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

ROSELLA A. HARPER, on behalf of herself and all others similarly situated	:	
v.	:	CIVIL ACTION NO. 04-3510
TRANS UNION, LLC.	:	
and	:	
EXPERIAN INFORMATION SOLUTIONS, INC.	:	
and	:	
EQUIFAX INFORMATION SERVICES LLC	:	

O'Neill, J. March 24, 2005

MEMORANDUM

On July 23, 2004, plaintiff Rosella A. Harper filed suit against defendants Trans Union, LLC; Experian Information Solutions, Inc. and Equifax Information Services LLC. She alleges that, in violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681e(b), defendants generated credit reports that incorrectly included notations that she and the members of the class she seeks to represent had filed for bankruptcy protection. Plaintiff was an opt-out plaintiff in three class actions filed in the United States District Court for the District of South Carolina that raised similar claims against defendants under the FCRA (the Clark litigation).[1] On January 28, 2004,

[1]The prior actions in the District of South Carolina were: Franklin E. Clark v. Experian Information Solutions, Inc., No. 8:00-1217-22; Franklin E. Clark and Latanjala Denise Miller v.

the Clark Court entered a confidentiality order protecting the complete opt-out list for the three class actions which included the names, addresses and Social Security numbers of the individuals who opted out of the litigation.[2]

Plaintiff has proposed a class of those individuals who opted out of the Clark litigation. In order to establish the composition of her proposed class, she now seeks to discover the names and addresses of the opt-outs. In her Interrogatory 16, plaintiff requests that defendants "[i]dentify by name and address all consumers who filed or served opt-out notices in the Clark litigation, the date such notice(s) were received and the aggregate number of opt-outs." Plaintiff's document request 16 asks for:

> [a]ll documents which list or state the names and addresses of any consumers, other than those who are bound by the Clark judgment or release, of whom you have reason to believe you published a consumer report after January 1, 2000 which contained a reference to "bankruptcy" in a tradeline without a bankruptcy reported in the public records section of such report.

Plaintiff's document request 18 asks for "[a]ny list of names and addresses of each consumer who "opted out" of the Class Action settlement in the Clark cases."

Defendants now move for a protective order pursuant to Fed. R. Civ. P. 26(c) protecting the opt-out list from theClark litigation from discovery and also move for a stay of these proceedings "to give Plaintiff's counsel a reasonable opportunity to petition to intervene in the

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Equifax Inc. and Equifax Information Services, Inc., No. 8:00-1218-22 and Franklin E. Clark v. Trans Union Corporation and Trans Union L.L.C., No. 8:00-1219-22. In the Clark litigation, the Court did not reach the merits of the plaintiffs' FCRA claims. Instead, the Court granted class certification, approved a settlement class and subsequently approved the settlement agreed to by the parties.

[2]A redacted list including only the names of the individuals who opted out of the Clark actions is available on the public docket for the class actions.

Clark FCRA litigation and seek a modification of the Order of January 28, 2004." Plaintiff asks that her opposition to defendants' motion for a protective order be treated as a cross-motion to compel defendants to respond to her discovery requests.

I agree with plaintiff that the information she seeks is "reasonably calculated to lead to discovery of admissible evidence," in this case, the identity of the members of her purported class. Fed. R. Civ. P. 26(b)(1).[3] Ordinarily parties may discover any relevant matter which is "not privileged." Fed. R. Civ. P. 26(b). However, at this time I will not order defendants to produce the opt-out list or any information that would allow plaintiff to replicate the content of the opt-out list in Clark because to do so would require me to interfere with the continuing jurisdiction of the District of South Carolina over its Order protecting the confidentiality of the information plaintiff now seeks to discover.

