No. 16-7008

In the United States Court of Appeals
for the District of Columbia Circuit

ANTHONY RIVERA
Plaintiff-Appellant,

v.

JPMORGAN CHASE BANK, N.A.,
Defendant-Appellee.

On Appeal from the
United States District Court for the District of Columbia
Case No. 1:15-cv-1065

BRIEF OF *AMICI CURIAE* CONSUMER FINANCIAL PROTECTION BUREAU AND FEDERAL TRADE COMMISSION IN SUPPORT OF APPELLANT AND REVERSAL

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici

The appellant in this Court, who was plaintiff in the district court, is Anthony Rivera.

The appellee in this Court, who was defendant in the district court, is JPMorgan Chase Bank, N.A.

There were no amici in the district court.

B. Rulings Under Review

The rulings under review are the Memorandum Opinion, not yet published (Mem. Op. I), and accompanying Order granting JPMorgan Chase Bank, N.A.'s motion to dismiss, issued on October 22, 2015, by Judge Royce C. Lamberth; and the Memorandum Opinion, 312 F.R.D. 216 (D.D.C. 2015) (Mem. Op. II), and accompanying Order denying Anthony Rivera's motion to alter or amend the judgment, issued on December 10, 2015, by Judge Royce C. Lamberth.

C. Related Cases

This matter has not been previously before this Court or any other court. There are no related cases before this Court or any other court.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

* Authorities upon which we chiefly rely are marked with asterisks.

STATUTES

REGULATIONS

OTHER AUTHORITIES

GLOSSARY

Bureau or CFPB	Consumer Financial Protection Bureau
Chase	JPMorgan Chase Bank, N.A.
Commission or FTC	Federal Trade Commission
CRA	Consumer reporting agency
FCRA	Fair Credit Reporting Act
FTC Report	Federal Trade Commission, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (2012), *available at* https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf
Mem. Op. I	Memorandum Opinion granting motion to dismiss, issued on October 22, 2015, by Judge Royce C. Lamberth
Mem. Op. II	Memorandum Opinion denying motion to alter or amend the judgment, issued on December 10, 2015, by Judge Royce C. Lamberth
NCLC Report	National Consumer Law Center, Automated Injustice (2009), *available at* https://www.nclc.org/images/pdf/pr-reports/report-automated_injustice.pdf

INTERESTS OF *AMICI CURIAE*

This case concerns the interpretation of a provision of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq*. The Consumer Financial Protection Bureau (CFPB or Bureau), an agency of the United States, has general authority to enforce the FCRA, *id*. § 1681s(b)(1)(H), and to "prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives" of the FCRA. *Id*. § 1681s(e)(1). Those purposes and objectives include promoting the accuracy of consumer reports for the benefit of the financial industry and for the protection of consumers. *See id*. § 1681(a)-(b); *see also* CFPB Bulletin 2013-09 (2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_bulletin_furnishers.pdf ("The CFPB expects [consumer reporting agencies] and furnishers to comply fully with these FCRA requirements, thereby promoting the accuracy and completeness of information in the consumer reporting system."). The Bureau therefore has a substantial interest in the Court's decision in this case.

The Bureau is joined in this brief by the Federal Trade Commission (FTC or Commission). The Commission is the federal agency with primary responsibility for protecting consumers from unfair and deceptive trade practices, including enforcement of the FCRA. 15 U.S.C. § 1681(a). The

Commission has long studied the consumer issues that arise in credit reporting and has issued numerous reports on the FCRA. The Commission thus has an interest in the Court's resolution of the issues presented in this case.

One provision of the FCRA, 15 U.S.C. § 1681s-2(b), requires a furnisher – an entity that provides information about consumers, including debts consumers owe, to consumer reporting agencies (CRAs) – to conduct an investigation after a CRA notifies it that a consumer has disputed the completeness or accuracy of information provided by the furnisher. In an important supplement to the Bureau's and the Commission's enforcement authorities, the FCRA provides a private right of action for consumers to recover damages for willful or negligent violations of this provision. *See id.* §§ 1681n, 1681*o*; *cf. id.* § 1681s-2(c). This case implicates a furnisher's duty to investigate a dispute and the time within which a consumer may seek redress under the FCRA for violations of that duty.

Amici therefore respectfully submit this brief to assist the Court in its resolution of this appeal.

