

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARIA E. PINTOS,

Plaintiff,

v.

PACIFIC CREDITORS ASSOCIATION and
EXPERIAN INFORMATION SOLUTIONS, INC.,

Defendants.

No. C 03-5471 CW

ORDER GRANTING
DEFENDANT
EXPERIAN
INFORMATION
SOLUTIONS, INC.'S
RENEWED MOTION
FOR PARTIAL
SUMMARY JUDGMENT
(Docket No. 129)

Defendant Experian Information Solutions, Inc., renews its motion for partial summary judgment that it did not wilfully violate the Fair Credit Reporting Act (FCRA). Plaintiff Maria E. Pintos opposes the motion. The motion was heard on March 31, 2011. Having considered oral argument and the papers submitted by the parties, the Court GRANTS Experian's motion.

BACKGROUND

Because the Court's Order of November 9, 2004 (Docket No. 82) explains the facts of this case in sufficient detail, they will not be repeated here in their entirety.

Defendant Pacific Creditors Association (PCA) is a collection agency that specializes in deficiency claims for towing companies.

1 Experian is a consumer credit reporting agency that gathers credit
2 information and makes it available to third-party subscribers. In
3 1987, PCA entered into a subscriber agreement with Experian's
4 predecessor, and PCA continues to subscribe to Experian's credit
5 reporting services.

6 On May 29, 2002, the San Bruno Police Department instructed
7 P&S Towing to tow and impound a Chevrolet Suburban because the
8 registration tags were expired. Thereafter, P&S Towing sent a
9 "Notice of Pending Lien Sale" to Plaintiff and her son, indicating
10 that it held a lien on the vehicle for towing and impound charges
11 and that the car would be sold if Plaintiff or her son did not pay
12 the debt and reclaim the vehicle. The vehicle was not reclaimed
13 and, following the lien sale, P&S Towing transferred the deficiency
14 for towing and impounding to PCA for collection.

15 On December 5, 2002, after failing to secure payment on
16 Plaintiff's debt, PCA obtained Plaintiff's credit information from
17 Experian's database.

18 On December 4, 2003, Plaintiff filed a complaint against both
19 PCA and Experian, alleging violations of the FCRA. Plaintiff
20 claimed that Experian provided PCA with her credit report, even
21 though PCA did not have a legally permissible purpose. Plaintiff
22 alleged that Experian violated the FCRA willfully or, at the least,
23 negligently.

24 In their motions for summary judgment, PCA and Experian
25 asserted that, by obtaining Plaintiff's credit report to collect on
26 the deficiency, PCA did so in connection with the "collection of an
27 account," as provided under 15 U.S.C. § 1681b(a)(3)(A).

28

1 Separately, Experian argued that it satisfied the FCRA's
2 requirement, pursuant to 15 U.S.C. § 1681e(a), that it "maintain
3 reasonable procedures" to prevent the improper disclosure of
4 Plaintiff's credit report. Experian pointed to PCA's "one-time
5 blanket or so-called 'general certification,'" in which PCA
6 promised that it would only request and obtain credit reports for
7 permissible purposes. Experian's Mot. for Summ J. 10:9-10 (Docket
8 No. 53).

9 On November 9, 2004, the Court granted PCA's and Experian's
10 motions for summary judgment, concluding that PCA had a legally
11 permissible purpose when it obtained Plaintiff's credit report.
12 Accordingly, the Court did not reach whether Experian would have
13 violated the FCRA had PCA not had a permissible purpose.

14 The Ninth Circuit reversed the Court's judgment. The Ninth
15 Circuit concluded that § 1681b(a)(3)(A) applies only when a
16 consumer's credit report is furnished in connection with a credit
17 transaction initiated by the consumer. Pintos v. Pac. Creditors
18 Ass'n, 605 F.3d 665, 675-76 (9th Cir. 2010). Because Plaintiff had
19 not initiated the credit transaction, inasmuch as she did not ask
20 P&S Towing to tow the vehicle, the Ninth Circuit held that
21 § 1681b(a)(3)(A) did not apply. Id. at 676. The Ninth Circuit
22 also rejected the argument that PCA's blanket certification
23 immunized Experian from liability. Id. at 677.

24 Defendants petitioned for rehearing en banc, which was denied;
25 seven circuit judges dissented from the denial. See generally
26 Pintos, 605 F.3d at 670-72. On June 1, 2010, the Ninth Circuit's
27 mandate issued. Experian petitioned for a writ of certiorari,

28

1 which the United States Supreme Court denied on January 12, 2011.

