No. 20-17160

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARSHALL GROSS,

Plaintiff-Appellant,

v.

CITIMORTGAGE, INC., ET AL

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Arizona

Hon. Susan R. Bolton

Case No. 2:18-cv-02103

BRIEF OF *AMICUS CURIAE* CONSUMER FINANCIAL PROTECTION BUREAU IN SUPPORT OF PLAINTIFF-APPELLANT'S REQUEST FOR REVERSAL

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INTEREST OF THE BUREAU

To ensure fair and accurate credit reporting, the Fair Credit Reporting Act (FCRA or the Act), 15 U.S.C. § 1681 *et seq.*, imposes various requirements that consumer reporting agencies (CRAs), and entities that furnish information to CRAs (furnishers), must follow when they compile and disseminate personal information about individuals. For example, FCRA requires a furnisher who is notified by a CRA of a dispute about information it furnished to the CRA (i.e., an indirect dispute)[1] to "conduct an investigation with respect to the disputed information." 15 U.S.C. § 1681s-2(b)(1)(A). Although FCRA itself does not distinguish between legal and factual disputes, the district court below found that to the extent that an indirect dispute claims a consumer did not owe a debt for a legal reason, as opposed to a factual reason, FCRA does not require a furnisher to investigate that indirect dispute. This holding runs counter to the purpose of the FCRA provision to require reasonable investigation, and it leaves room for furnishers to evade the investigation obligation if they can construe the relevant dispute as a "legal" one.

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[1] An "indirect dispute" is one that the consumer files with a CRA, and the CRA, in turn, notifies the furnisher of the dispute. In contrast, a "direct dispute" is one that the consumer files directly with the furnisher under a different provision of the FCRA, 15 U.S.C. § 1681s-2(a)(8). FCRA does not provide a private right of action to consumers for violations of the furnisher's obligation to investigate direct disputes. 15 U.S.C. § 1681s-2(c)(1).

The Consumer Financial Protection Bureau (Bureau) has exclusive rule-writing authority for most provisions of FCRA, 12 U.S.C. § 5581, and it, along with various other federal and state regulators, may enforce the Act's requirements. 15 U.S.C § 1681s(a) - (c). These requirements include Congress's specific mandate that furnishers investigate disputed information in a credit file. The interpretation adopted by the district court below would curtail the reach of the investigation requirement for indirect disputes in a way that runs counter to the purpose of that provision, which is to require reasonable investigation of a consumer's dispute. Such an unduly narrow interpretation of the investigation requirement could yield increased inaccuracy in credit reporting and, contrary to congressional intent, could limit the realm in which the Bureau can exercise its authorities to protect consumers. It could also increase the volume of consumer complaints about credit reporting issues that the Bureau receives and addresses.[2] The Bureau therefore has a substantial interest in the issue presented in this case.

[2] In 2020, the Bureau received and addressed over 200,000 consumer complaints related to incorrect information on credit/other consumer reports and/or issues with company investigations. *See* Consumer Fin. Prot. Bureau, *Consumer Response Annual Report* (March 2021) at 23, *available at* https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf

STATEMENT

A. Statutory Background

Congress enacted FCRA 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). From its inception, FCRA has regulated the practices of consumer reporting agencies (CRAs) that collect and compile consumer information into consumer reports for use by credit grantors, insurance companies, employers, landlords, and other entities in making eligibility decisions affecting consumers. To further ensure that consumer reports are accurate, in 1996 Congress amended FCRA to also impose "duties on the sources that provide credit information to CRAs, called 'furnishers' in the statute." *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1153 (9th Cir. 2009). These duties include requiring a furnisher, after it receives notice of dispute from a CRA pursuant to §1681i(a)(2) (known as an "indirect dispute"), to:

> (A) [C]onduct an investigation with respect to the disputed information;
> (B) [R]eview all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;
> (C) [R]eport the results of the investigation to the consumer reporting agency;
> (D) [I]f the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and
> (E) [I]f an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting

> agency only, as appropriate, based on the results of the reinvestigation promptly –
>
> (i) [M]odify that item of information;
> (ii) [D]elete that item of information; or
> (iii) [P]ermanently block the reporting of that item of information.

