

I. STATEMENT OF INTEREST OF *AMICUS CURIAE*

NACA is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, and law professors and students whose primary practice or area of study involves the protection and representation of consumers. Its mission is to promote justice for all consumers by maintaining a forum for information sharing among consumer advocates across the country and to serve as a voice for its members as well as consumers in the ongoing struggle to curb unfair and abusive business practices.

Compliance with the Fair Credit Reporting Act (FCRA) and faithful application of this law as Congress wrote it have been a continuing focus of NACA since its inception. Protection of the consumers for whose benefit Congress adopted the FCRA is NACA's ultimate goal, both within the consumer finance field as well as the larger arena of the consumer rights movements. To that end, NACA has appeared regularly as an *amicus curiae* before federal Courts of Appeals as well as before the United States Supreme Court on several occasions, including in its only FCRA case, *TRW Inc. v. Andrews*, 534 U.S. 19 (2001).

II. SUMMARY OF ARGUMENT

Contrary to Experian's assertions, the FCRA imposes two separate duties on

a consumer reporting agency (CRA): initial accuracy duties and reinvestigation duties following a dispute. The District Court erroneously accepted Experian's "accuracy only" argument and improperly dismissed the claim regarding its reinvestigation duties. The pertinent FRCA sections, § 1681e(b) and § 1681i, detail different CRA responsibilities triggered by distinct events occurring at unrelated times. Because the District Court was misled by Experian regarding both the statutory scheme and this Court's case law, the court erred by not discussing the difference in the duties that Congress has required. The District Court's omission is shown by the absence of any citation to § 1681i and the lack of any discussion regarding the law and facts of this reinvestigation claim.

Section 1681e(b) imposes on a CRA the initial duty to "follow reasonable procedures to assure maximum possible accuracy" of information contained in any consumer report that it prepares. The District Court inappropriately determined that a violation of this initial accuracy standard is also an element of a claim under § 1681i regarding the failure to conduct a proper reinvestigation. The freestanding reinvestigation procedure in § 1681i is triggered only when a consumer affirmatively notifies the CRA of a dispute. Section 1681i(a) through (d) then details exactly how a CRA complies with that procedure, including what must be considered and how various outcomes of the reinvestigation are to be reported.

Unlike § 1681e(b) claims that necessarily involve whether the information is substantively accurate, the essential elements of a § 1681i claim are whether the process was properly followed. Although Congress required that the consumer assert an inaccuracy to activate the § 1681i dispute process, whether a CRA has met its duty to follow this process is not determined by the substantive accuracy of that initial assertion.

In an effort to avoid the requirements of § 1681i, Experian falsely informed the District Court that accuracy is the first element of any FCRA claim. Rather than analyze the language of the § 1681i reinvestigation provision, the District Court merely cited cases that properly impose on a consumer the burden of demonstrating an initial, uninvestigated inaccuracy to sustain a § 1681e(b) claim. Finding none, it erroneously dismissed the § 1681i claim as well as the presumably deficient § 1681e(b) claim.

Experian did not proffer evidence of its compliance with § 1681i, and the District Court thus could not determine whether Experian breached its duty to follow the proper reinvestigation process. Consequently, the decision below did not consider the principal claim that Experian committed the fundamental § 1681i error of merely parroting the creditor/furnisher's contention without considering the information presented by the consumer. Amicus' sole concern is to rectify the

error of dismissing the § 1681i reinvestigation claim without applying the statutory elements.

Inaccuracy can play a role in a § 1681i case, but not as an initial element of the claim. The process outlined by Congress allows the CRA to avoid conducting the reinvestigation only if it determines the dispute is frivolous or irrelevant. Otherwise, the CRA must notify the furnisher of the disputed information and consider all relevant information submitted by the consumer. The CRA's reporting duties as part of the reinvestigation process then differ depending on whether the information is found to be incomplete or unverifiable or whether the CRA determines the information is accurate. Even if the CRA determines the information is accurate, the consumer may file a statement of dispute which must be included with the reported information unless the CRA finds that such a statement is frivolous or irrelevant. Because the reinvestigation process applies to all disputed information without regard to the accuracy or incompleteness of the information, accuracy is not an element to a claim that the CRA did comply with its § 1681i duties.

