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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CONSUMER DATA INDUSTRY)
ASSOCIATION,)

) Civil Action No. 3:19-CV-19054-ZNQ-
) TJB

Plaintiff,)

)

)

)

)

)

v.)

)

ANDREW J. BRUCK,)

in his official capacity)

as ACTING ATTORNEY GENERAL)

FOR THE STATE OF NEW JERSEY,))

)

Defendant.)

**BRIEF OF *AMICUS CURIAE* NATIONAL CONSUMER LAW CENTER IN
SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

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INTERESTS AND IDENTITY OF *AMICUS CURIAE*

Amicus curiae National Consumer Law Center (NCLC) is a nonprofit organization that works for consumer justice and economic security for low income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. NCLC draws on fifty years of expertise regarding the Fair Credit Reporting Act (FCRA) and its protections for consumers. NCLC provides information, legal research, and policy analysis to Congress, state legislatures, administrative agencies, and courts. NCLC publishes *Fair Credit Reporting* (9th ed. 2017), the definitive treatise on the FCRA. The Supreme Court of the United States has cited NCLC's treatises with approval.

Amicus writes to offer its perspective of the importance that language translation of credit reports for residents of New Jersey. Mandating translation by credit reporting agencies provides vital access to information for 1.6 million New Jersey residents that are limited English proficient. Access to credit reporting information is critical to manage consumer financial health.

ARGUMENT

I. Translation of credit reports provides enormous benefits to a significant portion of consumers who have limited English proficiency

There is a significant population of United States residents for whom English is not a first language and are considered “limited English proficient.” (LEP). In 2017, the LEP population¹ included 26 million individuals, or about nine percent of the population. U.S. Census Bureau, 2017 American Community Survey 1-Year Estimates, Subject Table S1601: Language Spoken at Home. Of these LEP individuals, over 84% speak one of eight languages. *Id.* The majority, or 16 million LEP individuals (64 %) speak Spanish as their first language, while over five million individuals in total speak Chinese, Vietnamese, Korean, Tagalog, Russian, Arabic, and Haitian Creole, making up the remaining 20 percent. *Id.*; Nat’l Consumer Law Ctr., Comments to the Consumer Financial Protection Bureau on its Proposed Debt Collection Rule Docket No. CFPB-2019-0022 RIN 3170-AA41 185 (Sept. 18, 2019), https://www.nclc.org/images/pdf/debt_collection/comments-debt-collection-sept2019.pdf (analysis of U.S. Census data). These individuals

¹ Limited English proficiency refers to anyone above the age of five who reported speaking English less than “very well,” as classified by the U.S. Census Bureau. Jie Zong & Jeanne Batalova, *The Limited English Proficient Population in the United States*, Migration Pol’y Inst. (July 8, 2015), <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states>.

currently participate in the financial marketplace but cannot access their credit reports in any language other than English, with one exception, which is discussed in Section V.

Credit reports, and the credit scores generated from them, can determine whether a consumer can obtain a loan to purchase a home or an automobile, obtain insurance for both, open a new business, or finance their college education.

Consumer Fin. Prot. Bureau, Key Dimensions and Processes in the U.S. Credit Reporting System (2012), https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf. Credit reports are also used by employers and landlords.

Id. At one point, credit reports and scores were to be used for immigration purposes, as the Department of Homeland Security's "Public Charge" rule (now vacated) required their consideration. Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292, 41503 (Aug. 14, 2019) (to be codified at 8 C.F.R. 103, 212, 213, 214, 245, 248), *vacated by* 86 Fed. Reg. 14221 (Mar. 15, 2021).

Providing credit reports solely in English leaves millions of LEP residents of the United States without access to a tool that is critical to effectively managing their economic lives. In enacting N.J. Stat. Ann. § 56:11-34, the New Jersey legislature took a critical step in addressing this problem for its residents. N.J. Stat. Ann. § 56:11-34 (West 2019).

