No. 19-1519

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOSEPH W. DENAN, et al.,

Plaintiff-Appellants,

V.

TRANSUNION, LLC,

Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
Civil Action No. 1:18-cv-05027

BRIEF OF *AMICI CURIAE* NATIONAL CONSUMER LAW CENTER AND NATIONAL ASSOCIATION OF CONSUMER ADVOCATES IN SUPPORT OF PLAINTIFF-APPELLANTS JOSEPH W. DENAN, *ET AL.*, AND IN SUPPORT OF REVERSING THE DISTRICT COURT'S DECISION

John Soumilas
Lauren KW Brennan
FRANCIS & MAILMAN, P.C.
1600 Market Street, Suite 2510
Philadelphia, PA 19103
T: (215) 735-8600
jsoumilas@consumerlawfirm.com
lbrennan@consumerlawfirm.com

Counsel for Amicus Curiae

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 19-1519

Short Caption: Joseph W. Denan v. Transunion, LLC

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

National Consumer Law Center (proposed Amicus Curiae)

National Association of Consumer Advocates (proposed Amicus Curiae)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Francis & Mailman, P.C.

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: s/ John Soumilas Date: 7/24/2019

Attorney's Printed Name: John Soumilas

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: Francis & Mailman, P.C., 1600 Market Street, Suite 2510, Philadelphia, PA 19103

Phone Number: 215-735-8600 Fax Number: 215-940-8000

E-Mail Address: jsoumilas@consumerlawfirm.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 19-1519

Short Caption: Joseph W. Denan v. Transunion, LLC

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[✓] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

National Consumer Law Center (proposed Amicus Curiae)

National Association of Consumer Advocates (proposed Amicus Curiae) (NEW)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Francis & Mailman, P.C.

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: s/ Lauren KW Brennan Date: 7/25/2019

Attorney's Printed Name: Lauren KW Brennan

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: Francis & Mailman, P.C., 1600 Market Street, Suite 2510, Philadelphia, PA 19103

Phone Number: 215-735-8600 Fax Number: 215-940-8000

E-Mail Address: lbrennan@consumerlawfirm.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

The undersigned counsel provides the following statement in compliance with Federal Rule of Appellate Procedure 26.1 and Seventh Circuit Rule 26.1:

1. The full name of every party that the attorney represents in the case:

   National Consumer Law Center; National Association of Consumer Advocates.

2. The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

   Francis & Mailman, P.C.

3. If the party is a corporation:

   i) Identify all its parent corporations, if any:

   N/A.

   ii) List any publicly held company that owns 10% or more of the party's stock:

   N/A.

/s/ John Soumilas
John Soumilas

TABLE OF CONTENTS

Page

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT C-1

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES ii

INTEREST OF AMICI CURIAE.....1

INTRODUCTION 2

ARGUMENT 3

I. Fair And Accurate Reporting Is Essential To Protecting Individuals' Rights And Credit Opportunities.....3

II. Fair And Accurate Credit Reporting Begins With Reliable Sources Of Data.....6

III. Requiring CRAs To Exclude Information From Objectively Unreliable Sources Protects Consumers' Rights And Imposes Minimal Burdens On CRAs 11

CONCLUSION.....14

TABLE OF AUTHORITIES

Page(s)

CASES

Aldaco v. Rentgrow, Inc.,
921 F.3d 685 (7th Cir. 2019) 8

Cortez v. Trans Union, LLC,
617 F.3d 688 (3d Cir. 2010) 7

Handrock v. Ocwen Loan Servicing, LLC,
216 F. Supp. 3d 869 (N.D. Ill. 2016).....8

Henson v. CSC Credit Servs.,
29 F.3d 280 (7th Cir. 1994) 3, 7, 8, 9

Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA,
559 U.S. 573 (2010).....1

Johnson v. Trans Union, LLC,
524 Fed. App'x 268 (7th Cir. 2013) 9

Reyes v. Experian Info. Sols, Inc.,
___ Fed. App'x ___, 2019 WL 2157436 (9th Cir. May 17, 2019) 10, 13

