UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

NATHAN S. HASSEL, Plaintiff, v. CENTRIC BANK, et al., Defendants.	CIVIL ACTION NO. 1:19-CV-02081 (WILSON, J.) (MEHALCHICK, M.J.)

REPORT AND RECOMMENDATION

This is an action brought pursuant to the Fair Credit Reporting Act by *pro se* plaintiff Nathan S. Hassel. (Doc. 2). Before the Court is a motion to dismiss filed December 24, 2019, by Defendant Centric Bank ("Centric"). (Doc. 6). The Defendant's motion to dismiss states that it is not a proper party under the law raised by Plaintiff, that Plaintiff has no private right of action against it, and that Plaintiff did not adequately plead certain portions of the Complaint. (Doc. 6). For the reasons described herein, the Court respectfully recommends that Defendant's motion be granted.

I. BACKGROUND AND PROCEDURAL HISTORY

Nathan S. Hassel ("Hassel") filed a Fair Credit Reporting Act (FCRA) action against Defendants Centric Bank and Trans Union, LLC on December 6, 2019. (Doc. 2). In his Complaint, Hassel asserts that Defendant Centric Bank erroneously reported a mortgage payment as "late" to Defendant Trans Union, LLC ("Trans Union") and that Trans Union subsequently lowered Hassel's credit score as a result of this error. (Doc. 2, at 3-4). Plaintiff further avers that after he notified Defendants of the error, neither Centric nor Trans Union performed an adequate investigation or communicated with him details of an investigation as

required by the FCRA. (Doc. 2, at 5-8). Plaintiff states that as a result of Defendants' actions and his erroneous credit score, he has avoided applying for additional credit. (Doc. 2, at 8).

Hassel submits that he first discovered the alleged error on October 8, 2019, when he checked his credit report and noticed a 54 point drop in his credit score, "taking his creditworthiness from what lenders would consider low risk, or excellent, down to a rating that would place him into a category that lenders and creditors would consider high risk and not likely to be approved for loans and/or lines of credit." (Doc. 2, ¶¶ 12, 13). Hassel discovered that the reason for this drop was a "30 day delinquency" reported by Centric. (Doc. 2, ¶ 14).

On October 15, 2019, Hassel contacted Centric by phone to notify them of the purported error. (Doc. 2, ¶ 18). At that time, Hassel also submitted proof, via email, to Centric that his September mortgage payment had been made before it was thirty days late. (Doc. 2, ¶ 18). On October 16, 2019, Hassel requested an update on the status of the dispute from Centric. (Doc. 2, ¶ 19). Later that day, Hassel received an email from Centric showing that he had sent his September mortgage payment prior to the 30-days late threshold. (Doc. 2, ¶ 20). On October 17, 2019, Hassel sent ACH deduction details to Centric showing his September mortgage payment had been deducted from his account prior to 30 days from the day it was due, and also showing that he had $2,000.00 of overdraft protection on the checking account "to refute any claim of returned payment due to insufficient funds for this and any previous months' payments." (Doc. 2, ¶ 21).

Centric subsequently requested proof of payment in the form of bank statements from previous months, which Hassel asserts "has no bearing on the accuracy of the information in

dispute on his credit report and payment had already been made for these months without issue." (Doc. 2, ¶ 22). On October 19, 2019, Hassel submitted a reply with a restatement of the reason for the dispute and a request to correct the error. (Doc. 2, ¶ 23). This was the last communication between Hassel and Centric. (Doc. 2, ¶ 24).

Centric's Motion to Dismiss has been briefed by both sides and this issue is now ripe for disposition. (Doc. 6; Doc. 11; Doc. 15).

II. MOTION TO DISMISS STANDARD

Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes a defendant to move to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "Under Rule 12(b)(6), a motion to dismiss may be granted only if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds the plaintiff's claims lack facial plausibility." *Warren Gen. Hosp. v. Amgen Inc.*, 643 F.3d 77, 84 (3d Cir. 2011) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007)). Although the Court must accept the allegations in the complaint as true, it is not compelled to accept "unsupported conclusions and unwarranted inferences, or a legal conclusion couched as a factual allegation." *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (quoting *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007)). In deciding a Rule 12(b)(6) motion, the Court may consider the facts alleged on the face of the complaint, as well as "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

III. DISCUSSION

A. CENTRIC IS NOT A PROPER PARTY FOR CLAIMS BROUGHT UNDER SECTION 1681I OF THE FCRA.

Centric first submits that any claim brought against it under 15 U.S.C. § 1681i of the FCRA must be dismissed because this section provides no cause of action against furnishers of information. (Doc. 15, at 13). In his Complaint, Hassel alleges that Centric violated 15 U.S.C. § 1681i because it received notification from Trans Union of his dispute, he had communicated the details of the dispute directly to Centric, and he was not provided explanation of the dispute procedure or reinvestigation as required by 15 U.S.C. § 1681i. (Doc. 2, ¶¶ 46, 48, 60). Hassel alleges that Centric is a "furnisher" as defined in the FCRA. (Doc. 2, ¶ 9).

Only consumer reporting agencies are governed by 15 U.S.C. § 1681i. *Harris v. Pa. Higher Educ. Assistance Agency/Am. Educ. Servs.*, 696 F. App'x 87, 90 (3d Cir. 2017) (upholding District Court's dismissal of § 1681i claim against a student lender because the defendant was not a consumer reporting agency under the FCRA); *Bartell v. Dell Financial Services, LP*, 2007 WL 89157, at *3 (M.D. Pa. 2007) (explaining that 15 U.S.C. § 1681i established a duty on the part of a consumer reporting agency to give notice of a dispute to a furnisher of information); *see Anthony v. GE Capital Retail Bank*, 321 F. Supp. 3d 469, 478 (S.D.N.Y. 2017) ("FCRA § 1681i provides a right of action against a consumer reporting agency, which 'refers to firms that are in the business of assembling and evaluating consumer credit information.'"). According to the FCRA, a consumer reporting agency, at least in part, gathers or evaluates consumer information in order to furnish that information to third parties. *Harris*, 696 F. App'x at 90 (citing 15 U.S.C. § 1681a(f)). "As used in the statute the term refers to firms that

are in the business of assembling and evaluating consumer credit information." *Harris*, 696 F. App'x at 90 (quoting *DiGianni v. Stern's*, 26 F.3d 346, 348-49 (2d Cir. 1994)).

Centric does not engage in the type of activity which would classify it as a consumer reporting agency under the FCRA. *See* 15 U.S.C. § 1681a(f). Indeed, Hassel alleges Centric is a "furnisher" of consumer credit information, while Trans Union is a "consumer reporting agency." (Doc. 2, ¶¶ 9,10). Only consumer reporting agencies are governed by 15 U.S.C. § 1681i. *Harris*, 696 F. App'x at 90. Therefore, it is recommended that Hassel's claim against Centric for allegedly violating 15 U.S.C. § 1681i be **DISMISSED WITH PREJUDICE.**[1]

B. HASSEL DEMONSTRATES THAT CENTRIC PERFORMED REASONABLE INVESTIGATION AND ACCURATE REPORTING.

Centric asserts that it conducted a reasonable investigation into Hassel's complaints, as admitted by Hassel himself, thus any claim brought under 15 U.S.C. § 1681s-2(b) should be moot. (Doc. 15, at 15). Even a cursory look at Hassel's brief, which Centric cites in support of this argument, shows that Hassel acknowledged reasonable investigation by Centric only *after* he had filed suit. (Doc. 11, at 6). Such argument by Centric is, therefore, meritless.

Centric additionally asserts that Hassel failed to plead facts which would raise a right to relief under 15 U.S.C. § 1681s-2(b). This section of the FCRA mandates that furnishers, after receiving notice of a dispute from a consumer reporting agency, must:

(A) conduct an investigation with respect to the disputed information;

[1] Similarly, any claim brought pursuant to an alleged violation of 15 U.S.C. § 1681s-2(a) must be **DISMISSED WITH PREJUDICE**, as this section "shall be enforced exclusively … by the Federal agencies and officials and the State officials identified in [15 U.S.C. § 1681s]." 15 U.S.C. § 1681s-2(d); *see Tauro v. Capital One Financial Corporation*, 684 F. App'x 240, 242 (3d Cir. 2017) ("Notably, however, the FCRA prohibits private enforcement of the duties arising under § 1681s-2(a).").

> (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;
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> (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 consumers on a nationwide basis; and
>
> (E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly — (i) modify that item of information; (ii) delete that item of information; or (iii) permanently block the reporting of that item of information.
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> 15 U.S.C. § 1681s-2(b).

To state a valid claim under 15 U.S.C. § 1681s-2(b), a plaintiff must establish "(1) that he notified a consumer reporting agency of the dispute under § 1681i, (2) that the consumer reporting agency notified the party who furnished the information under § 1681i(a)(2), and (3) that the party who furnished the information failed to investigate or rectify the disputed charge." *Shull v. Synchrony Bank*, 2020 WL 1467269, at *3 (M.D. Pa. 2020) (internal quotation omitted).

In his Complaint, Hassel avers that Centric "failed to conduct reasonable investigation into the Trans Union provided dispute," in violation of 15 U.S.C. § 1681s-2(b). (Doc. 2, ¶ 50).[2] He alleges that Trans Union provided notice of the dispute to Centric after he contacted Trans Union on October 28, 2019. (Doc. 2, ¶¶ 26, 49). He further alleges that he timely made

[2] The FCRA, through 15 U.S.C. § 1681o, provides the right for a consumer to sue for damages caused by a furnisher's negligent breach of its duties to consumers under 15 U.S.C. § 1681s-2(b). *Seamans v. Temple University*, 744 F.3d 853, 864 (3d Cir. 2014).

his September payment and Centric's failure to provide investigation details or change his credit report as requested evince a lack of reasonable investigation in violation of 15 U.S.C. § 1681s-2(b). (Doc. 2, ¶¶ 28-31, 49-52). Centric asserts that the exhibits attached to the Complaint[3] show that Hassel's late payment issue was adequately investigated and communicated to him by Centric, and that Hassel refused to provide information which Centric required to investigate his claim. (Doc. 15, at 16-17). By not providing requested information, according to Centric, an action under 15 U.S.C. § 1681s-2 cannot stand. (Doc. 15, at 17).

When assessing the reasonableness of an investigation, it would be absurd to require a furnisher to continue its investigation after the information at issue is proven accurate and the accuracy is communicated to the consumer. Indeed, in *Shull*, this Court stated that to adequately plead an action under 15 U.S.C. § 1681s-2(b), the plaintiff must plausibly plead that the report was factually inaccurate. *Shull*, 2020 WL 1467269, at *4. It is apparent from the exhibits attached to Hassel's Complaint that the information furnished by Centric was accurate and this accuracy was properly communicated to Hassel in October 2019. (Doc. 2-1, at 3). Centric properly notified Hassel that his August, not his September, payment was 31 days overdue. (Doc. 2-1, at 3). When faced with Centric's statement, from its Motion to Dismiss, that "Plaintiff was 31 days late on his payment due on August 9, 2019, paid on September 9, 2019," Hassel does not dispute its accuracy. (Doc. 11, at 5). Rather, he asserts that this information had not been communicated to him during the dispute process, causing

[3] Courts may consider matters of public record, exhibits attached to the complaint, and undisputedly authentic documents attached to a motion to dismiss. *Delaware Nation v. Pennsylvania*, 446 F.3d 410, 413 n. 2 (3d Cir. 2006).

him to believe that it was his payment due on September 9, 2019, that had been reported as 31 days late. (Doc. 11, at 5). He states that had Centric's investigation been properly conducted in October and November of 2019, this fact would have been discovered and communicated to him at that point in time. (Doc. 11, at 5).

Exhibit A to Hassel's Complaint, however, indicates that this information was communicated to Hassel on October 16, 2019. (Doc. 2-1, at 3). In that communication, Centric circled the payment at issue showing that the payment due on August 9, 2019, was paid on September 9, 2019. (Doc. 2-1, at 3). Furthermore, Centric wrote that Hassel's August 21, 2019, payment was returned due to "not sufficient funds" on August 26, 2019, and that his August payment was satisfied on September 10, 2019. (Doc. 2-1, at 3). This communication directly contradicts Hassel's claim and eliminates the plausibility that Centric's report was factually inaccurate. *See Glover v. Horvath*, 2015 WL 4040597, at *11 (M.D. Pa. 2015) (citing exhibits attached to the complaint which contradict plaintiff's allegations in granting motion to dismiss).

As Centric demonstrated to Hassel that the information it furnished was accurate, the Court shall recommend that Hassel's claims arising from Centric's alleged violation of 15 U.S.C. § 1681s-2(b) be **DISMISSED WITH PREJUDICE**.

IV. LEAVE TO AMEND WOULD BE FUTILE.

The Third Circuit has instructed that if a complaint is vulnerable to dismissal for failure to state a claim, the district court must permit a curative amendment, unless an amendment would be inequitable or futile. *Grayson v. Mayview State Hosp*, 293 F.3d 103, 108 (3d Cir. 2002). The Third Circuit has also acknowledged that a district court has "substantial leeway in

deciding whether to grant leave to amend." *Lake v. Arnold*, 232 F.3d 360, 373 (3d Cir. 2000); *see also Ruffin v. Mooney*, No. 3:16-1987, 2017 WL 3390361, at *2 (M.D. Pa. Jan. 31, 2017) (dismissing prisoner-plaintiff's case without prejudice where it was unclear whether he was seeking relief under § 1983 or a habeas statute).

Hassel has exhibited through his communications with Centric that the information furnished to Trans Union was not inaccurate, only that he was mistaken as to which month's payment was at issue. (Doc. 2-1, at 3). Therefore, granting Hassel leave to amend his complaint as to his claim for violation of U.S.C. § 1681s-2(b) would be futile. The remaining violations alleged by Hassel are either enforced exclusively by government actors, or do not pertain to furnishers such as Centric. *See* 15 U.S.C. §§ 1681i, 1681s-2(d). Granting leave to amend these claims, too, would be futile.

V. RECOMMENDATION

For the reasons set forth herein, it is respectfully recommended that Defendant Centric's Motion to Dismiss (Doc. 6) be **GRANTED**.

Dated: April 13, 2020

s/ Karoline Mehalchick
KAROLINE MEHALCHICK
United States Magistrate Judge

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NATHAN S. HASSELL, Plaintiff, v. CENTRIC BANK, et al., Defendants.	CIVIL ACTION NO. 1:19-CV-02081 (WILSON, J.) (MEHALCHICK, M.J.)

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing **Report and Recommendation** dated **April 13, 2020**. Any party may obtain a review of the Report and Recommendation pursuant to Rule 72.3, which provides:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Dated: April 13, 2020

s/ Karoline Mehalchick
KAROLINE MEHALCHICK
United States Magistrate Judge