

NY Judge Green Lights FCRA Suit Against Experian

from The Privacy Times

JUDGE PERMITS FCRA SUIT AGAINST EXPERIAN TO PROCEED

A federal judge in Manhattan has rejected Experian Information Solutions Inc.'s bid to dismiss a Bronx woman's FCRA lawsuit charging that the giant credit bureau failed to investigate her disputes of alleged inaccuracies stemming from identity theft.

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U.S. District Judge Colleen McMahon, of New York's Southern District, dismissed Experian's claim it complied with the FCRA as a matter of law merely by verifying the disputed debts with collectors and creditors. The judge also ruled that the plaintiff, Keisha Jones, had standing to bring the suit even though she is not alleging any actual damages. She upheld Jones' right to pursue statutory and punitive damages. The ruling means the case will go to trial unless the two sides settle. The opinion was first reported by The New York Law Journal.

Jones, a New York resident, disputed to Experian she was responsible for an \$800 debt at a Philadelphia hospital reported by Central Financial Control (CFC), a collector. She told Experian she likely was the victim of identity theft. Similarly, she said she didn't owe nearly \$3,000 to Comcast, which was showing past due and charged off. In response to both disputes, Experian followed its normal practice of sending an electronic query to the two furnishers. CFC confirmed the disputed accounts were associated with Jones' name and Social Security number, but with a different birth date and

address. Nonetheless, Experian told Jones it would not remove the disputed items.

Experian gave her the same response, even after Comcast advised that Jones' first name was spelled differently on the account—"Keshia instead of Keisha" and that the address was different, but the Social Security number and birthday were the same.

In denying Experian's motion that Jones lacks Article III standing because she did not allege actual damages, Judge McMahon wrote that such standing arises when a plaintiff suffers an "injury in fact" consisting of "an invasion of a legally protected interest," quoting the U.S. Supreme Court's 1992 decision in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-62.

Such an injury "may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing," she said, quoting the Supreme Court's 1975 decision in *Warth v. Seldin*, 422 U.S. 490, 500.

"Defendant's alleged failure to fulfill its statutory obligations with respect to Plaintiff caused Plaintiff an injury in fact," she said, noting that Jones had been denied the benefit of the reasonable reinvestigation of her credit report to which she was statutorily entitled. Judge McMahon wrote. "This is an actual, concrete injury which is particularized to Plaintiff."

She went on to reject Experian's argument that it had fulfilled its obligations as a matter of law by asking CFC and Comcast about the disputed items. A reasonable jury could find otherwise, Judge McMahon said, in light of the fact that Jones had shown that the disputed items contained inaccurate information concerning name, birthday and address. She ruled that the FCRA does not require that erroneous information was given to third parties in order for Jones to state a claim.

Finally, Judge McMahon ruled that Jones may be entitled to punitive damages under the FCRA, even in the absence of actual damages, because a reasonable jury could find that Experian had willfully failed to fulfill its duty.

"We think it's a very significant decision," plaintiff's attorney Kevin Mallon, of Fishman & Mallon, told The New York Journal. "The procedures that are outlined in the decision are, in our experience, standard operating procedure. This is what [the credit reporting agencies] do, and they don't do much."

It's particularly baffling in a case of identity theft," he added, since simply confirming someone incurred a debt using Jones' name and personal information cannot possibly not rule out identity theft. (Jones v. Experian: USDC-S.D.N.Y. No. 1:11-cv-09136; Nov. 12)

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