No. 14-1661

In the United States Court of Appeals for the Fourth Circuit

ALISHA KINGERY, f/k/a ALISHA WILKES,
on behalf of herself and those similarly situated
Plaintiff-Appellant,

v.

QUICKEN LOANS, INC.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of West Virginia

REPLY BRIEF OF PLAINTIFF-APPELLANT ALISHA KINGERY

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INTRODUCTION

The parties do not dispute that the question on appeal is whether a rational jury could conclude that Quicken "use[d]" Alisha Kingery's credit scores. 15 U.S.C. §1681g(g)(1). Nor do the parties disagree on the meaning of "use." Because the word means "to convert to one's service" or "to employ," *Smith v. United States*, 508 U.S. 223, 229 (1993), use occurs when a lender converts, "implement[s]," or employs a credit score to "facilitate" or achieve a purpose related to a mortgage inquiry. Quicken Br. 32, 34. This much is common ground.

The only real disagreement, then, is on how to read the record—that is, which inferences to draw, how to weigh the evidence, and whose testimony to credit. Quicken doesn't deny that its genuine beef is with "the factual predicate" of Kingery's position, which Quicken claims (seven times) is "fiction." *Id.* at 31, 35.

But sorting fact from fiction is the jury's job. At summary judgment, this Court's role is to "review all of the evidence in the record" to determine whether a rational jury could find that Quicken used Kingery's scores. *Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 329 (4th Cir. 2001). In doing so, the Court "must draw all inferences in favor of [Kingery], and it may not make credibility determinations or weigh the evidence." *Id.* This means that it "must disregard all evidence favorable to [Quicken] that the jury is not required to believe," and credit only "the evidence favoring [Kingery,] as well as that evidence supporting

[Quicken]" that "comes from disinterested witnesses" and "is uncontradicted and unimpeached." *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000).

Applying these standards, there is no question that a rational jury could find for Kingery. For starters, there is more than enough evidence to find that Quicken used Kingery's score to determine her eligibility for "Fresh Start," a credit-repair service sold to people with scores below 620. Far from being "raw speculation," as Quicken claims (at 37), this is a logical inference—the only logical inference—and Quicken cannot even bring itself to assert that it did not use her scores in this way.

In fact, ample evidence shows that Quicken used Kingery's score throughout the process. Quicken "requires" scores to start the process. JA-227. It receives them in one format and converts them to another format for its own purposes. JA-41–42. After converting them and integrating them into its system, Quicken projects the scores on the banker's computer screen in seconds, displaying them "on the first page of the report, in bold typeface." Quicken Br. 12; JA-187–88. The banker who handled Kingery's inquiry, who has "no recollection" of doing so, conceded that he might have looked at and considered her score. JA-595. Quicken also identified her qualifying score to determine her eligibility for "Second Voice," another program, like "Fresh Start," with a credit-score cutoff. Putting all this together, a jury could rationally infer that Quicken "used" Kingery's credit score at least once during the process. Nothing more is needed.

ARGUMENT

I. Because Quicken has provided no competing evidence about Fresh Start, nor articulated a competing inference that could be drawn from the record, this Court should reverse for that reason alone.

Quicken does not even *deny* that it used Ms. Kingery's credit score to determine her eligibility for Fresh Start. Instead, Quicken offers just two arguments for why it should win anyway: (1) that "[t]here is no evidence about Fresh Start" in the record other than "a call log indicating that Ben Gamble, a Fresh Start consultant, attempted to contact Ms. Kingery," and (2) that "Kingery has not preserved this issue for appeal." Quicken Br. 35–36. Neither bid can save Quicken.

A. The first argument is internally contradictory and at odds with the facts. Although Quicken says that there is "no other evidence about Fresh Start" apart from the call log, it elsewhere claims that a different piece of evidence—a training guide showing that "[a]s of November 2012, the program 'targeted' consumers with a credit score under 620"—"is the sole evidence concerning Fresh Start." *Id.* at 15, 36. Those statements, as a matter of logic, cannot both be true. And in fact the record reveals them both to be false. Here is the evidence about Fresh Start:

1. FreshStart was "specifically designed" as a program for consumers whose "credit scores" need improvement. This is made clear in Quicken's training guide for mortgage bankers, which says: "Our Fresh Start Credit Repair Program was specifically designed to help our clients improve their

credit scores in order to qualify for a mortgage OR to qualify for premium/preferred pricing." JA-269. This document is part of the summary-judgment record. *See* Dkt. 230-51, at 139 (Ex. 51 to SJ Opp.).

