

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

MARIA AGOSTA,	:	
Plaintiff,	:	CIVIL ACTION
	:	
V.	:	NO. 02-806
	:	
INOVISION, INC.,	:	
Defendant.	:	

MEMORANDUM OPINION

LEGROME D. DAVIS, J.

DECEMBER __, 2003

Presently before this Court are Defendant InoVision, Inc.’s Motion for Summary Judgment (Def.’s Mot. for Summ. J., Doc. No. 26) filed on April 14, 2003, Plaintiff’s Opposition to Defendant InoVision Inc.’s Motion for Summary Judgment (Pl.’s Opp., Doc. No. 31) filed on May 12, 2003, and the Reply to Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment (Def.’s Reply, Doc. No 37) filed by Defendant InoVision, Inc. on May 30, 2003. Also before this Court are the Motion for Partial Summary Judgment (Pl.’s Mot. for Summ. J., Doc. No. 27) filed by Plaintiff on April 14, 2003, the Opposition to Plaintiff’s Motion for Partial Summary Judgment (Def.’s Opp., Doc. No. 32) filed by Defendant InoVision, Inc. on May 14, 2003, and the Reply to Defendant InoVision’s Opposition to Plaintiff’s Motion for Partial Summary Judgment (Pl.’s Reply, Doc. No. 38) filed by Plaintiff on May 30, 3002.

I. Factual Background and Procedural History

On February 15, 2002, Maria Agosta (“Plaintiff”) filed suit against InoVision, Inc. (“InoVision”), Equifax Credit Information, and Equifax, Inc. (together, “Defendants”) for alleged violations of the Fair Credit Reporting Act. 15 U.S.C. § 1681, et seq (“FCRA”), the Fair Debt

Collection Practices Act, 15 U.S.C. § 1692, et seq. (“FDCPA”), and common law defamation, negligence and invasion of privacy/false light, seeking recovery for “serious financial losses, credit and dignitary harm and emotional distress damages.” See Pl.’s Mot. for Summ. J. at 5. The Equifax defendants settled with Plaintiff and the case against those defendants was dismissed by praecipe on February 13, 2003. See Pl.’s Praecipe, Doc. No. 24. Plaintiff’s remaining claims against InoVision allege that though Plaintiff disputed the account, InoVision inaccurately reported a charged off PECO utility account for two years after Plaintiff no longer resided at the apartment that had accumulated \$1200 of unpaid electricity bills. See Pl.’s Mot. for Summ. J. at 5.

Therefore, Plaintiff claims that InoVision violated the FDCPA and the FCRA by reporting the commencement of delinquency incorrectly and by failing to indicate that Plaintiff disputed the accuracy of the report. See Id. at 2. According to Plaintiff’s deposition testimony, shortly before vacating the apartment on 626 S. 10th Street in February 1994, she contacted PECO to terminate the account. See Pl.’s Mot. for Summ. J. at Ex. B, Agosta Dep. at 61-63. However, PECO records indicate that Agosta’s verbal request for termination on February 14, 1994 was followed by a visit to 626 S. 10th Street by PECO technicians on February 16, 2004 at which time Plaintiff dismissed the technicians, expressing a desire for service to continue at that address. See Def. Mot. for Summ. J., Ex. D. Until June 1996 when it terminated the account and discontinued service, PECO continued to provide electricity and send billing statements to 626 S. 10th Street. Id. NCO Financial Systems, Inc., an independent collection agency, (“NCO”) then reported the delinquency on PECO’s behalf. See Def. Mot. for Summ. J. at Ex. F, Jenkins Dep. at 76-80; Ex. H, Maguire Aff. InoVision purchased the debt from PECO on March

24, 1998; as part of the transfer, PECO warranted the validity of the debt. See Def. Mot. for Summ. J., Ex. C. In 2000, when Sovereign Bank denied her application for a mortgage, Plaintiff discovered that InoVision was furnishing information of alleged delinquency on this utility service account. See Pl.’s Mot. for Summ. J. at Ex. B, Agosta Dep. at 42-48. Chase and Capital One also denied credit card accounts to Plaintiff after reviewing her credit report which she claims contained only one adverse entry, the PECO account.¹ See Pl.’s Mot. for Summ. J., Ex. F. Plaintiff disputed the inaccuracy of the negative data with Equifax and other credit reporting agencies, who submitted Consumer Dispute Verification forms (“CDV”) to InoVision through its collection agency, NCO in October 2001. See Def. Mot. for Summ. J. at 4. InoVision claims that NCO later conducted an investigation as to the validity of the debt the findings of which InoVision communicated to Plaintiff. See Def. Mot. for Summ. J. at Ex. F, Jenkins Dep. at 71.

