

No. 24-10147

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Jessica Nelson,

Plaintiff-Appellant,

v.

Experian Information Solut.1 (ti)8.5 (on)3or lr .3 137 Td[(,)III,

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

Pursuant to 11th Cir. Rule 26.1, counsel for *amici curiae* the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) certify that the following additional persons and entities have an interest in the outcome of these appeals:

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INTEREST OF AMICI

The Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC or Commission) file this brief pursuant to Fed. R. App. P. 29(a)(2).

To ensure fair and accurate credit reporting, the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.*, imposes various requirements on consumer reporting agencies (CRAs), such as Experian Information Solutions (Experian), and the companies that provide those agencies information about consumers. The CFPB has exclusive rule-writing authority for most provisions of the FCRA. *Id.* § 1681s(e). The CFPB also interprets and, along with other federal and state regulators, enforces the law’s requirements. *Id.* § 1681s(a)-(c).

The Federal Trade Commission has been charged by Congress with protecting consumers from deceptive or unfair trade practices. *Id.* § 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 Commission 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].” *Id.* § 1681s(a). And .3 (m)12.7 (is)88.nst2uumhe [t2uuiio 412.2 (

though the applicable terms and conditions of the Federal Trade Commission Act were part of [the FCRA].” *Id.*

This case concerns the FCRA’s requirement that a CRA “conduct a reasonable reinvestigation” in response to a consumer’s dispute regarding information “contained in [the] consumer’s file.” *Id.* § 1681i(a)(1)(A). The questions presented on appeal are (1) whether this requirement applies to disputes concerning personal identifying information—here, name, address, and Social Security number information—and (2) if so, whether Experian willfully or negligently violated

STATEMENT

A. The Fair Credit Reporting Act

CRAAs collect and assemble credit, public record, and other consumer information into consumer reports.¹ Creditors, insurers, landlords, employers, and others use the information in these reports to make decisions that can have a significant impact on consumers. For example, credit

B. Facts and Procedural History

Plaintiff Jessica Nelson contacted Experian identifying several errors in her Experian credit report: (1) her maiden name was used and misspelled, (2) two addresses were listed that were not hers, and (3) her Social Security number (SSN) was wrong. Appendix at 516. Experian responded by letter instructing Nelson to contact either the sources of the inaccurate information or Experian if Nelson needed help identifying those sources. Experian did not delete the disputed information, notify any furnishers of Nelson's dispute, or provide the sources of the disputed information. *Id.*

Nelson then sent a second letter reiterating her dispute. *Id.* This time Experian deleted the misspelled maiden name, the incorrect SSN, and one of the two addresses. Experian did not delete the other address because it was associated with an open credit account. Experian did not notify Nelson of any of this; nor did Experian inform the furnishers that it deleted certain information. Instead, Experian again instructed Nelson to contact either the sources of the information, without providing those sources, or Experian if she needed help identifying the sources. *Id.* Thinking she had been ignored again, Nelson sent a third dispute letter. As before, Experian did not tell Nelson that it had deleted her maiden name, the incorrect SSN, and one address. Nor did Experian explain that it did not delete the

other address because it was associated with an open credit account. Experian also again did not notify any furnishers that it had deleted certain information. *Id.*

Nelson subsequently brought a putative class action alleging Experian willfully or negligently violated the FCRA's reinvestigation requirement in 15 U.S.C. § 1681i by failing to reinvestigate her dispute regarding her name, address, and SSN information. *See generally id.* at 25 (Compl.). At summary judgment, Experian argued that it was not required to conduct any reinvestigation because such information fell outside the scope of the FCRA's reinvestigation provision. *Id.* at 520-521. The court disagreed but granted Experian's motion for summary judgment. *Id.* at 523, 527.

First, the court held that the FCRA's reinvestigation requirement applies to the personal identifying information disputed here. *Id.* at 523. The court found that numerous provisions in the FCRA reflected Congress's intent to include name, address, and SSN information in the ambit of "any item of information contained in a consumer's file." *Id.* However, the court also held that Experian did not willfully or negligently violate the FCRA because Experian's interpretation of the scope of the reinvestigation requirement was, in the court's view, "based on the text of the Act, judicial precedent, or guidance from administrative agencies"—or, as the court described it, not "objectively unreasonable." *Id.* at 524.

The district court correctly held that this reinvestigation requirement applies to consumer disputes regarding name, address, and Social Security number (SSN) information. The relevant provision covers disputes regarding “any item of information contained in a consumer’s file,” *id.* § 1681i(a)(1)(A), and the FCRA defines “file” as “all of the information on [a] consumer recorded and retained by a [CRA] regardless of how the information is stored,” *id.* § 1681a(g). That plainly includes identifying information such as name, address, and SSN. Various other provisions reinforce that commonsense conclusion. For example, the FCRA’s disclosure provision provides that when requesting “all information in the consumer’s file,” the consumer can ask the CRA to redact the first five digits from her SSN before the CRA discloses the SSN it has on file. *Id.* § 1681g(a)(1).