2. Fresh Start existed in May 2010. Quicken's own words establish this fact as well. After formally denying Ms. Kingery's mortgage inquiry, Quicken sent her a letter dated May 24, 2010 explaining: "We know that having good credit is important to you, which is why Quicken Loans Inc. developed the Fresh Start Service. It's a 12-month program designed to help you improve your credit and your ability to qualify for credit-based financing. For more information about this exclusive service, call (800) 915-6344 to speak with a Fresh Start Expert today." JA-104. This document is also part of the summary-judgment record. *See* Dkt. 230-25, at 3 (Ex. 25 to SJ Opp.).

3. Quicken determined whether Kingery qualified for Fresh Start. Here, too, Quicken is the source. The company admitted in one of its interrogatory responses that it twice transferred Kingery's file to a Fresh Start consultant (*i.e.*, a Quicken employee) to determine whether she qualified for Fresh Start:

> On May 5, 2010, Plaintiff's lead was transferred to Ben Gamble, a consultant with Quicken Loans' Fresh Start Program. The Fresh Start Program is a credit repair team that works with loan leads to attempt to develop them into loan applications where the lead is preliminarily denied in Quicken Loans' internal lead inquiry system. On May 7, 2010, Plaintiff's lead was [for a second time] transferred to a Fresh Start Consultant *to determine whether Plaintiff would be a candidate for credit restoration services*.

JA-654–55 (emphasis added). That same day (May 7), as documented in the company's internal records, Quicken noted in Kingery's file: "Credit Restoration Accepted." JA-850. Both documents are part of the summary-judgment record. *See* Dkt. 216-12 (Ex. L to SJ Mot.); Dkt. 220-14 (Ex. 14 to Class-Cert. Mot.).

4. Quicken contacted Kingery about Fresh Start. This fact is found in Quicken's call log, which shows that Ben Gamble "attempted to contact" Ms. Kingery on May 5, 2014, and sent her an email immediately afterward. JA-850. Two days later, Quicken entered "Credit Restoration Accepted" into its system. *Id.* As explained above, this document is part of the summary-judgment record.[1]

5. Quicken targeted those with credit scores below 620 for Fresh Start. Quicken's mortgage-banker training guide also supplies this information. In the section discussing Fresh Start, Quicken says that "[t]arget clients have a credit score under the conventional 620." JA-269. It also informs bankers that Fresh Start costs $299 and that employees "will receive 240 Trek Points when [their] client enrolls" in the program, a financial incentive to generate sales. *Id.* This version of the training guide—the only version produced by Quicken—was last updated on

[1] Although Quicken (at 36 n.17) likens the call log to "evidence presented after summary judgment," it was filed on the same day as Quicken's summary-judgment motion—two weeks *before* Kingery filed her opposition. *See* Dkt. 220-14.

November 16, 2012. *Id.* It is part of the summary-judgment record. *See* Dkt. 230-51, at 139 (Ex. 51 to SJ Opp.).

6. No evidence shows that Fresh Start operated any differently in 2010, and Quicken has not asserted that it did. Even in its brief to this Court, Quicken never once asserts that Fresh Start worked any differently in 2010 than it did in 2012, when the version of the banker training guide that Quicken produced in discovery was last updated. And Quicken certainly has not claimed that Fresh Start's eligibility criteria were so radically different in 2010 that Quicken did not even consider credit scores in determining whether to contact people about a product designed solely to improve their *credit scores*.

That is not surprising. For one thing, in 2010 Quicken itself described Fresh Start on its website as "a Quicken Loans program that offers assistance to people" with "credit score[s] [of] less than 620"—the same cutoff score mentioned in the training guide—to "rebuild [their] credit and get [them] qualified for a loan." Amber Hunt, *Watch-It Wednesday: Bad Credit Mortgage Options* (Nov. 17, 2010), http://bit.ly/1DOziPo. For another thing, the record shows that the Fresh Start program pursued a strategy originally known as "press the bruise," Dkt. 230-28 (Ex. 28 to SJ Opp.), which Quicken's "Banker Thesaurus" defines as "pointing out existing credit/loan issues that might make a prospect's loan difficult to approve."