Plaintiff argues that the commencement of delinquency began in February 1994, thirty days after the last payment Plaintiff made on the account. She further argues that because the information did not appear on Plaintiff’s credit report until June 1996, the derogatory information appeared on her credit report after September 2001, in excess of the seven-year (plus 180 day) period allowable under the FCRA. 15 U.S.C. § 1681c(a)-(c). InoVision argues that in accordance with utility industry practice and Pennsylvania Utility Commission (“PUC”) regulations, the “charge-off/shut-off” date qualifies as the first delinquency because it marks the

¹ InoVision notes that Plaintiff consistently made late payments to the PECO account at 1438 Snyder Avenue and was repeatedly delinquent on PECO and other accounts. See Def. Mot. for Summ. J. at 4. InoVision relies primarily on Plaintiff’s deposition testimony and an Equifax credit report for this information and uses it to argue that the cause of future credit application denials was not solely the alleged PECO account. Id. at Ex. E

date that service can be terminated regardless of payment history on the account. See Def. Mot. for Summ. J. at 5. Plaintiff concludes that InoVision’s own admissions via deposition testimony of its corporate representative, Amelie Jenkins, reveal no issue of material fact that would preclude judgment as a matter of law due to the inaccurate, untimely, and defamatory nature of the reported information in violation of FDCPA § 1692e(8) and FCRA § 1681s-2(b). See generally Pl.’s Mot. for Summ. J at 3-7. InoVision argues that only when a furnisher fails to take action after receiving information from a credit reporting agency are the duties created by FCRA § 1681s-2(b) triggered, that it appropriately concluded that the information it reported was accurate, timely, and that a reinvestigation would yield the same conclusion. Finally, InoVision argues that Plaintiff fails to establish a prima facie case under the least sophisticated consumer test that it violated the FDCPA and that her claims under the FDCPA are time barred by the statute of limitations. See generally Def.’s Mot. for Summ. J. at 11-20. In the alternative, InoVision contends that were such a cause of action available, Plaintiff’s state law claims are preempted by the FCRA Id.

II. Standard of Review

Summary judgment is appropriate when “there is no genuine issue of material fact and . . . the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). In reviewing the record, “a court must view the facts in the light most favorable to the nonmoving party and draw all inferences in that party’s favor.” Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994). The moving party bears the burden of showing that the record discloses no genuine issues as to any material fact and that he or she is entitled to judgment as a matter of law. See Fed. R. Civ. P.

56(c); see also Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). Once the moving party has met its burden, the non-moving party must go beyond the pleadings to set forth specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56(e); see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986). There is a genuine issue for trial “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson, 477 U.S. at 249. “Such affirmative evidence – regardless of whether it is direct or circumstantial - must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance.” Williams v. Borough of W. Chester, 891 F.2d 458, 460-61 (3d Cir. 1989).

III. Analysis

Prompted by concerns over abuses in the credit reporting industry, Congress enacted the FCRA to “insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and respect for the consumer’s right to privacy.” 15 U.S.C. § 1681(a)(4) (2003); Guimond v. Trans Union Credit Info. Co., 45 F.3d 1329, 1333 (9th Cir. 1995).

Consumer reporting agencies and credit furnishers play crucial roles in collecting and transmitting consumer credit information; inaccurate information can visit detrimental effects upon both the individual customer and the national economy. Philbin v. Trans Union Corp. 101 F.3d 957, 962 (3d Cir. 1996) citing 15 U.S.C. § 1681(a)(1), (3).

A. Fair Credit Reporting Act Claims

1. Plaintiff May Bring A Private Right of Action Against, InoVision, A Furnisher of Information

Defendant argues that because no private right of action exists for Plaintiff against InoVision, a furnisher of information, Plaintiff's allegations that Defendant failed to meet its investigative duties under § 1681s-2(b) of the FCRA after it received notice from a credit reporting agency must be dismissed. See Def.'s Reply at 5. In reaching this conclusion, Defendant points to Jaramillo v. Experian Information Solutions, Inc. 155 F. Supp. 2d 356 (E.D.Pa. 2001) in which the Court observes that Congressional intent in this regard is unclear. See Def. Mot. for Summ. J. at 12. Plaintiff responds by pointing specifically to Sheffer v. Experian Information Solutions, Inc., 2003 WL 403171, *2 (E.D.Pa. Feb. 14, 2003) which holds that a private right of action does exist against a furnisher of information. See Pl.'s Reply at 6, Ex. C. We agree.

