

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to 11th Cir. Rule 26.1, counsel for amici curiae the
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INTEREST OF AMICI CURIAE

To ensure fair and accurate credit reporting, the Fair Credit Reporting Act (FCRA or the Act), 15 U.S.C. § 1681 requires consumer reporting agencies (CRAs)—like Experian Information Solutions, Inc. (Experian), TransUnion, and Equifax—and entities that furnish information to CRAs (furnishers)—often, but not always, creditors—to follow various requirements when they compile and disseminate personal information about individuals. The Consumer Financial Protection Bureau (CFPB or Bureau) has exclusive rule-writing authority for most provisions of the FCRA. 15 U.S.C. § 1681s(e). The Bureau interprets and, along with various other federal and state regulators, enforces the Act’s requirements.

§ 1681s(a)–(c).

The Federal Trade Commission (FTC or Commission) has been charged by Congress with the mission to protect consumers from deceptive or unfair trade practices. 15 U.S.C. § 45(a). As part of that mission, the Commission has long played a key role in the implementation, enforcement, and interpretation of the FCRA. The FTC enforces the FCRA through Section 5 of the FTC Act. Congress deemed a violation of the FCRA to “constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the [FTC Act].” 15 U.S.C. § 1681s(a). 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].” .

The FCRA requires a furnisher who is notified by a CRA of a dispute about information it furnished to the CRA (i.e., an indirect dispute)¹ to “conduct an investigation with respect to the disputed information.” § 1681s-2(b)(1)(A). This case presents a question about the scope of a

credit reporting issues² that the Bureau receives and devotes resources to address. It could also limit the ability of the Bureau and the FTC to exercise their authorities to protect consumers. The Bureau and the FTC, therefore, have a substantial interest in these issues.

STATEMENT

A. The Fair Credit Reporting Act

1. Information contained in consumer reports has critical effects on Americans' daily lives. Consumer reports are used to evaluate consumers' eligibility for loans and determine the interest rates they pay, ascertain their eligibility for insurance and set the premiums they pay, and assess their eligibility for rental housing and for checking accounts. Prospective employers also commonly use consumer reports in their hiring decisions.

Consumer Fin. Prot. Bureau, Key Dimensions and Processes in the U.S. Credit Reporting System (2012),

² From January to September 2021, the Bureau received over 500,000 consumer complaints related to credit or consumer reporting.

Consumer Fin. Prot. Bureau,

(Jan. 2022), at 21,

https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf.

(i) when a consumer submits an “indirect” dispute to a CRA, which must forward the dispute to the furnisher under 15 U.S.C. § 1681i(a); and (ii) when a consumer submits a dispute directly to the furnisher, § 1681s-2(a)(8) and (b).

The Act requires a furnisher, after it receives notice of an “indirect” dispute from a CRA pursuant to § 1681i(a)(2), to:

- (A) [C]onduct an investigation with respect to the disputed information;
- (B) [R]eview all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;
- (C) [R]eport the results of the investigation to the consumer reporting agency;
- (D) [I]f the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and
- (E) [I]f an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under [§ 1681s-2(b)(1)], for purposes of reporting to a consumer reporting agency only, as appropriate, based on the result of the reinvestigation promptly –
 - (i) [M]odify that item of information;
 - (ii) [D]elete that item of information; or
 - (iii) [P]ermanently block the reporting of that item of information.

15 U.S.C. § 1681s-2(b)(1).

These responsibilities are part of the FCRA’s overall framework for ensuring accuracy in credit reports. As is relevant here, when a consumer notifies a CRA that he or she disputes “the completeness or accuracy of any

item . . . contained in a consumer’s file,” the CRA is required to “conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate.” . § 1681(a)(1)(A). The CRA must also provide notice to the furnisher, . § 1681i(a)(2), after which the furnisher is required to engage in the activities listed above. . § 1681s2(b)(1)(A)-(E).⁴ A consumer may sue a furnisher for willful or negligent noncompliance with its obligation to perform an investigation under § 1681s-2(b). . §§ 1681n, 1681o.

3. Despite Congress’s repeated efforts to promote accuracy, errors persist in consumer reports. Between January and September 2021, the Bureau received more than 500,000 complaints about credit or consumer reporting, and the most common issue consumers identified was incorrect information on a credit report. Consumer Fin. Prot. Bureau, Annual Report of Credit and Consumer Reporting Complaints (Jan. 2022), at 21,

⁴ Within 30 days of receiving notice of the dispute, the CRA must record the status of the disputed information or modify or delete the disputed information, as appropriate, and promptly notify the furnisher that the information has been modified or deleted. 15 U.S.C. § 1681i(a)(1)(A), (a)(5)(A). After completing a reinvestigation, the CRA must notify the consumer of the results within five business days. . § 1681i(a)(6). If the CRA reinvestigation does not resolve the dispute, the consumer has the right to add a brief statement about the dispute that will appear or be summarized in all subsequent consumer reports from the CRA that contain the information. . § 1681i(b)-(c).