Dkt. 230-29 (Ex. 29 to SJ Opp.).[2] As one Quicken representative explained in a deposition included in the record: By pressing the bruise and "highlighting" why a consumer's credit score is so low, Quicken is able to "get their attention" and show them that "there is a problem that [Quicken] can make a solution to." Dkt. 230-28. It would be beyond strange if, in determining whether to target a consumer with this strategy, Quicken *didn't* review the details of their credit history, including (at least) their credit score.

Those are the facts. So the legal question on appeal is whether a reasonable jury—weighing all this evidence and drawing any "rational inferences in the light most favorable" to Kingery, *Defenders of Wildlife v. N.C. Dep't of Transp.*, 762 F.3d 374, 392 (4th Cir. 2014)—could reasonably conclude that Quicken used her credit score in determining her eligibility for Fresh Start or in trying to sell her the service. Because the answer is plainly yes, reversal is warranted.

In fact, the *only* plausible inference that can be drawn from the above evidence (all of which is undisputed) is that Quicken used Ms. Kingery's score. It is hard to imagine what a competing inference might be, and Quicken does not even bother trying to articulate one. For that reason—because "no rational jury could" find for Quicken, "[e]ven accepting as true everything [it] has claimed"—this

[2] Quicken advised its salespeople to stop using the phrase "press the bruise" because, while "[t]he technique works, the phrase does not." *Id.*

Court may wish to grant summary judgment in Kingery's favor on this issue. *See Dennis v. BEH-1, LLC*, 520 F.3d 1066, 1070–71 (9th Cir. 2008) (Kozinski, J.) (reversing grant of summary judgment to defendant in Fair Credit Reporting Act case and entering summary judgment for plaintiff on the court's "own motion" because "a remand would be pointless").

But even if Quicken could point to a plausible competing inference, that still wouldn't be enough to avoid reversal. All that matters at this stage is whether a jury could find for Kingery without resort to "[f]anciful inferences and bald speculations of the sort no rational trier of fact would draw or engage in at trial." *Local Union 7107 v. Clinchfield Coal Co.*, 124 F.3d 639, 640 (4th Cir. 1997). It could easily do so. Because Kingery "can show that the inferences [she] suggest[s] are reasonable in light of the competing inferences, summary judgment must be denied." *Columbia Union College v. Clarke*, 159 F.3d 151, 164 (4th Cir. 1998) (internal quotation marks omitted). Kingery will have the opportunity to ask Quicken at trial whether it considered credit scores in determining eligibility for Fresh Start in 2010 (as will this Court at oral argument), thereby reducing the need for any inferences at all.

B. No doubt aware of all this, Quicken begins its discussion of Fresh Start by crying waiver, claiming (at 35–36) that "Ms. Kingery did not argue below that Quicken Loan used her score to direct her to its Fresh Start program," and thus "has not preserved this issue for appeal." That is doubly wrong.

Lest there be any doubt, here is exactly what Kingery argued in her brief opposing summary judgment: "Quicken also used Ms. Kingery's credit score to attempt to direct her into its credit repair program (Fresh Start)." Dkt. 230, at 6. Then, after explaining that "Fresh Start is offered by Quicken to improve [a] consumer's credit scores," Kingery provided specific citations to particular documents that she had attached to her opposition for the sole purpose of supporting this precise argument. *See id.* at 6 n.8. One of those documents (reproduced at JA-269) is the Quicken training guide, from which Kingery quoted the part about how "target clients have a credit score under the conventional 620." *Id.* There is nothing "vague" about these statements or the logic of her argument. Quicken Br. 36. Nor has she "refashion[ed]" the argument on appeal into something not "remotely close to the argument" she made below. *Id.*

But even assuming (counterfactually) that Kingery "did not make this precise argument before the district court," it still wouldn't matter. *United States v. Robinson*, 744 F.3d 293, 300 n.6 (4th Cir. 2014). She undoubtedly argued that Quicken used her credit score without providing the notice required by the Fair Credit Reporting Act—indeed, that was the sole issue decided by the district court—"and thus [she] preserved [her] claim." *Id.*; *see also Yee v. City of Escondido*, 503 U.S. 519, 534 (1992) ("Once a federal claim is properly presented, a party can make any argument in

support of that claim; parties are not limited to the precise arguments they made below.").[3]

II. Based on ample record evidence, a rational jury could conclude that Quicken used Ms. Kingery's credit score at some point in the loan-inquiry process.

