IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERTA L. EVANTASH,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
G.E. CAPITAL MORTGAGE SERVICES, INC., et al.,	:	NO. 02-CV-1188
	:	
Defendants.	:	

MEMORANDUM AND ORDER

Presently before this Court are Defendant G.E. Capital Mortgage Services, Inc.'s Motion for Summary Judgment (Dkt. No. 24) and Defendant Trans Union LLC's Motion for Summary Judgment (Dkt. No. 25). For the reasons discussed below, Defendants' Motions are **DENIED**.

I. Factual History and Procedural Background

Plaintiff Roberta L. Evantash and her husband, Bernard Evantash, are co-obligors on a mortgage loan with G.E. Capital Mortgage Services, Inc. ("G.E. Capital")[1] bearing account number 15175516 (the "Account"). On March 6, 2000, Bernard Evantash filed for bankruptcy under Chapter 7 of the Bankruptcy Code and included the Account in his schedule.[2] Upon receiving electronic notification from the bankruptcy court that Mr. Evantash had filed for

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[1] G.E. Capital is a furnisher of credit information and, as such, its obligations are set forth in Section 1681s-2 of the Fair Credit Reporting Act. A furnisher of credit information is an entity "which transmits information concerning a particular debt owed by a particular consumer to consumer reporting agencies such as Experian, Equifax, MCCA, and Trans Union." Carney v. Experian Info. Solutions, Inc. 57 F. Spp. 2d 496, 501 (W.D. Tenn. 1999).

[2] On July 31, 2000, the bankruptcy court entered an order discharging Mr. Evantash and closing the case.

bankruptcy and included the Account in his schedule, Trans Union LLC ("Trans Union")[3] began reporting the Account on Plaintiff's credit report as "INCLUDED IN BANKRUPTCY."

In May 2000, Plaintiff applied for a revolving line of credit from Dial National Bank ("Dial") to purchase a dishwasher from American Appliance. On May 25, 2000, Dial notified Plaintiff that her credit application was denied because of "BANKRUPTCY." Plaintiff's Response and Opposition to Defendant Trans Union's Motion for Summary Judgment ("Pl's. Resp. & Opp'n.") (Dkt. No. 31), Ex. H. In reaching its decision, Dial relied on information from Trans Union. Id.

After receiving Dial's statement of credit denial, Plaintiff, through her husband's bankruptcy attorney, informed Trans Union that she did not file for bankruptcy, and requested that Trans Union remove any bankruptcy references in her credit report. See Pl's Resp. & Opp'n, Ex. D. In response, Trans Union sent an Automated Consumer Dispute Verification ("ACDV") to G.E. Capital, informing G.E. Capital that Plaintiff was disputing the bankruptcy reference in her credit report. See Pl's. Resp. & Opp'n., Ex. E. Specifically, the ACDV stated: "bankruptcy not his, verify consumer liability." Id. On June 17, 2000, G.E. Capital responded "Account included in bankruptcy of another person not included in bankruptcy" and instructed Trans Union to correct Plaintiff's credit report. Id. Accordingly, Trans Union removed the "INCLUDED IN BANKRUPTCY" notation.

Subsequently, Trans Union received reporting tapes from G.E. Capital which described the Account's status as "BNKRPTCY 7/11." Trans Union's Memorandum of Law in

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[3] Trans Union is a credit reporting agency under Section 1681a(f) of the Fair Credit Reporting Act.

Support of Its Motion for Summary Judgment ("Trans Union's Mem."), Ex. E at 3. As a result, Trans Union reinserted the "INCLUDED IN BANKRUPTCY" remark on Plaintiff's credit report. In October 2000, Plaintiff learned of Trans Union's reinserting the bankruptcy remark and contacted Trans Union twice to dispute the accuracy of the entry. On October 17, 2000, Trans Union sent an ACDV to G.E. Capital, which again responded "Account included in bankruptcy of another person not included in bankruptcy" and instructed Trans Union to correct Plaintiff's credit report. Trans Union's Mem., Ex. C at 103. On October 25, 2000, Trans Union sent another ACDV to G.E. Capital, which responded that the Account was in good standing and instructed Trans Union to remove the bankruptcy reference because Bernard Evantash, not Plaintiff, had filed for bankruptcy. See G.E. Capital's Memorandum of Law in Support Its Motion for Summary Judgment ("G.E. Capital's Mem."), Ex. D at 159. Trans Union nevertheless verified the Account as accurately reported because it was included in a bankruptcy. See Trans Union's Mem., Ex. N.

