

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JANICE HENNESSEY,

Plaintiff,

v.

RADIUS GLOBAL SOLUTIONS LLC et
al.,

Defendant.

CASE NO. 3:24-cv-05654-DGE

ORDER ON MOTIONS TO
DISMISS (DKT. NOS. 18, 26)

I INTRODUCTION

This matter comes before the Court on two motions to dismiss, the first from Defendants Radius Global Solutions LLC (“RGS”) and Michael Barrist (Dkt. No. 18), the second from Defendant Experian Information Solutions Inc. (“Experian”) (Dkt. No. 26). Plaintiff responded to each motion (Dkt. Nos. 30, 34); Defendants replied (Dkt. Nos. 35, 38); and Plaintiff surreplied (Dkt. Nos. 37, 40). Upon thorough review of the briefing provided by the Parties, the Court DISMISSES Plaintiff’s claims against Experian, RGS, and Barrist.

II BACKGROUND

On August 8, 2024, Plaintiff Janice Hennessy, proceeding *pro se*, filed a complaint against four defendants: Trans Union LLC (“Trans Union”), Experian, RGS, and the Chief Executive Officer of RGS, Michael Barrist. (Dkt. No. 1.) Plaintiff’s First Amended Complaint alleges violations of the Washington Fair Credit Reporting Act (“WFCRA”), the Fair Credit Reporting Act (“FCRA”), the Fair Debt Collection Practices Act (“FDCPA”), the Washington Consumer Protection Act (“WCPA”), and the Gramm-Leach-Bliley Act (“GLBA”). (Dkt. No. 14 at 23–64.) Plaintiff also brings several claims under Washington law, including identity theft, defamation, negligence, emotional distress, and invasion of privacy. (*Id.* at 42–61.) On September 16, 2024, RGS and Barrist moved to dismiss Plaintiff’s First Amended Complaint for failure to state a claim. (Dkt. No. 18). On October 3, 2024, Experian moved to dismiss Plaintiff’s First Amended Complaint for failure to state a claim. (Dkt. No. 26.)

A. Factual Background

The following facts are taken from Plaintiff’s First Amended Complaint and must be accepted as true for the purposes of Defendants’ motions to dismiss.¹

Plaintiff alleges that in January of 2024, she reviewed her credit reports and “found unfamiliar entries”—specifically, a negative tradeline reported by RGS. (Dkt. No. 14 at 5, 9.) Plaintiff claims that “after examination of her TransUnion consumer credit reports,” she learned that RGS “had pulled Plaintiff’s TransUnion consumer credit report on February 13, 2021, September 25, 2021, and March 2, 2022, and placed inquiries on her consumer file, without her knowledge or consent.” (*Id.* at 6.) Plaintiff claims that she “never engaged in any business

¹ The Court only recounts the alleged facts that are germane to resolving Plaintiff’s claims.

1 dealings with Defendants RGS and Michael Barrist and does not hold any accounts or credit with
2 them.” (*Id.*)

3 Plaintiff proceeded to research RGS online and learned that RGS is a debt collector and
4 was involved in a data breach in May of 2023. The breach exposed the personal information of
5 hundreds of thousands of individuals connected to RGS’s debt collection efforts. (*Id.*) In her
6 Amended Complaint, Plaintiff summarizes a public notice released by RGS, which states that the
7 company sent out data breach notifications “to all individuals whose information was affected by
8 the recent data security breach.” (*Id.* at 8.) Plaintiff asserts that RGS “never notified the Plaintiff
9 of this data breach.” (*Id.* at 7.) Nevertheless, she claims that RGS breached “her sensitive and
10 valuable data.” (*Id.* at 8.)

11 Plaintiff commenced litigation against RGS in small claims court, alleging that RGS had
12 accessed her credit reports and sensitive personal information without a permissible purpose and
13 committed identity theft and defamation. (*Id.* at 6–8.) Plaintiff also filed a complaint with the
14 Consumer Financial Protection Bureau (“CFPB”) on April 2, 2024, alleging that RGS had pulled
15 her consumer credit reports “without her knowledge or consent, thereby committing identity
16 theft.” (*Id.* at 9.) RGS responded to Plaintiff’s CFPB complaint on April 3, 2024, stating that
17 RGS had “created an RGS account in the Plaintiff’s name for an alleged ATT account.” (*Id.*)
18 Plaintiff claims that “[o]nly at this time did Plaintiff realize that RGS was a debt collector and
19 attempting to collect on an unverified alleged ATT account.” (*Id.* at 10.) On April 3, 2024,
20 Plaintiff called AT&T and spoke with a representative on a recorded line. (*Id.*) The
21 representative informed her “that her ATT credit account was never sent to RGS.” (*Id.*)

22 On April 8, 2024, Plaintiff received a letter from RGS’ attorney, which was dated March
23 28, 2024. (*Id.* at 11.) The letter stated:

1 In the complaint, you asserted RGS violated the law regarding an ATT account in
2 your name, RGS internal account ending in ***2595 (“the Account”). We have
3 investigated the matter and do not discern any basis for liability. Nonetheless,
4 RGS has made the business decision to cease collecting the Account. To the
5 extent RGS credit reported the Account, RGS has contacted the credit reporting
6 agencies and requested they delete any RGS tradeline associated with the
7 Account. We trust this addresses the issues raised in your Letter, but if you have
8 any questions or concerns, please contact me directly.

9 (*Id.* at 9.) Plaintiff claims that she “had no prior knowledge of this debt until receiving notice
10 from RGS’ attorney.” (*Id.* at 11.) Plaintiff dismissed her claim in small claims court and instead
11 prepared to sue RGS in federal court. (*Id.* at 8.)

12 In July of 2024, Plaintiff received an email from CreditWise “indicating a change to her
13 Experian credit report.” (*Id.* at 12.) Plaintiff viewed the report and learned that “RGS had
14 reported a derogatory tradeline to Experian” dated “April 21, 2022, April 28, 2022, May 5, 2022,
15 and May 11, 2022.” (*Id.*) The tradeline “indicated an ‘Account Balance’ of \$519 for an alleged
16 ‘Derogatory Account’ with RGS.” (*Id.*) Plaintiff claims “this discovery reveals that RGS has
17 been reporting false, derogatory, and unverified information to the credit reporting agencies from
18 approximately February 13, 2021, to the present date going on for three and a half years.” (*Id.* at
19 12.) Plaintiff alleges that “[t]his false reporting significantly impacted the Plaintiff’s
20 creditworthiness, shedding light on the reasons behind her denials for credit and housing, as well
21 as the higher interest rates she has faced.” (*Id.*)

22 Although Plaintiff claims that “[t]he erroneous placement of this tradeline constitutes a
23 defamatory statement that falsely represents the Plaintiff as a debtor who has defaulted on a
24 financial obligation to Defendants RGS and Michael Barrist,” Plaintiff does not deny ownership
of the AT&T account in question. (*Id.* at 16.) Indeed, the facts in the Complaint indicate that
Plaintiff did own the AT&T account, as she was able to speak to a representative about it and
allegedly confirm it was not referred to RGS. (*Id.* at 10.) Accordingly, based on a holistic

1 reading of the Amended Complaint, it appears that the gravamen of Plaintiff’s claim against
2 RGS is that the company allegedly had no right to access her credit reports and collect on the
3 debt, not that she did not own the AT&T account. Likewise, Plaintiff’s core complaint against
4 TransUnion and Experian is that the companies “authorized access to Plaintiff’s consumer
5 reports and file to RGS without verifying that RGS had a permissible purpose” and without her
6 consent. (*Id.* at 6; *see also id.* at 22–23, 26.)

7 Plaintiff states that she “reported Defendants Radius Global Solutions’ conduct to the
8 Tumwater Police Department” on July 29, 2024. (*Id.* at 17.) She subsequently sent “formal
9 notice” to the Washington State Attorney General’s Office, the Thurston County Sheriff’s
10 Office, the Federal Trade Commission, and the Consumer Financial Services Bureau “urging
11 these bodies to initiate investigations” in August of 2024. (*Id.*) Plaintiff brought suit in this
12 Court on August 8, 2024. (Dkt. No. 1.)

13 **B. Procedural Background**

14 Plaintiff brings the following claims:

15 Against all Defendants

- 16 • Violations of the FCRA (alleging violations of 15 U.S.C. §§ 1681b, §1681q, and
17 1681a(q)(3) and invoking the civil remedies provided for willful and negligent
18 noncompliance with the FCRA’s requirements under 15 U.S.C. §§ 1681n and
19 1681o)
- 20 • Violations of the WFCRA (invoking Wash. Rev. Code § 19.182.020)
- 21 • Identity theft (invoking Wash. Rev. Code § 19.35.020)
- 22 • Defamation (invoking Wash. Rev. Code § 4.36.120)
- 23 • Violations of the WCPA (invoking Wash. Rev. Code § 19.86.020)
- 24 • Invasion of privacy by intrusion upon seclusion

Against RGS and Barrist

- Violations of the FDCPA (invoking 15 U.S.C. §§ 1692d, 1692f, 1692e)
- Negligence
- Breach of confidentiality (invoking Wash. Rev. Code § 42.56.590)
- Infliction of emotional distress
- Invasion of privacy
- “Individual Liability of CEO Michael Barrist” (*see* Dkt. No. 14 at 56)

Against TransUnion and Experian

- Violations of the FCRA (alleging violations of 15 U.S.C. § 1681e(b) and invoking the civil remedies provided for willful and negligent noncompliance with the FCRA’s requirements under 15 U.S.C. §§ 1681n and 1681o)
- Violations of the GLBA (invoking 15 U.S.C. §§ 6801–09)

(*See* Dkt. 14 at 23–64.)

