UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 16-00563 AG (AFMx)	Date	October 1, 2019
Title	DEMETA REYES V. EXPERIAN INFORMATION SOLUTIONS, INC.		

Present: The Honorable	ANDREW J. GUILFORD	
Melissa Kunig	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	

[IN CHAMBERS] ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

In February 2016, Plaintiff Demeta Reyes, a Georgia resident, filed this putative class action against Defendant Experian Information Solutions, Inc., a nationwide credit-reporting agency headquartered in Costa Mesa, California. Plaintiff purports to assert one claim for relief under the Fair Credit Reporting Act of 1970 ("FCRA"), 15 U.S.C. § 1681 *et seq*. Specifically, Plaintiff alleges Defendant willfully failed to "follow reasonable procedures to assure maximum possible accuracy" of information contained in Plaintiff's credit report from certain "payday" loan companies. *See* 15 U.S.C. 1681(b). Plaintiff now moves to certify her proposed class under Federal Rule of Civil Procedure 23. (*See generally* Mot., Dkt. No. 58.)

The Court GRANTS Plaintiff's motion for class certification.

1. BACKGROUND

These facts are taken mostly from the operative complaint and evidence cited in the parties' briefing. The Court's purpose here is only to provide a brief summary of the case.

Back in November 2012, Plaintiff took out a $2,600 loan from Western Sky Financial LLC. (First Am. Compl. ("FAC"), Dkt. No. 48 at ¶ 75.) According to Plaintiff, Western Sky was part of a "rent-a-tribe" scheme involving two other lending entities: Cash Call, Inc. and Delbert Services, Inc. (*Id.* at ¶ 11.) The scheme allegedly went something like this. To avoid state lending laws through tribal sovereign immunity, Cash Call partnered with members of a federally-recognized Indian Tribe to form Western Sky, which offered high-interest loans to consumers over the internet. (*Id.* at ¶¶ 12-14.) Though Western Sky initially issued the loans,

Cash Call funded them. (*Id.* at ¶ 14.) And shortly after Western Sky issued the loans, Cash Call purchased them. (*Id.*) Accordingly, borrowers made all their loan payments to Cash Call, not Western Sky. (*Id.*) And for its alleged role, Delbert assisted with debt collection. (*Id.* at ¶ 20.) If a borrower stopped making payments to Cash Call for a Western Sky loan, the loan would be assigned to Delbert who then initiated "more aggressive collection tactics." (*Id.*)

For her Western Sky loan, Plaintiff maintained her monthly payments from January 2013 through March 2014. (*Id.* at ¶ 78; *see also* Decl. of Demeta Reyes ("Reyes Decl."), Dkt. No. 57-62 at ¶ 1.) By April 2014, however, Plaintiff decided to stop making loan payments. (FAC at ¶ 79.) Plaintiff had learned that Georgia's Attorney General was pursuing a consumer protection action against Western Sky, Cash Call, and Delbert for violations of the Payday Lending Act. (*Id.* at ¶ 35.) *See* Ga. Code Ann. § 16-17-1(a) (prohibiting certain predatory lending practices, like offering small-dollar loans at unreasonably high interest rates). For some reason, this led Plaintiff to believe that her original loan was "illegal and void" under state law and, further, that she had no "obligation to continue making payments." (FAC at ¶ 19.) But Plaintiff's decision to stop making loan payments was, it turns out, premature. Although a Georgia trial court did preliminarily enjoin the defendants in that case from "making new loans or assigning existing loans to any third party," it didn't "prohibit[] them from servicing existing loans." *See W. Sky Fin., LLC v. State ex rel. Olens*, 793 S.E.2d 357, 362 (Ga. 2016).

Plaintiff's failure to continue making loan payments thus made her delinquent. (*See* FAC at ¶¶ 79-80.) And because Western Sky, Cash Call, and Delbert were all Experian clients, Plaintiff's delinquency was reflected in her Experian credit history. (*Id.* at ¶¶ 86-87.) For instance, in December 2015, Plaintiff requested and received an Experian consumer credit disclosure that included a potentially "negative" credit item. (*See* 2015 Report, Dkt. No. 57-60 at 4.) The report stated that Delbert had "charged off" her account, that over a thousand dollars had been "written off" her account, and that the account was over a thousand dollars "past due." (*Id.*) A portion of the report is reproduced following this paragraph.

