UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NICHOLAS A. OWOYEMI,

Plaintiff,

- against -

CREDIT CORP SOLUTIONS INC.
DBA TASMAN CREDIT,

Defendant.

21-CV-8021 (GHW) (RWL)

REPORT AND RECOMMENDATION TO HON. GREGORY H. WOODS: MOTION FOR SUMMARY JUDGMENT

ROBERT W. LEHRBURGER, United States Magistrate Judge.

Plaintiff Nicholas A. Owoyemi ("Plaintiff" or "Owoyemi"), proceeding pro se, alleges that Defendant Credit Corp Solutions Inc. d/b/a Tasman Credit ("Defendant" or "Credit Corp") failed to conduct an investigation pursuant to the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681s-2(b) after receiving notice from credit reporting agencies that he disputed the accuracy of his credit information. Credit Corp moves for summary judgment dismissing Owoyemi's First Amended Complaint ("FAC") with prejudice pursuant to Federal Rule Of Civil Procedure 56. Credit Corp contends that its duty to investigate was never triggered and Owoyemi's claim under 15 U.S.C. § 1681s-2(b) should be dismissed because it is beyond dispute that Owoyemi failed to establish that Credit Corp received notice from any credit reporting agency before he commenced this action. The Court agrees. Accordingly, for the reasons that follow, I recommend that Defendant's motion be GRANTED and that Owoyemi's claim be dismissed with prejudice.

FACTUAL BACKGROUND[1]

A. The Loan And Default

On September 14, 2015, Owoyemi applied for a loan, for which he was approved on September 16, 2015 in the amount of $20,000 issued by WebBank and serviced by LendingClub Corporation ("LendingClub"). (Confirmation Of Funds Deposit from August 17, 2022, attached as Ex. 3 to Johnson Decl., Dkt. 64-3; *see also* Def. 56.1 ¶¶ 4, 6; Johnson Decl. ¶¶ 6, 8.) Owoyemi was assigned an account number ending in 5114. (Def. 56.1 ¶ 4; Johnson Decl. ¶ 6.) On September 22, 2015, $19,200 was disbursed to Owoyemi's Capital One Bank N.A. account ending in 085. (Dkt. 64-3; Def. 56.1 ¶ 6; Johnson Decl. ¶ 8.)

Credit Corp alleges that, in July 2018, Owoyemi defaulted on his loan, leaving an unpaid principal balance of $3,776.18 on his account. (Def. 56.1 ¶ 7; Johnson Decl. ¶ 9; *see also* Statement of Account from September 16, 2015 to July 16, 2018 and from July 31, 2018 to September 20, 2018, attached as Ex. 4 to Johnson Decl., Dkt. 64-4.) In the FAC, Owoyemi alleges that Credit Corp's credit information on him is "inaccurate,"

[1] This factual background is based on Credit Corp's Local Civil Rule 56.1 Statement of Material Facts ("Def. 56.1," Dkt. 63), the Declaration of Katy Johnson ("Johnson Decl.," Dkt. 64), the Declaration of Alina Levi, Esq. ("Levi Decl.," Dkt. 68), and the Declarations' accompanying exhibits. Owoyemi failed to submit a Rule 56.1 counterstatement of disputed facts. As discussed more fully below, Credit Corp's Rule 56.1 Statement of Material Facts is deemed admitted, except where countered by Owoyemi's factual assertions supported by evidence in his Revised Opposition to Summary Judgment ("Pl. Rev. Opp. SJ," Dkt. 70). Pursuant to the standard for summary judgment, the Court resolves all ambiguities and draws all reasonable inferences in favor of Owoyemi as the nonmoving party. The facts are undisputed unless otherwise noted.

"disputed," and "wrongful." (FAC, Dkt. 32, ¶¶ 4, 6, 7, 9, 10.[2]) But in opposing summary judgment, Owoyemi nowhere asserts or provides any evidence that he in fact paid off the loan.[3]

B. Credit Corp's Purchase Of Owoyemi's Account

On January 31, 2019, LendingClub sold multiple credit accounts to Credit Corp, including Owoyemi's account. (Def. 56.1 ¶ 8; Johnson Decl. ¶¶ 10-11.) On March 1, 2019, Credit Corp mailed a debt validation notice letter to Owoyemi, informing him that his account was assigned to Credit Corp and that he owed $3,776.18. (Def. 56.1 ¶ 9; Johnson Decl. ¶¶ 12-13; *see also* Validation Notice from March 1, 2019, attached as Ex. 6 to Johnson Decl., Dkt. 64-6.) The letter also stated that if Owoyemi did not dispute the validity of his debt within 30 days, Credit Corp would assume the debt was valid. (Johnson Decl. ¶¶ 12-13; Dkt. 64-6.) Owoyemi did not respond to the letter, let alone within 30 days. (Def. 56.1 ¶ 10; Johnson Decl. ¶ 14.) On November 25, 2020, Credit Corp mailed a credit reporting notice letter to Owoyemi, warning him that a negative credit report could be submitted to credit reporting agencies if he failed to fulfill the terms of his credit obligations, e.g., pay the remaining balance of $3,776.18 on his account. (Def.

[2] Although Owoyemi's revised opposition to summary judgment was filed at Dkt. 70, his exhibits were filed at Dkts. 69 and 69-1. The Court uses ECF page numbers and then paragraph numbers to guide the reader when citing to Dkts. 69 and 69-1.

[3] Credit Corp's exhibits include a transcript of an April 1, 2022 telephone call from Owoyemi to Experian in which Owoyemi says, "I paid them, I sent them a check to pay it off." (Transcript of Owoyemi's Call to Experian on April 1, 2022, attached as Ex. 18 to Levi Decl., Dkt. 68-4 at 2.) That statement is inadmissible double hearsay, and, as discussed below is beside the point, given the date of the call.

