22-87

In the United States Court of Appeals for the Second Circuit

GIA SESSA, on behalf of herself and all others similarly situated,
Plaintiff-Appellant,
v.
TRANS UNION, LLC, *Defendant-Appellee,*
LINEAR MOTORS, LLC, DBA CURRY HYUNDAI SUBARU, *Defendant,*
HUDSON VALLEY FEDERAL CREDIT UNION, *Defendant,*
CREDIT UNION LEASING OF AMERICA, *Defendant,*
CULA, LLC, *Defendant.*

On Appeal from the United States District Court for the Southern District of New York, Case No. 19-cv-9914 (Hon. Kenneth M. Karas)

REDACTED PAGE PROOF BRIEF OF DEFENDANT-APPELLEE TRANS UNION LLC

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Defendant-Appellee Trans Union LLC, by and through undersigned counsel, states as follows:

Defendant-Appellee Trans Union LLC is a wholly owned subsidiary of TransUnion Intermediate Holdings, Inc., which is wholly owned by TransUnion. TransUnion is a publicly traded entity with the ticker symbol TRU. Investment funds affiliated with T. Rowe Price Group, Inc., a publicly traded entity with the ticker symbol TROW, own more than 10% of the stock of Defendant-Appellee's ultimate parent, TransUnion.

No public company directly owns 10% or more of the stock in Defendant-Appellee Trans Union LLC.

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INTRODUCTION

The Fair Credit Reporting Act ("FCRA") is designed to facilitate a "fair and equitable" credit reporting market that meets the "needs of commerce." The FCRA envisions furnishers, consumer reporting agencies ("CRAs"), and consumers each serving important but discrete functions. Furnishers must supply CRAs with data that reflects the terms of and liability for a consumer's account. CRAs compile the furnished data into a comprehensible format, allowing others to evaluate the creditworthiness of a given consumer. If a consumer believes information on their file is inaccurate, the consumer may dispute the accuracy of the information with either the furnisher or the CRA.

Here, Plaintiff Gia Sessa argues that Trans Union should have: (1) questioned the accuracy of balloon payment information that Plaintiff's creditor furnished to Trans Union; (2) requested Plaintiff's underlying contract documents from the furnisher; (3) interpreted the underlying contract documents; and (4) resolved a legal dispute as to Plaintiff's liability for a balloon payment—all without ever receiving any notice (from Plaintiff, the furnisher, or anyone else) that Plaintiff believed she did not owe a balloon payment. Plaintiff's contentions lack merit, and the district court properly granted summary judgment to Trans Union.

Hudson Valley Federal Credit Union ("Hudson Valley") financed Plaintiff's car lease and furnished data to Trans Union showing that Plaintiff owed a balloon payment of $19,444 at the end of the lease period. Based on her interpretation of the lease, Plaintiff believed she did not owe a balloon payment. As noted, instead of informing Trans Union of the dispute, Plaintiff sued Trans Union under the FCRA, 15 U.S.C. § 1681e(b), which requires CRAs to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."

Plaintiff's claim fails for multiple reasons. As the district court recognized, a section 1681e(b) claim requires a threshold showing that a CRA reported inaccurate information, and "[a]ll circuit courts to have opined on whether accuracy in the FCRA context includes legal inaccuracies are unanimous: 'The claimed inaccuracy must be factual, not legal.'" A section 1681e(b) claim fails if the alleged inaccuracy requires a legal determination because CRAs are not tribunals, and no amount of resources could empower a CRA to assume the role of a tribunal. As Plaintiff acknowledges, "it would be unreasonable for a [CRA] to have to act as a legal tribunal." (Sessa Brief at 33)

CRAs are ill equipped to make legal determinations not only because they are not tribunals, but also because a CRA lacks a direct relationship

with the consumer. Thus, FCRA claims against CRAs are not the proper vehicle for collaterally attacking the legal validity of a debt involving third parties, *i.e.*, consumers and their lenders. This rule makes sense in light of the accuracy duties imposed on furnishers, which are required to furnish information that "correctly [r]eflects … liability for the account." No comparable duty exists for CRAs.

Plaintiff disregards the comprehensive statutory and regulatory framework of the FCRA in favor of interpreting a few words in isolation based on definitions found in some—but not other—dictionaries. Apart from the lack of uniformity in the dictionaries, Plaintiff's argument fails to account for how the language of section 1681e(b) fits within the FCRA's broader statutory and regulatory framework.

Plaintiff also contends that, if this Court declines Plaintiff's request to break with every other Court of Appeals to have addressed this issue, this Court should still reverse because the "errors" here are "factual" inaccuracies. Not true. By Plaintiff's own admission, to determine whether Plaintiff owed a balloon payment, Trans Union would need to request, obtain, and interpret Plaintiff's underlying contract documents, and the interpretation of a contract is a legal question. CRAs are ill equipped to adjudicate contract disputes.

This Court also may affirm based on an alternative ground that Trans Union raised in the district court—*i.e.*, Trans Union was entitled to rely on Hudson Valley's reporting. Under settled law, a CRA does not violate its duty to assure reasonable accuracy under section 1681e(b) simply by reporting an inaccurate debt or judgment, absent prior reason to believe that its source was unreliable.

Trans Union had no reason to believe Hudson Valley's balloon payment information was unreliable. ***First***, the balloon payment information was not inconsistent with the information available to Trans Union. The alleged inaccuracy could not be identified without interpreting the lease, and neither Plaintiff nor Hudson Valley provided the lease to Trans Union. ***Second***, the information was not facially inaccurate. A consumer can be responsible for a balloon payment at the end of an auto lease if the consumer has agreed to a contract obligating the consumer to pay a balloon payment. ***Third***, Trans Union had no reason to question Hudson Valley as a furnisher. Hudson Valley successfully passed through Trans Union's credentialing process. Moreover, when consumers actually disputed data furnished by Hudson Valley on accounts that happened to involve balloon payments, the consumers overwhelmingly did not dispute the accuracy of the balloon payment information. Of the 72 consumer disputes regarding Hudson Valley accounts that happened to include balloon payments, only two challenged the accuracy of the balloon

payment information. And, for both of those two disputes, Hudson Valley verified the accuracy of the information.

For these reasons, as further explained below, this Court should affirm.

ISSUES PRESENTED

1. Did the district court correctly hold—as every federal appellate court to consider the issue has held—that a CRA is not required to act as a tribunal and resolve legal issues relating to a consumer's liability for a debt?

2. Alternatively, was Trans Union entitled to rely on the information furnished by Plaintiff's creditor because Trans Union had no notice (from Plaintiff, the creditor, or anyone) that the information was inaccurate or that the creditor was not a reliable data furnisher?

STATEMENT OF THE CASE

A. Statutory and Regulatory Background

The FCRA imposes duties on furnishers and CRAs in a manner consistent with their respective roles in the credit reporting market. Furnishers and CRAs—although related—serve discrete functions.

Furnishers—such as banks, credit lenders, and collection agencies—supply "information relating to consumers to one or more [CRAs] for inclusion in a consumer report." 12 C.F.R. § 1022.41(c). "A person shall not furnish any information relating to a consumer to any [CRA] if the person knows or has reasonable cause to believe that the information is inaccurate." 15 U.S.C. § 1681s-2(a)(1)(A). Specifically, furnishers must provide information to CRAs that "[r]eflects the terms of and liability for the account or other relationship." 12 C.F.R. § 1022.41(a).

CRAs engage in the practice of "assembling or evaluating consumer credit information …." 15 U.S.C. § 1681a(f). CRAs compile the furnished data into a comprehensible format, allowing others to evaluate the creditworthiness of a given consumer. "Whenever a [CRA] prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." 15 U.S.C. § 1681e(b).

The FCRA contemplates that consumers play an essential role in correcting errors in their credit file. If a consumer believes information on their credit file is inaccurate, the FCRA provides two mechanisms for the consumer to dispute the accuracy of that information—both of which result in a furnisher addressing the consumer's dispute.

First, a consumer can notify the furnisher directly. 15 U.S.C. § 1681s-2(a)(8). After receiving a dispute notice, the furnisher shall "(i) conduct an investigation with respect to the disputed information; (ii) review all relevant information provided by the consumer with the notice; (iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before [30 days]; and (iv) if the investigation finds that the information reported was inaccurate, promptly notify each [CRA] to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate." *Id.* § 1681s-2(a)(8)(E).

