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INTEREST OF AMICI CURIAE

To ensure fair and accurate credit reporting, the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq*., imposes various requirements that consumer reporting agencies and the companies that provide those agencies information about consumers, known as fui[illegible]

violation of the FCRA "constitute[s] an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the Federal Trade Commission Act." *Id.* § 1681s(a)(1). And the FCRA grants the Commission "such procedural, investigative, and enforcement powers ... as though the applicable terms and conditions of the Federal Trade Commission Act were part of [the FCRA]." *aTwBri… lȷ4 ay.3*

STATEMENT

A. Consumer Credit Reporting

Consumer credit reporting plays an important role in the lives of American consumers. The consumer credit reporting system includes: (1) consumer reporting agencies, which compile reports on consumers and make them available to lenders, insurers, employers, landlords, and other users, and (2) furnishers, which provide information about consumers to consumer reporting agencies. *See* CFPB, *Annual report of credit and consumer reporting complaints* 5 (Jan. 2022), https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf. The three largest consumer reporting agencies are Equifax, Experian, and TransUnion. *Id.* These companies maintain files on over 200 million Americans. *Id.* More than 15,000 furnishers provide these companies information about consumers. *Id.* at 5–6.

The reports compiled by these companies are used to make decisions that affect every facet of consumers' lives. Lenders use credit reports, also referred to as consumer reports,[1] when determining whether to extend credit and on what terms. *Id.* at 5. Landlords use these reports when

[1] The term "credit report" is used throughout this brief to have the same meaning as the term "consumer report" as defined at 15 U.S.C. § 1681a(d).

deciding whether to rent housing to tenants. *Id.* And, employers use these reports to determine whether a job applicant should be hired. *Id.* Given how important these decisions are to consumers, it is critical that the information contained in credit reports be correct and that consumers can identify and dispute any inaccuracies.

However, credit reports frequently contain errors. By one estimate, one in five Americans has a verified error on at least one credit report. *See* FTC, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* i-ii (Jan. 2015), https://www.ftc.gov/system/files/documents/reports/section-319-fair-accurate-credit-transactions-act-2003-sixth-interim-final-report-federal-trade/150121factareport.pdf; *see also* Liane Fiano, CFPB, *Common errors people find on their credit report—and how to get them fixed* (Feb. 5, 20t9,

content/uploads/2021/06/A-Broken-System-How-the-Credit-Reporting-System-Fails-Consumers-and-What-to-Do-About-It.pdf.

Given this error rate, it is unsurprising that consumers frequently complain about the consumer credit reporting system. The CFPB receives hundreds of thousands of complaints about the consumer credit reporting industry every year. *See* CFPB, *Consumer Response Annual Report* 11 (Mar. 2022), https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf. In 2021, over 70% of the complaints consumers submitted to the CFPB related to credit reporting. *Id.* That year, consumers submitted over 700,000 complaints to the CFPB related to credit reporting, more than every other industry combined. *Id.* The number of complaints the Bureau receives related to credit reporting is also dramatically increasing. The 700,000 credit-reporting complaints submitted to the Bureau in 2021 reflected a 122% increase over the previous year. *Id.*

B. The FCRA

The FCRA, 15 U.S.C. § 1681 *et seq.*, enacted in 1970, created a regulatory framework governing consumer credit reporting. The statute "was crafted to protect consumers from the transmission of inaccurate information about them, and to establish credit reporting practices that

utilize accurate, relevant, and current information in a confidential and responsible manner." *Seamans v. Temple Univ.*, 744 F.3d 853, 860 (3d Cir. 2014) (quoting *Cortez v. Trans Union, LLC*, 617 F.3d 688, 706 (3d Cir. 2010)). Consumer reporting agencies "collect consumer credit data from 'furnishers,' such as banks and other lenders, and organize that material into individualized credit reports, which are used by commercial entities to assess a particular consumer's creditworthiness." *Id.* The "FCRA imposes a variety of obligations on both furnishers and [consumer reporting agencies]," *id.*, including the obligation, under certain circumstances, to investigate disputes submitted by consumers.

The FCRA provides two avenues through which consumers can dispute the accuracy or completeness of the information in their credit reports. First,4.906 -2.265 Td3s2 (v9 (e)- n)Tj-0.-1.3 (s24p004 Tw 04 TTw [(F)]TJ/TT

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1. Direct Disputes

Section 1681s-2(a)(8) of the FCRA governs the duties of furnishers upon receipt of a direct dispute from a consumer. After receiving notice that a consumer disputes the accuracy of the information a furnisher

However, the consumer reporting agency is not required to satisfy either of these obligations "if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant, including by a reason of a failure by a consumer to provide sufficient information to investigate the disputed information." *Id.* § 1681*i*(a)(3)(A). If the agency determines that a dispute is frivolous or irrelevant, it must

information that is found to be inaccurate, incomplete, or that cannot be verified. *Id.* § 1681s-2(b)(1)(A)-(E).

