Case No. 23-2181

In the United States Court of Appeals
for the Third Circuit

Michael Ritz and Andrew Ritz,
Plaintiffs-Appellants,

v.

EQUIFAX INFORMATION SERVICES LLC, EXPERIAN INFORMATION SOLUTIONS INC., TRANSUNION LLC, and NISSAN INFINITI LT,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of New Jersey
Case No. 20-13509-GC-DEA
The Honorable Georgette Castner

Brief of *Amicus Curiae* ACA International-The Association of Credit and Collection Professionals In Support of Defendants-Appellees

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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]

ACA International-The Association of Credit and Collection Professionals ("ACA") represents approximately 1700 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 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 ACA 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.

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 he is trusted with a loan or products/services prior to payment, Providers and lenders would need to generalize

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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.

risk to manage their potential exposure. Without accurate and complete information about repayment history, Providers would increase prices for all borrowers to protect against losses from the few who do not pay.

Resolving the issues here pursuant to the proposals presented by the Plaintiffs-Appellants Andrew and Michael Ritz (the "Ritzes") and amici, the Consumer Financial Protection Bureau ("CFPB") and the Federal Trade Commission ("FTC") (collectively the "Agencies"), would undermine the accuracy and integrity of credit reports, and therefore the efficiency and functionality of the U.S. credit system. If the Agencies' views are adopted, it will degrade creditors' trust in credit reports and force them to curtail credit offerings. Those relying on credit reports have no way to know when furnishers suppress information about their histories 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. This will impact all consumers, including those who have worked to address their outstanding legal obligations to improve their credit scores. Thus, creditor decisions based on incomplete or inaccurate credit reports will undoubtedly increase the cost of credit for everyone to manage the risk of unknown/omitted historical credit data.

II. SUMMARY OF ARGUMENT

The Federal circuit courts 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 Congress has not spoken on whether a furnisher must investigate a "legal" dispute versus a "factual" dispute. Brief of Amici Curiae CFPB and FTC, at 25 ("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.")). The Agencies' suggestion that furnishers investigate *all* disputes until they reach some amorphous limit of "reasonableness" is unhelpful and rife with opaque reasoning that will burden courts and waste judicial resources.

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 Nissan Infiniti LT ("Nissan") 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 FCRA's absence of 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.

The Ritzes disputed whether the Provider in the instant matter, Nissan, properly exercised its contractual rights. They blame Nissan for the vehicle's

untimely grounding. *See* Memorandum Opinion, dated May 30, 2023 ("MSJ Order"). The Ritzes did not dispute the terms of the agreement or the fact that they did not pay the additional month on their vehicle lease, *i.e.* the payment status. Thus, Nissan accurately reported the terms of the agreement, the debts assessed under the agreement, and the Ritzes' conduct concerning the debt. Rather, the Ritzes' claim of credit furnishing inaccuracy after the vehicle abandonment is a dispute about the Provider's conduct.

Neither 15 U.S.C. §1681s-2(b) nor the related regulations at 12 C.F.R. §1022.40-43 impose any duty on furnishers to investigate or report Providers' conduct concerning debts. Rather, if a borrower has such a dispute, his recourse is to insist the account be marked as "disputed" under 15 U.S.C. §1681s-2(a)(3). The borrower may also seek resolution directly with the Provider or turn to the courts to address the Provider's conduct under the terms of the agreement.

III. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from the termination of a vehicle lease. The Ritzes leased a car from Nissan, and the lease was set to expire on August 9, 2019. Prior to that date, Nissan sent the Ritzes an email detailing the procedures for returning the leased vehicle—"grounding" the vehicle—which included scheduling an inspection appointment. Despite this directive, the Ritzes did not make an appointment and showed up to the dealership on August 9, 2019, expecting immediate service. When

the dealership explained that they could not attend to the Ritzes because they had not scheduled an appointment for the inspection and to complete the lease-end paperwork, including the federally required odometer statement, the Ritzes threw their keys on the counter and abandoned the vehicle without completing the required lease termination procedures or paperwork.

Because the lease was not terminated, as required, the vehicle was not timely grounded. Nissan exercised its contractual right to charge the Ritzes for another month under the lease terms. There is no dispute that Nissan assessed this charge. There is no dispute that the charge was for the same monthly payment amount that had been assessed for each month prior under the lease. And there is no dispute that the Ritzes refused to pay the additional monthly charge.

