Case No. 23-1911

In the United States Court of Appeals
for the Fourth Circuit

Shelby Roberts,
Plaintiff-Appellant,

v.

Carter-Young, Inc.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of North Carolina at Greensboro
Case No. 1:22-cv-01114-WO-LPA
The Honorable William L. Osteen, Jr.

Brief of *Amicus Curiae* The Association of Credit and Collection Professionals In Support of Defendant-Appellee

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), amicus curiae states it has no parent corporation, and no publicly traded companies own 10% or more of its stock

I. IDENTITY AND INTEREST OF AMICUS CURIAE[1]

The Association of Credit and Collection Professionals ("ACA") represents approximately 1800 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs over 113,000 people worldwide. The accounts receivable management ("ARM") industry is instrumental in keeping America's credit-based economy functioning with access to credit at the lowest possible cost.

Many of ACA's members furnish consumer credit information to the major credit reporting agencies ("CRAs") and are therefore responsible for compliance with the Fair Credit Reporting Act ("FCRA"). 15 U.S.C. § 1681; *see TRW Inc. v. Andrews*, 534 U.S. 19, 23 (2001). This includes compliance with the provisions at issue here. *See TRW*, 534 U.S. at 23. ACA members rely on consumer report information to assess the collectability of accounts. Finally, ACA members and employees are borrowers who rely upon a fair and efficient credit reporting system.

Creditors, and product and service providers ("Providers"), rely on the completeness and accuracy of consumer credit reporting to make decisions. Without accurate details about a borrower's behavior when she is trusted with a loan or

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[1] All parties have consented to this filing. No party's counsel authored this brief in whole or in part, and no person or entity other than amicus curiae, its counsel, or its members made a monetary contribution intended to fund the brief's preparation or submission.

products/services prior to payment, providers and lenders would need to generalize to manage risk. Without accurate and complete information about repayment history, Providers would increase prices for all borrowers to reserve for losses from the few who do not pay.

Resolving the issues here pursuant to the proposals presented by the Plaintiff-Appellant Shelby Robert ("Roberts") and amici, the Consumer Financial Protection Bureau ("CFPB") and the Federal Trade Commission ("FTC") (collectively the "Agencies"), would undermine credit report accuracy and therefore the efficiency and fairness of the U.S. credit system. If the Agencies' views are adopted, it will degrade Providers' trust in credit reporting. Credit report users have no way to know when furnishers suppress information about their experiences with borrowers and will be forced to make credit decisions based on incomplete information, which will lead risk-averse creditors to limit lending, lend at higher rates, or both. And creditor decisions based on incomplete or inaccurate credit reports will undoubtedly increase the cost of credit for everyone to manage the risk of unknown data.

II. SUMMARY OF ARGUMENT

The Circuits reviewing this issue, as well as the CFPB and FTC, recognize there is a reasonable limit to the depth of investigation a furnisher must undertake to comply with the FCRA's provisions at 15 U.S.C. § 1681s-2(b). But there is scant guidance on the limit at issue here: whether a furnisher must investigate a "legal"

dispute versus a "factual" dispute. *See* Dkt. 14, Brief of Amici Curiae CFPB and FTC, at 22 ("Agency Brief") (citing *Cornock v. Trans Union LLC*, 638 F. Supp. 2d 158, 163 (D.N.H. 2009) ("[C]lassifying a dispute over a debt as 'factual' or 'legal' will usually prove a frustrating exercise.")). Similarly, the Agencies' suggestion that furnishers investigate *all* disputes until they reach some amorphous limit of "reasonableness" is unhelpful and rife with risk.

While practicalities should guide judgments of such broad economic importance, the FCRA's plain language must nevertheless support any lines drawn by the judiciary. Defendant-Appellee Carter-Young ("Carter-Young") convincingly argues the test should be whether the consumer disputes objectively verifiable information that challenges the report under the statutory standards of "accuracy" and "completeness." ACA views this as a minimum standard. This Circuit should, in addition, recognize the statutory distinction that the FCRA does not contain a textual duty to furnish—or even investigate—information about Provider behavior. The FCRA's directive to furnishers to investigate information covers only "consumers" and consumer performance related to the account.

Roberts disputed whether the Provider in the instant matter, an apartment complex, properly exercised its contractual rights. This is a dispute about the Provider's conduct. Roberts did not dispute the terms of the agreement or her payment status. Indeed, Carter-Young accurately reported the terms of the

agreement, the debts assessed under the agreement, and Roberts's conduct concerning the debt.

