FCRA LITIGATION UPDATE

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Written and Presented By:
GREGG STEVENS, *Dallas*
McGlinchey Stafford

Co-Author:
GREGORY DEVRIES, *Houston*
McGlinchey Stafford

State Bar of Texas
18TH ANNUAL
ADVANCED CONSUMER & COMMERCIAL LAW
September 22-23, 2022
Austin

CHAPTER 12

Gregg D. Stevens

member
dallas
gstevens@mcglinchey.com
T (214) 445-2406 F (214) 594-2197

Legal Assistant
Linda Weaver
lweaver@mcglinchey.com
(214) 445-2433

education

Southern Methodist University Dedman School of Law (J.D., 1987)

Miami University of Ohio (B.S., Finance, 1984)

admissions

Texas
U.S. District Court for the Eastern District of Texas
U.S. District Court for the Northern District of Texas
U.S. District Court for the Southern District of Texas
U.S. District Court for the Western District of Texas
U.S. Court of Appeals for the Ninth Circuit
U.S. Court of Appeals for the Fifth Circuit

affiliations

Professional

- American Bar Association, Committee on Consumer Financial Services
- Association of Credit and Collection Professionals (ACA), Members' Attorney Program
- Dallas Bar Association
- Texas Bar Foundation, Fellow

Although I'm a litigator, I also understand the complexities of the regulatory framework because I am well versed in "alphabet soup" litigation. I can see how a problem needs addressing by both a litigator, which is a temporary fix, and our business banking group, which can lead to a permanent fix by correcting a systemic problem within the client's organization. I believe my previous experience both as an attorney at the Department of Justice and as in-house counsel at a large bank enhances my ability to help clients.

Gregg Stevens represents financial institutions, large national banks, lenders, credit card issuers, auto finance companies, and other organizations in commercial litigation and disputes stemming from the federal statutes pertaining to consumer financial services. With a deep well of knowledge on the "alphabet soup" laws, Gregg primarily defends clients involved in regulatory issues raised under the Fair Credit Reporting Act (FCRA), the Truth in Lending Act (TILA), the Fair Debt Collection Practices Act (FDCPA), and the Telephone Consumer Protection Act (TCPA), as well as under the state Unfair or Deceptive Acts or Practices (UDAP) laws, among others.

Gregg also advises companies in disputes centered on issues such as credit acceptance, mortgage fraud, credit card fees and practices, consumer leases, payday loans, debt collection

- State Bar of Texas

Community

- Temple Shalom, General Counsel. Pro Bono
- Plano Wildcats Hockey Association, President, 2018–2019

practices, credit reporting, and application of credit card payments. He frequently helps financial institutions obtain recoveries from debt elimination scam promoters.

Gregg's previous experience manifests in his current practice. He spent several years with the Department of Justice Tax Division, litigating federal tax cases on behalf of the United States in federal courts in Texas and New Mexico, and then served as in-house counsel at a large national bank. Gregg makes a point of getting to know his clients well, and he communicates frequently with them about their needs, concerns, and problems. With a perspective gained from in-house experience, Gregg appreciates that the business solution is often preferable to the legal solution, and he always factors the client's goals and financial standing into his strategies. He relates to his clients and their concerns because he has been in their shoes and knows what it's like to feel pressure to contain costs and settle cases quickly.

Drawing on his knowledge about the regulatory landscape, Gregg frequently speaks to clients and national audiences on consumer financial services litigation topics. He also writes about consumer credit issues for legal publications.

presentations

"TCPA and Remaining Questions After the Facebook Decision," 2021 Virtual Consumer Finance Legal Conference, October 15, 2021

"Is the TCPA Robocall Restriction Enforceable?" McGlinchey webinar, December 3, 2020

"Credit Reporting in the Pandemic Era," Client webinar, November 11, 2020

"Efforts to Minimize Liability under the FCRA," 2020 Virtual Consumer Finance Legal Conference, October 9, 2020

"The Evolving TCPA Landscape and Circuit Court Splits," 2020 Virtual Consumer Finance Legal Conference, October 9, 2020

"TCPA and the First Amendment," Texas Bar CLE's 16th Annual Course Advanced Consumer & Commercial Law, August 28, 2020