Nissan, therefore, accurately reported this delinquency to the CRAs. The Ritzes complained to Nissan. While the complaints department sought to resolve the Ritzes' dispute by forgiving the payment as a customer service matter, Nissan's consumer reporting department maintained that the reporting was accurate. Eventually, Nissan removed the past due payment and updated its reporting to reflect that deletion.

The instant suit claims Nissan violated FCRA §1681s-2(b) when it failed to reasonably investigate the Ritzes' indirect credit reporting dispute. Nissan filed a Motion for Summary Judgment arguing that (1) its reporting was, in fact, accurate,

and (2) it could not be liable under §1681s-2(b) because the Ritzes never alleged an inaccuracy or lack of completeness in their credit reports.

At the District Court, the Honorable Judge Georgette Castner agreed with Nissan and granted its Motion for Summary Judgment. The Ritzes' appeal followed. The CFPB and FTC filed an Amicus brief arguing the FCRA requires furnishers to conduct a "reasonable" investigation when they receive an indirect dispute, regardless of the underlying nature of the dispute. *See* Agency Brief at 11. The Agencies now urge this tribunal to adopt a rule that recognizes no objective limit to the duties of furnishers to investigate indirect furnishing disputes.

IV. ARGUMENT

ACA disagrees with the Appellants', CFPB's, and FTC's expansive view of furnishers' investigation obligations under §1681s-2(b). In arguing that the FCRA requires furnishers to conduct a "reasonable" investigation when they receive 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 Court 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 24. This position changes the law, is not supported by the plain language of 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. *See* 15 U.S.C. §1681s-2(b)(1). 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. Agency Brief, at 11-13. They concede, however, there is no clear answer to "[h]ow much more the furnisher must do to investigate" if the dispute is legal in nature. *Id.* at 19. 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 23.

Thus, the Agencies acknowledge their view of a reasonable investigation could include complex legal issues, including statutory and contractual analysis. They also acknowledge "[a] court may be the ultimate arbiter of whether a debt is

owed." *Id.* at 24. 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.

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

The Agencies and the Ritzes misguidedly focus on factual-versus-legal disputes. *See, e.g.*, Opening Brief of Appellants, at 4 ("Appellants' Brief") ("the district court err[ed] in interpreting the[] requirements [of 15 U.S.C. §1681s-2(b)(1)] to categorically exempt inaccuracies rooted in 'legal disputes'"). The Agencies claim the "district court held that furnishers need not investigate indirect disputes involving purportedly 'legal' questions" and argue, "[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 3.

The District Court's holding was not so broad, nor did it rest exclusively on the "legal" nature of the Ritzes' dispute. The District Court, applying the plain language of the FCRA, held that the Ritzes did not allege an inaccuracy in their credit reports. And because they did not challenge the accuracy or completeness of the reported debt, Nissan's duty to conduct an investigation was never triggered. In

fact, the court never reached the issue of whether Nissan's investigation was reasonable because it did not need to conduct one. *See* MSJ Order. Indeed, as the MSJ Order explained, the Ritzes took issue with Nissan's conduct in exercising its rights under the lease contract. The district court held that, "at issue is 'whether Nissan's charge was valid.'" MSJ Order at 9. While this may be characterized as a "legal" issue, at its core, the distinction is fundamentally about consumer versus Provider conduct.

While the FCRA does not address the legal-versus-factual distinction, this observation does not require the result the Agencies urge. 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.

An interagency task force drafted FCRA regulations that define "accuracy," originally codified at 12 C.F.R. §222.41. Now recodified at 12 C.F.R. §1022.41(a), this section defines "accuracy" in the context of a FCRA dispute:[2]

> 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

[2] While §1022.41 governs direct versus indirect disputes, it is still instructive to the analysis here.

consumer.

12 C.F.R. §1022.41(a).

Without citing any legal authority or regulatory history, the Ritzes and the Agencies argue that the term "liability" in the regulation text "confirm[s] that furnishers are capable of, and are expected to, investigate legal issues of liability." Agency Brief, at 21, n. 12; Appellants' Brief at 24. This newly articulated argument finds no support in the plain language of the regulation or in its administrative history.

Liability simply means "responsible for." It does not suggest a detailed analysis of a consumer's alleged legal defenses to that liability. Subsequent sections of the very same regulation give examples of what "liability" disputes encompass. For instance, a reasonable investigation into "liability" ensures the consumer whose report is at issue is the same consumer connected to the account:

> [A] furnisher must conduct a reasonable investigation of a direct dispute if it relates to the consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account.