While courts have reached varied conclusions as to whether a consumer has a private right of action against a credit furnisher, a majority of courts that have addressed this issue has "effectively recognized Congress' obvious intent [to] create a private cause of action through § 1681s-2." Sheffer v. Experian Information Solutions, Inc., 249 F.Supp.2d 560, 562 (E.D.Pa. 2003) citing Vazquez-Garcia v. Trans Union De P.R., Inc., 222 F.Supp.2d 150, 155 (D.P.R. 2002); see also Nelson v. Chase Manhattan Mortg. Corp., 282 F.3d 1057, 1058 (9th Cir. 2002) (describing purpose of § 1681s-2(b) as "provid[ing] some private remedy to injured consumers"). "The civil liability sections, 15 U.S.C. § 1681n and 1681o, explicitly provide a private right of action for consumers wishing to enforce any provision of the Fair Credit Reporting Act against

‘any person’ who either ‘willfully fails to comply’ or is ‘negligent in failing to comply.’”

DiMezza v. First USA Bank, Inc., 103 F.Supp.2d 1296, 1300 (D.N.M.2000). As defined by § 1681a, a “person” for purposes of the FCRA means “any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.” 15 U.S.C. §1861a. A credit furnisher falls within this definition.² The plain language of 15 U.S.C. §§ 1681a, 1681n, 1681o, 1681s-2(b) and (c) provide a private right of action for a consumer against furnishers of information who have willfully or negligently failed to perform their duties upon notice of a dispute. Id.; see also Angelastro v. Prudential-Bache Securities, Inc., 764 F.2d 939, 947 (3d Cir. 1985) (noting that where the enabling statute authorizes an implied right of action, courts should permit private suits under agency rules within the scope of the enabling statute if doing so is not at variance with the purpose of the statute.); Nelson v. Chase Manhattan Mortgage Corp., 282 F.3d 1057 (9th Cir. 2002)(holding that §§ 1681n and 1681o permit suit against a furnisher of credit reporting information that violates the duties imposed under § 1681s-2). The plain language of the FCRA suggests that a private right of action for consumers to enforce the investigation and reporting duties imposed on furnishers of information exists. Id.³ Consistent with this reasoning and with Sheffer, we conclude that § 1681s-2(b) provides Plaintiff with a private right of action against InoVision, a furnisher of credit

²In the context of the FCRA, the term “person” might refer to a furnisher, supplier, or user of credit information, though it usually does not refer to the subject of the information.” After the Deal is Done: Debt Collection and Credit Reporting, 47 A.F.L. Rev. 89, 107 (1999).

³ While it seems clear that the duties imposed on a credit furnisher may differ from those imposed upon a credit reporting agency, subsection 1681s-2(b) specifies the duties the FCRA imposes on credit furnishers. “The furnisher of disputed information has four duties: (1) to conduct an investigation with respect to the disputed information,” to review all relevant information provided by the CRA; to report the results of its investigation to the CRA; and if the investigation finds the information is incomplete or inaccurate to report those results to the nationwide consumer reporting agencies to which it furnished the information.” Nelson v. Chase Manhattan Mortgage Corp., 282 F.3d 1057 (9th Cir. 2002).

information.

2. Genuine Issues Of Material Fact Preclude A Grant Of Summary Judgment With Respect to FCRA Claim

At the core of the dispute in this case lies the accuracy of the debt and the adequacy of InoVision's procedure in reporting and investigating that debt. Where a consumer alleges defamation and violation of the FCRA, whether the agency should have verified the accuracy of information, whether the agency promptly notified the consumer of reinsertion of disputed information and provided an adequate description of its reinvestigation procedures, and whether the alleged defamatory information about the consumer was published by the agency were questions for the jury. Cushman v. Trans Union Corp., 115 F.3d 220 (3d Cir. 1997). Because issues related to the accuracy of credit reporting are primarily factual inquiries about which reasonable minds could differ, this Court reserves the resolution of such questions for the jury.

a. Commencement of Delinquency

Plaintiff argues that the period of delinquency should have begun thirty days after her last payment on the 626 S. 10 Street account in January 1994. Had the reporting commenced in February of 1994, the derogatory information would only appear on her credit report until September 2001.⁴ Plaintiff further argues that InoVision violated the FDCPA by reporting the incorrect date of first delinquency.⁵ The FCRA defines when the seven years begins to run: (1) in general, the seven-year period referred to in paragraphs (4) and (6) of subsection (a) of this

⁴ Pl.'s Mot. for Summ. J. at n. 4 (Plaintiff cites to 15 U.S.C. §§1681c(a)-(c) which reads, in pertinent part: "Except as authorised under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information: (4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.")