"FCRA Litigation Pitfalls to Watch Out For," AccountsRecovery.net webinar, May 26, 2020

"FCRA Hot Topics Including Furnisher Issues and Other Developments," 2019 Consumer Finance Legal Conference, New Orleans, LA, October 15, 2019

"TCPA Judicial Developments, the FCC's Recent Regulatory Initiatives, and their Impact on Related Communications," 2019 Consumer Finance Legal Conference, New Orleans, LA, October 14, 2019

"Scared Straight: Avoiding Grievances," Texas State Bar 15th Annual Course on Advanced Consumer & Commercial Law, Austin, TX, September 5, 2019

"The Telephone Consumer Protection Act (TCPA) Litigation Bubble: Evolving Technology, Record-Breaking Settlements, and Uncertain Legal Precedent," ACI's 30th National Forum on Consumer Financial Class Actions and Government Enforcement, Chicago, IL, July 16, 2018

"The Evolving Landscape of First Party Collections," The Conference on Consumer Finance Law Annual Consumer Financial Services Conference, Ft. Worth, TX, November 3, 2017

"FCRA and the CFPB: Managing Credit Reporting Disputes, Litigation, and Bankruptcy Reporting; Metro 2 Updates," 16th Annual Consumer Finance Legal Conference, New Orleans, LA, October 12, 2017

"Updates on TCPA, FCRA, and the CFPB," Independent Finance Association of Illinois, June 16, 2017

"Legal Developments in Federal Debt Collection, Private Education Loan Developments, and Limited English Proficiency," Client CLE Presentation, May 18, 2017

"A Closer Look at the CFPB's Proposals to Overhaul the Debt Collection Industry," 2017 ABA Consumer Financial Services Committee Winter Meeting, Carlsbad, CA, January 13, 2017

"The Fair Credit Reporting Act: From Reasonable Investigation to Permissible Purpose – How to Avoid & Successfully Defend FCRA Claims," 15th Annual Consumer Finance Legal Conference, New Orleans, LA, September 30, 2016

"Litigating and Trying Cases Under the Fair Credit Reporting Act," 12th Annual Advanced Consumer & Commercial Law Course, TexasBarCLE, Austin, TX, September 15, 2016

"The Fair Credit Report Act: From Reasonable Investigation to Permissible Purpose – How to Avoid, and Successfully Defend, FCRA Claims," Client Presentation, Plano, TX, August 29, 2016

"The Fair Credit Reporting Act: From Reasonable Investigation to Permissible Purpose – How to Avoid and Successfully Defend FCRA Claims," 2016 ACA International Convention & Expo, Denver, CO, June 17, 2016

"FCRA Update," Comenity Bank, Columbus, OH, April 2015

"The Telephone Consumer Protection Act - What's Debt Got to Do with It?"10th Annual Advanced Consumer & Commercial Law Course, TexasBarCLE, Austin, TX, September 12, 2014

"Update on FDCPA and TCPA," Consumer Credit 2011, The Credit Law Institute and The Conference on Consumer Finance Law, October 27, 2011

"Open-End Credit Issuer Legislation and Trends in Credit Card Litigation," 10th Annual Consumer Finance Legal Conference, October 20, 2011

"Update on FCRA Issues and Developments," Consumer Credit 2010, The Credit Law Institute and Conference on Consumer Finance Law, October 28, 2010

"Debt Collection and Servicer Compliance Issues in an Electronic Age; Servicer and Debt Buyer Licensing; Collection Litigation Issues," 9th Annual Consumer Finance Legal Conference, October 21, 2010

"Combating Closing Table Fraud: Tactics for Successful Identification and Reporting," October Research Corporation webinar, October 7, 2010

"Arbitration: What's Left," Suing, Defending, and Negotiating with Financial Institutions, February 25, 2010

"Servicing Litigation, Debt Collection Compliance and Licensing Issues Under State and Federal Law," 8th Annual Consumer Finance Legal Conference, October 22, 2009

"Other FCRA Developments and Litigation - Red Flag ID Theft Rules and Issues," Credit 2008, The Credit Law Institute and Conference on Consumer Finance Law, November 7, 2008

"FCRA Developments and Litigation," Consumer Credit Conference, Dallas, TX, November 9, 2007