15 U.S.C. § 1681s-2(b)(1).

These responsibilities are part of FCRA's overall framework for requiring accuracy in credit reports. When a consumer notifies a CRA that he or she disputes "the completeness or accuracy of any item … contained in a consumer's file," the CRA is required to "conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate." 15 U.S.C. § 1681i(a)(1)(A) (emphasis added). The CRA is also required, within five business days of receiving notice of the dispute, to "provide notification of the dispute to any person who provided any item of information in dispute." 15 U.S.C. § 1681i(a)(2)(A). After receiving such notice, the furnisher is required to engage in the activities listed above including "conduct[ing] an investigation with respect to the disputed information," "review[ing] all relevant information provided by the" CRA, and "report[ing] the results of the investigation to the" CRA. *Id.* at § 1681s-2(b)(1)(A)-(C). If the furnisher's investigation finds the information is incomplete or inaccurate, the furnisher "report[s] those results to all other [nationwide CRAs] to which the [furnisher] furnished the information," and, "for purposes of reporting to a [CRA]" promptly modifies, deletes, or permanently blocks the reporting of that item of

information. 15 U.S.C. § 1681s-2(b)(1)(D)-(E). Within 30 days of receiving notice of the dispute, the CRA must record the current status of the disputed information or modify or delete the disputed information, as appropriate, and must then promptly notify the furnisher of that information that the information has been modified or deleted from the consumer's file. 15 U.S.C. § 1681i(a)(1)(A), (a)(5)(A).[3] After completing a reinvestigation, the CRA must also notify the consumer of the results within five business days. 15 U.S.C. § 1681i(a)(6). A consumer may sue a furnisher for willful or negligent noncompliance with its obligation to perform an investigation under § 1681s-2(b). 15 U.S.C. §§ 1681(n), 1681(o).

B. **Facts**

This case arises from appellee CitiMortgage's alleged furnishing of inaccurate information about appellant, and CitiMortgage's alleged failure to conduct a reasonable investigation after it was notified by a CRA of appellant's dispute.

Appellant Marshall Gross purchased a single-family home in Arizona in 2007 and financed the purchase with two mortgage loans.[4] The junior loan was ultimately assigned to CitiMortgage. In the interim, Mr. Gross experienced financial

[3] If the CRA reinvestigation does not resolve the dispute, the consumer has the right to add a brief statement about the dispute that will appear or be summarized in all subsequent consumer reports from the CRA that contain the information. 15 U.S.C. § 1681i(b)-(c).

[4] The facts in this section are derived from the district court's case description, 2020 WL 5976678 at *1-4, which is in Appellant's Excerpts of Record (ER) 5-8.

difficulties and made no payments on the debt after November 2012. In 2013, the senior lender sold the property to a third party as part of a non-judicial foreclosure. From 2013 to 2017, CitiMortgage furnished the debt showing the past due balance on the junior loan. In 2017, Mr. Gross was denied a mortgage, and complained to CitiMortgage that "he did not owe Citi any money post foreclosure."

In February 2018, Mr. Gross filed a dispute with a nationwide CRA over the debt reported by CitiMortgage. The CRA forwarded the dispute to CitiMortgage, including a note indicating that Mr. Gross should not be held liable for the junior loan under an Arizona anti-deficiency statute.[5] CitiMortgage responded by noting the amount it considered past due and adding a notation that Mr. Gross disputed the account information under FCRA. It continued to report that Mr. Gross owed money on that account through March 2018. On April 19, 2018, CitiMortgage charged-off the debt. In May 2018, Gross again filed a written dispute – this time with the three nationwide CRAs. Gross asserted that he did not owe any money on the junior loan because the relevant property was foreclosed upon on June 13, 2013. The CRAs forwarded the dispute to CitiMortgage, which closed the account and changed the

[5] Under Arizona law, an action cannot be maintained to recover any unpaid balance on the debt after a foreclosure. Ariz. Rev. Stat. Ann. § 33-814(G); *see also Helvetic Serv., Inc. v. Pasquan*, 470 P.3d 155, 158 (Ariz. 2020). As discussed further below, the district court found that the effect of the statute was that the debt was uncollectible, but was not extinguished and, in fact, could be furnished to consumer reporting agencies. 2020 WL 5976678, at *7.

records to show that Mr. Gross had a $0 balance on the relevant loan as of Spring 2018.