Experian asserts that “Plaintiff fails to plausibly allege a claim for relief on the face of the First Amended Complaint, thus, the First Amended Complaint should be dismissed, in full, with prejudice.” (Dkt. No. 26 at 3.) Likewise, RGS and Barrist argue that “all of Plaintiff’s claims fail as matter of law” and therefore “should be dismissed as to the RGS Defendants.” (Dkt. No. 18 at 3.)

III DISCUSSION

A. Legal Standard

Defendants move to dismiss Plaintiff’s First Amended Complaint (Dkt. No. 14) for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do.” *Bell Atl.*

1 *Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (internal quotations and citations omitted).
2 Accordingly, “only a complaint that states a plausible claim for relief survives a motion to
3 dismiss.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “[W]here the well-pleaded facts do not
4 permit the court to infer more than the mere possibility of misconduct, the complaint has
5 alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.* at 679 (quoting
6 Fed. Rule Civ. Proc. 8(a)(2)); *see also id.* at 678–79 (“Rule 8 marks a notable and generous
7 departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock
8 the doors of discovery for a plaintiff armed with nothing more than conclusions.”).

9 On a motion to dismiss for failure to state a claim, the Court must accept as true all well-
10 pleaded factual allegations and construe the allegations in favor of the non-moving party. *See*
11 *Wood v. City of San Diego*, 678 F.3d 1075, 1080 (9th Cir. 2012). However, “the tenet that a
12 court must accept as true all of the allegations contained in a complaint is inapplicable to legal
13 conclusions.” *Iqbal*, 556 U.S. at 678. Complaints filed pro se are “to be liberally construed”; “a
14 pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal
15 pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v.*
16 *Gamble*, 429 U.S. 97, 106 (1976); *see also Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)
17 (“*Iqbal* incorporated the *Twombly* pleading standard and *Twombly* did not alter courts’ treatment
18 of pro se filings; accordingly, we continue to construe pro se filings liberally when evaluating
19 them under *Iqbal*.”). “Unless it is absolutely clear that no amendment can cure the defect, [] a
20 pro se litigant is entitled to notice of the complaint’s deficiencies and an opportunity to amend
21 prior to dismissal of the action.” *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995).
22 However, leave to amend is properly denied if amendment would be futile. *See Ventress v.*
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1 *Japan Airlines*, 603 F.3d 676, 680 (9th Cir. 2010); *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027,
2 1039 (9th Cir. 2002).

3 **B. Analysis**

4 1. FCRA Claims Against All Defendants (15 U.S.C. §§ 1681b, §1681q, and 5 1681a(q)(3))

6 a. 15 U.S.C. § 1681b

7 Section 1681(b)(f) of the FRCA prohibits using or obtaining a consumer credit report
8 without a permissible purpose. *See* 15 U.S.C. § 1681b(f); *see also Pintos v. Pac. Creditors*
9 *Ass’n*, 605 F.3d 665, 674 (9th Cir. 2009). Section 1681b(a) enumerates the circumstances under
10 which a consumer reporting agency (CRA) may furnish consumer credit reports. 5 U.S.C.
11 § 1681b(a). These permissible purposes include furnishing a report “[t]o a person which it has
12 reason to believe [] intends to use the information in connection with a credit transaction
13 involving the consumer on whom the information is to be furnished and involving the extension
14 of credit to, or review or collection of an account of, the consumer[.]” 15 U.S.C.
15 § 1681b(a)(3)(A). Accordingly, if a CRA “has reason to believe” that the entity they provide a
16 report to is intending to collect on a debt, the CRA has a permissible purpose to furnish the
17 report under the FRCA. *Id.* Likewise, a plain reading of the FCRA indicates that “requesting a
18 credit report with the intent to collect on a debt is among the ‘permissible purposes’ listed in the
19 FCRA.” *Thomas v. U.S. Bank, N.A.*, 325 F. App’x 592, 593 (9th Cir. 2009).

20 To state a claim for a § 1681b violation, a plaintiff must allege that the Defendant used or
21 obtained the plaintiff’s credit report without a permissible purpose and must also put forth facts
22 to show that the violation was willful or negligent. *Marino v. Ocwen Loan Servicing LLC*, 978
23 F.3d 669, 671 (9th Cir. 2020) (“a consumer may succeed on a claim under the FCRA only if he
24 or she shows that the defendant’s violation was negligent or willful.”). This is because civil

1 liability for violations of the FCRA are actionable under 15 U.S.C. §§ 1681n and 1681o, which
2 establish “[a]ny person who willfully fails to comply with any requirement imposed under this
3 subchapter with respect to any consumer is liable to that consumer” and “[a]ny person who is
4 negligent in failing to comply with any requirement imposed under this subchapter with respect
5 to any consumer is liable to that consumer” respectively. “To prove a negligent violation, a
6 plaintiff must show that the defendant acted pursuant to an objectively unreasonable
7 interpretation of the statute.” *Marino*, 978 F.3d at 673. “To prove a willful violation, a plaintiff
8 must show not only that the defendant’s interpretation was objectively unreasonable, but also that
9 the defendant ran a risk of violating the statute that was substantially greater than the risk
10 associated with a reading that was merely careless.” *Id.* Thus, the FCRA is not a strict liability
11 statute; “a creditor who violates [15 U.S.C. § 1681b] is not necessarily liable to the consumer.”
12 *Id.* at 671.

13 Plaintiff alleges that Defendants Experian and RGS “were aware or should have been
14 aware of their obligations under the FCRA to authorize access or obtain access to consumer
15 credit reports only for permissible purposes, but they knowingly, willfully and negligently failed
16 to comply with 15 U.S.C. §1681b.” (Dkt. No. 14 at 32.) Plaintiff further argues that because
17 “Defendants had absolutely no direct consent from Plaintiff to authorize access or obtain access
18 to any information from her credit reports and files,” they are “in direct violation of 15 U.S.C.
19 §1681b.” (*Id.* at 30.)

20 Experian asserts that “Plaintiff’s claims are based on a lack of adequate factual pleading
21 and misinterpret the legal standard” because “Plaintiff’s claim hinges on the mistaken belief that
22 reporting information on her consumer report without her consent violates the FRCA.” (Dkt.
23 No. 26 at 3.) Experian is correct that Plaintiff cannot successfully plead a §1681b violation
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1 based on lack of consent alone. As numerous courts have affirmed, “[w]hen a permissible
2 purpose exists, parties may obtain, and consumer reporting agencies may furnish, consumer
3 reports without the consumers’ permission or over their objection.” *Baker v. Trans Union LLC*,
4 No. CV 07-8032-PCT-JAT, 2008 WL 4838714, *4 (D. Ariz. Nov. 6, 2008) (internal quotations
5 omitted); *see also White v. Experian Information Sols., Inc.*, No. 2:23-CV-05591-DSF-PVC,
6 2024 WL 3075252, *2 (C.D. Cal. May 16, 2024) (“When a permissible purpose exists, a user can
7 obtain a consumer report without the consumer’s express authorization or understanding that the
8 report will be requested”); *Jones v. Best Serv. Co.*, No. CV 14-9872 SS, 2017 WL 490902, *7–8
9 (C.D. Cal. Feb. 6, 2017), *aff’d*, 700 F. App’x 580 (9th Cir. 2017) (“Plaintiff’s FCRA claims not
10 only consist largely of legal conclusions, but are almost entirely predicated on the erroneous
11 assertion that Defendant was required to secure Plaintiff’s express consent to access his credit
12 report for any reason. . . . However, a credit report can be accessed without a consumer’s
13 permission for other ‘permissible purposes’ under the FCRA.”). Accordingly, because Experian
14 had a “permissible purpose” under the FCRA, Plaintiff’s consent was not required, Experian
15 argues.