In November 2000, Plaintiff again disputed Trans Union's reporting of the Account as "INCLUDED IN BANKRUPTCY." On November 22, 2000, Trans Union sent another ACDV to G.E. Capital, which informed Trans Union that Plaintiff was not in bankruptcy and instructed Trans Union to correct her credit report. See G.E. Capital's Mem., Ex. D at 164. Trans Union again verified the Account as accurately reported. See Trans Union's Mem., Ex. N.

After Fleet reduced Plaintiff's credit limit and Discover and MBNA increased her Annual Percentage Rate ("APR") based on information provided by Trans Union, Plaintiff again disputed the accuracy of her credit report. See Pl.'s Resp. & Opp'n., Ex. I. Accordingly, on September 21, 2001, Trans Union sent another ACDV to G.E. Capital, which again responded

that the Account was not included in bankruptcy and instructed Trans Union to remove the bankruptcy reference from Plaintiff's credit report. See G.E. Capital's Mem., Ex. D at 166-67. On September 25, 2001, Trans Union removed the remark "INCLUDED IN BANKRUPTCY."

On March 7, 2002, Plaintiff filed this action under the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (the "FCRA" or the "Act") against G.E. Capital and Trans Union. (Dkt. No. 1). Plaintiff alleges that G.E. Capital: (1) failed to conduct an adequate investigation regarding the disputed information; (2) failed to properly and accurately report Plaintiff's status and the status of the Account; and (3) continued to report or re-report inaccurate information. Compl. ¶ 21. Plaintiff alleges that Trans Union: (1) failed to conduct an adequate investigation; (2) permitted repeated reinsertions of inaccurate and misleading information in Plaintiff's credit report; (3) failed to follow reasonable procedures to assure maximum possible accuracy of the information in her credit report; (4) failed to conduct an adequate reinvestigation; and (5) continued to include on Plaintiff's credit report the remark, "INCLUDED IN BANKRUPTCY." Id. at ¶ 22. Plaintiff seeks, among other things, punitive damages. In response, G.E. Capital argues that it has satisfied its duty to investigate the disputed information pursuant to the FCRA and Plaintiff does not have a private cause of action against G.E. Capital under the Act for failure to report accurate information. G.E. Capital's Mem. 5-10. Trans Union argues that its reporting of the Account as "INCLUDED IN BANKRUPTCY" was accurate as a matter of law, and even if the remark was misleading, Plaintiff cannot adequately plead the essential elements of a Section 1681e(b) claim. Trans Union's Mem. 10-19. Moreover, Trans Union argues that Plaintiff cannot sustain a claim for punitive damages under the FCRA because she has failed to demonstrate a willful violation of the Act. Id. 19-21.

II. Standard of Review

Summary judgment is appropriate when "there is no genuine issue of material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, 106 S.Ct. 2505 (1986). In reviewing the record, "a court must view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994). The moving party bears the burden of showing that the record discloses no genuine issues as to any material fact and that he or she is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); see also Adickes v. S.H. Kress & Co., 398 U.S. 144, 157, 90 S.Ct. 1598, 1608 (1970). Once the moving party has met its burden, the non-moving party must go beyond the pleadings to set forth specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56(e); see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-86, 106 S.Ct. 1348 (1986). There is a genuine issue for trial "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 249. "Such affirmative evidence – regardless of whether it is direct or circumstantial - must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance." Williams v. Borough of W. Chester, 891 F.2d 458, 460-61 (3d Cir. 1989).

