22-87

In the United States Court of Appeals for the Second Circuit

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

v.

TRANS UNION, LLC,
Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of New York (White Plains)
Case No. 19-cv-9914 (The Honorable Kenneth M. Karas)

BRIEF OF PLAINTIFF-APPELLANT GIA SESSA

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INTRODUCTION

Accurate credit reporting is critical to participation in the modern American economy. Jobs, housing, access to financial services—all can turn on the information contained in an individual's credit report. Precisely for this reason, Congress enacted the Fair Credit Reporting Act. The law includes a number of measures designed to protect consumers from the harms caused by the dissemination of inaccurate credit information. Key among them is section 1681e(b), which requires that credit-reporting agencies "follow reasonable procedures to assure maximum possible accuracy of the information" in a consumer's credit report. 15 U.S.C. § 1681e(b).

This appeal asks this Court to determine what the statute means when it says "accuracy." Because Congress did not define the term, it should be interpreted in line with its ordinary meaning—freedom from mistake or error. Section 1681e(b) thus requires credit-reporting agencies to adopt procedures reasonably calculated to ensure that the information they report about customers is free from mistake or error. And not just that: These procedures must achieve "maximum possible" accuracy, a standard that "requires more than merely allowing for the possibility of accuracy." *Cortez v. Trans Union, LLC*, 617 F.3d 688, 709 (3d Cir. 2010). This plain-text understanding is consistent with the statute's purpose "to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report." S. Rep. No. 91-517, 91st Cong., 1st Sess. 1 (1969).

In recent years, however, certain courts have erected an artificial threshold requirement for section 1681e(b) claims that is entirely unmoored from the statute. Without analyzing the actual statutory text, these courts have decided that the statute implicitly draws a distinction between two categories: "factual" inaccuracies and "legal" inaccuracies. An inaccuracy that falls in the former category, these courts acknowledge, can serve as the basis for a consumer's section 1681e(b) claim. But, under this view, a so-called "legal" inaccuracy—any dispute over consumer information that requires the credit-reporting agency to make "legal determinations" about the facts or legal judgments—cannot.

This factual-vs.-legal framework cannot be squared with the statute's plain text, which makes no distinction between different forms of accuracy. And it frustrates the FCRA's core purposes by sharply limiting the types of inaccuracies that credit-reporting agencies must try to detect and prevent.

Yet the district court here took these problems a step further. Starting from the atextual premise that section 1681e(b) does not require credit-reporting agencies to even try to weed out legal inaccuracies, the district court adopted a novel construction of the statute that effectively immunizes such companies against *any* liability under the FCRA. Credit-reporting agencies "can only be held liable for FCRA claims," it held, "when the information reported does not match the information furnished." SA19. Thus, under the district court's decision, all credit-

reporting agencies have to do to satisfy section 1681e(b) is correctly transcribe the "exact information" they receive from data furnishers. SA20. Nothing else.

The district court's interpretation is irreconcilable with the FCRA's plain text. After all, section 1681e(b) explicitly says that credit-reporting agencies must adopt "reasonable procedures to assure maximum possible accuracy." But the district court so narrowly read "accuracy" that it effectively means nothing at all. Under its logic, a credit-reporting agency that reports obviously erroneous or implausible information—that a consumer has $10 million of undergraduate student loans or a $500,000 payment for a used Toyota Camry—could face no liability under section 1681e(b), so long as it received that information from a data furnisher. It is difficult to imagine an interpretation in greater conflict with Congress's intent than one that absolves credit-reporting agencies from any meaningful obligation to ensure the accuracy of consumer information.

This case demonstrates that the hypotheticals above are not far-fetched. Gia Sessa, the plaintiff here, entered into a 36-month lease for a Subaru Forester. Under the terms of the lease, she was obligated to pay monthly payments of $237 for three years, after which the lease terminated. As is typical, the auto lease also provided Ms. Sessa with the option to purchase the vehicle at the end of her lease for its residual value of $19,444. When Ms. Sessa reviewed her credit report, however, she learned

that Trans Union had inaccurately reported the vehicle's residual value—an amount she did not owe at all—as a "balloon" loan payment.

It should have been obvious to Trans Union that this balloon payment obligation was incorrect. The record evidence made clear what we all know—that consumer auto leases simply do not include balloon payments at all, let alone one nearly 100 times the size of the monthly payment. The information that Trans Union received was internally inconsistent and illogical. And Ms. Sessa's lessors—not to mention the actual lease itself—confirmed that she owed no balloon payment. This should have been more than enough, at the summary-judgment stage, to establish a triable issue of fact as to whether Trans Union had followed "reasonable procedures to assure maximum possible accuracy" of Ms. Sessa's credit report.

Yet the district court prevented Ms. Sessa from even trying to establish Trans Union's liability. Applying its novel interpretation of section 1681e(b), the court held as a matter of law that Trans Union's report must be "considered accurate pursuant to the FCRA" because it "reflected the data furnished" by Ms. Sessa's creditors—data that was not just incorrect, but entirely illogical and implausible. SA21–22. That holding conflicts with the FCRA's text, structure, and purpose—and with common sense. Indeed, even under the atextual legal-factual framework, the district court should have denied summary judgment, because the inaccuracies at issue here are indisputably "factual" inaccuracies—Trans Union reported that Ms. Sessa had a

balloon loan payment obligation that simply did not exist. Because the district court's summary-judgment order rested on multiple legal errors, it should be reversed.

JURISDICTIONAL STATEMENT

The district court had subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1681p. The court entered final judgment for Trans Union on December 20, 2021. Dkt. 134.[1] The plaintiff Gia Sessa timely appealed on January 13, 2022. Dkt. 135. This Court has jurisdiction over this appeal under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Did the district court err in interpreting the Fair Credit Reporting Act's requirement that credit-reporting agencies "follow reasonable procedures to assure maximum possible accuracy" of consumer information to allow liability only where the reported information does not match the information furnished to the credit-reporting agency—*i.e.*, transcription errors?

2. Did the district court err in granting summary judgment to Trans Union based solely on its conclusion that the company's erroneous reporting of the residual value of Ms. Sessa's Subaru Forester as a $19,444 balloon loan payment was nonetheless "accurate" within the meaning of the Fair Credit Reporting Act?

[1] The parties have stipulated to submit a deferred appendix under Rule 30(c) of the Federal Rules of Appellate Procedure and Local Rule 30-1(c). References in this brief to "SA" are to the concurrently filed special appendix, and references to "Dkt." are to the district court record.

STATEMENT OF THE CASE

I. Statutory and regulatory background

Congress enacted the Fair Credit Reporting Act in 1970 "to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy." *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007).[2] As Congress recognized, "[t]he banking system"—and indeed, much else in our economy—"is dependent upon fair and accurate credit reporting." 15 U.S.C. § 1681(a)(1). Credit-reporting agencies "provide a critical economic service by collecting and transmitting consumer credit information." *Ross v. FDIC*, 625 F.3d 808, 812 (4th Cir. 2010); *see* 15 U.S.C. § 1681(a)(3). But, far too often, these companies "were reporting inaccurate information that was adversely affecting" consumers. *Dalton v. Capital Associated Indus., Inc.*, 257 F.3d 409, 414 (4th Cir. 2001). As a result, and motivated by "concerns about the accuracy of information disseminated by credit reporting agencies," *Galper v. JP Morgan Chase Bank, N.A.*, 802 F.3d 437, 444 (2d Cir. 2015), Congress passed the Act "to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report," S. Rep. No. 517, 91st Cong., 1st Sess. 1 (1969).