Another way accuracy is implicated in a § 1681i case is in the damages that flow from any violation, including whether a claim may be stated for merely a negligent violation. Typically, a consumer alleges economic damage, such as a

subsequent credit denial or interest rate increase, flowing from the continued reporting of erroneous information following a deficient reinvestigation. If the consumer cannot prove that the information is incomplete or inaccurate, the trier of fact may well find the putative economic harm was not proximately caused by the credit reporting. Even then, however, the FCRA provides for other damages, such as for hedonic injury and statutory damages where the defendant acted willfully, irrespective of the accuracy of the disputed entry. Accordingly, contrary to the decision below, the consumer's failure to prove inaccuracy in the underlying account information cannot support dismissal of the § 1681i claim.

The District Court's opinion actually rewrites the statute by changing the language "frivolous or irrelevant" to "not accurate." On the contrary, the detailed process mandated by § 1681i is the means by which a CRA is to determine accuracy, and a CRA may only avoid that process by making a "frivolous or irrelevant" determination. The District Court should have followed the statutory scheme, and its determination as to the § 1681i claim must therefore be reversed.

III. ARGUMENT OF LAW

A. Because The District Court Improperly Determined That The Accuracy Standard Of § 1681e(b) Was An Element To Any FCRA Claim, It Failed To Analyze And Apply The Reinvestigation Standards Of § 1681i.

Appellant brought this action against Experian under both the reinvestigation

provision of § 1681i and the accuracy provision of § 1681e(b). (JA 14-15, ¶29).

In pursuing its summary judgment motion, Experian improperly argued that accuracy was an essential element for claims based on the reinvestigation provision. It falsely supported that assertion by citing this Court's opinion in *Dalton v. Capital Associated Industries, Inc.*, 257 F.3d 409, 415 (4th Cir. 2001)(see Experian's Reply Brief, p. 5). At Experian's request, the District Court erroneously applied the standard and elements for an initial accuracy claim under § 1681e(b) to the Appellant's allegations of violation of § 1681i. Consequently, it mistakenly dismissed the § 1681i claim without analyzing the detailed process provided in § 1681i, without mentioning whether this process was undertaken by Experian, and without asking Experian why its affidavit filed in the support of the Motion for Summary Judgment does not state whether any reinvestigation was ever done. (JA 21-23).

Section § 1681e(b) imposes on all CRAs, including Experian and its industry brethren, Trans Union and Equifax, an initial, uninvestigated duty to maintain "reasonable procedures to assure maximum possible accuracy:"

Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

One claim made by the Appellant was for a violation of this initial accuracy

section of the FCRA. Section 1681e(b) by its terms requires a consumer to prove that (1) a consumer report was published which contained inaccurate information, and (2) the reporting agency did not follow reasonable procedures to assure maximum possible accuracy. *Dalton*, 257 F.3d at 415 (4th Cir. 2001)(no discussion of the requirements for a § 1681i claim). Consistent with other Circuits, this Court has held that the standard for “accuracy” under § 1681e(b) requires more than “technical accuracy.” *Dalton*, 257 F.3d at 415; *see, e.g. Sepulvado v. CSC Credit Servs.*, 158 F.3d 890, 895 (5th Cir.1998); *Pinner v. Schmidt*, 805 F.2d 1258, 1262-63 (5th Cir. 1986); *Koropoulos v. Credit Bureau, Inc.*, 734 F.2d 37, 39-45 (D.C. Cir. 1984). While a determination of whether a CRA followed “reasonable procedures” is almost always a question of fact, Amicus does not take a position as to whether Experian violated § 1681e(b). *Dalton*, 257 F.3d at 416; *see also, Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir.1995); *Andrews v. TRW Inc.*, 225 F.3d 1063, 1068 (9th Cir.2000), *rev’d on other grounds*, 534 U.S. 19 (2001).

In addition to the § 1681e(b) claim, Appellant also alleged multiple violations of the reinvestigation provisions of § 1681i. (JA 14-15, ¶29). The District Court’s opinion must be reversed as to the § 1681i claim because it did not

separately consider the legal standards that apply to the reinvestigation process required by § 1681i. Instead, the District Court accepted Experian's false assertion that this Court in *Dalton* held that accuracy requirement of § 1681e(b) was an essential element in claims regarding the reinvestigation requirements of § 1681i. Because *Dalton* did not discuss the elements of the § 1681i claim, the District Court opinion has no basis in the statute or this Court's jurisprudence.

