

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

ERIC KELLER, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

EXPERIAN INFORMATION
SOLUTIONS, INC.,

Defendant.

Case No.: 1:23-cv-00409-LCB-LPA

**MEMORANDUM OF LAW IN SUPPORT OF EXPERIAN INFORMATION
SOLUTIONS, INC.’S MOTION FOR JUDGMENT ON THE PLEADINGS**

This case arises under the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* The operative First Amended Complaint pleads three claims—*all* under Section 1681i of the FCRA. In ruling on Experian’s motion to dismiss, the Court rightly dismissed Counts 2 and 3, finding that Experian has no legal duty under Section 1681i to reinvestigate Plaintiff’s dispute because it sought a reinvestigation of a legal issue, not a factual one. ECF No. 21. Accordingly, the Court found that Plaintiff failed to plead a *prima facie* claim under Section 1681i. *Id.* As that ruling also dooms Count 1, Experian seeks judgment on pleadings on Count 1, and dismissal of this action with prejudice.¹

The analysis compelling dismissal is straightforward. In Count 1, Plaintiff alleges that Experian violated Section 1681i by failing to conduct a reasonable reinvestigation of

¹ The allegations are summarized in EIS’s earlier Motion to Dismiss and this Court’s order on that motion.

Plaintiff's dispute pursuant to Experian's suspicious mail policy. In denying Experian's motion to dismiss that count, the Court explained that whether Experian acted reasonably pursuant to that policy is a question of fact that cannot be resolved on the pleadings. What can (and should) be resolved on the pleadings, however, is the threshold question on the first element of the claim—namely: Was Experian even legally obligated to conduct a reinvestigation of Plaintiff's dispute under Section 1681i? After all, the issue of whether Experian acted reasonably (or unreasonably) under its reinvestigation policy is *irrelevant* if there was no legal duty to conduct a reinvestigation. Either way, the claim fails.

The Court's ruling on Experian's motion to dismiss as to Counts 2 and 3 is dispositive. As the Court explained, “[t]o state a claim under § 1681i, a consumer must *first show* that his or her credit file contains inaccurate or incomplete information.” ECF No. 21 at 10 (emphasis added) (citation omitted). Section 1681i only applies to *factual* inaccuracies, not legal disputes. *Id.* at 12-13; *see also Perry v. Toyota Motor Credit Corporation*, Case No. 1:18CV00034, 2019 WL 332813, at *4 (W.D. Va. Jan 25, 2019) (holding that the existence of a factual inaccuracy is a *prima facie* element of a claim under Section 1681i). And, “[t]o determine whether a consumer has identified a factual inaccuracy on his or her credit report that would *activate* § 1681i's *reinvestigation requirement*, [t]he decisive inquiry is whether the defendant [CRA] could have uncovered the inaccuracy if it had reasonably reinvestigated the matter.” ECF No. 21 at 10 (emphasis added) (citations omitted).

Here, the Court already has found the dispute over which Plaintiff sought a reinvestigation involved a legal issue—was Truist in breach of contract—not a factual one. For this reason, “*no reasonable investigation* on the part of Defendant could have uncovered an inaccuracy in Plaintiff's report because there was never any factual deficiency in the report.”

Id. at 12. That being the case, regardless of the reasonableness of Experian’s actions pursuant to its suspicious mail policy, that claim can never move forward because a legal dispute of the type Plaintiff alleges does not “activate § 1681i’s reinvestigation requirement[.]” *Id.* at 10. Put differently, because Experian had no legal duty under Section 1681i to reinvestigate Plaintiff’s legal dispute, the reasonableness of Experian’s actions is immaterial. *Estrada v. Experian Info. Sols., Inc.*, No. 21-cv-00114, 2023 WL 4411034, at *10 (W.D. Tex. July 7, 2023) (“Because Plaintiff’s credit report reflected a legal dispute, it follows that Defendant’s duty to investigate was not triggered and, by extension, neither was Section 1681i(c.)”); *Jackson v. Bank of Am.*, 579 F. Supp. 3d 1295, 1297 (N.D. Ala. 2022), *appeal dismissed sub nom. Jackson v. Bank of Am., N.A.*, No. 22-11956-HH, 2022 WL 17452339 (11th Cir. Nov. 10, 2022) (“Credit reporting agencies have no obligation to investigate ‘legal disputes about the validity of the underlying debt they report.’” (quoting source omitted)).

In sum, even assuming, *arguendo*, that Plaintiff could show that Experian suspicious mail procedures are unreasonable, Count 1 must be dismissed because it is based upon the reinvestigation request of a legal dispute and, hence, as a matter of law, fails to state a claim under Section 1681i. Thus, Experian respectfully requests that the Court enter judgment on the pleadings in Experian’s favor on Count 1, and dismiss this action with prejudice.

This the 3rd day of April, 2024.

Respectfully submitted,

/s/ John A. Vogt

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CERTIFICATION OF WORD COUNT

The undersigned hereby certifies that the foregoing document does not exceed the word count set forth in L.R. Civ. Pro. 7.3. In making this certification, the undersigned relies upon the word count reported by its word processing software.

This the 3rd day of April, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2024, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorney of record:

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