Second, a consumer can notify a CRA. 15 U.S.C. § 1681i(a)(1)(A). After receiving the dispute notice, the CRA shall "conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the file … before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer or reseller." *Id.*

The CRA must provide the furnisher, which is the source of the disputed information, with the dispute notice. 15 U.S.C. § 1681i(a)(2). After receiving the dispute notice through the CRA, the furnisher shall

investigate the dispute and report the results of the investigation to the CRA. 15 U.S.C. § 1681s-2(b). If the investigation finds that the information is incomplete or inaccurate, the furnisher shall report those results to all other CRAs to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis. *Id.*

B. Factual Background

1. Trans Union credentials its furnishers and screens for anomalies.

Before accepting data from a furnisher, Trans Union requires a furnisher to pass through its "credentialing" process. (Dkt 123-3 at 20:6-18) Through the credentialing process, Trans Union vets a furnisher by, among other things, investigating the reputation and standing of the furnisher. (*Id.* at 20:15-18, 38:25-39:10) Trans Union also tries to understand why a potential furnisher wants to do business with Trans Union, what kind of data the entity will furnish, how much data the entity plans to furnish, and how frequently it will update that data. (*Id.* at 35:7-23, 40:3-41:2)

If a potential data furnisher satisfies the requirements of the credentialing process, Trans Union requires that the furnisher contractually agree to comply with all of the obligations imposed by the FCRA and the FCRA's related regulations. (Dkt 123-5 at § 2(C); Dkt 123-7 at § 2(C); Dkt 123-3 at 55:8-56:5; Dkt 114-16 at 3) As noted, one of the FRCA duties

imposed on furnishers is the duty to report accurate information regarding a consumer's liability for a debt. *See* 15 U.S.C. § 1681s-2(a); 12 C.F.R. § 1022.41. Additionally, before accepting data from a new furnisher, Trans Union conducts an onboarding process where it works with a furnisher to test and verify the integrity of the data the company intends to furnish. (Dkt 123-15 at 75:6-77:4, 133:11-134:9)

After Trans Union has credentialed a furnisher, Trans Union monitors the quality and hygiene of the data received from the furnisher in the ordinary course of business. (Dkt 114-16 at 3; Dkt 123-15 at 74:9-75:5, 135:18-136:7; Dkt 123-3 at 113:3-114:5) Trans Union's monitoring procedures include screening rules that Trans Union applies to data received from a furnisher before loading that data into Trans Union's consumer credit database. (Dkt 123-3 at 113:3-114:5)

[redacted]

[redacted] These screening rules must be carefully calibrated to avoid an overabundance of false positives (*i.e.*, flagging accurate credit information), which would defeat the purpose of the screens. (Dkt 123-15 at 136:24-138:15)

As warranted by the circumstances, Trans Union will address with a furnisher any concerns or issues with the accuracy of the data identified by the efforts described above, and Trans Union will stop accepting data from a furnisher if any issues or concerns are not resolved. (Dkt 123-3 at 20:1-21:1, 55:24-56:5; Dkt 114-16 at 3) Trans Union applies these rules to data it maintains on hundreds of millions of consumers and billions of accounts. (Dkt 123-14 at ¶¶ 35, 47; Dkt 123-3 at 113:3-114:5)

As relevant here, Hudson Valley successfully passed through Trans Union's furnisher credentialing process. (Dkt 123-3 at 44:17-19, 34:9-24; Dkt 123-14 at ¶ 40; Dkt 123-15 at 76:11-20) After credentialing Hudson Valley, Trans Union entered into a "Data Furnishers Reporting Agreement" with Hudson Valley in 2016 and again in 2019. (Dkt 123-5; Dkt 123-7) In both Agreements, Hudson Valley agreed that "all information furnished to TransUnion shall be complete and accurate." (Dkt 123-5 at § 2(A); Dkt 123-7 § 2(A); Dkt 123-3 at 53:8-55:23)

Hudson Valley's Data Furnishers Reporting Agreement also required Hudson Valley to report data in the Metro2 Format, which is the industry standard data specification by which data furnishers report credit information to CRAs in a standardized format. (Dkt 123-12 at 6; Dkt 123-13 at 23:25-24:5, 73:1-16; Dkt 123-2 at 57:8-58:1; Dkt 123-14 at ¶ 18; Dkt 114-16 at 3; Dkt 123-3 at 89:20-90:2, 98:15-99:2; Dkt 123-5 at § 2(B); Dkt 123-7 at § 2(B)) The details of how to report data in the Metro2 Format are contained in a manual known as the Credit Reporting Resource Guide ("CRRG"). (Dkt 123-14 at ¶ 18; Dkt 109-6)

2. Hudson Valley financed Plaintiff's lease and furnished balloon payment information, which Plaintiff never disputed with Trans Union.

In November 2018, Plaintiff leased a Subaru Forester from Curry Hyundai Subaru ("Curry"). (Dkt 4 at ¶ 30; Dkt 18) Hudson Valley financed

Plaintiff's lease. (Dkt 123-1 at 20:20-21:5, 23:11-24:3; Dkt 109-1 at PL Prod Sessa 2019-10) [redacted]

Also in November 2018, Hudson Valley began furnishing data about Plaintiff's account to Trans Union. (Dkt 109-2) The data Hudson Valley furnished to Trans Union showed that Plaintiff owed a balloon payment of $19,444 that was due on January 1, 2022, at the end of the lease period. (Dkt 123-2 at 84:8-86:10)

From January 2017 through June 2020, Trans Union received 72 consumer disputes regarding Hudson Valley accounts that happened to include balloon payments. However, only two of those disputes challenged the accuracy of the balloon payments—the other disputes came from consumers who were focused on the accuracy of their data, yet these consumers did not question the balloon payment information. (Dkt 114-16

at 5-6; Dkt 123-2 at 44:17-45:8; Dkt 123-3 at 108:24-109:8) For both of the two disputes where consumers challenged the balloon payment information, Hudson Valley verified the accuracy of the information. (Dkt 123-3 at 82:4-83:5; Dkt 114-16 at 5-6)

When furnishers send data about a consumer's account to a CRA, furnishers do not send the underlying contract documents, because the FCRA does not require CRAs to review underlying documents giving rise to a consumer's debt obligations before reporting data about the documents. (Dkt 123-20 ¶ 32, Pl's Counterstatement, citing Dkt 123-13 at 24:21-25:1) Accordingly, when Hudson Valley sent data about Plaintiff's account Trans Union, it did not send Plaintiff's lease to Trans Union. (Dkt 123-13 at 24:6-9) And Plaintiff did not provide Trans Union with a copy of the lease until she filed it as an exhibit to her complaint in this case. (Dkt 123-1 at 15:3-8; Dkt 18)

Nonetheless, Plaintiff's argument here is premised on her interpretation of the lease. Based on her interpretation of the lease, Plaintiff believed that she was required to either return her vehicle at the end of the three-year lease term or pay a lump sum to purchase the car, and Plaintiff further believed that she was not required to make a balloon payment at the end of her lease if she returned the car. (Dkt 123-1 at 35:16-24, 37:5-19, 48:24-49:15, 102:12-18; Dkt 123-11 at 42:16-24; Dkt 123-10 at ¶¶ 3, 7)

According to Plaintiff, she contacted Curry and Hudson Valley, and both confirmed she did not owe a balloon payment. (Dkt 124 ¶¶ 10-13). Plaintiff, however, never submitted evidence of her communications with Hudson Valley, the creditor that actually furnished the balloon payment information to Trans Union. (*See generally* Dkt 124)[1]

In any event, Plaintiff never disputed any aspect of the balloon payment information with Trans Union. (Dkt 123-1 at 15:3-8; Dkt 123-15 at 55:5-56:20, 98:16-21) Plaintiff testified that she has never "spoken with anybody at TransUnion about [her] Hudson Valley account." (Dkt 123-1 at 63:20-24) In fact, before Plaintiff filed this lawsuit, Trans Union never received notice from any person or entity that Plaintiff disputed the

[1] Plaintiff's contention that Hudson Valley agreed she did not owe a balloon payment is based on a hearsay statement in her post-deposition declaration. *See, e.g.*, *Patterson v. County of Oneida*, 375 F.3d 206, 219 (2d Cir. 2004) (hearsay in declaration is inadmissible at summary judgment). Plaintiff's statement is contradicted by her deposition testimony that Hudson Valley told her to speak with a different entity about the balloon payment issue (Dkt 123-1 at 45:19-46:16), as well as Hudson Valley's continued reporting of the balloon payment information to Trans Union (Dkt 123-2 at 84:8-86:10), and Plaintiff's Hudson Valley account statements, which reflect the same loan balance that Hudson Valley reported to Trans Union. (Dkt 109-1, PL Prod Sessa 209-10) In any event, Plaintiff does not contend that she disputed the balloon payment information with Trans Union.

accuracy of any information relating to her that Hudson Valley reported to Trans Union. (Dkt 123-3 at 123:6-23; Dkt 114-16 at 4)

3. The industry-standard format for furnishing data allows a furnisher to report a balloon payment obligation for an auto lease.

As noted, Hudson Valley furnished data to Trans Union in the Metro2 Format, which is the industry standard data specification by which data furnishers report credit information to CRAs in a standardized format. (Dkt 123-12 at 6; Dkt 123-13 at 23:25-24:5, 73:1-16; Dkt 123-2 at 57:8-58:1; Dkt 123-14 at ¶ 18)

The CRRG provides instructions on how to format data furnished to CRAs and explains the meaning of data reported in the Metro2 Format. (Dkt 123-14 at ¶ 18) [redacted]

[redacted]

Balloon payments with auto leases are actual types of accounts—a consumer can be responsible for a balloon payment at the end of an auto lease if the consumer has agreed to a contract obligating the consumer to pay a balloon payment. (Dkt 114-7 at 4-5, No. 7; Dkt 123-11 at 22:2-10, 23:8-11, 27:24-28:9, 42:12-15, 48:20-24, 60:8-14; Dkt 123-14 at ¶¶ 3-4; Dkt 123-13 at 35:17-20)

Hudson Valley's balloon payment information—which Hudson Valley transmitted to Trans Union through the Metro2 Format—did not raise any flags when passing through Trans Union's data screening procedures. (Dkt 123-3 at 58:13-22)

4. Trans Union reported Plaintiff's balloon payment information to only one creditor, which took no adverse action.

From November 1, 2018 to May 11, 2020—the time in which the balloon payment information was on Plaintiff's file—Plaintiff did not apply for any credit, and thus no company made any "regular" inquiries (also known as "hard" inquiries) with Trans Union seeking Plaintiff's entire credit report. (Dkt 123-1 at 49:16-51:9, 57:14-19; Dkt 114-13 at 4-5, No. 3; Dkt 114-7 at 3-4, No. 6; Dkt 123-14 at ¶ 55)

The only third party that received a report containing the balloon payment information was JP Morgan Chase Bank, N.A. ("Chase"). (Dkt 123-13 at 40:11-41:7; Dkt 123-14 at ¶ 54; Dkt 123-2 at 35:3-9, 38:3-39:5; Dkt 109-2 at TU-000010-11; Dkt 109-8 at 9) Plaintiff had an existing checking account and two credit accounts with Chase open during the time in which the balloon payment information was on her file. (Dkt 123-1 at 51:10-53:5)

All of Chase's inquiries that resulted in Trans Union delivering Chase the balloon payment information were "account review" inquiries—*i.e.*, inquiries used to determine whether a consumer continues to meet the terms of an existing account with that company. (Dkt 109-2 at TU-000004, TU-000010; Dkt 109-8 at 9)[2] Chase did not change the terms of Plaintiff's account during the time that the balloon payment information was on her credit file. (Dkt 123-1 at 123:14-124:3)

Plaintiff received an email from Chase inviting her to apply for a new credit card during the time in which the balloon payment information was on her file. (Dkt 123-1 at 54:16-55:1) Plaintiff testified that she was "not really concerned" about Trans Union reporting the balloon payment information to Chase. (*Id.* at 123:23-124:3)

[2] *See* 15 U.S.C. § 1681b(a)(3)(A) (noting permissible purpose to obtain credit report to "review … an account").