56.1 ¶ 11; Johnson Decl. ¶ 15; *see also* Credit Reporting Notice from November 25, 2020, attached as Ex. 7 to Johnson Decl., Dkt. 64-7.)

C. Credit Reporting On Owoyemi's Account

On February 26, 2021, Credit Corp reported Owoyemi's account as delinquent to Experian, a credit reporting agency. (Def. 56.1 ¶ 13; Johnson Decl. ¶ 17; *see also* Records Sent To Experian, attached as Ex. 9 to Johnson Decl., Dkt. 64-9.) The FAC alleges that Credit Corp "inaccurately reported derogatory credit information" to Experian, as well as the two other credit reporting agencies, Equifax and TransUnion (FAC ¶ 2.), but Owoyemi offers no evidence on summary judgment that the report was sent to any agency other than Experian. To the contrary, Credit Corp attests that it did not report the account to either Equifax or TransUnion.[4] (Def. 56.1 ¶ 14; Johnson Decl. ¶ 18.)

Owoyemi asserts that he first "noticed" the allegedly derogatory credit report submitted by Credit Corp in April 2021, but he does not explain where or how. (Pl. Rev. Opp. SJ ¶ 1.) Months later, on August 5, 2021, Owoyemi sent letters to the three credit reporting agencies disputing the credit report.[5] (Pl. Rev. Opp. SJ ¶ 6; *see also* Dispute

[4] Owoyemi attached a TransUnion Credit Report as an exhibit to his revised opposition to summary judgment. (TransUnion Credit Report, attached as Exs. 3A-3B to Pl. Rev. Opp. SJ, Dkt. 69-1 at ECF 1-2.) The report, from April 30, 2021, states that his account status was "derogatory" and that the original loan amount was for $20,000. (*Id.*) Nothing about the document indicates that Credit Corp reported the information to TransUnion. But even if Credit Corp had furnished the information to TransUnion, it would not change the absence of any evidence that TransUnion notified Credit Corp prior to commencement of this action that the debt was disputed. As discussed below, that deficiency, and others, warrant summary judgment.

[5] Owoyemi also asserts that he contacted the three credit reporting agencies sometime before August 5, 2021, but the only support he cites for that are the August 5, 2021 letters. (Pl. Rev. Opp. SJ ¶ 2; *see also* Dispute Letters to Credit Reporting Agencies, attached as

Letters to Credit Reporting Agencies, attached as Exs. 2A-2C to Pl. Rev. Opp. SJ, Dkt. 69 at ECF 9-11.).

D. The Instant Dispute

On August 11, 2021, Owoyemi called Credit Corp requesting its headquarters' mailing address, and, on August 26, 2021, he filed a complaint in New York state court, claiming that Credit Corp wrongfully filed a derogatory credit report in violation of 15 U.S.C. § 1681s-2(b). (Def. 56.1 ¶¶ 15-16; Johnson Decl. ¶¶ 19-20; Levi Decl. ¶ 2, Pl. Rev. Opp. SJ ¶¶ 7-8; *see also* Transcript of Owoyemi's Call to Credit Corp on August 11, 2021, attached as Ex. 11 to Johnson Decl., Dkt. 64-11.)

The FAC alleges that, "[b]efore filing the lawsuit against Defendant," Owoyemi disputed his credit information with the three credit reporting agencies, and they, in turn, alerted Credit Corp of the dispute. (FAC ¶¶ 3-7.) On summary judgment, however, Owoyemi offers no evidence that any credit reporting agency notified Credit Corp of the dispute before Owoyemi filed the lawsuit. In contrast, Credit Corp asserts that the first time it learned of any dispute over Owoyemi's account was when it was served with the Complaint; in other words, Credit Corp never received any communication from Owoyemi or a credit reporting agency regarding a dispute of its credit reporting on his account before it learned of the Complaint. (Def. 56.1 ¶ 16; Johnson Decl. ¶¶ 21-22.)

On September 1, 2021, Credit Corp mailed a balance statement to Owoyemi, showing the balance on his account as of that date was $3,776.18. (Def. 56.1 ¶ 12; Johnson Decl. ¶ 16; *see also* Balance Statement from September 1, 2021, attached as

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Exs. 2A-2C to Pl. Rev. Opp. SJ, Dkt. 69 at ECF 9-11.) Owoyemi has offered no proof or specifics of any prior contacts.

Ex. 8 to Johnson Decl., Dkt. 64-8.) A few days later, on September 7, 2021, Credit Corp reported to Experian that Owoyemi's account was disputed by denoting his account with an "XB code," which stands for "account information disputed by consumer – FCRA." (Def. 56.1 ¶ 17; Johnson Decl. ¶ 23; *see also* Dkt. 64-9 at 3.)

On September 27, 2021, Credit Corp removed the action to federal court. (Dkt. 1; Def. 56.1 ¶ 20; Johnson Decl. ¶ 26; Levi Decl. ¶ 2.) On March 9, 2022, this Court issued a report and recommendation that all of Owoyemi's claims in the FAC be dismissed except for his claim under 15 U.S.C. § 1681s-2(b). (Dkt. 26 at 11.) The Court stated that Owoyemi could cure this claim by amendment if he pled that Credit Corp timely received notice from one of the credit agencies of a dispute with him. (Dkt. 26 at 10.) On March 31, 2022, the District Judge adopted the report and recommendation in full. (Dkt. 28.)