The district court erred, however, in holding that Experian did not negligently or willfully violate the FCRA because, in the court’s opinion, Experian’s view was “based on the text of the Act, judicial precedent, or guidance from administrative

was under no obligation to investigate disputes about the accuracy of information as fundamental as name, address, and SSN.

The district court compounded its error by applying the standard for reckless (and thus willful) violations under Section 1681n to assess whether Experian's violation of the statute was negligent under Section 1681o. This Court has previously recognized that different standards govern whether a CRA recklessly (and thus willfully) or negligently violated the FCRA. In particular, as this Court held in *Losch v. Nationstar Mortg. LLC*, 995 F.3d 937, 947 (11th Cir. 2021), identifying some basis in text, precedent, or administrative guidance for an ultimately wrong interpretation is insufficient to defeat a negligence claim. Thus, even if Experian's view could find any support in text, precedent, or agency guidance, that was the wrong standard to apply to determine whether Experian's violation was negligent.

ARGUMENT

The FCRA provides that if a consumer contacts a CRA to dispute the “completeness or accuracy of any item of information contained in [the] consumer's file at [the CRA] . . . , the agency shall, free of charge, conduct a

FCRA’s goal of promoting “fair and accurate credit reporting,” *id.* § 1681(a)(1), by giving consumers the ability to correct incomplete and inaccurate information compiled by CRAs.

The district court correctly held that the FCRA’s reinvestigation provision applies to consumer disputes regarding personal identifying information—here, name, address, and SSN information.

To start, the FCRA defines “file” as “all of the information on [a] consumer recorded and retained by a [CRA] regardless of how the information is stored.” 15 U.S.C. § 1681a(g). There is no dispute that CRAs, including Experian here, “record[] and retain[]” consumers’ names, addresses, and SSN information. Indeed, on Experian’s own website, it lists “personal information,” including name, address, and SSN, under “types of information you may see on your Experian credit report.” *See* Experian, Understanding Your Experian Credit Report (March 4, 2021), <https://www.experian.com/blogs/ask-experian/credit-education/report-basics/understanding-your-experian-credit-report/>. Experian would not be able to provide this information if it did not record and retain it.

Other provisions of the FCRA confirm this straightforward understanding of “information contained in a consumer’s file.” Take the FCRA’s disclosure provision at 15 U.S.C. § 1681g. There, the FCRA provides that upon a consumer’s request, a CRA shall “disclose to the consumer . . . [a]ll information in the consumer’s *file* . . . except that . . . if the consumer to whom the *file* relates requests that the first 5 digits of the social security number . . . not be included in the disclosure . . . the [CRA] shall so truncate such number in such disclosure.” *Id.* § 1681g(a)(1) (emphases added). In other words, when requesting information in the consumer’s “file,” the consumer can ask the CRA to redact five of her nine

SSN digits before the CRA discloses the SSN it has on file. This necessarily means that SSN information is “information contained in a consumer’s file.”

Similarly, 15 U.S.C. § 1681c(h) places a consumer’s address inside a consumer’s file. Under that provision, “[i]f a person has requested a consumer report relating to a consumer from a [nationwide CRA], the request includes an address for the consumer that substantially differs from the *addresses in the file* of the consumer, and the agency provides a consumer report in response to the request, the [CRA] shall notify the requester of the existence of the discrepancy.” *Id.* (emphasis added). This provision necessarily means that address information is “information contained in a consumer’s file.”

Other provisions point the same way. Sections 1681f and 1681u, for example, provide that a CRA may “furnish identifying information respecting any consumer”—specifically including “name,” “address,” and “former addresses”—to a governmental agency. Meanwhile, Section 1681b(c) authorizes CRAs to “furnish a consumer report” in connection with certain transactions not initiated by a consumer but limits the specific information that can be furnished to, among other things, “the name and address of a consumer.” These provisions demonstrate that identifying information such as name and address is information that CRAs routinely “record[] and retain[]” in a consumer’s file.

Experian’s contrary interpretation is not only atextual but would lead to bizarre results. In particular, the FCRA provides that a CRA “shall furnish a consumer report of a consumer and all other *information in a consumer’s file* to a government agency authorized to conduct investigations of . . . international terrorism.” *Id.* § 1681v(a) (emphasis added). If “information in a consumer’s file” does not include identifying information, then it could produce the unlikely result that CRAs would not have to disclose basic identifying information when requested by government agencies for counterterrorism purposes.

Interpreting the FCRA according to its plain terms not only avoids that bizarre result but is consistent with the Act’s broader stated purpose to ensure fair and accurate reporting about consumers. *See id.* § 1681(a)–(b). One way of doing that is by ensuring that the information furnished about a consumer is actually about that consumer. And that is precisely what FCRA’s reinvestigation requirement seeks to accomplish. If a consumer’s identifying information is inaccurate, then that can lead to CRAs attributing furnished information to the wrong person. *See Fair Credit Reporting; Name-Only Matching Procedures*, 86 Fed. Reg. 62468, 62469 (Nov. 10, 2021) (advisory opinion). This in turn can lead to users of consumer reports attributing incorrect information to a particular consumer. Such errors can have serious consequences for consumers, such as lost rental, housing, and employment opportunities; higher interest rates or otherwise

less favorable credit terms; or just the outright denial of credit—all because negative information about someone else was wrongly found on their credit report. But by requiring CRAs to reinvestigate disputes concerning identifying information, including name, address, and SSN, the FCRA gives consumers the power to help ensure the information that CRAs furnish is accurate.