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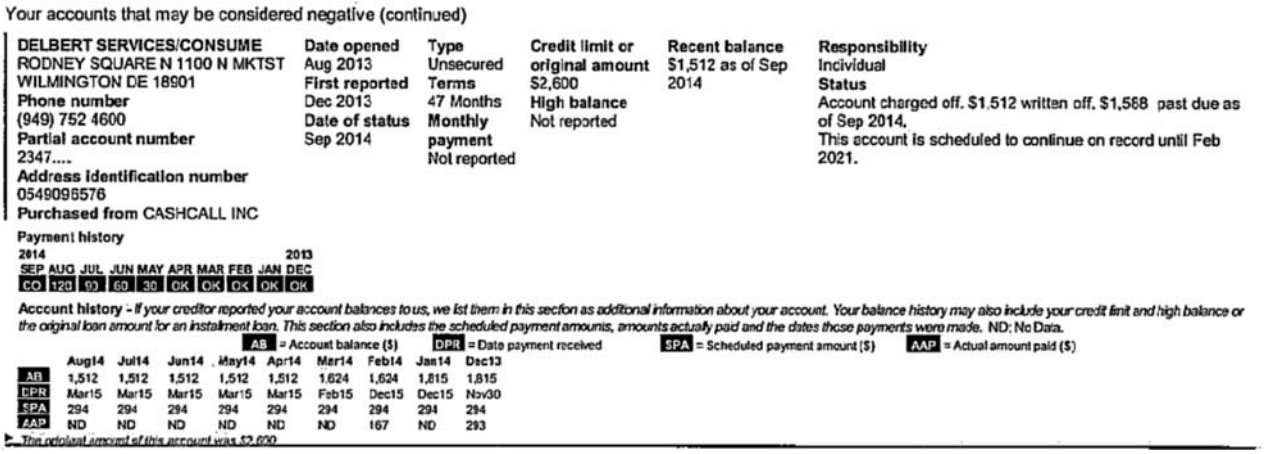

Your accounts that may be considered negative (continued)

DELBERT SERVICES/CONSUME
RODNEY SQUARE N 1100 N MKTST
WILMINGTON DE 19801
Phone number
(949) 752 4600
Partial account number
2347....
Address identification number
0549095576
Purchased from CASHCALL INC

Date opened
Aug 2013
First reported
Dec 2013
Date of status
Sep 2014

Type
Unsecured
Terms
47 Months
Monthly payment
Not reported

Credit limit or original amount
$2,600
High balance
Not reported

Recent balance
$1,512 as of Sep 2014

Responsibility
Individual
Status
Account charged off. $1,512 written off. $1,568 past due as of Sep 2014.
This account is scheduled to continue on record until Feb 2021.

Payment history

2014									2013
SEP	AUG	JUL	JUN	MAY	APR	MAR	FEB	JAN	DEC
CO	120	90	60	30	OK	OK	OK	OK	OK

Account history - If your creditor reported your account balances to us, we list them in this section as additional information about your account. Your balance history may also include your credit limit and high balance or the original loan amount for an installment loan. This section also includes the scheduled payment amounts, amounts actually paid and the dates those payments were made. ND: No Data.

AB = Account balance ($) DPR = Date payment received SPA = Scheduled payment amount ($) AAP = Actual amount paid ($)

	Aug14	Jul14	Jun14	May14	Apr14	Mar14	Feb14	Jan14	Dec13
AB	1,512	1,512	1,512	1,512	1,512	1,624	1,624	1,815	1,815
DPR	Mar15	Mar15	Mar15	Mar15	Mar15	Feb15	Dec15	Dec15	Nov30
SPA	294	294	294	294	294	294	294	294	294
AAP	ND	ND	ND	ND	ND	ND	167	ND	293

The original amount of this account was $2,600

But in December 2014, a year before this particular disclosure was generated, Experian decided to stop reporting all accounts associated with Western Sky loans, including all loans serviced by Delbert. (Decl. of Kimberly Cave ("Cave Decl. 1"), Dkt. No. 52-22 at ¶ 8; FAC at ¶ 112.) This decision was in part motivated by a flurry of other state enforcement actions filed against Western Sky, Cash Call, and Delbert that voided tens of thousands of Western Sky loans and forced Western Sky out of business. (*See* Opp'n, Dkt. No. 73 at 6; FAC at ¶¶ 25, 31-33.)