16 Specifically, Experian explains that it had a permissible purpose to furnish the report
17 because it held the reasonable belief that RGS—a debt collector—was collecting on Plaintiff’s
18 debt. (Dkt. No. 26 at 6.) As Experian points out, “Plaintiff’s own allegations indicate that
19 Experian reasonably believed RGS intended to use Plaintiff’s information to review her
20 account—a permissible purpose under the statute.” (*Id.*) In response, Plaintiff advances a
21 statutory interpretation argument focused on the definition of the word “account” in the FRCA.
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(Dkt. No. 34 at 7–9.)² Plaintiff argues: “the definition of ‘account’ does not include an account such as a credit card open end credit account or an alleged AT&T account, but does include a demand deposit account, savings deposit or other asset account.” (Dkt. No. 9 at 23.) Thus, Plaintiff argues that because the AT&T “account” does not fall within the purview of the FCRA definition, Experian did not have a “permissible purpose” to furnish the report. *See* 5 U.S.C. § 1681b(a)(3)(A). Plaintiff cites no caselaw in support of her argument, which is foreclosed by ample precedent indicating that collection of credit debt is a permissible purpose under the FCRA.³

Indeed, Plaintiff is far from the first litigant to advance this exact statutory interpretation argument. As one district court summarized, “[t]he Court understands the basis of Plaintiff’s arguments based on the literal words of the statutory provisions. But this same argument has been tried around the country, and as far as the Court can tell, and as far as the parties have shown in their briefs, it has been universally rejected by every court that has considered it.” *Middlebrooks v. Sacor Fin., Inc.*, No. 1:17-CV-0679-SCJ-JSA, 2017 WL 8186719, *4 (N.D. Ga. Aug. 28, 2017) (discussing the “account” argument at length and concluding that “[i]n light of the broader context of the statute, the term ‘account’ as used in § 1681b(a)(3) must be interpreted to include debts such as credit card accounts and student loans”). In *Rawls v. Convergent Outsourcing*, the plaintiff similarly asserted that “his T-Mobile account [was] not an ‘account’ for purposes of the FCRA.” *Rawls v. Convergent Outsourcing, Inc.*, No. 1:23-CV-

² In response, Plaintiff also argues that Experian violated 5 U.S.C. § 1681e(a). As Plaintiff does not plead this cause of action in the First Amended Complaint, the Court does not address it. The Court addresses Plaintiff’s argument that Experian violated 5 U.S.C. § 1681e(b) *infra*.

³ Plaintiff directs the Court to cases in which Plaintiffs voluntarily dismissed their claims with prejudice upon reaching a settlement agreement; these actions do not give rise to persuasive or binding precedent.

1 5465-SEG-CCB, 2024 WL 3833854, *5 (N.D. Ga. July 25, 2024), report and recommendation
2 adopted, No. 1:23-CV-05465-SEG-CCB, 2024 WL 4251738 (N.D. Ga. Aug. 14, 2024). The
3 Court rejected this argument, noting that “Defendant is a debt collector, as Plaintiff recognizes in
4 his complaint, [] and Defendant was collecting a debt from an account that Plaintiff allegedly has
5 with T-Mobile.” *Id.* at *3 n.2. Accordingly, the court concluded that “Defendant had a
6 permissible purpose to obtain Plaintiff’s consumer report, and Plaintiff fails to state a claim
7 under 15 U.S.C. § 1681b.” *Id.* at *6; *see also Fritz v. Cap. Mgmt. Servs., LP*, No. 2:12-CV-1725,
8 2013 WL 4648370 (W.D. Pa. Aug. 29, 2013) (collecting cases rejecting the “account”
9 argument); *Harris v. NCO Fin. Sys.*, No. CIV.A. RDB-13-0259, 2013 WL 6858852, *3 (D. Md.
10 Dec. 23, 2013) (“The Plaintiff argues that her delinquent credit card account is not an “account”
11 under the FCRA. . . . The Plaintiff’s argument has been universally rejected by every court that
12 has directly addressed it.”); *Valle v. RJM Acquisitions, LLC*, No. 3:12-CV-00957, 2015 WL
13 739855, *3 (D. Conn. Feb. 19, 2015) (same).⁴

14 Accordingly, the AT&T account Plaintiff describes in the complaint falls squarely within
15 the accepted definition of “account” for the purposes of permissible collection activity. Plaintiff
16 has not pleaded *any* facts that would provide a plausible basis to conclude that Experian provided
17 Plaintiff’s information for any reason other than a permissible belief that RGS—a debt
18 collector—was collecting on the account. Finally, Plaintiff has provided no facts to suggest that
19 Experian acted willfully and negligently. Thus, even if Experian lacked a permissible purpose,
20 Plaintiff has alleged no facts to indicate its conduct would represent more than “good faith
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22 ⁴ Moreover, the Ninth Circuit affirmed that requesting a credit report to collect a debt is a
23 permissible purpose under the FCRA in a case that itself involved Visa credit card debt. *See*
24 *Thomas* 325 F. App’x at 593 (affirming *Thomas v. U.S. Bank, N.A.*, No. CV 05-1725-MO, 2007
WL 764312 (D. Or. Mar. 8, 2007)).

1 error.” *In re Banner Bank*, No. 820CV02304JLSJDE, 2022 WL 19239736, at 4 (C.D. Cal. Dec.
2 16, 2022) (citing *Beckstrom v. Direct Merch.’s Credit Card Bank*, 2005 WL 1869107, at *3 (D.
3 Minn. Aug. 5, 2005)). In this way, Plaintiff has both failed to show lack of permissible purpose
4 and the required mens rea. For these reasons, Plaintiff’s 15 U.S.C. § 1681b claim against
5 Experian is DISMISSED without prejudice.

6 RGS argues that it is not liable under § 1681b because Plaintiff “does not dispute owning
7 the debt” and admits that RGS is a debt collector—as such, RGS asserts it “had a permissible
8 purpose to access Plaintiff’s credit report in connection with its debt collection efforts.” (Dkt.
9 No. 18 at 3, 5.) In response, Plaintiff once more advances a statutory interpretation argument
10 based on the definition of “account.” (Dkt. No. 30 at 14–15.) This argument fails for the reasons
11 described *supra*. Collection of credit debt is a permissible purpose to access an account under
12 the FCRA. *See Thomas* 325 F. App’x at 593. Plaintiff further argues that “because AT&T
13 confirmed that they did not transfer the alleged ‘Account’ in Plaintiff’s likeness to RGS,” RGS
14 did not have a right—or permissible purpose—to collect on the debt. (Dkt. No. 30 at 18.) RGS
15 maintains that its permissible purpose was debt collection on the AT&T account, as stated in the
16 letter RGS’s counsel sent to plaintiff. (Dkt. No. 35 at 3.) Finally, Plaintiff represents that she
17 “does not confirm or deny ownership of the [AT&T] account.” (*Id.* at 5.) In reply, Defendant
18 points out that “to have obtained the alleged information from AT&T” in response to RGS’
19 letter, Plaintiff needed to have been a customer with an account—facts indicating her ownership
20 of the account in question. (Dkt. No. 35 at 4.)

21 To succeed on her claim against RGS under § 1681b, Plaintiff must allege, with sufficient
22 factual support, that RGS did not have a permissible purpose for requesting her credit report. *See*
23 *Thomas* 325 F. App’x at 593. Additionally, “[m]erely stating that the violation was ‘willful’ or
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1 ‘negligent’ is insufficient”; instead, the Plaintiff must aver facts from which the Court can infer
2 that the Defendants possessed the requisite mens rea when they requested the report. *Braun v.*
3 *United Recovery Sys., LP*, 14 F. Supp. 3d 159, 167 (S.D.N.Y. 2014). Whether RGS had business
4 dealings with Defendant is not relevant. The Ninth Circuit has affirmed that “§ 1681b(a)(3)(A)
5 allows a third-party to obtain a consumer’s credit report without having a previous relationship
6 with the consumer and without the consumer initiating the transaction.” *Nayab v. Cap. One*
7 *Bank (USA), N.A.*, 942 F.3d 480, 487 (9th Cir. 2019); *see also Pyle v. First Nat. Collection*
8 *Bureau*, No. 1:12-CV-00288-AWI, 2012 WL 1413970, *3 (E.D. Cal. Apr. 23, 2012) (the fact
9 that Plaintiff did not have business dealings or accounts with the Defendant did not indicate that
10 Defendant’s activities were not permissible); *Egbert v. Sw. Collection Servs., Inc.*, No. SA CV
11 13-00421-DOC, 2013 WL 3188850, *3 (C.D. Cal. June 21, 2013) (same).

12 “Courts have been especially skeptical of [FCRA] claims brought against debt collection
13 agencies, given that debt collection agencies typically request credit reports for the permissible
14 purpose of seeking the information in connection with the consumer’s debt.” *Thomas v. Fin.*
15 *Recovery Servs.*, No. EDCV 12-1339-PSG-OPx, 2013 WL 387968, at *4 (C.D. Cal. Jan. 31,
16 2013) (collecting cases). Thus, conclusory allegations that a debt collector did not have a
17 permissible purpose for obtaining a credit report are insufficient to state a claim upon which
18 relief can be granted. *See Wise v. Experian Info. Sols., Inc.*, No. CV 23-5513-KK-RAOX, 2024
19 WL 3337128 (C.D. Cal. June 18, 2024) (collecting cases). Instead, Courts typically look to
20 whether a Plaintiff has pled that they did not own the underlying debt and/or that the Defendant
21 was not a debt collection agency acting in conjunction with collection activities. *See Pyle v.*
22 *First Nat. Collection Bureau*, No. 1:12-CV-00288-AWI, 2012 WL 1413970, *3 (E.D. Cal. Apr.
23 23, 2012) (dismissing FCRA claim because “Plaintiff fail[ed] to establish that Defendant was
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1 not, in fact, a collection agency, or that Plaintiff did not owe any debt that Defendant was
2 seeking to collect on behalf of another entity”); *Salmas v. Portfolio Recovery Assocs., LLC*, No.
3 SACV 13-0575-DOC, 2013 WL 6182614 (C.D. Cal. Nov. 25, 2013) (dismissing FCRA claim
4 because “[Plaintiff] does not allege that no such debt exists, or that Portfolio is not a debt
5 collector”); *cf. Nayab v. Cap. One Bank*, 942 F.3d 480, 496 (9th Cir. 2019) (holding plaintiff
6 adequately alleged defendant lacked permissible purpose for obtaining credit report where
7 plaintiff claimed they were “not aware of any collection accounts, including any accounts that
8 were purchased or acquired by Defendant that would permit Defendant to obtain Plaintiff’s
9 credit report as provided in 15 U.S.C. § 1681b(a)(3)(A)”).