STATEMENT

A. Statutory Background

1. Information contained in consumer reports can be critical to a host of decisions vital to Americans' daily lives. Consumer reports are used to evaluate consumers' eligibility for loans, rental housing, insurance, and checking accounts, as well as to determine the interest rates and insurance premiums they are assessed. Prospective employers commonly use consumer reports in their hiring decisions. *See generally* Consumer Fin. Prot. Bureau, Key Dimensions and Processes in the U.S. Credit Reporting System 5 (2012), *available at* http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-whitepaper.pdf.[1] Given the importance of this information, a "primary purpose for the FCRA [is] to protect consumers against inaccurate and incomplete credit reporting." *Nelson v. Chase Manhattan Mortg. Corp.*, 282 F.3d 1057, 1060 (9th Cir. 2002). Much of the information about consumers in consumer reports comes from "furnishers" – entities such as credit card issuers, depository institutions, mortgage lenders, student loan servicers, and collection agencies – who

[1] The FCRA generally uses the term "consumer report," *see, e.g.*, 15 U.S.C. § 1681a(d) (defining "consumer report"), rather than the more common term "credit report." Additionally, when a consumer requests his own report, the FCRA refers to that report as a "disclosure" of information in the consumer's "file." *See id.* § 1681g(a).

report information about the consumer to CRAs.[2] Therefore, whether a consumer gets a needed loan, apartment, or job can depend on the accuracy of the information that CRAs obtain from furnishers.

In addition to the harmful consequences of inaccurate and incomplete consumer reports for consumers, Congress also recognized that inaccurate or incomplete consumer reports have broader economic effects. Thus, when Congress enacted the FCRA in 1970, *see* Pub. L. No. 91-508, tit. VI, 84 Stat. 1128, it found that "[t]he banking system is dependent upon fair and accurate credit reporting," "[i]naccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system." 15 U.S.C. § 1681(a)(1).

2. Since its enactment, the FCRA has sought to maintain the integrity of information contained in consumer reports by allowing consumers to dispute the "completeness or accuracy" of information contained in their files. *See* Pub. L. No. 91-508, § 611, 84 Stat. 1128 (1970) (codified as amended at 15 U.S.C. § 1681i). Since then, Congress has repeatedly

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[2] While the FCRA does not define "furnisher," its implementing regulation defines the term, for purposes of its subpart relating to furnishers, as "an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report." 12 C.F.R. § 1022.41(c). There is no dispute in this case that Chase is a furnisher and that it has furnished information about Rivera.

enhanced consumers' dispute rights. Initially, the duty to investigate disputes was imposed solely on CRAs, with no corresponding duty for furnishers. *See id.* After receiving a dispute, the CRA is required to "reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant." *Id.* (codified as amended at 15 U.S.C. § 1681i). A CRA that negligently or willfully fails to comply with this requirement is subject to consumer lawsuits for damages. *Id.* §§ 616, 617, 84 Stat. 1132, 1134 (codified as amended at 15 U.S.C. §§ 1681n, 1681*o*).

Furnishers had no duties under the FCRA until 1996, even though it is furnishers, "not consumer reporting agencies, that have direct access to the facts of a given credit transaction" and are "best situated to determine whether the information [they] reported was inaccurate or incomplete and to ensure its correction." S. Rep. No. 103-209, at 6 (1993). Congress believed that this prior "gap in the FCRA's coverage weaken[ed] the accuracy of the consumer reporting system" because "[i]f the furnisher of the information acts irresponsibly in verifying the information, . . . inaccurate information may remain on the report and the consumer is left with little or no recourse." *Id.*; *see also Chiang v. Verizon New England Inc.*, 595 F.3d 26, 35 (1st Cir. 2010) (Congress intended to close a gap

"whereby even dutiful investigations of consumer disputes by CRAs could be frustrated by furnishers' irresponsible verification of inaccurate information, without legal consequence to the furnishers").

To address this gap, Congress amended the FCRA in 1996 to impose several duties on furnishers.[3] With respect to consumer disputes filed with CRAs, the 1996 amendments require a CRA to forward a consumer dispute to the furnisher of the disputed information. The furnisher, in turn, has five statutory obligations. As codified today, the two obligations pertinent here are that the furnisher must "conduct an investigation with respect to the disputed information" and must "review all relevant information" provided by the CRA. 15 U.S.C. § 1681s-2(b)(1)(A)-(B).[4] Thus, a furnisher violates its duty to investigate if (1) a consumer discovers an error in his consumer report; (2) the consumer then notifies a CRA that he disputes the accuracy

[3] Under the 1996 amendments, furnishers are generally prohibited from reporting to CRAs information they know or have reasonable cause to believe is inaccurate, as well information that consumers have identified to furnishers as inaccurate. *See* 15 U.S.C. § 1681s-2(a). Consumers do not, however, have a private right of action to enforce this provision. *Id.* § 1681s-2(c).

[4] The other requirements are (3) that the furnisher must report the results of its investigation back to the CRA that forwarded the dispute, 15 U.S.C. § 1681s-2(b)(1)(C); (4) if the furnisher determines that the information is incomplete or inaccurate, it must report the results to all the nationwide CRAs to which it furnished the information, *id.* § 1681s-2(b)(1)(D); and (5) if the furnisher determines that the information is inaccurate, incomplete, or cannot be verified, it must modify, delete, or permanently block reporting of that information. *Id.* § 1681s-2(b)(1)(E).

and completeness of information in the report, *see id.* § 1681i(a)(1); (3) the CRA provides notice of the dispute and all relevant information concerning the dispute to the furnisher, *see id.* § 1681i(a)(2); and (4) the furnisher, upon receipt of that notice, fails to conduct an investigation and review all the relevant information provided. *Id.* § 1681s-2(b).