12 C.F.R. §1022.43(a)(1).

None of these examples contemplate a legal defense to the consumer's liability on the account. Similarly, §1022.43(a)(2), which discusses investigation into the "terms of an account" defines such terms as "the terms of a credit account

or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the credit limit on an open-end account."

Additionally, the original rulemaking reflects that the regulatory purpose of these sections did *not* contemplate consumer challenges based on legal defenses. *See* 74 Fed. Reg. 31484, (July 1, 2009). Following the CFPB's recodification of the regulations into the Dodd-Frank Act in 2011, the original administrative history remains instructive. After notice-and-comment, six agencies published "final rules to implement the accuracy and integrity and direct dispute provisions in section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) that amended section 623 of the Fair Credit Reporting Act." *Id.* There was significant discussion in the final rules about the agencies' efforts to define "accuracy." *Id.* at 31487–89.

Critically, none of this discussion contemplated "liability" in the context of a consumer's alleged defenses to a debt. *Id.* Notably, the one change to the definition of accuracy that occurred between the proposed rules and the final rules was the deletion of the qualifier, "without error." *Id.* at 31488 ("The Agencies agree that the 'without error' standard could be read to imply an expectation that information be reported according to unreasonably high standards. Such an unrealistic and potentially burdensome standard could lead some furnishers to cease or limit their furnishing of information to CRAs or act as an obstacle to entities becoming

furnishers."). This explanation for limiting the scope of furnisher responsibilities highlights the agencies' collective concern about placing too much burden on furnishers and the resulting risk of inaccurate reporting. This is precisely the same concern that ACA raises here.

The Ritzes' dispute was not cause for removing the tradeline because it did not concern accuracy or completeness of information about the consumers' performance and/or terms of the consumers' account. Many disputes may require investigation and tradeline deletion if there is an inaccuracy or incompleteness. For example, investigation would be required *if* the Ritzes disputed:

- that they were of legal age to be bound by the agreement;
- the dollar amount Nissan charged; or
- that they had already paid the additional monthly debt under the lease.

Instead, the Ritzes' dispute raised a defense to the lease agreement based on their subjective view of Nissan's conduct. *See, e.g.*, Appellants' Brief, at 12–14. Specifically, they allege that Nissan should have: (1) grounded the vehicle on August 9, 2019, despite the Ritzes not following the proper procedures for returning the vehicle despite the fact that they were notified of such, and (2) elected not to exercise its rights under the lease by charging the Ritzes for another month despite the fact that the lease was not terminated, as required. *Id.* The Ritzes also alleged that Nissan's conduct was inappropriate because it was purportedly in response to Nissan's perception of the Ritzes as "rude." *Id.* at 13. Again, these arguments turn

on allegations about the *Provider's* conduct, and not the consumers' conduct, which is undisputed. *See* Appellants' Brief at 32 (admitting that the Ritzes "simply refuse[d] to pay" what they viewed as an "extra-contractual and unilaterally imposed fee").

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:

- 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 the Ritzes advance, the salient similarity is that the *prima facie* elements of these defenses require an examination of non-borrower conduct. Moreover, in many cases, these defenses 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 Agencies' View Conflicts with 12 C.F.R. §1022.41.

Rather than point to statutory text, the Agencies seek to expand FCRA requirements relying on dictionary definitions of "accuracy" and "completeness." *See* Agency Brief, at 15, n.9. But in 2003, a joint agency regulation interpreted these terms in reference to FCRA §1681s-2, among others. *See* 12 C.F.R. §222.41(a) (recodified in 2011 at 12 C.F.R. §1022.41(a)). The Agencies provide no justification for employing different interpretations.

When interpreting the direct dispute duties of furnishers (as opposed to the instant 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:

> 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).[3]

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[3] The interim final rule 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 duplicates the following FTC regulations: 16 C.F.R. 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 C.F.R. part 1022, reproduces those regulations and

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, §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.

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

Instead of the joint agency notice-and-comment rulemaking completed over 20 years ago, the Agencies now assert that Merriam-Webster should dictate. Agency Brief, at 15 ("'accuracy'–defined as 'freedom from mistake or error'–is also naturally understood to refer to freedom from legal errors.") (quoting *Accuracy*,

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associated model forms and interpretations with only certain non-substantive, technical, formatting, and stylistic changes. 76 Fed. Reg. 79308 (Dec. 21, 2011).

Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/accuracy (last visited Feb. 6, 2024)). 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.

