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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 CHRISTOPHER ABERNATHY,
16 Plaintiff,

17 v.

18 CONTINENTAL SERVICE GROUP, INC.
19 d/b/a ConServe and EXPERIAN
INFORMATION SOLUTIONS, INC.,

20 Defendants.
21

Case No. 2:17-CV-636-APG-NJK

**EXPERIAN'S MOTION FOR
SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

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23 This Motion is based upon the Memorandum of Points and Authorities in Support of the
24 Motion, declarations and exhibits attached thereto, all of the pleadings and other papers on file in
25 this action, and upon such other and further evidence or argument that the Court may consider.
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1 551 U.S. 47, 52 (2007). The FCRA governs the content of consumer reports, which contain credit
2 information provided by data furnishers, including creditors and lenders; and the preparation and
3 distribution of consumer credit reports by credit reporting agencies² (“CRAs”), such as Experian.
4 *See, e.g.*, 15 U.S.C. §§ 1681b, 1681c. Importantly, the FCRA does not require CRAs to maintain
5 error-free credit reports. *See Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th
6 Cir. 1995). Instead, the FCRA requires that CRAs use reasonable procedures to ensure that
7 consumer credit information is accurate, and to reasonably reinvestigate consumer disputes about
8 the accuracy of credit information—a process called “reinvestigation.” 15 U.S.C. §§ 1681e, 1681i.

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10 “In passing the FCRA, Congress . . . struck a balance between the rights of citizens to be
11 reported about accurately and the need for efficiency among credit reporting agencies.” *Smith v.*
12 *Auto Mashers, Inc.*, 85 F. Supp. 2d 638, 641 (W.D. Va. 2000). “The balance . . . struck places a
13 comparatively light burden on reporting agencies regarding the accuracy of information they
14 gather. In order to comply with FCRA . . . , a reporting agency need only disregard information
15 that is plainly wrong or suspicious.” *Id.* “Congress [has] made clear that FCRA was intended to
16 be a balanced regulatory scheme that recognizes the vital role of consumer reporting agencies.”
17 *Equifax Inc. v. FTC*, 678 F.2d 1047, 1048 n.3 (11th Cir. 1982). “The statute has been drawn with
18 extreme care, reflecting the tug of the competing interests of consumers, CRAs, furnishers of credit
19 information, and users of credit information.” *Nelson v. Chase Manhattan Mortg. Corp.*, 282 F.3d
20 1057, 1060 (9th Cir. 2002). *See also, e.g., Scharpf v. AIG Mktg., Inc.*, 242 F. Supp. 2d 455, 459
21 (W.D. Ky. 2003).

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² The FCRA actually refers to such entities as “consumer reporting agencies,” 15 U.S.C.
28 § 1681a(f), but given that the term “credit reporting agencies” is more common in colloquial
usage, this brief uses that term instead.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1
2 Plaintiff Christopher Abernathy (“Plaintiff”) owed a debt of \$1,158.50 for unpaid tuition
3 and fees to the College of Southern Nevada. (Ex. L³ (Deposition of Christopher Abernathy
4 (“Abernathy Dep.”)) at 39:19-40:10; Ex. C at 6) After a protracted period of nonpayment, the
5 college assigned Plaintiff’s debt to Defendant Continental Service Group, Inc. (“ConServe”), a
6 collection agency. ConServe, in turn, attempted to collect on the debt and reported the account as
7 a collection account to Experian. (See Ex. M (Deposition of Mary Kay Holleran (“Holleran Dep.”))
8 at 16:17-25.) Plaintiff ultimately paid the debt. (See Ex. L (Abernathy Dep.) at 45:7-9.)

9
10 In July of 2016, Plaintiff began using the services of a “credit clinic,” Credit Restoration of
11 Nevada, to attempt to remove all negative items from his credit file, regardless of their accuracy.
12 (*Id.* at 17:24-18:1; 23:15-19, 23-25.) He met with a Credit Restoration representative once, signed
13 a power of attorney, and paid Credit Restoration an initial fee of between \$500 and \$1,000.⁴ (*Id.*
14 at 18:5-9; 22:14-24; 24:5-10.) Without any discussion of the accuracy of specific accounts—or
15 any input at all from Plaintiff—the Credit Restoration set out to dispute all of the negative accounts
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19 ³ References to Exhibits A through K are to the exhibits attached to the Declaration of
20 Amanda Hoover, filed concurrently herewith. References to Exhibits L through R are to the
21 exhibits attached to the Declaration of Jennifer Braster, also filed concurrently herewith.

