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July 1, 2022

Honorable Georgette Castner, U.S.D.J.  
Clarkson S. Fisher Building & U.S. Courthouse  
402 East State Street  
Trenton, New Jersey 08608

Re: **Consumer Data Indus. Assoc. v. Matthew J. Platkin, Att’y Gen. of N.J.**  
**Case No. 3:19-cv-19054**  
**Notice of Supplemental Authority**

Dear Judge Castner:

Defendant respectfully submits this letter regarding an interpretive rule issued by the Consumer Financial Protection Bureau (CFPB) on June 28, 2022, and titled “The Fair Credit Reporting Act’s Limited Preemption of State Laws.” A copy is attached as Exhibit A. The rule confirms that the FCRA’s narrow preemption provisions do not apply to N.J. Stat. Ann. § 56:11-34, the New Jersey statute challenged here.

As relevant here, the rule addresses the preemptive effect of 15 U.S.C. § 1681t(b)(5)(E), the provision which provides the principal basis for Plaintiff’s preemption claims. That section “preempts State laws ‘with respect to the conduct required by the specific provisions of [an enumerated FCRA provision].’” Rule at 15 (alteration in original). The enumerated provisions include 15 U.S.C. § 1681j(a), “which sets forth requirements for nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies to provide free annual credit reports to consumers.” *Id.*



Significantly, in discussing this provision, the CFPB concludes that “if a State law required that a consumer reporting agency provide information required by the FCRA at the consumer’s request in languages other than English”—which is exactly what New Jersey’s law does—“such a law would generally not be preempted by section 1681t(b)(5)(E).” *Id.* The CFPB reasons that since “section 1681j(a) provides no requirements regarding the language in which disclosures of information are provided,” such a state law “does not concern ‘the conduct required by’” section 1681j(a), *i.e.*, the annual disclosure requirement. *Id.* The CFPB recognizes that this interpretation flows from the plain text, as the “with respect to the conduct required by” language would be meaningless unless it required comparison of the state law to the specific conduct required by the enumerated FCRA provision. *See id.*

The CFPB’s rule thus directly refutes Plaintiff’s claim that New Jersey’s law is preempted by 15 U.S.C. § 1681t(b)(5)(E). Moreover, the CFPB’s interpretation rejects Plaintiff’s core theory that “what is intended to be preempted by the FCRA is the ‘what’ and the ‘how’ these disclosures must be provided,” ECF 61 at 5, which is divorced from the express statutory text on which the CFPB’s interpretation relies. The CFPB’s well-reasoned interpretation is entitled to considerable weight in the Court’s preemption analysis, particularly as it is consistent with the FCRA’s plain text and judicial decisions construing this text. *See United States v. Mead Corp.*, 533 U.S. 218, 227-28 (2001) (citing *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)); *Hayes v. Harvey*, 903 F.3d 32, 46-48 (3d Cir. 2018) (en banc); *see also* Rule at 7-8 (citing *Consumer Data Indus. Ass’n v. Frey*, 26 F.4th 1 (1st Cir. 2022)).

Respectfully submitted,

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ACTING ATTORNEY GENERAL  
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By: /s/ Olga E. Bradford  
Olga E. Bradford  
Deputy Attorney General

cc: All counsel of record (via ECF)