[2] Unless otherwise indicated, all internal citations, quotation marks, and alterations are omitted.

The FCRA was specifically "crafted to protect consumers from the transmission of inaccurate information about them, and to establish credit reporting practices that utilize accurate, relevant, and current information in a confidential and responsible manner." *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995). To that end, the statute provides "a variety of measures designed to insure that agencies report accurate information." *Dalton*, 257 F.3d at 414–15. And it confers on consumers "a private right of action against credit reporting agencies for the negligent . . . or willful . . . violation of any duty imposed under the statute." *Casella v. Equifax Credit Info. Servs.*, 56 F.3d 469, 474 (2d Cir. 1995); *see* 15 U.S.C. §§ 1681o, 1681n.

The FCRA provision at issue in this appeal is section 1681e(b), which requires credit-reporting agencies to "follow reasonable procedures to assure maximum possible accuracy of" consumer reports. 15 U.S.C. § 1681e(b). "This section imposes a duty of reasonable care in the preparation of a consumer report." *Pinner v. Schmidt*, 805 F.2d 1258, 1262 (5th Cir. 1986). "It is important to note that § 1681e(b) erects a standard of '*maximum* possible accuracy,'" which "requires more than merely allowing for the possibility of accuracy." *Cortez*, 617 F.3d at 709 (emphasis added). "Under this standard a plaintiff need not introduce direct evidence of unreasonableness of procedures"—indeed, "inaccurate credit reports by themselves can fairly be read as evidencing unreasonable procedures." *Stewart v. Credit Bureau,*

Inc., 734 F.2d 47, 52 (D.C. Cir. 1984). The question whether a credit-reporting agency failed to follow "reasonable procedures" will thus be a "jury question[ ] in the overwhelming majority of cases." *Guimond*, 45 F.3d at 1333.

Courts have held that, to make out a section 1681e(b) violation, a consumer must also present "evidence tending to show that a credit reporting agency prepared a report containing inaccurate information." *Id.* "A report is inaccurate when it is patently incorrect or when it is misleading in such a way and to such an extent that it can be expected to have an adverse effect." *Dalton*, 257 F.3d at 415; *see Shimon v. Equifax Info. Servs. LLC*, 994 F.3d 88, 91 (2d Cir. 2021). "[T]he standard of accuracy embodied in [section 1681e(b)] is an objective measure that should be interpreted in an evenhanded manner toward the interests of both consumers and potential creditors in fair and accurate credit reporting." *Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1158 (11th Cir. 1991).

The Federal Trade Commission, which shares responsibility with the Consumer Financial Protection Bureau for implementing and enforcing the FCRA, has provided additional guidance on section 1681e(b)'s reasonable-procedures requirement. *First*, "[a] CRA must accurately transcribe, store and communicate consumer information received from a source that it reasonably believes to be reputable, in a manner that is logical on its face." Fed. Trade Comm'n, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of*

Interpretations § 607(b), at 67 (July 2011), https://perma.cc/6QMJ-MDDY ("FTC Staff Rpt."). *Second*, "when a CRA learns or should reasonably be aware of errors in its reports that may indicate systematic problems . . . , it must review its procedures for assuring accuracy and take any necessary steps to avoid future problems." *Id.* For example, if a creditor "has often furnished erroneous consumer account information," the credit-reporting agency should either require the creditor to correct the systemic problems or "stop reporting information from that creditor." *Third*, the credit-reporting agency should establish procedures to avoid reporting information from its furnishers that appears implausible or inconsistent." *Id.* Related to this, the FTC made clear that "CRA[s] must maintain procedures to avoid reporting information with obvious logical inconsistencies." *Id.* at 68.[3]

II. Factual background

A. Ms. Sessa enters into an auto lease requiring her to pay $237 per month for 36 months.

The plaintiff here, Gia Sessa, decided in November 2018 to lease a 2019 Subaru Forester from Curry Hyundai Subaru. The lease she signed identified Curry as the "lessor," and Hudson Valley Federal Credit Union and Credit Union Leasing of America as "assignees." Dkt. 124-1 at 4.

[3] This Court, like other courts, has referred to the 2011 FTC Staff Report when analyzing the FCRA. *See Galper v. JP Morgan Chase Bank, N.A.*, 802 F.3d 437, 444 n.4 (2d Cir. 2015); *Hammer v. Equifax Info. Servs., L.L.C.*, 974 F.3d 564, 568 n.15 (5th Cir. 2020); *Zabriskie v. Fed. Nat'l Mortg. Ass'n*, 940 F.3d 1022, 1027 (9th Cir. 2019) (en banc).

The lease's terms were straightforward. Ms. Sessa agreed to make 36 monthly payments of $237.75, for a total of $8,559, in addition to $4,000 in upfront costs. Dkt. 124-1 at 4. According to the contract, the "Total of Payments" (including various fees and charges) that Ms. Sessa would have to pay "by the end of the lease" was $12,721.25. Dkt. 124-1 at 4. The lease also made clear that Ms. Sessa would be released from any obligation under the contract once she made those total payments and otherwise complied with the lease's terms. Dkt. 124-1 at 3.

As is typical with auto leases, the lease here also provided Ms. Sessa with the option to purchase the Subaru Forester "at the end of the Lease Term for the Residual Value, assuming all payments are made on the exact scheduled date." Dkt. 124-1 at 3. The lease specified that the "Residual Value" of Ms. Sessa's vehicle was $19,447.07. Dkt. 124-1 at 4; *see also* 12 C.F.R. § 1013.2(n) (defining "residual value" under the Consumer Leasing Act, 15 U.S.C. § 1667, *et seq.*, as "the value of the leased property at the end of the lease term, as estimated or assigned at consummation by the lessor, used in calculating the base periodic payment").

In short, Ms. Sessa assumed no obligations under the lease beyond her monthly payment, nor did she obtain any other form of financing. All she had to do was pay $237 per month for three years. If she made all of those payments, her lease would be terminated without further obligation—unless she exercised her option to purchase the Subaru Forester for its $19,444 residual value.

B. Trans Union inaccurately reports the $19,444 residual value of Ms. Sessa's leased car as a "balloon payment" obligation.

A month after signing the lease, Ms. Sessa received an email alert informing her that there had been a recent change to her Trans Union credit report. When Ms. Sessa reviewed the credit report, she was surprised to see that it showed a new account attributed to Hudson Valley Federal Credit Union containing a "[b]alloon payment" of $19,444. Dkt. 124 ¶ 6.[4] She also received notifications from other credit-monitoring services, such as Credit Karma, alerting her that "a new auto lease account with HVFCU was appearing on [her] Trans Union credit report, with a high balance of $25,928, a monthly payment of $237 for 36 months, and a balloon payment obligation." Dkt. 124 ¶ 8.

