NO. 23-1911

# United States Court of Appeals

*for the*

# Fourth Circuit

SHELBY ROBERTS,

*Plaintiff-Appellant,*

– v. –

CARTER-YOUNG, INC.,

*Defendant-Appellee.*

CONSUMER FINANCIAL PROTECTION BUREAU;
FEDERAL TRADE COMMISSION,

*Amici Supporting Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AT GREENSBORO

## BRIEF FOR DEFENDANT-APPELLEE

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

**DISCLOSURE STATEMENT**

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 23-1911 Caption: Shelby Roberts v. Carter-Young, Inc.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Carter-Young, Inc.
(name of party/amicus)

who is Appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐YES ☑NO

2. Does party/amicus have any parent corporations? ☐YES ☑NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐YES ☑NO
If yes, identify all sucb owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Jonathan K. Aust Date: January 25, 2024

Counsel for: Appellee



Print to PDF for Filing

# TABLE OF CONTENTS

**Page**

## TABLE OF AUTHORITIES

**Page(s)**

**Cases:**

**Statutes & Other Authorities:**

## STATEMENT OF THE ISSUES

1. Whether the word "accuracy" used in 15 U.S.C. §1681s-2(b) of the Fair Credit Reporting Act ("FCRA") requires that disputes under that section be "objectively and readily verifiable" to trigger a furnisher's obligation to conduct an investigation of that dispute.
2. Whether Roberts sufficiently alleged that she disputed the "accuracy" of the information Carter-Young reported to a consumer reporting agency about her unpaid apartment lease debt.

## STATEMENT OF THE CASE

Appellant Shelby Roberts ("Roberts") signed an apartment lease with Ansley at Roberts Lake ("Ansley"), for an initial term through September 10, 2020, which was then extended through November 10, 2020. (JA5 ¶¶ 9-10). At the end of its term, the lease converted to a month-to-month tenancy requiring 30 days written notice to terminate. (JA5 ¶ 10). Without first providing Roberts with 30 days' notice, Ansley leased Roberts' apartment to a new tenant. (JA5 ¶ 11). When Roberts learned of the new tenant, she informed Ansley of its failure to provide proper notice and refused to vacate the apartment. (JA5-6 ¶ 12). Roberts' refusal to vacate caused Ansley to breach its lease agreement with the new tenant. (JA6 ¶ 13). Roberts ultimately moved out on January 10, 2021. (JA6 ¶ 14).

According to Roberts, Ansley sought to retaliate against her for causing it to lose the new tenant. (JA6 ¶ 14). The alleged retaliation involved charging Roberts for "damages that either never occurred, were ordinary wear and tear items, or were grossly overstated." (JA6 ¶ 14). Roberts admits, however, that before she moved out, the oven door was broken and not repaired. (JA6 ¶ 16).[1] Ansley claims that Roberts "forcefully" pulled the oven door which caused it to become detached.

[1] Throughout Roberts' brief, she incorrectly argues that the door was reattached or fixed. Roberts Brief, pgs. 4, 8, 14, 26, and 51. Those facts are not in her Complaint. Nowhere in her Complaint does she allege that the door was reattached or fixed. Instead, on numerous occasions she specifically alleges that the door "could" have been repaired. (JA6 ¶ 16, JA7 ¶ 18 and JA9-10 ¶ 34).

(JA9-10 ¶ 34). Roberts denies she engaged in any "forceful" act and claims that the door could have been reattached. (JA9-10, ¶ 34). In total, Ansley claims that Roberts owes $791.14 for damages which were not covered by the security deposit. (JA5 ¶ 15) The largest portion of the claim, more than $500, was for a replacement stove. (JA6 ¶ 15). The complaint does not articulate the damages which comprise the remaining balance due. Ansley sent Roberts an invoice for $791.14 and Roberts refused to pay it. (JA7 ¶ 20).

After Roberts refused to pay, Ansley referred the debt to Appellee Carter-Young, Inc. ("Carter-Young") for collections. (JA7 ¶ 21). On March 5, 2021, Carter-Young mailed Roberts' lease guarantor (who is also her father and counsel for Roberts) a letter seeking the unpaid balance. (JA8 ¶ 24). Roberts' guarantor/father responded to Carter-Young on March 30, 2021, disputing the debt claiming that it was retaliatory and false. (JA8 ¶ 25).

Carter-Young reported the debt to the three main consumer reporting agencies ("CRAs"). (JA8 ¶ 26). Even though Roberts was aware that the debt had been credit reported, she did not submit her first dispute to any CRA until August 2, 2022, claiming that the debt was retaliatory and fraudulent. (JA9 ¶ 30). Throughout August and September 2022, Robert submitted disputes to the CRAs claiming that the debt was retaliatory, false or fraudulent. (JA9 ¶¶ 30-31, JA10 ¶ 35

and JA11 ¶ 44). Roberts alleges that Carter-Young failed to conduct a reasonable investigation into her CRA disputes. (JA9 ¶ 32, JA10 ¶ 36, and JA12 ¶ 48).

While Roberts was disputing the debts with the CRAs and Carter-Young, she filed suit against Ansley in Buncombe County Small Claims Court on September 20, 2022, alleging that Ansley violated the "North Carolina Debt Collection Practices Act."[2] (JA10 ¶ 38). She filed the lawsuit "hop[ing] to invalidate through legal process the Ansley claim, which would hopefully cause Carter-Young to delete its reporting of the claim." (JA11 ¶ 39). Roberts then submitted a copy of that lawsuit to a CRA on September 24, 2022, which was ultimately forwarded to Carter-Young. (JA11 ¶ 44).

On October 7, 2022, Ansley and Roberts settled their dispute. (JA13 ¶ 52). As part of the settlement, they agreed that the debt would be "abandoned" and that Ansley would instruct Carter-Young to delete its reporting of the debt. (JA13 ¶ 53). Carter-Young instructed the CRA's to delete the apartment debt that day. (JA13 ¶ 54).