A short time later, in January 2015, Delbert also went out of business. And when it did, Delbert told Experian that it wanted to "discontinue use of any and all services provided by Experian." (Decl. of J. Austin Moore ("Moore Decl."), Dkt. No. 57-1 at Exh. 42; *see also* FAC at ¶ 69.) Experian promptly responded by confirming that it had deleted all Delbert loans from its database. (Moore Decl. at Exh. 43.) But actually deleting this information turned out to be "somewhat [of a] rocky road." (Opp'n, at 7.) According to both parties, the employee spearheading the effort admittedly "dropped the ball." (*Id.*; FAC at ¶ 72.) Consequently, Experian continued to report Delbert accounts until April 2016. (Cave Decl. 1 at ¶ 11.)

2. LEGAL STANDARD

The class action is an exception to the way litigation usually goes: typically, lawsuits are litigated just by the individually named parties. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011). This exception is only justified if certain requirements are met.

First, a plaintiff seeking class certify action must show that the proposed class satisfies the four elements of Federal Rule of Civil Procedure 23(a): (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation by the class representatives and class counsel. Fed. R. Civ. P. 23(a). All these elements must be satisfied for a class to be certified.

Second, the proposed classes must satisfy one of the three subsections of Rule 23(b). In this case, Plaintiff seeks to certify her proposed class under Rule 23(b)(3). (Mot. at 2) Certification under Rule 23(b)(3) requires a court to find "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

"Rule 23 does not set forth a mere pleading standard." *Dukes*, 131 S. Ct. at 2551. "A party seeking class certification must affirmatively demonstrate his compliance with the Rule." *Id.* The party seeking class certification bears the burden of showing that the requirements of Rule 23(a) and (b) are met. *See Marlo v. U.P.S.*, 639 F.3d 942, 947 (9th Cir. 2011). A district court should certify a class only if the court "is satisfied, after a rigorous analysis," that the Rule 23 prerequisites have been met. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982). If the court is not satisfied, then certification should be refused. *Falcon*, 457 U.S. at 161.

"Frequently that 'rigorous analysis' will entail some overlap with the merits of the plaintiff's underlying claim. That cannot be helped." *Dukes*, 131 S. Ct. at 2551. But "Rule 23 does not authorize a preliminary inquiry into the merits of the suit for purposes other than determining whether certification [is] proper." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 n.8 (9th Cir. 2011) (citing *Dukes*, 131 S. Ct. at 2552 n.6).

3. ANALYSIS

Plaintiff asks the Court to certify the following class, "All persons whose Experian consumer report contained an account from Delbert Services Corp. reflecting delinquency on a loan originated by Western Sky Financial, LLC after January 21, 2015 . . . ." (Mot. at 11.) Plaintiff defines "delinquency" as "accounts that have been charged off, sent to collection, and/or reflect past due or late payments[.]" (*Id.* at 11, n.4.) Excluded from the Class are certain

persons affiliated with Experian, as well as "any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staff." (*Id.* at 12.)

As discussed below, the Court finds certification of this class appropriate. Accordingly, the Court doesn't address whether Plaintiff's alternative proposed class meets the requirements of Rule 23. (*See* Mot. at 11-12.)

3.1 Standing

At oral argument, particularly when compared to previous times, standing was the Defendant's key defense. Because standing is now a dominant issue in the arguments, the Court addresses it first here, beginning with the key Supreme Court case, *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) ("*Spokeo I*") and its Ninth Circuit progeny, *Robins v. Spokeo, Inc.*, 867 F.3d 1108 (9th Cir. 2017) ("*Spokeo II*").

In *Spokeo I*, the Supreme Court held that the injury-in-fact requirement for standing under Article III isn't "automatically satisf[ied] whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." *Spokeo I*, 136 S. Ct. at 1549. Rather, "Article III standing requires a concrete injury even in the context of a statutory violation." *Id.* The Supreme Court noted, however, that a concrete injury could be intangible. *Id.* And in such cases, the Court explained that "the violation of a procedural right granted by statute can be sufficient" to show injury-in-fact. *Id.*

Then, in *Spokeo II*, the Ninth Circuit set out a two-part test for "how courts should evaluate whether a concrete harm [exists] based on the procedural violation of a statute." *Dutta v. State Farm Mutual Automobile Ins. Co.*, 895 F.3d 1166, 1174 (9th Cir. 2018); *see Spokeo II*, 867 F.3d at 1174. Under that test, courts "ask: (1) whether the statutory provisions at issue were established to protect [the plaintiff's] concrete interests (as opposed to purely procedural rights), and if so, (2) whether the specific procedural violations alleged in [the] case actually harm, or present a material risk of harm to, such interests." *Spokeo II*, 867 F.3d at 1113. While the first inquiry focuses on "whether Congress enacted the statute at issue to protect a concrete interest that is akin to a historical, common law interest[,]" the second inquiry "'requires some examination of the *nature* of the specific alleged [violations] to ensure that

they raise a real risk of harm to the concrete interests [the statute] protects.'" *Dutta*, 895 F.3d at 1174 (quoting *Spokeo II*, 867 F.3d at 1116).