This reporting was obviously wrong. Nothing in Ms. Sessa's lease required a "balloon payment." Nor did she have a "high balance" of $25,925—her total payment remaining under the lease was less than one-third of that amount ($8,532). Ms. Sessa did not understand why her credit report was showing this inaccurate information. So she contacted the dealership (Curry), the lease's assignee (Hudson

[4] A balloon payment is "a larger-than-usual one-time payment at the end of the loan term," most typically associated with certain types of mortgages. CFPB, *What is a balloon payment? When is one allowed?* (Sept. 9, 2020), https://perma.cc/MJU6-ZAAR; *see also, e.g.*, 15 U.S.C. § 1639(e) (defining balloon payment as "a scheduled payment that is more than twice as large as the average of earlier scheduled payments"); *id.* § 1639c(b)(2)(A)(ii) (same).

Valley), and the financing company (Credit Union Leasing of America) several times by email and telephone to get some clarity about what had gone wrong. *See* Dkt. 124 ¶¶ 10–11.

All three companies "confirmed that [Ms. Sessa] did not owe a balloon payment on the Lease." Dkt. 124 ¶ 13. The general manager at the Curry dealership, for instance, responded to Ms. Sessa's email inquiry stating: "I looked over your transaction with Curry and it is for sure a 36 month lease, not a balloon." Dkt. 124-8. All of the lessors expressed that they were "confused as [to] what was occurring with [Ms. Sessa's] credit report." Dkt. 124 ¶ 12.

The lessors' confusion was understandable, because "industry standard auto lease terms," like those at issue here, simply "do not include balloon payment obligations." Dkt. 114-5 ¶ 5. In fact, Ms. Sessa's expert witness—who had 42 years of experience in the auto sales and leasing business—testified that he had "never seen or been made aware of a 'balloon payment' contained within and concluding a[n] [auto] lease obligation." Dkt. 114-5 ¶ 4. Ms. Sessa's expert further testified that "[b]ased on [his] experience and knowledge of the consumer auto leasing industry, 'balloon payments' have not been utilized with any degree of frequency in consumer auto lease transactions. . . To the extent that balloon payments exist at all in consumer auto leases, which is contrary to my experience and knowledge of the auto leasing industry, such obligations would be extremely peculiar and considered

oddities within the auto finance industry." Dkt. 114-5 ¶ 4. In light of this, "a statement or indication that a consumer auto lease contains a balloon payment obligation raises a significant possibility that the representation is not accurate." Dkt. 114-5 ¶ 5. Trans Union provided no rebuttal expert on these points. Basic knowledge of auto leasing, in other words, should have prompted Trans Union to question whether the information it reported about Ms. Sessa's lease was accurate.

Trans Union had further reason to doubt the accuracy of this report: It had prior notice that Hudson Valley was misreporting residual values as balloon payments. Trans Union conceded that it received 72 consumer disputes concerning Hudson Valley data that contained balloon payments, all of which were, as a result, subject to manual review (meaning that a Trans Union employee or third-party designee specifically reviewed the data subject to dispute). Dkt. 114-12 at 23. And in at least two of those instances, consumers had specifically alerted Trans Union that balloon payments were being erroneously reported on their accounts. Dkt. 114-4 at 45. Yet Trans Union failed to adopt data-screening procedures that could flag the same problem in the data furnished by Hudson Valley about Ms. Sessa's lease.

And Trans Union should have had more general concerns about Hudson Valley's reliability as a furnisher. Under Hudson Valley's contracts with Trans Union, Hudson Valley was only approved to furnish auto "loan records"—even though Trans Union specifically understood these types of transactions as different

categories. Dkt. 132 at 15. Yet Hudson Valley still furnished data to Trans Union coded as auto leases, and Trans Union's procedures did not screen for or detect this discrepancy. Dkt. 132 at 16; *see* Dkt. 123-3 at 43–44, 48, 92 (filed under seal).

C. Ms. Sessa files this case, the district court limits discovery, and Trans Union moves for summary judgment.

Despite its obvious inaccuracy, Trans Union continued to report that Ms. Sessa owed a nearly-$20,000 balloon payment throughout 2019. Dkt. 124 ¶ 31. During this time, Trans Union sent 13 credit reports to Ms. Sessa's bank. SA6. Knowing that Trans Union had inaccurately reported her credit, Ms. Sessa chose not to apply for new credit cards and stopped receiving prescreened credit offers. Dkt. 124 ¶¶ 26–30. She also suffered anxiety and distress because she was concerned that the erroneous loan obligation on her credit report would "present a significant obstacle for . . . finding an apartment, receiving offers of credit, or even obtaining a job." Dkt. 124 ¶ 25.

To remedy these harms, Ms. Sessa filed this putative class action against Trans Union, alleging that Trans Union violated section 1681e(b) and New York's state-law analogue, N.Y. G.B.L. § 380-j(e). Dkt. 4 at 13–15.[5] She also brought other federal and

[5] No one disputes that Trans Union meets the FCRA's definition for "consumer reporting agencies," which mean "any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties." 15 U.S.C. § 1681a(f).

state claims against her lessors (Curry, Hudson Valley, and Credit Union Leasing of America). Dkt. 4 at 11–13. Following the initial conference, the district court issued an order bifurcating class and individual discovery, allowing discovery only relating to Ms. Sessa's individual claims prior to summary judgment, and staying class certification until the merits of her individual claims were resolved. Dkt. 68. The lessors and Ms. Sessa subsequently reached settlement, and Ms. Sessa stipulated to dismissal of her claims against them. Dkts. 91, 92, 99.

Following limited discovery, Trans Union moved for summary judgment. It argued that Ms. Sessa's claims failed as a matter of law because she did not establish an "actionable" inaccuracy under section 1681e(b). Dkt. 112 at 8–12. Trans Union did not contest that the information that Hudson Valley furnished was factually incorrect given that (1) Ms. Sessa had entered into an auto lease, not a loan; and (2) the lease—like all standard auto leases—did not provide for a balloon payment. Yet Trans Union characterized the inaccuracy here as "a dispute over the validity of a debt," Dkt. 112 at 9, and contended that the FCRA immunized credit-reporting agencies from liability for such "legal" inaccuracies. In support of this argument, Trans Union cited several cases in which the inaccuracy at issue related to whether the plaintiff was legally bound to pay the underlying debt—it cited no case, like this one, where

the credit-reporting agency incorrectly reported the amount and nature of a consumer's debt obligation. *See* Dkt. 112 at 10–12 (citing cases).[6]

In her opposition to summary judgment, Ms. Sessa explained that there was no "dispute" here over the lease terms at all. Dkt. 132 at 8–9. All parties agreed that she did not owe a balloon payment, and that the information that Trans Union reported was therefore incorrect. This kind of obvious factual inaccuracy, Ms. Sessa argued, has long been the basis for section 1681e(b) claims. And the fact that Trans Union reported this information—even though it contradicted standard auto-leasing practices and even though Trans Union had prior notice that Hudson Valley had previously reported inaccurate data including balloon payments—strongly suggested that Trans Union lacked reasonable procedures to assure maximum possible accuracy. At the very least, Ms. Sessa argued, "the reasonableness of Trans Union's policies is a jury question." Dkt. 132 at 19.

D. The district court rules that Trans Union can't be held liable under the FCRA for any inaccuracies except for transcription errors.