II. Credit report translation is of particular importance in New Jersey given its diversity and large population of LEP residents

Credit report translation is particularly needed in New Jersey. In 2013, New Jersey had the fifth highest share of LEP residents in the United States, and as of 2017, 1.6 million LEP individuals live there. Jie Zong & Jeanne Batalova, *The Limited English Proficient Population in the United States*, Migration Pol’y Inst. (July 8, 2015), <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states>. This constitutes 19.6% of the state’s population, which is more than double the national LEP population of nine percent. U.S. Census Bureau, 2017 American Community Survey 1-Year Estimates, Detailed Table C16001: Language Spoken at Home for the Population 5 Years and Over: New Jersey [hereinafter Census Bureau, Language Spoken at Home for the Population 5 Years and Over: New Jersey]. Despite this, prior to the enactment of N.J. Stat. Ann. § 56:11-34 there was no option to request a translation of a consumer credit reports; this vital financial information was available only in English. N.J. Stat. Ann. § 56:11-34 (West 2019).

Requiring translation into Spanish alone would not be sufficient. Of New Jersey’s LEP residents, only 37.2% are Spanish speakers, compared to 64% nationally. Census Bureau Language Spoken at Home for the Population 5 Years and Over: New Jersey. Over one million non-Spanish speaking LEP individuals

reside in New Jersey, comprising twelve percent of the state's population. *Id.* Providing translation in Spanish and the next ten most commonly spoken languages other than English provides the majority of LEP New Jersey residents with access to critical financial information.

Further, 31% of New Jersey residents, more than 2.5 million, speak some English, but speak a different language at home. *Id.* Even individuals who may have some proficiency in English can benefit from translated credit reports, as “advanced literacy skills are needed to understand the terms and conditions tied to most financial contracts and [] it can take up to 5 years of regular English communication and practice for an immigrant who is not a native English speaker to achieve that level of advanced literacy.” U.S. Gov't Accountability Office, GAO-10-518, Factors Affecting Financial Literacy of Individuals with Limited English Proficiency 10 (2010) (citing study by the Lutheran Immigration and Refugee Service). New Jersey's large population of diverse residents who speak languages other than English would all benefit if this Court grants summary judgment in favor of the State.

III. LEP individuals face greater obstacles to accessing financial products than those who are English proficient

LEP individuals face more obstacles to securely accessing and understanding financial products than those who are English proficient. Consumer

Fin. Prot. Bureau, Spotlight on Serving Limited English Proficiency Consumers 13 (2017). Without N.J. Stat. Ann § 56:11-34, more than 1.6 million residents would be left with limited options to translate complex credit reports on their own.

Commercially available translation services are a start, but cannot serve as the sole source for providing accurate translated financial information. Automated translation can be inconsistent and cannot be relied on given the content and formatting of credit reports and disclosures. Laura Godfrey, *Lost in Translation*, Digital.gov (Oct. 1, 2012), <https://digital.gov/2012/10/01/automated-translation-good-solution-or-not/>. Therefore, consumers cannot be expected to translate documents received in English on their own using these services. Human translators with financial expertise are essential to review automated translations and ensure the information is accurate and coherent.

Studies have found that where translated documents are not available, LEP consumers must resort to relying on friends and family members—and sometimes even children—to convey crucial financial information. *See, e.g.*, Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report 14 (April 2017), <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf> (study produced for Fannie Mae and Freddie Mac). Placing the burden of interpreting technical, legal, or financial

information on individuals who lack financial expertise compromises the consumer's ability to make well-informed decisions. Consumers feel vulnerable when they cannot review documents in their language. *Id.* at 8. Even those who speak some English would still prefer to have translated documents in order to double check their understanding. *Id.* at 8–9.

Requiring NCRAs to provide translated credit reports also ensures that financial information is translated accurately. By shifting translation obligations to the NCRAs instead of friends and family who might not have a sufficient understanding of the financial terms in a credit report, New Jersey ensures that staff who understand the credit reports are part of the translation process. This is essential to avoid the consumer harms that arise when poor translation or mistranslation of consumer financial data occurs.

Requiring individual consumers to seek their own third-party translation may lead to undesirable disclosure of private personal financial information. A 2017 CFPB survey found that “[c]onsumers feel it is important that others not overhear a message about their debt from a creditor or debt collector.” Consumer Fin. Prot. Bureau, *Consumer Experiences with Debt Collection: Findings from the CFPB’s Survey of Consumer Views on Debt 6* (2017). Consumers may be reluctant to have their sensitive financial information in a credit report shared with a third party, especially if there is negative information or the translation would be

by a child or family member. *Id.* Requiring credit reporting agencies to provide translation of credit reports relieves LEP consumers of the risks of exposing private financial information.