When Plaintiff applied for financing from Hudson Valley, her credit score was calculated to be between 779 and 798. (Dkt 123-1 at 90:11-25) As of September 3, 2019, when the balloon payment information was on Plaintiff's file, her credit score was around 820. (*Id.* at 99:4-100:21) Plaintiff's credit score put her in the "super prime" credit tier both before and after the balloon payment information was included on her file. (Dkt 123-15 at 162:20-163:15)

Plaintiff admits that she has "not suffered any emotional distress, humiliation, embarrassment or mental anguish as a result of Trans Union's conduct." (Dkt 114-20 at 9, No. 27)

C. Procedural Background

On October 25, 2019, Plaintiff filed this lawsuit. (Dkt 1) Six days later, Plaintiff amended her complaint. (Dkt 4) In the amended complaint, Plaintiff asserted various claims against Curry, Hudson, and Trans Union, as well as a fourth party, CULA, LLC. (Dkt 4 at 1) Plaintiff would ultimately settle with all defendants except Trans Union. (SA8)

Plaintiff alleged that Trans Union "was reporting that Plaintiff owes a balloon payment" and that this reporting was "inaccurate because the $19,444 amount is not a balloon payment … but simply the anticipated residual value of the Vehicle at the end of the three-year lease term." (Dkt 4 at 7 ¶¶ 48-50) Plaintiff's claims against Trans Union arose under one

provision of the FCRA, section 1681e(b). According to Plaintiff, "Trans Union has failed to implement reasonable procedures to assure maximum possible accuracy of Plaintiff and Class Members' lease terms." (Dkt 4 at ¶¶ 97-98) Plaintiff claimed damages due to both "willful" and "negligent" violations. (Dkt 4 at ¶¶ 100-01)[3] Plaintiff purported to bring her lawsuit on a classwide basis, seeking to represent "[a]ll natural persons nationwide about whom Defendant Trans Union reported the residual value of a leased vehicle as a balloon payment owed by the lessee." (Dkt 4 at ¶ 54)

The district court bifurcated the proceedings and deferred issues related to class certification until Trans Union's summary-judgment motion on Plaintiff's individual claim was resolved. (SA8) In moving for summary judgment, Trans Union explained that Plaintiff's FCRA claim under section 1681e(b) failed as a matter of law because (1) Plaintiff did not allege an actionable inaccuracy in her credit report; (2) Trans Union had no prior notice that the balloon-payment information might be inaccurate; (3) Plaintiff presented no evidence of willfulness; and (4) Plaintiff suffered no harm. (Dkt 112 at 8-9)

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[3] Plaintiff also raised an identical claim against Trans Union under New York's analogue to FCRA, NY GBL § 380-j(e). (Dkt 4 at ¶¶ 102-05) As the district court recognized, "[b]ecause the federal FCRA and the New York State Fair Credit Reporting Act ('NYFCRA') are worded so similarly, 'the two statutes must be construed in the same way.'" (SA12 n.6, quoting *Scott v. Real Est. Fin. Grp.*, 183 F.3d 97, 100 (2d Cir. 1999))

The district court granted summary judgment to Trans Union. (SA23) The court explained that Plaintiff's FCRA claim was subject to the threshold requirement that Trans Union "reported inaccurate information" (SA12-13) and that Plaintiff failed to satisfy this threshold requirement.

The district court recognized that "[a]ll circuit courts to have opined on whether accuracy in the FCRA context includes legal inaccuracies are unanimous: 'The claimed inaccuracy must be factual, not legal.'" (SA16, emphasis added; citation omitted) The court also acknowledged that "the Second Circuit has also affirmed a 'well-reasoned [district court] order' that adopted this interpretation in a non-binding summary order." (*Id.*, quoting *Okocha v. Trans Union LLC*, 488 F. App'x 535, 536 (2d Cir. 2012)) In addition, the district court based its decision on "several convincing arguments" (SA17) that underpinned the conclusion that accuracy with respect to FCRA claims applies to factual not legal accuracy:

- First, under the FCRA's regulatory scheme, only furnishers are tasked with accurately reporting liability. CRAs have no comparative duty. (SA17)
- Second, the Consumer Finance Protection Board ("CFPB") clearly knew what language would charge CRAs with a duty comparable to furnishers, but did not include that language. (*Id.*)

- Third, creditors (furnishers) are in a better position to determine the validity of a debt instrument they themselves hold than CRAs, which are third parties to a consumer's transaction. (SA17-18)

Plaintiff failed to show an inaccuracy in Trans Union's reporting. As stated by the district court, "[i]t may be the case that the terms of the lease contradict the data [Hudson Valley] furnished—though, to be clear, the Court is no way opining on this question. But Plaintiff cannot reframe this purportedly 'implausible interpretation[]' as a matter of fact. This is at its core 'a contractual dispute,' and one not before this Court." (SA21, citations omitted, emphasis added) The court elaborated:

> Plaintiff tacitly concedes that this is a legal dispute, as Plaintiff describes TransUnion as having taken a 'position' by 'rel[ying] on [] interpretations' of the debt instrument. Plaintiff then goes on to attack TransUnion's 'interpretation' of the contractual obligation. These are, simply put, legal terms, which bespeak legal arguments regarding the debt's legal validity, not factual disputes regarding whether [Trans Union] reported accurate numbers.

(SA22, citations omitted)

SUMMARY OF ARGUMENT

This Court should affirm summary judgment for Trans Union. Section 1681e(b) of the FCRA—which requires CRAs to use reasonable procedures to assure maximum possible accuracy—does not require CRAs

to make legal determinations as to whether furnished information reflects a consumer's liability for a debt. Five other Courts of Appeals—every federal appellate court to have addressed the issue—has held that a plaintiff cannot premise a section 1681e(b) claim on a legal rather than factual inaccuracy, because CRAs are not tribunals charged with resolving third party legal disputes. *See, e.g.*, *Denan v. Trans Union LLC*, 959 F.3d 290, 297 (7th Cir. 2020); *Wright v. Experian Info. Sols., Inc.*, 805 F.3d 1232, 1242 (10th Cir. 2015); *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 891-92 (9th Cir. 2010); *DeAndrade v. Trans Union LLC*, 523 F.3d 61, 68 (1st Cir. 2008); *Batterman v. BR Carroll Glenridge, LLC*, 829 F. App'x 478, 481 (11th Cir. 2020); *see also Okocha v. Trans Union LLC*, No. 08-CV-3107, 2011 U.S. Dist. LEXIS 39998, at *17 (E.D.N.Y. Mar. 31, 2011), *aff'd* 488 F. App'x 535 (2d Cir. 2012).

CRAs are ill equipped to make legal determinations not only because they are not tribunals, but also because "'the CRA is a third party, lacking any direct relationship with the consumer ….'" *Carvalho*, 629 F.3d at 892 (citation omitted). Accordingly, FCRA claims against CRAs "'are not the proper vehicle for collaterally attacking the legal validity of consumer debts.'" *Wright*, 805 F.3d at 1242 (quoting *Carvalho*, 629 F.3d at 892). The rule is consistent with the accuracy duties imposed on furnishers, which are prohibited from providing information to CRAs if the furnisher "knows or has reasonable cause to believe that the information is inaccurate." 15

U.S.C. § 1681s-2(a)(1)(A). "Accuracy" for furnishers means information that "correctly [r]eflects ... liability for the account …." 12 C.F.R. § 1022.41(a) (emphasis added). "Neither the FCRA nor its implementing regulations impose a comparable duty upon [CRAs], much less a duty to determine the legality of a disputed debt." *Denan*, 959 F.3d at 295.

Plaintiff barely acknowledges this unanimous line of cases. When Plaintiff actually gets around to addressing the relevant case law, Plaintiff simply argues that district court should have disregarded the unanimous rulings of the federal Courts of Appeals. Plaintiff's contentions lack merit. Plaintiff disregards the structure of the FCRA and its regulations in favor of interpreting a few words in isolation based on definitions in some—but not other—dictionaries. However, as this Court has recognized, proper statutory interpretations need to account for the broader statutory and regulatory framework, and thus dictionaries do not often resolve the relevant issue. *See United States v. Bove*, 888 F.3d 606, 608 n.5 (2d Cir. 2018); *Time Warner Cable, Inc. v. DIRECTV, Inc.*, 497 F.3d 144, 157 (2d Cir. 2007); *New York v. United States DOJ*, 964 F.3d 150, 167 n.3 (2d Cir. 2020) (Katzmann, C.J., dissenting from denial of rehearing en banc).

