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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF CALIFORNIA

MARY SMITH,
Plaintiff,

vs.

PEGASUS CUSTOMER FINANCE,
INC.
Defendant.

Case No. 54321

PLAINTIFF MARY SMITH'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
MOTION FOR SUMMARY
JUDGMENT, OR, ALTERNATIVELY,
SUMMARY ADJUDICATION OF
DEFENDANT PEGASUS CUSTOMER
FINANCE, INC.

Date:
Time: 10:00 a.m.
Courtroom:
Judge:

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1 Weil & Brown, CAL. PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL. 5

4 Witkin, CAL. PROCEDURE, Pleading, § 44 (4th ed. 1997). 5

7 Witkin, CAL. PROCEDURE, Judgment, § 354 (4th ed. 1999). 6

1 Plaintiff Mary Smith brings this federal court action alleging that defendant
2 Pegasus Customer Finance, Inc. violated federal and California state laws regulating the
3 reporting of consumer credit information to credit reporting agencies. She alleges that
4 defendant inaccurately reported that (1) Smith had two open leases with Pegasus
5 Customer Financial (PCF) (when in fact she had only one), and (2) the car she leased had
6 been repossessed for nonpayment (when in fact Smith had voluntarily turned in the car
7 and rescinded the lease). She contends that these actions violated both the Federal Fair
8 Credit Reporting Act (15 U.S.C. § 1681 et seq.) (“FCRA”) and California Consumer
9 Credit Reporting Agencies Act (Cal. Civ. Code § 1785.1 et seq.) (“CCRAA”). The
10 common theme of these claims is that PCF violated these laws by misreporting Smith’s
11 financial information to credit reporting agencies: the very violation of her rights that she
12 alleged in her state-court cause of action, which she dismissed *without* prejudice.

13 PCF’s basic argument in this summary judgment motion that this action is barred
14 by res judicata (claim preclusion) is thus mystifying. It is also wrong. A dismissal
15 without prejudice does not preclude a new action based on the same violation of rights
16 alleged in the previous lawsuit.

17

18 **FACTS¹**

19 **1. Background**

20 This case springs from Smith’s lease of a 2000 Pegasus Phantom. On March 22,
21 20__, Smith leased the vehicle from a dealer in Northern California. The dealer assigned
22 the lease to PCF. Over the course of the next four months, the dealer and PCF presented
23 Smith with six different lease agreements for the vehicle, each of which misstated the
24 terms she thought she had agreed to. At one point, PCF showed two open lease accounts

25
26 ¹In the service of brevity, all references to evidence have been deleted from this
27 sample document.

1 for the same car; it did so by failing to close the account for the third lease agreement
2 when Smith signed the sixth and final lease agreement. After learning in November 20__
3 that PCF was showing two open leases for the same vehicle, and was reporting this
4 inaccurate information to credit reporting agencies, Smith spent the next four months
5 trying to make PCF correct this misinformation; it finally did so in March 20__. In the
6 meantime, Smith learned that, over the course of asking her to sign six lease agreements
7 for the same car, the dealer had surreptitiously greatly increased the cost of the lease.
8 After learning this, Smith returned the car to the dealer on June 15, 20__, and voluntarily
9 terminated the lease. On June 16, she told Pegasus in writing that she was rescinding the
10 lease for fraud.

11 But her troubles were just beginning. Instead of notifying the credit reporting
12 agencies that she had voluntarily ended the lease and was disputing any claim for a
13 balance due, Pegasus notified the credit reporting agencies that the car had been
14 repossessed for nonpayment. On July 28, 20__, Smith sent a Credit Report Dispute Form
15 to two credit reporting agencies—Trans Union and Equifax—stating that she disputed
16 both the existence of two lease accounts and the alleged repossession and account
17 deficiency. After receiving Dispute Verification Forms from both agencies, PCF
18 responded to Trans Union and reported that Smith had indeed voluntarily turned in the
19 car. It did not report this information to Equifax. And after reporting the voluntary turn-
20 in to Trans Union in response to its request, PCF continued to report that the car had been
21 repossessed and that Smith owed money on the lease. Indeed, it continues to report this
22 inaccurate information to this day: Smith's September 20__ credit report from Equifax
23 and her April 20__ credit report from Trans Union both still state that the car was
24 repossessed for delinquency in payment.

1 Consumers Legal Remedy Act (Civ. Code § 1770 et seq.) based on PCF’s failure to
2 disclose the yield-spread premium and fraudulent increase in the gross capitalized cost of
3 her lease financing.

4
5 **ARGUMENT**

6 **1. Because its factual showing does not establish its defense of res judicata,**
7 **the court should deny summary judgment to PCF.**

8 PCF argues that Smith’s federal claims and state claims in her first six claims for
9 relief are barred by res judicata. But its argument misapplies California law, and
10 conflates res judicata (claim preclusion) with collateral estoppel (issue preclusion). It
11 argues as follows: In her state court causes of action that she dismissed with prejudice,
12 Smith sought damages and rescission of the lease based on PCF’s misrepresentation of the
13 lease terms and its continued redrafting of the leases, resulting in her paying more for the
14 lease than she should have. Thus, her right to rescind the contract was at the heart of her
15 case. Her action here seeks damages and attorney’s fees under federal and state consumer
16 protection statutes that require companies like PCF to report accurate financial
17 information to credit reporting agencies. The inaccurate information Pegasus reported
18 was that the car had been repossessed rather than voluntarily relinquished when Smith
19 rescinded the lease. Thus, *an* issue in this case is whether Smith had the right to rescind
20 the lease in the first place. Thus, argues PCF, the issue whether Smith had the right to
21 rescind the contract is involved in both actions, barring this one.

22 This argument flies in the face of California law. Under California law, a valid
23 judgment on the merits precludes further litigation only on the same “cause of action”
24 between the parties to the previous action. *Slater v. Blackwood*, 15 Cal.3d 791, 195
25 (1976). But that judgment does not bar a later lawsuit between the same parties if that
26 suit involves a different “cause of action” as defined by California law. *Agarwal v.*

1 *Johnson*, 25 Cal.3d 932, 954 (1979); *Holmes v. David H. Bricker, Inc.*, 70 Cal.2d 786,
2 788 (1969). It is thus important to determine what California means by a “cause of
3 action.”

4 California courts employ the primary-rights doctrine to determine the scope of a
5 cause of action. Under this theory, a plaintiff may state different “causes of action” based
6 on injury to different protectable interests or “primary rights,” even if those interests were
7 injured in the same incident. For example, it is well established in California that if a
8 person is involved in an auto accident in which she suffers both personal injury and
9 property damage to her car, she has two “causes of action” that she may assert in separate
10 lawsuits: one for violating her interest to be free from personal injury and one for
11 violating her interest to be free from property damage. *Holmes v. David H. Bricker, Inc.*,
12 at 789-790 (citing cases); 4 Witkin, CAL. PROCEDURE, Pleading, §§ 44, 301-302 (4th ed.
13 1997); 1 Weil & Brown, CAL. PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL,
14 ¶ 6:262, at 6-59 (TRG 2000).

15 This principle was applied in *Agarwal v. Johnson*, *supra*, 25 Cal.3d at 954-955.
16 The plaintiff, an East Indian, alleged that the defendants had made racially derogatory
17 remarks about him and had fired him because of his race. Based on these incidents, the
18 plaintiff brought state court causes of action for defamation, intentional and negligent
19 infliction of emotional distress, and interference with economic advantage. He had earlier
20 brought a federal court action under Title VII for employment discrimination based on the
21 same incidents and had recovered a judgment in that case. The California Supreme Court
22 held that the judgment in the federal action did not bar the state court action, even though
23 both actions were based on the same incidents. *Id.* at 954. The court explained that
24 primary rights are based on the harm suffered and on the relief available for that harm,
25 and that the harm and the relief differed in the two cases. In the federal case, the plaintiff
26 alleged injury to his federally-guaranteed right to be free from employment
27

1 discrimination, and the relief only included back pay. In the state case, the plaintiff
2 alleged injury to his right to be free from defamatory statements and his right to be free
3 from tortiously inflicted emotional distress, and sought punitive and general damages,
4 which were not available under the federal statute.

5 Smith's two actions are based on invasions of different primary rights, and the
6 relief available is different. In her state court action, Smith sought relief for—as PCF
7 phrases it—“damage to plaintiff caused by PCF's alleged breach and fraud in connection
8 with the automobile lease agreement” that invaded her primary right “to enjoy the
9 benefits of the automobile lease contract” and her primary right not to be defrauded.
10 Moreover, the relief she sought was damages and rescission.

11 But in this action, Smith seeks redress for invasion of a different primary right: the
12 right guaranteed by the FCRA and by the CCRAA to have her financial information and
13 credit history accurately reported to credit reporting agencies such as Equifax and Trans
14 Union so that she can obtain the credit to which that history entitles her. She would have
15 this right regardless of her dispute with PCF over the lease terms, and PCF would be
16 obligated to report information accurately whether or not it was disputing her right to
17 rescind the lease. Moreover, her remedies are different under the Acts. Under the
18 California Supreme Court's decision in *Agarwal v. Johnson*, 25 Cal.3d at 954, Smith is
19 asserting a different “cause of action” based on a different primary right in this lawsuit.

20 Nor is this result changed by the fact that an issue in this litigation may be whether
21 Smith had the right to voluntarily rescind the lease, turn in the car, and cease making
22 payments. That involves the doctrine of collateral estoppel (issue preclusion), not res
23 judicata (claim preclusion). Under the doctrine of collateral estoppel, Smith could be
24 barred from relitigating the issue whether she had the right to voluntarily turn in the car
25 and rescind the lease if that issue had been decided adversely to her in the previous
26 lawsuit. See generally 7 Witkin, CAL. PROCEDURE, Judgment, § 354 (4th ed. 1999). For
27

1 example, in *Agarwal*, if the trier of fact in the federal action had found that the defendants
2 had not made the alleged racially derogatory remarks, or had not fired the plaintiff based
3 on his race, he could not have relitigated those issues in the state court lawsuit. That does
4 not mean that the two lawsuits were based on the same causes of action for claim
5 preclusion purposes. Likewise, if in an action for property damage resulting from an auto
6 accident the trier of fact determined that the defendant was not negligent, the plaintiff
7 would be barred from relitigating that issue in an action for personal injury based on the
8 same accident. But again, that does not mean that the plaintiff is precluded from bringing
9 the claim, only from winning it.

10 In this case, there has been no such factual determination. Thus Smith is not
11 collaterally estopped from litigating that issue, and she is not barred from raising her
12 claims in this action. Since the dismissed state lawsuit presented a different cause of
13 action than does the current federal suit, PCF's motion for summary adjudication of the
14 first four claims for relief should be denied.

15
16 **2. Because Smith can show a violation of the federal Fair Credit Reporting**
17 **Act, PCF's motion for summary adjudication of the first and second**
18 **claims for relief should be denied.**

19 Under the FCRA, when a credit reporting agency notifies it of a credit dispute,
20 PCF, as a "furnisher of information," is required to investigate and report the results of its
21 investigation back to the credit reporting agency. 15 U.S.C. § 1681s-2 (b)(2)(A)-(C).
22 And if its investigation reveals that the information is incomplete or inaccurate, PCF must
23 also report the results of its investigation "to all other consumer reporting agencies to
24 which [it] furnished the information" *Id.* § 1681s-2 (b)(2)(D). The Act allows an
25 injured consumer to bring a private cause of action against a furnisher of information that
26 violates these statutes. *Id.* §§ 1681 (n), (o); *Dornhecker v. Ameritech Corporation*, 99
27

1 F.Supp.2d 918, 929 (N.D. Ill. 2000). Contrary to PCF’s argument, the evidence shows
2 that PCF violated the FCRA.

3 First, Smith alleges—and the evidence shows—that PCF “violated 15 U.S.C.
4 § 1681s-2(b)(2)(D) by failing to report the results of its investigation to all other CRAs to
5 which PCF furnished the disputed information when the investigation found that the
6 information was incomplete and inaccurate.” First Amended Complaint, ¶ 50, 8:5-8.
7 Even after PCF reported back to Trans Union that the car had indeed been voluntarily
8 repossessed, other CRAs continued to show that PCF reported a repossession for
9 delinquent payments. Experian’s reports for September 20__ and January 20__ continued
10 to show repossession. If PCF had sent its correction to Experian, that agency would have
11 corrected its records. This evidence alone shows a violation of the FCRA; PCF’s motion
12 for summary judgment should thus be denied on this ground alone.

13 But there is more. The evidence also shows that PCF continued to report that the
14 car had been repossessed—and continues to report that “fact” to this day. And Smith sent
15 written dispute forms to Trans Union in March 20__, and to Equifax in May 20__. Under
16 the FCRA, both these companies were required to report these disputes to PCF. 15
17 U.S.C. § 1681i. Yet PCF never corrected the information: Smith’s credit reports from
18 Trans Union still showed the repossession in April; Equifax still showed the repossession
19 in June and September. It is at least inferrable, then, that PCF violated 15 U.S.C.
20 § 1681s-2(b)(2) as late as this year by failing to investigate after receiving later dispute
21 forms from Trans Union and Equifax.

22 Finally, there is no merit to PCF’s argument that Smith pleaded herself out of court
23 by alleging in ¶ 39 that PCF “filled out and returned the [dispute] form to Trans Union”
24 confirming the voluntary repossession. First, Smith alleges that she sent dispute forms to
25 both Trans Union and Equifax, yet PCF responded only to Trans Union. Second, Smith
26 also alleges that PCF “continued each month thereafter to rereport a repossession.” First
27

1 Amended Complaint, ¶ 39, 7:4-5. Thus, she alleges that, despite checking a box on a
2 form, PCF did not really correct the information, as it was required to do under the law.

3 This case thus differs from *Dornhecker v. Ameritech Corporation*, 99 F.Supp.2d
4 918 (N.D. Ill. 2000), which PCF cites to support its argument. In *Dornhecker*, the
5 plaintiff did not allege that the finance company continued to send false information to
6 the credit reporting agencies after it “corrected” the record. It is misleading to say that
7 PCF corrected the record, as it was required to do, if it continued to send false
8 information after the “correction.” Congress could not have intended to let PCF off the
9 hook by merely checking a box; it must have intended that future transmittals by the same
10 company continue to reflect the correct information.

11 Because the evidence presents a disputed issue of fact whether PCF violated the
12 FCRA, its motion for summary judgment and summary adjudication on the first and
13 second claims for relief should be denied.

14
15 **3. Because Smith can show that PCF violated the CCRAA, its motion for**
16 **summary adjudication on the third and fourth claims for relief should**
17 **be denied.**

18 As already shown, the third and fourth claims for relief are not barred by res
19 judicata.² Indeed, they cannot be. The only cause of action in the previous lawsuit that
20 involved a cause of action for violation of the CCRAA was dismissed *without prejudice*.
21 The evidence also shows that there is at least a disputed issue of fact whether PCF
22 “repeatedly report[ed] information about [Smith’s] leases that it knew or should have
23 known was inaccurate and misleading, i.e., that the vehicle had been repossessed instead
24 of voluntarily surrendered.” First Amended Complaint, ¶ 66, 10:6-9. As already shown,

25
26 ²Smith concedes that her claims for misreporting that she had two leases are barred
27 by the statute of limitations.

1 PCF has reported—and continues to report—this “inaccurate and misleading
2 information.” This is a violation of California Civil Code § 1785.25(a), which forbids a
3 “person” to “furnish information on a specific transaction or experience to any consumer
4 credit reporting agency if the person knows or should know the information is incomplete
5 or inaccurate.” California law allows Smith to sue for both the intentional (*id.*
6 § 1785.31(a)(2)) and negligent (*id.* § 1785.31(a)(1)) violation of § 1785.25.

7 Her third and fourth claims for relief thus state a cause of action, and PCF’s
8 motion for summary judgment and summary adjudication of those claims for relief should
9 be denied.

10
11 **4. Because the evidence shows that PCF violated both the FCRA and the**
12 **CCRAA, the evidence shows a violation of the California Unfair**
13 **Business Practices Act.**

14 PCF argues that the court must grant summary adjudication on Smith’s seventh
15 claim for relief for violation of California’s Unfair Business Practices Act (Cal. Bus. &
16 Prof. Code § 17200 et seq.) because she lacks any evidence to support her claim that PCF
17 “violated [the Act] by conspiring with automobile dealers to misrepresent the terms of its
18 automobile lease contracts.” But that is not the only violation of the Unfair Practices Act
19 that Smith alleges. She also alleges that PCF violated the Act by violating both the
20 FCRA and the CCRAA in that it “repeatedly and knowingly trasmitt[ed] incorrect credit
21 information to CRAs, refus[ed] to conduct investigations, and refus[ed] to correct this
22 information after being placed on notice of the error.” Violation of the FCRA and the
23 CCRAA is a violation of the Unfair Business Practices Act as well. *Cisneros v. UD*
24 *Registry, Inc.*, 39 Cal.App.4th 548, 562-564 (1995). Smith has introduced evidence
25 showing repeated violations of both 15 U.S.C. § 1681s-2(b) and of California Civil Code
26 § 1785.25(a). Since she has therefore stated a cause of action for violating the California
27

1 Unfair Business Practices Act, PCF's motion for summary adjudication of Smith's
2 seventh claim for relief should be denied.

3
4 **CONCLUSION**

5 Smith's claims that PCF violated the FCRA and the CCRAA by continually
6 reporting inaccurate and misleading information to credit reporting agencies were not
7 resolved by her prior California state lawsuit. Indeed, the only claim for relief in the state
8 court action that alleged that PCF reported inaccurate information to credit reporting
9 agencies was dismissed *without* prejudice. Moreover, the evidence shows that PCF did
10 violate both the FCRA and the CCRAA. Therefore Smith requests that this court deny
11 PCF's motion for summary judgment, and its motion for summary adjudication of her
12 first through fourth and seventh claims for relief.

13
14 Dated: _____

Respectfully submitted,

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16 _____
17 Attorney for Plaintiff
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