⁵ Pl.'s Opp. at 22 (Plaintiff argues that failure to report the commencement of delinquency accurately violates § 1692e(8) of the FDCPA because InoVision, in reporting the wrong date of first delinquency of the PECO utility account knew or should have known that the debt reported was inaccurate.)

section shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action. Batdorf v. Trans Union, 2002 U.S. Dist. LEXIS 9489 (N.D.Cal. May 13, 2002). Whether the commencement of delinquency began in February 1994 as Plaintiff contends, thirty days after her last payment or whether the “charge-off/shut-off” date qualifies as the first delinquency because it marks the date that service can be terminated regardless of payment history on the account depends largely on whether Plaintiff still bore responsibility for the account. That InoVision complied with PUC protocol does not adequately counter Plaintiff’s contention that the “charge off/shut off” date should have been in February at her request. See Pl.’s Mot. for Summ. J. at Ex. B., Agosta Dep. at 61-63.

b. Accuracy of Reporting and Burden of Reporting Consumer Dispute

The FCRA requires credit reporting agencies to report information that is “technically accurate.” Heupel v. Trans Union LLC, 193 F. Supp. 2d 1234, 1240-41 (N.D. Al. 2002).⁶ In Todd, Associated Bureau Services, Inc. (“Associated”), a credit reporting agency under the FCRA, reported in late 1975 that the plaintiffs, as of the early part of 1973, owed Hess’, Inc.

⁶ Section 1681s-2(a) begins with a flat prohibition in (1)(A) directed against “[a] person” furnishing information “relating to a consumer” to a CRA “if the person knows or consciously avoids knowing that the information is inaccurate.” This prohibition is reinforced in subsection (1)(B) by a prohibition of furnishing inaccurate information after notice of actual inaccuracy from the affected consumer. Subsection (2) imposes a duty on regular furnishers of credit information to correct and update the information they provide so that the information is “complete and accurate.” Subsection (3) imposes a duty on such furnishers to notify CRA’s if a consumer disputes the information furnished. Subsection (4) obliges furnishers to notify the CRA of the closure of a consumer’s account, and subsection (5) imposes a similar obligation to notify the CRA of delinquent accounts. Nelson v. Chase Manhattan Mortg. Corp., 282 F.3d 1057, 1059 9th Cir. 2002)

\$1,200.00 without mentioning that the plaintiffs had paid off their debt. 451 F. Supp. at 448.

The plaintiffs brought an action against Associated, alleging that the “misleading, stale and erroneous credit report distributed to various retailers by Associated rose to the level of negligent noncompliance with the Act.” Id. at 448. The court held that the plaintiffs could not sustain their cause of action because Associated’s report was accurate. Id. at 449. Todd v. Associated Credit Bureau Servs., Inc., 451 F. Supp. 447 (E.D. Pa. 1977), aff’d, 578 F.2d 1376 (3d Cir. 1978), cert. denied, 439 U.S. 1068 (1979).

Though “technically accurate,” a derogatory entry on a credit report is actionable because it is misleading or materially incomplete. Koropoulos v. Credit Bureau, Inc., 734 F.2d 37 (D.C. Cir. 1984). In Koropoulos, the District of Columbia Circuit Court of Appeals held that granting “summary judgment on the grounds that the information in [a credit] report was technically accurate, regardless of any confusion generated in the recipient’s minds as to what it meant, [is] improper.” Id. at 42. The court also noted that the “technical accuracy defense” is not in accord with the purpose of the FCRA. Id. 40-42.