Applying this two-part test here, the Court finds Plaintiff has standing to pursue her FCRA claim. As to the first part of the test, it's clear that the statutory provision at issue—Section 1681e(b) of the FCRA—was established by Congress to protect a concrete interest akin to those interests traditionally protected under the common law. That concrete interest is the interest in accurate credit reporting. Indeed, Congress "'crafted [the FCRA] to protect consumers from the transmission of inaccurate information about them in consumer reports.'" *Spokeo II*, 867 F.3d at 1113 (quoting *Guimond v Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995)). And Section 1681e(b) furthers this goal by "specifically requir[ing] reporting agencies to 'follow reasonable procedures to assure maximum possible accuracy' of the information contained in an individual's consumer report." *Id.* at 1114 (quoting 15 U.S.C. § 1681e(b)). Further, the interest served by the FCRA's procedural requirements, including those embodied in Section 1681e(b), are sufficiently concrete, particularly given "the real-world implications of material inaccuracies in [credit] reports" and "the likelihood that such information will be important to one of the many entities that make use of such reports." *Id.* And finally, this interest mirrors those traditionally protected under the common law because of its similarity to certain historical reputational and privacy protections. *See id.* ("As other courts have observed, the interests that the FCRA protects also resemble other reputational and privacy interests that have long been protected in the law.") The first part of the standing test is thus satisfied.

So is the second part. The nature of the statutory violation that allegedly occurred here—namely, Defendant's failure to use maximum reasonable procedures to prevent the continued reporting of delinquent Delbert accounts—presents a clear risk of material harm to Plaintiff's concrete interest in accurate credit reporting. This much is obvious from Plaintiff's allegations, and from Plaintiff's expert evidence. (Moore Decl. at Exh. 60, pp. 27-30.) Indeed, Plaintiff's expert has opined that, because credit scores are based largely on payment history and payments owed, the continued reporting of Plaintiff's Delbert account "negatively affected her credit score[.]" (*Id.* at Exh. 60, pp. 29.) Even by Defendant's own admission, delinquent accounts—such as Plaintiff's Delbert account—are those that "lenders are likely to consider negative when reviewing your credit history." (*Id.* at Exh. 59, pp. 3.) What's more, because

Delbert had gone out of business, Plaintiff's delinquent Delbert account couldn't be verified or made current. (*Id.* at Exh. 60, pp. 23, 26.) Given these facts, and "given the ubiquity and importance of consumer reports in modern life," the lingering presence of Plaintiff's Delbert account jeopardized Plaintiff's creditworthiness and, by extension, her concrete interest in accurate credit reporting.

The material risk of harm here sets this case apart from the infamous zipcode example found deficient in *Spokeo I*. *See Spokeo I*, 136 S. Ct. at 1550 ("It is difficult to imagine how the dissemination of an incorrect zip code, without more, could work any concrete harm."). That's also what sets this case apart from other cases in the Ninth Circuit that found no material risk of harm based on inaccuracies in other consumers' credit reports. *See Dutta*, 895 F.3d at 1176 (involving an employment decision based on *accurate* information in the plaintiff's credit report); *Jaras v. Equifax, Inc.*, 766 Fed. App'x. 492, 494 (9th Cir. 2019) (involving inaccuracies "that wouldn't "obvious[ly]" cause the plaintiffs' to have lower credit scores); *Terry Carson v. Experian Info. Sols., Inc.*, No. 8:17-cv-02232-JVS-KES, 2019 WL 3073993, at *7 (C.D. Cal. July 9, 2019) (involving "[t]he inability to completely assess" information in credit reports where none of the information disclosed or withheld was "inaccurate"); *see also Dreher v. Experian Info. Sols. Inc.*, 856 F.3d 337, 346 (4th Cir. 2017) (involving the failure to disclose the proper *source* of information contained in a credit report); *Huff v. TeleCheck Services, Inc.*, 923 F.3d 458, 467 (6th Cir. 2019) (involving a consumer's ability to "monitor a credit report" that had "no actual consequences for the consumer"). Consequently, the procedural violation that purportedly occurred here, together with the inaccuracy that allegedly resulted, gives Plaintiff standing to sue under the FCRA.