Based on the plain language of the FCRA, the initial standard of care for a CRA when initially preparing a report cannot be exported to the discrete requirements of the reinvestigation process. Nowhere in the FCRA did Congress state or imply that the § 1681e(b) "reasonable procedures to assure maximum possible accuracy" standard applies to the CRA's separately detailed reinvestigation duties of § 1681i. Those duties are to investigate, to forward "all relevant information" to the furnisher, to "review and consider all relevant information submitted by the consumer," to perform these duties in specific time frames, to respond to the consumer with required disclosures, and to report results in ways that vary depending on the determination of the reinvestigation.

§ 1681i(a)-(d). The Third Circuit and other district courts have properly refused to engraft the § 1681e(b) initial report standard onto the § 1681i(a) investigation provision because to do so "would render the two sections largely duplicative of

each other” in violation of the rule to avoid results that “render statutory language superfluous, meaningless, or irrelevant.” *Cushman v. Trans Union Corp.*, 115 F.3d 220, 225 (3rd Cir. 1997); *accord*, *Swoager v. Credit Bureau of Greater St. Petersburg*, 608 F.Supp. 972, 974-75 (M.D.Fla. 1985); *Grenier v. Equifax Credit Information Services*, 892 F.Supp. 57, 59 (D.Conn. 1995); *Yelder v. Credit Bureau of Montgomery, L.L.C.*, 131 F.Supp.2d 1275, 1281 (M.D.Ala. 2001); *see also*, *TRW Inc.*, 534 U.S. at 31 (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant”) (citations and internal quotes omitted); *Lane v. United States*, 286 F.3d 723, 731 (4th Cir. 2002) (same).

In contrast with § 1681e(b), § 1681i does not base liability on either proof that disputed information is inaccurate or even proof that a specific consumer report was prepared or published. The pertinent subsection of § 1681i that requires a reinvestigation states:

Subject to subsection (f), if the completeness or accuracy of any item of information contained in a consumer’s file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly, or indirectly through a reseller, of such dispute, the agency shall free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed

information, or delete the item from the file in accordance with paragraph (5) before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer.

15 U.S.C. Sec. 1681i(a)(1)(A)(as modified by the FACTA amendments, Pub. L. No. 108-159, eff. December 1, 2004, but with no substantive change pertinent to the issues before this Court).

Section 1681i also requires that a CRA must “review and consider all relevant information submitted by the consumer” and forward same to the furnisher of the disputed information. §§ 1681i(a)(4) and (2). These procedural rights are independent of the underlying uninvestigated accuracy of the disputed information. Only § 1681i(a)(5) imposes the condition that information be inaccurate, incomplete, or otherwise unverifiable before requiring additional duties by a CRA, but such a determination can only be made after the requirements of § 1681i(a)(1)-(5) are performed. When the required reinvestigation determines the information is accurate, additional notice and reporting duties are placed on the CRA by § 1681i(a)(6)(7), § 1681i(b), and § 1681i(c). Except for the inaccuracy component of § 1681i(a)(5), consumers may state a claim under any of the other provisions of § 1681i without first asserting that the disputed information was in fact inaccurate. The legal question is simply whether the CRA complied with its duties, including notifying the furnisher, reviewing and considering the consumer’s

information, and properly reporting the results.

Congress did provide a CRA with the means to disregard facially invalid disputes. Under both § 1681i(a)(3) and § 1681i(c), a CRA need not conduct a reinvestigation or report a dispute statement that it determines is “frivolous or irrelevant.” The “frivolous or irrelevant” standard is how a CRA can stop a consumer from misusing the dispute process. The District Court improperly read into the FCRA text an additional means for a CRA to avoid doing any reinvestigation by finding an “implied” prohibition against what it terms a “collateral attack” on an accurate credit report. (J.A. 49). While a consumer prosecuting a claim under § 1681e(b) certainly must establish that the subject consumer report was actually inaccurate, the District Court’s deference to the declarations and beliefs of the creditor is not supported by the statute that mandates the prophylactic process by which the CRA is to determine whether information is inaccurate.