III. Analysis

A. Trans Union's Motion to Strike

As an initial matter, Trans Union moves to strike Plaintiff's expert report (Dkt. No. 39), submitted by Plaintiff in opposition to Trans Union's Motion for Summary Judgment. Because we have not relied on the expert report in reaching a decision here, Trans Union's

Motion to Strike is denied.

B. FCRA Claims

Congress enacted the FCRA to "insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and respect for the consumer's right to privacy." 15 U.S.C. § 1681(a)(4) (2003). The Act's creation was prompted by "congressional concern over abuses in the credit reporting industry." Guimond v. Trans Union Credit Info. Co., 45 F.3d 1329, 1333 (9th Cir. 1995). "In the FCRA, Congress has recognized the crucial role that consumer reporting agencies play in collecting and transmitting consumer credit information, and the detrimental effects inaccurate information can visit upon both the individual customer and the nation's economy as a whole." Philbin v. Trans Union Corp. 101 F.3d 957, 962 (3d Cir. 1996) (citing 15 U.S.C. § 1681(a)(1), (3)).

1. Section 1681e(b)

Section 1681e(b) of the FCRA penalizes dissemination of inaccurate reports: "Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report related." 15 U.S.C. 1681e(b). In order to succeed on a Section 1681e(b) claim, a plaintiff must establish each of the following four elements: (1) inaccurate information was included in his or her credit report; (2) the inaccuracy was due to the defendant's failure to follow reasonable procedures to assure maximum possible accuracy; (3) he or she suffered injury; and (4) his or her injury was caused by the inclusion of the inaccurate entry. Philbin, 101 F.3d at 963.

Relying on Heupel v. Trans Union LLC, 193 F. Supp. 2d 1234 (N.D. Al. 2002)

and Todd v. Associated Credit Bureau Servs., Inc., 451 F. Supp. 447 (E.D. Pa. 1977), aff'd, 578 F.2d 1376 (3d Cir. 1978), cert. denied, 439 U.S. 1068, 99 S.Ct. 834 (1979), Trans Union argues that it is entitled to summary judgment because its reporting of the Account as "INCLUDED IN BANKRUPTCY" was accurate as a matter of law. In Heupel, the plaintiff was a joint obligor on a bank account, which was covered under her ex-husband's Chapter 13 Bankruptcy. 193 F. Supp. 2d at 1237. The plaintiff disputed the defendant's reporting in her credit report that the account was subject to a Chapter 13 Wager Earner Plan. The defendant moved for summary judgment, arguing that its reporting of the account was accurate. The court concluded that the FCRA merely requires credit reporting agencies to report information that is "technically accurate" and granted the defendant's motion. Id. at 1240-41.

In Todd, Associated Bureau Services, Inc. ("Associated"), a credit reporting agency under the FCRA, reported in late 1975 that the plaintiffs, as of the early part of 1973, owed Hess', Inc. $1,200.00 without mentioning that the plaintiffs had paid off their debt. 451 F. Supp. at 448. The plaintiffs brought an action against Associated, alleging that the "misleading, stale and erroneous credit report distributed to various retailers by Associated rose to the level of negligent noncompliance with the Act." Id. at 448. The court held that the plaintiffs could not sustain their cause of action because Associated's report was accurate. Id. at 449.

Plaintiff responds that although the remark may be "technically accurate," under Koropoulos v. Credit Bureau, Inc., 734 F.2d 37 (D.C. Cir. 1984), it is actionable because it is misleading or materially incomplete in that it suggests Plaintiff filed for bankruptcy. In Koropulos, the District of Columbia Circuit Court of Appeals held that granting "summary judgment on the grounds that the information in [a credit] report was technically accurate,

regardless of any confusion generated in the recipient's minds as to what it meant, [is] improper." Id. at 42. The court also noted that the "technical accuracy defense" is not in accord with the purpose of the FCRA. Id. 40-42.