Plaintiff also argues that, if this Court declines to break with every other Court of Appeals to have addressed this issue, this Court should nonetheless reverse because the "errors" here are "factual" inaccuracies. That's wrong. At a minimum, to determine whether Plaintiff owed a

balloon payment, Trans Union would need to request, obtain, and interpret Plaintiff's underlying contract documents, and "[t]he interpretation of a contract is a legal question …." *Capital Ventures Int'l v. Republic of Argentina*, 552 F.3d 289, 293 (2d Cir. 2009). "CRAs are ill equipped to adjudicate contract disputes." *Carvalho*, 629 F.3d at 891. By conceding the amount of the reported debt and disputing only the legal effect of that debt, Plaintiff has raised a legal inaccuracy—and Trans Union is neither qualified nor obligated to resolve Plaintiff's contract dispute.

This Court also may affirm based on an alternative ground that Trans Union raised in the district court—*i.e.*, Trans Union was entitled to rely on Hudson Valley's reporting. "Courts have consistently held … that a CRA does not violate its duty to assure reasonable accuracy pursuant to Section 1681e(b) simply by reporting an inaccurate debt or judgment, absent prior reason to believe that its source was unreliable." *Frydman v. Experian Info. Sols., Inc.*, No. 14cv9013-PAC-FM, 2016 U.S. Dist. LEXIS 107139, at *39 (S.D.N.Y. Aug. 11, 2016) (emphasis added) (citing *Wright*, 805 F.3d at 1240; and *Sarver v. Experian Info. Sols.*, 390 F.3d 969, 972 (7th Cir. 2004)); *see also Podell v. Citicorp Diners Club*, 112 F.3d 98, 105 (2d Cir. 1997) ("Trans Union did not breach its duties under FCRA by relying on the updates it received from [the creditors], and … Trans Union was entitled to report [consumer's] indebtedness, at least until it heard from him directly.") (emphasis added; citation and brackets omitted).

Here, Trans Union reasonably relied on the information furnished by Hudson Valley—for multiple reasons.

First, the balloon payment information was not inconsistent with the information available to Trans Union. The alleged inaccuracy could not be identified without looking to the lease, but Hudson Valley did not provide the lease to Trans Union, and neither did Plaintiff.

Second, the balloon payment information was not facially inaccurate. Balloon payments with auto leases are actual types of accounts—a consumer can be responsible for a balloon payment at the end of an auto lease if the consumer has agreed to a contract obligating the consumer to pay a balloon payment. [redacted]

Third, Trans Union had no reason to question the reliability of Hudson Valley as a furnisher. Hudson Valley successfully passed through Trans Union's furnisher credentialing process and, consistent with its obligations under the FCRA, agreed to furnish accurate information. When consumers actually disputed data furnished by Hudson Valley on accounts that happened to involve balloon payments, the consumers overwhelmingly did not dispute the accuracy of the balloon payment information. Of the 72 consumer disputes regarding Hudson Valley

accounts that included balloon payments, only two challenged the accuracy of the balloon payment information. For both of those disputes, Hudson Valley verified the accuracy of the information. For these reasons, Trans Union was entitled to rely on Hudson Valley's reporting, and this Court may affirm on this alternative ground.

ARGUMENT

This Court should affirm summary judgment for Trans Union because, as explained below, (I) the FCRA does not require CRAs to make legal determinations as to whether furnished information reflects a consumer's liability for a debt; and (II) Trans Union was entitled to rely on Hudson Valley's reporting. Each of these reasons is independently sufficient for affirmance.

I. The FCRA does not require CRAs to make legal determinations as to whether furnished information reflects a consumer's liability for a debt.

A plaintiff must show that a CRA reported an inaccuracy to prove a claim under section 1681e(b). *Shimon v. Equifax Info. Servs. LLC*, 994 F.3d 88, 92 (2d Cir. 2021) ("The accuracy of Shimon's credit report is fatal to his § 1681e(b) claims that Equifax engaged in willful or negligently inaccurate reporting."). As Plaintiff's *amici* acknowledge, the FRCA allows "'a consumer to bring suit for a violation of section 1681e(b) only if a [CRA]

issues an inaccurate report on the consumer, since only then does harm flow from the agency's violation.'" (CFPB and FTC Amicus Brief at 12 n.3 (citation omitted))[4]

Here, Plaintiff asserts that Trans Union reported inaccurate balloon payment information that Trans Union received from Hudson Valley because, according to Plaintiff, her lease does not require her to make a balloon payment. Plaintiff raises a contractual dispute—which is a question of law. As explained below, (A) CRAs are not tribunals required to make legal determinations as to a consumer's liability for a debt; (B) the FCRA is structured for consumers to take their legal disputes to furnishers, not collaterally attack their debts by suing CRAs; and (C) the district court faithfully applied the FCRA in lockstep with every other Court of Appeals to address this issue.

A. CRAs are not tribunals required to make legal determinations as to a consumer's liability for a debt.

A plaintiff cannot make the threshold showing that a report contains inaccurate information if the alleged inaccuracy requires a legal determination because "[CRAs] are not tribunals," *Carvalho*, 629 F.3d at 891, and "[n]o amount of resources could empower Trans Union to assume

[4] The threshold inaccuracy requirement applies to claims asserted under section 1681e(b) and section 1681i. *See, e.g.*, *Denan*, 959 F.3d at 296-97; *DeAndrade*, 523 F.3d at 67.

the role of a tribunal." *Denan*, 959 F.3d at 297; *see also Wright*, 805 F.3d at 1242; *DeAndrade*, 523 F.3d at 68; *Batterman*, 829 F. App'x at 481; *Okocha*, 2011 U.S. Dist. LEXIS 39998, at *17, *aff'd* 488 F. App'x 535. As Plaintiff acknowledges on appeal, "it would be *unreasonable* for a [CRA] to have to act as a legal tribunal." (Sessa Brief at 33, citing *Wright*, 805 F.3d at 1242; and *Carvalho*, 629 F.3d at 892)

"[CRAs] such as … Trans Union gather credit information about consumers from, *inter alia*, subscribing commercial, retail, and financial entities, and distribute that information in the form of credit reports to other subscriber customers." *Podell*, 112 F.3d at 100. The FCRA does not require CRAs to make legal determinations regarding the disputed meaning of statutes; neither does the FCRA require CRAs to make legal determinations regarding the disputed meaning of contracts. Unlike tribunals, "CRAs are ill equipped to adjudicate contract disputes …." *Carvalho*, 629 F.3d at 891. "Such contractual disputes require resolution by a court of law, not a [CRA]." *Batterman*, 829 F. App'x at 481. "[A] contractual dispute is exactly the type of legal issue that courts have held [CRAs] have no duty under the FCRA to resolve." *Leboon v. Equifax Info. Servs., LLC*, No. 18-1978, 2020 U.S. Dist. LEXIS 21140, at *19 (E.D. Pa. Feb. 6, 2020) (citing *Carvalho*, 629 F.3d at 891; and *DeAndrade*, 523 F.3d at 68).

The Courts of Appeals have consistently recognized these basic principles in analyzing FCRA claims under sections 1681e(b) and/or 1681i—that is, FCRA claims that require a threshold showing of inaccuracy.

In *DeAndrade*, for example, the First Circuit addressed an FCRA claim against Trans Union for refusing to remove a loan appearing on a credit report. 523 F.3d at 63. The plaintiff contended that the loan was inaccurate because the underlying mortgage contract was legally invalid. *Id.* at 63-64. The First Circuit upheld the grant of summary judgment in Trans Union's favor because "what DeAndrade is attacking is the mortgage's validity" and "[w]hether the mortgage is valid turns on questions that can only be resolved by a court of law …." *Id.* at 68. Thus, the claimed inaccuracy was "a legal issue that a credit agency such as Trans Union is neither qualified nor obligated to resolve under the FCRA." *Id.* (citing *Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1160 (11th Cir. 1991)).

Similarly, in *Carvalho*, the Ninth Circuit upheld the dismissal of an FCRA claim where the plaintiff conceded that her report was factually accurate, but nonetheless argued that a CRA's reporting was inaccurate because she was not legally responsible for the debt. 629 F.3d at 891. The Ninth Circuit cited *DeAndrade* and held that a legal dispute over a debt was not a cognizable inaccuracy under the FCRA. *Id.* The court explained that the flaw in the plaintiff's theory was that "[CRAs] are not tribunals,"

because "CRAs are ill equipped to adjudicate contract disputes …." *Id.* The Ninth Circuit thus concluded that the FCRA does not require a CRA "to provide a legal opinion on the merits" of the plaintiff's dispute over the legal validity of a debt. *Id.* at 892.

Again, in *Wright*, the Tenth Circuit addressed an assertion that CRAs had inaccurately reported the existence of an IRS tax lien against a plaintiff. 805 F.3d at 1234-35. The plaintiff argued that he had made all requisite payments and that the IRS should have withdrawn the lien. But because the IRS treated the lien as "released" rather than "withdrawn," the CRAs did not remove the lien entirely from the plaintiff's report. In affirming summary judgment for the CRAs, the Tenth Circuit cited *DeAndrade* and *Carvalho* and held that the FCRA "does not require CRAs to resolve legal disputes about the validity of the underlying debts they report." *Id.* at 1237, 1242.