As discussed above, the Agencies' novel interpretation is not reflected in the regulatory history, *supra* at A.1., or subsequent sections of the same regulation, *see* 12 C.F.R. §1022.43(a). "Liability for a credit account" simply refers to whether someone is associated with, and therefore responsible for, a debt. *Id.* It does *not* mean a detailed analysis of every potential defense to that liability. To accept the CFPB's newly articulated interpretation of this provision in the instant case would conflict with the plain language of the current regulations.

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 consumers' 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 are not character assessments, but should be methodical records that protect both consumers and creditors by providing accurate information about credit history. If an unproven contract defense resulted in tradeline deletion, this would lead to incomplete information. 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:

> [T]he 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.

The relevant language of the FCRA is found at 15 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." 15 U.S.C. §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 that 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, the FCRA's consistent use of the word "accuracy" throughout the statute indicates that it refers to an objective measure. *See e.g.*, *Peoples v. Equifax Info. Sols*., 3:23-cv-495-MOC-DCK, 2023 U.S. Dist. LEXIS 187444, at *6 (W.D. N.C. Oct. 18, 2023) (quoting *Cahlin*, 936 F.2d at 1158) ("Plaintiff's subjective belief is not sufficient to plead an inaccuracy: 'the standard of accuracy embodied in [the FCRA] 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 of the statute. The plain language does not support such a reading. Requiring the investigation of every dispute would impermissibly render

meaningless and superfluous the limiting phrase 'completeness or accuracy' from the FCRA. *See In re Fesq*, 153 F.3d 113, 115 (3d Cir. 1998) (quoting *Cushman v. Trans Union Corp.*, 115 F.3d 220, 225 (3d Cir. 1997)) ("[A]s a general rule of statutory construction '[w]e strive to avoid a result that would render statutory language superfluous, meaningless, or irrelevant.'").

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

The Agencies' proposed resolution would erode the integrity of the 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 significant loophole ripe for calamitous exploitation. As just one example, 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. The CFPB itself has acknowledged the dangers of the credit

repair industry through enforcement activity.[4]

On the other hand, the Agencies argue that the legal/factual dichotomy leads furnishers to avoid investigation responsibilities in unwarranted situations. Agency Brief, at 25–26. This all-or-nothing approach is not workable. If the Agencies' perfection-or-deletion approach were adopted, credit reports overall would become less reliable predictors of consumer propensity to pay, raising costs for all borrowers.

Imagine a world where furnishers must investigate any and every dispute regardless of its basis only to meet FCRA requirements. Even if the furnisher reasonably confirms that a debt is valid and the reporting is accurate, the consumer will undoubtedly disagree, incentivizing the consumer to sue the furnisher. And if the court then reaches a different result than the furnisher, that furnisher could 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,

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[4] Paige Smith, *Credit-Repair Firms Agree to Settle CFPB Claims for $2.7 Billion*, Bloomberg (Aug. 28, 2023), *available at* https://www.bloomberg.com/news/articles/2023-08-28/credit-repair-firms-agree-to-settle-cfpb-claims-for-2-7-billion

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. 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 furnisher's duty to investigate under §1681s-2(b) is analogous. 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 investigative responsibilities are only

triggered if a consumer disputes 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." *Suluki v. Credit One Bank, NA*, 666 F. Supp. 3d 403, 410 (S.D.N.Y. 2023) (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. *DeAndrade v.*

Trans Union LLC, 523 F.3d 61, 68 (1st Cir. 2008). Most courts recognize 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.* at 95 (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) (quoting *DeAndrade*, 523 F.3d at 68) ("Like CRAs, furnishers are 'neither qualified nor 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, N.A.*, 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).

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

Here, this Court can further clarify that objectively and readily verifiable information would not typically include information about the performance of

someone other than the consumer. The FCRA's plain text supports this interpretation as it focuses only on accurate information about the *consumer's* performance.

Indeed, 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 §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. Contract Defenses are Not Always Inaccuracies Under the FCRA.

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, the Ritzes' subjective beliefs about Nissan's conduct in exercising its rights under the lease does 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)).

Public policy requires 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 Nissan and the Ritzes' relationship, including the Ritzes' subjective belief about the dealership's conduct regarding the return of the leased vehicle or Nissan's purported perception of the Ritzes as rude, 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) ("[T]he Sixth Circuit has repeatedly found that a personal opinion, by itself, cannot support an inaccuracy claim under the FCRA."); *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 in 12 C.F.R. §1022.41(a), a furnisher has no obligation to undertake an investigation of that consumer's dispute.

V. CONCLUSION

While some courts have attempted to navigate the 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 textually supported bright line.

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