10 Here, Plaintiff does not allege that she did not own the underlaying debt; nor does she
11 dispute that RGS is a debt collector. Plaintiff does, however, appear to allege that the debt was
12 not assigned to RGS for collection. Plaintiff emphasizes that “upon contacting AT&T in April
13 2024 regarding the alleged account, Plaintiff was informed that AT&T never transferred any
14 accounts in her name to RGS.” (Dkt. No. 30 at 5.) Plaintiff argues that this communication with
15 AT&T establishes that RGS did not have a permissible purpose to access her credit information.
16 However, Plaintiff provides no facts beyond the phone call to suggest RGS harbored any purpose
17 *other* than debt collection. Instead, Plaintiff argues that “RGS has been named as a defendant in
18 over 401 lawsuits, including several class action suits in the federal court system alone” and
19 suggests “[t]his data confirms that Plaintiff’s claims are not farfetched.” (Dkt. No. 30 at 4)
20 (internal quotations removed). Yet separate suits against RGS have no bearing on whether
21 Plaintiff is entitled to relief. Any reference to other lawsuits is a conclusory argument that
22 cannot substitute for the requirement that Plaintiff allege sufficiently detailed facts to state a
23 claim.

1 Ultimately, Plaintiff's call with the AT&T representative alone is not sufficient to plead a
2 violation of § 1681b, especially because Plaintiff's Amended Complaint also includes a letter
3 from RGS's attorney stating that it was collecting on the debt. (Dkt. No. 14 at 9.) Moreover,
4 Plaintiff alleges no facts that would establish negligence or willfulness beyond conclusory
5 allegations that RGS acted negligently and willfully. A complaint that fails to allege specific
6 facts to satisfy the state-of-mind element must fail. *Marino*, 978 F.3d at 673. Based on the facts
7 in the Amended Complaint, RGS's conduct—even assuming it constituted a violation—could
8 just as likely have been “merely careless,” rather than negligent. *Id.*; *see also Perl v. Plains*
9 *Com. Bank*, No. 11 CIV. 7972 KBF, 2012 WL 760401, *2 (S.D.N.Y. Mar. 8, 2012) (dismissing
10 plaintiff's claim, despite plaintiff sufficiently alleging defendant lacked a permissible purpose,
11 because “plaintiff's assertion that defendant's state of mind in doing so was willful is
12 conclusory”); *Abbink v. Experian Info. Sols., Inc.*, No. SACV191257JFWPJWX, 2019 WL
13 6838705, *5 (C.D. Cal. Sept. 20, 2019). Accordingly, Plaintiff's claim under 1681b(f) against
14 RGS is DISMISSED without prejudice.

15 b. 15 U.S.C. § 1681q

16 15 U.S.C. s 1681q provides: “[a]ny person who knowingly and willfully obtains
17 information on a consumer from a consumer reporting agency under false pretenses shall be
18 fined not more than \$5,000 or imprisoned not more than one year, or both.” The Ninth Circuit
19 has concluded that § 1681q “does state a ‘requirement imposed under this subchapter,’” meaning
20 that “[i]ts violation . . . forms a basis of civil liability under either § 1681n or § 1681O.” *Hansen*
21 *v. Morgan*, 582 F.2d 1214, 1219 (9th Cir. 1978). “The standard for determining when a
22 consumer report has been obtained under false pretenses will usually be defined in relation to the
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1 permissible purposes of consumer reports which are enumerated in 15 U.S.C. § 1681b,” as a
2 CRA may only issue a report for the purposes listed in § 1681b. *Id.*

3 Experian asserts that because “Plaintiff’s claim is based on the allegation that RGS
4 *obtained* her credit report from Experian,” Plaintiff’s § 1681q claim “can only be used to
5 establish RGS’s liability, not Experian’s.” (Dkt. No. 26 at 6) (emphasis added). In response,
6 Plaintiff “withdraws her [§ 1681q] claim against Experian[.]” (Dkt. No. 34 at 12.) Accordingly,
7 Plaintiff’s claim against Experian under § 1681q is DISMISSED with prejudice.

8 RGS does not brief § 1681q liability separately from § 1681b liability, likely because
9 courts are in agreement that “if a user of information seeks consumer information for an
10 impermissible purpose, it must also do so under false pretenses.” *Nogali v. Transcon Fin., Inc.*,
11 No. EDCV1400206VAPDTBX, 2014 WL 12968085 (C.D. Cal. July 3, 2014). Accordingly, a
12 § 1681q violation follows from a § 1681b violation and a “permissible purpose” forms a
13 complete defense to both causes of action. *See Hansen*, 582 F.2d at 1219. The Court concluded
14 *supra* that Plaintiff failed to make out a prima facie claim that RGS violated § 1681b. Thus,
15 Plaintiff’s claim against RGS under § 1681q is DISMISSED without prejudice.

16 c. 15 U.S.C. § 1681a(q)(3)

17 15 U.S.C. § 1681a(q)(3) “merely defines the term ‘identity theft’ under the FCRA and
18 neither articulates the duties of a consumer reporting agency in responding to identity theft nor
19 bestows a right of action.” *Rivera v. Transunion*, No. 3:22-CV-1038 (MPS), 2022 WL
20 17370506, *3 (D. Conn. Oct. 31, 2022). Accordingly, this citation does not give rise to a viable
21 claim under the FCRA. To the extent Plaintiff attempted to plead claims under § 1681a(q)(3),
22 these claims are DISMISSED with prejudice as against Experian and RGS.

23 2. FCRA Claim Against Experian (15 U.S.C. §1681e(b))
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1 15 U.S.C. § 1681e(b) establishes: “Whenever a consumer reporting agency prepares a
2 consumer report it shall follow reasonable procedures to assure maximum possible accuracy of
3 the information concerning the individual about whom the report relates.” A violation of
4 1681e(b) is actionable under either § 1681n or § 1681o. *Guimond v. Trans Union Credit Info.*
5 *Co.*, 45 F.3d 1329, 1332 (9th Cir. 1995). “In order to make out a prima facie violation under
6 § 1681e(b), a consumer must present evidence tending to show that a credit reporting agency
7 prepared a report containing inaccurate information.” *Id.* at 1333. However, the FCRA is not a
8 strict liability statute; thus, “an agency can escape liability if it establishes that an inaccurate
9 report was generated despite the agency’s following reasonable procedures.” *Id.*

10 Plaintiff alleges that “Experian failed to follow reasonable procedures to ensure
11 maximum possible accuracy of the information concerning Plaintiff, in violation of §1681e(b).”
12 (Dkt. No. 114 at 60.) Experian responds that “Plaintiff has not identified any information in her
13 consumer file that she claims is inaccurate,” and instead puts forth conclusory and formulaic
14 allegations that fail to meet the pleading standard. (Dkt. No. 59 at 2.) In reply, Plaintiff once
15 more argues that the AT&T account does not constitute an “account” under the FCRA. (Dkt.
16 No. 60 at 1–2.) Plaintiff also advances a new argument statutory interpretation argument based
17 on the definition of “credit transaction.” (*Id.* at 2.) Plaintiff further emphasizes that “Experian
18 failed to verify the accuracy of the tradeline furnished by RGS before allowing it to be placed on
19 her report” and “concealed the tradeline from Plaintiff’s eyes only consumer credit report[.]”
20 (*Id.* at 3.)

21 To plead a § 1681e(b) violation, “a consumer must first make a prima facie showing of
22 inaccurate reporting by the CRA.” *Shaw v. Experian Info. Sols., Inc.*, 891 F.3d 749, 756 (9th
23 Cir. 2018) (internal quotations removed). Information is inaccurate if it is “patently incorrect” or
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1 is “misleading in such a way and to such an extent that it can be expected to adversely affect
2 credit decisions.” *Id.* (quoting *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th
3 Cir. 2009). “Once the consumer has made a prima facie showing of inaccuracy, he or she must
4 next show that the consumer reporting agency failed to follow reasonable procedures to assure
5 the maximum possible accuracy of the information. 15 U.S.C. § 1681e(b).” *Wilson v. Equifax*
6 *Info. Servs., LLC*, No. 219CV00055RFBNJK, 2020 WL 2771184, *3 (D. Nev. May 27, 2020).

