 6324179, at \*2 (citing 15 U.S.C. § 1692k). Plaintiff next asserts a cause of action for “Negligent Enablement of a Fraud.” at a ean “To establish a violation under the FDCPA, three elements that Experian's- allure to Investigate submitted’ dispute must be proven: ‘(1) the plaintiff [must] be a ‘consumer’ “enabled identity fraud” against her, and, as a result | i laintif? h fered “nevlivent who allegedly owes the debt or a person who has been the ° fi ot nes sland aunt tie su □□ neengen object of efforts to collect a consumer debt, (2) the defendant infliction of emotional and financial distress.

(*Id.* collecting the debt must be considered a “debt collector,” and third faction is b ht under the FDCPA (3) the defendant must have engaged in an act or omission os “trale wee Tous wa a “1 in violation of the FDCPA's requirements.’ ” *Skvarla v. ‘ eIEDCPAT ihe a ee t collector as MRS BPO, LLC*, No. 21-CV-55, 2021 WL 2941118, at \*2 y he [ hb nan, crhin (S.D.N.-Y.

July 12, 2021) (quoting *Derosa v. CAC Fin. Corp.*, he “ee ° □: oe ay, 278 F. Supp. 3d 555, 559-60 (E.D.N.Y. 2017). “The term the 30-day period under SC. § B(b).” (*Id.* at 6-7). ‘debt collector’ is defined under the FDCPA as a person who, among other requirements, is engaged in any ‘business the Plaintiff's final cause of action is brought under the FCRA. La.:. principal purpose of which is the collection of any debts, or (*Id.* at 7).

She states that Experian “willfully violated the FCRAI by faili ly with 15 USC. § 1681b th who regularly collects or attempts to collect... debts owed or [FCR un oom wit eel aya © due... another.’ ” *Perez v. Experian*, No. 20-CV-9119, 2021 oer ° sven" cy aA Wr 4784280, at \*12 (S.D.N.Y. Oct. 14, 2021), report and efinitions; rules of construction.” (*Id.* at 7). recommendation adopted, 2021 WL 5088036 (S.D.N.Y.

Nov., 2, 2021)(quoting 15 U.S.C. § 1692a(6)). In her request for relief, plaintiff seeks compensatory damages ae a eee aa and ee ae \*3 Plaintiff's complaint fails to state facts suggesting a claim to an mnabuity {0 utilize the re it system, ]” as well as for for relief under the FDCPA. Experian, the sole defendant causing “emotional and financial damages due to reported...

Lg.. inf ‘on by” E C Lat 4) Plaintiff al k named in this action, is “not normally identified as a m ean y “penn omp”. soon “k he debt collector.” *Anderson v. Experian*, 2019 WL 6324179, Punitive

aoa ae ee | fect □□ ‘. at \*2; see also *Perez v. Experian*, 2021 WL 4784280, va fs aoe fay L ue □ at \*13 (“Equifax, Experian, and Trans Union are credit Punish and deter future similar conduct.” (/d.).

Last, plaintiff reporting agencies that do not collect debts, and therefore 2024 WL 618741 do not fall within the meaning ‘debt collector’ under the WL 855870 (S.D.N.Y. Mar. 23, 2022)). However, liability FDCPA, but instead under the term ‘consumer reporting § may attach to a CRA where a third party accessed or used agency’ [(“CRA”)] as defined in § 1681a(f).”); compare 15 a consumer report for an impermissible purpose, if the CRA 1692a(6) (defining debt collector) with 15 U.S.C. § — “either willfully or negligently fail[ed] to maintain reasonable 168 1a(f) (defining consumer reporting agency).

Plaintiff does procedures” designed to avoid violations of” Section 1681b. not credibly allege that Experian is a “debt collector.” Rather, *Pietrafesa v. First Am. Real Estate Info. Servs.*, No. 05 Civ. plaintiff’s allegations suggest her challenges to the consumer 1450 (LEK/RFT), 2007 WL 710197, at \*3 (N.D.N.Y. Mar. report issued by Experian in its capacity as a CRA.

(Compl. at 6, 2007); see also *Podell v. Citicorp Diners Club*, 859 F. 7). Because the complaint fails to allege any non-conclusory Supp. 701, 705 (S.D.N.Y. 1994) (noting that Section 1681b allegations that Experian is a “debt collector,” or that it has “limits the purposes and uses of a credit report,” and that the engaged in any debt collection activity, plaintiff has failed to FCRA “imposes civil liability upon [CRAs]... who willfully state a claim under the FDCPA.

See *Allen v. United Student or negligently violate the [FCRA]”*). To determine whether Aid Funds, Inc., No. 17-CV-8192, 2018 WL 4680023, at \*5 the CRA maintained reasonable procedures, “the standard of (S.D.N.Y. Sept. 28, 2018) (granting motion to dismiss when —\_ conduct is what a reasonably prudent person would do under plaintiff has not pled sufficient facts to classify defendants as\_ the circumstances.” Hines.

2022 WL 2841909. at \*23. debt collectors). Section 1681e(a) provides that “[e]very [CRA] IV. The Fair Credit Reporting Act shall maintain reasonable procedures designed to... “The FCRA regulates consumer credit reporting agencies limit the furnishing of consumer reports to the to ensure accuracy, confidentiality, relevancy, and proper purposes listed under section 168 1b of this title.” 15 utilization of consumer credit information.” *Perez v. U.S.C. § 1681e(a)*.

The court construes plaintiff’s *Experian*, 2021 WL 4784280, at \*5 (citing 15 U.S.C. § Section 1681b Claim as if brought pursuant to 1681(b)). “It ‘places distinct obligations on three types of both Sections 1681b and 1681e(a), and, as other entities: consumer reporting agencies, users of consumer courts have done, analyzes these claims together. reports, and furnishers of information to consumer reporting See *Hines v. Equifax Info*.

Servs., LLC, No. 19 Civ. agencies.’ ” Jd. (quoting *Redhead v. Winston & Winston, P.C.*, 6701, 2022 WL 2841909, at \*23 (E.D.N.Y. July 16, No. 01-CV-11475, 2002 WL 31106934, at \*3 (S.D.N.Y. Sept 2022). 20, 2002) (citing 15 U.S.C. §§ 1681 et seq.)). \*4 Plaintiff fails to plausibly allege a § 1681b claim against Experian, because the complaint does not allege that Experian Liberally construed, plaintiff's complaint alleges FCRA provided plaintiff's consumer report to a third party, “which claims against Experian pursuant to §§ 1681b, 1681e(b), and \_ jg fatal to any claim that [Experian] impermissibly shared her 1681i.

The court will address each claim in turn. report.” *Moore v. Experian*, 2023 WL 7169119, at \*6. On this basis alone, plaintiff's complaint is subject to dismissal. A. § 1681b 8.. Even if the complaint could be read to allege that Experian Section 1681b generally specifies the circumstances under.... furnished a consumer report to an unnamed third party, the which a consumer report may be furnished and used[,] and.....

Loa. claim would still fail because plaintiff does not plausibly protects consumer privacy by limiting access to consumer allece that a third sousht or used the information credit reports.” *Moore v. Experian*, No. 23 Civ. 673, 2023 wor an om nabhe na ae on howe it plausibly allece WL 7169119, at \*5 (S.D.N.Y. Oct. 13, 2023), report and □ peas in onlin □ □ recommendation adopted, 2023 WL 7166158 (S.D.N.Y.

Oct. a xperan omer WI y ° negheenhy ar led] to. us.. maintain reasonable procedures” to prevent an improper 31, 2023) (internal citations and quotation marks omitted). a:... □□□.. furnishing of information. *Pietrafesa*, 2007 WL 710197, at ‘As distinguished from many other provisions of the FCRA reoulatine CRAs. liability under Section 1681b ‘call \*3; see also *Selvam v. Experian Info.*

*Sols., Inc.*, No. 13 NSS any YP Y Civ. 6078, 2015 WL 1034891, at \*4 (E.D.N.Y. Mar. 10, attaches to third parties who willfully or negligently ‘use or.... □□ 2015) (granting motion to dismiss where plaintiff failed to obtain’ a consumer report for an impermissible purpose..... allege how the CRA acted unreasonably).

In her complaint, 1d. (internal quotation marks omitted) (quoting *Rajapakse v. ier* states that Experian “willfully” violated the FCRA *Shaw*, No. 20 Civ. 10473, 2022 WL 1051108, at \*5 (S.D.N-Y. P dal f th te ” “p "hed [its] duty thr h Feb. 18, 2022), report and recommendation adopted,2022 and’ also *TeleTences Mate xperian breached Lis] Cuty □□□□ 2024 WL 618741 negligence.”* (Compl. at 6-7).

However, “[m]erely stating that — will... depend on the circumstances of a particular dispute.” the violation was ‘willful’ or ‘negligent’ without more is = *Frydman v. Experian Info. Sols, Inc.*, No. 14-CV-9013, 2016 insufficient.” *Perez v. Experian*, 2021 WL 4784280, at \*11 WL 11483839, at \*15 (S.D.N.Y. Aug. 11, 2016) (quoting (citing *Perl v. Plains Com. Bank*, No. 11-CV-7972, 2012 *Cortez v. Trans Union, LLC*, 617 F.3d 688, 713 (3d Cir.

WL 760401, at \*2 (S.D.N.Y. Mar. 8, 2012)); see also Perl 2010)), report and recommendation adopted, 2016 WL v. Am. Exp., No. 11-CV-6899, 2012 WL 178333, at \*2 5661596 (Sept. 30, 2016). The reinvestigation requirement (S.D.N.Y. Jan. 19, 2012) (“While [plaintiff] assert[s] that each demands “more than (a) forwarding the dispute information [D]efendant’s FCRA violation was willful, [he] do[es] so in a onto the furnisher of information and (b) relying on the conclusory manner in [both] of the complaints....

[Plaintiff] furnisher of information’s response.” Gorman v. Experian ha[s] failed to allege any facts related to [D]efendants’ Info. Sols., Inc., No. 07-CV-1846, 2008 WL 4934047, at \*5 state of mind when they allegedly [violated the FCRA]”). (S.D.N.Y. Nov. 19, 2008) (citing Cushman v. Trans Union Accordingly, plaintiff’s § 1681b claim should be dismissed. Corp., 115 F.3d 220, 225 (3d Cir.

1997)). \*5 The threshold question under both Sections 1681e(b) B. §§ 1681e(b) and 1681i° and 1681i “is whether the challenged credit information is 3 The following discussion of the applicable law accurate; if the information is accurate, no further inquiry is taken from U.S. Magistrate Judge James L. into the reasonableness of the consumer reporting agency’s Cott’s cogent summary in Perez v. Experian, No. procedures is necessary.” Jd. (collecting cases).

A credit 20-CV-9119, 2021 WL 4784280, at \*1 (S.D.N.Y. report is inaccurate “either when it is patently incorrect or Oct. 14, 2021), which report-recommendation was when it is misleading in such a way and to such an extent that adopted in its entirety by U.S. District Judge Paul it can be expected to have an adverse effect.” Wimberly, 2021 A. Engelmayer in Perez v. Experian, No. 20 Civ.

WL 326972, at \*5 (quoting Wenning v. On-Site Manager, Inc., 9119, 2021 WL 5088036 (S.D.N.Y. Nov. 2, 2021). No. 14-CV-9693, 2016 WL 3538379, at \*9 (S.D.N.Y. June 22, 2016)). “Information provided by a consumer reporting Section 1681e(b) imposes a duty on CRAs to “assure agency is misleading where it is ‘open to an interpretation maximum possible accuracy of the information concerning that is directly contradictory to the true information.’ ” Jd. the individual about whom the report relates.” 15 U.S.C. § (quoting Wagner v. TRW, Inc., 139 F.3d 898, 898 (5th Cir.

1681e(b). To state a claim under Section 1681e(b), a plaintiff 1998). must allege that: “(1) the consumer reporting agency was negligent or willful in that it failed to follow reasonable Although plaintiff may have a cognizable cause of action procedures to assure the accuracy of its credit report; (2) the against Experian under the FCRA, at this juncture the bare- consumer reporting agency reported inaccurate information bone allegations contained in her complaint fail to state a about the plaintiff; (3) the plaintiff was injured; and (4) the claim for purposes of this initial review.

As to the threshold consumer reporting agency's negligence proximately caused question of the accuracy of the challenged information, the plaintiff's injury.” *Wimberly v. Experian Info. Sols.*, No. Plaintiff states that Experian “report[cd] transactions on the 18-CV-6058, 2021 WL 326972, at \*5 (S.D.N.Y. Feb. 1, 2021) plaintiffs consumer report that were not authorized to be (quoting *Khan v. Equifax Info.*

*Servs., LLC*, No. 18-CV-6367, furnished by the consumer.” (Compl. at 7). Without more, 2019 WL 2492762, at \*2 (E.D.N.Y. June 14, 2019). the court cannot determine whether plaintiff is alleging that the information in her credit report was factually inaccurate, When the accuracy of a report is in dispute, Section 1681i o y if plaintiff's challenge is actually to the validity of a debt outlines specific procedures that CRAs must follow to ensure assessed by a third-party lender, which ultimately appeared the proper reinvestigation of disputed information.

Section on her credit report. If the latter, plaintiff's claim must fail 1681i requires that ifa consumer notifies a CRA of adispute because “inaccuracies that turn on legal disputes are not as to the accuracy of any item of information contained in cognizable under the FRCA.” See *Mader v. Experian Info.* his file, within 30 days of notification, the CRA “shall, free sais Ine.

56 F.Ath 264, 270 (2d Cir, 2023) (plaintiff failed of charge, conduct a reasonable reinvestigation to determine to allege inaccuracy within the plain meaning of the FCRA whether the disputed information is inaccurate.” 15 U.S.C. § because “[t]he bespoke attention and legal reasoning required 1681i(a)(1)(A); *Jones v. Experian Info. Solutions, Inc.*, 982 to determine the post-bankruptcy validity of Mader's debt F. Supp. 2d 268, 272 (S.D.N.Y.

2013). Courts in this District have noted that “the parameters of a reasonable investigation 2024 WL 618741 means that its status is not sufficiently objectively verifiable to 413, 417-18 (2021)); see also *In re FDCPA Mailing Vendor* render Mader's credit report ‘inaccurate’ under the FCRA.”). Cases, 551 F. Supp. 3d 57, 62-63 (E.D.N.Y. 2021). At the pleading stage, “standing allegations need not be crafted with Even if the court were to interpret plaintiffs allegation to precise detail, nor must the plaintiff prove the allegations state that the challenged information in plaintiff's creditreport of his injury.” *Fin.*

*Guar. Ins. Co. v. Putnam Advisory Co.*, was factually inaccurate, plaintiff has failed to set forth LLC, 783 F.3d 395, 401-02 (2d Cir. 2015) (quoting *Baur v.* any allegations regarding the deficiencies in the procedures *Veneman*, 352 F.3d 625, 631 (2d Cir. 2003)).

However, a followed by Experian in assuring the accuracy of its reporting plaintiff must allege facts “that affirmatively and plausibly in order to state a claim under § 1681e(b). Because plaintiff | suggest that [she] has standing to sue.” *Amidax Trading Grp.* “fail[s] to make any allegations regarding... the procedures *v. S.WIET. SCRL*, 671 F.3d 140, 145 (2d Cir.

2011). followed” by Experian, *Neuygen v. Ridgewood Sav. Bank*, No. 14-CV-1058, 2015 WL 2354308, at \*11 (E.D.N.Y. May 15, 2015). Here, plaintiff has alleged injury to the extent that she 2015), her “[t]hreadbare recitals of the elements” do not state has an “inability to utilize the credit system... due to a plausible claim for relief under Section 1681e, *Jgbal*, 556 reported information by” Experian.

(*Compl.* at 4). There *US.* at 678. is no suggestion, however, that plaintiff has suffered any particularized injury, or that her information was Assuming, again, that plaintiff had sufficiently alleged that actually disseminated to third parties. See *Zoinick v. Equifax* her credit information was not factually accurate, the court *Information Services, LLC*, 583 F. Supp. 3d 387, 391 could also construe that plaintiff is alleging Experian violated (E.D.N.Y.

2022) (“[W]hile plaintiff claims that his credit the FCRA requirement to reasonably investigate her disputes score was lowered as a result of the alleged improper under § 1681i. However, to state such an action, plaintiff | reporting... he fails to allege any particularized injury or must allege that Experian was either willful or negligent in its actual dissemination to third-party creditors.”); *Grauman v. noncompliance with § 1681i.*

See *Perez v. Experian*, 2021 WL *Equifax Info. Servs., LLC*, 549 F. Supp. 3d 285, 291 (E.D.N.Y. 4784280, at \*11 (“The FCRA allows for a cause of action for 2021) (“Just as a plaintiff could not bring a defamation suit willful and negligent noncompliance ‘with any requirement over a letter that merely sat in a desk drawer, these plaintiffs imposed’ by the FCRA.”) (citing 15 U.S.C. §§ 1681n, 1681o). could not bring their FCRA suit over information that had “In regard to a plaintiff’s obligation to allege that a defendant’s — never left the credit reporting agency’s database.”) (citation violation was willful or negligent, various courts have held omitted). that... the plaintiff’s complaint must allege specific facts as to the defendant’s mental state” when the defendants committed □□ Plaintiff’s conclusory allegations of “emotional and financial the violation of the FCRA.

*Braun vy. Client Servs. Inc.*, 14 distress” are further insufficient to allege a how Experian’s F. Supp. 3d 391, 397 (S.D.N.Y. 2014). Here, plaintiff has — purported violations caused plaintiff to suffer a “concrete” failed to allege any facts as to Experian’s “mental state” harm. See *Gross v. TransUnion, LLC*, 607 F. Supp. 3d 269, when committing the alleged violations of the FCRA.

As = 273 (E.D.N.Y. 2022) (Conclusory allegations in complaint detailed above, plaintiff’s reference to the terms “willful” and were insufficient where “[t]he alleged harms are not □□□□□□□□ “negligence” in her statement of claims, without more, is costs, any specific lost credit opportunity, or specific insufficient. (*Compl.* at 6-7). See *Perez v. Experian*, 2021 WL emotional injuries[.]”) (citing *Ashcroft v. Iqbal*, 556 U.S. at 4784280, at \*11; *Perl v. Am.*

Exp., 2012 WL 178333, at \*2. 678); see also *Maddox v. Bank of N.Y. Mellon Trust Co.*, 19 F.4th 58, 66 (2d Cir. 2021) (“A perfunctory allegation of \*6 Moreover, in the FCRA context, “the Supreme Court emotional distress, especially one wholly incommensurate made clear that ‘a bare procedural violation, divorced with the stimulant, is insufficient to plausibly allege from any concrete harm’ fails to satisfy the injury-in-fact constitutional standing.”); *Garland v. Orlans, PC*, 999 F.3d requirement of Article III.

*Zlotnick v. Equifax Info. Servs.*, 432, 440 (6th Cir. 2021) (plaintiffs injuries cannot create LLC, 583 F. Supp. 3d 387, 391 (E.D.N.Y. 2022) (quoting standing “[b]ecause bare allegations of confusion and anxiety *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016), as revised do not qualify as injuries in fact”); *Pennell v. Glob. Tr.* (May 24, 2016)). “In 2021, the Supreme Court, in another *Memt., LLC*, 990 F.3d 1041, 1045 (7th Cir.

2021) (stress and case involving the FCRA, again emphasized that the absence — confusion - without accompanying physical manifestation - of any allegation of a concrete harm forecloses federal do not suffice for standing). standing.” *Jd.* (citing *TransUnion LLC v. Ramirez*, 594 U.S. 2024 WL 618741 Accordingly, for the reasons stated above, the court recommends dismissing plaintiff’s claims for violations of §§ 1681e(b) and 1681i of the FRCA against Experian.

VI. Opportunity to Amend Generally, before the court dismisses a pro se complaint or any part of the complaint sua sponte, the court should afford V. State Law Claims the plaintiff the opportunity to amend at least once; however, Section 1681h(e) of the FCRA provides that “no consumer \_ leave to re-plead may be denied where any amendment would may bring any action or proceeding in the nature of be futile.

*Ruffolo v. Oppenheimer & Co.*, 987 F.2d 129, 131 defamation, invasion of privacy, or negligence with respect to (2d Cir. 1993). Futility is present when the problem with the reporting of information against any consumer reporting \_ plaintiff’s causes of action is substantive such that better agency, any user of information, or any person who furnishes pleading will not cure it.

*Cuoco v. Moritsugu*, 222 F.3d 99, information to a consumer reporting agency,.... except as to 112 (2d Cir. 2000) (citation omitted). false information furnished with malice or willful intent to injure such consumer.” Otherwise stated, “[s]ection 168 Lh(e) Here, the court is recommending dismissal with prejudice preempts defamation [and other state-based] claims against as to plaintiffs claims brought pursuant to the FDCPA.

CRA’s unless the alleged false information is furnished with There is no plausible suggestion that defendant Experian was malice or willful intent to injure the plaintiff.’ *Thompson operating outside of its capacity as a credit reporting agency v. Equifax Info. Servs. LLC*, No. 20-CV-6101, 2022 WL withrespect to the conduct at issue, and the court does not find 2467662, at \*10 (E.D.N.Y.

Feb. 24, 2022) (citing Frydman it plausible that plaintiff could amend to state a claim against v. Experian Info. Sols., Inc., No. 14-CV-9013, 2016 WL Experian in any capacity as a “debt collector.” 11483839, at \*17 (S.D.N.Y. Aug. 11, 2016), report and recommendation adopted, 2016 WL 5661596 (S.D.N.Y. Sept. With respect to plaintiffs FCRA and state law claims, 30, 2016) (“[Section 168 lh(e)] essentially affords... qualified the court is recommending dismissal without prejudice, immunity against the types of state law claims asserted by \_\_\_ providing plaintiff the opportunity to amend her complaint.

If [plaintiff] unless he can establish that [defendants] acted — the court approves this recommendation and allows plaintiff ‘with malice or willful intent to injure’ him”) (citations — to submit a proposed amended complaint, plaintiff should be omitted)); Ogbon v. Beneficial Credit Services, Inc., 10 warned that any amended complaint must be a complete and Civ.

3760, 2013 WL 1430467, at \*10 (S.D.N.Y. Apr. 8, separate pleading. Plaintiff must state all of her claims in the 2013) (“Thus, defendants have qualified immunity against new pleading and may not incorporate by reference any part defamation actions, which can only be overcome where of her original complaint. plaintiff shows that defendants acted with malice or willful intent.”) (collecting cases).

WHEREFORE, based on the findings above, it is \*7 As previously discussed, plaintiff has failed to allege ORDERED, that plaintiff’s motion to proceed IFP (Dkt. No. anything more than conclusory statements to suggest that —\_9) is GRANTED,“ and it is Experian furnished any information with “malice” or “willful intent to injure” plaintiff.

Accordingly, plaintiffs state 4 law claims related to the contents of her credit report Although her TEP Application has been granted,.. plaintiff will still be required to pay fees that she are preempted. Moreover, even if her claims were not □ a preempted, her allegations lack the sufficient specificity may incur in this action, including copying and/or required of such claims to put Experian on notice.

See, witness fees. e.g., Mitchell v. Experian Info. Sols., Inc., No. 22-CV-5883, | RECOMMENDED, that plaintiffs claims pursuant to the 2023 WL 2990479, at \*3 (E.D.N.Y. Apr. 18, 2023) (‘In Fair Debt Collection Practices Act be DISMISSED WITH assessing whether a defamation claim has been plead with © PREJUDICE, and it is sufficient particularity, courts look to whether [the] complaint references the alleged defamatory statement, identifies who RECOMMENDED, that the complaint be DISMISSED made the statement, when it was made, the context in which WITHOUT PREJUDICE in all other respects, and it is it was made, whether it was made orally or in writing and whether it was made to a third party.”) (citation omitted)..

RECOMMENDED, that if the District Court adopts this Accordingly, plaintiff’s state law claims should be dismissed. recommendation, plaintiff be given forty-five (45) days to 2024 WL 618741

amend her complaint to the extent authorized, and that plaintiff be advised that any amended pleading must be a 5 The Clerk shall also provide plaintiff with copies of COMPLETE PLEADING, WHICH WILL SUPERSEDE all unreported decisions cited herein in accordance THE ORIGINAL, and that plaintiff must include all with Lebron v. Sanders, 557 F.3d 76 (2d Cir.

2009) remaining facts and causes of action in the amended (per curiam). complaint. No facts or claims from the original complaint may Pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.1(c), the be incorporated by reference, and it is parties have fourteen (14) days within which to file written objections to the foregoing report. Such objections shall be RECOMMENDED, that if the District Court adopts this g1eq with the Clerk of the Court.

FAILURE TO OBJECT recommendation, and plaintiff does not elect to amend her TO THIS REPORT WITHIN FOURTEEN DAYS WILL complaint within the imposed deadline, the case be dismissed PRECLUDE APPELLATE REVIEW. Roldan y. Racette, in its entirety, with prejudice, and it is 984 F.2d 85, 89 (2d Cir, 1993) (citing Small v. Sec'y of Health and Hum. Servs., 892 F.2d 15 (2d Cir.

1989)); 28 U.S.C. § RECOMMENDED, that if the District Court adopts this 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72. recommendation, and plaintiff files a proposed amended complaint, the proposed amended complaint be returned to me for review of the amended complaint and any orders All Citations relating to service on the defendants, and it is Not Reported in Fed.

Supp., 2024 WL 618741 \*8 ORDERED, that the Clerk of the Court serve a copy of this Order and Report-Recommendation on plaintiff by regular mail. > End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works. Filings (1) Title PDF Court Date Type 1. Docket 5:24-CV-00188 — N.D.NY. Feb. 07, 2024 Docket Taylor v. Experian Information Solutions, Inc. History (4) Direct History (2) 1.

Taylor v. Experian Information Solutions, Inc. = 2024 WL 618741, N.D.N.Y., Feb. 14, 2024 Report and Recommendation Adopted by 2. Taylor v. Experian Information Solutions, Inc. 2024 WL 986483, N.D.N.Y., Mar. 07, 2024 Related References (2) 3. Taylor v. Experian 2024 WL 2420542, N.D.N.Y., May 01, 2024 Report and Recommendation Adopted by 4. Taylor v. Experian 2024 WL 2399917, N.D.N.Y., May 23, 2024 2009 WL 3148764 Brian Olson, King & Spalding LLP, Atlanta, GA, Richard 2009 WL 3148764 Thomas Marooney, Jr., King & Spalding, New York, NY, Only the Westlaw citation s currently available.

John/Janc Doc Employce(s) of Mitsubishi Motor Credit, United States District Court, Equifax. E.D. New York. Timothy P. Creech, Kogan Trichon & Wertheimer P.C., Mark GAFT, Plaintiff, Philadelphia, PA, for Transunion. Vv. MITSUBISHI MOTOR CREDIT Allen G. Gibbs, Sandra D. Brown, Jones Day, New York, NY, OF AMERICA, et al., Defendants. for Experian. No. 07—CV-527 (NG)(LB).

OPINION AND ORDER Sept. 29, 2009. GERSHON, District Judge. West KeySummary \*1 On February 2, 2007, plaintiff Mark Gaft filed a complaint alleging that defendants Equifax Information 1 Res Judicata @ Finance and banking Services L.L.C. (“Equifax”) and Mitsubishi Motor Credit of America (“MMCA”) had misreported plaintiff's credit An alleged identity theft victim's claims history in violation of the Fair Credit Reporting Act, 15 against credit reporting agencies under the Fair US.C. §§ 1681a-1681x, (the “FCRA”), and the Fair Debt Credit Reporting Act (FCRA) and Fair Debt Collection Practices Act, 15 U.S.C. §§ 1592a-1592p (the Collection Practices Act (FDCPA), for allegedly “FDCPA”).

Plaintiff also alleged that defendants’ actions misreporting his credit history, were not barred violated state common law doctrines. On June 28, 2007, by res judicata. Although the alleged victim's plaintiff filed an Amended Complaint adding similar claims claims concerned the same general subject against defendants Experian Information Solutions, Inc. matter as a prior action, iec., the improper (“Experian”) and Trans Union LLC (“Trans Union”). attribution of an extension credit stemming from an identity theft, it was not clear that each fact The instant lawsuit follows a prior action by plaintiff against alleged by the alleged victim existed or could these defendants filed in this court on April 21, 2005, have been sued upon at the time of the prior Gaft v. Equifax, et al., 05—cv-1941 (“Gaft I” ).

Following action. Even if the debt in question existed and settlements with certain defendants, Gaft J was dismissed with was known to the alleged victim at the time of prejudice. the prior litigation, the current claim would not be barred because the allegations alleged a new All defendants have filed motions to dispose of this litigation. misrepresentation that was not adjudicated by the prior litigation.

BACKGROUND 12 Cases that cite this headnote Gaft I In Gaft I, plaintiff alleged that numerous defendants, Attorneys and Law Firms including defendants in this action, who were engaged in Mark Gaft, Brooklyn, NY, pro se. “consumer credit transactions” or who were “credit reporting agencies,” wrongly reported that plaintiff had been extended Melissa A. Pena, Norris, McLaughlin & Marcus, PA, New accounts of credit and owed certain debts when, in fact, York, NY, for Mitsubishi Motor Credit. plaintiffhad never applied for these accounts.

Plaintiff alleged that the improper reporting stemmed from identity theft. Specifically, plaintiff alleged that MMCA wrongly informed 2009 WL 3148764 defendant credit reporting agencies that MMCA had made ten loans to plaintiff. Plaintiff alleged that the credit reporting \*2 Plaintiff contends that, following his discovery of the agencies improperly published the ten incorrect MMCA \_ Eleventh Account on a credit report published by Equifax, accounts, as part of plaintiff's credit history, as debts owed. he “officially disputed the accuracy of his Credit Report with Based on these allegations, plaintiff sought damages for Equifax,” but that Equifax “failed or otherwise refused to common law negligence and violations of the FCRA. provide copies of any validation

to the plaintiff as demanded in plaintiff [sic] letter of request pursuant to the [Fair Credit On October 28, 2005, plaintiff amended his original Gaff Reporting] Act.”?

Plaintiff alleges that he later discovered 7 complaint, intentionally omitting claims against MMCA the Eleventh Account on credit reports published by Trans and later informing the court that the action had been [pion and Experian and he amended his complaint to add dismissed as to MMCA.!

On March 6, 2006, plaintiff these parties as defendants. Plaintiff contends that the false executed settlement agreements with defendants Equifax — reporting was a product of the defendants' negligence, gross and Trans Union dismissing those defendants from Gaji I. negligence and disregard of their statutory obligations. Pursuant to those settlements, plaintiffreceived consideration in exchange for (1) plaintiffs acknowledgement thata version 3 Plaintiff does not allege that he disputed the of his credit report, in the form attached as an exhibit to Eleventh Account with Trans Union or Experian. the stipulated settlement, was “accurate and correct”; and (ii) releasing defendants Equifax and Trans Union from claims or Plaintiff also avers, without detail, that he is the target of an causes of action which were raised, or which couldhave been ternal fraud” perpetrated by unknown persons employed raised in that action. by MMCA who have access to plaintiff's credit information. l Plaintiff did not specify whether the dismissal of Finally, plaintiff contends that defendants' actions with respect to the inaccuracies alleged in Gaff J and the instant MMCA was with or without prejudice and no action “caused [him] to suffer 11 or more acts of fraud stipulation of dismissal was ever filed with the committed against him.” court.

On March 27, 2006, following the settlement agreements, the | Based on these allegations, plaintiff claims that each court dismissed, with prejudice, the entirety of Gaft J with defendant (i) failed to meet its duties, under the FCRA, leave to reopen the action within 60 days.~ On July 31,2006, investigate plaintiffs written dispute and correct more than 60 days later, plaintiff moved, pro se, to reopen — ©tToneous information; (ii) engaged in a pattern of “willful the litigation as to non-settling parties.

The court denied the | 2oncompliance” with the duties set forth under the FCRA request as untimely. by repeatedly reporting 11 erroneous credit events; (iii) misrepresented debts owed by plaintiff in violation of the 2 FD CPA; (iv) made false statements concerning erroneous It appears that Experian, named as a defendant debts owed amounting to “Slander of Title”; (v) committed m Gafi 1, never appeared in that action, but was fraud by “accepting a fraudulent credit application” causing dismissed pursuant to the court's March 27, 2006 plaintiff to be named “as the debtor of the defendant Order dismissing “the remaining defendants.” Mitsubishi on 11 or more separate occasions”; (vi) committed negligence per se by violating the FCRA; and (vii) acted with Gaft II gross negligence by violating the FCRA.

Plaintiff seeks both a money judgment and injunctive relief against defendants. Plaintiff now brings the above-captioned action, pro se, against MMCA, Equifax, Trans Union and Experian alleging | Defendants Equifax, Trans Union and Experian each move that, sometime during 2007, following the dismissal of the for judgment on the pleadings pursuant to Rule 12(c) of the prior action, plaintiff discovered an eleventh inaccurate debt Federal Rules of Civil Procedure.

Defendant MMCA moves (the “Eleventh Account”), purportedly owed to Mitsubishi, for summary judgment pursuant to Rule 56 of the Federal which was improperly reported by Equifax, Trans Union and Rules of Civil Procedure.

For the sake of judicial economy Experian. Plaintiff alleges that he has no knowledge of this these motions will be addressed together. debt. 2009 WL 3148764 genuine issue as to any material fact and that the moving DISCUSSION party is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, *Legal Standards* 106 S.Ct.

2548, 91 L.Ed.2d 265 (1986). A “genuine” issue of material fact exists where “the evidence is such that a Motions for Judgment on the Pleadings reasonable jury could return a verdict for the non-moving The motions for judgment on the pleadings pursuant to Rule \_ party.” *Anderson y. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 12(c) of the Federal Rules of Civil Procedure by defendants 106 S.Ct.

2505, 91 L.Ed.2d 202 (1986). MMCA, as the Experian, Equifax and Trans Union are evaluated under the —s moving party, bears the burden of showing that it is entitled same standard as a motion to dismiss under Rule 12(6) to summary judgment. *Huminski v. Corsones*, 386 F.3d 116, (6). See *Nicholas v. Goord*, 430 F.3d 652, 658 n. 8 (2d. 132 (2d Cir.2004). “When the burden of proof at trial would Cir.2005).

On a motion to dismiss, the allegations in the \_ fall on the nonmoving party, it is ordinarily sufficient for the complaint are accepted as true. See *Grandon v. Merrill Lynch* movant to point to a lack of evidence to go to the trier of fact & Co., 147 F.3d 184, 188 (2d Cir.1998).

The court may on an essential element of the nonmovant's claim.” *Jaramillo* properly consider any statements or documents which have —y. *Weyerhaeuser Co.*, 536 F.3d 140, 145 (2d Cir.2008). The been incorporated by reference into a complaint, although —\_ burden then shifts to the nonmovant to put forth admissible mere discussion or limited quotation of a document does not \_ evidence sufficient to create a genuine issue of material fact constitute incorporation.

See *Holmes v. Poskanzer*, No. 08— \_ for trial. *Jd.* A court must draw all “justifiable inferences” in CV-14750, 2009 WL 2171326, at \*1 (2d Cir. July 21,2009); the nonmovant's favor, and construe all of the facts in the light *Cosmas v. Hassett*, 886 F.2d 8, 13 (2d Cir.1989).

However, — most favorable to the nonmovant. *Anderson v. Liberty Lobby*, even “where a document is not incorporated by reference, the 477 USS. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). In court may nevertheless consider it where the complaint relies — the case of *Gaft*, who is pro se, the court is further obliged to heavily upon its terms and effect, which renders it integral to — “read his supporting papers liberally, and... [to] interpret them the complaint.” *Chambers v. Time Warner, Inc.*, 282 F.3d 147, to raise the strongest arguments that they suggest.” *Burgos v.* 152 (2d Cir.2002).

*Hopkins*, 14 F.3d 787, 790 (2d Cir.1994), Even a pro se party, however, “may not rely simply on conclusory allegations or \*3 When considering a motion to dismiss, the court “view[s] speculation to avoid summary judgment, but instead must all reasonable inferences that can be drawn from [the] offer evidence to show that its version of the events is not allegations and [appropriate] documents in the light most — wholly fanciful.” *Auguste v. New York Presbyterian Medical* favorable to the plaintiff.” See *Dangler v. N.Y.C.*

*Off Track Center*, 593 F.Supp.2d 659, 663 (S.D.N.Y.2009) (quoting *Betting Corp.*, 193 F.3d 130, 138 (2d Cir.1999) (internal *Morris v. Lindau*, 196 F.3d 102, 109 (2d Cir.1999)). quotations and citations omitted). While a complaint need not include “detailed factual allegations” to survive a motion for judgment on the pleadings, it cannot be a conclusory MMCA's 56.1 Statement recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, — U.S. —, 129 8.Ct.

1937, 1949, 173 \*4 Local Rule 56.1 provides that a motion for summary L.Ed.2d 868 (2009). Rather, a plaintiff must assert enough judgment is to be accompanied by a “short, concise facts to state a claim to relief that is “plausible” on its face, —tatement... of the material facts as to which the moving rather than merely possible. *Jd.* at 1950. A document filed party contends there is no genuine issue to be tried.” Local pro se must be “liberally construed and a pro se complaint, — Rule 56.1(a).

The party opposing the motion is to provide a however inartfully pleaded, must be held to less stringent — responsive statement of “additional material facts as to which standards than formal pleadings drafted by lawyers.” *Boykin* it is contended that there exists a genuine issue to be tried.” *v. Keycorp*, 521 F.3d 202, 214 (2d Cir.2008) (internal at (b) (emphasis omitted).

Each statement by the movant quotation marks omitted). or the opponent “must be followed by citation to evidence which would be admissible, set forth as required by Federal MMCA's Motion for Summary Judgment Rule of Civil Procedure 56(e).” *Id.* at (@).

To the extent a.... Rule 56.1 statement cites to an affidavit, the affidavit must Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on be a sworn statement of fact based on personal knowledge file, together with affidavits, if any, show that there is no that would be admissible in evidence at trial.” *Cameron v.* 2009 WL 3148764

Coach Apparel Store, No. 07-CV-3991, 2009 WL 536068, at —\_ offer the report which was presented by plaintiff or specify \*3 (S.D.N.Y.

Mar.3, 2009). A court may disregard “portions “who” made the determination that the account was reported of an affidavit that are not based upon the affiant's personal = prior to the settlement. Without more, these averments knowledge, contain inadmissible hearsay or make generalized | by MMCA concerning the content of the “report,” and and conclusory statements.” *Hollander v. Am.*

*Cyanamid Co.*, determinations about the “report,” are inadmissible evidence 172 F.3d 192, 198 (2d Cir.1999). barred as hearsay and by the best evidence rule. 4 See *Sarno v. Douglas Elliman Gibbons & Ives, Inc.*, 183 F.3d 155, Plaintiff, who appears pro se, did not submit a Rule 56.1 169 (2d Cir.1999) (hearsay assertion that would not be Statement in opposition to MMCA's motion.

Although — admissible if testified to at trial is not competent material for ordinarily a party's failure to oppose an adverse party's Rule 4 Rule 56 affidavit); *New York ex rel. Spitzer v. St. Francis* 56.1 statement is grounds for admitting all proposed facts in *Hosp.*, 94 F.Supp.2d 423, 428 (S.D.N.Y.2000) (disregarding, that statement, the court has discretion to overlook failures to on summary judgment, statements concerning documents conform to the Local Rules, including Rule 56.1, especially because the documents “themselves are the best evidence of where the party is pro se.

See, e.g., *Buller v. Potter*, No. 06- their contents”). Therefore, for the purposes of determining 2009 WL 804722, at n. 1 (E.D.N.Y. Mar. 26, MMCA's motion, this portion of the 56.1 statement will be 2009). Therefore, the court will not deem MMCA's Rule 56.1 disregarded by the court. Statement admitted in its entirety; rather, the facts as set forth by MMCA will be deemed admitted only whereastatementof 4 fact in MMCA's Rule 56.1 Statement is supported by citations MMCA has made no showing pursuant to Rule to admissible evidence.

See *Alfano v. NGHT*, 623 F.Supp.2d 1004 of the Federal Rules of Evidence that the 355, 362 (E.D.N.Y.2009). report in question is unavailable. Defendant MMCA states in its Rule 56.1 Statement that. *Res Judicata* plaintiff, at an August 27, 2007, conference before the court, produced a “report” listing the false account which serves \*§ Defendants Equifax and Trans Union argue that the as the basis of his claims and “it was determined that the Amended Complaint is barred by the doctrine of *res judicata* account [in the report] was reported prior to the settlement —\_ecause it involves claims arising out of the same transactions and dismissal of the First Action, and that Gaft knew it was which were litigated and settled pursuant to the March 6, reported.” To support this statement, MMCA cites to the 2006, settlements in *Gaff I*. Similarly, defendants Experian sworn affidavit of its counsel, which states, and MMCA argue that each was voluntarily dismissed from *Gaft I* and, therefore, plaintiff is barred from bringing claims which could have been raised in the prior action.

A case management conference was conducted in this matter on August Under the doctrine of res judicata, a “final judgment on the 27, 2007.... One question was what merits of an action precludes the parties... from relitigating was the “new” account that was issues that were or could have been raised in that action.” reported for the first time in 2007. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 101 Gaft produced what he claimed was S.Ct.

2424, 69 L.Ed.2d 103 (1981). “To prove that a claim that new report. However, upon is precluded under this doctrine, a party must show that (1) examination by counsel, it was the previous action involved an adjudication on the merits; determined that the account was (2) the previous action involved the parties or those in privity reported prior to the settlement and with them; and (3) the claims asserted in the subsequent action dismissal of the First Action, and that were, or could have been, raised in the prior action.” *Pike v. Gaft* knew it was reported.

*Freeman*, 266 F.3d 78, 91 (2d Cir.2001). The dismissal with prejudice in Gaft [ ] which arose out of (Affidavit of Kathleen Cavanaugh at § 14.) Notably, in Settlement agreements, can “operate[ ] as a final judgment for support of its motion for summary judgment, MMCA does TS judicata purposes.” *Marvel Characters v. Simon*, 310 F.3d not provide a transcript of the case management conference, 280, 286-87 (2d Cir.2002).

Further, it cannot be disputed that 2009 WL 3148764 defendants Experian, Equifax and Trans Union were parties previously verified the accuracy of this account as reported in Gaft > The only question with respect to these defendants | by Equifax and Trans Union and that claims based on is whether the claims asserted here were, or could have been, —‘this account are barred by the March 6, 2006, settlement raised in Gaft I. Of course, claims which are identical to those 2greements.

While the settlement agreements have been discontinued with prejudice are barred. See *Boguslavsky v. So. incorporated by reference into the Amended Complaint and Richmond Securities, Inc.*, 225 F.3d 127, 130 (2d Cir.2000). \_4f€ appropriately considered here, see *Poskanzer*, 2009 WL However, res judicata does not bar later “claims which did 2171326, at \*1, the court rejects defendants Equifax's and not even then exist and which could not possibly have been Tans Union's argument.

Neither the Amended Complaint sued upon in the previous case.” *Marvel Characters*, 310F.3d 10r the settlement agreements identify the disputed account at 287 (internal quotations omitted). as MMCA account 8500500, and Equifax and Trans Union fail to explain how they identified the Eleventh Account as 5 Defendant MMCA is discussed infra. MMCA account 8500500. ° In any event, even assuming that the Eleventh Account is MMCA account 8500500, and was To determine whether a claim that was not raised in the subject to the settlement agreements, to the extent plaintiff's prior action could have been raised there “depends in part —\_aggagations concern a new misrepresentation of that account, on whether the same transaction or connected series of

different from what he verified as “accurate and correct,” he transactions is at issue, whether the same evidence is needed is not barred by res judicata from bringing suit. to support both claims, and whether the facts essential to the second were present in the first.” /d. (internal quotations — \_¢ omitted) (emphasis in original).

A court should also consider Although plaintiff states, in his opposition papers, “whether an independent judgment in a separate proceeding that he “concur” that an erroneously reported would impair or destroy rights or interests established by the outstanding debt “was part of the original. □□ settlement agreement,” it is unclear whether he judgment entered in the first action.” Swre—Snap Corp. v. State Street Bank & Trust Co., 948 F.2d 869, 874 (2d Cir.1991). is identifying the Eleventh Account as part of the settlement or, alternatively, agreeing that the Although plaintiffs claims here concern the same general prior settlements concerned some erroneously subject matter as in the prior action, ie., the improper reported debts.

Further, plaintiff's statement does attribution of an extension credit, stemming from an identity not preclude the claim that defendants have theft, to plaintiff, it is not clear that each fact alleged by breached the settlement agreement by publishingd plaintiff existed or could have been sued upon at the time anew misrepresentation concerning an account that of Gaft I. Specifically, the Amended Complaint alleges that, was previously verified as accurate. following the settlement of Gaft J MMCA reported a “new Defendant Experian also argues that res judicata bars this debt”, “an 11th... lease or loan, which the plaintiffonce again suit.

Experian claims that plaintiff requested, from Experian, had no knowledge of.” (Am. Compl. §/ 11 (emphasis added).) a credit report dated May 1, 2007, and argues that this In addition, plaintiff states that this “new debt”, the Eleventh credit report proves that the Eleventh Account existed at the Account, was “discovered” some time in 2007, which post- time of Gaft I and that the claims raised here could have dates the settlement and dismissal of Gaft I. Accepting these \_\_\_ been raised in the prior action.

However, plaintiff's pleadings allegations as true, with all reasonable inferences to the make no reference to, and do not indicate reliance on, the plaintiff, the court cannot conclude, based on the pleadings, May 1, 2007, Experian report.

Therefore, this document is that the claims here existed at the time of Gaft J or are barred extrinsic to the pleadings and not appropriately considered on by the settlement agreements in that action. a motion pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. \*6 Therefore, to the extent plaintiff's claims arose after the dismissal of Gaft I, and are not limited by the terms of the Finally, defendant MMCA also argues that res judicata bars settlement agreements in Gajft J, those claims are not barred \_\_\_ claims against it by plaintiff.

This argument is without merit. by res judicata. First, MMCA, cannot avail itself of the court's Order, dated March 27, 2006, dismissing Gaft [ with prejudice, as to Defendants Equifax and Trans Union argue that the Eleventh — the “remaining defendants”, because MMCA had not been Account is “MMCA account number 8500500”, that plaintiff | included in the Gaft Jamended complaint and was no longer a 2009 WL 3148764 party to that action as of the date of the court's Order.

Second, argue, then its appearance after the conclusion of the prior although MMCA was voluntarily dismissed by plaintiff from litigation could be a breach of the settlement agreement. The Gaft [, correspondence, dated November 14, 2005, informing \_ point is that, on the pleadings, these factual issues cannot be the court of plaintiff's dismissal of MMCA does not state determined. whether the dismissal was with or without prejudice and no stipulation of dismissal pursuant to Rule 41(a)(1) of the Nonetheless, most of the claims must be dismissed for legal Federal Rules of Civil procedure was ever filed with, or insufficiency, as discussed below. endorsed by, the court. “In light of Rule 41(a)(2)'s statement that voluntary dismissal by order of the court is without prejudice unless the court orders otherwise, the court assumes Violations of the Fair Credit Reporting Act that [plaintiff] has agreed only to voluntary dismissal without prejudice.” Pouliot v. Paul Arpin Van Lines, Inc., 235 F.R.D.

The FCRA mandates certain conduct pertaining to the 537, 544 (D.Conn.2006); see also White v. City of New York, reporting of accurate consumer credit information and creates No 85-CV-8127, 1986 WL 6164, at \*1 (S.D.N.Y. May 27, a private cause of action for willful non-compliance, see 15 U.S.C. § 1681n, and negligent non-compliance, see 15 U.S.C. does not apply.

See Camarano v. Irvin, 98 F.3d 44,47 16810, with the duties under the statute. See Casella v. Cir.1996); Elfenbein v. Gulf & Western Industries, Inc., 590 Equifax Credit Info. Svcs., 56 F.3d 469, 473 (2d Cir.1995). F.2d 445, 449 (2d Cir.1978). Plaintiff alleges that all defendants failed to comply, either willfully or negligently, with the duties imposed by the \*7 It is worth noting, however, that plaintiff barred, as a FORA. matter of law, from seeking damages from Equifax and Trans Union based on allegations that defendants are publishing credit information which plaintiff previously verified as | Furnishers of Credit Information “accurate and correct” pursuant to the March 6, 2006, MMCA is a “furnisher of information to credit reporting settlements.

Further, plaintiff is similarly barred from seeking agencies” as defined by the FCRA and its conduct is governed damages, in this action, from defendants Equifax, Trans by Section 1681s of that Act. Section 1681s—2(a) relates Union and Experian based on allegations which could have to MMCA's duty to report information and the ongoing been raised in, but were omitted from, Gaft I. duty to correct inaccurate information.

Plaintiff, however, cannot pursue a claim under Section 1681s—2(a) of the FCRA because the plain language of the statute limits enforcement of this subsection to government agencies and officials. See Merits 15 U.S.C. § 1681s2-(a); *Ryder v. Wash. Mut. Bank, FA*, 371 In addition to arguing that plaintiffs claims are barred F-Supp.2d 152, 154 (D.Conn.2005). by principles of preclusion, defendants also argue that the claims should be dismissed on the merits.

In making this \*8\_ A private right of action may be available to plaintiff argument, defendants rely upon attached credit reports which, 482inst MMCA under Section 1681s—2(b), which provides: as discussed above, cannot be considered incorporated into the complaint or integral to it because it cannot be determined on the existing record whether the attached reports are the After receiving notice pursuant to reports upon which the plaintiff is relying.

Indeed, with section 6ll(a)(2) [, 15 U.S.C. § respect to the report attached by Equifax, the contents of the 1681i(a)(2),] of a dispute with regard report are completely redacted. But, even where the reports to the completeness or accuracy attached by the other defendants include a Mitsubishi debt, of any information provided by a the court cannot assume that the debt listed is the one plaintiff person 7 to a consumer reporting is suing over.

Moreover, as the plaintiff in opposition to the agency, the person shall—(A) conduct motions argues, either the reported debt he complains of is an investigation with respect to the “new,” that is, could not have been the basis for a claim disputed information; (B) review all in the prior litigation, or, if it could have been included, relevant information provided by the and was included, in the settlement agreement, as defendants consumer agency...; (C) report the 2009 WL 3148764 results of the investigation to the of disputed information, 15 U.S.C. § 1681i; the duty to consumer agency; and (D) if the follow reasonable procedures to ensure the accuracy of credit investigation finds that the information information, 15 U.S.C. § 1681e; and the duty to follow proper is incomplete or inaccurate, report procedures in disposing of credit information, 15 U.S.C. § those results to all other consumer 1681w. reporting agencies....

Plaintiff alleges that Experian, Trans Union and Equifax violated the FCRA by failing to “perform a mandatory 7 investigation into plaintiffs written dispute concerning... “The term ‘person’ means any individual, erroneous debt.” Following a dispute of credit information partnership, corporation, trust, estate, cooperative, by a consumer, Section 1681i of the FCRA requires association, government or governmental that a consumer reporting agency “conduct a reasonable subdivision or agency, or other entity.” 15 U.S.C. reinvestigation to determine whether the disputed information § is inaccurate and record the current status of the disputed 15 U.S.C. § 1681s—2(b)(1).

Section 1681i(a)(2) requires a information” within 30 days of receipt of notice of the dispute. consumer reporting agency which receives notice ofa dispute □□ U.S.C. § 1681i(1)(A). As stated

above, the agency is also to provide notification to the provider of the information Required to “provide notification of the dispute to any person within five days of receipt.

15 U.S.C. § 1681i(a)(2)(A). Thus, | Who provided any item of information in dispute.” /d. at § according to the statute, the duties of MMCA are triggered 1681 i(2)(A). Then, within five days of completion of the only by notice from the consumer reporting agency and are —‘reinvestigation, the agency must “provide written notice... limited to a duty to investigate the accuracy of the information \_ of the results of a reinvestigation” to the consumer. ° Td. at § previously provided.

See *Prakash v. Homecomings Financial*, 1681i(6)(A). In addition, upon request, an agency is required No. 05—CV-2895, 2006 WL 2570900, at \*2—\*3 (E.D.N.Y. to provide a description of the procedure used to determine Sept. 5, 2006).