In addition to translation and confidentiality challenges, LEP individuals are disproportionately low income and belong to communities of color. Nat'l Consumer Law Ctr., *Fair Debt Collection* § 1.3.1.8, n.139 (9th ed. 2018), www.nclc.org/library. The language access barrier adds to the financial challenges that disproportionately impact members of these communities. “In 2013, about twenty-five percent of LEP individuals lived in households with an annual income below the official federal poverty line,” compared to just 14.5% of the national population. *Id.*

As the Supreme Court has observed, English proficiency is closely tied to national origin, and practices that disfavor LEP individuals can have a disparate impact based on national origin. *See Lau v. Nichols*, 414 U.S. 563 (1974) (Supreme Court recognized abrogation on other grounds in *Alexander v. Sandoval*, 532 U.S. 275, 285 (2001)). Based on this nexus between limited English proficiency and national origin, entities covered by the Fair Housing Act, the Equal Credit Opportunity Act, and Title VI of the Civil Rights Act of 1964 have a duty to avoid policies that cause an unjustified disparate impact based on language proficiency. U.S. Dep't Housing and Urban Development, Office of General Counsel Guidance

on Fair Housing Act Protections for Persons with Limited English Proficiency (Sept. 15, 2016), <https://www.hud.gov/sites/documents/LEPMEMO091516.PDF>.

It is uniquely important for low-income families to have access to financial information and to ensure it is accurate given that these individuals are often already on the margins of economic security. Inaccurate credit reports could prove devastating for a family living at or below the federal poverty line.

IV. Making credit reports available in multiple languages avoids an economic burden on individuals and the State

Making credit reports available in multiple languages will increase economic mobility for LEP individuals without financially burdening the state. Finding and resolving errors in credit reporting or judgments early prevents long-term damage to consumer financial health. Conversely, not noticing errors means they go unresolved, stay for up to seven years (ten years for bankruptcies), *see* 15 U.S.C § 1681c(a), and negatively impact the financial health of the individual. Refusing to provide access to credit reports in a language other than English leaves more than 31% of New Jersey's population at risk of unknown and uniquely avoidable credit challenges. Census Bureau, Language Spoken at Home for the Population 5 Years and Over: New Jersey. This is not only unfair and inefficient, but harms New Jersey's economy by preventing LEP residents' full participation in the financial system.

Credit reports are used by about half of employers. Society for Human Resource Management, *Background Checking—The Use of Credit Background Checks in Hiring Decisions 2* (2012), <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/creditbackgroundchecks.aspx>. In New Jersey, 75% of the LEP population, or over one million individuals, are of working age, between 18–64 years old. Census Bureau, *Language Spoken at Home for the Population 5 Years and Over: New Jersey*. Currently, New Jersey does not have statutory restrictions on employers’ use of credit reports. Amy Traub & Sean McElwee, *Demos, Bad Credit Shouldn’t Block Employment: How to Make State Bans on Employment Credit Checks More Effective 7* (2016), https://www.demos.org/research/bad-credit-shouldnt-block-employment-how-make-state-bans-employment-credit-checks-more#footnoteref1_yd215dm. Avoidable credit challenges could impact the employability of working-age LEP individuals and make self-sufficiency unrealistic, creating a significant burden on New Jersey’s economy.

V. Credit reports are already subject to translation

In their Memorandum of Law in Support of Motion for Summary Judgment and Relief under the Declaratory Judgment Act, Plaintiff CDIA asserts that “[i]t is impossible for any NCRA to comply with both the FCRA requirement [to make a

file disclosure under 15 U.S.C. § 1681g(a)] and Revised 56:11-34's requirement to provide disclosures in real time in at least eleven additional languages." Pls.' Mem. Supp. Summ. J 17, ECF No. 42-4 (emphasis omitted). CDIA argues that "an NCRA cannot comply with the FCRA's requirement to provide a disclosure of the information in the file (which is in English) and New Jersey's requirement that NCRAs provide a disclosure in a language other than the one in which the file is maintained." *Id.* at 18.