Reyes v. Experian Info. Sols, Inc.,
2017 WL 4712075, (C.D. Cal. Oct. 13, 2017) 10

Sarver v. Experian Info. Sols.,
390 F.3d 969 (7th Cir. 2004) 7

TRW Inc. v. Andrews,
534 U.S. 19 (2001).....4

STATUTES

Fair Credit Reporting Act 15 U.S.C. §§ 1681-1681x .....*passim*

15 U.S.C. § 1681(b).....4

15 U.S.C. § 1681e(b) 6, 7, 9

OTHER AUTHORITIES

12 C.F.R. § 1041 .....5, 13

Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues, Congressional Research Service (Mar. 28, 2019) 6

CONSUMER FINANCIAL PROTECTION BUREAU, KEY DIMENSION AND PROCESSES IN THE U.S. CREDIT REPORTING SYSTEM: A REVIEW OF HOW THE NATION'S LARGEST CREDIT BUREAUS MANAGE CONSUMER DATA 8 (2012) 12, 13

SUSANNA MONTEZEMOLOA & SARAH WOLFF, CENTER FOR RESPONSIBLE LENDING, PAYDAY MAYDAY: VISIBLE AND INVISIBLE PAYDAY LENDING DEFAULTS 3 (March 2015).....13, 14

Who's Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System, Hearing Before the United States House of Representatives Committee on Financial Services, 116th Cong. 1 (2019) 11, 12

Chi Chi Wu et al., *Automated Injustice Redux: Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors* National Consumer Law Center, (February 2019) 5

INTEREST OF AMICI CURIAE

Both Appellants and Appellees consent to the filing of this amicus brief by the National Consumer Law Center ("NCLC") and the National Association of Consumer Advocates ("NACA").

NCLC is a national nonprofit research and advocacy organization. NCLC draws on over forty years of expertise working on protecting the integrity of the Fair Credit Reporting Act ("FCRA") rights of low-income consumers to provide information, legal research, and policy analysis to Congress, state legislatures, administrative agencies, and courts. NCLC and counsel appear now in this role. Among other treatises, NCLC publishes *Fair Credit Reporting* (9th ed. 2018), a volume that focuses upon the FCRA.[1] Its interest in this appeal flows from its efforts to protect the integrity of the FCRA rights of consumers like Plaintiff-Appellants herein.

NACA is a national nonprofit association of attorneys and consumer advocates committed to representing consumers' interests. Its members are private and public sector attorneys, legal services attorneys, law professors and law students whose primary focus is the protection and representation of consumers. NACA's

---

[1] The Supreme Court of the United States has cited NCLC treatises with approval. *See e.g., Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 605 (2010) (citing to R. Hobbs *et al.*, National Consumer Law Center, *Fair Debt Collection* §§ 6.12.2, 7.3 (6th ed.2008)); *see also, id*. at FN 12.

mission is to promote justice for all consumers by maintaining a forum for communication, networking, and information-sharing among consumer advocates across the country, particularly regarding legal issues, and by serving as a voice for its members and consumers in the ongoing struggle to curb unfair or abusive business practices that affect consumers. In pursuit of this mission, making certain that corporations comply with state and federal consumer protection laws in general and the FCRA in particular has been a continuing and significant concern of NACA since its inception.

No party or counsel for any party in the pending action authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief, and no other person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the *amici curiae*, their members, or their counsel.

All parties to this appeal consented to the filing of this brief.

INTRODUCTION

Amici curiae NCLC and NACA submit this brief in support of Plaintiff-Appellants Joseph W. Denan and Adrienne L. Padgett, and in support of the thousands of consumers nationwide who will be harmed if this Court adopts the district court's flawed distinction between "legal" and "factual" inaccuracies. NCLC and NACA urge this Court to instead uphold the longstanding balancing

approach in this Circuit, which weighs the burdens of establishing accuracy against the harms inflicted on consumers by inaccurate reports. *Henson v. CSC Credit Servs.,* 29 F.3d 280, 285 (7th Cir. 1994). Certain sources of information are so inherently unreliable, based on a review of available and objective data, that it is reasonable to expect consumer reporting agencies to exclude information from such sources, regardless of whether the information is characterized as "legal" or "factual." The accounts at issue in this case were reported by sources which lacked business licenses and have a demonstrated history of illegal activity, in violation of Appellee's own credentialing procedures for furnishers. Regardless of whether information provided by these sources is "legal" or "factual," the harm of reporting that consumers owe illegal and uncollectable debts far outweighs the minimal efforts required if Appellee were to follow its own credentialing processes and exclude this information. The judgement of the District Court should be reversed.