C. Procedural History

Mr. Gross brought suit in July 2018. *See Gross v. CitiMortgage Inc.*, No. CV-18-02103-PHX-ROS, 2020 WL 5976678, at *4 (D. Ariz. Oct. 8, 2020). He alleged that CitiMortgage violated FCRA by willfully providing inaccurate information to credit reporting agencies and failing to conduct a reasonable investigation following receipt of the written disputes earlier in 2018, in violation of 15 U.S.C. § 1681s-2(a) and (b). *Id.* In a motion for summary judgment, CitiMortgage contended that its reporting was accurate because the Arizona anti-deficiency statute did not extinguish Gross's debt and that it was not required to make any representation about whether the debt could be collected. *Id.* at *5. CitiMortgage also argued that it had no legal duty to investigate whether the anti-deficiency statute extinguished Gross's debt. *Id.*[6]

The district court granted summary judgment for CitiMortgage. The court found CitiMortgage accurately reported that Mr. Gross's debt on the junior lien was due until 2018, because, according to the court, the Arizona anti-deficiency statute did not extinguish the debt after the 2013 Trustee sale; it merely ended CitiMortgage's *ability to collect* on the debt after the sale. *Id.* at *7. The court

[6] CitiMortgage also challenged Mr. Gross' standing.

further found that FCRA did not obligate CitiMortgage, after receiving the CRAs' notices of dispute, to investigate whether the debt had actually been due (i.e., to evaluate the effect of Arizona's anti-deficiency statute). *Id.* at *10. It ruled that whether the Arizona anti-deficiency statute rendered Mr. Gross's debt uncollectible is a *legal* question, not a factual one, and in the context of indirect disputes "the FCRA does not impose on furnishers a duty to investigate legal disputes, only factual inaccuracies." *Id.* (citing *Chiang v. Verizon New England Inc.*, 595 F.3d 26, 38 (1st Cir. 2010)).

SUMMARY OF ARGUMENT

The district court's decision that FCRA section 623(b) imposes no duty on furnishers to investigate legal disputes was incorrect, and this Court should reverse it. FCRA section 623(b)(1) states that if a furnisher receives from a CRA notice of a dispute with regard to the information it provided to a CRA, it shall "conduct an investigation with respect to the disputed information." 15 U.S.C. § 1681s-2(b)(1)(A). The text of the statute does not distinguish between legal and factual disputes. The district court nevertheless interpreted this provision to require an investigation only of factual, not legal, disputes. The district court erred, and this Court should decline to rely, in the context of FCRA section 623(b), on a formalistic distinction between factual and legal questions. Such a distinction is inconsistent with the text and purpose of FCRA, would be hard to implement, and would allow

furnishers to evade their legal obligation to investigate disputes by labelling disputes as "legal" in nature.

ARGUMENT

A. FCRA Does Not Categorically Exempt Legal Issues from the Investigations Furnishers Must Conduct Pursuant to Section 623

FCRA section 623(b)(1) requires a furnisher who receives notice of a dispute about the completeness or accuracy of information it provided to a CRA, to "conduct an investigation with respect to the disputed information." 15 U.S.C. § 1681s-2(b)(1)(A). Such an investigation must be "at least a *reasonable*, non-cursory investigation." *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1157 (9th Cir. 2009) (emphasis added). This "comports with the aim of the statute to 'protect consumers from the transmission of inaccurate information about them.'" *Id.*[7]

[7] "Because of the importance of consumer report accuracy to businesses and consumers, the structure of …[FCRA] creates interrelated legal standards and requirements to support the policy goal of accurate credit reporting …[including the imposition of] certain accuracy obligations on furnishers … [and the inclusion of] a dispute and investigation framework, with obligations on both CRAs and furnishers, to ensure potential errors are investigated and corrected promptly, if necessary." *Examining the Consumer Reporting Agencies and the Fair Credit Reporting Act*: *Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs*, 115th Cong. 361 (2018) (Testimony of Peggy Twohig), *available at*: https://www.govinfo.gov/content/pkg/CHRG-115shrg32483/html/CHRG-115shrg32483.htm. If courts maintain a legal/factual divide for furnisher obligations with respect to disputes, consumers would have no recourse for whole classes of inaccuracies on their consumer reports. There is no indication that Congress intended that.