C. Facts

Stefan Ingram, the Plaintiff and Appellant in this case, believes he was the victim of identity theft.[2] He alleges that a Comcast account was opened in his name, without his authorization, for service at a Philadelphia address where he has never lived. According to Ingram, he first learned of the account when he noticed it was listed as delinquent on his credit report.

After learning of the account, Ingram filed a direct dispute with Comcast. On October 19, 2017, his lawyer sent a letter to Comcast advising the company that the account in Ingram's name was fraudulent. The letter requested that Comcast investigate the account's authenticity and report to the consumer reporting agencies that the account was disputed. Comcast responded and requested additional documentation including an affidavit and a police report. Ingram never submitted the requested documents, and Comcast ultimately did not find that the account was opened due to fraud. Comcast subsequently referred the delinquent account to Waypoint

[2] The description of the facts provided here is based on the district court's account of those facts in its summary judgment order. *See Ingram v. Experian Info. Sols., Inc.*, No. 18-cv-3776, 2021 WL 2681275, at *1–6 (E.D. Pa. June 30, 2021).

Resource Group LLC ("Waypoint"), the Defendant and Appellee in this case, for collections.

Next, Ingram filed an indirect dispute with Experian. After noticing that the allegedly fraudulent account remained on his credit report, Ingram had his lawyer dispute the account using Experian's website. The indirect dispute was submitted to Experian on June 29, 2018. The dispute stated, "THIS IS NOT MY ACCOUNT. PLEASE REMOVE THIS FROM MY CREDIT." On July 16, 2018, Waypoint received the dispute from Experian. In response, Waypoint updated Ingram's address in its system and confirmed that the account had his correct name and Social Security number. Because the dispute did not include the code for fraud, Waypoint did not take any additional steps to verify the authenticity of the account.[3] However, Waypoint's system did automatically mark the account with the code "XB," which indicates that the account information is disputed and an investigation of the dispute is in progress by the furnisher. As a result, the

[3] Consumer reporting agencies and furnishers communicate about disputes using standardized codes. *See generally* CFPB, *Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation's Largest Credit Bureau's Manage Consumer Data* (Dec. 2012), https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting--

Waypoint account was marked as disputed on Ingram's Experian credit report.

Finally, Ingram filed a second indirect dispute with Experian, which was again forwarded to Waypoint. The second indirect dispute noted that

showing that he submitted a bona fide dispute." *Ingram v. Experian Info. Sols., Inc.*, No. 18-cv-3776, 2021 WL 2681275, at *7 (E.D. Pa. June 30, 2021). The court explained that this requirement "is inherent in the first element of an FCRA claim, which requires that a consumer give notification of a dispute." *Id.* at *5.

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SUMMARY OF ARGUMENT

Under the FCRA's indirect dispute provisions, when a consumer reporting agency notifies a furnisher that a consumer has disputed information in her credit report, the furnisher is required to conduct an investigation. There are no exceptions to this rule to be found in the statutory text. The district court, however, found an *implicit* exception for frivolous disputes. It held that the FCRA requirement that furnishers investigate indirect disputes applies only to so-called "bona fide disputes." This Court should reject this atextual, judge-made exception to furnisher liability under the FCRA for three reasons.

First, the FCRA means what it says. There is nothing in the text of the statute that suggests a furnisher can choose not to investigate disputes ife-3.3 (tu)-0.6 (t

Second, consumers are entitled to notice of the outcome of their disputes and an opportunity to cure any deficiencies. The district court's holding would circumvent those requirements, leaving consumers in the dark. Where the FCRA all ( )Tj0 Tc 0 Tw -25.332 -2.265 Td( )Tj (el)-1.3 /Artifact ≮Attac

courts of appeals have acknowledged that the FCRA envisions consumer reporting agencies serving as the filtering mechanism for frivolous indirect disputes. So should this Court.

Moreover, the FCRA provides furnishers an additional layer of protection insofar that it requires them only to conduct a *reasonable* investigation. What constitutes a reasonable investigation is, in part, a function of how much information and documentation the consumer provides. But whether a furnisher conducted a reasonable investigation is a fact-intensive inquiry that should almost always be resolved at trial.

ARGUMENT

I. When a consumer reporting agency forwards a dispute to a furnisher, the furnisher is required to conduct an investigation.

The text of the FCRA requires furnishers to investigate any dispute forwarded to them by a consumer reporting agency. Nothing in the text of the statute suggests that a furnisher may evade its obligation to investigate an indirect dispute simply because it deems the dispute frivolous or inadequately supported.

A. The statutory text is unambiguous.

To begin, the plain meaning of the statutory text requires furnishers to investigate all indirect disputes. Section 1681s-2(b) provides that "[a]fter receiving notice" from a consumer reporting agency "of a dispute with

regard to the completeness or accuracy of *any* information provided by a [furnisher] to a consumer reporting agency, the [furnisher] *shall* ... conduct an investigation with respect to the disputed information." 15 U.S.C. § 1681s-2(b)(1)(A) (emphases added). This language does not afford furnishers any discretion to determine whether to conduct an investigation. *See SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1351 (2018) ("This directive is both mandatory and comprehensive. The word 'shall' generally imposes a nondiscretionary duty. And the word 'any' naturally carries an 'expansive meaning.'" (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997) and citing *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998))). And there is no other language in the FCRA's indirect dispute provisions that provides a furnisher the right to decline to investigate a dispute that it has determined to be frivolous.