The 1996 amendments also expanded the FCRA's civil liability provisions to allow for some consumer lawsuits against furnishers. Specifically, civil liability for negligent and willful violations of the FCRA is no longer limited to "[a]ny consumer reporting agency or user of information," but now extends to "[a]ny person" who negligently or willfully fails to comply with certain statutory requirements. Pub. L. No. 104-208, §§ 2412(a), (d), 2413(a)(2), 110 Stat. 3001, 3009-446 (1996) (codified as amended at 15 U.S.C. §§ 1681n, 1681*o*); *see also Nelson*, 282 F.3d at 1060 (Congress intended "any person" in civil liability provisions to include furnishers).

3. In 2003, Congress further expanded consumers' ability to seek relief for violations of the FCRA when it passed the Fair and Accurate Credit Transactions Act, Pub. L. No. 108-159, 117 Stat. 1952 (2003), which "extend[ed] the statute of limitations" for FCRA violations. 149 Cong. Rec. E2512-02 (daily ed. Nov. 21, 2003) (statement of Rep. Oxley). As amended,

the statute of limitations provision states that "[a]n action to enforce any liability created under [the FCRA] may be brought . . . not later than the earlier of – (1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or (2) 5 years after the date on which the violation that is the basis for such liability occurs." 15 U.S.C. § 1681p. Congress made this amendment following a 2001 Supreme Court decision holding that the prior version of the FCRA's statute of limitations provision generally did not incorporate a "discovery rule" such as that now present in Section 1681p(1). *See TRW Inc. v. Andrews*, 534 U.S. 19, 23 (2001) (interpreting 15 U.S.C. § 1681p (1994 ed. & Supp. V)).

4. Despite Congress's repeated efforts to promote accuracy, errors persist in consumer reports. In a 2012 study conducted by the Commission, roughly 20% of participants had an error in at least one of their consumer reports. Fed. Trade Comm'n, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 iv (2012) (FTC Report), *available at* https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf. Similarly, according to one estimate, at least six million Americans have errors in their reports serious enough to result in a denial of credit, and the number

could be as high as fifty million. Nat'l Consumer Law Ctr., Automated Injustice 1, 5, 7 (2009) (NCLC Report), *available at* https://www.nclc.org/images/pdf/pr-reports/report-automated_injustice.pdf.

B. Facts and Procedural History

According to the allegations in Plaintiff-Appellant Anthony Rivera's complaint, Rivera declared bankruptcy in January 2003 and received a discharge of personal liability for his mortgage loan in May of that year. Compl. ¶¶ 14-16. At the time of the bankruptcy, the mortgage loan was serviced by Washington Mutual Bank, F.A. *Id.* ¶ 15. Rivera alleges that Washington Mutual Bank correctly reported to CRAs that the loan had a zero balance as a result of the bankruptcy discharge. *Id.* ¶ 17. In September 2009, Defendant-Appellee JPMorgan Chase Bank, N.A. (Chase) acquired servicing rights for Rivera's mortgage loan. *Id.* ¶ 18.

Rivera alleges that, in March 2013, he obtained his consumer report from a CRA and discovered that Chase had reported that his discharged mortgage loan had an outstanding balance and that Rivera was delinquent on the loan. Compl. ¶¶ 19-20. Rivera alleges that he disputed the information with CRAs, including in January 2015. *Id.* ¶ 21. In particular, Rivera alleges that he provided information for Equifax, one of the three nationwide CRAs, to forward to Chase and that this information was

sufficient to correct the alleged error. *Id.* ¶ 22. According to Rivera, Chase responded to Rivera's dispute by instructing Equifax to continue reporting his mortgage loan as due and owing. *Id.* Rivera further alleges that the inaccurate reporting of his mortgage loan balance and delinquency status has adversely affected his credit score. *Id.* ¶¶ 20, 23.

Rivera, acting *pro se*, sued Chase in the Superior Court of the District of Columbia on June 17, 2015. With respect to the FCRA, he alleges that Chase willfully, Compl. ¶¶ 31-36, and negligently, *id.* ¶¶ 37-41, failed to conduct a reasonable investigation of his dispute, in violation of 15 U.S.C. § 1681s-2(b).[5] Chase removed the case to federal court on July 7, 2015.