Roberts accuses Carter-Young of failing to perform a reasonable investigation of her disputes to the CRAs pursuant to 15 U.S.C. §1681s-2(b). Carter-Young asserts that Roberts did not dispute the "accuracy" of the information

[2] Roberts is referring to the North Carolina Debt Collection Act ("NCDCA"), N.C.G.S. § 75-50 et seq., which prohibits unfair deceptive conduct in the context of debt collection.

reported by Carter-Young as that term is used in the FCRA, and therefore, she fails to state a claim under § 1681s-2(b).

## SUMMARY OF ARGUMENT

The Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq., allows consumers to dispute the "completeness or accuracy" of the information contained in their credit file. Under 15 U.S.C. §1681s-2(b), the dispute is made to a CRA which transmits that dispute to the entity which furnished the information ("Indirect Dispute"). The furnisher is required to perform an investigation of the consumer's dispute *only* when the dispute challenges the "completeness or accuracy" of the information contained in the consumer's credit file.

To dispute the "accuracy" of information contained in a consumer's credit file, the consumer must assert facts which are objectively and readily verifiable. The word "accuracy" is not defined in the statute, and so its ordinary meaning governs the interpretation of §1681s-2(b). The ordinary meaning of the word "accuracy" contains a standard of *objective* measure. As used in the FCRA, the word "accuracy" means *objective* accuracy. Disputes which do not assert objectively verifiable facts challenging the reported credit information are *not* disputes regarding the "accuracy" of the credit information contained in a credit file. The word "accuracy" is used uniformly throughout the statute to mean "objectively verifiable" accuracy. Prevailing case law also consistently interprets the word "accuracy" to mean *objective* accuracy. Therefore, disputes grounded in assertions which are not objectively and readily verifiable are not disputes

challenging the "accuracy" of the information contained in a credit file. Such disputes do not trigger the obligation to perform an investigation under §1681s-2(b).

Several courts have distinguished "factual" disputes from "legal" disputes, holding that the former triggers investigation obligations and the latter does not. Notwithstanding the labels "legal" and "factual," at bottom these Courts analyze the nature of disputes on the basis of the ability to objectively verify the facts underpinning the dispute. It is the nature of the dispute itself which governs the analysis, not the label given to the dispute.

Furnishers are not required to investigate *all* disputes they receive pursuant to §1681s-2(b). Requiring furnishers to investigate all disputes would effectively delete from the statute the deliberate limiting language "completeness or accuracy" which describes the two categories of disputes that trigger investigations. Ignoring the categories of "completeness" and "accuracy" as conditions precedent to the obligation to investigate a dispute would render those words superfluous.

Roberts did not dispute the completeness or accuracy of the information Carter-Young reported to the CRAs. Instead, she challenged her obligation to pay the underlying debt based on the admitted ongoing disagreement she had with her landlord creditor. Roberts sued her landlord to adjudicate the validity of the debt, virtually admitting that the nature of her purported dispute did not assert facts

which were objectively and readily verifiable. Roberts did not dispute the "accuracy" of the information contained in her credit file. She does not state a claim for relief under the FCRA.

The FCRA was amended in 2003. Those amendments do not impact the analysis of this case because the amendments impose additional obligations on furnishers only *after* the completion of an investigation. Roberts' dispute did not trigger an obligation to investigate and, therefore, the amendments do not apply.

## ARGUMENT

### Discussion Of The Issues

1. **FCRA Disputes Are Limited To Disputes Challenging The "Completeness Or Accuracy" Of The Information Being Reported.**

The Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq., does not require consumer reporting agencies ("CRAs") or data furnishers to investigate every dispute they receive. Instead, they are required to investigate only the disputes which challenge the "completeness or accuracy" of information being reported by the furnisher. 15 U.S.C. § 1681i(a)(1)(A) and 15 U.S.C. § 1681s-2(b)(1). The statute establishes a condition precedent which must be satisfied before a CRA or furnisher becomes obligated to conduct an investigation. The CRA or furnisher must receive a dispute challenging the (1) accuracy, or (2) completeness of information contained in the credit file. If a dispute does not contest the accuracy or completeness of information contained in a credit file, then the obligation to perform an investigation is not triggered. *Saunders v. Branch Banking & Trust Co.*, 526 F.3d 142, 148 (4th Cir. 2008) ("At issue in this appeal are the additional duties a furnisher incurs under § 1681s-2(b) if a consumer disputes the accuracy of information that the furnisher reports.").

Appellant Shelby Roberts ("Roberts") alleges that Appellee Carter-Young, Inc. ("Carter-Young") reported an invalid debt. She disputed the debt with the CRAs and accuses Carter-Young of violating 15 U.S.C. § 1681s-2(b) because it

failed to conduct a reasonable investigation of those disputes. (JA4-19). To trigger a data furnisher's obligation to conduct an investigation, the dispute must first challenge the "completeness or accuracy" of the information being reported. 15 U.S.C. § 1681s-2(b)(1). This litmus test applies equally to both CRAs and data furnishers:

> As to CRAs:
>
> - "…if the **completeness or accuracy** of any item of information contained in a consumer's file at a consumer reporting agency is disputed … the agency shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate…" 15 U.S.C. § 1681i(a)(1)(A). (emphasis added).[3]
>
> As to furnishers:
>
> - "After receiving notice pursuant to section 611(a)(2) [15 U.S.C. § 1681i(a)(2)] of a dispute with regard to the **completeness or accuracy** of any information provided by a person to a consumer reporting agency…conduct an investigation…" 15 U.S.C. § 1681s-2(b)(1). (emphasis added).

The issue here is whether Roberts disputed the "accuracy" of the information reported by Carter-Young to the CRAs, which would then have triggered Carter-Young's obligation to conduct a reasonable investigation. She did not; therefore, she fails to sufficiently allege an FCRA claim.