ARGUMENT

I. Fair And Accurate Reporting Is Essential To Protecting Individuals' Rights And Credit Opportunities

The Fair Credit Reporting Act ("FCRA") is a federal law regulating consumer reporting agencies ("CRAs") such as Appellee, as well as furnishers of information, and users of reports. 15 U.S.C. §§ 1681, *et seq*. Its purpose is:

> to require that consumer reporting agencies adopt reasonable procedures for meeting 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). The FCRA helps to support our national economy, because it provides the framework for an efficient and uniform credit reporting system which both promotes competition – ensuring potential creditors have access to the same information on potential borrowers – and helps manage risk – providing dependable credit information, without which creditors may not extend credit or may extend it at higher costs to consumers to account for the higher level of risk. *See also TRW Inc. v. Andrews*, 534 U.S. 19, 23 (2001) ("Congress enacted the FCRA in 1970 to promote efficiency in the Nation's banking system and to protect consumer privacy.").

CRAs play a vital role in the credit reporting system as the gatekeepers of data – determining what data is appropriate to buy and sell, and who may buy and sell it. A CRA's decision to accept data from an unreliable source can exact serious consequences upon consumers by adding inaccurate and negative information to a consumer's credit file, increasing the risk that they will be denied credit or receive credit only at an increased cost.

The protections of the FCRA imposed upon CRAs are particularly important with respect to reporting the existence of status short-term, high-interest loans, commonly referred to as payday loans. CONSUMER FINANCIAL PROTECTION

BUREAU, PAYDAY LOANS AND DEPOSIT ADVANCE PRODUCTS: A WHITE PAPER OF INITIAL DATA FINDINGS 8 (2013) ("2013 CFPB White Paper"). These loans are typically used by the most financial vulnerable consumers, who are "living paycheck to paycheck, [and] have little to no access to other credit products" CFPB Final Rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans, 12 C.F.R. § 1041 at p. 2 (2017), *available at https://files.consumerfinance.gov/f/documents/201710_cfpb_final-rule_payday-loans-rule.pdf* ("Payday Lending Final Rule"); 2013 CFPB White Paper at pp. 17-20. The CFPB has found that payday lending practices diverge from those of traditional credit grantors, and are harmful to the consumers who use their services. Payday Lending Final Rule at pp. 2-3. Specifically, consumers who take out payday loans are more likely to default, and be subject to "extended sequences of unaffordable loans " than other borrowers *Id.* at p. 3.

The critical role that credit reports play in consumers' lives means that references to payday loans on credit reports can have devastating consequences for consumers. Credit reports dictate a consumer's ability to obtain credit and the amount they must pay for it, to buy a house or rent an apartment, and even to find a job. *See* Chi Chi Wu et al., *Automated Injustice Redux: Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors*, National Consumer Law Center, (February 2019), *available at*

https://www.nclc.org/images/pdf/credit_reports/automated-injustice-redux.pdf; Cheryl R. Cooper & Darryl E. Getter, *Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues*, Congressional Research Service, (Mar. 28, 2019), *available at* https://crsreports.congress.gov/product/pdf/R/R44125. It is therefore of utmost importance that any references to payday loans on credit reports be accurate.

II. Fair And Accurate Credit Reporting Begins With Reliable Sources Of Data

"Information is only as good as its source." This old adage is true in many contexts, including in credit reporting. Because the default rate is high, credit reporting related to payday lending is far more likely to be adverse to the consumer's interest than other types of credit data. Therefore, it is even more important that CRAs ensure that the data they report about such loans comes from reliable sources, and in fact represents a true liability by the consumer. Vetting of sources is a foundational method by which CRAs can assure the accuracy of the information they report.