Because the FCRA's notice requirement is triggered by even a single use of a credit score in connection with the mortgage-inquiry process, this Court need not look any further than Fresh Start to reverse the decision below. But Quicken's use of Ms. Kingery's score was not limited to Fresh Start. To the contrary, there is ample record evidence for a rational jury to conclude that Quicken used her score *throughout* the mortgage-inquiry process, from beginning to end.

A. A jury could rationally conclude that Quicken "requires" credit scores to start the mortgage process.

To start with, there is evidence in the record that credit scores are so integral to the mortgage process that Quicken requires them at the threshold. Although Quicken now tries to downplay their importance, asserting (at 1) that it "does not require credit *scores* at all," it tells customers just the opposite: "To get the ball rolling," Quicken instructs them, "we need your credit *score*. This isn't our rule; it's something every mortgage company requires." JA-227 (emphasis added). We will

[3] Quicken agrees that this is the only issue on appeal. "The issue in this case," says Quicken (at 1), is "whether Quicken Loans 'used' [Kingery's] credit scores at all."

not attempt to resolve this intramural dispute between Quicken and itself, and this Court shouldn't either. That task is for the jury.[4]

Moreover, before receiving the scores, Quicken was required to certify that "it intends *to use* the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer." 15 U.S.C. § 1681b(a)(3)(A) & (f) (emphasis added). Was Quicken not telling the truth then? Or is it not telling the truth now? Again, the jury must decide.

B. A jury could rationally conclude that Quicken "uses" credit scores by converting and integrating them into its system and prominently displaying them to its bankers.

Once Quicken obtains the scores, it puts them to use right away, converting them into its own format, integrating them into its system, and projecting them in bold onto the mortgage banker's screen. *See* Kingery Br. 4–5; 27–30. Although Quicken (at 38) objects to this straightforward description because it contains "action verbs," Quicken concedes the substance.

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[4] The only evidence Quicken cites to support its assertion that a score isn't required is the self-interested testimony of two of its employees, which "the jury is not required to believe"—particularly in light of Quicken's own words to the contrary—and thus this Court "must disregard" at summary judgment. *Reeves*, 530 U.S. at 150.

First, Quicken admits (at 12) that it "receives the data in Mismo 2.3.1 format and places it into XML format"—which is just a jargon-filled way of saying that Quicken receives the scores in one format and *converts* them to another format for its own purposes, to facilitate the mortgage process. *See* JA-41–42 (Lang Decl. ¶ 9) ("Loans Platform receives the credit report in Mismo 2.3.1 format and arranges the data in the credit report in an xml file to send to the LOLA database."). That is "use." *See Smith*, 508 U.S. at 229 (defining use as "to convert to one's service").[5]

Second, the reason Quicken receives scores in "Mismo 2.3.1 format"—and then immediately converts them to a different format—is so that it can seamlessly integrate the scores into its own system no matter which credit-reporting agency provided them.[6] After Quicken converts the scores, it sends them from one computer program (Loans Platform) to another (LOLA), which it uses to determine loan eligibility and set loan terms. Although Quicken skips over this step in its brief (at 12), there is no dispute that it sends the scores—in the new format—to its loan-

[5] On this point, too, Quicken is at war with itself. Two sentences after admitting that it converts the scores into its own format, Quicken asserts that they are "displayed on the banker's screen in the *same format* [they are] received from the credit reporting agencies." Quicken Br. 12; *see also id.* at 38. Go figure.

[6] Mismo stands for Mortgage Industry Standards Maintenance Organization. MISMO, *XML Implementation Guide: General Information – Version 2*, 1-8, http://bit.ly/1B3jSa1. It was created by the Mortgage Bankers Association in 1999 to produce "a single common data set for the mortgage industry," so lenders wouldn't have to create a different interface for each reporting agency. *Id.*

allocation program. *See* JA-41–42 (Lang Dec. ¶ 9). That is "implementation," and thus use. *Bailey v. United States*, 516 U.S. 137, 145 (1995).

Third, after Quicken has converted and integrated the scores, it highlights them for its mortgage bankers, prominently displaying the scores in bold on the first page of the consumer's credit report, which "pops right up on the screen" within "[f]ifteen seconds" of the banker requesting it. JA-177 (Muskan Dep. 38). This is not "fiction," as Quicken protests, but yet another undisputed fact. As Quicken itself concedes in its brief to this Court (at 12): "The credit report is displayed on the mortgage banker's screen" seconds after Quicken converts the data "into XML format," and "[t]he credit scores are located on the first page of the report in bold typeface." *See also* JA-187 (screenshot).