[3] The FCRA also requires that CRAs "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." 15 U.S.C. §1681e.

**2. "Accuracy" Under The FCRA Means "Objective and Readily Verifiable" Accuracy.**

The FCRA begins with the word "accuracy." 15 U.S.C. § 1681(a). ("Accuracy and fairness of credit reporting.") Accuracy is a threshold issue for FCRA claims. *DeAndrade v. Trans Union LLC*, 523 F.3d 61, 66-68 (1st Cir. 2008); *Pittman v. Experian Info. Solutions, Inc.*, 901 F.3d 619, 630 (6th Cir. 2018) ("We agree that a threshold showing of inaccuracy or incompleteness is necessary in order to succeed on a claim under § 1681s-2(b)"); *Gross v. Citimortgage, Inc.*, 33 F.4th 1246, 1251 (9th Circ. 2022) ("In such lawsuits, before a court considers the reasonableness of the agency's procedures, the consumer must make out a 'prima facie showing' of inaccuracy in the agency's reporting. This order of proof makes sense: if there is no inaccuracy, then the reasonableness of the investigation is not in play." (citations omitted); *Chuluubat v. Experian Info., Servs., Inc.*, 4 F.4th 562, 567 (7th Cir. 2021); *Felts v. Wells Fargo Bank, N.A.*, 893 F.3d 1305, 1313 (11th Cir. 2018).

**a. The Statute Gives The Word "Accuracy" Its Ordinary Meaning.**

Although "accuracy" is the linchpin of the FCRA, the statute leaves it undefined. When a statute does not define a word, a fundamental canon of statutory interpretation requires that words be interpreted using their ordinary meaning. *United States v. Lehman*, 225 F.3d 426, 428 (4th Cir. 2000). To determine the meaning of a term not defined in the statute or its implementing

regulation, courts turn to the dictionary definition for the word's common meaning.[4] *United States v. Lehman*, 225 F.3d 426, 429 (4th Cir. 2000). Identical words used in different parts of a statute are generally presumed to have the same meaning. *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005).

The definition of "accuracy" bears the same meaning when applied to CRAs and data furnishers. The statute does not distinguish between the standard of "accuracy" used to measure a CRA's obligations and the standard of "accuracy" used to measure a furnisher's obligations. *Compare*, 15 U.S.C. §§1681e, 1681i with 1681s-2(b). This Court has acknowledged the same standard as applying to both CRAs and furnishers:

> Although the majority of cases involved the duty of a CRA to report accuracy under § 1681e, BB&T concedes that the same standard of accuracy applies to a furnisher's response under § 1681s-2. Both § 1681e and § 1681s-2 serve the same purpose: ensuring accuracy in consumer credit reporting. A CRA can best fulfill its obligation to report accurately under § 1681e if it receives accurate information from a furnisher under § 1681s-2.

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[4] The Code of Federal Regulations defines "accuracy," but in a different context not applicable here. 12 C.F.R. 1022.41(a)(1) defines the term "accuracy" in the context of direct disputes from consumers to data furnishers. See, 12 C.F.R. 1022.43 ("Direct Dispute"). The text of the FCRA further confirms that the regulation only applies to Direct Disputes. 15 U.S.C. § 1681s-2(a)(8)(A) ("The Bureau…shall jointly prescribe regulations…based on the direct request of a consumer."). See also the CFPB's amicus brief, "The Bureau has not issued regulations addressing indirect furnisher disputes." CFBP Brief, pg. 18, fn 12. By its own terms, the definition of "accuracy" applies only to Subpart E and Appendix E of the Regulation. 12 C.F.R. 1022.41(a)(1). Neither Subpart E nor Appendix E are involved in the *indirect* dispute process which is the basis of Roberts' claims under § 1681s-2(b). ("Indirect Dispute").

*Saunders*, 526 F.3d at 148, n. 3. "Accuracy" has the same meaning whether used in the context of a furnisher's obligations or a CRA's obligations.

**b. The Ordinary Meaning Of "Accuracy" Contains A Standard Of Objectivity.**

The word "accuracy" is defined as "a: freedom from mistake or error . . .b: conformity to truth or to some standard or model." Webster's Third International Dictionary at 13-14 (1961). The definition has not materially changed over the past 50 years, to wit: – "1: freedom from mistake or error . . . 2a: conformity to truth or to a standard or model . . .b: degree of conformity of a measure to a standard or a true value." Accuracy, Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/accuracy (last visited Jan. 23, 2024). Both definitions refer to a "standard," a "model", and to "truth" against which something is to be measured. The "standard," "model," or "truth" is fixed in nature and serves as the constant of "correctness" against which a thing is to he compared. By its terms, the meaning of "accuracy" involves the exercise of measurement against something certain, something *objective*. A thing cannot be "accurate" if the "standard" or "truth" against which it is measured is not certain or cannot be known. The ordinary meaning of the word "accuracy" therefore means *objective* accuracy when used in the FCRA.

### c. Throughout The FCRA, The Term "Accuracy" Is Used To Mean *Objective* Accuracy.

Use of "accuracy," "accurate" and "inaccurate[5]" throughout the FCRA is consistently *objective*. For example, the statute prohibits data furnishers from reporting information to a CRA if a consumer notifies the data furnisher that the information is inaccurate and "the information is, *in fact*, inaccurate." 15 U.S.C. § 1681s-2(a)(1)(B)(emphasis added). It is not sufficient that a consumer subjectively believes the information to be inaccurate. Instead, the information must *actually* be inaccurate. The phrase "in fact" serves as the "standard" or "truth" against which the reported information is measured and clearly indicates that it must be objectively based on measurable fact. It is a direct reference to the objective nature in which the statue refers to the accuracy of information.