Neither 15 U.S.C. § 1681s-2(b) nor the related regulations at 12 C.F.R. § 1022.40-43 impose any duty for furnishers to investigate or report on the Providers' conduct concerning the debt. Rather, if a borrower has a dispute in that regard, her recourse is to insist the account be marked as "disputed" under 15 U.S.C. § 1681s-2(a)(3). She may also, as shown in the instant matter, use the civil courts to address the Provider's conduct under the terms of the agreement.

III. FACTUAL AND PROCEDURAL BACKGROUND

The furnisher in this matter, Carter-Young, is an ACA member who furnished data to CRAs reflecting that Roberts did not pay an amount due under an apartment rental agreement with Ansley. Roberts then submitted indirect disputes to all three major CRAs claiming she should not owe the debt because Ansley's assessment was retaliatory and fraudulent. Specifically, Roberts alleged: "[a]s a result of Plaintiff exercising her legal rights under the written lease agreement, Ansley was forced to breach a lease agreement it had entered with a third-party, which caused Ansley extreme embarrassment and potential financial liability. Thereafter, Ansley sought to retaliate against Plaintiff for exercising her legal rights [by] . . . attempt[ing] to charge Plaintiff for alleged damages that either never occurred, were ordinary wear and tear items, or were grossly overstated." Joint Appendix ("JA") at 6, ¶¶ 13–14.

In sum, Roberts raised a defense that relied on facts about her landlord's conduct.

The instant suit claims Carter-Young violated FCRA section 1681s-2(b) when it failed to reasonably investigate Roberts's indirect credit reporting dispute. Carter-Young filed a motion to dismiss arguing its obligation to conduct a reasonable investigation under the FCRA was never triggered because Roberts never alleged an inaccuracy or lack of completeness in her credit report. Carter-Young argued that Roberts' dispute alleging a defense to liability under the agreement does not trigger a furnisher's reasonable investigation responsibilities under the FCRA. *Id.* at 6, ¶¶ 13–16. At the District Court, the magistrate agreed with Carter-Young and recommended dismissal for failure to state a claim. Following written objections and responses to that recommendation, the District Court judge adopted the magistrate's report and recommendation, thereby dismissing the case. Roberts's appeal followed.

Following Roberts's brief on appeal, the CFPB and FTC filed an Amicus brief arguing the FCRA requires furnishers to conduct a "reasonable" investigation when it receives an indirect dispute, regardless of the underlying nature of the dispute. *See* Agency Brief at 21. The Agencies urge this tribunal to adopt a rule that recognizes no objective limit to duties of furnishers to investigate indirect furnishing disputes.

IV. <u>ARGUMENT</u>

ACA disagrees with the CFPB's and FTC's view of furnishers' investigation obligations under § 1681s-2(b). In arguing that the FCRA requires furnishers to

conduct a "reasonable" investigation when it receives an indirect dispute, regardless of the underlying nature of the dispute, the Agencies attempt to expand the scope of a furnisher's investigation obligations. Their approach is unworkable and will result in inconsistent application and abuse by consumers and the credit repair industry. This panel should hold that § 1681s-2(b) does not require investigation into disputes concerning Provider or third-party conduct.

A. The CFPB would have Furnishers Delete Tradelines if a Dispute Raises a Contractual Defense.

The Agencies argue that *any* dispute that cannot be resolved by a furnisher or CRA should result in the deletion of disputed information from a consumer's credit report. Agency Brief, at 20. This position changes the law, is not supported by the FCRA, and would cause the absurd result of less accurate and less complete credit reports.

The Agencies ignore that, when evaluating the necessity of an investigation, a dispute must be about "accuracy" or "completeness" of the reporting at issue. Instead, they argue *every* consumer dispute should be investigated, regardless of its nature or basis and the FCRA's investigation directive applies equally to factual disputes and those that could be characterized as legal. *Id.* at 11-12. Moreover, they concede there is no clear answer to "[h]ow much more the furnisher must do to investigate" in these circumstances. *Id.* They admit a furnisher "confronted with a dispute raising a 'legal' question might need to review the terms of the contract, a

statute, or other relevant authorities to determine whether it has a sufficient legal basis to support the conclusion that the debt is owed in the amount asserted." *Id.* at 19-20.

Thus, the Agencies acknowledge their view of a reasonable investigation could include complex legal issues, including statutory and contract analysis. They also acknowledge "only a court can conclusively answer [these] questions." *Id.* at 20, n.13. Yet, they argue furnishers must investigate every dispute regardless of its nature, and that, unless a furnisher feels comfortable enough with its own legal analysis, it should not verify the debt, and should delete the reporting. The reality is that any dispute raising thorny legal questions will cause furnishers to err on the side of caution and delete the disputed reporting rather than risk the consequences of making the wrong legal decision.

1. Plaintiff's/Amici's Proposed Interpretation Creates a False Dichotomy that is Unsupported by the Plain Language of the Statute.

