22-87

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

GIA SESSA, on behalf of herself and all others similarly situated,
Plaintiff-Appellant,

v.

TRANS UNION, LLC,
Defendant-Appellee.

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

BRIEF OF *AMICI CURIAE* CONSUMER-ADVOCACY ORGANIZATIONS IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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RULE 26.1 DISCLOSURE STATEMENT

All the *amici* are nonprofit entities that have no parent corporations and that are not owned, in whole or in part, by any publicly held corporation.

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INTERESTS OF THE *AMICI CURIAE*[1]

Amici are nonprofit organizations dedicated to advancing the rights and interests of consumers and combatting corporate misconduct through the use of litigation, policy advocacy, research, and public outreach. *Amici* are dedicated to pursuing economic justice for low-income and other vulnerable people. They believe that the Fair Credit Reporting Act is an important tool to protect consumers from abusive credit-reporting practices, and they therefore have a keen interest in preserving the Act's integrity and ensuring that it is correctly interpreted and applied.

The *amici* are:

- CAMBA Legal Services
- Connecticut Fair Housing Center
- Consumer Action
- Housing Clinic of Jerome N. Frank Legal Services Organization at Yale Law School
- Mobilization for Justice

[1] No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund this brief, and no person other than *amici*, their members, and their counsel contributed money to fund this brief. A motion for leave to file accompanies this brief.

- National Association of Consumer Advocates
- National Consumer Law Center
- New Economy Project
- Public Justice
- U.S. PIRG

INTRODUCTION AND SUMMARY OF ARGUMENT

Consumer-reporting agencies—particularly Trans Union, Experian, and Equifax, the three largest nationwide CRAs or "credit bureaus"—hold considerable power over most Americans' lives. The consumer-credit reports that CRAs package and disseminate affect our ability to obtain credit at an affordable rate, secure home and auto insurance, satisfy a prospective employer's background screening, or rent an apartment, among countless other transactions. Yet the credit files underpinning these enormously important determinations are often teeming with errors. And CRAs regularly fail to take reasonable precautions to prevent even easily identifiable errors.

The Fair Credit Reporting Act is meant to provide some recourse for consumers. Section 1681e(b) of the Act requires CRAs to "follow reasonable procedures to assure maximum possible accuracy of the information" in a consumer's credit report. 15 U.S.C. § 1681e(b). This

provision does not hold CRAs liable for every error in every consumer's file; rather, by its terms, it requires them to take reasonable steps to produce maximally accurate credit reports. For example, since thousands of people share the same first and last name, CRAs must use additional identifying information when matching a piece of credit data to an individual consumer. Likewise, CRAs must screen for illogical or internally inconsistent information, like a report showing that a consumer who lacks any history of delinquent accounts nevertheless has filed for bankruptcy. As multiple courts have held, whether a CRA has complied with its obligations under this provision is a fact-sensitive inquiry that requires balancing the harm that the underlying inaccuracy causes the consumer against the burden that more accurate information would impose on the CRA.

Some courts (this Court not among them) have read a threshold requirement into § 1681e(b), holding that CRAs are liable only for so-called factual inaccuracies but not legal inaccuracies (i.e., errors that would require a CRA to make a legal determination about the validity of the disputed debt). Purporting to draw on that distinction, the district court in this case drastically expanded it and held that a "legal inaccuracy" encompasses all errors except those that result from a CRA's

failure to accurately transcribe the credit information that it receives into a consumer's file. The court discarded the fact-bound reasonableness analysis that § 1681e(b) demands and replaced it with a categorical rule that all but immunizes CRAs from liability.

No court, to *amici*'s knowledge, has ever gone so far. And for good reason: The district court's holding is at odds with the text of § 1681e(b), the purpose of the FCRA, and judicial precedent. Should the rule stand, it would disincentivize CRAs from taking even the limited precautions they currently take to avoid reporting inaccurate credit. And it would have disastrous consequences for consumers, leaving them without this vital means of redress of the credit-reporting errors that may otherwise follow them for years.

The district court's rule would render § 1681e(b) a dead letter and harm consumers. Its holding should be reversed.

