UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CONSUMER DATA INDUSTRY ASSOCIATION,	)	
	)	
Plaintiff	)	Case No. 1:19-cv-00438-GZS
	)	
v.	)	
	)	
AARON M. FREY, et al.	)	
	)	
Defendants	)	

MEMORANDUM OF AMICUS CURIAE MAINE COALITION TO END DOMESTIC VIOLENCE IN SUPPORT OF DEFENDANT

Domestic violence is Maine's most significant violent crime problem, representing approximately half of Maine's homicides[1] and charged assaults[2] in our criminal courts each year. The Maine Coalition to End Domestic Violence (MCEDV) represents Maine's eight regional domestic violence resource centers (DVRCs), that collectively serve approximately 14,000[3] survivors of domestic abuse and violence in Maine annually. All services provided by DVRCs are free, confidential and designed to respond directly to the safety needs of survivors to prevent an increase in those statistics and to address the impacts of abuse on survivors and their families.

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[1] *See* "Voices Against Violence: The 12th Biennial Report of the Maine Domestic Abuse Homicide Review Panel," (2018), available at: https://www.maine.gov/ag/docs/DVHRP-FinalReport%2010.2.2018.pdf.

[2] *See* pg. 39, "Crime in Maine 2017," State of Maine Department of Public Safety (2017), available at: https://www.maine.gov/dps/cim/crime_in_maine/2017pdf/Crime%20in%20Maine%202017.pdf.

[3] In 2019, Maine's DVRCs served 13, 759 adults and children experiencing domestic violence in Maine. This included, amongst a range of other services, 631 people accessing our shelters and 4,953 people receiving court and legal advocacy services. *See* "MCEDV 2019 Annual Report," available at: https://www.mcedv.org/wp-content/uploads/2020/01/FY-2019-Annual-Report-1.pdf.

Providing survivor services uniquely positions Maine's DVRCs to recognize and articulate the safety barriers experienced by survivors in our state experience and to propose solutions to those barriers.

Our observations support a correlation between domestic violence and economic instability. Domestic violence consistently results in economic instability for survivors resulting from financial abuse by perpetrators. In turn, economic instability exacerbates the poverty already experienced by many survivors. It reduces their options and increases their vulnerability to continued violence and isolation. Acknowledging that reality, the Maine Legislature enacted the now-challenged credit repair provision (Section 1) of L.D. 748, H.P. 553 "An Act to Provide Relief to Survivors of Economic Abuse," as a potentially life-saving policy advancement in Maine's domestic violence response.

Power and control are at the root of domestic violence, and credit abuse is a very effective way for an abuser to achieve both. Abusers understand that without a job, housing, reliable transportation, and basic utilities (all of which are difficult to aquire with damaged credit), it is almost impossible for a survivor to be economically stable, secure and independent. A growing body of national research confirms that almost every survivor of domestic violence has also experienced economic abuse.[4] This frequently looks like an abuser using threats or physical force to convince victims to obtain loans or credit lines, engage in debt transfers, and sign financial documents. When a survivor separates from an abuser, it is also

[4] *See* "Guidebook on Consumer & Economic Civil Legal Advocacy for Survivors: A Comprehensive and Survivor Centered Guide for Domestic Violence Attorneys & Legal Advocates," Center for Survivor Agency and Justice (2017).

common for an abuser to max out the survivor's available credit lines to further limit a survivor's financial options.

In 2018, MCEDV undertook a statewide study on the impact of economic abuse on domestic violence survivors in Maine specifically and published findings in "A Report on the Impact of Economic Abuse on Survivors of Domestic Violence in Maine" (Economic Abuse Study).[5] This Economic Abuse Study confirmed that the trends observed nationally also exist here in Maine. Findings of particular relevance to the credit repair provision of "An Act to Provide Relief to Survivors of Economic Abuse," L.D. 748, H.P. 553 (Section 1) include:

- 74% of survivors report that they were never, infrequently or only occasionally accustomed to making their own financial decisions when in the relationship with their abuser;[6]
- 89% of survivors reported that their abusive partners reacted negatively (35%) or very negatively (54%) when the issue of finances came up within the relationship;[7]
- 72% of survivors said their partners often claimed they were paying bills when they weren't,[8] which had a deep and long-lasting impact on credit standings where the relative weight FICO assigns to payment histories is 35% - the most important factor - superseding even the total amount of debt a consumer has outstanding;

[5] *See* "A Report on the Impact of Economic Abuse on Survivors of Domestic Violence in Maine," presented to Maine's Joint Standing Committee on Judiciary on February 7, 2019, available at: https://www.mcedv.org/wp-content/uploads/2019/02/Economic-Abuse-Report_FINAL.pdf.
[6] *Id*. at 8.
[7] *Id*. at 7.
[8] *Id*. at 14.

