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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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10 NAKIA WOODSON, an individual,

11 Plaintiff,

12 v.

13 CAPITAL ONE AUTO FINANCE, INC., a
foreign corporation, et al.,

14 Defendants.

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Case No. 2:07-cv-01080-KJD-LRL

ORDER

16 Presently before the Court is Defendant's Renewed Motion for Summary Judgment (#61).

17 Plaintiff filed a response in opposition (#63) to which Defendant replied (#66).

18 **I. Facts and Procedural History**

19 In 2004, Plaintiff purchased a car with a loan secured from Defendant Capital One Auto
20 Loans ("Capital One"). The car was reported stolen on June 25, 2006, and the insurance company
21 sent a check to Defendant in the amount of \$17,606.25 on July 25, 2006. On August 5, 2006,
22 Defendant sent a letter to Plaintiff acknowledging receipt of the insurance check and demanding
23 remittance of the remainder of the loan, which then totaled \$5,447.00. Defendant then sent a series of
24 letters, one on September 23, one on September 26, and one on September 29, warning Plaintiff that
25 legal action might be taken on the account unless she paid the remainder of the balance in full. On
26 September 29, 2006, Defendant sent another letter offering to settle the account at sixty-five percent

1 (65%) of the balance. Plaintiff had until October 31, 2006, to make payment and thereby accept the
2 settlement offer. Defendant also refused to accept proceeds from the gap insurance claim to satisfy
3 the terms of the settlement offer.

4 Meanwhile, on September 28, 2006, the insurance company sent a second payout on the
5 insurance claim, a check for \$3,650.63, this time addressed to Plaintiff, the check being made out to
6 both Defendant and Plaintiff. On October 3, 2006, Plaintiff forwarded the check to Defendant along
7 with a note stating that she wished to settle the account. Defendant credited the \$3,650.63 to
8 Plaintiff's account but did not close it. On November 1, 2006, Defendant sent a letter to Plaintiff
9 offering to settle for fifty-five percent (55%) of the remaining \$1,903.16 balance. During this time
10 period, Defendant reported to consumer reporting agencies that Plaintiff was late on her payments,
11 and later that Defendant had charged off the loan as bad debt. Plaintiff, during this time period,
12 disputed the accuracy of the credit reports.

13 Plaintiff filed a Complaint under 15 U.S.C. § 1681 *et seq.* on August 14, 2007, alleging that
14 Defendant supplied false information to the consumer reporting agency and failed in its duty to
15 investigate a disputed claim brought to the consumer reporting agency. Defendant filed a motion
16 seeking summary judgment (#52). The Court granted Defendant's motion for summary judgment on
17 Plaintiff's 1681e and 1681f claims. However, the Court denied (#56) summary judgment on
18 Plaintiff's 1681n and 1681o claims because it was unclear whether the security agreement included
19 an acceleration clause or other expedited payment provision (#56). Subsequently, Defendant filed
20 this Renewed Motion for Summary Judgment (#61) on Plaintiff's 1681n and 1681o claims, asserting
21 that the Note and Security Agreement ("Agreement") included an acceleration clause.

22 **II. Standard for Summary Judgment**

23 Summary judgment may be granted if the pleadings, depositions, answers to interrogatories,
24 and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any
25 material fact and that the moving party is entitled to a judgment as a matter of law. See, Fed. R. Civ.
26 P. 56(c); see also, Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party bears the

1 initial burden of showing the absence of a genuine issue of material fact. See, Celotex, 477 U.S. at
2 323.

3 The burden then shifts to the nonmoving party to set forth specific facts demonstrating a
4 genuine factual issue for trial. See, Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
5 587 (1986); Fed. R. Civ. P. 56(e). “[U]ncorroborated and self-serving testimony,” without more, will
6 not create a “genuine issue” of material fact precluding summary judgment. Villiarimo v. Aloha
7 Island Air Inc., 281 F.3d 1054, 1061 (9th Cir. 2002). Summary judgment shall be entered “against a
8 party who fails to make a showing sufficient to establish the existence of an element essential to that
9 party’s case, and on which that party will bear the burden of proof at trial.” Celotex, 477 U.S. at 322.

10 **III. Analysis**

11 Section 1681s-2 discusses the duties of a furnisher of information. Section 1681n imposes
12 civil liability upon any person who “willfully fails to comply” with any requirement of section 1681
13 *et seq.* The Ninth Circuit has held that “a company is liable for a willful violation of FCRA if it
14 ‘knowingly and intentionally committed an act in conscious disregard for the rights of others.’”
15 Reynolds v. Hartford Fin. Servs. Group, Inc., 435 F.3d 1081, 1085 (9th Cir. 2006) (quoting Cushman
16 v. Trans Union Corp., 115 F.3d 220, 226 (3d Cir. 1997)). Section 1681o imposes civil liability upon
17 any person “who is negligent in failing to comply” with any requirement of 1681 *et seq.*, but
18 damages under this section are limited to any actual damages as well as costs and fees.

19 In its motion, Capital One submitted an affidavit of its auto loan representative and attached a
20 copy of the Agreement. The Agreement sets forth the terms of the auto loan. The Court finds that
21 Capital One’s Agreement with Woodson included an acceleration clause. The clause provides that
22 Capitol One may demand immediate payment of the loan balance if the Plaintiff breaches any of the
23 obligations in the Agreement. Plaintiff was obligated under the Agreement to provide a security
24 interest in the vehicle that was purchased with the loan proceeds. Once the vehicle was stolen, she
25 could no longer perform that obligation. Therefore, Capital One acted in compliance with the
26 Agreement when it demanded payment on the remainder of the loan.

1 Because Plaintiff did not pay on the remainder of the loan, and still has not paid, Capital One
2 did not act in conscious disregard for the rights of Plaintiff when it reported Plaintiff's activity to
3 creditors. See Reynolds, 435 F.3d at 1085. Likewise, because Plaintiff failed to pay the balance on
4 her loan, Capital One did not willfully or negligently fail to comply with the requirements of 1681s-2
5 when it reported Plaintiff's activities to credit agencies. Since Plaintiff has no claim under 1681n or
6 1681o, the Court grants Defendant's Renewed Motion for Summary Judgment.

7 **IV. Plaintiff's Request for an Evidentiary Hearing**

8 The Court denies Plaintiff's request for an evidentiary hearing because Plaintiff has failed to
9 support that request with points and authorities. Local Rule 47-9 requires that parties provide points
10 and authorities to support motions. The failure to do so constitutes consent to the denial of the
11 motion. In Plaintiff's Opposition to Defendant's Renewed Motion for Summary Judgment, Plaintiff
12 merely includes "Request for Evidentiary Hearing" in the document title. Plaintiff's motion fails to
13 explain what evidence would be adduced at that hearing. Accordingly, Plaintiff's request is denied.

14 **V. Conclusion**

15 Accordingly, **IT IS HEREBY ORDERED** that Defendant's Renewed Motion for Summary
16 Judgment (#61) is **GRANTED**;

17 **IT IS FURTHER ORDERED** that Plaintiff's Request for an Evidentiary Hearing (#63) is
18 **DENIED**;

19 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter **JUDGMENT** for
20 Defendant Capital One Auto Finance and against Plaintiff.

21 DATED this 1st day of July 2010

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25 Kent J. Dawson
26 United States District Judge