Because the Third Circuit has not endorsed the “technical accuracy defense,”⁷ we shall apply the less stringent approach articulated in Koropoulos. Applying that approach, we find that there is a genuine issue of material fact as to whether InoVision’s treatment of the PECO account was so misleading as to be inaccurate within the meaning of Section 1681e(b). A reasonable jury could find that delinquent PECO account reported in Plaintiff’s credit report misled potential

⁷The Third Circuit affirmed Todd without opinion. See 578 F.2d 1376. Nevertheless, even if we were to adopt the Todd approach, there is a question of fact as to whether the PECO utility account delinquency was indeed “technically accurate.” InoVision argues that the account was correctly reported, see Def.’s Mot. for Summ. J. at 13, whereas, Plaintiff contends that it was incorrect. See Pl.’s Compl., 34-7; Pl.’s Mot. for Summ. J. at 6.

creditors into believing that she had indeed been delinquent despite her contention that she had not; a reasonable jury could similarly support InoVision's contention that the account did belong to Plaintiff.

c. Investigation Disputed Debt

When a consumer notifies a consumer reporting agency of a dispute regarding the accuracy of information contained in the consumer's credit report, the agency must reinvestigate the disputed information. As part of its reinvestigation, the agency must notify the furnisher of the credit information of the dispute. Section 1681s-2(b)(1) of the FCRA requires the furnisher to conduct an investigation regarding the dispute and to report its findings accordingly.⁸

The Act does not provide any indication as to the level of investigation required under § 1681s-2(b)(1). Section 1681s-2(b)(1)'s investigation requirement for furnishers, however, "is analogous to the requirement imposed upon credit reporting agencies under § 1681i(a) to reinvestigate a consumer's dispute regarding information contained in his credit report" and, therefore, furnishers of credit are required to conduct a reasonable investigation. Bruce v. First U.S.A. Bank, National Association, 103 F. Supp. 2d 1135, 1143 (E.D. Miss. 2000). In Bruce, the Court employed two factors to determine whether a furnisher of information engaged in adequate investigation of a disputed debt: "(1) whether the consumer has alerted the agency that the initial source of the information may be unreliable or if the agency knows or should know that the

⁸After receiving notice pursuant to section 1681(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall (A) conduct an investigation with respect to disputed information; (B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2);(C) report the results 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 all other consumer reporting agencies to which the person furnished the information." 15 U.S.C. § 1681s-2(b)(1).

source is unreliable, and (2) the cost of verifying the accuracy of the source versus the possible harm of reporting inaccurate information.” Bruce, 103 F. Supp 2d 1135, 1143 (E.D.Mo. 2000). Whether such an investigation has been conducted is generally a question of fact for the jury. See Cushman, 115 F.3d at 225; Henson, 29 F.3d at 287. Again, InoVision argues that the level of investigation it conducted satisfies the requirement imposed by the FCRA because the debt was accurate while Plaintiff disagrees. See generally Def. Mot. for Summ. J. at 13; Pl.’s Mot. for Summ. J. at 12-14. This factual disagreement cannot be resolved at summary judgment in either party’s favor.

B. Fair Debt Collection Practices Act Claims

The Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 et seq., provides a remedy for consumers who have been subjected to abusive, deceptive, or unfair debt collection practices by debt collectors. Pollice v. National Tax Funding, L.P., 225 F.3d 379, 400 (3d Cir 2000) citing Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1167 (3d Cir.1987). In achieving this purpose, the FDCPA requires that the prohibited practices are used in an attempt to collect a “debt.” 15 U.S.C. §§ 1692e-(f).⁹

1. Statute of Limitations

The statute of limitations under the FDCPA begins to run one year from the date of the

⁹“Debt” is defined as “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.” 15 U.S.C. § 1692a(5). In Pollice, the Court of Appeals affirmed the district court’s conclusion that water and sewer obligations constitute “debt” for purposes of the FDCPA from the time they were initially owed to the respective entities and retained that status despite assignment or transfer of that debt. Pollice, 225 F. 3d at 400. Similarly, Plaintiff’s disputed utility account with PECO constitutes a debt that required her to pay money; that obligation arose out of a transaction for “services ... primarily for personal, family, or household purposes” and maintained its status as debt under the FDCPA despite InoVision’s purchase of the debt.

violation.¹⁰ In cases involving alleged violations of § 1692e, based upon letters sent to consumer, the statute of limitations begins to run on the day a debt collector mails a letter allegedly containing information proscribed by Act. Mattson v U.S. West Communications, Inc., 967 F2d 259 (8th Cir. 1992). “The one year limitation period in the FDCPA, however, is jurisdictional and not subject to waiver or tolling.” Zhang v. Haven-Scott Assocs., 1996 U.S. Dist. LEXIS 8738 (E.D.Pa.1996) citing Id. at 262. See also Chisolm v. Charlie Falk Auto Wholesalers, Inc., 851 F. Supp. 739, 749 (E.D. Va. 1994); Friedman v. HHL Fin. Serv., Inc., 1993 WL 286487, (N.D. Ill. July 29, 1993). The limitations period runs from the date of the alleged violation and not the date on which plaintiff became aware of it. Maloy v. Phillips, 64 F.3d 607, 608 (11th Cir. 1995) (statute runs from date offending collection letter mailed and not date plaintiff received it).