On October 26, 2015, the district court granted Chase's motion to dismiss Rivera's complaint. Mem. Op. I p. 1. The district court concluded that, under 15 U.S.C. § 1681p(1), Rivera was required to file his complaint within two years of having discovered the alleged error on his consumer

[5] Rivera's first cause of action is captioned "Willful Failure To Reasonably Reinvestigate in Violation of 15 U.S.C. *§ 1681s-2(a)*." Compl. p. 7 (emphasis added). While the caption cites Section 1681s-2(a), which prohibits furnishers from furnishing inaccurate information, the body of the complaint refers only to furnishers' obligation to investigate under Section 1681s-2(b). *Id.* ¶¶ 37-41. In Rivera's motion to alter or amend, he clarified that he was not seeking a judgment under Section 1681s-2(a), which he understood could not be enforced by private plaintiffs. Mot. to Alter or Amend p. 2; *see also supra* n.3. Instead, his first cause of action was for a willful violation of Section 1681s-2(b) and his second was for a negligent violation of the same provision.

report in March 2013. Because Rivera filed his complaint in June 2015, the district held that he failed to satisfy the two-year limitations period in Section 1681p.[6] *Id.* p. 5. In reaching that conclusion, the court rejected Rivera's argument that liability under Section 1681s-2(b) cannot attach – and the statute of limitations for a violation of that provision therefore cannot begin to run – until a furnisher fails to conduct a reasonable investigation after a consumer lodges a dispute with a CRA. Pl.'s Opp'n to Mot. to Dismiss pp. 1-2. Rivera moved the court to alter or amend its order as having been granted in clear error of the law; the court denied the motion on December 10, 2015. Mem. Op. II p. 1.

SUMMARY OF ARGUMENT

The district court erred in concluding that Rivera's claim under 15 U.S.C. § 1681s-2(b) was barred by the FCRA's statute of limitations. The plain text of the FCRA's statute of limitations provides that a consumer lawsuit must be brought within the earlier of 5 years of the violation that is the basis for liability and "2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability." *Id.* § 1681p(1). Here, the "violation that is the basis" for Rivera's claim is Chase's alleged failure to

[6] The court did not address other FCRA arguments in the parties' briefing, such as whether Rivera had adequately pleaded other elements of his Section 1681s-2(b) claims or whether he was entitled to amend his complaint.

investigate Rivera's dispute, which he submitted in January 2015. Because Rivera filed his complaint against Chase only five months later, he manifestly satisfies the FCRA's statute of limitations.

The district court erred because it concluded that the statute of limitations began to run at a much earlier time – when Rivera discovered the allegedly incorrect information that Chase placed on his consumer report. That date, however, is irrelevant to the time for bringing suit for a failure to conduct a reasonable investigation under Section 1681s-2(b). Both the text of Section 1681p and the background principles applicable to statutes of limitations make clear that the limitations period begins to run only after a plaintiff's claim has accrued (*i.e.*, after the "violation" has occurred) and, if a discovery rule is applicable, only after the plaintiff knew or through the exercise of reasonable diligence should have known of the violation.

In denying Rivera's motion to alter or amend, the district court referred to district court decisions that address a separate question: whether a new violation – and accordingly, a new limitations period – should arise each time a consumer files a dispute with a CRA over the same item of allegedly incomplete or inaccurate information. Those cases are not relevant here, where there is no allegation in the complaint that Rivera has

filed multiple disputes with respect to the same information. Nor was Rivera's dispute with the CRA otherwise untimely; the FCRA does not limit the time within which a consumer who has discovered inaccuracies in his consumer report must dispute them with a CRA, nor does it condition or limit a furnisher's obligations under Section 1681s-2(b) based on the time it took for the consumer to submit his dispute to the CRA.

Because Rivera filed his complaint against Chase for failure to conduct a reasonable investigation under Section 1681s-2(b) within the two-year period set forth in Section 1681p(1), the district court's dismissal of his complaint should be reversed.

ARGUMENT

THE STATUTE OF LIMITATIONS FOR A VIOLATION OF 15 U.S.C. § 1681s-2(b) DOES NOT EXPIRE UNTIL THE EARLIER OF TWO YEARS AFTER THE CONSUMER DISCOVERS A FURNISHER'S FAILURE TO CONDUCT A REASONABLE INVESTIGATION OR FIVE YEARS AFTER THAT FAILURE OCCURS.

A. Rivera's Claims Under Section 1681s-2(b) Are Timely.

Section 1681p establishes two limitations periods by which a consumer must bring an action for a violation of the FCRA. First, if the consumer has discovered the violation, then the "action to enforce any liability" created under the FCRA must be brought "2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability."

15 U.S.C. § 1681p(1). Second, regardless of whether the consumer has discovered the violation, the action must be brought "5 years after the date on which the violation that is the basis for such liability occurs." *Id.* § 1681p(2). Under the plain text of Section 1681p, the limitations period for a particular FCRA claim cannot begin to run until the relevant FCRA "violation" has occurred. And the shorter two-year limitations period cannot begin until the plaintiff "discover[s]" the relevant violation.