The district court granted Trans Union's motion for summary judgment, based solely on its finding that Ms. Sessa failed to establish a "triable issue of fact

[6] Trans Union alternatively argued that it was entitled to summary judgment because it reasonably relied on the data that Hudson Valley furnished it, and because Ms. Sessa did not establish that Trans Union acted willfully or negligently. Because the district court granted summary judgment solely based on its conclusion that Ms. Sessa did not demonstrate any inaccuracy, it did not reach these arguments.

regarding whether TransUnion put forward an inaccurate report." SA12–13. The court acknowledged that the lease obligated Ms. Sessa only to make a monthly payment of $273 and provided her the option to purchase the vehicle for its residual value of $19,444. SA4–5. And it further acknowledged that Trans Union reported this residual value as a balloon payment, which was contrary to "the lease's term." SA6.

Despite these acknowledgments, the district court nevertheless concluded that Trans Union's credit report—including the erroneously reported balloon payment obligation—must be "considered accurate" under the FCRA. SA22. The district court reached this unlikely conclusion by adopting a novel interpretation of section 1681e(b), under which credit-reporting agencies "can only be held liable … when the information reported does not match the information furnished." SA19. The district court did not discuss the statute's actual text in its analysis. Instead, it purported to ground its interpretation in "policy positions" and out-of-circuit caselaw construing the FCRA to silently include a distinction between so-called "factual" and "legal" inaccuracies. SA16–19.

Applying its novel interpretation, the district court held that Trans Union was "absolve[d]" of liability because it "reported the exact information it received from [the] data furnisher." SA20. "It may be the case," the court conceded, "that the terms of the lease contradict the data [Hudson Valley] furnished." SA21. But the district court believed this to be a "contractual dispute" going to "the debt's legal validity,"

not a "factual dispute[] regarding whether [Trans Union] reported accurate numbers." SA21–22. It therefore granted the motion and entered final judgment in Trans Union's favor. SA23–24.

STANDARD OF REVIEW

This Court "review[s] a grant of summary judgment de novo, examining the evidence in the light most favorable to, and drawing all inferences in favor of, the non-movant." *Huebner v. Midland Credit Mgmt., Inc.*, 897 F.3d 42, 50 (2d Cir. 2018). "Summary judgment is appropriate only when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Cortez v. Forster & Garbus, LLP*, 999 F.3d 151, 154 (2d Cir. 2021). Likewise, because "[i]nterpretations of statutes are pure questions of law," this Court "review[s] [them] de novo." *Bruce Katz, M.D., P.C. v. Focus Forward, LLC*, 22 F.4th 368, 370 (2d Cir. 2022).

SUMMARY OF ARGUMENT

I. The district court held that credit-reporting agencies "can only be held liable for FCRA claims when the information reported does not match the information furnished." SA19. That novel interpretation of section 1681e(b)—which conflicts with the statute's text, structure, and purposes—cannot stand.

A. Statutory interpretation begins with the plain text. Section 1681e(b) requires credit-reporting agencies to "follow reasonable procedures to assure maximum possible accuracy" in credit reports. The term "accuracy" must be given its ordinary meaning—freedom from mistake or error. Thus, when information in a credit report

is not free from mistake or error, it is inaccurate within the meaning of section 1681e(b). Nothing in the statutory text contemplates a distinction between "legal" inaccuracies and "factual" inaccuracies—or between any other "categories" of inaccuracies. But the district court simply ignored the text. It opted for an atextual interpretation of the statute based on a misreading of agency regulations defining "accuracy" for other purposes. The district court's failure to apply the plain and unambiguous statutory text, standing alone, warrants reversal.

Other traditional tools of statutory construction confirm that the district court's interpretation of section 1681e(b) was deeply flawed. That Congress specifically chose to modify "accuracy" with the phrase "maximum possible" is evidence that it intended for credit-reporting agencies' statutory duty to assure accuracy to be serious and meaningful. Yet, disregarding the language that Congress chose, the district court gave "accuracy" an extremely *narrow* reading—to only cover transcription errors. This reading cannot be squared with Congress's express purposes in enacting the FCRA: to protect consumers from the dissemination of inaccurate information.

B. The district court claimed that its interpretation flowed from out-of-circuit case law recognizing an implied distinction between legal inaccuracies and factual inaccuracies. That is wrong. No court has ever held, as the district court did here, that section 1681e(b) claims can be brought only when the credit-reporting agency

fails to exactly transcribe the information it receives from a data furnisher. To the contrary, even the decisions on which the district court relied have held that inaccuracies that do not involve challenges to the legal validity of the underlying debt—like misstatements of the amount or nature of a debt—*are* cognizable under the FCRA. In any event, the courts that have drawn this implied distinction failed, like the district court here, to give effect to the statute's plain text. Thus, this Court should not follow them.

Even worse, the district court rested its interpretation in large part on its own policy concerns about placing burdens and costs on credit-reporting agencies. That violated basic principles of statutory interpretation. Congress is best positioned to decide how to resolve such policy arguments—not courts. And it did so here. Section 1681e(b) does not require credit-reporting agencies to eliminate all inaccuracies in credit reports. Rather, it requires only that they follow "reasonable procedures" to assure "maximum possible accuracy." This reasonableness requirement protects credit-reporting agencies from liability in cases in which detecting a challenged inaccuracy would be *un*reasonable. The statutory text thus reflects the delicate balance that Congress struck in crafting the FCRA. The district court's failure to respect that congressional balance is reversible error.

II. The district court erred in granting summary judgment to Trans Union solely based on its conclusion that Ms. Sessa failed to establish an "inaccuracy" under

section 1681e(b). Reporting the residual value of Ms. Sessa's car—an amount that she did not owe—as a balloon loan payment is plainly inaccurate, especially given the unrebutted record evidence showing that industry-standard auto leases, like this one, do not contain balloon payments. This is true even if this Court accepts the atextual distinction between factual inaccuracies and legal inaccuracies. Even under that framework, the inaccuracy challenged here is a factual one, because Trans Union could have resolved it without "mak[ing] any legal determinations about the facts or legal judgments." *Chuluunbat v. Experian Info. Sols., Inc.*, 4 F.4th 562, 568 (7th Cir. 2021).

Thus, the district court should have turned to the primary inquiry under section 1681e(b)—whether Trans Union followed reasonable procedures. And under that inquiry, the record evidence demonstrates—at the very least—genuine material disputes as to whether Trans Union's data-screening procedures unreasonably failed to detect the implausible, inconsistent, and illogical information furnished to it about Ms. Sessa's lease. This Court should therefore reverse the district court's grant of summary judgment.

ARGUMENT

I. Nothing in the Fair Credit Reporting Act supports the district court's interpretation of section 1681e(b), which would immunize credit-reporting agencies from liability for all inaccuracies aside from transcription errors.

The district court's interpretation of the Fair Credit Reporting Act is unprecedented: It concluded, as a matter of law, that credit-reporting agencies "can

only be held liable for FCRA claims when the information reported does not match the information furnished." SA19. In the district court's view, only those kinds of inaccuracies—mere transcription or scrivener's errors—can serve as the basis for section 1681e(b) claims. Any other inaccuracy, the district court held, is a "legal" inaccuracy that falls outside the ambit of the statute. Under the district court's construction, in other words, a credit-reporting agency like Trans Union can *never* be liable for reporting inaccurate information about a consumer so long as it reports the "exact information" that a furnisher provides—no matter how obviously incorrect or erroneous. SA20.

