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
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
AT GREENSBORO

REPLY BRIEF OF APPELLANT

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NOW COMES Shelby Roberts, Plaintiff/Appellant herein, and files her reply brief to Carter-Young's Answering Brief [1] as follows:

INTRODUCTION

The ultimate question on appeal is whether Roberts' complaint plausibly alleged that Defendant/Appellee Carter-Young violated its obligations under the Fair Credit Reporting Act (FCRA), §1681s-2(b)(1), by failing to reasonably investigate and correct a fictitious "debt" that Carter-Young was reporting to the major consumer reporting agencies (CRAs or agencies). In the District Court Carter-Young argued that Roberts' "dispute" was not cognizable because it presented a "legal," rather than "factual," defense to the debt. The District Court agreed and dismissed the complaint. For reasons discussed in Roberts' opening brief, however, a "legal dispute" exception, at least as applied to furnishers, finds little support among the circuit courts of appeals, contravenes the text and purpose of the FCRA, is inconsistent with this Court's FCRA jurisprudence, and in any event is irrelevant because Roberts did not assert any legal defense to the debt. Roberts plainly and plausibly alleged all essential elements of a §1681s-2(b)(1) claim.

In response, Carter-Young offers little support for a "legal dispute" exception or inquiry, and it now acknowledges that labeling a dispute as "legal" or "factual" is

[1] The Consumer Data Industry Association (CDIA) and the Association of Credit and Collection Professionals (ACCP) filed amicus curiae briefs in support of Carter-Young.

largely superfluous. (Answering Brief at 21). Changing direction, Carter-Young espouses a different theory, one that is based on the proposition that "[f]urnishers are not required to investigate *all* disputes they receive pursuant to §1681s-2(b)," (*Id.* at 7), but "*only* when the dispute challenges the 'completeness or accuracy' of the information contained in the consumer's credit file." (*Id.* at 6) (Emphasis included). The argument runs like this: Section 1681s-2(b)(1) provides that "[a]fter receiving notice . . . of a dispute with regard to the completeness or accuracy of any information provided by" the furnisher to the agency, the furnisher shall take certain actions. This creates "a condition precedent which must be satisfied before a CRA or furnisher becomes obligated to conduct an investigation." (*Id.* at 9). "Accuracy is a threshold issue for FCRA claims." (*Id.* at 11). Common definitions of the term "accuracy" include "freedom from mistake or error" and "conformity to truth or some standard or model," which signifies "*objective* accuracy." (*Id.* at 13) (Emphasis included). Before a furnisher incurs any obligations under §1681s-2(b)(1), it must not only receive *notice* of the dispute, but the consumer's *dispute* must be "objective and readily verifiable." (*Id.* at 17-20). Although labeling a dispute as "legal" does not alter the analysis (*Id.* at 21), "where there is an unresolved and disputed legal issue, the dispute is not objectively and readily verifiable." (*Id.* at 23.) Purporting to apply this analysis, Carter-Young argues that the District Court properly dismissed Roberts' complaint because her "disputes did not assert objectively verifiable facts,"

(*Id.* at 28), "[d]etermining whether the damage to the [oven] door was so severe it required replacement and not repair is a subjective determination," which "evades objective verification," (*Id.* at 29), and Roberts' small-claims lawsuit against the creditor (Ansley) "is a virtual admission that her dispute was not objectively and readily verifiable." (*Id.* at 30). Carter-Young then concludes that the 2003 amendments to the FCRA come into play only "after an investigation is completed" and "[s]ince Carter-Young was not required to conduct an investigation in the first instance, the amendment does not apply in this case." (*Id.* at 31-32).

Implicit in Carter-Young's argument is that the furnisher serves as a gatekeeper to all indirect disputes, and if it determines (how is left unsaid) that the consumer's dispute is not sufficiently objective and verifiable, the furnisher may relegate the dispute to the trashcan. It need not inform either the consumer or the agency of its determination. Even if it purports to pursue an investigation, no matter how shoddy or superficial, and even if it affirmatively reverifies the disputed information without any supporting evidence or documentation, a reviewing court must ignore the furnisher's own conduct and dismiss the consumer's §1681s-2(b)(1) lawsuit because there was never a "bona fide" dispute.

SUMMARY OF ARGUMENT

Insofar as Carter-Young now acknowledges that there is no "legal dispute" exception in suits brought under §1681s-2(b)(1), Roberts fully agrees. For the reasons set out in her opening brief, Roberts requests that this Court affirmatively reject this purported exception to a furnisher's mandatory investigatory obligation following notice of a consumer's indirect dispute.