The Agencies and Roberts wrongly focus on factual versus legal disputes. Roberts asserts the legal issue for determination is: "Whether this Circuit will recognize an exception to a furnisher's obligations under §1681s-2(b)(1) if the consumer's dispute asserts a "legal" defense to the reported debt?" Dkt. 12, Opening Brief of Appellant, at 2 ("Appellant Brief"). The Agencies claim the "district court held the furnishers need not investigate indirect disputes involving purportedly

'legal' questions" and say, "[t]his decision has no basis in the text of the FCRA, unduly narrows the scope of a furnisher's obligations, and runs counter to the purpose of the FCRA." Agency Brief, at 2 .

The District Court's holding was not so broad, nor did it rest on the "legal" nature of Roberts's dispute. The District Court, applying the plain language of the FCRA, held Roberts did not allege an inaccuracy in her credit report. And because she did not challenge the accuracy or completeness of the reported debt, Carter-Young's duty to conduct an investigation was never triggered. In fact, the court never reached the issue of whether Carter-Young's investigation was reasonable because it did not need to conduct one at all where Plaintiff failed to assert the credit reporting, as it related to the debt's existence or her performance on the debt, was inaccurate or incomplete.

While the FCRA does not address the legal-versus-factual distinction, this observation does not require the result urged by the Agencies. This Court can uphold the ruling below even if it agrees with this textual observation. The FCRA, and its implementing regulation, are clear that a furnisher's duty to reasonably investigate a consumer dispute only arises when there is a challenge to the completeness or accuracy of information reported about that consumer. *See* 12 CFR § 1022.41. Roberts's dispute was not a cause for removing the tradeline because the dispute did not concern accuracy or completeness of information about the consumer's

performance and/or terms of the consumer's account.

Many types of disputes may require investigation and tradeline deletion if there is an inaccuracy or incompleteness. For example, investigation would be required *if*:

- Roberts disputed she was one of Ansley's tenants;
- Roberts disputed she was of legal age to be bound by the agreement;
- Roberts disputed the dollar amount Ansley charged;
- Roberts disputed whether the agreement allowed for damage charges beyond the security deposit; or if
- Roberts disputed she had already paid the $791.14 for damage to the property.

Instead, Roberts's dispute raised a defense to the agreement based on Ansley's "retaliatory" conduct. *See, e.g.*, Appellant Brief, at 16. The Agencies' position is that furnishers must investigate even when consumers dispute credit reporting based on contract defenses arising from another party's conduct. For example, the Agencies' view would require investigation into a myriad of potential contract defenses, including:

- Non-performance of service provider;
- Incorrect performance of a service provider;
- Damages caused by a service provider;
- Fraud, misrepresentation, or fraudulent inducement by the creditor or service provider;
- Duress or mistake.

While at first blush this list looks like the type of "legal" disputes that are part of the false dichotomy Roberts advances, the salient similarity is that the *prima facie*

elements of these defenses require an examination of non-borrower conduct. Moreover, in many cases, they cannot be objectively and readily verified. The Agencies' position is that furnishers of consumer report information must investigate non-consumer conduct to verify the accuracy and completeness of a consumer report. That position is inconsistent with prior CFPB interpretations and legislative direction to the agencies.

2. The Regulations at 12 CFR § 1022.41 Conflict with the Agencies' View in their Amicus Brief.

Agency regulations at 12 CFR § 1022.41(a) define "accuracy" differently than what the agencies advance here. Agency Brief, at 13 ("'accuracy' – defined as 'freedom from mistake or error' – is also naturally understood to refer to freedom from legal errors.") (citing Merriam-Webster.com Dictionary). But this Court need not refer to dictionary definitions when the CFPB's own regulations provide the definition of accuracy as it relates to information disputes. Based on the CFPB's own regulations at 12 CFR § 1022.41(a), accuracy *only* refers to whether the information correctly reflects the terms and liability for the account, the consumer's performance on the account, and identification of the appropriate consumer. Additionally, by asserting that accuracy also includes freedom from any potential legal errors, the CFPB provides an opportunity for consumers to challenge the legal validity of their debts, beyond the three enumerated considerations contained in section 1022.41(a). Reading the statute and Regulation V together, the reasonable investigation

requirement only applies to the accuracy of information about the existence of the debt and the consumer's performance on their debt obligations. It does not contemplate anything beyond that, such as a challenge to the validity of a debt based on the creditor's conduct.

Although the FCRA imposes a duty to report "accurate" information on a consumer's credit history, it creates no duty to report only information favorable or beneficial to the consumer. *Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1158 (11th Cir. 1991). To the contrary, Congress enacted the FCRA with the goals of ensuring that credit reporting agencies imposed procedures that were not only "fair and equitable to the consumer," but that also met the "needs of commerce" for accurate credit reporting.