22 ⁴ This fee violated both state and federal law. Nevada law provides that a credit clinic
23 “shall not . . . [c]harge or receive any money or other valuable consideration before full and
24 complete performance of the services the organization has agreed to perform for or on behalf of
25 the buyer.” Nev. Rev. Stat. § 598.746. And the federal Credit Repair Organizations Act
26 (“CROA”) likewise states that “[n]o credit repair organization may charge or receive any
27 money . . . for the performance of any service . . . for any consumer . . . before such service is
28 fully performed.” 15 U.S.C. § 1679b(b). Congress enacted CROA to combat “credit repair
fraud” and to address its concern that credit clinics too often “inappropriately led consumers to
believe that adverse information in consumer reports can be deleted or modified regardless of the
accuracy of the information.” The Consumer Reporting Reform Act of 1994, Sen. Rep. 103-209,
at 5 (1993). Congress noted that “credit repair organizations that succeed in having accurate
information deleted from the consumer’s report often do so by abusing the reinvestigation
system,” for example by “lodging protest after protest until the [credit reporting] agency is unable
to verify the information.” *Id.* The CROA sought to curtail those activities by regulating the
advertising and billing practices of companies that held out the promise that they could help
consumers with accurate, but negative, credit information “restore” their credit.

1 on Plaintiff's credit report. (*Id.* at 23:2-20.) The clinic sent dispute letters to Experian in August,
2 September, and November 2016.

3 **Experian's Credit Reporting Practices**

4 Experian generates consumer reports based on information that it receives from creditors,
5 also called "data furnishers." (Hoover Decl. ¶¶ 5-7.) Experian organizes the information creditors
6 provide into usable reports and makes those reports available to consumers and authorized third
7 parties. (*Id.*) Although CRAs like Experian necessarily depend on the information creditors
8 provide, Experian also has instituted procedures for verifying the accuracy of information it reports.
9 (*Id.* ¶¶ 9-12.) In the event a consumer disputes the accuracy of a report, Experian also has
10 procedures in place to reinvestigate the disputed account. (*Id.* ¶¶ 13-21.) In performing these
11 reinvestigations, Experian considers all relevant information the consumer provides. (*Id.* ¶ 15.)

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14 Experian is able to internally resolve some disputes based either on proof provided by the
15 consumer or Experian's own internal policies. (*Id.*) In other cases, including this one, Experian
16 contacts the relevant data furnisher, explains the consumer's dispute, forwards a copy of all
17 documentation provided by the consumer (no such documentation was provided here, *see infra* at
18 5-7), and requests a response concerning the accuracy of the disputed items. (*Id.* ¶¶ 15-16, 22, 25.)
19 This contact with data furnishers frequently occurs through submission of an Automated Consumer
20 Dispute Verification ("ACDV") form. (*Id.* ¶ 16.)

21 **The First Dispute Letter**

22
23 The first letter Credit Restoration sent Experian was dated August 12, 2016, and disputed
24 all 13 of the negative accounts on Plaintiff's credit report, including the ConServe collection
25 account. (Ex. A; Ex. L (Abernathy Dep.) at 32:16-33:16.) The letter demanded that Experian
26 remove the ConServe account solely on the basis that it was "not familiar." (Ex. A at 1.) No
27 documentation or other evidence to support the claim of inaccuracy as to the ConServe account (or
28

1 any of the other disputed accounts) was included with the letter. In the absence of any such
2 documentation, Experian complied with its obligations under the FCRA by sending a request to
3 ConServe that it investigate the accuracy of the account and report its conclusions to Experian.
4 (Ex. N (Deposition of Amanda Hoover (“Hoover Dep.”)) at 56:3-7.) Pursuant to industry practice,
5 this request was made via ACDV. (*Id.* at 56:3-7; Ex. B.) On September 7, 2016, ConServe
6 responded to the ACDV, and Experian updated its reporting consistent with ConServe’s response.
7 (Ex. B; Ex. M (Holleran Dep.) at 60:8-13, 78:3-12; Ex. N (Hoover Dep.) at 56:8-13.) Experian
8 then sent Plaintiff a letter on September 16, 2016, informing him of the results of the reinvestigation
9 and reflecting ConServe’s reporting of the account as “paid, closed” with a zero balance as of
10 September 2016. (Ex. C at 6.) The comment section for the ConServe account indicated, in light
11 of the dispute letter, that the “[a]ccount information [was] disputed by consumer.” (*Id.*)
12