In *Denan*, the Seventh Circuit addressed allegations that Trans Union published information received from furnishers regarding debts that were legally invalid under state usury laws. 959 F.3d at 292-93. The district court granted judgment on the pleadings to Trans Union, and the Seventh Circuit affirmed. *Id.* at 292. The Seventh Circuit noted that CRAs are not "tribunals"—instead, "they collect consumer information supplied by furnishers, compile it into consumer reports, and provide those reports to

authorized users." *Id.* at 295. The Seventh Circuit held that "[o]nly a court can fully and finally resolve the legal question of a loan's validity," *id.*, and stated, "[i]n this conclusion we join the First, Ninth, and Tenth Circuits in holding that a consumer's defense to a debt 'is a question for a court to resolve in a suit against the [creditor,] not a job imposed upon [CRAs] by the FCRA.'" *Id.* at 296 (quoting *Carvalho*, 629 F.3d at 892).

Most recently, in *Batterman*, the Eleventh Circuit addressed a claim that Trans Union inaccurately reported a collection account on a credit report. 829 F. App'x at 479. The district court granted Trans Union's motion for judgment on the pleadings, and the Eleventh Circuit affirmed. *Id.* at 481-82. The Eleventh Circuit emphasized that the plaintiff's complaint "focuses on the inclusion of the liquidated damages on his credit reports and his allegation that he does not owe liquidated damages to [the creditor]. The report of the liquidated damages is not a factual inaccuracy; rather, it is a contractual dispute. Such contractual disputes require resolution by a court of law, not a [CRA]." *Id.* at 481.

This Court is familiar with these settled principles. A panel of this Court affirmed a decision based on these principles in *Okocha*, 488 F. App'x 535. There, HSBC informed certain CRAs that the plaintiff had overdrawn his line of credit. *See Okocha*, 2011 U.S. Dist. LEXIS 39998, at *3-4, 16-17. The plaintiff contended that he did not agree to the terms of the overdraft line

of credit. *Id.* The plaintiff also filed a section 1681e(b) claim against the CRAs, alleging that they inaccurately reported the overdraw information furnished by the HSBC. *Id.* The district court granted summary judgment to the CRAs and explained, "Plaintiff's argument that he did not agree to the terms of the overdraft line of credit is a collateral legal attack on the validity of the debt, which may be resolved only with HSBC, not a factual inaccuracy, and, thus, is insufficient to withstand summary judgment." *Id.* at *17 (emphasis added). The plaintiff appealed to this Court, and a panel of this Court held that "Okocha's appeal is without merit substantially for the reasons articulated by the district court in its well-reasoned order." *Okocha*, 488 F. App'x at 536.[5]

The district court here followed this unbroken chain of authority. In fact, many courts within this Circuit have recognized the "widespread agreement" on the fundamental point that CRAs are not tribunals that are required to make legal determinations as to a consumer's liability for a debt. *See Holland v. Chase Bank United States, N.A.*, 475 F. Supp. 3d 272, 276-

[5] The *Okocha* court affirmed the district court ruling in a non-precedential summary order. This Court is "of course, permitted to consider summary orders for their persuasive value, and often draw[s] guidance from them in later cases." *Force v. Facebook, Inc.*, 934 F.3d 53, 66 n.21 (2d Cir. 2019) (citation omitted). "[D]enying summary orders precedent effect does not mean that the court considers itself free to rule differently in similar cases …." *United States v. Payne*, 591 F.3d 46, 58 (2d Cir. 2010) (citation omitted).

77 (S.D.N.Y. 2020) ("[T]he federal courts of appeals and district courts that have addressed this question are in widespread agreement that a plaintiff's legal challenge to the validity of a debt is alone insufficient to make a report of that debt factually inaccurate …. These cases establish that the obligation of furnishers of information (like Chase) and [CRAs] to ensure an accurate factual report of debts incurred does not include an obligation to ensure that debts they report would survive any and all legal challenges."); *Mohnkern v. Equifax Info. Servs., LLC*, No. 19-CV-6446L, 2021 U.S. Dist. LEXIS 218532, at *12 n.5 (W.D.N.Y. Nov. 10, 2021) ("[I]t is well settled by the Courts of Appeals to have considered the issue that CRAs need not resolve legal disputes ….").

Accordingly, CRAs are not tribunals required to make a legal determination as to a consumer's liability for a debt.

B. The FCRA is structured for consumers to take their legal disputes to furnishers, not collaterally attack their debts by suing CRAs.

CRAs are ill equipped to make legal determinations not only because they are not tribunals, but also because "the CRA is a third party, lacking any direct relationship with the consumer …." *Carvalho*, 629 F.3d at 892. When it comes to liability for debts, a furnisher "'stands in a far better position'" to make the proper determination than the CRA. *Id.* (citation omitted). Accordingly, "[t]he FCRA expects consumers to dispute the

validity of a debt with the furnisher of the information or append a note to their credit report to show the claim is disputed." *Wright*, 805 F.3d at 1244.

Because CRAs are ill equipped to make legal determinations as non-tribunal third parties who do not have direct relationships with a consumer, FCRA claims against CRAs "'are not the proper vehicle for collaterally attacking the legal validity of consumer debts.'" *Wright*, 805 F.3d at 1242 (quoting *Carvalho*, 629 F.3d at 892); *DeAndrade*, 523 F.3d at 68 (holding that plaintiff "has crossed the line between alleging a factual deficiency that Trans Union was obliged to investigate pursuant to the FCRA and launching an impermissible collateral attack against a lender by bringing an FCRA claim against a [CRA]").[6]

The prohibition on using claims against CRAs as collateral attacks on debts is consistent with the accuracy duties imposed on furnishers. *See, e.g.*, 15 U.S.C. § 1681s-2 (section titled "Responsibilities of furnishers of

[6] None of this is to say that a CRA will never recognize a debt as legally invalid. To the contrary, after an adjudicatory body—*e.g.*, a court, regulatory agency, or arbitral tribunal—determines that a disputed debt is legally invalid, the furnisher must change its reporting to the CRA. If that change does not occur, the consumer can advise the CRA of the adjudication, and the CRA will update its records. *See Scheel-Baggs v. Bank of Am.*, 575 F. Supp. 2d 1031, 1042 (W.D. Wis. 2008) (after an arbitrator determined that plaintiff was not legally obligated to pay a debt, the court held that "the legal question was resolved" and the plaintiff could maintain FCRA claims based on any reporting that was "*factually* inaccurate") (emphasis in original).

information to consumer reporting agencies"). For example, under section 1681s-2(a), a furnisher is prohibited from providing information to CRAs if the furnisher "knows or has reasonable cause to believe that the information is inaccurate." 15 U.S.C. § 1681s-2(a)(1)(A). "Accuracy" for furnishers means information that "correctly [r]eflects ... liability for the account …." 12 C.F.R. § 1022.41(a) (emphasis added). "Neither the FCRA nor its implementing regulations impose a comparable duty upon [CRAs], much less a duty to determine the legality of a disputed debt." *Denan*, 959 F.3d at 295. Accordingly, "[o]nly furnishers are tasked with accurately reporting liability." *Id.* (emphasis added). "The FCRA imposes duties on [CRAs] and furnishers in a manner consistent with their respective roles in the credit reporting market" and a plaintiff cannot "graft responsibilities of data furnishers and tribunals onto a [CRA]." *Id.* at 294, 295.

Furnishers have duties when they receive a notice from a CRA that a consumer has disputed information. *See* 15 U.S.C. § 1681i. After receiving notice of the dispute, the furnisher must investigate the disputed information, "review all relevant information provided by the" CRA,[7] and

[7] When forwarding the dispute to the furnisher, the CRA can include a copy of the consumer's dispute letter. *See, e.g., Whitlock-Allouche v. PlusFour, Inc.*, No. 2:17-cv-01656-RFB-VCF, 2018 U.S. Dist. LEXIS 151647, at *5 (D. Nev. Sept. 6, 2018) (noting Trans Union sent consumer's dispute letter to furnisher as part of reinvestigation); *Markosyan v. Hunter Warfield, Inc.*, No. CV 17-5400 DMG (JCx), 2018 U.S. Dist. LEXIS 244191, at *18 (C.D. Cal. May 11, 2018) (noting furnisher's duty to "'review all relevant information'" in

report the results to the CRA so it can complete its investigation by the statutory deadline. 15 U.S.C. § 1681s-2(b)(1)-(2). As part of that investigation, the furnisher must modify, delete, or "permanently block the reporting" of any information that "is found to be inaccurate or incomplete." 15 U.S.C. § 1681s-2(b)(1)(E)(i)-(iii).

If the furnisher does not agree with a consumer's view of the legal validity of the debt, a consumer has a right to provide the CRA with a statement explaining the consumer's view of the disputed debt. 15 U.S.C. § 1681i(b). The CRA must then include that statement on future reports relating to the debt. 15 U.S.C. § 1681i(c). "In this way, potential creditors have both sides of the story and can reach an independent determination of how to treat a specific, disputed account." *Cahlin*, 936 F.2d at 1160 n.23.

These FCRA provisions empower a consumer to challenge the legal validity of a debt directly with the furnisher, and the consumer need not—in fact, may not—collaterally attack the legality of the debt by filing suit against the CRA.

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connection with CRA-provided copies of dispute letters (quoting 15 U.S.C. § 1681s-2(b)(1)(B))).

C. The district court faithfully applied the FCRA in lockstep with every other Court of Appeals to address this issue.

The district court properly granted summary judgment to Trans Union. The district court correctly recognized that "[a]ll circuit courts to have opined on whether accuracy in the FCRA context includes legal inaccuracies are unanimous: 'The claimed inaccuracy must be factual, not legal.'" (SA16, emphasis added, citation omitted) The district court also correctly recognized that "the Second Circuit has also affirmed a 'well-reasoned [district court] order' that adopted this interpretation in a non-binding summary order." (*Id.*, quoting *Okocha*, 488 F. App'x at 536). Plaintiff argues that the district court nonetheless should have taken a new path and disregarded the unanimous rulings of the Courts of Appeals. As explained below, Plaintiff's contentions lack merit.