However, at least one court has indicated that a cause of action might not accrue until receipt of the collection notice for purposes of the Act's one-year statute of limitations, 15 U.S.C. § 1692k(d). Bates v. C & S Adjusters, Inc., 980 F.2d 865, 868 (2d Cir. 1992) citing Seabrook v. Onondaga Bureau of Medical Economics Inc., 705 F. Supp. 81, 83 (N.D.N.Y. 1989) (“more likely” that statute would start to run only “on the date the debtor received the communication”).¹¹ In addition to the apparent split among the circuits as to whether the

¹⁰ Section 1692k-(d) reads in pertinent part: “An action to enforce any liability created by this title [15 U.S.C.S. 1692 et seq.] may be brought in any appropriate United States District Court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.” 15 U.S.C.S. § 1692k-(d).

¹¹ This analysis is consistent with that conducted of the statute of limitations under the FCRA, giving the potential plaintiff opportunity to discover the alleged violation. The FCRA, with one exception, contains a two-year statute of limitations. 15 U.S.C. § 1681p; Houghton v. Insurance Crime Prevention Institute, 795 F.2d 322, 324 (3d Cir. 1986). The statute of limitations under the FCRA begins to run when the consumer first discovers the alleged violation or when the erroneous or incomplete consumer report is discovered. The limitations period for a suit, like this one, asserting negligence commences when the report issued to the user causes injury to the consumer for whose protection the FCRA was adopted, and the limitations period for a suit asserting an intentional violation begins at the same time, or if consumer is unaware of the issuance of the report, when she later discovers it. Hyde v. Hibernia Nat. Bank, 861 F2d 446 (5th Cir. 1988) cert. denied 491 U.S. 910 (1989).

statutory period commences when the collection agency mails the letter or when the debtor receives it, factual ambiguity in this case cautions the Court from making such a determination. Because the only written communication Plaintiff received from InoVision occurred some time in 2000 at an inexact date, the precise commencement of the statute of limitations tolling period is not readily ascertainable. “The primary purpose of statutes of limitations must be to reduce to a fixed interval the time between accrual of a right of action and commencement of the action and to put all on notice of that interval.” McClure v. Middletown Hosp. Ass'n, 603 F.Supp. 1365 (D.C.Ohio 1985). That purpose would be ill-served by conclusions of fact made by the Court without proper documentary support. If neither party can proffer any documentary evidence to determine the date the statutory period should commence, the Court must allow such questions of disputed material fact to proceed to the jury.¹²

2. Genuine Issues Of Material Fact Preclude A Grant Of Summary Judgment With Respect to FDCPA Claims

a. Least Sophisticated Consumer

Under the FDCPA, “statutory notice under the Act is to be interpreted from the perspective of the ‘least sophisticated debtor.’” Graziano v. Harrison, 950 F.2d 107, 111 (3d Cir.1991) citing Baker v. G. C. Servs., 677 F.2d 775, 778 (9th Cir.1982).¹³ To comply with the

¹² Defendant points only to Plaintiff’s deposition testimony in which she says that InoVision contacted her via letter in “2000. 2001, maybe.” See Pl.’s Mot. for Summ. J. at Ex. B, Agosta Dep.at 40, but she could not recall the specific date nor could she recall producing that document to her attorney. This is insufficient.

¹³ See also United States v. National Financial Services, Inc., 98 F.3d 131, 135 -136 (4th Cir. 1996) (citing Russell v. Equifax A.R.S., 74 F.3d 30, 34 (2nd Cir. 1996); Smith v. Transworld Systems, Inc., 953 F.2d 1025, 1028 (6th Cir.1992); Jeter v. Credit Bureau, 760 F.2d 1168, 1172-75 (11th Cir. 1985) (deciding that Congress intended FDCPA to apply same standard as FTC Act, which was enacted to protect unsophisticated consumers, not only reasonable consumers who could otherwise protect themselves in the market place); Baker v. G.C. Services Corp., 677 F.2d 775, 778 (9th Cir. 1982); Dutton v. Wolhar, 809 F.Supp. 1130, 1141 (D.Del. 1992) (applying least sophisticated debtor standard to section 1692e(10) claim); Wright v. Credit Bureau of Georgia, Inc., 555 F.Supp. 1005, 1007 (N.D.Ga. 1983) (adopting “least sophisticated” reader test of the FTCA rather than the “reasonable consumer” test developed under the Truth in Lending Act); Bingham v. Collection Bureau, Inc., 505 F.Supp. 864,