Here, plaintiff has not alleged that MMCA the accuracy and completeness of the credit information. Jd. failed to complete an investigation with respect to the § 1681i(7). Eleventh Account—the duty imposed by statute. 8 Therefore, plaintiff's FCRA claims against MMCA must fail. See *Willey* 9 Specifically, a consumer reporting agency is v. J.P. Morgan Chase, N.A., No. 09-CV—1397, 2009 WL required to provide to the consumer, 1938987, at \*4 (S.D.N.Y.

July 7, 2009) (finding a failure (i) a statement that the reinvestigation is to state a claim where plaintiff did not set forth “factual completed; (ii) a consumer report that is based allegations that describe any insufficiency” in defendant's upon the consumer's file as that file is revised procedures). as a result of the reinvestigation;... (iv) a notice that the consumer has the right to add a statement 8 Although plaintiff alleges that MMCA failed to to the consumer's file disputing the accuracy or conduct an investigation concerning the “previous completeness of the information; and (v) a notice Identity Theft or fraud” which was “brought before that the consumer has the right to request under the Court,” MMCA's duty under the FCRA is subsection (d) of this section that the consumer limited to an investigation of the propriety of the reporting agency furnish notifications under that Eleventh Account as reported to Equifax.

In any subsection. event, plaintiff has offered no evidence, beyond 15 U.S.C. § 1681i(6)(B). reliance on his pleadings, of MMCA's failure to \*9 Plaintiff's claims that defendants have failed to investigate any complaints by plaintiff, as required investigate are insufficient.

As an initial matter, plaintiff failed by Rule 56 of the Federal Rules of Civil Procedure. to allege that he informed either Experian or Trans Union of any disputed item. Therefore, those defendants had no duty to Credit Reporting Agencies investigate under the FCRA. See *Caltabiano v. BSB Bank & The FCRA mandates that consumer reporting agencies meet Trust Co.*, 387 F.Supp.2d 135, 140 (E.D.N.Y.2005). multiple duties with respect to consumers and their credit information, including the duty to perform investigations 2009 WL 3148764 Plaintiff does allege that he “disputed the accuracy of — For the reasons stated above, plaintiff has failed to state a his Credit

Report with Equifax”; however, plaintiff also claim, as a matter of law, against any defendant for failure to states that Equifax responded to plaintiff that “Equifax had = comply with the duties mandated by the FCRA. investigated the matter and was certain that the debt was [ ] that of the plaintiff.” Plaintiff fails to allege that Equifax failed to provide any of the information required by Section Violations of the Fair Debt Collection Practices Act 1681(6)(B).

See supra note 8. Further, plaintiff does not allege that Equifax failed to comply with its statutory duty \*10 Plaintiff also alleges that all defendants have violated to inform defendant MMCA of the disputed item. For these the FDCPA which was enacted in order to eliminate abusive reasons, plaintiff’s claim concerning Equifax’s failure to practices in the collection of consumer debts.

Specifically, investigate is deficient. plaintiff alleges that defendants violated section 807(2)(A) of the FDCPA by misrepresenting the character, amount and The FCRA, under Section 1681 e, also mandates that — Jegal status of the debt owed by plaintiff. Section 807(2)(A) consumer reporting agencies “follow reasonable procedures \_ prohibits a “debt collector” from using “any false, deceptive, to assure maximum possible accuracy” of a credit report. or misleading representation or means in connection with the Seel5 U.S.C. § 1681 e(b).

A Section 1681 e claim requires —cg/lection of a debt.”15 U.S.C. § 1692e (emphasis added). plaintiff to “show that (1) the consumer reporting agency —\_4 “debt collector” is defined as “any person who uses any was negligent or willful in that it failed to follow reasonable instrumentality of interstate commerce or the mails in any procedures to assure the accuracy of its credit report; (2) the business the principal purpose of which is the collection of consumer reporting agency reported inaccurate information —\_any debts, or who regularly collects or attempts to collect, about the plaintiff; (3) the plaintiff was injured; and (4) the — directly or indirectly, debts owed or due or asserted to be consumer reporting agency’s negligence proximately caused — gwed or due another.”/d. at § 1692a.

However, the statute the plaintiff’s injury.” Gorman v. Experian Info. Solutions, specifically exempts from the definition of “debt collector” Inc., No. 07-CV-1846, 2008 WL 4934047, at \*4 (S.D.N.Y. any creditor attempting to collect debts it is owed. Id. Noy. 18, 2008). Plaintiff’s allegations under the FDCPA are insufficient for Here, the Amended Complaint alleges that defendant two reasons: first, no defendant, as alleged, is a “debt consumer reporting agencies reported inaccurate information □□ collector” within the meaning of the FDCPA.

Second, causing damage to plaintiff’s “reputation, Credit worthiness, \_ plaintiff has not alleged that defendants have engaged in any and personal health.” (Am.Compl.{| 23.) However, an attempt to collect a debt from plaintiff.

Therefore, plaintiff’s inaccurate entry of credit information, in and of itself, is claims under the FDCPA are dismissed. See Fashakin v. not a violation of the FCRA; rather, to state a claim under

Nextel Comm'ns, No. 05-CV—3080, 2006 WL 1875341, at \*7 Section 1681(b), plaintiff must allege that the consumer (— DN.Y. July 5, 2006). reporting agencies failed, through negligence or intention, to follow reasonable procedures to ensure the accuracy of the information.

See Gorman, 2008 WL 4934047, at \*4. Plaintiffs Amended Complaint is devoid of any allegations State Law Claims concerning the reasonableness of the procedures used by the In addition to the FCRA and FDCPA claims, plaintiff also defendant consumer reporting agencies.

Therefore, plaintiff's brings four state law claims: (i) slander of title; (ii) fraud; (iii) claim that defendants failed to comply with their duties under gross negligence and (iv) negligence per se. the FCRA, to the extent that claim refers to any duty to follow reasonable procedures to ensure the accuracy of information, must fail. See Willey, 2009 WL 1938987, at \*4.

Limitation on Liability/Preemption As an initial matter, the court notes that two sections of the Finally, plaintiff makes no mention of, nor does he allege, | FCRA potentially preempt plaintiff's claims. First, Section facts related to any defendants' duty to properly dispose of —1681h(e) provides: consumer credit information. 2009 WL 3148764 2006 WL 2570900, at \*5 (“Though § 1681t(b)(1)(F) appears to preempt all state law claims, Congress did not withdraw Limitation on liability.

Except as § 1681h(e)—which preempts certain state law claims, but provided in sections 1681n and impliedly permits others—when it added § 1681t(b)(1)(F) to 1681e, no consumer may bring any the code in 1996.”); see also Kane, 2005 WL 1153623, at \*5— action for proceeding in the nature \*11 (collecting cases).

As discussed below, with respect to the of defamation, invasion of privacy, claims against MMCA, it is unnecessary for the court to adopt or negligence with respect to the an approach to resolve the tension between these preemption reporting of information against any provisions. consumer reporting agency... or any person who furnishes information Slander of Title to a consumer except as to false,.....

Plaintiff alleges that each defendant made “false and information furnished with malice or. □: willful intent to injure such customer. malicious statements amounting to slander of title. Even assuming that this claim is not pre-empted by the FCRA, plaintiffs pleadings are insufficient. 15 U.S.C. §§ 1681h(e) (emphasis added).

In addition, Section In New York, to state a claim for slander of title a plaintiff of the FCRA, which applies only to furnishers must allege that (i) defendant made a “communication falsely of credit information, provides: casting doubt on the validity of [the] complainant's title’; (ii) which was “reasonably calculated to cause harm; and (iii) “result[ed] in special damages.” 39 College Point Corp. v. No requirement or prohibition may Transpac Capital Corp., 27 A.D.3d 454, 455, 810 N.Y.S.2d be imposed under the laws of any 520 (N.Y., 2d Dept., 2006).

However, a plaintiff cannot State... with respect to any subject make a claim of slander of title where the plaintiff does matter regulated under... section not have title to the property about which a communication 1681s—2, relating to responsibilities or was made. See *White & Baxter, Inc. v. Jade Square and persons who furnish information to Tower, Ltd.*, 62 A.D.2d 963, 963, 404 N.Y.S.2d 105 (N.Y., 1st consumer reporting agencies, except Dept., 1978).

The essence of plaintiff's claims are that he has that this paragraph shall not apply [to been misattributed an extension of credit, and the associated specific sections of the Massachusetts debt, for something that he never applied for or owned. Annotated Laws and the California Because plaintiff makes no allegations that any defendant has Civil Code. ] disparaged a title that plaintiff actually holds, the slander of title claim must fail as to all defendants.

15 U.S.C. § 1681t(b)(1)(P). Fraud Of these two provisions, only Section 1681h(e) might apply Plaintiff alleges that each defendant committed an act of to plaintiff's state law claims against the consumer reporting —‘fraud by “acting in concert with one another” and “accepting agency defendants. That section “does not preempt every 4 fraudulent credit application” which resulted in plaintiff possible action, as it allows plaintiffs to maintain tort actions, bŕig improperly named “on 11 or more separate occasions including defamation and negligence claims, but requires 8 the true debtor for a loan or lease from the defending plaintiffs to prove malice or willful intent for such claims.” creditor Mitsubishi.” Plaintiff alleges, “on information and Kane y. Guaranty Residential Lending, Inc., No. 04-CV— belief’, that this fraud stemmed from “unknown unidentified 4847, 2005 WL 1153623, at \*6 (E.D.N.Y.

May 16, 2005). employees or agents” of MMCA who have improperly gathered, and misused, plaintiffs credit information. Even \*11 By contrast, both Section 1681h(e) and Section 1681t(b) | 28Suming that this claim is not pre-empted by the FCRA, (1)(F) may apply to claims against MMCA.

Because these — Plaintiff's pleadings are insufficient. provisions appear to be contradictory, courts have devised multiple approaches in order to reconcile them. See *Prakash*, 2009 WL 3148764 In New York, a claim of fraud requires plaintiff to plead a — possibility, that defendants knew the Eleventh Account to be material false misrepresentation or omission of an existing — false, or that the defendants acted with conscious or reckless fact, which defendants made with knowledge of its falsity disregard for its falsity.

See *Marekh v. Equifax, et al.*, No. and intent to defraud, and which plaintiff relies upon to 00— CV6246, 2001 WL 65602, at \*1 (2d Cir. Jan.25, 2001); his detriment. *Guilbert v. Gardner*, 480 F.3d 140, 147 (2d Whelan v. Trans Union Credit Reporting Agency, 862 F.Supp. Cir.2007). Fraud claims under New York common law are 824, 834 (E.D.N.Y.1994). also subject to the heightened pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure.

See Steinberg 10 In New York, gross negligence “is conduct that v. Sherman, No. 07-CV-1001, 2008 WL 2156726, at \*5 evinces a reckless disregard for the rights of others (S.D.N.Y. May 8, 2008). “The pleadings must adequately and smacks of intentional wrongdoing.” Sutton specify the statements that were allegedly false or misleading, Park Development Corp. Trading Co. v. Guerin & provide particulars as to the alleged falsity of the statements, Guerin Agency, 297 A.D.2d 430, 432, 745 N.Y.S.2d state the time and place the statements were made, and 622 (N.Y. 3rd Dept., 2002). identity [of] the persons who made them.” Hunt v. Enzo Biochem, 530 F.Supp.2d 580, 593 (S.D.N.Y.2008).

II In New York, “negligence per se” requires that the plaintiff establish “(1) that he or she is among \*12 Here plaintiffs fraud pleading is insufficient. First, the class of people for whose particular benefit a plaintiff has failed to plead any reliance on the purportedly statute has been enacted; (2) that a private right false statement of the defendants.

Second, plaintiff has failed of action would promote the legislative purpose to state, with particularity, the purportedly false statement behind the statute; and (3) that creation of the right (i.e., the Eleventh Account), for example, the account number would be consistent with the overall legislative and any details related to that account.

For these reasons, scheme.” Fagan v. AmerisourceBergen Corp., 356 plaintiffs common law fraud claim is dismissed as to all F.Supp.2d 198, 214 (E.D.N.Y.2004). Under this defendants. theory, if a defendant violates a statute it is per se negligence and then the plaintiff only need show that the violation of the statute proximately caused Negligence Actions injury to the plaintiff.

See German by German v. Plaintiff alleges two claims based in negligence; specifically, Fed. Home Loan Mortg. Corp., 896 F.Supp. 1385, that each defendant's failure to comply with “a manifest duty 1396 (S.D.N.Y.1995).

However, this standard is imposed upon them by [the FCRAJ" constituted (1) “gross inconsistent with the limitation imposed by Section negligence”, and (ii) “negligence per se.” As stated above, a 1681h(e) requiring a demonstration of willful or negligence action stemming from the reporting of consumer malicious intent to injure the plaintiff. credit information is limited by Section 1681(e) of the FRCA, which requires that the plaintiff allege that defendants.: as: Consumer Reporting Agencies published false information “with malice or willful tntent to A reading of the Amended Complaint, with all reasonable injure” plaintiff.

Seel5 U.S.C. § 1681h(e). Malice, m the inferences in favor of the pro se plaintiff, leads the court context of the FRCA, holds the same meaning as it does to conclude that plaintiff may be alleging that, although in a libel action, in other words, “the speaker knew [the...: each credit reporting agency defendant knew plaintiff was report] was false or acted with reckless disregard for its truth the victim of identity theft in 2006 resulting in false items or falsity.” George v. Equifax Mortg.

Services, No. 06—CV—, □□□.. 971, 2008 WL 4425299, at \*9 (E.D.N.Y. Sept. 30, 2008). “ppeams on plaintiff's credit report, which was □□□□□□□□: by a litigation and settlement, Mitsubishi acted with “gross “Willful,” in the context of the FRCA, “require[s] a showing. a.. negligence,” in 2007, by reporting a new false item—the that the agency knowingly and intentionally committed an act Eleventh Account—to Equifax and then, subsequent to the in conscious disregard of the rights of others.” /d. (internal. oe,... filing of the original Complaint in this action, again reporting citations omitted), that account to Experian and Trans Union.

(See Am. Compl. §] 22.) The credit reporting agencies then allegedly acted with Therefore, here, plaintiff's claims “gross negligence” ° and “eross negligence” by incorporating this new, false item into “negligence per se” i require plaintiff to allege facts which, their credit reports. if true, demonstrate, with plausibility, rather than the mere 2009 WL 3148764 Plaintiff has alleged facts which, if truc, could show that each by MMCA.

Indeed, Gaft has not identified any evidence, of the credit reporting agencies acted with reckless disregard beyond the pleadings, whether through affidavits, documents for the reporting of false information on plaintiff's credit or deposition testimony, that the law would regard as damages reports. caused by MMCA through reckless or conscious disregard, or malice, concerning the falsity of the Eleventh Account. \*13 Therefore, with respect to defendants Trans Union, Therefore, even assuming that the negligence claims against Equifax and Experian, to the extent plaintiff is alleging that MMCA are not preempted, summary judgment is appropriate. defendants acted with malice or reckless disregard for the truth of the Eleventh Account because defendants were on notice of a prior identity theft, plaintiff has stated a claim Conclusion for gross negligence as required by Section 1681h(e) of the FRCA.

For the foregoing reasons, each of plaintiff's federal claims under the Fair Credit Reporting Act and the Fair Debt Collecting Practices Act are dismissed. In addition, plaintiff's Furnishers of Credit Information state law claims for fraud and slander of title are dismissed. Unlike the credit reporting agency defendants, which have Defendants Experian's, Equifax's and Trans Union's motions moved for judgments on the pleadings, MMCA has moved \_to dismiss plaintiff's negligence claims are denied.

Defendant for summary judgment. As discussed above, ifthe nonmoving © MMCA's motion for summary judgment against plaintiff's party will bear the burden of proof at trial, but there is an \_ negligence claims is granted. absence of evidence in the record as to an essential element of his claim, summary judgment is appropriate. See Shah v. SO ORDERED. Kuwait Airways Corp., No. 088—CV—7371, 2009 WL 2877604, at \*2 (S.D.N.Y.

Sep.9, 2009) (Lynch, J.) Here, MMCA argues that there is no evidence in the record creating □□ issue of fact All Citations as to whether plaintiff suffered damages proximately caused. Not Reported in F.Supp.2d, 2009 WL 3148764 End of Document © 2026 Thomson Reuters. No claim

to original U.S. Government Works. Filings (6) Title PDF Court Date Type 1. Defendant Equifax Information Services LLC's a E.D.N.Y.

Aug. 16, 2007 Pleading Answer and Affirmative Defenses to Plaintiff's Ae Amended Complaint Mark GAFT, Plaintiff, v. MITSUBISHI MOTOR CREDIT OF, America, Equifax; Trans Union; and Experian, Defendants. 2007 WL 4770827 2. Answer, and Affirmative Defenses E.D.N.Y. Aug. 16, 2007 Pleading Mark GAFT, Plaintiff, v. MITSUBISHI MOTORS CREDIT 'mt OF AMERICA, INC., Together with Their Employees & Agents; Equifax, Together with Their Employees & Agents; Trans Union, Together with Their Employees & Agents; Experian, Together with Their Employees & Agents, Defendants.

2007 WL 4771052 3. Answer Of Defendant, Trans Union Llc To aa E.D.N.Y. Aug. 16, 2007 Pleading Amended Complaint An Mark GAFT, Plaintiff, v. MITSUBISHI MOTOR CREDIT OF AMERICA; Equifax; Trans Union; and Experian, Defendants. 2007 WL 4771053 4. Defendant Experian Information Solutions, Inc.'s Gm E.D.N.Y. July 31, 2007 Pleading Answer and Affirmative Defenses to Amended ai Complaint Mark GAFT, Plaintiff, v. MITSUBISHI MOTOR CREDIT OF AMERICA, Together with Its Employees & Agents; Equifax, Together with Its Employees & Agents; Transunion, Together with Its Employees & Agents; Experian Information Solutions, Inc., Together with Its Employees & Agents, Defendants.

2007 WL 4771051 5. Defendant Equifax Information Services LLC's Ga £.D.N.Y. Mar. 05, 2007 Pleading Answer and Affirmative Defenses 'aa Mark GAFT, Plaintiff, v. MITSUBISHI MOTOR CREDIT, John/Jane Doe Employee(s) of Mitsubishi Motor Credit, and Equifax, Defendants. 2007 WL 1174640 6. Docket 1:07cv00527 — E.D.N.Y. Feb. 07, 2007 Docket GAFT v. MITSUBISHI MOTOR CREDIT ET AL History (2) Direct History (1) 1.

Gaft v. Mitsubishi Motor Credit of America v= 2009 WL 3148764, E.D.N.Y., Sep. 29, 2009 Related References (1) 2. Gaft v. Transunion 2010 WL 180933, E.D.N.Y., Jan. 14, 2010 2015 WL 2354308 \*1 Plaintiffs Thomas Nguyen ("Mr.Nguyen") and Tiffany 2015 WL 2354308 Nguyen ("Ms. Nguyen"), proceeding pro se, commenced Only the Westlaw citation is currently available. the above-captioned actions against Defendants, alleging United States District Court, violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. ("FCRA"), Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5301 et seq. ("CFPA"), Thomas NGUYEN, Plaintiff, particularly the section relating to the Bureau of Consumer V. Financial Protection, §§ 5481-5620, 42 U.S.C. §§ 1983 and RIDGEWOOD SAVINGS BANK 1985, and the New York State Fair Credit Reporting Act. and Peter Boger, Defendants.

New York. 1681 et seq. ("FCRA"), Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5301 et seq. ("CFPA"), Thomas NGUYEN, Plaintiff, particularly the section relating to the Bureau of Consumer V. Financial Protection, §§ 5481-5620, 42 U.S.C. §§ 1983 and RIDGEWOOD SAVINGS BANK 1985, and the New York State Fair Credit Reporting Act. and Peter Boger, Defendants.

The three Complaints name different Defendants but raise thomas Nguyen, Plaintiff, overlapping claims. ' Vv. Chase Bank USA, N.A. and James Dimon, Defendants. | These actions are three of

seven filed by Mr. Thomas Nguyen and Tiffany Nguyen, Plaintiffs, Nguyen in the Eastern District of New York in v. the last fifteen months, many of which have been Santander Bank, N.A., Roman Blanco, dismissed.

See *Nguyen v. Bush*, No. 15—CV-641 Citibank, N.A., Michael Corbat, Experian v. D.N.Y. filed Feb. 6, 2015) (see Docket Entry Information Solutions, Inc., Donald Robert, No. 6 (dismissing complaint in full without leave to amend)); *Nguyen v. Milliken*, No. 15—CV—587 Trans Union LLC, and Equifax, Inc., Defendants. (E.D.N.Y. filed Jan. 30, 2015) (see Docket Entry Nos. 14-CV-1058 (MKB), 14-CV— No. 5 (dismissing complaint in full with leave to 3464 (MKB), 14-CV-3989 (MKB). amend)); *Nguyen v. Santander Bank*, No. 14-CV— 3989 (E.D.N.Y. filed June 26, 2014) (dismissing Signed May 15, 2015. complaint at September 17, 2014 status conference, with leave to amend); *Nguyen v. JPM Chase Bank, Attorneys and Law Firms* No. 14-CV—03464 (E.D.N.Y. filed June 2, 2014) (same); *Nguyen v. China Nat'l Offshore Oil Corp.* Thomas Nguyen, Brooklyn, NY, pro se.

(CNOOC), No. 14-CV-3327 (E.D.N.Y. filed May Tiffany Nguyen, Brooklyn, NY, pro se 29, 2014) (dismissing complaint at September 17, 2014 status conference, in full with prejudice as any Adam Matthew Marshall, Cullen and Dykman LLP, Garden amendment would be futile) appeal dismissed No. City, NY, Marianne McCarthy, Cullen and Dykman Bleakley 14-3871 (2d Cir.

Mar. 6, 2015); *Nguyen v. Bank Platt, LLP*, Garden City, NY, Christopher B. Turcotte, The of America, No. 14—CV—1243 (E.D.N-Y. filed Feb. Law Office of Christopher B. Turcotte, New York, NY, 26, 2014) (see Docket Entry No. 22 (dismissing James A. Kassis, Rahil Darbar, Schenck Price Smith & King complaint in full with leave to amend)); *Nguyen LLP*, Florham Park, NJ, Raymond Alexander Garcia, Stroock v. Ridgewood Savings Bank, No. 14~CV—1058 & Stroock & Lavan, New York, NY, Jennifer Kathleen (E.D.N -Y. filed Feb.

28, 2014) (see Docket Entry Messina, Jones Day, New York, NY, Matthew Samberg, Jones No. 22 (dismissing complaint in full with leave to Day, Pittsburgh, PA, Camille Renee Nicodemus, Schuckit amend)). & Associates, P.C., Zionsville, IN, Christina Marie Conroy, Currently before the Court are seven separate motions to Paul Allan Straus, King & Spalding, New York, NY, for — dismiss filed by Defendants Ridgewood Savings Bank and Defendants.

Peter Boger, (Ridgewood Mot. to Dismiss, No. 14-CV—1058 Docket Entry (“S8DE”) No. 37), Chase Bank USA, N.A. and James Dimon, (Chase Mot. to Dismiss, No. 14-CV—3464 MEMORANDUM & ORDER Docket Entry (“64DE”) No. 19), Santander Bank, N.A. and Roman Blanco, (Santander Mot. to Dismiss, No. 14-CV— MARGO K. BRODIE, District Judge. 3989, Docket Entry (“89DE”) No. 46), Citibank, N.A. and Michael Corbat, (Citibank Mot. to Dismiss, 89DE No. 61), 2015 WL 2354308 Experian Information Solutions, Inc. and Donald Robert, 2 Michael Corbat, CEO of Citigroup; Experian Information (Experian Mot. to Dismiss, 89DE No. 54), Trans Union LLC, Solutions, Inc. (“Experian”), incorrectly identified as (Trans Union Mot. to

Dismiss, 89DE No. 50), and Equifax, Experian, Inc.; Donald Robert, Chairman of Experian plc; 3 Inc., (Equifax Mot. to Dismiss, 89DE No. 58).

Defendants Trans Union LLC (“Trans Union”); and Equifax, Inc. move pursuant to Rules 8, 9, and 12(b)(6) of the Federal Rules (“Equifax”). Mr. Nguyen's daughter, Tiffany Nguyen, is also of Civil Procedure. Also before the Court is Mr. Nguyen's a Plaintiff in action 14-CV—3989.

The three Complaints requests for default judgments against Ridgewood and Boger, name different Defendants but raise overlapping claims and (58DE Nos. 32-33), and against Experian and Robert. (See frequently contain overlapping allegations. Mr. Nguyen's Am. Compl. in No. 14-CV—3989 (“3989 Am. Compl.”) § submissions often reference all three actions, and the 17, 89DE No. 25; see also Letter dated Nov.

18, 2014 from | = Amended Complaints filed in 14-CV—1058 and 14-CV— Mr. Nguyen seeking default judgments against Experian and § 3989 include reference to the other actions in the captions. Robert, 89DE No. 32.) In addition, Mr. Nguyen submitted an identical “addendum” to his Amended Complaints in actions 14-CV—3464 and 14— Experian Information Solutions, Inc. submitted CV-3989. a single motion to dismiss, noting that it was incorrectly identified in the Complaint as 3 Experian ple is the parent company of Experian “Experian Inc.” and “CEO Don Robert.” (Cover Information Solutions, Inc. (Corporate Disclosure Letter dated January 12, 2015 at 1, 89DE No. 53.)

Statement § 1, No. 14-CV—3989, Docket Entry No. Robert did not join Experian's motion to dismiss, 36.) (see generally Experian Mot. to Dismiss), though \*2 On September 17, 2014, the Court dismissed the Experian's counsel has entered an appearance Complaints in 14-CV-3464 and 14-CV-3989 in. their on Robert's behalf, (S9DE No. 69), and the entirety pursuant to Rule 8 of the Federal Rules of memorandum of law in support of the motion seeks Civil Procedure, for failure to plead with specificity the dismissal as to Robert for failure to state a claim, violation Plaintiffs allege, and permitted Plaintiffs to file (Experian Mem., 89 DE No. 55 at 4-5, 12). amended complaints.

(See Nos. 14-CV—3464 and 14-CV— For the reasons discussed below, Defendants’ motions to 3989, Minute Entry dated Sept. 17, 2014.) By Memorandum dismiss are granted as to Plaintiffs' federal claims, and and Order dated December 17, 2014, the Court dismissed Mr. Nguyen's motions for default judgments are denied. the Complaint in 14-CV—1058 for failure to state a As Plaintiffs have previously been given the opportunity to claim pursuant to Rule 12(b)(6) of the Federal Rules amend their complaints in each action, and have failed to of Civil Procedure.

Plaintiffs subsequently filed Amended correct the deficiencies identified by the Court, the Amended Complaints, and Defendants now move to dismiss the Complaints are dismissed with prejudice as to all of Plaintiffs’ | Amended Complaints in all of the above-captioned actions.

federal claims. b. Factual background I. Background The following facts are taken from Plaintiffs' Amended Complaints, (Am.

Compl. in No. 14—CV—1058 (“1058 Am. a. Procedural background Compl.”), 58DE No. 23; Am. Compl. in No. 14-CV-3464 Plaintiff Mr. Nguyen, proceeding pro se, filed the («3464 Am. Compl.”), 64DE No. 12; 3989 Am. Compl.), an above-captioned actions challenging various actions of — jgentical Addendum to the Amended Complaint submitted in Ridgewood Savings Bank (“Ridgewood”); Peter Boger, actions 14—CV—3989 and 14-CV—3464 on October 24, 2014, Chairman, President and Chief Executive Officer (“CEO”) of (Am.

Compl. Add., 64DE No. 14 and 89DE No. 27), and Ridgewood; Chase Bank USA, N.A. (“Chase”), incorrectly 4 Supplemental Addendum to the Amended Complaint filed identified as JPMC Chase Bank in the initial Complaint; in 14-CV-3989 on October 31, 2014, in which Mr. Nguyen James Dimon, Chairman and Chief Executive Officer “repeats and re-alleges... the entire amended complaint in 14— (“CEO”) of JPMorgan Chase & Co., incorrectly identified as [CV]-3464.” (Suppl.

Am. Compl. Add. § 22, 89DE No. 28). Jamie Dimon; Santander Bank, N.A. (“Santander”); Roman Blanco, Chairman and CEO of Santander; Citibank, N.A. fy sum, Plaintiffs appear to allege that Santander, Chase, (“Citibank”), incorrectly identified as Citibank (Citigroup); Citibank and Ridgewood provided incorrect or inaccurate 2015 WL 2354308 information about Mr. Nguyen's accounts to Equifax, on a total credit limit of \$71,000> and reached a different Experian and Trans Union, which affected Mr. Nguyen's conclusion, placing him in the “top of.01% tail [sic ] on credit score.

Both Plaintiffs also experienced difficulty normal distribution curve of favorable credit rating and credit obtaining credit from Defendant banks at various times. score.” (Id.) i. Allegations against Santander, Blanco, Equifax, Plaintiffs allege that this reflects Mr. Nguyen's total Experian and Trans Union credit limit on all of his revolving accounts.

On or about February 19, 2007, Mr. Nguyen was approved for \*3 In March or April of 2013, Mr. Nguyen alerted. ”:... a GoldOption” credit account with Santander, with a credit Janet Sanders, “Brooklyn Tech's payroll secretary.” 6 «Beth line of \$15,000, and another “GoldOption” credit account □. oe. Johnson's UFT chapter leader” and Teresa Samuels, “UFT with a credit line of \$26,500 held by Bank of America, but 5. cert □□□..

Brooklyn Rep.” that something was wrong “inside.” (/d. § serviced by FIA Card Services. (3989 Am. Compl. 4 2.) Mr.: □ 10.) In September of 2013, Mr. Nguyen spent one week Nguyen alleges that he attempted to pay down his two credit... oa □□ ye gs. in Maimonides hospital in Brooklyn. Ud. § 9.) Plaintiffs accounts with his disposable income, but “[D]efendants were..... allege that

Santander and Bank of America's actions with using unfair, deceptive, abusive acts or practices... to drive... gy respect to Mr. Nguyen's credit accounts caused financial and [Mr.

Nguyen] into destitution.” In or about June of 2007, Mr.. □. psychological damage, and slowed Mr. Nguyen's recovery Nguyen went to a Bank of America branch to attempt to make time. (Id.) a payment on his Santander credit card account, and alleges “\_ that Santander never received his \$1000 payment 4 □□□ 6 chibi 3.) Mr. Nguyen contacted a manager at one of the banks, and Exhibits annexed to the Supp emental Addendum. “ » to the Amended Complaints in 14-CV—3989 and was eventually informed that “they found the money.” (/d.) □ eee gs 9 14-CV—3464 indicate that in 2012, and perhaps Mr. Nguyen alleges that his “credit-performance” on the i h teach Santander account “is considered AAA+++.” (Id.) ater, Mr. Nguyen was a math teacher at Brooklyn Technical High School.

(Letter dated March 1, 4 2012 from Randy J. Asher, Principal of Brooklyn It is unclear from the allegations in the Amended Technical High School to Mr. Nguyen, annexed to Complaint what connection Mr. Nguyen believes Supp. Am. Compl. Add. at Ex. 2.) that Santander and Bank of America have I b 5014 through October 2014. Plaintiff beyond offering credit accounts with the name n or about January ous cto? auntills “GoldOption.” allege that Santander committed a series of deceptive, unfair, and abusive acts or practices including various forms of Mr. Nguyen alleges that from November 19, 2008 to the fraud against Mr. Nguyen's checking account and a separate present, Santander, Bank of America, and FIA Card Services, \_Jine of credit.

(Id. 4 6.) Mr. Nguyen alerted the Consumer acting in conspiracy with one another, committed unfair, Financial Protection Bureau (““CFPB”) and sent a letter to deceptive, abusive acts or practices “against” his accounts, Blanco regarding the issue, and received a letter in reply forcing him “eventuall d gradually int life of hell. lm een ya oraenay ao wae ons from a bank representative on February 24, 2014.7 Ud.)

On for so many years until” September 1, 2013, when Mr.... \_ March 29, 2014, Mr. Nguyen attempted to withdraw \$20 Nguyen sustained atrial fibrillation and other heart conditions.... from his account ending in—1223 at Santander, and received (Id. § 4.) At some point, Mr. Nguyen apparently requested... Lo... ce a receipt regarding a different account, ending in —3496, that someone examine the “GoldOption portfolio,” and “the Loe...,, indicating that there was a larger balance in the account office of President and CEO represented by Tom Jordan contacted Experian. (/d. § 5.)

Mr. Nguyen was also sent than he Knew was 10 his—1223 account.” (Id. | 6c; Ex. a “suspicious, terrorizing, and threaten [sic ] letter.” id.) | SF 5.) Plaintiffs allege that this was a set-up” and a scam. Plaintiffs allege that from October 16, 2013 through the date 3989 Am. Compl. {j 6c.) Plaintiffs allege that Santander, the present actions were filed, Experian, Bank of America acting in concert with Bank of America and FIA Card and Santander “conspired in committed [sic ]a

fraudulent act, Services, deceptively and fraudulently violated the FCRA criminal deception, grossly abusive” practice by “fabricating” 24 engaged in unfair and deceptive practices in relation to the credit utilization ratio reported to Mr. Nguyen. (/d.)

Mr. | Mt. Nguyen's credit accounts. (/d. | 9.) Mr. Nguyen further Nguyen recalculated his own credit utilization ratio, based \_States that he “has suffered loss and damages including, but not limited to, financial loss, financial injuries, expenditure 2015 WL 2354308 of time and resources, emotional distress, A—Fib, mental | Blanco and [Vice President, Manager of Customer Relations anguish, humiliation, and embarrassment, entitling him to JoAnn] Gruber and then hung up [.]” Ud. § 6e.)

On another actual immediate relief.” (/d.) occasion, Mr. Nguyen received a call from “Jeff,” on behalf of Santander, at 8:00 AM on a Saturday. (/d.) 7 Plaintiffs state that they have attached the letter to the Complaint, but the copy filed is illegible. (See ii. Allegations against Citibank and Michael Corbat Ex. SF, annexed to 3989 Am. Compl.) Plaintiffs a+ the end of the 3989 Amended Complaint, Plaintiffs allege appear to object to computation of balances on that Citibank and Corbat “were contacted” and discussed the Mr. Nguyen's account statements, alleging that the Plaintiffs’ allegations against them including conspiracy to accounting is fraudulent.

(3989 Am. Compl. { | 6; commit murder. (/d. 20.) Plaintiffs refer to the Addendum to Ex. SF 3-4.) the Amended Complaint. (/d.) Therein, Plaintiffs allege that 8 It is not clear from the Complaint what relationship Citibank acted with non-party Expedia “et al” in a conspiracy there is between the two accounts, and why Mr. with “several “State Actors to committing [sic ] murder or Nguyen would receive a receipt for the account committing [sic | to terrorize us in the post 9/11 era, etc. in ending in—3496 when he attempted to withdraw pursuant to FCRA” and several sections of the United States \$20 from the account ending in—1223.

Code. (Am.Compl.Add.1.) In January 2014 “and thereafter,’ Mr. Nguyen contacted —\_a¢ or about the time Mr. Nguyen's father passed away in Experian, Trans Union and Equifax to “personally address[ | January of 2014, Mr. Nguyen called Citibank “at about 2 the issue and offer[ ][an] amicable solution.” (/d. § 16.)

On 3 am” requesting an increase in his credit line, which was March 1, 2014, Plaintiffs allege that Experian committed —pefiseg. (Supp.Am.Compl.Add.§ 15.) Mr. Nguyen allegedly unspecified fraud. (/d. § 17.) Mr. Nguyen “gave the evidence purchased flights from Expedia to Vietnam to attend his to expose Experian [sic ] crime to the [Federal Trade father's funeral.

Mr. Nguyen alleges that Citibank acted in Commission (“FTC”) ] and CFPB.” (/d.) Also in March — ¢gnjunction with Expedia to commit unfair and deceptive acts 2014, Trans Union answered Mr. Nguyen's letter with an against him, forcing him to extend his credit account over the inaccurate credit report, in which Trans Union “deceptively credit limit. (Id.) sandbag[ged]” Mr.

Nguyen's credit score by “suppress[ing] my payment's info[r]mation] and data with JPM Chase [and] —\_A¢ some unspecified time, Mr. Nguyen brought to Citibank's Ridgewood....” (dd. { | 18.)

Plaintiffs also allege that Equifax attention an unauthorized charge on his account. (/d.) used unfair practices against Mr. Nguyen for many years, Citibank removed the charge from his account initially, but apparently related to reporting a low credit utilization ratio —\_Jater recharged the credit account. (Id.) and otherwise using or misusing Mr. Nguyen's FICO credit score. (/d.)

Mr. Nguyen also apparently received two calls On April 23, 2014, Citibank refused Ms. Nguyen a credit from Equifax's counsel in August, although he does not card account “because of terrorist activity,” but still sent her specify the year. (/d.) Plaintiffs complain that one of the calls Gregit card in the mail. (id. § 19.) Plaintiffs allege this was unprofessional because it was received at 9:26PM ona —\_ongtitutes “discrimination, character defamation, abuse of Sunday evening, while Mr. Nguyen was serving food to his power” and is “criminally fraud [sic ].” id.) brother in a nursing home. (/d.) \*4 On April 28, 2014, Santander “and/or” Experian iii.

Allegations against Chase Bank and Dimon “fraudulently” collected \$16.30 “instead of the usual one Mr. Nguyen brought a separate action, not joined by Ms. week prior to the 28th....” Ud. § 6d.) Plaintiffs allege that | Nguyen, against Chase Bank and Dimon, in which he Mr. Nguyen suffered “fears, financial and physical injuries, alleges similar claims for fraud, unfair and deceptive business etc.” Ud.)

Since September 17, 2014, Mr. Nguyen has practices, violations of the FCPA and CFPA, and conspiracy received more than one hundred “harass[ing] phone call[s]” pursuant to 42 U.S.C. § 1985. (3464 Am. Compl. 4 II.) from Santander. (/d. §] 6e.)

On October 20, 2014, Mr. Nguyen Mr. Nguyen alleges that Chase bank engaged in “illegal and received a telephone call asking him to verify his social deceptive practices” between October 2005 and June 2012, security number, and spoke with two different individuals. and that on September 13, 2013, the CFPB ordered Chase (Id. 6e.) Mr. Nguyen “politely advised them to ask those [sic to pay more than \$309 million in damages to credit card 2015 WL 2354308 customers.

(3464 Am. Compl. {J 1, 8.) On September 13, he argues entitles him to relief. Ud. 4 14.) At the end of 2013, Mr. Nguyen filed a claim in Small Claims Court, Kings — his Complaint, Mr. Nguyen repeats his allegations regarding County, for “Chase's violation” relating to Mr. Nguyen's his March or April 2013 contact with Janet Sanders, Beth credit card account, seeking damages of \$5000 (“Small Johnson's “UFT chapter leader” and Teresa Samuels. (/d. § Claims action”).

Ud. § 2.) In December 2013, Mr. Nguyen 15.) sent Dimon a letter regarding his credit card account, because it “was illegally charged and billed with illegal and deceptive practice products.” (Id. § 3.) iv. Allegations against Ridgewood and Boger Mr. Nguyen brought a third action, not

joined by Ms. Nguyen, \*5 Shortly after filing his Small Claims action, Mr. Nguyen against Ridgewood and Boger, in which he alleges similar received a telephone call requesting his appearance on claims for fraud, unfair and deceptive business practices, “People's Court” with Dimon “or his representative.” (Jd.

Violations of the FCRA and CFPA, and conspiracy pursuant 4.) Mr. Nguyen alleges that he “smelled something fishy” and '© 42 U.S.C. § 1985. (1058 Am. Compl. { | III.) The facts determined that the offer was related to fraud and collusion, llegal in Mr. Nguyen's Complaint are set forth in Nguyen though he does not allege who colluded and for what end R'dgewood Savings Bank (Nguyen 1), — F.Supp.3d □□ the collusion occurred.

(Id. 4] 4.) On January 27, 2014, Mr, 2014 WL 7182812 (E.D.N-Y. Dec. 17, 2014), which decision Nguyen received a letter from a lawyer stating, infer alia, \_ 4ismissed Mr. Nguyen's initial Complaint, but permitted him “please contact me to discuss the litigation and whether we \_ °° file the instant Amended Complaint. can reach an amicable resolution.” Ud. § 5.)

On March 3, 2014, Mr. Nguyen received another telephone call from \*6 In or about November of 2005, Mr. Nguyen opened the “Judge Judy Show,” asking if he would appear on the a Certificate of Deposit (“CD”) account of \$8000 with show regarding the small claims case. (/d. § 6.) Mr. Nguyen Ridgewood. (1058 Am. Compl. § 1.)

In connection with the apparently did not appear on either television show, instead account, Mr. Nguyen received a television and a camcorder. appearing before Judge Harriet Thompson in April of 2014, (id.) On or about October 2007, Mr. Nguyen obtained a where Mr. Nguyen indicated that he would bring the actionin Secured loan of about 90% of the CD value. (Id. { 2.) the United States District Court after discontinuing his Small | Sometime between 2005 and 2010, Mr. Nguyen began Claims action.

(Id. §7.) making monthly payments on his loan at the Ridgewood branch in Brooklyn, NY. Ud. § 3.) In 2013, Mr. Nguyen Mr. Nguyen alleges that he had a “good if not perfect record ©Mtacted the Federal Deposit Insurance Corporation's with Chase until” July of 2014. (id. 8.) He states that“Chase | (FDIC”) Consumer Response Center disputing the accuracy broke the law and had been ordered to pay [P]laintiff, one of Ridgewood's records as to the timeliness of twenty two of the victims.” (Id.)

He also refers to a “fabricated charge- f Mr. Nguyen's payments on his loan. (/d. 4] 4—S, 18.) A off” and indicates that this was a “false pretense” for Chase \_ ‘Short time “before or after” December 16, 2013, Mr. Nguyen to conspire with Credit Reporting Agencies via “fraud-ridden ©OMtacted Ridgewood seeking an additional loan, and appears report(s).” Id.) According to Mr. Nguyen, Chase “knowingly to allege that he was denied the loan in connection with the and willingly used false and inaccurate credit information” Sifts he received in 2005. (/d. { | 7a.)

Mr. Nguyen attempted to to cut his credit line—on a different account—from \$14,000 resolve these issues in person at the branch, but the persons to \$6700, and to raise the interest rate on his account. (Id. with whom he had direct contact were no longer available. (/d. 9.) Mr. Nguyen then stopped “dealing with” Chase. (Id. 4 8.) 4] 7b.) Ridgewood then reported to Trans Union or Experian He states that the conduct, including cutting his credit line, that Mr. Nguyen had missed payments on his loan. (/d.) “changing Court TV shows,” and “conspiring” with different lawyers and attorneys, were “unfair and abusive practice[s]” | Mt Nguyen alleges that Equifax, Trans Union, Experian, and “pervert[ed] the course justice [sic ].” (Id. § 10.)

Ridgewood, “and all [D]efendants in all cases” were motivated by a discriminatory animus against him in a Mr. Nguyen spent a week at Maimonides Hospital in ©O2SPiracy against him. (/d. { 19.) Brooklyn as a result of Defendants’ conduct. Ud. {J 10, 15.) He suffered from “financial loss, financial injuri we. svenditin of time and resources cmotional distress, A. ¥.

Additional allegations.. Fib, mental anguish, humiliation and embarrassment.” which In the Supplemental Addendum to his Amended Complaint ° ° ° on October 31, 2014, Mr. Nguyen includes a number of facts 2015 WL 2354308 not related to any of the Defendants in the above-captioned pleaded facts do not permit the court to infer more than the actions. He refers to actions surrounding the September mere possibility of misconduct, the complaint has alleged 11, 2001 terrorist attacks in New York City, Mr. Nguyen's —but it has not ‘show [n]’—‘that the pleader is entitled to former employment at Brooklyn Technical High School, Mr. \_\_\_ relief.’ “ Pension Ben.

Guar. Corp., 712 F.3d at 718 (alteration Nguyen's contact with the United States Embassy in the original) (quoting Jgbal, 556 U.S. at 679). Although Republic of Singapore, alleged discrimination perpetrated all allegations contained in the complaint are assumed by Randy Asher,” and the death of Mr. Nguyen's father true, this principle is “inapplicable to legal conclusions” or in January of 2014. □□□□□□□□□□□□□□□□□□□□ 1-14, 20, 30- “threadbare recitals of the elements of a cause of action, 31.)

Mr. Nguyen also alleges that he “saw the perpetrator supported by mere conclusory statements.” 10 Tgbal, 556 U.S. attempting or/ and conspiring to kill or/ and to terrorize” him \_—\_at 678. In reviewing a pro se complaint, the court must be on three separate airline flights, though he does not indicate mindful that the plaintiffs pleadings should be held “to less who “the perpetrator” is or include any other details about stringent standards than formal pleadings drafted by lawyers.” what happened. (/d. {§| 16-18.)

Mr. Nguyen also attached Hughes v. Rowe, 449 U.S.5,9, 101 S.Ct. 173, 66 L.Ed.2d 163 documents relating to teaching evaluations at Brooklyn (1980) (internal quotation marks omitted); Harris v. Mills, Technical High School, (id. at 12—18), and airline itineraries, 572 F.3d 66, 72 (2d Cir.2009) (noting that even after 7wombly, (id. at 19-21). He did not indicate how any ofthese

additional —\_ the court “remain[s] obligated to construe a pro se complaint documents were relevant to the above-captioned cases. liberally”).

If a liberal reading of the complaint “gives any indication that a valid claim might be stated,” the court must 9 Randy J. Asher appears to have been the principal grant leave to amend the complaint. *Shabazz v. Bezio*, 511 F. at Brooklyn Technical High School in 2012. (See App'x 28, 31 (2d Cir.2013) (quoting *Branum v. Clark*, 927 Supp. Am. Compl. Add. 12.) F.2d 698, 705 (2d Cir.1991)).

IL. Discussion 10 When deciding a motion to dismiss, a court's review is limited to the four corners of the a. Standard of review complaint, as well as (1) documents attached to In reviewing a motion to dismiss under Rule 12(b)(6) of the the complaint, (2) any documents incorporated in Federal Rules of Civil Procedure, a court “must take all of the complaint by reference, (3) any documents the factual allegations in the complaint as true.” Pension Ben. deemed integral to the complaint, and (4) public Guar.

Corp. ex rel. St. Vincent Catholic Med. Centers Ret. records. See *Nielsen v. Rabin*, 746 F.3d 58, 65 Plan Morgan Stanley Inv. Mgmt. Inc., 712 F.3d 705, 717 (2d Cir.2014) (Jacobs, J. dissenting) (documents (2d Cir.2013) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678, attached to the complaint and those incorporated 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)); see also *Lundy v. by reference*); *Global Network Commc'ns, Inc. v. Catholic Health Sys. of Long Island Inc.*, 711 F.3d 106, 113 City of New York, 458 F.3d 150, 156 (2d Cir.2006) (2d Cir.2013) (quoting *Holmes v. Grubman*, 568 F.3d 329, (documents integral to the complaint); *Blue Tree* 335 (2d Cir.2009)); *Matson v. Bd. of Educ.*, 631 F.3d 57, 63 Hotels Inv.

(Canada), Ltd. v. Starwood Hotels & (2d Cir.2011) (quoting *Connecticut v. Am. Elec. Power Co., Resorts Worldwide, Inc.*, 369 F.3d 212, 217 (2d 582 F.3d 309, 320 (2d Cir.2009)). A complaint must plead Cir.2004) (public records).

For the purposes of “enough facts to state a claim to relief that is plausible on this Memorandum and Order, the Court deems its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 Plaintiffs' supplemental submissions in support of S.Ct. 1955, 167 L.Ed.2d 929 (2007). A claim is plausible the Amended Complaints as part of the Amended “when the plaintiff pleads factual content that allows the court Complaints. to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Matson*, 631 F.3d at 63 (quoting b. Fair Credit Reporting Act claims *Iqbal*, 556 U.S. at 678); see also Pension Ben.

Guar. Corp., \*7 As observed in *Nguyen I*, the FCRA regulates consumer 712 F.3d at 717-18. A complaint need not contain “detailed — Gregit reporting agencies to ensure the confidentiality, factual allegations,” but a plaintiff must do more than — accuracy, relevancy, and proper

utilization of consumer credit present “an unadorned, the defendant-unlawfully-harmed-me information.

15 U.S.C. § 1681(b); *Nguyen I*, — F.Supp.3d accusation.” *Matson*, 631 F.3d at 63 (internal quotation marks at —, 2014 WL 7192812, at \*2. Under the statute, omitted) (quoting /gbal, 556 U.S. at 678). “[W]here the well- “consumer reporting agencies,” sometimes referred to as 2015 WL 2354308 “credit reporting agencies,” are defined as entities which, inaccurate, see § 1681s—2(a)(2).”).

Furthermore, furnishers of for a monetary fee, “regularly engage[ ] in whole or in information have a responsibility to conduct an investigation part in the practice of assembling or evaluating consumer \_ after receiving notice of a credit dispute from a consumer credit information or other information on consumers for the reporting agency. § 1681s—2(b); see also *Redhead*, 2002 WL purpose of furnishing consumer reports to third parties.” 15 31106934, at \*4 (“The FCRA imposes two [general] duties U.S.C. § 1681a(f). “The FCRA places distinct obligations on on furnishers of information, codified at 15 U.S.C. §§ 1681s— three types of entities: consumer reporting agencies, users of —\_2(a) and (b).”). consumer reports, and furnishers of information to consumer reporting agencies.” *Redhead v. Winston & Winston, P.C.*, No. 01-CV-11475, 2002 WL 31106934, at \*3-5 (S.D.N.Y. \_1- Section 1681s-2(a) Sept.

20, 2002) (citing 15 U.S.C. § 1681, ef seg.; *Aklagi* \*8 “[T]here is no private cause of action for violations of v. Nationscredit Fin. Servs. Corp., 196 F.Supp.2d 1186, [Section] 1681s—2(a).” *Longman*, 702 F.3d at 151 (collecting 1192 (D.Kan.2002); *Thomasson v. Bank One, La., N.A.*, 137 cases); *Barberan v. Nationpoint*, 706 F.Supp.2d 408, 427 11 (S.D.N.Y.2010); *Trikas v. Universal Card Servs.*

*Corp.*, 351 F.Supp.2d 721, 722 (E.D.La.2001))). F.Supp.2d 37, 44 (E.D.N.Y.2005). Therefore, any claims Plaintiffs attempt to bring under Section 1681s—2(a) of A “furnisher” is “an entity that furnishes the FCRA, including those claims relating to Plaintiff’s information relating to consumers to one or more complaints directly to Defendant banks, are dismissed. consumer reporting agencies for inclusion in a consumer report.” 16 C.F.R. § 660.2.

Plaintiffs do not specifically allege which Defendants they 2. Section 1681s—2(b) consider to be furnishers, and which they consider To state a claim under Section 1681s—2(b) of the statute, to be consumer reporting agencies. Plaintiffs must allege that a furnisher of information received notice from a consumer reporting agency of Mr. Nguyen’s i. Individual Defendants credit dispute.

See *Markovskaya v. Am. Home Mortg. Plaintiffs* have set forth no allegations as to *Blanco, Dimon, S@”/cing, Inc.*, 867 F.Supp.2d 340, 344 (E.D.N.Y.2012) *Corbat, Robert or Boger* (“Individual Defendants”) that (“Plaintiff’s only claim can be pursuant to Section 1681s— establish the FCRA applies to them. Plaintiffs’ FCRA claims 2()).

As noted, such a claim is stated only when [p]laintiff are therefore dismissed as to the Individual Defendants. can show that the furnisher received information regarding a consumer's credit directly from a credit reporting agency, and not only from the consumer.”); *Dickman v. Verizon ii. Furnishers of information Commc'ns, Inc.*, 876 F.Supp.2d 166, 172-74 (E.D.N.Y.2012) Plaintiffs appear to bring claims against all Defendant banks (“[U]nder § 1681s—2(b), [a] defendant ha[s] no duty to as furnishers of information, similar to those claims Mr. investigate [a] credit dispute unless defendant received notice Nguyen brought against Ridgewood in Neuyen J, that is, that of the dispute from a consumer reporting agency.” (alterations Defendant banks improperly provided inaccurate information in original) (internal quotation marks omitted) (quoting to consumer reporting agencies, or failed to correct inaccurate =*Prakash v. Homecomings Fin.*, No. 05-CV—2895, 2006 information that was provided to the consumer reporting WL 2570900, at \*3 (E.D.N.Y.