Because the Third Circuit has not endorsed the "technical accuracy defense,"[4] we shall apply the less stringent approach articulated in Koropoulos. Applying that approach, we find that there is a genuine issue of material fact as to whether Trans Union's treatment of the Account was so misleading as to be inaccurate within the meaning of Section 1681e(b). A reasonable jury could find that the bankruptcy reference in Plaintiff's credit report misled potential creditors into believing that she had filed for bankruptcy. See Pl's Resp. & Opp'n., Ex. H;[5] see also Trans Union's Mem., Ex. H at 53.[6]

Having determined that the "INCLUDED IN BANKRUPTCY" notation might have been inaccurate, we now turn to the question of whether Trans Union followed reasonable procedures in preparing Plaintiff's credit report. With respect to the question of reasonableness,

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[4] The Third Circuit affirmed Todd without opinion. See 578 F.2d 1376. Nevertheless, even if we were to adopt the Todd approach, there is a question of fact as to whether the "INCLUDED IN BANKRUPTCY" remark was indeed "technically accurate." Defendants stake out competing positions on this issue: Trans Union argues that the remark was correct, see Trans Union's Mem. 10-17,whereas, G.E. Capital contends that it was incorrect. See G.E. Capital's Mem. 3-6.

[5] A reasonable jury could infer from Dial's denying Plaintiff's credit application because of "BANKRUPTCY" based on information in her credit report that Dial believed Plaintiff had filed for bankruptcy.

[6] In determining whether to increase Plaintiff's APR, MBNA did not review her credit report. Instead, MBNA based its decision on her credit score, which, according to Michael Green of MBNA, could have been influenced by the bankruptcy reference in her credit report. See Trans Union's Mem., Ex. H at 53.

"the Third Circuit has discussed three approaches – without endorsing any of the three – for determining whether a plaintiff has presented sufficient evidence to survive summary judgment." Sheffer, 2003 WL 21710573, at * 2. Under the most stringent approach, a plaintiff "'must minimally present some evidence from which a trier of fact can infer that the consumer reporting agency failed to follow reasonable procedures in preparing a credit report.'" Id. (quoting Stewart v. Credit Bureau, Inc., 734 F.2d 47, 51) (D.C. Cir. 1984). Typically, the question of whether a credit reporting agency followed reasonable procedures is reserved for a jury. See, e.g., Cousin v. Trans Union Corp., 246 F.3d 359, 368 (5th Cir. 2001). Here, Trans Union removed the "INCLUDED IN BANKRUPTCY" remark in June 2000, after G.E. Capital notified Trans Union that it was reporting incorrect information on Plaintiff's credit report. Upon receiving reporting tapes from G.E. Capital which described the Account's status as "BNKRPTCY 7/11," however, Trans Union reinserted the bankruptcy reference on Plaintiff's credit report. Despite the inconsistencies in G.E. Capital's reporting, Trans Union failed to further inquire about the status of the Account. Pl.'s Resp. & Opp'n., Ex. N at 139-40. That alone provides a basis from which a jury could infer that Trans Union's procedures were unreasonable.

Trans Union further argues that Plaintiff cannot adequately plead causation and harm. We disagree. To satisfy these elements, a plaintiff must "produce evidence from which a trier of fact could infer that the inaccurate entry was a 'substantial factor' that brought about the denial of credit." Philbin, 101 F.3d 957, 968. Plaintiff has demonstrated that Dial's denying her credit application because of a "BANKRUPTCY" was based on information supplied by Trans Union. Plaintiff has also shown that her credit reports did not contain any delinquent accounts or derogatory information other than the "INCLUDED IN BANKRUPTCY" remark. A reasonable

jury could infer that Dial was referring to the bankruptcy remark contained in Plaintiff's credit report, and that the remark played a substantial role in its decision to deny Plaintiff's credit application.[7]

In sum, we conclude that Plaintiff has produced evidence sufficient to satisfy her burden of proving a prime facie case of negligent noncompliance with 15 U.S.C. § 1681e(b).