The next day, on April 1, 2022, Owoyemi called Experian and disputed the accuracy of his debt, stating "I paid them, I sent them a check to pay it off."[6] (Dkt. 68-4 at 2.) That same day, Credit Corp received a tradeline dispute on Owoyemi's account from Experian via E-OSCAR, the communication portal between Credit Corp and Experian. (Def. 56.1 ¶ 21; Johnson Decl. ¶ 27; Levi Decl. ¶ 6.) Credit Corp investigated the matter, concluded its investigation on April 4, 2022 when it verified that the account information was accurate, and notified Experian of the same. (Def. 56.1 ¶ 22; Johnson

[6] Owoyemi first disputed his debt vis-a-vis LendingClub. The Experian representative explained that LendingClub was the "original creditor" and the balance with LendingClub was "showing a zero … because it was transferred to another lender." The representative explained that although, "as far as the original creditor, [the debt] is already cleared," there was a "collection" relating to the second lender. When Owoyemi turned to dispute his debt with Credit Corp, the representative explained "that's the collection from Lending Club [*sic*]." (Dkt. 68-4 at 2-3.)

Decl. ¶ 28; *see also* E-OSCAR Transmission from April 4, 2022, attached as Ex. 14 to Johnson Decl., Dkt. 64-14.) Credit Corp continued to notify Experian that the account remained "in open collections" and "delinquent" but disputed by Owoyemi on April 26, 2022, June 7, 2022, and June 28, 2022. (Def. 56.1 ¶¶ 23; Johnson Decl. ¶¶ 29-30; Dkt. 64-9 at 3.) Credit Corp asserts that it never received any payment from Owoyemi to satisfy the outstanding balance and that Owoyemi never provided any proof of payment to Credit Corp. (Def. 56.1 ¶ 24; Johnson Decl. ¶¶ 31-32; Levi Decl. ¶ 7.) In opposing the instant motion, Owoyemi has not submitted any proof of his having paid the outstanding balance.

PROCEDURAL BACKGROUND

On April 21, 2022, Owoyemi filed the FAC alleging that Credit Corp furnished an inaccurate tradeline to the credit reporting agencies and that it failed to reasonably investigate the disputed credit information. (Dkt. 32.) Credit Corp answered on May 9, 2022. (Dkt. 34.) During discovery, Credit Corp issued subpoenas to the three relevant credit reporting agencies, requesting documents and/or communications they received from Owoyemi. (Dkts. 46-47.) On October 14, 2022, Experian responded to its subpoena and identified one telephone call it received from Owoyemi on April 1, 2022, in which he disputed his debt.[7] (Levi Decl. ¶ 5; *see also* Experian's Responses and Objections to the So-Ordered Subpoena from October 14, 2022, attached as Ex. 16 to Levi Decl., Dkt. 68-2; Dkt. 68-4.)

[7] There is no evidence of whether or to what extent TransUnion or Equifax responded to subpoenas served on them.

On December 1, 2022, Credit Corp sought leave to move for summary judgment, which the Court granted on December 8, 2022. (Dkts. 57-58.) Credit Corp filed its motion on January 9, 2023. (Dkts 61-64, 68.) Owoyemi filed his opposition on February 10, 2023 (Dkt. 69), but then filed a revised opposition on February 13, 2023. (Dkt. 70.) Credit Corp replied on March 6, 2023, at which time the motion was fully submitted. (Dkt. 71.)

LEGAL STANDARDS

A. Summary Judgment

To obtain summary judgment under Federal Rule Of Civil Procedure 56, the movant must show that there is no genuine dispute of material fact. Fed. R. Civ. P. 56(a). The Court may grant summary judgment "only if no reasonable trier of fact could find in favor of the nonmoving party." *Sutera v. Schering Corp.*, 73 F.3d 13, 16 (2d Cir. 1995); *accord Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986).

The moving party bears the initial burden of identifying "the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986). The moving party may demonstrate the absence of a genuine issue of material fact "in either of two ways: (1) by submitting evidence that negates an essential element of the non-moving party's claim, or (2) by demonstrating that the non-moving party's evidence is insufficient to establish an essential element of the non-moving party's claim." *Nick's Garage, Inc. v. Progressive Casualty Insurance Co.*, 875 F.3d 107, 114 (2d Cir. 2017) (quoting *Farid v. Smith*, 850 F.2d 917, 924 (2d Cir. 1988)).

The opposing party must then come forward with specific evidence establishing the existence of a genuine dispute; conclusory statements or mere allegations are not sufficient to defeat summary judgment. *Anderson*, 477 U.S. at 248, 106 S. Ct. at 2510;

Geyer v. Choinski, 262 F. App'x 318, 318 (2d Cir. 2008) (summary order). Where the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," summary judgment must be granted. *Celotex*, 477 U.S. at 322, 106 S. Ct. at 2552; *accord El-Nahal v. Yassky*, 835 F.3d 248, 252 (2d Cir. 2016).

In assessing the record to determine whether there is a genuine issue of material fact, a court must resolve all ambiguities and draw all factual inferences in favor of the nonmoving party. *Anderson*, 477 U.S. at 255, 106 S. Ct. at 2513 ("[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor"). The Court must "eschew credibility assessments." *Smith v. Barnesandnoble.com, LLC*, 839 F.3d 163, 166 (2d Cir. 2016) (internal citation marks omitted). However, conclusory statements or mere allegations are not sufficient to defeat summary judgment. *Anderson*, 477 U.S. at 248, 106 S. Ct. at 2510. Summary judgment thus may be granted "where the nonmovant's evidence is conclusory, speculative, or not significantly probative." *Zeno v. Pine Plains Central School District*, No. 07-CV-6508, 2009 WL 1403935, at *2 (S.D.N.Y. May 20, 2009) (citing *Anderson*, 477 U.S. at 249-50, 106 S. Ct. at 2510-11); see *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 1356 (1986) (finding that, if there is nothing more than a "metaphysical doubt as to the material facts," summary judgment is proper).

B. Review of Pro Se Pleadings

Where, as here, a plaintiff is pro se, district courts must read his pleadings "liberally and interpret them to raise the strongest arguments that they suggest." *Jorgensen v. Epic/Sony Records*, 351 F.3d 46, 50 (2d Cir. 2003) (internal quotation marks omitted).