Carter-Young's current argument fares no better. Like its "legal dispute" argument in the District Court, its "inadequate dispute" argument is essentially a smokescreen based on a false premise. Even assuming, *arguendo,* that a consumer's dispute must meet some initial qualitative standard, there is no obvious deficiency in Roberts' dispute of the debt. Nowhere in her complaint does she rely on her subjective view of the debt. Instead, she asserts that the debt was purely fictitious and lacked any documentary support; i.e, it was not "free[] from mistake or error." (Answering Brief at 13). To support this contention, she asserted that the alleged damages never occurred, and the $500+ charge for a new stove was factually unsupported because the detached oven door handle was easily reattached by screws in minutes, Ansley did not purchase a new stove, and Ansley never replaced the stove in her apartment. These facts are objectively verifiable, and, if true, render the $500+ charge for a new stove "inaccurate" under any definition of the term. Carter-Young

had complete access to the facts through its client and easily could have requested documentation to support the asserted debt.

Carter-Young's own actions are inconsistent with its contention that Roberts' dispute did not challenge the accuracy of the debt. Thus, despite ongoing communications with Roberts, Carter-Young never asserted that the dispute was incapable of being verified, and it purported to investigate. On multiple occasions, including as late as September 30, 2022, it affirmatively verified the debt. Eventually, however, on October 7, Carter-Young reported the debt as invalid. This constitutes an admission, which must be accepted at this stage of the litigation, that the debt was in fact inaccurate and in error.

The associated legal argument is equally flawed. "Accuracy" is a relevant issue in §1681s-2(b)(1) cases and if a debt ultimately proves to be free from mistake or error, a furnisher will not violate that section by reporting the debt. However, a furnisher is not authorized to exercise gatekeeping authority by refusing to investigate an indirect dispute referred to it by an agency on the ground that the dispute does not sufficiently challenge the accuracy of the disputed information. The statute grants such authority to agencies, and it grants similar authority to furnishers when presented with a direct dispute, but Congress chose not to grant such authority to furnishers in indirect disputes. *Ingram v. Experian Information Solutions, Inc.,* 83 F.4th 231, 241 (3d Cir. 2023). Here, Roberts properly filed her dispute with multiple

agencies. The agencies did not reject her dispute as frivolous or irrelevant and did not decline to investigate. Rather, consistent with their statutory obligation, they notified Carter-Young of the dispute, effectively triggering Carter-Young's obligation to investigate.

Except perhaps in cases where a consumer openly admits in her complaint that a debt (or other reported information) is accurate, accuracy is not a front-end issue that can be resolved in a motion to dismiss. Rather, it is a back-end issue that can only be assessed after discovery. If the material facts are undisputed and only one conclusion is reasonable, summary judgment for either party may be appropriate. In the vast majority of cases, however, accuracy will be a jury issue.

Roberts requests that this Court reverse and remand for further proceedings.

ARGUMENT

A. Roberts Adequately Disputed The Accuracy Of The Entire Debt. The District Court Erred In Dismissing The Complaint.

Setting aside for the moment the merits of Carter-Young's proffered legal analysis, the argument lacks any factual foundation in the record. Like its initial "legal dispute" argument in the District Court, its current argument before this Court is based on a false premise, the premise now being not that Roberts' dispute was "legal," but that it was "subjective," rather than "objective," and incapable of being verified. Because this premise is untrue, even assuming, *arguendo,* the correctness

of the proffered legal analysis, it merely confirms that the District Court erred in dismissing the complaint.

1. Roberts' Dispute, As Described In The Complaint, Was Objective And Fully Capable Of Being Investigated.

On its face, there was nothing remotely subjective about Roberts' dispute. She did not assert that the debt was "unfair" or "not right" or that she "thought" it had been excused or written off. Her dispute was based not on her "opinion" or "belief," but on a straight-forward contention that the debt was purely fictitious and lacking in any objective or documentary foundation. The debt was non-existent and created out of thin air. There was no document containing Roberts' signature attesting to the debt. The charge for the cost of a new stove was false because the creditor did not purchase a new stove or replace the stove in her apartment and the detached oven door handle was reattached in minutes. The other claimed "damages" were likewise nonexistent or grossly inflated and lacking in any objective or documentary support. The assertion that Roberts proffered nothing that was capable of being verified or investigated strains credulity.