First, Plaintiff relies on the fact that the FCRA does not define "accuracy" to contend that this Court should define "accuracy" as Merriam-Webster's Dictionary defines it: "freedom from mistake or error." (Sessa Brief at 23) According to Plaintiff, under this definition, CRAs must act as a tribunal and make legal determinations as to a consumer's liability for a debt. (*Id.*) Plaintiff is wrong.

To begin, Plaintiff has selectively picked a dictionary definition that suits her. This definition is not uniform among reputable dictionaries. The American Heritage Dictionary, for example, defines "accuracy" as

"conformity to fact." *See* The American Heritage Dictionary of the English Language (5th ed. 2022) (emphasis added);[8] *see also Schwanke v. Minn. Dep't of Admin.*, 851 N.W.2d 591, 594-95 (Minn. 2014) (applying The American Heritage Dictionary's definition of "accuracy" in explaining that a particular assertion "does not '[c]onform[] to fact'"). The Supreme Court and this Court both frequently reference The American Heritage Dictionary. *See, e.g.*, *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2380 (2020); *Zepeda-Lopez v. Garland*, --- F.4th ---, 2022 U.S. App. LEXIS 17748, at *11-12 (2d Cir. June 28, 2022).

Furthermore, Merriam-Webster's definition of "accuracy" (which Plaintiff prefers) includes examples of how the word can be used in a phrase or sentence—and those examples all involve factual accuracy: "checked the novel for historical *accuracy*"; "impossible to determine with *accuracy* the number of casualties"; "Each experiment is performed twice to ensure *accuracy*"; "The police questioned the *accuracy* of his statement"; "He could not say with any *accuracy* what he had seen"; "Several managers have tried to increase the speed and *accuracy* of the workers." *See* Merriam-Webster Dictionary.[9]

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[8] https://ahdictionary.com/word/search.html?q=accuracy (last visited July 28, 2022).

[9] https://www.merriam-webster.com/dictionary/accuracy (last visited July 28, 2022).

Dictionaries can be helpful in some contexts, but "it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary." *Time Warner Cable*, 497 F.3d at 157 (citation omitted). "[B]ecause interpretive challenges often arise from the way a particular word is used in the context of the provision or statute as a whole, dictionaries are often less helpful in addressing them than we might hope." *New York*, 964 F.3d at 167 n.3 (Katzmann, C.J., dissenting from denial of rehearing en banc). As the Seventh Circuit has noted, "dictionaries must be used as sources of statutory meaning only with great caution" because they are acontextual and can supply a judge with many possible meanings and no reasoned basis to choose among them. *United States v. Costello*, 666 F.3d 1040, 1043-44 (7th Cir. 2012) (Posner, J.). This Court has referred to the Seventh Circuit's discussion as "helpful cautionary advice." *Bove*, 888 F.3d at 608 n.5. That same cautionary advice is relevant here.

Second, Plaintiff contends that CRAs should be required to act like tribunals and make legal determinations as to a consumer's liability for a debt because the FCRA requires "maximum possible accuracy." (Sessa Brief at 26) The term "maximum possible accuracy," however, merely reflects the fact that "the FCRA is not a strict liability statute." *Sarver*, 390 F.3d at 971; *Ogbon v. Ben. Credit Servs., Inc.*, 2013 U.S. Dist. LEXIS 50816, at *22 (S.D.N.Y. Apr. 8, 2013) ("the FCRA does not impose … strict liability"). Instead, the FCRA requires "reasonable procedures to assure maximum

possible accuracy ….” 15 U.S.C. § 1681e(b). And, as Plaintiff acknowledges, “it would be *unreasonable* for a [CRA] to have to act as a legal tribunal.” (Sessa Brief at 33, citing *Wright*, 805 F.3d at 1242; and *Carvalho*, 629 F.3d at 892)

To be sure, as Plaintiff and the CFPB/FTC *amici* emphasize, some courts have observed that the term “maximum possible accuracy” shows that CRAs can be liable for reporting “misleading” information even if the information is “technically accurate.” *See Cortez v. Trans Union, LLC*, 617 F.3d 688, 709 (3d Cir. 2010); *Twumasi-Ankrah v. Checkr, Inc.*, 954 F.3d 938, 942 (6th Cir. 2020); *Erickson v. First Advantage Background Servs. Corp.*, 981 F.3d 1246, 1251 (11th Cir. 2020). That is not the same as holding that CRAs are responsible for making legal determinations as to a consumer’s liability for a debt. For example, in this very case, the district court reasoned that a CRA could be liable for reporting “misleading” factual information, but the district court also (correctly) held that “[t]he claimed inaccuracy must be factual, not legal.” (SA16)

Ultimately, Plaintiff asks this Court to focus on a specific statutory term in isolation from the FCRA’s broader framework. However, words must be “‘read in their context’” with a view to their place in the overall statutory and regulatory framework. *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 320 (2014) (citation omitted). “[I]n addition to looking at the

statutory text, we analyze the statutory and regulatory framework as a whole and examine the meaning of the statutory provisions 'with a view to their place' in that framework." *United States v. Boyd*, 991 F.3d 1077, 1080 (9th Cir. 2021) (quoting *Util. Air Regulatory Grp.*, 573 U.S. at 320); *Mary Jo C. v. N.Y. State & Local Ret. Sys.*, 707 F.3d 144, 158 (2d Cir. 2013) (interpreting a statutory term with reference to "the regulations implementing the relevant section of the [statute]" (footnote omitted)); *Mei Juan Zheng v. Mukasey*, 514 F.3d 176, 182 (2d Cir. 2008) (noting that the meaning of a statute is interpreted in light of "the broader statutory and regulatory framework") The FCRA's statutory and regulatory framework imposes "duties on [CRAs] and furnishers in a manner consistent with their respective roles in the credit reporting market." *Denan*, 959 F.3d at 294. "Only furnishers are tasked with accurately reporting liability," and no "comparable duty" exists for CRAs. *Id.* at 294-95 (citing 12 C.F.R. § 1022.41(a)).

Third, Plaintiff argues that the FCRA's regulations do not support the district court's conclusion that "'[o]nly furnishers are tasked with accurately reporting liability.'" (SA17, quoting *Denan*, 959 F.3d at 295, citing 12 C.F.R. § 1022.41(a)). (*See* Sessa Brief at 24-25) Plaintiff, however, cannot dispute that the agency regulations require furnishers to provide information to CRAs that "[r]eflects the terms of and liability for the account or other relationship," 12 C.F.R. § 1022.41(a) (emphasis added), while no comparable statutory or regulatory requirement exists for CRAs.

Plaintiff cannot "graft responsibilities of data furnishers … onto a [CRA]." *Denan*, 959 F.3d at 294-95.

Fourth, Plaintiff relies on the FCRA's purpose of achieving "'fair and equitable'" results. (Sessa Brief at 28, quoting 15 U.S.C. § 1681(b)) However, "Congress enacted FCRA with the goals of ensuring that [CRAs] impose procedures that were not only 'fair and equitable to the consumer,' but that also met the 'needs of commerce' for accurate credit reporting." *Cahlin*, 936 F.2d at 1158 (quoting 15 U.S.C. § 1681). This is a "very economic purpose," *Cahlin*, 936 F.2d at 1158; *Carvalho*, 629 F.3d at 892, and Plaintiff's argument contradicts this very economic purpose. As the district court correctly recognized, requiring CRAs to act as tribunals and make legal determinations "'would substantially increase the cost of their services,' forcing CRAs 'to pass on the increased costs to their customers and ultimately to the individual consumer.'" (SA17-18, quoting *Henson v. CSC Credit Servs.*, 29 F.3d 280, 285 (7th Cir. 1994))

Fifth, Plaintiff eventually addresses the fact that she is asking this Court to part ways with the First, Seventh, Ninth, Tenth, and Eleventh Circuits, as well as a summary order from this very Court, and a multitude of district courts inside and outside of this Circuit. (Sessa Brief at 30-31) Plaintiff at least acknowledges the overwhelming authority supporting the district court's ruling here—in contrast to Plaintiff's *amici*, the CFPB and

FTC, which fail to cite the relevant cases and imply (incorrectly) that the district court simply followed a single Eleventh Circuit decision. (CFPB and FTC Amicus Brief at 15)

Plaintiff contends that the district court was "wrong to rely on these out-of-circuit cases" because the courts in those cases discussed "policy determinations" and did not accept the arguments that Plaintiff advances here. (*Id.*)[10] However, contrary to what Plaintiff suggests, the federal Courts of Appeals do not disregard the law in favor of policy preferences. That is not how the federal courts decide issues generally, and it is not how the federal courts have decided this specific issue. *See, e.g.*, *Denan*, 959 F.3d at 293-97 (analyzing the language of section 1681e(b), the structure of the FCRA, the implementing regulations, the practicalities of the credit reporting market, and existing case law).

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[10] Plaintiff attempts to evade *Okocha* by arguing that the district court based its decision on the plaintiff's failure to provide evidence, not on the factual/legal accuracy distinction. (Sessa Brief at 31 n.7) That is incorrect. The plaintiff in *Okocha* made two arguments relating to his account: (1) he "did not overdraw on his account"; and (2) "he did not agree to the terms of the overdraft line of credit." *Okocha*, 2011 U.S. Dist. LEXIS 39998, at *16. On the first argument, the district court did indeed hold that the plaintiff failed to provide evidence. *Id.* at *16-17. On the second argument, however, the court held that "Plaintiff's argument that he did not agree to the terms of the overdraft line of credit is a collateral legal attack on the validity of the debt … not a factual inaccuracy, and, thus, is insufficient to withstand summary judgment." *Id.* at *17.