The statute also provides specific objective criteria to determine the accuracy of information on consumer reports relating to defaulted student loans. 15 U.S.C. § 1681s-2(a)(E). There, removal of defaulted student loan information from a consumer's credit file will not be considered inaccurate if (1) the financial

[5] The definition of "inaccurate" is "not accurate." Inaccurate, Merriam-Webster Dictionary, Merriam Webster, https://www.merriam-webster.com/dictionary/inaccurate (last visited Jan. 24, 2024). The definition of "accurate" is "1: free from error especially as the result of care" and "2: conforming exactly to truth or to a standard." Inaccurate, Merriam-Webster Dictionary, Merriam Webster, https://www.merriam-webster.com/dictionary/accurate (last visited Jan. 24, 2024).

institution offers a loan rehabilitation program, (2) that program requires on-time monthly payments, and (3) the payments are made. 15 U.S.C. § 1681s-2(a)(E). These steps provide a "standard or model" against which to measure the accuracy (or its opposite, inaccuracy) of a consumer report which omits student loan information. Again, the statute's reference to the accuracy of information contained in a credit file is measured by three verifiable and objective criteria.

An additional signpost contained in the FCRA which points to the meaning of the word "accuracy" is found in the section of the FCRA which discusses public records. 15 U.S.C. § 1681d(d)(3). A CRA may publish an investigative consumer report containing information that is a "matter of public record and that relates to an arrest, indictment, conviction, civil judicial action tax lien or outstanding judgment" only if the CRA has first verified the accuracy of the information. 15 U.S.C. § 1681d(d)(3). Arrests, indictments, convictions, tax liens, and judgments can all be verified to confirm the correctness of an investigative consumer report. Each of these pieces of information is *objectively* verifiable. The word "accuracy" is used consistently throughout the statute to mean *objective* accuracy.

### 3. Prevailing Case Law Interprets "Accuracy" To Mean "Objectively Verifiable" Accuracy.

This Court and courts throughout the country agree that "accuracy" must mean objective accuracy. In *Dalton v. Capital Associated Indus.*, this Court held that a credit "report is inaccurate when it is 'patently incorrect' or when it is

'misleading in such a way and to such an extent that it can be expected to [have an] adverse [] effect.'" *Dalton v. Capital Associated Indus.*, 257 F.3d 409, 415 (4th Cir. 2001); citing *Sepulvado v. CSC Credit Servs.*, 158 F.3d 890, 895 (5th Cir. 1998). *Dalton* instructs that to be "inaccurate" the information must be "patently," i.e., clearly and without a doubt, incorrect.[6] To be "patently incorrect" means that the thing does not conform to the clear standard of correctness.

The Eleventh Circuit has also held that "accuracy" under the FCRA is a measure of objectivity. *Cahlin v. General Motors Acceptance Corp.*, 936 F.2d 1151, 1158 (11th Cir. 1991). ("Thus, the standard of accuracy embodied in Section 607(b) is an objective measure that should be interpreted in an evenhanded manner toward the interests of both consumers and potential creditors in fair and accurate credit reporting.") See also, *Peoples v. Equifax Info. Sols.*, 3:23-cv-495-MOC-DCK, 2023 U.S. Dist. LEXIS 187444, 6 (W.D. N.C. Oct. 18, 2023) ("Plaintiff's subjective belief is not sufficient to plead an inaccuracy: 'the standard of accuracy embodied in [the FCRA] is an objective measure'"); *Butler v. Experian Info. Sols. Inc.*, 1:23-cv-02519-ELR-LTW, 2023 U.S. Dist. LEXIS 154386, 3 (N.D. Ga. Aug. 25, 2023) ("Plaintiff's subjective 'beliefs' about tradelines are not enough to state an FCRA claim. The FCRA's accuracy standard 'is an objective measure.'"); adopted by *Butler v. Experian Info. Sols. Inc.*, 1:23-cv-02519-ELR, Docket Entry

[6] Roberts does not allege that Carter-Young's reporting was somehow misleading.

13 (N.D. Ga. Sept. 15, 2023); *Bueno v. Univ. of Miami*, 22-22831-Civ-Scola, 2023 U.S. Dist. LEXIS 72958, 8 (S.D. Fla. Apr. 26, 2023) ("The Plaintiff fails to identify an actual, objective inaccuracy with this credit report to support his FCRA claim against the University.")

Recently, the Second Circuit has addressed the meaning of "accuracy" and twice held that disputed information must be "objectively and readily verifiable" to be actionable under the FCRA. In *Mader v. Experian Info., Sols. Inc.*, the court relied on the definition of "accuracy"' - "freedom from mistake or error" and "conformity to truth or to some standard or model" – and concluded that accuracy required a focus on objectively and readily verifiable information. *Mader v. Experian Info., Sols., Inc.*, 56 F.4th 264, 269 (2d Cir. 2023). This conclusion is consistent with that court's prior precedent that an inaccuracy must be "patently incorrect or …misleading." *Id.*, citing, *Shimon v. Equifax Info. Servs., LLC*, 994 F.3d. 88, 91 (2d Cir. 2021).[7] A dispute that evades objective verification or is not sufficiently objectively verifiable is not a dispute which challenges the "accuracy" of information contained in a consumer report. *Id.* Therefore, the dispute was not about an inaccuracy under the FCRA. *Id.*

[7] In *Shimon*, the Second Circuit relied on this Court's meaning of "inaccurate" in *Dalton*.

Shortly after *Mader*, the Second Circuit again confirmed that a dispute must be "objectively and readily verifiable" to be actionable under the FCRA. *Sessa v. Trans Union, LLC* rejected *Mader's* holding about the legal nature of the consumer's dispute, but the court confirmed that *Mader* was good law and adopted *Mader's* reasoning and conclusion that an FCRA claim alleges an inaccuracy only "so long as the challenged information is objectively and readily verifiable." *Sessa v. Trans Union, LLC*, 74 F.4th 38, 40 (2d Cir. 2023). The Second Circuit again concluded, "in determining whether a claimed inaccuracy is potentially actionable under [the FCRA], a court must determine…whether the information in dispute is 'objectively and readily verifiable.'" *Id*, at 43. If a consumer's dispute does not challenge the accuracy of information contained in a credit file in a way that is objectively verifiable, then the FCRA does not apply.