Carter-Young's obligation was to reasonably investigate and take appropriate action. Roberts' contentions provided a road map, but the purpose of the investigation was not merely to prove or disprove her *dispute,* but to determine if the disputed *information*, in this case the entire debt, could be "verified." In light of

Roberts' assertions and detailed communications, there were numerous documents Carter-Young might have requested from its client to verify the debt such as pictures of any alleged damages, particularly as to the stove, and an affidavit or statement from Ansley's maintenance department (or an outside contractor if the repairs were made by an outside party) detailing any labor and material costs incurred by Ansley. One obvious document that might have sealed the deal at least as to the $500+ charge for a stove would have been an invoice from a third-party vendor establishing, contrary to Roberts' contention, that Ansley had in fact purchased a new stove to replace the stove in Roberts' apartment.

Carter-Young's brief is long on legal argument, but short on any explanation of why Roberts' dispute was subjective and incapable of verification. Its argument in full is as follows:

> "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." (Answering Brief at 28).
>
> Thus, the "core" of the dispute "is whether the damage[2] to the oven/stove could have been repaired versus replaced" and "[d]etermining whether the damage to the door was so severe it required replacement and not repair is a subjective determination," which "evades objective verification." (*Id.* at 29).

[2] Roberts has never conceded "damage" to the oven. The screws holding the handle in place became loose, resulting in the handle detaching from the oven door. The handle itself was undamaged and it was reattached, not replaced.

This argument is as false and inaccurate as the debt. Roberts has never asserted she did not owe the debt *because* of Ansley's retaliatory motive. She did not owe the debt because it was purely fictitious. The retaliatory motive explained *why* Ansley would fabricate a debt. It provided context, not a legal defense. Carter-Young did not need to determine Ansley's motive to determine whether the debt could be verified. It merely needed to seek out documentation to support the debt. Roberts also did not contend that Ansley *could have* repaired, rather than replace, the stove. She contended that Ansley *did in fact* reattach the door handle in minutes and *did not* replace or purchase a stove. It was Carter-Young's client, not Roberts, who determined that replacement was unnecessary. Carter-Young's obligation, in part, was to determine whether these objective factual assertions could be proved or disproved. And if, as alleged, Ansley reattached the door handle in minutes and neither replaced the stove in Roberts' apartment nor purchased a new stove, the $500+ charge for a new stove was false and inaccurate as a matter of law. No reasonable jury could conclude otherwise.

Even beyond Roberts' characterization of her dispute, Carter-Young's own actions, as set forth in the complaint, wholly belie its contention that Roberts failed to dispute the objective accuracy of the debt, thereby excusing Carter-Young from any obligation to investigate her dispute. According to Carter-Young, "'Accuracy' Under The FCRA Means 'Objective and Readily Verifiable' Accuracy." (Brief at 11).

Yet, at no point during the relevant sixty-day period did Carter-Young once inform either Roberts or any notifying agency that it was rejecting her dispute because it was not sufficiently objective or capable of being verified. Indeed, on September 21, Carter-Young's manager informed Roberts personally that it would investigate her dispute. (JA 11, ¶ 40). On September 22, following Roberts' submission of additional support, the manager responded that he had forwarded the provided information to "our client for review." (JA 11, ¶ 42). On September 27, after additional support had been furnished by Roberts, Carter-Young's manager responded by asking if she would withdraw her small-claims lawsuit against its client. (JA 12, ¶ 46). And on September 30, Carter-Young affirmatively reverified to Experian the validity of the debt. (JA 12, ¶ 49). One week later, however, on October 7, Carter-Young "reported the [debt] as invalid and requested that it be deleted," (JA 13, ¶ 54), effectively admitting, at least for purposes of this motion to dismiss case, that the debt was inaccurate. [3]

[3] For obvious reasons, Carter-Young seeks to shield its own conduct from any scrutiny. It argues that the 2003 FCRA amendments are not relevant because the obligation to investigate was never triggered. (Answering Brief at 31-32). As shown below, the agencies' notifications triggered Carter-Young's obligation to investigate. Further, in a motion to dismiss, the complaint must be construed in its entirety, and Carter-Young's own conduct is material because it contradicts its argument that the dispute did not challenge accuracy. Perhaps Carter-Young will have an explanation down the road, but the court cannot simply ignore the import of bona fide complaint allegations.

2. A Dispute Alleging That Reported Information Is False Inherently Challenges The Accuracy Of The Information.

"[F]alse information about a consumer is clearly inaccurate." *Boggio v. USAA Federal Savings Bank,* 696 F.3d 611, 617 (6th Cir. 2012). The courts routinely review FCRA cases in which consumers challenge a debt or account appearing on their credit report as false, fraudulent, or nonexistent for any variety of reasons. *E.g., Ingram,* 83 F.4th at 234 (consumer "was simply trying to clear his credit report of an account that was falsely created in his name"); *Drew v. Equifax Information Services, LLC,* 690 F.3d 1100, 1104 (9th Cir. 2012) (consumer disputed fraudulent credit card accounts that he never opened); *Linda Johnson v. MBNA America Bank, NA,* 357 F.3d 426 (4th Cir. 2004) (consumer disputed $17,000 credit card debt on grounds that account "belongs to husband only," she was "never a signer on account," and she disputed the "account balance"); *Pinner v. Schmidt,* 805 F.2d 1258, 1260 (5th Cir. 1986) (consumer admitted personal charge account, but disputed "several fictitious charges" entered by his manager for retaliatory reasons).