Plaintiff is asking this Court to create a circuit split. Plaintiff, however, has offered no legitimate—let alone compelling—reason to create a split among the federal Courts of Appeals. Under these circumstances, creating a circuit split is "inadvisable." *Janese v. Fay*, 692 F.3d 221, 227 (2d Cir. 2012) (declining to maintain a circuit split "in the absence of compelling reasons to the contrary"); *United States v. Thomas*, 939 F.3d 1121, 1130 (10th Cir. 2019) ("[O]nly a 'compelling' or 'strong' reason can justify creation of a circuit split.") (citing *Janese*, 692 F.3d at 227).

Sixth, Plaintiff argues that Trans Union reported inaccurate information because, according to Plaintiff, the evidence shows that Plaintiff did not owe a balloon payment and Trans Union should have known this. (Sessa Brief at 36-37) There are multiple problems with Plaintiff's argument.

To begin, the question of whether Plaintiff actually owed a balloon payment is irrelevant to the question of whether Trans Union was required to determine whether Plaintiff owed a balloon payment. The district court understood this: "It may be the case that the terms of the lease contradict the data [Hudson Valley] furnished—though, to be clear, the Court is in no way opining on this question. But Plaintiff cannot reframe this purportedly 'implausible interpretation[]' as a matter of fact. This is at its core 'a

contractual dispute,' and one not before this Court." (SA21, citations omitted, emphasis added)[11]

Additionally, Plaintiff's statements in support of her argument that Trans Union should have known that she did not owe a balloon payment are either materially misleading or flat wrong. Plaintiff states that the evidence "shows that commercially available consumer auto leases do not include balloon payment obligations." (Sessa Brief at 36) For this, Plaintiff cites the report of Plaintiff's opinion witness, Lewis Linet, where Mr. Linet stated, "I have never seen or been made aware of a 'balloon payment' contained within and concluding a lease obligation." (Dkt 114-5 at 2, ¶ 4) In his deposition, Mr. Linet clarified that "I went online and just did a little research just to find out if there were ever such things as balloon payments in leases, even though I've never seen one or heard of one, and I believe that I read that there could be a possibility for a balloon payment in a

[11] Plaintiff claims that Hudson Valley "confirmed" that its own reporting was wrong. (Sessa Brief at 36) This would not change the legal nature of her contract dispute. Moreover, as noted, Plaintiff provided no evidence that Hudson Valley no longer believes its own reporting. Plaintiff had an opportunity to take discovery from Hudson Valley but chose not to—and that has consequences. *See Brill v. Transunion LLC*, 838 F.3d 919, 922 (7th Cir. 2016) ("Brill's suit against Toyota was his chance to use discovery to interview Toyota employees. It's too late now. It was his decision to settle his suit against Toyota rather than use discovery procedures to explore the issue … in depth.").

lease." (Dkt 123-11 at 22:17-22, emphasis added) Mr. Linet also clarified that he was not aware of anything that would prevent an auto lease from requiring a balloon payment of $19,000 at the end of it. (*Id.* at 48:20-24) This is consistent with the testimony of Michael Turner who stated, [redacted]

Plaintiff also states that Trans Union "knew that auto-lease information submitted by this particular furnisher in the past had inaccurately included non-existent balloon payments." (Sessa Brief at 36) Plaintiff does not cite anything to support this statement—because it isn't true. When consumers actually disputed data furnished by Hudson Valley on accounts that happened to involve balloon payments, the consumers overwhelmingly did not dispute the accuracy of the balloon payment information. Of the 72 consumer disputes regarding Hudson Valley accounts that included balloon payments, only two challenged the accuracy of the balloon payment information. For both of those two disputes, Hudson Valley verified the accuracy of the information. (Dkt 114-16 at 5-6; Dkt 123-2 at 44:17-45:8; Dkt 123-3 at 82:4-83:5, 108:24-109:7)

Seventh, Plaintiff argues that, if this Court declines to break with every other Court of Appeals to have addressed this issue, this Court should nonetheless reverse because the "errors" here are "factual" inaccuracies, and Trans Union "merely had to conduct a 'straightforward' and 'fact-based' inquiry: Do consumer auto leases commonly have balloon payments?" (Sessa Brief at 37-39, emphasis added) Multiple problems permeate this argument.

To start, answering Plaintiff's proposed question would not resolve the issue of whether Plaintiff owed a balloon payment. At a minimum, to determine whether Plaintiff owed a balloon payment, Trans Union would need to request, obtain, and interpret Plaintiff's underlying contract documents. As the CFPB and FTC *amici* acknowledge, "[D]etermining whether [Plaintiff] owed a $19,444 balloon payment requires reading and interpreting the contract." (CFPB and FTC Amicus Brief at 17) Plaintiff's opinion witness acknowledged this same point:

> Q. The accuracy would depend on what the underlying lease said; correct?
>
> THE WITNESS: Yes.
>
> Q. Would there be any way for Trans Union to know whether or not a reported balloon payment for an auto lease was accurate without looking at the lease itself?
>
> THE WITNESS: I don't think so.

(Dkt 123-11, at 28:10-19, objections omitted)

When furnishers send data about a consumer's account to a CRA, furnishers do not send the underlying contract documents, because the FCRA does not require CRAs to review underlying documents giving rise to a consumer's debt obligations before reporting data about the documents. (Dkt 123-20 ¶ 32, Pl's Counterstatement, citing Dkt 123-13 at 24:21-25:1) Thus, when Hudson Valley sent data regarding Plaintiff's account to Trans Union, it did not send Plaintiff's lease. (Dkt 123-13 at 24:6-9) And Plaintiff did not provide Trans Union with a copy of the lease until she filed it as an exhibit to her complaint in this case. (Dkt 123-1 at 15:3-8; Dkt 18)

Even if Hudson Valley or Plaintiff had notified Trans Union of the dispute regarding the balloon payment information and provided Trans Union with a copy of the lease—which they did not—Trans Union still would have needed to interpret the lease, and "[t]he interpretation of a contract is a legal question." *Capital Ventures Int'l*, 552 F.3d at 293; *United States ex rel. O'Donnell v. Countrywide Home Loans, Inc.*, 822 F.3d 650, 655 n.9 (2d Cir. 2016) ("[T]he proper interpretation of the contracts at issue is a question of law…."). "CRAs are ill equipped to adjudicate contract disputes." *Carvalho*, 629 F.3d at 891. "Such contractual disputes require resolution by a court of law, not a [CRA]." *Batterman*, 829 F. App'x at 481.

"[A] contractual dispute is exactly the type of legal issue that courts have held [CRAs] have no duty under the FCRA to resolve." *Leboon*, 2020 U.S. Dist. LEXIS 21140, at *19 (citing *Carvalho*, 629 F.3d at 891; and *DeAndrade*, 523 F.3d at 68).

By conceding the amount of the reported debt and disputing only the legal effect of that debt, Plaintiff has raised a legal inaccuracy—and Trans Union is neither qualified nor obligated to resolve Plaintiff's contract dispute. *See Chuluunbat v. Experian Info. Sols., Inc.*, 4 F.4th 562, 568 (7th Cir. 2021) (holding that a claimed inaccuracy was legal because the plaintiffs did not argue "that the debts are in improper amounts," but instead disputed "the legal relationship" of the debts); *Batterman*, 829 F. App'x at 481 (holding that a claimed inaccuracy was legal because "Batterman's complaint does not allege that the reported debt is inaccurate as to the amount," but instead raised a "contractual dispute" that "require[s] resolution by a court of law, not a [CRA]").

Plaintiff also briefly raises a claim that her "total balance" was inaccurate. (Sessa Brief at 37) This claim appears only once in her Argument, and Plaintiff immediately proceeds to drop it and focus exclusively on the balloon payment information. (*Id.* at 39) Accordingly, this argument is not properly presented to this Court. *See Tolbert v. Queens College*, 242 F.3d 58, 75 (2d Cir. 2001) ("It is a 'settled appellate rule that

issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.'" (citation omitted)). Plaintiff also waived this argument in the district court: this assertion appeared only in her opposition to Trans Union's summary-judgment motion. (Dkt 1; Dkt 4; Dkt 113 at 16 ¶¶ 101-02; Dkt 132 at 1). A party waives a claim when the claim is "not explicitly asserted, and is not supported by the facts alleged, in the complaint." *Dickerson v. Napolitano*, 604 F.3d 732, 738 (2d Cir. 2010). Unsurprisingly, the district court did not address this argument (SA20-22), and it is not properly before this Court either. In any event, Plaintiff's high-balance argument suffers from the same flaw as the balloon-payment argument. Plaintiff does not dispute the [redacted] Once again, this is a legal dispute.

Finally, Plaintiff argues that this Court should be concerned with the statement that the district court made after resolving the relevant legal issue. Specifically, after ruling that "CRAs cannot be held liable when the accuracy at issue requires a legal determination as to the validity of the debt the agency reported," the district court also stated, "CRAs can only be held liable for FCRA claims when the information reported does not match the information furnished." (SA19)

This Court need not grapple with the district court's additional statement. It is dictum. It was "not necessary to decide the case" and "should not be treated as binding." *Chem One, Ltd. v. M/V Rickmers Genoa*, 660 F.3d 626, 640 (2d Cir. 2011) (citation omitted). The district court resolved the relevant issue by concluding that Trans Union was not required to make a legal determination. (SA16-19) The district court's statement about Trans Union's reporting matching the information that was furnished was not necessary to the court's summary-judgment ruling and is not binding on any court. Under these circumstances, this Court can and should affirm, regardless of whether it agrees with the district court's dictum. *See Ahmad v. Wigen*, 910 F.2d 1063, 1064 (2d Cir. 1990) ("Although we affirm, we do not necessarily subscribe to the district court's dicta concerning the expanded role of habeas corpus in an extradition proceeding …."); *United States v. Deandrade*, 600 F.3d 115, 120 (2d Cir. 2010) (affirming district court decision, noting "[i]t cannot matter whether the court's dicta was sound, and we neither endorse nor reject it").