Contrary to Defendant's suggestion, this conclusion holds true regardless of whether Plaintiff can prove that the continued reporting of Plaintiff's delinquent Delbert account "adversely affected . . . some decision by a creditor, employer, or insurer." (Def.'s Supp'l Brief, Dkt. No. 121 at 1.) Why? Because for the reasons already mentioned, "both the challenged conduct and the attendant injury have already occurred." *Spokeo II*, 867 F.3d at 1118. The challenged conduct is, of course, Defendant's continued reporting of Plaintiff's delinquent Delbert account after that account should've been deleted. And the alleged attendant injury is the intangible risk of harm associated with having a consumer report generated that included this purported misinformation. The Court thus finds that it's "of no consequence how likely

[Plaintiff] [was] to suffer *additional* concrete harm[,]" such as the loss associated with a missed credit opportunity. *See id.* Indeed, *Spokeo II* held the same based on much less detrimental inaccuracies than those alleged here. *See Spokeo II*, 867 F.3d at 1117-18 (holding that the "seemingly flattering" inaccuracies about plaintiff's marital status, age, wealth, employment status, and educational background were "sufficiently concrete" to confer standing regardless of whether the plaintiff "suffer[ed] *additional* concrete harm . . . (such as the loss of specific job opportunity)."). Plaintiff thus has standing to pursue her FCRA claim.

But Defendant says that's not enough. Defendant asserts Plaintiff must also prove standing on behalf of the entire class to justify certification. (Def's Supp'l Brief at 2.) Not so. Though *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 596 (9th Cir. 2012) held that "[n]o class may be certified that contains members lacking Article III standing," a later case clarified that this statement "signifies only that it must be *possible* that class members have suffered injury, not that they did suffer injury, or that they must prove such injury at the certification phase." *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, n.6 (9th Cir. 2016). Instead, "in a class action, standing is satisfied if at least one named plaintiff meets the [standing] requirements." *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (en banc); *see also Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1021 (9th Cir. 2011). Here, for all the same reasons Plaintiff has standing, it's at least possible that the unnamed class members also have standing. This conclusion finds further support in that relief is limited to class members who actually had a consumer report prepared by Defendant during the class period, rather than broadly encompassing all consumers with delinquent Delbert accounts generally. *See* 15 U.S.C. § 1681e(b) (applying "[w]henever a consumer reporting agency *prepares* a consumer report" (emphasis added)). And although Defendant argues that the alleged "inaccuracy" was probably harmless for some class members, Defendant's evidence on this point is fleeting and thus fails to disprove a possibility of class standing here. (*See* Decl. of Kimberly Cave ("Cave Decl. 2"), Dkt. No. 73-1 at ¶¶ 19-21.) Accordingly, Plaintiff's motion for class certification can't be denied for lack of standing.

3.2 Rule 23(a)(1)—Numerosity

The Court moves on to Rule 23(a), beginning with the numerosity requirement in Rule 23(a)(1). That subsection requires that a class be "so numerous that joinder of all members is

impracticable." Fed. R. Civ. P. 23(a)(1). A proposed class of at least forty members generally satisfies the numerosity requirement. *See Jordan v. Los Angeles County*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds by County of Los Angeles v. Jordan*, 459 U.S. 810 (1982).

According to Plaintiff, there are at least 102,824 class members. (Mot. at 13.) Defendant doesn't contest this estimate. Clearly, this volume of class members makes joinder impractical. The Court thus finds Rule 23(a)(1) satisfied.

3.3 Rule 23(a)(2)—Commonality

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). But "Plaintiffs need not show that every question in the case, or even a preponderance of questions, is capable of classwide resolution. So long as there is 'even a single common question,' a would-be class can satisfy the commonality requirement of Rule 23(a)(2)." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 544 (9th Cir. 2013) (quoting *Dukes*, 564 U.S. at 359.)

Plaintiff states in broad terms several questions that are common to her proposed class. These include whether Defendant's consumer reports contained "inaccurate information" under the FCRA, whether Defendant followed reasonable procedures to assure maximal accuracy of its consumer reports as required by Section 1681e(b), and whether Defendant's alleged misconduct was "willful." (*See* Mot. at 14-18.) (The Court explains why, exactly, each of these inquiries are indeed common to all class members in Section 3.6.1 below.) These questions can be further subdivided into other, more specific common questions focusing on the core facts underlying each of these inquiries. (*Id.*) And because Plaintiff's individual claim is based on the same alleged inaccuracy as the class claims, the vast majority of these questions generate common answers capable of resolving this case on a classwide basis. That's enough to satisfy Rule 23(a)(2).