The statutory text is unambiguous and, therefore, conclusive: "It is axiomatic that statutory interpretation begins with the language of the statute itself ... [I]f the statutory language is unambiguous, the plain meaning of the words ordinarily is regarded as conclusive." *Gov't of Virgin Islands v. Knight*, 989 F.2d 619, 633 (3d Cir. 1993) (citing *Pennsylvania Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 557–58 (1990) and *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108

(1980)); *see also In re Am. Pad & Paper Co.*, 478 F.3d 546, 554 (3d Cir. 2007) ("Congress says in a statute what it means and means in a statute what it says." (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000))).

B. If Congress intended to create an exception for frivolous disputes, it would have said so.

Further, had Congress intended to allow furnishers to decline to investigate disputes they determine to be frivolous, it knew how to say so. For one, the FCRA expressly states that if a consumer reporting agency "reasonably determines that [a] dispute ... is frivolous or irrelevant" it is not required to investigate or to forward the indirect dispute to the furnisher. 15 U.S.C. § 1681*i*(a)(3)(A). Similarly, when a furnisher receives a direct dispute (that is, a dispute received directly from the consumer), the FCRA clearly provides that the furnisher is not required to investigate so long as it "reasonably determines that the dispute is frivolous or irrelevant." *Id.* § 1681s-2(a)(8)(F)(i). But this language is nowhere to be found in the FCRA's indirect dispute provisions.

This Court must "presume that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another." *Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 140 S. Ct. 768, 777 (2020) (quoting *BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 537 (1994))

(alteration adopted); *see also Aristy-Rosa v. Att'y Gen. United States*, 994 F.3d 112, 115–16 (3d Cir. 2021) (same). Here, Congress *expressly* provided consumer reporting agencies the authority to assess whether an indirect dispute is frivolous or irrelevant, and it *expressly* provided furnishers the authority to assess whether a direct dispute is frivolous or irrelevant. Had Congress also intended to give furnishers the authority to assess whether an indirect dispute is frivolous or irrelevant, "it presumably would have done so expressly." *Russello v. United States*, 464 U.S. 16, 23 (1983).

The district court's reasoning is erroneous for the same reason. It held that "[t]he bona fide dispute requirement is *inherent* in the first el

Likewise, the district court's reliance on statutory language governing direct disputes is unpersuasive. The court cites the frivolousness exception in Section 1681s-2(a), which governs direct disputes, to support its conclusion that a similar, albeit implied, exception should be read into Section 1681s-2(b), which governs indirect disputes. *E.g.*, *Ingram*, 2021 WL 2681275, at *6 (citing 15 U.S.C. § 1681s-2(a)(8)(F)(i)). The two district court cases relied on by the district court similarly import the frivolousness exception from the part of the statute governing direct disputes into the part of the statute governing indirect disputes. *See Palouian v. FIA Card Servs.*, No. 13-cv-0293, 2013 WL 1827615, at *3 (E.D. Pa. May 1, 2013) (citing t o o. on(.)0.5 e2.1(tu)-mocte..13.9 ((.)0.5 o)or(ct)2315 -i0(o)v7 (u)-co0o o.6 oct..2

This Court should not endorse that outcome for two reasons. First, it is inconsistent with the statutory scheme, which in every other regard ensures consumers are advised of the outcome of their disisn.2 (S1)2nd.3 9sthe(Cou) .21(

and the agency must then determine whether "the dispute by the consumer is frivolous or irrelevant." *Id.* (quotation omitted).

Thus, the statutory scheme charges consumer reporting agencies with filtering frivolous disputes in the first instance, and it does so intentionally, in order to protect furnishers. Having put "this filter in place," and having provided an "opportunity for the furnisher to save itself from liability by taking the steps required by § 1681s-2(b), Congress put no limit on private enforcement under §§ 1681n & o." *Id.* The district court's holding that a furnisher's liability under section 1681s-2(b) is impliedly limited to instances in which the underlying dispute is bona fide, therefore, is contrary to the scheme designed by Congress.

Furnishers also have a final layer of protection: they are not required to conduct an unreasonably onerous investigation into a conclusory or unsubstantiated dispute. *See Seamans*, 744 F.3d at 864 ("[A] furnisher's post-dispute investigation into a consumer's complaint must be 'reasonable.'" (quoting *SimmsParris*, 652 F.3d at 359)). Courts have held that determining what such an investigation looks like is a fact-intensive inquiry that requires "weighing 'the cost of verifying the accuracy of the information versus the possible harm of reporting inaccurate information.'" *Id.* at 865 (quoting *Johnson v. MBNA Am. Bank, NA*