Credit reports would not be accurate if they shaded credit histories in the best possible light for consumers. Nor would they be complete if an unproven contract defense resulted in tradeline deletion. The standard of accuracy embodied in the FCRA is an objective measure that should be interpreted in an evenhanded manner, considering the interests of both consumers and potential creditors in fair and accurate credit reporting.

Additionally, the Agencies' position defies the FCRA's directive to the CFPB to promulgate rules concerning disputes that weigh benefits to consumers and costs to furnishers as well as the overall accuracy and integrity of consumer reports:

> In prescribing regulations under subparagraph (A), the agencies shall weigh—
> (i) the benefits to consumers with the costs on furnishers and the credit reporting system;
>
> (ii) the impact on the overall accuracy and integrity of consumer reports of any such requirements;
>
> (iii) whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any such dispute; and
>
> (iv) the potential impact on the credit reporting process if credit repair organizations, as defined in section 1679a(3) of this title, including entities that would be a credit repair organization, but for section 1679a(3)(B)(i) of this title, are able to circumvent the prohibition in subparagraph (G).

15 U.S.C. § 1681s-2(a)(8)(B). This legislative directive highlights the importance of overall accuracy and integrity of consumer reports, expeditious resolution, the impact of any rules of the credit reporting process generally, and avoiding abuse by credit repair organizations. In the instant matter, the Agencies' position disregards these statutory demands merely because the dispute was indirect rather than direct.

3. The Agencies' View is Not Supported by FCRA Text.

As discussed above, the relevant language of the FCRA is found at 12 U.S.C § 1681s-2, which sets forth the responsibilities of furnishers. It states, "[a] person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate." 12 USC § 1681s-2(a)(1)(A). The statute does not explicitly define accuracy. However, it states, "[f]or purposes of subparagraph (A), the term

'reasonable cause to believe that the information is inaccurate' means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information." *Id*. at (A)(1)(D).

Section 1681s-2(b) governs furnisher responsibilities when a consumer disputes information in their credit report and provides that when a consumer submits a dispute "with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency," the furnisher must take the actions enumerated in subsections (b)(1)(A-E). Reading these two provisions together, as we must, it is evident a consumer dispute only triggers a furnisher investigation if it pertains to the accuracy or completeness of the information, which means that specific information or knowledge, *other than sole allegations by the consumer*, would cause a reasonable person to have substantial doubts as to the accuracy of the disputed information. Thus, the Agencies' position that *any* consumer dispute, even those based solely on a consumer's subjective beliefs and allegations, triggers a furnisher's investigation obligation, is contrary to the plain language of the FCRA.

Moreover, as detailed at length in Appellee's Opening Brief, the FCRA's consistent use of the word accuracy throughout the statute indicates that accuracy refers to an objective measure. *See* Dkt. 26, Appellee's Opening Brief ("Appellee

Brief") at 16 (citing *Peoples v. Equifax Info. Sols*., 3:23-cv-495-MOC-DCK, 2023 U.S. Dist. LEXIS 187444, 6 (W.D. N.C. Oct. 18, 2023) ("Plaintiff's subjective belief is not sufficient to plead an inaccuracy: 'the standard of accuracy embodied in [the FCRA] is an objective measure'") and *Butler v. Experian Info. Sols. Inc.*, 1:23-cv-02519-ELR-LTW, 2023 U.S. Dist. LEXIS 154386, 3 (N.D. Ga. Aug. 25, 2023) ("Plaintiff's subjective 'beliefs' about tradelines are not enough to state an FCRA claim. The FCRA's accuracy standard 'is an objective measure.'")).

Finally, this court need not consider the Agencies' position that exempting "legal" disputes would effectively nullify the "accuracy" and "completeness" threshold qualifiers out of the statute. The plain language does not support such a reading. As Appellee notes in its Opening Brief, "[r]equiring the investigation of every dispute would render meaningless and superfluous the limiting phrase 'completeness or accuracy' from the FCRA." Appellee Brief at 27; *see also Scott v. United States*, 328 F.3d 132, 139 (4th Cir. 2003) (courts must "give effect to every provision and word in a statute and avoid any interpretation that may render statutory terms meaningless or superfluous").

4. Adopting the Agencies' Position Would Damage the Credit Reporting System.

The Agencies' proposed resolution would erode the integrity of the entire credit reporting system. They assert that furnishers are responsible for analyzing complex legal issues including contract and statutory analysis, and argue that if a

furnisher cannot conclusively determine the consumer has no defense to the debt, then the furnisher should not report it at all. But furnishers should not be required to conduct discovery and judge defenses or forego reporting altogether.

