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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JUDE DARRIN, individually, and on  
behalf of the general public,

Plaintiff,

v.

BANK OF AMERICA, N.A., EXPERIAN  
INFORMATION SOLUTIONS, INC.,  
EQUIFAX INFORMATION SERVICES,  
LLC, & TRANSUNION LLC,

Defendants.

No. 2:12-cv-00228-MCE-KJN

**MEMORANDUM AND ORDER**

On November 12, 2012, Jude Darrin (“Plaintiff”) filed a Second Amended  
Complaint (“SAC”) against Bank of America (“BoA”), Experian Information Solutions, Inc.  
 (“Experian”), Equifax Information Services, LLC (“Equifax”), and TransUnion LLC  
 (“TransUnion”) (collectively referred to as “Defendants”).<sup>1</sup> (ECF No. 23.)

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<sup>1</sup> Because oral argument will not be of material assistance, the Court orders this matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

1 Plaintiff alleges the following causes of actions against BoA: (1) violations to the Fair  
2 Credit Reporting Act 15 U.S.C § 1681s-2(b); (2) violations to the California Consumer  
3 Credit Reporting Agencies Act; (3) violations to the California Rosenthal Act;  
4 (4) violations to the California Consumers Legal Remedies Act; (5) violations to the  
5 California Business and Professions Code § 17200; (6) Defamation; and (7) Conversion.  
6 Id. Plaintiff alleges that Equifax, Experian and TransUnion violated: (1) the Fair Credit  
7 Reporting Act 15 U.S.C. § 1681e(b); (2) the Fair Credit Reporting Act 15 U.S.C.  
8 §1681(i); (3) the California Business and Professions Code § 17200; and  
9 (4) Defamation. Id. On November 29, 2012, BoA filed a Motion to Dismiss. (ECF  
10 No. 25.) On January 3, 2013, TransUnion filed a Motion to Dismiss. (ECF No. 41.)  
11 Equifax filed a Motion for Judgment on the Pleadings and joined TransUnion's Motion to  
12 Dismiss on January 24, 2013. (ECF No. 48.) On January 31, 2013, Experian filed a  
13 Motion to Join TransUnion's Motion to Dismiss. (ECF No. 53.) For the reasons  
14 discussed below, BoA's Motion is GRANTED in part and DENIED in part. (ECF No. 25.)  
15 For the reasons discussed below, TransUnion's, Equifax's, and Experian's Motions are  
16 GRANTED. (ECF Nos. 41, 48 and 53.)

## 17

## 18 **BACKGROUND<sup>2</sup>**

## 19

20 In May 2004, Plaintiff refinanced her home loan mortgage through Countrywide.  
21 Plaintiff's monthly payments were due the first of each month. The refinancing terms  
22 stated that Countrywide would assess late charges against Plaintiff if her full payment  
23 was not received by the end of the fifteenth calendar day after the first day of the month.  
24 Until July 2007, Plaintiff paid \$910.18 monthly, but after July 2007 her payment  
25 fluctuated. In July 2009, Plaintiff's payment was set at \$1058.49. Later, BoA took over  
26 the loan from Countrywide.

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<sup>2</sup> Unless specified otherwise, the facts in this section are from Plaintiff's SAC. (ECF No. 23.)

1 In September 2009, Plaintiff learned that her monthly payment would increase to  
2 \$1366.89 in October 2009. On September 30, 2009, Plaintiff called BoA and spoke with  
3 "Vlad," a BoA employee. Plaintiff told Vlad that she would be unable to make the higher  
4 mortgage payment. During their September 2009 conversation, Vlad told Plaintiff that  
5 she might qualify for a loan modification and that she should make an \$800.56 payment  
6 in November 2009. Thus, in November 2009 Plaintiff sent BoA a check for \$800.56.