What constitutes a "reasonable" investigation is context specific, *id.,* and the investigation must be "reasonable under the circumstances. It may be either simple or complex, depending on the nature of the dispute." Fed. Trade Comm'n, 40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations (2011), https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf.

FCRA specifically describes the types of indirect disputes that furnishers need to investigate – those that dispute "the completeness or accuracy of any item of information contained in a consumer's file."[8] Nothing in that description suggests that Congress intended to exclude disputes that implicate legal issues – to the contrary, the accuracy and completeness of information in consumer files often turns on legal issues, such as whether a debt is valid and whom it obligates. And although the Bureau has not issued detailed regulations addressing indirect furnisher disputes, it has issued regulations implementing the requirement for furnishers to conduct

[8] 15 U.S.C. §§ 1681i(a)(1)(A), (a)(2), 1681s-2(b)(1). Notably, "under the FCRA, a CRA is required to delete an item if it cannot be verified … Thus, if a dispute (whether legal or otherwise) cannot be resolved, the presumption should be in favor of the consumer, not the furnisher … If a CRA cannot confirm the debt's validity, the FCRA requires that it be deleted." National Consumer Law Center, *Fair Credit Reporting*, Chapter 4.5.3.4.6 (9th ed. 2017), *updated at* www.nclc.org/library. https://library.nclc.org/fcr/0405030406-0

investigations of direct disputes concerning accuracy that the Court may look to for guidance. Those regulations specifically require that "a furnisher must conduct a reasonable investigation of a direct dispute if it relates to [t]he consumer's liability for a credit account or other debt with the furnisher,"[9] which is exactly the type of dispute at issue in this case. Moreover, while a furnisher is relieved of these direct dispute investigation requirements if certain exceptions apply, none of the exceptions set forth in the regulation would exclude the type of dispute at issue in this case. *See* 12 C.F.R. § 1022.43. Nothing in the exceptions or regulation overall suggest that a furnisher would have difficulty investigating disputes that are legal in nature – indeed, the regulations explicitly require investigation of consumer disputes related to a consumer's liability for a credit account or other debt with the furnisher.[10]

Nevertheless, rather than assessing the context-specific reasonableness of the furnisher's investigation, the district court below found the furnisher had *no* investigation obligation because § 1681s-2(b) simply "does not impose on furnishers a duty to investigate legal disputes, only factual inaccuracies." 2020 WL 5976678,

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[9] 12 C.F.R. § 1022.43(a), (a)(1)

[10] Moreover, FCRA explicitly required the agencies to weigh a number of factors in prescribing these regulations, including: "the benefits to consumers with the costs on furnishers," "the impact on overall accuracy and integrity of consumer reports," and "whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any such dispute." 15 U.S.C. 1681s-2(a)(8)(B).

at *10. In making this distinction, the court relied on a First Circuit case, *Chiang v. Verizon New England Inc.*, which imported a factual/legal distinction from case law analyzing a different FCRA provision: Section 611, 15 U.S.C. § 1681i.