That interpretation finds no support in the FCRA's text, structure, or purpose. For good reason: It would effectively blue pencil from the statute the requirement that credit-reporting agencies adopt "reasonable procedures to assure maximum possible accuracy." The district court's statutory construction immunizes credit-reporting agencies from *any* obligation to verify the accuracy of information they receive about consumers, thus undermining Congress's intent in enacting the FCRA in the first place. Because the district court's order rested on this basic legal error, this Court should reverse.

A. The district court erected an artificial threshold requirement for section 1681e(b) claims that conflicts with the Act's plain text, structure, and purpose.

1. The statutory "analysis begins, as it must, with the plain text of" section 1681e(b). *Springfield Hosp., Inc. v. Guzman*, 28 F.4th 403, 418 (2d Cir. 2022); *see N.Y. Legal Assistance Grp. v. Bd. of Immigr. Appeals*, 987 F.3d 207, 216 (2d Cir. 2021) ("Every exercise in statutory construction must begin with the words of the text.").

The relevant text here is straightforward: A credit-reporting agency must "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." § 1681e(b). Because the FCRA does not define "accuracy," the term should be given "its common, ordinary meaning." *Harris v. Sullivan*, 968 F.2d 263, 265 (2d Cir. 1992). The common meaning of "accuracy" is "freedom from mistake or error." Merriam-Webster Dictionary (2022); *see, e.g.*, *Erickson v. First Advantage Background Servs. Corp.*, 981 F.3d 1246, 1251–52 (11th Cir. 2020).

This ordinary definition of "accuracy" contemplates no distinction between different forms of accuracy, whether they are labeled "legal," "factual," or something else. Rather, the only question is whether the information presented about an individual is "free[] from mistake or error." Here, Trans Union made a "mistake or error" in producing Ms. Sessa's credit report—it erroneously reported the residual value of her car as a balloon loan payment obligation. Thus, applying the statute's

plain text, Ms. Sessa has demonstrated an actionable "inaccuracy" for purposes of her section 1681e(b) claim. She is therefore entitled to put before a jury the question of whether Trans Union employed "reasonable procedures to assure maximum possible accuracy."

Violating the cardinal requirement of statutory interpretation, the district court ignored the statute's plain meaning. And the few sentences that it did say about the text were wrong. The district court suggested, for instance, that, "under the FCRA's statutory scheme, [o]nly furnishers are tasked with accurately reporting liability." SA17. That is simply incorrect: Nothing in the statute says that only furnishers must accurately report consumer liability. As explained, the FCRA does not define "accuracy" for *either* furnishers or credit-reporting agencies. The district court didn't even cite any statutory provision for this proposition—instead, it cited regulations promulgated by the Consumer Financial Protection Bureau that implement the FCRA's requirements for furnishers. SA17. And it is true that these regulations define "accuracy," for furnishers, as information that "correctly [r]eflects the terms of and liability for the account or other relationship." 12 C.F.R. § 1022.41(a)(1). But, contrary to the district court's belief, this regulatory definition cannot suffice as evidence of what *Congress* intended credit-reporting agencies' duties and obligations to be. *See* SA17 (explaining that the lack of an "analogous charge on CRAs . . . militates towards absolving CRAs from this responsibility"). Congress's

intent must be determined from the statute's text. And here, the text does not supply any definition—technical or otherwise. That, as explained above, means the plain meaning of "accuracy" controls.

Nor does the regulatory definition of "accuracy" for furnishers do anything to show that federal agencies have somehow interpreted the FCRA not to require credit-reporting agencies to accurately report liability. That's because neither the CFPB nor any other agency has issued any regulations that define "accuracy" for credit-reporting agencies. So the district erred, even on its own terms, in drawing a negative implication from the regulations. *See* SA17. Consider a different example: The CFPB regulation defining accuracy for furnishers that the district court cited also requires that the furnished information "correctly . . . identifies the appropriate consumer." 12 C.F.R. § 1022.41(a)(3). Under the district court's logic, because there is no comparable regulation governing credit-reporting agencies, that means that section 1681e(b) does not obligate them to assure even that consumers are accurately identified. But that is plainly wrong. *See, e.g.*, *Cortez*, 617 F.3d at 710. In fact, the CFPB itself has held that credit-reporting agencies violate section 1681e(b) when they use simple "name-only matching" procedures that inaccurately identify a consumer as another person with the same name. *See Fair Credit Reporting; Name-Only Matching Procedures*, 86 Fed. Reg. 62468-01 (Nov. 10, 2021).

Ultimately, "[s]tatutory construction begins with the plain text and, if that text is unambiguous, it usually ends there as well." *United States v. Gayle*, 342 F.3d 89, 92 (2d Cir. 2003). Here, the relevant text is unambiguous: Credit-reporting agencies must adopt "reasonable procedures to assure maximum possible accuracy." § 1681e(b). That means that a credit-reporting agency's procedures should be reasonably calculated to report information that is free from mistake or error. Nothing in section 1681e(b)'s text supports the district court's contrary reading—that "accuracy" only means freedom from transcription mistakes or errors.

2. The other traditional tools of statutory construction—context, structure, and purpose—only confirm that the district court erred in interpreting section 1681e(b) to exclude all but the most trivial set of inaccuracies.

To start, Congress already specified what kind of accuracy credit-reporting agencies have to assure: "maximum possible accuracy." That Congress specifically chose to include certain modifiers ("maximum possible") and not others means that courts do not have license to invent new modifiers ("legal" and "factual") that are not in the statute's text. *See Lamie v. U.S. Tr.*, 540 U.S. 526, 538 (2004) (courts cannot "read an absent word into the statute"). And the modifiers that Congress *did* write into the statute—"maximum possible"—make clear that Congress contemplated that credit-reporting agencies' obligation to assure accuracy under section 1681e(b) is substantial. Indeed, as courts have recognized, "maximum possible accuracy" is a

standard that "requires *more* than merely allowing for the possibility of accuracy." *Cortez*, 617 F.3d at 709 (emphasis added); *see also Erickson*, 981 F.3d at 1251–52 (explaining that "[t]he words 'maximum' and 'possible' mean 'greatest in quantity or highest in degree attainable' and 'falling or lying within the powers' of an agent or activity").

Yet the district court's interpretation of the statute—which read section 1681e(b)'s reference to "accuracy" so narrowly as to effectively write it out of the provision altogether—is diametrically opposed to the language that Congress chose. A basic tenet of statutory construction is that courts "must presume that Congress says in a statute what it means and means in a statute what it says there." *Rotkiske v. Klemm*, 140 S. Ct. 355, 360 (2019). Here, though, the district court refused to apply the plain text of the statute and rewrote section 1681e(b)'s requirement that credit-reporting agencies assure "maximum possible accuracy" to instead mean that they need only correctly parrot and "disseminate[] the information as it was furnished." SA21–22.