ACA is concerned that if tradeline deletion were the only option for a dispute that cannot be resolved with information about the agreement terms and consumer performance, it creates a loophole ripe for exploitation. Consumers and the credit repair industry could attain tradeline deletions by raising spurious legal defenses to the contract creating the debt. Deleting an otherwise accurate tradeline is the essence of incompleteness and the antithesis of the FCRA.

On the other hand, the Agencies argue that the legal/factual dichotomy leads furnishers to avoid investigation responsibilities in unwarranted situations. Agency Brief, at 24–26. This all-or-nothing approach is not a workable solution. If the Agencies' perfection-or-deletion approach were followed, credit reports overall would become less reliable predictors of consumer propensity to pay. This raises costs for all borrowers.

Here, Plaintiff the Agencies argue that Carter-Young should have made a legal determination regarding Roberts's defenses to the agreement with Ansley. Yet, had Carter-Young engaged in such an exercise and determined that the debt was valid, Roberts would still be suing Carter-Young because she disagreed with its legal analysis. And if the court found a different result, Carter-Young would be liable for

statutory damages. In such a framework, most companies would refrain from making any determination about defenses and would simply not report the debt, resulting in inaccurate and incomplete credit reporting, defeating the very purpose the FCRA strives to achieve.

In sum, the Agencies' view that all disputes must be investigated is not supported by regulatory interpretations and has no basis under the statute. Further, they urge a "reasonableness" standard with no limits and encourage consumers and credit repair firms to file spurious disputes raising contract defenses in an effort to get negative tradeline information deleted. The Court should reject this approach in favor of a rule based on the statute's text and the FCRA directive to balance the benefits to consumers with the costs on furnishers and the credit reporting system. *See* § 1681s-2(a)(8)(B).

B. Other Courts Recognize Limits to the Need to Investigate Disputes.

The Second Circuit's decision in *Sessa v. Trans Union, LLC*, 74 F.4th 38 (2d Cir. 2023), a FCRA challenge against a CRA rather than a furnisher, is informative and largely analogous to the issues confronted here. In *Sessa*, the Second Circuit rejected a bright line distinction between a factual inquiry and a legal inquiry and instead adopted as a threshold test: the determination of whether challenged information can be characterized as objective and readily verifiable. *Id.* at 43. If the consumer's dispute is one about accuracy or completeness and also raises an

objective and readily verifiable issue, it must be investigated under section 1681e.

While *Sessa* addresses CRAs' duties under 1681e(b) and 1681i, a non-creditor data furnisher's duty to investigate under 1681s-2(b) is analogous. As the District Court noted in its report and recommendation, concerns about collateral attacks on the underlying debt will remain where, as here, the data furnisher is not the creditor. JA, 79 (citing *Saunders*, 526 F.3d at 150). Critically, the *Sessa* decision does not alter or conflict with the plain language of the FCRA. In fact, the court's analysis aligns squarely with the existing statute and regulations. Consistent with the discussion above, a furnisher's investigation responsibilities are only triggered after a consumer has disputed the accuracy or completeness of the reported debt. *Sessa* stands for the proposition that a furnisher's obligation to investigate inaccuracies only extends so far as the challenged information is objective and readily verifiable.

A claim of an inaccuracy is a threshold issue. "This order of proof makes sense: if there is no inaccuracy, then the reasonableness of the investigation is not in play. On the flip side, if there is an inaccuracy, to succeed, the plaintiff must establish that the investigation was unreasonable." *Id.* (quoting *Gross v. CitiMortgage, Inc.*, 33 F.4th 1246, 1251 (9th Cir. 2022)). Typical consumer disputes regarding accuracy on their consumer reports include whether they failed to make a payment, whether a payment was late, or the outstanding balance on a certain obligation. This information can be readily verified by consulting a loan document or the consumer's

payment history. In contrast, if a dispute is about the validity of an affirmative defense, it does not cross the threshold of disputing an inaccuracy.

1. The FCRA Does Not Require Furnishers to Step into the Role of Judicial Decisionmaker when Consumers Raise Affirmative Defenses to Reported Accounts.

The prevailing view among circuit courts is that CRAs and furnishers should not step into the role of courts and determine the validity of debts. Courts recognize that furnishers "[are] n[ot] qualified . . . to resolve" legal questions. JA, 73 (citing *DeAndrade v. Trans Union LLC*, 523 F.3d 61, 68 (1st Cir. 2008)). Most courts have recognized that the responsibilities of CRAs, and relatedly, furnishers, should turn on their competencies based on their respective roles in the credit reporting market. The FCRA "imposes duties on consumer reporting agencies and furnishers in a manner consistent with their respective roles in the credit reporting market." *Denan v. Trans Union LLC*, 959 F.3d 290, 294 (7th Cir. 2020). And *Denan* made clear that reporting agencies are not "tribunals," so "[t]he power to resolve these legal issues exceeds [their] competencies," as "[o]nly a court can fully and finally resolve the legal question of a loan's validity." *Id.* (citing *DeAndrade*, 523 F.3d at 68).