The facts in *Mader* and *Sessa* provide clear examples of the application of the "objectively and readily verifiable" standard against which to measure disputes under the FCRA. In *Mader*, the plaintiff claimed that his student loans were discharged in bankruptcy. *Mader*, 56 F.4th at 266. Typically, student loans are not dischargeable. *Id.* Whether plaintiff's loans were discharged, turned on the unsettled meaning of the word "program" under the Bankruptcy Code. *Id.*, at 269. Determining the accuracy of the information contained in his consumer report required "both resolving a contested statutory question [regarding bankruptcy law]

and applying the resulting statutory construction to disputed facts regarding the structure of Navient's loan program." *Id.*, at 266. That dispute "evade[][ed] objective verification" because there was "no bankruptcy order explicitly discharging [the] debt." *Id.*, at 269. The dispute was not "sufficiently objectively verifiable" because there was no clear answer to the question of whether the student loan was discharged.

In contrast, *Sessa* involved a clear answer to the objectively verifiable question raised by the dispute. In *Sessa*, the consumer's auto leasing company reported to the CRAs that Sessa owed a balloon payment at the end of his automobile lease in the amount of $19,444. *Sessa*, 74 F.4th at 41. The truth, however, was that the lease gave the consumer an option to purchase the vehicle for that amount at the end of the lease term. *Id.*, at 43, fn. 7. Sessa disputed the $19,444 balance on his credit report because it was not a debt obligation but instead a mere purchase option. Whether the lease required a balloon payment was an objectively verifiable fact. *Mader* was not yet decided when the district court entered its order. *Id.*, at 43-44. Therefore, the *Sessa* court remanded the case back to the district court to address whether the dispute was objectively and readily verifiable. *Id.*, at 44. Ultimately, the *Sessa* court concluded that the existence of a balloon payment obligation was an objectively verifiable fact and thus it was error for the District Court to have dismissed the action. *Id.*, at 43, fn 7 ("The statement

on Sessa's credit report that she owed a balloon payment was, therefore, factually inaccurate. Thus, under the District Court's mistaken approach, the reported balloon payment might have been actionable under § 1681e(b).")

Following *Mader* and *Sessa*, which involved claims under §1681e, additional courts have adopted the "objectively and readily verifiable" standard for measuring disputes under 1681i and 1681s-2(b). In *Sanchez v. JP Morgan Chase Bank, N.A.*, the court granted the data furnisher and CRAs defendants' motions to dismiss because plaintiff failed to allege facts challenging the "accuracy" of reported information. *Sanchez v. JP Morgan Chase Bank, N.A.*, No. 3:22-cv-1396 (SRU), 2023 U.S. Dist. LEXIS 164094 (D. Conn. Sept. 15, 2023). Plaintiff alleged that his credit report was inaccurate because the debt at issue was beyond the statute of limitations. *Id.*, at 3-5. The court held that such a dispute was not objectively and readily verifiable because determining whether the statute of limitations had expired depended on various factors including which state's limitations period applied, the date the debt accrued, and whether an acknowledgement of the debt changed that date. *Id.*, at 13 and 16. The dispute in *Sanchez* did not challenge the accuracy of the information contained in the credit file. Therefore, Sanchez failed to satisfy the FCRA's prerequisite that the challenge to the credit information must be either inaccurate or incomplete. *Id.*, at 9 and 16. Similarly, in *Kamrul Hossain v. Portfolio Recovery Assocs., LLC*, the court held

that a dispute over the running of a statute of limitations is not objectively and readily verifiable and, therefore, was not a dispute challenging the accuracy of the credit file information under the FCRA. *Kamrul Hossain v. Portfolio Recovery Assocs., LLC*, 22-CV-5124 (DLI)(MMH), 2023 U.S. Dist. LEXIS 168573 (E.D. N.Y. Sept. 21, 2023).

In *Johnson v. Transunion*, the plaintiff alleged that his credit report was inaccurate because his student loan had been discharged. *Johnson v. Transunion*, 1:22-cv-02533-JPB-JKL, 2023 U.S. Dist. LEXIS 140715, 1 (N.D. Ga. Aug. 11, 2023; adopted by *Johnson v. Transunion*, 1:22-cv-02533-JPB, Docket Entry 24 (N.D. Ga. Aug. 30, 2023). Relying on *Mader*, the court dismissed plaintiff's claim because whether his student loans had been discharged was still an "open question." *Id.*, at 10. If there was any inaccuracy it turned on a "legal dispute about which reasonable minds could disagree" and was not an inaccuracy under the FCRA. *Id.*

4. **Labeling A Dispute As "Legal" Or "Factual" Does Not Change The Analysis.**

The analytical framework does not change whether the dispute is labeled "legal" or "factual." The *nature* of the dispute governs. Case law is consistent no matter the label, pre and post *Mader* and *Sessa,* that the dispute must challenge the accuracy of the reported information.

