UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ROBERT L. BELAIR and LORI N. BELAIR,

Plaintiffs,

v. Case No. 6:21-cv-165-WWB-DCI

HOLIDAY INN CLUB VACATIONS INCORPORATED,

Defendant.
_____/

ORDER

THIS CAUSE is before the Court on Defendant's Second Amended Motion for Partial Summary Judgment as to Count III (Doc. 37), Plaintiffs' Response in Opposition (Doc. 42),[1] and Defendant's Reply (Doc. 43). For the reasons set forth below, Defendant's Motion will be granted.

I. BACKGROUND

In July 2017, Plaintiffs purchased a timeshare from Defendant. ("**Sales Contract**," Doc. 32-1). To finance the purchase, Plaintiffs executed a promissory note, ("**Note**," Doc. 32-2), and deed of trust, (Doc. 32-3). The Note required Plaintiffs to make monthly installment payments until the full amount, including interest, was repaid, beginning in August 2017. (Doc. 32-2 at 1). From August 2017 to March 2019, Plaintiffs made monthly

[1] Although Plaintiffs' filing fails to comply with this Court's January 13, 2021 Standing Order, in the interests of justice, the Court will consider the filing. The parties are cautioned that future failures to comply with all applicable rules and orders of this Court may result in the striking or denial of filings without notice or leave to refile.

installment payments but did not make any additional payments thereafter. (Doc. 14, ¶ 39; Doc. 32-4 at 1). During that time, Plaintiffs hired an attorney, who sent multiple letters to Defendant advising that Plaintiffs did not intend to make further payments, attempting to cancel any contract with the Defendant pursuant to certain language in the Sales Contract, and demanding a full trade line deletion. (Doc. Nos. 14-2, 14-3). Despite these communications, in July 2019, Plaintiffs' timeshare deed was recorded. (Doc. 32-5 at 1–3).

Defendant then reported Plaintiffs' delinquency on the Note to Experian Information Solutions, Inc. ("**Experian**"), a credit reporting agency ("**CRA**"). (Doc. 32, ¶ 12). Each Plaintiff sent three dispute letters to Experian, beginning in December 2019 and ending in June 2020. (Doc. Nos. 14-6, 14-8, 14-10, 14-13, 14-15, 14-17; *see also* Doc. 14, ¶ 88). Defendant investigated the disputes but determined that there was no factual inaccuracy with respect to the reporting of the disputed information. (Doc. 32, ¶ 15; Doc. 32-6).

As a result, Plaintiffs brought claims against Defendant for violations of the Florida Consumer Collection Practices Act ("**FCCPA**"), Fla. Stat. § 559.55 *et seq.* (Counts One and Two) and violations of the Fair Credit Reporting Act ("**FCRA**"), 15 U.S.C. § 1681 *et seq.* (Count Three).[2] Defendant seeks summary judgment on Plaintiffs' FCRA claim.

II. LEGAL STANDARD

Summary judgment is appropriate when the moving party demonstrates "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a

[2] Plaintiffs' claims against Experian (Counts Four and Five) have been resolved. (*See* Doc. 44 at 1).

matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material if it may "affect the outcome of the suit under the governing law." *Id.* "The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." *Allen v. Bd. of Pub. Educ.*, 495 F.3d 1306, 1313–14 (11th Cir. 2007). Stated differently, the moving party discharges its burden by showing "that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

However, once the moving party has discharged its burden, "Rule 56(e) . . . requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Id.* at 324 (quotation omitted). The nonmoving party may not rely solely on "conclusory allegations without specific supporting facts." *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985). Nevertheless, "[i]f there is a conflict between the parties' allegations or evidence, the [nonmoving] party's evidence is presumed to be true and all reasonable inferences must be drawn in the [nonmoving] party's favor." *Allen*, 495 F.3d at 1314.

III. DISCUSSION

In Count Three, Plaintiffs allege that Defendant violated § 1681s-2(b) by furnishing inaccurate and incomplete credit information, failing to properly re-investigate Plaintiffs' disputes, failing to review all relevant information, and failing to correct the inaccuracies. (Doc. 14, ¶ 116). Congress enacted the FCRA "to ensure fair and accurate credit

reporting, promote efficiency in the banking system, and protect consumer privacy." *Hunt v. JPMorgan Chase Bank, Nat'l Ass'n*, 770 F. App'x 452, 453 (11th Cir. 2019) (quoting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007)). The FCRA governs the conduct of CRAs, as well as furnishers, the entities that supply information to CRAs. *Id.* In this case, Defendant is a furnisher.