13 **The Second Dispute Letter**

14
15 Credit Restoration sent Experian another letter, dated September 14, 2016, again disputing
16 all of the negative accounts on Plaintiff’s credit report. (Ex. F; Ex. L (Abernathy Dep.) at 35:12-
17 36:1.) This time, though, instead of saying it was “not familiar,” the letter stated that the ConServe
18 account “was paid and [Plaintiff] would like it removed.”⁵ (Ex. F at 1.) Once again, no
19 documentation supporting Plaintiff’s claimed payment of the ConServe debt was included. (*See*
20 Ex. F.) Experian wrote to Plaintiff on September 29, 2016, referring him to the copy of his credit
21 report attached to the letter, which showed that the account was already reporting as paid and
22 closed. (Ex. G at 1, 5.) An internet dispute was also submitted around this time, asking Experian
23 to confirm the “negative notation in September” on the ConServe account. Experian sent another
24 ACDV to ConServe on October 5, 2016, asking ConServe to reverify the account, and ConServe
25

26
27 ⁵ Plaintiff presumably requested removal because even a paid collection account is still,
28 after all, a collection account, and thus can reflect negatively on a consumer’s credit file. (*See*,
e.g., Ex. M (Holleran Dep.) at 80:2-82:3.) But the FCRA provides that such collection accounts
may remain on a consumer file for seven years. 15 U.S.C. § 1681c(a)(4).

1 responded on October 6, 2016, indicating that the account should be reported as a paid collection
2 account with zero balance as of October 6, 2016. (Ex. H; Ex. M (Holleran Dep.) at 86:8-22, 92:15-
3 19, 93:9-18.) That same day, Experian again wrote to Plaintiff, informing him of the results of the
4 reinvestigation. (Ex. I; Ex. N (Hoover Dep.) at 63:23-65:4.) The comment section for the ConServe
5 account again indicated that it was being disputed by Plaintiff. (Ex. I at 3.)

7 **The Third Dispute Letter**

8 Credit Restoration sent Experian a third and final letter dated November 2, 2016, disputing
9 all of the negative accounts on Plaintiff's credit report. (Ex. J; Ex. L (Abernathy Dep.) at 36:14-
10 37:5.) The third letter again stated that the ConServe account "was paid." (Ex. J at 1.) Again, no
11 documentation regarding the ConServe debt was provided to Experian. (*See* Ex. J.) Because, as
12 before, the account was already reporting as paid, Experian did not send a third ACDV but instead
13 wrote to Plaintiff on November 29, 2016, referring him to the copy of his credit report attached to
14 the letter, which showed that the account was reporting as paid and closed. (Ex. K.) The CDF
15 reflected ConServe's updated reporting of the account and that the account was "disputed by
16 consumer." (*Id.* at 6.)

18 **The Lawsuit**

19 This lawsuit was filed, purportedly by Plaintiff,⁶ against Experian and ConServe on March
20 1, 2017, alleging, as to Experian, violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et*
21 *seq.* ("FCRA"). (*See* ECF No. 1, Complaint ("Compl.")). The cut-and-paste complaint alleges that
22

24 ⁶ In fact, Plaintiff's counsel, Vernon Nelson, was retained by Credit Restoration to initiate
25 this lawsuit on Plaintiff's purported behalf. (Ex. L (Abernathy Dep.) at 22:3-5). Prior to the filing
26 of the complaint, however, Mr. Nelson never contacted Plaintiff to discuss the factual allegations,
27 and Plaintiff did not even review the complaint. (*See id.* at 30:3-31:6; 31:12-14; 37:8-18.) In
28 fact, Plaintiff *never even spoke* to any attorney until the day before his deposition. (*Id.* at 31:5-6.)
Plaintiff never saw "his" interrogatory responses until he was shown them at his deposition. (*Id.*
at 52:21-53:5.) And he never was asked by his counsel to collect any documents as part of the
case. (*Id.* at 31:12-14.) Further, "Plaintiff's" counsel did not even tell Plaintiff about Experian's
settlement offers. (*Id.* at 52:21-53:5.)

1 Experian “failed to evaluate or consider any of Plaintiff’s information, claims, or evidence
2 [regarding the ConServe debt] and did not make any reasonable attempt to verify the disputed
3 reporting of the [Conserve] Debt,” (Compl. ¶ 15.) It also alleges that “Experian have [sic] failed
4 to indicate that Plaintiff disputes the reporting of the [ConServe] Debt.” (*Id.*) And the complaint
5 further alleges that Plaintiff has suffered “(1) substantial economic damages; (2) severe emotional
6 damages, and (3) damages to her [sic] credit history and reputation.” (*Id.* ¶ 19.) A purported
7 Nevada Revised Statutes Chapter 598⁷ claim is tacked onto the end of the complaint. The entirety
8 of the substantive allegation is that Experian and ConServe violated the act via generalized “unfair
9 and deceptive credit reporting activities.” (*Id.* ¶ 60.)