The Supreme Court's very recent decision in *Department of Agriculture Rural Development Rural Housing Service v. Kirtz,* ____ U.S. ____ (No.22-846) February 8, 2024) is illustrative. While the issue in *Kirtz* revolved around sovereign immunity,[4] the lawsuit itself involved a complaint brought under §1681s-2(b)

[4] The Court found the text of the FCRA to be plain and unambiguous in waiving sovereign immunity.

against the USDA. Observing that "[a] credit report can determine everything from whether a person can secure a credit card, purchase a home, win a new job, or start a small business," the Court described the FCRA, in its present form, as "allow[ing] consumers to sue private lenders who willfully or negligently supply *false information* about them to agencies that generate credit reports." (*Slip op.* at 1) (Emphasis supplied). The consumer (Kirtz) filed a dispute with TransUnion alleging that a loan that was being reported as past due was false because "he repaid his loan in full by mid-2018." (*Slip op.* at 1-2). The Supreme Court observed that while the USDA had moved to dismiss the complaint on immunity grounds, it "did not dispute that allegations like Mr. Kirtz's state a viable claim for relief." (*Slip op.* at 3). The Court described Kirtz's complaint as follows:

> [T]he USDA furnished information to TransUnion. The agency had notice that the information it supplied was false. The false information impaired Mr. Kirtz's ability to access affordable credit. Yet the agency failed to take any steps to correct its mistake—either willfully (in violation of §1681n) or negligently (in violation of §1681o). By way of remedy, Mr. Kirtz sought money damages consistent with what the FCRA allows.

(*Id.)*

If one were to substitute "Ms. Roberts" for "Mr. Kirtz" and "rental housing" for "credit," the Court's description of Kirtz's complaint would mirror a description of Roberts' complaint. Like Kirtz, Roberts disputed the purported debt as "false." As

in *Kirtz*, the furnisher received proper notification of the dispute. As in *Kirtz,* the furnisher failed to investigate and take corrective action. As in *Kirtz*, Roberts alleged that the furnisher willfully or negligently violated the FCRA and sought damages in accordance with its terms. That Roberts' complaint states a viable claim for relief is beyond dispute.

3. Roberts' Small-Claims Lawsuit Under The NCDCA Does Not Admit That Her Dispute Was Not "Objectively And Readily Verifiable."

Carter-Young argues, with little explanation, that Roberts' small-claims lawsuit against Ansley "is a virtual admission that her dispute was not objectively and readily verifiable." (Answering Brief at 30). Seizing upon a single statement in the complaint that Roberts "hoped to invalidate through legal process the [debt], which would hopefully cause Carter-Young to delete its reporting of the claim," (JA 11, ¶39), Carter-Young argues that until a court actually adjudicates that a disputed debt is invalid, a furnisher can incur no liability for reporting the debt. The debt is purportedly incapable of being verified prior to such a determination. (Answering Brief at 30-31). This argument is simply incorrect.

As explained in Roberts' opening brief at 49-51, the small-claims lawsuit was a strategic decision aimed at placing pressure on Ansley to direct Carter-Young to delete its reporting of the debt. In this regard, it was a complete success. But Roberts' "hope" had nothing to do with the legal or factual issues raised in the small-claims

lawsuit, which were wholly distinct from the facts and claims raised in this FCRA lawsuit against Carter-Young. "The NCDCA prohibits debt collectors from engaging in unfair debt collection practices, including the use of threats, coercion, harassment, unreasonable publication of the consumer's debt, deceptive representations to the consumer, or other unconscionable means." *Ross v. Federal Deposit Insurance Corp.,* 625 F.3rd 808, 817. (4th Cir. 2010). These types of unfair acts and practices *by Ansley* were the subject of the state lawsuit. The actual *validity* of the debt is immaterial in a NCDCA case. In contrast, Roberts' §1681s-2(b)(1) claims are based on *Carter-Young's refusal to reasonably investigate and correct false information that it reported to the agencies.* Ansley's prior efforts to collect the debt were wholly irrelevant to any investigation by Carter-Young of whether the debt was false. Claims under the NCDCA and the FCRA are frequently brought together, and Roberts is unaware of any court ever holding that a consumer's NCDCA claims somehow rendered her FCRA claims invalid or incapable of being verified. *E.g., Guthrie v. PHH Mortgage Corp.,* 79 F.4th 328 (4th Cir. 2023) (consumer entitled to go to jury on NCDCA and FCRA claims); *Glenn v. FNF Servicing, Inc.,* 2013 WL 4095524 (E.D. N.C. 2013) (same); *Sara Johnson v. MBNA America National Bank,* 2006 WL 618077 (M.D. N.C. 2006) (same). The sole difference between these cases and this case is that because the creditor (Ansley) and the furnisher (Carter-Young) were different legal entities, Roberts had to bring her claims in two separate proceedings,