7 Plaintiff puts forth no facts about *what* specific information was inaccurate or how the
8 inaccurate information was reported. (*See generally* Dkt. No. 14.) The conclusory, threadbare
9 assertion that Experian published “false statements in her consumer report” is not sufficient to
10 meet the pleading standard, as Plaintiff does not explain what “statements” were “false.” (*Id.* at
11 18.) Indeed, Plaintiff does not deny ownership of the AT&T account, which is the only specific
12 information allegedly “reported” by Experian. (*See generally* Dkt. No. 14.) Likewise, Plaintiff’s
13 claim that Experian “did not verify the accuracy” of the tradeline does not suggest that the
14 information itself was “patently incorrect” or “misleading.” *Shaw*, 891 F.3d at 756.
15 Furthermore, Plaintiff fails to show that Experian followed unreasonable procedures; the
16 Complaint does not put forth any *facts* related to allegedly unreasonable policies or procedures.
17 (*See generally* Dkt. No. 14.)

18 Plaintiff’s statutory interpretation argument is likewise unavailing. The FCRA allows a
19 person to access a credit report “in connection with a credit transaction involving the consumer
20 on whom the information is to be furnished and involving the extension of credit to, or review or
21 collection of an account of, the consumer.” 15 U.S.C. § 1681b(a)(3)(A). Plaintiff argues that
22 “the alleged AT&T account” is “not a credit transaction or a permissible account, disqualifying it
23 from permissible purpose under the FCRA.” (Dkt. No. 60 at 2.) The FCRA defines “credit” as
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1 “the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its
 2 payment or to purchase property or services and defer payment therefor.” 15 U.S.C. §§
 3 1681a(r)(5); 1691a(d). The AT&T account meets this definition. As a court considering the
 4 same argument about a Verizon account explained: “The Verizon invoice reflects a previous
 5 balance that was past due[,]” which “reflects a debt incurred for services and thus constitutes a
 6 credit transaction.” *Layne-Williams v. Radius Glob. Sols., LLC*, No. 22CV340 (DLC), 2022 WL
 7 17251665, *3 (S.D.N.Y. Nov. 28, 2022). So too here.⁵

8 Accordingly, as Plaintiff has failed to put forth concrete factual allegations about what
 9 specific information is inaccurate and how Experian failed to follow reasonable procedures,
 10 Plaintiff’s § 1681e(b) claim does not survive a motion to dismiss. *See Iqbal*, 556 U.S. at 678 (“A
 11 claim has facial plausibility when the plaintiff pleads factual content that allows the court to
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14 ⁵ Plaintiff cites *Pintos v. Pacific Creditors Ass’n* in support of the argument that the AT&T
 15 account is not a “credit transaction.” (Dkt. No. 59 at 3); *see* 565 F.3d 1106 (9th Cir. 2009),
 16 *opinion amended and superseded on denial of reh’g*, 605 F.3d 665 (9th Cir. 2010). However,
 17 the case is readily distinguishable. *Pintos* involved a plaintiff whose car was towed. *Id.* at 1110.
 18 The towing company had obtained a lien on the costs of towing and impound and brought a
 19 deficiency claim against the plaintiff, which was then transferred to the defendant debt collection
 20 agency. *Id.* The *Pintos* court addressed the question of whether “the transaction was ‘a credit
 21 transaction involving’ [the plaintiff],” and thus constituted permissible grounds for the collection
 22 agency to obtain the report. *Id.* at 1112 (quoting 15 U.S.C. § 1682b(a)(3)(A)). The court found
 23 that someone is “involved in a credit transaction” within the meaning of the FCRA when she is
 24 “draw[n] in as a participant in the transaction” but not where she is “obliged to become
 associated” with it. *Id.* Because the plaintiff was not involved as a participant in the transaction
 within the meaning of the FCRA, the defendant did not have a permissible purpose to use the
 credit report. *Id.* at 1113 (“that *Pintos* owned the car that was towed did not mean that she
 initiated the credit transaction”). Here, the AT&T account in question is under Plaintiff’s name
 and Plaintiff does not deny ownership of it. Indeed, the facts alleged in Plaintiff’s Complaint
 suggest that Plaintiff created the account with AT&T and ran up a balance that was—without her
 knowledge—referred to RGS for collections. Thus, there is no indication that Plaintiff was not
 “involved” as a participant under *Pintos*.

1 draw the reasonable inference that the defendant is liable for the misconduct alleged.”).

2 Plaintiff’s 15 U.S.C. § 1681e(b) claim against Experian is DISMISSED without prejudice.

3 3. FDCPA Claims Against RGS (15 U.S.C. §§ 1692e, 1692f, 1692d)

4 Plaintiff alleges that RGS violated the FDCPA “by making false, deceptive, and
5 misleading statements regarding an alleged debt, despite the Plaintiff having no business or
6 accounts with them.” (Dkt. No. 14 at 34.) Plaintiff further asserts that RGS violated the FDCPA
7 because they did not attempt any initial communication with her about the debt collection. (*Id.*)
8 Specifically, she asserts that—under the FDCPA—RGS was required to provide her with notice
9 before placing a tradeline on her credit reports, which RGS did not do. (*Id.* at 37.) RGS
10 responds that Plaintiff fails to satisfy the elements of an FDCPA claim because she fails to allege
11 any collection activity arising from the debt. (Dkt. No. 18 at 11.) “Without any communications
12 from RGS seeking collection on the debt, there can be no violation of the FDCPA,” RGS
13 concludes. (*Id.*)

14 Under 15 U.S.C. § 1692e, a debt collector may not use any false, deceptive, or
15 misleading representation or means in connection with the collection of a debt by providing a
16 false representation of character, amount, or legal status of any debt. Under 15 U.S.C. § 1692f, a
17 debt collector may not use unfair or unconscionable means to collect or attempt to collect any
18 debt. 15 U.S.C. § 1692d provides that a debt collector may not harass or abuse any person in
19 connection with the collection of a debt. “To state a claim under the FDCPA, a plaintiff must
20 allege facts that establish that (1) the plaintiff has been the object of collection activity arising
21 from a consumer debt; (2) the defendant attempting to collect a debt qualifies as a ‘debt
22 collector’ under the FDCPA; and (3) the defendant has engaged in a prohibited act or has failed
23 to perform a requirement imposed by the FDCPA.” *James v. Puget Sound Collections*, No. 22-
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1 5237 RJB, 2022 WL 2357050, *2 (W.D. Wash. June 30, 2022); *see also Miller v. Bank of Am.*,
2 *Nat. Ass’n*, 858 F. Supp. 2d 1118, 1122 (S.D. Cal. 2012) (“To bring a FDCPA action against a
3 debt collector, the debt collector’s misconduct must have occurred during an attempt to collect a
4 present debt.”).

5 Courts in this circuit have concluded that the reporting of an account to a CRA does not
6 establish that a plaintiff was the “object of a collection activity” for the purposes of making out a
7 prima facie FDCPA case. *See Drake v. Enhanced Recovery Co., LLC*, No. 6:15-CV-01899,
8 2018 WL 1402586 (D. Or. Mar. 19, 2018). *Drake* involved a similar fact pattern to the alleged
9 FDCPA violations at issue. A delinquent AT&T account was placed with the defendant debt
10 collector for collection. *Id.* at *1. The account in question belonged to somebody by the same
11 name as the plaintiff—not the plaintiff himself—but the agency commenced collection activities
12 with the plaintiff, believing that he owned the debt. *Id.* Accordingly, the plaintiff informed the
13 defendant that the AT&T account did not belong to him, and the defendant informed the plaintiff
14 it would not direct any further collection attempts on the account to him. *Id.* The plaintiff
15 asserted that the defendant violated the FDCPA because it reported the delinquent AT&T
16 account to CRAs as “disputed” after the plaintiff had informed them that it did not belong to him.
17 The court first found that “the reporting of the Account to the CRAs was not in connection to the
18 collection of the account” because “the recipient of the alleged ‘false, deceptive or misleading
19 representation’ was not the debtor, but rather the CRAs.” *Id.* at *3. Moreover, the Court found
20 that the information conveyed was not actually false—the defendant reported, accurately, that the
21 account was “disputed”—which further frustrated the plaintiff’s 15 U.S.C. § 1692e claim.

22 So too here. The recipient of the allegedly false information at issue was the CRAs, not
23 Plaintiff, as Plaintiff’s Complaint makes very clear. Thus, the reporting of the AT&T account to
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the CRAs was not in connection to the collection of the account for the purposes pleading an FDCPA claim. Moreover, as the *Rawls* court noted, “[a] plaintiff cannot baldly assert that an alleged debt is not real or false without providing a factual basis explaining why that is so.” *Rawls*, 2024 WL 3833854, *3. As in *Rawls*, “Plaintiff does not even allege what the false information allegedly was, nor does [s]he allege any facts to show that the account between Plaintiff and [AT&T] does not exist.” *Id.* Plaintiff cannot plausibly plead a 15 U.S.C. § 1692e violation when she has put forth no facts alleging what specifically was false about the AT&T account information or otherwise supporting the FDCPA claim. Likewise, Plaintiff has pled no facts suggesting that RGS harassed her or employed unconscionable means to collect the debt—by her account, RGS deleted the tradeline and ceased collecting on the account after Plaintiff sent RGS a pre-litigation notice with her complaint. (Dkt. No. 14 at 8.) Plaintiff has also provided no authority suggesting that RGS was required to provide her with notice before placing a tradeline on her accounts.⁶ As Plaintiff has failed to establish collection activity and not plead any specific factual claims that support the causes of action asserted, her FDCPA claims fail as a matter of law and are DISMISSED with prejudice.