In this case, however, the district court considered the limitations period to have commenced at a different, much earlier date. Although Rivera claimed that Chase violated 15 U.S.C. § 1681s-2(b) by failing to conduct a reasonable investigation of his dispute about the reporting of his discharged mortgage loan, Compl. ¶¶ 32-33, 38-39, the district court concluded that the limitations period commenced when he discovered the allegedly inaccurate information in his consumer report – well before the alleged violation of Section 1681s-2(b) occurred. *See* Mem. Op. I p. 5. The district court further concluded that it was appropriate to dismiss Rivera's complaint on statute-of-limitations grounds because "the complaint on its face is conclusively time-barred" and "no reasonable person could disagree on the date on which the cause of action accrued." *Id.* pp. 4-5 (citing *DePippo v. Chertoff*, 453 F. Supp. 2d 30, 33 (D.D.C. 2006)). Because the

district court's dismissal of Rivera's complaint based on the statute of limitations cannot be reconciled with Section 1681p, the district court's decision should be reversed.

1. The timeline of events alleged in the complaint is as follows:

- March 2013 – Rivera discovers the alleged error on his consumer report. Compl. ¶ 19.
- January 2015 – Rivera files a dispute with a CRA. *Id.* ¶¶ 21-22.
- June 2015 – Rivera files his FCRA complaint against Chase.

Rivera alleges that Chase failed to correct its reporting of his account in response to his January 2015 dispute and instead reported that the account was "due and owing." Compl. ¶ 22. Rivera further alleges that "Chase has failed to use reasonable investigation practices for ascertaining the accuracy of information" concerning discharged debts. *Id.* ¶¶ 32, 38.[7] Chase's alleged

[7] Rivera's use of the term "reasonable investigation" reflects that every circuit court to address the extent to which a furnisher must investigate a dispute has concluded that the investigation conducted under Section 1681s-2(b) must be "reasonable." *See, e.g.*, *Boggio v. USAA Fed. Sav. Bank*, 696 F.3d 611, 616 (6th Cir. 2012); *Chiang*, 595 F.3d at 36; *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1154 (9th Cir. 2009); *Westra v. Credit Control of Pinellas*, 409 F.3d 825, 827 (7th Cir. 2005); *Johnson v. MBNA Am. Bank*, 357 F.3d 426, 430 (4th Cir. 2004). As explained by the first court of appeals to consider the question, "[i]t would make little sense to conclude that, in creating a system intended to give consumers a means to dispute – and, ultimately, correct – inaccurate information on their credit reports, Congress used the term 'investigation' to include superficial,

actions and failures could have occurred only after January 2015, when Rivera filed his dispute with a CRA. He filed his complaint five months later, in June 2015.

As this timeline makes manifest, Rivera's complaint against Chase for its alleged violation of Section 1681s-2(b) was timely filed. Chase could not have violated Section 1681s-2(b)'s requirement that it conduct a reasonable investigation until after January 2015, when Rivera filed his dispute with the CRA. And Rivera could not have discovered Chase's allegedly inadequate investigation until, at the earliest, Rivera obtained the results of Chase's investigation. Because all of the relevant events occurred in the five-month period between the date that Rivera filed his dispute with the CRA and the date he filed his complaint, Rivera's claim under Section 1681s-2(b) is timely under both the two-year and the five-year limitations periods set forth in Section 1681p.

2. The district court concluded that Rivera failed to meet the statute of limitations because he filed his complaint more than two years after he discovered that Chase had been reporting his discharged mortgage loan as past due and having an outstanding balance. Mem. Op. I p. 5. For purposes of Rivera's Section 1681s-2(b) claim, however, the date on which he

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*un*reasonable inquiries by creditors." *Johnson*, 357 F.3d at 430-31 (emphasis in original).

discovered the alleged error is irrelevant to the time for bringing suit for a failure to conduct a reasonable investigation. As one district court has explained, "the date that the consumer learned that his credit report contained inaccuracies [is not] actually relevant in the calculus" for determining the statute of limitations for a Section 1681s-2(b) claim. *Broccuto v. Experian Info. Solutions, Inc.*, 2008 WL 1969222, at *3 (E.D. Va. May 6, 2008); *see also Vasquez v. Bank of Am., N.A.*, 2015 WL 7075628, at *2-3 (N.D. Cal. Nov. 13, 2015) (rejecting furnisher's contention that statute of limitations for Section 1681s-2(b) claim began to run on date consumer discovered the inaccurate reporting). Instead, a furnisher's duty to investigate arises when it "receives notice of a dispute from a consumer," *Broccuto*, 2008 WL 1969222, at *3, and, as explained above, the relevant violation does not occur until the furnisher fails to satisfy its duties in response to a consumer dispute filed with a CRA. 15 U.S.C. § 1681s-2(b). Under Section 1681p(1), "[t]he statute of limitations accrues based on the date the *violation* was discovered by the consumer." *Id.* (emphasis added).

