CASE NO. 23-1911

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SHELBY ROBERTS,
Plaintiff-Appellant,
v.

CARTER-YOUNG, INC.,
Defendant-Appellee.

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

BRIEF OF *AMICUS CURIAE* CONSUMER DATA INDUSTRY ASSOCIATION IN OPPOSITION TO PLAINTIFF-APPELLANT'S APPEAL

SUBMITTED BY:
REBECCA E. KUEHN
JENNIFER L. SARVADI
HUDSON COOK, LLP
1909 K Street, NW, 4th Floor
Washington, DC 20006
(202) 715-2008
rkuehn@hudco.com
jsarvadi@hudco.com

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,

Consumer Data Industry Association
(name of party/amicus)

who is amicus, 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 such 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:

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/ Rebecca E. Kuehn Date: 2/2/2024

Counsel for: Consumer Data Industry Association

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The Consumer Data Industry Association respectfully submits this brief in support of Appellee Carter-Young, Inc.'s ("Carter-Young") opposition to Appellant Shelby Roberts's ("Roberts") appeal of the decision of the district court.

STATEMENT OF INTEREST OF AMICUS CURAE

The Consumer Data Industry Association ("CDIA")[1] is a trade association representing consumer reporting agencies ("CRAs"), including the nationwide credit bureaus, regional and specialized credit bureaus, and background check and residential screening companies. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity, thereby helping to ensure fair and safe transactions for consumers and facilitating competition, expanding consumers' access to financial and other products suited to their unique needs.

CDIA is interested in the outcome of this appeal because CDIA's members are subject to an intricate and comprehensive regulatory scheme under the Fair

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(2), CDIA represents that all parties have consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E) , CDIA represents that no party or party's counsel has authored this brief, in whole or in part, or contributed money intended to fund the preparation or submission of this brief. Further, no person other than *amicus* CDIA and its non-party members contributed money that was intended to fund the preparation or submission of this brief.

Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.*, which governs the collection, use, maintenance, and dissemination of consumer report information, and this case seeks to determine the scope of certain obligations of CRAs thereunder. CDIA members process over 50 million updates to consumer report information each day.[2] Thus, the issues raised in this appeal addressing the scope of "accuracy" under the FCRA and whether the FCRA dispute process may be used to collaterally attack an on-going legal dispute has implications reaching far beyond the parties in this case. Court have recognized that there is a limit to a CRA's duty to investigate, as a CRA does not have the ability or obligation to adjudicate a legal dispute.[3]

A ruling by this Court in favor of Roberts's argument that an investigation into the "accuracy" of an item means that the furnisher (or CRA) must essentially adjudicate a collateral legal dispute that goes beyond the objectively verifiable facts would expand the scope of the FCRA, or alternatively, result in the removal of factually accurate information from credit reports any time a consumer raises a collateral dispute. CDIA has been involved in the consumer reporting industry for more than a century and is therefore uniquely qualified to assist this Court in

[2] *Sarver v. Experian Info. Sols.*, 390 F.3d 969, 972 (7th Cir. 2004) (noting that one CRA "processes over 50 million updates to trade information each day").
[3] *See* pp. 5-8, *infra.*

understanding the impact of the positions advocated by the parties and the implications of those on the greater credit reporting ecosystem.

ARGUMENT

This case raises the question of whether a determination of accuracy under the FCRA requires a furnisher to make a legal determination as to the validity of a consumer's liability for damages under her contract with her landlord. The district court adopted the magistrate judge's Memorandum of Opinion and Recommendation, which found that "because the Complaint fails to 'show a factual inaccuracy [in Defendant's reports],' her claim constitutes 'an impermissible collateral attack on the debt,' and she has thus 'failed to state a claim against [Defendant] for violating [the FCRA].'" *Roberts v. Carter-Young, Inc.*, No. 1:22CV1114, 2023 WL 4366059, at *8 (M.D.N.C. July 6, 2023), report and recommendation adopted, No. 1:22-CV-1114, 2023 WL 7924174 (M.D.N.C. Aug. 10, 2023) (internal citations omitted).

Because a furnisher does not categorically have a duty under the FCRA to adjudicate a legal question involving a dispute, Carter-Young could not have been liable for Roberts's claim under section 1681s-2(b), and summary judgment was appropriate. This Court should hold that collateral attacks on debts like the one here do not raise questions of accuracy and affirm the ruling of the district court.