Sept. 5, 2006))))); *Kane v. agencies*. “As part of [its] regulatory scheme, the [FCRA] Guar. Residential Lending, Inc., No. 04-CV-4847, 2005 WL imposes several duties on those who furnish information to 1153623, at \*4 (E.D.N.Y. May 16, 2005) (“[T]he duty to consumer reporting agencies.” *Longman v. Wachovia Bank*, \_ investigate in Subsection (b) is triggered only after a furnisher N.A., 702 F.3d 148, 150-51 (2d Cir.2012) (citing 15 U.S.C. \_ of information receives notice from a credit reporting agency § 1681s—2).

Among those obligations are the duties to of a consumer's dispute.”). “A plaintiff proceeding under provide accurate information to consumer reporting agencies, [Section] 1681s—2(b) is required to show that the furnisher to correct inaccurate information, and to correct inaccurate — was told by a credit reporting agency that the consumer's information after receiving notice of a credit dispute directly information was disputed, as opposed to being told by the from a consumer.

15 U.S.C. § 1681s—2(a); see *Longman*, consumer directly.” *Mendy v. JP Morgan Chase & Co.*, No. 702 F.3d at 150 (“Among these are duties to refrain from 12—CV-8252, 2014 WL 1224549, at \*5 (S.D.N.Y. Mar.24, knowingly reporting inaccurate information, see§ 1681s—2(a) 2014) (internal quotation marks and citations omitted).

(1), and to correct any information they later discover to be 2015 WL 2354308 The majority of Plaintiffs' allegations are conclusory furnished to a consumer reporting agency, Plaintiffs fail to statements that Defendants Santander, Chase, Citibank state a claim under the FCRA. Plaintiffs' claims are therefore and Ridgewood engaged in unfair and abusive practices, dismissed with prejudice. providing no indication of whether the alleged practice involved information reported to a consumer reporting 12 Though it is not clear from the Complaints agency.

Plaintiffs appear to allege that Defendant banks Plaintiffs vaguely tie “the issue” to their allegations forced Mr. Nguyen into destitution by refusing to extend him that the consumer reporting agencies were engaged further credit or reducing his credit limits, which affected his in

fraud of some kind. (See 3989 Am. Compl. 4 16.) credit utilization ratio and credit score, making it difficult for him to obtain further credit and leading to increased 13 Chase also moves for dismissal of Mr. Nguyen's interest rates on his accounts.

Plaintiffs also specifically FCRA claim on the ground that claims more allege certain practices on the part of each Defendant bank: than two years old are barred by the statute of that Santander charged Mr. Nguyen approximately sixteen limitations.

The Court declines to address the dollars on the wrong date, and at an unspecified time; statute of limitations, given that Mr. Nguyen has Citibank inappropriately dealt with a charge which Mr. not plausibly identified a factual basis for his claim, Nguyen reported was unauthorized; Citibank "refused" Ms. including failing to identify when the claim arose. Nguyen a credit card, though it eventually sent one to her Ridgewood improperly reported to Trans Union that Mr. Plaintiffs allege generally that Equifax, Trans Union and Nguyen had made late payments on his account.

Experian violated the FCRA. "The FCRA creates a private right of action against credit reporting agencies for the \*9 Plaintiffs allege that Mr. Nguyen notified the FTC, the negligent or willful violation of any duty imposed under CFPB and the FDIC Consumer Response Center regarding the statute.'Casella v. Equifax Credit Info. Servs., 56 F.3d his issues with the Defendant banks, and the Amended 469 473 (2d Cir,1995) (internal citations omitted).!4 Based Complaints allege that Experian, Trans Union and Equifax heir allevati Plaintiffs appe: invoke Secti involved in "conspiracy" with the Defendant banks on their allegations, Plaintiffs appear to invoke Sections were mvo ve Piracy 168le and 1681i of the FCRA against the Defendant Plaintiffs also allege that Experian may have acted in.... consumer reporting agencies, which require consumer conjunction with Santander to collect the sixteen dollars,.... reporting agencies to insure that the reported information is although they are unclear and indeterminate on Experian's... □ accurate, and to investigate disputes as to the accuracy of involvement, and allege that Mr. Nguyen contacted Experian, 45 Trans Union and Equifax in January 2014, although there reported information. is no indication in any of Complaints of what Mr. Nguyen 4 reported to them other than "address[ing] the issue!" and Equifax argues that Equifax, Inc., the named offer [ing an] amicable solution in the interest of law and Defendant in this action, Is a holding company in the interest of our mother, America." (3989 Am.

Compl. for Equifax Information Services LLC and is not 4 16.) Even affording the Complaint a liberal reading, it is a credit reporting agency subject to the FCRA. difficult to conclude from the allegations that Ridgewood, (Equifax Mot. to Dismiss 4 n. 1.)

Because the.. h i hat Plaintiffs have failed Chase, '5 Citibank or Santander received or ignored any Court has determined that Plaintiffs have ane... to allege any facts that would support a claim notice of a dispute regarding the completeness or accuracy of: □... against Equifax, the Court declines to address this any information provided to a consumer reporting agency.

See *ment. Dickman*, 876 F.Supp.2d at 172 (“[U]nder § 1681s-2(b), [a]ny defendant ha[s] no duty to investigate [a] credit dispute unless 15 Plaintiffs also reference 15 U.S.C. §§ 1681o defendant received notice of the dispute from a consumer and 1681n, which permit civil liability for reporting agency.” (alterations in original) (quoting *Prakash*, consumer reporting agencies’ negligent or willful 2006 WL 2570900, at \*3)).

Absent any allegation that (a) noncompliance with the statute. Under Sections Plaintiffs notified a consumer reporting agency of a credit 1681o and 1681n, a plaintiff is entitled to actual dispute or (b) any of the Defendant banks, Ridgewood, Chase, damages as a result of defendants’ noncompliance Citibank or Santander, was notified by a consumer reporting with the statute. “To maintain a claim under the agency of a dispute as to the accuracy of the information 2015 WL 2354308 FCRA, Plaintiff bears the burden of demonstrating reporting inaccurate information is insufficient to give rise to ‘actual damages sustained’ as a result of the liability under the FCRA, as the Act is not a strict liability Defendants’ activities.” *Caltabiano v. BSB Bank & statute*.

See 15 U.S.C. §§ 1681o, 1681n; *Ogbon v. Beneficial Trust Co.*, 387 F.Supp.2d 135, 141 (E.D.N.Y.2005) *Credit Servs., Inc.*, No. 10-CV—3760, 2013 WL 1430467, at (citing *Casella v. Equifax Credit Info. Servs.*, \*6-7 (S.D.N.Y. Apr. 8, 2013) (‘[A] credit reporting agency is 56 F.3d 469, 473 (2d Cir.1995)). Defendants not held strictly liable under the FCRA merely for reporting argue that Plaintiffs fail to adequately allege [inaccurate information]; rather, the consumer must show actual damages to support their claims under the that the agency failed to follow reasonable procedures in statute.

The Court declines to address Defendants’ generating the inaccurate report.” (internal quotation marks argument as to damages, as Plaintiff has failed to and citations omitted)), appeal dismissed (Sept. 23, 2013); state a claim for liability under the statute. *Gafi*, 2009 WL 3148764, at \*9 (“However, an inaccurate entry of credit information, in and of itself, is not a violation of 1.

Section 1681e(b) the FCRA; rather... plaintiff must allege that the consumer Section 1681e(b) imposes a duty on consumer reporting agencies failed, through negligence or intention, to agencies “to assure maximum possible accuracy of the follow reasonable procedures to ensure the accuracy of the information concerning the individual about whom the report — information.”) relates.” 15 U.S.C. § 1681e(b); *Podell v. Citicorp Diners Club, Inc.*, 112 F.3d 98, 104 (2d Cir.1997) (same); *Gorman*..

2. Section 1681i v. *Experian Info. Solutions, Inc.*, No. 07-CV—1846, 2008 WL 4934047, at \*4 (S.D.N.Y. Nov. 19, 2008) (“[T]he FCRA Section 1681i sets out procedures consumer reporting requires that consumer reporting agencies, such as Experian, agencies must follow to Investigate disputes as to the ‘follow reasonable procedures to assure maximum possible \*°CUR@CY of reported information.

15 U.S.C. § 1681i. These accuracy of the information' contained in the consumer procedures include reinvestigating a consumer's record within report." (quoting 15 U.S.C. § 1681e(b))). In order to succeed a reasonable period of time after a consumer "directly on a claim under Section 1681 e(b), a plaintiff must show that: conveys a dispute as to the "completeness or accuracy of an item on his credit report" to the consumer reporting agency.

Podell, 112 F.3d at 101 (citing id. § 1681i(a)); #10 (1) th see also Longman, 702 F.3d at 151 ("If a dispute is filed (1) the consumer repo me with the agency, both the agency and the furnisher of that agency was negligent [or willful] in..... that it failed to fol bi information have a duty to reasonably investigate and verify i reason:.. a 4 ne o he casona. that the information is accurate." (citing §§ 1681i(a)(1)(A), Proce ures © assure tne accuracy © 1681s—2(b))).

Section 1681i states, in relevant part, that if its credit report; (2) the consumer..... a consumer notifies a consumer reporting agency—either reporting agency reported inaccurate.. inf 4 bout the plaintiff. (3 directly or indirectly—of a dispute as to the accuracy of any m onmmalion apowr □ plainufl, (3) item of information contained in his file, within thirty days the plaintiff was injured; and (4).... of notification the consumer reporting agency "shall, free the consumer reporting agency's.

Lo.... of charge, conduct a reasonable reinvestigation to determine negligence proximately caused the 16 plaintiff's injury. whether the disputed information is inaccurate." ~ 15 U.S.C. § 1681i(a)(1)(A); see Jones v. Experian Info. Solutions, Inc., 982 F.Supp.2d 268, 272 (S.D.N.Y.2013) (quoting same). Gorman, WL 4934047, at \*4 (quoting Whelan v What constitutes a "reasonable" reinvestigation depends on.. the circumstances of the allegations. /d. (citing Cortez v. Trans Trans Union Credit Reporting Agency, 862 F.Supp. 824, Union, LLC, 617 F.3d 688, 713 3d... nion, >: 5 829 (E.D.N.Y.1994)) (internal quotation marks omitted) (alteration in original); Se/vam v. Experian Info.

Solutions, 16 Inc., No. 13-CV-6078, 2015 WL 1034891, at \*3 (E.D.N.Y. In full, the relevant section states: Mar.10, 2015) (same); Agu v. Rhea, No. 09-CV—4732, 2010 [I]f the completeness or accuracy of any WL 5186839, at \*5 (E.D.N.Y. Dec. 15, 2010) (same) (quoting item of information contained in a consumer's Gaft v. Mitsubishi Motor Credit of Am., No. 07-CV-527, file at a consumer reporting agency is 2009 WL 3148764, at \*9 (E.D.N.Y.

Sept. 29, 2009)). Merely disputed by the consumer and the consumer 2015 WL 2354308 notifies the agency directly, or indirectly how consumer reporting agency acted unreasonably with through a reseller, of such dispute, the agency respect to disputed information); Agu, 2010 WL 5186839, shall, free of charge, conduct a reasonable at \*6 (dismissing FCRA claim against consumer reporting reinvestigation to determine whether the agencies because plaintiff "rests his Section 1681e claim disputed information is inaccurate and record on a combination of nonspecific, conclusory allegations the current status of the disputed information, about 'false' or 'derogatory'

statements, and repetition of or delete the item from the file in accordance his argument that Bank of America incorrectly reported that with paragraph (5), before the end of the 30— he ‘owe[d] more than once’ ”).

Plaintiffs FCRA claims day period beginning on the date on which the against Trans Union, Equifax and Experian are dismissed, agency receives the notice of the dispute from with prejudice. the consumer... 15 U.S.C. § 1681i(a)(1)(A). \*11 Cir.2010)). “Prior to being notified by a consumer, a Consumer Financial Protection Act claims es Plaintiffs bring claims pursuant to the CFPA, specifically credit reporting agency generally has no duty to reinvestigate enumerating Sections 5531, 5536(a), 5563 and 5565.

As an credit information.” Casella, 56 F.3d at 474. initial matter, Plaintiffs provide no facts beyond conclusory statements that Defendants engaged in unfair and abusive 3, Plaintiffs fail to state a claim practices to support a finding that Defendants may be in Plaintiffs allege that Trans Union, Equifax and Experian violation of the CFPA. Furthermore, Plaintiffs provide no have issued credit reports regarding Mr. Nguyen that statutory basis, and the Court can find none, for finding a contained fraudulent, inaccurate or “deceptive” information, private right of action under these provisions of the statute, particularly as it relates to Mr. Nguyen's credit utilization ratio which outline duties, authorities and enforcement powers and his “FICO” credit score.

(See 3989 Am. Compl. 7] 5, 18.) of the CFPB. See Johnson v. J.P Morgan Chase Nat'l Plaintiffs also allege that Mr. Nguyen complained to these Corporate Servs., Inc., No. 13-CV-678, 2014 WL 4384023, agencies about “the issue.” (Jd. § 16.) Plaintiffs fail, however, @t “9 (W-D.N.C. Aug. 5, 2014) (“[T]here is no private right to make any allegations relating to the procedures Trans of action under the CFPA.”) report and recommendation Union, Equifax or Experian instituted to ensure the accuracy adopted, 2014 WL 4384024 (W.D.N.C.

Sept.3, 2014); In re of the information in Mr. Neuyen's credit reports, to support a Capital One Derivative S'holder Litig., No. 12-CV—1100, Section 1681e(b) claim. See Ogbon, 2013 WL 1430467, at\*7 2012 WL 6725613, at \*7 (B.D.Va. Dec. 21, 2012) (“[I]t is true (granting summary judgment on Section 168 1e claim in favor that there are no private causes of action available under... the of Trans Union and Experian because the plaintiff “ha[d] Consumer Financial Protection Act.”); see also Bellikoff v. adduced no evidence to suggest that either defendant failed to Eaton Vance Corp., 481 F.3d 110, 116 (2d Cir.2007) (A Court follow reasonable procedures in preparing her credit report”); “cannot ordinarily conclude that Congress intended to create Gafi, 2009 WL 3148764 (dismissing FCRA claim, noting a right of action when none was explicitly provided.” (citing that the plaintiffs amended complaint was “devoid of any Touche Ross & Co. v. Redington, 442 U.S. 560, 571, 99 S.Ct. allegations concerning the reasonableness of the procedures 2479, 61 LEd2d 82 (1979))).

A related provision of the used by the defendant consumer reporting agencies”). statute specifically provides that, “[i]f any person violates a Federal consumer financial law, the Bureau may... commence Plaintiffs also fail to make any allegations regarding either a civil action against such person to impose a civil penalty the procedures followed or investigations by Trans Union, or to seek all appropriate legal and equitable relief including Equifax or Experian in response to Mr. Nguyen's complaints, a permanent or temporary injunction as permitted by law.” in order to support a Section 1681i claim.

Plaintiffs’ 15 U.S.C. § 5564(a) (emphasis added). Therefore, Plaintiffs' conclusory and broad allegations of fraud and deceptive claims under the CFPA are dismissed, with prejudice, as to practices, without explanation of how Defendants willfully or all Defendants. negligently violated the FCRA, do not suffice to state a claim under the statute. See *Selvam*, 2015 WL 1034891, at \*3-4 d. Sections 1983 and 1985 (dismissing FORA claims against consumer reporting agency 49.

Plaintiffs invoke 42 U.S.C. §§ 1983 and 1985 in relation when plaintiff failed to explain how defendant willfully to vague allegations of conspiracy. Plaintiffs' claims are not or negligently violated the statute, and did not set forth cognizable under Section 1983 or 1985.

In order to sustain 2015 WL 2354308 a claim for relief under Section 1983, a plaintiff must allege Actors.” Furthermore, Plaintiffs allege no specific violation (1) that the challenged conduct was “committed by a person — of constitutional or federal rights, other than presenting acting under color of state law,” and (2) that such conduct vague and repeated references to conspiracy.

These general “deprived [the plaintiff] of rights, privileges, or immunities allegations are insufficient to state a claim under Section secured by the Constitution or laws of the United States.” 1983 or 1985(3). See *White v. Monarch Pharm., Inc.*, 346 F. Cornejo v. Bell, 592 F.3d 121, 127 (2d Cir.2010) (quoting App'x 739, 741 (2d Cir.2009) (noting that conclusory, vague, *Pitchell v. Callan*, 13 F.3d 545, 547 (2d Cir.1994)); see or general allegations are insufficient to state a claim for *Pangburn v. Culbertson*, 200 F.3d 65, 72 (2d Cir.1999) (“To conspiracy pursuant to Section 1985 (citing *Sommer v. Dixon*, prove a § 1983 conspiracy, a plaintiff must show: (1) an 709 F.2d 173, 175 (2d Cir.1983)); *Tekiner v. Dep't of Corr*, agreement between two or more state actors or between No. 14-CV—1293, 2014 WL 2440671, at \*3 (E.D.N.Y.

May a state actor and a private entity; (2) to act in concert to 30, 2014) (“To state a civil rights claim under § 1983, a inflict an unconstitutional injury; and (3) an overt act done complaint must contain ‘specific allegations of fact which in furtherance of that goal causing damages.”); *Bartels v. Inc.* indicate a deprivation of constitutional rights; allegations *Vill. of Lloyd*, 751 F.Supp.2d 387, 402 (E.D.N.Y.2010). “[T]he | which are nothing more than broad, simple, and conclusory under-color-of-state-law element of § 1983 excludes from its statements are insufficient to state a claim under [§ | 1983.’ reach merely private conduct, no matter how discriminatory — ” (alteration in original) (quoting *A/faro Motors, Inc. v. Ward*, or wrongful.” *American Mfrs.*

Mut. Ins. Co. v. Sullivan, 526 F.2d 883, 887 (2d Cir.1987)); Houghton v. Cardone, USS. 40, 50, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999) (citation 295 F.Supp.2d 268, 273 (W.D.N.Y.2003) (same); see also and internal quotation marks omitted). Similarly, to bring a =74DCO Const. Corp. v. Dormitory Auth. of State of N. Y., 700 claim for conspiracy under Section 1985(3), a plaintiff must = F.Supp.2d 253, 262 (E.D.N.Y.2010) (noting that § 1983 “does allege: not, however, itself create substantive rights, but ‘merely provides a method for vindicating federal rights elsewhere conferred’ ” (quoting Rateau v. City of New York, No. 06— (1) a conspiracy (2) for the purpose of CV-4751, 2009 WL 3148765, at \*4 (E.D.N -Y.

Sept. 29, depriving a person or class of persons 2009))). Plaintiffs’ claims pursuant to Sections 1983 and 1985 of the equal protection of the laws, are dismissed, with prejudice, as to all Defendants. or the equal privileges and immunities under the laws; (3) an overt act in □□ furtherance of the conspiracy: and (4) e. Federal criminal statutes. an injury to the plaintiff’s person or “13 Plaintiffs appear to assert that certain Defendants are property, or a deprivation of a right in violation of 18 USC. §§ 1111, 1113, 1117 and 1119, or privilege of a citizen of the United and have possibly] violated 18 U.S.C. §§ 2381 and 2382.

States. These statutes, prohibiting murder, attempt to commit murder or manslaughter, conspiracy to commit murder, and foreign murder of United States nationals, and treason and misprision of treason, respectively, do not provide a private right of Finn y. Anderson, 592 F. App’x 16, 20 (2d Cir.2014) (quoting action. See Shaughnessy v. New York, No. 13—CV—271, 2014 v. Roach, 105 F.3d 137, 146 (2d Cir.1999)) (internal WL 457947, at \*7 (N.DN.Y.

Feb.4, 2014) (adopting report quotation marks omitted). and recommendation which concluded “even if the claim were not completely conclusory, plaintiff may not sue any Plaintiffs have not stated a claim under Section 1983 or of the defendants for treason because there is no private 1985 against any Defendant. Plaintiffs have acknowledged right of action for the crime” (citations omitted)), appeal that the Defendants are either private corporations or private cog (May 28, 2014); Patrick v. Butzbaugh, No. □□□ individuals acting as corporate officers of the Defendant CV-1075, 2009 WL 311073, at \*2 (W.D.Mich.

Feb. 6, 2009) corporations. (1058 Am. Compl. {I II; 3464 Am. Compl. (dismissing a claim brought pursuant to section 2381); Estate {I 3989 Am. Compl. {I II.) However, Plaintiffs have vjusayelova v. Kataja, No.06-CV-881, 2006 WL 3246779, not alleged that any of the Defendants were acting under at \*2 (D.Conn. Nov. 7, 2006) (denying reconsideration of color of state law, nor have they provided any facts which dismissal of action including claims brought pursuant to 18 would support such an allegation beyond the vague and U.S.C. §§ 1111 and 1117, noting that there was no private conclusory statement that Defendants conspired with “State cause of action); see also Delarosa v. Serita, No. 14-CV- 2015 WL 2354308 737, 2014 WL 1672557, at \*2 (E.D.N.Y.

Apr. 28, 2014) 6 (S.D.N.Y. Mar.17, 2014) (discussing scope of (“Violations of the Criminal Code do not provide a basis preemptive effect of Section 1681t(b)(1)(F)), the for a civil cause of action, unless the particular provision Court declines to address the issue of federal in question includes an express or implied private right preemption. of action.” (quoting Weinstein v. City of New York, No. 13—CV—06301, 2014 WL 1378129, at \*4 (S.D.N.Y.

Apr.8, g. Mr. Nguyen's request for default judgments 2014))). Accordingly, Plaintiffs' claims pursuant to these By letter dated November 18, 2014, Mr. Nguyen moved for federal criminal statutes are dismissed with prejudice. default judgments against Experian and Robert, alleging that Plaintiffs had not received Experian's motion to dismiss or Because Plaintiffs have failed to state a claim under the an answer to his Complaint, and arguing that “Experian is FCRA, CFPA, 42 U.S.C. §§ 1983 and 1985, or the referenced the biggest criminal ever in the history of [Mr.

Nguyen's] federal criminal statutes, all of Plaintiffs' federal claims are life.” (Letter dated Nov. 18, 2014 from Mr. Nguyen seeking dismissed for failure to state a claim, pursuant to Rule 12(b) —\_ —\_ default judgment against Experian and Robert 1, 89DE No. (6) of the Federal Rules of Civil Procedure.!7 32.)

On March 27, 2015, Mr. Nguyen filed a letter renewing his request for default judgments on the grounds that Experian 17 Defendants also moved for dismissal pursuant and Robert have failed to defend the action. ” (Letter dated to Rules 8 and 9(b) of the Federal Rules of Mar. 24, 2015, 89DE No. 65.) Civil Procedure, arguing that Plaintiffs failed to sufficiently plead their claims, and Rule 12(b) (5) 19 By letters dated March 6, 2015 and March 11,2015, of the Federal Rules of Civil Procedure, arguing Mr. Nguyen requested default judgments against that Plaintiffs failed to properly serve certain Ridgewood and Boger, which the Court denied.

Defendants, including Corbat, (see Citibank Mot. (See No. 14-CV—1058, Order dated Mar. 10, 2015 to Dismiss | n. 1). Because the Court finds that and Order dated Mar. 17, 2015.) Plaintiffs have failed to state a claim against any \*14 Mr. Nguyen has failed to show a basis for his motion. of the Defendants, the Court will not address the As an initial matter, it is not clear that Experian and Robert alternative grounds for dismissing the Complaints. have failed to defend this action.

By Order of the Court dated November 6, 2014, Defendants were granted until f. New York State Fair Credit Reporting Act claims December 5, 2014 to serve their motions to dismiss. On Plaintiffs also bring claims pursuant to the New York State December 5, 2014, counsel for Experian electronically filed Fair Credit Reporting Act, specifically referring to N.Y.

Gen. a letter indicating that Experian had served its motion to Bus. Law §§ 380-0, 380-/380-m. '\* The Court declines to dismiss on Plaintiffs. (89DE No. 37.) Experian's counsel exercise supplemental jurisdiction over Plaintiffs' state law entered her appearance on the same day. (89DE

No. 35.) claims. See 28 U.S.C. § 1367(c)(3) (“District courts may decline to exercise supplemental jurisdiction over a claim if the district court has dismissed all claims over which it has original jurisdiction.”).

(See 89 DE decline to exercise supplemental jurisdiction over a claim No. 54.) Second, because Plaintiffs have failed to state if the district court has dismissed all claims over which it has a claim against Experian and Robert, Mr. Nguyen cannot have original jurisdiction.”).

Because Plaintiffs' Complaints do show that Experian and Robert are liable to him on the not contain sufficient facts that may fairly be read to state a grounds alleged, even if they had defaulted. See *Lopez v. claim for any violation of Plaintiffs' federal rights*, the Court *oy*, on. *roimishe Bakery Inc.*, No. 13-CV-5050, 2015 WL declines to exercise supplemental jurisdiction over Plaintiffs' 1469619, at \*3 (E.D.N.Y.

Mar.30, 2015) (adopting report state law claims. Plaintiffs' state law claims are dismissed and recommendation, which noted that “{wlith respect to without prejudice. liability, a defendant's default does no more than concede the complaint's factual allegations; it remains the plaintiffs' Is Defendants argue that Plaintiffs' claims brought burden to demonstrate that those uncontroverted allegations, pursuant to the New York State Fair Credit without more, establish the defendant's liability on each Reporting Act are preempted, as outlined in 15 asserted cause of action” (citing *Finkel v. Romanowicz*, 577 U.S.C. § 1681t(b).

While this may be the case in *F.3d 79, 84 (2d Cir.2009)* and *Greyhound Exhibitgroup, Inc.* some instances, see *Galper v. JPMorgan Chase, v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 159 (2d Cir.1992))). N.A., No. 13—CV3449, 2014 WL 1089061, at \*3- 2019 WL 2354308 20 with prejudice. See *Shabtai v. Levande*, 38 F. App'x 684, 686— As discussed *infra* n. 2, Robert did not explicitly 7 (24 Cir.2002) (affirming dismissal of pro se complaint after join Experian's motion to dismiss, but Experian and failure to file amended complaint that complied with Rule 8 Robert are represented by counsel at the same law of the Federal Rules of Civil Procedure, in accordance with firm and Experian's memorandum of law in support district court's order).

Plaintiffs will not be granted leave to of the motion to dismiss contains argument as to further amend the Complaints. Robert. h. Plaintiffs will not be granted leave to amend TI. Conclusion “Generally, ‘[a] pro se complaint should not be dismissed | For the foregoing reasons, the Court grants Defendants! without the Court granting leave to amend at least once when motions to dismiss, with prejudice, all of Plaintiffs' federal a liberal reading of the complaint gives any indication that | claims and dismisses, without prejudice, Plaintiffs' state a valid claim might be stated.’ ” *Obot v. Sallie Mae*, — law claim.

The Court denies Plaintiffs request for default F. App'x —, 2015 WL 548202, at \*2 (2d Cir. Feb.11, | judgments. The Clerk of the Court is directed to close these 2015) (alteration in original) (quoting *Nielsen v. Rabin*, 746 cases. F.3d 58, 62 (2d Cir.2014)). Plaintiffs have been granted

leave to amend in all three of their actions, and Mr. Nguyen SO ORDERED: has been granted leave to file supplemental addenda to the Amended Complaints in 14-CV—3464 and 14-CV—3989..

Plaintiffs have failed to address the deficiencies in their All Citations Complaints in accordance with the Court's prior orders, and Not Reported in F Supp.3d, 2015 WL 2354308 the Court therefore dismisses all of Plaintiffs' federal claims End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works. Filings (3) Title PDF Court Date Type 1.

Memorandum of Law in Support of Defendants' — E.D.N.Y. Apr. 11, 2014 Motion Motion to Dismiss the Complaint Thomas NGUYEN, Plaintiff, v. RIDGEWOOD SAVINGS BANK and Peter Boger, Defendants. 2014 WL 12795457 2. Docket 1:14cv03989 — E.D.N.Y. June 26, 2014 Docket NGUYEN ET AL v. SANTANDER BANK ET AL 3. Docket 1:14cv01058 — E.D.N.Y. Feb. 18, 2014 Docket NGUYEN v. RIDGEWOOD SAVINGS BANK ET AL History (2) Direct History (1) 1.

Nguyen v. Ridgewood Sav. Bank v= 2015 WL 2354308, E.D.N.Y., May 15, 2015, appeal dismissed (2nd Circ. 15-1928) ( Jul 24, 2015 ), appeal dismissed (2nd Circ. 15-1929) ( Jul 28, 2015 ), appeal dismissed (2nd Circ. 15-1927) ( Jul 29, 2015 ) Related References (1) 2. Nguyen v. Ridgewood Sav. Bank 66 F.Supp.3d 299, E.D.N.Y., Dec. 17, 2014 2020 WL 3268488 the pleader is entitled to relief.

A complaint states a claim for 2020 WL, 3268488 relief if the claim is plausible. Ashcroft v. Iqbal, 556 U.S. 662, Only the Westlaw citation is currently available. 678-79 (2009) (citing Bell Atl. Corp. v. Twombly, 550 US. United States District Court, S.D. New York. 544, 555 (2007)).

To review a complaint for plausibility, the Court accepts all well-pleaded factual allegations as true and Derrick PHIPPS, Plaintiff, draws all reasonable inferences in the pleader's favor. □□□□□ V. 556 U.S. at 678-79 (citing Twombly, 550 U.S. at 555). But the EXPERIAN, Defendant. Court need not accept “[t]hreadbare recitals of the elements of a cause of action,” which are essentially legal conclusions.

20-CV-3368 (LLS) Id. at 678 (citing Twombly, 550 U.S. at 555). After separating | legal conclusions from well-pleaded factual allegations, the Signed 06/15/2020 Court must determine whether those facts make it plausible — not merely possible — that the pleader is entitled to relief. □□□ Attorneys and Law Firms Derrick Phipps, Middletown, NY, pro se. BACKGROUND ORDER TO AMEND Plaintiff asserts that Experian “intentionally, willfully, and knowingly” violated the FCRA when it “ignored several LOUIS L. STANTON, United States District Judge: certified letters to remove fraudulent names, addresses, information, and inquiries” that appeared on his credit report. \*1 Plaintiff brings this pro se action, for which the filing fee (ECF No. 1, at 1.) has been paid, under the Court's federal question jurisdiction, alleging that Defendant

Experian, a consumer reporting agency, violated his rights under the Fair Credit Reporting Act which is not a model of clarity: On November 10, 2017, (“FCRA”).

For the reasons set forth below, the Court grants Plaintiff leave to file an amended complaint within sixty days “false and negative information” that appeared on his credit report. (/d.) He received a report from Experian on November 29, 2017, stating that the information had been removed, but he maintains that Experian “updated name STANDARD OF REVIEW not addresses.” (/d.)

On December 18, 2017, Plaintiff sent another letter to Experian that included his “[driver's] license, The Court has the authority to dismiss a complaint, even \_ Social security card, electric bill and Affidavit with name and when the plaintiff has paid the filing fee, if it determines that | address.” (/d.)

On January 5, 2018, he received a report from the action is frivolous, *Fitzgerald v. First E. Seventh Tenants Experian* that “still show[ed] false information.” (/d.) Corp., 221 F.3d 362, 363-64 (2d Cir. 2000) (per curiam) (citing *Pillay v. INS*, 45 F.3d 14, 16-17 (2d Cir. 1995) (per \*2 ~On February 6, 2020, Plaintiff sent a third letter to Experian, and attached “[p]olice and [i]dentity theft reports” to dismiss frivolous appeal)), or that the Court lacks subject matter jurisdiction, *Ruhrgas AG v. Marathon Oil Co.*, 526 F.3d 1141 (11th Cir. 2017) (affidavit).

Ud.) On February 27, 2020, he received a U.S. 574, 583 (1999). The Court is obliged, however, to report from Experian that included the “same false and construe pro se pleadings liberally, *Harris v. Mills*, F.3d negative information” that he had requested it to remove. 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest (/d.) Plaintiff sent a fourth letter on March 13, 2020, “stating [claims] that they suggest,” *Triestman v. Fed.*

Bureau of false and fraudulent accounts and inquiries,” and included Prisons, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation 4 identity theft report and the same identifying information marks and citations omitted) (emphasis in original). that he included in his previous letters. (/d.)

In a letter dated March 28, 2020, Experian “acknowledg[ed]” the identity Rule 8 of the Federal Rules of Civil Procedure requires a \_\_\_ theft report and stated that it had “removed negative accounts” complaint to make a short and plain statement showing that from Plaintiff's report. (/d.) Plaintiff asserts, however, that 2020 WL 3268488 Experian's last report still contained “negative and false negligence proximately caused the accounts” and that “previously removed names and addresses plaintiff's injury. have reappeared with wrong birth date.” (/d.)

Plaintiff seeks compensatory and punitive damages. (/d. at 2.) *Gestetner v. Equifax Info. Servs. LLC*, ECF 1:18-CV-5665, 13, 2019 WL 1172283, at \*2 (S.D.N.Y. Mar. 13, 2019) (emphasis and

citations omitted); see also *Anderson v. DISCUSSION Experian*, ECF 1:19-CV-8833, 9, 2019 WL 6324179, at \*3 (S.D.N.Y. Nov. 26, 2019) (same). Congress enacted the FCRA to ensure that consumer reporting agencies “follow fair and equitable procedures. If a consumer notifies a consumer reporting agency of in regard to the confidentiality, accuracy, relevancy, and an inaccuracy in the information it reports, the agency proper utilization of consumer credit information.” 15 U.S.C. | must conduct a “reasonable reinvestigation to determine § 1681(b).

The FCRA therefore imposes a variety of | whether the disputed information is inaccurate.” 15 U.S.C. § requirements on consumer reporting agencies to verify the 168 1i(a)(1)(A). If after reinvestigation a consumer reporting accuracy of credit information in general and in response to — agency determines that the disputed information is inaccurate, consumer disputes.

See *id.* §§ 1681b—1681p. And it creates incomplete, or cannot be verified, the agency must delete or a private right of action against consumer reporting agencies modify the disputed item of information. *Jd.* § 1681i(a)(5)(A) for “negligent or willful violation of any duty imposed by the (i). statute.” *Casella v. Equifax Credit Info. Servs.*, 56 F.3d 469, 473 (2d Cir.

1995) (citations omitted) (citing 15 U.S.C. §§ If disputed information is deleted from a consumer's file 1681n, 1681o). following reinvestigation, the consumer reporting agency may not reinsert the information “unless the person who Plaintiff's complaint implicates the FCRA's requirements that furnishes the information certifies that the information is consumer reporting agencies follow reasonable procedures complete and accurate.” U.S.C. § 1681i(a)(5)(B)(i).

And if to assure accuracy in a consumer's credit report, § 1681e(b), the agency does reinsert any previously deleted information, investigate disputed information, §§ 1681i(a)(1)(A), 168 1i(a) it must provide notice to the consumer, within five business (5)(B), and block any information identified as resulting from days, that the information has been reinserted.

*Jd.* § 1681i(a) identity theft, § 1681c-2(a)(1). (5)(B)(ii)-(iii). \*3 In actions under § 1681e and § 1681i, the threshold A. Accuracy of Information question is whether the disputed credit information is The FCRA requires that consumer reporting agencies “follow inaccurate. *Anderson*, 2019 WL 6324179, at \*3: see reasonable procedures to assure maximum possible accuracy — *ajsgHouston v. TRW Info.*

*Servs., Inc.*, 707 F. Supp. 689, of the information” in a consumer's credil report. 15 U.S.C. 691 (S.D.N.Y. 1989) (“The threshold question in a § § 1681e(b). To succeed on claim that a consumer reporting —\_ 1 6g] e(b) action is whether the challenged credit information agency failed to follow proper compliance procedures under □□ jg inaccurate. If the information is accurate no further inquiry § 1681e(b), a plaintiff must show that: into the reasonableness of the consumer reporting agency's procedures is necessary.”); *Gestetner*, 2019 WL 1172283, at \*2 (“{A} plaintiff asserting claims under § 1681i must (1) the consumer reporting agency demonstrate that the

disputed information is inaccurate.”) was negligent or willful in that it (quoting Jones v. Experian Info.

Solutions, Inc., 982 F. Supp. failed to follow reasonable procedures 2d 268, 272-73 (S.D.N.Y. 2013)). to assure the accuracy of its credit report; (2) the consumer A plaintiff must therefore identify the specific information reporting agency reported inaccurate on his credit report that is inaccurate and explain why information about the plaintiff; (3) the identified information is inaccurate.

See Magee v. the plaintiff was injured; and (4) Am. Express, ECF 1:19-CV-8476, 6, 2019 WL 6030099, the consumer reporting agency's at \*4 (S.D.N.Y. Nov. 12, 2019) (holding that plaintiff's 2020 WL 3268488 allegations that “delinquent payments” on his credit report \*4 A consumer reporting agency has a duty to “block the should be removed because of a “mail fraud investigation” reporting of any information” in a consumer's file that the were “insufficient to suggest specific information on his consumer identifies as resulting from identity theft within reports was inaccurate”); Gestetner, 2019 WL 1172283, four days of the agency receiving from the consumer: (1) at \*2 (dismissing complaint alleging that credit report proof of the identity of the consumer; (2) a copy of the “showed erroneous and inaccurate information,” without identity theft report; (3) the identification of the information “any explanation as to why” information was false, for failure resulting from the alleged identity theft; and (4) a statement to state claim under § 1681i and § 1681e(b)). by the consumer affirming that the disputed information does not relate to any transaction by the consumer.

15 U.S.C. Here, Plaintiff fails to allege sufficient facts to make § 1681c-2(a). A consumer reporting agency may decline the threshold showing that his credit report contained to block or rescind a block under certain circumstances, inaccurate information. He asserts that he sent Experian including if it determines that the block was based on a letters requesting that it “remove fraudulent names, addresses, material misrepresentation by the consumer. /d. § 1681c-2(c) information and inquiries that appear on [his] credit (1).

If a consumer reporting agency declines a request to block report.” (ECF No. 1, at 1.) In response, Experian “updated — information, it must notify the consumer within five business name not addresses,” but subsequent reports still included days. Id. § 1681c-2(c)(2) (referencing § 1681i(a) (5)(B)). “false and fraudulent accounts and inquiries.” (/d.) Plaintiff never identifies the specific names, addresses, accounts, or Plaintiff alleges that on February 6, 2020, he sent Experian other information he alleges are inaccurate.

Nor does he a “[p]olice and [i]dentity theft report, drivers license, social explain why such information is inaccurate. Absent additional — security card,” and affidavit. (ECF No. 1, at 1.) On February facts explaining why the disputed information and inquiries 27, 2020, he received a

report that and “the same false are false, Plaintiff has failed to plead an essential element of — and negative information remained on my report without no under § 1681e(b) or § 1681i.

See Gestetner, 2019 WL written verification or permissible purpose given.” (/d.) On 11/22/2019, at \*2. March 13, 2020, Plaintiff sent another notice to Experian “stating false and fraudulent accounts and inquiries,” and Moreover, Plaintiff does not allege facts indicating again included his driver's license, social security card, police that Experian failed to follow reasonable reinvestigation and identify theft reports, and an affidavit.

Ud.) In a March procedures. See § 1681i(a)(1)(A); Jones, 982 F. Supp. 2d = 28, 2020 report, Experian “acknowledg[ed]” the identity 268, 272. Instead, Plaintiff implies that, on more than one — theft and police reports and stated it had “removed negative occasion, Experian did reexamine his information, verify accounts,” but Plaintiff maintains that the reports “had [the] its accuracy, and remove inaccurate information, although — same negative and false accounts.” (/d.) he disputes its conclusions.

(See ECF No. 1, at 1) (“[T]he outcome of the investigation by Experian employees was also — Plaintiff's allegations appear to suggest that Experian did not quite predictable, the employee would incorrectly verify the comply with the time frames prescribed by § 1681c-2. But existence of a continuing debt.”). it is also unclear from the complaint whether he provided Experian with the required information.

For example, as is Plaintiff states that in Experian's March 28, 2020 report, the case with his other allegations, Plaintiff does not identify he “noticed previously removed names and addresses have — the information on his report that he alleges is the result of reappeared with wrong birth date.” Cd.) But the only identity theft, nor does he plead any of the facts included in indication that Experian previously deleted any information — the affidavit he sent to Experian. from Plaintiff's report is his allegation that in response to his November 10, 2017 letter, Experian “updated name not addresses.” (ECF No. 1, at 1) He fails to identify the “name” LEAVE TO AMEND that was “updated,” the “names and addresses” that were later reinserted, and, crucially, whether the information that Plaintiff proceeds in this matter without the benefit of reappeared was the same information Experian removed in an attorney.

District courts generally should grant a self- response to his disputes. represented plaintiff an opportunity to amend a complaint to cure its defects, unless amendment would be futile. See *Hi/l v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. B. Identity Theft* 2020 WL 3268488 *Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Indeed, the Second UNITED STATES DISTRICT COURT Circuit has cautioned that district courts “should not dismiss *sommes* [a pro se complaint] without granting leave to amend at CW. (—) least once when a liberal reading of the complaint gives (nthe space above er the al names af the plas) AMENDED any indication that a valid claim might be stated.” *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir.

2000) (quoting Gomez v. Wainwright, 950 F.2d 1069, 1075 (10th Cir. 1992)). Because Plaintiff may be able to allege additional facts to state a valid claim under the FCRA, the Court grants Plaintiff sixty days' leave to amend his complaint to detail his claims.

Should Plaintiff choose to replead his claims, to the greatest extent possible, he must (1) identify the specific information «sumer yee ompa that Experian reported that he alleges is inaccurate; (2) explain why the information is inaccurate; (3) identify the usin shun nncl swine dbase caw specific pieces of information that Experian removed and PusinstY = Nam reinserted; (4) plead any facts suggesting Experian failed Cnc to follow reasonable procedures in verifying information generally or in response to his inquiries; (5) identify the Bist al defendams You should state the fl nme of the defendant, even if hat defendant i specific information on his credit report that he alleges is cc ded yb ved Mat cata he i iowa demi! wo thee the result of identity theft, and plead facts showing that he provided Experian with the information required under oo § 1681c-2(a) and that it failed to comply with its duties Defendant N xine — under the statute.

You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary. A Where did the events giving rise to your claim(s) occur? \_ ee What date and approximate time did the events giving rise to your claim(s) occur? c. Facts SS ☐ Udeclare under penalty of perjury that the foregoing is true and correct, abe ee Mailing Address wht Telephone Number ☐ Fax Number ☐ if you have amep IV.

Injuries: Note: All plaintiffs named in the caption of the complaint must date and sign the complaint, Prisoners must also provide their inmate numbers, present place of confinement, and address. If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. +--+ ☐ +--+ -- === - + +--+ Eor Preonces I declare under penalty of perjury that on this \_ day of \_\_.

210\_, Lam delivering 5-5-5 this complaint to prison authorities to be mailed to the Pro Se Office of the United States District Court for ☐ ee the Southern District of New York. ☐ Signature of Plvintiffs Inmate Number Rev, J22008 Rew. f2e2008 All Citations Not Reported in Fed. Supp., 2020 WL 3268488 End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works.

Filings (1) Title PDF Court Date Type 1. Docket 1:20-CV-03368 — S.D.N.Y. Apr. 27, 2020 Docket Phipps v. Experian History (4) Direct History (1) 1. Phipps v. Experian v= 2020 WL 3268488, S.D.N.Y., June 15, 2020 Related References (3) 2. Phipps v. Experian Information Solutions, LLC 2022 WL 4280427, S.D.N.Y., Sep. 15, 2022 3. Phipps v. Experian Information Solutions, LLC 2023 WL 6215304, S.D.N.Y., Sep.

23, 2023 Affirmed by 4. Phipps v. Experian Information Solutions, LLC 2024 WL 5001842, 2nd Cir.(N.Y.), Dec. 06, 2024 2023 WL 7169119 federal and New York state criminal statutes. (ECF No. 18 2023 WL 7169119 at 3-6). Specifically, Ms. Moore claims that her consumer Only the Westlaw citation is currently available. reports in 2021 and 2023 were “incomplete, inaccurate, United States District Court, S.D.

New York. and [contained] false information,’ and that Defendants conducted an “unauthorized investigation” which negatively Erisa MOORE, Plaintiff, affected her credit. (Id. at 18 J] 7-19). Defendants oppose Ms. V. Moore's Motion. (ECF No. 22). EXPERIAN and TransUnion, Defendants.

For the reasons set forth below, the Court respectfully CIVIL ACTION NO. 23 Civ. 673 (PAE) (SLC) recommends that Defendants' Motions be GRANTED, Ms. | Moore's Motion be DENIED, leave to amend be DENIED, Signed October 13, 2023 and the action be dismissed with prejudice. Attorneys and Law Firms Erisa Moore, Bronx, NY, Pro Se. II. BACKGROUND Victoria

Dorfman, Jones Day, Washington, DC, Justin Harris, —\_A, Factual Background 1 Jones Day, New York, NY, for Defendant Experian.

1 The following facts are drawn from Ms. Moore's Camille Renee Nicodemus, Schuckit & Associates, P.C., allegations in the Complaint and in the PAC with Zionsville, IN, for Defendant TransUnion. annexed exhibits, which the Court presumes to be true for purposes of deciding Defendants' Motions. See *Spoletto Corp. v. Ethiopian Airlines Grp., Inc.*, REPORT AND RECOMMENDATION No. 21 Civ.

5407 (PAE), 2022 WL 329265, at \*] n. 1 (S.D.N.Y. Feb. 3, 2022), *aff'd*, 2022 WL SARAH L. CAVE, United States Magistrate Judge. 17574469 (2d Cir. Dec. 12, 2022) (summary order). The Court also considers the credit disclosure \*1 TO THE HONORABLE PAUL A. ENGELMAYER, Experian sent to Ms. Moore on March 9, 2023 United States District Judge (ECF No. 22-1), as incorporated by reference in the PAC and integral to the PAC because: (i) Ms. L INTRODUCTION Moore discusses its contents in the PAC (ECF No. 18 § 17), (ii) Ms. Moore attaches part of Pro se Plaintiff Erisa Moore ("Ms.

Moore") asserts the document to the PAC (compare ECF No. claims for "[d]efamation of character" and an "[i]naccurate 18-4 at 2-4 with ECF No. 21-1 at 2-5), and [c]onsumer report" against Defendants Experian and (iii) Ms. Moore has not disputed its authenticity. TransUnion (collectively, "Defendants"). (ECF No. 1-1 (the See, e.g., *Rosenberg v. Loandepot, Inc.*, No. 21 "Complaint')).

Experian moves to dismiss the Complaint Civ. 8719 (PMH), 2023 WL 1866871, at \*3 under Federal Rule of Civil Procedure 12(b)(6) ("Experian's (S.D.N.Y. Feb. 9, 2023) (considering a "statement Motion'), and TransUnion moves to dismiss the Complaint of dispute" attached to defendant's motion because under Federal Rule of Civil Procedure 12(c) ("TransUnion's it was referenced in the complaint and integral Motion," together with Experian's Motion, "Defendants' to plaintiff's claims); *Boyer v. TransUnion, LLC*, Motions").

(ECF No. 13). In opposition, Ms. Moore No. 21 Civ. 918 (KAD), 2023 WL 1434005, at submitted a Proposed Amended Complaint (ECF No. 18 \*2 n.l (D. Conn. Feb. 1, 2023) (considering as (the "PAC")), which the Court construes to be a cross- integral to the complaint a credit report plaintiff motion to amend the Complaint under Federal Rule of Civil referenced in the complaint and defendant attached Procedure 15(a)(2) ("Ms.

Moore's Motion"). (ECF No. 19). to its motion); see also *Hello I Am Elliot, Inc. v. The PAC* asserts proposed claims under the Fair Credit Sine, No. 19 Civ. 6905 (PAE), 2020 WL 3619505, Reporting Act, 15 U.S.C. §§ 1681, et seq. (the "FCRA"), at \*3 n.3 (S.D.N.Y. July 2, 2020) (considering as well as identity theft and frauds and swindles under integral documents submitted in connection with a 2023 WL 7169119 motion to dismiss in the absence of a dispute as Ms.

Moore stated that (i) the balance on her Capital One to the documents' authenticity) (citing DiFolco v. account was too high and that the "fall off date" TransUnion MSNBC Cable LLC, 622 F.3d 104, 111 (2d Cir. provided was different than that provide by Experian and 2010)).

Equifax, and (ii) her Victoria Secret account reflected an \*2 At an unspecified time, Ms. Moore "wanted to inaccurate "[l]ast payment made" and inaccurate "[p]ayment obtain a car" and was attempting to build her credit to received," in addition to reporting a different "[flall off date" "provide for [her] family." (ECF No. 18 § 7).

In 2021, than Experian and Equifax. (Id. at 7). In response to the Letter, Ms. Moore obtained a copy of her consumer report and TransUnion did not submit a dispute or otherwise take action. determined that it contained "incomplete, inaccurate, and (ECF No. 18 13). false information." (Id.)

In 2021, Ms. Moore disputed the "accuracy of the debt for Capital One." (Id. § 8). In 2023, In March 2023, Amsher was "removed from the Plaintiff's Ms. Moore lodged disputes regarding her debt with "Victoria credit file... by [Experian and TransUnion]." (ECF No. Secret" and "Amsher Collections" ("Amsher"). (Id.) Her 18 14).

On March I 2023, Experian documented that report, however, remained "incomplete, inaccurate, and with Ms. Moore had submitted an "authorized dispute." dd. 1 false information." (Id.) Ms. Moore filed a lawsuit against 15).

On March 5, 2023, Ms. Moore asked Experian to cn: am 2 provide a "description of the procedure for the results of Capital One (the Capital One Action"), and lodged a the authorized dispute, and provided an Affidavit of Truth dispute with Experian. (Id. ' | 9). [(the "Affidavit')] against the unauthorized dispute." (Id. 16; see ECF No. 18-3 at 5-7).

In a February 1, 2023 The Capital One Action was initially filed in email to counsel for Experian (the "Email"), Ms. Moore the Supreme Court of the State of New York, listed purported inaccuracies concerning Capital One in her County of Bronx, and was subsequently removed credit report, including, inter alia, that (1) incomplete data, to this District. See Notice of Removal, Moore (ii) inaccurate balances, (iii) inaccurate dates of closure of the v. Cap.

One Bank (USA), N.A., No. 21 Civ. account, (iv) an inaccurate credit limit, (v) an incorrect fall off 9654 (S.D.N.Y. Nov. 22, 2021), ECF No. 1. date, and (iv) incorrect comments. (ECF No. 18-3 at 2). The Honorable Jesse M. Furman dismissed Ms. Moore's complaint and entered judgment in favor Experian did not respond to the Affidavit. (ECF No. 18 § of the defendants in the Capital One Action.

Moore 16). On March 9, 2023, Ms. Moore received from Experian Cap. One Bank (USA), N.A., No. 21 Civ. 9654 "Td]ispute results from another unauthorized investigation," (JMF), 2022 U.S.

Dist. LEXIS 123221, at \*2 which she claims she had not requested and to which (S.D.N.Y. July 12, 2022). she did not consent. (id. § 17; see ECF No. 18-4 at 2- Experian and TransUnion conducted an investigation, which 4 and ECF No. 21-1 at 2-5 (the “Investigation Results”)).

Ms. Moore characterizes as “[i]dentity theft,” “unauthorized,” On the Investigation Results, Ms. Moore hand-wrote that and lacking a “protocol in place to protect [her] credit the reported balance of \$792 in the investigation results file.” (ECF No. 18 § 10). She claims that Experian as inaccurate and circled other items as being false or and TransUnion “allowed their legal counsel to submit a incomplete, although it is unclear the extent to which she dispute without [her] consent or request and they accepted communicated these issues to Experian.

(ECF No. 18-4 at it.’ Ud. § 11). Experian and TransUnion did not “seek 2-4). [her] participation or permission.” (Id.) As part of the investigation, Experian and TransUnion sent “[false and \*3 Ms. Moore characterizes Defendants’ actions as “identity misleading statements” to Capital One, Victoria Secret, and theft” and “mail fraud,” and claims to have suffered damages Amsher.

(Id. § 12). On February 17, 2023, Ms. Moore mailed in the form of “[m]ental and emotional distress, severe a handwritten letter to TransUnion providing “notice of humiliation, experiencing low credit expectancy, ruined credit [her] dissatisfaction with the unauthorized dispute and other reputation, tampered credit file, prolonging an important issues.” (Id. § 13; see ECF No. 18-1 at 2-4 (the “Letter”)).