FCRA Section 611 requires CRAs to conduct a "reasonable reinvestigation" of disputes received (directly or indirectly through a reseller) from consumers regarding the accuracy or completeness of information in the consumer's file. The district court below implied that the First Circuit found this "reasonable reinvestigation" provision requires CRAs to investigate only factual disputes, not legal questions. 2020 WL 5976678, at *10 (citing *Chiang* for distinction between duty to investigate factual inaccuracies and no duty to investigate legal disputes). And, indeed, some courts, including this one, have found that a "CRA is not required as part of its reinvestigation duties to provide a legal opinion on the merits." *See, e.g.*, *Carvalho v. Equifax Info. Servs. LLC*, 629 F.3d 876, 891 (9th Cir. 2010). According to the district court, the First Circuit in *Chiang* joined a few other courts that have expanded a distinction between legal and factual disputes in the CRA context to the context of FCRA section 623(b) furnisher investigations, holding that "just as in suits against CRAs, a plaintiff's required showing [in a case against a

furnisher] is factual inaccuracy, rather than the existence of disputed legal questions." *Chiang,* 595 F.3d 26, 38 (1st Cir. 2010).[11]

Despite this smattering of cases, the Ninth Circuit has not applied the factual/legal distinction in the context of furnisher investigations. And even if the factual/legal distinction that the district court relied on was warranted in the CRA context – which, as explained below, it is not – it should not be extended to the furnisher context. Courts that have distinguished between factual and legal investigations in the CRA context have based their holdings on the determination that "a credit agency such as Trans Union is *neither qualified nor obligated to resolve* under the FCRA" the relevant "legal issue." *See, e.g.*, *DeAndrade v. Trans Union LLC*, 523 F.3d 61, 68 (1st Cir. 2008) (emphasis added). "With respect to the … disputed information, the CRA is a third party, lacking any direct relationship with the consumer, and its responsibility is to '*re* investigate' a matter once already investigated in the first place." *Gorman*, 584 F.3d at 1156-57. However, "the

[11] *See also Hopkins v. I.C. Systems, Inc.*, Civ. No. 18-2063, 2020 WL 2557134, at *7 (E.D. Pa. May 20, 2020) ("While the legal inaccuracy exception has developed around 15 U.S.C. § 1681i, which sets the requirements for reinvestigations by credit reporting agencies as opposed to furnishers . . . federal courts have extended the legal inaccuracy exception to…investigations performed by furnishers"); *Herrell v. Chase Bank USA*, 218 F. Supp. 3d 788 (E.D. Wis. 2016) (granting defendant summary judgment because the dispute posed "a legal question 'that can only be resolved by a court of law'"); *Van Veen v. Equifax Info.*, 844 F. Supp. 2d 599, 605 (E.D. Pa. 2012) (applying legal question exception to FCRA section 623(b)).

rationale for excluding legal validity from the scope of a CRA's investigative duty does not extend to a furnisher." *Markosyan v. Hunter Warfield, Inc.*, No. CV 17-5400, 2018 WL 2718089, at *8 (C.D. Cal. May 11, 2018). Unlike CRAs, furnishers *are* qualified and obligated to assess (and routinely *do* assess in deciding whether to collect on obligations, and in complying with their duties to accurately report credit information)[12] issues such as whether debts are actually due and/or are collectible. As this Court has noted, the creditor/furnisher "stands in a far better position to make a thorough investigation of a disputed debt than the CRA does on reinvestigation." *Carvalho*, 629 F.3d at 892.

Moreover, even in the context of Section 611 CRA reinvestigations, it is not clear that a stark distinction between legal and factual disputes – such that CRAs are not required to investigate any "legal" disputes – is appropriate. This Court has held that "[a] CRA is not required as part of its reinvestigation duties to provide a legal opinion on the merits [because] determining whether the consumer has a valid defense 'is a question for a court to resolve in a suit against the [creditor]." *Id.* But

[12] Furnishers have obligations with respect to the "accuracy" of the information they provide (i.e., including that the information "correctly [r]eflects . . . liability for the account"). 12 C.F.R. § 1022.41(a), (a)(1). "Neither the FCRA nor its implementing regulations impose … a duty [on CRAs] to determine the legality of a disputed debt," so "it makes sense" that "[o]nly furnishers are tasked with accurately reporting liability": "they assumed the risk and bear the loss of unpaid debt, so they are in a better position to determine the legal validity of a debt." *Denan v. Trans Union LLC*, 959 F.3d 290, 295 (7th Cir. 2020).

excusing CRAs from having to conclusively adjudicate a legal dispute is not the same thing as excusing them from investigating any dispute that could be characterized as "legal." For example, even if Section 611 does not require a CRA to interpret a particular ambiguous or complex statute, it may require the CRA to take lesser steps, such as assessing whether the CRA has received or can readily obtain any guidance about the issue and/or has already developed a policy about how to handle the situation, as part of a reasonable investigation under the circumstances.