I. Appellant Failed to Establish an "Inaccuracy" for the Purpose of Stating a Claim Under the FCRA.

The balance of courts that have examined the issue of whether a "legal question" can render a consumer report inaccurate have consistently found that a "factual inaccuracy" is necessary to state a claim under the FCRA. These cases demonstrate why Roberts's claim should not proceed.

To establish a claim under Section 1681s-2(b) of the FCRA, a plaintiff must make "a prima facie showing that the furnisher's report was inaccurate." *Gross v. CitiMortgage, Inc.*, 33 F. 4th 1246, 1251 (9th Cir. 2022); *See also Felts v. Wells Fargo Bank, N.A.*, 893 F.3d 1305, 1313 (11th Cir. 2018) (holding a plaintiff must demonstrate that "had the furnisher conducted a reasonable investigation, the result would have been different; i.e., that the furnisher would have discovered that the information it reported was inaccurate or incomplete…"); *Chiang v. Verizon New Eng. Inc.*, 595 F.3d 26, 37 (1st Cir. 2010) (holding that "plaintiff had to demonstrate some causal relationship" between the furnisher's investigation "and the failure to discover inaccuracies in his account."). A report is inaccurate when it is either "patently incorrect" or "misleading in such a way and to such an extent that it can be expected to have an adverse effect." *Saunders v. Branch Banking and Tr. Co. of VA*, 526 F.3d 142, 148 (4th Cir. 2008). More recently, the Second Circuit Court of Appeals ruled that a report is inaccurate when it is not "objectively and readily verifiable." *Sessa v. Trans Union, LLC*, 74 F.4th 38, 43 (2d Cir. 2023).

Several courts have examined the issue of whether a "legal dispute" establishes an "inaccuracy" under the FCRA, answering that question in the negative. For nearly fifteen years, courts have declined to require that CRAs act as mini courts of law and settle disputes between a furnisher and a consumer, uniformly prohibiting "collateral attacks" against account validity couched as FCRA claims. Likewise, for over a decade, courts have extended the bar against collateral attacks to furnishers in cases arising out of Section 1681s-2(b), where consumers seek to litigate an ongoing dispute over a collateral issue through the guise of a credit reporting dispute.

The First Circuit first applied the collateral attack doctrine to bar an FCRA claim where the consumer challenged the legal validity of a debt instrument in a dispute filed with the CRA. *See DeAndrade v. Trans Union LLC*, 523 F.3d 61 (1st Cir. 2008). In that case, after verifying the reported information in response to an initial dispute, the plaintiff's creditor continued to report the account to the CRA, believing the contract to have been ratified by the consumer's conduct in accepting the goods and making payments on the account. *Id.* The plaintiff sued the creditor and mailed a copy of the lawsuit to the CRA, demanding the CRA stop reporting the debt. *Id.* at 64. The CRA followed its normal dispute reinvestigation procedure, but ultimately did not delete or modify the account. *Id.*

The First Circuit found that there was no "inaccuracy" reflected in the information reported by the CRA for the purpose of stating an FCRA claim under §1681i(a), holding that the plaintiff could not collaterally attack the validity of the underlying debt instrument between the parties using the FCRA dispute process. *Id.* at 64-65. The court stated:

> Whether the mortgage is valid turns on questions that can only be resolved by a court of law, such as whether DeAndrade ratified the loan. This is not a factual inaccuracy that could have been uncovered by a reasonable reinvestigation, but rather a legal issue that a credit agency such as Trans Union is neither qualified nor obligated to resolve under the FCRA. ... In essence, DeAndrade 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 consumer reporting agency.

Id. at 68 (emphasis added). Therefore, the collateral attack doctrine does not bar a complaint because CRAs should be "exempt" from liability as a policy matter; rather, it is because the question of the legal validity of a contract requires a legal determination that only a court of law should undertake. Thus, the *DeAndrade* court distinguished those inaccuracies that are rightly within the CRA's bailiwick as "factual," versus "legal" inaccuracies, which are not. 523 F.3d at 68.