3.4 Rule 23(a)(3)—Typicality

The "claims or defenses of the representative parties" must be "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the

same course of conduct." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (internal quotation marks omitted). "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

Typicality is easily met in this case. Here, Plaintiff's alleged injury is Defendant's continued reporting of a delinquent Delbert account even after Delbert went out of business and Defendant decided to stop reporting all such accounts. Because Plaintiff only seeks to represent a class of consumers whose credit reports contained this exact same "inaccuracy," the unnamed class members share an identical injury. Further, Plaintiff's claim is based on the same course of conduct by Defendant as the claims of the unnamed class members. Indeed, the entire class's claims hinge on proving that Defendant willfully failed to follow reasonable procedures in assuring the accuracy of its consumer reports, and that the continued reporting of Delbert accounts was, in fact, an "inaccuracy." *See* 15 U.S.C. § 1681e(b).

Despite this, Defendant argues typicality isn't satisfied because Plaintiff "initiated a dispute with Experian" that caused her Delbert account to be deleted before other unnamed class members had their accounts deleted. (Opp'n at 20.) This is a problem, according to Defendant, bearing on both statutory damages and proof of Defendant's willfulness. (*Id.*) But that doesn't overcome the strong showing of typicality here, particularly since "[t]ypicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (internal quotations and citation omitted); *see also Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 n.9 (9th Cir. 2011) ("Differing factual scenarios resulting in a claim of the same nature as other class members does not defeat typicality."). And in any case, these factual differences are irrelevant since liability arises under Section 1681e(b) at the time the report was *prepared*, not when an error was corrected. *See* 15 U.S.C. § 1681e(b) (applying "[w]henever a consumer reporting agency *prepares* a consumer report" (emphasis added)). Plaintiff thus satisfies the typicality requirement of Rule 23(a)(3).

3.5 Rule 23(a)(4)—Adequacy

As the proposed class representative, Plaintiff must be able to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To assess Plaintiff's ability in this regard,

the Court must answer two questions: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020. "Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011).

The Court isn't aware of any conflict between Plaintiff and the proposed class members, and the record doesn't suggest any antagonism between the named Plaintiff and absent class members. As for Plaintiff's and counsel's willingness to vigorously prosecute this action on behalf of the class, the Court has no doubt. The Court knows only too well how actively this case has been litigated on both sides from its inception in 2016. Indeed, the present motion is before this Court only because Plaintiff's counsel successfully appealed a grant of summary judgment in Defendant's favor. The test for adequacy under Rule 23(a)(4) is thus met.

Plaintiff has met her burden regarding all four prerequisites of Rule 23(a). The Court now turns to Rule 23(b)(3).

3.6 Rule 23(b)(3)

Again, Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Plaintiff meets the requirements of Rule 23(b)(3) by satisfying both the predominance and superiority prongs.

3.6.1 Predominance

"The predominance inquiry of Rule 23(b)(3) asks 'whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 957 (9th Cir. 2009) (quoting *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001)). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a

representative rather than an individual basis." *Hanlon*, 150 F.3d at 1022 (internal quotation marks omitted).

Defendant argues that five groups of individual issues dominate this litigation. (Curiously, Defendant asserts there are only four groups, but then goes on to present five groups.) Those groups of issues concern standing, accuracy, liability, willfulness, and damages. (Opp'n at 12.)

Defendant argues standing is a hopelessly individualized inquiry for at least two reasons. First, for consumers with "numerous other negative accounts" on file, the continued reporting of delinquent Delbert accounts likely had no impact on their credit scores. (*Id.* at 13.) And second, for consumers who "did not apply for credit and [were] not even aware of the [continued Delbert] reporting[,]"the lingering "inaccuracy" on their credit reports caused no harm even if their scores *were* negatively impacted. (*Id.*) This argument is unconvincing. As discussed previously in Section 3.1, Plaintiff need not prove standing on behalf of the entire class at the class certification stage. *See Stearns*, 655 F.3d at 1021 ("At least one *named* plaintiff must satisfy the actual injury component of standing in order to seek relief on behalf of himself or the class."); *Bates*, 511 F.3d at 985 ("In a class action, standing is satisfied if at least one named plaintiff meets the requirements."). Accepting Defendant's argument that individualized issues concerning standing could nonetheless defeat certification under Rule 23(b)(3), would thus run afoul of the settled principal that standing "focuses on whether the plaintiff is properly before the court, not whether represented parties or absent class members are properly before the court." *Lewis v. Casey*, 518 U.S. 343, 395 (1996). And in any case, the Court already concluded in Section 3.1 that standing here is established by the mere existence of the delinquent Delbert accounts on consumer's credit reports, and not whether those accounts resulted in some additional tangible harm to class members.