4. State Law Claims Against RGS

⁶ Under the FCRA, 15 U.S.C. § 1681s-2(a)(7), “[i]f any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 1681a(p) of this title furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.” (emphasis added). This provision places a duty on creditors and not third-party debt collectors, however. Moreover, 15 U.S.C. § 1681s-2(a)(7) does not provide a private right of action. See 15 U.S.C. § 1681s-2(c); 15 U.S.C. § 1681s-2(d) (providing that subsection (a) “shall be enforced exclusively . . . by the Federal agencies and officials and the State officials identified in section 1681s of this title”).

1 Plaintiff alleges that RGS is liable for identity theft, defamation of character, negligence,
2 breach of confidentiality, invasion of privacy, intrusion upon seclusion, infliction of emotional
3 distress, and for violating the WFCRA and the WCPA. (See Dkt. No. 14.) RGS asserts that
4 Plaintiff's state law claims "are all preempted by the FCRA" and therefore fail. (Dkt. No. 18 at
5 8.) Plaintiff responds that "state law claims can coexist with FCRA claims as long as they do not
6 conflict directly with the statute," emphasizing that state law is "designed to address specific
7 consumer rights not entirely encompassed by the FCRA." (Dkt. No. 30 at 28.) Accordingly,
8 before considering Plaintiff's individual claims, the Court must determine the extent to which the
9 FCRA preempts state law.

10 The FCRA contains two preemption provisions that restrict state law claims against
11 furnishers of information: 15 U.S.C. § 1681h(e) and 15 U.S.C. § 1681t(b)(1)(F). The first
12 preemption provision, which was included when the statute was first enacted in 1968, provides:

13 Except as provided in section 1681n and 1681o of this title, no consumer may bring any
14 action or proceeding in the nature of defamation, invasion of privacy, or negligence with
15 respect to the reporting of information against any consumer reporting agency, any user
16 of information, or any person who furnishes information to a consumer reporting agency,
17 based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title,
or based on information disclosed by a user of a consumer report to or for a consumer
against whom the user has taken adverse action based in whole or part on the report
except as to false information furnished with malice or willful intent to injure such
consumer.

18 15 U.S.C. § 1681(h)(e). See *Buraye v. Equifax*, 625 F. Supp. 2d 894, 897 (C.D. Cal. 2008).
19 Congress amended the FCRA in 1996, adding a more general and sweeping preemption
20 provision. *Shiver v. Ally Fin.*, No. CV190189DOCGJSX, 2019 WL 2902500, *3 (C.D. Cal. Feb.
21 22, 2019). Section 1681t(b)(1)(F) establishes that "[n]o requirement or prohibition may be
22 imposed under the laws of any State with respect to any subject matter regulated under section
23 1681s–2 of this title, relating to the responsibilities of persons who furnish information to
24

1 consumer reporting agencies[.]” 15 U.S.C. § 1681t(b)(1)(F). Section 1681s–2 regulates the duty
2 of “furnishers of information to provide accurate information” to CRAs. 15 U.S.C. § 1681s–2.
3 “A ‘furnisher of information,’ for purposes of the FCRA, is an entity that transmits information
4 concerning a particular debt owed by a particular consumer to a credit reporting agency.” *In re:*
5 *Banner Bank*, No. 820CV02304JLSJDE, 2022 WL 17886044 (C.D. Cal. Oct. 26, 2022) (quoting
6 *Thompson v. Pro. Collection Consultants*, 2013 WL 12114592, at *5 (C.D. Cal. Sept. 18, 2013)).

7 As multiple district courts have noted, “[i]t is hard to reconcile these two provisions
8 because the former, § 1681h(e), implies that certain state-law claims can proceed, while the
9 latter, § 1681t(b)(1)(F), appears to preempt all state law claims.” *Haddock v. Countrywide Bank*,
10 NA, No. CV146452PSGFFMX, 2015 WL 9257316, *21 (C.D. Cal. Oct. 27, 2015); *see also*
11 *Buraye v. Equifax*, 625 F. Supp. 2d 894, 898 (C.D. Cal. 2008) (“Numerous courts have
12 recognized that there is an apparent tension between these two preemption provisions.”). Courts
13 have developed three approaches to interpreting the provisions—the so-called total preemption
14 approach, the statutory approach, and the temporal approach. *Shiver*, 2019 WL 2902500, *3;
15 *Subhani v. JPMorgan Chase Bank, Nat. Ass’n*, No. C 12-01857 WHA, 2012 WL 1980416, *3
16 (N.D. Cal. June 1, 2012). The Ninth Circuit has noted the “disarray” but declined to adopt an
17 approach. *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1167 (9th Cir. 2009)
18 (“Attempting to reconcile the two sections has left district courts in disarray In the end, we
19 need not decide this issue.”). However, “[t]he majority of courts in the Ninth Circuit have
20 favored the total preemption approach, determining that § 1681t(b)(1)(F) totally preempts all
21 state statutory and common law causes of action which fall within the conduct proscribed under
22 § 1681s–2.” *Shiver*, 2019 WL 2902500, *3 (internal quotations removed) (collecting cases); *see*
23 *also Subhani* 2012 WL 1980416, at *3 (collecting cases). This accords with the conclusion of
24

1 the circuit courts that have addressed this issue, which have also found § 1681t(b)(1)(F)
2 completely preempts statutory and common law causes of action predicated on the conduct of
3 furnishers of information regulated under Section 1681s-2. *See Purcell v. Bank of America*, 659
4 F.3d 622, 624–25 (7th Cir. 2011); *Macpherson v. JPMorgan Chase Bank, N.A.*, 665 F.3d 45, 48
5 (2d Cir. 2011). Finding this weight of authority persuasive, the Court adopts the total
6 preemption approach.

7 a. Defamation

8 Plaintiff alleges that RGS “published false statements about the Plaintiff in her consumer
9 reports and files,” specifically “a false statement that Plaintiff is a debtor who has defaulted on a
10 financial obligation.” (Dkt. No. 14 at 43.) Plaintiff asserts that this constitutes defamation by
11 libel under Washington Revised Code § 4.36.120. (*Id.*) Because this claim is a state law cause
12 of action brought against RGS in its capacity as a furnisher of information under the FCRA, it is
13 preempted. *C.f. Shriver*, 2019 WL 2902500, *3 (defamation claim preempted by FCRA);
14 *Grigoryan v. Bank of Am. Corp.*, No. ED CV 12-01219 MMM, 2012 WL 10423215, *12 (C.D.
15 Cal. Dec. 31, 2012) (defamation claim preempted by FCRA); *Johnson v. JP Morgan Chase Bank*
16 *DBA Chase Manhattan*, 536 F. Supp. 2d 1207, 1215 (E.D. Cal. 2008) (“15 U.S.C.
17 § 1681t(b)(1)(F) preempts [Plaintiff’s] defamation claim based on allegations that [Defendant]
18 reported information to a credit reporting agency”); *Buraye*, 625 F. Supp at 901 (“Based on the
19 plain language of § 1681t(b)(1)(F), the court concludes that [Plaintiff’s] state law negligence and
20 defamation claims are preempted by the FCRA.”). Accordingly, Plaintiff’s defamation claim as
21 against RGS is DISMISSED WITH PREJUDICE.

22 b. Negligence, invasion of privacy, breach of confidentiality, and infliction of
23 emotional distress
24

1 Plaintiff asserts that RGS was involved in a data breach and her “nonpublic PII and
2 private financial information, including her name, social security number, date of birth,
3 addresses, and other private data” was included in the breach. (Dkt. No. 14 at 50.) Plaintiff
4 alleges that RGS’s failure to protect her information led to a “severe invasion of the Plaintiff’s
5 privacy,” including the disclosure of her “financial records and identity details.” (*Id.* at 51.) “As
6 a result of the data breach and subsequent misuse of her personal information, the Plaintiff has
7 experienced significant emotional distress,” she claims. (*Id.*) Plaintiff also alleges that RGS is
8 liable for negligence and breach of confidentiality based on these allegations. (*Id.*) Plaintiff
9 collectively brings these claims under the heading “Count 9” in her Amended Complaint. (Dkt.
10 No. 14 at 50.)

11 As these common law claims are not premised on RGS’s “conduct relating to a
12 furnisher’s responsibilities to provide accurate information and conduct reasonable investigations
13 following a dispute,” they are not preempted. *Subhani* 2012 WL 1980416, at *6. Plaintiff states
14 that “[c]ommon law principles governing the data breach negligence, breach of confidentiality,
15 infliction of emotional distress and invasion of privacy are applicable in this case.” (Dkt. No. 14
16 at 51.)