When courts have held that a dispute properly challenged the accuracy of reported information, the facts show that the dispute was objectively and readily verifiable. In *Gross v. Citimortgage, Inc.*, the plaintiff claimed his report was inaccurate because it showed he owed a mortgage balance even though under Arizona law no balance was owed. *Gross*, 33 F.4th at 1249. The plaintiff was correct, Arizona law abolished personal liability on qualified Arizona mortgage deficiencies. *Id.*, at 1252. Whether or not his debt was owed was objectively determinable – he did not owe the debt based on Arizona law. Like this Court and others, the Ninth Circuit recognized that accuracy under the FCRA requires that the report be "patently incorrect."[8] *Id.* The Eleventh Circuit dealt with a similar issue in *Losch v. Nationstar Mortg., LLC.* There, the plaintiff alleged that his report was inaccurate because be did not owe a mortgage balance because it had been discharged in bankruptcy. *Losch v. Nationstar Mortg. LLC*, 995 F.3d 937, 941 (11th Cir. 2021). The Eleventh Circuit explained there was "no doubt" that the mortgage had been discharged. *Id.*, at 946. Both cases involve legal issues, but both involve a "straightforward application of law to facts." *Mader*, 56 F.4th at 270. In both

[8] In *Gross*, the Ninth Circuit addressed the issues of accuracy and reasonableness of the investigation separately. Carter-Young relies on *Gross*'s analysis about accuracy, which is the issue in this case. *Gross*, 33 F.4th at 1252. Roberts relies on *Gross*'s analysis about the reasonableness of the investigation, wbicb is not the issue in this case. *Id.*, at 1253. Roberts Brief, pg. 37. Roberts' reliance on *Gross* is misplaced.

cases, there was a simple answer to the dispute. Neither involved an *unresolved* legal issue.

On the other hand, where there is an unresolved and disputed legal issue, the dispute is not objectively and readily verifiable. In *Denan v. Trans Union LLC*, the plaintiff argued that his loans were void under New Jersey and Florida law. *Denan,* 959 F.3d 290, 293 (7th Cir. 2020).[9] The Seventh Circuit stated that determining the collectability of the loan required resolution of three legal issues: whether choice of law provision is enforceable, whether state law renders the loan void, and whether tribal sovereign immunity applies. The Seventh Circuit, relying on the First Circuit's decision in *DeAndrade v. Trans Union LLC*, 523 F.3d 61, 68 (1st Cir. 2008), held:

> The correct way to resolve the legal defenses to [lenders'] loans was in a lawsuit against those lenders. "If a court had ruled the [loans] invalid and Trans Union had continued to report it as a valid debt, *then* [plaintiffs'] would have grounds for a potential FCRA claim." Because no formal adjudication discharged plaintiffs' debts, no reasonable procedures could have uncovered an inaccuracy in plaintiffs' credit reports.

[9] Roberts cites *Denan* for the proposition that data furnishers, not CRAs are required to determine the validity of a debt. To support this argument the Seventh Circuit incorrectly relied on the definition of "accuracy" under 12 C.F.R. § 1022.41(a). As stated above, that definition is limited to Direct Disputes, not Indirect Disputes. At issue in this case, is the meaning of "accuracy" regarding Indirect Disputes, which means the same to both CRAs and data furnishers.

*Id.*, at 296. (emphasis in original) (citation omitted).[10] Until there is a formal adjudication of an unresolved legal dispute, no amount of reasonable procedures (or investigation) could uncover an inaccuracy. Stated differently, the dispute evades objective verification.

The "objectively and readily verifiable" standard has also been applied in the context of disputes over apartment lease agreements. In *Hopkins v. I.C. Sys.*, the plaintiff disputed the debt, claiming that she previously settled the debt with her landlord. *Hopkins v. I.C. Sys.*, 18-2063, 2020 U.S. Dist. LEXIS 88905, 17 (E.D. Pa. May 20, 2020). After vacating the premises, Hopkins sued the landlord for return of her security deposit. *Id.*, at 7. The case settled for $1,000 and a stipulation of dismissal was filed on the record stating that "[i]t is hereby stipulated and agreed that all causes action between the parties in the above-captioned matter are hereby dismissed with prejudice and without costs to either party." *Id.*, at 7-8. Even though the landlord settled its claims with the plaintiff, it placed the debt with defendant for collections. *Id.*, at 8. The defendant reported the debt to the CRAs,

[10] Roberts attempts to discredit *Chiang v. Verizon New England, Inc.*, which held that claims against data furnishers require factual inaccuracies, not disputed legal questions. *Chiang v. Verizon New England, Inc.*, 595 F.3d 26, 38 (1st Cir. 2010). Roberts argues that the First Circuit did not explain how it came to that conclusion and that it is merely dicta. Roberts Brief, pg. 41. The First Circuit came to that conclusion by adopting the reasoning previously articulated in *DeAndrade*. Furthermore, it was not dicta because an issue in the case was whether the plaintiff disputed the accuracy of the data furnisher's reporting. *Id.*, at 37-38.

and the plaintiff disputed explaining that she previously settled the debt with the apartment: "THIS IS LANDLORD TENANT SITUATION THAT WAS DISPUTED IN COURT BY ME AND THIS LANDLORD GAVE ME A SETTLEMENT TO CLOSE [] THE CASE." *Id.*, at 9-10. Holding that this dispute was "factual," the court explained that the dispute involved a "simple yes or no answer…" *Id.*, at 18. The court applied an objective standard against which to measure the accuracy of the reported information. The *nature of the dispute* contained facts which were objectively verifiable by the collector/furnisher i.e. whether the parties settled the debt in court. Like *Sessa*, the dispute could be verified because the court docket or even the creditor could have confirmed the settlement.