rather than one. Roberts' NCDCA claims against Ansley have no bearing on her claims against Carter-Young.

Requiring a consumer who disputes a debt as false to obtain a court judgment on the invalidity of the debt before the furnisher incurs any obligations would essentially gut §1681s-2(b)(1). In both *DeAndrade v. Trans Union LLC,* 523 F.3d 61 (1st Cir. 2008) and *Denan v. Trans Union LLC,* 959 F.3d 290 (7th Cir. 2020), the issue concerned the obligations of CRAs under §1681e(b) and (i), not the obligations of furnishers under §1681s-2(b)(1). And in each case, the court concluded that the consumer was raising a "legal defense" that the CRA was incapable of resolving. In *Denan,* the court explicitly held that legal defenses to a debt should be resolved "directly with the *creditor or furnisher*," rather than the agency. 959 F.3d at 297. (Emphasis added.) Section 1681s-2(b)(1) draws no distinction between *furnishers who are also the creditor* and *furnishers who merely have a contractual relationship with the creditor.* Their obligations are identical. Roberts has not asserted any legal defense to the debt, and this Court should reject the application of a "legal dispute" exception to §1681s-2(b)(1) claims brought against furnishers, whether they be the creditor or a third party with whom the creditor has contracted.[5]

[5] The two landlord-tenant district court decisions cited by Carter-Young (Answering Brief at 24-26) shed no light on this case. Roberts alleges that the debt was false and non-existent, not that it was barred by some prior settlement agreement or that the landlord breached the lease thereby excusing an otherwise accurate payment obligation.

B. A Furnisher's Obligations Are Triggered By An Agency's Notification That A Consumer Has Disputed Information In Her Credit Report. Furnishers Are Not "Gatekeepers" And May Not Decline To Investigate An Indirect Dispute Based On Some Asserted Deficiency In The Dispute.

Apart from its inapplicability to this case, the legal analysis presented by Carter-Young is severely flawed. Roberts does not dispute that "accuracy" is a relevant inquiry in FCRA cases, and she has no quarrel with the application of an "objective" standard of accuracy,[6] but the furnisher has no statutory authority to predetermine this issue at the initial dispute stage, weed out disputes it deems "inadequate," or refuse to conduct any investigation at all. The only "condition precedent" to its investigatory obligation of an indirect dispute is that it be notified by an agency of the consumer's dispute. The investigation will determine whether the disputed information can or cannot be verified.

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[6] Roberts does dispute application of a "readily verifiable" standard, at least insofar as this phrase is interpreted as excusing a furnisher from investigating where the disputed information ultimately proves to be incapable of being verified. Section 1681s-2(b)(1)(E) requires a furnisher to delete or block not only the reporting of "inaccurate" information, but also information that cannot be "conclusively verified." *Linda Johnson,* 357 F.3d at 432. Roberts also disputes that some higher standard of "inaccuracy" must be met. This Court's reference to "patently incorrect" information in *Dalton v. Capital Associated Industries,* 257 F.3d 409, 415 (4th Cir. 2001) merely distinguished information that was plainly inaccurate from information that was technically accurate, but nevertheless misleading. Both are inaccurate under the FCRA. There was no intent to create some inordinately high standard of inaccuracy.

In arguing otherwise, Carter-Young focuses on the following introductory statement in §1681s-2(b)(1):

> After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute *with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency*, the person shall—

(Emphasis supplied). From this text Carter-Young extrapolates that a consumer's indirect dispute must clear a threshold hurdle before the furnisher incurs any obligations under §1681s-2(b). The furnisher functions as a gatekeeper and can reject and decline to investigate any dispute it deems inadequate. And even if it investigates and verifies the disputed information, it can wait until a consumer files suit under §1681s-2(b) to assert this defense, and the court must dismiss the consumer's complaint based not on a full record, but because the consumer's initial dispute was not sufficiently objective to trigger any obligation to investigate. This analytical paradigm ignores the structure and text of the FCRA and would create a massive gap in the protection offered consumers by the FCRA.