For all of these reasons, the district court faithfully applied the FCRA in lockstep with every other Court of Appeals to address this issue, and this Court should affirm.

II. Trans Union was entitled to rely on Hudson Valley's reporting.

The Court can affirm on the same grounds as the district court—*i.e.*, Plaintiff failed to show that Trans Union reported any inaccurate information. Because of its ruling on this threshold issue, the district court had no reason to address any of the other summary-judgment grounds that Trans Union raised. However, if need be, this Court may affirm based on the alternative grounds—in particular, this Court may affirm because Trans Union was entitled to rely on Hudson Valley's reporting.

This Court "may affirm a grant of summary judgment 'on any basis [with] sufficient support in the record, including grounds not relied on by the district court.'" *Schwebel v. Crandall*, 967 F.3d 96, 99 (2d Cir. 2020) (quoting *Bruh v. Bessemer Venture Partners III L.P.*, 464 F.3d 202, 205 (2d Cir. 2006)); *Smith v. Barnesandnoble.com, LLC*, 839 F.3d 163, 166 (2d Cir. 2016) ("The district court granted summary judgment on the basis that the conduct at issue did not amount to direct or contributory infringement …. [W]e affirm on an alternative ground."); *De Espana v. Am. Bureau of Shipping, Inc.*, 691 F.3d 461, 468 (2d Cir. 2012) ("We therefore affirm the district court's grant of summary judgment to Defendants on this alternative ground.").

"[T]he FCRA is not a strict liability statute." *Sarver*, 390 F.3d at 971; *Ogbon*, 2013 U.S. Dist. LEXIS 50816, at *22 ("the FCRA does not impose …

strict liability"). "Courts have consistently held … that a CRA does not violate its duty to assure reasonable accuracy pursuant to Section 1681e(b) simply by reporting an inaccurate debt or judgment, absent prior reason to believe that its source was unreliable." *Frydman*, 2016 U.S. Dist. LEXIS 107139, at *39 (emphasis added) (citing *Wright*, 805 F.3d at 1240; and *Sarver*, 390 F.3d at 972). A CRA need only look beyond the information furnished to it when the information "is inconsistent with the CRAs' own records, contains a facial inaccuracy, or comes from an unreliable source." *Wright*, 805 F.3d at 1239-40 (collecting cases).

This Court's decision in *Podell* is on point. In *Podell*, creditors furnished inaccurate information to Trans Union. 112 F.3d at 100. The creditors later notified Trans Union that the information was inaccurate but continued to send updates (containing the inaccurate information) to Trans Union, which reported the information until the consumer notified Trans Union of the dispute, at which time Trans Union investigated the issue and removed the inaccurate information from the consumer's report. *Id.* at 100, 104. The consumer sued Trans Union and "urge[d] that where a [CRA] actually does receive notice of an error in an account from the creditor that supplied the account entry, a duty arises under the FCRA § 1681*e* to use 'reasonable procedures to assure maximum possible accuracy' of that credit entry.'" *Id.* at 104-05.

The district court, however, granted summary judgment to Trans Union, and this Court affirmed: "[I]n these circumstances, Trans Union did not breach its duties under the FCRA by relying on the updates it received from [the creditors], and … Trans Union was entitled to report [consumer's] indebtedness, at least until it heard from him directly." *Id.* at 105 (emphasis added; citation and brackets omitted). Thus, in *Podell*, this Court not only held that the CRA was entitled to rely on the furnished information until it heard from the consumer directly—it also held that the CRA's reliance was reasonable even though the creditors had technically notified the CRA of the inaccuracy.[12]

This Court's decision in *Podell* is consistent with decisions from the other Courts of Appeals. For example, in *Sarver*, the Seventh Circuit addressed a consumer's claim that a CRA violated section 1681e(b) by reporting inaccurate information pertaining to bankruptcy. 390 F.3d at 970. There was no dispute that the information was inaccurate. *Id.* The district court, however, held that there was nothing in the record to show that the CRA violated section 1681e(b), and the Seventh Circuit agreed: "What Sarver is asking, then, is that each computer-generated report be examined for anomalous information and, if it is found, an investigation be launched. In the absence of notice of prevalent unreliable information from a

[12] The Court need not go that far here. It is undisputed that no one notified Trans Union of an alleged inaccuracy.

reporting lender, which would put [the CRA] on notice that problems exist, we cannot find that such a requirement to investigate would be reasonable given the enormous volume of information [the CRA] processes daily." *Id.* at 972.

District courts within this Circuit also have followed suit. *See Whelan v. Trans Union Credit Reporting Agency*, 862 F. Supp. 824, 830 (E.D.N.Y. 1994) ("The court concludes that due to plaintiffs' failure to present any evidence showing that Trans Union was notified prior to April 15, 1993 that its credit report concerning the Whelans contained inaccurate information, Trans Union is entitled to summary judgment on plaintiffs' claim under § 1681e(b)."); *Frydman*, 2016 U.S. Dist. LEXIS 107139, at *44 (affirming summary judgment for CRA and citing *Podell v. Citicorp Diners Club*, 914 F. Supp. 1025, 1035 (1996), for the proposition that a CRA is "entitled to report inaccurate debt, at least until it heard from the plaintiff directly" (brackets omitted)).

Here, Trans Union reasonably relied on the information furnished by Hudson Valley—for multiple reasons.

First, the balloon payment information that Hudson Valley furnished to Trans Union was not inconsistent with the information available to Trans Union. This alleged inaccuracy could not be identified without looking to the lease (Dkt 123-11 at 28:10-19; Dkt 123-1 at 35:16-24, 37:5-19, 48:24-49:15,

102:12-18), but Hudson Valley did not provide the lease to Trans Union (Dkt 123-13 at 24:6-9), and neither did Plaintiff (Dkt 123-1 at 15:3-8; Dkt 18). Plaintiff has provided no evidence to support any argument that Trans Union should have questioned the balloon payment information based on the information available to Trans Union. *See Wright*, 805 F.3d at 1240 (affirming summary judgment on section 1681e(b) claim where consumer "provided no evidence to show the tax lien information taken from the Recorder's website was inconsistent with the information the CRAs had on file about him.").

Second, the balloon payment information was not facially inaccurate. Balloon payments with auto leases are actual types of accounts—a consumer can be responsible for a balloon payment at the end of an auto lease if the consumer has agreed to a contract obligating the consumer to make a balloon payment. (Dkt 114-7 at 4-5, No. 7; Dkt 123-11 at 22:2-10, 23:8-11, 27:24-28:9, 42:12-15, 48:20-24, 60:8-14; Dkt 123-14 at ¶¶ 3-4; Dkt 123-13 at 35:17-20) [redacted] As noted above, Plaintiff relies on a report from her opinion witness, who said that he has never seen a balloon payment within and concluding a lease obligation, but that witness also admitted that "there could be a possibility for a balloon payment in a

lease" (Dkt 123-11 at 22:16-22), and that he was not aware of anything that would prevent an auto lease from requiring a balloon payment of $19,000 at the end of it. (*Id.* at 48:20-24)

Third, Trans Union had no reason to question the reliability of Hudson Valley as a furnisher. Hudson Valley successfully passed through Trans Union's furnisher credentialing process (Dkt 123-3 at 44:17-19, 34:9-24; Dkt 123-14 at ¶ 40; Dkt 123-15 at 76:11-20), and Hudson Valley agreed that "all information furnished to TransUnion shall be complete and accurate." (Dkt 123-5 at § 2(A); Dkt 123-7 § 2(A); Dkt 123-3 at 53:8-55:23) When consumers actually disputed data furnished by Hudson Valley on accounts that happened to involve balloon payments, the consumers overwhelmingly did not dispute the accuracy of the balloon payment information. Of the 72 consumer disputes regarding Hudson Valley accounts that included balloon payments, only two challenged the accuracy of the balloon payment information—the other disputes involved consumers who were focused on the accuracy of their consumer data, yet these consumers did not question the balloon payment information. In both of the two instances where consumers did question the balloon payment information, Hudson Valley verified the accuracy of the information. (Dkt 114-16 at 5-6; Dkt 123-2 at 44:17-45:8; Dkt 123-3 at 82:4-83:5, 108:24-109:7)

Under these circumstances, as in *Podell*, "Trans Union did not breach its duties under the FCRA by relying on the [information] it received from [the creditor], and … Trans Union was entitled to report consumer's indebtedness, at least until it heard from [her] directly," 112 F.3d at 105 (emphasis added; brackets omitted), which never happened.

For these reasons, Trans Union was entitled to rely on Hudson Valley's reporting, and this Court may affirm on this alternative ground.

CONCLUSION

This Court should affirm the judgment of the district court.

July 28, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the type-volume limit of Federal Rules of Appellate Procedure 28(a)(10) and 32(g)(1), along with Local Appellate Rule 32.1(a)(4)(A), because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 13,210 words as counted by the word-processing software used to create the brief.

I further certify that this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared using Palatino Linotype 14-point font.

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CERTIFICATE OF SERVICE

I hereby certify that, on August 3, 2022, I caused the foregoing Redacted Page Proof Brief of Defendant-Appellee to be served via CM/ECF on the following counsel of record:

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