One district court should not review the decision of another district court. See, e.g. Green v. Citigroup, Inc. 68 Fed. Appx. 934, 936 (10th Cir. 2003) ("It is axiomatic that one district court has no jurisdiction to review the decision of another district court."). In Celotex Corporation v. Edwards, 514 U.S. 300, 313 (1995), quoting Walker v. Birmingham, 388 U.S. 307, 314 (1967), quoting Howat v. Kansas, 258 U.S. 181, 189-190 (1922), the Supreme Court explained, "'it is for the court of first instance to determine the question of the validity of the law, and until its

[3]In its supplemental memorandum in support of defendants' joint motion for a protective order, defendant Experian argues that I should rule on the propriety of plaintiff's proceeding with her action as a class action because the likelihood of a successful class action is remote and further prolonging these proceedings with discovery pertaining to the propriety of a class action is unnecessary. However, Rule 23 does not explicitly bar opt-outs in one class action from bringing a subsequent class action and it may be that allowing the opt-outs here to proceed as a class will further the purposes of Rule 23 (i.e., to provide for judicial economy in the litigation of similar claims). Without further information about the purported class, I cannot rule on the propriety of allowing a class of opt-outs at this time.

decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected.'" Therefore I must respect the decision of the District of South Carolina to protect the information contained in the Clark opt-out list as confidential. Essentially what plaintiff asks me to do by moving to compel defendants to produce either the opt-out list or information that would allow her to replicate the content of the opt-out list is to overrule the Clark Court's decision to issue a confidentiality order protecting the opt-outs' identifying information. Were I to grant plaintiff's motion to compel, I would necessarily interfere with the decision of a court of coordinate standing. Considerations of comity and orderly administration of justice require that I defer to the judgment of the District of South Carolina on this matter. See Exxon Corp. v. United States Dep't of Energy, 594 F. Supp. 84, 89-91 (D. Del. 1984) (holding that the Court should not exercise its jurisdiction over the action because in order to do so it would have to interfere with the jurisdiction and outstanding injunction of a court of coordinate standing).

Federal Rule of Civil Procedure 24(b) provides that "upon timely intervention anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common." In a case such as this, where plaintiff seeks to discover information that is subject to a protective order issued by another Court in a different action, the proper procedure for her to follow is to seek permissive intervention in the Clark litigation pursuant to Federal Rule of Civil Procedure 24 in order to petition the District of South Carolina for a modification of its Order of January 28, 2004. "[A] district court may properly consider a motion to intervene permissively for the limited purpose of modifying a protective order even after the underlying dispute between the parties has long been settled." Pansy v.

Borough of Stroudsburg, 23 F.3d 772, 778-70 (3d Cir. 1994) (quotations, citations omitted). Courts within the Fourth Circuit have also recognized the propriety of permissive intervention in this context. See , e.g., Autry v. K Mart Corp., No. 92-105-CIV-3-BR, 1995 U.S. Dist. LEXIS 18253 at *2-5 (E.D.N.C. Nov. 22, 1995); Boone v. City of Suffolk, 79 F. Supp. 2d 603 (E.D. Va. 1999). Should plaintiff choose to move to intervene in the Clark litigation, the South Carolina Court will decide whether modification of its Order of January 28, 2004 is justified.

Therefore I will stay this action for sixty (60) days to allow plaintiff's counsel a reasonable opportunity to petition to intervene in the Clark action to seek modification of the Order of January 28, 2004.

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EQUIFAX INFORMATION SERVICES LLC	:	

ORDER

AND NOW, this 24th day of March 2005, upon consideration of defendants' joint motion for a protective order and for a stay of proceedings and all responses thereto, it is ORDERED that defendants' motion is GRANTED. This action is stayed for sixty (60) days to allow plaintiff's counsel a reasonable opportunity to petition to intervene in the Clark action to seek modification of the Order of January 28, 2004. Defendants need not produce the opt-out list or provide identifying information for the opt-outs to the plaintiff unless and until plaintiff obtains a modification of the Order of January 28, 2004 of the District Court for the District of South

Carolina.

s/Thomas N. O’Neill, Jr.

THOMAS N. O'NEILL, JR., J.