terms of the [FDCPA], statutory notice must not only explicate a debtor's rights; it must do so effectively." Id. at 111 (citing Swanson v. Southern Oregon Credit Serv., 869 F.2d 1222, 1225 (9th Cir.1988)). This standard ensures that the FDCPA protects all consumers, regardless of naivety. However, as InoVision notes, the least sophisticated consumer doctrine, while intended to protect individuals from unfair, abusive, or misleading collection practices, it will not impose liability for "bizarre or idiosyncratic interpretations of collection notices." United States v. National Financial Services, Inc. 98 F.3d 131, 136 (4th Cir. 1996) citing Clomon v. Jackson, 988 F.2d 1314, 1318 (2nd Cir.1993) (quoting Federal Trade Commission v. Standard Education Society, 302 U.S. 112, 116, (1937)). The FDCPA preserves a quotient of reasonableness and requires a basic level of understanding and care on the part of the debtor. Id. InoVision argues that its collection practices did not reach the level of unreasonableness so as to sustain a claim under this provision, that its investigation verified the validity of the debt, and that said debt was properly reported to the credit reporting agencies. See Def. Mot. for Summ. J. at 23. Plaintiff, however, contends that despite its knowledge that she last paid the PECO utility account in January and that the subsequent debt did not belong to her, InoVision knowingly reported incorrect delinquency. See Pl.'s Mot. for Summ. J. at 10-11. Because this material fact remains in dispute and because the question under the FDCPA is ultimately one of reasonableness, this Court cannot grant summary judgment as to the FDCPA claim.

870 (D.N.D. 1981) (least sophisticated reader); Bustamante v. First Fed. Sav. & Loan Ass'n, 619 F.2d 360, 364 (5th Cir. 1980) (applying "reasonable consumer" standard includes protection for the "unsophisticated or uneducated consumer"). But see Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222, 1227 (9th Cir. 1988); Blackwell v. Professional Business Services, of Georgia, Inc., 526 F.Supp. 535, 538 (N.D.Ga. 1981) (applying "reasonable consumer" test).

b. Failure to Mark the Debt as Disputed

Plaintiff's claim that InoVision violated §1692(e) by failing to communicate that she had disputed the validity of the debt is not supported by documentary evidence that she affirmatively disputed the debt with InoVision. Section 1692g(a)(3) requires that a debt collection notice submitted under the Act must include "a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector." While this statutory language does not expressly require that a debtor's dispute be in writing, there is strong support for reaching such a conclusion. Graziano v. Harrison, 950 F.2d 107, 111 -112 (3d Cir. 1991). In Graziano, the plaintiff argued that because the notice he received from the defendant did not require a written dispute, that notice failed to satisfy the requirements of the FDCPA. To support this contention, he noted that three courts have concluded that under section 1692g(a)(3), if a debtor disputes a debt, the debt collector may not presume the validity of that debt without may dispute a debt, regardless of whether the dispute was in writing. Id.¹⁴ In response, the defendant argued that §§ 1692g(a)(4) and 1692g(a)(5), expressly provide that the debtor communication be in writing revealing a congressional intent to that effect. Id. The court concluded that "given the entire structure of section 1692g, subsection (a)(3) must be read to require that a dispute, to be

¹⁴ This contention is further supported by Brady v. Credit Recovery Co. which provides that failure of debt collector to disclose disputed status of debt constitutes false, deceptive or misleading representation, does not impose writing requirement on consumer who wishes to dispute debt. Brady v. Credit Recovery Co., 160 F.3d 64, 67 (1st Cir. 1998). In reaching this conclusion, the court in Brady conducts a thorough statutory construction analysis to determine that despite the absence of clear definition in the FDCPA of the terms "dispute" or "disputed debt" in the section devoted to definitions, 15 U.S.C. § 1692a, ordinary usage of "dispute" does not contemplate a writing. Brady, 160 F.3d at 67.

effective, must be in writing.”¹⁵ The court further reasons that imposing a writing requirement avoids potential conflicts by creating a lasting record. Id. In this case, InoVision argues that the credit reporting agencies, and not InoVision failed to mark the debt as disputed and that no allegation that InoVision took or failed to take appropriate action is offered by Plaintiff. See Def.’s Opp. at 22. InoVision does not, however, provide specific facts in support of its suggestion that it complied with the duties imposed by the FDCPA sufficient to deny summary judgment in Plaintiff’s favor as to this claim. Again, this claim ultimately turns, not on a question of law with respect to InoVision’s obligations under the FDCPA, but rather on a question of material fact. As such, summary judgment is denied.