A person who exercises rights under the FCRA to dispute information does not “collaterally attack” anything but merely requests that the information be properly reinvestigated. Unless the CRA determines the dispute is frivolous or irrelevant, it must follow the reinvestigation procedure. Once the CRA conducts a proper reinvestigation, it can then decide how to report the debt. Pursuant to

§ 1681i, Congress allows the CRA to “record the current status of the disputed information, or delete the item from the file,” but it can only make that choice after conducting the reinvestigation required by § 1681i. Although a determination of accuracy is one possible outcome of the process, a CRA has statutory duties that must be followed for the reinvestigation of that accurate information.

In addition to misrepresenting the holding in *Dalton*, Experian also improperly cited *Cahlin v. GMAC*, 936 F.2d 1151 (11th Cir. 1991), to the District Court. The reinvestigation claim in that case was based on the statutory scheme prior to the Consumer Credit Reform Act of 1996, Pub. L. No. 104-208. Effective on September 30, 1997, 15 U.S.C. § 1681i(a) was substantially amended with the specific procedures to be followed in any reinvestigation, and the “review and consider” requirement codified at § 1681i(a)(4)(originally § 611(a) of the Act) was added at that time. Even though *Cahlin* provides no authority to the application of later enacted mandated process, its reasoning actually supports Appellant. The Eleventh Circuit held that “[a] consumer, however, cannot bring a § 611(a) claim against a credit reporting agency when it exercises its independent professional judgment, based on full information, as to how a particular account should be reported on a credit report.” *Cahlin*, 936 F.2d at 1160. This requirement of “independent professional judgment, based on full information” was essentially

codified into the reinvestigation process when Congress adopted the “review and consider” standard.

The District Court should have applied the current statutory scheme and not dismissed the § 1681i claim without the presentation of undisputed material facts showing that the CRA performed its duties.

B. Because Experian Decided To Present No Evidence Regarding Whether It Complied With The § 1681i Reinvestigation Requirement To “Review And Consider” Appellant’s Information, The District Court Erred By Dismissing The § 1681i Claim.

Congress mandated that a CRA “review and consider all relevant information submitted by the consumer” when conducting a reinvestigation of a disputed information. § 1681i(a)(4). In his Opposition to Experian’s Motion for Summary Judgment, Appellant did inform the Court that the lawsuit was challenging the lack of investigation done by Experian and cited the duty under § 1681i(a)(4). Plaintiff’s Memorandum in Opposition, p. 6. No sworn testimony was submitted to the District Court by Experian regarding its reinvestigation process because Experian’s main affidavit did not provide any explanation about what actions it took after receiving the consumer’s dispute. (JA 21-23). Notably absent from that affidavit is a simple statement by Experian such as “we

considered the information submitted by the Plaintiff.”

The mandatory duty to “review and consider” the consumer’s information is an express procedural requirement on Experian. This Court has recognized that a mandated investigation under the FCRA requires more than a superficial inquiry.

Johnson v. MBNA America Bank, NA, 357 F.3d 426, 430-31 (4th Cir. 2004).

Under analogous § 1681s-2(b), a furnisher/creditor must conduct a “detailed inquiry or systematic examination” as part of the reinvestigation process. *Id.*

Similarly, pursuant to § 1681i(a)(4), a CRA may not rely exclusively on the perfunctory computerized response of its furnisher because Congress requires it to also “review and consider” the consumer’s information. In *Cushman*, the seminal case cited favorably by this Court in other regards,¹ the Third Circuit held:

The "grave responsibilit[y]" imposed by § 1681i(a) **must consist of something more than merely parroting information** received from other sources. Therefore, a "reinvestigation" that merely shifts the burden back to the consumer and the credit grantor cannot fulfill the obligations contemplated by the statute.