Furnishers are no more equipped than CRAs to make legal determinations as to the validity of debts. *See, e.g.*, *Chiang v. Verizon New Eng., Inc.*, 595 F.3d 26, 88 (1st Cir. 2008) ("Like CRAs, furnishers are 'neither qualified no obligated to resolve' matters that 'turn[] on questions that can only be resolved by a court of

law.'"). Numerous courts have echoed this holding. *See Holland v. Chase Bank USA, Nat'l Ass'n*, 475 F. Supp. 3d 272, 276-77 (S.D.N.Y. 2020); *Hunt v. JPMorgan Chase Bank, Nat'l Ass'n*, 770 Fed. Appx. 452, 458 (11th Cir. 2019) (same).

2. Furnishers collecting for Providers are not Equipped to Conduct Discovery.

Where, like here, the furnisher is a third-party debt collector who was assigned the debt for collection purposes, the furnisher may not have unfettered access to information necessary to resolve a consumer's dispute. More importantly, when the consumer's dispute raises a defense to the debt based on the conduct of a third-party, the necessary information may be unobtainable.

Furnishers who are not original creditors are handicapped in the same ways as the CRAs discussed in caselaw above because the furnishers lack the technical legal skills to analyze complex contractual interpretation questions, as well as the interplay of various potentially applicable laws. *See Denan*, 959 F.3d at 294. This policy explains why the FCRA does not require furnishers to go beyond their statutorily prescribed responsibility of investigating objective and readily verifiable disputes regarding the accuracy or completeness of a debt.

C. The Accuracy Investigation Duties of Furnishers Apply Only to Information about a Consumer.

In the instant matter, this Court can further clarify that objectively and readily verifiable information would not usually include information about the performance

of someone other than the consumer. The FCRA's plain text supports this interpretation.

The FCRA focuses only on accurate information about the *consumer's* performance. A furnisher's responsibilities under the FCRA should be found in FCRA's plain language. *United States v. Bly*, 510 F.3d 453, 460 (4th Cir. 2007). The first directive in the FCRA related to furnishers' duties is that they shall not "furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate." 15 U.S.C.A. §1681s–2(a)(1)(A). This core directive relates only to furnishing accurate information "relating to a consumer." *Id*. In contrast, furnishers can submit "any information" whose completeness and accuracy are disputed, so long as it also provides a notice of dispute under section 1681s–2(a)(3).

Additionally, the subsection on a furnisher's "duty to correct and update information" contemplates the furnisher's "transactions or experiences with any consumer." §1681s–2(a)(2). And finally, a consumer report itself is defined as one, "bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living [for certain permitted uses]." §1681a(d)(1). In sum, consumer reports are about consumers.

1. Since at least 2003, Regulation V has Interpreted Accuracy and Completeness.

Rather than point to statutory text, the Agencies seek to expand FCRA

requirements by looking to dictionary definitions of "accuracy" and "completeness". *See* Agency Brief, at 13–14. But in 2003, a joint agency regulation interpreted these terms in reference to FCRA section 1681s-2, among others. *See* 12 C.F.R. § 222.41(a) (recodified in 2011 at 12 C.F.R. § 1022.41(a)). As Carter-Young notes, the terms "accuracy" and "completeness" appear in multiple places within the FCRA text. Appellee Brief, at 11-12. The Agencies provide no justification for employing different interpretations to the same terms.

When interpreting the direct dispute duties of furnishers (as opposed to the instant issue of an indirect dispute), federal agencies have established through notice-and-comment rulemaking the meets and bounds of "accuracy" to be an inquiry limited to account liability, the consumer, and consumer performance:

> For purposes of this subpart and appendix E of this part, the following definitions apply:
> (a) Accuracy means that information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer correctly:
> (1) Reflects the terms of and liability for the account or other relationship;
> (2) Reflects the consumer's performance and other conduct with respect to the account or other relationship; and
> (3) Identifies the appropriate consumer.