ARGUMENT

I. Consumer-reporting agencies perpetuate a credit-reporting system that is rife with error and abuse.

The credit-reporting industry is a four-billion-dollar market, and each of the three largest credit bureaus oversee the credit files of more than 200 million Americans. Consumer Fin. Prot. Bureau, Fact Sheet: Credit Reporting Market (2012), https://bit.ly/3F509eF. Some 67 million

of those Americans have errors in their credit reports. *See* Syed Ejaz, Consumer Reps., A Broken System: How the Credit Reporting System Fails Consumers and What to Do About It 15 (2021), https://bit.ly/3vln7uI. While CRAs shrug off this staggering number as the cost of doing business, or else blame the furnishers with whom the data originates, they refuse to implement routine measures that would significantly improve the accuracy of consumers' credit reports. *See infra* pp. 7-10. And consumers—who have little say over whether and how third parties access their credit files, and therefore cannot influence the market by simply taking their business elsewhere—are stuck with errors.

a. Improving the quality of consumer-credit data was among Congress's principal motivations for passing the FCRA. *See* 115 Cong. Rec. 2410, 2411 (1969). But the problem persists.

A seminal study by the Federal Trade Commission, completed in 2012, found that 21% of the approximately 1,000 participants it engaged had a verified error in one of their credit reports, and 5% had errors serious enough to cause them to pay more for credit or to be denied credit altogether. *See* Fed. Trade Comm'n, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 i-ii (2015),

https://bit.ly/3vAvsLn (describing results of 2012 study). Even a 5% serious-error rate translates to millions of Americans potentially subjected to financial penalties and other consequences because of inaccurate credit reports. *See* Chi Chi Wu et al., Nat'l Consumer Law Ctr., Automated Injustice Redux 4 (2019), https://bit.ly/3MO312a. The same is true today. A study published last year, for example, found that among nearly 6,000 people surveyed, 34% reported finding an error on their credit report. *See* A Broken System, at 15.[2]

It's no surprise, then, that the Consumer Financial Protection Bureau—which collects and processes consumer complaints regarding credit reporting, debt collection, mortgages, and student loans, among

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[2] These findings largely confirmed historical trends. A study conducted in 1991 found that 25% of credit reports contained inaccuracies severe enough to result in a denial of credit. *See* Chi Chi Wu et al., Nat'l Consumer Law Ctr., Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports 5 (2009), https://bit.ly/38cOKNM (citing Consumers Union, What Are They Saying About Me? The Results of a Review of 161 Credit Reports from the Three Major Credit Bureaus (1991)). A decade later, another study found that approximately one third of the consumers whose files were reviewed had credit scores that varied by 50 points or more from one CRA to another. *See* Consumer Fed'n of Am., Credit Score Accuracy and Implications for Consumers 20, 25 (2002), https://bit.ly/3KnIIHd. That report concluded that "tens of millions of consumers are at risk of being penalized" by reporting inaccuracies. *Id.* at 37.

other financial products and services—receives hundreds of thousands of complaints against CRAs each year, far more than any other industry that the CFPB regulates. *See, e.g.*, Consumer Fin. Prot. Bureau, Consumer Response Annual Report: January 1 – December 31, 2020 9, 20 (2021), https://bit.ly/3KmNo0e. Indeed, the CFPB received so many complaints about CRAs over the last two years—more than 800,000 between January 2020 and September 2021, some 700,000 of them concerning the big three credit bureaus—that it "led the CFPB to publish [an] independent report" on the matter. *See* Consumer Fin. Prot. Bureau, Annual Report of Credit and Consumer Reporting Complaints 3 (2022), https://bit.ly/3kkEWnq. And the number of complaints made to the CFPB is only a fraction of the total number of consumer complaints about CRAs in a given year; the CFPB estimates that CRAs themselves receive millions of disputes annually. *See id.* at 21.

b. Consumers regularly report significantly harmful errors in their credit reports. Among them are "mixed files," where data about one person is reported in the credit file of another, causing consumers' reports to reflect debts that are not theirs. *See Fair Credit Reporting; Name-Only Matching Procedures*, 86 Fed. Reg. 62,468 (Nov. 10, 2021); Automated Injustice Redux, at 5-6, 14. This problem results from CRAs' continued

use of inadequate procedures for matching data to the correct consumer (e.g., using a partial Social Security number or relying on other overly loose matching criteria), despite regulatory guidance and policy advocacy to the contrary. See *Name-Only Matching Procedures*, 86 Fed. Reg. at 62,469-71; Automated Injustice Redux, at 14. Mixed files have resulted in CRAs inaccurately reporting that consumers have filed for bankruptcy or missed payments on their mortgage. *See* Automated Injustice Redux, at 14.