C. Plaintiff’s State Law Claims for Defamation, Negligence, and Invasion of Privacy are Preempted by the FCRA

Finally, Plaintiff’s claims for defamation, negligence, and invasion of privacy are preempted by the FCRA; as such, InoVision’s Motion for Summary Judgment is granted with respect to those claims. The FCRA preempts claims under the Pennsylvania Unfair Trade Practices and Consumer Protection Law for willful and intentional failure to reinvestigate credit information disputed by consumer. Jaramillo v. Experian Information Solutions, Inc., 155 F. Supp. 2d 356 (E.D.Pa. 2001). State law claims for negligence, defamation, and invasion of

¹⁵ “Subsection (a)(3) states that unless the debtor disputes the debt within thirty days of receipt of notice, the debt collector will assume the debt to be valid. Subsection (a)(4) states that if the debtor disputes the debt in writing within thirty days, the debt collector must obtain verification of the debt and must send the debtor a copy of the verification. Subsection (a)(5) states that, if the debtor makes a written request, the debt collector must provide the name and address of the original creditor. Subsection (b) states that if the debtor disputes the debt in writing within thirty days, the debt collector must cease collection efforts until the debt collector has verified the debt. Adopting Graziano’s reading of the statute would thus create a situation in which, upon the debtor’s non-written dispute, the debt collector would be without any statutory ground for assuming that the debt was valid, but nevertheless would not be required to verify the debt or to advise the debtor of the identity of the original creditor and would be permitted to continue debt collection efforts.” Graziano, 950 F.2d at 111-112.

privacy may be preempted by the FCRA. See Hasvold v. First USA Bank, N.A., 194 F. Supp. 2d 1228, 1235 (D. Wy. 2002); Wiggins v. Philip Morris, Inc. et al., 853 F. Supp. 458, 466 (D.D.C. 1994); see also Riley v. General Motors Acceptance Corp., 226 F. Supp. 2d 1316 (S.D. Ala. 2002); Vazquez-Garcia v. Trans Union De Puerto Rico, 222 F. Supp. 2d 150 (D.P.R. 2002).

IV. Conclusion

Accordingly, this Court denies the Plaintiff's Partial Motion for Summary Judgment and grants in part Defendant's Motion for Summary Judgment. An appropriate Order follows.

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

MARIA AGOSTA,	:	
Plaintiff,	:	CIVIL ACTION
	:	
V.	:	NO. 02-806
	:	
INOVISION, INC., et al.,	:	
Defendants.	:	

ORDER

AND NOW, this day of December, 2003, upon consideration of the Defendant InoVision, Inc.'s Motion for Summary Judgment (Def.'s Mot. for Summ. J., Doc. No. 26) filed on April 14, 2003, Plaintiff's Opposition to Defendant InoVision Inc.'s Motion for Summary Judgment (Pl.'s Opp., Doc. No. 31) filed on May 12, 2003, the Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment (Def.'s Reply, Doc. No 37) filed by Defendant InoVision, Inc. on May 30, 2003, the Motion for Partial Summary Judgment (Pl.'s Mot. for Summ. J., Doc. No. 27) filed by Plaintiff on April 14, 2003, the Opposition to Plaintiff's Motion for Partial Summary Judgment (Def.'s Opp., Doc. No. 32) filed by Defendant InoVision, Inc. on May 14, 2003, and the Reply to Defendant InoVision's Opposition to Plaintiff's Motion for Partial Summary Judgment (Pl.'s Reply, Doc. No. 38) filed by Plaintiff on May 30, 2002., it is hereby ORDERED that Plaintiff's Motion for Summary Judgment is DENIED, that InoVision's Motion for Summary Judgment is DENIED in part and GRANTED in part, and that Counts IV, IX, and XI of Plaintiff's Complaint are dismissed, with prejudice.

BY THE COURT:

Legrome D. Davis, J.