Courts "are less demanding of [pro se] litigants generally, particularly where motions for summary judgment are concerned." *Jackson v. Federal Express*, 766 F.3d 189, 195 (2d Cir. 2014). A pro se litigant thus is given "special solicitude" in responding to a motion for summary judgment. *Tracy v. Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010); *see also Knowles v. New York City Department Of Corrections*, 904 F. Supp. 217, 220 (S.D.N.Y. 1995) (same). That solicitude, however, "does not relieve [the pro se litigant] of his duty to meet the requirements necessary to defeat a motion for summary judgment." *Jorgensen*, 351 F.3d at 50 (internal quotation marks omitted).

C. Owoyemi's Failure To Provide A Rule 56.1 Counterstatement

"Local Civil Rule 56.1 requires a party opposing summary judgment to submit a counterstatement with numbered paragraphs corresponding to each paragraph in the moving party's statement," and states that "each paragraph of the movant's statement that is not specifically controverted by a correspondingly numbered paragraph in the counterstatement will be deemed to be admitted for purposes of the motion." *Suares v. Cityscape Tours, Inc.*, 603 F. App'x 16, 17-18 (2d Cir. 2015) (internal quotation marks omitted). In the absence of such a counterstatement, the Court may deem the moving party's statements of fact to be admitted. Loc. Civ. R. 51(c) ("Each numbered paragraph in the statement of material facts set forth in the statement required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party"); *Genova v. County of Nassau*, 851 F. App'x 241, 243 (2d Cir. 2021) ("A nonmoving party's failure to respond to a Rule 56.1 statement permits the court to conclude that the facts asserted in the statement are uncontested and

admissible") (internal quotation marks omitted). Credit Corp urges the Court to apply that rule here and find all of Credit Corp's statements of fact to be undisputed. (Def. Reply at 2-3, 6-7.[8])

With respect to pro se plaintiffs like Owoyemi, however, courts in this District generally do not deem a defendant's statements of material facts admitted when the plaintiff fails to submit a counterstatement of facts – so long as the plaintiff's arguments are supported by evidence in the record. *See, e.g.*, *Fredricks v. Parrilla*, No. 20-CV-5738, 2022 WL 3053654, at *6 (S.D.N.Y. Aug. 3, 2022) ("where a *pro se* plaintiff fails to submit a proper Rule 56.1 statement in opposition to a summary judgment motion, the Court retains some discretion to consider the substance of the plaintiff's arguments, where actually supported by evidentiary submissions") (internal quotation marks omitted); *McChriston v. Diversified Consultants, Inc.*, No. 18-CV-185, 2019 WL 4418580, at *3 (S.D.N.Y. June 7, 2019), *R & R adopted*, 2019 WL 2912172 (S.D.N.Y. July 8, 2019) ("because [plaintiff] is pro se, the Court will consider the substance of his arguments if and to the extent they are supported by his affidavit or other evidence in the record").

Here, Owoyemi did not submit a counterstatement of disputed facts as required by Local Civil Rule 56.1. Although he included a "statement of facts" in his revised opposition to summary judgment, its paragraphs do not correspond to or controvert each paragraph in Credit Corp's statements. Nevertheless, the Court has "broad discretion to determine whether to overlook a party's failure to comply with local rules." *Fredricks*, 2022 WL 3053654, at *6 (internal quotation marks omitted). And, because Owoyemi is pro se, the

[8] "Def. Reply" refers to Defendant's Reply Brief In Further Support Of Its Motion For Summary Judgment, filed on March 6, 2023 (Dkt. 71.)

Court will not deem Credit Corp's statements admitted so long as Owoyemi has provided evidentiary submissions to support his allegations countering Credit Corp. As discussed below, however, Owoyemi has failed to submit any admissible proof that: (1) Experian, or any other credit reporting agency, notified Credit Corp of a dispute regarding Owoyemi's credit information before Owoyemi commenced this action; (2) Credit Corp's credit reporting was inaccurate; (3) Credit Corp failed to conduct a reasonable investigation into Owoyemi's account; and (4) Owoyemi suffered actual damages as a result of Credit Corp's actions. Credit Corp's statements of material fact thus stand uncontroverted.

DISCUSSION

As discussed below, Credit Corp is entitled to summary judgment because it has indisputably demonstrated the absence of multiple elements required for Owoyemi to establish his FCRA claim. The Court first address those requirements and then discusses the proof with respect to each one individually.

A. Requirements To Establish Claim Under Section 1681s-2(b)

A plaintiff seeking relief pursuant to 15 U.S.C. § 1681s-2(b) must prove that: "(1) the furnisher received notice of a credit dispute from a credit reporting agency, and (2) the furnisher thereafter acted in willful or negligent noncompliance with the statute." *Perez v. Experian*, No. 20-CV-9119, 2021 WL 4784280, at *6 (S.D.N.Y. Oct. 14, 2021), *R & R adopted*, 2021 WL 5088036 (S.D.N.Y. Nov. 2, 2021) (internal quotation marks omitted). "[O]ne of the core ways in which a plaintiff may establish willful or negligent noncompliance with the statute, is to show that the furnisher failed to ***reasonably*** investigate the plaintiff's dispute." *Frederick v. Capital One Bank (USA), N.A.*, No. 14-CV-

5460, 2018 WL 1583289, at *7 (S.D.N.Y. March 27, 2018) (internal quotation marks omitted) (emphasis in original).