"Debt Elimination Scams," Houston Bar Association, Houston, TX, October 10, 2007

"Fair Debt Collection Practices Act," Dallas, TX, October 2007

"Fair Credit Reporting Act Teleconference," Lorman, Dallas, TX, September 18 and March 21, 2007

"Debt Elimination Scams," Consumer Credit Conference, November 9, 2006

"Drafting and Enforcing Arbitration Provisions: Recent Trends," 3rd Annual Consumer Finance Legal Conference, New Orleans, LA, September 9, 204

"Identity Theft," Consumer Credit Update, Fall 2003

published articles

"CFPB Update on the Amicus Program and Other Litigation," *ABA Business Law Today*, May Month-In-Brief: Business Regulation & Regulated Industries, June 2, 2022

"Facebook and Beyond," *Advanced Consumer and Commercial Law*, State Bar of Texas, October 8, 2021

"Constitutionality of the TCPA Between 2015 and 2020," ABA Litigation Section *Consumer Litigation,* Volume 2, Number 1, Summer 2021

"Courts Rule on Constitutionality of TCPA Robocall Restriction," *ABA Business Law Today*, November Month-In-Brief: Business Regulation & Regulated Industries, November 2020

"Navigating the FCRA in the heavy wake and possible undertow of the CARES Act changes to the FCRA," Westlaw's Consumer Financial Service Law Report, May 5, 2020

"Mitigating risk in pulling credit reports," Auto Finance Excellence, March 2, 2020

Co-author, "Chapter 3: Fair Credit Reporting Act" and "Chapter 11: Credit Cards," *Consumer Financial Services Answer Book (2020 Edition)*, PLI, October 17, 2019

"Credit Reporting Dispute Investigations in the Wake of Felts," ABA Business Law Section Consumer Financial Committee Newsletter, March 25, 2019

Chapter Author, *Consumer Financial Services Answer Book (2017 Edition)*, PLI, September 1, 2017

"Confidentiality in Settlement Agreements Is a Virtual Necessity," GPSolo, Vol. 29, No. 6, November/December 2012

"Impact of the TCPA and the FDCPA on Debt Collection: Current Issues and Recent Developments 2012," *Consumer Finance Law Quarterly Report*, Vol. 66, Nos. 1-2

"Fair Credit Reporting Act Update," *Consumer Finance Law Quarterly Report*, Vol. 65, Nos. 1-2, Spring/Summer 2011

"Anatomy of a scam: How Chase Bank won injunction, damages against promoter of debt elimination scheme," *Consumer Financial Services Law Report*, Vol. 12, No. 13, December 2008

"Post-Bankruptcy Credit Reporting: What Should Be Done?" *Banking & Financial Services*, Vol. 27, No. 6, June 2008

"The Impact of TILA on the Debtor-Creditor Relationship," *Consumer Finance Law Quarterly Report,* Vol. 61, No. 2, Summer 2007

"Debt-Elimination Scams," *The Review of Banking & Financial Services*, October 2006

"Identity Theft," *Consumer Credit Update*, Fall 2003

Greg DeVries

associate
houston
gdevries@mcglinchey.com
T (713) 335-2145 F (713) 457-5207

Legal Assistant
Teri Rostron
trostron@mcglinchey.com
(713) 335-2106

education

South Texas College of Law (J.D., 2017)

- *CALI Excellence for the Future Award in Civil Trial Advocacy*

Baylor University (B.A., Journalism, 2014)

admissions

Texas
U.S. District Court for the Southern District of Texas

Greg DeVries represents financial institution clients including national banks, mortgage lenders and servicers, auto finance companies, and other consumer financial service providers in state and federal court. He frequently defends the firm's lending and servicing clients in claims arising under the Truth in Lending Act (TILA), Fair Credit Reporting Act (FCRA), and Fair Debt Collection Practices Act (FDCPA), as well as suits based on alleged violations of the Texas Constitution's provisions on home equity lending, and other Federal and State statutes.

In prior positions, including a Clerkship with the Texas Attorney General's General Litigation Division, Greg has gained experience in various areas of employment law, corporate and contract law, and real estate proceedings.