A CRA's duty to assure the accuracy of information it reports about consumers is enshrined in the FCRA at section 1681e(b), which requires that "[w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information

concerning the individual about whom the report relates." 15 U.S.C. § 1681e(b). The reasonableness of a reporting agency's procedures is usually a question for trial unless the reasonableness or unreasonableness of the procedures is beyond question. *Sarver v. Experian Info. Sols.*, 390 F.3d 969, 971 (7th Cir. 2004).

Neither the text of the FCRA nor the case law of this Circuit supports the distinction made by the District Court in this case between "legal" inaccuracy and "factual" inaccuracy. App. 3-4. Rather, the touchstone both in the statutory text and in the case law is what is *reasonable* to expect of CRAs. In *Henson v. CSC Credit Servs., Inc.*, 29 F. 3d 280 (7th Cir. 1994), this Court established a balancing test for determining whether a CRA acted reasonably with respect to assuring the accuracy of information it reported, weighing the costs a particular procedure would impose upon the CRA against the potential harm inaccurate information would cause to the consumer. *Id.* at 287.[2]

Furthermore, the *Henson* court explicitly incorporated the idea of reliability of data into its analysis, finding that the scope of a CRA's responsibilities depend on whether "the reporting agency itself knows or should know that the source [of the information] is unreliable." *Id.* This test does not seek to categorize the information

[2] The Third Circuit takes a similar approach. *Cortez v. Trans Union, LLC*, 617 F.3d 688, 709 (3d Cir. 2010) ("Judging the reasonableness of a credit reporting agency's procedures involves weighing the potential harm from inaccuracy against the burden of safeguarding against such inaccuracy.") (citing *Philbin v. Trans Union Corp.*, 101 F.3d 957, 963 (3d Cir. 1996)).

itself, but instead asks what the burden on the CRA would be in order to maintain and report the information accurately. Furthermore, even moderately burdensome procedures to assure accuracy may be justified where the source is not clearly reliable and the potential harm to the consumer from inaccurate reporting is high.

The legal vs. factual distinction the District Court adopted below fails to account for the longstanding balancing test of *Henson.* Furthermore, it fails to account for the reality that many of the types of information that CRAs regularly report are neither strictly legal nor strictly factual – they are combined questions of law and fact. Whether a criminal infraction is a felony or misdemeanor requires an application of a particular jurisdiction's criminal code to the facts related to actions taken by the alleged offender.[3] Whether a debt was discharged in bankruptcy involves a comparison of the facts of a debtor's liabilities against the provisions of the bankruptcy code.[4] As examined in *Henson*, whether there is a judgment in force against a particular individual involves the application of state law to individual circumstances. 29 F.3d at 285 (referencing Indiana Rules of Trial Procedure in determining whether CRAs reporting regarding the existence of a money judgment

---

[3] *See, e.g., Aldaco v. Rentgrow, Inc.*, 921 F.3d 685, 688 (7th Cir. 2019) (analyzing meaning of "conviction" under federal law for purposes of determining whether reported conviction was accurate for FCRA purposes).

[4] *See Handrock v. Ocwen Loan Servicing, LLC*, 216 F. Supp. 3d 869, 875 (N.D. Ill. 2016) (credit report listing debt discharged in bankruptcy was inaccurate).

was accurate). Indeed, credit reporting is rife with criminal records, bankruptcies, civil judgments, tax liens, charged-off debts, and other liabilities which are considered adverse precisely because of their legal status.