The FCRA prohibits furnishers from "furnish[ing] any information relating to a consumer to any [CRA] if the person knows or has reasonable cause to believe that the information is inaccurate" or "if the person has been notified by the consumer . . . that specific information is inaccurate [and] the information is, in fact, inaccurate." 15 U.S.C. § 1681s-2(a)(1). Upon notice that a consumer disputed the accuracy or completeness of information provided by a furnisher, the furnisher must conduct an investigation regarding the disputed information, review all relevant information provided by the CRA, and report the results of the investigation to the CRA. *Id.* § 1681s-2(b)(1). If the investigation reveals that the disputed information is incomplete, inaccurate, or cannot be verified after reinvestigation, the furnisher must either modify, delete, or permanently block reporting of that information. *Id.* For information determined to be inaccurate or incomplete, the furnisher must also report those results to all CRAs. *Id.* The Eleventh Circuit has made clear that "[c]onsumers have no private right of action against furnishers for reporting inaccurate information to CRAs regarding consumer accounts" and that "the only private right of action consumers have against furnishers is for a violation of § 1681s-2(b), which requires furnishers to conduct an investigation following notice of a dispute." *Felts v. Wells Fargo Bank, N.A.*, 893 F.3d 1305, 1312 (11th Cir. 2018) (citing 15 U.S.C. § 1681s-2(b), (c)(1)).

"Reasonableness is the touchstone for whether the furnisher conducted a sufficient investigation." *Holden v. Holiday Inn Club Vacations Inc.*, No. 6:19-cv-2373-CEM-EJK, 2022 WL 993572, at *2 (M.D. Fla. Feb. 28, 2022) (citing *Hinkle v. Midland Credit Mgmt., Inc.*, 827 F.3d 1295, 1302 (11th Cir. 2016)). "When a furnisher ends its investigation by reporting that the disputed information has been verified as accurate, the question of whether the furnisher behaved reasonably will turn on whether the furnisher acquired sufficient evidence to support the conclusion that the information was true." *Felts*, 893 F.3d at 1312 (quotation omitted). "[A] plaintiff asserting a claim against a furnisher for failure to conduct a reasonable investigation cannot prevail on the claim without demonstrating that *had* the furnisher conducted a reasonable investigation, the result would have been different; *i.e.*, that the furnisher would have discovered that the information it reported was inaccurate or incomplete[.]" *Id.* at 1313.

Defendant argues that it is entitled to summary judgment because the issue of whether the debt is owed—the basis of Plaintiffs' FCRA disputes—constitutes a legal dispute, which is not actionable under the FCRA. Here, the parties have presented a contractual dispute: Plaintiffs assert that they properly rescinded the Sales Contract, thereby extinguishing any debt owed, while Defendant contends that no rescission occurred, and Plaintiffs remain obligated to make loan payments. "Generally, unresolved contract disputes constitute legal disputes and not factual inaccuracies." *Holden*, 2022 WL 993572, at *3 (citing *Batterman v. BR Carroll Glenridge, LLC*, 829 F. App'x 478, 481–82 (11th Cir. 2020)); *see also Wilson v. SunTrust Bank, Inc.*, 533 F. Supp. 3d 1363, 1369 (S.D. Ga. 2021) (finding that the question of whether the plaintiff was contractually obligated to make loan payments was one of legal interpretation and not factual

accuracy); *Baldeosingh v. TransUnion, LLC*, No. 8:20-cv-925-WFJ-JSS, 2021 WL 1215001, at *3 (M.D. Fla. March 31, 2021) ("A consumer fails to establish a factual inaccuracy . . . by merely asserting a challenge to the legal validity of a reported debt.").

The Eleventh Circuit has stated, in an unpublished opinion, that "[a] plaintiff must show a factual inaccuracy rather than the existence of disputed legal questions to bring suit against a furnisher under § 1681s-2(b)." *Hunt*, 770 F. App'x at 458 (citation omitted). In their Response, Plaintiffs ask this Court to ignore the Eleventh Circuit's clear instruction in *Hunt* and instead find that a furnisher can be liable under the FCRA for failing to conduct a reasonable investigation regarding a legal dispute. In support, Plaintiffs rely on non-binding, out-of-circuit authority and two amicus briefs submitted in other circuits.[3] Notably, Plaintiffs fail to cite binding precedent contrary to *Hunt*, or even any in-circuit, persuasive authority. Thus, this Court declines Plaintiffs' invitation to diverge from the numerous courts in this Circuit finding that a furnisher's duty under the FCRA to investigate does not