"Accuracy is also an essential element of a claim for negligent or willful violation of § 1681s-2(b) of the FCRA. Thus, a threshold showing of inaccuracy or incompleteness is necessary to succeed on a claim under § 1681s-2(b)." *Krausz v. Equifax Information Services, LLC*, No. 21-CV-7427, 2023 WL 1993886, at *11 (S.D.N.Y. Feb. 14, 2023) (internal quotation marks omitted); *see also Suluki v. Credit One Bank, NA*, No. 21-CV-1156, 2023 WL 2712441, at *4 (S.D.N.Y. March 30, 2023) ("A prerequisite for any FCRA claim is that the challenged credit information is incomplete or inaccurate. … This order of proof makes sense: [I]f there is no inaccuracy, then the reasonableness of the investigation is not in play. On the flip side, if there is an inaccuracy, to succeed, the plaintiff must establish that the investigation was unreasonable") (internal quotation marks omitted).

Finally, "summary judgment is … appropriate if no reasonable factfinder could find that Plaintiff is entitled to damages under the FCRA." *Frederick*, 2018 WL 1583289, at *7) (internal quotation marks omitted); *see also Burns v. Bank of America*, 655 F. Supp.2d 240, 250 (S.D.N.Y. 2008), *aff'd*, 360 F. App'x 255 (2d Cir. 2010) ("There is no showing that Bank of America either failed to investigate Plaintiffs' disputed information or that Bank of America's investigations were unreasonable as a matter of law. … But, even assuming, *arguendo*, that Bank of America violated § 1681s–2(b), summary judgment in favor of Bank of America would still be appropriate because no reasonable factfinder could find that [Plaintiffs are] entitled to damages under the FCRA") (internal quotation marks omitted).

To succeed on its motion for summary judgment, Credit Corp need only establish the absence of any genuine issue of material fact with respect to one of the required elements of Owoyemi's claim. *See Frederick*, 2018 WL 1583289, at *7 ("The Defendants make several arguments in favor of their respective motions for summary judgment. The Court addresses three of the core arguments, each of which is sufficient to warrant summary judgment for some or all Defendants"); *Burke v. Jacoby*, 981 F.2d 1372, 1379 (2d Cir. 1992) ("If the undisputed facts reveal that there is an absence of sufficient proof as to one essential element of the claim, any factual disputes with respect to other elements of the claim become immaterial and cannot defeat a motion for summary judgment"); *Chandok v. Klessig*, 632 F.3d 803, 812 (2d Cir. 2011) (affirming the district court's dismissal because "the first element" of the "identified three elements of a claim" "was not satisfied").

Credit Corp amply clears that bar, demonstrating that Owoyemi cannot establish several elements of his claim, including that Credit Corp received notice of a dispute from any credit reporting agency; that Credit Corp reported inaccurate credit information; that Credit Corp did not conduct a reasonable investigation; and that Owoyemi incurred damages as a result of Credit Corp's actions or inaction. The Court discusses each of these issues in turn.

B. No Evidence That Credit Corp Received Notice Of A Dispute

15 U.S.C. § 1681s-2(b) imposes duties on furnishers of credit information, such as Credit Corp, after receiving notice of a dispute of the accuracy of credit information from a credit reporting agency, including the duty to investigate the disputed credit information, to report the results of the investigation to the credit reporting agency, and to modify or

delete any inaccuracies. 15 U.S.C. § 1681s-2(b). But such duties are triggered only if the furnisher receives notice from a credit reporting agency, not the consumer. *Sprague v. Salisbury Bank & Trust Co.*, 969 F.3d 95, 99 (2d Cir. 2020) ("The statute is clear that the notice triggering these duties must come from a [credit reporting agency], not the consumer"); *Ritchie v. Northern Leasing System, Inc.*, No. 12-CV-4992, 2016 WL 1241531, at *16 (S.D.N.Y. March 28, 2016), *aff'd sub nom. Ritchie v. Taylor*, 701 F. App'x 45 (2d Cir. 2017) ("the record evidence does not show that … Experian, the [credit reporting agency] to whom plaintiff sent her letter, ever forwarded the letter to defendants – the crucial step that triggers defendants' obligations under 15 U.S.C. § 1681s-2(b)(1)").

If, as here, the furnisher shows that it did not receive notice from a credit reporting agency, then the consumer must provide evidence to the contrary to survive a motion for summary judgment. *See Frederick*, 2018 WL 1583289, at *7 (granting summary judgment in favor of defendant IC System "since it is undisputed that Plaintiff has presented no evidence to suggest that he lodged a complaint with a CRA about IC System in particular, [IC] System's duty to investigate any claims concerning its reporting on Plaintiff's account was never triggered, and Plaintiff fails to establish his FCRA claim"); *Halkiotis v. WMC Mortgage Corp.*, No. 12-CV-1507, 2015 WL 13629239, at *7 (D. Conn. March 12, 2015) (granting summary judgment because "[t]here is no evidence in the record that a credit reporting agency contacted Ocwen or Deutsche Bank regarding any dispute Mr. Halkiotis had as to his credit information").

Owoyemi failed to submit any evidence that Credit Corp received notice of a dispute over his credit information ***from a credit reporting agency*** and ***before he commenced this action***. While he did offer the August 5, 2021 letters that he sent to

Experian, Equifax, and TransUnion, those letters are insufficient to establish that the agencies, in turn, notified Credit Corp.[9] In contrast, Credit Corp submitted two declarations maintaining that it did not receive notice of the dispute from Experian until April 1, 2022, well after Owoyemi commenced his case on August 26, 2021 in state court, and after the case was removed to federal court on September 27, 2021. (Dkt. 1.) Those assertions are bolstered by the fact that Experian's discovery responses identified only one telephone call from Owoyemi disputing his debt – a call that took place on April 1, 2022.