11 At his deposition, Plaintiff testified that core allegations in his complaint were in fact false.⁸
12 Specifically, he admitted that he had not sustained *any* damages: There were no changes to the
13 terms of his existing accounts (Ex. L (Abernathy Dep.) at 49:1-15; 57:2-15), he was not denied any
14 rental opportunities (*id.* at 49:16-50:19), he was not denied any credit (*id.* at 50:22-24; 55:8-16;
15 56:20-57:1), and he was not denied any job opportunities (*id.* at 52:11-18). Further, he stated
16 unequivocally that he did not experience any emotional distress. (*Id.* at 50:24-51:3; 60:8-11.)
17 Moreover, Plaintiff admitted that Experian’s reporting of the ConServe account was accurate
18 (Abernathy Dep. at 47:4-20), and that the credit disclosures produced by Experian did in fact reflect
19 that he disputed the ConServe account.⁹ (*Id.* at 42:5-43:9.)
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24 ⁷ Plaintiff has provided no guidance, in his pleading or in discovery, as to what section(s)
of the fairly voluminous chapter he contends have been violated.

25 ⁸ While certainly an unusual development, Plaintiff’s disavowal of the key allegations of
26 “his” complaint is hardly surprising given that he was uninvolved with the case prior to the day
before his deposition.

27 ⁹ Experian’s counsel has repeatedly pointed out to Plaintiff’s counsel that these
28 admissions are fatal, yet counsel has persisted, without explanation or factual basis, in pursuing
this lawsuit.

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LEGAL STANDARD

A motion for summary judgment should be granted if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000). A “material” fact is one that may affect the outcome of the suit under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A “genuine” issue exists where there is sufficient evidence that a reasonable jury could return a verdict for either party. *See id.* Mere arguments or allegations are insufficient to defeat a properly supported motion for summary judgment; the nonmovant must present more than a scintilla of evidence and must advance specific facts to create a genuine issue of material fact for trial. *See* Fed. R. Civ. P. 56(e); *Anderson*, 477 U.S. at 248-51. “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party,” summary judgment should be entered in the movant’s favor. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

LEGAL ARGUMENT

There are multiple independent reasons why summary judgment should be granted in Experian’s favor. There is no evidence of any damages, Experian’s reporting was accurate, and, at any rate, the procedures Experian followed satisfied its duties under the FCRA.

I. PLAINTIFF CANNOT ESTABLISH THAT EXPERIAN CAUSED ANY COGNIZABLE DAMAGES.

In order to succeed on his 15 U.S.C. § 1681e(b) or 15 U.S.C. § 1681i claims,¹⁰ Plaintiff must prove that Experian caused him a cognizable injury. The FCRA permits the recovery of the “*actual damages* sustained by the consumer as a result of the [defendant’s] failure” to comply with the statute. 15 U.S.C. § 1681o (emphasis added). “The FCRA does not presume actual damages for a negligent or

¹⁰ The complaint never specifies what sections of the FCRA Plaintiff contends Experian violated, but the allegations suggest that Plaintiffs asserts violation of 15 U.S.C. §§ 1681e(b) & 1681i. (*See* Compl. ¶¶ 34, 35.)

1 willful failure to comply with any of its requirements.” *Johnson v. Wells Fargo Home Mortg., Inc.*, 558
 2 F. Supp. 2d 1114, 1122 (D. Nev. 2008). Instead, “Plaintiff bears the burden of proving that his damages
 3 were, in fact, caused by Defendant’s violation.” *Id.* Thus, a claim for negligent violation of the FCRA
 4 fails as a matter of law if the plaintiff cannot show damages. *See, e.g., Banga v. Experian Info. Solutions,*
 5 *Inc.*, 473 F. App’x 699, 700 (9th Cir. 2012) (affirming summary judgment for defendants on claim for
 6 negligent violation of FCRA because plaintiff “failed to raise a triable dispute as to whether defendants’
 7 conduct resulted in actual damages”); *Dowell v. Wells Fargo Bank, NA*, 517 F.3d 1024, 1026 (8th Cir.
 8 2008) (same); *Ruffin-Thompkins v. Experian Info. Solutions, Inc.*, 422 F.3d 603, 609 (7th Cir. 2005)
 9 (same); *Nagle v. Experian Info. Solutions, Inc.*, 297 F.3d 1305, 1307 (11th Cir. 2002) (same).

11 Here, Plaintiff cannot possibly prove actual damages because he *freely admits he was not*
 12 *damaged*. Plaintiff admits that he suffered no emotional distress from Experian’s reporting of the
 13 ConServe account, that he was not denied credit, was not denied any rental opportunity, and was not
 14 denied any job opportunities, and that no changes to his existing credits accounts resulted from Experian’s
 15 reporting of the ConServe debt:
 16

17 Q. So I will represent to you that these are all the hard inquiries on
 18 your account. So if you look at the second column, the second
 entry down says American Honda Finance; is that right?