TABLE OF CONTENTS

FCRA LITIGATION UPDATE

This article will review recent important rulings in Fair Credit Reporting ("FCRA") Act cases. Specifically, the cases relate to (1) the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") amendments to the FCRA, (2) permissible purposes for obtaining a consumer credit report, and (3) investigations related to the accuracy of tradelines.

I. THE FCRA AND THE CARES ACT

Perhaps the most important and notable development in FCRA standards in recent years is the passing of the CARES Act, on March 27, 2020. The CARES Act was Congress' attempt to right the economic ship during the initial stages of the COVID-19 pandemic, and it amended the FCRA to assist consumers struggling to make monthly payments or obtain credit. At the same time, employment in many "non-essential" positions was prohibited due to health and safety concerns. Since the CARES Act passed, Courts have begun interpreting these amendments to provide clarity for consumers, furnishers, and credit reporting agencies.

A. *Horvath v. JPMorgan Chase & Co.*

in the United States District Court for the Southern District of California[1]

The Plaintiff filed a petition in San Diego County Small Claims Court, alleging Chase violated the FCRA and the CARES Act. Chase removed the case to the Southern District of California and filed a Motion to Dismiss. The Plaintiff claimed Chase's reports of delinquent payments to the credit reporting agencies were inaccurate or misleading because the account was subject to COVID deferral.

The Court held that Plaintiff does not have a cause of action under the CARES act because there is no private cause of action to enforce its provisions. Additionally, the Plaintiff failed to plead that she notified the credit reporting agencies that she disputed the reporting as inaccurate. The Court held that an allegation of tradeline inaccuracy stemming from a CARES Act deferral does not absolve a plaintiff from first having to dispute the tradeline with the credit reporting agency. Because the complaint failed to allege that a dispute letter was provided to the credit reporting agencies, the Motion to Dismiss was granted,with leave to amend.

B. *Hafez v. Equifax Information Services, LLC*

in the United States District Court for the District of New Jersey[2]

The Plaintiff brought this putative class action alleging Defendants failed to adopt reasonable procedures to insure the accuracy of consumer credit reports in light of the CARES Act amendments to the FCRA. The Plaintiff's student loan payments were suspended by the the CARES Act, and her loan servicer reported her loans as in "forbearance" rather than "current." Her credit score fell by 97 points during this time. Plaintiff notified her servicer, and the servicer removed the "forbearance" remark and notified the credit reporting agencies. Plaintiff alleges that, despite the Secretary of Education's requirement to ensure that suspended payments were treated as if the borrower made a regularly scheduled payment for credit reporting purposes, VantageScore Solutions provided a score that did not account for the CARES Act amendments and treated the suspension of student loan payments as an adverse credit event. Importantly, the Plaintiff did not state whether her federal student loans were current prior to the CARES Act or whether she received an accommodation under the CARES Act.

The defendants filed a motion to dismiss. The Court held that it is not patently inaccurate to report federal student loans as anything other than current. Said another way, the credit reporting agencies do not need to report an account as "current" if the account was delinquent before an accommodation under the FCRA (as amended by the CARES Act).

C. *Mitchell v. Specialized Loan Servicing, LLC*

in the United States District Court for the Central District of California[3]

In this case, the Plaintiff took out a second mortgage on his home in 2019. He sought three months of loan forbearance under the CARES Act. Interacting with a voice response system, the Plaintiff indicated he sought

[1] *Horvath v. JP Morgan Chase & Co*., No. 3:21-cv-1665-BTM-AGS, 2022 U.S. Dist. LEXIS 3976 (S.D. Cal. 2022)
[2] *Hafez v. Equifax Info. Servs., LLC*, Civil Action No. 20-9019 (SDW) (LDW), 2021 U.S. Dist. LEXIS 78260 (D.N.J. 2021)
[3] *Mitchell v. Specialized Loan Servicing LLC*, No. 2:20-cv-10455-SB-PD, 2021 U.S. Dist. LEXIS 246880 (C.D. Cal. 2021)

forbearance because of the economic impacts of COVID-19 and selected an option that indicated he lost income or work hours. The defendant approved the forbearance, and the Plaintiff was not required to make payments for three months. The defendant specified that delinquent payments would not be reported to credit bureaus as long as payments were made according to the forbearance plan. Near the end of the forbearance period, the Plaintiff requested and received an additional three months of forbearance. During this time, the defendant reported to the credit bureaus that there was no date of first delinquency, that there were zero past-due payments, that the account was affected by a natural or declared disaster, and a payment history code of "D" for each month of the forbearance, which indicates the absence of data or payment history during the forbearance. Shortly after being in forbearance, the Plaintiff sought to finance the purchase of a a new car but was denied financing because of the payment history code on his credit report.