Beyond mixed files, consumers also say that their credit reports frequently fail to capture accurate and current information about the credit data that *is* theirs. Consumers report that debts that they have paid, that have been discharged in bankruptcy, or that a court has adjudicated and found the consumer not liable for nevertheless appear as outstanding payments owed. *See* A Broken System, at 15; Automated Injustice Redux, at 16-17. And to take another, recent example, 15% of respondents to a 2021 survey who had a loan for which they had been granted a forbearance (pursuant to relief provided during the Covid-19 pandemic) nevertheless stated that their loan had been reported as delinquent by a CRA. *See* A Broken System, at 16.

c. For consumers trying to unwind errors that they have identified in their credit reports, the process is confusing, time-consuming, and sometimes fruitless.

For one, CRAs often barely investigate the consumer disputes that they receive. Instead, they assign each dispute a two- or three-digit code and hand it over to the furnisher to investigate. *See* Automated Injustice Redux, at 6. Furnishers, in turn—tasked with reviewing data that they supplied in the first instance—often conduct little more than a cursory review themselves, failing to review whatever supporting documentation that the consumer submitted. *See id.* at 14-15. And CRAs virtually always accept the furnisher's findings without bothering to independently review those findings. *See id.* at 6-7, 16; A Broken System, at 13.

Worse yet, the CFPB reports that CRAs have recently streamlined the way that they process consumer complaints to avoid having to conduct even nominal investigations. *See* Annual Report of Credit and Consumer Report Complaints, at 46-51. According to the CFPB, one recent tactic is to be overinclusive in weeding out supposed "suspicious requests," particularly form complaints that the CRA believes have come from a third party and not from the consumer directly. *See id.* at 46-47,

49 (CFPB data showing that Trans Union mischaracterized approximately 25% of identifiably unique complaints as third-party complaints, triggering a form response and no adjudication); Automated Injustice Redux, at 21-22. As a result, consumers receive even fewer non-form-letter responses to their complaints on average, and the percentage of complaints in which relief is granted has dropped to under 2%. *See* Annual Report of Credit and Consumer Report Complaints, at 51-54.

Even when consumers come armed with paperwork that definitively shows reporting errors, CRAs refuse to correct these errors as a matter of course. One consumer reported that it took *eight years* to fix his credit file, which had inaccurately shown debts that had been incurred as a result of identity theft—only for the debt to be reported again as soon as one of the fraudulent accounts was transferred to a new third-party debt collector. Automated Injustice Redux, at 18-19. Another spent six years trying to rid her credit report of medical debt that she had not incurred, to no avail. Consumer Fin. Prot. Bureau, Medical Debt Burden in the United States 28-29 (2022), https://bit.ly/3rY3Q0o.

d. Without the deterrent created by the FCRA, CRAs have little inherent incentive to provide more accurate consumer-credit data. "[T]he paying clients of this industry are *not* consumers, but the creditors and

debt collectors who furnish or use the information contained in the credit bureaus' databases." Automated Injustice Redux, at 4. CRAs are not beholden to consumers, who have no choice in whether or by whom their credit files are maintained. As the CFPB has summarized the dynamic, "America's credit reporting oligopoly has little incentive to treat consumers fairly when their credit reports have errors." Press Release, CFPB Releases Report Detailing Consumer Complaint Response Deficiencies of the Big Three Credit Bureaus (Jan. 5, 2022), https://bit.ly/3LGfIvK. And therefore they "under-invest in accuracy." Consumer Fin. Prot. Bureau, Supervisory Highlights Consumer Reporting Special Edition 21 (2017), https://bit.ly/3MEsBqy.

II. This Court should not nullify a key FCRA provision designed to hold CRAs responsible when they misreport consumers' credit.