Not only does the district court's conclusion contravene the plain language of the FCRA, but it also violates "the standard rule for limitations periods," which is that a "limitations period commences when the plaintiff has a complete and present cause of action," meaning that "the plaintiff can

file suit and obtain relief." *Green v. Brennan*, --- U.S. ----, 2016 WL 2945236, at *5-6 (May 23, 2016) (internal quotation marks modified) (quoting *Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 545 U.S. 409, 418 (2005); *Bay Area Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal. Inc.*, 522 U.S. 192, 201 (1997)). Put another way, "[s]tatutes of limitations require plaintiffs to pursue 'diligent prosecution of known claims.'" *CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2183 (2014) (quoting Black's Law Dictionary 1546 (9th ed. 2009)). A plaintiff typically cannot prosecute a known claim until the violation of law that forms the basis for the claim has occurred. Instead of following this "standard rule," the district court incorrectly concluded that "the moment when liability attaches" – *i.e.*, when the violation occurred – "and the moment when the statute of limitations period accrues are distinct issues." Mem. Op. I p. 6. To the contrary, under the standard rule and the text of the FCRA's five-year limitations period, 15 U.S.C. § 1681p(2), those dates are one and the same.

Furthermore, when a statute of limitations is based on a discovery rule, the occurrence of the violation alone does not suffice to trigger that statute. Under those circumstances, the district court was correct to conclude that the date liability attaches differs from the date the statute of

limitations begins to run, Mem. Op. I p. 6; with a discovery rule, the statute cannot begin to run until the plaintiff knew, "or through the exercise of reasonable diligence should have known," of the violation. *Jones v. Rogers Mem'l Hosp.*, 442 F.2d 773, 774-75 (D.C. Cir. 1971); *see also Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 648, 650-52 (2010) (the term "'discovery' . . . encompasses not only those facts the plaintiff actually knew, but also those facts a reasonably diligent plaintiff would have known"; rejecting argument that statute begins to run when plaintiff encounters facts putting her on "inquiry notice"). As a result, in the context of the FCRA, courts have held that Section 1681p(1)'s two-year statute of limitations based on the date of discovery "runs from the date a reasonably diligent plaintiff would have discovered the facts constituting the violation, not the discovery of facts that put a plaintiff on inquiry notice." *Banga v. Chevron U.S.A. Inc.*, 2013 WL 71772, at *12 (N.D. Cal. Jan. 7, 2013).

In this case, Rivera could not have either discovered or successfully pursued his Section 1681s-2(b) claim against Chase upon discovering the alleged error on his consumer report, because Chase had no duty to conduct an investigation until after Rivera filed his dispute with the CRA. It is only after Rivera submitted his dispute that Chase's Section 1681s-2(b) duties arose, Rivera could have discovered the violation, and the limitations

period under Section 1681p(1) could have commenced. Because the running of the FCRA's statute of limitations is tied to the "violation that is the basis for such liability," 15 U.S.C. § 1681p, the standard rule is fully consistent with the plain language of the statute. Neither the standard rule nor the statutory text regard Rivera's discovery of the alleged error on his consumer report as the starting point for the limitations period for a violation of Section 1681s-2(b).

B. Decisions Concerning Furnisher Liability Under Section 1681s-2(b) for Repeated Disputes About the Same Information Are Not Relevant Here.

In denying Rivera's motion to alter or amend, the district court was not persuaded by Rivera's argument that "a furnisher is liable for each and every violation of the Act."[8] Mem. Op. II p. 3. Instead, it referred to a split in district court decisions that, properly understood, addresses a separate question: whether a new violation – and accordingly, a new limitations period – should arise each time a consumer files a dispute with a CRA over

[8] Rivera presumably raised this argument because the district court had interpreted Rivera's complaint as bringing "two causes of action under the FCRA – one under Section 1681s-2(a) and another under Section 1681s-2(b)." Mem. Op. I p. 5. But as noted *supra* note 5, the body of Rivera's complaint makes no reference to Section 1681s-2(a) and instead raises two claims under Section 1681s-2(b). Compl. ¶¶ 31-41. In any event, because "[t]he limitations-period analysis is always conducted claim by claim," *Green*, 2016 WL 2945236, at *10, even if Rivera had raised a separate claim under Section 1681s-2(a), his Section 1681s-2(b) claim was timely.