2 LEGAL STANDARD

3 Summary judgment is properly granted when no genuine and
4 disputed issues of material fact remain, and when, viewing the
5 evidence most favorably to the non-moving party, the movant is
6 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.
7 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
8 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.
9 1987).

10 The moving party bears the burden of showing that there is no
11 material factual dispute. Therefore, the court must regard as true
12 the opposing party's evidence, if supported by affidavits or other
13 evidentiary material. Celotex, 477 U.S. at 324; Eisenberg, 815
14 F.2d at 1289. The court must draw all reasonable inferences in
15 favor of the party against whom summary judgment is sought.
16 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
17 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d
18 1551, 1558 (9th Cir. 1991).

19 Where the moving party does not bear the burden of proof on an
20 issue at trial, the moving party may discharge its burden of
21 showing that no genuine issue of material fact remains by
22 demonstrating that "there is an absence of evidence to support the
23 nonmoving party's case." Celotex, 477 U.S. at 325. The moving
24 party is not required to produce evidence showing the absence of a
25 material fact on such issues, nor must the moving party support its
26 motion with evidence negating the non-moving party's claim. Id.;
27 see also Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 885 (1990);

1 Bhan v. NME Hosps., Inc., 929 F.2d 1404, 1409 (9th Cir. 1991),
2 cert. denied, 502 U.S. 994 (1991). If the moving party shows an
3 absence of evidence to support the non-moving party's case, the
4 burden then shifts to the opposing party to produce "specific
5 evidence, through affidavits or admissible discovery material, to
6 show that the dispute exists." Bhan, 929 F.2d at 1409. A complete
7 failure of proof concerning an essential element of the non-moving
8 party's case necessarily renders all other facts immaterial.
9 Celotex, 477 U.S. at 323.

10 DISCUSSION

11 Experian seeks summary adjudication that it did not willfully
12 violate the FCRA because, at the time it furnished Plaintiff's
13 credit report to PCA, no authority clearly established that doing
14 so was unlawful.

15 The FCRA limits the purposes for which consumer reporting
16 agencies may disclose credit reports, 15 U.S.C. § 1681b, and
17 requires such agencies to "maintain reasonable procedures" that
18 prevent disclosure in the absence of a permissible purpose, id.
19 § 1681e. Violations of these requirements may be willful or
20 negligent. Compare 15 U.S.C. § 1681n with id. § 1681o. For
21 willful violations, prevailing consumers may recover actual or
22 statutory damages, punitive damages and reasonable attorneys' fees.
23 15 U.S.C. § 1681n(a). In contrast, for negligent violations, a
24 consumer may recover only actual damages and reasonable attorneys'
25 fees. Id. § 1681o(a).

26 To prove a willful violation, a consumer must show that the
27 defendant violated the FCRA either knowingly or recklessly. Safeco

1 Ins. Co. of Am. v. Burr, 551 U.S. 47, 57 (2007). A defendant's
2 action is considered reckless if it "is not only a violation under
3 a reasonable reading of the statute's terms, but shows that the
4 company ran a risk of violating the law substantially greater than
5 the risk associated with a reading that was merely careless." Id.
6 at 69. A defendant that violates the FCRA based on an erroneous,
7 but objectively reasonable, reading of the statute does not act
8 recklessly. Id. To determine whether a defendant's reading was
9 objectively reasonable, courts may consider the text of the Act or
10 "guidance from the courts of appeal or the Federal Trade
11 Commission." Id. at 70.

12 Experian asserted that PCA's reason for obtaining Plaintiff's
13 credit report was a permissible purpose under § 1681b(a)(3)(A),
14 which provides that, subject to enumerated exceptions not relevant
15 here,

16 any consumer reporting agency may furnish a consumer
17 report . . . [t]o a person which it has reason to believe
18 . . . intends to use the information in connection with a
19 credit transaction involving the consumer on whom the
information is to be furnished and involving the
extension of credit to, or review or collection of an
account of, the consumer.

20 Experian argued that, by obtaining Plaintiff's credit report to
21 collect the towing and impound deficiency, PCA used the information
22 in connection with the "collection of an account" of Plaintiff.
23 Plaintiff does not identify any language in § 1681b(a)(3)(A), or
24 any guidance from the courts of appeal or the Federal Trade
25 Commission existing at the time PCA acquired her report, that
26 renders Experian's reading objectively unreasonable, even though it
27 ultimately proved to be wrong. Therefore, Experian did not
28

1 willfully violate § 1681b.