17 A plaintiff must prove four elements to prevail on a negligence claim: “(1) the existence
18 of a duty owed, (2) breach of that duty, (3) a resulting injury, and (4) a proximate cause between
19 the breach and the injury.” *Tincani v. Inland Empire Zoological Soc.*, 875 P.2d 621, 624 (1994).
20 Plaintiff alleges that Defendants “owed a duty to Plaintiff to exercise reasonable care in
21 obtaining and protecting” Plaintiff’s data and breached that duty by releasing her information in
22 the data breach. (Dkt. No. 14 at 51.) While such a duty may well exist, Plaintiff has plead no
23 facts indicating that her data was, in fact, compromised in the data breach. Indeed, the only
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1 finite facts provided in Plaintiff’s Amended Complaint suggest that she was *not* part of the
2 breach. In the Amended Complaint, Plaintiff summarizes a public notice released by RGS,
3 which states that the company sent out data breach notifications “to all individuals whose
4 information was affected by the recent data security breach.” (*Id.* at 8.) Plaintiff then asserts that
5 RGS “never notified the Plaintiff of this data breach.” (*Id.* at 7.) In its motion to dismiss, RGS
6 confirms that “[t]he reason Plaintiff never received any notice is simple: Plaintiff was not part of
7 the data breach.” (Dkt. No. 18 at 7 n.7).

8 Plaintiff provides no concrete facts indicating she was part of the data breach. (Dkt. No.
9 14 at 8.) In her response, Plaintiff suggests that “notices may not have reached her” and
10 references a news article about 632,204 consumer accounts that were breached. (Dkt. No. 36 at
11 9.) Plaintiff further suggests “it is highly unlikely the cybercriminals instructed the ‘malware’ to
12 selectively remove Plaintiff’s file before they stolen [sic] the remaining 632,204 files.” (*Id.* at
13 10.) In conclusion, Plaintiff states: “it is reasonable to conclude that her information may have
14 been compromised during the breach.” (*Id.*) Plaintiff’s speculative assertion that her
15 information “may have been compromised” does not give rise to a data breach negligence
16 claim.⁷ Likewise, Plaintiff’s invasion of privacy, intrusion upon seclusion, breach of
17 confidentiality, and infliction of emotional distress claims based on the alleged breach of her data
18 fail as a matter of law. (See Dkt. 14 at 50–54.)

19
20 ⁷ Even in cases where it is undisputed that a plaintiff’s information was breached and stolen,
21 plaintiffs have had a difficult time surviving a motion to dismiss. *See, e.g., In re Accellion, Inc.*
22 *Data Breach Litig.*, 713 F. Supp. 3d 623 (N.D. Cal. 2024) (plaintiffs described identity theft,
23 fraudulent charges on bank and credit accounts, temporary bank freezes, and out-of-pocket
24 losses, such as overdraft fees, credit monitoring costs, and credit card reissuance fees resulting
from breach); *Smallman v. MGM Resorts Int’l*, 638 F. Supp. 3d 1175 (D. Nev. 2022) (hackers
accessed plaintiffs’ driver’s license numbers, passports numbers, military identification numbers,
names, addresses, phone numbers, email addresses, and dates of birth).

1 Accordingly, Plaintiff's invasion of privacy, intrusion upon seclusion, breach of
2 confidentiality, and infliction of emotional distress claims are DISMISSED without prejudice.

3 c. WFCRA and WCPA

4 Plaintiff does not bring her WFCRA claim against RGS in its capacity as a furnisher of
5 information. Rather, Plaintiff's WFCRA claim arises from the same allegations that underpin
6 her FCRA claim discussed *supra*—that RGS accessed her credit report without her consent and
7 with no permissible purpose. (Dkt. No. 14 at 23.) Accordingly, section 161t(b)(1)(F) does not
8 preempt Plaintiff's WFCRA claim. *See In re: Banner Bank*, 2022 WL 17886044, at *1
9 (“Plaintiffs’ claims do not involve Defendant’s reporting of inaccurate credit information to
10 TransUnion, but rather Defendant’s obtaining a credit report from TransUnion for an
11 impermissible purpose [t]herefore, the Court concludes that, as a matter of law, section
12 1681t(b)(1)(F) of the FCRA does not preempt Plaintiffs’ state law claims.”).

13 Plaintiff alleges that RGS violated the WFCRA—specifically, Washington Revised Code
14 § 19.182.020—by “access[ing] Plaintiff’s consumer credit report, nonpublic PII and private
15 financial information without a permissible purpose” and without her consent. (Dkt. No. 14 at
16 23.) Like the FCRA, the WFCRA establishes the circumstances under which a consumer
17 reporting agency may furnish, or an entity may procure, a consumer report. *See Wash Rev. Code*
18 § 19.182.020. A violation of the WFCRA constitutes an unfair or deceptive act in trade under
19 WCPA. *See Wash Rev. Code* § 19.182.150; *Cain v. Trans Union LLC*, No. 04-cv-1779, 2006
20 WL 328409, at *6 (W.D. Wash. Feb. 9, 2006) (“RCW 19.182.150 explicitly makes a violation of
21 the WFCRA a violation of the WCPA.”). “To state a claim under the CPA, plaintiff must plead
22 facts demonstrating: (1) an unfair or deceptive act or practice, (2) in trade or commerce, (3) that
23 impacts the public interest, (4) which causes injury to the plaintiff in his or her business or
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1 property, and (5) which injury is causally linked to the unfair or deceptive act.” *Leavitt v. Credit*
2 *Central LLC*, No. 23-CV-01817-RAJ, 2024 WL 4839360, *4 (W.D. Wash. Nov. 20, 2024)
3 (citing *Indus. Indem. Co. v. Kallevig*, 114 Wash. 2d 907, 920–21 (1990)). “A private dispute can
4 affect the public interest if it is likely that additional plaintiffs have been or will be injured in
5 exactly the same fashion.” *Id.*

6 Plaintiff fails to state a claim under the WCPA based on the alleged WFCRA violation, as
7 the text of the WFCRA makes clear that debt collection constitutes a permissible purpose for
8 furnishing a consumer report and Plaintiff admits RGS is a debt collector. Like the FCRA, the
9 WFCRA provides that a CRA “may furnish a consumer report” if the agency has reason to
10 believe that the information will be used “in connection with a credit transaction involving the
11 consumer on whom the information is to be furnished and involving the extension of credit to, or
12 review or collection of an account of, the consumer.” Wash Rev. Code § 19.182.020. As this
13 provision is functionally identical to the FCRA provision analyzed *supra* (15 U.S.C. § 1681b),
14 the same analysis conducted above applies here. *See supra*. Plaintiff’s WFCRA claim fails for
15 the same reason her § 1681b claim fails. *See supra*. To the extent that Plaintiff’s WCPA claim
16 is based on the same allegations—that Defendants “obtained access to Plaintiff’s consumer
17 reports and files without permissible purpose or consent”—it too fails.

18 Plaintiff also alleges that RGS violated the WCPA by “reporting false statements on
19 Plaintiff’s consumer file.” (Dkt. No. 14 at 48.) 15 U.S.C. § 1681t(b)(1)(F) preempts Plaintiff’s
20 WCPA claim based on allegations that Defendant reported false information to a credit reporting
21 agency. *See supra*; *Miller v. Bank of Am., Nat. Ass’n*, 858 F. Supp. 2d 1118, 1126 (S.D. Cal.
22 2012) (state law claims preempted “to the extent they are based on [defendant’s] inaccurate
23 reporting and failure to investigate.). Finally, Plaintiff once more asserts that her data was
24

1 breached by RGS and that the breach of her private financial information gives rise to a claim
2 under the WCPA. (Dkt. 14 at 46–47.) As the Court discussed *supra*, Plaintiff provides no facts
3 suggesting her data was breached and no facts refuting RGS’s confirmation that she was not part
4 of the data breach. Accordingly, to the extent Plaintiff attempts to make out a WCPA claim
5 based on the alleged breach of her data, the claim fails as a matter of law.

6 In sum, Plaintiff’s WFCRA and WCPA claims against RGS fail as a matter of law are
7 DISMISSED without prejudice.

8 d. Identity theft

9 Plaintiff alleges that RGS violated Washington Revised Code § 9.35.020, which
10 establishes that “[n]o person may knowingly obtain, possess, use, or transfer a means of
11 identification or financial information of another person, living or dead, with the intent to
12 commit, or to aid or abet, any crime.” A violation of § 9.35.020 constitutes an unfair or
13 deceptive act in trade or commerce and an unfair method of competition for the purpose of
14 applying the WCPA. Wash. Rev. Code. § 9.35.800. The allegations underlying this claim are
15 the same as those plead in support of Plaintiff’s FCRA and WFCRA claims—that RGS obtained
16 Plaintiff’s private financial information and consumer credit reports without her knowledge,
17 permissible purpose, or consent. (Dkt. No. 14 at 38.) Plaintiff pleads no facts indicating that
18 RGS possessed an intent to commit or aid or abet any crime. (*See generally* Dkt. No. 14.) Nor
19 has she pled facts that indicate her data was breached or her identity was stolen. *See supra*.
20 Accordingly, Plaintiff’s identity theft claim fails as a matter of law and is DISMISSED with
21 prejudice.