Unlike *Hopkins* and *Sessa*, unresolved legal disputes evade objective verification. In *Mohnkern v. Equifax Info. Servs., LLC*, the plaintiff alleged that her landlord breached the lease. *Mohnkern v. Equifax Info. Servs., LLC*, 19-CV-6446L, 2021 U.S. Dist. LEXIS 218532 (W.D. N.Y. Nov. 10, 2021). The lease allowed plaintiff the option of finding someone to take over the remainder of the lease, which would then terminate the plaintiff's lease obligations. *Id.*, at 2. Plaintiff identified two potential replacement tenants, but the landlord signed those prospective tenants to separate leases. *Id.*, at 2-3. Plaintiff argued that that action thwarted her efforts to find replacement tenants resulting in a material breach of

the lease by the landlord, therefore relieving her of her payment obligations. *Id.*, at 3. Plaintiff subjectively believed that the lease had been breached. *Id.*, at 16. As the court noted, "only if [the landlord] breached the Lease was the [data furnisher's] reporting of the Debt inaccurate." *Id.*, at 10. However, there had been no determination on whether the lease and been breached. *Id.*, at 16. Unlike *Hopkins*, where the parties stipulated to a dismissal of the underlying legal claims, there was nothing the *Mohnkern* defendant could have investigated to objectively and readily evaluate the dispute. The *Mohnkern* court ultimately held that the plaintiff did not dispute the accuracy of the information contained in her credit report. *Id.* at 17-18.

The case law throughout the country is consistent - a dispute does not challenge the "accuracy" of information contained in a credit file unless the dispute asserts facts which can be objectively and readily verified.[11] The mere labeling of a dispute as "legal" or "factual" is not determinative.

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[11] Roberts argues that this Court's recent decision in *Guthrie v. PHH Mortg. Corp.*, supports her argument regarding factual vs. legal disputes. Roberts Brief, pgs. 40-41. That was not the issue in *Guthrie*. Instead, the issue was damages - the district court granted the defendant's motion for summary judgment because there was insufficient evidence to create a genuine dispute of material fact regarding negligent and willful damages. *Guthrie v. PHH Mortg. Corp.*, 7:20-CV-43-BO, 2022 U.S. Dist. LEXIS 40690, 24-31 (E.D. N.C. Mar. 4, 2022). The Fourth Circuit reversed holding that the record did reflect evidence that created a genuine dispute of material fact. *Guthrie v. PHH Mortg. Corp.*, 79 F.4th 328, 344-349 (4th Cir. 2023). Roberts also relies on *Wright v. Experian Info., Solutions, Inc.*, regarding the legal vs. factual distinction. Roberts Brief, pg. 38. However, that court was

**5. Interpreting The FCRA To Mandate Investigations Of All Disputes Would Effectively Read The Qualifiers "Accuracy" And "Completeness" Out Of The Statute.**

Roberts and the Consumer Financial Protection Bureau ("CFPB") contend that the FCRA does not make a distinction between legal and factual disputes. Roberts Brief, pgs. 33-43. CFPB Brief, pgs. 12-26. Instead, they contend that data furnishers are required to conduct an investigation in response to all disputes, no matter their content or nature. This conclusion defies the plain language of the statute. Requiring the investigation of every dispute would render meaningless and superfluous the limiting phrase "completeness or accuracy" from the FCRA. Courts should not remove or ignore the words of a statute. *62 Cases of Jam v. United States*, 340 U.S. 593, 596 (1951) ("But our problem is to construe what Congress has written. After all, Congress expresses its purpose by words. It is for us to ascertain – neither to add not to subtract, neither to delete nor to distort."). A court cannot simply ignore the words "completeness or accuracy." Instead, courts must "give effect to every provision and word in a statute and avoid any

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analyzing whether the CRA conducted a reasonable investigation, not whether the reporting was accurate. *Wright v. Experian Info., Solutions, Inc.*, 805 F.3d 1232, 1242 (10th Cir. 2015). Lastly, Roberts relies on *Ingram v. Experian Info., Sols, Inc.*, 2023 U.S. App. LEXIS 26788 (2d Cir. 2023), which held that the Direct Dispute exception does not apply to Indirect Disputes. Carter-Young is not arguing that the FCRA provides an exception for disputes about the accuracy of what was reported. Instead, it is arguing that the plain text of the FCRA limits disputes to those that challenge the "completeness or accuracy" of the reporting.

interpretation that may render statutory terms meaningless or superfluous." *Scott v. United States*, 328 F.3d 132, 139 (4th Cir. 2003). The phrase "completeness or accuracy" serves to limit the scope of the kind of disputes which trigger investigation obligations. Requiring the investigation of all disputes would render this phrase meaningless.[12]

**6. Carter-Young's Obligation To Investigate Roberts' Dispute Was Not Triggered Because She Did Not Dispute The Accuracy Of The Information Contained In Her Credit File.**

Roberts did not challenge the "accuracy" of the information Carter-Young reported to the CRAs. Her disputes did not assert objectively verifiable facts.

**a. Roberts' Claims Of Retaliation And Excessive Repair Costs Are Not Objectively Verifiable Disputes.**

Roberts claims she does not owe the debt because her landlord retaliated against her and could have repaired the damaged oven instead of replacing it. Her dispute is not about the "accuracy" of the information that Carter-Young reported.

[12] Roberts does not allege that she disputed the "completeness" of the information contained in her credit report. This case focuses on the "accuracy" prong of § 1681s-2(b). Roberts relies on *Saunders* which suggested that data furnishers, unlike CRAs, are in a better position to investigate disputes whether they be factual or legal. Roberts Brief, pg. 40. Roberts' reliance on *Saunders* is misplaced because *Saunders* dealt with "completeness" when a furnisher neglects to notate an account as disputed. Even if *Saunders* applied, determining whether the BB&T's reporting was incomplete was objectively and readily verifiable because BB&T admits that is records showed that *Saunders* disputed the debt and that BB&T intended not to report the dispute. *Saunders*, 526 F.3d at 151.

Roberts claims that Ansley sought to retaliate against her for causing it to lose a new tenant. (JA5-6, ¶ 12). The alleged retaliation started once Roberts moved out and Ansley sought damages that Roberts believes that "either never occurred, were ordinary wear and tear items, or were grossly overstated." (JA6, ¶ 14). Roberts admits, however, that before she moved out, the oven door was broken and not repaired. (JA6, ¶ 16). The existence of the damage is not in dispute and is an objective fact.