7 Meanwhile, in October 2009, Plaintiff applied for a loan modification through the  
8 government-sponsored Home Affordable Modification Program ("HAMP"). In response  
9 to her application, BoA wrote Plaintiff and told her to stop making her existing mortgage  
10 payment of \$808.52 and instead to pay \$675.87 starting December 4, 2009. Plaintiff  
11 submitted her \$675.87 payment for December, and BoA posted it on December 11,  
12 2009.

13 On December 29, 2009, Plaintiff signed the HAMP Trial Period Plan and agreed  
14 to pay BoA \$675.87 in January 2010, February 2010 and March 2010. The payment  
15 coupons that accompanied the loan stated that Plaintiff's payment would be considered  
16 on time if the payment was received no later than the fifteenth day after the first of each  
17 month. Plaintiff made her January 2010, February 2010 and March 2010 payments on  
18 time. BoA did not contact Plaintiff about her April 2010 payment. As a precautionary  
19 measure, Plaintiff paid BoA \$675.87, which BoA posted to her account on March 29,  
20 2010.

21 On April 1, 2010, Plaintiff received a letter from BoA informing her that BoA  
22 approved Plaintiff for a permanent loan modification, that the new monthly payment was  
23 set at \$790.10, and that she should not make her April 2010 payment. BoA and Plaintiff  
24 finalized the loan modification on May 28, 2010. Plaintiff called BoA and again spoke  
25 with Vlad about the loan modification. Plaintiff informed Vlad that she made her April  
26 2010 payment before receiving BoA's instructions not to make the payment. Vlad  
27 explained that BoA would put her April 2010 payment towards Plaintiff's May 2010  
28 payment.

1 Vlad directed Plaintiff to pay the difference between the old payment amount (\$675.87)  
2 and the new amount (\$790.10) to satisfy her May 2010 obligations. Plaintiff mailed the  
3 difference (\$114.23), which BoA posted on May 3, 2010.

4 After May 2010, Plaintiff's monthly mortgage amount changed each month. Each  
5 month, Plaintiff waited for BoA to inform her of the amount she owed. After receiving the  
6 amount, Plaintiff mailed the payment before the fifteenth of each month. BoA posted  
7 Plaintiff's June 2010 - September 2011 payments before the fifteenth of each month.

8 In September 2011, Plaintiff put an offer on a house and it was accepted pending  
9 financing. At that time, Plaintiff discovered that BoA was reporting her mortgage  
10 payments as late, specifically, that it reported her November 2009, December 2009,  
11 January 2010, February 2010, March 2010, May 2010, September 2010 and June 2011  
12 payments as late. BoA's reporting surprised Plaintiff because BoA never charged  
13 Plaintiff a late fee or notified Plaintiff that she was late. In April 2010, Plaintiff received a  
14 "pay for performance" credit because her payments had been so timely.

15 In September 2011, Plaintiff wrote BoA and requested that it correct the  
16 information it provided Experian, Equifax and TransUnion about her late payment  
17 history. Plaintiff also contacted Experian, Equifax and TransUnion about correcting the  
18 erroneous information. Experian, Equifax and TransUnion investigated the dispute and  
19 forwarded the information they received from Plaintiff to BoA along with a Consumer  
20 Dispute Verification Form. BoA verified the late payment history. Experian, Equifax and  
21 TransUnion informed Plaintiff that they would not change the information on Plaintiff's  
22 credit report because BoA verified it as correct.

23 In October 2011, Plaintiff asked Defendants to reinvestigate her claim. Experian,  
24 Equifax and TransUnion sent BoA a new Consumer Dispute Verification Form. Again,  
25 BoA verified the late payment history. In November 2011, Equifax, TransUnion and  
26 Experian informed Plaintiff that they would not change the untimely payments on her  
27 credit report as BoA confirmed its accuracy.