19 A. Yes.

20 . . .

21 Q. You already had an account with them; right?

22 A. Yes.

23 Q. Did anything change with that account around this time that
 you recall, around September of 2016?

24 A. No. I don’t believe anything.

25 [Q.] Did you experience any credit denials in October or November
 of 2016?^[11]

26 A. October or November? No, I don’t believe so.

27 ¹¹ In his responses to Experian’s Requests for Production, Plaintiff repeatedly asserts that
 28 this case concerns only Experian’s reporting of the ConServe account “from October through
 November 2016.” (Ex. O at 4-10.)

1 Q. And you see there under reason, it says rental on behalf of
Trent Property Management; is that correct?

2 A. That's correct.

3 Q. Do you know what this inquiry could be for?

4 A. A rental property that I ended up living at.

5 Q. So you previously stated that you worked for the Aria, and now
you work for the State of Nevada; is that right?

6 A. That's correct.

7 Q. Did you try to get any other job in between the two or did you -

8 A. No. I stayed at the same job.

9 Q. Okay. Would you say that you sustained emotional damages as
a result of the reporting of the ConServe debt?

10 A. No.

...

11 Q. Have you seen a doctor or a therapist to talk about issues
arising with the reporting of the ConServe account?

12 A. No.

13 (Ex. L (Abernathy Dep.) at 49:1-15; 57:2-15 (no changes to existing accounts); 49:16-50:19 (no
14 denied rental opportunities); 50:22-24; 55:8-16; 56:20-57:1 (no credit denials); 52:11-18 (no lost
15 job opportunities); 50:24-51:3; 60:8-11 (no emotional distress).) Plaintiff's own testimony
16 conclusively establishes he was not damaged. Moreover, Experian's ninth interrogatory to Plaintiff
17 asked him to "[d]escribe all actual damages suffered . . . as a result of the alleged actions of
18 Experian. (Ex. P at 6.) Plaintiff's response stated, in its entirety, that he was "in the process of
19 compiling a list of damages and will update this response when the process is complete." (*Id.* at
20 7.) Plaintiff never provided Experian with any such list, and thus has failed to identify any
21 damages.¹² The absence of any evidence of damages—indeed, the express disavowal of damages—
22 requires summary judgment in Experian's favor.
23

24
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26 _____
27 ¹² Similarly, Experian's seventh request for production to Plaintiff asked for "[a]ll
28 documents which support your damages claims." (Ex. O at 4.) Plaintiff produced no such
documents. He "reserve[d] the right to supplement [his] response as additional documentation
ar[ose] during discovery," but never provided any such "supplement." (*Id.*)

1 **II. EXPERIAN’S REPORTING IS ACCURATE**

2 Even if Plaintiff had been able to overcome the foregoing hurdles, his FCRA claims still
3 would have failed for the most basic of reasons: The disputed information is accurate. In order to
4 prevail on a claim under Section 1681e(b) or Section 1681i, Plaintiff must, among other things,
5 establish that Experian inaccurately reported the information in dispute. *Carvalho v. Equifax Info.*
6 *Servs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010) (“a plaintiff filing suit under Section 1681i must
7 make a ‘prima facie showing of inaccurate reporting’”) (quoting *Dennis v. BEH-1, LLC*, 520 F.3d
8 1066, 1069 (9th Cir. 2008); *Gauci v. Citi Mortgage*, No. 11-CV-1387, 2012 WL 1535654, at *5
9 (C.D. Cal. Apr. 30, 2012) (“Accurate reporting by a credit reporting agency is thus a complete
10 defense to claims under both § 1681e(b) and § 1681i(a).”); *Kuehling v. Trans Union LLC*, 137 F.
11 App’x 904, 908 (7th Cir. 2005) (same). After all, an individual could not possibly have been
12 harmed by the reporting of *accurate* information.
13

14 Again, Plaintiff’s own testimony is fatal to his claims. Experian, as set forth above, reported
15 the ConServe account as “Paid, Closed” during the October-November timeframe at issue. When
16 confronted with his September 19, 2016 Experian credit disclosure at his deposition, Plaintiff
17 admitted the ConServe account was a “Paid, Closed” account and that such reporting by Experian
18 was accurate.
19

20 [Q.] Let’s take a look at the right-hand side again. Under status, it
21 says, “Paid, closed.” Is that right?