12 C.F.R. § 1022.41(a).[2]

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[2] The interim final rule at § 1022.41 substantially duplicated the interagency regulations promulgated under the FCRA by the Board, the FDIC, the FTC, the NCUA, the OCC, and the OTS. In addition, the interim final rule substantially

The regulatory definition provides that furnishers meet their requirements to ensure accuracy by reference only to the "terms of and liability for the account or other relationship;" that the information correctly reflects the "consumer's performance and other conduct;" and "identifies the appropriate consumer." *Id.*

Notably, section 1022.41(a) does not require investigation into a consumer's defenses, excuses, or justifications for nonpayment of the account or other relationship. Nor does this definition require the furnisher be accurate or complete about whether the creditor or Provider performed under the agreement creating the debt. The original text of this rule has governed furnisher conduct since 2003.

While section 1022.41(a) applies to direct disputes, there is no reason the definition of accuracy therein should be different for indirect disputes. Indeed, the Northern District of New York recently favorably relied upon the accuracy definition in Section 1022.41(a) in the context of an indirect dispute to the CRAs, then relayed to the defendant furnisher. *See Renee Lamando v. Rocket Mortgage*, No. 2:23-CV-147, 2024 WL 264034 (N.D.N.Y. Jan. 24, 2023).

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duplicates the following FTC regulations: 16 CFR parts 603, 610, 611, 613, 614, and 642, and associated model forms and disclosures. The interim final rule, published as the CFPB's new Regulation V, 12 CFR part 1022, reproduces those regulations and associated model forms and interpretations with only certain non-substantive, technical, formatting, and stylistic changes. 76 FR 79308 (12/21/2011).

2. The FCRA Does Not Require Reporting on Provider Performance.

Despite the prevalence of debts arising from services, the FCRA is silent about reporting Provider performance under the agreements creating reported accounts. According to a recent CFPB report, most collections tradelines are for low-balance, non-financial accounts.[3] The median collections balance is $382, and almost three-quarters of all collections are nonfinancial including medical, utility, and rental/leasing collections. *Id.* Thus approximately 75% of all collection accounts reported derived from an instance where a consumer received a product or service in advance of payment.

But the FCRA says nothing about what should be furnished regarding the quality or completeness of the provided product or service. Consumer reports are not about creditor or provider performance. Indeed, the only FCRA provisions concerning the reporting of information about creditors directs CRAs to exclude from consumer reports information that would reveal a consumers' medical condition. *See* 15 U.S.C. § 1681s–2(a)(9).

3. Contract Defenses are Not Always Inaccuracies under the FCRA.

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[3] CFPB, *Market Snapshot: An Update on Third-Party Debt Collections Tradelines Reporting* at 3 (February 2023), *available at* https://files.consumerfinance.gov/f/documents/cfpb_market-snapshot-third-party-debt-collections-tradelines-reporting_2023-02.pdf.

Courts have consistently held that a consumer's personal opinion or speculation is "insufficient to support a claim of inaccuracy under the FCRA." *Shaw v. Equifax Info. Sols., Inc.*, 204 F. Supp. 3d 956, 961 (E.D. Mich. 2016); *see also Sherfield v. Trans Union, LLC*, No. CIV-19-001-R, 2019 WL 3241176, at *3 (W.D. Okla. July 18, 2019); *Meeks v. Equifax Info. Sols., LLC*, No. 1:18-CV-0366-TWT-WEJ, 2019 WL 3521955, at *6 (N.D. Ga. May 14, 2019). Thus, as other courts have recognized, Roberts's subjective beliefs about the Provider's (Ansley's) conduct do not create an inaccuracy under the FCRA.

Relatedly, courts have rejected the notion that a consumer report is inaccurate or incomplete simply because it *could* include more information desired by the consumer. In *Rocket Mortgage*, the court explained that its task is to consider whether the information is inaccurate or misleading, not to look for ways that the information might be more accurate:

> Plaintiff argues that the failure of her credit report to include more information makes the presented information inaccurate. Absent statutory or caselaw authority supporting such a contention, the fact that Plaintiff continued paying [] to stave off foreclosure does not create an inaccuracy in Plaintiff's credit report. Perhaps a report reflecting continued payment, without creditors requiring the payment, might be more inclusive and all-encompassing of [] Plaintiff's situation, but it is not required by law. Rather, "as a matter of law, the Court's task is to consider whether the information is inaccurate or misleading, not to look for ways that the information might be more accurate."

2024 WL 264034, at * 8 (quoting *Holland v. TransUnion LLC*, 574 F. Supp. 3d 292, 300 (E.D. Pa. 2021)).

The *Holland* court held that public policy required a limiting principle to investigations into inaccuracy:

> [A]s a matter of policy, if the Court were to grant [plaintiff]'s request, there would be no limiting principle. If information in a credit report that could be more accurate is inaccurate for purposes of the FCRA, then every single customer in the United States would be able to state a claim under the FCRA.... If a plaintiff could make a claim under the FCRA that credit information was inaccurate simply by alleging, entirely subjectively, that there is a 'better' (perhaps only longer, more cumbersome) way to report it, federal courts would take up the unwelcome task of engaging in pedantic pedagogy of phraseology.