- 57% reported that abusers incurred debt in their name;[9]
- 40% of survivors indicated their abusers falsely used their identity without their knowledge, including a full 36% reporting that their identities were used to access credit or to set up utilities.[10]

Employers, landlords and utility companies make extensive use of credit histories in screening potential employees, tenants and customers. These entities presumably value information about payment history on past debt because of its predictive power. However, predictive power is substantially diminished when the consumer in question did not acquire the debt voluntarily and may not have been the person managing its payment. As noted above, the Economic Abuse Study confirms the high likelihood that both these things are true for domestic violence survivors in Maine. Credit abuse thus presents a skewed view that harms all parties: survivors by being blocked from critical resources as a result of activities that are not their doing; and creditors and other interested parties by being provided inaccurate information that results in them precluding otherwise credit-worthy candidates from consideration.

Current law around identity theft protection does not sufficiently address the more common tactics of economic abuse in domestic violence relationships. Coerced debt is different from debt incurred as a result of identity theft. An example of this reality is Christie Davis.[11] Ms. Davis reported to Maine's Joint Standing Committee on Judiciary that if she told her former husband "no" regarding their finances, he would "yell, become verbally abusive, throw objects,

[9] *Id*. at 14.
[10] *Id*. at 14.
[11] Ms. Davis testified in front of Maine's Joint Standing Committee on Judiciary in support of L.D. 748, H.P. 553, "An Act to Provide Relief to Survivors of Economic Abuse," on April 3, 2019, and her written testimony is included in Appendix D (at pages 60-61of the Joint Stipulation of the Record in this matter).

punch holes in the walls, threaten me with harm, and sometimes carry out those threats."[12] Financial matters in which she felt she had no choice as a result of his abuse (which we note did not always rise to the level of physical force or threats of physical force) included transferring an $18,0000. balance of his debt onto credit cards held solely in her name. Those transfers of debt were not fraudulent, in that Ms. Davis in fact signed the necessary documents. Her husband did not forge her signature. Neither did the transfers result from identity theft.[13] However, when examining the totality of her situation, those transfers of debt were not voluntary. They were coerced through a pattern of conduct by her abuser. How do you explain to a credit reporting agency that you signed the debt transfer papers because, even though your partner said nothing threatening to you in that moment when the papers were put in front of you (or maybe even in the week leading up to that moment), you knew from the look on their face that you were at risk of physical harm if you didn't sign them? Countless survivors have reported to Maine's DVRCs trying to have this exact conversation – with law enforcement, credit agencies, landlords, lenders, etc. – only to be told that there was nothing that could be done for them because they "voluntarily" signed the documents and knew what they were signing. For too many survivors, that results in years of living in poverty or returning to an abusive household.

To effectively address the pervasive economic impact of domestic violence, our laws must recognize that coercive control prevents survivors from exercising free will in financial matters just as completely as identity theft by a stranger, or acts performed under duress, and

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[12] *"An Act to Provide Relief to Survivors of Economic Abuse,"* hearing on L.D. 748, H.P. 553 Before the Joint Standing Committee on Judiciary, 129th Maine Legislature (April 3, 2019) (statement of Christie Davis, Appendix D (at pages 60-61 of the Joint Stipulation of the Record in this matter)).

[13] 16 CFR § 603.2 defines "identity theft" as "a fraud committed or attempted using the identifying information of another person without authority." The Identity Theft Rules promulgated by the Federal Trade Commission for the Fair Credit Reporting Act relies on this definition. *See* 16 CFR § 681.1 2020.

provide relief accordingly. Doing so is in keeping with both the findings and the underlying purposes of the Fair Credit Reporting Act.[14] Section 1 of L.D. 748, H.P. 553, "An Act to Provide Relief to Survivors of Economic Abuse," by requiring credit reporting agencies to remove references in a survivor's credit report to those debts that resulted from coercion by their abuser, and speaks directly to the purpose of the FCRA to "require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information *which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information* …."[15] For all of these reasons, MCEDV supports the Defendants' Motion for Judgment on the Record.

Respectfully submitted,

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[14] *See generally* 15 U.S.C. §§ 1681(a) and (b) (1970).
[15] 15 U.S.C. § 1681(b) (1970) (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April, 2020, a true and correct copy of the foregoing document was filed electronically via the Court's CM/ECF system causing electronic service upon all counsel of record as follows:

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