22 A. That’s correct.

23 Q. And is that correct?

24 A. Yes.

25 Q. So this report was issued in September of 2016; right?

26 A. Yes.

27 Q. And as of September 2016, the status of the debt should be paid
28 closed; is that right?

 A. Yes.

 Q. . . . As long as that account’s being reported in the future, it
should be reported as being closed?

 A. Yes. That’s how it should work, I would assume.

1 (Ex. L (Abernathy Dep.) at 47:4-20.)¹³ In addition, Plaintiff admitted his *Experian-issued*
2 disclosures did in fact indicate that he disputed the reporting of the ConServe account, and that the
3 complaint's allegations that Experian failed to include that indication were incorrect. (*Id.* at 42:5-
4 44:25.) As Plaintiff admits the ConServe account was reporting accurately, the undisputed facts
5 show Plaintiff cannot meet the threshold inaccuracy requirement in order to establish a violation of
6 Section 1681e(b) or Section 1681i. Experian is entitled to summary judgment.
7

8 **III. THE UNDISPUTED EVIDENCE SHOWS THAT EXPERIAN FULFILLED ITS** 9 **OBLIGATIONS UNDER THE FCRA.**

10 **1. Experian Followed Reasonable Procedures.**

11 Plaintiff's claims under section 1681e(b) independently fail because the evidence
12 establishes that Experian's procedures are reasonable. Experian is not obligated to assure perfect
13 accuracy of Plaintiff's credit information. Instead, the law requires that Experian maintain
14 "reasonable procedures" to assure maximum *possible* accuracy of such information. 15 U.S.C. §
15 1681e(b); *see Guimond*, 45 F.3d at 1333 ("Liability under § 1681e(b) is predicated on the
16 reasonableness of the credit reporting agency's procedures in obtaining credit information.").
17 Because Plaintiff admits that his accounts are accurate, *see* Section III *supra*, the reasonableness of
18 Experian's procedures is unassailable. *Gauci*, 2012 WL 1535654, at *5.

19
20 Furthermore, even if the reporting were inaccurate—and it was not—Experian's procedures
21 in reporting the ConServe account were reasonable. A credit reporting agency acts reasonably
22 "even if it reports inaccurate information, so long as it reasonably believed the source to be
23 reputable at the time it received the information." *Anthony v. Experian Info. Sols., Inc.*, No. 2:14-
24 CV-1230, 2017 WL 1198499, at *5 (E.D. Cal. Mar. 31, 2017); *see also Darrin v. Bank of Am.*,
25 *N.A.*, No. 2:12-CV-228, 2014 WL 1922819, at *6 (E.D. Cal. May 14, 2014) (citing *Guimond*, 45
26

27 ¹³ Plaintiff's October and November credit reports likewise report the account as "Paid,
28 Closed." *See, e.g.*, Ex. E at 4; Ex. K at 6.

1 F.3d at 1333) (holding that plaintiff’s Section 1681e(b) claim failed because the CRA relied upon
2 information from Bank of America (the creditor), and plaintiff presented no evidence that Bank of
3 America was not a reputable source); *see also* 16 C.F.R. 600, § 607.3(A) (a CRA does not violate
4 Section 1681e(b) when it “accurately transcribes, stores and communicates consumer information
5 received from a source that it reasonably believes to be reputable, and which is credible on its
6 face[.]”). Here, there is no evidence that ConServe was an unreliable data furnisher, that the
7 information provided by ConServe was unreliable on its face, or that Experian inaccurately
8 communicated the information ConServe reported. Further, the account was reporting the way
9 Credit Restoration’s September and November dispute letters said it should be. Experian thus had
10 no reason to disregard ConServe reporting as unreliable. As a consequence, the Section 1681e(b)
11 claims fail for this independent reason too.
12

13 **2. Experian’s Investigation Was Adequate.**

14 In the same vein, Plaintiff’s reinvestigation claim under section 1681i independently fails
15 because the evidence establishes that Experian’s investigation was reasonable. Section 1681i
16 provides:
17

18 [I]f the completeness or accuracy of any item of information contained in a
19 consumer’s file . . . is disputed by the consumer and the consumer notifies the
20 agency directly . . . of such dispute, the agency shall . . . conduct a reasonable
21 reinvestigation to determine whether the disputed information is inaccurate.

22 15 U.S.C. § 1681i(a)(1)(A). Similar to Section 1681e(b), Section 1681i does not require a perfect
23 reinvestigation—only a reasonable one. *See id.* When a consumer submits a dispute to a CRA, the
24 CRA satisfies its reinvestigation obligations by contacting the creditor reporting the account,
25 informing it of the consumer’s dispute, including relevant information provided by the consumer,
26 and requesting that the creditor verify the information. *See Boothe v. TRW Credit Data*, 768 F.
27 Supp. 434, 438 (S.D.N.Y. 1991) (a CRA complies with the reinvestigation requirements of the
28

1 FCRA by reinvestigating disputed information with the source of the information to verify that it
2 is accurate). Indeed, the Ninth Circuit has recognized that “the CRA’s ‘reasonable reinvestigation’
3 consists largely of triggering the investigation by the furnisher [here, ConServe].” *Gorman v.*
4 *Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1156 (9th Cir. 2009).