Defendant filed a a summary judgment motion, arguing its credit reporting was correct. The Court granted the Motion for Summary Judgment. It held that the loan servicer met its statutory obligation to report the loan as "current" when it did so in the payment status field. The Court expanded upon this, saying the use of the "D" code in the payment history section was not prohibited by the FCRA.

II. PERMISSIBLE PURPOSES FOR OBTAINING A CONSUMER REPORT

The FCRA establishes the rules for when a person may obtain an individual's consumer report and provides a cause of action for consumers whose consumer reports are obtained without a permissible purpose. Since the turn of the century, this section of the FCRA has been amended at least eight times. While the waters may be muddy concerning when a permissible purpose exists to obtain a consumer report, the following cases shed some light on how a court will analyze the issue at various stages of litigation.

A. *Shockley v. Clarity Services, Inc.*
in the United States District Court for the Western District of Wisconsin[4]

The Defendant assembles and sells consumer credit information to short term lenders. The plaintiffs are Wisconsin residents that approached short term lenders for extensions of credit and the lenders obtained a consumer report from the defendant. In some instances, the plaintiffs alleged they never sought credit from these lenders. The plaintiffs allege Clarity violated the FCRA by furnishing credit reports based solely on the lender's promise that it had a permissible purpose for obtaining the information without obtaining written consent from the plaintiffs. Clarity's agreements with each lender state that the lender would request and use consumer reports only for lawful purposes.

Clarity filed a Motion to Dismiss, which was granted. The court held that the defendant was entitled to rely on the representations made by the lenders that they would only use consumer reports for permissible purposes. The court also asserted that a lender's actual purpose for obtaining a consumer report is irrelevant to the defendant's liability. Third, the court held that a consumer does not need to consent before a party obtains a consumer's report if the agency has a reason to believe that the recipient has a permissible purpose.

B. *Persinger v. Southwest Credit Systems, L.P.*
in the United States Court of Appeals for the Seventh Circuit[5]

The plaintiffs obtained a bankruptcy discharge order for the debt serviced by the defendant. The defendant closed its account for plaintiffs. Months later, defendant received a delinquent account in a plaintiff's former name (perhaps a maiden name) for a debt that was not listed on the plaintiffs' bankruptcy schedules. The defendant performed a LexisNexis search for bankruptcy information related to the account, and the search did not yield a positive hit. So the defendant began to form a collection strategy, which involved ordering a "propensity-to-pay" score from a consumer credit reporting agency. Several months later, LexisNexis updated the plaintiffs' information such that the new debt was shown to be discharged. It provided this information to the defendant, who promptly closed the account. The plaintiffs learned that the defendant obtained her credit information and filed a putative class-action alleging defendant lacked a permissible purpose.

In affirming the granting of defendant's Motion for Summary Judgment, the 7th Circuit held that although the defendant did not have a permissible purpose for obtaining the report because the account was discharged in bankruptcy, the noncompliance was not willful because Plaintiff failed to list the debt on its bankruptcy schedules. Therefore, Southwest Credit Systems had a reasonable basis for relying on its procedures. This fact, along with the fact that the defendant closed the account immediately upon learning of the discharge, led the Court of Appeals to hold the granting of the Motion for Summary Judgment was proper.

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[4] *Shockley v. Clarity Servs., Inc.*, No. 21-cv-434-jdp, 2022 U.S. Dist. LEXIS 117524 (W.D. Wis. 2022)
[5] *Persinger v. Sw. Credit Sys., L.P.*, 20 F.4th 1184, 1188 (7th Cir. 2021)

C. *Breneisen v. Countryside Chevrolet/Buick, GMC, Inc.*
in the United States District Court for the Eastern District of Wisconsin[6]