Owoyemi provided no evidence to show that any credit reporting agency reported his dispute to Credit Corp before he filed suit. His contention otherwise is merely that – a contention, asserted in two conclusory sentences in the FAC (FAC ¶¶ 6-7), which do not suffice to create a genuine issue of disputed fact. *See Frederick*, 2018 WL 1583289, at *8 ("Despite his lengthy objection to Anderson's statement of facts, at no point does Plaintiff point to evidence suggesting that Anderson's contentions … that it never received a request from a [credit reporting agency] … were subject to genuine dispute"); *O'Diah v. New York City*, No. 02-CV-274, 2003 WL 22021921, at *3 (S.D.N.Y. Aug. 28, 2003) (granting summary judgment because "O'Diah has failed to show the existence of a disputed issue of material fact on his putative FCRA claim. … O'Diah has failed to dispute, other than by conclusory statements, these defendants' description of events or their

[9] Owoyemi's letters refer to a dispute with LendingClub, the original lender, not Credit Corp. As demonstrated by Owoyemi's April 1, 2022 conversation with Experian, Experian was able to identify Credit Corp's acquisition of the account. (*See* Dkt. 68-4 at 2.) Regardless, there is no evidence that Experian ever notified Credit Corp of any dispute prior to April 1, 2022.

procedures"). Credit Corp therefore is entitled to summary judgment on this issue and thus on Owoyemi's claim in its entirety.

C. No Evidence That Credit Corp Reported Inaccurate Credit Information

"A prerequisite for any FCRA claim is that the challenged credit information is incomplete or inaccurate." *Ostreicher v. Chase Bank USA, N.A.*, No. 19-CV-8175, 2020 WL 6809059, at *3 (S.D.N.Y. Nov. 19, 2020); *see also Frederick*, 2018 WL 1583289, at *7 ("while it may be self-evident, if Plaintiff cannot show that any of the information was inaccurate, there is no harm"). For example, in *Matheson v. Ocwen Federal Bank FSB*, the Court granted summary judgment because the plaintiff did not offer any admissible proof that the information the defendant reported was inaccurate. No. 05-CV-2747, 2008 WL 11413560, at *8 (E.D.N.Y. June 18, 2008). The Court explained that the plaintiff's "own assertion[s] that she was timely in her mortgage payments, that her loan was never in default, and that, therefore, any negative report was not justified," were insufficient because "the record evidence show[ed] just the opposite." *Id.*

Similar to the plaintiff in *Matheson*, Owoyemi did not submit any admissible evidence that Credit Corp reported inaccurate credit information. He only provided his conclusory allegations in the FAC that Credit Corp's information was "inaccurate," "disputed," and "wrongful," whereas the evidence in the record, specifically the Johnson Declaration (¶ 9) and a statement of Owoyemi's account (Dkt. 64-4), show that Owoyemi defaulted on his loan in July 2018 with an unpaid principal balance of $3,776.18. Owoyemi has not offered any proof that he either paid off his loan, such as cancelled checks or statements of account, or that Credit Corp's reporting was somehow otherwise inaccurate. "Even under the very liberal standard accorded pro se litigants, [Owoyemi]'s

claim cannot survive summary judgment in light of the complete dearth of proof." *O'Diah*, 2003 WL 22021921, at *3.

D. No Evidence That Credit Corp Did Not Conduct A Reasonable Investigation

Although 15 U.S.C. § 1681s-2(b) delineates a furnisher's duty to investigate after receiving notice of a dispute from a credit reporting agency, it "does not specify what type of investigation must take place, and the Second Circuit has yet to determine the governing standard." *Frederick*, 2018 WL 1583289, at *7. However, "other circuit and district courts have assumed that it must be 'reasonable.'" *Id.* (citing *SimmsParris v. Countrywide Financial Corp.*, 652 F.3d 355, 359 (3d Cir. 2011); *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1157 (9th Cir. 2009); *Westra v. Credit Control of Pinellas*, 409 F.3d 825, 827 (7th Cir. 2005); *Johnson v. MBNA America Bank, NA*, 357 F.3d 426, 432 (4th Cir. 2004); *Jenkins v. Capital One, N.A.*, No. 14-CV-5683, 2017 WL 1323812, at *5 (E.D.N.Y. Feb. 28, 2017); *Okocha v. HSBC Bank USA, N.A.*, 700 F. Supp.2d 369, 374 (S.D.N.Y. 2010)). "What constitutes reasonableness is viewed in light of what the furnisher learned about the nature of the dispute from the description in the [credit reporting agency]'s notice of dispute." *Id.* (internal quotation marks and brackets omitted). Whether an investigation is reasonable turns on the facts. *Id.* at *8 ("[R]easonableness is generally a question for a finder of fact") (internal quotation marks omitted).

Cases suggest that a reasonable investigation typically includes a review of records and verification of the account holder's identifying information. *See, e.g.*, *Jenkins v. LVNV Funding, LLC*, No. 14-CV-5682, 2017 WL 1323800, at *11-12 (E.D.N.Y. Feb. 28, 2017) (granting summary judgment based on the finding that Resurgent's – Defendant's servicer for the relevant account – investigation was reasonable, explaining that

"Resurgent reviewed its records including 'the Bill of Sale dated February 25, 2009, the Bill of Sale and Assignment Agreement dated September 23, 2011, the Declaration of Account Transfer dated September 23, 2011, and the Arrow data files associated with these dates and transfers,' and verified Plaintiff's name, social security number, and address); *Llewellyn v. Asset Acceptance, LLC*, No. 14-CV-0411, 2015 WL 6503893, at *7-8 (S.D.N.Y. Oct. 26, 2015), *aff'd*, 669 F. App'x 66 (2d Cir. 2016) (granting summary judgment based on the finding that Asset's investigation was reasonable, explaining that, "upon receiving notice of Plaintiff's dispute, Asset reviewed its records and those provided by Citibank … [and] concluded that the debt belonged to Plaintiff – Plaintiff's name, address, social security number, and account information matched the information provided to the consumer reporting agencies, and the account revealed that Plaintiff had incurred the debt on a Home Depot credit card issued by Citibank"); *cf. Ritchie*, 2016 WL 1241531, at *17 (granting summary judgment with respect to an FCRA claim because defendants "met their obligation" when they "receiv[ed] the [Automated Credit Dispute Verification ('ACDV')]," "understood that plaintiff's account was in the 'suit process' and that plaintiff contested the charges," and then "responded to Experian confirming that there was indeed a dispute on plaintiff's account").