Nevertheless, Quicken tries to pin responsibility for its own formatting on *other* entities, arguing (at 12) that the scores appear in bold on the bankers' screens only "because that is the format in which the credit reporting agencies send the report to Quicken." But, again, Quicken *changes* the format once it receives the scores. And when it does so, only the raw information (*i.e.*, the numerical score) is converted, not the formatting data (*e.g.*, bold typeface), as Mismo's guidebook shows. *See* MISMO, *XML Implementation Guide: Credit Reporting – Version 2*, 3-1–3-3, http://bit.ly/1E5d6hS. Thus, although Quicken tries to convey the impression that it simply "sorts and stores" the credit scores, *see* Quicken Br. 29, and just passes

along the credit report to its bankers as if it were in a standard PDF (portable data format) file, that is not what happens. Because Quicken converts the scores to its own format and integrates them into its system, *Quicken alone* is responsible for conveying the credit scores in bold typeface to its mortgage bankers. That is use, use, and more use—or at least a rational jury could so conclude.[7]

C. A jury could rationally infer that Quicken "used" Kingery's credit scores in determining her eligibility for a mortgage, and need not credit Matt Muskan's after-the-fact testimony speculating that he thinks he would not have done so.

That is not all. Viewing the record in the light most favorable to Ms. Kingery, a jury could rationally infer that Matt Muskan, the mortgage banker who processed her inquiry, consulted her scores and took them into account in exercising his discretion to determine her loan eligibility, notwithstanding the fact that he later denied her inquiry because of a foreclosure. Simply put, a reasonable jury could find that Mr. Muskan—who was trained to identify the consumer's "qualifying loan score" when reviewing the credit report, JA-270, who saw the consumer's scores in bold when the report flashed on his screen, and who exercised

[7] Because all mortgage lenders use credit scores in this way immediately upon obtaining them, it is no surprise that the Federal Trade Commission and Federal Reserve Board "understand[] that industry practice is generally to provide the credit score disclosure within three business days of *obtaining* a credit score." 75 Fed. Reg. at 2741 (emphasis added). That does mean, however, that "use" is the same as "obtain" (or "possess"). The Supreme Court has held otherwise, *see Bailey*, 516 U.S. at 143, 149, and we expressly disclaimed that erroneous reading in our opening brief (at 28).

his "independent judgment" in determining whether to accept or deny an inquiry, Quicken Br. 10–11—at least *considered* the scores in making his decision. At a minimum, that is a rational inference from the evidence.

Quicken cannot overcome these facts by asking the Court (at 20) to "believe" Muskan's after-the-fact speculation that he thinks he would have "focus[ed] on the foreclosure proceedings" in Kingery's credit report, rather than the credit scores that appeared in bold on the first page. JA-592 (Muskan Dep. 51). That is true for two separate reasons. One: Muskan admitted that has "no recollection" of her inquiry and does not deny that he may have consulted her scores. *See* JA-595 (Muskan Dep. 67) (Question: "So, you might have looked at the credit score, you might have seen that and drawn some conclusions; is that a fair assessment?" Answer: "I have no recollection of the loan. So, I don't know whether it would have been used or not."). Two: The jury is "not required to believe" his speculative testimony anyway, so this Court is required to disregard it at summary judgment. *Reeves*, 530 U.S. at 150. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).[8]

[8] Quicken also complains (at 20–21) that Kingery relies on the excluded testimony of Chris McConville, a veteran of the mortgage-lending industry, to prove otherwise. But we cited Mr. McConville's testimony only as an example of a rational inference that a jury might draw. *See, e.g.*, JA-183–86 (McConville Dep. (continued…)

Yet Quicken flatly asserts that Kingery's "scores were never considered," as if that were undisputed. Quicken Br. 2. But where's the evidence of that? Even assuming that Muskan denied her inquiry "due to a foreclosure on her credit report," that doesn't mean that he did not consider her scores. *Id.* To argue otherwise, as Quicken does, is to collapse the distinction between "using" a score and making a decision "based on" the score, an argument that Quicken expressly disavows. *See id.* at 40.

D. A jury could rationally infer that Quicken "used" Kingery's scores in determining her eligibility for Second Voice and Fresh Start, two programs with credit-score cutoffs.