CDIA's assertion not only strains credulity, it is contradicted by the fact that one of the NCRAs—Equifax—is already providing voluntarily providing credit reports in Spanish. On September 13, 2021, Equifax issued a press release entitled "Equifax Offers Credit Reports in Spanish Online and By Mail" and stating:

Equifax is the first and only credit bureau to provide a free, translated credit report in Spanish online and by mail.

"Having a translated Spanish report available, free of charge, to consumers will go a long way in breaking down communication barriers for those who speak English as a second language," said Beverly Anderson, president of Global Consumer Solutions at Equifax. "By providing credit reports in Spanish, we will help millions better understand, protect and enhance their financial well-being."

Equifax believes that financial equity means making products, services and pathways to prosperity available for all regardless of age, race, gender, sexual orientation, zip code, income or geography. Broadening access to credit for underserved populations is at the heart of Equifax’s purpose—to help people live their financial best.

Press Release, Equifax, Equifax Offers Credit Reports in Spanish Online and By Mail (Sept. 13, 2021), <https://www.equifax.com/newsroom/all-news/-/story/equifax-offers-credit-reports-in-spanish-online-and-by-mail-1/>.

The fact that Equifax is already providing credit reports in Spanish shows that it is entirely possible for an NCRA to both comply with 15 U.S.C § 1681g(a) and to provide translated credit reports.

Moreover, the contents of a credit report, *i.e.*, a consumer file disclosure, are already subjected to a form of translation when the information is converted from the consumer’s file into the actual disclosures. This is because the information in a consumer’s file at an NCRA is stored in codes and numeric sequences, not plain English. This information is actually shared in two formats—a “consumer report” when it is sent to third parties, 15 U.S.C. § 1681a(d), or a “file disclosure” when it is sent to the consumer. *See Collins v. Experian Info. Solutions, Inc.*, 775 F.3d 1330, 1335 (11th Cir. 2015) (explaining difference between consumer report and file disclosure), *on reh’g sub nom. Collins v. Equable Ascent Fin., LLC*, 781 F.3d

1270 (11th Cir. 2015). As the Southern District of California explained in *Shaw v. Experian Information Solutions, Inc.*:

The vast majority of [consumer] credit reports go to credit grantors, who read the information with computers. The information is therefore delivered in a computer-generated format “in segments and bits and bytes.”

Defendant [Experian] uses its own proprietary coding to report information to credit grantors. Although this output is easily read by the computers of credit grantors with reference to Defendant's technical manuals, it is essentially incomprehensible to human beings.

....

Unlike a [consumer] credit report, which contains industry codes and fields which are designed to be read by computers and which would be unfamiliar and meaningless to a lay consumer, the consumer disclosure uses a more elementary and easy-to-read format to convey the same information.

Shaw v. Experian Info. Sols., Inc., 2016 WL 5464543, at *2, *3 (S.D. Cal. Sept. 28, 2016), *aff'd*, 891 F.3d 749 (9th Cir. 2018) (internal citations omitted).

Thus, the contents of a consumer's file consist of “segments and bits and bytes,” which must be must be translated into plain English for a file disclosure under § 1681g(a). There already is a process of translation which occurs with file

disclosures, which directly contradicts the assertion that translating the contents of a consumer's file in order to make a file disclosure somehow violates the FCRA.

CONCLUSION

New Jersey's revised statute requiring the translation of credit reports upon a consumer's request into Spanish and the ten most commonly spoken languages after English and Spanish is a critical measure addressing the deep and complex issues that language access barriers present for LEP individuals. For the reasons described above, this Court should grant summary judgment in favor of the State.

Dated: March 24, 2022

Respectfully submitted,

s/ Jeremiah Battle, Jr.

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CERTIFICATE OF COMPLIANCE

This Brief conforms with the requirements of Local Civil Rule 7.2, in that it is 14 pages long and has been prepared in the proportional font Times New Roman in size 14.

Dated: March 24, 2022

s/ Jeremiah Battle, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Brief was served by filing the same on CM/ECF on March 24, 2022, which will send links to:

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