115 F.3d at 225 (emphasis added).

Nearly every federal Court to consider the standard required for a FCRA “investigation” or “reinvestigation” has either expressly cited *Cushman* or adopted

¹ *Johnson v. MBNA*, 357 F.3d at 432.

a similar requirement. *Johnson*, 357 F.3d at 432; *Stevenson v. TRW Inc.*, 987 F.2d 288, 293 (5th Cir.1993); *Henson v. CSC Credit Servs.*, 29 F.3d 280, 287 (7th Cir.1994)(upholding dismissal of a 1681e(b) while allowing the § 1681i claim to go forward); *McKeown v. Sears Roebuck*, 335 F. Supp. 2d 917, 935 (W.D. Wisc. 2004); *Crane v. Trans Union*, 282 F. Supp. 2d 311, 318 (E.D. Pa. 2003); *Lawrence v. Trans Union*, 296 F. Supp. 2d 582, 589-590 (E.D. Pa. 2003); *Soghomonian v. United States*, 278 F.Supp. 2d 1151, 1156-1158 (E.D. Ca. 2003); *see also*, *Evantash v. G.E. Capital Mortgage Serv., Inc.*, 2003 WL 22844198, *5 (E.D. Pa. 2003); *O'Connor v. Trans Union*, 1999 WL 773504 (E.D. Pa. 1999); *Sampson v. Equifax*, 2005 WL 2095092, *4-5 (S.D. Ga. 2005). As explained by the Seventh Circuit, the reinvestigation duties of § 1681i apply to “potentially inaccurate information” and require a thorough investigation:

A credit reporting agency that has been notified of potentially inaccurate information in a consumer's credit report is in a very different position than one who has no such notice. As we indicated earlier, a credit reporting agency may initially rely on public court documents, because to require otherwise would be burdensome and inefficient. However, such exclusive reliance may not be justified once the credit reporting agency receives notice that the consumer disputes information contained in his credit report. When a credit reporting agency receives such notice, it can target its resources in a more efficient manner and conduct a more thorough investigation.

Henson, 290 F.3d at 286-87.

The record before the District Court provides no basis to determine that Experian complied with all of its § 1681i requirements because Experian chose not to attempt to prove such compliance; instead, its argument was simply “we do not have to discuss such compliance because we can now prove the disputed information was accurate.” Given that it supplied an affidavit from a knowledgeable witness who could have easily stated what type of investigation was done and whether the consumer’s information was considered, the failure to provide such testimony implies that Experian did not reinvestigate. Because the District Court erroneously accepted the argument that accuracy was a required element for a § 1681i claim, it never analyzed whether Experian even had a process whereby it could “review and consider” Appellant’s information.

Furthermore, based on what was presented, a reasonable jury could have found that Experian failed to “review and consider” the relevant information submitted by Appellant. Although Experian did not offer any specific testimony by affidavit or deposition to explain its investigation process, it did present the court with correspondence it sent to the Appellant. (J.A. 31). In that correspondence, Experian provided the information required by § 1681i(a)(7), a description of its “reinvestigation process”:

Experian conveys your dispute to the creditor. The creditor will

review its records and respond to our office concerning your dispute. The disputed account is then updated accordingly per the creditor's response. Experian mails the results to the consumer upon completion of this process. The creditor is not required to provide our office with any documentation, contracts, signatures, etc. when verifying a consumer dispute.

(J.A. 31). Experian did not explain what, if anything, it ever did to “review and consider” Appellant’s information. The District Court erred in concluding upon the generic evidence before it that Experian ever “investigated the FMCC account” (J.A. 47), and it provided no explanation for what standard it applied in making that conclusion. In direct violation of § 1681i(a)(4)’s requirement to “review and consider” a consumer’s information, Experian’s letter implies that its standard process is nothing beyond “parroting” the creditor’s response. The District Court’s decision does not even address the question of “review and consider” and instead assumes away the very heart of the Appellant’s § 1681i claim: that Experian willfully refused to conduct the reinvestigation in the manner required by Congress.

The reason Experian attempted to rewrite the FCRA and make accuracy an element of any § 1681i claim was to avoid having the statute’s actual requirements applied to its reinvestigation process. Based on the only evidence in the record, as a matter of established policy, it simply chose to ignore the “review and consider”

requirement of § 1681i(a)(4) and convinced the District Court to give a stamp of approval to that unlawful choice. Like the statutory duties on furnishers and as explained in cases like *Cushman* and *Johnson*, that statutory reinvestigation requirement means something other than merely parroting the creditor's computerized data, and the specific "review and consider" defines Experian's legal duties. Unless and until Experian submits undisputed evidence that it reviewed and considered Appellant's information, it is not entitled to summary judgment on the § 1681i claim. Accordingly, the District Court's decision must be reversed and remanded for further proceedings on that claim.