At its core, the dispute between Ansley and Roberts is whether the damage to the oven/stove could have been repaired versus replaced. Roberts really disputes the magnitude of the costs required to repair the admitted damage (the broken oven handle) not the accuracy of the information contained on her credit report. She admits that there was damage to the oven/stove, but she contends it did not require replacement and only required repair. This type of dispute is not "objectively and readily verifiable." Determining whether the damage to the door was so severe it required replacement and not repair is a subjective determination. Such a dispute "evades objective verification." *Mader*, 56 F.4th at 270. As the Magistrate Judge noted, such a dispute and subsequent investigation "should not require hiring contractors to visit apartments across the country in order to render second opinions as to repairs that have already taken place." (JA80, pg. 18, fn. 2). No amount of investigation of the facts could have resulted in a definitive answer

to Roberts' question of whether she owed the debt. Her defenses to Ansley's claim of damage are not the kind of dispute for which the FCRA requires furnishers to investigate. Roberts did not dispute the accuracy of the information on her credit report.

**b. Roberts' Lawsuit Against Ansley Supports The Conclusion That She Did Not Dispute The Accuracy Of Her Credit File.**

Roberts suit against Ansley is a virtual admission that her dispute was not objectively and readily verifiable. Roberts specifically alleges that she filed suit against Ansley "hop[ing] to invalidate through legal process the Ansley claim." (JA11 ¶ 39). In her own words, the purpose of the lawsuit was for a court to determine the validity of the debt. This is the exact scenario discussed in *DeAndrade* and *Denan*. In both cases, the First and Seventh Circuits explained that the correct course of action is to first file a lawsuit against the creditor regarding the validity of the debt. *DeAndrade*, 523 F.3d, at 68. *Denan*, 959 F.3d, at 296. If a court determines that the debt is invalid, but a furnisher continues to report to the CRAs, *only then* would such reporting support a claim under the FCRA for conducting an improper investigation when the consumer made the *objectively verifiable* dispute about the invalidity of the debt based on judicial adjudication. *DeAndrade*, 523 F.3d, at 68. *Denan*, 959 F.3d, at 296. Prior to a formal adjudication of an unresolved legal dispute (or legal defense to a debt obligation), no reasonable investigation procedures could uncover any inaccuracy

in a credit report. *Denan*, 959 F.3d, at 296. Roberts' complaint all but admits that no amount of investigation would have uncovered any inaccuracy which is the very reason she filed the lawsuit against Ansley.[13]

**7. The FCRA's 2003 Amendment Did Not Change The Conditions Precedent Triggering A Furnisher's Obligation To Investigate.**

Roberts argues that adopting a "legal" exception is inconsistent with the text and purpose of § 1692s-2(b). In support of this argument, Roberts cites the FCRA's 2003 amendment which added new obligations on furnishers *following a completed investigation.*

The 2003 amendment imposes post-investigation obligations on furnishers not applicable here. Prior to 2003, if a data furnisher's investigation found the disputed information to be either inaccurate or incomplete, then the FCRA required the furnisher to report those results to the CRA to which it reported the information. 15 U.S.C. § 1681s-2(b)(1)(D). The 2003 amendment added a new requirement that data furnishers either modify, delete or block their reporting if the investigation found that the information was inaccurate, incomplete or could not be verified. 15 U.S.C. § 1681s-2(b)(1)(E). This amendment applies only *after* a furnisher completes an investigation. By its own terms, the amendment does not

[13] Contrary to the CFPB's position that the dispute must be investigated to determine whether it is objectively verifiable, there is a significant difference between simply *assessing* the nature of a dispute and actually investigating the facts underlying a dispute. CFPB Brief, pg. 17.

apply until after an investigation is completed, stating "if an item of information disputed by a consumer is found to be inaccurate, incomplete or cannot be verified *after* any reinvestigation…" 15 U.S.C. § 1681s-2(b)(1)(E) (emphasis added). Since Carter-Young was not required to conduct an investigation in the first instance, the amendment does not apply in this case.

The 2003 Amendment did not amend or otherwise change the types of disputes that would trigger a data furnisher's obligations to conduct a reasonable reinvestigation. § 1681s-2(b)(1) remained unchanged – the dispute must be about "completeness or accuracy." If a consumer does not dispute the accuracy or completeness of information on the credit file, then the data furnisher's obligation to conduct a reasonable investigation is not triggered.[14] The 2003 amendment did not change this requirement.

[14] Roberts spends several pages of her brief discussing the reasonableness of an investigation and the results of an investigation. Roberts Brief, pgs. 23-28. The CFPB also argues that to conduct a reasonable investigation a furnisher may need to look beyond what is in its possession. CFPB Brief, pgs. 26.30. The reasonableness of the investigation is not at issue in this Appeal. The only issue is whether Roberts disputed the accuracy of the information on her credit report. Since Roberts failed to dispute the accuracy of her credit report, the question of whether Carter-Young conducted a reasonable investigation is irrelevant. *Gross*, 33 F.4th at 1251 ("if there is no inaccuracy, then the reasonableness of the investigation is not in play.")

## CONCLUSION

Furnishers are not required to investigate all disputes. They are required to investigate only those disputes which regard the "completeness or accuracy" of the information contained in a credit file. The words "completeness or accuracy" limit the scope of the kind of disputes which trigger an investigation obligation. Requiring furnishers to investigate all disputes effectively removes these words of limitation from the statute. The limitation is logical as it would be pointless to require a furnisher to conduct an investigation into matters which could not be resolved through such investigation. Roberts did not dispute the "completeness or accuracy" of the information contained in her credit file. Therefore, Carter-Young did not have an obligation to perform an investigation. The judgment of the District Court should be affirmed.

## STATEMENT REGARDING ORAL ARGUMENT

Carter-Young does not request oral argument. The issue in this case is straight forward and does not warrant oral argument.

Respectfully submitted,

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Dated: January 26, 2024

/s/ Jonathan K. Aust
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