Relatedly, although the district court cited *Chiang* in support of its holding that "FCRA does not impose on furnishers a duty to investigate legal disputes," 2020 WL 5976678, at *10, the *Chiang* court did not go this far. The First Circuit's decision excused CRAs and furnishers from having to conclusively adjudicate certain legal disputes but did not extinguish their obligation to conduct an investigation solely because a dispute could be categorized as a "legal" dispute. The *Chiang* court held that "just as in suits against CRAs, a plaintiff's required showing [in a suit against a furnisher] is *factual* inaccuracy,[13] rather than the existence of disputed legal questions . . . [and] [l]ike CRAs, furnishers are 'neither qualified nor

[13] "[T]he Ninth Circuit has not expressly clarified whether, as a prerequisite to an unreasonable investigation claim [brought by a private plaintiff]. . . plaintiff must show that the information on the credit report was inaccurate or incomplete." *Jones v. Pennsylvania Higher Educ. Assistance Agency*, No. CV 16-00107-RSWL-AFMx, 2017 WL 4594078, at *6 (C.D. Cal. July 24, 2017).

obligated to *resolve* matters that 'turn on questions that can only be resolved by a court of law." 595 F.3d at 38 (emphasis added). Thus, the First Circuit in *Chiang* did not rely on a formal distinction between legal and factual disputes to evaluate the relevant investigation; instead, it exempted CRAs and furnishers from having to conclusively adjudicate complicated legal issues, and explicitly reiterated that "what is a reasonable investigation by a furnisher may vary depending on the circumstances." *Id*. On the specific facts before it, the First Circuit granted summary judgment for the furnisher because Mr. Chiang had not presented evidence that the procedures employed by the furnisher (which were the furnisher's standard procedures) were actually unreasonable. *Id*.[14] This is far afield from this case, where appellant disputes the adequacy of the investigation procedures CitiMortgage employed. *See* Appellant's Br. 41-43.

Finally, even if, as the district court indicated, the First Circuit had actually held that "FCRA does not impose on furnishers a duty to investigate legal disputes," that holding would have been in error, and this Court should not follow it.

[14] The *Chiang* court also granted summary judgment to the furnisher, finding the plaintiff had not demonstrated any actual factual inaccuracies in his billing that a reasonable investigation could have detected. 595 F.3d at 41.

B. Exempting Legal Issues from the Investigations Furnishers Must Conduct Would be Hard to Implement and Could Lead to Evasion of the Purposes of FCRA

This Court should reject the district court's reliance on a formal distinction between factual and legal investigations because it will likely prove unworkable in practice. "[C]lassifying a dispute over a debt as 'factual' or 'legal' will usually prove a frustrating exercise." *Cornock v. Trans Union LLC*, 638 F. Supp. 2d 158, 163 (D.N.H. 2009). Many disputes can be characterized as either factual or legal. For example, the question of whether a debt has been validly transferred from an original creditor to a debt collector has been described as a "legal dispute," *see Rodas v. Experian Info. Sols., Inc.*, No. 19-CV-07706, 2020 WL 4226669 (N.D. Ill. Jul. 23, 2020), a "closely intertwined question[] of law and fact," *see Hoyos v. Experian Info. Sols., Inc.*, No. 20 C 408, 2020 WL 4748142, at *3 (N.D. Ill. Aug. 17, 2020), and a factual dispute. *See* Appellants' Reply Brief at 10, *Rodas v. Transunion Data Solutions, LLC*, No. 20-2392 (7th Cir. Mar. 23, 2021), ECF No. 51.[15]

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[15] The appellants in *Rodas* claim: "[Appellees] provide no argument whatsoever to explain why [other cases where the dispute is] – 'these debts are not mine' qualify as unequivocal factual matters, but Appellants' disputes – 'these debts are not yours' – are [according to appellees] pure legal questions. No argument is offered because there is no argument to make. It is a distinction without a difference. Both sets of disputes are unequivocal factual matters. Both sets of disputes require a rudimentary review of basic documentation to determine factual accuracy. And both sets of disputes require the CRAs to conduct a reasonable investigation." The issue of whether this dispute is "factual" or "legal" is also being litigated in other appeals currently pending before the Seventh Circuit. *See Molina v. Trans Union, LLC*, No.