The Court next turns to Defendant's arguments regarding accuracy. Defendant argues that individual questions concerning accuracy predominate because, under some state lending laws, the Western Sky loans remained valid. (Opp'n at 15-16.) Thus, according to Defendant, the class contains "large swaths of consumers" whose reports showed "legal and accurate debts owed to Delbert." (*Id.*) But this argument misinterprets the nature of the alleged inaccuracy here. Plaintiff's claim doesn't rise and fall on the legality of the underlying loan. Rather, Plaintiff contends Defendant's continued reporting of the delinquent Delbert accounts after January 21, 2015 was itself an inaccuracy. And this makes sense because, under the FCRA, a

credit entry is considered inaccurate if it's either "patently incorrect" or "misleading in such a way and to such an extent that it can be expected to adversely affect credit decisions." *See Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010) (quoting *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009)). And here, Plaintiff relies on this second theory, asserting that the lingering presence of the delinquent Delbert accounts was unduly misleading in the following ways:

> (1) Plaintiff's report contained an account that Experian made the decision to delete but Experian failed to properly execute the deletion; (2) Plaintiff's report contained an account that Experian's policies mandate should have been deleted when Delbert went out of business—and Delbert instructed Experian to cancel all services—but Experian failed to properly execute the deletion; [and] (3) Plaintiff's report contained an account that Experian made the decision to delete *and* Experian's policies mandate should have been deleted when Delbert went out of business but Experian failed to properly execute the deletions.

(Reply, Dkt. No. 77 at 13-14.) The Ninth Circuit has already found this sufficient to support a jury finding of inaccuracy under the FCRA. *See Reyes v. Experian Info. Sols., Inc.*, 773 Fed. App'x. 882, 883 (9th Cir. 2019). And importantly, none of these potential bases for proving an "inaccuracy" turns on the individual proof or individual circumstances of class members. Accordingly, accuracy is not a predominantly an individual question.

But what about liability generally? Defendant says this is an individualized inquiry because "a prerequisite to any claim under [Section] 1681e(b) is the existence of an inaccurate consumer report . . . *provided to a third party*." (Opp'n at 16.) And according to Defendant, determining whether class members meet this requirement necessitates "tens of thousands of mini trials." (*Id.*) But this argument makes little sense, particularly because Section 1681e(b) claims aren't predicated on the dissemination of a consumer report to a third party. *See Guimond*, 45 F.3d at 1333 ("[T]he district court erred in finding that any liability under § 1681e(b) was predicated, as a matter of law, on the occurrence of some event—denial of credit or transmission of the report to third parties—resulting from the compilation and retention of erroneous information"); *see also Miller v. Trans Union, LLC*, No. 3:12-CV-1715, 2013 WL 5442008, at *7 (M.D. Pa. Aug. 14, 2013) ("[A]ctual transmission of the report to a third party is not a legally required element of a § 1681e claim."). Nor is the Court convinced by Defendant's "mini-

trials" argument, which is premised entirely on the difficulty of proving if and when delinquent Delbert accounts were included in consumers' credit reports. As Plaintiff correctly points out, this argument asks the Court to consider the administrative feasibility of identifying class members, which the Ninth Circuit has explicitly directed district courts not to do. *See Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1126 (9th Cir. 2017) ("In sum, the language of Rule 23 does not impose a freestanding administrative feasibility prerequisite to class certification. Mindful of the Supreme Court's guidance, we decline to interpose [this] additional hurdle into the class certification process . . . ."). This goes along with the general principle that "courts should not refuse to certify a class merely on the basis of manageability concerns." *Id.* at 1128 (internal quotation and citation omitted). The same is true here.