2. Section 1681i

Under Section 1681i(a) of the Act, if a consumer notifies a consumer reporting agency of a dispute regarding the completeness or accuracy of information contained in the consumer's credit report, the agency is required to reinvestigate the disputed information. 15 U.S.C. § 1681i(a). The agency must do more than "merely parrot[] information received from other sources; [] a 'reinvestigation' that merely shifts the burden back to the consumer and the credit grantor cannot fulfill the obligations contemplated by the statute." Cushman v. Trans Union Corp., 114 F.3d 220, 225 (3d Cir. 1997). In order to fulfill its obligation under Section 1681i(a), "a credit reporting agency may be required in certain circumstances, to verify the accuracy of its initial source of information." Id. The scope of an agency's duty to go beyond the original source depends on a number of factors, including:

> (1) whether the consumer has alerted the reporting agency to the possibility that the source may be unreliable or the reporting agency knows or should know that the source is unreliable; and (2) the cost of verifying the accuracy of the source versus the

[7] Plaintiff has also demonstrated that Fleet decreased her credit limit and MBNA and Discover increased her APR based on information from Trans Union. See Pl.'s Resp. & Opp'n., Ex. I. Again, given the absence of adverse information in Plaintiff's credit report, a trier of fact could reasonably infer that the bankruptcy remark played a substantial role in their credit determinations.

> possible harm inaccurately reported information may cause the consumer.

Sheffer, 2003 WL 21710573, at *2 (citing Cushman, 114 F.3d at 225). "Whatever considerations exist, it is for 'the trier of fact [to] weigh the[se] factors in deciding whether [an agency] violated the provisions of section 1681i." Id. at 225-26 (quoting Henson v. CSC Credit Services, 29 F.3d 280, 287 (7th Cir. 1994)); see also Cousin, 246 F.3d at 368 (noting that the question of weather a consumer reporting agency followed reasonable procedures is typically a question of fact reserved for the jury); Cahlin v. Gen. Motors Acceptance Corp., 936 F.2d 1151, 1156 (11th Cir. 1991) (same).

In Stevenson v. TRW Inc., 987 F.2d 288 (5th Cir. 1993), the Fifth Circuit held that the defendant credit reporting agency's contacting subscribers only through Consumer Dispute Verification Forms despite the complexity of Plaintiff's dispute violated Section 1681i. Id. at 293; see also Cushman, 115 F.3d at 225 (agreeing with the conclusions reached in Stevenson). The court also noted that "[a]llowing inaccurate information back onto a credit report after deleting it because it is inaccurate is negligent." Stevenson, 987 F.2d at 293. Here, Trans Union contacted G.E. Capital only through ACDVs, despite Plaintiff's disputing the "INCLUDED IN BANKRUPTCY" notation at least five times. Moreover, Trans Union may have reinserted inaccurate information on Plaintiff's credit report.[8] Therefore, a reasonable jury

[8] Trans Union argues that although it reinserted the "INCLUDED IN BANKRUPTCY" remark after receiving reporting tapes from G.E. Capital which described the Account's status as "BNKRPTCY 7/11," it was not negligent because Section 1681i only punishes the "'allowing [of] **in**accurate information back onto a credit report. . . ." Trans Union's Mem. 18 (emphasis in original). As previously discussed, however, there is a factual question as to whether the bankruptcy reference in Plaintiff's credit report was so misleading as to be inaccurate within the meaning of Section 1681e(b).

could find that Trans Union violated Section 1681i.

3. Section 1681s-2(b)(1)

As noted above, when a consumer notifies a consumer reporting agency of a dispute regarding the accuracy of information contained in the consumer's credit report, the agency must reinvestigate the disputed information. As part of its reinvestigation, the agency must notify the furnisher of the credit information of the dispute. Section 1681s-2(b)(1) of the FCRA requires the furnisher to conduct an investigation regarding the dispute and to report its findings accordingly:

> After receiving notice pursuant to section 1681(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall –
> (A) conduct an investigation with respect to disputed information;
> (B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2);
> (C) report the results of the investigation to the consumer reporting agency; and
> (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information. . . .