[3] The Court rejects Plaintiffs' assertion that the Consumer Financial Protection Bureau's and Federal Trade Commission's legal interpretations of the FCRA set forth in amicus briefs are entitled to deference under *Auer v. Robbins*, 519 U.S. 452 (1997). Rather, "[w]hen a court engages in *Auer* deference, it defers to an agency's reading of its own genuinely ambiguous *regulation*." *Rafferty v. Denny's Inc.*, 13 F.4th 1166, 1179 (11th Cir. 2021) (emphasis added) (citation omitted); *see also Kisor v. Wilkie*, 139 S. Ct. 2400, 2408 (2019) ("*Auer* deference retains an important role in construing agency regulations."). Thus, as no genuinely ambiguous regulations are before the Court, *Auer* is inapplicable. To the extent Plaintiffs instead intended to argue deference is warranted under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944),—"an agency's interpretation of a statute in an amicus brief is entitled to, at most, *Skidmore* deference," *Lanfear v. Home Depot, Inc.*, 679 F.3d 1267, 1279 n.15 (11th Cir. 2012),—Plaintiffs make no arguments as to why any of the *Skidmore* factors should warrant deference or even why *Skidmore* applies. *See id.* ("The weight given to an agency's position 'depend[s] upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'" (quoting *Skidmore*, 323 U.S. at 140)). Therefore, the Court is not persuaded to defer. *Id.*

apply to legal disputes. *See, e.g.*, *Holden*, 2022 WL 993572, at *3 n.3 ("The Court finds *Hunt* far more persuasive than out-of-circuit case law."); *Jackson v. Bank of Am., N.A.*, No. 2:19-cv-01940-RDP, 2022 WL 1493849, at *4 (N.D. Ala. May 11, 2022)*; Kahalani v. Experian Info. Sols., Inc.*, No. 20-81018-CV, 2020 WL 13388260, at *2–3 (S.D. Fla. Dec. 29, 2020); *Santessi v. Experian Info. Sols., Inc.*, No. 20-22689-CIV, 2020 WL 13401919, at *2–3 (S.D. Fla. Oct. 26, 2020). *See also Wilson*, 533 F. Supp. 3d at 1369 ("[F]urnishers are neither qualified nor obligated to resolve issues that can only be resolved by a court of law." (quotation omitted)); *Bauer v. Target Corp.*, No. 8:12-cv-00978-AEP, 2013 WL 12155951, at *13 (M.D. Fla. June 19, 2013) ("[A] furnisher's duty to investigate extends to *factual* inaccuracies, not legal disputes." (quotation omitted)).

Moreover, Plaintiffs' argument that because the legal dispute as to whether Plaintiffs owed the debt remained in controversy, Defendant could not have verified as accurate the furnished information misses the mark. Plaintiffs do not dispute that they stopped making payments on the loan, and Defendant verified information as to Plaintiffs' missed payments. *See Leones v. Rushmore Loan Mgmt. Servs., LLC*, 2017 WL 6343622, at *3 (S.D. Fla. Dec. 11, 2017) ("Plaintiff has alleged at best a legal defense to the debt, not a factual inaccuracy in [the furnisher's] reporting."); *Wilson*, 533 F. Supp. 3d at 1370 ("[B]ecause Plaintiff's contention that Defendant furnished inaccurate information is based on a legal contention, . . . Defendant's Motion for Summary Judgment may be granted on this ground alone.").

Next, Plaintiffs argue that this Court has already addressed Defendant's argument regarding the legal versus factual nature of Plaintiffs' dispute. This Court previously denied Defendant's motion to dismiss, which argued in part that legal disputes were not

actionable under § 1681s-2(b). (Doc. 28 at 17; *see* Doc. 29 at 2). In support, the Court relied upon *Mayer v. Holiday Inn Club Vacations Inc.*, No. 6:20-cv-2283-GAP-EJK, 2021 WL 2942654 (M.D. Fla. June 8, 2021), and its application of *Losch v. Nationstar Mortg. LLC*, 995 F.3d 937 (11th Cir. 2021). However, as was true in *Mayer* at the summary judgment stage, "[n]ow, the Court has a different picture before it." *Mayer*, No. 6:20-cv-2283, Dkt. 59 at 7.