Further, an investigation will not be deemed sufficient without at least some evidence of what the investigation actually entailed. *See Jenkins v. Capital One*, 2017 WL 1323812, at *7 (denying summary judgment because "Defendant's responses do not detail the exact nature and scope of Capital One's investigation, and Defendant has offered no testimony – either by deposition, affidavit, or otherwise – from any Capital One employee involved in investigating Plaintiff's disputes"); *Dickman v. Verizon*

Communications, Inc., 876 F. Supp.2d 166, 173-74 (E.D.N.Y. 2012) (finding that the existence of ACDVs and testimony from a furnisher's employee who did not actually create the ACDVs were "deficien[t]" to show that the furnisher conducted a reasonable investigation).

Owoyemi has not submitted any evidence that Credit Corp did not conduct a reasonable investigation. That said, Credit Corp has provided no details about its investigation into Owoyemi's account. Instead, it merely states that, after receiving the tradeline dispute from Experian on April 1, 2022, it "complet[ed] its investigation," and then, on April 4, 2022, "verified the Account information reported to Experian was accurate." (Def. 56.1 ¶¶ 21-22, Johnson Decl. ¶¶ 27-28.) Credit Corp does not explain what records, if any, it reviewed to determine whether Owoyemi sent a check to pay off his loan. Nor does Credit Corp state whether it completed a basic check of Owoyemi's name, address, social security number, and account information, as the defendants in *Llewellyn* and *Jenkins v. LVNV Funding* did. Moreover, Credit Corp's supporting declaration comes from its Litigation Manager, Johnson, but it does not indicate whether she had any direct involvement in the investigation as was deemed significant in *Jenkins v. Capital One* and *Dickman*.

The Court thus concludes that although Owoyemi has not come forward with any evidence to show that Credit Corp did not conduct a reasonable investigation, Credit Corp has not satisfied its burden on summary judgment to come forward with more than conclusory evidence demonstrating that it is entitled to judgment on this particular issue. As noted above, however, Credit Corp need only demonstrate its entitlement to summary judgment on one component of Owoyemi's claim, and it has done so with respect to notice

from a credit reporting agency, inaccuracy of information, and, as discussed next, damages.

E. No Evidence That Owoyemi Incurred Damages

"[E]ven where a defendant has violated 15 U.S.C. § 1681s-2(b) by failing to conduct a reasonable investigation of the disputed information, summary judgment in favor of the defendant is still appropriate if no reasonable factfinder could find that Plaintiff is entitled to damages under the FCRA." *Suluki*, 2023 WL 2712441, at *6 (internal quotation marks omitted). That is precisely the situation here.

The damages available to a claimant under 15 U.S.C. § 1681s-2(b) depend on whether the conduct of the furnisher was willful or negligent. If the plaintiff proves that the furnisher willfully violated the statute, then the furnisher is liable for "[a]ny actual damages sustained by the consumer as a result of the failure ***or*** damages of not less than $100 and not more than $1,000," and, in addition to these actual or statutory damages, the furnisher is liable for punitive damages. *See* 15 U.S.C. § 1681n(a) (emphasis added); *accord Suluki*, 2023 WL 2712441, at *6; *Frederick*, 2018 WL 1583289, at *10; *see also Okocha*, 2010 WL 5122614, at *5 ("If plaintiff establishes that defendants' violation was willful, he need not show actual damages and is entitled to statutory and punitive damages"). In contrast, if the plaintiff proves that the furnisher only negligently violated the statute, then the furnisher is liable for actual damages, but not statutory or punitive damages. *See* 15 U.S.C. § 1681o; *accord Suluki*, 2023 WL 2712441, at *6; *Frederick*, 2018 WL 1583289, at *10. In either case, whether the furnisher's conduct was willful or negligent, a successful plaintiff is also entitled to recover costs together with reasonable attorneys' fees. 15 U.S.C. § 1681n(a)(3); 15 U.S.C. § 1681o(a)(2).

"To establish a willful violation of the FCRA, a plaintiff 'must show that the defendant knowingly and intentionally committed an act in conscious disregard for the rights of others'" or "'intentionally misled consumers or concealed information from them.'" *Frederick*, 2018 WL 1583289, at *10 (citing, respectively, *Northrop v. Hoffman of Simsbury, Inc.*, 12 F. App'x. 44, 50 (2d Cir. 2001) and *George v. Equifax Mortgage Servs.*, No. 06-CV-971, 2010 WL 3937308, at *2 (E.D.N.Y. Oct. 5, 2010)). "To survive summary judgment on a willful non-compliance claim, a plaintiff must set forth affirmative evidence demonstrating conscious disregard or deliberate and purposeful actions." *Burns*, 655 F. Supp.2d at 252 (internal quotation marks and brackets omitted). More specifically, "[t]o allege willful noncompliance with the FCRA, a plaintiff must allege facts related to defendants' state of mind when they allegedly violated the FCRA." *Perez*, 2021 WL 4784280, at *11 (internal quotation markets and brackets omitted). A plaintiff's assertions that "defendants' violations were 'deliberate' … in an entirely conclusory manner and [without] alleg[ing] any facts related to the … defendants' state of mind" are insufficient for a "Court to draw a reasonable inference that the alleged violations were willful." *Id.*; *see also Frederick*, 2018 WL 1583289, at *10 (finding that plaintiff did not establish defendant's willful violation of the FCRA because plaintiff failed "to provide evidence beyond his own hyperbole that any Defendant intentionally failed to correct information it knew to be false").