5
6 Although the Ninth Circuit has not yet ruled on this issue, “many courts have held [that] the
7 practice of using ACDVs in the reinvestigation process is reasonable as a matter in law.” *Garrett*
8 *v. Experian Info. Sols., Inc.*, No. 11-CV-12523, 2012 WL 1931324, at *6 (E.D. Mich. May 29,
9 2012) (collecting cases). Reliance on the ACDV process is especially reasonable in cases, such as
10 this, where the plaintiff failed to provide any evidence to support his contention that the information
11 reported by the creditor was unreliable. *Anthony*, 2017 WL 1198499, at *6 (holding as matter of
12 law that Experian’s exclusive reliance on the ACDV process was reasonable when plaintiff failed
13 to provide evidence that the information provided by the data furnisher was suspect); *see also Edeh*
14 *v. Equifax Info. Servs., LLC*, 974 F. Supp. 2d 1220, 1236-37 (D. Minn. 2013), *aff’d*, 564 F. App’x
15 878 (8th Cir. 2014) (granting summary judgment and concluding that the CRA’s exclusive reliance
16 on an ACDV was reasonable as a matter of law when plaintiff submitted no documentation to
17 support the dispute); *Childress v. Experian Info. Sols., Inc.*, 790 F.3d 745, 747 (7th Cir. 2015)
18 (same). “[A] consumer’s dispute of inaccurate information alone [*i.e.*, without providing any
19 supporting evidence] cannot call into question a furnisher’s credibility because consumers have an
20 incentive to be deceitful about their credit information.” *Anthony*, 2017 WL 1198499, at *6. In
21 effect, this would “allow[] [consumers] to dictate their own credit history [and] would make credit
22 reports less, rather than more, accurate.” *Id.*

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24
25 Here, there is no evidence that Experian’s investigations were unreasonable. Experian *twice*
26 reinvestigated Plaintiff’s account with ConServe via the ACDV process. *See supra* at 5-7.
27 Experian then updated Plaintiff’s account in accordance with ConServe’s responses and informed
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1 Plaintiff of the results of its reinvestigations. Regarding the third Credit Restoration letter, from
2 November 2016, Experian referred Plaintiff to the current version of his report, given that the
3 dispute letter asserted the ConServe debt was paid and the account was indeed already reporting as
4 paid and closed. *See supra* at 7. Plaintiff (or, more accurately, Credit Restoration) never provided
5 any documents to support his bald dispute regarding the ConServe account, despite the fact that the
6 letters Experian sent him informing him of the results of its reinvestigations invited him to
7 “provide . . . additional information or documents about [his] dispute to help us resolve it.” (*E.g.*,
8 Ex. G at 2.) As such, Experian’s reliance on the ACDV process is sufficient as a matter of law.

10 **IV. PLAINTIFF CANNOT RECOVER STATUTORY OR PUNITIVE DAMAGES**
11 **BECAUSE HE CANNOT SHOW THAT EXPERIAN WILLFULLY VIOLATED**
12 **THE FCRA.**

13 Punitive and statutory damages are available under the FCRA only upon a showing that a
14 defendant “willfully” failed to comply with the requirements imposed by the FCRA. *See* 15 U.S.C.
15 § 1681n. To satisfy this requirement, Plaintiff must prove that Experian intentionally harmed him,
16 or that Experian’s procedures were so objectively unreasonable that they were in reckless disregard
17 of its statutory obligations. *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 69-70 (2007). To prove a
18 reckless violation, a plaintiff must meet a stringent and objective threshold test: He must show that
19 the action of the credit reporting agency “is not only a violation under a reasonable reading of the
20 statute’s terms, but shows that the company ran a risk of violating the law *substantially greater*
21 than the risk associated with a reading that was merely *careless*.” *Id.* at 69 (emphasis added).
22 Where a CRA’s actions have “a foundation in the statutory text . . . and a sufficiently convincing
23 justification,” they are not objectively unreasonable, let alone reckless, even if the court disagrees
24 with the justification. *Id.* at 69-70. Thus, a CRA violates the FCRA willfully only where its acts
25 are established as unlawful by either “pellucid” statutory text or “guidance from the courts of appeal
26 or the [FTC] . . . that might have warned it away from the view it took.” *Id.* at 70. As the Supreme
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1 Court demonstrated in *Safeco*, the issue of willfulness is amenable to resolution on a motion for
2 summary judgment. *See id.* at 71 (holding, as a matter of law, that the defendant had not acted
3 recklessly); *see also Banga*, 473 F. App'x at 700 (affirming summary judgment for Experian that
4 it had not willfully violated the FCRA).