Read properly and in context, the highlighted phrase in the introductory statement to §1681s-2(b)(1) is merely descriptive of the notice that §1681i(a)(2) requires the agency to give a furnisher following the agency's receipt of a consumer's dispute. The phrase is neither restrictive nor limiting, and it confers no gatekeeping function on the furnisher. Rather, it is a "descriptive shorthand"

designed to link the reader back to §1681i(a)(2), *see generally, Gourche v. Holder,* 663 F.3d 882, 886 (7th Cir. 2011). This provision in turn provides that if a consumer notifies an agency that "the completeness or accuracy of any information contained in a consumer's file at a consumer reporting agency is disputed by the consumer," the agency must not only conduct a "reasonable reinvestigation," but shall timely "provide notification of the dispute" to the person who furnished the disputed information, which "notice shall include all relevant information regarding the dispute that the agency has received from the consumer."

It is the agency's notification to the furnisher that "triggers" the furnisher's various obligations under §1681s-2(b)(1). *Drew, supra,* 690 F.3d at 1106. Section 1681i does not require that the agency notification take any specific form or meet any particular qualitative standard. In *Drew,* the Ninth Circuit rejected a furnisher's contention that its §1681s-2(b)(1) obligations were never triggered because the agency's notice was in the form of a "fraud block notification" rather than an "automated consumer dispute verification." The court observed that the statute was "more concerned with substance than nomenclature." *Id.* Further, "an inadequate CRA notification may limit the *scope* of a furnisher's § 1681s–2(b) duty, for example, by excusing a more limited investigation; it does not, however, eliminate the duty altogether." *Id.* at 1107. (Emphasis included).

That a furnisher possesses no authority to weed out *indirect disputes* is apparent from the structure and text of the statute. Thus, §1681i(a)(3) provides that following receipt of a consumer's dispute, the *agency* may terminate a reinvestigation "if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information." Conspicuously absent from §1681s-2(b) is any corresponding right of a furnisher who has received notice of a consumer's *indirect dispute* to determine that the dispute is frivolous or irrelevant. The furnisher's obligations are mandatory and without exception. In contrast, when a consumer files a *direct dispute* with the furnisher, Congress gave furnishers the same right that agencies possess to terminate an investigation if they reasonably determine that the dispute "is frivolous or irrelevant, including—(i) by reason of the failure of the consumer to provide sufficient information to investigate the disputed information." Section 1681s-2(a)(8)(F). The absence of any similar provision in §1681s-2(b) is telling.

This dichotomy between direct and indirect disputes reflects Congress' intent that in the context of indirect disputes, the agency serves as a "'filtering mechanism' to protect furnishers from overexposure through consumer suits under Section 1681s-2(b)." *Ingram,* 83 F.4th[th] at 241 (quoting *Nelson v. Chase Manhattan Mortg. Corp.,* 282 F.3d 1057, 1060 (9[th] Cir. 2002)). It would contravene the purpose of

§1681s-2(b) "to allow a furnisher to shirk its duty to act on an indirect dispute to which it was referred by a consumer reporting agency, in many cases after the agency has itself determined that the dispute is not frivolous." *Id.* at 242. In *Ingram,* the court expressly rejected a "reading of the FCRA" to the effect that absent a bona fide "dispute, the furnisher has no duty to investigate." *Id.* at 242. The court explained:

> We decline to endorse this reading of the indirect dispute section of the statute. Not only does it atextually vest threshold vetting power with the furnisher when the FCRA explicitly grants the consumer reporting agency such power over indirect disputes, but to the extent furnishers do have such power, Congress only discussed it in provisions of the statute governing direct, not indirect disputes.

Id. at 242-243. *Accord, Boggio,* 696 F.3d at 619 ("the text of §1681s-2(b) does not permit furnishers to require independent confirmation of materials contained in a CRA notice of a dispute before conducting the required investigation.")

Here, as alleged, the agencies notified Carter-Young of Roberts' dispute. That is all that was required to trigger Carter-Young's §1681s-2(b)(1) obligations.

C. Whether Reported Information Is "Inaccurate" Is Rarely Suitable For Resolution In A Motion To Dismiss.

Although "accuracy" is a relevant issue in FCRA cases, it is rarely suitable for resolution in a motion to dismiss, *see Kirtz, supra,* and under no circumstances does a furnisher have gatekeeping authority to refuse to investigate a consumer's dispute, provided only that the agency has notified the furnisher of the consumer's dispute.