Even if Owoyemi's claim did not falter on other elements, he has submitted no evidence that Credit Corp engaged in any sort of willful behavior. The FAC may suggest willful conduct in alleging that "Credit Corp Solution [*sic*] disseminated the wrongful information without prior investigation to current and potential creditors to further harm

Plaintiff" (FAC ¶ 10), but Owoyemi has not offered any proof to support that allegation. Owoyemi thus has not established any basis for recovery of statutory or punitive damages.

That leaves Owoyemi solely with the prospect of actual damages (and attorneys' fees) if he were able to establish that Credit Corp acted negligently, which for the reasons set forth above, he cannot. But even if he had, Owoyemi has not raised any genuine issue of material fact with respect to the absence of any actual damages.

"A plaintiff claiming actual damages … must demonstrate that he suffered an actual injury and generally cannot stand on his subjective testimony alone, but must set forth other evidence that such injury occurred." *Frederick*, 2018 WL 1583289, at *11 (internal quotation marks and brackets omitted). Actual damages may include "a denial of credit, as well as humiliation and mental distress, even in the absence of out-of-pocket expenses." *Id.* (internal quotation marks omitted). A "plaintiff must present concrete evidence of such distress (e.g., medical reports), and his own conclusory allegations are insufficient." *Okocha*, 2010 WL 5122614, at *6. Additionally, "a plaintiff must establish a causal relationship between the violation of the statute and the loss of credit or other harm. … That is, Plaintiff must establish actual damages attributable to defendants' unreasonable investigation … [and] any harm must be traceable to the inaccurate, FCRA-violating information – not just to the report that contained that information." *Frederick*, 2018 WL 1583289, at *11 (internal quotation marks omitted).

The record is devoid of any such proof of actual damages. Owoyemi alleged in his FAC that he suffered injuries, including denials from potential creditors for new credit, interest rate increases on his credit cards from existing creditors, and potential termination

from his employer. (FAC ¶ 12.) But Owoyemi provided no evidence that any of those alleged injuries came to pass. He did not provide proof of any actual denial of credit, interest rate increase, or termination of employment, let alone any that could be causally connected to the alleged credit reporting violation. Nor did Owoyemi provide any proof of mental distress. Since he has offered only conclusory allegations of his injuries, he has not demonstrated a genuine dispute that he suffered actual damages.

In sum, Credit Corp has established its entitlement to summary judgment for multiple reasons, including having demonstrated beyond dispute that it did not receive notice of Owoyemi's dispute from a credit reporting agency prior to Owoyemi's commencement of this action, that the information Credit Corp furnished was accurate, and that Owoyemi incurred no actual damages.

F. Owoyemi Is Not Entitled To Additional Discovery

Federal Rule of Civil Procedure 56(d) provides, "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." Fed. R. Civ. P. 56(d). To request this additional discovery, the nonmoving party must submit an affidavit or declaration describing: "(1) what facts are sought and how they are to be obtained; (2) how these facts are reasonably expected to raise a genuine issue of material fact; (3) what efforts the affiant has made to obtain them; and (4) why the affiant's efforts were unsuccessful." *DeLorme v. Markwitz*, No. 14-CV-6104, 2017 WL 512617, at *2 (W.D.N.Y. Feb. 8, 2017) (quoting *Gualandi v. Adams*, 385 F.3d 236, 244 (2d Cir. 2004)).

Owoyemi makes no mention of Rule 56(d) and has not argued that summary judgment is premature because further discovery is necessary. He does, however, claim that Credit Corp did not abide by its discovery obligations and provide "all information" to him. (Pl. Rev. Opp. SJ ¶ 16.) He submitted, as exhibits, emails between him and Credit Corp's counsel from May, June, and August 2022, in which he requested a number of documents. (Attached as Exs. 4, 4A-4D, 5A-5C to Pl. Rev. Opp. SJ, Dkt. 69-1 at ECF 3-10.) Credit Corp levied objections to his discovery requests, and the parties met and conferred. (Def. Reply at 7.) After that, Owoyemi did not file any document with the Court requesting assistance with those discovery disputes or pursue a motion to compel.

Even if the Court construes Owoyemi's claims as a request for additional discovery under Rule 56(d), Owoyemi cannot satisfy the requirements to warrant additional discovery without the requisite declaration. He has not anywhere identified any facts to be sought, what those facts can be expected to show, or how they would demonstrate a genuine dispute of material fact. Nor did Owoyemi raise the matter with the Court when he had the opportunity to do so during discovery, instead only addressing his concerns with Credit Corp. Indeed, there is nothing to suggest that Credit Corp has not provided all relevant documentation, and there is no reason to believe that any further discovery would overcome the uncontroverted fact that Experian did not notify Credit Corp of a dispute over Owoyemi's account until after Owoyemi had commenced his action.

CONCLUSION

For the foregoing reasons, I recommend that the Court GRANT Defendant's motion for summary judgment, and that Plaintiff's claims be dismissed with prejudice.

DEADLINE FOR OBJECTIONS AND APPELLATE REVIEW

Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rules Of Civil Procedure 72, 6(a), and 6(d), the parties have fourteen days to file written objections to this report and recommendation. Such objections shall be filed with the Clerk of Court, with extra copies delivered to the Chambers of the Gregory H. Woods, United States Courthouse, 500 Pearl Street, New York, New York 10007, and to the Chambers of the undersigned, 500 Pearl Street, New York, New York 10007. **Failure to file timely objections will result in waiver of objections and preclude appellate review.**

SO ORDERED.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: May 31, 2023
New York, New York