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

LARKAY D. WESLEY on behalf of herself and all others similarly situated Plaintiff	:	CIVIL ACTION
v.	:	
CALVARY INVESTMENTS, LLC and CALVARY PORTFOLIO SVCS Defendant	:	No. 05-3523

MEMORANDUM AND ORDER

I. INTRODUCTION

The instant action has been brought by Larkay D. Wesley, on behalf of herself and all others similarly situated, against Defendants Calvary Investments, LLC and Calvary Portfolio Svcs ("Calvary"). Wesley has brought this action as a consumer class action under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq., ("FDCPA"), alleging that Calvary violated section 1692e(8) of the FDCPA by communicating to third parties information which is known to be false, including the failure to communicate that a disputed debt is disputed. Defendant, Calvary has filed a Motion for Judgment on the Pleadings[1]. For the reasons which follow, defendant's Motion is denied.

II. FACTS AND HISTORY

Plaintiff alleges that both Calvary Investments, LLC and Calvary Portfolio Svc are business

[1]Pursuant to a stipulation filed by the parties, the second part of defendant's motion which references an exhibit attached to defendant's answer will be treated as a motion for summary judgment and will be addressed after additional discovery is complete.

entities whose principle purpose is the collection of debts. Calvary reports its accounts to national consumer reporting agencies, such as Trans Union, LLC, Experian Information Solutions and Equifax Information Services, Inc. Plaintiff alleges that as debt collectors regulated by the FDCPA, Calvary is legally required to communicate to the credit reporting agencies that a collection account is disputed when they are notified that a consumer disputes the validity of a debt or the accuracy of information. Plaintiff asserts that instead, as a matter of policy, unless the situation involves fraud or identity theft, Calvary does not mark the debts disputed to the credit reporting agencies after being notified of a dispute.

Plaintiff specifically alleges that after viewing her Trans Union credit report in May 2005, she learned that Defendants were reporting false information that she had a derogatory car loan which did not belong to her, and she immediately disputed the accuracy of the account. (Complaint at par. 17). On June 6, 2005, plaintiff was sent a revised disclosure from Trans Union which described the results of her dispute, stating that Defendants had verified the account and made no changes, failing to mark it as disputed. (Complaint at par. 18). Plaintiff alleges that she has suffered damages, including but not limited to, a reduction of her credit score. She also brings the action on behalf of all consumers who have disputed an account reported by defendants through a credit reporting agency and provided a reason other than fraud or identity theft for the dispute.

Defendants deny that Calvary Investments is engaged in the collection of debts. (Answer at par. 5, 6). Furthermore, they deny that Calvary Portfolio, as a data furnisher is obligated to mark a debt as disputed, when contacted by a consumer reporting agency. With regard to plaintiff's account, they deny all allegations and contend that plaintiff alleged fraud to Equifax and that her account was marked disputed.

III. LEGAL STANDARD

A Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure is treated under the same standard as a motion to dismiss pursuant to Rule 12(b)(6). DeBraun v. Meissner, 958 F.Supp. 227, 229 (E.D. Pa. 1997). In a Motion for Judgment on the Pleadings, this Court will accept as true all well-pleaded allegations in the complaint and draw all inferences in favor of the non-moving party. Pennsylvania Nurses Ass'n v. Pa. State Educ. Ass'n, 90 F.3d 797, 799-800 (3d Cir.1996). Judgment will not be granted unless the movant clearly establishes that there is no material issue of fact to be resolved and that he is entitled to judgment as a matter of law. Jablonski v. Pan American World Airways, Inc., 863 F.2d 289, 290 (3d Cir.1988). In addition, the court may consider matters of public record, orders and exhibits attached to the complaint. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.2 (3d Cir.1994). However, the court is not required to accept legal conclusions either alleged or inferred from the pleaded facts. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). To survive a motion to dismiss, the plaintiff must set forth facts, and not mere conclusions, which state a claim as a matter of law. Sterling v. SEPTA, 897 F. Supp. 893, 895 (E.D. Pa. 1995).