The investigatory obligation is mandatory. While some courts have referred to "inaccuracy" as a "threshold" requirement in FCRA cases, these courts have used the term to signify that if the disputed information ultimately proved accurate and complete, there could be no liability even if the investigation was unreasonable. "Accuracy" is not a front-end issue to be resolved by the furnisher at the dispute stage or by a court on a motion to dismiss; rather, it is a back-end issue, typically addressed at either the summary judgment stage or trial.

For example, in *Pittman v. Experian Information Solutions, Inc.,* 901 F.3d 619 (6th Cir. 2018), the consumer's appeal followed an order from the district court granting summary judgment for the furnishers on the ground that the consumer failed to show any errors in the reporting. The Sixth Circuit agreed that "a threshold showing of inaccuracy or incompleteness is necessary in order to succeed on a claim under §1681s-2(b)," *Id.* at 629, but disagreed that the consumer's evidence was insufficient to create a material issue of fact. In *Felts v. Wells Fargo Bank, N.A.,* 893 F.3d 1305 (11th Cir. 2018), the Eleventh Circuit affirmed a district court order granting summary judgment for the furnisher in a §1681s-2(b) case on the ground that the consumer "failed to make the threshold showing that a reasonable investigation could have uncovered an inaccuracy." *Id.* at 1309. But again, this decision was based on a full record, *Id.* at 1311, not on a motion to dismiss.

This is not a summary judgment case. The accuracy of disputed information is rarely suitable for resolution through a motion to dismiss. *See Twumasi-Ankrah v. Checkr, Inc.,* 954 F.3d 938, 945 (6th Cir. 2020) (reversing district court dismissal of FCRA claim against CRA on accuracy grounds and observing that a "'competing plausibility' analysis rarely is appropriate at the motion-to-dismiss juncture").[7] Roberts more than adequately alleged that the debt was false and therefore inaccurate. Any determination regarding ultimate accuracy must await summary judgment or trial. [8]

[7] The few district court decisions cited where the court dismissed either on a motion to dismiss or on a motion for judgment on the pleadings (Answering Brief at 20-21) involved discrete legal defenses such as whether a statute of limitations had run or a debt had been discharged. No similar defenses are in issue here.

[8] It is the accuracy of the disputed *information,* not the *dispute,* that is relevant under §1681s-2(b)(1). The consumer's burden is to "present evidence tending to show" that the disputed information was "inaccurate." *Dalton,* 257 F.3d at 415. If the furnisher reverifies the disputed information, it must have "acquired sufficient evidence to support the conclusion that the information was true. This is a factual question, and it will normally be reserved for trial." *Hinkle v. Midland Credit Mgmt., Inc.,* 827 F.3d 1295, 1303 (11th Cir. 2016). Thus, a furnisher who affirmatively verifies disputed information has a burden of producing supporting evidence. *See Linda Johnson,* 357 F.3d at 432; *Sara Johnson,* 2006 WL 618077, at *5 and n. 7 (furnisher failed "to produce clear evidence of Plaintiff's liability on the account," thus precluding summary judgment). Ironically, given Carter-Young's extensive argument regarding "accuracy," Roberts contends that it is the debt itself, not her dispute, that was purely subjective. There is literally nothing objective to support the debt. It existed solely in the mind of Ansley and its manager.

D. There Is No Legal Dispute Exception Under §1681s-2(b)(1) And Roberts' Complaint Raises No Legal Defense To The Debt. Nor Does Her Complaint Constitute A "Collateral Attack" On The Debt.

Although Carter-Young largely avoids the "legal dispute" argument that it advanced in the District Court, it briefly argues that "where there is an unresolved and disputed legal issue, the dispute is not objectively and readily verifiable." (Answering Brief at 23; See also CDIA Brief at 9). Carter-Young, however, fails to identify any "unresolved and disputed legal issue" placed in issue by the complaint. That is not surprising because no such issue exists. Further, for the reasons set forth in Roberts' opening brief, this Court should decline to recognize any "legal dispute" exception to a furnisher's obligations under §1681s-2(b)(1).