the same item of allegedly incomplete or inaccurate information. *See id.* (citing *Bittick v. Experian Info. Solutions, Inc.*, 419 F. Supp. 2d 917 (N.D. Tex. 2006), and *Blackwell v. Capital One Bank*, 2008 WL 793476 (S.D. Ga. Mar. 25, 2008)). The cases cited by the district court decline to find a new violation and limitations period for subsequent disputes, on the grounds that to do so "would allow plaintiffs to indefinitely extend the limitations period by simply sending another complaint letter to the credit reporting agency." *Bittick*, 419 F. Supp. 2d at 919; *see also Blackwell*, 2008 WL 793476, at *3. As the district court also noted, other federal district courts "have ruled differently on this specific matter," Mem. Op. II p. 3, holding that each consumer complaint to a CRA constitutes a separate violation that starts a separate limitations period. *See, e.g.*, *Vasquez*, 2015 WL 7075628, at *3 ("each dispute letter triggers a duty to investigate, regardless of whether the information has been previously disputed"); *Broccuto*, 2008 WL 1969222, at *4 ("[t]he statute's construction creates a violation every time a consumer submits a dispute to a credit reporting agency and that agency or the relevant lender does not respond to the complaint," regardless of whether the information "may have also been the subject of a previous dispute").

The existence of cases like *Bittick* and *Blackwell* does not justify the district court's decision in this case, where there is no allegation in the complaint that Rivera filed multiple identical disputes. Nor would there be other grounds to contend that these cases are relevant because Rivera somehow circumvented the FCRA's statute of limitations provision. While Rivera alleges that he filed a dispute with a CRA in January 2015 – 22 months after he discovered the alleged error on his consumer report – nothing in the FCRA limits the time within which a consumer who has discovered inaccuracies in his consumer report must dispute them with a CRA. *See Thomasian v. Wells Fargo Bank, N.A.*, 2014 WL 1244892, at *9 (D. Or. Mar. 25, 2014) ("[W]hen it comes to a claim that a furnisher has made an unreasonable investigation of a dispute, or failed to correct or remove erroneous information after such an investigation, it makes no difference how long the furnisher has been reporting the allegedly false information before the consumer initiates a dispute."). Nor does the FCRA condition or limit a furnisher's obligations under Section 1681s-2(b) based on the time it took for the consumer to submit his dispute to the CRA. To impose such a limitation would curtail an important mechanism for correcting errors, frustrating Congress's goal of enhancing the accuracy of

consumer reports for the benefit of both consumers and the efficiency of the markets that rely on consumer reports. *See* 15 U.S.C. § 1681.[9]

For this reason and those explained above, the district court's decisions in this case cannot withstand scrutiny.

CONCLUSION

The decisions of the district court should be reversed.

Dated: June 7, 2016

Respectfully submitted,

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[9] If this Court nonetheless concludes that it is necessary to address the question of multiple disputes, the Court should adopt the position of the "majority of courts," which "have concluded that each separate notice of dispute triggers a duty to investigate the disputed information, . . . and each time a furnisher fails reasonably to investigate the dispute results in a new FRCA violation." *Vasquez*, 2015 WL 7075628, at *3 (internal quotation marks omitted). This result comports with both the text and purpose of the statute. *Id.*; *Broccuto*, 2008 WL 1969222, at *4; *Marcinski v. RBS Citizens Bank, N.A.*, 36 F. Supp. 3d 286, 291 (S.D.N.Y. 2014); *Maiteki v. Marten Transp. Ltd.*, 4 F. Supp. 3d 1249, 1254 (D. Colo. 2013). Furthermore, it reflects both Congress's goal of promoting accuracy and the unfortunate reality that consumers may need to file multiple disputes to correct errors. *See* FTC Report vi (63% of consumers who disputed errors did not have all of their concerns resolved); NCLC Report 3, 8, 9-11 (providing examples of failure to correct despite repeated disputes, with outcomes including a $2.7 million punitive damages verdict and one consumer's suicide).

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,199 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Circuit Rule 32(e)(1). I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in 14-point Georgia, a proportionally spaced typeface, using Microsoft Word 2010.

Dated: June 7, 2016

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ADDENDUM

ADDENDUM TABLE OF CONTENTS

15 U.S.C. § 1681i. Procedure in case of disputed accuracy

(a) Reinvestigations of disputed information

(1) Reinvestigation required.—

(A) In general.—Subject to subsection (f) of this section, if the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly, or indirectly through a reseller, of such dispute, the agency shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer or reseller.

(B) Extension of period to reinvestigate.—Except as provided in subparagraph (C), the 30-day period described in subparagraph (A) may be extended for not more than 15 additional days if the consumer reporting agency receives information from the consumer during that 30-day period that is relevant to the reinvestigation.

(C) Limitations on extension of period to reinvestigate.—Subparagraph (B) shall not apply to any reinvestigation in which, during the 30-day period described in subparagraph (A), the information that is the subject of the reinvestigation is found to be inaccurate or incomplete or the consumer reporting agency determines that the information cannot be verified.

(2) Prompt notice of dispute to furnisher of information.—

(A) In general.—Before the expiration of the 5-business-day period beginning on the date on which a consumer reporting agency receives notice of a dispute from any consumer or a reseller in accordance with paragraph (1), the agency shall provide notification of the dispute to any person who provided any item of information in dispute, at the address and in the manner established with the person. The notice shall include all relevant information regarding

the dispute that the agency has received from the consumer or reseller.