2 Similarly, Plaintiff offers no evidence that Experian
3 willfully failed to maintain reasonable procedures to limit
4 disclosure of Plaintiff's credit report for only permissible
5 purposes. In relevant part, § 1681e(a) provides,

6 Every consumer reporting agency shall maintain reasonable
7 procedures designed . . . to limit the furnishing of
8 consumer reports to the purposes listed under section
9 1681b of this title. These procedures shall require that
10 prospective users of the information identify themselves,
11 certify the purposes for which the information is sought,
12 and certify that the information will be used for no
13 other purpose. Every consumer reporting agency shall
14 make a reasonable effort to verify the identity of a new
15 prospective user and the uses certified by such
16 prospective user prior to furnishing such user a consumer
17 report. No consumer reporting agency may furnish a
18 consumer report to any person if it has reasonable
19 grounds for believing that the consumer report will not
20 be used for a purpose listed in section 1681b of this
21 title.

22 At the time Experian disclosed Plaintiff's credit report, the
23 Federal Trade Commission (FTC) had provided guidance concerning the
24 use of blanket certifications to satisfy the requirements of
25 § 1581(a). See generally 16 C.F.R. pt. 600, App. § 607 cmt. 2.
26 The FTC's guidance states, "Once the consumer reporting agency
27 obtains a certification from a user (e.g., a creditor) that
28 typically has a permissible purpose for receiving a consumer
report, stating that it will use those reports only for specified
permissible purposes (e.g., for credit or employment purposes), a
certification of purpose need not be furnished for each individual
report obtained, provided there is no reason to believe the user
may be violating its certification." Id. App. § 607 cmt. 2C. The
FTC further states that, when "doubt arises concerning any user's

1 compliance with its contractual certification, a consumer reporting
2 agency must take steps to insure compliance, such as requiring a
3 separate, advance certification for each report it furnishes that
4 user, or auditing that user to verify that it is obtaining reports
5 only for permissible purposes." Id. App. § 607 cmt. 2D.

6 Plaintiff offers no evidence that, based on the FTC's
7 guidance, Experian willfully failed to meet its obligations under
8 § 1681e(a). Instead, she cites Pintos, which stated, "Under the
9 plain terms of § 1681e(a), a subscriber's certification cannot
10 absolve the reporting agency of its independent obligation to
11 verify the certification and determine that no reasonable grounds
12 exist for suspecting impermissible use." Pintos, 605 F.3d at 677.
13 However, this is not necessarily inconsistent with the FTC guidance
14 cited by Experian.¹ The FTC guidance suggests that, when an agency
15 has doubts about a creditor's purposes, the agency must then take
16 steps to verify compliance with the certification.

17 Plaintiff also argues that Experian's other procedures may not
18 have been sufficient to limit disclosure of her credit report and
19 that, even if they were, there is no evidence that Experian
20 enforced them against PCA. Plaintiff also suggests various other
21 measures that Experian could have taken to avoid violations of
22 § 1681b. In light of the FTC guidance described above, these
23 arguments do not demonstrate that Experian willfully violated

24

25 ¹ Pintos did not consider the FTC guidance. To the extent
26 that Pintos is inconsistent with the FTC interpretation of the
27 FCRA, Plaintiff cannot maintain her willfulness claim on it.
28 Pintos obviously did not exist at the time her report was
disclosed. See Safeco, 551 U.S. at 70.

1 § 1681e(a).

2 Finally, Plaintiff notes various district court cases in which
3 the summary judgment was denied with respect to the plaintiffs'
4 willfulness claims. However, Saindon v. Equifax Information
5 Services, 608 F. Supp. 2d 1212 (N.D. Cal. 2009) and Drew v.
6 Equifax, 2010 WL 5022466 (N.D. Cal.), are distinguishable. Neither
7 case dealt with § 1681e(a) or related FTC guidance.

8 CONCLUSION

9 For the foregoing reasons, the Court GRANTS Experian's motion
10 for partial summary judgment that it did not willfully violate the
11 FCRA. (Docket No. 129.)

12 IT IS SO ORDERED.

13
14 Dated: April 13, 2011



15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLAUDIA WILKEN
United States District Judge