C. The District Court Failed To Determine Whether Experian's Violation Of § 1681i Caused Appellant Actual Damages.

Because the District Court determined that the disputed information was "accurate" and that this conclusion was itself dispositive of all of Appellant's claims, it did not consider whether Appellant had suffered actual damages caused by Experian's apparent violation of § 1681i(a)(4). Because of the finding that the information was accurate (a finding which Amicus has no interest in disputing), Appellant ultimately may not be able to prove actual damages that flow from that violation.

The record below does not show that the parties or the District Court considered the question of damages on summary judgment. The question of “accuracy” under the § 1681i claim may determine what damages were caused by Experian’s violation. As the Court has previously held, proof of a denial of a benefit, such as employment or credit, is not necessary to establish actual damages under the FCRA. *Dalton*, 257 F.3d at 418-19. Often, in an FCRA case, “the most significant damage sustained by a consumer is the emotional distress and vexation of dealing with the repercussions of an inaccurate credit report and the often frustrating ordeal of trying to set the record straight.” *Fair Credit Reporting*, § 11.2.3.1, p. 273, National Consumer Law Center (5th ed. 2002). Unlike most common law claims, and even those of other federal statutes, damages under the FCRA are available for loss of sleep, nervousness, frustration, humiliation, embarrassment, and mental distress as well as injury to reputation, family, work, and sense of well-being. *See Dalton*, 257 F.3d at 418-19; *Cousin v. Trans Union Corp*, 246 F.3d 369, 371 n.15 (5th Cir. 2001); *Bakker v. McKinnon*, 152 F.3d 1007, 1013 (8th Cir. 1998); *Guimond*, 45 F. 3d at 1333; *Zamora v. Valley Fed. Savs. & Loan Ass'n*, 811 F.2d 1368, 1371 (10th Cir.1987); *Philbin v. Trans Union*, 101 F. 3d 957, n.3 (3rd Cir. 1996); *see also, e.g. McKeown*, 335 F. Supp. at 933; *Crane*, 282 F. Supp. 2d at 319; *Lawrence*, 296 F. Supp. 2d at 588-89; *Soghomonian*, 278

F.Supp. 2d at 1159-60.

Because of the argument on which Experian based its summary judgment motion, the record is incomplete as to whether the claim that Experian negligently violated § 1681i will fail for lack of actual damage. Even if that claim fails, Experian's letter does provide evidence that it "willfully" violated § 1681i. Even if a consumer cannot show that a CRA's violation of the FCRA caused him actual damages, he may still recover punitive damages and statutory damages between \$100 and \$1,000 if the violation was "willful." § 1681n. Although the standard for "willfulness" is higher than that for "negligence," unlike some common law torts it does not require malice:

A showing of malice or evil motive is not required to prove willfulness under the Act. *See, e.g., Stevenson v. TRW, Inc.*, 987 F.2d 288, 294 (5th Cir.1993); *Yohay v. City of Alexandria Employees Credit Union*, 827 F.2d 967, 972 (4th Cir.1987). The plaintiff must only show that the defendant "knowingly and intentionally committed an act in conscious disregard for the rights" of the consumer. *Pinner v. Schmidt*, 805 F.2d 1258, 1263 (5th Cir.1986). *See also Stevenson*, 987 F.2d at 294; *Yohay*, 827 F.2d at 972.

Dalton, 257 F.3d at 418.

In the present case, unless other evidence is submitted, the District Court could well conclude that Experian followed its customarily superficial investigation procedure that included no review or consideration of Appellant's

information. (J.A. 31). As established so far, the record shows that Experian's chosen policy merely parroted the creditor's information, in direct violation of § 1681i(a)(4). It will be rare for summary judgment to be appropriate for the determination of willfulness. *Dalton*, 257 F.3d at 418. If Experian can rebut its own letter with competent evidence on remand, this case may be the rare example.

IV. CONCLUSION

Amicus urges that the opinion below granting summary judgment be vacated and that the portion of the opinion adding to § 1681 an accuracy element that Congress omitted from the statutory language be eliminated. The case should be remanded for an evidentiary determination regarding Experian's compliance with § 1681i, particularly its "review and consider" requirement, and whether any damages flowed from any such violation. Amicus takes no position on the determination on the § 1681e(b) claim that the disputed information was accurate.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE