

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Evelyn Kettler,

Civil File No. 03-2621 (PAM/RLE)

Plaintiff,

v.

**MEMORANDUM AND ORDER**

CSC Credit Service, Inc.,  
Trans Union L.L.C., Experian  
Information Solutions, Inc.,  
Equifax, d/b/a/ Equifax Information  
Services, Inc., Household Bank,  
and Washington Mutual Bank, FA,

Defendants.

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This matter is before the Court on Defendant CSC Credit Service, Inc.'s ("CSC")  
Motion to Dismiss.<sup>1</sup> For the reasons that follow, the Court grants the Motion.

**BACKGROUND**

Plaintiff Evelyn Kettler obtained a mortgage in 1998 that was eventually purchased  
by Defendant Washington Mutual Bank, FA ("Washington Mutual"). Kettler's husband,  
Richard Kettler did not sign the mortgage. In addition, Kettler and her husband held jointly  
a credit card through Household Bank ("Household"). In June 2000, Richard Kettler filed  
for bankruptcy and on both his original petition and on his reorganization plan, listed both  
accounts as his. On August 1, 2002, and again on October 15, 2002, Kettler sought to

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<sup>1</sup> The remaining Defendants, Equifax d/b/a Equifax Information Services, L.L.C.  
("Equifax"), Trans Union L.L.C. ("Trans Union"), and Experian Information Systems, Inc.  
("Experian") have joined in CSC's Motion. The allegations against CSC, Equifax, Trans  
Union and Experian are identical to one another. Accordingly, the Court will refer to these  
four Defendants collectively throughout the Order.

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RICHARD D. SLETTEN, CLERK  
JUDGMENT ENTD. \_\_\_\_\_  
DEPUTY CLERK \_\_\_\_\_

refinance her Washington Mutual mortgage, but was unable to do so because the credit report noted that her Washington Mutual account and her Household account were involved in bankruptcy proceedings.

On November 14, 2002, Kettler, acting through her attorney, disputed the notation that these accounts were involved in bankruptcy proceedings. Ultimately, Defendants investigated the two accounts and revised their credit reports. However, the revised credit reports did not satisfy Kettler. Kettler brought this action against Defendants for violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681e, 1681i, and for credit defamation. (Compl. Counts I - VII.) In addition, Kettler contends that Washington Mutual and Household violated § 1681s-2(b) of the FCRA. (Compl. Counts IX, XIII.) She also alleges state-law claims of invasion of privacy, libel, and tortious interference with credit expectancy against Washington Mutual and Household. (*Id.* Counts X, XI, XII, XIV, XV.) Washington Mutual and Household have not moved to dismiss any of these claims.<sup>2</sup>

## DISCUSSION

### A. Standard of Review

For the purposes of the Motion to Dismiss, the Court takes all facts alleged in the Complaint as true. *See Westcott v. Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990). The Court

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<sup>2</sup> The parties have agreed to dismiss Kettler's § 1681e claims. The instant Motion pertains only to her § 1681i claims and her defamation claims against CSC, Equifax, Trans Union, and Experian. It does not affect the claims against Washington Union and Household.

must construe the allegations in the Complaint and all reasonable inferences arising from the Complaint favorably to Kettler. Morton v. Becker, 793 F.2d 185, 187 (8th Cir. 1986). A motion to dismiss will be granted only if "it appears beyond doubt that the Plaintiff can prove no set of facts which would entitle him to relief." Id.; see also Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

**B. Section 1681i**

Kettler claims that Defendants violated § 1681i by failing to respond appropriately to her letter disputing the bankruptcy entries on her credit report. Defendants' duty when performing a reinvestigation under § 1681i is different from the duty to ensure maximum possible accuracy of the initial report under § 1681e(b). See Olwell v. Med. Info. Bureau, Civ. No. 01-1481, 2003 WL 79035, at \*5 (D. Minn. Jan. 7, 2003) (Tunheim, J.) (citing Cushman v. Trans Union Corp., 115 F.3d 220, 225 (3rd Cir. 1997)). Once an individual notifies the credit reporting agency of a dispute regarding the completeness or accuracy of information contained in the credit report, the credit reporting agency has a duty to investigate the disputed information and to correct or delete the inaccurate or incomplete information. 15 U.S.C. §§ 1681i(a)(1), (5). In order to fulfill its obligations under § 1681i, a credit reporting agency may be required to verify the accuracy of its initial source of information, depending on whether the consumer has alerted the credit reporting agency to the possibility that the underlying source may be unreliable and on the cost of verifying the accuracy of the source versus the harm that inaccurately reported information may cause the

consumer. Cushman, 115 F.3d at 225-26 (citing Henson v. CSC Credit Servs., 29 F.3d 280, 287 (7th Cir. 1994)).

In this case, Kettler's letter to Defendants put Defendants on notice that they were required under § 1681i to investigate the information she disputed. However, her letter merely stated that she had never filed for bankruptcy. (Compl. Ex. 14.) The letter did not explain that her husband had filed for bankruptcy and mistakenly listed the Washington Mutual and Household debts as his. Thus, Defendants were alerted only to the fact that Kettler claimed that she had not filed for bankruptcy.

As they were obligated to do, Defendants investigated Kettler's claim. On December 19, 2002, Defendants responded to Kettler's letter. They informed Kettler that the Household debt was still reporting as being involved in a bankruptcy, but that the Washington Mutual debt was no longer reporting as involved in a bankruptcy. (Id. Ex. 15.) The next day, Defendants sent another letter to Kettler and informed her that the Washington Mutual debt would be removed from her credit report altogether. (Id. Ex. 16.) There was no explanation for the decision to remove the debt entry.

Kettler claims that Defendants' failure to discover that the Household debt was hers and not her husband's violated Defendants' duty to investigate under § 1681i. Had Defendants conducted a proper investigation, Kettler argues, they would have discovered that only Kettler's husband had declared bankruptcy, and the credit report should have been corrected to reflect that fact. Instead, Defendants deleted the Washington Mutual account

entry entirely and did not change the Household notation.

The information reported by Defendants was undisputedly information Defendants received from public bankruptcy records. Indeed, Kettler attached a copy of her husband's bankruptcy petition to her Complaint that shows these debts and lists Kettler as co-debtor on these debts. (Compl. Ex. 2.) Thus, the information Defendants reported after the investigation was accurate. Kettler contends that Defendants should have investigated further and determined that her husband was mistaken in listing these debts in his petition. In other words, Kettler asks the Court to require Defendants to inquire into the accuracy of the information underlying public records. The Court will not create such a burdensome requirement.

In this case, Kettler failed to explain the situation to Defendants in a way that would have allowed them to investigate her claim and reach the result she desired. Rather than merely insisting that she had never filed for bankruptcy, she should have explained that her husband filed for bankruptcy and mistakenly listed these debts as his. This information would have allowed Defendants to fully investigate Kettler's contentions and might have alerted Defendants to the necessity of inquiring as to the accuracy of the public bankruptcy records. Absent this information, Defendants cannot be expected to inquire into the accuracy of the information contained in Kettler's husband's bankruptcy petition. Defendants must be allowed to rely on information contained in public records absent more specific evidence that the information therein is inaccurate. See Wilson v. Rental Research Servs., Inc., Civ.

No. 3-96-820, slip op. at 12 (D. Minn. Nov. 10, 1997) (Magnuson, J.) (“The Court does not believe the FCRA requires [defendant] to go beyond accurately reporting information from the court database and conducting more extensive research into information not in their possession”), aff’d by divided en banc court, 206 F.3d 810 (8th Cir. 2000). As a matter of law, Kettler has failed to show that Defendants violated their duties under § 1681i.

### C. Defamation


Finally, Kettler brings a claim for defamation against Defendants. The FCRA provides that “no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency.” 15 U.S.C. § 1681h(e). This provision does not apply if the consumer alleges “false information furnished with malice or willful intent to injure such consumer.” Id. Because the information Defendants allegedly supplied to third parties was accurate, Kettler’s defamation claim fails. Moreover, even if the information was not accurate, Defendants complied with their statutory duties and Kettler cannot show the requisite malice or willful intent. See Phillips v. Grendahl, 312 F.3d 357, 368 (8th Cir. 2002). Accordingly, the defamation claims are dismissed.

### CONCLUSION

Kettler’s Complaint fails to state a claim on which relief can be granted as to Defendants CSC, Equifax, Trans Union, and Experian.

Accordingly, **IT IS HEREBY ORDERED** that CSC's Motion to Dismiss (Clerk Doc. No. 13) is **GRANTED** and Counts I through VII of the Complaint are **DISMISSED WITH PREJUDICE**.

Dated: August 11, 2003

  
Paul A. Magnuson  
United States District Court Judge