IV. DISCUSSION

Plaintiff seeks relief for alleged violation of the Fair Debt Collection Practices Act. Pursuant to section 1692e(8) of the FDCPA:

> "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section...Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed."

Plaintiff argues that defendant failed to report her debt as disputed even after being notified by Trans Union that she disputed the debt.

Defendant asserts that as a data furnisher, Calvary Portfolio Svc. was responsible pursuant to the Fair Credit Reporting Act ("FCRA") to conduct an investigation and that it complied with that requirement. Specifically, defendants argue that they complied with 15 U.S.C. § 1681s-2(b)(1), which provides that after receiving a consumer debt verification form ("CDV"), a data furnisher must "(A) conduct an investigation with respect to the disputed information; (B) review all relevant information provided by the consumer reporting agency...; (C) report the result 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 ...consumer reporting agencies..." Defendants argue that they are not liable under the Fair Debt Collection Practices Act, when they have fully discharged their obligations under the Fair Credit Reporting Act.

Furthermore, defendants note that under the FCRA, the consumer raises a dispute directly with the credit reporting agency, which then requests the data furnisher to conduct an investigation and report back with the results and under the FDCPA, liability attaches when a debt collector fails to communicate that a debt is disputed. They argue that it would therefore be a tortured reading of the FCRA and the FDCPA to require the data furnisher to communicate to the credit reporting agency regarding the existence of a dispute when the credit reporting agency was already aware of the dispute firsthand by virtue of its own direct contact with the consumer.

As plaintiff notes, not all data furnishers are also debt collectors. However, assuming one entity is both a data furnisher and a debt collector, we find no authority to preclude liability under both Acts. As plaintiff indicates, the Court in Farren v. RJM Acquisition Funding, LLC, 2005 WL

1799413 (E.D. Pa. July 26, 2005), the case cited by Defendants, recognized the existence of a cause of action under both the FCRA and FDCPA for an entity who is both a data furnisher and a debt collector, as alleged in this case. We therefore agree that by virtue of its alleged dual role as both a data furnisher and a debt collector, an entity may be subject to both the FCRA and the FDCPA. "Where two statutes are 'capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.' " Ruckelshaus v. Monsanto Co. 467 U.S. 986, 1018, 104 S.Ct. 2862, 2881 (U.S.1984), quoting Morton v. Mancari, 417 U.S. 535, 551 (1974). We agree with plaintiff that there does not appear to be anything in either Act which precludes enforcement or in any way suggests that compliance with one Act relieves the entity's duty to comply with the other Act; we do not find the requirements of the two Acts to be irreconciable. As plaintiff notes, the very fact that defendants admit to marking plaintiff's account disputed after being notified by Equifax is proof that such compliance would be possible upon notification from any of the Consumer Reporting Agencies, even if reference is not specifically made to fraud or identity theft.

Since there exist factual disputes as to whether defendant is a debt collector and as to the policies followed by defendant, this action cannot be dismissed at this time. At least according to the facts as plead by plaintiff, defendant occupies roles as both a data furnisher and debt collector, and therefore is not automatically relieved of its obligations under the FDCPA as a matter of law, simply because it complied with its obligation to conduct an investigation under the FCRA.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LARKAY D. WESLEY,	:	NO. 2:05-cv-3523
Plaintiff	:	
	:	
VS.	:	
	:	
CALVARY INVESTMENTS, LLC,	:	
Defendant	:	

ORDER

AND NOW, this 9th day of May, 2006, upon consideration of defendant's motion for judgment on the pleadings (docket entry #12) and plaintiff's response thereto (docket entry #17), it is hereby ORDERED that defendant's motion for judgment on the pleadings (first part of docket entry #12[2]) is DENIED.

It is so ORDERED.

BY THE COURT:

/s/ Charles B. Smith
CHARLES B. SMITH
UNITED STATES MAGISTRATE JUDGE

[2]The second part of defendant's motion will be treated as a separate motion for summary judgment to be addressed after additional discovery has been completed.