CDIA's related "collateral attack" argument (CDIA Brief at 4-9) is also without merit. When courts speak of an improper "collateral attack," they typically are referencing an attempt to challenge a final judgment or order rendered in one legal proceeding in a subsequent unrelated legal proceeding. Hence the subsequent attack is collateral and improper, except sometimes in prescribed circumstances. *See,* e.g., *Jarrell v. Cole,* 215 F. 315, 318 (4th Cir. 1914) ("The courts go to great lengths in upholding judgments and decrees which are assailed in collateral proceedings for want of jurisdiction to render them.") Hypothetically, if a debt were determined in an actual legal proceeding to be valid and enforceable, a subsequent FCRA lawsuit alleging that an agency or furnisher reported a false debt might conceivably

constitute an improper collateral attack on the prior court judgment. But that is not the case here. Ansley never sought to collect the debt through litigation, and there is no court order or judgment finding the debt to be enforceable. Thus, there is nothing to be collaterally attacked. Indeed, because FCRA claims almost invariably "attack" debts and other credit information, this type of amorphous "collateral attack" theory, if adopted, would result in almost all FCRA claims being dismissed as a collateral attack on a debt or credit account. The "collateral attack" doctrine is not implicated in this case. And the doctrine, even if sometimes applicable in FCRA cases brought against agencies, has no application in FCRA cases brought against furnishers, who either are the creditor or have a direct and close relationship to the creditor.

ACCP's argument that the FCRA should not be interpreted to require furnishers to investigate conduct by "Providers" seeks to engraft yet another ill-conceived exception into the FCRA. There is no legal authority for such an exception, which would be difficult to apply and without any visible benefit. The touchstone of any investigation is "reasonableness," a standard that already permits a furnisher to explain any difficulties it may have encountered in investigating a dispute. The jury will determine if the explanation is reasonable. In any event, Roberts did not assert "contract defenses," or plead or admit that Ansley "properly exercised its contractual rights" or that "Carter-Young accurately reported the terms of the agreement, the debts assessed under the agreement, and Roberts' conduct

concerning the debt." (ACCP Brief at 3-4). Its consistent position was that the debt was false and without any factual foundation.[9] Carter-Young is free to make these type contentions in its answer to the complaint or present evidence to this effect during discovery, but these are not *facts* this Court can accept simply on ACCP's word.

E. Public Policy Favors Enforcement of FCRA in Accordance with Its Terms.

The public policy arguments advanced by amici are weak and inconsistent with the consumer protection goals of the FCRA. These industry groups seek to neuter the statute and relieve furnishers and reporting agencies of any meaningful burden in investigating and responding to consumer disputes. In their view, any investigatory obligation that requires their members to do anything more than ensure that reported information has not been incorrectly transcribed will lead to increased costs and the collapse of the entire credit system. In essence, they want a statutory scheme that places all power in the hands of creditors, furnishers, and reporting agencies.

Yet all that the statute requires is that their members reasonably investigate and respond to consumer disputes. This Court's precedents already establish that the investigation must be more than superficial. There must be some meaningful effort

[9] ACCP concedes that an investigation would be required if "Roberts disputed the dollar amount Ansley charged." (ACCP Brief at 9). And, in fact, Roberts did alternatively challenge the amount of the debt as "grossly overstated." (JA 6, ¶14).

to inquire into the disputed information to determine if it can be verified. It is difficult to see how requiring a furnisher to act "reasonably" is unduly burdensome. The fact is that the power already rests largely with the credit industry. Furnishers and agencies have massive resources, and they effectively control the lives of millions of Americans. With the stroke of a key, they can render a consumer homeless and without access to any financial resources. An inaccurate debt can haunt a consumer for seven years before it disappears from her credit report. It hardly seems too much to ask that they be scrupulous in ensuring that the information they furnish and report is in fact accurate. The proposition that furnishers should be able to weed out indirect disputes prior to investigation would certainly grant them greater power, but with immense harm to consumers and little benefit to the credit industry. After all, if a dispute is frivolous or patently insufficient, the investigation should be easy and quick to complete.

The FCRA is a consumer protection statute designed to protect consumers from false and misleading information in their credit reports. Roberts asks that this Court reaffirm its prior FCRA jurisprudence and give notice to all relevant actors, their counsel, and the lower courts that the FCRA means what it says, that a furnisher's investigatory obligation when presented with an indirect dispute is mandatory, and that these cases are almost never suitable for resolution on a motion to dismiss.

CONCLUSION

Roberts respectfully requests that this Court reverse the District Court and remand for further proceedings in accordance with its decision.

Respectfully submitted February 16, 2024,

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CERTIFICATE OF COMPLIANCE

1. The foregoing brief has been prepared in a proportionally spaced typeface using Microsoft Word, Times New Roman, 14 point.

2. Exclusive of the table of contents; table of citations; certificate of compliance and the certificate of service, the foregoing brief contains 6,451 words.

3. I understand that a material misrepresentation can result in the Court striking the brief and imposing sanctions. If the Court so directs, I will provide an electronic version of the brief with the word or line printout.

/s Charles P. Roberts, III
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