22 e. Invasion of privacy by intrusion upon seclusion
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24

Plaintiff alleges that RGS's accessing her credit report without her consent constitutes invasion of privacy and intrusion upon seclusion, as she "at all times expected to have her consumer credit report kept private unless she provided her consent." (Dkt. No. 14 at 54.) Intrusion upon seclusion is an intentional tort. *Fisher v. State ex rel. Dep't of Health*, 106 P.3d 836, 879 (Wash. Ct. App. 2005) ("Intent is [] an essential element."). To establish a prima facie case, a Plaintiff must show "(1) an intentional intrusion, physically or otherwise, upon the solitude or seclusion of plaintiff, or her private affairs; (2) a legitimate and reasonable expectation of privacy with respect to that matter or affair; (3) an intrusion that would be highly offensive to a reasonable person; and (4) damage proximately caused by the defendant's conduct." *Mancini v. City of Tacoma*, 188 Wash. App. 1006 (2015). A person acts with intent under Washington law when "he or she desires to achieve the particular consequences of the act or knows that the consequences are substantially certain to follow from the act." *Est. of Jordan by Jordan v. Hartford Acc. & Indem. Co.*, 844 P.2d 403, 412 (Wash. 1993). Plaintiff has failed to plead facts that suggest an intentional intrusion on her private affairs. Moreover, Plaintiff fails to plead facts giving rise to a "reasonable expectation of privacy"; as the Court has discussed, a debt collector accessing a credit report is explicitly permitted under the FCRA and WFCRA. *See supra*. Accordingly, Plaintiff's inclusion upon seclusion claim ("Count 10) against RGS is DISMISSED with prejudice. (See Dkt. No. 14 at 54.)

5. State Law Claims Against Experian

Plaintiff alleges that Experian violated the WFCRA and the WCPA and committed defamation, invasion of privacy by intrusion upon seclusion, and identity theft.

a. WFCRA and WCPA

1 Plaintiff alleges that “Experian authorized Radius Global Solutions access to Plaintiff’s
2 consumer credit report, nonpublic PII and private financial information without a permissible
3 purpose” or her consent and thereby violated the WFCRA. (Dkt. No. 14 at 24.) Plaintiff’s
4 WFCRA claims against Experian fail for the same reason Plaintiff’s WFCRA claims failed
5 against RGS. The WFCRA provides that a CRA “may furnish a consumer report” if the agency
6 has reason to believe that the information will be used “in connection with a credit transaction
7 involving the consumer on whom the information is to be furnished and involving the extension
8 of credit to, or review or collection of an account of, the consumer.” Wash Rev. Code
9 § 19.182.020. Thus, because Experian—a CRA—furnished a consumer report with reason to
10 believe the information would be used by RGS—a debt collector—related to its collection of an
11 account, Experian had a permissible purpose under the WFCRA. Likewise, Plaintiff’s WCPA
12 claim, which is based on the same underlying allegation, fails due to Experian having a
13 permissible purpose. (See Dkt. No. 14 at 49.)

14 Accordingly, Plaintiff’s WFCRA and WCPA claims against Experian are DISMISSED
15 with prejudice.

16 b. Defamation and invasion of privacy by intrusion upon seclusion

17 Under 15 U.S.C. § 1681(h)(e), “no consumer may bring any action or proceeding in the
18 nature of defamation, invasion of privacy, or negligence with respect to the reporting of
19 information against any consumer reporting . . . except as to false information furnished with
20 malice or willful intent to injure such consumer.” “A plaintiff can allege actual malice with facts
21 supporting that the defendant knew the statement was false, or acted with a high degree of
22 awareness of its probable falsity, or in fact entertained serious doubts as to the statement’s truth.”
23
24

1 *Delashaw v. Seattle Times Co.*, No. C18-0537JLR, 2018 WL 4027078, at *11 (W.D. Wash. Aug.
2 23, 2018).

3 As discussed *supra*, Plaintiff has failed to plausibly allege that Experian reported false
4 information about her, as she provides no facts about what specifically was falsely reported.
5 Likewise, Plaintiff has plead no facts suggesting Experian “knew the statement was false, or
6 acted with a high degree of awareness of its probable falsity.” *Id.* Plaintiff’s conclusory
7 assertion that Experian “acted with malice” does not meet the pleading standard for malice.
8 (Dkt. No. 14 at 45); *see Twombly*, 550 U.S. at 555 (plaintiff’s obligation “requires more than
9 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
10 do”). Because plaintiff does not plausibly plead malice or willful intent, § 1681(h)(e) preempts
11 her state tort law claims for defamation and invasion of privacy by intrusion upon seclusion.

12 Accordingly, Plaintiff’s claims for defamation and invasion of privacy as against
13 Experian are DISMISSED without prejudice.

14 c. Identity theft

15 Plaintiff asserts that Experian “facilitated identity theft against the Plaintiff through
16 negligent information possession, use, and transferring and nonexistent verification processes
17 without her knowledge or consent.” (Dkt. No. 14 at 39.) As the Court noted *supra*, Washington
18 Revised Code § 9.35.020 establishes that “[n]o person may knowingly obtain, possess, use, or
19 transfer a means of identification or financial information of another person, living or dead, with
20 the intent to commit, or to aid or abet, any crime.” Plaintiff pleads no facts indicating that
21 Experian possessed an intent to commit or aid or abet any crime. (*See generally* Dkt. No. 14.)
22 Nor has she pled facts that indicate her data was breached or her identity was stolen. *See supra*.

1 Accordingly, Plaintiff's identity theft claim against Experian fails as a matter of law and is
2 DISMISSED with prejudice.

3 6. Violations of the GLBA (invoking 15 U.S.C. §§ 6801–09)

4 Plaintiff alleges that Experian violated the GLBA “by failing to safeguard Plaintiff’s
5 sensitive nonpublic personal information and using, transferring, possessing and sharing her
6 information without permissible purpose or Plaintiff’s consent.” (Dkt. No. 14 at 62.) In
7 response, Experian points out that “[t]he legislative scheme of the GLBA does not support
8 private suits for damages.” (Dkt. No. 26 at 7) (citing cases). In reply, Plaintiff “acknowledges
9 that the GLBA does not provide a private right of action and respectfully withdraws her request
10 for civil remedies under the GLBA.” (Dkt. No. 34 at 16.) Accordingly, Plaintiff’s GLBA claims
11 are DISMISSED with prejudice.

12 7. Individual Claims Against Barrist

13 Plaintiff’s claims against Barrist are coextensive with Plaintiff’s claims against RGS.
14 (See Dkt. No. 14.) Generally speaking, this is not sufficient to plead CEO liability: “individual
15 defendants cannot be held liable solely because they are chief executive officers for the corporate
16 defendants.” *McNack v. Smith*, No. 2:14-cv-04810-CAS(SPx), 2015 WL 7302218, at *5 (C.D.
17 Cal. Nov. 16, 2015) (quoting *Sloan v. TransUnion, LLC*, 2010 WL 1949621, at *2 (E.D. Mich.
18 Apr. 22, 2010)). Instead, “cases which have found personal liability on the part of corporate
19 officers have typically involved instances where the defendant was the guiding spirit behind the
20 wrongful conduct . . . or the central figure in the challenged corporate activity.” *Id.* Here, the
21 Complaint does not indicate that Barrist took any actions individually, instead Plaintiff conflates
22 Barrist’s actions with those of RGS. The facts alleged are not sufficient to hold Barrist
23 individually liable. *C.f. Estrada v. Equifax Info. Servs. LLC*, No. CV-21-01704-PHX-SMB, 2022

1 WL 2705835, *4 (D. Ariz. July 12, 2022) (finding that where plaintiff failed to plead that CEO
2 took actions individually and instead conflated CEOs with corporate defendants, the complaint
3 was insufficient to state a claim). Accordingly, Plaintiff's claims against Barrist are
4 DISMISSED without prejudice.

5 IV CONCLUSION

6 For the reasons outlined, the Court GRANTS the motions to dismiss (Dkt. Nos. 18, 26).
7 All of Plaintiff's claims against Experian, RGS, and Barrist are DISMISSED.

8 Plaintiff may file a motion for leave to amend for those claims dismissed without
9 prejudice. For each claim Plaintiff requests leave to amend, Plaintiff's motion SHALL identify
10 with specificity the additional facts she alleges address the deficiencies identified in this Order.
11 In addition to the motion itself, Plaintiff SHALL file as an exhibit to the motion a redline version
12 of the proposed amended complaint that highlights the specific additional facts included in the
13 proposed amended complaint so that the Court can easily identify and review. The motion for
14 leave to amend SHALL be filed no later than December 30, 2024 or the Court will enter an order
15 of dismissal with prejudice against Experian, RGS, and Barrist.

16 The Clerk is directed to calendar this event.

17 Dated this 16th day of December, 2024.

18 
19 _____
20 David G. Estudillo
21 United States District Judge
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