In purchase, and limiting the Plaintiff's ability to provide [for the Letter, Ms. Moore informed TransUnion of her belief that her] family[’s] needs.” (ECF No. 18 18-19). her report contained inaccurate information, including with respect to her accounts with Capital One and Victoria Secret. B. Procedural Background (ECF No. 18-1 at 2-4, 7).

In an attachment to the Letter, 2023 WL 7169119 On or about November 7, 2022, Ms. Moore filed a Summons and to issue a Report and Recommendation on Defendants' with Endorsed Complaint in New York State Court, in Motions. (ECF No. 16). the Civil Court of the City of New York, County of Bronx. (ECF No. 1-1).

The Complaint contained only two allegations: “Other for \$10,000.00 with interest from III. DISCUSSION 10/22/2021. Defamation of Character, Inaccurate Consumer report.” id.) On January 26, 2023, Defendants removed \_A, Legal Standards the case to this Court. (ECF No. 1).

On February 1, 2023, TransUnion filed an Answer to the Complaint. (ECF No. 11). 1. Motions to Dismiss under Rules 12(b)(6) and 12(c) In reviewing a motion to dismiss under Federal Rule of On March 6, 2023, Experian moved to dismiss the Complaint | Civil Procedure 12(b)(6), the Court accepts as true all under Federal Rule of Civil Procedure 12(6)(6), and factual allegations in the complaint and draws all reasonable TransUnion moved to dismiss the Complaint under Federal \_ inferences in favor of the plaintiff.

See N.J. Carpenters Health Rule of Civil Procedure 12(c). (ECF No. 13). After *Ms. Fund v. Royal Bank of Scotland Grp., PLC*, 709 F.3d 109, Moore missed the March 20, 2023 deadline to oppose 119 (2d Cir. 2013); *Blackson v. City of N.Y.*, No. 14 Civ. 452 Defendants' Motions, the Court sua sponte extended her (VEC), 2014 WL 6772256, at \*2 (S.D.N.Y. Dec. 2, 2014).<sup>4</sup> deadline to March 29, 2023.

(ECF No. 17). On March = “[T]he Court must assess whether the complaint ‘contain[s] 30, 2023, rather than opposing Defendants’ Motions, Ms. sufficient factual matter, accepted as true, to state a claim Moore filed the PAC, which asserts eleven claims for {o relief that is plausible on its face.’ ” *Blackson*, 2014 WL relief under the following statutes: 15 U.S.C. § 1681b (first 6772256, at \*2 (quoting *Nielsen v. Rabin*, 746 F.3d 58, 62 claim) (the “Section 1681b Claim”); 15 U.S.C. §§ 1681i(a) (2d Cir.

2014)). A claim has “facial plausibility when the (2), 1681i(a)(4), 1681i(a)(5), 1681i(a)(6)(a), 1681i(a)(6)(6) plaintiff pleads factual content that allows the court to draw (iii), and 1681i(a)(7) (second through seventh claims) (the the reasonable inference that the defendant is liable for the “Section 16811 Claims”); New York General Business Law — misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, § 380-s (eighth claim) (the “Identity Theft Claim”); and = 129 S.Ct.

1937, 173 L.Ed.2d 868 (2009); see *Myers v. City* 18 U.S.C. §§ 1028(a)(7), 1028A, and 1341 (ninth through — of N.Y., No. 11 Civ. 8525 (PAE), 2012 WL 3776707, at \*2 eleventh claims) (the “Federal Criminal Claims”). (ECF No. — (S.D.N.Y. Aug. 29, 2012) (quoting *Iqbal*, 556 U.S. at 678, 18 99 20-66). 3 The PAC omitted a defamation claim that 129 S.Ct. 1937). A complaint “cannot withstand a motion Ms. Moore had asserted in the Complaint (the “Defamation to dismiss unless it contains factual allegations sufficient to Claim”).

(See ECF No. 18). raise a ‘right to relief above the speculative level.’ ” *Blackson*, 2014 WL 6772256, at \*2 (quoting *Bell Atl. Corp. v. Twombly*, 3 The Court notes that the PAC is not signed (or USS. 544, 393, 127 S.Ct. 1955, 167 L.Ed.2d 929 □□□□□□ dated), and therefore does not comply with Federal Threadbare recitals of the elements of a cause of action, Rule of Civil Procedure 11(a).

Should this Report supported by mere conclusory statements, do not suffice. and Recommendation not be adopted such that the *Iqbal*, 556 US. at 678, 129 S.Ct. 1937. For Purposes of Rule PAC would survive Defendants' Motions, in whole 12(b)(6), the complaint s deemed to include any written or in part, Ms. Moore should be directed to file a instrument attached to as an exhibit or any statements or signed copy of the PAC. documents incorporated in it by reference.

*Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002). Because, under Federal Rule Civil Procedure 15, Ms. Moore could not amend as of right and without leave of the Court 4

Internal citations and quotation marks are omitted or consent of the parties, the Court: (i) construed the PAC as oe a motion to amend the Complaint, (ii) deemed Defendants' unless otherwise indicated.

Motions as directed to the allegations in the PAC, and (iii) \*4 “The standard for addressing a Rule 12(c) motion for ordered Defendants to file a reply by April 14, 2023. (ECF judgment on the pleadings is the same as that for a Rule 12(b) No. 19).

On April 14, 2023, Defendants filed a reply. (ECF — (6) motion to dismiss for failure to state a claim.” *Palin v. N.Y. No. 22*). The Honorable Paul A. Engelmayer has referred Times Co., No. 17 Civ. 4853 (JSR), 2020 WL 353455, at \*2 this matter to the undersigned for general pretrial supervision (S.D.N.Y. Jan. 21, 2020) (quoting *Hogan v. Fischer*, 738 F.3d 509, 514-15 (2d Cir.

2013)). 2023 WL 7169119 analyzes Defendants' arguments against the sufficiency of the PAC. (ECF No. 19). See *MB v. Islip Sch. Dist.*, No. 14 2. Motion to Amend Civ. 4670 (SJF) (GRB), 2015 WL 3756875, at \*4 (E.D.N.Y. Federal Rule of Civil Procedure 15 provides that a court June 16, 2015) (collecting cases); *Conforti v. Sunbelt Rentals*, “should freely give leave” to amend a pleading “when Inc., 201 F. Supp. 3d 278, 291 (E.D.N.Y.

2016) □□□□□□ the justice so requires.” Fed. R. Civ. P. 15(aj)(2). The Rule purpose of procedural efficiency, the Court, in its discretion, encourages courts to determine claims “on the merits” considers the Defendants’ sufficiency arguments, along with rather than disposing of claims or defenses based on “mere their futility arguments, in light of the [proposed amended technicalities.” *Monahan v. NYC Dep’t of Corr.*, 214 F.3d complaint]”).

275, 283 (2d Cir. 2000) (“Rule [15] reflects two of the most important principles behind the Federal Rules: pleadings are to serve the limited role of providing the opposing party 3. The FCRA with notice of the claim or defense to be litigated, and ‘mere \*5 “The FCRA regulates consumer credit reporting agencies technicalities’ should not prevent cases from being decided [“CRAs”] to ensure accuracy, confidentiality, relevancy, and on the merits’). proper utilization of consumer credit information.” *Perez v. Experian*, No. 20 Civ.

9119 (PAE) (JLC), 2021 WL 4784280, The Second Circuit has explained that “district courts should = at \*5 (S.D.N.Y. Oct. 14, 2021) (“Perez I’), adopted by 2021 not deny leave [to amend] unless there is a substantial reason WL 5088036 (S.D.N.Y. Nov. 2, 2021) (“Perez II’). “The to do so, such as excessive delay, prejudice to the opposing © FCRA creates a private right of action against [CRAs] for the party, or futility.” *Friedl v. City of New York*, 210 F.3d negligent or willful violation of any duty imposed under the 79, 87 (2d Cir.

2000). This District has held that a Court statute.” *Braun v. United Recovery Sys., LP*, 14 F. Supp. 3d should deny a motion to amend where “(1) the movant is 159, 165 (S.D.N.Y. 2014). guilty of undue delay, (2) the movant has acted in bad faith, (3) the amendment would be futile, or (4) the

amendment Section 1681b “generally specifies the circumstances under which would prejudice the opposing party.” *Procter & Gamble Co. v. Hello Prods., LLC*, No. 14 Civ.

649 (VM) (RLE), 2015 Braun, 14 F. Supp. 3d at 165, and “protects consumer privacy WL 2408523, at \*1 (S.D.N.Y. May 20, 2015) (citing *State by limiting access to consumer credit reports.*” *Perl v. Am. Teachers Ret. Bd. v. Fluor Corp.*, 654 F.2d 843, 856 (2d — Express, No. 12 Civ. 4380 (ER), 2012 WL 2711270, at Cir. 1981)); see also *Williams v. Citigroup Inc.*, 659 F.3d \*2 (S.D.N.Y.

July 9, 2012). As distinguished from many 208, 213-14 (2d Cir. 2011) (per curiam) (reiterating Supreme other provisions of the FCRA regulating CRAs, liability Court precedent that finds proper grounds for denying a under Section 1681b typically attaches to “third parties motion to amend as “undue delay, bad faith or dilatory motive | who willfully or negligently ‘use or obtain’ a consumer on the part of the movant,... undue prejudice to the opposing — report for an impermissible purpose.” *Rajapakse v. Shaw*, party by virtue of allowance of the amendment, [or] futility of | No. 20 Civ.

10473 (VEC) (OTW), 2022 WL 1051108, amendment’) (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 at \*5 (S.D.N.Y. Feb. 18, 2022), adopted by 2022 WL S.Ct. 227, 9 L.Ed.2d 222 (1962)). “Consistent with the liberal 855870 (S.D.N.Y. Mar. 23, 2022). A CRA may be liable principles underlying Rule 15(a)(2), the party opposing the — where a third party accessed or used a consumer report amendment has the burden of establishing that leave to amend — for an impermissible purpose if the CRA “either willfully would be unduly prejudicial or futile.” *Pilkington N. Am., Inc.* or negligently fail[ed] to maintain reasonable procedures y. *Mitsui Sumitomo Ins.*

*Co. of Am.*, No. 18 Civ. 8152 JFK), —\_gesigned to avoid violations of” Section 1681b.> *Pietrafesa* 2021 WL 4991422, at \*5 (S.D.N.Y. Oct. 27, 2021). v. *First Am. Real Estate Info. Servs.*, No. 05 Civ. 1450 (LEK) (RFT), 2007 WL 710197, at \*3 (N.D.N.Y. Mar. 6, “Where a plaintiff seeks to amend [her] complaint while a 2007); see *Podell v. Citicorp Diners Club*, 859 F. Supp. 701, motion to dismiss is pending, a court “may either deny the □□□ (§.

D.N.Y. 1994) (noting that Section 1681b “limits the pending motion to dismiss as moot or consider the merits purposes and uses of a credit report,” and that the FCRA of the motion, analyzing the facts as alleged in the amended “imposes civil liability upon [CRAs]... who willfully or pleading.’ □ *Cotto v. Fed. Nat’l Mortg. Ass’n*, No. 20 Civ. negligently violate the [FCRA]”).

To determine whether the 6487 (MKV), 2021 WL 4340068, at \*4 (S.D.N.Y. Sept. 22, CRA maintained reasonable procedures, “the standard of 2021) (quoting *Pettaway v. Nat’l Recovery Sols., LLC*, 955 F.3d 299, 303 (2d Cir. 2020)).

Accordingly, here, the Court 2023 WL 7169119 conduct is what a reasonably prudent person would do under (same). A credit report is inaccurate “either when it is patently the circumstances.” Hines, 2022 WL 2841909, at \*23. incorrect or when it is misleading in such a way and to such an extent that it can be expected to have an adverse effect.” 5 The provision of the FCRA providing that CRAs Perez I, 2021 WL 4784280, at \*9. must maintain reasonable procedures to avoid violations of Section 1681b is Section 1681e(a), 4.

Pro Se Considerations which provides that “Lelvery [CRA] shall maintain \*6 “It is well established that the submissions of a pro se reasonable procedures designed to... limit the litigant must be construed liberally and interpreted to ‘raise furnishing of consumer reports to the purposes the strongest arguments that they suggest.’ ” Triestman\_v. listed under section 1681b of this title.” Is U.S.C. Fed.

Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006) § 1681e(a). The Court construes the Section 1681b (per curiam). Courts undertake to “ensure that inexperienced Claim as if brought pursuant to both Sections pro se litigants do not inadvertently forfeit rights or winning 1681b and 1681e(a), and, as other courts have arguments,” Tartt v. City of N.Y., No. 12 Civ.

5405 (VEC), done, analyzes these claims together. See Hines v. 2014 WL 3702594, at \*2 (S.D.N.Y. July 16, 2014), and Equifax Info. Servs., LLC, No. 19 Civ. 6701 (RPK) therefore apply “a more flexible standard to evaluate the[ ] (RER), 2022 WL 2841909, at \*23 (EDNY. July sufficiency [of their complaints] than... when reviewing a 16, 2022) (report and recommendation). complaint submitted by counsel.” Lerman v. Bd. of Elections Section 1681i outlines the “procedures [CRAs] must follow in City of N.Y., 232 F.3d 135, 140 (2d Cir.

2000); see Erickson to investigate disputes as to the accuracy of reported v.Pardus,551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 information,” including “reinvestigating a consumer’s record (2007) (“[A] pro se complaint, however inartfully pleaded, within a reasonable period of time after a consumer ‘directly must be held to less stringent standards than formal pleadings conveys’ a dispute as to the ‘completeness or accuracy ofan \_—\_ drafted by lawyers”). item on his credit report’ to the [CRAJ].” Khan v. Equifax Info.

Servs., LLC, No. 18 Civ. 6367 (MKB), 2019 WL 2492762, at \*3 (E.D.N.Y. June 14, 2019) (quoting Podell vy, □ B- Application Citicorp Diners Club, Inc., 112 F.3d 98, 101 (2d Cir. 1997)). 1. FCRA Claims If a consumer files a dispute with the CRA, Section 1681i imposes on “both the [CRA] and the furnisher of the disputed information [ ] a duty to investigate the dispute.” Nguyen v. a. Section 1681b Claim Ridgewood Sav.

Bank, 66 F. Supp. 3d 299, 304 (E.D.N.Y. 2014): see also Fashakin v. Nextel Comme'ns, No. 5 Civ. Ms. Moore claims that Defendants violated Section 1681b 3080 (RRM), 2009 WL 790350, at #10 (E.D.N.Y. Mar. 25, by failing to certify that Amsher (i) had legal or lawful 2009) (“Where credit

information is disputed, § 168 1i(a) authority to procure her consumer report, and (ii) would requires [CRAs] to “conduct a reasonable reinvestigation to use the consumer report lawfully.

(ECF No. 18 □□ 20-21). determine whether the disputed information is inaccurate.’ Defendants argue that the Section 1681b Claim fails because (quoting 15 U.S.C. 1681i(a)(1)(A))). CRAs have thirty days (i) Ms. Moore does not plausibly allege that Defendants sent to conduct a reinvestigation after receiving “notice of the the consumer report to Amsher, and (ii) the PAC fails to dispute from the consumer or reseller.” 15 U.S.C. § 168 1i(a) plausibly allege that Amsher obtained her credit report for an (1)(A). “If after reinvestigation a [CRA] determines that the impermissible purpose.

(ECF No. 22 at 6~7). disputed information is inaccurate, incomplete, or cannot be verified, the agency must delete or modify the disputed As an initial matter, Section 1681b primarily imposes liability item of information.” Phipps v. Experian, No. 20 Civ. 3368 upon users of consumer reports who obtain them for an (LLS), 2020 WL 3268488, at \*2 (S.D.N.Y. June 15, 2020), Permissible purpose, rather than the CRAs who furnish To state a claim under Section 1681i, “the plaintiff must [ ] consumer reports.

(See § III(A)(3), supra). Here, the Section plausibly allege that the disputed information is inaccurate.” 1681b Claim against the CRAs fails because the PAC does not Thompson v. Equifax Info. Servs. LLC, No. 20 Civ. 6101 allege that Defendants provided Ms. Moore's consumer report (RPK) (ST), 2022 WL 2467662, at \*8 (E.D.N.Y. Feb. 24, to the alleged user, Amsher.

With respect to Amsher, the PAC 2022): see Gestetner v. Equifax Info. Servs. LLC, No. 18 Civ. merely alleges that (i) Ms. Moore disputed the accuracy of her 5665 (JFK), 2019 WL 2343659, at \*1 (S.D.N.Y. June 3, 2019) debt with Amsher in 2023, (11) Defendants sent unidentified 2023 WL 7169119 “Tflalse and misleading information/statements” to Amsher at an unspecified time, and (iii) Amsher was removed from Ms. 7 Specifically, Ms. Moore alleges that both Moore's file in March 2023.

(ECF No. 18 Nl 8, 12, 14). The Defendants violated 15 U.S.C. §§ 1681i(a)(2), PAC does not allege that Defendants provided Ms. Moore's 1681i(a)(4), and 1681i(a)(5); Experian violated 15 consumer report to Amsher, which is fatal to any claim that US.C. §§ 1681i(a)(6)(b)(iii) and 1681i(a)(7); and Defendants impermissibly shared her report. ° TransUnion violated 15 U.S.C. § 1681i(a)(6)(a).

(Id.) 6 To the extent that the PAC can be read to allege that Amsher requested, procured and/or used Ms. □ □ Moore's credit report for an impermissible purpose i. Inaccurate Information (see ECF No. 18 at 4] 20), that claim would fail A threshold requirement for Ms. Moore's Section 1681i because Amsher is not a party to this litigation and Claims is the inaccuracy of the information in her credit Ms. Moore does not allege any basis for imputing report.

(See § III(A)(3), supra). Here, the PAC alleges that liability for Amsher's actions to Defendants. Ms. Moore's consumer report in 2021 and 2023 contained Even if the PAC could be read to allege that Defendants "incomplete, inaccurate, and false information." (ECF No. 18 furnished a consumer report to Amsher or that the allegedly —\_{{§} 7-8). Ms. Moore's Letter to TransUnion in 2023 informed and misleading" information (ECF No. 184.12) was TransUnion of her belief that her report contained inaccurate sufficient to constitute a consumer report, the Section 1681b — information, specifically with respect to her accounts with Claim would still fail because Ms. Moore does not plausibly | Capital One and Victoria Secret.

(ECF No. 18-1 at 2-7). allege that Amsher sought or used the information for an \_—\_ 'In the Letter, Ms. Moore disputed the balance and "fall off impermissible purpose or that Defendants "either willfully dates" on her Capital One and Victoria's Secret accounts. or negligently fail[ed] to maintain reasonable procedures" to \_— (Id. at 7).

In the Affidavit, Ms. Moore informed Experian of prevent an improper furnishing of information. Pietrafesa, her dispute. (ECF No. 18-3 at 2—7). In the Email to counsel 2007 WL 710197, at \*3; see Selvam v. Experian Info. Sols. for Experian, Ms. Moore also listed purported inaccuracies Inc., No. 13 Civ. 6078 (DLI)(JO), 2015 WL 1034891, at \*4 concerning Capital One in her credit report.

(Id. at 2). Finally, (E.D.N.Y. Mar. 10, 2015) (granting motion to dismiss where Ms. Moore disputed the results of Experian's investigation, as plaintiff failed to allege how the CRA acted unreasonably). — indicated in her handwritten comments on the Investigation The statement that "Defendants Experian and TransUnion Results. (ECF No. 18-4 at 2-3). have done so either negligently and/or willfully" (ECF No. 18 23) is conclusory language that simply tracks the statute While the allegation in the PAC that Ms. Moore's in a formulaic manner and is insufficient to state a claim.

See | consumer reports contained "incomplete, inaccurate, and Selvam, 2015 WL 1034891, at \*3 (holding that statements false information" (ECF No. 18 §[{} 7—8) is conclusory (ECF that "Defendants 'willfully failed to comply' and 'negligently | No. 22 at 9), when considered together with the Letter, the failed to comply' with the FCRA... are conclusory and Affidavit, the Email, the Investigation Results, and the other amount to nothing more than the formulaic recitation of the documents attached to the PAC, Ms. Moore has met her elements of a cause of action"). minimal burden at the pleading stage to plausibly allege that Defendants reported inaccurate information about her credit. \*7 Accordingly, I respectfully recommend that the Section See Perez, 2021 WL4784280, at \*10 (where plaintiff alleged 1681b Claim be DISMISSED. that "the CRAs reported inaccurate information in his trade lines, including his Capital Bank balance, Verizon Wireless balance, Best Buy balance, as well as other accounts," holding b. Section 1681; Claims

that, “the Court finds that [plaintiff] satisfies the threshold requirement as he has alleged his credit information is not Ms. Moore claims that Defendants’ investigation of her accurate”).

Ms. Moore has therefore satisfied the first element disputes violated Section 1681i, (ECF No. 18 □□ 25-48).<sup>7</sup> OF het Section 16811 Claims. Defendants argue that the PAC fails to plausibly allege that (i) the reported information was inaccurate, and (ii) their reinvestigations were unreasonable. (ECF No. 22 at 7-11). 2023 WL 7169119 53-66). None of these statutes, however, provides a private ee. right of action.

See Pharr v. Evergreen Garden, Inc., 123 F. ii. Manner of Investigations. □□ App’x 420, 422 (2d Cir. 2005) (summary order) (explaining Ms. Moore’s Section 1681i Claims falter, however, because — that “[t]he law in this circuit is clear that” 18 U.S.C. § 1341 the PAC does not plausibly allege that Defendants failed to | “does not support any private right of action”); Chance v. conduct reinvestigations or that those reinvestigations were Selip & Stylianou, LLP, No. 22 Civ.

3314 (LTS), 2022 WL unreasonable. Indeed, Ms. Moore’s chief complaint seems 1556038, at \*4 (S.D.N.Y. May 16, 2022) (explaining that to be that, although she lodged disputes with Defendants “there is no private right of action authorizing an individual to as to the accuracy of certain information contained in her — bring suit under U.S.C. § 1028A]”); Clark v. Student Loan consumer reports, Defendants investigated those complaints, Fin.

Corp., No. 18 Civ. 9354 (JPO), 2019 WL 4412571, at but somehow lacked authorization. (See ECF No. 18 §§ (S-D.N.Y. Sept. 16, 2019) (explaining that “[s]ection 1028 10-17). Ms. Moore’s allegations, taken as true, therefore also does not supply a private right of action”). demonstrate that Defendants did conduct an investigation at her request.

The gravamen of Ms. Moore’s Section Accordingly, I respectfully recommend that the Federal 1681i Claims—that Defendants should not have investigated Criminal Claims be DISMISSED. her disputes and that doing so constituted identity theft and fraud—belies her assertion that different or more thorough investigations were required under Section 16811. b. Identity Theft Claim Because most of the allegations on the PAC pertain to Ms. Moore’s theory that the investigations should not have been Ms. Moore claims that Defendants’ actions constitute identity initiated in the first place—despite her admission that she — theft under New York General Business Law § 380-s.

(ECF lodged the disputes—she has not plausibly alleged facts to No. 18 449-52). Defendants argue that the PAC fails to state support an inference that Defendants’ investigations into her —\_a prima facie claim for identity theft. (ECF No. 22 at 12). disputes violated Section 1681i.

The PAC otherwise contains conclusory recitals of the elements of each subsection of Sections 380-i and 380-s “create[ ] a cause of action for a Section 168 1i (ECF No. 18 25-48), which is insufficient to victim of identity theft to sue any person who engages in state Section 1681i

Claims. See Perez I, 2021 WL 4784280, identity theft if the theft results in the transmission of certain at \*10—11 (granting motion to dismiss for lack of allegations information about the consumer to a [CRA].” Abergel \_v. plausibly supporting willful or negligent noncompliance Santander Bank, No. 19 Civ.

6535 (CM), 2019 WL 4141668, with Section 1681i); Nguyen v. Ridgewood Sav. Bank, at \*3 (S.D.N.Y. Aug. 30, 2019) (citing Galper v. JP Morgan No. 14 Civ. 1058 (MKB), 2015 WL 2354308, at \*11 Chase Bank, N.A., 802 F.3d 437, 441 (2d Cir. 2015) (citing (E.D.N.Y. May 15, 2015) (granting motion to dismiss where = N.Y. Gen. Bus. L. §§ 380-i, 380-s)).

In this context, identity plaintiff failed to allege deficiencies in “the procedures theft is defined to include “the knowing and intentional followed or investigations by [the CRAs] in response to fraudulent use of something of value in the name of another [plaintiff’s] complaints” and offered only “conclusory and \_\_\_ person without that person’s consent.” Prignoli v. Bruczynski, broad allegations of fraud and deceptive practices”).

No. 20 Civ. 907 (MKB), 2021 WL 4443895, at \*9 (E.D.N.Y. Sept. 28, 2021) (citing Galper, 802 F.3d at 442). New York \*8 Accordingly, I respectfully recommend that the Section —\_law “authorizes a civil action only if the identity theft ‘resulted 1681i Claims be DISMISSED. in the transmission or provision to a [CRA] of information that would otherwise not have been transmitted or provided.’ ” Galper, 802 F.3d at 442 (quoting N.Y.

Gen. Bus. L. § 380- 2. Remaining Claims i) 8 a. Federal Criminal Claims 8 The statutes in question provide a right of action Ms. Moore claims that Defendants’ actions violated federal against an identity thief whose actions result in the criminal statutes and constituted mail fraud (18 U.S.C. § transmission of information to a CRA, see Galper, 1028), aggravated identity theft (18 U.S.C. § 1028A), and 802 F.3d at 442, as opposed to a right of action frauds and swindles (18 U.S.C. § 1341).

(ECF No. 18 4] against a CRA. See N.Y. Gen. Bus. L. §§ 380-I, 2023 WL 7169119 380-s. The Court therefore doubts whether Sections the nature of defamation... with respect to the 380-I and 380-s create a private right of action reporting of information against any [CRA], any against CRAs for identity theft. user of information, or any person who furnishes Here, the PAC does not plausibly allege that Defendants information to a [CRA]...”); see also Macpherson engaged in identity theft.

Ms. Moore offers only nonspecific v.JPMorgan Chase Bank, N.A., 665 F.3d45, 47-48 and conclusory allegations, ie., that “[Defendants] both (2d Cir 2011) (per curl), Indeed, Judge Furman took part in [il]identity theft to conduct an unauthorized dismissed a similar claim brought by Ms. Moore in investigation,’ and “[t]he identity theft committed also the Capital One Action.

See Moore, 2022 U.S. Dist. involved mail fraud.” (ECF No. 18 4 10, 18). LEXIS 123221, at \*2 (holding that “common-law These allegations are insufficient to plausibly support defamation claim [was] preempted by the FCRA”). that Defendants knowingly and intentionally engaged in Accordingly, I respectfully recommend that the Defamation fraudulent use of Ms. Moore's credit information.

See | Claim be DISMISSED. Prignoli, 2021 WL 4443895, at \*9 (granting motion to dismiss because “conclusory allegations that... Defendants engaged in an ‘illegal scheme’ to ‘misappropriate’ Plaintiffs funds C©-Leave to Amend and ‘participated in identity theft’ are insufficient to state a | Leave to amend should be ‘freely give[n]... when justice claim under GBL § 380-s”); Abergel, 2019 WL 4141668, at 5° requires.” ” Trujillo v. City of N.Y., No. 14 Civ.

8501 \*3 (holding that plaintiff failed to state a claim under Section (PGG), 2016 WL 10703308, at \*21 (quoting Fed. R. Civ. 380-s because “Plaintiff does not allege that Defendant [ ] or P: 15(@) (2)); see Bloomberg v. N.Y.C. Dep't of Educ., 410 its employees engaged in identity theft”); see also Bisceglia Supp. 3d 608, 628 (S.D.N.Y. 2019) (permitting amended v. Recovery Racing, LLC, No. 654335/2022 (LEF), 2023 complaint after granting motion to dismiss).

The Second WL 2113337, at \*2 (Sup. Ct. N.Y. Cnty. Feb. 17, 2023) Circuit recognizes that “the ‘liberal spirit’ of the Federal (dismissing Section 380-s claim where complaint lacked any Rule of Civil Procedure 15 embodies a ‘strong preference factual allegations of identity theft). for resolving disputes on the merits.’ ” Davis v. Goodwill Indus. of Greater N.Y. & N.J., Inc., No. 15 Civ.

7710 (ER), \*9 Accordingly, I respectfully recommend that the Identity 2017 WL 1194686, at \*14 (S.D.N.Y. Mar. 30, 2017) (quoting Theft Claim be DISMISSED. Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 190-91 (2d Cir. 2015)).

Thus, “[d]istrict courts ‘ha[ve] broad discretion in determining whether to grant leave to amend.’ ” Trujillo, 2016 WL 10703308, at \*21 (quoting c. Defamation Gurary v. Winehouse, 235 F.3d 793, 801 (2d Cir. 2000)). Ms. Moore asserted a Defamation Claim against Defendants Courts “ordinarily recommend that a pro se plaintiff be in the original Complaint (see ECF No. 1-1), but omitted given leave to amend hfer] complaint to replead all factually that claim in the PAC (see ECF No. 18).

Therefore, Ms. insufficient claims.” Huggins v. Schriro, No. 14 Civ. 6468 Moore has abandoned this claim. See Gifford v. United N. (GBD) (JLC), 2015 WL 7345750, at \*9 (S.D.N.Y. Nov. 19, Mortg. Bankers, Lid., No. 18 Civ. 6324 (PAE) (HBP), 2019-7015): See Grultony. City of New Haven v\_City of New Haven, 720 F.3d 133, 140 WL 2912489, at #3 (S.D.N.Y. July 8, 2019) (finding that pro (74 <sup>TM</sup> 2013) La] pro se complaint generally should not.. va. be dismissed

without granting the plaintiff leave to amend at se plaintiff abandoned certain claims by failing to include. them in a proposed amended complaint submitted in lieu of least once”).

The Court may deny an opportunity to amend. oe “when amendment would be futile.” *Fulton v. Goord*, 591 opposition to a motion to dismiss); *Leary v. Warnaco, Inc.*, F.3d 37, 45 (2d Cir, 2009) 251 B.R. 656, 659 (S.D.N.Y. 2000) (finding that, “by omitting ° [the claim] from the proposed amended complaint, this Court. 9 Here, Ms. Moore has already had an opportunity amend her deems it abandoned”). claims, with the benefit of having seen Defendants' arguments why her claims were deficient.

Because the PAC “gives no 9 The Court would still recommend that the indication that [she] has a colorable claim under federal Defamation Claim be dismissed as preempted law and [she] has already had one opportunity to amend by the FCRA. See 15 U.S.C. § 1681h(e) (“no the complaint[,] any further attempt to amend the complaint consumer may bring any action or proceeding in would be futile.” *Selvam*, 2015 WL 1034891, at \*4 (citing 2023 WL 7169119 *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir.

2000)); sec Moore, 2022 U.S. Dist. LEXIS 123221, at \*2 (denying Ms. NOTICE OF PROCEDURE FOR Moore leave to further amend in the Capital One Action FILING OBJECTIONS TO THIS where she had previously had an opportunity to amend, and REPORT AND RECOMMENDATION finding that, “[h]ere, leave to amend is not warranted because the problems with Moore's claims are substantive, so better © The parties shall have fourteen (14) days (including pleading will not cure them”); *Ingram v. Premier Bankcard*, | weekends and holidays) from service of this Report and Inc., No. 15 Civ.

2205 (PGG), 2017 U.S. Dist. LEXIS 112636, | Recommendation to file written objections pursuant to 28 at \*14-15 (S.D.N.Y. July 18, 2017) (denying pro se plaintiff U-S.C § 636(b)(1) and Rule 72(b) of the Federal Rules of leave to amend a second time where plaintiff “did not add Civil Procedure. See also Fed. R. Civ. P. 6(a), (d) (adding sufficient factual allegations to demonstrate either a willful or three additional days when service is made under Fed.

R. Civ. negligent violation of the FCRA,” and where “it appears that P. 5(6)(2)(C), (D) or (F)). A party may respond to another any further attempt to amend the complaint would be futile”). Party's objections within fourteen (14) days after being served with a copy. Fed. R. Civ. P. 72(b) (2). Such objections, and \*10 Accordingly, I respectfully recommend that further @2y response to objections, shall be filed with the Clerk of leave to amend be DENIED. the Court.

See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), (d), 72(b). Any requests for an extension of time for filing objections must be addressed to Judge Engelmayer. IV. CONCLUSION FAILURE TO OBJECT WITHIN FOURTEEN (14) For the reasons set forth above, the Court respectfully

DAYS WILL RESULT IN A WAIVER OF OBJECTIONS recommends that Defendants' Motions be GRANTED, Ms. AND WILL PRECLUDE APPELLATE REVIEW.

See 28 Moore's Motion be DENIED, leave to amend be DENIED, —\_U-S-©- § 636(b)(1); Fed. R. Civ. P. 6(a), (d), 72(b); Thomas v. and the action be DISMISSED WITH PREJUDICE. Ar, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). If Ms. Moore does not have access to cases cited in this Report Defendants shall promptly serve a copy of this Report and and Recommendation that are reported on Westlaw, she may Recommendation on Ms. Moore, and, by October 17, 2023, request copies from Defendants' counsel.

See Loc. Civ. R. 7.2. file proof of service on the docket. All Citations Not Reported in Fed. Supp., 2023 WL 7169119 End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works. Filings (1) Title PDF Court Date Type 1. Docket 1:23-CV-00673 — S.D.NY. Jan. 26, 2023 Docket Moore v. Experian et al History (4) Direct History (3) 1. Moore v. Experian 2023 WL 3005746, S.D.N.Y., Mar.

31, 2023 Subsequent Determination 2. Moore v. Experian += 2023 WL 7169119, S.D.N.Y., Oct. 13, 2023 Report and Recommendation Adopted by 3. Moore v. Experian 2023 WL 7166158, S.D.N.Y., Oct. 31, 2023 Related References (1) 4. Moore v. Experian 2023 WL 7491515, S.D.N.Y., Nov. 09, 2023 2007 WL 710197 Credco is an entity engaged in the business of furnishing credit information from the three major credit bureaus.

KeyCite Yellow Flag Credco does not maintain credit history information on eee Ritchie v. Northern Leasing Systems, Inc., SDNY, individual consumers. Rather, at the request of its clients, Credco compiles credit scores from the three credit bureaus 2007 WL 710197 into a single, merged report. Only the Westlaw citation is currently available. United States District Court, Prior to offering services to its clients, Credco requires ND.

New York. its clients to sign an agreement and certification providing that the client will not seek credit reports for an improper Anthony J. PIETRAFESA, Plaintiff purpose and only in connection with a “credit transaction Vv. involving the consumer on whom the information is to FIRST AMERICAN REAL ESTATE be furnished and involving the extension of credit to, or INFORMATION SERVICES, INC., d/b/a First review or collections of an account of the consumer.” In American Credco, Aegis Lending Corporation, Pema a, oon ne ee oe to.

Lg receive the merged reports. As part of the application, Aegis Aegis Mortgage Corporation, SCOTT DOE, supplied Credco with its business address, identified itself being a person whose real name is unknown to as a wholesale lender, listed the number of employees and plaintiff now, Jointly and Severally, Defendants. its annual revenue, named its officers, and supplied three No. 1:05-CV-1450. references.

Credco checked the references, ensured that Aegis was in good standing with the Office of the Comptroller March 6, 2007. in the State of Texas (where Aegis is located), interviewed one of Aegis's senior vice presidents, conducted a physical Attorneys and Law Firms inspection of Aegis's offices to ensure that it was a bona fide lending institution, and, as a result, determined that Aegis was Anthony J. Pietrafesa, Albany, NY, pro se. authorized to obtain credit reports and requested such reports for a legitimate purpose.

Bartlett, Pontiff, Stewart & Rhodes, P.C., Glens Falls, NY, Eileen M. Haynes, Esq., for Defendant Credco. Up through August 2005, Aegis had requested that Credco provide “thousands of credit reports.” Def.'s Stmt. of Mat. Facts at § 12. From 1999 through August 2005, Credco had MEMORANDUM-DECISION AND ORDER been obtaining credit reports for Aegis for approximately six years and “had received no information that Aegis was LAWRENCE E. KAHN, United States District Judge... » requesting reports for improper purposes.” /d. at 13.

On or \*1 Plaintiff Anthony Pietrafesa (“Plaintiff”) commenced about August 26, 2005, Aegis requested that Credco provide the instant action against Defendants alleging violations of 4 merged report on Plaintiff. Credco provided the report. federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681, et seq., the New York Fair Credit Reporting Act On or about September 9, 2005, Credco received a notice (“NYFCRA”), N.Y.

Gen. Bus. Law § 380 et seq., and the New from Aegis that it improperly requested Plaintiff's credit New York Consumer Protection Act, N.Y. Gen. Bus. Law § 349. report. Aegis asked that the inquiry be removed from all Plaintiff alleges that Defendants obtained a copy of his credit credit reporting bureaus. Credco investigated Aegis's request. report for an improper purpose.

Presently before the Court is Credco then wrote to each of the three credit bureaus and Defendant Credco's Motion, and Plaintiff's Cross-Motion, for requested that they remove the inquiry from Plaintiff's credit summary judgment pursuant to FED. R. CIV. P. 56. Dkt. Nos. report. Credco also received notice from Plaintiff that he did 8, 11. not authorize the release of his credit information.

Although Credco had already asked the three credit bureaus to remove the inquiry from Plaintiff's credit report, Credco responded to I. FACTS Plaintiff that he should address the matter directly with Aegis. 2007 WL 710197 \*2 Plaintiff then commenced the instant action alleging Credco is a user of credit reports or a consumer reporting that Credco violated the FCRA, the NYFCRA, and the New agency.

New York Consumer Protection Laws by obtaining his credit report from the three bureaus, providing that information to Aegis, and failing to provide adequate notice to Plaintiff. The phrase “consumer reporting Presently before the Court is Credco's Motion for summary agency” is statutorily defined to judgment pursuant to FED.R.CIV.P. 56 seeking dismissal of mean any

person which, for monetary the Complaint in its entirety and Plaintiffs Cross-Motion fees, dues, or on a cooperative seeking a determination of liability as a matter of law.

Dkt. nonprofit basis, regularly engages in Nos. 8, 11. whole or in part in the practice of assembling or evaluating consumer credit information or other information II. STANDARD OF REVIEW Federal Rule of Civil Procedure 56 provides that summary judgment on consumers for the purpose of... furnishing consumer reports to third judgment is proper when “the pleadings, depositions, answers.. to interrogatories, and admissions on file, together with the Parties, | and which uses any Means □ or facility of interstate commerce for affidavits, if any, show that there is no genuine issue as to. ae... the purpose of preparing or furnishing any material fact and that the moving party is entitled to a. consumer reports. judgment as a matter of law.” FED.

R. CIV. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In applying this standard, courts must “ ‘resolve all ambiguities, and + | credit all factual inferences that could rationally be drawn, in 315 USC. § 1681a(h).

As it is ordinarily used, the favor of the party opposing summary judgment,’ “ Brown v: term “assemble” means “to bring together; to gather into Henderson, 257 F.3d 246, 251 (2d Cir.2001) (quoting Cifra B® Place.” The Random House Dictionary of the English v. Gen. Elec. Co., 252 F.3d 205, 216 (2d Cir.2001)). Once Language, 1979, at p. 89; see also Oxford English Dict.

(2d the moving party meets its initial burden by demonstrating Ed.1989) (“To bring together (things) into one place or mass, that no material fact exists for trial, the nonmovant “must to collect.”). The nature of Credco’s business is gathering do more than simply show that there is some metaphysical credit information doubt as to the material facts.” Matsushita Elec.

Indus. maintained by the three credit bureaus and providing Co. Zenith Radio Corp., 475 US. 574, 586 (1986) that information in a single merged report to its clients. (citations omitted). Rather, the nonmovant “must come forth As such, its conduct constitutes “assembling.” See with evidence sufficient to allow a reasonable jury to find Morrissey v. TRW Credit Data, 434 F. Supp 1107, 1108 in her favor.” Brown, 257 F.3d at 251 (citation omitted).

(E.D.N.Y.1977). Credco also qualifies as a “reseller” Bald assertions or conjecture unsupported by evidence are of consumer reports. See Credit Chequers Info, Servs., insufficient to overcome a motion for summary judgment. Inc. v. CBA, Inc., NO. 98 CIV. 3868(RPP), 1999 WL Carey v. Crescenzi, 923 F.2d 18, 21 (2d Cir.1991); Western 253600, at \*2 (S.D.N.Y. Apr.

29, 1999) (an entity World ins. Co. v. Stack Oil, Inc., 922 F.2d 118, 121 Qd that provides merged credit reports identical to the Cir.1990). reports provided by Credco here is a “reseller of credit reporting services.”).

The FCRA defines the terms III. DISCUSSION “reseller” to mean “a consumer reporting agency that (1) assembles and merges information contained in a. FCRA the database of another consumer reporting agency or Credco contends that it is entitled to summary judgment multiple consumer reporting agencies concerning any because the undisputed facts demonstrate that, as a consumer consumer for purposes of furnishing such information to reporting agency, it complied with the applicable provisions any third party...; and (2) does not maintain a database of the FCRA.

Plaintiff responds that he is entitled to summary of the assembled or merged information from which judgment because Credco is not a “consumer reporting new consumer reports are produced.” 15 U.S.C. § 1681 agency,” but a “user” of credit reports that obtained a report a(u).

Thus, to be a reseller, one must be: (1) a consumer for an improper purpose. Thus, the initial inquiry is whether reporting agency, see *Poore v. Sterling Testing Sys., 2007 WL 710197 Inc., 410 F.Supp.2d 557, 566-67 (E.D.Ky.2006)*, (2) that actions by Credco constitute reasonable efforts to verify assembles and merges information maintained in the \_Aegis's identity and the use for which Aegis intended to databases of other consumer reporting agencies, and(3) use the consumer reports.

The evidence in the record further that does not maintain its own databases of consumer demonstrates that Credco complied with § 1681 e by requiring information. 15 U.S.C. § 1681 e(e), Aegis to: identify itself, certify the purpose for which the information was sought, and certify that the information As a consumer reporting agency, Credco is obligated to | would be used for no other purpose.

Plaintiff offers no comply with, among other things, the requirements of 15 — evidence upon which it reasonably can be concluded that §§ 1681 b and 1681e(a)-(d). As is relevant hereto, § Credco had reason to believe that Aegis would obtain a 1681 b(a)(3) permits a consumer report to be furnished only — consumer report for an improper purpose.

To the contrary, the a person which it has reason to believe-(A) intends to record evidence demonstrates that Credco had supplied Aegis use the information in connection with a credit transaction with thousands of credit reports over an approximately six involving the consumer on whom the information is to be \_—\_ (6) year period without incident.

Thus, Credco had no reason furnished and involving the extension of credit to, or review to believe that Aegis sought a credit report for a improper or collection of an account of, the consumer.” Section 1681 □ purpose. requires consumer reporting agencies to “maintain reasonable procedures designed to avoid violations of section 1681c of — Plaintiff has failed to identify any deviations from the this title and to limit the furnishing of consumer reports to

standard of care to be used by credit reporting agencies in the purposes listed under section 1681 b of this title.” 15 maintaining reasonable procedures to comply with §§ 1681 U.S.C. § 1681e(a).

These reasonable procedures must include b and 1681c. See 15 U.S.C. § 1681i; Dobson, 828 F.Supp. at a requirement that the prospective users of information: (1) 977 (“To determine whether the consumer reporting agency identify themselves; (2) certify the purposes for which the = maintained reasonable procedures, the standard of conduct information is sought; and (3) certify that the information is what a reasonably prudent person would do under the will be used for no other purpose. /d.

Consumer reporting — circumstances.”); see also Obabueki v. Int’l Bus. Machines agencies also are required to “make a reasonable effort to Corp., 145 F.Supp.2d 371, 395-96 (S.D.N.Y.2001) (liability verify the identity of a new prospective user and the uses may be imposed upon a credit reporting agency for failing certified by such prospective user prior to furnishing such \_\_\_ to act reasonably in complying with the FCRA).

It would be user a consumer report.” /d. Consumer reporting agencies —\_ unreasonable to require credit reporting agencies processing are prohibited from furnishing a report “to any person if a high number of requests to independently investigate each it has reasonable grounds for believing that the consumer and every request to determine its legitimacy. See Boothe v. report will not be used for a purpose listed in section 1681 TRW Credit Data, 557 F.Supp. 66, 71 (S.D.N.Y.1982). b....” Id. Civil liability can be imposed upon someone who is negligent in failing to comply with the requirements of | Because Credco also qualifies as a reseller of consumer the FCRA.

15 U.S.C. § 1681o. “The fact that a consumer \_\_\_ reports, it had additional obligations imposed upon it pursuant report is furnished for an impermissible purposc... docs not to § 1681 c(c). Under § 1681 c(c)(1), Credco was required result in automatic liability. Liability is imposed only when \_ to disclose to the “consumer reporting agency that originally the consumer reporting agency either willfully or negligently furnish[ed] the report-(A) the identity of the end-user of the fails to maintain reasonable procedures to avoid violations of, report (or information); and (B) each permissible purpose ie., § 1681 b.” Dobson v. Holloway, 828 F.Supp. 975,977 under section 1681 b of this title for which the report is (M.D.Ga.1993) (internal citations omitted). furnished to the end-user of the report.” Section 1681 e(e)(2) further required Credco to: \*4 The undisputed evidence before the Court demonstrates that Credco complied with all of these requirements.

Before (A) establish and comply with reasonable procedures accepting Aegis as a client, Credco verified Aegis's identity designed to ensure that the report (or information) is resold by requiring a completed application, verifying its status with by the person only for a purpose for which the report may the Office of the Comptroller of the State of Texas, checking be furnished under section 1681 b of this title, including into its line of business, conducting a physical inspection of

by requiring that each person to which the report (or Aegis's business, and checking Aegis's references.

Credco information) is resold and that resells or provides the report learned that Aegis was a real estate loan company. These (or information) to any other person- 2007 WL 710197 b and three hundred eighty-j of this article and to limit the \*5 (I) identifies each end user of the resold report (or furnishing of consumer reports to the purposes listed under information), said section three hundred eighty-b,” the claims under N.Y. (ii) certifies each purpose for which the report (or Gen.

Bus. Law §§ 380-b(a), 380-k must be dismissed. information) will be used; and. N.Y. Gen. Bus. Law § 380-b(b) further provides that: (iii) certifies that the report (or information) will be used for no other purpose; and No person shall request a consumer (B) before reselling the report, make reasonable efforts report... in connection with an to verify the identifications and certifications made under application... for credit,... unless the subparagraph (A). applicant is first informed in writing The evidence discussed above concerning Credco's orm the same manner in which compliance with § 1681 b equally applies to demonstrate the application is made that (1) a Credco's compliance with § 1681e(e)(2).

As noted, Credco ConsunICT Teport may be requested mn had a reasonable procedure to ensure that Aegis was using connection with such application, and credit reports for a proper purpose and had information that (a) the applicant upon request will be Aegis was the end user of the resold report.

Moreover, Aegis, informed whether or not a CONSUTICT as the end user, certified the purpose for which the report was report was requested, and ifsuch report used, and certified that the report would not be used for any was requested, informed of the name other purpose. and address of the consumer reporting agency that furnished the report. There is, however, an absence of evidence in the record concerning whether Credco complied with § 1681e(1)(B).

It is unknown whether Credco informed the three credit bureaus \*6 N.Y. Gen. Bus. Law § 380-b(b). There is no evidence from which it obtained the credit information concerning in the record that Credco complied with this requirement. Plaintiff of “cach permissible purpose under section 1681 b Indeed, looking at the evidence in the light most favorable to of this title for which the report is furnished to the end-user the nonmovant, it appears that Credco did not inform Plaintiff of the report.” See15 U.S.C. § 1681 e(e)(1)(B).

Accordingly, hat it intended to request a consumer report. the Court cannot determine on the present record whether: (1) Credco negligently failed to comply with § 1681e(e)(1)(B); That being said, the Court concludes that § 380-b(b) is and, ifso, (2) Plaintiff sustained any actual damages as a result inapplicable here. By its plain terms, § 380-b(b) applies of the failure.

See 15 U.S.C. § 1681i(a). Credco's Motion for requests for a consumer report "in connection with an summary judgment on the FCRA claim must, therefore, be application... for credit." When such a request is made, denied, notice must be given to "the applicant" that a consumer report may be requested "in connection with such application." It is arguable that Aegis's request for a consumer report was b. NYFCRA "in connection with an application for credit." After all, this The Court will now turn to Plaintiffs claims under N.Y.

Gen. was the purported basis for Aegis's request for the credit Bus. Law Art. 25. As is relevant hereto, the requirements report. Nevertheless, as Plaintiff states, he "did not initiate of Article 25 are substantially similar to those under the any business transaction, or apply for credit... by or through FCRA. See *Scott v. Real Estate Fin. Group*, 183 F.3d 97, Credco" or any other Defendant.

Pl.'s Stmt. of Mat. Facts at 100 (2d Cir.1999). There is a difference between the two §§ 11-12 (emphasis added); Compl. at § 8. As such, strictly statutes, however, insofar as Article 25 does not contain adhering to the text of the statute, Plaintiff cannot be an additional requirements applicable to resellers as does the "applicant" to whom notice is required to be given.

See N.Y. FCRA. For the reasons previously discussed with respect to STAT. LAW § 73 ("A statute must be read and given Credco's compliance with §§ 1681b and 1681e(a)-(d) of the effect as it is written by the Legislature, not as the court may FCRA, because Credco maintained "reasonable procedures to think it should or would have been written if the Legislature designed to avoid violations of sections three hundred eighty- had envisaged all of the problems and complications which 2007 WL 710197 might arise in the course of its administration; and no matter —\_case indicates that the Legislature did not intend the act to what disastrous consequences may result from following the cover such a case....").

This conclusion is even more forceful expressed intent of the Legislature, the Judiciary cannot avoid considering that, under the NYFCRA, the term "consumer" is its duty.... Under the foregoing principle... courts may not... —\_a statutorily defined term, see § 380-a(b), that is purposefully change the scope of a legislative enactment"); N.Y. STAT. \_ and intentionally used throughout Article 25, but was not used LAW § 94 ("The Legislature is presumed to mean what it in § 380-b(b).

Because Plaintiff was not an "applicant," he says.... In the construction of statutes, each word in the statute was not entitled to notice under § 380-b(b). must be given its appropriate meaning.... Words will not be expanded so as to enlarge their meaning to something which Furthermore, the Court finds that § 380-b(b) was not intended the Legislature could easily have expressed but did not...."); to apply to every person or entity involved in the process N.Y.

STAT. LAW § 230 ('[E]ach word or phrase in the of obtaining a consumer report. See *Scott v. Real Estate enactment must be given its appropriate meaning*). Fin. Group, 956 F.Supp. 375, 385

(E.D.N.Y.1997) ( “[T]he Court finds that the language contained in the statute does The conclusion that § 380-b(b) does not apply to the situation not require notice from everyone involved in obtaining the where, as here, there is no actual application is supported consumer report.”), affd in part, rev'd in part,183 F.3d 97 by comparing § 380-b(b) (requiring notice for consumer (2d Cir.

1999), Without question, the end-user of the consumer reports) with §§ 380-c(a) and 380-c(b) (requiring notice for report is subject to § 380-b(b)'s requirements. The purpose investigative consumer reports). Section 380-b(b) specifically of § 380-b(b) is to require the end-user (that is, those who refers to providing notice to the “applicant,” whereas § 380- —\_ intend to use the credit report for making determinations c(a) requires that notice be given to “the consumer.” It must concerning employment, the extension of credit, the provision be assumed that when enacting Article 25, the legislature of insurance, or the rental or leasing of a residence) to inform intentionally used two different terms in the two different — the applicant that end-user may request a consumer report as sections.

N.Y. STAT. LAWW § 98 (“[T]he court must assume \_\_ part of the decision-making process. It is the end-user who that the Legislature did not deliberately place in the statute a ordinarily has a direct relationship with the consumer and, phrase intended to serve no purpose, but mustread each word \_\_ therefore, is in a position to provide notice concerning the and give to it a distinct and consistent meaning.”); N.Y.STAT. intention to obtain a consumer report.

By requiring the end- LAWW § 97 (“Statutory words must be read in their context, user to provide this information at the time of the application and words... of a statutory section should be interpreted with — for credit, employment, insurance, or the rental or lease of reference to the scheme of the entire section....