It therefore makes little sense to rely upon a test with a strict categorization of information as "factual" or "legal" in determining a CRA's responsibility for assuring the "maximum possible" accuracy of information as required by FCRA section 1681e(b). The test is whether the question of accuracy can reasonably be determined through reference to objective, available data from reliable sources. And this is exactly what the balancing test of *Henson* achieves. In *Henson*, the Seventh Circuit found that CRAs often need not investigate beyond the face of the public record of a civil judgment, not because a judgment listing is "legally accurate," but because the information is objective and available to a CRA from a "presumptively reliable source." 29 F.3d at 285.[5]

Applying the *Henson* balancing test here demonstrates the District Court's error. Determining whether the debts at issue in this case were valid presented only a minimal burden on Appellee: it simply needed to follow its own internal procedures for reviewing whether a non-bank entity possessed the appropriate

[5] *See also Johnson v. Trans Union, LLC*, 524 Fed. App'x 268, 271 (7th Cir. 2013) (CRA's obligations with respect to reporting of child support obligation turned not upon the legal character of the reported information, but upon fact that state agency was an inherently reliable source).

license. App. 45-46. The record here demonstrates that Appellee had ample objective information in its possession indicating that no such licenses existed. App. 24-26, 41. When contrasted with the substantial harm exacted on consumers by the reporting of inaccurate and invalid payday loans, it is clear that it was unreasonable for Appellee to fail to follow procedures which would have excluded information reported by these highly unreliable sources.

In a highly analogous case where, as here, the reliability of the data source was at issue, the Ninth Circuit has rejected a strict categorization of data as "legal" or "factual." *Reyes v. Experian Info. Sols, Inc.,* ___ Fed. App'x ___, 2019 WL 2157436 (9th Cir. May 17, 2019). In *Reyes*, the plaintiff asserted that payday loans originated by the same type of online tribal lenders at issue here were usurious and uncollectible. *Reyes v. Experian Info. Sols, Inc.*, No. SACV 16-00563 AG (AFMx), 2017 WL 4712075, at *1 (C.D. Cal. Oct. 13, 2017). The district court granted summary judgment in favor of the CRA defendant on the same bases the District Court applied here, finding that the validity of the loan was a question of "legal accuracy" and citing to *Carvalho. Id.* at *4. On review, the Ninth Circuit reversed, finding that the CRA's failure to follow its own stated policy of refusing to report loans that were unverifiable because they were associated with known predatory lenders could be found to be a willful violation of the FCRA. *Reyes v. Experian Info. Sols, Inc.,* ___ Fed. App'x ___, 2019 WL 2157436, at *2 (9th Cir. May 17,

2019). The same outcome is appropriate here.

III. Requiring CRAs To Exclude Information From Objectively Unreliable Sources Protects Consumers' Rights And Imposes Minimal Burdens On CRAs

The burdens of requiring CRAs like Appellee to determine whether online payday lenders who seek to report information on credit reports are in fact reliable sources are far outweighed by the benefits such screening provides to consumers and to the credit reporting industry as a whole.

Vetting and credentialing data sources according to their reliability is already a central part of the credit industry, one that is essential to the integrity and accuracy of the credit system and to protecting consumers. Furthermore, Appellee itself acknowledges its own central role in determining whether certain forms of data are reliable. In his testimony before the U.S. House Financial Services Committee, Appellee's President and CEO James Peck repeatedly stated that CRAs like Appellee act as "curators" of credit data. *Who's Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System, Hearing Before the United States House of Representatives Committee on Financial Services*, 116th Cong. 1 (2019) at pp. 4-5 (statement of James M. Peck, President and Chief Executive Officer, TransUnion) ("Peck Congressional Testimony"), *available at* https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-peckj-20190226.pdf. According to Peck, each entity that provides data to be included on

consumers reports is "thoroughly vetted before being approved to provide data and is repeatedly reviewed throughout their relationship with TransUnion." *Id.* at p. 6.

Indeed, the record here shows that Appellee already has policies in place that should have prevented its inaccurate reporting about Appellants. Appellee's own policies require it to inspect the applicable business licensing status of any entity seeking to furnish information to Appellee. App. 21, 23. The online payday lenders are issue here are not licensed to make loans in multiple states, including those where Plaintiff-Appellants reside. App. 24, 26. The business licensing status of these tribal lenders is publicly available and objective information, and indeed was provided directly to Appellee as part of its own vetting process. *Id.*

Similarly, Appellee retains in its own database substantial address history establishing the residence of Plaintiff-Appellants. App. 31; CONSUMER FINANCIAL PROTECTION BUREAU, KEY DIMENSION AND PROCESSES IN THE U.S. CREDIT REPORTING SYSTEM: A REVIEW OF HOW THE NATION'S LARGEST CREDIT BUREAUS MANAGE CONSUMER DATA 8 (2012) ("2012 CFPB Report") *available at* https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf. By following its own existing procedures, Appellee would have found objective information demonstrating that it had no basis to report any amount owed on the accounts at issue.