15 U.S.C. § 1681s-2(b)(1).

The Act does not provide any indication as to the level of investigation required under Section 1681s-2(b)(1). Section 1681s-2(b)(1)'s investigation requirement for furnishers, however, "is analogous to the requirement imposed upon credit reporting agencies under § 1681i(a) to reinvestigate a consumer's dispute regarding information contained in his credit

report" and, therefore, furnishers of credit are required to conduct a reasonable investigation. Bruce v. First U.S.A. Bank, National Association, 103 F. Supp. 2d 1135, 1143 (E.D. Miss. 2000). Whether such an investigation has been conducted is generally a question of fact for the jury. See Cushman, 115 F.3d at 225; Henson, 29 F.3d at 287.

G.E. Capital argues that "there is no genuine issue of material fact because the reasonableness of the investigation is evidenced by the fact that G.E. Capital took all reasonable measures to verify the accuracy of the information in dispute." We disagree. Trans Union sent G.E. Capital five ACDVs informing G.E. Capital of Plaintiff's disputes regarding the bankruptcy reference in her credit report. G.E. Capital responded to the ACDVs by sending short, electronic messages notifying Trans Union that Plaintiff had not filed for bankruptcy and instructing Trans Union to correct her credit report. G.E. Capital, however, did not telephone Trans Union or send it a facsimile, which according to G.E. Capital's former Credit Reporting Manager, Barbara Lewis, are ordinary steps when a consumer continues to dispute the accuracy of an entry in his or her credit report. Pl.'s Mem., Ex. N at 139-40. Moreover, G.E. Capital sent inconsistent messages to Trans Union: In June 2000, G.E. Capital notified Trans Union that the "Account [was] included in bankruptcy of another person not included in bankruptcy" and instructed Trans Union to correct Plaintiff's credit report, Pl.'s Resp. & Opp'n., Ex. E, whereas, in July 2000, G.E. Capital sent Trans Union reporting tapes which described the Account's status as "BNKRPTCY." Trans Union's Mem., Ex. E at 3. Finally, a G.E. Capital customer service representative gave Plaintiff the wrong information about the effect of Mr. Evantash's bankruptcy on her credit. Pl.'s Mem., Ex. N at 141-42. Based on the foregoing, we conclude that the record discloses genuine issues of material fact as to whether G.E. Capital negligently

failed to comply with Section 1681s-2(b)(1)(a)'s investigation requirement.

G.E. Capital further argues that Plaintiff does not have a private cause of action against G.E. Capital under the FCRA because her claims fall within the provisions of Section 1681s-2(a). G.E. Capital's Mem. 5-10. Section 1681s-2(a) provides in relevant part: "A [furnisher] shall not furnish information . . . to any consumer reporting agency if . . . the [furnisher] has been notified by the consumer . . . that [the] specific information is inaccurate . . . and . . . the information is, in fact, inaccurate. 15 U.S.C. § 1681s-2(a)(1)(B). The provisions of Section 1681s-2(a) are to be "enforced exclusively . . . by the Federal agencies and officials and [certain] State officials. . . ." 15 U.S.C. § 1681s-2(d). Thus, there is no private right of action for a violation of Section 1681s-2(a). See, e.g., Fino v. Key Bank of New York, No. Civ. A. 00-375E, 2001 WL 849700 (W.D. Pa. July 27, 2001).

Contrary to G.E. Capital's arguments, Plaintiff's claims fall squarely within the provisions of Section 1681s-2(b). Section 1681s-2(b), which is entitled "Duties of furnishers of information upon notice of dispute," provides:

> After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall –
> (A) conduct an investigation with respect to the disputed information;
> (B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;
> (C) report the results of the investigation to the consumer reporting agency; and
> (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the

> person furnished the information and that compile and maintain files on consumer on a nationwide basis.