The different | an apartment, the consumer is in a position to determine parts of the same act, though contained in difference sections, whether to proceed with the application. This would appear are to be construed together as if they were all in the same \_to satisfy the policy reasons behind the notice provision-to section.”). enable consumers to know under what situations consumer reports concerning them will be obtained and to permit the \*7 Furthermore, § 380-c(b) expressly contemplates the type consumer to discontinue the application process if they do of notice to be provided in the situation where no application not want their consumer report to be disclosed.

Taking into is made. That section provides that “[t]he notice required by — consideration these purposes of § 380-b(b), the question is this section shall be in writing ifa written application is made — whether § 380-b(b) also was intended to apply to require by the consumer, or may be in writing or orally in all other \_ resellers (those who obtain the consumer report from another circumstances.” § 380-c(b)(emphases added).

By contrast, § consumer reporting agency or multiple consumer reporting 380-b(b) does not provide for situations where there is no agencies) to provide notice to the consumer where the end- application. In light of the fact that the Legislature expressly — user seeks to obtain a consumer report through that reseller. considered the situation where there is no application with respect to investigative consumer reports, the failure to \*8 It is common practice for the end-users of consumer include a similar provision in § 380-b(b) cannot be considered — reports to obtain the reports through a middleman or reseller. a legislative oversight, but, rather must be presumed to be an — As previously discussed, the FCRA expressly contemplates intentional omission.

See N.Y. STAT. LAWS § 74 ('[W]hen this situation. By the time a request for a consumer report from the language of an act and circumstances surrounding is made to a reseller, the requirements of § 380-b(b) already its enactment it appears that the Legislature has specified the should have been complied with by the end-user.

Under such cases to which it shall apply, the failure to specify a particular circumstances, it makes little sense to require the middleman, 2007 WL 710197 or reseller, to also provide notice to the consumer before challenged act or practice was consumer oriented; second, obtaining the report that has already been requested by the that it was misleading in a material way; and third, that the end-user.

Such notice would be superfluous. It also would plaintiff suffered actual injury as a result of the deceptive act. be extremely onerous on resellers to require that they notify *Stutman v. Chemical Bank*, 95 N.Y.2d 24, 29 (2000). every consumer about whom they receive a request to obtain a consumer report Defendant moves for summary judgment on the ground that there is no evidence that it engaged in any materially Most significantly, perhaps, the statute prohibits requesting a misleading or deceptive acts.

In response, Plaintiff merely consumer report “unless the applicant is first informed” that a contends that a violation of the NYFCRA or FCRA can consumer report may be requested. § 380-b(b). The required sustain a claim under § 349. While certain acts may constitute notice informs the “applicant” that “a consumer report may a violation of both the FCRA and § 349, see, *C8 Wegmans* be requested in connection with such application.” § 380-b(b) *Food Markets Inc. v. Serimphsher* (In re Serimphsher) □□ (emphasis added).

By the time the matter gets to a reseller, BR 299 (Bankt.N-D.N.Y.1982), here, Plaintiff has failed to a consumer report already has been requested (at least by identity any consumer oriented, misleading acts by *Credco*. the end-user) and, thus, any notice provided by the reseller Accordingly, the § 349 claim must be dismissed. would be after the time contemplated by the statute.

Notice provided by a reseller would not Fulfil the above-discussed IV. CONCLUSION policy reasons of affording the applicant an opportunity to \*9 Accordingly, it is hereby discontinue the application process and preventing the request and/or disclosure of his or her consumer Teport.

For these ORDERED, that Defendants' Motion for summary judgment NrenvEeRa nine “ ee is mpeanis here. (kt. No. 8) is GRANTED IN PART and DENIED IN claims are, theretore, dismissed. PART. Defendants’ Motion is GRANTED insofar as all of Plaintiff’s claims are DISMISSED with the exception of the c. New York Consumer Protection Law claim under § 1681 e(1)(B) of the FCRA; and it is further Plaintiff also asserts a claim under N.Y.

Gen. Bus Law § 349, which makes it unlawful to engage in deceptive acts or ORDERED, that Plaintiff’s Cross-Motion for summary practices in the conduct of any business or in the furnishing of judgment (Dkt. No. 11) is DENIED; and it is further any service in New York state. See N.Y. GEN. BUS LAW § 349 To recover under this section, Plaintiff must demonstrate ORDERED, that the Clerk serve a copy of this Order on all that he suffered actual injury as a result of a practice that was parties by regular mail.

IT IS SO ORDERED. objectively misleading or deceptive. Pe/man ex rel. Pelman v. McDonald's Corp., 396 F.3d 508, 511 n. 4 (2d Cir.2005). All Citations As the New York Court of Appeals has stated, “[a] plaintiff under section 349 must prove three elements: first, that the | Not Reported in F.Supp.2d, 2007 WL 710197 End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works.

Filings (2) Title PDF Court Date Type 1. Memorandum of Law in Support of Defendant a N.D.N.Y. Apr. 14, 2006 Motion Credco's Motion for Summary Judgment As Anthony J. PIETRAFESA, Plaintiff, v. FIRST AMERICAN REAL ESTATE INFORMATION SERVICES, INC., d/ b/a First American Credco Aegis Lending Corporation, Aegis Mortgage Corporation, "Scott Doe," being a person whose real name is unknown to plaintiff now, Jointly and Severally, Defendants.

2006 WL 1468334 2. Docket 1:05cv01450 — N.D.N.Y. Nov. 18, 2005 Docket PIETRAFESA v. FIRST AMERICAN REAL ESTATE INFORMATION SERVICES, INC. ET AL History There are no History results for this citation. 2022 WL 2841909 seeking monetary, injunctive, and declaratory relief for alleged violations of the Fair Credit Reporting Act (“FCRA”), Ps KeyCite Yellow Flag 15 U.S.C. §§ 1681-1681x, and the New York Fair Credit Ce 380-380-v.

(ECF No. | (“Compl.”)). Plaintiff has moved 2022 WL 2841909 pursuant to Rule 23 of the Federal Rules of Civil Procedure Only the Westlaw citation is currently available. to certify a nationwide FCRA class and three claim-based United States District Court, E.D. New York. subclasses as described in further detail below. (ECF No. 43 (“Mot. for Class Cert.”); ECF No. 42-2 SEALED (“PI.’s Duane A. HINES, on behalf of himself Mem.” at 3-4).

Your Honor has referred the motion to me and all others similarly situated, Plaintiff, for a report and recommendation. (Order dated 03/22/2022). Vv. EQUIFAX INFORMATION For the reasons set forth below, I respectfully recommend that SERVICES, LLC, Defendant. the motion be granted in part and denied in part.

The Court should (1) grant Plaintiffs request for certification of the No. 19-CV-6701 (RPK) (RER) New York Subclass and the Capital One Subclass under Rule | 23(b)(3); (2) deny Plaintiff's request for certification of the Signed July 16, 2022 nationwide FCRA Class for failure to satisfy the superiority requirement of Rule 23(b)(3), or alternatively order further Attorneys and Law Firms briefing from the parties on the issue of whether a stay, consolidation, or transfer of proceedings is warranted in light James A. Francis, Pro Hac Vice, John Soumilas, Pro Hac Vice, of the pending Rivera Action; (3) deny Plaintiff's request Jordan M. Sartell, Pro Hac Vice, Francis Mailman Soumilas for certification of the Post-Dispute Publication Subclass for P.C., Philadelphia, PA, Micah S. Adkins, Pro Hac Vice, The failure to satisfy the predominance requirement of Rule 23(b) Adkins Firm, P.C., Dallas, TX, Robert S. Sola, Pro Hac (3); (4) deny Plaintiff's request for certification under Rule Vice, Robert S. Sola, P.C., Portland, OR, Kevin Christopher 23(b)(2) with respect to the New York Subclass: (5) appoint Mallon, Mallon Consumer Law Group, PLLC, New York, Plaintiff as the class representative and Francis Mailman NY, for Plaintiff.

Soumilas, P.C., Robert S. Sola, P.C., Skaar & Feagle, LLP, Edward Bedard, Pro Hac Vice, Robbins Alloy Belinfante Adkins Firm, PC. as class counsel; and, (6) direct the Littlefield LLC, Atlanta, GA, Zachary A. McEntyre, Pro Patties to submit to the Court within thirty days proposed Hac Vice, Billie Pritchard, Pro Hac Vice, Carley Hawkins forms and schedules for providing notice to the certified Thompson, Pro Hac Vice, King & Spalding LLP, Atlanta, GA, classes.

Jessica Kristen Shook, King & Spalding, New York, NY, for Defendant. BACKGROUND REPORT & RECOMMENDATION I. Consumer Reporting Agencies, the Fair Credit Reporting Act, and the NYFCRA RAMON E. REYES, JR., UNITED STATES MAGISTRATE \_ AS “one of the “Big Three” [consumer] reporting agencies,” JUDGE: Equifax “compiles personal and financial information about individual consumers to create consumer reports” and “sells those consumer reports [also known as credit reports] for TO THE HONORABLE RACHEL P. KOVNER use by entities such as banks, landlords, and car dealerships UNITED STATES DISTRICT JUDGE [i.e., Equifax's customers] that request information about the creditworthiness of individual consumers.” ZransUnion LLC Duane A. Hines (“Hines” or “Plaintiff”) brings this action —\_, Ramirez, 141 S. Ct.

2190, 2201 (2021); see also (Compl. on behalf of himself and similarly situated consumers 4 7 (explaining that “Equifax prepares consumer report[s] against Equifax Information Services, LLC (“Equifax” or (commonly called ‘credit report[s]’ ”)). Consumer reports “Defendant”), a Georgia-

based consumer reporting agency, may include up to two years' worth of "inquiry information," 2022 WL 2841909 which is comprised of notations on the consumer's credit Act requires that consumer reporting agencies: (1) properly file that identify the entities or individuals who requested \_\_\_ reinvestigate or remove incomplete or inaccurate information information about the consumer from the reporting agency — contained in a consumer's file upon direct notice of a dispute and the date such information was delivered.

(Compl. 7-8; from the consumer, 15 U.S.C. § 1681i(a); (2) "maintain Pl.'s Mem. at 1; ECF No. 42-3 SEALED ("Def's Opp.") at 4 reasonable procedures designed... to limit the furnishing of (citing ECF No. 42-24 SEALED) ("Gobin Depo. Excerpts") consumer reports to the [permissible] purposes" specifically 30:24-31:1; 16 CLER. § 660.2(c)); see also ECF No. 42-25 enumerated in the Act, 15 U.S.C. §§ 1681b, 1681e(a); and SEALED ("Gobin Decl.") § 3).

(3) refrain from furnishing records of non-consumer-initiated inquiries to third parties, 15 U.S.C. § 1681b(c)(3). "The \*2 An inquiry may be considered either "soft" or "hard." = Act creates a cause of action for consumers to sue and An inquiry is "soft" when it is made as part of an ongoing recover damages for certain violations," including actual, relationship between the inquirer and the consumer, relates to statutory, or punitive damages for willful noncompliance employment screening, or will otherwise leave the consumer's —\_ with its requirements, and actual damages for negligent credit score unaffected.

Conversely, an inquiry is "hard" when noncompliance. Ramirez, 141 S. Ct. at 2201; 15 U.S.C. §§ it is associated with a consumer-initiated application for credit 1681n(a), 1681o. and may therefore impact the consumer's credit score. (See Pl.'s Mem. at 1; ECF No. 42-22 SEALED) ("Hendricks The NYFCRA deals with the same subject matter and Expert Rep.") at 1 n.1 [Redacted]; id. at 1 [Redacted]; contains substantively similar provisions to the FCRA.

ECF No. 42-32 SEALED ("Hines Depo. Exhibits") at 15 Like its federal counterpart, the NYFCRA directs consumer [Redacted] Compl. § 9 ("Inquiries have a negative impact \_\_\_ reporting agencies to reinvestigate information that is directly on a consumers credit score because scoring programs view disputed by a consumer, requires that they adopt procedures to each inquiry as an application for credit[.]"); ECF No. limit the furnishing of consumer reports to a set of enumerated 42-34 SEALED ("Turner Expert Rep.") 9 2 n.1 (describing = permissible purposes, and provides for civil liability for difference between hard and soft inquiries); ECF No. 42-5 negligent or willful noncompliance with its provisions.

N.Y. SEALED ("Gobin Depo. Tr.") at 12:7—20, 17:2—11 (same); Gen. Bus. Law §§ 380-f(a), 380-k, 380-m, 380-/. Because Equifax Knowledge Ctr., Understanding Hard Inquiries on \_ of these substantial similarities, the provisions of the FCRA Your Credit Report, EQUIFAX (last visited May 24, 2022) and the NYFCRA are generally "construed in the same way." (indicating that hard inquiries "tell a lender that you are = Scott v. Real Estate Fin.

Grp., 183 F.3d 97, 100 (2d Cir. 1999); currently shopping for new credit[;]” “may be meaningful to see also *Abdallah v. LexisNexis Risk Sols. FL Inc.*, No. 19- potential lender when assessing your creditworthiness[;]” and CV-3609 (MKB), 2021 WL 6197060, at \*6 (E.D.N.Y. Dec. “usually impact credit scores.”).! But see (Def’s Opp. at 8— 30, 2021); *Grayson v. Equifax Credit Info.*

Servs., No. 18- 9) (“Inquiries have varying impacts on individual consumers CV-6977 (MKB), 2021 WL 2010398, at \*7 (E.D.N.Y. Jan. —if they have any impact at all—depending on factors 29, 2021). that are unique to each consumer and each credit score... [Redacted] (citing Turner Expert Rep. §] 27-45; ECE No. IL Hines’ Hard Inquiry Dispute 45-2 (“Hendricks Depo.

Tr.’”) at 63:5-17, 66:22-69:4”). Equifax reported a November 27, 2018 “hard” inquiry by 1 Capital One Bank USA N.A. on Hines’ consumer report (the <https://www.equifax.com/personal/education/> “Capital One Inquiry”) in connection with a transaction that credit/report/understanding-hard-inquiries-on- Hines claims he did not initiate or authorize. (Compl. □□□ your-credit-report/.

30-31; see also Pl.’s Mem. at 4; ECF No. 42-7 SEALED promote ‘fair and accurate credit reporting’ and (“12/7/2018 Consumer Report”) at 8; ECF No. 44-2 (“Hines to protect consumer privacy,” the FCRA “regulates the Depo. Tr.’”) at 12:14-18; 33:10—21; Gobin Depo. Tr. at 18:19- consumer reporting agencies that compile and disseminate 19:3). Concerned that it would negatively impact his credit personal information about consumers” and “ ‘imposes a SOre, Hines disputed the Capital One Inquiry to Equifax host of requirements concerning the creation and use of | twice through a Consumer Financial Protection Bureau consumer reports.’ ” Ramirez, 141 S. Ct. at 2200 (first © (CFPB”) complaint portal in early December 2018.

(Compl. quoting 15 U.S.C. § 1681(a), then quoting *Spokeo, Inc. v.* §] 32; see also Hines Depo. Tr. at 12:14—18, 33:10—21; Hines Robins, 578 U.S. 330, 335 (2016). As relevant here, the Depo. Exhibits at 2-9 (CFPB Complaint 181204-3669026), id. at 10-12 (CFPB Complaint 181204-3669303); ECF No. 2022 WL 2841909 42-33 SEALED (“Pl.’s Resps. to Def’s First Interrogs.”) at 9— Inquiry from his consumer report.

(Hines Depo. Exhibits at 10 (listing CFPB complaints)). 2 17-21, 32-37 (CFPB Complaint 190908-4376677); see also Pl.’s Mem. at 5). Days later, Equifax responded with the 2 The FCRA specifically contemplates the same formulaic response as in December 2018: “Inquiries are a factual record of file access. If you believe this was submission of complaints to consumer reporting unauthorized, please contact the creditor.” (Compl. □ 42; agencies through the CFPB.

See 15 U.S.C. § Hines Depo. Exhibits at 22-25, 38-73). In October 2019, 168li(e). Hines submitted a fifth complaint to Equifax directly via \*3 On December 7, 2018, Equifax responded to Hines’ certified mail, and received the same form response three complaints with a form letter

[Redacted] (ECF No. 42-8 weeks later. (Compl §[] 36-39, 42; Hines Depo. Exhibits at SEALED (“Dec.

7, 2018 Equifax Resp. Ltr’) at 2). In 27-31). this letter, Equifax explained that [Redacted]. (/d.). Equifax reported the formal “results of [its] reinvestigation” into the — Hines alleges that, despite his repeated complaints, Equifax Capital One Inquiry as follows: “Inquiries are a factual record — included the disputed Capital One Inquiry in certain reports of file access.

If you believe this was unauthorized, please \_\_\_ to his potential and existing creditors. (Pl.’s Mem. at 8-9; see contact the creditor. If you have additional questions about —a/so Compl. § 44 (“Notwithstanding ample notice that Hines this item please contact [Capital One].” Ud. at S—6; see also \_ had not initiated nor authorized [the] Capital One inquiry, Pl.’s Mem. at 4).

Equifax reported it to Hines’ potential and existing creditors on numerous occasions, including to Digital Federal Credit In July 2019, Hines submitted a third complaint through the Union on December 10, 2018 and March 30, 2019, to Factual CFPB portal—this time directed at Capital One—disputing § Data on December 31, 2018.”); Hines Depo. Tr. at 14:17— the Capital One Inquiry as unauthorized, and demanding 16:10 (alleging that Digital Credit Union and Paypal were either an affidavit from a bank representative affirming its provided with Hines’ consumer information, including the accuracy or the removal of the inquiry from his credit disputed Capital One Inquiry); ECF No. 42-17 SEALED file.

(Hines Depo. Exhibits at 13-14 (CFPB Complaint (“Leslie Depo. Tr.”) at 50:13—51:3, 57:7-58:7 (discussing 190724-4249764)). Capital One responded the following \_ post-dispute June 2019 inquiry by Synchrony Bank/Paypal)). month, noting that it “was unable to locate any previous disputes of this inquiry” and had “received an application for \*4 Ultimately, Equifax removed the Capital One Inquiry credit using [Plaintiff’s] information” on November 17, 2018, approximately four months after receiving Capital One’s but that after reviewing his complaint, it “made a business —\_ request and shortly after this suit was filed in November decision to ask the Consumer Reporting Agencies” to remove 2019.

(See Gobin Depo. Tr. at 20:17—21:5, 48:13-52:4; the inquiry. (Hines Depo. Exhibits at 15-16). In light of that — see also Hines Depo. Tr. at 18:1—5). Nevertheless, Hines business decision, Capital One reported that on August 5, alleges that as a result of Equifax’s failure to adequately 2019, it “sent a request to the Consumer Reporting Agencies \_reinvestigate his disputes and its delay in removing the (CRAs) asking them to remove the hard inquiry.” (Compl.

4 Capital One Inquiry, he has been subjected to a number 34; Hines Depo. Exhibits at 15-16). In its letter, Capital One of injuries, including: a reduced credit score; “deprivation indicated that those agencies would ultimately determine how \_ of the information that Equifax had not reinvestigated his the change would be reflected in his credit file, that the inquiry dispute or

contacted Capital One which, at a minimum, would could be changed to a soft inquiry, and that it could take upto have armed him with additional information concerning sixty days for the agency to update its records.

(Hines Depo. his creditworthiness; [t]he invasion of his privacy when Exhibits at 15-16). Equifax provided a consumer report about him to Capital One without a permissible purpose; [d]istress from getting the In September 2019, Hines submitted a fourth complaint — run around from Equifax concerning his disputes and what through the CFPB portal to Equifax, arguing that Capital | Equifax would actually do to investigate them; and [l]ost time One's reported inability to locate previous disputes of — and resources in association with making multiple ignored the inquiry demonstrated that Equifax never performed a disputes[.]” (Compl.

7 45; see also Hines Depo. Tr. at 62:2— reasonable reinvestigation in response to his initial disputes 15, 118:19-119:1). and expressing dissatisfaction that Equifax had not yet complied with the bank's request to delete the Capital One Ill. Equifax Policies and Class Members’ Disputes 2022 WL 2841909 The nature of Hines’ hard inquiry dispute is not uncommon, Equifax has also produced letters from [Redacted] and similar complaints are contemplated by Equifax's consumers disputing hard inquiry information, approximately standardized policies and procedures.

According to Equifax, [Redacted] contain the phrase “Capital One.” (ECF No. [Redacted] (Gobin Decl. §[20]. In general, Equifax [Redacted] | 42-21 SEALED) (‘Sartell Decl.” 49 3-5). In addition to (Gobin Decl. 3, 5). Nevertheless, Equifax maintains that these letters, Equifax has reproduced [Redacted] similar [Redacted] (Gobin Decl. 6, 9).

In such cases, [Redacted] letters containing disputes of hard inquiries which were (Gobin Decl. § 9). The form letter that consumers receive \_\_ provided to the named plaintiffs in a substantially similar class in these circumstances, and which Hines received here, is action currently pending in the Northern District of Georgia, known internally at Equifax as “[Redacted].” (Gobin Depo. \_\_— Rivera v. Equifax Info.

Servs., LLC, No. 1:18-CV-4639 (AT) Tr. at 28:19-29:11, 39:18-22; ECF No. 42-13 SEALED = (CCB) (the “Rivera Action’). (See ECF No. 42-26 SEALED (“Equifax Dispute Policy Manual v. 17”) at 37; ECF No. (“Pritchard Decl.) 4 2). Among the [Redacted] total letters 42-14 SEALED (“Equifax Dispute Policy Manual v.22”) at produced in both actions, Equifax has identified [Redacted] 35; ECF No. 42-20 SEALED (“Equifax Training & QA”) at | “exemplars” which it argues [Redacted] and [Redacted] rather 3; Pl.’s Mem. at 6).

[Redacted]. (ECF No. 42-15 SEALED than directly from the consumers themselves. (/d. § 2; see also (“Def's Resps. to Pl.’s First Set of Interrogs.”) at 6). According = ECF Nos. 42-27-42-31 SEALED (“Def's Exemplar Dispute to the agency, [Redacted] (/d. at 8). Letters”)).

In the two years preceding Hines' class action complaint, Equifax received hard inquiry disputes from, and sent —!V. Procedural History [Redacted] to, [Redacted] consumers nationwide, and \*5 Plaintiff filed his class action complaint on November [Redacted] consumers in New York. (ECF No. 42-19 27, 2019. (Compl.). Early in the case, the parties agreed SEALED ("Def's Suppl.

Resps. to Interrog. Nos. 1 and 8") to bifurcate the proceedings, such that "[a]ny dispositive at 3; Leslie Depo. Tr. at 42:12-18, 48:4-8); (Pl.'s Mem. at | Motion practice may be filed only after the court's ruling 11). Further, while [Redacted] (Gobin Decl. 22), the agency on class certification." (ECF No. 22 4 11).

After a number has identified records indicating that, for [Redacted] of the of discovery disputes, court interventions, and concomitant New York consumers, Equifax delivered some information 'Cadline extensions (ECF Nos. 26-28, 30-35, Minute Entry about the consumer to a third party after it had received a dated 12/03/2020; Orders dated 01/26/2021, 02/04/2021, hard inquiry dispute from the consumer.

(ECF No. 42-35 03/18/2021, 04/12/2021), Plaintiff filed the motion for class SEALED ("Def's Suppl. Resp. to Pl.'s Interrog. No. 6") certification on January 26, 2022. (See ECF No. 43-46). Your at 2: Leslie Depo. Tr. at 47:3, 59:9-19, 64:1-15, 82:14— Honor referred the motion to me on March 22, 2022. (Order 83:3). These records—internally known as "Log F" or "MDB dated 03/22/2022).

Shortly after the motion was referred, records"—contain a "snapshot" of the consumer's credit file Plaintiff filed a notice directing the Court's attention to an at the time that a product containing information about that order recently issued in the Rivera Action, which certified consumer was delivered to an Equifax customer. (Leslie a nationwide class that overlaps with the nationwide FCRA Depo.

Tr, at 17:19-24, 19:19-25, 20:3-6). These [Redacted] lass sought in this case. (ECF No. 47); Rivera v. Equifax consumers' files contained a combined [Redacted] disputed Info. Servs., LLC, No. 1:18-CV-4639 (AT) (CCB), 2022 WL hard inquiries. (Pl.'s Mem. at 8 n.5 (citing Leslie Depo. Tr, 986443, at \*5 (N.D. Ga. Mar. 30, 2022). at 59:17-61:3); see also Def's Suppl.

Resp. to Pl.'s Interrog. No. 6 at 2). However, some Equifax products contain only a V. Proposed Nationwide Class and Subclasses subset of the information included on a consumer s full credit Plainutt seeks to certify one nationwide class and three file, and because of the nature of Equifax's record keeping.. tes □□□:: claim-based subclasses. With respect to his "reinvestigation practices, the agency cannot specifically determine whether claims" under 15 U.S.C. § 1681i, Plaintiff seeks to certify a the products sold regarding these [Redacted] individuals nationwide "FCRA Class," defined as: included a disputed hard inquiry or contained disputed information.

(Def's Opp. at 20 n.12; Def's Suppl. Resp. to Pl.'s During the period beginning two years prior to the filing Interrog. No. 6 at 3; Leslie Depo. Tr. at 67:19-69:1, 82:14— of this action and through the time of final judgment, all 83:24). consumers with an address in the U.S. and its Territories to whom Equifax sent a document containing [Redacted] □□□□□□ a letter that includes the language, “inquiries are a factual 2022 WL 2841909 record of file access” in response to a written dispute of one through the time of final judgment, or more hard inquiries). all consumers with an address in the U.S. and its Territories (1) to Mem. at 3). > Plaintiff also seeks to certify three claim- whom Equifax sent correspondence based subclasses: a “New York Subclass” with respect to containing [Redacted] (i.e., a letter claims under the NYFCRA, N.Y.

Gen. Bus. Law §§ 380 ef that includes the language, “inquiries seq.: are a factual record of file access” in response to a written dispute of one or more hard inquiries) During the period beginning two years and (2) about whom Equifax has prior to the filing of this action and a “MDB record” (¢.g., a “Log F” through the time of final judgment, or “Frozen Scan”) that postdates all consumers with an address in the the [Redacted] correspondence and State of New York to whom Equifax contains the disputed hard inquiry. sent a document containing [Redacted] (i.e., a letter that includes the language, “mquiries are a factual record of file (Id. at 4).4 access” in response to a written dispute of one or more hard inquiries).

3 As noted above, a similar and overlapping nationwide class definition was proposed and an: wes « recently certified in the Rivera action. See Rivera (Id.); a “Capital One Subclass with respect to unreasonable v. Equifax Info. Servs., LLC, No. 1:18-CV-4639- procedures” and “permissible purpose” claims under 15 AT-CCB, 2022 WL 986443, at \*5 (ND. Ga, Mar. U.S.C. § 1681e(@): 30, 2022) (“During the period beginning two years prior to the filing of this action [on October 4, 2018] and through the time of class notice, all persons During the period beginning two years residing in the U.S. and its Territories to whom prior to the filing of this action and Equifax sent a document containing [Redacted] through the time of final judgment, (i.e., a statement that ‘inquiries are a factual record all consumers with an address in the of file access’) in response to a written dispute of U.S. and its Territories (1) to whom one or more hard inquiries.”) (emphasis added), Equifax sent a document containing leave to appeal denied, (11th Cir.

June 14, 2022). [Redacted] (i.¢., a letter that includes This definition is substantially identical to the class the language, “inquiries are a factual definition that was certified in a similar case against record of file access” in response to TransUnion in the Eastern District of Pennsylvania. a written dispute of one or more See Norman v. TransUnion, LLC, 479 F. Supp. 3d hard inquiries), which (2) corresponds 98 (E.D.

Pa. 2020), leave to appeal denied, 2020 to the consumer's dispute of a hard WL 6393900 (3d Cir. Sept. 15, 2020). inquiry associated with Capital One. As a result of the overlapping class definitions, Hines is a member of the nationwide class certified in the Rivera action. Notably, the

Rivera plaintiffs and a “Post-Dispute Publication Subclass” with respect are also represented by Hines’ attorneys.

(See to “improper furnishing” claims under 15 U.S.C. § 1681b(c) ECF No. 27 at 2 n.2) (“Counsel for Plaintiff and (3): Defendant in this matter and the Rivera matter are the same.”). During the period beginning two years 4 The classes sought in Plaintiffs motion are.... different from those described in the complaint. prior to the filing of this action and 2022 WL 2841909 (Compare Compl.

4 51-53 with ECF No. 43-2 courts engage in a “bifurcated inquiry.” Gold v. Eva Nats., (“Proposed Order”) at 1-2). Inc., No. 21-CV-2842 (GRB) (AYS), 2022 WL 566230, at \*] (E.D.N.Y. Feb. 16, 2022) (quoting Petrosino v. Stearn's Prod., Inc., No. 16 Civ. 7735 (NSR), 2018 WL 1614349, at \*5 DISCUSSION (S.D.N.Y. Mar. 30, 2018)). “First, the representative plaintiff L Standin must establish that she has Article III standing...

Second, the \*6 Asa threshold matter, the Court must determine whether plaintiff must establish that she has “class standing.’ Cold, Hines has standing to pursue his claims on his own behalf 2022 WL 966230, at “1. This requires that the plaintiff show and on behalf of absent class members. Equifax argues that a or ue person y i. eet ve fet ‘Lat □ class may not be certified because Hines has not demonstrated result of Me putative y “ea con uct of Me delendant, an that absent class members have standing.

(Def's Opp. at 11— a a nies same set oo as 12). Specifically, it argues that “Hines has not identified © On uct a eged fo have caused injury 10° oh eames any concrete harms suffered by the class members beyond of the putative class by the same defendants.” NECA-IBEW technical violations of the FCRA and the NYECRA, UAW“ & Welfare Fund Goldman Sachs & Co., 693 F.3d let alone that he could prove any such harms with common 145, 162 2d Cir.

2012) (alteration in original) (first quoting Blum vy. Yaretsky, 457 U.S. 991, 999 (1982), then quoting evidence.” (/d. at 12). For the reasons explained below, Hines Gratz v. Bollinger, 539 U.S. 244, 267 (2003). has standing to pursue damages on his own behalf and on;; behalf of absent class members for each claim. While Equifax's assertion that plaintiff's failure to demonstrate absent class members’ standing precludes class A. Standing in the Class Action Context certification is incorrect, its objection underscores the Article III standing is a “threshold question in every federal importance of the Court's “independent obligation to assure case” that “determine[s] the power of the court to entertain that standing exists.” Swmmers vy.

Earth Island Inst., 555 the suit.” Warth v. Seldin, 422 US. 490, 498 (1975). “Tf US. 488, 499 (2009). Accordingly, I will examine whether plaintiffs lack Article III standing, a court has no subject Hines has demonstrated Article III standing on each of his matter jurisdiction to hear their claim.” Mahon v. Ticor Title claims and for each form of relief sought, and whether he has Ins.

Co., 683 F.3d 59, 62 (2d Cir, 2012) (quoting Cent. States – Satisfied the NECA-IBEW test for class standing. Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C., 433 F.3d 181, 198 (2d Cir. 2005)). B. Hines Has Article II Standing to Pursue Monet In the class action context in particular, “[s]tanding to sue Relief is an essential threshold which must be crossed before any — determination as to class representation under Rule 23 can be made.

Without standing, one cannot represent a class[.]” 1. Article II Standing — Legal Standard Cassese v. Washington Mut., Inc., 262 F.R.D. 179, 183. co. oo. le □□ (E.D.N.Y. 2009) (quoting Weiner v. Bank of King of Prussia, 7 To establish Article Mm standing, a plaintiff must 358 F. Supp. 684, 694 (E.D. Pa. 1973). Contrary to Equifax's S20W () that he suffered an injury in fact that is concrete, position, courts in the class action context focus on the class particularized, and actual or imminent; (ii) that the injury representative's standing, rather than that of the absent class was likely caused by the defendant, and (iti) that the injury members. “To establish Article III standing in a class action would likely be redressed by judicial relief.” Ramirez, 141 for every named defendant there must be at least one named S. Ct. at 2203 (citing Lujan v. Defenders of Wildlife, 504 plaintiff who can assert a claim directly against that defendant, US.

555, 560-61 (1992). “Since they are not mere pleading and at that point standing is satisfied and only then will the requirements but rather an indispensable part of the plaintiff's inquiry shift to a class action analysis.” NECA-IBEW Health case, each element must be supported in the same way as any & Welfare Fund y. Goldman Sachs & Co., 693 F.3d 145, other matter on which the plaintiff bears the burden of proof, 159 (2d Cir.

2012) (alterations omitted) (emphasis added) i.e., with the manner and degree of evidence required at the (quoting Cent. States, 504 F.3d at 241). successive stages of the litigation.” Lujan, 504 U.S. at 561; see also FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 Where a class opponent challenges a named plaintiff's (1990), holding modified by City of Littleton, Colo. v. Z.J. standing to bring claims on behalf of absent class members, Gifts D-4, L.L.C., 541 U.S. 774 (2004) (“It is a long-settled 2022 WL 2841909 principle that standing cannot be inferred argumentatively physical or monetary damage, or an “intangible harm” that from averments in the pleadings, but rather must affirmatively bears “a close relationship to harms traditionally recognized appear in the record.

And it is the burden of the party who as – providing a basis for lawsuits,’ such as reputational seeks the exercise of jurisdiction in his favor clearly to damage, the disclosure of private information, or intrusion allege facts demonstrating that he is a proper party to invoke — upon seclusion. /d. at 2204. judicial resolution of the dispute.”) (internal quotation marks and citations omitted). “At the class certification stage, a In Ramirez, a class representative brought suit under the named plaintiff must prove standing by a preponderance of | FCRA on behalf of more than eight thousand consumers the evidence.” Pryce v. Progressive Corp., No. 19-CV-1467 who had

been flagged by TransUnion as potential matches (RJD) (RER), 2022 WL 1085489, at \*13 (E.D.N.Y.

Feb. 17, to individuals identified on a list of terrorists and serious 2022) (citing *Calvo v. City of New York*, No. 14 Civ. 7246 criminals maintained by the Treasury Department, based (VEC), 2017 WL 4231431, at \*3 (S.D.N.Y. Sept. 21, 2017)), solely on their shared names. *Jd.* at 2201-02.

The class adopted as modified by 2022 WL 969740 (Mar. 31, 2022); representative alleged that the agency failed to use reasonable see also *Giammatteo v. Newton*, 452 F. App'x 24, 27 (2d Cir. procedures as required by § 1681e(b) to assure that class 2011) plaintiff asserting subject matter jurisdiction has | members' credit reports would not inaccurately label them the burden of proving by a preponderance of the evidence as \_ potential criminals, and failed to adhere to specific that jurisdiction exists.") (citing *Makarova v. United States*, requirements under the Act when providing those consumers 201 F.3d 110, 113 (2d Cir.

2000); *Malik v. Meissner*, 82 F.3d with a copy of their credit file that confirmed the error. □□□ at 560, 562 (2d Cir. 1996)). "And standing is not dispensed in 2207. Of the eight thousand-plus class members, "the parties gross; rather, plaintiffs must demonstrate standing for each \_ stipulated that TransUnion did not provide [more than six claim that they press and for each form of relief that they thousand class members' | credit information to any potential seek (for example, injunctive relief and damages)." *Ramirez*, creditors during the class period." *Jd.* at 2209.

141 S. Ct. at 2208 (citing *Davis v. Federal Election Comm'n*, 554 U.S. 724, 734 (2008); *Friends of the Earth, Inc. v. \*8 The Ramirez Court* held that, for the minority of class *Laidlaw Env't'l Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000)). members whose credit reports were shared, the dissemination evaluating standing, courts 'must assume that the of a credit report bearing misleading information to a third party asserting federal jurisdiction is correct on the legal party constituted an injury in fact under Article IIT because merits of his claim, that a decision on the merits would be — the harm exacted by the publication of such misleading favorable and that the requested relief would be granted.' " — statements "bears a sufficiently close relationship to the harm *Barry's Cut Rate Stores Inc. v. Visa, Inc.*, No. 05-MD-1720 from a false and defamatory statement." *Jd.* at 2209.

However, (MKB) (JO), 2019 WL 7584728, at \*14 (E.D.N.Y. Nov. 20, likening inaccurate but undisclosed notations of a potential 2019) (quoting *Cutler v. U.S. Dep't of Health & Human terrorist match on a consumer's credit file to a "defamatory Servs.*, 797 F.3d 1173, 1179 (D.C. Cir. 2015)). letter... stored... in [a] desk drawer," the Court determined that "[t]he mere presence of an inaccuracy in an internal With respect to the injury-in-fact requirement, the Supreme credit file, if it is not disclosed to a third party, causes no Court has recently emphasized in cases involving the FCRA concrete harm." /d. at 2210.

Accordingly, the Court found that “[o]nly those plaintiffs who have been concretely harmed that the remaining majority of class members whose files by a defendant's statutory violation may sue that private were not disseminated lacked standing to sue for damages on defendant over that violation in federal court,” Ramirez, 141 the reasonable procedures claim.

Jd. The Court also found S. Ct. at 2205 (emphasis in original), and that a plaintiff that the risk of future harm, without some demonstration “cannot satisfy the demands of Article III by alleging a that exposure to such risk caused an independent harm (such bare procedural violation,” since “[a] violation of one of the = as emotional or psychological distress), or that the harm [statute's] procedural requirements may result in no harm.” itself materialized, is insufficient to confer standing to pursue Spokeo, 578 U.S. at 342.

Accordingly, where Congress has \_\_ retrospective damages. See id. at 2211—13. With respect to the created “a statutory prohibition or obligation and a cause remaining claims, the Court held that TransUnion's conduct— of action,” as it has in the case of the FCRA, a Court mailing one copy of the consumer credit file upon request that must “independently decide whether a plaintiff has suffered omitted the alert, and mailing a second, corrected copy to the a concrete harm under Article II.” Ramirez, 141 S. Ct. at consumer without attaching a statutorily required summary-2205.

This may be a “traditional tangible harm” such as of-rights—caused no traditionally recognized harm to any 2022 WL 2841909 class members, such as confusion, distress, or reliance on WL 1061921, at \*3 (W.D. Wash. Apr. 8, 2022) (citing Losch the improperly formatted information, such that plaintiffs — v. Nationstar Mortg. LLC, 995 F.3d 937, 943 (11th Cir. 2021); demonstrated only “ ‘bare procedural violations, divorced Nelson v. Experian Info.

Sols., Inc., 21-CV-894 (CLM), 2022 from any concrete harm.’... [t]hat [did] not suffice for Article WL 193010, at \*2—3 (N.D. Ala. Jan. 10, 2022)). For example, If standing.” Zd. at 2213 (quoting Spokeo, 578 U.S. at 341). in Nelson, a court in the Northern District of Alabama found that the lost time and money spent sending successive dispute In interpreting Ramirez, the Second Circuit has reiterated \_—\_ letters to an agency that unlawfully failed to conduct a that “plaintiffs must show that the statutory violation caused —\_ reasonable reinvestigation after an initial request constituted them a concrete harm, regardless of whether the statutory an injury in fact sufficient to confer standing.

Ne/son, 2022 rights violated were substantive or procedural.” Maddox v. WL 193010, at \*3. Here, Hines has similarly demonstrated Bank of New York Mellon Tr. Co., N.A., 19 F.4th 58, 64 that he made multiple futile attempts via the CFPB portal n.2 (2d Cir. 2021).

Accordingly, courts in this District have and via certified mail to dispute and obtain a reasonable held in FCRA cases that “[w]here a plaintiff claims that an \_ reinvestigation of the unauthorized

inquiry. (See, e.g., Hines improper notation on his credit report resulted in a credit score | Depo. Exhibits 2-37; Pl.'s Resps. to Def's First Interrogs. at reduction that could cause him reputational and financial 9-10).

This wasted time and expense is a traditional monetary harm, the absence of allegations of dissemination to third — harm that is fairly traceable to Equifax's policy of summarily parties requires dismissal" for lack of standing. *Zlotnick v. categorizing and handling such disputes without a thorough Equifax Info. Servs., LLC*, No. 21-CV-7089 (GRB) (JMW), investigation and without contacting the creditor responsible 2022 WL 351996, at \*3 (E.D.N.Y.

Feb. 3, 2022) (citing for the inquiry (Gobin Decl. § 9; Gobin Depo. Tr. at 29:5—22), *Grauman v. Equifax Informational Services, LLC*, 549 F. and is redressable by judicial relief. Supp. 3d 285, 291-92 (E.D.N.Y. July 16, 2021); *Cohen v. Experian Information Solutions, Inc.*, No. 20-CV-3678 \*9 Further, although without dissemination "neither an (BMC), 2021 WL 413494, at \*2 (E.D.N.Y.

Feb. 4, 2021)). incorrect notation on plaintiffs credit report nor the diminution in his credit score are sufficient to confer standing," *Zlotnick*, 2022 WL 351996 at \*3; cf *Shimon v. >. Reinvestigation Claims Equifax Info. Servs. LLC*, 431 BE Supp. 3d 115, 122 (EDNY. 2020) (dismissing reinvestigation claims under § 168 lion the With respect to his reinvestigation claims under § 168liand Merits where disputed information was disseminated but was its New York analogue, Hines contends that Equifax fails ultimately confirmed to be accurate), *aff'd*, 994 F.3d 88 (2d to reinvestigate consumer disputes regarding unauthorized Cit.

2021), Hines' Capital One Inquiry was, in fact, shared inquiries as a matter of course, and that their failure to do so —\_- With at least one third party creditor in June 2019—after it results in "lost time and money submitting a doomed dispute, Was disputed but before it was removed from his credit file. the deprivation of the results of a reasonable reinvestigation, | (See Hines Depo.

Tr. at 14:17-16:10; Leslie Depo. Tr. at and the diminution of [his] credit score[.]” (Pl.'s Reply at 50:13-51:3, 57:7-58:7). > As recognized in *Ramirez* and its 2). Hines' argument that a plaintiff's loss of the "benefit of progeny, sharing inaccurate or misleading information about the reasonable reinvestigation into the accuracy of her credit a consumer may cause traditionally recognized reputational report to which he was statutorily entitled [was] an actual, harm that is actionable at law.

See, e.g., *Ramirez*, 141 S. Ct. at concrete injury which is particularized to Plaintiff' (/d.) 2209; *Maddox*, 19 F.4th at 65; *Grauman*, 549 F. Supp. 3d at (quoting *Jones v. Experian Info. Sols., Inc.*, 982 F. Supp.2d 291-92. Assuming that Hines is correct on the merits of his 268, 272 (S.D.N.Y. 2013)) is unavailing in light of *Spokeo* and claim, see *Barry's Cut Rate Stores*, 2019 WL 7584728, at \*14, *Ramirez*, which caution that an agency's failure to adhere to such harm would not have occurred had Equifax performed the procedural obligations imposed by the FCRA is, in and of a

reasonable reinvestigation into the inquiry pursuant to itself, insufficient to establish an injury in fact.

See Spokeo, its statutory obligations. Accordingly, Hines has sufficiently 578 USS. at 342; Ramirez, 141 S. Ct. at 2213. demonstrated a second concrete harm that is fairly traceable to Equifax's alleged violations of § 1681i and N.Y. Gen. Bus.

However, courts in other circuits “have routinely found that = Law § 380-f, which is sufficient to confer Article III standing wasted time resulting from a defendant's FCRA violation is \_ to pursue damages. a sufficiently concrete and particularized injury to establish standing.” Healy v. Milliman, Inc., No. C20-1473 (JCC), 2022 2022 WL 2841909 5 Although the nature of Equifax's products and resulting harm to the interests of the other.” Restatement record-keeping practices preclude a finding with (Second) of Torts § 652A. “The traditional tort comprises certainty at this time that the Capital One four separate privacy causes of action: public disclosure Inquiry was, in fact, shared with any third-party of private facts, false light, intrusion upon seclusion, and creditors, the Court finds that the post-dispute appropriation of likeness.” Devitt, 2022 WL 1460278, at inquiries by Synchrony Bank evidenced by MDB \*6. (quoting Restatement (Second) of Torts § 652A).

Under records generated after he disputed the inquiry are the Restatement, a defendant may be liable for intrusion sufficient to demonstrate by a preponderance of the on seclusion where he “intentionally intrudes, physically or evidence that such a harm likely occurred. otherwise, upon the solitude or seclusion of another or his private affairs or concerns... if the intrusion would be highly offensive to a reasonable person.” Restatement (Second) of 3.

Reasonable Procedures and Permissible Purpose Claims Torts § 652B. Such intrusion “may be by some... form of investigation or examination into his private concerns,” and In connection with his § 1681e(a) and related state claims, \_ it is “[t]he intrusion itself [that] makes the defendant subject Hines alleges that Equifax failed to adopt reasonable to liability, even though there is no publication or other use procedures to assure that consumer information is furnished of any kind of the... information outlined.” /d. cmt. b. “The only for the permissible purposes defined on the exhaustive — defendant is subject to liability under the rule... only when list in § 1681b of the statute.

Specifically, he alleges that, \_ he has intruded into a private place, or has otherwise invaded because the Capital One Inquiry represents an inquiry made \_a private seclusion that the plaintiff has thrown about his in connection with a transaction that he did not initiate, person or affairs.” Jd. cmt. c. In line with these common disclosure of the inquiry was prohibited by the “permissible \_law principles, the Supreme Court has recognized that “both purpose” provision of § 1681b(c) (3).

Further, he argues that the common law and the literal understandings of privacy the high volume of disputes regarding inquiries by Capital — encompass the individual's control of information concerning One should have put Equifax on notice that the bank was his or her person.” U.S. Dep't of Justice v. Reporters Comm. routinely acquiring reports for impermissible purposes.

(Pl.'s\_ for Freedom of the Press, 489 U.S. 749, 763-64 (1989). Reply at 10). In his complaint, he alleges that “Equifax's procedures are clearly broken,” as “[t]hey fail to limit the \*10 Legislative history indicates that the FCRA was adopted disclosure of sensitive personal and financial information to vindicate these general rights to privacy, and to protect about millions of consumers to FCRA and NYFCRA the public from harms similar to those redressable by permissible purposes and fail to reign [sic] in repeat common law claims for intrusion on seclusion.

According offenders who illegally obtain sensitive personal and financial \_to the “[c]ongressional findings and statement of purpose” consumer information without authorization.” (Compl. { section of the FCRA, the Act was in part adopted “to 29).

Although not specifically articulated by Plaintiff, the — insure that consumer reporting agencies exercise their grave injuries caused by violations of these provisions bear a close — responsibilities with fairness, impartiality, and a respect for relationship to two of the “traditionally recognized” harms the consumer's right to privacy.” 15 U.S.C. § 1681(a)(4) identified by the Ramirez Court: “reputational harm” and — (emphasis added).

Courts across the country have therefore “intrusion on seclusion.” Ramirez, 141 S. Ct. at 2204 (citing interpreted the FCRA in general, and the permissible purposes Meese v. Keene, 481 U.S. 465, 473 (1987); Gadelhak v. AT&T section in particular, as protecting the public from intrusions Servs., Inc., 950 F.3d 458, 462 (7th Cir. 2020)). upon seclusion and from invasions upon the right to privacy.

See, e.g., Nayab v. Cap. One Bank (USA), N.A., 942 F.3d Because New York does not recognize a common-law right 480, 489-93 (9th Cir. 2019) (comparing the harm attending to privacy, courts sitting in this District look to traditional \_a violation of the permissible purposes section of the FCRA tort concepts and to the Restatement of Torts to carry as “closely related to—if not the same as—a harm that had out the historical common law analysis contemplated by traditionally been regarded as providing a basis for a lawsuit: Spokeo and Ramirez.

See, e.g., Devitt v. Portfolio Recovery \_\_ intrusion upon seclusion.”); Browner v. Am. Eagle Bank, 355 Assocs., LLC, No. 21-CV-5657 (ARR) (ARL), 2022 WL \_ F. Supp. 3d 731, 737 (N.D. Ill. 2019) (“The claim here is... 1460278, at \*6 (E.D.N.Y. May 9, 2022).

The Restatement — simple[ ]: unauthorized access for no permissible purpose. recognizes as a “general principle” that “one who invades \_ The clear intent of Congress to preclude such access,

taken the right of privacy of another is subject to liability for the in connection with the long legal history of protecting the 2022 WL 2841909 privacy of confidential information, makes clear that the | unauthorized disclosure of his information, if considered complaint alleges enough to carry the plaintiffs burden of “highly offensive,” could itself be an actionable intrusion at alleging standing, including injury in fact.”); Gambles v. common law.

Restatement (Second) of Torts § 652B cmt. c. Sterling Infosystems, Inc., 234 F. Supp. 3d 510,522 (S.D.N.Y. Even if Equifax's initial intrusion upon Hines' seclusion in 2017) (finding standing under FCRA and noting that “it has — disclosing his information in connection with a transaction long been the case that an unauthorized dissemination of that he did not initiate was permissible, reporting the inquiry one's personal information, even without a showing of actual — constitutes a second, impermissible intrusion and allegedly damages, is an invasion of one's privacy that constitutes a | caused reputational harm.

(See Hines Depo. Tr. at 14:17- concrete injury sufficient to confer standing to sue.”) (quoting 16:10; Leslie Depo. Tr. at 50:13—51:3, 57:7—58:7). At this Thomas v. FTS USA, LLC, 193 F. Supp. 3d 623, 636 (E.D. Va. stage, Hines has sufficiently demonstrated a likelihood that 2016)); Gillison v. Lead Express, Inc., No. 3:16-CV-41, 2017 Equifax's failure to adopt reasonable procedures to prevent WL 1197821, at \*5 (E.D.

Va. Mar. 30,2017) (denying motion — the furnishing of the Capital One Inquiry resulted in invasions to dismiss permissible purpose claims for lack of standing, upon his right to privacy and caused reputational harm. Both noting that “not only has Congress defined the invasion of harms bear a sufficient relationship to harms traditionally one's privacy as an injury in fact, but courts traditionally have = recognized at common law, such that he has Article I recognized statutory violations rooted in privacy invasions as standing to pursue damages on his § 1681e(a) and § 1681b a basis for suit’). claims.

Section 1681b of the FCRA in particular illustrates Congress' judgment that the collection and dissemination 4. Post-Dispute Publication Claims of certain personal information for certain purposes violates a consumer's right to privacy.

As relevant here, Section \*11 With respect to his Post-Dispute Publication claims 1681b(c)(3) prohibits a credit reporting agency from ynder § 1681b(c), Hines argues that the distribution furnishing “to any person a record of inquiries in connection of disputed hard inquiry information to creditors with a credit or insurance transaction that is not initiated caused reputational injuries sufficient to confer standing by a consumer.” 15 U.S.C. § 1681b(c)(3).

This section independently. (P1.'s Reply at 3). As noted above, Hines implicitly acknowledges some limitations on the right to ajieges, and Equifax has confirmed, that his credit privacy by permitting agencies to collect and disclose information was disseminated to at least one third party

certain personal information for specified purposes, but in June 2019, after the Capital One Inquiry was disputed ensures that when an agency permissibly intrudes upon a person put before it was removed from his credit file.

(See Hines consumer's seclusion by disclosing his personal information — Depo. Tr. at 14:17-16:10; Leslie Depo. Tr. at 50:13-51:3, in response to an unsolicited request, additional damage to the = 57:7\_58:7). The reputational harm that results from the consumer's privacy and reputational interests is not done by disclosure of inaccurate or misleading credit information to disseminating a record of that intrusion to other third parties. — third parties, as alleged here, has clearly been recognized In tandem, Section 1681b and Section 1681c(a) mandate a sufficient to confer standing.

See, e.g., Ramirez, 141 that agencies adopt reasonable procedures to prevent such § Ct. at 2210; Grauman, 549 F. Supp. 3d at 292. disclosures; define as a matter of public policy the scope of — Such harms are fairly traceable to Equifax's conduct and individual's right to privacy to credit-related information; and, are redressable by monetary relief. Hines has therefore with Sections 1681n and 1681o, make actionable any willful — sufficiently demonstrated standing to pursue his § 1681b(c) and negligent invasions upon that right which bear a close — relationship to harms traditionally recognized at common law.

Here, Hines reportedly opted out of receiving prescreened offers of credit with the expectation that doing so would 5. Injunctive and Declaratory Relief prevent his personal information from being disseminated “TP Plaintiffs must demonstrate standing for each claim that without his authorization. (Hines Depo. Tr. at 32:17-23). they press and for each form of relief that they Voicing his preference to be free from unsolicited offers Ramirez, 141 S. Ct. at 2208.