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1 Plaintiff was unable to buy the home she bid on in September 2011 because of  
2 the payment history BoA reported to the credit reporting agencies. In January 2012,  
3 BoA sent Plaintiff a “Notice of Intent to Accelerate” and informed Plaintiff that she could  
4 cure the default if she paid \$1,617.04 on or before February 16, 2012. Plaintiff sent BoA  
5 a check on January 26, 2012. On or about February 2, 2012, Plaintiff received a letter  
6 from BoA stating that BOA had contacted Experian, Equifax and TransUnion and  
7 informed the agencies that the November 2009, December 2009, January 2010,  
8 February 2010, March 2010 and April 2010 payments were timely.

9  
10 **STANDARD**

11  
12 On a motion to dismiss for failure to state a claim under Federal Rule of Civil  
13 Procedure 12(b)(6)<sup>3</sup>, all allegations of material fact must be accepted as true and  
14 construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins.  
15 Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) requires only “a short and plain  
16 statement of the claim showing that the pleader is entitled to relief” in order to “give the  
17 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell  
18 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,  
19 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require  
20 detailed factual allegations. However, “a plaintiff’s obligation to provide the grounds of  
21 his entitlement to relief requires more than labels and conclusions, and a formulaic  
22 recitation of the elements of a cause of action will not do.” Twombly, 550 U.S. at 555  
23 (internal citations, brackets and quotations omitted). A court is not required to accept as  
24 true a “legal conclusion couched as a factual allegation.” Ashcroft v. Iqbal, 129 S. Ct.  
25 1937, 1950 (2009) (quoting Twombly, 550 U.S. at 555). “Factual allegations must be  
26 enough to raise a right to relief above the speculative level.”

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28 <sup>3</sup> All further references to “Rule” or “Rules” are to the Federal Rules of Civil Procedure.

1 Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R. Miller, Federal  
2 Practice and Procedure § 1216 (3d ed. 2004) (stating that the pleading must contain  
3 something more than “a statement of facts that merely creates a suspicion [of] a legally  
4 cognizable right of action.”)).

5 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket  
6 assertion, of entitlement to relief.” Twombly, 550 U.S. at 556 n.3 (internal citations and  
7 quotations omitted). Thus, “[w]ithout some factual allegation in the complaint, it is hard  
8 to see how a claimant could satisfy the requirements of providing not only ‘fair notice’ of  
9 the nature of the claim, but also ‘grounds’ on which the claim rests.” Id. (citing 5 Charles  
10 Alan Wright & Arthur R. Miller, supra, at § 1202). A pleading must contain “only enough  
11 facts to state a claim to relief that is plausible on its face.” Id. at 570. If the “plaintiffs . . .  
12 have not nudged their claims across the line from conceivable to plausible, their  
13 complaint must be dismissed.” Id. However, “[a] well-pleaded complaint may proceed  
14 even if it strikes a savvy judge that actual proof of those facts is improbable, and ‘that a  
15 recovery is very remote and unlikely.’” Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S.  
16 232, 236 (1974)).

17  
18 **BANK OF AMERICA**

19 **A. Violations of the Fair Credit Reporting Act 15 U.S.C. § 1681s-2(b)**

20  
21 Plaintiff’s first cause of action alleges that BoA violated the Fair Credit Reporting  
22 Act (“FCRA”), 15 U.S.C. § 1681s-2(b), by failing and refusing to investigate or  
23 reinvestigate the disputed payment information after the credit reporting agencies  
24 notified Defendant of the disputes. Plaintiff contends that BoA was obligated to conduct  
25 a reasonable, timely and thorough reinvestigation of the disputed amounts but failed to  
26 do so, thereby causing Plaintiff to lose the home she bid on in September 2011.

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1           The FCRA requires consumer reporting agencies to “adopt reasonable  
2 procedures for meeting the needs of commerce for consumer credit.” 15 U.S.C.  
3 § 1681(b) (2006). Section 1681s-2 states that companies shall not furnish information  
4 about a consumer to a credit reporting agency if they have reason to know, or do know,  
5 that the information is false. 15 U.S.C. § 1681s-2(a)-(b) (2006).