Section 1681e(b) of the FCRA is designed to provide an incentive for CRAs to take reasonable measures to accurately report their credit information by providing recourse to consumers when CRAs fail to do so. Whether a CRA has acted reasonably requires weighing the harm that inaccurate information causes the consumer against the burden on the CRA of providing accurate information. Yet the district court here substituted a categorical rule that favors CRAs by default for that factual

inquiry. That categorical rule is not supported by the statutory text or case law. And it would deprive consumers of an important means by which to redress inaccuracies in their credit reports and hold CRAs accountable—something that, given the state of credit reporting today, we can ill afford.

A. Section 1681e(b) of the FCRA demands a fact-specific evaluation of CRAs' practices to prevent consumer-reporting inaccuracies.

The FCRA was enacted in 1970 "to ensure fair and accurate credit reporting, promote efficiency in the baking system, and protect consumer privacy." *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007). Congress passed the act specifically out of concern that players in the credit-reporting industry were trading consumers' personal information in large numbers without safeguards. Inaccurate information was "the most serious problem in the credit reporting industry" (115 Cong. Rec. at 2411), and the FCRA was designed "to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report" (S. Rep. No. 91-517, at 1 (1969); *cf.* S. Rep. No. 108-166, at 5-6 (2003) (describing inaccurate information reported by CRAs—and difficulties consumers faced in having them fixed—as the "driving force" of amendments to the FCRA)).

To that end, § 1681e(b) of the FCRA requires CRAs to "follow reasonable procedures to assure maximum possible accuracy of the information" contained in the credit reports they produce. 15 U.S.C. § 1681e(b). The FCRA does not define "reasonable procedures" or "maximum possible accuracy." Nor has this Court spoken on the matter. But other courts have acknowledged that reasonableness under § 1681e(b) "is a fact-dependent inquiry" (*Wright v. Experian Info. Sols., Inc.*, 805 F.3d 1232, 1239 (10th Cir. 2015)), requiring the factfinder to determine whether the CRA's procedures comport with "what a reasonably prudent person would do under the circumstances" (*Bryant v. TRW, Inc.*, 689 F.2d 72, 78 (6th Cir. 1982) (internal quotations omitted)). Reasonableness, "like other questions concerning the application of a legal standard to given facts (notably negligence, a failure to exercise reasonable care)," is a question of fact. *Crabill v. Trans Union, L.L.C.*, 259 F.3d 662, 664 (7th Cir. 2001). Hence, whether a CRA fulfilled the reasonableness requirement of § 1681e(b) is not a question that ordinarily can be resolved on summary judgment "unless the reasonableness . . . of the procedures is beyond question." *Id.* at 664; *see Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995) ("The reasonableness of the procedures and whether the agency

followed them will be jury questions in the overwhelming majority of cases."); *Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1156 (11th Cir. 1991) (before disposition by ultimate factfinder, CRA will "prevail only if a court finds, as a matter of law, that a credit report was 'accurate.'").

As the Sixth Circuit has explained, reasonableness "requires a [CRA] to do more than correctly report the information supplied to it by creditors." *Bryant*, 689 F.2d at 77. In evaluating whether a CRA has failed to follow reasonable procedures in violation of § 1681e(b), courts have often sought to balance the burden to the CRA of providing more accurate or complete information against the potential harm that reporting an inaccuracy would cause the plaintiff. As the D.C. Circuit characterized the inquiry, "the more misleading the information [*i.e.,* the greater the harm it can cause the consumer] and the more easily available the clarifying information, the greater the burden upon the consumer reporting agency to provide this clarification." *Koropoulos v. Credit Bureau, Inc.*, 734 F.2d 37, 42 (D.C. Cir. 1984) (alteration in original) (quoting *Alexander v. Moore & Assocs., Inc.*, 553 F. Supp. 948, 952 (D. Haw. 1982)). Likewise, "if the misleading information is of relatively insignificant value, a consumer reporting agency should not be

required to take on a burdensome task in order to discover . . . clarifying data, and it should not be penalized under [§ 1681e(b)] if the procedures used are otherwise reasonable." *Id.* (quoting *Alexander*, 553 F. Supp. at 952). Put another way, CRAs must "look beyond information furnished to them when," for example, the information is "inconsistent with the CRAs' own records, contains a facial inaccuracy, or comes from an unreliable source" (*Wright*, 805 F.3d at 1239), but not when "'the cost of verifying the accuracy of the source' outweighs the 'possible harm inaccurately reported information may cause the consumer'" (*id.* (quoting *Henson v. CSC Credit Servs.*, 29 F.3d 280, 285 (7th Cir. 1994))).