The First Circuit extended the collateral attack doctrine from CRAs to furnishers in *Chiang v. Verizon New England Inc.*, 595 F. 3d 26 (1st Cir. 2010) (plaintiff filed suit under section 1681s-2(b) against Verizon months after filing a separate lawsuit against Verizon in state court based on claims Verizon had billed

his account for services he did not order; almost all of the disputes initiated by the plaintiff occurred after filing the federal lawsuit). In *Chiang*, the plaintiff alleged a telecommunications company and its agent with whom it contracted to perform credit reporting services failed to perform an adequate investigation into disputes it received regarding the plaintiff from CRAs. *Id.* at 30. The telecommunications company's agent investigated each of the plaintiff's disputes, notifying the CRAs that the information reported was accurate. *Id.* at 33. The court held that a plaintiff must demonstrate a "*factual* inaccuracy, rather than the existence of disputed legal questions. Like CRAs, furnishers are 'neither qualified nor obligated to resolve' matters that 'turn on questions that can only be resolved by a court of law.'" *Id.* at 38 (quoting *DeAndrade*, 523 F.3d at 68).

Following *Chiang*, several courts have likewise applied the collateral attack doctrine to section 1681s-2(b) claims against furnishers, including the Eleventh Circuit Court of Appeals. In *Hunt v. JPMorgan Chase Bank, N.A.*, the Eleventh Circuit Court of Appeals held that the plaintiff's claim that the bank/furnisher inaccurately reported late payments following the filing of a foreclosure action did not establish a factual inaccuracy: "Whether Hunt was obligated to make payments on the mortgage after the Foreclosure Action was filed is a currently unresolved legal, not a factual, question. Thus, even assuming JPMC furnished information that turned out to be legally incorrect under some future ruling, JPMC's purported legal

error was an insufficient basis for a claim under the FCRA." *Hunt v. JPMorgan Chase Bank, Nat'l Ass'n*, 770 F. App'x 452, 458 (11th Cir. 2019).

Likewise, in *Alston v. Wells Fargo Home Mortg.*, No. CV TDC-13-3147, 2016 WL 816733 (D. Md. Feb. 26, 2016), the United States District Court for the District of Maryland found that the plaintiff failed to prove that Wells Fargo's reporting of delinquent payments was factually inaccurate. Specifically, Wells Fargo initially reported the plaintiff current for the month of August based on receipt of an invalid cashier's check. *Id.* at *9. The court held that:

> Wells Fargo was faced with the legal question whether Alston's cashier's check containing Alston's confusing and misleading annotations was a legally valid payment, and it gave Alston the benefit of the doubt on that question. This provisional determination cannot be deemed patently incorrect because it is not a factual question, but a legal one.

Id. at *10 (D. Md. Feb. 26, 2016). The United States District Court for the Western District of Virginia also upheld the use of the collateral attack doctrine as applied to furnishers, stating that "a plaintiff's allegations of inaccurate reporting must dispute facts underlying the reporting rather than present legal defenses to paying the debt at issue." *Perry v. Toyota Motor Credit Corp.*, No. 1:18CV00034, 2019 WL 332813, at *7 (W.D. Va. Jan. 25, 2019) (plaintiff argued that Toyota had inaccurately reported his vehicle lease as due and owing with a past-due balance because his lease had been discharged in bankruptcy; court found that plaintiff's claim presented a legal defense to payment rather than a dispute regarding the facts). "[T]he FCRA is

not meant as a route for debtors to challenge the legal validity of their debts, even against their creditors." *Id.* at *7.

Here, Roberts disputed that she was liable for the amount of damages her landlord claimed she owed in connection with her terminated apartment lease. (JA9 ¶ 30). The fact that Roberts could be liable for damages to rental property under the terms of the lease and North Carolina law is not disputed – it is true that Roberts *could* be liable for these amounts. What is in question is whether Roberts's assertion that the landlord incurred the costs in retaliation of Roberts exercising her rights under the lease excused her from liability under both the terms of the lease and North Carolina law. (JA6 ¶ 14; JA8 ¶ 25; JA9 ¶¶ 30-31; JA10 ¶ 35; and JA11 ¶ 44). This calculus requires one to engage in an examination of the contractual terms of the lease, the facts as alleged by both Roberts and the landlord, and North Carolina landlord tenant law. Where a furnisher's "reporting was factually accurate; the dispute is whether [the furnisher] correctly interpreted the parties' legal obligations." *Palmer v. LoanCare, LLC, No.* 1:22-CV-03307-LMM, 2023 WL 6940284, at *2 (N.D. Ga. Sept. 1, 2023). Further, whether Roberts's landlord was legally entitled to the damages is not "objectively and readily verifiable." "The bespoke attention and legal reasoning required" to ascertain Roberts's liability for such damages under North Carolina law "means that its status is not sufficiently objectively verifiable"

to constitute an inaccuracy actionable under the FCRA. *Mader v. Experian Info. Sols., Inc.*, 56 F.4th 264, 270 (2d Cir. 2023).