574 F. Supp. 3d at 301.

Here, the omission of additional information about Ansley and Roberts's relationship, including Roberts' subjective belief about Ansley's motives, does not make the challenged reporting inaccurate.

A consumer's subjective belief that a debt should not be owed does not make it facially inaccurate. Other circuits have recognized this distinction. *See, e.g.*, *Euring v. Equifax Info. Servs., LLC*, No. 19-CV-11675, 2020 WL 1508344 (E.D. Mich. Mar. 30, 2020) ("And the Sixth Circuit has repeatedly found that a personal opinion, by itself, cannot support an inaccuracy claim under the FCRA." (citing *Dickens v. Trans Union Corp.*, 18 F. App'x 315, 318 (6th Cir. 2001) ("mere speculation . . . without more, is insufficient"))). Thus, unless a consumer disputes information about the debt that falls under one of the three categories enumerated in 12 CFR §1022.41(a), a furnisher has no obligation to undertake an investigation of

that consumer's dispute.

D. Consumers have Recourse under the FCRA's "Dispute Notice" Provision and through Action Against the Provider to Resolve Disputes about Provider Conduct.

If a consumer has a defense to a contract that turns on Provider conduct, the furnisher should report the account as disputed in compliance with §1681s–2(a)(3). That should be the end of the matter.

Under the FCRA section 1681s–2(a)(1)(A), furnishers cannot provide inaccurate information "related to the consumer." But section 1681s–2(a)(2) allows the furnishing of "any information" that is disputed so long as the information is accompanied by a notice it is disputed:

> If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

15 U.S.C.A. § 1681s–2(a)(3). That is, subsection 2(a)(1)(A) bars against furnishing inaccurate information related to a consumer; but 2(a)(3) allows furnishing of disputed information, so long as it is accompanied by appropriate notice.

These provisions can only coexist if there is a distinction between them. *See, e.g.*, *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (describing the courts' duty to avoid rendering a statutory provision superfluous). Based on the absence in § 2(a)(3) of the qualifier "related to a consumer," it appears that one type of information that

can be disputed and be potentially inaccurate, but nevertheless furnished after a reasonable investigation, is information not related to the consumer. Another revelation from this textual comparison is that the FCRA recognizes in §1681s–2(a)(3) that not all disputes are capable of resolution upon a provider's investigation.

Therefore, §1681s–2(a)(3) says that if a consumer disputes reporting based on a Provider's conduct, no investigation is necessary, but the account should be noted as disputed.

Alternatively, or in addition, consumers can file suit against the creditor or provider to raise and resolve its defenses—precisely what Roberts did here. In fact, this case is a quintessential example of how the credit reporting system is designed to work. Carter-Young accurately reported the existence and amount of the debt that Roberts owed. Following litigation between Roberts and Ansley, the two parties came to a settlement. As part of the settlement, Ansley agreed to abandon its claim against Roberts, and instruct Carter-Young to update the reporting, including deleting all references to the claim from Robert's credit record. JA, 13, ¶¶ 52-53. Carter-Young promptly removed the item from their reporting. *Id.* at ¶ 54.

Thus, the CFPB's concern that consumers would be limited in their ability to correct harmful inaccuracies on their consumer reports is unfounded. *See* Agency Brief, at 2. Consumers can resolve disputes about challenged debt with the original creditor or file bona fide disputes with the furnisher. If the furnisher *then* fails to

designate the debt as disputed in future reporting, a consumer may have a claim against the furnisher for inaccurate or incomplete reporting because it fails to include the *disputed nature* of the debt. *Saunders v. Branch Banking & Trust Co. of VA*, 526 F.3d 142, 149–50 (4th Cir. 2008).

The FCRA appropriately solves for the issue of unresolvable disputes; therefore the Agencies' expansive reading of investigatory obligations should be rejected.

V. **CONCLUSION**

While prior courts have established a dichotomy between "legal" disputes and "factual" disputes, the FCRA is better understood to only require investigation of disputes about the accuracy of reported agreement terms and consumer performance that can be objectively and readily verified. Disputes that raise defenses based on Provider conduct do not meet the threshold for a dispute about accuracy. This clarification from the Circuit will both meet the CFPB's and FTC's concerns and establish a bright line that is textually supported.

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Certificate of Compliance

This brief complies with the length limits permitted by Federal Rule of Appellate Procedure 29(a)(f).

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I hereby certify that on January 2, 2024, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit via the appellate CM/ECF system. The participants in this case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

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