So, for example, in *Stewart v. Credit Bureau, Inc.*, 734 F.2d 47 (D.C. Cir. 1984), the court held that a CRA that had inaccurately reported a bankruptcy in a consumer's file was not entitled to summary judgment on the consumer's § 1681e(b) claim, particularly where the inaccuracy was starkly inconsistent with the rest of the consumer's file and where the harm of a falsely reported bankruptcy so profound. *See id.* at 52-53. The court concluded that, in some instances—as when information appears suspicious on its face or in the context of a consumer's file—an inaccuracy alone creates a triable issue as to a CRA's unreasonableness, and the plaintiff need not present additional evidence of an unreasonable

procedure. *Id.* at 53; *cf., e.g.*, *Wilson v. CARCO Grp., Inc.*, 518 F.3d 40, 42-43 (D.C. Cir. 2008) (plaintiff need not present expert testimony to establish CRA's unreasonableness); *Guimond*, 45 F.3d at 1334 (process that was "plagued with errors" suggested "that Trans Union might indeed be liable under § 1681e(b) because of the errors in its reporting system," and hence reversing the trial court's grant of summary judgment (internal quotations omitted)).

By contrast, in *Henson*, 29 F.3d 280, the court held that a CRA was not liable for inaccurately reporting that a consumer owed a money judgment, where the CRA had obtained that information from a court's docket and where it had no prior notice or reason to believe that the court record in question would contain inaccurate information. *See id.* at 285-86. Requiring the CRA here to manually evaluate every official court document looking for the rare docket error "would be unduly burdensome and inefficient." *Id.* at 286.

This fact-bound reasonableness inquiry is consistent with guidance from the FTC and the CFPB. The FTC has interpreted § 1681e(b) to require a balancing of consumers' and CRAs' respective interests. *See* Fed. Trade Comm'n, 40 Years of Experience with the Fair Credit Reporting Act 67 (2011), https://bit.ly/3MzbAxO. The FTC's guidance

instructs that, when a CRA is aware of or should be aware of reporting errors that suggest a systemic problem, it must take all necessary steps to resolve the problem. *Id.* Likewise, if a particular furnisher provides information that is "often" inaccurate, the CRA must either require the furnisher to fix the problem or else stop reporting information from that furnisher. *Id.* And CRAs should have procedures in place to screen information that "appears implausible or inconsistent" (*id.*) or that has "obvious logical inconsistencies" (*id.* at 68). Ultimately, if a CRA is aware of or should be aware of "steps it can take to improve the accuracy of its reports at a reasonable cost, it must take any such steps." *Id.* at 67.

The CFPB has identified similar parameters. In its published procedures for evaluating CRAs' compliance with the FCRA, it pinpoints several factors to evaluate whether a CRA has employed reasonable procedures to ensure maximum possible accuracy: how it screens furnishers; whether it includes "appropriate identifying information" about the consumer, and what procedures it uses to match data to the correct consumer file; what audit, quality-control, and data-quality metrics it uses to assess the accuracy of information received from furnishers; its response after receiving poor-quality data from a given furnisher; measures taken to avoid reporting duplicative data; and any

other procedures used to evaluate data accuracy. *See* Consumer Fin. Prot. Bureau, Examination Procedures: Consumer Reporting Larger Participants 11 (2020), https://bit.ly/37KZmn7.

At bottom, § 1681e(b) does not require that CRAs be perfect or that they perform extraordinary measures to achieve accuracy. It requires them to take reasonable measures to protect consumers from avoidable errors on their credit reports.

B. The district court's categorical rule ignores the fact-intensive balancing of § 1681e(b) claims and stands to seriously harm consumers.

a. The district court in this case ignored the fact-intensive reasonableness analysis that § 1681e(b) demands and replaced it with a categorical rule of its own devising that would immunize CRAs from liability for common credit-reporting errors.