Such screening procedures, applied well in advance of accepting and reporting

any loan data, are standard within the credit data industry. 2012 CFPB Report at 18 (inspecting of business license is part of standard new furnisher screening process for national CRAs). Indeed, similar procedures implemented by Appellee's competitor, Experian Information Solutions, Inc., led Experian to decide to stop reporting all data reported by online tribal payday lenders similar to those at issue here in December 2014. *Reyes*, 2019 WL 2157436, at *1.

In contrast to the minimal burdens imposed by requiring CRAs to refrain from reporting information provided by objectively unreliable sources, the reporting of such information presents an immense risk of harm to consumers. According to the Center for Responsible Lending, consumers who take out payday loans are far more likely to default than consumers accessing traditional financing – nearly half of consumer who take out a payday loan default within two years. SUSANNA MONTEZEMOLOA & SARAH WOLFF, CENTER FOR RESPONSIBLE LENDING, PAYDAY MAYDAY: VISIBLE AND INVISIBLE PAYDAY LENDING DEFAULTS 3 (March 2015), *available at http://www.responsiblelending.org/payday-lending/research analysis/finalpaydaymayday_defaults.pdf*. Consumers may also simply obtain another loan to avoid the negative consequences of default, a phenomenon known as "re-borrowing." Payday Lending Final Rule at 4. Appellee's reporting of invalid payday loans serves to perpetuate the impact of the harmful "cycle of debt" on already struggling consumers who turn to such products, by providing further

pressure to repay loans, even when the debt is invalid. *Id*. at 3-4, 35. Furthermore, even in the absence of a default, the mere existence of a payday loan on a consumer's credit report is an indicator of low income, financial instability and even potential insolvency. Montezemoloa & Wolff at 11; 2013 CFPB White Paper at 18. Given these substantial harms that flow from the reporting of invalid payday loans, requiring CRAs such as Appellee to take the utmost care in assuring that the entities that report information about payday loans are reliable is of foundational important to the FCRA's consumer-protection purposes.

CONCLUSION

In enacting the Fair Credit Reporting Act and requiring consumer reporting agencies to maintain reasonable procedures to assure maximum possible accuracy, Congress intended to balance the needs of commerce against protection of consumers' rights. The test set forth in the Seventh Circuit's decision in *Henson* properly reflects and enforces this balance. The District Court here departs from the existing and established standard of *Henson* in a manner that would be harmful to consumers (possibly many thousands of consumers) who have information of a mixed legal and factual nature inaccurately reported about them. The reporting of legally incorrect information cannot be the purpose of the FCRA's "maximum possible accuracy" standard. *Amici* therefore respectfully request that this Court

reverse and remand the instant matter to the United States District Court for the Northern District of Illinois for further proceedings.

Dated: July 26, 2019

Respectfully submitted,

/s/ John Soumilas

John Soumilas
Lauren KW Brennan
FRANCIS & MAILMAN, P.C.
1600 Market Street, Suite 2510
Philadelphia, PA 19103
T: (215) 735-8600
jsoumilas@consumerlawfirm.com
lbrennan@consumerlawfirm.com

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a) and Circuit Rule 29-3, I certify as follows:

1. The foregoing amicus brief complies with the type-volume Circuit Rule 29 because this brief contains 3,275 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and

2. 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 this brief has been prepared in a proportionally-spaced typeface using Microsoft Word 2011, the word processing system used to prepare the brief, in 14-point font in Times New Roman font.

/s/ John Soumilas
John Soumilas

CERTIFICATE OF SERVICE

In accordance with Federal Rule of Appellate Procedure 25, I certify that on July 26, 2019, I electronically filed this document through the ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ *John Soumilas*
John Soumilas