(B) Provision of other information.—The consumer reporting agency shall promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer or the reseller after the period referred to in subparagraph (A) and before the end of the period referred to in paragraph (1)(A).

(3) Determination that dispute is frivolous or irrelevant.—

(A) In general.—Notwithstanding paragraph (1), a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under that paragraph if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information.

(B) Notice of determination.—Upon making any determination in accordance with subparagraph (A) that a dispute is frivolous or irrelevant, a consumer reporting agency shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency.

(C) Contents of notice.—A notice under subparagraph (B) shall include—

(i) the reasons for the determination under subparagraph (A); and

(ii) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

* * *

15 U.S.C. § 1681n. Civil liability for willful noncompliance

(a) In general

Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

* * *

15 U.S.C. § 1681*o*. Civil liability for negligent noncompliance

(a) In general

Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure; and

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

* * *

15 U.S.C. § 1681p. Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of—

(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(2) 5 years after the date on which the violation that is the basis for such liability occurs.

15 U.S.C. § 1681s-2. Responsibilities of furnishers of information to consumer reporting agencies

(a) Duty of furnishers of information to provide accurate information

(1) Prohibition

(A) Reporting information with actual knowledge of errors

A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

(B) Reporting information after notice and confirmation of errors

A person shall not furnish information relating to a consumer to any consumer reporting agency if—

(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(ii) the information is, in fact, inaccurate.

(C) No address requirement

A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(D) Definition

For purposes of subparagraph (A), the term "reasonable cause to believe that the information is inaccurate" means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.

(2) Duty to correct and update information

A person who—

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

(3) Duty to provide notice of dispute

If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

(4) Duty to provide notice of closed accounts

A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.

(5) Duty to provide notice of delinquency of accounts

(A) In general

A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the date of delinquency on the account, which shall be the month and year of the commencement of the delinquency on the account that immediately preceded the action.

(B) Rule of construction

For purposes of this paragraph only, and provided that the consumer does not dispute the information, a person that furnishes information on a delinquent account that is placed for collection, charged for profit or loss, or subjected to any similar action, complies with this paragraph, if—

(i) the person reports the same date of delinquency as that provided by the creditor to which the account was owed at the time at which the commencement of the delinquency occurred, if the creditor previously reported that date of delinquency to a consumer reporting agency;

(ii) the creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and follows reasonable procedures to obtain the date of delinquency from the creditor or another reliable source and reports that date to a consumer reporting agency as the date of delinquency; or

(iii) the creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained as provided in clause (ii), the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.

(6) Duties of furnishers upon notice of identity theft-related information

(A) Reasonable procedures

A person that furnishes information to any consumer reporting agency shall have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 1681c-2 of this title relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information.

(B) Information alleged to result from identity theft

If a consumer submits an identity theft report to a person who furnishes information to a consumer reporting agency at the address specified by that person for receiving such reports stating that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.

(7) Negative information

(A) Notice to consumer required

(i) In general

If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 1681a(p) of this

title furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

(ii) Notice effective for subsequent submissions

After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 1681a(p) of this title with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

* * *

(8) Ability of consumer to dispute information directly with furnisher

(A) In general

The Bureau, in consultation with the Federal Trade Commission, the Federal banking agencies, and the National Credit Union Administration, shall prescribe regulations that shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request of a consumer.

* * *

(b) Duties of furnishers of information upon notice of dispute

(1) In general

After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—

(i) modify that item of information;

(ii) delete that item of information; or

(iii) permanently block the reporting of that item of information.

(2) Deadline

A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 1681i(a)(1) of this title within which the consumer reporting agency is required to complete actions required by that section regarding that information.

(c) Limitation on liability

Except as provided in section 1681s(c)(1)(B) of this title, sections 1681n and 1681*o* of this title do not apply to any violation of--

(1) subsection (a) of this section, including any regulations issued thereunder;

(2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 1681n or 16810 of this title, as applicable, for violations of subsection (b) of this section; or

(3) subsection (e) of section 1681m of this title.

(d) Limitation on enforcement

The provisions of law described in paragraphs (1) through (3) of subsection (c) of this section (other than with respect to the exception described in paragraph (2) of subsection (c) of this section) shall be enforced exclusively as provided under section 1681s of this title by the Federal agencies and officials and the State officials identified in section 1681s of this title.

(e) Accuracy guidelines and regulations required

(1) Guidelines

The Bureau shall, with respect to persons or entities that are subject to the enforcement authority of the Bureau under section 1681sof this title—

(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

(2) Criteria

In developing the guidelines required by paragraph (1)(A), the Bureau shall—

(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on June 7, 2016. I certify that I have caused the foregoing to be served by mail on plaintiff-appellant Anthony Rivera, at the address listed on the court's docket. I certify that all other participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: June 7, 2016

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