As a result of the difficulty in cleanly distinguishing legal and factual issues, even in the context of CRA reinvestigations, judges have sometimes rejected a formal legal/factual distinction. For example, "the Ninth Circuit has endorsed holding a CRA liable under FCRA when it 'overlooks or misinterprets' … publicly available documents of *legal* significance." *Nelson v. Ocwen Loan Servicing, LLC*, No. 3:14-cv-00419-HZ, 2014 WL 2866841, at *5 (D. Or. June 23, 2014) (emphasis added) (relying on *Dennis v. BEH-1, LLC*, 520 F.3d 1066, 1068-70 (9th Cir. 2008).[16]

Such rejections of a stark distinction between legal and factual investigations are consistent with the intent of FCRA, which requires reasonable investigations of consumer disputes. The district court's opinion that furnishers are excused from investigating any dispute that could be characterized as "legal" would allow furnishers to evade their investigation obligation by construing the relevant dispute as a "legal" one.

Thus, rather than relying on a formal distinction between factual and legal disputes, the district court should have evaluated whether the furnisher's

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20-2775; *Hoyos v. Equifax Info. Servs., LLC*, No. 20-2776; *Soyinka v. Equifax Info. Servs., LLC*, No. 20-3000; *Amorah v. Equifax Info. Servs., LLC*, No. 20-3351; *Cowans v. Equifax Info. Servs., LLC*, No. 20-3368; *Chuluunbat v. Cavalry Portfolio Servs., LLC*, No. 20-2373.

[16] The Ninth Circuit in *Dennis* also explained the importance of CRAs training their employees "to understand the legal significance of the documents they rely on." 520 F.3d at 1071.

investigation here was "reasonable." The district court found CitiMortgage "conduct[ed] a reasonable non-cursory investigation into the accuracy of the reporting" (i.e., "into the patent accuracy of Gross' debt") but "was not obligated to conduct a legal investigation into whether the debt was uncollectible, and did not do so." 2020 WL 5976678, at *10-11. Relying on this formal distinction between legal and factual issues, the court essentially found that CitiMortgage had no obligation to investigate Plaintiff's specific claim that he "should not be held liable for debt after foreclosure" (i.e., that the debt had been extinguished). *Id.* at *3. While CitiMortgage did not necessarily have to resolve the legal question of whether the Arizona anti-deficiency statute extinguished the debt (a question on which the district court described the caselaw as "slim") in order for its investigation to comply with FCRA, it violated FCRA by conducting no investigation whatsoever of this question. The court erred in finding there exists a categorical exemption from the investigation requirement of any indirect dispute that could be characterized as legal. Such an exemption is unwarranted. Regardless of how much investigation may have been reasonable, CitiMortgage should not have been excused from performing *any* investigation whatsoever of the legal question.

CONCLUSION

For these reasons, the Court should conclude that the district court erred in holding that furnishers are categorically excused from conducting investigations of legal disputes when they receive notification of such disputes from CRAs.

Dated: April 19, 2021

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UNITED STATES COURT OF APPEALS
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- [ ] it is a joint brief submitted by separately represented parties;
- [ ] a party or parties are filing a single brief in response to multiple briefs; or
- [ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated _____.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature /s/ *Karen Bloom* **Date** 4/19/21
*(use "*s/[typed name]*" to sign electronically-filed documents)*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit on April 19, 2021, by using the appellate CM/ECF system.

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

Dated: April 19, 2021 /s/ *Karen S. Bloom*

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