30, https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf.

B. Factual and Procedural Background

1. Mark Mayer v. HICV

Plaintiff-Appellant Mark Mayer entered into a timeshare agreement with Defendant-Appellee Holiday Inn Club Vacations Incorporated (HICV)⁵ in 2014 for a property in Cape Canaveral, Florida.⁶ Mr. Mayer made monthly payments for approximately three years, but ceased making payments in 2017. In 2019, Mr. Mayer mailed HICV letters that disputed the validity of, and purported to rescind, the agreement, while permitting HICV to retain all prior payments as liquidated damages.

In August 2019, Mr. Mayer obtained a copy of his credit report from Experian. The report stated that he had an open account with HICV with a past-due balance. Mr. Mayer submitted letters to Experian in January,

⁵ HICV is a for-profit “resort, real estate and travel company.” Holiday Inn Club Vacations, Our Purpose, hicv.com. In 2017, HICV was named one of the fastest growing private companies in Central Florida by the Orlando Business Journal. Holiday Inn Club Vacations, Our Team and Our Values, <https://hicv.com/our-team>.

⁶ Unless otherwise noted, the facts in this section are derived from the description in the district court’s opinion.

, No. 6:20-cv-2283-GAP-EJK (M.D. Fla. April 21, 2022) (“Mayer Op.”).

The court did not reach the question of

inquiry.”

can be evaluated by how thoroughly the furnisher investigated the dispute (e.g., how well its conclusion is supported by the information it considered or reasonably could have considered).

2. Congress Did Not Exclude Disputes that Implicate Legal Questions

The FCRA specifically describes the types of indirect disputes that furnishers need to investigate—those that dispute “the completeness or accuracy of any item of information contained in a consumer’s file.”¹² 15 U.S.C. §§ 1681i(a)(1)(A), (a)(2), 1681s-2(b)(1). Nothing in the term “accuracy” suggests that Congress intended to exclude information that is inaccurate on account of legal issues. , 142 S. Ct. 1856, 1862 (2022) (holding that the word “mistake” in Federal Rule of Civil Procedure 60(b)(1) encompasses both mistakes of fact and of law, because had the drafters “intended a narrower meaning, they ‘easily could have drafted language to that effect’ . . . The difference between ‘mistake of fact’ and ‘mistake of law’ was well known at the time. . . . Yet they chose to include ‘mistake’ unqualified.”). To the contrary, the accuracy and completeness of information in consumer files often turns on legal

¹² Notably, under the FCRA, a CRA is required to delete an item if it cannot be verified. 15 U.S.C. § 1681i(a)(5)(A); 827 F.382 (a)Tc 0.003 Tw 3.50

Prior to the Ninth Circuit’s decision, some courts had drawn a distinction between factual and legal inaccuracies in the context of a

FCRA provision that does not apply to furnishers.

, No. 1:19-CV-2650-CC-JKL, 2020 WL 4048062, at *4

(N.D. Ga. July 17, 2020) (“[R]easonable reinvestigation does not require

CRA’s to resolve legal disputes about the validity of the underlying debts

they report. (t)2.7]TJ-0.002 Tc 0.001 Twi470v(.002 Tc 0.001 T-1.3 Td()Tj0 Tc 0 Tw 9.9

debt-generating transactions, are not as well positioned as furnishers to investigate legal disputes arising from those transactions.

, 759 F. App'x 484,488 (7th Cir. 2019)

(concluding that furnisher “was in a better position than the CRAs to make

**3. An Atextual Exception for Legal Inaccuracies Will Create
a**

shows how easily a loophole for “legal” inaccuracies can be manipulated to swallow the rule.¹⁸

Given the difficulty in distinguishing “legal” from “factual” disputes,

this Court should

Certificate of Compliance

This brief complies with the length limits permitted by Federal Rule of Appellate Procedure 29(a)(5). The brief contains 5,700 words, excluding the portions exempted by Rule 32(f). The brief's typeface and type style comply with Rule 32(a)(5) and (6).

December 16, 2022

/s/
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Certificate of Service

I hereby certify that on December 16, 2022, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system. The participants in the case are registered CM/ECF user I-d ser(hey)0.500.-1 wiplp12.2 (l)-0.6 (hey)0.shtyntpp12.2 velte CM/ECFs stemd

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