Next, Defendant argues individual issues govern the willfulness of Defendant's purported actions. (Opp'n at 17-18.) This argument is about timing. Essentially, Defendant argues that events over time inevitably impact the question of "willfulness," meaning that "[a] consumer whose report contained a Delbert account one month after Experian made its decision to delete such accounts" proves willfulness using different facts than, for example, "the 'last in line' consumer, whose Delbert account remained for months after Experian's deletion decision." (*Id.* at 18.) But this argument rests on the flawed assumption that Defendant's conduct didn't become "willful" until sometime after the class period began. And here, Plaintiff asserts willfulness was established "before the class period commenced" through Defendant's failure to "delete the Delbert accounts in December 2014." (Reply at 18.) Further, as the Ninth Circuit pointed out, Plaintiff could also prove willfulness for all class members by showing Defendant "'adopt[ed] a reading of the [FCRA] statute that runs a risk of error substantially greater than the risk associated with a reading that was merely careless.'" *Reyes*, 773 Fed. App'x. at 884 (quoting *Syed v. M-I, LLC*, 853 F.3d 492, 504 (9th Cir. 2017)). Thus, determining whether Defendant's conduct was willful isn't predominantly an individual issue.

Finally, Defendant argues that damages is an individual question because "many putative class members likely suffered no injury at all" and because class members will be entitled to varying amounts of statutory damages ranging from $100 to $1,000. (Opp'n at 18.) The Court rejects this argument. Plaintiff here is only seeking statutory damages on behalf of herself and the class. Thus, whether damages are owed doesn't hinge on the individual harm suffered by each class member. *See Ramirez v. Trans Union, LLC*, 301 F.R.D. 408, 422 (N.D. Cal. 2014) ("Under

the law of the Ninth Circuit, an FCRA claim for statutory damages does not require a showing of actual harm when a plaintiff sues for willful violations." (internal quotations omitted)). And the mere fact that each class member might collect slightly different amounts of statutory damages is insufficient, without more, to defeat a showing of predominance in this case. *See Leyva v. Medline Industries Inc.*, 716 F.3d 510, 514 (9th Cir. 2013) ("[T]he presence of individualized damages cannot, by itself, defeat class certification under Rule 23(b)(3)."). The Court thus finds the predominance prong of Rule 23(b)(3) satisfied.

3.6.2 Superiority

Class actions certified under Rule 23(b)(3) must be "superior to other available methods for the fair and efficient adjudication of the controversy." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997) (quoting Fed. R. Civ. P. 23(b)(3)). "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Id.* at 617.

A class action is clearly the superior method for adjudication. Where, as here, a class seeks only statutory damages under the FCRA, "class members will have little interest in pursuing individual claims due to the small potential recovery, and class-wide resolution will save time and resources." *In re Toys R Us-Delaware, Inc.—Fair and Accurate Credit Transactions Act (FACTA) Litigation*, 300 F.R.D. 347, 364-65 (C.D. Cal. 2013) (collecting cases). Indeed, if each class member here was forced to bring a separate lawsuit, "the costs and fees of each separate action would exceed those of a class action," making it "more efficient to adjudicate the claims as a class action rather than thousands of individual actions." *Ramirez*, 301 F.R.D. at 424. This is all the truer in this case since Plaintiff's proposed class consists of over 100,000 people who all purport to assert the same claim based on the same theories and proof. Consequently, the Court finds the superiority prong of Rule 23(b)(3) met.

Plaintiff's motion for class certification is thus GRANTED. The Court CERTIFIES this class under Rule 23(b)(3).

3.7 Rule 23(g)—Appointment of Class Counsel

Plaintiff asks the Court to appoint as class counsel: Stueve Siegel Hanson LLP. (Mot. at 2.) In appointing class counsel, the Court considers (1) the work done in identifying or investigating

potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1).

Class counsel is amply qualified to litigate this case. They have extensive experience handling class actions and other complex litigation. (Decl. of Norman E. Siegel, Dkt. No. 58-2 at ¶¶ 2-3.) The declaration submitted with Plaintiff's class certification motion further confirms this finding, which Defendant doesn't dispute. (*See generally id.*) But the most compelling evidence of the qualifications and dedication of proposed class counsel is their work in this case. Considering how far this action has come despite a grant of summary judgment in Defendant's favor and a reversal on appeal, proposed class counsel have made a strong showing of their commitment to helping the class vigorously prosecute this case. The Court is thus satisfied that class counsel will "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4).

The Court thus APPOINTS Stueve Siegel Hanson LLP as class counsel in this case.

5. DISPOSITION

The Court GRANTS Plaintiff's motion for class certification.

Any arguments not addressed in this lengthy order either weren't convincing or didn't need to be addressed at this time.

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