Accordingly, Hines must of credit can be viewed as an attempt to “throw [a independently demonstrate Article III standing to obtain private seclusion] about his affairs,” and Equifax's initial injunctive and declaratory relief. (See Compl. at 16-17 2022 WL 2841909 (seeking orders declaring that Defendant's actions are in demonstrated any facts that suggest he is personally subject violation of the FCRA and NYFCRA and orders enjoining to ongoing harm or is likely to suffer the same harm again in Equifax to comply with the relevant provisions of the the future if injunctive relief is not granted.

The theoretical NYFCRA)). possibility that Equifax's improper reinvestigation practices will be applied to Hines detriment again at some unknown “Although past injuries may provide a basis to seek money — point in the future is insufficient to give him standing to sue damages, they do not confer standing to seek injunctive for injunctive relief.’ relief unless the plaintiff can demonstrate that she is likely to be harmed again in the future in a similar way.” Pryce, 6 2022 WL 1085489, at \*7 (quoting Nicosia v. Amazon.com, Inc., Equifax argues that injunctive relief is not Inc., 834 F.3d 220, 239 (2d Cir.

2016)); see also Pres. at expressly authorized by either the FCRA or the Connetquot Homeowners Ass'n, Inc. v. Costco Wholesale Opp at 2) While it is well-said that "injunctions are premised on relief is unavailable in suits brought by private the threat of repeated injury, a plaintiff must show "a sufficient parties" under the FCRA, Grauman, 549 F. Supp. likelihood that it will be wronged in a similar way.' ") (quoting 3d at 292 n4 (citing Ramirez, 141 8.

Ct. at City of Los Angeles v. Lyons, 461 U.S. 95, 111-12 (1982)); ant: Cetto we aoe □□ □□ Barry's Cut Rate Stores Inc., 2019 WL 7584728, at \*19 ° (E.D.N.Y. Nov. 20, 2019) ("In seeking prospective relief like (E.D.N.Y. Oct. 5, 2010); White v First Am. an injunction, 'a plaintiff must show that he can reasonably Registry, Inc., 378 F. Supp. 2d 419, 424 (SDNY. expect to encounter the same injury again in the future— 2005); see also Owoyemi v. Credit Corp Sols. otherwise there is no remedial benefit that he can derive from Inc., No. 21 Civ.

8021 (GHW) (RWL), 2022 such judicial decree.' ") (quoting Leder v. Am. Traffic Sols., oth ovens al. "hot orouihe tor 'hyunetive e... does no 6 ae a oor S. ee aT Os relief to consumers."), the availability of injunctive Clapper, 785 F.3d 787, 800 (2d Cir. 2015) ("The Supreme relief under the NYFCRA is less clear, compare Court has 'repeatedly reiterated that threatened injury must Owoy emt, 2022 WL 993011, al 6 (dismissing be certainly impending to constitute injury in fact, and that claim for ajunctive relief with prejudice because allegations of possible future injury are not sufficient.' ") such relief "is not available under either the (emphasis in original) (quoting Clapper v. Amnesty Int'l USA, FCRA or the NYFCRA") and Sloan v. TransUnion, 568 US.

398 (2013)). LLC, No. 21-CV-769 (MAD) (ML), 2022 WL 2237639, at \*3 (N.D.N.Y. June 16, 2022) (denying Setting aside his concession that "[i]t is less than clear that default judgment seeking injunctive relief pursuant 6 to the FCRA and NYFCRA) with White, 378 injunctive relief is available under the FCRA," Plaintiff F. Supp. 2d at 425 (noting that "while the argues injunctive relief is appropriate under the NYFCRA NYFCRA expressly authorizes monetary damages, "because Equifax engaged in a standardized, common course the absence of any mention of injunctive relief or an of conduct," (Pl.'s Mem. at 18) and because the agency "has affirmative grant of power to seek injunctive relief not changed its uniform policy concerning disputes of hard does not necessarily and inescapably lead to the inquiry information." (Pl.'s Reply at 3).

However, " "the conclusion that the Legislature meant to preclude existence of an official policy, on its own, is not sufficient such relief for private plaintiffs"). Because there are to confer standing to sue for injunctive and declaratory relief independent grounds for denying injunctive relief, on any individual who had previously been subjected to the Court need not determine whether such reliefis that policy,' unless the individual can also show a sufficient available under the NYFCRA at this time. likelihood of future harm." Dorce v. Citv of New York, 2 F.4th 82, 95 (2d Cir.

2021) (quoting *Shain v. Ellison*, 356 F.3d 7 Equifax also notes that the injunctive relief Plaintiff 211, 216 (2d Cir. 2004) (alterations omitted)). While Hines seeks would impermissibly amount to an order that has alleged past injuries, and alleges that Equifax continues Equifax “obey the law.” (Def’s Opp. at 24). Plaintiff to willfully violate the requirements outlined by FCRA and responds that a more detailed injunctive order NYFCRA (Compl { | 46-49), he has neither alleged nor would be available upon further merits discovery 2022 WL 2841909 and is unnecessary at this time.

(Pl.’s Reply 14). enforced against him again in the future such that prospective On this score, Plaintiff is correct. While Equifax relief is appropriate. is correct that an “obey the law” order similar to that described in the generalized prayer for relief Given the adequacy of remedies at law and Plaintiff’s failure of Hines’ complaint would be invalid, see S.C. to allege prospective harm, the Court finds that Plaintiff has *Johnson & Son, Inc. v. Clorox Co.*, 241 F.3d 232, not established standing to seek injunctive or declaratory 240 (2d Cir.

2001), should Hines prevail on the relief. merits and should the Court find that he is entitled to injunctive relief, he would “have the opportunity to submit a proposed order of injunction for C. Hines Has Class Standing the Court’s review.” See, e.g., *Kaganovich v. A* named plaintiff in a putative class action has “class McDonough, 547 F. Supp. 3d 248, 279 (E.D.N.Y. standing” to pursue claims on behalf of absent class members 2021) (citing *Equal Emp.*

Opportunity Comm’n “if he plausibly alleges (1) that he personally has suffered v. *AZ Metro Distributors, LLC*, No. 15-CV-5370 some actual injury as a result of the putatively illegal (ENV) (PK), No. 15-CV-5370 (ENV) (PK), 2020 conduct of the defendant, and (2) that such conduct implicates WL 7404432, at \*14 (E.D.N.Y. Dec. 16, 2020)). the same set of concerns as the conduct alleged to have caused injury to other members of the putative class by the \*12 Plaintiff similarly has not established standing to pursue same defendants.” *NECA-IBEW*, 693 F.3d at 162 (internal declaratory relief.

Under the Declaratory Judgment Act: “[i]n quotation marks and citations omitted). “When this standard a case of actual controversy within its jurisdiction... any is satisfied, the named plaintiff’s litigation incentives are court of the United States, upon the filing of an appropriate sufficiently aligned with those of the absent class members pleading, may declare the rights and other legal relations that the named plaintiff may properly assert claims on their of any interested party seeking such declaration, whether or behalf.” *Ret.*

*Bd. of the Policemen’s Annuity & Ben. Fund* of not further relief is or could be sought.” 28 U.S.C. § 2201. the *City of Chicago v. Bank of New York Mellon*, 775 F.3d 154, “A court will generally decline to exercise its discretion to 161 (2d Cir. 2014). entertain a request for declaratory relief where such relief would serve ‘no useful purpose.’ \* *Pryce*, 2022 WL 1085489, The application of the *NECA-IBEW* test is straightforward at \*8 (quoting *Intellectual Capital Partner v. Inst.*

Credit here. As explained above, Hines has adequately demonstrated Partners LLC, No. 08 Civ. 10580, 2009 WL 1974392, at \*6 that he has personally suffered actual injuries as a result of (S.D.N.Y. July 8, 2009)). “Declaratory relief serves ‘no useful Equifax's putatively illegal conduct; namely, Hines lost time purpose’ where ‘legal issues will be resolved by litigation’ and money in pursuing doomed disputes of unauthorized hard of the underlying claims.” *Jd.* (quoting Intellectual Capital inquiries, and suffered harms to his privacy and reputational Partner, 2009 WL 1974392, at \*6); see also *Zam & Zam interests as a result of Equifax's failure to adopt reasonable Super Mkt, LLC v. Ignite Payments, LLC*, No. 16-CV-6370 procedures to prevent the disclosure of personal information (SJF) (AYS), 2017 WL 6729854, at \*12 (E.D.N.Y.

Oct. 31, for impermissible purposes. Equifax's uniform conduct with 2017), *aff'd* 736 F. App'x 274 (2d Cir. 2018) (same). respect to disputes of unauthorized inquiries is alleged to have caused the same injuries to absent class members and Here, Plaintiff seeks “[a]n order declaring that Defendant's implicates the same set of concerns.

Thus, Hines’ litigation actions are in violation of the FCRA” and “[a]n order incentives are sufficiently aligned with the absent class declaring that Defendant's Actions are in violation of the members, and he may pursue claims on their behalf. NYFCRA.” (Compl. at 16).

The legal issues implicated by these requests will be resolved through litigation on the underlying claims, such that declaratory relief is unnecessary. II. Personal Jurisdiction Further, relief under the Declaratory Judgment Act is \*13 As a second threshold issue, the Court must determine “intended to operate prospectively.” *Guan v. Mayorkas*, 530 whether it has personal jurisdiction over the defendant and F. Supp. 3d 237, 255 (E.D.N.Y.

2021) (quoting *Storms v. over out-of-state claims*. Equifax correctly notes that the United States, No. 13-CV-811 (MKB), 2015 WL 1196592, at Court lacks general personal jurisdiction to adjudicate claims \*21 (E.D.N.Y. Mar. 16, 2015)).

As noted above, Plaintiff has brought against it, since Equifax is a Georgia LLC with a not alleged or established that Equifax's policy will likely be principal place of business in Georgia, and therefore is not “at home” in New York. (See Def's Opp. at 25); see also *Daimler* 2022 WL 2841909 AG v. Bauman, 571 U.S. 117, 137 (2014); *Goodyear Dunlop why personal jurisdiction should be treated any differently Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011). from subject-matter jurisdiction and venue: the named Equifax also argues that the Court lacks specific personal representatives must be able to demonstrate either general jurisdiction to hear the claims of putative class members that — or specific personal jurisdiction, but the unnamed class arose outside of New York, because they lack a sufficient | members are not required to do so.” *Mussat*, 953 F.3d connection to the forum.

(Def's Opp. at 25) (citing *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. (2017)) (“Nonnamed class members... may be parties for 1773, 1780-81 (2017)). I disagree. some purposes and not for others.”).

The court also noted that the superiority requirement of Rule 23(b)(3) and its In *Bristol-Myers*, the Supreme Court held that a California corresponding committee notes advise courts considering court lacked specific personal jurisdiction over non- whether to certify a class to consider “ ‘the desirability or California residents’ mass tort claims in a consolidated — undesirability of concentrating the litigation of the claims products liability action because the conduct giving rise to \_—in the particular forum,’ ” in recognition of the fact that “a their claims did not occur in the state.

*Bristol-Myers*, 137 S. Ct. at 1781-82. However, that case “involved a state-court where the lead plaintiff brings the case.” *Mussat*, 953 F.3d consolidated mass action, not a class action in federal court,” at 448 (quoting Fed. R. Civ. P. 23(b)(3)).

Accordingly, the *Cox v. Spirit Airlines, Inc.*, No. 17-CV-5172(EK) (VMS), — *Mussat* court held that in a class action, “the absentees are 2022 WL 939732, at \*18 (E.D.N.Y. Mar. 29, 2022), thus = more like nonparties, and thus there is no need to locate was more limited in its holding than *Equifax* argues. Indeed, each and every one of them and conduct a separate personal- both the majority and the dissenting opinions explicitly jurisdiction analysis of their claims.” *Jd.* at 448. acknowledged the limited nature of the Court's ruling.

See *Bristol-Myers*, 137 S. Ct. at 1783-84 (“[S]ince our decision \*14 In *Lyngaas*, the Sixth Circuit “follow[ed] their lead in concerns the due process limits on the exercise of specific holding that *Bristol-Myers Squibb* does not extend to federal jurisdiction by a State, we leave open the question whether class actions” for the same reasons. *Lyngaas*, 992 F.3d at 435. the Fifth Amendment imposes the same restrictions on the Succinctly distinguishing mass actions where *Bristol-Myers* exercise of personal jurisdiction by a federal court.”); seealso *Squibb* clearly applies from class actions where it does not, *id.* at 1789 n.4 (Sotomayor, J., dissenting) (“The Court today the Sixth Circuit explained that in the class action context does not confront the question whether its opinion here would also apply to a class action in which a plaintiff injured in the forum State seeks to represent a nationwide class of plaintiffs, [t]he defendant is presented with a not all of whom were injured there.”). unitary, coherent claim to which it need respond only with a unitary, “In the wake of the *Bristol-Myers* decision, lower federal coherent defense.

In this sense, the courts have split on whether its rationale applies to federal only suit before the court is the one nationwide class action under Rule 23 of the Federal Rules brought by the named plaintiff. Thus, of *Civil Procedure*.” *Mason v. Lumber Liquidators, Inc.*, No. when the court

considers whether the 17-CV-4780 (MKB), 2019 WL 2088609, at \*5 (E.D.N.Y. suit arises out of or relates to the May 13, 2019), adopted by 2019 WL 3940846 (Aug.

19, defendant's contacts with the forum, 2019) (collecting cases). Only two circuit courts have directly the court need analyze only the claims addressed the applicability of Bristol-Myers to federal class raised by the named plaintiff, who actions—both held that it does not apply. See *Mussat v. in turn represents the absent class IQVIA, Inc.*, 953 F.3d 441, 447 (7th Cir.

2020), cert. denied, members. 141 S. Ct. 1126 (2021); *Lyngaas v. Ag*, 992 F.3d 412, 435 (6th Cir. 2021). *Id.* at 435 (internal quotation marks and citations omitted). In *Mussat*, the Seventh Circuit explained that “absent class members are not full Parties to the case for many The Second Circuit has not specifically taken up the issue, Purposes,” such as determining whether diversity jurisdiction but other courts in this Circuit have followed this majority exists or whether venue is proper, and found “no reason rule and found that Bristol-Myers does not apply to federal 2022 WL 2841909 class actions.

See *Cox*, 2022 WL 939732, at \*18 (granting motion for class certification over defendant's personal A. Legal Standards jurisdiction objections, adopting the reasoning in *Mussat* The class action is ‘an exception to the usual rule that and *Lyngaas*); *Cummings v. FCA US LLC*, 401 F. Supp. 3d litigation is conducted by and on behalf of the individual 288, 317 (N.D.N.Y.

2019) (“This Court therefore does not named parties only.” *Comcast Corp. v. Behrend*, 569 U.S. believe that Bristol-Myers Squibb stands for the point of 27» 33 (2013) (quoting *Califano v. Yamasaki*, 442 U.S. law that all putative class members in a class action must ©82, 700-01 (1979)).

As a result, the party seeking class meet the requirements of personal jurisdiction imposed on certification must affirmatively demonstrate compliance with plaintiffs in ordinary (non-class action) cases.”); see also the requirements of Rule 23(a): numerosity, commonality, Bank y. CreditGuard of Am., No. 18-CV-1311 (PKC) (RLM), typicality, and adequacy of representation.

See Fed. R. Civ. 2019 WL 1316966, at \*12 n.11 (E.D.N.Y. Mar. 22, 2019) P. 23(a); *In re Restasis (Cyclosporine Ophthalmic Emulsion)* (noting that “most district court decisions have held that 4”“#rust Litig., 335 F.R.D. 1, 11 (E.D.N.Y. 2020).

In the Bristol-Myers does not apply to federal class actions” and Second Circuit, a party seeking class certification must collecting cases, but declining to decide the issue before 4/0 satisfy an implied requirement of ascertainability which class certification was sought). But see *In re Dental Supplies* requires that “a proposed class is defined using objective Antitrust Litig., No. 16-CV-696 (BMC) (GRB), 2017 WL criteria that establish a membership with definite boundaries” 4217115, at \*9 (ED.N.Y.

Sept. 20, 2017) (holding that and does not permit certification where “a proposed class Bristol-Myers applies to class actions in federal court and —‘efinition is indeterminate in some fundamental way.” In re dismissing plaintiff’s claims for lack of personal jurisdiction), 7<sup>o</sup>” obras Sec., 862 F.3d 250, 269 (2d Cir. 2017).

In addition Spratley y. FCA US LLC, No. 17-CV-0062, 2017 WL to the Rule 23(a) requirements and the implied requirement of 4023348, at \*6-7 (N.D.N.Y. Sept. 12, 2017) (same). ascertainability, a party seeking class certification “must also satisfy through evidentiary proof at least one of the provisions Lagree with the majority of district courts that have addressed Of Rule 23(b).” Comcast Corp., 569 U.S. at 33. “[T]o certify the issue, and with the Sixth and Seventh Circuits, and a class pursuant to Rule 23(b)(3), a plaintiff must establish (1) find that Bristol-Myers does not apply to federal class predominance—‘that the questions of law or fact common to actions.

Because absent class members are non-parties for class members predominate over any questions affecting only jurisdictional purposes—including as explained above for individual members’; and (2) superiority—‘that a class action the purposes of determining standing to litigate—there is no superior to other available methods for fairly and efficiently reason to treat them as parties for the purposes of determining adjudicating the controversy.’ ” Johnson v. Nextel Commc’ns personal jurisdiction.

Rather, the Court can be satisfied that /”¢-, 780 F.3d 128, 137 (2d Cir. 2015) (quoting Fed. R. Civ. personal jurisdiction exists by examining only the claims of \_P. 23(b)(3)). 8 the named plaintiff, who represents the absent class members.

In this case, it is enough that the Court unquestionably has = 8 Although Plaintiffs class action complaint contains personal jurisdiction over the claims of named plaintiff, a conclusions of law that repeat the requirements resident of Brooklyn, New York, which arise out of or relate of Rule 23(b)(1) (Compl. 59), his memorandum to Equifax’s conduct in and contacts with New York.

(Compl. of law in support of class certification addresses | 4; Hines Depo. Tr. at 10:4~10). The Court’s foregoing only certification of an injunctive relief class under examination of the requirements of Rule 23 will ensure Rule 23(b)(2) and certification of a class under that absent class members’ claims are sufficiently similar to the predominance and superiority requirements of Hines’ such that concentrating the litigation in this forum is Rule 23(b)(3).

(Pl.’s Mem. at 15-18). Further, as appropriate. described above, Plaintiff has not demonstrated Article III standing to pursue injunctive relief. III. Class Action Certification Requirements “Courts cannot permit injunctive relief ~ When \*15 Having determined that Plaintiff has sufficiently plaintiffs would otherwise lack standing to seek established standing and personal jurisdiction to pursue such relief under Article IIT.

Where there is no claim against Equifax, the Court now decides whether the likelihood of future harm, there is no standing is appropriate to certify the Plaintiff's proposed class and to seek an injunction, and so no possibility of subclasses. being certified as a Rule 23(b)(2) class.” *Berni v. Barilla S.p.A.*, 964 F.3d 141, 148-49 (2d Cir. 2022) (collecting cases); see also *Allegra v. Luxottica Retail N. Am.*, No. 17-CV-5216 (PKC) 1.

*Ascertainability* (RLM), 2022 WL 42867, at \*18 (E.D.N.Y. Jan. 5, 2022) (“[T]he Second Circuit has made clear Although not an enumerated requirement under Rule 23, that there is no equitable or policy exception to courts in the Second Circuit must find that “a proposed the Article III standing requirements that would class is defined using objective criteria that establish a allow past purchasers like Plaintiffs to nonetheless membership with definite boundaries” and will not certify maintain an injunctive class under Rule 23(b)(2).”). the class where “a proposed class definition is indeterminate Accordingly, the Court will focus exclusively on in some fundamental way.” *In re Petrobras Sec.*, 862 F.3d the requirements of Rule 23(b)(3).

250, 269 (2d Cir. 2017). This is not meant to be a demanding \*16 “The party seeking class certification bears the burden \_ Standard; rather, “it is designed only to prevent certification of establishing by a preponderance of the evidence that classes whose membership is actually indeterminable.” *Harte* each of Rule 23’s requirements have been met.” *Jd; V- Ocwen Fin.*

*Corp.*, No. 13-CV-5410 (MKB) (RER), 2018 see also *Teamsters Local 445 Freight Div. Pension Fund* | WL 1830811, at \*31 (E.D.N.Y. Feb. 8, 2018) (citing *Gomez v. v. Bombardier Inc.*, 546 F.3d 196, 202 (2d Cir. 2008) *Lace Enters., Inc.*, No. 15 Civ. 3326 (CM), 2017 WL 129130, (“Today, we dispel any remaining confusion and hold that at \*8 (S.D.N.Y. Nov. 24, 2015)), adopted in part by 2018 WL the preponderance of the evidence standard applies to 1559766 (E.D.N.Y.

Mar. 30, 2018). While “membership of evidence proffered to establish Rule 23’s requirements.”), the class must be ascertainable “at some point in the case,” Importantly here, the same requirements and burden apply \_\_ it does not necessarily have to be determined prior to class to the certification of subclasses. See *B & R Supermarket, Certification.*” *Jd.* (quoting *Sykes v. Mel Harris & Assocs., Inc. v. MasterCard Int’l Inc.*, No. 17-CV-02738 (MKB), — LLC, 285 F.R.D.

279, 287 (S.D.N.Y. 2012). 2018 WL 1335355, at \*3 n.7 (E.D.N.Y. Mar. 14, 2018) (“When establishing subclasses, each subclass must meet Here, Equifax raises no objections to the ascertainability of the Rule 23 class certification requirements....

The movant Hines’ proposed class and subclasses. As they are described bears the burden of constructing the subclasses based on the above, Hines’ proposed class and subclass definitions use requirements of Rule 23.”) (citations omitted). clear, objective criteria and establish class membership with definite temporal and geospatial boundaries such that class “Rule 23 should be construed ‘liberally rather than membership can be readily determined.

Indeed, membership restrictively’ ” and “[t]he ‘general preference’ of the Court in the nationwide FCRA Class, New York Subclass, and of Appeals for the Second Circuit is ‘granting rather than Capital One Subclass can be ascertained simply by examining denying class certification.’ ” *Belfiore v. Procter & Gamble* records of dispute correspondence, and the Post-Dispute Co., 311 F.R.D.

29, 60 (E.D.N.Y. 2015) (quoting *Gortat v. Publication Subclass* can be identified by examining a *Capala Bros.*, 257 F.R.D. 353, 361-62 (E.D.N.Y. 2009)), combination of dispute correspondence and the “Log F” Nevertheless, “[a] court may certify a class action only if it | or “MDB records” of consumer credit files created when concludes, after a ‘rigorous analysis,’ that the proposed class Equifax distributed its products. ” Accordingly, the Court meets the requirements of Rule 23(a) and (b).” *In re Restasis*, finds that the ascertainability requirement is satisfied as to the 335 F.R.D. at 11 (quoting *Comcast Corp.* 569 U.S. at 33- nationwide FCRA Class and as to each of the three subclasses.

34). This rigorous “analysis may ‘entail some overlap with the merits of the plaintiff's claim’ oo [b]ut courts may decide 9 Although Equifax has raised no direct objections merits issues at class certification only to the extent they are to this factor, its objections to the Post-Dispute relevant to’ the application of Rule 23.” *Jd.* (quoting *Wal-Mart Publication Subclass* may bear on ascertainability, *Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011), then quoting...

*Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, Specifically, Equifax argues there 's no way fo determine whether it disseminated a consumer 466 (2013). report about a putative class member that included a disputed inquiry because Equifax does not B. Rule 23(a) Requirements and Ascertainabilit maintain a copy of the reports it issues or a record reflecting the contents of those reports.

(Def's Opp. at 20 (citing Def's Suppl. Resp. to Interrog. 2022 WL 2841909 No. 6; Leslie Depo. Tr. 65:19-66:7; Gobin Decl. Nos. | and 8 at 3; Leslie Depo. Tr. at 42:12—18, 48:4—8). This 4] 22)). While Equifax does not retain copies of is more than sufficient to satisfy the numerosity requirement the reports it provides to its customers, MDB for the nationwide FCRA Class and the New York Subclass. records provide a snapshot of the consumers’ With respect to the Capital One Subclass, Equifax has credit file at the moment an Equifax product produced [Redacted] hard inquiry dispute letters that mention containing their personal information is delivered, “Capital One,” (Sartell Decl. §] 3-5), which gives rise and Equifax's billing records describe the product to a common sense assumption that at least forty class that a customer ordered, the data that was included members, if not the full [Redacted], disputed a hard inquiry in the product, and the date the product was associated with Capital One.

Those class members would delivered. (Leslie Depo. Tr. at 15:18—17:24, 19:19- have received [Redacted] pursuant to Equifax's internal 20:6). Cross referencing these documents could policies.

(Gobin Decl. 4 20). Finally, with respect to the accordingly identify those individuals who suffered Post-Dispute Publication Subclass, MDB records indicate the harm alleged.

Further, as the subclass is that for New York consumers alone, Equifax delivered defined, membership is ascertainable by examining information regarding more than [Redacted] of the New York only correspondence and MDB records; it is consumers to third parties after it had already received a hard liability, rather than class membership, that hinges inquiry dispute from the consumer.

(Def's Suppl. Resp. to on additional evidence proving that disputed Pl.'s Interrog. No. 6 at 2; Leslie Depo. Tr. at 47:3, 59:9- hard inquiry information stemming from a non- 19, 64:1-15, 82:14-83:3). Extrapolating from this sample, consumer initiated transaction was disseminated to it is reasonable to assume that an even greater number a third party. of consumers received similar treatment nationwide, and that Equifax disseminated disputed hard inquiry information stemming from a non-consumer initiated transaction to a third 2.

Numerosity party in more than forty of those cases. Accordingly, the Rule 23(a)(1) requires a finding that the class is “so court finds that the numerosity requirement is satisfied for the nationwide FCRA Class and for each of the three subclasses. numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “In the Second Circuit, numerosity is presumed for classes of [forty] or more.” *In re Restasis*, 335 FR.D. at 11 (citing *Consol.*

*Rail Corp. v. Town of 3. Commonality Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995)); see also *Shahriar v. Smith & Wollensky Rest. Grp., Inc.*, 659 F.3d Rule 23(a)(2) requires the existence of “questions of law or 234, 252 (2d Cir. 2011) (same). “[I]n assessing numerosity fact common to the class.” Fed. R. Civ. P. 23(a)(2). “Even a court may make common sense assumptions without the a single common question will do.” *Dukes*, 564 US. at 359 need for precise quantification of the class.” *Chime v. Peak* (alterations and citations omitted).

To show commonality, *Sec. Plus, Inc.* 137 F. Supp. 3d 183, 207 (E.D.N.Y. 2015) a movant must demonstrate that the class claims “depend (internal quotation marks and citations omitted). “There is a common contention” that “is capable of class-wide no requirement to specify an exact class size in order to resolution—which means that determination of its truth or demonstrate numerosity,” *Shady Grove Orthopedic Assocs.*, falsity will resolve an issue that is central to the validity of PA. *Allstate Ins.*

*Co.*, 293 ER.D. 287, 300 (ED.N.Y. 2013), “aeh one of the claims in one stroke.” /d. at 350. “[W]hat and “numerosity may be fulfilled by extrapolating from a matters to class certification is not the raising of common sample,” *Harte*, 2018 WL 1830811 at \*27. “However, if “questions’—even in droves—but rather, the capacity of a ‘the plaintiff's assertion of numerosity is pure speculation or class-wide proceeding to generate common aTISWEPS apt to bare allegations, the

motion for class certification fails.’ ” drive the resolution of the litigation.” Id. at 350 (internal Pryce, 2022 WL 1085489, at \*13 (quoting *Edge v. C. Tech* quotation marks and citations omitted). “Where the same Collections, Inc., 203 FR.D.

85, 89 (E.D.N.Y. 2001). conduct or practice by the same defendant gives rise to the same kind of claims from all class members, there is a According to interrogatories produced by Equifax and the common question.” Johnson, 780 F.3d at 137-38 (quoting testimony of Equifax representatives, [Redacted] consumers Suchanek y. Sturm Foods, Inc., 764 F.3d 750, 756 (7th Cir. nationwide received [Redacted], including [Redacted] 2014)). consumers in New York.

(Def's Suppl. Resps. to Interrog. 2022 WL 2841909 \*18 Hines asserts that commonality is satisfied here existence of individualized factual questions with respect to because the nationwide FCRA class and the subclasses the class representative's claim will not bar class certification, raise common factual and legal questions with respect to class certification is inappropriate where a putative class Equifax's “standard policies and practices” for processing — representative is subject to unique defenses which threaten and reinvestigating hard inquiry disputes, for preventing its | to become the focus of the litigation.” *Baffa v. Donaldson*, customers, including Capital One, from obtaining consumer Lufkin & Jenrette Sec. Corp., 222 F.3d 52, 59 (2d Cir.

2000) reports for impermissible purposes without authorization, (quoting *Gary Plastic Packaging Corp. v. Merrill Lynch*, and for preventing disputed hard inquiries from being *Pierce, Fenner & Smith, Inc.*, 903 F.2d 176, 180 (2d Cir. disseminated in subsequent consumer reports. (Pl.'s Mem. 1990), abrogated on other grounds by *Microsoft Corp. v.* at 12-13). Equifax generally raises concerns regarding *Baker*, 137 S. Ct.

1702 (2017)). predominance that are more adequately evaluated under the framework of Rule 23(b), but briefly notes that Hines’ Hines asserts that his “claims are typical of those of other common questions “all reduce to the same inquiry: Did — class members.” (Pl.'s Mem. at 13).

In particular, he contends Equifax violate the FCRA and NYFCRA?” which “does — that he and all other nationwide FCRA class members little to advance the resolution of this case” and renders disputed a hard inquiry in writing and received Equifax's the commonality requirement unsatisfied. (Def's Opp. at 12— [Redacted] form response pursuant to Equifax's inadequate 13, 13 n.9).

I disagree. Because common factual questions □□ reinvestigation policy (Pl.'s Mem. at 13). He contends that his regarding the uniform application of Equifax's policies — claims are typical of the New York Subclass members as he and practices and common legal questions regarding the is a New York resident who suffered the same injury from the reasonableness of those policies and practices sit at the core same course of conduct as other New York resident subclass of this action and apply to all class and subclass members, members (Pl.'s Mem. at 14), that his claims are

typical of the Court finds that Plaintiff has sufficiently demonstrated — the Capital One Subclass because he and all other subclass compliance with Rule 23’s commonality requirements. members disputed the unauthorized dissemination of private information to Capital One (Pl.’s Mem. at 14), and that his claims are typical of the Post-Dispute Publication subclass Lo: because he suffered the same harm from the same course of 4.

Typicality cn:.. conduct when Equifax included a disputed, unauthorized hard Rule 23(a)(3) requires a finding that “the claims or defenses ‘Nquiry in credit products that it disseminated to customers of the representative parties are typical of the claims or (PL.’s Mem. 14). Equifax does not oppose class certification defenses of the class.” Fed. R. Civ. P. 23(a)(3). “While the 0 typicality grounds, and has identified no defenses which commonality inquiry establishes the existence of a certifiable uniquely apply to Hines’ claims that threaten to become class, the typicality inquiry focuses on whether the claims focus of the litigation.

Because each class and subclass of the putative class representatives are typical of the class |  
™member's claim depends on the same legal arguments and the sharing common questions.” Jn re Frontier Ins. Grp., Inc. Same underlying course of conduct by Equifax, and because Sec. Litig., 172 FR.D. 31, 40 (E.D.N.Y. 1997). Typicality 20 unique defenses applicable only to Hines are apparent from is found “when each class member's claim arises from the record, the Court finds that the typicality requirement of the same course of events and each class member makes Rule 23(a)(3) is satisfied. similar legal arguments to prove the defendant's liability.” Jensen v. Cablevision Sys.

Corp., 372 F. Supp. 3d 95, 121 (E.D.N.Y. 2019) (quoting Robidoux v. Celani, 987 F.2d 931, 5. Adequacy of Representation 936 (2d Cir. 1993)); see also Karvaly v. eBay, Inc., 245 FR.D. 71, 82 (E.D.N.Y. 2007) (“The typicality requirement is \*19 Rule 23(a)(4) requires that “the representative parties generally satisfied ‘as long as plaintiffs assert that defendants \_— will fairly and adequately protect the interests of the committed the same wrongful acts in the same manner against class.” Fed.

R. Civ. P. 23(a)(4). In assessing adequacy all members of the class.’ ”) (quoting Jn re Medical X-ray Film of representation, courts consider “whether: 1) plaintiff's Antitrust Litigation, No. 93-CV-5904, 1997 WL 33320580 interests are antagonistic to the interest of other members of at \*4 (E.D.N.Y. Dec. 26, 1997)). “Minor variations in the the class and 2) [whether] plaintiff's attorneys are qualified, fact patterns underlying individual claims” will not preclude experienced, and able to conduct the litigation.” Cordes & typicality.

Robidoux, 987 F.2d at 936-37. But while “the mere Co. Fin. Servs. v. A.G. Edwards & Sons, 502 F.3d 91, 99 2022 WL 2841909 (2d Cir. 2007) (quoting Baffa, 222 F.3d at 60). “This process “serves to uncover conflicts of interest between named parties C. Rule 23(b)(3) Requirements—Predominance and and the class they seek to represent.’ ” Jd. (citing Amchem Superiority Prods.,

Inc. v. Windsor, 521 U.S. 591, 613 (1997). “Courts Having found that Plaintiff satisfies Rule 23(b)(3) rarely deny class certification on the basis of the inadequacy of Plaintiff’s arguments, the Court must consider whether he has of class representatives, doing so only in flagrant cases, Satisfied the requirements of Rule 23(b)(3).

A court may where the putative class representatives display an alarming M/y certify a class under Rule 23(b)(3) if it “finds that unfamiliarity with the suit, display an unwillingness to learn the questions of law or fact common to class members about the facts underlying their claims, or are so lacking in P?edominate over any questions affecting only individual credibility that they are likely to harm their case.” Bayne, | Members, and that a class action is superior to other 2021 WL 4822426, at \*7 (quoting In re Pfizer Inc. Sec. Litig., available methods for fairly and efficiently adjudicating the 282 38, 51 (S.D.N.Y.

2012)). Indeed, “the requirement of controversy.” Fed. R. Civ. P. 23(b)(3). that the class representative have knowledge of the facts of the case is a ‘modest one.’ ” Vergara v. Apple REIT Nine, Inc., No. 19-CV-2027 (DLT) (RML), 2021 WL 1103348, at 1. Predominance \*3 (E.D.N.Y. Feb. 5, 2021) (quoting Decastro v. City of New York, No. 16 Civ. 3850, 2019 WL 4509027, at \*12(S.D.N.Y.

In the Second Circuit, “[p]redominance is satisfied ‘if Sept. 19, 2019)). resolution of some of the legal or factual questions that qualify each class member’s case as a genuine controversy can be Defendant here does not challenge the adequacy of Plaintiff achieved through generalized proof, and if these particular or his chosen counsel. Plaintiff contends that he holds no issues are more substantial than the issues subject only to conflicts of interest, and Defendant has not uncovered any \_\_ individualized proof.’ ” Roach v. T.-L.

Cannon Corp., 778 such conflicts in deposing him. (Pl.’s Mem. at 14-15; Hines = F.3d 401, 405 (2d Cir. 2015) (quoting Catholic Healthcare Depo. Tr. at 119:16-124:15). Further, Hines has demonstrated v U.S. Foodservice Inc. (In re U.S. Foodservice Inc. sufficient familiarity with the suit, his claims, and his role Pricing Litig.), 729 F.3d 108, 118 (2d Cir. 2013)); see also as class representative to meet the “modest” requirements AXA Equitable Life Ins.

Co. COI Litig., No. 16-CV-740 of Rule 23(a)(4). (Pl.’s Mem. at 14; see also Hines Depo. (JMF), 2020 WL 4694172, at \*14 (S.D.N.Y. Aug. 13, 2020) Tr. at 117:9-23, 119:2-123:23). With respect to counsel: | (“Common questions are not just ‘more substantial’ than Hines is represented by five law firms, four of which have \_ individual ones — they form the crux of the class claims.”) demonstrated experience in pursuing complex FCRA and = (citing Myers v. Hertz Corp., 624 F.3d 537, 547 (2d Cir. consumer protection claims in individual representations and = 210)). in the class action context.

(Pl.’s Mem. at 14 n.10 (discussing the experience of Francis Mailman Soumilas, P.C., Skaar \*20 Evaluating predominance requires a “ ‘more & Feagle, LLP, Robert Sola, P.C., and The Adkins

Firm, demanding' ” inquiry than that required to find commonality P.C.); see also ECF Nos 44-23-44-26 (collectively, “Firm under Rule 23(a), in which courts examine whether “common Bios”) (same)).

Indeed, these same four firms are counsel issues can profitably be tried on a class-wide basis, or whether of record in the Rivera Action. (ECF No. 27 at 2 n.2). 10 they will be overwhelmed by individual issues.” Johnson, Because Defendant has not challenged the adequacy of the 780 F-3d at 138 (quoting Comcast Corp., 569 U.S. at 34); Plaintiff or his chosen counsel, because Plaintiff's interests %°@ 4/80 Zvson Foods, Inc. v. Bouaphakeo, 577 U.S. 442, are not antagonistic to the class, and because his counsel 453 (2016) (“The predominance inquiry asks whether the have sufficient qualifications to represent the class, the common, aggregation-enabling, issues in the case are more Court concludes that the Plaintiff has satisfied his burden of Prevalent or important than the non-common, aggregation- establishing adequacy under Rule 23(a)(4). defeating, individual issues.” (internal quotation marks and citations omitted)).

As a result, courts must “give careful 10 scrutiny to the relation between common and individual The omission of the Mallon Consumer Law Group, questions in a case.” Bouaphakeo, 577 U.S. at 453. “An PLLC is discussed further below. See infra Section individual question is one where ‘members of a proposed HLD. class will need to present evidence that varies from member to member,’ while a common question is one where “the same 2022 WL 2841909 evidence will suffice for each member to make a prima facie actual damages, no such individualized inquiry is showing [or] the issue is susceptible to generalized, class- required.

(Pl.’s Mem. at 16). wide proof.’ ” Jd. (quoting 2 W. Rubenstein, Newberg on Class Actions § 4:50, pp. 196-97 (5th ed. 2012)). a. Section 16811 — Reinvestigation Class Claims In undertaking the predominance inquiry, courts typically begin by considering the elements of the underlying causes Violations of the reinvestigation provisions of the of action. See In re Air Cargo Shipping Servs.

Antitrust Litig., NYFCRA are evaluated in an identical manner No. 06-MD-1175 (JG) (VVP), 2014 WL 7882100, at \*35 to those brought under Section 1681i. See, eg., (E.D.N.Y. Oct. 15, 2014) (citing Erica P. John Fund, Inc. v. Ogbon v. Beneficial Credit Servs., Inc., No. 10 Halliburton Co., 131 S. Ct. 2179, 2184 (2011)), adopted by Civ. 3760 (PAE), 2013 WL 1430467, at \*9 n.7 2015 WL 5093503 (July 10, 2015).

However, the rule “does (S.D.N.Y. Apr. 8, 2013) (“[T]he Court construes not require a plaintiff seeking class certification to prove [N.Y. Gen. Bus. Law § 380-f(a)] in the same that each element of [his] claim is susceptible to class wide way as its similar federal analogue.”); Abdallah proof,” but requires that he “show that “questions common v. LexisNexis Risk Sols.

FL Inc., No. 19-CV-3609 to the class predominate, and not that those questions will be (RRM) (VMS), 2021 WL 1209419, at \*8 (E.D.N.Y. answered, on the merits, in the favor of the class.’ ”

Hasemann Mar. 30, 2021), reconsideration denied, 2021 WL v. Gerber Prod. Co., 331 F.R.D. 239, 273 (E.D.N.Y. 2019) 6197060 (E.D.N.Y. Dec. 30, 2021). quoting A, 568 U.S. at 459, 468). “Typically, common. (q mee □□ ) yP y \*21 Section 1681i requires that “if a consumer notifies issues predominate when liability is determinable on a class- □□..

Loe. a consumer reporting agency—either directly or indirectly wide basis, even where class members have individualized.. [through a reseller]—of a dispute as to the accuracy of any damages.” Id. (citing In re Visa Check/MasterMoney Antitrust Litig., 280 F.3d 124, 139 (2d Cir. 2001), abrogated on other i we, □□ grounds by In re Initial Pub. Offerings Sec. Litig., 471 F.3d 1001, 1004 (2d Cir. 2006)). “When ‘one or more of the central issues.. oo, so... whether the disputed information is inaccurate.’ ” Khan v. in the action are common to the class and can be said to...

Equifax Info. Servs., LLC, No. 18-CV-6367 (MKB), 2019 WL predominate, the action may be considered proper under Rule... 2492762, at \*3 (E.D.N.Y. June 14, 2019) (quoting 15 U.S.C. 23(b) (3) even though other important matters will have to... § 1681i(a)(1)(A); Jones, 982 F. Supp. 2d at 272 (S.D.N.Y. be tried separately, such as damages or some affirmative ce. Loa.

5 oe 2013)). “What constitutes a ‘reasonable’ reinvestigation defenses peculiar to some individual class members. 4 4 the ci ' F the alleviations.” Id. (citi nds on ir 2 Id. Bouaphakeo, 577 U.S. at 453-454 (quoting 7AA C. Wright, i. □□□ s > at 272) No eeatons □□..... r, in A. Miller, & M. Kane, Federal Practice and Procedure § 1778, one’ PP a OWEN:. un ins Wl a reinvestigation, the agency must at a minimum “review pp. 123-124 (3d ed.

2005)). and consider all relevant information submitted by the consumer... with respect to such disputed information,” and ul Equifax argues, in part, that the Court cannot must forward such relevant information to “any person who certify a class where individual questions regarding provided any item of information in dispute.” 15 U.S.C. damages will predominate.

(Def’s Opp. at 20-23). §§ 1681i(a)(2), (4). Importantly, “the statutory responsibility However, as noted above, individualized issues imposed on the credit report agency “must consist of with respect to damages do not necessarily preclude something more than merely parroting information received a finding that common issues predominate. from other sources.’ ” Jones, 982 F. Supp. 2d at 273 Indeed, “it is well-established in this Circuit (quoting Gorman yv.

Experian Info. Solutions, Inc., No. that ‘individualized damages determinations alone 07 Civ. 1846 (RPP), 2008 WL 4934047, at \*5 (S.D.N.Y. cannot preclude certification under Rule 23(b) (3),’ Nov. 19, 2008)). If an agency reasonably determines that and proponents of class certification need not ‘rely the consumer’s dispute is “frivolous or irrelevant”’—for upon a class-wide damages

model to demonstrate example, where the consumer fails to provide sufficient predominance.’ ” Pryce, 2022 WL 10854839, at \*19 information to conduct a reinvestigation—it may terminate n.8 (citing Roach, 778 F.3d at 408-09).

Further, as its reinvestigation of a consumer's dispute, provided that it Hines notes, since statutory and punitive damages provides the consumer with notice within five days of making are sought here for each class member, rather than that determination, explaining the agency's reasoning and 2022 WL 2841909 identifying any information that it would need to actually — reporting agency had failed to reasonably reinvestigate a investigate the dispute.

15 U.S.C. § 168 1i(a)(3). “Ultimately, disputed item.’ ” (quoting Fashakin v. Nextel Commc'ns., it is up to the trier of fact to weigh [various] considerations No. 05-CV-3080 (RRM), 2009 WL 790350, at \*11 □□□□□□□□ in determining whether the CRA conducted a reasonable Mar. 25, 2009)). “Although the Second Circuit has yet to reinvestigation” under the circumstances.

Jones, 982 F. Supp. address the issue, ‘the overwhelming weight of authority 2d at 273 (citing Cushman v. TransUnion Corp., 115 F.3d 220, holds that a credit report is inaccurate either when it is patently 226 (3d Cir. 1997)). incorrect or when it is misleading in such a way and to such an extent that it can be expected to have an adverse Unless the dispute is made through areseller,aconsumermust — effect on credit decisions.’ ” Abdallah, 2021 WL 6197060, directly dispute an alleged inaccuracy in order to trigger the at \*7 (quoting Gross v. Priv.

Nat'l Mortg. Acceptance Co., duty to reinvestigate. 15 U.S.C. § 1681i(a)(1)(A); see also. □ LLC, 512 F. Supp. 3d 423, 426 (E.D.N.Y. 2021)). If disputed Podell v. Citicorp Diners Club, Inc., 112 F.3d 98, 104 (2d information is found to be inaccurate or incomplete, or if it Cir. 1997) (“[T]he statutory duty [to reinvestigate] is triggered cannot be verified pursuant to a reinvestigation, it must be only by direct requests from consumers, and...noclaimcould — deleted from the consumer's credit report.

See 15 U.S.C. § have arisen here until [plaintiff] himself communicated with 168 1i(a)(5)(A)G); see also Okocha v. TransUnion LLC, No. TransUnion to dispute his credit record.”). “A consumer has 08-CV-3107, 2011 WL 2837594, at \*7 (E.D.N.Y. Mar. 31, not ‘directly’ contacted a credit reporting agency when... she 2011), aff'd 488 F. App'x 535 (2d Cir. 2012). merely signs up for a credit repair service and then has no further involvement with, or even knowledge of, the disputes \*22 Plaintiff maintains that with respect to his Section submitted putatively on her behalf.” Cohen v. Equifax Info.

1681i claims, Equifax's transmission of [Redacted] to all Servs., LLC, No. 18 Civ. 6210 (JSR), 2019 WL 5200759, at — nationwide FCRA class members and New York Subclass \*6 (S.D.N.Y. Sept. 13, 2019). But see Milbauer v. TRW, Inc., members in response to hard inquiry disputes, and the 707 F. Supp. 92, 95 (E.D.N.Y. 1989) (holding that “consumer legal sufficiency of that

transmission to satisfy Section reporting agencies... are not privileged to ignore a consumer's 1681i's reinvestigation requirements are common factual and dispute simply because that dispute is submitted by a third legal issues that predominate over any individual issues. party," and noting that such third party submissions "do[ ] not (Pl.'s Mem. at 15).

However, as described in more detail constitute a complete defense" to reinvestigation claims). below, Equifax argues that "overwhelmingly individualized evidence" rather than "common proof" must be presented. Additionally, to succeed on a Section 1681i claim, a plaintiff must show that each disputed hard inquiry was in fact plaintiff "must demonstrate that the disputed information "inaccurate" and to show that each hard inquiry was disputed is inaccurate." Khan, 2019 WL 2492762, at \*3 (quoting "directly" by the individual consumer class member, such as Gestetner v. Equifax Info.

Servs. LLC, No. 18 Civ. 5665 that the predominance requirement is not satisfied and class (JFK), 2019 WL 1172283, at \*2 (S.D.N.Y. Mar. 13, 2019)); certification is unwarranted. (Def's Opp. at 13-18). see also Cohen v. Equifax Info. Servs., LLC, 827 F. App'x 14, 16 (2d Cir. 2020) (summary order) ("The parties agree With respect to "inaccuracy," Equifax argues that its policy that a plaintiff must demonstrate that her credit report of categorizing disputes as "Miscellaneous/Not Mine" cannot contain inaccurate information in order to prevail on a \_ be relied upon to determine whether an inquiry was, in claim under § 1681e(b) or § 1681i."); Artemov v. TransUnion, fact, unauthorized and therefore inaccurate, particularly since LLC, No. 20-CV-1892 (BMC), 2020 WL 5211068, at \*2 certain dispute letters produced in this case were sorted into (E.D.N.Y.

Sept. 1, 2020) ("In considering a challenge under \_ that category but do not clearly articulate the reason for the § 1681e(b) or § 1681i, the 'threshold question' is whether — dispute, or otherwise indicate that the inquiry may have been the disputed credit information is accurate; if the information disputed for different reasons. (Def's Opp. at 5-6, 14).

For is accurate, 'no further inquiry into the reasonableness of | example, Equifax argues that produced dispute letters sorted the consumer reporting agency's procedure is necessary.' ") — into the "Miscellaneous/Not Mine" category reveal instances (quoting Whelan v. Trans Union Credit Reporting Agency, 862. — where consumers disputed an inquiry because Equifax failed F. Supp. 824, 829 (E.D.N.Y.

1994)); Jones, 982 F. Supp. 2d to comply with the "permissible purpose" provisions of the at 272-73 (S.D.N.Y. 2013) ("[A] 'plaintiff asserting claims | FCRA or because the inquiry was otherwise "false" without under § 1681i must demonstrate that the disputed information further explanation. (Def's Opp. at 5-6; see also Pritchard is inaccurate in order to prevail on allegations that a consumer Decl.

4] 6—7). Further, Equifax argues that consumers may 2022 WL 2841909 have disputed an accurate inquiry as “unauthorized” because differently, Hines argues that Equifax “cannot now claim... they forgot that they engaged in the transaction that resulted that had it reinvestigated it would have come up with results in the inquiry, did not recognize the name of the creditor as\_\_ that showed that some of the inquiries were accurate.” (Pl.’s it appeared on their credit report, did not expect a known \_\_ Reply at 6).

Rather, their failure to reinvestigate constitutes transaction to result in an inquiry, or falsely disputed the a violation of § 1681i, and “[t]o require more of a disputing inquiry in an attempt to improve their credit score. (Def’s Opp. consumer now, as Equifax suggests, when the agency neither at 5; see also Gobin Decl. § 12; Hendricks Depo. Tr. at 54:4— \_reinvestigates nor deletes the disputed information, places 18; Turner Expert Rep. { 18). consumers in an untenable Catch 22.” (Pl.’s Reply at 8).

Further, Hines argues that to the extent merits discovery According to Equifax, determining whether an inquiry — exposes evidence indicating that Equifax shared consumer was “unauthorized” and “inaccurate” will therefore require data for permissible purposes, or that Equifax properly a direct review of each consumer’s individual dispute declined to investigate, the relevant individuals can be correspondence, review of other relevant documents, and \_ identified using representative or statistical methods and can testimony from consumers and from the representatives of be administratively removed from the class.

(Pl.’s Reply at 4 data inquirers to determine whether each disputed inquiry \_ n.3). was actually authorized, or whether the data inquirer believed they had some other permissible purpose to obtain the 13 According to the Federal Trade Commission, “[a] information. (Def’s Opp. at 14-16).

As a result, Equifax CRA must assume a consumer’s dispute is bona maintains that individual issues of fact predominate and will fide, unless there is evidence to the contrary. Such demand thousands of mini-trials to determine whether each evidence may constitute receipt of letters from class member has a valid claim. Indeed, Equifax argues consumers disputing all information in their files that adjudicating Hines individual claims will require a without providing any allegations concerning the review of documentation and testimony from Hines and from specific items in the files, or of several letters in Capital One to determine whether he applied for credit and similar format that indicate that a particular third authorized the Capital One Inquiry. and that the same process party (e.g., a ‘credit repair’ operator) is counseling must be followed for each Putative class member’ showing consumers to dispute all items in their files, consumer-specific evidence proving that the inquiries about regardless of whether the information is known them should not have occurred.” (Def’s Opp. at 15) (citing to be accurate.” Fed.

Trade Comm'n, 40 Years of Mazzei v. Money Store, 829 F.3d 260, 232-73 (2d Cir. 2016)). Experience With the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations, Plaintiff responds that class-wide proof can demonstrate, 2011 WL 3020575, at \*69 (July 2011) (citing 1990 and indeed has demonstrated, that upon notification of a Commentary on the Fair Credit Reporting Act, presumptively pone fide dispute from a consumer regarding Appendix to Part 600, comment 611-11). a hard inqui Equifax uniformly responds by sendin... 'dl quest.. y P. y \*23 With respect to "directness," Equifax argues that [Redacted] without further investigating the circumstances... determining whether a consumer class member directly of the inquiry, and therefore uniformly fails to satisfy.. ys. □□□.... disputed his or her inquiry will similarly require reviewing its obligations under Section 1681i to delete disputed Lo.. kc Loa..... individual dispute correspondence "for indicia that the information, reinvestigate disputed information, or decline to..... dispute was made by a [credit repair organization] or other reinvestigate for cause upon proper notice to the consumer...;. third party"—such as [Redacted]—and would require the (Pl.'s Reply at 5-9).

According to Hines, Equifax should. □ Lo. oe assessment of further evidence related to the class member's have conducted individualized inquiries into the accuracy Lee,. wae..... participation in generating and submitting the dispute to of disputed information, reviewed documentary evidence,: Lo. □□□□ □ make an affirmative determination that he or she "directly and considered statements from complaining consumers... disputed the alleged inaccuracy.

(Def's Opp. at 17-18; see and relevant data inquirers regarding whether the inquiry.... \_ oe. also Gobin Decl. § 14). To support this argument, Equifax was authorized or otherwise inaccurate within the thirty.... □□□, ... points to [Redacted] dispute letters which contain such indicia day window for reinvestigation established by § 1681i, or Lo.... of indirectness.

(Def's Opp. at 18; see also Pritchard Decl. 4 alternatively should have notified the complaining consumer. Loe Lo..... 3-5). Hines argues that these alleged indicia of indirectness at that time that he or she did not provide sufficient.....; are based in speculation and are supported by cherry-picked information to conduct such an inquiry. (Pl.'s Reply at 4).

Put. ca 4:.. □□□ evidence, and that to the extent "indirect disputes" exist 2022 WL 2841909 and preclude recovery, the relevant class members can be Info. Servs., Inc., No. 05-CV-1450, 2007 WL 710197, at identified and administratively removed from the class. (Pl.'s \*3 (N.D.N.Y. Mar. 6, 2007) ("These reasonable procedures Reply at 9-10). must include a requirement that the prospective users of information: (1) identify themselves; (2) certify the purposes Although Equifax raises legitimate concerns regarding the for which the information is sought; and (3) certify that feasibility of evaluating individualized issues of inaccuracy □ the information will be used for no other purpose.").

Under and directness, the crux of the class claim here is whether this section, “no consumer reporting agency may furnish a treating disputed hard inquiries as accurate without any consumer report to any person if it has reasonable grounds further investigation, sending [Redacted], and shifting the for believing that the consumer report will not be used burden to consumers to investigate allegedly unauthorized for a purpose listed in section 1681b[.]” 15 U.S.C. § inquiries by contacting their customers satisfies Equifax's 1681e(a). “To determine whether the consumer reporting reinvestigation obligations under § 1681i.

Hines has agency maintained reasonable procedures, the standard of demonstrated that Equifax's common course of conduct in —\_ conduct is what a reasonably prudent person would do under response to hard inquiry disputes is susceptible to class- — the circumstances.” Pietrafesa, 2007 WL 710197, at \*3 wide proof, (see, e.g., Equifax Dispute Policy Manual v.17 (quoting Dobson v. Holloway, 828 F. Supp. 975, 977 (M.D. at 37; Equifax Dispute Policy Manual v.22 at 35; Equifax § Ga. 1993)); see also Obabueki v. Int'l Bus.

Machines Corp., Training & QA at 3; Gobin Decl 9, 18, 20), and 145 F. Supp. 2d 371, 395-96 (S.D.N.Y. 2001) (liability may the legal sufficiency of Equifax's reinvestigation practices be imposed upon a credit reporting agency for failing to act may therefore be evaluated on a class-wide basis. While — reasonably in complying with the FCRA), aff'd 319 F.3d 87 inaccuracy and directness are “important matter[s]” bearing (2d Cir, 2003).

14 on individual class members’ ability to recover that may “have to be tried separately,” Bouaphakeo, 577 U.S. at 453— 14 54, or may require developing a method of administratively Notably, only one court m this Circuit has so.. evaluated claims brought specifically for violations removing individuals from the class, issues regarding the. Ley of § 1681e(a).

See Pietrafesa, 2007 WL 710197, legal sufficiency of Equifax's common course of conduct predominate over these individualized issues. Accordingly, at \*4 (finding on summary judgment that these individualized issues do not defeat predominance. defendant agency complied with the requirements enumerated in § 1681e and that plaintiff “failed to Therefore, despite Equifax's legitimate concerns regarding identify any deviations from the standard of care to individualized accuracy and directness issues, I find that be used by credit reporting agencies in maintaining... reasonable procedures to comply with §§ 1681b common legal questions susceptible to class-wide proof □ predominate such that Plaintiff's claims under § 1681i and and 1681c”).

N.Y. Gen. Bus. Law § 380-f are amenable to class resolution. \*24 In turn, “[t]o prove a violation of section 1681b, a plaintiff must show that credit information was obtained for an impermissible purpose.” Ogbon, 2013 WL 1430467, at... \*10 (quoting Stonehart v. Rosenthal, No. 01 Civ. 651 (SAS), b. Section 1681e(a) — Capital One Subclass Claims 2001 WL 910771, at \*3 (S.D.N.Y.

Aug. 13, 2001); citing *Because the statutes reference one another*, the Court *er!* v. *Am. Express*, 12 Civ. 4380 (ER), 2012 WL 2711270, considers the Reasonable Procedures claims brought on at \*2 (S.D.N.Y. July 9, 2012)). “Conversely, a showing of behalf of the Capital One Subclass under sections 4 permissible purpose is a complete defense.” *Sronehart*, 1681e(a) and 1681b together.

Section 1681e(a) requires 2001 WL 910771, at \*3 (citing *Advanced Conservation* that consumer reporting agencies “maintain reasonable YS. *Jvc. v. Long Island Lighting Co.*, 934 F. Supp. 53, 54 procedures designed... to limit the furnishing of consumer \_— (E-D.N.Y. 1996)). Further, “[t]he fact that a consumer report reports to the purposes listed under section 1681b....

18 furnished for an impermissible purpose does not result These procedures shall require that prospective users of in automatic liability. Liability is imposed only when the the information identify themselves, certify the purposes | Consumer reporting agency either willfully or negligently for which the information is sought, and certify that the ails to maintain reasonable procedures to avoid violations of, information will be used for no other purpose.” 15 U.S.C. □□ § 1681b.” *Pietrafesa*, 2007 WL 710197, at \*3 (internal § 1681e(a); see also *Pietrafesa v. First Am.*

*Real Est.* uotation marks and alterations omitted); see also *Betz v.* 2022 WL 2841909 *Matte*, No. 12-CV-5946 (SJF) (ETB), 2013 WL 5603846, that defense.” /d. Here again, *Equifax's* common course at \*2 (E.D.N.Y. Oct. 10, 2013) (“To state a claim based on of conduct and generally applicable procedures are the Section 1[6]81b of the FCRA, ‘a plaintiff must allege both = predominant concern, rather than their application to each that the defendant used or obtained the plaintiff’s credit report class member’s disputed inquiry.

Further, while *Equifax* for an impermissible purpose, and that the violation was argues that liability requires a finding that *Equifax* had a willful or negligent.’ ”) (quoting *Per/*, 2012 WL 2711270, at “reason to believe” that Capital One acted improperly in \*2), each instance (*Def’s* *Opp.* at 19), the high volume of Capital One-related dispute letters suggests that representative or In connection with the § 1681e(a) claims of the Capital statistical proof may be used to evaluate whether, under the One Subclass, Plaintiff argues that in addition to common circumstances, *Equifax* should have known Capital One was factual questions regarding the procedures used by *Equifax* improperly using consumer data.

(See *Pl.’s Reply* at 10; see to prevent unauthorized disclosures to its customers also *Sartell Decl.* 3-5). generally and to Capital One in particular, common legal questions regarding the reasonableness of those procedures predominate over any individualized issues. (*P’s Mem. c.* Section 1681b(c)(3) — *Post Dispute Publication Subclass* at 16; see also *Pl.’s Reply* at 10-11).

*Equifax* argues that even assuming class members’ disputed Capital One \*25 Under Section 1681b(c)(3), “a consumer reporting inquiries correspond with truly unauthorized transactions, —\_ agency shall not furnish to any person a record of inquiries there are other permissible purposes

for obtaining consumer information in connection with a credit or insurance transaction that is not information that Capital One may have had, such that “to be initiated by a consumer.” 15 U.S.C. § 1681b(c)(3).

As Equifax adjudicate the class members’ [claims], the factfinder would report, there is a scarcity of case law evaluating claims brought have to delve even more deeply into the class member—under this section. (See Def’s Opp. at 11 n.8). Nevertheless, specific facts to determine if Capital One had any permissible purpose—the application of the provision is straightforward—an agency purpose to obtain their consumer report,” and would need to prove this provision by furnishing to any person a record prove that Equifax had a “reason to believe” that Capital One — of an inquiry that corresponds with a credit or insurance would not use the data for a permissible purpose.

(Def’s Opp. — transaction that the consumer did not initiate. at 19). Plaintiff contends that the Post-Dispute Publication Subclass Although individual questions concerning whether Capital — claims — raise “predominating factual issue[s]” regarding One had a permissible purpose to obtain consumer whether a consumer disputed a hard inquiry with Equifax information are relevant here, such questions are secondary — and “whether Equifax prepared a credit report about that to and outweighed by common questions concerning consumer for one of its customers after the dispute that the reasonableness of Equifax’s standardized procedures. included the disputed hard inquiry[,]” which “implicate[ ] the Specifically, the Court is satisfied that questions of law — legal issue of whether such conduct violates” the provisions of concerning whether Equifax’s procedures meet the minimum § 1681b(c)(3).

(Pl.’s Mem. at 15-16). Equifax argues that in requirements established by § 1681e(a) and were objectively — addition to proving that each class member’s disputed inquiry reasonable as applied to its transactions with Capital One, was, in fact, “unauthorized,” these claims require proving are susceptible to common proof and predominate over that each class member’s disputed hard inquiry was shared those individualized issues that can be adjudicated separately. with a third party, and that there is no common evidence Indeed, even if showing a permissible purpose as to certain — available to establish that element of the claim since Equifax class members would serve as a complete defense, the fact — goes not retain copies of the consumer reports it transmits that such a defense “may arise and may affect different to its customers.

(Def’s Opp. at 20) (citing Pl.’s Mem. at 8: class members differently does not compel a finding that — Def’s Suppl. Resp. to Pl.’s Interrog. No. 6; Leslie Depo. Tr. individual issues predominate over common ones.” In re Visa — at 65:19-66:7, 83:4—20: Gobin Decl. | 22). Hines replies that Check, 280 F.3d at 138 (quoting Waste Mgmt. Holdings, the MDB records reflecting the sale of credit reports to third Inc. v. Mowbray, 208 F.3d 288.

296 (1st Cir. 2000)). “[T]he parties should suffice as common evidence to prove these question for purposes of determining predominance is not claims, and further contends that certification should

not be whether a defense exists, but whether the common issues defeated simply because Equifax—a data broker—maintains will predominate over the individual questions raised by unreliable records.

(P1.'s Reply at 11-12). 2022 WL 2841909 (3). In assessing superiority, Rule 23 advises that courts might In general, “[c]ommon issues predominate where individual — consider “(A) the class members’ interests in individually factual determinations can be accomplished using computer — controlling the prosecution or defense of separate actions; records, clerical assistance, and objective criteria, thus (B) the extent and nature of any litigation concerning the rendering unnecessary an evidentiary hearing on each claim.” controversy already begun by or against class members; (C) Shady Grove, 293 F.R.D. at 306 (quoting *Smilow v. Sw.* the desirability or undesirability of concentrating the litigation *Bell Mobile Sys's., Inc.*, 323 F.3d 32, 40 (1st Cir.

2003)). of claims in the particular forum; and (D) the likely difficulties Here, using computer records and objective criteria, Equifax § in managing a class action.” Fed. R. Civ. P. 23(b)(3)(A) — has been able to identify and aggregate those New Yorkers (D). “Rule 23(b)(3) class actions can be superior precisely who received [Redacted] and about whom information was because they facilitate the redress of claims where the costs of transmitted after a hard inquiry dispute was made (Def's bringing individual actions outweigh the expected recovery.” Suppl.

Resp. to Pl.'s Interrog. No. 6 at 2), and has suggested *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d at 130; that Log F and MDB records generated at the time of delivery — see also *Amchem Prods., Inc.*, 521 U.S. at 617 (“The policy can be cross referenced against Equifax's billing records at the very core of the class action mechanism is to overcome to determine whether the product delivered included the \_ the problem that small recoveries do not provide the incentive disputed hard inquiry information (*Leslie Depo.*

Tr. at 15:18— for any individual to bring a solo action prosecuting his or 17:24). her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth Importantly, though, these computer records are not able to someone's (usually an attorney's) labor.”) (quoting *Mace v.* determine whether the consumer initiated the transaction that *Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir.

1997)). caused the hard inquiry. And unlike the FCRA Class claims, which focus predominantly upon the propriety of Equifax's Plaintiff argues that the “consumer claims” here are uniform reinvestigation practices in response to hard inquiry “particularly appropriate for class resolution,’ where disputes, and the Capital One Subclass claims, which “Equifax has violated the rights of [sic] large number of predominantly turn on the reasonableness of its standardized geographically dispersed persons to such an extent that the procedures in preventing the disclosure of consumer data cost of pursuing individual litigation to seek recovery against for impermissible purposes, the Post-Dispute Publication a well-financed adversary is not feasible,” and where “the Subclass

claims turn entirely on the individualized, non-alternatives to a class action are either no recourse for tens consumer-initiated nature of the inquiry.

Put differently, the of thousands of consumers, or... a multiplicity of thousands Post-Dispute Publication Subclass claims do not rely on of scattered suits resulting in the inefficient administration a uniform or standardized practice adhered to by Equifax, of litigation.” (Pl.’s Mem. at 17). Equifax does not contest but hinge on whether the individual consumer initiated the | whether the superiority requirement has been satisfied.

The underlying transaction. Thus, while aggregate proof may be Court agrees that the class action mechanism typically offers available to administratively manage certain aspects of the amore efficient method of redressing harms caused by FCRA Post-Dispute Publication claims, assessing Equifax’s conduct violations. See, e.g., 7 Newberg on Class Actions § 21:4 raises predominantly individualized questions and is not (Sth ed.

2021) (“FCRA matters remain good candidates for suitable to class adjudication. class actions—they tend to involve a large number of harmed individuals with small claims, often disbursed throughout the \*26 Because the predominance requirement is not satisfied □ country. Absent a class suit, many FCRA violations would with respect to these claims, I respectfully recommend that remain un-remedied.”).

However, the nature and extent of Your Honor deny class certification with respect to the Post- □□ the Rivera Action gives me pause with respect to nationwide Dispute Publication Subclass. FCRA Class. Hines specifically brought the Rivera Action to the Court’s attention to stand for the proposition that certification in 2. Superiority □: □ □ Rivera “directly supports his position that class certification Rule 23(b)(3) requires a plaintiff establish “that a class 1 this matter is warranted and should be granted in this action is superior to other available methods for fairly and case.” (ECF No. 47).

While “a multiplicity of class-action efficiently adjudicating the controversy.” Fed. R. Civ. P.23(b) — filings is not necessarily ‘needless,’ ” and “may aid a district 2022 WL 2841909 court in determining, early on, whether class treatment is as compensation, result in the unequal distribution of those warranted,” China Agritech, Inc. v. Resh, 138 S. Ct. 1800, funds.”); Rhonda Wasserman, Dueling Class Actions, 80 B.U.

1811 (2018), the maturity of this first-filed,’° duplicative 1. Rev. 461, 542 (2000) (“Whenever two or more class litigation that “has already begun by... class members” @ctions are filed on behalf of the same class, seeking the militates against certifying an overlapping nationwide FCRA same relief for the same wrong, numerous problems result: class here. Fed.

R. Civ. P. 23(b)(3)(B). (1) scarce resources are wasted, (2) counsel are subject to intense pressure to settle, (3) class counsel, class members 15 and the court all are compelled to make important

decisions The first-filed rule is a well-established Second without complete information, and (4) courts are required Circuit doctrine, based on the principle that ‘where to grapple with complex and difficult preclusion questions. there are two competing lawsuits, the first suit These problems seriously undermine the utility of the class should have priority, absent the showing of balance action vehicle.”). of convenience or special circumstances giving priority to the second.” \* Thomas v. Apple-Metro, In addition to sharing the same class members and the Inc., No. 14 Civ.

4120 (VEC), 2015 WL 305384, same reinvestigation claims brought under the FCRA, at \*2 (S.D.N.Y. Feb. 5, 2015) (quoting First City the sharing of discovery with the Rivera Action further Nat'l Bank & Trust Co. Simmons, 878 Fad 76, demonstrates the potential for such concerns.

As has been (2d Cir. 1989). This rule “embodies considerations noted, Hines has secured the reproduction of substantial of judicial administration and conservation of evidence from the Rivera Action to demonstrate that Rule resources by avoiding duplicative litigation and 23's requirements are satisfied here. (Pritchard Decl. 4 2 honoring the plaintiff's choice of forum.” Travis v (noting that [Redacted] dispute letters produced in Rivera Navient Corp -, 284 F. Supp. 3d 335, 348 (E.D.N.Y. were reproduced here); see also ECF No. 27).

On one hand, 2018) (quoting Emp'rs Ins. of Wausau v. Fox coordinating discovery among the two actions enables certain Enim't Grp., Inc., 522 F.3d 271, 274-15 (2d Cir. efficiencies by preventing duplication of effort in the fact 2008). See also, e.g., Baduria v. Sealifi Holdings, gathering process; on the other, the efficiencies that result Inc., 451 F. Supp. 3d 248, 297 (E.D.N.Y.

2020) are likely outweighed by the inefficiencies of having multiple (transferring a putative class action to the Western lawyers from multiple firms duplicating efforts to review the District of Louisiana under the “first filed” rule). same materials on behalf of the same class members but on But see Shimon v. Equifax Info. Servs. LLC, No. behalf of different named class representatives in different 18-CV-2959 (BMC), 2018 WL 4906245, at \*3 fora, thereby increasing attorneys' fees, reducing the amount (E.D.N.Y.

Oct. 9, 2018) (finding that the first- of compensation available to the class upon recovery, and filed rule should not be applied to stay or dismiss increasing the risk that inconsistent decisions will be made claims where putative class actions do not entirely based on the same proffered evidence. overlap), aff'd, 994 F.3d 88 (2d Cir. 2021). \*27 In general, parallel and overlapping class actions Beyond issues regarding the nature and cxtent of the create problems related to duplicative litigation and fees, Rivera Action, the remaining Rule 23(b)(3) superiority risk disparate verdicts, and undermine the goals of judicial factors do not weigh heavily toward class certification. economy that the class action device was meant to advance. \_ Indeed, the existence of an overlapping action concerning See, e.g., Galvan v. Mnuchin, No. 20-CV-4511, 2020 WL the same claims and class members indicates that there is 8259110, at \*3 (N.D.

Ill. Oct. 15, 2020) (“Considerable no strong interest in individual control of litigation and authority counsels against certifying a redundant class.”) no particular desirability in concentrating litigation in this (collecting authorities); 7B C. Wright, A. Miller, & M. — forum.

Finally, the likely difficulties of managing a class Kane, Federal Practice and Procedure § 1798.1 (3d ed. action would likely be exacerbated in managing multiple, 2022) (“[C]ompeting and duplicative actions not only overlapping class actions, notwithstanding the presence of generate unnecessary litigation and duplicative fees, but also shared class counsel.

Accordingly, with all due respect they may result in delay, pose complicated problems of to the certification decision of the Northern District of judicial coordination in some instances, increase the risk Georgia, 16 7 respectfully recommend that the Court deny of disparate verdicts raising serious questions of fairness, certification of the nationwide FCRA class in order to and, in situations in which there are limited funds available — ayoiq the concerns created by overlapping class actions.

2022 WL 2841909 Alternatively, I recommend that the Court order further and (iv) the resources that counsel will commit to representing briefing from the parties on the issue of whether a stay, the class.” Fed. R. Civ. P. 23(g)(1)(A)(@)-(iv).

The court may consolidation, or transfer of proceedings is warranted under \_ also consider “any other matter pertinent to counsel's ability the circumstances. See, e.g., China Agritech, 138 S. Ct. at to fairly and adequately represent the interests of the class.” 1811 (noting that “district courts have ample tools at their Fed. R. Civ. P. 23(g)(1)(B). Defendant raises no objections to disposal to manage [overlapping class] suits, including the Plaintiff's proposed class counsel. ability to stay, consolidate, or transfer proceedings.”).

Although Plaintiff is represented by five firms, the proposed 16 Smith v. Bayer Corp., 564 U.S. 299, 317 (2011) order submitted in connection with his motion for class (noting that federal courts are expected “to certification lists only four firms. (See Proposed Order at 3, 5 apply principles of comity to each other's class (omitting Mallon Consumer Law Group, PLLC)).

For those certification decisions when addressing a common four firms, Plaintiff has submitted exhibits demonstrating the dispute”); see also Mast, Foos, & Co. v. Stover experience, knowledge, and resources of those four listed Mfe. Co., 177 US. 485, 488 (1900) (“Comity is firms that satisfy the factors outlined in Rule 23 (g). (See Firm not a rule of law, but one of practice, convenience, Bios).

Without documentation to consider the credentials and expediency. It is something more than mere of the Mallon Consumer Law Group, PLLC or a request courtesy, which implies only deference to the that such firm be appointed class counsel, however, the opinion of others, since it has substantial value in Court finds that it would be inappropriate to include Mallon securing

uniformity of decision, and discouraging Consumer Law Group, PLLC in an order appointing class repeated litigation of the same question.”). counsel.

Accordingly, I respectfully recommend that Your Honor appoint Francis Mailman Soumilas, P.C., Robert S. \*28 Despite this recommendation, I find that the Rule 23(b) Sola, P.C., Skaar & Feagle, LLP, The Adkins Firm, □□□ as (3) superiority factors weigh in favor of certifying the New gJacg counsel. York Subclass and Capital One Subclass. With respect to those subclasses, the likely cost of litigation as compared with the potential recovery indicates that class members have no strong interest in individually controlling the CONCLUSION prosecution or defense of separate actions.

Those subclasses For the reasons set forth above, I respectfully recommend that also contemplate separate claims not covered by the Rivera Your Honor (1) grant Plaintiff's request for certification of action, ve that the extent ee that tigation the New York Subclass, and Capital One Subclass under Rule ‘Wlibation of NYFCRA ches nina. he tenn 23(b)(3); (2) deny Plaintiff's request for certification of the Il equipped to apply nationwide FORA Class under Rule 23(b)(3), or alternatively ork low Finally the hoe no patil manageability order further briefing ‘rom the parties on the sue of whether ° □ a stay, consolidation, or transfer of proceedings is warranted concerns implicated by these subclass claims. in light of the pending Rivera Action; (3) deny Plaintiff's Accordingly, because the Rule 23(a) and Rule 23(b)(3) factors request for certification of the Post-Dispute Publication are satisfied, I respectfully recommend that Your Honor grant sues ns a ae ) ” oe ee □□□ Plaintiff's motion for class certification with respect to the certification un ue. ( x ) with respect to the □□ □□ New York Subclass and the Capital One Subclass.

Subclass; (5) appoint Plaintiff as the class representative and Francis Mailman Soumilas, P.C., Robert S. Sola, P.C., Skaar & Feagle, LLP, The Adkins Firm, P.C. as class counsel; and, D. Rule 23(g)—Class Counsel (6) direct the parties to submit to the Court within thirty days Rule 23(g) requires that “a court that certifies a class must proposed forms and schedules for providing notice to the appoint class counsel.” Fed.

R. Civ. P. 23(g). The Rule "tified classes. requires that the court consider “(i) the work counsel has done in identifying or investigating potential claims in the | “2Y Objections to the recommendations made in this Report action; (ii) counsel's experience in handling class actions, | <sup>TM</sup> must be filed with the Clerk of the Court and the Honorable other complex litigation, and the types of claims asserted in Rachel P. Kovner within fourteen (14) days of receipt hereof. the action; (iii) counsel's knowledge of the applicable law: Failure to file timely objections waives the right to appeal the 2022 WL 2841909 District Court's Order.

See 28 U.S.C. § 636(b)(1); Fed. R. Civ. All Citations P. 72; Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989). Not Reported in Fed. Supp., 2022 WL 2841909 End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works. Filings (1)

Title PDF Court Date Type 1. Docket 1:19-CV-06701 — E.D.N.Y. Nov. 27, 2019 Docket Hines v. Equifax Information Services LLC History (3) Direct History (2) Fa 1.

Hines v. Equifax Information Services, LLC r= 2022 WL 2841909, E.D.N.Y., July 16, 2022 Report and Recommendation Adopted as Modified by Fa 2. Hines v. Equifax Information Services LLC 2024 WL 4132333, E.D.N.Y., Sep. 10, 2024 Related References (1) 3. Hines v. Equifax Information Services LLC 2024 WL 4930116, E.D.N.Y., Dec. 02, 2024 2021 WL 4784280 the Federal Trade Commission (“FTC”), and Citibank, N.A.

2021 WL 4784280 (“Citibank”). I Sequium has moved for judgment on the Only the Westlaw citation is currently available. pleadings pursuant to Rule 12(c) of the Federal Rules of United States District Court, S.D. New York. Civil Procedure. Experian, Equifax, Trans Union, and Verizon (“joint defendants”) have jointly filed motion papers but Eric Andrew PEREZ, Plaintiff, under two different rules.

As Equifax has not yet filed its v. answer, it has moved to dismiss the complaint pursuant to EXPERIAN, et al., Defendants. Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted, while 20-CV-9119 (PAE) (JLC) Experian, Trans Union, and Verizon, which have each filed an | answer, have moved for judgment on the pleadings pursuant Signed October 14, 2021 to Rule 12(c).

For the reasons set forth below, I recommend. that both motions be granted, but that Perez be given leave to Attorneys and Law Firms file an amended complaint as to certain of his claims. Eric Andrew Perez, New York, NY, Pro Se. I Citibank appears to have been served via certified Cealagh P. Fitzpatrick, Jones Day, Courtney Sophie Stieber, return receipt to a registered agent at the CT Seyfarth Shaw LLP, New York, NY, for Defendant Experian.

Corporation System but has not responded to the Courtney Sophie Stieber, Seyfarth Shaw LLP, New York, NY, complaint to date. Dkt. No. 19. As discussed infra, for Defendant Equifax. the Court previously dismissed all claims against the FTC. Dkt. No. 11. Camille Renee Nicodemus, Schuckit & Associates, P.C., Zionsville, IN, Courtney Sophie Stieber, Seyfarth Shaw LLP, New York, NY, for Defendant Trans Union.

I. BACKGROUND Howard Alan Fried, McGivney Kluger Clark & Intoccia, PC., A. Perez's Allegations Courtney Sophie Stieber, Seyfarth Shaw LLP, Danit Sibovits, Dean L. Pillarella, McGivney, Kluger, Clark & Intoccia, P.C., following facts are taken from the complaint. Complaint New York, NY, for Defendant Verizon. (“Compl.”), Dkt. No. 2.7 All of its factual allegations are Brendan Hoffman Little, Lippes Mathias LLP, Buffalo, NY, accepted as true for purposes of both motions.

See, e.g., for Defendant Sequium Asset Solutions. Littlejohn v. City of New York, 795 F.3d 297, 306 (2d Cir. 2015) (motion to dismiss); Famous Horse Inc. v. 5th Ave. Photo Inc., 624 F.3d 106,

108 (2d Cir. 2010) (motion for REPORT & RECOMMENDATION judgment on the pleadings).

Because Perez is proceeding pro se, the Court also considers allegations made for the first time JAMES L. COTT, United States Magistrate Judge in his response opposing the motions. See, e.g., *Saudager v. Walgreens Co.*, No. 18-CV-437 (KPF), 2019 WL 498349, at \*1 To the Honorable Paul A. Engelmayer, United States \*1 n.1 (S.D.N.Y. Feb. 8, 2019) (“A district court deciding a District Judge: motion to dismiss may consider factual allegations made by a pro se party in his papers opposing the motion.” (quoting Pro se plaintiff Eric Andrew Perez brings this action alleging *Walker v. Schult*, 717 F.3d 119, 122 n.1 (2d Cir.

2013))). violations of the Fair Credit Reporting Act (“FCRA”), the Fair Debt Collection Practices Act (FDCPA”), and the 2 Attached to the complaint are exhibits that appear Federal Trade Commission Act (“FTC Act”) against Experian.. / to be the credit reports issued by consumer Information Solutions (“Experian”), Equifax Information reporting agency (“CRA”) defendants Equifax, Services LLC Equifax”), Trans Union, LLC (“Trans Experian, and Trans Union (“CRA defendants”), Union”), New York SMSA Limited Partnership d/b/a Verizon.. □: with annotations, presumably made by Perez, Wireless (“Verizon”), Sequium Asset Solutions (“Sequium”), indicating that many of the outstanding debts listed 2021 WL 4784280 on the reports are disputed, as well as emails sent by “2 Perez was born on June 27, 1976.

Compl., Ex. 4. He is Perez to the FTC. Compl., Exhibits (“Ex.”) 1-12 a discharged United States Marine Corps veteran who suffers The exhibits are properly considered under Rule from post-traumatic stress disorder (“PTSD”) and traumatic 10(c), which provides that “[a] copy of a written brain injury (“TBI”). Plaintiff's Opposition (“Pl. Opp.”), Dkt. instrument that is an exhibit to a pleading is a part No. 73, at 1.

Perez alleges that defendants have developed of the pleading for all purposes.” In the context of a “system of misreporting and manipulating credit files and a Rule 12(b)(6) motion, courts “may permissibly scores for their own profit” (id. at 2) as part of a “civil criminal consider documents other than the complaint,” conspiracy” depriving him of his rights and charging him with including “[d]ocuments that are attached to the “socioeconomic oppression... in construction and collusion complaint or incorporated in it by reference.” Roth with various federal and state agencies.” Compl.

25; Pl. Opp. v. Jennings, 489 F.3d 499, 509 (2d Cir. 2007). al 3. The same applies to Rule 12(c) motions. *Lively vy. WAERA Inv. Advisory Grp., Inc.*, 6 F.4th 293 Perez alleges the CRAs Experian, Equifax, and Trans 305 (2d Cir. 2021) “[C] ouris may on 4 Rule Union have all misreported accounts to his credit file and 12(c) motion—just as on a Rule 12(b)(6) motion inaccurately reported his credit.

Compl. 4927, 29. He alleges —consider extrinsic material that the complaint the following inaccuracies: “‘incorporate[s] by reference,’ that is “integral” to the complaint....” (citation omitted). Table 1: Alleged Inaccuracies on Experian Report Reported Alleged by Perez Capital Bank \$21 \$0 Verizon \$421 \$0 Educational 4 accounts with 9 Educational accounts late payments account in forbearance and then \_ disputed using the borrowers’ defense application Inquiries 9 3 The page numbers cited are those produced by the Id. 929, Ex. 1 at 23-44.° Electronic Case Filing (“ECF”) system.

Table 2: Alleged Inaccuracies on Equifax Report Reported Alleged by Perez Best Buy \$753 \$0 Capital Bank \$136 \$0 Lead Bank \$259 \$0 Id.; Ex. 1 at 44-65. Table 3: Alleged Inaccuracies on Trans Union Report“ Reported Alleged by Perez 2021 WL 4784280 Capital Bank \$136 \$0 Best Buy \$753 \$0 CBNA “Self” \$259 \$100 Educational 4 loans paid 4 loans “on loans on time, and time placed in 6 educational forbearance loans with 9 late borrowers defense payments application pending” Inquiries 7 4 furnished to the CRAs.

Jd. 9/42, 47. Perez claims that he has Perez attaches a “Trans Union Credit Report as of provided information to validate that the debt was assigned 10-29-20.” However, it appears to be a duplicate of to the wrong person, such as his driver's license, social the Equifax Credit Report from October 14, 2020. security number, proof of residence, and proof of payment.

See Compl., Ex. | at 65-84. For the purposes of the Id. 443. Despite Perez's attempts to dispute the information, motion, the Court will take Perez's allegations in Citibank, Verizon, and Sequium have allegedly failed to his Complaint as true reflections of the Trans Union remove the inaccurate information and continued to furnish credit report, although there is no report attached. it to the CRAs, without informing them that the information See Compl.

728. is disputed by Perez. Id. 944, 50. Perez also asserts that Sequium failed to issue him a debt settlement letter after his Id. §29. Lastly, Perez alleges that Experian, Equifax, and request. Id. 937.5 Trans Union have misreported his employment history by providing an incomplete history of United Way of America, J 5 & J Towers, Kew Forest, and Stream America despite Perez Debt settlement offers are letters that offer having additional employment history, although he does not a specific amount of money in exchange for specify which employers are missing.

Jd. §28. Experian lists forgiveness of the consumer's debt. See, eg., United Way of America and JJ Auto Repair, see Ex. 1 at 43, Cortez v. Forster & Garbus, LLP, 999 F.3d 151, and Equifax lists Fresh Direct as his employer, see Ex. 1 at 63. 156 (2d Cir. 2021) (describing debt settlement Perez contends that the CRA defendants arbitrarily assigned offers). him credit scores as part of a “scheme to disenfranchise en \*3 Perez's credit file allegedly has several errors that he mass” by the CRA defendants and federal and state agencies. \_ claims indicate proof of manipulation and control.

Pl. Opp. Id. 930. As part of the scheme, Perez alleges that the CRA at 6. For example, Perez complains that his gender is not defendants have assigned an “illegal synthetic identity toa □□ included on the reports, his changes of physical addresses confidential informant.” /d. 431. Perez alleges that Citibank is delayed and not reported at the same time, and he still also an active participant in the “alternate credit scheme.” Id. \_ receives Experian notifications for new sex offenders added 438.

Additionally, he alleges that Verizon provided access to to his former zip code of 10304. Id. at 6-7. © Perez has Perez's cable, internet, and cell phone accounts to informants allegedly reported the scheme and his claims of identity and law enforcement without warrants and passed off the theft to the FTC on more than 12 occasions without any “debt of an unknown informant into his account and reported sacnonse.

Compl. 76-78: Exs. 2-12 (11 emails from Perez the debt to three credit bureaus after the debt was settled.” Id. to FTC from March 14, 2020 through October 6, 2020). 35-36. Perez contends that as a result of the inaccuracy of his credit. reports, he is unable to increase his existing credit and was Perez has contacted Citibank, Verizon, and Sequium to denied economic opportunities, including entrepreneurship dispute information that he believed was inaccurate and programs, more than 50 employment opportunities, and 30 2021 WL 4784280 opportunities for personal credit.

Moreover, he alleges that Memorandum of Law in Support of Their Motions (“Joint he has suffered from character defamation and experienced Defs. Mem.”), Dkt. No. 65. As Experian, Trans Union, and pain and suffering over a ten-year period. Compl. {{79-83; Verizon have all filed answers to the complaint, they moved Pl. Opp. at 6. for judgment on the pleadings. /d. at 1 n.1.

Equifax has not yet filed its answer and therefore moved to dismiss the complaint 6 Experian offers Sex Offender Monitoring to for failure to state a claim. Td. Specifically, they argue that inform users of all registered sex offenders Perez failed to state a claim for @ violation of the FORA living within the user's area and notify the because: (1) a CRA cannot be held liable for the reporting of user when a new offender is added.

Non- employment information; (2) the inaccurate reporting claim is Credit Monitoring Services, EXPERIAN, [https:// based on a false allegation that defendants were engaged in a www.experianpartnersolutions.com/identity-criminal-conspiracy](https://www.experianpartnersolutions.com/identity-criminal-conspiracy), G) Equifax, Experian, and Trans Union management/non-credit/ (last visited Oct. 12, are not furnishers of information; (4) there is no private right 2021). of action to assert a claim under § 1681s-2(a) against Verizon; and (5) Perez failed to allege that Verizon was notified of Perez's dispute by any CRA as required by § 1681s-2(b).

Jd. B. Procedural History at 1-2. The joint defendants also argue that Perez failed to state a claim for a violation of the FDCPA because they are Perez commenced this action on October 30, 2020, asserting not debt collectors. Id. at 2.7 claims under the FCRA, 15 U.S.C. §§ 1681 et seq., against all defendants, including a violation of § 1681s-2(a) by 7 furnishing information about him despite notice that it is Despite the parties' briefing on the issue (Joint inaccurate, and a violation of § 1681s-2(b) by failing to Defs.

Mem. at 13-14), Perez's criminal negligence investigate upon notice of dispute and furnishing information claims were only alleged against the FTC and have without notice that the reported information is under already been dismissed. See Dkt. No. 11. Similarly, investigation. Compl. {[/42—45; 46-48. He also asserts claims Perez's claims of character defamation under state under the FDCPA, 15 U.S.C. §§ 1692-1692p, for the false law were also only made against the FTC and were representations by all defendants concerning the legal status also dismissed. /d.; Compl.

83. Therefore, the of a debt. Id. 9953-54. Perez seeks damages as well as Court need not address those claims. declaratory and injunctive relief. Id. { | 20-21. Although \*4 On June 13, 2021, Perez submitted his response to the Perez initially included the FTC as a defendant, the Court — motions, restating his claims against the CRAs for failure to dismissed all claims against the FTC and all claims brought report his complete and accurate information (Pl.

Opp. at 3— under the FTC, 15 U.S.C. § 45, in an Order of Service dated 4, 9-11), his claims against Verizon, id. at 12-13, and his January 6, 2021. Dkt. No. 11. claims against defendants as debt collectors, id. at 13-14.

On July 1, 2021, Sequium submitted reply papers. Sequium's On May 14, 2021, Sequium moved for judgment on the — Reply Brief in Support Of Its Motion ("Sequium Reply"), pleadings pursuant to Rule 12(c), arguing that Perez fails to Dkt. No. 75.

On July 2, 2021, the joint defendants submitted state a claim upon which relief may be granted. Defendant — reply papers as well. Defendants' Joint Reply to Plaintiff's Sequium's Brief in Support of its Motion ("Sequium Mem."), — Opposition ("Joint Defs. Reply"), Dkt. No. 76. Dkt. No. 62.

In particular, Sequium argues that: (1) Perez's claims under § 1681s-2(a) fail because the FCRA does not provide Perez with a private right of action; (2) his claims IL DISCUSSION under § 1681s-2(b) of the FCRA fail because Sequium did not act as a furnisher of information regarding the debt at issue; and (3) his claims under the FDCPA fail because it does not A. Applicable Standards have a requirement to issue debt settlement letters.

Sequium Mem. at 1-2, 5. 1. Motion to Dismiss Pursuant to Rule 12(b)(6) On May 17, 2021, Equifax, Trans Union, Experian, and = Under Rule 12(b)(6), a complaint may be dismissed for

Verizon jointly filed motion papers. Defendants' Joint "failure to state a claim upon which relief can be granted." 2021 WL 4784280 Fed. R. Civ. P. 12(b)(6).

To survive a Rule 12(b)(6) motion, a motions, the court must take all factual allegations in the plaintiff must plead facts in his complaint that "state a claim as true and draw all reasonable inferences in the to relief that is plausible on its face" and that satisfy Rule non-moving party's favor. See, e.g., *Famous Horse Inc.*, 624 F.3d 8(a)(2). *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *F.3d* at 108).

*Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Rule 8(a)(2) requires a "short and plain statement of the claim showing that the pleader is entitled to relief." *id.* at 577-78. Standards Applicable to Pro Se Litigants (quoting Fed. R. Civ. P. 8(a)(2)). A claim is facially plausible when there exists "factual content that allows the court to \*5 "A document filed pro se is to be liberally construed." draw the reasonable inference that the defendant is liable = *Fyckson v. Pardus*, 551 U.S. 89, 94 (2007) (citing *Estelle for the misconduct alleged.* " *id.* at 663 (citing *Twombly*, 550 v. *Gamble*, 429 U.S. 97, 106 (1976) (internal quotations U.S. at 556).

Nevertheless, this standard requires a plaintiff's omitted)). Courts within this Circuit grant pro se litigants pleadings to sufficiently "nudge[ ] [his] claims across the line a " 'special solicitude' by interpreting a complaint filed from conceivable to plausible." *Twombly*, 550 U.S. at 570. pro se 'to raise the strongest claims that it suggests.' " *Hardaway v. Hartford Pub.*

*Works Dep't*, 879 F.3d 486, 489 When considering a motion to dismiss, a court must accept — (2d Cir. 2018) (quoting *Hill v. Curcione*, 657 F.3d 116, 122 all factual allegations in the complaint as true and draw all □□□ Cir. 2011)).

However, the "duty to liberally construe reasonable inferences in favor of the plaintiff. *Littlejohn*, 795g plaintiff's complaint [is not] the equivalent of a duty to F.3d at 306 (citing *Ofori-Tenkorang v. Am. Int'l Grp., Inc.*, 460 re-write it." *Geldzahler v. N.Y. Med. Coll.*, 663 F. Supp. F.3d 296, 300 (2d Cir. 2006)). "A complaint need not include 2d 379, 387 (S.D.N.Y.

2009) (quoting 2 Moore's Federal 'detailed factual allegations,' but it must contain more than — Practice § 12.31[1][b] (2005), at 12-61 (internal quotation mere 'labels and conclusions' or 'a formulaic recitation of — marks omitted)).

Therefore, a court should "not hesitate to the elements of a cause of action.' " *JCG v. Ercole*, No. 11- dismiss a pro se complaint if it fails altogether to satisfy the CV-6844 (CM) (JLC), 2014 WL 1630815, at \*5 (S.D.N.Y. — pleading standard." *Henry v. Davis*, No. 10-CV-7575 (PAC) Apr. 24, 2014) (quoting *Iqbal*, 556 U.S. at 678) *Gnternal* = (JLC), 2011 WL 3295986, at \*2 n.5 (S.D.N.Y.

Aug. 1, 2011), quotations omitted), adopted by 2014 WL 2769120 (June 18, adopted by 2011 WL 5006831 (Oct. 20, 2011). 2014). A complaint containing only "conclusory allegations or legal

conclusions masquerading as factual conclusions” —\_ With these standards in mind, the Court will discuss each of will not survive a motion to dismiss. *Womack v. Capital* Perez's claims in turn, beginning with his claims under the *Stack, LLC*, No. 18-CV-4192 (ALC), 2019 WL 4142740, at FCRA. \*3 (S.D.N.Y.

Aug. 30, 2019) (quoting *Faber v. Metro. Life Ins. Co.*, 648 F.3d 98, 104 (2d Cir. 2011)). B. Claims under the Fair Credit Reporting Act 2. Motion for Judgment on the Perez contends that all of the defendants have violated the Pleadings Pursuant to Rule 12(c) FCRA. Compl. 9939-51.

The FCRA regulates consumer credit reporting agencies to ensure accuracy, confidentiality, Under the Federal Rules of Civil Procedure, a party may move relevancy, and proper utilization of consumer credit for judgment on the pleadings “[a]fter the pleadings are closed — information. 15 U.S.C. § 1681(b). It “places distinct — but early enough not to delay trial.” Fed.

R. Civ. P.12(c). \_ bligations on three types of entities: consumer reporting The standard for evaluating a motion for judgment on the — agencies, users of consumer reports, and furnishers of pleadings under Rule 12(c) is the same as the standard for —\_ information to consumer reporting agencies.” *Redhead v. Rule 12(b)(6) motion to dismiss for failure to state a claim.*

*Winston & Winston, P.C.*, No. 01-CV-11475 (DLC), 2002 WL See, e.g., *Ziemba v. Wezner*, 366 F.3d 161, 163 (2d Cir. 2004). 31106934, at \*3 (S.D.N.Y. Sept 20, 2002) (citing 15 U.S.C. “To survive a Rule 12(c) motion, [a] complaint must contain —\_gg 1681 ef seg.). Perez alleges claims under the FCRA against sufficient factual matter, accepted as true, to state a claim to —\_ both consumer reporting agencies (Experian, Equifax, and relief that is plausible on its face.” *Johnson v. Rowley*, 569 Trans Union) and alleged furnishers of information (Sequium F.3d 40, 43-44 (2d Cir.

2009) (quoting *Jgbal*, 556 U.S. at and Verizon). Accordingly, the Court will address the two 678) (internal quotation marks omitted). In considering such relevant types of obligations—first, obligations for furnishers 2021 WL 4784280 of information, and then obligations for consumer reporting However, it is well-settled that there is no private cause agencies. of action for alleged violations of Section 1681s-2(a).

See, e.g., *Longman*, 702 F.3d at 151 (“[T]he statute plainly restricts enforcement of that provision to federal and state 1. Liability of furnishers of information authorities.”). Enforcement of FORA § 1681s-2(a) is limited to government agencies and officials as the statute provides Although the primary function of the FCRA is to regulate \_—\_ that Subsection (a) “shall be enforced exclusively... by the the actions of consumer reporting agencies like Equifax, | Federal agencies and officials and the State officials identified Experian, and Trans Union, the FCRA also imposes iM section 1681s of this title” 15 U.S.C. § 1681s-2(d) obligations on parties that furnish information to such (emphasis added). agencies.

See 15 U.S.C. § 1681s-2. Courts in this Circuit have “interpreted [furnishers of information] to mean entities that | Although Perez has alleged a violation of Subsection (a) of transmit, to credit reporting agencies, information relating to Section 1681s-2 of the FCRA, because that provision does not debts owed by consumers.” *Barberan v. Nationpoint*, 706 F. \_ Provide a private right of action, this claim fails as a matter Supp. 2d 408, 426 n.11 (S.D.N.Y.

2010) (internal quotation Of law. omitted) (citing *Kane v. Guar. Residential Lending, Inc.*, No. 04-CV-4847 (ERK), 2005 WL 1153623, at \*4 (E.D.N.Y. May 16, 2005)). “[T]hese obligations involve the duty to provide ii.

The duty to investigate after receiving accurate information and to correct inaccurate information, notice of a credit dispute from a consumer 15 U.S.C. § 1681s—2(a), and to conduct an investigation after reporting agency under § 1681s-2(b) receiving notice of a credit dispute from a consumer reporting agency, § 1681s—2(b).” *Nguyen v. Ridgewood Sav. Bank*, 66 Perez also alleges defendants have violated § 1681s-2(b) of F. Supp. 3d 299, 303 (E.D.N.Y.

2014) (citing *Longman vy. the FCRA. Compl. §/46-48*. In contrast to § 1681s-2(a), *Wachovia Bank, N.A.*, 702 F.3d 148, 150 (2d Cir. 2012)). which is triggered when a consumer sends a dispute directly However, certain requirements are only triggered when a \_\_\_ to a furnisher of information, § 1681s-2(b) is triggered when furnisher of information receives notice of a credit dispute the furnisher is notified by the CRA that a consumer disputes from specified parties.

If a consumer files a dispute with — the accuracy of the furnished information. Compare 15 U.S.C. the furnisher of the disputed information, under § 1681s-2(a) § 1681s-2(a)(8) with 15 USC. § 1681s-2(b)(1). 8 Section (8) the furnisher must investigate the dispute. If a consumer 1681s-2(b) requires the furnisher to “conduct an investigation files a dispute with the consumer reporting agency, then with respect to the disputed information,” after receiving both the consumer reporting agency and the furnisher have a — potice from a CRA.

15 USC. § 1681s-2(b)(1); see, eg., duty to investigate the dispute. 15 U.S.C. §§ 1681i(a)(1)(A), *Redhead*, 2002 WL 31106934, at \*4 (“The category of duties 1681s-2(b). in [1681s-2(b)] governs the furnishers' duty once notice is received from a credit reporting agency that there is a dispute as to the completeness or accuracy of the information a. Statutory Requirements provided to that reporting agency.”).

Upon such notice, a furnisher must: i. The duty to provide accurate information and correct inaccurate information under § 1681s-2(a). □□□. (1) conduct an investigation with \*6 Perez alleges Verizon and Sequium have violated respect to the disputed information; FCRA § 1681s-2(a). Compl. §41-45. FCRA § 1681s-2(a) (2) review all relevant information provides that a furnisher of information has a duty to report provided by the consumer reporting information accurately to credit reporting agencies.

15 U.S.C. agency..., (3) report the results of § 1681s-2(a). Moreover, if a person, or creditor, learns the investigation to the consumer that any reported information is inaccurate, Subsection (a) reporting agency; (4) where an obligates them to notify the credit reporting agency of the investigation finds that the information inaccuracies and provide corrections.

15 U.S.C. § 1681s-2(a). is incomplete or inaccurate, report those results to all other consumer 2021 WL 4784280 reporting agencies to which the person furnishes of information. Moreover, in his opposition papers, furnished the information...; and Perez concedes that the “CRA defendants are not furnishers (5) where the information is found of information.” Pl.

Opp. at 11. Because Perez does not allege to be inaccurate, incomplete, or that the CRA defendants are furnishers of information, he fails unverifiable, promptly modify, delete, to state a plausible claim under Section 1681s-2(b) as against or permanently block the reporting of them and that claim should also be dismissed. See *Frederick v. Cap. One Bank (USA), N.A.*

(USA), N.A., No. 14-CV-5460 (AJN), 2015 WL 5521769, at \*6 (S.D.N.Y. Sept. 17, 2015), opinion amended on reconsideration sub nom. *Frederick v. Cap. One Bank (USA), N.A.*, No. 14-CV-5460 (USA) N.A., No. 14-CV-5460 (AJN), 2015 WL 8484560 (AJN), 2018 WL 1583289, at \*6 (S.D.N.Y. Mar. 27, 2018) (Dec. 8, 2015) (dismissing for failure to allege defendants (internal quotations omitted) (citing 15 U.S.C. §§ 1681s-2(b) = were furnishers of information).

(1)(A)-(E)). ° As defined in the FCRA, the term “consumer 8 Although § 1681s-2(a) of the FCRA does not reporting agency” means “any person which, provide a private right of action, § 1681s-2(b) has for monetary fees, dues, or on a cooperative been recognized to provide a private right of action nonprofit basis, regularly engages in whole or in for willful or negligent noncompliance with the part in the practice of assembling or evaluating statute.

See, e.g., *Nguyen v. Ridgewood Sav. Bank*, consumer credit information or other information 66 F. Supp. 3d 299, 305 (E.D.N. Y. 2014) (collecting on consumers for the purpose of furnishing cases). consumer reports to third parties, and which uses., any means or facility of interstate commerce for To satisfy a claim under § 1681s-2(b), a plaintiff must first. a: establish that the defendant is a “furnisher of information” the Purpose of preparing or furnishing consumer reports.” 15 U.S.C. § 168 1la(f). within the meaning of the statute. /d. at \*6.

Then, he must establish that: “(1) the furnisher received notice of a credit | Accordingly, the Court recommends that all of Perez's claims dispute from a credit reporting agency, and (2) the furnisher | Under FCRA § 1681s-2(b) against Equifax, Experian, and thereafter acted in ‘willful or negligent noncompliance with Trans Union be dismissed.

However, Verizon concedes it is a the statute.’ ” *Markovskaya v. Am. Home Mortg. Servicing, ~ furnisher of information*” and therefore can be liable under Inc., 867 F. Supp. 2d 340, 343

(E.D.N.Y. 2012) (quoting § 1681s-2(b)). Joint Defs. Mem. at 10. Additionally, Perez Redhead, 2002 WL 31106934, at \*5). “Notice from an alleges sufficient facts to support a reasonable inference that individual consumer, in the absence of notice from a credit | Sequium is a furnisher of information.

See Compl. ¶¶ (“As reporting agency, is insufficient to trigger the duties contained — Part of its debt collection activities,... Sequium... furnishes in Subsection (b).” Kane, 2005 WL 1153623, at \*4; see information to CRAs”).

The Court will thus analyze the also *O'Diah v. New York City*, No. 02-CV-274 (DLC), 2002 remaining claims against Verizon and Sequium as furnishers WL 1941179, at \*13 (S.D.N.Y. Aug. 21, 2002) (§ 1681s-2(b) Of information under the FCRA. requires plaintiff to “show that the furnisher received notice from a consumer reporting agency, as opposed to the plaintiff alone, that the credit information is disputed”). c. Perez fails to state a claim against Verizon or Sequium under FCRA § 1681s-2(b). b. Perez failed to allege the CRAs are “furnishers of In response to his allegations that they violated § 1681s-2(b), information” as defined under FCRA § 1681s-2(b). both Verizon and Sequium contend that Perez failed to allege that he disputed the information with a consumer reporting \*7 Equifax, Experian, and Trans Union argue they are not agency, who then reported the dispute to the furnishers of “furnishers of information” under § 1681s-2(b) of the FCRA, information (Verizon and Sequium).

Joint Defs. Mem. at as they are consumer reporting agencies and therefore not 11; Joint Defs. Reply at 7; Sequium Mem. at 5. 10 Th his liable under § 1681s-2(b). Joint Defs. Mem. at 9.? Perez complaint, Perez alleges that he had reported disputes directly failed to allege in his complaint that the CRA defendants were \_t0 Citibank, Verizon, and Sequium regarding information that 2021 WL 4784280 they had furnished to the CRAs.

Compl. §[42. In his opposition Second Circuit has cautioned that district courts should not papers, Perez further stated that he disputed “several accounts dismiss [a pro se complaint] without granting leave to amend electronically and by mail” but it is unclear if he is referring —\_ at least once when a liberal reading of the complaint gives any to his communications with the FTC, the CRA defendants, indication that a valid claim might be stated.” *Olsson v. ABM or Verizon and Sequium*.

Pl. Opp. at 13. Perez also contends *Taxi Dispatch Laguardia Airport*, No. 18-CV-8815 (PGG), that he contacted Verizon directly to dispute the charges in 2020 WL 5038742, at \*3 (S.D.N.Y. Aug. 26, 2020) (internal Small Claims Court in the Bronx in 2019 and when Verizon —\_ quotations omitted) (quoting *Cuoco v. Moritsugu*, 222 F.3d “over charged him for his devices and bills,” Perez notified 99, 112 (2d Cir.

2000)). them that he wanted “to pay [the charges] off prior to having these charges appear on his credit.”/d. at 12-13. However, to state as 1681s-2(b) claim, Perez must allege that Verizon 2. Liability of credit reporting agencies and Sequium were contacted by a consumer reporting agency about a dispute, not contacted by Perez himself, and that those Perez also alleges claims under the FCRA against the CRA agencies followed up with a notice of dispute to Verizonand — defendants.

Compl. §§39-48. Specifically, Perez alleges the Sequium (which in turn must then conduct an investigation CRA defendants violated § 1681s of the FCRA. However, into the information in question). Kane, 2005 WL 1153623, at ag previously discussed, § 1681s-2(a) does not provide for a \*4 (granting motion to dismiss for failure to allege furnisher private cause of action and credit reporting agencies do not received notice of dispute from CRA).

This he has failed to — have a duty under § 1681s-2(b). In his opposition papers, do. Perez alleges that defendants “are not in compliance with the FCRA.” Pl. Opp. at 12. Given its obligation to construe 10 In its motion papers, Sequium Mem. at 5, Sequium Perez's pro se complaint liberally, the Court will construe cites to the declaration of its chief compliance these allegations as making claims for the negligent, see15 officer and general counsel, see Dkt.

No. 29-1, U.S.C. § 16810, or willful, see15 U.S.C. § 1681n, violation which it has attached to its answer, but on a of duties or requirements imposed under the FCRA for motion for judgment on the pleadings, a court credit reporting agencies, specifically § 1681e(b) (requiring cannot consider matters outside the pleadings. reasonable procedures to assure accuracy) and § 1681i(a) Moreover, Sequium did not move in the alternative (requiring reinvestigation of disputed information).

See, e.g., for summary judgment, or provide Perez with the Braun v. United Recovery Sys., LP, 14 F. Supp. 3d 159, 173 appropriate notice under Local Rule 56.2 that it (S.D.N.Y. 2014) (construing complaint under Section 168 1(f) intended to do so.

For these reasons, the Court has not Section 1681-2(b) as “a context in which [his claims] not considered this declaration in its review of the make much more sense, and a context in which Plaintiff motion papers. may have intended to assert them’); Caraveo □□ Nielsen \*8 Insum, Perez's “furnishers of information” FCRA claims Media Rsch. Inc., No. 01-CV-9609 (LBS) (RLE), 2003 WL □: 1745064, at \*2 (S.D.N.Y.

Mar. 31, 2003) (“At this stage of should be dismissed. Specifically, Perez's claim under 15 we, wo woe. § 1681s-2(a) should be dismissed with prejudice, as the litigation, pro se Plaintiff's citations to specific statutory that Subsection affords no private right of action and any prev isions in his memoranda of law do not supersede the.. plain language of the complaint.”), affd sub nom.Caraveo amendment would be futile.

However, Perez's claim under *vy. USEE.O.C.*, 96 F. App'x 738 (2d Cir, 2004). In other 15 U.S.C. § 1681s-2(b) against Verizon and Sequium should.... be dismissed without prejudice to his filing an amended words, construing Perez's allegations liberally, the complaint □ can be read to allege the CRA defendants to be willfully, or complaint, pleading all the necessary elements of a claim.... under that Subsection to the extent they exist, given that in the alternative, negligently noncompliant, in violation of, 1681e(b) and § 1681i.

Accordingly, the Court will consider the complaint is difficult to parse through but suggests he.: Perez's allegations in that light. might have a viable claim. See, e.g., *Branum v. Clark*, 927 F.2d 698, 705-06 (2d Cir. 1991) (where pro se pleading contained “the seeds” of viable claims, it should not be dismissed “without granting leave to amend at least once”); a. Statutory Requirements under §§ 1681e(b) and 1681i *Kane*, 2005 WL 1153623, at \*11 (while plaintiff's complaint much to be desired,” it was not “so clearly deficient that Section 1681e(b) imposes a duty on CRAs to “assure amendment would necessarily be futile”).

Moreover, “[t]he maximum possible accuracy of the information concerning 2021 WL 4784280 the individual about whom the report relates.” 15 U.S.C. § or when it is misleading in such a way and to such an 1681e(b). To state a claim under Section 1681e(b), a plaintiff | extent that it can be expected to have an adverse effect.” must allege that: “(1) the consumer reporting agency was *Wimberly*, 2021 WL 326972, at \*5 (quoting *Wenning v. negligent or willful* in that it failed to follow reasonable = *On-Site Manager, Inc.*, No. 14-CV-9693 (PAE), 2016 WL procedures to assure the accuracy of its credit report; (2) the 3538379, at \*9 (S.D.N.Y.

June 22, 2016)). “Information consumer reporting agency reported inaccurate information provided by a consumer reporting agency is misleading where about the plaintiff; (3) the plaintiff was injured; and (4) the it is ‘open to an interpretation that is directly contradictory to consumer reporting agency's negligence proximately caused \_\_\_ the true information.’ ” *Jd.* (quoting *Wagner v. TRW, Inc.*, 139 the plaintiff's injury.” *Wimberly v. Experian Info.*

*Sols.*, No. F.3d 898, 1998 WL 127812, at \*1 (Sth Cir. 1998)). 18-CV-6058 (MKV), 2021 WL 326972, at \*5 (S.D.N.Y. Feb. 1, 2021) (quoting *Khan v. Equifax Info. Servs., LLC*, No. 18- CV- 6367 (MKB), 2019 WL 2492762, at \*2 (E.D.N.Y. June b. Perez fails to state a claim against the CRA 14, 2019). defendants under §§ 1681e(b) and 1681i. \*9 When the accuracy of a report is in dispute, Section 1681i —\_ Perez argues that the CRA defendants violated the FCRA outlines specific procedures that CRAs must follow ensure —\_y their failure to report his gender, address changes, and the proper reinvestigation of disputed information.

Section complete employment information. Compl. §28-32; Pl. 1681i requires that if a consumer notifies a CRA of dispute Opp. at 6-7. The Court interprets these claims to assert as to the accuracy of any item of information contained in \_violations under § 1681e(b) and § 1681i.

The CRA defendants his file, within 30 days of notification, the CRA “shall, free gid not address these specific statutory allegations in their of charge, conduct a reasonable reinvestigation to determine — motion papers, as in making such allegations, Perez cited whether the disputed information is inaccurate.” 15 U.S.C. § to a different section of the FCRA.

Nevertheless, in arguing 1681i(a)(1)(A); Jones v. Experian Info. Solutions, Inc., 982 that Perez's claims against them under the FCRA should be F. Supp. 2d 268, 272 (S.D.N.Y. 2013). The Second Circuit dismissed, the CRA defendants contend that they do not have has not directly addressed what constitutes a “reasonable —\_q duty to report gender or address changes (Joint Defs.

Reply reinvestigation” under section 1681i. Jones, 982 F. Supp. 2d \_at 8) or to report “complete” employment information (Joint at 273. However, courts in this District have noted that “the — Defy. Mem. at 5-6). parameters of a reasonable investigation will... depend on the circumstances of a particular dispute.” Frydman v. Experian Info. Sols, Inc., No. 14-CV-9013 (PAC) (FM), 2016 WL 11483839, at \*15 (S.D.N.Y.

Aug. 11, 2016) (quoting Cortez v. i. Failure to report gender and change of address Trans Union, LLC, 617 F.3d 688, 713 (3d Cir. 2010)), adopted Perez argues that the CRA defendants violated the FCRA by 2016 WL 5661596 (Sept. 30, 2016).

The reinvestigation by failing to report his gender and changes of his physical requirement has demanded “more than (a) forwarding the addresses. Pl. Opp. at 6. However, inaccuracies are only dispute information onto the furnishcr of information and (b) actionable if they affect an assessment of a consumer's credit, relying on the furnisher of information's response.” Gorman v. insurance, or employment and fit within the definition of a Experian Info.

Sols., Inc., No. 07-CV-1846 (RPP), 2008 WL «consumer report” under the FCRA. See 15 U.S.C. § 1681a(d) 4934047, at \*5 (S.D.N.Y. Nov. 19, 2008) (citing Cushman v. (1) (listing factors in establishing the consumer's eligibility); Trans Union Corp., 115 F.3d 220, 225 (3d Cir. 1997)).

To state Williams-Steele v. Trans Union, No. 12-CV-0310 (GBD) a claim under Section 1681i, the plaintiff must also allege (JCF), 2014 WL 1407670, at \*4 (S.D.N.Y. Apr. 11, 2014) that “the disputed information is inaccurate.” Khan, 2019 WL (“[N]o restriction is put on the use of information that is not 2492762, at \*3. a ‘consumer report’... Address information on a consumer, for example, is not a consumer report because it is not The threshold question under both Sections 1681e(b) and information that bears on any of the characteristics described 1681i “is whether the challenged credit information is in 15USS.C. § 1681a(d)(1).”) (citing Ali v. Vikar Management, accurate; if the information is accurate, no further inquiry — 7 4994 F. Supp. 492, 497 (S.D.N.Y.

1998), adopted by 2015 into the reasonableness of the consumer reporting agency's WL 576707 (Feb. 10, 2015), aff'd sub nom. Williams-Steele procedures is necessary.” Id. (collecting cases). A credit v, TransUnion, 642 F. App'x 72 (2d Cir. 2016). A “consumer report is inaccurate “either

when it is patently incorrect report” communicates information bearing on a consumer's 2021 WL 4784280 “credit worthiness, credit standing, credit capacity, character, a furnisher of information, such as Citibank or Verizon.

In his general reputation, personal characteristics or mode of opposition papers, Perez states that he has notified Experian, living,” which information is used, expected to be used, Equifax, and Trans Union of inaccuracies in his reports ““on at or collected for purposes of establishing the consumer's least a dozen cases” over a ten-year period, with “no action... eligibility for credit, insurance, and employment, or for — taken on the part of any of these defendants.” Pl.

Opp. at certain other limited purposes. 15 U.S.C. § 1681a(d)(1). 6. He also alleges that he filed “at least a dozen complaints Perez's gender and address history do not fit within the — within the last [six] years in reference to mistakes that he has definition of a “consumer report” nor does the Experian sex \_ discovered on his reports” that were “summarily dismissed.” offender monitoring and notification tool.

Therefore, Perez's Jd. at 11. Perez contends that Experian, Equifax, and Trans allegations regarding his address changes and gender do not —Unionare all “complicit” in a scheme of misreporting. Compl. state a claim for inaccurate information under the FCRA as =. 32.

The CRA defendants respond that Perez made no claim a matter of law. SeeWilliams-Steele, 2014 WL 1407670, at that they failed to meet their obligations under the FCRA, \*4 (recommending dismissal for claim based on “inaccurate and instead only contends the issues with his credit report contact information’). arise from a “criminal conspiracy.” Joint Defs. Mem. at 7, 15.

The Court construes Perez's claims to allege willful or negligent noncompliance with Section 1681e(b) as to the. CRAs' procedures to assure maximum possible accuracy, ii. Incomplete employment history: as well as Section 1681i as to the CRA's procedures to \*10 Perez also contends that the CRA defendants have \_ investigate disputes as to a report's accuracy. “deliberately and maliciously reported plaintiff's incomplete work history for a number of years.” Compl. §28.

However, i A trade line is a “record of activity for any in order to state a cognizable claim, Perez would need to type of credit extended to a borrower and allege that his incomplete work history has been “prejudicial reported to a credit reporting agency.” Trade Line, to an assessment of the plaintiff's eligibility for credit under INVESTOPEDIA, <https://www.investopedia.com/> the FCRA,” or otherwise adversely affected the other factors terms/t/trade-line.asp (last visited Oct.

12, 2021). listed in § 1681a(d)(1). Williams-Steele, 2015 WL 576714, ts.. Taking his allegations to be true, the Court finds that Perez at \*2 (“Plaintiffs claim that her ‘[p]lace of employment [is] □ □ □ +:.. satisfies the threshold requirement as he has alleged his credit not [a]ccurate’ is not actionable.”). Perez has not done so.:.. oye:... information is not accurate.

See Compl. 27, 29; Khan, 2019 WL 2492762, at \*3. Thus, Perez has failed in his present pleading to state a claim:... However, Perez fails to set forth any under the FCRA for the reporting of incomplete work history... Co.,... oo. allegations regarding deficiencies in the procedures followed This particular claim should be dismissed without prejudice and □ pea:... by the CRAs.

Because Perez “fail[s] to make any allegations to his filing an amended complaint, but only if he can provide. ss..... regarding... the procedures followed” by Equifax, Experian, the necessary information to show how the alleged reporting..... and Trans Union, Newygen, 2015 WL 2354308, at \*11, his of his allegedly incomplete work history bore on his credit. ss □ worthiness [t]hreadbare recitals of the elements” do not state a plausible claim for relief under Section 1681e and should be dismissed.

Iqbal, 556 U.S. at 678. c. Perez fails to allege a violation of §§ 1681e and Because he has alleged his credit information is not accurate, 1681i for inaccurate reporting of his trade lines. Perez also satisfies the threshold requirement for a claim under § 1681i. See Compl. §§27, 29; Khan, 2019 WL Perez also alleges the CRAs reported inaccurate information 2492762, at \*3.

Additionally, Perez directly disputed the in his trade lines, including his Capital Bank balance, Verizon inaccuracies with Experian, Equifax, and Trans Union. Wireless balance, Best Buy balance, as well as other accounts. Pl. Opp. at 6. Perez's notification of dispute triggered Compl. 29; Ex. 1. ul He claims that the CRA defendants “do the CRA defendants' obligation to conduct a “reasonable not conduct a meaningful investigation, or an investigation \_reinvestigation” and notify the “furnisher” of information that at all, when it receives a notice of dispute from a [sic].” Id. \_ Perez disputed the items.

15 U.S.C. §§ 1681i(a)(1); 1681i(a) The party providing notice to the CRA is omitted and the — (2). However, Perez states that the CRA defendants took sentence is incomplete, so it is unclear if Perez's allegations “no action” in response to his disputes regarding his reports. refer to a notice from a consumer, as in Perez himself, or from —\_ Pl. Opp. at 6.

Thus, liberally construed, Perez has alleged 2021 WL 4784280 that the CRA defendants violated the FCRA requirement to its statutory duties must be “objectively unreasonable,” not reasonably reinvestigate under § 1681i.

To state such a cause merely “erroneous.” /d. at 69. of action, Perez must also allege that the CRA defendants were either willful or negligent in their noncompliance with Perez alleges that Experian, Equifax, and Trans Union § 1681i.

Accordingly, the Court will now consider whether have “deliberately and maliciously” misreported his work Perez has satisfied the requirements of § 1681n or § 1681o for history and credit accounts. Compl. {}28—29. Throughout his willful or negligent noncompliance with §

168 1i. complaint, he alleges the CRA defendants have participated in a “deliberate scheme” with the other defendants and government agencies.

Compl. In his opposition papers, i. Perez fails to allege sufficient facts to establish that Perez contends that the CRAs are “in collusion with the the CRA defendants’ actions were willful or negligent. inaccurate reporting, of his accounts and have been informed “of their indiscretions and violations.” Pl. Opp. at 9, 12. \*11 To maintain a claim under § 1681i for the failure to reinvestigate the inaccurate reporting of his trade lines, Perez Perez adequately alleges that his credit report contained must allege the CRA defendants were willful or negligent inaccuracies, but he fails to allege sufficient facts to establish in their noncompliance.

The FCRA allows for a cause of the CRA defendants’ actions were willful. While Perez asserts action for willful and negligent noncompliance “with any the CRA defendants’ violations were “deliberate,” he does requirement imposed” by the FCRA. 15 U.S.C. §§ 1681n, SO in an entirely conclusory manner and does not allege any 1681o. “In regard to a plaintiff’s obligation to allege that a facts related to the CRA defendants’ state of mind when they defendant’s violation was willful or negligent, various courts allegedly failed to meet their statutory requirements.

The facts have held that, in order to survive a motion to dismiss, he does assert do not include enough information to allow the plaintiff’s complaint must allege specific facts as to the the Court to draw a reasonable inference that the alleged defendant’s mental state” when the defendants committed the Violations were willful or that the CRA defendants knew that violation of the FCRA.

Braun v. Client Servs. Inc., 14 F.Supp. they recklessly disregarded their obligations to reinvestigate 3d 391, 397 (S.D.N.Y. 2014). Merely stating that the violation the disputed information. See, e.g., Perl, 2012 WL 178333, was “willful” or “negligent” without more is insufficient. at \*3. Perl v. Plains Com. Bank, No. 11-CV-7972 (KBF), 2012 WL 760401, at \*2 (S.D.N.Y.

Mar. 8, 2012); Perl v. Am. Exp., No. 11-CV-6899 (KBF), 2012 WL 178333, at \*2 (S.D.N.Y. Jan. b. Negligence 19, 2012) (“While [plaintiff] assert[s] that each [D]efendant’s FCRA violation was willful, [he] do[es] so ina conclusory The Court also construes Perez’s complaint as alleging manner in [both] of the complaints.... [Plaintiff] ha[s] failed the negligent violation of the FCRA under § 1681o.

In to allege any facts related to [D]efendants’ state of mind when \_\_\_ his opposition papers, Perez states that “the CRAs should they allegedly [violated the FCRA]’). have been able to identify inaccuracies in the information being reported and the agencies reporting this information.” Pl. Opp. at 12.

However, like his allegations as to the ii, Willful and Negligent Noncompliance with the FCRA CRA defendants’ supposed willfulness, these allegations are pleaded in conclusory fashion, and do

not constitute facts from which the Court can infer that the CRA defendants a. Willfulness should have known that they were violating the provisions of the FCRA.

To allege willful noncompliance with the FCRA, a plaintiff must allege facts “related to defendants’ state of mind. Additionally, a complaint alleging a claim for negligent when they allegedly [violated the FCRA].” *id.* at \*2.

The violation of the FCRA under § 1681lo must allege actual requirement of willfulness in this context can be satisfied damages. To do so, the complaint need allege only enough by evidence of “reckless disregard” for statutory duties. facts demonstrating that the plaintiff suffered an injury *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 56-57 (2007). *wt oy*:: entitling him to actual damages.

See, e.g., *Ritchie v. N. To constitute reckless disregard, a CRA's interpretation of Leasing Sys., Inc.*, 14 F. Supp. 3d 229, 240 (S.D.N.Y. 2014). Perez alleges actual damages in his complaint. See *Compl.* 2021 WL 4784280 480 (“Perez has also been unable to use or increase his CV-1082 (CBA) (LB), 2008 WL 2944643, at \*3 (E.D.NLY. existing credit”); 982 (“[D]enial of Personal credit card July 31, 2013)), adopted by 2013 WL 3776201 (July 18, occurred without written notification: Apple Credit, Chase 2013).

A “creditor” is defined as “any person who offers or Business Credit, Bank of America business credit, American extends credit creating a debt or to whom a debt is owed” *Express*”). These allegations are enough to satisfy Perez's except to the extent the person “receives an assignment burden to allege actual damages. See *Braun v. Client Servs. or transfer of a debt in default solely for the purpose of Inc.*, 14 F. Supp. 3d at 400 (burden of actual damages satisfied facilitating collection of such debt for another.” *Masudi*, 2008 by allegations of “loss of credit, loss of the ability to purchase WL 2944643, at \*3 (quoting 15 U.S.C. § 1692a(4)). and benefit from credit, and lowering of credit lines’).

The FDCPA prohibits, *inter alia*, conduct whose “natural \*12 Accordingly, the Court recommends dismissing Perez's consequence” is to “harass, oppress, or abuse any person in claims for a violation of § 1681i of the FCRA against the connection with the collection of a debt.” 15 U.S.C. § 1692d. CRA defendants as they are, on the present record, entirely — To this end, the FDCPA gives a consumer the right to dispute conclusory in nature, but granting him leave to amend his a debt claimed by a debt collector, and to seek verification complaint with the requisite facts—to the extent they exist of the validity of the debt.

*Jd.* § 1692g(b). The FDCPA also —to give him one final opportunity to make these claims regulates the debt collector's written notice, within five days cognizable under the FCRA. of its initial communication with the consumer, stating the amount of debt and the name of the creditor to whom the debt is owed. *Id.* §§ 1692g(a)(1), 1692g(c)(a)(2). C. Claims under the Fair Debt Collection Practices Act Additionally, Perez alleges violations of § 1692e of the 1.

Perez failed to allege that Verizon, FDCPA. Compl. 953-54. The FDCPA prohibits debt Equifax, Experian, and Trans Union collectors from engaging in “any conduct the natural are “debt collectors” under the FDCPA. consequences of which is to harass, oppress, or abuse any person,” and from using “any false, deceptive, or misleading Perez alleges defendants have violated § 1692e of the FDCPA representation or means” in connection with the collection of by using false representations concerning the character, any debt.

15 U.S.C. §§ 1692d, 1692e. “To establish a violation | amount, and legal status of a debt, and by failing to under the FDCPA, three elements must be proven: ‘(1) the |= communicate to the CRA that the debt is disputed. Compl. plaintiff [must] be a “consumer” who allegedly owes the debt 53.

In response, Equifax, Experian, Trans Union, and or a person who has been the object of efforts to collect a Verizon argue that Perez failed to allege that they are debt consumer debt, (2) the defendant collecting the debt must be collectors and that as a result, he has failed to state a claim considered a “debt collector,” and (3) the defendant must have against them for violation of the FDCPA.

Joint Defs. Mem. engaged in an act or omission in violation of the FDCPA's —\_ at 11—12; Joint Defs. Reply at 8. Perez alleges that Sequium, requirements.” ” Skvarla v. MRS BPO, LLC, No. 21-CV-55 Verizon, and Citibank serve as a debt collector “at times.” PI. (ER), 2021 WL 2941118, at \*2 (S.D.N.Y. July 12, 2021) = Opp. at 14. (quoting Derosa v. CAC Fin. Corp., 278 F. Supp. 3d 555, 559— 60 (E.D.N.Y.

2017)). \*13 Equifax, Experian, and Trans Union are credit reporting agencies that do not collect debts, and therefore do not fall The term “debt collector” is defined under the FDCPA as a \_ within the meaning of “debt collector” under the FDCPA, person who, among other requirements, is engaged in any \_\_ but instead under the term “consumer reporting agency” as “business the principal purpose of which is the collection of — defined in § 1681a(f).

Compare 15 U.S.C. 1692a(6) (defining any debts, or who regularly collects or attempts to collect... debt collector) with 15 U.S.C. § 168 1a(f) (defining consumer debts owed or due... another.” 15 U.S.C. § 1692a(6). By — reporting agency). See also Allah v. New Century Mortg. contrast, “ ‘creditors’ are not considered ‘debt collectors’ Corp., No. 06-CV-3031 (JG), 2006 WL 3196851, at \*2 under [the FDCPA] and [its] provisions... do not apply to (E.D.N.Y.

Nov. 4, 2006) (company only becomes subject to them.” Reid v. Toyota Motor Credit Corp., No. 12-CV-7436 the FDCPA as debt collector or there is an “indicat[ion] that (PAC) (ILC), 2013 WL 1397143, at \*6 (S.D.N.Y. Apr. 8, a third person is collecting... debts” in its name). Perez does 2013) (quoting Masudi v. Ford Motor Credit Co., No. 07- not allege that the CRA defendants are “debt collectors.” 2021 WL 4784280 Instead, he alleges that the defendants “do not always collect

informed of the amount of debt, name of creditor, and their debts but hire debt collection companies like Sequium.” \_ rightto dispute the validity within 30 days but does not require Pl.

Opp. at 13. Because the complaint contains no non- debt collectors to offer settlements. See5 U.S.C. § 1692g. conclusory allegations that any of the CRA defendants are | Because Perez has only alleged that he did not receive a “debt collectors” or have engaged in any debt collection settlement letter, he has failed to state a FDCPA claim against activity, Perez fails to state a claim under the FDCPA against Sequium. them.

SeeAllen v. United Student Aid Funds, Inc., No. 17- CV-8192 (VSB), 2018 WL 4680023, at \*5 (S.D.N.Y. Sept. 12 Sequium also contends that Perez waived any 28, 2018) (granting motion to dismiss when plaintiff has not claims against it by failing to address the arguments pled sufficient facts to classify defendants as debt collectors). in its Memorandum of Law.

Sequium Reply at 2. However, “a litigant's failure to oppose a motion Similarly, Verizon Is not a “debt collector” as Perez's does not by itself merit dismissal of a complaint.” pleadings, if anything, establish that it extends credit, thus Bernheim v, New York City Dep't of Educ., No. creating a debt. SeeVallecastro, 2014 WL 7185513, at \*3; 19-CV-9723 (VEC) (JLC), 2020 WL 3865119, at Mazzei v. Money Store, 349 F. Supp. 2d 651, 658 (S.D.N.Y. \*4 (SDNY.

July 9, 2020) (citing Goldberg v. 2004) (“Creditors are generally not considered debt collectors Danaher, 599 F.3d 181, 183-84 (2d Cir. 2010), under the FDCPA.”) (citing ‘ib USC. § 1692a(6) (F)). adopted by2020 WL 4383503 (July 31, 2020). Perez instead alleges that Verizon “hire[s] debt collection “When presented with an unopposed motion, a companies like Sequium.” Pl.

Opp. at 13. Further, Perez court remains obligated to review the pleadings does not allege that Verizon used the name of a third and determine whether there is a sufficient basis party in connection with his debt so as to fall within the for granting the motion.” Id. (citing Goldberg, 599 natrow category of “creditors” who are also considered “debt F.3d at 183). collectors.” Scalercio-Isenberg v. Citizens Fin.

Grp., Inc., No. 18-CV-9226 (JGK), 2019 WL 7187247, at\*8(S.D.N.Y.Dec. “14 In sum, Perez's FDCPA claims against Equifax, 26, 2019) (creditors only subjected to the FDCPA if they Experian, Trans Union, Verizon, and Sequium should all be use third party name to collect debts).

Because Verizon isa Aismitted for failure to state a claim. “creditor” who hires a debt collection company seeking to collect its debts, Perez has failed to allege that Verizon is a “debt collector” within the meaning of the FDCPA. SeeHouck III. CONCLUSION v. U.S. Bank, N.A. for Citigroup Mortg. Loan Tr. 2007-ARS, 689 F. App'x 662, 664 (2d Cir. 2017) (affirming dismissal For the foregoing reasons, the Court recommends that the against creditor under FDCPA). following claims be dismissed with prejudice: Sequium, on the other hand, concedes that it falls

within 1) Perez's claims under 15 U.S.C. § 1681s-2(a); the definition of a "debt collector." Sequium Mem. at 5.

2) Perez's claims under 15 U.S.C. § 1681s-2(b) against Equifax, Experian, and Trans Union; and that Sequium violated the FDCPA is cognizable. 3) Perez's claims under the FDCPA. 2. Perez fails to allege Sequium violated the FDCPA.

The Court recommends that the following claims be dismissed without prejudice, so that Perez may replead them. Perez alleges that Sequium's failure to issue a debt settlement within thirty (30) days of the Court's decision: letter violates § 1692e and § 1692(a) of the FDCPA. Compl. 49137, 54. Sequium counters that Perez has failed to state a 1) Perez's claims under 15 U.S.C. § 1681s-2(b) against claim under the FDCPA because there is no requirement to Verizon and Sequium, issue settlement letters.

Sequium Mem. at 6. 2 The Court 2) Perez's claims under the FCRA against Equifax, agrees with Sequium. The FDCPA requires that, inter alia, Experian, and Trans Union related to the reporting of his debt collectors issue written collection letters to consumers, employment history; and with language requirements to ensure the consumers are 2021 WL 4784280 3) Perez's claims under 15 U.S.C. § 1681i against Equifax, Any requests for an extension of time for filing objections Experian, and Trans Union. must be directed to Judge Engelmayer.

FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS WILL RESULT IN A PROCEDURE FOR FILING OBJECTIONS WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. 28 U.S.C. § 636(b)(1); Fed. R. Civ. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 726) of the 5 a9 seethomas v. Arn, 474 US. 140 (1985); Wagner & Federal Rules of Civil Procedure, the parties shall have Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd fourteen (14) days from service of this Report to file written & Garwile, PC., 596 F.3d 84, 92 (24 Cir, 2010). objections.

See also Fed. R. Civ. P. 6. Such objections, and any responses to such objections, shall be filed with the Clerk of the Court, with courtesy copies delivered to the — All Citations chambers of the Honorable Paul A. Engelmayer, United States Courthouse, 40 Foley Square, New York, New York. Not Reported in Fed. Supp., 2021 WL 4784280 End of Document © 2026 Thomson Reuters.

No claim to original U.S. Government Works. Filings (3) Title PDF Court Date Type 1. Defendants' Joint Memorandum of Law in Support | — |S.D.N.Y. May 17, 2021 Motion of Their Motion to Dismiss and for Judgment on the Pleadings Eric Andrew PEREZ, Plaintiff, v. EXPERIAN, Equifax, Trans Union, Verizon, Sequium Asset Solutions, Federal Trade Commission, Citibank, Defendants.

2021 WL 11109411 2. Docket 1:20-CV-09119 — S.D.N.Y. Oct. 30, 2020 Docket Perez v. Experian et al 3. Docket 7:20-CV-09119 — S.D.N.Y. Oct. 30, 2020 Docket Perez v. Experian et al History (2) Direct History (2) 1. Perez v. Experian x 2021 WL 4784280, S.D.N.Y., Oct. 14, 2021 Report and Recommendation Adopted by 2. Perez v. Experian 2021 WL 5088036, S.D.N.Y., Nov.

02, 2021 2012 WL 178333 The Court now sua sponte DISMISSES the complaints Fa without prejudice for failure to state a claim upon which KeyCite Yellow Flag relief can be granted, except that the willful FCRA claim in Distinguished by Braun v. United Recovery Systems, LP, S.D.N.Y., American Express and Credit Bureau and the FDCPA claim in March 28, 2014 “on Arrow Financial Services, LLC survive dismissal at this time.

2012 WL 178333 Only the Westlaw citation is currently available. United States District Court, DISCUSSION S.D. New York. The Court has the authority to screen sua sponte an in forma Israel PERL, Plaintiff, pauperis complaint at any time pursuant to 28 U.S.C. § v. 1915(e)(2)(B).

The Court may dismiss such a complaint, or AMERICAN EXPRESS, Defendant. portion thereof, if it fails to state a claim upon which relief could be granted. § 1915(e)(2)(B)(ii). Even though the law No. 11 Civ. 7374(KBF). authorizes dismissal on that ground, courts “remain obligated | to construe pro se complaints liberally.” E.g., DiPetto v. This Memorandum and Order also relates U.S. Postal Serv, 383 Fed.

Appx. 102, 103 (2d Cir.2010); to: 11 Civ. 6899(KBF), 11 Civ. 7972(KBF), Johnson v. J.P. Morgan Chase Bank, N.A., et al., No. 11 11 Civ. 7767(KBP), 11 Civ. 8165(KBF), Civ. 662(DLC), 2011 WL 497923, at \*1 (S.D.N.Y. Feb.10, 11 Civ. 8521(KBF), 11 Civ. 8529(KBF), 11 2011).

Thus, pro se complaints should be read with “special Civ. 8705(KBF), 11 Civ. 8887(KBF), 11 Civ. solicitude” and should be interpreted to raise the “strongest 9007(KBF), 11 Civ. 9066(KBF), 11 Civ. 9092(KBF). claims that they suggest.” E.g., DiPetto, 383 Fed. Appx. at | 103 (internal punctuation omitted); see also Johnson, 2011 Jan. 19, 2012. WL 497923, at \*1.

Nonetheless, a pro se complaint must still provide a defendant MEMORANDUM AND ORDER with fair notice of what the plaintiffs claims are and each of the grounds upon which they rest. See Valenzuela v. Riverbay KATHERINE B. FORREST, District Judge. Corp., No. 06 Civ. 903(DLC), 2007 WL 414487, at \*2 Lo.. Lo. (S.D.N.Y. Jan.31, 2007); see generally Dura Pharms., Inc. v. laintiffs Israel Perl 1 Perl h ro se plaintitis Israel Perl and Gittel Perl initiated these ip, 544 U.S. 336, 346, 125 S.Ct.

1627, 161 L-Ed.2d 577 related actions in forma pauperis over a number of months..... (2005). A pleading that offers only “labels and conclusions or this past fall. Either Mr. Perl or Ms. Perl brings each of. \_.. these actions against a single financial institution ortin a formulaic recitation of the elements of a cause of action will remons 28 oie Mane Purpose not do.” Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct.

1937, 1949, to claim willful and negligent violations of the Fair Credit 173 L-Ed.2d 868 (2009) (internal quotation marks omitted) Reporting Act (“FCRA”). In support of both claims, each complaint alleges that the relevant defendant initiated one.... P « os “Even though all allegations contained in the complaint are or more “hard pull(s)” and/or “soft pull(s)” of the relevant. □□.. assumed to be true” on a motion to dismiss, that “tenet plaintiff’s credit report without a permissible purpose, thereby □□. □□ ce..... is ‘inapplicable to legal conclusions.

Zapolski v. Fed. reducing his or her credit score. The complaints in Per/ Republic of Germany, 425 Fed. Appx. 5, 6 (2011) (quoting v. American Express and Perl v. Credit Bureau Services. □□□ “a > Iqbal, 129 S.Ct. at 1949) (affirming sua sponte dismissal of Inc. (“Credit Bureau”) ) each also allege that the defendant..... wo.. pro se, in forma pauperis complaint).

Rather, “[t]he complaint repeatedly informed the plaintiff that it could not find a record.... we must plead ‘enough facts to state a claim to relief that is of his or her account. In addition to the two FCRA causes.. sec.. plausible on its face.’ “ Zapolski, 425 Fed. Appx. at 6 (quoting of action, the complaint in Perl v. Arrow Financial Services, □. □□...

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. LLC claims violations of the Fair Debt Collection Practices □. 1955, 167 L-Ed.2d 929 (2007)); accord DiPetto, 383 Fed. Act (“FDCPA”) and the General Business Law of the State “ck..... Appx. at 103 (“pro se complaints must contain sufficient of New York, based on allegedly deceptive debt-collection. sua:. factual allegations to meet the plausibility standard”).

A claim P has “ ‘facial plausibility when the plaintiff pleads factual 2012 WL 178333 content that allows the court to draw the reasonable inference at 1949 (“A pleading that offers labels and conclusions or a that the defendant is liable for the misconduct alleged.’ “ formulaic recitation of the elements of a cause of action will Zapolski, 425 Fed. Appx. at 6 (quoting /gbal/, 129 S.Ct. at not do.” (internal quotation marks omitted)).

Willfulness as 1949). used in the relevant provision of the FCRA, Section 1681n, means knowledge or recklessness. See, e.g., Safeco Ins. Co. of America v. Burr, 551 U.S. 47, 56-60, 127 S.Ct. 2201, 167 Statute of Limitations L-Ed.2d 1045 (2007); see generally 15 U.S.C. § 1681n. Other As an initial matter, one of the actions, Perl v. Bombay than in American Express and Credit Bureau, plaintiffs have CMPNY/CBSD (“Bombay” ), may be dismissed as time- failed to allege any facts related to defendants’ state of mind barred.

An action alleging liability under the FCRA may be when they allegedly initiated the “hard” and/or “soft pull(s)” brought in a federal district court no later than the earlier 9 plaintiffs’ credit reports. Some of the complaints assert a of (1) two years after the plaintiff’s discovery of the alleged caries of “pulls.” Such allegations go some of the way toward violation; or (2) five years

after the alleged violation occurred. suggesting knowledge on defendants' part by demonstrating ISU.S.C. § 1681p.

The alleged violation in Bombay occurred sg pattern of conduct. But even those complaints do not in July 2006, more than five years before the complaint was provide enough factual content to allow this Court to draw filed on October 27, 2011.

Thus, regardless of when plaintiff the reasonable inference that the alleged violation was willful. discovered the alleged violation, his action is outside the — gue Zapolski, 425 Fed. Appx. at 6. Based on the allegations in statute of limitations period and so fails to state a claim upon the complaints, defendants' conduct could just as likely have which relief can be granted. been unintentional and so plaintiffs have failed to state a claim under Section 1681n.

Violation of the FCRA \*3 In American Express and Credit Bureau, however, the Plaintiffs' purported FCRA causes of action each rest upon:., □□ a defendant's alleged violation of Section 1681b(f) of the complaints provide more factual content—each additionally Act.

To state a claim for civil liability based on that Section, alleging that the relevant defendant repeatedly informed the a plaintiff must allege both that the defendant used or relevant plaintiff that it could not find any record of an account obtained the plaintiffs credit report for an impermissible belonging to him or her. (Compl. at] 12, American Express; Rosenthal, No. 01 Civ.

651(SAS), 2001 WL 910771, at \*3. ° Aug.13, 2001), and that the violation was willful relevant defendant was well aware that the plaintiff had no or negligent, seel5 U.S.C. §§ 1681n, 16819: see also, eg, account, it plausibly follows that the defendant was also aware Casella v. Equifeex Credit Info. Servs., 56 F3d 469, 473 (2d that t had no permissible purpose for obtaining the plaintiff's Cir.1995).

In each of the instant cases, the relevant plaintiff credit report. See generally15 USC § 1681b(a) (setting forth adequately alleges that his or her report was “pulled”—ie. the permissible Purposes for obtaining a credit report). Given.. the liberal pleading standard for pro se cases, such allegations obtained-for an impermissible purpose (see, e.g., Compl.: at 10-11, Perl v. American Express, No. 11 Civ.

7347) permit a rcasonable inference that the defendant committed a... knowing or reckless violation of the FCRA. Accordingly, Ms. but fails adequately to allege willfulness and/or negligence. °,;. ep.. Perl's willful violation claim against American Express and Accordingly, plaintiffs' willfulness and negligence claims Mr. Perl's equivalent claim against Credit Bureau Collection against Plains Commerce Bank, AT & T Mobility, Nationwide Credit Inc., Webbank/DFS.

121 NCC 1593 via CBC Innovis. Services survive sua sponte dismissal as currently pled. AT & T Services, Hudson Valley Federal, Capital One Bank, and Arrow Financial Services, LLC, and their negligence Negligent Violation claim against American Express and Credit Bureau Collection a. with the willful noncompliance claim, plaintiffs' claim for Services, Inc., are dismissed with leave to replead. negligent violation of the FCRA amounts to no more than a legal conclusion in all cases except American Express and Willful Violation Credit Bureau.

Other than in those two actions, plaintiffs While the plaintiffs assert that each defendant's FCRA have failed to identify any duty or standard of care owed... by the respective defendants. See generally *Clavizzao v. violation was willful*, they do so in a conclusory manner in all but two of the complaints. See generally *Iqbal*, 129 S.Ct. United States, 706 F'Supp.2d 342, 349-50 (S.D.N. Y.2009) (holding that pro se plaintiffs failed to state a negligence claim 2012 WL 178333 where they made only a "conclusory allegation of negligence" reduction proximately caused actual injury to the plaintiff.

See and were "woefully non-specific, failing to identify what = *Gorman v. Experlan Info, Solutions Inc.*, No. 07-CV-1846 duty [defendant] owed [p]laintiffs... and how [defendant] (RPP), 2008 WL 4934047, at \*7 (S.D.N.Y. Nov.18, 2008); see breached that duty"). Allegations stating a violation of the — also *Casella*, 56 F.3d at 474-76; *Engel*, 2011 WL 4091468, at FCRA are insufficient, without more, to establish the element \*6, of negligence, which Congress clearly intended to be an extra hurdle to liability under the FCRA.

See 5 U.S.C. § That plaintiffs even believe they were actually damaged is 16810; see also *Casela*, 56 F.3d at 473; *Pietrafesa v. First not plain* from the complaints. See generally *Dura Pharms.*, *American Real Estate Info. Servs.*, No. 1:05—CV—1450, 2007 544 U.S. at 346 (holding that defendants must have fair notice WL 710197, at \*3 (N.D.N.Y. Mar.6, 2007) ("The fact that a of the grounds for plaintiffs' claims); *Valenzuela*, 2007 WL consumer report is furnished for an impermissible purpose 414487, at \*2.

Plaintiffs' recitation of the elements of their does not result in automatic liability. Liability is imposed — cause of action in the "Counts" section of each complaint only when the [defendant] either willfully or negligently | omits a statement of actual damage, despite the obvious care fails to maintain reasonable procedures to avoid violations \_ plaintiffs' took in reciting the other elements of their claim. of, ie., § 1681b." (internal punctuation omitted)); King Plaintiffs also demand only statutory, not actual, damages v. *MTA Bridges and Tunnels*, 933 F.Supp. 220, 224-25 (including on their willful noncompliance claim) in all but (*E.D.N.Y.1996*) (rejecting potential 16810 claim by pro se the *Bombay and Perl v. Plains Commerce Bank* matters.

In plaintiff despite allegations suggesting a FCRA violation, any event, because in *Bombay and Plains Commerce Bank* where plaintiff had put forth no facts to support an inference —\_ and all of the other actions, plaintiffs have failed to allege of negligence). adequate facts in support of

actual damage and also—except in American Express and Credit Bureau—in support of a In American Express and Credit Bureau, the same factual negligent state of mind, plaintiffs’ negligent noncompliance allegation that plausibly establishes a willful state of mind — claim against each of the defendants is dismissed with leave also does so for a negligent state of mind.

There is no *te* replead. | question that the defendant in each case acted unreasonably in “pulling” the relevant plaintiff’s credit report if it was aware | that it had no permissible purpose for doing so. Yet because Plaintiffs also demand punitive damages for their plaintiffs in these actions have failed adequately to allege negligent noncompliance cause of action in a another necessary element of the negligence cause of action number of the Cases, which damages are not —actual damage—their claim is nevertheless dismissed.

See available under Section 16810 for a negligent *Engel v. Scully & Scully, Inc.*, No. 10 Civ. 3167, 2011 WL violation of the FCRA. Seels U.S.C. § 16810. 4091468, at \*5—6 (S.D.N.Y. Sept. 14, 2011) (holding that while plaintiff had stated a willfulness claim under Section — /¥"#Sher of Information 1681n, he did not state a negligence claim under Section In both of their FCRA counts in each of the complaints, because he failed to allege actual damage). plaintiffs allege that the applicable defendant is a “furnisher of information within the meaning of the FCRA, 15 U.S.C. \*4 Plaintiffs have insufficiently pled actual damage in § 16SIS—2.”

The term “furnisher of information” is not support of their negligent noncompliance claim. A defendant defined in the FCRA, but this Court has interpreted it to who negligently violates the FCRA is liable for any actual | <sup>TM</sup>Can “entities that transmit, to credit reporting agencies, damage sustained by the plaintiff, 15 U.S.C. § 16Blo(a) information relating to debts owed by consumers.” Barberan (1), and Courts have recognized such damage to be an v. Nationpoint, 706 F.Supp.2d 408, 427 n. 11 (S.D.N.Y.2010) essential element of a Section 1681o claim, see *Engel*, 2011 (internal quotation marks omitted).

The reference to Section WL 4091468, at \*6 (dismissing Section 16810 claim, where 1©81S~2 in the complaints is passing, and plaintiffs do not no actual damage was alleged and only statutory damages state a separate cause of action under that section.

Thus, were demanded); *Agu v. Rhea*, No. 09-CV—4732, 2010 WL to the extent that plaintiffs intended to state such a claim, 5186839, at \*6-7 (E.D.N.Y. Dec. 15, 2010) (pro se plaintiff). it is dismissed. Additionally, to the extent that they wish While the factual allegations in each of the instant complaints to plead a cause of action under Section 1681s—2(a) in state that at least one of the “pulls” reduced the plaintiff’s any amended complaint—which section imposes a duty on credit score, they contain no facts suggesting that such furnishers of information to provide accurate information about consumers to credit reporting agencies—doing so 2012 WL 178333 would be futile.

Section 1681s—2(a) is only enforceable by subsections he identifies) that survives at least *swa* sponte government officials, not by private plaintiffs. 15 U.S.C. § dismissal. 1681s—2(d); accord Barberan, 706 F.Supp.2d at 427.

Thus, any claim for violation of that section would necessarily fail Plaintiffs GBL claim does not fare as well, however. To as a matter of law. Accordingly, any claim brought under state a claim under Section 349 of the GBL, a plaintiff Section 1681s—2(a) is dismissed with prejudice. must allege that “(1) the act or practice was consumer- oriented; (2) the act or practice was misleading in a material respect; and (3) the plaintiff was injured as a result.” E.g. *Perl v. Arrow Financial Services, LLC* *Spagnola v. Chubb Corp.*, 574 F.3d 64, 73 (2d Cir.2009). \*5 This action is different from the others in that it contains Plaintiff fails to provide anything more than a legal conclusion two additional counts for violations of Section 1692e of the regarding the first element of the claim.

While plaintiff Fair Debt Collection Practices Act (“FDCPA”) and Section alleges that Arrow's acts were “consumer-oriented” and 349 of the General Business Law of the State of New —«threatened] the rights of consumers generally,” he does not York (“GBL”), both based on allegations of deceptive debt- plead particular facts that plausibly demonstrate that Arrow's collection practices.

Specifically, the plaintiff alleges that he alleged conduct had “a broader impact on consumers at large” sent a “Debt Validation letter” to Arrow Financial Services or “potentially affect[ed] similarly-situated consumers.” See (“Arrow”), a debt collection company, presumably requesting *O.KF-C., Inc. v. Bell Atlantic TriCon Leasing Corp.*, 84 that it provide evidence that he had a valid debt.

Arrow p3g 629, 636 (2d Cir.1996) (internal punctuation omitted), allegedly responded with a debt collection letter, stating that He does not allege, for instance, that the debt collection the “information from the credit agency will be deleted,” —\_Jetter he received was a form collection letter, see *Rozier* but subsequently failed to delete that information and never v. Fin.

*Recovery Sys., Inc.*, No. 10-CV-3273(DLD(JO)), validated the debt. The plaintiff also alleges that he never had = 493) wr 2295116, at \*5 (E.D.N.Y. June 7, 2011) (finding “an account” with Arrow, presumably meaning that he did not —\_allegation that debt collection letter was a form notice sent in fact have any debts on which Arrow was entitled to collect. to thousands of customers sufficient to meet ‘consumer- Reading between the lines of the complaint, the plaintiff oriented’ requirement of Section 349), or that Arrow has seems to allege that Arrow at least implicitly acknowledged — \_ improperly sought to collect on the debts of other consumers that the claimed debt was invalid when it indicated that jp a similar fashion.

Thus, because the plaintiff has failed to provide the information regarding the debt would be erased from the credit report adequately a necessary element of his claim, the claim Plaintiff's credit report, but then never actually erased it and, is dismissed. See generally *OK Petroleum v. Travelers Indem. Co.*, 09 Civ. 10273, 2010 WL 2813804, at \*4-5 (S.D.N.Y. July 15, 2010) (dismissing plaintiffs' Section 349 claim where Such factual allegations should be liberally construed and they speculated that others had been treated in a similar interpreted to raise the strongest claims they suggest.

Assuch, fashion but provided no factual support of consumer-oriented they provide sufficient support to permit the Court to draw a conduct); *Cross v. State Farm Ins. Co.*, No. 3:10—CV—1179, reasonable inference—based on the complaint—that Arrow 2011 WL 496534, at \*3-4 (N.D.N.Y. Oct. 17, 2011) (same is liable for the violations of the FDCPA claimed. See 15 for a pro se plaintiff). §§ 1692e(2), (5), (10); see generally *DiPetto*, 383 Fed.

Appx. at 103; *Zapolski*, 425 Fed. Appx. at 6. Section 1692c of the FDCPA prohibits a debt collector from using “any false, deceptive, or misleading representation or means CONCLUSION in connection with the collection of any debt.” 15 U.S.C. § 1692c. For the foregoing reasons, the following complaints and 1692e. Whether a debt collection notice violates the FDCPA... “is judged by the ‘least sophisticated consumer’ test,” under claims are here by dismissed without prejudice and with leave which the notice is deceptive “if it can be reasonably read to re-plead within 30 days of the date of this Order (except to have two or more different meanings, one of which is to the extent that they purport to state a claim under FCRA: > Section 1681s—2(a), which claim is dismissed with prejudice): inaccurate.” See, e.g., *Suiquilanda v. Cohen & Shamowitz, LLP*, No. 10 Civ.

5868(PKC), 2011 WL 4344044, at \*4 \* The complaints in their entirety in *Perl v. Bombay* (S.D.N.Y. Sept. 8, 2011) (internal quotation marks omitted). *CMPNY/CBSD*, 11 Civ. 7767, *Perl v. Plains Commerce* Given those standards, the plaintiff has stated a plausible Bank, 11 Civ. 7972, *Perl v. AT & T Mobility*, 11 Civ. claim for violation of Section 1692e (and the particular 2012 WL 178333 8521, *Perl v. Nationwide Credit Inc.*, 11 Civ.

8529, *Perl* extent that they know of other facts relevant to the conduct v. *Webbank/DFS*, 11 Civ. 8705, *Perl v. 121 NCC 1593 via eged*, they would be prudent to add those facts to any *CBC Innovis*, 11 Civ. 8887, *Perl v. AT & T Services*, 11 amended complaints they file. Civ. 9007, *Perl v. Hudson Valley Federal*, 11 Civ. 9066, oo, and *Perl v. Capital One Bank USA NA*, 11 Civ.

9092. If plaintiffs fail to replead any of their dismissed complaints or claims within the 30-day period, those complaints or \* Count II of the complaints in *Perl v. American Express*, 11 claims will be dismissed with prejudice.

As noted, any claim Civ. 7347, and Perl v. Credit Bureau Collection Services, intended to be brought under Section 1681s—2(a) of the FCRA Inc. DBA CBCS, 11 Civ. 8165. is already dismissed with prejudice and cannot be resuscitated by repleading. \* Counts I-II and IV of the complaint in Perl v. Arrow Financial Services, LLC, 11 Civ. 6899.

The non-dismissed claims in American Express, Credit Bureau and Arrow Financial Services will proceed in their If plaintiffs choose to replead, to survive dismissal they must cyrrrent form. The Court notes that defendant American allege particular facts that would allow this Court to draw Express is technically in default, having failed to answer Mr. the reasonable inference that each defendant is liable for the \_perl's original complaint by January 11, 2012 (see Docket conduct alleged.

Put another way, plaintiffs would have to — Entry 8, Perl v. American Express, 11 Civ. 7347), and should plead facts that would permit the Court to conclude that each —\_ answer plaintiff's willfulness claim immediately. defendant's conduct was more likely illegal than legal based on the applicable statute. Any amended complaints should also allege, provide facts in support of, and demand actual SO ORDERED: damage for the defendants' negligent violation of the FCRA.. □□□.

All Citations Additionally, while plaintiffs have already pled sufficient facts to support some elements of some of their claims, to the Not Reported in F.Supp.2d, 2012 WL 178333 End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works. Filings (5) Title PDF Court Date Type 1. Docket 1:11cv08887 — S.D.N.Y. Dec. 02, 2011 Docket PERL v. 121 NCC 1593 VIA CBC INNOVIS 2.

Docket 1:11cv08705 — S.D.N.Y. Nov. 28, 2011 Docket PERL v. WEBBANK/DFS 3. Docket 1:11cv08529 — S.D.N.Y. Nov. 18, 2011 Docket PERL v. NATIONWIDE CREDIT INC. 4. Docket 1:11cv08521 — S.D.N.Y. Nov. 18, 2011 Docket PERL v. AT&T MOBILITY 5. Docket 1:11cv07347 — \$.D.N.Y. Oct. 11, 2011 Docket PERL v. AMERICAN EXPRESS History (2) Direct History (1) Fa 1. Perl v. American Exp. ve 2012 WL 178333, S.D.N.Y., Jan.

19, 2012 Related References (1) 2. Perl v. Plains Commerce Bank 2012 WL 760401, S.D.N.Y., Mar. 08, 2012