For all these reasons, the FCRA's reinvestigation requirement in 15 U.S.C. § 1681i(a) applies to disputes regarding name, address, and SSN.

A. The FCRA’s text does not support Experian’s interpretation.

Experian’s argument that the FCRA’s reinvestigation requirement applies only to information that would itself constitute a credit report finds no support in the FCRA’s text.

As discussed above, the FCRA’s reinvestigation requirement explicitly applies to “any item of information contained in a consumer’s *file*”—not in a consumer’s credit report. *See* 15 U.S.C. § 1681i(a)(1)(A) (emphasis added). “File” and “consumer report” have distinct definitions, *compare id.* § 1681a(g), *with id.* § 1681a(d), and as this Court has recognized—in a case in which Experian was a party—“Congress chose to give different statutory definitions to the terms ‘consumer report’ and ‘file,’ and used the different terms in different subsections.” *Collins v. Experian Info. Sols., Inc.*, 775 F.3d 1330, 1335 (11th Cir. 2015).

That Congress intentionally distinguished between “file” and “consumer report” in the FCRA’s reinvestigation requirement is further highlighted later in that section. Congress required that a CRA’s post-reinvestigation communication to the consumer include “a consumer report that is based upon the consumer’s file as that file is revised as a result of the reinvestigation.” 15 U.S.C. § 1681i(a)(6)(B). This sentence would make no sense if “file” somehow meant “consumer report.” *See generally Iraola & CIA, SA v. Kimberly–Clark Corp.*, 232 F.3d 854, 859 (11th Cir. 2000) (“[W]hen Congress uses different language in similar sections, it intends

different meanings.”). Indeed, this Court has previously explained that “[t]o

found in such reports—something Experian itself advertises. *See* Experian, Understanding Your Experian Credit Report (March 4, 2021), <https://www.experian.com/blogs/ask-experian/credit-education/report-basics/understanding-your-experian-credit-report/>.⁴

B. Judicial precedent does not support Experian’s view.

Like the FCRA’s text, judicial precedent cuts against Experian’s view that it had no obligation to investigate Nelson’s dispute about her name, addresses, and SSN information retained by Experian. In the district court, Experian relied on two decisions by other circuits involving a different question about the meaning of “information contained in a consumer’s file.” *See Gillespie v. Trans Union Corp.*, 482 F.3d 907 (7th Cir. 2007); *Tailford v. Experian Info. Sols., Inc.*, 26 F.4th 1092 (9th Cir. 2022). But neither support Experian’s view that personal identifying information is exempt from the FCRA’s reinvestigation requirement. And this Court’s decision in *Collins*—in which Experian was a party—undermines Experian’s position here. *See Collins*, 775 F.3d 1330.

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Neither of the two out-of-circuit decisions suggests that information in a consumer’s “file” is limited to—as Experian argues—information that itself

⁴ Experian is not unique in this regard. Other CRAs include personal identifying information, such as name, address, and SSN, in their consumer reports

constitutes a consumer report. At most, those cases support the view that “any item of information contained in a consumer’s file” generally means information that a CRA might furnish or has furnished *in* a consumer report. *See Gillespie*, 482 F.3d at 909; *Tailford*, 26 F.4th at 1101. In *Gillespie*, the Seventh Circuit held that the FCRA’s requirement that a CRA disclose to a consumer “[a]ll information in the consumer’s file” under Section 1681g did not mean that a CRA had to disclose everything that the CRA recorded and maintained on the consumer; rather, the CRA had to disclose only “information included in a consumer report.” 482 F.3d at 910 (holding “purge dates,” i.e., when information would be deleted from consumer reports, was not “information contained in a con

Moreover, this Court’s decision in *Collins v. Experian Information Solutions, Inc.*, 775 F.3d 1330 (11th Cir. 2015), further undercuts Experian’s attempted reliance on *Gillespie* and *Tailford*. In that case—just as in this one—Experian attempted to defeat a consumer’s reasonable reinvestigation claim under Section 1681i by reading into that provision limitations that do not appear in the text of the statute. *See id.* at 1334 (describing Experian’s argument that “a plaintiff seeking damages for a negligent violation of ... § 1681i(a), must show the inaccurate information was published to a third party”).

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the brief exempted by Fed. R. App. P. Rule 32(f), this brief contains 5965 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 and 14-point Times New Roman font.

March 29, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2024, I electronically filed the foregoing brief 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 users and service will be accomplished by the appellate CM/ECF system.

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