A minority of circuits (not including this Court) have recognized a distinction between "factual" inaccuracies, which give rise to § 1681e(b) claims, and "legal" inaccuracies, which do not. So-called legal inaccuracies are errors that would require a CRA to make a legal determination about the validity of the disputed debt. *See* Appellant's Br.

30.[3] Purporting to rely on this distinction and expanding it beyond recognition, the district court held that CRAs "can only be held liable for FCRA claims when the information reported does not match the information furnished" (SA19); everything else is a legal inaccuracy, and therefore not cognizable under § 1681. In other words, under the district court's rule, a CRA can never be liable for reporting inaccurate information in consumers' credit reports unless the CRA has made a transcription error when copying information from the data furnisher.

This rule does not derive from the text of § 1681e(b), whose reasonableness requirement, as described above, has been repeatedly and properly interpreted to call for a fact-intensive consideration of whether a CRA undertook reasonable measures to achieve maximum-possible accuracy in reporting consumers' credit information. *See supra* pp. 12-18. The reasonableness inquiry considers whether a CRA had reason to doubt the furnisher's data, requires CRAs to consider the information they receive in the broader context of the consumer's file,

[3] For the reasons Appellant explains, Br. at 23-35, while some courts have recognized that distinction, it is not consistent with the statutory text of § 1681e(b) and is an unworkable standard.

weighs the burden of identifying a given inaccuracy, and considers the harm to the consumer from the inaccuracy. *See id.*

The district court's rule reduces the reasonableness requirement of § 1681e(b) to a single point of inquiry: Did the CRA correctly record the information it received from the furnisher? And, as long as the answer is "yes," the CRA is off the hook, whether the information it reports is accurate or not. This is so no matter the furnisher's history of providing inaccurate information, the data's internal inconsistency or obvious falsity, the ease with which the CRA could have verified the information's accuracy, or the harm to the consumer that results.

Courts have already explicitly rejected that interpretation of § 1681e(b). For example, in *Bryant*, 689 F.2d 72, the Sixth Circuit concluded that holding that a CRA need not "do more than correctly report the information supplied to it by creditors" would "serve essentially to repeal by judicial decree a statute that Congress adopted." *Id.* at 77. The reasonableness requirement "evince[s] [Congress's] desire that agencies that assemble conventional credit reports be more than conduits of information." *Id.* at 78. Hence, that provision requires CRAs "to do more than correctly report the information supplied to [them]." *Id.* at 77; *see also, e.g.*, *Crane v. Trans Union, LLC*, 282 F. Supp. 2d 311, 317-

18 (E.D. Pa. 2003) (citing *Cushman v. Trans Union Corp.*, 115 F.3d 220, 225 (3d Cir. 1997)).

Moreover, the rule is also unsupported by the case law that distinguishes between factual and legal inaccuracies. As an initial matter, *amici* are unaware of any case, and the district court did not identify any, holding that all credit-reporting inaccuracies but transcription mistakes are legal errors categorically not subject to liability. What's more, courts that have adopted the legal/factual distinction still recognize the balancing required in assessing reasonableness under § 1681e(b). *See, e.g.*, *Denan v. Trans Union LLC*, 959 F.3d 290, 297 (7th Cir. 2020) (contrasting the burden of uncovering an inaccuracy regarding a disputed debt when the legality of the debt has and has not been adjudicated in a court); *Losch v. Nationstar Mortg. LLC*, 995 F.3d 937, 945-46 (11th Cir. 2021) (applying balancing principles in resolving claim after addressing whether inaccuracy at issue was legal or factual). Hence, the categorical rule that the district court set out should be struck down regardless of whether this Court recognizes a distinction between legal and factual inaccuracies.

b. Adopting the district court's rule would harm consumers, leaving them without a vital means to redress the overwhelmingly common, potentially life-altering problem of credit-reporting inaccuracies.