The plaintiffs visited the defendant's dealership and informed the salesperson that they were interested in purchasing a car in cash. They specifically instructed the salesperson not to conduct a credit check because they would be paying in cash. After a test drive and an agreement on price, the salesperson asked for the plaintiffs' social security numbers, which the plaintiffs reluctantly provided. The plaintiffs indicated they would return with a cashier's check for the price of the vehicle. After being informed of an additional fee associated with cashier checks, the plaintiffs decided not to purchase the car. The plaintiffs eventually received a letter stating the dealership accessed their Experian and TransUnion credit reports because the plaintiffs had "inquired about doing business with Countryside Auto Group." When the plaintiffs contacted the dealership, they were told this was "standard procedure." In their complaint, the plaintiffs claim the defendant misrepresented to Experian and TransUnion that the plaintiffs were applying for financing.

The Court denied the defendant's Motion to Dismiss. The defendant argued that it had a permissible purpose when the plaintiffs offered to pay with a cashier's check, citing a 1998 FTC Advisory Opinion Letter that addressed this scenario. The Court noted, however, that the plaintiffs initially told the salesperson they would pay in cash. Because the court must make all reasonable inferences in favor of the plaintiffs when analyzing whether to dismiss a complaint under Rule 12(b)(6), the court held that the plaintiffs' allegations that they would pay in cash and that the defendant lacked a permissible purpose to obtain the consumer report were sufficient to state a claim upon which relief could be granted. The court denied the Motion to Dismiss.

III. INVESTIGATIONS AND ACCURACY OF TRADELINES PURSUANT TO 15 U.S.C. § 1681S-2(B)

Section 1681s-2(b) has resulted in significant litigation over the last several years. As courts meticulously try and determine which investigations are reasonable and how furnishers should report different fact patterns, the following cases should be useful in navigating this area.

A. *Bibbs v. TransUnion, LLC*
in the United States Court of Appeals for the Third Circuit[7]

In *Bibbs*, the Third Circuit consolidated three cases and affirmed the district courts' orders granting TransUnion's Motion for Judgment on the pleadings. Each Plaintiff borrowed student loans and eventually defaulted on the loan obligations by failing to make monthly payments. Each student loan servicer transferred the borrowers' accounts and began reporting the accounts to the credit reporting agencies with a zero balance, noting that the payment obligations transferred. They also indicated that the "Pay Status" field showed "120 Days Past Due" but also noted a $0 balance. It was undisputed that each borrower failed to make timely payments and that the accounts were correctly reported as delinquent until they were closed and transferred. It was also undisputed that each borrower owed no balance to the creditors that transferred the accounts after the accounts were transferred. Each borrower argued that reporting a "Pay Status" of "120 Days Past Due" and a balance due of $0 was inaccurate and can mislead prospective creditors into incorrectly assuming each borrower was currently more than 120 days late on loans that have been closed. Each borrower sent a dispute letter to TransUnion, arguing that it is impossible to be late on an account with a $0 balance, and requested removal of the tradeline. TransUnion timely investigated the accounts and sent each borrower a letter stating each credit report was accurate and was not updated following the investigation.

To determine whether the tradelines were inaccurate or misleading under the FCRA, the court adopted the "reasonable reader" standard, where courts view a credit report from the perspective of a typical, reasonable reader viewing the tradeline in its entirety, not by reading a portion of the credit report in isolation. In applying this reasonable reader standard, the court analyzed whether the "Pay Status" field showing "120 Days Past Due" was inaccurate or misleading given the "maximum possible accuracy" standard that the FCRA applies to the credit reporting agencies. The court held that a reasonable reader viewing each borrower's credit report would see the multiple conspicuous statements noting that the accounts were closed and conclude no amounts were due to the creditors that transferred the accounts. The Court affirmed the judgment on the pleadings and held the credit reports were accurate.

[6] *Breneisen v. Countryside Chevrolet/Buick/Gmc, Inc.*, 573 F. Supp. 3d 1328-29 (E.D. Wis. 2021)
[7] *Bibbs v. Trans Union LLC*, Nos. 21-1350, 21-1527, 21-1530, 2022 U.S. App. LEXIS 21819 (3d Cir. 2022)

B. *Otto v. TransUnion, LLC*
in the United States District Court for the District of Oregon[8]

The Plaintiff obtained a bankruptcy discharge as to his account with a defendant. When he obtained his credit report, which he believed contained multiple charge-off notifications (including two months reporting a charge-off after the discharge), the Plaintiff requested that the post-discharge reporting be removed. Upon disputing the information with a defendant credit reporting agency, and upon a reinvestigation by the defendant furnisher, the tradeline was not updated, and the Plaintiff filed suit against both entities.