The surrounding statutory context further demonstrates the errors in the district court's analysis. *Saks v. Franklin Covey Co.*, 316 F.3d 337, 345 (2d Cir. 2003) (holding that courts should "look[] to the statutory scheme as a whole and plac[e] the particular provision within the context of that statute"). Like section 1681e(b), other provisions of the FCRA relating to credit-reporting agencies' duties to report accurate information include no qualifier when discussing accuracy. *See, e.g.*, 15

U.S.C. § 1681i(a)(1)(A) (requiring a "reasonable reinvestigation to determine whether the disputed information is inaccurate"); *id.* § 1681b(b)(3)(B)(i)(IV) (requiring CRAs to inform consumers about their right to "dispute with the consumer reporting agency the accuracy or completeness of any information in a report").

This makes sense: Congress specifically enacted the FCRA because of concerns that credit-reporting agencies were disseminating "[i]naccurate credit reports." 15 U.S.C. § 1681(a)(1); *see, e.g.*, *Galper*, 802 F.3d at 444; *Dalton*, 257 F.3d at 414. That's why the statute expressly states that the reasonable-procedures requirement is intended to "meet[] the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information." 15 U.S.C. § 1681(b). Yet the district court's rule is the opposite of "fair and equitable to the consumer." By reducing credit-reporting agencies' obligations under the statute to simply a requirement that they accurately transcribe furnished data—nothing more—the district court subverted the FCRA's fundamental purposes. And it did so without providing any basis for believing that Congress intended for the law to cover only a narrow subset of "factual" inaccuracies—let alone just transcription errors.

Bottom line: Section 1681e(b) does not immunize credit-reporting agencies from liability for reporting inaccuracies so long as they are not transcription errors.

As explained, "the plain text, the statutory context, and common sense all lead inescapably and unambiguously to that conclusion." *See Pereira v. Sessions*, 138 S. Ct. 2105, 2110 (2018). Instead, the statute means what it says: Credit-reporting agencies must adopt reasonable procedures to assure "maximum possible accuracy." That language makes no distinction between "legal" and "factual" inaccuracies. Because the district court required Ms. Sessa to make a threshold showing that is unmoored from the statute's text, its order should be reversed.

B. The district court's atextual interpretation rests on a misunderstanding of case law and flawed policy justifications.

Instead of focusing on the FCRA's text and structure, the district court turned to out-of-circuit case law and self-described "policy positions." SA17. Neither supports the district court's interpretation.

1. The district court first claimed that circuit courts are "unanimous" in holding that section 1681e(b) claims require factual inaccuracies, not legal inaccuracies. SA16. It then cited various out-of-circuit cases as supporting its conclusion that "CRAs can only be held liable for FCRA claims when the information reported does not match the information furnished." SA18–19.

That is wrong: *No* court has adopted such an unduly restrictive understanding of section 1681e(b). In fact, the district court did not point to a single case holding that a credit-reporting agency can be held liable under the FCRA *only* when it fails to

accurately transcribe the information it received from a furnisher. As we explain in greater detail in Section II, even those circuits that have adopted the (atextual) distinction between factual and legal inaccuracies recognize that actionable factual inaccuracies include those, like here, that "do not require the [CRA] to make any legal determinations about the facts or legal judgments." *Chuluunbat,* 4 F.4th at 568 (noting that "examples of factual inaccuracies include the amount a consumer owes"); *Losch v. Nationstar Mortg. LLC*, 995 F.3d 937, 945 (11th Cir. 2021) (holding that reporting a debt for a consumer who "was no longer liable for the balance" was "factually inaccurate"); *Batterman v. BR Carroll Glenridge, LLC*, 829 F. App'x 478, 481 (11th Cir. 2020) (suggesting that a credit-reporting agency who "reported any factually incorrect information in [a consumer's] credit report" has included a "factual inaccuracy"). Contrary to the district court's claim, none of these cases come close to suggesting that a factual inaccuracy within the meaning of section 1681e(b) is limited to a credit-reporting agency's failure to report "the exact information it received from a data furnisher." SA20.

But the district court was wrong to rely on these out-of-circuit cases for a more fundamental reason: None of them grounded their distinction between legal and factual accuracy in the FCRA's text. Indeed, the First and Eleventh Circuits' decisions adopting this distinction did not even purport to analyze the text. *See, e.g.*, *DeAndrade v. Trans Union LLC*, 523 F.3d 61, 68 (1st Cir. 2008); *Cahlin*, 936 F.2d at 1156,

1160–61. And while the Seventh Circuit referenced the statutory text, it adopted the legal-factual inaccuracy distinction largely based on its own policy determinations regarding how liability should be apportioned between credit-reporting agencies and furnishers. *See Denan v. Trans Union LLC*, 959 F.3d 290, 293–96 (7th Cir. 2020). Nothing in the text or structure of the FCRA supports these courts' interpretation of section 1681e(b)—which holds that disputes concerning "legal" issues are outside the coverage of the FCRA. The out-of-circuit decisions on which the district court relied therefore cannot be squared with the basic premise that statutory interpretation "start[s] with the plain meaning of the text." *Wilson v. United States*, 6 F.4th 432, 435 (2d Cir. 2021). So even if the district court was right that these decisions supported its atextual interpretation (and it was not), this Court should not follow them and instead apply the plain text of section 1681e(b).[7]

2. In reality, the district court's interpretation seems to have been motivated largely by the court's self-described "policy positions." SA17. Specifically, the district

[7] The district court also erroneously suggested that this Court's summary affirmance in *Okocha v. Trans Union LLC*, 488 F. App'x 535, 536 (2d Cir. 2012), already blessed the factual-legal distinction. *See* SA16–17. Although this Court did not explain its reasoning, the district court's decision in *Okocha* makes clear that it granted summary judgment because the plaintiff failed to provide any evidence supporting his assertions that Trans Union reported inaccuracies about his debt. *Okocha v. Trans Union LLC*, 2011 WL 2837594, at *5 (E.D.N.Y. Mar. 31, 2011). Further, the plaintiff there admitted that the terms of the accounts were accurately reported, *see id.* at *6–8, in marked contrast to the undisputed evidence here, which shows that Trans Union incorrectly reported the residual value of Ms. Sessa's car at lease end as a balloon payment *obligation*—a plainly factual inaccuracy.

court explained that its interpretation better aligned with its beliefs that creditors are likely better-positioned than credit-reporting agencies to investigate inaccuracies, and that allowing credit-reporting agencies to be liable for reporting inaccuracies would increase costs for consumers. SA17–18.

That was impermissible. "Whatever arguments can be mounted for or against the policy choice reflected in" section 1681e(b), "the proper forum for that debate is Congress, not the courts." *Shepherd v. Goord*, 662 F.3d 603, 609 (2d Cir. 2011). A federal court's "job [is] to apply faithfully the law Congress has written," *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017), not to "replace the actual text with speculation as to Congress' intent" or underlying purpose, *Magwood v. Patterson*, 561 U.S. 320, 334 (2010). But that is precisely what the district court did here. It disregarded section 1681e(b)'s actual text in favor of its own policy views about whether credit-reporting agencies should be required under the FCRA to detect non-transcription inaccuracies before disseminating consumer reports. But Congress has already decided that question—it determined that credit-reporting agencies may be held liable when they fail to adopt reasonable procedures that "assure maximum possible accuracy."[8]

[8] The district court's only effort to ground its policy considerations in the statute was a reference to the FCRA's purpose of "promot[ing] efficiency." SA18. But, as the Supreme Court has made clear, such a "generalized statutory purpose" cannot override the FCRA's actual text. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 649 (2012).