Take this case for example. Here, the court held that Ms. Sessa could not, as a matter of law, establish a § 1681e(b) violation based on Trans Union's inaccurately reporting the residual value of a car that Ms. Sessa was leasing as a balloon payment she owed as a debt. *See* SA12-13, 20. This was so even though, as record evidence showed, a basic understanding of consumer-financial products makes the furnisher's error obvious on its face. *See* Appellant's Br. 12-14. Standard car leases don't have required balloon payments because leases aren't structured to require the consumer to purchase the car at the end of the lease term. *See id.* at 12-13. And if that weren't enough, the record also shows that Trans Union knew that this furnisher had misreported information concerning balloon payments in the past. *See id.* at 13.

Consider, too, the consumer who is among the millions of victims of identity theft annually. In such cases, a perpetrator of identity theft will open credit accounts in a consumer's name. The creditor will then furnish that information to a CRA, which reports those debts out as the consumer's own. Under the district court's interpretation, as long as the

CRA has copied and reported the information as the furnisher supplied it, it doesn't matter whether there was strong evidence that the debt is not actually the consumer's, or whether the CRA was on notice that the furnisher had a history of sharing credit information that was the product of identity theft, or whether the consumer's credit score has plummeted as a result. Given the significant intractability that victims of identity theft face from CRAs and furnishers alike when trying to remove identity-theft-related inaccuracies from their credit reports, consumers will have little recourse. *See, e.g.*, Annual Report of Credit and Consumer Reporting Complaints, at 36-37; Automated Injustice Redux, at 6.

Or take the consumer who has obtained a judgment in court discharging a debt that she owed. As one consumer wrote in a complaint to the CFPB, "A credit report inquiry . . . revealed one derogatory line on my credit report . . . that was incorrectly still present in my record despite the fact that this debt was satisfied (paid off) and signed off by [a county court] one year prior." Automated Injustice Redux, at 17 (quoting CFPB Complaint No. 3085700 (Nov. 28, 2018)). The complainant had obtained an order of dismissal with prejudice of her debt, and yet it continued to appear on her credit reports more than a year later. *See id.*

The complainant sought to have the inaccuracy removed so that she could apply for a mortgage. *Id.* The CRAs refused to remove the item even after the complainant alerted them to the court order. Under the district court's test, if the complainant were to bring a § 1681e(b) claim, the only question a court could ask is whether the furnisher reported the debt to the CRA as outstanding. And if the answer is "yes," the consumer is stuck with it.

What about the consumer who repeatedly ends up with his father's overdue medical bills on his own credit report, because the bills have been turned over to a debt collector that furnished inaccurate information to the credit bureaus? *Cf. Perez Ramones v. Experian Info. Sols., LLC*, 537 F. Supp. 3d 1314 (S.D. Fla. 2021). Credit data originating from debt collectors is disproportionately likely, compared to data from other furnishers, to result in consumer disputes to CRAs. *See* Consumer Fin. Prot. Bureau, Key Dimensions and Processes in the U.S. Credit Reporting System 14, 29 (2012), https://bit.ly/3OYiHBZ. Yet according to the district court, a CRA would have done nothing wrong in repeatedly misattributing debt to the wrong family member, even if the consumer sent dozens of disputes to the CRA informing it that the information was inaccurate and the furnisher was unreliable—i.e., even though the CRA

had every reason to doubt the quality of the furnisher data it was receiving.

And what of the student borrower whose loan servicer reports incorrect information to a credit bureau, e.g., that the student isn't making payments (when she actually is), or that the payments aren't current (even though they are subject to a federal consumer-relief program holding the loans in forbearance)? *See* Ann Carrns, *More Consumers Complain About Errors on Their Credit Reports*, N.Y. Times (updated Oct. 1, 2021), https://nyti.ms/3MGbTa9. Even when her credit score drops by 200 points, which "prevented the borrower from taking steps like moving and buying a car," she has no avenue to relief under the law.

If the district court's rule is left standing, the end result, in the foregoing examples and in countless others, will be that CRAs will enjoy virtual immunity from liability for consumer-credit inaccuracies, no matter how pervasive, obvious, or harmful to consumers. And consumers will continue to pay the price.

CONCLUSION

The district court's order granting summary judgment to Trans Union should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Local Rules 29.1(c) and 32.1(a)(4)(A) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), it contains 5,120 words.

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared using Microsoft Word in Century Schoolbook font, in a size measuring no less than 14 points.

s/ *Sarah R. Goetz*