The furnisher defendant filed a motion to dismiss. The court noted that a "charge-off" was when a creditor changed the debt from a receivable to a loss for accounting purposes. The court viewed the credit report and noted that the alleged multiple charge-offs were simply a recurring report of one charge-off, specifically permitted by the FCRA under § 1681c(a)(4). Because reporting a delinquent account as charged off is not inaccurate within the meaning of the FCRA, the court granted the furnisher's motion as to the claim, alleging inaccuracy based on multiple charge-offs. However, Plaintiff adequately pled an FCRA claim based on the furnisher's reporting that the debt was charged off for two months following the bankruptcy discharge because this information can plausibly be inaccurate or misleading.

C. *Hussey v. Equifax Information Services, LLC*
in the United States District Court for the Western District of Tennessee[9]

The Plaintiff alleged his student loan servicer furnished an inaccurate tradeline to the credit reporting agencies when it included a notation indicating an account was in dispute. The Plaintiff then sent a letter to the defendant credit reporting agencies indicating he no longer disputed the account. The defendant credit reporting agencies then forwarded the dispute letter to the defendant loan servicer, but the "account in dispute" notation was not removed. The Plaintiff claimed this notation prevented him from obtaining mortgage refinancing.

The loan servicer defendant filed a motion for judgment on the pleadings. The court noted that district courts seemed to be split on the issue, but held that where a consumer sends a letter to a credit reporting agency requesting the removal of the dispute notation but never terminates a dispute directly with the furnisher, a furnisher cannot be liable, as a matter of law, under § 1681s-2(b). The court granted the furnisher's motion for judgment on the pleadings.

D. *Gross v. CitiMortgage, Inc.*
In the United States Court of Appeals for the Ninth Circuit[10]

The plaintiff obtained two loans to finance the purchase of a home. The lienholder for the senior lien eventually conducted a foreclosure sale which "abolished" the junior lien. Several years later, the plaintiff attempted to get approved for a mortgage loan, but the junior lienholder was reporting the junior lien as past due with accruing interest and late fees despite the fact that Arizona law prohibits lienholders from pursuing deficiency judgment for deficiencies after the foreclosure of mortgage liens. The borrower sent two dispute letters – one in February 2018 and one in May 2018. In response to the February 2018 dispute letter, the junior lienholder only changed the information from 120 days past due to 180 days past due. In response to the May 2018 dispute letter, the junior lienholder reported the debt as charged off as of April and May 2018. The borrower filed suit and alleged the junior lienholder failed to conduct a reasonable investigation to determine that no amount was owed after the foreclosure sale of the property several years prior.

The district court granted the junior lienholder's motion for summary judgment. On appeal, the Court of Appeals overturned the summary judgment order. The Ninth Circuit held that the borrower was only required to make a prima facie showing of inaccurate reporting, but he established inaccuracy as a matter of law based on Arizona's anti-deficiency statute. The court then turned to the reasonableness of the junior lienholder's investigation. The Court held that the "FCRA will require furnishers to investigate, and even to highlight or resolve questions of legal significance." Despite the fact that a vice president of the junior lienholder testified about the company's processes for handling credit reporting investigations, the court held that genuine issues of material fact existed regarding the reasonableness of the junior lienholder's investigation of the debt. Additionally, because FCRA plaintiffs can recover damages based on emotional distress and humiliation, and to what extent other tradelines were the cause of the plaintiff's damages, the court held that damages and causation questions should also be decided by a finder of fact.

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[8] *Otto v. TransUnion, LLC*, No. 6:21-cv-00379-AA, 2022 U.S. Dist. LEXIS 46314 (D. Or. 2022)
[9] *Hussey v. Equifax Info. Servs., LLC*, No. 2:20-cv-2791-JPM-ATC, 2022 U.S. Dist. LEXIS 49548 (W.D. Tenn. 2022)
[10] *Gross v. CitiMortgage, Inc.*, 33 F.4th 1246, 1249 (9th Cir. 2022)