In particular, the district court appeared motivated by concerns that credit-reporting agencies are not well-positioned to investigate and resolve legal disputes about the underlying debt. But the statutory text already addresses those concerns. The FCRA "does not impose strict liability on consumer reporting agencies for inaccuracies in reporting," *Dalton*, 257 F.3d at 417; it just requires that they take "*reasonable* procedures" to assure "maximum possible accuracy," § 1681e(b) (emphasis added). By requiring credit-reporting agencies to adopt "reasonable procedures," the plain text of the statute protects them from having to conclusively adjudicate legal disputes over the validity of the debt. That's because, in the typical case, it would be *unreasonable* for a credit-reporting agency to have to act as a legal tribunal. *See, e.g.*, *Wright v. Experian Info. Sols., Inc.*, 805 F.3d 1232, 1242 (10th Cir. 2015); *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892 (9th Cir. 2010).

Section 1681e(b)'s text, in other words, reflects the balance that Congress struck between its desire to protect consumers from the dissemination of inaccurate information and its understanding that credit-reporting agencies cannot eliminate all inaccuracies in credit reports. *See Nelson v. Chase Manhattan Mortg. Corp.*, 282 F.3d 1057, 1060 (9th Cir. 2002) (observing that the FCRA "has been drawn with extreme care, reflecting the tug of the competing interests").

The district court's artificial threshold requirement, however, wreaks havoc on that balance. It shields credit-reporting agencies from liability in all cases except

for when they make a mistake in transcribing the data they receive from a furnisher. The consequences of the district court's decision are astounding: Under its logic, Trans Union could not be liable under the FCRA even if it incorrectly reported that Ms. Sessa owed a $5 million—or even $500 million—balloon payment on her Subaru Forester so long as that report matched what it received from her lessors. And that would be true even if the data about the $5 million balloon payment obligation was obviously inconsistent with other data furnished about the same account. It is hard to imagine a rule more in conflict with the FCRA's primary purpose—"to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report." S. Rep. No. 91-517, 91st Cong., 1st Sess. 1 (1969).

The district court also entirely overlooked the policy consequences of adopting its preferred threshold requirement. In many cases, it will be "unworkable" to determine whether the alleged inaccuracy is "factual" or "legal." *Cornock v. Trans Union LLC*, 638 F. Supp. 2d 158, 163–64 (D.N.H. 2009) (explaining that "classifying a dispute over a debt as 'factual' or 'legal' will usually prove a frustrating exercise"). Indeed, even those courts that have adopted a factual-legal distinction have acknowledged that this standard is open to interpretation and difficult to apply. *See, e.g.*, *Soyinka v. Equifax Info. Servs., LLC*, 486 F. Supp. 3d 1232, 1237 (N.D. Ill. 2020) (suggesting that "[a] dispute that would be primarily 'factual' in court may still

exceed the capacities of a consumer reporting agency, and thus pose a legal question under the FCRA," whereas "some defenses to debts that might be deemed 'legal' in other contexts fall within a consumer reporting agency's competence, and thus pose factual questions"); *see also* CFPB Amicus Br. at 17–19, *Gross v. CitiMortgage, Inc.*, No. 20-17160 (9th Cir. April 19, 2021) (arguing that the factual-legal distinction is "hard to implement and could lead to evasion of the purposes of [the] FCRA"). No policy or practical considerations commend adopting such an indeterminate approach to applying section 1681e(b).

* * * * *

In enacting the FCRA, Congress struck a balance between protecting consumers against the dissemination of inaccurate information and preventing credit-reporting agencies from being held strictly liable for reporting inaccuracies. It did so by requiring credit-reporting agencies to adopt "reasonable procedures" to assure "maximum possible accuracy." § 1681e(b). Courts do not have license to graft additional requirements onto the statute to further balance the policy concerns as they see fit—instead, they must "respect the balance struck by Congress when interpreting its provisions" and apply the text as written. *Ross v. FDIC*, 625 F.3d 808, 812 (4th Cir. 2010). Because the district court failed to do that here, its order granting summary judgment should be reversed.

II. The district court erred in granting summary judgment because Trans Union's incorrect reporting of the residual value of Ms. Sessa's leased car as a balloon loan payment was inaccurate under any standard.

1. Here, the undisputed evidence shows that Ms. Sessa did not owe a balloon payment under her auto lease. All three of Ms. Sessa's lessors confirmed that for her—and it also reflects the terms of the actual lease agreement underlying the transaction. The record evidence—including unrebutted expert testimony—also shows that commercially available consumer auto leases do not include balloon payment obligations. *See* Dkt. 114-5 ¶¶ 4–5. Nevertheless, Trans Union reported the residual value of Ms. Sessa's car as a $19,444 balloon payment—an amount that was more than 81x her monthly payment and that constituted nearly triple the amount of what she actually had to pay under the terms of lease. And it did so even though it knew that auto-lease information submitted by this particular furnisher in the past had inaccurately included non-existent balloon payments and this furnisher had not been approved to provide consumer lease information.

Based on this evidence, and under a correct interpretation of the statute, Ms. Sessa demonstrated that Trans Union reported a cognizable inaccuracy for purposes of her section 1681e(b) claim. As explained above, information is accurate under the FCRA if it is free from mistake or error—there is no distinction between "legal" or "factual" inaccuracies in the statute. Here, the information that Trans Union reported to third parties incorrectly stated that Ms. Sessa was obligated to make a

balloon payment in the amount of $19,444 at the end of her auto lease. Trans Union's credit report was therefore *not* free from mistake or error. Accordingly, the district court erred in granting summary judgment to Trans Union based solely on its determination that Ms. Sessa had not established an inaccuracy.

2. Even if this Court accepts that the FCRA contemplates a distinction between factual and legal inaccuracies, it should still reverse the district court's grant of summary judgment. All of Trans Union's errors here—reporting the residual value of Ms. Sessa's lease as a balloon payment and misstating her total balance—are indisputably "factual" inaccuracies.

In other words, the district court was simply wrong when it determined that the inaccuracy that Ms. Sessa challenges here is a "legal dispute." SA22. The courts that have interpreted the FCRA to implicitly provide for a distinction between factual and legal inaccuracies have held that legal inaccuracies are those that require the credit-reporting agency to definitively adjudicate a legal dispute as to the underlying debt's validity. Under this view, a legal inaccuracy arises where "a consumer argues that although his debt exists and is reported in the right amount, it is invalid due to a violation of law." *Chuluunbat*, 4 F.4th at 567. Essentially, this framework purports to operate as a screening tool designed to identify errors beyond the scope of the credit-reporting agency's competence to identify or to resolve once disputed by consumers (as in a section 1681i reinvestigation claims).

Thus, courts have held that section 1681e(b) does not permit claims against credit-reporting agencies premised on, for example, a dispute over the validity of a mortgage allegedly induced by fraud, *see DeAndrade*, 523 F.3d at 64, 68, or a dispute over state usury laws and tribal sovereign immunity, *see Denan*, 959 F.3d at 295–96. Central to these decisions' reasoning is the belief that "[o]nly a court can fully and finally resolve the legal question of a loan's validity." *Denan*, 959 F.3d at 295. Put differently, under this caselaw, an inaccuracy that requires a credit-reporting agency "to assume the role of a tribunal" is not actionable under section 1681e(b). *Id.* at 297; *see also Carvalho*, 629 F.3d at 891.