15 U.S.C. § 1681s-2(b). Here, Plaintiff, through her husband's bankruptcy attorney, contacted Trans Union to dispute the bankruptcy reference in her credit report. In response, Trans Union sent an ACDV to G.E. Capital notifying G.E. Capital of Plaintiff's dispute. After receiving notice of the dispute from Trans Union, G.E. Capital's duty under Section 1681s-2(b) was triggered. See, e.g., Whisenant v. First Nat'l Bank & Trust Co., 258 F. Supp. 2d 1312, 1316-17 (N.D. Ok. 2003) ("Courts have consistently held that a furnisher's duty under § 1681s-2(b) is triggered only after the furnisher receives notice of the dispute from a consumer reporting agency.") (citations omitted). Section 1681s-2(b), unlike Section 1681s-2(a), may form the basis for a private cause of action where, as here, "the plaintiff shows that the furnisher 'received notice from a *consumer reporting agency*,' as opposed to the plaintiff alone, 'that the credit information is disputed." Fino, 2001 WL 849700, at *5 (quoting Dornhecker v. Ameritech Corp., 99 F. Supp. 2d 918, 928-29 (N.D. Ill. 2000)) (emphasis in original). Accordingly, we conclude that Plaintiff has a private cause of action against G.E. Capital.

C. Punitive Damages

Under Section 1681n, "[a]ny person who willfully fails to comply with any requirement imposed under [the FCRA] with respect to any consumer is liable to that consumer in an amount equal to the sum of . . . such amount of punitive damages as the court may allow." 15 U.S.C. § 1681n. "To show willful noncompliance with the FCRA, [a plaintiff] must show that defendants 'knowingly and intentionally committed an act in conscious disregard for the rights of others,' but need not show 'malice or evil motive.'" Philbin, 101 F.3d at 970 (quoting

Pinner v. Schmidt, 805 F.2d 1258, 1263 (5th Cir. 1986)). "[T]o justify an award of punitive damages, a defendant's actions must be on the same order as willful concealments or misrepresentations [such as the adoption of a] reinvestigation policy either knowing that policy to be in contravention of the possessed by consumers pursuant to the FCRA or in reckless disregard of whether the policy contravened those rights." Cushman, 115 F.3d at 226.

Trans Union contends that Plaintiff has failed to present any evidence of wilful noncompliance under the FCRA. Punitive damages, however, "may be warranted where the evidence shows that inaccuracies in credit reports arise from something more than 'an isolated instance of human error which [the agency] promptly cures." See Sheffer, 2003 WL 21710573, at *3 (quoting Boris v. Choicepoint Servs., 249 F. Supp. 2d 851, 862 (W.D. Ky. 2003). Here, there is evidence regarding the conduct of Trans Union suggesting that the problems Plaintiff experienced were more than an isolated instance of human error which Trans Union promptly cured. When a consumer disputes the accuracy of information in his or her credit report to Trans Union and the furnisher disagrees with the consumer's dispute, as a matter of policy, Trans Union reports the disputed information as reported by the furnisher. See Pl.'s Resp. & Opp'n., Ex. F at 61-62. Notwithstanding this policy, Trans Union continued to report the Account on Plaintiff's credit report as "INCLUDED IN BANKRUPTCY" even though G.E. Capital notified Trans Union that their reporting was incorrect. On that basis alone, a jury may find that Trans Union acted with conscious or reckless disregard to Plaintiff's rights and, therefore, we conclude that Trans Union is not entitled to summary judgment on Plaintiff's punitive damages claim.

IV. Conclusion

Accordingly, this Court denies Defendants' motions for summary judgment. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERTA L. EVANTASH,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
G.E. CAPITAL MORTGAGE SERVICES, INC., et al.,	:	NO. 02-CV-1188
	:	
Defendants.	:	

ORDER

AND NOW, this day of November, 2003, upon consideration of G.E. Capital Mortgage Services, Inc.'s Motion for Summary Judgment and Trans Union LLC's Motion for Summary Judgment, and Plaintiff Roberta L. Evantash's responses thereto, it is hereby ORDERED and DECREED that:

1) Defendant G.E. Capital Mortgage Services, Inc.'s Motion for Summary Judgment (Dkt. No. 24) is DENIED;

2) Defendant Trans Union LLC's Motion for Summary Judgment (Dkt. No. 25) is DENIED; and

3) Defendant Trans Union LLC's Motion to Strike Plaintiff's Expert Report (Dkt. No. 39) is DENIED.

BY THE COURT:

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Legrome D. Davis, J.