In *Losch*, the Eleventh Circuit determined that an FCRA action did not involve a legal dispute about the validity of an underlying debt where the debt at issue had been discharged in a bankruptcy proceeding. 995 F.3d at 946. The *Losch* court explained that the dispute was factual in nature because "there [was] no doubt that [the plaintiff's] mortgage was discharged" by the bankruptcy court. *Id.* At the motion to dismiss stage in the instant case, the Court entertained the possibility that Plaintiffs may be able to establish a claim against Defendant if enough courts had ruled against Defendant's interpretation of the contractual provision at issue, rendering it no longer a true legal dispute. (Doc. 28 at 16–17); *see also Mayer*, No. 6:20-cv-2283, Dkt. 59 at 6. However, as recognized in both *Mayer* and *Holden*, there are conflicting orders from other courts interpreting contract provisions similar to the one at issue here.[4] *Mayer*, No. 6:20-cv-2283, Dkt. 59 at 7; *Holden*, 2022 WL 993572, at *3. "These conflicting orders establish that there has not been the kind of final resolution referenced in *Losch*, and whether Plaintiff owes the Debt remains a disputed legal issue." *Holden*, 2022 WL 993572, at *3. Even so, upon further consideration, the Court is not convinced that, pursuant to *Losch*, a court

[4] Examples include the following: *Orange Lake Country Club, Inc. v. Arndt,* 2016-CA-6342 (Fla. 9th Cir. Ct. Aug. 14, 2019), *and Holiday Inn Club Vacations Inc. v. Granger*, 2018-CA-011778-O (Fla. 9th Cir. Ct. Mar. 15, 2021).

determination in a case involving a different debt and a different plaintiff could resolve a legal dispute in a separate case. *See Holden*, 2022 WL 993572, at *3. Here, there has been no formal resolution as to the validity of the underlying debt in this case, and thus, *Losch* is distinguishable.

Therefore, Plaintiffs' claim is based on a legal dispute that is not actionable under the FCRA and Defendant is entitled to summary judgment.[5] *See Hunt*, 770 F. App'x at 458; *see also Mayer*, No. 6:20-cv-2283, Dkt. 59 at 7; *Holden*, 2022 WL 993572, at *3–4.

As a final matter, the remainder of the claims in this case arise under state law. "When all federal claims are dismissed before trial, a district court should typically dismiss the pendant state claims as well." *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1296 (11th Cir. 2018); *see also Handi-Van Inc. v. Broward Cnty.*, 445 F. App'x 165, 170 (11th Cir. 2011) (holding that the district court did not err in remanding state law claims to state court following dismissal or summary judgment on claims over which it had original jurisdiction). Having determined that summary judgment is proper with respect to Plaintiffs' FCRA claim—the claim over which this Court has original jurisdiction—the Court declines to exercise supplemental jurisdiction over the remaining state law claims and will dismiss them without prejudice.[6]

IV. CONCLUSION

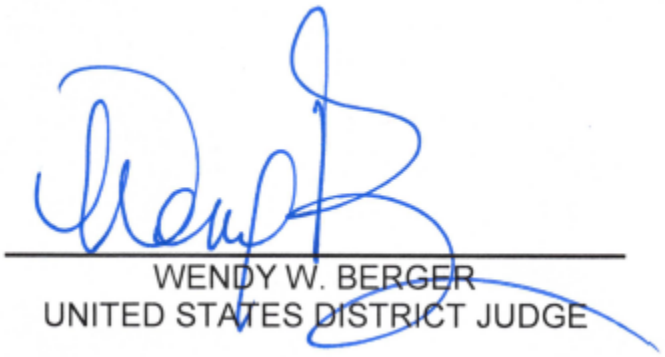
In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

[5] Because the Court has determined Plaintiffs' FCRA must fail, the Court need not address the merits of whether Plaintiffs are still obligated to make payments under the Note.

[6] Plaintiffs allege jurisdiction of this Court arises under 28 U.S.C. §§ 1331, 1367. (Doc. 14, ¶ 4).

1. Defendant's Second Amended Motion for Partial Summary Judgment as to Count III (Doc. 37) is **GRANTED**.
2. Counts I and II of the Amended Complaint (Doc. 14) are **DISMISSED without prejudice**.
3. The Clerk is directed to enter judgment in favor of Defendant and against Plaintiffs as to Count III, providing that Plaintiffs shall take nothing on their claim against Defendant. Thereafter, the Clerk is directed close this case.

DONE AND ORDERED in Orlando, Florida on December 12, 2022.



WENDY W. BERGER
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record