II. Public Policy Supports the Long-Standing Interpretation That Accuracy Under the FCRA Does Not Include Legal Disputes.

The courts that have held that the FCRA does not require CRAs or furnishers to arbitrate unresolved legal disputes between the original parties to a transaction regarding the factual accuracy of the reported information have done so on strong public policy grounds. First, requiring furnishers or CRAs to resolve legal questions may necessitate consideration of statutes and case law, the type of determination best left to a court of law. While causing furnishers and CRAs to encroach upon the province of the judiciary, this would also compel furnishers and CRAs to hire either additional in-house attorneys or engage outside counsel to resolve the novel and complex legal questions that disputes can present, potentially increasing transactional costs throughout the industry and ultimately the cost of credit for consumers. Second, requiring furnishers or CRAs to act as arbiters of legal disputes in the first instance would turn district courts into novel appellate panels, further clogging an already burdened judiciary. Finally, requiring furnishers or CRAs to resolve legal disputes might mislead consumers to believe that the furnisher's or CRA's determination of how and whether a debt should be

reported carries some legal effect on the enforceability of the debt outside of credit reporting.

It is worthy of note that courts resolve disputes after months or years of discovery, briefing, and possible trial. Further, for the type of dispute at issue here – an indirect dispute submitted through a CRA – the FCRA generally requires that the reinvestigation be completed within thirty (30) days of the date the consumer's dispute is received by the CRA. 15 U.S.C. § 1681s-2(b)(2). Because the CRA has five days within which to forward the dispute to a furnisher, 15 U.S.C. § 1681i(a)(2)(A), a furnisher necessarily has less than thirty days to conduct its investigation and respond to the dispute. And unlike courts, CRAs and furnishers do not have subpoena power.

The Consumer Financial Protection Bureau and the Federal Trade Commission (the "Agencies") argue in their amicus brief that:

> [e]ven though a court may be the ultimate arbiter of whether the debt is owed (in a debt-collection action or a declaratory judgment action by the consumer, for example), the furnisher maintains an obligation to consider disputes that raise legal questions, conduct a reasonable investigation, and determine whether, in light of the issues raised in the dispute, it has a sufficient basis to verify the debt.

Br. at 21. The result of this broad view of accuracy disputes is that furnishers and CRAs – which will be unable to resolve these disputes without the time and

tools afforded courts of law – may have to remove accurate but negative information from credit reports or be faced with lawsuits where the question is not whether the furnisher or CRA conducted a reasonable investigation, but whether they reached the right legal conclusion.

Here, it is clear from the record that the nature of Roberts's dispute was not about the accuracy of the information that Carter-Young reported. Without the powers of a court to take testimony and evidence, Carter-Young would not be able to determine as a result of a reasonable investigation whether the debt incurred by Roberts for damages to rental property stemmed from "normal wear and tear," or whether Roberts did not owe the debt because her landlord retaliated against her and could have repaired the damaged oven instead of replacing it. (JA6 ¶ 14; JA9-10 ¶ 34). This is not a dispute that Carter-Young could readily and objectively resolve, nor does it relate to the accuracy of the information reported by Carter-Young.

CONCLUSION

For the foregoing reasons, *amicus* Consumer Data Industry Association urges this Court to hold that collateral attacks on debts like the one here do not raise questions of accuracy and affirm the judgment of the district court.

Dated: February 2, 2024

HUDSON COOK, LLP

/s/ Rebecca E. Kuehn

Rebecca E. Kuehn
1909 K Street, N.W., 4th Floor
Washington, D.C. 20006
(202) 715-2002
rkuehn@hudco.com

Counsel for Amicus Curiae
Consumer Data Industry Association

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February 2024, I electronically filed the foregoing Brief of Amicus Curiae Consumer Data Industry Association in Opposition to Plaintiff-Appellant's Appeal with the clerk of this Court using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished using the CM/ECF system.

HUDSON COOK, LLP

By */s/ Rebecca E. Kuehn*

Counsel for Amicus Curiae
Consumer Data Industry Association