Conversely, these same courts recognize that an inaccuracy that is "straightforward, fact-based, and c[an] be resolved through a reasonable investigation" may be challenged under section 1681e(b). *Denan*, 959 F.3d at 297. Such factual inaccuracies include, for example, instances where plaintiffs "contest their debts' existence or [whether] the debts are [reported] in improper amounts." *Chuluunbat*, 4 F.4th at 568; *see also Denan*, 959 F.3d at 293 (noting that "contest[ing] the debt amounts or Trans Union's account of [one's] payment history" qualifies as a "factual" dispute); *Carvalho*, 629 F.3d at 891 (explaining that allegations that a certain debt "account does not pertain to [the consumer]" or "that the amount past due is too high or low" are actionable inaccuracies). Credit-reporting agencies can likewise be held liable under section 1681e(b) for reporting these sorts of inaccuracies, because

resolving them would not "require the [CRA] to make any legal determinations about the facts or legal judgments" that is "outside [their] competency." *Chuluunbat*, 4 F.4th at 568. In short, for these courts, "the central question is whether the alleged inaccuracy turns on applying law to facts or simply examining the facts alone." *Id.*

The inaccuracy challenged here falls squarely in the latter category. Contrary to the district court's assertions, Trans Union did not have to undertake *any* legal determinations about the underlying claim to detect the inaccuracies in the data appearing in Ms. Sessa's credit report. It merely had to conduct a "straightforward" and "fact-based" inquiry: Do consumer auto leases commonly have balloon payments? Was the information it received about a balloon payment in Ms. Sessa's auto lease facially illogical, implausible, or internally inconsistent? *See* FTC Staff Rpt. at 67–68. Indeed, this inquiry would have been particularly straightforward here because all parties *agree* that Trans Union's credit report did not accurately reflect the terms of Ms. Sessa's auto lease—and that is also clear from the lease itself.

In this case, in other words, there is "no doubt" that Ms. Sessa did not owe a balloon payment. *See Losch*, 995 F.3d at 946. Thus, "this case doesn't involve a legal dispute about the validity of the underlying debt." *See id.* It involves a purely factual inaccuracy—Trans Union reported that Ms. Sessa had a balloon payment under an auto lease when she did not. So even under the atextual analytical framework on

which the district court purported to rely, the court erred in labeling Trans Union's error here a non-cognizable "legal" inaccuracy, as opposed to a core "factual" one.

3. Because Ms. Sessa showed that Trans Union reported an inaccuracy in her credit report, the district court should have turned to the next task under section 1681e(b)—evaluating "[t]he reasonableness of [Trans Union's] procedures and whether the agency followed them." *See Guimond*, 45 F.3d at 1333.

The record evidence here demonstrates that there are genuine disputes of material fact as to both of these "fact-dependent inquir[ies]." *Wright*, 805 F.3d at 1239. In particular, Ms. Sessa introduced evidence showing that Trans Union should have doubted the accuracy of its reporting just based on the data it received and its ordinary knowledge of auto leasing—evidence that the district court did not even mention in its order. Ms. Sessa's expert witness testified, for example, that he had "never seen or been made aware of a 'balloon payment' contained within and concluding a[n] [auto] lease obligation." Dkt. 114-5 ¶ 4. The appearance of a balloon payment in auto-lease data is therefore "suspicious and raises a substantial question whether the [data] is inaccurate." Dkt. 114-5 ¶ 5. Moreover, even if an auto lease did somehow include a balloon-payment term, "the structure and economics involved in lease financing" would require any such balloon payment "to be a relatively small sum and in proportion to monthly payments." Dkt. 114-5 ¶ 6.

Nevertheless, here, Trans Union reported a $19,444 balloon payment—an amount that dwarfed Ms. Sessa's $237 monthly payment by orders of magnitude. Such a discrepancy should have triggered for Trans Union the possibility that this information about Ms. Sessa's auto lease was inaccurate, without any investigation into the underlying lease or terms. Indeed, the fact that Trans Union failed to flag or detect this obvious inaccuracy is itself "evidenc[e]" of Trans Union's "unreasonable procedures." *See Stewart*, 734 F.2d 52. As the FTC has explained, a credit-reporting agency's procedures are unreasonable when they result in "reporting information from [ ] furnishers that appears implausible or inconsistent," or information "with obvious logical inconsistencies." FTC Staff Rpt. 67–68. That precisely describes the information that Trans Union reported here about the non-existent balloon payment—the information was implausible based on standard industry practice and inconsistent with the other data that Hudson Valley furnished about Ms. Sessa's lease. But Trans Union reported it anyway.

And that is not all. Ms. Sessa introduced evidence that Trans Union's screening procedures and policies more broadly failed to identify unreliable and inaccurate data it received from its furnishers. The record showed that Trans Union was on notice that consumers had previously disputed balloon-payment inaccuracies

reported on Hudson Valley accounts.[9] And it also showed that Hudson Valley furnished auto-lease data to Trans Union even though it had only been approved to furnish "loan records." This evidence was consistent with other record evidence showing that the data-screening procedures that Trans Union applies are inadequate to satisfy its duty to assure maximum possible accuracy. *See* Dkt. 123-19 at 17–18 (citing sealed deposition testimony).

Again, the FTC has made clear that "when a CRA learns or should reasonably be aware of errors in its reports that may indicate systematic problems"—including "by virtue of information from consumers"—the credit-reporting agency "must review its procedures for assuring accuracy and take any necessary steps to avoid future problems." FTC Staff Rpt. 67. That is particularly true where, as here, the credit-reporting agency knew or should have known that "a particular credit grantor has often furnished erroneous consumer account information." *Id.* Yet, again, Trans Union disregarded all of these problems and continued to publish credit reports with obvious inaccuracies about Ms. Sessa and her lease.

The question "[w]hether a credit-reporting agency acted reasonably under the FCRA will be a jury question in the overwhelming majority of cases." *Losch*, 995

[9] Because the district court limited discovery to just the individual claims, Ms. Sessa was not able to determine the extent to which Trans Union was on notice that it had inaccurately reported balloon payments in auto-lease data furnished by creditors *other* than Hudson Valley.

F.3d at 944; *see, e.g.*, *Wright*, 805 F.3d at 1239; *Guimond*, 45 F.3d at 1333. It may be that in some outlier cases—where, for instance, a consumer's claim would require the credit-reporting agency to definitively adjudicate the legal validity of the underlying debt—this reasonableness question can be answered as a matter of law. But not here: The record evidence demonstrates that there are, at the very least, triable issues of fact about the reasonableness of Trans Union's procedures. The district court therefore should have denied Trans Union's motion for summary judgment and allowed the case to proceed to trial. Instead, it usurped the jury's role and subverted Congress's purposes by erecting an artificial threshold requirement for FCRA claims that finds no support in the statute's actual text. That fundamental legal error warrants reversal.

CONCLUSION

The district court's summary-judgment order should be reversed.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Local Rule 32.1(a)(4) because this brief contains 10,312 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Baskerville font.

April 28, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2022, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Second Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the CM/ECF system.

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