6           BoA argues that Plaintiff has failed to state a claim because Plaintiff’s SAC  
7 alleges that BoA’s reporting was accurate, that Defendant did not have reason to know  
8 its reporting was false, and that Defendant properly investigated the disputed amounts.  
9 (ECF No. 25.) BoA’s argument is unpersuasive. In Plaintiff’s SAC, Plaintiff alleges facts  
10 that BoA knew or should have known that the information it reported about the  
11 November 2009, December 2009, April 2010 and May 2010 payments to Equifax,  
12 Experian and TransUnion was inaccurate.

13           In September 2009, a BoA customer advocate, Vlad, advised Plaintiff that she  
14 might qualify for the HAMP. (ECF No. 23.) That fall, Plaintiff applied for the HAMP. In  
15 October 2009, BoA wrote Plaintiff and directed her to stop making her existing mortgage  
16 payments until the parties completed the HAMP paperwork. Id. Plaintiff alleges that she  
17 did not make the November 2009 payment in reliance on BoA’s letter. The parties  
18 signed the HAMP paperwork on December 29, 2009. Again, Plaintiff alleges that she  
19 did not make the December 2009 payment in reliance on BoA’s letter. The HAMP trial  
20 required Plaintiff to make three payments of \$675.87 in January 2010, February 2010  
21 and March 2010. Id. It also required perfect compliance in order to qualify for the  
22 permanent loan modification. At the end of March 2010, Plaintiff made a \$675.87  
23 payment for April. BoA posted the payment on March 29, 2010. Then, in a letter dated  
24 April 1, 2010, BoA informed Plaintiff that she qualified for a permanent loan modification,  
25 but her payment would rise to \$790.10 each month. In the same letter, BoA directed  
26 Plaintiff not to make her April 2010 payment. Because Plaintiff made her April 2010  
27 payment before receiving the letter, Plaintiff contacted Vlad, the customer advocate.

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1 Vlad told Plaintiff that BoA would consider her April 2010 payment as portion of her May  
2 2010 payment. Id. Vlad directed Plaintiff to pay the difference between the old amount  
3 (\$675.87) and new amount (\$790.10) for May 2010. BoA posted the remaining portion  
4 of Plaintiff's May 2010 on May 3, 2010. Id. Thus, Plaintiff alleges facts that Plaintiff  
5 complied with each and every BoA instruction. It is unreasonable for BoA to argue that  
6 Plaintiff's payments were untimely or incomplete if Plaintiff followed the instructions  
7 BoA's representatives and letters provided.

8 Experian, Equifax and TransUnion informed BoA about the disputes Plaintiff filed  
9 in September 2011 and October 2011. Each agency forwarded all of Plaintiffs'  
10 correspondence to BoA along with a dispute notification form. In both instances, BoA  
11 verified the untimely payments. Plaintiff has pleaded enough facts to state a claim upon  
12 which relief may be granted. If BoA had led a "reasonable" investigation into this  
13 dispute, its own correspondence to Plaintiff would have made it clear that Plaintiff paid  
14 BoA as it directed her to do so.

15 Because Plaintiff states a claim upon which relief may be granted, BoA's Motion  
16 to Dismiss is DENIED as to this claim.

17  
18 **B. Violations to the California Consumer Credit Reporting Agencies Act**

19  
20 The California Consumer Credit Reporting Agencies Act, as codified at California  
21 Civil Code section 1785.25(a) et seq. ("CCRAA"), provides in pertinent part that "[a]  
22 person shall not furnish information on a specific transaction or experience to any  
23 consumer credit reporting agency if the person knows or should have known the  
24 information is incomplete or inaccurate." BoA argues that the Court should dismiss  
25 Plaintiff's CCRAA claim because Plaintiff cannot show that Defendant furnished  
26 information which it knew or had reason to know was incomplete or inaccurate by failing  
27 to notify her about negative information.

28 ///



1 BoA argues that the information it reported regarding the Plaintiff's November 2009,  
2 December 2009, April 2010 and May 2010 payments was accurate.

3 This state action is analogous to the FCRA. Based on the same reasoning  
4 detailed above, BoA's Motion to Dismiss Plaintiff's CCRAA claim is DENIED.

5  
6 **C. Violations of California's Rosenthal Fair Debt Collection Practices Act**

7  
8 The Rosenthal Fair Debt Collection Practices Act ("RFDCPA") was enacted "to  
9 prohibit debt collectors from engaging in unfair or deceptive acts or practices in the  
10 collection of consumer debts, and to require debtors to act fairly in entering into and  
11 honoring such debts." Cal. Civ. Code § 1788.1. Plaintiff alleges that BoA repeatedly  
12 made false reports to credit reporting agencies about Plaintiff's credit standing and  
13 falsely stated Plaintiff's payment history.

14 Based on the language of the statute, courts have declined to regard a residential  
15 mortgage loan as a 'debt' under the RFDCPA. See Cal. Civ. Code § 1788.2(e)-(f);  
16 Castaneda v. Saxon Mortg. Services, Inc., No. 2:09cv01124, 2009 WL 4640673, at \*3  
17 (E.D. Cal. Dec. 3, 2009) (holding that a foreclosure pursuant to a deed of trust does not  
18 constitute a debt collection under the RFDCPA); Pittman v. Barclays Capital Real Estate,  
19 Inc., No. 09CV0241, 2009 WL 1108889, at \*3 (S.D. Cal. April 24, 2009) (dismissing  
20 plaintiff's mortgage-related RDFCPA claim for failing to "invoke statutory protections");  
21 Ines v. Countrywide Home Loans, Inc., No. 08cv1267, 2008 WL 4791863, at \*3 (S.D.  
22 Cal. 2008) (stating plaintiff's mortgage debt claim did not fall within the meaning of the  
23 RFDCPA).

24 The behavior Plaintiff complains of arises out of or exists in connection to her  
25 residential mortgage loan. As the courts have repeatedly held, the collection of this debt  
26 does not fall under the purview of the RFDCPA. Thus, BoA's Motion to Dismiss  
27 Plaintiff's RFDCPA claim is GRANTED.

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1           **D.     Violations of California’s Consumer Legal Remedies Act**

2  
3           California’s Consumer Legal Remedies Act (‘CLRA’) prohibits “unfair methods of  
4 competition and unfair or deceptive acts or practices.” Cal. Civ. Code § 1770. The  
5 CLRA defines goods as “tangible chattels bought or leased for use primarily for personal,  
6 family, or household purchases . . . .” Cal. Civ. Code § 1761(a). BoA argues this action  
7 is inapplicable to this case because the behavior Plaintiff complains of arises out of or  
8 exists in connection to a residential mortgage. (ECF No. 25.) The Court agrees as other  
9 courts have repeatedly declined to interpret “mortgage loan transactions” to meet  
10 CLRA’s goods or services requirement. See McKell v. Washington Mutual, Inc. 142 Cal.  
11 App. 4th 1457, 1488 (2006) and T.C. Jefferson v. Chase Home Finance LLC, No. C06-  
12 6510 TEH, 2007 WL 1302984, at \*2 (N.D. Cal. May 3, 2007).

13           Because Plaintiff’s claim is based on BoA’s misreporting of a residential loan  
14 mortgage, a CLRA action is inappropriate. BoA’s Motion to Dismiss Plaintiff’s CLRA  
15 claim is GRANTED.

16  
17           **E.     Violations of California Business and Professions Code § 17200**

18  
19           California’s Business and Professions Code sections 17200-17210, commonly  
20 known as the Unfair Competition Law (“UCL”), defines unfair competition as “any  
21 unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code  
22 §§ 17200-17210. “Unlawful” practices are practices “forbidden by law, be it civil or  
23 criminal, federal, state, or municipal, statutory, regulation, or court-made.” Saunders v.  
24 Superior Court, 27 Cal. App. 4th 832, 838-39 (1994) (citing People v. McKale, 25 Cal. 3d  
25 626, 632 (1979)). To state a cause of action based on an “unlawful” business act or  
26 practice under the UCL, a plaintiff must allege facts sufficient to show a violation of some  
27 underlying law. McKale, 25 Cal. 3d at 635.

28     ///

1 A business act or practice is "unfair" when the conduct "threatens an incipient  
2 violation of an antitrust law, or violates the policy or spirit of one of those laws because  
3 its effects are comparable to a violation of the law, or that otherwise significantly  
4 threatens or harms competition." Cel-Tech Commc'n, Inc. v. L.A. Cellular Tel. Co.,  
5 20 Cal. 4th 163, 187 (1999). To sufficiently plead an action based on an "unfair"  
6 business act or practice, a plaintiff must allege facts showing the "unfair" nature of the  
7 conduct and that the harm caused by the conduct outweighs any benefits that the  
8 conduct may have. Motors, Inc. v. Times Mirror Co., 102 Cal. App. 3d 735, 740 (1980).

9 A "fraudulent" business act or practice is one in which members of the public are  
10 likely to be deceived. Hall v. Time, Inc., 158 Cal. App. 4th 847, 849 (2008); Olsen,  
11 48 Cal. App. 4th at 618 ("does not refer to the common law tort of fraud but only requires  
12 a showing [that] members of the public 'are likely to be deceived'"). Thus, in order to  
13 state a cause of action based on a "fraudulent" business act or practice, the plaintiff must  
14 allege that consumers are likely to be deceived by the defendant's conduct. Comm. on  
15 Children's Television, Inc. v. Gen. Foods Corp., 35 Cal. 3d 197, 212 (1983).

16 Furthermore, a plaintiff alleging unfair business practices under section 17200  
17 "must state with reasonable particularity the facts supporting the statutory elements of  
18 the violation. Khoury v. Maly's of Cal., Inc., 14 Cal. App. 4th 612, 619 (1993).

19 In alleging a violation of the UCL, Plaintiff incorporates by reference all prior  
20 causes of actions. The Court is dismissing some, but not all, of Plaintiff's causes of  
21 actions; thus, Plaintiff may be able to establish the predicate "unlawful" action underlying  
22 the UCL claim. BoA's Motion to Dismiss Plaintiff's UCL cause of action is DENIED.

## 23 24 **F. Defamation**

25  
26 The basis for a state law defamation action in this case is that BoA provided  
27 inaccurate information about Plaintiff's credit history to Equifax, TransUnion and  
28 Experian. Defamation may be based on either libel or slander in California.

1 Woods v. Protection One Alarm Monitoring, Inc., 628 F. Supp. 2d 1173, 1187 (E.D. Cal.  
2 2007).

3 Libel is a false and unprivileged publication by writing,  
4 printing, picture, effigy, or other fixed representation to the  
5 eye, which exposes any person to hatred, contempt, ridicule,  
or obloquy, or which causes him to be shunned or avoided, or  
which has a tendency to injure him in his occupation.

6 Id.

7 BoA argues that Plaintiff's defamation claim fails because BoA provided the credit  
8 reporting agencies with true and accurate information. Whether BoA reported accurate  
9 information is material to this case and it cannot be ascertained at this early stage;  
10 however, Plaintiff has pleaded enough facts to state a cause of action upon which relief  
11 may be granted. BoA's Motion to Dismiss Plaintiff's Defamation claim is DENIED.

12  
13 **G. Conversion**

14  
15 Plaintiff's final cause of action against BoA is an allegation of conversion pursuant  
16 to California Civil Code section 3336. Under California law, a Plaintiff must show the  
17 following elements to establish conversion: (1) ownership or right to possession of  
18 property; (2) wrongful disposition of the property right; and (3) damages. Kremen v.  
19 Cohen, 337 F.3d 1024, 1029 (9th Cir. 2003).

20 Plaintiff has failed to establish that BoA "wrongfully" dispossessed Plaintiff of  
21 \$1,617.04. Plaintiff's SAC describes Plaintiff voluntarily paying BoA the sum. (ECF  
22 No. 23.) Further, California law does not provide for a conversion action where there is  
23 "a contractual right of payment." Ortega v. Toyota Motor Sales, USA, Inc., 572 F. Supp.  
24 2d 1218, 1220 (S.D. Cal. 2008). Because Plaintiff owed BoA money because the parties  
25 entered into home mortgage loan contract, an action for conversion in this instance is  
26 legally unsound. BoA's Motion to Dismiss Plaintiff's Conversion action is GRANTED.

27 ///

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**EQUIFAX, TRANSUNION, AND EXPERIAN**

**A. Violations of the Fair Credit Reporting Act 15 U.S.C. § 1681e(b)**

1  
2  
3  
4 Congress intended the FCRA to protect consumers from credit reporting agencies  
5 spreading inaccurate information about their credit history by requiring credit reporting  
6 agencies to collect accurate, relevant and current information in a confidential and  
7 responsible manner. Guimond v. TransUnion Credit Info. Co., 45 F.3d 1329, 1333 (9th  
8 Cir. 1995) (quoting St. Paul Guardian Ins. Co. v. Johnson, 884 F.2d 881, 883 (5th Cir.  
9 1989). Section 1681e(b) of the Act states: “whenever a consumer reporting agency  
10 prepares a consumer report it shall follow reasonable procedures to assure maximum  
11 possible accuracy of the information concerning the individual about whom the report  
12 relates.” The Ninth Circuit has explained that liability under “§ 1681e(b) is predicated on  
13 the reasonableness of the credit reporting agency’s procedures in obtaining credit  
14 information.” Guimond, 45 F.3d 1329 at 1333.

15 Carvalho v. Equifax Information Services, 588 F. Supp. 2d 1089 (N.D. Cal. 2008),  
16 is instructive in this instance. In Carvalho, a creditor and a consumer were engaged in a  
17 dispute about the validity of a debt which “could only be resolved by a court of law.” Id.  
18 at 1097. The Court explained that credit reporting agencies are “neither qualified nor  
19 obligated to resolve” legitimacy of debt disputes between creditors and consumers. Id.  
20 at 1098. Actions, like the one at hand, have crossed the line from factual deficiencies to  
21 “collateral attacks.” Id. In this case, the actual dispute is with BoA. The FRCA does not  
22 permit consumers to sue credit reporting agencies as another way to “collateral[ly]  
23 attack” a creditor. Id. at 1098-99.

24 In this case, there is no evidence that the information Equifax, TransUnion or  
25 Experian reported was inaccurate at the time it reported the adverse reports. Plaintiff  
26 and BoA disputed the accuracy of the underlying credit information. BoA repeatedly  
27 confirmed the negative credit history’s accuracy.

28 ///

1 In September 2011, Plaintiff notified Equifax, TransUnion and Experian that the  
2 information each agency was reporting from BoA was inaccurate. Within the month,  
3 each of the credit reporting agencies investigated the dispute and contacted BoA about  
4 the information. BoA verified the information as accurate. A month later, in October  
5 2011, Plaintiff disputed the information again. Each agency reinvestigated the  
6 information and recontacted BoA about the possible inaccuracies. Again, BoA  
7 confirmed the information it gave the credit reporting agencies about Plaintiff's credit as  
8 accurate. Plaintiff's own complaint describes each credit reporting agency's response to  
9 her contention as extremely responsive. (ECF No. 47.)

10 Equifax's, TransUnion's and Experian's Motion to Dismiss Plaintiff's FCRA action  
11 is GRANTED with prejudice.

12  
13 **B. Violations of the Fair Credit Reporting Act 15 U.S.C. § 1681(i)**

14  
15 Section 1681i governs how credit reporting agencies should govern  
16 reinvestigations of disputed credit information. A prima facie showing under § 1681i  
17 consists of the following elements: (1) plaintiff's credit file contains inaccurate or  
18 incomplete information; (2) plaintiff notified the credit reporting agency directly of the  
19 inaccurate or incomplete information; (3) plaintiff's dispute is not frivolous or irrelevant;  
20 (4) the credit reporting agency failed to respond to plaintiff's dispute; (5) the failure to  
21 reinvestigate caused plaintiff to suffer damages; (6) actual damages, such as damages  
22 caused by humiliation, mental distress, or injury to reputation or creditworthiness,  
23 resulted to plaintiff. Thomas v. TransUnion, LLC, 197 F. Supp. 2d 1233, 1236 (D. Or.  
24 2002).

25 As explained above, Plaintiff's own Complaint describes each credit reporting  
26 agency's response to her contention that the BoA information was inaccurate as  
27 extremely responsive. (ECF No. 47.) All three credit reporting agencies reinvestigated  
28 Plaintiff's claim within one month of the original complaint about the BoA information.

1 In both investigations, each agency contacted BoA after the alleged inaccurate  
2 information. In both September and October 2011, BoA confirmed the information it  
3 provided the agencies about Plaintiff was accurate. Thus, Plaintiff has failed to present  
4 facts that TransUnion, Experian, or Equifax “failed to respond” or “failed to reinvestigate”  
5 the dispute. Plaintiff’s complaint presents facts that defeat its own action.

6 Equifax’s, TransUnion’s and Experian’s Motion to Dismiss Plaintiff’s FCRA action  
7 is GRANTED with prejudice.

8  
9 **C. Remaining State Claims Against Equifax, TransUnion, and Experian**

10  
11 Having dismissed Plaintiff’s federal claims against TransUnion, Equifax and  
12 Experian, the Court determines that the SAC presents no basis for federal question  
13 jurisdiction or for diversity jurisdiction. 28 U.S.C. §§ 1331, 1332 (2006). The Court  
14 declines to exercise supplemental jurisdiction over these claims pursuant to 28 U.S.C.  
15 § 1367(c). Plaintiff’s UCL and Defamation causes of action against TransUnion, Equifax  
16 and Experian are DISMISSED as moot.

17  
18 **CONCLUSION**

19  
20 For the foregoing reasons, BoA’s Motion to Dismiss is GRANTED in part and  
21 DENIED in part without leave to amend. (ECF No. 25.) BoA’s Motion to Dismiss  
22 Plaintiff’s RFDCPA, CCLRA, and Conversion actions is GRANTED with prejudice. (ECF  
23 No. 25.) BoA’s Motion to Dismiss Plaintiff’s FRCA, CCRAA, UCL, Defamation actions is  
24 DENIED. (ECF No. 25.) The Court orders BoA to answer Plaintiff’s Complaint within  
25 twenty-one days of this Order.

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1 For the reasons discussed above, the motions of TransUnion, Equifax and  
2 Experian are GRANTED (ECF Nos. 41, 48 and 53) with prejudice. Because the Court is  
3 granting Equifax's Motion to Dismiss with prejudice, the Court need not rule on its  
4 Motion for Judgment as it is now moot. (ECF No. 48.) The Clerk of the Court is directed  
5 to the close this case as it relates to TransUnion, Equifax and Experian.

6 IT IS SO ORDERED.

7 Dated: March 6, 2013

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MORRISON C. ENGLAND, JR., CHIEF JUDGE  
UNITED STATES DISTRICT JUDGE