5
6 Applying this rigorous standard, there is no evidence in the record here that Experian
7 willfully violated the FCRA (or violated the FCRA at all). To the contrary, Plaintiff explicitly
8 admitted at his deposition that he did not believe Experian acted willfully. (Ex. L (Abernathy Dep.)
9 at 54:11-15 (“[Q] Do you believe that Experian willfully reported your ConServe account
10 inaccurately? Did it intentionally? A. Intentionally do that? No.”)). *Cf. Banga*, 473 F. App'x at
11 700 (granting summary judgment on willful violation claims because plaintiff admitted the
12 defendant's actions were not objectively unreasonable).

13
14 Even without Plaintiff's admission, the FCRA and numerous court decisions cited herein
15 make it clear that Experian's actions in this case were not in reckless disregard of its statutory
16 obligations (or taken to intentionally harm Plaintiff). The uncontroverted evidence shows that
17 Experian reported the disputed account consistently with the information provided to it by
18 ConServe (and, for that matter, with the minimal information provided in “Plaintiff's” dispute
19 letters). And Plaintiff, though invited to, did not provide Experian with any documents or
20 information that would give it reason to question the reliability of ConServe's records of the
21 account. *Sarver v. Experian Info. Sols., Inc.*, 390 F.3d 969, 971-72 (7th Cir. 2004) (CRAs may rely
22 on information provided by a reliable furnisher of information).

23
24 At bottom, when a CRA reports information from a source it reasonably believes is
25 reputable, it is deemed to have followed reasonable procedures, even where (unlike here) it
26 subsequently reports inaccurate information on the consumer. *Sarver*, 390 F.3d at 971-72. Plaintiff
27 has not produced *any* evidence that Experian knew it could not rely on ConServe's responses in
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1 this case, let alone produced enough evidence to create a genuine issue of material fact. And
2 Plaintiff cannot point to “pellucid” statutory text, federal rulings, or authoritative agency
3 interpretations that Experian flagrantly contravened. Far from it. Experian complied with its
4 statutory obligations here. Plaintiff cannot prove that Experian willfully violated the FCRA, and
5 his claims fail as a matter of law. The Court should grant summary judgment on Plaintiff’s claim
6 (such as it is (*see* Compl. ¶ 17)) for willful violations of the FCRA as well as his claim for punitive
7 damages.¹⁴ *See, e.g., Cousin v. Trans Union Corp.*, 246 F.3d 359, 373-75 (5th Cir. 2001).

9 **V. THE DECEPTIVE TRADE PRACTICES STATUTE IS INAPPLICABLE, AND**
10 **PLAINTIFF HAS PRESENTED NO EVIDENCE TO SUPPORT THIS CLAIM.**

11 Summary judgment should be granted in Experian’s favor regarding the Deceptive Trade
12 Practices (“DTP”), Nev. Rev. Stat. 598, *et seq.*, claim tacked onto the end of the complaint. The
13 claim is purportedly based on Experian’s “unfair and deceptive credit reporting activities.” (Compl.
14 ¶ 60.) But the DTP statute applies only to the lease or sale of goods or services, and thus does not
15 apply here. *E.g., Rivera v. Nat’l Default Servicing Corp.*, No. 12-CV-629, 2012 WL 2789015, at
16 *3 (D. Nev. July 6, 2012) (dismissing DTP claim based on “false and ineffectual” mortgage
17 documents because DTP statute only applied to “the sale or lease of goods and services”);
18 *Gibilterra v. Aurora Loan Servs., LLC*, No. 12-CV-685, 2013 WL 4040820, at *2 (D. Nev. Aug. 6,
19 2013) (DTP governs only “deceptive trade practices in the sale and lease of consumer goods and
20 services”); *Duarte v. Wells Fargo Bank, N.A.*, No. 13-CV-371, 2013 WL 5236565, at *3 (D. Nev.
21 Sept. 16, 2013) (DTP claim failed in absence of allegations that “Plaintiff[] purchased any goods
22 or services” from the defendant).
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27 ¹⁴ Any attempt by Plaintiff to claim punitive damages is also barred by his failure to show
28 compensatory damages. *Crabill*, 259 F.3d at 664 (without compensatory damages, a plaintiff
“cannot possibly obtain punitive damages”).

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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee of NAYLOR & BRASTER and that on this 20th day of November 2017, I caused the document **EXPERIAN’S MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** to be served through the Court's CM/ECF system addressed to:

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