There is still more evidence of use in the record. After Quicken preliminarily denied Ms. Kingery's mortgage inquiry, it determined whether she qualified for a second level of review, called "Second Voice." JA-267. This program has a minimum-score requirement: If the middle credit score "is below a certain threshold, then it's not selected for Second Voice." JA-774 (Hein Dep. 82). Kingery's middle score was 614—below the threshold of either 620 or 640—and she was not selected for Second Voice. *See* JA-102–03 (listing middle credit score of

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294–97) (explaining that, because the credit scores are "such a big part of the loan," and are as "bold as can be," "I don't see how any loan officer could ever say that they don't look at those credit scores and consider them"). Even the district court, in certifying the case as a class action before backtracking, recognized that "a screenshot of a sample Quicken credit report reveals that the banker must scroll past the credit scores to get to the foreclosure information," which makes it particularly unlikely that Muskan ignored her scores. JA-419.

614 for Kingery); JA-757 (Lang Dep. 44) (mentioning cutoff score of 640 for Second Voice); JA-267 (mentioning cutoff score of 620 for Second Voice). The most reasonable inference from this evidence is that Quicken used Ms. Kingery's score to determine her eligibility for Second Voice.

Yet Quicken contends that this inference is not even rational. Descending into jargon, Quicken says (at 21) that the program's "exclusionary logic" technically denied Kingery's inquiry without "view[ing] her score" at all. *See also* Quicken Br. 22 ("Ms. Kingery's credit score was not viewed by the Second Voice logic because her lead was excluded during the first step."). It is easy to see why Quicken resorts to such jargon, as it did when describing (at 12) how it "receives the data in Mismo 2.3.1. format" and merely "places it into XML format." "In jargon nobody ever does anything, feels anything, or causes anything; nobody has an opinion. Opinions are had; causes result in; factors affect. Everything is reduced to vague abstraction." Robert Waddell, "Formal Prose & Jargon," in *Modern Essays on Writing and Style* 84, 89 (Paul C. Wermuth ed., 1964).

But linguistic trickery does not change the facts. And the only evidence Quicken can point to in support of its "exclusionary logic" theory is the self-serving declaration of one of its employees. *See* Quicken Br. 21–22 (citing Lang Decl.). That is not enough at summary judgment. Nor does it matter whether the employee "testified consistently with his declaration," as Quicken claims (at 22).

What matters is that the jury does not have to believe him. *See Reeves*, 530 U.S. at 150. It is free, instead, to exercise common sense and conclude that Quicken really did use Kingery's score to determine her eligibility for Second Voice.

The same goes for Fresh Start, as already explained. Because that program too has a credit-score cutoff—targeting people with scores below 620—a jury could rationally infer that Quicken determined that Kingery was eligible for the program because she had a score below 620. Or, at the very least, a jury could infer that Quicken consulted her score in making this determination. That is enough for reversal.

One last point: Quicken repeatedly tries to trivialize this case and the FCRA's credit-score notice requirement, which Quicken says (at 4 n.1) exists only "to educate consumers about the role of credit scores" as a general matter, not to allow consumers an opportunity to review their information right away, to ensure its accuracy before it's too late. Congress, however, thought otherwise. Given the importance of credit scores, the frequency of reporting errors, and the potentially devastating effects of identify theft (as this case well illustrates), Congress determined that the consumer must receive the score "that is being furnished" so that she can "make sure it is accurate." 15 U.S.C. § 1681g(g)(1)(D). To this end, Congress determined that mortgage lenders must send notice not just eventually but "as soon as reasonably practicable." *Id.* § 1681g(g). If Quicken disagrees with

that determination—if it thinks, as its CEO does, that the requirement is "insane and meaningless," JA-278 (capitalization removed)—then it can take it up with Congress, not this Court.

CONCLUSION

The district court's grant of summary judgment should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)

I hereby certify that my word processing program, Microsoft Word, counted 4,717 words in the foregoing brief, exclusive of the portions excluded by Rule 32(a)(7)(B)(iii).

/s/ Deepak Gupta

February 18, 2015 Deepak Gupta

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2015, I electronically filed the foregoing Reply Brief for the Plaintiff-Appellant with the Clerk of the Court of the U.S. Court of Appeals for the Fourth Circuit by using the Appellate CM/ECF system. All participants are registered CM/ECF users, and will be served by the Appellate CM/ECF system.

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