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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NAHID NOORI,

Plaintiff,

v.

BANK OF AMERICA

Defendant.

Case No. CV 15-01467-AB (AFMx)

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

Before the court is Defendant Bank of America’s (“BofA”) Motion for Summary Judgment. (Dkt. No. 33.) Plaintiff Nahid Noori (“Plaintiff”) filed an opposition and BofA filed a reply. The court heard oral argument on May 9, 2016. For the following reasons, the court **GRANTS** the motion.

I. BACKGROUND

This action arises out of BofA’s alleged “inaccurate reporting of Plaintiff’s consumer credit information.” Compl. ¶ 1. BofA is a furnisher of consumer data and information to credit reporting agencies. *Id.* ¶ 7. Plaintiff alleges that she and her father Ebrahim Noori owned a joint credit account with BofA until her father’s death.

1 *Id.* ¶ 8. In June 2013, while applying for a home loan, Plaintiff learned that BofA had
2 erroneously reported her as deceased to consumer credit reporting agencies. *Id.* ¶ 17.
3 Plaintiff notified BofA of the error, but BofA continued to report that Plaintiff was
4 deceased. *Id.* ¶¶ 18, 19. Plaintiff claims she was denied credit several more times
5 because of BofA’s mistaken report that she was deceased. *Id.* ¶¶ 20-21. Based on the
6 foregoing, Plaintiff asserts the following claims: (1) violation of the Fair Credit
7 Reporting Act (“FCRA”), 15 U.S.C. § 1681s-2(b); (2) violation of the Consumer
8 Credit Reporting Act (“CCRA”), Cal. Civ. Code § 1785.25(a); (3) unfair business
9 practices in violation of Cal. Bus. & Prof. Code § 17200 (“UCL claim”); and (4)
10 defamation.¹

11 BofA moves for summary judgment on all of Plaintiff’s claims. Because some
12 of BofA’s grounds are dispositive, the court will not reach every argument.

13 **II. UNDISPUTED FACTS**

14 Plaintiff and her father Ebrahim had a joint credit card account with BofA.
15 SUF 2.² In December 2012, Ebrahim died. *Id.* 4. Later that month, BofA updated its
16 system to reflect that Noori (rather than Ebrahim) was deceased.³ Using the Metro 2
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19 ¹ The Complaint also asserts a claim for declaratory relief, but Plaintiff has
abandoned that claim. *See* Opp’n 23:4-8.

20 ² All references to “SUF”, “PRSUF”, “PSGI”, and “PAF” are to matters in Plaintiff’s
21 Statement of Genuine Disputes. (Dkt. No. 40.) “SUF” refers to facts BofA presents,
22 “PRSUF” refers to Plaintiff’s response to BofA’s SUF, “PSGI” refers to Plaintiff’s
statement of genuine issues, and “PAF” refers to Plaintiff’s additional facts.

23 ³ How BofA obtained information that caused it to show Plaintiff was deceased is
24 disputed. BofA claims it received an electronic notification from a third party that the
25 primary holder (Plaintiff) of the joint account was deceased. SUF 5. Plaintiff states
26 that her sister Jaleh personally informed BofA that Ebrahim was deceased, and
27 suggests that the associate documenting that information made an error. PRSUF 5-6.
28 There is some evidence supporting both accounts. But either way, the mistake
appears to have originated with BofA. Whether BofA was notified of the death
electronically by a third party, or whether Plaintiff’s sister Jaleh notified BofA of
Ebrahim’s passing, are not material to the court’s resolution of the motion.

1 format (described below), BofA informed the three major credit reporting agencies
2 (“CRAs”) that Plaintiff was deceased. SUF 9. In around June 2013, Plaintiff
3 discovered that BofA erroneously reported to the CRAs that she was deceased. SUF
4 26. Plaintiff contacted BofA to correct its “deceased” reporting. PSGI 6-8. By June
5 2013, BofA fixed its internal system to reflect that Plaintiff was not deceased. SUF
6 11.

7 However, Plaintiff claims that her credit reports continued to indicate a
8 deceased status. Plaintiff claims that the only account on her credit reports that
9 indicated a deceased status was the BofA credit card account. However, Plaintiff has
10 never produced her complete credit report despite running it several times during the
11 course of this dispute. *See* SUF and PRSUF 15-17. Plaintiff claims she filed disputes
12 with the credit agencies, but she has produced no documentary evidence of such
13 disputes, nor has she shown that BofA received notice of such disputes from any
14 CRA. SUF 12. However, eventually, in May 2015, BofA furnished information to
15 the CRAs to correct the deceased indicator it transmitted in December 2012. SUF 14.

16 Plaintiff claims that as a result of BofA’s inaccurate deceased status report, she
17 was denied a home mortgage in June 2013, and therefore could not purchase a home
18 that has since appreciated by \$1.3million. PSGI 11. However, Plaintiff has not
19 produced a written contract or offer to purchase the home, or her application for a
20 home loan; she only produced two pages of an “adverse action letter” from Glendale
21 Federal Mortgage, dated 9/10/15, denying a loan application on the ground that
22 Plaintiff is deceased. SUF 15, 16, 17, 27-31 . Plaintiff also claims she was denied
23 credit to purchase a car and a television, and that her applications to rent property
24 were denied, but has not presented any documentary evidence showing that she
25 applied for such credit or sought to rent property. SUF 20, 21.

26 BofA uses the Metro 2 format to furnish information. SUF 25. The Metro 2
27 format is the industry standard for furnishers to transmit data to the CRAs and to
28 investigate consumer disputes they receive from CRAs. *Id.* BofA presented

1 unrebutted expert testimony that an agency that uses Metro 2 adheres to and maintains
2 reasonable procedures to comply with the FCRA and the CCRA. SUF 25; Ulzheimer
3 Decl. ¶ 10(a),(b).⁴

4 BofA uses the Automated Consumer Disputes Verification (“ACDV”) system
5 to process consumer disputes, and the e-OSCAR system to facilitate communication
6 regarding consumer disputes. Ulzheimer Decl. ¶ 9. Plaintiff has produced no
7 evidence that any CRA sent BofA an ACDV, and BofA’s document production
8 included no documents indicating that BofA received an ACDV form, nor were there
9 any notations in BofA’s e-OSCAR logs or other records indicating that Plaintiff filed
10 a dispute with a CRA or that BofA received such a dispute. SUF 13; Ulzheimer Decl.
11 ¶ 9.

12 III. LEGAL STANDARD

13 Summary judgment is proper where the pleadings, discovery, and affidavits
14 show that there is “no genuine dispute as to any material fact and the movant is
15 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also Celotex Corp.*
16 *v. Catrett*, 477 U.S. 317, 322 (1986). The Court must view the evidence and the
17 inferences therefrom in the light most favorable to the non-moving party, and the
18 moving party bears the initial burden to demonstrate the absence of a genuine issue of
19 fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 251–52, 256 (1986).
20 However, once the moving party has met its initial burden, the burden shifts to the
21 non-moving party to show a genuine issue for trial by establishing that the fact in
22 contention is material (i.e. affecting the outcome of the suit under the governing law)

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25 ⁴ Plaintiffs’ expert Doug Minor also testified that BofA used Metro 2 and that it is the
26 industry standard. *See* Garfinkle Decl. ¶12, Exh. E 127:9-23. In an attempt to dispute
27 this fact, Plaintiff points to Minor’s testimony about the ACDV process. But ACDV
28 has to do with processing disputes, not with BofA’s initial reporting of information,
which uses Metro 2. Thus, Minor’s testimony about ACDV does not genuinely
dispute that BofA uses Metro 2 to furnish information to CRAs.

1 and the dispute is genuine (i.e. the evidence is such that a reasonable jury could return
2 a verdict for the nonmoving party). *Anderson*, 477 U.S. at 248, 251–52; *Owens v.*
3 *Local No. 169, Assoc. of W. Pulp and Paper Workers*, 971 F.2d 347, 355 (9th Cir.
4 1987).

5 When the non-moving party bears the burden of proof at trial, the moving party
6 may meet its initial burden to show the absence of a genuine issue of fact for trial
7 either by presenting evidence that negates an essential element of the non-moving
8 party’s claim or by pointing out there is an absence of evidence to support the non-
9 moving party’s case at trial. *Celotex*, 477 U.S. at 322-25. The non-moving party
10 must make an affirmative showing on all matters placed at issue by the motion where
11 it has the burden of proof at trial. *Id.*; *see also Anderson*, 477 U.S. at 250-52.

12 **IV. DISCUSSION**

13 **A. Plaintiff’s Claim under the FCRA Fails.**

14 Plaintiff claims that after she disputed BofA’s report to a credit reporting
15 agency (“CRA”) that she was deceased, the CRA sent BofA notice of the dispute, but
16 BofA failed to reasonably investigate in violation of the FCRA. *See Compl.* ¶¶ 31-34.
17 This claim arises under 15 U.S.C. § 1681s-2(b), “Duties of furnishers of information
18 upon notice of dispute.” This section provides, in summary, that “[a]fter receiving
19 notice pursuant to section 1681i(a)(2) . . . of a dispute with regard to the completeness
20 or accuracy of any information provided by a [furnisher] to a [CRA], the [furnisher]
21 shall” conduct an investigation regarding the disputed information, review all relevant
22 information provided by the CRA, and report the results of the investigation to the
23 CRA, among other steps. Section 1681i(a)(2) requires the CRA to provide to a
24 furnisher notice that a consumer disputed information provided by the furnisher, and
25 requires that notice to be provided “at the address and in the manner established” with
26 the furnisher. 15 U.S.C.A. § 1681i (a)(2). Thus, a furnisher’s duty under § 1681s-
27 2(b) to investigate a dispute is triggered only by the furnisher’s receipt of notice, from
28

1 a CRA, at the address and in the manner established, that the consumer disputed
2 information provided by the furnisher.

3 The means by which a CRA customarily notifies a furnisher of dispute is well-
4 established. “The CRAs . . . notify [a furnisher], through an online reporting system,
5 when a consumer disputes his credit information. These reports of disputes trigger the
6 protections of 15 U.S.C. § 1681s-2(b) . . .” *Chiang v. Verizon New England Inc.*, 595
7 F.3d 26, 32 (1st Cir. 2010); *see also Kim v. BMW Financial Services NA LLC*, 2015
8 WL 6680911, at *9, FN 7 (C.D. Cal. Oct. 30, 2015) (“When a consumer disputes
9 information reported to a CRA, the CRA refers the dispute to the furnisher of the
10 information by means of an ACDV report or transmission. This process is referred to
11 as an ‘indirect dispute.’ [...] Under the FCRA, private rights of action exist only with
12 respect to indirect disputes.”).

13 That statute is clear that a furnisher’s duties “under subsection (b) are triggered
14 only after ‘receiving notice pursuant to’ § 1681i(a)(2), under which a CRA provides a
15 ‘notification’ to a furnisher which includes ‘all relevant information’ regarding the
16 dispute.” *Drew v. Equifax Info. Servs., LLC*, 690 F.3d 1100, 1106 (9th Cir. 2012).
17 Thus, a consumer’s direct complaint to a furnisher does not itself trigger any duty
18 under § 1681s-2(b); only an indirect dispute with a CRA transmitted to a furnisher
19 through the AVDC system triggers that duty . *See Gorman v. Wolpoff & Abramson,*
20 *LLP*, 584 F.3d 1147, 1154 (9th Cir.2009) (“These duties arise only after the furnisher
21 receives notice of dispute from a CRA; notice of a dispute received directly from the
22 consumer does not trigger furnishers’ duties under subsection (b).”).

23 Here, there is no triable issue of fact regarding whether BofA received notice of
24 a dispute from a CRA. Plaintiff baldly asserts – with no documentary evidence – that
25 in June 2013, she disputed with TransUnion and Experian the report that she was
26 deceased. *See Noori Decl.* ¶ 10. Plaintiff also points to some references in BofA’s
27 internal documentation suggesting that BofA might have attempted to send a dispute
28 letter to the CRAs in June 2013 and April 2014. *See PR 12.* Importantly, however,

1 Plaintiff has produced no evidence that BofA received, from any CRA, a notice of
2 dispute through the ACDV system. Because a furnisher's duties under § 1681s-2(b)
3 are not triggered absent indirect notice from a CRA through the ACDV system,
4 Plaintiff's claim under § 1681s-2(b) fails.

5 **B. Plaintiff's CCRA Claim Fails.**

6 Plaintiff asserts that BofA violated the CCRA by intentionally and knowingly
7 furnishing information it knew was inaccurate (Compl. ¶ 42, Cal. Civ. Code §
8 1785.25(a)), by failing to perform an investigation of the inaccurate report (Compl. ¶
9 43, § 1785.25(f)), and by failing to correct the inaccurate information (Compl. ¶ 44, §
10 1785.25(b)). However, the FCRA preempts all of these claims except Plaintiff's
11 claim under § 1785.25(a). *See* 15 U.S.C. § 1681t(b)(1)(F)(ii) (FCRA preempts state
12 laws relating to furnishers of information, but § 1785.25(a) is expressly exempted
13 from preemption). Thus, the only CCRA claim that Plaintiff may bring is her claim
14 that BofA violated § 1785.25(a). Compl. ¶ 42. BofA is therefore entitled to
15 judgment on Plaintiff's claims under § 1785.25(b) and (f).

16 Section 1785.25(a) provides that "[a] person shall not furnish information on a
17 specific transaction or experience to any consumer credit reporting agency if the
18 person knows or should know the information is incomplete or inaccurate." Cal. Civ.
19 Code § 1785.25(a). Section 1785.31(a) provides "[a]ny consumer who suffers
20 damages as a result of a violation of this title by any person may bring an action in a
21 court of appropriate jurisdiction against that person . . ." Cal. Civ. Code § 1785.31(a).
22 However, the CCRA includes a safe harbor provision: that a "person who furnishes
23 information to a consumer credit reporting agency is liable for failure to comply with
24 this section, unless the furnisher establishes by a preponderance of the evidence that,
25 at the time of the failure to comply with this section, the furnisher maintained
26 reasonable procedures to comply with those provisions." Cal. Civ. Code § 785.25(g).

27 Here, it is undisputed that BofA follows the Metro 2 format to furnish
28 information, and that the Metro 2 format is the industry standard for furnishers to

1 transmit data to the CRAs. BofA's expert also testified that a furnisher who uses
2 Metro 2 uses reasonable procedures to comply with the CCRA. Notably, Plaintiffs'
3 expert also testified that BofA used Metro 2 and that it is the industry standard. *See*
4 Garfinkle Decl. ¶12, Exh. E 127:9-23. Plaintiff presented no evidence that BofA used
5 some other reporting format, or that the Metro 2 procedures are unreasonable in any
6 way. Plaintiff merely invokes generic language from *Guimond v. Trans Union Credit*
7 *Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995) that "[t]he reasonableness of the
8 procedures and whether the agency followed them will be jury questions in the
9 overwhelming majority of cases," without explaining how BofA's reporting
10 procedures were unreasonable. Plaintiff in effect asks the court to allow her to present
11 BofA's use of Metro 2 to a jury, and let them assess its reasonableness in a vacuum.
12 But the only evidence in the record is one-sided in BofA's favor. No reasonable jury
13 assessing this one-sided evidence could find for Plaintiff. Absent any evidence
14 suggesting that Metro 2 is unreasonable, a jury simply has no rational basis to find
15 that it is unreasonable, and there is no triable issue of fact.

16 In light of the foregoing, BofA has established that it uses reasonable
17 procedures to comply with the CCRA, and it is therefore entitled to the protection of
18 the CCRA's safe harbor provision. Accordingly, BofA is entitled to judgment on
19 Plaintiff's CCRA claim.

20 **C. There is No Genuine Dispute as to Compensatory Damages.**

21 Plaintiff claims that she is entitled to damages resulting from several credit
22 denials that she claims were caused by BofA's erroneous reporting. Specifically,
23 Plaintiff claims that she was rejected for a loan to purchase a house that has since
24 appreciated about \$1.3 million, that she was denied consumer credit to purchase a car
25 and a television, and that she was denied one or more leases. However, Plaintiff has
26 presented no documentary evidence whatsoever substantiating any of these claims; all
27 she has is her own testimony.

1 To meet the “burden of proving actual damages under the FCRA, [a plaintiff]
2 must show that each transaction at issue involved the use of a consumer report. If he
3 cannot make that causal connection, his alleged actual damages are not recoverable
4 under the FCRA.” *Johnson v. Wells Fargo Home Mortgage, Inc.*, 558 F. Supp. 2d
5 1114, 1126-27 (D. Nev. 2008). Plaintiff’s testimony is insufficient to establish that
6 that these alleged credit denials were caused by BofA’s erroneous report because she
7 has no first-hand knowledge of why the third parties denied her credit or lease
8 applications. Were Plaintiff to testify that the third parties told her that they denied
9 her denied credit because of the deceased report, such testimony would be excluded as
10 hearsay. In addition, Plaintiff’s failure to produce her full credit report makes it
11 impossible for a jury to attribute all of Plaintiff’s damages to BofA alone. For
12 example, other furnishers may also have made inaccurate reports that damaged
13 Plaintiff’s credit and caused her claimed damages.

14 As for the purported home purchase, Plaintiff produced only two pages of a
15 notice of adverse action showing that Glendale Federal denied her a home loan. But
16 she presents no evidence that she was in a position to purchase the house – no
17 contract, no evidence of any kind of negotiation whatsoever. Thus, even assuming the
18 notice of adverse action shows Plaintiff was denied a loan, it could not support the
19 further finding that she was on the cusp of buying the house and would have done so
20 but for BofA’s mistake.⁵ Plaintiff argues that BofA could have obtained evidence
21 about her home purchase and other damages through third-party discovery, but the
22 burden of proving these matters lies with Plaintiff. Because Plaintiff has not presented
23 any admissible, competent evidence tending to show that her claimed credit denials
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25 ⁵ At oral argument, Plaintiff’s counsel stated that Plaintiff and an employee from
26 Glendale Federal would testify at trial about her anticipated home purchase. But
27 Plaintiff has not presented any such evidence in connection with the summary
28 judgment motion. The court must assess the motion based on the evidence before it,
and that evidence fails to create a triable issue.

1 were caused by the erroneous information BofA furnished on her credit report,
2 Plaintiff has not raised a triable issue of fact as to damages arising out of those credit
3 denials.

4 Insofar a Plaintiff claims emotional distress damages, these all derive from her
5 claim that she was denied credit. *See* PSGI 14 (“Noori suffered significant and
6 continuous anxiety, depression and humiliation as a result of being unable to get
7 credit, from June 11, 2013 onward.”). But as noted above, Plaintiff lacks evidence to
8 establish a causal link between BofA’s erroneous reporting and her claimed credit
9 denials. It therefore also follows that Plaintiff cannot establish that her emotional
10 distress was caused by BofA’s conduct.

11 For the foregoing reasons, Plaintiff has raised a triable issue on compensatory
12 damages.

13 **D. Plaintiff’s Defamation Claim Fails.**

14 Plaintiff’s claim for defamation also fails. The entirety of Plaintiff’s damages
15 from BofA’s allegedly defamatory statement that she was deceased stem from her
16 claimed credit denials. *See* Opp’n 22:17-24 (“Noori has shown that she suffered from
17 defamatory republication of her erroneous deceased status, within the statutory period
18 when she was denied credit as follows. . .”). But as discussed above, Plaintiff has not
19 presented any admissible, competent evidence to establish that BofA’s allegedly
20 defamatory statement caused Plaintiff to be denied credit. Plaintiff has not asserted
21 that she suffered damage in any other way or that she will seek some other kind of
22 damage attributed to the claimed defamation. Therefore, Plaintiff has not established
23 a triable issue of fact as to damages from defamation.

24 Plaintiff argues, however, that BofA’s statement that she was deceased is
25 defamation per se, such that the statement is actionable without proof of special
26 damages. *See* Opp’n 13:9-24; *see also* Cal. Civ. Code § 45a. A statement is
27 defamatory per se if it falls within Cal. Civ. Code §§ 46(1)-(4), that is, if it (1) charges
28 the person with a crime; (2) imputes to him an infectious, contagious, or loathsome

1 disease; (3) tends directly to injure him in respect to his office, profession, trade or
2 business by saying he is disqualified; or (4) imputes to him impotence or want of
3 chastity. *See Crowe v. Cty. of San Diego*, 608 F.3d 406, 442 (9th Cir. 2010)
4 (identifying §§ 46(1)-(4) as establishing defamation per se). Plaintiff has not shown
5 that erroneously stating she was deceased is defamatory per se. The only subsection
6 that could arguably apply in this case is § 46(3), which states, in its entirety, that a
7 statement is defamatory per se if it “[t]ends directly to injure [a person] in respect to
8 his office, profession, trade or business, either by imputing to him general
9 disqualification in those respects which the office or other occupation peculiarly
10 requires, or by imputing something with reference to his office, profession, trade, or
11 business that has a natural tendency to lessen its profits.” Cal. Civ. Code § 46(3).
12 Plaintiff has neither shown nor argued that BofA erroneously reporting her status as
13 deceased amounted to imputing “disqualification in those respects . . . [her]
14 occupation peculiarly requires,” thereby harming her in her profession. Indeed,
15 Plaintiff makes no reference to her employment or profession. Furthermore, it seems
16 to the court that being deceased would disqualify anyone from any profession equally,
17 such that an erroneous deceased status report would not harm Plaintiff in some way
18 peculiar to her profession, whatever it may be. Plaintiff has therefore failed to raise a
19 triable issue of fact as to her defamation per se claim.

20 **E. Plaintiff’s UCL Claim Fails.**

21 Plaintiff’s claim for unfair and unlawful business practices under Cal. Bus. &
22 Profs. Code § 17200 also fails. First, Plaintiff concedes that insofar as she sought
23 declaratory and injunctive relief under this claim, it is moot because BofA has
24 corrected the erroneous report. The parties disagree whether Plaintiff can seek
25 damages under a UCL claim. The court need not reach this legal question because, as
26 discussed above, Plaintiff has not presented evidence to create a triable issue of fact
27 that BofA’s erroneous deceased report caused her to be denied credit, which credit
28 denials are the source of all of Plaintiff’s damages. Thus, Plaintiff’s UCL claim fails.

1 **V. CONCLUSION**

2 For the foregoing reasons, Defendant Bank of America, N.A.'s Motion for
3 Summary Judgment is **GRANTED** in its entirety. Defendant is **ORDERED** to file a
4 proposed Judgment within ten (10) days of the issuance of this order.

5 In light of the foregoing, Defendant's Motion to Exclude Expert Testimony of
6 Doug Minor (Dkt. No. 34) is **DENIED AS MOOT**.

7 The Pretrial and Jury Trial dates are hereby vacated.

8
9 Dated: May 26, 2016



10 HONORABLE ANDRÉ BIROTTE JR.
11 UNITED STATES DISTRICT COURT JUDGE